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BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD

COMMUNITY LANDFILL COMPANY and)
CITY OF MORRIS,)
Complainant/Petitioner,)No. PCB01-48
vs.) PCB01-49
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

VOLUME III, Pages 553 - 891

The following is a transcript of
proceedings from the hearing held in the
above-entitled matter, taken stenographically by
ROSEMARIE LAMANTIA, CSR, a notary public within
and for the County of Cook and State of
Illinois, before BRADLEY P. HALLORAN, Hearing
Officer, at 100 West Randolph Drive, Room 9-040,
Chicago, Illinois, on the 19th day of January
2001, A.D., scheduled to commence at the hour of
9:30 a.m.

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

2 HEARING TAKEN BEFORE:

3

4 ILLINOIS POLLUTION CONTROL BOARD,

5 100 West Randolph Drive

6 Room 11-500

7 Chicago, Illinois 60601

8 BY: BRADLEY P. HALLORAN, HEARING OFFICER

9

10 LAROSE & BOSCO, LTD.

11 734 North Wells Street

12 Chicago, IL 60601

13 (312) 642-4414

14 BY: MR. MARK A. LAROSE

15 Appeared on behalf of the

16 Complainant/Petitioner;

17

18 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

19 Division of Legal Counsel

20 1021 North Grand Avenue East

21 Springfield, IL 62704

22 (217)782-5544

23 BY: MR. JOHN J. KIM

24 Appeared on behalf of the Respondent.

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1 HEARING OFFICER HALLORAN: Good
2 morning. My name is Bradley Halloran. I'm a
3 hearing officer with the Illinois Pollution
4 Control Board and I am assigned to this
5 consolidated matter, PCB01-48, PCB01-49,
6 Community Landfill Company and the City of
7 Morris versus the Illinois Environmental
8 Protection Agency.

9 Today is Friday, January 19th, the
10 year 2001. It's approximately 9:45.

11 I note that there are no members or
12 employees of the board present, nor are there
13 any members of the public. If there were
14 members of the public present, they would be
15 allowed to give testimony subject to
16 cross-examination and, of course, there will be
17 a public comment period discussed during the
18 briefing period at the end of the hearing.

19 This hearing is continued on the
20 record from yesterday, January 18, and is being
21 held pursuant to Section 105-214 of the board's
22 procedural rules regarding permanent POs in
23 accordance with Section 101, subpart F.

24

With that said, I believe the

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1 Petitioner is going to be calling his next and
2 last witness, is that correct, Mr. LaRose?

3 MR. LAROSE: That's correct, Mr.
4 Halloran.

5 Our next and, hopefully, last witness
6 is Mr. McDermont.

7 (Witness duly sworn.)

8 MICHAEL MCDERMONT,
9 called as a witness herein, having been first
10 duly sworn, was examined and testified as
11 follows:

12 EXAMINATION

13 BY MR. LAROSE:

14 Q. Mr. McDermont, could you state your
15 name for the record?

16 A. My name is Mike McDermont.
17 M-C-D-E-R-M-O-N-T.

18 Q. What do you do for a living, sir?

19 A. I'm a professional engineer employed
20 by Andrews Environmental Engineering in
21 Springfield.

22 Q. You testified to some preliminary

23 matters the other day. We went over your resume
24 at that time. That testimony still stands for

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1 today, correct?

2 A. That is true.

3 Q. I'm sure everybody will be happy that
4 we're not going to go over that again.

5 Sir, are you familiar with the general
6 plan for the design and construction of this
7 landfill pursuant to the permits that are at
8 issue in this proceeding?

9 A. Yes.

10 Q. Were you the person that -- strike
11 that.

12 With respect to the permits at issue
13 in this proceeding, what was your job?

14 A. My job was the -- I'm the project
15 manager for Andrews Engineering.

16 Q. Okay. And just in general, in
17 general, in the course of the last four years
18 that we have been dealing with this thing, in
19 general what did that entail?

20 A. That entailed me managing support
21 staff of engineers, hydrogeologists,

22 secretaries, CAD technicians, statisticians,
23 chemists, interfacing with the client.

24 Q. Did it entail you actually doing any

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1 work on the application yourself?

2 A. In addition, I did do quite a bit of
3 work on the application myself.

4 Q. When you say quite a bit of work, you
5 mean actually writing the application?

6 A. The 1996 application was primarily
7 prepared by support staff and in that role I
8 performed editing of all of it. In the 2000
9 application, I wrote virtually 80 percent of it,
10 was assisted primarily by a gentleman, who is
11 the hydrogeologist, by the name of Ron Hewitt.

12 Q. Okay. And regardless of whether you
13 wrote the '96 or whether you wrote all portions
14 of the 2000, did you review the entire
15 application?

16 A. Yes, I did.

17 Q. Every single word of it?

18 A. Every single word of it.

19 Q. And that is for Parcel A and Parcel B,
20 correct?

21 A. That is correct.

22 Q. Okay. The board's procedural rules,
23 excuse me, the board's rules on permit appeals
24 require us to describe potential contaminants

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1 that we are seeking to control with the design
2 of this landfill and describe the methods that
3 we seek to control them with, correct?

4 A. That is correct.

5 Q. Okay. Could you describe briefly the
6 potential contaminants, and I don't mean the
7 chemical elements, but just the general and most
8 significant contaminants that we are seeking to
9 control with the design and operation of this
10 landfill?

11 A. Yes. There would be three of them.
12 It would involve leachate, groundwater and
13 landfill gas.

14 Q. What is leachate?

15 A. Leachate is a liquid that largely
16 derives from precipitation entering the waste
17 mass inside of a landfill, it percolates down by
18 gravity to the bottom of the landfill.

19 Q. Okay. And why is that a contaminant?

20 A. When the precipitation or infiltration
21 passes through the solid waste, it has a
22 tendency of picking up various chemicals from
23 the waste itself, which then become dissolved in
24 the liquid phase.

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1 Q. Talk to me for a second about
2 groundwater. Why is that a contaminant with
3 respect to this issue?

4 A. Groundwater is the water in the ground
5 that surrounds the landfill. Typically a
6 landfill places waste below ground level and in
7 most landfills in Illinois places it below the
8 groundwater table. As such we installed
9 monitoring wells to preclude or measure and
10 monitor to insure that there is no contamination
11 of the groundwater occurring.

12 Q. Okay. And in this particular -- at
13 this particular site, were there some
14 groundwater problems or groundwater
15 contamination that existed before these
16 applications even went in?

17 A. That is correct.

18 Q. Were there some groundwater

19 contamination petitions that existed before CLC
20 even entered into an agreement with the City of
21 Morris to do anything on Parcel A?

22 A. That is correct.

23 Q. So that would have been groundwater
24 contamination attributable to what you had

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1 termed earlier in the hearing as that historical
2 fill?

3 A. Yes, sir.

4 Q. Okay. As a result of that groundwater
5 contamination, the historical groundwater
6 contamination from the historical fill, did you
7 have to design and propose to design this
8 landfill a little bit differently than others?

9 A. Yes. The design for Parcel A included
10 a contingent remediation program to address
11 potential and alleviate groundwater
12 contamination concerns on the east side of
13 Parcel A.

14 Q. Talk to me about gas.

15 A. When solid waste, municipal solid
16 waste degrades, it gives off carbon monoxide
17 and methane, nitrogen and some carbon monoxide.

18 Basically, these gases or a portion of them are
19 known as greenhouse gases and as such to prevent
20 global warming the gases are collected and in
21 this case beneficially reused to make
22 electricity.

23 Q. Now, the regulations, do they require
24 you to actually control the gas that is

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1 generated as a result of the disposition of
2 trash?

3 A. The regulations do require that you
4 control the gas if you meet certain standards.
5 For this landfill, an active gas system was
6 installed on Parcel B prior to ever measuring to
7 determine if regulations required us to do it.
8 In other words, we did that activity
9 voluntarily.

10 Q. Do you have to do -- I guess that was
11 my next question. Do the regs require you to do
12 an active gas collection system?

13 A. The regs require you to do an active
14 gas collection system, if the concentration of
15 gas is measured above a certain explosive limit
16 in buildings or in waste probes, waste gas

17 probes or in gas parameter probes. There is
18 also another regulation by the US EPA that
19 requires gas collection system based on surface
20 emission monitoring coming from the landfill.

21 Q. The gas collection system you said
22 it's turned into energy. Is that this site or
23 other sites?

24 A. This is on the Parcel B side of this

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1 landfill.

2 Q. And describe just briefly how the gas
3 turns into electricity.

4 A. The gas, the energy from the gas is
5 extracted as a fuel, which actually is used
6 inside a converted caterpillar reciprocating
7 engine, much as gasoline or diesel fuel. In
8 other words, the BTU content is extracted and
9 the -- which in turn drives the piston in the
10 engine, which in turn drives the generator
11 producing electricity.

12 Q. Sir, the actual contaminants -- now,
13 we've talked about the general. Is there a list
14 of contaminants that you are -- particular
15 chemical compounds or chemicals that you're

16 trying to make sure don't get into the
17 environment in an adverse way?

18 A. Yes, there is.

19 Q. Okay.

20 A. A long list.

21 Q. I'm going to hand you what has been
22 previously marked as Exhibit P. It's merely the
23 permit appeal in this case.

24 MR. LAROSE: Mr. Halloran, it's just

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1 the permit appeal in this case. I'm not going
2 to burden you with another piece of paper.

3 HEARING OFFICER HALLORAN: Okay.

4 Thank you.

5 BY MR. LAROSE:

6 Q. Mr. McDermont, that is the petition or
7 the permit appeal petition for Parcel A?

8 A. That is correct.

9 Q. And that document in paragraphs 10 and
10 11 describe the contaminant emissions and the
11 proposed levels of control, correct?

12 MR. KIM: Excuse me. What page
13 numbers are you referring to?

14 MR. LAROSE: Sorry. 3 and 4,

15 paragraphs 10 and 11.

16 BY MR. LAROSE:

17 Q. Sir?

18 A. Yes, sir.

19 Q. Those paragraphs describe the
20 contaminant emissions and the proposed level of
21 controls on Parcel A?

22 A. Yes, they do.

23 Q. And appended to this document is a
24 long -- is Exhibit 1, which is a long list of

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1 contaminants and additional parameters that
2 might be found in leachate, groundwater and gas
3 condensate. Do you see that?

4 A. That is true.

5 Q. Are those the specific chemical
6 elements that we're trying to make sure don't
7 get into the environment in an adverse way?

8 A. Yes, sir.

9 MR. LAROSE: With that, Mr. Halloran,
10 I would move Exhibit P into the record.

11 HEARING OFFICER HALLORAN: Mr. LaRose,
12 I will get a copy of that, I assume.

13 MR. LAROSE: I will give you a copy

14 right now.

15 HEARING OFFICER HALLORAN: Thank you.

16 Mr. Kim, any objection?

17 MR. KIM: No, it's a pleading, I guess
18 the board could take note of it but no
19 objection.

20 HEARING OFFICER HALLORAN: Exhibit P
21 is admitted.

22 (Exhibit No. P was admitted.)

23 BY MR. LAROSE:

24 Q. Sir, I'm going to hand you what has

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1 been previously marked as Exhibit Q and ask you
2 to take a look at that, please.

3 Sir, that is a permit appeal for
4 Parcel B, correct?

5 A. Yes.

6 Q. And Parcel B in paragraphs 10 and 11
7 on pages 3 and 4 and in Parcel B, permit appeal,
8 they describe the contaminants that we seek to
9 control and the methods or means by which we
10 seek to control them, correct?

11 A. Yes.

12 Q. And attached to the Parcel B

13 application is an identical Exhibit 1, which was
14 the specific list of chemical compounds that
15 we're hoping don't get into the environment in
16 an adverse way based on the design and operation
17 of this landfill, right?

18 A. That is true.

19 MR. LAROSE: With that, Mr. Hearing
20 Officer, I would move Exhibit Q into the record.

21 HEARING OFFICER HALLORAN: Mr. Kim?

22 MR. KIM: No objection.

23 HEARING OFFICER HALLORAN: Exhibit Q
24 is admitted.

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1 (Exhibit No. Q was admitted.)

2 BY MR. LAROSE:

3 Q. Mr. McDermont, even though the permit
4 appeals described in a general fashion the
5 particular devices that we seek to control, I
6 would like -- got a couple of exhibits and I'd
7 like to take a couple of minutes for you to just
8 illustrate on these exhibits how these controls
9 operate.

10 First document I'm going to show you
11 is Exhibit BBB.

12 MR. LAROSE: For the record, Mr.
13 Hearing Officer, this is sheet number B4-3,
14 which was included in the permit application and
15 is included in the record at page Parcel B,
16 Volume 1, pages 0112.

17 BY MR. LAROSE:

18 Q. Mr. McDermont, do you have that little
19 clicker that I bought for you?

20 A. I certainly do.

21 Q. Okay.

22 A. Certainly in my hotel room.

23 Q. Very good, sir.

24 MR. LAROSE: Can you guys see this?

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1 John, can you see this?

2 Brad, can you see this?

3 HEARING OFFICER HALLORAN: Yes,
4 thanks.

5 BY MR. LAROSE:

6 Q. Mr. McDermont, what is Exhibit BBB?

7 A. Exhibit BBB is our drawing sheet
8 number B4-3, which is -- the used copy of it is
9 provided in Attachment 4 of the Parcel B
10 application, drawing entitled, final grading

11 plan of Parcel B.

12 Q. Okay. So that is the Parcel B, the
13 west side of the landfill, if you will, correct?

14 A. Yes, sir.

15 Q. Could you generally describe the --
16 and let's take it one at a time so that the
17 record is clear, the pollution control devices,
18 where the devices designed to control
19 contaminants as they are depicted on Exhibit
20 BBB?

21 A. Certainly.

22 We're just talking about the active
23 landfill gas management system, down here in the
24 southeast corner of the landfill is the two

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1 buildings, two long buildings that house the
2 engines that turn the gas into electricity.
3 Prior to the gas reaching those engines, it
4 passes through a gas condensate tank, the gas
5 condensate tank allows the saturated gas to give
6 up some of the moisture and drop in the tank,
7 the condensate tank is hooked up to or it is
8 connected to the City of Morris sanitary sewer,
9 which runs on the east side of the Parcel B

10 facility.

11 Q. How is the gas collected?

12 A. The gas is collected by a series of
13 piping, which is configured in a loop around
14 Parcel B. From this loop of piping, which has a
15 vacuum in it, various pipes are appending off of
16 this.

17 Q. Could you stand back just a little bit
18 so that Mr. Halloran can see it? Thanks.

19 A. Once again, the header pipe, the gas
20 pipe is running in a loop configuration exiting
21 back at the plant. The gas is extracted from
22 the landfill under a vacuum based on the intake
23 from the compressor, which compresses the gas
24 for engine fuel.

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1 Q. Is that entire system, the gas
2 extraction system that you just explained,
3 built?

4 A. That entire system is built, and as
5 part of that there appears to be at least 18
6 vertical gas extraction wells that are connected
7 to that well fill. In addition, there are three
8 vertical leachate wells that are also connected

9 to the gas extraction system for a total of 21
10 points for removing landfill gas from Parcel B.

11 Q. You have said that it is built. Is
12 that system permitted?

13 A. That system is permitted.

14 Q. Is that operational?

15 A. Yes.

16 Q. Is there a storage tank appended to
17 the gas collection system?

18 A. The gas collection system storage tank
19 is what we call the gas condensate tank.

20 Q. And is that like gas leachate?

21 A. That's like gas leachate, yes, sir.

22 Q. And is that connected to the city
23 sewer?

24 A. That is connected to city sewer.

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1 Q. Where does that go to?

2 A. City sewer goes to the City of Morris
3 sewage treatment plant.

4 Q. City of Morris POTW.

5 A. Yes, sir.

6 Q. It was permitted by the IEPA?

7 A. Yes, sir.

8 Q. When was that?

9 A. The -- I'm sorry. I don't understand
10 the question.

11 Q. When was the permit issued?

12 A. The permit was issued for operating
13 the gas extraction system in 1996.

14 Q. And was there a separate permit issued
15 to send the gas leachate through the sewer
16 system to the POTW?

17 A. I'm sorry. I need to correct myself.
18 The developmental permit or the gas extraction
19 system was issued in '96. The gas -- the permit
20 to operate, approving the gas operating system,
21 was issued probably in 1999 plus or minus a year
22 and now back to your question, which I forgot,
23 sir.

24 Q. That's all right.

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1 Was there a separate permit -- permit
2 to develop the system, right?

3 A. Uh-huh.

4 Q. Yes or no, sir, she can't --

5 A. I'm sorry, yes.

6 Q. Okay. There is a permit to operate

7 the system, yes?

8 A. Yes.

9 Q. There is a separate permit to send the
10 gas leachate to the Morris POTW.

11 A. Yes. That is permitted by the bureau
12 of water.

13 Q. What do they call that permit?

14 A. They call that a NPDES permit.

15 Q. Okay. So there is a -- okay. Did the
16 NPDES permit approve this to go to the Morris
17 POTW?

18 A. Yes, they did.

19 Q. Even though Morris owns the landfill?

20 A. Yes, sir.

21 Q. Okay. So we have covered the gas
22 system as on Parcel B as a means to control
23 contaminants?

24 A. And there is only one thing I would

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1 add in addition to the two bureau of land
2 permits that apply to it, the bureau of water
3 permit that applies to it, there is also two
4 bureau air permits that apply to the emission
5 source, which are the engines.

6 Q. Okay. The turbines or the generators?

7 A. The engines powering the generators.

8 Q. Okay. Describe the next pollution
9 control device or series of devices that appears
10 on Exhibit BBB.

11 A. From the southeast corner going into a
12 counterclockwise measure, the next device we
13 would come across would be the proposed leachate
14 storage tank.

15 Q. Okay. How big is the leachate,
16 proposed leachate storage tank?

17 A. It's approximately 104,000 gallons,
18 based on having a storage capacity of one day of
19 leachate condensate and groundwater generation.

20 Q. Okay. And is that calculated on a
21 maximum of leachate, condensate and groundwater
22 generated in one day?

23 A. Yes, sir, it is.

24 Q. It doesn't necessarily mean, however

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1 that you're going to make or generate that much
2 of those components that are going to go into
3 the tank, correct?

4 A. That is correct.

5 Q. The next pollution control device that
6 exists on Parcel B, please.

7 A. I guess I would call the next device
8 typical of --

9 Q. Can I back up for a second, Mr.
10 McDermont? I don't mean to interrupt you.

11 The tank that you just described, is
12 that going to service only Parcel B or is there
13 a proposal for one tank that is going to service
14 both A and B?

15 A. Actually, that would -- you are
16 correct, that would be for both A and B.

17 Q. And the 104,000 gallon calculation
18 would have been a calculation based on the
19 maximum possible?

20 MR. KIM: Objection, leading.

21 BY MR. LAROSE:

22 Q. Sir, what would the 104,000 gallon
23 calculation be based on?

24 A. As required by the regulation, it is

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1 based upon the maximum amount of precipitation
2 entering the landfill and the peak leachate
3 generation, which the landfill will produce in a

4 one day period, and that is used to size the
5 storage tank.

6 Q. And would that be for Parcels A and B?

7 A. For both parcels, yes, sir.

8 Q. The next leachate -- or excuse me, the
9 next pollution control device on Parcel B.

10 A. The next pollution control device
11 would be a groundwater monitoring well.

12 Q. A groundwater monitoring well or a
13 system of groundwater monitoring well?

14 A. It would be one in a counterclockwise
15 measure, which would be typical of, I believe
16 there is over 10 on this parcel, and similarly
17 on Parcel A there is 9 on that segment.

18 Q. I guess I didn't understand that. One
19 in a counterclockwise measure, what do you mean?

20 A. I'm sorry. I was trying to do this in
21 order. The groundwater monitoring wells are
22 placed around the perimeter of the landfill and
23 in a counterclockwise order the next one we came
24 to was one well that is representative of the

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1 groundwater monitoring network around the
2 perimeter of the land.

3 Q. So how many wells are there around the
4 perimeter of Parcel B, proposed?

5 A. It appears there are ten.

6 Q. Okay. Are any of those constructed?

7 A. All of those are constructed.

8 Q. And installed?

9 A. And installed and have been sampled,
10 yes, sir.

11 Q. Let's back up again.

12 The tank, obviously, the leachate
13 storage tank or the storage tank for leachate,
14 condensate and groundwater, hasn't been
15 constructed yet because that's one of the issues
16 we're arguing about here whether we need a tank
17 and how big it should be?

18 A. That is correct.

19 Q. The next pollution control device on
20 Parcel B, please.

21 A. Would be a gas perimeter probe,
22 similarly to the groundwater monitoring wells,
23 there are 18 perimeter gas probes placed around
24 the facility approximately at equal intervals.

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1 Q. And what do they do?

2 A. They serve as a detection device to
3 make sure that the landfill gas, which is
4 bringing -- kind of coming from the degraded
5 solid waste is not leaving or migrating past the
6 property boundary.

7 Q. Are those installed?

8 A. Those are 75 percent installed and
9 they're being finished this week or next week.

10 Q. Okay. The next pollution control
11 device on Parcel B, please.

12 A. The next device would just simply be
13 drainage devices around, or drainage ditches
14 around the facility that enter into a storm
15 water detention pond, remove sediments from the
16 storm water generator from precipitation.

17 Q. Sir, is that -- with the exception of
18 the final, the intermediate and final cover
19 systems -- well, strike that.

20 Is there a separation layer on Parcel
21 B?

22 A. Yes, there is a separation layer on
23 Parcel B.

24 Q. Okay. And is that similar in design

1 and construction to the separation layer that is
2 proposed to be put on Parcel A?

3 A. That is true.

4 Q. Okay. And when I say separation
5 layer, a layer of dirt that separates --

6 MR. KIM: Objection, leading.

7 BY MR. LAROSE:

8 Q. When I say separation layer, what do I
9 mean by that?

10 A. Separation layer design is a 36 inch
11 thick barrier layer of clay that is impermeable
12 and has to meet a standard of 1 times 10 to the
13 negative 7 centimeters per second.

14 Q. What does it separate?

15 A. Separates the old trash from the new
16 trash. The new trash is placed on top of it.

17 Q. The things that you've described on
18 Parcel B, with the exception of the final cover
19 system, which we'll see on an illustration on
20 another drawing, are all set forth in general
21 terms on Exhibit Q, paragraph 11, A through J,
22 correct?

23 A. Yes, sir.

24 MR. LAROSE: I'm going to, sir, with

1 that I would move admission of Exhibit BBB into
2 the record.

3 HEARING OFFICER HALLORAN: Any
4 objection, Mr. Kim?

5 MR. KIM: No objection.

6 HEARING OFFICER HALLORAN: So
7 admitted, Exhibit BBB.

8 (Exhibit No. BBB was admitted.)

9 HEARING OFFICER HALLORAN: Mr.
10 McDermont, could you raise your voice a little
11 bit? Sometimes you trail off at the end and I'm
12 having a little trouble hearing you. I
13 appreciate it.

14 THE WITNESS: No problem.

15 BY MR. LAROSE:

16 Q. Mr. McDermont, I'm going to show you
17 what has been previously marked as Exhibit CCC.

18 Mr. McDermont, what is Exhibit CCC?

19 A. Exhibit CCC is sheet number B3-2,
20 which appears in Attachment 4 of the Parcel A
21 application. It is entitled site development
22 plan, Parcel A.

23 MR. LAROSE: For the record, Mr.
24 Hearing Officer, that is in the record at Parcel

1 A, Volume 1, page 0115.

2 HEARING OFFICER HALLORAN: Thank you.

3 BY MR. LAROSE:

4 Q. Mr. McDermont, this is a depiction not
5 of Parcel A but Parcel B, correct?

6 A. That is correct, land view of Parcel
7 A.

8 Q. Does this show some, perhaps not all,
9 of the pollution control devices that are
10 designed and either constructed or proposed to
11 be constructed for Parcel A?

12 A. It shows a -- certainly a majority of
13 them, yes.

14 Q. Okay. Could you explain for the
15 board, Mr. Halloran, pollution control device
16 depicted on Exhibit CCC?

17 A. Okay. I think I'll start with the
18 ones that were similar to Parcel B.

19 In the south corner of Parcel A, you
20 have a proposed sedimentation pond, drainage
21 ditches will surround Parcel A bringing run off,
22 storm water run off from precipitation events to
23 the sedimentation basin. Actually, the water
24 from Parcel B, which is over here, will also

1 flow onto Parcel A and flow into that pond.
2 This side of the landfill also has groundwater
3 monitoring wells located around the perimeter,
4 also has gas perimeter probes located around the
5 perimeter.

6 Q. Let's slow down just a little bit.

7 The first thing is the drainage
8 ditches and the sedimentation pond, are those
9 built?

10 A. Those are built, yes.

11 Q. Okay. The second thing you alluded to
12 was the leachate -- or the groundwater
13 monitoring wells?

14 A. Yes, sir.

15 Q. These were similar to the ones that
16 are in Parcel B?

17 A. Yes, sir.

18 Q. Do you have any idea how many
19 groundwater monitoring wells are either on or
20 proposed to be on Parcel A as depicted in
21 Exhibit CCC?

22 A. I believe there are nine of them.

23 Q. Okay. Are those constructed?

24 A. Those are constructed, yes.

1 Q. Okay. And that is something that was
2 proposed in the sig mod?

3 A. Absolutely.

4 Q. Was that an increase in the number of
5 wells?

6 A. Certainly was. Previously to the
7 issuance of the sig mod, the 1989 application
8 required three wells on Parcel A.

9 Q. Let's back up. On Parcel B you
10 identified, I think, 10 groundwater monitoring
11 wells. Was that an increase from the old
12 permit?

13 A. Previously six were required by the
14 1989 permit.

15 Q. Okay. In addition to groundwater
16 monitoring wells, can you describe the next
17 pollution control device depicted on Exhibit
18 CCC?

19 A. Assuming you want me to back up and
20 talk about the perimeter probes on --

21 Q. Yes. Yes.

22 A. The gas perimeter probes, again,
23 similarly to Parcel B, they serve as a detection
24 device for migrating landfill gas, which may

1 escape past the property boundaries.

