

BEFORE THE VILLAGE BOARD
OF THE VILLAGE OF ROUND LAKE PARK
SITTING AS A POLLUTION CONTROL FACILITY
SITING AUTHORITY

IN RE: APPLICATION FOR LOCAL SITING)
APPROVAL FOR GROOT INDUSTRIES)03-01
LAKE TRANSFER STATION,)

Transcript of proceedings at the hearing
of the above-entitled cause on the 30th day of
September, 2013, at the hour of 3:00 p.m.

(Proceedings concluded at 6:00 p.m.)

REPORTED BY: SHELLY S. RUBAS

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1 APPEARANCES:

2

3

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The Hearing Officer;

5

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6

On behalf of Groot Industries;

7

THE LAW OFFICES OF RUDOLPH F. MAGNA
MR. PETER S. KARLOVICS

8

On behalf of Board of Trustees of the
Village of Round Lake Park;

9

THE SECHEN LAW GROUP, P.C.

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MR. GLENN C. SECHEN

On behalf of Village of Round Lake Park;

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TRESSLER, LLP.

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MR. STEPHEN T. GROSSMARK

On behalf of Village of Round Lake;

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MR. MICHAEL S. BLAZER

On behalf of Timber Creek Homes, Inc.;

15

MR. LARRY M. CLARK

16

On behalf of The Solid Waste Agency of
Lake County, Illinois.

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I N D E X

WITNESS	EXAMINATION
CHARLES MYRON McGINLEY	
By Mr. Blazer (Direct)	10
By Mr. Porter (Cross)	43
By Mr. Grossmark (Cross)	93
By Mr. Clark (Cross)	120
By Mr. Sechen (Cross)	123

E X H I B I T S

NUMBER	IDENTIFICATION
Groot Exhibit No.	
10	72
11	82

(Exhibits not attached - retained by the
Hearing Officer.)

1 THE HEARING OFFICER: I have 3:00 o'clock, so
2 we will reconvene the hearing on the application
3 for local siting approval for Groot Industries Lake
4 Transfer Station before the Village Board of the
5 Village of Round Lake Park sitting as pollution
6 control facility siting authority.

7 Would the attorneys please state your name
8 for the record.

9 MR. PORTER: Good afternoon. Rick Porter on
10 behalf of Groot, applicant.

11 MR. SECHEN: Glenn Sechen on behalf of the
12 Village of Round Lake Park.

13 MR. KARLOVICS: Peter Karlovics on behalf of
14 Round Lake Park Village Board. Present with us
15 today are Trustee Bob Cerretti, Trustee Jean McCue,
16 and Trustee Donna Wagner.

17 MR. BLAZER: Michael Blazer for Timber Creek
18 Homes.

19 MR. GROSSMARK: Steve Grossmark for the Village
20 of Round Lake.

21 MR. CLARK: Larry Clark on behalf of Solid
22 Waste Agency of Lake County.

23 THE HEARING OFFICER: Before we get started
24 with Mr. Blazer's witness, is there any preliminary

4

1 matters that anybody has?

2 Okay. I think I have a couple issues.

3 One is we talked about providing an aerial. Where
4 are we at on that issue?

5 MR. PORTER: Mr. Leutkehans, I can provide you
6 today with a document that depicts potential truck
7 routes.

8 THE HEARING OFFICER: Have the rest of the
9 attorneys seen this?

10 MR. SECHEN: No.

11 MR. PORTER: They have not.

12 THE HEARING OFFICER: If you could please
13 present that to them.

14 Mr. Blazer, did you have something else in
15 addition to or in place of or what are your
16 thoughts?

17 MR. BLAZER: I haven't seen this yet, so if we
18 could, I'll take a look at this later and we can
19 talk about it a little later or tomorrow before we
20 start. My recollection was that this is -- what
21 you had asked for was potential routes to
22 Winnebago. This is, for whatever reason,
23 substantially more than that. I'm not sure why.

24 THE HEARING OFFICER: Okay.

1 MR. BLAZER: So anyway, I'll --

2 THE HEARING OFFICER: We'll deal with that at
3 the next break or --

4 MR. BLAZER: The only other thing is I had
5 circulated a couple of articles from MSW Management
6 magazine that I propose to use with Mr. McGinley
7 who I'm about to call. I suppose we can address
8 them when I try to use them during his examination
9 or we can deal with it now.

10 THE HEARING OFFICER: No. Let's deal with it
11 then.

12 Mr. Sechen, you also sent an e-mail around
13 over the weekend.

14 MR. SECHEN: I did. I provided a copy of my
15 appraiser's report, though, it does not address
16 anything with respect to Mr. Maroose yet because
17 Mr. Maroose has not yet testified. But I figured
18 it would be good timing because Mr. Maroose will
19 testify tomorrow, at least that is the schedule,
20 and shortly after that, we can make a decision or I
21 can make a decision, which I think I am allowed to,
22 whether I call the appraiser.

23 THE HEARING OFFICER: Okay. So at this point,
24 that's not really before us the way I see it.

1 Let's see what you decide to do with your appraiser
2 and then we will deal with that issue. I think it
3 is important that everybody got that early, though,
4 so everybody can make a justified decision on how
5 they want to proceed.

6 A couple other things I would like the
7 attorneys to think about between or at the break
8 today and maybe have a conversation with each other
9 about and that is it looks like we are going to
10 finish, if not tomorrow, for sure Wednesday. The
11 siting ordinance allows I guess with my discretion
12 a proposed finding of fact and conclusion of law to
13 be submitted by the parties.

14 I would like you to try to come up with
15 some form of agreed schedule between the parties
16 keeping in mind a couple of things. And I don't
17 remember the exact date, so please don't hold me to
18 them. But I know we will have a 30-day public
19 comment period after the last -- after we close the
20 hearing. We also have until -- a very limited, and
21 I don't remember the exact day, but I think it's in
22 early December for the village board to act, so
23 that has to be taken into account. Also it is
24 important to know that I will be out of the country

1 from October 24th until November -- October 22nd
2 until November 4th.

3 MR. BLAZER: Can I go?

4 THE HEARING OFFICER: Yeah, good luck with
5 that.

6 So to the extent we can get findings of
7 fact and conclusions of law submitted before that,
8 I think that would be helpful and I can review them
9 while I'm gone. Then if people wish an additional
10 seven days after the public comment period to
11 submit anything supplemental that you think you
12 need to deal with because it was in the public
13 comment, I'm kind of leaning towards some schedule
14 along those lines, but obviously, I don't want to
15 push the parties to do something they are not
16 prepared for. But I think something along that
17 line would make sense for everybody if the timing
18 works for you guys to get this on file, your stuff
19 on file by then.

20 Also I know Mr. Blazer has requested time
21 for closings. Depending on what we do with
22 Mr. Kleszynski and whether there's any rebuttal
23 testimony, my gut is that we will either -- we may
24 get to that tomorrow afternoon, but more than

1 likely Wednesday. They may be all we do Wednesday.
2 And lot of it depends on Mr. Porter's client and
3 what they decide to do and what Mr. Sechen decides
4 to do with Mr. Kleszynski, but that is something
5 else to kind of be aware of as we go forward.

6 Without anything else, is there anyone
7 here -- and I know we have public comment scheduled
8 for 7:00 o'clock. We are getting towards the end.
9 I am going to provide a little more opportunity
10 than just what is in the schedule for public
11 comment. We haven't had a lot of it, but I don't
12 want anyone to say I didn't get a chance. I think
13 that would probably be pretty hard on this record.
14 But is there anybody here today at this point who
15 would like to make public comment?

16 Hearing none, and there will be more
17 opportunities for people, so, please, this isn't
18 the only opportunity. Hearing none, Mr. Blazer,
19 you may proceed with Mr. McGinley I believe.

20 You may proceed, Mr. Blazer.

21 MR. BLAZER: Thank you, sir.

22 Would you state your name, please, sir?

23 THE WITNESS: Charles Myron McGinley,

24 M-c-G-i-n-l-e-y.

1 (Whereupon, the witness was
2 duly sworn.)

3 CHARLES M. MCGINLEY,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BLAZER:

8 Q. What do you do for a living, Mr. McGinley?

9 A. I am an engineer.

10 Q. What type of engineering do you practice?

11 A. Environmental in the specialty field of
12 air quality, air toxics, and odor.

13 Q. Could you summarize your educational
14 background for us?

15 A. I was trained in the U.S. Army at Fort
16 Leonard Wood in the field of chemical, biological,
17 warfare. I was -- received a degree in chemical
18 engineering from the University of Minnesota in
19 1970 and I received a masters of business
20 administration from the University of St. Thomas in
21 1978.

22 Q. Do you hold any licenses or
23 certifications?

24 A. Yes.

10

1 Q. What is that?

2 A. I'm licensed in the state of Minnesota as
3 a practicing chemical engineer.

4 Q. Could you summarize your work experience
5 after college?

6 A. Well, my work experience began before I
7 graduated from college at 3M Company in central
8 research and that continued after graduation until
9 1974 when I went to work as an enforcement engineer
10 for the Minnesota Pollution Control Agency
11 specializing in the odorous industries of
12 Minnesota.

13 MR. PORTER: Mr. Luetkehans, I actually have to
14 object to this witness testifying here in Illinois
15 regarding what has been reflected in his report.
16 We just heard that he is a licensed engineer in
17 Minnesota. He is not a licensed engineer in
18 Illinois.

19 Under Illinois law, the Professional
20 Engineering Practice Act, only one qualified and
21 authorized to engage in the practice of
22 professional engineering in the state of Illinois
23 is allowed to do so. He has no license here.

24 This is directly handled by the Van Bremen

1 case vs. Department of Professional Regulation and
2 several prodigy cases which have held that
3 witnesses testifying in Illinois are in violation
4 of the Illinois Department of Professional
5 Regulation rules.

6 Now, there is a case that Mr. Blazer has
7 used in the past at least at depositions concerning
8 Thompson vs. Gordon which is a Supreme Court case
9 which allows a witness to testify in a court of law
10 as a 213 disclosed witness only if he's not
11 licensed in Illinois. It goes to the weight of his
12 testimony and then the question becomes whether or
13 not he has met the criteria for moving forward as
14 an expert witness.

15 However, we are not in a court of law.
16 This is not a 213 disclosed witness. We are at a
17 fact finding stage. He is here today literally to
18 provide engineering testimony, engineering advice
19 to the Village of Round Lake Park. He cannot do so
20 without violating the Illinois rules of
21 professional conduct and should be barred from
22 doing so.

23 MR. SECHEN: I will join in the objection for
24 the record.

1 THE HEARING OFFICER: Mr. Blazer?

2 MR. BLAZER: Mr. Hearing Officer, I just handed
3 you, expecting Mr. Porter's objection because he's
4 done it before and it's been rejected since 2006, a
5 copy of the Illinois Supreme Court decision June 2,
6 2006, over seven years ago, in the case of Thompson
7 vs. Gordon. Very last page -- I have a feeling you
8 are familiar with it, but I will read it any way.

9 The appellate court simply held that
10 licensure pursuant to the Engineering Act is not
11 required in order to testify as an expert witness
12 in a civil case. As discussed, this finding is
13 entirely correct based on this court's precedent
14 concerning expert testimony.

15 Down at the conclusion: With regard to
16 the second certified question, the appellate court
17 was correct that the decision in Van Bremen does
18 not control and that the lack of an Illinois
19 engineering license is not a bar to expert
20 testimony in a civil case.

21 That is the law in Illinois, not what
22 Mr. Porter just suggested.

23 THE HEARING OFFICER: Mr. Porter?

24 MR. PORTER: Again, we are not in a civil case.

1 We are at a local siting hearing to determine
2 whether or not the nine criteria have been met to
3 site a transfer station at the proposed location
4 that is literally providing engineering services to
5 the Village of Round Lake.

6 This is not -- the question in Thompson
7 vs. Gordon was whether the work of an engineer
8 unlicensed in the state of Illinois as an Illinois
9 Supreme Court Rule 213(f) retained opinion witness
10 in a litigated matter in the state of Illinois
11 constitutes Illinois subscribed professional,
12 et cetera.

13 That is not what we have here. He is not
14 a 213 disclosed witness. We are not in a litigated
15 case in Illinois. We are at a Section 39.2 siting
16 hearing.

17 MR. BLAZER: May I just say one last thing?

18 THE HEARING OFFICER: No, not yet.

19 Here's what we're going to do. We are
20 going to let Mr. McGinley testify. I am going to
21 read the case. If you have any other cases that
22 you would like me to review, Mr. Porter, I am happy
23 to review those. At the break today I will -- you
24 can give them to me now, but at the break today, I

1 will review them and I will take what you've
2 done -- if at that time, you wish to make a motion
3 to strike his testimony, you may do so. I will
4 look at the cases and rule after at some point
5 either tonight or first thing tomorrow. Either way
6 we are going to go through and let Mr. McGinley
7 testify as an offer of proof or not and you can
8 remake a motion and we will just go from there.

9 MR. PORTER: For the record, I am about to hand
10 you the Van Bremen vs. Department of Professional
11 Regulation case as well as 225 ILCS 325/1 which is
12 part of the Engineering Practice Act.

13 MR. BLAZER: Just so we are clear, Mr. Hearing
14 Officer, what he's handing you is the Van Bremen
15 case that the Illinois Supreme Court specifically
16 rejected; is that correct?

17 THE HEARING OFFICER: The Van Bremen case that
18 I saw quoted or cited in the Thompson case.
19 Whether it was rejected or not is something that I
20 will read and make a decision on.

21 MR. BLAZER: What I would ask just as a follow
22 up to your request, Mr. Hearing Officer, is that
23 Mr. Porter provide, and I challenge him to do that,
24 any authority in Illinois that distinguishes the

1 Gordon case in the context of a 39.2 hearing or any
2 other type of hearing.

3 THE HEARING OFFICER: You know what? I'm not
4 going to get into this. You don't have to respond
5 to that, Mr. Porter. I am assuming whatever case
6 law there is, you will both provide me. If you
7 have something additional and I will also let you
8 have the opportunity to argue this again after I
9 have read the cases. If you have something
10 specific you want to say.

11 MR. PORTER: Very quickly. I am not the party
12 that is proffering the witness. This is his burden
13 for him to lay the foundation that this witness is
14 capable and should be allowed to testify, not mine.
15 We have --

16 MR. BLAZER: And I have done that.

17 MR. PORTER: If you can let me finish please.
18 Thank you.

19 THE HEARING OFFICER: One at a time. One at a
20 time.

21 MR. PORTER: I have indeed looked into whether
22 or not this issue has been addressed in the context
23 of 39.2 siting hearing and it has not by the
24 appellate court.

