

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RESIDENTS AGAINST A POLLUTED)
ENVIRONMENT and THE EDMUND B.)
THORNTON FOUNDATION)
)
Petitioner,)
)
-vs-) NO. PCB 96-243
)
COUNTY OF LASALLE and LANDCOMP)
CORPORATION,)
)
Respondent.)

TRANSCRIPT OF PROCEEDINGS of the public
hearing held in the above-entitled matter; taken before
ANN L. PELLICAN, C.S.R., a Notary Public in and for the
County of LaSalle, State of Illinois, at The LaSalle
County Courthouse, Room 300, Ottawa, Illinois, on the
22nd day of July, 1996, commencing at the hour of 10:00
a.m.

PRESIDING: MS. DEBORAH FRANK, Hearing Officer.

ANN L. PELLICAN, CSR

(815) 223-5994

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

APPEARANCES:

HOFFMAN, MUELLER & CREEDON
Attorneys at Law
BY: MR. GEORGE MUELLER
501 State Street
Ottawa, Illinois 61350

appearing on behalf of the Petitioner;

MR. ROBERT M. ESCHBACH
Special Assistant State's Attorney
728 Columbus Street
Ottawa, Illinois 61350

appearing on behalf of the County of LaSalle.

BUTLER, RUBIN, SALTARELLI & BOYD
Attorneys at Law
BY: MR. JAMES I. RUBIN
MR. KEVIN J. O'BRIEN
Three First National Plaza
Chicago, Illinois 60602

appearing on behalf of Landcomp Corporation.

ALSO PRESENT: Audrey Lozuk-Lawless, Attorney
Members of the public.

INDEX PAGE

WITNESSES:

ROBERT ESCHBACH	
Direct Examination by Mr. Mueller	17
Cross-Examination by Mr. Rubin	58
SUSAN GRANDONE-SCHROEDER	
Direct Examination by Mr. Mueller	59
Redirect Examination by Mr. Mueller	97
Cross-Examination by Mr. Eschbach	94
Recross-Examination by Mr. Eschbach	108
Cross-Examination by Mr. O'Brien	96

1	INDEX, CONT'D.	PAGE
2	ANDREE-MARIE KOBAN	
	Direct Examination by Mr. Mueller	112
3	Cross-Examination by Mr. Eschbach	119
	Cross-Examination by Mr. Rubin	120
4		
	PAUL DeGROOT	
5	Direct Examination by Mr. Mueller	123
	Cross-Examination by Mr. Rubin	127
6		
	BRUCE MARKWALTER	
7	Direct Examination by Mr. Mueller	128
8		
	EDMUND B. THORNTON	
	Direct Examination by Mr. Mueller	131
9	Redirect Examination by Mr. Mueller	144
	Cross-Examination by Mr. Eschbach	141
10	Cross-Examination by Mr. Rubin	143
11		
	SUSAN GRANDONE-SCHROEDER	
	Direct Examination by Mr. Eschbach	154
12	Cross-Examination by Mr. Mueller	156
	Cross-Examination by Mr. O'Brien	158
13		
	MEMBERS OF THE PUBLIC:	
14		
	JOAN C. BERNABEI	
15	Examination by Mr. Eschbach	148
	Examination by Mr. O'Brien	150
16	Examination by Mr. Mueller	153
17		
18		
19		
20		
21		
22		
23		
24		

1 HEARING OFFICER FRANK: Go on the record.

2 Good morning. My name is Deborah Frank, and
3 I'm the Illinois Pollution Control Board hearing officer
4 for this matter. To my right is Audrey Lozuk-Lawless.
5 She is the attorney assistant to board member -- board
6 member Dr. Ron Flemel (phonetic).

7 For the record, I note that it is about 10:05
8 on July 22nd and that there are members of the public
9 present.

10 The proceeding before us today is Residents
11 Against A Polluted Environment and the Edmund B.
12 Thornton Foundation versus the County of LaSalle and
13 Landcomp Corporation, PCB 96-243.

14 Before we begin, I would like to explain a
15 little bit about the Board's hearing process. First,
16 you should know that it is the Board and not me that
17 makes the decision in this case. My job consists of
18 guiding the hearing transcript and the record in an
19 orderly manner so that the Board can follow it and --
20 when they go and read it to make their decision. I also
21 assess the credibility of witnesses. At times I may ask
22 for clarification for the record or ask questions which
23 I believe are necessary for the Board to fully
24 understand what is taking place. This is provided for

1 in the Board's procedural rules.

2 Today's hearing is for the purpose of
3 determining whether the procedures used at the hearing
4 before the County were fundamentally fair and whether
5 jurisdiction was proper. The petition for review also
6 alleges that the County decision on the nine criteria
7 used to site the landfill was against the manifest
8 weight of the evidence. The parties and the public are
9 cautioned that the Illinois Environmental Protection Act
10 specifically states that no new or additional evidence
11 in support of or in opposition to any finding, order,
12 determination, or decision of the appropriate county
13 board or governing body of the municipality shall be
14 heard by the Pollution Control Board.

15 The Board's procedural rules and the
16 Environmental Protection Act state that members of the
17 public be allowed to speak or submit written statement
18 at hearing. Any person doing so shall be subject to
19 cross-examination, and they can come forward and be
20 sworn in order to make their statement. Additionally,
21 any such statement must be relevant to the case and the
22 issues currently before the Board. I will call for
23 statements from members of the public at various times
24 throughout the day, depending on the amount of people

1 who wish to speak. If anyone needs to leave early or
2 can't be there for the public session on Tuesday
3 evening, you need to let me know so that we can take
4 your statement before you leave.

5 There's really nothing else unless there are
6 questions from any of the parties or members of the
7 public about how the proceeding will run. Otherwise,
8 we'll go ahead and begin.

9 Okay. Yes, ma'am.

10 A MEMBER OF THE PUBLIC: What's the purpose of
11 tomorrow night's -- the public hearing?

12 HEARING OFFICER FRANK: It's just to allow members
13 of the public a chance to speak on the record who may
14 not be able to come during the day, during working
15 hours. So it will be -- basically, we will just show up
16 in order to give members of the public a chance to
17 speak.

18 A MEMBER OF THE PUBLIC: When you say a chance to
19 speak, they could speak about the whole process, or are
20 they limited?

21 HEARING OFFICER FRANK: As I said, they can't speak
22 about the criteria, the siting criteria, but they are
23 allowed to make statements on the record.

24 A MEMBER OF THE PUBLIC: About the process?

1 HEARING OFFICER FRANK: About the hearing, about --
2 basically, as long as it's relevant to the proceeding,
3 they can -- they can speak about it.

4 A MEMBER OF THE PUBLIC: Will they be
5 cross-examined?

6 HEARING OFFICER FRANK: Yes. They're subject to
7 cross-examination. I can't tell you whether or not they
8 will be; but they'll have to be sworn by the court
9 reporter and give their name and then come up and speak.
10 Okay?

11 Are there any other questions?

12 Okay. The parties want to go ahead and make
13 their appearance then.

14 MR. MUELLER: George Mueller for Residents Against
15 a Polluted Environment and the Edmund B. Thornton
16 Foundation.

17 MR. RUBIN: James Rubin and Kevin O'Brien for
18 Landcomp.

19 MR. ESCHBACH: Robert Eschbach, Special Assistant
20 State's Attorney for LaSalle County.

21 HEARING OFFICER FRANK: Mr. Mueller, do you want to
22 go ahead and begin?

23 MR. MUELLER: Yes. Thank you.

24 Before I call any witnesses, Ms. Frank, I must

1 confess to you that I am concerned and disturbed about a
2 certain order of the Pollution Control Board rendered on
3 July 18th, several days ago, and a subsequent ruling by
4 yourself with respect to certain subpoenas that had
5 previously been issued. I would at this time move that
6 you clarify the scope of these proceedings with respect
7 to the PCB's prior order and with respect to your own
8 ruling in conformity with that order. I'm not clear at
9 this point what the scope of my inquiry can be, but it
10 appears to me that the Board's ruling of July 18th is
11 rather broad in that it states in pertinent part on page
12 five: Based upon the Board's prior decision in
13 Beardstown, the motion in limine requesting that the
14 Board bar the introduction of evidence of ex parte
15 contacts prior to the filing of the petition on November
16 1, 1995, is hereby granted. Such evidence shall be
17 excluded at the hearing before the Board scheduled to
18 begin on July 22, 1996.

19 I would further note, Ms. Frank, that both the
20 motion of Mr. Eschbach to dismiss paragraph 8-W of the
21 citizens' pending petition for review and the motion of
22 Landcomp in limine attach to that motion a copy -- or
23 attach to their pleadings a copy of a certain prehearing
24 motion filed before Dr. Schoenberger in the original

1 siting hearing, which motion attaches and makes a part
2 of it a certain complaint for injunctive relief in
3 LaSalle County case number 94-CH-106.

4 Now, quite frankly, the allegations in that
5 complaint, 94-CH-106, lie at the heart of the citizens'
6 allegations that these proceedings are fundamentally
7 unfair. I thought I had argued clearly before the Board
8 in recent pleadings that our position is and we are
9 prepared to prove that this proceeding, this decision
10 was prearranged prior to the filing of the application.
11 Therefore, to now limit me to evidence that is developed
12 after November 1, 1995, takes out the very heart and
13 essence of the citizens' allegations here.

14 HEARING OFFICER FRANK: Mr. Mueller, as you know --
15 I understand your concerns, but I do not have the power
16 to overrule the Pollution Control Board. So while I
17 understand your concerns, it's -- the order still
18 stands.

19 MR. MUELLER: My question is do you interpret that
20 order to mean I am barred from introducing any evidence
21 that would tend to prove or go to the allegations set
22 forth in case number 94-CH-106 from LaSalle County?

23 HEARING OFFICER FRANK: I believe the Board's
24 order --

1 MR. RUBIN: I don't think the Pollution Control
2 Board ruled in any respect on Mr. Mueller's complaint
3 before the Circuit Court of LaSalle County in 1994.

4 HEARING OFFICER FRANK: No. The Board did though
5 say that -- that you were barred from introducing
6 evidence on ex parte contacts prior to the application
7 being filed. I mean I think that's clear from the Board
8 order.

9 MR. MUELLER: But my question is does that bar me
10 from all evidence as to what occurred prior to November
11 1 of 1996 -- or 1995?

12 HEARING OFFICER FRANK: I think the Board's order
13 is fairly clear in that it does.

14 MR. MUELLER: Because if it does, Ms. Frank, I'm
15 not going to waste time here by asking questions which
16 will just result in objections be sustained and which
17 will disrupt the process. And I understand that you are
18 not the person to whom I should make my appeal regarding
19 the Board's order being patently erroneous. I'm trying
20 to understand what the ground rules are. And it was my
21 perception that the PCB's order is rather broad, and I
22 hear you to say that -- that you interpret it the same
23 way.

24 HEARING OFFICER FRANK: Yes. As you know, you are

1 always free to make offers of proof; and if that's the
2 route you want to go in order, you know, to create your
3 record for any appeal, that's a decision you have to
4 make. But as to sustaining objections to things which
5 the Board order specifically says shall not be admitted
6 into evidence, my hands are tied by the Board order.

7 MR. MUELLER: So what you're saying is you would
8 bar any evidence that goes to the allegations contained
9 in LaSalle County case number 94-CH-106?

10 MR. RUBIN: I'm going to object. Mr. Mueller is
11 trying to argue something different than what the
12 Pollution Control Board actually ruled on. The
13 Pollution Control Board didn't rule on evidence going to
14 the allegations in Mr. Mueller's complaint in the
15 Circuit Court of Cook County, nor did our -- or LaSalle
16 County, nor did our motion go to what he describes the
17 essence of his complaint in Cook (sic) County. Our
18 motion went to paragraphs 8-W and ex parte contacts
19 prior to the filing of the application.

20 I think it would be premature for you to have
21 to rule on individual proposals or offers of proof or
22 questions until Mr. Mueller makes such offers.

23 MR. MUELLER: Well, let's do it another way,
24 Ms. Frank. Actually, the motion in limine went to

1 paragraphs 8-E and 8-F of the pending petition.
2 Paragraph 8-F states that both before and after the
3 filing of the application there existed a conspiracy
4 between certain County Board members and Landcomp
5 Corporation and its principal owner, Paul DeGroot, to
6 approve an application for siting approval by Landcomp
7 Corporation regardless of applicable law, procedures,
8 regulations, ordinances, et cetera.

9 Am I barred from introducing evidence that
10 would tend to prove the allegation in paragraph 8-F?

11 HEARING OFFICER FRANK: I believe as to any
12 conspiracy that existed prior to the application being
13 filed the answer is yes. If you're talking about things
14 that happened after November 1st, 1995, then you're free
15 to try and make your case. But the Board has been very
16 clear I think in its order that there is a bright line
17 that exists prior to the filing of the application and
18 after the filing of the application.

19 MR. RUBIN: I'm not sure what Mr. Mueller means by
20 a conspiracy. But the Board has clearly barred ex parte
21 contacts between Landcomp and others prior to the
22 application, and I think as to ex parte contacts prior
23 to the filing of the petition the Board has ruled.

24 MR. MUELLER: We're ready to proceed then with that

1 clarification. We call Robert Eschbach to the stand.

2 HEARING OFFICER FRANK: Did you want to make any
3 type of opening statements?

4 MR. MUELLER: No.

5 HEARING OFFICER FRANK: What about the County? Do
6 you want to reserve it?

7 MR. ESCHBACH: No.

8 HEARING OFFICER FRANK: Then you may begin.

9 Would you please swear the witness.

10 ROBERT ESCHBACH, called as a witness herein,
11 upon being first duly sworn on oath, was examined and
12 testified as follows:

13 (Witness sworn.)

14 MR. MUELLER: I would at this time also move to
15 exclude witnesses. I believe that would include
16 Ms. Schroeder.

17 HEARING OFFICER FRANK: Is there any objection?

18 MR. RUBIN: As long as we have a list of witnesses,
19 I have no objection to hearing who the witnesses that
20 are to be excluded should be.

21 MR. MUELLER: Well, I believe Mr. DeGroot is
22 entitled to be in the room whether I move to exclude him
23 or not since he's a party.

24 MR. ESCHBACH: And I don't know who the witnesses

1 are; I presume the witnesses Mr. Mueller intends to
2 call. At this point I don't have anybody in mind to
3 call, but it depends on what comes out in direct
4 examination.

5 HEARING OFFICER FRANK: Well, Mr. Mueller, who
6 remains on your witness list that you intend to call
7 that you would like excluded?

8 MR. RUBIN: Well, it's not that he would like
9 excluded. Who does he intend to call?

10 MR. MUELLER: Well, I intend to call Susan
11 Grandone-Schroeder.

12 HEARING OFFICER FRANK: Okay.

13 MR. MUELLER: And I believe Mr. Franzetti is in the
14 room. He would probably need to be excluded; although,
15 as a member of the County Board, I don't know that --
16 he's a party probably.

17 HEARING OFFICER FRANK: He is a party. In the past
18 what we have done in landfill siting cases is allowed a
19 representative, usually the chair of the county board,
20 to remain and ask the other county board members to
21 leave the room. If that's agreeable, that's the way we
22 will do it this time. If there's an objection, I would
23 be willing to hear it.

24 MR. MUELLER: I don't think Mr. Lambert is here, is

1 he?

2 MEMBERS OF THE PUBLIC: No.

3 HEARING OFFICER FRANK: So if Mr. Franzetti is the
4 only member of the County Board that is here --

5 MR. ESCHBACH: There's other members of the Board,
6 but not the chairman.

7 HEARING OFFICER FRANK: -- he could be the
8 representative. You guys need to tell me if you have an
9 objection.

10 MR. RUBIN: I would object unless the County
11 designates its representative. I don't think it is
12 appropriate for Mr. Mueller to designate. Representing
13 RAPE and the Thornton Foundation, I don't think he gets
14 to designate the County's representative; only the
15 County does. Unless the County designates a
16 representative, I think all witnesses that Mr. Mueller
17 plans on calling would have to be excluded. And we have
18 a partial list. We have Ms. Grandone-Schroeder and
19 Mr. Franzetti.

20 MR. MUELLER: I'll police my own witnesses and make
21 sure that they're out of the room. If we could have a
22 minute off the record as soon as we're done with this
23 discussion, I'll make sure that those witnesses that
24 represent the citizens groups that may be testifying

1 will also not be in here.

2 HEARING OFFICER FRANK: But I believe the other
3 side would probably like to hear who that list of
4 witnesses is.

5 MR. RUBIN: That's correct.

6 MR. MUELLER: Well, I cannot tell them that until I
7 confer.

8 HEARING OFFICER FRANK: Okay. Then why don't we
9 take a couple-minute break, and we can figure that out.

10 (A brief recess was taken.)

11 MR. RUBIN: Mr. Mueller has represented that of the
12 people that are here he intends on calling
13 Ms. Schroeder, who is asked to leave; Mr. Franzetti and
14 Ms. Koban, who are County Board members who would have
15 to leave; Mr. Thornton, who is a representative of the
16 Thornton Foundation; Mr. Markwalter, who is a
17 representative of Residents Against a Polluted
18 Environment; and Mr. DeGroot. All those three are party
19 representatives. Mr. Mueller has said he has other
20 witnesses who are not present he intends to call -- or
21 perhaps intends to call at a later time; is that
22 correct?

23 MR. MUELLER: That's correct.

24 HEARING OFFICER FRANK: Okay. As far as any --

1 MR. RUBIN: He has not identified those other
2 witnesses.

3 HEARING OFFICER FRANK: Okay. But they are not
4 present, Mr. Mueller?

5 MR. MUELLER: That's correct.

6 HEARING OFFICER FRANK: Is there a reason why we
7 aren't identifying them?

8 MR. MUELLER: I don't know whether I'll call them.
9 They're contingent witnesses.

10 HEARING OFFICER FRANK: What about your side? Is
11 there anyone that you're planning on calling that you
12 would like excluded?

13 MR. RUBIN: The only person is Mr. DeGroot, who's a
14 party representative. I don't know whether we'll call
15 anybody in response to Mr. Mueller's case or not.

16 HEARING OFFICER FRANK: Okay. All right. Well,
17 then let's begin.

18 DIRECT EXAMINATION BY:

19 MR. GEORGE MUELLER

20 MR. MUELLER: Would you identify yourself for the
21 record, please.

22 THE WITNESS: Robert Eschbach.

23 Q. Mr. Eschbach, what do you do?

24 A. I'm an attorney in LaSalle County.

1 Q. And how long have you been a practicing
2 attorney in LaSalle County?

3 A. Since 1978.

4 Q. You, sir, are also a Special Assistant
5 State's Attorney; is that correct?

6 THE WITNESS: That's correct.

7 Q. What is your role in the State's Attorney's
8 office?

9 A. I'm assigned to environmental cases, cases
10 involving the health department, and I advise the County
11 Development Committee regarding subdivision and
12 development matters.

13 Q. And Mr. Eschbach, how long have you held
14 that's post?

15 A. Probably seven or eight years.

16 Q. And are you acquainted with Paul DeGroot?

17 A. Yes, I am.

18 Q. How long have you been acquainted with him?

19 A. I've known of him since probably around 1980.

20 Q. And Mr. Eschbach, do you recall the period
21 when the LaSalle County Solid Waste Plan was originally
22 adopted?

23 A. Generally, yes.

24 Q. Were you involved in the writing of the

1 adoption of that plan?

2 A. Yes, I was.

3 Q. And what type of ownership did that plan call
4 for with respect to the LaSalle County Landfill?

5 MR. RUBIN: I'm going to object. These questions
6 go directly to the prior legislation adopted by the
7 County in the early '90s which is the subject of the
8 motion that both the County and Landcomp filed, and --
9 and it is outside the scope. That legislation -- that
10 is, the adoption of that legislation, the process
11 leading to the adoption is outside the scope of this
12 proceeding.

13 HEARING OFFICER FRANK: Mr. Mueller?

14 MR. MUELLER: It goes to establish the beginnings
15 of a conspiracy between Mr. DeGroot and a controlling
16 fashion of the LaSalle County Board.

