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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

LANDFILL 33, LTD.,

Petitioner

vs.

No. PCB 03-43
(Third-Party Pollution Control
Facility Siting Appeal)

EFFINGHAM COUNTY BOARD and
SUTTER SANITATION SERVICES,

Respondent.

The following is a transcript of the above-entitled matter taken stenographically before ANN MARIE HOLLO, CSR, RPR, RMR, a notary public within and for the County of Montgomery and State of Illinois. Said hearing was taken on the 19th day of December A.D., 2002, commencing at 9:00 o'clock a.m. at the Effingham County Building, County Board Room, 101 North Fourth Street, Effingham,, Illinois.

1 APPEARANCES:
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 By: Edward Deters, Esq.
 10 Appearing on behalf of the Respondent
 Effingham County Board
 11 Hodge, Dwyer & Zeman
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 By: Christine G. Zeman, Esq.
 13 Appearing on behalf of Petitioner
 Stock & Company, LLC
 14 Sorling, Northrup, Hanna, Cullen and Cochran, Ltd.
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 15 Suite 800
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 16 By: Charles J. Northrup, Esq. and David A. Rolf, Esq.
 Appearing on behalf of Respondent Sutter
 17 Sanitation Services

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1 HEARING OFFICER HALLORAN: Good morning,
2 everyone. My name is Bradley Halloran. I'm the hearing
3 officer with the Illinois Pollution Control Board. I'm
4 also assigned the hearing officer for this consolidated
5 matter entitled Landfill 33, Limited, petitioner, versus
6 Effingham County Board and Sutter Sanitation Services,
7 respondents; and Stock & Company, petitioner, versus
8 Effingham County Board and Sutter Sanitation Services,
9 the respondents.

10 Today is December 19th, approximately
11 9:05 a.m.

12 I want to state that both petitioners
13 allege in their respective petitions that the siting
14 decision was fundamentally unfair, and that several
15 findings regarding the statutory criteria was against
16 the manifest weight of evidence.

17 This hearing has been scheduled and in
18 accordance with the Illinois Environmental Protection
19 Act and the Pollution Control Board rules and
20 procedures. It will be conducted according to the
21 procedural rules found at Section 107.400 and 101
22 sub part F.

23 It looks like we do have a handful of
24 public here, and they will be allowed, and we welcome

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1 testimony subject to cross examination. If you could
2 raise your hand, do any members of the public sitting in
3 the rows in the seats back there, do they plan to
4 testify today?

5 Okay. We have one. And your name, ma'am?

6 MS. DETERS: Nancy Deters. You mean
7 testify or just give an opinion?

8 HEARING OFFICER HALLORAN: Well, you can
9 give an opinion, but it will be accorded through
10 weight. You can make a comment, but if you testify
11 subject to cross examination, it's given more weight.

12 MS. DETERS: Okay.

13 HEARING OFFICER HALLORAN: Anyway -- I'm
14 sorry?

15 MR. LLOYD STOCK: I have a public comment.

16 HEARING OFFICER HALLORAN: And your name,
17 sir?

18 MR. LLOYD STOCK: Lloyd Stock.

19 HEARING OFFICER HALLORAN: Could you spell
20 your name.

21 MR. LLOYD STOCK: S-t-o-c-k.

22 HEARING OFFICER HALLORAN: S-t-o-c-k, all
23 right. Thank you. Will you be able to give your public
24 comment? Do you wish to testify subject to cross

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1 examination, sir, or just give a public comment?

2 MR. LLOYD STOCK: Just give a public
3 comment at this time.

4 HEARING OFFICER HALLORAN: Let's finish up,
5 and both of you can give public comments so we can get
6 that out of the way if you so choose.

7 In any event, before I begin, I would like
8 to talk just a moment about the board's hearing
9 process. First, I think the majority of the people here
10 are already familiar with the process.

11 I will not be making the ultimate decision
12 in the case. Rather, it's the Pollution Control Board
13 who will. They are going to review the transcript of
14 the proceedings and the remainder of the record and
15 decide the case. My job is to ensure that the hearing
16 is orderly and a clear record is developed, so that the
17 board can have all the proper information before
18 deciding the case.

19 After the hearing, the parties will also
20 have an opportunity to submit post-hearing briefs.
21 These, too, will be considered by the board.

22 Public comment is also accepted, and I'll
23 set a public comment cutoff date as well.

24 With that said, I'd like to have the

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1 parties introduce themselves. Mr. Hedinger?

2 MR. HEDINGER: My name is Steve Hedinger,
3 H-e-d-i-n-g-e-r. And I represent the petitioner, and
4 that's Landfill 33, Limited, in the PCB 03-43 case.

5 MS. ZEMAN: My name is Christine Zeman,
6 Z-e-m-a-n, and I represent the petitioner, Stock &
7 Company, LLC, in the consolidated PCB 03-52 appeal.

8 HEARING OFFICER HALLORAN: Mr. Deters?

9 MR. DETERS: My name is Edward Deters. I'm
10 the State's Attorney of Effingham County. I represent
11 the Effingham County Board in both matters.

12 MR. NORTHRUP: Charles Northrup, and Dave
13 Rolf for the respondents, Sutter Sanitation, in both
14 cases.

15 HEARING OFFICER HALLORAN: I also want to
16 note for the record that Mr. John Knittle is here. He's
17 the staff attorney for Member Tom Johnson.

18 I think what we'll do, we'll have opening
19 statements, if any, and then we'll have Mr. Stock and
20 Ms. Deters give their public comment if they so choose
21 at this time.

22 Mr. Hedinger, do you have an opening
23 statement?

24

MR. HEDINGER: Well, I do have a

6

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1 preliminary matter --

2 HEARING OFFICER HALLORAN: Sure.

3 MR. HEDINGER: -- directed to the record.

4 And I spoke with Mr. Deters about this earlier, and I
5 just want to get it on the record.

6 There are a number of instances within the
7 record where the submittal has a page indicating that
8 the document that should go in that spot was not
9 reproduced, but is available for review at the county
10 board itself.

11 And those -- the ones I saw in the record
12 were at C-298, which is the siting application; C-302,
13 which is the IEPA 2000 annual report on waste; the
14 C-304, which is the county consolidated waste management
15 plan; C-312, which is the large poster size exhibits
16 that were used actually during the hearing. And those
17 were the instances that I noted.

18 I would request that those be transmitted
19 from the county to the board, because I believe those
20 should be part of the record that stays with the
21 remainder of the record as it winds its way through the
22 process.

23 So that's -- the other request I have, as
24 long as I've got the floor here; also in reviewing the

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1 record, a public comment was submitted by Sutter
2 Sanitation after the hearing. There's a notation or a
3 reference at C-375 to an exhibit or appendix 5 to that
4 public comment, but the record doesn't contain a copy of
5 it. And that, I think, was their proposed findings of
6 fact and conclusions of law. So if that had been
7 submitted and the reference at C-375 was merely a typo,
8 I would request that that be located and submitted with
9 the record as well.

10 HEARING OFFICER HALLORAN: So it's my
11 understanding the siting application, the annual report,
12 the city waste plan and the exhibits, the posters and
13 public comment were not submitted with the record.

14 MR. HEDINGER: Well, the public comment is
15 a separate matter. The first four is correct.

16 There's notations at the places that I
17 mentioned in the record. In compiling the record, the
18 county merely said, "Well, we didn't reproduce the
19 entirety of this document. If you want to see it, you
20 can come to the county." What I'm requesting is that
21 they send those to the board to catch up with the

22 official record in this case.

23 Then the fifth item I mentioned, the public
24 comment was simply a matter of I didn't find in the

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1 record the attachment A to their public comment that is
2 referenced. And if it had been submitted, I would
3 request that that be located and submitted to the
4 Pollution Control Board for inclusion in the record.

5 HEARING OFFICER HALLORAN: Mr. Deters?

6 MR. DETERS: If I could take them somewhat
7 out of order.

8 You're talking about page C-75 of the
9 record?

10 MR. HEDINGER: Yes.

11 MR. DETERS: You're discussing public
12 comment?

13 MR. HEDINGER: Well, yeah. At the
14 paragraph, Roman numeral IV of that page, says, "A
15 proposed finding of fact and resolution approving
16 Sutter's proposal is attached as attachment 5."

17 Did I miss that? Is that in there? Maybe
18 it wasn't submitted. I mean, it's just a typo here, but
19 you know.

20 MR. DETERS: If I could have a couple

21 minutes.

22 HEARING OFFICER HALLORAN: While Mr. Deters
23 is looking for that document, if there's anybody in the
24 back that can't hear me, please speak up, and I'll speak

9

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1 louder.

2 Mr. Knittle, can you hear me back there?

3 MR. KNITTLE: I can hear you perfectly,
4 sir.

5 HEARING OFFICER HALLORAN: Thank you.

6 MR. HEDINGER: I guess while you're looking
7 for it, Ed -- but I didn't mean to cause a disruption
8 here. I just wanted to make that issue for the record.

9 I'd be perfectly satisfied if after today's
10 hearing, you just sent in -- well, say, that that
11 apparently wasn't attached, and maybe, you know,
12 Mr. Rolf and Mr. Northrup would also say the same thing,
13 or here's a copy of it included in the record. I mean,
14 I don't want to disrupt anything right now.