2 Q. And are those installed?

3 A. Those are being -- will be finished in
4 the next week probably.

5 Q. And are those called for by the sig
6 mod?

7 A. Those are a condition of the sig mod
8 and were present in our application.

9 Q. Okay. The next pollution control
10 device, please.

11 A. The primary purpose of the drawing is
12 to illustrate the plan view of the separation
13 layer. The contours present inside the, if you
14 will, four continuous lines running around in a
15 somewhat oval shape, represent the surface of
16 the separation layer. The typical design
17 illustrates a high in the center of the landfill
18 with drainage occurring to the outside perimeter
19 in all four directions. On the outside of the
20 separation layer is a berm and the lined up
21 represented by the dash dot is indicative of a
22 continuous leachate collector pipe that is --
23 area to those manholes where the leachate is
24 removed.

1 Q. Let me back up on you again.

2 Describe the low permeability
3 separation layer, then jump to the leachate
4 system, is the low permeability separation
5 system called for by the sig mod?

6 A. Yes.

7 Q. Was it also permitted previously to
8 this?

9 A. Yes, it was. It was originally
10 proposed in 1988 and approved by the Agency in
11 1989.

12 Q. But we didn't start, CLC didn't start
13 to even have the ability to start any operations
14 on --

15 MR. KIM: Objection, leading.

16 BY MR. LAROSE:

17 Q. When did CLC first have the ability to
18 have any operations on Parcel A?

19 A. I believe it was 1995 or 1996.

20 Q. Okay. Is any of the low permeability
21 separation layer constructed?

22 A. Yes, it is.

23 Q. How much?

24 A. Approximately 25 to 30 percent.

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1 Q. Okay. And is that where you placed
2 materials and then built the separation layer
3 over it?

4 MR. KIM: Objection, that is leading.

5 BY MR. LAROSE:

6 Q. How did you build the separation
7 layer?

8 A. Materials were brought in and
9 deposited, shaped to provide a mirror image of
10 this, of these contours, only 3 feet lower, and
11 they were compacted with various landfill
12 equipment, and our first layer of clay soil was
13 placed on it and it was compacted until we
14 achieved a 3 foot thickness, whereupon we graded
15 that to achieve these contours as illustrated
16 here.

17 Q. Okay. Then you went -- the next
18 pollution control device you wanted to talk
19 about, leachate collection system, can you
20 describe that, please?

21 A. Certainly.

22 On the outside perimeter of the

23 separation layer is a continuous loop of piping.
24 A drop of water hitting this landfill that got

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1 inside would eventually hit the separation layer
2 and then travel downward at a 3 percent slope to
3 an outside edge, whereupon the sloped piping
4 would bring it to a leachate collection manhole,
5 which I illustrated by the open circle around
6 the drawing.

7 Q. Okay. Is that called for by the sig
8 mod?

9 A. Yes, sir.

10 Q. Is that constructed?

11 A. The portions of the leachate
12 collection system that are adjacent to the
13 separation layer areas that are constructed are
14 indeed constructed.

15 Q. And is the construction of the
16 remainder, the timing of the construction,
17 remainder of the leachate collection devices on
18 Parcel A, one of the subjects of this appeal?

19 A. Yes, it is.

20 Q. Does the leachate collection system
21 that you've described also include the leachate

22 collection trench and vertical leachate wells?

23 A. Yes, it does. The leachate collection
24 system I just described primarily controls

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1 leachate and the minimization of infiltration
2 from migrating beneath it of the new waste.
3 There are two types of devices that are part of
4 the permit application, which are designed to
5 address leachate of the historic or previously
6 placed waste in Parcel A.

7 Q. Is any of the leachate collection
8 trench or the two vertical leachate collection
9 wells constructed?

10 A. No, they are not.

11 Q. That is part of the timing thing that
12 we're talking about here today?

13 A. Yes, sir.

14 Q. Okay. What is the plan with the
15 leachate, where is it -- from Parcel A, where is
16 it ultimately going to go?

17 A. All of the leachate from Parcel A will
18 flow across Ashley Road and just south of the
19 equipment building there will be a storage tank
20 that is not shown on this drawing but shown on

21 the Parcel B drawing, it will be located in
22 the -- approximately the middle of the western
23 side of Parcel A drawing.

24 Q. And is that going to go to the --

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1 where is it ultimately going to go?

2 A. Ultimately it's going to go to the
3 POTW, City of Morris.

4 Q. Is there a permit for that?

5 A. It has already been permitted, yes,
6 sir.

7 Q. And that was permitted by the bureau
8 of water?

9 A. Yes, sir.

10 Q. Okay. Because -- strike that.

11 We talked, I talked with Ms. Munie
12 yesterday, and I don't know if I was using the
13 right terms, if she understands what I was
14 saying, do you understand what I mean when I say
15 groundwater impact assessment?

16 A. Yes, I do.

17 Q. What is a groundwater impact
18 assessment?

19 A. I -- my definition for it includes

20 running a series of computer models in order to
21 predict the impact to the groundwater of a -- in
22 this case a landfill or a source, determining
23 what the impact would be taking into
24 considerations the geological, the

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1 hydrogeological setting of the study area as
2 well as the -- any barriers that may be in place
3 and how they interact with precipitation and
4 seasonal variations.

5 Q. Did this landfill pass the groundwater
6 impact assessment?

7 A. No, it did not. Parcel A did not pass
8 the groundwater impact assessment.

9 Q. Because why?

10 A. Basically, because there was no
11 documentation of a liner existing beneath the
12 historic waste in Parcel A.

13 Q. Okay. Did you have to propose
14 extraordinary or additional measures in the
15 design and operation of this landfill than you
16 would have had to propose had it passed the
17 groundwater impact assessment?

18 A. Yes, sir.

19 Q. And can you describe that for Mr.
20 Halloran. . .

21 A. The devices that they were referring
22 to were part of the contingent remediation
23 program. They involved two things. Our primary
24 control devices as proposed in the application

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1 were two vertical wells designed to remove
2 groundwater, vertical pumping wells, entitled T4
3 and T2, which are located on the eastern side of
4 the facility. As a backup to those and only in
5 the event that they would become necessary, a
6 groundwater collection trench is also proposed
7 to be installed along the entire eastern side or
8 approximately 2,000 feet along the eastern side
9 of Parcel A.

10 Q. Now, are you proposing to install the
11 wells and the trench right away?

12 A. No, sir. Based on a long-term study
13 we did at the facility, which we've called in
14 these proceedings the 1999 pump disk, we believe
15 absolutely that the best way to address the
16 removal of groundwater is with the vertical
17 well. The groundwater collection trench design

18 is only included as a backup, backup, backup
19 type thing to only be used if the two vertical
20 wells that we propose that we believe will be
21 very successful in meeting our objectives and/or
22 if a third or fourth vertical well might be
23 necessary, only at that time -- and it didn't
24 come out right. I'll start over.

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1 Q. Go ahead.

2 A. The two vertical wells are our primary
3 devices. In the event that the vertical, the
4 two vertical wells do not work, finding
5 something that we don't believe to exist, but
6 somehow something new is going on, at that time,
7 I might propose to lower the water level in T2
8 or T4 by half a foot or a foot, maybe that
9 wouldn't do it. If that wouldn't do it, I might
10 propose to install a third well. In the event
11 that I do not believe that I can get correction
12 of this problem with T2 and T4, I can or I have
13 provided a design for a shallow groundwater
14 collection trench along the east side of Parcel
15 A.

16 Q. When you say determined that it works

17 or it doesn't work, how does that procedure
18 work?

19 A. The permit application and the
20 permit -- I'm sorry. The permit is not -- the
21 permit application made a proposal to correct
22 data from the east side of Parcel A on a monthly
23 and a quarterly basis. The data would then be
24 compiled annually and submitted to the Agency.

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1 The results of this daily collection, plus the
2 results of the groundwater monitoring across
3 Parcel A, in addition to the volume of water
4 removed and disposed, would all be submitted to
5 the Agency in I believe the form of the permit
6 application which demonstrates the success of
7 our proposed system and its operation.

8 Q. And in all honesty it can also
9 demonstrate the failure of that system as well,
10 is that correct?

11 A. That is correct.

12 Q. Okay. And it could also include, your
13 report could also include requests for approval
14 of adjustment to the system, correct?

15 A. That is correct.

16 Q. Okay. Now, in addition to this deep
17 well system, because the landfill failed the
18 groundwater impact assessment, have you -- do
19 you have longer requirements for the treatment
20 of groundwater than would have been required had
21 it not failed the GIA?

22 A. Yes, the groundwater impact assessment
23 predicts the level of contamination that your
24 source would cause in your setting for 100 years

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1 passed the date of your last operation of your
2 sewers or landfill in this case.

3 Q. Okay. And what do we have to do in
4 this case?

5 A. In this case it is proposed that we
6 collect groundwater for up to 100 years and we
7 would only stop collecting groundwater if the
8 remediation program was successful in cleaning
9 up the groundwater on the east side and that the
10 improvements to Parcel A, the separation layer,
11 the final cover, leachate removal system, et
12 cetera, are significantly effective in reducing
13 the source of the contamination.

14 Q. That groundwater for the next 100

15 years is going to go to where?

16 A. The groundwater for the next 100
17 years, and I would point out that I believe we
18 would be successful in stopping the removal of
19 groundwater over the next 100 years from this
20 facility as the other controls are installed --

21 MR. KIM: Objection, that is
22 non-responsive.

23 HEARING OFFICER HALLORAN: He may
24 proceed.

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1 THE WITNESS: -- will go to the City
2 of Morris POTW.

3 BY MR. LAROSE:

4 Q. When you said you believe you'll be
5 successful in stopping the removal of
6 groundwater over 100 years, what did you mean by
7 that?

8 A. I mean that the groundwater
9 conditions, the quality of groundwater should
10 improve enough that it will not be required
11 under the 811 regulations to continue extracting
12 the groundwater on the east side of Parcel A.

13 Q. So part of these annual submittals

14 might be a report that we succeeded and a
15 request that we no longer have to do it?

16 A. Yes, that is spelled out in the
17 application.

18 Q. Sir, the things that you've just
19 described, again, with the exception of the
20 final cover system, are generally laid out on
21 Exhibit Q, paragraph 11, A through J, correct?

22 A. That is correct.

23 Q. Mr. McDermont, I'm going to show you
24 one more oversized drawing, then I'm going to

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1 let you sit down for a little bit.

2 MR. KIM: Were you going to offer CCC?

3 MR. LAROSE: Yes. Sorry. Thank you,
4 Mr. Hearing Officer, I would offer Exhibit CCC
5 into admission into the record.

6 HEARING OFFICER HALLORAN: Any
7 objection, Mr. Kim?

8 MR. KIM: No objection.

9 HEARING OFFICER HALLORAN: Exhibit
10 CCC is admitted.

11 (Exhibit No. CCC was admitted.)

12 BY MR. LAROSE:

13 Q. I'm going to show you, Mr. McDermont,
14 what we've previously marked and made an
15 oversize of Exhibit DDD.

16 What is Exhibit DDD, Mr. McDermont?

17 A. Exhibit DDD is our drawing sheet
18 number B3-5, which is a generally speaking north
19 to south cross section of Parcel A and this,
20 again, is provided in Attachment 4 of the Parcel
21 A application.

22 MR. LAROSE: For the record, Mr.
23 Halloran, this will be provided in volume --
24 excuse me, Parcel A, Volume 1, page 0118

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1 BY MR. LAROSE:

2 Q. Sir, could you describe what is
3 depicted on Exhibit DDD?

4 A. Certainly. Once again, this is a
5 north to south or a south to north cross
6 section. In other words, we've sliced the
7 landfill, separated it and now we're looking at
8 the landfill as if we were standing just to the
9 side of it.

10 Q. Okay. Sliced it open, what are we
11 looking at?

12 A. We're looking at the final cover or
13 our top line. These lines illustrate that a 3
14 foot protective soil layer will be put on top of
15 a 3 foot recompacted low permeability layer.
16 This will preclude or certainly minimize
17 infiltration from precipitation from entering
18 the landfill.

19 Q. Okay. That is the top final cover
20 system, right, that top kind of arch?

21 A. Yes, sir.

22 Q. There is an arch below that, what is
23 that?

24 A. Yes, sir. The arch below it is

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1 representative of our 3 foot separation layer,
2 which is made of clay soil. Again, it has
3 maximum permeability of 1 times 10 to the
4 negative 7 centimeters per second.

5 Q. And below that separation layer, what
6 is that?

7 A. Below the separation layer, the dash
8 line represents the bottom of the landfill,
9 one -- sorry, that is the larger dash line
10 represents the bottom of the landfill. The line

11 above that, which is also dashed but with
12 smaller dashes, represents the existing grade,
13 the top of the landfill that existed in 1995
14 when this fly over topography was done.

15 Q. Just for the record, the smaller
16 version that we have in front of us don't appear
17 as a dashed line there, just on the blowup.

18 HEARING OFFICER HALLORAN: So noted.
19 BY MR. LAROSE:

20 Q. And between the smaller -- the larger
21 dash line on the bottom, which is the bottom
22 landfill, and the smaller dash line, which is
23 the existing grade, what is in there?

24 A. That is the historical fill or is

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1 labeled on this drawing previously deposited
2 refuse.

3 Q. Sir, for sake of brevity so we don't
4 have to go over the same separation layer and
5 final cover system for Parcel B, could you
6 describe what, if any, changes there would be
7 between the Parcel B final cover and separation
8 system and the one depicted on Exhibit DDD?

9 A. The Parcel A and Parcel B final cover

10 system design both include the 3 foot protective
11 layer and a 3 foot recompacted clay layer. The
12 Parcel B and the Parcel A design includes the 3
13 foot separation layer and the slope is provided
14 on that to provide positive drainage to the
15 outside of this leachate collection system,
16 which consists of perimeter piping, on Parcel A
17 and Parcel B, both. Parcel B has three vertical
18 leachate wells in it. Parcel A has -- is
19 proposed to have two vertical leachate
20 withdrawal wells in it that will remove leachate
21 from the previously deposited refuse on A and B.

22 Q. Okay. You can sit down at least for a
23 couple of minutes.

24 MR. LAROSE: Mr. Hearing Officer, I

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1 would move the admission of Exhibit DDD into the
2 record, please.

3 HEARING OFFICER HALLORAN: Mr. Kim?

4 MR. KIM: No objection.

5 HEARING OFFICER HALLORAN: Exhibit DDD
6 is admitted into the record.

7 (Exhibit No. DDD was admitted.)

8 BY MR. LAROSE:

9 Q. Mr. McDermont, I'm going to hand you
10 what has previously been admitted as Exhibit R,
11 which is the Parcel A permit. Going to leave
12 that in front of you because we may be referring
13 to that throughout your testimony.

14 Sir, is there a condition in the
15 Parcel A permit regarding the fact that leachate
16 is supposed to be maintained below the static
17 groundwater?

18 A. Yes, sir.

19 Q. Okay. Would you turn to page 42 of
20 Exhibit R, please?

21 Paragraph Roman numeral 827, as it
22 appears on page 42 of Exhibit R, is that
23 condition, is it not?

24 A. Yes.

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1 Q. Would you read the first paragraph of
2 that into the record, please?

3 A. "The permitting must maintain the
4 leachate levels within Parcel A, below the
5 static groundwater levels at all times.
6 Period."

7 Q. Is it possible to comply with that

8 condition at this landfill?

9 A. Yes, it is impossible to comply.

10 Q. My question is is it possible?

11 A. No, it is not possible to comply with
12 this.

13 Q. Okay. Why not?

14 A. The Parcel A landfill bottom was
15 previously investigated and found that the
16 majority of it was above the water table.

17 Q. I'm going to hand you what has been
18 previously marked as Exhibit II.

19 What is that, sir?

20 A. This, again, is a different cross
21 section of the Parcel A landfill.

22 MR. LAROSE: For the record, Mr.
23 Hearing Officer, this exhibit appears in Volume
24 A -- excuse me, Parcel A, Volume 2, page 059.

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1 HEARING OFFICER HALLORAN: Thank you.

2 BY MR. LAROSE:

3 Q. Sir, what does that document or what
4 does that document depict with respect to this
5 condition about maintaining leachate levels
6 below the static groundwater level?

7 A. The drawing illustrates a groundwater
8 or...Surface of the deep monitoring zone with a
9 double dot dash line running from west to east.

10 Q. Okay. Does that line depict the
11 groundwater level?

12 A. Yes, sir, it does.

13 Q. And how does that relate to the other
14 things that are on Exhibit II in relation to
15 this condition that we maintain leachate levels
16 below that line?

17 A. The line just above the columns of
18 dashed lines is a solid line running from west
19 to east, it dips downward and then rises upward,
20 dips downward again and then rises upward again
21 slightly.

22 Q. Yes, sir.

23 A. That represents the Parcel A landfill
24 bottom or invert, it is labeled as such on the

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1 drawing.

2 Q. Okay. So, I don't have this in front
3 of me but I have seen this before, just a little
4 bit of landfill is below the static groundwater
5 level, is that right?

6 A. That's correct.

7 Q. So for that portion would you be able
8 to comply with the condition?

9 A. Yes.

10 Q. For the rest of it would you?

11 A. No, sir.

12 MR. LAROSE: I would move Exhibit II
13 into the record, please.

14 HEARING OFFICER HALLORAN: Mr. Kim?

15 MR. KIM: No objection.

16 HEARING OFFICER HALLORAN: Exhibit II
17 is admitted.

18 (Exhibit No. II was admitted.)

19 BY MR. LAROSE:

20 Q. Sir, I'll show you what has been
21 previously marked as Exhibit FF and ask you to
22 take a look at that, please. What is that?

23 A. This is a drawing entitled, Figure 4,
24 which appears in the leachate management plan,

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1 Attachment 9, of the Parcel A application.

2 MR. LAROSE: Mr. Hearing Officer, for
3 the record, that document appears at Parcel A,
4 Volume 2, page 0057.

5 HEARING OFFICER HALLORAN: Thank you.

6 BY MR. LAROSE:

7 Q. Could you describe what this document
8 depicts, please?

9 A. Yes, this drawing depicts the area of
10 the landfill invert, which is below the water
11 table.

12 Q. Okay. What is the outline that
13 appears on this document, the single line
14 outline?

15 A. The outside line is the property
16 boundary, which is also evident on the other
17 Parcel A plan view drawings we've seen.

18 Q. So within that property boundary then
19 there is a permitted area of waste disposal?

20 A. Yes, sir.

21 Q. And what do these elevation lines mean
22 on this particular document?

23 A. The lines inside the outside boundary
24 indicate they're Isopacs of the depth, that

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1 portion of the landfill is below the water
2 table.

3 Q. Okay. How much of the total waste

4 disposal area is below the water table?

5 A. Five percent.

6 Q. So for 95 percent or the rest of the
7 landfill, this condition is impossible to comply
8 with, is that correct?

9 A. That is correct.

10 MR. LAROSE: Mr. Hearing Officer, I'd
11 move the admission of Exhibit FF into the
12 record.

13 HEARING OFFICER HALLORAN: Mr. Kim?

14 MR. KIM: No objection.

15 HEARING OFFICER HALLORAN: Exhibit FF
16 is admitted.

17 (Exhibit No. FF was admitted.)

18 BY MR. LAROSE:

19 Q. Mr. McDermont, there are two
20 conditions that are related to one another in
21 the permit regarding restriction of placement of
22 waste in unpermitted areas of the landfill,
23 correct?

24 A. That is correct.

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1 Q. Okay. Take a look at Exhibit R. And
2 I'm going to direct your attention to page 5,

3 Roman numeral II, subparagraph I.

4 Could you read Roman numeral II,
5 subparagraph I, into the record, please?

6 A. I'm sorry. Would you like the
7 introduction of number II as well or just the I
8 portion?

9 Q. I want the introduction of number II,
10 which will then make the I portion make some
11 sense.

12 A. Thank you, sir.

13 "The operator of this solid waste
14 facility shall not conduct the operation in a
15 manner which results in any of the following:
16 I. Deposition of refuse in any unpermitted
17 (i.e., without an Illinois EPA approved
18 significant modification authorization or
19 authorizing operation,) portion of the landfill
20 semicolon."

21 Q. And flipping back to page 2 of Exhibit
22 R, sorry, page 3 of Exhibit R, condition Roman
23 numeral I, subpart 2A. Could you read subpart
24 2A into the record, reading the subpart and A,

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1 please?

2 A. "No part of the unit shall be placed
3 into service or accept waste until an acceptance
4 report for all of the activities listed below
5 has been submitted to and approved by the
6 Illinois EPA as a significant modification
7 pursuant to 35IAC, Sections 811.505(d) and
8 813.203, perhaps a coma, A, item A is
9 preparation of the separation layer to design
10 parameters, semicolon."

11 Q. Pursuant to the construction plan,
12 which was approved in this case, are these two
13 conditions read together possible for you to
14 comply with?

15 A. Yes, they are impossible.

16 Q. My question -- just so the record is
17 clear. I asked if it was possible for you to
18 comply with them and you said, yes, it is
19 impossible. I just want to make sure your
20 answer is clear for the record.

21 A. Would you please ask it, again?

22 Q. Yes.

23 Is it possible given the construction
24 plan that was approved in this case for the

1 landfill to comply with these two conditions?

2 A. No, it is not possible.

3 Q. Okay. And why not?

4 A. The separation layer slope is above or
5 is greater than the present land form slope,
6 which was illustrated in drawing B3-1, which was
7 shown or provided in this hearing in day one.
8 So what we're doing to improve the ability of
9 Parcel A to collect leachate is increasing the
10 land form slope above what was already
11 previously there.

12 Q. Okay. Everybody has Exhibit DDD in
13 front of them. Would you come back up to this
14 drawing and show on DDD the concept that you're
15 talking about?

16 A. Certainly.

17 The existing grade is represented by
18 this line, which you can see generally speaking
19 has a small slope to the north and a small slope
20 to the east. This line is lower than the two
21 lines directly above it, which are indicative of
22 a separation layer.

23 Q. Okay. Why does the separation layer
24 have to come to a peak? Why can't you just put

1 it right on top of the old waste?

2 A. The purpose of the separation layer is
3 that water infiltrating into the landfill will
4 migrate through the waste and land on top of the
5 separation layer.

6 In order to collect this matter and
7 remove it, we have designed the separation layer
8 to have a positive drainage slope to the outside
9 perimeter on all four sides.

10 Q. So where do you need to place the
11 waste in order to build the separation layer?

12 A. I need to place the waste above the
13 existing current grade and to meet the
14 separation layer construction plan in this space
15 between the double lines and the line directly
16 below it.

17 Q. Okay. You can sit down again, Mr.
18 McDermont.

19 Did you tell the EPA that in your
20 permit application?

21 A. Yes, I did.

22 Q. I'm going to hand you what has been
23 previously admitted as Exhibit WWW, that might
24 be just a duplicate of what you got but that way

1 you don't have to go looking for it. What is
2 that, sir?

3 A. This is page 12 of the construction
4 plan for Parcel A that was provided in the May
5 2000 application.

6 Q. Sir, is this construction plan part of
7 what was approved in the May -- in the August
8 4th, Parcel A permit?

9 A. Yes.

10 Q. Okay. Which portion of this advises
11 the EPA of the need to place waste materials in
12 order to construct the separation layer?

13 A. The second paragraph underneath the
14 section entitled, separation layer.

15 Q. Okay. That has already been read into
16 the record several times, so I'm not going to
17 belabor the point.

18 You heard Ms. Munie's testimony
19 yesterday, didn't you?

20 A. Yes, I did.

21 Q. And she said that the condition Roman
22 numeral I, 2A, was only a restriction on
23 acceptance of waste, not placement of waste. Do
24 you remember that?

1 A. Yes, sir.

2 Q. With her interpretation of that
3 particular condition, does that make any
4 difference as to whether we could comply with
5 this condition or not?

6 A. Certainly makes a big difference on
7 whether we could comply with this condition.

8 Q. In what way?

9 A. The separation layer was designed to
10 be placed over the existing waste, the expressed
11 understanding that we were trying to minimize
12 the amount of new waste that would be placed
13 above the previously deposited waste.

14 Q. Okay.

15 A. This waste has to come from someplace,
16 and if you look at Exhibit DDD, you could see
17 that there is a -- between the two lines we
18 talked about before is a cross section, which
19 represents a volume of additional fill that is
20 needed.

21 Q. Okay. Is there -- if you couldn't
22 accept waste to build the invert for the
23 separation layer, what would happen?

24 A. Substantially, we would, CLC would go

1 out of business.

2 Q. Are you doing okay? Do you need some
3 water or --

4 A. I'll be happy to take a break.

5 MR. LAROSE: This a good time to take
6 five.

7 HEARING OFFICER HALLORAN: Let's take
8 five minutes.

9 (Off the record.)

10 HEARING OFFICER HALLORAN: We're back
11 on the record. It's approximately 11:00
12 o'clock. Mr. McDermont is on the stand. I
13 remind him he is still under oath.

14 Mr. LaRose, you may continue your
15 direct. Thank you.

16 BY MR. LAROSE:

17 Q. Sir, when you prepared the original
18 application, 1996, and the submittals that
19 followed that, you submitted a closure and
20 post-closure care cost estimate of approximately
21 \$17 million, correct?

22 A. Yes, sir.

23 Q. Did that cover both Parcel A and
24 Parcel B?

1 A. Yes.

2 Q. Of the 17 million, what, if any, of
3 that amount was attributable to the treatment of
4 leachate, groundwater and condensate for 100
5 years as required by your -- I don't remember
6 whether it was called an amended treatment
7 program or --

8 A. Oh, by the contingent or remediation
9 program?

10 Q. Right. Correct.

11 A. The amount in question was
12 approximately \$10 million.

13 Q. Are you aware of or did you
14 participate in any negotiations with the City of
15 Morris regarding that \$10 million cost?

16 A. Yes, I did.

17 Q. When?

18 A. That would have been in June and/or
19 July of 1999.

20 Q. Okay. What was the purpose of those
21 negotiations?

22 A. The purpose of those negotiations was
23 to seek a reduction of leachate, groundwater and

24 condensate treatment costs.

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1 Q. From the City of Morris POTW?

2 A. Yes, sir.

3 Q. Did you participate in those
4 negotiations?

5 A. Yes.

6 Q. Tell me about the first thing that you
7 did.

8 A. The first meeting I attended was with
9 you and the City of Morris engineers.

10 Q. Okay. And where was that meeting
11 held?

12 A. That was held in the city engineer's
13 office in Morris, Illinois.

14 Q. Okay. And what was the purpose of
15 that meeting?

16 A. Again, to seek a reduction of the
17 leachate or of the wastewater treatment costs.

18 Q. Okay. And what was our proposal to
19 them?

20 A. Our proposal to them was to try and
21 reduce the amount of that based on the historic
22 waste fill in Parcel A that the city had

23 previously deposited and the problems it was
24 causing for our client, CLC.