17 HEARING OFFICER FRANK: As we've discussed earlier,
18 the Board's order is not interested in contacts prior to
19 the application being filed. So you need to restrict
20 your questions to incidents that occurred after the
21 application was filed.

22 MR. RUBIN: Well, actually, the County Board's --
23 or the Pollution Control Board's order restricted him
24 from introducing evidence of ex parte contacts between

1 Landcomp and County Board members prior to that date.

2 MR. MUELLER: Now, whom am I to take my direction
3 from here? Mr. Rubin or Ms. Frank?

4 HEARING OFFICER FRANK: You're to take it from me.
5 I think Mr. Rubin was trying to help clarify. But the
6 Board's order specifically says that you cannot
7 introduce evidence of ex parte contacts prior to the
8 filing of the petition.

9 MR. MUELLER: I don't think my question -- last
10 question asked for ex parte contacts. It asked for
11 Mr. Eschbach's involvement in the development of the
12 Solid Waste Management Plan.

13 HEARING OFFICER FRANK: There was also -- paragraph
14 8-W was also stricken which went to the information on
15 how the Solid Waste Management Plan was developed and
16 also to -- I can read it for you -- the improper
17 influence on development of the Solid Waste Management
18 Plan. So with the striking of 8-W, your question is no
19 longer relevant.

20 MR. MUELLER: Thank you.

21 Mr. Eschbach, moving forward in time then to
22 the period at which the County was considering selection
23 of a vendor for the solid waste facility that was
24 proposed to be developed and built, do you recall that

1 period of time?

2 THE WITNESS: Generally, yes.

3 Q. Who were the contenders for the selection of
4 vendor?

5 MR. RUBIN: I'm going to object to this question.
6 The selection process leading to the selection of a
7 vendor or a preferred vendor is outside the scope of
8 these proceedings.

9 MR. MUELLER: Very briefly, Ms. Frank, and then
10 I'll abandon this line of questioning until we get to
11 the appellate court. The manner in which Mr. DeGroot
12 caused Landcomp to be selected as a vendor over the
13 objection of County experts such as Mr. Eschbach, the
14 witness in front of us, demonstrates clearly and
15 unequivocally the undue influence that Landcomp was able
16 to exert over a controlling portion of the LaSalle
17 County Board and demonstrates thereby the prejudgment on
18 the part of the LaSalle County Board of any subsequent
19 application to be filed by Landcomp.

20 HEARING OFFICER FRANK: Okay. I understand that
21 this is your continuing objection; but again, I point
22 you to the fact that paragraph 8-W was stricken. This
23 goes directly to that, and the objection is sustained.
24 You need to move on to another line of questioning.

1 MR. MUELLER: Thank you.

2 Mr. Eschbach, what was your role in the
3 selection of Allen Schoenberger as hearing officer?

4 THE WITNESS: I was at the Development Committee
5 meetings when his name was discussed. Other than that,
6 I had never talked to him. I didn't know who he was.

7 Q. Do you know who originally brought his name
8 up?

9 A. I believe Susan Grandone-Schroeder did.

10 Q. And was there a interview with
11 Mr. Schoenberger at some point in time?

12 A. Not that I'm aware of.

13 Q. Do you know whether any representative of
14 Landcomp was given an opportunity to review a potential
15 list of candidates for the role of hearing officer?

16 A. Not that I'm aware of.

17 Q. Is that to say you don't know either way, or
18 you know that that didn't happen?

19 A. I don't know a negative. I know that I don't
20 know anything that would indicate that it did happen.

21 Q. Would it be fair to say that Susan
22 Grandone-Schroeder was the one principally responsible
23 in the day-to-day administrative matters that are part
24 of getting one of these hearings organized?

1 A. She was very involved.

2 Q. So she'd be knowledgeable about those matters?

3 A. I think so.

4 Q. When the application for siting approval was

5 filed on November 1 of 1995, it contained seven volumes,

6 correct?

7 A. That's correct.

8 Q. Now, by the way, the County has a set of

9 procedural rules for the conduct of siting hearings,

10 correct?

11 A. That's correct.

12 Q. Those were amended just a matter of weeks

13 before the application was filed and in anticipation of

14 Landcomp's application; isn't that right?

15 MR. RUBIN: I'm going to object to the form of the

16 question, but also this goes again to 8-W. This is

17 outside the scope -- that is, the process by which those

18 procedural regulations were adopted or amended is

19 outside the scope of this hearing.

20 MR. MUELLER: I would just argue that this is so

21 proximate in time to the filing of the application that

22 the Board ought to grant leeway here.

23 HEARING OFFICER FRANK: Well, I'm not the Board. I

24 am the hearing officer, and I am bound by the Board

1 order, so I cannot allow it. And as to the form of the
2 question, you are asking leading questions, and I
3 caution you to try to rephrase your questions.

4 MR. MUELLER: I just presumed this was a hostile
5 witness.

6 HEARING OFFICER FRANK: You didn't ask.

7 MR. MUELLER: Well, we'll see how hostile he
8 becomes.

9 Mr. Eschbach, did you review the application
10 after it was filed?

11 THE WITNESS: Yes.

12 Q. And did you review Volume 7 of the
13 application?

14 A. Yes.

15 Q. What was in Volume 7 of the application?

16 MR. RUBIN: I'm going to object to the form of the
17 question; not to generic descriptions, since the
18 Pollution Control Board has ruled on the
19 confidentiality, but I would object to the disclosure of
20 the detailed information which has been ruled to be
21 confidential.

22 MR. MUELLER: So that we're clear, I'm not asking
23 him to give me any numbers that were in that volume, but
24 rather I want to know what its contents were by subject

1 and category.

2 HEARING OFFICER FRANK: You may continue with your
3 answer.

4 THE WITNESS: As I recall, there was information
5 regarding the finances of Landcomp, and there was
6 information regarding real estate transactions,
7 purchases, options such as that with respect to the real
8 estate that was the -- that comprised the site.

9 MR. MUELLER: The county siting ordinance provides
10 that such information be made a part of any application;
11 isn't that correct?

12 THE WITNESS: That's correct.

13 Q. And with respect to the financial information,
14 the County's ordinance provides that balance sheets and
15 profit-and-loss statements for five years be included
16 with the application?

17 A. I don't have the ordinance in front of me. If
18 that's what it says, that's what it says.

19 Q. Do you recall whether there was any additional
20 information provided besides balance sheets and
21 profit-and-loss statements in the financial area only?

22 MR. RUBIN: I'm going to object. The Volume 7 is
23 available, and the Pollution Control Board has already
24 ruled that that argument is preserved for appeal. The

1 Pollution Control Board has a copy of that material.
2 It's already been described on the record both below and
3 now by Mr. Eschbach.

4 MR. MUELLER: I don't know what's in Volume 7. I
5 know what's in the county ordinance. And admittedly,
6 this is somewhat awkward because we're dealing in a
7 complete vacuum. The public has been shut out of the
8 right to know with respect to this. So I'm necessarily
9 fumbling a little bit, but I'm trying to understand what
10 Volume 7 consisted of, not the actual numbers.

11 MR. RUBIN: You've already asked that question, and
12 there was no objection to that question.

13 MR. MUELLER: I think my last question is was there
14 financial data in that volume besides balance sheets and
15 profit-and-loss statements?

16 HEARING OFFICER FRANK: I'm going to allow the
17 question.

18 THE WITNESS: I don't recall.

19 MR. MUELLER: Now, the county ordinance provides,
20 Mr. Eschbach, that balance sheets and profit-and-loss
21 statements may be -- shall be treated by the County
22 Board as confidential unless the Board determines that
23 part or all of such information shall be made public,
24 correct?

1 THE WITNESS: That's correct.

2 Q. Was there ever any deliberation on the part of
3 the Board or any committee of the Board with respect to
4 making this information public?

5 A. Not that I recall.

6 Q. You recall that at the siting hearing I moved
7 that the information be disclosed, and the hearing
8 officer denied that motion?

9 A. That's correct.

10 Q. Do you recall any other action with respect to
11 whether or not these records or this volume should be
12 made public besides the actions of the hearing officer
13 at the siting hearing?

14 A. Any other actions by?

15 Q. By any other county board agency, entity,
16 committee, or representative?

17 A. I don't recall that.

18 Q. You don't recall any, or there was no other
19 action?

20 A. I don't recall any.

21 Q. Now, you also indicated that the -- the secret
22 Volume 7 contained some real estate information; is that
23 right?

24 A. Yes.

1 Q. And that would have to do with the manner and
2 form of Landcomp's control over the proposed site?

3 A. I guess you could say that.

4 Q. Now, the county ordinance -- the siting
5 ordinance does not provide for that information to
6 remain confidential, does it?

7 MR. RUBIN: I'm going to object. That's
8 argumentative, calls for a legal conclusion.

9 HEARING OFFICER FRANK: I'm going to sustain the
10 objection.

11 MR. MUELLER: Are you aware, Mr. Eschbach, of
12 whether or not the county ordinance restricts the
13 release of real estate related information as opposed to
14 its restriction on the release of balance sheets and
15 P-and-L statements?

16 THE WITNESS: The ordinance says what it says. I
17 don't -- I don't have any other comment.

18 Q. Why, Mr. Eschbach, was the real estate related
19 information in Volume 7 not made available to the
20 public?

21 A. I don't know, other than it was requested not
22 to be, and we were proceeding under what I thought were
23 the rules.

24 Q. What -- who made the request that it not be

1 released?

2 A. The applicant.

3 Q. What was the form of that request?

4 Excuse me, sir?

5 A. I believe that the document was marked
6 confidential. I believe that there was a letter
7 accompanying it, but that would be part of the record.

8 Q. Has that letter been made public or available?

9 A. Whatever was there would be part of the
10 record.

11 Q. So what you're telling me is that some request
12 was made by the applicant that this information not be
13 disclosed, and the County simply decided to agree with
14 the applicant regardless of whether or not its ordinance
15 called for the disclosure of the information?

16 MR. RUBIN: I'm going to object to the form of the
17 question. It's argumentative.

18 HEARING OFFICER FRANK: Restate your question.

19 MR. MUELLER: Are you saying, sir, that the County
20 decided to honor the applicant's request to keep this
21 information confidential without considering any other
22 possibilities?

23 THE WITNESS: We just -- I looked at it, and I
24 thought the ordinance applied. The request was that it

1 be confidential, and that was the way it was treated.

2 Q. Who made the decision to withhold the real
3 estate related information from the public?

4 A. Well, it was discussed with the committee. I
5 believe it was my recommendation.

6 Q. It was your recommendation, sir?

7 A. Take that back. We didn't discuss the real
8 estate specifically. It was my recommendation that the
9 information contained in there would be treated as
10 confidential since that's what the ordinance provided.

11 Q. And you're saying as you sit here now, you
12 don't know whether the ordinance provides that for real
13 estate information, aren't you?

14 MR. RUBIN: I'm going to object. The question
15 again is argumentative.

16 MR. MUELLER: Well, he says he doesn't know.

17 MR. RUBIN: Whatever he said is in the record,
18 Mr. Mueller.

19 HEARING OFFICER FRANK: The procedural rules are
20 part of the record, and the Board can read them and make
21 the decision as to whether or not the real estate is
22 covered by them.

23 MR. MUELLER: Mr. Eschbach, let me show you, sir,
24 what purports to be a part of the LaSalle County Siting

1 Ordinance, which is a rather lengthy document. And the
2 portion I'm showing you was appended to Landcomp's
3 recent application for nondisclosure. And I'll show you
4 specifically a part that is -- appears to be page 11 and
5 is marked Part, Roman numeral, IV, The Site. And I'll
6 direct you to paragraph three of that and ask you to
7 review it and tell me whether that refreshes your
8 recollection as to whether or not information regarding
9 control, ownership, or access to the site is to be held
10 confidential?

11 THE WITNESS: (Complying.)

12 MR. RUBIN: Excuse me. What provision are you
13 asking the witness to refer to, Mr. Mueller?

14 MR. MUELLER: I think it's paragraph three, isn't
15 it?

16 THE WITNESS: On page 11.

17 Q. Yes.

18 A. Okay. I've read it.

19 Q. Does that refresh your recollection, sir?

20 A. I'm reading it, yes.

21 Q. And is real estate information to be held
22 confidential pursuant to the County's ordinance?

23 A. Well, this is what the requirements are under
24 the provisions under the part entitled The Site. And it

1 says, "The applicant shall set forth names, addresses,
2 and telephone numbers of the owners of the site if other
3 than the applicant." So I mean I didn't think that
4 applied.

5 "If the site is owned by a trust, the names,
6 addresses, and telephone numbers of all of the
7 beneficiaries should be set forth, and a copy of the
8 trust agreement should be attached to the application."
9 I don't think there was a trust involved.

10 "If the site is owned by a corporation, all of
11 the information required by the paragraphs of part three
12 shall be furnished in the application as to the owning
13 corporation." And I believe in the site portion of the
14 application that was provided.

15 "If the site is not owned by the applicant, the
16 application shall describe all documents giving the
17 applicant the right to use the site for the purposes
18 listed in the application who shall attach copies of all
19 documents to the application as exhibits." I believe in
20 the application they did identify the fact that there
21 were some arrangements with respect to property. As I
22 recall, the actual documents contained -- did contain
23 financial information also, which was dollar figures and
24 things like that.

1 Q. But those documents showing control of the
2 site were not profit-and-loss statements, were they?

3 A. No.

4 Q. They were not balance sheets, were they?

5 A. Correct.

6 Q. And those documents were not disclosed to the
7 public, were they?

8 A. Unless they're in a different part of the
9 application.

10 Q. You're telling me --

11 A. I don't recall that they were.

12 Q. They were not?

13 A. Right.

14 Q. When did the committee meet with you to make
15 this determination that there be nondisclosure to the
16 public of Volume 7 of the application?

17 A. I don't know that -- other than just
18 discussing it at in general, I don't know if there
19 was -- there was a vote by the committee to do that. I
20 don't think there was.

21 Q. Can you explain to me, Mr. Eschbach, this
22 process of discussing it in general? Is that some
23 process that takes place outside of the Open Meetings
24 Act?

1 A. No. I just made it at -- I should say that I
2 think I advised the committee that it wouldn't be
3 disclosed, but that would all be at open meetings.

4 Q. Well, at what meeting did you advise them of
5 that?

6 A. I don't recall.

7 Q. Do you know whether they ever took any action
8 on it one way or another?

9 A. I don't believe they did.

10 Q. So there would have never been any vote for
11 nondisclosure; is that right?

12 A. No. You're correct.

13 Q. Sir, do you know what Mr. Schoenberger's
14 compensation arrangement was in connection with these
15 hearings?

16 A. I don't know if I ever saw an agreement, but I
17 believe it was an hourly rate.

18 Q. Did you draft or review, as legal advisor to
19 these proceedings, any compensation contracts or other
20 written agreements between the County and
21 Mr. Schoenberger?

22 A. I know I didn't prepare one. I may have
23 reviewed one, but I can't say for certain right now.

24 Q. Do you know whether Landcomp was a party to

1 the agreement to retain Mr. Schoenberger?

2 A. No, Landcomp was not.

3 Q. Has Mr. Schoenberger billed the County for his
4 services?

5 A. Yes, he has.

6 Q. And did the County pay Mr. Schoenberger for
7 his services?

8 A. It has paid him, yes.

9 Q. What was the amount of his fee?

10 A. I don't know.

11 Q. Can you give me an approximation?

12 A. Susan Grandone-Schroeder would have that
13 information. I don't recall. I'd just be guessing.

14 Q. Was that fee paid by the County, or was it
15 paid by Landcomp?

16 A. It's paid by the County.

17 Q. Directing your attention, Mr. Eschbach, to the
18 County's engineers in connection with this application,
19 did the County retain an engineering firm to render
20 technical support?

21 A. Yes, it did.

22 Q. And that firm was CDM?

23 A. That's correct.

24 Q. When was CDM retained?

1 A. I don't remember exactly. It would have been
2 shortly before the filing of the application.

3 Q. And how is it that you would have retained an
4 engineering firm before an application was filed?

5 A. It was -- we -- we were advised that Landcomp
6 would be filing an application. We had gone through
7 a host -- we had gone through a selection process
8 whereby Landcomp was the selected vendor of the County,
9 and we entered into a host agreement which required that
10 Landcomp file an application to site a facility.

11 Q. So you're telling me now that there are things
12 that happened before November 1 of last year that bore
13 directly on the way that the siting proceedings were
14 conducted?

15 A. No. I'm answering your question.

16 Q. Well --

17 A. You asked me how we knew Landcomp would be
18 filing the application, and I answered the question.

19 Q. Well, how did you know? Did someone tell you,
20 or was it just a host agreement?

21 A. Well, just the host agreement was a document
22 that took months and months and months to put together
23 and to negotiate, so it was self-evident I think.

24 Q. Who drafted the host agreement?

1 A. The host --

2 MR. RUBIN: I'm going to object. This is beyond
3 the scope of these proceedings. There's already been a
4 ruling by the Board.

5 HEARING OFFICER FRANK: Mr. Mueller?

6 MR. MUELLER: Well, I think you can see now by the
7 witness' answering of the question that we've been put
8 into an absurd position. Clearly, there are things that
9 bear directly on these proceedings which occurred prior
10 to the filing of the application, such as the retention
11 of the County's engineers in known anticipation of the
12 application being filed. And Mr. Eschbach says, well,
13 that was all known because of the host agreement. So I
14 think at this point the door's been opened, and the host
15 agreement is fair game.

16 HEARING OFFICER FRANK: Mr. Mueller, it goes
17 directly to local conditions for siting approval in 8-W
18 which the Board has stricken from your petition for
19 review, so you need to find another line questioning.

20 MR. MUELLER: Thank you, Ms. Frank.

21 Mr. Eschbach, what was the scope of CDM's
22 responsibility on this project?

23 THE WITNESS: They were to review the application
24 and to advise the County of areas of concern and work

1 with County representatives. We had -- I believe we had
2 a written agreement with CDM, but I mean that generally.

3 Q. Who was the person at the county level who
4 acted as the equivalent of a local liaison with CDM?

5 A. Most of the communications went through Susan
6 Grandone's office.

7 Q. Did you review the agreement that the County
8 had with CDM?

9 A. Yes, I did.

10 Q. Did you draft that agreement?

11 A. No.

12 Q. Did that contract call for CDM to meet
13 directly with representatives of Landcomp in connection
14 with the pending application?

15 A. I don't recall if the contract said that.

16 Q. At some point CDM did meet with
17 representatives of Landcomp in connection with the
18 pending application, right?

19 A. I don't know if there was a meeting, but there
20 was certainly communications.

21 Q. There were direct communications between
22 representatives of CDM and Patrick Engineering, who was
23 the consulting engineer for Landcomp, right?

24 A. Right. And there was one meeting that I

1 recall when we were making a determination as to whether
2 the application was administratively complete.

3 Q. Who was at that meeting?

4 A. Kevin Murray was there from CDM. I was there.
5 Susan Grandone was there, and there were several
6 representatives from Patrick Engineering, one or two
7 more people. That's all I can remember.

8 Q. The meeting that you're talking about, where
9 did that take place?

10 A. That took place on the fourth floor of the
11 courthouse, what was then the Department of Solid Waste
12 Management.

13 Q. In Ms. Grandone's office for all intents and
14 purposes, right?

15 A. In her conference room.

16 Q. And was the substantive content of the
17 application discussed at that meeting?

18 A. What was discussed at that meeting was whether
19 or not the application was administratively complete.
20 And CDM had some areas of concern. As you know, it was
21 a voluminous application. You know, there were some
22 questions as to where we might find this or where we
23 might find that, because they couldn't find it in the
24 application. That was the nature of that meeting.

1 Q. Did Patrick Engineering make changes in the
2 application as a result of that meeting; or was it
3 determined that the application, in fact, was
4 administratively complete as filed?

5 A. It was determined that the application was
6 administratively complete as filed.

7 Q. Subsequently, did a dialogue continue between
8 representatives of CDM on behalf of the County and
9 representatives of Patrick Engineering on behalf of
10 Landcomp?

