

**AUG 06 2004**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**STATE OF ILLINOIS**  
**Pollution Control Board**

CITY OF KANKAKEE, )  
)  
Petitioner, )  
)  
v. )  
)  
)  
COUNTY OF KANKAKEE, COUNTY )  
BOARD OF KANKAKEE, and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )  
)  
Respondents. )

PCB 03-125  
  
(Third-Party Pollution Control  
Facility Siting Appeal)

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MERLIN KARLOCK, )  
)  
Petitioner, )  
)  
v. )  
)  
)  
COUNTY OF KANKAKEE, COUNTY )  
BOARD OF KANKAKEE, and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )  
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Respondents. )

PCB 03-133  
  
(Third-Party Pollution Control  
Facility Siting Appeal)

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MICHAEL WATSON, )  
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Petitioner, )  
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v. )  
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COUNTY OF KANKAKEE, COUNTY )  
BOARD OF KANKAKEE, and WASTE )  
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PCB 03-134  
  
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KEITH RUNYON, )  
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Petitioner, )  
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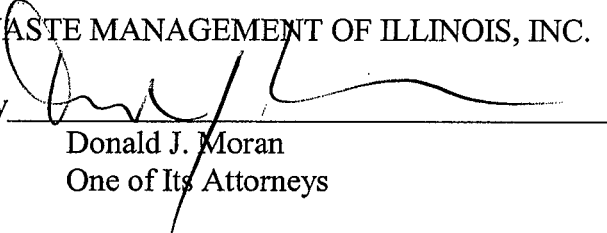
**NOTICE OF FILING**

TO: See Attached Service List

PLEASE TAKE NOTICE that on August 6, 2004, we filed with the Illinois Pollution Control Board, the attached **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION FOR RELIEF FROM JUDGMENT** in the above entitled matter.

WASTE MANAGEMENT OF ILLINOIS, INC.

By

  
\_\_\_\_\_  
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One of Its Attorneys

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**PROOF OF SERVICE**

Victoria L. Kennedy, a non-attorney, on oath states that she served a copy of the foregoing **WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION FOR RELIEF FROM JUDGMENT** on the following parties by hand delivery to Hearing Officer Bradley Halloran at 100 West Randolph Street, Suite 11-500, Chicago, Illinois 60601 on this 6th day of August, 2004, and by depositing said copy in the U.S. mail at 161 N. Clark St., Chicago, Illinois 60601, on this 6th day of August, 2004 to all other parties at their addresses indicated below:

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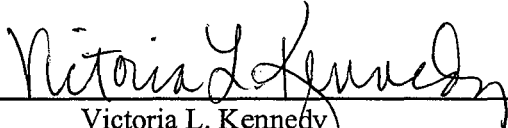
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\_\_\_\_\_  
Victoria L. Kennedy)

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## MOTION FOR RELIEF FROM JUDGMENT

Respondent Waste Management of Illinois Inc. ("WMII"), pursuant to Illinois Pollution Control Board ("IPCB") Procedural Rule 101.904(b)(1), moves for the entry of an order granting relief from the August 7, 2003 Order vacating the Kankakee County Board's January 31, 2003 approval based upon newly discovered evidence. This evidence establishes that Brenda Keller received and had knowledge of pre-filing notice, and warrants reversal of the IPCB decision that the Kankakee County Board lacked jurisdiction to consider the local siting application on the ground that Mrs. Keller did not receive pre-filing notice. In support of this motion, WMII states the following:

### I. PROCEDURAL BACKGROUND

On August 16, 2002, WMII filed an application for site location approval ("Application") with Respondent County of Kankakee ("Kankakee County") to be reviewed and decided by the Kankakee County Board ("County Board") pursuant to Section 39.2 of the Illinois Environmental Protection Act (the "Act"). 415 ILCS 5/39.2 (2002). The Application requested local siting approval for an approximate 302-acre expansion of the existing Kankakee Recycling and Disposal Facility ("Kankakee Landfill") located in unincorporated Kankakee County, Illinois. On January 31, 2003, after 11 days of public hearings conducted from November 18 to December 6, 2002, the County Board granted local siting approval in a seven-page written decision ("Approval").

Respondents City of Kankakee ("City of Kankakee"), Merlin Karlock ("Karlock"), Keith Runyon ("Runyon"), and Michael Watson ("Watson") filed third-party appeals with the IPCB, contesting the Approval, *inter alia*, on the ground that the County Board lacked jurisdiction to decide the Application based on an alleged failure to serve certain persons with notice of WMII's intent to

file the Application in accordance with Section 39.2(b) of the Act.<sup>1</sup> Respondents also contested the Approval on other grounds not raised in this appeal.

On August 7, 2003, the IPCB issued an Opinion and Order ("August 7 Order"), reversing the Approval. The IPCB held that the County Board lacked jurisdiction to decide the Application based solely on the IPCB's determination that one property owner, Mrs. Keller, did not receive pre-filing notice. Specifically, the August 7 Order states:

The issue of whether or not proper notice to landowners was provided under Section 39.2(b) of the Act (415 ILCS 5/39.2(b)(2002)) is a threshold issue. Failure to provide notice under Section 39.2 of the Act (415 ILCS 5/39.2(b)(2002)) divests the County Board of jurisdiction in this landfill siting appeal. After a careful examination of the record and the arguments presented by the parties the Board finds that proper notice was not provided to Brenda Keller and the Board will vacate the decision of the County for lack of jurisdiction. \* \* \* Since the Board has found that the County Board lacked jurisdiction to review the siting application, the Board need not address the remaining issues regarding fundamental fairness and the criteria raised by the parties.

On September 12, 2003, WMII filed a motion to reconsider and vacate the August 7 Order based on the IPCB's errors in applying existing law. The IPCB denied WMII's motion to reconsider on October 16, 2003 ("October 16 Order"), on the ground that the motion did not present new evidence or a change in the law that indicated the IPCB's decision was in error.

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<sup>1</sup> Section 39.2(b) of the Act requires applicants to give pre-filing notice of the intent to file a siting application to certain property owners. Section 39.2(b) provides, in pertinent part:

No later than 14 days before the date on which the county board or governing body of the municipality receives a request for site approval, the applicant shall cause written notice of such request to be served either in person or by registered mail, return receipt requested, on the owners of all property within the subject area not solely owned by the applicant, and on the owners of all property within 250 feet in each direction of the lot line of the subject property, said owners being such persons or entities which appear from the authentic tax records of the County in which such facility is to be located ...

WMII appealed the August 7 and October 16 Orders to the Appellate Court. *Waste Management of Illinois, Inc. v. Illinois Pollution Control Board, et al., No. 3-03-0924 (3d Dist.)* The appeal challenges the reversal by the IPCB of the Approval, and asserts that Mrs. Keller was provided pre-filing notice. During the pendency of this appeal, new evidence was discovered establishing that contrary to the IPCB's findings, Mrs. Keller was in actual receipt of pre-filing notice as required by Section 39.2(b). Relief from the judgment is therefore warranted.

## II. FACTS <sup>2</sup>

Public hearings on the Application were held before the County Board between November 18 and December 6, 2002. (C1244-1272). At the start of the public hearings, Objectors Karlock and Richard Murray filed three motions to dismiss the proceedings due to an alleged lack of jurisdiction for failure to serve notice on certain property owners. (C1244 at 45-105). The Hearing Officer denied the motions. (C1244 at 61, 68, 104).

On December 4, 2002, near the conclusion of the public hearings, a fourth motion to dismiss the proceedings for lack of jurisdiction was filed by Objector Watson ("Watson Motion"). Watson claimed that Mr. Robert Keller and Mrs. Keller, husband and wife, residing at 765 East 6000 South Road, Chebanse, Illinois, never received notice. (C1268 at 105-107).

### A. Testimony from Evidentiary Hearing on Issue of Notice to The Kellers

To address the notice issue raised in the Watson Motion, the Hearing Officer heard testimony from special process server, Ryan Jones ("Jones"), as well as from Mr. and Mrs. Keller on December 5, 2002. Their testimony disclosed the following.

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<sup>2</sup> References to the Common Law Record will be cited herein as "(R. CL vol. \_\_, p. 00000\_\_)". References to the transcripts of the public hearings held before the County Board on November 18 through December 6, 2002 will be cited as "(C\_\_\_\_ at \_\_)".

The Kellers were personal friends of Objector Watson, and had a social relationship with him for over three years. (C1271 at 63-64, 104-105). Watson operates United Disposal of Bradley, Inc., a waste hauler and waste transfer facility, that competes with WMII in Kankakee County. Mr. Keller hauled garbage for Watson without being paid. (C1271 at 105).

Jones was a licensed process server with Diligent Detective Agency in Clifton, Illinois, and was assigned the responsibility of serving notice on the Kellers. (C1271 at 5-6, 44, 46-47). Between the four-day period of Monday, July 29 through Thursday, August 1, 2002, at various times throughout the day and evening, Jones made five separate attempts to personally serve Mrs. Keller at the 765 East 6000 South Road address. (C1271 at 7-15, 18, 21-23, 26-27, 35, 58-59). On all five attempts, Jones repeatedly knocked on the front and side doors of the Keller home. Except on July 31, when a woman who refused to give her name or accept notice came to the door, no one answered the knocks on either door.

Jones made his fifth and final attempt on Thursday, August 1, 2002 at approximately 12:19 p.m. (C1271 at 12). Jones again knocked on both doors, and getting no response, posted a copy of the notice to the side door, which had a window located at eye level. (C1271 at 12-14). Jones posted the notice in the window portion of the door, which was about five feet from the ground. (C1271 at 12-14). Jones posted the notice by securely affixing it to the window surface of the door with two strips of packing tape at the top and bottom of the notice. (C1271 at 13-15).

On August 1, 2002, Mrs. Keller arrived home from work at around 4:00 p.m. (C1271 at 73-74). She entered her home via the side door. (C1271 at 74). The notice Jones posted at around 12:19 p.m. would have been prominently affixed to that door. (C1271 at 12-15).

At the evidentiary hearing, Mrs. Keller claimed that she did not "find" any posted notice at



her home on August 1, 2002. She did not state or explain how the posted notice came to be removed from the door to her residence. (C1271 at 73-74). No evidence was provided establishing how the notice disappeared or was removed from the premises.

At Watson's request, both Kellers also signed affidavits in support of the Motion. On November 9, 2002, two Saturdays before the public hearings began, Mr. Keller and Watson made a plan for the Kellers to sign affidavits claiming that they never received notice. (C1271 at 77-81, 95-97). Watson went to the Kellers' residence on Thanksgiving Day, November 28, 2002, and asked Mrs. Keller to sign an affidavit asserting that she never received notice. Watson asked Mrs. Keller to sign the affidavit, without any discussion or explanation as to its purpose or contents. (C1271 at 78-80, 95-96). She testified that she signed the affidavit "simply because Mr. Watson asked" her to. (C1271 at 90).

Both Kellers testified that they did not know who prepared the affidavits, and had never talked with anyone to provide information or verify the accuracy of the statements contained in the affidavits prior to signing. (C1271 at 78-83, 90, 95-97, 119-122).

The Watson Motion was filed on December 4th. In the Watson Motion, Watson stated that the Kellers did not observe the notice posted "on the door of the Keller's [sic] home." (Watson Public Hearing Ex. 4 at p. 2). At the time the Watson Motion was filed, *there was no testimony or other evidence in the record indicating where the process server posted the notice.*

After hearing testimony from Jones and the Kellers, and oral argument from legal counsel, the Hearing Officer denied Watson's motion to dismiss. (C1271 at 148). On January 31, 2003, the County Board determined that sufficient pre-filing notice was established and that it had jurisdiction to decide the Application. The County Board then granted the Approval. On appeal, the IPCB reversed the Approval in its August 7 Order.

**B. Newly Discovered Evidence of Actual Section 39.2(b) Notice to Robert and Brenda Keller.**

Following the IPCB reversal, WMII not only appealed, but also filed a second siting application (the "Second Application") with the Kankakee County Board. Although identical in all material respects with the prior Application, the Second Application was denied for failure to satisfy criteria one, three and six of Section 39.2(a). WMII filed an appeal to the IPCB on the basis that the denial was reached as a result of fundamentally unfair procedures and that the rejection of criteria one, three and six was against the manifest weight of the evidence. This appeal is pending as *WMII v. County Board of Kankakee County, No. PCB 04-186 (P.C.B. April 21, 2004)* ("Kankakee Appeal").

On July 20, 2004, during the course of discovery conducted in the Kankakee Appeal, WMII took the deposition of County Board Member Lisa Latham Waskosky ("Waskosky"). The transcript of the Waskosky deposition is attached as Exhibit A. Waskosky recounted that she first met the Kellers because of their mutual interest in scuba diving and that they shared mutual friends. (Exhibit A at 53-56). Waskosky further testified to a conversation with Mr. Keller in August of 2002, prior to her election to the County Board in November, 2002. During the conversation in the parking lot of a local retailer in Kankakee County, Mr. Keller admitted to Waskosky that both he and his wife had actual knowledge of the pre-filing notice posted at their home. Specifically, Waskosky testified as follows:

Q. Who is Rob Keller?

A. Rob Keller is the person from the first application that stated he did not receive notification.

Q. And when you say the first application, you're referring to the application that was filed on August 16th of 2002?

A. That is correct.

Q. And how do you know that Rob Keller had claimed that he did not receive notice for the first siting application, the one filed on August 16th of 2002?

A. Because Mr. Keller told me himself prior to my election to the county board that notice had been served and affixed to their door and he instructed his wife, Brenda Keller, not to touch it or open it because if she didn't, then she hadn't been served.

Q. And he was referring to a notice that was posted on their door at their home?

A. That is correct.

Q. And how did you learn this?

A. In a conversation with Mr. Keller.

Q. In a conversation you had directly with Mr. Keller?

A. Right. (Exhibit A at 46-47).

Ms. Waskosky provided the details of the conversation as well, saying:

Q. If these notices were sent out at the end of July of 2002, would it be accurate to say that your discussion with him about these notices occurred sometime after July of 2002?

A. The discussion occurred immediately after the notice was—within a week of the notice being placed on his door. (Exhibit A at 64).

