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1 D-15071
 2 STATE OF ILLINOIS)
) SS:
 3 COUNTY OF KENDALL)
 4 BEFORE THE PUBLIC HEARING OFFICER
 5 In The Matter Of:
 6 APPLICATION FOR LOCAL SITING APPROVAL
 7 PROPOSED WILLOW RUN RECYCLING AND DISPOSAL FACILITY
 8 KENDALL LAND & CATTLE, L.L.C.
 9 WASTE MANAGEMENT OF ILLINOIS, INC.
 10 KENDALL COUNTY, ILLINOIS
 11
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 13
 14 REPORT OF PROCEEDINGS had and
 15
 16 testimony taken at the hearing of the above-entitled
 17
 18 matter before PATRICK M. KINNALLY, Hearing Officer,
 19
 20 taken by Kathleen M. Grove, CSR No. 84-002196, on
 21
 22 September 8, 2008, at 6:00 p.m., at 6617 Chicago Road,
 23
 24 Plattville, Illinois.

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1 PRESENT:
 2 MR. PATRICK M. KINNALLY, Hearing Officer;
 3 PEDERSON & HOUP, by
 4 MR. DONALD J. MORAN
 5 161 North Clark Street, Suite 3100
 6 Chicago, Illinois 60601-3242, and
 7 Appeared on behalf of Waste Management of
 8 Illinois, Inc.
 9
 10 JEEP & BLAZER, LLC by
 11 MR. MICHAEL S. BLAZER and
 12 MR. DEREK B. RIEBMAN,
 13 24 North Hillside Avenue, Suite A
 14 Hillside, Illinois 60162, and
 15
 16 KENDALL COUNTY STATE'S ATTORNEY, by
 17 MR. ERIC C. WEIS and
 18 MR. BRIAN J. LABARDI,
 19 807 West John Street
 20 Yorkville, Illinois 60560
 21 Appeared on behalf of the County of
 22 Kendall;
 23
 24 SCOTT M. BELT & ASSOCIATES, P.C., by
 MR. SCOTT M. BELT
 105 East Main Street, Suite 206
 Morris, Illinois 60450
 Appeared on behalf of City of Morris;
 MUELLER & ANDERSON, P.C., by
 MR. GEORGE MUELLER,
 609 Etna Road
 Ottawa, Illinois 61350
 Appeared on behalf of Kankakee Regional
 Landfill, LLC;
 LAW OFFICES OF DANIEL J. KRAMER, by
 MR. DANIEL J. KRAMER,
 1107A S. Bridge Street
 Yorkville, Illinois 60560
 Appeared on behalf of Village of Minooka;

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1 PRESENT: (Cont'd.)
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 3 LAW OFFICES OF DANIEL J. KRAMER, by
 4 MS. KELLY A. KRAMER,
 5 1107A S. Bridge Street
 6 Yorkville, Illinois 60560
 7 Appeared on behalf of Old Second National
 8 Bank of Aurora Trust 8932.
 9 ALSO PRESENT:
 10 MS. RENNETTA MICKELSON, Kendall County Clerk;
 11 MR. ROBERT E. DAVIDSON, County Board Member;
 12 MS. JESSIE HAFENRICHTER, County Board Member;
 13 MS. KAY HATCHER, County Board Member;
 14 MS. NANCY MARTIN; County Board Member;
 15 MS. PAM PARR, County Board Member;
 16 MR. JOHN P. PURCELL, County Board Member;
 17 MS. ANNE VICKERY, County Board Member;
 18 MR. JEFF WEHRLI, County Board Member.
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 22
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1 HEARING OFFICER KINNALLY: All right. I'd like
 2 to get started. It's 6:00 o'clock, please.
 3 Good evening. This is a public
 4 information hearing for the Applicant, Waste
 5 Management and Kendall County & Land Cattle for a
 6 siting of a facility under state law.
 7 Will the County Board members please
 8 like to introduce themselves and the State's Attorney.
 9 BOARD MEMBER VICKERY: My name is Anne Vickery.
 10 HEARING OFFICER KINNALLY: Okay.
 11 BOARD MEMBER PURCELL: John Purcell. I live in
 12 Yorkville.
 13 BOARD MEMBER MARTIN: Nancy Martin, District 1.
 14 BOARD MEMBER HAFENRICHTER: Jessie Hafenrichter,
 15 District 2.
 16 BOARD MEMBER WYKES: Bill Wykes, District 1.
 17 BOARD MEMBER WEHRLI: Jeff Wehrli, District 2.
 18 BOARD MEMBER HATCHER: Kay Hatcher, Yorkville.
 19 BOARD MEMBER PARR: Pam Parr.
 20 MR. WEIS: Eric Weis, and Brian Labardi from
 21 the State's Attorney's office.
 22 HEARING OFFICER KINNALLY: Okay. My name is
 23 Pat Kinnally, and I'm the hearing officer for -- and
 24 this is a public information meeting that we hold when