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1 Q. As a result of that meeting, did we
2 reach an agreement with the city engineers to
3 reduce the cost of POTW?

4 A. No, we did not.

5 Q. As a result of that meeting, did we
6 conduct additional, either meetings or
7 negotiations with respect to this point?

8 A. Yes, we did.

9 Q. And when did that occur?

10 A. That occurred, again, late June or
11 early July, but this meeting was after the
12 meeting with city engineers.

13 Q. Okay. And where was the second
14 meeting?

15 A. The second meeting was at the City of
16 Morris city hall.

17 MR. KIM: I'm going to object to this
18 line of questioning, unless it can be shown that
19 there is any records of these meetings that took
20 place in the application, I don't think this
21 testimony should be admitted.

22 HEARING OFFICER HALLORAN: Mr. LaRose.

23 MR. LAROSE: This is the -- this is
24 the negotiations that led up to the agreement

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1 that Morris would treat the landfill condensate
2 at a reduced cost. The agreement that is in the
3 record and the agreement that forms the basis of
4 our request to the Agency that we -- that we be
5 allowed to reduce financial assurance from 17
6 million down to 7 million. This is just
7 background about the agreement that is in the
8 record.

9 HEARING OFFICER HALLORAN: I'll allow
10 it. Let's not go too far into it.

11 MR. LAROSE: Thanks. And we're almost
12 done with this.

13 BY MR. LAROSE:

14 Q. Who was the second meeting with?

15 A. The second meeting was with the city
16 alderman, the mayor and the city engineer.

17 Q. Okay. And as a result of that second
18 meeting, did we enter into an agreement with the
19 City of Morris eventually for the reduced cost?

20 A. Yes, we did.

21 Q. Okay. How would you describe the
22 negotiations during those two meetings?

23 A. At arm's length.

24 Q. Okay. The agreement was ultimately

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1 entered into in writing, correct?

2 A. Yes.

3 Q. I am going to show you what has been
4 previously admitted as Exhibit LL. I think the
5 only one that doesn't have a copy of this is
6 probably you. Here, I've got an extra one.

7 What is that document?

8 A. This is an addendum to the lease dated
9 or made on July 20, 1999, between City of Morris
10 and Community Landfill Company.

11 MR. LAROSE: For the record, Mr.
12 Hearing Officer, this document appears in Parcel
13 A, reviewer notes 0328 and 0329.

14 BY MR. LAROSE:

15 Q. Sir, could you look at paragraph 6 of
16 that document, please?

17 A. Yes, sir.

18 Q. Could you read paragraph 6 of that
19 document into the record?

20 A. "This agreement shall inure to the
21 benefit of the lessee, its successors and
22 assigns, and specifically to the State of
23 Illinois Environmental Protection Agency, or its
24 designee, in the event it is required to perform

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1 closure/post-closure activities."

2 Q. Okay. Was that something that we put
3 into the agreement on purpose?

4 A. Yes, sir.

5 Q. By the way, the circle around
6 paragraph 6, did you make that?

7 A. I do not recall.

8 Q. Okay.

9 A. I must have.

10 Q. Okay. The purpose of paragraph 6, we
11 put it in there purposely, what was the purpose
12 of it?

13 A. The purpose of this was in the event
14 of CLC not fulfilling its obligations under the
15 post-closure care portion of its permit that the
16 reduction in cost by the City of Morris would be
17 passed on or assigned to the IEPA or its
18 designee who would perform the corrective action

19 for the facility.

20 Q. And in short they'd get free leachate
21 disposal too, right?

22 A. Yes, sir.

23 Q. As a result of entering into this
24 agreement, what did you do?

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1 A. Based upon this agreement, I used the
2 figures that were presented to me for the City
3 of Morris POTW treatment cost for our wastewater
4 and recalculated the cost estimates for
5 post-closure care for Parcels A and B.

6 Q. Did you submit that to the Agency?

7 A. Yes, I believe we submitted those
8 permit addendums on August 13, 1999.

9 Q. Okay. And what happened as a result
10 of those submittals?

11 A. The permit reviewer, Christine Roque,
12 called me and said that our Parcel A and Parcel
13 B permits were going to be denied.

14 Q. What did you respond to that?

15 A. I asked if we could have a meeting to
16 discuss the issue.

17 Q. Did she get back to you on your

18 request for a meeting?
19 A. Yes, she did.
20 Q. And what was her response?
21 A. She said Joyce Munie was not going to
22 agree to any reduction of the financial
23 assurance amounts so there was no need for a
24 meeting.

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1 Q. What happened after that?
2 A. We received the permit denials of
3 Parcel A and Parcel B on September 1, 1999.
4 Q. And we appealed that decision to this
5 board, correct?
6 A. Yes, we did.
7 Q. And included in that appeal was an
8 appeal of the financial assurance condition and
9 the entire denial itself, correct?
10 A. Yes, sir.
11 Q. Did we then enter into a plan to
12 resolve that permit appeal and to just fight
13 about the financial assurance at a later date?
14 A. Yes, sir.
15 Q. Okay. What were the basic elements of
16 that plan?

17 A. The basic elements of that plan were
18 that we would resubmit the application,
19 substantially identical to the 1996 application,
20 and we would include in that application
21 post-closure care cost estimates totalling \$17
22 million.

23 Q. Was there any part of that plan that
24 related to an expedited procedure?

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1 A. Yes. It was my understanding that the
2 IEPA would try and accommodate an expedited
3 review of these materials.

4 Q. Sir, what was the -- what, if
5 anything, did the plan have to do with whether
6 we were going to exchange drafts with the EPA?

7 A. I believe the plan set forth a
8 procedure wherein we would provide them with the
9 \$17 million of financial assurance, in this
10 case, a performance bond, in exchange for the
11 draft permits of Parcels A and B.

12 Q. Okay. Why was it important for us to
13 get the draft permits?

14 A. We wanted to make sure that we had an
15 accurate permit.

16 Q. Okay. And one we could live with,
17 right?

18 A. Yes, sir.

19 Q. I'm going to hand you what has been
20 previously marked as Exhibit VV, which is a
21 series of correspondence that appears in the
22 record in this case.

23 Sir, without belaboring the point,
24 because these documents are already in the

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1 record, does that correspondent between Mr. Kim
2 and myself and you, that sets forth the
3 procedure that you just described?

4 A. Yes, it does.

5 Q. Admittedly, Mr. Kim says in that
6 document, we'll give you drafts, if we have
7 time, correct?

8 A. I believe so.

9 Q. Okay. So he was saying, I'll try my
10 best, but if we don't have time, you won't get
11 the drafts, and we were saying as long as you
12 try your best, that's okay, right?

13 A. Yes, sir.

14 MR. LAROSE: Mr. Hearing Officer, I

15 would move Exhibit VV into the record, please.

16 HEARING OFFICER HALLORAN: Mr. Kim,
17 any objection?

18 MR. KIM: No objection.

19 HEARING OFFICER HALLORAN: Exhibit VV
20 as in victory is admitted.

21 (Exhibit No. VV was admitted.)

22 BY MR. LAROSE:

23 Q. Sir, did you resubmit the permit
24 application in furtherance of this procedure

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1 that we set forth?

2 A. Yes, I did.

3 Q. And that was submitted in May of 19 --
4 I'm sorry, May of 2000?

5 A. Yes, sir.

6 Q. Along with that application, did you
7 submit a cover letter to the IEPA?

8 A. Yes, I did.

9 Q. I'm going to hand you what has been
10 previously admitted as Exhibit T, ask you to
11 take a look at that, please. That's the only
12 copy I have. I'm going to put U in front of you
13 as well.

14 Sir, both T and U respectfully are the
15 -- respectively are the cover letters for the
16 Parcel A and Parcel B May 2000 submittals of the
17 application, correct?

18 A. Yes, sir.

19 Q. Okay. There is a paragraph in there
20 about submitting the financial assurance to
21 merely resolve this matter and that we would not
22 waive our rights to seek relief from that at a
23 later date, right?

24 A. Yes, sir.

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1 Q. Okay. That paragraph as it appears in
2 T and U are identical, correct?

3 A. Yes, sir.

4 Q. You wrote the term, I need to peek
5 over your shoulder for a second, through
6 appropriate available procedures, is that
7 correct?

8 A. Yes.

9 Q. That's your term, right?

10 A. Yes, sir.

11 Q. What did you mean by that when you
12 wrote it?

13 A. Basically, I felt like there would be
14 two procedures which might be used to settle the
15 issue of financial assurance for this facility.

16 Q. Okay. The first procedure that you
17 had in mind was what?

18 A. The first procedure was the issuance
19 of permits for Parcels A and B, which we could
20 live with, and --

21 Q. When you say we could live with, do
22 you mean that didn't have conditions that we
23 needed to appeal besides the financial
24 assurance?

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1 A. Yes, sir, that had acceptable
2 conditions that were in accordance with our
3 application.

4 Q. Okay. And if that was the case, if
5 you received the permit that you could live
6 with, what available procedure did you
7 contemplate following?

8 A. Based on the receipt of those
9 acceptable permits, we would file an additional
10 significant modification application for Parcel
11 A and Parcel B which sought to reduce the

12 post-closure care amount from \$17 million to \$7
13 million.

14 Q. And what did you anticipate would
15 happen with that application?

16 A. We anticipated that the Agency would
17 deny that application.

18 Q. And then what would happen?

19 A. And then we would appeal that denial
20 to the board.

21 Q. And, if necessary, through the court
22 system?

23 A. Certainly.

24 Q. And what was your understanding of

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1 whether that was the Agency's understanding or
2 not?

3 A. That is my understanding that the
4 Agency agreed with that procedure.

5 Q. Okay. What was the second appropriate
6 available procedure that you contemplated?

7 A. The second appropriate procedure that
8 I contemplated was the receipt of a permit that
9 would require appeal to the Pollution Control
10 Board based on unacceptable permit conditions.

11 Q. Like the ones that we received on
12 August the 4th, 2000, right?

13 A. Yes, sir.

14 Q. Okay. Did the issue of whether we
15 were going to get drafts ahead of time or not
16 have anything to do with this second procedure,
17 if you will, specifically whether the permits
18 were going to be something we could live with or
19 were acceptable, did that have anything to do
20 with our need to look at them ahead of time?

21 A. Generally speaking, whenever the
22 Agency issues a draft permit to the consultant
23 or the receiving facility, it usually helps to
24 facilitate a better permit for both parties,

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1 yes, sir.

2 Q. Okay. So the idea was if there was
3 stuff you couldn't live with, we could talk to
4 them about it before the permit was issued?

5 A. Absolutely.

6 Q. And under the second procedure, what
7 actually happened in this case when we received
8 permits we couldn't live with, what appropriate
9 available procedure did you contemplate

10 challenging the financial assurance on?

11 A. We contemplated appealing the
12 financial assurance requirements of \$17 million
13 as well.

14 Q. Okay. And bringing that before the
15 board?

16 A. Yes, sir.

17 Q. Was there a reason why we brought it
18 in this particular procedure and where we --
19 what was the reason that we brought it in this
20 particular procedure as opposed to filing a
21 separate application and doing it separately,
22 even though we received a permit we couldn't
23 live with?

24 A. My primary concern was that, in the

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1 eyes of the board or the appellate court, we
2 might somehow be criticized if we were to at a
3 future date file a permit application, have it
4 denied by the Agency and then challenge that.

5 Q. And not having appealed that in this
6 proceeding?

7 A. Right, giving not -- not appealing it
8 now may prejudice ourselves for a later appeal.

9 Q. Sir, regardless of which of these two
10 available procedures you contemplated following,
11 was this issue going to go to the board no
12 matter what?

13 A. Yes, sir.

14 Q. And if the board ruled adverse to
15 either party, it was contemplated that we were
16 going to let the court's decide, correct?

17 A. Yes, sir.

18 Q. And as far as you're concerned, that
19 was also the Agency's understanding of the deal?

20 A. Yes, sir.

21 Q. Let's shift for a second as to the
22 reason why this reduction in financial assurance
23 was not allowed by the Agency in the 1999
24 permit.

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1 Joyce Munie and Christine Roque have
2 testified in this proceeding that they didn't
3 allow it because it wasn't a, quote, unquote,
4 third-party cost?

5 MR. KIM: Objection as to the
6 characterization.

7 HEARING OFFICER HALLORAN: You want to

8 rephrase that, Mr. LaRose?

9 MR. LAROSE: I'll try but I think that
10 is exactly what they said.

11 MR. KIM: Well --

12 MR. LAROSE: I guess --

13 MR. KIM: That's incorrect. I'm
14 not -- I don't want to get into too much of
15 restating their testimony, they might have made
16 comments like that concerning the 1999 permit
17 denial, but they never made that statement
18 concerning the August 2000 permit issuance. I
19 think the record will bear that out.

20 MR. LAROSE: We're talking about the
21 1999 permit.

22 HEARING OFFICER HALLORAN: Then I
23 think we need to clarify.

24 MR. LAROSE: Okay. I will.

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1 HEARING OFFICER HALLORAN: Thank you,
2 Mr. LaRose.

3 BY MR. LAROSE:

4 Q. The permit denial in 1999, let's get
5 this straight, it was denied for one reason and
6 one reason only, they didn't approve your cost

7 for reduction of financial assurance, right?

8 A. Yes.

9 Q. And what is your understanding of why
10 they did that based on your conversations with
11 them and based on the testimony that they gave
12 in this proceeding?

13 A. My understanding is that they felt
14 that the City of Morris' cost was not
15 third-party since the City of Morris owns the
16 landfill and the POTW.

17 Q. Is the City of Morris POTW somehow
18 connected financially to the landfill?

19 A. No, it is not.

20 Q. Okay. Does the Community Landfill
21 Company share any revenue or -- either provide
22 any revenue or receive any revenue from the
23 Morris POTW?

24 A. No, it does not.

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1 Q. Does the Morris POTW have anything to
2 do with the basic lease agreement between the
3 City of Morris and CLC other than the recent
4 amendment that allowed them to dispose of the
5 leachate, condensate and groundwater at reduced

6 costs?

7 A. Can I ask you to repeat that question?

8 Q. Sure. Sure.

9 Is it part of the general lease
10 agreement, Morris POTW between CLC and the City
11 of Morris?

12 A. Yes, it is.

13 Q. Okay. The agreement that we entered
14 into with CLC -- excuse me, with the Morris POTW
15 you characterized as arm's length?

16 A. Very much so.

17 Q. And why did you say it was an arm's
18 length agreement?

19 A. We were -- at the first negotiation
20 the responsibility with the city engineer for
21 the Parcel A historical fill before seeking
22 approval from the alderman.

23 Q. And we had negotiated with the
24 alderman, too, it wasn't some backroom deal?

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1 A. No, sir.

2 Q. It's also a matter of public record
3 that these negotiations occurred?

4 A. Yes, sir.

5 Q. The lease amendment that allowed for
6 the reduction, reduced cost of treating the
7 leachate, inures to the benefit of the IEPA?

8 A. Yes.

9 Q. So what does that mean, do they get
10 \$10 million?

11 MR. KIM: Object, that calls for a
12 legal conclusion.

13 HEARING OFFICER HALLORAN: I agree.
14 If you can rephrase it.

15 BY MR. LAROSE:

16 Q. Okay. Because it inures to the
17 benefit of them, what benefit does the IEPA get?

18 MR. KIM: Objection, that calls for
19 legal conclusion.

20 MR. LAROSE: I don't think it does.

21 MR. KIM: He is being asked to
22 interpret what I assume is being offered up as
23 an official or legally enforceable document,
24 what the impact of that is to the IEPA. I don't

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1 think he is qualified to do that.

2 MR. LAROSE: I think he is. This
3 isn't an interpretation of a legal document. It

4 says it inures to their benefit, the question is
5 what do they get?

6 MR. KIM: Well, then I think that --
7 for the same reason, if that is what his
8 statement is, if that is what the question is,
9 the document speaks for its own.

10 HEARING OFFICER HALLORAN: Objection
11 sustained.

12 BY MR. LAROSE:

13 Q. If the IEPA has to step in to clean up
14 the landfill because the operator walked away,
15 do they get \$10 million of free leachate?

16 A. Yes, they do.

17 Q. Okay. And if, in addition to that,
18 they require us to put up \$10 million in
19 financial assurance to treat the leachate, how
20 much are they really getting?

21 A. They would be getting \$10 million
22 worth of performance bonds plus the free service
23 for treating the leachate and groundwater and
24 condensate for a total of approximately \$20

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1 million.

2 Q. What would that result in?

3 A. I would call that double-dipping.

4 Q. The Agency at the time that you
5 proposed a reduction in financial assurance had
6 already approved the Morris POTW costs for
7 treatment of leachate as a third-party cost,
8 hadn't they?

9 A. Yes, sir.

10 Q. Okay. And, in fact, they had done it
11 with respect to the gas permit, right?

12 A. Yes, sir.

13 Q. And the 2000 permit application
14 accepts the Morris POTW cost as a third-party
15 cost even though Morris owns the POTW and the
16 landfill?

17 MR. KIM: Objection, these are all
18 leading.

19 HEARING OFFICER HALLORAN: I agree.
20 You're starting to lead more and more and I'd
21 appreciate it if you can rephrase the questions.

22 MR. LAROSE: Trying to move it along a
23 little bit.

24 MR. KIM: I have no problem with

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1 moving it along from a procedural standpoint.

2 This is all substantive.

3 HEARING OFFICER HALLORAN: I agree.

4 BY MR. LAROSE:

5 Q. Okay. Sir, what costs did the Agency
6 approve for treatment of the leachate in the
7 2000 application?

8 A. I do not specifically recall the
9 number, but it approved the standard City of
10 Morris POTW treatment cost.

11 Q. Okay. Even though Morris owned both
12 facilities?

13 A. Yes, sir.

14 Q. Sir, you're familiar with the
15 reservation of disposable capacity agreement?

16 A. I am.

17 Q. What does that document do?

18 A. That document memorializes the
19 capacity of Parcel A in Parcel A to accommodate
20 the over-height waste in Parcel B, in other
21 words, reserving available disposal volume or
22 capacity.

23 Q. And who made that commitment to the
24 IEPA in that document?

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1 A. The City of Morris and Community
2 Landfill Company made that commitment.

3 Q. Does that document contain any
4 third-party cost for waste disposal?

5 A. No, that document does not.

6 Q. Okay. And the IEPA accepted that
7 document and the permit application in this
8 case, right?

9 A. Yes, sir.

10 Q. Okay. And that document still exists
11 with the City of Morris and CLC guarantying
12 disposal capacity?

13 MR. KIM: Again, leading. This is a
14 real leading question.

15 MR. LAROSE: I'll rephrase.

16 HEARING OFFICER HALLORAN: Sustained.

17 BY MR. LAROSE:

18 Q. What, if anything, is your
19 understanding of whether that document is still
20 in force or effect?

21 A. That document is included in the
22 Parcel A and Parcel B permit applications. In
23 fact, I believe it is one of the documents
24 Christine asked me to provide her a second time

1 that is referenced in the Parcel A permit
2 application.

3 Q. And that was something that you had to
4 do like -- excuse me.

5 Did you have to do that between the
6 May submittal and the August 4 submittal, give
7 it to her a second time?

8 MR. KIM: Objection.

9 THE WITNESS: Yes, we provided it
10 after the May application was submitted, before
11 the permit was issued.

12 BY MR. LAROSE:

13 Q. Sir, are you aware of any other
14 facilities in the State of Illinois where a
15 municipality owns the landfill and owns the
16 publicly owned treatment works where no
17 third-party cost is required for leachate
18 disposal?

19 A. Yes, sir.

20 Q. What facility is that?

21 A. City Water, Light & Power.

22 Q. Can you describe what type of facility
23 the City Water, Light & Power facility is?

24 A. City Water, Light & Power is a

1 department of the City of Springfield. They are
2 a public utility that generates electricity and
3 they have a landfill facility that disposes of
4 the facility by-products.

5 Q. So the City of Springfield owns CWLP,
6 right?

7 A. Yes, sir.

8 Q. And CWLP owns a landfill?

9 A. Yes, sir.

10 Q. What goes into the landfill?

11 A. Scrubbers sludge, coal, combustion,
12 waste, lime sludge, things like that.

13 Q. What is their disposal and treatment
14 option for the leachate from the landfill?

15 A. The leachate from the landfill is
16 pumped to a treatment pond before being
17 discharged.

18 Q. Who owned the treatment pond?

19 A. CWLP.

20 Q. Who owns CWLP?

21 A. City of Springfield.

22 Q. Is there any cost in the closure and
23 post-closure care plan for that facility,
24 third-party or otherwise, for the treatment of

1 the leachate and condensate from the landfill
2 that CWLP owns to the treatment pond that they
3 own?

4 A. No, there is none.

5 Q. You requested in the 1996 application
6 a time period to either site waste pursuant to
7 SP172 or move it across the street to Parcel A,
8 correct?

9 A. Yes.

10 MR. KIM: Excuse me, before we go on,
11 can we go off the record for just a moment?

12 (Off the record.)

13 HEARING OFFICER HALLORAN: Back on.

14 MR. KIM: Considering that the witness
15 just gave testimony concerning a permit, which
16 has not been admitted into evidence, which has
17 not been offered into evidence, I would ask that
18 the testimony be stricken in that there has been
19 no supporting documentation offered for his
20 testimony.

21 HEARING OFFICER HALLORAN: Mr. LaRose.

22 MR. LAROSE: First of all, the witness
23 testified he has competent, personal knowledge.

24 Second of all, this is absolutely

1 ridiculous and offensive.

2 These are the very documents we've
3 asked them to produce and they haven't. These
4 are the very documents that you quashed the
5 subpoena on. For them to say -- Ms. Munie got
6 up on the stand yesterday and said I don't know
7 whether CWLP does this or not. I don't know
8 whether there is another facility. I don't know
9 whether I issued a permit. The permit they
10 provided us with doesn't spell out this
11 particular issue. Mr. McDermont is a consultant
12 for that facility, he testified pursuant to his
13 personal knowledge. And for Mr. Kim to say that
14 we can't do this because we don't have the NPDES
15 permit that we asked them for, that they didn't
16 give to us, is a little bit offensive.

17 MR. KIM: Again, I'm not going to
18 rehash. The hearing officer has ruled on the
19 motion to quash, and that stands. My objection
20 is he is offering testimony concerning what is
21 contained within a permit document, presumably
22 within other documents that have provided to the
23 IEPA, which described in impeccable detail the
24 information which he has testified to, that

1 information has not been presented to the board,
2 not been offered as an exhibit, therefore, I
3 think that testimony should be stricken.

4 HEARING OFFICER HALLORAN: What about
5 Exhibit ZZ regarding the Rochelle municipal
6 landfill?

7 MR. LAROSE: Yes, sir.

8 HEARING OFFICER HALLORAN: I don't
9 think that was ever offered or admitted and
10 there was testimony on that, correct?

11 MR. LAROSE: We're going to get into
12 ZZ. That is really for another point. It's not
13 for this particular point but it is for another,
14 the one day versus five days' leachate storage.
15 That permit does speak to the one day versus the
16 five day. I did inquire of Ms. Munie of that.
17 The permit for CWLP, that they showed to us,
18 does not speak to this issue of the cost. Only
19 the closure and post-closure care cost estimate
20 would speak to that which is what we asked them
21 for which is what they moved to quash and
22 which is what they didn't give us. Mr.
23 McDermont, and I can lay a little better
24 foundation, if you need it, is testifying from

1 his personal knowledge of dealing with this
2 particular facility, I think he is competent to
3 testify to that.

4 MR. RAO: Can I ask something?

5 HEARING OFFICER HALLORAN: Sure. Mr.
6 Rao.

7 MR. RAO: I had a question about this
8 CWLP landfill.

9 MR. LAROSE: Please.

10 MR. RAO: Just, you know, maybe this
11 question should be directed to you, it relates
12 to what you're discussing right now. Is this an
13 on-site landfill, which does not require a
14 permit or is it a permitted landfill? Do you
15 have any idea?

16 MR. LAROSE: Mr. McDermont can speak
17 to that. I don't know.

18 MR. KIM: And before he gives any
19 answer, I think that question is exactly the
20 type of thing which begs the introduction as
21 evidence of the documents that are being
22 referred to.

23 The documents will be in the best --

24 he can give his interpretation of what he thinks

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1 those documents mean but I think to offer up
2 evidence about a document that has not been
3 provided by the board so the board can't review
4 what those terms are I think would be
5 inappropriate.

6 MR. LAROSE: Is Mr. Kim saying that
7 there wasn't a permit? They gave us the permit
8 yesterday. Mr. Rao's questions are good ones.
9 I welcome them. I'm not competent to speak to
10 them. Certainly I'm not sworn as a witness. I
11 would suggest he ask the questions of Mr.
12 McDermont and he can give the answer.

13 MR. KIM: If you would like to offer
14 the permit as an exhibit, then you may do so.
15 If he'd like to testify as to what is contained
16 in the terms of that permit document, he can do
17 so, but he is testifying.

18 First of all, that document hasn't
19 been introduced.

20 Second of all, I'm pretty sure he is
21 testifying about information that is not found
22 in that permit and that is found in documents

23 that exists otherwise or elsewhere.

24 MR. LAROSE: That we asked them to

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1 provide us.

2 HEARING OFFICER HALLORAN: And I
3 granted a motion to quash.

4 MR. LAROSE: But how can my hands be
5 tied that way? How can you say that this
6 gentleman can't testify from his personal
7 knowledge for two reasons? To show that they're
8 treating us differently than somebody else and
9 to impeach Ms. Munie's testimony when she said I
10 don't believe that is the case.

11 MR. KIM: Well, and actually Ms.
12 Munie's testimony was, I haven't look at those
13 documents.

14 MR. LAROSE: She said I don't know.

15 MR. KIM: Well --

16 MR. LAROSE: She said -- I don't know
17 if that's the case or not, I mean, let's level
18 the playing field here. We're being treated
19 differently in the permit section and if we
20 can't present evidence that we're being treated
21 differently --

22 HEARING OFFICER HALLORAN: Your
23 opinion is so noted. I will sustain the
24 Agency's objection, however, you're more than

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1 welcome to make an offer of proof.

2 Mr. Rao, did you still want to ask a
3 question of Mr. McDermont?

4 MR. KIM: Just so we're clear then,
5 your motion to strike will cover all of the
6 testimony Mr. McDermont just provided concerning
7 CWLP facilities?