\* \* \*

Q. And how did Mr. Keller approach you in the parking lot?

A. He was going in for whatever reason. Hey, how you doing, (indicating), and that kind of thing.

A. Yes, that was a wave, I'm sorry.

Q. And what did he say to you then?

A. He came over, he chatted for a few minutes, and then he indicated something about—trying to think exactly how he put it. Something to the effect that, I don't know who he was indicating, they are so F-ing stupid that they put that F-ing notice on our door and just left it, and I told the old lady not to touch it, don't open it, just leave it where it's at and we never got it. You didn't read it, we never got it.

Q. And when you say he said the old lady, who was he referring to?

A. I'm assuming Brenda [Keller].

Q. And what's the basis of that assumption?

A. Well, he's referred to her as the old lady a few times.

Q. Oh, he has?

A. Yes.

Q. And he had referred to her as that prior to that occasion?

A. Yeah. (Exhibit A at 66-67).

\* \* \*

Q. What else did he say to you regarding the notice that was sent to his home or that was posted on his door?

A. That it was still there.

Q. It was still on his door—

A. Uh-huh.

Q. —as of the day he spoke with you?

A. Uh-huh. (Exhibit A at 67-68).

\* \* \*

Q. What else did he say about any notice that went to his home?

A. That was pretty much it. He was laughing at himself and appearing to be quite proud of his cleverness. And then I concluded the conversation, said I am freezing to death, I got to get in the car, I got to go.

Q. And when you say he was referring to his cleverness, what did you understand that cleverness to be?

A. That he had outsmarted somebody.

Q. And did he indicate that he was going to deny that he had received any such notice?

A. That was the indication.

Q. Did he indicate that his wife Brenda or the old lady—

A. The old lady.

Q. —was going to deny that she received any notice?

A. That was the indication. (Exhibit A at 68-69).

\* \* \*

Q. And you said before that this discussion occurred about a week after the notice was posted. What was the basis for your conclusion that the discussion occurred shortly after the notice had been posted? Did he make some reference to it or did he indicate that it had been recently posted?

A. No. All he said was it was still there, so I was thinking it had to be fairly recently for it to still be stuck on the door.

Q. Did he in any way describe or state how the notice was affixed to the door? In other words, with nails, with tape, with —

A. He said it was taped to the door. (Exhibit A at 70-71).

### III. ANALYSIS

#### A. The IPCB Has the Power to Grant Relief from Final Orders.

IPCB Procedural Rules, Section 101.904(b)(1), states:

On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:

- (1) Newly discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered.

Accordingly, the IPCB has the express power to grant relief from the August 7 Order.

**B. Relief Based upon Newly Discovered Evidence.**

WMII respectfully requests the entry of an order granting relief from the August 7 Order, based upon the newly discovered evidence provided by Waskosky. Such an order is justified (i) because the evidence provided by Waskosky is "newly discovered" as that term is defined in the case law, (ii) Robert Keller's statements established that both he and Mrs. Keller received and had actual knowledge of the posted notice, and (iii) the evidence of actual pre-filing notice to the Kellers is material to the outcome of this jurisdictional issue, as the alleged absence of such notice was the *sole* basis for the IPCB's decision to reverse the Approval.

**1. Standards for Relief.**

While no reported decisions could be found specifically construing Section 101.904(b)(1), the Section is similar to the provisions of the Illinois Code of Civil Procedure governing relief from final judgments based on newly discovered evidence. 735 ILCS 5/2-1401 (2002). The Section is also similar to the motion for new trial based upon newly discovered evidence, which has the same standards as the Section 2-1401 petition for relief from final judgment. The application of these standards here establish that relief from the August 7 and October 16 Orders is warranted.

Section 2-1401 of the Code of Civil Procedure (formerly section 72 of the Civil Practice Act (Ill. Rev. Stat. 1981, ch. 110, par. 72) provides a statutory mechanism procedure by which final orders, judgments, and decrees may be vacated by the trial court 30 days from the entry thereof. *Smith v. Airoom*, 114 Ill. 2d 209, 220-21 (1986); *accord American Ambassador Casualty v. Jackson*, 295 Ill. App. 3d 485, 489 (1998).

In order to be entitled to relief under section 2-1401, the newly discovered evidence must be (1) so conclusive that it would probably change the result if a new trial is granted; (2) discovered after the trial; (3) of such character that it could not have been discovered prior to trial in the exercise of due diligence; (4) material to the issues; and

(5) not merely cumulative to the trial evidence. (*Tuttle v. Fruehauf Corp.* (1984), 122 Ill. App. 3d 835, 839, 462 N.E.2d 645, 78 Ill. Dec. 526.)

*People v. Hallom*, 265 Ill. App. 3d 896, 906 (1st Dist. 1994)

## **2. Motion For New Trial.**

A motion for a new trial based upon newly discovered evidence is reviewed upon exactly the same standard as a petition under §2-1401:

First, it must appear to be of such conclusive character that it will probably change the result if a new trial is granted; second, it must have been discovered since the trial; third, it must be such as could not have been discovered before the trial by the exercise of due diligence; fourth, it must be material to the issue; and fifth, it must not be merely cumulative to the evidence offered on the trial.

*Kaster v. Wildermuth*, 108 Ill. App. 2d 288, 291-292 (3d Dist. 1969) (citations omitted). Here, applying applicable case law under these identical standards (either §2-1401 petition or motion for new trial), the newly discovered evidence establishing Mrs. Keller's receipt of pre-filing notice satisfies the requirements for relief from the August 7 and October 16 Orders.

### **a. Highly Probable That Evidence of Pre-filing Notice Will Change the Result.**

Newly discovered evidence is sufficient to merit relief when the evidence will "probably lead to a different result." *Pritchett v. Steinker Trucking Co.*, 40 Ill. 2d 510, 512 (1968).

While it is the general rule \* \* \* that courts do not favor new trials on newly discovered evidence and that unless the evidence appears to be such as would cause a different verdict new trials should not be granted, yet where it appears likely that upon a re-trial such new evidence would change the result, courts should not hesitate to grant a new trial on account of new evidence.

*People v. Cotell*, 298 Ill. 207, 216-217 (1921)(new trial warranted where the veracity of witness testimony which was the foundation of the state's case was undermined by newly discovered evidence); *Swiney v. Miller*, 253 Ill. App. 81, 88 (3d Dist. 1929)( courts should not hesitate to grant

a new trial on account of newly discovered evidence, where it is apparent or likely that it might change the result upon a retrial); *cf. Springer v. Schultz*, 205 Ill. 144, 145 (1903)(judgment affirmed where new evidence would not affect outcome); *Quagliano v. Johnson*, 100 Ill. App. 2d 444, 448-49 (3d Dist. 1968) (husband's motion for new trial due to new evidence was properly denied, where evidence could only partially discredit witness).

In *Herington v. Smith*, 138 Ill. App. 3d 28 (3d Dist.1985), a new trial was granted where the defendant's expert witness had lied about his credentials. Similarly, in *People v. Alfano*, 95 Ill. App. 3d 1026 (2d Dist. 1981), the appellate court remanded the case for a new hearing where it was discovered during the pendency of his appeal that the state's expert witness had perjured himself. In *Bezark v. Kostner Manor, Inc.*, 29 Ill. App. 2d 106 (1st Dist.1961), a patient's false denial of a felony conviction during a negligence action against a nursing home required a new trial because the denial could have affected the outcome. Finally, in *Swiney*, a grandfather's forgery defense to liability on a note purportedly signed by both the grandfather and his grandson included testimony of the grandson that he forged the grandfather's signature. 253 Ill. App. at 88. After the trial, the grandson made an affidavit, used in support of the motion for new trial, stating that his testimony at the trial regarding his forgery was not true. The court found that the motion for a new trial should have been granted.

The central issue in this appeal is whether Brenda Keller received pre-filing notice. The testimony provided by Waskosky directly addresses this issue as it (a) proves actual service of the pre-filing notice upon Brenda Keller; (b) is an admission by Robert Keller of receipt of the pre-filing notice by him and his wife; and (c) demonstrates that the Kellers' knew of the implications of the posted notice, and they left the pre-filing notice affixed to their door purposefully to obviate service



(which would lend credence to the conclusion, that the Kellers were constructively served under circumstances where they were affirmatively avoiding service).

If the IPCB were to determine that both Robert and Brenda Keller had actual receipt and knowledge of the pre-filing notice, it is highly probable that the IPCB would reverse its August 7 Order, which was based solely on the determination that Mrs. Keller had not been sufficiently served pre-filing notice.

**b. Discovery Since Trial.**

Waskosky's deposition was taken on July 20, 2004, in connection with the Kankakee Appeal. The public hearing before the County Board in this case was held from November 18 to December 6, 2002. The County Board granted its Approval on January 31, 2003. The IPCB issued its Opinion and Order vacating the Approval on August 7, 2003. Hence, the new evidence adduced from Waskosky post-dated the hearings before both the County Board and the IPCB.

**3. Newly Discovered Evidence.**

"Newly discovered" is evidence that was not previously discoverable prior to judgment by the exercise of ordinary diligence. *Andersen v. Resource Economics Corp.*, 133 Ill. 2d 342, 347-348 (1990). "Ordinary diligence" requires that a party diligently use pretrial discovery procedures or even adequate pretrial investigation. *Kaster v. Wildermuth*, 108 Ill. App. 2d 288, 293 (3d Dist. 1969).

Here, there is no question that the testimony provided by Waskosky was not discoverable prior to judgment by the exercise of due diligence. The Watson Motion was presented at the start of WMII's rebuttal on December 4, 2002. (Affidavit of Donald J. Moran, Exhibit B, ¶14). The public hearings concluded December 6, 2002. (Ex. B., ¶14). There was no opportunity or reason

to conduct discovery or seek information regarding the Waskosky evidence during the siting proceedings before the County Board. (Ex. B., ¶14).

Indeed, Waskosky's existence was unknown to WMII at the time of her conversation with Robert Keller in which he admitted his contrivance to deny service. (Ex. B., ¶10). Waskosky's existence remained unknown until her election to the County Board in November 2002 (which became effective on December 10, 2002, just after the public hearings were concluded). (Ex. B., ¶11). Even after she was sworn in as a County Board member, WMII had no basis or information to suspect that Waskosky either had a relationship with Robert or Brenda Keller, or that she might have facts or information relating to the Kellers' receipt of pre-filing notice. (Ex. B., ¶12). In short, no witnesses, facts or documents in any way pointed to the slightest possibility that Waskosky had either relevant or crucial information regarding this issue of pre-filing notice on the Kellers. (Ex. B., ¶13).

WMII sought to depose Waskosky in PCB 04-186 to establish facts and information relating to the claim of fundamental unfairness in the decision on the Second Application. (Ex. B., ¶8). WMII had no information or reason to believe that Waskosky had any relationship with the Kellers or knowledge of their receipt of pre-filing notice prior to scheduling her deposition in the Kankakee Appeal. (Ex. B., ¶12). Thus, even as late as the pendency of the Kankakee Appeal in April to July, 2004, WMII had no reason to know or discover the evidence of Waskosky's discussion with Mr. Keller. (Ex. B., ¶17).

**d. The Evidence is Critical to the Sole Issue in this Appeal.**

Waskosky's testimony provides evidence that lies at the essence of this appeal: whether the Kellers received pre-filing notice. The alleged lack of such receipt was the basis for the IPCB's decision. The evidence is material to prove receipt of the pre-filing notice by the Kellers.

Waskosky's testimony not only establishes the admission of actual notice (and correlatively impeaches the Kellers' version of events), but also indicates that the Kellers purposefully obstructed the fair administration of the hearing process with a specious jurisdictional objection. In effect, the Kellers worked a fraud upon the judicial process which alone may be sufficient to warrant remand for hearing and consideration by the IPCB. Where perjured testimony would work fraud upon the court, false testimony of a material witness may alone be sufficient to warrant a new trial. *Herington*, 138 Ill. App. 3d at 31 citing *Quagliano*, 100 Ill. App. 2d at 448.

**e. Waskosky's Evidence is Not Cumulative.**

Waskosky's evidence is not cumulative. While Jones testified that he affixed the pre-filing notice to the window of the Keller's side door, the issue was whether Brenda Keller had actual receipt or knowledge of pre-filing notice. No other witness or other direct evidence was offered at the siting hearing refuting her claim that she, and her husband, actually saw the notice affixed to their door.

**IV. REQUEST FOR ORAL ARGUMENT**

Pursuant to Section 101.700 of the IPCB Procedural Rules, WMII respectfully requests the opportunity to present oral argument in support of this motion.

WMII is unaware of any decision applying Section 101.904(b)(1) where, as here, newly discovered evidence not only directly relates to the sole issue in the case, but also refutes the factual basis on which the issue was decided. The new evidence is critical to a fair and complete determination of the jurisdictional question, and should be explained and considered in the context of the lengthy, complex and hotly contested siting proceedings before the Kankakee County Board.

WMII believes the IPCB and the parties may benefit from oral argument and analysis of the critical jurisdictional question in this matter of first impression.

**V. CONCLUSION**

For the reasons set forth above, WMII respectfully requests the entry of an order (a) granting relief from the August 7 and October 16 Orders vacating the County Board's January 31, 2003 Approval, based upon the newly discovered evidence provided by Waskosky, (b) setting this matter for hearing, and (c) awarding such other and further relief as the IPCB deems appropriate.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

By: 

One of Its Attorneys

Donald J. Moran  
Pedersen & Houpt, P.C.  
161 N. Clark Street-Suite 3100  
Chicago, Illinois 60601  
(312) 641-6888

# Exhibit A

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

WASTE MANAGEMENT OF ILLINOIS, )

3

INC., )

4

Petitioner, )

-vs-

) No. PCB 04-186

5

COUNTY BOARD OF KANKAKEE )

6

COUNTY, ILLINOIS, )

7

Respondent. )

8

9

CSR License No. 084-003038

10

11

DEPOSITION

12

Deposition of LISA LATHAM WASKOSKY taken

13

on behalf of the Petitioner at Kankakee County

Building, 189 East Court Street, Kankakee, Illinois,

on July 20, 2004.

