

1 D-15130
 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
 PROPOSED WILLOW RUN RECYCLING AND DISPOSAL FACILITY
 7 KENDALL LAND & CATTLE, L.L.C.
 WASTE MANAGEMENT OF ILLINOIS, INC.
 8 KENDALL COUNTY, ILLINOIS
 9
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 11
 12 REPORT OF PROCEEDINGS had and
 13
 14 testimony taken at the hearing of the above-entitled
 15
 16 matter before PATRICK M. KINNALLY, Hearing Officer,
 17
 18 taken by Kathleen M. Grove, CSR No. 84-002197, and
 19
 20 Janet L. Galasso, CSR No. 84-002167, on Tuesday,
 21
 22 September 23, 2008 at 6:00 p.m., at 6617 Chicago Road,
 23
 24 Plattville, Illinois.

1 ALSO PRESENT: (Cont'd.)
 2 LAW OFFICES OF DANIEL J. KRAMER, by
 MS. KELLY A. KRAMER
 3 1107A S. Bridge Street
 Yorkville, Illinois 60560
 4 Appeared on behalf of Old Second National
 Bank of Aurora Trust 8932 and Village of
 5 Minooka.
 6 ALSO PRESENT:
 7 MS. RENNETTA MICKELSON, Kendall County Clerk;
 MR. ROBERT E. DAVIDSON, County Board Member;
 8 MS. JESSIE HAFENRICHTER, County Board Member;
 MS. KAY HATCHER, County Board Member;
 9 MS. NANCY MARTIN, County Board Member;
 MS. PAM PARR, County Board Member;
 10 MR. JOHN P. PURCELL, County Board Member;
 MS. ANNE VICKERY, County Board Member;
 11 MR. JEFF WEHRLI, County Board Member;
 MR. BILL WYKES, County Board Member,
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1 PRESENT:
 2 MR. PATRICK M. KINNALLY, Hearing Officer;
 3 PEDERSON & HOUP, by
 MR. DONALD J. MORAN
 4 161 North Clark Street, Suite 3100
 Chicago, Illinois 60601-3242
 5 Appeared on behalf of Waste Management of
 Illinois, Inc.;
 6
 7 JEEP & BLAZER, LLC by
 MR. MICHAEL S. BLAZER, and
 MR. DEREK B. RIEMAN
 8 24 North Hillside Avenue, Suite A
 Hillside, Illinois 60162
 9
 10 KENDALL COUNTY STATE'S ATTORNEY, by
 MR. ERIC C. WEIS
 807 West John Street
 11 Yorkville, Illinois 60560
 Appeared on behalf of the County of
 Kendall;
 12 HINSHAW & CULBERTSON, LLP, by
 MR. RICHARD S. PORTER
 13 100 Park Avenue, P.O. Box 1389
 Rockford, Illinois 61105
 14 Appeared on behalf of the County of Grundy;
 15 SCOTT M. BELT & ASSOCIATES, P.C., by
 MR. SCOTT M. BELT
 16 105 East Main Street, Suite 206
 Morris, Illinois 60450
 17 Appeared on behalf of City of Morris;
 18
 19 MUELLER & ANDERSON, P.C., by
 20 MR. GEORGE MUELLER
 609 Etna Road
 21 Ottawa, Illinois 61350
 Appeared on behalf of Kankakee Regional
 22 Landfill, LLC;
 23
 24

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1 HEARING OFFICER KINNALLY: Okay. Mr. Vogen,
2 you are still under oath.
3 MR. BELT: Mr. Kinnally, before proceeding with
4 the offer of proof, I would ask that you entertain
5 your ruling as to relevancy, and I would make a motion
6 now that you reconsider that.
7 I have had an opportunity to review
8 the case cited by Mr. Moran which is the City of
9 Geneva versus Waste Management which is a PCB opinion,
10 94-58, and I believe that that provides authority
11 which allows this evidence to come in and that it is
12 relevant.
13 The distinction that I'd like to make
14 from the explanation that Mr. Moran provided to the
15 Board last night is that there is an express finding
16 by the Board that evidence that was submitted by the
17 City of Geneva, which was related to the safety of the
18 airport operations, was actually deemed relevant and
19 proper for the hearing board, in that case the county
20 board, to consider.
21 On Page 20 of the opinion, the
22 Pollution Control Board indicates that they find that
23 it was not improper for the Kane County Board -- for
24 Kane County, rather, to accept the contested reports

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1 HEARING OFFICER KINNALLY: Okay. I'd like to
2 reconvene, so if people would take their places.
3 Okay. This is the reconvened hearing
4 in the Application of Waste Management and Kendall
5 Land & Cattle for a site location approval for a
6 pollution control facility.
7 Can the County Board please introduce
8 themselves.
9 BOARD MEMBER DAVIDSON: Bob Davidson.
10 BOARD MEMBER VICKERY: Anne Vickery.
11 BOARD MEMBER MARTIN: Nancy Martin.
12 BOARD MEMBER HAFENRICHTER: Jessie Hafenrichter.
13 BOARD MEMBER PURCELL: John Purcell.
14 BOARD MEMBER HATCHER: Kay Hatcher.
15 BOARD MEMBER WEHRLI: Jeff Wehrl.
16 BOARD MEMBER WYKES: Bill Wykes.
17 BOARD MEMBER PARR: Pam Parr.
18 HEARING OFFICER KINNALLY: We have a quorum,
19 and our State's Attorney, Eric Weis, is with us
20 tonight.
21 I think we left off last night with,
22 Mr. Belt, you were going to make an offer of proof.
23 That's what my notes indicate. Is that right?
24 MR. BELT: That is correct, Mr. Kinnally.

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1 as public comments.
2 The scenario in which that finding is
3 made was contemplated by a situation at the public
4 hearing unlike what we have here this evening.
5 Obviously, the City of Morris has elected to put on a
6 case, put on Mr. Vogen, subject him to
7 cross-examination. In the Geneva case, there was no
8 such testimony nor was there anything that was offered
9 by the applicant.
10 Those are two important distinctions
11 because the City of Geneva in this Geneva case simply
12 offered public comment, unsworn testimony, and offered
13 two reports that were taken into consideration by the
14 board at the siting level, not subject to
15 cross-examination.
16 Secondly, the fact that Waste
17 Management elected within its discretion not to put on
18 any evidence either at hearing or within its
19 application as to the compatibility or safety of the
20 airport relative to Settler's Hill's relationship --
21 location and relationship to the airport, that's a
22 distinction that's made by the case -- by the
23 Pollution Control Board opinion.
24 And essentially, what the holding is,

1 in my opinion, is that they concluded that the
2 information that was submitted, the two reports that
3 were submitted by the City of Geneva, were properly
4 considered by the siting board and that the fact that
5 Waste elected not to include any information in its
6 application or otherwise put on any proofs to that
7 issue at hearing was not against the manifest weight
8 of the evidence.

9 So this is a holding that is more
10 related to a standard of proof on appeal than it is as
11 to a relevancy issue as to whether or not the city can
12 proceed with this type of evidence.

13 With that having been said and those
14 distinctions made, I would ask you, Mr. Kinnally, to
15 reconsider your relevancy finding from last night as
16 it relates to these videos that we are proposing to
17 show this evening.

18 HEARING OFFICER KINNALLY: So you're asking
19 that I reconsider the issue of showing the videos?

20 MR. BELT: Reconsider your sustaining the
21 objection of Waste Management on the issue of
22 relevancy.

23 HEARING OFFICER KINNALLY: Okay. Who wants to
24 be heard on that? Mr. Moran?

1 MR. MORAN: Yes. Certainly Mr. Hearing
2 Officer, we would have no objection if this
3 participant wishes to submit as public comment
4 whatever information it wishes to present.

5 Our point, and the point that was
6 confirmed by that Pollution Control Board decision, is
7 that a matter relating to whether this proposed
8 expansion has or could have any effect on airport
9 safety is a matter not properly within the criterion,
10 not properly considered as a part of the review of
11 this Siting Application, is something that's more
12 properly addressed, and, indeed, properly addressed at
13 the stage after siting approval before both the
14 Illinois Environmental Protection Agency and as
15 necessary before the FAA.

16 And for the County Board to be in a
17 position to have to evaluate this information, which
18 isn't properly part of the criterion, which isn't
19 properly part of the review, only tends to extend
20 these hearings, prolong them, and suggests to the
21 Board that there is considerations here that properly
22 may be considered when it's more properly considered
23 during that later stage.

24 HEARING OFFICER KINNALLY: Anybody else?

1 MR. PORTER: Yes. I also had the opportunity
2 to review that case today, and I guess my concern
3 mainly is that this Board not be misled by Mr. Moran's
4 comments. That is not at all what that case held. It
5 did not in any way hold that this Board cannot
6 consider airport safety. To the contrary, all that it
7 held was that in that case no evidence had been
8 submitted during the case in chief by Waste Management
9 about airport safety.

10 In the public comment period, the
11 airport or an objector submitted evidence concerning
12 that issue and then later on argued on appeal that
13 that means there should be an automatic reversal of
14 the siting authority's approval of the application
15 because Waste Management didn't submit any evidence
16 and we submitted some in public comment.

17 The PCB said, no, that's not correct.
18 You still get to weigh whether or not overall there
19 was a finding -- a correct finding that Criterion 2
20 had been met. But it did not go to the admissibility
21 one iota of the evidence as to airport safety; and it
22 never, never divested the county board at issue in any
23 case from its duties to look at whether or not the
24 project, indeed, protected the public health, safety,

1 and welfare. It was just an evidentiary issue. It
2 does not stand for the proposition that was just
3 presented.

4 HEARING OFFICER KINNALLY: Okay.

5 MR. PORTER: Therefore I joint in Mr. -- the
6 City of Morris's comments.

7 HEARING OFFICER KINNALLY: Thank you,
8 Mr. Porter.

9 Anyone else want to be heard on this?
10 Mr. Blazer?

11 MR. BLAZER: No, sir.

12 HEARING OFFICER KINNALLY: All right. Well,
13 here's the issue: I read the decision. I guess I
14 didn't make myself clear. I'm going to let you play
15 the video, but here's the problem. I don't see
16 anything in the materials that you submitted that
17 indicate any of this information had anything to do
18 with a bird strike near a landfill. I think we all
19 know that birds strike airplanes. Mr. Vogen has told
20 us that time and time again. I don't think that is
21 disputed. The relevance is whether or not the
22 information that you are seeking to admit here has
23 anything to do with a bird strike by a landfill.

24 Having said that, you're going to

1 make an offer of proof. I'm going to reverse myself,
 2 and you can play the videos.
 3 MR. BELT: Thank you, your Honor.
 4 HEARING OFFICER KINNALLY: So the objection,
 5 Mr. Moran, now is overruled. That's my ruling.
 6 MR. BELT: Thank you, Mr. Kinnally.
 7 HEARING OFFICER KINNALLY: I hope you can
 8 connect -- I assume you're going to connect this up
 9 some way with respect to these bird strikes. I'd like
 10 to hear some testimony.
 11 BOARD MEMBER DAVIDSON: Can we have the lights
 12 down so everybody can see it?
 13 HEARING OFFICER KINNALLY: Yeah, maybe we can
 14 turn the lights down a little bit so the Board can see
 15 the videos.
 16 (Witness previously sworn.)
 17 JEFF VOGEN
 18 called as a witness herein, having been previously
 19 duly sworn, was examined and testified as follows:
 20 DIRECT EXAMINATION (Cont'd.)
 21 BY MR. BELT:
 22 Q. Mr. Vogen, before going forward, we have
 23 marked as Morris Exhibit No. 31 a document entitled
 24 "NATO Hawk Bird Strike with Pilot and Student Ejection

1 in Crash."
 2 Are you familiar with that document?
 3 A. Yes, I am.
 4 Q. And how is it that you're familiar with
 5 that?
 6 A. I have watched it over and over. We
 7 filled out the -- actually written portion of their
 8 oral comments during this accident, and I have
 9 basically identified the aircraft is a NATO Hawk
 10 aircraft, which is the training version of the A-4
 11 single-engine jet, very typical type of engine that is
 12 flying in and out of the Morris Airport.
 13 Q. In terms of Morris Exhibit No. 31, does
 14 that document truly and accurately contain the audio
 15 transmissions between the pilot, copilot, and the
 16 tower in this video?
 17 A. Yes, it does.
 18 Q. Okay. As to the video itself, are you
 19 familiar with what's contained in the video?
 20 A. Yes, I am.
 21 Q. And could you explain that briefly before
 22 playing it?
 23 A. Very simply, the aircraft is just after
 24 takeoff off the runway. You can see two different

1 versions. You'll see the bird ingested into the
 2 engine. You'll see a ground view of what happens to
 3 the engine as it's being ingested.
 4 The nice part of these videos, and
 5 this is why you can get videos, the military has
 6 cameras on their training aircraft. That's why --
 7 bird strike videos are very rare, and this is a very
 8 good example of one.
 9 MR. BELT: Thank you. With that I will
 10 initiate the video.
 11 HEARING OFFICER KINNALLY: Can we have some
 12 more foundation before you play the video? I'd like
 13 to know when this was done, where it was done.
 14 MR. BELT: Certainly.
 15 HEARING OFFICER KINNALLY: And, you know, where
 16 did you get the video.
 17 MR. BELT: Okay. Certainly.
 18 BY MR. BELT:
 19 Q. Mr. Vogen, do you know when this video was
 20 taken?
 21 A. The actual date, I do not know. It was
 22 filmed out of Pensacola, the naval training base. It
 23 was on its way to Natchez. The actual video, if you
 24 go onto the bird strike committee, it will direct you

1 to actual bird strike videos, and that's how I
 2 procured this video.
 3 Q. I'm sorry. You procured it in what
 4 fashion?
 5 A. The bird strike committee is the joint
 6 committee between the FAA, the Air Transport of
 7 Canada. Basically they compile all the bird strike
 8 notes. They, on their Web site, lead you to all these
 9 bird strike videos, and it was downloaded there.
 10 Q. In your 27-and-a-half years' experience
 11 and education and your experience as a pilot, does
 12 this video truly and accurately depict what occurs,
 13 what the observations are and communications are
 14 within a cockpit immediately after a midair bird
 15 strike?
 16 A. Yes, it does.
 17 MR. BELT: With that, we'll move forward.
 18 (The video was played but not
 19 herein transcribed.)
 20 BY MR. BELT:
 21 Q. Mr. Vogen, with that video having been
 22 concluded --
 23 HEARING OFFICER KINNALLY: Wait a minute. Just
 24 so the record is clear, the court reports are unable

1 to transcribe what occurred audibly on the video. So
2 I just want the record to reflect that. Go ahead.

3 MR. BELT: Thank you.

4 BY MR. BELT:

5 Q. Obviously, Mr. Vogen, this video depicts
6 a -- the conclusion following this bird strike as the
7 ejection and crash of the aircraft; is that correct?

8 A. That is correct.

9 Q. Do you have any knowledge as to the
10 well-being of the pilot and copilot in this instance?

11 A. The pilot walked away fine. The
12 instructor ended up with a broken hip. He got the
13 broken hip as he was being ejected out of the
14 aircraft.

15 (City of Morris Exhibit No. 32
16 marked.)

17 BY MR. BELT:

18 Q. Mr. Vogen, the next exhibit that I'd like
19 to direct your attention to is Morris Exhibit No. 32,
20 which in the transcription is entitled "Boeing 757
21 Bird Strike, Manchester Ringway International
22 Airport."

23 Likewise, did you transcribe the
24 audio communications contained in this video?

1 A. Yes, I did.

2 Q. And is the information contained in Morris
3 Exhibit No. 32 a fair and accurate representation of
4 the communications that occur between the pilot and
5 the tower in this video?

6 A. Yes, it is.

7 Q. Okay. Likewise, are you familiar with the
8 video itself?

9 A. Yes, I am.

10 Q. Can you describe what this video depicts,
11 where it occurred, and the resulting circumstances,
12 please?

13 A. This is a National Airline 757 that was
14 taking out of Manchester, England. The film is
15 actually taken off the airport as they are watching
16 the aircraft depart.

17 If you look on the video, just as the
18 aircraft comes into view, you can see the bird strike
19 into the No. -- or the right engine, I should say.
20 The consequenting bird strike causes a compressor
21 stall, high temperature, and a fire out the tailpipe.

22 This is exactly what I saw for
23 27-and-a-half year. This is major damage. The engine
24 ended up being shut down, and the aircraft had to

1 return back to the gate. Luckily, they had enough
2 power to make it back to the airport.

3 Q. When you say this is exactly the type of
4 incident that you saw, are you referencing your
5 employment at Delta?

6 A. Yes, I am.

7 Q. And in the 27-and-a-half years that you
8 were -- that you were employed with Delta, on how many
9 occasions were you involved -- directly involved in a
10 bird strike incident?

11 A. We would have evidence of bird strike
12 and/or damage from bird strikes easily 12 times a
13 year. For 27 years, that's quite a few bird strikes.
14 Several of them major, major damage. Some, the
15 engines imploded, and some, the aircraft were
16 literally destroyed.

17 If you look closely as the airport --
18 airplane comes into view, you'll actually see the bird
19 ingested into the engine.

20 Q. I'm sorry. Go ahead.

21 A. Wrong video.

22 Q. I'm sorry. I interrupted you. Go ahead.

23 A. If you look just as the airplane comes
24 into view, you'll see the bird being ingested.

1 (The video was played but not
2 herein transcribed.)

3 BY MR. BELT:

4 Q. Mr. Vogen, what was the end result as a
5 consequence of this bird strike which was just
6 depicted in this video?

7 A. At the end of the video we see when the
8 tailpipe fire starts. They shut the aircraft -- the
9 engine on the right side off. The aircraft had to
10 then fly out, dump fuel, and return to land.

11 Q. And this was obviously a video that was
12 taken during takeoff?

13 A. Yes, it was.

14 Q. The airplane such as a 757 utilizes
15 instrument approach surfaces?

16 A. Yes, they do.

17 (City of Morris Exhibit No. 33
18 marked.)

19 BY MR. BELT:

20 Q. Next I'd like you to take a look, if you
21 would, please, at Morris Exhibit No. 33 which is
22 entitled "A-10 Bird Strike to Vertical Stabilizer."

23 Are you familiar with Morris
24 Exhibit No. 33?

1 A. Yes, I am.
 2 Q. And does this document truly and
 3 accurately depict the audio communications associated
 4 with this video?
 5 A. Yes, it does.
 6 Q. Are you familiar with the video itself?
 7 A. Yes, I am.
 8 Q. Could you please describe what this video
 9 depicts?
 10 A. The A-10 was actually doing a performance
 11 at an air show. For those of you that are not
 12 familiar with what an A-10 is, it's affectionately
 13 known as the warthog. It is an air-to-ground attack
 14 aircraft. It is built for the military to take small
 15 arms fire, rocket attacks, and it's basically used for
 16 anti-tank usage. So it's used to being literally shot
 17 at all the time.
 18 Q. And what is it that this video depicts?
 19 A. As you see the airport -- aircraft
 20 approach the runway to the air show, you'll see a bird
 21 strike to the right rear vertical stabilizer and the
 22 damage that ensues.
 23 Q. And then the -- do you know the results of
 24 the aircraft following this bird strike?

1 A. The aircraft was able to make it back to
 2 the aircraft with substantial -- back to the airport
 3 with substantial damage. No one was hurt. However,
 4 due to the birds that then congregated near the
 5 airport, they canceled the air show.
 6 Q. Thank you.
 7 HEARING OFFICER KINNALLY: Wait a minute. Time
 8 out. Hold on a minute.
 9 When did this happen?
 10 THE WITNESS: I believe they explained the date
 11 during the video commentary by the reporter.
 12 HEARING OFFICER KINNALLY: Where did it happen?
 13 THE WITNESS: I do not know.
 14 HEARING OFFICER KINNALLY: Okay. Thank you.
 15 I'm sorry to interrupt.
 16 (Video was played but not
 17 herein transcribed.)
 18 BY THE WITNESS:
 19 A. You can see the vertical stabilizer was
 20 damaged all the way to the main spar.
 21 HEARING OFFICER KINNALLY: Thank you.
 22 (City of Morris Exhibit No. 34
 23 marked.)
 24

1 BY MR. BELT:
 2 Q. Mr. Vogen, the last video had been
 3 transcribed on what's been previously marked Morris
 4 Exhibit No. 34. Likewise, did you transcribe the
 5 audio communications associated with this video?
 6 A. Yes, I did.
 7 Q. And is what's depicted on Morris
 8 Exhibit No. 34 a true and accurate depiction of the
 9 audio communications associated with this video?
 10 A. Yes, it is.
 11 Q. And this is a video that depicts a T-45C
 12 bird strike; is that correct?
 13 A. That is correct.
 14 Q. And that occurred on October 30th of 2007?
 15 A. Yes, it did.
 16 Q. Do you know where it occurred at?
 17 A. That, again, was outside of Pensacola.
 18 Q. Okay. Could you describe what this video
 19 depicts, please?
 20 A. Yes. This aircraft has taken off. It is
 21 on departure from the aircraft, and you'll be able to
 22 hear the controllers talking to other aircraft in the
 23 area. He is cleared on his direct path to Natchez
 24 when this happens.

1 The actual student as he was flying
 2 did not know what happened. Luckily the instructor
 3 had a calm head about him.
 4 (The video was played but not
 5 herein transcribed.)
 6 BY MR. BELT:
 7 Q. Mr. Vogen, obviously the conclusion of
 8 this video was a safe return to the airport?
 9 A. Yes, it is.
 10 One thing that's really important to
 11 note about this video, this was after takeoff. He was
 12 at 1,200 feet, cleared to 7,000 feet when he struck
 13 the bird. We've got to remember 90 percent -- or 97
 14 percent of all bird strikes happen at 3,000 feet or
 15 below when on approach or takeoff to an airport.
 16 Q. Mr. Vogen, as it relates to the videos
 17 that we just watched, obviously several of these
 18 involve jet engines.
 19 Are these similar type jet engines
 20 for aircraft that currently utilize the Morris
 21 Airport?
 22 A. Yes, they are.
 23 Q. And I believe you testified yesterday that
 24 there was a substantial increase in the jet traffic

1 utilizing the airport, and I don't recall the
2 percentage.

3 A. Yes, there is. Just by our fuel sales
4 alone, we've jumped up to where jet fuel traffic is --
5 or jet fuel sales is over 61 percent of our fuel sales
6 right now.

7 Q. Okay. In terms of the jet aircraft that
8 utilize the airport, is it common for those aircraft
9 to utilize an instrument approach surface in arriving
10 at the Morris Airport?

11 A. Yes, it is. They will use the instrument
12 approach even on clear, sunny days because of the
13 traffic patterns and the ease to get into the airport.

14 Q. And does that include the VOR-A instrument
15 approach which you testified to yesterday?

16 A. Yes, it does.

17 Q. Mr. Vogen, the City of Morris in the past
18 has on numerous occasions engaged in an air show; is
19 that correct?

20 A. Yes, we have.

21 Q. Does that air show involve flying over the
22 airspace that would be directly above the proposed
23 landfill footprint which is being proposed here by
24 Waste Management?

1 A. Yes, it does. Our high-speed holding area
2 for the faster aircraft is to the northeast of the
3 airport.

4 Q. When you say holding area, what do you
5 mean by that?

6 A. As we do different acts, we'll send the
7 next act up -- next act up in the air and hold out of
8 the airspace of the airport. We have a blocked-off
9 radius basically strictly for the air show. They hold
10 outside of that air show and then be cleared in by the
11 airbus.

12 Q. When you say they hold before they're
13 called in, is there a particular altitude that they're
14 directed to hold at?