1 THE HEARING OFFICER: I kind of assumed that
2 just by -- I am assuming someone would have handed
3 me that case and we would be done by now.

4 MR. BLAZER: Yes, we would.

5 MR. PORTER: Does anybody else want the case?

6 MR. SECHEN: Yes.

7 MR. BLAZER: I even have copies for the board,
8 so they can read it themselves.

9 THE HEARING OFFICER: Let's proceed.

10 BY MR. BLAZER:

11 Q. All right. Where were we?

12 I believe you were talking about your
13 experience both before and after college, is that
14 right, Mr. McGinley?

15 A. Yes.

16 Q. Would you proceed, please.

17 A. After working for the Minnesota Pollution
18 Control Agency, I worked for the Hormel Company as
19 their environmental manager, environmental
20 equipment manager.

21 In 1980, I formed a consulting firm,
22 McGinley Associates, which included an odor testing
23 laboratory. And in 1991, I formed a separate
24 company called St. Croix Sensory and Odor Testing

17

1 and Training Company and it is currently in
2 operation today.

3 Q. And do you have experience in your field
4 in the waste industry?

5 A. Yes.

6 Q. And could you describe that experience,
7 please, since 1974?

8 A. I've worked for a number of waste and
9 solid waste companies including Waste Management,
10 Incorporated, Republic Services, Veolia, and
11 Recology, as well as smaller companies and
12 counties, for example, Kane County in Seattle.

13 Q. And what type of services have you
14 provided to the waste industry?

15 A. I provide training services for the
16 subject of odor management development, odor
17 management auditing, odor sampling, and
18 investigation.

19 Q. And does that training apply to both
20 landfills and transfer stations?

21 A. Yes.

22 MR. PORTER: Objection, foundation. We haven't
23 heard that he has worked at any transfer stations.

24 THE HEARING OFFICER: Objection, sustained.

1 BY MR. BLAZER:

2 Q. Could you describe the types of
3 individuals that you have trained at some of the
4 companies that you have mentioned? What are the
5 facilities that they were working in?

6 A. Yes. The large management, solid waste
7 management companies, Waste Management,
8 Incorporated, Republic Services, Recology, and
9 Veolia operate landfills as well as waste transfer
10 stations and employees and operators of those waste
11 transfer stations working for those companies were
12 part of training.

13 Q. Part of the training that you provided?

14 A. Yes.

15 Q. Is that just limited to the United States?

16 A. No. I've provided training in Canada,
17 Mainland China, Hong Kong, and Australia.

18 Q. Now, have you -- the type of training that
19 you have just described, have you provided those
20 services to any companies that themselves provide
21 services to the waste industry?

22 A. Yes, to a number of engineering firms
23 including FOTH Infrastructure, Herst, spelled
24 H-e-r-s-t, Parsons, HER, Earth Tech --

1 THE HEARING OFFICER: Can you spell Brick Tech?

2 THE WITNESS: -- and Shaw Environmental.

3 THE HEARING OFFICER: Can you spell Brick Tech?

4 THE WITNESS: Earth Tech and Shaw

5 Environmental.

6 BY MR. BLAZER:

7 Q. And what type of training have you
8 provided to Shaw Environmental?

9 A. I have provided the same type of training
10 to Shaw Environmental as the other engineering
11 firms teaching them how to develop odor management
12 strategies and designs, how to develop odor
13 management audit procedures, and how to collect
14 odor data, quantifiable odor data.

15 Q. And can you estimate how many Shaw
16 employees you have provided training to over the
17 years?

18 A. Over ten.

19 Q. Over ten employees?

20 A. More than ten employees.

21 Q. Did that include Shaw employees in
22 Illinois?

23 A. Yes.

24 Q. And have you contributed to or authored

1 any reference materials or articles in your field?

2 A. Yes, a number of articles presented at
3 conferences as well as the principal author of
4 Chapter 2 of the Water Environment Federation,
5 Manual of Practice 25 and the subject of Chapter 2
6 was odor sampling and measurements as well as a
7 contributing author to Chapter 8 in the textbook
8 VOCs and Odor edited by Harold Rafson.

9 Q. Is that the Odor and VOC Control Handbook
10 that I am holding in my hand?

11 A. Yes.

12 Q. Can you describe in the context of the
13 waste industry what is the Odor and VOC Control
14 Handbook?

15 A. Well, it's a ready reference for what odor
16 is, how odor can be measured both by human odor
17 panels and by chemistry, as well as what techniques
18 and devices and methods and operational practices
19 are available to engineers that are practicing in
20 air, solid waste, and waste water.

21 Q. Do you hold any patents related to your
22 field?

23 A. Yes. I hold three U.S. patents.

24 Q. And can you describe what those involve?

1 A. In 1999, I received a patent for a
2 laboratory device that is used by laboratories to
3 measure odor. All of the universities in the
4 United States including the University of Illinois
5 used this device in their laboratories to measure
6 odor from waste operations.

7 The second patent issued in 2003 was for a
8 portable device that is used by state agencies and
9 counties and countries around the world for
10 measuring the strength of odor. And in 19
11 -- excuse me. That was 2003.

12 In 2012, the third patent, that was called
13 odor inspection system. It's an internet cloud
14 based database where companies such as solid waste
15 companies store odor data that is collected and
16 from the cloud, they can download and immediately
17 print maps of the odor that they have collected on
18 Google Earth or Google Maps.

19 Q. And have you also provided the services
20 that you provide to any governmental entities?

21 A. Yes, I have.

22 Q. And could you describe some of those?

23 A. In the past two years, I have provided
24 training to the Ohio EPA specifically for solid

1 waste inspections of landfills and transfer
2 stations and also for the Cleveland Department of
3 Health, also for the state of California Department
4 that is called CalRecycle that oversees landfills,
5 composting, and transfer facilities.

6 Also internationally to the city of
7 Edmonton, to the Province of Saskatchewan.

8 Q. Have you been the subject of any
9 interviews or articles in waste industry trade
10 journals?

11 A. Yes.

12 Q. You have in front of you what have been
13 marked as TCH Exhibits 41 and 42.

14 Do you recognize those articles?

15 A. Yes.

16 Q. And those are articles, at least according
17 to the top, from a publication called MSW
18 Management?

19 A. Correct.

20 Q. And what is MSW Management?

21 A. It's the premiere journal that is
22 purchased by those people in municipal solid waste
23 management, transfer facilities, and other types of
24 waste handling.

1 Q. And generally speaking, what do these
2 articles relate to?

3 MR. PORTER: I'm going to interpose an
4 objection here. I think this is as good of time as
5 any.

6 These articles were tendered to us via
7 e-mail on Friday. The local ordinance made it very
8 clear that any and all exhibits that are going to
9 be utilized would be given seven days before
10 commencement of the hearing. They were not.

11 Beyond that, these articles are nothing
12 but trade publications and nothing in this
13 witness's testimony.

14 THE HEARING OFFICER: Mr. Blazer, your
15 response?

16 MR. BLAZER: Thank you. Mr. Hearing Officer,
17 candidly, we didn't provide these -- September 12th
18 I believe was the deadline. Frankly, it's because
19 we didn't know they existed on September 12th.

20 I circulated them to all parties as soon
21 as I saw them, as soon as I learned of their
22 existence. I didn't wait until today or right
23 before I was going to submit them like others have
24 in this proceeding.

1 But in any event, they are specifically
2 relating to the substance of this witness'
3 testimony. The siting ordinance does provide a
4 deadline, but it also grants you the authority to
5 allow the admission of, for want of a better
6 description, late filed exhibits. I believe it's
7 Subsection 5.

8 THE HEARING OFFICER: 9.

9 MR. BLAZER: 9, excuse me. You are looking at
10 it, I'm not.

11 THE HEARING OFFICER: That's okay.

12 MR. BLAZER: You do have the discretion. These
13 are to a great extent background, but they are also
14 indicative, not just of Mr. McGinley's
15 publications, which as you folks will see from his
16 resume, there are dozens, if not more, but these
17 are publications by the principal trade journal of
18 the waste industry relating to odor from transfer
19 stations and how those odors are controlled.

20 So they are probative. We have given the
21 applicant several days to review them. They
22 clearly have an opportunity to cross-examine the
23 witness with respect to anything that may be in
24 these articles.

1 THE HEARING OFFICER: Let's start one step at a
2 time.

3 Now you get a chance, Mr. Porter. The
4 ordinance says there has to be a showing of "good
5 cause." What is the good cause that you are
6 arguing that allows for a late filing of these?

7 MR. BLAZER: I wish I could give you something
8 other than inadvertence, Mr. Hearing Officer, but
9 candidly, I did not know these existed until
10 Friday. They are not prejudicial. They are
11 probative.

12 The good cause is that they are clearly
13 probative of the issues that this person will
14 testify to and they are not written by him. They
15 are written by the waste industry. That is the
16 good cause. I think that this hearing body is
17 entitled to hear what the waste industry says about
18 these issues and not just what Devin Moose says
19 about these issues.

20 THE HEARING OFFICER: They are clearly -- first
21 of all, they are clearly going to hear what at
22 least one expert thinks about these issues. That
23 is why you have Mr. McGinley here.

24 MR. BLAZER: That is correct.

1 THE HEARING OFFICER: So, Mr. Porter, please
2 feel free to respond.

3 MR. PORTER: I stepped on my grave there.
4 There is no doubt that, number one, they are not
5 timely, there is no good cause, it's clear
6 inadvertence. That is not a good cause. The case
7 law is very clear on that.

8 They obviously never asked their own
9 witness whether or not he had been quoted in any
10 articles related to the potential topics because he
11 was quoted in at least one of these.

12 Regardless, they are being offered for the
13 truth of the matter asserted apparently and so we
14 are trying to get in hearsay upon hearsay upon
15 hearsay evidence into the record. The witness is
16 here and can testify to his opinions over my
17 objection because I don't believe he should be
18 because he not licensed in Illinois.

19 But nonetheless, there is no reason to be
20 adding articles out there on the other end of this
21 and start throwing things into the record. It's
22 clearly improper.

23 THE HEARING OFFICER: Before you respond,
24 Mr. Blazer, any of the other attorneys have a

1 position they wish to take on this?

2 MR. SECHEN: No argument.

3 THE HEARING OFFICER: Mr. Blazer?

4 MR. BLAZER: Once more, Mr. Hearing Officer,
5 Mr. Porter refers to case law without identifying
6 any. It's your discretion as it's granted to you
7 under the siting ordinance.

8 THE HEARING OFFICER: I am going to allow it to
9 be introduced. I am going to allow him to discuss
10 it, but I also want everyone to know that at least
11 in my opinion, the weight of his testimony is less
12 than what his direct testimony will be that gives
13 people an opportunity to cross-examine.

14 It is clearly hearsay evidence and there
15 is no showing that it is , quote, some kind of
16 treatise that is relied upon in the industry. So
17 while I am going to let it in because I've been
18 pretty broad about what I have allowed in
19 throughout this hearing, I think for the board and
20 myself, it really kind of may have somewhat limited
21 value, but we will let the witness testify.

22 What is more important to me is what the
23 witness says and his own opinions because that,
24 Mr. Porter, has an opportunity to cross-examine and

1 the board has an opportunity to listen to and rely
2 on the credibility of the witnesses which is a much
3 better thing than what may or may not be an article
4 that is in a trade magazine.

5 I did read it and it has, you know, both
6 sides of the issue asserted. It's clearly not
7 being considered some kind of treatise that anyone
8 would rely on. So for that purpose, I will let it
9 in, but personally, I would not focus on it,
10 Mr. Blazer.

11 MR. BLAZER: Thank you. And as they say, it's
12 hearsay, but it's really good hearsay.

13 All right. We will move on.

14 BY MR. BLAZER:

15 Q. Could you look at what is before you there
16 that has been marked as TCH Exhibit 3? Is that
17 your resume?

18 A. Yes.

19 Q. And does your resume accurately summarize
20 your background, training, and experience in, for
21 want of a better description, the field of odor
22 from waste facilities?

23 A. Yes.

24 Q. Now, can you describe what you were asked

1 to do in this case?

2 A. I was asked to review the site application
3 and associated information to determine if the
4 proposed facility is designed or so designed as to
5 -- with regard to the public health, safety, and
6 welfare prevention of infringement of those items
7 referring to criteria two of the state regulation.

8 Q. The siting statute?

9 A. The siting statute, yes.

10 Q. And you have, in fact, reviewed the siting
11 application?

12 A. Yes.

13 MR. PORTER: I'm sorry, Mr. Luetkehans. I need
14 to renew my earlier objection.

15 His assignment was to determine if the
16 facility design protected the public health,
17 safety, and welfare. Clearly there has not been a
18 foundation laid that this witness is qualified to
19 offer that testimony and he should be barred from
20 doing so.

21 THE HEARING OFFICER: When you say foundation,
22 you are talking about back to the professional
23 engineering or something different?

24 MR. PORTER: Little bit of both. Not only is

1 he not licensed in Illinois to be testifying, he
2 also is a chemical engineer. He is not an
3 engineer. There has been no foundation laid that
4 he has the requisite qualification or experience to
5 testify concerning design of a transfer station and
6 whether or not this is designed to protect the
7 public health, safety, and welfare.

8 THE HEARING OFFICER: Having read his opinion,
9 his opinion or his report, for lack of a better
10 word, I take it to be a very -- a somewhat narrow
11 focus as to Mr. McGinley's portion of his
12 testimony. I assume, Mr. Blazer, it deals with
13 odor?

14 MR. BLAZER: It deals exclusively with odor.

15 THE HEARING OFFICER: So I am going to let him
16 testify. He has the expertise to talk about the
17 odor, but he is clearly not -- I shouldn't say
18 clearly not. To date I have not seen any
19 information that allows him to testify to -- with
20 any expertise beyond that particular very narrow
21 issue.

22 If he does testify to something more, we
23 will deal with it then.

24 MR. BLAZER: And we are not submitting him for

1 anything other than that, Mr. Hearing Officer. I
2 think that is obvious to everyone, obvious to
3 almost everybody.

4 THE HEARING OFFICER: Please present the
5 witness.

6 MR. BLAZER: I'd sure love to, but somebody
7 clearly doesn't want me to.

8 THE HEARING OFFICER: Mr. -- we don't need the
9 comments, Mr. Blazer. Please proceed.

10 BY MR. BLAZER:

11 Q. Before the objection, Mr. McGinley, I had
12 asked you if you have, in fact, reviewed the
13 application that was prepared by Shaw in this
14 matter.

15 A. Yes.

16 Q. And have you also reviewed testimony of
17 Devin Moose regarding purported odor control
18 measures that he says will be implemented at this
19 facility?

