

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 COMMUNITY LANDFILL COMPANY)
and CITY OF MORRIS,)
3)
 Petitioners,)
4)
 vs) No. PCB 01-48
5) PCB 01-49
ILLINOIS ENVIRONMENTAL)
6 PROTECTION AGENCY,)
)
7 Respondent.)

VOLUME II

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10 Record of Proceedings taken before

11 Hearing Officer Bradley P. Halloran, taken

12 stenographically before GEANNA M. IAQUINTA, CSR,

13 a notary public within and for the County of Cook

14 and State of Illinois, at the James R. Thompson

15 Center, 100 West Randolph Street, Room 9-031,

16 Chicago, Illinois, on the 18th day of January,

17 A.D., 2001, scheduled to commence at 9:30 a.m.,

18 commencing at 9:35 a.m.

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1 A P P E A R A N C E S :

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3 ILLINOIS POLLUTION CONTROL BOARD
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 BY: MR. BRADLEY P. HALLORAN, Hearing Officer

5

6 LaROSE & BOSCO, LTD.,
7 734 North Wells Street
8 Chicago, Illinois 60610
9 (312) 642-4414
10 BY: MR. MARK A. LaROSE

11 Appeared on behalf of the Petitioners,

10

11 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
12 1021 North Grand Avenue East
13 Springfield, Illinois 62794
14 (217) 782-5544
15 BY: MR. JOHN J. KIM

16 Appeared on behalf of the Respondent.

15

16 ILLINOIS POLLUTION CONTROL BOARD MEMBERS
17 PRESENT:

18 Mr. John Knittle

19 Ms. Catherine Glenn

20 Mr. Anand Rao

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1 HEARING OFFICER HALLORAN: Good morning.
2 My name is Bradley Halloran. I'm the hearing
3 officer with the Illinois Pollution Control
4 Board. I'm assigned to this matter, this
5 consolidated matter, PCB 01-48 and 01-49. It's
6 Community Landfill Company and City of Morris
7 versus the Illinois Environmental Protection
8 Agency.

9 Today is Thursday, January 18th,
10 2001. It's approximately 9:35 a.m. I note,
11 aside from a representative of the Board,
12 Ms. Cathy Glenn, there do not appear to be any
13 members of the public present. This hearing is
14 continued on record from yesterday, January 17th,
15 and is being held pursuant to Section 105.214 of
16 the Board's procedural rules regarding permit
17 appeals and in accordance with Section 101,
18 Subpart F.

19 Mr. LaRose, would you like to
20 introduce yourself again, please, for the
21 record?

22 MR. LaROSE: Yes. My name is Mark LaRose,

23 and I represent one of the petitioners, Community
24 Landfill Corporation. I've been assigned as

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1 trial counsel on behalf of both petitioners,
2 Community Landfill and the City of Morris. With
3 me here is the representative of the party,
4 Community Landfill Company, Mr. Michael
5 McDermont, Andrews Environmental Engineering.

6 HEARING OFFICER HALLORAN: Mr. Kim.

7 MR. KIM: My name is John Kim. I'm a
8 special assistant attorney general and the
9 assistant counsel for the Illinois EPA
10 representing the respondent in this case. With
11 me today are Christine Roque, R-o-q-u-e, a member
12 of our technical staff, and Kyle Rominger,
13 R-o-m-i-n-g-e-r, an attorney with our office who
14 is here, but not appearing as of record.

15 HEARING OFFICER HALLORAN: Some
16 preliminary matters; first, there was a motion to
17 exclude witnesses yesterday. That was granted
18 and it is still in effect today. Secondly, I
19 stated that I would rule on a motion -- on the
20 Agency's motion to quash subpoena duces tecum,
21 and I know I asked Mr. LaRose yesterday to file a

22 written response, and I believe you stated that
23 you'd have trouble doing so, but in light of
24 that, I wonder have you filed anything or do you

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1 have any additional comments or arguments
2 regarding that motion to quash?

3 MR. LaROSE: I have not filed anything. I
4 think I said yesterday that Mr. McDermont had
5 advised me, and I think the testimony -- there
6 was a little bit of testimony from Ms. Roque
7 yesterday that the affidavit that supports the
8 motion says permit writers, permit reviewers,
9 have to spend hours and hours to collect this
10 stuff.

11 Ms. Roque was the permit writer on
12 this case and had some involvement in those, and
13 she testified yesterday all she did was make a
14 phone call and call some clerk. Mr. McDermont
15 said, and Ms. Roque couldn't tell us one way or
16 the other, but said that he believed that with a
17 phone call they could punch up on a computer the
18 NPDES permits, although not signed, and give us
19 those copies without hours and hours of review of
20 those materials.

21 I apologize for not having the time
22 to brief this matter. I could certainly brief it
23 early next week, but it's evident that I'm not
24 going to get these materials today or tomorrow,

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1 and my position would be I'm entitled to them at
2 some time even if it's after the hearing closes.

3 For the record, we are absolutely 100
4 percent willing to do whatever we can do to
5 assist in review of materials, including
6 reviewing the files ourselves to pull these
7 materials out. I urge you not to grant this
8 motion just to say because they didn't get it to
9 us in time of the hearing it relieves their
10 obligation to do so.

11 I will be questioning both Ms. Munie
12 and Ms. Thompson about the affidavit about how
13 much time it took to compile these documents. We
14 do appreciate the documents that we had received,
15 but like we suspected, the permits, the permits
16 themselves, don't give us all of the
17 information.

18 It says in the permit, follow your
19 closure plan. Well, without the closure plan, we

20 don't know what that means. It says in the
21 permit, follow your NPDES permit. Without the
22 NPDES permit, we don't know what that means. The
23 two pieces of information that we don't have for
24 each of these sites are crucial, and we'd like to

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1 have it. I think we're entitled to it. We will
2 accept it after the hearing. We will help find
3 it. We will do it pursuant to voir if it can be
4 done on an accelerated basis so we can include it
5 in the record.

6 I'm not so sure that the statements
7 that, you know, actual permit writers and
8 engineers have to scour these files is accurate
9 based on Ms. Roque's testimony. She didn't do
10 anything but make a phone call.

11 HEARING OFFICER HALLORAN: Thank you, Mr.
12 LaRose. Mr. Kim.

13 MR. KIM: I won't comment on anything
14 that's in the motion. I'll just respond to his
15 comments regarding the testimony yesterday.

16 First of all, the affidavit was not
17 signed by Ms. Roque. The affidavit was signed by
18 Joyce Munie, who is the head of the permit

19 section. I think any questions as to how long it
20 would take for review should be directed to Ms.
21 Munie. It is not Ms. Roque's responsibility to
22 dole out the work assignments. She does not tell
23 other permit reviewers in the section what to
24 do. That's Ms. Munie's job. So she is the one

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1 that did that, and she will be perfectly happy to
2 testify that the statements she made in her
3 affidavit are correct.

4 Second of all, as to the ability to
5 punch up permits on the -- with a keypunch or
6 something, I recall the question being asked of
7 Ms. Roque. I don't recall if there was ever any
8 testimony provided by Mr. McDermont on that
9 issue. So to the best of my understanding, the
10 only time that that issue has been raised was in
11 a question from counsel to Ms. Roque. I don't
12 think that there's ever been testimony provided
13 affirmatively that that is something that we can
14 or cannot do.

15 HEARING OFFICER HALLORAN: Anything else,
16 Mr. McDermont?

17 MR. LaROSE: And I didn't mean to imply

18 that there had been testimony in that regard. I
19 did inquire of Ms. Roque and she didn't know.
20 Mr. McDermont told me that that's the practice.
21 In two seconds, we can put him under oath and he
22 can testify to that, if that's necessary for you
23 to make a ruling on that. He's not scheduled to
24 testify until tomorrow. We're not going to have

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1 the documents until tomorrow. So if you want to
2 wait until he actually gets on the stand, I'll
3 ask him those questions, Mr. Kim can
4 cross-examine him, that would be fine.

5 HEARING OFFICER HALLORAN: Notwithstanding
6 your arguments, Mr. LaRose, I'm going to grant
7 the motion to quash. I find that based on the
8 arguments today and yesterday and the motion, I
9 do find it overly burdensome, unreasonable, and
10 in addition, there's no evidence to show that the
11 Agency considered these requested documents at
12 the time it made its permit determination, and I
13 would also grant the Agency's motion that this
14 includes at the conclusion of the hearing that
15 the Agency is not required to provide any
16 documents pursuant to the subpoena duces tecum,

17 and as you know, Mr. LaRose, you may appeal a
18 hearing officer's order to the Board if you feel
19 it is a wrong decision.

20 MR. LaROSE: Is that something that's
21 included in the new -- is that -- there's new
22 regulations now, new rules as of January.

23 Is that rule, the hearing officer
24 appeal order, the same as it was or has that

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1 changed?

2 HEARING OFFICER HALLORAN: That I don't
3 know. We could -- at recess, I could take a
4 look. It's in 101, I believe. I'm not sure.

5 With that said, any other preliminary
6 matters or do we want to get right to the -- I
7 believe it's petitioner's fourth witness.

8 MR. KIM: I was wondering if the hearing
9 officer was going to enter an order on the motion
10 -- not on the motion, but on the issue about the
11 exhibits and case law that was provided at the
12 end of the day yesterday?

13 HEARING OFFICER HALLORAN: Are you
14 referring to Exhibits 00 and PP? I'll reserve
15 that ruling, Mr. Kim.

16 MR. KIM: Thank you.
17 MR. LaROSE: My turn? The petitioner
18 calls Van Silver as its next witness.
19 HEARING OFFICER HALLORAN: Mr. Van Silver,
20 please step up. Swear him in.
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23
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1 (Witness sworn.)
2 WHEREUPON:
3 VAN SILVER, P. E.,
4 called as a witness herein, having been first
5 duly sworn, deposeth and saith as follows:
6 DIRECT EXAMINATION
7 by Mr. LaRose
8 Q. Take a seat, please, sir.
9 Could you state your name for the
10 record, please?
11 A. Van A. Silver.
12 Q. Mr. Silver, by whom are you employed?
13 A. Andrews Environmental Engineering,
14 Incorporated.

15 Q. And is that employment on a full-time
16 basis or a part-time base?

17 A. No. It's on a part-time basis.

18 Q. And what is the nature of your employment
19 with Andrews Environmental Engineering?

20 A. I perform geotechnical studies for the
21 different SIGMODs and other projects.

22 Q. Sir, I'm going to hand you what's been
23 previously marked as Exhibit F and ask you to
24 take a look at that, please.

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1 Sir, what is that?

2 A. This is my, what I would call, resume.

3 Q. And is this the resume that you provided
4 me in November of the year 2000 that I then
5 provided to Mr. Kim in discovery in this case?

6 A. It is.

7 Q. Could you briefly go over the -- let me
8 back up.

9 You call yourself a geotechnical
10 engineer. Could you explain for the hearing
11 officer and the Board what it
12 is -- what geotechnical engineer means?

13 A. Geotechnical engineering is an outgrowth

14 of soil and foundation engineering. It's made up
15 of two phases; basically, soil mechanics and
16 foundation engineering. It's been developed
17 during this century. It has always been taught
18 as a part of civil engineering until recent
19 years. It's becoming more and more of a subject
20 all in itself, and so I have a master's of
21 science in civil engineering with a strong
22 geotechnical option.

23 Q. And in addition to your master's of
24 science, you have a BS in civil engineering from

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1 the University of Utah that you obtained in 1952?

2 A. That is correct.

3 Q. And then you went on to U of I and
4 received your MS in civil engineering
5 in '56, correct?

6 A. '56.

7 Q. Now, the MS in '56, did it have a
8 particular concentration or --

9 A. It was oriented toward soil mechanics and
10 foundation engineering aspects of the civil
11 degree.

12 Q. Was that the predecessor of what they now

13 call geotechnical engineering?

14 A. That is correct.

15 Q. In '56, did they even have the term
16 geotechnical engineering?

17 A. No, sir.

18 Q. Did you have any continuing education
19 after your MS degree at U of I
20 in '56?

21 A. In 1969, I attended the sixth soil
22 mechanics program at Harvard University under the
23 directorship of Arthur Hasagrandy, who was one of
24 the outstanding founders and teachers in the soil

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1 mechanics and foundation engineering arena and he
2 had been at Harvard for quite a number of years.

3 Q. And did you complete that program?

4 A. Yes, sir.

5 Q. Sir, under the general information --
6 Strike that. Let's back up.

7 I want to talk about your
8 professional certifications. Where are you
9 licensed presently to practice geotechnical
10 engineering?

11 A. State of Illinois. My original license

12 was in 1962. I'm also licensed in the state of
13 Indiana. My original license dates all the way
14 back to 1957 in the Commonwealth of Pennsylvania.

15 Q. The Pennsylvania license is no longer
16 active; is that correct?

17 A. It is no longer active.

18 Q. Is it that you don't have a license or
19 that you've transferred it to an inactive status?

20 A. Inactive status.

21 Q. The general introduction portion of your
22 curriculum vitae talks about, about halfway down,
23 mass, slash, slope stability using the PC STABL
24 computer program, bearing capacity, settlement,

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1 and swell.

2 Is that some of the things that you
3 did on this particular project, the Morris
4 Community Landfill Project?

5 A. Yes, sir.

6 Q. Let's talk about the PC STABL program for
7 a second. Explain that to Mr. Halloran and the
8 Board.

9 A. The PC STABL program was developed at
10 Purdue University, oh, in the early '80s I

11 believe it was by the -- for the Indiana Highway
12 Commission to investigate slope stability of
13 their highway embankments and cuts, and it's a
14 very easy program. It's been well accepted and
15 over the years different states are using it and
16 it's well accepted within the EPA organization.

17 We're on the fifth generation in that
18 program. It's the PC STABL 5M stability program.

19 Q. Bear with me just a second. I need to get
20 my glasses out of my coat here.

21 Sir, did you actually use the PC
22 STABL 5 program to make some calculations in this
23 case?

24 A. For this study, yes, sir.

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1 Q. Looking down the left-hand side of the
2 first page of your resume, you did a publication
3 in October of 1977?

4 A. That is correct.

5 Q. Okay. And is that the most major
6 publication that you've been involved with?

7 A. Yes. That was based on the studies that
8 we had done at that Coal Creek Generating Space
9 in North Dakota, which was an unusual rock

10 foundation and had special characteristics and we
11 wrote the paper on that.

12 Q. You've listed on here two landfills that
13 you've worked for.

14 Of course, we know for sure that you
15 worked for Morris Community Landfill, right?

16 A. Correct.

17 Q. Before we talk about the two that are on
18 here, are there any other landfill projects in
19 Illinois that you worked on that aren't listed on
20 your CV?

21 A. Dixon GROF; Rochelle Municipal; Livingston
22 Landfill; Livingston County Landfill, Parcel D;
23 Hoopeston, which is now, I believe, called
24 Illinois Landfill; Landfill 33 near Effingham;

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1 West End Disposal, which is in progress with the
2 Agency, I believe; and Sangamon Valley, which is
3 in progress with the Agency, and that's located
4 in Springfield and then Macon County Landfill.

5 Q. Okay. Now, with respect -- you said that
6 you worked for these.

7 Did you do any work for any of this
8 list of landfills with respect to their

9 significant modification application?

10 A. They were all SIGMODs.

11 Q. And were they all SIGMODs as they related
12 to your expertise, geotechnical engineering?

13 A. Yes.

14 Q. And did they relate to the subexpertise in
15 the area of site stability?

16 A. Yes.

17 Q. And site stability as it relates to the
18 Illinois Landfill Regulations, correct?

19 A. That is correct.

20 Q. Okay. Tell me a little bit about Upper
21 Rock Island Landfill, what you did there.

22 A. Upper Rock is unique. It's up in the Quad
23 Cities area, and it's located within a mile or a
24 mile and a half of a major seismic experience

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1 event many, many years ago.

2 As it turned out, the geology is such
3 that I had to eventually write two SIGMODs
4 involving the geotechnical portion because the
5 one side was somewhat similar to what we have at
6 Morris involving shallow coal mines which were
7 exposed and then the other side of it was a deep

8 glacial deposit involving sediment.

9 So it was two entirely different
10 geotechnical soil mechanic foundation problems.

11 Q. Is it fair to say, sir, that for that
12 particular landfill, the Upper Rock Island
13 Landfill, you did two stability studies?

14 A. Two stabilities.

15 Q. On the same landfill?

16 A. The same landfill.

17 Q. Tell us a little about the Macon County
18 Landfill.

19 A. The Macon County Landfill is situated on
20 the southwest of side of Decatur, Illinois, in
21 Macon County on the North Bank of the Sangamon
22 River, which is -- it's all glacially deposited
23 material. It's particularly in section four that
24 I believe we were -- did most of my work.

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1 We thought it was a routine glacial
2 site until we discovered a buried channel that
3 was just a few feet wide that was transmitting as
4 much as 150 gallons of water a minute, and we
5 first noticed this during excavation and bottom
6 heave and we had to quickly drill more borings

7 and install wells and subsequently had to bring
8 in vacuum pumps to withdraw the water to maintain
9 stability of that site during construction.

10 Q. Sir, to the best of your knowledge, was
11 the work that you performed in the Upper Rock
12 Island Landfill, I'm backtracking on you now,
13 approved by the Agency?

14 A. Yes.

15 Q. Okay. And the same with respect to the
16 work that you performed on the Macon County
17 Landfill?

18 A. That is correct.

19 Q. These other landfills that you talked
20 about stability studies, we know that the Agency
21 had a problem with your stability or with the
22 subsidence issue as it relates to the Morris
23 Landfill and, therefore, the things that were
24 proposed with respect to the deep wells were

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1 denied, but all of these other landfills, the
2 work that you've done, generally has been
3 accepted by the Agency?

4 A. Yes.

5 Q. Sir, let's talk about the work that you

6 performed on the Morris Community Landfill site.

7 When did you first perform any work
8 regarding Morris Community Landfill?

9 A. It dates back to the summer of 1996.

10 Q. And what did you do in the summer of 1996?

11 A. In 1996, it was basically the geotechnical
12 requirements to meet the regulations, Sections
13 811.304(a) through (d) and 305(a), and it was to
14 show the capability of the area to sustain the
15 loading, that settlements would be within reason,
16 that the stability of the slopes would be -- meet
17 specs and the capacity factor of safety would be
18 satisfactory.

19 Q. Did you prepare the mass stability report
20 that was included in the original August 5th,
21 '96, application?

22 A. I did.

23 Q. That's your work?

24 A. Yes.

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1 Q. At that time, sir, was there even any
2 suggestion or proposal that there be a deepwell
3 groundwater remediation program?

4 A. No, sir.

5 Q. At that time, was there even any
6 suggestion that there might have been undermining
7 under the site?
8 A. No, sir.
9 Q. At that time, was there any suggestion
10 that anything other than a groundwater and
11 receptive trench was going to be used and that's
12 what was being proposed by Andrews?
13 A. Not to my knowledge.
14 Q. So is it fair to say that your '96 mass
15 stability analysis didn't take into consideration
16 those factors?
17 A. That is correct.
18 Q. Okay. When was the next involvement that
19 you had regarding the issues of stability at the
20 Morris Community Landfill site?
21 A. It was in the spring of 1999.
22 Q. How did you come to be contacted?
23 A. Contacted?
24 Q. Yes.

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1 A. I had a call from Andy Limmer, a geologist
2 with Andrews. I knew that the drilling work had
3 been going on. I knew that pumping tests were

4 being conducted, but Andy called and said with
5 the additional borings they were becoming quite
6 suspicious of a subsidence issue, stability
7 issue, the relationship between the two, and
8 would I back up and review the '96 report and see
9 if my stabilities were still applicable.

10 Q. And the issue at that point was stability,
11 correct?

12 A. Stability.

13 Q. Okay. Did he tell you that as a result of
14 additional testing that Andrews had been told by
15 somebody that they believed the site to be
16 undermined?

17 A. Yes.

18 Q. And who was that somebody that he related
19 to you told them that the site was undermined?

20 A. I believe it was Mr. McDermont and Mr. Limmer
21 relayed that information to me.

22 Q. Okay. When you say that McDermont and
23 Limmer relayed the undermining information to
24 you, did anybody from Andrews Environmental

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1 Engineering tell you in the spring of 1999 that
2 they thought there might have already been some

3 subsidence on the site?

4 A. Yes.

5 Q. When you gave your deposition in this
6 case, do you remember being asked a similar
7 question like that and you gave kind of the
8 opposite answer?

9 A. That is correct.

10 Q. Mr. Kim asked you if they had told you
11 about this and you said no, right?

12 A. That is correct.

13 Q. Okay. Sometime after your deposition, you
14 had a chance to review it, correct?

15 A. That is correct.

16 Q. And you called me up and said what?

17 A. I said I've had a chance to think about
18 it, and I do recall that it had been mentioned to
19 me at that time that there was possible
20 subsidence.

21 Q. Okay. You asked me if you could change
22 your deposition?

23 A. That is correct.

24 MR. KIM: Objection, leading.

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1 HEARING OFFICER HALLORAN: Overruled.

2 BY MR. LaROSE:

3 Q. What, if anything, did you ask me about
4 that issue, sir?

5 A. Well, I said I'd like to change it, if
6 possible.

7 Q. What did I tell you?

8 A. You'll try it.

9 Q. Okay. And we tried it and it didn't work
10 because I was unaware that the rules had
11 changed.

12 A. I just blew the answer. That's the sum
13 and substance of it.

14 Q. Sir, whether or not they told you about
15 the issue of subsidence, did you do
16 recalculations in 1999?

17 A. Yes.

18 Q. Okay. And what, if any, effect of the
19 issue of subsidence did you include in your
20 calculations?

21 A. Well, when the word subsidence came up and
22 the fact that we now knew that we had underground
23 mining, I automatically just backed up and said
24 this has been 40 years ago. I need to consider

1 the fact that it has occurred and for my purpose,
2 I assumed that it was 100 percent complete.

3 Q. Okay. When you say you assumed that it
4 was 100 percent complete, what do you assume was
5 100 percent complete?

6 A. That the subsidence was complete, that
7 there were no basically open voids. We had seen
8 no sinkholes. We had not seen anything of major
9 consequence leading us to believe that it was
10 still going on.

11 Q. So how did you factor in to your
12 calculations the fact that you believe the
13 subsidence had already occurred?

14 A. Well, I went back to my '96 report, the
15 shear strength parameters that I used in those
16 evaluations as far as the underclay was concerned
17 and the mine spoil and the coal itself, I reduced
18 those values and redid the stabilities.

19 Q. You reduced the values to take into
20 consideration the subsidence issue?

21 A. That is correct.

22 Q. Sir, did you make a report then to Andrews
23 Environmental Engineering about your
24 recalculations in '99?

1 A. Yes.

2 Q. And that report was then submitted as part
3 of a '99 update to the stability by Andrews to
4 the EPA?

5 A. That is correct.

6 Q. And that's included in the record in this
7 case?

8 A. That is correct.

9 Q. In September 1999, the permit applications
10 that you worked on were denied, correct?

11 A. That is correct.

12 MR. KIM: Objection. I have no problem
13 moving the testimony along, but these are all
14 leading questions.

15 HEARING OFFICER HALLORAN: Mr. LaRose.

16 MR. LaROSE: That's fine. I am just
17 trying to move it along, and I think on any
18 substantive point, I haven't asked him a single
19 leading question, but I'll ask more nonleading
20 questions.

21 BY MR. LaROSE:

22 Q. Sir, what happened in September 1999 with
23 respect to the permit, if you know?

24 A. I received a copy of a letter to Andrews

1 signed by Joyce Munie denying a number of things
2 specifically relating to geotechnical -- it was
3 point number five and the section numbers
4 811.304(a) through (d) and 305(a).

5 Q. Okay. And were you given later on any
6 assignment with respect to those denial letters?

7 A. Yes.

8 Q. When was that?

9 A. Well, within the next month or so to
10 respond to that denial.

11 Q. To the denial points in that letter?

12 A. That's right.

13 Q. Okay. Did you perform then additional
14 calculations?

15 A. Yes, sir.

16 Q. Okay. And when was that?

17 A. That would have been in late 1999 and
18 early 2000.

19 Q. Okay. And did the additional calculations
20 that you performed end up in the application, if
21 you know?

22 A. Yes, sir.

23 Q. Okay. And that was part of the May 2000
24 submittal and it was a mass stability and

1 subsidence study?

2 A. That is correct.

3 Q. What, if any, additional information did
4 you have in your possession in late '99, early
5 2000 that you didn't have either in '96 or '99
6 when you did the first two projects?

7 A. Well, we had additional borings as part of
8 the '99 drilling and pumping test program. We
9 had additional information we thought as far as
10 the subsidence was concerned. We thought their
11 information was better and more complete.

12 Q. What, if anything, did the information
13 tell you about your initial assumption that the
14 site hadn't subsided?

15 A. It confirmed it.

16 Q. Okay. Sir, did you prepare new
17 calculations then for the 2000 report?

18 A. Yes, sir.

19 Q. Okay.

20 MR. LaROSE: I'm going to -- before we do
21 that, I would move Mr. Silver's resume, Exhibit
22 F, into the record, please.

23 HEARING OFFICER HALLORAN: Mr. Kim?

24 MR. KIM: No objection.

1 HEARING OFFICER HALLORAN: Exhibit F is
2 admitted.

3 BY MR. LaROSE:

4 Q. Sir, we put on the easel what we've
5 previously marked as Exhibit CC, which, for the
6 record, appeared in -- appears in two places in
7 the record, but one place where it appears is
8 volume B -- I'm sorry, parcel B, volume one, page
9 260.

10 Sir, what is that chart?

11 A. Well, it is a chart showing the shear
12 strength parameters that I used in the PC STABL
13 program to compute the factor of safety for the
14 mass stability report.

15 Q. Okay. And that's part of the mass
16 stability and subsidence analysis from the May
17 2000 report, correct?

18 A. That is correct.

19 Q. Can you explain to Mr. Halloran and the
20 Board what this chart means?

21 A. This is a summary of everything that we
22 used to input into that computer program, and if
23 I can find it on there, in this particular
24 program, we used ten different layers of

1 stratigraphy of the upper soils, the rock, the
2 coal, municipal solid waste. They're not
3 necessarily in order as they're shown as we've
4 input them into the program.

5 Q. When you say the ten different layers,
6 does that appear on the left-hand side of this
7 chart?

8 A. That appears on the left-hand side, soil,
9 that column right there.

10 Q. What's the next column?

11 A. The next column is the soil, rock waste,
12 and mining materials. That's the definition of
13 the -- number one was unweathered Pennsylvanian
14 shale. Obviously, that is the basal material.
15 On top of the Pennsylvanian shale is the in situ
16 underclay, which is normally found under
17 bituminous coal layers.

18 Q. By the way, sir, we're trying to be high
19 tech here with that thing. If you feel more
20 comfortable just stepping up and pointing to it,
21 go ahead and do that.

22 A. If that's all right. We have the in situ
23 coal. Then above that, slightly weathered,
24 moderately hard shale. Under the surface, we

1 have the glacial drift, brown silty clay, and
2 then we have materials which I term mine spoil or
3 collapsed and slumped overburden. Then the main
4 load itself, the municipal solid waste, and then
5 at Morris, we have the separation layer between
6 the old and the proposed new, the compacted
7 impervious silt clay silt, and then the final
8 cover consisting of the semi-compacted vegetative
9 layer, and then I later went back and put in
10 another layer of weathered clay sandy silty
11 shale.

12 Q. Some of these layers were put in here,
13 were they not, from actual boring logs that you
14 had in your position?

15 A. That is correct.

16 Q. And others, like the last two, aren't even
17 there yet. So you just assume they were going to
18 be there?

19 A. Well, that's right. The vegetative cover
20 and the -- a lot of the municipal solid waste is
21 not there yet.

22 Q. Okay. Now, to the third column, the unit
23 weight moist, slash, saturation pcf: varies.

24 A. Okay. Let me diverse here just a bit.

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1 When we're dealing with soil mechanics, the
2 characteristics of soil and rock, we have the
3 natural moisture content. We have the dry unit
4 weight. We have the compressibility factor,
5 and we have the shear strength factor, and we use
6 them all in stability analysis.

7 This is a unit weight of each of
8 these materials, and this is the generally dry
9 material or we assume it to be dry. Well, no.
10 I'm sorry. It says moist. So we use the moist
11 unit weight and the saturated. These are pounds
12 per cubic foot of each of these materials that we
13 input into the program.

14 The fourth column and the most
15 important probably is from the stability
16 standpoint is the shear strength of the
17 materials. We're dealing with a long-term
18 loading condition, seismic loading, and when you
19 get into the long-term loading, cohesion
20 generally drops off to nearly zero and we're left
21 with -- this should be the angle feet in degrees
22 and these are the friction angles of each of

23 these materials that are used.

24 Q. Now, sir, did you do anything to the shear

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1 strengths, what you termed as the most
2 important?

3 Did you make any adjustments to the
4 shear strengths based on the information that you
5 had in your possession?

6 A. The shear strengths of soil rock layer
7 number two, three, and -- two, three, and six I
8 reduced by as much as 20 to 30 percent to account
9 for the subsidence effect because that would be
10 the main ones affecting the factors of safety.

11 Q. I'm still trying to understand this stuff.
12 So bear with me if I ask a stupid question.

13 If you left the shear strengths where
14 they were without reducing them, would that give
15 you a higher factor of safety or a lower factor
16 of safety?

17 A. It would give me a higher factor of
18 safety.

19 Q. Okay. So that by reducing the shear
20 strengths in your calculation, you actually came
21 up with a lower factor of safety?

22 A. That is correct.

23 Q. By reducing the shear strengths, were you
24 being more aggressive or more conservative?

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1 A. More conservative.

2 Q. Okay.

3 MR. LaROSE: Sir, I would move the
4 introduction of Exhibit CC into evidence.

5 HEARING OFFICER HALLORAN: Mr. Kim.

6 MR. KIM: No objection.

7 HEARING OFFICER HALLORAN: Exhibit CC is
8 admitted.

9 BY MR. LaROSE:

10 Q. Mr. Silver, you can still stay up here
11 because I want to show you something else that's
12 on the flipside of this. This is Exhibit AA.

13 Sir, what is Exhibit AA?

14 A. Well, that is a Mass/Global Stability
15 Analysis For Long-Term Loading Conditions Using
16 Residual Shear Strengths based on those that I've
17 shown in table one.

18 Q. Now, this is -- the top part of the graph,
19 is that the result of the PC STABL runs?

20 A. That is correct.

21 Q. Okay. Now, could you explain -- let's
22 take -- you ran the table it looks like on this
23 table two -- excuse me.

24 You ran the program it looks like on

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1 table two for three different groundwater
2 elevations, correct?

3 A. That is correct.

4 Q. What elevations did you run it for?

5 A. I ran it for 509, 506, and 503.

6 Q. Let's just take 509, for example, and
7 explain why there's several numbers at 509 for
8 the Board and Mr. Halloran.

9 A. I used four different search methods for
10 the stability, the Bishop, Janbu, and the
11 Rankine, and then the Spencer specified surface.
12 So we're dealing both with static emissions and
13 seismic. Generally speaking, we don't have
14 problems meeting the static. It's that long-term
15 seismic that is generally the controlling factor
16 of safety.

17 Q. Is that like the earthquake thing?

18 A. Yes.

19 Q. I mean, you're trying to protect -- you're

20 trying to make sure that the stability of
21 whatever it is you're building is going to
22 withstand an earthquake?

23 A. That is correct.

24 Q. So why is there three different

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1 calculations then at 509?

