

1 BEFORE THE POLLUTION CONTROL BOARD

2 STATE OF ILLINOIS

3

4

5 PEOPLE OF THE STATE OF ILLINOIS,

6 Claimant,

7 -vs-

NO. PCB 95-091

8 BELL SPORTS, INC., and WASTE HAULING
9 LANDFILL, INC., and WASTE HAULING, INC.,

9

 Respondents;

10

11 WASTE HAULING LANDFILL, INC. and
12 WASTE HAULING, INC.,

13 Cross-Claimants,

14 -vs-

15 BELL SPORTS, INC.,

16 Cross-Respondent.

17

18

19 Hearing held, pursuant to Notice, on the 4th day
20 of December, 1996, at the hour of 10:00 a.m., at 600
21 South Second Street, Springfield, Illinois, before
22 Mr. Michael Wallace, duly appointed Hearing Officer.

23

24

 TRANSCRIPT OF PROCEEDINGS

 CAPITOL REPORTING SERVICE, INC.
 SPRINGFIELD, ILLINOIS 217-525-6167

1 APPEARANCES:

2 MR. THOMAS DAVIS
3 Chief, Environmental Bureau, and
4 MS. MARIA M. MENOTTI
5 Assistant Attorney General
6 Environmental Bureau
7 500 South Second Street
8 Springfield, Illinois 62706

9 on behalf of the People of the
10 State of Illinois;

11 MR. GREGORY RICHARDSON
12 Division of Legal Counsel
13 Illinois Environmental Protection Agency
14 2200 Churchill Road
15 Springfield, Illinois

16 on behalf of the IEPA;

17 SIDLEY & AUSTIN, by
18 MR. BYRON F. TAYLOR and
19 MR. IRA JACK NAHMOD
20 Attorneys at Law
21 One First National Plaza
22 Chicago, Illinois 60603

23 on behalf of Bell Sports, Inc.;

24 WEBBER & THIES, by
MR. PHILLIP R. VAN NESS
Attorney at Law
202 Lincoln Square
P.O. Box 189
Urbana, Illinois 61801

and
WILLOUGHBY, LATSHAW & HOPKINS, by
MR. K. MICHAEL LATSHAW
Attorney at Law
502 West Prairie
P.O. Box 1336
Decatur, Illinois 62525

on behalf of Waste Hauling Landfill, Inc.
and Waste Hauling, Inc.

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1 HEARING OFFICER: Pursuant to the direction
2 of the Illinois Pollution Control Board, I now call
3 Docket PCB 95-91. This is the People of the State of
4 Illinois versus Bell Sports, Inc., Waste Hauling
5 Landfill, Inc., and Waste Hauling, Inc.

6 If I could have appearances for the record,
7 please. For the People.

8 MR. DAVIS: On behalf of the Attorney
9 General's office and the People of the State of
10 Illinois, I'm Thomas Davis.

11 MS. MENOTTI: Maria Menotti.

12 HEARING OFFICER: And for Bell Sports.

13 MR. TAYLOR: Representing Bell Sports, I'm
14 Byron Taylor.

15 MR. NAHMOD: Jack Nahmod.

16 HEARING OFFICER: And for Waste Hauling
17 Landfill, Inc. and Waste Hauling.

18 MR. VAN NESS: My name is Phillip Van Ness.

19 MR. LATSHAW: And Michael Latshaw.

20 HEARING OFFICER: Thank you.

21 Let the record reflect there are no other
22 appearances at today's hearing.

23 Although, you're expecting Mr. Richardson from the
24 Agency.

1 MR. DAVIS: Yes, Greg Richardson from the
2 Illinois EPA.

3 HEARING OFFICER: Preliminarily, this is an
4 enforcement action filed by the People of the State of
5 Illinois versus the Respondents. This matter comes on
6 for hearing at the request of Waste Hauling Landfill,
7 Inc. and Waste Hauling, Inc. in response to the
8 stipulation filed between the Attorney General and the
9 Respondent Bell Sports, Inc.

10 The hearing is required under Section 31(a)(2) of
11 the Environmental Protection Act and that gives
12 interested persons the ability to request a hearing on
13 a stipulation, notwithstanding the fact that the Act
14 allows stipulations to be entered by the Board without
15 hearing. Waste Hauling Landfill, Inc. and Waste
16 Hauling, Inc. did make a proper request, and this
17 hearing was scheduled.

18 We did have a prehearing conference to try to iron
19 out some of the mechanics of this hearing. And I have
20 received statements -- case statements from the
21 parties. Thank you for filing those. Those should be
22 helpful to the Board.

23 These hearings on stipulations are also covered by
24 Section 103.180 of the Board's rules.

1 And I think preliminarily, if anyone wants to make
2 an opening statement or go directly to your comments.

3 Mr. Davis.

4 MR. DAVIS: Thank you, Mr. Wallace.

5 As the chief legal officer for the State of
6 Illinois, the Attorney General prosecutes
7 environmental enforcement actions in the name of the
8 People of the State of Illinois and at the request of
9 the Illinois Environmental Protection Agency. These
10 actions are filed in the circuit courts or before the
11 Illinois Pollution Control Board, depending upon the
12 nature of the claims and the relief being sought.
13 Where the violations directly threaten the environment
14 we generally seek injunctive relief in the courts.
15 Where the necessary remedy requires regulatory
16 interpretations we generally rely upon the technical
17 expertise of the Board.

18 The enforcement objective of the Attorney
19 General's office and the Illinois EPA is,
20 simplistically speaking, to obtain justice, to obtain
21 satisfaction through judgments or settlements that are
22 protective of the human health and the environment.
23 Any settlement that is reached is done so through good
24 faith negotiation with an eye toward statewide

1 consistency as to both technical remedy and penalty.
2 In reaching a settlement with a violator, the Attorney
3 General's office and the Illinois EPA generally
4 consider the factors and circumstances of the
5 particular case in the context of the statutory
6 criteria within Sections 33(c) and 42(h) of the Act.
7 These facts and circumstances in any given case are
8 articulated in the consent order tendered to the court
9 or the stipulation and proposal for settlement filed
10 with the Board.

11 The Board pleadings have evolved over time into a
12 specific format where each criterion, if applicable,
13 is discussed. In our settlement with Bell Sports we
14 have adequately addressed all of the relevant facts
15 and circumstances to show the impact of the
16 violations, to assure future compliance, and to
17 justify the amount of penalty. We believe that all
18 settlements in the name of the People of the State of
19 Illinois ought to withstand public scrutiny.

20 In this case the Board has been provided with a
21 stipulation and proposal for settlement executed by
22 the Attorney General's office, the Illinois EPA, and
23 Bell Sports. If adopted, this settlement would
24 resolve the State's claims against Bell Sports, but

1 would not affect the State's claims against Waste
2 Hauling, Inc. and Waste Hauling Landfill, Inc., nor
3 affect the cross-claims by the Waste Hauling companies
4 against Bell Sports. We believe that the settlement
5 with Bell Sports is fair and will withstand scrutiny
6 by the Board.

7 The purpose of the present proceeding is to
8 conduct a hearing in which all interested persons may
9 testify with respect to the nature of the alleged
10 violation and its impact upon the environment,
11 together with their views on the proposed stipulation
12 and settlement.

13 Even though legal argument would seem to be beyond
14 the purview of this hearing, I would simply note that
15 any settlement document filed by the Attorney
16 General's office should be accorded a high degree of
17 presumptive validity since it represents the
18 culmination of the People's enforcement efforts
19 through good faith negotiations. A legal challenge by
20 the Waste Hauling Respondents through a motion to
21 strike has already been considered and denied by the
22 Board. Moreover, this hearing has been preceded by
23 the filing of statements by the Attorney General's
24 office and each of the three Respondents.

1 I respectfully suggest to you, Mr. Hearing
2 Officer, that testimony be taken and further argument
3 be confined to briefs if further argument is deemed to
4 be necessary.

5 Thank you.

6 HEARING OFFICER: Mr. Davis, just for the
7 record, could you summarize the stipulation?

8 MR. DAVIS: The stipulation resolves two
9 different violations.

10 The waste that was provided to Waste Hauling, Inc.
11 for transportation to Waste Hauling Landfill, Inc. for
12 disposal was done so by Bell Sports under a special
13 waste permit. As it turned out, there were problems
14 with the waste characterization in that these wastes
15 which were disposed of in 1991 and 1992 were actually
16 hazardous wastes. So we have one category of
17 violations being the disposal, the other category
18 being the problems I alluded to as far as waste
19 characterization at the facility in Rantoul. The
20 hazardous waste generation and storage on-site is also
21 included within the second category of violations.

22 The settlement, as we've filed it, contains
23 statements that the impact of the violations were --
24 as far as disposal were hopefully minimized because of

1 the rural nature of the landfill and the lack of
2 essentially persons within the immediate vicinity.
3 We've also indicated that the Bell facility has
4 economic and social value to the surrounding community
5 and its employees and customers. We've also indicated
6 that we agree that the facility is located in a
7 suitable area.

8 Importantly, we've agreed that it is technically
9 difficult and perhaps economically prohibitive for
10 Bell to remove the waste that was disposed of at the
11 landfill. And also very importantly, we've
12 represented that Bell has taken steps to remedy the
13 above-cited violations.

14 Let me elaborate on this. Bell Sports does not
15 now generate hazardous waste. Any waste that is being
16 generated by Bell Sports is not going to the Waste
17 Hauling Landfill. The Waste Hauling Landfill is not
18 operating.

19 Also part and parcel of our settlement is an
20 attempt to justify the penalty being imposed. The
21 penalty of 69,427 is significant because it will deter
22 future violations. It addresses the economic benefit
23 which we, the State, believe may have been
24 inadvertently derived by Bell through the improper

1 disposal, and it is an indication, as I mentioned in
2 my opening statement, that we've had good faith
3 negotiations.

4 I can represent to you, Mr. Hearing Officer, that
5 we've taken -- we, the Attorney General's office and
6 the Illinois EPA, have considered similar cases in
7 deriving this penalty. And while the case that I have
8 in mind might not be reflected in the record, I
9 believe that as an officer of this hearing I can
10 represent that two or three years ago we had a
11 prosecution for a similar situation in St. Clair
12 County. The generator was Mallinkrodt Specialty
13 Chemical Company, and the landfill was Laidlaw Waste
14 Systems of Belleville. The factual scenario was very
15 similar in that what was being provided to the
16 landfill pursuant to special waste authorizations
17 turned out later to be hazardous waste. In this
18 instance the levels of barium were too high. And that
19 once that this was found out and discovered by the
20 company, further waste shipments were ceased. But it
21 still left the landfill with a similar problem, that
22 is dealing with hazardous wastes which were disposed
23 of within its landfill that could not be extricated.