15 MR. DETERS: Okay. I have a vague
16 recollection that there was something submitted. I'm
17 not sure why it wasn't behind that. I don't know if
18 there was confusion as I was putting together the record
19 that it was duplicative. In the county clerk's file,

20 there were two or three copies of findings of fact that
21 appeared to me to be the same, but I may have left
22 something out, and I'll check on that further. And I
23 don't have any problems supplementing it that way.

24 With respect to the four exhibits, could I

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1 have one moment to talk to the county clerk?

2 HEARING OFFICER HALLORAN: Sure.

3 MR. DETERS: Mr. -- I guess I'm unsure how
4 I should refer to you. Mr. Hearing Officer?

5 HEARING OFFICER HALLORAN: Mr. Halloran or
6 Mr. Hearing Officer.

7 MR. DETERS: Mr. Hearing Officer, the
8 county clerk's preference from the beginning has been
9 not to turn over originals. However, with respect to
10 those specific originals, I don't have any -- and I've
11 talked to the county clerk. He doesn't have any
12 objection of turning over those specific exhibits if the
13 board feels that they will be useful. They were all
14 photocopied, and they're all contained within the
15 record. But if you and the Pollution Control Board
16 preferred to have the originals of those items, that's
17 fine.

18 The one thing I would note is, and I think

19 it was included in the motion that I had made regarding
20 copies versus originals, I referenced the record page
21 wise, paginated it off of what I considered to be an
22 original set of copies. So the documents requested by
23 Mr. Hedinger do not have the C1, C whatever it is,
24 referring to the record on them, because I didn't mark

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1 up the originals.

2 If that's a problem or if the board wants
3 me to take the time later today or later tomorrow to put
4 in what is the corresponding page number, I could do
5 that. But they won't be the original set, because what
6 I marked was an original set of copies. But I have no
7 objection to those four things going to the board.

8 HEARING OFFICER HALLORAN: Okay. Those
9 four things, meaning the siting application, the
10 exhibits, the annual report, and the city -- or excuse
11 me, the county waste management plan?

12 MR. DETERS: Right. I understood that to
13 be just the poster size exhibits.

14 HEARING OFFICER HALLORAN: Okay.

15 MR. DETERS: There were 12, I think,
16 exhibits offered by Sutter and four by Landfill 33. I
17 understood the question would simply be the poster size

18 exhibits.

19 MR. HEDINGER: Correct.

20 HEARING OFFICER HALLORAN: Correct.

21 MR. HEDINGER: And each of the record pages
22 that I referenced. For instance, in that case, it's
23 C-312. I guess Mr. Deters is including, or whoever in
24 putting this record together, included a note saying

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1 these specific documents would go here, but they're not,
2 and they're available.

3 So, for instance, that particular page
4 C-312 says, "Sutter Sanitation's Exhibit 6 are poster
5 size versions of their applications reduced plan set,
6 six separate diagrams which have already been copied as
7 part of their siting application. They are not recopied
8 again here, but can be found at C-75 to C-81 of this
9 record. The actual exhibits were only referred to and
10 not marked upon by any of the hearing participants. The
11 poster size originals are available for viewing upon
12 request of the Effingham County Clerk's office."

13 And so all I'm saying is those specific
14 documents referred to on those page -- on that page
15 should be sent to catch up with the rest of the record.

16 HEARING OFFICER HALLORAN: I totally

17 agree.

18 And I'm looking at section 107.304 of the
19 record contents, and you know, that should be included
20 as well as a siting application in all we have before
21 us. I guess I am confused, or I don't understand that
22 these things that Mr. Hedinger refers to, they have not
23 been submitted to the board?

24 MR. DETERS: What I made was a copy.

13

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1 HEARING OFFICER HALLORAN: Okay.

2 MR. DETERS: I had an original set of
3 copies.

4 Nobody that I spoke with beforehand -- and
5 I frankly felt that the language of the board's
6 procedural rules was confusing. And I didn't understand
7 that the board expected a copy of the originals and I
8 had a deadline to make, which I made, but that was
9 because I did not start over and try and re-number all
10 of the originals. And because my county clerk, frankly,
11 was of the position that originals shouldn't leave his
12 office.

13 HEARING OFFICER HALLORAN: So as we sit
14 here today, Mr. Hedinger doesn't have, for instance, the
15 siting application, a copy of the siting application.

16 MR. DETERS: No. He has copies of it.

17 MR. HEDINGER: Yeah. In fact, and
18 that's -- I guess I want to clarify that. I don't
19 think -- I understand what Mr. Deters did. He didn't
20 want to copy --

21 HEARING OFFICER HALLORAN: Correct.

22 MR. HEDINGER: -- redundantly these
23 things. And I don't disagree with that at all. I don't
24 think additional copies -- and I don't need copies of

14

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1 these things.

2 What I think ought to happen, though, is
3 that those originals ought to go to the board so that we
4 have the actual record all in one place.

5 HEARING OFFICER HALLORAN: Okay. I'll
6 reserve that, and we'll talk about it later.

7 MR. HEDINGER: Okay.

8 HEARING OFFICER HALLORAN: Because I'm not
9 sure if the board has ruled on Mr. Deters' motion yet.

10 MR. DETERS: I have not received word of
11 ruling.

12 HEARING OFFICER HALLORAN: All right. Any
13 other comment regarding Mr. Hedinger's issues?

14 MS. ZEMAN: I would ask if there were

15 attachments to it, Mr. Northrup's filing on C-375, that
16 it's my understanding they do not appear in the record
17 that Mr. Deters made for us, that either he or
18 Mr. Deters be asked to provide at least the attachments
19 to counsel for the other parties. I mean, I've never
20 seen the attachments. So it would certainly make sense
21 that we should see what a party filed.

22 HEARING OFFICER HALLORAN: Would you agree
23 with that, Mr. Deters?

24 MR. DETERS: I agree with that.

15

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1 MR. NORTHRUP: I agree, too. And I think
2 there are five attachments referenced. Four of them are
3 in the record. And, apparently, there is this issue
4 with respect to the fifth attachment. And I'll go back,
5 and if for some reason we have it and Mr. Deters
6 doesn't, I'll provide a copy to supplement the record.

7 MS. ZEMAN: That would be fine. Thank
8 you.

9 HEARING OFFICER HALLORAN: Any other
10 preliminary issues?

11 MR. HEDINGER: None for me. That's
12 enough.

13 HEARING OFFICER HALLORAN: Ms. Zeman? I'm

13 reserve that as well. I'll take a look at the petition
14 when we're off the record.

15 MS. ZEMAN: May I respond?

16 HEARING OFFICER HALLORAN: Yes.

17 MS. ZEMAN: In the record, the county board
18 has already indicated at C-427?

19 MR. HEDINGER: That's what it says.

20 MS. ZEMAN: At C-427, there is a statement
21 by the county board as to how that letter made its way
22 into the board's record here, but that it was not
23 considered by the county board because it was submitted
24 after what they considered the close of the public

17

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1 comment period.

2 The attachment A is submitted only so as to
3 provide standing. And the standing issue has not been
4 contested based on the other exhibits that are
5 attached.

6 So the notion that it is in any way
7 supporting issues that do not otherwise appear, that is
8 not the purpose for it being there.

9 So I would object to his motion to strike
10 because it is not there for the reason that he has
11 stated.

12 And the true nature of that comment is
13 referenced further by the county board in the record.

14 HEARING OFFICER HALLORAN: Anything
15 further? You know, I think based on that clarification
16 that Ms. Zeman just offered, I'm going to deny your
17 motion to strike. And of course, Mr. Northrup, you can
18 appeal my ruling to the board in your post-hearing
19 brief.

20 MR. NORTHRUP: Thank you.

21 HEARING OFFICER HALLORAN: Or in addition
22 to the post-hearing brief.

23 Any other issues, comments, questions?

24 MR. HEDINGER: Just one. And that's in

18

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1 terms of just the order of our business today.

2 Ms. Zeman and I were speaking yesterday,
3 and I think we would request that she will be allowed to
4 proceed before I do with the case in chief. So our
5 calling of witnesses --

6 HEARING OFFICER HALLORAN: Okay. That's
7 terrific.

8 With that said, any opening statements?

9 MR. HEDINGER: We will waive.

10 MS. ZEMAN: I do have an opening statement

11 I'd like to make just to clarify the nature of our case
12 please.

13 HEARING OFFICER HALLORAN: Thank you.

14 MS. ZEMAN: As already indicated, I have
15 been retained by Stock & Company, LLC, which throughout
16 today's proceeding I will simply reference as Stock to
17 make my discussion easier to follow.

18 I was retained with respect to an appeal of
19 the Effingham County Board's grant of siting approval
20 for the Sutter Sanitation Services transfer station,
21 which if siting is approved on appeal would be located
22 directly across the street from Stock's property.

23 As you've already pointed out, our petition
24 to appeal challenges the decision on several grounds.

19

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1 The initial grounds are with respect to the manifest
2 weight of the evidence on the nine criterion.

3 Consistent with 40.1 of the Act that we are
4 here today on, it is not my intent to present evidence
5 on the criterion. Rather, 40.1 addresses the
6 fundamental fairness of the procedures used by the
7 Effingham County Board in its siting decision making.