8 HEARING OFFICER HALLORAN: Right.
9 That is correct.

10 MR. KIM: Thank you.

11 MR. LAROSE: I am going to make an
12 offer of proof.

13 BY MR. LAROSE:

14 Q. Sir, are you aware of the permitting
15 situation of the CWLP landfill?

16 A. I am.

17 Q. Is it an on-site landfill?

18 A. It's a landfill located on the City
19 Water, Light & Power property, however, the
20 definition of on-site that you are likely

21 referring to from a regulatory standpoint it is
22 not considered to be that.

23 Q. Okay. Does it have a permit?

24 A. Yes, it does.

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1 Q. Are you particularly familiar with
2 that permit?

3 A. I absolutely am.

4 Q. Okay. And you have personal knowledge
5 of the content of that permit?

6 A. I do.

7 Q. Okay. Were you the permit applicant
8 in that case?

9 A. I was not the applicant.

10 Q. I mean, did you write -- were you the
11 consultant for the permit applicant?

12 A. Yes, I was.

13 Q. Okay. Were you the recipient of or
14 did you receive a copy of the permit in that
15 case?

16 A. Yes, I did.

17 Q. Okay. The CWLP facility, is it
18 regulated pursuant to the 811 regulations?

19 A. Yes, it is.

20 Q. Is it permitted pursuant to the 811
21 regulations?

22 A. Yes.

23 Q. Was a sig mod permit granted in that
24 case?

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1 A. Yes, it was.

2 Q. Do you have personal knowledge of the
3 closure and post-closure care cost estimates in
4 that case?

5 A. Yes, I do.

6 Q. And do the closure and post-closure
7 care cost estimates in that case based on your
8 personal knowledge contain any costs,
9 third-party or otherwise, for the treatment and
10 disposal of leachate from that landfill in the
11 city owned treatment pond?

12 A. No, they do not.

13 MR. LAROSE: Given that foundation,
14 Mr. Hearing Officer, I would move that you
15 reconsider your ruling. This gentleman is
16 competent to testify based on his personal
17 knowledge. There is absolutely no requirement
18 that he present documents based on the

19 foundation that I've laid not to support his
20 personal knowledge with respect to the
21 circumstances of that permit.

22 HEARING OFFICER HALLORAN: My ruling
23 stands.

24 MR. LAROSE: Okay.

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1 HEARING OFFICER HALLORAN: Thank you,
2 the record will note.

3 BY MR. LAROSE:

4 Q. Sir, you requested in the 1996
5 application time to site or move the site or
6 move the waste overfill to Parcel B to Parcel A?

7 A. Yes.

8 Q. And in the 2000 application, you made
9 a similar request?

10 A. Yes, sir.

11 Q. Did we conduct any meetings with the
12 Agency with respect to this issue prior to the
13 issuance of the 2000 permit?

14 A. Yes, we did.

15 Q. And what was the nature of that
16 meeting?

17 A. The nature of that meeting was

18 determining what options might be available to
19 CLC in the City of Morris based on the IEPA's
20 viewpoint of the situation.

21 Q. Did the meeting also discuss the
22 reservation of disposal capacity?

23 A. Yes, it did.

24 Q. Did we discuss the idea of siting it

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1 or moving it?

2 A. Yes, we did.

3 Q. At that meeting, what was the Agency's
4 response to our request that we be allowed time
5 to site it?

6 MR. KIM: Objection, I think a little
7 foundation needs to be laid as to the date of
8 the meeting, who was there and so forth.

9 BY MR. LAROSE:

10 Q. Okay. What was your best recollection
11 of the date of the meeting, sir?

12 A. My best recollection of the date of
13 the meeting is the spring of '97 or the spring
14 of '98.

15 Q. Okay. And where was the meeting held?

16 A. Red Bedroom at the IEPA in

17 Springfield, Illinois.

18 Q. Who was present, if you recall?

19 A. People present that I recall were --
20 perhaps Mr. Kim will help me, but the IEPA
21 attorney, I believe her name was Vickie or
22 Victoria --

23 MR. KIM: Valerie Puchene.

24 THE WITNESS: Thank you, Valerie.

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1 Christine Roque was there. I believe Ken Smith
2 was there. I believe and know Joyce Munie was
3 there. I believe Andrew Catland was there from
4 the groundwater systems unit.

5 BY MR. LAROSE:

6 Q. And if I remember correctly, Les poked
7 his -- Ken Les poked his head in and out?

8 A. That's correct.

9 Q. Who was there from our side?

10 A. There were myself, a representative,
11 another representative of Andrews Engineering
12 for the groundwater issues and yourself, if I
13 recall correctly.

14 Q. Okay. And what did the Agency respond
15 to our proposal that we be given time to site

16 the waste in place based on a proposed
17 reservation of disposal capacity?

18 A. The Agency was agreeable to providing
19 a schedule for siting in the application as well
20 as providing third-party cost to transfer the
21 waste from Parcel B of the landfill to Parcel A
22 of the same landfill provided there was a
23 reservation of disposal capacity agreement.

24 Q. Did we have any meetings with the city

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1 after this meeting with respect to the siting?

2 A. Yes, we did.

3 Q. Okay. And what were the nature of
4 those meetings, just briefly describe?

5 A. Those meetings were -- usually
6 involved other topics, but usually the city's
7 position on eventually siting the facility was
8 discussed.

9 Q. Do you have any experience in local
10 siting, what I term as SP172 proceedings?

11 A. Yes, I do.

12 Q. Can you explain briefly what your
13 experience is in those proceedings?

14 A. I have provided led testimony on -- or

15 excuse me. I have provided testimony on three
16 applications made before county boards for
17 siting expansions to municipal solid waste
18 landfills.

19 Q. How would you describe the SP172
20 proceedings in terms of the difficulty and the
21 burden on the applicant to being successful?

22 A. I would describe it as extremely
23 difficult and extremely volatile.

24 Q. And why is it volatile?

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1 A. Generally speaking, you're asking an
2 unqualified public servant, an alderman, a
3 county board member, who does not have much of a
4 technical, scientific background, to look at
5 nine criteria and judge whether the applicant is
6 fairly representing that no harm or that the
7 application meets each of these nine criteria.

8 Q. That might be the difficulty portion.
9 What about the volatility portion?

10 A. My belief is that the people on the
11 committee who hear these things are really
12 following more their constituent's wish and less
13 of their technical review of the subject matter.

14 There is a common syndrome in the solid waste
15 industry called NIMBY, which is not in my
16 backyard. It causes a lot of heartfelt emotion,
17 volatility, during the proceedings on a typical
18 basis.

19 Q. I can sum that up in ten words, these
20 are difficult proceedings because people don't
21 want a landfill, right?

22 A. Yes, sir.

23 Q. Was there a plan put in place with the
24 City of Morris to eventually take this overfill

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1 issue to local siting?

2 A. I'm senior. Can you rephrase that?

3 Q. Was it our plan to eventually take the
4 overfill issue to siting to the City of Morris?

5 A. Yes, it is.

6 Q. What, if anything, what, if any, part
7 of that plan was effected by whether we had a
8 sig mod or didn't have a sig mod?

9 A. Again, could you rephrase?

10 Q. Yes, sir.

11 When we went to local siting, have
12 anything to do with whether we had received a

13 sig mod permit or not received a sig mod permit?

14 A. Yes, sir.

15 Q. Okay. And what was it about the plan
16 that related to the -- whether we had received a
17 permit or not?

18 A. Again, and under the circumstances of
19 non-technical people reviewing an application,
20 given the volatility involved, past press
21 releases in radio and newspaper were not very
22 favorable to the continued operation of Parcel

23 A. There was some division on the city council
24 in regard to granting Community Landfill Company

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1 the right to operate Parcel A back in late 1995
2 or '96. That was still existing on the board.
3 And, basically, given the difficulty of
4 achieving performance or satisfaction of nine
5 siting criteria, we thought it would be a fatal
6 flaw.

7 Q. Sir, did you, in your professional
8 opinion, did you consult with the client and
9 give them any advice on whether they should wait
10 before they got the sig mod before they should
11 move forward with the local siting?

12 A. The consultations were brief in that
13 we all agreed that we should not do that.

14 Q. Okay. Should not go to siting before
15 the sig mod?

16 A. Correct.

17 Q. When we got the permit, we were given
18 six months to move it or increase the financial
19 assurance, right?

20 A. That is correct.

21 Q. You did ask for a period of time in
22 the permit, 2000 permit application to allow you
23 more time than that to site it?

24 A. Yes, I did.

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1 Q. As we sit here today, if we move as
2 expeditiously as we possibly can on this issue,
3 when do you think we could get the initial
4 hearings and a decision from the City of Morris
5 on the siting application?

6 A. I would say at a minimum you're
7 looking at a period of time of six months.

8 Q. Okay. Six months from the date that
9 the application is filed, correct?

10 A. Generally speaking, yes.

11 Q. Okay. So if the board was to give us
12 relief in this case, the relief we would
13 request, what would we want? How long would we
14 want to be comfortable enough to prepare this
15 application and push it through the siting
16 process as expeditiously as possible?

17 A. Well, we would like at least six and a
18 half months for the siting process and the
19 consulting engineer would like at least one
20 month to prepare the siting application.

21 Q. And if we, for example -- strike that.
22 You heard the mayor's testimony the
23 other day, he would like us to wait until after
24 the election?

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1 A. Yes, sir.

2 Q. So if we have to take, that election
3 is in April, if we move out seven and a half
4 months from April, we're looking at the end of
5 the year, right?

6 A. Yes, sir.

7 Q. If the board gives us to the end of
8 the year, that would be a lot better than just
9 February 1st, right?

10 A. Yes, sir.

11 Q. Okay.

12 A. Of 2001.

13 Q. Let's talk about the condition
14 regarding the installation of the leachate
15 system on Parcel B and Parcel A. We were given
16 on Parcel B until March 1st to do some leachate
17 work and until February 1st to do the same
18 leachate work on Parcel A, right?

19 A. Yes, sir.

20 Q. Tell me what they want us to do by
21 March 1st on Parcel B?

22 A. On Parcel B we need to install a
23 leachate storage tank. We need to install
24 three -- or the permit requires us to install

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1 three vertical leachate withdrawal wells. The
2 permit requires us to install the pumps. It
3 includes installing the forced main piping from
4 the -- excuse me, with the withdrawal devices to
5 the tank and connecting the tank to the sewer.

6 Q. Some of that work has already been
7 done, correct?

8 A. That is correct.

9 Q. Okay. You have the ability right
10 now -- strike that.

11 Do you have the ability right now to
12 pump and store and ship for treatment to the
13 POTW the leachate on Parcel B?

14 A. Yes, we do.

15 Q. Okay. But the large storage tank
16 isn't required or isn't in yet?

17 A. That is correct.

18 Q. And the leachate removal wells, some
19 of the leachate system isn't installed yet,
20 right?

21 A. Currently, we are, at this very
22 moment, withdrawing leachate from nine gas wells
23 in the well field. The leachate removal, the
24 three leachate removal wells have been

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1 installed, but they do not have pumps in them.
2 And the tank has not been installed.

3 Q. Okay. The schedule that was proposed
4 by the IEPA, was it long enough for you to do
5 these things in conjunction with all of the
6 other things you're supposed to do at this site?

7 A. No, it was not.

8 Q. Okay. Does it make any sense, we're
9 trying to resolve this issue whether to site the
10 waste, move the waste, what does that have to do
11 with the thing -- what, if anything, does that
12 have to do with the things you're supposed to do
13 regarding the tank and the leachate wells on
14 Parcel B?

15 A. Basically, the permit would require us
16 to install forced main piping from the leachate
17 removal wells to the storage tank. This piping
18 would need to be placed in the area that is over
19 height, which may eventually require removal,
20 and/or would be destroyed during waste
21 relocation activities.

22 Q. If I could summarize, again, put the
23 pipes in, if you got to dig up the waste and
24 move it across the street, you're going to ruin

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1 the pipes, right?

2 A. Yes, sir.

3 Q. So does it make some sense to wait
4 until the final contours will be determined?

5 A. Yes.

6 Q. With respect to the stuff that you're

7 supposed to do on Parcel A, they want you by
8 February 1st, the permit purports to require you
9 by February 1st to do what activities?

10 A. Requires us to install two vertical
11 extraction wells, install a groundwater
12 collection trench and install -- and to install
13 a horizontal leachate extraction trench as well
14 as a storage tank.

15 Q. You're not talking about an additional
16 storage tank, the same storage tank that is on
17 Parcel A?

18 A. Yes, we're currently proposing
19 internally to have one storage tank to serve
20 Parcels A and B.

21 Q. What about the piping system for the
22 leachate removal?

23 A. Obviously, the piping from the
24 leachate withdrawal devices and the groundwater

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1 collection trench would have to be installed and
2 connected to the tank, the tank itself would
3 have to be connected to the sewer.

4 Q. So you've got all of the activities
5 you described on Parcel B, right?

6 A. Yes.

7 Q. By February 1st. You've got all the
8 activities you described by March the 1st -- all
9 the activities described on Parcel A by February
10 1st, and, in addition, you're supposed to be
11 moving this waste across the street or getting
12 local siting and building a separation area,
13 right?

14 A. Yes.

15 Q. Is that physically possible, sir?

16 A. No, it is not.

17 Q. Okay. You would like a little bit
18 more time to do that?

19 A. Yes, I would.

20 Q. And what would be your time frame with
21 respect to the Parcel B activities? We're now
22 at March 1st. Those conditions have been staged
23 so we'll have a little bit more time. They gave
24 us a certain amount of time. What would you

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1 like to do with the Parcel B activities, if the
2 board gave us the relief we're requesting?

3 A. The Parcel B leachate activities, we
4 asked in the permit application to install the

5 tank within six months. That six months
6 included construction, included preparing an
7 acceptance report, included purchasing the
8 tanks, selecting the tank, writing the
9 specification and having it delivered.

10 Q. We haven't done that yet, have we?

11 A. We have done part of that. We have
12 not purchased any tank.

13 Q. Okay. Is that because we're fighting
14 about --

15 MR. KIM: Objection, leading question.

16 BY MR. LAROSE:

17 Q. Why haven't we purchased the tank?

18 A. The permit that was issued for Parcels
19 A and B required us to have five days of
20 leachate storage instead of our requested one
21 day volume.

22 Q. That is being contested in this case?

23 A. Yes, sir.

24 (Off the record.)

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1 HEARING OFFICER HALLORAN: Back on the
2 record.

3 BY MR. LAROSE:

4 Q. I don't remember whether you got to
5 answer this question before we changed or not,
6 I'm going to ask it one more time, make sure the
7 record is clear. We didn't buy the tank yet
8 because that's what we're contesting in this
9 appeal?

10 A. Yes, sir.

11 Q. So back to the question. I know what
12 the application said. Tell me what you'd like
13 the board to do for us in this case, not
14 specifically, but generally, in terms of giving
15 us more time to comply with the Parcel B
16 activities?

17 A. I would like for the board to rule in
18 our favor that only one day storage is
19 applicable and then give us the same requested
20 time-line of six months to install that tank and
21 submit the acceptance report to the IEPA for
22 approval.

23 Q. Then what about the other Parcel B
24 activities?

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1 A. The other Parcel B activities for
2 leachate withdrawal from the three vertical

3 leachate removal wells, our proposal before
4 installing the permanent piping was to take
5 advantage of the existing gas header system and
6 allow the leachate flow into the condensate tank
7 before being sent to the City of Morris POTW.

8 The application says that we would
9 like for installing pumps to be able to only
10 give the Agency two weeks of approval, a period
11 of time to issue approval, and/or inspection of
12 the pumps before we start operating them.

13 Q. Okay. Back to the question.

14 How much more time do you need to do
15 the Parcel B stuff?

16 A. If I do not have to give the Agency an
17 acceptance report for operating the Parcel B
18 leachate withdrawal pumps, I believe within 45
19 days those pumps could be running from the date
20 the acceptance report of the leachate storage
21 tank is received.

22 Q. Okay. And with respect to the piping
23 system that you said would have to go through
24 the final contours, would your proposal be that

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1 we wait until we determine whether we're moving

2 the waste or siting the waste?

3 A. We would just wait until the final
4 shape of Parcel B has been determined.

5 Q. In the meantime, move the leachate to
6 the condensate tank?

7 A. Continue to move the present leachate.

8 Q. With respect to Parcel A activities
9 that you described, which we have now been
10 given, let's leave aside building the separation
11 layer, the other Parcel A activities that were
12 required to be performed by February the 1st,
13 how much more time would you like to do those?

14 A. In regard to the leachate
15 requirements, I would like perhaps six to nine
16 months to construct the horizontal leachate
17 collection trench. And I would like
18 approximately one year in order to install the
19 two vertical leachate withdrawal wells.

20 Q. Okay. And you already have wells T2
21 and T4 in place, correct?

22 A. In regards to the groundwater system,
23 yes, that is correct.

24 Q. So that system, if approved, the

1 permit doesn't allow us to use that, but that
2 system, if approved, can remove leachate --
3 excuse me, groundwater from the facility
4 immediately?

5 A. Not quite immediately.

6 Q. Okay. Tell me what you -- what time
7 you need to do that?

8 A. We would need approximately 60 to 90
9 days to in -- to not install T2 and T4 instead
10 of the groundwater collection trench but to
11 install the piping, purchase the pumps and
12 install the electricity to operate the pumps.
13 This time period would be after the acceptance
14 report on the leachate storage tank was
15 approved.

16 Q. Put in the leachate storage tank, put
17 in the pumps, ready to go?

18 A. Yes, sir.

19 Q. When you pump the groundwater from T2
20 and T4, are you -- what, if any, contaminants
21 from the historic fill area are you picking up
22 in the groundwater?

23 A. Can you rephrase?

24 Q. Yes.

1 When you pick up the -- when you pump
2 the groundwater from T2 and T4 for treatment,
3 are you picking up any leachate or contaminants
4 from the landfill?

5 A. Yes. The groundwater that we're
6 removing would be -- would have been
7 contaminated by the previously placed waste in
8 Parcel A.

9 Q. Okay. Sir, the permit denied five
10 days -- excuse me.

11 The permit required five days leachate
12 storage, denied our request to have only one day
13 leachate storage, correct?

14 A. Yes.

15 Q. Are you familiar with the 811.309(e)
16 regulation as it relates to the off-site
17 treatment of leachate?

18 A. Yes, I am.

19 Q. And would you need to refer to -- I
20 have it here, if you want to refer to it, do you
21 want to refer to that particular regulation?

22 A. Yes, please.

23 Q. Okay. I'm going to hand you what has
24 been previously admitted as Exhibit RR, which is

1 a copy of 811.309 in its entirety which contains
2 309(e).

3 Does 811.309(e) -- strike that.

4 The leachate disposal and treatment
5 option that we selected at this site is -- is it
6 a direct sewer connection?

7 A. Yes, it is.

8 Q. Direct sewer connection going to
9 where?

10 A. The direct sewer connection from the
11 condensate tank to the forced main sewer, which
12 leads to the City of Morris POTW, has been
13 installed.

14 Q. Sir, the 809.811.309(e) regulation,
15 have you reviewed that?

16 A. Yes, I have.

17 Q. Does it require the construction of a
18 storage tank where there is a direct sewer
19 connection?

20 A. I do not believe it does.

21 Q. And did you tell the Agency that in
22 this case?

23 A. Yes, I did.

24 Q. What did they say?

1 A. They said that they did not share my
2 same interpretation.

3 Q. You did propose a one day leachate
4 storage tank in this particular case?

5 A. In this particular case, the Agency
6 themselves recommended it as an alternative to
7 my interpretation of these regulations.

8 Q. Sir, the -- and that is what is
9 included in the application?

10 A. Yes, sir.

11 Q. You're familiar with 811.309(d)
12 regulation, correct?

13 A. Yes, sir.

14 Q. Okay. And it requires, in order to
15 have one day, it has to have two means to --

16 MR. KIM: Objection, this is Mr.
17 LaRose testifying at this point.

18 BY MR. LAROSE:

19 Q. Why don't you read the regulation,
20 sir. 811.309(d)(6).

21 A. Would you like that outloud or to
22 myself, sir?

23 Q. Outloud.

24 A. "811.309(d)(6), a facility may have

1 less than five days' worth of storage capacity
2 or accumulated leachate as required by
3 subsection (d)(1) of this section, if the owner
4 or operator of the facility demonstrates that
5 multiple treatments, storage and disposal
6 options in the facility's approved leachate
7 management system developed in the accordance
8 with subsection (b) of this section, will
9 achieve equivalent performance, period."

10 Q. Okay. Even though it was your
11 interpretation of the 811.309(e) regulation that
12 no storage tank was required, did you propose
13 two options for transporting the leachate to the
14 Morris POTW?

15 A. Yes, I did.

16 Q. I'm going to hand you what has been
17 previously marked as Exhibit XX. And ask you to
18 take a look at that, please.

19 HEARING OFFICER HALLORAN: And, for
20 the record, XX has been admitted.

21 MR. LAROSE: Yes. Thank you.

22 HEARING OFFICER HALLORAN: Thank you.

23 BY MR. LAROSE:

24 Q. Sir, what is that?

1 A. This is page 11 of the leachate
2 management plan, Parcel A application, similarly
3 the same language exists in the Parcel B
4 application.

5 Q. Is that where you identify a tank
6 truck as a means to transport leachate to POTW?

7 A. Yes, it is.

8 Q. In your opinion, does a direct
9 connection to a POTW and a tanker truck bringing
10 it to the same POTW, meet the requirements of
11 811.309(d)(6) allowing one day's leachate
12 storage?

13 A. Yes, it does.

14 Q. And was this in your understanding
15 also the Agency's interpretation of this
16 particular regulation, with the exception of
17 their decision in this case?

18 A. Prior to the denial of the 1999
19 application, that is exactly my understanding of
20 their final interpretation.

21 Q. I'm going to hand you what has been
22 previously marked as Exhibit ZZ.

23 MR. LAROSE: Is this the one you said,

24 Brad, was not admitted?

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1 HEARING OFFICER HALLORAN: Yes.

2 That's my understanding.

3 BY MR. LAROSE:

4 Q. Okay. What is that document, sir?

5 A. This document is a permit issued by
6 the bureau of land to the City of Rochelle as
7 owner and to Rochelle waste disposal as
8 operator.

9 Q. Sir, directing your attention to page
10 20 of that permit --

11 A. Yes, sir.

12 Q. Okay. -- paragraph 7, are they -- is
13 the Agency allowing one day's leachate storage
14 with only one connection to a POTW pursuant to
15 paragraph 7?

16 A. That's my interpretation, sir.

17 Q. Okay. How many permits to dispose of
18 leachate at the POTW does the Rochelle facility
19 have?

20 A. They have one.

21 MR. LAROSE: Mr. Hearing Officer, I
22 would move the admission of ZZ into the record,

23 please.

24 HEARING OFFICER HALLORAN: Mr. Kim,

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1 any objection?

2 MR. KIM: No objection.

3 HEARING OFFICER HALLORAN: Exhibit ZZ

4 is admitted into evidence.

5 BY MR. LAROSE:

6 Q. I'm going to hand you -- I want to
7 back up for a second, probably much to the
8 chagrin of everybody in this room, I forgot one
9 thing that I wanted to talk to you about. I
10 hand you what has been previously marked as
11 Exhibit EE and ask you to take a look at it.
12 What is Exhibit EE, sir?

13 A. Exhibit EE is the leachate thickness
14 drawing, which illustrates the amount of liquid
15 or leachate in the bottom of Parcel A above the
16 invert or bottom of the landfill.

17 MR. LAROSE: For the record, Mr.
18 Hearing Officer, this document appears in the
19 record at Parcel A, Volume 2, page 0056.

20 HEARING OFFICER HALLORAN: Thank you.

21 BY MR. LAROSE:

22 Q. On this drawing to the lower left-hand
23 portion there is a line that says, existing
24 waste collection trench, I'm sorry, waste

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1 leachate collection trench.

2 MR. KIM: Before we continue, this
3 document, as it has been provided, is not the
4 document that has been identified in the record.

5 MR. LAROSE: Is the record different
6 than this?

7 MR. KIM: It is.

8 MR. LAROSE: May I see it?

9 MR. LAROSE: So the -- isn't this in
10 your permit review --

11 BY MR. LAROSE:

12 Q. Would that be the A application -- can
13 we go off the record?

14 HEARING OFFICER HALLORAN: Yes.

15 (Off the record.)

16 HEARING OFFICER HALLORAN: Back on the
17 record.

18 BY MR. LAROSE:

19 Q. We probably won't mark this one
20 separately, just refer to it as a record

21 document, is that okay?

22 MR. KIM: That's fine.

23 MR. LAROSE: Okay with you?

24 BY MR. LAROSE:

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1 Q. I'm going to show you Parcel A, Volume
2 2 of the record and refer your attention to page
3 000056.

4 A. Yes, sir.

5 Q. What is that document?

6 A. This is the leachate thickness
7 document showing the leachate elevation above
8 the Parcel A invert bottom.

9 Q. And what is the significance of that
10 document? What does it show?

11 A. The significance of this document is
12 that the Isopach lines show the relative
13 thickness of the leachate in Parcel A based on
14 the various monitoring points in Parcel A.

15 Q. Okay. The leachate trench is going to
16 go in parcel -- or the leachate trench that the
17 permit requires us to dig is going to go into
18 Parcel A, correct?

19 A. Yes, it is.

20 Q. Is it going to intersect any of those
21 areas where there is thick amounts of leachate?

22 A. No, it is not.

23 Q. In your professional opinion, the
24 schedule that has been presented by the IEPA

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1 for us to dig the leachate collection trench,
2 would any environmental harm occur if that
3 schedule was delayed for the period of time that
4 you outlined in this case?

5 A. Can I ask you to ask that one more
6 time?

7 Q. Yes.

8 If we delay the digging of the
9 leachate collection trench, are we going to
10 cause any environmental harm?

11 A. No.

12 Q. Thank you.

13 T2 and T4 then we're done, until Mr.
14 Kim steps up.

15 You requested permission for the T2
16 and T4 system that we've heard a lot about from
17 Mr. Skouby, Mr. Silver, Ms. Roque and now you
18 and that was denied, correct?

19 A. That is correct.

20 Q. Okay. Your original proposal,
21 however, was to install the groundwater in a
22 separate trench, correct?

23 A. Correct.

24 Q. Did you conduct a pump test with

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1 respect to that original proposal?

2 A. In 1998 we conducted a trench pump
3 test, yes.

4 Q. And were the -- just briefly describe
5 that test, what did you do?

6 A. That pump test was conducted over
7 Labor Day weekend, 1998. We dug a small short
8 section of trench, approximately 20 to 25 feet
9 deep, installed two pumps in the trench and
10 monitored groundwater elevations around the
11 trench while we were pumping from it.