24 The penalty with Mallinkrodt because of the long

1 duration of the shipments over the course of five or
2 six years, I believe, was a little bit higher. If
3 memory serves well, I think the penalty was 89,000.
4 It was definitely in the 80,000 range. So, that fact,
5 I think, is perhaps pertinent. This was certainly
6 discussed with our good faith negotiations with Bell
7 Sports.

8 It perhaps -- at least, I would submit that it's
9 public knowledge because it's all reflected in a
10 consent order filed within St. Clair County Circuit
11 Court. I don't know that we've ever come out and told
12 counsel for the Waste Hauling Respondents about it,
13 but certainly, it's no secret to anybody.

14 I think the important thing for today's purposes
15 is that this document speaks for itself. I've really
16 not attempted to summarize everything that's within
17 the stipulation and proposed settlement, but when we
18 filed it, we served it upon all parties, including the
19 Waste Hauling Respondents, and it's something that, as
20 I mentioned, we think will withstand any public
21 scrutiny.

22 HEARING OFFICER: Thank you.

23 In addition to the stipulation speaking for
24 itself, is there anything else that the People would

1 add to this process for the Board's assistance?

2 MR. DAVIS: We perceive that we're under no
3 obligation to --

4 HEARING OFFICER: No, I understand your
5 perception that you're not under an obligation. I
6 just wanted to know if there was anything else you
7 wished to add.

8 MR. DAVIS: No. We will simply question any
9 other any witnesses or other persons that may provide
10 testimony.

11 HEARING OFFICER: All right, thank you.

12 Mr. Taylor, do you wish to make a statement on
13 behalf of Bell Sports?

14 MR. TAYLOR: Yes, Bell Sports also has a
15 brief statement to make.

16 Again, like the State, we do not have any
17 witnesses to present at this hearing because we also
18 believe that the stipulation, which I'll tend to refer
19 to as a settlement, speaks for itself. We believe
20 that the document is straightforward and meets the
21 requirements of the Illinois Environmental Protection
22 Act, as well as the Board's regulations.

23 In particular, I think it's worth summarizing what
24 the criteria are for such settlements.

1 Number one, there should be a full stipulation of
2 all material facts pertaining to the nature, extent
3 and causes of the alleged violations. And we believe
4 that the settlement does that exactly. It details the
5 alleged violations against Bell Sports, explains them
6 we believe clearly.

7 One point that's worth noting is that there is no
8 admission on behalf of Bell Sports of the violations,
9 but we believe that such an admission is not required.
10 Stipulations without admissions have been acceptable
11 to the Board on numerous occasions; and therefore, we
12 do not believe that after describing the alleged
13 violation that you then have to follow that up with a
14 statement whereby Bell would admit that it committed
15 such violations of the Act.

16 The second requirement is that the stipulation
17 specify the nature of the relevant party's operations
18 and control equipment. In this case this isn't
19 particularly relevant. I believe the stipulation does
20 mention, however, that Bell Sports is primarily a
21 helmet manufacturing facility, making bicycle helmets,
22 racing helmets and like materials.

23 The third requirement is that the stipulation
24 include any explanation for past failure to comply and

1 an assessment of the impact on the public. Beginning
2 with the impact on the public, there is an entire
3 section of the stipulation that addresses this. I
4 believe it's Section 2 of the stipulation. And we
5 believe that that is sufficient.

6 With respect to an explanation for past failure to
7 comply, we also believe that the stipulation is pretty
8 much self-evident. For example, there is an
9 allegation that Bell failed to adequately identify its
10 waste. You can't explain that any further. If the
11 waste was not adequately identified, then that's what
12 happened.

13 The fourth requirement is an obligation to specify
14 details as to future plans for compliance. Bell
15 Sports currently is in compliance with all of the
16 allegations mentioned in the complaint. To the extent
17 that we generate hazardous waste, it's handled
18 properly and sent to other facilities -- to facilities
19 other than Waste Hauling Landfill near Decatur.

20 And finally, the stipulation is required to
21 specify the proposed penalty. In this case the
22 proposed penalty from Bell Sports' point of view is
23 quite substantial. It is 69,000 dollars
24 approximately. This penalty figure was reached after

1 some lengthy negotiations with the State in which the
2 State initially demanded more money and Bell Sports
3 was willing to pay a lot less, and what this
4 represents is a negotiated settlement between the
5 parties.

6 The one key factor that I think we should point
7 out is that Bell Sports has absolutely no power to
8 coerce the State into entering a settlement. We
9 believe that, as Mr. Davis mentioned earlier, that the
10 State has fully evaluated this settlement, meaning the
11 Illinois Attorney General's office, as well as the
12 Illinois Environmental Protection Agency, and
13 determined that it is in the interests of the People
14 of the State of Illinois to settle with Bell Sports.
15 And we believe that that's a significant factor and
16 that any objections to the settlement should be read
17 in that light.

18 HEARING OFFICER: Thank you.

19 Mr. Latshaw or Mr. Van Ness?

20 MR. VAN NESS: I do not have prepared
21 remarks, Mr. Hearing Officer, but I would like to make
22 a couple of comments relating to what we've heard this
23 morning.

24 First, I would challenge the notion that something

1 negotiated by the Attorney General's office is
2 entitled to a high degree of presumptive validity. I
3 had always understood that a presumption of validity
4 only attached to adjudicated facts. This does not
5 qualify as adjudicated facts, and there's no
6 presumption attaching to it, either.

7 If Mr. Davis meant by that, rather, that they had
8 worked very hard on it and wanted that to be
9 recognized as their best effort, so be it.

10 My concern -- our clients' concern with this
11 proposal, frankly, doesn't have anything to do with
12 whether it addresses economic benefits in terms of the
13 penalty. 69,000 dollars, no doubt, exceeds the
14 economic value that was received in terms of benefit
15 by Bell Helmet. On the other hand, that's only part
16 of the equation. It's like clapping with one hand.
17 The other part of the equation, of course, is the
18 seriousness of the environmental offense and the
19 nature of the repercussions. It does me very little
20 good to know that something that did me a great deal
21 of harm didn't save somebody else a whole lot of
22 money. And so that is a poor indicator of the
23 adequacy of a penalty, particularly in circumstances
24 such as this.

1 It is our view that very little is self-evident
2 about the quality of this particular proposed
3 settlement. This proposed settlement leaves very much
4 to the Board's imagination. It leaves the Board in a
5 position of having to speculate as to causation,
6 duration, and the mechanics of how specifically
7 hazardous waste found its way from Bell's plant into
8 the hands of Waste Hauling Landfill. It leaves the
9 Board to speculate as to how this mess is eventually
10 going to be cleaned up. And it certainly provides the
11 State of Illinois a fractional part of the amount of
12 funds that will be necessary potentially to deal with
13 the waste that Bell has left behind. Far from being
14 adequate, it is a fractional part of what will be
15 required. We expect our testimony today to reflect
16 that fact.

17 And while we're on the subject of testimony, let
18 me say, as I have indicated in prior filings with this
19 Board, it is our understanding that it is the
20 obligation of the People to come forward in an
21 enforcement case and to carry the burden of proof.
22 This they failed to do. They refused to do with
23 respect to this document which purportedly speaks to
24 itself but in fact says so little.

1 The misallocation of burdens is at the very heart
2 of our objection to this proposed settlement. This
3 proposed settlement purports to shift the burden of
4 compliance for the outcome, for the result of Bell's
5 wrongdoing, either to the nonsettling Respondents in
6 this case or ultimately to the People of the State of
7 Illinois themselves, otherwise known as the taxpayers.
8 That is a settlement feature that this Board ought to
9 reject out of hand. In like fashion, because of the
10 way the proposed settlement is crafted, the burden of
11 proof ultimately is shifted impermissibly from the
12 State to Waste Hauling Landfill and Waste Hauling,
13 Inc., both for purposes of the cross-claim and for
14 purposes of the enforcement action currently pending
15 against the nonsettling Respondents.

16 We will show in subsequent filings that even Bell
17 acknowledges this by the documents that they've
18 already filed.

19 I do not know whether my co-counsel has anything
20 he wishes to add to those remarks. We are prepared to
21 go forward otherwise.

22 HEARING OFFICER: Do you wish to respond?

23 MR. DAVIS: Thank you, Mr. Hearing Officer.

24 I suppose I could add that if we have done such a

1 lousy job so far that they probably don't want us
2 sharing the workload from here, but I should note that
3 we are not dismissing our claims against the Waste
4 Hauling Respondents. We have a hearing set for March
5 1997. We intend to prove that violations were
6 committed by these Respondents above and beyond the
7 haz waste situation.

8 But I would like specifically to respond to the
9 concept that the 69,000 dollar penalty is somehow
10 going to be spent by the State of Illinois to address
11 these problems. That's not reflected in the
12 settlement document, nor is it true. This is a
13 penalty intended to obtain future compliance from Bell
14 Sports. This is a penalty intended to discourage
15 similarly situated persons from committing similar
16 violations. This is not a penalty that's going to be
17 spent on this facility.

18 This problem, that is what to do with the haz
19 waste within the Bell -- within the Waste Hauling
20 Landfill is going to have to be corrected by the Waste
21 Hauling Landfill company. This is their problem that
22 I believe the testimony that we'll be getting into
23 will show that they have not yet adequately addressed.
24 This is their problem that they're going to have to

1 spend their money to take care of.

2 And the reason I mention this, Mr. Hearing
3 Officer, is that we do have these cross-claims. The
4 State of Illinois has not through its settlement with
5 Bell Sports, nor did we with Mallinkrodt and Laidlaw,
6 impede the ability of the disposal facility to sue the
7 waste generator for contribution. These cross-claims
8 are on file. The Board will consider those during the
9 hearing in March.

10 Nothing we have done thus far has done anything
11 except to simplify that hearing. Now that we've
12 resolved some of the violations against one of the
13 parties, this allows the Board and the parties, and
14 certainly Bell Sports remains in this case, to focus
15 on how the problem is going to be addressed, the
16 contribution aspect presented by the cross-claims and
17 so forth.

18 I expect when Mr. Krimmel testifies that he'll
19 admit that the facilities -- the landfill facility
20 still doesn't have a closure plan, still doesn't have
21 an approved concept for addressing the hazardous
22 waste, but I did want to respond to what Mr. Van Ness
23 said that -- and I hope I wrote it down correctly,
24 that the penalty we're getting from Bell represents a

1 fractional amount of money to be spent by the State of
2 Illinois. That's not true.

3 Thank you.

4 HEARING OFFICER: Mr. Taylor?

5 MR. TAYLOR: We also have a brief follow-up
6 statement.

7 We've also addressed these two points, I believe,
8 in our rebuttal to the case statement that we filed
9 late last week. There are two points to make.