14

Appearances:

15

Donald Moran

16

Attorney at Law

Pedersen & Houpt

17

161 North Clark Street, Suite 3100

Chicago, IL 60601

18

312.641.6888

Appearing for Petitioner

19

Richard Porter

20

Attorney at Law

Hinshaw & Culbertson

21

100 Park Avenue

P.O. Box 1389

22

Rockford, IL 61105

815.490.4900

23

Appearing for Respondent

24

Also Present: Nancy Richardson

1  
2           Deposition taken pursuant to the discovery  
3 provisions of the Illinois Code of Civil Procedure  
4 and the Rules of the Supreme Court promulgated  
5 pursuant thereto.

6                         (Commencing at 10:55 a.m.)

7                                 LISA LATHAM WASKOSKY,  
8 the deponent herein, called as a witness, after  
9 having been first duly sworn, was examined and  
10 testified as follows:

11                                 EXAMINATION BY

12                                 MR. MORAN:

13                         Q.    Let the record reflect this is the  
14 deposition of County Board Member Waskosky taken  
15 pursuant to the Illinois Code of Civil Procedure,  
16 the Illinois Supreme Court rules and the applicable  
17 rules of the Illinois Pollution Control Board.

18                                 Good morning. My name is Donald Moran. I  
19 represent the applicant, Waste Management of  
20 Illinois, Inc. The matter is Waste Management of  
21 Illinois, Inc., versus County Board of Kankakee,  
22 Illinois. The number is PCB 04-186.

23                                 I'm going to be asking a number of  
24 questions today that relate to the applications

1 filed by Waste Management of Illinois, Inc., for the  
2 proposed expansion of the Kankakee landfill. I will  
3 try to ask questions that are as clear and  
4 understandable as possible, but there may very well  
5 be times when I fail in that attempt, and when I do,  
6 I would ask that you request clarification because  
7 it will be important that the answers you provide  
8 are responsive to the questions that I ask. Is that  
9 fair enough?

10 A. Uh-huh.

11 Q. Okay. You need to say yes or no for the  
12 court reporter.

13 A. Yes. Yes.

14 Q. Could you tell us your full name and spell  
15 your last name for the court reporter?

16 A. My full name is Lisa Latham Waskosky. No  
17 hyphen. My last name is spelled W A S K O S K Y.

18 Q. And what is your address?

19 A. 26 Dennison Drive, Bourbonnais, Illinois.

20 Q. What is your business or occupation?

21 A. I'm a registered nurse.

22 Q. Are you currently employed?

23 A. Yes.

24 Q. By whom?



1           A.    Riverside Medical Center emergency  
2 department.

3           Q.    And how long have you been there?

4           A.    Four years.  Prior to that time, I was a  
5 college student.

6           Q.    When were you elected or appointed to the  
7 county board?

8           A.    I was elected in November of 2002.

9           Q.    When does your current term expire?

10          A.    November of 2004.

11          Q.    Are you running for reelection?

12          A.    Yes.

13          Q.    Which district do you represent?

14          A.    It's 27.

15          Q.    And where is District 27 located?

16          A.    District 27 is in a portion of Bourbonnais  
17 representing part of Beller subdivision, Heritage  
18 Estates subdivision and Northfield subdivision.

19          Q.    How far is the district located from the  
20 proposed expansion or the existing Kankakee  
21 landfill?

22          A.    I'm not really certain.  14, 15 miles  
23 maybe.

24          Q.    Are you affiliated with any political

1 party?

2 A. Yes, I am.

3 Q. Which party?

4 A. I'm a Democrat.

5 Q. What committees have you served on while  
6 on the county board?

7 A. Capital development, schools, public  
8 health and animal, bridges and highway, and building  
9 and grounds.

10 Q. Are you a member of the Regional Planning  
11 Commission?

12 A. No.

13 Q. Now, Ms. Waskosky, are you familiar with a  
14 siting application which was filed by Waste  
15 Management of Illinois, Inc., on August 16th of 2002  
16 requesting approval for the proposed expansion of  
17 the existing Kankakee landfill?

18 A. Yes, I am.

19 Q. And how did you become aware of that  
20 application?

21 A. It was in the newspaper. It was a hot  
22 issue.

23 Q. Did you attend any of the hearings on this  
24 application, and those hearings would have been

1 conducted in November and December of 2002?

2 A. No, I did not.

3 Q. Did you discuss that application or have  
4 any communications with any member of the Regional  
5 Planning Commission regarding that first  
6 application?

7 MR. PORTER: Wait a second. You can  
8 answer that.

9 A. I'm not really sure who all is on the -- I  
10 can't keep everybody straight on the Regional  
11 Planning Commission. To my knowledge, no.

12 Q. And when I refer to the first siting  
13 application, this is the application that I will be  
14 referring to.

15 A. Okay.

16 Q. Are you also aware that a siting  
17 application was filed by Waste Management of  
18 Illinois, Inc., on September 26th of 2003 for the  
19 expansion of the existing Kankakee landfill?

20 A. Yes.

21 Q. And how did you become aware of that  
22 filing?

23 A. I was a member of the county board and it  
24 was discussed by the county board.

1 Q. Did you vote on the first application?

2 A. Yes. That was in February of 2003, am I  
3 correct?

4 Q. It would have been on January 31st of  
5 2003.

6 A. Yes, I did vote on it.

7 Q. And how did you vote on the first  
8 application?

9 A. I voted in favor of it.

10 Q. You voted to approve the first  
11 application?

12 A. Uh-huh.

13 Q. You need to say yes or no.

14 A. Yes. Yes.

15 Q. And to the best of your recollection, that  
16 did occur on January 31st of 2003.

17 A. Yes.

18 Q. Have you talked with or had any  
19 communications with any person about your vote on  
20 the first application?

21 A. Yes, county board, fellow county board  
22 members.

23 Q. Did you have those discussions or  
24 communications after you voted on January 31st,

1 2003?

2 A. I don't recall. Possibly.

3 Q. Which county board members did you talk  
4 to?

5 A. George Washington.

6 Q. Anybody else?

7 A. Jamie Romein and Pam Lee.

8 Q. When did you talk with Mr. Washington  
9 approximately?

10 A. I would say initially after that meeting  
11 in January.

12 Q. Any other times?

13 A. I couldn't recall the dates, but from time  
14 to time we discussed it.

15 Q. And would that be up to the current date,  
16 up to today?

17 A. Yes.

18 Q. How many such discussions have you had  
19 with Mr. Washington approximately?

20 A. About four.

21 Q. What has Mr. Washington said to you in  
22 these conversations?

23 MR. PORTER: Objection. That  
24 interrogatory is designed and does indeed

1 potentially invade the deliberative process of a  
2 county board member regarding applications at issue,  
3 and I direct you not to answer.

4 A. Okay.

5 Q. Do you accept that instruction not to  
6 answer that question?

7 A. Yes.

8 Q. Other than the discussion you had with Mr.  
9 Washington after the vote on January 31st, 2003,  
10 where did these discussions with Mr. Washington take  
11 place?

12 MR. PORTER: I'm sorry, can you read that  
13 back?

14 (Requested portion of the deposition was  
15 read by the court reporter.)

16 MR. PORTER: Okay. If you understand the  
17 question, you can answer it.

18 Q. Well, I assume that you talked to Mr.  
19 Washington on January 31st here at the county board  
20 building.

21 A. Right, that's where I usually speak to  
22 him. I --

23 Q. So other than that meeting, where have you  
24 had these discussions? Maybe they've all been here.

1 Maybe --

2 A. Yeah, they've all been here.

3 Q. They've all been in the county building?

4 A. Yes..

5 Q. Was anyone else present during these  
6 communications or discussions with Mr. Washington?

7 A. There were other people around, but  
8 usually not directly involved. You know, they would  
9 pass by and say hi, but that was about it.

10 Q. And who were these other people?

11 A. Just other board members.

12 Q. How many such discussions or  
13 communications did you have with Jamie Romein  
14 regarding your vote on the first application?

15 A. One.

16 Q. When did that occur?

17 A. That occurred on the day of the vote.

18 Q. Was anyone else present for this  
19 discussion or communication?

20 A. We were in the boardroom, but it was a  
21 private discussion.

22 Q. Because, as you know, during or after the  
23 board meetings, there are frequently citizens,  
24 residents, other people come up to talk to board

1 members, so my question is this discussion with Mr.  
2 Romein may have been in the presence of other  
3 resident, citizens or interested persons.

4 A. Uh-huh.

5 Q. And you're saying that there wasn't any  
6 other person who was part of this discussion with  
7 Mr. Romein --

8 A. No.

9 Q. -- is that correct?

10 A. That's correct.

11 Q. Did you also talk about Mr. Romein's vote  
12 on the January 31st, 2003?

13 MR. PORTER: I'm going to caution the  
14 witness that this question calls for a yes or no  
15 response and that's how you should respond. Go  
16 ahead and answer.

17 A. Yes.

18 Q. What did Mr. Romein say to you during this  
19 conversation?

20 MR. PORTER: Objection. And I would  
21 direct the witness not to answer on the same ground  
22 as earlier.

23 A. Agreed.

24 Q. Do you accept that instruction?



1           A.    Uh-huh.

2                   MR. PORTER:  You have to say yes or no.

3           A.    Yes.

4                   MR. PORTER:  And I'm sorry, while there's  
5 a gap here, Ms. Waskosky, sometimes you're saying  
6 uh-huh, uh-uh, while Mr. Moran is asking a question.  
7 Try to wait until he's completely done asking his  
8 question and then respond, okay?

9                   THE WITNESS:  Okay.

10                   MR. PORTER:  Sorry, go ahead.

11           Q.    You mentioned you had some discussions  
12 with Pam Lee after your vote on January 31st, 2003.  
13 How many such discussions did you have with Ms. Lee?

14           A.    One.

15           Q.    Was that the day of the vote?

16           A.    Yes, it was.

17           Q.    Where did it take place?

18           A.    Here at the county building.

19           Q.    Was it in the county board meeting room or  
20 some other place here in the county board building?

21           A.    Actually it was in the meeting room, yes.

22           Q.    Anyone else present during this  
23 conversation with Ms. Lee?

24           A.    Not as a part of the conversation, no.

- 1 Q. You talked about your vote with Ms. Lee?
- 2 A. Uh-huh. Yes.
- 3 Q. Did she talk about her vote with you?
- 4 A. No.
- 5 Q. How long did this discussion with Ms. Lee
- 6 last?
- 7 A. 30 seconds or less.
- 8 Q. You've had no other discussions with Ms.
- 9 Lee about your vote on January 31st of 2003?
- 10 A. No.
- 11 Q. And you had no discussion or communication
- 12 with any other person about your vote on January
- 13 31st, 2003, other than the three people you've
- 14 identified; is that correct?
- 15 A. Just my husband.
- 16 Q. What is your husband's name?
- 17 A. Thomas.
- 18 Q. Last name?
- 19 A. Waskosky.
- 20 Q. Other than those four people, you haven't
- 21 had communications or discussions with anyone about
- 22 your vote on the 2003 --
- 23 A. No.
- 24 Q. -- January 31 vote?

1           A.    No.

2           MR. PORTER:  Again, I know that Don  
3 sometimes talks very slowly, but try to wait  
4 until --

5           THE WITNESS:  Okay.

6           MR. PORTER:  -- he's done asking the  
7 question.

8           THE WITNESS:  I'm used to stat responses,  
9 yes, no, da da da.

10          MR. PORTER:  Oh, you're a nurse.

11          THE WITNESS:  Uh-huh.

12          MR. PORTER:  Yeah, we move at a whole  
13 different speed.

14          THE WITNESS:  Oh, yeah.  See, I'm looking  
15 at my watch, okay, I'm done with this, should be  
16 done.

17   BY MR. MORAN:

18          Q.    Have you had any discussions or  
19 communications with any person regarding the filing  
20 of the second application on September 26th, 2003?

21          A.    Fellow board members.

22          Q.    When did those discussions take place?  
23 Let's break it down this way.  Prior to that second  
24 filing on September 26th of 2003, did you have any

1 discussions with any persons regarding the second  
2 filing?

3 A. Yes.

4 Q. With whom did you have such discussions?

5 A. Ann Bernard.

6 Q. Anyone else?

7 A. George Washington.

8 Q. Anyone else?

9 A. And Jamie Romein.

10 Q. I'm including within the question any  
11 person at all, county board member or not.

12 A. Oh, okay. My husband, Thomas.

13 Q. Anyone else?

14 A. My uncle lives next door to me, John  
15 Latham.

16 Q. John Latham?

17 A. Uh-huh.

18 Q. Anyone else?

19 A. That's the only specific people I can  
20 recall.

21 Q. And when did you have any discussions with  
22 Ms. Bernard regarding the am -- the second  
23 application?

24 MR. PORTER: Well --

1 Q. And again we're talking about a period  
2 prior to the time the second application was filed,  
3 prior to September 26, 2003.

4 A. Board meetings. She sits behind me.

5 Q. And on how many occasions did she talk  
6 with you about this --

7 A. Every board --

8 Q. -- anticipated filing?

9 A. Every board meeting --

10 Q. Every board meeting?

11 A. -- she would poke me between the shoulder  
12 blades and start babbling.

13 MR. PORTER: That's fine. Remember, limit  
14 your answers to the questions that are asked.

15 A. Okay.

16 Q. So this was a continuing pattern for Ms.  
17 Bernard?

18 A. Yes.

19 Q. And again, focussing on the time prior to  
20 the actual filing of that second application, did  
21 Ms. Bernard indicate to you that she was aware that  
22 this second application was anticipated to be filed?

23 MR. PORTER: Hang on a minute please.  
24 I'll object to the extent it's not limited to

1 sessions outside of executive session meetings. To  
2 the extent it invades the attorney/client privilege  
3 I object and direct the witness not to answer, but  
4 if they were public meetings, I don't have a problem  
5 with this particular question.

6 Q. Well, let me just clarify that. My  
7 understanding was you were saying she was poking you  
8 and talking to you during the public meeting, during  
9 the public portion of the county board meeting; is  
10 that correct?

11 A. That's correct.

12 Q. We aren't talking about poking you and  
13 talking to you during executive session, correct?

14 A. That's correct.

15 Q. So she was doing this during the normal  
16 regularly scheduled county board meetings --

17 A. Yes.

18 Q. -- prior to September 26th of 2003?

19 A. Yes.

20 Q. And your best recollection is she did this  
21 for each of the regularly scheduled board meetings  
22 immediately before the September 26th, 2003, filing.