12 Q. As a result of that pump test, did
13 you, Andrews Environmental, and the Agency have
14 any questions as to the efficacy of the trench
15 system?

16 A. Yes, we did.

17 Q. What did you do, if anything, to

18 address those questions?

19 A. Based on that concern being raised and
20 draft denial permit letter, I contacted -- or
21 yes, that was me, I contacted Mr. Skouby.

22 Q. Okay. And what was the purpose of
23 contacting Mr. Skouby?

24 A. To take advantage of his years of

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1 dewatering experience.

2 Q. And what did you -- what questions did
3 you ask him or what issue did you ask him to
4 address?

5 A. We basically asked him why we had 3
6 feet of drawdown in piezometers, 450, 890 feet
7 away from the pump test area, trench test area,
8 but the shallow monitoring well approximately 50
9 feet away showed much less than a foot of
10 drawdown.

11 Q. What did he tell you?

12 A. He concluded in a matter of seconds
13 that the facility or site was undermined.

14 Q. Did you then send him some data to --
15 for him to look at?

16 A. In fact, I argued with him and sent

17 him some data to review.

18 Q. As a result of this -- well, you
19 argued with him. Are you still arguing with
20 him?

21 A. Absolutely not.

22 Q. Do you agree with his conclusion that
23 the site is undermined?

24 A. Positively.

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1 Q. And to your knowledge, the Agency
2 agrees with that as well?

3 A. They have testified to that, too.

4 Q. Is that when you shifted to the deep
5 well system strategy?

6 A. Sort of. After the trench test was
7 done and based on the Agency's denial letter, we
8 performed another pumping test using two wells,
9 what we have commonly referred to as T2, T4.

10 Q. And how long did this test take?

11 A. The test lasted approximately four
12 months.

13 Q. And approximately when was the test
14 conducted?

15 A. In the first four months of 1999.

16 Q. Okay. Did the results of the test
17 tell you anything about whether the deep well
18 system would be effective for the removal and
19 treatment of contaminated groundwater?

20 A. The deep well system indicated that
21 based on the -- based upon the test results of
22 the deep well pumping test, it was shown to us
23 conclusively that it was the preferred method
24 for treating the groundwater.

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1 Q. During the four month test, was the
2 mined area ever completely dewatered?

3 A. No, sir.

4 Q. What was your pumping rate during that
5 test?

6 A. Pumping rate during the test -- or we
7 used a pump with a capacity of 190 gallons per
8 minute.

9 Q. Did you run that pump at capacity all
10 the time?

11 A. We had three phases of this test. We
12 started out at 100 gallons per minute. When you
13 start a pumping test, you want to see how your
14 environment is going to react and we ran that

15 test, ran the test at 100 gallons per minute for
16 a period of time, concluded that we could
17 elevate the pumping rate to 190 gallons per
18 minute or maximum capacity of the pump we were
19 using. And then later in the test, we reduced
20 our flow rate to 80 gallons a minute and tried
21 to establish steady state conditions.

22 Q. Did you ever observe any indications
23 of depressions or possible subsidence on the
24 facility?

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1 A. I have observed two areas that I
2 became suspicious about, once we determined that
3 undermining at the site had indeed occurred.

4 Q. Did you have any conversations with
5 Mr. Silver about your suspicions that
6 undermining and subsidence had occurred at the
7 facility?

8 A. Yes, I did.

9 Q. Did you ask Mr. Silver to do anything
10 with respect to his initial mass stability study
11 as a result of T2 and T4 pumping and as a result
12 of Mr. Skouby's conclusion that the site had
13 been undermined?

14 A. Yes. We asked him to correct or
15 modify his existing report as necessary based on
16 the discovery of these subsurface conditions.

17 Q. The 1999 permit was -- in 1999, the
18 permit was denied and one of the denial points
19 was T2 and T4, right?

20 A. That is correct.

21 Q. Even though the application in 2000
22 was going to be substantially similar to the
23 previous application, was this T2 and T4 issue
24 an exception to that?

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1 A. I'm sorry. You need to rephrase.

2 Q. Sure.

3 Did you intend to submit additional
4 information on T2 and T4 to address the denial
5 point in the September 1st submittal -- I'm
6 sorry, in the May submittal?

7 A. Yes, we did.

8 Q. Okay. And what did you do to attempt
9 to address that?

10 A. The primary concern or primary way
11 that we attempted to address that was the
12 modification of the previously performed slope

13 stability analysis on the project.

14 Q. At any time, sir, did you intend to
15 completely dewater the mining area during either
16 the pump test or in your proposal to operate T2
17 and T4 as the primary groundwater remediation
18 method?

19 A. No, sir.

20 Q. Did you tell the Agency that you
21 intended to maintain a specific groundwater
22 level?

23 A. Yes, I did.

24 Q. And what did you tell them?

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1 A. I told them that we would maintain a
2 groundwater elevation of 500 or approximately 7
3 feet of drawdown.

4 Q. Okay. Is that contained in the
5 application or was that a verbal?

6 A. That is contained in the application
7 in numerous locations.

8 Q. Did your application contain any
9 proposal for continuing either maintenance,
10 monitoring or reporting of the system as it went
11 forward, if it was approved?

12 A. Yes, it did.

13 Q. Can you describe that briefly?

14 A. Briefly, we proposed to take monthly
15 and quarterly readings of the system, the amount
16 of water it discharged, the water readings,
17 which would translate into water elevations and
18 the various barometers in water wells.

19 Basically, report the effectiveness of the
20 system to the IEPA based on the collection of
21 this data at least once every year.

22 Q. So you weren't going to just put the
23 pumps in and leave them?

24 A. No, sir.

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1 Q. I'm going to hand you what has been
2 previously marked as Exhibit EEE.

3 A. Yes, sir.

4 Q. My brother's shoe size.

5 What is Exhibit EEE, Mr. McDermont?

6 A. Exhibit EEE is a plan sheet that
7 exists in the Parcel A application entitled, fig
8 or F-I-G - CRP.

9 MR. LAROSE: For the record, Mr.
10 Hearing Officer, this drawing appears in the

11 record at Parcel A, Volume 6, page 0276.

12 HEARING OFFICER HALLORAN: Thank you.

13 BY MR. LAROSE:

14 Q. Mr. McDermont, without belaboring the
15 issue too much, does this particular drawing
16 depict the T2 and T4 deep well groundwater
17 treatment system that you propose?

18 A. This drawing does indeed depict the T2
19 and T4 wells along with the geologic setting of
20 the eastern side of Parcel A.

21 MR. LAROSE: With that, Mr. Hearing
22 Officer, I would move the admission of EEE.

23 HEARING OFFICER HALLORAN: Mr. Kim?

24 MR. KIM: No objection.

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1 HEARING OFFICER HALLORAN: Exhibit EEE
2 is admitted.

3 BY MR. LAROSE:

4 Q. Sir, have you formed an opinion as to
5 the efficiency of T2 and T4 versus the
6 groundwater trench?

7 A. Yes, I have.

8 Q. And what is your opinion?

9 A. There is no question in my mind that

10 the use of T2 and T4 is preferable to the
11 groundwater collection trench.

12 Q. Sir, when is the first time that you
13 heard that the Agency was criticizing the T2 and
14 T4 use based on their review of the Streeter
15 EIS?

16 A. After the permit was issued and the
17 special condition about not utilizing T2 and T4
18 was in the permit itself.

19 Q. So you didn't consult Streeter EIS in
20 presenting this permit to the Agency?

21 A. No, I did not.

22 Q. Do you profess an opinion, in your
23 professional opinion, did you have any reason to
24 consider the Streeter EIS?

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1 A. No.

2 Q. Until they told us about it, you
3 didn't even know that it existed, right?

4 A. That is correct.

5 Q. Had you even read the Streeter EIS?

6 A. No, I have not.

7 Q. Was it always the intent of the
8 groundwater remediation program through T2 and

9 T4 to maintain a pumping level above the bottom
10 of the coal?

11 A. Yes, sir.

12 Q. Sir, if the board grants us relief in
13 every one of the conditions that we've sought
14 relief on in this case, have you formed an
15 opinion as to whether granting that relief would
16 cause any harm or potential harm to the human
17 health or environment of the people or the land
18 of the state of Illinois?

19 A. The granting of our request for
20 operation T2 and T4 would not cause any harm.

21 Q. Okay. What about all of the rest of
22 the conditions that we've sought relief for in
23 this case?

24 A. Similarly as well, no harm would

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1 result.

2 MR. LAROSE: That's all I have for
3 now, Mr. Hearing Officer.

4 HEARING OFFICER HALLORAN: Thank you,
5 Mr. LaRose.

6 (Off the record.)

7 HEARING OFFICER HALLORAN: We're back

8 on the record, we're going to take a lunch break
9 for 45 minutes. We'll be back at 1:15. Thank
10 you.

11 (Lunch recess.)

12 HEARING OFFICER HALLORAN: We're back
13 on the record from lunch recess. It is
14 approximately 1:25.

15 I want to note for the record that,
16 again, there are no members of the public here.
17 If they were, they'd be allowed to testify,
18 subject to cross-examination.

19 There will be a period where they can
20 have public comment after the hearing is over
21 and after the transcript is provided.

22 We have Mr. McDermont on the stand and
23 I would remind him that he is still under oath.
24 Mr. Kim is about to cross-examine this witness.

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1 CROSS-EXAMINATION

2 BY MR. KIM:

3 Q. Mr. McDermont, I'll tell you right
4 from the beginning that my questions are skew
5 about me, so bear with me. I'll try and do this
6 as comprehensively, topic by topic as I can, but

7 I may have to jump back and forth.

8 Let's start with the issue of one day
9 leachate storage versus five day leachate
10 storage.

11 If you could, direct your attention to
12 Exhibit XX, which, I think, is in front of you.

13 This is the portion of the
14 application, the May 2000 sig mod application,
15 is it not, that addresses Community Landfill's
16 request to be given one day storage, to be
17 subject to only one day's minimum storage versus
18 five days' minimum storage of leachate, is that
19 right?

20 Let me rephrase that.

21 Does this page represent the request
22 by Community Landfill to be subject only to the
23 one day versus the five day minimum storage
24 requirements for leachate storage?

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1 A. No, it does not.

2 Q. Where in the application is that
3 request made?

4 A. It is in the leachate management plan,
5 which this document came from. It just appears

6 later in the -- later or earlier in the text. I
7 can't recall which.

8 Q. Okay. I'm going to provide you with a
9 portion of the administrative record, this is
10 Parcel A, Volume 2, and beginning on Bates
11 stamped 0051, there is Attachment 9 that is
12 labeled, leachate management plan, is that
13 correct?

14 A. Yes, sir.

15 Q. Okay. And you're saying within
16 Attachment 9 is the request by CLC to be subject
17 to only one day's leachate storage as opposed to
18 five days' leachate storage?

19 A. That is correct.

20 Q. Can you look through that attachment,
21 and if it is in more than one place, as you come
22 across the request, can you just identify the
23 page number?

24 MR. LAROSE: By Bates?

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1 MR. KIM: By Bates stamp.

2 THE WITNESS: Would you like more than
3 one request or the first one I come to?

4 BY MR. KIM:

5 Q. I would like every request that is in
6 that attachment, because I think you testified
7 it is in several places, is that right?

8 A. I do not know that that is my exact
9 testimony.

10 Q. Any reference or request made within
11 that attachment seeking the one day storage
12 versus five day storage, I'd like you to
13 identify that, please.

14 A. The primary place it is spelled out is
15 Bates page 0061, which is page 10 of the
16 document.

17 Q. And what portion of that page?

18 A. The lower portion of the document
19 specifies the one day storage volume for the
20 different wastewater itemizations for
21 condensate, leachate storage and groundwater.

22 Q. Okay. And so you're stating that that
23 bottom portion of that page represents a request
24 on the part of the landfill to seek one day

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1 versus five days' storage, is that correct?

2 A. Yes, it is.

3 Q. Is there any other portion in

4 Attachment 9?

5 A. I do not believe there is any other
6 reference in this attachment.

7 Q. Okay. Thank you.

8 If you can look back at exhibit -- if
9 you can return your attention to Exhibit XX,
10 please. The bottom of that page has a section
11 that is headed, with the reference to disposal,
12 is that correct?

13 A. Yes, sir.

14 Q. In the text that falls below --

15 HEARING OFFICER HALLORAN: Let's go
16 off the record for a minute.

17 (Off the record.)

18 BY MR. KIM:

19 Q. The second paragraph in that section,
20 would you read that into the record, please?

21 A. "The sanitary sewer adjacent to the
22 landfill is a forced main, therefore, a pump may
23 be necessary to discharge the contents of the
24 tank into the forced main depending upon the

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1 operating and anticipated feature design
2 pressure of the forced main. In addition, a

3 valve and flange connection will be provided to
4 facilitate transfer of liquid to a tank truck or
5 a truck tanker as may be needed. The transfer
6 pump will alternately allow loading of a tank
7 truck should it be necessary."

8 Q. And, I'm sorry, I don't mean to do
9 this out of order, can you also read the first
10 section of that section as well?

11 A. "The primary method planned for
12 treatment and disposal of leachate generated by
13 this facility will be disposal at the Morris
14 POTW. The connection to the Morris sewage
15 treatment plant has been installed via sanitary
16 sewer. A copy of the permit regarding leachate
17 disposal is attached."

18 Q. So this language states that the two
19 methods of treatment and disposal of leachate at
20 the facility, will be, one, disposal at the
21 Morris POTW, and, two, transfer to a truck
22 tanker, as may be needed, is that correct?

23 A. Yes, sir.

24 Q. Is there any description in this

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1 provision or in any other portion of the

2 application that describes the capacity of the
3 truck tanker?

4 A. No, sir.

5 Q. Is there anything in this language or
6 in any other part of the permit application that
7 describes where the truck tanker will be going?

8 A. It is implied that the truck tanker
9 will be --

10 Q. I'm asking you is it stated anywhere
11 where the truck tanker will be going?

12 A. I have a POTW permit for Morris.
13 That's the only place I'm permitted to go to.

14 Q. Mr. McDermont, I'm going to ask you
15 again. Does this permit application anywhere
16 state where this truck tanker will be going, yes
17 or no?

18 A. I believe the first paragraph, the
19 first line says the primary method planned for
20 treatment and disposal of leachate generated at
21 this facility will be disposal at the Morris
22 POTW.

23 Q. So you believe that the answer to my
24 question is yes, is that what you're saying,

1 that it is described where this truck tanker
2 will be going --

3 A. Yes, sir.

4 Q. -- is that right?

5 Could you draw your attention, please,
6 to Exhibit RR, please?

7 MR. LAROSE: Do you have that in front
8 of you?

9 BY MR. KIM:

10 Q. Do you have that?

11 A. I am looking. I have Exhibit RR, yes,
12 sir.

13 Q. Thank you.

14 MR. LAROSE: I don't have a copy of
15 RR. What one is that?

16 MR. KIM: 811 --

17 MR. LAROSE: Okay.

18 MR. KIM: Do you --

19 MR. LAROSE: No. No. That is okay.

20 BY MR. KIM:

21 Q. Isn't it correct that the permit
22 application does not contain any references to
23 Section 811.309(d) in regards to your proposal
24 to store leachate on site?

1 A. Rephrase that again.

2 Q. The application doesn't cite or
3 reference 811.309(d), does it, anywhere in the
4 application?

5 A. The application does not call out the
6 regulation, that is correct.

7 Q. But it is your testimony that that was
8 what you were relying upon in asking for the
9 relief, specifically Section 811.309(d) says, is
10 that correct?

11 A. That, and based upon the meetings with
12 the Agency that we've had up to this date.

13 Q. I'm asking for the regulatory
14 citation. I should have made that clear. The
15 regulatory authority that you in your opinion
16 were basing your request to seek one day storage
17 versus five day storage was 811.309(d)(6), is
18 that right?

19 A. I believe that is correct unless it is
20 contained in Volume 1.

21 Q. Okay. Thank you.

22 So you're saying that you might have
23 included a citation, that citation in Volume 1?

24 A. Yes.

1 Q. Okay. I believe you also testified on
2 direct examination that the permit application
3 described two options to transport to the Morris
4 POTW, is that correct?

5 A. Yes, sir.

6 Q. Okay. Now, look, again, at Exhibit
7 RR. And specifically Section 811.309(d)(6).
8 And specifically within that subsection the
9 second sentence that begins, such options, can
10 you read that into the record, please?

11 A. "Such options shall consist of not
12 less than one day's worth of storage capacity or
13 accumulated leachate plus at least two
14 alternative means of managing accumulated
15 leachate through the treatment or disposal or
16 both treatment and disposal, each of which means
17 is capable of being -- of treating or disposing
18 of all leachate generated at the maximum
19 generation rate on a daily basis."

20 Q. Okay. Is it your interpretation of
21 that language that that sentence means that you
22 need to have, in addition to one day's worth of
23 storage capacity, two alternative means of
24 transportation of the leachate to facilities

1 case?

2 HEARING OFFICER HALLORAN: Mr. Kim?

3 MR. KIM: That's what I'm referring
4 to, yes.

5 HEARING OFFICER HALLORAN: Would you
6 rephrase it then, please?

7 MR. KIM: I will.

8 BY MR. KIM:

9 Q. If the Illinois Pollution Control
10 Board enters an order in this case that states
11 that -- the sentence that you just read into the
12 record, does not mean at least two alternative
13 means of transportation of leachate to a
14 facility or facilities for treatment or
15 disposal, but instead means two alternative
16 facilities that can either treat or dispose of
17 the accumulated leachate, then would you agree
18 that your interpretation is inconsistent with
19 that interpretation?

20 MR. LAROSE: I'm going to object to
21 the relevancy, the fact that it calls for a
22 legal conclusion. I guess what Mr. Kim is
23 asking, if we lose the case, do we lose the
24 case. I don't get it.

1 HEARING OFFICER HALLORAN: Mr. Kim?

2 MR. KIM: What I'm trying to get at
3 is -- you know, I'll just withdraw the question.

4 HEARING OFFICER HALLORAN: Thank you.

5 MR. KIM: Off the record.

6 (Off the record.)

7 BY MR. KIM:

8 Q. First of all, Mr. McDermont, can you
9 find Exhibit ZZ? That is the City of Rochelle
10 permit.

11 MR. LAROSE: I think I took that back.
12 Hold on.

13 BY MR. KIM:

14 Q. Okay. Would you turn to page 20 of
15 that and specifically paragraph 7 on page 20?

16 Does that language -- why don't you
17 take a moment to look that language over. You
18 don't have to read it into the record but look
19 it over and let me know when you've had a chance
20 to do so.

21 A. Ready, Mr. Kim.

22 Q. All right. That paragraph does not
23 make any reference or citation to 35 Illinois
24 Administrative Code Section 811.309(d)(6), does

1 it?

2 A. Does not appear to.

3 Q. And that condition does not include a
4 description as to where the leachate that would
5 be hauled -- when it makes reference to leachate
6 hauling capabilities, does not reference where
7 that leachate will be going to, does it?

8 A. No, it does not.

9 Q. Okay. I'm going to show you what I've
10 marked as Exhibit FFF. And just as a little
11 background, Mr. McDermont, this is one of the
12 permits that was provided to you through the
13 course of the Illinois EPA's response to the
14 subpoena duces tecum. Do you recognize the
15 landfill as being on that list?

16 A. Yes, I do.

17 Q. Okay. Would you please turn to
18 page -- let me -- you may find it before I do.

19 Page 29.

20 A. Yes, sir.

21 Q. Paragraph 8.

22 MR. LAROSE: Hold on a second.

23 MR. KIM: Sure.

24 BY MR. KIM:

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1 Q. Would you please read this -- would
2 you please read that paragraph into the record?

3 A. Yes, sir.

4 Q. Thank you.

5 A. "Special condition Roman numeral VII
6 - VIII, permit modification number 6
7 acknowledges that the facility is in compliance
8 with the 35 Ill Administrative Code
9 811.309(d)(6) pertaining to the leachate storage
10 systems. This modification number 8 allows the
11 operator to use the existing 10,000 gallon
12 double walled leachate storage tank and to
13 maintain three additional options to dispose of
14 leachate off site as specified in the
15 application log number 1998-337. Since the
16 operator demonstrates the compliance with the 35
17 Illinois Administrative Code 811.309(d)(6), the
18 operator is no longer required to install
19 additional leachate storage tanks that were
20 previously proposed and approved in the
21 application in log number 1998-028."

22 Q. Thank you.

23 So in comparing the permit references
24 in Exhibit FFF to the permit that was referenced

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1 as Exhibit ZZ of the second permit, which the
2 Settler Hill recycling and disposal permit does
3 include a section to 811.309(d)(6), doesn't it?

4 A. Yes, it does.

5 Q. And this language does state that
6 there are -- that it does acknowledge that there
7 are three additional options to dispose of
8 leachate off site, does it not?

9 A. Yes, it does.

10 MR. KIM: Mr. Hearing Officer, I would
11 move that Exhibit FFF be admitted into evidence.

12 HEARING OFFICER HALLORAN: Mr. LaRose?

13 MR. LAROSE: No objection.

14 HEARING OFFICER HALLORAN: Exhibit
15 FFF, Respondent's FFF is admitted into evidence.

16 MR. LAROSE: Mr. Hearing Officer, I
17 guess I would say no objection with the caveat
18 that I hope we're not going to go through every
19 one of these permits to show that they've -- I
20 mean, this one is okay, but if he intends to
21 submit every one of these with respect to the

22 leachate plan, without having given us -- with
23 respect to storage tank, without having given us
24 the POTW permits, I would object. This one is

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1 okay. I'm certainly not going to make this --

2 HEARING OFFICER HALLORAN: So noted
3 for the record.

4 MR. KIM: And just to head this off,
5 this is the only permit that I will be --

6 MR. LAROSE: Thank you.

7 HEARING OFFICER HALLORAN: Thank you.

8 BY MR. KIM:

9 Q. Mr. McDermont, we're done with those
10 exhibits, by the way.

11 You were describing the number of
12 groundwater wells at Community Landfill, I
13 believe, specifically on Parcel A and I think
14 this was through the course of your description
15 of pollution control devices while you were
16 referencing Exhibit CCC. Do you recall that?

17 A. Generally speaking, yes.

18 Q. I believe you noted that the new
19 permit would provide for more groundwater wells
20 than the previous permit. I believe the new

21 permit has 9 water wells referenced and the old
22 has 6 referenced, is that correct?

23 A. Can I ask which parcel?

24 Q. Parcel A.

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1 A. No, that is incorrect.

2 Q. Okay. Well, set aside the numbers,
3 was it your testimony that there were more
4 groundwater wells to be required under the new
5 permit than there were under the old permit?

6 A. Yes.

7 Q. When we say new permit and old permit,
8 are we referring to permits -- an old permit
9 being a permit issued pursuant to Part 807 of
10 Title 35 of the Illinois Administrative Code,
11 and the new permit would be the permit pursuant
12 to Part 811 of Title 35 of the Illinois
13 Administrative Code?

14 A. When I refer to old permit, it
15 basically would include a variety of permits for
16 Parcel A that were indeed issued under 807, not
17 one single permit.

18 Q. Okay. But you would agree that the
19 old permit was -- or permits were issued

20 pursuant to 807 and the new permits that we --
21 that are the subject of this appeal were issued
22 pursuant to Part 811, is that correct?

23 A. Yes, sir.

24 Q. You would also agree, wouldn't you,

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1 that Part 811 by its terms are more
2 comprehensive in its scope than Part 807?

3 A. Yes, it is.

4 Q. Part 811 imposes more requirements on
5 landfill owners and operators than did Part 807,
6 correct?

7 A. Yes, it does.

8 Q. I'd like to -- I would -- I'm going to
9 draw the witness' attention to the
10 administrative record, Parcel A, Volume 6?

11 MR. LAROSE: Hold on.

12 MR. KIM: Sure.

13 MR. LAROSE: Got it.

14 MR. KIM: And specifically portions of
15 the remediation plan, which begin at Bates 0252.

16 MR. LAROSE: Okay.

17 BY MR. KIM:

18 Q. And what I'm trying to find, Mr.

19 McDermont, and you might be able to do this
20 quicker than me, is the portion -- you're
21 familiar with that attachment, are you not?

22 A. Yes, I am.

23 Q. Okay.

24 A. Co-author.

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1 Q. I'm sorry?

2 A. I was co-author on that.

3 Q. Thank you.

4 And isn't it true that the reference
5 to the horizontal groundwater collection trench
6 as a backup to the use of wells -- the proposed
7 use of wells T2 and T4 is contained in that
8 attachment?

9 A. Yes, it is.

10 Q. Do you know if -- I'm going to present
11 this to you. Can you find in that attachment
12 where that reference is made?

13 A. Can you tell me your question?

14 Q. I'm asking you to find it in the --
15 well, my question is would you please find in
16 the record the place or places where the
17 horizontal groundwater collection trench is

18 characterized as a backup or a contingency to
19 the deep wells, wells T2 and T4.

20 Have you found that place?

21 A. Yes, I believe I have.

22 Q. And what is the Bates stamp page,
23 please?

24 A. That would be 0278.

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1 Q. Which is also page 24 of the
2 remediation plan, is that correct?

3 A. That's correct.

4 MR. LAROSE: Hold on one second. Let
5 me get there. Okay.

6 BY MR. KIM:

7 Q. And I believe, you correct me if I'm
8 wrong, I believe you're directing my attention
9 to the bottom portion of that page that begins
10 with the section header collector trench
11 installation, is that correct?

12 A. That's correct.

13 Q. And could you read the portions of
14 that -- the portion of the application in that
15 subsection that describes how the groundwater
16 collection trench could be a contingency or a

17 backup as proposed to wells T2 and T4?

18 A. I would point out that the document
19 prior to this section talks about the
20 groundwater collector trench and also talks
21 about the vertical wells.

22 Under Section 4.4 entitled, collector
23 trench installation, the sentence reads, second
24 sentence of the first paragraph reads,

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1 "Therefore, we are requesting to delay the
2 installation of groundwater collector trench.
3 We believe it would be appropriate to discuss
4 the future need for the groundwater collector
5 trench when the one year report on the
6 groundwater remediation program as submitted to
7 IEPA for review."

8 Q. And I'd also like to draw your
9 attention to page -- Bates stamp page 0255,
10 which would also be page 1 of the remediation
11 plan. And would you just look over the first
12 half of that page and let me know when you've
13 done that?