11 MR. RUBIN: Excuse me. I'm going to object. When
12 you say CDM on behalf of the County, I think that
13 requires more precision. On behalf of what part of the
14 County are you inquiring?

15 MR. MUELLER: On behalf of LaSalle County, on
16 behalf of the Board for whom it was working.

17 MR. RUBIN: There's been no evidence that CDM was
18 working for the County Board.

19 MR. MUELLER: Let's back up. Was CDM involved in
20 this as an independent exercise and review that they
21 wanted to do to increase their knowledge?

22 THE WITNESS: No.

23 Q. CDM was employed by LaSalle County --

24 A. That's correct.

1 Q. -- for the specific purpose of rendering
2 technical assistance to the LaSalle County Board in
3 connection with the application, right?

4 A. The technical assistance would be rendered to
5 representatives of the County. In this case, it was
6 myself and Susan Grandone.

7 Q. Why would you and Susan Grandone need an
8 engineering firm to provide you with technical
9 assistance if you weren't even voting on the
10 application?

11 A. Because I was responsible for representing the
12 County Board at the hearing, for asking questions to
13 make a determination as to whether or not there were
14 areas where the applicant did not meet the siting
15 criteria. And I'm not an engineer.

16 Q. So really the job of CDM, as you're telling me
17 now, was to help you and Ms. Grandone and not to help
18 the County?

19 A. It was to help us present our case and
20 basically ask the questions that we thought had to be
21 asked at the hearing to bring those issues out at the
22 hearing for the committee to hear and ultimately for the
23 County Board to decide.

24 Q. Did CDM at some point in January of this year,

1 shortly before the hearings commenced, issue a summary
2 of some concerns or questions it had about the
3 application?

4 A. Yes.

5 Q. And who was that summary directed to? The
6 Siting Committee?

7 A. Yes, I believe so. It's part of the record.

8 Q. Did you authorize CDM at that point or prior
9 to that point to deal directly with Patrick Engineering
10 representatives regarding their areas of concern?

11 A. I wouldn't say I personally did. I consented
12 to it. I asked -- I knew that it was happening. We
13 wanted them to be able to advise us -- and when I say
14 us, I mean Susan Grandone-Schroeder and myself -- as to
15 what we -- what they thought we needed to be looking
16 for. And we didn't want to waste a lot of time with
17 them looking for things -- you know, as I said, the
18 application was humongous -- that could -- you know, you
19 just call up Patrick Engineering and say, where is this
20 in the application, for example, or whatever. And we
21 thought it would be best that there be a dialogue
22 between them; not that, you know, Patrick Engineering
23 was trying to convince CDM one way or the other, but to
24 allow them to readily access the information in the

1 application that they needed to find.

2 Q. So the purpose of this dialogue you're telling
3 me was only to have Patrick act as an index for the
4 application?

5 A. To help out in that fashion. I think that was
6 their primary function.

7 Q. There was no discussion about substantive
8 differences that CDM representatives and Patrick
9 representatives may have had with respect to how certain
10 issues were approached or analyzed?

11 A. Well, there was -- you know, we asked -- we
12 asked CDM to be very critical. And a lot of times their
13 criticisms were just in the nature of style, choice of
14 words, things like that which really weren't our
15 concerns. But we -- you know, our primary concern was
16 substantive issues where they thought there were
17 concerns.

18 Q. And you consented to CDM people and Patrick
19 people dealing with each other directly on some of those
20 substantive concerns?

21 A. Right.

22 Q. Did a report get generated out of this
23 dialogue which summarized both the concerns and the way
24 that Patrick had addressed them?

1 A. I don't think there was ever a final report.
2 There was a lot of paper that was generated. There was
3 a lot of -- I'm not sure what we call the documents. I
4 think it might have been Application Review would have
5 been the title that was on it that came to the County
6 from CDM, and those things would change from time to
7 time. They would be added to. They would be clarified.

8 Q. And those documents also would include summary
9 of -- of Patrick's responses to various concerns voiced
10 by CDM?

11 A. Right.

12 Q. And, in fact, wasn't one of those documents a
13 document that was approximately a hundred pages in
14 length?

15 A. I don't know about that. I mean if you added
16 'em up, they probably went up to a couple hundred. But
17 as I said, it was a working document. There was a lot
18 of repetition. Things were added. They'd send me the
19 same document back, but it'd have more pages on it or
20 more paragraphs in it.

21 Q. None of this working document has ever been
22 made a part of the public record, has it?

23 A. That's correct.

24 Q. You've reviewed it, right?

1 A. Yes, I have.

2 Q. The Siting Hearing Committee had access to it,
3 didn't they?

4 A. No.

5 Q. They never did?

6 A. No.

7 Q. How did you prevent them from having access to
8 it?

9 A. Well, it wasn't given to 'em as far as I know.

10 Q. Who had this document?

11 A. They all -- the originals came through Susan's
12 office, and she would make copies.

13 Q. For whom?

14 A. For me.

15 Q. For anybody else?

16 A. Not that I'm aware of.

17 Q. Did you share the content of this working
18 document with any member of the County Board at any
19 time?

20 A. Well, in the form of my questions I suppose at
21 the hearing; but other than that -- you know, I think we
22 probably reported to the Development Committee now and
23 then that we had been getting reports in, but there was
24 no discussion as to the content.

1 Q. Now, do you recall, Mr. Eschbach, my asking
2 you around the time that these communications between
3 CDM and Patrick became known to the citizens groups,
4 whether or not the citizens' representative -- or expert
5 representative for engineering, Geosyntech (phonetic),
6 could communicate directly with CDM with respect to the
7 critical review of the application?

8 A. Yes.

9 Q. And do you recall that you polled the
10 committee, and it was decided that the citizens'
11 engineer could not communicate directly with CDM?

12 A. That's right.

13 Q. And you so communicated to me, correct?

14 A. That's correct.

15 Q. Now, Mr. Eschbach, the siting ordinance --
16 well, I should say the hearing ordinance provided for a
17 hearing officer, correct?

18 A. That's correct.

19 Q. And I think it may have provided that the
20 hearing officer could, at the request of the Board,
21 prepare a written set of findings?

22 A. I believe that's correct.

23 Q. Did you ever request Dr. Schoenberger to
24 prepare any written findings in this matter?

1 MR. RUBIN: Excuse me. Are you using the word
2 findings different from what was actually supplied to
3 the County Board by Professor Schoenberger?

4 MR. MUELLER: I'm referring to his report so we're
5 clear.

6 MR. RUBIN: The recommendations that he made?

7 MR. MUELLER: Yes.

8 Did you request Dr. Schoenberger to prepare a
9 document of proposed findings?

10 THE WITNESS: The committee did.

11 MR. RUBIN: I don't --

12 THE WITNESS: The committee asked that he prepare a
13 report.

14 MR. MUELLER: When did the committee ask that?

15 THE WITNESS: I don't recall. It would be toward
16 the end of the hearing.

17 Q. And when you say the committee asked, did they
18 do so by virtue of a motion?

19 A. I don't recall if it was a motion or if it was
20 just a general consensus.

21 Q. When would these consenses be arrived at that
22 you keep talking about? During meetings or outside of
23 meetings?

24 A. They would be during meetings. One might have

1 been when the -- I mean it was discussed at meetings.
2 From the very beginning there was the -- you know, by
3 virtue of the agreement with the hearing officer, there
4 was the understanding that the hearing officer could be
5 requested to make a -- issue a report.

6 Q. And did you, in fact, receive a report from
7 Mr. Schoenberger?

8 A. Yes.

9 Q. Now -- and that would be a document of
10 approximately 101 pages entitled Landcomp Corporation
11 Application for Siting Approval, Professor Allen
12 Schoenberger?

13 A. That's correct.

14 Q. Did you assist him at all in the preparation
15 of this document?

16 A. No.

17 Q. Did CDM, by the way, provide any final report
18 with respect to their findings?

19 A. As I said, there was no final document as
20 such. It was just a series of reports over a period of
21 time.

22 Q. Now, I noticed that the Schoenberger report
23 contains a number of proposed -- or contains a
24 recommendation for siting approval, correct?

1 A. That's correct.

2 Q. Did you ask Mr. Schoenberger for a
3 recommendation?

4 A. I'm not sure what word was used. Basically,
5 the Siting Committee had indicated that they wanted a
6 report from Dr. Schoenberger. Susan was asked to convey
7 that, and Susan Grandone conveyed that message.

8 Q. So the idea of making an actual recommendation
9 probably came from Schoenberger himself, right?

10 A. I don't know if that's the case at all.

11 Q. Did you participate in any way in structuring
12 or clarifying the directive to Dr. Schoenberger with
13 respect to what was expected in his report?

14 A. No. He was given pretty much free rein on
15 that.

16 Q. And I couldn't help noticing that
17 Dr. Schoenberger's report contains a number of proposed
18 conditions lettered A through M. Do you notice that,
19 too?

20 A. That's correct.

21 Q. And these were technical conditions, weren't
22 they?

23 A. I don't remember them all offhand, but
24 generally I think that's correct.

1 Q. They dealt with substantive matters of
2 hydrogeology and other technical issues that had arisen
3 at the hearings, right?

4 A. Some of them may have. Others were more
5 procedural, or I think some might have dealt with
6 offering protection to adjacent property owners as far
7 as screening and that kind of thing.

8 Q. Now, Schoenberger, he's a lawyer, isn't he?

9 A. Yes, he is.

10 Q. And to your knowledge he's not a geologist,
11 right?

12 A. That's correct.

13 Q. He's not an urban planner?

14 A. That's correct.

15 Q. He's not a traffic engineer?

16 A. Correct.

17 Q. He's not an engineer of any kind, is he?

18 A. Not that I'm aware of.

19 Q. The A through M conditions that he proposed
20 were adopted by the County Siting Committee and
21 ultimately the County Board verbatim, weren't they?

22 A. I don't think that's correct.

23 Q. Which ones were not adopted?

24 A. I don't recall. But there was several days of

1 meetings going over those conditions, and a transcript
2 of those meetings is part of the record. But I mean we
3 went through a lot of them. We made changes in them.
4 We may have deleted some. I don't remember. We
5 certainly added to them. I know that.

6 Q. I understand that you may have added to them.
7 But did you change or delete any of Schoenberger's
8 recommendations?

9 A. Mr. Mueller, as I said, I think we did. That
10 process took days. It's all recorded word for word, and
11 it's part of the record. I don't recall.

12 Q. What do you mean, it's all reported?

13 A. There was a transcript of the meeting where
14 that occurred.

15 Q. In fact, Mr. Eschbach, other than rewording,
16 were not the conditions A through M in the Schoenberger
17 report adopted in their entire substance as conditions A
18 through M in the ultimate ordinance approving this site?

19 MR. RUBIN: I'm going to object. First of all, the
20 question is now being asked for the third time.
21 Secondly, the actual recommendations by Professor
22 Schoenberger as well as all of the dialogue with the
23 Siting Committee is contained as a part of the record
24 before the Pollution Control Board where it's preserved

1 there as an issue of appeal if Mr. Mueller intends to
2 pursue it.

3 HEARING OFFICER FRANK: Mr. Mueller?

4 MR. MUELLER: Just trying to expedite the process
5 here and get the witness, who appears to be reluctant,
6 to admit the obvious. I'm prepared to go through the
7 conditions with him. The fact, Ms. Frank, that there
8 are things in the record which would allow one to
9 compare the conditions in the Schoenberger report and
10 the conditions in the ordinance does not preclude me
11 from asking this witness about it.

12 HEARING OFFICER FRANK: I will allow you to ask
13 him, although I think we've gotten to the point where
14 he's given you his best answer. And so you may ask it
15 one more time, and then we need to move on.

16 MR. MUELLER: Mr. Eschbach, do you recall the last
17 question?

18 THE WITNESS: Yeah, and I think I had answered it a
19 couple times. What I was saying was that I can't say
20 that those recommendations or those conditions that the
21 hearing officer made were accepted basically as is. I
22 know we went through each one of them, and we went
23 through a lot more than the ones that he had presented.
24 I know changes had been made. I can't recall whether

1 some were deleted completely or not. But as I said,
2 there is a record of the conversation word for word
3 regarding the discussions that the committee had
4 regarding each one of those proposed conditions. I
5 would just be guessing. And quite frankly, I don't
6 remember.

7 Q. Did CDM propose any conditions?

8 MR. RUBIN: Propose any to whom?

9 MR. MUELLER: To you or the County Board.

10 THE WITNESS: I believe that -- I can't recall that
11 there was a list of conditions as such. But certainly
12 something that I gleaned and Susan would have gleaned
13 from reading the reports were certain concerns where we
14 may have come up with the conditions. I don't recall a
15 list of conditions being prepared as such by CDM.

16 Q. Did CDM make a recommendation to you at any
17 time with respect to approval or disapproval of the
18 application?

19 A. No.

20 Q. Did they ever make any recommendation to you
21 as to any condition that they would attach to approval?

22 A. Well, you know, they pointed out areas of
23 concern, and a lot of those came out in questions of the
24 witnesses at the hearing; for example, the type of

1 leachate collection outlets, for example. That was a
2 concern. Some of 'em were designed, it seemed as
3 though, that they were too small. So that ended up
4 being a condition. There ended up being a condition in
5 the approval regarding those outlets as I recall. That
6 was based in part, I suppose, on information or concerns
7 that were expressed in CDM's report, but I don't think
8 it was put together as a condition or labeled a
9 condition. I think that's something that the committee
10 did, and I think the -- the transcript of that meeting
11 would show that.

12 Q. Mr. Eschbach, how would the committee have
13 known what the concerns were in the CDM report, such as
14 the size of leachate collection tanks?

15 A. Because they were present at all the hearings,
16 and they all came out at the hearings in the forms of --
17 mostly in the form of cross-examination. I was the one
18 that brought the question -- I don't remember the name
19 of the witness, but it was one of Landcomp's witnesses
20 regarding the design of those collection outlets.

21 (A brief recess was taken.)

22 HEARING OFFICER FRANK: Are we ready to go back on
23 the record? Mr. Mueller, are you ready to go back on
24 the record?

1 MR. MUELLER: I'm ready. Thank you.

2 HEARING OFFICER FRANK: I remind you you're still
3 under oath.

4 Do you need us to read back the last question,
5 or do you know where you were?

6 MR. MUELLER: I have no clue where I was.

7 HEARING OFFICER FRANK: Could you read back the
8 last question, please?

9 (Record read.)

10 MR. MUELLER: Mr. Eschbach, do you recall early on
11 during the hearings when the media conducted a call-in
12 radio show one morning while the hearings were going on?

13 THE WITNESS: No, I don't.

14 Q. You don't recall anything about the
15 particulars with respect to that show?

16 A. I don't even recall that it occurred. I'm not
17 saying it didn't. I don't remember.

18 Q. Someone else will say that it did.

19 Now, did you have occasion to have a
20 conversation with Mr. Thornton toward the end of the
21 hearings about his wanting to testify, and as part of
22 that testimony reading into the record a letter from a
23 representative of the Heritage Corridor or the I & M
24 Canal Association?

1 MR. RUBIN: Could I have the question read back?

2 (Record read.)

3 THE WITNESS: I don't recall. You know, I may
4 have, but I don't recall that conversation.

5 MR. MUELLER: Did you ever do anything to prevent
6 Mr. Thornton from being able to read that letter into
7 the record?

8 MR. RUBIN: What letter are you referring to?

9 THE WITNESS: No. In fact, you were his attorney,
10 George.

11 HEARING OFFICER FRANK: Are you referring to the
12 letter in the previous question?

13 MR. MUELLER: Yes.

14 So you don't recall having any conversation
15 with Edmund Thornton about his wanting to testify in his
16 individual capacity?

17 THE WITNESS: Like I said, we may have had a
18 conversation. I don't recall it.

19 Q. All right. Do you recall a -- a letter from a
20 Professor Brown that was sent to Mr. Lambert by way of
21 public comment?

22 A. I remember the letter. I don't --

23 Q. So that letter you do remember?

24 A. Yes, I do.

1 Q. And as I understand it, that letter never
2 became part of the record in this matter?

3 A. That's incorrect. It's part of the record.

4 Q. That letter was held by Mr. Lambert on his
5 desk for quite some period of time though, wasn't it?

6 A. I -- somebody told me something to that
7 effect. I don't know. My understanding was that that
8 very well may have been the case. But I do know that it
9 got to the committee, and it became part of the record.

10 Q. Did you advise Mr. Lambert that he should not
11 hold on his desk letters by experts that were
12 unfavorable to this application?

13 A. No, certainly not.

14 Q. When Mr. Lambert received communication that
15 he deemed to be favorable, in some cases would he
16 distribute that to other County Board members in their
17 mailboxes?

18 A. I don't know. I'm not aware of that
19 happening, but I don't know.

20 Q. You are aware of that happening?

21 A. I am not aware of that happening.

22 Q. I have no further questions.

23 HEARING OFFICER FRANK: Okay. Cross-examination?

24 CROSS-EXAMINATION BY:

ANN L. PELLICAN, CSR

57

(815) 223-5994

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MR. JAMES I. RUBIN

MR. RUBIN: Yes, if I may.

I want to take you back to the testimony regarding CDM. CDM stands for Camp, Dresser, McKee. Is that correct, Mr. Eschbach?

THE WITNESS: That's correct.

Q. I think you used the phrase -- and correct me if I'm wrong -- administrative reviews to describe the work product that you and Ms. Grandone received from CDM; is that correct?

A. I'm not sure if I used those words, but that would be probably a fair characterization.

Q. Did you provide -- that is, you personally -- provide any of those -- any of those administrative reviews to any County Board members?

A. No.

Q. Are you aware of anybody providing any of those administrative reviews by CDM to County Board members?

A. No.

Q. I have no further questions.

HEARING OFFICER FRANK: Mr. Mueller, do you have anything else?

MR. MUELLER: I have nothing further.

1 HEARING OFFICER FRANK: Okay. Thank you.

2 (Witness excused.)

3 HEARING OFFICER FRANK: Let's go off the record.

4 (A conversation was held off
5 the record.)

6 HEARING OFFICER FRANK: Mr. Mueller, do you want
7 to go ahead and call your next witness?

8 MR. MUELLER: I thought you were going to break
9 for lunch.

10 HEARING OFFICER FRANK: After.

11 MR. MUELLER: We'll call Ms. Schroeder. I presume
12 she -- somebody just went to get her. That's what I was
13 waiting for.

14 HEARING OFFICER FRANK: Okay.

15 SUSAN GRANDONE-SCHROEDER, called as a witness
16 herein, upon being first duly sworn on oath, was
17 examined and testified as follows:

18 (Witness sworn.)

19 DIRECT EXAMINATION BY:

20 MR. GEORGE MUELLER

21 MR. MUELLER: Would you identify yourself for the
22 record, please.

23 THE WITNESS: Susan Grandone, G-r-a-n-d-o-n-e, dash
24 Schroeder, S-c-h-r-o-e-d-e-r.

1 Q. And where are you employed?

2 A. Upstairs on the fourth floor with the LaSalle
3 County Department of Environmental Services & Land Use.

4 Q. What is your title?

5 A. Director.

6 Q. How long have you held that title?

7 A. Three -- a little over three years.

8 Q. And who is your immediate supervisor?

9 A. I report directly to the LaSalle County
10 Development Air, Land & Water Pollution Committee and
11 then to the full LaSalle County Board.

12 Q. So you deem yourself to work for the County
13 Board, correct?

14 A. I'm employed by the County Board, yes. I'm an
15 appointed official.

16 Q. Does the County of LaSalle have any other
17 environmental departments?

18 A. Yes. The LaSalle County Health Department has
19 an environmental division.

20 Q. What is the role of that division as opposed
21 to the role of your department?

22 A. The LaSalle County Health Department primarily
23 focuses on public health issues such as sewage, septic
24 systems, private water wells, nuisance complaints,

1 factor control problems; whereas my department focuses
2 on solid waste management, reduction, reuse, recycling,
3 enforcement of solid waste management issues as well as
4 land use issues.

5 Q. Would it be fair to say that you are the
6 county official who is most involved on a day-to-day
7 basis with solid waste disposal and related issues?