23 A. Yes.

24 Q. The first of those that you can remember,

1     what did Ms. Bernard say to you when she was poking  
2     you?

3                   MR. PORTER:  Okay, hang on a second.  
4     That's different than the question you asked before.  
5     I need to take a break with the witness.

6           A.     Okay.

7                   (Brief recess at 11:14 a.m. to 11:16 a.m.)

8                   MR. PORTER:  Having spoken to the witness,  
9     this question does indeed invade the deliberative  
10    process of a board member.  Therefore, I'm going to  
11    direct her not to answer.

12                   MR. MORAN:  To clarify the basis for the  
13    question, there obviously was no siting application  
14    on file during the period within which I'm asking  
15    about these questions.  This question may very well  
16    reveal information that discloses prejudice or  
17    bias on the part of a county board member who may  
18    have concluded or indicated a conclusion about an  
19    anticipated application that was yet to be filed.  
20    Obviously there's no decision making process that's  
21    being invaded here.

22                   We're talking about an anticipated filing  
23    on an application which was planned to be filed at a  
24    certain point, and by definition there can't have

1     been an evaluation or decision making process that  
2     could have taken place. However, there could very  
3     well be a conclusion or a prejudgment by a county  
4     board member of an application that was yet to be  
5     filed.

6                     So I think from that standpoint it  
7     certainly is a relevant question. It's not in any  
8     way intended to invade anybody's decision making  
9     process because there could not have been one with  
10    regard to this application.

11                    MR. PORTER: If I may respond, Ms. Bernard  
12    voted on both applications. Your interrogatory  
13    indeed does invade the deliberative process because  
14    it is quite possible that those conversations or the  
15    response to that interrogatory involved a discussion  
16    about the reasons she may or may not have voted one  
17    way or the other in regard to the first application.  
18    Your interrogatory is not limited and therefore does  
19    indeed the invade the deliberative process. The  
20    fact that those communications took place after an  
21    application was pending is irrelevant. The issue is  
22    whether or not it invades the deliberative process,  
23    and if it indeed invades the deliberative process,  
24    it's not to be discovered. That's why I have no



1 choice but to direct the witness not to answer.

2 Q. And you accept that instruction?

3 A. Yes.

4 Q. Did anything that Ms. Bernard stated to  
5 you during these County Board meetings about the  
6 upcoming application in any way relate to the  
7 reasons why she voted as she did on January 31st,  
8 2003, on the first siting application?

9 MR. PORTER: Caution the witness that this  
10 question calls for a yes or no response and you  
11 should answer so.

12 A. Yes.

13 Q. Did any portion of the statements she made  
14 to you refer in any way to the anticipated second  
15 application to be filed September 26th of 2003?

16 MR. PORTER: Sorry to have to keep  
17 interrupting, but I need that read back please.

18 (Requested portion of the deposition was  
19 read by the court reporter.)

20 MR. PORTER: You may respond.

21 A. No.

22 Q. Would it be accurate to say, then, that  
23 whenever Ms. Bernard made a statement to you in the  
24 board meetings immediately prior to the September

1 26th, 2003, filing of the second application, she  
2 referred only to the reasons she voted the way she  
3 did on January 31st, 2003?

4 A. Yes.

5 Q. Did you respond or say anything to her in  
6 response to the statements she made to you?

7 MR. PORTER: This, again, calls for a yes  
8 or no response.

9 A. Yes.

10 Q. And what did you say to her?

11 MR. PORTER: I have to take a moment with  
12 the witness.

13 (Brief recess at 11:20 a.m. to 11:22 a.m.)

14 MR. PORTER: I would just caution the  
15 witness that your -- I am directing you not to  
16 answer to the extent that your response in any way  
17 states or suggests what Ms. Bernard may have been  
18 indicating her deliberative process or what your  
19 deliberative process was, but apart from that, you  
20 may go ahead and answer. Do you understand my  
21 direction?

22 THE WITNESS: Yes.

23 MR. PORTER: Okay. So you may go ahead  
24 and answer Mr. Moran's question. I ask that it be

1 read back one more time so our record is nice and  
2 clear.

3 (Requested portion of the deposition was  
4 read by the court reporter.)

5 A. Shut up. Stop poking me. Shut up. Leave  
6 me alone. You're an idiot. Basically I told her I  
7 was just tired of hearing her mouth. Just to leave  
8 me be.

9 Q. And did she leave you be?

10 A. No. No.

11 Q. She did not respect your request that she  
12 stop talking with you --

13 A. No.

14 Q. -- about, we're talking about the siting  
15 applications.

16 MR. PORTER: Whoa. That -- wait one  
17 second please. You've now changed your question in  
18 to limiting it about the siting applications, and I  
19 think that's an improper characterization of what  
20 the record is in this case. And as a matter of  
21 fact, it's contrary to what the witness has already  
22 testified to when she said that Ms. Bernard never  
23 discussed the impending application. So I object to  
24 the extent you tried to mischaracterize the record.

1 And you can answer if you can. Do you understand  
2 the question?

3 THE WITNESS: I thought I did, but --

4 MR. PORTER: Let's have it read back.

5 (Requested portion of the deposition was  
6 read by the court reporter.)

7 MR. PORTER: All right. Again, I believe  
8 that that question -- I'm going to direct the  
9 witness not to answer because the question has been  
10 asked and answered. You've already asked it in  
11 regard to the first application. You've asked it in  
12 regard to the second application. I've either  
13 objected or allowed the witness not to answer. So  
14 you're rehashing ground that's already been covered.  
15 I'm going to direct the witness not to answer.

16 Q. Let me just clarify this because I'm  
17 really confused now. My initial series of questions  
18 here was to ask you whether you had any discussions  
19 with any -- anyone regarding the September 26th,  
20 2003, siting application which we've called the  
21 second siting application prior to September 26th,  
22 2003. I thought your answer to that question was  
23 yes, and you identified five names of people with  
24 whom you had had discussions or communications

1 regarding the September 26th, 2003, siting  
2 application prior to September 26th, 2003. Is that  
3 correct or incorrect?

4 A. That's correct.

5 Q. Okay. The first person you identified as  
6 having any discussion or communication about the  
7 second siting application prior to September 26th,  
8 2003, was Ann Bernard. Is that correct?

9 A. That's correct.

10 Q. So is it accurate to say that at some  
11 point you had some discussion or communication prior  
12 to September 26, 2003, with Ann Bernard about the  
13 second siting application?

14 A. No, she was still going on about the  
15 January vote.

16 Q. Okay.

17 A. Yeah.

18 Q. So is it fair to say, then, that you had  
19 no discussion or communication with Ann Bernard  
20 regarding the second siting application prior to  
21 September 26, 2003?

22 MR. PORTER: I'm going to object. I think  
23 it's been asked and answered. But I agree that  
24 counsel is entitled to some clarification here. Go

1 ahead and answer again.

2 A. Yes. I think it -- she didn't -- she  
3 wasn't specifically speaking about the second  
4 siting. It was generalized.

5 Q. She was still talking about --

6 A. Yes.

7 Q. -- the vote on January 31st, 2003?

8 A. Yes. Yes.

9 Q. Okay.

10 A. I'm sorry to blur it.

11 Q. Is it accurate to say you had no  
12 discussion or communication with her about the  
13 second siting application prior to September 26,  
14 2003?

15 A. About the second one, no, I guess. No.

16 Q. Let's go to Mr. Washington. Did you have  
17 any discussions or communications with Mr.  
18 Washington about the second siting application prior  
19 to September 26, 2003?

20 MR. PORTER: And so the witness is clear,  
21 that date is the date of the filing of the second  
22 application. Go ahead and answer.

23 A. Not about the second filing, no.

24 Q. And Jamie Romein?

1 A. Not about the second application, no.

2 Q. And your husband?

3 A. Not about the second application, no.

4 Q. And Mr. Latham?

5 A. Not about the second application, no.

6 Q. So all these conversations or

7 communications you were referring to related back to

8 the --

9 A. Correct.

10 Q. -- application filed on August 16th, 2002,

11 the first siting application?

12 MR. PORTER: Please, let him finish and

13 then answer and you'll avoid confusing issues.

14 A. Correct. I was confused. It's been a

15 long two years. I apologize.

16 Q. Now, having clarified that, did you have

17 discussions or communications with any person about

18 the second siting application prior to the date the

19 second siting application was filed which was

20 September 26, 2003?

21 A. No.

22 MR. PORTER: Off the record.

23 (Discussion off the record.)

24 BY MR. MORAN:

1 Q. Was the second siting application, the one  
2 filed September 26, 2003, the same siting  
3 application which was filed August 16th, 2002?

4 MR. PORTER: I'll object to the extent  
5 that calls for a legal conclusion.

6 Q. I'm not asking you for a legal conclusion.

7 MR. PORTER: Wait. And to the extent it  
8 invades the deliberative process as to attempting a  
9 back door method to determine what exactly a county  
10 board memory reviewed or did not review. Having  
11 said that, I'm going to allow the witness to answer  
12 subject to those objections.

13 Q. Let me ask it again --

14 A. Please.

15 Q. -- just to clarify.

16 MR. PORTER: And same objections so I  
17 don't have to interrupt.

18 Q. Was it your understanding that the second  
19 siting application was the same as the first siting  
20 application?

21 A. Yes.

22 Q. Now, with regard to the second siting  
23 application, is it your recollection that the public  
24 hearings on the second siting application occurred



1 in January of 2004?

2 A. Yes.

3 Q. Did you attend any of those public  
4 hearings?

5 A. Yes.

6 Q. How many sessions did you attend of those  
7 public hearings?

8 A. One.

9 Q. Which session was that?

10 A. The Regional Planning Commission that was  
11 held here, that meeting.

12 Q. Was it your understanding that the  
13 Regional Planning Commission was conducting the  
14 public hearings?

15 A. Yes.

16 Q. And they were conducted over a number of  
17 days?

18 A. Yes.

19 Q. Okay. And you indicated you attended one  
20 of those --

21 A. Yes.

22 Q. -- days? Do you recall which day that  
23 was?

24 A. It was -- it was the last hearing.

1 Q. What evidence or testimony was presented  
2 during the public hearing that you attended?

3 A. They went over all the criteria and, you  
4 know, the reasoning for that criteria.

5 Q. Was this a public hearing that was  
6 conducted over at the Quality Inn?

7 A. No.

8 Q. So this may have been a meeting of the  
9 Regional Planning Commission in which they  
10 considered the evidence that was presented at the  
11 public hearing. Would that be accurate?

12 A. Yes.

13 Q. And that meeting took place in this  
14 building --

15 A. Uh-huh, yes, it did.

16 Q. -- in the county board meeting room?

17 A. Yes. Yes.

18 Q. Was that the day the Regional Planning  
19 Commission voted on its recommendations regarding  
20 the second siting application?

21 A. Yes.

22 Q. And how did the Regional Planning  
23 Commission -- let me withdraw that.

24 What action did the Regional Planning

1 Commission take on that day? Did they recommend to  
2 approve the application, to deny the application or  
3 to take some other position?

4 A. They just went through the criteria, the  
5 different criteria, and I left before they took a  
6 vote.

7 Q. Did you subsequently learn how the  
8 Regional Planning Commission had decided to either  
9 recommend or not recommend approval of the  
10 application?

11 MR. PORTER: Hang on a second. Again,  
12 this question does invade the deliberative process  
13 because it's essentially asking whether or not a  
14 board member reviewed a Regional Planning Commission  
15 report which is part of the evidence of the record.  
16 So I have to direct her not to answer.

17 A. Yes, I accept that.

18 Q. Did you obtain a copy of the second siting  
19 application?

20 MR. PORTER: Objection. Direct the  
21 witness not to answer.

22 Q. Was the second siting application made  
23 available for your review?

24 A. Yes, it was.

1 Q. And who made that available?

2 A. The county.

3 Q. Who in the county?

4 A. I'm -- I would guess it would be the  
5 planning commission. It was here. We could pick it  
6 up here in this building.

7 MR. PORTER: Okay. You've answered the  
8 question.

9 A. Okay.

10 Q. Your best recollection is the planning  
11 department had the transcript, had the second siting  
12 application available for review by any county board  
13 member?

14 A. Yes.

15 Q. That's your best recollection?

16 A. Yes.

17 Q. Were the transcripts of the public  
18 hearing -- not the Regional Planning Commission  
19 meetings but the public hearings made available for  
20 your review?

21 A. For which siting?

22 Q. The second siting application.

23 A. The second siting. I don't recall.

24 Q. Have you had any discussions or

1 communications with any of the following persons at  
2 any point prior to March 17th of 2004? And March  
3 17th, 2004, is the date on which the second siting  
4 application was voted upon. Mayor Donald Green?

5 A. No.

6 Q. Mr. Michael Watson?

7 A. Yes.

8 Q. Who is Mr. Watson?

9 A. I'm not really certain who he is. Wait a  
10 minute. No, I've got -- I've got the name confused.  
11 Not, not Mr. Watson. Not Mr. Watson. I apologize.

12 Q. Do you know who Mr. Watson is?

13 A. He's --

14 Q. Is he one of the owners of United  
15 Disposal?

16 A. Yeah, I couldn't think of the name of the  
17 company. Yes. And, no, I had no contact with him.  
18 I misspoke.

19 Q. Was it your understanding that Mr. Watson  
20 appeared in both siting proceedings as an objector?

21 A. Yes.

22 Q. And he was represented by counsel in both  
23 proceedings?

24 A. I have no idea about that.

1 Q. Are you aware that Mr. Watson owns  
2 property immediately adjacent to the proposed site  
3 of the expansion to the east?

4 A. Yes.

5 Q. Have you had discussions with Mr. Watson  
6 about any matters prior to March 17th, 2004?

7 A. No. No.

8 Q. Have you had any communications or  
9 discussions with a Mr. Merlin Carlock?

10 A. No.

11 Q. Do you know who Mr. Carlock is?

12 A. Yes. Yes.

13 Q. Who is Mr. Carlock?

14 A. Mr. Carlock is a land developer, a banker.

15 Q. Have you ever met him?

16 A. Years ago, yes.

17 Q. Were you aware that Mr. Carlock appeared  
18 in both siting hearings as an objector?

19 A. Yes.

20 Q. Have you had any discussions or  
21 communications prior to March 17th, 2004, with Mr.  
22 Bruce Harrison?

23 A. Yes. That's who -- I'm sorry, that's who  
24 I misspoke. I get him and Watson confused. But

1       yes.