20 A. Yes.

21 Q. And do you have an opinion within a
22 reasonable degree of certainty in your field as to
23 whether this proposed transfer station is so
24 designed, located, and proposed to be operated that

32

1 the public health, safety, and welfare will be
2 protected?

3 MR. PORTER: Objection.

4 THE HEARING OFFICER: The objection is
5 sustained.

6 If you wish to talk about a specific
7 issue, feel free, but --

8 MR. BLAZER: I was going to.

9 BY MR. BLAZER:

10 Q. And I want you to focus with respect to
11 design and operations specifically on the issue of
12 odors that will be emitted from this facility.

13 Do you understand the question?

14 A. Yes.

15 Q. Do you have an opinion as to --

16 A. The answer is yes.

17 Q. The answer is yes, you do?

18 MR. PORTER: I object. There is no question
19 pending. I objected. It was sustained. I don't
20 know what that was.

21 MR. SECHEN: Assumes a fact not in evidence.

22 THE HEARING OFFICER: We will let Mr. Blazer
23 restate the question and proceed because it was
24 kind of a little funky on the record.

1 BY MR. BLAZER:

2 Q. Let's try it again, Mr. McGinley.

3 Do you have an opinion within a reasonable
4 degree of certainty in your field as to whether
5 this proposed transfer station is so designed,
6 located, and proposed to be operated that the
7 public health, safety, and welfare will be
8 protected with respect to the issue of odors that
9 will be emitted from this facility?

10 MR. PORTER: Same objection.

11 THE HEARING OFFICER: Objection overruled.

12 THE WITNESS: Yes.

13 BY MR. BLAZER:

14 Q. And what is that opinion?

15 MR. SECHEN: Objection.

16 THE HEARING OFFICER: Mr. Sechen?

17 MR. SECHEN: One, assumes a fact not in
18 evidence that there will be odors emitted from the
19 facility, but worse, it's a fact that apparently he
20 is not qualified to testify to in the state of
21 Illinois.

22 Certainly involves the operations of the
23 facility with odors being generated and so further
24 than the licensure issue, it's his degree of

1 chemical engineering and as opposed to being a
2 civil engineer familiar with the operation and
3 competent to testify on same.

4 MR. BLAZER: Mr. Hearing Officer --

5 THE HEARING OFFICER: That objection will be
6 overruled subject to the motion to strike that will
7 occur at the end.

8 You may proceed with your questions.

9 MR. PORTER: I'm sorry to keep delaying it.

10 MR. BLAZER: No, you're not.

11 MR. PORTER: Can I have the least question read
12 back?

13 THE HEARING OFFICER: Sure.

14 (Whereupon, the record was read
15 back as follows:

16 Question: Do you have an
17 opinion within a reasonable degree of
18 certainty in your field as to whether
19 this proposed transfer station is so
20 designed, located, and proposed to be
21 operated that the public health,
22 safety, and welfare will be protected
23 with respect to the issue of odors
24 that will be emitted from this

1 facility?)

2 MR. PORTER: In addition to the objection I
3 have already raised for the record, I object on the
4 grounds again of qualification and foundation.
5 There has been no testimony that he has even been
6 to the site, to the transfer station. There has
7 been no testimony that he has the qualifications or
8 has done any scientific analysis that allows him to
9 testify to a reasonable degree of scientific
10 certainty.

11 There has been no testimony of any
12 modeling, any testing, any scientific knowledge
13 that has been done whatsoever.

14 MR. BLAZER: Evidently, Mr. Porter --

15 THE HEARING OFFICER: Please no more speeches.
16 The objection will be overruled and subject to
17 cross-examine and you can deal with it at that
18 point.

19 BY MR. BLAZER:

20 Q. Mr. McGinley, how many years have you
21 spent at transfer stations training transfer
22 station operators on odor management systems and
23 odor control procedures?

24 MR. PORTER: Objection, beyond leading. It's

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1 leading.

2 THE HEARING OFFICER: Objection overruled.

3 BY MR. BLAZER:

4 Q. Do you understand the question?

5 A. Yes. The first transfer station and waste
6 management landfill training I conducted was in the
7 mid 1980s.

8 Q. And how many transfer station operational
9 personnel have you provided that type of training
10 to in the last three decades?

11 A. Several dozen.

12 Q. And how many transfer stations throughout
13 the world?

14 MR. PORTER: Objection, vague. Are you asking
15 him how many transfer stations he's actually been
16 to?

17 MR. BLAZER: I'm not telling you what I'm
18 asking him. You can figure it out.

19 MR. PORTER: Well, I can't. Obviously, that is
20 the reason I am objecting.

21 MR. BLAZER: It's --

22 THE HEARING OFFICER: Mr. Blazer, that is
23 enough. Deal with me and not with each other. I
24 have been pretty lax, but now it's time to kind of

37

1 tone it down and let's move on.

2 The objection as to form is sustained.

3 Please make it a little clearer, Mr. Blazer, and we
4 will proceed.

5 MR. BLAZER: I could if I could remember what
6 it was.

7 THE HEARING OFFICER: The question I think was
8 how many transfer stations he had been at.

9 MR. BLAZER: Right.

10 BY MR. BLAZER:

11 Q. Over the last three decades, Mr. McGinley,
12 can you estimate how many transfer stations you
13 have been at providing your training to transfer
14 station operators?

15 A. I believe I answered over a dozen.

16 Q. That is transfer stations, over a dozen
17 transfer stations?

18 A. Yes.

19 Q. How many transfer station personnel have
20 you trained in that period of time?

21 A. I believe my answer was --

22 THE HEARING OFFICER: 24.

23 THE WITNESS: -- several dozen.

24 THE HEARING OFFICER: He testified to that

1 already.

2 MR. BLAZER: Mr. Hearing Officer, I will admit
3 I know he testified to that already. Thank you.
4 And I apologize.

5 BY MR. BLAZER:

6 Q. Now, you had stated --

7 MR. BLAZER: I can't remember now if I asked
8 him whether he does have an opinion. I asked him
9 if he does have an opinion and he answered yes and
10 I can't remember if I asked him what the opinion
11 is.

12 THE HEARING OFFICER: Why don't you ask him
13 again to at least make sure it's on the record.

14 MR. BLAZER: Thank you. I appreciate that.

15 BY MR. BLAZER:

16 Q. You testified that you do have an opinion
17 with respect to odors to be emitted from this
18 transfer station.

19 What is that opinion, Mr. McGinley?

20 A. My opinion is that the described design
21 and operation of the facility will not prevent
22 odors from infringing or passing into the community
23 specifically odors of air laden with garbage odor
24 and that would infringe upon the public welfare.

1 THE HEARING OFFICER: Before you proceed,
2 Mr. Blazer.

3 (Whereupon, a discussion was
4 had off the record.)

5 THE HEARING OFFICER: Go ahead.

6 BY MR. BLAZER:

7 Q. What is the basis for that opinion?

8 A. Well, the basis is the details that are
9 present in the siting application and related
10 information that describe how air will be exhausted
11 from the facility and how doors will be opened
12 during the facility business hours allowing odorous
13 air to leave the facility.

14 Q. Have you prepared a report summarizing
15 your opinions and conclusions?

16 A. Yes.

17 Q. And is that report TCH Exhibit 4 that is
18 in front of you?

19 A. Yes.

20 Q. Are there ways in your experience to
21 reduce garbage odors both physically and
22 operationally that are emitted by waste transfer
23 stations?

24 A. Yes, there are ways.

1 Q. Could you explain what some of those may
2 be?

3 A. Well, ways that I know are those that are
4 published by the EPA in guidance documents and
5 studies specifically for urban based transfer
6 stations. Those ways include closure of
7 doors --

8 MR. PORTER: I am going to object. Again, this
9 is hearsay testimony unless the witness knows of
10 -- has designed or knows of these ways from
11 personal experience or history, all he is doing is
12 telling us what some other publication says.

13 MR. BLAZER: He doesn't have to have designed,
14 Mr. Hearing Officer. He has 40 years of experience
15 training other people how to design.

16 THE HEARING OFFICER: So we move this along, I
17 am going to ask the next question.

18 Mr. McGinley, is this the type of
19 information you normally rely upon in making an
20 opinion?

21 THE WITNESS: Yes.

22 THE HEARING OFFICER: Okay. You may proceed.

23 MR. BLAZER: That was my next question. Thank
24 you.

1 BY MR. BLAZER:

2 Q. And based on your review of the siting
3 application and the testimony in this matter, does
4 Groot intend to implement those odor control
5 measures?

6 A. Not entirely. Only partially.

7 Q. And in your opinion, will the partial
8 measures that Groot intends to implement be
9 adequate to keep odors from traveling beyond the
10 boundary of this facility?

11 A. No.

12 MR. BLAZER: That's all I have, Mr. Hearing
13 Officer

14 THE HEARING OFFICER: Mr. Porter, would you
15 like to proceed or do you need a couple minutes?

16 MR. PORTER: I want to take one minute and that
17 is about it.

18 THE HEARING OFFICER: All right. That is fine.

19 (Whereupon, recess taken.)

20 THE HEARING OFFICER: Please proceed,
21 Mr. Porter.

22 MR. PORTER: Thank you.

23

24 CROSS-EXAMINATION

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1 BY MR. PORTER:

2 Q. You are not an expert in design of Waste
3 Management transfer stations, correct?

4 A. I teach people how to design them.

5 Q. Have you ever taught a course on the
6 actual design of entire transfer stations?

7 MR. BLAZER: Objection. That is not what he
8 testified to and it's not the scope of his
9 testimony.

10 THE HEARING OFFICER: The objection is
11 overruled. You can ask. It's cross-examination.

12 THE WITNESS: I teach people how to design and
13 manage odor from waste water facilities, from solid
14 waste facilities, and solid waste transfer
15 facilities such as transfer stations.

16 BY MR. PORTER:

17 Q. So your teaching has only been limited to
18 the issue of odor, not the panoply of other issues
19 that might revolve around the design of transfer
20 stations, correct?

21 A. Yes.

22 Q. You have never designed a transfer station
23 from scratch, correct?

24 A. I am not a civil engineer nor mechanical

1 or construction engineer, correct.

2 Q. You have never operated a transfer
3 station, correct?

4 A. Correct.

5 Q. You have never been employed at a transfer
6 station, correct?

7 A. Correct.

8 Q. It appears from your publications that are
9 referenced in your curriculum vitae, that most of
10 them have to do with odor measurement or attempting
11 to quantify odor; is that right?

12 A. Most, if you describe more than 25 percent
13 or 50 percent, yes.

14 Q. And you did not perform any site specific
15 odor testing or modeling at the location proposed
16 for the Groot facility; is that right?

17 MR. BLAZER: Objection. This facility has not
18 even been built yet. There is nothing for anybody
19 to model or test.

20 THE HEARING OFFICER: Objection overruled.

21 THE WITNESS: Correct.

22 BY MR. PORTER:

23 Q. Now, you certainly could have gone and
24 done background tests of what the odor or wind and

1 prevailing wind conditions are at this facility; is
2 that right?

3 A. Correct.

4 Q. You did no such analysis, correct?

5 A. Correct.

6 Q. You have not done any independent analysis
7 other than review the application and testimony of
8 CBI, Mr. Moose; is that right?

9 A. CBI is Shaw. Are you saying --

10 Q. CBI is CBI. It used to be Shaw.

11 A. I thought I saw Shaw's name on the report.
12 Yes, correct.

13 Q. Have you ever drafted any publications
14 specifically related to transfer stations?

15 A. One of the publications that I presented
16 was for municipal solid waste decision makers which
17 included landfills and transfer stations.

18 Q. You would certainly agree that landfills
19 have a variety of additional issues or problems
20 that are not present in a transfer station,
21 correct?

22 A. They may have.

23 Q. Have you ever performed an indoor air
24 quality study at a transfer station?

1 A. I have measured odor inside a transfer
2 station.

3 Q. You are not qualified to measure indoor
4 air quality; is that right?

5 MR. BLAZER: Objection to the form of the
6 question.

7 THE HEARING OFFICER: That objection is
8 sustained. Rephrase, Mr. Porter.

9 BY MR. PORTER:

10 Q. Have you done any other testing beyond
11 -- well, strike that.

12 The odor testing that you have done is
13 utilizing a piece of equipment that you have a
14 patent for; is that correct?

15 A. Well, it's using a piece of equipment that
16 is cited by the Illinois Department of --

17 Q. Was there something wrong with my
18 question?

19 The training that you have done --

20 MR. BLAZER: Mr. Hearing Officer, he was
21 answering the question. Whether or not Mr. Porter
22 liked it is not the issue. I think he should be
23 allowed to answer the question.

24 THE HEARING OFFICER: Well, I am going to let

1 him finish the answer and I do have a question as
2 to whether or not he was actually answering that
3 question as well, but you can finish the answer,
4 Mr. McGinley.

5 THE WITNESS: I used a device called a
6 scentometer. It's a generic device designed
7 originally in Illinois, used by the state of
8 Illinois and, yes, the nasal ranger device, which
9 we invented in 2002, is a newer scentometer. They
10 both work the same and I have trained both people
11 using the original scentometer and the nasal
12 ranger.

13 BY MR. PORTER:

14 Q. Okay. This scentometer does not attempt
15 to identify or analyze air quality, rather it's
16 something that an individual puts on his face in
17 order to assist him in determining if there's odor
18 present; is that right?

19 MR. BLAZER: Object to the form of the
20 question.

21 THE HEARING OFFICER: Objection overruled.

22 THE WITNESS: The answer is no.

23

24 BY MR. PORTER:

1 Q. What's wrong? Why is the answer no?

2 A. Well, in a number of states, I believe
3 including Illinois, odor is considered a pollutant
4 which addresses the statement of air quality. And
5 the device, the scentometer developed by the U.S.
6 Public Health Service in 1958 was intended to
7 measure the odor air quality in the United States.

8 Q. The device has a very large subjective
9 component in that it relies upon the wearer of the
10 device to note when he or she identifies odor; is
11 that correct?

12 A. No.

13 Q. Have you -- well, strike that.

14 Are you indicating that the device can
15 work without an individual wearing it?

16 A. Well, first of all, a person doesn't wear
17 it. They use it to put on their -- close to their
18 nose to measure the odor strength with a yes, no
19 question because the device has several testing
20 steps of dilution and they inhale through one of
21 those testing steps and they say yes, no. That is
22 an objective yes, no.

23 Q. The device still requires one to use his
24 own nose in order to determine if there is a smell.

1 It doesn't smell for you, correct?

2 A. It's a device called an organoleptic
3 device that enhances the person's sense of smell to
4 a yes, no question is there an odor at that
5 dilution level or is there not an odor at that
6 dilution level.

