

1 D-15134
 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 AND CATTLE, L.L.C.
 WASTE MANAGEMENT OF ILLINOIS, INC.
 8 KENDALL COUNTY, ILLINOIS
 9
 10
 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 TIMI M. FULFS, CSR 084-003517, and KAREN R.
 19
 20 SHALES, CSR 084-004177, on Wednesday, September 24,
 21
 22 2008 at 6:00 p.m., at 6617 Chicago Road, Plattville,
 23
 24 Illinois.

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
 JEEP & BLAZER, LLC by
 7 MR. MICHAEL S. BLAZER, and
 MR. DEREK B. RIEMAN
 8 24 North Hillside Avenue, Suite A
 Hillside, Illinois 60162
 9
 KENDALL COUNTY STATE'S ATTORNEY, by
 10 MR. BRIAN J. LABARDI
 807 West John Street
 11 Yorkville, Illinois 60560
 Appeared on behalf of the County of
 Kendall;
 12 LAW OFFICES OF DANIEL J. KRAMER, by
 MS. KELLY A. KRAMER
 13 1107A S. Bridge Street
 Yorkville, Illinois 60560
 14 Appeared on behalf of Old Second National
 Bank of Aurora Trust 8932.
 15
 16 ALSO PRESENT:
 17 MS. ERIN SUTTON, Kendall Deputy Clerk;
 18 MR. ROBERT E. DAVIDSON, County Board Member;
 MS. JESSIE HAFENRICHTER, County Board Member;
 19 MS. NANCY MARTIN, County Board Member;
 MS. PAM PARR, County Board Member;
 20 MR. JOHN P. PURCELL, County Board Member;
 MS. ANNE VICKERY, County Board Member;
 21 MR. JEFF WEHRLI, County Board Member;
 MR. BILL WYKES, County Board Member.
 22
 23
 24

1 I N D E X
 2
 3 PUBLIC COMMENT PAGE
 4 George Gilson 1855
 Cheryl Wallin 1882
 5 Daniel Shepherd 1886
 Bev Anderson 1891
 6 Sharon Friestad 1894
 Todd Milliron 1906
 7 Bob Friestad 1952
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1 HEARING OFFICER KINNALLY: Okay. This is the
 2 reconvened hearing for the Landfill Siting Application
 3 of Waste Management and Kendall Land & Cattle.
 4 Would the County Board please
 5 introduce themselves.
 6 BOARD MEMBER DAVIDSON: Bob Davidson.
 7 BOARD MEMBER MARTIN: Nancy Martin.
 8 BOARD MEMBER HAFENRICHTER: Jessie
 9 Hafenrichter.
 10 BOARD MEMBER WEHRLI: Jeff Wehrl.
 11 BOARD MEMBER WYKES: Bill Wykes.
 12 BOARD MEMBER PARR: Pam Parr.
 13 BOARD MEMBER HAFENRICHTER: John Purcell is
 14 here somewhere.
 15 HEARING OFFICER KINNALLY: Pardon me?
 16 BOARD MEMBER HAFENRICHTER: John Purcell is
 17 here somewhere.
 18 HEARING OFFICER KINNALLY: All right. We have
 19 a quorum. And I think we left off last night with
 20 arguments with respect to this issue about
 21 jurisdiction and the borrow pits or the borrow area,
 22 and I don't know if anybody wants to be heard on this
 23 further. I don't see Mr. Porter. Maybe we should
 24 wait a little bit and see if he's going to come

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1 tonight.
2 Does anybody know whether he's
3 coming?
4 MR. BLAZER: I haven't heard from him,
5 Mr. Kinnally. We did receive by e-mail a reply memo
6 from him, the one that you asked him not to file
7 yesterday.
8 HEARING OFFICER KINNALLY: I understand.
9 MR. BLAZER: Yeah.
10 HEARING OFFICER KINNALLY: Well, why don't we
11 wait a little bit. In the meantime, we'll hear public
12 comment.
13 Anyone who wants to make public
14 comment, if you want to step up in this microphone
15 here or you can sit over here, and if you want to be
16 sworn, just come on up and we'll be happy to hear you.
17 Okay. Sure, come on up. Did you
18 want to be sworn or did you just want to make public
19 comment?
20 MR. GILSON: Public comment.
21 HEARING OFFICER KINNALLY: Just state your
22 name, please, and go ahead.
23 MR. GILSON: My name is George Gilson.
24 Thank you for hearing me tonight, and

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1 I'm hoping that in this presentation or public
2 comment, you really listen to the content of my words.
3 My name is George Gilson. I'm a
4 Yorkville resident for six years now and a believer in
5 Kendall County and our leadership. I am not a
6 radical, but for those who know me, instead a
7 reasonable and logical thinking being.
8 Let me start out by saying that I
9 believe that the Kendall County Board wants a
10 landfill. I base this belief on the simple fact that
11 when the residents of Kendall County asked the
12 existing County Board for a moratorium on landfills
13 until further exploration of all tentative
14 technologies has been fully explored and evaluated,
15 the Board denied this reasonable and logical request.
16 I want to first address this belief
17 and lack of action first. The County does not need a
18 landfill. With a plan in place to export garbage by
19 sending our garbage to facilities and landfills that
20 are more accepted by other area residents with less
21 potential danger to the public health, safety, and
22 welfare, or conversely, exploring alternative
23 technology to landfills is a much better solution to a
24 landfill in Kendall County.

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1 There are municipalities, counties,
2 and states that are currently sending their garbage
3 elsewhere, all over the country. A prime example of
4 this is Toronto, Canada, who exports their garbage to
5 Michigan. Illinois has plenty of landfill space. The
6 nation must also have plenty of landfill space if we
7 can afford to accept garbage from another country.
8 If the county has learned one thing
9 by now, it should have learned that our residents
10 don't want a landfill. If the county remains
11 headstrong on the necessity of having a landfill, then
12 it is your duty and ultimate responsibility to make
13 sure that this Applicant or any Applicant, for that
14 matter, comes to the County and proves beyond a shadow
15 of a doubt that it meets all criteria as set forth in
16 the 39.2 process.
17 This burden is completely and solely
18 the responsibility of the Applicant. Ignore
19 technobabble and garbage science and listen to the
20 answers to all questions asked of their witnesses.
21 Use common sense and reasoning in relation to the
22 Applicant's testimony.
23 I don't agree often with Mr. Mueller
24 or Helsten about anything due to their conflict of

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1 interest opposing this landfill, but I do agree that
2 the Application is missing some very crucial
3 information in regards to its design and operation.
4 Without this information, you cannot adequately
5 determine whether or not this landfill is so designed
6 and/or operated to protect the public's health,
7 safety, and welfare.
8 The borrow area has been identified
9 by Waste Management's own experts as being a crucial
10 part of the design and operation of this landfill.
11 Without information on this area, you are left in the
12 dark in relation to storm water detention, safety and
13 operation of the temporary roads being built, the
14 depth and safety of the borrow area while being mined,
15 the materials being used from that borrow area, and
16 last, but not least, bird mitigation from the
17 resulting standing water or ponds left when finished.
18 This is a direct threat to the Morris Airport and the
19 safety of the people flying.
20 Waste Management couldn't prove this
21 burden in its first Application for the Willow Run
22 Landfill, and it's clearly demonstrated that they
23 cannot meet the criteria with this Application as
24 well. This has been proven by their own witnesses and

1 the testimony of the witnesses by the opponents to
 2 this landfill.
 3 The biggest burden that has not been
 4 met here is in respect to the public health, safety,
 5 and welfare. This landfill, like the proposed Fox
 6 Moraine Landfill in Yorkville, has not and cannot be
 7 designed, located, and proposed to be operated so that
 8 the public's health, safety, and welfare is to be
 9 protected. Both landfills are poor choices for
 10 landfills in relation to these criteria.

11 Another reason for denial of this
 12 landfill is traffic. How can traffic in Morris be
 13 minimally impacted when the trucks going to and from
 14 this landfill are to be routed through Morris'
 15 downtown area? This affects both Criteria 2, 3, and
 16 6. It is not compatible with Morris and surrounding
 17 areas, especially in relation to the Morris Airport.

18 A denial must also be rendered based
 19 on the lack of evidence presented in Criteria 5.
 20 There is nothing in this Application that protects
 21 from spills and other operational accidents,
 22 especially when considering that these unwashed trucks
 23 will be crossing Walley Run Creek via a bridge.

24 Now, I know that in testimony it was

1 stated that trucks don't leak, but that is contrary to
 2 my belief and knowledge of any truck other than a
 3 tanker, which also on occasion spills, overturns, et
 4 cetera. Wouldn't it be logical to have an independent
 5 monitoring company or system in place to make sure
 6 that the creek is not being polluted?

7 There is a lot of reasons to deny
 8 this landfill, but I want to address another important
 9 reason, which pertains to Criteria 10, which is the
 10 owner and operator's experience and record.

11 I asked Mr. Hoekstra about the past
 12 violations of the proposed operator here, and he
 13 admitted that there have been several violations. I
 14 would like to read a few because this is the same
 15 operator that -- and the company that you are putting
 16 your blind faith and trust in to operate this proposed
 17 facility.

18 Keep in mind when I read this article
 19 that there will be -- that there will be, according to
 20 testimony, 1,003 private wells within a five-mile
 21 radius of this facility.

22 The name of this article is entitled
 23 Why Greater Pottstown Area Families Can't Believe or
 24 Trust Waste Management.

1 Waste Management's record. Since its
 2 inception in 1968, the company has a long record of
 3 felonies and violations. Judge Odell Horton of the
 4 Western District Court of Tennessee ordered Waste
 5 Management to pay 91.5 million in a 1996 fraud case.
 6 The judge said what is troubling about this is that
 7 fraud, misrepresentation, and dishonesty apparently
 8 became part of the operating culture of the
 9 defendant's corporation. There was no reason for the
 10 defendant to undertake and conduct -- undertake such
 11 conduct -- such conduct other than greed.

12 For the period of 1970 to 1991, Waste
 13 Management paid over 36 million in fines and
 14 penalties. 10 of those were criminal violations; 23
 15 were anti-trust cases; 22 were civil cases; 87 were
 16 administrative cases. Plus, 81 actions against
 17 Chemical Waste Management led to 15 million in fines
 18 and penalties.

19 From the period of 1991 to 2000, now
 20 this is not too far off, guys, 3.3 million fined
 21 Chemical Waste Management in Sauget, Illinois in 1991;
 22 11.6 million fine and conviction, Chemical Waste
 23 Management 1992; for PA Superfund violations, \$60,000
 24 in class action settlement for waste contamination in

1 Pennsylvania, that was Waste Management in 1994;
 2 91.5 million paid in fraud scheme, Waste Management
 3 1996, Federal judge in Tennessee ordered the payment.
 4 \$100,000 fined by OSHA for the deaths
 5 of three employees in New York, 1997; \$125,000 in
 6 fines in Virginia for medical waste violations, 1998;
 7 220 million settled stockholder class action suit in
 8 1998 for alleged inflated stock and overestimated
 9 earnings or overstated earnings; \$186,700 penalties
 10 for Florida violations at a recycling plant in 1998,
 11 United Waste Management, hazardous storage and
 12 improper training.

13 \$5 million, settled California fraud
 14 case on a rail-cycle project in 1998, stock fraud,
 15 phone tapping, stolen computer files, water reports
 16 falsified and false information disseminated about the
 17 opposition; 7.5 settlement of two lawsuits in Illinois
 18 over property tax removal, 1999; two school districts
 19 sued Waste Management and the county for removing a
 20 landfill from property tax rolls.

21 In 1999, Waste Management's history
 22 of violations and legal problems was used to reject
 23 the company's takeover of a hauling operation in San
 24 Luis Obispo, California. San Luis Obispo Board of

1 Supervisors member Peg Pinard stated, you take the
2 whole batch together and you see it's not just one bad
3 apple, but all these companies and the employees
4 violating the law time after time.

5 This is the company which is on the
6 honor system to monitor, test, calculate and report
7 Pottstown Landfill's air pollution. This is the
8 company which just paid for a cancer study around the
9 Pottstown Landfill.

10 Why anyone would believe Waste
11 Management's -- Why would anyone believe Waste
12 Management's cancer study, clearly an attempt to cloud
13 or nullify shocking childhood PA cancer registration
14 statistics and other significantly elevated cancer
15 statistics around the Pottstown Landfill.

