

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 PEOPLE OF THE STATE OF ILLINOIS,

4 Petitioner,

5 vs. No. PCB 95-091

6 WASTE HAULING LANDFILL, INC.,

7 and WASTE HAULING, INC.,

8 Respondents.

9 and

10 WASTE HAULING LANDFILL, INC.,

11 and WASTE HAULING, INC.,

12 Cross-claimants,

13 vs.

14 BELL SPORTS, INC.,

15 Cross-Respondent.

16

17

18 Proceedings held on April 16, 1997 at
19 10:00 a.m., at the Office of the Attorney General,
20 Conference Room, 500 South Second Street,
21 Springfield, Illinois, before the Honorable Michael
22 L. Wallace, Hearing Officer.

21 Reported by: Darlene M. Niemeyer, CSR, RPR

 CSR License No.: 084-003677

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Belleville, Illinois

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I N D E X

WITNESS	PAGE NUMBER
John Taylor	10, 27, 35
Charles R. Maw	39, 69, 75
Robert G. Krimmel	79, 138, 156, 165, 174
Edwin C. Bakowski	177, 203, 204, 206

E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
People's Exhibit 19	--	8
People's Exhibit 20	19	27
Respondent's WHL Exhibit 5	38	--
Respondent's WHL Exhibit 6	84	113
Respondent's WHL Exhibit 7	88	113
Respondent's WHL Exhibit 8	93	113
Respondent's WHL Exhibit 9	98	113
Respondent's WHL Exhibit 10	105	113
Respondent's WHL Exhibit 11	128	173
Respondent's WHL Exhibit 12	131	173
Respondent's WHL Exhibit 13	132	173

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P R O C E E D I N G S

(April 16, 1997; 10:00 a.m.)

HEARING OFFICER WALLACE: Pursuant to adjournment, I now call Docket PCB 95-91.

This is the matter of the People of the State of Illinois versus Waste Hauling Landfill, Inc. and Waste Hauling, Inc. and the counter-claim of Waste Hauling Landfill, Inc. and Waste Hauling, Inc. versus Bell Sports, Inc.

Let the record -- well, is Mr. Davis going to come by?

MS. MENOTTI: Yes, he will.

HEARING OFFICER WALLACE: And Mr. Nahmod is going to join us?

MR. TAYLOR: Yes.

HEARING OFFICER WALLACE: All right. Please show the same appearances as yesterday.

All right. Are there any new appearances today?

MR. KRIMMEL: Yes.

HEARING OFFICER WALLACE: You are Mr. Krimmel, though, right?

MR. KRIMMEL: That's correct.

HEARING OFFICER WALLACE: All right. I

1 am just wanting attorneys. Only attorneys can
2 appear.

3 Are there any preliminary matters, Ms.
4 Menotti?

5 MS. MENOTTI: None that I can think of.

6 HEARING OFFICER WALLACE: Mr. Van Ness?

7 MR. LATSHAW: We have --

8 MR. VAN NESS: Yes, we have one.

9 MR. LATSHAW: We have one matter.

10 HEARING OFFICER WALLACE: Mr. Latshaw?

11 MR. LATSHAW: With Mr. Van Ness'

12 permission, I will go ahead and discuss this.

13 At the close of the hearing yesterday,
14 when the People introduced I believe it was
15 People's Exhibit 19, I understand that the Hearing
16 Officer was taking the matter under advisement.

17 (Mr. Nahmod entered the hearing
18 room.)

19 MR. LATSHAW: But I wanted to make sure,
20 for the purposes of our position, that the record
21 is clear as to what our objections were, and so I
22 wanted to reiterate them just clearly for the
23 record, with your permission.

24 HEARING OFFICER WALLACE: All right.

1 MR. LATSHAW: First of all, we wanted to
2 reassert our objections in the motion in limine
3 principally because there is a line of cases that
4 says if we don't we waive it. So we are doing
5 that, and I won't comment further because that is
6 clearly stated in our motion, and I believe you
7 have already ruled on that motion.

8 The second is -- I guess the second
9 objection was that it was our understanding that
10 the order was going to be permitted to come into
11 evidence for the sole purpose of I guess in
12 aggravation of damages or penalty or consideration
13 for penalty under the Watts case, and that was all
14 discussed at the time of that hearing. But our
15 second objection was that I expected it to be
16 certified, and I was going to stand on that
17 objection as well. Thank you.

18 HEARING OFFICER WALLACE: All right.
19 Thank you.

20 Ms. Menotti, do you want to put anything
21 else in on Exhibit 19?

22 MS. MENOTTI: Just that as Mr. Latshaw
23 stated, it is being offered just for the purposes
24 of penalty. It is a copy directly from the Macon

1 County Circuit Court, which we called and asked
2 them to send over. So it is an accurate copy of
3 the record.

4 HEARING OFFICER WALLACE: All right. Mr.
5 Taylor, do you have any preliminary matters to
6 raise before we get started?

7 MR. TAYLOR: No.

8 HEARING OFFICER WALLACE: All right. I
9 had a chance to look at a few things, and I am
10 going to deny admission to People's Exhibit 18, the
11 inspection report. I checked the transcript, and
12 the People did state that they had no further
13 testimony concerning Counts 5 and 6. It appeared
14 to the Hearing Officer that People's Exhibit 18
15 goes solely to Counts 5 and 6.

16 In terms of Mr. Burger's testimony, I am
17 not going to strike the testimony to the extent
18 that his testimony is probably simply cumulative of
19 the prior witness on Counts 5 and 6. But the State
20 had rested on Counts 5 and 6.

21 On People's Exhibit 19, I am going to
22 admit People's Exhibit 19. Basically I think under
23 ESG Watts, Inc. versus the Pollution Control Board
24 668 Northeast 2nd 1015, Illinois Appellate Fourth

1 District, 1996, I think it is permissible for the
2 Pollution Control Board to take official notice of
3 the Circuit Court order in this case.

4 I will note that it is being offered and
5 accept it only for the purposes of the penalty
6 stage in terms of aggravation or mitigation,
7 whichever it may be. It will be used in the
8 factors that the Board goes to in determining any
9 penalty, if such is found and needs to be
10 assessed.

11 Mr. Latshaw's objection is noted for the
12 record for preservation.

13 MR. LATSHAW: Thank you.

14 (Whereupon said document was
15 admitted into evidence as
16 People's Exhibit 19 as of this
17 date.)

18 HEARING OFFICER WALLACE: All right.

19 MS. MENOTTI: What about the portions of
20 the inspection report that related to the hazardous
21 waste?

22 MR. TAYLOR: Which inspection report?

23 HEARING OFFICER WALLACE: People's
24 Exhibit 18.

1 MR. TAYLOR: Mr. Burger did not give any
2 testimony relating to it.

3 MS. MENOTTI: Yes, he did. He gave
4 testimony related to the last paragraph of the
5 inspection report, which was related to the
6 hazardous waste violations. Additionally, the
7 State would make an offer of proof regarding the
8 inspection.

9 HEARING OFFICER WALLACE: All right. I
10 am still going to deny admission of People's 18 to
11 the extent that the paragraph entitled hazardous
12 waste regulations, which is on approximately page
13 seven of this exhibit, appears to be repetitious of
14 prior testimony.

15 In any event, I will accept People's
16 Exhibit 18 as an offer of proof.

17 MS. MENOTTI: The People call John
18 Taylor.

19 HEARING OFFICER WALLACE: All right. Mr.
20 Taylor, would you step over here, please.

21 (Whereupon the witness was
22 sworn by the Hearing Officer.)

23 HEARING OFFICER WALLACE: Please speak
24 loudly so we can all hear.

1 J O H N T A Y L O R,
2 having been first duly sworn by the Hearing
3 Officer, saith as follows:

4 D I R E C T E X A M I N A T I O N

5 B Y M S . M E N O T T I :

6 Q Would you state your name for the record,
7 please.

8 A John Taylor.

9 Q Who is your employer?

10 A The Illinois Environmental Protection
11 Agency.

12 Q How long have you worked for the Illinois
13 EPA?

14 A Seven years.

15 Q What is your current position?

16 A I work as a financial assurance analyst
17 for the Bureau of Land.

18 Q Have you held any other position within
19 the Agency?

20 A Yes. From 1975 to 1980 I was a field
21 inspector.

22 Q What does your current position involve?

23 A Monitoring compliance basically with
24 solid waste financial assurance regulations by

1 operators of facilities in the State of Illinois.

2 Q Have you had any experience with
3 hazardous waste facilities at all?

4 A I do monitor a few hazardous waste
5 facilities, but primarily my duties are to track
6 compliance with the solid waste regulations.

7 Q Can you please describe your educational
8 background?

9 A I have a Bachelor of Arts in Economics
10 from what is now the University of Illinois at
11 Springfield. I have a Master of Business
12 Administration from Washington University in St.
13 Louis. I have completed a little more than
14 two-thirds of the requirements for a J.D. Degree
15 from the St. Louis University School of Law.

16 Q Do you have any training provided by the
17 Illinois EPA?

18 A I have attended some seminars and
19 workshops that were sponsored by the United States
20 Environmental Protection Agency dealing with
21 financial assurance or related materials.

22 Q As a financial assurance analyst, what
23 documents do you review?

24 A Primarily financial assurance instruments

1 tendered by operators of -- owners and operators of
2 disposal facilities to support their compliance
3 efforts with the financial assurance requirements
4 and some related Agency permitting documents that
5 set forth these requirements.

6 Q Who generates the financial assurance
7 documents that you were referring to?

8 A Generally they are generated either by
9 owners and operators of pollution control
10 facilities or third party sureties in their behalf.

11 Q Approximately how many facilities do you
12 review each year?

13 A Well, I have responsibility for tracking
14 compliance with about 160 facilities in the State
15 of Illinois.

16 Q Are you familiar with the Waste Hauling
17 Landfill?

18 A Yes, to some degree.

19 Q Have you had an opportunity to review
20 your file regarding the landfill prior to your
21 testimony today?

22 A Yes, I have.

23 Q What documents did you review?

24 A The contents of the financial assurance

1 file. There was some information available about
2 prior financial assurance instruments, prior
3 permits, permit denials and various letters,
4 correspondence.

5 Q What financial assurance regulations
6 apply to this landfill?

7 A Financial assurance requirements in the
8 main that apply to this landfill are found at
9 Illinois Administrative Code, Title 35, Section
10 807.600.

11 Q Can you tell me what closure cost
12 estimates are?

13 A Closure cost estimates are as the term is
14 self-explanatory. It is a cost of closure of a
15 facility in accordance with an approved closure
16 plan.

17 Q And can you tell me what post-closure
18 cost estimates are?

19 A Those are the estimated cost of
20 post-closure monitoring and care in accordance with
21 an approved plan, approved by the EPA.

22 Q Who submits or generates the estimates?

23 A It is the responsibility of the operator
24 to provide the closure and post-closure care plans.

1 Q In what context are these estimates
2 submitted to the Agency?

3 A They must be submitted to the Agency as
4 part of a permit application to the Agency.
5 Generally the engineering aspects have to be
6 certified by a Registered Professional Engineer.
7 They are typically a consulting engineer working
8 for the facility operator.

9 Q Can you summarize what means are
10 available to a landfill to provide for financial
11 assurance?

12 A Well, under these regulations in question
13 currently there are six available methods; closure
14 insurance, self insurance, a trust fund, a letter
15 of credit, payment bond, and performance bond.

16 Q Was the Waste Hauling Landfill ever
17 required to provide information regarding closure
18 costs, post-closure costs or financial assurance?

19 A Yes.

20 Q Did the landfill provide this to the
21 Agency?

22 A Yes. From my review of the file it
23 appears that the -- someone on behalf of the
24 landfill provided closure and post-closure care

1 cost estimates in 1985 under a relevant interim
2 formula.

3 Q And was this information ever updated?

4 A It appears that in 1988 the operator
5 submitted an application for a closure and
6 post-closure care plan. It was never approved by
7 the Agency. Apparently it was denied.

8 Q Did that plan include any cost estimates
9 or financial assurance estimates?

10 A I believe so, yes.

11 Q Mr. Taylor, I am going to hand you what
12 has been previously marked and admitted into
13 evidence as People's Exhibit Number 3.

14 If you could, please turn to Attachment
15 C, page 12 of that attachment. It is about a
16 little less than halfway through.

17 A Okay. Attachment C.

18 Q The pages aren't numbered.

19 A I have Attachment C.

20 Q Do you have Attachment C?

21 A Yes.

22 Q Go to page 12 of that attachment,
23 please.

24 MR. LATSHAW: What page are we talking

1 about now?

2 MS. MENOTTI: Attachment C, page 12.

3 MR. LATSHAW: Is there a title?

4 Q (By Ms. Menotti) Do you have it?

5 A It is the closure and post-closure care
6 application cost estimates, April 1991, revised
7 March 1996. Is that what you are speaking of?

8 Q That's the Attachment. Maybe I am on the
9 wrong page. Let me count back. Is there a -- come
10 back to page 12 or 13, the letter of credit.

11 A Okay. It is right after that. Are you
12 referring to the letter of credit?

13 Q Right. Is that the letter of credit that
14 you were just referring to?

15 A There were two letters of credit
16 submitted by the operator of this landfill
17 facility, one in 1985 and this one in March of
18 1988.

19 Q Okay. And what was the bond posted by
20 this one?

21 A The amount of this letter of credit is
22 \$85,000.00.

23 Q Was that posted in accordance with Agency
24 regulations?

1 A Yes, I believe so. It apparently was in
2 support of the application. There was a permit
3 application that was attached to it.

4 Q Okay. Who was the letter of credit
5 issued to or on behalf of?

6 A The letter of credit was issued at the
7 request of the account of Waste Hauling, Inc.

8 Q I think we are done with that.

9 A Okay.

10 HEARING OFFICER WALLACE: Mr. Taylor, you
11 need to speak a little louder so everyone can hear
12 you.

13 THE WITNESS: Okay.

14 Q (By Ms. Menotti) When was the landfill
15 first required to comply with these financial
16 assurance requirements that we have been talking
17 about?

18 A March 1st of 1985.

19 Q Okay. How long -- well, scratch that.
20 Sorry.

21 Do you know when the most recent letter
22 of credit for the Waste Hauling Landfill expired?

23 A It is the one we were just looking at. I
24 believe it expired in 1992.

1 Q And is there anything in your file or
2 that you know of in the form of financial assurance
3 that has been posted since then?

4 A I am not aware of anything.

5 Q In your opinion, is the landfill in
6 compliance with the financial assurance
7 regulations?

8 A No, it is not.

9 Q In your review, have you formed an
10 opinion as to whether or not the landfill has
11 gained any kind of economic benefit from not
12 complying with these financial regulations,
13 financial assurance regulations?

14 A In my opinion, they have more than likely
15 gained some sort of an economic benefit, but as to
16 how much it is not possible to tell. The
17 regulations require the operator of the landfill to
18 provide a closure plan detailing the costs of
19 closure and post-closure care and monitoring and
20 provide financial assurance in an amount that would
21 guarantee the proper closure and post-closure
22 care. If you don't know the amounts involved, it
23 would be difficult to come to any conclusions at
24 all as to how much money they may have saved or

1 what sort of an economic benefit they may have
2 gained by not complying with these regulations.

3 Q Does the landfill currently have any
4 financial assurance for -- as a solid waste
5 facility?

6 A None that I am aware of.

7 Q What about as a hazardous waste facility?

8 A There is nothing in the file to reflect
9 that.

10 Q At my request, did you make an estimation
11 regarding the amount of revenue generated by the
12 landfill for the years 1990 through 1992?

13 A Yes.

14 MS. MENOTTI: Could you mark this,
15 please.

16 HEARING OFFICER WALLACE: Let's go off
17 the record.

18 (Whereupon a short recess was
19 taken.)

20 (Whereupon said document was
21 duly marked for purposes of
22 identification as People's
23 Exhibit 20 as of this date.)

24 HEARING OFFICER WALLACE: Back on the

1 record.

2 Q (By Ms. Menotti) Mr. Taylor, you have in
3 front of you what has been marked as People's
4 Exhibit 20. Can you identify this document?

5 A This is a copy of an IEPA publication
6 titled, Available Disposal Capacity for Solid Waste
7 in Illinois, Sixth Annual Report, published in
8 January of 1993.

9 Q Who generated it?

10 A It is generated by the Illinois
11 Environmental Protection Agency, Bureau of Land.

12 Q Are you familiar with this document?

13 A Yes, this is an annual report that our
14 Bureau publishes. It is derived from information
15 supplied to us by owners and operators of solid
16 waste facilities in Illinois.

17 Q Are you familiar with the figures in the
18 report?

19 A Yes.

20 (Mr. Thomas Davis entered the
21 hearing room.)

22 Q (By Ms. Menotti) Have you specifically
23 looked at the figures with regard to the Waste
24 Hauling Landfill on page 78?

1 A Yes, I have.

2 Q Is this an official Illinois EPA
3 publication?

4 A Yes, it is.

5 Q Is this the type of document that is
6 prepared annually in the regular course of Agency
7 business?

8 A Yes, it is.

9 Q Did you have an opportunity to do some
10 calculations regarding the figures listed for the
11 Waste Hauling Landfill on page 78?

12 A Yes, I did.

13 Q Did they give you any kind of an idea as
14 to the amount of revenue generated by the landfill
15 for the years 1990 through 1992?

16 A Assuming that these figures are
17 relatively accurate, for the three years in
18 question, there was just slightly less than 700,000
19 cubic yards of waste received by the landfill, and
20 they reported a tipping fee of \$3.60 per cubic
21 yard. Simply by multiplying the tipping fee times
22 the summation of the waste received, the volume of
23 waste received, it came up with a figure of just
24 right at 2.5 million dollars.

1 Q The figures regarding the amount of waste
2 received was submitted by the landfill to the
3 Agency?

4 A Yes, that's my understanding.

5 Q Of that 2.5 million dollars that you are
6 talking about, how much would you estimate was paid
7 out to the state or county in the form of tipping
8 fees required by the government?

9 MR. LATSHAW: I will object. I don't
10 think there is sufficient foundation for that
11 opinion. There is no knowledge or basis for
12 knowledge for him to express the opinion. There is
13 no foundation established prior to her asking that
14 question.

15 MS. MENOTTI: The numbers are in the
16 report right in front of them.

17 MR. LATSHAW: Can he point them out,
18 then?

19 HEARING OFFICER WALLACE: The objection
20 is to the foundation, so maybe you need to back up
21 and --

22 MS. MENOTTI: Oh, to the foundation of
23 the document?

24 HEARING OFFICER WALLACE: No, to his

1 knowledge of anything, as I understood the
2 objection.

3 MR. LATSHAW: Correct.

4 MS. MENOTTI: Not only does the witness
5 have knowledge of the report, but --

6 HEARING OFFICER WALLACE: Right. You
7 need to establish that. The objection is
8 sustained.

9 (Mr. Davis and Ms. Menotti
10 confer briefly.)

11 Q (By Ms. Menotti) Mr. Taylor, are you
12 aware of any provision, statutory provision that
13 requires a landfill to pay fees to the State of
14 Illinois?

15 A Yes, I am, generally.

16 Q Could you explain that?

17 A In the Environmental Protection Act there
18 is a fee schedule by which the State collects a
19 tipping fee from landfill operators in the State of
20 Illinois. Unfortunately, I am not familiar with
21 exactly what is charged in Macon County, because it
22 depends on whether or not the County Health
23 Department has delegated powers from our Bureau to
24 inspect landfill sites. There is a fee sharing

1 mechanism, and I am not familiar with what it --
2 what it costs sites in Macon County.

3 (Mr. Davis and Ms. Menotti
4 confer briefly.)

5 Q (By Ms. Menotti) Does the amount -- Mr.
6 Taylor, if the landfill had to pay money to the
7 county and to the state, does that affect the total
8 amount paid out?

9 A Yes. My understanding is that there is a
10 minimum of I believe 47 cents a cubic yard,
11 perhaps. That may not be right. If there is a
12 delegation agreement with the county the fees go
13 up. It is not -- it is not hard to find out what
14 the fee is in Macon County. I just simply don't
15 know what it is.

16 (Mr. Davis and Ms. Menotti
17 confer briefly.)

18 Q (By Ms. Menotti) What was the total
19 amount that was generated in your estimate, again?

20 A It was right at 2.5 million dollars.

21 Q And what years does the report cover?
22 Can you tell me what the volume of waste for each
23 year was?

24 A According to this, the waste disposed at

1 the Waste Hauling Landfill in 1990 was 227,309
2 cubic yards. In 1991 the figure was 231,182. In
3 1992 it was 241,066.

4 Q Okay.

5 MR. LATSHAW: I am going to object to the
6 witness just reading the document. Either the
7 document comes in or it speaks for itself or he has
8 some opinion about it. But so far the document is
9 not in evidence, I guess, and he is just reading
10 from a document that is yet to be in evidence and
11 so far has not expressed an opinion about these
12 numbers, so I don't know. This seems to be an
13 inappropriate line of questioning.

14 HEARING OFFICER WALLACE: The objection
15 is overruled.

16 Please continue, Ms. Menotti.

17 MS. MENOTTI: That's all I have regarding
18 this report. The State would move the document
19 into evidence.

20 HEARING OFFICER WALLACE: Any objection?

21 MR. LATSHAW: Well, I think we should
22 note an objection for the record here, because I
23 don't think there is a sufficient foundation for
24 the document, aside from the fact that this witness

1 did say that he is aware that the Bureau of Land
2 apparently produced it. It is apparently produced
3 and published by an Agency of the State of
4 Illinois.

5 But in terms of the exact source of the
6 information and how it is compiled and its
7 reliability and so on, I think is quite
8 questionable and insufficient foundation. I think
9 I would interpose an objection.

10 MS. MENOTTI: Not --

11 HEARING OFFICER WALLACE: Mr. Taylor, any
12 objection?

13 MR. TAYLOR: No.

14 MS. MENOTTI: Not only is --

15 HEARING OFFICER WALLACE: Do you care to
16 respond?

17 MS. MENOTTI: Not only is this report
18 required, it is also an official report of the
19 Illinois EPA, which means it is generally
20 considered to be self-authenticating. The witness
21 has testified that he does have knowledge of the
22 report and he does rely on it, and it is produced
23 by the Bureau that he works for at the Illinois
24 EPA.

1 HEARING OFFICER WALLACE: All right.
2 People's Exhibit Number 20 is admitted into
3 evidence.

4 (Whereupon said document was
5 admitted into evidence as
6 People's Exhibit 20 as of this
7 date.)

8 MS. MENOTTI: I have nothing further for
9 Mr. Taylor at this time.

10 HEARING OFFICER WALLACE: Mr. Latshaw?

11 MR. LATSHAW: Thank you, sir.

12 CROSS EXAMINATION

13 BY MR. LATSHAW:

14 Q Mr. Taylor, I call your attention again
15 to what has been marked previously as People's
16 Exhibit 3. Do you have that available to you,
17 sir? And, again, I ask you to refer to the same
18 page you cited on the record previously as the cost
19 estimate page, the closure, post-closure
20 application. Do you recall the page, sir?

21 A I will find it.

22 Q All right, sir.

23 A It is here somewhere. Yes, I have it.

24 Q I wonder if I may for a moment take a

1 peak over your shoulder to see if I have the same
2 page. I am not sure. Okay. Thank you.

3 That document does reflect a portion of
4 the closure, post-closure care plan as a cost
5 estimate; isn't that correct?