10 The first is that we've heard the assertion that
11 the stipulation leaves the Board to speculate as to
12 issues of causation and exactly how hazardous waste or
13 allegedly hazardous waste reached the landfill. With
14 respect to how the waste reached the landfill, we
15 believe it's abundantly clear. Bell Sports was
16 arranging to have what it believed to be special waste
17 disposed of at the landfill and provided that material
18 to Waste Hauling, Inc., I believe, who then took it to
19 the landfill where it was disposed of. It's a simple
20 matter that we can't really see what the issue is.
21 And with respect to the issue of causation, that
22 relates to the cross-claim and presumably there will
23 be a hearing on the cross-claim to the extent that
24 it's valid at a later date, but it's not relevant to

1 this proceeding.

2 This settlement is between Bell Sports and the
3 People of the State of Illinois as it relates to the
4 State's claims against Bell. It does not directly
5 discharge the cross-claim or otherwise address it. We
6 believe that that's something that is key to this
7 hearing today.

8 The last point I have is the assertion that the
9 State somehow bears the burden of proving Waste
10 Hauling's cross-claim, which -- and if that's a
11 misstatement, then I'll withdraw it. But the idea
12 that Bell Sports should not be allowed to settle, that
13 the hearing addressing the claims by the State against
14 Bell has to take place somehow in order to prove
15 certain things, simply isn't true. Waste Hauling has
16 filed an enforcement action against Bell Sports, to my
17 understanding, which under Section 31(c) of the Act
18 they clearly bear the burden of proving their claims.
19 And if that's a misstatement, then I'll withdraw it.
20 But that was my understanding of what Mr. Van Ness had
21 said.

22 Thank you.

23 HEARING OFFICER: Thank you.

24 Mr. Van Ness, do you wish to call witnesses?

1 MR. VAN NESS: I believe we are. And I will
2 address some of the remarks made in response in my
3 closing remarks. I assume we will have the
4 opportunity for closing remarks.

5 HEARING OFFICER: If you like, yes.

6 MR. VAN NESS: Thank you.

7 While we're on this, Mr. Hearing Officer, I would
8 also request that you advise us as to your intentions
9 with respect to posthearing matters. I have a couple
10 of things I would like to share with you.

11 First, as Mr. Taylor mentioned, we did receive a
12 document entitled Rebuttal to Case Statement of Waste
13 Hauling, Inc. and Waste Hauling Landfill from Bell a
14 couple of days ago. In fact, within the last 36
15 hours. And we would seek leave of you, Mr. Hearing
16 Officer, to file a response to that rebuttal. And
17 accord the same privilege, of course, to the other
18 parties if you so desire.

19 And also, perhaps with respect to posthearing
20 matters you could let your intentions be known either
21 now or at the end of the hearing with respect to a
22 posthearing briefing schedule.

23 HEARING OFFICER: Is there any objection to
24 Waste Hauling filing a response to the reply?

1 MR. TAYLOR: None from Bell.

2 MR. DAVIS: No, sir.

3 HEARING OFFICER: To the extent that Waste
4 Hauling Landfill, Inc. and Waste Hauling, Inc. wishes
5 to file a response, leave is certainly granted.

6 Let's take up the posthearing matters towards the
7 end of the hearing. Although, I will say that I --
8 I'm not sure. I think -- is there anything additional
9 that the parties wish to submit to the Board on the
10 settlement that's not already been said in filings at
11 this point?

12 MR. VAN NESS: Well, I think there might be.
13 Of course, we haven't had the witness testify yet, so
14 presumably both the parties on the other side and
15 ourselves will have legal arguments, at least, that we
16 will wish to make with respect to the meaning and
17 import of this witness's testimony.

18 HEARING OFFICER: The point is well taken.
19 We can talk about it at the close.

20 MR. VAN NESS: Thank you.

21 Since the -- Mr. Hearing Officer, since the People
22 and Bell decline to present witnesses, at this time
23 Waste Hauling Landfill and Waste Hauling, Inc. will
24 ask permission to put Mr. Bob Krimmel on the stand.

1 HEARING OFFICER: Okay, Mr. Krimmel.

2 ROBERT G. KRIMMEL

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION BY

6 MR. VAN NESS:

7 Q. Mr. Krimmel, for the record, would you state
8 your complete name, please?

9 A. Robert G. Krimmel.

10 Q. And what is your business address, Mr.
11 Krimmel?

12 A. 2900 North Martin Luther King, Jr. Drive,
13 Decatur, Illinois.

14 Q. What's your occupation, Mr. Krimmel?

15 A. I'm a consulting engineer with the firm of
16 SKS Engineers, Incorporated.

17 Q. Are you an engineer yourself, sir?

18 A. Yes, I am. I'm a Registered Professional
19 Engineer in the State of Illinois and also I'm
20 registered in the State of Indiana.

21 Q. What's your education -- educational
22 background, Mr. Krimmel?

23 A. I have a bachelors in civil engineering from
24 the University of Illinois. I graduated in 1963.

1 Q. Have you received additional training beyond
2 the University of Illinois?

3 A. I took a week-long short course through
4 University of Michigan in Detroit several years ago in
5 sanitary landfill design. I've been to several
6 seminars put on by the Agency.

7 Q. When you say the Agency, are you referring to
8 the Illinois Environmental Protection Agency?

9 A. Yes, sir.

10 Q. Would you share with the Board your
11 professional activities and credentials for their
12 background?

13 A. Subsequent to graduation, I worked for about
14 ten years with two consulting firms, one in
15 Springfield, one in Decatur, doing primary highway
16 design. 1973 I went into private practice and have
17 continued in private practice in an ownership position
18 since that time, first with the firm of Krimmel &
19 Associates that I owned in conjunction with another
20 engineer and then with Shaffer, Krimmel, Silver and
21 Associates, which is the predecessor firm of my
22 current firm.

23 HEARING OFFICER: I'm sorry, Shaffer, Krimmel
24 and --

1 A. Silver and Associates.

2 And in that time period I've been in charge of the
3 -- with SKS I've been in charge of the general civil
4 engineering projects that the firm does, including the
5 landfill work.

6 Q. Could you briefly describe your landfill
7 work, please?

8 A. Throughout the 1980s and into the early '90s
9 our firm did under my direction work on several
10 landfills. I served as engineer of record on seven or
11 eight landfills throughout central Illinois and the
12 State in that time period.

13 Q. Thank you.

14 In the course of your employment have you become
15 familiar with Waste Hauling, Incorporated -- Inc.?

16 A. Yes, I have.

17 Q. And in what capacity?

18 A. The capacity of that of just I was aware that
19 Mr. Camfield operated that business.

20 Q. And your reference to Mr. Camfield is to Mr.
21 Jerry Camfield?

22 A. That's correct.

23 Q. Would you identify him for the Board, please?

24 A. Personally?

1 Q. Well, no. Who is he and what does he do?

2 A. Mr. Camfield is in the waste hauling business
3 and was in the landfill business in Macon County.

4 Q. And he is the president of Waste Hauling
5 Landfill, is that correct?

6 A. That's correct.

7 Q. Is he also the president of Waste Hauling,
8 Inc.?

9 A. I believe he is, yes.

10 Q. Do you in the course of your employment have
11 familiarity with Waste Hauling Landfill, Incorporated?

12 A. That's correct. We were -- I was retained --
13 our firm was retained under my direction to be the
14 engineer of record of Waste Hauling Landfill when Mr.
15 Camfield purchased it in the 1980s and we've continued
16 in that -- I've continued in that position since that
17 time.

18 Q. And could you describe what it means to be
19 the engineer of record for Waste Hauling Landfill?

20 A. In this particular case I was responsible for
21 the engineering work that was involved with permitting
22 the permits that were required by the Agency and
23 including special waste permits.

24 Q. Now, did your employment in that capacity

1 require you to be present at the landfill at all
2 times?

3 A. Not at all times.

4 Q. But you have been present at the landfill on
5 occasion?

6 A. Yes, I have.

7 Q. And that was in connection with the work you
8 were doing with respect to permitting?

9 A. That's correct.

10 Q. Were you there with respect to any other
11 activities?

12 A. No.

13 Q. Are you familiar with the permits that have
14 been issued over the years to either Waste Hauling,
15 Inc. or Waste Hauling Landfill?

16 A. Yes.

17 Q. And could you describe very briefly the
18 permits that have been issued to Waste Hauling
19 Landfill?

20 A. I believe that they have -- I'm sorry, Waste
21 Hauling Landfill?

22 Q. Yes.

23 A. They have a permit that was issued under the
24 old Chapter 7 rules in the mid 1970s to the former

1 operator of the site and that permit was transferred
2 to Mr. Camfield when he -- by the Agency when he
3 purchased the site in 1980. Also, Waste Hauling
4 Landfill, Inc. holds permits for several special waste
5 streams, including the one from Bell.

6 Q. And those special waste streams do they
7 include any other hazardous waste streams?

8 A. They do not.

9 Q. In the course of your training and
10 employment, Mr. Krimmel, have you become acquainted
11 with the regulations set forth in 35 Illinois
12 Administrative Code Part 807?

13 A. Yes, I have.

14 Q. And could you briefly describe those as you
15 understand them?

16 A. Those are the rules that governed sanitary
17 landfills prior to about 1990.

18 Q. We might call them the old-fashioned rules,
19 perhaps?

20 A. The old rules, yes.

21 Q. And similarly, are you acquainted, Mr.
22 Krimmel, with the regulations set forth at 35 Illinois
23 Administrative Code Parts 811 through 814?

24 A. Yes, I am.

1 Q. Could you briefly describe those?

2 A. They are sometimes referred to as the new
3 rules or the rules that now govern municipal solid
4 waste landfills.

5 Q. And finally, sir, are you familiar with the
6 Pollution Control Board regulations set forth at 35
7 Illinois Administrative Code Part 721 through 726?

8 A. Yes, I have believe they're the rules that
9 govern hazardous wastes.

10 Q. Now, Mr. Krimmel, based on your years of
11 experience as the engineer of record, could you
12 describe, please, the nature of the permits currently
13 held by Waste Hauling Landfill?

14 A. They hold the permit that again was issued in
15 the -- to the former operator in the mid 1970s and
16 transferred to Mr. Camfield when he purchased the
17 site, and also the several special waste streams.

18 Q. And those permits taken together allow --
19 allowed that landfill when it was operating to receive
20 conventional solid waste, is that correct?

21 A. Yes, that's correct.

22 Q. And certain specified industrial process
23 wastes?

24 A. Yes, that's correct.

1 Q. Nonhazardous industrial process wastes?

2 A. That's correct, yes.

3 Q. Thank you.

4 Mr. Krimmel, in the course of your employment with
5 respect to Waste Hauling Landfill, did you have
6 occasion to discuss with Illinois Environmental
7 Protection Agency matters relating either to the
8 permits or to a Closure/Post-Closure Care Plan?