2 A. Basically, to test the section that I had
3 chosen to see maybe which best suited the
4 conditions that are there, and as it turns out,
5 the Rankine Block Search is the preferred method
6 because you can isolate a slippage zone, and then
7 if there has been subsidence, even though it may
8 be completed, that is still considered probable
9 failure zone.

10 Q. By the way, this document was included in
11 the May 2000 report?

12 A. That is correct.

13 Q. And it is, for the record, in both
14 volumes, but it appears that volume -- I'm sorry,
15 parcel B, volume one, page 262.

16 So at 509, sir, what, if any,
17 conclusion did you reach as to whether the
18 stability of the landfill met the 811 regs?

19 A. I'd like to refer to lines 19 and 20. At
20 elevation 488, I conclude that the seismic factor
21 of safety was 1.35, which is greater than 1.3
22 point, and then for the Spencer method, it was
23 even higher, but for the purpose of this
24 analysis, I would prefer to just go with the

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1 Rankine Block search.

2 Q. So at 509, what was your conclusion as to
3 whether it met --

4 A. It met the specifications. It met the
5 regulations.

6 Q. You did similar calculations then at 506,
7 correct?

8 A. At 506, line 26, the seismic factor of
9 safety was 1.44, which is an improvement of not
10 quite ten percent from what it was at 509.

11 Q. 506, that's the groundwater elevation
12 level?

13 A. That is the groundwater elevation. That
14 was one of the elevations that I was told they
15 would be lowering the water table too.

16 Q. So when you got -- when you looked at 506,
17 groundwater elevation 506, did the stability get

18 greater or lesser than 509?

19 A. It was greater because at 509, it was
20 1.35. At 506, it was up to 1.44 or an increase.

21 Q. And at 503, what happened when you ran the
22 same calculation?

23 A. The same thing. Line 36 was showing to be
24 1.51, a definite trend greater factor of safety

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1 with the lowering of the water level.

2 Q. Did you present these initial calculations
3 to Mr. McDermont?

4 A. Yes.

5 Q. Did he then call you and ask you to do
6 something in addition to that?

7 A. He suggested to me that it might be
8 necessary to go to elevation 490 and what did I
9 think, would it still be safe, and I said yes,
10 because I saw the definite trend we had, three
11 points, and I very quickly extrapolated down to
12 elevation 490 and even 480 and it was going to
13 meet the factor of safety at all points in
14 between.

15 Q. So you didn't actually conduct at the time
16 that this document was submitted calculations

17 under the PC STABL program down to elevation 480?

18 A. No, I did not.

19 Q. You extrapolated?

20 A. I extrapolated.

21 Q. Based on the known values that you had?

22 A. That is correct.

23 Q. There was a percentage of increase in the

24 factor of safety from 509 to 503.

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1 Was it that you were expecting that
2 to continue down to lower levels?

3 A. Yes.

4 Q. Did you indicate anywhere on Exhibit AA
5 that you had extrapolated?

6 A. Yes.

7 Q. Okay. And could you point that out to Mr.
8 Halloran and the Board?

9 A. This states that I had calculated at 509,
10 506, and 503, and since we were assuming the
11 going unit at -- be no lower than 480 and that
12 would be the absolute lowest elevation from which
13 groundwater could be pumped at any time, knowing
14 that we were increasing at the slight rate for
15 every three-foot drop, I just made a straight

16 line extrapolation of that data down to elevation
17 480, and it was -- the 1.4 is a very conservative
18 estimate based on extrapolation.

19 Q. You actually tell them in this document
20 that was submitted to the EPA that you
21 extrapolated?

22 A. Yes.

23 Q. And you thought the extrapolation was
24 probably conservative and the actual factor of

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1 safety --

2 MR. KIM: Objection. That's a leading
3 question.

4 BY MR. LaROSE:

5 Q. Sir, what did you feel about the
6 extrapolation?

7 A. I felt perfectly comfortable with it
8 because I had three points of known data that I
9 was comfortable with. They were increasing, and
10 the only changing factor in the entire program
11 now was a three-foot differential drop every time
12 in the water level, and I saw a pattern, and I
13 considered the trend and accepted it.

14 Q. Sir, in your deposition in this case -- by

15 the way, you've read the depositions of Ms. Roque
16 and Ms. Thompson?

17 A. Yes.

18 Q. They offered some criticism of the fact
19 that you extrapolated rather than calculated,
20 correct?

21 A. Yes.

22 Q. And, in fact, Mr. Kim has offered that
23 same criticism and probably is about to in a few
24 minutes, right?

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1 A. I suspect so.

2 Q. I suspect so too.

3 As a result of that, did I ask you to
4 do any tests to test your extrapolation?

5 A. Yes.

6 Q. And did you perform those tests?

7 A. Yes.

8 Q. When?

9 A. Well, it's been within the last few weeks
10 that I went back. I looked at the condition. I
11 even went a little bit more conservative than
12 what this is based on, and I calculated or I --
13 with the computer, I went 509, 506, 503, 500,

14 495, I believe, and then 480 or 490.

15 Q. Sir, do you think, as a demonstration
16 anyway, that it would be instructive for the
17 technical people in the Board and the Board
18 members themselves to see the results of that
19 calculation?

20 A. I think it would be.

21 Q. Okay.

22 MR. LaROSE: I would move admission of
23 Exhibit AA into evidence, Mr. Halloran.

24 MR. KIM: No objection.

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1 HEARING OFFICER HALLORAN: Exhibit AA is
2 admitted.

3 BY MR. LaROSE:

4 Q. I'm going to show you what's been
5 previously marked, Mr. Silver, as Exhibit DD?

6 MR. LaROSE: Mr. Halloran, for the record,
7 I received this document in this form for the
8 first time this morning and showed it to Mr. Kim
9 for the first time this morning.

10 BY MR. LaROSE:

11 Q. Sir --

12 MR. KIM: Mr. Hearing Officer, I'm sorry.

13 Before we even go into this, I'm going to see if
14 we can save some time. I don't think any
15 discussion or any questioning on this document is
16 at all relevant and should at all be considered.

17 Mr. LaRose has just testified -- has
18 just asked and Mr. Silver has just testified this
19 information was not prepared up until just a few
20 weeks ago. Mr. LaRose said he's just now
21 received a copy of this. We, obviously, just
22 have seen a copy of this. This is not in the
23 application. This has nothing to do with what
24 the Agency reviewed, and it should have no

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1 bearing. It's not relevant. It shouldn't even
2 be discussed.

3 HEARING OFFICER HALLORAN: Mr. LaRose.

4 MR. LaROSE: Sir, this is not being
5 offered as direct evidence in this case, but as
6 demonstrative evidence, and the courts in the
7 state of Illinois -- the Board doesn't really
8 have any particular rule that relates to
9 demonstrative evidence, but the courts in the
10 state of Illinois have all said that the courts
11 favor the use of demonstrative evidence if it

12 will help the trier of fact understand an issue.

13 The issue in this case that we're
14 trying to help the Board understand is the issue
15 of extrapolation. There's no doubt that Mr.
16 Silver extrapolated. There's no doubt that he
17 didn't conduct the calculations down from 503 all
18 the way down to 480.

19 He's been criticized very heavily
20 because of that. We are trying to explain to the
21 Board the theory of extrapolation and trying to
22 show them that by test Mr. Silver's theory of
23 extrapolation was not only a valid one, but one
24 that should be recognized by this Board. It's

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1 not offered as direct evidence. It's offered as
2 a demonstration, and I would suggest that it's
3 offered as a good demonstration.

4 HEARING OFFICER HALLORAN: Mr. Kim.

5 MR. KIM: Well, Mr. LaRose can
6 characterize this as any type of exhibit he
7 wants, but he just stated this is being put forth
8 to demonstrate that Mr. Silver's actions were
9 justified and were correct, which basically means
10 we're trying to -- we're going to use this

11 document to show that what he has here in the
12 application was correct.

13 There's nothing -- but this document
14 itself is not in the application. He can't argue
15 off something not in the application prepared
16 just a few weeks ago to try and support what the
17 Agency had before us. It obviously puts us at an
18 unfair position because we didn't have this
19 information before us.

20 We only have the information in the
21 application. That's all he should testify to.
22 That's all the Board should consider. This
23 document shouldn't come in.

24 MR. LaROSE: Could I make a comment on

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1 that, sir?

2 HEARING OFFICER HALLORAN: Yes, you may.

3 MR. LaROSE: If you look at this document,
4 Exhibit DD, look at the curved line farthest to
5 the to the right, that's exactly what's in the
6 application. That's exactly what's in the
7 application. That's the extrapolation that he
8 did. You could see the dotted line is the
9 extrapolation. So they did have at least half of

10 this information in their possession.

11 They now criticize it without having
12 conducted any test to confirm it. I'm not
13 offering it for direct evidence. I'm offering it
14 as a demonstration of Mr. Silver's theory of
15 extrapolation. I think it's instructive. I
16 certainly think that it's relevant in that Mr.
17 Kim is going to get up in about two seconds and
18 tell Mr. Silver that he didn't do the right thing
19 because he extrapolated instead of calculated.

20 HEARING OFFICER HALLORAN: I will sustain
21 the objection. This was not before the Board
22 when it made its permit determination. However,
23 you're more than welcome, Mr. LaRose, to make an
24 offer of proof and the Board will take a look at

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1 it and whether they see fit that --

2 MR. LaROSE: I would like it to be
3 admitted as an offer of proof, and because of
4 that, just so we have the foundation for it, I'm
5 going to ask him a few questions under an offer
6 of proof, if that's okay?

7 HEARING OFFICER HALLORAN: That's fine,
8 Mr. LaRose.

9 MR. LaROSE: Thank you.

10 BY MR. LaROSE:

11 Q. Sir, could you get back up here and just
12 explain what you did.

13 A. This is a graph of groundwater elevations
14 on the vertical and on the horizontal. It's
15 factors of safety going from 1.1 to 1.8. We have
16 a required minimum factor of safety of 1.3. This
17 is the Agency minimum requirement.

18 The 2000 report computer run number
19 gives us this factor of safety, which is a
20 little bit more than 1.3. In computer run number
21 26, you see we're over here at three-foot drop in
22 the water -- groundwater elevation. We're up to
23 about 1.42 for another three-foot drop. We're up
24 here around 1.47 or 1.48.

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1 Q. Sir, let me stop you right there.

2 At the run 36 at groundwater
3 elevation 503, that's where your calculations
4 under the 2000 submittal actually stopped?

5 A. These were all calculated values, and
6 that's where I stopped.

7 Q. Those were the actual calculated values --

8 A. That was the actual calculated values.
9 Q. -- in table two?
10 A. That is correct.
11 Q. And the dotted line represents what then?
12 A. The dotted line represents the best fit of
13 these three points extrapolated down to the
14 elevation 490. I said at the bottom of table two
15 that it would at least meet 1.4, which is back
16 here. I was being extremely conservative. Here
17 it is about 1.71, but the dashed line indicates
18 this is an extrapolated value. This is a
19 procedure that we use in engineering, not only in
20 this field, but almost in any area of civil
21 engineering where you resort to extrapolation
22 when we see a definite trend, and you don't find
23 a better trend than these three points here to
24 define that curve.

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1 Q. In your professional engineering opinion,
2 was it appropriate to use extrapolation in this
3 particular case?
4 A. Yes.
5 Q. And did you do anything then to test
6 whether or not your extrapolation theory was

7 correct?

8 A. Well, when the question came up, I went
9 back and I made some assumptions a little bit
10 more conservative.

11 Q. You're now referring to the curved line on
12 the left side of Exhibit DD?

13 A. That is correct. The solid line on the
14 left-hand side here is a result of one, two,
15 three, four, five computer-generated slope
16 stabilities, and this is the -- this is a
17 pattern. This is a trend, and it correlates very
18 well with the extrapolated line that I've drawn
19 in.

20 Q. Why didn't you just calculate the
21 extrapolated line as opposed to calculating
22 something more conservative?

23 A. Every time I get into this problem, I
24 always back up and put a little bit more

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1 conservatism into my assumptions to make sure
2 that I'm on the conservative side.

3 Q. You try to be on the safer side?

4 A. That is right.

5 Q. Okay.

6 MR. LaROSE: Again, Mr. Hearing Officer, I
7 don't think I actually did this, even though you
8 sustained the objection, I would move admission
9 of Exhibit DD. I probably know what the ruling
10 is going to be and I'll accept that, but formally
11 for the record we move the admission of DD as a
12 demonstrative aid to help the Board understand
13 the issue of extrapolation.

14 HEARING OFFICER HALLORAN: That motion is
15 denied. It will be admitted as an offer of proof
16 however.

17 MR. LaROSE: Thank you, very much.

18 HEARING OFFICER HALLORAN: Thank you.

19 BY MR. LaROSE:

20 Q. Mr. Silver, you can take your seat.

21 Sir, then your conclusions with
22 respect to whether the site meets the slope
23 stability factors of safety under the applicable
24 Illinois regulations is what?

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1 A. Well, I concluded that it does meet the
2 minimum requirements of 1.3 for that seismic
3 factor of safety.

4 Q. Under 811.304(d)?

5 A. That is correct.

6 Q. What about the load-bearing capacity
7 stability of this particular landfill?

8 A. That's a bearing capacity. This landfill
9 is setting on very stable material. It's
10 basically sound rock, high on the profile. The
11 glacial till overlying that rock is stable. The
12 subsidence, as far as I'm concerned, has
13 occurred, and the underlying Pennsylvanian shale
14 is extremely stable. The landfill itself is a
15 half mile square in round numbers. It's not
16 going to sink. It's not going to shift. It just
17 more than meets the minimum requirement.

18 Q. When you say the minimum requirements, you
19 mean the minimum requirements for a factor of
20 safety --

21 A. That is correct.

22 Q. -- out of 811 regulations?

23 A. Yes.

24 Q. Sir, again, you've read Ms. Thompson's and

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1 Ms. Roque's depositions, correct?

2 A. Correct.

3 Q. And some of their criticism of -- I won't

4 even call it criticism.

5 Some of their concerns with respect
6 to your work were related to a report called the
7 Morris EIS which was prepared for the USEPA in
8 1981, correct?

9 A. That is correct.

10 Q. Are you familiar --

11 MR. KIM: Streator.

12 MR. LaROSE: Did I say Morris?

13 MR. KIM: Yes.

14 MR. LaROSE: Sorry, Streator EIS. I've
15 said it so many times I've confused myself.

16 BY MR. LaROSE:

17 Q. Sir, are you familiar with the Streator
18 EIS?

19 A. Yes, sir.

20 Q. Okay. And have you looked at that portion
21 of the Streator EIS report that relates to the
22 geology under Streator?

23 A. Yes, sir.

24 Q. Are you familiar with the basic geology

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1 under the Morris site?

2 A. Yes, sir.

3 Q. And your familiarity with the basic
4 geology under the Morris site comes from what
5 source?

6 A. It comes from Andrews Environmental.
7 They're geologists who have researched this
8 specifically for the Morris area based upon their
9 findings and borings, and the geology that I use
10 in my reports are based on their geologic
11 findings.

12 Q. And their geologic findings as were
13 included in the application?

14 A. That is correct.

15 Q. Okay. Have you taken a look at the
16 geology that underlies the site that was
17 investigated in Streator and the geology that
18 underlies the Morris Community Landfill site from
19 a comparison standpoint?

20 A. Yes.

21 Q. I'm going to show you -- I'm probably
22 going to make you get back up again too.

23 A. That's all right.

24 Q. I'm going to show you what's been marked

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1 as Exhibit D2 and ask you to take a look at that,

2 please.

3 Sir, just as a matter of background,
4 the right-hand side of that page where there
5 appears to be the columns from the Letco borings
6 and from the geologic literature, where does that
7 information come from?

8 A. This is out of an EIS report.

9 Q. Is it verbatim out of the EIS report?

10 A. Yes. This is printed right out from the

11 --

12 Q. And the left-hand side of this page that
13 says Morris geology from the Morris borings,
14 where did that information come from?

15 A. That was generated from the Andrews'
16 geology.

17 Q. Okay. Could you discuss just in general a
18 comparison of the two geologies as they relate to
19 the issue of subsidence?

20 A. When I looked at the Streator report, this
21 is what the literature says from the Illinois
22 State Geological Survey.

23 Q. When you say this, that's the column on
24 the right-hand side of Exhibit D2?

1 A. On the right, and LETCO had made a series
2 of borings in the Streator area.

3 Q. And that's the column kind of down the
4 middle of the page?

5 A. This is the middle column, yes.

6 Q. Okay.

7 A. And the correlation between those borings,
8 the literature and the actual borings, appear to
9 be pretty good. My problem came in some of the
10 terminology I did not find over in the Andrews
11 report for the Morris site.

12 Q. Now you point to the far left-hand side --

13 A. To the far left-hand side.

14 Q. -- of Exhibit D2? Thank you.

15 A. Back over on the right-hand side here,
16 we're talking about the brereton limestone
17 primarily and most significantly the Herrin No. 6
18 coal seen.

19 Q. Why do you say that that's significant?

20 A. Because the Herrin No. 6 is a well-known
21 coal unit throughout the state of Illinois, and I
22 would expect if the geology -- if the geologic
23 sections were both -- were the same at both
24 sites, then I would expect to see an indication

1 of this Brereton limestone, Herrin No. 6, and
2 some of these other geologic terminologies, but I
3 never saw anything over here on the left-hand
4 side specifically for Morris, and then I can't
5 quote the page, but it also states in their
6 summary that the elevation of the -- the lowest
7 elevation of the No. 6 Herrin coal at Streator,
8 it gave elevations, the range of elevations, and
9 when I looked over here, whatever coal this is,
10 which is called the Morris No. 2, there is a 60
11 -- up to a 60-foot differential between the
12 lowest elevation of the Herrin No. 6 at Streator
13 and the top of what we had at Morris, and it
14 began to dawn on me that we do not have the same
15 geologic section at Morris as reported at
16 Streator.

17 Q. Is the Herrin No. 6 coal present under
18 Morris?

19 A. No.

20 Q. Okay. What, if any, significance did the
21 Herrin No. 6 coal have to the subsidence problems
22 at Streator?

23 A. Well, for one thing, the entire geologic
24 section that we see at Streator is completely

1 absent at Morris.

2 Q. Okay.

3 A. The problem at Streator was generated by
4 the fact that there is numerous sinkholes that
5 were developing on the ground surface, and if
6 you're not familiar with the problem, this states
7 that the whole town of Streator is practically
8 undermined, and individuals were even using the
9 mines to dispose of their sanitary waste, the
10 direct pipe from the ground surface down to the
11 top of the mines.

12 There was a tremendous erosional
13 problem within this underlying material.
14 Sinkholes were developing, big sinkholes, and
15 this was becoming dry. It was changing the
16 characteristics of the rock and the strength of
17 it, and there's just no comparison at all between
18 what was happening or what has happened at
19 Streator and what will happen at Morris.

20 For instance, the underlying --

21 MR. KIM: Excuse me. I'm sorry to
22 interrupt you, Mr. Silver, and I'm just asking
23 for a point of clarification.

24 Did you ever -- was there ever a

1 question asked of Mr. Silver as to when he
2 reviewed the Streator EIS? I don't know if
3 you've asked that. I don't know if that question
4 was asked or not. If it hasn't been asked, I'll
5 just -- I'm just wondering if that's been asked.

6 MR. LaROSE: I don't know that I asked
7 it. I think it's a fair question on
8 cross-examination.

9 HEARING OFFICER HALLORAN: I agree with
10 Mr. LaRose.

11 BY MR. LaROSE:

12 Q. Sir, the criticism or the comparison, if
13 you will, between the geology at Streator and the
14 geology at Morris used by the IEPA to criticize
15 your work, do you think that's a fair one in your
16 professional opinion?

17 A. It would be fair if it was applicable.

18 Q. Is it applicable?

19 A. No.

20 Q. Sir, just one more question.

21 Did you ever understand that the
22 intent of Andrews Environmental Engineering was
23 to dewater the mine voids under the Morris site?

24 A. I never understood that it was -- that it

1 would be dewatered.

2 Q. In fact, the understanding was that they
3 were going to maintain a water level?

4 A. That is correct.

5 MR. LaROSE: That's all I have for right
6 now.

7 HEARING OFFICER HALLORAN: Thank you, Mr.
8 LaRose.

9 MR. KIM: Is this exhibit being moved?

10 MR. LaROSE: Yeah. I would like to move
11 this exhibit into evidence, please, D2.

12 MR. KIM: And I'd like to object to that
13 for a number of reasons. First of all, I don't
14 know when this document was prepared, but it was
15 obviously prepared after the decision was made in
16 this case.

17 Second, it's attempting to combine
18 two different pieces of information, one from one
19 document and one taken from narrative form in the
20 permit application. This is not a document which
21 existed at the time we made our decision. This
22 was not a document that was submitted by the
23 permit applicant, and this document is not in the
24 record.

1 MR. LaROSE: I have two comments because I
2 did anticipate this. First of all, we have just
3 the right-hand side of it on a separate exhibit
4 if that's what you would prefer. However, this
5 is way different than any other thing Mr. Kim
6 objected to in this case.

7 The left-hand side, as testified to
8 by Mr. Silver, was taken -- signed by
9 professional geologists and is taken directly
10 from boring information that is contained in the
11 record. When I asked Ms. Roque yesterday, did
12 you do anything to investigate the conditions
13 under Morris, she said no, but it was right in
14 front of her.

15 All we're doing was trying to
16 condense 200 pages of boring logs into one simple
17 document that the Board could understand. The
18 borings on the left-hand side of this come right
19 out of the application and were right there for
20 the Agency to look at, and I'm sorry if they
21 didn't look at it, but I think this document is
22 clearly relevant.

23 As a fallback position, I can use the

24 right-hand side of this because we do have it on

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1 a separate document and submit this as an offer
2 of proof, but I clearly think the whole thing is
3 relevant and admissible.

4 HEARING OFFICER HALLORAN: So if I'm clear
5 on this, this is the Streator EIS and there was
6 testimony that the Agency did take a look at the
7 Streator EIS?

8 MR. KIM: That's correct. First of all, I
9 don't think -- again, I don't know if it's ever
10 been ascertained when this document was prepared.

11 MR. LaROSE: It was prepared within the
12 last couple of weeks.

13 MR. KIM: So the first objection we have
14 is this is a document prepared after the fact.
15 If doesn't matter if this is attempting to
16 regurgitate or restate or break down information
17 that was already in the application. This is not
18 a document that was in existence at the time of
19 --

20 HEARING OFFICER HALLORAN: This was not in
21 the record, the Streator EIS record?

22 MR. LaROSE: But the entire Streator

23 report wasn't in the record either. That's what
24 I tried to tell you yesterday.

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1 HEARING OFFICER HALLORAN: Okay. Fine. I
2 understand that. I apologize if I didn't make
3 myself clear.

4 MR. LaROSE: That's all right.

5 HEARING OFFICER HALLORAN: But the Agency,
6 Mr. Kim, did take a look at this document in
7 part?

8 MR. KIM: That's correct, and --

9 MR. LaROSE: The right-hand side of the
10 document.

11 MR. KIM: If I can finish.

12 If Mr. LaRose isn't going to do it, I
13 would be -- I'm going to offer up the Streator
14 EIS as an exhibit so that the Board has the
15 entire document because I think it's probably
16 fair to give them the entire document, although
17 it's somewhat lengthy, as opposed to just parts
18 and pages from it. So that's one point. So,
19 yes, the right-hand page, we have no objection to
20 that, but, again, this is not something that was
21 taken from the Streator EIS.

22 This is a hybrid document which was
23 prepared one-half from a document that we agree
24 we're going to -- if he doesn't do it, we're

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1 going to offer up into evidence. The second half
2 of the page was something -- first of all, again,
3 this was prepare after the fact. The second half
4 of the page, you know, they can testify that this
5 is sort of -- this is the very same thing as
6 taken from the application and so forth, but,
7 again, the second half of this page, no part of
8 this document, any part of this, exists in this
9 form in the permit application.

10 This information in this form was not
11 presented to us. We did not consider this
12 information in this form. We did not consider
13 this information in this comparison. This should
14 not be admitted.

15 MR. LaROSE: Sir, how could we have
16 possibly prepared this document not knowing that
17 they were going to use the Morris EIS? Here's
18 what happened. We prepare our report. We don't
19 look at Streator. We don't look at that report
20 at all because we don't think it's necessary.

21 When we issue interrogatories in this
22 case, the interrogatories say we're relying on
23 the Streator EIS to satisfy our conclusions or
24 support our conclusions that you didn't do the

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1 right thing. We then take the depositions, and,
2 in fact, they present us with the Streator EIS,
3 and for the first time we know that's their
4 position. It's not in the record. They looked
5 at it. They relied on it, and now we're trying
6 to rebut that position.

7 How could we possibly have prepared
8 this document and put it in the record? But the
9 more important point is the information that's
10 contained on the left-hand side of this document
11 is all in the record, every single piece of it is
12 in the record.

13 HEARING OFFICER HALLORAN: On the
14 left-hand side?

15 MR. LaROSE: That's correct. Did I say
16 right? On the left-hand side, every single piece
17 of it is in the record. It comes from the
18 borings, 200 pages of borings, which I kind of
19 thought rather than flip through 200 and spend

20 another couple of days here, that it was better
21 to put it on one chart and to summarize it.

22 MR. KIM: And, again, that's the problem.
23 The agency didn't have this document. The Agency
24 didn't have the benefit of this break down. The

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1 Agency didn't have this summary. The Agency had
2 the 200 pages.

3 HEARING OFFICER HALLORAN: Mr. Kim, are
4 you telling me that -- telling the Board you're
5 going to submit as evidence the whole entire
6 record of the Streator EIS?

7 MR. KIM: If Mr. LaRose doesn't, I will,
8 yes, but that -- and, therefore, if this document
9 -- if this exhibit were cut in half so we just
10 had the right-hand side of this exhibit, we would
11 have no objection.

12 MR. LaROSE: And I have that right here.
13 I just don't think it's appropriate. This is our
14 rebuttal to their argument, and the rebuttal
15 wasn't made up. It's not new stuff. It all came
16 from the record.

17 HEARING OFFICER HALLORAN: I would sustain
18 Mr. Kim's objection. This was not part of the

19 record or part of the Streater EIS that they
20 looked at. I don't know how you want to handle
21 this, Mr. LaRose. You said you had a copy there
22 with just the right --

23 MR. LaROSE: I do.

24 HEARING OFFICER HALLORAN: -- just the

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1 left-hand side?

2 MR. LaROSE: I do.

3 HEARING OFFICER HALLORAN: I would deny
4 the admission of Exhibit D2 as it exists now.

5 MR. LaROSE: So then I would ask D2 --
6 what we're going to do is ask D2 to be submitted
7 as an offer of proof, and then we're going to
8 admit two or 300 pages of boring logs that were
9 supported by D2.

10 MR. KIM: Those are already in the
11 record. There's no need to admit those. The
12 Board has them. Well, they can do that, but
13 that's just a waste of paper.

14 HEARING OFFICER HALLORAN: I'm sorry. You
15 were going to -- okay. You want to submit --
16 okay. The submission of Petitioner's Exhibit D2
17 as it stands now with both the left and

18 right-hand side regarding LETCO borings and
19 geologic literature, that will be denied, but
20 admitted as an offer of proof. Okay. Mr.
21 LaRose, you stated that it's your intention to
22 what?

23 MR. LaROSE: I have the right-hand side as
24 a separate exhibit, D1.

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1 HEARING OFFICER HALLORAN: Okay.

2 MR. KIM: I mean, I can save the trouble.
3 I'm going to put the whole thing in, which will
4 include this, if Mr. LaRose doesn't. He can do
5 it now if he wants. That's fine.

6 MR. LaROSE: I'd like to put it in as an
7 exhibit.

8 MR. KIM: That's fine.

9 HEARING OFFICER HALLORAN: Exhibit D1 is
10 admitted into evidence.

11 MR. LaROSE: For the record, the
12 information contained in D2 comes from parcel A,
13 volumes four and five, which are several hundred
14 pages of the summary of the report of
15 hydrogeology just so that the Board can have a
16 chance to maybe revisit this issue on an offer of

17 proof because I really think that, all the other
18 rulings aside, this one just goes too far. This
19 material is in the record. They had a chance to
20 look at it. This objection should not have been
21 sustained.

22 HEARING OFFICER HALLORAN: Sir, if I may
23 back up, my ruling is made, but you stated
24 earlier that some of this information is not in

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1 the record as presented here.

2 MR. LaROSE: Not true. All of it comes
3 from -- there is no chart in the record on the
4 left-hand side of this document exactly the way
5 it says. Every single piece of that information
6 is included in the record in detailed boring logs
7 that I thought it was too cumbersome for the
8 Board to go through. So we submitted a drawing
9 that would be more understandable.

10 HEARING OFFICER HALLORAN: Well, my ruling
11 stands, and the Board will take a look at it if
12 they so choose. Thank you.

13 MR. LaROSE: You're welcome.

14 MR. KIM: So was Exhibit D1 admitted?

15 HEARING OFFICER HALLORAN: Exhibit D1 was

16 admitted without objection.

17 MR. KIM: No objection.

18 MR. LaROSE: Exhibit D2 was admitted as an
19 offer of proof, correct?

20 HEARING OFFICER HALLORAN: That is
21 correct.

22 MR. LaROSE: I have no further questions
23 of Mr. Silver at this time.

24 HEARING OFFICER HALLORAN: Thank you, Mr.

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1 LaRose.

2 MR. LaROSE: You're welcome.

3 HEARING OFFICER HALLORAN: Off the record,
4 please.

5 (Discussion had
6 off the record.)

7 (Break taken.)

8 HEARING OFFICER HALLORAN: We're back on
9 the record. It's approximately 11:00 o'clock.
10 We took about a ten-minute break, I just want to
11 note for the record as well that Anand Rao is
12 here from the Illinois Pollution Control Board.
13 He's an employee from the technical unit. With
14 that said, one other matter of housekeeping,

15 yesterday we adjourned, and I'm not sure I said
16 for the record what time it was, but it was
17 approximately 4:50 p.m. that we adjourned on
18 January 17th.

19 With that said, I believe Mr. Kim
20 will be cross-examining.

21 MR. KIM: Yes. Thank you.

22 C R O S S - E X A M I N A T I O N

23 by Mr. Kim

24 Q. Mr. Silver, thank you for coming up here.

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1 We appreciate your participating in the hearing.
2 I'm going to try and get my questioning done as
3 quickly as I can. In the course of doing that, I
4 may be bouncing from topic to topic. So if I'm,
5 you know, moving and you're not exactly
6 understanding what my questioning is, just by all
7 means let me know and I'll try and slow it down a
8 little bit.

9 I want to focus first on your
10 testimony concerning you're awareness of mine
11 subsidence at Community Landfill. You testified
12 that you were informed by Andy Limmer that there
13 was mine subsidence at Community Landfill; is

14 that right?

15 A. At two different times, Andy Limmer and
16 Mr. McDermont.

17 Q. Informed you about mine subsidence?

18 A. Yes.

19 Q. Do you recall when those times were?

20 A. Well, it would have been in late March,
21 early April 1999.

22 Q. Okay. And that's not consistent with your
23 deposition testimony; is that correct?

24 A. That is correct.

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1 Q. And as a matter of fact, during the
2 deposition, you stated when asked on two
3 different occasions that you had not been
4 informed of any mine subsidence at Community
5 Landfill; is that correct?

6 A. I just blew that answer because in
7 recollection, I recall those conversations.

8 Q. Did you speak with anybody after your
9 deposition aside from Mr. LaRose on the question
10 of whether or not there was or was not mine
11 subsidence?

12 A. No.

13 Q. So your testimony was then that based upon
14 the fact that you were aware that there were --
15 there was evidence of mine subsidence at
16 Community Landfill, you went back and you
17 revisited your calculations; is that right?