8 A. Yes.

9 Q. And that's been true for approximately three
10 years?

11 A. Yes.

12 Q. Now, taking you back to August of -- bear with
13 me for a second -- August of 1994, that was the period
14 when selection of a vendor to propose and develop a
15 LaSalle County landfill was nearing an end. Do you
16 recall at or about that time being spoken to by
17 Mr. Johnson, Gerald Johnson, then the chairman of the
18 LaSalle County Board, and Mr. Joseph Hettel and being
19 told that unless you withdrew your opposition to
20 Landcomp Corporation as the proposed vendor that you
21 would no longer be working for the County?

22 A. No.

23 MR. RUBIN: I'm going to object to the form of the
24 question. I realize that the witness has answered it,

1 but it is beyond the scope of these proceedings.

2 MR. MUELLER: How can a communication between a
3 County Board member and an employee of the County Board
4 fit into the category of ex parte communication?

5 HEARING OFFICER FRANK: It fits into paragraph 8-W.
6 It goes to the improper influence on the development of
7 the conditions for a local siting approval.

8 MR. MUELLER: Is the witness' answer going to be
9 allowed to stand, or is it going to be stricken?

10 HEARING OFFICER FRANK: It's stricken.

11 MR. MUELLER: Which means I will not be allowed to
12 rebut that answer; is that correct?

13 HEARING OFFICER FRANK: Yes.

14 MR. MUELLER: Ms. Grandone-Schroeder, taking us
15 then forward to last fall, were you involved in the
16 selection of a hearing officer for the siting
17 proceedings that have just been completed?

18 THE WITNESS: I have to ask you to qualify that.
19 Do you mean did I make the decision? In what way do you
20 mean involved?

21 Q. Were you involved in the process of selecting
22 a hearing officer?

23 A. In my opinion, I provided consulting services
24 to the County, but I did not select the vendor. So no,

1 I was not involved in selecting the vendor.

2 Q. All right. We're not talking about a vendor
3 now. We're talking about the hearing officer,
4 Dr. Schoenberger.

5 A. Oh, I'm sorry. Was I involved in that
6 process? I made a recommendation.

7 Q. All right. Who asked you -- or what was your
8 role in the hearing officer selection?

9 A. As I recall, it came up in the Development
10 Committee about who should preside over the hearing,
11 what type of individual. And I recommended that it be
12 somebody with a legal background, preferably an
13 attorney, that it be a third-party objective individual
14 with no ties or associations to LaSalle County.

15 Q. And who came up with Allen Schoenberger's
16 name?

17 A. I provided that name along with approximately
18 seven other potential candidates.

19 Q. Where did you get Schoenberger's name?

20 A. From Ogle County. The solid waste coordinator
21 was Steve Ripkama (phonetic) who provided the
22 information. He presided over a hearing recently in
23 Ogle County.

24 Q. And you provided a list of six other names as

1 well or seven other names?

2 A. Approximately six or seven names.

3 Q. What was the process by which that list was
4 then winnowed down?

5 A. It was discussed in committee, different
6 recommendations and qualifications, recent hearing
7 experience versus recent Subtitle D hearing experience
8 as opposed to Section 807 Reg. Facilities, their legal
9 background. Those were the primary factors to the best
10 of my recollection.

11 Q. Were there any interviews conducted of
12 prospective hearing officers?

13 A. No.

14 Q. Did you, prior to selection, ever talk to
15 Mr. Schoenberger on the telephone to advise him that he
16 was being considered or to ask him about his
17 availability?

18 A. Once I was directed by the committee to
19 contact Dr. Schoenberger, I did so and asked him to
20 provide a quote, how much his hourly rate was per diem.

21 Q. Let me see if I understand this. The list of
22 seven was reduced by the committee to one before
23 Dr. Schoenberger was ever contacted?

24 A. To the best of my recollection, yes.

1 Q. Was it your recommendation that he looked like
2 the best candidate?

3 A. Possibly. In my opinion he was. I don't
4 recall if that was my recommendation.

5 Q. Was the selection of the hearing officer ever
6 discussed with Mr. DeGroot or anyone that works for him?

7 A. No.

8 Q. Did the list of candidates ever get presented
9 to Mr. DeGroot or anyone that works for him?

10 A. No.

11 Q. Did you go over those names, for example, with
12 any of Mr. DeGroot's engineers or employees?

13 A. No.

14 Q. Now, at that time CDM was already on board as
15 the County's consulting engineer for these hearings,
16 right?

17 A. I'm not sure. I'd have to check my records.

18 Q. Did you discuss the potential hearing officers
19 with CDM?

20 A. No.

21 Q. Did you discuss it with anyone from Patrick
22 Engineering?

23 A. No.

24 Q. To your knowledge had -- did Mr. Schoenberger

1 have any connection with Mr. DeGroot or Mr. DeGroot's
2 law firm?

3 A. Not to my knowledge.

4 Q. Do you have any contrary knowledge at the
5 present time?

6 A. No.

7 Q. What did you contemplate to be the scope of
8 Mr. Schoenberger's responsibilities?

9 A. Well, I felt that he would preside over the
10 process, rule on legal issues, guide the hearing, set
11 hearing dates and times, you know, rules of evidence,
12 things of that nature, and to provide a recommendation
13 to the committee if the committee requested a
14 recommendation from him.

15 Q. Did the committee request a recommendation
16 from Mr. Schoenberger?

17 A. Yes.

18 Q. When did they so request?

19 A. I believe when Dr. Schoenberger first met with
20 the committee, it was requested of him at that time.

21 Q. By oral request or by formal motion?

22 A. I don't recall.

23 Q. Was a contract entered into with
24 Mr. Schoenberger for his services?

1 A. I don't know if you would define it as a
2 contract.

3 Q. Was there a written document?

4 A. He submitted a written quote for fees for his
5 services which was presented to the committee and the
6 committee accepted.

7 Q. And was a letter written back to
8 Mr. Schoenberger accepting that quote and advising him
9 of what his responsibilities would be?

10 A. I believe I did send him a letter bringing him
11 on board or saying that the committee approved the bid,
12 so to speak, or quote. I don't know if at that time we
13 defined his role. I think that that was done in
14 committee when we met with him for the first time.

15 Q. Has Mr. Schoenberger been paid?

16 A. Yes.

17 Q. Do you know how much he's been paid?

18 A. No, not off the top of my head.

19 Q. Approximately.

20 A. This is an approximation. I would have to say
21 approximately \$25,000.

22 Q. At the time that Mr. Schoenberger was
23 selected, you were also familiar with representatives
24 from Patrick Engineering, weren't you?

1 A. Familiar in what way?

2 Q. Well, that you knew who Patrick Engineering
3 was.

4 A. I knew the primary individuals involved in
5 this project. I knew who the primary workers on
6 Landcomp's application were.

7 Q. And who would have been your main contact
8 people at Patrick?

9 A. Primarily I spoke with Andy Inman and a woman
10 named Johnna -- and I don't recall what her last name
11 is -- and upon occasion Devin Moose.

12 Q. And you'd been dealing with those people for
13 quite some period of time prior to November 1 of last
14 year, right?

15 MR. RUBIN: I'm going to object.

16 MR. MUELLER: This is preliminary. I understand I
17 can't go into the nature of the dealings, but it's
18 preliminary.

19 MR. RUBIN: I'll withdraw my objection.

20 THE WITNESS: I was familiar with Patrick
21 Engineering employees related to this project for --
22 well, since the RFP process.

23 MR. MUELLER: Which takes us back to when you
24 really started working here, right?

1 MR. RUBIN: I'm going to object.

2 MR. MUELLER: Just so that we put a date on it,
3 that's all.

4 MR. RUBIN: Do you want to ask her when the --

5 MR. MUELLER: Was the RFP process in 1993 and '94?

6 THE WITNESS: Yes.

7 Q. Thank you.

8 Now, you got a recommendation for Schoenberger
9 from a friend of yours in Ogle County?

10 A. No. He's not a friend of mine. He's a --
11 what I would consider my counterpart for Ogle County.
12 It was a business relationship.

13 Q. What would motivate you to pick up the phone
14 and call Ogle County and say, do you folks have someone
15 you can recommend as a hearing officer?

16 A. I did not pick up the phone and call
17 Mr. Ripkama. What I did was I went to the ICSWMA, which
18 stands for Illinois County Solid Waste Management
19 Association, regional meeting in Dixon, Illinois, and
20 spoke to the representatives from Lee County, from Ogle
21 County, from the North Central Illinois Council of
22 Governments, and Whiteside County. I believe there was
23 a representative from Rockford there as well. And as
24 part of our quarterly regional meeting I asked for any

1 recommendations and the names of any individuals
2 involved in the local siting process specifically
3 pertaining to Subtitle D facilities. And at that time,
4 for my region Mr. Ripkama was involved -- or approaching
5 the involvement in a public hearing. The names that I
6 obtained were from him as well as others.

7 Q. Now, you said one of your goals was to get
8 someone that was disinterested and didn't know any of
9 the parties, right?

10 A. I don't believe I used the word disinterested.
11 I said objective and unrelated to LaSalle County.

12 Q. So any connection with Mr. DeGroot would not
13 have bothered you?

14 A. Any connection in what manner?

15 Q. I'm asking you. Would any connection between
16 the hearing officer and Mr. DeGroot have been of concern
17 to you in terms of selecting a hearing officer?

18 A. I believe that if there was such a
19 relationship in existence and if I knew about it, I
20 would definitely have brought that to the committee's
21 attention.

22 Q. Well, in fact, didn't Ogle County, in the
23 hearings in which they used Mr. Schoenberger as hearing
24 officer, also have Patrick Engineering as their

1 consulting engineers?

2 A. I don't know.

3 Q. Has that allegation ever been brought to your
4 attention previously?

5 A. I don't believe so.

6 Q. Now, what was the role of CDM in the site
7 selection process?

8 A. Camp, Dresser, McKee was retained by the
9 County to provide assistance in the technical review of
10 the application submitted by Landcomp.

11 Q. Assistance -- they were retained by the
12 County?

13 A. Yes.

14 Q. So who did they provide their assistance to?

15 A. They provided their assistance to me, as a
16 representative for the County, and Mr. Eschbach as well.

17 Q. And did you folks then pass on the benefit of
18 your increased knowledge as a result of that assistance
19 to the County?

20 A. We did in a summary report presented to the
21 committee by Camp, Dresser, McKee on I believe it was
22 January 31st in a public meeting.

23 Q. That was a two- or three-page report as I
24 recall?

1 A. I believe it was four.

2 Q. All right. But very short summary report,
3 right?

4 A. Yes.

5 Q. And it addressed substantive issues?

6 A. Yes.

7 Q. Both before and after the date of that report
8 in January of this year, did CDM representatives meet or
9 consult with Patrick Engineering representatives
10 regarding how to address the concerns that CDM had?

11 A. No. There was no meetings. That was
12 forbidden. It was understood that there would be no
13 meetings with the vendor's representatives, and they
14 consulted with us at our request concerning the
15 application.

16 Q. Did the CDM people -- if they didn't meet with
17 Patrick representatives, did they talk to them on the
18 phone about their concerns?

19 A. I believe there were several occasions where
20 they requested clarification from members of Patrick
21 Engineering as to the location of certain documents
22 within the application. I recall in one instance they
23 were missing I believe the index or a table of contents
24 on an application. They were having some difficulty in

1 locating some of the information.

2 Q. Ms. Grandone-Schroeder, do you have in your
3 possession or in your office a document from CDM which
4 is more comprehensive than the four-page report
5 provided?

6 A. I don't have any single document. I have a
7 series of Faxes that I received from Camp, Dresser,
8 McKee that were working documents as we proceeded
9 through the hearing. There was a document that we
10 addressed certain questions and issues and asked Camp,
11 Dresser, McKee to provide input so that we could prepare
12 for each upcoming day's examination.

13 Q. The summary report that was prepared, was
14 there also a detailed report that accompanied that which
15 the committee never saw?

16 A. No.

17 Q. Wasn't there an approximately 100-page report
18 prepared for you and Mr. Eschbach by CDM at some point
19 during the hearings?

20 A. No. Again, it was a series of Fax
21 transmittals. There was never any one 101-page report.
22 It was a series of working documents in response to
23 requests for clarification or additional information
24 from our engineers.

1 Q. And those reports also summarized CDM's
2 contact with Patrick Engineering and Patrick
3 Engineering's responses to those contacts, correct?

4 A. Say that again.

5 Q. Don't these reports or working documents from
6 CDM that were furnished to you also summarize CDM's
7 contacts with Patrick Engineering?

8 A. No, not in the manner that you're implying.
9 They simply evaluated certain aspects of Landcomp's
10 application in this Fax transmittal, the working
11 document to us.

12 Q. Madam Hearing Officer, I'm going to ask that
13 you order this witness to produce this document for
14 review. We tried to get it during the hearing, and we
15 were not allowed at that time by Mr. Schoenberger to
16 have it. But I think it's essential that we be allowed
17 to review this document now as to its summary of ex
18 parte communications between County representatives and
19 the applicant's representatives after November 1 of last
20 year.

21 MR. RUBIN: I'm going to object. Those are not ex
22 parte communications first of all. There's no evidence
23 of any contact between Landcomp or its representatives
24 and the County Board members who voted on this

1 application. The testimony has been that
2 Ms. Grandone-Schroeder and Mr. Eschbach relied on Camp,
3 Dresser, McKee for their presentation of evidence during
4 the proceedings and their examination of witnesses
5 during the proceedings. Therefore, those documents most
6 properly fall under the category of work product
7 generated by a consulting witness or a consulting expert
8 who never testified in the proceedings, and it would
9 therefore fall under the work product privilege.
10 There's no evidence that those reports were -- or
11 communications were ever given to County Board members.

12 MR. ESCHBACH: Same objection, particularly with
13 emphasis on the fact that there is no evidence of any
14 communication between CDM and County Board members or --
15 including members of the Siting Hearing Committee which
16 were the decision makers in this case.

17 MR. MUELLER: I have twofold response. Number one,
18 I'm unaware of a blanket broad work product privilege or
19 exception to the disclosure of evidence. Secondly, to
20 say that there was no contact between CDM and County
21 Board members as Mr. Eschbach did or to say that there
22 was no contact between Patrick Engineering and voting
23 County Board members as Mr. Rubin did begs the question;
24 because there was, according to Mr. Eschbach, a

1 permitted, ongoing dialogue between an applicant
2 representative, Patrick Engineering, and a county
3 representative Camp, Dresser & McKee. And this witness
4 now is waffling with respect to the extent of that
5 dialogue. I think her testimony is fairly interpreted
6 as being inconsistent with Mr. Eschbach's. And
7 therefore, the only way we'll know the nature and extent
8 of these contacts is to have the actual records from CDM
9 produced.

10 HEARING OFFICER FRANK: Okay. At this time I am
11 going to reserve my ruling until after lunch. I'd like
12 some time to think about it. I believe you can continue
13 to question this witness; and then if we have to recall
14 her after lunch, then that's what we'll do. But I would
15 like some time to think about it.

16 MR. MUELLER: Thank you.

17 Ms. Grandone-Schroeder, did Mr. Schoenberger
18 ever prepare a -- a report?

19 THE WITNESS: Yes.

20 Q. And he made some recommendations in that
21 report --

22 A. Yes.

23 Q. -- correct? And I believe he recommended
24 approval with 13 conditions which were numbered A

1 through M inclusive in his report; is that right?

2 A. I believe that's correct.

3 Q. And were those conditions lettered A through M
4 in his report substantially adopted with only minor
5 changes in wording as conditions A through M of the
6 ordinance approving this application?

7 A. I don't -- I'm not following you. Are you
8 saying he's saying the same thing as the ordinance?

9 Q. Weren't his conditions adopted subject to some
10 rewording?

11 A. I believe the committee revised some of his
12 conditions, yes.

13 Q. You mean reworded them?

14 MR. RUBIN: I'm going to object. Mr. Mueller's
15 arguing with the witness now.

16 HEARING OFFICER FRANK: I think we're into
17 semantics here. The witness has answered your question.

18 MR. MUELLER: All right. Did you also propose some
19 conditions to the committee?

20 THE WITNESS: Yes.

21 Q. And did you make a recommendation to the
22 committee?

23 A. I provided conditions for their consideration,
24 additional conditions beyond what Dr. Schoenberger

1 provided.

2 Q. And those conditions were obviously premised
3 on approval?

4 A. No. Those conditions were presented to the
5 committee with the explanation that they had three
6 options: that was denial of the application, that was
7 approval as it was, or approval with conditions. And
8 there was discussion on those three options; and I
9 provided additional conditions stating that if it was
10 the committee's wish to approve based on their findings,
11 that they may want to consider these additional
12 conditions.

13 Q. And what was the source of the conditions that
14 you provided?

15 A. They were resultant from observations during
16 the hearing, concerns expressed by the public -- or in
17 other words, an attempt to address some of the concerns
18 expressed by the public -- and just additional
19 precautionary measures.

20 Q. Did CDM ever provide you with any
21 recommendations or conditions?

22 A. Throughout the hearing process there were
23 times when CDM took notes based on testimony which
24 basically revolved around if this issue or that issue

1 were not addressed during the hearing, you might want to
2 put it in the form of a condition.

3 Q. And did you take their input into account in
4 drafting your proposed conditions for the committee?

5 A. Not particularly. I can't remember all the
6 specific areas that they addressed throughout the
7 hearing, especially since many of those areas were
8 eventually addressed or resolved throughout the hearing.

9 Q. Were you also the person that reworded the 13
10 Schoenberger conditions?

11 A. No.

12 Q. Who provided the final wording for those
13 conditions as they appear in the resolution ultimately
14 adopted?

15 A. Those conditions, if there were revisions
16 made, they were done by the Development Committee, in
17 committee, and I believe by vote.

18 Q. Was there a particular committee member who
19 suggested the specific wording, or is it a matter of you
20 or Mr. Eschbach doing the wording and then presenting it
21 to the committee for a vote?

22 A. No. That was not the case. My recollection
23 is that the committee went over each and every
24 condition. It was discussed by all the committee

1 members, and that suggestions for revisions were from
2 many different members. I don't recall that there was
3 any one primary committee member making suggestions or
4 recommended revisions.

5 Q. Were the conditions which you proposed
6 adopted?

7 A. I believe the majority of them were with some
8 revisions.

9 Q. Were there some that you proposed which were
10 not adopted?

11 A. I don't believe so. I believe what I
12 presented was adopted, again, with some revisions.

13 Q. And whether those revisions are just a matter
14 of rewording or -- strike that. Let me ask it this way.

15 Do the revisions that were made in your
16 conditions represent substantive changes in them as far
17 as you're concerned?

18 A. I don't recall the specifics of the
19 revisions. It seems to me that there was one or two
20 conditions that were proposed by committee members, and
21 it seems that some of the revisions may have been minor,
22 relatively minor; but it also seems that some of them
23 may have been, you know, of substance.

24 Q. Directing your attention to January 24th of

1 this year, did you have occasion to contact Mr. DeGroot
2 by letter on that day and ask him to meet with -- with
3 the County to discuss amending the host agreement?

4 A. I did send him a letter and asked for a
5 meeting. I don't remember the exact date, but I did
6 send him a letter requesting that we meet to talk about
7 the disposal fee.

8 Q. Wasn't the request actually to meet for the
9 purpose of amending the host agreement?

10 A. Yeah, I suppose you could say that.

11 Q. I suppose you could, too, since that's what
12 your letter said, right?

13 A. It was to request a locked-in disposal fee.
14 The disposal fee was one aspect of the host agreement.

15 Q. Did that meeting take place?

16 A. Yes.

17 Q. All right. Let's back up a little bit.

18 What was it about Mr. DeGroot or the host
19 agreement that caused you to want to request this
20 meeting?

21 A. There was a series of phone calls which I
22 received from the general public, some concerned board
23 members, that the disposal rates had recently gone up,
24 that there was concern about what exactly would be the

1 disposal fee if there was a new facility constructed.
2 In our host agreement we did not have a disposal fee
3 locked in, and there was concern, again, on the part of
4 the public and certain board members to attempt to lock
5 in a maximum fee.