9 A. Yes, we did.

10 Q. Now, you've already stated that they
11 possessed a Part 807 sanitary landfill permit, I
12 believe you stated?

13 A. That's correct.

14 Q. Do you recall whether they also possessed an
15 approved Closure/Post-Closure Care Plan?

16 A. There is no approved Closure/Post-Closure
17 Care Plan for this facility.

18 Q. Did you or anyone to your knowledge on behalf
19 of Waste Hauling Landfill submit an application for a
20 Closure/Post-Closure Care Plan?

21 A. Yes, we submitted an application in April of
22 1991.

23 Q. Do you recall what transpired following the
24 submission of that April 1991 application --

1 Closure/Post-Closure Plan?

2 A. In November of '91 we received a letter from
3 the Permit Section of the Land Pollution Control with
4 the Illinois EPA which listed several deficiencies or
5 what they felt were deficiencies in that permit
6 application.

7 MR. VAN NESS: Would you mark this for
8 identification, please.

9 (Waste Hauling Exhibit Number 1 marked
10 for identification.)

11 Q. Now, I hand you what's been marked Waste
12 Hauling Exhibit Number 1 for identification. Have you
13 seen that document before?

14 A. Yes, I have.

15 Q. Would you briefly describe it, please?

16 A. It is a letter addressed to Waste Hauling
17 Landfill, Incorporated, attention Mr. Jerry Camfield.
18 It's dated November 4th, 1991. It's also noted that
19 Shaffer, Krimmel, Silver and Associates, which is our
20 predecessor firm, received a copy of that letter. It
21 is signed by Mr. Larry Eastep. And it lists -- it's a
22 list of 16 deficiencies that were noted upon a review
23 of the application that we had submitted in April of
24 that year.

1 Q. And this is the document that you previously
2 described, is that correct?

3 A. That's correct.

4 Q. Thank you.

5 Mr. Krimmel, I ask you to look at that document.
6 Do you see any reference in that document to Parts 811
7 through 814?

8 A. No, sir, I do not.

9 Q. Do you see any references in that document to
10 Parts 721 through 726?

11 A. No, sir.

12 Q. Following receipt of this letter, Mr.
13 Krimmel, what was your next contact with respect to a
14 Closure/Post-Closure Plan for Waste Hauling Landfill?

15 A. There were discussions that I know that went
16 on between the attorneys that were involved and my
17 next contact came in March of 1993 when we were to
18 have a meeting with representatives of the Agency and
19 others to -- what we thought was to discuss these
20 deficiencies.

21 Q. Had you prepared a response to deal with the
22 deficiencies that are listed in this letter of 1991?

23 A. Yes.

24 Q. Did you have an opportunity at that time to

1 share your responses to those listed deficiencies with
2 the Illinois Environmental Protection Agency?

3 A. No, we did not. We chose not to submit that
4 letter because we were informed at that meeting that
5 the Bell waste had tested hazardous and that we were
6 probably going to have to close this facility under
7 hazardous waste rules.

8 Q. So at that time you were told that you were
9 going to have to close under the hazardous waste
10 requirements?

11 A. That's correct.

12 Q. As a result of the Bell hazardous waste, is
13 that correct?

14 A. That's correct.

15 Q. And when you understood them to be referring
16 to closure under the hazardous waste regulations,
17 again we're referring back to the Parts 721 through
18 726, et cetera, regulations and affiliated regulations
19 associated with the hazardous waste?

20 A. Yes.

21 Q. Now, following the meeting in 1993 in which
22 you were advised that closure would be anticipated to
23 be required under the hazardous waste requirements,
24 did you have additional discussions or were you aware

1 of additional discussions with the Illinois
2 Environmental Protection Agency?

3 A. I believe that the discussions between the
4 attorneys for Waste Hauling and others, the Agency and
5 the AG, continued.

6 Q. In fact, you received some correspondence,
7 did you not, relating to the demands that EPA was now
8 making with respect to closure/post-closure care?

9 A. That's correct. I was also involved in some
10 meetings prior to that correspondence with the Agency.
11 Technical sessions.

12 Q. Are you familiar with a gentleman by the name
13 of Mr. Ed Bakowski?

14 A. Yes.

15 Q. Could you identify him, please?

16 A. I believe he's now in charge of the Permit
17 Section for the Division of Land Pollution Control of
18 the Agency.

19 Q. Do you recall receiving any correspondence
20 from Mr. Bakowski in 1995?

21 A. Yes. I received a letter from Mr. Bakowski
22 in early November of '95, I believe, listing technical
23 requirements for closure of the landfill.

24 Q. Were those technical requirements listed on

1 the letter or in an attachment to that letter?

2 A. In an attachment to that letter.

3 Q. I see. Now, I show you what will be marked
4 for --

5 MR. VAN NESS: I guess we're calling it Waste
6 Hauling. It will be Number 2 then. Would you mark
7 this, please.

8 (Waste Hauling Exhibit Number 2 marked
9 for identification.)

10 Q. I show you what has been marked for
11 identification as Waste Hauling Number 2. Is this the
12 letter to which you referred?

13 A. Yes, it is.

14 Q. And is the attachment thereto the attachment
15 to which you previously referred?

16 A. Yes, it is.

17 Q. We've come to describe -- in subsequent
18 discussions with the Agency and the Attorney General's
19 office, we've come to describe those -- the items on
20 that attachment in a particular way, haven't we?

21 A. Yes.

22 Q. And would you care to share that with the
23 Board?

24 A. It's come to be known as the points of light.

1 Q. What do you view as the significance of the
2 points of light?

3 A. In terms of a name not too much just other
4 than referring to this, but the document itself that
5 it refers to lists some closure requirements that
6 greatly exceed those that were covered under the 807
7 rules.

8 Q. In fact, do the points of light items refer
9 at all to 35 Illinois Administrative Code Part 807?

10 A. No, sir.

11 Q. Do they refer to 35 Illinois Administrative
12 Code Parts 721 through 726?

13 A. No, sir.

14 Q. Instead, they refer to what?

15 A. Illinois Administrative Code 811 and 814.

16 Q. And those were the regulations you described
17 previously as applying to the new order of landfills,
18 municipal solid waste landfills, is that correct?

19 A. Yes.

20 Q. Do you recall whether the -- whether that
21 attachment which we've come to refer to as the points
22 of light, do you recall whether that attachment was
23 subsequently referred to by Mr. Bakowski?

24 A. Yes, I believe it was referred to in a letter

1 to Waste Hauling Landfill, Inc. I believe in February
2 of '96 or thereabouts.

3 MR. VAN NESS: Would you mark that?

4 (Waste Hauling Exhibit Number 3 marked
5 for identification.)

6 Q. Now, I hand you what's been labeled Waste
7 Hauling Exhibit Number 3 for identification. Do you
8 recognize that document?

9 A. It's the letter addressed to Mr. Stephen
10 Willoughby of Willoughby, Latshaw & Hopkins, P.C.,
11 dated February 14th, signed by Mr. Bakowski, and our
12 firm was also copied, as well as Mr. Camfield.

13 Q. Do you recall seeing that letter before?

14 A. Yes.

15 Q. And that is the document that contains a
16 reference, you stated, to what we've come to call the
17 points of light document?

18 A. Yes, it does.

19 Q. For the benefit of the Board, could you read
20 the paragraph that you're referring to?

21 A. The last paragraph reads, "The enclosure
22 which was forwarded to Mr. Krimmel with my November
23 9th, 1995 letter contains closure and post-closure
24 care requirements the Agency has consistently imposed

1 on other solid waste disposal landfills which had
2 allegedly disposed of hazardous waste. Again, the
3 Agency is willing to consider less stringent closure
4 requirements, but this consideration will be based on
5 Waste Hauling's providing sufficient data and
6 documentation to warrant less stringent closure
7 measures, and number 2, the degree of which the
8 measures are protective of human health and the
9 environment and are commensurate with past disposal
10 activities."

11 Q. Is it safe to conclude in your opinion, Mr.
12 Krimmel, that these additional requirements are being
13 imposed solely because of the presence of Bell's
14 hazardous waste at the Waste Hauling Landfill?

15 A. That's my belief, yes.

16 Q. You stated previously that a
17 Closure/Post-Closure Care Plan had been presented to
18 the Agency as far back as 1991, I believe.

19 A. That's correct.

20 Q. Do you recall the fate of that application
21 for Closure/Post-Closure Care Plan?

22 A. It was rejected in June of this year.

23 HEARING OFFICER: Of '96?

24 A. That's correct. June of 1996.

1 MR. VAN NESS: Could you mark that, please.

2 (Waste Hauling Exhibit Number 4 marked
3 for identification.)

4 Q. Now, Mr. Krimmel, I show you what's been
5 marked as Waste Hauling Exhibit Number 4 for
6 identification and ask you if that is the letter of
7 rejection to which you just referred?

8 A. That is correct. This letter addressed to
9 Waste Hauling Landfill, Inc., dated June 26, 1996,
10 again signed by Mr. Bakowski, and carbon copied to my
11 firm.

12 Q. Now, I ask you to look at that letter and ask
13 whether you see any reference whatsoever to Parts 811
14 through 814?

15 A. No, sir, I do not.

16 Q. Do you see any reference to Parts 721 through
17 726?

18 A. No, sir.

19 Q. Following the receipt of the rejection letter
20 that's been marked for identification as Number 4, do
21 you recall any additional discussions with Illinois
22 Environmental Protection Agency and the People with
23 respect to the Closure/Post-Closure Care Plan?

24 A. Yes. In August of this year, August of 1996,

1 there was a meeting held at the Illinois EPA to
2 discuss this rejection and the requirements for
3 closure -- further closure activities at the site.

4 Q. Do you recall whether the discussion was
5 limited to the closure requirements applicable under
6 Part 807?

7 A. No, it was not limited to that.

8 Q. Do you recall whether the points of light
9 document popped up again?

10 A. Yes, it did.

11 Q. So, as a practical matter, the
12 closure/post-closure letter denial in June did not
13 express the full range of objections to your
14 knowledge?

15 A. That's correct, to my knowledge.

16 Q. Mr. Krimmel, if you would, would you pick up
17 the document that we've come to refer to as the points
18 of light document? Let's go through these one by one.
19 Do you have that in front of you?

20 A. Yes, I do.

21 Q. Number 1 refers to final cover, does it not?

22 A. Yes. It refers to the final cover system.

23 Q. And based on your experience and your
24 training and your experience with this particular

1 location, what's the significance of this particular
2 point of light with respect to engineering and cost?

3 A. In comparing the 811 requirements for the
4 final cover system on the landfill, the 807 rules
5 required a two foot compacted covercap with a six inch
6 vegetative layer and the requirements of 811 require a
7 three foot compacted covercap and a three foot
8 vegetative layer or an alternate with a -- or
9 alternate you could use a flexible membrane cover,
10 geomembrane in place of the three foot covercap. And
11 this is greatly -- both of the alternates in the 811
12 greatly -- are considerably more expensive than the
13 807 closure.