7 Q. I am not going to belabor this long, but
8 what it really does is it allows one to breathe
9 without any odor thereby using your own words,
10 zeroing the nose, if you will, and then they can
11 breathe in and determine if there has been some
12 type of odor; is that right?

13 A. Yes, that is how it's been described.

14 Q. So once again, the device itself doesn't
15 detect odor. It requires the operator to identify
16 the odor, correct?

17 A. Yes.

18 Q. Now, have you visited any of the Groot
19 transfer stations?

20 A. No.

21 Q. Have you performed even your odor analysis
22 at any of the Groot transfer stations?

23 A. No.

24 Q. Have you attempted to find any transfer

1 station that uses the same proposed operating
2 procedures and designs as the Groot transfer
3 station and utilized your device at that station?

4 A. I have been to waste transfer stations
5 that have open doors and ventilation without
6 filtration and I observed odor downwind in the
7 community from the ventilated air unfiltered and
8 from the air being pulled out or blown through the
9 open doors.

10 Q. Now, you are supposed to be an engineer,
11 correct?

12 MR. BLAZER: Object to the form of the
13 question.

14 THE HEARING OFFICER: Objection sustained.

15 BY MR. PORTER:

16 Q. Are you an engineer at least in some
17 state?

18 MR. BLAZER: Object to the form of the
19 question, argumentative.

20 THE HEARING OFFICER: Objection overruled.

21 THE WITNESS: Sir, engineering is a profession.
22 Whether one state regulates it or licenses it is up
23 to that state.

24 BY MR. PORTER:

1 Q. That wasn't my question.

2 You are an engineer, a chemical engineer
3 at least in Minnesota, right?

4 A. Well, after graduation from the University
5 of Minnesota --

6 Q. It's a yes or no question.

7 Are you or are you not a chemical engineer
8 in Minnesota?

9 A. I am a registered chemical engineer in
10 Minnesota.

11 Q. Okay. Now, as an engineer, wouldn't you
12 agree, to come to a scientific opinion of whether
13 or not the Groot facility will be causing odor, you
14 would need to identify the exact specifications of
15 the facility and then perform some type of
16 scientific test in order to come to a conclusion?

17 A. No.

18 Q. When were you contacted to give an opinion
19 concerning this facility?

20 A. May. April, May of this year.

21 Q. And then what study, if any, did you do?

22 A. I conducted a research study that is
23 embodied in the report that I submitted.

24 Q. Well, we didn't hear much about that. In

1 other words, the only thing you did was read the
2 application, right?

3 A. No.

4 Q. Did you go to the site?

5 A. The vacant lot you mean?

6 Q. Yes.

7 A. No.

8 Q. Have you ever been to the site?

9 A. No.

10 Q. Have you ever been to the location of
11 Mr. Blazer's clients?

12 A. No.

13 Q. You don't know the prevailing winds in the
14 area; is that correct?

15 A. Well, in Chicago, the word "prevailing
16 wind" doesn't really apply.

17 Q. Really?

18 A. I do know the wind rose of Chicago.

19 Q. And the wind rose identifies the
20 prevailing winds; isn't that correct?

21 A. Well, in the case of Chicago with the
22 variability, the quadrant from the west is equally
23 distributed and it's only 15 to 20 percent
24 different from the wind from the southwest.

1 Q. The winds in Chicago -- which, by the way,
2 is not where this facility is proposed, correct?

3 A. Correct.

4 Q. The winds in Chicago are predominantly
5 from the west and southwest, right?

6 A. Well, the word "predominantly" depends
7 upon your interpretation. If you are a
8 meteorologist, you would not use that term.

9 Q. Well, the word "predominantly" actually is
10 a scientific term talking about wind direction, is
11 it not?

12 A. Well, yes, it is.

13 Q. So I repeat. Did you determine the
14 predominant wind directions at the location of this
15 site?

16 A. No.

17 Q. Did you determine whether any particular
18 home, residence, or person would be subjected to
19 any odors from this particular site?

20 A. No.

21 Q. Now, your report you didn't really testify
22 too much about, but ultimately, it comes to a
23 conclusion that there should be used fabric or
24 rubber high speed doors.

1 That is the primary conclusion, right?

2 A. Sir, I understand that those are the doors
3 that are planned to be installed at the facility
4 according to the application.

5 Q. But your report apparently didn't
6 recognize that because your report made the opinion
7 that somehow criterion two was not met because in
8 your opinion, Ryttec sealed fabric doors should be
9 used at the facility.

10 Did I read it wrong?

11 A. You read the words correctly out of
12 context to the earlier finding in the report.

13 Q. Your report has two specific criticisms.
14 One is used -- the reported failure to use high
15 speed fabric doors?

16 A. No.

17 Q. And the second is the failure to use
18 scrubbers; isn't that correct?

19 A. No. Incorrect on both comments, both
20 questions.

21 Q. So you don't have an opinion that
22 scrubbers need to be used at this facility,
23 correct?

24 A. My report doesn't address the word

1 "scrubber."

2 Q. Oh, so the report on Page 2 of 3 that says
3 install ventilation system with air filters or
4 scrubbers, that is not meant to be there?

5 A. Well, that is an excerpt from the EPA
6 Waste Transfer Station Manual for Decision Making.

7 Q. Okay. I was under the mistaken impression
8 that you were telling us about that section of that
9 manual because you believe that should happen at
10 this facility, but you don't; is that correct?

11 A. Well, it's one of the choices that are
12 available to the transfer station as it states on
13 Page 3.

14 Q. Right. But it's not a choice that you are
15 recommending, right?

16 A. Well, I am suggesting that the applicant
17 has choices, filtration including scrubbers or
18 biofilters and those are endorsed by the EPA.

19 Q. Okay. But you are not making any opinion
20 to a reasonable degree of scientific certainty that
21 scrubbers are needed at this facility, correct?

22 A. Without the scrubbers, the air that is
23 laden with garbage odor will be exhausted from the
24 elevation on the side of the building as Mr. Moose

55

1 has described that will go into the community
2 untreated.

3 Q. Did you not understand my question?

4 MR. BLAZER: I believe he answered the
5 question, Mr. Hearing Officer.

6 THE HEARING OFFICER: Ask the next question or
7 reask that question.

8 BY MR. PORTER:

9 Q. Isn't it true that you don't have any
10 opinion within a reasonable degree of scientific
11 certainty that scrubbers are needed at this
12 facility?

13 MR. BLAZER: Objection, asked and answered.

14 THE HEARING OFFICER: You may answer.

15 THE WITNESS: You are speaking specifically
16 about scrubbers, the word "scrubber"?

17 BY MR. PORTER:

18 Q. Correct.

19 A. I did not specifically recommend scrubber.

20 Q. As a matter of fact, isn't it true that in
21 Illinois, there is no statute or regulation that
22 requires the use of scrubbers, right?

23 A. Correct.

24 Q. Likewise, in your own state, a facility

1 doesn't have any regulation that requires the use
2 of scrubbers; is that correct?

3 A. Well, actually, it does through the permit
4 process.

5 Q. There is no statute or regulation that
6 requires the use of scrubbers, correct?

7 A. Well, a scrubber is a technology of odor
8 abatement, so specifically, there is not a
9 regulation that specifically says scrubbers because
10 it provides the permitting an option.

11 Q. Now, your report states at item nine right
12 before your conclusion, "I am familiar with much
13 more effective odor control technology than that
14 proposed in the Groot transfer siting application.
15 For example, the Hennepin Energy Recovery Center,
16 HERC, owned by Hennepin County, Minneapolis,
17 Minnesota, and operated by Covanta, Independent
18 Energy Resources, a wholly owned subsidiary of
19 Covanta, Inc., 200 vehicles and 1,200 tons per day
20 utilize Rytex fast sealed fabric doors, automatic
21 50 inches per second operation."

22 You wrote that, correct?

23 A. Yes.

24 Q. Now, isn't it true that when you wrote

1 your report, you simply didn't realize that it was
2 already a proposal of Groot to use high speed
3 rubber doors?

4 A. I knew that. That is in the permit. That
5 is in the application.

6 Q. Well, why is it that you wrote in your
7 report here that you were familiar with more
8 effective means and then you cite the very means
9 that Groot was using?

10 MR. GROSSMARK: Objection, assumes facts not in
11 the record.

12 THE HEARING OFFICER: Objection overruled.

13 THE WITNESS: You are reading item number nine,
14 but item number nine continues referring to the
15 speed of those doors and how much time, how small a
16 time it would take to have the doors close all of
17 the time only adding 12 seconds for the truck to go
18 in and out.

19 My point was to have the doors closed. I
20 think it's very clear the report focuses upon
21 having the doors closed all of the time.

22 BY MR. PORTER:

23 Q. So you have no criticism of the high speed
24 rubber doors that are being proposed by Groot?

1 MR. BLAZER: Objection, asked and answered.

2 MR. PORTER: It is not.

3 THE HEARING OFFICER: Overruled.

4 THE WITNESS: Rubber, fabric, high speed, 15
5 inches per second that is going to have a door
6 closed, everyone will be happy when it's totally
7 closed all of the time except for truck passage.

8 BY MR. PORTER:

9 Q. I'm sorry. I asked a very specific
10 question.

11 MR. BLAZER: And he gave a very specific
12 answer, Mr. Hearing Officer. Objection.

13 THE HEARING OFFICER: Objection overruled.

14 Please answer the question. Mr. Blazer
15 will have the opportunity to let you expand even
16 though I think you have already done that. So
17 answer the specific question if you would, please.

18 BY MR. PORTER:

19 Q. You don't have any particular criticisms
20 of the doors that were proposed by CBI at the Groot
21 facility specifically the high speed rubber doors,
22 correct?

23 A. Correct.

24 Q. Isn't it true that this facility is

1 equipped with roof vents on the sides?

2 A. Yes.

3 Q. And you are aware that the proposed
4 facility will have an air exchange program that
5 will create negative pressure in the building; is
6 that right?

7 A. I saw that in testimony. I did not see
8 that in the permit application.

9 Q. And you actually jumped ahead for me.
10 So when you were drafting your report, you
11 didn't realize that there was going to be a
12 negative exchange in the building; isn't that
13 correct?

14 A. I presumed there would be because that's
15 how transfer facilities are designed.

16 Q. You agree that negative air pressure going
17 into the building will reduce odor to neighboring
18 sites, right?

19 A. Yes, if the negative pressure and the
20 ventilation rate is sufficient to maintain negative
21 pressure.

22 Q. Well, you saw or at least -- strike that.

23 Did you read in Mr. Moose's testimony that
24 air will be drawn into the facility and changed

1 four to six times per hour?

2 A. Yes, I read that.

3 Q. And you would certainly agree with that
4 procedure, would you not?

5 A. No, that's insufficient air change rate.

6 Q. Again, have you done any testing analysis
7 concerning a facility with the specifications of
8 the Groot facility to come to a conclusion that
9 somehow that is insufficient?

10 A. Yes, because that is a standard
11 calculation that takes place with air changes per
12 hour and the volume of the building and the
13 openings of the building. That is just math,
14 simple math.

15 Q. And what study did you do in relation to
16 the Groot facility that would tell you that
17 allowing or requiring the air to be drawn into the
18 facility and changed four to six times per hour
19 would be insufficient?

20 A. Well, I conducted three simple math
21 equations. It doesn't require a study.

22 Q. Are those three simple math equations
23 anywhere in your report?

24 A. No.

1 Q. As a matter of fact, your report did not
2 even mention the negative air exchange; is that
3 correct?

4 A. Correct.

5 Q. Had you known that it was negative air
6 exchange, would that have changed any of your
7 opinions, whatever they may be, in the report?

8 A. Yes.

9 Q. And if you had known there was negative
10 air exchange, you would not have had an opinion of
11 any further odor measures need to be taken; is that
12 right?

13 A. You are referring to a hypothetical air
14 exchange that was not available to me when I wrote
15 the report.

16 Q. Had you known that there was indeed going
17 to be negative air exchange at this facility, you
18 would not have had any criticisms concerning this
19 facility; is that right?

20 A. Your statement is incorrect because the
21 testimony talked about air exchange rate, air
22 exchanges per hour, and if I would have known the
23 number of air exchanges per hour, if it would have
24 been in the application, I would have been able to

1 do the simple mathematical calculation.

2 Q. So you drafted your report, you assumed
3 that there was no negative air exchange, correct?

4 A. I assumed there was exhausting and there
5 would have been some attempt to create a negative
6 pressure.

7 Q. And you would agree with Mr. Moose's
8 testimony that if one would stand by the door of
9 this facility and blow a match out, the smoke would
10 actually travel in the station, right?

11 A. Well, actually, engineers depend upon
12 calculations, not blowing smoke.

13 Q. I totally agree. And you have not done
14 any specific calculations given the measurements of
15 this facility at its location with its predominant
16 wind direction, right?

17 A. Are we speaking of negative air exchanges
18 or now are we speaking of meteorological wind? I'm
19 sorry. I misunderstood.

20 Q. Maybe I can have it read back and then it
21 will be made clear.

22 (Whereupon, the record was
23 read back.)

24 MR. BLAZER: Asked and answered. He already

1 said he did the simple math calculation.

2 THE HEARING OFFICER: Objection overruled.

3 Please answer.

4 THE WITNESS: I did not do calculations with
5 respect to the predominant wind direction if there
6 is such a calculation.

7 BY MR. PORTER:

8 Q. And, again, you have never designed a
9 transfer station from scratch, so you have never
10 had to do those --

11 MR. BLAZER: Objection, asked and answered.

12 THE HEARING OFFICER: Objection sustained.

13 BY MR. PORTER:

14 Q. You are aware that at this facility, empty
15 transfer trailers may only be stored for 24 hours
16 outside the facility; is that right?

17 A. Yes.

18 Q. You certainly agree that that is a good
19 procedure for keeping odor down, correct?

20 A. It will limit the time the odor will leave
21 those transfer trucks.

22 Q. You also -- do you understand the loaded
23 transfer trailers will generally not be stored
24 outside and if they are on site, they will be no

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1 longer than 24 hours inside of the facility?

2 A. Correct.

3 Q. And you agree with that procedure,
4 correct?

5 A. Yes, and that presumes they will also be
6 covered which is the industry standard.

7 Q. You also understand that on a daily basis,
8 the tipping floor will be cleared of waste and
9 swept; is that right?

10 A. Yes.

11 Q. And you would agree with that procedure,
12 correct?

13 A. Yes.

14 Q. You are now aware that this application
15 proposes to use fast-acting rubber doors and you
16 agree with that procedure, correct?