15 A. It varies. Usually it is at 1,500 feet.

16 Q. Okay. Thank you.

17 Lastly, does the City of Morris
18 engage in instructional activities for new pilots?

19 A. Yes, we are. We have a very active flight
20 school, and we teach everything from student pilots
21 through private instrument and commercial.

22 Q. Is part of that training to learn how to
23 approach the airport utilizing the Joliet VOR and
24 traveling across the top of this landfill's footprint?

1 A. Yes, it does. And it's not only our
2 flight school but Lewis University uses us and also
3 several other flight schools in the area.

4 Q. Mr. Vogen, before concluding your
5 testimony, I'd like to talk with you briefly about the
6 utility towers that are located east of the landfill
7 footprint and west of the east sedimentation basin.

8 Are you familiar with those towers?

9 A. Yes, I am.

10 Q. What, if any, effect do those towers have
11 as it relates to the construction -- or proposed
12 construction of this landfill?

13 A. Well, as far as the airport's concerned,
14 the towers do have an effect. The one thing on the
15 Joliet VOR approach to them, they are four-tenths of a
16 mile farther northeast than the landfill. The
17 footprint of the towers is roughly one-eighth of an
18 acre with the arches at 100 feet wide.

19 Towers do pose a threat to airports.
20 However, in this case, towers and power lines are not
21 bird attractants.

22 Q. Are you familiar with the width of the
23 utility towers that are located near this proposed
24 site?

1 A. Yes, I am. They're right at 100 feet
2 wide.

3 Q. Okay. And I believe you testified
4 yesterday that an aircraft approaching the Morris
5 Airport on the -- from the Joliet VOR would travel
6 approximately three-quarters of a mile across the
7 landfill footprint; is that correct?

8 A. That is correct, but that's also not
9 knowing the footprint of the borrow area.

10 Q. So you're saying there could possibly be a
11 greater distance depending on where the borrow area
12 ultimately is defined?

13 A. Yes.

14 Q. And as the aircraft continues in a
15 generally southwesterly direction to the airport,
16 would it be an accurate statement that the aircraft is
17 continuing to lose altitude?

18 A. Yes. The VOR approach is actually a
19 timing approach. You are supposed to be able to see
20 the ground. And I could pull out my chart to tell you
21 exactly, but you're given a time at the speed that
22 you're flying. There are four different categories of
23 aircraft. So your descent rate and your speed are
24 going to be different for each of those aircraft.

1 The goal on a VOR approach is to get
2 down to our minimum altitude and be able to see the
3 airport or runway. So when they cross over the VOR,
4 which is right over here outside of Plattville, they
5 are descending to their minimum altitude.

6 Q. So, in other words, there is a continual
7 descent, basically, from the VOR into the airport?

8 A. Absolutely.

9 Q. Okay. I believe one of the other
10 witnesses also testified as to a cell tower south of
11 this proposed facility.

12 Are you familiar with that?

13 A. Yes, I am.

14 Q. Where is that tower located?

15 A. That would be directly south of the
16 landfill.

17 Q. And how long has it been in that location?

18 A. It's been there roughly -- well, 10 years.

19 Q. And is -- where is that tower located in
20 relationship to the VOR instrument approach surface?

21 A. That it would be just to the left. It is
22 about right at 800 feet distance from the VOR line.

23 Q. Is there any significance to that 800-foot
24 distance from the VOR line?

1 A. Well, the good thing is you're not flying
2 directly over it. Your variance at that point, your
3 VOR is much more accurate the farther away you get
4 from a station.

5 Q. Is there a particular latitude that's
6 allowed in terms of your location in the air off of
7 the VOR line which is acceptable?

8 A. Yes. If you fly a perfect approach, 100
9 foot right or 100 foot left is the approved protection
10 area.

11 Q. So would it be a fair statement that if
12 you're 800 foot off of the VOR line, you have wandered
13 quite away off of the instrument approach?

14 A. Yes, you have.

15 Q. Mr. Vogen, based upon your education,
16 training, and experience in the aviation industry and
17 based upon your personal experiences as a pilot, do
18 you have an opinion as to whether or not this proposed
19 landfill may have a detrimental impact on the safety
20 of airport operations?

21 A. Yes, I do. Anything in this area
22 underneath our approach, underneath our circling
23 approach, underneath our departure airspace that is a
24 definite bird attractant, even in the Application it

1 says after closure, after it's done being worked, is
2 going to be a wildlife habitat refuge, that right
3 there tells me it is going to be a severe detriment to
4 the airport. It can cause us all kinds of problems,
5 it can cause the aircraft in the air all kinds of
6 problems, and it is definitely a safety issue.

7 Q. Okay. Again, Mr. Vogen, based upon your
8 education, training, and experience in the aviation
9 industry for the last 27-and-a-half years and your
10 experience as a pilot, do you have an opinion as to
11 whether or not this proposed facility would have a
12 detrimental impact on the safety of the airport
13 operations as it relates to the VFR departure path?

14 A. Yes, I do. It not only affects it for IFR
15 flights but the aircraft taking off during a standard
16 VFR day, it can cause a severe impact.

17 Q. And what is the basis of that opinion?

18 A. The aircraft departure tracks flying
19 directly over the landfill, the landfill being a known
20 bird attractant, prior bird strikes at other airports.
21 It's -- anything we do to make it safer, that's our
22 job. That's not just my job, that's all of our jobs.
23 And in this case, it's just not a good idea.

24 Q. Mr. Vogen, again, based upon your

1 experience and your training, do you have an opinion
2 as to whether or not this proposed landfill is
3 compatible with the operations at the Morris Airport?

4 A. It is definitely not compatible with the
5 operations of the Morris Airport.

6 Q. And the basis for your opinion, please?

7 A. Well, the -- the great thing -- I guess
8 not a great thing, but with bird attractants at that
9 area, not only can it cause in-flight bird strikes,
10 those birds travel 25 to 30 miles away from the
11 landfill. That can give us the possibility of having
12 a bird problem right on the airport, not only flying
13 over the airport.

14 This was brought up earlier at --
15 earlier from the DuPage Airport on what a bird problem
16 that they do have there now. If we have that problem,
17 it is going to cause us headaches every day of the
18 year.

19 Q. Thank you. Mr. Vogen, again, do you have
20 an opinion as to whether the plan of operations for
21 Willow Run have been designed to minimize the area
22 from operational accidents in the form of bird
23 strikes?

24 A. I have gone over their bird control plan,

1 and I do not see a whole lot in there that really is
 2 going to stop the bird problem.
 3 I have seen the cracker shells, the
 4 fire bombs, the cannons. These birds are extremely
 5 adaptable. They fly up, circle, land. If nothing has
 6 been killed, they come back and eat.
 7 Part of their bird control plan that
 8 I'm talking about is that they're going to have
 9 somebody watching with binoculars identifying the
 10 birds, and it's written in there if they have more
 11 than 10 birds circling of big size, then they will
 12 start implementing their bird control plan. After a
 13 year they will review it and have a USDA wildlife
 14 biologist explain to them what went wrong. That's my
 15 interpretation, of course. That's after the fact.
 16 That's too late. We need to have something
 17 implemented and going day one if this does go in.
 18 Q. Is part of the basis for your opinion your
 19 personal observations at Prairie View Landfill just
 20 last Friday night and your communications directly
 21 with the airport manager and other personnel at
 22 Settler's Hill Landfill?
 23 A. Yes, it is.
 24 Q. Lastly, Mr. Vogen, do you have an opinion

1 as to whether this landfill is proposed to be operated
 2 so as to protect the health, safety, and welfare of
 3 the public?
 4 A. Absolutely not. There has been absolutely
 5 no consideration given to the flying public.
 6 Again, the reason I'm here is for
 7 safety. I don't want to lose another friend due to an
 8 off-site airport problem. That's just unacceptable.
 9 MR. BELT: Mr. Kinnally, I have nothing
 10 further.
 11 HEARING OFFICER KINNALLY: Okay. Thank you,
 12 Mr. Belt.
 13 Mr. Moran?
 14 MR. MORAN: Thank you. Mr. Hearing Officer.
 15 Before we begin, if we might have a few minutes so we
 16 can set up our projector and a few other items.
 17 HEARING OFFICER KINNALLY: Okay.
 18 (Brief interruption.)
 19 MR. MORAN: Mr. Kinnally, we're all set to go.
 20 HEARING OFFICER KINNALLY: Okay. I guess
 21 Mr. Moran is ready to go and he's got his video there.
 22 Go ahead, Mr. Moran.
 23 MR. MORAN: Thank you, Mr. Hearing Officer.
 24

1 CROSS-EXAMINATION
 2 BY MR. MORAN:
 3 Q. Good evening, Mr. Vogen.
 4 A. Hi.
 5 Q. Did Waste Management request to meet with
 6 you in order to discuss this proposal?
 7 A. Yes, you did.
 8 Q. Okay. And that was done back in January
 9 of this year?
 10 A. No, it was closer to spring because it was
 11 right at planting time.
 12 Q. And did you meet with anyone from Waste
 13 Management?
 14 A. Yes, I did.
 15 Q. Who did you meet with?
 16 A. Yourself, Mr. Hoekstra, and I believe
 17 there was another gentleman.
 18 Q. You said you met with me?
 19 A. It wasn't you. It was Mr. Hoekstra, and I
 20 believe there was another gentleman with him. I
 21 didn't -- I don't have his card. I do have
 22 Mr. Hoekstra's card.
 23 Q. And your best recollection is that
 24 happened sometime in the spring?

1 A. Yes. It was early in the year.
 2 Q. Well, I believe it was February of this
 3 year, wasn't it?
 4 A. Okay. That would be earlier this year.
 5 Q. And that meeting occurred at your office
 6 at the --
 7 A. Yes, it did.
 8 Q. -- airport?
 9 Okay. And there was a discussion
 10 with respect to the proposed Application that was
 11 going to be filed for Willow Run?
 12 A. Yes, there was.
 13 Q. And at that point did Mr. Hoekstra
 14 indicate to you that he was interested in learning
 15 about whatever concerns you had with respect to this
 16 proposal?
 17 A. Yes, he did.
 18 Q. And did he offer -- also indicate to you
 19 that he was willing to provide whatever materials that
 20 might be helpful in your review of this proposal?
 21 A. Yes, he did.
 22 Q. And did he offer to provide those
 23 materials to you at your request?
 24 A. Yes, he did.

1 Q. Did he also offer to have you visit the
 2 Prairie View facility which is located in Will County?
 3 A. Yes, he did.
 4 Q. And did you follow up with him in order to
 5 obtain the materials that he offered?
 6 A. I did receive some of the materials. He
 7 dropped them off at my office.
 8 That time of the year was just an
 9 absolute zoo, so I was not able to go to the Prairie
 10 View center -- or Prairie View Landfill at that time.
 11 Also during that meeting he wanted to
 12 know some of my problems with the landfill. I've got
 13 the original from your Application, the lowering of
 14 the landfill, the smaller size, and at that time I
 15 pointed out to him the VOR approach, the
 16 circling-to-land approach, and the location of the
 17 landfill was unacceptable to the airport.
 18 Q. Now, in fact, after your first meeting
 19 with him in February, he attempted to call you to
 20 provide those materials that you just mentioned; is
 21 that correct?
 22 A. Yes, he did.
 23 Q. Okay. And at no point over that next few
 24 months did you ever return his call; isn't that

1 correct?
 2 A. I've -- you're probably right.
 3 Q. All right. And at some point Mr. Hoekstra
 4 actually dropped off the materials at your office at
 5 the airport; is that correct?
 6 A. Yes, he did.
 7 Q. Okay. He came to see you, and you weren't
 8 there?
 9 A. Correct.
 10 Q. Okay. And those are the materials you
 11 were referring to, and those materials included the
 12 drawings at least showing the footprint of this
 13 proposed facility?
 14 A. Yes, the drawing showed the footprint of
 15 the facility.
 16 Q. Okay. Did you ever contact Mr. Hoekstra
 17 after receiving those materials?
 18 A. No, I did not.
 19 Q. Okay. Did Mr. Hoekstra attempt to contact
 20 you again after he dropped off the materials?
 21 A. I don't know if he did or not.
 22 Q. Well, in fact, he did attempt to reach you
 23 by phone a few times?
 24 A. Earlier in the year, yes, he did.

1 Q. I'm talking about after he dropped off the
 2 materials.
 3 A. That, I do not know. There were no
 4 messages on my machine.
 5 Q. Did he send you a letter?
 6 A. Yes, he did.
 7 Q. Okay. And in his letter he said he was
 8 trying to reach you, you hadn't responded, he wanted
 9 to still be able to set up that meeting with you and
 10 have you visit Prairie View; is that correct?
 11 A. I can tell you right here. I've got the
 12 letter.
 13 Yes, he apologized for missing me on
 14 several occasions, stopped by and left the drawing and
 15 would like to meet to go to the Wilmington site.
 16 Q. Okay. Did you ever respond to the letter?
 17 A. The letter I received was August 15th. I
 18 was already busy planning for this hearing.
 19 Q. So you didn't have an opportunity to
 20 respond to it?
 21 A. No, I did not.
 22 Q. Okay. Now, you've indicated to us that
 23 you did visit Prairie View last Friday?
 24 A. Yes, I did.

1 Q. All right. Was there some reason you were
 2 unable to visit Prairie View prior to September 4th to
 3 take the photos that you ended up taking?
 4 A. Well, for a lot of people here, you also
 5 know I farm. I'm a very busy person. The airport has
 6 become very busy drawing my time.
 7 Last Friday, I did have the
 8 opportunity, I had a helicopter at my disposal, and I
 9 was able to fly over the Prairie View center.
 10 Q. Did you contact Mr. Hoekstra before you
 11 did that?
 12 A. No, I did not.
 13 Q. Now, when you followed up with your visit,
 14 did you make any attempt to determine whether there
 15 was a bird control plan in effect for Prairie View?
 16 A. No, I did not. I was told, quote-unquote,
 17 that this is a great site to see an operating
 18 landfill, and that's what I went to see.
 19 Q. Okay. Now, are you aware of the fact that
 20 the Prairie View facility is in the middle of the
 21 20,000-acre Midewin Tallgrass Prairie site?
 22 A. Yes, I am.
 23 Q. Are you also aware that that facility is
 24 located in and near the DesPlaines Fish and Wildlife

1 area?

2 A. Yes, I am.

3 Q. Now, with respect to your Exhibit No. 29,

4 which I believe was presented in the packet that

5 you've presented for us, can you go to that exhibit?

6 A. I've got it.

7 Q. Now, this document represents a summary of

8 incidents reported at the DuPage Airport?

9 A. Yes, it does.

10 Q. And is there a protocol that's followed in

11 both gathering the information and reporting it with

12 respect to each of the incidents identified on this

13 exhibit?

14 A. I don't know how DuPage does it, but, yes,

15 I'm sure there is.

16 Q. Okay. And would it be fair to say that

17 for each incident that's reported, the date of that

18 incident is identified on the exhibit?

19 A. Yes, it is.

20 Q. And the airport at which the incident

21 occurred is identified?

22 A. Yes, it is.

23 Q. The type of aircraft that is involved is

24 also identified?

1 have been identified on your Exhibit 29, is there any

2 information provided that any of these incidents

3 occurred at or on the Settler's Hill Landfill?

4 A. Without putting a tracking device on the

5 birds, that would be unknown.

6 The problem --

7 Q. So -- I'm sorry, Mr. Vogen.

8 So would it be accurate to say that

9 this exhibit in no way indicates that any of these

10 reported incidents came about as a result of any bird

11 activity on or at the Settler's Hill Landfill?

12 A. What this does -- what this evidence does

13 is shows that the DuPage Airport does have a bird

14 problem. That is what we are trying to avoid at the

15 Morris Airport.

16 The ironic part of this piece of

17 evidence is that the Settler's Hill Landfill is

18 directly at the end of the runway most identified as

19 where these bird strikes were caused.

20 Like I said, the birds fly in to eat,

21 fly out. If they're landing near the airport, if the

22 wildlife attractant is near the airport, that causes a

23 problem at the airport.

24 Q. Mr. Vogen, maybe I could rephrase the

1 A. Yes, it is.

2 Q. The runway at DuPage Airport on which the

3 incident occurred is identified?

4 A. Yes, it is.

5 Q. The damage code for that particular

6 incident is identified?

7 A. Yes, it does.

8 Q. The location from the airport at which

9 this incident occurred is also identified?

10 A. Yes, it is.

11 Q. And, of course, the species of bird that

12 was involved in the incident is also identified?

13 A. Yes, it is.

14 Q. Now, for each of the incidents that has

15 been identified on this Exhibit 29, where it's

16 indicated in the distance column that the distance is

17 0.0, does that indicate that the incident occurred on

18 the airport or on the airport grounds?

19 A. Yes, it does.

20 Q. And where there is no distance indicated

21 on the entry, does that also indicate that the

22 incident occurred on or around the airport grounds?

23 A. Yes, it does.

24 Q. Okay. And for any of the entries that

1 question.

2 Is it accurate to say that your

3 Exhibit 29 does not indicate any evidence that would

4 suggest that any of the incidents reported occurred as

5 a result of birds either on or near the Settler's Hill

6 Landfill?

7 A. For direct proof of where that bird comes

8 from, no, it does not.

9 Q. Now, with respect to the statement you

10 just made about Settler's Hill being at the end of the

11 runway at the DuPage Airport, if you could turn around

12 and look at the aerial that has been projected on the

13 screen, do you recognize this slide and what it

14 depicts?

15 A. Absolutely. Settler's Hill is just to the

16 southwest of the 2-20 runway.

17 Q. So it's not accurate to say that Settler's

18 Hill is at the end of that runway?

19 A. No, but that is the closest runway

20 affected to Settler's Hill.

21 Q. And just so that we're clear, the DuPage

22 runway you're referring to is located right along the

23 line that I'm identifying here; would that be correct?

24 A. That is correct.

1 Q. And the Settler's Hill Landfill is located
 2 over on the left-hand side of this exhibit over in the
 3 lower left corner of this aerial; would that be
 4 correct?
 5 A. That is correct.
 6 HEARING OFFICER KINNALLY: Can we identify the
 7 slide by some reference for the record? What slide is
 8 this, do we know?
 9 MR. MORAN: This is an aerial slide that we
 10 have not identified as yet although we've used -- in
 11 our earlier slides, there is an aerial depiction that
 12 includes most of what is depicted on this slide.
 13 HEARING OFFICER KINNALLY: I understand that.
 14 I just think it might be a good idea that if you
 15 produce this for the record so we can have something
 16 other than -- we won't have anything in the record to
 17 show us.
 18 MR. MORAN: Yes, we would intend to submit a
 19 hard copy of the slide at the appropriate time.
 20 HEARING OFFICER KINNALLY: Okay. Thank you.
 21 MR. MORAN: Okay.
 22 BY MR. MORAN:
 23 Q. Now, Mr. Vogen, we had previously
 24 identified that the distance between the DuPage

1 Airport runway and Settler's Hill, the northeast
 2 corner of Settler's Hill, is just under 10,000 feet;
 3 would that be correct?
 4 A. I believe you mentioned that in testimony,
 5 yes, or Mr. Hoekstra did.
 6 Q. Now, you've also indicated, I believe in
 7 your direct testimony, that the number of bird strikes
 8 at the DuPage Airport has been drastically increasing?
 9 A. It has -- let me -- let me rephrase that,
 10 because they were increasing every year, every year.
 11 After Settler's Hill closed, I
 12 believe that was in 2006, they have seen a reduction
 13 in gulls.
 14 Q. And is that what your Exhibit 29 shows?
 15 A. As you can see from 2005, there was only
 16 one gull strike. In 2007, after that they are unknown
 17 birds; so yes.
 18 Q. Well, what you pointed to was a strike or
 19 an incident on November 6th of 2005 involving a gull.
 20 Settler's Hill was still open at that time?
 21 A. I assume so. Yes, I believe it was closed
 22 in 2006; is that correct?
 23 Q. And I believe there's also an entry which
 24 shows that there was an incident involving gulls on

1 April 12th of 2007; is that correct?
 2 A. That is correct.
 3 Q. And if you count the number of incidents
 4 that occur after Settler's closes, which would be from
 5 April 12th of 2007 through January 9th of 2008, that's
 6 a total of six incidents; correct?
 7 A. That is correct.
 8 Q. And, in fact, for 2007, five of those
 9 incidents occurred; correct?
 10 A. That is correct.
 11 Q. And yet in the year prior, 2006, there was
 12 one incident?
 13 A. That is correct.
 14 Q. And Settler's Hill closed on December 31st
 15 of 2006?
 16 A. That's correct, after --
 17 Q. So, in fact, Mr. Vogen, after Settler's
 18 closed, there was a fivefold increase in the number of
 19 incidents involving birds at the DuPage Airport, would
 20 that be correct?
 21 A. That is correct, and I also have a very
 22 good explanation. That was a great question. Because
 23 after talking to the operations people at DuPage
 24 Airport, they now, if they even find a bird on the

1 runway, they make a report. They are very, very
 2 diligent in their reporting status. They want to make
 3 sure that they are able to control what's going on at
 4 their airport.
 5 Q. Now, Mr. Vogen, isn't it true that the
 6 DuPage Airport has never had a major accident
 7 involving any bird strike?
 8 A. Are you saying death, or are you saying
 9 major accident involving high dollars? Could you
 10 rephrase that question for me, please?
 11 Q. I guess we can start with a fatality. Has
 12 there ever been a major incident involving a bird
 13 strike that has involved a fatality?
 14 A. I hope for the sake of all people flying
 15 there's never been a fatality involving a bird strike
 16 at DuPage.
 17 Q. Well, that wasn't my question.
 18 My question was, has there ever been
 19 a bird strike at DuPage that has resulted in a
 20 fatality, to your knowledge?
 21 A. Not to my knowledge.
 22 Q. Okay. In fact --
 23 A. How --
 24 Q. I'm sorry. Did you finish your answer?

1 A. No, go ahead.
 2 Q. In fact, with respect to any bird strikes
 3 at the DuPage Airport, have any of those incidents
 4 involved a -- I'll withdraw that question.
 5 Mr. Vogen, if we could look at the
 6 slide depicted behind you showing the area that we've
 7 just referenced, with respect to the uses in and
 8 around the DuPage Airport, are you aware that there is
 9 a golf course located directly in the end of the
 10 runway that you've just identified?
 11 A. Yes, I am.
 12 Q. And who owns that golf course?
 13 A. That is owned by the DuPage Airport, the
 14 DuPage Airport Authority.
 15 Q. Okay. And the DuPage Airport Authority
 16 continues to operate that golf course; is that
 17 correct?
 18 A. That is correct. I believe that when that
 19 was put in, the DuPage Airport Authority put that in
 20 and purchased the ground so that they could have
 21 control over that area.
 22 Q. Okay. And is it accurate to say that this
 23 golf course has surrounding it a course of waterways
 24 and ponds directly south of that runway?