8 With respect to fundamental fairness
9 procedures, our petition challenges the decision of the

10 Effingham County Board on three different bases.

11 The first bases is with respect to the
12 unavailability of the transcript at the time the
13 decision was rendered, at the time the public comment
14 period was open, and most significantly at the time that
15 Stock & Company sought to file a petition to appeal.

16 Just as a matter of record to remind the
17 Pollution Control Board of the time line here, the
18 county board hearing occurred August 14, 2002. The
19 transcript was certified. And that is in the record at
20 C-294 as having been transcribed on 9-2-02. The public
21 comment period apparently ended on 9-13-02. Mr. Duane
22 Stock's comment letter that Mr. Northrup has already
23 referenced was filed and not considered on 9-16-02.

24 And consistent with the affidavit that we

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1 filed and the testimony that we will present, Duane
2 Stock attempted to obtain a copy of the transcript from
3 the county clerk on October 2, 2002. That date was
4 before the deadline for filing of a petition to appeal.
5 Our petition was filed on 10-21-02.

6 And as the petition notes, and consistent
7 with the affidavit of Duane Stock, we did not have the
8 transcript from the county clerk from the official

9 record made of this siting proceeding available to
10 review in preparation for that petition.

11 It's our understanding that the transcript
12 was filed with the county clerk on 10-24-02 as noted in
13 the record at C-124 based on the date it was stamped by
14 the county clerk as having been filed.

15 The Pollution Control Board has repeatedly
16 ruled that the availability of the transcript in the
17 offices of the county is an issue for fundamental
18 fairness. It not only has to be available, it has to be
19 made available for review by the public.

20 And in this case, it's our contention that
21 we stand in similar shoes to the Kathy Andrea (sp) in
22 the American Bottom Conservancy case.

23 There's a long line of cases by the
24 Pollution Control Board that references that the

21

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1 transcript of the public hearing of the county board
2 must be available in the county clerk or county board's
3 offices, beginning with Sierra club versus City of Wood
4 River.

5 The American Bottom Conservancy case is
6 very similar. The only difference there is that Kathy
7 Andrea who claimed fundamental fairness was not met,

8 needed a copy of the transcript for her public comment.

9 We are not making that same claim. But
10 other issues are the same. That is, we needed a copy of
11 the transcript from the clerk and had that statutory
12 right according to section 39.2 C and D of the
13 Environmental Protection Act and were not granted the
14 rights afforded under the statute.

15 The affidavit makes clear that it did
16 affect our right to appeal and impacted us, and that
17 impact is the prejudice that we incurred.

18 A couple of the other facts, like American
19 Bottom Conservancy, there the board ruled that there was
20 no information as to why the delay between the
21 transcript being transcribed and the date it was
22 actually filed. And in this case, there were just a few
23 days at issue. Here we have almost six weeks. And,
24 again, it was not filed until after the petition due

22

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1 date had run.

2 Another issue that Kathy Andrea raised in
3 American Bottom Conservancy that is similar here and the
4 record makes clear, there was a Effingham County Board
5 member who did not attend the August 14th hearing, and
6 that is Robert Shields. And yet Robert Shields attended

7 the decision making hearing. And that's another factor
8 that the board considered when it ruled that fundamental
9 fairness had been violated in the American Bottom
10 Conservancy case.

11 About the only difference here is that this
12 petitioner is represented by counsel, and we don't think
13 that that's a significant enough difference to
14 jeopardize the rights of the public to have that
15 transcript available as required by section 39.2 D,
16 where it says, "The public hearing shall develop a
17 record sufficient to form the basis of appeal of the
18 decision."

19 And with 39.2 C, that talks about all
20 documents or other materials on file with the county
21 board or governing body shall be made available for
22 public inspection.

23 The testimony that we will present then by
24 Duane Stock is relatively consistent with the

23

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1 affidavit. We're not going to go beyond the issue of
2 the transcript, because it's my understanding that no
3 new evidence on the criterion can be presented.

4 There are two other issues that we have
5 raised with respect to fundamental fairness in our

6 petition.

7 One concerns the extremely confusing and
8 what appears to be misstatements with respect to the
9 weight, if any, that is to be given to the evidence
10 presented by the applicant first on the recycling
11 center.

12 In fact, the record shows that Tracy Sutter
13 basically threatened to close down the recycling center
14 if the county board did not support the siting of the
15 transfer station. This is combined with some of the
16 issues that we will address in the appeal. But just as
17 a note here, that issue was opened by the applicant when
18 it inquired of Mr. Sutter whether the recycling center
19 would continue to operate if the transfer station was
20 not approved.

21 Following that, there were comments by the
22 county board chairman that said that the issue of the
23 recycling center was not germane. And on that basis,
24 other issues about the recycling center followed.

24

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1 However, in the minutes of the decision
2 making as noted in the record, at least one county board
3 member did comment on the value of the recycling
4 center.

5 This issue about the recycling center with
6 the third issue that we raise in our petition regarding
7 the relationship of the parties and the failure to
8 disclose certain relationships is the third prong of our
9 fundamental fairness argument.

10 There is one other issue that has come to
11 light since that time, but for now since it's not in our
12 petition, I will not address it here.

13 HEARING OFFICER HALLORAN: Thank you,
14 Ms. Zeman.

15 Mr. Hedinger, you said you didn't have an
16 opening?

17 MR. HEDINGER: Correct.

18 HEARING OFFICER HALLORAN: Mr. Deters?

19 MR. DETERS: I'll waive an opening.

20 HEARING OFFICER HALLORAN: Okay.

21 Mr. Northrup, you indicated you waive?

22 MR. NORTHRUP: I did, but in light of
23 Ms. Zeman's comments, I do want to address a couple of
24 points.

25

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1 With respect to the first issue of
2 fundamental fairness and the availability of the
3 transcript, the cases -- first of all, there is no

4 statutory or regulatory requirement that a transcript be
5 provided.

6 Second, the cases, the case law, Pollution
7 Control Board case law that talks about the availability
8 of transcripts, such as American Bottoms Conservancy,
9 all deal with cases or situations where siting hearings
10 have taken days and even weeks. There's thousands and
11 thousands of pages of transcripts. And in those
12 situations, the board has rightly said, yes, we need a
13 transcript.

14 There's a case -- I can't remember the name
15 of it. Of course, I'll be raising it in my closing
16 brief -- where a siting occurs over the space of a
17 couple of hours. And in a county board meeting, there
18 is no requirement of a transcript.

19 Also at issue with this point is that no
20 request for a transcript was made until after the public
21 comment period had closed, until after the county had
22 made its siting decision. So this is entirely an after
23 the fact issue that has been raised by Mr. Stock that
24 has resulted in no prejudice to him or anyone else for

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1 that matter.

2 Secondly, just on the issue of his failure

3 to disclose the relationship, as will be brought out
4 today, I'm sure, again, this is an issue that has been
5 waived by Mr. Stock. Mr. Stock was present at the
6 public hearing. He filed public comments, and nowhere
7 did he raise this issue of his relationship with the
8 county board member. So, again, this is an issue that's
9 not an issue. And, again, all these points will be
10 addressed in greater detail in the closing briefs.

11 HEARING OFFICER HALLORAN: Thank you,
12 Mr. Northrup.

13 MR. NORTHRUP: Thank you.

14 HEARING OFFICER HALLORAN: As indicated
15 earlier, we can have the members of the public step up
16 and make public comments if they so choose.

17 Ms. Deters, would you like to do it at this
18 time?

19 MR. DETERS: I would like to do it at this
20 time.

21 HEARING OFFICER HALLORAN: If you could
22 step up here by the court reporter. If you can just
23 stand by the court reporter. It's my understanding you
24 don't want to be sworn in?

27

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1 MS. DETERS: I don't care.

2 HEARING OFFICER HALLORAN: Then you can be
3 subject to cross examination.

4 [Witness sworn.]

5 NANCY DETERS
6 was sworn, and testifies and publicly comments as
7 follows:

8 HEARING OFFICER HALLORAN: You may have a
9 seat if you like.

10 MS. DETERS: Yeah, I would like to. I've
11 been wanting to sit in one of these. Okay, thanks.

12 First of all, my main reason for being here
13 is I am a recycler, and we have finally --

14 HEARING OFFICER HALLORAN: Before -- I'm
15 sorry. Before we -- can you state your name for the
16 record please.

17 MS. DETERS: Oh, I'm sorry. Nancy Eleanor
18 Deters. "D" as in David, e-t-e-r-s.

19 We have not had recycling here. Everybody
20 else has got it. We take our stuff all over, and we
21 finally got people that would do this for
22 us -- Sutters.

23 I don't know all the intrigue that goes on
24 behind the scenes, but I do -- my understanding was that

1 they could not continue to provide that unless they
2 received the permit for the transfer station.

3 Okay. The thing that really sticks in my
4 mind -- I've been to all the hearings. I've written
5 letters to the editor. The first hearing, Mr. Hayes was
6 standing back there at the podium, and I could not
7 believe him saying -- and I think this is a direct
8 quote. "Make no bones about it. I am here to keep
9 Sutters from getting that transfer station."

10 And since that time, it just seems like
11 we're talking David and Goliath here. They've got this
12 huge empire, and yet they don't want anybody else to
13 have any more than they've got or any piece of anybody
14 else's pie. I think it's a personal vendetta. I don't
15 understand what's going on between them. I think it's
16 self interests or business interests of Landfill 33. It
17 is not for the community interests that I can see.