18 A. That is correct.

19 Q. But in your testimony at the deposition,
20 you testified that you did not include any
21 specific reference or any specific county in your
22 calculations for mine subsidence at the site,
23 didn't you?

24 MR. LaROSE: Objection, improper

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1 impeachment.

2 HEARING OFFICER HALLORAN: Mr.

3 Kim.

4 BY MR. KIM:

5 Q. I'm going to read a question that was
6 asked of you, and I'm going to read your answer
7 back to you. This is from your deposition, page
8 42, line three. The question is; would you
9 change the methods of your analysis if you
10 discovered mine subsidence across the street from
11 Community Landfill, skip two lines, your answer;

12 I would have incorporated it into the
13 analysis --

14 HEARING OFFICER HALLORAN: Mr. Kim, would
15 you slow down a little?

16 MR. KIM: I'm sorry. I'll reread the
17 question.

18 BY MR. KIM:

19 Q. The question was; would you change the
20 methods of your analysis if you discovered mine
21 subsidence across the street from Community
22 Landfill. Your answer was; I would have
23 incorporated it into the analysis. I want to
24 qualify this that in the stability analysis that

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1 we conducted, the STABL 5 program basically is
2 limited to the site in question, specifically
3 like a ditch line along the edge of the
4 property. If a slippage is going to take place,
5 it will, and that's generally the end of the
6 movement.

7 Do you recall giving that testimony?

8 A. Yes.

9 Q. And I think at the time I was asking you
10 about whether or not you would have -- if you

11 were aware of any mine subsidence across the
12 street, and you had testified that no, you were
13 not; is that right?

14 A. At that time that is a correct response.

15 Q. And you're saying that since that time,
16 that answer would have changed?

17 A. As I have thought back on the situation,
18 yes, it -- the answer would have changed, but not
19 the content of it to the extent that my analysis
20 was taking into account subsidence. I'm not
21 explaining that correctly, but I would go through
22 the same procedure. I would just make allowances
23 for any subsidence that had come to my attention.

24 Q. You would change the input factors; is

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1 that right?

2 A. Yes.

3 Q. Okay. And you're testifying today that
4 you did change the input factors after you were
5 informed that there was evidence of mine
6 subsidence at Community Landfill?

7 A. Yes.

8 Q. Okay. I'm going to read another question
9 to you and another answer from your deposition.

10 This is on page 43 of your deposition. The
11 question begins on line 18. Let's take them one
12 step at a time. What I was doing was breaking
13 down a multiple question.

14 If you discovered mine subsidence on
15 the property, how would your analysis change?
16 Answer; well, most definitely you would have to
17 input the -- what you felt were the best
18 conditions or most representative conditions of
19 that -- of that mining system.

20 MR. LaROSE: Objection. How is this
21 impeachment? This is improper impeachment.
22 That's exactly what he just testified to.

23 HEARING OFFICER HALLORAN: Mr. Kim is
24 breaking it down for convenience in use of the

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1 Board and the hearing officer. That's what Mr.
2 Kim has represented.

3 MR. LaROSE: I don't know what he's
4 breaking down, but he's not properly impeaching,
5 and that's my objection.

6 MR. KIM: Well, if I could finish.

7 MR. LaROSE: Okay.

8 BY MR. KIM:

9 Q. You did not take -- this answer does not
10 indicate that you took into account evidence of
11 mine subsidence on the property, does it?

12 MR. LaROSE: Totally improper
13 impeachment. Same objection.

14 MR. KIM: What I'm saying is his testimony
15 is today he took into account mine subsidence on
16 the property. I'm saying that his deposition
17 transcript reveals otherwise, that he did not.
18 He states that he would have done this, but he
19 does not state that he did do this.

20 HEARING OFFICER HALLORAN: Sir.

21 MR. LaROSE: The proper way to impeach the
22 gentleman is to ask him a question, and then to
23 read the question and answer if it impeached the
24 answer that he gave under oath at this time and

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1 the answer that he gave --

2 HEARING OFFICER HALLORAN: The objection
3 is sustained.

4 MR. LaROSE: Thank you.

5 MR. KIM: Well, for the record, I think I
6 did do that, but I'll move on.

7 BY MR. KIM:

8 Q. After the time that you were informed of
9 mine subsidence, was that before or after you
10 prepared your May -- your portion of the May 2000
11 permit application?

12 A. Would you repeat?

13 Q. You discovered -- you were informed of
14 mine subsidence at Community Landfill before you
15 finalized your report that was included in the
16 May 2000 permit application; isn't that right?

17 A. That is correct.

18 Q. But you didn't mention any evidence of
19 mine subsidence at Community Landfill in your
20 report, did you?

21 A. Not specifically.

22 Q. Did you do it in any terms?

23 A. Without reviewing it, I can't say for
24 sure, but I know that someplace in that report

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1 I've referred to mine subsidence.

2 Q. But you didn't say that you knew that
3 there was mine subsidence, did you, at Community
4 Landfill?

5 A. Not specifically. I just -- it was
6 inferred.

7 Q. It was inferred.

8 You didn't say that you had been
9 informed that there was evidence of mine
10 subsidence at Community Landfill, did you?

11 A. No.

12 Q. Okay. You also stated during your
13 testimony that Mr. McDermont asked you to perform
14 a calculation relating to slope stability at an
15 elevation of 490 feet in addition to the 509,
16 506, and 503 feet elevations that you
17 specifically input into your program; is that
18 right?

19 MR. LaROSE: Objection to the form of the
20 question. I don't believe that's an accurate
21 characterization of his testimony at all.

22 HEARING OFFICER HALLORAN: Mr. Kim.

23 BY MR. KIM:

24 Q. Isn't it true that you included your

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1 extrapolation reference to an elevation of 490
2 feet because Mr. McDermont asked you to do so?

3 A. Yes.

4 Q. And why did he ask you to do that?

5 What did he tell you when he told you

6 to do that?

7 A. He told me there was a possibility that
8 the groundwater level might be -- it might be
9 necessary to lower the groundwater level to 490
10 feet.

11 Q. Did you state anywhere in the permit
12 application that 490 feet was possibly going to
13 be an elevation that the groundwater level would
14 be lowered to?

15 A. I think the only place that shows up is in
16 the footnote to table two.

17 Q. Per review of the -- I'm sorry. While
18 we're still on the subject of the extrapolation,
19 the report that you prepared that was included in
20 the May 2000 permit application doesn't include
21 any calculations as to how you performed your
22 extrapolation, does it?

23 A. No.

24 Q. It doesn't include any reference of the

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1 graph that you -- that was provided here today as
2 Exhibit DD, does it?

3 A. That is correct.

4 Q. And, in fact, that's impossible because

5 that document wasn't prepared at the time; is
6 that right?

7 A. Say that again.

8 Q. I'm saying that you're referencing this
9 particular -- the information portrayed on this
10 document, Exhibit DD, would have been impossible
11 to do because that document had not been prepared
12 at the time you completed your report; isn't that
13 right?

14 A. That is correct.

15 Q. When you performed the extrapolation --
16 and I'm not -- we're not necessarily now looking
17 at the -- I'm not working off of this exhibit,
18 but you testified that you performed a straight
19 line extrapolation to come up with a conclusion
20 that you reached for the 490 foot elevation; is
21 that right?

22 A. I believe so. Yes, sir.

23 Q. Did you take into account any kind of
24 different geologic parameters that would have

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1 been encountered at 490 feet?

2 A. May I qualify that answer?

3 Q. Well, why don't you answer and then you

4 can qualify it.

5 The question is did you take any kind
6 of geologic parameters that might have been
7 different at 490 feet when you made your straight
8 line extrapolation?

9 A. I'll answer yes in that there were no
10 differences in the geological assumptions that I
11 made because they were already inputted into the
12 program. The only thing that changed in going
13 from 503 to 490 would have been the groundwater
14 elevation.

15 Q. You don't believe that there were any
16 differences in geologic conditions from the
17 elevation of 503 to the elevation of 490?

18 A. Yes, there's differences, but they're
19 already in there in those different soil layers.
20 That is a fixed input.

21 Q. In which different soil layers? What
22 input are you referring to?

23 A. Well, there's ten -- I think there's ten
24 different soil layers, rock layers, and once you

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1 input those, then that becomes a fixed quantity
2 and what changes is, for instance, the

3 groundwater elevation. Now, I could have made
4 some other changes, but I was specifically
5 looking at lowering of the groundwater by three
6 feet.

7 Q. Okay.

8 A. The program automatically takes into
9 account -- as you make a simple change like that,
10 it will take into account anything else that is
11 affected by it.

12 Q. Okay. But the input factors that we're
13 talking about when we're talking about what you
14 put in when you run the PC STABL 5 program, to a
15 certain extent, that's sort of a judgment call as
16 to how you input those factors; isn't that
17 correct?

18 A. That is correct.

19 Q. So when you make that judgment call, you
20 are personally making some assumptions as to what
21 you believe the conditions are at the site; isn't
22 that right?

23 A. That is correct.

24 Q. So this extrapolation that you performed

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1 is essentially based upon the assumptions that

2 you made when you input the data to the PC STABL
3 program; isn't that right?

4 A. That is correct.

5 Q. I think you testified on direct
6 examination that you don't believe that given the
7 size of the landfill that the landfill is not
8 going to sink and the landfill is not going to
9 shift; is that right?

10 A. That is correct.

11 Q. But as a matter of fact, the landfill has
12 displayed evidence of mine subsidence in at least
13 two different locations; isn't that right?

14 A. Possibly.

15 Q. Do you believe there was not mine
16 subsidence at those locations?

17 A. It could be a possibility of a refuse
18 that's differential settlements.

19 Q. But you certainly treated that as if it
20 was evidence of mine subsidence, didn't you?

21 A. In my calculations, I assumed 100 percent
22 mine subsidence, no voids.

23 Q. Okay.

24 A. In other words, if there is on site a

1 depression one to two-and-a-half feet thick or
2 visible at the surface, I would assume that that
3 was complete, that there would be no more.

4 Q. So you're testifying that you did not --
5 your assumption was that there was no mine void,
6 there was only mine subsidence?

7 A. That is correct. Now, if I can expound a
8 little bit, we're going to state that at this
9 site, there were no sinkholes visible. This is
10 not a characteristic of the type of subsidence
11 that we have at this site, and basically the
12 subsidence is complete without further
13 possibility of sinkhole development.

14 Q. Okay. You testified as to your analysis
15 of comments or testimony that might have been
16 given during depositions by members of the EPA
17 concerning your -- some of your conclusions, and
18 you specifically were commenting on the geologic
19 conditions read in the Streater environmental
20 impact statement compared to geologic conditions
21 at the Morris Community Landfill; is that
22 correct?

23 A. Yes.

24 Q. When was the first time you reviewed the

1 Streator EIS in that context?

2 A. As soon as I could get a copy after I saw
3 the denial letter.

4 Q. So you did not review the Streator EIS
5 prior to denial?

6 A. There was no need to.

7 Q. So you're saying that you had a copy of
8 the Streator EIS as of September of 1999; is that
9 right?

10 A. Shortly thereafter.

11 Q. Okay. So you were aware of the
12 information in the Streator EIS at the time you
13 prepared -- you finalized your report for
14 inclusion in the May 2000 permit allocation;
15 is that right?

16 A. I've got to back up.

17 Q. Sure.

18 A. The first time I was aware of the Streator
19 EIS report --

20 Q. Well, you said denials, and I assumed you
21 meant the denials that took place in 1999.

22 Is that what you were referring to or
23 are you referring to the inclusion of conditions
24 in August of 2000?

1 A. I'm trying to remember. I think it was in
2 2000. It was not in 1999, but I can't remember
3 the --

4 Q. You don't remember when you looked at the
5 Streator EIS --

6 A. It was --

7 Q. -- in the context of considering the
8 comments made?

9 A. The denial letter came in August of 2000,
10 did it not?

11 Q. Well, actually, the approval letter came
12 in August of 2000, but the approval letter
13 contained certain --

14 A. Point five.

15 Q. Well, right, and it did contain one point
16 where it was not approving use of those wells --

17 A. Yes, and it was after that that I --

18 Q. Reviewed the Streator EIS?

19 A. -- saw the Streator report, yes, sir.

20 MR. KIM: Well, at this point, Mr. Hearing
21 Officer, I'd like to strike -- I make a motion to
22 strike all the testimony Mr. Silver provided
23 comparing his opinions or his beliefs in review
24 of the Streator EIS compared with the testimony

1 provided by the Agency witnesses during
2 depositions and that he's just testified he did
3 not look at this document until after the Agency
4 made its decision.

5 The testimony he gave, any opinions
6 he gave concerning his review of the Streator EIS
7 have no relevancy here. That information was
8 generated after the permit decision. It doesn't
9 have any bearing on this case.

10 MR. LaROSE: The Agency for the first time
11 in November of the year 2000 informed us they had
12 looked at the Streator EIS. That was in response
13 to interrogatories in this case. Prior to then,
14 we didn't even have the opportunity to know what
15 they had looked at.

16 When I took their depositions, they
17 said they looked at the Streator EIS, but had not
18 compared them to the Morris site. This gentleman
19 has testified as to whether the testimony of the
20 Agency is valid when they compared the Streator
21 EIS report that he first found out about in
22 November of 2000 to the conditions out in
23 Morris.

24 I think the testimony is not only

1 relevant, but it goes to rebut the Agency's
2 conclusions that were first revealed to us in
3 November of the year 2000, and I think it's
4 clearly admissible and the motion to strike
5 should be denied.

6 HEARING OFFICER HALLORAN: Mr. Kim.

7 MR. KIM: His testimony is no different
8 than if he had prepared a report which explained
9 in text as opposed to testimony all the
10 conclusions he just made. That report could not
11 have been prepared until after August 4 of 2000,
12 which is the date the decision was made in this
13 case. It would be considered the same as any
14 other piece of evidence that was prepared after
15 the fact.

16 It has no bearing in this case. It
17 wasn't before the Agency at the time. It
18 shouldn't be admitted, and his testimony, since
19 it came in the form of oral testimony, should be
20 stricken in its entirety. It's an opinion formed
21 after the fact.

22 HEARING OFFICER HALLORAN: I would sustain
23 the Agency's objection. It was a form after the
24 fact. It was not part of the application that

1 the Agency looked at. You may, you know, offer
2 it as an offer of proof, Mr. LaRose, but, again,
3 I agree with Mr. Kim that it has no bearing on
4 the application of the permit determination.

5 MR. KIM: Just to clarify, the specific
6 objection that I'd be making is that any and all
7 testimony he provided relating to Exhibit D2,
8 which I believe is now the subject of an offer of
9 proof, or any testimony he provided where he
10 critiqued Agency testimony given in depositions
11 concerning the Streator EIS should be stricken.
12 I just want to make clear that that's the scope.

13 MR. LaROSE: Mr. Halloran, just so I'm
14 clear, is it this Board's position that testimony
15 offered and revealed to us during the course of
16 the discovery in this case where we found out for
17 the first time what the Agency's conclusions are
18 is not allowed to be rebutted?

19 HEARING OFFICER HALLORAN: Well, you knew
20 during the deposition -- you found out after the
21 deposition that the Agency did rely on the
22 Streator EIS.

23 MR. LaROSE: That's correct.

24 HEARING OFFICER HALLORAN: Now, you have

1 those documents in front of you.

2 MR. LaROSE: That's correct.

3 HEARING OFFICER HALLORAN: And I assume
4 the Board will have it in front of them.

5 MR. LaROSE: That's correct.

6 HEARING OFFICER HALLORAN: They can take a
7 look at that. The witness giving an opinion
8 after the fact I believe is irrelevant.

9 MR. LaROSE: But how could it possibly be
10 if the Agency's position that the Streator EIS
11 supports their denial point, we find that out,
12 because we don't have a crystal ball, because we
13 don't live in their backyard, we find that out
14 for the first time in November, are you telling
15 me that we can't present expert testimony to
16 rebut their conclusion that the Streator EIS
17 report, which is revealed to us for the first
18 time in November, to rebut that testimony, that
19 we've just got to sit here and say what they said
20 is right and we can't bring in an expert to say
21 something different?

22 MR. KIM: Well, in fact, the recourse
23 available to Mr. LaRose is what he did yesterday,

24 which is he can go after our witnesses as to

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1 their conclusions or their assumptions based upon
2 that document. He can attack their conclusion.
3 He can attack their credibility, what have you.
4 He did that with Ms. Roque yesterday. He may or
5 may not do that with any other Agency witnesses,
6 but it's not as if he's without recourse. That's
7 his option. That's what he can do.

8 HEARING OFFICER HALLORAN: That's what I
9 understood what was going to happen.

10 MR. LaROSE: And that's what did happen,
11 but that's only half of the puzzle. The first
12 half of the puzzle is that they didn't look at
13 the comparison between Morris and Streater in
14 order to draw an applicable conclusion. I've got
15 that with Ms. Roque.

16 The second half of the puzzle that
17 the Board needs to be aware of is that there is
18 no proper comparison. I can't get that through
19 Ms. Roque because she didn't make the
20 comparison. Shouldn't the Board, Mr. Halloran,
21 be aware of the fact that the report that they
22 rely on is not in this expert's opinion and the

23 next expert's opinion a valid comparison?

24 HEARING OFFICER HALLORAN: They will be

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1 aware. They'll take a look at your offer of
2 proof and they could so choose to overrule me and
3 consider it. It's in the record. It will be
4 before them, each and every seven members of the
5 Board. It will be in front of the technical
6 unit, and they can take a look at it.

7 MR. LaROSE: In order to -- we won't be
8 able to do this now, but we may have to revisit
9 this issue just for a technical point once we get
10 the transcript because I need to know
11 specifically which questions and answers are
12 stricken. It's difficult here, and no fault of
13 yours or Mr. Kim's or mine, we can't just say we
14 strike all these questions and answers without
15 preparing a record of what it is you're
16 striking.

17 The stricken objection should have
18 come when I asked him the question so we would
19 have a record. So when we get the record in this
20 case, my point is we're going to have to revisit
21 this issue just so that we can say pages two

22 through ten are going to be cast out so that the
23 Board can look at specific questions and specific
24 answers when I appeal your ruling.

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1 HEARING OFFICER HALLORAN: We'll revisit
2 your position.

3 MR. KIM: And, for the record, I agree
4 with Mr. LaRose. It would have been easier if I
5 had been able to make the objection up front.
6 That's why I asked the question. I wanted -- I
7 can't ask Mr. Silver any questions until it's my
8 opportunity to do so.

9 HEARING OFFICER HALLORAN: I agree. Mr.
10 LaRose stood up and said that the proper time to
11 ask him that is on cross-examination.

12 MR. LaROSE: I don't have any problem with
13 that. I'm just suggesting that because we
14 followed the proper procedure, we're now in a
15 situation where we've stricken something that we
16 know the content of the striking, but we don't
17 know exactly what words were stricken, and in
18 order to set the record straight at some time,
19 we're going to have to figure it out.

20 MR. KIM: Mr. Hearing Officer, can we go

21 off the record for just a moment?

22 HEARING OFFICER HALLORAN: Yes.

23 (Discussion had

24 off the record.)

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1 HEARING OFFICER HALLORAN: To clear this
2 up, I have sustained the Agency's objection to
3 strike Mr. Silver's testimony as his opinion to
4 the Streator EIS review.

5 MR. KIM: Again, when the hearing officer
6 reviews the transcript, he can see how I describe
7 what I assume the scope would be, and rather than
8 -- just to expedite things, the Agency will
9 certainly agree that whatever order you issue if
10 you want to -- after the transcript, if you want
11 to identify it line by line or page by page,
12 that's fine. We don't need to take any time to
13 sit down and talk about what question did or did
14 not have to do with anything. We'll leave it up
15 to the hearing officer.

16 MR. LaROSE: I agree and maybe even to
17 help you, Mr. Kim and I can look at the
18 transcript. I certainly respectfully and pretty
19 strongly don't agree with your decision, but

20 respect it, and we would look at the transcript
21 and choose those -- fairly choose these questions
22 and answers that related to the subject matter of
23 your order to strike.

24 HEARING OFFICER HALLORAN: Thank you,

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1 gentlemen.

2 BY MR. KIM:

3 Q. Mr. Silver, we're at the home stretch. I
4 promise.

5 MR. LaROSE: Don't believe him.

6 BY MR. KIM:

7 Q. I believe you testified that you did not
8 believe there was any intent to dewater the mine
9 voids; is that correct?

10 A. That is correct.

11 Q. Okay. In the report that you prepared
12 that was included in the permit application, and
13 I'm going to, as a frame of reference, cite to --
14 and, again, I think this report appears in both
15 parcel A and parcel B permit applications.

16 The only -- I happen to have parcel B
17 in front of me because that's what Mr. LaRose was
18 using. So I don't know if they're parallel

19 citations, but I'm referring now to parcel B,
20 volume one, Bates stamp 256 --

21 MR. LaROSE: We don't have parcel B. So I
22 just need to maybe peek over your shoulder. We
23 don't have an extra copy. We're going to look
24 for it in parcel A.

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1 MR. KIM: It's pages three and 15 of the
2 mass stability report.

3 MR. LaROSE: The 2000 mass stability
4 report?

5 MR. KIM: Yeah.

6 MR. LaROSE: Okay. Good.

7 MR. KIM: Three and 15.

8 MR. LaROSE: Three and 15. I've got
9 three. Start it -- start with -- is it number
10 four scope on that page?

11 MR. KIM: That's correct.

12 MR. LaROSE: Okay. The essentials of the
13 study include --

14 BY MR. KIM:

15 Q. Okay. I'm referring to you the section
16 under number three, purpose, the first sentence
17 there, and I'll just read this in. It states the

18 specific twofold purpose of this report is to
19 determine long-range detrimental effects, if any,
20 of and then bullet point one states, proposed
21 long-term dewatering of remaining unmined coal
22 deposits along the east side of parcel A upon
23 additional subsidence of existing and proposed
24 filling of parcel A to elevation 600 feet MSL.

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1 Is that an accurate reading of that
2 portion?

3 A. Yes.

4 Q. Okay. I'm now going to turn to -- I'm
5 sorry. That's Bates stamp page 256.

6 I'm now going to turn to Bates stamp
7 page 268, and I am going to draw your --

8 MR. LaROSE: Is this the page 15
9 reference, John?

10 MR. KIM: That's correct.

11 BY MR. KIM:

12 Q. I'm going to draw your attention to the
13 bottom paragraph on that page, and I am going to
14 read the second sentence from the report that
15 states, subsidence and/or settlement of existing
16 refuse fill and intermediate cover have not been

17 estimated as they were independent of future
18 movements caused by additional filling and
19 proposed long-term dewatering. You could keep
20 these in front of you.

21 When you referred to proposed
22 long-term dewatering, what were you referring to?

23 A. Well, I had no specific elevation that I
24 was referring to. I was certainly not thinking

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1 in terms of dewatering, you know, down into the
2 mine system itself.

3 Q. What does the reference of -- and it's a
4 little more comprehensive on Bates page 256 or
5 page three of this report. Proposed long-term
6 dewatering of remaining unmined coal deposits,
7 what does that refer to?

8 A. Well, to back up, the specific twofold
9 purpose of the report is to determine the
10 long-range detrimental effects, if any, of the
11 proposed long-term dewatering of the remaining
12 unmined coal deposits. That means if we were to
13 dewater unmined coal, what's going to happen.

14 Q. Okay. So you did think that that was a --
15 and when you say that it's proposed, what does

16 the term proposed mean? Who is proposing that?

17 A. Well, at the time that this was written,
18 I'm not sure that the final plan had even been
19 completely generated, but I knew that there was
20 going -- need to be some dewatering. This is not
21 referring to any specific plan to pull the water
22 level down to elevation 480 or 485. It was more
23 of a general statement explaining, you know, the
24 general scope of work.

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1 Q. Okay. When you said you weren't even sure
2 if the plan had been finalized, which plan were
3 you referring to?

4 A. Well, you know, the final construction
5 plan, operational plan.

6 Q. But it is correct, isn't it, that these
7 references that I've just made are taken from
8 your report that's included in the May 2000
9 permit application; is that right?

10 A. That is correct.

11 Q. When you reviewed the Community Landfill
12 site and you began, you know, making your
13 assumptions and preparing to make your
14 calculations, it's correct, isn't it, that each

15 landfill is different and each has different
16 geologic conditions; isn't that right?

17 A. Yes.

18 Q. And so it really is sort of a case-by-case
19 basis that you have to make your assumptions and
20 make your calculations; is that right?

21 A. That is correct.

22 Q. But isn't it also true that there's some
23 general principles and general concepts which
24 are, you know, admittedly broad and not

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1 necessarily site specific that you do carry from
2 site to site?

3 A. Would you like to define those for me?

4 Q. Well, I'll give you an example. Would you
5 consider as a valid general concept that
6 dewatering of an undermined area below a landfill
7 could lead to a greater potential for mine
8 subsidence than if that undermined area was not
9 dewatered?

10 I'm not talking about specific
11 geologic conditions. I'm just simply making that
12 statement as a sort of general concept or a
13 general assumption that you would take from

14 landfill to landfill.

15 MR. LaROSE: I'm going to object to the
16 foundation for that because it is site specific
17 and it has to relate to this particular project.
18 He's not been allowed to testify. In fact, his
19 testimony has been stricken with respect to
20 things that he looked at other than Morris. His
21 questioning should be limited to the Morris site.

22 MR. KIM: I understand that. What I'm
23 saying is I'm not -- I'm specifically not being
24 site specific.

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1 MR. LaROSE: And I think that's irrelevant
2 to this proceeding as is consistent with the
3 previous rulings of the hearing officer.

4 MR. KIM: Mr. Silver has stated he makes
5 certain assumptions and he made certain judgment
6 calls when he prepared his calculations. I'm
7 simply trying to find out what some of those
8 assumptions and some of those judgment calls were
9 based upon, and to do that, I'm asking him
10 whether or not he believes the statement that I
11 just made is a general statement or a general
12 concept that would hold true depending upon the

13 specific geologic conditions.

14 MR. LaROSE: Actually, you said regardless
15 of any specific geologic conditions, but as long
16 as it's related to the Morris -- as long as it's
17 related to the Morris site, I have no objection.
18 If he's going to ask him general questions
19 unrelated to the specific geology and unrelated
20 to the Morris site, it wasn't part of the record,
21 it wasn't something the agency considered, it
22 wasn't something we considered, and the objection
23 is both relevance and foundation.

24 HEARING OFFICER HALLORAN: I agree with

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1 Mr. LaRose. Limit it to the --

2 BY MR. KIM:

3 Q. Well, Mr. Silver, let me ask you this.
4 Taking into account the specific geologic
5 conditions at Community Landfill, do you thing
6 dewatering the mine voids would pose a potential
7 harm in terms of stability at the landfill?

8 A. If the dewatering was deep enough, yes.

9 Q. Okay. That's all I have on that point.

10 My last questions -- and I'm going back to
11 whether you were made aware of the fact that

12 there was evidence of subsidence at Community
13 Landfill.

14 A. Okay.

15 Q. Other than being informed that there was
16 evidence of mine subsidence or mine subsidence,
17 did you take any other kind of data or any kind
18 of measurements or anything like that into
19 account when you say you adjusted your input
20 data?

21 A. No.

22 Q. And did you testify that your assumption
23 is that if there is 100 percent subsidence in the
24 mine void that would be, in effect, then no mine

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1 void to speak of?

2 MR. LaROSE: Objection, asked and answered
3 on direct and on cross.

4 MR. KIM: I'm simply trying to -- again, I
5 apologize. I'm bouncing around. I'm trying to
6 bring him back to that topic.

7 MR. LaROSE: The objection was that he's
8 asked him that question --

9 HEARING OFFICER HALLORAN: Sustained.

10 BY MR. KIM:

11 Q. Mr. Silver, there is, in your opinion,
12 still a possibility of additional subsidence at
13 Community Landfill; isn't that correct?

14 A. That is correct. It would be measured in
15 inches.

16 Q. But there is a possibility of additional
17 subsidence; is that right? Yes or no?

18 A. Yes.

19 Q. And isn't it true that, as you stated,
20 because of the fact that a lot of the
21 calculations that you performed were based on
22 judgment calls and based upon assumptions that,
23 perhaps, are your personal opinion, that
24 different people could have different conclusions

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1 as to the type of input data that should be used
2 for the PC STABL program?

3 A. Yes.

4 Q. And isn't it true then that people could
5 arguably make a determination as to whether
6 something was, in your mind, conservative or
7 aggressive?

8 In other words, what I'm saying is
9 just because you think something is conservative

10 doesn't necessarily mean someone else reviewing
11 that might think it's conservative as well; is
12 that right?

13 MR. LaROSE: Objection to the form of the
14 question. I think it's argumentative, even
15 though it was nice in tone.

16 HEARING OFFICER HALLORAN: Mr. Kim, could
17 you rephrase that, please?

18 MR. KIM: Sure.

19 BY MR. KIM:

20 Q. It's possible, isn't it, for someone to
21 look at input data that you characterize as being
22 conservative and walk away with the opinion that
23 it's not, in fact, as conservative as they would
24 like it to be; isn't that correct?

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1 A. That's correct.

2 MR. LaROSE: Objection to the relevance
3 and to the form of the question. This is the
4 same thing that Mr. Silver's testimony was
5 stricken on.

6 MR. KIM: Again, this questioning goes
7 towards Mr. Silver's statement that his input
8 data was a judgment call and that he has

9 characterized himself as being very conservative,
10 his approach is very conservative. I'm simply
11 trying to find out because it is a judgment call,
12 someone else might say that what his idea of
13 conservative is is, in fact, not their idea of
14 conservative.

15 MR. LaROSE: I still think it's improper.

16 HEARING OFFICER HALLORAN: Is that part of
17 the motion to strike? Was that his opinion on
18 the Streator EIS?

19 MR. KIM: No. I'm talking about his --

20 MR. LaROSE: No. I think, in all
21 fairness, that was a part of the motion to
22 strike. It's the same concept. You're asking --
23 Mr. Silver says my calculations were
24 conservative. Without identifying any expert or

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1 anybody, he says somebody else might disagree
2 with you. Well, that's what we were trying to
3 do, say that he disagrees with Ms. Roque, and
4 that was something that was stricken.

5 I think it is speculative, and I
6 think that it's really irrelevant if some
7 unidentified unknown expert might differ in

8 opinion with Mr. Silver. Ms. Roque differs in
9 opinion, I suppose, and she considered that as
10 part of her application. He can put her on to
11 testify.

12 MR. KIM: All I'm asking is -- I don't
13 think I have to identify a person. As a matter
14 of fact, what I'm saying is without being name
15 specific, isn't it possible that somebody else,
16 it doesn't matter who it is, somebody else might
17 have a different opinion as to the personal
18 opinions that he made not having to do with the
19 comparison, but I'm talking about his input and
20 his assumptions when he ran the stability program
21 which calculated the slope of stability.

22 HEARING OFFICER HALLORAN: I'll allow the
23 question. Objection overruled.

24 BY THE WITNESS:

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1 A. I think I've already that as yes, others
2 could disagree.

3 BY MR. KIM:

4 Q. And the specific question I guess I had
5 was others might disagree with what you say is
6 conservative might not be conservative to them;

7 is that right?

8 A. That is correct.

9 MR. KIM: I have nothing further at this
10 time.

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

12 by Mr. LaRose

13 Q. Sir, the concept of dewatering, does that
14 mean that you've got to take all the water out of
15 something?

16 A. No.

17 Q. In fact, it means that it's the process of
18 pumping water out of a known area, correct?

19 MR. KIM: Objection. That's leading.

20 BY MR. LaROSE:

21 Q. Sir, what is dewatering?

22 A. Dewatering is the process of unwatering an
23 excavation for a sewer installation or for a
24 major excavation such as constructing the bottom

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1 of a landfill. It in no way should be implied to
2 mean the complete and total extraction of the
3 water from that particular volume.