1 A. Absolutely. Open water and man-made
 2 ponds, borrow pits, they all are bird attractants.
 3 Q. Okay. And if we could look at the slide
 4 immediately behind you, would it be accurate to say
 5 that these waterways are located beginning in the
 6 upper left-hand corner of this slide, which would be
 7 the northwest portion of the golf course, extending
 8 down around the edge of that runway as depicted here
 9 in a circular movement, in fact, entirely encircling
 10 the bottom portion of the end of that runway?
 11 A. Absolutely.
 12 Q. Okay. There's also a pond over on the
 13 right-hand corner here; is that correct?
 14 (Indicating.)
 15 A. Yes, sir.
 16 Q. Also a body of water here, right above the
 17 woodland area located to the east of the golf course?
 18 (Indicating.)
 19 A. Yes, there is.
 20 Q. All right. Is there also a golf course
 21 that is located to the immediate north of this
 22 airport?
 23 A. That, I don't know.
 24 Q. Well, if we could take a look at the area

1 directly north of the airport, do you recognize the
 2 course that's identified here which is the Pheasant
 3 Run golf course?
 4 A. Oh, yes. Yes, I am familiar with that.
 5 Q. Okay. And that's located immediately to
 6 the northwest of the DuPage Airport?
 7 A. Mostly west, yes.
 8 Q. Okay. With bodies of water in a number of
 9 locations, including in this location, the bottom
 10 center portion of that course? (Indicating.)
 11 A. Yes, there is.
 12 Q. And bodies of water up, I believe, here,
 13 here, and the other ponds also identified in that
 14 course; is that correct? (Indicating.)
 15 A. Yes, there is.
 16 Q. Are you aware of the fact that there's a
 17 waste transfer station located immediately north of
 18 this airport just south of Route 64?
 19 A. Yes, I am. Waste transfer stations are
 20 also incompatible with airports.
 21 Q. Okay. Now, you have indicated on a number
 22 of occasions that open water is a condition or a
 23 situation that is of significant concern to you as you
 24 evaluate public safety and health; would that be

1 correct?
 2 A. Absolutely.
 3 Q. Are there bodies of water in and around
 4 the Morris Airport?
 5 A. Yes, there are.
 6 Q. Okay. And can you -- I put on the board
 7 behind you, the screen behind you, an aerial that
 8 depicts the Morris Airport.
 9 A. This is a fantastic question, and I'm so
 10 glad you asked it. Let me get my little thingie.
 11 If you remember my testimony, this is
 12 part of the property that the Morris Airport is in the
 13 process of purchasing. Right here, there's a
 14 two-and-a-half acre open body of water. One of the
 15 reasons -- one of the main reasons is for the
 16 extension of our runway. Part of our property
 17 purchase is the mitigation of this pond. Once the
 18 City of Morris has control of this area, we are
 19 eliminating that pond with mitigation with the USDA to
 20 where that open body of water is now -- will soon be
 21 gone. (Indicating.)
 22 That is a big concern of the airport.
 23 You are correct.
 24 Q. Is there also a body of water located

1 right here immediately to the west of this principal
 2 runway?
 3 A. Yes, there is. That is a quarter-acre
 4 drainage pond. The City of Morris does not own that
 5 at this time. However, as our expansion goes, that
 6 pond also will be mitigated.
 7 Q. Are there any ponds located in close
 8 proximity to this airport in the developments along
 9 Route 47 to the west?
 10 A. Yes, there are.
 11 Q. And is one of those ponds a 30-acre pond
 12 located on the Prologis site located just southwest of
 13 the airport?
 14 A. Yes, it is.
 15 Q. And was that a concern for you as that
 16 site was developed?
 17 A. It is and still is, and we have been
 18 talking with Prologis for mitigation -- not
 19 mitigation, but wildlife control measures for that
 20 area.
 21 Q. Is there a landfill located within the
 22 City of Morris within three miles of the Morris
 23 Airport?
 24 A. Yes, there is.

1 Q. And what landfill is that?
 2 A. That is the Environtech Landfill.
 3 Q. And the Environtech Landfill has been at
 4 that location for well over 20 years?
 5 A. Yes, it has.
 6 Q. And that landfill has and continues to
 7 operate and will operate at least over the next few
 8 years, is that your understanding?
 9 A. Yes, it will.
 10 Q. Now, Mr. Vogen, in all of the testimony
 11 that you have presented, both by way of your testimony
 12 and the written documentation, have you presented or
 13 can you identify for us any situation where the bird
 14 strikes that you have described have occurred at an
 15 airport at or near an operating landfill?
 16 A. That is a very, very good question; and
 17 yes, I can. It's going to be a long story.
 18 A DC-10 overseas National Airways was
 19 taking off at JFK airport. The No. 3 engine of the
 20 DC-10 was struck by a gull, multiple gulls. The
 21 engine literally exploded, came apart, caught on fire.
 22 The airport -- or the aircraft rejected takeoff, slid
 23 to a stop. 132 people got off before the aircraft
 24 burnt to the ground.

1 Part of the accident investigation,
 2 the NTSB spelled out it was because of the location of
 3 two landfills near the airport.
 4 Q. And which two landfills?
 5 A. I don't know the names of them.
 6 Q. Okay. Do you know when those landfills
 7 were constructed?
 8 A. No, I do not.
 9 Q. Do you have any idea as to whether those
 10 landfills had any bird control plans or similar
 11 procedures to identify and minimize any bird activity
 12 at those facilities?
 13 A. No, I do not.
 14 Q. In fact, both of those facilities were
 15 pre-Subtitle D areas that were used for waste disposal
 16 from prior to 1978; isn't that true?
 17 A. The only thing I know is that you asked
 18 the question if I knew of an aircraft accident
 19 involving a landfill near an airport.
 20 Q. Okay. And would it be accurate to say
 21 that that's the only example that you're aware of and
 22 the only information you have with respect to any
 23 indication that there's evidence to suggest that a
 24 bird strike has occurred as a result of a bird being

1 attracted to a solid waste landfill and causing the
 2 kind of bird strike that you've identified in these
 3 proceedings?
 4 A. That is the only example. And that is why
 5 I'm here, is to make sure that that is the only
 6 example.
 7 Q. And all the examples that you have shown
 8 us with respect to any bird strikes had absolutely
 9 nothing to do with any operating landfill and the
 10 possible movement of a bird from that landfill to the
 11 aircraft that you've identified; would that be
 12 correct?
 13 A. That is correct.
 14 MR. MORAN: Thank you, Mr. Vogen.
 15 Nothing further, Mr. Kinnally.
 16 HEARING OFFICER KINNALLY: Okay. Thank you,
 17 Mr. Moran.
 18 Mr. Porter?
 19 MR. PORTER: Just one follow-up.
 20 CROSS-EXAMINATION
 21 BY MR. PORTER:
 22 Q. You did have the data contained in Morris
 23 Exhibit 29. It's very possible, is it not, that the
 24 birds reflected in there emanated from the landfill at

1 Settler's Hill; right?
 2 MR. MORAN: Objection; speculation.
 3 MR. PORTER: He just asked him to speculate.
 4 MR. MORAN: And he just answered.
 5 HEARING OFFICER KINNALLY: Could you rephrase
 6 your question?
 7 BY MR. PORTER:
 8 Q. Well, you just got done testifying that
 9 none of the incidents that you have referenced had
 10 anything to do with the landfill.
 11 Isn't it true you don't know that?
 12 A. That -- could you rephrase that for me one
 13 more time, please?
 14 Q. Do you know where the birds emanated from
 15 referenced in Morris Exhibit 29?
 16 A. No, I do not. However, as you can see,
 17 most of them are gulls.
 18 I did some research on this. The
 19 Kane County Bird Spotters group, Kane County Bird
 20 Spotting Spots, the most recent issue, the best place
 21 to find all habitat of gulls -- and I've got them all
 22 listed here -- is at the Settler's Hill Landfill.
 23 Best place to observe them from after they made the
 24 last berm is the Kane County Cougar's Stadium.

1 Q. And you personally witnessed a large flock
 2 of gulls at that landfill; is that right?
 3 A. No, the flock of gulls that I had the
 4 pictures of were the Prairie View Landfill.
 5 Q. Okay. The Settler's Hill Landfill, when
 6 did it close?
 7 A. They've got a better idea than me, but I
 8 believe it's 2006.
 9 Q. And I do notice that the reference to
 10 gulls on here, except for one, are all before 2006; is
 11 that correct?
 12 A. That is correct.
 13 MR. PORTER: Nothing further.
 14 HEARING OFFICER KINNALLY: Mr. Mueller?
 15 MR. MUELLER: No, thank you.
 16 HEARING OFFICER KINNALLY: All right.
 17 Ms. Kramer?
 18 MS. KRAMER: No, thank you.
 19 HEARING OFFICER KINNALLY: Okay. Anyone from
 20 the County Board?
 21 EXAMINATION
 22 BY BOARD MEMBER DAVIDSON:
 23 Q. Yes. Bob Davidson. I've got a couple
 24 questions.

1 In your testimony you said that the
 2 DuPage Airport runways 2L and 2DR or -- and basically
 3 the two that you're showing in your Exhibit 29, you --
 4 I believe you stated that they were extended and
 5 opened in 1996?
 6 A. The actual runway was opened in '92 at
 7 5,000 feet, and in 1996, it was extended to the
 8 seventh -- to the present condition.
 9 Q. It was extended?
 10 A. Correct.
 11 Q. And that put it closer to the runway;
 12 correct?
 13 A. Absolutely.
 14 Q. Why -- and then in -- explain to me that
 15 if a landfill is to remain over 10,000 feet from -- or
 16 five miles, whatever you -- we've heard both here, how
 17 can the FFA -- FFA extend the runway when the landfill
 18 is already there? I mean, you just put everybody in
 19 harm's way --
 20 A. I understand your question. That's a
 21 very, very good question.
 22 The DuPage Airport is a different
 23 type of entity. It's the DuPage Airport Authority.
 24 They're basically their own taxing body, and they are

1 allowed to make their own recommendations and
 2 everything. They do go through the FAA.
 3 Part of that deal -- let me explain.
 4 Part of that deal they went from a 900-acre airport to
 5 a 2,800-acre airport so they could control their own
 6 borders. That's why they have implemented their bird
 7 control plan and all that. How it all went through
 8 the FAA, I can't explain.
 9 Q. Well, I thought all airports had to run by
 10 the same rules.
 11 A. Yes, they do. They're supposed to.
 12 Q. They're supposed to. So what's fair for
 13 the goose isn't fair for the gander?
 14 A. Correct.
 15 Q. Okay. You say you're a farmer. Now, what
 16 about the cornfield and the beans? Are they not also
 17 a hazard once the crop is removed?
 18 A. That is an excellent question; and yes, we
 19 actually do have farming plans and farming practices
 20 to eliminate -- let me say -- let me rephrase. You
 21 can't eliminate. To reduce the chance of wildlife in
 22 those areas.
 23 Q. Okay. Now, I guess I have a hard time
 24 understanding that. I have a plane. Average plane

1 speed is what?
 2 A. On approach, the -- the two most used
 3 approach speeds are 130-, 140-mile-an-hour, right in
 4 that area.
 5 Q. Okay. So --
 6 A. That's for high performance.
 7 For the smaller aircraft, you're
 8 talking 80- to 90-mile-an-hour.
 9 Q. So a bird that is on the water or at the
 10 landfill has to be in the air prior to any landing; in
 11 other words, that bird can't come off the landfill,
 12 cannot come off the body of water and catch an
 13 airplane from a dead stop?
 14 A. That is true. However, the birds flying
 15 back and forth to the landfill going to get food,
 16 going back to the resting places, now you're in the
 17 flight path.
 18 Also with some bird control measures,
 19 as I mentioned earlier, the pattern with cracker
 20 shells, with cannons, the birds immediately go to 100
 21 feet, climb to 1,000, and go back down. Now they're
 22 in your line of flight.
 23 Q. You also made one statement that kind
 24 of -- your landing and takeoffs, you're saying the

1 prevailing wind is out of the south.
 2 When it's out of the north, where
 3 is your -- your planes take off and land from the
 4 south; correct?
 5 A. If the -- yes, exactly. And that is --
 6 that's, again, because of the VFR departure tracks, if
 7 you're landing from the south, that means you're
 8 taking off to the north. Your departure track after
 9 your takeoff is to the northeast on roughly a
 10 45-degree angle which leads you directly over the
 11 landfill.
 12 Q. Do these planes fly over the Morris
 13 Landfill that's existing now?
 14 A. Well, there are times that they have, yes.
 15 Q. Has Morris had any --
 16 A. Our --
 17 Q. -- bird strikes?
 18 A. No. Actually, we have been -- I'm very
 19 pleased to say we have not. (Indicating.)
 20 The only way I can justify the fact
 21 that we have not had a bird problem is the fact that
 22 the normal nesting area for this type of bird is down
 23 in the cooling lakes, on the rivers, in the creeks.
 24 They fly basically to the landfill to eat.

1 We do have gulls at the landfill,
 2 there is no doubt about it. They fly to the landfill
 3 and then they fly back to their nesting place. We are
 4 extremely fortunate, we are not in their traffic
 5 pattern.
 6 Q. All right. And one last question: You
 7 made the statement, I believe it was, that the birds
 8 travel up to 25 miles.
 9 A. Absolutely.
 10 Q. Okay. Then the Morris River, which is the
 11 biggest, what do I want to say, refuge for Canadian
 12 geese and mallard ducks, the Illinois rivers, so
 13 they're prevalent all the time?
 14 A. We are in the Mississippi flywheel, you're
 15 exactly right.
 16 BOARD MEMBER DAVIDSON: Okay. Thank you.
 17 EXAMINATION
 18 BY BOARD MEMBER VICKERY:
 19 Q. Hi, Jeff.
 20 A. Hi.
 21 Q. Anne Vickery.
 22 As Morris grows farther and farther
 23 north and as they continue to build their mega
 24 warehouses north and every large body of water, like

1 the one over there by Prologis, 30 acres, every one of
 2 those because they are big bodies of water, would draw
 3 waterfowl.
 4 Doesn't that put you a little bit
 5 more at risk?
 6 A. Well, I am very, very fortunate that the
 7 mayor of Morris and the aldermen, we have now put
 8 restrictions in for future development.
 9 They are going to have water runoff,
 10 absolutely, but they are going to be detention ponds.
 11 Just like in the advisory circular I brought out, they
 12 will hold water for 24 hours and release the water
 13 slowly into the drainage system. They are not meant
 14 to hold water. They will just be a big open area
 15 slowly releasing the water.
 16 Q. And would that be the same way with every
 17 detention or retention pond that is put in for every
 18 home development, too?
 19 A. That -- if it's in our area, we are
 20 exactly absolutely going to try and plan that.
 21 Q. And you keep talking about the seagulls
 22 being a big, big hazard for air flight from the
 23 landfills; right?
 24 A. Yes.

1 Q. As I looked at this report here from
2 Settler's -- from the DuPage County Airport, out of 30
3 strikes, 11 were gulls?

4 A. Correct.

5 Q. The other were -- the other ones were
6 Canadian geese, unknown, unknown, killdeers,
7 red-tailed hawk, coyotes?

8 A. Absolutely.

9 Q. So, I mean, it's not just gull? Any kind
10 of thing that fly, regardless, or four legs?

11 A. Correct. A wildlife strike is a wildlife
12 strike, you're absolutely right.

13 Q. And I know I've come by the airport on
14 some of the beautiful fall days and on the west side
15 of 47 I've seen those cornfields just covered with the
16 Canadian geese.

17 What do you do on a day like that
18 when you know there is 7 or 8,000 of those birds out
19 there?

20 A. Geese are a little different than gulls.
21 When we do have a problem, we can actually try and
22 chase them out if it's in the neighboring area to the
23 airport.

24 We also have got on the radio and

1 warned the aircraft coming in that there are migratory
2 birds, there are geese in the area. It's an ongoing
3 problem.

4 BOARD MEMBER MARTIN: Are you done?

5 BOARD MEMBER VICKERY: Yes.

6 EXAMINATION

7 BY BOARD MEMBER MARTIN:

8 Q. Nancy Martin.

9 Have you had any other animal strikes
10 at the Morris Airport?

11 A. There have been none reported and none to
12 my knowledge.

13 Q. No other wildlife?

14 A. No.

15 Q. No?

16 A. In fact, if you remember our airport
17 layout plan, part of that, we are doing an ongoing
18 wildlife study. In fact, it should be just finishing
19 up this year. Part of that plan is to identify ground
20 animals that will cause hawks, everything else, to
21 come in.

22 And if you noticed on our airport
23 layout plan, the far south reaching borders, that has
24 now been fenced with a 10-foot fence with three

1 strands of barbwire. After our north property
2 acquisition and runway, the entire airport will be
3 fenced in that way to keep out the ground animals.

4 Q. And have you ever heard of the Merlin
5 system for -- it must be some kind of a system that
6 airports have --

7 A. Yes, I have.

8 Q. -- to detect?

9 A. Yes. That is very high-tech. It is being
10 in the testing phases. It is -- the simplest way to
11 describe it is it's a radar for birds. The Merlin
12 system is in -- it's basically in its infancy. It is
13 a great system. For everything I have read about it,
14 it is outstanding to give aircraft a warning, and it's
15 from the airport, especially if you have a control
16 tower, they can tell you the pattern, the flock, the
17 size, the whole bit. It's really a wonderful system.

18 Q. Is it expensive?

19 A. Extremely.

20 Q. Because I looked up about bird strikes on
21 the computer and I saw that Merlin system. So I
22 thought that would be a good thing for people to have
23 if they were concerned, because we're never going to
24 control Mother Nature totally?

1 A. Absolutely. And the Merlin system is a
2 great way to warn pilots. Unfortunately you do have
3 to have an active control tower at the time to give
4 them that warning.

5 BOARD MEMBER MARTIN: Thank you.

6 EXAMINATION

7 BY BOARD MEMBER PURCELL:

8 Q. John Purcell.

9 You stated that there's been no
10 wildlife strikes, including birds, at your airport to
11 your knowledge?

12 A. No, there has not, and none reported.

13 Q. Okay. Thank you.

14 Are you familiar with statistics for
15 bird strikes at other airports?

16 A. I -- just major bird strikes are what's
17 usually reported. Because the DuPage Airport was
18 brought up as not having a problem, I am familiar with
19 the DuPage Airport.

20 Q. Okay. But no other airports in the
21 United States?

22 A. I did not pull up -- no, I did not pull up
23 those airports. I have talked to other airport
24 owners -- or not -- airport managers, but I do not

1 know every airport.
 2 Q. Okay. So you would have no numbers nor
 3 percentages?
 4 A. No, I would not.
 5 Q. Okay. So that would include airports
 6 around other landfills? You have no statistics for
 7 those?
 8 A. No, I do not.
 9 Q. Okay.
 10 A. Just ours.
 11 Q. Okay. That's fine.
 12 In your opinion, is flying considered
 13 a safe or relatively safe mode of transportation?
 14 A. Flying is definitely safe, and it's for
 15 people like us, I'm talking "us," everybody in this
 16 room, to keep it that way.
 17 Q. Okay. So even though there are in the
 18 United States existing bird hazards and there have
 19 been known bird strikes, you still consider flying a
 20 relatively safe mode of transportation?
 21 A. Yes, I do, but with caution when you're
 22 going into areas with heavy bird activity.
 23 Q. Okay. And if this facility were sited,
 24 what measures would you recommend that are taken?

1 A. Well, my goal in safety respect is for it
 2 not to be sited in that location.
 3 Q. But I didn't ask you that.
 4 A. I understand that. And I'm trying to give
 5 you a good reason why for safety measures, bird
 6 control plans -- every bird control plan -- I
 7 shouldn't say every. I mean, most bird control plans
 8 are a Band-Aid. They do not literally stop the
 9 problem.
 10 The only way to stop, and at a
 11 landfill, other places, to stop a bird problem, a
 12 wildlife problem, is to eliminate the food source.
 13 They are out scavenging, trying to eat.
 14 I have talked to people using
 15 pesticides, and tainted food for this type of bird,
 16 they do not work. The closest thing to working is
 17 a -- there is one pesticide to kill ants. You kill
 18 the ants, you get less worms. You get less worms, you
 19 get less food source. Believe it or not, that's a
 20 pesticide that is actually starting to work for this
 21 type of problem.
 22 Q. Did I hear you state that birds fly 25 to
 23 30 miles?
 24 A. Yes, they do.

1 Q. So would that mean you'd have to
 2 eliminate, also, then, the flow of the Illinois River?
 3 A. No.
 4 Q. Okay.
 5 A. I do not mean that. That is the -- that's
 6 their nesting area.
 7 BOARD MEMBER PURCELL: Okay. Thank you.
 8 EXAMINATION
 9 BY BOARD MEMBER HATCHER:
 10 Q. Hi. Good evening. Kay Hatcher.
 11 Like Nancy, I had done some research
 12 about the Merlin system and was interested to see how
 13 it worked. And while it may be repeating something
 14 you've already said, I really would like you to hear
 15 it.
 16 If the Merlin system was installed at
 17 your airport, do you feel that it would provide
 18 reasonable safeguards for any possible wildlife
 19 activity that might be generated from a landfill?
 20 A. It is -- right at this time, it is
 21 impractical at our airport. It would not help because
 22 we do not have a control tower there to contact the
 23 aircraft flying at 24 hours a day.
 24 We are under what's called a Unicom

1 system. In other words, the aircraft announce their
 2 position. There is nobody telling them their traffic
 3 pattern or how to come in and out of the airport.
 4 If we had a control tower, do I think
 5 it would be wonderful? Anything that makes it safer
 6 is wonderful.
 7 Q. Maybe that should be part of the Host
 8 Agreement.
 9 A. Well, we'd need a control tower, too.
 10 Q. Well, yeah, I meant that, too.
 11 EXAMINATION
 12 BY BOARD MEMBER WEHRLI:
 13 Q. Mr. Vogen, Jeff Wehrli.
 14 You've got a creek and woods in close
 15 proximity to the runways. How do you keep the birds
 16 out?
 17 A. Those are done with -- the Morris Airport
 18 does have our own patrols. In morning and evening we
 19 make diligent runs to make sure.
 20 I'm usually there by 5:00, 5:30 in
 21 the morning. Most of our traffic does not start
 22 showing up until 6:30. We're out checking for birds,
 23 geese, ducks, deer, coyotes, even ground squirrels,
 24 believe it or not, because the ground squirrels draw

1 the coyotes.

2 Q. Okay. But that's what you would consider

3 a Band-Aid, also?

4 A. Absolutely.

5 Q. Okay. Is it true that on a VFR you cannot

6 set the climb or ascent rates, you cannot change them?

7 In other words, you saying that for the different

8 engine types that the ascent rates or the climb rates

9 are basically set in stone or uncalibrated?

10 A. On a VOR they are.

11 Q. VOR?

12 A. Yes, they are uncalibrated. They are

13 literally a descent to your altitude, and it's done by

14 timing. In other words -- and I don't have the chart

15 directly in front of me, but if I cross over the

16 Joliet VOR in -- I'm just going to abstract a

17 number -- 6.3 minutes or six-and-a-half minutes,

18 you're going to be at your destination, your final

19 approach fix, which would be the Morris Airport. At

20 that point in time, you need to be at your -- and the

21 descent rate is not a set descent rate.

22 Q. Okay. Okay. Can you describe your

23 farming efforts to keep birds out of your fields? You

24 mentioned that you farm and that you keep birds out of

1 your field when you farm. Describe those efforts.

2 A. Normal farming efforts, you cannot keep

3 birds out of your farm.

4 Around the airport we put in minimum

5 tillage. We make sure that the seeds are down under

6 the ground. Farming practices, you make sure that

7 your seed bed -- I mean, basic knowledge. When you

8 get heavy rains, you just plant, you get heavy rains,

9 you just combine, you're going to have birds out

10 everywhere.

11 So you change your farming practice

12 to make sure when you're doing them you're doing them

13 in the proper time and you're getting them covered to

14 where there is no food source for those animals.

15 Q. Okay. Let's go back to DuPage County

16 Airport, please.

17 You said that 90 percent of the

18 accidents up there happen on the runway. Is 2 left

19 and 20 right?

20 A. Yes, runway 2-20.

21 Q. Okay. Knowing that the landfill existed

22 in 1992, why would the airport expand a runway with a

23 flight path adjacent to the landfill?