18 Let's see. So I just would say that I
19 believe that Sutters is operating in good faith and good
20 will, a longtime family tradition, a real mom and pop
21 organization. And they have been bending over backwards
22 to help with this recycling. And I would like to see
23 them continue. Any problems or shortcomings in their
24 plan, I would trust them to address in a timely manner.

1 Thank you.

2 HEARING OFFICER HALLORAN: Thank you,

3 Ms. Deters.

4 Any cross? Ms. Zeman?

5 MS. ZEMAN: Do you want to go first?

6 MR. HEDINGER: No. Go ahead.

7 EXAMINATION

8 QUESTIONS BY MS. ZEMAN:

9 Q. Mrs. Deters, are you related to Ed Deters?

10 A. You betcha. Now, he hasn't even smiled at
11 me this morning, but I am related to him, yes.

12 Q. And with your concern over the recycling
13 center, did you discuss your concerns with Ed during the
14 proceeding?

15 A. During the proceeding?

16 Q. And by that I mean after the application
17 was filed, and the application was filed 4-19, April
18 19th.

19 A. Do you know, I honestly don't know. I do
20 have letters in the paper, though. So I presume that he
21 reads the letters to the editor. And that's about what
22 my thoughts would be.

23 Q. May I ask you, is this one of the letters
24 to the editor --

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1 A. Oh, boy.

2 Q. -- that you submitted? It's the Effingham
3 Daily News dated Wednesday July 24th?

4 A. Of course, yes, that's mine.

5 Q. And in that you talk about the issue of the
6 recycling center being necessarily woven together with
7 the transfer station site?

8 A. That was my understanding.

9 Q. Did you have discussions with any county
10 board members about your concerns after April 19th?

11 A. I'm mostly a letter writer, and I have two
12 or three letters that I -- because they ask for public
13 comments. So I have two or three letters that I wrote
14 to them. Actually, as far as talking to anybody face to
15 face, I really don't think so.

16 Q. The letter to the editor that you wrote
17 that I referenced also talked about a recycling event
18 that had occurred that you attended on July 20th; is
19 that correct? When you talk about what a pleasure it
20 was to see all the vehicles going in and out of the
21 center?

22 A. Oh, yeah, uh-huh.

23 MS. ZEMAN: I don't have any further
24 questions.

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1 HEARING OFFICER HALLORAN: Thank you.

2 MS. ZEMAN: I would ask that that be made a
3 part of the record because there are references. I can
4 label it Sutter Exhibit A. I don't have the one. Can
5 we get copies by any chance?

6 MR. DETERS: You can make copies. Sutter
7 Exhibit A?

8 MS. ZEMAN: I'm sorry. Stock Exhibit A.
9 Thank you very much.

10 [Stock Exhibit A was marked for
11 identification.]

12 MR. NORTHRUP: I would just object for the
13 record.

14 HEARING OFFICER HALLORAN: I'll allow it.
15 I guess we'll get copies, and we'll label it Stock
16 Exhibit A.

17 MR. NORTHRUP: Basically, there's no
18 evidence that anybody on the county board relied on that
19 letter to any extent with their deliberations.

20 HEARING OFFICER HALLORAN: And the record
21 will so note. Thank you, Mr. Northrup.

22 Mr. Hedinger, any --

23 MR. HEDINGER: A point of clarification.

24 EXAMINATION

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1 QUESTIONS BY MR. HEDINGER:

2 Q. Ms. Deters, Ms. Zeman asked you if you were
3 related to Ed Deters, and you said, yes, you were. And
4 I don't think you ever said what that relationship was.

5 A. He's my son.

6 Q. Okay, thank you.

7 A. Oldest son.

8 Q. Oldest.

9 A. Yes. And he's so embarrassed right now,
10 really. Sorry.

11 Q. And by David and Goliath, you were
12 referring to my client as Goliath, I assume?

13 A. That would be right, yes.

14 Q. And by that, you were suggesting that the
15 big guy is picking on the little guy?

16 A. Oh, man, right.

17 Q. And Sutter Sanitation as the little guy?

18 A. Right.

19 Q. And how many lawyers does Sutter Sanitation
20 have in the room this morning?

21 A. I don't really know. I know of two of
22 them.

23 Q. Two of them. Do you have any idea where
24 the money is coming from for Sutter Sanitation to pay

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1 for this?

2 A. See, now, I told you. I write letters to
3 the editor. I don't know the intrigue.

4 And I think of what my dad would say. He'd
5 say it's no skin off of sanitation services' nose what
6 goes on any place else. They're not doing it for the
7 community, I don't think.

8 Q. You were here for the entire testimony
9 during the hearing, though, correct, in August?

10 A. Yeah, I think I was. It doesn't mean I
11 understood everything that was going on.

12 Q. You don't -- that's a good point. Do you
13 have any background in solid waste management?

14 A. Oh, please. Yeah, I take big black bags of
15 it to the recycling place. That's my background.

16 Q. Okay. No education?

17 A. No.

18 Q. No formal training?

19 A. No, no, no.

20 MR. HEDINGER: No further questions.

21 HEARING OFFICER HALLORAN: Thank you --

22 MS. DETERS: Thank you.

23 HEARING OFFICER HALLORAN: -- Mr. Hedinger.

24 Mr. Northrup?

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1 EXAMINATION

2 QUESTIONS BY MR. NORTHRUP:

3 Q. Let's just make sure the record is clear.

4 Ms. Deters, how many lawyers does Landfill
5 33 have here today?

6 A. I have no idea. I had met you before. So
7 I knew and recognized you both again. I have no idea
8 how many they have.

9 Q. Do you know how many lawyers Stock has here
10 today?

11 A. I have no idea. I don't even know who he
12 is.

13 Q. Do you know how much either of those
14 lawyers are charging their clients to be here today?

15 A. I could guess.

16 Q. Now, you are not a county board member?
17 You're not related to a county board member?

18 A. [Shook head negatively.]

19 Q. You referenced a Mr. Hayes. Who is
20 Mr. Hayes?

21 A. Ryan Hayes.

22 Q. Who position does he have?

23 A. I don't know what his position is, but he

24 represents Landfill 33.

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1 And I should just mention that my son and I
2 rarely agree about anything. So if that clears up any
3 kind of record, that would be good.

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

6 HEARING OFFICER HALLORAN: Thank you,
7 Mr. Northrup.

8 Mr. Deters?

9 MR. DETERS: I do have a few questions of
10 my mother.

11 MS. DETERS: Oh, no.

12 EXAMINATION

13 QUESTIONS BY MR. DETERS:

14 Q. First of all, you're not an Effingham
15 County resident, correct?

16 A. That's true.

17 Q. You live in Cumberland County?

18 A. I do.

19 Q. It's fair to say that you have many causes;
20 is that correct?

21 A. That is true.

22 Q. And recycling is one of them?

23 A. Long been.

24 Q. You showed up at both the waste transfer

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1 siting hearing and at the county board meeting where the
2 vote was taken; is that correct?

3 A. That's right.

4 Q. Do you remember reference by the county
5 board chairman during both of those meetings that
6 recycling really wasn't one of the issues here, although
7 that's the issue that you care about?

8 A. I remember that Leon Gobczynski said that,
9 but board members brought it up afterwards. And it was
10 like the elephant in the room. Everybody knew that that
11 was part of it.

12 Q. And it's fair to say that you and I -- I
13 have never indicated to you that I shared your views in
14 this case --

15 A. Oh, please.

16 Q. -- at all; is that correct?

17 A. You don't share my views about anything.
18 Rarely.

19 Q. Do you recall that after you made your
20 comment, that Mr. Gobczynski specifically indicated that
21 the county board was to judge their application based on

22 the criteria before it?

23 A. I do remember that he said that. I'm just
24 saying that just because somebody tells you what to do

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1 doesn't mean that wipes it away. And I think it was
2 still an issue in people's minds whether it was spoken
3 out loud or not.

4 Q. Do you recall that his comment further
5 stated, essentially asking -- you were the first to make
6 public comment, correct?

7 A. I think so maybe, yeah.

8 Q. And do you recall Mr. Gobczynski's comments
9 to be that it was going to be a very long night for all
10 of us because we just can't accept comments based on
11 business practices or ethics or even recycling. As much
12 as those are important issues to all of us in daily
13 life, I would ask that we all try and focus on what's at
14 hand here and the work that we have? Do you recall him
15 commenting that?

16 A. I don't remember that long statement, but I
17 can imagine that he made it, because he said something
18 like that to that effect, that that was not on the
19 agenda tonight, or he didn't come there for that reason
20 tonight, or something like that.

21 MR. DETERS: I have no other questions.
22 HEARING OFFICER HALLORAN: Thank you,
23 Mr. Deters.
24 If nothing further, Ms. Deters, you may

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1 step down. Thank you very much.
2 MS. DETERS: Thank you.
3 HEARING OFFICER HALLORAN: Now,
4 Ms. Zeman -- Mr. Stock -- is that going to be your
5 witness? Or is that another Mr. Stock?
6 MS. ZEMAN: Duane Stock is my witness, not
7 Lloyd Stock.
8 HEARING OFFICER HALLORAN: Okay. And
9 you're Lloyd Stock?
10 MR. LLOYD STOCK: Yes, sir.
11 HEARING OFFICER HALLORAN: Come on up here,
12 sir. Now, do you choose to be sworn in?
13 MR. LLOYD STOCK: No, sir.
14 HEARING OFFICER HALLORAN: And be subject
15 under cross examination?
16 MR. LLOYD STOCK: No, sir.
17 HEARING OFFICER HALLORAN: You can just
18 give public comment. Just state your name, and please
19 have a seat. Thanks.