2           Q.    Who is Mr. Harrison?

3           A.    Frankly, I -- other than an objector, I  
4       have no idea.

5           Q.    You said other than as an objector?

6           A.    Uh-huh.

7           Q.    Do you know Mr. Harrison to be an objector  
8       to the siting applications filed for the expansion?

9           A.    Yes.

10          Q.    When did you first meet Mr. Harrison?

11          A.    I spoke with him on -- by phone on  
12       February 14th of 2003.

13          Q.    2003 or 2004?

14          A.    2004, I'm sorry. I'm sorry, I'm getting  
15       my years mixed up today.

16          Q.    So Valentine's Day?

17          A.    Valentine's Day, which is the only reason  
18       I remember it.

19          Q.    That was a Saturday?

20          A.    Yes, Saturday morning.

21          Q.    This was a phone call?

22          A.    Yes.

23          Q.    Did he call you or did you call him?

24          A.    Oh, he called me.

1 Q. Where did he call you? At home? At work?

2 A. At home.

3 Q. And do you know how he got your home  
4 number?

5 A. It's -- it's published in the paper.

6 Q. How long did this phone conversation last?

7 A. Less than five minutes.

8 Q. Was anyone else on the phone call?

9 A. Not --

10 Q. As far as you knew?

11 A. No. Not as far as I know, no.

12 Q. What did Mr. Harrison say to you?

13 A. He wanted to meet with me and discuss some  
14 legal papers that he had. I don't -- I never really  
15 -- I had just gotten off work, had just fallen  
16 asleep, I work midnights, and informed him I could  
17 not discuss this and would not discuss this.

18 Q. And did he identify any more clearly what  
19 type of papers, legal or otherwise, he had to  
20 discuss with you?

21 A. I was half asleep. He -- he rattled off  
22 some sort of -- I'm trying to think what he called  
23 it. An appeal, he called it an appeal or a ruling  
24 or -- and I informed him at that time that he wasn't



1 an attorney and I wasn't an attorney and therefore I  
2 wasn't interested in a legal document that I  
3 certainly could not understand.

4 Q. And these legal documents related to what?  
5 To the appeal of a siting request --

6 A. Oh.

7 Q. -- for application?

8 A. No, they related to us not speaking to  
9 anybody in regards to this after the close of the  
10 hearings.

11 Q. And did Mr. Harrison indicate what the  
12 meaning was of these documents that he was trying to  
13 show you?

14 A. Yes.

15 Q. And what did he say about that?

16 A. That it was illegal for us to be told that  
17 we could not speak to the public about this.

18 Q. And was he referring to the instructions  
19 that you had received from county board's counsel  
20 not to talk or speak with any interested parties  
21 regarding the second siting application or the first  
22 siting application?

23 MR. PORTER: I'm going to allow the  
24 witness to answer this one question, but that

1 allowance is in no way a waiver of the  
2 attorney/client privilege in any other respect. Go  
3 ahead.

4 A. Yes.

5 Q. Would it be accurate to say that Mr.  
6 Harrison was trying to persuade you that his  
7 attempts to talk with you about the siting  
8 application was proper even though you had been told  
9 otherwise by counsel?

10 A. Yes. Yes.

11 Q. Did he indicate to you in any way how he  
12 knew that the county board members such as yourself  
13 were instructed not to speak with various citizens  
14 or other parties who had participated in the  
15 hearings?

16 A. Not that he verbalized to me, no.

17 Q. And what was your response to his  
18 statement that, in fact, you could talk with him  
19 based on whatever legal materials he had available?

20 A. That on our attorney's advice, that he was  
21 incorrect.

22 Q. Did he say anything more to you about the  
23 siting applications, about what his position was on  
24 them, how you should vote on them, how you should

1 view them, anything along those lines?

2 A. No. Not -- let me clarify that. Not at  
3 that time he didn't.

4 Q. Not during that conversation?

5 A. Not during that conversation, no.

6 Q. And that conversation was about five  
7 minutes long?

8 A. Yeah.

9 Q. Was there anything else said either by you  
10 or by him in that phone conversation?

11 A. He indicated to me that he would bring me  
12 some -- those documents, and I believe my response  
13 was, yeah, yeah, whatever, but I'm not interested,  
14 I'm not going to read them, I won't understand them  
15 anyway.

16 Q. And how did you close that phone  
17 conversation with Mr. Harrison?

18 A. That I worked nights and I was tired, I  
19 had to go to sleep, and, you know, that was it.  
20 Just, you know, I didn't care to discuss this or --  
21 and I could not discuss this. That was the end of  
22 it.

23 Q. Did he indicate anything to indicate why  
24 he was calling you?

1 MR. PORTER: Let's go off the record for a  
2 moment.

3 (Discussion off the record.)

4 MR. PORTER: Okay. On the record, go  
5 ahead.

6 A. Repeat that question. He kind of --

7 Q. Did he indicate anything to you as to why  
8 he was calling you other than to tell you about  
9 these legal papers he had that would allow you to  
10 talk with him?

11 A. No. No.

12 Q. And you had no communication of any kind  
13 with him prior to this time?

14 A. None.

15 Q. You wouldn't know what he looked like?  
16 You wouldn't know who he was as of this time?

17 A. As of?

18 Q. As of February 14, 2004.

19 A. Oh, absolutely not, no.

20 Q. Did you report this discussion to anyone  
21 at the county?

22 A. Yes, I did.

23 Q. To whom?

24 A. Pam Lee.

1 Q. And what did Ms. Lee tell you about the  
2 conversation?

3 A. That I was correct and I should follow the  
4 county attorney's advice.

5 Q. Did you have any subsequent communications  
6 or discussions with Mr. Harrison?

7 A. Yes, I did.

8 Q. When was the next occasion you had a  
9 discussion or communication with him?

10 A. Be February 16th. It was on a Monday.

11 Q. And the nature of the communication?

12 A. He wanted to meet with me.

13 Q. So this was a phone call?

14 A. This was a phone call.

15 Q. On February 16th?

16 A. Uh-huh.

17 Q. Where was the phone call placed?

18 A. To my home.

19 Q. Again?

20 A. Again.

21 Q. What time of day did he call?

22 A. Oh, I would say it was approximately 9 --  
23 about 9:00 a.m.

24 Q. What specifically did he say to you on

1 this occasion?

2 A. That he really needed to meet with me,  
3 that once I saw these documents, I would know that  
4 he was right and that we had been instructed  
5 illegally not to talk.

6 Q. What was your response?

7 A. My response was, again, I don't -- I'm not  
8 an attorney. I'm going to follow the advice of our  
9 county attorney. You know, you can do whatever you  
10 want to with the documents. I will not read them, I  
11 will not review them, I will not understand them.  
12 He then indicated to me that he had spoke with other  
13 people and had meetings set up with another county  
14 board member. Would I be interested in joining them  
15 for lunch to discuss this? And I indicated to him  
16 at that time no.

17 Q. Did he indicate which other county board  
18 members he had attempted to contact?

19 A. He stated to me that he had met with Ann  
20 Bernard, Karen Hertzberger, and that he had a  
21 meeting I believe he said 11:00 a.m. -- no, 1:00  
22 p.m., excuse me, with Mike Lagesse.

23 Q. What day?

24 A. That day on Monday.

1 Q. Oh, that day, okay.

2 A. He didn't give me the dates for the other  
3 meetings with the other people.

4 Q. Oh, I see. Did he identify any other  
5 county board members who he was --

6 A. Not that I recall.

7 Q. -- either attempting to contact or had set  
8 up meetings with?

9 A. Not that I recall. He stated to me he had  
10 had meetings with both Ms. Bernard and with Mrs.  
11 Hertzberger.

12 Q. Did he state to you at all what the  
13 substance or the statements made --

14 A. No.

15 Q. -- during those meetings were?

16 A. No.

17 Q. Did he indicate to you that you should  
18 consider or review the application as either Ms.  
19 Bernard or Ms. Hertzberger was reviewing it?

20 MR. PORTER: You can go ahead and answer.

21 A. No.

22 Q. Did he indicate when these meetings with  
23 Ms. Bernard and Mrs. Hertzberger had taken place?

24 A. No.

1 Q. Did you get the impression that these  
2 meetings occurred a few weeks prior to this phone  
3 call with him?

4 MR. PORTER: Well, object to the  
5 conjecture. Go ahead and answer if you can.

6 A. He -- he really -- he didn't give me a  
7 time for them. My assumption was they had been very  
8 recently, within the past few days.

9 Q. Had you ever talked to either Ms. Bernard  
10 or Ms. Hertzberger about whether they had met with  
11 Mr. Harrison?

12 A. No, I did not.

13 Q. And you never learned from any source in  
14 any fashion whether there had been such meetings  
15 between Mr. Harrison and Ms. Bernard and Ms.  
16 Hertzberger?

17 A. No, I did not.

18 Q. Or Mr. Lagesse?

19 A. Mr. Lagesse I know about.

20 Q. And you know about that meeting on the  
21 basis of what?

22 A. After I hung up the phone from this Mr.  
23 Harrison, I immediately called the KC hall where he  
24 was supposed to meet Mr. Lagesse. Mike apparently



1 did not know who this gentleman was any more than I  
2 had the first time he called me. I informed him  
3 what his purpose was, reminded him about the order  
4 not to discuss this, and Mr. Lagesse then asked me  
5 where did he call from, do you have a phone number?  
6 And I had the number he had called me from on my  
7 caller ID. I gave it to Mr. Lagesse and he called  
8 him and cancelled his meeting.

9 Q. So as far as you know, Mr. Lagesse never  
10 met with Mr. Harrison.

11 A. That is correct.

12 Q. And how long did this phone conversation  
13 with Mr. Harrison last on February 16th?

14 A. I -- I would have to say roughly ten  
15 minutes.

16 Q. So it was about twice as long as the first  
17 call?

18 A. Yes. I -- he was very persistent.

19 Q. Did he indicate in any way what his views  
20 or opinion was on the request to expand the existing  
21 landfill?

22 A. Not in so many words. It was implied but  
23 not stated.

24 Q. Did Mr. Harrison ever indicate to you

1       whether he was working with other individuals in his  
2       effort to talk to county board members and oppose  
3       this proposed expansion?

4             A.    No.

5             Q.    Did you ever learn of any information or  
6       facts that indicated that Mr. Harrison was working  
7       in concert with other individuals, persons or  
8       entities to oppose this proposed expansion?

9             A.    Learn in what way?

10            Q.    Well, in any way.  Either through third or  
11       fourth-hand story, through rumor, through the most  
12       distant type of hearsay.  Just anything you may have  
13       heard about such an effort.

14            MR. PORTER:  And you're looking at me.  So  
15       you're aware, Mr. Moran has a right to ask you  
16       questions that may or may not be admissible in a  
17       hearing at this deposition.  Therefore, I'm not  
18       objecting at this time.  You can go ahead and  
19       answer.

20            A.    He called me that morning from Rob  
21       Keller's home.

22            Q.    The February 16th?

23            A.    Yes.

24            Q.    From Rob Keller?

1 A. Uh-huh.

2 Q. Who is Rob Keller?

3 A. Rob Keller is the person from the first  
4 application that stated he did not receive  
5 notification.

6 Q. And when you say the first application,  
7 you're referring to the application that was filed  
8 on August 16th of 2002?

9 A. That is correct.

10 Q. And how do you know that Rob Keller had  
11 claimed that he did not receive notice for the first  
12 siting application, the one filed on August 16th of  
13 2002?

14 A. Because Mr. Keller told me himself prior  
15 to my election to the county board that notice had  
16 been served and affixed to their door and he  
17 instructed his wife, Brenda Keller, not to touch it  
18 or open it because if she didn't, then she hadn't  
19 been served.

20 Q. And he was referring to a notice that was  
21 posted on their door at their home?

22 A. That is correct.

23 Q. And how did you learn this?

24 A. In a conversation with Mr. Keller.

1           Q.    In a conversation you had directly with  
2   Mr. Keller?

3           A.    Right.

4           Q.    Let's just step back for a moment and get  
5   back to the question that I was asking here, and  
6   that was any information that you had heard about  
7   Mr. Harrison working with other people to defeat  
8   this application. You said that -- that he was  
9   calling from Rob Keller's house February 16th of  
10  2004.

11          A.    That is correct.

12          Q.    Okay. And you knew he was calling from  
13  Mr. Keller's house on what basis?

14          A.    It was on my caller ID.

15          Q.    And you knew Mr. Keller's --

16          A.    Well, it said Robert Keller.

17          Q.    I'm sorry.

18          A.    And Mr. Mike Lagesse asked me for the  
19  number. He called him back at that number and Bruce  
20  Harrison picked up the phone.

21          Q.    And when was this call placed by you the  
22  16th of February?

23          A.    I didn't place the call. Mike Lagesse  
24  placed the call and returned a call to me and said I

1 called him at Rob Keller's house.

2 Q. All right. So that we're clear just on  
3 the sequence of events, Mr. Harrison called you  
4 February 16th, 2004.

5 A. Correct.

6 Q. You had this ten minute conversation with  
7 him about the law he had which says you can talk  
8 with me because what you've been told is wrong.

9 A. Correct.

10 MR. PORTER: I'm going to object.

11 A. Oh, I'm sorry.

12 MR. PORTER: And perhaps I missed it, but  
13 I don't recall there being testimony it was a ten  
14 minute conversation. To the extent that I am  
15 correct, I object to the mischaracteration.

16 Q. Well, just to clarify, did you say the  
17 conversation on February 16th --

18 A. Yes, I did.

19 Q. -- was ten minutes?

20 MR. PORTER: Sorry. Objection withdrawn.

21 A. Yes, I did.

22 Q. And it was during the course of this  
23 conversation that you learned that Mr. Harrison had  
24 planned to meet with Mr. Lagesse that afternoon at

1 one o'clock, correct?

2 A. Correct.

3 Q. And upon concluding your phone  
4 conversation with Mr. Harrison, you called Mr.  
5 Lagesse to inform him of what you knew about Mr.  
6 Harrison.