6 A Yes, it is a cost estimate.

7 Q So the plan was submitted and a cost
8 estimate was submitted with that plan; is that
9 correct?

10 A Yes.

11 Q Okay. Now, you refer to having examined
12 the financial assurance file. Did that file
13 contain the document marked as People's Exhibit 3?

14 A No.

15 Q Okay. Is that unusual?

16 A No.

17 Q Okay. Does that file in the usual course
18 contain copies of any previous closure,
19 post-closure care plans that may have been
20 submitted by an operator?

21 A Not -- our permit files -- let me restate
22 this. This document, I assume, was submitted as
23 part of a permit application and would be contained
24 in our Bureau's permit files, had a permit been

1 issued, had it been approved. If it was not, it
2 was returned to the operator.

3 If there was some policy in the Permit
4 Section as to what they do with denied
5 applications, I believe they are simply destroyed.
6 So if the application is not approved it is not in
7 the file.

8 Q All right.

9 A So, no, this is not in our files that I
10 am aware of.

11 Q So it is --

12 A I believe that --

13 Q Sorry.

14 A I believe that in more recent years our
15 Permit Section has revised their policy. I don't
16 work in that unit, so I don't know. But I believe
17 they keep copies of applications for some numbers
18 of years now, but the Bureau files do not contain
19 denied applications. It is simply not there.

20 Q All right, sir. So any application for
21 closure, post-closure that might have been
22 submitted by Waste Hauling Landfill for the
23 facility it owned and formerly operated in Macon
24 County would not have been any document you

1 reviewed prior to your testimony today; is that
2 correct?

3 A I am aware of this one.

4 Q Yes, sir.

5 A But the files do not contain any of the
6 prior ones if the applications were denied. If the
7 application permit is denied it is not in the file.

8 Q So the answer to my question is aside
9 from this one it would be no, then, is that
10 correct, that you had not looked at them?

11 A Well, that's your answer. My answer is
12 that I have seen this one.

13 HEARING OFFICER WALLACE: Mr. Taylor,
14 answer the question. He asked you a specific
15 question. Please answer it.

16 THE WITNESS: Okay. Would you repeat the
17 question?

18 MR. LATSHAW: I wonder if I could have
19 the court reporter read it back.

20 HEARING OFFICER WALLACE: Would you read
21 the question back, please.

22 (Whereupon the requested
23 portion of the record was read
24 back by the Reporter.)

1 HEARING OFFICER WALLACE: Go back prior
2 to that question.

3 (Whereupon the requested
4 portion of the record was read
5 back by the Reporter.)

6 THE WITNESS: No, it is not correct.

7 Q (By Mr. Latshaw) All right, sir.

8 A I have seen this one.

9 Q All right. Aside from that one, then,
10 sir --

11 A That's correct.

12 Q -- you did not examine any others?

13 A Yes.

14 Q Yes, you --

15 A Yes, I did not.

16 Q Okay. That was an awkward question, I
17 must admit.

18 You don't know if any cost estimates for
19 closure and post-closure care were submitted by
20 Waste Hauling Landfill prior to the document you
21 are referring to or that has been marked as
22 People's 3?

23 A I am aware that there was one in March of
24 1988.

1 Q All right.

2 A As a matter of fact, I believe that some
3 of it is contained in this one.

4 Q All right. I think you also mentioned
5 you were aware of a -- I had written a letter of
6 credit in 1985?

7 A Yes.

8 Q That had previously been submitted?

9 A Yes.

10 Q And that you indicated that it was on
11 some interim formula that was no longer effective?

12 A Yes.

13 Q What interim formula were you referring
14 to?

15 A I believe it is -- it is in the
16 regulations at 807.624, I believe. I would have to
17 look. It is 623 or 624. The Pollution Control
18 Board initial financial assurance regulations
19 contained what they called an interim formula for
20 providing financial assurance in order to comply
21 with the regulations during the first three years
22 of the program. It is still in the regulations.
23 It has never been deleted.

24 However, from 1985 to roughly March of

1 1988, as I recall, the facility operators could
2 comply with the financial assurance requirement by
3 calculating some financial assurance amount based
4 on I believe just mostly the area of the landfill
5 facility times some number. It is spelled out in
6 the regulations how it works. And they could
7 provide financial assurance in that amount during
8 that period of time and that would suffice to
9 comply with the regulations until such time as the
10 site operator submitted a permit application
11 containing a site specific closure and post-closure
12 care plan and cost estimates.

13 Q So was there a mathematical type of
14 formula, or was it a -- some other type of formula?

15 A It is still in the regulations. It is a
16 mathematical formula. It had to do with some
17 assumed cost for closure and then something -- I
18 believe it was based on site acreage. I would have
19 to look at it.

20 Q And it is your -- did you examine that
21 document prior to your testimony today?

22 A The one submitted by Waste Hauling
23 Landfill?

24 Q In 1985, yes, sir.

1 A Yes.

2 Q Okay. Do you have -- did you express any
3 opinion about that particular document?

4 A No.

5 Q All right. Then you mentioned another
6 letter of credit dated March 1st, 1988.

7 A Yes. I believe --

8 Q I am sorry.

9 A I believe there is a copy of it in this
10 exhibit.

11 Q That's the document you previously
12 identified I guess immediately following the cost
13 estimates in People's 3; is that correct, sir?

14 A Yes.

15 Q Do you have any opinion or did you have
16 any opinion about that particular document as far
17 as effective dates and termination dates?

18 A No.

19 MR. LATSHAW: Excuse me a second,
20 please.

21 Thank you. That's all of the
22 cross-examination I have, sir.

23 HEARING OFFICER WALLACE: Mr. Taylor?

24 MR. TAYLOR: No questions.

1 HEARING OFFICER WALLACE: Redirect?

2 MS. MENOTTI: No.

3 EXAMINATION

4 BY HEARING OFFICER WALLACE:

5 Q Mr. Taylor, you were talking about Permit
6 files and Bureau files. Are those one and the
7 same?

8 A Not exactly. Our -- each Bureau of the
9 EPA maintains their own files. They have become
10 quite massive over 25 years of the existence of the
11 Agency. In each Bureau file there is a number of
12 subsets of files. It is a fairly long list. There
13 are about 25 categories possible for any given
14 site.

15 It would be possible to have 25 sets of
16 files; things like permitting, groundwater
17 monitoring, general correspondence, complaints,
18 permits that would be discussed, financial
19 assurance, which I primarily deal with, Superfund,
20 hazardous waste. I was making a distinction
21 between the financial assurance files that I
22 generally review and the permit files, which is
23 actually a separate file.

24 Q All right. Then you said if a permit is

1 denied, then the application will not be found in
2 that facility's permit file?

3 A Right.

4 Q Will there be any cross-reference
5 material in the financial assurance file for that
6 facility if the permit is denied?

7 A Generally not.

8 Q And in --

9 A I --

10 Q In terms of People's Exhibit Number 3,
11 that is not in the permit file, that was your
12 testimony?

13 A That's my understanding, yes.

14 Q All right. But is it contained in
15 another Agency file?

16 A My understanding is, and I don't have a
17 complete knowledge of this, but I understand that
18 our permit unit in more recent years, which would
19 include this document in question, has begun
20 keeping copies of denied permit applications for a
21 lot of reasons, probably appeals and the like. But
22 if the permit application is denied, it has no --
23 it has no legal significance to us, and it is not
24 contained in our Bureau files.

1 They keep the applications for possible
2 appeal or questions later. They keep it for some
3 period of time. However, I don't work in that
4 unit, so I can't really tell you exactly what their
5 policy is. I am only vaguely aware of it.

6 Q Okay. Well, you reviewed People's
7 Exhibit 3; is that correct?

8 A Briefly, yes.

9 Q In conjunction with this hearing? Is
10 that how it came into your --

11 A Yes.

12 Q -- review?

13 A Yes. Otherwise, I would have never seen
14 it at all.

15 HEARING OFFICER WALLACE: All right.

16 Thank you, Mr. Taylor. You may step down.

17 (The witness left the stand.)

18 MS. MENOTTI: The People have no further
19 witnesses.

20 HEARING OFFICER WALLACE: All right.

21 Thank you.

22 Does Waste Hauling Landfill wish to
23 present anyone today?

24 MR. VAN NESS: Yes, Mr. Hearing Officer.

1 If we could, could we take a few seconds break and
2 start up with our part of the case?

3 HEARING OFFICER WALLACE: Yes. We will
4 take a five-minute break.

5 (Whereupon a short recess was
6 taken.)

7 (Whereupon a document was duly
8 marked for purposes of
9 identification as Respondent
10 WHL Exhibit 5 as of this date.)

11 HEARING OFFICER WALLACE: Back on the
12 record.

13 The People's case is through?

14 MS. MENOTTI: Yes, the People rest.

15 HEARING OFFICER WALLACE: All right. Mr.
16 Van Ness?

17 MR. VAN NESS: Thank you, Mr. Hearing
18 Officer.

19 Waste Hauling calls Mr. Charles Maw.

20 (Whereupon the witness was
21 sworn by the Hearing Officer.)

22 HEARING OFFICER WALLACE: Please speak
23 clearly and loudly so we can all hear, if you
24 would.

1 THE WITNESS: Okay.

2 HEARING OFFICER WALLACE: All right, Mr.
3 Van Ness.

4 MR. VAN NESS: Thank you, Mr. Hearing
5 Officer.

6 C H A R L E S M A W,
7 having been first duly sworn by the Hearing
8 Officer, saith as follows:

9 DIRECT EXAMINATION
10 BY MR. VAN NESS:

11 Q Mr. Maw, would you give your full name
12 and your current business address, please.

13 A My name is Charles Maw. My employer is
14 Weston Environmental Matrix. That is at 2417 Bond
15 in University Park, Illinois.

16 Q Can you describe your educational
17 background?

18 A Yes. I have a Bachelor of Arts Degree in
19 chemistry and biology from Asbury College in
20 Wilmore, Kentucky. I also have an MBA from Olivet
21 Nazarene University.

22 HEARING OFFICER WALLACE: I am sorry.
23 What was the undergrad college?

24 THE WITNESS: Asbury College.

1 HEARING OFFICER WALLACE: Asbury?

2 THE WITNESS: Yes.

3 HEARING OFFICER WALLACE: Could you spell
4 that for the record.

5 THE WITNESS: A-S-B-U-R-Y.

6 HEARING OFFICER WALLACE: Thank you.

7 Q (By Mr. Van Ness) Could you give the
8 dates that you received your degree, sir?

9 A The BA was received in 1982. The MBA in
10 1991.

11 Q Do you have any certificates? Do you
12 hold any certificates aside from your degrees?

13 A No, I do not.

14 Q Can you describe your work experience
15 prior to coming to Weston labs?

16 A Right out of college I worked at an
17 agricultural feed additive company called Kemmon
18 Industries. I worked as a quality control chemist
19 and also as a research chemist. Following three
20 years there, I worked at the University of Iowa
21 hygienic laboratory as a chemist II in the GCMS
22 department. I worked there for a year prior to
23 starting at Weston.

24 Q Can you describe your work experience at

1 Weston, and please give me the dates on those?

2 A Okay. In 1985, when I started, I was a
3 chemist in the GCMS department and soon promoted to
4 the unit leader position of that department. After
5 a year, I believe, I was promoted to the
6 information management system, system manager
7 position for a year, and following that I was
8 promoted to a project manager position.

9 Q Is that the position you hold to this
10 date?

11 A That is correct.

12 Q Do you know the approximate year that you
13 were elevated to the project manager position?

14 A I believe it would have been in 1988.

15 Q Okay. What are your job responsibilities
16 as project manager?

17 A I work with clients on setting up
18 projects to conduct the testing that they would
19 require regarding testing of chemicals in solid
20 waste, water, soil. I work as a client liaison
21 setting up project rotations, project technical
22 support.

23 Q You mentioned clients. Is the Illinois
24 EPA one of your clients?

1 A Yes, they are.

2 Q Were they one of your clients back in
3 1993?

4 A Yes, they were.

5 Q You mentioned that you are a client
6 liaison. Does that obligate you to correspond with
7 the EPA?

8 A Yes, it did.

9 Q Could you briefly describe what kind of
10 communication you would typically have with the
11 client as project manager?

12 A My contact would normally have been with
13 two different people, one person named Sue Dubit
14 (spelled phonetically), who would set up a project
15 that she had requested or that she would have
16 requested through the Agency for specific sites, if
17 we had the lab capacity to receive samples for a
18 given project.

19 The other contact would have been Ron
20 Turpin, the contract officer, that we correspond
21 with regarding technical issues, and also he was
22 the gentleman that we discussed contractual issues,
23 we submitted performance evaluation samples, and
24 other sorts of technical issues.

1 Q From a technical standpoint, what is the
2 significance, in your mind, of being a contract lab
3 for the Illinois EPA?

4 A It would normally require that you have
5 the ability, the instrumentation, and the people to
6 conduct projects that would meet their criteria,
7 which is similar to the U.S. EPA contract lab
8 program procedures.

9 Q And what does the U.S. EPA contract lab
10 procedures entail?

11 A They have a specific scope of work that
12 is to be followed for the analysis of a given set
13 of compounds, for a given set of parameters, and
14 they have reporting formats and analysis routines
15 that must be filed.

16 Q Do these requirements generally fall
17 within the rubric of quality assurance, quality
18 control?

19 A They have their own specific quality
20 control requirements, yes.

21 Q I assume that that applies also to the
22 Illinois EPA, as well?

23 A That's correct.

24 Q Do you recall whether in 1993 Weston Labs

1 received samples from the Illinois EPA identified
2 as originating from the Bell Sports facility in
3 Rantoul?

4 A Regarding the document in the report that
5 I had, yes.

6 Q Do you recall whether Weston was
7 requested to perform an analysis of these samples?

8 A Yes.

9 Q And were you Weston's project manager for
10 that project?

11 A Yes.

12 Q Do you recall the nature of the analyses
13 requested to be performed on these samples?

14 A We conducted TCLP analysis for volatiles
15 and semivolatiles.

16 Q Could you very quickly, for the record,
17 describe the TCLP procedure?

18 A The TCLP procedure stands for toxicity
19 characteristic leaching procedure, and it is a
20 laboratory procedure that is used to determine the
21 leachability of analytes from a particular waste.
22 Those leachates are then analyzed for specific
23 compounds.

24 Q In the course of performing this work for

1 the Agency, was Weston required to observe a strict
2 chain of custody protocol?

3 A Yes, they were.

4 Q Was Weston required to document
5 compliance with that protocol?

6 A According to the project, the scope of
7 work, and the contract that we had with the
8 Illinois EPA, yes.

9 Q Are you aware of any regulations or
10 standards governing the conduct of TCLP analysis?

11 A There are specific procedures that are in
12 that contract that we would have to follow, and in
13 the organic analysis of that leachate we would
14 follow those procedures as applicable for those
15 specific analytes.

16 Q Were there regulations or standards
17 governing the reporting of the analyses?

18 A Yes, there were.

19 Q And do those requirements again include
20 quality assurance, quality control?

21 A Yes, they did. The TCLP is a little bit
22 different than the normal CLP program, because it
23 has a different list of analytes and, therefore,
24 requires some different procedures, but for the

1 most part as applicable they were followed the same
2 as they would be for the CLP procedures.

3 Q Do you recall whether --

4 HEARING OFFICER WALLACE: I am sorry.

5 Are you saying CLP?

6 THE WITNESS: Yes.

7 HEARING OFFICER WALLACE: All right.

8 Q (By Mr. Van Ness) Do you recall whether
9 Weston prepared an analytical report of this
10 analyses?

11 A Yes, we did.

12 Q What role did you play in its
13 preparation?

14 A Of the report? I did not prepare any
15 report. There are a few of the forms that I would
16 have reviewed to insure that the protocols and the
17 procedures and the quality control steps were
18 conducted according to that contract when I signed
19 the report.

20 Q Would you recognize that analytical
21 report if I showed it to you?

22 A Yes, I would.

23 Q All right. I am going to hand you what
24 has been previously marked as WHL Exhibit Number 5,

1 and ask --

2 MR. TAYLOR: Is this the report that was
3 recently sent to us?

4 MR. VAN NESS: I am sorry?

5 MR. TAYLOR: This is the report that was
6 recently sent to us?

7 MR. VAN NESS: Yes.

8 MR. TAYLOR: We would object to testimony
9 based on this report for two reasons.

10 One, this report, as it exists here, is
11 not in the exhibit list that was filed in this
12 proceeding.

13 The second reason is that we received
14 this report on Friday of last week, which is two
15 business days prior to the time that this hearing
16 started. It is over 550 pages, I believe, of
17 technical information, and given the timing of it,
18 effectively prevented us from reviewing the
19 substance of this document.

20 HEARING OFFICER WALLACE: Any objection?

21 MS. MENOTTI: We haven't been given
22 anything regarding this report, not even that copy,
23 so I would --

24 HEARING OFFICER WALLACE: Well, are you

1 objecting?

2 MS. MENOTTI: I would stand behind Mr.
3 Taylor's objection.

4 HEARING OFFICER WALLACE: Mr. Van Ness?

5 MR. VAN NESS: Yes, Mr. Hearing Officer.
6 Counsel has it pretty much correctly. Actually,
7 both sides were somewhat surprised when we went to
8 the deposition of this witness. We received -- we
9 were prepared to examine him based on what had been
10 produced for us in the course of discovery. We
11 determined that this document that was produced for
12 us on discovery was, in fact, a summary of what you
13 have now before you as Waste Hauling Exhibit Number
14 5.

15 My suggestion to you, sir, is that there
16 is no significant prejudice worked against this
17 client, and this document is produced pursuant to
18 your order for limited somewhat late discovery of
19 this particular laboratory, simply because some of
20 this information was not known to us until late in
21 the procedure. I think you may recall that we were
22 given authority by the Hearing Officer's order to
23 conduct new discovery for this purpose. This is
24 the result of that effort.

1 Counsel for Bell Sports was certainly
2 present and participated in the questioning of this
3 witness, and while I certainly apologize for the
4 fact that the document was received as late as it
5 was, I submit that does not work any tremendous
6 disadvantage to Counsel. A lot of the bulk is
7 simply the QAQC measures and the raw data that
8 supported the conclusions that were reported to us
9 in the People's responses to our discovery.

10 So the nub of it is still and always was
11 before all of the parties in this proceeding. The
12 bulk of it was not, in terms of volume, but the
13 import of it certainly is.

14 MR. TAYLOR: May I respond?

15 HEARING OFFICER WALLACE: Please.

16 Mr. Maw, would you slide that Exhibit
17 over, please.

18 MR. TAYLOR: This document was produced
19 by Mr. Maw at the deposition, and a copy of it was
20 subsequently given to the Landfill, and I believe
21 they had it for approximately eight days prior to
22 the time that we received it.

23 We do believe that it creates substantial
24 prejudice because of the delay in the receiving it

1 effectively prevented us from reviewing it. We
2 can't say exactly what the problem is with the
3 document, because we haven't had time to go through
4 it. I think that's the basic problem. It was not
5 on the exhibit list, and it was not produced in a
6 timely fashion.

7 MR. VAN NESS: In terms of it not being
8 on the exhibit list, Mr. Hearing Officer, again, I
9 would reiterate that this document is, in fact, on
10 the exhibit list. It is simply the fully fleshed
11 out version of what both parties thought we had
12 received from the People. The People's report was
13 simply the summary version of what you have in
14 front of you.

15 MR. TAYLOR: We have no objection to the
16 use of the summary of the report that was provided
17 to us some months ago.

18 HEARING OFFICER WALLACE: Is the summary
19 report anywhere? Are you going to mark it as an
20 exhibit, Mr. Van Ness?

21 MR. VAN NESS: Well, I had no intention
22 of marking it except the report itself, because I
23 thought the Board was entitled to the whole thing.

24 MR. TAYLOR: As you can see, this is the

1 summary.

2 HEARING OFFICER WALLACE: May I see
3 that?

4 MR. TAYLOR: And it is substantially
5 shorter, by hundreds of pages.

6 HEARING OFFICER WALLACE: All right. I
7 am going to overrule the objections and allow Waste
8 Hauling to continue its questioning of this witness
9 based upon this document.

10 MR. VAN NESS: Thank you, Mr. Hearing
11 Officer.

12 Q (By Mr. Van Ness) For the record, Mr.
13 Maw, this is the --

14 HEARING OFFICER WALLACE: Although I do
15 have one question.

16 MR. VAN NESS: Yes.

17 HEARING OFFICER WALLACE: Did you send a
18 copy of this to the People?

19 MR. VAN NESS: I will be happy to -- no,
20 I haven't sent one to them. Actually, they have
21 this already. My understanding is that this is
22 information that was sent to them. We just have a
23 copy of the material that was sent to them, and not
24 given to us in its entirety.

1 HEARING OFFICER WALLACE: This report was
2 submitted to the Agency?

3 MR. VAN NESS: Well, the testimony will
4 show that --

5 HEARING OFFICER WALLACE: All right.
6 Then, let's --

7 MR. VAN NESS: I have not given it to the
8 People, no, I have not. More precisely, the People
9 have not given it to me, but my understanding is
10 that the People have this information. It is in
11 there. It was provided to the People some time
12 ago.

13 MS. MENOTTI: That's incorrect. Mr. Van
14 Ness is probably assuming that because the EPA
15 contracts with them -- all we have is the summary
16 report, not the big, huge report. We were never
17 notified that they were intending to use a
18 different report, and we don't have a copy.

19 HEARING OFFICER WALLACE: All right. My
20 ruling still stands. The objection is overruled,
21 and you may continue questioning --

22 MR. VAN NESS: Thank you, Mr. Hearing
23 Officer.

24 HEARING OFFICER WALLACE: -- based on

1 this identified exhibit.

2 MR. VAN NESS: Thank you.

3 Q (By Mr. Van Ness) Mr. Maw, is this
4 document that I have placed before you now, marked
5 Waste Hauling Exhibit Number 5, is this the
6 analytical report that you just referred to?

7 A This is the copy of the report that I
8 would submit to the Agency, yes.

9 Q Can you confirm that this is a complete
10 and accurate copy of that report?

11 A It looks complete. I certainly don't
12 remember every page of this document, no, but
13 everything that I see here as I scan through it
14 looks to be a copy of the document that was
15 produced.

16 Q Is this analytical -- I am sorry. Go
17 ahead and finish reviewing.

18 Is this analytical report the sort of
19 records which contract laboratories, such as
20 Weston, produces in the regular course of their
21 business?

22 A That's correct.

23 Q And are analytical reports, such as this,
24 the sort of information upon which you anticipate

1 the clients regularly and reasonably rely on in the
2 course of their business?

3 A I am sorry. Can you restate that?

4 Q Yes. Is this the kind of report that you
5 regularly provide for clients on the presumption
6 that the clients themselves will rely upon that
7 report?

8 A This format of report, this bulk of the
9 document is supplied to clients who request a full
10 CLP deliverable, yes. Not all clients request
11 that.

12 Q Based on the information in this
13 particular analytical report, do you have any
14 reason to believe that any of the standards and
15 guidelines to which you refer, including the chain
16 of custody, were not followed?

17 MR. NAHMOD: I object to that question,
18 that it calls for the witness to speculate. There
19 is no foundation for his knowledge as to any chain
20 of custody issues.

21 MR. VAN NESS: Mr. Hearing Officer --

22 HEARING OFFICER WALLACE: Sustained.

23 MR. VAN NESS: I am sorry. This witness
24 did, in fact, previously testify that there were

1 standards that applied, and those standards include
2 quality assurance and quality control, and that the
3 chain of custody procedures were required.