20 MR. LLOYD STOCK: Yes. Thank you.

21 HEARING OFFICER HALLORAN: You're welcome

22 [PUBLIC COMMENT OF LLOYD STOCK]

23 MR. LLOYD STOCK: My name is Lloyd Stock.

24 I lease a residential property right across the road

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1 from Sutter Sanitation. There's a home placed at that
2 site. It's within 200 yards from the proposed site.
3 And I'm also a resident of Effingham County. I live in
4 Mason Township.

5 I'm here to protest the proposed siting of
6 the waste transfer station right next door to my
7 property.

8 It was not until I negotiated a lease with
9 Duane Stock for this property that my attention was
10 directed to the fact that Sutter Sanitation had proposed
11 to construct a transfer station across the street from
12 the property. I negotiated the lease in the middle of
13 September. So that's why I attempted to go to the
14 September 16th meeting of the county board to voice my
15 opinion.

16 I tried to voice my objections to the
17 county board through Carol Willenborg. However, the
18 county board refused to hear my comments, as of it was

19 late.

20 I also presented a letter at the
21 meeting, indicating that I'd leased the home site and
22 was in the process of putting a home on the property.
23 However, when I later saw the minutes of the September
24 16, 2002 meeting, I discovered that the comments were

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1 not accepted in the record.

2 I am concerned about the impact that this
3 proposed transfer station will have an effect on my
4 property. Also, from what I understand, the proposed
5 transfer station most likely will not be permitted, as
6 it does not meet certain applicable setback
7 requirements.

8 In addition, I have already observed
9 garbage trucks going in and out of the site. Now, if
10 they are loaded, I have no idea. Even though it is my
11 understanding that Sutter Sanitation does not yet have
12 permit approval to receive waste, it appears to me as if
13 Sutter may have been storing trash and sheds on the
14 property. And, again, as far as I know, Sutter does not
15 have a permit which allows this conduct and these types
16 of operations.

17 I'm also concerned and disappointed about

18 the fact that the copy of the transcript and the siting
19 of the hearing in this matter was not available at the
20 county clerk's office, so that individuals such as
21 myself could review the transcript and determine what
22 went on at the siting hearing that took place this past
23 August. I don't see how this entire process can stand
24 if members of the public are not allowed to view a copy

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1 of the hearing transcript at the county clerks' office,
2 and had to go to the applicant's attorney's office to
3 attempt to review the record.

4 These are my concerns. And based upon
5 these concerns, I am respectfully requesting the
6 Pollution Control Board to reverse the siting approval
7 granted by the Effingham County Board on September 16,
8 2002.

9 HEARING OFFICER HALLORAN: Thank you --

10 MR. LLOYD STOCK: Thank you.

11 HEARING OFFICER HALLORAN: -- Mr. Stock.

12 And you're related to Duane Stock then?

13 MR. LLOYD STOCK: I am related to Duane
14 Stock, yes, but it's a distant relation.

15 HEARING OFFICER HALLORAN: Okay. Thank
16 you, sir.

17 All right. By previous agreement, I think
18 Ms. Zeman will proceed with her case in chief.

19 MS. ZEMAN: We would call Duane Stock.

20 HEARING OFFICER ZEMAN: Raise your right
21 hand, sir, and the court reporter will swear you in.

22 DUANE STOCK
23 being produced and sworn, testifies and says:

24 EXAMINATION

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1 QUESTIONS BY MS. ZEMAN:

2 Q. Would you state your full name for the
3 record please.

4 A. My name is Duane Richard Stock.

5 Q. She doesn't need that spelled, I'm sure.
6 What is your business address?

7 A. My business address is 205 South Washington
8 Street, P.O. Box 151, Taylorville, Illinois.

9 Q. And what is the business there?

10 A. My business is farm management and real
11 estate sales.

12 Q. And what is the name of the business at
13 that location?

14 A. The business is DR Stock, Inc.

15 Q. And are you the registered agent for Stock

16 & Company LLC?

17 A. Yes, I am.

18 Q. What is the nature of Stock & Company, LLC?

19 A. Stock & Company is a business that owns and
20 operates real estate.

21 Q. And is Stock & Company, does it own the
22 piece of property directly across the road from where
23 the transfer station is proposed to be located?

24 A. Yes, it does.

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1 Q. And I am going to hand you a copy of the
2 affidavit that you previously submitted in support of
3 the petition, and ask if you could take a look at that
4 please. Is that identified as Exhibit 2 with the
5 petition that was filed on behalf of Stock & Company,
6 LLC?

7 A. Yes, it is.

8 Q. And did you prepare that affidavit?

9 A. Yes.

10 Q. And is the contents of that affidavit true
11 and correct?

12 A. Yes, they are.

13 Q. Is there any impression in that affidavit
14 that you would like to correct?

15 A. Probably for clarification on item five.
16 On or about October 2nd, I contacted the Effingham
17 County Clerk. That was a phone contact. It was not a
18 visit to the office.

19 Q. And the impression is left by later
20 reference that you returned to the county clerk's
21 office; is that correct?

22 A. Correct.

23 Q. Item six of the affidavit says without
24 having reviewed a copy of the hearing transcript, the

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1 information submitted in Stock & Company's petition for
2 review is correct based on your recollection of the
3 hearing in a review of the siting application; is that
4 correct?

5 A. Correct.

6 Q. Is there any other impact of not having
7 been able to obtain a copy of the transcript prior to
8 the preparation of petition to appeal that you wish to
9 testify about?

10 A. Not having access to the transcript in a
11 timely manner and not having been represented by legal
12 counsel at the initial hearing, it put us at a
13 disadvantage of being able to work with our legal

14 counsel in developing an objection to the siting.

15 Q. And for the record, are you related to a
16 county board member?

17 A. Yes, I am. I'm related to Carolyn
18 Willenborg. She is a first cousin.

19 Q. And is Carolyn Willenborg the county board
20 member in which Stock's property is located?

21 A. Yes, she is.

22 Q. And is she also the county board member for
23 the area in which the Sutter Services' transfer station
24 has proposed will be located?

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1 A. Yes, she is.

2 Q. Did you have any discussions about the
3 substance of the application with Carolyn after the
4 siting application was filed in April of this year?

5 A. I had one contact with Carolyn probably in
6 mid July before the first scheduled hearing, in which I
7 contacted her to ask her what comments, if any, that she
8 was hearing from the general public in that immediate
9 area.

10 Q. And other than that, did you provide any
11 comment to her?

12 A. No, I did not. At that point, we had not

13 formulated an opinion on this application.

14 Q. Did you ultimately obtain a copy of the
15 transcript of the public hearing of the Effingham County
16 Board?

17 A. Yes. I saw a copy of the transcript at the
18 county clerk's office, of which I was allowed to review
19 it and make copies of portions that I wanted.

20 Q. And do you remember when that occurred?

21 A. The actual date that I was in the county
22 clerk's office is probably wrong in some of the
23 documents. I think it was November 25th, rather than
24 the 18th.

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1 MS. ZEMAN: I have no further questions.

2 HEARING OFFICER HALLORAN: Thank you,

3 Ms. Zeman.

4 Mr. Deters?

5 EXAMINATION

6 QUESTIONS BY MR. DETERS:

7 Q. Did you make an attempt before November
8 25th to go to the county clerk's office here in
9 Effingham to review the transcript?

10 A. Yes. On October the 2nd, I contacted the
11 clerk's office by telephone and was told that the

12 transcript was not available.

13 Q. But that was a phone contact, correct?

14 A. Yes.

15 Q. Between October 2nd and November 25th, did
16 you make any effort either by phone or in person contact
17 with the county clerk or the county board office to see
18 if you could obtain a copy of the transcript?

19 A. No, I did not.

20 Q. Were you in contact during that time with
21 your attorneys about getting yourself a copy of the
22 transcript?

23 A. We had conversations during that time. So
24 I'm sure there was some discussions.

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1 Q. Were part of your discussions that you
2 should make efforts to obtain a copy of the transcript?

3 A. Yes, they were.

4 Q. So between October 2nd and November 25th,
5 you didn't even ask, correct? You personally at least?
6 You did not ask for a copy of the transcript?

7 A. Correct.

8 Q. And you made reference to the fact that you
9 own and operate real estate in your -- that's your
10 livelihood, correct?

11 A. I do not own myself. I manage for absentee
12 owners, and I sell real estate.

13 Q. With respect to the property across the
14 street from the waste transfer -- proposed waste
15 transfer site, you own that property?

16 A. I do not.

17 Q. Who owns that property?

18 A. Stock & Company.

19 Q. Is that essentially a holding company for
20 family interests?

21 A. Yes.

22 Q. And do you manage the property?

23 A. Yes, I manage the property.

24 Q. That being your property?

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1 A. Yes.