16 Waste Management is a major polluter
17 in our community with a clear vested interest in
18 cancer statistics around the Pottstown Landfill. Why
19 would PMMC administration allow a private meeting with
20 Waste Management about the cancer study for this --
21 that this company paid for?

22 Waste Management, Incorporated, the
23 world's largest waste disposal corporation with
24 revenues over \$10 billion. Waste Management enlisted

1 services of 139 lobbyists in 32 states in 1998. Waste
2 Management gave over 1.6 million in state and federal
3 campaign contributions in 1998.

4 Waste Management was investigated by
5 the FBI for attempts to influence officials in Ferris,
6 Texas. Waste Management was accused of bribing public
7 officials in Chicago, Florida, and Ohio.

8 This is the company meeting behind
9 closed doors in the cancer department of PMMC to
10 report a cancer study which it bought. Isn't it
11 interesting that Waste Management would want to meet
12 with our cancer department about its own cancer study
13 the very day -- the very day that DEP is holding a
14 public hearing on three Pottstown Landfill air
15 pollution permits?

16 The majority of the area physicians
17 have previously spoken out to protect area residents
18 from landfill expansion. Isn't this meeting an
19 attempt to manipulate silence and/or support of PMMC
20 physicians?

21 Waste Management bought the Pottstown
22 Landfill in 1984, and since that time, Waste
23 Management has requested and received five expansions.

24 And I repeat, if you grant this

1 facility, expansions are guaranteed. They're going to
2 ask for expansions, so don't think it ends here.

3 We believe Pottstown Landfill is one
4 of the nation's largest -- one of the nation's worst
5 Landfills. Its gas is radioactive, and it is leaking
6 radioactivity. It has asbestos, medical waste,
7 residual waste, radioactive slag, toxic and
8 radioactive sludge, incinerator ash, construction and
9 demolition debris, and many other dangerous wastes.

10 Hazardous chemicals included in
11 massive amounts of these dangerous wastes break down
12 in the landfill and leachate. They continuously
13 escape for decades into the air and water of Greater
14 Pottstown Area residents. Children face far greater
15 health risks from the kinds of hazardous substances
16 emitted with Pottstown's air pollution.

17 And here's the statistics,
18 childhood cancer rates around the Pottstown Landfill.
19 In the late 1980's, about 30 percent above the
20 national average; in early 1990's, about 60 percent
21 above the national average; in late 1990's, soaring to
22 92.5 percent above the national average; late 1990's,
23 almost 100 percent higher than the state and
24 tri-county.

1 In the same area around the Pottstown
2 Landfill, leukemia rates were almost double the state.
3 Pottstown Landfill emits radiation and benzene into
4 our air. Both radiation and benzene are linked to
5 leukemia.

6 And I could go on and on, and I'm
7 going to submit this into the written comment, but the
8 statistics are alarming. And what you need to
9 consider and what hasn't been presented here is the
10 owner and operator's history and record, and I've read
11 some of those that need to be considered for
12 Criterion 10.

13 I also want to read a few other
14 articles about landfills in relation to well
15 contamination, post-closure clean up, and other
16 landfills with issues of contamination, remediation,
17 and nuisance. These same issues could be Kendall
18 County's problem if you approve this landfill,
19 especially because it has not been met here in
20 relation to Criteria 2 by the Applicant.

21 And like I said, once again, keep in
22 mind that there are 1,003 water wells within a
23 five-mile radius of their landfill.

24 Here's an article in the Daily Herald

1 posted Sunday, April 1, 2007. It's titled How Can
 2 Private Wells be Better Protected?
 3 Tyanna Cannata and Joe Anderson have
 4 never met, but they share a frightening memory.
 5 Cannata, of DuPage County, and Anderson, a Lake County
 6 resident, own homes near controversial garbage dumps.
 7 Both were shocked when they learned their wells and
 8 those of their neighbors contained vinyl chloride, a
 9 solvent associated with landfills.
 10 It was very -- it was a very uneasy
 11 feeling, said Anderson, who lives a half mile from the
 12 closed Wauconda Sand & Gravel Landfill. We were being
 13 told that the testing levels throughout the community
 14 were quite low, but at the same time, what was in the
 15 well was vinyl chloride, and it's a recognized
 16 carcinogen.
 17 Both have since been hooked up to the
 18 public water supply by the experience -- but the
 19 experience is something Cannata and her family, who
 20 live two miles from the closed Mallard Lake Landfill
 21 by Bloomingdale, can't forget.
 22 Her oldest son noticed something in a
 23 glass of water recently and asked hey, mom, is our
 24 water still bad, she recalled.

1 The two stories mirror those of
 2 hundreds of people on private wells in the collar
 3 counties. As suburban sprawl continues, landfills,
 4 once situated in remote areas now rub shoulders with
 5 subdivisions and strip malls.
 6 That's not the only problem lurking
 7 beneath the soil. Leaking underground gasoline tanks,
 8 industrial sites with a history of dumping liquid
 9 wastes all pose potential threats to groundwater.
 10 In November 2005, state officials
 11 estimated 400,000 households in Illinois have private
 12 wells and warned that they are vulnerable to
 13 contamination. People living near industrial sites,
 14 landfills, and gas stations are urged to get their
 15 wells tested.
 16 And this is -- once again, I can go
 17 on, but I'll let you read the rest of this article.
 18 It's all in relation to wells.
 19 The third article I'm going to read
 20 is called Critical Landfill Clean Ups -- Critical
 21 Landfill Clean Ups Only Two-Thirds Complete. In
 22 1999 -- and this is posted in the Daily Herald,
 23 Sunday, April 1, 2007.
 24 In 1999, state authorities targeted

1 33 abandoned landfills as critical environmental
 2 problems and pledged to clean them up by this year.
 3 But today, a third of the landfills are unfinished.
 4 Funds to pay for or fix -- to pay for a fix aren't
 5 there. They still pose problems and we feel they need
 6 to be addressed, said Neelu Lowder, the Illinois EPA's
 7 abandoned landfill program manager.
 8 While landfills were regulated in the
 9 1970's, it wasn't until the early 1990's that the
 10 state adopted stricter standards on groundwater
 11 monitoring systems, high tech liners, and post-closure
 12 care.
 13 In 1999, the IEPA researchers
 14 examined about 650 existing and closed landfills in
 15 the state. They identified 33 abandoned and polluted
 16 landfills as some of the worst in the state and
 17 allocated 50 million to remedy the situation.
 18 The landfills in 21 counties
 19 threaten -- quote, threaten public health and present
 20 a serious nuisance. They look bad and smell bad, a
 21 report concluded. Officials cited eroding landfill
 22 covers, exposed garbage, polluted groundwater as some
 23 of the specific problems.
 24 Now, however, it appears the program

1 is stalled. 11 landfills are not cleaned up because
 2 the funds aren't there. They include Bennitt in Will
 3 County, Chicago Heights Refuse Depot and Fitzmar, both
 4 in Cook County, and the McHenry County Sanitary
 5 Landfill.
 6 So far 40 million has been spent on
 7 clean up. Even if the final 10 million is provided,
 8 inflation has pushed costs higher, Lowder said.
 9 Still, we continue to request the money every year
 10 said Joyce Munie, IEPA manager of the remedial
 11 projects, and requests to build new landfills continue
 12 to come in.
 13 Today's landfills, though, are
 14 well -- very well-constructed, says groundwater
 15 pollution expert Melissa Lenczewski, an associate
 16 professor at Northern Illinois University. She points
 17 to monitoring systems that alert operators if
 18 contaminants are escaping, which in this Application
 19 we've already pointed out are missing.
 20 So when asked if she'd live next to a
 21 landfill, Lenczewski she said yes to contemporary
 22 dumps, but added, the ones built in the 1970's I would
 23 be a little more leery of.
 24 Next one, Daily Herald, April 1,

1 2007, and Mr. Shaw alluded to seagulls as toxic
2 chickens or something.
3 HEARING OFFICER KINNALLY: Dump chickens.
4 MR. GILSON: Dump chickens. Well, the title of
5 this one in the Daily Herald is called Toxic Chickens
6 Coming Home to Roost. It looks like a benign, if not
7 massive, bump on a flat stretch of road in DuPage
8 County.

9 For 25 years, Mallard Lake Landfill
10 near Bloomingdale is where much of the area's trash
11 was stashed. Towering and immense, the former dump is
12 covered with a blanket of grass, but beneath the
13 surface, homeowners two miles away allege, was a toxic
14 stew seeping toward and contaminating their wells.

15 Eight families in Wayne Township last
16 spring sued the landfill's operator, BFI Waste
17 Systems, and its owner, the DuPage County Forest
18 Preserve District. Residents claimed the landfill
19 tainted their wells with vinyl chloride, a toxin
20 linked with cancer.

21 Both BFI and the Forest Preserve
22 denied these claims, and the judge recently set a
23 October 1st trial date for the complex case.

24 A Daily Herald review of hundreds of

1 pages of court documents reveal that ironic
2 foreshadowing, the very government being sued today,
3 the forest district -- and mind you that can be you.
4 The forest district claimed decades ago that Mallard
5 Lake was improperly built and contained the
6 ingredients for environmental disaster.

7 And I want you to keep in mind
8 another thing, and I'm going to bring this back full
9 circle when I'm done. Post-closure landfills, the new
10 landfills since the '80s, they haven't -- or excuse
11 me. Subtitle D landfills, which are the new
12 landfills, the new technology since the '80s, they
13 haven't truly come to post-closure where you've seen
14 the ramifications of these yet. So when I read these,
15 you can take out of your mind the fact that these new
16 landfills are much better because we don't know that
17 yet.

18 State environmental -- Excuse me.
19 State environmental regulators haven't escaped
20 criticisms in the Mallard Lake affair too. They were
21 accused of allowing the dumping of liquid waste that
22 led to the allegations being made today.

23 They are expected to meet later this
24 month with U.S. EPA to discuss their respective roles

1 in whatever cleanup is deemed necessary. This comes
2 as a state hits a self-imposed deadline of this year
3 to clean up its 33 worst landfills, a mission that's
4 only about two-thirds finished.

5 And while Wayne Township may take
6 center stage as the residents' lawsuit is played out
7 in court, the problems of polluted wells are a
8 statewide threat, experts say. In short, it's a case
9 of environmental chickens coming home to roost,
10 raising a stink.

11 The landfill at Schick and County
12 Farm Roads opened in 1974 and accepted garbage until
13 1999. It was built as a convenient way to bury
14 garbage, and the resultant trash mountain could be
15 used for recreation. But there were problems almost
16 from the beginning.

17 Only solid wastes were permitted to
18 be dumped, but according to a lawsuit filed by the
19 Illinois Attorney General William Scott in 1979,
20 the -- mind you, that's 1979. '99 it kept taking
21 garbage. They contained such solvents and chemicals
22 as mercury, cyanide, lead -- Excuse me. I will go
23 back a minute.

24 The lawsuit filed by Illinois

1 Attorney General William Scott in 1979, operators of
2 the landfill allowed the disposal of more than 45
3 million gallons of liquids. They contained such
4 solvents and chemicals as mercury, cyanide, and lead,
5 according to a separate complaint lodged by the forest
6 preserve district with the State Pollution Control
7 Board. Adding to this mess were 560,000 gallons of
8 sewer sludge.

9 By then the Forest District was at
10 severe odds with the company it had hired to run the
11 landfill, E & E Hauling, which later was hired by BFI
12 Industries. Using words like irreversible damage, the
13 Attorney General blamed E & E Hauling and the Illinois
14 EPA for granting 178 permits that allowed the dumping
15 of liquid and hazardous wastes.

16 Mallard Lake is not geologically
17 adequate to prevent serious and continuing water
18 pollution violations, the Attorney General's lawsuit
19 stated. Landfills are supposed to be self-contained.
20 Otherwise, a toxic mess results.