14 Q. Have you an idea how much more expensive?

15 A. Somewhere in the neighborhood of 200,000
16 dollars.

17 Q. Could it be more? Could it be considerably
18 more?

19 A. Could be more, yes.

20 Q. Now, referring to number 2, that item refers
21 to financial assurance, does it not?

22 A. That's correct.

23 Q. Again, I ask you what's the significance of
24 that particular point of light to you from an

1 engineering and cost standpoint?

2 A. 811 requirements for financial assurance are
3 more specific than the 807 requirements in terms of
4 what must be included in the estimate of costs that
5 the bond must be provided for. Specifically, they --
6 as I recall, the 811 requirements require that the
7 bond must cover some potential costs for remediation.

8 Q. In terms of cost, do you have any specific
9 idea of what it might -- what it might cost based on
10 your knowledge of the site?

11 A. I'm not totally sure, but I would guess
12 somewhere in the neighborhood of maybe an additional
13 hundred thousand dollars might have to be added to the
14 bond or more, considerably more maybe to cover the
15 cost of the possible remediation, which in terms of
16 the financial assurance increases the cost of the
17 financial assurance bond or the letter of credit or
18 whatever is used to --

19 Q. You don't see any mention of Bell covering
20 any of those costs in there, do you?

21 A. No, I do not.

22 Q. Turning now to number 3, that relates to
23 groundwater monitoring, is that correct?

24 A. That's correct.

1 Q. I ask you again, sir, what significance you
2 find in that particular point from an engineering and
3 cost standpoint?

4 A. They're referring to 811 requirements, which
5 are, again, more stringent than 807 requirements. In
6 my opinion probably the new requirements would require
7 more study and probably more groundwater monitoring
8 wells than would have been required under 807,
9 increasing the cost of the groundwater monitoring
10 system.

11 Q. Have you an idea of what order of cost
12 additional might be required to install the additional
13 wells that you're referring to?

14 A. Somewhere in the order of 25 or 30,000
15 dollars.

16 Q. It could be higher?

17 A. Could be higher, depending on the final
18 permitting action.

19 Q. Turning now to item number 4, post-closure
20 care period. I ask you again, sir, what the
21 significance to you from an engineering and cost
22 standpoint is of that particular point of light.

23 A. 807 requirements call for a 15-year
24 post-closure care period. This document states that

1 the post-closure care period shall be 30 years. In
2 terms of costs to the Waste Hauling Landfill, it's an
3 additional 15 years that the monitoring systems will
4 have to be operated and the landfill maintained. So
5 there's considerable additional cost in the extra 15
6 years.

7 Q. Do you have an idea of what kind of cost
8 we're talking about here?

9 A. Just a rough guess of something in excess of
10 a million and a half dollars.

11 Q. Turning now to item number 5, that relates to
12 gas management, does it not?

13 A. Yes, it does.

14 Q. And again, I ask you, sir, the significance
15 to you from an engineering and cost standpoint.

16 A. Again, the 807 rules were much less
17 stringent. 807 landfills have been closed with
18 provisions to install gas vents or provisions to
19 attack the -- a gas problem during the post-closure
20 care period if it shows up. These rules, as I
21 interpret them, means in order to close we must have a
22 gas management system in place, which would be very
23 expensive. It's something I -- again, I'm sure it
24 would be in excess of a hundred thousand dollars, plus

1 again the cost to operate it over the 30-year
2 post-closure care period.

3 Q. Now, turning your attention to item number 6,
4 relating to a leachate management and extraction
5 system. I ask you again, sir, the significance of
6 that point of light to you from an engineering and
7 cost standpoint.

8 A. Again, they say that a leachate management
9 and extraction system shall be in place. The 807
10 rules again -- landfills that have closed under 807
11 rules had allowed those problems to be addressed at
12 the time during the post-closure care period. I
13 interpret this to mean that there must be some sort of
14 a leachate management and extraction system in place.

15 Q. Now, when you say extraction system, what
16 does that mean to you?

17 A. Some means of extracting the leachate from
18 the landfill to lower the level of the leachate within
19 the landfill to some -- some level lower than it is
20 right now. And it would entail extracting and some
21 sort of a treatment, which would also include having
22 some storage facilities and things on-site pending
23 treatment. And most likely, it would be hauled to
24 some treatment facility away from the site.

1 Q. And again, I believe you testified that the
2 marginal cost to Waste Hauling Landfill for these
3 steps made necessary by the presence of Bell's
4 hazardous waste is something in excess of 100,000
5 dollars, is that correct?

6 A. That's correct. In my estimate of the
7 post-closure care period cost operating the system for
8 the post-closure care period.

9 Q. Now, let's turn to number 7, the final item
10 on the list relating to permit application for closure
11 and post-closure care. I ask you again, sir, from an
12 engineering and cost standpoint the significance that
13 you see in that criteria.

14 A. Permit application would have to be submitted
15 in either case, and in terms of the numbers we're
16 talking about, the difference in cost for preparation
17 of the application would be nil.

18 Q. Thank you.

19 Mr. Krimmel, have you had occasion to look at the
20 proposed settlement in this case?

21 A. Yes, I have.

22 Q. Do you see any mention in the proposed
23 settlement of closure or post-closure care or any
24 other response to the hazardous waste remaining at the

1 Waste Hauling Landfill?

2 A. Not that I recall.

3 Q. Do you see any reference to the assumption of
4 the expense of closure/post-closure care or other
5 remediation on the part of Bell Helmet or Bell
6 Industries, Inc.?

7 A. No.

8 Q. Do you recall anything in the proposed
9 settlement that specified the exact cause, duration,
10 or gravity of the hazardous waste shipments to Waste
11 Hauling Landfill?

12 A. There's a comment in the settlement, as I
13 recall, that in my mind tended to downplay the danger
14 of this -- to the environment of this material being
15 in the landfill because of the location of the site
16 and the proximity of the -- and the surrounding
17 ground.

18 Q. But in any event, there's no element in this
19 proposed settlement for a compliance plan of
20 responding to the waste already currently in that
21 location?

22 A. That's correct.

23 Q. Is it your testimony, sir, that EPA is
24 instead insisting on a compliance plan from Waste

1 Hauling Landfill to deal with Bell's hazardous waste?

2 A. That's correct.

3 Q. Now, let's talk about that penalty for a
4 moment. You're familiar with the 69,427 dollar
5 penalty that's been agreed to by the parties in the
6 proposed settlement, is that correct?

7 A. Yes.

8 Q. And it is your testimony, is it not, that
9 that sum is a tiny fraction of the total additional
10 cost the State seeks to impose upon Waste Hauling
11 Landfill as a result of Bell's hazardous waste?

12 A. Yes.

13 Q. Based on your familiarity with the permits
14 possessed by Waste Hauling Landfill, Mr. Krimmel, are
15 you aware of any permit requirement that Waste Hauling
16 Landfill chemically test or otherwise ascertain the
17 contents of the waste shipped to it under manifests
18 from Bell Industries?

19 A. No, I am not.

20 Q. In fact, are they not required by rule to
21 rely upon the manifests?

22 A. That's --

23 MR. DAVIS: I would object, Mr. Wallace.
24 This type of question really calls for speculative

1 legal conclusion.

2 MR. VAN NESS: I'll withdraw the question.

3 MR. DAVIS: Thank you.

4 MR. VAN NESS: I'm not going to try to put
5 this gentleman on as an attorney or as an expert on
6 rules. I was, and I will ask the question
7 differently.

8 Q. Are you aware of any requirement, sir, in the
9 permit or in regulations that requires inspection --
10 chemical inspection of the load received from anyone
11 under a special waste permit?

12 A. No, I am not.

13 Q. Do you recall hearing previously when Mr.
14 Davis made his remarks his reference to the rural
15 nature of the location?

16 A. Yes.

17 Q. Do you recall any similar reference in the
18 stipulation and proposal for settlement in this case?

19 A. Yes, it's in the settlement.

20 Q. What did you construe the import of that
21 remark to be?

22 A. It was my opinion that it seemed that they --
23 the settlement in making that statement was
24 inconsistent with the demands that were being made on

1 Waste Hauling, Inc.

2 Q. How so?

3 A. As I recall, the settlement said that it was
4 -- in my words, I believe, it said that the fact that
5 the waste is there and that the site was rural in
6 nature that it probably wasn't going to cause any
7 problems, and that seemed to be inconsistent with the
8 demands of the Agency and in our so-called points of
9 light in requiring the additional closure measures
10 because the waste was there.

11 Q. Did you ever hear anything similar from
12 either the Agency or the Attorney General's office in
13 the course of discussions with Waste Hauling Landfill?

14 A. No.

15 Q. To the best of your knowledge, Mr. Krimmel,
16 has Bell Industries ever offered to remove its
17 hazardous waste -- the hazardous waste remaining at
18 the site?

19 MR. TAYLOR: I'd object. Mr. Krimmel to my
20 knowledge is a consultant. He's not --

21 MR. VAN NESS: And I asked him to the best of
22 his knowledge. I'm not asking him to either be a
23 lawyer or to be the owner of the site. I'm just
24 asking if he's aware of any such offer.

1 HEARING OFFICER: Objection overruled. Go
2 ahead and answer.

3 A. I don't recall any such offer.

4 Q. Do you recall whether to your knowledge the
5 Environmental Protection Agency ever insisted that
6 Bell remove the hazardous waste from the Waste Hauling
7 Landfill vicinity?

8 A. I don't recall that there was ever any
9 insistence.

10 Q. Mr. Krimmel, are you aware of any steps taken
11 by Bell to remove barrels of its hazardous waste from
12 the Waste Hauling Landfill at any time?

13 A. I'm not aware of anything that Bell did to
14 remove barrels from the landfill itself.

15 Q. How about from a container in the vicinity of
16 the landfill?

17 A. It's my understanding that the barrels that
18 had been removed by the Agency at the time that they
19 came in under a search warrant have been removed.

20 Q. Do you recall how many barrels there were
21 involved?

22 A. No, I don't remember. I remember seeing the
23 dumpster out there and it was full of barrels, but I'm
24 not sure how many -- don't remember how many there

1 were.

2 Q. Do you know whether that was all the barrels
3 that had been delivered to the landfill?

4 A. I would presume that it is not, but I don't
5 know for sure.

6 Q. When did you first become aware of the
7 stipulation and proposal for settlement that has been
8 filed in this case?

9 A. Just in the last few weeks.

10 Q. Did you have any idea in the course of the
11 discussions that you referred to previously with
12 either the Agency or the Attorney General's office
13 that a stipulation and proposal for settlement had, in
14 fact, been entered and signed by the parties back in
15 January and March of this year?