2 Q. How long had it been since a residence had
3 been located on that property?

4 A. I'm not sure of the exact time.

5 Q. Years?

6 A. It's been several years, yes.

7 Q. More than five?

8 A. Probably.

9 Q. More than 10?

10 A. I don't know.

11 Q. And you did make written comment to the
12 board during the statutory period for making comment to
13 the board?

14 A. Yes, I did.

15 Q. And in that letter to the board, did you
16 disclose your relationship to Carolyn Willenborg?

17 A. I did not.

18 Q. Was that because you didn't think it was
19 that important at that time?

20 A. Being naive to these type of proceedings,
21 yes.

22 Q. Do you have a bad relationship with Carolyn
23 Willenborg?

24 A. No.

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1 Q. I mean, as far as you're concerned, you get
2 along?

3 A. Very much so, yes.

4 Q. She's a nice person, correct?

5 A. I think so.

6 Q. Yeah. And to clarify another time frame,
7 between the public transfer hearing and the county board
8 meeting, did you make any request for a transcript?

9 A. No, I did not.

10 Q. So you did not contact the county board and
11 ask them for a transcript, correct?

12 A. Correct.

13 Q. You did not call the county clerk and ask
14 them for a copy of the transcript between those two
15 dates, correct?

16 A. Correct.

17 Q. You never contacted the state's attorney's
18 office to see if they might have a copy of the
19 transcript; is that correct?

20 A. Correct.

21 Q. And would it be fair to say, Mr. Stock,
22 that in fact, between the waste transfer hearing and
23 transfer siting hearing and the county board's action on
24 September 16th, other than having made written comment,

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1 you never told the county board or the state's
2 attorney's office or the county clerk's office that you
3 considered yourself to be an active participant in these
4 hearings, other than having made written comment?

5 A. Correct.

6 Q. Would it be fair to say that with respect
7 to your relationship with Ms. Willenborg, you never

8 asked her to step aside or recuse herself, or even
9 mention to her or anyone else that she should step aside
10 or recuse herself from the county board's decision on
11 this issue?

12 A. That's correct.

13 MR. DETERS: I have no other questions.

14 HEARING OFFICER HALLORAN: Thank you,
15 Mr. Deters.

16 Mr. Northrup?

17 MR. NORTHRUP: Just a couple of quick
18 questions, Your Honor.

19 EXAMINATION

20 QUESTIONS BY MR. NORTHRUP:

21 Q. You attended the public hearing on August
22 14th, correct?

23 A. That is correct.

24 Q. So obviously you had notice of that?

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1 A. Correct.

2 Q. Why didn't you retain counsel for that?

3 A. My client had not decided to do that prior
4 to that time.

5 Q. And who is your client?

6 A. Stock & Company.

7 Q. At the hearing, you did not raise your
8 relationship with Ms. Willenborg, correct?

9 A. That is correct.

10 Q. With respect to your request for a
11 transcript -- and I'm going to reference you to
12 paragraph five of your affidavit.

13 "On or about October 2, 2002, I requested
14 the Effingham County Clerk to obtain a copy of the
15 hearing transcript and was told that the county did not
16 have a copy of this transcript, and that I would have to
17 contact the lead attorney for Sutter Sanitation Service,
18 Inc."

19 At any time after October 2nd, you never
20 contacted any attorney for Sutter Sanitation, did you,
21 for a copy of the transcript?

22 A. No, I did not.

23 Q. Mr. Lloyd Stock just gave a public comment,
24 wherein he indicated that he negotiated a lease for the

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1 property across the street from the Sutter Sanitation
2 proposed facility in September of 2002.

3 A. Yes.

4 Q. Do you know when that lease was negotiated?

5 A. The specific date? No, I do not know the

6 specific.

7 Q. Is it accurate to say in September of 2002
8 sometime?

9 A. Yes.

10 Q. Did you inform him at that time of Sutter's
11 application, siting application?

12 A. Yes, I did.

13 Q. Did Mr. Lloyd Stock express any concern to
14 you about the presence of the site facility, the
15 transfer station?

16 MS. ZEMAN: I object. I don't -- this is
17 not related to the line of questioning on the transcript
18 availability.

19 HEARING OFFICER HALLORAN: I'm sorry.
20 Could you read the question back please.

21 MS. ZEMAN: Outside direct.

22 [Record read.]

23 HEARING OFFICER HALLORAN: Ms. Zeman, your
24 objection?

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KEEFE REPORTING COMPANY

1 MS. ZEMAN: It's outside the direct.

2 HEARING OFFICER HALLORAN: Mr. Northrup?

3 MR. NORTHRUP: Well, it's clearly a matter
4 that has been brought up by a public comment. And since

5 I was not given the opportunity to cross examine that
6 witness, I think it's appropriate to cross examine this
7 witness who had some knowledge apparently of the issue.

8 HEARING OFFICER HALLORAN: Well, I'm not
9 sure you can backdoor like that, but I will give you a
10 tad bit of latitude. And if you can wrap it up in a
11 hurry and ask this question, probably one more, and move
12 on.

13 Q. (By Mr. Northrup) Did Mr. Lloyd Stock
14 express any concern about the center facility, the
15 proposed facility?

16 A. Yes, he did.

17 Q. When did he express that concern?

18 A. During our negotiations as we were signing
19 the lease.

20 Q. What did you tell him about the Sutter
21 Sanitation facility?

22 A. I told him that it was in litigation at
23 that time. Or not in litigation, but in proposal stage,
24 and that nothing had been decided yet.

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1 Q. And he went ahead and signed the lease?

2 A. Yes.

3 MR. NORTHRUP: No further questions.

4 HEARING OFFICER HALLORAN: Thank you.

5 Ms. Zeman, redirect?

6 I'm sorry. Mr. Hedinger?

7 MR. HEDINGER: Just a few questions.

8 EXAMINATION

9 QUESTIONS BY MR. HEDINGER:

10 Q. Mr. Stock, first off, in your question from
11 Ms. Zeman, you were asked whether you had any contact or
12 discussion with Caroline Willenborg. I think you said
13 in July you talked to her and asked her what comments
14 she had received? Is that a correct paraphrasing of
15 your testimony?

16 A. Yes.

17 Q. I don't think anybody ever asked, what did
18 she respond?

19 MR. NORTHRUP: Objection. It's hearsay.

20 HEARING OFFICER HALLORAN: Sustained.

21 Q. (By Mr. Hedinger) Okay. Then let's go on
22 to the next issue.

23 Mr. Northrup was asking you about this
24 lease, and you couldn't remember when it was entered

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1 into, but you said it was sometime in September? Is
2 that accurate?

3 A. Yes.

4 Q. Was it before September 16th?

5 A. Yes, it was.

6 MR. HEDINGER: That will be all.

7 HEARING OFFICER HALLORAN: Thank you,

8 Mr. Hedinger.

9 Ms. Zeman?

10 MS. ZEMAN: Just briefly.

11 FURTHER EXAMINATION

12 QUESTIONS BY MS. ZEMAN:

13 Q. You were asked about your attempt to obtain
14 the transcript by Mr. Deters. Do you know why it was
15 not made available until October 24th when it was filed?

16 A. No, I do not.

17 Q. And you were also asked about the fact that
18 the land across the transfer station property has some
19 family interests. Do you have any personal interest in
20 that property?

21 A. I do not have any ownership in that
22 property.

23 MS. ZEMAN: No further questions.

24 HEARING OFFICER HALLORAN: Thank you.

1 Mr. Deters, any recross?

2 MR. DETERS: No.

3 HEARING OFFICER HALLORAN: Mr. Northrup?

4 MR. NORTHRUP: No.

5 HEARING OFFICER HALLORAN: Okay. You may
6 step down, Mr. Stock. Thank you very much.

7 MS. ZEMAN: That concludes our case.

8 HEARING OFFICER HALLORAN: Terrific. Thank
9 you.

10 Mr. Hedinger?

11 MR. HEDINGER: Yes. I think our only
12 witness will be Tracy Sutter.

13 HEARING OFFICER HALLORAN: Okay.

14 MR. NORTHRUP: Your Honor, I'm going to
15 have to object. I requested in interrogatories what
16 witnesses Mr. Hedinger was going to call, and he
17 indicated he was going to call no witnesses.

18 MR. HEDINGER: And then I received the
19 record, and I have some questions for Mr. Sutter
20 concerning matters that are in the record.

21 MR. NORTHRUP: The record speaks for
22 itself, Your Honor. Mr. Sutter was not disclosed as a
23 witness. Mr. Hedinger has indicated his questions
24 relate solely to matters inside the record. The record

1 speaks for itself.

2 MR. HEDINGER: Well, I don't think that's
3 accurate. I mean, you know, matters of fundamental
4 fairness and of jurisdiction are fair game for these
5 hearings. Otherwise there would be no hearing.

6 HEARING OFFICER HALLORAN: I mean, I do
7 have a problem that you did not disclose Mr. Sutter
8 until prior to moments ago.

9 MR. HEDINGER: I did say in the
10 interrogatories I reserved the right as the case may
11 arise to put on whatever case is necessary. This record
12 wasn't available until a couple of weeks ago. And in
13 preparing for the hearing was the first chance I had to
14 read the transcript, as everyone else has had a problem
15 with, to review other things that have never been made
16 matters of public record.

17 For instance, there's meetings of county
18 board minutes in here that cast a different light on
19 some of the things that Mr. Sutter was testifying
20 about. And there are also new copies of notices that
21 were filed. And those are the matters that I'd like to
22 discuss with Mr. Sutter.