6 Q. This concern on the part of the public and
7 board members arose out of Mr. DeGroot's increase in
8 tipping fees at his operating facility, right?

9 A. Yes. And also I believe some of the haulers
10 were raising their rates.

11 Q. What was -- what's the name of the facility
12 where Mr. DeGroot increased tipping fees?

13 A. States Land II.

14 Q. And Mr. DeGroot, to your knowledge, is the
15 controlling owner of Landcomp Corporation?

16 A. Yes.

17 Q. And so you were concerned about how this would
18 impact possible rates for the facility that is at issue
19 now?

20 A. Yes.

21 Q. Who was present at the meeting where amending
22 the host agreement was discussed?

23 A. Mr. Eschbach, myself, I believe Kevin O'Brien,
24 and I believe Paul DeGroot.

1 Q. It's the same Kevin O'Brien who's here today?

2 A. Yes.

3 Q. What was the outcome of that meeting?

4 A. Mr. O'Brien stated that they could appreciate
5 the County and the public's concern --

6 Q. No, ma'am. What was the outcome of the
7 meeting, not what was stated?

8 A. We never arrived at a disposal fee lock-in, if
9 you will, a locked-in disposal fee for the proposed
10 facility.

11 Q. Did you reach an understanding that locking in
12 the disposal fee would be deferred until after the
13 siting proceedings were over?

14 A. In part.

15 Q. What is the nature of that understanding?

16 A. It was understood that the outcome of the
17 hearing was up in the air, so to speak, and that
18 discussing financial issues was -- was not -- I don't
19 know a better word for it -- kosher, if you will; and
20 that even though that wasn't the intent of the meeting,
21 there was concern that it would be construed as such;
22 and that depending on the outcome of the hearing and the
23 potential appeals, if that was the issue on either side,
24 that it was an issue that would have to be addressed at

1 a later date.

2 Q. And did you leave that meeting comfortable
3 with the knowledge that you could count on these people
4 to -- to take care of the County once all of the siting
5 proceeding was completed?

6 A. No. I left the meeting disappointed that we
7 were not able to lock in a maximum disposal fee.

8 Q. Was any amendment to the host agreement made?

9 A. No.

10 Q. Was there a handshake agreement as to -- or a
11 verbal agreement as to any future amendment?

12 A. No. There was only an agreement that if this
13 process was completed and their application was approved
14 and appeals exhausted, that they would come back around
15 the table to discuss the issue.

16 Q. And the host agreement as currently written
17 doesn't even require them to do that much, does it?

18 A. No.

19 Q. Now, you recently had one of your employees
20 resign?

21 A. Yes.

22 Q. And his name is Mr. Swartzendruber?

23 A. Yes.

24 Q. He gave you notice of his intent to resign on

1 May 28th I believe; is that right?

2 A. I believe that's correct.

3 Q. And in his letter of resignation he cited,
4 among other reasons for his resignation, the inference
5 from outside the department that some things should be
6 overlooked in certain areas of the county.

7 MR. RUBIN: I'm going to object to the relevance of
8 this line of inquiry.

9 THE WITNESS: I object as well. That's a personal
10 document, part of a personnel file that he should not
11 have.

12 HEARING OFFICER FRANK: You have an attorney to
13 make your objections.

14 Mr. Mueller?

15 MR. MUELLER: Well, I don't know whether it's
16 outside the context of this or not. If what is to be
17 overlooked that disturbed her employee were infractions
18 on the part of Landcomp or Mr. DeGroot, then it's
19 certainly relevant. We don't know unless we ask.

20 MR. ESCHBACH: Your Honor, it seems to me that if
21 Mr. Mueller has a question of what that gentleman had to
22 say, he can call that gentleman, and then we can make a
23 determination as to whether or not it's relevant. But
24 as it was indicated, it is a part of the personnel file

1 first of all. Secondly, it's clearly beyond the scope
2 of what is before the Board at this point.

3 HEARING OFFICER FRANK: I'm not going to allow the
4 document, Mr. Mueller. If you want to call the
5 gentleman in, then you have that option.

6 MR. MUELLER: Well, I wasn't asking about a
7 document. I was asking whether or not this individual
8 cited to Ms. Grandone-Schroeder, the witness,
9 reservations about the fact that certain things
10 environmentally in the county are to be overlooked.

11 HEARING OFFICER FRANK: But that's based on I
12 believe the resignation letter, so I am not going to
13 allow that question.

14 MR. MUELLER: Let me ask another question.

15 Do you know what things in your department are
16 to be overlooked?

17 MR. RUBIN: I'm going to object to the question.
18 Again, it is beyond the scope of these proceedings which
19 have to do with the hearing held before the County Board
20 on the application by Landcomp, not an employment issues
21 or administrative issues within a county agency.

22 HEARING OFFICER FRANK: Mr. Mueller?

23 MR. MUELLER: This has nothing to do with an
24 employment or an administrative issue. She's testified

1 that she is the chief county officer with regard to
2 matters of solid waste disposal. And I'm asking her
3 whether there are some areas relating to solid waste
4 disposal and its regulation and enforcement that her
5 agency is expected to overlook.

6 MR. RUBIN: And that is irrelevant to this
7 proceeding.

8 MR. MUELLER: It's not when Mr. DeGroot owns the
9 only operating landfill in the county.

10 HEARING OFFICER FRANK: Mr. Mueller, let's let
11 Mr. Eschbach --

12 MR. ESCHBACH: I would object, although I'm sure
13 Mrs. Grandone-Schroeder is itching to answer that
14 question, and I would be if I were in her position.
15 The -- the question first of all is overly broad. If
16 Mr. Mueller has a question about something being
17 overlooked during this hearing which is the subject
18 before this hearing officer, I think he can answer (sic)
19 that question. But to delve now into other things that
20 may be occurring in her office or other areas in the
21 county would be overly broad and beyond the scope of the
22 hearing.

23 HEARING OFFICER FRANK: The objection is sustained.

24 Mr. Mueller, please continue.

1 MR. MUELLER: Ma'am, did you write a memo to the
2 Siting Hearing Committee on April 15th of this year with
3 regard to the review and consideration of the
4 application?

5 THE WITNESS: What's the title on the memo?

6 Q. I'm asking you if you wrote them a memo on or
7 about April 15th regarding review and consideration of
8 the siting application?

9 A. I wrote many memos.

10 Q. In one of your memos did you caution the
11 Siting Committee that they should not be influenced by
12 political pressures?

13 A. I believe that's a statement I made, yes.

14 Q. What political pressures were you concerned
15 about possibly influencing them?

16 A. Just general political issues: Constituents
17 calling, providing information off the record, asking
18 them to request of any constituent that the constituent
19 come forward and make a statement on the record or
20 provide a written statement, you know, basically
21 revolving around those kinds of issues.

22 Q. Were you aware of any specific political
23 pressure being applied to the members of that committee?

24 A. I was aware that certain phone calls were

1 being made to certain board members from members of the
2 public or members of other local governments, municipal
3 per se, making statements to these board members which
4 were statements that should have been made on the record
5 or statements, you know, provided in writing for the
6 record.

7 Q. Now, are you familiar, ma'am, with the
8 positions taken by the Illinois Department of Natural
9 Resources with respect to this application?

10 A. Is that -- that wouldn't be the I & M Canal
11 Association?

12 Q. No. This is the DNR.

13 A. Off the top of my head, no.

14 Q. Do you recall -- perhaps this will refresh
15 your recollection -- that the DNR initially wrote a
16 letter during the public comment period in opposition of
17 this application and then subsequently withdrew their
18 opposition by subsequent letter?

19 A. Yes, I recall that.

20 Q. All right. And do you recall the fact that
21 someone on the County Board caused copies of the DNR
22 letter withdrawing its opposition to be placed in the
23 County Board mailboxes of the members?

24 A. No, I'm not aware of that.

1 Q. Would you consider that to be political
2 pressure?

3 MR. RUBIN: I'm going to object to the form of the
4 question. What this witness considered political
5 pressure is irrelevant.

6 HEARING OFFICER FRANK: Sustained.

7 Mr. Mueller, please continue.

8 MEMBERS OF THE PUBLIC: We cannot hear you at all.

9 HEARING OFFICER FRANK: Okay.

10 MR. MUELLER: Were you involved with a school
11 project by which kids at Ottawa High School expressed
12 opinions with respect to this application?

13 THE WITNESS: No.

14 Q. So you don't know anything about how a summary
15 of those opinions would have been circulated to County
16 Board members?

17 A. No.

18 Q. You did not circulate that?

19 A. No, I did not.

20 Q. You did not tabulate the opinions or
21 preferences of these school children?

22 A. No.

23 Q. When the application was filed, there was a
24 Volume 7 enclosed or made a part of the application,

1 correct?

2 A. Yes.

3 Q. What generally were the contents of Volume 7?

4 A. They were basically some financial statements
5 provided by Landcomp Corporation.

6 Q. Was there anything else in there?

7 A. No.

8 Q. Was there information in Volume 7 regarding
9 control of the real estate on which the site was
10 proposed to be developed?

11 A. To my recollection I believe there was some
12 documents, a few pages, that -- I don't know if it was
13 copies of the plat or the title or property of some --
14 of some sort, and I believe a couple copies of some
15 options on property to the best of my recollection.

16 Q. Whose decision was it not to release this
17 information to the public?

18 A. It was a decision that was made by
19 Mr. Eschbach and myself based on our ordinance, what our
20 ordinance requires and what the ordinance refers to as
21 confidential information. It fell under that category
22 of our ordinance.

23 Q. Did you review the ordinance personally before
24 concurring with Mr. Eschbach in that decision?

1 A. I don't recall. I've reviewed that ordinance
2 numerous times.

3 Q. So you're very familiar with the ordinance,
4 right?

5 A. Parts of it, yes.

6 Q. Does the ordinance provide for confidentiality
7 of site control verification such as the option
8 agreements that would have been part of Volume 7?

9 A. I don't know. That would be something I would
10 go to the attorney to ask his opinion on.

11 Q. So with regard to this decision, you're
12 telling me you deferred to Mr. Eschbach?

13 A. In certain respects, yes.

14 Q. Other than the conditions for approval
15 proposed by Mr. Schoenberger and the additional
16 conditions proposed by you, were there any other
17 conditions proposed by any member of the Siting Hearing
18 Committee?

19 A. I would have to go back over the transcripts.
20 As I said, there was a lot of discussion for hours going
21 over every one of those conditions, and there was
22 suggested revisions to certain criteria or conditions,
23 whatever. I can't remember which one specifically, and
24 I can't remember if they were revised in their entirety

1 or partially. I'd have to look at the transcripts.

2 Q. Now, the County Board, the full Board adopted
3 the report and proposed conditions of the Siting Hearing
4 Committee in its entirety, didn't it?

5 A. Yes, I believe so.

6 Q. Without any change or revision of any sort?

7 A. I can't be sure, George. Again, I'd have to
8 look back at the transcripts. That sounds correct.

9 Q. If I may have a minute, I'm just about done.

10 HEARING OFFICER FRANK: That's fine.

11 MR. MUELLER: How much was CDM paid for their
12 technical review?

13 THE WITNESS: Again, I have to approximate here. I
14 would say to date -- again, this is a rough
15 approximation; I'm not sure without going back through
16 their auditing records -- but 75,000 roughly.

17 Q. Just a few more questions.

18 Both Mr. Eschbach and you have testified that
19 the work of the Siting Hearing Committee with respect to
20 reviewing the conditions that were proposed by
21 Schoenberger and yourself and making whatever changes
22 they felt necessary is fully documented in a transcript
23 of those meetings; is that right?

24 A. All discussion that occurred concerning those

1 conditions are on record as part of a court reporting
2 document.

3 Q. Weren't, in fact, a large number of those
4 discussions in an executive session; and therefore, the
5 transcript has not been released?

6 A. The first part of your question is correct;
7 the second part is incorrect. The transcripts were
8 released to the public and have been available to the
9 public for some time.

10 Q. So to your knowledge, the transcripts, even of
11 the executive sessions, are now part of the full record
12 that is available to the public?

13 A. Yes.

14 Q. That's all I have then.

15 CROSS-EXAMINATION BY:

16 MR. ROBERT M. ESCHBACH

17 MR. ESCHBACH: I just have a few questions.

18 Mrs. Grandone-Schroeder, you indicated that
19 with respect to contacts between county representatives
20 and CDM that no meetings occurred between Patrick
21 Engineering -- excuse me -- that no meetings occurred
22 directly between Patrick Engineering and CDM; is that
23 correct?

24 THE WITNESS: To my knowledge, that's correct.

1 Q. The only exception of that would be a meeting
2 where you and I were present when we were reviewing the
3 administrative completeness of the application?

4 A. Yes.

5 Q. So your comment -- your previous testimony in
6 regards to any meetings that might have occurred between
7 CDM and Patrick Engineering were where county
8 representatives would not have been present?

9 A. That's correct.

10 Q. Was it your intent and, in fact, was it the
11 procedure that was followed between -- procedure that
12 was followed by CDM that all of their concerns with
13 respect to the application would be made in writing by
14 CDM and would be answered in writing by Patrick
15 Engineering?

16 A. That's correct.

17 Q. Is that the way it was done?

18 A. Yes.

19 Q. And after Patrick Engineering answered the
20 concern, then would CDM make its comments to the County
21 regarding Patrick Engineering's answer?

22 A. They made them in writing on a facsimile to
23 me.

24 Q. And was it the intent that CDM was hired to

1 make sure that -- to assure yourself that you were
2 getting all of the information -- that the County's
3 counsel was getting all of the information that all of
4 those concerns would be expressed in a written document?

5 A. Yes.

6 Q. I have no other questions.

7 CROSS-EXAMINATION BY:

8 MR. KEVIN O'BRIEN

9 MR. O'BRIEN: Just a couple.

10 Ms. Grandone-Schroeder, with regard to Volume
11 7 of the application, was that Volume 7 ever distributed
12 to members of the Siting Hearing Committee?

13 THE WITNESS: No.

14 Q. Did members of the Siting Hearing Committee
15 ever have access to that Volume 7?

16 A. No.

17 Q. Was Volume 7 ever distributed to members of
18 the County Board of LaSalle County?

19 A. No.

20 Q. Were members of the County Board of LaSalle
21 County ever given access to that Volume 7?

22 A. No.

23 Q. I have no further questions.

24 HEARING OFFICER FRANK: Mr. Mueller?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

REDIRECT EXAMINATION BY:

MR. GEORGE MUELLER

MR. MUELLER: I have a few based on cross.

As I understand what you're saying, the written material that you have from CDM includes responses from Patrick Engineering to substantive concerns that CDM had also in writing?

THE WITNESS: George, you slipped the word substantive in there. Again, a lot of it was clarification. I don't know if I consider that substantive, but the responses were in writing regarding where certain aspects -- parts of the application can be found. They may have documented that certain things were missing from the application that were -- for example, in mind, like the table of contents; questions that I brought up that Camp, Dresser, McKee looked through the application for the answer. If they couldn't find it, they wrote to Patrick Engineering and said, where is it. And Patrick Engineering would respond saying, here it is, and this is the content.

Q. So you're saying that the responses from Patrick Engineering consisted exclusively of telling them where to look in the application for information?

A. Not exclusively, no. That was a good portion

1 of it. Or if they asked for an explanation or
2 clarification on something that was in the application
3 that Camp, Dresser, McKee's people reviewed and may not
4 have understood, it was not clear, they asked for
5 clarification.

6 Q. And then Patrick Engineering would provide
7 explanations and clarifications as to what they meant or
8 what their rationale was behind a particular point?

9 A. No. They provided an explanation based on the
10 information that was in their document saying, this is
11 the page; this is what it says. There was no addition
12 of new information or reports or figures or anything of
13 that nature. It was clarifying what was in the
14 document, pointing it out; and if it was something that
15 they found that was unclear, clarifying what it meant.

16 Q. What is the total volume of this clarification
17 in terms of pages?

18 A. I don't know. As I said, it came by Fax. As
19 the hearing progressed, it was a working, evolving
20 document. Some things were crossed off of it as we went
21 along, et cetera. You know, I don't know. I have no
22 idea how many pages we received.

23 Q. And there was no direct contact between
24 Patrick and CDM ever?

1 A. You mean in person?

2 Q. Well, the phone is pretty direct, too.

3 A. I believe that -- I know that there was
4 several phone calls made to me from Andy Inman
5 requesting if they could meet with Camp, Dresser, McKee.
6 And I said, no. And also called Camp, Dresser, McKee
7 while consulted with Mr. Eschbach, our attorney. He
8 agreed with me. We called Camp, Dresser, McKee to
9 reiterate the fact that there was to be no meetings or,
10 you know, phone conference-call meetings, things of that
11 nature, any kind of "meeting," quote, between our
12 engineer and the vendor's engineering firm.

13 Q. But it was okay for them to send Faxes to each
14 other as long as you got copies, right?

15 A. It was okay to ask for clarification of what
16 currently existed in that document.

17 Q. And did that happen by way of Faxes being sent
18 back and forth between CDM and Patrick Engineering?

19 A. And myself. I received a copy, yes.

20 Q. So they communicated with each other by Fax.
21 You were copied in, and that -- your copies represented
22 this evolving file where things were addressed on an
23 ongoing basis?

24 A. Yes, addressed, some resolved, some continued

1 throughout the hearing.

2 Q. And all of this helped you in formulating your
3 proposed conditions ultimately, didn't it?

4 MR. RUBIN: I'm going to object to the form of the
5 question. It is leading and suggestive.

6 HEARING OFFICER FRANK: Mr. Mueller, can you
7 rephrase?

8 MR. MUELLER: Did all of this help you in
9 formulating the conditions that you proposed to the
10 Siting Hearing Committee?

11 THE WITNESS: No, not what was in that document.
12 As I said, the majority of what was in these -- these
13 Facsimiles was resolved. The primary impetus for my
14 writing a number of the conditions I wrote was to
15 address the public concern that was brought up and
16 raised in the hearing or on the record in the form of a
17 written comment. Some of it was additional, above and
18 beyond or over Board precautions to try to alleviate
19 some of the public concern and to look at that, you
20 know, very remote possibility, worst-case-scenario
21 situation that could possibly occur, but was very
22 unlikely to occur. And some of it was based upon
23 working through the hearing on some of the issues that
24 may not have been resolved a hundred percent to the

1 County's satisfaction.

2 Q. Did I hear you to say that the County Board
3 never saw Volume 7 of the application?

4 A. To my knowledge that's correct.

5 Q. Who was the application filed with physically?

6 A. The LaSalle County Clerk.

7 Q. So the clerk has a copy of Volume 7, right?

8 A. No.

9 Q. Volume -- well, was Volume 7 -- did the clerk
10 ever have a copy of Volume 7?

11 A. No.

12 Q. What was filed with the LaSalle County Clerk?

13 A. Several copies, two or three perhaps, of
14 Volumes 1 through 6. Before we put it into the
15 possession of the clerk, I removed the seventh
16 volumes -- the seventh volume from each of the copies.

17 Q. Let me see if I understand this. The
18 application was not delivered to the clerk; it was
19 delivered to you?

20 A. No. I was present down in the clerk's office
21 when the application arrived.

22 Q. You just happened to be hanging out at the
23 County Clerk's Office?

24 A. No. I was aware that the application was

1 going to be filed on October 31st. And I called
2 Mr. Eschbach, and we were both there as well as the
3 County Clerk, her various employees, and I believe the
4 vendor was there and several of his representatives.

5 Q. By the vendor, you mean Mr. DeGroot
6 personally, right?

7 A. Yes.

8 Q. And how did you know to remove Volume 7?

9 A. Because we had already gone over the ordinance
10 that applied to the filing of the application in some
11 depth, Mr. Eschbach and myself. It was something that
12 we had already discussed, and I knew that the
13 information -- since he was a privately held company,
14 he's not on the stock exchange, or his financial data is
15 not a matter of public record, so I pulled the
16 information.

17 Q. How did you anticipate that there would be
18 confidential information to pull so as to have discussed
19 the matter with Mr. Eschbach before the application was
20 ever filed?