24 A. You know what? That is a question that I

1 don't understand the answer to myself.

2 Q. Then let me ask you, would you say that

3 DuPage County Airport Authority are lax in their

4 control over aircraft safety or you are being

5 proactive in trying to be overly safe? Because

6 there's definitely a huge difference in the

7 discrepancy on what you allow or what you would like

8 to allow and what the DuPage County Airport allows, a

9 big discrepancy.

10 A. You're absolutely right. I would -- if I

11 was at DuPage doing this, I would be pulling my hair

12 out on why they did that.

13 Q. No, I'm asking you, are they being unsafe

14 to their people that fly in, or are you trying to be

15 over safe?

16 A. No, and I'm going to -- I have to

17 speculate on this answer, because I don't know what

18 they were thinking at the time. However, when they

19 put in their usage -- they needed a longer runway.

20 When they put that longer runway in, and this is

21 strictly speculation on my part, I can't answer for

22 them, and I can't answer for the FAA.

23 Q. I understand.

24 A. But they did know that Settler's Hill was

1 going down on its last days. It was soon to be

2 closed. That could be part of the reason they did

3 that. I don't know.

4 Q. There was a four-year time span in between

5 when they built the runway and the closure of that

6 landfill. Four years is quite a bit of time.

7 A. That is correct. And that is why I said I

8 really can't give you the answer to that question.

9 Q. Okay. But then -- but obviously the FAA

10 didn't have a problem approving the actual building of

11 that runway with that landfill in that close

12 proximity?

13 A. Again, I wasn't there. Part of that deal

14 was, though, that they were to buy the property around

15 the area. Like I said, they went to 2,800 acres.

16 I'm sure part of their proof was that

17 they were going to implement, and, again, I can't

18 testify 100 percent, but part of their proof to get

19 that approval was to implement their bird control

20 procedures and try and control that area.

21 Q. Okay. But the FAA did allow that runway

22 to be built in a lot closer proximity to a landfill

23 than what is being proposed here?

24 A. Yes, they did. Yes, they did.

1 Q. Okay. Thank you.
 2 A. Can I add to that?
 3 Q. Sure.
 4 A. Yes, they did. And, again, look at the
 5 bird strikes, look what they got.
 6 Q. Okay. Does the FAA guidelines mandate
 7 that airports building additions contact waste
 8 management facilities -- waste management facilities
 9 in their areas to inform them of potential conflicts?
 10 Do you need to contact them when you expand?
 11 A. No, we do not. It is a one-way street.
 12 Q. Okay. What would be the minimum altitude
 13 of VOR approach in relationship to the high power
 14 lines directly to the east? How high -- how much
 15 higher -- is there a minimum regulation that they have
 16 to be over those lines, or it doesn't matter, they can
 17 just -- wherever it happens or --
 18 A. Again, on the VOR approach, and like I
 19 talked when Mr. Belt was asking me questions, do they
 20 cause me concern; yes, they do.
 21 It is a timing approach. You are
 22 leaving -- and I could pull the approach plate out,
 23 but you are leaving, I believe, it's 2,400 feet at the
 24 VOR. Because they are closer to the VOR, you're not

1 expected to dive-bomb down to your -- so, yes, you
 2 will be at a higher altitude. You are trying to
 3 maintain a proper descent all your way down. It is
 4 not guided, though. So you are a little bit higher at
 5 the high tension lines.
 6 Q. They're directly east of this proposed
 7 landfill within a couple hundred yards?
 8 A. Correct, and --
 9 Q. What is the comfort level, I guess, of
 10 height that you would prefer to see planes come in
 11 over the high tension wires?
 12 A. That is --
 13 Q. 1,000 feet?
 14 A. 1,000 feet would be wonderful, but that's
 15 not going to happen. They're going to be in the 5 to
 16 600 feet range at that point.
 17 Q. Okay.
 18 A. It's going to depend, again, on the type
 19 of aircraft.
 20 BOARD MEMBER WEHRLI: No more questions. Thank
 21 you.
 22 EXAMINATION
 23 BY BOARD MEMBER WYKES:
 24 Q. Bill Wykes.

1 Your main concern is the fact that
 2 landfills attract large birds; correct?
 3 A. Well, I'm sorry. I didn't hear the last
 4 part.
 5 Q. One of your -- your main concern is the
 6 fact that landfill attract large birds?
 7 A. That's -- that is a good question. Bird
 8 strikes happen with small birds as well as large
 9 birds. Yes, the larger the bird, the more damage.
 10 One of the diagrams we had, the
 11 two-pound bird actually hits with, was it, four ton of
 12 force. So at that speed, the larger the bird, the
 13 more damage you're going to get. So, yes, you are
 14 right.
 15 Q. Have you noticed -- I mean, you've
 16 evidently researched this, so the fact that the gulls
 17 are the main problem and that they tend to flock over
 18 a landfill; is that correct?
 19 A. That is correct. And gulls are the
 20 largest percentage of birds hit by aircraft.
 21 Q. Do your aviation maps, do they show like
 22 towers and cell towers, radio towers and that? Are
 23 they located on your aviation maps?
 24 A. Yes, they are.

1 Q. Do they locate landfills?
 2 A. That's an excellent question. Again,
 3 basically mounds or, you know, differences in
 4 elevation are shown by a minimum altitude on your
 5 chart. If it is extremely big, it will be on the
 6 chart. Otherwise, it's just shown as a minimum
 7 altitude that that's a minimum safe altitude for you
 8 to fly.
 9 BOARD MEMBER WYKES: Okay. Thank you.
 10 EXAMINATION
 11 BY BOARD MEMBER PARR:
 12 Q. Pam Parr.
 13 I'm so pleased that on day seven I
 14 get to actually ask a question that hasn't been asked
 15 already. Be still my beating heart.
 16 A. The answer is yes.
 17 Q. Thank you. Okay.
 18 Two questions. Number one, if I
 19 understood correctly, Mr. Moran stated that since the
 20 closing of Settler's Hill, the incidents of bird
 21 strikes were up fivefold. Did I hear that right, from
 22 206 to 207?
 23 A. Yes, they have --
 24 Q. Is that correct? So after the --

1 A. I don't know actual number, but yes, they
 2 have gone up.
 3 Q. Okay. So the landfill closed, and bird
 4 strikes went up.
 5 Also --
 6 A. Can I answer that?
 7 Q. I think you did.
 8 A. Well, the bird strikes have gone up, but
 9 the way they report them and how they report them have
 10 changed. They are now reporting any bird carcass,
 11 anything. That is how they're doing the reporting
 12 now. They have gotten very stringent in their
 13 reporting.
 14 Q. Okay. Regardless, the numbers have gone
 15 up even if by one --
 16 A. Yes.
 17 Q. -- since the landfill has closed?
 18 A. Yes.
 19 Q. Okay. The Environ -- the landfill in
 20 Morris is in, if I remember right, 3.3 miles of the
 21 airport?
 22 A. The Environtech Landfill?
 23 Q. Yes.
 24 A. Yes.

1 Q. And that bird flights are a 25- to 30-mile
 2 radius?
 3 A. Correct, from --
 4 Q. And the Morris Airport has had no bird
 5 strikes?
 6 A. No, we have not, and --
 7 Q. Help me to understand where the
 8 correlation is between --
 9 A. That is --
 10 Q. -- landfills and bird strikes when in
 11 these two instances I don't see it.
 12 A. Well, in our case at the Morris Airport,
 13 the landfill -- the birds fly up to 25 miles for food
 14 sources.
 15 The only way that I can explain your
 16 question for our case is that the landfill is in
 17 between the airport and their nesting area. They fly
 18 to the Environtech Landfill and go back to the nesting
 19 area after eating.
 20 Now, with the landfill to the north,
 21 the one that's being proposed, those same birds will
 22 have another feeding opportunity after flying over the
 23 top of the airport.
 24 Q. Okay. So for some reason in their flight

1 path the planes are not there?
 2 A. At the current time, yes.
 3 Q. All right. Question number two and my
 4 last one, I sense your passion for what you do, and,
 5 you know, obviously you're very proactive.
 6 Given that, help me to understand why
 7 you did not get yourself involved with a dialogue with
 8 Waste Management for this past seven-month period. It
 9 would seem to me if they're saying if you've got any
 10 questions talk to us, and help me explain why you
 11 didn't? What was going on?
 12 A. After our first meeting they wanted to
 13 know my problems with the landfill location. I
 14 explained to them my problems with the location being
 15 directly under the approach base, directly under the
 16 VOR approach, the height, the land, the wildlife
 17 attractants.
 18 Actually, my response was met with no
 19 response. There was no, well, gosh, how can we fix
 20 that, anything else. It was, well, that's where --
 21 that's where we've got it planned to go.
 22 Q. So the phone calls and the letter and the
 23 dropping by the office --
 24 A. Now, those were timing issues. Absolutely

1 I did miss him. I did not return his phone call. I
 2 only knew of several. We have three people working in
 3 the office.
 4 That -- I apologize. That is my
 5 mistake. I did not -- I was not able to get back in
 6 touch with him.
 7 BOARD MEMBER PARR: Thank you.
 8 EXAMINATION
 9 BY BOARD MEMBER WEHRLI:
 10 Q. Jeff Wehrli again. I have one more
 11 question for you.
 12 Your Exhibit 29, 17 out of the 30
 13 incidents have under damage code the letter N which
 14 means none.
 15 Can you explain, were those near
 16 misses? Was there a bird on the ground? Did it
 17 actually hit the plane? There is no damage to a
 18 plane, but 17 out of 30 were categorized as no damage.
 19 A. Correct. It was either none or
 20 negligible.
 21 When a bird -- several -- I mean, I
 22 shouldn't say that. A lot of my personal experience
 23 with bird strikes, you could hit a bird, splatter over
 24 the windshield, completely block out the windshield;

1 that was actually no damage. Caused zero visibility,
 2 but it was no damage, and it was a bird strike.
 3 If you're fortunate enough to hit it
 4 on the nose cowl and bounce off, you would get a bird
 5 strike, streak, feathers, and no damage. It's when
 6 they shatter the window, take off part of the leading
 7 edge, you know, that is considered damage.
 8 BOARD MEMBER WYKES: Okay, thank you.
 9 BOARD MEMBER PURCELL: Mr. Kinnally, I'd like
 10 to ask one more, too, please.

11 EXAMINATION

12 BY BOARD MEMBER PURCELL:

13 Q. John Purcell.

14 To your knowledge, what is the cause
 15 of more fatal accidents in aviation? Would it be
 16 considered pilot error or livestock or -- not
 17 livestock. I guess cows --

18 (Laughter.)

19 HEARING OFFICER KINNALLY: Okay. Just --
 20 that's fine. He made a mistake. He's going to
 21 correct it.

22 BOARD MEMBER PURCELL: It was pretty funny,
 23 though.

24

1 it and everything else.
 2 HEARING OFFICER KINNALLY: Now, wait a minute,
 3 Mr. Vogen. Hold on a minute.

4 You've don't know how many fatalities
 5 have been caused by bird strikes in the United States,
 6 do you?

7 THE WITNESS: I can look it up. Yes, I
 8 believe --

9 HEARING OFFICER KINNALLY: Wait a minute. Not
 10 look it up. You've don't know as you sit here today?

11 THE WITNESS: No.

12 HEARING OFFICER KINNALLY: Okay.

13 THE WITNESS: It's been quite a few. I mean,
 14 several hundred.

15 BOARD MEMBER PURCELL: Okay. Thank you.

16 HEARING OFFICER KINNALLY: All right. We're
 17 going to take a break now, and then any other
 18 participants can ask Mr. Vogen some questions.
 19 Mr. Blazer gets a turn, as well. So we'll take a
 20 10-minute break.

21 (Recess taken.)

22 HEARING OFFICER KINNALLY: All right. I'd like
 23 to reconvene, please.

24 Okay. If there are any participants

1 BY BOARD MEMBER PURCELL:

2 Q. What's causing more fatal accidents in
 3 aviation, pilot error or bird or other animal strikes?

4 HEARING OFFICER KINNALLY: If you know.

5 BY THE WITNESS:

6 A. You know, there's no good way to put it
 7 down. It's just -- there are a lot more birds in the
 8 area. There are a lot more aircraft flying. I mean,
 9 traffic has picked up enormously for air traffic, and,
 10 I mean, there's no way to pin it down to what's
 11 causing everything.

12 BY BOARD MEMBER PURCELL:

13 Q. So you are not aware of any reports that
 14 would, based on investigations, would --

15 A. Let me -- on bird strikes. Now, if you
 16 were just talking accidents I couldn't do it.

17 Q. No, I'm specifically talking about pilot
 18 error versus bird strikes, what causes more fatalities
 19 in aviation?

20 A. Well, I would have to go -- that's just
 21 really tough to answer because an accident you don't
 22 know if it's going to be -- I mean, a fatality, you've
 23 don't know if it's going to be pilot error until all
 24 the things come out about it and the NTSB goes through

1 that would like to ask Mr. Vogen some questions,
 2 please come up and identify yourself.

3 CROSS-EXAMINATION

4 BY MR. MILLIRON:

5 Q. Todd Milliron, 61 Cotswold Drive,
 6 Yorkville.

7 Mr. Vogen, the drawings that were
 8 dropped off by Mr. Hoekstra and provided to you, did
 9 those drawings include the beg/borrow area that is
 10 currently undefined and unmapped in the Application,
 11 or in this Application?

12 A. No, they did not. The first set of
 13 drawings was a rough sketch of where the actual
 14 footprint of the landfill was going to be in relation
 15 to the airport, and the second set of drawings was the
 16 buildout, the actual height of the landfill. There
 17 was absolutely nothing about the borrow pits.

18 Q. Thank you. Mr. Vogen, is it your opinion
 19 that landfills are a good bird feeder and also provide
 20 a food source for raptors up the bird food chain?

21 A. Absolutely.

22 Q. Mr. Vogen, would the borrow area that has
 23 been described in the neighborhood of 134 acres that
 24 will eventually be filled with water and become

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1 retention ponds outside the delineated Application
2 boundary make a good home for a vast variety of birds?
3 A. Yes, it does. In fact, in their
4 Application, the final usage of it is for a natural
5 habitat for wildlife.
6 Q. Okay. Do you believe that this borrow
7 area had been -- if it had been designed and put into
8 the Waste Management Landfill Application, you could
9 make a better and informed opinion about the magnitude
10 of the threat this landfill poses to the Morris
11 Airport?
12 A. Well, one thing it might do with the
13 borrow area in that area is put it inside the -- the
14 10,000-foot area. Yes, I do believe that.
15 Q. Okay. Do you think that this missing
16 borrow area component of the Waste Management Land
17 Application would have been an important factor in
18 helping this County Board in making an informed
19 decision in determining that the landfill design
20 protects the health, safety, and welfare of the
21 general public and the flying public?
22 MR. MORAN: Objection.
23 HEARING OFFICER KINNALLY: Sustained.
24 Mr. Milliron, the borrow pit or the

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1 borrow area is not part of the Landfill Application
2 that's before the Board. So if you want to ask a
3 different question, that's fine, but the objection is
4 sustained.
5 MR. MILLIRON: Okay. I asked if this missing
6 borrow area component, if it would have been -- maybe
7 I should rephrase the question.
8 HEARING OFFICER KINNALLY: That's fine. Go
9 ahead.
10 MR. MILLIRON: Let me try that.
11 HEARING OFFICER KINNALLY: That's all right.
12 Go ahead.
13 BY MR. MILLIRON:
14 Q. Do you think this missing borrow area
15 component that is missing from the Waste Management
16 Landfill Application would have been an important
17 factor in helping this County Board making an informed
18 decision in determining the Waste Management landfill
19 design protects the health, safety, and welfare of the
20 general public and the flying public?
21 MR. MORAN: Objection; foundation.
22 HEARING OFFICER KINNALLY: What do you mean,
23 foundation?
24 MR. MORAN: Well, how does he know what is good

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1 or appropriate for the County Board to consider in
2 terms of this Siting Application based on the
3 criteria, and what relevance is it what he considers
4 or doesn't consider the County Board having to
5 consider.
6 HEARING OFFICER KINNALLY: Well, there's been a
7 lot of people with opinions on what is appropriate and
8 not appropriate. We've heard this -- I think we're on
9 our ninth day now. So I don't know what he knows
10 about it, either, but I'm going to overrule your
11 objection.
12 If you understand the question, you
13 can answer it.
14 BY THE WITNESS:
15 A. I think you're asking do I think the
16 borrow pit --
17 HEARING OFFICER KINNALLY: No, don't ask what
18 you think you're asking. If you understand the
19 question, that's fine, just answer the question. If
20 you don't understand the question --
21 THE WITNESS: Then I do not understand --
22 HEARING OFFICER KINNALLY: Okay. Ask another
23 question, please.
24

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1 BY MR. MILLIRON:
2 Q. This borrow area, undefined -- well
3 actually I'm making statements. Excuse me.
4 HEARING OFFICER KINNALLY: Thank you. Any
5 other participants?
6 CROSS-EXAMINATION
7 BY MR. KARAFIAT:
8 Q. Gary Karafiat.
9 Mr. Vogen, is it fair to say that
10 you've spent probably most of your adult life centered
11 around airport safety?
12 A. Yes, I have.
13 Q. Okay. How many years exactly?
14 A. Right now, about 32 years.
15 Q. 32, okay. Just like a lot of things, it
16 seems like there's a certain amount of risk in
17 piloting and aircraft based on the videos we've seen.
18 In your opinion, will the
19 installation of this landfill make flying into the
20 Morris Airport safer or riskier?
21 A. It will increase the risk, definitely.
22 MR. KARAFIAT: Okay. Thank you.
23 HEARING OFFICER KINNALLY: Anyone else?
24

1 CROSS-EXAMINATION
 2 BY MR. GILSON:
 3 Q. George Gilson.
 4 Mr. Vogen, do you know whether or not
 5 the Applicant has given any information in the
 6 Application in terms of how mitigation of birds in
 7 relation to safety to the Morris Airport would
 8 minimize that bird traffic?
 9 A. I've read their bird control plan, and in
 10 relation to the Morris Airport, there's absolutely
 11 nothing.
 12 Q. In relation to the borrow areas, as well?
 13 A. Correct.
 14 MR. GILSON: Thank you.
 15 HEARING OFFICER KINNALLY: Anyone else? Any
 16 other participant?
 17 All right. Mr. Blazer.
 18 MR. BLAZER: Just a couple, Mr. Kinnally, thank
 19 you.
 20 HEARING OFFICER KINNALLY: Pardon me? Is there
 21 anybody else -- a participant that wants to ask a
 22 question?
 23 All right. Come on up and identify
 24 yourself, please.

1 don't know if they follow them the whole way.
 2 Q. Where would you expect that they come
 3 from?
 4 A. Most of them are coming from their nesting
 5 areas down on the Illinois River and the waterways
 6 there.
 7 MR. SHAW: Okay. Thank you.
 8 HEARING OFFICER KINNALLY: Thank you, sir.
 9 Anyone else?
 10 Mr. Blazer, it's your turn.
 11 MR. BLAZER: Thank you. Just a couple, I
 12 think.
 13 CROSS-EXAMINATION
 14 BY MR. BLAZER:
 15 Q. Mr. Vogen, on your Exhibit 29 that's the
 16 list of strikes at the DuPage Airport, what they call
 17 the damage codes, when it's a blank entry, what does
 18 that mean?
 19 A. That means the aircraft itself did not
 20 report it. It might have been an aircraft taking off
 21 and went to another airport. In other words, they do
 22 not know the actual damage to that aircraft.
 23 Q. All right. And the "N" means no damage?
 24 A. Correct.

1 I'm not signed up. My name is John Shaw. I
 2 live at 8270 East Highpoint Road in Yorkville.
 3 CROSS-EXAMINATION
 4 BY MR. SHAW:
 5 Q. I'm not signed up. My name is John Shaw.
 6 I live at 8270 East Highpoint Road in Yorkville.
 7 Mr. Vogen, I think you know me, and
 8 I'm sure you know that I have family in Morris and
 9 that I've spent a fair amount of time down there.
 10 Would it be your opinion that -- help
 11 me with this. You're talking about birds. Are we
 12 talking about the colloquially named dump chickens,
 13 seagulls that seem to migrate out here?
 14 A. That is the number one bird in bird
 15 strikes, yes.
 16 Q. Would you agree with me that dump
 17 chickens, as I like to refer to them since they are --
 18 HEARING OFFICER KINNALLY: Well, let's just
 19 call them gulls, Mr. Shaw.
 20 MR. SHAW: Thank you so much.
 21 BY MR. SHAW:
 22 Q. Gulls. Do they not follow and actually
 23 come in the trucks that come out to the landfill?
 24 A. I have seen them following trucks, yes. I

1 Q. "M" means minor?
 2 A. Yes.
 3 Q. All right. Now, you said that your
 4 understanding was that the DuPage Airport started --
 5 changed their counting protocol after 2006?
 6 A. After talking to the people that are
 7 actually in charge of doing that, they have become
 8 much more diligent with their reporting, yes.
 9 Q. But you said, I believe, that they even
 10 just count bird carcasses, whether or not they were
 11 the result of bird strikes?
 12 A. For their own record, yes.
 13 Q. Right.
 14 A. What's listed before you is strictly what
 15 they've known to hit aircraft, I mean, where the
 16 aircraft has actually reported it.
 17 Q. So what we're looking at here is not just
 18 bird carcasses, these are documented bird strikes?
 19 A. Yes.
 20 Q. All right. So then if we look at
 21 May 21, '07 for example, according to the guide down
 22 here, that's damage, extent unknown?
 23 A. Um --
 24 Q. May 21, '07 down toward the bottom. It's

1 the fifth one up.
 2 A. Damage but extent unknown.
 3 Q. And the third one up, October 20, '07,
 4 that's minor damage?
 5 A. Yes.
 6 Q. That, again, is not just a bird carcass.
 7 That's an actual strike; correct?
 8 A. Absolutely.
 9 Q. Then the very last one, January 9 of 2008,
 10 minor damage, again, that's an actual strike, not just
 11 a bird carcass; right?
 12 A. Yes.
 13 Q. Okay. I see here three incidents of
 14 Canada geese, and I believe you indicated that your
 15 airports lies under the Mississippi flyway?
 16 A. Yes, both airports do.
 17 Q. And would you agree that airports provide
 18 an ideal habitat for Canada geese?
 19 A. No, I don't think they're an ideal
 20 habitat.
 21 Q. Well, the reason I ask, and this is a
 22 slide that you didn't use, and unfortunately I'm not
 23 hooked to the projector, but it's part of the
 24 submission that Mr. Belt gave to us. It's called

1 Slide No. 20. I don't know if that rings a bell to
 2 you.
 3 The title of the slide is "Resident
 4 Non-Migratory Canada Goose Population in North
 5 America," and it talks about how much it's increased.
 6 A. Yes, I am familiar with that.
 7 Q. And down at the bottom of the slide it
 8 says airports provide ideal habitat for Canada geese.
 9 A. That is probably in part due to the big
 10 open space for landing, I mean, when you see the geese
 11 come in. I would say yes, that's probably very true.
 12 Q. Okay.
 13 A. And probably most of the reason why all of
 14 us are out bowling for geese in the morning.
 15 MR. BLAZER: All right. That's all I have.
 16 Thank you.
 17 HEARING OFFICER KINNALLY: All right. Thank
 18 you, Mr. Blazer. Mr. Belt, do you have any other
 19 questions?
 20 MR. BELT: A couple housekeeping questions,
 21 Mr. Kinnally.
 22
 23
 24

1 REDIRECT EXAMINATION
 2 BY MR. BELT:
 3 Q. Mr. Vogen, we've heard quite a bit of
 4 testimony this evening about the DuPage Airport.
 5 I believe you testified that that
 6 airport has a control tower?
 7 A. Yes, I do -- or yes, they do.
 8 Q. And is that manned 24 hours a day?
 9 A. Yes, it is.
 10 Q. Do you know whether it's part of the tower
 11 operator's responsibility to keep a lookout, so to
 12 speak, for birds that may be on or near the airport?
 13 A. Yes, it is. I've flown in and out of
 14 DuPage quite often, and if there is bird activity,
 15 they will warn the aircraft as they're coming in and
 16 actually vector them around it.
 17 Q. When you say "vector them around it," it's
 18 aviation lingo for steer the airplane around the
 19 birds?
 20 A. Correct.
 21 Q. Okay. Mr. Moran asked you several
 22 questions regarding the Pheasant Run golf course and
 23 the DuPage golf course, and pointed to a number of,
 24 what I would describe, rather small decorative ponds

1 throughout the -- both golf courses.
 2 Is there any comparison in your mind
 3 between those ponds that were pointed out by Mr. Moran
 4 and the three million cubic yards of earth that's
 5 going to be removed from the borrow areas which will,
 6 according to Waste Management's witnesses, result in
 7 standing open water?
 8 A. There's absolutely no resemblance between
 9 the two.
 10 Q. Mr. Vogen, Anne Vickery asked, I thought,
 11 a good question regarding the growth of the City of
 12 Morris.
 13 Isn't it true that with any
 14 annexations in any direction, not just north, to the
 15 City of Morris that the -- the landowner and/or
 16 developer is required to participate in the city's
 17 wildlife management study?
 18 A. Yes, they are.
 19 Q. And isn't it true that one development was
 20 actually required -- actually went through the
 21 process, and there were a number of conditions that
 22 were recommended through the USDA?
 23 A. That is correct. We worked with the USDA
 24 and the developer to get that problem rectified.