7 A. Correct.

8 Q. And on the basis of that conversation with  
9 Mr. Lagesse, Mr. Lagesse then called the number that  
10 Harrison had given you, correct?

11 A. No, not exactly. It was on my caller ID.  
12 I -- he never gave me the number. I read it off the  
13 phone and jotted it down.

14 Q. Okay. And after you jotted down the  
15 number, you then gave the number to Mr. Lagesse?

16 A. Yes, I did.

17 Q. And then Mr. Lagesse called the number  
18 back?

19 A. Yes, he did.

20 Q. And when Mr. Lagesse called back on  
21 February 16th, the number went to Mr. Keller's  
22 residence?

23 A. Correct.

24 Q. And Mr. Harrison answered that phone call

1 from Mr. Lagesse.

2 A. Correct.

3 Q. And told Mr. Harrison that he was refusing  
4 to meet with him?

5 A. Correct.

6 Q. And Mr. Keller was present when Mr.  
7 Lagesse called Mr. Harrison at the number that you  
8 had jotted down from Mr. Harrison's call to you?

9 MR. PORTER: I need that read back please.

10 (Requested portion of the deposition was  
11 read by the court reporter.)

12 MR. PORTER: I'm going to object to the  
13 extent it calls for conjecture, but go ahead and  
14 answer if you know.

15 A. I have no idea who was present on the  
16 other end of the phone.

17 Q. Other than these two phone calls with Mr.  
18 Harrison, did you have any other discussions or  
19 communications with Mr. Harrison?

20 A. He came to my house -- I can't remember  
21 the date. It was shortly before the March 17th  
22 meeting. My husband answered the door and he  
23 informed my husband that he was there on official  
24 county business, that he needed to speak with me.

1 So my husband not knowing who this was and not  
2 knowing any better went in and got me out of bed, I  
3 worked the night before, and herded me to the door  
4 and I -- I really didn't have any idea who this  
5 fellow was on my front porch until he identified  
6 himself. And he stated that he had the documents  
7 that he wanted me to read, the legal briefs that I  
8 needed, and I told him thank you, I was not an  
9 attorney, I would not understand anything in the  
10 envelope and that I would not therefore be reading  
11 it and to please not come back to my house. It made  
12 me very uncomfortable.

13 Q. And what was the date of this visit?

14 A. I couldn't tell you the exact date.

15 Q. In relation to the February 16th call, a  
16 couple of weeks later, a couple of days later?

17 A. I would say it was within a two week time  
18 frame.

19 Q. So it was sometime prior to March 17 --

20 A. Yes.

21 Q. -- of 2004?

22 A. Definitely.

23 Q. And what time of day was it?

24 A. Oh, goodness. Mid to late morning, maybe



1 early afternoon. Like I said, I work midnights, I  
2 had been sleeping.

3 Q. And how long did the meeting last?

4 A. Probably about a minute by the time it  
5 took me to get him told pretty much.

6 Q. And he left these materials with you?

7 A. Yes, he did.

8 Q. What did you do with the materials?

9 A. I shredded them actually.

10 Q. You didn't send them to the county or  
11 take --

12 A. No, I didn't even think about it. I just  
13 told my husband I don't understand this stuff and  
14 I'm not even going to -- not going to mess with it.

15 Q. Did you have any communications or  
16 discussions with Mr. Harrison after that visit to  
17 your house?

18 A. He's greeted me in the hall here when --  
19 the morning of the vote, and I did not respond. I  
20 believe the extent of that conversation on his end  
21 was, hey, I know you're going to do the right thing,  
22 and I just continued to go past him. I -- I have  
23 seen him once subsequent to that in a professional  
24 -- outside the county in relation to my job one --

1 one other time.

2 Q. And when was that?

3 MR. PORTER: I'm going to object to the  
4 extent it invades the physician/patient privilege.

5 A. Right, Hippo.

6 Q. You were seeing Mr. Harrison in your  
7 capacity as a nurse?

8 A. Mr. Harrison was not the patient.

9 Q. Okay. And did this occur within the last  
10 three months?

11 A. Yes, it did.

12 Q. It occurred at the hospital?

13 A. Yes, it did.

14 Q. Other than that instance and the other  
15 three -- four you identified, February 14th,  
16 February 16th, a day at your home probably two weeks  
17 thereafter and the county board meeting on March  
18 17th, have you had any other communications or  
19 discussions with Mr. Harrison?

20 A. None. None.

21 Q. Now, you mentioned Mr. Keller a few  
22 moments ago. When did you first meet Mr. Keller?

23 A. Six, seven years ago. I'm not really  
24 certain of the date.

1 Q. Where did he live at that time?

2 A. I believe he lived in Bradley.

3 Q. Do you know where he lives now?

4 A. Exactly, no. No, I have a -- kind of a  
5 vague idea, but really nothing specific.

6 Q. Does he live on 6000 South Road very close  
7 to the proposed expansion?

8 A. I don't know the exact location. I --  
9 I've never been to his home.

10 Q. Do you know if he lives in close proximity  
11 to the proposed expansion?

12 A. Yes.

13 Q. What were the circumstances under which  
14 you first met Mr. Keller?

15 A. We were both, are both scuba divers.

16 Q. And you met him scuba diving?

17 A. Uh-huh.

18 MR. PORTER: Is that yes?

19 Q. You need to say yes.

20 A. Yes. Yes. I'm sorry.

21 Q. Where?

22 A. Oh, golly. At Bird Park quarry actually  
23 the first time.

24 Q. Have you scuba dived with Mr. Keller or in

1 connection with an event where he also participated  
2 a number of times since then?

3 A. I've been to events, scuba events with  
4 him. I've only dove with him the one time.

5 Q. When you say a scuba event, what does that  
6 mean?

7 A. Gosh, we used to have underwater pumpkin  
8 carving things at the quarry. I know, it sounds  
9 ridiculous. The time that I met him, we were  
10 actually tying down markers to different landmarks  
11 in the quarry, specifically an old bus. And then we  
12 did a few -- there were a few night dives and things  
13 at the quarry.

14 Q. Other than these events and including the  
15 scuba diving that you did with Mr. Keller, have you  
16 had occasion to in any way have any interactions or  
17 dealings with him?

18 A. Yes.

19 Q. Could you describe those for us?

20 A. Just that we have some mutual friends and  
21 we have both been at functions.

22 Q. When you say functions, you mean --

23 A. Weddings, baby showers.

24 Q. -- social --

1           A.    Social gatherings.

2                   MR. PORTER:  Again, it's impossible for  
3   the court reporter to try to take down when you're  
4   both talking at the same time.  I'm sure she is  
5   making her best efforts at it however.

6           A.    Bless her heart.

7           Q.    Would it be fair to characterize your  
8   relationship with Mr. Keller as a friend?

9           A.    No.

10          Q.    Social acquaintance?

11          A.    Correct.

12          Q.    Is Mr. Keller married?

13          A.    Yes.

14          Q.    Do you know his wife's name?

15          A.    Brenda.

16          Q.    Do you know Brenda Keller?

17          A.    Yes.

18          Q.    When did you first meet Brenda Keller?

19          A.    The same time I met Rob.

20          Q.    Is she a scuba diver as well?

21          A.    She's part of that circle.  I've never  
22   actually seen her dive, so I couldn't say yes or no  
23   actually.

24          Q.    Was she a participant in these various

1 events you described having participated in with Mr.  
2 Keller?

3 A. Yes.

4 Q. Would it be fair to characterize her as a  
5 social acquaintance of yours?

6 A. Yes.

7 Q. A friend of yours?

8 A. No.

9 Q. And you said that both of them sort of  
10 work in or are around the same circle of people.

11 A. Yes.

12 Q. Okay. Which individuals or which people  
13 are we talking about? Can you give us any names of  
14 who these -- who these circle of acquaintances are?

15 A. Not really clear as to why that's  
16 important.

17 MR. PORTER: I think your concern is  
18 whether or not it's relevant, and I also have been  
19 sharing that concern. However, you indicated  
20 earlier that Mr. Harrison called you from Mr.  
21 Keller's house and I think that counsel has a right  
22 then to figure out who Mr. Keller hangs out with in  
23 order to determine whether or not one of those  
24 individuals was an objector. And that's the reason

1 I've not objected to relevancy yet, and I think that  
2 you have or I think counsel has a right to ask the  
3 question. I think you have a responsibility to  
4 answer.

5 A. Mostly it's a circle of my friends. My  
6 husband knows him, them. Pam and Mike Lachinsky.  
7 Gosh. Pam and Bill Convery who don't even live in  
8 this area. I mean, for heavens sake, they know my  
9 children. I don't know who they hang out with  
10 specifically. I can only give you instances where I  
11 have been with them through different things, and  
12 again, I don't know all those people's that went to  
13 the dive events names. I haven't been as deeply  
14 involved as perhaps they are, but --

15 Q. What does Mr. Keller do for a living?

16 A. To the best of my knowledge, the last job  
17 I knew he held, he worked at a stone quarry here in  
18 town.

19 Q. Has he had a number of different jobs over  
20 the period of time that you've known him?

21 A. I -- I really don't know him well enough  
22 to be able to answer that.

23 Q. Do you know whether Mr. Keller has ever  
24 performed any work for United Disposal?

1           A.    I have no idea.

2           Q.    Do you know whether he's ever performed  
3 any work or services for Mike Watson?

4           A.    I have no idea.

5           Q.    Do you know whether Mr. Keller knows Mr.  
6 Watson?

7           A.    I have no idea.

8           Q.    Now, you mentioned a little bit earlier  
9 about a conversation that you had with Mr. Keller  
10 about receipt of notice for the first siting  
11 application that was filed on August 16th of 2002;  
12 is that correct?

13          A.    That's correct.

14          Q.    Where did this conversation take place?

15          A.    Off the top of my head, I can't recall  
16 exactly. It was -- it was in town at a store. Had  
17 just run into him somewhere. And I honestly can't  
18 -- I want to say K Mart, but I can't say that for  
19 certain.

20          Q.    And when you say it was in town, which  
21 town are you referring to?

22          A.    Bradley.

23          Q.    And do you recall what time of year it was  
24 or when it occurred?



1           A.    Oh, it was chilly out, that's all I  
2    recall.  That could be -- I want to say sometime in  
3    the spring.

4           Q.    Are you aware that Mr. Keller and his  
5    wife, Brenda Keller, testified during the first set  
6    of public hearings on the first siting application  
7    and that testimony would have been in December of  
8    2002?

9           MR. PORTER:  I'm sorry, counsel, I have to  
10   object and direct the witness not to answer.  Again,  
11   I think this invades as to what she has reviewed.  
12   She did vote on that application.  For consistency  
13   sake, I have no choice but to direct the witness not  
14   to answer.

15          Q.    Do you know if the Kellers testified at  
16   the public hearing?

17          MR. MORAN:  I'm not sure how this affects  
18   her mental process or how she viewed the  
19   application.  This is a fact of as to whether these  
20   individuals testified or didn't.  She either does or  
21   doesn't know.  I've asked her whether she knows.

22          MR. PORTER:  As long as counsel is not  
23   asking what she reviewed, I'm going to go ahead --  
24   what she reviewed or what she saw at the hearings,

1 I'm going to go ahead and let her answer on that  
2 basis of what she's aware of. Go ahead.

3 A. Yes, that Rob had -- you're speaking of  
4 the public sessions?

5 Q. I'm speaking of the public hearings that  
6 were conducted by the Regional Planning Commission  
7 on the first siting application which took place in  
8 November and December of 2002.

9 MR. PORTER: And his question is if you're  
10 aware of the testimony.

11 A. I'm aware of it. I mean, I couldn't tell  
12 you what he said, but, yes, I'm aware.

13 MR. PORTER: Again, just answer the  
14 question that he asked.

15 Q. I'm not asking you what he said. Did he  
16 tell you that he testified?

17 A. No.

18 Q. You learned through some other means?

19 A. Yes.

20 Q. And you were also aware that Mrs. Keller  
21 testified during that -- those hearings.

22 A. Yes.

23 Q. So you ran into Mr. Keller at a store in  
24 Bradley sometime when it was cool out, but would it

1 have been sometime after they had testified?

2 MR. PORTER: Can we go off the record for  
3 a minute?

4 A. Yeah.

5 (Discussion off the record.)

6 MR. PORTER: Go ahead and answer.

7 MR. MORAN: You're absolutely right, and  
8 let me just go ahead and just clarify this.

9 Q. I think you did indicate previously that  
10 this discussion you had with Mr. Keller was prior to  
11 your election to the county board.

12 A. Correct.

13 Q. And you were elected to the county board  
14 in November of 2002.

15 A. Correct.

16 Q. So it would have been sometime prior to  
17 the date you were elected, which I assume was the  
18 first Tuesday in November of 2002.

19 A. Correct.

20 Q. Can you give us any indication as to how  
21 long before the date you were elected? Would it  
22 have been a couple of weeks, a month?

23 A. I -- I'm wanting to say it was -- it was  
24 more than a month. My recollection of it was --

1           MR. PORTER: You've answered his question,  
2 unless it relates to that question. I don't mean to  
3 interrupt.

4           THE WITNESS: Okay.

5           MR. PORTER: If you're answering that  
6 question or elaborating, go ahead and complete it,  
7 but if you're not, then I'd ask you to wait until  
8 another question is asked.

9           THE WITNESS: Okay.

10          MR. PORTER: All right. You're going to  
11 wait?

12          THE WITNESS: I think I'll wait.

13          Q. Your recollection was that it occurred  
14 sometime when it was cool out.

15          A. Yes.

16          Q. Would it be accurate to say that that  
17 discussion took place sometime in September or  
18 October of 2002?

19          A. No, I want to say spring. I want to say  
20 it was in the spring.

21          Q. The spring of?

22          A. 2002.

23          Q. The siting application that was filed in  
24 August of 2002 was filed on August 16th of 2002. Is

1 that your understanding?

2 A. Yes.

3 Q. The notices that would have been sent out  
4 to the various property owners and others were sent  
5 out in late July and early August of 2002.

6 A. Okay.

7 Q. Is that your understanding?

8 A. I -- I -- I have no idea when they were  
9 sent out.

10 Q. If these notices were sent out at the end  
11 of July of 2002, would it be accurate to say that  
12 your discussion with him about these notices  
13 occurred sometime after July of 2002?