21 You've heard in this testimony that
22 all landfills leak. This is sitting on top of an
23 aquifer. Liquids from decomposing trash combine with
24 rain water to produce a lethal concoction called

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1 leachate. To avoid it building up and overflowing, a
2 leachate collection system must be installed.
3 Back in the 1970's, the forest
4 preserve district told the Pollution Control Board no
5 leachate system had ever been installed at Mallard
6 Lake. A stack of pancakes. Mallard Lake Landfill was
7 supposed to have been protected by a barrier of clay
8 and divided into cells to stop water from entering the
9 aquifer.
10 Does that sound familiar? Models.
11 That model was supposedly going to work perfect, just
12 like it's going to work here.
13 The operator has not yet developed
14 the site by forming cells each contained by clay
15 layers, the forest preserve's engineer and consultant
16 James Paccione reported in March of 1979.
17 The operator simply has deposited the
18 waste in layers running across the site, much like a
19 stack of pancakes.
20 And this one goes on and on. This is
21 a four-page document. I'll spare you the rest of it,
22 but it's pretty -- there's a pretty relevant
23 resemblance to what you're hearing right now.
24 You're hearing that this model is

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1 going to work, and you know what? These landfills,
2 these Subtitle D landfills, they haven't reached
3 post-closure enough for you to know that. And if it's
4 missing crucial evidence and testimony in support as
5 to the criteria here, you must deny this landfill.
6 Here's something more -- well, I'm
7 going to read some of the titles and then a few
8 sentences from a few more articles that I'm going to
9 submit as well.
10 Hawaii Landfill Faces 2.8 Million
11 Fine for Landfill Violations. The Hawaii Department
12 of Health has fined the city of Oahu 2.8 million for
13 violations at the Waimanalo Gulch Sanitary Landfill,
14 the city's only municipal landfill.
15 According to the Honolulu Advertiser,
16 the city and the landfill operator, Waste Management
17 Hawaii, were cited for 18 violations over a two-year
18 period. The violations include improper solid waste
19 cover, exceeding height limits, and excessive
20 leachate.
21 The City and Waste Management also
22 are required to submit a plan to the DOH addressing
23 how the violations will be resolved. Waste Management
24 will pay the fine, which is one of the largest

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1 environmental fines in the state, the paper says.
2 The next article says Landfill
3 Operator Settling Hawaii Fines. Nearly two years
4 after the state health department fined the Waimanalo
5 Gulch Landfill 2.8 million for a variety of
6 environmental violations, the company that operates
7 the site has agreed to spend about half that amount to
8 settle the matter.
9 Waste Management of Hawaii agreed to
10 pay \$520,000 penalty and spend more than one million
11 on supplemental environmental projects at the
12 city-owned landfill near Kahe Point on the Leeward
13 Coast.
14 The settlement comes as the City is
15 seeking to extend the life of the controversial site.
16 They want to extend it, which serves as the island's
17 main garbage dump. The landfill's operating permit
18 expires in May, but the city is seeking a two-year
19 extension and is planning a 60-acre expansion that
20 could keep this site open for at least 15 more years.
21 The health department cited the
22 landfill in January of 2006 for 18 types of
23 violations, and all but one have been corrected.
24 We have always felt the amount of the

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1 fines levied by the Department of Health were
2 excessive, but in the interest of the City and the
3 County of Honolulu and all the residents we serve, we
4 believe it was best to put this issue behind us, said
5 Waste Management spokesperson Russell Nanod.
6 Most of the violations were resolved
7 before the fine was levied. A violation concerning a
8 faulty leachate pump to remove liquids, which I asked
9 about in some of the questions I asked Mr. Hoekstra,
10 most of the violations -- oh, the single -- a
11 violation concerned a faulty leachate pump to remove
12 liquids from beneath the garbage piles as corrected --
13 was corrected when the mechanism was replaced this
14 year.
15 The single remaining issue concerned
16 levels of incinerator ash that had been piled higher
17 than a grading permit allowed. That issue may be
18 resolved by today.
19 The supplemental projects will
20 include a community drop-off center at the landfill
21 for residents to deposit their solid wastes and
22 recyclables and other projects to be selected by the
23 Department of Health or designated state agencies.
24 Mayor Mufi Hannemann thanked Waste

1 Management for assuming all financial responsibility.
 2 Half is what it says up here, and he thanked them for
 3 that.
 4 The city planning commission last
 5 week heard arguments from opponents of the landfill
 6 extension, state senate president Colleen Hanabusa and
 7 Ko Olina Resort and Marina located across Farrington
 8 Highway from the site. If the panel approves the
 9 extension next year, it would still require approval
 10 from the state Land Use Commission.
 11 There's more to that article, too.
 12 I'm going to read the third follow-up article to it.
 13 City Fined 2.8 million for Landfill
 14 Offenses. Questions about the future of Oahu's
 15 only municipal trash dump arose quickly yesterday
 16 after the health department levied one of the state's
 17 biggest environmental fines ever against a city for
 18 violations of the Waimanalo Gulch Landfill.
 19 These are serious violations that
 20 warrant a large penalty said the deputy state health
 21 director, Laurence Lau. He said the health notice
 22 lists 18 types of violations over a year or two period
 23 that were uncovered in a six-month investigation. The
 24 city says the dump's private operator will pay the

1 fine.
 2 City counselman Todd Apo, who
 3 represents the Waianae Cost/Kapolei area show -- the
 4 charges show that years of community complaints about
 5 litter, pollution, and other problems are justified,
 6 and the city needs to find an alternative to dumping
 7 there by 2008 when its landfill permit expires.
 8 There's more to that article as well.
 9 And this is the final. Honolulu,
 10 Hawaii, the department of health has entered into
 11 1.5 million settlement agreement with Waste Management
 12 of Hawaii and the city and County of Honolulu relating
 13 to DOH's 2006 case that alleged solid waste violations
 14 of the Waimanalo Gulch Landfill.
 15 The settlement commits Waste
 16 Management, which manages the landfill, and the city,
 17 which owns and operates the landfill, to various
 18 corrective actions in addition to payment of 1.5
 19 million. The corrective actions include operation
 20 monitoring and reports of the landfill relating to
 21 groundwater, daily cover for municipal solid waste,
 22 and ash, leachate, asbestos, and gases.
 23 In conclusion, this landfill must
 24 meet all criteria beyond a shadow of a doubt. It has

1 not. It cannot.
 2 It is your responsibility as our
 3 County's leadership to deny this Application and make
 4 this Applicant come to the county and do this thing
 5 right.
 6 The county and its residents are the
 7 only entity that will ultimately be stuck with the
 8 ramifications pre, during, and post-closure. This
 9 responsibility is, once again, solely in your hands
 10 and ultimately your legacy.
 11 Don't rubber stamp an Application
 12 that has not met all criteria beyond a shadow of a
 13 doubt. This action may only result in imminent danger
 14 to the public health, safety, and welfare.
 15 Please keep in mind there is no --
 16 and I repeat, no Subtitle D landfills that have
 17 reached post-closure. Therefore, ramifications are to
 18 be discovered -- are yet to be discovered; hence, the
 19 reasoning for reinforcement of the belief that this
 20 better be done right beyond a shadow of a doubt
 21 because this county and its citizens may be left
 22 holding the bag in the long term.
 23 Models always work perfect, as they
 24 are designed to work. Real life construction and

1 operation of landfills have often proved differently.
 2 Thanks for your time and
 3 consideration of this advice. That's all I have.
 4 HEARING OFFICER KINNALLY: Okay. Thank you,
 5 Mr. Gilson.
 6 Is there anyone else that would like
 7 to come up and make public comment?
 8 You just want to make public comment,
 9 Ms. Wallin?
 10 MS. WALLIN: Yes.
 11 HEARING OFFICER KINNALLY: All right. Go
 12 ahead.
 13 MS. WALLIN: I'm Cheryl Wallin, Ashley Road.
 14 Throughout these hearings, we have
 15 heard the '07 Application continuously compared to the
 16 '08 Application. I compare this situation to taking a
 17 test and being provided with some of the answers.
 18 In this case, the answers came from
 19 the '07 landfill hearings, but just because you have
 20 some of the answers doesn't mean you're going to ace
 21 the test. And that clearly is what happened here.
 22 Waste Management did not pass the test of the nine
 23 criteria, and therefore, should receive a no vote from
 24 this Board.

1 As I understand it, we are supposed
2 to be confident in Waste Management's ability to run
3 this facility. How are we supposed to have that
4 confidence when they couldn't even come up with a plan
5 on their own? And even still throughout these
6 proceedings, they need the County's guidance in the
7 form of suggestions for reasonable conditions on
8 siting. Will they need the County's help in running
9 this facility too?

10 No matter how much rearranging of the
11 numbers, changing of the wording, you cannot get away
12 from the original problems of this vulnerable site,
13 two of those being an aquifer and a 181-foot mound of
14 garbage on flat land.

15 I think Mr. Helsten said it best in
16 his opening statement. This is a site God didn't mean
17 to have a landfill on. That evidence is clearer in
18 the rich black soil on this site and the flat area in
19 which to grow a bountiful field of crops. You can
20 have good intentions of protecting our health, safety,
21 and welfare, but it simply cannot be guaranteed.

22 Mr. Nickodem best illustrated this
23 thought. When being cross-examined by Mr. Mueller
24 about a published study that leaks are found after

1 completion in half of the liners that were surveyed,
2 Mr. Nickodem's response was I'm not familiar with that
3 study, but I guess if they were found, someone would
4 fix them; the important words being if they were
5 found, and that herein lies the problem with this
6 whole landfill concept.

7 You are relying on human beings to
8 detect leaks, monitor gauges, check incoming loads, et
9 cetera, and we all know humans make mistakes, plain
10 and simple. But in this case, mistakes can be
11 disastrous, such as contamination of those 1,003 wells
12 within that five-mile area, our water supply. Once
13 that damage is done, there is no turning back. There
14 is simply no way to guarantee our health and safety,
15 so Criteria 2 cannot possibly be met.

16 Now, let's go on to Criteria No. 3,
17 compatibility with the surrounding area. This one by
18 far is the biggest joke. Again and again, Waste
19 Management wants us to believe we will not notice this
20 181-foot mound in our flat area. After all, the
21 high line towers that are already there are a 170 and
22 150 feet tall. Evidently they don't understand the
23 concept of looking through an open-framed object
24 compared to looking through a solid object.

1 And I don't even know how to respond
2 anymore to the idea of a landfill with all its
3 detriments how it could possibly be compatible with
4 farming and all its positive qualities. Clearly, with
5 no contest, Criteria No. 3 can never be met.

6 So in closing, I just have a few
7 final thoughts. I have thought long and hard of just
8 what can you say to those people who believe putting a
9 landfill next to someone's home is a great idea. I'm
10 sorry. Of course, my first thought is to put it next
11 to those people's houses, but we all know that will
12 never happen.

13 So I've tried to understand how
14 someone feels they have the right to take away and
15 destroy everything that generations have worked so
16 hard for. How do you explain to those people what
17 it's like to have your windows open and smell that
18 fresh country air and how you enjoy hearing those
19 tweets, as my grandson calls them, singing in the
20 background? How do you explain that mindset, the
21 peace you feel when you are working on your family
22 farm?

23 There are so many advantages of
24 living where my family does now, and I only wish you

1 could all experience them too. But now,
2 unfortunately, it's out of our hands. Someone else
3 will decide our fate. Someone else gets to decide
4 what the future generations will be experiencing. The
5 right decision is very clear to all of us. It seems
6 to be right before your eyes. Let's hope that money
7 does not blur your vision.

8 Vote no on this landfill. Thank you.

9 HEARING OFFICER KINNALLY: We don't need
10 clapping.

11 Thank you, Ms. Wallin, for your
12 information. We appreciate it.

13 Anyone else?

14 MR. SHEPHERD: Good evening. My name is Daniel
15 Shepherd. I live 17311 Brisbin Road, right at the
16 corner of the property.

17 I'm a retired heavy equipment
18 operator. I had 40 years with the union. Most of
19 that time was spent with one of the contractors that
20 constructed a lot of these garbage dumps, Captum,
21 various different phases of it.