<p style="text-align: right;">Page 1759</p> <p>1 Q. And I'm sorry, that's the Kohl's and 2 Lowe's development that was located south of the 3 airport; correct? 4 A. Yes, it is. 5 Q. And some of the conditions that were 6 recommended by the USDA were, in particular, slopes on 7 a retention pond? 8 A. Yes, they were. 9 Q. And extremely large rip-rap to discourage 10 bird traffic? 11 A. Yes, it was. 12 Q. And was another recommendation to install 13 wires entirely both -- entirely across the pond, both 14 laterally and longitudinally? 15 A. Yes. It was to be cross-hatched with 16 wires over the entire area. 17 Q. And wasn't it also a recommendation that 18 specific plantings be avoided because they may be 19 considered attractant to waterfowl or other birds? 20 A. Absolutely. They came up with a 21 vegetation plan to help eliminate the wildlife 22 attractant part of that area. 23 Q. One last question back on the DuPage 24 Airport.</p>	<p style="text-align: right;">Page 1761</p> <p>1 you're excused. 2 THE WITNESS: Thank you very much. 3 (Witness excused.) 4 HEARING OFFICER KINNALLY: Is there anything 5 that you want to present, Mr. Belt? 6 MR. BELT: Mr. Hearing Officer, I would like to 7 enter at this time the balance of the City of Morris's 8 exhibits. 9 HEARING OFFICER KINNALLY: Well, I think we 10 need to go through them. 11 MR. BELT: Sure. When I say balance, I'm 12 excluding 18 through 26 because those were entered 13 yesterday by stipulation. 14 HEARING OFFICER KINNALLY: Those are already in 15 by stipulation. 16 MR. BELT: Correct. 17 HEARING OFFICER KINNALLY: All right. I'm 18 going to go through these. If there's any objection, 19 tell me what your objection is. 20 1, admitted. 21 2, admitted. 22 3, admitted. 23 4, admitted. 24 5, admitted.</p>
<p style="text-align: right;">Page 1760</p> <p>1 Settler's Hill Landfill, as we 2 understand, was closed in December of 2006. Are you 3 aware that it takes some period of time to actually 4 close a landfill? 5 A. Yes, I am. 6 Q. Do you have some kind of an estimation on 7 what it takes to actually go through the closure 8 process? 9 A. Actually to make it to final closure, I 10 don't believe a landfill's done that yet, have they? 11 I don't know the time period. 12 HEARING OFFICER KINNALLY: Okay. If you don't 13 know, that's fine. 14 BY MR. BELT: 15 Q. Okay. Would you agree with the 16 proposition that just because closure was initiated, 17 that the food source, if any, is not automatically 18 eliminated? 19 A. That is a very correct statement. 20 MR. BELT: I have nothing further. 21 HEARING OFFICER KINNALLY: All right. Any 22 other questions? All right. 23 Mr. Vogen, thank you for coming and 24 sharing with us the information that you have, and</p>	<p style="text-align: right;">Page 1762</p> <p>1 6, admitted. 2 7, admitted. 3 8. Any objection to 8? Admitted. 4 9, admitted. 5 10, admitted. 6 (City of Morris Exhibit Nos. 1 7 through 10 admitted.) 8 HEARING OFFICER KINNALLY: 11. Wait a minute. 9 I missed one. Sorry. I don't have an 11. 10 MR. BELT: For clarification, Exhibit 11 has 11 been intentionally excluded from this packet. 12 HEARING OFFICER KINNALLY: Okay. So there's no 13 11. 14 We go to 12. Admitted. 15 13, admitted. 16 14, admitted. 17 15, admitted. 18 (City of Morris Exhibit Nos. 12 19 through 15 admitted.) 20 HEARING OFFICER KINNALLY: 16. 21 MR. MORAN: Objection. 22 HEARING OFFICER KINNALLY: Objection is? 23 MR. MORAN: It was not filed seven days before 24 this hearing began.</p>

<p style="text-align: right;">Page 1763</p> <p>1 HEARING OFFICER KINNALLY: That's sustained. 2 MR. BELT: Your Honor, may I be heard on that? 3 HEARING OFFICER KINNALLY: Sure. 4 MR. BELT: There was nothing contained in the 5 Application filed by Waste Management here that 6 referenced Prairie View Landfill. However, during 7 their case in chief, we heard testimony regarding 8 Prairie View Landfill, and I think it was clear 9 through Mr. Vogen he was actually invited to visit the 10 site. 11 Considering the fact that we have a 12 rather late development on the part of Waste 13 Management to discuss Prairie View Landfill, I would 14 suggest that fundamental fairness would allow for 15 Morris 16 and Morris 17 to be admitted. 16 HEARING OFFICER KINNALLY: Anybody else want to 17 be heard on this? 18 Do you want to respond? 19 MR. MORAN: Yes. There was no indication given 20 as to why, if this were an issue, that Mr. Vogen could 21 not have come out to Prairie View at the invitation of 22 Waste which had been extended in February of 2008 and 23 take whatever photos he deemed appropriate. 24 There simply isn't any basis for</p>	<p style="text-align: right;">Page 1765</p> <p>1 33, admitted. 2 And 34, that's admitted. 3 (City of Morris Exhibit Nos. 18 4 through 34 admitted.) 5 HEARING OFFICER KINNALLY: I'd like the lawyers 6 or someone at some point to submit this letter that 7 Mr. Vogen referenced, in fact, I think he looked at it 8 during his testimony, with respect to some letter that 9 was sent by Waste Management. 10 I think I would like to read that, 11 and I think members of the County Board might, as 12 well. 13 MR. MORAN: May I approach? 14 HEARING OFFICER KINNALLY: Well, you can put it 15 in in your own case if you want. Is that what you 16 want to do? 17 MR. MORAN: Yes. I have copies and I've marked 18 it as our Exhibit 11. 19 HEARING OFFICER KINNALLY: Okay. You can put 20 it in in rebuttal. That's fine. 21 MR. BELT: Just for clarification, 22 Mr. Kinnally, Mr. Moran, are you referencing the 23 August 15th, 2008 letter? 24 MR. MORAN: That's correct.</p>
<p style="text-align: right;">Page 1764</p> <p>1 these late-filed and late-taken photos of Prairie 2 View, and they simply violate that part of the 3 ordinance that requires the filing seven days before 4 hearing. 5 HEARING OFFICER KINNALLY: Anybody else want to 6 be heard on this? 7 All right. The objection is 8 sustained. 9 17. 10 MR. MORAN: Same objection. 11 HEARING OFFICER KINNALLY: Do you want to be 12 heard on that, Mr. Belt? 13 MR. BELT: Same arguments. 14 HEARING OFFICER KINNALLY: That's sustained, as 15 well. 16 18, that's in. 18 through 26 are in 17 by agreement. 18 These are all upside down. 19 All right. 27, admitted. 20 28, admitted. 21 29, admitted. 22 30, admitted. 23 31, admitted. 24 32, admitted.</p>	<p style="text-align: right;">Page 1766</p> <p>1 MR. BELT: Thank you. 2 HEARING OFFICER KINNALLY: That's the one that 3 Mr. Vogen was looking at. He said he had it with him. 4 MR. BELT: Correct. 5 HEARING OFFICER KINNALLY: Okay. Anything 6 else, Mr. Belt? 7 MR. BELT: The only other witness that we would 8 have would be Morris Mayor Richard Kopczick, and he's 9 here this evening to offer public comment and is 10 available whenever you deem fit. 11 HEARING OFFICER KINNALLY: We'll do him right 12 now. 13 MR. BELT: Certainly. 14 HEARING OFFICER KINNALLY: We have two other 15 people that -- Mr. Runyon made arrangements to be here 16 so he's going to give public comment tonight, and I 17 believe Ms. Marcotte is going to give public comment. 18 I'd like to accommodate those people if we can so I 19 hope we can get to them tonight, as well. There may 20 be others. 21 So do you want to bring up the Mayor. 22 MR. BELT: Yes, Mr. Kinnally, and I do have the 23 notice of participation available. 24 MR. BLAZER: That's already on file.</p>

1 HEARING OFFICER KINNALLY: I think we already
 2 have it.
 3 MR. BLAZER: It's already on file.
 4 MR. BELT: Thank you.
 5 HEARING OFFICER KINNALLY: Okay. Where's the
 6 Mayor?
 7 MR. BELT: Mr. Mayor.
 8 HEARING OFFICER KINNALLY: Come on up. Do you
 9 want him to just make comment or do you want him to be
 10 sworn or what's your pleasure?
 11 MR. BELT: I think he has no objection to being
 12 sworn and entertaining questions.
 13 HEARING OFFICER KINNALLY: It's up to you.
 14 MR. BELT: He's here to offer public comment.
 15 HEARING OFFICER KINNALLY: Public comment?
 16 MR. BELT: Correct.
 17 HEARING OFFICER KINNALLY: Go ahead. Do you
 18 want to introduce yourself and then go ahead.
 19 MR. KOPCZICK: Good evening. My name is
 20 Richard P. Kopczick. I'm the Mayor of the City of
 21 Morris.
 22 I was originally elected mayor in
 23 2001 after having served as a Morris alderman for six
 24 years, and I'm proud to be here tonight to speak with

1 you regarding the proposed landfill and the possible
 2 negative consequences that its approval may have on
 3 our respective communities.
 4 I realize this is your third landfill
 5 siting hearing, but this hearing is just as important
 6 as the first.
 7 As a former alderman and the current
 8 Mayor of the City of Morris, you should all be
 9 commended for the time and personal commitment that
 10 this proceeding requires.
 11 As many of you are aware, Morris is
 12 no stranger to landfills. One landfill, community
 13 landfill has been shut down during my watch. The City
 14 of Morris unfortunately may ultimately experience a
 15 substantial damage to the lack of foresight can do to
 16 a community. It is this history and the need for
 17 reasonable foresight that has compelled me to address
 18 you this evening.
 19 The second facility, Environtech, has
 20 been a good neighbor to the City of Morris and is
 21 currently continuing to operate. The facility is
 22 quickly reaching the end of its life cycle, however.
 23 Neither facility is located where it
 24 could pose a risk to aircraft using the Morris

1 Airport, and neither are located underneath either an
 2 approach surface or a departure flight path.
 3 My comments this evening will be
 4 directed primarily towards the Morris Airport. Both
 5 myself and the aldermen of the City of Morris feel the
 6 airport is an extremely valuable asset not just to the
 7 City of Morris but to this entire region.
 8 Morris, like Kendall County, is in
 9 the process of substantial growth. Part of that
 10 growth has been to accommodate the demand for larger
 11 aircraft to serve the business and industries that
 12 have elected to locate in the region.
 13 Since the City took over the airport
 14 in 1991, there have been a number of improvements
 15 which have substantially enhanced the operations and
 16 made it safer for pilots traveling to and from the
 17 airport. The City has worked hand-in-hand in the FAA
 18 and the Illinois Division of Aeronautics on the design
 19 and funding for these improvements.
 20 Since 1991, the airport has seen the
 21 construction of new T-hangers, a large
 22 12,000-square-foot corporate hanger, the replacement
 23 of on-site fuel trucks, bulk fuel storage for both
 24 av gas and jet fuel.

1 Most significant is the recent
 2 completion of 1,000-foot runway extension to the
 3 south. This project alone cost over \$1.5 million, and
 4 its completion allows larger jets and other aircraft
 5 to use the airport.
 6 All of the combined projects at the
 7 Morris Airport since 1991 have exceeded the sum of
 8 \$8 million.
 9 The City has also installed the
 10 navigational equipment to assist pilots with both
 11 landings and takeoffs under less than favorable
 12 weather or visibility conditions.
 13 Future airport projects include an
 14 additional property acquisition for an additional
 15 500-foot runway extension to the north. This project
 16 alone is projected to cost approximately \$6.3 million,
 17 and all future projects on the approved City's airport
 18 layout plan exceeds \$7.9 million.
 19 I'm proud to share with you that the
 20 City of Morris just last week was notified that it is
 21 receiving a grant through the FAA in the amount of
 22 \$3.5 million for the north property acquisition and
 23 the north runway extension.
 24 It's no secret in Springfield and

1 within the FAA that the Morris Airport is a candidate
2 for the designation as a future reliever airport for
3 the Chicagoland area. This would be a significant
4 benefit to the entire region, including Kendall
5 County, as additional grant funds may follow this
6 designation.

7 As a future reliever airport, the
8 City could be looking at a runway length possibly as
9 long as 7,000 feet. This is longer than the longest
10 runway at Midway Airport today.

11 The Morris Airport holds the
12 distinction, to my knowledge, of being named the
13 only -- the Class B general aviation airport in the
14 State of Illinois to be awarded the honor of Airport
15 of the Year on two separate occasions. This award is
16 presented by the Illinois Division of Aeronautics.

17 In order to investigate the
18 feasibility of constructing a runway beyond the
19 5,500-foot length that is currently approved by the
20 FAA and the Illinois Division of Aeronautics, an
21 engineering study is required.

22 The City of Morris has recently
23 engaged Hanson Engineering at the cost of \$108,000 to
24 conduct an engineering study to explore the various

1 options associated with this issue.

2 Hanson Engineering will not only be
3 studying options associated with a longer north-south
4 runway, they have also been retained to study the
5 alternatives to a longer crosswind runway which will
6 be situated in a primarily east-west direction.

7 As you can see, the City, the FAA,
8 and the Illinois Division of Aeronautics have high
9 expectations and optimism for the future of the Morris
10 Airport. Everyone realized that it has the continuing
11 potential to be an economic engine to spur future
12 economic development for this entire region.

13 With that having been said, I've been
14 asked by both agencies to express their reservation
15 and objection to this proposed landfill. Likewise, I
16 am here tonight to offer the objection of the City of
17 Morris City Council and my personal objection as Mayor
18 to this proposed landfill.

19 It is well-known in the aviation
20 industry that municipal solid waste landfills are
21 known to attract large volumes of birds. It has been
22 confirmed that these birds present a threat to the
23 pilots, their passengers, and their aircraft in the
24 event of a midair bird strike.

1 I would request that you give serious
2 consideration to the fact that this landfill is
3 proposed to be located directly underneath one of the
4 primary instrument approach paths to the airport.

5 Likewise, I would also ask that you
6 give the same consideration to the fact that the
7 landfill is proposed beneath a departure air surface,
8 as well.

9 Placing a landfill beneath these
10 flight paths creates substantial risk of a bird
11 strike, a risk that should be given serious
12 considerations.

13 The Morris City Council has
14 formalized their objections in writing in the form of
15 a resolution. This resolution objects to the siting
16 of this landfill at its current location. The
17 resolution was passed unanimously by the aldermen of
18 the City of Morris on September 15, 2008.

19 Because the Mayor does not vote on
20 resolutions in an aldermanic form of government, it's
21 important to me that I appear at this hearing in
22 person to share my concerns and personally offer my
23 objection to this proposed landfill.

24 I've been asked by the aldermen to

1 briefly touch on the proposed traffic route which is
2 contained in the Host Agreement.

3 I recognize Route 47 is designed for
4 truck traffic, but to limit the truck traffic to
5 getting off I-80 at Route 47 in Morris places a
6 significant burden on this area. Alternate routes
7 should be considered to equally distribute what would
8 no doubt be a significant increase in semi traffic
9 should this be -- landfill be approved.

10 After reviewing the traffic plan,
11 restricting any truck traffic from traveling through
12 Kendall County from the north, east, or west is simply
13 not reasonable.

14 I hope if your Board approves this
15 landfill, that you eliminate the mandate for all truck
16 traffic to come through Morris. You have the ability
17 to place conditions on any siting approval, and I
18 personally hope, as does the Morris City Council, that
19 this is one area where you exercise your discretion
20 and evenly distribute the truck traffic.

21 The City is also participating in a
22 joint FAA and Illinois Division of Aeronautics
23 wildlife management study. It was recommended to the
24 City that it consider spending the funds necessary to

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1 investigate and obtain a report of the wildlife
2 hazards in and around the Morris Airport.
3 This study has been underway for
4 approximately 12 months, and we hope to identify
5 current wildlife habits, migration patterns,
6 reproductive patterns, and general information which
7 will enable the City to continue to keep our airport
8 operations safe. Safety must remain paramount both at
9 the City of Morris and here in Kendall County.
10 The statistics are clear: Collisions
11 between birds and aircraft have increased over the
12 last ten years at an alarming rate. This is most
13 likely due to the increase of certain bird
14 populations, the increased availability of attractive
15 bird habitat, and the migratory patterns of ducks,
16 geese, and other migratory waterfowl traveling through
17 Northern Illinois.
18 In conclusion, I would ask that you
19 please consider this -- the safety concerns that both
20 the City Council and I as Mayor of the City of Morris
21 have with the siting of this landfill at its proposed
22 location.
23 This is a large facility with a long
24 lifespan. Approval of this facility will affect the

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1 character of this area and the Morris Airport forever.
2 Upon taking the oath for our
3 respective offices, we are all charged with the
4 responsibility of treating the health, safety, and
5 welfare of our residents and neighbors as a priority.
6 Because of its location and the
7 conditions both below the ground and above the ground
8 this proposed landfill creates numerous safety hazards
9 of the highest proportions.
10 As elected officials, we have an
11 obligation to plan for the future, to look beyond
12 tomorrow, and consider the consequences of how our
13 decisions today will affect our children and future
14 generations.
15 As I mentioned earlier, it is
16 important that you have the foresight to contemplate
17 the changing conditions in this area in the future.
18 Thank you for allowing me to offer my
19 comments here this evening. Again, I respect the fact
20 that you have a huge responsibility to your
21 constituents and to the people surrounding this
22 landfill, and I sincerely hope that you examine all
23 nine siting criteria to determine whether Waste
24 Management has proven their case on all nine separate

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1 issues.
2 Thank you for your time and
3 consideration.
4 Mr. Hearing Officer, I do have and
5 may I offer the City of Morris Resolution No. R-08-10
6 into evidence at this time?
7 HEARING OFFICER KINNALLY: Is there any
8 objection to that?
9 All right. That will be admitted.
10 Thank you, Mayor, for coming and
11 sharing with us your views on this.
12 THE WITNESS: Thank you very much.
13 HEARING OFFICER KINNALLY: All right.
14 Mr. Belt, anything else?
15 MR. BELT: No, Mr. Kinnally.
16 HEARING OFFICER KINNALLY: What number are you
17 going to put on that?
18 MR. BELT: That would be City of Morris No. 35.
19 HEARING OFFICER KINNALLY: Okay. So that's the
20 resolution, Morris 35, from the Mayor.
21 (City of Morris Exhibit No. 35
22 admitted.)
23 HEARING OFFICER KINNALLY: Okay. Thank you,
24 Mr. Belt.