4 Q. Sir, if Morris Community Landfill pumped
5 the groundwater level from static groundwater

6 level to 509 down to 506, would that be
7 dewatering?

8 A. That would be limited dewatering.

9 Q. What about from 506 to 503, would that be
10 limited dewatering?

11 A. Yes.

12 Q. And from 503 to 490, would that be limited
13 dewatering?

14 A. Yes.

15 Q. So all of those things would be
16 dewatering, but there would still be water in the
17 bottom of the --

18 A. That's right.

19 Q. Mr. Kim spent a substantial amount of time
20 with you on this issue of whether you were told
21 about the subsidence and whether you weren't told
22 about the subsidence.

23 Sir, did you adjust your calculations
24 in the 2000 report to consider subsidence that

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1 had occurred at the time site?

2 A. Yes.

3 Q. And when you adjusted those calculations,
4 were they adjustments to the shear strengths of

5 the materials that you used?

6 A. Yes.

7 MR. KIM: Objection. That's a leading
8 question.

9 BY MR. LaROSE:

10 Q. How did you adjust the calculation, sir?

11 A. Well, as I explained earlier, there is
12 about three different categories, three different
13 strata that would be involved in a potential
14 failure, if one were to occur, and I adjusted the
15 shear strengths of those materials. I reduced
16 them by 20 to 30 percent.

17 BY MR. LaROSE:

18 Q. And by reducing the shear strengths of
19 those materials, what did that do to your factor
20 of safety calculation?

21 A. Compared to the previous calculations, it
22 lowered them.

23 MR. LaROSE: That's all I have.

24 BY THE WITNESS:

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1 A. And it still met the regulations.

2 HEARING OFFICER HALLORAN: Mr. Kim.

3 MR. KIM: Just a few follow-ups.

4 R E C R O S S - E X A M I N A T I O N

5 by Mr. Kim

6 Q. You said that dewatering doesn't
7 necessarily involve complete removal of all
8 water; is that correct?

9 A. That is correct.

10 Q. Was your-- isn't it correct that your
11 stability report was included as a portion or as
12 part of the permit applications section
13 addressing remediation, a remediation system for
14 the site?

15 A. I don't know.

16 Q. You don't know?

17 Do you know what remedial action was
18 proposed in the application for the site? I'm
19 not asking for specifics. I'm just -- I'm asking
20 do you know about them?

21 A. I know just bits and pieces of what's
22 being proposed on, you know, the collection
23 trench and the wells, but I don't know all of the
24 details.

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1 Q. So are you saying that it's possible that
2 some dewatering of the mine voids under your

3 assumptions would take place, but that's not
4 necessarily going to lead to subsidence?

5 A. Well, under my assumptions, my
6 recommendations would be that the mines not be
7 dewatered.

8 Q. Okay. And do you know if that was the
9 intent of the remediation system here?

10 A. To my knowledge, the remediation system
11 does not intend to unwater the mines.

12 Q. Okay. But if some of the water is
13 dewatered, not necessarily all, but some is
14 dewatered from the mine void, doesn't that create
15 a greater potential for mine subsidence than if
16 no water was removed from the mine void?

17 A. If I can qualify my answer.

18 Q. You can, but I'd like an answer and then
19 you can qualify it.

20 A. Ask it again.

21 Q. Isn't it true that even if some of the
22 water, not all, but some of the water is
23 dewatered from the mine void, there is a
24 possibility of greater potential for mine

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1 subsidence based upon that partial, not

2 necessarily complete, dewatering; isn't that
3 true?

4 A. I'll give yes with a qualification.

5 Q. Please.

6 A. The procedure would be to establish early
7 during the remediation process as to what pumping
8 rate would be required to maintain a static
9 drawdown above the mine adequate to prevent the
10 very thing that you're suggesting.

11 Q. Okay.

12 A. You don't start to pump and walk away from
13 it.

14 Q. Okay. So your overall conclusion or your
15 overall belief is that dewatering of the mine
16 void would be bad for the landfill; is that
17 right?

18 A. It would be detrimental.

19 Q. Okay. You just referred to the pump
20 tests, is that right, or the pumping -- I'm
21 sorry. Never mind. Strike that?

22 MR. KIM: I have no further questions.

23

24

1 R E - R E D I R E C T E X A M I N A T I O N

2 by Mr. LaRose

3 Q. Sir, if the groundwater is dewatered down
4 to elevation 490, in your professional opinion,
5 does that meet the factors of safety set forth in
6 the regulations?

7 A. Yes, sir.

8 Q. Okay. And any elevation above that would
9 be -- your conclusion would be the same?

10 A. Yes.

11 MR. LaROSE: That's all I have.

12 HEARING OFFICER HALLORAN: Any further
13 questions?

14 MR. KIM: No questions.

15 HEARING OFFICER HALLORAN: Thank you, Mr.
16 Silver.

17 MR. LaROSE: Thank you very much, Mr.
18 Silver. I hope you're feeling better. Can we
19 take five?

20 HEARING OFFICER HALLORAN: Yes, we may.
21 Off the record.

22 (Break taken.)

23 HEARING OFFICER HALLORAN: We're back on
24 the record. It's approximately 12:02. We took

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1 about a ten-minute break. Mr. LaRose.

2 MR. LaROSE: The next witness on behalf of
3 the petitioner is Marion C. Skouby.

4 (Witness sworn.)

5 WHEREUPON:

6 M A R I O N S K O U B Y,
7 called as a witness herein, having been first
8 duly sworn, deposeth and saith as follows:

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

10 by Mr. LaRose

11 Q. Sir, could you state your name for the
12 record, please?

13 A. Marion C. Skouby.

14 Q. Sir, what is your employment?

15 A. I'm a consulting engineer.

16 Q. Are you full-time or are you part-time?

17 A. Just part-time.

18 Q. Semi-retired would be a way to put it?

19 A. That's correct.

20 Q. I'm going to hand you, sir, what's been
21 previously marked as Exhibit I, which is a copy
22 of your CV, which was presented to me in November
23 and which I presented to the Agency at that time.

24 Is that a copy of your current

1 curriculum vitae?

2 A. Yes, it is.

3 Q. Sir, what kind of engineer are you?

4 A. I'm a civil engineer by education.

5 Q. Okay. And do you have a specialty or an
6 area of specialty that you -- or an area of
7 concentration within the field of civil
8 engineering?

9 A. Yes. I've got my bachelor of science
10 degree in civil engineering at the University of
11 Missouri at Rolla in 1958. Can you hear me?

12 Q. And you don't have to speak to me.
13 Really, you need to make sure that this young
14 lady can hear you. This hearing officer, it's
15 important that he hear you. The technical
16 advisor from the Board, it's very important that
17 he hear you. So if you could just speak up just
18 a little bit so everybody can hear you, that
19 would be great.

20 A. And then I got a master of science in
21 civil engineering at the University of Illinois
22 in 1962. My master's degree was primarily in the
23 area of geotechnical engineering.

24 Q. And your master's was at U of I?

1 A. Yes.

2 Q. Do you have any particular experience,
3 sir, in the area of soil stability and
4 subsidence?

5 A. Yes.

6 Q. Okay. Does your curriculum vitae
7 specifically set forth the different areas of
8 expertise that you've been involved in since
9 you've become a civil engineer and received your
10 master's degree in geotechnical engineering?

11 A. Yes, it does.

12 Q. Do you have any experience in the area of
13 dewatering?

14 A. Yes.

15 Q. Okay. When we say dewatering, sir, the
16 concept of, you know, removing water from an
17 area, what are we talking about?

18 A. To me, it would be talking of lowering the
19 groundwater level to some predetermined level.

20 Q. Okay. Does dewatering necessarily mean
21 that you're removing all the groundwater?

22 A. Not removing all of it, no.

23 Q. And, for example, give us an example of a
24 project that you would have worked on where you

1 brought the groundwater level down to a
2 predetermined level and what the purpose was.

3 A. Well, it in 1978, there was a test program
4 for the Lock & Dam No. 26 at Alton, and we had
5 two excavations there where we had to lower the
6 groundwater about 20 feet, this was in the
7 Mississippi River Valley, in order to perform the
8 test that the Corps. Of Engineers desired.

9 Q. Sir, have you been involved in other
10 dewatering projects where it was necessary to
11 bring the groundwater level down for either
12 stability or construction purposes?

13 A. Yes, I have. Right currently, there's six
14 or seven projects in New Orleans for the
15 construction of new canals that require lowering
16 the groundwater tables or to allow the
17 construction to be done in the dry.

18 Q. So you're bring the water level down so
19 that the guys can work in the dry areas?

20 A. Yes. That's correct.

21 Q. Okay. Do you have any experience, sir,
22 personal experience and professional experience,
23 with the area of Streator, Illinois, as it
24 relates to the subsidence issue?

1 A. Yes, I do.

2 Q. Could you explain that to Mr. Halloran and
3 the Board?

4 A. In the early 1990s, the company I worked
5 for, McClelland Engineers, had a project in
6 Streator of making borings for their sewer
7 expansion.

8 Q. And what did that have to do with your
9 expertise?

10 A. Well, I was only partially involved in it,
11 but since I had had other experience with mine
12 subsidence and mine collapse, I was asked a
13 number of questions at various times.

14 Q. As a result of your professional
15 involvement in Streator, have you come to be
16 familiar with the geology underlying the Streator
17 area?

18 A. Yes. The problem was with the mining of
19 the No. 6 coal and the formation of sinkholes up
20 through the overlying material to the ground
21 surface.

22 Q. Okay. So when you say sinkholes, what's
23 that?

24 A. The rock and the mine roof collapses and

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1 it just works it's way up to where it eventually
2 reaches the ground surface and there will be a
3 hole in the ground at that place.

4 Q. Kind of a catastrophic failure, if you
5 will, or -- what do I want to say?

6 How would you describe it?

7 A. Well, it would be catastrophic if there
8 was any structure over it, yes.

9 Q. A sudden failure is what I'm trying to get
10 at.

11 A. Usually, it would be a sudden failure,
12 yes.

13 Q. You brought here with you today, and I saw
14 them for the first time and showed them to Mr. Kim
15 a little bit earlier, an example of the picture
16 -- photographs of sinkholes that I think will be
17 illustrative of the concept. I showed these to
18 Mr. Kim earlier. I'm going to show these to Mr.
19 Halloran. I'm going to show these to the
20 technical advisor from the Board, and now I'm
21 going to show them to you, sir.

22 We've marked these as Exhibit AAA,

23 which we would tend to show to the Board as
24 demonstration just of the concept of sinkholes.

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1 A. Yes.

2 MR. KIM: Objection. I am fairly certain
3 that those particular photographs -- in fact, I
4 looked at the back of one of them and I think it
5 said something about a photo of the Du Quoin
6 Treatment System, something like that. Those are
7 not photos that were included in the permit
8 application. Those are not in the administrative
9 record. They were never reviewed by us. They
10 have no relevancy to the case here.

11 HEARING OFFICER HALLORAN: I'm sorry. One
12 of the photos is a photo of the Des Moines?

13 MR. KIM: Du Quoin.

14 HEARING OFFICER HALLORAN: Du Quoin. I
15 looked on the back of the photos. On one of the
16 photos, there was some reference to 1973 Du Quoin
17 Sewage Treatment Plant or something to that
18 effect. Regardless, those are not photos of
19 Community Landfill. They weren't included in the
20 permit application. They shouldn't be used.

21 HEARING OFFICER HALLORAN: None of them

22 are photos of the landfill?

23 MR. LaROSE: No, none of them are photos
24 of the landfill. None of the photos are even of

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1 Streator. It's just illustrative of the concept
2 of a sinkhole. It's a demonstrative aid to show
3 there will be relevant testimony from Mr. Skouby
4 that the problem in Streator or the report that
5 we've talked so much about with sinkholes in a
6 comparison of the --

7 HEARING OFFICER HALLORAN: I'll allow it.
8 It may assist the Board.

9 MR. LaROSE: Thank you.

10 HEARING OFFICER HALLORAN: Thank you.

11 BY MR. LaROSE:

12 Q. Sir, the pictures in front of you are of
13 what, the Exhibit AAA?

14 MR. LaROSE: I marked them all AAA kind of
15 as a group exhibit, Mr. Halloran.

16 MR. KIM: I'm sorry. So this was admitted
17 then?

18 HEARING OFFICER HALLORAN: Yes, it was.

19 BY MR. LaROSE:

20 Q. The pictures are of what, sir?

21 A. The picture shows a formation at the
22 ground surface of where a sinkhole was formed.
23 At this particular location, there was an
24 underground coal mine at a depth of about 30

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1 feet, and this is indicative of the formation of
2 a sinkhole as the mine roof collapses.

3 Q. And, sir, just so the Board is not
4 confused and so we're not trying to say anything
5 that's not true, that isn't -- those pictures
6 don't have anything to do with Morris Community
7 Landfill?

8 A. No, they do not.

9 Q. They also don't have anything to do with
10 the Streator area that had the sinkhole problem,
11 correct?

12 A. That's correct, other than to illustrate
13 what a sinkhole looks like.

14 Q. And where were those pictures taken? What
15 was the location of the --

16 A. These were taken at Du Quoin, Illinois.

17 Q. And one of those pictures has a date on
18 it.

19 Could you look at the back?

20 A. Yes. January 1973.
21 Q. Were they all taken about the same time?
22 A. Yes, they were. I think that this picture
23 was taken first and then the other two pictures
24 were taken a few days later.

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1 MR. KIM: Objection. If he's going to
2 refer to one picture -- well, never mind. I'll
3 withdraw it. It's not that important.
4 MR. LaROSE: Okay. And it really isn't.
5 HEARING OFFICER HALLORAN: For the record,
6 Exhibit AAA, and there's three photos included in
7 Exhibit AAA.
8 MR. LaROSE: Correct.
9 HEARING OFFICER HALLORAN: And they have
10 been admitted over the objection of the
11 respondent.
12 BY MR. LaROSE:
13 Q. Sir, back to the Streater -- your
14 knowledge of the Streater geology, what
15 was -- were they having problems with the
16 sinkholes in Streater?
17 A. Yes, they were.
18 Q. Okay. And was that related to this seam

19 of coal, the upper layer of coal?

20 A. It was related to the No. 6 coal which had
21 been mined at Streator.

22 Q. Okay. How bad was the subsidence problem
23 at Streator?

24 A. Well, I don't know how many sinkholes

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1 actually formed in Streator, but there were quite
2 a number of them.

3 Q. And what, if any, relation to this No. 6
4 coal present at Streator did it have to the
5 formation of these sinkholes?

6 A. The material that was over the No. 6 coal
7 fell into the mine opening, which resulted in
8 sinkholes.

9 Q. So there was direct correlation between
10 the No. 6 coal and the sinkhole problem?

11 A. That's correct.

12 Q. Are you familiar with the geology that
13 underlies the Morris Community Landfill?

14 A. Yes, I am.

15 Q. And how are you familiar with that?

16 A. Well, from the borings and the reports
17 from Andrews.

18 Q. And when were you provided the information
19 for the borings and the reports from Andrews?

20 A. I received most of that information, I
21 would say, it was in the spring of 1999.

22 Q. Okay.

23 A. And then as the borings were made, I
24 received additional borings.

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1 Q. Sir, is the coal, the No. 6 coal that
2 caused the problem at Streator, in your
3 professional opinion, present at the Morris site?

4 A. No, it is not.

5 Q. And are there any sinkholes present at the
6 Morris site or in that general vicinity of the
7 Morris site to your knowledge?

8 A. To my knowledge, there are no sinkholes at
9 this site.

10 Q. Have you actually visited the site?

11 A. Yes, I have.

12 Q. In visiting the site, were you present
13 during any of the borings that occurred there?

14 A. Yes. I was at the site when T3 was
15 drilled.

16 Q. Okay. Part of the -- when I refer to the

17 T system, will you understand that that means the
18 deepwell remediation system?

19 A. Yes.

20 Q. So you were there when T3 was actually
21 drilled?

22 A. Yes.

23 Q. Okay. Did you observe the conditions on
24 parcel A at that time?

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1 A. Yes, I did.

2 Q. Okay. Can you tell the Board in your
3 professional opinion whether it would be fair to
4 compare the geological conditions at Streator to
5 the geological conditions at the Morris Community
6 Landfill?

7 A. I don't think the conditions are
8 comparable at the two sites.

9 Q. Sir, when you -- you did have specific
10 professional involvement in this project, right?

11 A. Yes.

12 Q. First of all, do you know Mr. Silver?

13 A. Yes, I do.

14 Q. How do you know him and how long have you
15 known him?

16 A. I've known him since the
17 early '60s, and he and I worked for the same firm
18 at that time.

19 Q. Okay. Have you been involved in projects
20 with him over the period of time?

21 A. Yes, I have.

22 Q. And from time to time, would you and he
23 consult with one another on various projects?

24 A. Yes.

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1 Q. Did you consult with Mr. Silver on this
2 project?

3 A. Yes, I did.

4 Q. What was your first involvement in the
5 Morris Community Landfill project, if you
6 remember?

7 A. On parcel A, my first involvement was
8 after the pumping test on the trench was
9 performed.

10 Q. Okay. Do you remember approximately when
11 that was?

12 A. That would have been in December of '98, I
13 believe.

14 Q. Okay. So they had performed a trench pump

15 test, right?

16 A. Yes.

17 Q. Explain for the Board what we're talking
18 about when we talk about a trench dewatering
19 system.

20 A. Well, they -- I'm not certain on these
21 figures, but I think the trench was about 150
22 feet long, and I'm not sure of the depth, but it
23 was below the groundwater level.

24 Q. And the idea is that you bring in a

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1 machine and actually dig into the ground down to
2 a certain level and leave an open trench there?

3 A. That's what they did, yes.

4 Q. That was their initial proposal to the
5 IEPA, the trench system, was it not, to remediate
6 any contamination in the groundwater, correct?

7 A. That's correct, yes.

8 Q. Just as a matter of background, then they
9 dug up the test trench and did some test pumping,
10 correct?

11 A. That's correct.

12 Q. That's when your involvement began?

13 A. Yes.

14 Q. What did you do with respect to the pump
15 test?

16 A. I received a call on it to give my opinion
17 on the results of the test.

18 Q. And who called you?

19 A. Andy Limmer and I'm not sure whether Mike
20 was on that conversation or not.

21 Q. At that time, was it conversational only
22 or did you actually have pump test results in
23 front of you?

24 A. I believe initially I didn't have the pump

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1 tests results other than what was described to me
2 over the phone.

3 Q. Okay. What did they describe to you as
4 best you can recall?

5 A. They described the amount of water they
6 were pumping or the pumping rate from the trench
7 and also the water level measurements and the
8 related drawdown from existing piezometers.

9 Q. And what were they asking your opinion of?

10 A. They were wondering my interpretation of
11 the data.

12 Q. Okay. And did you render an

13 interpretation?

14 A. Yes, I did. Based on the information, I
15 concluded that the water was not coming directly
16 out of the shale, that the site must be
17 undermined and to allow the amount of drawdown
18 and the amount of water which they were pumping.

19 Q. Okay. Let's break that down.

20 Your conclusion was that the site was
21 undermined, correct?

22 A. Yes.

23 Q. And the basis on which you formed that
24 conclusion was twofold, correct?

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1 A. Yes. The rate of pumping --

2 Q. What was the first element?

3 A. Well, the rate of pumping and the
4 drawdown.

5 Q. Okay. When you say the rate of pumping,
6 they were getting too much water out of the --

7 MR. KIM: Objection. This is leading.

8 BY MR. LaROSE:

9 Q. Sir, when you say the rate of pumping,
10 could you explain what you mean by that in terms
11 of as it relates to your conclusion that the site

12 was undermined?

13 A. The rate of pumping was a rate at which
14 they were removing water from the trench, and I
15 think that was on the order of 60 gallons a
16 minute.

17 Q. What did that mean to you?

18 A. That there were some other factors rather
19 than the water coming directly out of the shale.

20 Q. Okay. Was that because you would not
21 anticipate that volume coming out of the shale?

22 A. That's correct. The shale has a very low
23 coefficient of permeability.

24 Q. What was the second element or the second

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1 basis for your conclusion that the site was
2 undermined?

3 A. As I recall, the amount of drawdown about
4 a thousand feet from the trench was equal to the
5 drawdown in the trench, and this also would not
6 be true if the water were coming through the
7 shale.

8 Q. Why is it that the drawdown shouldn't be
9 the same a thousand feet away as it is in the
10 trench?

11 A. Because the head loss of the water flowing
12 through the formation.

13 Q. Before you hung up that telephone
14 conversation, did you tell these fellows or this
15 fellow that you thought the site was undermined?

16 A. Yes, I did.

17 Q. Prior to that, what was your impression as
18 to whether they believed it was undermined or
19 not?

20 A. I don't think they had any information
21 that would have revealed it one way or another.

22 Q. Were they surprised when you told them
23 that?

24 A. I think they were, yes.

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1 Q. Okay. Did you subsequently get
2 documentary results of the pump test from them to
3 look at --

4 A. Yes, I did.

5 Q. -- of the trench pump test?

6 A. Yes.

7 Q. Did you look at those documents to confirm
8 your initial over-the-telephone conclusion that
9 the site had been undermined?

10 A. Yes, I did.

11 Q. Sir, as you sit here today with some
12 40-some years of experience in engineering and
13 dewatering and geotechnical experience, is there
14 any doubt in your mind that this site is
15 undermined --

16 A. No.

17 Q. -- the Morris Community Landfill site?

18 A. No. I think part of it is undermined.

19 Q. And when you say undermined meaning
20 digging shafts under the ground to extract the
21 coal?

22 A. That's correct.

23 Q. As opposed to stripping it in the strip
24 mining sense as opposed to scraping off the earth

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1 to extract the coal?

2 A. That's correct.

3 Q. Was there also strip mining that occurred
4 either on the site or close to it?

5 A. On that same landfill site on the western
6 side the area had been strip mined.

7 Q. Okay. The pump test, the results, the
8 documentary results then confirmed what you

9 thought that it was undermined, what was your
10 next involvement?

11 A. Well, it was in regard to investigating
12 the presence of the underground mine.

13 Q. Okay. And what did you do to do that?

14 A. As I recall, I suggested making additional
15 borings along that east side and that was later
16 done.

17 Q. And did you review those boring logs?

18 A. Yes, as they were done.

19 Q. Okay. Did you review those boring logs as
20 it related to the issue of whether subsidence had
21 already occurred on the site?

22 A. Yes, I did.

23 Q. And when did you review those boring logs
24 in relation to what -- to the issue of whether

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1 subsidence had already occurred on the site?

2 A. As I received the logs, I did.

3 Q. Did you render any conclusions or come to
4 any professional conclusions as to whether the
5 site had suffered any subsidence?

6 A. Yes. The borings showed that there was no
7 longer a mine opening as such. What had been the

8 mine opening was filled with material.

9 Q. Okay. And what did that mean to you?

10 A. That meant to me that subsidence had
11 occurred already.

12 Q. Some subsidence, moderate subsidence,
13 complete subsidence?

14 A. I would say complete subsidence for the
15 conditions.

16 Q. Okay. Did that surprise you that an area
17 of this landfill being undermined would have
18 completely subsided over a course of years?

19 A. No. Since it was flooded, I think it
20 would be anticipated.

21 Q. Okay. And what does the flooding have to
22 do with the idea that the mine had completely
23 subsided?

24 A. The No. 2 coal is underlined by what's

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1 called an underclay and in the presence of water,
2 the underclay will take on the water and swale.
3 The action of swaling reduces the shear strength
4 of the clay and eventually it will be reduced to
5 the point where the coal pillars which were left
6 in place will punch down into it. This will let

7 the mine -- all the overburden above the mine
8 subside.

9 Q. Let's take that one step at a time. We've
10 got a flooding condition, right?

11 A. Yes.

12 Q. You used the term coal pillars.

13 What are you talking about?

14 A. It's a room and pillar method of mining a
15 certain amount of the coal is left in place to
16 support the roof run.

17 Q. And you said that there is -- I think you
18 used the term -- did you say underburden? What
19 was the clay term that you used?

20 A. Underclay.

21 Q. Okay. What's the underclay?

22 A. The underclay is a natural formation
23 that's below the coal.

24 Q. So you've got coal and you've got clay

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1 beneath it?

2 A. Yes, sir.

3 Q. Then you've got pillars of coal that are
4 on top of the clay?

5 A. Yes, sir.

6 Q. And then you've got water running through
7 that void, correct?

8 A. Yes.

9 Q. What happens to cause the subsidence and
10 what do you believe happened to cause the
11 subsidence in this case?

12 A. Normally, what happens is that the
13 underclay will take on water, which results in
14 swaling, making a bigger volume, and this reduces
15 the strength of the underclay.

16 Q. Did you tell Andrews that you believed
17 that the site had completely subsided?

18 A. Yes, I did.

19 Q. Did you tell that to Mr. Silver?

20 A. Yes, I believe I did.

21 Q. Okay. You were involved in the -- did you
22 look at the pump test from the deepwells in the
23 spring of 1999?

24 A. Yes, I did.

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1 Q. They asked you to look at that prior to
2 the submission of the application in this case,
3 correct?

4 A. Yes. I think pumped it for about four

5 months, and I was provided the water level
6 information as the test progressed.

7 Q. During that four-month period, sir, did
8 they ever completely dewater the mined area?

9 A. No, they did not.

10 Q. Did they even come close to it?

11 A. No. That was not the purpose of the test.

12 Q. But it not only wasn't the purpose of the
13 test, it wasn't the result of the test either?

14 A. No. That's correct.

15 Q. Did you understand that the remediation
16 proposal was to completely dewater the mine or
17 just to bring the water level down?

18 A. It was my understanding that the
19 dewatering was merely to collect the water, lower
20 the water table to the point where any
21 contaminants would be collected and not get off
22 the site.

23 Q. Sir, you understand that they now propose
24 to use the deepwell system to remediate the

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1 groundwater as opposed to the shallow trench,
2 right?

3 A. Yes, as a primary system.

4 Q. Okay. Do you have a professional opinion
5 as a dewatering expert as to whether the deepwell
6 system is preferable to the trench system and, if
7 so, why?

8 A. Well, I think the deepwell system is
9 preferable because it's more efficient and easier
10 to maintain than a trench system.

11 Q. Okay. In the deepwell system, is there an
12 ability to adjust how much you lower the water
13 level?

14 A. Yes. That could be done in different
15 ways. One would be to -- one way is the
16 elevation that the pump intake is set at, but
17 then you won't be pumping below the pump intake,
18 and the other way is to put probes in the same
19 hole with the pump that would turn the pump on
20 and off with changes in the water level.

21 Q. Okay. Is the deepwell system more
22 flexible or less flexible than the trench system?

23 A. I think it's more flexible because it
24 would be easier to add to if the need ever arose.

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1 Q. Or subtract from for that matter?

2 A. Yes.

3 Q. In order to -- if you weren't getting the
4 results that you wanted from the deepwell, you
5 could just either dig another well or eliminate
6 one that you're pumping from, correct?

7 A. That's correct.

8 MR. KIM: Objection. That's leading.

9 BY MR. LaROSE:

10 Q. Sir, how would you make adjustments to the
11 deepwell system if you needed to adjust them?

12 A. Well, like I said before, if you weren't
13 getting the required drawdown, a person could add
14 additional wells, and also if you didn't need to
15 pump so much, you wouldn't need to pump all the
16 wells that you had installed.

17 Q. What about the trench system? For the
18 Board, what's physically involved in creating a
19 25-foot deep, 150-foot long trench?

20 A. I think that as long as the trench
21 remains -- the bottom of the trench remains high
22 enough in the shale, there probably wouldn't be
23 too much problem with making this excavation.

24 Q. Okay.

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1 A. But if it was taken too deep, there could

2 be stability problems.

3 Q. Okay. I said 150 feet long. That was the
4 test trench, correct?

5 A. That's correct.

6 Q. The trench was actually going to run the
7 whole side of the site?

8 A. I believe so, something in the order of.

9 Q. If the trench system doesn't work, if
10 you're not getting enough drawdown or getting too
11 much, how do you adjust that?

12 A. I think a person would have to go to a
13 different system.

14 Q. So in that respect, the trench system
15 would be less flexible to make adjustments to it,
16 correct?

17 A. That's right. If you have -- if you have
18 constructed a trench draining that didn't work,
19 it would have to be reconstructed in order to try
20 to get something that did work.

21 Q. When you say reconstructed, move it to a
22 completely different location or just
23 re-engineered?

24 A. It might be possible to re-engineer it,

1 just remove that, do what whatever you had to do
2 or to go to a new location.

3 Q. So you might have to completely dig a new
4 trench, right?

5 A. That's correct.

6 Q. Or you might have to go into this 2000
7 foot trench and dig it down deeper or fill it in
8 more to adjust your drawdown, correct?

9 A. You'd have to, yes.

10 Q. Okay. And the adjustment to the deepwell
11 system if you had to add a well involves what
12 physical mechanics if you added a well?

13 A. Getting a drill rig on the site and
14 drilling straight down to the mine level.

15 Q. Okay. In terms of the cost, the time, and
16 the physical labor involved, how would you
17 categorize adjustments necessary for the trench
18 to the adjustments necessary for the well system?

19 A. Adjustments to the trench would be much
20 more expensive.

21 Q. What about the timing of making the
22 adjustments? In other words, would you be able
23 to make quicker adjustments to the well system or
24 would it take longer to make adjustments to the

1 well system than adjustments to the trench
2 system?

3 A. Well, a well system, what you had in place
4 didn't continue to operate while you were
5 installing additional wells; whereas, a trench
6 system, the whole thing may have to be taken out
7 of service for modification.

8 Q. Sir, did you review Mr. Skouby's (sic)
9 mass stability and subsidence report?

10 MR. KIM: Mr. Silver's

11 BY MR. LaROSE:

12 Q. I'm sorry. Mr. Silver's, thank you, mass
13 stability and subsidence report before it was
14 submitted in May of 2000?

15 A. No, I did not.

16 Q. Okay. Did you review the information that
17 was included in that report, in other words, his
18 calculations and the input parameters that he put
19 into the program?

20 A. I don't think I was aware of his --

21 Q. Of his actual conclusions?

22 A. That's correct.

23 Q. Have you reviewed them since then?

24 A. Yes, I have.

1 Q. Okay. And have you reviewed them in the
2 context of this particular case?

3 A. Yes, I have.

4 Q. Okay. In your professional opinion --

5 MR. KIM: Objection. This is, again,
6 trying to elicit testimony that I presume was
7 prepared or was generated after the fact, after
8 the date of the decision. This has no relevance
9 and this shouldn't be admitted. I'm trying to
10 preempt any testimony here.

11 HEARING OFFICER HALLORAN: Mr. LaRose.

12 MR. LaROSE: This is testimony that was
13 not submitted in the May 2000 application, but
14 it's clearly expert testimony that directly
15 relates to that information. The Agency's
16 experts have said Mr. Silver's work is
17 criticized. Our expert says -- I think he's
18 going to say, I hope he's going to say
19 differently.

20 MR. KIM: This is an opinion generated
21 after our decision.

22 HEARING OFFICER HALLORAN: You know, at
23 the risk of being inconsistent in my rulings, I
24 will allow his testimony. I believe it would

1 assist the Board in making its determination.

2 BY MR. LaROSE:

3 Q. Sir, have you reviewed Mr. Silver's work
4 with respect to the regulations -- Illinois
5 regulations on slope stability and load-bearing
6 capacity?