14 A. The discussion occurred immediately after  
15 the notice was -- within a week of the notice being  
16 placed on his door.

17 Q. If I were --

18 A. So whenever that was.

19 Q. If I were to indicate to you that evidence  
20 presented at the public hearings on the first siting  
21 application indicated that a notice of the filing of  
22 the first siting application was posted on the  
23 Kellers' door on August 1st of 2002, does that in  
24 any way refresh your recollection as to when this

1 discussion with Mr. Keller took place?

2 MR. PORTER: Well, I need that read back,  
3 I'm sorry.

4 (Requested portion of the deposition was  
5 read by the court reporter.)

6 MR. PORTER: I object to the extent that  
7 counsel is trying to characterize the evidence that  
8 was admitted at the hearing, but it's for the  
9 purpose of establishing dates, so I'm going to go  
10 ahead and let you answer, but be aware it may be an  
11 incomplete hypothetical of what all that evidence  
12 actually showed. Go ahead and answer.

13 A. All I recall about that particular meeting  
14 is that it wasn't even a meeting. We just ran into  
15 each other, was in a parking lot, and I keep wanting  
16 to say K Mart. It was a blustery that day. It  
17 would have been fall, spring. I really can't  
18 recall. I know I was not on the county board. It  
19 was very windy and chilly out that day, and I really  
20 didn't -- my primary concern was getting back in my  
21 car and getting out of the weather.

22 Q. Was anyone else present or in or around  
23 the area where you had this discussion with Mr.  
24 Keller?

1           A.    My husband was with me, but he wasn't --  
2    wasn't actually a part of the conversation.

3           Q.    And you were coming to your car after  
4    having concluded whatever business you were doing --

5           A.    Yeah.

6           Q.    -- in the store that you were visiting?

7           A.    Yeah. That's my recollection. I remember  
8    him putting something in our car, my husband.

9           Q.    And how did Mr. Keller approach you in the  
10   parking lot?

11          A.    He was going in for whatever reason. Hey,  
12   how you doing, (indicating), and that kind of thing.

13                   MR. PORTER: For the record, did you  
14   indicate a wave?

15          A.    Yes, that was a wave, I'm sorry.

16          Q.    And what did he say to you then?

17          A.    He came over, he chatted for a few  
18   minutes, and then he indicated something about --  
19   trying to think exactly how he put it. Something to  
20   the effect that, I don't know who he was indicating,  
21   they are so F-ing stupid that they put that F-ing  
22   notice on our door and just left it, and I told the  
23   old lady not to touch it, don't open it, just leave  
24   it where it's at and we never got it. You didn't

1 read it, we never got it.

2 Q. And when you say he said the old lady, who  
3 was he referring to?

4 MR. PORTER: Object to conjecture. Go  
5 ahead and answer.

6 A. I'm assuming Brenda.

7 Q. And what's the basis of that assumption?

8 A. Well, he's referred to her as the old lady  
9 a few times.

10 Q. Oh, he has?

11 A. Yes.

12 Q. And he had referred to her as that prior  
13 to that occasion?

14 A. Yeah.

15 Q. So that was your understanding when he  
16 referred to the old lady.

17 A. Right.

18 Q. What else did he say to you regarding the  
19 notice that was sent to his home or that was posted  
20 on his door?

21 A. That it was still there.

22 Q. It was still on his door --

23 A. Uh-huh.

24 Q. -- as of the day he spoke with you?



1           A.    Uh-huh.

2                   MR. PORTER:  Is that yes?

3           A.    Yes.

4           Q.    And when he said they were so F-ing  
5   stupid, did you have any understanding as to who he  
6   was referring to?

7           A.    I -- I really wasn't clear and I wasn't  
8   interested enough at that point to ask him what he  
9   was referring to.  I didn't know if he meant like  
10  the sheriff's deputy, because it was my assumption  
11  that they serve you with legal documents, or if he  
12  was indicating Waste Management or just who they  
13  were.  He didn't make it clear and I didn't actually  
14  bother to ask him.

15          Q.    What else did he say about any notice that  
16  went to his home?

17          A.    That was pretty much it.  He was laughing  
18  at himself and appearing to be quite proud of his  
19  cleverness.  And then I concluded the conversation,  
20  said I am freezing to death, I got to get in the  
21  car, I got to go.

22          Q.    And when you say he was referring to his  
23  cleverness, what did you understand that cleverness  
24  to be?

1 A. That he had outsmarted somebody.

2 Q. And did he indicate that he was going to  
3 deny that he had received any such notice?

4 A. That was the indication.

5 Q. Did he indicate that his wife Brenda or  
6 the old lady --

7 A. The old lady.

8 Q. -- was going to deny that she received any  
9 notice?

10 A. That was the indication.

11 Q. Did he indicate whether anyone had  
12 discussed with him reasons as to why he should deny  
13 receipt of the notice?

14 A. No.

15 Q. Did he indicate someone had indicated to  
16 him that this is something that he ought to do in  
17 order to --

18 A. No.

19 Q. -- defeat a request for siting approval?

20 A. Did -- the only thing he really said about  
21 it was if we don't -- if we don't open it, if we  
22 don't read it, we didn't get it. So I -- you know,  
23 he never indicated that anybody told him that. I  
24 don't know if it was something he thought up on his

1 own. I have no idea. He never indicated anything.

2 Q. Did he state in any way whether he had  
3 received any mailings which may have contained a  
4 similar notice?

5 A. No.

6 Q. There was simply no discussion?

7 A. There was absolutely no discussion. That  
8 was the only thing he said to me was that this thing  
9 had been affixed to his door.

10 Q. Did he say when it had been affixed to his  
11 door?

12 A. No, he did not.

13 Q. And you said before that this discussion  
14 occurred about a week after the notice was posted.  
15 What was the basis for your conclusion that the  
16 discussion occurred shortly after the notice had  
17 been posted? Did he make some reference to it or  
18 did he indicate that it had been recently posted?

19 A. No. All he said was it was still there,  
20 so I was thinking it had to be fairly recently for  
21 it to still be stuck on the door.

22 Q. Did he in any way describe or state how  
23 the notice was affixed to the door? In other words,  
24 with nails, with tape, with --

1 A. He said it was taped to the door.

2 Q. Did he say which door?

3 A. No.

4 Q. Did he indicate how the notice came to be  
5 removed from the door?

6 A. No.

7 Q. Did you ever subsequently learn of any  
8 information as to how the notice came to be removed  
9 from the door?

10 A. No.

11 Q. Did he in any way indicate to you how he  
12 knew that the notice that was posted to his door  
13 related to the proposed expansion?

14 A. No.

15 Q. But he indicated to you that he knew it  
16 was related to the proposed expansion?

17 A. Yes.

18 Q. How long did this conversation with Mr.  
19 Keller last?

20 A. Five to seven minutes maybe.

21 Q. It would fair to say that the principal  
22 subject of discussion during this conversation was  
23 Mr. Keller boasting to you about his cleverness  
24 regarding the notice --

1 A. Yes.

2 Q. -- he had received?

3 A. Yes.

4 Q. Did you ever have any communication or  
5 discussion with him about this notice issue after  
6 that date?

7 A. None.

8 Q. Have you had any discussion or  
9 communication with any other person about this  
10 discussion with Mr. Keller at any time?

11 MR. PORTER: Well, I object to the extent  
12 that invades the attorney/client privilege. Other  
13 than that, you can go ahead and answer.

14 Q. I'm not asking for any communications you  
15 may have had with any lawyers representing you or  
16 representing the county. Just any discussions or  
17 communications with any other person about what Mr.  
18 Keller told you.

19 A. I mentioned it to my husband on the way  
20 home that afternoon, that that seemed kind of odd  
21 that they would -- I thought they would serve it.  
22 And my husband kind of, you know, blew it off. He  
23 doesn't really care for Mr. Keller too much, so --  
24 then I -- I again discussed it with my husband last

1 week, asked him if he recalled that conversation,  
2 and he said I only remember you making the comment  
3 about the deputies not serving it. He said I don't  
4 remember, I wasn't a part of that conversation.

5 Q. Other than your husband and any lawyers  
6 representing you or the county, have you talked or  
7 had a discussion with anyone about your discussion  
8 with Mr. Keller on that date?

9 A. Carl Kruse.

10 Q. When did you have a discussion or  
11 communication with Mr. Kruse about that  
12 communication?

13 A. It -- it wasn't a specific discussion  
14 about that so much. I spoke with him last week and  
15 said that I thought I would have to do the whole  
16 deposition then.

17 Q. So you were talking about this deposition?

18 A. Right.

19 Q. Talking to Mr. Kruse about what you might  
20 be --

21 A. No, I just told him that it looked like I  
22 was going to have to do it. I had mentioned to him  
23 in the past that I hoped I wouldn't have to because  
24 of my work schedule.

1 Q. To Mr. Kruse?

2 A. Yeah. And he said yes, you know, to go  
3 ahead and just tell you everything that you ask me  
4 and things would be fine.

5 Q. Did you ever learn that in August of 2003  
6 the Illinois Pollution Control Board reversed the  
7 siting approval of the Kankakee County Board on the  
8 first siting application?

9 MR. PORTER: I'll object to the extent it  
10 invades the attorney/client privilege. You haven't  
11 asked her -- well, that's my objection. If -- if  
12 the way you learned that was only through  
13 communication with counsel, I have to object to that  
14 invades attorney/client privilege. If you can  
15 rephrase it, counsel, I would appreciate it.

16 Q. Other than hearing it from a lawyer  
17 representing you or the county, did you ever learn  
18 that the Illinois Pollution Control Board reversed  
19 the grant of the siting approval by the Kankakee  
20 County Board for the proposed expansion?

21 A. No.

22 MR. PORTER: Do you need to talk to me?

23 THE WITNESS: No. Just kind of getting  
24 nervous about the time.

1                   MR. PORTER: Do you have somewhere you  
2                   need to be?

3                   THE WITNESS: I have to work at 3:00, so  
4                   I've got maybe an hour.

5                   MR. MORAN: We'll be done by then.

6                   (Discussion off the record.)

7                   BY MR. MORAN:

8                   Q. Did you indicate in any way to Mr. Kruse  
9                   the discussion that you had with Mr. Keller that  
10                  we've just talked about?

11                  MR. PORTER: Hang on a second. I'm going  
12                  to object to relevancy. There's been discussion or  
13                  testimony that that discussion took place within the  
14                  past week and clearly cannot be relevant to the  
15                  fundamental fairness of the proceedings, and  
16                  therefore, I'm going to direct her not to answer  
17                  that one.

18                  A. Okay.

19                  Q. Based upon the testimony that was  
20                  presented during the public hearings on the first  
21                  siting application in December of 2002, it was  
22                  stated that a process server had posted a notice on  
23                  the door of the Kellers' home on August 1st, 2002.  
24                  Does this fact refresh your recollection that the



1 conversation you had with Mr. Keller in the parking  
2 lot that you've just described occurred sometime in  
3 August of 2002?

4 A. Like I said, it was just -- I just  
5 remember it was a blustery day, and it would have to  
6 have been after the first week of August because we  
7 had been out of town that first week in August.

8 Q. Do you have any reason or information to  
9 indicate that this conversation with Mr. Keller did  
10 not occur in August of 2002?

11 A. Like I said, I -- my only recollection  
12 about the date was the fact that it was -- the  
13 weather was cool, it was uncomfortable. Other than  
14 that, that could be any time of the year here, so  
15 no.

16 Q. But you have no information to indicate  
17 that the discussion occurred other than in August of  
18 2002.

19 A. Like I said, I'm having trouble recalling  
20 exactly when it happened, so I don't know what  
21 information I could have.

22 Q. Would it be accurate to say that this  
23 discussion with Mr. Keller in the parking lot  
24 occurred sometime between August 1st of 2002 and the

1 date you were elected to the county board?

2 MR. PORTER: I'll object that it's been  
3 asked and answered. She's already testified it took  
4 place before she was elected to the county board,  
5 but go ahead and answer one more time. I think he  
6 does have a right to some clarification here.

7 A. I would say it would have to have been  
8 after the first week in August and prior to my  
9 election.

10 Q. And you've indicated that you have had no  
11 other communications or discussions with either Mr.  
12 Keller or Mrs. Keller regarding the proposed  
13 expansions since that discussion with Mr. Keller; is  
14 that correct?

15 A. None, that is correct.

16 Q. Have you had any communications or  
17 discussions with Ronald Thompson?

18 A. I have no idea who that is, no.

19 Q. With Keith Runyon?

20 A. He talked. I patted him on the arm and  
21 walked by. It was here in the county building prior  
22 to a meeting. He's always in the hallway. I  
23 wouldn't call it a discussion, no.

24 Q. He approaches you?

1 A. Oh, yeah.

2 Q. Says things to you --

3 A. Yes.

4 Q. -- regarding the proposed expansion?

5 A. Yes. No, no, no. That's incorrect. It's  
6 his discussions always revolve around closed loop  
7 gasification.

8 Q. Have you received any communications from  
9 any persons prior to March 17th of 2004 regarding  
10 the second siting application other than what we've  
11 talked about?

12 A. Yes.

13 Q. Could you describe for us what  
14 communications you have received?

15 MR. PORTER: Well, I'm going to object to  
16 the extent it invades the deliberative process of a  
17 county board member. Direct the witness to limit  
18 your responses to nonboard members at this time, and  
19 I'll let counsel follow-up if indeed he needs to.

20 A. Okay. I received letters which were from  
21 I'm assuming residents out in Otto and they were all  
22 turned into Bruce Clark's office.

23 Q. These were letters you received?

24 A. Uh-huh.

1 MR. PORTER: Yes?

2 Q. You need to say yes.

3 A. Yes, yes.

4 Q. How many letters did you receive  
5 approximately?

6 A. 25, 30.

7 Q. Did you review or read any of the letters?

8 A. I opened the first one. When I realized  
9 what it was, that it violated the not discussing,  
10 not being influenced after the date of the last  
11 hearing, I immediately put it back in the envelope,  
12 and any unfamiliar letters, anything that looked odd  
13 to us, the vast majority of them had the same  
14 handwriting, were addressed by the same hand, so  
15 some of the postmarks threw me. I did open a couple  
16 of them that were from, say, Bradley or Bourbonnais,  
17 and as soon as I realized what they were, I stopped  
18 reading, placed them in the envelope and turned them  
19 over to Bruce Clark.