22 And I'm here to tell you that, to
23 begin with, this thing doesn't fit the site. They
24 can't -- most generally you go where you have enough

1 depth of clay to get your borrow dirt. This thing is
 2 immense just to get borrow dirt. It doesn't make
 3 sense.
 4 It's right on the aquifers. What
 5 makes no difference there? All these liners leak.
 6 I've been there when they put them in. You've got
 7 thousands upon thousands of feet of seaming to do on
 8 these things. And they're put it -- and you've got
 9 people, humans putting these things in. Atmospheric
 10 conditions, there is -- all the variables involved to
 11 get an honest seal, it's almost impossible.
 12 I've seen them putting the clay on
 13 these things. I have seen them open up. You have to
 14 go back, try to clear them off, re-seam. It doesn't
 15 work. Sorry, it just doesn't work. Invariably
 16 they're going to leak.
 17 Now, the next thing you do, you throw
 18 the clay down on top. You got it all covered up. You
 19 might have missed some or it opened up. You didn't
 20 see it.
 21 Now you come by with the garbage.
 22 You push it out there. Lord only knows what you're
 23 pushing. You get things hooked right on the front of
 24 that dozer blade, you will shove that thing right down

1 through that little bit of clay and those liners, and
 2 there is another leak. And by the time those wells
 3 pick it up, it's too late.
 4 Besides that, how are you going to
 5 dig it back up? How are you going to repair it? I
 6 have going -- they have a cell that they bought an old
 7 dump. It was just recalled, ESL. It's down on
 8 Laraway Road. They have a cell there that they
 9 inherited that is highly, highly contaminated and it's
 10 leaking all over the place, and back in the earlier
 11 '90s, we were hired to go in and try to put a Band-Aid
 12 in.
 13 So I had to put a trench around the
 14 cell, 27-foot deep, 4-foot wide. Gravel, leachate
 15 pipe, more gravel, leachate pipe. Now, in order to
 16 even do this, this thing is so toxic, I had to wear
 17 Tyvek suits, gloves, booties and have supplied air
 18 tanks on the machine that I had to breathe just to
 19 maintain my life. It was deadly. And I don't know if
 20 that remedied -- that that did any good or not.
 21 They just got an extension, you know,
 22 on that site there, a permit to expand it. There's
 23 also barrels buried in that site. And Lord only knows
 24 what's in those barrels. They're afraid to touch

1 them, or they were when I was there. I don't know if
 2 they've done any remediation of any of that, but
 3 there's a super fun cleanup over there. You know,
 4 these things are not -- they are not fun. They are
 5 not games.
 6 I'm located downwind of this dump
 7 right along the property, and despite everything they
 8 tell you, you cannot stop all dust. You cannot stop
 9 the noise. Garbage does blow. I've seen it blow.
 10 They put up the wind screens. They try to stop it,
 11 but you get a wind switch in the middle of the day,
 12 now you've got to go run out there and try to grab
 13 ahold of a D-8 guy, get him over here, hook him on
 14 these screens, drag them around. By the time you do
 15 that, you've got papers scattered for half a mile if
 16 you got a nice wind that come up.
 17 It's just the whole situation is not
 18 a pleasant sight, not something you want to live next
 19 to. I've never seen very many of their managers live
 20 next door.
 21 And these sediment ponds, I did the
 22 enlargement -- the last enlargement up there at
 23 Settler's Hill. What was it -- five years ago. Five
 24 years ago I did that one. They smell. Everything

1 that is not in the cell at the open face, any rain,
 2 the water trucks, they wash all -- it all washes down.
 3 It all goes into these sediment ponds. In a way,
 4 they're just an open cut. You don't lay any liners
 5 back in, any clay liner to try -- they can
 6 contaminate.
 7 This thing is real close to my well.
 8 They're just not quite the picture they're being
 9 painted. I shouldn't say painted. Maybe whitewashed
 10 would be a more preferable term. Tom Sawyer would be
 11 proud.
 12 I'm asking the Board to vote no
 13 against this dump. It's going to be an eyesore. It's
 14 going to be a major problem, and you wind up --
 15 Kendall County winds up living with it, the problems,
 16 and eventually some of the expenses.
 17 If you see that you can't turn it
 18 down, I want to ask the Board to accept it with
 19 conditions on it, that they have to purchase any home
 20 within 1,500 feet of their property line because our
 21 lifestyles are just going to be totally disrupted.
 22 You've mentioned seagulls. They're
 23 going to be picking my garden. I won't even pick it
 24 no more. I can plant it and just leave it go.

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1 They'll take care of it for me. They provide
2 everything as far as the seagulls' lifestyle needs,
3 food and the water. That's all they need. They won't
4 migrate, not if that water is open. The only reason
5 they'll move off is if they can't get open water.
6 I don't have a whole lot else to say.
7 I'm going to keep this short and down a little bit,
8 but believe me, folks, I've worked in them. They're
9 not a pretty sight. Thank you.
10 HEARING OFFICER KINNALLY: Thank you,
11 Mr. Shepherd.
12 Is there anyone else who wants to
13 make public comment? Please come up and state your
14 name.
15 Did you want to make public comment,
16 Ms. Anderson?
17 MS. ANDERSON: That's all.
18 HEARING OFFICER KINNALLY: Okay. Thank you.
19 Nice to see you again.
20 MS. ANDERSON: Bev Anderson, Ashley Road.
21 I'm opposed to siting this landfill.
22 As an area resident and landowner, I have heard
23 nothing to make me feel confident in this siting as
24 opposed to the last time around.

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1 What's changed? You've moved the
2 footprint to the east side of Walley Run, but the
3 ground and aquifer are still the same. Walley Run is
4 still nearby and vulnerable. In fact, you'll drive
5 over it with leaking garbage trucks, so what has
6 changed?
7 What are we to believe the last time
8 around? We were told there would be no danger to the
9 water supply. Birds, litter, odor, and truck traffic,
10 no problem. Yes, you've tweaked it here and there,
11 made it smaller, agreed to expand protection for
12 wells, expanded distance for litter pickup, and even
13 agreed to add another well. But these conditions are
14 all agreed upon to appease this County Board and the
15 residents.
16 Again, what has changed? You still
17 can't assure the safety of this siting because errors
18 can be made in construction. You're only human. And
19 the results would be a detriment to current and future
20 residents. Time and again, these landfills are being
21 proven to be unsafe, and it's only a matter of time.
22 Criteria 1 is puzzling to me. We
23 don't need to take care of Cook and nine other
24 counties' garbage. That will fill the facility in a

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1 short time, and then what? You'll expand the
2 footprints and take even more land. Once you've
3 ruined the area, that will be easy to do.
4 Criteria 2 is a no-brainer.
5 Location, it's been stated enough times this is not a
6 good location. Public health and safety, that's
7 questionable and not probable.
8 Criteria 3, compatible with
9 surrounding area? I don't even know how to respond to
10 that. I'll just say it's not. It would be a blight
11 on the land.
12 Minimize value of property?
13 Definitely. Who would want to buy? Only industry
14 that would change this whole southern end of the
15 county. Don't destroy this flat, productive farmland.
16 Your complete disregard for siting
17 near the Morris Airport with their planned expansions
18 and danger to aircraft is also puzzling to me. And if
19 this siting is approved, Attorney Blazer and this
20 Kendall County Board, this will be your legacy. A
21 legacy should make you proud. This would not.
22 And to Waste Management, I wish you'd
23 put your time, energy, and money into a productive
24 proposal like waste to energy instead of being

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1 destructive to our ground. I can't help that Waste
2 Management in Kendall County -- or Kendall Land &
3 Cattle bought this land and must do something with it.
4 As my dad used to say, when things
5 went wrong, I think they put the cart before the
6 horse. Thank you.
7 HEARING OFFICER KINNALLY: Thank you,
8 Ms. Anderson.
9 Does anyone else want to make public
10 comment?
11 Come on up and state your name. Did
12 you want to be sworn, Ms. Friestad, or just make
13 public comment?
14 MS. FRIESTAD: Make public comment.
15 HEARING OFFICER KINNALLY: State your name
16 then, please.
17 MS. FRIESTAD: I'm Sharon Friestad, and my
18 husband and I live and farm at 9488 Whitewillow Road,
19 and we also have many of our children, grandchildren,
20 and great-grandchildren living and farming here in
21 Lisbon Township, so that makes four generations we are
22 concerned about for their health and safety.
23 Lisbon Township is a great place to
24 farm and raise a family, and we just hope that our

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1 grandchildren can continue to have that privilege here
2 and can farm and raise their families right here as
3 well.
4 We feel that even some of our nine
5 small great-grandchildren are really showing an
6 interest in farming.
7 An example, one little guy won't be
8 three until the end of November, but he probably would
9 amaze you with what he has stored in his little mind
10 about farming. If you had a chance to talk to him and
11 question him about machinery, crops and anything else
12 to do with farming, you would probably be like us and
13 feel sure he will be a farmer some day, if he has the
14 chance.
15 Here are some of my reasons besides
16 taking valuable farm land. Criteria No. 1 said the
17 facility is necessary to accommodate the waste needs
18 of the area it is intended to serve. Is a landfill
19 really necessary in this farming area or should we be
20 looking into other ways of disposing our waste? And
21 if it is necessary, should we in Kendall County be
22 responsible for other counties, which include big
23 cities like Chicago?
24 Then we come to No. 2, and I tied

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1 No. 6 in with No. 2. No. 2 states about the public
2 health, safety, and welfare being protected, and to
3 me, No. 6, which is the traffic, is a big concern for
4 our safety as well. We have heard great testimonies
5 about all the problems a landfill can cause in this
6 location for airplanes and all the health problems
7 that can result to our drinking water from our wells,
8 and that is a major concern to us.
9 But another one that wasn't talked
10 about much was the traffic that can cause a lot of
11 dangerous problems. If I remember right, the traffic
12 study was done in December, January, March, and April,
13 which is the time of year when there are very few
14 quarry trucks, farm machinery, and grain trucks on
15 Whitewillow Road, Joliet Road, and Route 47.
16 Their big months are April, May, and
17 especially October and November. I wonder what will
18 happen when the truck drivers hauling waste,
19 especially those drivers that are used to driving in
20 big cities like Chicago, what will they do out here
21 when they are slowed down for tractors, combines,
22 grain trucks, and quarry trucks all day long.
23 It was mentioned that there was
24 sufficient gaps in the traffic, but I can't believe

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1 that there will be enough gaps when farm machinery and
2 quarry trucks are all on the roads in a busy season.
3 It sounds pretty dangerous to me.
4 Criteria No. 3, I still can't imagine
5 that this facility won't have any negative effect on
6 the value of our property. But that is a minor
7 problem compared to our health and safety of our
8 family, friends, and neighbors in this community.
9 No. 5, I think there certainly is
10 more of a chance of a danger of fires, spills, and
11 other operational accidents in the landfill than if
12 this land is left for farming.
13 Thank you for taking the time to
14 listen to me and considering what affect this has on
15 both Grundy and Kendall Counties, and I would
16 encourage each one of you to take a stand in
17 opposition of this landfill and really would
18 appreciate your support. Thank you.
19 HEARING OFFICER KINNALLY: Thank you,
20 Ms. Friestad.
21 I think we're going to take a little
22 break right now, and then we'll take some more public
23 comment, and I want the lawyers to be ready to argue
24 this motion to dismiss.

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1 Apparently Mr. Porter is not coming
2 tonight and I'm going to go ahead on the motion, so
3 Ms. Kramer, you're going to have to take the laboring
4 war on that.
5 MS. KRAMER: That's fine.
6 HEARING OFFICER KINNALLY: Let's take a
7 ten-minute break.
8 (Recess taken.)
9 HEARING OFFICER KINNALLY: I'd like to
10 entertain this motion now -- or these two motions,
11 excuse me. These were motions to dismiss these
12 proceedings based on jurisdictional grounds.
13 And I believe Mr. Porter, who's not
14 with us tonight, filed the original motion, and then
15 Ms. Kramer filed a very similar motion on behalf of
16 her client, which was joined by Mr. Kramer on behalf
17 of the City of Minooka. And I believe also it was
18 joined in by Mr. Mueller, Mr. Lyle. And if I'm
19 missing someone, I think that's --
20 MS. KRAMER: Mr. Belt.
21 HEARING OFFICER KINNALLY: Mr. Belt. I'm
22 sorry.
23 So I'll hear any further argument on
24 that, and then I'll make a decision.