4 HEARING OFFICER WALLACE: But not
5 specifically chain of custody, so the objection is
6 sustained.

7 Q (By Mr. Van Ness) Can you, Mr. Maw,
8 recall whether within that report there are records
9 of chain of custody -- let me back up.

10 Do you recall whether there are any
11 records of chain of custody procedures being
12 followed within that report?

13 A The samples are signed off by the person
14 who relinquished them, and they are signed upon
15 receipt at the laboratory.

16 Q Do you see any evidence gaps?

17 A MR. NAHMOD: Mr. Hearing Officer, I am
18 still at somewhat of a loss as to the basis of his
19 testimony other than him simply reading documents.
20 The document speaks for itself. I don't know that
21 he is qualified to express an opinion as to the --

22 HEARING OFFICER WALLACE: Well, your
23 objection is out of order, because he is going
24 to -- the question pending is perfectly

1 appropriate.

2 THE WITNESS: Yes, I can see the chain of
3 custody that was signed by individuals at the
4 laboratory as samples were taken into custody and
5 relinquished back to a custodian.

6 (Ms. Menotti left the hearing
7 room.)

8 Q (By Mr. Van Ness) Thank you. Let's go
9 back to your role as project manager for a moment.
10 As project manager you indicated that it was one of
11 your duties to communicate and serve as a liaison
12 with the client; isn't that correct?

13 A Correct.

14 Q And that liaison consisted of describing
15 the scope of work that the client wanted
16 performed? That was included, was it not?

17 A Well, we would have a contract with the
18 Agency, yes. If there were specific items of note
19 that required technical support or direction from
20 the Agency, then we would correspond with them,
21 yes.

22 Q Now, a number of people would have had
23 access to the samples as they moved through the
24 laboratory analysis process; isn't that right?

1 MR. TAYLOR: We would object to the form
2 of the question as being leading. I think that's
3 about the second or third one in a row.

4 HEARING OFFICER WALLACE: All right.

5 MR. VAN NESS: Mr. Hearing Officer -- I
6 am sorry. Thank you.

7 HEARING OFFICER WALLACE: If you -- were
8 you going to respond?

9 MR. VAN NESS: No. I understood that you
10 denied it. I guess I didn't hear you.

11 HEARING OFFICER WALLACE: The questions
12 are leading.

13 MR. VAN NESS: Thank you. Very well. I
14 will rephrase the question.

15 Q (By Mr. Van Ness) Were other persons, Mr.
16 Maw, at the laboratory able to access the
17 laboratory samples?

18 A Other persons than who?

19 Q Aside from yourself?

20 A I did not have access. I did not handle
21 the samples. If they went to the sample custodian
22 to sign out a sample for a specific test that they
23 were requested to do, they would have access to
24 them, yes.

1 Q Would that be recorded in the analytical
2 report?

3 A They would have the sample signed out and
4 relinquished, yes.

5 Q Okay. Was it part of your responsibility
6 as the client liaison to communicate with the
7 client if there were any problems encountered?

8 A If there are any special specific
9 questions regarding the nature of the sample that
10 would require direction from the Agency, yes.

11 Q Were persons within the lab who became
12 aware of any problems, were they obligated to
13 somehow inform you?

14 A Yes, they were.

15 Q Do you recall whether anyone so informed
16 you with respect to this project?

17 A I believe there was a sample discrepancy
18 report noting the nature of the samples requiring a
19 multi-phased component, which was noted, and we
20 followed the procedures that would have been
21 requested stated in the methodology, but it was a
22 little bit out of the norm for some samples. Yes,
23 that was noted.

24 Q Aside from the information in that

1 discrepancy report, are you aware of any other --

2 A I am not.

3 Q -- problems? I ask you, then, based on
4 your knowledge of the procedures and your review of
5 this document, whether you have any reason to
6 believe that any of the standards and guidelines
7 which you referred were not followed?

8 A I do not have any reason to believe
9 that.

10 Q Are you aware of a regulatory standard
11 limit for 2-Butanone?

12 A I am aware there is one, yes.

13 Q Do you know what that is?

14 A For what type of sample, for what type of
15 analysis?

16 Q I believe we are talking about TCLP
17 analysis.

18 A Is there a TCLP limit for 2-Butanone?

19 Q Yes.

20 A Yes, there is.

21 Q Do you know what that is?

22 A I believe it is 200 milligrams per liter.

23 Q Do you recall, from the analytical
24 report, whether any of the sample analysis results

1 exceeded 200 milligrams per liter?

2 MR. TAYLOR: We would object to the
3 question, based on relevance.

4 MR. VAN NESS: The obvious relevance, Mr.
5 Hearing Officer, is that the whole case is about
6 2-Butanone, also known as methyl ethyl ketone, so
7 we are asking him to summarize the results.

8 MR. TAYLOR: It is unclear to me when
9 these samples were taken and what basis or what
10 bearing they relate to the Waste Hauling Landfill.

11 HEARING OFFICER WALLACE: All right. To
12 that extent, Mr. Van Ness, you should back up.

13 MR. VAN NESS: I will. I will -- in
14 fact, I will drop the questions entirely. I
15 believe the report will speak for itself.

16 Q (By Mr. Van Ness) You have previously
17 discussed the sample discrepancy report. Can you
18 summarize the significance of that report?

19 A That form?

20 Q Yes.

21 A That form is filled out when there are
22 items of note regarding the sample matrix or a
23 sample analysis procedure that would be out of the
24 norm and that form is completed. In this

1 particular case it was noted that the sample was
2 biphasic, and it was just noted that the sample was
3 leached in the solid form with the liquids
4 recombined at the end, which is what is required in
5 the procedure.

6 Q Is there any reason to believe from that
7 discrepancy report that the sample that was the
8 subject of that report is somehow inaccurate or
9 unreliable?

10 A There is no reason to believe that, no.

11 Q Thank you.

12 (Mr. Van Ness and Mr. Latshaw
13 confer briefly.)

14 Q (By Mr. Van Ness) I am going to ask you
15 to turn to your report very briefly, Mr. Maw.

16 I think a few pages into the report there
17 is a cover letter, is there not? Do you recall
18 when you transmitted this document to the EPA?

19 MR. TAYLOR: Can we just establish what
20 page we are on?

21 MR. VAN NESS: Okay. Well, they are not
22 numbered, but it looks to me about that far in
23 (indicating). It comes after all the chain of
24 custody.

1 MR. TAYLOR: Is it a letter dated March
2 10, 1993?

3 MR. VAN NESS: Right.

4 MR. TAYLOR: To Ron Turpin?

5 MR. VAN NESS: That is the one I am
6 referencing to.

7 HEARING OFFICER WALLACE: To who?

8 MR. TAYLOR: Mr. Ron Turpin.

9 HEARING OFFICER WALLACE: Okay. Thank
10 you.

11 Q (By Mr. Van Ness) Do you recall when you
12 transmitted this report to the Illinois EPA?

13 A Well, the letter is dated March 10th. Is
14 that what you are asking?

15 Q No, that is not what I am asking. I am
16 asking do you recall when?

17 A Do I recall when?

18 Q Yes.

19 A I guess I don't understand. I would
20 assume it was signed and sent shortly after the
21 date of March 10, 1993.

22 Q Okay. In fact, is there not a letter of
23 transmittal that you utilized to send this report
24 to the EPA?

1 A Yes, there is.

2 Q And that letter is maybe a half inch into
3 the WHL Exhibit Number 5; is that correct?

4 A Correct.

5 Q And do you see that -- do you have that
6 letter in front of you, sir?

7 A Yes, I do.

8 Q And to whom is it sent, specifically?

9 A To Ron Turpin.

10 Q And is that your signature there at the
11 bottom of the page, sir?

12 A In the middle of the page above my name,
13 yes.

14 Q All right. I sit corrected. There is
15 another signature at the bottom of the page, isn't
16 there? Who is Michael Healy?

17 A Mike Healy is the lab manager at the lab.

18 Q I see. When you prepared this report for
19 transmission to the EPA, what were your
20 responsibilities?

21 A To approve that this report that was
22 being submitted was for the samples that were
23 received and that the procedures and contract
24 requirements were followed within the

1 specifications of the contract and the quality
2 control procedures, and the systems that were set
3 up in place for analysis were followed.

4 Q So by the act of signing this letter and
5 sending it to Mr. Turpin at the Illinois EPA you
6 are essentially confirming that the quality control
7 and quality assurance were --

8 MR. TAYLOR: Objection to the leading.

9 HEARING OFFICER WALLACE: Overruled.

10 Q (By Mr. Van Ness) Is that correct?

11 A I am signing the report that states that
12 the systems that were in place were followed to the
13 best of my knowledge, yes.

14 Q Just for the record, Mr. Maw, the report
15 that was sent to the Illinois EPA consists of the
16 entirety of the materials that are marked as
17 Exhibit 5, Waste Hauling Exhibit 5; is that
18 correct?

19 A Actually, it would be everything from
20 this letter on. The top documents were a copy of
21 the original chain of custodies, which are required
22 to be retained at the laboratory and some of the
23 internal paperwork at the top that is retained.

24 Q So everything from your letter down was

1 transmitted to the Agency; is that correct?

2 A To the best of my knowledge, yes.

3 MR. VAN NESS: I guess I have no further
4 questions.

5 HEARING OFFICER WALLACE: All right. Mr.
6 Davis?

7 MR. DAVIS: Mr. Hearing Officer, inasmuch
8 as the State has settled its claims against Bell
9 Sports, and this testimony relates only to those
10 matters, we have no questions.

11 HEARING OFFICER WALLACE: All right. Mr.
12 Taylor?

13 MR. NAHMOD: We have no questions at this
14 time, Mr. Hearing Officer.

15 MR. VAN NESS: Mr. Hearing Officer, I
16 will move to admit Waste Hauling --

17 MR. TAYLOR: We would object.

18 HEARING OFFICER WALLACE: Let him finish
19 moving, please.

20 MR. VAN NESS: Anyway, I would request
21 that Waste Hauling Exhibit 5 be admitted into
22 evidence.

23 HEARING OFFICER WALLACE: All right. Mr.
24 Davis, any objection?

1 MR. DAVIS: No.

2 HEARING OFFICER WALLACE: Mr. Taylor?

3 MR. TAYLOR: Yes. We believe that -- we
4 object on the basis of relevance. There has been
5 no showing as to how this document or Mr. Maw's
6 testimony in any way relates to the landfill and
7 the waste that were presumably or allegedly
8 discovered at the landfill.

9 HEARING OFFICER WALLACE: All right. Mr.
10 Van Ness?

11 MR. VAN NESS: I guess my response would
12 be, Mr. Hearing Officer, that we had put this
13 witness on somewhat out of order in order to
14 convenience him, and would submit that relevance
15 will be shown subsequent, and it be accepted as
16 evidence now and let the Board determine the weight
17 to be given to it or the exact use to be made of
18 the report based on the entire record before them
19 when that record is submitted to the Board.

20 (Ms. Menotti entered the
21 hearing room.)

22 HEARING OFFICER WALLACE: All right. I
23 am not really interested in playing legal jousting,
24 but to the extent that I am not sure I have heard

1 anything about this document, that it does relate
2 to Waste Hauling Landfill, so in that regard, Mr.
3 Taylor's objection seems to be well-founded.

4 It does appear to be relevant, but I am
5 not sure that I have heard any tie-in. So I will
6 grant you leave to go back and show that to the
7 Board through this witness since he is here.

8 MR. VAN NESS: Could we ask you, Mr.
9 Hearing Officer --

10 HEARING OFFICER WALLACE: All right. To
11 be more specific, I have never heard this witness
12 say where these samples are from, any of that
13 information.

14 MR. VAN NESS: Right. I understand
15 that. Again, that is because I am taking this
16 witness somewhat out of order for the convenience
17 of the witness.

18 May I suggest that we take this testimony
19 and this document and reserve ruling on it until
20 the -- that I will offer it again into evidence at
21 the end of my case?

22 HEARING OFFICER WALLACE: That would be
23 fine.

24 MR. VAN NESS: All right.

1 HEARING OFFICER WALLACE: If this witness
2 can't supply any of this information.

3 MR. VAN NESS: No, I don't believe this
4 witness can supply this information.

5 HEARING OFFICER WALLACE: All right,
6 then.

7 MR. VAN NESS: There is a reason why I
8 have not asked him to produce it. He can't.

9 HEARING OFFICER WALLACE: All right,
10 then. I will reserve ruling on Waste Hauling
11 Exhibit Number 5 awaiting further testimony, I
12 guess.

13 MR. VAN NESS: Thank you.

14 MR. TAYLOR: We would then have questions
15 for Mr. Maw since he is here. I take it it would
16 be appropriate for us to ask him questions now,
17 rather than having him come back in the event that
18 any relevance is established.

19 HEARING OFFICER WALLACE: Okay. You are
20 intending to ask questions in the nature of
21 cross-examination of his testimony?

22 MR. TAYLOR: Yes.

23 HEARING OFFICER WALLACE: All right. You
24 may proceed.

1 MR. TAYLOR: Mr. Nahmod is going to do
2 it.

3 HEARING OFFICER WALLACE: All right. Mr.
4 Nahmod.

5 CROSS EXAMINATION

6 BY MR. NAHMOD:

7 Q Mr. Maw, you mentioned that you did not
8 handle these samples; is that right?

9 A That is correct.

10 Q So you did not sign or supervise the
11 chain of custody for these samples; is that right?

12 A That's correct.

13 Q You did not see anybody else handle the
14 samples?

15 A I may have. I don't recall.

16 Q You didn't take any of these samples?

17 A No, I did not.

18 Q Did you deliver the samples to Weston
19 Labs?

20 A No, I did not.

21 Q Did you sign for receipt of the samples?

22 A No, I did not.

23 Q Did you personally perform any of the
24 testing on the samples?

1 A No, I did not.

2 Q Did you review the quality of the
3 sampling that was done?

4 A Of the sampling? I wasn't present during
5 the sampling, no.

6 Q You testified as to the procedures and
7 standards followed by Weston Labs; isn't that
8 right?

9 A Correct.

10 Q But you do not know whether those
11 procedures and standards were followed specifically
12 in connection with these samples; isn't that right?

13 A I know that we have systems in place to
14 follow procedures for that contract, and I have
15 signed that those were conducted, yes.

16 Q But is that based on your personal
17 knowledge in observing or actually performing the
18 sampling or testing?

19 A No, it is not.

20 Q So then you don't have personal knowledge
21 as to whether the standards and procedures were
22 followed specifically in connection with these
23 samples?

24 A No, I do not.

1 Q I want to turn your attention to Waste
2 Hauling Exhibit Number 5, and specifically to what
3 is numbered as Bates Number 3, for the analysis
4 done of 2-Butanone.

5 HEARING OFFICER WALLACE: May I interrupt
6 for a minute. When you say 2-Butanone, how is that
7 spelled? Is it the number two?

8 MR. NAHMOD: I meant to say 2-Butanone.
9 It is 2, dash, B-U-T-A-N-O-N-E.

10 HEARING OFFICER WALLACE: All right.
11 Thank you. Just for the record.

12 Q (By Mr. Nahmod) And all the way on the
13 right column there are two letters there; is that
14 right?

15 A Yes.

16 Q What is the significance of the letter B?

17 A B means that a portion of that material,
18 2-Butanone, was also detected in the laboratory
19 blank.

20 Q How does that affect the import of any
21 results from testing that sample?

22 A You would need to assess the value of the
23 concentration of that material in the blank
24 analysis to do that.

1 Q Is that true anywhere that that letter B
2 is included in that right-hand column, for any
3 samples done by the lab?

4 A Any analysis that would have that B
5 flag. For organic analysis that B flag would note
6 that there were some portions of that material that
7 was found in the blank, yes.

8 Q What, under -- in a perfect world, what
9 would be the showing for a blank when sampling is
10 done?

11 A An undetect.

12 Q When the B is there that shows that there
13 was a detect?

14 A That's correct.

15 Q I want to turn your attention to the page
16 that is Bates numbered 43, also in Waste Hauling
17 Exhibit 5.

18 A Okay.

19 Q In the paragraph numbered one, can you
20 please take a second to look at that.

21 A Yes.

22 Q What is the -- could you please read the
23 last sentence of that?

24 A All the re-extractions occurred beyond

1 the recommended hold time.

2 Q What is the significance of that
3 occurrence, that re-extractions were beyond the
4 recommended hold time?

5 A That notes that the re-extraction for the
6 semivolatile analysis occurred beyond the seven-day
7 extraction hold time from the time of the leachate.

8 Q What is the impact of that on the
9 reliability of this sampling done?

10 A For the 2-Butanone it wouldn't have any
11 degree of relevance, because the 2-Butanone was
12 analyzed on the volatile analysis. On the
13 semivolatile analysis, it could impart some
14 potential low bias of sample data.

15 Q Does it render the sampling invalid?

16 A No, I wouldn't say so.

17 Q Are you familiar with the Illinois
18 Environmental Protection Agency's standards for
19 holding time?

20 A Yes.

21 Q Does the Illinois Environmental
22 Protection Agency accept or attribute any
23 significance to sampling that is done beyond the
24 recommended hold time?

1 A I believe in the interpretation of the
2 evaluation of the data they would consider that,
3 yes.

4 Q What significance would it have as to
5 evaluating?

6 A I am not able to evaluate the data based
7 on the usability. The hold time was exceeded
8 beyond the method requirements, yes.

9 Q And that would have an impact on any
10 sampling done in connection with this numerical
11 sample?

12 A This particular hold time as exceeded
13 would only apply to the semivolatile DNA analysis,
14 yes.

15 MR. NAHMOD: We have no further questions
16 at this time. Thank you.

17 HEARING OFFICER WALLACE: All right.
18 Redirect?

19 MR. VAN NESS: None.

20 HEARING OFFICER WALLACE: Okay. Thank
21 you, Mr. Maw. You may step down.

22 Off the record.

23 (Discussion off the record.)

24 HEARING OFFICER WALLACE: Back on the

1 record.

2 EXAMINATION

3 BY HEARING OFFICER WALLACE:

4 Q Mr. Maw, before you leave, what did you
5 say the pages in front of the cover letter were?

6 A Some of those pages are internal
7 documents that would have been an internal chain of
8 custody that we would have followed or some of the
9 paperwork that I completed when the project was
10 scheduled. And since this is a copy of my original
11 document, which contains the original chain of
12 custodies, those original chain of custodies were
13 copied in there as well.

14 But I believe those chain of custodies
15 are also included back in the document. Yes, there
16 are also copies back here. They are in there
17 twice. This material up front ahead of that would
18 have been the paperwork that the lab would have
19 retained that would have been specific to this
20 project.

21 Q Okay. What is its significance to the
22 entire document, then?

23 A It was significantly copied because when
24 I received the subpoena I was supposed to copy and

1 bring everything to the testimony that was related
2 to this project, so I brought everything. The
3 specific documents, those chain of custodies that
4 were copied would also be contained back here.

5 Q Okay. Why does Weston keep them in
6 front? Is that just a filing procedure?

7 A Yes, yes, because those are original
8 chain of custodies and this paperwork is not
9 submitted to the Agency.

10 Q Now, the first couple of pages are a
11 computer printout of some sort?

12 A Yes.

13 Q What are those two pages?

14 A The first page is a copy of our
15 electronic chain of custody which is a printout of
16 the sample I.D.s as submitted by the Agency as well
17 as our internal laboratory I.D.s associated with
18 the tests that were requested.

19 Q All right. For example, on the very
20 first line it says 001, Bell Sports. You
21 performed -- Weston performed two tests on that?

22 A Yes. The original sample, the matrix is
23 a drum or a waste sample, that was submitted from
24 the field, and on that particular sample it was

1 conducted through a TCLP leachate for semivolatile
2 analysis and also a TCLP leachate for volatile
3 analysis. That produced two new water samples,
4 essentially. Those are the next two samples and
5 additional analysis were conducted on those, the
6 leachates.

7 Q Which would be called 002 and 003?

8 A Correct.

9 Q Then you would have done test 0624T and
10 0625T?

11 A Yes. Those are test codes for the
12 volatile analysis and the semivolatile analysis for
13 which we spoke of earlier.

14 Q Just skimming through some of the
15 documents, was your contact with the Agency Bill
16 Zierath or Ron Turpin or both?

17 A Bill Zierath was the project manager for
18 the project. My contact would have been with Sue
19 Dubit, who sets up the project, and Ron Turpin for
20 any technical questions.

21 Q Who is Sue Dubit, if you know?

22 A She -- I really don't know what her title
23 is, but she, I believe, would be in the position of
24 sample coordinator that would coordinate with the

1 laboratories that are contracted and with the
2 project managers at the EPA for the delegations of
3 sample analysis.

4 Q It was your testimony that from the cover
5 letter, dated 10 March 1993, to the end of the
6 page, Bates stamp number 528, that was submitted to
7 the Environmental Protection Agency?

8 A Yes, to Ron Turpin.

9 Q Did you submit a summary analysis that
10 was mentioned earlier along with this or is that --

11 A I believe there is a summary analysis
12 that goes to Sue Dubit, yes, and she would pass
13 that information on to the project manager. The
14 remainder of the document is evaluated by the
15 contract -- or the Division of Laboratories, Ron
16 Turpin's group.

17 HEARING OFFICER WALLACE: All right.
18 Thank you, Mr. Maw. Now I believe I am finished.

19 (The witness left the stand.)

20 HEARING OFFICER WALLACE: Mr. Van Ness?

21 MR. VAN NESS: It is a quarter to 12:00.

22 Do you want to go to the next witness, fine,
23 otherwise I -- I will start with my next witness.

24 HEARING OFFICER WALLACE: Your next

1 witness is Mr. Krimmel?

2 MR. VAN NESS: Mr. Krimmel, that's
3 correct.

4 HEARING OFFICER WALLACE: Why don't we go
5 ahead and get started.

6 MR. VAN NESS: All right.

7 HEARING OFFICER WALLACE: Are you
8 releasing Mr. Maw?

9 MR. LATSHAW: That's correct.

10 HEARING OFFICER WALLACE: Mr. Maw, you
11 are excused. You may leave.

12 Mr. Krimmel, you are still under oath
13 from the last time. You still have to tell the
14 truth.

15 THE WITNESS: Okay.

16 (Mr. Davis and Mr. Latshaw left
17 the hearing room.)

18 R O B E R T G. K R I M M E L,
19 having been previously duly sworn by the Hearing
20 Officer, saith as follows:

21 DIRECT EXAMINATION

22 BY MR. VAN NESS:

23 Q Mr. Krimmel, I believe you stated in your
24 prior testimony that you had served as a consulting

1 engineer for Waste Hauling Landfill, Inc.; is that
2 correct?

3 A That's correct.

4 Q You also served in that capacity for
5 Waste Hauling, Inc.?

6 A No.

7 Q How long have you been working with Waste
8 Hauling Landfill, Inc.?

9 A Since approximately 1980.

10 Q Do your responsibilities require you to
11 be at the site on a daily basis?

12 A No.

13 Q You have been present at the landfill on
14 occasion?

15 A That's correct.

16 Q What are your duties as the landfill
17 consulting engineer? What do those entail?

18 A For the most part my duties to Waste
19 Hauling Landfill have been in preparing permit
20 applications to the Illinois Environmental
21 Protection Agency on behalf of the Landfill.

22 Q In the course of that work have you
23 become familiar with the permits that have been
24 issued?

1 A Yes.

2 Q And can you describe again very briefly
3 the permits that have been issued to the Waste
4 Hauling Landfill, Inc.?

5 A There was a permit issued for the site
6 under a previous owner in 1973 that was transferred
7 to Waste Hauling Landfill when they purchased the
8 site from the previous owner. And then there are
9 several special waste permits that have been issued
10 for the facility over the years.