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1 we have one of these sitings. This is the third time
2 we've done this, and many of the people have been here
3 for all of those. But for those who haven't been here
4 before, what I try to do is hopefully explain how this
5 process works, and then when I make mistakes,
6 Mr. Blazer, who is the official State's Attorney or
7 Assistant State's Attorney, will tell me that I'm
8 wrong, which is okay.

9 This is a process that's set up by
10 state law and it's under the Environmental Protection
11 Act. And the State's Attorney's office under the
12 tutelage of Eric Weis has put up packets over here of
13 information that are important to this process.

14 The people that just introduced
15 themselves are the County Board members. There are
16 ten of those individuals, and six of those have to be
17 here for every one of these hearings which are going
18 to start Thursday night, and that's a quorum. And
19 these men and women have taken upon themselves based
20 on an ordinance that they passed as amended in April
21 of this year to be heavily involved in making the
22 decision as to whether or not this particular facility
23 will be approved or not approved or approved with
24 conditions. So each one of these people have to be

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1 here for these hearings, and they've taken a lot of
2 time out of their schedules to do that to show the
3 citizens that they are very interested in this
4 particular process.

5 From time to time you may want, as a
6 public citizen, to talk to any one of the members of
7 the County Board about what goes on at these hearings,
8 and really they can't talk to you, not because they
9 don't want to talk to you, but because under the law
10 there are certain rules, legal rules, that basically
11 say that they can't talk to people that are involved
12 in the process, whether they be participants, which
13 we'll talk about in a minute, or citizens. And the
14 reason for that is because they are the ones that are
15 going to make the decision in this case. And if you
16 were involved in a lawsuit or a trial, you wouldn't
17 want the other people that were involved in the trial,
18 another party who you may have a claim against or them
19 have a claim against you, talking to the people who
20 make the decision in that case because that wouldn't
21 be fair.

22 Judges -- and the County Board act as
23 judges in this case because they're the ones that make
24 the decision in the end. I don't have a decision. I

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1 don't have -- I can make a recommendation. They can
2 follow it if they want to or if they don't, but in the
3 end, they're the ones that make the decision in this
4 case. So if they don't talk to you about what's going
5 on here, it's not because they don't like you or
6 because they're not interested in you, it's because
7 they can't do it.

8 And if you have a question about
9 anything in the process as we go through this -- and
10 this will take a series of days and weeks. These
11 things tend to take a little bit of time -- and if you
12 have a question, you can ask me, I'll try to answer
13 the question for you; or you can ask Mr. Blazer, who
14 is the attorney that represents the people of this
15 case, he represents the people of Kendall County, and
16 he will try to help you as the designate for Eric
17 Weis, who is our State's Attorney.

18 So that's one rule that is very
19 important. And, again, it's not that the County Board
20 members don't want to talk to you; it's because they
21 don't -- they can't talk to you about what goes on
22 here. And you'll have questions from time to time,
23 and we'll try to answer the questions as we go on.
24 Now, there's a couple of ground rules

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1 that are very important. Renetta Mickelson is our
2 County Clerk, and she is the one who is in charge of
3 the record. And the record, as all the lawyers know
4 and many of the participants, is very important.

5 My court reporter is Kathie Grove,
6 and I get to direct her to do things and not to do
7 things, and -- because we want to make sure that we
8 have a good record. So if someone is asking a
9 question, I would ask the lawyers not to direct my
10 court reporter to do things; just ask me to do it and
11 I'll tell her what to do or not to do. And that's not
12 any kind of edict or I'm trying to be an ogre or
13 anything like that. It's just so that we can keep the
14 record clean. So people can't talk at the same time
15 because Kathie can't take down two people talking at
16 the same time.