14 A. Yes, I have it. I reviewed it.

15 Q. Is there any reference on that page to

16 the proposed role of the horizontal collection
17 trench in regards to wells T2 and T4?

18 A. I'm sorry. You mean this?

19 Q. I'm sorry. Let me withdraw that
20 question.

21 Is it safe to say that there might be
22 another reference somewhere within that
23 attachment that would describe the horizontal
24 collection trench as a contingency to the use of

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1 wells T2, T4?

2 MR. LAROSE: Objection to the form of
3 the question, asking him to speculate.

4 HEARING OFFICER HALLORAN: Mr. Kim?

5 MR. KIM: Well, Mr. --

6 MR. LAROSE: I know you're trying to
7 speed it up, put the document --

8 MR. KIM: Mr. McDermont is the
9 co-author, so I'm simply asking him if, based
10 upon his recollection, if that reference might
11 be included in his work as well.

12 HEARING OFFICER HALLORAN: Could --

13 MR. LAROSE: The document is in front
14 of him.

15 HEARING OFFICER HALLORAN: Right.

16 MR. LAROSE: We ought to really
17 establish the pages.

18 HEARING OFFICER HALLORAN: I would
19 sustain Mr. LaRose's objection.

20 MR. KIM: That's all right.

21 BY MR. KIM:

22 Q. The page that you cited to was
23 language that stated that you were requested to
24 delay the installation of the groundwater

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1 collector trench, you thought it would be
2 appropriate to discuss that in the future after
3 one year report on groundwater remediation had
4 been submitted for review, is that correct?

5 A. Yes, in addition to any other
6 references that may be in that attachment of the
7 report.

8 Q. Okay. And then the second sentence
9 after that -- or the next sentence does state
10 that you are, however, at present maintaining
11 the groundwater collector trench in your design,
12 is that correct?

13 A. And that is correct.

14 Q. Do you believe that contained within
15 Attachment 25, the remediation plan, there is
16 any further elaboration as to when the
17 groundwater collector trench would be put into
18 use?

19 A. Yes, sir.

20 Q. Okay. And what is your testimony?
21 When would they be put into use as proposed?

22 A. Ask your question once more.

23 Q. What series of events would have to
24 take place before you would, pursuant to the

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1 proposal in your application, feel obligated to
2 use groundwater collector trench instead of
3 wells T2 and T4?

4 A. Pursuant to the application, the
5 application states that we believe that T2 and
6 T4 would be more effective at controlling
7 contamination than the groundwater collector
8 trench. We proposed in the application each
9 year to submit a report on the use or on the
10 results of the remediation system and only at
11 such time as a condition was identified that
12 would be better corrected by the use of the

13 groundwater collector trench would we tell the
14 Agency we're going to use it.

15 The report also has a -- I believe it
16 has an initial date of construction that when we
17 would start that after that condition was so
18 identified, start construction of the
19 groundwater collector trench.

20 Q. And you believe those -- I'm not
21 asking you for the pages, but you believe those
22 series of events are described within the permit
23 application, is that correct?

24 A. Yes, sir.

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1 Q. Let's turn our attention now to the
2 use of the question of revising the cost
3 estimate. And what I'm referring to there is
4 the issue of whether or not the Agency took into
5 consideration a request to revise downward the
6 cost estimate that has been previously approved,
7 17 million to 7 million. I believe you
8 testified that the -- your belief for -- as
9 justification for that request was that \$10
10 million that had been previously approved --
11 well, let's start it this way. 10 million of

12 the 17 million that had been previously approved
13 was attributable to disposal costs for the
14 leachate and leachate condensate, is that
15 correct?

16 MR. LAROSE: I'm going to object to
17 the form of the question only to the extent he
18 uses this term previously approved. I don't
19 know where that fits, previous to what, there
20 has to be some foundation. I don't know what
21 time frame.

22 MR. KIM: No, I can change the
23 question.

24 HEARING OFFICER HALLORAN: Thank you,

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1 Mr. Kim.

2 BY MR. KIM:

3 Q. There is only one approved cost
4 estimate for this landfill, is that correct?

5 A. That is correct.

6 Q. And the present approved cost estimate
7 includes, among other things, approximately \$10
8 million related to disposal costs for leachate,
9 leachate condensate. Is there anything else
10 that is included in that \$10 million, leachate,

11 leachate condensate and contaminated

12 groundwater, is that correct?

13 A. Yes. That's correct.

14 Q. And the \$10 million that is approved
15 in the cost estimate, is a figure that was
16 derived from the costs that the City of Morris
17 publicly owned the treatment works, or the POTW,
18 would normally charge for the acceptance and
19 disposal of those wastes, is that correct?

20 A. Yes, sir.

21 Q. That figure doesn't represent a
22 discounted rate, does it?

23 A. That figure represents an acceptable
24 rate that the bureau of land would approve, yes.

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1 Q. Okay. And I believe you also
2 testified that you were concerned that there was
3 a possibility that the Agency would somehow be
4 double-dipping from the \$10 million that had
5 been set aside for financial assurance, if we
6 didn't accept a revision downward on the cost
7 estimate, is that correct?

8 A. Can you rephrase that?

9 Q. Let me ask you this.

10 A. I'm sorry. Can you reask the
11 question?

12 Q. I don't know if I can exactly the way
13 I worded it.

14 Was it your testimony that if the
15 Agency does not revise downward the cost
16 estimate as you would like them to do, that in
17 effect that can create the potential for a
18 double dipping on the part of the Illinois EPA
19 as to the \$10 million in cost estimates related
20 to the POTW charges?

21 A. I believe my testimony was given in
22 regard to the occurrence of an operator
23 default --

24 Q. Okay.

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1 A. -- where the -- or the lease
2 amendment is being -- is applicable for those
3 reduced wastewater treatment rates to the
4 Agency, in addition to the performance bond,
5 financial assurance that is in place for \$17
6 million.

7 Q. Well, let's look at a different
8 figure. If the Agency were to accept the

9 revision that you would or Community Landfill
10 would like to receive, when I say the revision,
11 I mean the \$10 million reduction, and that has
12 been proposed to be reduced in recognition of
13 the lease addendum and the leasing -- the lease
14 agreement between the city of -- POTW and
15 Community Landfill. If the Agency were to
16 accept the revision downward, the cost estimate,
17 and if the Morris POTW were to shutdown, then
18 what -- where would the leachate, leachate
19 condensate and contaminated groundwater be taken
20 to?

21 They would be taken to a POTW other
22 than the City of Morris, is that correct?

23 A. I'm not aware of any POTW serving the
24 community the size of Morris shutting down, sir.

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1 Q. My question is not whether or not that
2 is going to happen. My question is if that does
3 happen, it would have to go to a POTW other than
4 the City of Morris, is that correct?

5 MR. LAROSE: My objection is
6 speculative.

7 MR. KIM: This is no different than

8 the operator default hypothetical that was posed
9 during direct.

10 HEARING OFFICER HALLORAN: I agree.
11 Overruled. You can answer.

12 THE WITNESS: A permit would have to
13 be obtained for a facility that was operating
14 and the leachate would have to go to where it
15 was permitted, that is correct.

16 BY MR. KIM:

17 Q. So it would go to a facility other
18 than the City of Morris, POTW, is that correct?

19 A. It would have to go to an operational
20 permitted facility, yes.

21 Q. So the answer is yes?

22 A. Yes.

23 Q. Okay. And do you know of any
24 agreements that exist between Community Landfill

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1 and any other POTW other than the City of Morris
2 where any other POTW would accept leachate,
3 leachate condensate and contaminated groundwater
4 from the Community Landfill free of charge?

5 A. No, sir.

6 Q. No such agreement exists, does it?

7 A. No, sir.

8 Q. And if that were the case, and if the
9 POTW were to fail, if the Illinois EPA were,
10 pursuant to the regulations, have to exercise
11 its oversight authority, the Illinois EPA would
12 be responsible for paying those costs, wouldn't
13 they?

14 MR. LAROSE: Objection to the form of
15 the question, compound and also speculative.

16 MR. KIM: It's compound only in the
17 sense that it is building upon -- I'm just
18 describing the facts that would lead up to my
19 question.

20 HEARING OFFICER HALLORAN: Overruled.
21 He may answer the question, if he is able.

22 THE WITNESS: Could you restate the
23 question?

24 BY MR. KIM:

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1 Q. The question is this, if the Morris
2 POTW shuts down, if the Illinois EPA had agreed
3 previously to revise downward the cost estimate
4 and if the Illinois EPA were to have to step in
5 and take its -- exercise its oversight authority

6 pursuant to the regulations and transport and
7 dispose of that leachate at another POTW, the
8 Illinois EPA would be responsible for those
9 costs, wouldn't it?

10 MR. LAROSE: Same objection.

11 HEARING OFFICER HALLORAN: Mr. Kim, is
12 there any way to break that down a little more?

13 MR. KIM: Well, it is one question
14 based upon one set of conditions. It's just
15 that the conditions are multiple, not a compound
16 question, seeks one answer.

17 HEARING OFFICER HALLORAN: My problem
18 is not with the speculation but just with the
19 compound nature of it.

20 BY MR. KIM:

21 Q. Let's ask this. It's a possibility,
22 isn't it -- let's assume for the sake of
23 argument that we were to approve the cost
24 revision downward, okay? Yes?

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1 A. Yes, sir.

2 Q. And let's then assume that the City of
3 Morris POTW were to shutdown, okay?

4 A. Yes, sir.

5 Q. And then let's assume that the
6 Illinois EPA would have to exercise its
7 oversight authority pursuant to the regulations,
8 okay?

9 A. Yes, sir.

10 Q. Without commenting on your personal
11 belief as to how likely those series of events
12 are, it is possible that all of those events
13 could occur, is it not?

14 A. Yes, sir, it is.

15 Q. If that were to happen, the Illinois
16 EPA would be responsible for the disposal costs
17 of the leachate, leachate condensate and
18 contaminated groundwater, wouldn't it?

19 A. Yes, sir.

20 Q. And let's take one step back. Let's
21 look at the application as a whole.

22 I know you testified as to what you
23 believed your -- your meaning of the word
24 appropriate, available procedure was, and that's

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1 from language found in the cover letter that you
2 supplied with the permit application but, in
3 fact, there is no specific request in the permit

4 application asking the Illinois EPA to revise
5 the cost estimate, is there?

6 MR. LAROSE: You mean with the
7 exception of the cover letter?

8 BY MR. KIM:

9 Q. I'm asking. There isn't any specific
10 request made anywhere within permit application
11 whereby Community Landfill asks the Illinois EPA
12 to revise the cost estimate, is there?

13 A. I would say that the cover letter --

14 Q. It's a yes or no question. Is there a
15 specific request anywhere in the permit
16 application?

17 A. It is implied through various places
18 in the permit application.

19 Q. Do you recall being asked this same
20 question during your deposition?

21 A. No, I do not.

22 Q. I'm going to read for you a portion
23 from your deposition transcript.

24 MR. LAROSE: Page, please.

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1 BY MR. KIM:

2 Q. Pages 59 through 60, and I'll read you

3 the question.

4 MR. LAROSE: What page?

5 MR. KIM: Line 17.

6 BY MR. KIM:

7 Q. Page 59, line 17.

8 "Question. So, having made that
9 statement, is there any specific request made
10 within any document within the permit
11 application whereby Community Landfill asks that
12 the Illinois EPA revise the cost estimate for
13 the landfill?"

14 "MR. LAROSE: In the permit app or in
15 the record?"

16 "MR. KIM: In the permit application."

17 "Answer. No."

18 Do you recall giving that answer?

19 A. Yes, sir.

20 Q. So there is no specific request in the
21 permit application asking the Illinois EPA to
22 revise the cost estimate for Community Landfill,
23 is there?

24 MR. LAROSE: Objection, that is

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1 improper impeachment.

2 HEARING OFFICER HALLORAN: How so?

3 MR. LAROSE: That's because the
4 impeachment -- with the reading of the
5 deposition, you can't argue with the witness
6 with what he said. He said one thing here.
7 Read the deposition. That is the end of the
8 impeachment.

9 HEARING OFFICER HALLORAN: I agree.
10 Sustained.

11 BY MR. KIM:

12 Q. So you're now testifying that your
13 testimony during the deposition was incorrect,
14 is that correct?

15 A. I believe so.

16 Q. And you're testifying instead that
17 there was an implication made in the cover
18 letter asking that the Illinois EPA revise the
19 cost estimate, is that correct?

20 A. Yes, sir.

21 Q. And I believe you testified that you
22 had an understanding, your personal opinion, as
23 to what you meant? Let's direct your attention
24 to Exhibit T and Exhibit U.

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1 A. Yes, sir.

2 Q. Those being the cover page to the
3 permit application.

4 And the words, appropriate, available
5 procedures, is found at the bottom of that page,
6 is it not?

7 A. Yes, sir.

8 Q. And you testified that your opinion of
9 that -- of what those words meant was that
10 either 1, if the permits for Parcel A and Parcel
11 B were issued and if it was something that
12 Community Landfill could live with, then
13 Community Landfill would later file an
14 additional sig mod permit application for
15 Parcels A and B to reduce the cost estimate, is
16 that correct?

17 MR. LAROSE: I'm going to object. The
18 testimony wasn't that it was his opinion as it
19 was because he wrote it. It was that -- it was
20 what he intended. There is a difference. He is
21 not interpreting that, he is --

22 BY MR. KIM:

23 Q. I can change the word.

24 Was it your intention that that is

1 what that meant?

2 A. Yes.

3 Q. It was also your intention that if
4 that anticipated permit application relating to
5 specifically to the cost estimate was denied
6 than there would be an appeal that would follow,
7 right?

8 A. Yes.

9 Q. It was also your intention that if you
10 received a permit pursuant to those permit
11 applications that you didn't find was something
12 you could live with, then you would file an
13 appeal, is that correct?

14 A. Yes, sir.

15 Q. And that if you did file an appeal,
16 you would additionally raise the financial
17 assurance question therein, is that correct?

18 A. Yes, sir.

19 Q. Aside from your testimony today about
20 what your intention is, is there anything in
21 this permit application that memorializes or
22 makes reference to those intentions or do you
23 think it is contained within that paragraph in
24 Exhibit U and Exhibit T?

1 A. I'm sure you want me to answer yes or
2 no.

3 Q. Well, it is a question that asks for a
4 yes or no answer.

5 A. I would have to examine the
6 application to conclude that the answer is no.

7 Q. Okay. Part of the justification that
8 was offered up as you intended to seek this cost
9 revision was the lease addendum, this is Exhibit
10 LL, between the City of Morris and Community
11 Landfill, is that correct?

12 A. Yes.

13 Q. Do you have Exhibit LL before you?

14 A. Yes.

15 Q. And I believe you testified that you
16 were involved in the discussions and
17 negotiations that led up to the execution of
18 this amendment or addendum, is that correct?

19 A. Yes.

20 Q. Did the Illinois EPA participate in
21 any of those negotiations between Community
22 Landfill and City of Morris?

23 A. I'm sure you and Mr. LaRose discussed
24 this in earnest, yes.

1 Q. There was no representative of the
2 Illinois EPA that attended any of the meetings
3 between Community Landfill and the City of
4 Morris that led up to the entry of this addendum
5 of the lease agreement, did they?

6 A. That is correct, yes.

7 Q. How long is this lease in effect, the
8 underlying lease?

9 Do you know the answer to that
10 question?

11 Do you know how long the lease is in
12 effect?

13 A. I need to finish reading the document.

14 Q. I'm sorry. Go right ahead.

15 Have you read the terms of that
16 exhibit?

17 A. Yes, I have.

18 Q. Okay. And, again, I'm asking you how
19 long is the lease to which this addendum is in
20 effect?

21 A. This document says in paragraph 3 the
22 second sentence, "Should the parcels reach final
23 disposal capacity prior to July 2010, the
24 landfill shall close, but this lease shall

1 continue for lessee to conduct closure and
2 post-closure care and remedial activities as
3 required by applicable IEPA permits."

4 Q. Okay. Now, you're not a lawyer, are
5 you, Mr. McDermont?

6 A. No. Thank you.

7 Q. You consider that a good thing, don't
8 you?

9 A. At this point, this week, yes, I do.

10 Q. I don't think many people would
11 disagree with you.

12 MR. LAROSE: I wouldn't.

13 BY MR. KIM:

14 Q. Since you're not a lawyer, you
15 wouldn't feel qualified to make any testimony as
16 to the rights or ability of the Illinois EPA to
17 enforce any term of this addendum, would you?

18 A. No, I'm not a lawyer. And no, I don't
19 speak for the IEPA.

20 Q. My question is, and since you're not a
21 lawyer, you don't have any -- you don't have any
22 source of knowledge -- or you're not qualified,
23 are you, to testify or to present an opinion as
24 to whether or not -- as to what rights or what

1 benefits the Illinois EPA derives from this
2 document, do you?

3 MR. LAROSE: I'm going to object to
4 that. He was never asked to render any opinion
5 as to the rights of the EPA. He read the
6 document that it inures to their benefit. I
7 didn't ask him to render any legal opinion. I
8 think Mr. Kim is saying, even though you didn't
9 render one, you're not qualified to render one.
10 I don't think that is appropriate.

11 MR. KIM: I think that is a fair
12 question.

13 I'm not asking him to render one. I'm
14 getting him to testify that he is not in a
15 position to do so.

16 MR. LAROSE: It's the negative of
17 something that never occurred. I don't think it
18 is an appropriate area of inquiry.

19 HEARING OFFICER HALLORAN: Sustained.

20 BY MR. KIM:

21 Q. Okay. Let's turn our attention now to
22 the question of the over-height waste of Parcel
23 B.

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1 reason that Community Landfill never sought
2 local siting approval from August of 1996 to
3 August of 2000 was because they had not at that
4 time yet received the sig mod permit?

5 A. That is correct.

6 Q. And is it your testimony that without
7 that permit you felt that there would be some
8 negative backlash either from members of the
9 reviewing body or members of the public, is that
10 correct?

11 A. I thought there would be substantial
12 backlash, yes.

13 Q. Did you testify that the people making
14 these siting decisions sometimes do not focus on
15 the technical points but sometimes are more
16 weighed by emotional concerns? Is that a fair
17 characterization?

18 A. Perhaps a little stronger than I would
19 like repeated, but, yes.

20 Q. I understand you have to do these in
21 the future, so I'm sure no one will read this
22 transcript, beyond the purposes of this hearing.

23 But from the time --

24 MR. LAROSE: If they do, they got a

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1 sad life.

2 BY MR. KIM:

3 Q. From the time between August of 1996
4 and up until the issue of the sig mod permits in
5 August of 2000, Community Landfill did have
6 permits issued to it that authorized and
7 addressed its operation, did it not? When I say
8 permits issued to it, I mean by the Illinois
9 EPA, did it not?

10 A. I am going to answer it in a two part
11 answer.

12 Q. Okay.

13 A. I firmly without any doubt have seen
14 these permits, know they existed, worked on the
15 application form and reviewed the resulting
16 permits from the IEPA.

17 On the other hand, I've also read
18 various conclusions by the IEPA that we are
19 operating without a permit.

20 Q. Okay. Let me reword the question
21 then.

22 In your opinion, from August of 1996
23 to August of 2000, just before the sig mod
24 permits were issued, did Community Landfill ever

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1 act or ever conduct operations without a permit?

2 A. No, sir.

3 Q. And do you believe that the general
4 public and the members of -- the political
5 members of the local unit of government that
6 would consider the siting application or any
7 siting application that might be offered by CLC,
8 would they have an appreciation for the
9 distinction between a Part 807 permit and a Part
10 811 permit?

11 A. We were successful in a meeting with
12 the city council of the City of Morris in
13 convincing more of them that there was indeed
14 such a distinction. There were still a member
15 or members on the board who still did not
16 understand that.

17 Q. So they really didn't care so much
18 about what the number you associated with a
19 permit, they were simply concerned about broader
20 aspects of having a landfill in the City of

21 Morris?

22 A. The broader aspects of the landfill in
23 Morris, whether it is operating with or without
24 a permit. Even if I recall correctly the permit

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1 now for Parcel A says we're operating without a
2 permit.

3 Q. So, in addition to the fact that no
4 sig mod permit had been issued, were there any
5 other reasons that you believe prevented
6 Community Landfill from seeking local siting
7 approval anytime between August of 1996 and
8 August of 2000?

9 MR. LAROSE: I'm going to object to
10 the form of the question. I don't believe
11 anyone has ever said that we were prevented but
12 that we thought it wasn't wise, so, technically,
13 the word prevented is the form, the word that
14 causes me a problem with the form of the
15 question.

16 HEARING OFFICER HALLORAN: Mr. Kim?

17 MR. KIM: I'll break it up in two
18 questions.

19 MR. LAROSE: Thank you.

20 HEARING OFFICER HALLORAN: Thank you.

21 BY MR. KIM:

22 Q. Was there anything that you felt
23 prevented Community Landfill from seeking local
24 siting approval between August of 1996 and

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1 August of 2000?

2 A. I believe we were prevented from
3 seeking siting approval if we expected to be
4 successful during that period of time.

5 Q. So you're not saying that there was
6 anything to prevent you from doing that, you're
7 just saying that you didn't think the likelihood
8 was very good, is that correct?

9 A. That is correct.

10 Q. And, again, you have been involved
11 in -- strike that.

12 I'm now going to do what I told you I
13 have to do. I skipped over a question I meant
14 to ask you.

15 Could you pull the exhibits, which are
16 the Parcel A and Parcel B permits? I believe
17 that's Exhibits R and S. Do you have those in
18 front of you?

19 A. I do not.

20 Q. R and S.

21 MR. LAROSE: I took those back. I've
22 got -- R is that Parcel A, and S is Parcel B.
23 Do you have S?

24 HEARING OFFICER HALLORAN: S is Parcel

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1 B.

2 MR. LAROSE: This is R. That's S.

3 BY MR. KIM:

4 Q. I'm backtracking a little bit to the
5 question of -- the cost estimate question as to
6 the Illinois EPA's act or non-act in considering
7 that issue.

8 Would you look to Exhibit R, which is,
9 I believe, the Parcel A permit, and specifically
10 look on pages 2 and pages 3?

11 A. Okay.

12 Q. At the bottom of page 2, there are two
13 paragraphs 1 and 2, is that correct?

14 A. Yes, sir.

15 Q. And the line above that, could you
16 read that line into the record?

17 A. Beginning with the word permit?

18 Q. Yes, please.
19 A. Permit number 2000-115.
20 MR. LAROSE: I'm sorry. Where are we?
21 MR. KIM: Page 2 of the parcel.
22 MR. LAROSE: Of R.
23 MR. KIM: Yes.
24 MR. LAROSE: Okay. Sorry.

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1 BY MR. KIM:
2 Q. Go ahead, please.
3 A. Once again, "Permit number
4 2000-155-LFM does not approve the following,
5 colon."
6 Q. And then what follows below are the
7 three paragraphs numbered consecutively 1, 2, 3,
8 is that correct?
9 A. Yes, sir.
10 Q. And number 1 relates to the proposed
11 use of pumping wells T2 and T4, is that correct?
12 A. That's correct.
13 Q. Number 2 relates to the proposed one
14 day's worth versus five days' worth of leachate
15 storage, is that correct?
16 A. Yes, sir.

17 Q. And item number 3 relates to the use
18 of saw dust and some other materials as ultimate
19 daily cover, is that correct?

20 A. Yes, sir.

21 Q. There is no mention here of a request
22 to revise a cost estimate, is there?

23 A. No, sir.

24 Q. Okay. Can you turn your attention to

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1 Exhibit S, which is Parcel B permit, and on page
2 of that permit in the middle of the page,
3 we'll just sort of speed this up, there is
4 another sentence that states what is not
5 approved in the permit, is that correct?

6 A. Yes, sir.

7 Q. And then what follows are four
8 numbered paragraphs, is that correct?

9 A. Yes, sir.

10 Q. And without going through each
11 paragraph, there is no mention in either -- in
12 any of those paragraphs as to a request to
13 review the cost estimate, is that correct?

14 A. That is fair.

15 Q. Would you like to take about a five

16 minute break?

17 A. When it would be convenient for you.

18 Q. Now is as good of a time as ever.

19 A. Thank you.

20 HEARING OFFICER HALLORAN: Sure, the
21 Hearing Officer will allow a five minute break.

22 (Off the record.)

23 HEARING OFFICER HALLORAN: It's
24 approximately 2:50. Mr. Kim will be continuing

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1 his cross-examination of Mr. McDermont.

2 BY MR. KIM:

3 Q. You have testified as to your
4 understanding -- oh, I'm sorry. Strike that.

5 You testified as to the schedule that
6 was imposed in the permit for Parcel B for the
7 completion of work on the leachate removal
8 system, do you remember that?

9 A. Yes, sir.

10 Q. And when I say that I'm referring
11 to -- well, you recall the condition I'm talking
12 about, is that correct? Condition Roman numeral
13 6-7 and Roman numeral 6-9 of Exhibit S, which
14 would be found at pages 20 and 21 of the permit.

15 A. Okay.

16 Q. And I believe you also testified that,
17 under questioning from opposing counsel, that
18 the schedule that the Illinois EPA imposed of
19 the permit for Parcel B did not provide you with
20 what you felt was enough time to complete those
21 activities, is that right?

22 A. And I testified to two things.

23 Q. Well, let me ask you this. Did you
24 testify that the schedule that was proposed in

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1 Parcel B, in the permit for Parcel B as to the
2 conclusion of the work for the leachate removal
3 system did not give you enough time to complete
4 all of those tests in the time allowed?

5 A. Yes.

6 Q. Okay. But there was no schedule,
7 other than a reference to the leachate storage
8 tank, there was no schedule that was provided in
9 the application for those tasks, was there?

10 A. No.

11 Q. I'd like to draw your attention then
12 to the condition concerning the -- okay. I'd
13 like to turn your attention now to the -- to

14 Exhibit R, which I believe is the permit for
15 Parcel A. And condition Roman numeral 8-23,
16 which is found at page 30 -- I'm sorry, page 41
17 of the permit.

18 There, again, I believe your testimony
19 was that the time periods provided in the permit
20 for completion of the activities described was
21 not sufficient to complete those tasks, is that
22 correct? Is that right?

23 A. I believe I testified that in
24 conjunction with the other improvements that had

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1 to be made in Parcel A that the groundwater
2 collection trench could not be completed in six
3 months, yes.

4 Q. But the permit application did not
5 include a proposed time-line or schedule for
6 completions of those tasks, did it?