7 A. Yes, I have.

8 Q. And your opinion of his work is what?

9 A. I believe his opinions are conservative.

10 Q. Do you believe that they're conservatively
11 accurate?

12 A. I believe they're conservative on the safe
13 side, like, the factor of safety for the slope
14 stabilities are probably greater than what he
15 calculated.

16 Q. Okay. Just so that I'm clear on this -- I
17 think I did it right with Mr. Silver, but I want
18 to make sure that I've got the concept.

19 If you reduce the shear strength of
20 the material --

21 A. Yes.

22 Q. -- what are you doing to the factor of
23 safety?

24 A. You're reducing the factor of safety too.

1 Q. And if you use a higher shear strength,
2 you're going to end up with a higher factor of
3 safety?

4 A. That's correct.

5 Q. So is what you're saying that he used the
6 shear strength that's lower than maybe he could
7 have or should have to depict the actual
8 conditions at the site?

9 A. I would say he used shear strengths that
10 were lower than what he could have.

11 Q. And still would have been accurate and
12 within the factor of safety called for by the
13 regulations, correct?

14 A. If he used the higher shear strength, it
15 would have been a higher factor of safety.

16 Q. Okay. In your opinion, did the slope
17 stability of the design of the landfill and the
18 remediation system meet the factors of safety
19 under the applicable 811 regulations?

20 A. I believe so, yes.

21 Q. And what about the same question for the
22 load-bearing capacity?

23 A. I believe that the load-bearing capacity
24 of the materials at the site are within the

1 factor of safety required.

2 Q. What do you base that conclusion on?

3 A. Just looking at the materials that are
4 involved.

5 Q. Okay. And when you say looking at the
6 materials that are involved, give me a little bit
7 more explanation, please.

8 A. Well, the primary materials is the silty
9 clay at the surface and above the shales and then
10 the shale itself, and the strength of these
11 materials are such that I don't think that there
12 would be a bearing capacity failure problem.

13 Q. Based on all the information that you've
14 seen, boring logs, pump tests, proposals to pump
15 from the deepwell, do you believe that there is
16 any deviation from the factor of safety called
17 for by the regulations as contained in the
18 application that was before the Board?

19 A. No.

20 Q. Did you review -- when you reviewed Mr.
21 Silver's calculations -- let me show you one
22 thing so that -- so that we're clear on this.
23 I'm going to show you what's been previously
24 admitted as -- I'm going to set this close so I

1 can make sure you can see it. Can everybody see
2 this then?

3 Can you see that okay, Mr. Skouby?

4 A. Yes.

5 Q. Okay. I'm going to show you what's been
6 previously admitted as Exhibit AA, which is a
7 table two from Mr. Silver's mass stability and
8 subsidence analysis in May 2000.

9 Have you seen that document before?

10 A. Yes, I have.

11 Q. Okay. And just to move this along, he
12 actually calculated factors of safety at
13 groundwater elevations 509, 506, and 503 and then
14 extrapolated them down to 480.

15 A. Yes.

16 Q. And that's what this paragraph on AA says,
17 sir?

18 A. Yes.

19 Q. Do you have any problem with the fact that
20 he extrapolated from 503 down to 480 versus
21 calculated in your professional opinion?

22 MR. KIM: Same objection. I assume this
23 is an opinion generated after the fact. This was

24 not information made available to the Agency. We

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1 didn't have the benefit of this. So for the
2 Board to take this into consideration works
3 against the Agency.

4 HEARING OFFICER HALLORAN: Overruled.

5 BY MR. LaROSE:

6 Q. Sir?

7 A. I see nothing wrong with the
8 extrapolation. It's a normal thing done in work,
9 and what he did there I think is acceptable.

10 Q. Okay. When you say it's a normal thing
11 done in work, is that another way to say --

12 MR. KIM: Objection, leading.

13 BY MR. LaROSE:

14 Q. What did you mean when you say it's a
15 normal thing done in work?

16 A. Extrapolation of data is not unusual.

17 Q. And you didn't find it to be either
18 unusual or offensive in this particular case?

19 A. That is correct.

20 Q. Is extrapolation not unusual in the
21 science of geotechnical engineering?

22 A. No. It's not unusual.

23 MR. LaROSE: Okay. That's all I have
24 right now.

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1 HEARING OFFICER HALLORAN: Thank you. Mr.
2 Kim.

3 MR. KIM: Well, it's 12:40 now. Do you
4 want me to begin my cross-examination?

5 HEARING OFFICER HALLORAN: We can go off
6 the record.

7 (Discussion had
8 off the record.)

9 HEARING OFFICER HALLORAN: We're going to
10 take a break, a 45-minute break until 1:30 for a
11 lunch break. We'll be back here at 1:30. Thank
12 you.

13 (Whereupon, further proceedings
14 were adjourned pursuant to the
15 lunch break and reconvened
16 as follows.)

17 HEARING OFFICER HALLORAN: We're back from
18 lunch. It's approximately 1:40, and I believe --
19 I'm sorry. Mr. LaRose?

20 MR. LaROSE: Before Mr. Kim starts his
21 cross-examination, I had forgotten to offer into

22 evidence Exhibit I, which is Mr. Skouby's CV.

23 MR. KIM: No objection.

24 HEARING OFFICER HALLORAN: No objection.

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1 Exhibit I will be admitted into evidence.

2 MR. KIM: Am I correct that there are four
3 exhibits that have been made as an offer of
4 proof? Is that what you show, Mark? I'm just
5 trying to keep track of all my exhibits.

6 MR. LaROSE: The ones I have are DD, the
7 extrapolation chart; MM, NN --

8 MR. KIM: That's four right there, and
9 then the Streator, slash, Morris comparison
10 chart.

11 HEARING OFFICER HALLORAN: Let's start at
12 the top. Right now, we have Exhibit D2 not
13 admitted, but it is for an offer of proof.

14 MR. LaROSE: That's correct.

15 HEARING OFFICER HALLORAN: We have Exhibit
16 DD. That's admitted as an offer of proof.

17 MR. LaROSE: Correct.

18 HEARING OFFICER HALLORAN: We have Exhibit
19 MM as in Mary. That is -- I believe that was the
20 one where --

21 MR. LaROSE: The hybrid.

22 MR. KIM: Right. The first two pages were
23 kept out. The remainder of the pages were
24 allowed.

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1 HEARING OFFICER HALLORAN: Well, that's
2 not entirely correct. It's the first two pages
3 that were kept out and the last three pages that
4 were kept out.

5 MR. KIM: Right, because those were some
6 fax log sheets.

7 HEARING OFFICER HALLORAN: Correct.

8 MR. LaROSE: The first two would have been
9 an offer of proof, and the remainder would have
10 been admitted.

11 MR. KIM: Except for the last three.

12 HEARING OFFICER HALLORAN: Except for the
13 last three pages.

14 MR. LaROSE: Which we just said forget
15 that --

16 MR. KIM: Right. And then I think the
17 only other one is NN.

18 MR. LaROSE: That's correct.

19 MR. KIM: Which is the article.

20 HEARING OFFICER HALLORAN: NN, as in
21 Nancy, and that's the newspaper article, and
22 that's an offer of proof.

23 MR. LaROSE: And then the only other issue
24 would have been -- the only other major issue

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1 with respect to the evidence would have been the
2 striking of the as yet undefined specific
3 questions and answers for Mr. Silver.

4 HEARING OFFICER HALLORAN: Correct.

5 MR. KIM: Just a little housekeeping. I
6 just wanted to make sure.

7 HEARING OFFICER HALLORAN: All righty.
8 Any other preliminary matters? Mr. Kim, your
9 witness. The witness is reminded he's still
10 under oath.

11 C R O S S - E X A M I N A T I O N

12 by Mr. Kim

13 Q. Mr. Skouby, I'm assuming, looking at your
14 resume, that you live somewhere around the St.
15 Louis area; is that right?

16 A. Yes. I lived in the St. Louis area from
17 1962 to about three months ago.

18 Q. Well, I was just going to say you came a

19 long way to be with us today. So thank you for
20 making the trip. I have just a few questions
21 that I'd like to ask you about, and I'm going to
22 bounce around from subject to subject. So if you
23 sort of think there's a -- you know, you don't
24 understand one of my questions, just ask me to

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1 rephrase it or ask me what I'm talking about and
2 I'll be happy to explain that.

3 A. Very good.

4 Q. The first question I wanted to ask you
5 about was some testimony you provided concerning
6 what your understanding of dewatering meant, and
7 I believe you testified that dewatering is
8 essentially lowering the groundwater level to a
9 predetermined level.

10 Is that a fair characterization?

11 A. Yes, it is.

12 Q. Now, would you consider as part of
13 responsible or as part of appropriate dewatering
14 that there should be some kind of measures taken
15 to ensure that there's going to be the --
16 predetermined level would be maintained?

17 A. That could be done by monitoring.

18 Q. Okay. Would you think that that would be
19 a good idea to do as opposed to just hitting the
20 groundwater level and then not monitoring it to
21 make sure that you're remaining static at that
22 level?

23 A. Anything that's operating has to be
24 monitored.

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1 Q. So you would agree that monitoring for the
2 -- as part of a dewatering plan is the correct
3 thing to do; is that right?

4 A. Yes. I think monitoring is necessary.

5 Q. Okay. Thank you. I don't know if you
6 were directly asked about this, but there's a
7 document that's been referred to as the Streator
8 EIS. It's an environmental impact statement that
9 was prepared by USEPA for a --

10 MR. KIM: As a side-bar, Mr. Hearing
11 Officer, I only have one copy today. I have
12 other copies in my hotel. So tomorrow I'll be
13 bringing complete copies for submission.

14 HEARING OFFICER HALLORAN: Thank you, Mr.
15 Kim.

16 BY MR. KIM:

17 Q. Let me show you what is identified as the
18 final environmental impact statement for the
19 rehabilitation of wastewater facilities for
20 Streator, Illinois. This was prepared by USEPA
21 in February of 1981.

22 Have you ever seen that document
23 before?

24 A. Yes, I have.

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1 MR. KIM: Okay. And, again, I apologize
2 for not offering it into evidence today. I will
3 tomorrow.

4 BY MR. KIM:

5 Q. When did you first see this document?

6 MR. LaROSE: I'm going to object. This is
7 beyond the scope of his direct examination. I
8 never asked him a single question about the
9 Morris EIS -- Streator EIS.

10 MR. KIM: Well, the reason I'm bringing
11 this up is he testified to soil conditions or
12 geologic conditions in Streator, and I'm assuming
13 that there's going to be some tie-in made to the
14 geologic conditions that are described in the EIS
15 and Mr. Skouby's testimony, and I'd just like to

16 find out if he reviewed this document in
17 conjunction with making his conclusions about the
18 Streator geology. If he didn't, then I won't
19 have any other questions.

20 MR. LaROSE: I think he can ask him that
21 question.

22 HEARING OFFICER HALLORAN: Go ahead, Mr.
23 Kim.

24 BY MR. KIM:

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1 Q. The testimony that you provided earlier
2 concerning your understanding of the geologic
3 conditions at Streator, was that testimony based
4 in any way upon your review of this document,
5 which is referred to as the Streator EIS
6 document?

7 A. No. It was based on my previous
8 experience in Streator, and it concurs with that
9 report, I think.

10 Q. Okay. So you are familiar enough with the
11 report to know that your understanding of the
12 geologic conditions is consistent with the
13 report's presentation of those conditions as
14 well; is that right?

15 A. Would you say that again?

16 Q. Sure.

17 Your understanding of Streator's
18 geologic conditions is consistent with what you
19 believe the report shows to be those conditions?

20 A. Yes, sir.

21 Q. Okay. Thank you. You also testified that
22 you were asked to review or you had cause to
23 review some of the boring logs that were
24 generated through the course of some

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1 investigations that were done at Community
2 Landfill; is that right?

3 A. That's correct.

4 Q. And I believe as part of your testimony
5 you stated that in looking at those logs, you
6 checked for past subsidence, and it was your
7 opinion that the borings showed that there was no
8 longer a mine opening; is that correct?

9 A. That's correct.

10 Q. And as a result of that, your conclusion
11 was that subsidence had occurred and that, in
12 fact, there was complete subsidence at the site;
13 is that right?

14 A. Yes, basically.

15 Q. Do you know if that representation, that
16 there was complete subsidence at the landfill,
17 was made anywhere in the May 2000 significant
18 modification permit application?

19 A. I do not know whether that's stated in
20 that way or not.

21 Q. Okay. Let me sort of take one step back.

22 What involvement did you have in
23 preparing any kind of documents or any kind of
24 reports that were included in the May 2000 SIGMOD

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1 application?

2 A. I think about the only thing I did that
3 was included was the flow of groundwater to the
4 trench.

5 Q. And I'm going to show you what is
6 identified as parcel A, volume six, of the
7 administrative record. It's Bates stamped page
8 307.

9 MR. LaROSE: Just give us a second.

10 MR. KIM: That's fine.

11 BY MR. KIM:

12 Q. And while counsel is looking for this

13 document -- this begins on page 307.

14 Can you look at the next few pages
15 and just let me know when you're done?

16 MR. LaROSE: When you say the next few --

17 MR. KIM: I'm sorry. The next -- through
18 page 310. Pages 307 through 310.

19 BY THE WITNESS:

20 A. Okay.

21 BY MR. KIM:

22 Q. Do you recognize those documents?

23 A. Yes, I do.

24 Q. Are those documents that were prepared by

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1 you?

2 A. Yes, they were.

3 Q. And when I say those, you're including
4 pages 308, 309, and 310; is that correct?

5 A. That is correct.

6 Q. Okay. And did you prepare these documents
7 specifically for inclusion in the May 2000 SIGMOD
8 application for Community Landfill?

9 A. I prepared these at the request of Mike
10 McDermont. I did not know, you know, the
11 purpose.

12 Q. Okay. And I don't have a direct citation
13 to pages, but I believe there also -- there may
14 be some references in the application to
15 conclusions reached by you or opinions stated by
16 you as to the presence of undermining at the
17 landfill, and this would have been done following
18 your review of the trench pump test results.

19 MR. LaROSE: Objection to the foundation.

20 MR. KIM: What I'm trying to establish is
21 that there may be some comments or some
22 references to Mr. Skouby in the application that
23 --

24 MR. LaROSE: But if there are, the

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1 foundational objection is that I'd like to know
2 where they're at.

3 HEARING OFFICER HALLORAN: Will you be
4 able to connect this up tomorrow?

5 MR. KIM: No. I can do this without
6 that.

7 BY MR. KIM:

8 Q. Mr. Skouby, you testified that you were
9 asked to review the trench pump test results
10 following the conclusion of those tests; is that

11 correct?

12 A. That is correct.

13 Q. And at that time, did you inform, I guess,
14 initially by telephone and then later on you
15 followed it up, did you inform representatives of
16 Andrews Environmental that it was your belief
17 that there was undermining at Community Landfill?

18 A. That is correct.

19 Q. Aside from your conveying that information
20 to them, which may have been included by them in
21 the preparation of the application, and aside
22 from your direct authorship of pages 307, 308 --
23 I'm sorry, 308, 309, and 310, is there any other
24 part of the permit application that you worked on

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1 directly?

2 A. Directly?

3 Q. Yes.

4 A. Not to my knowledge.

5 Q. So there's no other document there that
6 would have your name or that would be your work
7 product; is that correct?

8 A. That is correct.

9 Q. But you did testify, didn't you, that you

10 did have conversations with Andrews and with Mr.
11 Silver that you believed that the site had
12 experienced complete subsidence; isn't that
13 right?

14 A. That's correct.

15 Q. And those conversations took place before
16 May of 2000; is that right?

17 A. Yes.

18 Q. And when you conveyed that information on
19 to them, did they question your opinion or did
20 they question that conclusion?

21 A. No, I do not think so.

22 Q. So, in fact, to the best of your
23 knowledge, they accepted that as being a fair and
24 accurate opinion; is that correct?

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1 A. That's correct.

2 Q. You were also asked a little bit about the
3 horizontal groundwater collection trench, and
4 that goes towards those documents that are found
5 on pages 308 to 310 that you worked on, and I
6 believe you were asked about potential problems
7 with stability with the installation and
8 operation of the groundwater trench.

9 Do you recall that?

10 A. Yes, I do.

11 Q. And I believe your testimony was if the
12 trench is installed too deep, there could be a
13 stability problem; is that right?

14 A. That's correct.

15 Q. Did you believe that there was any
16 stability problem with the groundwater trench as
17 it was proposed in this permit application?

18 A. No.

19 Q. I believe you also stated that there were
20 certain problems or certain downsides, in your
21 opinion, to using a groundwater collection trench
22 as opposed to deepwells, and let me see if I can
23 repeat those back.

24 I think one of the concerns or one of

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1 the problems that you said might be encountered
2 is the adjustments to the use of the trench might
3 be more expensive; is that right?

4 A. That's correct.

5 Q. And I believe you also made reference to
6 the fact that the timing of making those
7 adjustments worked against using a trench as

8 opposed to using deepwells; is that correct?

9 A. That's correct.

10 Q. Do you know if those comments were
11 included in the application concerning -- in any
12 portion of the application that described or
13 addressed the groundwater collection trench?

14 A. I do not know.

15 Q. You also testified that you had an
16 opportunity to review some of Mr. Silver's
17 reports and calculations and assumptions; is that
18 right?

19 A. That's correct.

20 Q. But just so we're clear on the time frame,
21 when did you review those -- that work?

22 How about this, was it after August
23 of 2000?

24 A. Yes, it was.

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1 Q. So whatever opinions you might have had of
2 Mr. Silver's work, those obviously wouldn't have
3 been put into anything that's included in the May
4 2000 application; isn't that right?

5 A. That's correct.

6 Q. And some of your specific conclusions or

7 opinions that you formed turning to Mr. Silver's
8 calculations regarding slope stability and on the
9 specific topics of the factor of safety
10 and load-bearing capacity, there again, just so
11 we're clear, any opinions you might have had
12 concerning those issues would not have been
13 formed until after August of 2000; isn't that
14 correct?

15 A. That's correct.

16 Q. And, there again, those opinions would not
17 have been found anywhere in the May 2000
18 application; isn't that right?

19 A. That's correct.

20 Q. You, also, I believe, testified as to the
21 manner or the methodology that Mr. Silver
22 employed using extrapolation to make a -- make
23 some slope stability conclusions for a
24 groundwater elevation that was not a specific

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1 elevation and he put it into his computer
2 program.

3 Do you recall that?

4 A. Yes.

5 Q. I believe you stated that in your opinion

6 his use of the extrapolation was okay? I think
7 that was your word. It was appropriate?

8 A. Yes, I think it was.

9 Q. When did you review that extrapolation
10 work? Was that after August of 2000?

11 A. Yes.

12 Q. And, there again, so we're clear, that
13 information or that conclusion that you reached
14 or your opinion would not have been found in the
15 May 2000 application; is that right?

16 A. That's correct.

17 Q. You also were testifying about your review
18 of some testing, some pump testing that was done
19 at the landfill, and specifically you made
20 reference to a four-month test.

21 Do you recall that?

22 A. Yes, I do.

23 Q. What was the four-month test you were
24 referring to?

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1 A. What was that question again?

2 Q. What test -- what four-month test were you
3 referring to? It was a test to do what?

4 A. It was to determine drawdown based on

5 pumping the deepwell.

6 Q. Okay. I'm going to show you and I'll also
7 draw counsel's attention to appendix -- the
8 administrative record, volume six, attachment or
9 appendix A, which is found at Bates stamp 284 and
10 285.

11 MR. LaROSE: Thank you. Hold on a second.

12 MR. KIM: Sure.

13 BY MR. KIM:

14 Q. While Mr. LaRose is looking, can you just
15 take a look at the next two pages, that page and
16 the next?

17 A. (Witness complied.)

18 Q. When you were referring to the four-month
19 test, is the information presented on pages 284
20 and 285 representative of that four-month test
21 you were referring to?

22 A. I believe it is. I don't know that this
23 includes all of it.

24 Q. Okay. That's fair.

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1 A. But it is the right wells.

2 Q. Okay. I thought the dates were on here,
3 but I guess they're not.

4 A. No, they are not.

5 Q. Thank you.

6 I think you also testified that you
7 reviewed the results from that test and your
8 conclusion was that the testing that was done did
9 not dewater the mine void; is that correct?

10 A. It didn't lower the water table down to
11 the top of the mine.

12 Q. Okay. As a matter of fact, I think your
13 characterization was it didn't come close.

14 Do you recall saying that?

15 A. I do not remember saying that. I may
16 have.

17 Q. How would you base that -- what do you
18 base that conclusion on?

19 Is there some way that you can use
20 the data either in that report or another report
21 to reach that conclusion or is that just a
22 personal opinion?

23 A. No. The water levels in those wells are
24 shown, and then the boring logs show the

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1 elevation of the top of the coal or where the top
2 of the mine is, and the water level elevations

3 are always above the elevation of the top of the
4 mine. So that water level never was drawn down
5 to the top of the mine.

6 Q. So basically then -- let me present what I
7 think you just said, and if I'm wrong, stop me,
8 or if I'm wrong, at the end, just correct me.

9 To find out if you were getting down
10 to the point where you might be concerned about
11 dewatering the mine void, you would start with
12 the water level before you began the pump
13 testing, you would subtract the total drawdown,
14 and that was in that document that I just showed
15 you, and you would come up with a figure, which
16 would be the drawdown from that -- from the
17 beginning of the pump test to the conclusion of
18 the pump test.

19 At that point, you could compare that
20 elevation to the elevation of the mine void and
21 you could see if, as you said, you were getting
22 close to dewatering it or if you were sufficient
23 -- or if you were not close to dewatering it; is
24 that right.

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1 MR. LaROSE: I'm sorry. I hate to do

2 this, but I have to object to the form of the
3 question. He strung about ten of them together.
4 I think it also is repetitive of the question
5 that he just asked him, but if he's going to ask
6 him, he's going to have to break it up. Nobody
7 could answer that question.

8 HEARING OFFICER HALLORAN: Is there any
9 way you can rephrase that, Mr. Kim, break it up?

10 MR. KIM: Sure. I'll tell you what I'll
11 do, I'll make it broad and then I'll close it
12 down.

13 BY MR. KIM:

14 Q. What I'm trying to get at is to find out
15 if you were even close to dewatering the mine
16 void, conceptually, isn't it correct, that you
17 would take the elevation of the groundwater
18 before you began the pump test, you would
19 subtract the drawdown, and you would come up with
20 a figure. You would compare that figure with
21 what the boring logs show as the top of the mine
22 void and you would see how far apart you were.

23 Does that sound right.

24 MR. LaROSE: Objection to the form of the

1 question. This witness says -- keeps talking
2 about the top of the coal. He keeps talking
3 about the top of the mine void.

4 MR. KIM: I'm sorry.

5 MR. LaROSE: I think that's the problem.

6 BY MR. KIM:

7 Q. Do you agree -- am I using the term mine
8 void incorrectly? Should it be the coal instead
9 of mine void?

10 A. Well, basically the top of the mine is at
11 or near the top of the coal originally. Of
12 course, in the mine -- mined out areas, there was
13 no more coal there.

14 Q. I understand. So if it's sufficiently
15 close then, it's not incorrect to say the top of
16 the mine void would also basically be the top of
17 the point where the coal would begin; is that
18 correct?

19 A. That's correct.

20 Q. And, again then, now that we've
21 established that, to go back to what I said
22 before, to find out how close you got to
23 dewatering the mine void, you would take the
24 elevation that you began -- that you had before

1 you began the pump test, you would subtract the
2 drawdown, which represents the amount of water
3 that was taken down during the test, and you
4 would have a new elevation, and you would compare
5 that elevation with the top of the elevation from
6 the mine void.

7 Does that sound right?

8 A. Yes. A person would compare the drawdown
9 elevation of the water in the monitoring well
10 with the elevation of the top of the mine.

11 Q. Okay. And, you know, this could be a
12 difference of feet, inches, yards? You know, you
13 would get some kind of linear distance; is that
14 correct?

15 A. That is correct.

16 Q. Okay. And when you say that they did
17 dewater -- and trust me when I say I think you
18 said it didn't come close. It sort of struck me
19 when you said that. I think the transcript will
20 bear that out.

21 So when you say it didn't come close,
22 what kind of range in terms of distance would you
23 be referring to when you say it didn't come
24 close? How close would be didn't come close?

1 A. I'd have to look at the data, but I think
2 that the water wasn't drawn down to within ten
3 feet of the top of the mine.

4 Q. And when you did make that statement in
5 your testimony earlier, were you basing that upon
6 some kind of calculations that you had performed
7 to find out what that elevation was, that
8 resulting elevation or, again, was this just sort
9 of personal opinion?

10 A. It was -- I didn't specifically make any
11 calculations or figuring to determine. That it
12 was my recollection of the results of the pumping
13 test as it was performed.

14 Q. Okay. The last question that I have then
15 is -- I meant to ask you this before, and I
16 didn't do so, but, again, going back to talking
17 about -- you said that any plan to dewater should
18 include a monitoring plan; is that correct?

19 A. I think -- I think most aspects of this
20 landfill has to be monitored, and I think that
21 the deepwells, their functioning, would also have
22 to be monitored along with any other monitoring
23 done on the landfill.

24 Q. And why would you be -- what's the

1 specific need to monitor the deepwells?

2 A. Any time you have equipment operating, it
3 can break down.

4 Q. Okay. Isn't it true that in addition to
5 equipment breaking down, you might also want to
6 be able to check the performance and basically
7 whether the groundwater elevation that you had
8 predetermined was being maintained?

9 A. Yes. That would be part of it.

10 Q. If you didn't have a monitoring program,
11 you wouldn't be able to check that, would you?

12 A. That's correct.

13 Q. And so if you don't have a monitoring
14 program, there's a potential that you might begin
15 dewatering the mine void and you wouldn't really
16 know about it, would you?

17 MR. LaROSE: Objection. He's now asked
18 him 14 times about this monitoring thing. Asked
19 and answered.

20 MR. KIM: Not that specific question.

21 MR. LaROSE: I think he's really covered
22 the waterfront. He said he should have a
23 monitoring program. He said it now at least five
24 times.

1 MR. KIM: My last question was, if you
2 don't have a monitoring program, isn't it
3 possible that you could be dewatering the mine
4 void and you wouldn't know it?

5 HEARING OFFICER HALLORAN: Overruled. You
6 can ask that question again. The witness can
7 answer.

8 BY THE WITNESS:

9 A. Yeah. The plan was to have a pump intake
10 above the top of the mine so there's no
11 possibility of drawing the groundwater below the
12 top of the mine.

13 BY MR. KIM:

14 Q. I understand that, but my question was, if
15 you don't have a monitoring program in place, you
16 could -- there's a potential that you could begin
17 dewatering without knowing that you were?

18 MR. LaROSE: Objection, asked and
19 answered.

20 MR. KIM: He didn't answer the question.

21 MR. LaROSE: He did answer the question.
22 He answered it and said it was impossible.

23 BY MR. KIM:

24 Q. So your answer to that question would be

1 no?

2 A. Well, restate your question.

3 Q. I'll restate the question. I'm sorry.

4 HEARING OFFICER HALLORAN: I'd overrule
5 the objection. Mr. Kim, could you ask that?

6 MR. KIM: Yes.

7 BY MR. KIM:

8 Q. If you don't have a monitoring plan in
9 place, isn't it possible that you could be
10 dewatering the mine void and you wouldn't know
11 about it? I'd like a yes or no answer.

12 Is it possible that you would be
13 dewatering and you wouldn't be aware of that if
14 you didn't have a monitoring program?

15 A. It would not be possible based on the
16 planned installation.

17 Q. Okay. Assuming all the assumptions that
18 went into the plan were correct and were
19 accurate; is that right?

20 In other words, you're saying it's
21 only as good as the plan. I'm saying if there's
22 a problem with the plan, there could be a problem
23 with your assumption; isn't that correct?

24

MR. LaROSE: Objection to the form of the

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1 question. It's been asked and answered.

2 HEARING OFFICER HALLORAN: I don't think
3 it's been asked and answered. I would take issue
4 with the form of the question, Mr. Kim.

5 Overruled.

6 BY MR. KIM:

7 Q. Well, your answer was that's impossible
8 because the plan wouldn't allow that; is that
9 correct?

10 A. It was -- let me restate what I said
11 before.

12 Q. Sure.

13 A. On these dewatering deepwells, the plan
14 was to have the pump intake above the top of the
15 mine. Now, these pumps cannot lower the
16 groundwater below the pump intake. So if you
17 have the pump intake above the top of the mine,
18 it's impossible to draw down below the top of the
19 mine with those pumps.

20 Q. Okay.

21 A. I mean, whether you're monitoring or not.

22 Q. And to demonstrate that, we could go back

23 to what we talked about before, that equation
24 that we talked about how you can -- where you

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1 compare your drawdown level with your top of the
2 mine coal and the mine void level, and you're
3 saying you should never get below -- you should
4 never get to the point where your elevation after
5 the drawdown is below or is into the mine void
6 area; is that correct?

7 A. That's correct.

8 MR. KIM: I have nothing further at this
9 time.

10 HEARING OFFICER HALLORAN: Thank you, Mr.
11 Kim. Mr. LaRose.

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

13 by Mr. LaRose

14 Q. Sir, in response to one of Mr. Kim's
15 questions, you said that you weren't aware of
16 whether specific language that 100 percent
17 subsidence had occurred was included in Mr.
18 Silver's report; is that correct?

19 A. I do not know that it was stated. That's
20 correct.

21 Q. Do you know whether the 100 percent

22 subsidence, however, was accounted for in any
23 other way in Mr. Silver's reports and
24 calculations?

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1 A. Yes. He accounted for it in the shear
2 strength values that he used in his calculations.

3 Q. And that was contained in his report which
4 was in the application?

5 A. That's correct.

6 MR. LaROSE: That's all I have.

7 HEARING OFFICER HALLORAN: Thank you. Mr.
8 Kim, any recross?

9 MR. KIM: No.

10 HEARING OFFICER HALLORAN: Thank you,
11 sir. You may step down.

12 MR. LaROSE: Thank you very much, Mr.
13 Skouby. Before I call the next witness, I just
14 want to take two seconds to thank these gentlemen
15 and send them off.

16 HEARING OFFICER HALLORAN: Off the
17 record.

18 (Discussion had
19 off the record.)

20 (Break taken.)

21 HEARING OFFICER HALLORAN: We're back on
22 the record. It's approximately 2:15. We took
23 about a five-minute break.

24 MR. LaROSE: Good afternoon.

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1 MS. THOMPSON: Good afternoon.

2 MR. LaROSE: The next witness will be
3 Gwenyth Thompson on behalf of the petitioner as
4 an adverse witness.

5 (Witness sworn.)

6 WHEREUPON:

7 G W E N Y T H T H O M P S O N,
8 called as a witness herein, having been first
9 duly sworn, deposeth and saith as follows:

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

11 by Mr. LaRose

12 Q. Ms. Thompson, could you state your name
13 for the record, please?

14 A. Gwenyth, G-w-e-n-y-t-h, Thompson.

15 Q. And you are employed by the Illinois
16 Environmental Protection Agency; is that correct?

17 A. Yes, sir.

18 Q. And your position with the Agency?

19 A. I'm manager of the groundwater assistance

20 unit, the solid waste side.

21 Q. Is it fair to say that you're the senior
22 groundwater person in the land division?

23 A. Not in the entire division of land.

24 Q. In the permit section of the land

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1 division?

2 A. In the permit section, yes.

3 Q. Ma'am, you've signed off or initialed the
4 permits in this case, did you not?

5 A. I believe I did, yes.

6 Q. I'm going to hand you -- give me just a
7 second.

8 HEARING OFFICER HALLORAN: Go off the
9 record.

10 (Discussion had
11 off the record.)