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1 MR. BELT: Thank you.
2 HEARING OFFICER KINNALLY: And I believe we're
3 going to take some public comment for a while here,
4 and I also want to get to these motions that have been
5 filed. I'd like to hear the argument about them.
6 But Mr. Keith Runyon, he's a
7 participant, and he wanted to -- I don't know if you
8 want to give testimony, Mr. Runyon, or do you want to
9 give comment or what do you want to do.
10 MR. RUNYON: Just comment.
11 HEARING OFFICER KINNALLY: Come on up and
12 identify -- or you can stand up. You just have to
13 talk into the microphone because we have realtime
14 reporting.
15 MR. RUNYON: Okay.
16 HEARING OFFICER KINNALLY: State your name and
17 go ahead, Mr. Runyon. Nice to see you again.
18 MR. RUNYON: Thank you. My name is Keith
19 Runyon. I'm the president of Concerned United
20 Taxpayers, a not-for-profit organization, and I'm
21 going into my eighth year of fighting landfills, or as
22 I would like to call them, toxic tombs.
23 I apologize a little bit for the
24 style of my shirt tonight, but I wanted to wear

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1 something that I felt was as obsolete as the entity
2 that you're considering. I think they're appropriate,
3 and I think it's symbolic.
4 I'd like to make just a couple of
5 off-the-cuff comments about what's been said recently
6 about bird strikes.
7 Those of you who are familiar with
8 some of these cases would be advised to look at the
9 FAA versus Keebler Development in Williamson County,
10 Illinois. Keebler finally dropped its suit there.
11 They've been trying to site a landfill near the
12 runway.
13 And also approximately \$600 million
14 worth of air strike damages -- bird strike damages
15 occur every year, year after year, in the United
16 States.
17 I had intended fully to participate
18 more in these hearings, but health considerations have
19 prohibited that.
20 I am sparing you tonight a repeat of
21 my hour-and-a-half PowerPoint presentation because I
22 figured that you were probably getting near the point
23 of exhaustion and didn't need to see it again, but I
24 will do some excerpting from that PowerPoint

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1 presentation.
2 Some of you, the proponents of the
3 landfill, will certainly not be happy with what I have
4 to say tonight. Some of the County Board members may
5 not be too happy with it. Most of the opponents will
6 be happy with what I have to say. But I am privileged
7 to talk to all of you tonight, Mr. Hearing Officer,
8 County Board members, proponents and opponents.
9 This will be a relatively short
10 presentation, but hopefully will have enough punch in
11 it to keep you excited and awake.
12 Where have all the flowers gone?
13 This is a musical throwback to the '60 and the '70s.
14 A contemporary version might go something like this:
15 Where has all our garbage gone?
16 The end of garbage dumps is near.
17 Modern technology, driven by the high price of energy,
18 is preparing to consume the garbage streams that have
19 historically been delivered to regional dumps. In the
20 process, environmental problems surrounding dumps,
21 such as polluted drinking water and
22 methane-contaminated air, will be eliminated.
23 For those in authority locally who
24 still live in the Flintstone world, let's look at a

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1 siting -- a scorecard of recent actions.
2 Two dump companies in Kankakee County
3 have had four siting applications turned down or
4 reversed by the courts since 2001. In 2007, two
5 landfill applications were withdrawn here in this
6 County because the applicants realized the County
7 Board probably would deny approval. The City of
8 Yorkville also rejected a landfill application.
9 So at this point the scorecard is
10 landfills approvals zero, denials six.
11 Now, let's compare this with -- this
12 dismal record with the advance of the new technologies
13 that recover energy from our waste.
14 Number one, you've already heard
15 about St. Lucie, Florida, now installing a plasma arc
16 system that will daily consume 3,000 tons of garbage,
17 2,000 new tons, and will be used to mine 1,000 tons a
18 day from an old landfill to return that land to
19 usability, and that will provide electricity for
20 40,000 homes.
21 Tallahassee, Florida, likewise, is
22 now installing a plasma arc system to do essentially
23 the same thing.
24 Not too distant is Lake County,

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1 Indiana. It's installing a trash-to-ethanol plant to
2 convert 4,000 tons of garbage to ethanol and will be
3 charging only \$17.50 per ton to dump the garbage where
4 the nearby Allied Landfill is charging \$41 to dump
5 garbage in the landfill.
6 The County will receive 2.50 per ton
7 tipping fee and three cents a gallon for each gallon
8 of ethanol that will be produced, and they will share
9 in the carbon credits.
10 The revenue stream will run into the
11 tens of millions of dollars per year and will be great
12 enough to abate county taxes. But Kendall perhaps
13 would rather have a dump.
14 Coskata in nearby Warrenville,
15 Illinois, is building a plant in Pennsylvania to
16 convert trash to ethanol. They'll be looking for a
17 site in Illinois to do the same thing.
18 Ten miles east of Reno, Nevada, a
19 trash-to-ethanol plant is being built by Fulcrum
20 Bioenergy.
21 I think the most significant break
22 from tradition and garbage dumping comes from Clean
23 Tech Biofuels which has just announced an agreement
24 with the City of Chicago to use Chicago waste as a

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1 fuel for producing electricity and ethanol.
2 Chrysler is remodeling an older plant
3 and installing waste-to-energy technologies to recover
4 energy from the waste products of automobile
5 manufacturing, including paint sludge.
6 Rentec Corporation has developed a
7 process to convert garbage to jet fuel.
8 More and more industries are
9 installing waste-to-energy facilities in their plants
10 to convert their own waste from manufacturing to plant
11 powering energy. And then we still look at landfills
12 as a potential.
13 These progressive uses of garbage are
14 cropping up all over the United States and nearby
15 while the Kendall -- while Kendall still mulls
16 stepping boldly into the 19th century with
17 unparalleled regressive thinking to consider digging a
18 hole to bury a cheap source of inexpensive energy
19 while simultaneously contaminating your local
20 groundwater and polluting the air with methane gas.
21 During the last landfill hearing,
22 attorney for Waste Management/Kendall Cattle & Company
23 said the technologies are coming but it won't be for
24 another 100 years. Sure has been a short century,

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1 hasn't it?
2 I would hope that their other
3 calculations are not as far askew as that one has
4 been. Because all of those facilities I just talked
5 about will be up and running by 2010, and they are
6 under construction now.
7 Those who favor hole-digging may be
8 shocked to discover sometime that someone else is
9 using their desired garbage stream to fuel our cars
10 and power our homes.
11 For the residents of Kendall County
12 and the nation, our waste is too valuable to waste,
13 but here we are once again, and you're once again
14 enjoying yet another landfill hearing.
15 It's time to put an end to this craze
16 by amending your Solid Waste Plan banning garbage
17 burial as a means of garbage disposal. Landfill
18 companies will not make further applications knowing
19 full well that any application involving garbage
20 burial will not be in compliance with your Solid Waste
21 Plan or Criterion 8 of the siting process.
22 Landfills are jokingly referred to as
23 sanitary pollution control facilities. Whoever named
24 them has a bizarre sense of humor. The truth is

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1 landfills are pollution concentration facilities
2 polluting the groundwater around them and the air
3 above with putrid methane greenhouse gas. A molecule
4 in methane is 23 times more heat absorbing than a
5 molecule of CO2.
6 And what we've found with landfills
7 is research identifying municipal solid waste
8 landfills as one of the top 26 most significant
9 sources of hazardous air. The AP -- EPA has launched
10 a program to clean this up.
11 In a recent study of 288 landfills
12 off-site migration of gases, including methane, was
13 detected at 83 percent of these sites from the
14 University of Indiana.
15 In the case of inorganic materials
16 such as arsenic, lead, chromium and other hazardous
17 materials, heavy metals, will never change into
18 anything other than heavy metals.
19 49 out of 50 sites were found to have
20 contaminated groundwater off-site at -- in the study
21 of EPA by Geraghty & Miller. That's 90 percent
22 contamination rate for groundwater beneath the
23 landfills. 90 percent of the landfills.
24 In the Federal Register, May 26th,

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1 1981, the EPA argued forcefully that all landfills
2 will eventually leak, all of them, even those with the
3 most sophisticated liner systems.
4 There are an estimated 80,000
5 chemicals in commercial use today many of which are
6 not fully tested for environmental health impacts. A
7 1998 study by Environmental Defense called "Toxic
8 Ignorance" judged that less than 29 percent of high
9 volume chemicals, those produced or imported in the
10 U.S. in quantities of more than one million pounds per
11 year had completed health hazard testings in
12 sufficient detail to characterize their health risk.
13 Only 29 percent of the 80,000
14 chemicals have ever been tested and yet eventually
15 most of those 80,000 chemicals will end up in a
16 landfill. Many of those by themselves are toxic and
17 in coordination or in compounds may even be more toxic
18 than the volatile organic chemicals.
19 In a recent study of the University
20 of Massachusetts Lowell, they found that 96 percent of
21 the people ranked landfills as the least desirable
22 form of urban development. The other four percent
23 must have worked for the landfill companies.
24 Why should a booming community like

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1 Kendall invest one acre of valuable land in this most
2 undesired form of urban development?
3 Do the right thing. If you approve
4 your dump, your legacy of Kendall will be one of what
5 have you done to the people of Kendall County. If, on
6 the other hand, you seek out one of the
7 energy-recovering technologies, your legacy will be a
8 tribute of what you have done for the people of the
9 Kendall and for the nation.
10 Now, you may consider us to be
11 outsiders because we don't live here, but in this case
12 no one is an outsider because at this point in time we
13 can no longer afford to waste our waste and anything
14 you allow to be buried here is a net subtraction from
15 the energy source that we should be recovering. So it
16 has an impact on everybody everywhere in this country.
17 So I would urge you to do the right
18 thing, reject this landfill and instead look at the
19 garbage stream as a source of inexpensive energy.
20 Remember, each pound of garbage will
21 recover 4,500 BTU's of usable energy. That's pretty
22 powerful.
23 Thank you very much for letting me
24 talk with you tonight.

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1 HEARING OFFICER KINNALLY: Okay. Thank you,
2 Mr. Runyon, for coming and sharing your views with us
3 on this topic.
4 Okay. The next -- did you want to
5 file those, Mr. Runyon?
6 MR. RUNYON: Sure.
7 HEARING OFFICER KINNALLY: Okay. Great. Thank
8 you. We'll make sure those get stamped.
9 Do you want us to hand them out?
10 We'll be happy to do that. Why don't you hand those
11 down to the Board members, put this in the record,
12 please.
13 The next person is Leigh Marcotte. I
14 always mispronounce your name. I'm sorry.
15 MS. MARCOTTE: Mr. Kinnally, I need a
16 projector.
17 HEARING OFFICER KINNALLY: Pardon me?
18 MS. MARCOTTE: A projector.
19 HEARING OFFICER KINNALLY: I don't have one.
20 Does somebody have a projector that
21 she can use?
22 MS. MARCOTTE: They're getting it.
23 HEARING OFFICER KINNALLY: Okay. Here are some
24 papers that Ms. Marcotte wants to file. I don't know

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1 if everybody's seen these.
2 Do you want to see them?
3 MR. MORAN: Thank you.
4 HEARING OFFICER KINNALLY: She gave us 15
5 copies, so I don't know, do you have --
6 MR. BLAZER: I have one.
7 HEARING OFFICER KINNALLY: Okay. There's other
8 copies up here.
9 All right. Are we ready to go?
10 Getting there?
11 MR. BLAZER: Mr. Kinnally, while he's doing
12 that, should we assume this is being submitted as
13 public comment?
14 HEARING OFFICER KINNALLY: I don't know. She
15 indicated she wanted to file it, and I don't know if
16 there's objections to it. If there are, let's hear
17 them now.
18 MS. MARCOTTE: Yes, Mr. Kinnally, public
19 comment.
20 HEARING OFFICER KINNALLY: Okay. Is there any
21 objection to these filings as public comment?
22 MR. MORAN: Not as public comment.
23 HEARING OFFICER KINNALLY: That's good, because
24 I don't think you can object to that. You can object

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1 to the content, but as to the filing, I don't think
2 you can object.
3 All right. Just introduce yourself,
4 ma'am, tell us where you're from, and then go ahead.
5 MS. MARCOTTE: Thank you, Mr. Kinnally. Leigh
6 Marcotte. I'm from Kankakee County, the northwest
7 part of Kankakee County, specifically Bonfield,
8 Illinois, big metropolis of about 500 people.
9 I had done a presentation a year ago,
10 but since Mr. Moran did not allow the material that
11 was submitted last year, I will go over a little bit
12 of the stuff that I went over -- that I had submitted
13 last year but not all of it. I'll kind of go through
14 it so that people don't fall asleep because a lot of
15 same people are here, but I do want to touch upon a
16 few things for emphasis.
17 Four things I want to talk about.
18 And as I said, I talked about the background of the
19 Applicant. It's something you referred to,
20 Mr. Kinnally, I believe as the tenth criteria, and
21 it's the operating history of Joyce Farms landscape
22 waste site in Kankakee County.
23 The second thing is, I believe most
24 of the people here heard the ideal as far as how

1 things work with the building and the subsequent
 2 inspections and enforcement.
 3 I'm going to give you a real-life
 4 scenario of our experience in Kankakee County with
 5 Mr. Joyce and a few other sites, but specifically
 6 mostly Mr. Joyce since is he an Applicant.
 7 And the third thing I'm going to
 8 address is Mr. Nickodem -- Mr. Nickodem's findings for
 9 Criterion 4 that the facility does not lie within the
 10 100-year floodplain.
 11 And the fourth thing, you've heard
 12 the best-case scenario, so I'm going to give you
 13 briefly a worst-case scenario of something that has
 14 happened in Kankakee County.
 15 Just to try to tie this with Kendall
 16 County, as I said, Jerome Joyce is an Applicant in the
 17 Kendall County Siting Application. He's one of the
 18 principals in the Kendall Land & Cattle, L.L.C. He is
 19 also listed on the permit applications to the EPA as
 20 the sole beneficiary of a land trust on which Joyce
 21 Farms operates. Also, Michael Tadin is one of the
 22 three managers of Kendall Land & Cattle.
 23 Just to give you an idea where we're
 24 at compared to Kendall County, the Joyce Farm site is

1 in sort of the northwest part of Kankakee County.
 2 I'll be talking a little bit --
 3 again, I'm not going to talk about this extensively,
 4 but there are two sites on the Joyce Farms --
 5 historically there has been two sites.
 6 Any -- by state regulations, any,
 7 quote, farmer, can apply so-called landscape waste to
 8 their fields at the rate of 20 -- up to 20 tons an
 9 acre without a permit.
 10 In 2000, Mr. Joyce went and received
 11 a permit to sell off compost from a 13.62-acre portion
 12 of the farm. That portion only is the permitted site,
 13 that 13-and-a-half acres. So the two percent of
 14 Mr. Joyce's land historically was two percent of 360
 15 acres or 7.2 acres.
 16 And just a little more history.
 17 Jerome Joyce, who is an Applicant, sponsored a law to
 18 ban yard waste from landfills. By the end of 1992,
 19 Senator Joyce was accepting truckloads of landscape
 20 waste on his Essex Township farm. Joyce also became a
 21 registered lobbyist for a subsidiary of Waste
 22 Management, Inc.
 23 Jerome Joyce served on the Kankakee
 24 County Board with George Ryan in the '70s, and in the

1 summer of 1997 he held a fund-raiser for George Ryan
 2 before he was elected governor. This is them in the
 3 1972 photo.
 4 Last year Claire Manning represented
 5 Kendall Land & Cattle. She's not here at these
 6 landfill siting hearings this year, but as of
 7 September 4th, 2008, Claire Manning does represent
 8 Joyce Farms still in an Illinois Pollution Control
 9 Board case that has been filed on behalf of Joyce
 10 Farms.
 11 For nearly a decade from 1995 until
 12 November 2004, routine inspections and complaint
 13 investigations of Joyce Farms were performed by the
 14 Kankakee County Health Department, and no violations
 15 were observed in that nine-year plus period.
 16 Recently there's been quite a bit of
 17 activity on the 360-acre farm in Essex Township.
 18 Michael Tadin, doing business as MMT Investments,
 19 loaned Jerry Joyce \$500,000 and holds the lien on 80
 20 acres of farmland in Section 24 of Essex Township.
 21 Tadin loaned Joyce the money on October 17th, 2005,
 22 just days after they formed the Kendall Land & Cattle,
 23 L.L.C.
 24 Records show HomeStar Bank holds the

1 mortgage and lien on the Joyce Farms land in the
 2 amount of \$1,659,000 for several tracts in Section 24.
 3 It also includes land in Section 30. The loan has a
 4 maturity date of June 13th, 2008. I checked at the
 5 records at the recorder's office and no updated
 6 documents have been filed.
 7 In 2000, then, the Joyce Farms land
 8 consisted of 360 acres. 28 acres was sold to Joyce's
 9 son-in-law in January 2006. 158 acres was sold to
 10 Martin Joyce in either July or August 2008. They have
 11 lots of cross-offs on this warranty deed and
 12 everything.
 13 The amount of the farmland left,
 14 then, in Joyce Farms now is approximately 174 acres,
 15 which is less than half of the original acreage.
 16 This shows the -- the turquoise is the
 17 upper left corner with the turquoise line that's
 18 broken. That's the land that Michael Tadin holds the
 19 mortgage on, approximately 80 acres. The solid line
 20 turquoise is also still in the HomeStar Bank land
 21 trust. The red area and the green area are properties
 22 that were sold off.
 23 This was a local county inspector
 24 before 2005. The problems experienced by nearby

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1 residents were not documented by the health department
2 inspector.

3 We've had a number of gatherings
4 where people attended public meetings, and the vast
5 majority of those attending the meetings oppose the
6 way Joyce Farms manages landscape waste facility.

7 Residents in the area complain of
8 odors, swarms of biting flies, speeding semi tractor
9 trucks blowing trash, and noisy machinery. They also
10 expressed concerns about groundwater contamination.

11 This was a view in February 1998 from
12 an adjoining property of Joyce Farms.

13 This, I'm going to refer to, and I'll
14 kind of go through it fast, is the testimony that was
15 provided by Mr. Joyce and his expert witnesses in the
16 2000 hearings where he obtained the permit to sell off
17 compost.

18 They testified that instead of having
19 to apply it to their own farm ground, they're going to
20 be able to sell the product and derive economic
21 benefit from it. And then when a neighbor asked
22 Patrick Joyce "Are you going to continue also the land
23 operation in addition to composting," Patrick Joyce
24 replied, "Not if we get the composting permit."

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1 In order to meet that exemption for
2 permit for on-farm composting, Joyce Farms would be
3 limited to an area of 7.2 acres.

4 In a June 2004 inspection report, an
5 inspector from the IEPA Region 2 office noted "I would
6 estimate that approximately 15 acres are utilized,"
7 more than twice the allowed area.

8 As a person that's concerned about
9 what's happening in your community, going out and
10 getting signatures, this is a letter that -- it's
11 happened on a couple of occasions where people have
12 received letters from attorneys, and it just kind of
13 has a chilling effect when they write things like
14 "while solicitation -- soliciting signatures you have
15 made several defamatory statements about their
16 business." This attorney is now running for circuit
17 court judge in Kankakee County.

18 So is Joyce Farms a good neighbor?
19 They said in the paper when they responded to a series
20 of articles in 2005 that they care deeply about
21 providing a safe environment for our children and
22 remaining courteous and respectful to our neighbors.

23 In a 2006 Joyce Farms permit renewal,
24 the IEPA incorporated several conditions that

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1 residents asked for to address quality of life issues,
2 but Attorney Claire Manning is appealing most of them
3 with the Illinois Pollution Control Board.

4 There's an update on that. The
5 January 2008 permit modification does not allow Joyce
6 Farms to run machinery 24-7, and I might add, usually
7 it's Fourth of July, a three-day weekend, where you'll
8 hear the backup alarms or other machines from pretty
9 much all night long.

10 These are some of the things that the
11 inspectors noted when they visited the Joyce Farm site
12 in June 2004. That was when Mr. Joyce's luck ran out.
13 They found leachate flowing from the site into the
14 waterway which leads to Horse Creek, a lot of litter.

15 So after the IEPA came in, they
16 questioned the level of competency of the health
17 department inspector.

18 On May 27th, 2004, a Kankakee County
19 health department inspector performed an inspection at
20 Joyce Farms and wrote no violations were observed.

21 The middle of June, IEPA came from
22 outside the country -- outside of the county and noted
23 32 violations. A few weeks later the health
24 department inspector finds no violations.

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1 So in late 2004, the IEPA was
2 threatening to withdraw the delegation agreement from
3 Kankakee County, so the County Board was forced to
4 transfer the enforcement program to another
5 department, the planning department, in January 2005.

6 The new inspector performed the first
7 inspections of local solid waste sites in February
8 2005.

9 Waste standing in water, leachate,
10 stream going into the waterway leading into Horse
11 Creek, this was a photo that a neighbor took of Horse
12 Creek in August of 2004. It was a very vibrant rust
13 color.

14 An aerial photo shows some of the
15 leachate flowing off-site into the waterway leading
16 into Horse Creek, and that water just doesn't flow
17 uphill.

18 So there were continuing problems
19 with the leachate and also with the retention pond,
20 and I'm just going to go through these kind of fast.

21 They said in their testimony that
22 they would have a 25-year rain, clay lined, and
23 approximately one-and-a-half acre detention pond.
24 However, the neighbor's one-and-a-quarter-acre pond is

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1 much larger than what they apparently have on their
2 site.

3 And it looks like the -- this, when
4 you have a three-quarter inch rainfall, is what it
5 looked like in July of 2005, and this was January
6 2007. Again, the retention pond is overflowing into
7 those compost piles.

8 This was just taken last week. Those
9 little circles are the locations of the groundwater
10 monitoring wells. And, again, there are a lot of --
11 appears to be a lot of drainage problems on-site.

12 This is a location -- the oval, the
13 rust-colored oval is the location of an aerial photo
14 that was taken with a telephoto lens, and it appears
15 there is rust-colored water in the waterway just south
16 draining into Horse Creek.

17 Transfer trailer trucks are still
18 rolling into the Joyce Farms waste site. Last week
19 again -- this is a photograph again of a recent load
20 dumped at the site. It's surrounded by -- it's kind
21 of impossible to get the scale, but that screen area
22 is huge. If you can look at some of these aerial
23 photos and see something to give it scale, it is a
24 massive sight to see.

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1 At the 2000 hearings, they also
2 promised that they would have less volume and less
3 trucks, but that was in 2000. They had 23,400 tons
4 that they reportedly received in 1999. By 2002 they
5 were getting 41,000 and 43,000 tons per year that they
6 reported to the IEPA. So with a permit, is it really
7 less volume, less trucks?

8 Another problem that we've seen a lot
9 in the Joyce Farms reports is when they went to put
10 the permit in in 2000, they were required to place
11 groundwater monitoring wells on-site. So they
12 established background levels at Joyce Farms in 2000,
13 2001, but it was on land that had already been
14 impacted by seven years of -- at least seven years of
15 applying waste.

16 In 1997, the citizens sent a letter
17 to an agronomist with the soil test results from Joyce
18 Farms that they had obtained through a Freedom of
19 Information Act request to the EPA.

20 The agronomist said, "It appears the
21 application of lawn/yard waste to this ground has been
22 as a, quote, waste disposal, end quote, rather than an
23 agronomic utilization of a waste product." He went on
24 to say that "One likely problem with the excessive

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1 application of lawn/yard waste is the release of a
2 large amount of available nitrogen. A consequence of
3 this would be high soluble salts that are adverse to
4 crop growth, and the environmental effect of polluting
5 groundwater with nitrate-nitrogen."

6 This shows the location of those
7 groundwater monitoring wells. Just over the whole
8 seven years there's been significant changes in
9 groundwater. And things like phosphorous, nickel,
10 nitrates, lead, potassium and chromium have been --
11 chromium has been higher than the Class 2 standards on
12 many occasions.

13 So I'll just scroll through this part
14 here.

15 This occurred over six years so far.
16 So the concerns of the area was why does the IEPA use
17 Class 2 standards for the on-site groundwater
18 monitoring wells instead of Class 1 if an aquifer is
19 within 40 feet? Is there contamination in the
20 underlying bedrock where people in the area with
21 private wells get their drinking water from? Why do
22 they use a background standard of over a thousand
23 micrograms per liter for chromium when the background
24 statewide is approximately 20?

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1 In May of 2006, the Illinois EPA went
2 in to Joyce Farms and collected 20 soil samples from
3 the permitted site. One sample collected from the
4 southeast corner of the permitted site contained
5 chromium. The level was 1,200 milligrams per
6 kilogram.

7 The ISGS surface soil levels for
8 chromium in Kankakee County soils is 34 milligrams per
9 kilogram. When they did the SPLP extraction, it was
10 below the regulatory level.

11 Some of the wells were tested, they
12 came out okay, some of the wells in the area, they had
13 no exceedances considered public health threats.

14 This is more recent information about
15 the Joyce Farms groundwater monitoring test results
16 for the fourth quarter 2007 to the second quarter
17 2008. Again, there were high levels of chromium.

18 You can see in G104 the
19 fourth-quarter chromium was 2,000 micrograms per
20 liter. The first quarter 2008, chromium 1,400
21 micrograms per liter. The Class 2 standard is a
22 thousand micrograms per liter, and the Joyce Farms has
23 the unbelievable background of 1,159 micrograms per
24 liter.

1 And G102 had a chromium in the first
 2 quarter of 2008 of 1,700 micrograms per liter. There
 3 were also high values reported for boron and
 4 potassium.

5 I sent a -- the groundwater data to
 6 the IEPA and asked them if anybody's reviewing these
 7 reports, and if they can tell me what's happening
 8 here, doesn't this count as an exceedance, and the
 9 unbelievable response was that because Joyce Farms has
 10 a permit pending for the results of a groundwater
 11 assessment, because there's a permit application
 12 pending, the chromium and copper will not be subject
 13 to the requirements of the conditions.

14 So, therefore, according to the
 15 current permit, the noted chromium concentrations in
 16 well G104 and G102 are not in violation of the
 17 chromium exceedances in accordance with the permit.

18 Joyce Farms has had a lot of problems
 19 with the on-farm site, too. They agreed to clean up
 20 the facility by March 22nd, 2006, but they failed to
 21 meet that deadline. They were sent a notice of intent
 22 to pursue legal action in November 22nd, 2006, and I
 23 have a couple of the pictures attached that were
 24 attached to this notice.

1 This one is a lot of litter and
 2 vegetation on the windrows which usually signifies
 3 that the row's compost is not being managed properly.
 4 This is the cornfield in the fall of 2005 prior to
 5 harvest, and tell me what the crop is here.