17 MR. BLAZER: Object to the form of the
18 question.

19 THE HEARING OFFICER: Objection overruled.

20 THE WITNESS: I agree that fast-acting doors
21 are state of the art for transfer stations.

22 BY MR. PORTER:

23 Q. And those doors are to be located on the
24 tipping floor and transfer trailer and side of the

1 facility as well; is that right?

2 A. Yes.

3 Q. You would agree that those doors are one
4 of the -- strike that.

5 You would agree that those doors are one
6 of the effective means to control odor, correct?

7 A. Well, a closed door is. Not an open door.

8 Q. You would agree that the use of
9 fast-acting doors is one of the effective means to
10 control odor, correct?

11 MR. BLAZER: Objection, asked and answered. He
12 just answered it.

13 THE HEARING OFFICER: Objection overruled.

14 THE WITNESS: Yes.

15 BY MR. PORTER:

16 Q. Your suggestions in Paragraphs 8, 9, and
17 your conclusion is that somehow the vehicle
18 processing times could be improved by use of high
19 speed fabric doors, however, when you made those
20 findings, you did not realize Groot was already
21 using high speed doors, correct?

22 MR. BLAZER: Objection, asked and answered.

23 THE HEARING OFFICER: Objection sustained.

24 THE WITNESS: It was very clear --

1 BY MR. PORTER:

2 Q. Well, the objection has been sustained.

3 A. Oh, I'm sorry.

4 Q. Isn't it true that you were suggesting in
5 the report that Groot should use high speed doors
6 and that would increase their -- or decrease their
7 processing times?

8 MR. BLAZER: Objection, asked and answered.

9 THE HEARING OFFICER: Overruled.

10 THE WITNESS: No, that is exactly not what was
11 said.

12 BY MR. PORTER:

13 Q. I am going to let the board read the
14 report and make their own decision on that.

15 You agree -- you are aware that all
16 tipping operations be conducted indoors, correct?

17 A. Yes.

18 Q. And you agree with that procedure, right?

19 A. Yes.

20 Q. Waste typically may be removed within
21 hours of receipt on a first in and first out basis;
22 is that right?

23 A. Correct.

24 Q. And you agree with that procedure,

1 correct?

2 A. Yes.

3 Q. If waste has an unusually strong odor, it
4 will be immediately loaded on the transfer trailer;
5 is that right?

6 A. If properly identified, yes.

7 Q. There is nothing in the application that
8 leads you to believe that there is going to be a
9 problem identifying a strong odor emanating from a
10 particular transfer trailer, is there?

11 A. There is nothing in the application,
12 right.

13 Q. And you agree with that procedure of
14 immediately loading a particularly strong odored
15 load onto a transfer trailer, right?

16 A. Correct.

17 Q. If incoming waste is particularly odorous,
18 a nontoxic odor neutralizer will be disbursed
19 through the transfer facility; is that correct?

20 A. That is what is endorsed by the EPA.

21 Q. And what is going to happen here at the
22 Groot facility per the application and Mr. Moose's
23 testimony; is that right?

24 A. Right.

1 Q. And you don't have any criticism of that
2 procedure, do you?

3 A. No.

4 Q. The engines will be shut down while in a
5 loading bay in order to improve indoor air quality
6 and reduce exhaust odor; is that right?

7 A. Correct.

8 Q. And you agree with that procedure,
9 correct?

10 A. Yes.

11 Q. Now, as to misting at the facility, one of
12 the articles that you provided talks about the use
13 of odor neutralizers; is that right?

14 A. The author of the article writes a number
15 of paragraphs about misting systems, yes.

16 Q. Let me make sure I get the right one here.
17 Maybe you can help me out. Which one of
18 these articles talks about the car that was found
19 at an airport?

20 A. I don't recall that particular sentence.

21 THE HEARING OFFICER: I think it's TCH Exhibit
22 41, third page about halfway down.

23 MR. PORTER: Thank you very much. Appreciate
24 it.

1 THE HEARING OFFICER: No problem.

2 BY MR. PORTER:

3 Q. In the article entitled Preventing a
4 Nuisance, which is Exhibit 41 that was admitted
5 today over objection, there is a reference that a
6 police vehicle had confiscated a car -- or the
7 police confiscated a car that had been abandoned
8 for some time in an airport parking lot with a dead
9 body in the trunk.

10 Do you remember that article you provided?

11 A. I see that now in that paragraph.

12 Q. And they reference that one only has to
13 think of the heated Florida humidity and a dead
14 body shoved in a trunk like a ham sandwich in a
15 plastic bag to imagine the stench clinging to every
16 fabric of that car.

17 Do you recall that sentence?

18 A. Yes.

19 Q. And isn't it true that the vehicle was
20 subjected to odor neutralizers and the odors were
21 corrected?

22 A. I see that.

23 Q. And those very odor neutralizers are the
24 same type of product that will be used in this

1 facility; is that right?

2 A. Each of these odor neutralizing companies
3 have a plethora of models or brands and catalog
4 numbers. I don't know if they were speaking
5 specifically of the one used in the solid waste
6 industry.

7 Q. In your report, you relied on the U.S. EPA
8 publication Waste Transfer Stations: Involved
9 Citizens Make the Difference.

10 Do you remember that?

11 A. Yes.

12 MR. KARLOVICS: May the record please reflect
13 the presence of Mayor Lucassen. The time right now
14 is 4:25.

15 THE HEARING OFFICER: Welcome, Mayor.

16 MR. PORTER: Mr. Luetkehans, I apologize, but I
17 don't know what exhibit number Groot is on.

18 I am going to mark -- it may make a
19 difference. It's already an exhibit in
20 Mr. Blazer's material.

21 MR. BLAZER: Use the one that is already there.

22 MR. PORTER: Because this is the one that I
23 want to use.

24 I will mark the pertinent sections of the

1 Groot transfer stations as Exhibit 10.

2 MR. BLAZER: Do you have copies for the rest of
3 us?

4 (Whereupon, Groot
5 Exhibit No. 10 was marked for
6 identification.)

7 BY MR. PORTER:

8 Q. Now, this publication is directly from the
9 United States Environmental Protection Agency; is
10 that right?

11 A. Yes.

12 Q. And this is a publication that you -- one
13 of the two publications that you attached to your
14 report as having used and relied on by you; is that
15 correct?

16 A. Yes.

17 Q. And you would agree this is an
18 authoritative treatise on the ways to effectively
19 combat odor at a transfer station?

20 A. Well, the definition of authoritative
21 treatise may conflict with a public relations
22 brochure prepared by the EPA, but if you want to
23 call it that, yes.

24 Q. And at Bates stamp Page 29, Page 5 of the

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1 article, you can see that there are four specific
2 bullet points that the EPA provides as operating
3 procedures that help reduce odors; is that right?

4 A. The second paragraph of that section
5 defined by odors, yes.

6 Q. There is a section that I have provided
7 here entitled odor; is that right?

8 A. Yes.

9 Q. And that section contains four bullet
10 points that the U.S. EPA provides are operating
11 procedures for transfer stations that can help
12 reduce odors; is that right?

13 A. Yes. The second paragraph addresses
14 operational procedures.

15 Q. That are designed to help reduce odors,
16 correct?

17 A. Yes.

18 Q. And those four specific bullet points, the
19 first one is first in first out, waste handling
20 practices to keep waste on site for short periods
21 of time; is that right?

22 A. Yes.

23 Q. And, again, that first in first out
24 procedure is going to be employed at the Groot

1 facility; is that right?

2 A. As an operational procedure, yes.

3 Q. And the second bullet point that the
4 U.S. EPA provides is that all waste be removed from
5 the tipping floor or pit by the end of each
6 operating day, so that the surfaces can be swept
7 clean and washed down; is that right?

8 A. Yes, bullet two of the second paragraph.

9 Q. And isn't it true that at the Groot
10 facility, all waste will be removed from the
11 tipping floor and the floor swept daily?

12 A. Yes.

13 Q. The third bullet point is that good
14 housekeeping measures should be used including
15 cleaning and disinfecting surfaces and equipment
16 coming in contact with waste.

17 It's your understanding that those good
18 housekeeping procedures will be employed here; is
19 that correct?

20 A. Yes.

21 Q. And finally, the U.S. EPA recommends that
22 water misting and/or deodorizing systems be
23 employed.

24 Once again, that is going to be employed

1 at the Groot facility; is that right?

2 A. As an operational procedure, yes.

3 Q. So under the odor section of the
4 publication you rely upon, Groot is performing all
5 of the odor-eliminating procedures that the U.S.
6 EPA recommends, correct?

7 A. No.

8 Q. What portion of that section isn't Groot
9 going to do?

10 A. Of the odor section?

11 Q. Right.

12 A. Well, that first paragraph says at the
13 transfer building itself, exhaust fans with air
14 filters.

15 Q. Well, it actually says is at the transfer
16 building itself, exhaust fans with air filters and
17 rooftop exhaust fans can reduce off site odor
18 impacts; is that correct?

19 A. Yes, emphasis on air filters.

20 Q. And as far as the four bullet points, you
21 agree that Groot is doing all of those, right?

22 A. Yes.

23 Q. And as far as air filters, in this case,
24 there is a negative air exchange in this facility

1 which obviates the need for scrubber systems or air
2 filters?

3 MR. BLAZER: Objection, asked and answered
4 several times, Mr. Hearing Officer.

5 THE HEARING OFFICER: Objection overruled.

6 THE WITNESS: No.

7 BY MR. PORTER:

8 Q. Again, you have done no study about the
9 impacts of that negative air exchange on odor at
10 this facility, right?

11 MR. BLAZER: Same objection.

12 THE HEARING OFFICER: Objection sustained.

13 BY MR. PORTER:

14 Q. Now, isn't it true that in Illinois
15 -- well, strike that.

16 Do you know if in Illinois there is a
17 1,000 foot setback requirement for all
18 residentially zoned properties and dwellings?

19 A. Yes.

20 Q. And one of the articles that you attached
21 to your publication references a New Hampshire site
22 that involved closing doors at all times by
23 transfer stations.

24 Do you recall that?

1 A. Yes.

2 Q. And isn't it true that in New Hampshire,
3 there isn't no 1,000 foot setback requirement from
4 residential area dwellings?

5 A. I am not aware if there is or not.

6 Q. Isn't it also true that in New Hampshire,
7 a transfer station can allow putrescible waste to
8 remain in place for up to a week?

9 A. I am not aware of what --

10 THE HEARING OFFICER: Mr. Porter, your question
11 said something before the word waste and I don't
12 think either myself or the court reporter caught
13 it.

14 MR. PORTER: Putrescible.

15 THE HEARING OFFICER: Can you spell that?

16 MR. PORTER: Waste that is putrid.

17 P-u-t-r-e-s-c-i-b-l-e.

18 THE HEARING OFFICER: Thank you.

19 BY MR. PORTER:

20 Q. What is putrescible waste? Do you know?

21 A. Stinks.

22 Q. Can you elaborate?

23 MR. BLAZER: What more do you want to know?

24 THE WITNESS: Garbage stink.

1 BY MR. PORTER:

2 Q. Okay. Now --

3 MR. KARLOVICS: Mr. Hearing Officer, while
4 Mr. Porter is looking at his material, I would like
5 the record to reflect of the arrival of Trustee
6 Candace Kenyon at 4:32 p.m.

7 THE HEARING OFFICER: Welcome, Trustee.

8 BY MR. PORTER:

9 Q. The article in particular that I looked at
10 which attaches a report was Waste Transfer
11 Stations: A Manual for Decision Making.

12 That was the second U.S. EPA publication
13 you attached; is that right?

14 A. Correct.

15 Q. And in Appendix A to that publication,
16 there is a list of state transfer station
17 regulations; isn't that right?

18 A. That is what that appendix is it appears.

19 Q. And if you look at the New Hampshire
20 regulation, putrescible waste can remain on a
21 transfer station facility in New Hampshire for up
22 to seven days; is that right?

23 A. I have Appendix a.

24 Q. Try a-5.

1 A. A-5? That is at the very end of this
2 appendix and a-5 -- okay. I'm there.

3 Q. If you don't know, just tell me you don't
4 know.

5 Do you know whether or not in New
6 Hampshire, you can actually leave putrescible waste
7 on a transfer site floor for up to seven days?

8 MR. BLAZER: He's already testified he doesn't
9 know, Mr. Hearing officer.

10 THE HEARING OFFICER: Objection sustained.

11 THE WITNESS: I am not familiar with --

12 THE HEARING OFFICER: The objection is
13 sustained.

14 BY MR. PORTER:

15 Q. So isn't it true at this facility, that
16 that is not going to occur. Waste is going to be
17 removed from the tipping floor every day?

18 MR. BLAZER: Objection, asked and answered.

19 THE HEARING OFFICER: Objection overruled.

20 THE WITNESS: Yes.

21 BY MR. PORTER:

22 Q. And so -- well, strike that.

23 In Minnesota -- well, strike that.

24 Is it also true that in New Hampshire, a

1 waste facility can be as close as 50 feet from any
2 property line regardless of the use of property?

3 A. In what state?

4 Q. New Hampshire. The one in the article you
5 provided talks about leaving transfer stations
6 closed.

7 A. Well, I don't see any 50 foot number in
8 this table that you are referring to.

9 MR. BLAZER: Can we get a reference for the
10 record from where counsel is reading from?

11 THE HEARING OFFICER: I am not sure it is.
12 It's an open question if he knows or he doesn't
13 knows.

14 MR. PORTER: Correct.

15 MR. BLAZER: Well, if he is referring to the
16 exhibit that he is trying to use, I think it's fair
17 for the hearing body to know which section of the
18 exhibit he is referring to. If he is quoting
19 something else, then we should really know.

20 THE HEARING OFFICER: Objection overruled.

21 The question is do you know whether New
22 Hampshire has a 50 foot setback. If you don't
23 know, that's fine. I am assuming that is fine with
24 Mr. Porter as well.

1 MR. PORTER: I think he answered. Did you get
2 it?

3 THE HEARING OFFICER: I didn't hear it, so
4 please proceed.

5 BY MR. PORTER:

6 Q. Do you know if there is a 50 foot setback
7 in New Hampshire?

8 A. I do not know that.

9 Q. In Minnesota, is there any setback
10 requirement from residential or dwelling areas?

11 A. I do not know the setback requirement.

12 Q. Now, your report references quite a bit,
13 the Hennepin Energy Recovery Center, the HERC
14 facility.

15 Do you recall that?

16 A. Yes.

17 Q. And that facility is actually a waste
18 incinerator; isn't that right?

19 A. Correct.

20 Q. And your report admits that that facility
21 burns over 1,200 tons of waste per day which is
22 about 385,000 tons per year, right?

23 A. Yes.

24 Q. And that facility is situated right in the

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1 heart of Minneapolis, correct?