17 The other thing is that this
18 particular proceeding is being done in realtime. Now,
19 I am not a computer guru, but realtime basically means
20 that anyone who's talking, as soon as you're talking,
21 it comes up on a computer here, on the screen that I'm
22 looking at. This also accentuates the need for one
23 person talking at one time, because realtime has a
24 difficulty with people that talk at the same time.

1 The other thing that's important, if
2 I could remind the lawyers or any of the participants,
3 if they're reading from a document, please do so with
4 some measure of not talking too fast. I'm not saying
5 you've got to go da da da, but as long as there is
6 some pausing a little bit so the realtime thing can
7 occur. So those are a couple rules.

8 The other rules that I have, and I
9 think they've worked well in the past, is we don't
10 have applause; we don't have clapping; we don't have
11 people shouting out; we all take turns. And everyone
12 is going to get a chance here. I've done half a dozen
13 of these now, and you can ask the lawyers, you can ask
14 people on the County Board or other places I've done
15 these, everyone will get a chance to speak, okay?
16 Whether you want to do it as a sworn witness or making
17 public comment -- we'll go through that in a minute --
18 but everyone will get the opportunity.

19 The other thing that I like to do or
20 to make is if the lawyers -- we're going to start
21 Thursday night, okay, so if the lawyers can do two
22 things for me and the County Board and everyone else
23 involved: I want to know who your witnesses are, all
24 right? I'm not going to hold you if something comes

1 up or you want to bring somebody back on rebuttal, but
2 we need to know who your witnesses are so we can try
3 to get an idea where we're going with the schedule,
4 okay?

5 The other thing that's very
6 important, and I want the lawyers to read this because
7 it's unusual, we have a Host Benefit Agreement, and
8 there is copies here for anyone who wants to take
9 them, which basically has in the Host Benefit
10 Agreement performance standards that are required by
11 the Applicant. That is highly unusual. I have never
12 seen that before. But because there are performance
13 standards in the Host Benefit Agreement, it gives the
14 County Board, if this thing were to be sited -- I'm
15 not saying it will or it won't -- control over the
16 process locally as opposed to the state government.
17 So that is something that I would ask the lawyers to
18 familiarize themselves with that because it may have
19 some impact on the amount of questioning that you do
20 or don't do. Again, not limiting anybody, but just
21 making that available -- or those are available so
22 people can review those.

23 Now, before we get into this who is a
24 participant and who is not a participant, let me just

1 give you a couple ideas where we're going with this.
2 Thursday night we'll open up, and I have the
3 obligation under the Ordinance, I have to swear
4 witnesses. That's my job. That won't happen until
5 the participants have the opportunity to make an
6 opening statement, and they can do that or they don't
7 have to do it. It's up to them.

8 The only thing that I would ask all
9 of the people that are participating is that let's not
10 be redundant, all right? If there are certain points
11 that you want to make, then make them; but we don't
12 need to gild the lilly, so to speak, and have people
13 repeating what other lawyers or other participants
14 have already said.

15 Again, I'm going to give everybody
16 plenty of opportunity. I'm not going to limit you.
17 But if you could keep that in mind, that will make the
18 process that much more efficient.

19 Now, so they'll have their opening
20 statements. Then the Applicant gets to go first.
21 Mr. Moran represents Waste Management and Kendall
22 Land & Cattle. He gets to go first. And then what I
23 will usually do is I'll ask the lawyers who they're
24 representing -- I don't have a participant sheet in

1 front of me, but I'll have it by Thursday -- and we'll
2 start off with the lawyers with respect to who they
3 represent and then they get to go.

4 Mr. Blazer who represents the people,
5 he gets to go at the end if he wants to. He doesn't
6 have to, but he can if he wants to.

7 During the case that Mr. Moran starts
8 with, since he is the Applicant, like he is the
9 plaintiff in a trial, he gets to go first. Lawyers
10 get to cross-examine. The County Board gets to
11 cross-examine. Participants may cross-examine, if
12 they want. I may have a couple questions. And if
13 participants do not feel that they want to ask
14 questions, there is a form over here on the desk or on
15 this table over here where you can put a question down
16 and I'll ask the question for you. Sometimes that
17 makes things go quicker. Again, I'm not trying to
18 limit anybody, but that's the way it goes.