6 There was more recent inspection of
 7 Joyce Farms on April 30th. At that time, the Illinois
 8 EPA regional office inspector noted that all of the
 9 on-farm composting piles had been removed.

10 This is more than eight years after
 11 Joyce said that they would not have any on-farm
 12 operation if he received a permit. It's also more
 13 than two years after the deadline of March 2006 that
 14 Joyce agreed to in his compliance commitment agreement
 15 with IEPA.

16 Mr. Joyce stated the top six inches
 17 of soil and compost will be screened to remove as much
 18 litter as practically possible. Litter was present
 19 throughout the site.

20 So the permitted site received a
 21 under legal review in March 2007.

22 This is the kind of stuff that
 23 happens. This letter was sent to the boss of the
 24 inspector who was noting all these violations, and it

1 was sent by a Joyce Farms attorney, Claire Manning.
 2 Sorry. It says that Joyce Farms
 3 would ask the County Board more closely observe the
 4 nature of its delegated authority so that the county
 5 does not unfairly impede a local business's legitimate
 6 efforts to renew its state environmental permit by
 7 exceeding its delegated authority and turning mere
 8 allegations into violations without benefit of due
 9 process and espousing those violations to the EPA, to
 10 the local newspaper -- that reporter was fired -- and
 11 to any local citizenry who will listen.

12 A little bit of history on the
 13 delegation agreement and local solid waste
 14 inspections. Again, I don't know if anybody's touched
 15 on this, but what happens after a permit is granted,
 16 you know, who's going to be around to see that they've
 17 developed the site, that they're submitting their
 18 groundwater tests and that they're within the
 19 parameters they're supposed to be.

20 Kankakee County had a delegation
 21 agreement with the Illinois EPA beginning in 1987.
 22 Because of the difficulties mentioned by the IEPA in
 23 the level of competency letter, the Kankakee County
 24 Board transferred the solid waste program from the

1 health department to the planning department.
 2 During the initial inspection in
 3 February 2005 and in subsequent inspections, the new
 4 county solid waste inspector noted similar violations
 5 to those first found in the inspection report by an
 6 Illinois EPA inspector from Region 2 in June 2004.

7 Kankakee River Advocate Citizens and
 8 Illinois EPA officials wrote letters or spoke in
 9 support of the job that local inspectors were doing,
 10 but four mayors from Kankakee, Bradley, Bourbonnais,
 11 and Aroma Park wrote letters requesting the County
 12 Board terminate the agreement in late January and
 13 early February 2007.

14 It's probably no coincidence that the
 15 Mayor of Kankakee stands to get -- sorry, George, I
 16 didn't bring it with me from your Application, but
 17 it's in the way millions of dollars from the
 18 landfill -- Kankakee Regional Landfill in Kankakee
 19 County.

20 So on February 16th, 2007, the
 21 Kankakee County Board suspended the delegation
 22 agreement, the state funding stopped, routine
 23 inspections stopped, and one of the local inspectors
 24 was assigned to a new position. The health department

1 inspector whose level of competency the IEPA
2 questioned still maintains a job working for the
3 County as director of environmental health.

4 On February 13th, 2008, six months
5 ago, Kankakee County State's Attorney, Jamie Boyd,
6 presented a resolution for the County Board which had
7 not previously been passed in committee, and our
8 County Board usually does most of the work at
9 committee level.

10 This was a February surprise the
11 State's Attorney delivered to the County Board.

12 They approved the resolution which
13 continued the suspension of the delegation agreement
14 by a vote of 18 to 3. So by default, the
15 responsibility for investigating complaints for local
16 solid waste or burning issues goes back to the health
17 department.

18 Within days of the last year -- of
19 the end of last year's KLC/Waste Management siting
20 application hearings, the local inspector who had
21 written numerous ongoing violations for Joyce Farms
22 and other waste sites was fired.

23 The inspector filed suit against
24 Kankakee County and her former boss, planning director

1 Mike VanMill, in U.S. District Court, Central District
2 of Illinois, on June 2nd, 2008.

3 The complaint states Joyce Farms is
4 owned and/or otherwise operated by Jerome Joyce who is
5 a powerful political figure within the State of
6 Illinois and Kankakee, end quote.

7 These are some relevant facts from
8 the complaint filed against Kankakee County. And I
9 bring these out because it mentions the Kendall County
10 Board hearings.

11 One excerpt says that Mr. VanMill,
12 who is the inspector's boss, met her and asked her
13 whether she had anything to do with the Kendall County
14 Board hearing presentation made by a concerned
15 Kankakee citizen, which is me -- I put the quotes in
16 there because it's me -- who opposed Joyce's siting
17 permit application.

18 VanMill advised Plaintiff that the
19 County Board was aware of the presentation made at the
20 Kendall County Board hearing, and they were unhappy
21 about it.

22 In May 2007, George Mueller -- again,
23 I put his name in there because I know who it is -- an
24 attorney who represented a client who was objecting to

1 the Joyce siting permit application that was pending
2 in Kendall County sent a FOIA request to Kankakee
3 seeking the production of documents regarding, among
4 other things, the operation of and the violations of
5 the Act found at Joyce Farms.

6 Previous entities and individuals who
7 sent to Kankakee similar requests for information
8 regarding Joyce Farms were provided with such
9 documentation.

10 The Plaintiff was directed by VanMill
11 to gather and copy any of the documents which must be
12 responsive to the FOIA request and give them all to
13 the State's Attorney's office.

14 On May 11th, 2007, the Plaintiff,
15 unrelated to her job, and again as a concerned State
16 of Illinois citizen, attended another Kendall County
17 Board meeting about the Joyce siting permit
18 application.

19 At that hearing, George Mueller, the
20 attorney who sent to Kankakee the FOIA request
21 regarding Joyce Farms, approached Plaintiff and asked
22 her if she knew about the status of the FOIA request.

23 The Plaintiff stated that she had
24 given the documents to the State's Attorney's office

1 and that he should get them, but it was up to the
2 State's Attorney's office to decide whether to produce
3 the documents.

4 On or about June 4th, 2007, the
5 attorney who submitted to Kankakee the Joyce Farms
6 FOIA request appealed to the County Board chairman the
7 denial of the FOIA request based upon, among other
8 things, the fact that the documents which VanMill
9 claimed were, quote, too voluminous and burdensome,
10 end quote, to produce were, in fact, and contrary to
11 the stated reason for denial of the FOIA request,
12 copied and delivered to the State's Attorney's office.

13 On June 5th, 2007, VanMill had a
14 meeting with the Plaintiff. At that meeting he told
15 the Plaintiff that the State's Attorney's office had
16 received the Joyce FOIA request appeal letter and that
17 the State's Attorney's office and VanMill were upset
18 that Plaintiff had told the requesting attorney that
19 she had delivered the documents at issue to the
20 State's Attorney's office.

21 VanMill then terminated Plaintiff for
22 the truthful statements she made to the attorneys who
23 issued the FOIA request about it.

24 So they are claiming in the complaint

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1 that Defendants took the actions and terminated the
2 Plaintiff in an effort to chill the First Amendment
3 rights.
4 Kankakee County and Mike VanMill are
5 currently seeking dismissal of this complaint.
6 So in the past year-and-a-half when
7 we have not had the delegation agreement, the number
8 of inspections has dropped drastically.
9 There were 32 inspections of 25 solid
10 waste facilities in Kankakee County for the year
11 between February 1st, 2007, and February 1st, 2008.
12 Joyce Farms was inspected by the IEPA regional office
13 only two times in that year.
14 21 inspections were performed between
15 February 1st, 2008, and July 1st, 2008, this past six
16 months. 14 of those inspections were of car dealers
17 and other automotive-related businesses. Joyce Farms
18 was only inspected one time in that six months.
19 As a part of the delegation
20 agreement, the County receives a grant called the
21 solid waste enforcement grant, and according to the
22 document submitted for the solid waste enforcement
23 grant there were 201 solid waste inspections for the
24 state fiscal year 2006, which is between July 1st,

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1 2005 and June 30th, 2006. That's the last full year
2 that the delegation agreement was in effect. 13
3 routine inspections were performed at Joyce Farms
4 during that time.
5 So there were 32 inspections
6 performed in Kankakee County in 2007 versus 201
7 inspections state fiscal year 2006, which is a
8 decrease in number by approximately 84 percent.
9 The two inspections for Joyce Farms
10 in 2007 versus 13 for 2006 represents a similar
11 reduction. Not only has the quantity dropped off
12 dramatically but the quality is not nearly as
13 thorough.
14 This the Kankakee County Board
15 State's Attorney and IEPA's handling of inspections
16 and enforcements at the solid waste sites. They act
17 like a ostrich who has stuck his head in sand.
18 I want to switch gears a little bit
19 here now. Mr. Nickodem had testified as to the
20 Criterion 4. I just want to tell you about experience
21 in our county with Criterion 4, that is not -- not a
22 pleasant one.
23 During the opening night of the
24 KLC/Waste Management hearings, the professional

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1 engineer said the proposed landfill site is not within
2 the 100-year floodplain.
3 Mr. Nickodem testified that his
4 source of information was the flood insurance rate
5 maps for the area. Nickodem also said they got the
6 flood insurance rate maps off the FEMA website.
7 This is the experience we had with
8 that 100-year floodplain FEMA maps with Kankakee
9 Regional Landfill.
10 The location of the proposed Kankakee
11 Regional Landfill is bordered on three sides by two
12 branches of Minnie Creek. Farmable wetlands lie
13 within the boundaries.
14 The City of Kankakee annexed the
15 farmland for the proposed site and became the local
16 siting authority for the Kankakee Regional Landfill.
17 Critics hired their own experts who
18 found that the bedrock aquifer is extremely sensitive
19 to contamination in the area where the proposed site
20 is located.
21 Residents living in the area
22 testified about major flooding on the property,
23 especially in 1957 and 1993.
24 In the findings of fact attached to

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1 the local siting approval, the City found that based
2 on the testimony and FEMA flood insurance rate maps
3 presented to them in 2003, the proposed KRL landfill
4 was outside the boundary of the 100-year floodplain.
5 Subsequently, the Illinois EPA
6 granted a development permit for the Kankakee Regional
7 Landfill on March 3rd, 2006.
8 The KRL property is situated on
9 approximately 400 acres with a footprint of 236 acres.
10 When the applicants Tom Volini and
11 Fred Barbara finally completed a study of the Minnie
12 Creek drainage area, the Kankakee Regional Landfill
13 property was determined to be within the 100-year
14 floodplain.
15 In June 2007, the drainage
16 commissioners for the Minnie Creek drainage district
17 asked the Illinois Department of Natural Resources,
18 IDNR, if the proposed landfill area was in the
19 floodplain.
20 The response sent from IDNR said,
21 quote, the entire property lies below elevation 629.0,
22 which indicates the entire property lies within the
23 100-year floodplain.
24 In July 2007, the IDNR granted a

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1 permit for KRL to develop the proposed landfill and an
2 ethanol plant within the Minnie Creek floodplain. The
3 permit requires the developers to excavate a relief
4 channel with culvert crossings and modifications of
5 the existing railroad bridge over Minnie Creek.
6 This is the actual engineering plans
7 that were approved. It didn't show up real well, so I
8 had to use a colored pencil to sort of mark, but the
9 red areas are the relief channel and other grading
10 areas are the red areas.
11 The length of that relief channel and
12 the other grading areas is more than a mile long. The
13 channel is 280 feet wide in some places. It's cut off
14 at the top, but Minnie Creek does border the proposed
15 landfill on three sides.
16 So just as a word of caution, I
17 didn't know if you were aware that the IDNR is in the
18 process of flood map modernization project with FEMA,
19 and from the Web site, this is the Kendall County
20 project status.
21 So hopefully Miss Soltwisch, or
22 someone, will make sure that this does not, in fact,
23 based on the most current evidence, lie within that
24 100-year floodplain.

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1 I'm going to finish with a few
2 comments about something, again, that has happened in
3 Kankakee County. And this is pretty much, I would
4 say, a worst-case scenario. And that is the Shell
5 pipeline MTBE spill that occurred in Limestone
6 Township of Kankakee County in 1988.
7 Just a little history. They
8 settled -- they reached an agreement on settlement
9 with Shell in March 2008. It was approximately \$46
10 million. \$20 million of that is to -- approximately
11 \$20 million is to run well -- or water lines from
12 Aqua, Illinois, water lines out to the people that
13 have the private wells that have been contaminated.
14 It affects approximately 900 residents.
15 This is a quote in the newspaper from
16 Mr. Yurgine, who represented some of the residents in
17 a class action suit living in the area. He said, "We
18 had people who described the spill as a lake of gas.
19 Our estimate was far larger than Shell had indicated.
20 Shell originally estimated 16,000 gallons; that has
21 risen to 100,000. And once it goes down into the
22 ground and into the fractured rock, it can go
23 anywhere. The plume of pollution was supposedly
24 moving north towards the river."

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1 When I flew over it last week, I took
2 a picture of what I believe to be the Shell pipeline
3 spill remediation site, and according to the newspaper
4 article the remediation consists of water being drawn
5 out and purified on-site.
6 What the attorney meant by it was
7 supposed to go north, north is -- it was first found
8 to the northwest, quite a bit west. That is a school
9 in the background. It's Limestone Grade School.
10 And that area is not called Limestone
11 by accident. There are areas of the township where
12 bedrock is near or at land surface. Most of it's two
13 to four feet below. It's rare that it's more than six
14 feet below land surface.
15 So I just wanted to caution the
16 Kendall County Board that if you do approve this
17 landfill, try to make sure all safeguards are in place
18 and not just if you approve it and walk away from it.
19 Hopefully you're going to be -- make sure the
20 monitoring of the place is done properly and if any
21 enforcement action needs to be taken, that you will
22 take it.
23 The Shell pipeline spill, I say, is
24 the worst-case scenario because it seems like it's

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1 always a citizen, and in this case a citizen went to
2 an attorney, Mr. Yurgine, in 2001 with health
3 problems. They subsequently found MTBE, toluene, and
4 benzene in the well. This was more than 12 years
5 after the spill had occurred, because it was 2001 and
6 the spill occurred in 1988.
7 So it's kind of a sad situation
8 because this will affect generations of people living
9 in the area. You know, this remediation just has
10 occurred in the last year.
11 I fly over this site quite a few
12 times, the Limestone School quite a few times, and
13 this has just been -- their remediation has only begun
14 this year, 20 years after the spill occurred.
15 So I do, indeed, say this is a
16 worst-case scenario. Because those wells are
17 polluted, I don't know if they'll ever be able to
18 clean them up.
19 But people that had private wells
20 spent 4 or \$5,000 or more to put in wells in their
21 homes. They can use them, and they're going to have
22 to pay for -- to have a water bill every month.
23 So thank you for your time.
24 HEARING OFFICER KINNALLY: Okay. Thank you,

1 ma'am. Appreciate you coming and sharing with us your
2 information.

3 We're going to take a break now for
4 about ten minutes, and then we'll resume.

5 (Recess taken.)

6 HEARING OFFICER KINNALLY: All right. I'd like
7 to reconvene.

8 All right. I want to make a couple
9 of announcements. First of all, what we're going to
10 do next is Mr. Severson wants to give some testimony
11 because he's going out of town and he can't come back.

12 We're then going to do the motions
13 that were filed by the lawyers, Mr. Porter, which I
14 believe Dan Kramer and Kelly Kramer have also filed a
15 similar -- not exactly the same, but a similar motion.

16 We're going to do those tonight. I'm
17 going to hear the arguments on those tonight.

18 We're going to do the public comment
19 on Wednesday and Thursday. So everyone who wants to
20 give public comment, I'd like to get it done on those
21 two nights if we can. If we can't, then we can't.

22 Mr. Kramer's witness is going to be
23 here Monday, and I want the lawyers to go back and
24 talk to their clients to find out -- and if we have to

1 take public comment on Monday, we can do that, too.

2 I would like to conclude these
3 hearings early next week. Again, I'm not -- we've
4 waited an awful long time for the witness from
5 Minooka, and I'm a little bit displeased with the fact
6 that he couldn't be here this week. There's really no
7 reason for that. But given that...

8 So I think -- we're on our ninth day
9 now, and I think we would like to conclude these as
10 best we can early next week, but no later than
11 midweek. I think we can do that if we all kind of
12 work on this.

13 So that's my -- the only comments
14 that I have. I wanted to give everybody a chance.
15 And if people, participants can't get here Wednesday
16 and Thursday, then we'll take them Monday and Tuesday.
17 But I don't expect the witness from Minooka to take
18 all of Monday night. I'd be very surprised. That's
19 four-and-a-half hours. He has a report, and I hope
20 the lawyers read the report before so they're
21 prepared.

22 But that is kind of the way this is
23 going at this point. So -- and if somebody's got a
24 special problem where they can't, you know, get here

1 as a public comment or giving testimony this week,
2 just tell me and we'll work you in. But I can't --
3 I'd like to kind of get a handle on the schedule now
4 because I think it's -- we're getting closer to the
5 end.

6 Okay. Mr. Severson, you wanted to be
7 sworn; is that right?

8 Okay. Do you want to state your
9 name, raise your right hand.

10 MR. SEVERSON: Ronald Severson.

11 (Witness sworn.)

12 HEARING OFFICER KINNALLY: Okay. Mr. Severson.
13 Go ahead.

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

17 MR. SEVERSON: Thank you. This will be done by
18 10:00 o'clock. 15 minutes and I'll be done.

19 The reason I wanted to put it in in
20 testimony as a witness, I don't feel it's fair to have
21 comments and not have the other side be able to
22 cross-examine or the people on the County Board ask
23 questions.

24 My only concern here is I can't

1 argue, as I said before, semantics of a landfill, how
2 to build them, what they're going to do in 50 years.
3 I don't know any of that. That's up to the people
4 that are in that field to decide.

5 My concern is where it's going to be,
6 and the reason is our family came to that area, and my
7 two sons and I are involved in now what's called
8 Whitewillow poll Herefords. We farm 650 acres. We've
9 got a 60-cow registered poll Hereford herd. I've got
10 a radio ag network.

11 And by the name you would think we're
12 in close proximity to that, and we are.

13 Our family came there late in the
14 community. My great-grandfather bought it in 1876.
15 The Olsons were already there. The Knudsons were
16 there, the Cryders were there, the Sherrills were
17 there, the Vickerys were there. And this is a pretty
18 stable agricultural community.

19 I never really understood the
20 significance of southern Seward Township because my
21 brother and I always told my dad, why didn't our
22 great-grandfather go another few miles west? Why did
23 you stop here? Because the productivity, to be real
24 honest, is better in Lisbon and Elmer. It's good

1 there where the landfill's at, but it's better farther
 2 west.
 3 But I learned something because in
 4 about 1998 I ran into a fella called Dr. Ken Olson at
 5 the University of Illinois, and everybody tells me if
 6 you want to know dirt, you ask Dr. Ken Olson. He can
 7 tell you what the soil is underneath the pyramids. He
 8 knows the world and the country.
 9 And he had a presentation. I was
 10 doing radio there. And the presentation was T by
 11 2000, and this was a program to stop erosion and keep
 12 the soil by the year 2000. And he said that if you
 13 don't know till -- and he had graphs and stuff
 14 there -- that you're going to lose one percent to two
 15 percent of your topsoil per year with normal tillage.
 16 Afterwards I did an interview with
 17 him, and I said, I'm having trouble here. My
 18 great-grandfather farmed that. It's been tilled
 19 continuously since 1876. He didn't rip it up as
 20 virgin prairie. He bought that from somebody else who
 21 had tilled it before that. By your calculations we're
 22 six feet in bedrock. I said that soil is still there,
 23 it's still the same amount, and it's producing more
 24 now than it did 132 years ago.

1 He said -- without knowing where I
 2 was from, he said I will make a guess. He said you're
 3 in an area that has deep, dark soils, probably
 4 Swygert, Bryce, Clarence, whatever, doesn't drain real
 5 good. It's not completely flat but less than a 10
 6 percent slope. And I said, well, that's pretty good.
 7 He said you are in a very fortunate
 8 and unique part of the world. 95 percent of the other
 9 people in the world would love to have that.
 10 And he said part of it is because of
 11 the productivity, but the other part is the
 12 sustainability. He said most areas in the world would
 13 be eroded away by now if you did the same practices as
 14 that.
 15 In that particular region, he said
 16 what happens, you have high organic matter, you have
 17 five, six, eight percent organic matter that actually
 18 is microbes with carbon that produce soil. You have a
 19 high water table. When you have that configuration of
 20 black soil clay underneath it, the water table stays
 21 high. And he said that helps in this whole mix to
 22 produce soil.
 23 He said that area will probably be in
 24 good farming productivity another 150 years from now

1 when a lot of the world's land masses are gone.
 2 A good for instance -- and I talked
 3 to him today. I called him up to get some of the
 4 facts and figures right. And a good for instance, I
 5 do remember a guy from Ohio and he went down to Brazil
 6 and he bought a big tract of land.
 7 When he got it cleared he said this
 8 is great. He said we went down there, we were raising
 9 60, 70 bushel soybeans. I've never honestly raised
 10 over 50 bushel soybeans in Seward Township with that
 11 landfill near it in my life. But it only lasts for
 12 about 10 or 15 years.
 13 What happens is they go in and clear
 14 the rainforest. They turn it into soybean ground. 15
 15 years later it's shot, and then they turn the cattle
 16 in there.
 17 So they blame the beef industry for
 18 destroying the rainforest. They're not. The grain
 19 farmers are destroying the rainforest. The cattle are
 20 the only thing that's left after the soil productivity
 21 is gone. And that's after about 15 years. This has
 22 been going on for 150 years and has no signs of
 23 deterioration.
 24 The other thing that I wanted to

1 point out, and I mentioned it a couple times before,
 2 is the LESA score. And the LESA score -- and I know
 3 some of you that are probably on planning, zoning
 4 understand it, and some may not. I'll explain it just
 5 briefly.
 6 And I realize this is a siting, this
 7 is not a planning and zoning, but LESA doesn't come
 8 out of planning and zoning meetings. It comes out of
 9 the soil and water conservation service. They prepare
 10 these things for different companies that want to go
 11 in, quarries or whatever, and this gives you an idea
 12 if you should be protecting that or not.
 13 LESA is Land Evaluation and Site
 14 Assessment. And you slash it in two, land evaluation
 15 is one side, site assessment is the other.
 16 This is not an official evaluation.
 17 I've got the book. It doesn't take a whole rocket
 18 science mentality to figure out a LESA score.
 19 Because in that particular area, and
 20 giving the benefit of the doubt to the Applicants,
 21 you're supposed to take all of the good soils and how
 22 many acres and the poor soils and how many acres, the
 23 poorest productive soil in that area is Swygert and
 24 Bryce. So I used Swygert and Bryce for the whole

1 model, the poor soil for the whole model. It comes up
2 with 78 on the land evaluation side.

3 Then you go to site assessment -- and
4 site assessment is how close are you to the
5 municipalities. If you're more than 1.5 miles away,
6 it's a 20. If you're less to that, it's a 10. If
7 you're next to it, it's a zero.

8 A good for instance, if you did one
9 in Morris at the Environtech Landfill, the LESA score
10 would probably be below 100 because you've got very
11 poor soil, it's strip-mined, it's been levelled off,
12 it's next to a town, it's next to hard road. And it's
13 just yes or no questions.

14 A couple of the questions I didn't
15 know, so I scored them zero. I came up with a LESA
16 score of 229. Under their calculations, there is a
17 low protective ability, a medium, a high and very
18 high. 229 is in the high protected areas. In other
19 words, you should be protecting that area because
20 there's not much of it.

21 Now, the LESA score puts a lot of
22 emphasis on how far away you are from municipalities,
23 because if people don't know it -- and I know every
24 one of those people on the County Board do.