2 A. Yes.

3 Q. And you have some personal knowledge
4 concerning that waste incinerator?

5 A. Yes.

6 Q. Let me show you a document I will have
7 marked as Exhibit 11.

8 (Whereupon, Groot
9 Exhibit No. 11 was marked for
10 identification.)

11 BY MR. PORTER:

12 Q. What does Exhibit 11 depict --

13 MR. BLAZER: Objection, foundation.

14 BY MR. PORTER:

15 Q. -- if you know?

16 MR. BLAZER: We also don't know where this
17 document came from, who created it. We don't know
18 why it wasn't produced before now. We don't know
19 anything about this document.

20 THE HEARING OFFICER: Well, at this point,
21 answer the question -- Mr. McGinley, you can answer
22 the question if you know what this is a picture of.
23 If you don't, you don't.

24 THE WITNESS: Yes, I do know what this is.

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1 BY MR. PORTER:

2 Q. What is it?

3 A. It's a Google Maps photograph with the
4 center on the HERC facility.

5 Q. And the HERC facility is the facility that
6 is outlined in that blue marking; is that correct?

7 A. Yes.

8 Q. And, again, the HERC facility is a
9 municipal waste incinerator; is that right?

10 A. Yes.

11 Q. And that waste incinerator actually
12 creates energy; is that right?

13 A. Correct.

14 Q. What is that right next to the waste
15 incinerator?

16 A. It's the famous Twins ballpark, TCF
17 Stadium.

18 Q. Pardon?

19 A. TCF Stadium.

20 Q. And isn't it true that stadium holds about
21 40,000 people?

22 A. Yes.

23 Q. And about 3 million people visit it
24 annually; is that right?

1 A. Yes.

2 Q. And that stadium is right next door

3 -- strike that.

4 How close is that stadium to the HERC

5 transfer station referenced in your report

6 -- strike that.

7 How close is that stadium to the HERC

8 incinerator which is referenced in your report?

9 A. Close enough to stand on the upper deck of

10 the third base bleachers and throw a ball at an

11 incoming truck.

12 Q. It's adjacent; is that right?

13 A. Yes.

14 Q. And certainly within the 1,000 foot

15 setback that you have here in Illinois; is that

16 correct?

17 A. Correct.

18 Q. Now, isn't it true that at -- well, strike

19 that.

20 Is it your experience at this HERC

21 facility that led you to a conclusion that the

22 doors should be shut all the time at the transfer

23 station?

24 A. Yes, specifically this facility.

1 Q. And isn't it true that this incinerator
2 runs 24 hours a day, 7 days per week?

3 A. Yes.

4 Q. And because it's in an incinerator that
5 produces energy, it must always have a large
6 stockpile of waste available to keep the
7 incinerator operating; isn't that correct?

8 A. Yes, inside the building.

9 Q. And as a matter of fact, isn't it true
10 that at the HERC facility, there are literally
11 thousands of tons of waste always on site?

12 A. Yes.

13 Q. And isn't it true that the transfer
14 station at Groot usually is the most amount of
15 waste that will be on the facility is 40 tons?

16 A. Yes.

17 Q. So the HERC municipal waste incinerator
18 has over 20 times more waste on its tipping floor
19 at all times than the Groot facility will; is that
20 correct?

21 A. Yes.

22 Q. Furthermore, in Minnesota, isn't it true
23 that waste can be on that tipping floor for up to a
24 week before it has to be removed?

1 A. Correct.

2 Q. You'd also agree that the burning of that
3 waste creates odors and air quality issues that
4 don't exist at a transfer station, correct?

5 A. No.

6 Q. You don't agree that burning of waste
7 causes odors that are not going to be present at a
8 transfer station? Why not?

9 A. Well, the HERC incinerator is the air
10 control odor device for the garbage facility. It
11 takes in air off the tipping floor continuously and
12 incinerates it at elevated temperatures, different
13 from a scrubber or a biofilter or some other kind
14 of filter. So the incinerator itself is an air
15 cleaning device.

16 Q. But it's at that facility where there are
17 literally thousands of tons of waste on site at
18 all times, it's your experience there that it's
19 creating -- it's your opinion that the doors always
20 need to be closed at the Groot transfer station; is
21 that right?

22 A. Well, the HERC facility follows the EPA
23 guideline of an air vestibule where there is
24 fast-acting doors to open, the door goes into the

1 vestibule, the door closes in five seconds, and
2 then the next door opens. It's only because of the
3 fact-acting doors closed all of the time that odor
4 on home base and in the outfield and in the
5 bleachers does not smell.

6 Q. And are there going to be 3 million people
7 visiting the Groot facility?

8 A. I don't know how many.

9 Q. And you are aware that there are no
10 residences -- residential areas of dwelling within
11 1,000 feet of the Groot facility, right?

12 A. It appears that way on the map, correct.

13 Q. And since the HERC incinerator is in a
14 highly populated municipal area and has 20 times
15 more waste on site at all times, you would agree
16 that the odor control measures at the HERC facility
17 should necessarily be different than the odor
18 control measures at the Groot transfer station,
19 wouldn't you?

20 A. No.

21 Q. So in your opinion, every municipal waste
22 facility ought to use the exact same odor control
23 measures that are used at the HERC, right?

24 A. I would endorse the EPA's recommendations

1 for urban transfer stations which include closed
2 doors all the time and air filtration.

3 Q. You would agree that when it comes to
4 permitting facility, the U.S. EPA, the IEPA will
5 look at the facility and make a determination of
6 whether or not it affects the public health,
7 safety, and welfare, correct?

8 MR. BLAZER: Object to the relevance.

9 THE HEARING OFFICER: Objection overruled.

10 THE WITNESS: I don't know.

11 BY MR. PORTER:

12 Q. Because you have never been involved in
13 permitting a transfer station; is that right?

14 MR. BLAZER: Asked and answered.

15 THE HEARING OFFICER: Objection sustained.

16 MR. PORTER: If I may respond? I never asked
17 if he was involved in permitting of a transfer
18 station.

19 THE HEARING OFFICER: Objection overruled.

20 BY MR. PORTER:

21 Q. You have never been involved in permitting
22 a transfer station, have you?

23 A. In Illinois, correct, no.

24 Q. How about anywhere?

1 A. I've been involved with the discussions of
2 best management strategies for odor at a number of
3 facilities.

4 Q. Have you ever filed an application at a
5 permitting agency regarding a transfer station?

6 A. No.

7 Q. Isn't it true that in Illinois, air
8 scrubbers are not required at transfer stations?

9 MR. BLAZER: Asked and answered.

10 MR. PORTER: If I did, it's only because I
11 forgot.

12 THE HEARING OFFICER: Overruled. Honestly I
13 don't recall exactly whether that question was
14 asked or not.

15 THE WITNESS: I don't know if they are
16 required.

17 BY MR. PORTER:

18 Q. Isn't it true that no transfer stations in
19 Illinois currently use air scrubbers?

20 A. I do not know.

21 Q. You would agree that the transfer stations
22 at which waste is only held temporarily generally
23 create less odor issues than landfills, would you
24 not?

1 A. Correct.

2 MR. PORTER: I have nothing further.

3 Oh, may I have one moment before I rest?

4 THE HEARING OFFICER: Absolutely.

5 BY MR. PORTER:

6 Q. Isn't it true that in regard to this
7 application, there is a host agreement that
8 requires that facility not emit any noticeable
9 odors beyond the transfer facility?

10 A. I think I might have read that.

11 Q. And if indeed there is ever a problem with
12 odor --

13 THE HEARING OFFICER: I don't think he answered
14 your question, Mr. Porter. So now we are getting
15 into compound questions. Either restate it or have
16 it read back.

17 MR. PORTER: I guess I need the question read
18 back. I guess I missed --

19 THE HEARING OFFICER: There was actually no
20 answer. That was the problem.

21 MR. PORTER: I'm sorry.

22 THE HEARING OFFICER: He's asked to have the
23 question read back, so if you could read that, the
24 question right before he asked to have the question

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1 read back, Shelly.

2 (Whereupon, the record was read
3 back as follows:.

4 Question: Isn't it true that in
5 regard to this application, there is
6 a host agreement that requires that
7 facility not emit any noticeable
8 odors beyond the transfer facility?

9 Answer: I think I might have read
10 that.)

11 THE HEARING OFFICER: Oh, I'm sorry. Then I
12 heard it wrong. I apologize.

13 BY MR. PORTER:

14 Q. So wouldn't you agree that if there is
15 ever a problem with odor, the Groot facility can
16 certainly then close its doors for longer durations
17 or address those issues and is required to under
18 the host agreement?

19 MR. BLAZER: Object to the form of the
20 question, object to speculation, and probably a
21 half a dozen others.

22 THE HEARING OFFICER: Objection overruled.

23 THE WITNESS: I don't know the authority of the
24 host agreement nor the implication of the odor

1 regulation of Illinois.

2 BY MR. PORTER:

3 Q. Well, let me explain to you. The host
4 agreement is an agreement that Groot has --

5 MR. BLAZER: Is he asking a question or giving
6 a dissertation, Mr. Hearing Officer?

7 THE HEARING OFFICER: Yeah, I'm not sure that
8 you should be testifying.

9 MR. PORTER: I understand and agree.

10 BY MR. PORTER:

11 Q. If you were to learn that the village has
12 the right and authority to enforce a requirement
13 that the facility not emit any noticeable odor
14 beyond the transfer facility boundary, would that
15 have impacted your opinions?

16 A. No.

17 MR. PORTER: I have nothing further.

18 THE HEARING OFFICER: Let's take a five-minute
19 break.

20 (Whereupon, recess taken.)

21 THE HEARING OFFICER: We will reconvene. At
22 this point, Mr. Grossmark.

23

24

1 CROSS-EXAMINATION

2 BY MR. GROSSMARK:

3 Q. Good afternoon, sir.

4 Could you explain to us this notion of
5 -- is it negative pressure that is described either
6 in the applicant's application during testimony by
7 one of their retained witnesses or both?

8 A. We experience negative pressure when we
9 use a vacuum cleaner to clean our house. The
10 opening on the hose of the vacuum cleaner pulls air
11 in because there is a fan inside a vacuum cleaner
12 sucking air and blowing it out the bag or the
13 cyclone. So the negative pressure that is -- that
14 has been spoken about is the air being sucked in
15 right at the opening of that hose.

16 Q. And how does that notion apply in this
17 situation? As I understand it, the applicant is
18 suggesting that there will be some sort of negative
19 air pressure applied to their proposed building; is
20 that right?

21 A. Correct. All buildings have an exhaust
22 fan. This building, according to calculations, is
23 so large, that as Mr. Moose testified, it would
24 have a changing out of the whole air about four to

1 six times in one hour. He used the term four to
2 six air changes per hour, enough exhaust, so that
3 air would be going in to flush the building out
4 four to six air changes per hour.

5 Q. So there is some sort of a mechanical
6 system used at the building, the proposed building
7 that takes in air and then exhausts it, as they
8 suggest, through vents in the roof?

9 A. Vents, I believe Mr. Moose testified, on
10 the side of the building, but essentially side or
11 near the roof, fans.

12 Q. And they talked about the notion that if
13 you are outside the building, but close to it and
14 lit a match and then blew out the match and there
15 is a little smoke created, that smoke would be
16 drawn into the building? Is that what they're
17 saying?

18 A. If there was dead calm conditions, you
19 would very likely see that smoke be pulled in
20 because the calculations end up to be about 50 feet
21 per minute or some modest amount of air velocity
22 going into the building with all the doors open.

23 Q. And what's the reason for using this type
24 of negative air pressure system in this

1 application?

2 A. To hold as much odor inside the confines
3 of the building, so that the odor would not or
4 minimally escape through the doors. Unfortunately,
5 the downside is exhausting it out the roof at an
6 elevation that can be taken downwind. Without
7 filtration, it would be taken downwind.

8 Q. As I understand it, one of the choices I
9 think is the word you used, that a facility like
10 this would have is to put on something on -- what
11 is exhausting the air, I think the choices you
12 listed were air filters or scrubbers or biofilters?

13 A. Yes. Those were listed in the EPA manual,
14 date of 2003.

15 Q. So you are suggesting that if this
16 negative air pressure system is being used and
17 taking in air every four to six times per hour
18 exhausting the air, then one of these filters be
19 used to clean the air of odors before it's
20 exhausted, correct?

21 MR. PORTER: Objection, misstates his prior
22 testimony. He specifically testified he did not
23 consider what particular choices should be or
24 should not be used.

1 THE HEARING OFFICER: Objection overruled.

2 BY MR. GROSSMARK:

3 Q. You can answer the question, sir.

4 A. As I attempted to state earlier and I was
5 explaining what is in the EPA manual, there's
6 several options available, carbon filtrations,
7 scrubbers, or biofilters to consume or hold the
8 odor to prevent it from going downwind.

9 Q. So the air would be exhausted per one of
10 these options through one of these filters or
11 scrubbers without the odors?

12 A. Yes.

13 Q. Could you tell us what these options are,
14 describe them for us briefly? How do they work?

15 A. In basic odor engineering, the carbon
16 filters would work just as we know carbon filters
17 remove odors from filters worn on respirators where
18 there is an atmosphere that is cleaned before
19 inhaling.

20 Scrubbers are essentially air washers,
21 water washing the air laden with the garbage odor.

22 And biofilters are filters where wood
23 chips or other material has biology growing on the
24 wood chips that consume the odor as the air is

1 passed through the media.

2 Q. Let's take them one at a time.

3 For example, you are saying that the
4 carbon filter, when the air goes through the
5 carbon, the carbon retains the odor and the air
6 passes through it and is exhausted?

7 A. Yes.

8 Q. Do you know how difficult it is or costly
9 it is to install that type of filter, carbon filter
10 in this type of situation?

11 A. No, I did not do a value engineering for
12 specifically carbon filters.

13 Q. Can you answer that question for
14 biofilters or the other type of water scrubbers?

15 A. I did not do value engineering for the
16 scrubbers or the biofilters, however, in the field
17 of odor engineers, biofilters are typically the
18 least costly of those three choices.

19 Q. What are odors? And I think in that
20 question, I think of -- and I don't know, but
21 science tells me that there is gases, liquids, and
22 solids.

23 Are odors -- I assume -- what are odors?
24 Can you categorize those three types of things?

1 A. Chemistry in the air that we inhale and we
2 say, oh, something is in the air, I like it, I
3 don't like it. Odor typically has a negative
4 connotation, one of the chemical molecules in the
5 air that humans have an aversion to.