19 We have a lot of people here who want
20 to participate. Renetta told -- Ms. Mickelson told
21 me tonight apparently there are another eight or ten
22 people that signed up as participants today, and I
23 expect we'll have more by Thursday when we open up.

24 So, again, the form there is to try

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1 to make the question -- questioning go quicker, again
2 without limiting. If you want me to ask the question,
3 I'll be happy to do it.
4 So that's -- after the Applicant
5 goes, then the cross-examination occurs, and then all
6 of the participants can put on their case or their
7 witnesses in an order that we'll establish. Usually
8 Mr. Mueller went first and then Mr. Bell, I think,
9 Hinshaw & Culbertson has some lawyers that will come,
10 Dan Kramer is here representing Minooka, a new face.
11 I'm glad to see you here, Dan. So we'll try to use
12 that order, but nothing is set in stone. I mean, if
13 we can take people out of order, we will do that,
14 again, to move this thing along.
15 Now, let's talk about participants
16 for a minute. If you want to be a participant, of
17 course we welcome participation. That is what this is
18 all about. This is a situation where we're trying to
19 get the best information we can from all those folks
20 who want to give us information so the County Board
21 can make an informed decision. And again, we have
22 lawyers here that are representing certain parties,
23 but if you are not represented by a lawyer or if you
24 want to participate, you need to sign up with

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1 Ms. Mickelson, and you need to do that by Thursday.
2 And if you are going to produce any
3 kind of documents or exhibits, you need to file those
4 with Mrs. Mickelson on Thursday, or if you can't get
5 it done by Thursday and you have a good reason that
6 you can't get it done, I'm pretty liberal with letting
7 people file documents later than Thursday.
8 The Ordinance -- and again, a copy of
9 the Ordinance is on the table over there. If you want
10 to be a participant, you ought to take a look at it.
11 It's Article 5 of the Ordinance as to what the rules
12 are to be a participant. So if you have documents you
13 want to file, you need to get those on file by
14 Thursday. If you can't get them on file by Thursday
15 and you've got a good reason, then I'm probably going
16 to let you file them. But it's the statute or the
17 Ordinance here says for good cause shown, and, you
18 know, there's lots of reasons why; the car broke down,
19 things like that.
20 But here is the reason for the good
21 cause requirement: Again, it goes back to this idea
22 of fairness, having a fair hearing. Just because
23 you're a participant and you want to file documents,
24 you also have to remember that the Applicant has a

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1 right to see those documents and those exhibits so
2 they can prepare in connection with the testimony that
3 they want to put on. So there's a fairness component
4 here for the Applicant as well as any participant.
5 You want to give people notice as to what you're going
6 to say and what your arguments are going to be or what
7 your information is going to be because that's the way
8 these situations are resolved.
9 Granted, the Applicant has a right
10 after the -- after the other participants put on their
11 case to put on rebuttal evidence, and that can be
12 evidence that rebuts what the other witnesses put on
13 from other participants.
14 So this fairness idea runs through
15 this whole proceeding, and that's what we want to make
16 sure, that we have a good record and we have the fair
17 opportunity for everybody to participate. And with
18 that idea of participation also has an obligation for
19 any participant to show the other people, well, this
20 is what I'm going to talk about. And the Applicant
21 and other participants have a right to know what those
22 exhibits are, what those things are.
23 Now, there was some discussion, I
24 think, Mr. Belt, you had some videos or something or

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1 Mr. Vogen from the airport?
2 MR. BELT: Yes, we do, your Honor.
3 HEARING OFFICER KINNALLY: Okay. Well, here is
4 the deal on that. The reporter doesn't have a way to
5 transcribe that video. And I'm sure, you know, we'll
6 be happy to look at your video, but if there is some
7 way you can transcribe those, if there is like text
8 that goes along with them as opposed to just watching
9 a movie, that would be helpful so we can put that in
10 the record. If you can't do it, you can't do it. But
11 you've got to understand that once the decision is
12 made, this proceeding or whatever decision is made by
13 the County Board, then this -- their decision can be
14 reviewed by what's called the Illinois Pollution
15 Control Board and they can change the decision. And I
16 guess the reason I'm telling you is they may not watch
17 the video, but if they have a transcript, they can see
18 the printed word in the transcript.
19 MR. BELT: We spoke with Mr. Blazer before
20 things got going this evening, and we discussed the
21 practicality of that, and I think we will be able to
22 transcribe the audio and submit that.
23 HEARING OFFICER KINNALLY: Okay. That's fine.
24 Now, here is another thing:

1 Generally the court reporter will know who the people
2 are that are here all the time. She will know who the
3 lawyers are. But if you're a participant, also if
4 you're going to say something, you ought to say who
5 you are, what your name is, where you're from, and
6 another thing that's required under the Ordinance is
7 whether you're for or against the siting of this
8 particular landfill. Not my rule. It's a rule that's
9 required by the Ordinance.