1 Did you want to say something else,
 2 Ms. Kramer?
 3 MS. KRAMER: Mr. Kinnally, for the record, we
 4 would stand on the written motions that were filed
 5 yesterday on behalf of both the Old Second National
 6 Bank of Aurora Trust and the Village of Minooka, and
 7 do not have anything further to argue orally at this
 8 time.
 9 HEARING OFFICER KINNALLY: Okay. Does anyone
 10 else want to be heard on this?
 11 MR. MORAN: Mr. Hearing Officer?
 12 HEARING OFFICER KINNALLY: Sure.
 13 MR. MORAN: Thank you.
 14 Mr. Porter in his motion and also in
 15 the motions filed by Kelly and Dan Kramer cite to the
 16 Environmental Control Systems Case, which is a
 17 decision from the Fifth District from 1998. And if we
 18 go back and look at the underlying case there, it was
 19 actually a decision that the Pollution Control Board
 20 entered prior to the Land & Lakes Company Case that --
 21 HEARING OFFICER KINNALLY: I've read the
 22 opinion. I've read it. Go ahead.
 23 MR. MORAN: And I was just going to indicate
 24 that that opinion, which was the Madison County

1 Conservation Alliance versus Madison County &
 2 Environmental Control Systems, PCB Number 90-239 set
 3 out facts that were remarkably similar to the Land &
 4 Lakes case, which was that that Applicant had
 5 identified three separate parcels over a 211-acre
 6 facility.
 7 And in that instance, because the
 8 pre-filing notice was not sent to two of the property
 9 owners located directly adjacent to that facility in
 10 an effort to excuse that failure to serve, the
 11 argument was made that for one of the parcels within
 12 the facility, it only ought be identified as the
 13 footprint and not the entire parcel that had been
 14 identified as part of the facility.
 15 So the Court rightfully determined
 16 that the Applicant in that case could not cut back the
 17 definition within its own facility and include only
 18 the footprint to avoid the requirement to pre-file
 19 notice those two property owners.
 20 So again, even the case cited by the
 21 Movants supports the proposition that the definition
 22 of the facility is set out in the Environmental
 23 Protection Act. It's the definition of a sanitary
 24 landfill, which was the definition of the facility

1 provided here.
 2 And our request is that the motion be
 3 denied.
 4 HEARING OFFICER KINNALLY: Okay. Does anybody
 5 else want to be heard on this? Any participant or
 6 anyone else?
 7 Okay. As I indicated before, legal
 8 motions under the Siting Ordinance are to be decided
 9 by the Hearing Officer and not the Board.
 10 Mr. Porter's motion was directed to
 11 the Board, but that's my job, and so I will undertake
 12 it.
 13 Our ordinance is pretty clear as to
 14 what is required concerning a site description, and
 15 that's contained in Section 4.4. Nowhere in 4.4 does
 16 it indicate that property not within the site, so to
 17 speak, is to be considered part of the site. And it's
 18 somewhat vague as to what's required with respect to
 19 notice and, therefore, it relies on the state statute
 20 for notice given to people in the vicinity.
 21 Our ordinance also has different
 22 notice requirements under Article VIII, but they don't
 23 talk about whether or not notice has to be given to
 24 owners of land within 250 feet of the lot line. That

1 is a state statute, and that statute is contained in
 2 Section 39.2.(b) of the Act.
 3 Mr. Porter apparently argued that
 4 these borrow areas are part of the site, and he's
 5 incorrect. He also argued that these borrow areas are
 6 going to be mined. He's incorrect about that.
 7 The case that he cited really has
 8 nothing to do with a landfill siting. It's a legal
 9 malpractice case that was filed against a lawyer who
 10 apparently or at least allegedly, because the case was
 11 decided on a motion to dismiss, there was no facts
 12 determined by a jury or a judge at that point. The
 13 case basically said that if you want to site one of
 14 these things, a landfill, you have to follow what the
 15 state statute says. And the statute says notification
 16 of owners of land within 250 feet of the lot line.
 17 I'm troubled by the fact that
 18 Mr. Porter said that he could not find any case law
 19 other than this appellate court decision.
 20 And I found one or one was given to
 21 me where the Pollution Control Board, in a somewhat
 22 similar situation, and this is at 1999 Westlaw, 436,
 23 320, 1999 Pollution Control Board case talked about
 24 what was required in addition to the case that

1 Mr. Moran cited.
 2 And that case at 1999 Westlaw 436,
 3 320 is called ESG Watts versus Sangamon County Board.
 4 And that decision, which talks about what is required
 5 and talks about jurisdiction, talks about lot lines,
 6 is a case where Mr. Helsten was one of the lawyers
 7 involved in that appeal. So apparently, the research
 8 done by Mr. Porter was somewhat wanting.
 9 The case that is cited by the
 10 Applicant here, Land & Lakes Company Operations, PCB
 11 91-7 is on point. And clearly in that case, the issue
 12 was raised. There were three different areas, A, B,
 13 and C parcels. The A parcel being the parcel
 14 identified as the site where landfill operations would
 15 occur.
 16 And beginning at Page 10 of that
 17 decision and continuing through Page 12, the Pollution
 18 Control Board basically indicates that the
 19 requirements are the ones that Mr. Moran just talked
 20 about and talked about in his argument.
 21 I'm going to file a copy of this
 22 decision with my clerk. I don't need to belabor this
 23 issue because the issue here is whether people were
 24 notified about the facility or the waste storage site

1 within 250 feet, and that's undisputed that that
 2 occurred 250 feet of the lot line.
 3 Merely because there are other
 4 parcels that are owned by the Applicant which are in
 5 the vicinity or next to the site that they have
 6 defined in their Application as the site for land
 7 filling operations does not mean that that becomes
 8 part of the site. And the Pollution Control Board
 9 made that very clear in their decision.
 10 So for those reasons, and I will file
 11 all three copies of these cases, the ESG Watts case,
 12 the Land & Lakes Company case as well as the -- let me
 13 get it here -- the Environmental Control Systems
 14 versus Long case, which I think is consistent with the
 15 Pollution Control Board case, Land of Lakes. I'll
 16 file those with the clerk. Anybody can read those if
 17 they want.
 18 But for the reasons indicated in
 19 those -- in the decision of Land & Lakes Company, I'm
 20 going to deny the motion. And I think the County
 21 Board does have jurisdiction, so that will be my
 22 ruling with respect to that motion.
 23 All right. Did you want to give
 24 testimony or just make public comment, or are you

1 ready to go?
 2 MS. VINEYARD: It's not for me, it's for Todd.
 3 And I was going to do mine tomorrow.
 4 HEARING OFFICER KINNALLY: I don't know who
 5 Todd is. Oh, okay. Mr. Milliron?
 6 You know, we'll be here tomorrow
 7 night if people want to make public comment. We'll
 8 start again at the same time, 6:00 o'clock, and we'll
 9 go until we don't have anymore public comment.
 10 Some people said they wanted to give
 11 public comment on Monday. That's fine. Hopefully,
 12 the witness for the City of Minooka will come. We've
 13 been waiting for him. And if any other -- I don't
 14 know if you plan to put on rebuttal witnesses. What's
 15 the lineup for your rebuttal witnesses?
 16 MR. MORAN: Yes, Mr. Kinnally. At this point
 17 we would anticipate putting on rebuttal. We've
 18 identified two, possibly three witnesses. We've not
 19 identified all of them, but we will be putting on a
 20 rebuttal case.
 21 HEARING OFFICER KINNALLY: All right. Well,
 22 when are they going to be available?
 23 MR. MORAN: We would be able to put that
 24 rebuttal on next Wednesday evening, a week from

1 tonight. And we would anticipate concluding that part
 2 of the rebuttal and going to closing as well that
 3 night.
 4 HEARING OFFICER KINNALLY: Okay. So we may not
 5 do anything Tuesday night apparently. So I guess
 6 we'll see. I mean, if you can't have them available
 7 Tuesday, then I guess we won't be here. It's not my
 8 choice. It's not the County Board's choice, but I
 9 guess we'll see how it goes. Okay. Are you ready?
 10 MR. MILLIRON: Yeah.
 11 HEARING OFFICER KINNALLY: Do you want to make
 12 public comment?
 13 MR. MILLIRON: Please.
 14 HEARING OFFICER KINNALLY: All right. Identify
 15 yourself, please.
 16 MR. MILLIRON: Todd Milliron, 61 Cotswold
 17 Drive, Yorkville.
 18 We're going to play a short DVD video
 19 for you. It's a synopsis or a shortened version of
 20 what we call the Trash Video.
 21 This is a story of garbage American
 22 style. Trashed is the name of this DVD. It's a
 23 provocative investigation of one of the fastest
 24 growing industries in North America, the garbage

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1 business, most of whom never consider the
2 consequences, implications to our biosphere of these
3 land filling operations.
4 Landfills are the largest human
5 related source of methane in the U.S. Methane is a
6 greenhouse gas that's 21 times more potent than carbon
7 dioxide. We are consuming the earth, and we're
8 destroying the biosphere, wasting valuable energy.
9 Suicide.
10 We're going to need another home for
11 the civilization sooner or later if we continue to
12 consume our natural resources at the pace we are using
13 them now and discarding them as we are.
14 We are still putting the entire
15 planet on a plastic diet. The consequences of which
16 are still unknown. Make the environment a priority in
17 your home and business organization by educating your
18 family, employees, and incorporating practices in ways
19 to reduce, reuse, recycle. We're hoping this video
20 will be instructive.
21 I'd like to read some prior testimony
22 to you and refresh your memories from Waste Management
23 1 and how we got here again, and then show you one of
24 Waste Management's past calculated decisions.

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1 One that was willful and unlawful to
2 take yard waste and deposit it near my home for seven
3 plus years without the proper operating authority, in
4 aiding and abetting someone else that had a documented
5 business relationship with them in violation of the
6 law.
7 That law is referred to as 21Q. I'll
8 read it to you here shortly. Then continued to not be
9 forthcoming about this business relationship for this
10 seven-year period. This only came to light recently
11 and only through the investigation of the prior
12 Kendall Land & Cattle/Waste Management 1 39.2 landfill
13 hearing.
14 Again, this was done in the name of
15 the lure of the landfill and the greed of money. Then
16 the outing of each side to the secret deal to gain an
17 advantage for their own landfill Application. Funny
18 how greed sometimes leads to the truth.
19 Let us proceed with Mr. Wilt's
20 testimony from -- and a history lesson on Waste
21 Management ethics and business practices that affected
22 my neighbors and your constituents for over seven
23 years.
24 The law that applies to the

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1 Application of yard waste is 415 ILCS 5, Section 21,
2 Subsection Q, the law that I referred to as 21Q.
3 There are three paragraphs to that
4 law 1, 2, and 3 with Subparagraphs A, B, and C.
5 The one that particularly applies to
6 this is 21Q, Section 3, Subparagraph 3. The property
7 on which the composting facility is located and the
8 associated property on which the composting is used is
9 principally and diligently devoted to the production
10 of agricultural crops and is not owned, leased, or
11 otherwise controlled in any way by a waste hauler or
12 generator of non-agricultural compost materials.
13 And the operator of that composting
14 facility is not an employee, partner, shareholder, or
15 in any way connected with or controlled by any such
16 waste hauler or generator.
17 This provision in the law is the one
18 that, whatever we call the exempt farmer section,
19 which allows for farmers to use yard wastes on their
20 land, but only if they're a farmer, and they're not
21 connected with a waste hauler.
22 The regs that apply that come out of
23 this law is 830.106, and it's in the IEPA manual. And
24 it's very similar wording. This is 830(a).106(a),

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1 Subparagraph 2.
2 The property at which the compost is
3 located and associated property on which the compost
4 is used principally and diligently devoted to the
5 production of agricultural crops and is not owned,
6 leased, or otherwise controlled by a waste hauler or
7 generator of non-agricultural/compost materials.
8 And the operator of the composting
9 facility is not an employee, partner, shareholder, or
10 in any way connected with or controlled by any such
11 waste hauler or generator.
12 And George has spoke earlier tonight
13 about Waste Management's ethics and business
14 practices. And I would like to explain to you how
15 this actually comes down and has affected us in our
16 own county.
17 Mr. Moran indicated that he will be
18 putting on some rebuttal witnesses. This testimony
19 was rebuttal testimony from Waste Management 1. The
20 person that was making this testimony was sworn in and
21 that was -- His name was Dennis Wilt. And I would
22 like to read a few pages of his testimony from Waste
23 Management 1.
24 Direct examination by Mr. Moran to