6 Q. Can odors be gases?

7 A. The chemistry, the chemical compounds is
8 in the gas of air, so air is the gas, the chemical
9 molecules with the air and inhaled it becomes an
10 odor. The chemistry over there in a pile of
11 garbage is not odor. If it comes to my nose, it
12 becomes odor as a human perceives.

13 Q. Can be a gas, correct?

14 A. Yes.

15 Q. Can it be a solid articulate of some sort?

16 A. Some chemical molecules can absorb onto
17 particles and particle dust can carry downwind and
18 then someone can smell the chemicals coming off of
19 those particles.

20 Q. So in order to be a gas or a particle,
21 correct?

22 A. Correct.

23 Q. Can it be a liquid?

24 A. Well, we know that what we flush in the

1 toilet is odorous only because the chemicals are
2 coming out of the water and in the air of the
3 bathroom.

4 Q. So it can be a liquid, but it's in some
5 sort of a mist form of some sort?

6 A. It's a -- it can be carried by the air
7 liquid or solids.

8 Q. Thank you.

9 I think you were asked quite a few
10 questions about this type of door. Is the issue
11 not so much the type of door, but that it's only
12 going to be -- only planned to be closed, doors are
13 only planned to be closed from 4:00 a.m. to
14 8:00 a.m.; is that right?

15 A. Correct. Dead on, correct.

16 Q. So if the doors are open from 8:00 a.m. to
17 the following day 4:00 a.m., how does that affect,
18 if it does, or how does that impact, if it does,
19 this planned operation of this negative pressure
20 apply to the building?

21 A. If the negative pressure was a higher
22 rate, it would hold in air even when the doors are
23 open, however, when the wind is coming from one
24 direction, it's -- the wind is going to disregard

1 the negative pressure and blow as a tunnel through
2 the building. In one door, out the other.

3 MR. PORTER: Objection, foundation, move to
4 strike.

5 THE HEARING OFFICER: Overruled.

6 BY MR. GROSSMARK:

7 Q. In the application and during any
8 testimony that you've read, do you recall the
9 actual calculations being submitted in this
10 proceeding that evaluates or describes the negative
11 pressure both when the doors are closed and when
12 they are open?

13 A. No, only the air exchange rate was
14 mentioned by Mr. Moose in his testimony.

15 Q. So the application, unless they can show
16 it to us and I'd be interested in seeing it,
17 doesn't appear to include information -- in the
18 information submitted at this hearing, it doesn't
19 appear to include information about the size of the
20 system that is going to be necessary to apply this
21 negative air pressure to the building both when the
22 doors are closed and when the doors are open?

23 A. Correct. That calculation would need to
24 be conducted by a mechanical engineer, professional

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1 registered in the state of Illinois.

2 Q. And we'd appreciate if that could be
3 pointed out to us, but we haven't seen it yet,
4 correct? It could be in there, but we haven't seen
5 it?

6 A. I could not find it and we asked a
7 professional mechanical engineer to look for it and
8 they could not find it, but it still could be
9 there.

10 Q. And even if that information was provided
11 and we had the size of the system and all the data
12 necessary to know that the system would apply the
13 negative pressure with the doors both open and
14 closed, there is the additional factor of the wind
15 blowing and overriding all those calculations, it
16 has that potential, correct?

17 A. Yes.

18 Q. I am not sure I understood it, but I think
19 I heard you answer a question about the plan to
20 exchange the air four to six times per hour, and I
21 think you said that was insufficient?

22 A. I did three simple mathematical
23 calculations, but they are not in the report
24 because they would be mechanical engineering

1 calculations required of a professional engineer
2 registered in the state of Illinois.

3 I made that comment suggesting that
4 someone should do those calculations to find out
5 what this four to six air change an hour statement
6 is all about.

7 Q. To determine whether that is adequate to
8 prevent odors from escaping from doors in nooks and
9 crannies, so that air odors can be collected and
10 discharged, correct?

11 A. Yes.

12 Q. If we look at two situations, there is no
13 negative air pressure applied to the building and
14 odors are coming out of the building from wherever
15 versus negative air pressure being applied to the
16 building and the odors coming out from the planned
17 discharge locations whether it's through the roof
18 or the side of the building, do you have different
19 amounts of odor or is it all the same amount of
20 odor in both situations?

21 A. Odor -- air coming out the doors would be
22 coming out powered by the wind at low wind and high
23 wind conditions. Odors coming out with the air out
24 of ventilation would be a point source that is

1 going to be projected straight up or sideways at an
2 elevation of several meters high carried by the
3 wind, then carried by the wind.

4 Q. My question, sir, is without the negative
5 air pressure applied and with the negative air
6 pressure applied, in those two situations, are you
7 dealing with the same amount of odors, you are just
8 -- they are just being corrected at different
9 points?

10 A. Correct.

11 Q. You were asked questions about the
12 predominant wind direction.

13 Can you tell us why that matters?

14 A. Wind from one direction, the west, would
15 come on to the property and if the doors are open,
16 blow into the building with the doors open on that
17 side. And if the wind is strong enough and
18 depending upon the wind strong enough in terms of
19 velocity, the wind may be pulled out the other side
20 in spite of the negative pressure.

21 Q. So if the wind is hitting the building
22 parallel or perpendicular, that makes a difference?

23 A. Positioning the building is a factor in
24 design in potential or coincidental.

1 Q. And that could also have an impact on
2 predominant wind condition or wind conditions or
3 where wind is blowing can also have an impact on
4 where the odors are discharged out of the building
5 either on the top of the building or the side of
6 the building, it could also have an impact on that,
7 I suppose?

8 A. To some extent, yes.

9 Q. But the application and the information
10 submitted by the applicant at the hearing, they
11 would have to show us where the information is that
12 actually discusses that and discloses or evaluates
13 the dispersion of the odors, correct?

14 A. Yes.

15 Q. There was some discussion of odor
16 neutralizers and that they have even been endorsed
17 by the EPA. I think there was mention of that.

18 What is an odor neutralizer?

19 A. It is a water solution with additives that
20 create a small droplet when the water is sprayed
21 and one of the additives are compounds that cling
22 to absorb or interact with the chemical molecules
23 that is odor in the air.

24 Q. Is being absorbed and interacting the same
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1 thing or two different things?

2 A. Depending upon the sales literature of the
3 company that is selling the product, one mechanism
4 may predominate or the other may be the primary
5 marketing feature presented to the customer.

6 Q. Well, what is the difference between
7 something that absorbs the odor or interacting with
8 it, if there's a difference, if you know?

9 A. At the small level of droplets, there's
10 little difference except for some other
11 terminology. That gets to be high science with
12 aerosols and things like that.

13 Q. So these materials, whether they absorb or
14 interact, they capture the odor?

15 A. Well, the marketing literature says
16 capture the odor. Really the chemical molecule
17 that is odor in our nose could be absorbing them
18 into the water and/or reacting in some way with the
19 chemical that is being sold by the company, the
20 odor counteract.

21 Q. Does the neutralizer have an odor itself?

22 A. Many do and companies that sell them claim
23 that it's part of the chemical or it's part of the
24 tracer smell that they add, so they know where it

1 is or very few of the companies basically, except
2 for the fact that it can mask the odor, that is
3 attempting to be treated.

4 Q. Is there a difference between neutralizing
5 the odor and masking an odor?

6 A. Masking is covering, putting a blanket on
7 it. Treating is taking it away. Masking it with
8 putting a cover on it would just be temporary.

9 Q. Sir, I'm going to ask you some questions
10 about Groot Exhibit No. 10. I think that's the
11 excerpts from an EPA guidance document that you
12 testified about; is that right?

13 A. Yes, I see that.

14 Q. And looking again at Page 5 in the section
15 about odor.

16 A. Page 5 of what? I'm sorry.

17 Q. Page 5 in the section regarding odor is
18 the section I am going to be asking you some
19 questions about.

20 A. Of the Illinois regulation? Sorry.

21 Q. No, no. I'm sorry, sir. I think it was,
22 if I am not mistaken, Groot Exhibit No. 10, Groot
23 Transfer Station: Citizens Make the Difference,
24 EPA guidance document.

1 A. Okay. What page?

2 Q. It's Page 5 and there is a Bates stamp 29.

3 A. Yes, I see it.

4 Q. In that first paragraph in the section
5 labeled odor, the last sentence appears to state
6 that exhaust fans with air filters and rooftop
7 exhaust vents can reduce off site odor impacts.

8 A. Yes.

9 Q. So that's something that EPA is apparently
10 suggesting?

11 A. Yes.

12 Q. And then looking at that second paragraph
13 about operating procedures, I think you might have
14 testified that the applicant is going to do all
15 four of the things listed in that bullet point and
16 I wanted to ask you questions about that.

17 In the second bullet, it talks about the
18 tipping floor or waste being removed from the
19 tipping floor each day, so the services can be
20 swept clean and washed down.

21 Is that what it says?

22 A. Yes.

23 Q. Do you know what that references, washes
24 down? What does that mean?

1 A. I observe with hoses, high pressure hoses
2 literally rinsing and washing to the drain system,
3 collection system.

4 Q. Is any type -- well, what is used to wash
5 it down? Is it water, is it water and something
6 else?

7 A. It would be the choice of the facility
8 operator.

9 Q. Well, would there be a difference between
10 water on the one hand and on the other hand, water
11 plus soap or disinfectant or some sort of material
12 that would be a cleaning material in addition to
13 water?

14 A. Certainly those latter items added to
15 water are helpful, but we have all learned with our
16 rental or purchases of high pressure washers for
17 our own personal use at home, high pressure water
18 can do a decent job without the addition of
19 additives.

20 Q. Now, is it your understanding that what
21 would be done every day on the proposed transfer
22 station tipping floor is cleared of waste, that
23 there would be mechanical sweeping which involves a
24 mechanical sweeper that might apply some amount of

1 water? Is that what they are talking about here
2 when they are talking about -- the EPA is talking
3 about having washed down the floors?

4 MR. PORTER: Objection, compound.

5 BY MR. GROSSMARK:

6 Q. Do you understand the question?

7 THE HEARING OFFICER: Let him finish the
8 objection.

9 Mr. Porter, I'm sorry, go ahead.

10 MR. PORTER: Compound and foundation.

11 THE HEARING OFFICER: I will sustain the
12 objection to foundation.

13 BY MR. GROSSMAN:

14 Q. Do you recall what, if anything, was
15 stated in the application or in the information
16 submitted in this hearing about the procedure that
17 would be followed when the municipal waste would be
18 cleared from the tipping floor as proposed by the
19 applicant?

20 A. I don't recall the method that was
21 described in cleaning the floor.

22 Q. Sir, do you have a copy of the
23 application?

24 A. Not in front of me.

1 MR. GROSSMARK: Mr. Hearing Officer, can I give
2 him a copy?

3 THE HEARING OFFICER: Yes.

4 BY MR. GROSSMARK:

5 Q. Sir, I am going to give you the copy that
6 I printed out from the village's web site.

7 Sir, I am going to ask you to turn to Page
8 2.4-9.

9 THE HEARING OFFICER: Mr. Grossmark, do you
10 want to help him find the right page?

11 THE WITNESS: Thank you.

12 BY MR. GROSSMARK:

13 Q. You're welcome.

14 At that section of the application, it
15 states in part daily cleaning procedures will
16 include cleaning of the tipping floor and transfer
17 trailer loading bays and cleaning of interior
18 traffic -- that drives outside the transfer
19 building. I am just focusing on the first part.

20 And then on the next page, it says that on
21 a daily basis, the tipping floor will be cleared of
22 waste and the tipping floor and transfer trailer
23 loading bays will be mechanically swept daily to
24 prevent the accumulation of debris or residues. In
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1 addition, the push-walls will be periodically
2 cleaned with pressure washer. Disinfectant may be
3 used with the water to control odors if necessary.

4 Borrowing this question from another
5 lawyer here, did I read that correctly?

6 A. Yes.

7 Q. And so the push-walls will be periodically
8 cleaned with a pressure washer, correct?

9 A. Yes.

10 Q. It doesn't say daily, though. It's some
11 frequency. It appears to indicate some frequency
12 less than daily?

13 A. It says periodically. I don't know.

14 Q. They use the word "daily." They use the
15 word "periodically," so it appears that
16 periodically means less frequently than daily.

17 Is that a fair reading?

18 A. I --

19 Q. We don't know?

20 A. -- would have to talk to an English major
21 about that.

22 Q. We don't know what periodically means,
23 correct?

24 A. Correct.

1 Q. But it's the push-walls, not the floors
2 that will be periodically washed with the pressure
3 washer?

4 MR. PORTER: Objection, misstates evidence in
5 the record.

6 MR. SECHEN: Also asked and answered.

7 MR. PORTER: The street sweepers that will be
8 used uses water.

9 THE HEARING OFFICER: Objection overruled.

10 MR. GROSSMARK: May I have the question read,
11 please.

12 (Whereupon, the record was read
13 back as follows:

14 Question: But it's the push-walls,
15 not the floors that will be
16 periodically washed with the pressure
17 washer?)

18 THE WITNESS: Correct.

19 BY MR. GROSSMARK:

20 Q. And they use the word "daily" in the
21 application and "periodically."

22 We may not know what periodically means
23 based on the application correct?

24 A. Correct.

1 Q. And you read Mr. Moose's testimony in this
2 case, you read the transcript?

3 A. Only portions that referred to the air
4 flow.

5 Q. Turning back to Groot Exhibit No. 10. In
6 bullet number two, again, it says remove all waste
7 from the tipping floor by the end of each operating
8 day, so that these surfaces can be swept clean and
9 washed down, correct?

10 A. Yes.

11 Q. And so they are going to be -- they plan
12 to use this mechanical sweeping that apparently
13 uses water, but not the power washing that they
14 suggest for the push-walls, correct?

15 A. Correct.

16 Q. The third bullet point says, "good
17 housekeeping" measures include regular cleaning and
18 disinfecting of services and equipment that come
19 into contact with waste.

20 So that is something that is not being
21 suggested at least in the application because the
22 disinfectant will be used only on the push-walls if
23 necessary when they periodically pressure wash the
24 push-walls, correct?

1 A. Correct.

2 MR. PORTER: Object, move to strike. I don't
3 believe this witness has the foundation to
4 know --

5 THE HEARING OFFICER: Can you speak louder,
6 Mr. Porter? I'm sorry.

7 MR. PORTER: Object and move to strike. This
8 witness has testified that he didn't read the
9 entire application and I don't believe he knows or
10 hasn't laid the foundation to show that he has the
11 sufficient knowledge to testify as to what the
12 specific application did.

13 THE HEARING OFFICER: Can you read the
14 question.

15 (Whereupon, the record was read back
16 as follows:

17 Question: The third bullet point
18 says, "good housekeeping" measures
19 include regular cleaning and
20 disinfecting of services and
21 equipment that come into contact with
22 waste?