23 HEARING OFFICER HALLORAN: Go ahead,
24 Mr. Northrup.

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1 confer -- or 10 minutes to confer with my client?

2 HEARING OFFICER HALLORAN: Yes. Off the
3 record for 10 minutes. Thanks.

4 [Brief break.]

5 HEARING OFFICER HALLORAN: All right.
6 We're back on the record. We took about a 10-minute
7 break.

8 I believe Mr. Hedinger's
9 witness -- Mr. Sutter's taking the stand. I sustained
10 Mr. Northrup's objection to a surprise and not being
11 disclosed prior. So Mr. Sutter is going to take the
12 stand as an offer of proof, and Mr. Hedinger can go
13 forward.

14 Please raise your right hand.

15 [Witness sworn.]

16 MR. HEDINGER: You can have a seat.

17 THE WITNESS: Thank you.

18 TRACY SUTTER

19 being produced, sworn and examined on
20 the part of the Petitioner Landfill 33, Ltd., testifies
21 and says:

22 EXAMINATION

23 QUESTIONS BY MR. HEDINGER:

24 Q. Mr. Sutter, please state your name for the

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1 record.

2 A. Tracy Sutter. T-r-a-c-y S-u-t-t-e-r.

3 Q. Mr. Sutter, you're the same Tracy Sutter
4 who appeared during the hearing on the siting
5 application back on August 14th, correct?

6 A. I did.

7 Q. And you're the same Tracy Sutter of Sutter
8 Sanitation, Inc. who is behind this transfer station
9 request, correct?

10 A. That would be correct.

11 Q. We heard a public comment. You were here
12 for the entirety of this morning's proceedings, correct?

13 A. Yes, I have been.

14 Q. And you were here during the public comment
15 of Duane Stock? I'm sorry. Not Duane Stock. The
16 public comment of Lloyd Stock.

17 A. I was.

18 Q. And he mentioned something about garbage
19 trucks going into that facility even during this time.
20 Do you know anything about that?

21 MR. NORTHRUP: Your Honor, let me object.
22 I mean, I know this is an offer of proof, but
23 Mr. Hedinger just said he was concerned about items in
24 the record, nothing about Mr. Stock's testimony this

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1 morning.

2 MR. HEDINGER: When else could I have
3 learned about Mr. Stock's allegations until this
4 morning?

5 HEARING OFFICER HALLORAN: But you stated
6 earlier that you were just going to ask questions
7 regarding the record, and that's why you've decided to
8 call Mr. Sutter; is that correct?

9 MR. HEDINGER: That's correct.

10 HEARING OFFICER HALLORAN: I want to make
11 the record clear on that.

12 MR. HEDINGER: That's what I said earlier,
13 yes.

14 MR. NORTHRUP: I mean, even though he's
15 giving an offer of proof doesn't allow him to go on a
16 fishing expedition of every conceivable issue. I object
17 to it, and I ask that you limit his examination.

18 HEARING OFFICER HALLORAN: Mr. Hedinger?

19 MR. HEDINGER: I'll tell you what. I'll
20 just withdraw that, and we'll move on.

21 HEARING OFFICER HALLORAN: Thank you.

22 Q. (By Mr. Hedinger) Okay. Mr. Sutter, then
23 by way of background, this hearing for the siting
24 approval of this transfer station was originally

24 rescheduling?

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1 A. Yeah, I believe through my lawyers is how I
2 found out.

3 Q. So the county did not call you directly?

4 A. I don't remember that they did, you know,
5 called me directly. I don't recall a conversation
6 anyhow in regards to that.

7 Q. And do you have any knowledge as to what
8 prompted the county to reschedule the hearing?

9 A. I don't have that answer.

10 Q. Okay. Well, I would -- I'm just going to
11 show you what's in the record now at C-185, and this is
12 part of the transcript of the hearing. From August 14,
13 and in particular, oh, starting at about line four,
14 Mr. Rolf asks the question -- and if you'd read on down
15 to -- okay. Read on to line one of the next page,
16 C-186. I will give you a minute just to read those.

17 A. And your question in regards to this?

18 Q. You've had a chance to skim through those
19 pages?

20 A. Briefly, yes.

21 Q. And those pages -- in those pages, you were
22 testifying concerning exhibits that had been introduced

23 of notices of the public hearing, correct?

24 A. Notices, or green cards as we call them.

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KEEFE REPORTING COMPANY

1 Q. And those green cards came from your
2 office, right?

3 A. Yes.

4 Q. And in fact, at page C-353 of the record,
5 there's a note that at least is on your company's
6 letterhead, indicating a rescheduling of the hearing,
7 correct?

8 MS. ZEMAN: What was that reference?

9 MR. HEDINGER: 353.

10 THE WITNESS: Yes. This is a note
11 indicating the reference of it in the change.

12 Q. (By Mr. Hedinger) And that is your
13 company's letterhead?

14 A. That's correct.

15 Q. And that letter accompanied these notices
16 that were sent out to the individuals? Is that
17 accurate?

18 A. I would assume it to be accurate. I'm not
19 sure.

20 Q. And why is it you have to assume that, and
21 you don't know it?

22 A. Because my office would have done that
23 work, and it may have been something that was asked of
24 my attorneys to do.

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KEEFE REPORTING COMPANY

1 Q. But it was your office that actually
2 physically sent out the green cards?

3 A. Yeah. They left our office.

4 Q. And what about the notice that went to the
5 newspaper? Did that come from your office?

6 A. I believe so.

7 Q. Okay. And --

8 A. I'm not positive on that.

9 Q. And do you know whether in the process of
10 sending out those notices or contacting the newspaper,
11 did you have -- did you or your office have any contact
12 with the Effingham County Clerk's office?

13 A. I don't recollect at this time if it was
14 required of me. Yes, I would have, you know, took any
15 notices to the county clerk's office if I had to.

16 Q. And, actually, what I'm more interested in
17 knowing is whether the clerk's office discussed with you
18 the contents of the notice or who they were sent to.

19 A. I don't recall that that conversation ever
20 developed.

21 Q. Then next I'd like to turn your attention
22 to page C-191 of the record. And in particular, please
23 read from line 15 the sentence beginning under "this
24 lean-to," down to the very bottom of the page, line 24.

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1 A. Start at 15?

2 Q. Yes.

3 A. You only want me to go to 24, correct?

4 Q. To the end of that page. Have you had a
5 chance to look at that?

6 A. I have.

7 Q. Can you tell me what -- well, can you tell
8 me when the Waste Committee of Effingham County visited
9 your facility?

10 A. Before my application was filed at the
11 Effingham County Board.

12 Q. And that was the April 19th filing?

13 A. That would be correct.

14 Q. Do you recall how soon before that the
15 Effingham County Waste Committee visited your site?

16 A. That would be a question they could
17 answer. I don't write down dates when people come and
18 visit. I don't have that answer. I just know it was
19 before my application was filed.

20 Q. Were you there when they visited?
21 A. Yes, I was.
22 Q. Was it cold outside?
23 A. Yes, it was.
24 Q. So it might have been in the winter?

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KEEFE REPORTING COMPANY

1 A. [Witness nodded affirmatively.]
2 Q. Okay. When did you open that recycling
3 facility?
4 A. We opened it -- let's see -- March of 2002.
5 Q. So sometime between March of 2002 and April
6 of 2002, the committee came and visited you?
7 A. They did.
8 Q. Who all was on that committee?
9 A. Who was on that committee? Or who all was
10 there that day?
11 Q. Who all was there that day?
12 A. Carolyn Willenborg, Charlie Velker, Karen
13 Luthfeld, and I believe his name is Bob Reardon.
14 Q. Okay. And at the time, you were in the
15 process of developing your siting application, correct?
16 A. Yes, I would have been.
17 Q. And so you knew at that time that you
18 intended to use that building as a transfer station,

19 correct?

20 A. Not that building.

21 Q. Not which building?

22 A. The one you're asking me about in that
23 lean-to. It ain't the same building.

24 Q. But the building there that's on that site,

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1 correct?

2 A. Yes, the building is on that site.

3 Q. Okay. During that visit, did the members
4 of the county board who were there tour the building
5 that was going to be the transfer station?

6 A. There was a cardboard bailer sitting in
7 it. They had to. How do you look at a recycling
8 operation if you don't look at exactly how it works?

9 Q. The cardboard bailer was inside the
10 building that you're going to be using as a transfer
11 station?

12 A. It's in the same building currently.

13 Q. And is it going to remain there during the
14 transfer station operations?

15 A. I haven't made that decision yet. I don't
16 know if I'm going to get permitted.

17 Q. Okay. Well, you just told the county board

18 that if you get the siting approval, you'll continue
19 with the recycling activities, right?

20 A. It goes hand in hand as far as I am
21 concerned.

22 Q. So if you do get the transfer station,
23 where are you going to put the bailer?

24 A. I have three other buildings sitting

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1 there. I can put that bailer in any one of them.

2 Q. When the county board members were there on
3 this visit, did they -- or did you discuss with them
4 your intended and expected operations of the transfer
5 station?