<p style="text-align: right;">Page 1911</p> <p>1 Mr. Wilt after he had been sworn in. 2 "Could you please tell us your name 3 and spell your last name for the 4 court reporter? 5 Dennis, Wilt, W-i-l-t. 6 Mr. Wilt, what is your business or 7 occupation? 8 I am an in-house lawyer for Waste 9 Management, an employee, not with a 10 firm. I have been general counsel 11 of Waste Management of Illinois for 12 about 15 years. 13 Okay. What are your duties and 14 responsibilities in that position? 15 Well, with respect to the 16 development projects, I managed the 17 preparation of our Siting 18 Application, the preparation for 19 hearings like this hearing, appeals 20 that would follow a hearing like 21 this hearing. 22 How many such Siting Applications, 23 approximately, have you managed or 24 directed?</p>	<p style="text-align: right;">Page 1913</p> <p>1 Application? 2 Well, I think it's important to 3 understand that, you know, we 4 didn't begin this project. We did 5 not select this site. Kendall Land 6 & Cattle had been involved in 7 looking at a site in the southern 8 part of the county. I believe this 9 is something that is known, and 10 that they approached us probably in 11 late 2005, early 2006. We did not 12 reach an agreement with Kendall 13 Land & Cattle until about a year 14 ago, June of 2006. And that 15 agreement was that we would be the 16 operator and the owner if we were 17 fortunate enough to be sited and 18 receive an IEPA permit. 19 Mr. Mueller. 20 Mr. Kinnally." 21 He's asking Mr. Kinnally what is the relevance 22 of this rebuttal. 23 "What is he rebutting? 24 Hearing Officer Kinnally, I'm not</p>
<p style="text-align: right;">Page 1912</p> <p>1 In the 15 years I've been in the 2 Chicago area, about a dozen. 3 And those include both Siting 4 Applications for new landfills, 5 expansions, and transfer stations? 6 That's correct. 7 Now, for each of these Siting 8 Applications that you have managed, 9 other than the one that we are 10 dealing with here, has Waste 11 Management of Illinois been the 12 sole Applicant? 13 That's correct. 14 Would it be accurate to say that 15 this is the first project in which 16 Waste Management of Illinois has 17 not been the sole Applicant? 18 That's correct." 19 That is in reference to Kendall Land & Cattle. 20 "Could you briefly describe for us 21 the steps that are taken in 22 identifying a site, selecting 23 experts, and moving forward with 24 the preparation of that</p>	<p style="text-align: right;">Page 1914</p> <p>1 sure yet. He just got started. So 2 if that's an objection, it is 3 overruled, and I guess we will find 4 out as we go along. You can renew 5 your objection at a later time if 6 you want. 7 By the witness, with respect to 8 this site at the time we entered 9 into this agreement with Kendall 10 Land & Cattle in June of 2006. CEC 11 Engineering --" 12 HEARING OFFICER KINNALLY: Can you slow down a 13 little bit so the reporter -- 14 MR. MILLIRON: Sure. 15 "CEC Engineering --" 16 Somebody had asked about in a prior night this 17 week. 18 "Had been retained by Kendall Land 19 & Cattle, had worked on this 20 project and, in fact, had really 21 started putting together the pieces 22 that resulted in the Siting 23 Application." 24 In this case, Waste Management 1.</p>

<p style="text-align: right;">Page 1915</p> <p>1 "So when we signed our agreement 2 with Kendall Land & Cattle, what 3 came with that is CEC Engineering. 4 We weren't uncomfortable with that. 5 I was not uncomfortable with that. 6 John Hock, the project manager from 7 CEC, used to work for Waste 8 Management as an engineer. I went 9 to our engineering people 10 internally and asked questions 11 about John's performance. They 12 thought very highly of him. But we 13 didn't retain CEC, but we agreed to 14 have a joint Application." 15 One of the first ones they've ever done. 16 "When we started moving forward with 17 this Siting Application process in 18 full, we brought on additional 19 professionals onto our own team. I 20 think at one time we probably had 21 45 or 50 professionals working on 22 the Application, the different 23 criteria, traffic, property value. 24 The bulk of those were design</p>	<p style="text-align: right;">Page 1917</p> <p>1 hearing -- and I have sat through 2 most of the hearing -- and I think, 3 Mr. Mueller, it will become 4 relevant -- I have heard why isn't 5 CEC testifying. Well, we hired 6 Mr. Moran as our lawyer to present 7 our Siting Application." 8 The same gentleman as presenting Waste 9 Management 2. 10 "Mr. Moran recommended using 11 Mr. Nickodem as our witness with 12 respect to design." 13 The same witness you heard from again at this 14 hearing. 15 "Mr. Nickodem was part of a fairly 16 large team, the largest team I 17 think we've ever had to work on an 18 Application. He was selected by 19 Mr. Moran. I accepted that as the 20 manager of this project, and I 21 accepted it for a variety of 22 reasons. Mr. Nickodem had worked 23 for Waste Management on many 24 development projects. He had</p>
<p style="text-align: right;">Page 1916</p> <p>1 engineers that resulted in the 2 double composite design that we 3 have been discussed at these 4 hearings --" 5 A similar design, the same design that we're 6 talking about tonight. 7 "And on that design side, we 8 supplemented CEC. We brought in 9 Andy Nickodem from Shaw. We 10 brought in Dr. Stark, and you have 11 heard from him. We had two very 12 experienced engineers in-house at 13 Waste Management, Bill Schubert and 14 Chris Rubak, who were part of the 15 development team. The Application 16 was not finalized until we had 17 input from the entire team. 18 Mr. Nickodem from Shaw, inside 19 internal engineers from Waste 20 Management, and CEC. With respect 21 to the next step -- so I guess the 22 point is the Application itself was 23 a collaborative effort by a number 24 of people. When it came to the</p>	<p style="text-align: right;">Page 1918</p> <p>1 testified at Kankakee. He had 2 testified recently with respect to 3 Laraway's expansion." 4 Some of those two landfills are the ones that 5 had the difference in the coefficient factor that was 6 used for the liner. 7 "We were very comfortable with 8 Mr. Nickodem. The other members of 9 our design team, including CEC, we 10 talked to them. I talked to them. 11 I talked to John Hock. He was very 12 comfortable with Mr. Nickodem 13 representing our project as our 14 witness. With respect to Ms. 15 Underwood --" 16 Another witness you've heard from again. 17 "Mr. Mueller, I move to strike as 18 hearsay. Mr. Hock's comfort level 19 is clearly hearsay. 20 Hearing Officer Kinnally, that is 21 overruled. Hearsay is admissible. 22 We have heard so much hearsay in 23 this hearing so far, George, it's 24 unbelievable.</p>

<p style="text-align: right;">Page 1919</p> <p>1 By the witness, with respect to Ms. 2 Underwood and Earth Tech, we worked 3 with Earth Tech for many, many 4 years. We have worked with Ms. 5 Underwood at a number of projects. 6 She seems to forget some of them, 7 but she has worked with us at 8 Laraway, recently at Prairie View. 9 She's worked at Settler's. We have 10 a relationship of trust and 11 confidence with her. Maybe the 12 first time I met with her after 13 Mr. Moran suggested that she be our 14 witness at the siting hearing, it 15 confirmed in my mind that we made 16 the right decision. She said no, 17 without any lack of clarity, 18 Dennis, the bedrock is the 19 aquifer." 20 I want to repeat that again. 21 "She said in -- She said in no -- 22 without any lack of clarity, 23 Dennis, the bedrock is the aquifer. 24 You will be putting a landfill on</p>	<p style="text-align: right;">Page 1921</p> <p>1 guess, finally, I would look at 2 this -- and George will object -- 3 you know, if I had to have surgery, 4 I would want a team of surgeons 5 looking at the background 6 information and discussing what 7 would have to happen to me. But, 8 you know, when I picked the surgeon 9 to do the surgery, I'd want the 10 most experienced person, and that 11 was one of the things that was a 12 factor into a decision to have Andy 13 and Joan testify. 14 Question by Mr. Moran. With 15 respect to the Siting Applications, 16 is it accurate to say that as you 17 have indicated, they involve a 18 number of experts in multiple 19 disciplines who will work in 20 conjunction with preparing data, 21 gathering data, and preparing a 22 Siting Application? 23 Hearing Officer Kinnally, I think 24 he already said that.</p>
<p style="text-align: right;">Page 1920</p> <p>1 top of an aquifer." 2 HEARING OFFICER KINNALLY: You don't need to 3 yell. I mean, we can hear you. 4 MR. MILLIRON: I get a little excited. Please 5 forgive me. 6 HEARING OFFICER KINNALLY: It's okay to get 7 excited. Just don't yell. 8 MR. MILLIRON: 9 "She's one of the best 10 professionals I have worked with. 11 She tells me and our company not 12 what we want to hear, but what the 13 facts are." 14 You are being asked to believe her. 15 "But the decision on the Siting 16 Application, collaborative effort. 17 It was a team. The decision on who 18 testifies was a recommendation by 19 our lawyer, Mr. Moran, who we have 20 worked with for years. And I think 21 he has as much experience in these 22 matters as any lawyer in the State. 23 I accepted those recommendations 24 for the reasons I stated. And I</p>	<p style="text-align: right;">Page 1922</p> <p>1 By the witness, absolutely. 2 Hearing Officer Kinnally, he said 3 he had 45 people working on this 4 thing. 5 Mr. Moran, I am asking about prior 6 applications. 7 Hearing Officer Kinnally, oh. 8 By Mr. Moran, just to include that, 9 indeed, this is a typical 10 situation, it is not, Mr. Wilt, 11 in terms of the number of 12 professionals who will work in 13 connection with the Siting 14 Application? 15 I think, Don, we had more 16 professionals working on this 17 because it was a joint Application. 18 We probably had a few more here 19 than we normally have." 20 Maybe too many cooks spoil the broth. 21 "And in those situations where 22 there are the significant number of 23 professionals, they all don't 24 testify at the siting hearing, do</p>

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1 they?
 2 They don't.
 3 And the decision to make in terms
 4 of who testifies in one is made
 5 by -- based upon the obligation to
 6 establish compliance with the nine
 7 siting criteria; correct?
 8 That's correct.
 9 The decision has to be by necessity
 10 made to include only a certain
 11 number of those professionals and
 12 not everyone who worked in
 13 connection with preparing any part
 14 of an Application.
 15 That's correct.
 16 Mr. Moran, thank you very much.
 17 Nothing further.
 18 Hearing Officer Kinnally, thank
 19 you, Mr. Moran. Mr. Mueller, do
 20 you have any questions?
 21 Mr. Kinnally, I don't, but I would
 22 move to strike the testimony as not
 23 being rebuttal for the reason that
 24 answering a question which came up

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1 in somebody else's
 2 cross-examination is not rebuttal.
 3 Rebuttal has to be directed at the
 4 evidence that was elicited by the
 5 opposing party. I don't think this
 6 was. I don't think it is relevant.
 7 Hearing Officer Kinnally, all
 8 right. Well, my response to that
 9 is, and I understand that this
 10 witness is testifying to this is
 11 throughout these hearings, there
 12 have been questions by you,
 13 Mr. Porter, Mr. Blazer, other
 14 participants, County Board Members,
 15 or the committee, myself, as to why
 16 the individuals who prepared the
 17 Application, namely CEC, did not
 18 testify. As I understand this
 19 testimony, and I may be wrong, but
 20 I don't think I am, the reason for
 21 this witness testifying is to tell
 22 us why they didn't. And to that
 23 extent, I think it is proper for
 24 this witness to testify because

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1 many of the cross-examination
 2 questions were centered on where is
 3 CEC. So your motion is denied. Do
 4 you have any questions?
 5 Mr. Mueller. No, thank you.
 6 Hearing Officer Kinnally. Okay.
 7 Mr. Porter?
 8 Mr. Porter. Just a few."
 9 This is the part that I want to get to.
 10 "Hearing Officer Kinnally. I'm
 11 sorry, Ms. Harvey. I missed you.
 12 I apologize.
 13 Ms. Harvey. I did not have any
 14 questions.
 15 Hearing Officer Kinnally. All
 16 right. I apologize.
 17 Cross-examination by Mr. Porter.
 18 You mentioned that Waste Management
 19 did not select this site. What
 20 does Waste Management usually do
 21 when it comes to site selection?
 22 We will look at a site, Mr. Porter,
 23 and make a determination as the
 24 initial determination of whether we

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1 can meet the nine criteria with
 2 respect to that site, and we did
 3 that here.
 4 Okay. Am I correct that the use of
 5 a double liner is highly unusual
 6 for Waste Management?
 7 You're correct.
 8 And was there any investigation of
 9 other sites in the area that could
 10 have been developed without the use
 11 of a double liner?
 12 Mr. Moran. Objection, relevance.
 13 Hearing Officer Kinnally. Well, I
 14 don't know how relevant it is
 15 either, but I'm going to give him a
 16 little leeway. I don't know where
 17 we are going with this. I'm going
 18 to overrule the objection.
 19 By the witness. I think I can
 20 answer that, Mr. Porter. At one
 21 time we owned --"
 22 And I want to stress this --
 23 "At one time, we owned an undivided
 24 half-interest in Mr. Hamman's Fox