16 A. No, I had no knowledge of that.

17 MR. VAN NESS: I have no further questions.

18 HEARING OFFICER: Mr. Davis?

19 MR. DAVIS: Thank you.

20 Mr. Hearing Officer, let me, if I may, preface my
21 cross-examination by indicating it is not my intent to
22 conduct discovery. We've got claims pending against
23 these Respondents. We will be seeking to take Mr.
24 Krimmel's deposition. I'll try to confine myself to

1 relevant matters.

2 CROSS-EXAMINATION BY

3 MR. DAVIS:

4 Q. What other landfills have you worked on, Bob?

5 A. I was the -- I and my firm was the engineer
6 of record for the Christian County landfill from the
7 time it was bought -- or from the time it was
8 developed until Waste Hauling purchased it several
9 years ago.

10 Q. Waste Management?

11 A. Waste Management, I'm sorry.

12 I was the engineer of record for the Jacksonville
13 landfill. At one time I was the engineer near for the
14 Macon County landfill. I was working for American Fly
15 Ash on three landfills, and D & B Landfill in
16 Sullivan. Those are the ones that come to mind right
17 now. In addition to that, my firm has served other
18 engineers in other -- who are engineers of record
19 through soil borings, quality assurance, and things
20 like that.

21 Q. Now, as a consulting engineer you're involved
22 with design work and oversight of construction
23 activities and not the supervision of daily
24 operations, wouldn't that be true?

1 A. That is correct.

2 Q. As to the settlement demands regarding the
3 applicability of Part 811 and Part 814 regulations,
4 were you told by the EPA during the meetings that you
5 attended that the so-called points of light
6 represented something in between a Part 807 closure
7 and a full RCRA closure?

8 A. That's my recollection, yes.

9 Q. So in other words, this is perhaps better
10 viewed as a settlement demand, wouldn't you agree?

11 A. Define settlement demand for me, please.

12 Q. An attempt by the parties to resolve pending
13 claims.

14 A. Okay. Yes.

15 Q. And were you told by the Illinois EPA during
16 these meetings that this could be possible due to the
17 limited quantities of the wastes at issue and as well
18 the levels of the hazardous wastes?

19 A. I don't recall those discussions, but I may
20 not remember everything that was said.

21 Q. Well, that wasn't very artfully communicated.
22 But my intent is to inquire of you, and I'll do it
23 through a series of questions.

24 First of all, are you aware that the so-called

1 Bell Sports waste represents a total quantity of
2 perhaps 4400 gallons of paint sludge?

3 A. I would agree it's somewhere on that order of
4 magnitude.

5 Q. Okay. And from what you know about the case
6 from whatever source, Bob, would you agree that the
7 levels of methyl ethyl ketone and benzene were
8 slightly above the hazardous levels in the regulation?

9 A. That's my recollection in review of the
10 chemical test, yes.

11 Q. And in general, were these issues discussed
12 in the meetings that you attended with the Illinois
13 EPA?

14 A. Briefly.

15 Q. Have you also learned that -- well, let me
16 ask you. What do you know about the circumstances of
17 the disposal of the drums of Bell Sports' wastes in
18 April '92?

19 A. You mean the day as they came to the
20 landfill?

21 Q. Yes.

22 A. Nothing. Other than that they -- I know --
23 I've heard they were delivered and came back a few
24 days later and dug them up.

1 Q. Have you learned that there were perhaps as
2 many as 80 drums on that occasion?

3 A. I seem to recall that there were, yes.

4 Q. And have you learned that the drums were
5 placed into the landfill and compacted by machinery?

6 A. That would be consistent with the special
7 waste permit for that waste, as I recall.

8 Q. And have you learned that the paint sludge
9 was in a liquid form?

10 A. As opposed to a sludge form?

11 Q. Yes.

12 A. No, I don't know.

13 Q. Have you learned that the compaction
14 activities crushed the drums and released the
15 contents?

16 A. I don't know that that specifically happened,
17 but again, that would be consistent with the disposal
18 method that this permit allowed.

19 Q. What do you know, Bob, about the
20 circumstances of the execution of the search warrant
21 by the Illinois State Police and the Illinois EPA
22 later in April '92?

23 A. Only that it happened.

24 MR. VAN NESS: Mr. Hearing Officer, I'll

1 object to that. I think we're getting into the merits
2 of the case, Counsel. This witness is yours to cross
3 on the basis of testimony he's given. I don't recall
4 any discussion of a search warrant.

5 MR. DAVIS: Mr. Hearing Officer, I'll take my
6 directions from you. The objection seems to be that
7 I'm touching upon an illegitimate issue. However, I
8 would respond by indicating that this is something
9 that we've talked about on direct. I'm essentially
10 trying to see what this witness knows about it. He
11 was allowed to, without objection, to expound upon
12 certain things for some 40 minutes before his
13 attention was directed to the subject matter of this
14 proceeding, that being the settlement with Bell
15 Sports. So I would request, perhaps not the same
16 degree of latitude, but I would request that -- I
17 would suggest, rather, that this is an appropriate
18 cross-examination question.

19 HEARING OFFICER: Objection's overruled.

20 Q. What do you know about the circumstances of
21 the execution of the search warrant?

22 A. Only that it happened.

23 Q. Do you know that 53 drums were exhumed from
24 the landfill?

1 A. Not for sure.

2 Q. Do you know what quantity of waste remains
3 within the landfill?

4 A. No.

5 Q. If you were hired as a consulting engineer on
6 a project to extricate these wastes from this
7 landfill, what would you do?

8 A. I'd probably seek some help from somebody
9 that had some experience in that.

10 Q. Would it appear to you, Bob, that there's any
11 practical difficulty in trying to remove the remaining
12 wastes -- remaining Bell Sports wastes at this point
13 in time?

14 A. Yes.

15 Q. And what would those practical difficulties
16 consist of?

17 A. Knowing exactly where it is and being certain
18 that you got the -- got all of it.

19 Q. You indicated on direct exam, Bob, that the
20 69,427 in penalty represented a, quote, tiny fraction
21 of the total amount expected to be required to close
22 this facility, did you not? I mean that is your
23 testimony?

24 A. Yes.

1 Q. Okay. What is the total?

2 A. The numbers that I gave in my testimony I
3 think were an attempt of being marginal -- my estimate
4 or preliminary estimates of marginal costs to Waste
5 Hauling over a strict 807 closure, and I believe if
6 you were to total those numbers that I gave, we're
7 something somewhere between two and three million
8 dollars. That would be the costs of additional
9 monitoring and treatment systems that the so-called
10 points of light spell out, and the additional costs of
11 monitoring the landfill over the 15 to 30 year -- from
12 15 to 30 years, the extra 15-year period.

13 Q. Are you suggesting that the post-closure
14 period would have been 15 years and not 30 but for the
15 Bell Sports wastes?

16 A. That was my belief.

17 Q. This landfill did accept household waste on
18 or after October 9, 1991, didn't it?

19 A. Yes, it did.

20 Q. And did it stop receiving wastes before
21 October 9, 1993?

22 A. Yes, it did.

23 Q. On direct exam you testified that no
24 regulation requires a landfill to independently test a

1 special waste being provided pursuant to a special
2 waste permit, did you not?

3 A. I testified that I knew of no regulation or
4 nothing in the permit that required them to do a
5 chemical test on a particular load that was received
6 at the landfill for disposal.

7 Q. Who obtains the special waste permit, the
8 landfill or the waste generator?

9 A. We assisted Waste Hauling, Inc. in obtaining
10 the special waste permit for the special waste permits
11 that they have as their consultant.

12 Q. And what information did Waste Hauling have
13 to provide in order to obtain the special waste
14 permit?

15 A. We were provided from -- in, I believe, every
16 case of every special waste permit that we assisted
17 the Waste Hauling Landfill in we were provided
18 laboratory tests of the waste that almost invariably
19 came from the generator. They were furnished to Waste
20 Hauling by the generator.

21 Q. Wouldn't you agree that the landfill
22 basically relies upon those representations from waste
23 generators?

24 A. Yes.

1 Q. Does any regulation prohibit a landfill from
2 independently verifying the nature or characteristics
3 of the waste?

4 A. None that I know of.

5 Q. And is a landfill required to accept waste
6 just because there's a special waste permit?

7 A. No.

8 Q. Does the rural location of this landfill
9 preclude groundwater, leachate, or gas problems?

10 MR. TAYLOR: Could you repeat the last part
11 of that?

12 Q. Yes. Does the rural location of this
13 landfill preclude groundwater, leachate, or gas
14 problems?

15 A. The location of any landfill does not
16 preclude those problems.

17 MR. DAVIS: Thank you. No other questions.

18 HEARING OFFICER: Mr. Taylor?

19 MR. TAYLOR: Could we take just a five minute
20 break before we --

21 HEARING OFFICER: Any objection?

22 MR. VAN NESS: No.

23 HEARING OFFICER: Let's take a five minute
24 break then.

1 (A recess was taken.)

2 HEARING OFFICER: Back on the record.

3 Mr. Taylor?

4 CROSS-EXAMINATION

5 BY MR. TAYLOR:

6 Q. Mr. Krimmel, I will not take up too much of
7 your time, and I will endeavor not to cover questions
8 that Mr. Davis has addressed earlier, but I do have a
9 few questions.

10 The first one is just to help me with my
11 understanding of your testimony here on direct
12 examination, and it relates to the submission of
13 Closure Plans and Post-Closure Care Plans, as I
14 understand they're referred to. You stated that --
15 that you or someone else submitted a
16 closure/post-closure care proposal to the Agency
17 sometime either in '91 or prior to 1991?

18 A. We submitted a post-closure care application
19 to the Agency in the form of a supplemental permit
20 application on April 8th of 1991.

21 Q. Okay. And you received a notice from the
22 Agency of some deficiencies in that plan?

23 A. Yes. In November of that same year.

24 Q. And then I understood your testimony that you

1 prepared some responses to the Agency's deficiency
2 notice but that you did not, nor did anyone else to
3 your knowledge, submit that revised application to the
4 Agency?

5 A. We prepared a response to that letter -- let
6 me get my years right -- that we were going to present
7 to the Agency at a meeting in March of '93, and that
8 was when they told us that Bell's waste was hazardous,
9 and we felt that it was -- and that we would have to
10 close under RCRA rules and the response was of no
11 good. It was no good at that point because we --

12 Q. Right. I understand. Thank you.

13 So I understand you correctly, when you say that
14 you had no contact with the Agency between November
15 '91 when you received their deficiency notice and
16 March of '93 --

17 A. To the best of my knowledge, I personally had
18 no contact with the Agency during that time period.

19 Q. I'm going to change subjects a little bit on
20 you.

21 You testified earlier to a number of cost
22 estimates relating to the various points of light, if
23 I'm referring to those correctly. Would you agree
24 that those cost estimates at this point in time are

1 based on your best judgment but are somewhat
2 speculative?