7 A. Nor did it include --

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

9 A. No.

10 Q. Thank you.

11 And did the permit application for
12 Parcel B contain a plan which described proposed

13 waste relocation of the over-height waste,
14 Parcel B, is that correct?

15 A. Could you rephrase your question?

16 Q. In the Parcel B permit application,
17 there was a plan included within that
18 application, wasn't there, that addressed
19 relocating or the proposed relocating of the
20 over-height waste in Parcel B, the methods by
21 which you would do that, if you did do that?

22 A. Again, Mr. Kim, I think you need to
23 rephrase your question.

24 Q. Maybe I can see why you might have

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1 been confused by my question.

2 I'm going to refer to the
3 administrative record, Parcel B, Volume 3.

4 MR. LAROSE: What page, John?

5 MR. KIM: 0293 Bates stamped.

6 MR. LAROSE: Hold on one second. I
7 don't have Bates stamp. I just have 293.

8 MR. KIM: That's correct, 293.

9 BY MR. KIM:

10 Q. And that is also referenced as page 10
11 of the closure plan, post-closure plan and cost

12 estimates, is that correct?

13 A. Yes, sir.

14 Q. What is the heading on the top of that
15 page?

16 A. Waste relocation.

17 Q. Are you familiar with the information
18 and the text in that section?

19 A. Yes, I am.

20 Q. Does that text describe how
21 over-height waste, Parcel B, would be relocated,
22 if that was necessary?

23 A. It -- I would characterize it more as
24 referring to a schedule.

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1 Q. Okay. And you believe then that there
2 is a -- I'm -- you believe that there is a
3 schedule contained within that section that
4 addresses time periods for moving the
5 over-height waste from Parcel B?

6 A. Yes, sir.

7 Q. I'd like to now draw your attention to
8 the proposed use of wells T2 and T4.

9 I believe you testified as to a four
10 month test that was performed involving wells T2

11 and T4. Do you recall that?

12 A. Yes, I do.

13 Q. And, in fact, that four month test
14 involved collecting data from other wells in
15 addition to wells T2 and T4, did it not?

16 A. Other wells and piezometers, yes, sir.

17 Q. Okay. And I believe you testified
18 that based upon those results, it was shown that
19 the use of wells T2 and T4 was the preferred
20 method for removing groundwater, is that
21 correct?

22 A. Yes, sir.

23 Q. And I believe you also testified that
24 the mined area was never completely dewatered

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1 through the course of those -- that pump test,
2 is that correct?

3 A. Yes, sir.

4 Q. What about those test results to you
5 demonstrated that the use of wells T2 and T4 was
6 preferred? And when you say preferred,
7 preferred as opposed to what --

8 A. Well --

9 Q. -- the groundwater collection trench?

10 A. Yes, obviously that is my preference.

11 Q. Okay. And what were the reasons for
12 your preference or what were the reasons you
13 stated that was preferred?

14 A. The advantages I find for the vertical
15 wells over the groundwater collection trench is
16 ease of installation, ability to adjust the
17 system with a single -- I'm sorry, just easier
18 to adjust the system, if I'd like the water
19 level to go up or down a little bit, I can
20 easily adjust that. I do not have concerns from
21 pipes that are -- may clog or then become scaled
22 up with time, certainly easier to install,
23 certainly easier to maintain, easier to operate,
24 easier to monitor. I think the results I get

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1 are more uniform. The deep groundwater is being
2 removed, which causes the shallow groundwater to
3 be removed as well. The 1998 trench test we
4 pumped at approximately 80 gallons a minute, and
5 admittedly enough it is a shorter test, but my
6 control of the shallow groundwater decline was
7 not as rapid as with the vertical extraction
8 system wells during the same period of time.

9 The primary flow that we received in the
10 groundwater collection trench was from fracture
11 flow and not from removal of a more permeable
12 zone. So, just overall I feel that T2 and T4
13 are better methods for doing what we need to do,
14 plus if I need to expand, I can install another
15 vertical well and have it operational in, you
16 know, I always assume everything is going to
17 work out perfectly, but you can simply do that
18 in about a month.

19 Q. And were all of those reasons you just
20 described included in the permit application?

21 A. No, sir, they were not.

22 Q. When you testified that the mined area
23 was not completely dewatered, would there be a
24 problem in your opinion with completely

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1 dewatering the mined well?

2 A. Yes.

3 Q. And what would the problem be?

4 A. Mr. Skouby testified that the mine is
5 flooded, and that the strata above the mine to
6 the elevation, the groundwater as well as the
7 underclay below the coal, are saturated. They

8 have swelled up, expanded in volume and became
9 soft. If you completely dewatered the mine and
10 enough time passed in order to dry out those
11 soils, they would shrink. This to me is going
12 to take a considerable amount of time. It is
13 not something that can happen in a day. And I
14 think you're talking more about geological time
15 of years.

16 So, with that understanding, plus the
17 addition of some chemical and physical reactions
18 that may be going -- that might occur with the
19 resulting or remaining coal, you can get some
20 other undesirable actions occurring as well.

21 Q. Do you believe that if the mined area
22 were dewatered it would also be a potential for
23 or a greater potential for subsidence in those
24 dewatered areas?

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1 A. I believe that if the water was indeed
2 removed from the saturated substrata soils that
3 would increase settlement potential at the
4 landfill, but I do not believe that settlement
5 would be catastrophic at all.

6 Q. You also testified that there would --

7 that permit application does include references
8 to -- strike that.

9 I think the last question I have for
10 you on cross-examination concerns, if you can
11 direct your attention to Exhibit R, which is the
12 permit for Parcel A and page 3 of that permit
13 and, specifically I'm focusing on condition
14 Roman numeral 1, paragraph 2, subsection A.

15 Do you see the section I'm referring
16 to?

17 A. Yes, sir.

18 Q. That section was not included as one
19 of the conditions as being contested in this
20 permit appeal, is that correct?

21 A. I would have to examine the permit
22 appeal to be certain.

23 Q. Would you like -- do you have
24 exhibit --

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1 A. No, sir, it's not --

2 Q. -- before you?

3 A. No.

4 Q. You do not -- just a moment. I'll
5 hand it to you.

6 Exhibit P. Would you turn to page --
7 I'm directing your attention to pages 5 and 6 of
8 that exhibit. And specifically paragraph 13, do
9 you see that paragraph?

10 A. Yes, I do.

11 Q. And there are a number of subsections
12 to that paragraph, beginning with the letter A
13 and going through the letter H, is that correct?

14 A. That is correct.

15 Q. And included within those described
16 contested conditions -- let me rephrase that.

17 Condition Roman numeral I, paragraph
18 2, section A of the Parcel A permit is not
19 included among those contested conditions, is
20 that correct?

21 A. That is correct.

22 MR. LAROSE: Thank you. At this point
23 I have no further cross-examination questions
24 for Mr. McDermont.

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1 Can we go off the record for a moment?

2 (Off the record.)

3 HEARING OFFICER HALLORAN: Back on the
4 record.

5 MR. KIM: No, I don't have any further
6 questions for Mr. McDermont.

7 REDIRECT EXAMINATION

8 BY MR. LAROSE:

9 Q. I'm going to hand you Exhibit P,
10 again, please.

11 A. Yes.

12 Q. Take a look at that.

13 You said to Mr. Kim that Exhibit C
14 doesn't specifically reference condition -- I'm
15 sorry. Paragraph 13C doesn't specifically
16 reference condition Roman numeral I, 2A, on page
17 3 of Exhibit R, correct?

18 A. That is correct.

19 Q. But it does, does it not, speak to the
20 need to place the waste in order to build the
21 separation layer?

22 A. Absolutely.

23 Q. And the condition that is cited in
24 this particular paragraph, 13C, if you'll flip

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1 to page 5, condition Roman numeral II(i),
2 doesn't it reference something that would relate
3 back to the other section?

4 A. Yes, it's my opinion that the two are
5 definitely related.

6 Q. Okay. How so?

7 A. The question comes about in preparing
8 the separation layer or the first step of
9 installing the separation layer, our
10 construction talks about placing waste above the
11 existing grade on Parcel A before starting
12 construction of the first layer of the 36 inch
13 thick clay separation layers.

14 Q. How are the two related, sir?

15 A. The two are related because if I can't
16 place waste there, I can't start construction of
17 the separation layer.

18 Q. And doesn't the condition on page 5
19 reference a significant modification permit?

20 A. Yes, it does.

21 Q. Is that the sig mod permit in your
22 opinion that is referenced under condition 1,
23 2A?

24 A. Yes.

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1 Q. Mr. McDermont, in a series of
2 questions that Mr. Kim asked you about the

3 Morris POTW stopping to accept waste, going out
4 of business basically, do you believe that to be
5 a likely scenario?

6 A. No, I do not.

7 Q. Okay. If I was to tell you or ask you
8 your opinion, using the scale of 1 to 100, 1
9 being the least likely and 100 being the most
10 likely, what number would you assign to the
11 likelihood of the POTW in Morris going down?

12 A. Could you repeat your range?

13 Q. Yes. My range is 1 to 100. 1 would
14 be the least likely that it would go off-line
15 totally and permanently, 100 would be the most
16 likely. Could you assign a number to that?

17 A. I would assign a number of 1 to that.

18 Q. Okay. Would it have to be some kind
19 of catastrophic event?

20 A. It would have to be more than
21 catastrophic. It would basically have to remove
22 all treatment devices from the treatment plant.

23 MR. LAROSE: That's all I have, Mr.
24 Hearing Officer.

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1 HEARING OFFICER HALLORAN: Thank your,

2 Mr. LaRose.

3 Mr. Kim, any re-cross?

4 MR. KIM: Yes.

5 RE-CROSS-EXAMINATION

6 BY MR. KIM:

7 Q. Mr. McDermont, the purpose of posting
8 financial assurance in an amount equal to the
9 approved cost estimate is to provide the state
10 with monies equal to that which they would have
11 to spend if they had to step in and perform the
12 described activities at the landfill if the
13 landfill were not able to do so, is that
14 correct?

15 A. Yes, sir.

16 Q. And are you familiar with the
17 regulations in Part 811 -- in Part 811 that
18 describes how to calculate cost estimates?

19 A. In general, yes, sir.

20 Q. And there is no reference in those
21 cost estimate provisions in Part 811 that refer
22 to the likelihood of this or the likelihood of
23 that in the manner that Mr. LaRose has
24 described, is there?

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1 A. No, sir.

2 MR. KIM: Thank you. Nothing further.

3 HEARING OFFICER HALLORAN: Mr. LaRose?

4 MR. LAROSE: No, sir.

5 HEARING OFFICER HALLORAN: Thank you,
6 Mr. McDermont, you may step down.

7 MR. LAROSE: Before he does, can we
8 take about -- we need to take about 2 minutes.
9 We received a fax from Mr. McDermont's office
10 regarding this CWLP thing and I want him to take
11 a look at this document so that -- see if I can
12 lay a foundation for it, either so -- as I said
13 before, either so we can have these permits
14 submitted as an offer of proof or so that you
15 can look at them and see if you want to
16 reconsider your ruling on the CWLP issue.

17 (Off the record.)

18 HEARING OFFICER HALLORAN: Back on the
19 record.

20 MR. LAROSE: Mr. Halloran, I'm going
21 to show -- here, this is for Mr. Kim. I'm going
22 to show this to you. This is the only copy I
23 have. So you can take a look at it before he
24 does and this is a copy that you can have.

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REDIRECT EXAMINATION

BY MR. LAROSE:

Q. Mr. McDermont, we earlier had discussed City Water, Light & Power facility and it's, in fact, at least your testimony that was later stricken from the record, that it had a landfill and a treatment facility both owned by the City of Springfield and that there was no cost associated with the disposal of leachate into the treatment facility, is that correct?

A. That is correct.

Q. I'm going to hand you what has been previously marked as Exhibit GGG, which is a copy of the most recent permit, 811 permit for the CWLP, and that permit, that document was provided for us, provided to us by the IEPA pursuant to the subpoena.

Have you seen that document before?

MR. KIM: I'm sorry. You're saying this document was provided to you?

MR. LAROSE: No. No. GGG. The permit.

MR. KIM: Oh, I'm sorry. I apologize. I have HHH.

1 MR. LAROSE: But GGG is the permit.

2 MR. KIM: That's what you're referring
3 to?

4 MR. LAROSE: Right. GGG. Right.
5 Right. Right.

6 BY MR. LAROSE:

7 Q. Okay. Sir, are you familiar with that
8 permit?

9 A. Yes, I am.

10 Q. Were you the consultant on that
11 permit?

12 A. Yes, I was.

13 Q. Even though we have the permit in
14 front of us, would anything in that permit
15 substantiate your testimony, either substantiate
16 it or discredit your testimony that there was no
17 third-party cost for the treatment of leachate?

18 A. This particular permit would be silent
19 on the issue.

20 Q. It would just say following your
21 closure and post-closure plan?

22 A. Right, there would be a special
23 condition in here approving of that.

24 Q. Okay. It doesn't describe what is in

1 the closure, post-closure plan?

2 A. That's correct.

3 Q. I'm going to hand you now what has
4 been marked as Exhibit HHH and ask you to take a
5 look at that, please.

6 MR. KIM: Just for the record, and I
7 think this would be sort of just a corollary to
8 the previous question to strike, the Agency asks
9 that any testimony concerning HHH be stricken
10 from the record since that was not a document
11 that was provided or properly before the
12 Community Landfill or the IEPA or the Pollution
13 Control Board.

14 MR. LAROSE: I'm trying to lay a
15 foundation to see if --

16 HEARING OFFICER HALLORAN: You can
17 proceed and we can address Mr. Kim's --

18 MR. LAROSE: Okay. Good.

19 BY MR. LAROSE:

20 Q. Sir, where did you get that document?

21 Let's ask that differently. How did
22 you get that document?

23 A. At lunch today I called my office and
24 asked if they could print it out of the computer

1 and have it faxed to your law office.

2 Q. And did they do that?

3 A. Yes, they did.

4 Q. Then it was delivered here?

5 A. That is correct.

6 Q. Did you prepare that document?

7 A. Yes, I did.

8 MR. KIM: At this point, I'd like to
9 formally object. This document was not provided
10 by the IEPA through the course of any approved
11 or normal discovery or document disclosure.
12 This document was provided by the consultant
13 himself on the day of -- the last day of
14 hearing. I ask that any testimony on the
15 exhibit all be stricken.

16 HEARING OFFICER HALLORAN: You may
17 continue, Mr. LaRose. It's noted for the
18 record.

19 MR. KIM: Are you reserving your
20 ruling on that?

21 HEARING OFFICER HALLORAN: I'll
22 reserve -- right, because I have questions to
23 ask.

24 MR. KIM: Thank you.

1 BY MR. LAROSE:

2 Q. Sir, the document in front of you, you
3 did prepare that document?

4 A. Yes. It was prepared in September of
5 1994.

6 Q. And you submitted that to the IEPA?

7 A. Yes, sir.

8 Q. Was it approved?

9 A. Yes, it was.

10 Q. Could you direct the hearing officer
11 and the IEPA to the pages, page or pages of that
12 document that would represent the closure and
13 post-closure care cost estimates?

14 A. The pages in question --

15 MR. KIM: While he is looking, I'm
16 going to pose another objection in that since
17 this document was not provided by the IEPA
18 through the course of our review of the
19 underlying file, we don't know if this
20 particular document, Exhibit HHH, was part of
21 the permit application, which led up to the
22 issuance of a permit, that is found in GGG. So
23 I just want to note for the record we're also
24 objecting to this document because we don't know

24

MR. KIM: It's not --

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1 MR. LAROSE: Is it cut off?

2 MR. KIM: On this copy.

3 Can you describe the pages?

4 MR. LAROSE: I'm just going to show it
5 to you.

6 HEARING OFFICER HALLORAN: What pages
7 are those?

8 MR. LAROSE: It's the pages
9 immediately after Appendix L.

10 MR. KIM: I guess it would be the
11 pages in Appendix L.

12 HEARING OFFICER HALLORAN: Okay.
13 Thank you.

14 MR. KIM: Thank you.

15 MR. LAROSE: Sorry.

16 BY MR. LAROSE:

17 Q. In this, Exhibit HHH, this cost
18 estimate appears after appendix -- after the
19 page, Appendix L?

20 A. That's correct.

21 Q. Is there any cost associated with the
22 treatment and disposal of leachate in that

23 closure and post-closure care cost estimate?

24 A. There is no cost associated with

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1 leachate treatment in this post-closure care
2 cost estimate.

3 Q. And there is a cost associated with
4 handling it or monitoring it or something like
5 that, could you point that out and describe
6 that?

7 A. There is one cost entitled leachate
8 management, which includes the category field
9 measurements documentation, reporting and daily
10 review, this cost is for manual labor of \$30
11 per -- apparently per quarter.

12 Q. To the best of your knowledge,
13 information and belief, sir, is that a true and
14 accurate copy of the closure plan, post-closure
15 care plan and cost estimates submitted to the
16 IEPA on behalf of the CWLP facility in September
17 1994?

18 A. Yes, it is.

19 MR. LAROSE: Mr. Hearing Officer, with
20 that I would move the admission of Exhibits GGG
21 and HHH into evidence.

22 HEARING OFFICER HALLORAN: Mr. Kim,
23 you can make your statements.

24 MR. KIM: Thank you.

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1 The objections as to first with
2 Exhibit GGG we would have no objection to that.
3 I think that is already in, isn't it?

4 MR. LAROSE: No.

5 MR. KIM: No. Okay.

6 The permit itself we would have no
7 objection to.

8 HEARING OFFICER HALLORAN: Exhibit GGG
9 is admitted.

10 (Exhibit No. GGG was admitted.)

11 MR. KIM: As to Exhibit HHH, we would
12 have several objections.

13 First of all, that document was not
14 provided pursuant to the subpoena duces tecum as
15 was modified by the Hearing Officer. That
16 document was not provided through any discovery
17 request. That document was not found in the
18 permit application. That document was not found
19 in the administrative record before the board.
20 That is a document which was provided as it was

21 testified to by the consulting engineer for that
22 landfill as requested during some telephone
23 conversation today. The Agency has not seen
24 that document and has not reviewed that document

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1 in the context of this case and that document
2 should not be considered by the board.

3 HEARING OFFICER HALLORAN: Mr. LaRose?

4 MR. KIM: Oh, I'm sorry. And the last
5 objection is that also because the Agency has
6 not seen the application from which that
7 document came, we cannot certify or we cannot --
8 we cannot guaranty that that application -- that
9 document came from an application contained in
10 the Agency's permit as Exhibit GGG.

11 MR. LAROSE: I'll address those in
12 reverse order.

13 Mr. McDermont testified and,
14 obviously, he is under a little bit of a
15 disadvantage here because he is not at his
16 office and doesn't have access to the files, but
17 he testified to the best of his knowledge,
18 information and belief that it is a true and
19 accurate copy of the documents that he both

20 prepared and submitted.

21 Secondly, the issue is whether or not
22 the Agency ever accepts non third-party cost
23 estimates for the treatment of leachate. That's
24 what they've said in this case.

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1 The issue on the financial
2 instruction -- of financial assurance, which is
3 worth \$10 million in this case, very
4 substantial, is that we never accept third-party
5 costs, non third-party costs. That is what
6 Joyce Munie testified to. When I questioned her
7 about the CWLP application, she said I don't
8 know. It is a crucial examination of the
9 Agency's consistent application of what they say
10 is a clear regulation. She said I don't even
11 need legal counsel's help on this. I know this
12 is the fact. And here is a situation where she
13 signed a permit where -- or someone, I didn't
14 even look at the signature, someone signed a
15 permit where the difference is apparent.

16 And finally, the fact that the Agency
17 didn't see this document, they wrote -- they
18 accepted the document. They wrote the permit,

19 and we asked for it. I asked for it pursuant to
20 timely subpoena. I know that you made your
21 ruling with respect to that. I got it through
22 other means when they said we don't have time to
23 get it. They didn't say it wasn't a proper or
24 relevant request, they just said we don't have

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1 time. It is too burdensome. So I did my best
2 through the resources I have to get the
3 document. I think the document is relevant. I
4 think it is important to show the inconsistency.
5 I think that we've laid a proper foundation for
6 it and I think that not only should these
7 documents be admitted but your prior ruling on
8 the motion to strike Mr. McDermont's testimony
9 regarding the CWLP should be reconsidered and
10 reversed.

11 HEARING OFFICER HALLORAN: Mr. Kim?

12 MR. KIM: The only comment I have to
13 his characterization of Ms. Munie's testimony, I
14 think every Agency witness that has addressed
15 the issue of \$10 million associated with the
16 POTW policy in this case has been consistent in
17 that we did not receive a request to revise or

18 to review that cost estimate. So when he says
19 that in this case we're being inconsistent, we
20 have not made any decision in this permit appeal
21 or in these permit appeals relating to the
22 question of whether or not \$10 million that has
23 been described is or is not a proper third-party
24 cost. As a matter of fact, we went to pains

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1 trying to stress that we didn't have anything
2 before us, we can't testify and we can't make
3 any kind of speculative judgment calls on
4 requests, we don't have the course, specifically
5 looking at what Ms. Munie said. Mr. LaRose
6 asked her, what if we gave you this, if we gave
7 you this, would you be able to approve it, and I
8 believe you upheld an objection to that question
9 on the basis that we don't have that document,
10 that we don't have that request before us and we
11 can't make a decision until we see something in
12 front of us. We weren't presented with it here.
13 There is no reason for this to come in, if that
14 is what this is being offered of as in support
15 of.

16 HEARING OFFICER HALLORAN: My

17 recollection of the testimony as Mr. Kim has
18 described, I agree with him.

19 MR. LAROSE: Can I just say one more
20 thing?

21 HEARING OFFICER HALLORAN: Yes.

22 MR. LAROSE: She said two things. She
23 said I can't speculate on what I would do now,
24 but when I had the issue before me, I did this

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1 because it wasn't a third-party cost.

2 Okay. What you're doing and what he
3 is asking you to do basically is make a ruling
4 that summary judgment should be granted in this
5 case because you're saying that the evidence
6 that she had the material before her in the
7 prior permit application isn't before you in
8 this case. That is not a ruling for you to
9 make. That is a ruling for the board to make
10 based on summary judgment. If the board doesn't
11 grant summary judgment, they're certainly going
12 to examine the testimony where she said I denied
13 this because it wasn't a third-party cost. That
14 was her testimony when the issue was before her.
15 When I tried to get her to talk about what would

16 happen, you did sustain that objection. And I
17 can live with that, but the issue before this
18 board if it is going to be decided and right now
19 we must assume that it is, it's going to be
20 decided as is this a third-party cost or not and
21 this is germane to that issue.

22 MR. KIM: Again, as a point of
23 clarification, Ms. Munie's testimony on the acts
24 she took to deny the request for the cost

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1 estimate was related to permit denials issued in
2 September of '99, subsequent appeals were filed.
3 Those appeals have been dismissed with
4 prejudice. That's what she was testifying to.
5 Mr. LaRose asked her what did you do in
6 September 1999, she answered that. Those were
7 the subject of appeals that are now dismissed
8 and then he tried to ask her, speculative
9 matter, about what would have happened here,
10 you, we believe properly, did not allow to ask
11 that question because she testified that she
12 does not -- she did not believe she had a
13 request order. My objection was based on his
14 characterization that she testified as to why

15 she took certain actions in that case, she
16 clearly testified she did not take any action in
17 this case because she was not asked to.

18 HEARING OFFICER HALLORAN: Mr. LaRose,
19 I disagree with your characterization that if I
20 rule against you, it's in essence a dispositive
21 motion, and that is within the board's powers.
22 I disagree with that.

23 I will sustain the Agency's objection.
24 Not admitting Exhibit HHH and I stand on my

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1 prior ruling striking the testimony by Mr.
2 McDermont regarding --

3 MR. LAROSE: CWLP.

4 HEARING OFFICER HALLORAN: Thank you
5 very much.

6 -- CWLP. And if you would so note
7 for the record this would be an offer of
8 proof --

9 MR. LAROSE: Not only the exhibit but
10 the testimony.

11 HEARING OFFICER HALLORAN: The exhibit
12 will be taken as an offer of proof and as the
13 testimony.

14 MR. LAROSE: The prior testimony and
15 his testimony with respect to the exhibit.

16 HEARING OFFICER HALLORAN: That's
17 correct.

18 MR. LAROSE: Thank you.

19 HEARING OFFICER HALLORAN: Thank you.

20 MR. LAROSE: I have nothing further.

21 MR. KIM: Nothing further.

22 HEARING OFFICER HALLORAN: Thank you,
23 Mr. McDermont, you can step down again.

24 Does that conclude your case in chief

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1 then, Mr. LaRose?

2 MR. LAROSE: Yes, sir, it does.

3 Petitioner rest its case in chief.

4 HEARING OFFICER HALLORAN: Thank you.

5 MR. KIM: The Respondent would call
6 Christine Roque to the stand.

7 (Witness duly sworn.)

8 CHRISTINE ROQUE,
9 called as a witness herein, having been first
10 duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. KIM:

14 Q. Could you state your name for the
15 record, please?

16 A. My name is Christine Roque.

17 Q. And you have already been called to
18 testify in this case, is that correct?

19 A. That's correct.

20 MR. KIM: If I can take just a moment,
21 Mr. Hearing Officer, to mark some exhibits.

22 HEARING OFFICER HALLORAN: Yes.

23 BY MR. KIM:

24 Q. Ms. Roque, I'm going to show you what

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1 has been marked as Exhibit III.

2 Q. Could you tell me what that document
3 is, please?

4 A. It's an environmental impact
5 statement, Rehabilitation of Wastewater
6 Facilities, Streeter, Illinois.

7 Q. Have you seen that document before?

8 A. Yes, I have.

9 Q. When did you first see this document?

10 A. I cannot remember the exact date, but
11 during the review of the -- during the review of

12 the May 2000 application.

13 Q. And you've been present during most of
14 the testimony in this hearing, is that correct?

15 A. Yes.

16 Q. And have you heard different witnesses
17 make references to statements or information
18 included within this -- what I'm going to call
19 the Streeter EIS?

20 A. Yes.

21 Q. And do you know how this document was
22 provided to Community Landfill and the City of
23 Morris in the present appeals?

24 A. No, from the --

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1 Q. If I were to say to you this was
2 turned over in response to a discovery request,
3 does that sound right?