<p style="text-align: right;">Page 1927</p> <p>1 Moraine property and had an 2 agreement with Mr. Hamman, George's 3 client, to develop that property as 4 a landfill. About six or seven 5 years ago, we sold our interest 6 back to Mr. Hamman, and that 7 agreement was nullified because we 8 had made a conclusion we could not 9 meet the siting criteria at that 10 site, that that site was not 11 proper. So, sure, we looked at 12 other areas in the county, but that 13 is one of them. With respect to 14 this site, we have been comfortable 15 with this site from day one. We 16 can't think of a better location in 17 the county for a landfill. Its 18 proximity to traffic arteries. It 19 is in the southern part of the 20 county. It is away from the growth 21 zones. It is away from the 22 population center of Yorkville. We 23 have been very comfortable with 24 this site and our ability to meet</p>	<p style="text-align: right;">Page 1929</p> <p>1 I rely on Don for that, but I will 2 just tell you that I approached 3 John Hock on the issue, and he 4 advised me he had never testified 5 at a siting hearing. 6 Now, Mr. Nickodem was on the stand 7 under cross-examination for nine 8 and a half hours, probably seven 9 hours from Mr. Mueller, questions 10 that I had no idea what he was 11 really asking. I think it would 12 not be a good thing for me as the 13 manager of this project to put 14 someone in a position that they had 15 not been in before." 16 You had two people that were what I call virgin 17 gypsies, that came and made testimony, and they had 18 never testified at a landfill hearing before this 19 hearing. 20 "Mr. Nickodem was involved in 21 finalizing the Siting Application. 22 He didn't come after the fact. He 23 was part of the team that finalized 24 this. So sure, I considered it. I</p>
<p style="text-align: right;">Page 1928</p> <p>1 the nine criteria from the first 2 day that Kendall Land & Cattle came 3 to us, and we continue to be 4 comfortable today." 5 I'd like to remind this Board, Leigh Marcotte 6 was here last night and told you about Jerome Joyce 7 and showed what those people have been living with 8 down there and some of those problems they've had. 9 Another partner in Kendall Land & 10 Cattle is Mike Tadin, retired truck fame in Chicago, 11 and the scandal that went on there. And the other 12 partner is Pat Harbour, who has received several 13 no-bid contracts from the City of Chicago. 14 "We have looked at different areas, 15 specifically Mr. Hamman's site and 16 decided that it is inappropriate 17 for a landfill. 18 By Mr. Porter. On the issue of 19 comfortability, you mentioned you 20 are very comfortable with Mr. 21 Nickodem and Ms. Underwood 22 testifying. Are we to assume that 23 you are uncomfortable with CEC 24 witnesses testifying?</p>	<p style="text-align: right;">Page 1930</p> <p>1 think -- I assume Mr. Moran 2 considered -- the experience of 3 Mr. Nickodem in these situations 4 and the experience of Mr. Hock, and 5 Mr. Hock did not object to that. 6 But Mr. Hock had never testified at 7 a siting hearing. He has never had 8 to withstand the nine and a half 9 hours of cross-examination 10 testimony. 11 So you were concerned that Mr. Hock 12 would not have to withstand 13 cross-examination nearly as well as 14 Mr. Nickodem did? 15 I wouldn't put it that way. 16 Objection, he has mischaracterized 17 what the testimony has been. 18 Hearing Officer Kinnally. 19 Sustained. 20 Mr. Porter. I have nothing 21 further. Mr. Blazer. Thank you. 22 Nothing from Mr. Blazer. 23 Mr. Purcell, you are the lead 24 person on this project?</p>

<p style="text-align: right;">Page 1931</p> <p>1 Mr. Purcell, I manage these 2 projects, and I don't know what you 3 mean by that. But if lead means I 4 know everything, that is not what 5 it means. 6 What does it mean to manage these 7 projects? 8 I manage these projects and my role 9 in managing is to make sure that we 10 retain the very best people to move 11 these projects forward. 12 How many attorneys with Waste 13 Management, including yourself, 14 have worked on this project? 15 The only in-house attorney would be 16 me. 17 Okay. 18 Mr. Moran has worked on this 19 project and Ms. Manning has worked 20 on this project." 21 Ms. Manning was somebody that Claire talked 22 about last night who had sent threatening letters to 23 citizens for Mr. Joyce. 24 "And other staff members had</p>	<p style="text-align: right;">Page 1933</p> <p>1 Parkway. Could you give us some 2 insight? Are you aware of what 3 that would be?" 4 And they were talking about the number five 5 choice. 6 "We are encouraged by the 7 discussions we've had with IDOT, 8 their willingness to -- We have no 9 commitments from IDOT, but they 10 have expressed a willingness to 11 work with us." 12 Surprisingly, this highway goes right next to 13 this landfill. 14 "We bring a number of things to the 15 table. We own a lot of property 16 that they need for the Prairie 17 Parkway regardless of how it's 18 configured, if it is the B-5 19 configuration. So we are going to 20 continue to work with IDOT, and we 21 feel very comfortable about the 22 reception we've gotten to date. 23 Have there been any dollar amounts 24 discussed with IDOT?</p>
<p style="text-align: right;">Page 1932</p> <p>1 regarding the Prairie Parkway and 2 IDOT individuals pertaining to this 3 site because you testified this is 4 the best site. So, obviously, you 5 had to have some meetings with some 6 IDOT individuals? 7 I personally have not met with 8 IDOT, Mr. Purcell, but members of 9 the team with this project have met 10 with IDOT on a number of occasions, 11 probably four that I'm aware of. 12 In addition to that, there have 13 been other discussions with IDOT 14 representatives. The only direct 15 contact I've had is with IDOT. I 16 believe general counsel, was at 17 this hearing the first or second 18 day, and I had conversation with 19 him. So there have been four or 20 five meetings with IDOT regarding 21 the Prairie Parkway. 22 Okay. And then IDOT is supposed to 23 reveal June 1, which is Friday, 24 that the final path into Prairie</p>	<p style="text-align: right;">Page 1934</p> <p>1 No. We have discussed our 2 willingness to transfer the 3 property that we control to IDOT in 4 connection with a slight 5 reconfiguration if they select the 6 B-5 corridor. But as far as any 7 other monetary consideration, to 8 the best of my knowledge, no. 9 Mr. Purcell. Okay. Thank you. 10 Board Member Vickery. Examination, 11 Question, this goes back to the 12 amount of stone that you would be 13 taking out of the area negotiated 14 with IDOT. Has there been given or 15 has there been any discussions in 16 furnishing some of the stone out of 17 your pits that you are going to 18 have to dig to IDOT to help us 19 build the Prairie Parkway or is 20 that --" 21 And that was when they were going into the 22 aquifer. They were going to have to dig that stone 23 out. 24 "I don't believe so yet, but we</p>

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1 would be certainly willingly to
2 discuss that with them. We'd be
3 willing to discuss waste issues
4 that they run into with respect to
5 the parkway and other things. We
6 are confident we could work with
7 IDOT and develop both the landfill
8 and they could develop their
9 Prairie Parkway and co-exist very
10 positively.
11 So I guess I didn't understand your
12 question. Your answer was yes,
13 there has been discussions, or you
14 are not aware of any?
15 I am not aware of any discussions
16 with respect to the stone.
17 Okay. Then the other comment you
18 made was the land that you own.
19 Have you closed on all that land
20 down there?
21 No, I think we have closed on about
22 half of it, and we have the rest it
23 under contract."
24 Very similar to this situation.

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1 "With the closings spread out, I
2 believe, over the rest of this year
3 and some into next year.
4 Board Member Vickery. That is all.
5 Board Member Davidson. No
6 questions.
7 Hearing Officer Kinnally. Bill, do
8 you have any questions?
9 Board Member Wykes."
10 And this one I like.
11 "Anne just asked you so who owns
12 this property as of today?
13 And that question still has yet to be answered.
14 That was a question Mr. Severson asked and has yet to
15 receive an answer to. And we're all waiting.
16 And that would be something I'd like
17 you to address in your rebuttal, if you would, please.
18 "Well, we have -- Either we or
19 Kendall Land & Cattle have
20 contracts to purchase the property,
21 all of the property today. We have
22 closed on, I think, about
23 50 percent of the properties so the
24 rest of the property is owned by

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1 the current owners and occupiers of
2 that property.
3 Okay. So how much have you paid
4 per acre on the ones you've closed
5 on?
6 I believe that our purchases have
7 generally been around \$25,000 per
8 acre. There may have been a couple
9 a little bit higher than that, but
10 I believe it's 25,000 an acre is
11 what we've paid for the most part.
12 And as far as IDOT goes, you would
13 be willing to deal with them or do
14 something to move it out of the
15 protected corridor?
16 Absolutely, absolutely.
17 Do you know if anybody else has
18 been able to move it out of the
19 protected corridor?
20 We've -- We have talked to the
21 former general counsel of IDOT and
22 he has given us some indications
23 that that hasn't been done before,
24 and IDOT has given us indications

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1 that they will work with us.
2 They've made no commitments, but we
3 feel good about our prospects of
4 working positively with IDOT, and
5 it's a slight relocation that we
6 will need.
7 And in the end you testified that
8 Waste Management will be the total
9 owner and operator of the completed
10 site; correct?
11 Yes. Once we get a permit, Kendall
12 Land & Cattle will have no say with
13 respect to the operation, will have
14 no responsibility for the site at
15 all. We will be the sole owner,
16 the sole operator, and the sole
17 party responsible.
18 Will they benefit in any way other
19 than the purchase -- the sale of
20 the land? In other words, would
21 they have any income from the
22 landfill itself?"
23 And this is important.
24 "Yes. They will. They will not

<p style="text-align: right;">Page 1939</p> <p>1 benefit from the purchase of the 2 land. The only benefit is that 3 they will get a royalty on a per 4 ton basis as the landfill is 5 filled, but they will get no 6 benefit with respect to the 7 property purchases." 8 And I call this royalty arrangement, the 9 ultimate landfill annuity. It comes every month. 10 "So it's okay. It's basically a 11 commission kind of so much." 12 And this is what Kendall Land & Cattle is 13 getting for arranging this deal, picking the site, and 14 we don't really know how this site was picked because 15 they picked it. Waste Management didn't. 16 "This is going back to -- You've 17 discussed this. It was just, you 18 know, as the hearing progressed, 19 you agree that people have -- that 20 assembled the data and the studies 21 are not testifying, created 22 somewhat of a question mark in some 23 people's minds, and you testified 24 it was just the team's decision</p>	<p style="text-align: right;">Page 1941</p> <p>1 was a further clarification from Mr. Hamman's 2 attorney, one Mr. John P. Duggan. It's not quite as 3 long as the transcript thing that I dragged you 4 through. 5 This was to Paul Anderson, then the 6 County Clerk. I represented Don and Carol Hamman in a 7 series of transactions with Waste Management of 8 Illinois concerning property, some of which is the 9 subject of the Fox Moraine Landfill Application. I 10 have been asked by Charles Murphy to submit for the 11 record my recollection of a meeting in May of 2006 12 among Don Hamman, Charles Murphy, me, with Al 13 Bilthouse, and Dennis Wilt of Waste Management of 14 Illinois, at which time Waste Management asked Mr. 15 Hamman to reinstate their 1996 joint venture with the 16 Hammans on the Fox Moraine property in connection with 17 the statements -- 18 HEARING OFFICER KINNALLY: Slow down, slow 19 down. Come on. 20 MR. MILLIRON: All right. In connection with 21 the statements in the record by Dennis Wilt indicating 22 that Waste Management elected not to go forward with 23 the 1996 joint venture with Don Hamman on that Fox 24 Moraine property because Waste Management had</p>
<p style="text-align: right;">Page 1940</p> <p>1 that it would be better to have 2 someone else testify about it than 3 them; correct?" 4 I'm almost done with this. 5 "That's correct, but I just want to 6 make sure it's clear with respect 7 to Mr. Nickodem, he was part of the 8 team. He was part of the team that 9 finalized the Siting Application. 10 He was part of the many, many 11 meetings with respect to the 12 decisions to go with a double 13 composite liner design. So he was 14 part of the team that finalized the 15 Siting Application. He was the 16 team member selected for -- based 17 upon experience. 18 Mr. Wykes. Okay. Thank you. 19 Hearing Officer Kinnally. Okay. 20 Bill. Anyone else?" 21 And that's where I want to end on that. 22 So as you alluded to Waste Management 23 admitted that they had owned some property with 24 Mr. Hamman. This came in the written comments. It</p>	<p style="text-align: right;">Page 1942</p> <p>1 determined that the site did not meet the criteria 2 that relates to the suitability of a solid waste 3 facility. 4 Here's the background. On 5 February 26, 1996, Don and Carol Hamman entered into a 6 real estate sale and Exchange Agreement and Property 7 Development Agreement for the property that included 8 the Fox Moraine Landfill site. 9 Under the terms of that agreement, 10 Waste Management acquired an undivided one-half 11 interest -- and I'm going to repeat that again, an 12 undivided one-half interest with the Hammans in 13 1,768.4794 acres, about a half an acre more, in Fox 14 Township. 15 Waste Management agreed to purchase 16 the balance of the property upon operating approval. 17 The Waste Management undertook to apply for and pursue 18 all required operating approvals to develop and 19 operate a sanitary landfill on that property. 20 The 1996 Hamman-Waste Management 21 Agreement provided that upon issuance of all zoning, 22 siting, operating approvals, Waste Management will 23 require -- acquire the balance of the property and 24 will pay to the Hammans a supplemental purchase price</p>

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1 based upon the percentage of gross revenues received
2 from the operation of the solid waste facility at the
3 site.