11 (Mr. Latshaw entered the
12 hearing room.)

13 Q (By Mr. Van Ness) Do any of these permits
14 include special waste stream permits?

15 A Yes.

16 Q Do those authorize receipt and disposal
17 of hazardous waste streams?

18 A They do not.

19 Q Can you indicate what special wastes are
20 allowed for that landfill?

21 A Mr. Camfield -- or the landfill held
22 special waste permits from several of the local
23 industries in and around Decatur for various types
24 of special wastes.

1 Q To the best of your knowledge, has Waste
2 Hauling Landfill, Inc. ever made any effort to
3 obtain a permit to dispose of hazardous waste?

4 A To the best of my knowledge they have
5 not.

6 Q In the course of your training and
7 employment, Mr. Krimmel, have you become acquainted
8 with the regulations set out in 35 Illinois
9 Administrative Code?

10 A Yes.

11 Q Are you familiar with the regulations in
12 Part 807 of that?

13 A Yes.

14 Q Can you briefly describe what the Part
15 807 regulations relate to?

16 A They relate to the operation of solid
17 waste landfills prior to the implementation of the
18 regulations that are in 811 through 814 governing
19 the --

20 Q When you are referring to 811 and 814 you
21 are referring to parts of 35 Illinois
22 Administrative Code?

23 A That's correct.

24 Q What do those regulations relate to?

1 A They are newer regulations that pertain
2 to landfills that stay open after the
3 implementation, which I believe is somewhere around
4 1990.

5 Q Based on your knowledge of the permits
6 that were issued to Waste Hauling Landfill, Inc.,
7 can you tell the Board what kinds of waste was
8 authorized to be disposed of?

9 A They had authorization for municipal
10 solid waste and several special waste streams.

11 Q Were these special -- I believe you
12 testified earlier that these special wastes were
13 limited to nonhazardous waste?

14 A That's correct.

15 Q In the course of your employment with
16 respect to Waste Hauling Landfill, Inc., did you
17 have occasion to discuss permits with the Illinois
18 Environmental Protection Agency?

19 A Yes, on several occasions.

20 Q And did that include discussions relating
21 to a closure, post-closure care plan?

22 A Yes, it did.

23 Q I believe you testified previously that
24 you submitted a closure, post-closure care plan on

1 more than one occasion; is that correct?

2 A Yes, that's correct.

3 Q Do you recall how many times?

4 A Three times.

5 Q Do you recall the last time that you
6 submitted -- made an effort to submit a closure,
7 post-closure care plan?

8 A I believe it was in April or in the
9 Spring of 1991.

10 Q Was that subsequently augmented or
11 modified?

12 A Yes, it was.

13 Q When would that have been?

14 A That was modified in the Spring of 1996.

15 (Mr. Davis entered the hearing
16 room.)

17 MR. VAN NESS: Could you mark this,
18 please.

19 (Whereupon said document was
20 duly marked for purposes of
21 identification as Respondent
22 WHL Exhibit 6 as of this date.)

23 Q (By Mr. Van Ness) Would you recognize the
24 application you said you submitted in 1991?

1 A Yes, I think so.

2 Q And if I hand you this document that has
3 been marked Waste Hauling Landfill Exhibit Number
4 6, can you tell me whether you recognize that
5 document?

6 A Yes, I recognize it as the closure,
7 post-closure care application that we submitted in
8 April of 1991, which is the date on the cover
9 letter on the inside.

10 Q I notice that there is a cover sheet on
11 the top of that document that you have before you;
12 is that correct?

13 A That's correct.

14 Q That precedes the cover letter?

15 A That's correct.

16 Q And does it have the correct date on it?

17 A No, it does not.

18 Q That is incorrect?

19 A That's correct. The date on the cover
20 sheet says April 1992. That is not correct. It
21 was submitted in April of 1991.

22 Q Okay. So except for that, can you
23 confirm that that is a true and accurate copy of
24 the report -- I am sorry -- of the application that

1 you submitted in 1991?

2 A I believe it is, yes. It is a closure,
3 post-closure care plan as well as a proposed
4 groundwater monitoring care plan that was required
5 at that time.

6 Q After you submitted this application, do
7 you recall whether you received a response?

8 A Yes. In November of 1991 we received a
9 letter from Mr. Eastep which listed several
10 potential denial points to this application.

11 (Mr. Davis left the hearing
12 room.)

13 MR. VAN NESS: Mr. Hearing Officer, I
14 will need People's Exhibit Number 2, please.

15 Q (By Mr. Van Ness) Mr. Krimmel, I am
16 handing you what has been marked as People's
17 Exhibit Number 2, and ask if that is a copy of that
18 report -- I am sorry -- of that response to which
19 you just referred?

20 A Yes, it is.

21 Q Do you recall whether you or Waste
22 Hauling Landfill, Inc. made any response to Mr.
23 Eastep's letter in 1991?

24 A Yes. We made a couple of responses to

1 this letter, the first of which was drafted under
2 the -- about March 10th of 1993, for the purposes
3 of delivering it to the Agency at the time of the
4 meeting that we were having to discuss the closure
5 of this landfill and the closure, post-closure care
6 plan.

7 Q Do you recall whether at that time Waste
8 Hauling Landfill, Inc. was attempting to gain
9 approval for expansion of the landfill?

10 A We went to the meeting, Mr. Camfield and
11 I, on that day under the impression that we were
12 going to discuss the closure, post-closure care
13 plan that was pending approval and hopefully arrive
14 at some direction for a solution.

15 Q That might have included expansion of the
16 landfill, is that what you were thinking at that
17 time?

18 A No. At that time we were just discussing
19 the approval of the closure of the landfill, of the
20 existing landfill.

21 Q Okay.

22 A Looking for a way to get the -- attempt
23 to negotiate out the deficiencies and amend our
24 plan so that it would be approved.

1 Q Prior to that meeting, to which you just
2 referred, were there any communications from the
3 time that you received what has been marked as
4 People's Exhibit Number 2 and the meeting you just
5 described between you and the EPA?

6 A No.

7 Q You mentioned that you went to a meeting
8 with the EPA in an attempt to clarify the
9 requirements in 1993?

10 A That is correct.

11 Q Do you recall what date that was?

12 A On or about March 10th.

13 Q Did you have prepared at that time a
14 document that you -- I am sorry. Did you have
15 prepared at that time a document?

16 A Yes, we had prepared a letter to the
17 Agency addressing the deficiencies that were listed
18 in the November 1991 letter.

19 Q I hand you what has -- what will be 7.

20 (Whereupon said document was
21 duly marked for purposes of
22 identification as Respondent
23 WHL Exhibit 7 as of this date.)

24 Q (By Mr. Van Ness) I hand you what has

1 been labeled WHL Exhibit Number 7, and ask if you
2 recognize that document?

3 A Yes. It appears to be a copy of that
4 letter that I prepared.

5 MR. TAYLOR: May I see this?

6 MS. MENOTTI: Mr. Hearing Officer, are
7 copies going to be provided?

8 MR. VAN NESS: I am sorry. I thought I
9 had copies here, and I must have mislaid them. I
10 apologize. I will absolutely provide them to you.
11 I believe they have been disclosed previously.

12 MR. LATSHAW: That's right.

13 MR. VAN NESS: I must have misplaced my
14 copies.

15 Q (By Mr. Van Ness) Can you say whether the
16 copy you have before you, Mr. Krimmel, is a true,
17 accurate and complete copy of that application?

18 A I believe it is, yes.

19 Q Did you have an opportunity to give that
20 document to the EPA?

21 A No, we did not.

22 Q Why is that?

23 A Contrary to the belief that we had when
24 we went to the meeting, we learned very early in

1 the meeting that there had -- that there had been
2 some tests, laboratory analysis, run on some waste
3 that had been taken from the landfill, and that
4 they had tested hazardous, and we were informed
5 that we could no longer -- probably would not be
6 able to close this site under the current or the
7 807 Regulations, and it would have to be a RCRA
8 closure, and that statement rendered this document
9 somewhat useless if we were to have to close under
10 RCRA.

11 Q Do you recall who made that statement?

12 A Mr. Childs from the Bureau of Land
13 chaired that meeting. To the best of my knowledge,
14 I believe that he made that -- he made that
15 statement.

16 Q Was this the first time that you were
17 made aware of the hazardous waste at the landfill?

18 A Yes.

19 MR. TAYLOR: Objection. It calls for
20 hearsay. We did not object to his testimony about
21 his beliefs as to why they didn't submit this plan,
22 but we would object to questions concerning
23 hazardous waste from Mr. Krimmel, unless a basis is
24 established for his knowledge.

1 MR. VAN NESS: I am not sure I understood
2 all of that. I didn't hear you clearly.

3 MR. TAYLOR: I don't believe there has
4 been a foundation established for his knowledge of
5 the existence or nonexistence of any hazardous
6 waste.

7 MR. VAN NESS: I don't recall that that
8 is what I asked him. I think I asked him if that
9 was the first time he was advised that there was
10 hazardous waste.

11 If not, I will rephrase the question, Mr.
12 Hearing Officer.

13 HEARING OFFICER WALLACE: All right.
14 Restate the question.

15 Q (By Mr. Van Ness) Mr. Krimmel, was this
16 the first time that you were advised that there
17 might be hazardous waste at the landfill?

18 A Yes.

19 Q Do you recall whether you were told at
20 the meeting of March 10, 1993, from whence the
21 hazardous waste had allegedly come?

22 MR. TAYLOR: Objection. Hearsay.

23 HEARING OFFICER WALLACE: Overruled.

24 THE WITNESS: Yes. We were told that it

1 had come from a sample that had been extracted from
2 the Landfill by Agency personnel, and they believed
3 it was waste that had come from Bell Helmets.

4 Q (By Mr. Van Ness) Subsequent to the
5 meeting of March 10, 1993, did you receive any
6 additional communication or correspondence from the
7 EPA?

8 A There was some correspondence in the late
9 summer and fall of 1995.

10 Q Did these -- did these relate to the
11 attempt to close the Waste Hauling Landfill?

12 A Yes, they did.

13 Q Are you familiar with a gentleman by the
14 name of Ed Bakowski?

15 A Yes.

16 Q And who is he?

17 A I believe -- I am not sure of his current
18 title, but I believe he is in charge of the Permit
19 Section in the Bureau of Land.

20 Q Do you recall whether you received any
21 correspondence from --

22 A Yes, I did.

23 Q -- Mr. Bakowski?

24 A Yes, I did.

1 Q Do you recall whether that correspondence
2 expressly identified closure requirements
3 additional to Part 807?

4 A Yes, it was discussing additional closure
5 requirements beyond 807.

6 MR. VAN NESS: Would you mark this,
7 please.

8 (Whereupon said document was
9 duly marked for purposes of
10 identification as Respondent
11 WHL Exhibit 8 as of this date.)

12 Q (By Mr. Van Ness) Now I am going to hand
13 you what has been marked WHL Exhibit Number 8, and
14 ask you if you recall that document?

15 A Yes, I recall the document.

16 Q Can you describe that document, please?

17 A This document is a letter from Mr.
18 Bakowski addressed to me dated November 9, 1995,
19 and it is in response to a letter that I had
20 written to the Agency on October 31st of 1995
21 asking for a response from the Agency on a -- from
22 an expected response from the Agency from a meeting
23 that we had had earlier that year concerning the
24 closure of this landfill.

1 Q Is that the meeting referenced in the
2 first paragraph, then?

3 A Yes, it is.

4 Q And that was what date?

5 A April 12, 1995.

6 Q I see. Now, does this letter also have
7 an attachment or an enclosure?

8 A Yes, it does.

9 Q Was that included in the correspondence
10 you received?

11 A Yes, it was.

12 Q You have the letter in front of you; is
13 that correct?

14 A Yes.

15 Q Let me direct your attention to the
16 second paragraph of that letter. Would you care to
17 read that into the record, please?

18 A The second paragraph of the letter says,
19 attached to this letter is a copy of correspondence
20 dated September 6, 1995, from Mr. Greg Richardson,
21 Agency Legal Counsel, to Mr. Steve Willoughby,
22 formerly legal counsel for Waste Hauling Landfill.
23 The intent of the September 6 correspondence was to
24 relay to Waste Hauling representatives technical

1 requirements the Agency believes are necessary to
2 close this landfill and to monitor it during the
3 post -- during a post-closure care period. It was
4 expected the response from the Agency would be
5 communicated to Waste Hauling via legal counsel.

6 Q Now, what, to you, is the significance of
7 Mr. Bakowski's characterization of the requirements
8 on the attachment?

9 A I am not quite sure I understand what you
10 mean.

11 Q Did you understand them to be additional
12 to other requirements?

13 A I understood these closing requirements
14 to be additional to what would be a normal 807
15 closure.

16 Q Now, let's turn your attention to the
17 requirements themselves on the attachment. Is it
18 fair to say that these requirements --

19 MR. TAYLOR: Objection to the leading.

20 MR. VAN NESS: I am sorry?

21 MR. TAYLOR: It is going to be a leading
22 question.

23 HEARING OFFICER WALLACE: Well --

24 MR. TAYLOR: He is characterizing the

1 letter already.

2 HEARING OFFICER WALLACE: All right. I
3 would like to hear the end of the question first.

4 MR. VAN NESS: Well, I will rephrase the
5 question.

6 Thank you, Counsel.

7 Q (By Mr. Van Ness) Turning your attention
8 to the attachment to Mr. Bakowski's letter, which
9 is WHL Exhibit 8, do you see a numbered paragraph
10 there?

11 A Numbered paragraphs, yes. In the
12 attachment?

13 Q I am sorry?

14 A In the attachment?

15 Q Yes.

16 A All right.

17 Q Okay. Thank you. What do you take to be
18 the significance of these paragraphs?

19 A These numbered paragraphs list technical
20 requirements that the Agency is requesting be used
21 in the preparation of a closure, post-closure care
22 plan, and the closure and post-closure care of the
23 facility.

24 Q Do you see any references within any of

1 these paragraphs to 35 Illinois Administrative
2 Code, Part 807?

3 A No.

4 Q Do you see any references herein to 35
5 Illinois Administrative Code, other than 807?

6 A Yes, there are several references to the
7 code that you mentioned, in Sections 811 and 814.

8 Q And, again, as you testified previously
9 811 -- Part 811 and 814 apply to what kind of
10 landfill?

11 A Newer landfills and landfills that were
12 to remain operating after the implementation of the
13 new regs, after the implementation of 811, 814 in
14 approximately 1990.

15 Q Based on your knowledge of the permits
16 obtained by this landfill, was this landfill
17 subject to Part 811 or 814?

18 MR. TAYLOR: Objection. It calls for a
19 legal conclusion by the witness. It is my
20 understanding that he is, in fact, a technical
21 consultant.

22 HEARING OFFICER WALLACE: Overruled.

23 THE WITNESS: I believe the landfill has
24 always been considered an 807 landfill.

1 Q (By Mr. Van Ness) In fact, the entire
2 time you were submitting permit applications you
3 never applied for an 811 or 814 permit, did you?

4 A That's correct.

5 Q Did you receive correspondence from Mr.
6 Bakowski subsequent to correspondence you have just
7 been referring to?

8 A Uh-huh, yes.

9 MR. VAN NESS: Could you mark this,
10 please.

11 (Whereupon said document was
12 duly marked for purposes of
13 identification as Respondent
14 WHL Exhibit 9 as of this date.)

15 Q (By Mr. Van Ness) I show you what has
16 been marked WHL Exhibit Number 9, and ask you
17 whether you recognize this document.

18 A Yes, this is a letter dated February
19 14th, 1996, from Mr. Bakowski addressed to
20 Willoughby, Latshaw & Hopkins, P.C., the co-counsel
21 for Waste Hauling Landfill, and I received -- it is
22 noted that I received or my office received a
23 carbon copy of that letter.

24 Q Is it your testimony that this is a

1 complete and accurate and true copy of that letter?

2 A To the best of my knowledge it is, yes.

3 Q Turning your attention to page three of
4 that letter, could you read the first paragraph on
5 that page, please?

6 A The first paragraph on page three reads
7 as follows:

8 The enclosure which was forwarded to Mr.
9 Krimmel with my November 9, 1995 letter contains
10 closure and post-closure requirements the Agency
11 has consistently imposed on other solid waste
12 disposal landfills which have allegedly disposed of
13 hazardous waste. Again, the Agency is willing to
14 consider less stringent closure requirements, but
15 this consideration will be based on, one, Waste
16 Hauling's providing sufficient data and
17 documentation to warrant less stringent closure
18 measures and, two, that the degree to which the
19 measures are protective of human health and the
20 environment in commensurate with past disposal
21 activities.

22 Q Did you understand from that letter, sir,
23 that he was referring to the attachment to what has
24 been marked as WHL Exhibit Number 8?

1 A Yes, that's what I understood that to
2 mean.

3 MR. VAN NESS: I believe I need People's
4 Exhibit Number 3.

5 Q (By Mr. Van Ness) I am going to hand you
6 what has been previously marked as People's Exhibit
7 Number 3, and ask you whether you recall that
8 document?

9 A Yes, I recall it.

10 Q Can you describe this document, please?

11 A This is a letter to Mr. Bakowski dated
12 March 21st, 1996, and the purpose of this letter
13 was, again, to address the deficiencies or
14 potential denial points that were in Mr. Eastep's
15 letter, dated November 4th, 1991, marked People's
16 Exhibit Number 2.

17 Also, it was a -- there were provisions
18 within this letter to offer some enhanced 807
19 closure requirements to address the alleged
20 existence of hazardous waste within the landfill.

21 Q Do you recall what the EPA's response to
22 that March 21, 1996 submittal was?

23 A Yes, it was a denial of the supplemental
24 permit application that had been submitted in April

1 of 1991.

2 Q I will hand you what has been previously
3 marked as People's Exhibit Number 4, and ask if you
4 recognize that document?

5 A Yes, I do.

6 Q Is that the denial letter to which you
7 previously referred?

8 A Yes. It is a letter dated June 26, 1996,
9 from Mr. Bakowski addressed to Waste Hauling
10 Landfill, Incorporated, denying the permit
11 application and listing 16 denial points.

12 Q Now, you did state that the signatures at
13 the bottom of that letter was from Mr. Bakowski?

14 A That's correct.

15 Q Do you see any reference in that letter
16 to 35 Illinois Administrative Code Parts 811
17 through 814?

18 A No, I do not.

19 Q Do you see any reference to the
20 additional closure, post-closure demands that the
21 EPA had set out in Mr. Bakowski's letter of
22 November 9, 1995?

23 A No.

24 Q Following the receipt of that denial

1 letter, were there additional discussions with the
2 Illinois Environmental Protection Agency?

3 A Yes, there was.

4 Q All of this was with respect to the
5 closure, post-closure care plan?

6 A That's correct.

7 Q Do you recall when those occurred?

8 A Sometime in August of 1996.

9 Q Do you recall whether the discussions
10 held during that meeting in August of 1996 were
11 limited to Part 807 requirements?

12 A No, they were not.

13 Q So as a practical matter, did the
14 closure, post-closure denial letter of June 19,
15 1996 completely reflect the full range of the
16 Agency's objections?

17 MR. TAYLOR: Objection. It calls for
18 speculation regarding the intent of the Agency in
19 writing a letter from June of 1996.

20 MS. MENOTTI: The State would also object
21 that the witness does not have the sufficient
22 knowledge to testify to that, and that it does call
23 for speculation on his part.

24 MR. VAN NESS: Mr. Hearing Officer, the

1 witness is simply comparing one document to the
2 next, so you don't need to be an expert for that.
3 He has already identified all of those documents.

4 HEARING OFFICER WALLACE: The objection
5 is sustained. The question asked if this was all
6 the Agency's points, didn't it?

7 MR. VAN NESS: I am sorry?

8 HEARING OFFICER WALLACE: Well, the
9 objection is sustained.

10 MR. VAN NESS: Thank you.

11 Q (By Mr. Van Ness) Let's look at People's
12 Exhibit Number 3 again.

13 A Okay.

14 Q That would be the March 21, 1996 closure,
15 post-closure application; is that correct?

16 A I am sorry. People's Exhibit Number 3 is
17 the response -- the March 21st, 1996 response to
18 the November 1st, 1991 letter.

19 Q Now, you stated previously that one of
20 your intentions in resubmitting a response in March
21 was to address the 16 points raised in Mr. Eastep's
22 letter of 1991; is that correct?

23 A That's correct.

24 Q In fact, you have 16 numbered paragraphs

1 in your letter, do you not?

2 A Well, I address each of the 16 points by
3 item number within my letter.

4 Q Thank you. Do you recall, from looking
5 at Mr. Bakowski's denial letter of June 26, 1996,
6 how many of the points raised by Mr. Eastep in 1991
7 were not mentioned again in the denial letter?

8 A There were five or six.

9 Q So is it safe to say that the 16 points
10 of denial in -- mentioned in June of 1996 are not
11 the same 16 as were mentioned in 1991?

12 A That's correct.

13 Q Again, none of those 16 points mentions
14 35 Illinois Administrative Code, Part 814; is that
15 correct?

16 A None of the 16 points --

17 HEARING OFFICER WALLACE: Wait.

18 THE WITNESS: I am sorry.

19 Q (By Mr. Van Ness) None of the 16 points
20 in the -- I guess it is People's Exhibit Number 4,
21 which is Mr. Bakowski's letter of June of 1996,
22 mentions 35 Illinois Administrative Code, Part 814?

23 A That's correct.

24 Q Now, isn't it true, Mr. Krimmel, that the

1 closure, post-closure plan submittal of March 21,
2 1996 included some cost estimates for closure?

3 A Yes, it did.

4 Q Do you have those in front of you, sir?

5 A Yes, I do.

6 Q Shortly after you submitted the closure,
7 post-closure plan in March of 1996, did you have
8 occasion to reconsider the numbers set forth there?

9 A Yes. In a brief review of that, after
10 submittal, I noted that I had erred in the
11 computation of the post-closure care costs in that
12 we had proposed in the document I believe seven
13 groundwater monitoring wells, and the post-closure
14 care estimate, as it was submitted in March, it
15 only included five, and we supplemented or made a
16 correction by letter.

17 MR. VAN NESS: Could you mark this,
18 please.

19 (Whereupon said document was
20 duly marked for purposes of
21 identification as Respondent
22 WHL Exhibit 10 as of this
23 date.)

24 Q (By Mr. Van Ness) Do you recall the date

1 of that letter?

2 A Sometime in April, I believe.

3 Q I am going to hand you what has been
4 marked as WHL Exhibit Number 10, and ask you
5 whether you recognize that document?

6 A Yes, it is a letter dated April 12th from
7 me to Mr. Bakowski indicating that we were making
8 some corrections in the post-closure care estimate
9 to the previous submittal.

10 Q I am sorry?

11 A We were making some corrections in the
12 previous submittal.

13 Q Did that result in a difference in the
14 total of the estimated closure, post-closure care
15 costs?

16 A Yes, it does. There was no difference in
17 the submittal in the closure cost estimates. There
18 was a difference in the post-closure care cost
19 estimate. The original submittal was \$184,450.00.
20 The new submittal was \$233,305.00, and the major
21 difference resulted in adding the two groundwater
22 monitoring wells to the system, and the cost of
23 monitoring those over the 30 year post-closure care
24 time accounted for the increase from 184,000.00 to

1 \$233,000.00.