3 A. I believe I testified that they were
4 preliminary -- that they were preliminary, yes, and
5 speculative from the standpoint as we're not sure what
6 kinds of systems the Agency might approve through a
7 permitting process.

8 Q. I also understood you to say that you
9 received a copy of a letter from February '96 from the
10 Agency and in that letter the Agency stated -- and
11 since I do not have a copy of that letter, I'm not
12 sure of the exact wording -- but they indicated some
13 willingness to negotiate about the closure
14 requirements for the landfill?

15 A. My interpretation of that letter is not so
16 much that it was negotiated. It was basically --
17 you're talking about the February 14th, '96 letter?

18 MR. VAN NESS: I'm sorry I didn't give that
19 to you. I knew the Agency people had it and I didn't
20 think about you possibly not having it.

21 A. Mr. Bakowski in that letter was really
22 reinforcing to Mr. Willoughby the requirements of the
23 so-called points of light that had been presented to
24 me in the November '95 letter. They did -- the points

1 of light do indicate that there's some willingness to
2 negotiate if Waste Hauling would provide some
3 additional investigative information.

4 Q. Right. And on page 3 from that letter it
5 says, and I quote, "Again, the Agency is willing to
6 consider less stringent closure requirements"
7 presuming certain conditions are met?

8 A. That's correct.

9 Q. Once again, I'm going to change subjects on
10 you slightly.

11 You have never collected samples of the paint
12 sludge waste that Bell Sports sent to the landfill, is
13 that correct?

14 A. That's correct.

15 Q. Are you also aware that Bell Sports provided
16 some sampling results showing that the waste was
17 nonhazardous prior to the receipt of the permit -- the
18 special waste disposal permit?

19 A. That's correct.

20 Q. And just for my clarification then, you do
21 not at this time have any sound technical basis for
22 estimating the amount of hazardous waste in the
23 landfill?

24 A. No.

1 Q. Finally, I understand that these disposal
2 events took place in the 1991-1992 time period?

3 A. I believe that's correct, yes.

4 Q. To your knowledge has any work been done --
5 other than what the Agency did to remove some of the
6 barrels, has any work been done to remove or stabilize
7 or contain any of the materials that are allegedly
8 hazardous in the landfill?

9 A. Nothing beyond the -- Mr. Camfield did
10 install a covercap in the 1992-93 time period.

11 Q. And that covercap consisted of several feet
12 of topsoil or several inches of topsoil presumably?

13 A. It consisted of approximately two feet of
14 compacted clay.

15 MR. TAYLOR: That's all for me. Thank you
16 very much.

17 HEARING OFFICER: Redirect, Mr. Van Ness?

18 MR. VAN NESS: No, I don't think so. No.

19 HEARING OFFICER: Just some questions for
20 clarification, Mr. Krimmel.

21 A. Sure.

22 HEARING OFFICER: Would you describe the area
23 where the landfill is located?

24 A. Generally, the landfill is located about five

1 to eight miles west of the city of Decatur, and it's
2 in the upland areas bordering the floodplain of the
3 Sangamon River on the south side.

4 HEARING OFFICER: And as mentioned earlier,
5 it is surrounded by what, farmland, woods?

6 A. It's surrounded by bottom ground farmland on
7 the south. I believe on the east it's pasture land,
8 and generally agricultural land on all four sides.

9 HEARING OFFICER: Thank you.

10 Your cost estimate of two to three million
11 dollars, was that with the extras that are in the
12 points of light or without the extras, so to speak?

13 A. That's my preliminary estimate of the
14 marginal costs of the points of light -- of a closure
15 under the points of light compared to a standard 807
16 closure.

17 HEARING OFFICER: You lost me again, sir.
18 You don't have an estimate for the standard closure?

19 A. No.

20 HEARING OFFICER: Okay.

21 A. It was my attempt to give the additional cost
22 above that.

23 HEARING OFFICER: Was the two to three
24 million dollar figure a total cost or --

1 A. Marginal additional cost.

2 HEARING OFFICER: What's the baseline for the
3 regular closure? Or did you compile that?

4 A. I didn't compile that necessarily in that
5 way. When I did my numbers, I compute -- I actually
6 just came up with rough marginal additional quantities
7 over and above that and figured that cost rather than
8 a total.

9 HEARING OFFICER: And one other
10 clarification. Your firm assisted Waste Hauling
11 Landfill in obtaining a special waste permit, is that
12 what you're saying?

13 A. That's correct.

14 HEARING OFFICER: But then in response to Mr.
15 Davis, you're not -- even though you obtained a
16 special waste permit, you're not required to accept
17 that special waste from that generator?

18 A. Yes. Yes. That's what I said, yeah.

19 HEARING OFFICER: But is there generally a
20 contractual relationship between the generator and the
21 landfill that you know of?

22 A. I'm not totally familiar with Mr. Camfield's
23 hauling operation, but I presume there is some.

24 HEARING OFFICER: But any agreement would be

1 a contractual agreement and not -- to your knowledge
2 it would not be required by the rules?

3 A. To my knowledge, yes, that's correct.

4 HEARING OFFICER: Okay. Thank you, Mr.
5 Krimmel.

6 Anything further of Mr. Krimmel?

7 MR. VAN NESS: No. But Your Honor, at this
8 time I would like to move the admission of Waste
9 Hauling Landfill Exhibits 1 through 4, I believe.

10 HEARING OFFICER: Any objections?

11 MR. DAVIS: May I see those, please?

12 No objection to 1, no objection to 2, no objection
13 to 3, no objection to 4.

14 MR. TAYLOR: Bell Sports has no objections,
15 either.

16 HEARING OFFICER: Hearing no objections,
17 Waste Hauling Landfill Exhibits 1 through 4 are
18 admitted.

19 (Waste Hauling Exhibit Numbers 1 - 4
20 admitted.)

21 HEARING OFFICER: Mr. Krimmel has exited the
22 stand. Thank you, Mr. Krimmel.

23 (Witness excused)

24 HEARING OFFICER: Mr. Van Ness, any further

1 testimony?

2 MR. VAN NESS: No further testimony, Mr.
3 Hearing Officer.

4 HEARING OFFICER: All right. One other point
5 of clarification. I don't know if the Board will want
6 to know this, but is there any agreement that we could
7 put into the record on the roll-on box?

8 MR. DAVIS: Well, it's in the stipulation.

9 HEARING OFFICER: That's why I brought it up.
10 I noticed there was a reference to it.

11 MR. TAYLOR: Well, I would think we might be
12 able to -- Bell Sports offered to remove the roll-off
13 box and with the assistance of the State and with the
14 assistance of Mr. Camfield sampled the material and
15 disposed of it in an authorized facility.

16 MR. LATSHAW: There is an agreement on record
17 that was approved by the Board that you certainly
18 could take judicial notice of.

19 HEARING OFFICER: Right. My question was has
20 it been disposed of or is it still on-site somewhere?

21 MR. TAYLOR: No, it's been disposed of. It's
22 been removed from the Waste Hauling Landfill site and
23 transported and disposed of at another landfill, and
24 I'm sorry, I don't recall the name of the landfill at

1 this time.

2 HEARING OFFICER: All right. Thank you very
3 much. I noticed that in the stipulation and I just
4 wanted to make -- to see if it had been taken care of.

5 MR. DAVIS: That's one reason for the delay
6 between execution and filing was to get those details
7 taken care of.

8 HEARING OFFICER: All right, thank you.

9 You have nothing further, Mr. Van Ness?

10 MR. VAN NESS: Nothing further. I do have
11 some brief closing remarks.

12 HEARING OFFICER: Well, in just a second.

13 MR. VAN NESS: But I think we have some other
14 matters to deal with.

15 HEARING OFFICER: Okay. Mr. Davis, do you
16 wish to present anything in light of the testimony of
17 Mr. Krimmel?

18 MR. DAVIS: No, sir.

19 HEARING OFFICER: And Mr. Taylor?

20 MR. TAYLOR: No, I do not.

21 HEARING OFFICER: Thank you.

22 All right, Mr. Van Ness, did you have something to
23 bring up?

24 MR. VAN NESS: Yes, thank you. I have, Mr.

1 Hearing Officer, and I'll try to keep it short.

2 Although neither the People nor Bell felt it
3 necessary to put forth witnesses in support of their
4 settlement, it evidently is due to the fact that both
5 seem to believe that the burden of proof and the
6 burden of going forward belong to someone else, and we
7 don't agree. We think it's a poor precedent. But we
8 would agree that this entire proceeding appears to be
9 about a misallocation of responsibilities and burdens.

10 As Bell would have it, the Board should approve
11 the proposed settlement because it's, and I quote,
12 fair and equitable. Unfortunately, we don't believe
13 that's true. And we also don't believe that's wholly
14 the point of our objections.

15 First, as we've repeatedly pointed out, the
16 proposed settlement is manifestly unfair to everybody
17 except Bell. Bell claims that a 69,000 dollar fine is
18 fair in light of the fact that the benefit to Bell is
19 probably only around 26,000 dollars. But as the Board
20 well knows, the benefit to Bell is only one of the
21 factors to be taken into consideration. Another
22 component of fairness certainly must be gauging the
23 impact of the wrongdoing on the environment and on
24 others.

1 If I throw my old rusty safe out the window to
2 avoid 20 dollars in disposal costs, that's small
3 consolation for the guy on the sidewalk who gets hit
4 by the safe, and it's a poor allocation of the
5 penalty. It's especially poor if the prosecutor and I
6 get away with alleging that I only contributed to the
7 safe-dropping accident, while the prosecutor continues
8 to maintain an action against the poor guy on the
9 street for allowing the safe to damage the sidewalk.

10 Causation is critical in this case. It's critical
11 in both cases to establishing liability and
12 responsibility for remedial action, whether we're
13 talking about fixing a sidewalk or repairing or fixing
14 the remediation necessary to fix the landfill site, as
15 it were.

16 In any case, even a 40 dollar fine is not
17 sufficient in our falling safe example if the walk
18 suffered 500 dollars worth of damage. Never mind the
19 poor fellow who'd been hit by it. Under this proposed
20 settlement we still don't know who fixes the damage to
21 the sidewalk, we don't know who caused the damage to
22 the sidewalk, and we still don't know what it will
23 take to fix the damage to the sidewalk. We do know
24 that it will cost probably in excess of two million

1 dollars. Even the most speculative numbers taken most
2 conservatively suggest that it's going to be a very
3 substantial sum of money. All we know is that the
4 poor guy who got hit by the safe is the fellow who's
5 going to be picking up the cost of cleaning it up.
6 And that's as unfair as it possibly can get.