21 A. Because our ordinance calls for it. The same
22 ordinance that I have been speaking about requires that
23 financial data be provided, but it also provides
24 confidentiality for an applicant if that is not public

1 information. We were well aware of what we would
2 receive as part of the application because the ordinance
3 stipulates what had to be included.

4 Q. What did you do with Volume 7 physically after
5 you took it from the County Clerk?

6 A. I put it -- all copies of Volume 7 from all
7 copies that were delivered went into boxes which I
8 closed and taped and put into the back of my truck, an
9 enclosed truck.

10 Q. And where do they -- where do those documents
11 reside now?

12 A. We have -- all copies, except for Bob
13 Eschbach's copy and mine, are still in a box and still
14 in my possession.

15 Q. What is the point of requiring this financial
16 information if the County is not entitled to review it?

17 A. There was nothing of substance in the seventh
18 volume that would have aided the County Board in
19 evaluating the statutory criteria, because the statutory
20 criteria do not revolve around the finances of an
21 applicant.

22 Q. And who made that determination?

23 A. Again, it was a discussion between
24 Mr. Eschbach and myself, our interpretation of the

1 ordinance and its relevance to the record.

2 Q. So you and Mr. Eschbach determined that there
3 was nothing that could help the County or that was
4 relevant to the County's determination in Volume 7; and
5 therefore, you did not make that volume available to the
6 County?

7 A. Yes.

8 Q. Suppose, for example, that the Volume 7
9 contained information showing that the applicant did not
10 have proper or complete site control because an option
11 that the applicant relied on might have been defective.
12 Would that be relevant to the County's determination?

13 A. I don't know.

14 Q. So you and Mr. Eschbach determined between
15 yourselves that no such problem existed?

16 A. I don't recall that Mr. Eschbach and I sat
17 down at any time and discussed that particular issue.

18 Q. But you determined that no -- I take it you
19 reviewed Volume 7, right?

20 A. Yes.

21 Q. And Mr. Eschbach reviewed Volume 7?

22 A. Yes.

23 Q. And the purpose of you're reviewing it was to
24 make sure that there were no problems presented in the

1 material contained in that volume, right?

2 A. No. Actually, I reviewed it for the purpose
3 of determining if it met the requirement under the
4 ordinance; did they submit what they were supposed to
5 submit.

6 Q. Evidence of site control is one of the things
7 they're supposed to submit, right?

8 A. I don't recall that. Can I see the ordinance?

9 Q. I'd be happy to show it to you. You'll have
10 to forgive me. I don't have the entire ordinance here,
11 but I have the portion appended to Mr. Rubin's recent
12 motion for nondisclosure which is Part, Roman numeral,
13 IV contained on page 11 of this ordinance. And I'd ask
14 you to review -- to review that to refresh your
15 recollection?

16 A. You're saying -- wait a minute. Under number
17 three, George?

18 Q. Yes.

19 A. (Complying.) In reading paragraph three, I
20 don't feel that there was any conflict or problem with
21 Volume 7 for not making it part of the public record, as
22 that what would have violated the ordinance, or to the
23 County Board members. I don't really understand what --
24 where you're going.

1 Q. You know, it's really not necessary for you to
2 understand. It's only necessary for you to answer my
3 questions. And my question is who reviewed the option
4 documents presented in Volume 7 to ascertain that they
5 properly demonstrated control of the proposed site
6 within the meaning of those terms?

7 A. Again, I told you. Mr. Eschbach and myself
8 reviewed the information that was in Volume 7, and we
9 did not review it specifically asking the question you
10 just asked. We reviewed it in its entirety in a general
11 manner with relation to the entire ordinance.

12 Q. Now, there were also financial records
13 provided, profit-and-loss statements and so forth,
14 correct?

15 A. Did you say profit and loss?

16 Q. Profit-and-loss statements. Those were
17 provided, weren't they? Yes?

18 A. I'm trying to recall. There was very general
19 information. Basically, I recall there was what I would
20 call assets and liability sheets. I don't know if
21 that's what you're referring to, profit and loss, for
22 the vendor's company and his subsidiaries is the term I
23 would use for them.

24 Q. Now, if those documents had hypothetically,

1 let's say, shown that the applicant was completely
2 insolvent, wouldn't that be relevant for the County to
3 know in terms of ascertaining, for example, the
4 applicant's ability to finance a spill prevention plan?

5 MR. RUBIN: Excuse me. I'm going to object to this
6 question. That hypothetical is -- presupposes that the
7 Pollution Control Board can't, as a matter of law,
8 review this application, including Volume 7, which it
9 has, and determining whether or not there was or was not
10 something erroneous with the County Board's decision;
11 and therefore, there was some unfairness associated with
12 the hearings. Mr. Mueller is now really just arguing
13 with the witness over his and the witness'
14 interpretation of the material that the Pollution
15 Control Board is going to have to review and decide on
16 in any event.

17 MR. MUELLER: Ms. Frank, and incredibly incongruous
18 situation has arisen here. The local ordinance requires
19 certain information to be presented as part of the
20 application. Now, one of the rules of construction that
21 I'm aware of is you're supposed to read these things in
22 a way that makes sense. And the only way that that
23 requirement makes sense to me is that that is a
24 requirement that -- that someone is going to look at in

1 terms of what the information means. Now I hear from
2 this witness that she and Mr. Eschbach unilaterally
3 determined that the information contained in Volume 7
4 held nothing of relevance for the trier of fact.

5 MR. RUBIN: And indeed that is also a ruling
6 reached by Professor Schoenberger, and it's also a
7 ruling reached by the Pollution Control Board and the
8 Illinois Appellate Courts on numerous occasions that
9 financial information is outside the scope of 172
10 hearings.

11 HEARING OFFICER FRANK: Mr. Mueller, you made your
12 point that it was the witness and Mr. Eschbach who
13 reviewed the documents and reviewed the siting ordinance
14 and the documents based upon that ordinance. The Board
15 has Volume 7. The Board has access to Volume 7. They
16 also have a copy of the ordinance. So I think you can
17 move on now.

18 MR. MUELLER: I don't have any further questions.

19 HEARING OFFICER FRANK: Is there cross?

20 RE-CROSS-EXAMINATION BY:

21 MR. ROBERT M. ESCHBACH

22 MR. ESCHBACH: Just one question to clarify and to
23 alleviate some of the concerns I hear out here.

24 When you said that right now you have control

1 of all of the volumes, isn't it correct that three of
2 the volumes are on file -- the original plus three
3 copies, or four of the volumes, are on file with the
4 Pollution Control Board?

5 THE WITNESS: Yes. That's correct.

6 HEARING OFFICER FRANK: Is there anything further?

7 Okay. Why don't we take about an hour lunch
8 break, come back at 2 o'clock. At that point I will
9 make my ruling on the CDM documents; and if necessary,
10 we can recall the witness.

11 (A lunch break was taken.)

12 HEARING OFFICER FRANK: Back on the record.

13 My ruling on the CDM document is that I would
14 like them to be produced for the Board. Any objection
15 to that ruling will have to be in writing to the Board.
16 What I'm going to do is once we figure out how long this
17 hearing is going to go, I'm going to require that they
18 be produced on the same date that the transcript is
19 due. That way, Ms. Grandone-Schroeder -- is that right?

20 MS. GRANDONE-SCHROEDER: Yes.

21 HEARING OFFICER FRANK: I didn't know if the
22 pronunciation was correct -- will have time to gather
23 the information, because it sounds like it's sort of in
24 a file and not necessarily all together. And I don't

1 know if it's -- how is it -- I would like a copy to go
2 to Mr. Mueller, but is it possible to do that? Tell me
3 a little bit about the document.

4 MS. GRANDONE-SCHROEDER: It's a series of Fax
5 sheets. They're Fax quality. I have bits and pieces,
6 you know, pages that were Faxed on a certain day and
7 more pages on another. And a lot of what I had, as I
8 said, was resolved and discarded. Some of the copies
9 that I have have my notes on them. And they're just --
10 basically I keep a big accordion type file, and they're
11 kind of interspersed throughout with other documents.

12 HEARING OFFICER FRANK: Mr. Eschbach, you said that
13 you also had copies of all of these documents.

14 MR. ESCHBACH: I think between the two of us, plus
15 we can contact CDM if we need to.

16 HEARING OFFICER FRANK: Would it be possible then
17 to also make a copy for Mr. Mueller?

18 MR. ESCHBACH: Sure.

19 MR. MUELLER: I need to point out one thing here,
20 Ms. Frank. These documents were at issue during the
21 initial siting hearing. And at that time my information
22 was that there was a voluminous CDM report, somewhere in
23 the neighborhood of a hundred pages. And when I argued
24 that point, certainly Mr. Eschbach did not lead me to

1 believe that I was incorrect in my assumptions. And I'm
2 gathering from Ms. Grandone-Schroeder's representations
3 that there is, in fact, no such reports, but rather just
4 loose papers. I guess I would like for Mr. Eschbach and
5 Ms. Grandone-Schroeder to be asked to produce an
6 affidavit with respect to the completeness of what
7 they're tendering to the Board.

8 HEARING OFFICER FRANK: That's fine. They can only
9 produce what they have. So to the extent that, you
10 know, they threw documents away or they -- you know,
11 during the course of the proceeding, there's nothing we
12 can do about that at that time. You know, providing the
13 affidavit as to the completeness as far as you are
14 capable of doing at this point in the proceeding is
15 fine.

16 Mr. Rubin, did you have a comment?

17 MR. RUBIN: No.

18 HEARING OFFICER FRANK: By doing it at the date the
19 transcript is due, that should allow time for a motion
20 if you want to make a motion to the Board before the
21 documents go out to everybody.

22 Mr. Mueller, are you ready to proceed?

23 MR. MUELLER: Yes, we are. Thank you. We will
24 call Andree-Marie Koban to the stand.

1 HEARING OFFICER FRANK: Would you please swear the
2 witness.

3 ANDREE-MARIE KOBAN, called as a witness
4 herein, upon being first duly sworn on oath, was
5 examined and testified as follows:

6 (Witness sworn.)

7 HEARING OFFICER FRANK: You're going to have to
8 speak up.

9 THE WITNESS: I was just giving her my name.

10 DIRECT EXAMINATION BY:

11 MR. GEORGE MUELLER

12 MR. MUELLER: Would you identify yourself for the
13 record.

14 THE WITNESS: Yes. My name is Andree-Marie Koban,
15 and I'm a LaSalle County Board member, District 18.

16 Q. How long have you been a member of the LaSalle
17 County Board?

18 A. I was voted in December of '94.

19 Q. And so -- I'm sure you're going to be asked
20 this on cross-examination. Did you vote on the proposed
21 application for siting approval?

22 A. I voted against it.

23 Q. Okay. Andree, are you familiar with the
24 position -- or multiple positions taken by the Illinois

1 Department of Natural Resources with respect to the
2 pending application?

3 A. I am as of last week.

4 Q. And how is it that you are familiar with those
5 positions?

6 A. Through conversations with the citizens
7 against -- with the RAPE group.

8 Q. Are you aware that the Department initially
9 opposed siting and then reversed itself?

10 A. I'm aware of that after I read it in the
11 newspaper. The day we did the vote for -- for and
12 against the landfill, I read about that in the newspaper
13 that evening.

14 Q. With respect to the Department's position
15 reversing itself and withdrawing its opposition to the
16 proposal, did you receive notice of that in your County
17 Board mailbox?

18 MR. RUBIN: Can I have the question read back? I
19 missed the question. May have it read back?

20 HEARING OFFICER FRANK: Yes.

21 MR. MUELLER: I can just rephrase it or repeat it
22 if that's all right.

23 HEARING OFFICER FRANK: That's fine.

24 MR. MUELLER: In fact, I'm going to ask a different

1 question.

2 What is the procedure by which County Board
3 members get official mail?

4 THE WITNESS: We have a coffee room, a lounge area
5 where we have mailboxes with each of our names. And we
6 get anything from advertisements to notice of different
7 meetings to whatever official mail they call.

8 Q. And who places things in your Board member
9 mailboxes?

10 A. I'm sure it's Tina, the secretary.

11 Q. So that's a vehicle by which you get official
12 notice of various things, announcements of the County
13 Board, picnic, meetings, whatever it might be, right?

14 A. Right. It has to go through her office.

15 Q. Tina is the chairman's secretary, right?

16 A. Correct, Tina Bush.

17 Q. And did you ever -- do you check your mailbox
18 regularly?

19 A. I check it when I go up there for meetings.
20 And I go four to five other times during the month other
21 than our regular scheduled Board meeting for other
22 meetings, and that's when I also check it.

23 Q. Did you ever get in your mailbox a letter of
24 April 9th, 1996, from the Illinois Department of Natural

1 Resources withdrawing their opposition to the proposed
2 application?

3 A. I did not.

4 Q. Do you know whether other County Board members
5 got such letters?

6 MR. RUBIN: I going to object to the form of
7 question. It asks for speculation.

8 MR. MUELLER: Asked her if she knows.

9 MR. RUBIN: With no foundation.

10 MR. MUELLER: We don't need a foundation until we
11 find out whether she knows or not.

12 MR. RUBIN: That's not correct. The proper
13 foundation requires you to establish that there's a
14 basis for asking her the question.

15 HEARING OFFICER FRANK: Why don't you establish the
16 foundation, please.

17 MR. MUELLER: Are you aware of whether such letters
18 were distributed -- copies of that letter was
19 distributed to some or all County Board members?

20 MR. RUBIN: I'm going to object to the form of the
21 question. It's the same problem.

22 MR. MUELLER: Whether she's aware or whether she
23 has knowledge is preliminary. And I guess -- although,
24 you know, maybe Mr. Rubin went to the same law school as

1 Mr. Schoenberger. The next question would then be
2 whether or not what the basis of her knowledge is.

3 HEARING OFFICER FRANK: Mr. Mueller, that's
4 uncalled for.

5 MR. MUELLER: Well, his objection's uncalled for.
6 He's being difficult over a simple matter.

7 MR. RUBIN: I apologize, Mr. Mueller, if you think
8 I'm being difficult, but I do need to protect the
9 record, and I am entitled to make an objection. And in
10 this instance it happens to be that I believe my
11 objections are proper.

12 HEARING OFFICER FRANK: Mr. Mueller, can you please
13 create a foundation for how she would know whether or
14 not the information were in the boxes?

15 MR. MUELLER: Well, I don't know whether -- I don't
16 have to create that foundation until I know whether she
17 knows.

18 HEARING OFFICER FRANK: I'm asking you to create
19 the foundation first. If you don't want to do that, you
20 can't ask her the question.

21 MR. MUELLER: Do you have knowledge of things,
22 Andree?

23 THE WITNESS: Of other people's mailboxes?

24 Q. Yes.

1 A. Yes, I do, because they're wide open. You can
2 see what everybody else gets in their mailbox. And
3 that's how I know when I don't get certain articles,
4 because we're all lined up in little cubicles, and mine
5 is blank very often. And I'll go in to Tina and say, am
6 I missing something, you know. I know I got the Weight
7 Watchers brochure, but that was it.

8 Q. In other words, what you're telling us is that
9 the contents of those mailboxes are pretty much visible
10 to any Board member who's looking at their own mailbox
11 and --

12 A. Anybody who walks in the room will see what's
13 in the mailboxes.

14 Q. How many County Board members are there?

15 A. There are 29.

16 Q. So there's not an enormous number of boxes to
17 scan?

18 A. No.

19 Q. How large is this area that comprises the
20 mailboxes?

21 A. I would say it takes up probably from this
22 wall to maybe a little bit past this wall and about this
23 high. They're cubicles about like this (indicating).

24 Q. Indicating about four feet wide, two feet

1 high, and maybe four-inch square cubicles?

2 A. Each labeled with our names alphabetically.

3 Q. And do you know, based upon your own
4 observations, whether or not other -- other County Board
5 members had distributed in their mailbox before the
6 final vote on this application copies of the letter from
7 the Department of Natural Resources withdrawing their
8 opposition to this siting proposal?

9 A. I had seen a letter from the Department of
10 Natural Resources. And the only way is is because you
11 just can't help see what everyone else has lined up.
12 The letters were not enclosed in envelopes. They were
13 not folded. They were just stuck in, and it was very
14 obvious who it was from.

15 Q. You didn't get one?

16 A. I didn't get one. I had no idea about that
17 until, like I said, I read it in the newspaper.

18 Q. Do you know why you didn't get one?

19 A. I assume it's because of my vocal viewpoints
20 on I'm against the landfill.

21 Q. Does anyone other than the County Board
22 Chairman's secretary distribute materials into these
23 mailboxes?

24 A. Anybody can if they get authorization from the

1 chairman.

2 Q. That's all I have.

3 HEARING OFFICER FRANK: Mr. Rubin or Mr. Eschbach
4 or Mr. O'Brien?

5 CROSS-EXAMINATION BY:

6 MR. ROBERT M. ESCHBACH

7 MR. ESCHBACH: Just one question.

8 Andree, is there any reason to assume that the
9 other Board members --

10 (The reporter requested
11 clarification.)

12 MR. ESCHBACH: Is there any reason to assume -- or
13 not to assume that other members may have already
14 removed from their mailboxes the document that you're
15 talking about?

16 THE WITNESS: If they had gotten there earlier than
17 I had. I had gotten there probably about 12:25, 12:20
18 that day, because it was going to be a big day, and I
19 wanted to go through all my mail. And some of the
20 letters were still in there, but that's probably because
21 the County Board members had not arrived.

22 Q. Couldn't those letters have been sitting in
23 that box for days?

24 A. I don't know about that.

1 Q. Okay. Thank you.

2 CROSS-EXAMINATION BY:

3 MR. JAMES I. RUBIN

4 MR. RUBIN: Ms. Koban, how do you know what letter
5 it was that was sitting in the box of somebody other
6 than yourself?

7 THE WITNESS: How do I know that it was the
8 Department of Natural Resources? Because it said right
9 on it. It has fairly large heading, Department of
10 Natural Resources. Because I have seen the letter
11 recently.

12 Q. Okay. When you walked into the mail room at
13 12:20 on the -- what day was it?

14 A. I believe it was a Thursday. I have to go
15 back and look at a calendar because we had several
16 meetings that month.

17 Q. What month?

18 A. The month we took the vote.

19 Q. Is this on the day of the vote?

20 A. Yes. This is the day that we took the vote.

21 Q. When you saw that there was a letter from the
22 DNR in someone's mailbox, did you see whether it was in
23 anybody else's mailbox?

24 A. Well, usually the mailboxes all look the same

1 when the same thing is in there. Like I said, the
2 Weight Watchers was a bright yellow, and it was folded
3 in a certain way, and everybody had that in their
4 mailbox. And it was the same way with the Department of
5 Natural Resources. It was folded, but it was halfway
6 folded. So it was just stuck in face up, so you could
7 see who had them and who didn't.

8 Q. Who didn't besides yourself?

9 A. I don't know. I know there were several
10 letters that were missing. But once again, it could be
11 they had already removed it.

12 Q. When you saw that at 12:20 on that day, the
13 day of the vote, that the DNR letter was missing from
14 your mailbox, did you go and ask this person, Tina?

15 A. No, because I did not know what the letter
16 contained. Some Board members get certain letters, and
17 some do not, depending on if you're on a committee.

18 Q. Did you have a chance to review all of the
19 written comments that were filed during the 30-day
20 public comment period with the County Board prior to the
21 vote on the hearing?

22 A. Yes, I did.

23 Q. Was the DNR letter a part of the public
24 comment correspondence that was submitted to the County

1 Board during the three-day period?

2 A. There was the first letter of them taking a
3 position with the environmentalists bringing up their
4 concerns and agreeing with them on that. I remember
5 seeing that.

6 Q. And did you see a second letter?

7 A. I don't recall a second letter.

8 Q. But did you review every piece of paper that
9 was submitted during the 30-day --

10 A. I did, and maybe I don't remember seeing that
11 one. There was a lot of information. So I have all the
12 information at home, and I will go back and look. And
13 maybe I did see it, and I just don't remember it at this
14 moment.