4 This transaction, which was
5 negotiated primarily between Don Hamman and James
6 Berry, the then president of Waste Management of
7 Illinois, created a fiduciary obligation on behalf of
8 Waste Management to utilize good faith and honesty in
9 dealing with Don and Carol Hamman.

10 Waste Management advised Don Hamman
11 in my presence on many occasions, through statements
12 by Waste Management officers including Jim Berry,
13 Bruce Malec, Al Bilthouse, and Lee Adelman that its
14 interest in developing the joint venture with the
15 Hammans for the Fox Township property was that the
16 property had the ideal geology, location,
17 transportation access for siting a sanitary landfill.

18 The representative of Waste
19 Management primarily responsible for securing
20 regulatory approvals for the siting was Lee Adelman.
21 Mr. Adelman ultimately advised us that in Waste
22 Management's opinion, no solid waste ordinance would
23 be adopted in Kendall County, and Waste Management and
24 Don Hamman agreed in September of 2003 that Don and

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1 Carol Hamman would repurchase Waste Management's
2 one-half interest in the Fox Township property.

3 This is before Ms. Vickery decided to
4 change the solid waste plan and allow landfills in
5 this county.

6 HEARING OFFICER KINNALLY: That's out of order.
7 That is out of order. You don't make public comment
8 statements that are not true like that. She didn't
9 change the ordinance. Don't argue with me. Just
10 don't make comments like that.

11 MR. MILLIRON: All right. At no time did Waste
12 Management ever state to me or to my knowledge to Don
13 Hamman that the Fox Moraine site was unsuitable for a
14 landfill, but merely that it concluded that Kendall
15 County would not adopt a solid waste ordinance.

16 Waste Management 2006 request to
17 reinstate the development agreement.

18 When Kendall County subsequently did
19 adopt a solid waste ordinance several years later and
20 it became known that Don Hamman intended to apply for
21 a permit on the Fox Moraine, I received several
22 telephone calls from Al Bilthouse inquiring about the
23 possibility of Waste Management participating with Don
24 Hamman in the Fox Moraine Landfill Application and

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1 reformulating a joint venture along the lines that the
2 parties had completed in 1996.

3 Finally, in May of 2006, Don Hamman,
4 Charles Murphy, and I were invited to meet with Al
5 Bilthouse and Dennis Wilt of Waste Management at the
6 Colonial Restaurant in Aurora, Illinois. At that
7 meeting, Al Bilthouse indicated that Waste Management
8 wished to become involved with the Hammans'
9 Application and to reformulate the joint venture for
10 the Fox Moraine property.

11 At no time from 1996 to 2003 when the
12 Hammans had a Development Agreement with Waste
13 Management for the property and until the meeting in
14 May of 2006, at which Waste Management proposed
15 reinstating the Development Agreement with the Hammans
16 for the Fox Moraine property did any representative of
17 Waste Management ever advise me or advise Don Hamman,
18 in my presence, that it felt that the Hamman site was
19 not suitable in any way for a solid waste landfill,
20 except the statement by Waste Management in 2003
21 through Lee Adelman that they felt it was unlikely
22 that Kendall County would adopt a solid waste
23 ordinance.

24 Numerous Waste Management officers

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1 commented to me or in my presence that the Hamman Fox
2 Moraine site was ideal for a landfill during that
3 period. That's all in the record.

4 57,430 cubic yards that was deposited
5 on the Hamman site. Waste Management entered in this
6 agreement with Mr. Hamman in February of '96, I
7 believe was the date.

8 Number two. Here's the section --
9 This is something that had to be signed, okay. And it
10 basically relates to the part that I had cited about
11 where the exempt farmer does not have a relationship.
12 The property is not owned with the waste hauler in any
13 way, shape, or form.

14 If Waste Management would have been
15 forthcoming and disclosed this ownership in this
16 property, they would have had to operate under a
17 different style of permit instead of this exempt
18 farmer facade that went on for seven years.

19 Go ahead and scroll on down. Right
20 there is Mr. Hamman's signature. Anyway, this goes on
21 for seven years. There's seven documents that were
22 filed with the IEPA just like this, year in and year
23 out, while Waste Management continued to send yard
24 waste to the Hamman facility while our county helped

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1 the department get a handle on that situation.
2 It's only recently that the Attorney
3 General has gotten involved, and we've gotten
4 significant results and changes out there.
5 But it was their morals, their
6 business operating practices, their disregard for the
7 21Q law for money that led to that situation that me
8 and my neighbors have lived with for year in and year
9 out for quite some time. And during that period of
10 time, they had an undivided half interest in 1996 to
11 2003 with Mr. Hamman in that property and totally
12 disregarded that law.
13 And that's a situation that we have
14 lived with, continue to live with, and all's I know is
15 that I think they broke the law, and I don't know why
16 you want to trust them here in this county when they
17 are asking for a landfill, and they broke the law out
18 there by my house and continued to do so year in and
19 year out.
20 I'd like to show Trashed, that video,
21 and then I'm done. Then I'll read what else I have,
22 and I'm almost done now.
23 HEARING OFFICER KINNALLY: What are you
24 throwing at us? Don't do that.

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1 MR. MILLIRON: I wasn't throwing --
2 HEARING OFFICER KINNALLY: If you want to give
3 something to me or the clerk, but don't just throw
4 things up here.
5 MR. MILLIRON: I'm sorry. I thought this was
6 already put on file.
7 HEARING OFFICER KINNALLY: Thank you. And I
8 just want to remind you, as I did with the other
9 people that were using audio, that the court reporters
10 can't take audio from the video. You can't do the
11 audio on a videotape, so go ahead.
12 MR. MILLIRON: I think you'll find the prior
13 testimony of Waste Management's corporate attorney
14 Dennis Wilt constructive in how this sensitive site on
15 top of a very shallow aquifer was chosen.
16 The site was not chosen for its
17 geology characteristics, but for its proximity to the
18 proposed I-80 Brisbin Road interchange that was
19 conveniently funded at the federal level by our old
20 Speaker of the House, just as the Prairie Parkway was
21 shepherded through Congress to provide the
22 transportation conduit to turn Kendall County into the
23 cash cow garbage dump of choice for the Chicago Metro
24 area.

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1 No one on the County Board wants to
2 talk about the politics of garbage and the connected
3 few that are pushing this garbage agenda in southern
4 Kendall County. It's no accident that Waste
5 Management has chosen to get in bed with former county
6 republican precinct committeeman Pat Harbour, a member
7 of the old ruling republican guard. Most of the board
8 members sitting in front of you tonight are current
9 republican precinct committeemen and committeemen --
10 committeewomen and committeemen.
11 This has been a coordinated old guard
12 republican effort to cash in on the last vestiges of
13 an old machine, an old power machine that ruled
14 Kendall County for decades.
15 How many County Board members sitting
16 before you tonight are part of this leftover clan from
17 this bygone era of once supreme and --
18 MR. BLAZER: Objection.
19 HEARING OFFICER KINNALLY: Time out. We're not
20 going to -- I'm not going to tolerate personal attacks
21 that are unfounded on any evidence in the record.
22 This is not a bully pulpit, and you're not going to do
23 that. That's not what this hearing is about.
24 If you have constructive arguments

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1 that you want to make with respect to the merits or
2 demerits of this Application, that is fine. We
3 welcome that. But you are not getting up in front of
4 me and trying to make fun and trying to slander the
5 County Board at this particular hearing.
6 So if you have comments along those
7 lines, you better disregard them. This is not a
8 political forum. All right?
9 MR. MILLIRON: Waste Management's questionable
10 business dealings and business ethics is
11 well-documented. It seems the dollar rules in this
12 company's corporate offices. Morals and the end seems
13 to justify the means even if some laws need to be
14 broken along the way. It is all well and fine if it
15 is done behind closed doors and done for the sake of
16 greed, secret agreements for royalty for this landfill
17 with blind trust beneficiaries.
18 Who are these individuals that will
19 benefit in this county besides Jerome Joyce, Pat
20 Harbour and Mike Tadin. You on the County Board --
21 Skip that one.
22 One of the fundamental questions of
23 the landfill hearing is the question asked by
24 Mr. Severson. He asked who are these so-called

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1 beneficial interest holders in Kendall Land & Cattle.
2 Waste Management knows who they are
3 because this deal was cooked up a long time ago for
4 royalties. Waste Management did not pick this site.
5 Kendall Land & Cattle did. Now, Waste Management is
6 trying to close this deal for the sake of money by
7 rehashing and re-cooking the data obtained with a new
8 5.2 in-situ layer thrown in for a layer of safety.
9 Who cares about the aquifer
10 underneath. This is about the love of money for a few
11 and big unscrupulous corporation. Not what is the
12 best for the land use and for this property in
13 question. I'm done.
14 HEARING OFFICER KINNALLY: Okay. Anything
15 else?
16 MR. MILLIRON: If we can get this video to run.
17 HEARING OFFICER KINNALLY: Are you done?
18 MR. MILLIRON: Yes.
19 HEARING OFFICER KINNALLY: I thought you were
20 going to give -- So you're finished?
21 MR. MILLIRON: Yes, sir.
22 HEARING OFFICER KINNALLY: All right. I think
23 that's enough for tonight. I don't want to cut
24 anybody -- Is there somebody that can't come tomorrow

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1 night that wants to give public comment tonight?
2 Sure, Mr. Friestad. Come on up. Otherwise, we'll
3 just do it tomorrow. I know there's some folks that
4 want to do it tomorrow night. Do you just want to do
5 public comment, Mr. Friestad?
6 MR. FRIESTAD: Yes. I will make this very
7 short because my wife just said about everything that
8 I was going to say.
9 Thank you for the opportunity to
10 voice some of our concerns. I am Bob Friestad, and I
11 have lived at Whitewillow Road as long as my wife has,
12 which is about over 51 years. And I'm in total
13 agreement with what she has said.
14 I think this landfill company has
15 bought this property at a high price not knowing the
16 sensitive aquifer was as close to the surface under
17 this land, and now they are still trying to site a
18 landfill on our precious aquifer. It was stated that
19 this location is one of the worst sites in Kendall
20 County.
21 As far as that crest on Route 47 that
22 I talked about the other night, it is more than the
23 930 feet away, I believe, for the sight distance
24 required, but I come from the west on Whitewillow Road

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1 and turn right, or south, on Route 47 with a loaded
2 truck and heading into Morris.
3 The other day as I pulled out onto
4 Route 47, a car was just coming over the ridge on
5 Route 47, so I checked to see what speed I could get
6 up to before this car was immediately behind me. And
7 I was going right about 25 miles an hour. That's
8 about as fast as I could get going, and the car was
9 right on my tail.
10 I realize that the garbage trucks
11 coming from the landfill will be empty when they go
12 south on 47, but that may occur 2 or 300 times a day.
13 I think this is worth looking into.
14 I could go on, but I will stop here.
15 And for these reasons and all those my wife mentioned,
16 I respectfully urge you board members to vote no in
17 siting this landfill at this location. Thank you.
18 HEARING OFFICER KINNALLY: Okay. Thank you,
19 Mr. Friestad, for your information.
20 Unless there's somebody else that
21 can't come tomorrow night, I think we've had enough
22 public comment -- not enough. We can never get enough
23 public comment, but enough for tonight. And we can go
24 home early tonight instead of 10:30.

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1 So I'm going to adjourn the hearing
2 for this evening, and we'll come back tomorrow night.
3 And anyone who wants to make public comment, please
4 come so you can be heard, and we'll see you then.
5 Thanks for coming.
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