10 All right. Now, participants, we
11 talked about that before. Again, if you want to
12 participate, great. Make sure that you follow the
13 rule. There is a sheet over there that tells you what
14 you have to do. In order to participate, you have to
15 sign up with Mrs. Mickelson, and you have to file your
16 exhibits or whatever your paperwork is or evidence
17 that you want considered by the County Board.

18 Participants don't have to be sworn
19 witnesses. Last time we did one of these, there were
20 plenty of people that got up during the course of the
21 hearing or hearings and made what is called public
22 comment. Fine. That's great. If you want to -- if
23 you don't want to be sworn as a witness, you don't
24 have to be.

1 If you are sworn as a witness, you
2 have to remember that you're going to be subject to
3 cross-examination by the lawyers. It's nothing to be
4 afraid of. Nobody is going to beat you up. Don't
5 worry, I'll take care of that, all right? But you are
6 subject to cross-examination, just so you know.

7 If you don't want to be subject to
8 cross-examination or if you don't want people asking
9 you questions, then you can make public comment, and
10 your public comment as required under the Ordinance
11 will be considered by these men and women of the
12 County Board just like any other testimony in the
13 hearing, okay?

14 Now, I think we talked about the
15 right to ask questions for any of the participants.
16 It's been my experience that if you give me the
17 question sometimes it goes quicker; but, again, I'm
18 not trying to limit you in any way.

19 Once the hearing is concluded,
20 there's then a period of time where any participant
21 can file written comment, a memorandum, a letter,
22 whatever you want, within 30 days of the time the
23 hearing is closed. And you must file that written
24 comment with Mrs. Mickelson at the Clerk's office so

1 it can be considered by the County Board when they
2 enter into their deliberations. So if you want to
3 file a written memorandum or some letter or document
4 at the end of the hearing when we close the hearing,
5 you have 30 days to do that. If you don't do it, then
6 it probably won't be considered unless, again, you can
7 show good cause for not filing a written memorandum,
8 and generally at that point I'm less likely to permit
9 a late filing because we're coming down to the end of
10 the process at that point. So that's the other thing
11 that will occur.

12 I have the right under the Ordinance
13 to limit the amount of testimony. If I think we're
14 getting too repetitive, I may do that. Generally
15 speaking, I'm fairly liberal about that, again,
16 because I want the County Board to have as much
17 information as they can during the course of the
18 hearings. But if we get too redundant, if we're
19 plowing the same ground three times, then we'll
20 probably -- I'll ask whoever is examining at that
21 time to move on.

22 Once the written record is
23 completed -- and again, Kathie Grove, the court
24 reporter, and the ladies that work with her will file

1 the transcript every day with Rennetta Mickelson at
2 her office. So if you want to look at the transcript
3 from the previous night, generally it will be up there
4 the next day. In the end, the entire transcript will
5 be filed with Rennetta's office, and that will be the
6 record, at least the record of the testimony, as well
7 as all the exhibits that are introduced by any
8 participant during the course of these hearings.

9 After the 30-day period concludes,
10 then the County Board will convene at some point and
11 they will review the evidence. I will make a
12 recommendation, which they're free to discount, not
13 follow, adopt, whatever they want to do, and the
14 attorney for Kendall County, Mr. Blazer, also has the
15 ability to write an opinion that the County Board can
16 adopt, not adopt in whatever they -- you know, they
17 have the final say, in other words. They're the ones
18 who make the call.

19 Once that occurs, then the decision
20 is final, at least as far as the local siting process
21 is concerned, and whatever happens with that decision,
22 it can be appealed by participants who -- any
23 participant who participated in this proceeding, and
24 that would go to the Illinois Pollution Control Board