1 In Illinois you don't have the
2 ability as a county to control the municipalities. In
3 Pennsylvania and a few other places you do, but not in
4 Illinois.

5 If you have a farming area that's
6 productive close to a municipality, they can annex it,
7 and they can annex it and take you completely out of
8 the mix. You have no control over it.

9 They can annex it with 60 feet. How
10 it got to be 60 feet was when Mayor Richard J. Daley
11 wanted O'Hare Field, couldn't put it next to Chicago,
12 but he wanted it in Chicago. He went out and he sent
13 his engineers out and he said measure the road. And
14 the road is like 62-and-a-half feet.

15 He put the arm on some people in
16 Springfield, made it a law if you have 60 feet running
17 out there you can annex it. So when you land on
18 O'Hare Field, you are in Chicago. You can't see
19 Chicago, but Richard Daley got his way.

20 So this is the problem, and this is
21 why the LESA score gets higher the farther you are
22 away from a municipality, because it's less likely
23 that that municipality is going to encroach and take
24 it in and it will be gone forever.

1 This is my -- this is my problem with
2 it: We've got 6 billion people now in the world.
3 When I brought this up just in conversation at the
4 Newark hearings, I had somebody said what in the heck
5 are you worried about corn? It's only \$2 a bushel.
6 This summer it hit \$7.

7 We are going to face a food crisis in
8 the next 50 years. That landfill will never -- and
9 Waste Management, we were customers of theirs, it's a
10 good company, but that landfill will never go back
11 into food production, and it's going to be needed.

12 And I think the County Board, I would
13 just ask them to think about not only here, not only
14 the money, because I know people throw around, you
15 know, \$4 million, whatever. If you divide it up to
16 the number of residents in Kendall County, it's \$35 or
17 \$40 apiece. But you're giving away something that you
18 can never get back.

19 You know the old saying is that you
20 buy land because you're not making more of it, and
21 that's really true. The land is gone when you take it
22 out.

23 And like Dr. Olson said, you can go
24 anywhere in the world. The number one row crop that

1 the people in the world want to plant is corn.

2 Why don't they plan corn in Kansas?
3 Because they can't. The soil's too alkaline. You
4 plant wheat. Why do they plant cotton in Alabama?
5 It's too hot. Why do they plant barley? I was just
6 in Canada, and I said why don't you plant corn? He
7 said it's too cold.

8 We have a unique mixture of moisture,
9 the right temperature, the right soil type that can
10 produce corn. And the only other place on earth is in
11 the Ukraine north of the Black Sea. There's only two
12 places in the world that can produce that.

13 And I'm not saying it's just Seward
14 Township. He was talking about what he called the
15 heart of the corn belt, which if you started basically
16 in Will County and you went southwest and you get down
17 to Litchfield which is 30 miles south of Springfield,
18 it pretty well ends, and you go west into western
19 Illinois, out to northeast Iowa, back around, that's
20 really the bread basket for the world.

21 And like he said, you've got to save
22 as much as possible because there's people in other
23 countries that would kill for land like that because
24 they can't raise anything like we can.

1 My 15 minutes are up. That's all I
 2 got to say. Just take it into consideration. And if
 3 there's any questions or cross-examination, I'm open.
 4 HEARING OFFICER KINNALLY: Does anybody have
 5 any questions for Mr. Severson?
 6 (No response.)
 7 HEARING OFFICER KINNALLY: All right. Well, we
 8 appreciate your information. Thanks very much.
 9 Okay. Now we're going to listen to
 10 motions that were filed first by Mr. Porter -- I mean,
 11 if you want to do them together, they're fairly
 12 similar. It's up -- you know. I'm not trying to
 13 preclude anybody.
 14 Mr. Porter, you were first. I mean,
 15 however you want to handle it.
 16 MR. PORTER: Thank you, Mr. Kinnally. Rick
 17 Porter on behalf of Grundy County.
 18 We have filed a motion yesterday to
 19 dismiss these proceedings on the grounds that you as a
 20 County Board do not have jurisdiction because the
 21 Applicant has not provided appropriate notice.
 22 You've been through this proceeding
 23 several times now, so you're, I'm sure, familiar with
 24 Section 39.2(b) which requires notice to all owners

1 within 250 feet of the lot line of the subject
 2 property. Sufficient notice is strictly required in
 3 Illinois to establish your jurisdiction, and pursuant
 4 to 39.2(b), that notice must include the location of
 5 the site, the size of the site, and the nature of the
 6 activity for the notice to be sufficient.
 7 The lot line of the subject area is
 8 the boundary of the Applicant's greater parcel. And,
 9 Mr. Kinnally, that is the Environmental Control
 10 Systems case that we've cited in our brief, and I have
 11 ample copies of it. I'm going to briefly quote from
 12 the last page of that case which provides, "We
 13 conclude that the lot line refers to the greater
 14 parcel line and not simply the regional pollution
 15 control facility line. To conclude otherwise could
 16 result in abuse with property owners in close
 17 proximity to a proposed regional pollution control
 18 facility not receiving notification because the
 19 application owns enough land surrounding the proposed
 20 regional pollution control facility to negate the
 21 250-foot rule."
 22 This is an Illinois Appellate Court
 23 case, and it is the only case that we have found on
 24 the topic by an Illinois Appellate Court. What it

1 establishes is is that the mere footprint of the
 2 landfill is not where you determine whether notice is
 3 sufficient. And even if the activity surrounding the
 4 landfill is simply open space/buffer zone, you still
 5 have to give notice from the 250 feet beyond that
 6 buffer zone.
 7 In this case, the notice is
 8 insufficient here because we know that there's a
 9 3-million-cubic-yard borrow pit which is an integral
 10 part of Waste Management's design, construction, and
 11 operation. There's 3 million cubic yards of soil,
 12 according to their own witnesses, that are going to be
 13 used, apparently, for cover, liner material, for
 14 roads, and eventually some sort of retention ponds.
 15 There's also been discussion about potentially
 16 imposing conditions in the borrow pit area for further
 17 buffering and berming of the site from view. These
 18 are all inherent portions of the Application and
 19 should have been included in the Application.
 20 So there are actually three failures
 21 that have occurred here that I have noticed: First is
 22 a procedural problem with due process. The second is
 23 a substantive prob -- I'm sorry, a procedural problem
 24 with notice; second is more of a substantive problem

1 with notice; and then third are the ability of you as
 2 a Board to impose conditions.
 3 As far as the procedural issue, what
 4 we're concerned about now is whether or not notice was
 5 given to those individuals that are within 250 feet of
 6 these borrow pit areas that we haven't even been
 7 identified to us with specificity as to where they
 8 are, what the size of them is going to be, and whether
 9 or not the people within 250 feet of that area have
 10 been given notice. They were entitled to it as this
 11 area is clearly part and parcel of the proposed
 12 Application and there are going to be substantial
 13 impacts to that area.
 14 Second is this whole concept of the
 15 notice that had to be provided here must reference an
 16 Application and it must identify with specificity the
 17 location and the size of the proposed site. And,
 18 again, the site is not just the landfilling area but
 19 it's all operations. And that hasn't been provided.
 20 Therefore, substantively the notice is insufficient,
 21 as well, and therefore you haven't been vested with
 22 proper jurisdiction.
 23 Furthermore, by omitting the borrow
 24 pit area, this Board has no jurisdiction to impose

1 conditions relative to those borrow pit areas.
 2 Mr. Blazer elicited on his
 3 cross-examination of Mr. Yocca that a reasonable
 4 condition would be to require screening of the south
 5 border of the facility by using the borrow bit area
 6 owned by Waste Management. Likewise, Mr. Hoekstra
 7 testified that the borrow area will involve
 8 substantial excavation, truck traffic, dirt roads, and
 9 ultimately result in a series of ponds. He indicated
 10 that the plan of operations for the landfill will be
 11 used for the borrow pit, as well.

12 Kendall County would certainly want
 13 to impose, at a minimum, if you approve this
 14 Application, a condition that that plan of operations
 15 apply to the borrow pit area. You can't do it because
 16 that would -- you don't have jurisdiction to do so, to
 17 impose those conditions over this borrow pit area
 18 because they have decided that they're going to remove
 19 that from the Application, which is the exact abuse
 20 that the ECS case was designed to avoid.

21 The ECS case doesn't allow the
 22 Applicant to arbitrarily pick its facility area. It
 23 has to include the greater parcel, the entire parcel
 24 in its Application so that everybody around gets

1 proper notice and everybody around it has the ability
 2 to see what the impacts are going to be.
 3 Furthermore, the Kendall County
 4 Ordinances and the Act require that the site be
 5 accurately described, and the Act defines site very
 6 broadly as any location, place, tract of land, and
 7 facilities, including but not limited to buildings and
 8 improvements used for purposes subject to regulation
 9 or county by this Act or regulations thereunder.
 10 That's the definitions section of 5/3.46 of the
 11 definitions action; any location, place, tract of land
 12 and facilities, including but not limited to buildings
 13 and improvements.

14 The borrow pit area will be used for
 15 a clay liner, used for soil cover, used for roadway
 16 facilities, and possibly used for berming and water
 17 retention. Clearly those are purposes subject to the
 18 Act. That's the salient point. So it's obviously
 19 part of the site.

20 And I'll remind you that in ECS, the
 21 relevant case here, there were going to be no impacts
 22 in the area that the Appellate Court found had to be
 23 included in the site. That was just a buffer zone,
 24 and the Appellate Court said that's got to be

1 included. In this case, it's much more than just a
 2 buffer zone. It's going to be an active part of the
 3 facility.

4 Finally, I'd like to point out that
 5 the Kendall County Ordinances require a complete site
 6 description at Section 4.4, and that includes location
 7 of the site, hydrogeologic conditions of the site, and
 8 what I found particularly interesting is at 4.47 your
 9 Ordinance requires that any information on any
 10 existing surface or subsurface mining on the site --
 11 and here again is the salient point -- and within any
 12 area that may be affected by the proposed site use,
 13 including but not -- must have a legal description of
 14 the area as mined, materials removed from the mining,
 15 and approximate size of displacement.

16 Your Ordinance isn't limited to the
 17 footprint, either. Any area that's affected by mining
 18 associated with the activity must be identified with a
 19 legal description, the material going to removed and
 20 approximate size of displacement. It's not contained
 21 in this Application, and there is no way you cannot
 22 acknowledge that there's going to be mining at this
 23 borrow pit area. They're going to be mining sand and
 24 gravel, soil materials, clay materials. That's what

1 it is.

2 For those reasons, the Applicant has
 3 failed to provide sufficient notice of its proposal
 4 and provide -- and we believe has failed to provide
 5 sufficient notice to the people that are entitled to
 6 it as we don't know exactly where the borrow pit is
 7 defined. Therefore, you, as a Board, lack
 8 jurisdiction, and we're requesting that this
 9 Application be dismissed.

10 Thank you.

11 HEARING OFFICER KINNALLY: Okay. Ms. Kramer,
 12 do you want to -- do you have anything you want to
 13 add? You had a similar motion. I don't think it's
 14 exactly the same, but go ahead.

15 MS. KRAMER: We would join in -- Old Second
 16 National Bank Trust 8932 would join in Grundy County's
 17 motion to dismiss, as would the Village of Minooka,
 18 that was presented by Attorney Porter.

19 My client contends that the pre-filing
 20 notification and the Application itself is
 21 jurisdictionally defective in the failure and the
 22 omission of including the borrow area to that
 23 particular notice and Application.

24 I would reiterate the arguments made

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1 by Attorney Porter just a minute ago and add on if you
2 look at Section 4.6 of the Amended and Restated
3 Kendall County Siting Ordinance regarding the site
4 development plan, the Applicant failed to include both
5 a legal description of the borrow area, they failed to
6 give the five-foot contours located with the borrow
7 area. We have no idea whether or not the borrow area
8 is going to be 10 feet in the ground, 12 feet in the
9 ground, 5 feet in the ground. And I believe Attorney
10 Porter was indicating that the excavation of that
11 particular site, the evidence is completely lacking in
12 this particular case.

13 Furthermore, we have no idea, nor
14 does the County Board have any jurisdiction whatsoever
15 to impose conditions upon that borrow area as the
16 Applicant has presented the plan. We have no idea
17 whether or not they have a stormwater management plan
18 in place. And I believe Mr. Nickodem and Mr. Hoekstra
19 stated that they haven't even contemplated what type
20 of stormwater detention is going to be implemented.
21 Therefore, we cannot comprehend what type of impact
22 this is going to have on any of the adjoining
23 landowners both to the east and the west of the
24 subject site.

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1 So my client, as an adjoining
2 landowner to both the southeastern portion of the site
3 and also the west -- southwest portion of the site
4 would respectfully request this -- the Hearing Officer
5 grant the Grundy County and also Old Second National
6 Bank Trust 8932 motion to dismiss for lack of
7 jurisdiction -- or lack of jurisdiction in this
8 particular case.

9 HEARING OFFICER KINNALLY: All right. Does
10 anyone else want to be heard in support of the motions
11 filed by Grundy County or Old Second National Bank and
12 the City of Minooka?

13 MR. MUELLER: If I may.

14 HEARING OFFICER KINNALLY: Okay.

15 MR. MUELLER: I would join in everything that's
16 been said by Ms. Kramer and by Mr. Porter and just add
17 that the Illinois Administrative Code defines site as
18 any location, place, or tract of land used for waste
19 management, and then it defines waste management as
20 the process of storage, treatment, or disposal of
21 waste.

22 Now, we all know that these landfills
23 are construction projects for the life of the
24 facility, and, therefore, construction is one of the

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1 processes that is essential to the storage and
2 disposal of waste. That being the case, all the
3 elements of that part of the process, i.e., securing
4 the soil, which in this case is immediately adjacent
5 off-site, and bringing it onto this site and then
6 using it in the construction operation is part of the
7 waste management process.

8 So I think clearly the borrow pit is
9 encompassed in the meaning for the facility,
10 particularly when the record from Waste Management's
11 own witnesses is that the sole and exclusive purpose
12 of the borrow pit is to service this facility and that
13 the exclusive control of the borrow pit will be by the
14 owner and operator of this facility. Thank you.

15 HEARING OFFICER KINNALLY: Does anybody else
16 want to speak in favor of these motions?

17 MR. BELT: Mr. Kinnally, Scott Belt on behalf
18 of the City of Morris. And I would, on behalf of the
19 City, join in on each of the three motions to dismiss
20 which are being presented here this evening, and
21 rather than repeat the arguments of counsel, I would
22 just simply ask that the record reflect the City
23 concurs with the arguments, joins in with the
24 arguments previously stated, and we, too, would

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1 request that the Application be dismissed for want of
2 jurisdiction. Thank you.

3 HEARING OFFICER KINNALLY: All right. Anyone
4 else? Any other participant want to be heard on the
5 motion?

6 (No response.)

7 HEARING OFFICER KINNALLY: All right. Do you
8 want to respond, Mr. Moran?

9 MR. MORAN: Yes, Mr. Hearing Officer.

10 The Illinois Environmental Protection
11 Act sets out the requirements and also the obligations
12 of an applicant in submitting a site location
13 application for local siting approval. The Act
14 provides that before a pollution control facility
15 could be permitted by the Illinois Environmental
16 Protection Agency, local siting approval must be
17 obtained for the pollution control facility.

18 The pollution control facility, in
19 turn, is defined in the Act as a number of things, but
20 the most important definition that applies to the
21 pollution control facility is a sanitary landfill.

22 That provision, as well, is
23 identified in the Illinois Environmental Protection
24 Act and defined specifically in Section 3.445 of that

1 Act as follows: "Sanitary landfill means a facility
 2 permitted by the Agency for the disposal of waste on
 3 land meeting the requirements of the Resource
 4 Conservation Recovery Act, Public Law 94-580 and
 5 regulations thereunder and without creating nuisances
 6 or hazards to public health or safety by confining the
 7 refuse to the smallest practical volume and covering
 8 it with a layer of earth at the conclusion of each
 9 day's operation or by such other methods and intervals
 10 as the Board may provide by regulation. That language
 11 defines the facility that must, in turn, be defined
 12 and described as the subject of the site location
 13 approval application.

14 Now, the language in the part of the
 15 Act that relates to notice that the parties have set
 16 forth is found in Section 39.2(b) of the Siting Act,
 17 and that language, indeed, provides a clear indication
 18 of who has to be served with pre-filing notice. That
 19 language is very clear. It talks about that notice
 20 being served at least 14 days before you file the
 21 application, and I want to quote here, "on the owners
 22 of all property within 250 feet" -- here's the key
 23 language -- "in each direction of the lot line of the
 24 subject property." So the subject property is a key

1 term here to define.

2 What does the subject property refer
 3 to? Subject property refers to the definition of the
 4 pollution control facility that I indicated earlier,
 5 which was equivalent to the definition of sanitary
 6 landfill in the Act.

7 This application sets out the
 8 facility boundaries, including the 368 acres outlined
 9 and set forth in the Application. That 368-acre
 10 parcel is the definition -- comports with the
 11 definition of a sanitary landfill as it's set out in
 12 the Act.

13 But more importantly, besides these
 14 statutory provisions that I think clearly lay out what
 15 comprises a facility and how that's properly
 16 identified, there's a case that's identified this very
 17 issue that's been raised before us today. The case is
 18 a Pollution Control Board opinion entitled Land and
 19 Lakes Company versus the Village of Romeoville. The
 20 number is 91-7.

21 In that case, the applicant in its
 22 application identified three separate parcels, a Lot
 23 A, a Lot B, a Lot C. Lot A included simply a waste
 24 footprint or the area where the waste would be

1 disposed of, and Lots B and C, Lot B being a borrow
 2 area, an area that was identified as borrow for the
 3 construction of that facility. And what the opponents
 4 in that case argued was because the Applicant had
 5 identified the borrow area as part of the facility but
 6 had failed to serve pre-filing notice on the property
 7 owners who were located within 250 feet of that borrow
 8 area, that, as we've heard from these movants, that
 9 notice wasn't provided, and since notice is
 10 jurisdictional, the Village of Romeoville did not have
 11 the authority to rule upon that siting application.

12 The Pollution Control Board evaluated
 13 that claim and rejected it, said that the operative
 14 language in the Act talks about what, indeed, is
 15 defined as the subject property. That language in
 16 39.2(b) which I can indicated was critical.

17 What is the subject property? The
 18 subject property is the pollution control facility,
 19 again identified in the Act, and that term is
 20 equivalent to the definition of the sanitary landfill,
 21 also defined in the Act.

22 And in this case, the Pollution
 23 Control Board determined that the proper facility to
 24 be defined for which site location approval was being

1 requested was the area including the landfill
 2 footprint. And the Pollution Control Board
 3 specifically said that these other uses relating to
 4 the borrow area, relating to an area in which drainage
 5 ways would service that particular facility were not
 6 properly part of the facility, not properly considered
 7 as part of a the facility for which local siting
 8 approval could be obtained; and that, indeed, the
 9 proper definition and the proper characterization is
 10 of that portion of the facility which is properly
 11 defined as a sanitary landfill, which is precisely the
 12 368-acre parcel that has been identified here.

13 Prefiling notice that was sent in
 14 this case was, indeed, sent to individuals and
 15 property owners who live within 500 feet, and even a
 16 greater distance, from that 368-acre facility.

17 The borrow areas, these ancillary
 18 uses defined in that decision are simply not properly
 19 included as part of that facility. It's what the case
 20 says, definitively addresses that issue and resolves
 21 it by way of defining the appropriate facility for
 22 which local siting must be approved.

23 On that basis, we respectfully
 24 request that these motions be denied. Thank you.

1 HEARING OFFICER KINNALLY: Mr. Blazer, did you
 2 want to say anything?
 3 MR. BLAZER: No, sir.
 4 HEARING OFFICER KINNALLY: Okay.
 5 MR. PORTER: May I briefly reply to that?
 6 HEARING OFFICER KINNALLY: Briefly. Briefly.
 7 MR. PORTER: The PCB case -- the PCB that
 8 Mr. Moran has just referenced to is just that, it is
 9 not presidential or binding authority. The ECS case,
 10 as you know, Mr. Kinnally, is. It was decided after
 11 that case and it's an Appellate Court case. A PCB
 12 case is, at best, advisory.
 13 Furthermore, it hasn't been provided
 14 to any of the attorneys in this room voluntarily, and
 15 I haven't had a chance to review it yet, but it
 16 doesn't matter. Even if it -- even if it provides all
 17 that Mr. Moran has just indicated, it is not binding
 18 authority, the ECS case is. Thank you.
 19 HEARING OFFICER KINNALLY: Well, here's the way
 20 we're going to do this, okay. Number one, the motions
 21 that you filed -- the motion you filed was addressed
 22 to the Board, and the motion that Ms. Kramer filed and
 23 Mr. Kramer filed was addressed to me. And I get to
 24 make this call, all right?

1 The Ordinance says, and you can look
 2 at the Ordinance, that any contested legal issue and
 3 all motions under Article 7, Section 2(a) and 2(b) of
 4 the Ordinance is my job to do, and I'm going to make
 5 this call.
 6 I'm not going to make it right now
 7 because I think you should have the opportunity to
 8 review this opinion. I haven't seen the opinion.
 9 I've read the case that you cited, and the case that
 10 you cited is basically a legal malpractice case that
 11 was brought against some lawyers who basically
 12 apparently didn't do their job supposedly because they
 13 missed this notice requirement that the Appellate
 14 Court said was from, as you indicated, the lot line.
 15 So here's the way we're going to do
 16 this: Number one, somebody can send me -- Mr. Moran,
 17 if you have a copy of that case. If there's some
 18 other case, Ms. Kramer, that you want me to look at.
 19 I've read the cases that Mr. Porter relied on. I
 20 looked at those today, and I'll look at the case that
 21 Mr. Moran has. And if you want to talk about it a
 22 little bit tomorrow night and if Mr. Moran wants to
 23 talk about it a little bit more and somebody else
 24 wants to talk about it a little more, I'll hear it.

1 I don't need a brief, okay? All I
 2 need is the cases. And I'll read the cases tomorrow.
 3 If you want to -- if you've got any additional one,
 4 Mr. Porter or Ms. Kramer or Mr. Mueller, Mr. Belt or
 5 Mr. Blazer, I'll read those tomorrow, and then I'll
 6 rule tomorrow night. But I don't need a brief. I
 7 appreciate that you might want to write a brief, but I
 8 think I can do it without a brief.
 9 So that's the way we're going to
 10 handle it, and we're done for tonight. And thanks for
 11 coming, and we'll see you tomorrow night and public
 12 comment, and then we'll decide this issue.

13 * * * * *

1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF DU PAGE)
 3 I, Janet L. Galasso, CSR. No. 84-002176, and
 4 Kathleen M. Grove, CSR No. 84-002197, do hereby
 5 certify that we reported in shorthand the proceedings
 6 had at the hearing of the above-entitled cause and
 7 that the foregoing Report of Proceedings, Pages 1659
 8 through 1849, inclusive, is a true, correct, and
 9 complete transcript of my shorthand notes taken at the
 10 time and place aforesaid.
 11 We further certify that we are not counsel for
 12 nor in any way related to any of the parties to this
 13 suit, nor are we in any way, directly or indirectly
 14 interested in the outcome thereof.
 15 This certification applies only to those
 16 transcripts, original and copies, produced under our
 17 direction and control; and we assume no responsibility
 18 for the accuracy of any copies which are not so
 19 produced.
 20 IN WITNESS WHEREOF we have hereunto set my
 21 hand this 24th day of September, 2008.
 22
 23 Certified Shorthand Reporter
 24
 Certified Shorthand Reporter