15 Q. You said that you were vocally opposed to the
16 siting of the landfill; is that correct?

17 A. (Nodding.)

18 Q. You have to --

19 A. Yes, I did. I have always been vocally
20 opposed to the landfill in this county.

21 Q. And you had made your position on the landfill
22 known publicly, hadn't you?

23 A. Yes. That was one of the platforms I ran on.

24 Q. And that was both -- you had made your

1 position known both before the application was filed and
2 during the actual proceedings; isn't that correct?

3 A. Right, beginning around '93, 1993.

4 Q. All the way up through the time of the
5 decision?

6 A. Yes.

7 Q. No further questions.

8 HEARING OFFICER FRANK: Mr. Mueller?

9 MR. MUELLER: Nothing further of this witness.

10 HEARING OFFICER FRANK: Thank you.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 MR. MUELLER: We'll call Mr. DeGroot.

14 PAUL DeGROOT, called as a witness herein,
15 upon being first duly sworn on oath, was examined and
16 testified as follows:

17 (Witness sworn.)

18 DIRECT EXAMINATION BY:

19 MR. GEORGE MUELLER

20 MR. MUELLER: Would you identify yourself for the
21 record, please.

22 THE WITNESS: I'm Paul DeGroot.

23 Q. And Mr. DeGroot, you are one of the owners of
24 Landcomp, Inc.?

1 A. Yes, sir.

2 Q. Are you the principal shareholder?

3 A. Principal shareholder.

4 Q. Sir, you are also in the waste disposal
5 business in LaSalle County at the present time?

6 A. Yes, sir.

7 Q. You own an entity called States Land
8 Improvement Corporation?

9 A. States Land Number 2, yes.

10 Q. And you also own an entity called Illinois
11 Valley Recycling?

12 A. Yes. We own that, too.

13 Q. That's in LaSalle County, also?

14 A. Yes.

15 Q. In connection with the pending application,
16 sir, do you recall being on a radio call-in show last
17 February while the hearings were in progress?

18 A. Yes, I called in.

19 Q. You called in to present your viewpoint on
20 this particular radio show that was taking calls,
21 correct?

22 A. Yes.

23 Q. Now, where did you call from, Mr. DeGroot?

24 A. From one of the offices downstairs.

1 Q. That'd be downstairs in the County building?
2 A. That's correct.
3 Q. Would that have been Mr. Johnson's office?
4 A. Well, I can't recall the name of the lady, but
5 it wasn't Mr. Johnson's office.
6 Q. You know who Mr. Johnson is, don't you?
7 A. Yes.
8 Q. He's the auditor?
9 A. Yes.
10 Q. And he was, up until December of 1995,
11 Chairman of the LaSalle -- or '94, Chairman of the
12 LaSalle County Board?
13 A. Yes, before the current chairman.
14 Q. Before Mr. Lambert, right?
15 A. That's right.
16 Q. Was Mr. Johnson a friend of yours?
17 A. No.
18 Q. Didn't you, in fact, use his private office to
19 talk on the telephone on this radio call-in show?
20 A. No. That wasn't his office.
21 Q. Was it his secretary's office?
22 A. If that lady works for him, then it was an
23 office belonged to his secretary. But she allowed me to
24 use her phone, not Mr. Johnson.

1 Q. Did she know you when you went in there?

2 A. Yeah. She knows me.

3 Q. How is it that she knows you?

4 A. Well, I've been around the County Board
5 buildings many times over many years, and I know a
6 number of people, not necessarily by name, but certainly
7 they know me.

8 Q. Did you use this office with the door closed?

9 A. Pardon me?

10 Q. Was the door closed in the office that you
11 were talking on the telephone?

12 A. The door was wide open.

13 Q. How long were you on the phone for this
14 call-in show?

15 MR. RUBIN: I'm going to object. I think that this
16 line of questioning has gone far enough to demonstrate
17 that it has nothing to do with the application that is
18 at issue before the County Board -- before the Pollution
19 Control Board.

20 MR. MUELLER: I think favoritism on the part of the
21 County toward Mr. DeGroot by making private offices
22 available for him to use to call a radio show that is
23 going to air his position is certainly relevant. All I
24 want to know is how long he was on the phone.

1 HEARING OFFICER FRANK: I'll allow the question.

2 THE WITNESS: Answer?

3 HEARING OFFICER FRANK: Um-hum.

4 THE WITNESS: I imagine three minutes, four
5 minutes.

6 MR. MUELLER: I have no further questions.

7 HEARING OFFICER FRANK: Mr. Eschbach?

8 MR. ESCHBACH: I have no questions.

9 HEARING OFFICER FRANK: Mr. Rubin?

10 CROSS-EXAMINATION BY:

11 MR. JAMES I. RUBIN

12 MR. RUBIN: Mr. DeGroot, whom did you ask for
13 permission to make -- to use the private telephone?

14 THE WITNESS: I asked for permission to listen to
15 the radio. And when Mr. Bruce Markwalter made an
16 erroneous statement, I said I would like to call. And
17 she said, go ahead, use my phone. And that's the lady
18 that allowed me to use her phone.

19 Q. That is Mr. Markwalter who is the president of
20 Residents Against a Polluted Environment?

21 A. Yes. There was a talk show on WCMY, and he
22 made a statement that I had to tell him that was
23 incorrect.

24 Q. I have no further questions.

1 HEARING OFFICER FRANK: Mr. Mueller, did you have
2 anything else?

3 MR. MUELLER: Nothing further.

4 HEARING OFFICER FRANK: Okay. Thank you. You may
5 step down.

6 THE WITNESS: That's it?

7 (Witness excused.)

8 MR. MUELLER: We'll call Mr. Markwalter.

9 BRUCE MARKWALTER, called as a witness herein,
10 upon being first duly sworn on oath, was examined and
11 testified as follows:

12 (Witness sworn.)

13 DIRECT EXAMINATION BY:

14 MR. GEORGE MUELLER

15 MR. MUELLER: Would you identify yourself for the
16 record, please.

17 THE WITNESS: My name is Bruce Markwalter, spelled
18 M-a-r-k-w-a-t-l-t-e-r.

19 Q. And sir, where do you reside?

20 A. Reside at 1210 Lincoln Avenue, south side of
21 Ottawa.

22 Q. You -- you are president of Residents Against
23 a Polluted Environment?

24 A. I am.

1 Q. Mr. Markwalter, directing your attention to
2 February of this year, did you have occasion to call a
3 radio talk show on WCMY that was fielding phone calls
4 with respect to this proposed landfill?

5 A. I was -- I did not call. I was a guest of
6 that show. I was invited to make a presentation on the
7 landfill during that show.

8 Q. So you were actually on the show, correct?

9 A. I was there on the show with one of our Board
10 members, Diane Gassman.

11 Q. WCMY is the local radio outlet?

12 MR. RUBIN: I'm going to object to this line of
13 questioning. It seems absolutely clear that it has
14 nothing to do with the proceedings before this -- the
15 Pollution Control Board nor, for that matter, the County
16 Board.

17 MR. MUELLER: This is impeachment of the last
18 witness.

19 HEARING OFFICER FRANK: I'm going to allow the
20 questioning.

21 THE WITNESS: I appear on radio talk shows and
22 television shows.

23 MR. MUELLER: Is WCMY the local outlet?

24 THE WITNESS: They are, in fact, the local outlet.

1 Q. Did someone who you knew to be Paul DeGroot
2 call in the show that day?

3 A. Yes, that's correct.

4 Q. And how long was that individual on the air
5 and on the telephone?

6 A. Long enough for me to be able to go through
7 about four pages of notes while he was talking. So at a
8 minimum he was speaking probably 10 to 15 minutes. And
9 he was on -- he was on hold for at least another five
10 minutes. I would say total, over 20 minutes. I
11 remember this because I was upset with the host saying
12 that, you know, Mr. DeGroot and Landcomp had an
13 opportunity -- he was on a previous show, and we were
14 there for rebuttal. And the implication was that we
15 were going to have free and open access to make our case
16 in terms of the application that was being submitted and
17 what the impact on the health, safety, and welfare of
18 the community would be based on our position and our
19 research. And I had expressed that concern to the talk
20 show host and -- co-host actually -- and suggested to
21 him in no uncertain terms that I thought it was
22 inappropriate that he'd have that much air time during a
23 show that we were invited on to carry our message.

24 Q. So your recollection is clear that it was much

1 more than three minutes?

2 A. There's no question about it. In fact, we
3 recorded that interview, and we have -- somewhere we
4 have a tape I believe that could be produced for that.

5 MR. MUELLER: No further questions.

6 HEARING OFFICER FRANK: Mr. Rubin?

7 MR. RUBIN: I have no questions.

8 HEARING OFFICER FRANK: Mr. Eschbach?

9 MR. ESCHBACH: No questions.

10 HEARING OFFICER FRANK: Okay. Thank you.

11 MR. MUELLER: We'll call Mr. Thornton.

12 EDMUND B. THORNTON, called as a witness
13 herein, having been sworn on oath, was examined and
14 testified as follows:

15 (Witness sworn.)

16 DIRECT EXAMINATION BY:

17 MR. GEORGE MUELLER

18 MR. MUELLER: Would you identify yourself for the
19 record, please.

20 THE WITNESS: My name is Edmund Thornton, a
21 resident of LaSalle County, Illinois.

22 Q. And sir, do you have a connection with the
23 Edmund B. Thornton Foundation which is one of the
24 parties in this case?

1 A. I do. I'm the current president of the
2 foundation.

3 Q. Mr. Thornton, directing your attention to
4 March 11th of this year, did you have occasion at that
5 time to have a conversation with Robert Eschbach,
6 attorney for the County, in connection with certain
7 evidence that you wanted to present at the local siting
8 hearing?

9 A. I did.

10 Q. Why don't you tell the hearing officer what
11 occurred on that date.

12 A. As a member of the -- I should lay the
13 foundation or at least the background of this concern.
14 One of my responsibilities is a member of the Federal
15 Commission on the Illinois-Michigan Canal. And that
16 entity had entered a statement or had passed a
17 resolution in opposition to the landfill siting. The
18 meeting of that commission was held on a Thursday, the
19 7th of March, and it was exactly the same date that the
20 Commission was meeting in Lockport, Illinois; and for
21 that reason, it was impossible for myself, as a
22 representative of the commission, to present the
23 statement.

24 The statement then was given to a Mr. Vincent

1 Michael who is a -- an employee of the Canal Corridor
2 Association which is a private not-for-profit entity who
3 was an intervener in this matter. And inasmuch as
4 Michael was going to be making a statement on behalf of
5 his association, he was asked to present the resolution
6 of the Illinois-Michigan Canal Commission to the hearing
7 officer and before the -- the hearing. We assumed that
8 that was, in fact, done. In actual fact, it was not
9 done. Mr. Michael was prevented from admitting that
10 statement into the record by the hearing officer, and I
11 was told of that action on -- on a Saturday morning when
12 I inquired as to the disposition of the -- of the
13 matter.

14 MR. RUBIN: I'm going to object and move that that
15 last section of the witness' testimony be stricken on
16 the grounds of hearsay.

17 MR. MUELLER: It would go to his state of mind as
18 to what he believed when he went to the hearing. It's
19 certainly not offered for the truth of it.

20 HEARING OFFICER FRANK: I'll allow it.

21 THE WITNESS: And having been told that the
22 statement was not entered into the record, I then
23 attended the meeting on the following Monday, which was,
24 in fact, then the last day of the hearing. The hearing

1 officer had chosen to extend the hearing for one more
2 day, into the 11th of April.

3 MR. MUELLER: March.

4 THE WITNESS: March. Excuse me. And during a
5 break in that session, which was about 10 o'clock I
6 believe it was on the morning of the 11th, I attended
7 and was concerned that this statement had not yet been
8 entered into the record. During the break the hearing
9 officer was off the floor someplace. He was in the back
10 or having coffee or not available. So I asked
11 Mr. Eschbach, whom I have known over the years, if the
12 statement had been entered into the record; that is, the
13 statement of the Illinois & Michigan Canal National
14 Heritage Corridor Commission. Bob very obviously did
15 not want to talk to me and attempted to avoid me. I
16 asked him if the statement had been read into the
17 record. He said no. And I said that I would be happy
18 to read it into the record inasmuch as I am a member of
19 the Commission, also as an intervener. He asked if the
20 Commission was an intervener, and I said, no, they were
21 not, but that I was. And he said, well, he said, don't
22 worry about it; I will read it into the record -- or I
23 will do that. I asked him if I could read it into the
24 record. He said, no, I will do that. That's a direct

1 quotation from --

2 Q. Mr. Thornton, at that point did you rely upon
3 Mr. Eschbach to make sure that the statement of the
4 I & M Canal Corridor Association became part of the
5 record?

6 A. I did. He was the only person available that
7 I knew sufficiently to ask the question.

8 At that time the hearing officer came into the
9 room and reconvened the meeting or the hearing, and we
10 all took our places. I fully expected Mr. Eschbach to
11 read the statement into the record or somehow make it
12 available. I saw Mr. Eschbach arise from his chair,
13 walk across the room, and give the statement to
14 Mr. Rubin. I saw it because it was in his hand. He
15 hand-carried it across the room to gave it to Mr. Rubin.
16 I thought this was rather unusual, rather strange.

17 I did not in the course of the meeting that
18 morning attempt to ask the hearing officer for an
19 opportunity to present this statement because I did not
20 have a copy with me at that time, and I didn't know
21 what -- the meeting adjourned at 12 o'clock noon anyway
22 or close to 12 o'clock.

23 Based on these concerns, I asked the
24 Commission through its executive director, Mr. Hansen,

1 to have a second statement prepared and submitted, this
2 time by mail, by Federal post office to the County
3 Clerk. That was done, and I think it was on the 22nd
4 of -- of March that letter was -- or that statement was
5 actually -- second statement was received.

6 As it turned out, in fact, the statement --
7 original statement had been presented into the record on
8 the 11th of March, although the occasion of actually
9 reading it into the record by a member of the Commission
10 was denied.

11 Q. And if Mr -- but for Mr. Eschbach telling you
12 that he would read it into the record, would you have
13 availed yourself of the opportunity afforded by the
14 hearing officer to citizens to make final comments?

15 MR. RUBIN: I'm going to object to the form of the
16 question.

17 THE WITNESS: Well, I --

18 HEARING OFFICER FRANK: Mr. Mueller, can you
19 rephrase your question?

20 MR. MUELLER: All right. On the morning of the
21 11th, Edmund, the hearing officer was allowing members
22 of the public to -- to continue to make their
23 statements, correct?

24 THE WITNESS: It was a closing session and, yes,

1 there were comments being solicited.

2 Q. And at the time that you gave a copy of Lee
3 Hansen's letter or statement on behalf of the Corridor
4 Association to Mr. Eschbach, we were getting very near
5 starting closing arguments by the attorneys?

6 A. I did not give a copy to Mr. Eschbach. I did
7 not have a copy with me. I asked him if the copy had
8 been submitted for the record. He said no, and he
9 produced it from his folio (sic). He had it in his
10 hand. He had the copy. I did not have the copy. And
11 so I relied upon his good faith at the time saying that
12 I will do that. When I asked if I could put it into the
13 record and read it, he said, no, I will do that. And I
14 took his word for that action.

15 Q. Mr. Thornton, did you also have communication
16 with a certain Professor Brown with respect to this
17 proposal?

18 A. I did.

19 Q. And who's Professor Brown?

20 A. Dr. James Brown is a professor of archeology
21 or anthropology at Northwestern University. He is a
22 very eminent archeologist, and he is also chairman of
23 the Illinois State Museum Board.

24 Q. And did Mr. Brown at your -- or in follow-up

1 to communication with you regarding this proposal submit
2 a letter containing some expert opinions to Mr. Lambert,
3 the County Board Chairman?

4 A. Yes, he did.

5 Q. And did the County Board Chairman to your
6 knowledge promptly make that part of the official record
7 in this matter?

8 MR. RUBIN: I'm going to object.

9 MR. MUELLER: Let me rephrase the question.

10 Do you know what happened to Mr. Brown's
11 letter after he mailed it?

12 MR. RUBIN: Again, I'm going to object. Lack of
13 foundation. The record -- by the way, the record is
14 clear on what is within the record and what has been
15 made part of the record including Professor Brown's
16 correspondence.

17 HEARING OFFICER FRANK: Mr. Mueller, you need to
18 lay a foundation for your question.

19 MR. MUELLER: Do you know what the date was of
20 Professor Brown's letter, sir? Do you have a copy of it
21 with you?

22 THE WITNESS: No. I do not have a copy, but I
23 believe it's February 25th or something.

24 Q. So let me show you a copy of Professor Brown's

1 letter and ask you if that refreshes your recollection
2 as to what the date of that letter was?

3 A. This is a letter on stationery of Northwestern
4 University dated 29 March 1996 addressed to Edward R.
5 Lambert, Chairman of the LaSalle County Board, Ottawa,
6 Illinois, and is signed by Dr. James A. Brown, Professor
7 of Anthropology.

8 Q. Sir, do you know whether that letter ever
9 became part of the official hearing record in this
10 matter?

11 A. I know that when I called the County Clerk at
12 the close of these proceedings, the hearings, and asked
13 for a list of all -- all persons who had submitted
14 written letters of support or in opposition to the
15 matter, she gave me that list with the names, the dates
16 of the receipt of each of these letters, and at the
17 bottom -- and at the bottom she said a statement to the
18 effect that she had a letter from a Dr. James Brown that
19 was received after the close of the receipt of official
20 commentary. And she -- it came into her possession I
21 think it was the 15th of April, the date of the -- vote
22 in the County Board was held. And she said to me that
23 she had asked --

24 MR. RUBIN: I'm going to object to what someone

1 said to Mr. Thornton as hearsay.

2 MR. MUELLER: Be a representative of the County.

3 It's a party in interest.

4 MR. RUBIN: There is absolutely no basis for any
5 exception to the hearsay rule just because he spoke with
6 an employee of LaSalle County.

7 MR. MUELLER: It's an admission against interest by
8 a party opponent.

9 HEARING OFFICER FRANK: Actually, the Board's rules
10 allow for reduced evidentiary standards, and I'm going
11 to allow the questioning to continue.

12 MR. MUELLER: By the way, Mr. Thornton, before you
13 finish, who was the person you were speaking to in the
14 clerk's office?

15 THE WITNESS: Mary Jane Wilkinson, the County
16 Clerk.

17 Q. So it was the County Clerk herself you had
18 this conversation with?

19 A. I specifically asked to speak with her.

20 Q. And why don't you finish telling us what she
21 had to say.

22 A. Well, she told me that there was this one
23 exception. She had this letter that came in after the
24 close of the hearings, and she knew nothing about it

1 until the date of the actual vote at the County Board
2 meeting, which I believe was the 15th of April. And the
3 letter was dated the 29th of March, and she was
4 concerned as to what she should do with this. The
5 letter was obviously in the -- been sent to Mr. Lambert,
6 and -- but it was never -- never given to her and never
7 part of the official record. So I asked her if she
8 would just make a statement at the bottom of the list
9 and tell me what she did with it, so she did. It's -- I
10 can produce the list of names and her written statement
11 at the bottom indicating this fact.

12 Q. I have nothing further, Mr. Thornton.

13 HEARING OFFICER FRANK: Cross?

14 CROSS-EXAMINATION BY:

15 MR. ROBERT M. ESCHBACH

16 MR. ESCHBACH: Mr. Thornton, you indicated that you
17 had said to me on March 11th I believe that you had
18 asked me if I would put into the record or read a
19 letter, is that correct, from Lee Hansen?

20 THE WITNESS: I asked if it had been read into the
21 record or had it been submitted into the record, and at
22 that time you indicated -- indicated to me no -- no is
23 what it was.

24 Q. Are you aware that that letter dated March

1 7th, 1996, appears four times in the record?

2 A. I'm aware that it appears -- well, as a member
3 of the Commission, I'm aware of the fact that there were
4 two separate submissions of the letter. I don't know
5 when it was -- when it was ever entered into the record.

6 Q. Okay. So you're not aware of that.

7 A. First I know was the 11th. That's -- I was
8 told of that.

9 Q. Are you aware that Mr. Hansen's letter dated
10 March 21st, 1996, appears -- excuse me -- March 19th,
11 1996, appears two times in the record?