23 So that is something that is not
24 being suggested at least in the

1 application because the disinfectant
2 will be used only on the push-walls
3 if necessary when they periodically
4 pressure wash the push-walls,
5 correct?)

6 THE HEARING OFFICER: I will let the answer
7 stand. I think it's clear, however, that
8 Mr. Porter's point of -- this witness has not
9 reviewed all of the application, so the application
10 stands for itself. Whatever it says, it says. But
11 I will let the answer stand at this point.

12 BY MR. GROSSMARK:

13 Q. So to the extent that you testified
14 earlier that all four of these operational items
15 listed in this exhibit have been or will be met by
16 the applicant may not be completely consistent with
17 what you just testified to because we had a couple
18 examples at least where they do not plan at least
19 as set out in the application to do all four of
20 those things completely, correct?

21 MR. PORTER: Objection, form.

22 THE HEARING OFFICER: Objection sustained.

23 THE WITNESS: Correct.

24 THE HEARING OFFICER: No. There is no question

1 pending.

2 THE WITNESS: Sorry.

3 MR. PORTER: I realize it's somewhat silly, but
4 I move to strike the response.

5 THE HEARING OFFICER: The response is stricken.

6 BY MR. GROSSMARK:

7 Q. We just discussed at least a couple of
8 examples regarding washing down surfaces and
9 regular cleaning and disinfecting of services that
10 is not planned and is not going to be done as far
11 as the application goes; is that correct?

12 A. Correct, if we read these things to the
13 letter exactly as you're pointing out.

14 Q. In your report, part of it is Appendix A
15 that lists state transfer station regulations,
16 correct?

17 A. I'm not --

18 Q. One of the exhibits to your report is a
19 list of different transfer station rules and
20 regulations in different states?

21 A. Yes.

22 Q. And you were asked questions about the
23 New Hampshire law, and I think the question was
24 something to the effect that New Hampshire

1 putrescible material be kept at a transfer station
2 maybe on the tipping floor for a week. And I think
3 your answer was you weren't sure.

4 But if you look at --

5 MR. PORTER: I object. The witness testified
6 that he didn't know the regulation and his document
7 speaks for itself. To just have him read it into
8 the record the attachment to the U.S. EPA form adds
9 nothing to the conversation.

10 MR. GROSSMARK: Well, Your Honor, I think
11 -- Mr. Luetkehans, I think it does add something
12 because the way the question was posed it
13 inaccurately asks the question about information
14 that is in this exhibit and it leaves an inaccurate
15 impression perhaps with the village.

16 THE HEARING OFFICER: Objection overruled. You
17 can finish your question or restate your question.

18 BY MR. GROSSMARK:

19 Q. So in your exhibit, does it state that in
20 New Hampshire under storage restrictions, it says,
21 yes, meaning there would be storage restrictions,
22 remove putrescibles within one week or before
23 producing an odor?

24 A. If that's -- I don't see that exact

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1 location, but if that's what it is.

2 Q. Look at Page A4 under New Hampshire and I
3 think you go across that Page A4 on to page A5. On
4 the top of the column, it says storage
5 restrictions. It's the first column on the left
6 side of A5.

7 MR. PORTER: I am going to renew the objection.
8 I asked him this very question and he said he
9 didn't know what the regulations were in New
10 Hampshire.

11 THE HEARING OFFICER: Objection overruled.

12 BY MR. GROSSMARK:

13 Q. Do you understand the question in reading
14 the chart?

15 A. Yes. I apologize. That column was
16 underneath a staple and I see that clearly.

17 Q. So the proper question would have been in
18 New Hampshire, is the rule that you must remove
19 PUTRESCIBLE within one week, that is accurate, or
20 before producing an odor which means you can't keep
21 it there a week if after one day it's producing an
22 odor?

23 MR. PORTER: I'll object.

24 THE HEARING OFFICER: Objection sustained for a
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1 lot of different reasons. We will just leave it at
2 that.

3 BY MR. GROSSMARK:

4 Q. But the rule in New Hampshire per this
5 chart is that as far as storage restrictions, they
6 have them and there must be putrescible materials
7 removed within one week or before producing an
8 odor?

9 A. Correct.

10 Q. Do you know whether the 1,000 foot setback
11 requirement under Illinois law is to address odors,
12 to permit odors to leave a site, and it's okay as
13 long as they don't go past 1,000 feet?

14 A. I do not know if the 1,000 foot setback is
15 solely for odors, specifically for odors. I would
16 have to read that again to clarify that.

17 Q. Okay. Thank you.

18 Is the proposed operation going to be
19 conducted in a building in part to control odors?

20 A. I didn't understand what you meant by
21 -- what operation.

22 Q. Is the proposed transfer station operation
23 regarding municipal waste in part done enclosed to
24 control odors?

1 A. Yes.

2 Q. If you know, would regularly cleaning
3 surfaces including a tipping floor where municipal
4 wastes are placed and managed and handled regularly
5 cleaning it with power washing with water and
6 regularly cleaning with some sort of detergent or
7 disinfectant help control odors?

8 A. Yes.

9 MR. GROSSMARK: Thank you, sir. I don't have
10 any other questions right now.

11 THE HEARING OFFICER: Mr. Clark?

12 CROSS-EXAMINATION

13 BY MR. CLARK:

14 Q. Good evening, Mr. McGinley. Just a couple
15 questions.

16 I want to make sure that we understand
17 your testimony completely with regard to your
18 recommendations on using the doors that open and
19 close.

20 Specifically, is it your recommendation
21 that every time a vehicle comes to deposit a load
22 of waste on the tipping floor, that the door open
23 and allow the vehicle to come in and then close?

24 A. Yes.

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1 Q. And then as the vehicle exits the
2 building, the same would happen, the door would
3 open, the vehicle would go out, and then close
4 again?

5 A. Yes.

6 Q. So that is your recommendation with regard
7 to collection vehicles.

8 Is that a fair statement?

9 A. Yes.

10 Q. Does the same hold true for the transfer
11 trailers?

12 A. Yes.

13 Q. The transfer loading area should be -- the
14 door should be closed until a vehicle enters and
15 then it closes again, correct?

16 A. Yes.

17 Q. Then load it and then as it gets ready to
18 go out, the door would open, the vehicle would
19 exit, and then the door would close again, correct?

20 A. Yes.

21 Q. Did you hear Mr. Moose's testimony with
22 regard to occasionally parking a loaded transfer
23 trailer outside for possibly up to two hours?

24 A. I don't recall that part of the testimony.

1 Q. Would you recommend that any transfer
2 trailers -- any loaded transfer trailers be parked
3 outside?

4 A. If they were uncovered, it would not be a
5 smart thing to do, odor management. If they were
6 covered with the rollover tarp, that would reduce
7 because you are containing the movement of air.

8 Q. So it wouldn't be a significant source of
9 odor if it was there for up to a couple of hours as
10 long as it had a good cover, correct?

11 A. Correct.

12 Q. What type of a cover would you recommend
13 for that?

14 A. I know that my recommendation, whatever it
15 would be, is irrelevant to what the industry
16 commonly uses and I've seen netting and I've seen
17 impermeable tarps. Certainly the impermeable tarp
18 would be better than an open net.

19 MR. CLARK: Thank you. That's all I have.

20 THE HEARING OFFICER: I have a couple follow up
21 questions.

22 Mr. Sechen, go ahead. I apologize.

23 MR. SECHEN: Does Mr. Smith have anything?

24 THE HEARING OFFICER: I don't think Mr. Smith

1 has any questions of this witness.

2 MR. SMITH: Especially because I didn't hear
3 his testimony.

4 CROSS-EXAMINATION

5 BY MR. SECHEN:

6 Q. Mr. McGinley, how many transfer stations?

7 AUDIENCE MEMBER: Use a mic, please.

8 BY MR. SECHEN:

9 Q. Can you tell me how many transfer stations
10 you have been to that have been cited for excessive
11 odor violations by EPA?

12 A. I have been to a number of transfer
13 stations, but I do not know their record of
14 compliance.

15 Q. So you don't know whether they have been
16 cited with odor violations?

17 A. Not by the U.S. EPA.

18 Q. By the state EPA?

19 A. The transfer station at the Port of San
20 Francisco Pier 94 operated by Recology has been put
21 on notice from time to time by the Port Authority,
22 however, it is a leasing violation not related to
23 odor release -- leasing violation, not according to
24 a state or city or federal law.

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1 Q. I take it you went to that facility to
2 investigate that leasing violation?

3 A. I was given a tour of a number of
4 facilities that the Port Authority leases property
5 to to assess their relative importance in odor
6 issues in the community.

7 Q. And, again, that is a leasing issue
8 regarding a lease; is that correct?

9 A. Like a permit, like a permit like this.

10 Q. Like a permit?

11 A. Yes.

12 Q. Which is it, a lease or a permit?

13 A. As I recall, the contractual things I saw,
14 it appeared to be a lease that gave them some
15 licensing ability. You get complicated when you
16 are dealing with port authorities.

17 Q. So have you read that lease?

18 A. Not for Recology.

19 Q. Now, you testified I believe, and you can
20 correct me, please, if I'm wrong, that you have not
21 been to the subject site?

22 A. Correct.

23 Q. Are you aware of the land uses surrounding
24 the subject site?

1 A. Yes, to some extent.

2 Q. Are you aware that the nearest residential
3 use is over 1,000 feet away?

4 A. Correct.

5 Q. Are you aware that there is industrial
6 property located between the subject site and that
7 residential use?

8 A. Yes.

9 Q. Now, there are pollution control board
10 regulations that cover odor; is that correct?

11 A. What jurisdiction are you speaking?.

12 Q. Pollution control board.

13 THE HEARING OFFICER: He is asking what state.

14 THE WITNESS: I'm sorry?

15 BY MR. SECHEN:

16 Q. Let me withdraw the question and ask this.

17 Are you aware that in Illinois, we have a
18 pollution control board?

19 A. Yes, I am. I'm aware that the EPA,
20 Illinois's EPA has regulations regarding odor.

21 MR. PORTER: Objection.

22 MR. SECHEN: That is nonresponsive. I ask that
23 the Hearing Officer strike it and that he answer
24 the question that I asked.

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1 THE HEARING OFFICER: Reask the question.

2 BY MR. SECHEN:

3 Q. Are you aware that Illinois has pollution
4 control board?

5 A. Yes.

6 Q. Are you aware of the functions of that
7 pollution control board?

8 A. Not of the exact functions.

9 Q. Well, let's ask you this. Are you aware
10 that the pollution control board passes
11 regulations?

12 A. Yes.

13 Q. Are you aware that Illinois EPA does not?

14 A. Well, I only know that the regulation that
15 I referred to on item 10, Illinois Environmental
16 protection Air Pollution Chapter, Pollution Control
17 Board. I don't know the administrative structure
18 of the Illinois EPA.

19 Q. So then specifically, you don't know
20 whether Illinois EPA passes regulations?

21 A. No, I don't know the regulatory structure
22 in Illinois.

23 Q. I take it that then you don't know whether
24 Illinois EPA passes regulations like the third

1 time. Can I have the answer?

2 MR. BLAZER: I believe --

3 THE HEARING OFFICER: He said he didn't know.

4 He said he didn't know the structure and didn't

5 know.

6 BY MR. SECHEN:

7 Q. Well, let's get to the regulation that you

8 put in your report, 35 Illinois Administrative Code

9 245.121.

10 You put that in your report, didn't you?

11 A. Yes.

12 Q. And you put Subsection A in your report,

13 didn't you?

14 A. Correct.

15 Q. And that particular regulation refers to

16 residential, recreational, institutional, retail,

17 hotel, and other premises where odor is detectable,

18 et cetera?

19 A. Yes.

20 Q. You didn't put Subsection B in your

21 report, did you?

22 A. Correct.

23 Q. And that refers to an industrial premises

24 where odor is detectable, correct?

1 A. Correct.

2 Q. You're not telling us, are you, that in
3 your opinion, the residential property that's set
4 back over 1,000 feet is going to suffer an odor
5 violation under that regulation?

6 A. I have no opinion on that question.

7 Q. In fact, you can't even tell us whether
8 there will be a perceptible odor at that location,
9 can you?

10 A. Correct.

11 Q. And the same holds true for the
12 residential property in between the transfer
13 station -- excuse me -- for the industrial property
14 in between the transfer station and that
15 residential use; isn't that correct?

16 A. Correct.

17 Q. Are you familiar with Groot Industries,
18 the applicant in this matter?

19 THE HEARING OFFICER: Mr. Sechen, how much
20 longer do you have of this witness?

21 MR. SECHEN: Probably ten minutes.

22 THE HEARING OFFICER: Let's take a dinner break
23 and come back at 7:00 and continue.

24 Anybody here for public comment?

1 Mr. Smith, you will be here at 7:00?

2 MR. SMITH: Yes.

3 THE HEARING OFFICER: Also, Mr. Porter,
4 Mr. Smith has additional questions he would like to
5 direct towards Mr. Moose. I am not advising that
6 you have to. I am asking that you consider whether
7 or not you wish to give Mr. Smith only those
8 follow-up questions and I am asking you now to
9 think about it over the break and to advise us at
10 7:00 o'clock when we come back.

11 If you wish to talk to Mr. Smith about
12 what those particular questions are, feel free, but
13 I am not directing you to do it. I am just saying
14 he would like it and that is your call. I am not
15 going to force you, Mr. Moose, to answer this
16 question.

17 MR. PORTER: Is there going to be any redirect?

18 THE HEARING OFFICER: No.

19 MR. PORTER: Or recross?

20 THE HEARING OFFICER: No. It's just going to
21 be Mr. Smith's questions and no more. But you have
22 time to think about it. I am not asking for it
23 now. I wanted to give you that time and not
24 surprise you at 7:00 o'clock and say he has these

1 questions.

2 With that, we will recess until
3 7:00 o'clock at which time, we will start with
4 public comment.

5 Thank you.

6 (Whereupon, further proceedings.
7 were adjourned to 9/30/13 to the
8 time of 7:00 o'clock p.m.)

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4

5 SHELLY S. RUBAS, being first duly sworn,
6 on oath says that she is a court reporter doing
7 business in the City of Chicago; and that she
8 reported in shorthand the proceedings of said
9 hearing, and that the foregoing is a true and
10 correct transcript of her shorthand notes so taken
11 as aforesaid, and contains the proceedings given at
12 said hearing.

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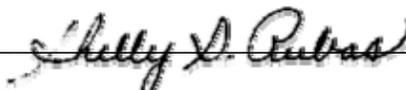
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Certified Shorthand Reporter



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