2 HEARING OFFICER WALLACE: Mr. Van Ness,
3 are you at a fairly good break off point here?

4 MR. VAN NESS: Yes. Why don't we -- give
5 me another couple minutes and then we will be at a
6 good cut off point.

7 HEARING OFFICER WALLACE: All right.

8 Q (By Mr. Van Ness) First, with respect to
9 what has been marked as WHL Exhibit Number 10, can
10 you say whether it is a true and accurate and
11 complete copy of that document?

12 A Yes, I believe it is.

13 Q At the time that you prepared that
14 document, you were relying upon information? Were
15 you relying upon information when you prepared this
16 document, or were you preparing it out of thin air?

17 A Well, I found the mistake when I was
18 reviewing the plan.

19 Q Okay.

20 A So I had to correct it.

21 Q Were you relying upon current data when
22 you submitted the closure post-closure care
23 estimate?

24 A Yes.

1 Q Do you recall what the sources of that
2 data were?

3 A Be specific about the data.

4 Q Yes, I am talking about the sources of
5 the information you used in the closure,
6 post-closure process in which you were referring?

7 A The information being the quantities of
8 the work that needed to be done were based on the
9 designs that we had submitted with the March 21st,
10 1996 letter, the elements of the closure work and
11 the post-closure care plan.

12 Q Now we are looking at specific items
13 within that April 12, 1996 attachment.

14 A Okay.

15 Q When you were referring to individual
16 cost items, were you using cost information that
17 you generated yourself or was that supplied to you?

18 A The quantities I computed from the data
19 that was available that I -- what I knew of the
20 landfill.

21 Q Okay. So, for instance, do you see
22 paragraph C in the middle of the first page there?

23 A Yes.

24 Q Do you see the reference to cost there?

1 A Yes.

2 Q Okay. Do you see a dollar figure
3 mentioned there?

4 A Yes, \$3.00.

5 Q What is that?

6 A \$3.00.

7 Q Where did that \$3.00 estimate come from?

8 A That was an estimate based upon my
9 judgment as an engineer and experience of knowing
10 what it might cost to do work like this.

11 Q Would the same be true for your estimate
12 of the gas control system in the next paragraph?

13 A Yes.

14 MR. VAN NESS: This might be a good place
15 to wind up. Let me move that WHL Documents 6
16 through 10 be admitted into the record as
17 evidence.

18 MS. MENOTTI: Can we see them? There is
19 some documents that the State was not provided with
20 copies of.

21 MR. VAN NESS: I apologize. There is one
22 document number that I did not provide Counsel copy
23 of.

24 MS. MENOTTI: We don't have 6 or 7.

1 MR. LATSHAW: They were provided to you
2 in discovery.

3 Do you guys have them?

4 MR. TAYLOR: Yes, we have received some
5 discovery documents from Waste Hauling. We had
6 received 6 and 7 from them.

7 MR. LATSHAW: They are on the exhibit
8 list, too, Maria.

9 HEARING OFFICER WALLACE: All right. You
10 look at those and --

11 MS. MENOTTI: There is no objection to
12 those three.

13 MR. VAN NESS: You don't think you have
14 7?

15 HEARING OFFICER WALLACE: All right.
16 Let's go off the record.

17 (Whereupon a lunch recess was
18 taken from 12:35 p.m. to 1:40
19 p.m.)

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AFTERNOON SESSION

(April 16, 1997; 1:40 p.m.)

HEARING OFFICER WALLACE: Back on the record.

Mr. Van Ness, you may resume. I am sorry. There were some exhibits.

Do you object to any of the exhibits, Ms. Menotti?

MS. MENOTTI: Exhibit Number 7, the State is objecting on the grounds that there was no proper foundation laid for the document. In addition, this document is completely irrelevant and immaterial, as it was never submitted on behalf of the Landfill to the Agency. It was never considered, and doesn't apply to the allegations in the complaint.

HEARING OFFICER WALLACE: All right.

Mr. Taylor, any objections to Waste Hauling Exhibits 6 through 10?

MR. TAYLOR: No.

HEARING OFFICER WALLACE: All right. Mr. Van Ness, do you want to respond?

MR. VAN NESS: Yes, Your Honor. The significance, of course, is to at least matters in

1 mitigation of penalty. As far as the testimony and
2 this document are concerned I believe it is well
3 within the Board's discretion to make of it
4 whatever they wish.

5 There was no assertion by this witness
6 that this document had been given to the People, so
7 it is not being tendered for that purpose. It was
8 simply being tendered to show the state of mind and
9 the degree of effort expended by this witness in
10 that interval of time between 1991 and 1992.

11 HEARING OFFICER WALLACE: Well --

12 MS. MENOTTI: May I respond?

13 HEARING OFFICER WALLACE: Briefly.

14 MS. MENOTTI: The objection to relevance
15 was based on the fact that it was never considered
16 and never entered or submitted to the Agency. The
17 fact that the engineer of record did some work on
18 his own time is irrelevant if it was never
19 submitted for any kind of review.

20 MR. VAN NESS: Mr. Hearing Officer, first
21 of all, there was no testimony that this witness
22 did it on his own time. Secondly, the matter
23 whether it was submitted or not does not -- is not
24 dispositive of its relevance. I simply restate the

1 grounds I gave earlier.

2 HEARING OFFICER WALLACE: All right. I
3 am going to admit all of the Exhibits 6, 7, 8, 9
4 and 10 of Waste Hauling Landfill. Exhibit 7 is
5 admitted for the limited purpose that it may have
6 in any consideration of penalties by the Board, but
7 not as -- it is referenced that it was not
8 submitted to the Agency.

9 (Whereupon said documents were
10 admitted into evidence as
11 Respondent WHL Exhibits 6, 7,
12 8, 9 and 10 as of this date.).
13 (Mr. Van Ness and Mr. Latshaw
14 confer briefly.)

15 HEARING OFFICER WALLACE: Are you ready
16 to resume, Mr. Van Ness?

17 MR. VAN NESS: Yes.

18 Q (By Mr. Van Ness) The letter that you
19 wrote to Mr. Bakowski on April 12, 1996, which was
20 WHL Exhibit 10, includes a revised process for the
21 closure, post-closure care; is that correct?

22 A Yes, that's correct.

23 Q And do you have that in front of you now,
24 sir?

1 A Yes, I do.

2 Q Do you have an opinion as to whether the
3 cost of addressing the other alleged deficiencies
4 mentioned in Mr. Bakowski's denial letter of June
5 26th would have any effect on these costs, as you
6 have them stated?

7 A I probably would increase those costs
8 some.

9 Q Do you have any opinion to how much you
10 would increase?

11 A No, I don't have an opinion at this
12 point.

13 Q Now, turning to the attachment to what
14 has been marked as WHL Exhibit Number 8, that's the
15 11-09-95 Bakowski letter. Do you have that in
16 front of you sir?

17 A Yes, I do.

18 Q Do you have an opinion as to the point
19 mentioned on that attachment?

20 A An opinion to --

21 Q As to whether the points mentioned in
22 that attachment would have an increase or an affect
23 on the closure, post-closure costs?

24 A Yes. If these items were implemented as

1 part of the closure, post-closure care plan for
2 this landfill there would be substantial increase
3 in cost for the closure and the post-closure care.

4 Q What is the basis for that opinion, sir?

5 A A tremendous -- an increased amount of
6 work that is required and a longer post-closure
7 care period.

8 Q Let's go through each of those points one
9 by one. Do you see the first numbered point, sir?

10 A Number one?

11 Q Yes.

12 A Yes.

13 Q What does that refer to?

14 A It refers to a final cover system that is
15 suggesting a final cover system in accordance with
16 811.314, which when compared to 807 final cover, an
17 807 final cover would be a two foot compacted cover
18 cap with a six inch vegetative layer. This 811.314
19 would be a six foot compacted cover cap and a
20 vegetative layer.

21 I am sorry. A three foot compacted cover
22 cap and a three foot vegetative layer or a membrane
23 in place of the three foot cover cap.

24 Q Are you familiar with the cost of

1 performing these steps?

2 A Roughly.

3 Q Do you have an idea, from an engineering
4 standpoint, what the additional costs would be?

5 MR. TAYLOR: We would --

6 HEARING OFFICER WALLACE: I am sorry.
7 What?

8 MR. TAYLOR: We would object and ask for
9 some additional foundation as to these cost
10 estimates.

11 MR. VAN NESS: I just asked him if he had
12 any. I was going to get to it in a minute.

13 HEARING OFFICER WALLACE: All right. Go
14 ahead with your questioning.

15 MR. VAN NESS: Thank you.

16 THE WITNESS: I believe that the
17 additional cover cap system would be something in
18 the neighborhood of \$100,000.00 more than an 807.

19 Q (By Mr. Van Ness) Again, what is the
20 basis for that opinion, sir?

21 A Just my -- well, the fact that it is --
22 the thicker cap, the heavier cap requires more.

23 Q Are you aware of --

24 A My basic knowledge of the engineering

1 cost of doing these things.

2 Q I am sorry. I didn't mean to step on
3 your response. Are you aware of the cost in your
4 area for performing those tasks?

5 A Yes, roughly.

6 Q Is your estimate based on your
7 understanding of those costs?

8 A Yes.

9 Q Now, referring to item number two, what
10 does that item refer to?

11 A Financial assurance documents shall meet
12 in accordance with 811, Subpart G. Financial
13 assurance will cost more, just generally more than
14 the financial assurance if it was an 807 closure,
15 because there is more work involved that will cost
16 more, and so it is just -- will generally be more
17 expensive to the operator to provide financial
18 assurance under these rules than it would under the
19 807 rules. I can't quantify that at this point.

20 Q Again, now turning to item number three,
21 what does that relate to?

22 A Groundwater monitoring.

23 Q What significance do you find in that
24 point, from an engineering and cost standpoint?

1 A Well, I believe that an 811, 814 closure
2 probably would require a little more sophisticated
3 groundwater monitoring system than the 807 would
4 have. There are probably more wells to meet the
5 requirements.

6 Q Are you acquainted with the cost of
7 installing wells?

8 A Yes. Roughly I would say that the
9 groundwater monitoring system for installation
10 might run \$25,000.00 to \$30,000.00 more.

11 Q And what is that based upon, sir?

12 A Based upon my experience of being a
13 purveyor of those services.

14 Q Do you have a specific number of wells
15 that you base that number on?

16 A Well, part of it is not only based on the
17 wells, but it would be based on the additional
18 investigation and things like that that would
19 require a more sophisticated investigation to meet
20 the 811, 814 requirements.

21 Q What does item number four refer to?

22 A Post-closure care period.

23 Q I am going to ask you now what the
24 significance of that particular item is to you from

1 an engineering standpoint?

2 A An 807 closure would require a 15 year
3 post-closure care period and an 811, 814 requires a
4 30 year post-closure care period. Also an 811 and
5 814, you -- well, the additional post-closure care
6 period requires additional monitoring, additional
7 inspections, additional record keeping, and things
8 like that.

9 Q Have you had occasion to determine what
10 that additional cost might be?

11 A I think that additional cost might be on
12 the order of a million and a half dollars.

13 HEARING OFFICER WALLACE: I am sorry?

14 THE WITNESS: A million and a half.

15 Q (By Mr. Van Ness) Again, is that based
16 upon information available to you in your line of
17 work?

18 A Yes.

19 Q Turning now to item number five, what
20 does that relate to?

21 A Gas management.

22 Q What significance do you see in that
23 point, from an engineering standpoint?

24 A Typically under 807 they used to allow

1 vents or flares, and as I understand the 811
2 requirements, we have to have a collection and
3 treatment system, and my -- certainly, that would
4 be in excess of \$100,000.00 more.

5 Q Is there a reference in item number five
6 to a collection and treatment system?

7 A No, but my understanding of 811.310
8 through 312 is that requires a collection and
9 treatment system.

10 Q That is your understanding of that?

11 A That's my understanding, yes.

12 Q Now, referring to item number six in that
13 letter?

14 A Uh-huh.

15 Q What does that refer to?

16 A Leachate management extraction.

17 Q And, again, the significance of that
18 point, from an engineering standpoint?

19 A Well, I believe had this landfill closed
20 earlier in, you know, 1990, 1991, that probably
21 there would not have been the requirement for a
22 sophisticated leachate management and collection
23 system.

24 Now 814 would seem to -- 811 would seem

1 to dictate that we need a collection and extraction
2 system, and that would then require that the
3 leachate be taken off site to some off site
4 treatment or treated off site.

5 MR. TAYLOR: On this one we would either
6 ask for clarification or object to the
7 characterization of number six, because there is no
8 reference here to any standards whatsoever, no 811
9 or 814 standards.

10 MR. VAN NESS: I have no objection to
11 asking the witness for a clarification on that
12 point either, Mr. Hearing Officer.

13 Q (By Mr. Van Ness) Mr. Krimmel, to what
14 are you basing your opinion on with respect to this
15 item?

16 A Well, I have had several discussions with
17 representatives of the Agency in discussing these
18 closure standards, and it was my understanding,
19 although it is not mentioned here, that they were
20 looking toward some kind of a system of extraction
21 of the leachate from the landfill that I felt was
22 probably -- would be more sophisticated than
23 something that would have been required several
24 years ago.

1 Q Would you agree that there is no
2 reference here to either Part 811 or Part 814?

3 A Yes, I agree.

4 Q So, again, that opinion that you just
5 stated is based upon your inference?

6 A Yes.

7 Q Finally, turning now to item number
8 seven. Do you see that, sir?

9 A Yes.

10 Q What does that relate to?

11 A Permit application for post-closure and
12 closure must be submitted to the Permit Section.

13 Q What significance, if any, do you find in
14 that particular item?

15 A I don't believe that there would be a
16 significant difference in cost for the operator for
17 that.

18 Q Why is that?

19 A The work involved once the other
20 investigative work is completed that we talked
21 about earlier in preparing the closure and
22 post-closure care plan would be approximately the
23 same.

24 Q Are you familiar with the Agency's

1 allegation with respect to the height of the fill
2 in fill area number two?

3 A Yes.

4 Q And can you summarize what is your
5 understanding of the Agency's allegations in that
6 regard?

7 A They are alleging that the landfill is
8 several feet above the permitted contours that are
9 shown in the original 1973 permit.

10 Q What is the basis for your understanding
11 of that allegation, sir?

12 A A review of the permit documents plus a
13 trip to the field to view the site.

14 Q Is it not, in fact, mentioned in Mr.
15 Bakowski's letter of June of 1996?

16 A Yes, and that overheight has been the --
17 it has been discussed in many of the denials for
18 the approval in the closure, post-closure care
19 plans.

20 Q Would you turn to paragraph 13 of Mr.
21 Bakowski's letter. I believe that is People's
22 Exhibit Number 4.

23 MR. TAYLOR: Which letter?

24 MR. VAN NESS: People's Exhibit Number

1 4. That is Mr. Bakowski's letter of June 26, 1996.

2 Q (By Mr. Van Ness) Do you have that in
3 front of you, sir?

4 A Yes. Paragraph 13?

5 Q Yes.

6 A Yes.

7 Q Could you read that to me, please?

8 A Fill area number two has been landfilled
9 such that its existing contours exceed the
10 currently permitted final contours. The applicant
11 should provide a cost estimate and financial
12 assurance for removal of the overfill until such
13 time that the overfill is excavated, hauled and
14 disposed of at a permitted facility, or the
15 facility operator has received local siting
16 approval in accordance with Section 39.2 of the
17 Illinois Environmental Protection Act for the
18 expansion of the waste boundaries.

19 Q Have you any idea what it would cost to
20 remove the alleged overfill at this landfill?

21 A I made some rough estimates as to what
22 that might be, yes.

23 Q What were those estimates based upon,
24 sir?

1 A I estimated the volume of material that I
2 thought would have to be removed using the contour
3 maps that I had and what little survey data that we
4 had from the site, and extrapolated that to a cost
5 to remove it from the site and take it to a
6 permitted landfill.

7 I estimate that there is somewhere
8 between 600,000 and 900,000 cubic yards of material
9 that would have to be removed. And if I assume
10 that that is approximately one ton per cubic yard
11 in place, which is not unreasonable, in my opinion,
12 and to take that to -- it would be very expensive
13 to take that to another facility.

14 Naturally, the first thought would be,
15 why, we would take it to Macon County Landfill,
16 which is just down the road and around the corner.
17 In some discussions with the current president of
18 the Macon County Landfill Corporation I determined
19 that this would be -- to take this material there
20 would use up about one-third to one-half of their
21 existing permitted air space.

22 I am presuming from that -- although he
23 didn't say so, I am presuming from that that they
24 are not interested, that they wouldn't be

1 interested in losing that air space.

2 Q Did you ask whether they would be?

3 A No, I did not.

4 Q Okay.

5 A It didn't seem prudent to me that they
6 would give up that much of their space for this.
7 So the most logical, then, would be Clinton and/or
8 Five Oaks in Christian County. If we can assume
9 that they could be removed and hauled as a
10 municipal solid waste and not hazardous, it could
11 be disposed of at Christian County for \$18.00 a
12 ton, and roughly speaking I think it would be
13 \$60.00 to \$70.00 a ton to haul it.

14 The bottom line is that you are looking
15 at a minimum of 18 to 20 million dollars to haul
16 this material off site. It could be considerably
17 higher than that.

18 Q You gave us quite a long narrative
19 there. Were you basing that upon your knowledge of
20 tipping fees and --

21 A Yes.

22 Q And were there some transportation costs
23 incorporated in those figures?

24 A Yes.

1 Q What was the basis for those
2 transportation costs?

3 A I discussed it with a contractor that I
4 know and what usual hauling fees would be and made
5 some estimates of what loading costs would be.

6 Q Now, with regards to the second approach
7 have you, in fact, represented the Waste Hauling
8 Landfill in the past with attempts to secure local
9 siting approval?

10 A Yes, I have.

11 Q Are you familiar with the criterion for
12 obtaining local siting approval?

13 A Yes.

14 Q Would you agree that a permanently closed
15 landfill will have a hard time showing it is
16 capable of obtaining -- of meeting those criteria?

17 A Yes.

18 Q Let's change gears and discuss some other
19 matters. You stated previously that you were
20 familiar with the permits issued to Waste Hauling
21 Landfill; is that correct?

22 A Yes.

23 Q Did those permits include a supplemental
24 special waste stream permit?

1 A Yes.

2 Q What is a supplemental waste stream
3 permit?

4 A A special waste stream permit is a permit
5 that is specific for a special waste from a
6 particular generator to be taken to a particular
7 landfill.

8 Q Did Waste Hauling Landfill have more than
9 one supplemental special waste stream permit?

10 A Yes, they had several.

11 Q Did you prepare and submit the
12 applications for those permits?

13 A Yes, we did, many of them.

14 Q I take it you would recognize a
15 supplemental waste stream application if I showed
16 it to you?

17 A Yes.

18 MR. VAN NESS: Could you mark this.

19 (Whereupon said document was
20 duly marked for purposes of
21 identification as Respondent
22 WHL Exhibit 11 as of this date.

23 Q (By Mr. Van Ness) I am going to show you
24 what has been marked WHL Exhibit Number 11. Can

1 you identify that document, please?

2 A It is a July 4th, 1987 supplemental waste
3 stream permit application for paint sludge from
4 Bell Helmets at Rantoul to Waste Hauling Landfill.

5 Q Can you say whether this is a true,
6 accurate and complete copy of that document?

7 A It appears to be, yes.

8 Q And, again, you submitted this proposal
9 on behalf of Waste Hauling Landfill, Inc.; is that
10 correct?

11 A Yes. We took information that was
12 furnished to us by Waste Hauling Landfill and
13 prepared the documents and submitted it to --
14 prepared the documents for Mr. Camfield's
15 signature, and then we submitted them to the Agency
16 on his behalf.

17 Q Did you prepare all of the documents in
18 this exhibit?

19 A There is a laboratory analysis that was
20 prepared by Randolph & Associates of the waste
21 stream and some other supplemental information.
22 There is a pesticide, herbicide certification that
23 appears to be prepared by the generator.

24 Q And the generator, again, was?

1 A Bell, Bell Helmets.

2 Q Okay. Was this information upon which
3 you based the application, sir?

4 A Yes.

5 Q Did that information signify that the
6 Bell waste were represented to you as being
7 hazardous or nonhazardous?

8 A Representative of being nonhazardous
9 special waste.

10 Q Do you recall whether the EPA approved
11 that application?

12 A Yes, I believe they did.

13 Q Did it eventually become necessary to
14 renew that application?

15 A Yes, it was renewed at a later date.

16 Q Do you recall when that was?

17 A 1991 or 1990. I think it was 1990.

18 Q Do you recall whether at that time you
19 submitted a reapplication?

20 A I believe that we did, yes.

21 Q If I showed you a copy of that document
22 you would recognize that; is that correct? Is that
23 right?

24 A Yes.

1 (Whereupon said document was
2 duly marked for purposes of
3 identification as Respondent
4 WHL Exhibit 12 as of this
5 date.)

6 Q (By Mr. Van Ness) The Hearing Officer has
7 handed you what has been marked as WHL Exhibit
8 Number 12; is that correct?

9 A Yes, that's correct.

10 Q Do you recognize that document?

11 A Yes, it was prepared in my office.

12 Q Is this the renewal of which you spoke a
13 few moments ago?

14 A Yes. It is dated May 15, 1990, the
15 submittal date.

16 Q Can you say whether this is a true,
17 accurate and complete copy of that application?

18 A Yes, I believe it is.

19 Q Now, again, did you produce all of the
20 information that is included in that attachment --
21 I am sorry -- in that exhibit?

22 A No. Again, there is a pesticide,
23 herbicide certification provided by Bell. There is
24 a laboratory analysis of the waste from Randolph &

1 Associates that was provided by Bell. We merely
2 transferred the information to the form.

3 Q For the record, what is the description
4 of the waste that is involved in this document?

5 A Paint sludge.

6 Q Is that indicated or represented as being
7 hazardous or nonhazardous?

8 A It is represented as being nonhazardous.

9 Q Do you recall whether the EPA approved
10 that renewal application?

11 A I believe that they did, yes.

12 Q Did you have occasion to see the Agency's
13 approval of that application?

14 A Yes.

15 Q Did you receive a copy of it?

16 A Yes.

17 Q If I handed you a copy, would you be able
18 it recognize it?

19 A Yes.

20 (Whereupon said document was
21 duly marked for purposes of
22 identification as Respondent
23 WHL Exhibit 13 as of this
24 date.)

1 Q (By Mr. Van Ness) I will hand you what
2 has been labeled WHL Exhibit Number 13. Do you
3 recognize that document?

4 A It is a permit that is issued for
5 disposal of paint sludge from Bell Helmets in
6 Rantoul. It is dated June 26, 1990.

7 Q This is a copy of the document to which
8 you just referred?

9 A Yes, that's correct.

10 Q And insofar as you can tell, is it a true
11 and accurate copy of that document?

12 A Yes.

13 Q Based on your familiarity with the
14 permits and regulations and statutory requirements
15 that are relative to this landfill, Mr. Krimmel,
16 are you aware of any permit or any regulation that
17 mandated that Waste Hauling Landfill, Inc.
18 chemically test or otherwise independently verify
19 the contents of waste shipped to it under special
20 waste manifest from a generator?