12 BY MR. LaROSE:

13 Q. Ma'am, I'm going to hand you what's been
14 previously marked and admitted as Exhibits S and
15 R. We'll leave these here in front of you
16 because we're going to refer to them throughout.

17 With respect to S, is that the parcel

18 A -- I'm sorry.

19 With respect to R, is that the parcel
20 A permit in this case?
21 A. Yes, it is.
22 Q. Okay. If you look on the very last page
23 of that document, there's a signature page,
24 correct?

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1 A. Correct.
2 Q. Joyce Munie signed it as the manager of
3 the permit section of the bureau of land,
4 correct?
5 A. Correct.
6 Q. Underneath that is a series of letters and
7 numbers. One of the letters is GT or the
8 initials GT.
9 Is that you?
10 A. Yes.
11 Q. Okay. So you initialed the parcel A
12 permit?
13 A. Yes.
14 Q. What does that mean?
15 A. That means that I read through the
16 groundwater permit conditions to see if they met
17 the regulations.

18 Q. Does it also mean, ma'am, that you looked
19 at the groundwater portions of the permit
20 applications and found nothing amiss?

21 A. Yes.

22 Q. Thank you.

23 HEARING OFFICER HALLORAN: Are we looking
24 at Exhibit S and R?

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1 MR. LaROSE: I'm sorry. We are looking at
2 R and S. I'm looking at R right now.

3 HEARING OFFICER HALLORAN: Thank you, Mr.
4 LaRose. It's my mistake.

5 MR. LaROSE: R is the parcel A permit,
6 sir, and S is the parcel B permit.

7 HEARING OFFICER HALLORAN: Thank you.

8 MR. KIM: Just to clarify because it's not
9 actually the very last page of that permit. It's
10 page 48. The very last page has to do with
11 standard conditions.

12 MR. LaROSE: That makes sense.

13 BY MR. LaROSE:

14 Q. It's page 48 where the signature line is,
15 right?

16 A. (Nodding head.)

17 Q. And the same thing, ma'am, referring to
18 Exhibit S, page 36 of that document, you
19 initialed that as well?

20 A. Correct.

21 Q. And that meant that you found that you
22 reviewed the groundwater portions of the permit
23 and found them to be in accordance with the
24 applications -- with the regulations, correct?

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1 A. Correct.

2 Q. Ma'am, I'm going to hand you -- let's
3 leave those two out because we will be referring
4 back to them in a little bit.

5 I'm going to hand you what we've
6 previously marked as Exhibit E, which is your, I
7 guess, current resume or curriculum vitae?

8 A. Correct.

9 Q. This is the one that you supplied to Mr.
10 Kim in or around November of 2000 and then he
11 supplied it to me?

12 A. Yes.

13 Q. And we went over this during your
14 deposition, correct?

15 A. Correct.

16 Q. You're a licensed -- you've been a
17 licensed geologist for three years?
18 A. Licensed professional geologist.
19 Q. You did not have to take the exam to be
20 licensed by the Department of Professional
21 Regulation, however, correct?
22 A. Correct.
23 Q. You were grandfathered in?
24 A. Correct.

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1 Q. Is that the extent -- I'm sorry.
2 You took one course in mine
3 subsidence; is that correct?
4 A. Yes.
5 Q. Is that the extent of your formal
6 education on the subject of mine subsidence?
7 A. I believe so, yes.
8 Q. You signed off on both the parcel A and
9 parcel B permits, right?
10 A. Correct.
11 Q. But you didn't actually work on reviewing
12 any of the application, did you?
13 A. In reviewing insofar as -- could you
14 define review, please?

15 Q. Ma'am, you didn't read a single word of
16 either application, did you?

17 A. Yes, I read single words of the
18 application, but if you are getting at --
19 perhaps, you can define what you're trying to --

20 Q. Did you actually work on reviewing any of
21 the application itself, yes or no?

22 A. For the purpose of generating the
23 memorandum, no.

24 Q. For the purpose of approving the permit no

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1 as well, right?

2 A. Correct.

3 Q. You just reviewed some of the project
4 reviewers' memos, correct?

5 A. Correct.

6 Q. You reviewed Scott McGill's memos, right?

7 A. Some of them.

8 Q. Or a memo from Scott McGill?

9 A. Some of them.

10 Q. He was a groundwater reviewer early on?

11 A. Correct.

12 Q. You reviewed some of Andrew Caitlin's
13 memos, right?

14 A. Correct.

15 Q. He was a groundwater reviewer early on?

16 A. Correct.

17 Q. And you reviewed Victoria Bruhed's memo or

18 memos, and she was an earlier groundwater

19 reviewer as well, correct?

20 A. Right.

21 Q. All of those memos that you reviewed

22 related to the initial 1996 application which was

23 denied in 1999, correct?

24 A. Correct.

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1 Q. Todd Hall was the reviewer on the 2000

2 application, right?

3 A. Correct.

4 Q. You didn't review any of Todd Hall's

5 reviewer notes for the present application,

6 correct?

7 A. I don't know. He's on my staff, and I

8 simply cannot recall if I reviewed his memorandum

9 or not. If I did, my initials would be on it.

10 Q. Okay. If you reviewed his memos, your

11 initials would be on it, correct?

12 A. Correct.

13 Q. Prior to the issuance of the 2000 permit,
14 you did not review any of the specific
15 groundwater data contained in the permit, did
16 you?

17 A. Correct.

18 Q. You didn't review -- you didn't do
19 anything related to the issues of stability or
20 subsidence, did you?

21 A. Define do anything.

22 Q. You didn't review any of the application
23 with respect to the issues of stability or
24 subsidence?

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1 A. I did not review the application.

2 Q. And you didn't review any of the stability
3 information contained therein?

4 A. Correct.

5 Q. Is it fair to say that the stability --
6 the areas of stability are not your area of
7 expertise?

8 A. Correct.

9 Q. At least as of December the 20th, 2000,
10 the date of your deposition, you hadn't formed
11 any professional conclusions with respect to

12 stability or subsidence at Morris Community
13 Landfill?

14 A. Repeat your question.

15 Q. At least as of the date of your
16 deposition, December 20th, 2000, you hadn't
17 formed any professional conclusions with respect
18 to the issues of stability or subsidence at
19 Morris Community Landfill, yes or no, ma'am?

20 A. Yes.

21 Q. And you had not formed any professional
22 opinion as to whether the proposal corrective
23 action plan would result in mine subsidence under
24 the landfill, had you?

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1 A. I believe that, and this would be
2 reflected in the deposition, that I stated that
3 it had the potential.

4 Q. Okay.

5 A. It was my opinion that it had the
6 potential.

7 MR. LaROSE: Page 53, Counsel.

8 BY MR. LaROSE:

9 Q. You remember giving your deposition on
10 December 20th, 2000, correct?

11 A. Uh-huh.

12 MR. KIM: Did you have a line?

13 MR. LaROSE: Yes, I'm sorry. Beginning on
14 line five.

15 BY MR. LaROSE:

16 Q. You were under oath at that time?

17 A. Uh-huh.

18 Q. You have to say yes or no, ma'am, because
19 the court reporter can't take down --

20 A. I apologize. Yes.

21 Q. And you've had an opportunity to review
22 your deposition obviously since then?

23 A. Yes.

24 Q. And you made some corrections to it in a

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1 typographical or transmission sense?

2 A. Yes.

3 Q. And you signed the deposition?

4 A. Yes.

5 Q. So everything else in there is accurate?

6 A. Yes.

7 Q. Do you remember being asked this question
8 on the 20th of December of 2000 and giving this
9 answer; Question, yeah. Is it true, Gwen, that

10 you have not formed any opinion with respect to
11 whether the corrective action plan contained in
12 the 2000 application would cause subsidence under
13 the landfill? Answer, not an absolute opinion,
14 no.

15 Do you remember being asked that
16 question and giving that answer?

17 A. I remember that and --

18 Q. Ma'am, yes or no, do you remember being
19 asked that question and giving that answer?

20 A. Yes.

21 Q. Do you know whether the 811 regs require a
22 landfill to be designed to eliminate the
23 possibility of subsidence?

24 A. No, I do not.

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1 Q. One groundwater condition is that the
2 leachate levels in the landfill are required to
3 be maintained below the static groundwater
4 levels.

5 Are you familiar with that condition?

6 A. Yes.

7 Q. Are you aware that there are portions of
8 the bottom of a landfill that are above the

9 static groundwater elevation?

10 A. Yes. I've been made aware of that.

11 Q. And, in fact, there's substantial portions
12 of the bottom of the landfill that are above the
13 groundwater elevation, correct?

14 A. If you say so.

15 Q. Okay. Is it possible for that condition
16 to be complied with for those portions of the
17 landfill where the bottom of the landfill is
18 above the static groundwater?

19 A. No, sir.

20 MR. KIM: Before you go on, are you going
21 to offer her resume into evidence?

22 MR. LaROSE: Yes. Thank you.

23 MR. KIM: No objection, by the way.

24 HEARING OFFICER HALLORAN: Exhibit E is

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1 admitted into evidence.

2 BY MR. LaROSE:

3 Q. Should that condition be changed or
4 amended to reflect that for those portions of the
5 landfill where the bottom is above the static
6 groundwater they don't have to meet that
7 condition?

8 A. It probably should.

9 Q. I'm going to hand you what's been
10 previously marked as Exhibit B and ask you to
11 take a look at that, please.

12 This is an affidavit that your boss,
13 Joyce Munie, wrote on the 22nd of September 2000
14 in this particular case, correct?

15 A. It looks to be, yes.

16 Q. And we went over this in your deposition,
17 right?

18 A. No.

19 Q. We didn't?

20 A. No, we didn't.

21 Q. Yes, we did, but that's okay. You don't
22 have to remember that.

23 A. I don't recall seeing this.

24 Q. That's all right.

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1 Look at paragraph nine on page two.

2 It says if a hearing on these appeals is
3 conducted, representatives of the Illinois EPA,
4 including myself, if necessary, will provide more
5 extensive and detailed testimony as to why these
6 contested conditions are necessary and why a stay

7 of those conditions would result in a potential
8 threat to human health and the environment.

9 Ma'am, other than -- leaving aside
10 for a second the subsidence issue, you haven't
11 formed any opinions as to potential danger to
12 human health and the environment regarding
13 groundwater conditions at the site, have you?

14 A. Regarding groundwater conditions?

15 Q. That's correct.

16 A. No, not regarding groundwater conditions.

17 Q. Okay. Other than your informal conclusion
18 with respect to subsidence, which was formed
19 after the application was filed and after the
20 permit was issued -- let me back up.

21 You did form an informal opinion that
22 the deepwell system might result in -- could
23 potentially result in subsidence at Morris,
24 right?

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1 A. Correct.

2 Q. You formed that opinion after the permit
3 application was filed and after the permit was
4 issued, right?

5 A. No. After the permit application was

6 filed, but before the permit was issued.

7 Q. Okay. But you didn't even look at any of
8 the --

9 MR. KIM: Objection, asked and answered.

10 BY MR. LaROSE:

11 Q. You didn't even look at any of the
12 subsidence or stability issues prior to the
13 issuance of the permit, did you?

14 MR. KIM: Objection. It's a vague
15 question. What issues is he referring to?

16 HEARING OFFICER HALLORAN: Can you
17 rephrase that, Mr. LaRose?

18 MR. LaROSE: Sure.

19 HEARING OFFICER HALLORAN: Thank you.

20 BY MR. LaROSE:

21 Q. With respect to your opinion, informal as
22 it was, that the conditions at the site might
23 possibly cause subsidence, you hadn't looked at
24 any of the subsidence or stability data at the

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1 time that you formed that conclusion?

2 A. I did not look at the data, correct.

3 Q. So my question is other than that informal
4 opinion as to subsidence, you haven't formed any

5 opinions as to potential danger to human health
6 or the environment regarding any of the contested
7 conditions?

8 MR. KIM: Objection, asked and answered.
9 He just asked that.

10 MR. LaROSE: Sir, I don't think she
11 answered it.

12 MR. KIM: She did. She said that's
13 correct.

14 MR. LaROSE: Well, then could she answer
15 it again because I want to make sure --

16 HEARING OFFICER HALLORAN: You may ask the
17 question again, Mr. LaRose.

18 MR. LaROSE: Thank you, sir.

19 BY MR. LaROSE:

20 Q. So other than the informal opinion on
21 subsidence, you haven't formed any opinions as to
22 potential danger to human health or the
23 environment regarding any of the contested
24 conditions, correct?

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1 A. All of the conditions?

2 Q. Yes, ma'am.

3 A. Okay. I don't believe so. I don't know

4 all of the contested conditions, but I don't
5 believe, no.

6 Q. You believe that you haven't formed that
7 opinion?

8 A. Correct.

9 MR. LaROSE: Could I have just one minute
10 to review my notes, please, and that might be all
11 that I have?

12 HEARING OFFICER HALLORAN: Yes, you may.
13 We can go off the record.

14 (Discussion had
15 off the record.)

16 HEARING OFFICER HALLORAN: We're back on
17 the record. Mr. LaRose has nothing further to
18 ask at this time.

19 MR. KIM: Before I begin questioning my
20 cross or redirect, I don't know how to phrase it,
21 Mr. LaRose referenced Exhibit B, which is an
22 affidavit by Joyce Munie. I would assume that he
23 wouldn't have any objections to holding his
24 introduction of that until Ms. Munie is called

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1 and then there won't be any objections?

2 MR. LaROSE: I don't have any objection to

3 holding it. If you guys will all -- everybody
4 here, if you'll remind me so I don't forget.

5 HEARING OFFICER HALLORAN: We're talking
6 about Exhibit B, B as in boy?

7 MR. LaROSE: Yes.

8 C R O S S - E X A M I N A T I O N

9 by Mr. Kim

10 Q. Okay. I just have a few questions for
11 you. I'd like to congratulate you also for being
12 one of the speediest witnesses thus far.

13 A. I'm thinking, waiting all this time.

14 Q. You testified that you reviewed the memos,
15 but you did not review the application or you did
16 not review -- or you did not work on the
17 application.

18 Do you remember that?

19 A. Yes.

20 Q. Did you ever look at the applications?

21 A. Looked at, yes.

22 Q. For what purpose?

23 A. Looked at them in order to see what the
24 responses were, whether they involved groundwater

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1 or not in order to determine whether it should be

2 assigned to groundwater personnel.

3 Q. And why don't you do the actual review or
4 the work on the application?

5 A. That specific application?

6 Q. Any application that you assigned out to
7 your staff.

8 A. Luck of the draw.

9 Q. Would this have to do with your having a
10 bigger office than everybody else?

11 A. A little bit.

12 Q. Does assignment of work -- you testified
13 you're a supervisor or a -- what's your specific
14 job title again? I'm sorry.

15 A. I'm the manager of the solid waste
16 groundwater assistance unit.

17 Q. And as the manager of the groundwater
18 assistance unit, what do you do when you receive
19 an application that needs to be reviewed? How do
20 you handle that?

21 A. After it's been logged in and passed on to
22 me, I look through the application to make a
23 determination of whether it requires a
24 groundwater review.

1 Q. And if you decide it does need a review,
2 what happens to it then?

3 A. I assign it to one of my personnel and
4 occasionally do assign it to myself.

5 Q. The unlucky draw?

6 A. Yeah.

7 Q. If you assigned it to your personnel, what
8 do you expect of them?

9 A. They review it with respect to the
10 regulation and also for technical merit.

11 Q. And what happens at the end of their
12 review?

13 A. They generate memorandum with either
14 deficiency points or conditions, sometimes
15 neither.

16 Q. Do you review those memos?

17 A. Most of them, not all.

18 Q. And when you review them, what's your
19 purpose in doing that?

20 A. Generally, to see if they meet with
21 regulations, if what we're asking for is within
22 the scope of the regulations.

23 Q. When you review those applications, do you
24 also review -- I'm sorry.

1 When you review those memos prepared
2 by your staff for your approval, do you also at
3 the same time review the application that they
4 just commented on?

5 MR. LaROSE: Objection, leading.

6 HEARING OFFICER HALLORAN: Do you want to
7 rephrase that, Mr. Kim?

8 BY MR. KIM:

9 Q. What documents do you look at when you
10 review your staff's memos?

11 A. Generally, memorandum only.

12 Q. And not the application?

13 A. And not the application.

14 Q. Why not?

15 A. That would be the reviewer's job.

16 Q. I believe you also were asked concerning
17 whether or not you had formed any opinion with
18 respect to the corrective action plan and whether
19 that would cause subsidence, and I think your
20 answer as given in the deposition and read back
21 to you was that you did not have an absolute
22 opinion.

23 What did you mean by that answer?

24 A. That I think my focus was on absolute. If

1 you read on in the deposition, the question gets
2 asked several different ways, and, yes, I had
3 formed an opinion. I believe Mr. LaRose is
4 calling that an informal opinion.

5 MR. KIM: Nothing further.

6 HEARING OFFICER HALLORAN: Thanks, Mr, Kim.
7 Mr. LaRose?

8 MR. LaROSE: Not a thing.

9 HEARING OFFICER HALLORAN: Thank you, Ms. Thompson.
10 You may step down.

11 MR. LaROSE: You win the prize. All that
12 sleep that you lose for that 15 minutes of fame.

13 MR. KIM: It's almost worth it, isn't it?

14 THE WITNESS: I'm smiling.

15 MR. KIM: Can we take one minute while I
16 go and get your next witness?

17 HEARING OFFICER HALLORAN: Sure. Off the
18 record, please.

19 (Break taken.)

20 HEARING OFFICER HALLORAN: Mr. LaRose,
21 your witness.

22 MR. LaROSE: The petitioners would call
23 Joyce Munie as our next witness, please.

24

1 (Witness sworn.)

2 WHEREUPON:

3 J O Y C E M U N I E,
4 called as a witness herein, having been first
5 duly sworn, deposeth and saith as follows:

6 D I R E C T E X A M I N A T I O N
7 by Mr. LaRose

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. State your name for the record, please.

11 A. Joyce Munie.

12 Q. Ms. Munie, what is your employment?

13 A. I'm currently employed as the permit
14 section manager of the bureau of land at the
15 Illinois Environmental Protection Agency.

16 Q. I'm going to hand you what's been
17 previously marked as Exhibit H and ask you to
18 take a look at that, please. Ma'am, we went over
19 this in your dep -- no. I guess we didn't go
20 over this in your deposition.

21 This was prepared after the
22 deposition, right?

23 A. Actually, it was prepared before my
24 deposition, but you didn't have it before my

1 deposition, yes.

2 Q. Okay. That is your current resume or
3 curriculum vitae, whichever you prefer?

4 A. Yes.

5 Q. That shows the extent of your education to
6 date, correct?

7 A. Yes.

8 Q. Do you have any specific expertise in the
9 area of mine subsidence?

10 A. No.

11 Q. The only time you've seen the Morris
12 Community Landfill is when you drove by it about
13 six months ago, right?

14 A. I can't give the specific date, but yes.

15 Q. Within the last six months?

16 A. Yes.

17 Q. Okay. When you were there, you didn't get
18 out of the car, right?

19 A. Right.

20 Q. You didn't talk to anyone from the CLC,
21 right?

22 A. Right.

23 Q. You just turned around in the driveway?

24 A. Yes.

1 Q. Do you know which side of Ashley Road
2 parcel A is on and which side of Ashley Road
3 parcel B is on?

4 A. No, I do not.

5 Q. When you drove by, you didn't observe any
6 violations of the regs or the Act at that time,
7 did you?

8 A. No.

9 MR. LaROSE: I would move the admission of
10 Exhibit H into the record, Mr. Halloran.

11 HEARING OFFICER HALLORAN: Any objection?

12 MR. KIM: No objection.

13 HEARING OFFICER HALLORAN: Exhibit H is
14 admitted.

15 BY MR. LaROSE:

16 Q. Ma'am, in front of you -- in front of you,
17 there are three exhibits. One of them is Exhibit
18 B.

19 Would you grab that one, please?

20 A. Yes.

21 Q. That's your affidavit that you gave on the
22 22nd of September the year 2000 for the purpose
23 of opposing our motion to stay the contested
24 conditions in this case, correct?

1 A. With some highlights made by someone else,
2 yes.

3 Q. That's right.

4 Referring to the second page, the
5 underlining and the highlights are my doodlings,
6 not yours?

7 A. Yes.

8 Q. Would you read into the record page --
9 paragraph nine on page two, please?

10 A. If a hearing on these appeals is
11 conducted, representatives of the Illinois EPA,
12 including myself, if necessary, will provide more
13 extensive and detailed testimony as to why the
14 contested conditions are necessary and why a stay
15 of these conditions would result in a potential
16 threat to human health and the environment.

17 Q. Ma'am, at least as of the date of your
18 deposition, you weren't able to identify any
19 other Agency personnel that would have given
20 testimony regarding potential harm to human
21 health or the environment?

22 A. No one specific, no.

23 Q. And protection of the groundwater was the

24 only concern that you had for human health or the

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1 environment at the time you wrote the affidavit,
2 correct?

3 A. Yes.

4 Q. Gwenyth Thompson is your chief groundwater
5 person in the bureau of land permit section, and
6 you looked to her for advice on groundwater,
7 correct?

8 A. For nonhazardous waste management
9 facilities, yes.

10 Q. You rely on her to make groundwater
11 decisions for nonhazardous waste management
12 decisions, correct?

13 A. I rely on her to make recommendations for
14 those decisions, yes.

15 Q. Have you read her deposition?

16 A. No.

17 Q. Do you know whether she has any concerns
18 for groundwater and human health and the
19 environment as it relates to groundwater at the
20 site?

21 A. Not specifically.

22 Q. There were two permit applications in this

23 matter, one in 1996 and one in 1999, correct?

24 A. There were four applications.

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1 Q. I'm sorry. You're right.

2 There was two permit applications in

3 1996, correct?

4 A. I can't give a specific date --

5 Q. All right.

6 A. -- but approximately then.

7 Q. An earlier application or two earlier

8 applications, one for parcel A and one for parcel

9 B, correct?

10 A. Yes.

11 Q. And there were two permit applications

12 submitted in May of 2000, one for parcel A and

13 one for parcel B, correct?

14 A. I can't state the specific day, but yes.

15 MR. LaROSE: Let's back up just one

16 second. Before I forget, you guys were going to

17 remind me, move admission B, the affidavit, into

18 the record.

19 MR. KIM: No objection.

20 HEARING OFFICER HALLORAN: Exhibit B is

21 admitted.

22 BY MR. LaROSE:

23 Q. The application, what I'm going to call
24 the 1996 applications, were denied in September

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1 of 1999, correct?

2 A. I don't know the specific date, but they
3 were denied, yes.

4 Q. Does September 1999 sound like --

5 A. At least approximately, yes.

6 Q. And the fatal flaw in those permits was
7 the request -- petitioners' request for reduction
8 of financial assurance? When I say fatal flaw,
9 the reason why they were denied is what I mean.

10 A. Actually, the fatal flaw was the reduction
11 in cost estimate.

12 Q. That's right. So the record is straight
13 then, the fatal flaw was the petitioners'
14 reduction in the cost estimate -- reduction in --
15 Strike that.

16 The fatal flaw was the petitioners'
17 request for your approval of their reduction in
18 the cost estimate for closure and postclosure
19 care, correct?

20 A. Correct.

21 Q. And they had requested a reduction from
22 approximately, if you remember, \$17 million down
23 to approximately \$7 million, correct?

24 A. Yes.

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1 Q. That permit denial or permit denials were
2 appealed to this Board, correct?

3 Do you remember that?

4 A. No, I do not recall that.

5 Q. Okay. Do you remember that I worked out a
6 procedure with Mr. Kim whereby we would resolve
7 that permit appeal, submit \$17 million in
8 financial assurance under protest and have the
9 permit issued and then later we would argue about
10 a reduction in financial assurance?

11 Do you remember a procedure something
12 like that?

13 A. I don't think I would characterize it like
14 that, but I remember you discussing ways to
15 submit a new application.

16 Q. Okay. When you say you wouldn't
17 characterize it by that, let's break it down.

18 The procedure was going to resolve
19 the prior permit appeals. They were going to be

20 dismissed, right?

21 A. Right.

22 Q. The procedure was that we were going to
23 submit \$17 million in financial assurance and a
24 \$17 million financial assurance cost estimate

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1 under protest, right?

2 A. I didn't know about the protest, but I do
3 know that you were going to submit the higher
4 cost estimate.

5 Q. Did you think we were doing it because we
6 wanted to do it or we agreed with you that it was
7 appropriate for us to do it?

8 MR. KIM: Objection. She's being asked to
9 speculate why Community Landfill was doing
10 something.

11 MR. LaROSE: Well, I'll rephrase the
12 question.

13 BY MR. LaROSE:

14 Q. Ma'am, there's no doubt in your mind that
15 there was a dispute between your permit section
16 and Community Landfill and the city of Morris as
17 to how much financial assurance should have been
18 allowed, right?

19 A. Right.

20 Q. And, in fact, the reason why the initial
21 permit was denied was because you wouldn't
22 approve our request for a reduction from 17
23 million down to seven million, right?

24 A. Right.

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1 Q. So isn't it a fair characterization that
2 the 17 million was submitted under protest?

3 MR. KIM: Again, objection as to the
4 characterization.

5 HEARING OFFICER HALLORAN: I think she can
6 answer.

7 BY THE WITNESS:

8 A. When someone submits an application to me,
9 I assume that they agree with the application
10 they're submitting.

11 BY MR. LaROSE:

12 Q. Didn't the application itself say that the
13 17 million was submitted merely as a means to
14 resolve this matter and without prejudice to our
15 rights to contest the financial assurance?

16 MR. KIM: Objection. Which application
17 are we referring to?

18 MR. LaROSE: Both of them, the 2000
19 application, parcel A, parcel B, cover letters,
20 and executive summary.

21 BY THE WITNESS:

22 A. I did not read that in the application.

23 BY MR. LaROSE:

24 Q. If we had submitted -- Strike that.

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1 Today, if we submit the same request
2 that you approved a reduction of closure and
3 postclosure care cost estimates from 17 million
4 to seven million, what would you do today?

5 MR. KIM: Objection. That's speculative.
6 There's no application before us.

7 HEARING OFFICER HALLORAN: Could you read
8 the question?

9 (Record read.)

10 HEARING OFFICER HALLORAN: I'm going to
11 sustain the Agency's objection.

12 MR. LaROSE: Can I be heard on this point
13 for a second, Mr. Hearing Officer?

14 HEARING OFFICER HALLORAN: Yes, you may.

15 MR. LaROSE: The Agency has filed a motion
16 for partial summary judgment in this case saying

17 that this issue isn't before the Board --
18 properly before the Board because we didn't
19 specifically request a reduction in this
20 application. I know you're familiar with that
21 motion and it has yet to be decided by the Board.

22 Our response was twofold. Number
23 one, we think it's properly before the Board
24 because of the language that we put in the

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1 application, but, number two, we're wasting our
2 time not doing it now because if we just submit
3 another application, they're just going to deny
4 it and we're going to be back here anyway.

5 Our position is, you know, a judicial
6 economy position. I think she should have to
7 answer the question as to what she would do.

8 MR. KIM: Of course, the response is the
9 Agency cannot be expected to make a
10 predetermination on an application that we don't
11 have before us. We can't be asked what are you
12 going to do if I give you this. I haven't given
13 you this. We don't know what's in there, but
14 what are you going to do. Give me an answer and
15 commit to it on the record. That's impossible

16 for us to do. He's asking us to prejudge an
17 application we don't have.

18 MR. LaROSE: That's just it. I'll be
19 happy to make the question a little tighter, but
20 what I'm talking about is it was a narrow, like,
21 14-page submittal requesting a specific
22 reduction. If we submitted that same document
23 today, what would she do with it?

24 HEARING OFFICER HALLORAN: I still think

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1 it's speculative, Mr. LaRose, and I would sustain
2 the respondent's objection.

3 BY MR. LaROSE:

4 Q. The reason why, ma'am, you denied the
5 request for reduction of financial assurance from
6 17 million to seven million in September 1999
7 was because it wasn't a third party cost,
8 right?

9 A. Right.

10 Q. Has your position on that changed?

11 MR. KIM: Objection. Position as to what,
12 her decision on the last application?

13 MR. LaROSE: That's right.

14 BY THE WITNESS:

15 A. On the denied application?

16 BY MR. LaROSE:

17 Q. Yes.

18 MR. KIM: Then I think you need to reword
19 that.

20 HEARING OFFICER HALLORAN: Could you
21 rephrase that, Mr. LaRose?

22 BY MR. LaROSE:

23 Q. Has your position on whether or not using
24 Morris' POTW to dispose of leachate free of

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1 charge would be a third-party cost?

2 MR. KIM: Again, objection. His question
3 was, has your position changed. Is he saying has
4 your position changed as to the decision we made
5 in September of 1999?

6 MR. LaROSE: As to the issue of whether
7 it's a third-party cost or whether it's not,
8 which is the issue that's before this Board.

9 MR. KIM: Then I think he needs to make a
10 reference in his question as to what position
11 he's referring to, and if he's referring to our
12 decision in September '99, he needs to include
13 that in his question.

14 MR. LaROSE: I think that's fair. Let me
15 try.

16 HEARING OFFICER HALLORAN: Thank you,
17 Mr. LaRose.

18 BY MR. LaROSE:

19 Q. You made the decision in September of 1999
20 to deny the permit because we requested a
21 reduction in the postclosure care cost estimate
22 from 17 million to seven million, correct?

23 A. Correct.

24 Q. And did you understand that the request

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1 for the reduction was solely related to the issue
2 of the city of Morris treating the leachate in
3 its POTW free of charge?

4 A. Yes.

5 Q. Okay. And you denied that because you did
6 not believe that using the Morris POTW to treat
7 the leachate free of charge was a third-party
8 cost as required by the regulations, correct?

9 A. I don't know that I'd characterize it that
10 way.

11 Q. Did you characterize it that way in your
12 deposition?

13 A. Something close to that.

14 Q. What did I miss?

15 MR. KIM: Objection. He's making
16 reference to a deposition. If he's got something
17 specific he'd like to cite her to, I think we
18 should hear it.

19 HEARING OFFICER HALLORAN: I agree,
20 Mr. LaRose.

21 BY MR. LaROSE:

22 Q. According to you, Ms. Munie, the request
23 for a reduction in the closure and postclosure
24 care costs was not a third-party cost because

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1 Morris owned the landfill and owned the POTW;
2 isn't that correct?

3 MR. KIM: Objection. If this is testimony
4 from the deposition, I think he needs to identify
5 it.

6 HEARING OFFICER HALLORAN: Sustained.

7 MR. LaROSE: In all due respect, you've
8 both got it wrong. I have to ask her the
9 question first before I can read the deposition.

10 HEARING OFFICER HALLORAN: I thought you
11 asked her the question already.

12 MR. LaROSE: I didn't.

13 MR. KIM: I believe he did too.

14 MR. LaROSE: I didn't. This isn't from
15 her deposition. I'm trying --

16 HEARING OFFICER HALLORAN: Then you're
17 going to have to be a little more clear,
18 Mr. LaRose, because I was under the assumption
19 that you did ask the question and then you went
20 back to your notes and you're starting to ask it
21 again.

22 MR. LaROSE: All I did, sir, was ask her
23 whether she testified in a certain manner in her
24 deposition. She said no. You sustained the

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1 objection. I went back and asked her another
2 question, which I have to do before I can read
3 the deposition into the record. I'm just
4 following the appropriate procedure.

5 MR. KIM: I'll withdraw the motion to --
6 I'll withdraw the objection as long as he's
7 clarified he's not reading from the deposition.