20 After that, I received -- after the vote,  
21 I received thank you cards, lots and lots of thank  
22 you cards. After I realized again what those were  
23 and recognized the handwriting on the envelopes, I  
24 just -- I threw those away. I just pitched them.

1 Q. Did you receive any phone calls from any  
2 residents or constituents prior to March 17, 2004?

3 MR. PORTER: Other than what's already  
4 been testified to?

5 MR. MORAN: Yes.

6 A. What would be the time frame for that?

7 Q. Any time prior to March 17, 2004, which is  
8 the date of the second siting application.

9 A. The only phone call I received was from  
10 Olivia Wagner and that was shortly after I was  
11 elected to the board, before I was even sworn in,  
12 encouraging me to looking to get closed loop  
13 gasification.

14 Q. And so in 2004, prior to March 17th, you  
15 received no phone calls from any persons other than  
16 Mr. Harrison --

17 A. Exactly.

18 Q. -- regarding the proposed expansion?

19 A. Exactly.

20 Q. And other than the letters you've  
21 testified about, you haven't received any written  
22 materials or any other documents from any persons  
23 prior to March 17th, 2004, regarding the second  
24 siting application.

1           A.    That is correct.

2           Q.    Have you seen or did you see any of the  
3 posters or placards that were located throughout the  
4 environs regarding the proposed expansion?

5           A.    Yes, I did.

6           Q.    And what did you see?

7           A.    Actually, that's how John Latham's name  
8 came up. He lives next door to me. He's my uncle.  
9 There was one in his front yard that said -- it was  
10 green and white. It said no dump, no Chicago  
11 garbage or something like that. And I went over and  
12 had a little chat with him; that it really upset me  
13 he had that in his yard and I did not think that  
14 that was appropriate. And he expressed that he knew  
15 how I felt about this issue, but that he had the  
16 right to put it there. And I said, well, I'm a  
17 little uncomfortable, you know, perhaps you could  
18 take it down. And his -- my aunt, his wife, said  
19 you know, she's right, she shouldn't have to look at  
20 that every day when she comes home. And they did  
21 remove the sign. And I've seen them elsewhere  
22 through town.

23           Q.    The same sign?

24           A.    The same exact sign.

1           Q.    Do you have any facts or information to  
2           indicate that any of the other county board members  
3           took these posters and what they said into account  
4           in voting on the second siting application?

5           MR. PORTER:  Hold on.

6           Q.    It's a yes or no response.

7           A.    No.

8           THE WITNESS:  Did I jump the gun?

9           MR. PORTER:  You're fine.

10          Q.    I believe you had indicated that with  
11          regard to the first siting application, that is the  
12          one voted on on January 31st, 2003, you voted to  
13          approve that application, correct?

14          A.    I believe I did, yes.

15          Q.    And on March 17th, 2004, you voted and  
16          ultimately voted against two of the criteria; is  
17          that correct?

18          A.    That is correct.

19          Q.    You voted against criterion three which is  
20          the criterion related to the character of the  
21          surrounding area and whether any incapability was  
22          minimized with regard to the proposed expansion and  
23          also where the location of the facility was such as  
24          to minimize any adverse effect on property values.

1 Is that correct?

2 A. I voted against --

3 MR. PORTER: Right now, his question is  
4 only if you recall voting against criterion three,  
5 and he has accurately described what criterion three  
6 is. This isn't a memory test. If you like, I have  
7 your roll call vote right here.

8 A. No, I know what I voted against, and I  
9 guess I would have to say yes, then, to that  
10 question.

11 Q. Okay. And I believe you also voted to  
12 disapprove criterion six which had to do with  
13 whether the impact on existing traffic patterns had  
14 been minimized.

15 A. That is correct.

16 Q. Okay. Now, with respect to the first  
17 siting application, you had voted to approve  
18 criterion six, correct?

19 A. Correct.

20 Q. What information or facts did you base  
21 your decision to vote against criterion six on March  
22 17th, 2004, regarding the second siting application?

23 MR. PORTER: I would object and direct the  
24 witness not to answer based on the fact that that



1 obviously invades the deliberative process of a  
2 county board member.

3 Q. You also voted to disapprove criterion  
4 three as I indicated a few moments ago, correct?

5 A. Uh-huh, yes.

6 Q. But in the 2003 vote, you voted to approve  
7 criterion three, correct?

8 A. Yes.

9 Q. Why did you change?

10 MR. PORTER: Same direction. Same  
11 objection.

12 Q. What facts or information did you have on  
13 which you based your decision to change your vote  
14 from an approval on criterion three to a disapproval  
15 on criterion three?

16 MR. PORTER: Same objection, same  
17 direction.

18 Q. Do you accept that instruction?

19 A. Yes.

20 Q. I'm going to go through very briefly a  
21 list of names and I want to ask you if you had any  
22 communications or discussions with any of the  
23 following individuals regarding the second siting  
24 application.

1 A. Okay.

2 Q. Andrea Taylor?

3 A. No.

4 Q. Karen Mallaney?

5 A. No.

6 Q. Robert Taylor?

7 A. No.

8 Q. Pat Buescher?

9 A. No.

10 Q. Stephanie Kramer?

11 A. No.

12 Q. Jeremy Christer?

13 A. No.

14 Q. Tammy Christer?

15 A. No.

16 Q. Tammy Focken?

17 A. No.

18 Q. Rodney Cote?

19 A. No.

20 Q. Rodney Burch?

21 A. No.

22 MR. MORAN: Thank you. That's all I have.

23 MR. PORTER: We have no follow-ups. And

24 we will reserve signature.

(Adjourned at 12:43 p.m.)

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1 STATE OF ILLINOIS )  
 )SS  
 2 COUNTY OF FORD )

3

4 I, June Haeme, a Notary Public in and for  
 the County of Ford, State of Illinois, do hereby  
 5 certify that LISA LATHAM WASKOSKY, the deponent  
 herein, was by me first duly sworn to tell the  
 truth, the whole truth and nothing but the truth, in  
 6 the aforementioned cause of action.

7 That the following deposition was taken on  
 behalf of the Petitioner at the Kankakee County  
 Building, 189 East Court Street, Kankakee, Illinois,  
 8 on July 20, 2004.

9 That the said deposition was taken down in  
 stenograph notes and afterwards reduced to  
 typewriting under my instruction; that the  
 10 deposition is a true record of the testimony given  
 by the deponent; and that it was agreed by and  
 11 between the witness and attorneys that said  
 signature on said deposition would not be waived.

12 I do further certify that I am a  
 disinterested person in this cause of action; that I  
 13 am not a relative, or otherwise interested in the  
 event of this action, and am not in the employ of  
 14 the attorneys for either party.

15 IN WITNESS WHEREOF, I have hereunto set my  
 hand and affixed my notarial seal this 20th day of  
 July, 2004.

16

17

18

  
 JUNE HAEME, CSR, RMR, CRR  
 NOTARY PUBLIC

19

20

21

"OFFICIAL SEAL"

22

June Haeme

Notary Public, State of Illinois

23

My Commission Expires:

September 27, 2004

24



# Exhibit B

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

CITY OF KANKAKEE, )  
)  
Petitioner, ) PCB 03-03-125  
)  
v. ) (Third-Party Pollution Control  
) Facility Siting Appeal)  
)  
COUNTY OF KANKAKEE, COUNTY )  
BOARD OF KANKAKEE, and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )  
)  
Respondents. )

---

MERLIN KARLOCK, )  
)  
Petitioner, ) PCB 03-133  
)  
v. ) (Third-Party Pollution Control  
) Facility Siting Appeal)  
)  
COUNTY OF KANKAKEE, COUNTY )  
BOARD OF KANKAKEE, and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )  
)  
Respondents. )

---

MICHAEL WATSON, )  
)  
Petitioner, ) PCB 03-134  
)  
v. ) (Third-Party Pollution Control  
) Facility Siting Appeal)  
)  
COUNTY OF KANKAKEE, COUNTY )  
BOARD OF KANKAKEE, and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )  
)  
Respondents. )

---

KEITH RUNYON, )  
)  
Petitioner, ) PCB 03-135  
)  
v. ) (Third-Party Pollution Control  
) Facility Siting Appeal)  
)  
COUNTY OF KANKAKEE, COUNTY )  
BOARD OF KANKAKEE, and WASTE )  
MANAGEMENT OF ILLINOIS, INC., )  
)  
Respondents. )

**AFFIDAVIT OF DONALD J. MORAN  
IN SUPPORT OF MOTION FOR RELIEF FROM JUDGMENT.**

I, Donald J. Moran, state on oath that I have personal knowledge of the facts contained herein, and if called, could and would competently testify as follows:

1. I am a partner in the law firm of Pedersen & Houpt and admitted to practice law by, *inter alia*, the Supreme Court of Illinois.
2. At all times relevant to the events set forth in this Affidavit, I have been principal counsel for Waste Management of Illinois Inc. ("WMII").
3. On August 16, 2002, WMII, filed an application for site location approval to expand the Kankakee Landfill ("Application") with Respondent County of Kankakee ("Kankakee County") to be reviewed and decided by the Kankakee County Board ("County Board") pursuant to Section 39.2 of the Illinois Environmental Protection Act, (the "Act"). 415 ILCS 5/39.2 ("Act").
4. Public hearings on the Application were held before the County Board on 11 days between November 18 and December 6, 2002.
5. On December 4, 2002, near the conclusion of the public hearings, a motion to dismiss the proceedings for lack of jurisdiction was filed by objector Michael Watson ("Watson"). Watson claimed that Mr. Robert Keller and Mrs. Brenda Keller, husband and wife, residing at 765 East 6000 South Road, Chebanse, Illinois, did not received pre-filing notice. After hearing testimony and considering the evidence concerning the service of pre-filing notice on the Kellers, the hearing officer denied Watson's motion to dismiss.
6. On January 31, 2003, the County Board found that it had jurisdiction to decide the Application and granted local siting approval in a seven-page written decision ("Approval"). The



Approval was appealed by various parties to the Illinois Pollution Control Board ("IPCB") in *City of Kankakee, et al. v. County of Kankakee, Nos. PCB 03-125, 03-133, 03-134, 03-135 (cons.) (August 7, 2003)*.

7. On August 7, 2003, the IPCB issued an Opinion and Order ("August 7 Order") reversing the Approval. The IPCB held that the County Board lacked jurisdiction to decide the Application based on the IPCB's determination that one property owner, Mrs. Keller, did not receive pre-filing notice. The IPCB held that, because the County Board was without jurisdiction, the Approval was void. *Id.* The IPCB did not address any of the other grounds raised by Respondents.

8. As a result of the August 7 Order, WMII refiled the Application on September 26, 2003. Despite the fact that the Application filed September 26 was the same as the Application approved by the County Board on January 31, 2003, the County Board denied the former on March 17, 2004. WMII appealed the denial in *WMII v. County Board of Kankakee County, No. PCB 04-186 (April 21, 2004)*. In that appeal, WMII sought to depose County Board Member Lisa Latham Waskosky to establish facts and information relating to the claim of fundamental unfairness in the proceedings. On July 20, 2004, I took the deposition of Lisa Latham Waskosky.

9. The testimony provided by Waskosky was not discoverable prior to the January 31, 2003 decision of the County Board by the exercise of due diligence.

10. Waskosky's existence was unknown to WMII at the time of her conversation with Robert Keller in August 2002, in which Keller admitted the receipt of service and his intention, along with Mrs. Keller, to nevertheless deny service.

11. Waskosky's existence remained unknown to WMII until her election to the County Board in November 2002, which became effective on December 10, 2002, just after the siting hearings were concluded.

12. Even after she was sworn in as a County Board member, WMII had no basis or information to suspect that Waskosky either had a relationship with Robert or Brenda Keller, or that she might have facts or information relating to the Kellers' receipt of pre-filing notice.

13. No witnesses, facts or documents in any way pointed to the slightest possibility that Waskosky had either relevant or crucial information regarding this issue of pre-filing notice on the Kellers.

14. The Watson Motion was presented at the start of WMII's rebuttal case on December 4, 2002. The public hearings concluded December 6, 2002. There was no opportunity or reason to conduct discovery or seek information regarding the Waskosky evidence. Neither the siting applicant or any party has the right or power to undertake discovery during the siting proceedings before the County Board.

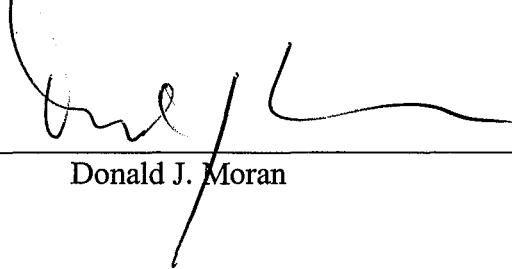
15. During the appeal in *City of Kankakee*, WMII had no knowledge or reason to know Waskosky's evidence. While WMII had the right to conduct discovery in the appeal, it had no reason or basis to depose County Board members on the jurisdictional issue because the County Board found that pre-filing notice was effected and that it had jurisdiction to decide the Application.

16. The first ruling that pre-filing notice was not received and that the County Board thus lacked jurisdiction was the August 7 Order. There was no reason or basis for WMII to depose County Board members on that issue prior to the August 7 Order. Even after issuance of

the August 7 Order, WMII had no reason to depose or discover information from County Board members on the issue of pre-filing notice because the County Board found it had jurisdiction. In fact, WMII had no right or ability to depose County Board members on that issue after issuance of the August 7 Order.

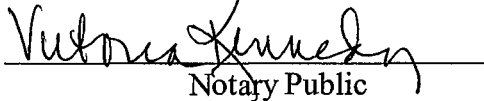
17. Even as late as the pendency of *Kankakee County* in April to July 2004, WMII did not know and had no reason to know or discover the evidence of Waskosky's discussion with Mr. Keller.

FURTHER AFFIANT SAYETH NOT



Donald J. Moran

Subscribed and sworn to me  
before this 6<sup>th</sup> day of August 2004.

  
Notary Public