21 A I am not aware of anything.

22 Q Mr. Krimmel, did you have opportunity or
23 occasion to visit the Waste Hauling Landfill at
24 anytime in 1992?

1 A I probably was out there sometime. I
2 don't recall specifically.

3 Q Okay. Have you had occasion to look at
4 the cover cap at the landfill at Waste Hauling
5 Landfill, Inc.?

6 A Yes.

7 Q And do you recall visiting the landfill
8 for that purpose in 1992?

9 A Yes.

10 Q Can you explain the circumstances under
11 which you were out there?

12 A We were there at Mr. Camfield's request
13 to do some borings on the cover cap to determine
14 its thickness.

15 Q Do you recall what specific date or year
16 that occurred? Do you recall what exact date that
17 occurred?

18 A It was sometime in July, I believe. I
19 don't recall the exact date.

20 Q Do you recall what year that was?

21 A It was 1992.

22 Q What did you determine when you took your
23 borings?

24 A We took borings at several places across

1 the site, and we found it substantially had -- most
2 of the site had two feet of cover on it. There was
3 a few places where it might have been one or two
4 inches or so, thin, and some places it was thicker.

5 Q Did you actually supervise the placement
6 of that cover?

7 A No.

8 Q Now, you stated that "we" went out
9 there. Were you accompanied by someone else?

10 A My drill crew.

11 Q Were you present at the landfill again on
12 February 28th of this year?

13 A Yes.

14 Q What was the weather like the day you
15 were there?

16 A It was a bright, sunshiny day.

17 Q Had it been bright and sunshiny in the
18 days previous, to the best of your knowledge?

19 A No. As a matter of fact, it had rained
20 about two inches the previous day.

21 Q How did you come by that number?

22 A The Macon County Conservation District
23 operates a weather station a few miles up river
24 from this site, and I called and asked for a copy

1 of the records.

2 Q From the perspective of a closed
3 landfill, what is the significance of that kind of
4 precipitation, that degree of precipitation?

5 A It can be kind of detrimental.

6 Q In what way?

7 A It can cause erosion.

8 Q You indicated that there had been a
9 couple inches of precipitation, you stated,
10 immediately prior to the day of your visit?

11 A As I recall the records, it was two
12 inches about the day before, and then for the whole
13 month of February, and we were there toward the end
14 of February, and I think it was almost four inches
15 of rainfall --

16 Q Is that --

17 A -- for the month.

18 Q I am sorry. Is that four additional
19 inches?

20 A No. A total of four inches for the
21 month. January had had a snowfall, and it had been
22 a very wet January, too. The time we were there
23 was at the end of a big rainfall and a snowmelt.

24 Q Would you agree that that kind of

1 precipitation would make it difficult to maintain
2 the cover on a landfill?

3 MR. TAYLOR: Objection to the leading.

4 HEARING OFFICER WALLACE: Sustained.

5 MR. VAN NESS: I will rephrase the
6 question.

7 Q (By Mr. Van Ness) What affect would you
8 say that the amount of precipitation that you just
9 described would have on the maintenance of the
10 landfill?

11 A The wet weather coming out of the winter
12 months would make it difficult to come in there and
13 do any repairs.

14 Q Why would that be?

15 A You would tear up more than you would
16 repair. You would have to wait for it to dry out
17 so that you could get equipment in there to work
18 properly.

19 MR. VAN NESS: We have no further
20 questions for Mr. Krimmel.

21 HEARING OFFICER WALLACE: Okay.
22 Cross-examination, Ms. Menotti?

23 MS. MENOTTI: Yes. Can we have a few
24 minutes, Mr. Hearing Officer, off the record?

1 HEARING OFFICER WALLACE: All right.

2 Let's take a five minute break, then.

3 (Whereupon a short recess was
4 taken.)

5 HEARING OFFICER WALLACE: All right.

6 Back on the record.

7 Do you have any cross-examination?

8 MS. MENOTTI: Yes.

9 HEARING OFFICER WALLACE: All right.

10 CROSS EXAMINATION

11 BY MS. MENOTTI:

12 Q Mr. Krimmel, you were just talking about
13 some cover material that is over the top of the
14 landfill. Did you do any borings on that material
15 when you were there in February of 1996?

16 A No, we did not.

17 Q And you testified that most of this site,
18 when you did borings in July of 1992, had
19 approximately two feet of thickness?

20 A Yes. Could I make a correction? I was
21 off in my date that we did those. We did those
22 borings in 1994.

23 Q What month of 1994?

24 A It was the summer of 1994, in July or so.

1 Q Was this material ever certified by the
2 Illinois EPA as a cover cap, as you refer to it?

3 A No.

4 Q When did this landfill cease accepting
5 waste?

6 A I believe it was by court order in May or
7 June of 1992.

8 Q Excuse me just one second. If it was
9 closed in June of 1992, has the facility ever been
10 certified closed by the Illinois EPA?

11 A Not to my knowledge.

12 Q So when you are referring to the facility
13 as being closed in your direct testimony, wouldn't
14 it be more accurate to say you just ceased
15 accepting waste?

16 A Yes.

17 Q Okay. Let's turn to your testimony
18 regarding the rainfall that you observed or that
19 you reviewed records of in February of 19 -- was it
20 February of this year or February of last year?
21 Was it 1996 or 1997?

22 A I am sorry. It was 1997.

23 Q You testified that rainfall could cause
24 erosion of cover material?

1 A Yes.

2 Q And in your general knowledge, since this
3 material was placed over the top of the landfill in
4 1992, has it rained in the general area of the
5 landfill?

6 A Since 1992?

7 Q Yes.

8 A Sure.

9 Q Has it snowed?

10 A I am sure it has.

11 Q These activities can cause some sort of
12 erosion on that material that is on top of the
13 landfill?

14 A Uh-huh, yes.

15 Q Let's turn to what has been marked as
16 Waste Hauling Landfill's Exhibit -- I believe it is
17 Exhibit Number 9. I am sorry. It is Exhibit
18 Number 8.

19 Q Could you turn to the second page of that
20 document, please. You previously testified that
21 these items would be required by the Agency for
22 closure of this facility; is that right?

23 A That was the impression that I was given,
24 yes.

1 Q Isn't it true, Mr. Krimmel, that the
2 Waste Hauling Landfill does not presently have a
3 final cover system in place as defined by the
4 regulations?

5 A That's correct.

6 Q Does it have any financial assurance as
7 required -- as defined in the regulations?

8 A Not to my knowledge.

9 Q And any groundwater monitoring program in
10 place, as defined in the regulations?

11 A There is one groundwater monitoring well.

12 Q Is there a program for any kind of site
13 maintenance in place?

14 A I don't know of any written program.

15 Q Is there any system or program at the
16 facility to deal with gas or leachate flowing out
17 of the landfill?

18 A No.

19 Q Based on your experience with the
20 landfill, would you say it is a fair
21 characterization to say that leachate has been
22 observed leaking out of this landfill?

23 MR. VAN NESS: Objection. I don't recall
24 Mr. Krimmel mentioning leachate in the course of

1 direct examination. I believe this is beyond the
2 scope.

3 MS. MENOTTI: I believe that Mr. Krimmel
4 had testified he was not only out at the site, but
5 that a system would be required because of leachate
6 escaping from the landfill.

7 HEARING OFFICER WALLACE: It is
8 overruled.

9 Mr. Krimmel?

10 THE WITNESS: Do you want to repeat your
11 question, please.

12 MS. MENOTTI: Could you read it back,
13 please.

14 HEARING OFFICER WALLACE: Off the
15 record.

16 (Discussion off the record.)

17 HEARING OFFICER WALLACE: Back on the
18 record.

19 Would you read the last question back,
20 please.

21 (Whereupon the requested
22 portion of the record was read
23 back by the Reporter.)

24 THE WITNESS: I am waiting for her to say

1 if she still wants an answer to that question.

2 MS. MENOTTI: Yes, you can answer that.

3 THE WITNESS: Yes.

4 Q (By Ms. Menotti) Would you agree, Mr.
5 Krimmel, that some sort of leachate management
6 system would be required to address the problem of
7 leachate leaving the landfill?

8 A Some sort of system may be required,
9 yes.

10 Q Does this facility currently have an
11 approved closure plan?

12 A No, it does not.

13 Q What about one for post-closure?

14 A No, it does not.

15 Q Does it have any posted financial
16 assurance in place?

17 A No, it does not.

18 Q When was the most recent denial of the
19 permit you submitted?

20 A June of 1996.

21 Q Since that time, have you submitted any
22 new documentation for closure or post-closure care
23 for this landfill?

24 A No, we have not.

1 Q Have you ever submitted any closure or
2 post-closure applications under the 811
3 Regulations?

4 A For this facility?

5 Q Yes, for this facility.

6 A No.

7 Q Have you ever submitted a closure or
8 post-closure care application pursuant to the
9 hazardous waste regulations for this facility?

10 A No.

11 Q What has been marked as People's Exhibit
12 3, that Mr. Van Ness has referred to, this is your
13 supplemental revision, addition to the 1991
14 application for closure and post-closure care for
15 Waste Hauling?

16 A In a way, yes. As I testified earlier,
17 it is an attempt to answer the deficiencies that
18 were listed in Mr. Bakowski's letter to Waste
19 Hauling, dated November 4th -- I am sorry. It is
20 Mr. Eastep's letter of November 4th, 1991.

21 Q And when you testified -- when you
22 previously testified regarding this document, you
23 submitted it according to the 807 Regulations?

24 A Yes.

1 Q Let's turn, for a second, to the document
2 that has been marked as Waste Hauling Landfill
3 Exhibit Number 9. Could you put that in front of
4 you, please?

5 A Number 9. Okay.

6 Q During your direct testimony, you
7 indicated that you found out that hazardous waste
8 was allegedly disposed of at the landfill on March
9 of 1993; is that correct?

10 A That's the first time I had personal
11 knowledge. No. What was the date of Exhibit 5?

12 HEARING OFFICER WALLACE: Exhibit 5?

13 MS. MENOTTI: Is there a problem?

14 HEARING OFFICER WALLACE: Exhibit 5 is
15 the analytical report.

16 THE WITNESS: I am sorry. It is the one
17 that -- the top one there.

18 Okay. March 10th of 1993 was the first
19 time.

20 Q (By Ms. Menotti) That was the first time
21 that you heard that hazardous waste was allegedly
22 disposed of at that landfill?

23 A Yes.

24 Q Does Part 807 of the Illinois

1 Administrative Code address hazardous waste
2 anywhere?

3 A Not to my knowledge.

4 Q In fact, wouldn't the alleged disposal of
5 hazardous waste trigger a RCRA closure?

6 A That's what we were told in the meeting
7 of March of 1993.

8 Q So it would trigger a RCRA closure?

9 A That's what we were told.

10 Q And what regulations are discussed at
11 Section 811 of the Regulations? I believe you have
12 characterized them before as the new regulations.
13 Can you tell me what they address?

14 A Basically solid waste and special --
15 municipal solid waste and special waste.

16 Q So would you say that perhaps it is fair
17 to characterize the demands by the Agency or the
18 requirements by the Agency that this landfill close
19 under 811 is something less than a RCRA closure?

20 A Probably.

21 Q And would you say it is fair to
22 characterize it as the Agency was willing to cut
23 the landfill a break regarding a full RCRA closure?

24 MR. VAN NESS: I will object, Mr. Hearing

1 Officer. I don't think the witness is competent to
2 testify as to what was going through the mind of
3 the Illinois Environmental Protection Agency. I
4 don't think the direct testimony covered that area,
5 whatsoever.

6 MS. MENOTTI: Not only am I not asking
7 him to -- I am asking him his opinion based on his
8 technical expertise of what was going on, not to
9 what the Illinois EPA was thinking. I believe that
10 Section 811 was covered numerous times in his
11 direct testimony.

12 HEARING OFFICER WALLACE: Sustained as to
13 the form of the question.

14 You may rephrase it.

15 Q (By Ms. Menotti) Mr. Krimmel, in your
16 opinion, would an 811 closure requirement be less
17 than the requirements imposed if a RCRA closure was
18 required?

19 A I am not familiar with the RCRA closure
20 requirements, so I don't have an opinion.

21 Q Can you please turn to page three of
22 Waste Hauling Landfill Exhibit Number 9. You read
23 that paragraph before. Is anything in there, any
24 representation regarding closure requirements in

1 that paragraph?

2 A It refers to requirements that Mr.
3 Bakowski put in his letter to me on November 9th of
4 1995.

5 Q Could you please read the second sentence
6 of that paragraph?

7 A Again, the Agency is willing to consider
8 less stringent closure requirements.

9 Q Mr. Krimmel, do you know when the 811
10 Regulations went into effect?

11 A I think 1990.

12 Q I believe you testified before that it
13 applied to landfills that continued to remain open
14 after that date?

15 A In varying -- as I recall, there was a
16 schedule of certain -- if it closed in certain
17 times then they didn't have to abide totally by the
18 regulations.

19 Q Do you --

20 A If they closed at other times then they
21 abide partially by the regulations, and if they
22 stayed open for a longer period of time they had to
23 abide totally by the regulations.

24 Q Do you recall what that cut-off date was?

1 A I believe that if you closed before
2 October of 1992, if I remember correctly, then you
3 did not have to abide by 811.

4 Q You previously testified during my -- you
5 previously testified that technically this landfill
6 is still open, didn't you?

7 HEARING OFFICER WALLACE: I think it has
8 been asked and answered. Move on, please.

9 Q (By Ms. Menotti) Mr. Krimmel, I am going
10 to direct your attention to what has been marked as
11 Waste Hauling Exhibit 13. Could you tell me again
12 what this document is?

13 A It is a waste stream permit number or
14 waste stream number 870462 for disposal of paint
15 sludge from Bell Helmets.

16 Q Who is the permit issued to?

17 A According to this document, it is issued
18 to Jerry Camfield.

19 Q Is there a date of expiration on this
20 permit?

21 A July 23rd, 1995.

22 Q Can you turn to the second page of this
23 document, please? Can you read the paragraph
24 numbered one?

1 A There shall be no deviations from the
2 approved specification unless a written request for
3 modification of this permit is submitted to the
4 Agency and approved.

5 Q And to your knowledge, did the landfill
6 or Mr. Camfield, the permittee, ever request any
7 kind of modification of his permit?

8 A Not to my knowledge.

9 Q Turning your attention to the document
10 that has been marked as Waste Hauling Landfill
11 Exhibit Number 11, you prepared this document; is
12 that right?

13 A Yes, it was either prepared by me or
14 under my direction at my office.

15 Q Can you turn to the second page, please.
16 Can you tell me who the applicant is?

17 A It says Waste Hauling Landfill, Inc.

18 Q I am sorry. Where does it say that?

19 A Under applicant. Page two is the first
20 page of the application, right?

21 Q Page two is the application where it says
22 applicant?

23 A Yes.

24 Q Okay.

1 A Then it says waste -- applicant's address
2 is Waste Hauling Landfill, Inc., Post Office Box
3 358, Decatur, Illinois.

4 Q Can I see the document? I am not certain
5 we have the same copy. Mr. Krimmel, I am going to
6 point to where it says applicant. Do you see the
7 word "landfill" in there anywhere?

8 A No.

9 Q And what is the site address of this
10 facility? Under site address what is the name?

11 MR. VAN NESS: Excuse me, Counselor.
12 Which exhibit are we looking at?

13 MS. MENOTTI: This is Exhibit Number 11.

14 MR. VAN NESS: Thank you.

15 Q (By Ms. Menotti) What name appears under
16 site address?

17 A Waste Hauling, Inc.

18 Q I turn your attention to the document
19 marked as Waste Hauling Exhibit Number 12. Can you
20 please turn to the second page? Can you please
21 tell me what the name is under applicant on this
22 permit?

23 A Waste Hauling, Inc.

24 Q And what is the site address here?

1 A Waste Hauling -- the name under the site
2 address is Waste Hauling Landfill, Inc.

3 Q During your direct testimony you
4 mentioned that approximately 600,000 to 900,000
5 cubic yards of overfill exist at the site?

6 A That's a rough calculation that I have
7 made recently, yes.

8 Q And this was based on what information?

9 A In my last testimony we discussed a
10 contour map that we had prepared, and we also
11 discussed some elevations that we had measured at
12 the top of the site on an earlier date, and I am
13 just estimating from that contour map where I think
14 the fill is, and that height is estimated from
15 those two instruments what the volume would be that
16 would have to be removed.

17 Q Do you recall if this landfill ever
18 applied for siting to address this overfill?

19 A To the best of my knowledge --

20 MR. VAN NESS: I will object, Your
21 Honor. I am not sure that this is relevant to this
22 line of questioning, and is certainly not within
23 the scope of direct. I don't believe it is germane
24 to the non Counts 5 and 6 portion of the complaint,

1 either.

2 HEARING OFFICER WALLACE: Overruled.

3 Q (By Ms. Menotti) Do you know if this
4 landfill has ever applied for any kind of siting to
5 address the overfill?

6 A To the best of my knowledge, they have
7 not.

8 Q Do you know if any of the overfill that
9 you talked about has been removed from the
10 landfill?

11 A To the best of my knowledge, there has
12 been nothing removed.

13 Q Has the Macon County Landfill indicated
14 to you that it would refuse waste that was removed
15 from this landfill for disposal?

16 A No.

17 Q Can you tell me again how you calculated
18 how much it would cost to remove this approximately
19 600 or 900,000 cubic yards of overfill?

20 A I estimated the -- using the current
21 tipping fee for municipal solid waste at the Five
22 Oaks Landfill in Taylorville, which I believe is
23 \$19.00 a ton. I then estimated, knowing an hourly
24 rate of equipment, trucking equipment, and things

1 like that, I estimated the time of turn around and
2 how long it would take to deliver, load and deliver
3 the material to the landfill, and came up with an
4 estimate of the price per ton.

5 Q How many tons does 600 and 900,000 cubic
6 yards equal?

7 A I estimated that it was approximately one
8 ton per cubic yard.

9 Q One ton per cubic yard?

10 A Yes.

11 Q How did you come up with that figure?

12 A I am sorry. I estimated it was a half a
13 ton per cubic yard.

14 Q Okay, wait. A half ton per cubic yard?

15 A Yes.

16 Q How did you come up with half a ton per
17 cubic yard?

18 A Based on experience.

19 MS. MENOTTI: I would like just one
20 second.

21 Q (By Ms. Menotti) Regarding the special
22 waste stream permits, you testified that there is
23 no regulations that you know of that requires a
24 facility to test incoming waste; is that correct?

1 A Incoming special waste, yes.

2 Q Is there any regulation, to your
3 knowledge, that prevents a facility from testing
4 incoming waste?

5 A No.

6 Q Just one -- going back to the denial of
7 the application in June of 1996, to your knowledge,
8 has the landfill appealed that denial?

9 A Not to my knowledge.

10 (Mr. Davis and Ms. Menotti
11 confer briefly.)

12 Q (By Ms. Menotti) I just have one more
13 area of inquiry. On direct exam you indicated that
14 it would be difficult for a closed landfill to meet
15 siting criteria. Can you please explain what you
16 meant by that?

17 A Well, there is one of the provisions that
18 says it must be in accordance with the solid waste
19 plan. I am not sure that there is anything in the
20 Macon County solid waste plan about closed
21 landfills. It would also be difficult to show that
22 you need that to meet the waste needs of the
23 county, or the area that is served, which is
24 another of the criteria. As I understand the

1 criteria, they are really based on active, open --
2 active landfills. They don't really fit this
3 particular case.

4 Q But you don't know that for certain, do
5 you?

6 A No. It is an opinion. That's my
7 opinion.

8 MS. MENOTTI: The State has nothing
9 further for Mr. Krimmel.

10 HEARING OFFICER WALLACE: Mr. Taylor?

11 MR. TAYLOR: Yes.

12 CROSS EXAMINATION

13 BY MR. TAYLOR:

14 Q Mr. Krimmel, I do have some questions for
15 you, and I will tell you in the beginning that I am
16 going to attempt not to repeat --

17 A Thank you.

18 Q -- what Ms. Menotti has covered. I
19 believe you stated either on direct or during cross
20 that there is no final cover on the landfill; is
21 that correct?

22 A Well, define final cover for me.

23 Q A cover that would meet the standards of
24 Part 807 of the Illinois Pollution Control Board

1 Regulations?

2 A That's correct.

3 (Ms. Menotti left the hearing
4 room.)

5 Q (By Mr. Taylor) But you did indicate that
6 Mr. Camfield had placed some material on top of the
7 landfill in 1990, sometime before -- well, when did
8 that occur?

9 A I believe some time after it was closed
10 in 1992 or maybe some in 1993, he placed what I
11 believe to be a minimum of two feet of material,
12 soil, over the top of the landfill.

13 Q You have not done testing on that
14 material to determine its porosity; is that
15 correct?

16 A That's correct.

17 Q The material that was placed on the
18 landfill, would that be more properly characterized
19 as clay or soil?

20 A Well, clay is a form of soil. From what
21 I have observed, I believe the predominate material
22 that was placed on the fill was a clay material.

23 Q Okay. And to the best of your knowledge
24 there has been no effort to apply a layer of top

1 soil on top of that in order to establish a
2 vegetative cover?

3 A That's correct.

4 Q I would like to please refer to Waste
5 Hauling Exhibit Number 9, which is a February 14th,
6 1996 letter addressed to Willoughby, Latshaw &
7 Hopkins. Do you have a copy of that?

8 A Yes.

9 Q I would ask you to please refer to page
10 three.

11 A Okay.

12 Q Various people have asked you to read
13 various portions of this. But does not this letter
14 state, and I quote, that this consideration will be
15 based on Waste Hauling providing sufficient data
16 and documentation to warrant less stringent closure
17 measures?

18 A That's correct.

19 Q So it would appear that this letter is
20 indicating that the Agency is willing to consider
21 less stringent closing measures, correct?

22 A This letter would seem to indicate that,
23 yes.

24 Q Now, you have not collected any data

1 since the date of this letter from the interior of
2 the landfill; is that correct?

3 A That's correct.

4 Q And you also have not collected any
5 groundwater data in response to this letter; isn't
6 that correct?

7 A That's correct. We have continued the
8 monitoring of the one well that has been in there
9 for a number of years in accordance with the permit
10 that required that.

11 Q Right, but there is no additional data
12 that was collected in response to this letter?

13 A That's correct.

14 Q Isn't it true, sir, that today, sitting
15 here right now, you do not know what closure
16 standards the landfill ultimately will have to
17 meet?

18 A Yes, that's true.

19 Q At this time I would like to refer to
20 Waste Hauling Exhibit 8. This is a November 9,
21 1995 letter. I would like you to refer to page two
22 of this letter. Now, in response to this letter or
23 in testifying about this letter, you gave various
24 cost estimates; isn't that correct?

1 A Yes.

2 Q Referring to item number four, which
3 states the post-closure care period shall be 30
4 years?

5 A Yes.

6 Q In response to that you indicated that
7 that might cause a cost increase of 1.5 million
8 dollars to the landfill; isn't that correct?

9 A Yes.

10 Q Okay. And coming up with that 1.5
11 million dollar figure, you have assumed that the
12 post-closure period applicable to this landfill is
13 less than 30 years?

14 A No, I believe that my testimony was
15 intended to -- the costs that I was testifying to
16 were what I felt were marginal costs that it would
17 cost the operator over and above an 807 closure. I
18 don't believe that I was figuring the closure
19 period less than 30 years.

20 Q But you did testify that an 807
21 post-closure care period would be 15 years?

22 A That's correct.

23 Q This indicates the post-closure care
24 period of 30 years?

1 A That's correct.

2 Q Then you did a calculation to come up
3 with a marginal cost difference?

4 A That's correct.

5 Q This 1.5 million dollar figure, that's
6 not the present value of those costs, is it?

7 A No.

8 (Ms. Menotti entered the
9 hearing room.)

10 Q (By Mr. Taylor) Mr. Krimmel, you have no
11 personal knowledge of any hazardous waste being in
12 this landfill; isn't that correct?