6 A. I don't recall that to have been a topic
7 that we discussed. I'm sure that it was possibly in
8 their mind.

9 Q. And was it possibly in your mind?

10 A. As far as to propose a transfer site?

11 Q. Yes. And as far as that being relevant to
12 their visit?

13 A. It was more relevant to their visit to know
14 what recycling was going on in Effingham County due to
15 the fact the Effingham County Equity who was doing it in
16 Altamont prior to me dropped it in January. And the

17 waste committee was concerned that it was a good thing
18 that was going on, and they wanted someone to continue
19 the effort.

20 Q. Did you tell them at that time that the
21 only way you could continue that effort is if you had a
22 transfer station?

23 A. I don't recall ever making that statement
24 to them.

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1 Q. Is it possible you did?

2 A. I doubt it.

3 Q. Is it possible you talked about the
4 transfer station?

5 A. I don't recall that we ever had -- I'm not
6 saying I didn't, you know, have some conversation in
7 regards to it, to that. I don't recall.

8 Q. Okay.

9 A. It was never really the topic. You know,
10 it was recycling is what they were there for.

11 Q. Okay. I'd like to turn your attention to
12 page C-109 of the record.

13 Were you present at the Effingham County
14 Board's May 20th meeting? That was the first meeting
15 after you filed your application.

16 A. May 20? Would that have been the date when
17 they set the first hearing date?

18 Q. Yeah. Look at C-109. I put that in front
19 of you. And there's a thing that says "sign here."
20 Look at that paragraph please.

21 A. That appears to me to be when Leon
22 Gobczynski, the chairman of the board at the time, set
23 the original July date for a public hearing.

24 Q. Were you present for that meeting?

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1 A. I believe that I was. It's an open county
2 board meeting. And I was here in regards to my concerns
3 of when that date would be, when the public hearing date
4 would be.

5 Q. Do you recall this discussion that is
6 reflected in what I just had you read?

7 A. The only thing I read there was where
8 Mr. Gobczynski discussed the setting of the date, unless
9 I misread something.

10 Q. Let me read this sentence to you. It says,
11 "It was decided to tour the transfer station site on
12 Wednesday, July 31, 2002 at 6:30 p.m." Do you recall
13 that discussion?

14 A. Nope. I'm not saying it didn't take

15 place. I just don't recall that. If I remember
16 correctly, and if you look at when I got present to that
17 meeting --

18 Q. Let me hand you this back. I don't want to
19 trick you here. If there's something in the record that
20 will help you, please feel free to refer to it.

21 A. I don't recall that I showed up at that
22 meeting in the beginning. I think they addressed me
23 later and said they had set a July 18th date for the
24 public hearing is what I'm saying. So there may be

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1 things that took place in that meeting that I don't
2 recollect, because the meeting was ongoing when I walked
3 through that door over there.

4 Q. Did the county board ever tour your
5 facility in July or August?

6 A. Not unless they were there to drop off
7 recyclables in the open to the public drop-off facility.

8 Q. And my question was, did the board -- and
9 let me ask it individually. Did any of the individual
10 board members come to tour your proposed facility?

11 A. Not that I know of. I'm not saying they
12 weren't there. There's folks that drop off
13 recyclables. When I'm not there, you know, it's open

14 for them to drop off recyclables.

15 Q. So if I understand you correctly, even
16 though the county board chairman set a date for the
17 county board to tour your facility, you don't know
18 anything about that; is that correct?

19 A. Not of that date right there.

20 Q. What date do you know about?

21 A. The date that would have been prior to my
22 proposed application of April 19th.

23 Q. Okay.

24 A. That's when the waste committee was there

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1 in regards to the recycling facility.

2 Q. Okay. Did you have any other discussions
3 prior to the April 19th filing with any county board
4 members concerning your proposal to site a transfer
5 station?

6 A. Not that I recollect, that it was any, you
7 know, any topics that we discussed prior to April 19th.

8 I take that back. On June of 1999, this
9 same exact board was present when I proposed one then
10 that was denied. So there was a transfer site for the
11 past since '99 that has been discussed in Effingham
12 County lots of times.

13 Q. But I'm talking about after -- about this
14 site.

15 A. As far as -- I'm not sure.

16 MR. HEDINGER: All right. Thank you.

17 THE WITNESS: Thank you.

18 MR. HEDINGER: Okay. That will end my
19 questions.

20 HEARING OFFICER HALLORAN: Thank you. In
21 the event the board overrules me -- Mr. Deters, do you
22 have any questions of this witness?

23 MR. DETERS: I don't think I do.

24 HEARING OFFICER HALLORAN: Mr. Northrup?

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1 MR. NORTHRUP: No questions.

2 HEARING OFFICER HALLORAN: Ms. Zeman?

3 MS. ZEMAN: No.

4 HEARING OFFICER HALLORAN: Thank you,

5 Mr. Sutter. You may step down.

6 THE WITNESS: Thank you.

7 MR. HEDINGER: And that will be all that I
8 have.

9 HEARING OFFICER HALLORAN: Thank you.

10 Mr. Hedinger rests.

11 Mr. Deters?

12 MR. DETERS: The People do not plan to
13 present formal evidence.

14 HEARING OFFICER HALLORAN: Thank you,
15 Mr. Deters.

16 Mr. Northrup?

17 MR. NORTHRUP: Sutter has nothing.

18 HEARING OFFICER HALLORAN: Everybody has
19 rested.

20 Let's go off the record for a moment.

21 [Off-the-record discussion.]

22 HEARING OFFICER HALLORAN: Back on the
23 record.

24 We've been talking about post-hearing

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1 briefs and what not.

2 First, before I forget, I'm required to
3 make a credibility determination on the witnesses who
4 testified here today. And based on my legal experience,
5 judgment and observations, I find that there are no
6 issues of credibility with any of the witnesses.

7 We also talked about Mr. Deters, he had
8 previously filed a motion to file copies of the record,
9 certain portions of the copy -- of the record instead of
10 the originals. However, I'm going to require Mr. Deters

11 to file the originals with the Pollution Control Board.

12 And he also had indicated he has an
13 original of the annual report that I will take back to
14 the board. He's going to hand-deliver that to me
15 personally.

16 And what else, Mr. Deters?

17 MR. DETERS: I'm going to hand you what was
18 marked at the siting hearing as Exhibit 1, being the
19 application itself for local siting approval, what was
20 marked as Exhibit 4, the regional waste management plan
21 for Effingham and other counties. Exhibit 3, the IEPA
22 book on nonhazardous solid waste and landfill capacity
23 in Illinois.

24 Finally, this has got an Exhibit 6 sticker

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1 on it somewhere, I believe. It's the poster size, the
2 exhibits that were already contained in the record. And
3 I'll have to look for that final attachment to the
4 comment.

5 HEARING OFFICER HALLORAN: That's the fifth
6 attachment to the public comment for the record.

7 MR. DETERS: Right, and I hope to provide
8 that within a day or two.

9 HEARING OFFICER HALLORAN: All righty. And

10 also for the record, I have accepted into the evidence,
11 over objection, Petitioner Stock Exhibit A.

12 [Stock Exhibit A was admitted into
13 evidence.]

14 HEARING OFFICER HALLORAN: The parties have
15 indicated they're going to waive closing arguments, and
16 reserve that for their briefs, post-hearing briefs.

17 We've also decided on a post-hearing
18 briefing schedule. We've determined that the transcript
19 will be available on our Web site by December 24th of
20 2002. With that being established, we're going to
21 require that we're going to do simultaneous opening
22 briefs. They're due on or before January 10, 2003. And
23 a reply, if any, is due January 17th. And that is to be
24 filed and served simultaneous.

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1 Also I want to note that the mailbox rule
2 will not apply. So all the parties, including the
3 board, must be served -- must be served and filed on
4 that date.

5 I'm also setting January 3, 2002 as the
6 public comment cutoff date. And the mailbox rule will
7 apply regarding the January 3, 2003 public comment
8 cutoff date.

8 you very much. The Applicant Sutter will file a waiver
9 of the statutory decision deadline. I believe two days.

10 MR. NORTHRUP: Yes.

11 HEARING OFFICER HALLORAN: So the board
12 meeting will have to be decided by February 20th, which
13 is good.

14 I want to thank the parties for their
15 professionalism and their civility. And I also want to
16 thank Mr. Deters for the use of his premises. They've
17 been excellent. And with that, thank you and have a
18 great day.

19 [End of proceedings.]

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COURT REPORTER'S CERTIFICATION

2

3 I, Ann Marie Hollo, Certified Shorthand
4 Reporter, Registered Professional Reporter, Registered
5 Merit Reporter of the State of Illinois and Notary
6 Public, do hereby certify that said hearing before the
Illinois Pollution Control Board and Illinois Pollution
Control Board Hearing Officer Bradley Halloran, took
place on the 19th day of December A.D., 2002, and held
at the Effingham County Building, Effingham County Board
Room, Effingham, Illinois.

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I do hereby certify that I did take stenographic notes of the proceedings and that said notes were reduced to typewritten form under my direction and supervision.

I do further certify that the attached and foregoing is a true, correct and complete copy of my notes and that said testimony is now herewith returned.

I do further certify that I am not related in any way to any of the parties involved in this action and have no interest in the outcome thereof.

Dated at Litchfield, Illinois, this 22nd day of December, A.D. 2002 and given under my hand and seal. My commission expires April 5, 2006.

Ann Marie Hollo, CSR, RPR, RMR