8 HEARING OFFICER HALLORAN: It was not
9 clarified before, sir, but you may proceed.

10 MR. LaROSE: I'm not reading from the

11 deposition.

12 HEARING OFFICER HALLORAN: You may
13 proceed.

14 BY MR. LaROSE:

15 Q. According to you, the third-party cost
16 issue, it wasn't a third-party cost because
17 Morris owned the landfill and owned the POTW,
18 correct?

19 MR. KIM: Objection. If he's going to say
20 according to, he's referring to something. He's
21 going to either have to change the wording of the
22 question or he's going to have to give the
23 citation of what he's --

24 MR. LaROSE: According to her opinion.

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1 I'm asking her the question. Everything I ask
2 her is according to her.

3 MR. KIM: Well, then you can ask it that
4 way, but when you say according to, it begs the
5 question according --

6 HEARING OFFICER HALLORAN: I agree, Mr. LaRose.
7 You're going to have to be a little clearer and
8 please rephrase your question.

9 BY MR. LaROSE:

10 Q. Joyce, in your opinion, was this not a
11 third-party cost because Morris owned the
12 landfill and the POTW?

13 A. Yes.

14 Q. Hadn't you already approved a Morris cost
15 to treat the leachate at their POTW?

16 A. Not that I'm aware of.

17 Q. You didn't approve the Morris cost to
18 treat the -- you did not approve the Morris cost
19 to treat leachate and condensate from the gas
20 collection system at the landfill prior to
21 September 1st, 1999?

22 A. Not that I recall.

23 Q. You may have, but you don't recall?

24 A. Right.

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1 Q. Hadn't you at that time already accepted a
2 reservation of disposal capacity agreement from
3 the city of Morris that included no third-party
4 cost for the disposal of overfill in parcel B to
5 parcel A?

6 A. At what point?

7 Q. Prior to -- Strike that.

8 In the application -- in your

9 decision to grant the permits in this case,
10 August 4th, 2000, you had approved a reservation
11 of disposal capacity agreement from the city of
12 Morris that included no third-party cost for
13 disposal of the overfill in parcel B to be moved
14 to parcel A?

15 A. Except for the cost of moving.

16 Q. Except for the cost of moving, but no
17 disposal costs?

18 A. Right.

19 Q. And for the period from August the 4th,
20 2000, to February 1st, 2001, you accepted that
21 agreement, right?

22 A. Right.

23 Q. Are there any other facilities, ma'am,
24 where municipalities own the solid waste

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1 facilities and own the POTW where you've allowed
2 leachate to go from the solid waste facility to
3 the POTW at no cost and without including that
4 cost in the closure and postclosure care cost
5 estimate?

6 A. Not that I can recall.

7 Q. What about CWLP Landfill in the city of

8 Springfield?

9 Does the city of Springfield own the
10 CWLP Industrial Landfill?

11 A. Not that I know of offhand.

12 Q. Okay. Does the city of Springfield own
13 the POTW, the ash pond where they dispose of
14 their leachate?

15 A. Not that I know of offhand.

16 Q. And does the closure and postclosure care
17 plan for the CWLP site include any cost, third
18 party or otherwise, for the disposal of leachate
19 in the city-owned POTW?

20 A. Not that I know of offhand.

21 Q. When you made the decision that the
22 financial assurance reduction request --
23 financial assurance cost estimate reduction
24 request did not comply with the regulations, you

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1 didn't think it necessary for the division of
2 legal counsel to look at it, did you?

3 A. No.

4 MR. KIM: Objection. Which decision is
5 he -- is this a formal decision he's referring to?

6 HEARING OFFICER HALLORAN: Mr. LaRose.

7 BY MR. LaROSE:

8 Q. The decision -- you made the decision
9 prior to September 1st, actually it was in August
10 of 1999, that the financial assurance, the
11 request to reduce the cost estimate for financial
12 assurance did not meet the regs, right?

13 A. Right.

14 Q. That was your decision, right?

15 A. Yes.

16 Q. And you thought that you were competent to
17 make that decision without seeking any advice
18 from the division of legal counsel, correct?

19 A. Correct.

20 Q. In fact, you instructed Christine Roque to
21 withdraw a request from the division of legal
22 counsel that she had prepared and thought was a
23 good idea, right?

24 MR. KIM: Objection. He's trying to

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1 characterize -- he's asking Ms. Munie to comment
2 on Ms. Roque's characterization.

3 MR. LaROSE: I think he's right. I'll
4 rephrase.

5 BY MR. LaROSE:

6 Q. You asked Ms. Roque to withdraw her
7 request that the division of legal counsel look
8 at the decision?

9 A. Yes.

10 Q. You signed the denial letters for parcels
11 A and B in August -- I'm sorry, September 1st,
12 1999, correct?

13 A. I can't recall the date specifically.

14 Q. Here is what's been previously marked as
15 Exhibit M and Exhibit N.

16 Ma'am, those are the denial letters
17 of September 1, '99, in the parcel A and parcel B
18 applications, correct?

19 A. Correct.

20 Q. And you signed those, correct?

21 A. Yes.

22 Q. Those letters denied -- look on page three
23 of Exhibit M, please.

24 MR. LaROSE: Mr. Hearing Officer, for the

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1 record, Exhibit M appears in the record at parcel
2 A, volume one, page 209 to 211.

3 HEARING OFFICER HALLORAN: Is this Exhibit
4 M as in Mary?

5 MR. LaROSE: M as in Mary. Exhibit N does
6 not appear to be part of the record.

7 BY MR. LaROSE:

8 Q. On page three of this document, you denied
9 the specific August 13th -- page three, paragraph
10 three, you denied the August 13th request that
11 the cost estimate revisions or that the cost
12 estimates for closure and postclosure care be
13 revised, correct?

14 A. Number three on page three, that specific
15 denial point, yes.

16 Q. And if you look at Exhibit N, ma'am, page
17 two carrying onto page three, point number two,
18 it's the exact same denial point, correct? I
19 don't know -- I don't mean to say that the words
20 are exactly the same.

21 It's denying the exact same issue?

22 A. Yes.

23 MR. LaROSE: Okay. Mr. Hearing Officer, I
24 would move for admission of Exhibits M and N into

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1 the record, please.

2 HEARING OFFICER HALLORAN: Mr. Kim.

3 MR. KIM: No objection as to -- which

4 document did you say was included?

5 MR. LaROSE: M is included.

6 MR. KIM: No objection as to M, and no
7 objection as to N as in Nancy.

8 HEARING OFFICER HALLORAN: Exhibit M as in
9 Mary and Exhibit N as in Nancy are
10 admitted.

11 BY MR. LaROSE:

12 Q. I'm going to hand you what's been
13 previously -- did you actually work on reviewing
14 the 2000 application or did you rely on others to
15 do that?

16 A. I rely on others to review the
17 applications.

18 Q. Were you aware that part of the agreement
19 that I have reached with Mr. Kim was that we were
20 going to try and exchange drafts of the financial
21 assurance information and drafts of the permit
22 prior to issuance?

23 A. Yes.

24 Q. The IEPA never issued a draft of the

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1 permits to either CLC or the city of Morris
2 because of time constraints, right?

3 A. It was my understanding we did on parcel
4 B. Didn't we on parcel B?
5 Q. The 2000 permit applications you think we
6 received drafts of?
7 A. The permit application you submitted to
8 us. So, therefore, you would have had the final
9 on the application.
10 Q. The 2000 permits that were issued on
11 August the 4th of 2000 were parcel A and parcel
12 B. You say we saw a draft of that?
13 A. I thought you had seen another draft of
14 parcel B.
15 Q. Well, wasn't the draft we saw for the '99
16 permit application, not the 2000 permit
17 application?
18 A. I didn't know that.
19 Q. Did we see any drafts in the year 2000 of
20 permits at all?
21 A. I did not submit any drafts of permits to
22 you.
23 Q. In the year 2000?
24 A. At any time.

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1 Q. And at no time did we see any draft for

2 parcel -- you think we saw parcel B earlier?

3 A. I thought you saw parcel B, yes.

4 Q. If we saw parcel B, and I'm not sure
5 whether we saw particle B or parcel A, we never
6 saw the other one?

7 A. Okay.

8 Q. Is that right?

9 MR. KIM: Objection. He's asking Ms. Munie
10 to comment on what they did or did not see,
11 Community Landfill.

12 MR. LaROSE: Well, I guess that's fair.

13 BY MR. LaROSE:

14 Q. In 2000, you showed us no drafts of any
15 permits, correct?

16 A. I did not show you any draft of any
17 permits.

18 Q. In fact, the 2000 -- the August 4th, 2000,
19 permits were signed on August 4th, 2000, and
20 faxed to us that afternoon?

21 A. Yes.

22 Q. You think we saw a draft permit of parcel
23 B previously?

24 A. I believe my staff faxed you one. That

1 was my understanding.

2 Q. Okay. If your staff faxed us one of them,
3 is it true then that they didn't fax us the other
4 one?

5 A. I'm not aware that it happened or it did
6 not happen.

7 Q. Okay. Is it true, ma'am, that granting
8 the permit and regulated a landfill pursuant to
9 the 811 regulations was better environmentally
10 than leaving parcel A the way it was?

11 A. Granting the permit doesn't change how the
12 landfill itself is left, how it sits there.

13 Q. Okay. Yes or no, ma'am, was granting the
14 permit better environmentally than leaving old
15 parcel A the way it was?

16 MR. KIM: Objection. Which permit are we
17 referring to, the 811 permit?

18 MR. LaROSE: There's only one permit that
19 got granted, the August 4th, 2000, permit for
20 parcel A.

21 BY MR. LaROSE:

22 Q. Let me ask it just so that you're sure.

23 Yes or no, was granting the August
24 4th, 2000, permit for parcel A better

1 environmentally than leaving old parcel A the way
2 that it was?

3 A. I have to answer only yes or no?

4 Q. Right now, you do.

5 MR. KIM: If the witness is having this
6 difficulty, maybe Mr. LaRose can rephrase.

7 MR. LaROSE: I really don't know how I
8 can. I mean, I'll try.

9 BY MR. LaROSE:

10 Q. Is it your opinion, as an environmental
11 professional, who signed and granted this permit
12 that granting the permit, if the things that are
13 required by the permit are done, will protect the
14 environment more than just leaving the landfill
15 the way that it was?

16 A. Yes.

17 Q. There's a condition in the permit
18 requiring that leachate levels must be maintained
19 below the static groundwater levels.

20 Are you aware of that?

21 A. Yes.

22 Q. Are you aware that significant portions of
23 parcel A -- that four significant portions of
24 parcel A, the bottom of the landfill is above the

1 static ground level?

2 A. Yes.

3 Q. Would this condition be unreasonable to
4 require CLC to comply with for those portions of
5 parcel A where the bottom of the landfill is
6 above the static groundwater level?

7 A. It would seem unreasonable, yes.

8 Q. It would seem unreasonable or it is
9 unreasonable? How could they possibly comply
10 with that?

11 MR. KIM: I'm going to object only to the
12 extent that -- again, I'm just going to restate
13 what we said at the beginning of the hearing.
14 We've already conceded that this is a poorly
15 worded condition, and if he'd like to ask the
16 witness how best to word the condition, that
17 might be more helpful.

18 MR. LaROSE: I don't know, but if they're
19 conceding it, then I wonder why it only seems
20 unreasonable instead of it is unreasonable.

21 HEARING OFFICER HALLORAN: You may ask
22 that question, Mr. LaRose. Overruled.

23 BY MR. LaROSE:

24 Q. Ma'am, it's not just unreasonable. For

1 those portions of the landfill where the bottom
2 of the landfill is above the static groundwater,
3 it's impossible to comply with, isn't it?

4 MR. KIM: Objection. That's a little
5 argumentative.

6 BY MR. LaROSE:

7 Q. Ma'am?

8 HEARING OFFICER HALLORAN: She can answer
9 if she's able.

10 BY THE WITNESS:

11 A. It would seem -- it would seem that way,
12 yes.

13 BY MR. LaROSE:

14 Q. There is a condition in the permit that
15 there's to be no waste placed in the landfill
16 until the separation layer is built.

17 Are you familiar with that?

18 A. No.

19 Q. Take a look at the parcel A permit, which
20 is Exhibit R. Look at page three, condition 2A.

21 Why don't you read 2A into the
22 record, Roman numeral one, condition 2A?

23 A. No part of the unit shall be placed into
24 service or accept waste until an acceptance

1 report for all the activities listed below has
2 been submitted to and approved by the Illinois
3 EPA as a significant modification SIGMOD pursuant
4 to 35 IAC, Section 811.505(d) and 813.203.
5 Subparagraph A is preparation of a separation
6 layer to design parameters.

7 Q. So doesn't that say that we can't put waste
8 in the landfill until we submit a report to you
9 and obtain a SIGMOD permit for the construction
10 of the separation layer?

11 A. If that's the only areas where you have
12 capacity left, yes.

13 Q. Is it unreasonable -- Strike that.

14 Do you know whether the construction
15 plan call for the placement of waste to actually
16 build the separation layer?

17 A. Not offhand.

18 MR. LaROSE: Can we go off the record for
19 a second?

20 HEARING OFFICER HALLORAN: Yes. Off the
21 record.

22 (Discussion had
23 off the record.)

24 BY MR. LaROSE:

1 Q. I'm going to hand you what's already been
2 admitted as Exhibit WW and ask you to take a look
3 at that, please?

4 A. Okay.

5 Q. Read to yourself the last full paragraph
6 on that page and tell me when you're done.

7 A. I'm done.

8 Q. Okay.

9 MR. KIM: Can you allow me just a moment
10 to find it?

11 MR. LaROSE: No problem. It's WW

12 BY THE WITNESS:

13 A. It's page 0054 of the record.

14 MR. LaROSE: 0054 of --

15 MR. KIM: We have it.

16 BY MR. LaROSE:

17 Q. Ma'am, that's an excerpt from the
18 construction plan that was approved as part of
19 the May 2000 permit -- parcel A permit
20 application.

21 Didn't they say in the construction
22 plan that they were going to place waste or fill
23 materials to construct and achieve an invert in

24 the separation layer?

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1 A. Can you ask that question again?

2 Q. Yes, ma'am.

3 Doesn't this document say that
4 they're going to place waste or fill materials in
5 areas that are lower than the base grade to
6 achieve a smooth and uniform subgrade for the
7 placement of the separation layer?

8 A. Yes.

9 Q. So wouldn't it be unreasonable to prevent
10 them on condtion I2A petition from placing waste
11 before they build a separation layer if you
12 approved a construction plan that allowed the
13 placement of waste in order to build the
14 separation layer?

15 A. Are we talking about condition I2A.

16 Q. Yes.

17 A. That does not deny the placing of waste.
18 It denies the acceptance of waste. It does not
19 allow the acceptance of waste until that layer
20 has been built.

21 Q. You mean that they're not supposed to be
22 accepting waste at parcel A right now?

23 Is that what you're saying?

24 A. Not in areas that require this separation

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1 layer to be built prior to accepting of waste.

2 Q. So let me see if I get this straight.

3 They can accept waste in areas -- I don't even

4 know if I could ever get this straight. Strike

5 that.

6 When you say accepting waste, do you

7 mean accepting waste through the gate of the

8 facility?

9 A. Yes.

10 Q. Ma'am, if they haven't built the

11 separation layer and you're saying they can't

12 accept waste through gate of the facility, where

13 are they going to get the waste to build the

14 separation layer?

15 A. According to the proposal, it's the waste

16 that is existing.

17 Q. It doesn't say that.

18 It says placing waste or fill

19 materials, correct?

20 A. The sentence before there says that the

21 existing landfill will be regraded, that this

22 process will involve stripping off portions of
23 that area that are higher than the base grade.

24 Q. You read it a little tricky there, didn't

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1 you? It says stripping off portions of in place
2 cover.

3 It doesn't say anything about waste,
4 does it?

5 A. That's how I would interpret this
6 paragraph.

7 Q. Let me ask you a question.

8 If they accept waste through the gate
9 right now and put that waste on top of the old
10 landfill in order to build the invert, are they
11 in violation of condition I2A?

12 A. If they don't have areas of operating
13 authorization other than areas above this
14 separation layer, then that would be in violation
15 of this permit.

16 Q. Okay. And then they would have to shut
17 down and not accept waste necessary to build the
18 next separation layer, correct?

19 A. If they need waste to build the next
20 separation layer, then yeah.

21 Q. They're out of business, huh?
22 A. I wouldn't say they're out of business.
23 I'd say that they can't accept waste.
24 Q. But isn't that what they do?

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1 A. But a place can build part of a liner that
2 will allow them to accept further waste and not
3 be closed down.
4 Q. Except in this condition, in this case
5 they told you that they need waste to build the
6 liner?
7 A. That's not how I read this paragraph, and
8 I must admit that I only have the paragraph in
9 front of me. If the rest of your plan says that
10 --
11 Q. If the rest of the plan says that they
12 need waste -- additional waste in order to build
13 the invert elevation for the separation layer,
14 then it would be unreasonable to prevent them
15 from placing waste prior to building the
16 separation layer, wouldn't it?
17 A. No.
18 Q. Just so we get this finally clear, if
19 right now there is an area that needs a

20 separation layer built and they have no waste on
21 the site to build it with, they cannot accept
22 waste to build that separation layer?

23 A. No.

24 Q. Have you ever issued a significant

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1 modification permit to a solid waste landfill
2 that did not pass the groundwater impact
3 assessment?

4 A. Only this one that I'm aware of.

5 Q. What about the Litchfield site, did they
6 pass the groundwater impact assessment?

7 A. Their alternate design passed the
8 groundwater impact assessment.

9 Q. Their alternate design passed the model?

10 A. Yes. A facility has to pass the model to
11 receive a permit.

12 Q. Okay. So this facility, Morris Community
13 Landfill, didn't pass the initial groundwater
14 impact modeling assessment, correct?

15 A. Could you rephrase that?

16 Q. Yeah.

17 Did Morris Community Landfill pass
18 the groundwater impact assessment?

19 A. You told me it didn't.
20 Q. Did they?
21 A. You asked me many times in my deposition
22 to believe you. So I believe you that it did not
23 pass the model.
24 Q. Okay. Did it pass the groundwater impact

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1 assessment based on its remediation plan then?
2 A. You told at me it didn't pass the model.
3 So I'm assuming it didn't. I did believe you.
4 Q. Okay. You just told me something, though,
5 that threw me a little bit.
6 You said that I can't issue a permit
7 to a facility that doesn't pass the groundwater
8 impact assessment, right?
9 A. Right.
10 Q. So did we pass it or not?
11 A. You told me it didn't pass. If you're
12 asking me have I done an independent assessment
13 of that since you told me that in deposition, no.
14 Q. So you don't know whether we passed the
15 groundwater impact assessment or not?
16 A. Not -- I have not made an independent
17 verification of that, no.

18 Q. Is there a way that a landfill could fail
19 the model, but pass the assessment?

20 Is there a modeling program that you
21 plug numbers into to see if they pass the
22 assessment?

23 A. You're using one term interchangeably and
24 saying --

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1 Q. Apparently, I am.

2 A. -- you are not allowed -- and can't use
3 the other.

4 Q. Apparently, I am.

5 A. So I don't understand the question.

6 Q. Okay. What's the groundwater impact
7 assessment?

8 A. The groundwater impact assessment is an
9 evaluation of a facility using groundwater
10 modeling to determine that the facility will not
11 increase the concentrations of contaminants in
12 the groundwater within 100 years within 100 feet
13 of the facility.

14 Q. Okay. Is there a way that a -- now, the
15 groundwater impact assessment uses groundwater
16 modeling, which is a computer program, right?

17 A. Many computer programs, yes.
18 Q. Is there a way that a landfill can fail
19 the modeling, fail the computer portion of this,
20 but still ultimately pass the assessment?
21 A. Fail the modeling, no.
22 Q. You said that Litchfield's something,
23 their alternate groundwater program or something
24 like that, passed the groundwater impact

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1 assessment.
2 What was the term that you used?
3 A. Alternate design.
4 Q. What's an alternate design?
5 A. When the minimum design fails on initial
6 review, then facilities will design an alternate
7 liner or an alternate design, an alternate to
8 their liner, which will allow them to pass the
9 GIA.
10 Q. Okay. Now, I think we're getting to it.
11 Litchfield failed the initial GIA, right?
12 A. Litchfield's minimum design did not pass
13 the GIA.
14 Q. Okay. Then they had an alternate or a
15 souped up design that ultimately did pass the

16 GIA, right?

17 A. Yes.

18 Q. You said their alternate design passed the
19 GIA, did it or did it not?

20 MR. KIM: She answered. I think you
21 didn't hear it.

22 MR. LaROSE: I didn't hear it. I'm sorry.

23 MR. KIM: She said yes.

24 BY THE WITNESS:

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1 A. Yes.

2 BY MR. LaROSE:

3 Q. In Litchfield's case, is it the case of an
4 older landfill that's going to be covered by a
5 separation layer and then waste placed on top of
6 the separation layer?

7 A. Offhand, I don't know the design of the
8 actual landfill.

9 Q. Did you sign that permit?

10 A. Offhand, I can't tell you I did.

11 Q. Do you know whether the Litchfield site is
12 required to remove leachate from the old waste
13 section of the landfill?

14 A. Offhand, I can't say.

15 Q. CLC is required to remove waste -- excuse
16 me, remove leachate from the old section of
17 parcel B, according to your permit, by February
18 1, right?

19 A. I can't say that offhand.

20 Q. The permit is right in front of you. Take
21 a look.

22 A. Parcel B?

23 Q. Parcel A.

24 MR. KIM: Can you direct her attention to

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1 what you're referring to?

2 MR. LaROSE: No. I would. I'm not trying
3 to be -- she knows better in here where that
4 language is than I do. Mike, could you help us?

5 MR. McDERMONT: Certainly, sir.

6 MR. LaROSE: Thank you.

7 MR. KIM: Which condition are you
8 referring to?

9 MR. LaROSE: The condition requiring us to
10 remove leachate by February 1.

11 MR. KIM: I think that's -- I believe that
12 is condition Roman numeral VII, number seven.

13 THE WITNESS: No. That condition does not

14 require this.

15 MR. KIM: I'm sorry.

16 BY MR. LaROSE:

17 Q. Ma'am, I think we've got it. Take a look
18 at page 30.

19 A. Yes.

20 Q. Seven, seven.

21 A. Okay.

22 Q. Doesn't that condition require us to have
23 installed a permitted -- submit a permit to the
24 IEPA by February 1, 2000, all of the leachate

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1 management devices?

2 A. Yes.

3 Q. Including leachate management devices to
4 withdraw leachate from the old waste in parcel A,
5 right?

6 A. I can't tell that specifically from this
7 condition.

8 Q. Okay. As far as you recall, there isn't
9 any distinction from us removing waste just from
10 the new area of the landfill versus the
11 historical fill area?

12 A. Removing waste, no.

13 Q. I'm sorry. Removing leachate.
14 A. As far as I know, no.
15 Q. Okay. There is a reservation of disposal
16 capacity agreement in this case, correct?
17 A. Yes.
18 Q. I'm going to hand you, which is my only
19 copy of this because I don't know what the heck I
20 did with the other copies, Exhibit O.
21 A. Okay.
22 Q. That's previously been admitted into the
23 record. That's the reservation of disposal
24 capacity agreement, correct, ma'am?

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1 A. That's what it's titled, yes.
2 Q. But that's what it is?
3 A. Okay.
4 Q. Right?
5 A. I've never specifically read this
6 document, and that's what it's titled, yes.
7 Q. But the permit that you wrote on parcel A
8 references that document, and that's what allowed
9 us to have until February 1st to move the waste,
10 right?
11 A. I don't actually write the permits.

12 Q. The permit that you signed, ma'am?
13 A. Yes.
14 Q. The permit that you issued?
15 A. Yes.
16 Q. Did you ever read it?
17 A. Yes.
18 Q. Okay. With that document, CLC and the
19 city of Morris were agreeing to reserve space in
20 parcel A to accommodate the overflow in parcel B
21 if, in fact, the Agency ever needed that space,
22 correct?
23 A. Correct.
24 Q. That agreement is still in force and

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1 effect as we sit here today, is it not?
2 A. As far as I'm aware, yes.
3 Q. The permit requires us to move the waste
4 from parcel A to parcel B before or by February
5 1, correct?
6 A. I believe that's correct.
7 Q. Okay. Exhuming up the 475,000 yard --
8 cubic yards of waste and moving that from one
9 location to across the street could cause some
10 concerns about human health and the environment

11 in and of itself, could it not?
12 A. If done incorrectly, yes.
13 Q. Would you know how to go about doing it in
14 a safe and proper manner?
15 A. Not offhand.
16 Q. Even if it's done correctly, it could
17 still cause some environmental and health
18 problems, couldn't it?
19 A. Anything could happen, yes.
20 Q. When you exhume waste like this, there's
21 always the potential for dust and particulate
22 emissions, correct?
23 A. Done incorrectly, yes.
24 Q. Even if it's done correctly, exhuming this

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1 level of waste could create some dust, couldn't
2 it?
3 A. Anything could happen, yes.
4 Q. And if you dig up this volume of waste,
5 you could have a problem with odor, could you
6 not?
7 A. Anything could happen, yes.
8 Q. And if you dig up this volume of waste,
9 you could have a problem with blowing litter,

10 could you not?

11 A. Anything could happen, yes.

12 Q. And causing -- do you have any idea how
13 many trucks it would take to move 475,000 cubic
14 yards from parcel A across -- from parcel B
15 across to A so we're moving it to parcel A?

16 A. I haven't done that calculation nor have I
17 seen the calculation.

18 Q. Do you know how many cubic yards a typical
19 dump truck holds?

20 A. I dump truck, no, not offhand.

21 Q. What about a typical garbage truck?

22 A. Not offhand.

23 Q. What about a garbage transfer truck?

24 A. Twenty cubic yards.

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1 Q. So if we divide 20 cubic yards into
2 475,000, that ought to give us the number of
3 trucks it's going to take to potentially move
4 this volume of waste across the street, right?

5 A. That would be one way to do a calculation.

6 Q. Okay. And do you find any concerns in
7 having that volume of traffic go across a busy
8 county highway?

9 A. Do I have any concerns?
10 Q. Yes.
11 A. No.
12 Q. When you drove by the landfill, were you
13 driving the car?
14 A. No.
15 Q. Do you remember what the speed limit was?
16 A. No.
17 Q. The permit says that we can't leave the
18 waste in place, correct?
19 A. It says you have six months to move it.
20 Q. Ma'am, yes or no, does the permit say we
21 can't leave the waste in place?
22 A. Ultimately, no.
23 Q. The permit says that we're supposed to
24 move it by February 1, correct?

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1 A. Correct.
2 Q. At the same time, we're supposed to build
3 a separation layer, build a leachate tank, build
4 a leachate collection system, connect the sewer,
5 and start the removing leachate; isn't that
6 correct?
7 A. Yes.

8 Q. Isn't it that true that you didn't give
9 CLC and Morris any more time to site the waste in
10 place through local siting because you thought
11 they already had enough time to do it, ma'am?

12 A. Yes.

13 Q. Okay. Did you expect them to go to siting
14 before they received the significant modification
15 permit from the agency?

16 A. If they wanted to leave it in place, yes.

17 Q. Before the significant modification,
18 wasn't the IEPA and the attorney general claiming
19 CLC was operating illegally and without a permit?

20 MR. KIM: Objection. This goes to the
21 matters presumably raised in the enforcement
22 case, and that's not what is at issue here.

23 HEARING OFFICER HALLORAN: Mr. Halloran,
24 she's saying the reason why we didn't get this is

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1 we had enough time. I'm asking her -- then I
2 asked her whether she expected us to do it before
3 we got the SIGMOD, and she said presumably I
4 should. I think I should be able to inquire at
5 to what her very agency, including the director
6 of her agency, was saying about us at that time.

7 It really ties into what we were saying
8 yesterday.

9 MR. KIM: And, again, the objection here
10 is if he wants to limit her questioning to her
11 duties under the review of this permit
12 application, that's one thing. If he's asking
13 her about enforcement matters, I think that's
14 entirely noted. The two matters should not be
15 intertwined.

16 HEARING OFFICER HALLORAN: Objection,
17 sustained.

18 BY MR. LaROSE:

19 Q. Do you think that they would have had any
20 chance of being successful with the siting
21 hearing without the SIGMOD and with the EPA
22 claiming that they were operating illegally?

23 MR. KIM: Objection. That's speculative.

24 BY MR. LaROSE:

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1 Q. Ma'am?

2 HEARING OFFICER HALLORAN: Mr. LaRose, do
3 you want to comment on that?

4 MR. LaROSE: I think it's really the same
5 thing, Mr. Halloran.

6 HEARING OFFICER HALLORAN: The same thing
7 as what?

8 MR. LaROSE: The same thing as the last
9 objection. She's saying we had enough time, but
10 they're not even taking into any consideration
11 the factors that would go into a siting hearing.

12 HEARING OFFICER HALLORAN: Geanna, could
13 you read that back?

14 (Record read.)

15 MR. KIM: She's being asked to speculate
16 as to the likelihood of success on the part of
17 the landfill.

18 HEARING OFFICER HALLORAN: I agree.
19 Sustained, same as the last.

20 BY MR. LaROSE:

21 Q. Ma'am, as we sit here today, we haven't
22 moved the waste, and we have a reservation of
23 disposal capacity agreement, right?

24 A. Yes.

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1 Q. If we don't move this waste until, say,
2 December 2001 or obtain siting until December
3 2001, you'll still have a binding reservation of
4 disposal capacity agreement in place, correct?

5 A. Correct.

6 Q. So that if by January 2002 CLC walks away
7 from the landfill, you still have free disposal
8 space where the state can move it right across
9 the street, right?

10 A. Right.

11 MR. LaROSE: This is -- I've only got a
12 few more minutes, but it's not just a minute or
13 two. Is this a good time to take a five-minute
14 break?

15 HEARING OFFICER HALLORAN: How does
16 everyone feel?

17 THE WITNESS: I'm fine.

18 MR. LaROSE: I am too. McDermont just
19 whispered to me that the room needs a break.
20 I've got a few more minutes.

21 HEARING OFFICER HALLORAN: We'll
22 continue.

23 BY MR. LaROSE:

24 Q. CLC asked in there 2000 permit application

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1 for five days' leachate storage in a permit that
2 you signed and said, no, you get one day leachate
3 storage, right?

4 A. No.

5 Q. I said it backwards, didn't I?

6 A. Yes.

7 Q. I'm getting tired.

8 CLC asked for one day's leachate
9 storage and the permit that you signed said you
10 don't get one day, you must have five days?

11 A. Yes.

12 Q. Okay. The permit calls for a direct sewer
13 connection to the Morris POTW, correct?

14 A. It approved that, yes.

15 Q. According to you, a sewer connection to
16 the Morris POTW and another means, like a tanker
17 truck, to transfer the leachate to the Morris
18 POTW would not satisfy the regulations to allow
19 one day's storage, correct?

20 A. Correct.

21 Q. According to you, two POTWs are necessary
22 connections -- Strike that.

23 Approval for treatment and disposal
24 at two POTWs is necessary in order to qualify for

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1 the reduced one-day leachate storage, right?

2 A. With a conveyance system to either one,

3 yes, to both.

4 Q. Conveyance to both, right?

5 A. Yes.

6 Q. So we've got the Morris POTW, right?

7 A. Yes.

8 Q. Approval to go to the Morris POTW, right?

9 A. Yes.

10 Q. It wouldn't matter if we had a sewer and a
11 train and a tank truck and a helicopter and 15
12 other means to get it to Morris, we still
13 couldn't have one day's leachate storage
14 according to you because it's only one POTW,
15 right?