13 A That's correct.

14 Q You have not been asked by Mr. Camfield
15 to provide services in connection with the removal
16 of any hazardous waste from this landfill, have
17 you?

18 A No, I have not.

19 Q And in that same vein, you have not been
20 asked to provide any services in connection with
21 solidifying an area of the landfill which might be
22 done by injecting concrete, for example?

23 A No, we have not discussed that.

24 Q Or to encapsulate an area of this

1 landfill?

2 A In discussions with Mr. Camfield, no.

3 Q You also are not aware of any data
4 showing that the groundwater near this landfill has
5 been contaminated by hazardous waste, are you?

6 A No.

7 Q You testified that the costs of removing
8 the overfill in this landfill would be
9 approximately 18 to 20 million dollars?

10 A Uh-huh.

11 Q That would be for disposal --

12 HEARING OFFICER WALLACE: Yes?

13 THE WITNESS: I am sorry. Yes.

14 Q (By Mr. Taylor) Excuse me. That would be
15 for disposal of this overburden at a solid waste
16 facility, correct?

17 A That's correct. That would also assume
18 that it could be disposed of as municipal solid
19 waste as opposed to special waste or hazardous
20 waste.

21 Q So it is not hazardous waste, not a
22 special waste, but municipal solid waste?

23 A Yes.

24 Q And that cost would be 18 to 20 million

1 dollars?

2 A Minimum.

3 (Mr. Taylor and Mr. Nahmod
4 confer briefly.)

5 Q (By Mr. Taylor) Referring to Waste
6 Hauling Exhibit Number 11, do you have that in
7 front of you?

8 A I have Number 11.

9 Q I would like you to refer to the sixth
10 page of this document.

11 A Okay.

12 Q The sixth page in conjunction with the
13 seventh page constitute analytical data on Bell
14 Sports paint sludge waste stream?

15 A Yes.

16 Q And that analytical data was provided by
17 Randolph & Associates, Inc.?

18 A Yes.

19 Q Do you understand that the Randolph &
20 Associates, Inc. is a laboratory?

21 A It was my understanding at that time that
22 they operated an analytical laboratory, yes.

23 Q Referring to Waste Hauling Exhibit Number
24 12, on the sixth page of this document, again, we

1 are showing analytical results; isn't that correct?

2 A That's correct.

3 Q This is from the same Randolph &
4 Associates?

5 A That's correct.

6 Q They operated a lab, correct?

7 A That's correct.

8 Q This data showed that the waste was not
9 hazardous, correct?

10 A I believe that to be true, yes.

11 MR. TAYLOR: That's all we have at this
12 time.

13 HEARING OFFICER WALLACE: All right.
14 Thank you.

15 Redirect, Mr. Van Ness?

16 MR. VAN NESS: Thank you, Mr. Hearing
17 Officer.

18 HEARING OFFICER WALLACE: Before you
19 begin, let's go off the record.

20 (Discussion off the record.)

21 HEARING OFFICER WALLACE: Back on the
22 record.

23 All right, Mr. Van Ness.

24 MR. VAN NESS: Thank you, Mr. Hearing

1 Officer.

2 REDIRECT EXAMINATION

3 BY MR. VAN NESS:

4 Q Mr. Krimmel, do you recall being asked by
5 Ms. Menotti whether Waste Hauling Landfill, Inc.
6 had submitted a new closure, post-closure care plan
7 application since June of 1996?

8 A Yes.

9 Q Do you have any information as to why
10 there was no new closure, post-closure care plan
11 application filed in that time?

12 A I believe it had -- well, the
13 applications had been rejected because of the --
14 partially because of the siting and the overheight
15 issue, and I am presuming that it was felt that
16 there was no sense going back through this again
17 until you can address that issue.

18 Q In fact, though, didn't you previously
19 testify that there had been a meeting in August of
20 1996 following that?

21 A That's correct.

22 Q What did you understand the purpose of
23 that meeting to be?

24 A To discuss the reasons for the rejection

1 and hopefully find some common ground to move
2 ahead.

3 Q Do you recall whether at that meeting
4 there was discussion as to what other less
5 stringent closure, post-closure requirements might
6 be required in lieu of the points that were
7 mentioned in Mr. Bakowski's letter of November 19,
8 1995?

9 A I believe there was some discussion that
10 Mr. Camfield was willing to do a very expensive
11 investigation, or what might be a very expensive
12 investigation, that there might be some reduction
13 in the groundwater monitoring requirements.

14 Q I don't know if you recall from that
15 period whether there was any discussion as to what
16 that expense might be?

17 A Well, after that meeting, and I made some
18 estimates and discussed them with Mr. Camfield that
19 the engineering investigation to do that would be
20 in the neighborhood of \$50,000.00 to \$75,000.00 --

21 MR. TAYLOR: Excuse me. Can you
22 clarify? Engineering investigations to do what?
23 Sorry for --

24 THE WITNESS: Additional soil borings and

1 geological investigations that might be required
2 for groundwater monitoring system design, and
3 leachate built up within the landfill.

4 Q (By Mr. Van Ness) And with such a test,
5 such additional steps, would that necessarily
6 obviate the necessity for doing the things that had
7 been demanded by Mr. Bakowski?

8 A They may not.

9 Q But it might have been additional to the
10 other costs you mentioned?

11 A That's correct.

12 Q Now, you stated earlier that you based
13 your estimated cost of removal of the alleged
14 overheight in fill area number two on it being
15 nonhazardous, non special waste; is that correct?

16 A That's correct.

17 Q What would be the effect -- do you know
18 what the effect would be if, in fact, the waste
19 were to be characterized as special waste?

20 A It would certainly increase the cost of
21 removal and disposal, I would think.

22 Q And upon what do you base that
23 conclusion?

24 A Well, it would probably require different

1 handling and may have a higher tipping fee.

2 Q Are you familiar with the tipping fees
3 for special waste?

4 A No, I did not investigate that.

5 Q Again, for point of clarification, I
6 believe you originally testified that you had
7 calculated that one ton equals -- was equivalent to
8 one cubic yard; is that correct?

9 A I originally testified to that, and I
10 clarified it.

11 Q And then you corrected that. I believe
12 you stated that it was one half ton equals a cubic
13 yard?

14 A Yes.

15 Q Now, did that change -- effect a change
16 in your calculations?

17 A No, I related my calculations erroneously
18 in my initial comment.

19 Q So as you mentioned earlier, the 18 to 20
20 million was predicated on one half ton equals one
21 cubic yard?

22 A Yes.

23 MR. VAN NESS: Okay. Thank you.

24 At this time, Mr. Hearing Officer, I have

1 no further questions for this witness.

2 I would like to move WHL Exhibits 11
3 through 13 into evidence.

4 HEARING OFFICER WALLACE: Any objections
5 to those exhibits, Ms. Menotti?

6 MS. MENOTTI: The two special waste
7 stream permits have documents attached to the back
8 of them, which appear to be generated by the
9 Illinois EPA. And I would object to their
10 admission, as no proper foundation has been -- they
11 appear to be review documents that appear after the
12 application was submitted to the Agency. No
13 foundation was laid for them. I don't think they
14 are properly part of the special waste permit
15 applications. They appear on the back of both
16 applications.

17 HEARING OFFICER WALLACE: Mr. Taylor?

18 MR. TAYLOR: We have no objections to
19 Waste Hauling -- I can't remember the exact
20 numbers, but --

21 HEARING OFFICER WALLACE: It is 11, 12
22 and 13.

23 MR. TAYLOR: Okay. Thank you.

24 HEARING OFFICER WALLACE: Mr. Van Ness?

1 MR. VAN NESS: I have no objection if we
2 could just remove these pages from the exhibit. I
3 would be perfectly happy to take them out. They
4 appear to be Agency review notes.

5 HEARING OFFICER WALLACE: What are they
6 attached for?

7 MR. VAN NESS: Just a moment, Mr. Hearing
8 officer. Maybe we can clarify this through the
9 witness, if I may.

10 HEARING OFFICER WALLACE: All right.

11 Q (By Mr. Van Ness) Just for point of
12 clarification, Mr. Krimmel, turning to WHL Exhibit
13 Number 11, do you have that?

14 HEARING OFFICER WALLACE: I am sorry.
15 Wait just a minute. Were these documents tendered
16 back to Waste Hauling Landfill through discovery?

17 MR. VAN NESS: Oh, yes.

18 MR. LATSHAW: Yes, from the State.

19 HEARING OFFICER WALLACE: I noticed they
20 do have some stamp numbers on them.

21 MR. DAVIS: Well, the number I believe on
22 each page at the top is the same, and that's the
23 special waste permit. Are you talking about some
24 Bates numbering?

1 MS. MENOTTI: He is saying that --

2 HEARING OFFICER WALLACE: All right. Mr.
3 Van Ness, go ahead and clarify.

4 MR. VAN NESS: Let me try to clarify
5 this. Thank you, Mr. Hearing Officer.

6 Q (By Mr. Van Ness) Do you have WHL Exhibit
7 Number 11 before you, Mr. Krimmel?

8 A Number 11, yes.

9 Q Are there any documents among the
10 attachments that were not included in the original
11 submitted to the Environmental Protection Agency?

12 A The last document that is attached is an
13 Agency document entitled Special Waste Application
14 Reviewer's Notes.

15 Q That was not included in the original
16 applications?

17 A That's correct.

18 Q Okay. And if that document were removed,
19 then the balance of WHL Exhibit Number 11 would, in
20 fact, be the true, accurate and complete copy of
21 the application that was submitted?

22 A Yes, I believe it would be.

23 MR. VAN NESS: Then I would amend my
24 motion, Mr. Hearing Officer, so as to exclude the

1 last page, and that's the page bearing Bates number
2 719 from WHL Exhibit Number 11, and I move that
3 into evidence.

4 HEARING OFFICER WALLACE: All right. We
5 will remove it. As amended, WHL Exhibit Number 11
6 is admitted into evidence.

7 Q (By Mr. Van Ness) And similarly, Mr.
8 Krimmel, with respect to what has been marked WHL
9 Exhibit Number 12, do you see any pages in that
10 exhibit there that were not among those that were
11 submitted by you on May 15th, 1990?

12 A Yes, again, the last page of the document
13 appears to be an Agency review form.

14 Q Again, that bears Bates number 733 at the
15 bottom right-hand corner?

16 A Yes.

17 MR. VAN NESS: Then, Mr. Hearing Officer,
18 I would move that that page similarly be excised
19 from WHL Exhibit Number 12, and that the balance of
20 the exhibit be admitted into evidence.

21 HEARING OFFICER WALLACE: All right. As
22 amended, WHL Exhibit Number 12 is --

23 MS. MENOTTI: Mr. Hearing Officer, the
24 page previous to that also appears to be an Agency

1 document. Was it part of the application? That's
2 all I am concerned about.

3 THE WITNESS: The previous page to that
4 is a copy of the letter to public officials of
5 notification -- notification to public officials
6 that is required for issuing a permit.

7 MR. VAN NESS: So that was one of the
8 documents you did include?

9 THE WITNESS: Yes.

10 HEARING OFFICER WALLACE: All right.

11 MR. VAN NESS: With those changes, Mr.
12 Hearing Officer, I move documents WHL 11 through 13
13 into evidence.

14 HEARING OFFICER WALLACE: All right.
15 Then 11, 12 and 13 WHL Exhibits are admitted.

16 (Whereupon said documents were
17 admitted into evidence as
18 Respondent WHL Exhibits 11, 12
19 and 13 as of this date.)

20 HEARING OFFICER WALLACE: Re-cross, Ms.
21 Menotti?

22 MS. MENOTTI: No.

23 HEARING OFFICER WALLACE: Mr. Taylor?

24 MR. TAYLOR: No.

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EXAMINATION

BY HEARING OFFICER WALLACE:

Q Mr. Krimmel, what is the first date you became involved with this landfill, whether by the owner, Mr. Camfield, or a prior owner?

A I became involved as engineer for Mr. Camfield when he purchased it in 1980.

Q In 1980?

A In 1980. Prior to that time I had done some work for another engineer who was the engineer for the previous owner, so sub-consulting work.

Q Your first filing for a closure, post-closure plan was in the late 1980s?

A In 1988.

Q At that point, was there an estimated life span to the landfill?

A I don't recall that we had attached a life span at that point.

Q Was that filing made pursuant to the current operating permit, or what prompted that?

A The interim rules, the 1985 interim rules, require that you file a closure, post-closure care plan within a certain period of time. I believe that 1988 submittal was pursuant

1 to that requirement.

2 HEARING OFFICER WALLACE: All right.

3 Thank you. You may step down, Mr. Krimmel.

4 (The witness left the stand.)

5 MR. VAN NESS: I guess we are ready for
6 Mr. Bakowski whenever he is ready for us.

7 HEARING OFFICER WALLACE: All right. I
8 guess we will be on a break until he gets here.

9 Off the record.

10 (Whereupon a short recess was
11 taken.)

12 HEARING OFFICER WALLACE: Back on the
13 record.

14 All right, Mr. Van Ness.

15 MR. VAN NESS: Thank you. Mr. Hearing
16 Officer, we would like to make clear that Mr.
17 Bakowski is appearing as a Section 21102 witness,
18 under the Civil Practice Act, the examination of an
19 adverse party or agent.

20 MR. DAVIS: We would disagree with that
21 characterization. You will have to state your
22 ground, Mr. Van Ness, for a change.

23 MR. VAN NESS: I guess, for a change, I
24 will.

1 I will state the obvious fact that this
2 witness was and is an employee of the Environmental
3 Protection Agency, and that the Environmental
4 Protection Agency has brought this action against
5 us. He has been represented as being the head of
6 the Permit Section for the Division of Land.
7 Consequently, I believe he is an agent for an
8 adverse party.

9 MR. DAVIS: Well, the Board has its own
10 rules, Mr. Wallace, and I don't believe that Mr.
11 Bakowski, unless there is cause shown, should be
12 cross-examined with leading questions on direct, so
13 we would object.

14 HEARING OFFICER WALLACE: All right. The
15 objection is noted and overruled. The motion to
16 call Mr. Bakowski as an adverse witness is granted
17 under Section 103.209 of the Board's Rules of
18 Procedure.

19 MR. VAN NESS: Thank you.

20 (Whereupon the witness was
21 sworn by the Hearing Officer.)

22 HEARING OFFICER WALLACE: Please speak
23 loudly and clearly so the court reporter can hear
24 and everyone else.

1 E D W I N C. B A K O W S K I,
2 having been first duly sworn by the Hearing
3 Officer, saith as follows:

4 D I R E C T E X A M I N A T I O N

5 B Y M R. V A N N E S S:

6 Q Would you give your full name and current
7 business address, please.

8 A It is Edwin C. Bakowski. I am with the
9 Illinois EPA, the Bureau of Land, Permit Section,
10 2200 Churchill Road, Springfield, Illinois.

11 Q How long have you been working with the
12 EPA?

13 A I have been with the Agency since 1978.

14 Q Can you describe your educational
15 background?

16 A I have an engineering degree in general
17 engineering from the University of -- the Southern
18 Illinois University. I have been with the Agency
19 in the Bureau of Water, the Mine Pollution Control
20 Program, and the Land Pollution Control Program.

21 Q Do you hold any certificates besides the
22 degrees that you just mentioned?

23 A I am a Licensed Professional Engineer in
24 the State of Illinois.

1 Q Now, did you work anywhere after
2 graduation, but prior to the Illinois EPA?

3 A Upon graduating, my first position in my
4 career was with the EPA.

5 Q All right. And what date did you
6 commence working with the EPA?

7 A I believe it was August 16, 1978.

8 Q And your current title is what?

9 A I am a Senior Public Service
10 Administrator, and my position is Section Manager
11 in the Division of Land, Pollution Control, Bureau
12 of Land.

13 Q How long have you held that position?

14 A Almost two years now.

15 Q Okay. Prior to that position?

16 A Prior to that I was a branch manager for
17 approximately 18 months, and then prior to that I
18 was a unit manager in the Solid Waste Unit in the
19 Permit Section.

20 Q Have you always worked in the Permit
21 Section in the Bureau of Land?

22 A Since 1987 I have worked in the Permit
23 Section in the Bureau of Land.

24 Q Are you familiar with an entity known as

1 Waste Hauling, Inc.?

2 A Yes, I am.

3 Q And are you familiar also with the entity
4 known as Waste Hauling Landfill, Inc.?

5 A Yes, I am, and I am familiar with them
6 enough to know that I didn't know they were any
7 different.

8 Q When did you first become aware of Waste
9 Hauling?

10 A I couldn't say exactly when that was.

11 Q That was in the course of your
12 employment --

13 A Yes.

14 Q -- at the Agency?

15 A Yes.

16 Q Are you familiar with an entity known as
17 Bell Sports, Inc.?

18 A I have heard of Bell Sports, Inc. in
19 conjunction with this facility and in conjunction
20 with Helmets.

21 Q Have you had any experience working with
22 the permit applications from any of these parties
23 that I just mentioned?

24 A Nothing notable.

1 Q Are you familiar with the requirements of
2 35 Illinois Administrative Code, Part 807?

3 A Fairly familiar, yes.

4 Q Can you characterize what those are?

5 A Those are basically the solid waste
6 permitting rules for nonhazardous facilities in
7 Illinois.

8 Q Are you aware of any provisions in Part
9 807 that requires a sanitary landfill operator to
10 inspect, chemically sample, or otherwise
11 independently verify an incoming load?

12 A I don't believe there is anything
13 specific in the rules that state that.

14 Q Are you aware of anything specific in any
15 of the permits issued to Waste Hauling Landfill
16 that requires that?

17 A I am not familiar with all of the
18 specific permits, but general practice is we don't
19 normally put that in as a routine requirement of
20 special waste permits.

21 Q Are you familiar with the requirements of
22 35 Illinois Administrative Code, Part 809?

23 A Yes.

24 Q Would you characterize those for us,

1 please?

2 A Those are the special waste management
3 standards for nonhazardous waste.

4 Q Do those include requirements for special
5 waste haulers?

6 A I believe they do.

7 Q Are you aware of any provision of that
8 part that requires the special waste hauler or
9 sanitary landfill operator to physically inspect,
10 chemically sample, or otherwise independently
11 confirm the nature of a special waste load coming
12 to them?

13 A I am not as familiar with the 809
14 requirements as the 807 requirements, but I don't
15 think that they specifically have a provision for
16 that in there, either.

17 Q All right. Are you familiar with any of
18 the permits issued by the Agency to Waste Hauling
19 Landfill, Inc.?

20 A Not by memory, no.

21 Q Are you familiar with the duration of the
22 period of post-closure care imposed on sanitary
23 landfills under the Environmental Protection Act?

24 A I am familiar with the requirements.

1 Q Is that a yes?

2 A Yes.

3 Q Sir, would you agree that the duration of
4 the period of post-closure care imposed on sanitary
5 landfills under the Act is generally limited to 15
6 years?

7 A Could you repeat that?

8 Q Yes. Would you agree that the
9 post-closure care period under the Environmental
10 Protection Act for sanitary landfills is generally
11 limited to 15 years?

12 A No, I don't think so.

13 Q Okay. Would it refresh your memory if I
14 showed you a copy of the Environmental Protection
15 Act?

16 A Yes, that would refresh my memory, but
17 post-closure care for sanitary landfills has varied
18 from 3 years to a minimum of 30 years over time, so
19 it -- when you say generally, I don't think you can
20 say generally any specific requirement applies
21 generally to any specific landfill.

22 Q Are you familiar with Section 22.17 of
23 the Environmental Protection Act?

24 A Yes, I am familiar with it.

1 Q Do you believe you would recognize that
2 section if I showed you a copy?

3 A Yes.

4 Q I show you what I represent to you, sir,
5 as a copy of Section 22.17 of the landfill -- I am
6 sorry -- of the Environmental Protection Act. Do
7 you have that before you?

8 A Yes, I have page 74 of one of the
9 versions of the Act. I don't know what year
10 publication this is.

11 Q All right. And do you see the Section
12 22.17 A?

13 A Yes.

14 Q And what does that section say?

15 A It says that the owner and operator of a
16 sanitary landfill site that is not subject to
17 Section A5 or A10 of this section shall monitor
18 gas, water and settling at the completed site for a
19 period of 15 years after the site is completed or
20 closed or such longer period as may be required by
21 Board or federal regulation.

22 Q Do you know whether this site, in your
23 opinion, is subject to Subsection A5 or A10?

24 A A5 and A10 deal with at what time a

1 landfill -- a municipal solid waste landfill unit
2 accepted household waste on a specific date in
3 October of 1993, or that when it closed and
4 specifically when that applies, if, and how that
5 applies to this landfill, I am not that familiar.

6 Q All right. Thank you.

7 MR. VAN NESS: I am going to request the
8 Hearing Officer to hand Mr. Bakowski what has been
9 marked as People's Exhibit Number 2.

10 Q (By Mr. Van Ness) Do you have that
11 document before you now, sir?

12 A Yes, I do.

13 Q Are you familiar with that document?

14 A It is a letter from the Agency dated
15 November 4th, 1991, discussing an application.

16 Q Who is the signatory on that letter?

17 A Lawrence W. Eastep.

18 Q Can you identify Mr. Eastep?

19 A Mr. Eastep was the Permit Section Manager
20 at the time that this letter was issued.

21 Q And that is a position you now hold; is
22 that correct?

23 A That's the position I currently hold.

24 Q Now, you stated that you were familiar

1 with this letter. Have you seen it before?

2 A I believe I -- I believe we discussed it
3 during the previous depositions.

4 Q And prior to that do you recall whether
5 you had seen it before?

6 A I saw it when it was drafted. My
7 initials are on it.

8 Q Do you see the numbered paragraphs in
9 that letter?

10 A Yes.

11 Q What is the significance of those --
12 first of all, how many numbered paragraphs do you
13 see on that letter?

14 A There is 1 through 16.

15 Q What, to you, is the significance of
16 those 16 numbered paragraphs?

17 A I believe they are explained in the
18 introductory paragraphs as preliminary comments of
19 the documents that were submitted under that --
20 under log number 1991-136.

21 Q In fact, are those -- what are those
22 points referred to as in that first paragraph?

23 A It says they are a list of deficiencies
24 identified during a preliminary review.

1 Q Okay. That's fine. Thank you. Mr.
2 Bakowski, have you communicated the Agency's
3 demands regarding the closure, post-closure care
4 plan to Waste Hauling Landfill, Inc.?

5 A Have I?

6 Q Yes, have you?

7 A Not -- I don't believe I have personally,
8 but I may have through correspondence --

9 Q Well --

10 A -- in some way or shape.

11 Q You have had prior correspondence, then,
12 with Waste Hauling Landfill, Inc.?

13 A You know, I signed off on this letter and
14 I believe I signed off on some other letters to the
15 facility.

16 Q Would those other letters be subsequent
17 to the letter before you at this time?

18 A There might have been letters before or
19 letters after.

20 Q In your present capacity as the Permit
21 Manager, have you communicated with Waste Hauling
22 Landfill, Inc.?

23 A From recollection, I believe I have
24 signed some letters, personally signed some letters

1 to them.

2 Q And you would recognize those if I showed
3 them to you?

4 A Yes, I should be able to.

5 MR. VAN NESS: Mr. Hearing Officer, could
6 we have Waste Hauling Exhibits 8 and 9?

7 Q (By Mr. Van Ness) I am going to hand you
8 what has been previously marked as WHL Exhibit
9 Number 8, and ask you whether you recognize that
10 document.

11 A Okay. This is a letter from the Agency
12 to SKS Engineers, attention Mr. Robert Krimmel,
13 dated November 9, 1995, signed by me.