7 Second, even under an arguably fair and equitable
8 settlement, a settlement has to pass muster under 35
9 Illinois Administrative Code 103.180. I believe we've
10 shown today that this one doesn't come close to that.
11 The Board should reject out of hand the proposed
12 settlement's invitation to treat the plain language of
13 Section 103.180 as either surplusage or mere
14 exhortation. It's mandatory, it's good public policy,
15 and it's essential to proper functioning of the
16 Pollution Control Board. And this would be the case
17 whether we were a party or not. We, referring to
18 Waste Hauling Landfill.

19 Bell insists it satisfies the procedures in
20 substantive requirements by asserting that the
21 settlement addresses every factual allegation made by
22 the complaint. Without conceding whether that's so,
23 we would note that the complaint itself is quite
24 imprecise as to the specific mechanics of causation,

1 which is not a problem if all three Respondents are
2 charged collectively. It is a problem where, as here,
3 such imprecision remains after a partial settlement
4 such as that all implications of that imprecision now
5 rest on the shoulders of the nonsettling Respondent.
6 If this settlement is approved, who will bear the
7 burden of proving the precise mechanisms of causation?
8 Certainly, Waste Hauling Inc. and Waste Hauling
9 Landfill will have unwilling inherited the
10 prosecutor's mantle.

11 Finally, this proposed settlement would be
12 objectionable even if we were not parties to the case.
13 As taxpayers we should all be upset that Bell is
14 seeking to shed responsibilities for the consequences
15 of its actions where the full extent of those
16 consequences is so far unknown and may be so costly.

17 We have shown by Mr. Krimmel's testimony today
18 that the People continue to demand that Waste Hauling
19 Landfill, not Bell, undertake a program of groundwater
20 monitoring and other remedial action in response to
21 the presence or possible presence of Bell's hazardous
22 waste in the area. We've heard counsel for the People
23 suggest today that we might be dealing with a very
24 small amount, perhaps 4400 gallons, of material here,

1 and against that intends to impose over two million
2 dollars worth of costs upon Waste Hauling Landfill.

3 We do know under this proposed settlement that the
4 People won't hold Bell responsible. The settlement
5 expressly recites that the State, "releases, waives,
6 and discharges Bell from any claims, liabilities,
7 demands, and orders associated with this wrongdoing,
8 accepting only private party claims for contribution
9 and/or response costs." So Bell's assertion that
10 under the proposed settlement it will still be
11 responsible for complying with regulations begs the
12 question. With what regulations will it be forced to
13 comply and who's going to make it?

14 We believe that Bell impermissibly dumped this
15 hazardous waste on the nonsettling Respondents without
16 their knowledge or permission. That is the event
17 which caused or allowed pollution or the threat of
18 pollution to come into being. We believe that Bell,
19 with the active participation of the People, now seeks
20 to dump its responsibility for sorting out the issues
21 of causation and remedy on Waste Hauling Landfill and
22 Waste Hauling Inc. We think that this proposed
23 settlement is the means by which they purport to
24 accomplish that end. Justice is not served by this

1 and the Board should reject it.

2 HEARING OFFICER: Thank you.

3 Mr. Davis?

4 MR. DAVIS: Thank you, Mr. Hearing Officer.

5 The exercise of prosecutorial discretion is always
6 subject to second-guessing by nonprosecutors and this
7 is okay. Frankly, this is the way it should work. We
8 will consider these comments and so forth. We will
9 strive, as we always have, to treat all parties
10 fairly. But that doesn't change the fact that we
11 think we've done so here.

12 For instance, I would suggest to you, and I
13 suppose I'm speaking now to the Board through this
14 record, that we have some evidence regarding increased
15 costs, but we really don't have much evidence as to
16 the underlying closure costs. What would the landfill
17 have to do anyway? That's not clear. We do know that
18 the 1991 permit application for the closure plan was
19 denied. Those costs could be looked up, but they're
20 simply not relevant at this point in time.

21 We do know -- and we'll try to address this in the
22 brief because it really is a legal issue -- that 30
23 years post-closure would have been imposed anyway. So
24 that's -- that so-called point of light, and it's an

1 expensive one, admittedly, we believe would have been
2 required anyway.

3 But as far as the handling of this case, the
4 resolution of our claims with Bell, I would still
5 submit to the Board that this document, the settlement
6 and proposal -- the stipulation and proposal for
7 settlement is a good one in the sense that it was
8 entered into eyes wide open by the People and Bell
9 Sports, knowing that cross-claims were on file,
10 knowing -- at least we knew the extent of underlying
11 technical discussions between the Illinois EPA and the
12 landfill as far as what really needed to be
13 implemented to address the 4400 gallons of paint
14 sludge. Knowing all the things that we knew and many
15 of which have come out into the open here, if they
16 were not referenced also in the settlement document,
17 that we felt this was an adequate resolution.

18 One of the things we knew -- and I think I can
19 represent this without objection -- is that
20 restitution is not an option. We had no authority to
21 require Bell to pay Waste Hauling pursuant to our
22 settlement with Bell Sports. And even if we had the
23 authority, the extent was not known. It was not yet
24 determined. The years of permit application review

1 and technical discussions had not yet come to
2 fruition. We didn't know, mainly because it hadn't
3 been proposed in an approvable form, what the landfill
4 could do, should do, and would do. So restitution in
5 that sense was not an option.

6 We entered into the settlement knowing that there
7 was an attempt to get contribution. That's good
8 enough. We are not able to solve every aspect of a
9 problem. And I submit to you -- and the record will
10 show this when we get to hearing -- that the hazardous
11 waste disposal is just one problem of many.

12 But let me close my remarks by addressing this
13 analogy of the safe. This is almost cartoonish in a
14 way, but let's say somebody threw a safe out a window
15 and hit somebody on the sidewalk, and let's say the
16 EPA got involved because there was a cleanup of the
17 safe. It is not reasonable to expect the EPA through
18 its action to take care of all of the aspects of this
19 scenario. The guy who gets hit by the safe should sue
20 the guy who throws the safe.

21 End of story. End of my remarks. Thank you.

22 HEARING OFFICER: Okay. Mr. Taylor, any
23 remarks?

24 MR. TAYLOR: My final remarks will be brief

1 also.

2 I guess the first thing I'd like to point out is
3 that the State, as I understand it, has made certain
4 requests to the landfill for additional closure
5 requirements. But I have not heard any testimony
6 about what Waste Hauling's counteroffer to that was.
7 And so the cost estimates, the additional requirements
8 at this point in time are somewhat speculative in
9 nature. There's also no prohibition -- even if the
10 Board approves the settlement between Bell and the
11 State, there's no prohibition on Waste Hauling
12 continuing to negotiate with the State, thereby
13 reducing whatever requirements might happen to apply
14 to it.

15 With respect to the issue of causation, I am
16 continually confused by it. What we have in this case
17 is the State suing Bell, the State suing Waste
18 Hauling, and Waste Hauling filing a cross-enforcement
19 action against Bell. It's always been my
20 understanding that in this country a plaintiff bears
21 the burden of proving its case. If Waste Hauling is
22 bringing an enforcement action against Bell, then
23 Waste Hauling, therefore, bears that burden of proving
24 its claim and cannot then rely on a third party, i.e.

1 the State, to say will you please prove my claim for
2 me and I will prevent you from entering into any
3 settlement that might allow you not to prove my claim
4 for me. It's just ridiculous. I don't understand it.

5 With respect to the claim of Waste Hauling that
6 the settlement is somehow deficient in its failure to
7 describe the alleged violations, we've addressed this
8 numerous times. But we, again, believe that the
9 stipulation and proposal for settlement is quite
10 self-evident, and, again, there's clearly no
11 obligation to admit to violations of the Act. So
12 that's not a clear basis or a recognizable basis for
13 objecting to a settlement.

14 With respect to the amount of penalty paid, Bell
15 finds it interesting that somehow this amount is
16 small. It's not -- Bell doesn't consider it small,
17 and almost tripling the amount of the economic benefit
18 we believe is quite -- quite substantial, and that's
19 what happened in this case.

20 And finally, you know, in its pleadings Waste
21 Hauling has stated that it believes it has a right to
22 seek contribution from Bell in circuit court, and
23 accordingly, I -- there is no harm to Waste Hauling.
24 It believes that it has rights to pursue Bell Sports,

1 and it is certainly free to do so. This settlement
2 with the State is between the People of the State of
3 Illinois and their allegations against Bell Sports.
4 Those are the claims that are settled here. And we
5 think that for that reason that the settlement is
6 clearly approvable by the Board.

7 HEARING OFFICER: Thank you.

8 Before I forget, I should note for the record that
9 no members of the public are in attendance this
10 morning. Mr. Camfield, the president of Waste Hauling
11 Landfill, Inc., is present, and another member of the
12 Attorney General's office is present in the audience.

13 Let me also state that I find no credibility
14 issues with Mr. Krimmel's testimony.

15 Is there a desire to file any posthearing briefs
16 on this hearing? Mr. Van Ness?

17 MR. VAN NESS: Yes. I believe we should. I
18 would like to address some of the lingering comments.

19 HEARING OFFICER: All right. Let's go off
20 the record, please.

21 (Discussion off the record.)

22 HEARING OFFICER: The briefing schedule for
23 this hearing will be as follows. Waste Hauling
24 Landfill, Inc.'s brief will be due December 20th,

1 1996. The reply by Bell Sports and the People will be
2 due January 3rd, 1997. A response, if any, is due --
3 a response, if any, by Waste Hauling Landfill is due
4 January 10th, 1997.

5 As we mentioned in an off-the-record discussion,
6 discovery will continue during this period of time.

7 And if there's any further activity in this with
8 discovery or -- please bring it to the attention of
9 the Hearing Officer.

10 Anything further?

11 Mr. Davis?

12 MR. DAVIS: No, sir.

13 HEARING OFFICER: Mr. Taylor?

14 MR. TAYLOR: No.

15 HEARING OFFICER: Mr. Van Ness?

16 MR. VAN NESS: Nothing further, thank you.

17 HEARING OFFICER: Thank you. And this
18 hearing is closed.

19 (Which were all of the proceedings had
20 on the hearing of this cause on this
21 date.)

22

23

24

1 STATE OF ILLINOIS)
)SS
2 COUNTY OF SANGAMON)

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CERTIFICATE

5 I, Dorothy J. Hart, affiliated with Capitol
6 Reporting Service, Inc., do hereby certify that I
7 reported in shorthand the foregoing proceedings; that
8 the witness was duly sworn by me; and that the
9 foregoing is a true and correct transcript of the
10 shorthand notes so taken as aforesaid.

11 I further certify that I am in no way associated
12 with or related to any of the parties or attorneys
13 involved herein, nor am I financially interested in
14 the action.

15

16

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20 Dated this 9th day of
21 December, A.D., 1996, at
22 Springfield, Illinois.

23

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