16 A. Correct.

17 Q. The regulation, 811.309(d), doesn't say
18 that you have to have two POTWs, does it?

19 A. Can I see the regulation?

20 Q. Sure.

21 MR. LaROSE: This is Exhibit RR that I
22 don't know if we entered this into the record or
23 if we took judicial notice of it or whatever. I
24 don't have another copy.

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1 MR. KIM: I think it was entered.

2 HEARING OFFICER HALLORAN: Yeah. I think
3 it was entered just for convenience, nothing
4 else.

5 BY MR. LaROSE:

6 Q. I'm specifically referring to 811.309(d),
7 any portion of d, but certainly d6 doesn't say
8 the words to publicly owned treatment works or
9 two POTWs, does it?

10 A. No, it does not.

11 Q. Are you familiar with the regulation under
12 811.309(e)?

13 A. Yes.

14 Q. Those are the standards for discharge to
15 off site treatment works, right?

16 A. Yes.

17 Q. Subparagraph e of that, doesn't it say
18 that if you have a direct connection for it --
19 doesn't it mean that if you have a direct
20 connection, you don't have to have leachate
21 storage?

22 A. No.

23 Q. Okay. So your interpretation of that is
24 if you have a direct connection you have to have

1 leachate storage too?

2 A. Yes.

3 Q. What portion of 809 -- I mean,
4 811.309(e)(6) do you interpret to mean that you
5 have to have storage capacity if you have a
6 direct connection?

7 A. The storage system shall meet the
8 requirements of subsection d.

9 Q. Okay. Except it says where leachate is
10 not directly discharged into the sewerage system,
11 the operator shall provide capacity.

12 In this case, we were directly
13 discharging it into the sewer system, were we
14 not?

15 A. Yes.

16 Q. Okay. So to the extent that you directly
17 discharged it into the sewerage system, you don't
18 have to have storage, do you?

19 MR. KIM: He's asking for her
20 interpretation?

21 MR. LaROSE: Yes.

22 HEARING OFFICER HALLORAN: Rephrase the
23 question.

24 MR. LaROSE: I'll try one more time.

1 BY MR. LaROSE:

2 Q. Ma'am, pursuant to 811.309(e)(6), is it
3 your interpretation that you need to have storage
4 even if you directly discharge to a sewer system?

5 A. Yes.

6 Q. Based on what? What language of
7 809.311(e)(6) are you relying on when you say
8 that?

9 A. The storage system shall meet the
10 requirements of subsection d, the same as before.

11 Q. But in order to rely on that language,
12 don't you have to completely ignore the first
13 sentence that says where leachate is not directly
14 discharged to a sewerage system, ma'am?

15 A. Yes, sir?

16 Q. Is that the answer?

17 A. No. I thought you were directing my
18 attention. I'm sorry.

19 Q. No. I'm wondering if you're going to
20 answer the question. I know it's a tough one,
21 but you can't read the last sentence of this --
22 maybe this is a better way to say it.

23 You can't read the last sentence of
24 811.309(e)(6) without incorporating the first

1 sentence, can you? It's all part of Section e,
2 isn't it?

3 A. But Subsection d still exists, and there's
4 nothing in Subsection d that exempts someone who
5 has off site-- has direct
6 discharge into a sewer system from that storage
7 requirement.

8 Q. Okay. Except 811.309(e) says where
9 leachate is not directly discharged into a
10 sewerage system, the operator shall provide
11 storage.

12 Isn't it the corollary of that,
13 ma'am, where it is, you don't have to provide
14 storage?

15 MR. KIM: Objection. This is
16 argumentative. He's asked the same question
17 several times.

18 HEARING OFFICER HALLORAN: It has been
19 asked and answered.

20 BY MR. LaROSE:

21 Q. So regardless of how I ask the question,
22 your interpretation of 811.309(e)(6) is that
23 storage is required regardless of whether it's a
24 sewer or any other transport system to the POTW?

1 A. Yes.

2 Q. Nothing I could do to change your mind on
3 that --

4 A. No.

5 Q. -- right?

6 A. Right.

7 Q. Have you ever approved a SIGMOD permit
8 where there was one-day leachate storage where
9 only one POTW was connected?

10 A. Not that I'm aware of.

11 Q. I'm going to hand you what's been
12 previously marked as Exhibit ZZ.

13 Ma'am, is that a permit that you
14 signed for the Rochelle landfill?

15 A. Yes.

16 Q. You signed that permit a little bit over a
17 month ago, December the 13th, 2000?

18 A. Yes.

19 Q. Referring your attention to page 20,
20 ma'am --

21 A. Uh-huh.

22 Q. -- look at page 20 and condition number
23 seven on page 20. You allowed them to have one
24 day's leachate storage, correct?

1 A. Yes.

2 Q. And they have a connection to a POTW,
3 correct?

4 A. Yes, and leachate hauling.

5 Q. To one POTW, correct?

6 A. I can't say that from this permit.

7 Q. This permit doesn't tell you whether they
8 have only one POTW?

9 A. Right.

10 Q. If it does -- if they do only have within
11 one POTW connection, then did you, in fact, issue
12 a permit on December the 13th, 2000, where a
13 landfill had two means to go to the same POTW?

14 MR. KIM: Objection. She's just testified
15 that without knowing the background information,
16 she can't give a complete answer.

17 MR. LaROSE: In response to that, sir,
18 this is the very information we asked for in the
19 subpoena. Okay. They gave us the permits. We
20 can't find the leachate permit. This is the very
21 reason why we need this stuff. She can't hide
22 behind that.

23 MR. KIM: This is not her hiding behind
24 anything. This is -- we can go back and reargue

1 the merits of the motion, although that's been
2 done, but, again, the reason we didn't provide it
3 was not because we were trying to hide anything.
4 It's because we didn't have enough time.

5 What my objection is is that she just
6 testified she doesn't have the complete package.
7 She can't give a definitive answer to his
8 question without seeing that.

9 HEARING OFFICER HALLORAN: I will sustain
10 the respondent's objection.

11 BY MR. LaROSE:

12 Q. Ma'am, the third line of that says 10,000
13 gallons is now required in conjunction with
14 maintaining a permit for direct discharge to the
15 sanitary sewer system.

16 Doesn't that imply to you that there
17 was one permit and one system?

18 A. For that before you get to the and hauling
19 capability.

20 Q. And hauling capability to where, to the
21 POTW that has the permit, correct?

22 A. Possibly.

23 Q. Okay. So you don't know whether or not
24 there was two permitted POTWs for the Rochelle

1 Landfill?

2 A. No, I do not.

3 Q. Did anybody look for the -- did anybody at
4 the IEPA look for the NPDES permits or permit for
5 the Rochelle Landfill pursuant to the subpoenas
6 in this case?

7 A. I don't think we had time to go that far
8 down your list.

9 Q. So the answer is no?

10 A. Not pursuant to this subpoena, no.

11 Q. As you sit here today, you don't know
12 whether there's one permit or two permits -- one
13 permitted POTW or two?

14 A. Right.

15 Q. If there was only one, did you make a
16 mistake?

17 A. Yes.

18 Q. CLC's consultant concluded that the site
19 was undermined.

20 Does the Agency agree with that
21 conclusion?

22 A. Yes.

23 Q. You said dig the trench and -- dig the

24 groundwater trench and don't use the Wells in the

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1 permit, right?

2 A. There is a denial of the wells and it
3 required the trench, yes.

4 Q. There was a denial of the wells and a
5 requirement to construct the trench and actually
6 a requirement to decommission the wells, correct?

7 A. I believe so, yes.

8 Q. Did you review the pump test on the
9 trench?

10 A. No.

11 Q. Do you know if there would be more
12 flexibility by using the vertical well system
13 versus the groundwater -- horizontal groundwater
14 trench?

15 A. No.

16 MR. LaROSE: If I could just have a minute
17 to review my notes, I might be off the record.

18 HEARING OFFICER HALLORAN: Take your time.

19 Off the record.

20 (Discussion had
21 off the record.)

22 HEARING OFFICER HALLORAN: We're back on

23 the record. It's approximately 4:15. Mr.
24 LaRose.

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1 MR. LaROSE: I don't have any further
2 questions at this time.

3 HEARING OFFICER HALLORAN: Thank you. Mr.
4 Kim, cross?

5 MR. KIM: Okay.

6 C R O S S - E X A M I N A T I O N

7 by Mr. Kim

8 Q. I will try and move expeditiously if you
9 don't understand a question or don't understand
10 what subject I'm talking about, let me know.

11 A question came up about whether or
12 not you've reviewed a specific document, and I'm
13 referring to the reservation of disposal capacity
14 agreement, which is Exhibit O.

15 Was that document included as part of
16 the 48, 50-page permit that you signed for parcel
17 A?

18 A. Part of the permit, no.

19 Q. Where would that document have been?

20 A. In the application.

21 Q. Do you review all applications before the

22 sign the permits?

23 A. No.

24 Q. You were also asked about a decision and,

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1 generally speaking, decisions you might make
2 concerning interpretation of regulations that
3 would be applicable to conditions that you're
4 signing.

5 Do you make those kind of decisions
6 as a part of your job duties?

7 A. Yes.

8 Q. Is that an uncommon thing for you to do?

9 A. No.

10 Q. And in an average year, if there is such a
11 thing, can you give me a ballpark figure as to
12 how many permits -- when I say permits, I'm
13 referring to solid waste nonhazardous last
14 landfill permits -- how many permits you sign in
15 a year?

16 A. Just nonhazardous landfills?

17 Q. Yes.

18 A. A couple hundred.

19 Q. Do you know how many denials you sign in a
20 given year?

21 A. Less than a dozen.
22 Q. Okay. There was some questioning
23 concerning the agreement that was reached between
24 the Illinois EPA and Community Landfill as to

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1 exchange of documents and so forth which would
2 lead up to the issuance of the SIGMOD permits.

3 Do you remember that?

4 A. Yes.

5 Q. Is your recollection clear on exactly what
6 drafts may or may not have been sent to Community
7 Landfill?

8 A. Not specifically. I didn't send any of
9 the drafts.

10 Q. Okay. And as far as any agreement that
11 might have been reached, was it your
12 understanding that there was a hard and fast
13 requirement for a deadline imposed upon the EPA
14 to provide a draft permit before you would sign
15 the permit?

16 A. No.

17 Q. There was some testimony elicited
18 concerning the separation layer construction --
19 just a moment. I'm going to skip that question

20 for now.

21 Once again, this goes, again, towards
22 the depth of your review of applications before
23 you sign the permits that are based upon the
24 applications.

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1 Did you review the permit application
2 for parcel A and parcel B submitted by Community
3 Landfill in early 2000 specifically as to their
4 groundwater impact assessment results?

5 A. No.

6 Q. What did you base any conclusions you
7 might have reached as part of signing the permit
8 as far as the subject of groundwater impact
9 assessment?

10 What did you base your knowledge of
11 whether they did or did not pass it?

12 A. Reviewer's notes, discussions with the
13 groundwater assistance unit manager.

14 Q. And I'm not sure exactly what the
15 transcript is going to look like when we get this
16 back, but you and Mr. LaRose were going back and
17 forth, and some of the terminology that was used
18 when you were referring to GIAs and minimum

19 designs and alternative designs, did you -- was
20 his use of those terms the way you use those
21 terms?

22 A. No.

23 Q. As far as your review of the landfill
24 applications and when you sign off on landfills,

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1 how do you -- how is each landfill application
2 treated or reviewed in terms of, you know,
3 comparing them to the one just before and the one
4 just after?

5 A. The reviewers use standard operating
6 procedures for reviewing applications. They
7 generally would not review the permit application
8 for a different facility that they just issued or
9 they just approved. They would not be looking at
10 those specific permits.

11 Q. What specifically would they be looking
12 at?

13 A. They would be looking at the facility, the
14 previous permits for that facility, the
15 applications for that facility. They would also
16 be looking at standard operating procedures, the
17 regulations themselves, and anything that fell

18 outside of standard procedures they would be
19 going to their unit manager to discuss.

20 Q. Okay. In terms of local siting approval,
21 based upon your understanding of the
22 Environmental Protection Act and the Pollution
23 Control Board regulations, is there any
24 requirement that the Illinois EPA approve a party

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1 seeking -- I'm sorry. Let me rephrase that.

2 Must a party wishing to receive local
3 siting approval from a local unit of government
4 first come to the EPA to receive the EPA's
5 approval before they do that?

6 A. Specifically not.

7 Q. And what is the EPA's role in terms of
8 local siting procedures?

9 A. We receive a notice when they submit the
10 application to the local unit of government.
11 Then after all hearings and decisions are made,
12 if they have approval, we will receive that
13 approval with the application when it comes in.

14 Q. Do we make decisions on local siting
15 approval, whether or not to grant or not to grant
16 the siting approval?

17 A. No.

18 Q. Do we play any role in the local siting
19 approval proceedings?

20 A. No.

21 Q. You also testified on the question of
22 whether or not the waste, the overhead waste, of
23 the parcel B can be left in place in the permit,
24 and I believe that's Exhibit -- this would be the

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1 permit for parcel B.

2 So that would be Exhibit S?

3 A. Yes.

4 Q. And specifically condition Roman numeral
5 IX-1, which is found on page 32 and 33 of that
6 permit.

7 A. Okay.

8 Q. Is there any option that the -- that
9 Community Landfill --

10 MR. LaROSE: What paragraph again?

11 MR. KIM: I'm sorry. Roman numeral IX,
12 paragraph one. That goes from page 32 to 33.

13 BY MR. KIM:

14 Q. Is there any activity that Community
15 Landfill can take pursuant to this regulation

16 that would allow them to leave the overhead waste
17 in place?

18 A. Yes. They do provide a third-party cost
19 for disposal of the waste in the form of an
20 application for significant modification by March
21 1, 2001.

22 Q. And is there anything in that condition
23 that prohibits them from seeking local siting
24 approval to site the overhead waste in place?

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1 A. No.

2 Q. Let's turn our attention to the torturous
3 conditions or regulation at 811.309.

4 A. I don't think I have it still.

5 Q. I'm sorry.

6 MR. LaROSE: I don't think I took it
7 become from you.

8 HEARING OFFICER HALLORAN: Exhibit RR.

9 MR. LaROSE: Did I take it back?

10 BY MR. KIM:

11 Q. I can give you a copy if you don't have
12 one.

13 A. I don't appear to have it.

14 MR. LaROSE: Maybe I did.

15 MR. KIM: Mark, I can give her a copy.

16 MR. LaROSE: I've got Mike's copy.

17 BY MR. KIM:

18 Q. Okay. You were asked some questions
19 concerning 811.309 and specifically subsection D
20 and subsection e --

21 A. Yes.

22 Q. -- during your testimony.

23 A. Okay.

24 Q. Okay. And, again, turn to, if you could,

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1 Exhibit S, which is the -- well, turn to either
2 permit before you because this question about the
3 five-day leachate storage, I think the conditions
4 are identical in each permit. So doesn't really
5 matter.

6 Which permit do you have?

7 A. I have parcel B, which is Exhibit S.

8 Q. If you would look to condition Roman
9 numeral VI-9.

10 A. Page 21.

11 Q. And would you just take a moment to read
12 condition nine and let me know when you're done.

13 A. Okay.

14 Q. Does that condition make any citation to
15 811.309, subsection e?

16 A. No.

17 Q. In fact, what regulations does that cite
18 to?

19 A. It's citing to 811.309(d)(6) and
20 811.309(d)(1).

21 Q. Okay. In your opinion, if a facility
22 seeks to receive an exemption from the otherwise
23 applicable requirement of having to store a
24 minimum of five days' worth of leachate, what

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1 section of the regulations do they need to look
2 to find out what they need to satisfy to receive
3 that exemption?

4 MR. LaROSE: Objection to the form of the
5 question. He stated a legal conclusion about the
6 otherwise applicable. His question assumes the
7 five days' leachate storage is required for
8 direct sewer connection, which is exactly the
9 opposite of our argument.

10 HEARING OFFICER HALLORAN: Mr. Kim, would
11 you rephrase?

12 MR. KIM: I can rephrase.

13 BY MR. KIM:

14 Q. In your opinion, what regulation should a
15 landfill -- must a landfill demonstrate
16 compliance with to be able to have less than five
17 days' worth of leachate storage?

18 A. They would be demonstrating compliance
19 with 811.309(d)(6).

20 Q. And you were asked about 811.309(e)(6).

21 Do you remember that?

22 A. Yes.

23 Q. In your opinion, does 811.309(e)(6) and
24 its two sentences there, that entire subsection,

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1 does that preempt the requirement in
2 811.309(d)(6)?

3 MR. LaROSE: Objection to the form of the
4 question. I think preempt has a legal meaning.
5 If he could just change that word. Our argument
6 isn't preemption. It's just two separate
7 regulations that don't, you know --

8 MR. KIM: I'll try and rephrase it.

9 HEARING OFFICER HALLORAN: Thank you.

10 BY MR. KIM:

11 Q. Did you think that the -- in your opinion,

12 does the regulation at subsection (e)(6), is that
13 inconsistent, in your opinion, with the
14 requirement in subsection (d)(6)?

15 A. No.

16 Q. Do you think they're speaking on the same
17 issue?

18 MR. LaROSE: Objection, leading.

19 HEARING OFFICER HALLORAN: Sustained.

20 BY MR. KIM:

21 Q. Is the subject matter of the two
22 regulations the same?

23 MR. LaROSE: Objection, leading.

24 HEARING OFFICER HALLORAN: I'll allow it.

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1 BY MR. KIM:

2 Q. Is the subject matter of the two
3 subsections the same?

4 A. No.

5 Q. What does subsection (d)(6) address?

6 A. It's addressing the leachate storage
7 capacity for accumulated leachate, standards for
8 leachate storage systems; whereas, (e) is
9 referring to standards for discharges to an off
10 site treatment works.

11 Q. Okay. And you may or may not know this,
12 but the permit application for parcel A and
13 parcel B that was submitted by Community Landfill
14 in early 2000, do you know if they cited to
15 Section 811.309(d)(6) as part of their request to
16 be able to have less than five days' worth of
17 leachate storage?

18 A. Not that I'm aware of.

19 Q. That's fine. But that is the regulation
20 you would expect them to cite to?

21 A. Yes.

22 Q. And as far as 811.309(d)(6), I think the
23 sentence that seems to be key to considerations
24 here is the second sentence which begins, such

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1 options.

2 Could you read that into the record?

3 A. Such options shall consist of not less
4 than one day's worth of storage capacity for
5 accumulated leachate, plus at least two
6 alternative means of managing accumulated
7 leachate through treatment or disposal or both
8 treatment and disposal, each of which means is
9 capable of treating or disposing of all leachate

10 generated at the maximum generation rate on a
11 daily basis.

12 Q. The use of the word means in that
13 sentence, both two alternative means and just
14 below that, each of which means is capable, what
15 does that word mean to you?

16 A. The means here is --

17 Q. Or I can put it a different way.

18 What's your understanding -- if you
19 were to rephrase that question and not use the
20 word means, could you do that?

21 MR. LaROSE: Objection to the form of the
22 question.

23 HEARING OFFICER HALLORAN: I agree.
24 Sustained.

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1 BY MR. KIM:

2 Q. Could you substitute a different word
3 based upon your interpretation for the word
4 means?

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

7 HEARING OFFICER HALLORAN: Sustained.

8 BY MR. KIM:

9 Q. Okay. Well, I'll go back to my original
10 question then. I was just trying to make it
11 easier.

12 A. A means is a treatment system, and there's
13 -- the second means is treatment system. The
14 first means is -- well, it's all going to the
15 conveyance system and the treatment system.

16 Q. So that to you conveys two elements,
17 conveyance and the second part?

18 MR. LaROSE: Objection, leading.

19 MR. KIM: I was just trying to -- okay.

20 BY MR. KIM:

21 Q. So what are the components of means in
22 your opinion?

23 A. The components of means here are not only
24 the treatment system, but also the conveyance

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1 systems.

2 Q. Okay. Would a truck -- if an application
3 identifies a truck as being offered up to satisfy
4 one of the means as identified in this
5 regulation, in your opinion, does that satisfy
6 that requirement?

7 A. That's one of the conveyance systems.

8 Q. Okay. But not the second part; is that
9 correct?

10 A. Right.

11 MR. KIM: I don't think I have anything
12 further.

13 MR. LaROSE: Just a couple of questions.

14 R E D I R E C T E X A M I N A T I O N
15 by Mr. LaRose

16 Q. Just to stick with what we were just
17 doing, Joyce, when you're interpreting those
18 words, means, the words that you interpret don't
19 -- aren't included in the actual regulation?

20 A. Correct.

21 Q. It just says means?

22 A. Yes.

23 Q. Turn to page 33, again, of Exhibit S,
24 which is the parcel B permit application

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1 condition Roman numeral IX-1 on the top of page
2 33.

3 A. Yes.

4 Q. You're saying that the condition is move
5 475,000 cubic yards by February 1, right?

6 A. On page 33, yes.

7 Q. Or by March 1, increase the financial
8 assurance to a third-party cost, right?

9 A. No. By March 1, submit an application
10 that will increase the cost -- that will propose
11 an increase in cost estimate for a third-party
12 cost for the cost of disposal and removal.

13 Q. Okay. Do you know what the third-party
14 cost is, the going rate in that area for the
15 disposal of solid waste?

16 A. No, I don't.

17 Q. Would you assume with me for the purpose
18 of the question that we could get a really good
19 third-party cost as ten bucks a yard?

20 A. Would I assume that?

21 Q. Yes.

22 A. If you're telling me that, I'll -- for
23 this question, yes.

24 Q. I just want you to assume that for the

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1 purpose of the question.

2 A. You bet.

3 Q. So that would mean that by March 1, under
4 your permit, the permit that you signed, we would
5 have to increase the closure and postclosure care

6 cost estimate by approximately \$4,750,000, right?

7 A. Correct.

8 Q. Okay. At \$10.00 a yard?

9 A. Not by that date, but, yes, that cost.

10 Q. We would have to submit the application by

11 that date, you would approve that it, and then

12 within, I think, 90 days after that we'd have to

13 actually increase the financial assurance, right?

14 A. If I could approve it, I would approve it,

15 yes.

16 Q. So the way it would go would be we don't

17 move it by February 1 or, in this case, by

18 whatever date, assuming the Board doesn't rule in

19 our favor, whatever date the stay extends us out

20 to, we don't move it in the time frame set forth

21 in the permit and whatever stay, right?

22 A. Right.

23 Q. Okay. Within a month after the time that

24 we were supposed to move it, we submit an

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1 application asking you to approve an increase for

2 a third-party cost, right?

3 A. Correct.

4 Q. Okay. And if was \$10.00 a yard, that

5 increase would be \$4,750,000, right?

6 A. Correct.

7 Q. If it was \$20.00 a yard, it would be
8 double that, right?

9 A. Correct.

10 Q. Okay. And you review the application,
11 approve it, and then isn't it 90 days after your
12 approval we actually have to post the financial
13 assurance?

14 A. Yes.

15 Q. Okay. If that procedure was followed,
16 ma'am, wouldn't you still have the reservation of
17 disposal capacity agreement in place in addition
18 to the \$4,750,000 of additional financial
19 assurance?

20 A. Is there an out clause in the reservation
21 of disposal capacity agreement?

22 Q. No, ma'am.

23 A. Then, yes.

24 Q. So wouldn't you be covered twice? You'd

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1 be requiring us not to use our space, which would
2 cost us \$4,750,000 at \$10.00 a cubic yard, plus
3 post another \$4,750,000 in financial assurance so

4 that you could go somewhere else?

5 A. Yes.

6 Q. Isn't that double-dipping?

7 A. At the same time, you could propose
8 getting rid of the reservation of disposal
9 capacity.

10 Q. Okay. Couldn't you just -- I mean, is
11 there any regulatory prohibition from you leaving
12 the reservation of disposal capacity as it is and
13 just giving us a little bit more time so that we
14 could site?

15 A. There would be an argument that there is a
16 regulatory problem there.

17 Q. Okay. Forget about even the permit saying
18 that you're giving us time to site. Okay. Just
19 change the date in here from February 1, 2001, to
20 January 1, 2002.

21 Would there be a regulatory
22 prohibition from changing the date from February
23 1, 2001, to January 1, 2002, in paragraph nine --
24 subparagraph -- Roman numeral IX, subparagraph

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1 one on page 33 of Exhibit S?

2 A. Yes.

3 Q. And what would the regulatory prohibition
4 be?

5 A. That I cannot issue a permit to expand a
6 facility without demonstration of additional
7 siting.

8 Q. This permit -- you set this date, right,
9 February 1st, 2001, or you approved the setting
10 of this February 1st, 2000, date, right?

11 A. Yes.

12 Q. If that date was set at March 1st, 2001,
13 or July 1st, 2001, or December 1st, 2001, or
14 January 1st, 2002, it wouldn't be any more
15 violative of the regulations than setting it at
16 February 1, 2001, would it?

17 A. Without justification that that additional
18 time is needed, yes.

19 Q. So you're telling the Board -- it's your
20 testimony that extending this February 1 deadline
21 by a single day would be in violation of the
22 regulations?

23 A. It could be, yes.

24 Q. And by six months, it could be in

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1 violation of the regulations?

2 A. It could be.

3 Q. When you say it could be, what regulation?

4 A. In the Act, it tells me I cannot issue a
5 develop -- a permit for development of an
6 expansion of a new pollution control facility
7 without proof of additional siting.

8 Q. But in this case -- in this case, you've
9 done that without proof of additional siting or
10 third-party cost until February 1, 2001, correct?

11 A. I issued a permit to close the facility.
12 To close the facility in accordance with the
13 permit, you've got to remove this waste.

14 Q. Well, didn't you just tell Mr. Kim that we
15 don't have to remove the waste, all we have to do
16 is put up an extra \$4,750,000 at \$10.00 a cubic
17 yard?

18 A. I'm saying if that's what the condition
19 says, yes.

20 Q. So if we just put up additional waste,
21 haven't you approved the expansion? Excuse me.

22 If we just put up additional
23 financial assurance, haven't you approved the
24 expansion?

1 A. There could be an argument made, yes.

2 Q. So back to the point, what would be
3 violative of regulations if either you, in your
4 discretionary capacity when you wrote this, or
5 the Board in making the decision in this case,
6 extended this date from February 1, 2001, until
7 the date we requested, December 2001, to give us
8 enough time to do the same?

9 MR. KIM: Objection. I think that's been
10 asked and answered.

11 HEARING OFFICER HALLORAN: Sustained. It
12 has been answered.

13 BY MR. LaROSE:

14 Q. What regulation, ma'am?

15 HEARING OFFICER HALLORAN: Mr. LaRose, it
16 has been answered.

17 MR. LaROSE: But she never cited a
18 regulation.

19 HEARING OFFICER HALLORAN: She stated it
20 was in the Act.

21 MR. LaROSE: Can I inquire as to where in
22 the Act? I mean, this is a pretty important
23 point. She's saying the Board -- if the Board
24 gives us the relief here, they're going to

1 violate the Act. I think I'm entitled to
2 inquire. I know it's getting late. I'm almost
3 done, but where in the Act?

4 HEARING OFFICER HALLORAN: Ms. Munie, if
5 you can, cite to a specific portion of the Act in
6 the regs, please do so.

7 BY THE WITNESS:

8 A. Section 39. I do not know which
9 subparagraph offhand.

10 BY MR. LaROSE:

11 Q. So Section 39 of the Act would prevent
12 you, in your opinion, from -- prevent you or the
13 Board from extending the February 1, 2001, date
14 which is on page 33 of Exhibit S, which is the
15 parcel B permit?

16 A. I said it would prevent me. I didn't say
17 it would prevent the Board.

18 Q. Okay. So that section would prevent you
19 from extending that date?

20 A. Yes, without good reason.

21 Q. And, in your opinion, another nine months
22 to go through siting isn't good reason?

23 MR. KIM: Objection. That's been asked
24 and answered.

1 MR. LaROSE: No, it hasn't.

2 MR. KIM: He's asked her about local
3 siting. He's asked her about the time. He's
4 asked her what her opinion is on that.

5 MR. LaROSE: I'm almost done, Mr. Hearing
6 Officer. Bear with me get so we can get this
7 record.

8 HEARING OFFICER HALLORAN: Rephrase that
9 again, Mr. LaRose.

10 BY MR. LaROSE:

11 Q. In your opinion -- okay.

12 You can comply with the regs by
13 extending this date if there was a good reason to
14 extend the date, correct?

15 A. Correct.

16 Q. In your opinion, another nine months to
17 allow us to go through local siting isn't a good
18 enough reason?

19 A. Siting is not necessary to close this
20 facility.

21 Q. So that's not a good enough reason?

22 A. Right.

23 MR. LaROSE: That's all I have.

24 MR. KIM: Just a few follow ups.

1 R E C R O S S - E X A M I N A T I O N

2 by Mr. Kim

3 Q. Ms. Munie, the permit that was issued for
4 parcel B, which is Exhibit S, I believe, is that
5 a closure permit or an operating permit?

6 A. It's a permit to operate the closure of
7 the facility.

8 Q. So it's intended to oversee the closure
9 activities for parcel B?

10 A. Yes.

11 Q. And Roman numeral IX, paragraph one of
12 that permit we've been referencing, does that
13 give more than one option for -- that allows the
14 facility to demonstrate compliance with that
15 condition?

16 A. Either remove the waste or submit an
17 application.

18 Q. Is removing the waste closure activity?

19 A. Yes.

20 Q. Is increasing the cost a closure activity?

21 A. Yes.

22 Q. Okay. Is there any guarantee that local
23 siting approval would be obtained by any
24 applicant -- by any applicant -- does any

1 applicant go into a siting procedure with a
2 guarantee that they'll receive local siting
3 permit?

4 A. Not that I'm aware of.

5 Q. And the time period that was given in this
6 permit, in other words, either February 1 to
7 remove the waste or March 1 to submit an
8 application for a SIGMOD, is that, in your
9 opinion, a reasonable time period for each of
10 those respective closure activities?

11 A. Yes.

12 MR. KIM: Nothing further.

13 R E - R E D I R E C T E X A M I N A T I O N

14 by Mr. LaRose

15 Q. Ma'am, you said that just increasing the
16 financial assurance is a closure activity.

17 Would just increasing the financial
18 assurance finalize the closure?

19 A. No.

20 Q. The waste has ultimately got to be moved,
21 right?

22 A. Yes.

23 Q. Or sited in place?

24 A. Yes.

1 MR. LaROSE: That's all I have.

2 MR. KIM: Nothing further.

3 HEARING OFFICER HALLORAN: Thank you very
4 much. You may step down. Off the record.

5 (Discussion had
6 off the record.)

7 HEARING OFFICER HALLORAN: We're back on
8 the record. It's approximately 4:45. We're
9 going to adjourn the hearing for today and
10 continue it on the record for tomorrow morning,
11 January 19th at 9:30 a.m. in this very same room,
12 9-031, and I also want to note that no members of
13 the public are present nor were they throughout
14 the entire hearing. Thank you very much.

15 (Whereupon, these were all the
16 proceedings held in the
17 above-entitled matter.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

4 I, GEANNA M. IAQUINTA, CSR, do
5 hereby state that I am a court reporter doing
6 business in the City of Chicago, County of Cook,
7 and State of Illinois; that I reported by means
8 of machine shorthand the proceedings held in the
9 foregoing cause, and that the foregoing is a true
10 and correct transcript of my shorthand notes so
11 taken as aforesaid.

12

13

14 _____
GEANNA M. IAQUINTA, CSR
15 Notary Public, Cook County, IL
Illinois License No. 084-004096

16

17 SUBSCRIBED AND SWORN TO
before me this ____ day
18 of _____, A.D., 2001.

19

Notary Public

20

21

22

23

24

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