14 Q Okay. Would that be one of the pieces of
15 correspondence you referred to previously?

16 A That was one of the ones. I know I had
17 signed some letters to this or regarding this
18 facility. This isn't actually to the facility.
19 This is, I believe, to their consultant, or who we
20 believed who their consultant was.

21 Q Okay. Thank you. Is there an attachment
22 to that letter?

23 A Yes, there is.

24 Q Do you recognize that?

1 A I recognize it. I believe we discussed
2 it in the depositions.

3 Q Previous to that, do you recall seeing
4 that attachment?

5 A The records would indicate that when it
6 was handed to me I knew it was attached to the
7 letter. It was in November of 1995. I don't
8 specifically recall seeing it at the time, but I
9 assume that I did.

10 Q I want to turn your attention to the
11 attachment itself. First, would it be fair to say
12 that these requirements are not based on 35
13 Illinois Administrative Code, Part 807?

14 A Can I read the letter?

15 Q Okay. Take your time.

16 A Okay. I have read enough that I think
17 generally I understand it is. What was the
18 question?

19 MR. VAN NESS: Would you read the
20 question back for the witness?

21 MR. HEARING OFFICER: Would you read the
22 question back, please.

23 (Whereupon the requested
24 portion of the record was read

1 back by the Reporter.)

2 THE WITNESS: Okay. I think there is
3 seven points in here, some of them refer to Part
4 811, 814, and some don't refer to any part. The
5 ones that don't refer to any part may have a basis
6 in 807.

7 Q (By Mr. Van Ness) So those that do not or
8 may not have a basis under 807 would be
9 additionally under whatever 807 would require; is
10 that correct?

11 A No, no. For example -- what I said is if
12 the ones that don't specifically reference 811,
13 like, for example, number seven, it doesn't really
14 reference 807, there may be a basis at 807 for a
15 facility to have a closure plan.

16 Q I understood that. I am limiting my
17 question, sir, to the numbered paragraphs that
18 reference -- specifically reference sections other
19 than Part 807. Do you see those?

20 A You mean the ones that reference 811 and
21 814?

22 Q Yes.

23 A Yes.

24 Q My question to you was should those be

1 considered additional to what Part 807 required?

2 A They may be additional or equivalent.

3 Q Equivalent of?

4 A Equivalent in that 807 may have the exact
5 same -- I don't know. Without -- I haven't read
6 them all in detail so, you know. I believe --
7 like, for example, the financial assurance
8 requirements of 811 are -- they may be
9 substantially equivalent to the financial assurance
10 requirements in 807.

11 Q Could you --

12 A It wouldn't be any addition.

13 Q Could you imagine why you would reference
14 Part 811 then instead of 807?

15 A I believe that's in the context of what
16 this is.

17 Q I am sorry?

18 A This isn't a -- this isn't a letter
19 describing exactly what regulations apply or do not
20 apply to a particular facility.

21 Q Well, we will take them one by one then,
22 because we seem to be not communicating. Do you
23 see the first numbered paragraph, sir?

24 A Yes.

1 Q That refers to what part of 35 Illinois
2 Administrative Code?

3 A It says 811.314.

4 Q And what does that deal with? What is
5 the subject of that paragraph?

6 A It says a final cover system for the new
7 landfill area.

8 Q Okay. Did you understand that that was a
9 more stringent requirement than Part 807 requires?

10 A Is 811.314 more stringent? I believe it
11 is. I mean, assuming it is the reg that deals with
12 final cover. The final cover requirements in 811
13 are more stringent than 807.

14 Q As a general proposition can we say that
15 Part 811 requirements or Part 814 requirements are
16 more stringent than Part 807 requirements?

17 A In many areas.

18 Q Okay. I am going to be handing you a
19 copy of a document that has been previously marked
20 as WHL Exhibit Number 9, and ask you whether you
21 recall seeing that document previously?

22 A I signed it, so I know I saw it.

23 Q Can you identify it for the record?

24 A This is a letter to Willoughby, Latshaw &

1 Hopkins, attention Mr. Stephen O. Willoughby, dated
2 February 14th, 1996, concerning the Waste Hauling
3 Landfill, signed by me.

4 Q Now, turning your attention to the third
5 page of that letter.

6 A Page three.

7 Q Do you see a reference to the enclosure
8 that accompanied your prior letter on November 9,
9 1995?

10 A Yes, I do.

11 Q And what does that say?

12 A It references the enclosure and states
13 that the Agency has consistently imposed on other
14 solid waste disposal landfills which had allegedly
15 disposed of hazardous waste, and it states that we
16 are willing to consider less stringent closure
17 requirements, but this consideration will be based
18 on Waste Hauling providing sufficient data and
19 documentation to warrant less stringent closure
20 measures, and the degree to which the measures are
21 protective of human health and the environment and
22 are commensurate with past disposal activities.

23 Q What led you to believe that the Waste
24 Hauling Landfill had received hazardous waste?

1 A The recommendation of the reviewer.

2 Q Do you recall what that recommendation
3 was?

4 A Not specifically, but I can -- no,
5 specifically, I don't remember my discussion with
6 him or his review notes.

7 Q Who was your reviewer? What is his name?

8 A Mr. Kenneth Smith.

9 Q How can you tell that?

10 A At the back of the letter it says contact
11 Kenneth Smith, and just from my knowledge of
12 dealing with the site, I know he is the assigned
13 reviewer.

14 Q I gather, from your letter, that it was
15 your understanding that the landfill had received
16 hazardous waste. Did you have any conversations
17 with Mr. Smith relating to that? Do you recall?

18 A I am sure that I had conversations. I
19 don't recall the specific times and dates and exact
20 discussions.

21 Q Right.

22 A But, yes, my general belief was that -- I
23 believe it was Bell Sports that sent certain
24 quantities to --

1 Q I am sorry?

2 A That Bell Sports had sent certain
3 quantities to that facility.

4 Q Do you recall mention of any other
5 alleged generator of hazardous waste?

6 A Offhand I don't recall.

7 Q Do you recall whether the Waste Hauling
8 Landfill, Inc. renewed its effort to respond to Mr.
9 Eastep's 1991 letter?

10 A No, that is too far ago, too long ago.

11 MR. VAN NESS: All right. Mr. Hearing
12 Officer, I am going to request that you get out
13 People's Exhibit Number 3. Thank you very much.

14 Q (By Mr. Van Ness) Okay. I am going to
15 hand you -- Mr. Bakowski, I am going to hand you
16 what has been previously labeled as People's
17 Exhibit Number 3, and ask if you recognize that
18 document?

19 A No, I really don't recognize it. I could
20 read it, but I don't recognize it as something that
21 I read before.

22 Q All right. That's fine. Would you agree
23 that it appears to be an application for closure,
24 post-closure care?

1 A It says it is a letter to address the
2 list of deficiencies from the 1991 letter.

3 Q So it refers back to Mr. Eastep's letter
4 that you previously looked at?

5 A Correct.

6 Q Do you recall what the Agency's reaction
7 to the document in front of you was?

8 A From -- I don't specifically recall.

9 Q If I showed you a copy of the Agency's
10 response, would that help?

11 A I bet that would help a lot.

12 MR. VAN NESS: All right. I need
13 People's Exhibit Number 4, Mr. Hearing Officer.

14 Q (By Mr. Van Ness) I show you what has
15 been labeled People's Exhibit Number 4 and ask you
16 if you recall that document?

17 A Yes, this is a letter to Waste Hauling
18 Landfill, Inc., dated June 26, 1996, which I
19 signed, which is a denial letter denying the
20 application, log number 1991-136, and included
21 review of documents submitted or dated April 8th,
22 1991.

23 Q Do you see --

24 A June 25th. It looks like June 25th, 1991

1 and March 21, 1996, and that would incorporate this
2 document Exhibit Number 3 that we were talking
3 about.

4 Q Thank you. Again, I apologize for
5 speaking over you.

6 Do you see any references in that
7 document before you to closure, post-closure care
8 requirements additional to those in Part 807?

9 A The review letter references certain 807
10 Regulations that might be violated and certain
11 sections of the Act that may be violated if this
12 permit were issued.

13 Q Okay. But you see no references in that
14 review letter to 35 Illinois Administrative Code
15 Part 811 or 814, do you?

16 A No direct references to those
17 regulations.

18 Q Do you recall any additional discussions
19 with Waste Hauling Landfill after the issuance of
20 that letter?

21 A No, I don't.

22 Q Would it be fair to say that the
23 requirements set forth in your letter of November
24 4th, 1991 are still requirements that the Agency

1 expects of the closure, post-closure plan from the
2 facility?

3 A Are the requirements in the 1991 letter?

4 Q Yes. I am sorry. Excuse me. The 1995
5 letter, the November 4, 1995 letter. Pardon me. I
6 misspoke.

7 A Oh, okay. In the 1995 letter we were --
8 that was discussing correspondence between an
9 Agency attorney and the attorney from the facility,
10 concerning issues involving the compliance matter
11 about taking hazardous waste. The letter of 1996
12 is in response to specific requests for a permit
13 from 1991 and 1996.

14 Q So you viewed them operating on a
15 separate track; is that a fair statement?

16 A Yes. I believe that the 1996 letter that
17 we wrote as a denial letter kind of didn't take the
18 compliance issues in the same context, in the
19 context of a permit application.

20 Q Okay. So you didn't feel it was
21 necessary to put the reference to Part 811 and 814
22 in there; is that correct?

23 A I believe by -- we were referencing just
24 some basic provisions of the Act that might be

1 violated should this facility get a permit. So we
2 didn't feel it was specifically necessary, since
3 the applicant didn't request any permit pursuant to
4 814 or 811, that we discussed 814 or 811.

5 Q Okay. What I am trying to get at is
6 whether -- assuming for a moment that the
7 application, in your opinion or in the opinion of
8 your permit reviewer, had met all the requirements
9 to Part 807, was it your understanding that the
10 Part 811, 814 requirements referenced in your
11 letter of 1995 would not have come into play, would
12 not have been invoked?

13 A No, I can't say that.

14 Q Okay.

15 A You know, the letter -- the 1995 letter
16 discusses some basically negotiation type
17 settlement issues that were not discussed in the
18 application for the permit.

19 Q All right. So you viewed them as being
20 on a separate track?

21 A There are two distinct kinds of things
22 going on here.

23 Q You did not see one going away with the
24 resolution of the other?

1 A Right.

2 Q Okay. That's all I was trying to get
3 at.

4 (Mr. Van Ness and Mr. Latshaw
5 confer briefly.)

6 Q (By Mr. Van Ness) Mr. Bakowski, I don't
7 mean to belabor the point, but I simply want to
8 make it clear so that everybody understands what
9 the Agency's position is, if you know that.

10 MR. DAVIS: We would object to these
11 parenthetical, sarcastic remarks, Mr. Hearing
12 Officer. If there is a question, then let it be
13 asked.

14 HEARING OFFICER WALLACE: Your objection
15 is overruled. I didn't hear any parenthetical
16 remark.

17 So, Mr. Van Ness, please continue.

18 MR. VAN NESS: Thank you, Mr. Hearing
19 Officer.

20 Q (By Mr. Van Ness) Mr. Bakowski, we have
21 two sets of documents, do we not, that set forth
22 deficiencies; is that a fair way to put it? They
23 set forth deficiencies in the Waste Hauling
24 Landfill, Inc. closure, post-closure care plan; is

1 that a fair statement?

2 A No, it is not a fair statement.

3 Q Can you clarify that, please?

4 A Yes. The 1995 letter discussed a
5 technical resolution to closing the landfill
6 regardless of any specific review of whether the
7 requirement was applicable or not applicable. I
8 believe it was in the context of doing some kind of
9 settlement.

10 Q Right.

11 A In which we really look at the technical
12 issues regarding protection of human health and the
13 environment. The 1996 letter was a review of an
14 application submitted in accordance with 807 to get
15 an approved closure, post-closure care plan under
16 the 807 requirements.

17 Q Would it be possible to secure closure,
18 post-closure care plan approval under one but not
19 the other of these documents?

20 A I think under an 807 permit you can get
21 an approvable closure plan. Because of provisions
22 of the Act, like Section 12A, and references to
23 basic protections of the water and the air and the
24 land, you may have to exceed the minimal standards

1 in 807, but clearly, if they propose to do that,
2 and we approve that, you might be able to get an
3 approvable permit.

4 Q Okay. Is that what was intended by to be
5 conveyed in the attachment to what is WHL Exhibit
6 8? Is that the point?

7 A No, I believe the -- that exhibit deals
8 with a discussion of potential settlement of some
9 technical issues.

10 Q Well, I see -- well, read the first
11 paragraph of that attachment to WHL Exhibit 8, if
12 you would please. It is the first unnumbered
13 paragraph.

14 A Uh-huh. It says technical requirements
15 that the Agency would find acceptable in the
16 closure of Waste Hauling Landfill.

17 Q And so, again, my question is what does
18 it take to close this landfill then?

19 A Okay. But you are asking me what does it
20 take to close the landfill and you are asking me
21 what does it take to get a permit to have it -- to
22 close the landfill, right.

23 Q Okay.

24 A Those are two different things. You may

1 be able to close the landfill technically under,
2 for example, a consent order and never obtain a
3 permit. But you may not be able to get a permit,
4 like a consent order may not meet the requirements
5 of a permit.

6 Q I see.

7 A That's what I am trying to -- do you
8 understand what I am trying to say?

9 Q I hope so. I am going to ask you a
10 couple of questions to try to follow-up on that.
11 Is it fair to characterize the attachment to WHL
12 Exhibit Number 8, then, as what might be acceptable
13 to the Agency as part of a settlement agreement?

14 A I believe that's the context that those
15 discussions were.

16 Q Was it your understanding that were we to
17 see Waste Hauling Landfill, Inc. attain closure
18 under these requirements, that it would not have to
19 go through the application process?

20 A I don't know if part of it would have
21 been also -- it says that they did need a permit
22 application for a closure and post-closure care, so
23 I am assuming that the permit to close the landfill
24 was still in addition to these technical items.

1 Q Okay. So it would be these technical
2 items and those --

3 A Number seven says an application for a
4 closure, post-closure must be submitted to the
5 Permit Section. I am assuming that they were
6 anticipating that these were above the permit
7 requirements.

8 MR. VAN NESS: Okay. Thank you. I think
9 that's all I have for this witness.

10 HEARING OFFICER WALLACE: Mr. Davis --

11 MR. DAVIS: May I?

12 HEARING OFFICER WALLACE: -- are you
13 going to cross? All right. Please proceed.

14 CROSS EXAMINATION

15 BY MR. DAVIS:

16 Q Mr. Bakowski, we heard some discussions
17 about the closure plan application that was denied
18 in June of 1996. Is it your recollection that it
19 was denied because that application did not satisfy
20 the Part 807 requirements?

21 A We specifically listed the 807
22 requirements that it didn't meet and also sections
23 of the Act.

24 Q Okay. This being true, wouldn't you

1 agree that this application would not have
2 satisfied the more stringent Parts 811 and 814
3 requirements, as referenced in the November letter,
4 the Waste Hauling Exhibit Number 8?

5 A Yes.

6 MR. DAVIS: Thank you. I have no other
7 questions.

8 HEARING OFFICER WALLACE: Mr. Taylor?

9 MR. TAYLOR: Just a few questions.

10 CROSS EXAMINATION

11 BY MR. TAYLOR:

12 Q Mr. Bakowski, you don't have any personal
13 knowledge of hazardous waste from Bell Sports being
14 disposed of at the Waste Hauling Landfill, do you?

15 A I don't recall seeing any specific
16 documentation regarding that, no, sir.

17 Q When I ask you about personal knowledge,
18 you haven't --

19 A I haven't been at the Bell Sports
20 facility, and I didn't see any trucks unloading
21 waste from Bell Sports at the landfill.

22 Q So your prior testimony about who
23 generated this waste, that was based on
24 representations from members of your staff?

1 A That was based on my recollection of
2 the -- in letters and meetings and in review notes
3 and such.

4 Q Okay. I would like to refer you to Waste
5 Hauling Exhibit Number 9, which is a February 14th,
6 1996 letter.

7 A Okay.

8 Q I would like to refer you to the third
9 page of that letter.

10 A Okay.

11 Q The first sentence of this paragraph
12 states as follows, the enclosure, which was
13 forwarded to Mr. Krimmel with my November 9th, 1995
14 letter contains closure and post-closure
15 requirements the Agency has consistently imposed on
16 other solid waste landfills which had allegedly
17 disposed of hazardous waste. Correct?

18 A Correct.

19 Q Would it be accurate to say that the
20 generator of any particular hazardous waste is not
21 relevant to determining what requirements might
22 apply to the landfill?

23 A You mean who the generator is?

24 Q Right.

1 A No, that is really not relevant.

2 MR. TAYLOR: All right. No further
3 questions.

4 HEARING OFFICER WALLACE: Redirect, Mr.
5 Van Ness?

6 (Mr. Van Ness and Mr. Latshaw
7 confer briefly.)

8 MR. VAN NESS: No further questions.

9 EXAMINATION

10 BY HEARING OFFICER WALLACE:

11 Q Mr. Bakowski, on this two track thing you
12 were talking about, doesn't the Agency require a
13 permit for the closure, post-closure of a landfill?

14 A Yes, the regulations require that a
15 landfill get a permit for closure and post-closure
16 care. However, there can be instances where
17 through a consent order certain requirements are
18 addressed via some consent order in lieu of
19 specifically getting a permit, okay. So you could
20 have an order that looks just like a permit, but it
21 is really an order and, you know, there may be a
22 specific rule or something that is not specifically
23 adhered to.

24 Q This consent order you talk about,

1 though, this is a court consent order; is that
2 correct?

3 A Yes. In some kind of legal enforceable
4 document, either through the --

5 Q It is not an Agency --

6 A No, it would be through an enforcement
7 action or -- I think it could be in front of the
8 Board or a Court. It is certainly not just a
9 mutual agreement from the Agency and the party. It
10 would be an enforceable, legal --

11 Q To the extent that the Agency and the
12 party reached an agreement on issues, the Agency
13 would still require those to be placed in a permit,
14 absent any other legal --

15 A Absent any other legal -- yes, if we just
16 negotiated what -- well, that's the point. If you
17 are -- you either meet the rules or if you don't
18 meet the rules you have to have some avenue, either
19 through an adjusted standard, a variance, or some
20 type of consent order that says you didn't have to
21 meet a rule.

22 Q Okay. Under the one letter that says we
23 would consider less -- I am paraphrasing -- less
24 stringent requirements, are you familiar with that?

1 A That letter, yes.

2 Q All right. If you would consider less
3 stringent requirements, would those -- isn't that a
4 form of reaching an agreement and placing that into
5 the permit?

6 A Okay. I am trying to find where that is
7 again, because I don't want to -- I think we are
8 getting out of -- we are getting off track here.

9 MR. TAYLOR: It is Waste Hauling Number
10 9.

11 HEARING OFFICER WALLACE: Thank you, Mr.
12 Taylor.

13 THE WITNESS: Okay. Now, see, that's in
14 a letter to the attorney representing the
15 facility. Where does --

16 Q (Hearing Officer Wallace) I think it is
17 on the last page.

18 A On the last page. Okay. That references
19 items 1 through 7 of Exhibit 8, okay.

20 Q All right.

21 A It refers to we may consider less
22 stringent closure requirements. And as we
23 discussed in my testimony, number seven was getting
24 a permit, okay, so numbers 1 through 6 you can

1 assume are up and above the minimum requirements to
2 get a permit.

3 Q So your only less stringent requirements
4 were numbers 1 through 6?

5 A Yes, 1 through 6 or if we didn't want to
6 make them get a permit, we would have to do
7 something like a consent order rather than a
8 permit. But, you know, that's like taking it to
9 the extreme, I would say.

10 HEARING OFFICER WALLACE: All right.

11 Thank you, Mr. Bakowski.

12 THE WITNESS: Does that help?

13 HEARING OFFICER WALLACE: Anything
14 further today, Mr. Van Ness?

15 MR. VAN NESS: No, Mr. Hearing Officer.
16 I don't believe so.

17 HEARING OFFICER WALLACE: I am sorry. I
18 couldn't hear you.

19 MR. VAN NESS: No. I said I don't
20 believe so.

21 HEARING OFFICER WALLACE: All right. Mr.
22 Bakowski, you can step down.

23 (The witness left the stand.)

24 HEARING OFFICER WALLACE: Are we all

1 clear for May --

2 MR. LATSHAW: Clear.

3 HEARING OFFICER WALLACE: -- 19, 20 and
4 21?

5 MR. LATSHAW: If I may, I think I
6 mentioned that I had to check with -- I wanted to
7 check with Mr. Camfield and I wanted to check my
8 own calendar, since I didn't have it with me.

9 Jerry Camfield indicated that the 19th is
10 fine, but he is going to be out of town the 20th
11 and the 21st. If -- I mean, there is no problem as
12 far as we are concerned. I think he was under
13 subpoena from Byron and if, you know, we can
14 satisfy that on that day, then I guess that is not
15 a problem. But I want to make sure we are all
16 aware of that.

17 I have got a problem on the 21st. I have
18 a conflict in the morning, but I will resolve
19 that. I will not let that stand in the way.

20 HEARING OFFICER WALLACE: I am sorry.
21 Let's go off the record, then.

22 (Discussion off the record.)

23 HEARING OFFICER WALLACE: Back on the
24 record.

1 (Mr. Davis left the hearing
2 room.)

3 HEARING OFFICER WALLACE: In an
4 off-the-record discussion discussing scheduling, we
5 will reconvene on May 19th, and we will reserve May
6 20th and 21st for hearings. The Waste Hauling
7 Landfill and Waste Hauling Landfill, Inc. will
8 continue their case, and following their case Bell
9 Sports will present any witnesses that they wish.
10 The State will still be considering whether it
11 wants to put on any rebuttal.

12 If there is a motion to move the hearing,
13 you can make it now or put it in writing, it
14 doesn't matter to me, if there is any consensus on
15 moving it, otherwise we will reconvene in
16 Springfield.

17 I will have to find a room. We may be
18 back here or we may be at the third floor
19 conference room in the State Medical Society
20 Building.

21 All right. Is there anything further,
22 Ms. Menotti?

23 MS. MENOTTI: Nothing.

24 HEARING OFFICER WALLACE: Mr. Van Ness?

1 MR. VAN NESS: Nothing.

2 HEARING OFFICER WALLACE: Mr. Taylor?

3 MR. TAYLOR: No.

4 HEARING OFFICER WALLACE: All right.

5 Thank you very much. We stand adjourned. Thank
6 you.

7 (People's Exhibits 19 and 20
8 and Respondent WHL Exhibits 5
9 through 13 retained by Hearing
10 Officer Wallace.)

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

3 C E R T I F I C A T E

4 I, DARLENE M. NIEMEYER, a Notary Public
5 in and for the County of Montgomery, State of
6 Illinois, DO HEREBY CERTIFY that the foregoing 212
7 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 16th of
9 April A.D., 1997, at the Office of the Attorney
10 General, Conference Room, Springfield, Illinois, in
11 the case of The People of the State of Illinois v.
12 Waste Hauling Landfill, Inc. and Waste Hauling,
13 Inc., in proceedings held before the Honorable
14 Michael L. Wallace, Hearing Officer, and recorded
15 in machine shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my
17 hand and affixed my Notarial Seal this 24th day of
18 April A.D., 1997.

19

20

21 Notary Public and
22 Certified Shorthand Reporter and
Registered Professional Reporter

23 CSR License No. 084-003677
My Commission Expires: 03-02-99

24

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