12 A. No. I'm not aware of that.

13 Q. And you were represented by counsel during
14 this proceeding; is that correct?

15 A. Yes.

16 Q. Now, are you aware that various -- with
17 respect to -- or Mr. Brown's letter, are you aware that
18 all of the public notices and all of the comments made
19 by the hearing officer during the hearing regarding
20 public comment directed that anyone who wanted to file
21 written comment was to do so with the County Clerk?

22 A. That's my understanding.

23 Q. And Mr. Lambert is not the County Clerk
24 obviously; is that correct?

1 A. No, he's not the clerk. That's right.

2 Q. And are you aware that Mr. Lambert was ill and
3 away from the office for a considerable period of time
4 during the landfill siting hearings?

5 A. I'm not aware of that.

6 Q. I have no other questions. Thank you.

7 MR. MUELLER: Mr. Thornton --

8 HEARING OFFICER FRANK: Excuse me.

9 MR. RUBIN: Excuse me. My turn.

10 MR. MUELLER: I'm sorry.

11 CROSS-EXAMINATION BY:

12 MR. JAMES I. RUBIN

13 MR. RUBIN: Mr. Thornton, what was it you intended
14 to do with the letter dated March 7th if Mr. Eschbach
15 had not said what you have testified that he said? What
16 was it you were going to do with the letter?

17 THE WITNESS: Well, I was concerned that there had
18 been no -- that the position of the Federal Commission
19 had not been properly entered into the record. And it
20 was my intention, having been told that Michael did not
21 get it into the record -- although he was deputized to
22 do so -- I was concerned that it was not in the record;
23 and therefore, I was prepared to do that as a member of
24 the Commission on Monday, the 11th.

1 Q. So you were going to read it in yourself. Is
2 that what you were proposing?

3 A. I was asked by Hansen on behalf of the
4 Commission to do that, because I was the only one here,
5 member of the Commission.

6 Q. And what you proposed to do was read it into
7 the record; is that correct?

8 A. That was my intention.

9 Q. Nothing further. Thank you.

10 REDIRECT EXAMINATION BY:

11 MR. GEORGE MUELLER

12 MR. MUELLER: Mr. Thornton, you were also aware
13 of -- if you would resume your seat for one second.

14 You were aware of the conflicting positions
15 taken by the Department of Natural Resources with
16 respect to this application, weren't you?

17 THE WITNESS: Yes.

18 Q. And when the Department of Natural Resources
19 reversed its earlier position on opposition and withdrew
20 that opposition by a letter of April 9th, 1996, to whom
21 did they address that letter? Do you recall?

22 MR. RUBIN: I didn't mean to interrupt you. Were
23 you finished with your question?

24 MR. MUELLER: Yes.

1 THE WITNESS: I've seen that --

2 MR. RUBIN: Excuse me, Mr. Thornton. This is --
3 does not seem to be related to the cross-examination,
4 and it appears to be an entirely new subject.

5 MR. MUELLER: Not true because Mr. Eschbach asked
6 if Mr. Lambert was the County Clerk to imply that there
7 is an unreliable chain of transmission of materials if
8 they're not submitted directly to the County Clerk. And
9 I'm prepared to show that that is more true with
10 materials that express opposition than it is with
11 materials such as the DNR letter withdrawing its
12 opposition which was also addressed to Mr. Lambert and
13 which had know trouble finding its way into the record.

14 MR. RUBIN: I'm going to object that all he wants
15 to do is argue and that basis for that argument is
16 self-contained in this record. He doesn't need this
17 witness --

18 HEARING OFFICER FRANK: Mr. Mueller, this is a
19 subject for your briefs. The document speaks to itself
20 and -- it speaks for itself, and who it's addressed to
21 is a part of the record already. You don't need your
22 witness to testify who it is addressed to.

23 MR. MUELLER: No further questions.

24 May we take a ten-minute recess?

1 HEARING OFFICER FRANK: Certainly. Come back at 3
2 o'clock.

3 (A brief recess was taken.)

4 HEARING OFFICER FRANK: Let's go back on the
5 record.

6 Before we proceed anymore with the case, I'd
7 like to ask if there are any members of the public who
8 would like to make a statement for the record that would
9 like to come up at this time and make a statement on the
10 record for the Pollution Control Board.

11 A MEMBER OF THE PUBLIC: Is this in addition to
12 tomorrow night, or is it separate?

13 HEARING OFFICER FRANK: Tomorrow night is an
14 opportunity for people who can't be here during the day.
15 I mean if you'd prefer to speak tomorrow night, that's
16 fine, but we're only going to be there for two hours,
17 from 6 to 8. You won't be allowed to speak twice, I
18 mean, unless you have something new to say. It's the
19 same record, so you don't need to say the same thing
20 today and tomorrow night. But since there are members
21 of the public that are here, I thought I would give them
22 an opportunity.

23 A MEMBER OF THE PUBLIC: I do have something that I
24 want --

1 HEARING OFFICER FRANK: Okay. Then you need to
2 come forward, and you need to be sworn and give your
3 name to the court reporter.

4 JOAN C. BERNABEI, upon being first duly sworn
5 on oath, gave a statement as a member of the public and
6 testified as follows:

7 (Witness sworn.)

8 HEARING OFFICER FRANK: Can you state your name for
9 the record, please?

10 MS. BERNABEI: Joan C. Bernabei.

11 HEARING OFFICER FRANK: Can you spell that for our
12 court reporter?

13 MS. BERNABEI: B-, as in boy, -e-r-n-a b- -- again,
14 as in boy -- -e-i.

15 HEARING OFFICER FRANK: Okay. Did you get that?

16 THE REPORTER: Yeah.

17 HEARING OFFICER FRANK: Faster than I am.

18 Okay. Why don't you go ahead then and state
19 whatever it is you would like to state on the record.

20 MS. BERNABEI: I am a teacher. I work during the
21 day. My hours are 7:30 until 2:45. By the time I get
22 to the courthouse up at Etna Road, I am lucky to make it
23 there by 10 or 15 minutes after 3. It was very
24 important to me that I was able to view copies of the

1 application. It was supposed to be on record in the
2 Ottawa Public Reddick Library. It was never available.
3 My husband and myself checked nightly. They said it is
4 to be available, but it's not available, and it was
5 never there. My husband and I, as citizens who have a
6 right to view the application, never did have access to
7 it, to any of it, Volumes 1 through 7. And that's all I
8 have to state.

9 HEARING OFFICER FRANK: Stay there for just a
10 moment.

11 Is there any cross-examination or questioning?

12 MR. MUELLER: I have some questions.

13 HEARING OFFICER FRANK: Just a moment. I'm going
14 to allow the other side a chance first.

15 EXAMINATION BY:

16 MR. ROBERT M. ESCHBACH

17 MR. ESCHBACH: I have a couple questions.

18 Mrs. Bernabei, why do you say that the -- the
19 application was supposed to be in the public library?

20 THE WITNESS: It's supposed to be on record.
21 Anytime I have ever come acrost hearings, there's
22 supposed to be a copy for the public to view. And I am
23 the public, and I could not ever view it through this
24 entire testimony.

1 Q. Are you aware that there were files on copy at
2 the County Clerk's office?

3 A. They weren't available to me. I had asked for
4 them, and they were not available to me.

5 Q. Did you ask to have copies made?

6 A. It was supposed be on record at the library.
7 That's what came through Susan's office and your office
8 in the paper, on the radio. And it was to be available
9 to people like me, and it never was made available at
10 the library. I shouldn't have to go to someone else's
11 office when your office stated that it would be in the
12 library. And it always has been on the record in the
13 past, and it was not. This entire hearing is null and
14 void because people like me have not seen this.

15 HEARING OFFICER FRANK: Mrs. Bernabei, you need the
16 calm down.

17 THE WITNESS: I have not since day one seen Volume
18 1 through 7 to have at my leisure to go in and read at
19 any time I want that's not in locked doors, and I work.

20 MR. ESCHBACH: Mrs. Bernabei, are you aware of the
21 fact that the County tried to get the public library in
22 Ottawa to take Volumes 1 through 6 and that they
23 wouldn't do it?

24 THE WITNESS: That is not true. Because I asked

1 them daily, and they said they're waiting for you people
2 to give to them -- daily. And I know Paul. I sing in
3 church choir with him. I know him personally, and he's
4 also been on the County Board. He knows how it
5 operates.

6 Q. Is Paul -- who are you referring to by Paul?

7 A. Help me.

8 MEMBERS OF THE PUBLIC: Depaoli.

9 THE WITNESS: Depaoli. Thank you.

10 MR. ESCHBACH: Is Paul Depaoli the head librarian
11 of the library?

12 THE WITNESS: No, he is not. He works there.

13 Q. Okay. Thank you.

14 A. But I talked to more than Paul Depaoli. I
15 talked to everybody that was there.

16 HEARING OFFICER FRANK: You need to wait for them
17 to ask you questions at this point.

18 EXAMINATION BY:

19 MR. KEVIN J. O'BRIEN

20 MR. O'BRIEN: Mrs. Bernabei, did you ever go to the
21 office of the LaSalle County Clerk and ask to see the
22 application?

23 THE WITNESS: Yes.

24 Q. And when did you ask? When was that?

1 A. In -- sometime in January or February, early
2 in the case.

3 Q. January or February of this year?

4 A. Of 1996.

5 Q. A what were you told at the clerk's office
6 when you asked to see the application?

7 A. That they didn't have a copy of it.

8 Q. This is at the office of the LaSalle County
9 Clerk on Etna Road?

10 A. Um-hum.

11 Q. And who did you speak to there?

12 A. Someone in Mary Jane Wilkinson's office.

13 Q. Do you know the name of this person?

14 A. No, I don't.

15 Q. Do you know whether it was the morning or the
16 afternoon?

17 A. No, I don't. Probably -- probably late
18 afternoon because I'm working, although I did take off
19 days for the hearing. So --

20 Q. What did the person look like that you asked
21 for the record from -- asked for the application from?

22 A. I don't recall.

23 Q. Was it a woman or a man?

24 A. Woman.

1 Q. Just a minute.

2 A. They told me it was supposed to be in the
3 library. That's all I know.

4 HEARING OFFICER FRANK: Ma'am, you got to make your
5 statement. Now it's their turn to question you. I know
6 it's frustrating, but you need to wait for a question.

7 MR. O'BRIEN: Just a few more questions,
8 Ms. Bernabei.

9 Do you know approximately how old the
10 woman was that you talked to in the clerk's office?
11 Older woman, younger woman?

12 THE WITNESS: Probably thirtyish.

13 Q. Did you see the notice that was published in
14 the paper by the County regarding the siting hearings?

15 A. Yes.

16 Q. Did you see that the notice published by the
17 County indicated that the application was on file and
18 available for viewing at the County Clerk's Office?

19 A. No.

20 Q. Mrs. Bernabei, are you a member of the
21 Residents Against a Polluted Environment?

22 A. Yes, I am.

23 Q. And Residents Against Polluted Environment was
24 represented by counsel during the siting hearings; is

1 that correct?

2 A. Um-hum.

3 Q. You have to answer yes or no.

4 A. Yes.

5 Q. Did you ever bring up this issue with
6 Mr. Mueller, counsel for the Residents group during the
7 hearings?

8 A. No, I did not. I brought it up with our
9 group.

10 Q. No further questions.

11 HEARING OFFICER FRANK: Okay. Ms. Bernabei, I
12 believe Mr. Mueller had a question for you.

13 EXAMINATION BY:

14 MR. GEORGE MUELLER

15 MR. MUELLER: Joan, when was the last time you
16 checked at the library for a copy of the application?

17 THE WITNESS: It was like about the second to the
18 last day of the hearings, probably around I'd say March
19 10th or so.

20 Q. And there was still nothing?

21 A. Still nothing.

22 Q. That's all.

23 HEARING OFFICER FRANK: Okay. Wait, Mrs. Bernabei.

24 Is there anything else?

1 MR. RUBIN: Nothing.

2 HEARING OFFICER FRANK: Okay. Thank you.

3 (Ms. Bernabei was excused from
4 the witness stand.)

5 HEARING OFFICER FRANK: Is there anyone else who
6 wishes to make a statement?

7 Okay. We will resume.

8 Mr. Mueller, did you have another witness you
9 wanted to call?

10 MR. MUELLER: In light of the Board's ruling of
11 July 18th, the rest of our case has been held as
12 inadmissible. So we have no further witnesses.

13 HEARING OFFICER FRANK: Okay. Then would Landcomp
14 and the County like to begin.

15 MR. ESCHBACH: In light of the hearing officer's
16 ruling regarding the CDM documents, I'd like to call
17 Susan Grandone to the stand.

18 HEARING OFFICER FRANK: You're still under oath.

19 SUSAN GRANDONE-SCHROEDER, called as a witness
20 herein, upon being previously duly sworn on oath, was
21 examined and testified as follows:

22 (Witness previously sworn.)

23 DIRECT EXAMINATION BY:

24 MR. ROBERT M. ESCHBACH

1 MR. ESCHBACH: Would you identify yourself, please.

2 THE WITNESS: Susan Grandone-Schroeder.

3 Q. Okay. I have just two questions regarding the
4 CDM documents, Susan.

5 First of all, did you provide copies of the
6 CDM documents to any committee member -- and when I say
7 committee member, I mean the Siting Hearing Committee --
8 did you provide documents to any -- CDM documents to
9 any committee member or any County Board member?

10 A. No.

11 Q. And are you aware, or do you have any
12 knowledge of anyone else providing copies of those
13 documents to committee members or County Board members?

14 A. No.

15 Q. Did you attempt to place the Landcomp
16 application on file with Reddick Library in Ottawa?

17 A. Yes.

18 Q. And what happened when you tried to do that?

19 A. They indicated to me that they were concerned
20 about the copious amounts of documentation, and they
21 would not be able to provide copies and that they
22 preferred that we not put it on file with them.

23 Q. Did you provide the RAPE organization with a
24 complete copy of Volumes 1 through 6?

1 A. Yes, I did.

2 Q. I have no other questions. Thank you.

3 HEARING OFFICER FRANK: Mr. Mueller?

4 CROSS-EXAMINATION BY:

5 MR. GEORGE MUELLER

6 MR. MUELLER: Who did you speak with at Reddick
7 Library that told you they didn't want the application?

8 THE WITNESS: I spoke with a woman. I don't have
9 her name. I can't think of her name right now, but it
10 is written down in my office.

11 Q. Did you speak with her in person or on the
12 phone?

13 A. On the phone.

14 Q. Do you know whether she was the head librarian
15 or just a clerk there?

16 A. I don't recall at this time. I have a
17 message -- I have a record of the message when she
18 returned my call.

19 Q. Now, the CDM Faxes that went back and forth,
20 as I understood your testimony this morning, that also
21 included Fax responses from Patrick Engineering
22 representatives, correct?

23 MR. ESCHBACH: Madam Hearing Officer, I'm going to
24 object at this time. Mr. Mueller has had an opportunity

1 to go into that. The only questions that were asked of
2 this witness on my direct examination was simply whether
3 she provided copies or knew of anyone else who had
4 provided copies of those documents to committee members
5 or Board members. And I think Mr. Mueller's questioning
6 goes beyond the scope of direct.

7 HEARING OFFICER FRANK: I think also, Mr. Mueller,
8 your question has been asked and answered in your direct
9 examination.

10 MR. MUELLER: Well, Ms. Schroeder, did you use that
11 information to help you formulate questions for
12 witnesses?

13 MR. ESCHBACH: Madam Hearing Officer, again, I
14 would object on the same basis.

15 MR. MUELLER: Well, to the extent that they have an
16 advantage in formulating questions through a private
17 dialogue between their engineers and the applicant's
18 engineers, they are indirectly communicating valuable
19 information from that dialogue to the Siting Committee
20 members who are present at the hearing.

21 HEARING OFFICER FRANK: Mr. Mueller, your question
22 has been asked and answered earlier today. You're
23 reiterating your direct examination.

24 MR. MUELLER: No further questions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

CROSS-EXAMINATION BY:

MR. KEVIN J. O'BRIEN

MR. O'BRIEN: One question.

Ms. Grandone-Schroeder, you said that you provided a copy of the application, Volumes 1 through 6, to the RAPE organization; is that correct?

THE WITNESS: Yes. Actually, I believe I provided two complete sets with complete sets of blueprints and drawings. I know I provided at least one complete set of binders, original documents, as well as the blueprints and all its associated diagrams.

Q. My question is to whom at RAPE did you provide this material?

A. Melody Carr.

Q. Thank you.

HEARING OFFICER FRANK: Is there anything further?

MR. ESCHBACH: No.

HEARING OFFICER FRANK: Okay. Thank you.

THE WITNESS: Thank you.

(Witness excused.)

MR. ESCHBACH: I have no one else at this time.

HEARING OFFICER FRANK: Landcomp?

MR. RUBIN: We have no witnesses.

HEARING OFFICER FRANK: Okay. Let's go off the

1 record for a moment.

2 (A conversation was held off
3 the record.)

4 HEARING OFFICER FRANK: Okay. What we've done is
5 kind of tentatively set a briefing schedule based on the
6 idea that we will be able to finish these hearings at
7 tomorrow evening's session and that the transcript would
8 be in on August 2nd. I remind also the County that that
9 would also mean that the CDM documents then would be due
10 on August 2nd. The parties have agreed to August 9th as
11 the date for the first brief by the petitioners, August
12 16th as the response brief date, and August 21st as the
13 reply brief date. And this may change a little bit if
14 we end up going to Wednesday. Just the transcript date
15 would change.

16 MR. RUBIN: May I make one request, and that is
17 that when the appellants or petitioners file their
18 opening brief on August 9th, that they do so and serve
19 us by facsimile that day since our brief will be due
20 only seven -- seven total days later?

21 HEARING OFFICER FRANK: That's fine. We can agree
22 to -- it does not need to be Faxed to the Board or
23 overnighted to the Board. Mailed as filed with the
24 Board, although that last one, it would be great if you

1 could get it in as quickly as possible, the reply
2 briefs, and we'll start deliberating.

3 MR. RUBIN: And we will reciprocate and file our
4 brief by that --

5 MR. MUELLER: So agreed.

6 HEARING OFFICER FRANK: So we've got an agreement
7 that you guys will Fax between each other. You do not
8 need to Fax to me. You can just stick 'em in the mail
9 to me.

10 At this time we are going to recess the
11 hearing until tomorrow evening. The parties have stated
12 that they don't have anything further at this point. So
13 we will recess until the 6 o'clock session at Koolie's
14 Banquet Hall tomorrow evening. We will be there from 6
15 to 8 mainly for public participation, although we may
16 have one witness that will be called. And then there
17 will be a possibility of a Wednesday morning session if
18 we need to call any rebuttal witnesses or the parties
19 have anything additional that we need to take care of.

20 Are there -- is there anyone else from the
21 public while we're here that wishes to make a statement
22 today on the record?

23 Okay. Are there any questions about the
24 procedures or any other matters before we go ahead and

1 recess for today?

2 Okay. Then I will see you all at 6 o'clock
3 tomorrow evening.

4 (At which time the hearing was
5 adjourned, to be reconvened on
6 July 23, 1996, at Koolie's
7 Banquet Hall at 6:00 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF LASALLE)

3 I, ANN L. PELLICAN, a Certified Shorthand
4 Reporter and Notary Public in and for the County of
5 LaSalle, State of Illinois, do hereby certify that I
6 reported the public hearing in the above-entitled matter
7 by means of machine shorthand and reduced it to writing
8 by computer-aided transcription; that said hearing was
9 taken at The LaSalle County Courthouse, Ottawa,
10 Illinois; and that the foregoing is a true, correct, and
11 complete transcript of my shorthand notes so taken
12 aforesaid.

13 I further certify that I am not counsel for
14 nor in any way related to any of the parties in this
15 matter, nor am I in any way interested in the outcome
16 thereof.

17 IN TESTIMONY WHEREOF, I have hereunto set my
18 hand and affixed my Notarial Seal this ____ day of
19 _____, 1996.

20

21

ANN L. PELLICAN
Certified Shorthand Reporter
Ill. License No. 084-003080

22

23

24