4 MR. LAROSE: So stipulated.

5 THE WITNESS: That's correct.

6 MR. KIM: I would move that Streeter
7 EIS be admitted into evidence.

8 HEARING OFFICER HALLORAN: Mr. LaRose?

9 MR. LAROSE: Object. There is
10 absolutely no foundation for any of this

11 document to be admitted. There has been no
12 discussion by anybody of the content of this
13 document. Ms. Roque definitely and clearly
14 testified that she did not know the geology of
15 the Morris site. There has been no foundation
16 that anything in this report relates to Morris.

17 The second reason is, more of a
18 procedural one other than a substantive one, it
19 is just patently unfair for this document -- for
20 the EPA to be allowed to review this document,
21 not tell us about it until after the fact and
22 have my witnesses be -- testimony be stricken
23 when they criticize this document yet let the
24 EPA put it in.

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1 I put in one page of this document so
2 that we can criticize those findings. There is
3 absolutely no foundation for the rest of this
4 document.

5 HEARING OFFICER HALLORAN: Mr. Kim?

6 MR. KIM: Well, Mr. LaRose just took
7 part of my response. He did offer and it was
8 admitted into evidence one page from this
9 particular document. I don't think you got

10 foundation issues, if we've already included
11 part of the document. I'm just simply actually
12 trying to, I think, provide the board with a
13 better picture and provide the document in
14 total. As to his arguments concerning the
15 manner in which this document was provided,
16 again, what was stricken were opinions that were
17 formed after our permit decision based upon the
18 review of this document. It doesn't matter if
19 it was in the review of this document or any
20 other document. What was stricken were opinions
21 that were formed by the witness after the permit
22 decision. And it just so happened that they
23 were this document but it could have been other
24 things, too. For example, the extrapolation

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1 tables. The document itself has been testified
2 to and has been offered up in response to
3 discovery request seeking information that was
4 consulted or reviewed by the IEPA in making a
5 decision. That is what it is being offered for.
6 That is what it is being -- that is how it is
7 being referred to in the testimony.

8 HEARING OFFICER HALLORAN: You said it

9 was exchanged during discovery?

10 MR. KIM: That is correct.

11 HEARING OFFICER HALLORAN: Mr.

12 LaRose?

13 MR. LAROSE: And that's just the
14 point. The first time we saw it was during
15 discovery. We couldn't have had an opportunity
16 to review this prior to it being provided to us
17 because we had no idea that the Agency was
18 relying on it until that time.

19 Secondly, the foundational issue is
20 sound. A one page argument isn't an argument at
21 all because there was no foundational argument.
22 It was offered by me and admitted without
23 objection. That doesn't lay a foundation, there
24 is probably 200 pages in that report, for the

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1 other 199 pages of the report. I think Ms.
2 Roque testified, and I think if you asked her
3 again, she would honestly testify she hasn't
4 even read the whole thing. How can there
5 possibly be a foundation for a document you
6 didn't read?

7 HEARING OFFICER HALLORAN: Mr. Kim?

8 MR. KIM: Well, in response, his
9 arguments are no different than if we had
10 included, again, as I stated earlier during the
11 hearing, to the extent that we erred, we
12 probably should have included this in the
13 administrative record, but the fact is we
14 provided this in response to a discovery request
15 seeking any information that we did rely upon
16 that was found outside of the record. They
17 complied with that. If we included the Streeter
18 EIS or any administrative record, he still
19 couldn't have had people testify about opinions
20 that they have formed after the fact, even if it
21 was in the record, even if he was able to call
22 expert witnesses or witnesses that would come up
23 and say, yes, I reviewed that and I didn't
24 receive it until after August of 2000, but I

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1 have an opinion about this and here is my
2 opinion. Just like no one can provide testimony
3 relating to any matter that is in the record,
4 which was formed after the fact. That was the
5 basis of the objection at the time that those --
6 that testimony was offered and that was the

7 reason to my understanding why it was stricken,
8 not because it was this document, it was because
9 information -- it was opinions or conclusions
10 that were reached after the permit decision. As
11 to this document itself, if you want me to lay a
12 little bit more foundation, I can do that.

13 HEARING OFFICER HALLORAN: That's what
14 I am concerned about.

15 MR. KIM: Fine. I can do that if
16 you'd like. Again, the document was properly
17 provided during the course of discovery. And if
18 it was a foundation issue, I can lay some more
19 foundation. As to the other points I don't
20 think there is any reason to object to the
21 infiltrate of the document.

22 HEARING OFFICER HALLORAN: You better
23 attempt to lay a little more foundation, I would
24 appreciate it.

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1 MR. KIM: Thank you.

2 BY MR. KIM:

3 Q. Ms. Roque, I believe I asked you when
4 you first saw this document.

5 A. It's during the review of the, I

6 believe, 2000 application.

7 Q. Okay.

8 A. For Parcel A.

9 Q. For Community Landfill?

10 A. For Community Landfill.

11 Q. And how did you learn of the existence
12 of this document?

13 A. It was referred to me by Ms. Thompson.

14 Q. That would be Gwenyth Thompson?

15 A. Gwenyth Thompson.

16 Q. G-W-E-N-Y-T-H.

17 What did Gwenyth say to you when she
18 mentioned this document?

19 A. She had mentioned that -- to read this
20 document because it has the same -- what they
21 were doing or what they proposed to do in Morris
22 Community Landfill is the same as or similar to
23 what they did on Streeter.

24 Q. Okay. And did you conduct a thorough

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1 review of the Streeter EIS as to the geologic
2 conditions that were described in the EIS?

3 A. No, I did not.

4 Q. Did you use that document for any

5 purposes relating to trying to ascertain what
6 the geologic conditions were at Streeter?

7 A. No, I did not.

8 Q. What did you use that document for?

9 A. I read this document just to see what
10 the effect of dewatering mine voids, effect of
11 potential subsidence and collapse due to
12 dewatering.

13 Q. Did you find any general statement in
14 this EIS that were helpful to you?

15 A. Yes, I did.

16 Q. Okay. Just to -- unless Mr. LaRose
17 objects, I'd like to direct your attention to a
18 certain portion of the exhibit just to sort of
19 speed things up.

20 MR. LAROSE: I really think it's part
21 of the foundation, if he directs her
22 attention --

23 MR. KIM: I can have her look it up.
24 That's fine.

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1 BY MR. KIM:

2 Q. Would you please turn to the portion
3 or portions of the EIS that you felt or that you

4 reviewed and you relied upon?

5 A. I focused on Appendix B, which is
6 evaluation of the potential for ground surface
7 subsidence.

8 Q. Okay.

9 A. Page B-36.

10 Q. And, again, just to be clear, did you
11 not --

12 A. B-37, the conclusion.

13 Q. Okay. B-36 and B-37?

14 A. That's correct.

15 Q. Thank you.

16 Just to be clear, you did not review
17 this document in the course of any -- your
18 review of any stated geologic conditions of the
19 City of Morris?

20 A. No.

21 Q. Or in the area geologic conditions at
22 Community Landfill?

23 A. No.

24 MR. KIM: Again, I would move that

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1 Exhibit III be admitted.

2 MR. LAROSE: I'd like to voir dire the

3 witness on this point.

4 HEARING OFFICER HALLORAN: You may.

5 MR. LAROSE: Ma'am, did you read the
6 entire report?

7 THE WITNESS: No, I did not read the
8 entire report.

9 MR. LAROSE: And you testified on
10 direct examination by Mr. Kim that you didn't do
11 a thorough review of this report with respect to
12 even the Streeter geology?

13 THE WITNESS: Correct.

14 MR. LAROSE: You didn't do a thorough
15 review of this report with respect to the
16 geologic conditions at Morris?

17 THE WITNESS: That's correct.

18 MR. LAROSE: At any time during the
19 permit review process, either in the 1996
20 application or the 2000 application, did you
21 advise anybody from CLC, the City of Morris or
22 Andrews Environmental Engineering, that you were
23 reviewing this document in analysis of their
24 stability study?

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1 THE WITNESS: No.

2 MR. LAROSE: Same objection. She has
3 not -- first of all, she hasn't read the whole
4 document.

5 Second of all, she hasn't read it
6 thoroughly with respect to the -- even the
7 Streeter geology, which is the subject matter of
8 this report.

9 Third of all, she certainly didn't
10 read it with respect to the Morris geology,
11 which is the subject matter of this hearing.
12 She testified earlier that she has no idea what
13 the geology is at any site.

14 This report is entirely irrelevant to
15 this proceeding.

16 HEARING OFFICER HALLORAN: Mr. Kim?

17 MR. KIM: I think Mr. LaRose is
18 incorrect on a number of points.

19 First of all, she stated she didn't
20 review the geology here because she stated she
21 used this document for other conclusions that
22 were provided. She stated that she didn't
23 really review it for the geologic conditions of
24 Morris. And, again, that was just to make sure

1 that -- that is not the purpose that this
2 document was used for. She stated that within
3 the appendix she describes there were statements
4 that she felt were -- that provided her guidance
5 in review of the permit application.

6 HEARING OFFICER HALLORAN: Permit
7 application for the City of Morris, Community
8 Landfill?

9 MR. KIM: Yes, that's what her
10 testimony was.

11 So, it's a document. I mean, I guess
12 I'm not sure how this doesn't fall squarely
13 within into something which the board would want
14 to consider, it is a document that has been
15 admitted to by the Illinois EPA as having been
16 relied upon in -- through the course of making
17 its permit decision that is at issue in this
18 case. We've tried to define the scope of how
19 this document was or was not used. We tried to
20 identify the specific pages of the document that
21 Ms. Roque focused on and we provided the
22 document to Community Landfill and to the city
23 through the course of the discovery proceedings.
24 I guess I just don't see why there would be some

1 reason the board would not want this admitted as
2 an exhibit.

3 MR. LAROSE: The foundational
4 relevance objection stands. The other thing I
5 just can't help but remind you about is the
6 patent unfairness of this whole thing. Think
7 about what a ruling like this, if sustained by
8 the board, means. It means that the Agency can
9 make permit decisions. During the course of
10 those permit decisions, consult documents that
11 they don't tell the permit person about, pull
12 those documents out of their hat during the
13 permit review period, rely on them, and then the
14 Petitioner or the permittee experts can't even
15 rebut that, which has been your ruling on this
16 case. My guys couldn't testify about the report
17 because they didn't read it until afterwards.
18 Well, we didn't know about it until afterwards.
19 We didn't know about the fact that they reviewed
20 it. It is just absolutely unfair. This would
21 never happen in a criminal case. This would
22 never happen in a civil case. And it shouldn't
23 happen in a board case. If there is something
24 that an expert relied upon, your expert should

1 be able to criticize that report. If my expert
2 were able to criticize that report, we wouldn't
3 be having this discussion right now. The report
4 would go in. Because I think it's good to show
5 that it doesn't apply, but I wasn't able to
6 testify that it doesn't apply, not me, my guys
7 weren't able to testify. So if it comes in now,
8 they get the benefit of the one side of it and I
9 get nothing on the other side. So there is
10 foundational, relevance problems because she
11 didn't read the whole thing and it really
12 doesn't apply to our side because she hasn't
13 proven it applies to our side. Didn't look at
14 the geology in Streeter, didn't look at the
15 geology in Morris.

16 But the second point is it's just
17 unfair given your ruling striking Mr. Silver's
18 testimony that he couldn't testify about it.

19 MR. KIM: I'll try to make my comments
20 brief.

21 This is not a civil case that is
22 guided by the circuit court. This is not a
23 criminal case. This is a case that is decided
24 and should be handled by the board and their

1 procedural rules and otherwise applicable rules.
2 Under those rules this document should come in.
3 Mr. LaRose is stating he is without complete
4 recourse to challenge our use of this document.
5 That is completely false because he has and my
6 witnesses will be more than happy to attest to
7 this, he has severely questioned them as to how
8 they did or did not use that document. He has
9 called into question their use of that document,
10 which is entirely his right to do so. He has
11 called into question whether or not the document
12 that has been used, which is entirely his right
13 to do so. He is not without recourse. He has
14 done that. But, again, his argument fails
15 because this is no different than if the
16 Illinois EPA had a permit review, that through
17 the course of reviewing the permit application
18 used a guidance document or used course
19 materials for seminars or something like that.
20 The permit applicant may not know about that.
21 We don't have to provide them with every piece
22 of information we're using up until the time of
23 the permit decision. We do after the decision
24 is tell him what we reviewed at that time, have

1 to disclose, which we did in this case, all of
2 the documents which were relied upon. They
3 provided expert testimony -- well, first -- and
4 the other thing, too, there were no expert
5 witnesses, quote, unquote, used in this case, we
6 only had opinion witnesses, but as far as that
7 is neither here nor there, because this can't in
8 any way provide testimony on opinions formed
9 after the permit decision, no. I think the
10 board's case law is very clear on that point.
11 Can Mr. LaRose question the Illinois EPA reviews
12 of any document, including the permit record or
13 any document that we have testified to that we
14 relied upon in our decision, yes. Has he done
15 so, yes, he has, with several different
16 witnesses.

17 So, again, I think this is nothing
18 that should impede this document being
19 introduced into evidence.

20 MR. LAROSE: I've said enough.

21 HEARING OFFICER HALLORAN: I'm going
22 to overrule your objection. I find sufficient
23 foundation and I do find that relevant and
24 distinguishable from my ruling on Mr. Silver.

1 MR. LAROSE: Thank you.

2 HEARING OFFICER HALLORAN: Thank you.

3 BY MR. KIM:

4 Q. That's all I have on that document.

5 You can set that aside.

6 I'd like to ask you a question about
7 your job duties and the scope of your job duties
8 as a permit reviewer. I believe it has been
9 brought out in testimony that is your position
10 of employment with the IEPA?

11 A. That's correct.

12 Q. When you receive an application, such
13 as you did for Community Landfill, and by that
14 I'm referring to a significant mod application
15 for a solid waste landfill, do you review all
16 aspects of that permit application?

17 A. No, I don't.

18 Q. What aspects or what portions of that
19 permit application do you not review?

20 A. I do not review specifically the
21 groundwater monitoring section, which deals with
22 the review of the geology and hydrogeology of
23 the facility and the groundwater monitoring

24 systems that is being proposed.

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1 Q. Who does review that information?

2 A. Our groundwater assistance unit of the
3 permit section.

4 Q. Okay. So with the exception of those
5 subject areas you just described, do you review
6 everything else in the application?

7 A. Yes, I do.

8 Q. The next question I have is relating
9 to testimony that has been provided
10 concerning -- can you please find Exhibit S --
11 I'm sorry, R, which I believe is the permit for
12 Parcel A, and would you please turn to page 5 of
13 that permit?

14 MR. KIM: Do you need a copy? I think
15 I have one.

16 MR. LAROSE: I got it. Thanks.

17 BY MR. KIM:

18 Q. Are you familiar with that, and I'm
19 referring to specifically condition Roman
20 numeral II, subsection I, do you see that on
21 that page?

22 A. Yes, I do.

23 Q. And is this a condition that is unique
24 to the permit that was issued to CLC?

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1 A. No, it is not.

2 Q. What other facilities receive this
3 condition in this form in their permits?

4 A. Just all sig mod permits that we issue
5 have this condition.

6 Q. So as to those type of facilities is
7 this a special condition or a standard
8 condition?

9 A. It's a standard condition.

10 Q. I'm going to try and speed my
11 testimony along, and if Mr. LaRose has an
12 objection, I'll back it up, just to sort of move
13 things along.

14 MR. LAROSE: Preliminary leading
15 questions are fine.

16 BY MR. KIM:

17 Q. You're familiar with the permit
18 application for Parcel A, are you not?

19 A. Yes, I am.

20 Q. And in that permit application is
21 there a section which describes or which

22 proposes how they will conduct construction
23 activities at that parcel?

24 A. Yes, there is a section.

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1 Q. And does that section include any
2 discussion that -- what has been testified to
3 previously relating to separation layers and
4 invert elevations?

5 A. Yes, there is.

6 Q. Does the permit that is found at
7 Exhibit R approve the proposals that are
8 included in that construction portion of the
9 permit application?

10 A. Yes, it did.

11 Q. Given that, is it your opinion that
12 construction of the separation layer, if done in
13 accordance with the construction plan and the
14 Parcel A permit application, would result in the
15 landfill depositing refuse in an unpermitted
16 portion of CLC?

17 MR. LAROSE: Objection, leading.

18 HEARING OFFICER HALLORAN: Mr. Kim,
19 rephrase, please.

20 BY MR. KIM:

21 Q. Sure.

22 If Community Landfill conducts
23 activities in accordance with construction plan
24 that was approved, will they be creating a

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1 separation layer as part of their activity?

2 A. Yes. The construction plan proposed
3 included a separation layer between the old
4 waste and the new waste.

5 Q. And do you expect them to construct
6 the construction in accordance with their
7 approved plan?

8 A. Yes.

9 Q. Do you have Exhibit DDD in front of
10 you, which I believe is sort of a cross section
11 of the landfill? If not, I've got a copy.

12 I've shown you what is marked as
13 Exhibit DDD. Are you familiar with that
14 document?

15 A. Yes, I am.

16 Q. Okay. And does that document indicate
17 to you where the separation layers would be
18 constructed at Parcel A of Community Landfill?

19 A. Yes.

20 Q. And can you describe where that is
21 on -- where that is depicted on this exhibit?

22 A. Describe it? It's about in the middle
23 of the exhibit.

24 MR. LAROSE: I can't see. Can I come

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1 over there?

2 I've got a bigger one of this.

3 BY MR. KIM:

4 Q. Here. Let me bring this to you.

5 MR. LAROSE: I'm going to step around
6 there, if you don't mind.

7 BY MR. KIM:

8 Q. Yes. Using this document or using
9 this exhibit, can you describe, and if you can,
10 you can make reference to the notations or the
11 wording that is on the exhibit, can you describe
12 where the separation layer -- what your
13 understanding of where the separation layer
14 would be constructed?

15 A. The separation layer would be
16 constructed about -- or on top of the existing
17 waste.

18 Q. Okay. So -- and I'm just sort of --

19 graphically when I look at this document, it's
20 sort of -- there are two lines that form, two
21 solid lines that form the bottom boundary of
22 that schematic, is that right?

23 A. This is two lines?

24 Q. Yes. I believe one is identified

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1 as --

2 A. This is the 3 feet recompactd
3 separation layer.

4 Q. Right. And those two lines constitute
5 the bounds of the layer?

6 A. The 2 feet, right.

7 Q. Does this document to you demonstrate
8 what the permitted boundary is of the landfill?

9 A. That's correct.

10 Q. Where is the permitted boundary
11 displayed on this exhibit?

12 A. The permitted boundary, the height,
13 the maximum height permitted boundary will be at
14 this elevation, around 570.

15 Q. Okay. Looking at those -- and is that
16 above the -- where you just described the
17 separation layer would be?

18 A. That's correct.

19 Q. Okay. So are activities concerning
20 construction of the separation layer in the
21 permitted boundary of the landfill, if done in
22 accordance with the construction plan?

23 A. Yes.

24 MR. KIM: Nothing further.

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1 MR. LAROSE: Nothing.

2 HEARING OFFICER HALLORAN: Nothing,
3 Mr. LaRose? You may step down. Thank you very
4 much.

5 (Off the record.)

6 HEARING OFFICER HALLORAN: I'll
7 attempt to explain Andrew Limmer's testimony,
8 the evidence deposition, and if I'm incorrect,
9 please correct me.

10 Anyways, we're back on the record,
11 approximately 4:05. The parties have agreed
12 to -- we're going to read the evidence
13 deposition of Andrew Limmer, I believe, into the
14 record, but how we're going to do that we're not
15 going to read it in, but the court reporter is
16 going to receive a disk from the court reporter

17 that took the deposition, I understand she'll
18 receive it by Monday, January 22, and the
19 respective parties have also given the court
20 reporter in this matter the changes that Mr.
21 Limmer made on the deposition and also the page
22 numbers and lines that they would like to be
23 transcribed in this transcript. Does that
24 pretty much sum --

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1 MR. LAROSE: I believe it does.

2 MR. KIM: Yes, sir.

3 (Insert testimony.)

4 S T I P U L A T I O N It is
5 stipulated and agreed, by and between the
6 parties hereto, through their attorneys, that
7 the deposition of Andrew Limmer may be taken
8 before Julie A. Brown, a Notary Public and
9 Certified Shorthand Reporter, upon oral
interrogatories, on the 18th of December A.D.,
2000, at the instance of the Respondent at the
hour of 10:00 o'clock A.M., 2009 Mall Street,
Collinsville, Madison County, Illinois;

10 That the oral interrogatories and the
11 answers of the witness may be taken down in
shorthand by the Reporter and afterwards
transcribed;

12 That all requirements of the Civil
13 Practice Act and the Rules of the Supreme Court
as to dedimus, are expressly waived;

14 That any objections as to competency,
15 materiality or relevancy are hereby reserved,
but any objection as to the form of question is

16 waived unless specifically noted;

17 That the deposition, or any parts
18 thereof
19 may be used for any purpose for which
20 depositions are competent, by any of the parties
21 hereto, without foundation proof;

22 That any party hereto may be furnished
23 copies of the deposition at his or her own
24 expense.

(Whereupon the Deponent was

sworn by the Notary Public.)

A N D R E W L I M M E R

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1 having been first duly sworn by the Notary
2 Public, deposeth and saith as follows:

3 DIRECT EXAMINATION

4 BY MR. KIM:

5 Q. This deposition today is being taken
6 in the case of Community Landfill Company and
7 City of Morris versus Illinois EPA, PCB Numbers
8 01-48 and PCB01-49.

9 We are here today via telephone to
10 take the deposition of Andrew Limmer.

11 And Mr. Limmer, if you don't -- would
12 you prefer to be called Mr. Limmer or Andy or
13 Andrew?

14 A. Andy's fine.

15 Q. My name is John Kim, K-I-M. I am a
16 Special Assistant Attorney General and Assistant
17 Counsel with the Illinois EPA. Also present via
18 telephone is Mark LaRose.

19 Mark, you can introduce yourself, if
20 you'd like.

21 MR. LAROSE: Yeah. I am the attorney
22 for one of the Petitioners, Community Landfill
23 Company.

24 MR. KIM: And Mark's last name, just

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1 in case you don't have anything down there, is
2 spelled capital L-A, capital R-O-S-E.

3 MR. LAROSE: Julie, for the record, let
4 me give you the name of my firm, my address,
5 phone number and fax number so you know how to
6 get ahold of me.

7 The name of my firm is LaRose and
8 Bosco. B-O-S-C-O. Our address is 734 North
9 Wells, W-E-L-L-S, Chicago 60610. Phone number,
10 (312) 642-4414. Fax number 642-0434.

11 Can everybody hear me okay?

12 THE WITNESS: Yeah.

13 BY MR. KIM:

14 Q. Andy, this deposition is being taken
15 regarding the pending permit appeals that I
16 referenced. It concerns specifically the
17 preparation of some permit applications that
18 were submitted by Community Landfill and the
19 City of Morris through their retained
20 environmental consultant, Andrews Engineering.
21 And if during the course of this deposition you
22 have any questions concerning what's being asked
23 of you or if you're not sure of what's being
24 asked of you, please just let either myself or

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1 Mr. LaRose know what your question is. We want
2 to make sure that you understand what you're
3 being asked before you answer.

4 A. Okay.

5 Q. Will you state your name for the
6 record?

7 A. Andrew Limmer. L-I-M-M-E-R.

8 Q. What is your current address?

9 A. Home address, 401 Copper Bend Road,
10 Maryville, Illinois 62062.

11 Q. And who are you presently employed by?

12 A. Geotechnology, Inc.

13 Q. What is their address?

14 A. 850 Vandalia Street, Suite 230,
15 Collinsville, Illinois 62234.

16 Q. How long have you been employed by
17 Geotechnology?

18 A. Since the beginning of July, a little
19 over, I guess close to six months, not quite.

20 Q. July of 1999?

21 A. No, July of 2000.

22 Q. I'm sorry. Prior to your employment
23 with Geotechnology, who were you employed by?

24 A. STS Consultants.

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1 Q. And what period of time were you
2 employed by STS Consultants?

3 A. July of '98 to, or sorry, June of '99
4 to June of 2000.

5 Q. And where is STS Consultants located?

6 A. The branch office I was employed by is
7 in Springfield.

8 Q. You don't happen to remember the
9 address off the top of your head, do you?

10 A. I have a card here. I'll read it off.

11 Q. Okay.

12 A. Because I really don't remember it off
13 the top of my head. 413 West Monroe Street,
14 Suite A, 62704. That's STS Consultants,
15 Limited.

16 Q. Prior to your employment with STS
17 Consultants, who were you employed by?

18 A. Then I was employed with Andrews
19 Environmental Engineering.

20 Q. What were the periods of employment
21 with Andrews?

22 A. March 1995 through June of 1999.

23 Q. During your time of employment with
24 Andrews Environmental, what was your job title

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1 or what different job titles did you have?

2 A. Hydrogeologist 1 up through 3, I think
3 was the last scale.

4 Q. And what are the distinctions between
5 those different scales, as far as how Andrews
6 classifies their employees?

7 A. Basically more of an entry level type
8 hydrogeologist. Somebody with experience in
9 hydrogeology or been trained in hydrogeology but
10 not much work experience would be the

11 hydrogeologist 1 and then additional work
12 experience on the other classifications.

13 Q. To the best of your recollection, what
14 were the periods of time of your employment with
15 Andrews that you held the position of
16 hydrogeologist 1, 2 and 3?

17 A. Oh, best recollection for
18 hydrogeologist 1 would be from '95 through mid
19 '96; 2, mid '96 through '97, perhaps; and then 3
20 would be '98, 1998.

21 Q. Okay.

22 A. Sometime. I'm not real sure on those
23 classifications. Internally they meant
24 something, but. . .

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1 Q. Okay. During the time -- let's back
2 up a little bit.

3 What is your educational background?

4 A. Bachelor in geology from St. Louis
5 University and then a master's degree focusing
6 on hydrogeology from Carbondale, SIU Carbondale.

7 Q. What years did you get your degrees?

8 A. Bachelor's degree, received that in
9 1989 and then the master's was 1996.

10 Q. During your period of employment with
11 Andrews Environmental, did you have periods of
12 time where you were working on any issues or any
13 matters relating to Community Landfill located
14 in Morris, Illinois?

15 A. Yeah, I guess I'll answer it, the
16 initial part where I started working on
17 Community Landfill was June of 1996, I believe.

18 Q. What did -- what work did you do in
19 June of '96?

20 A. Preparation of the significant
21 modification application.

22 Q. What portions of the -- of that permit
23 application did you work on?

24 A. The groundwater impact assessment, the

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1 model for that impact assessment.

2 Q. And who else did you work with at that
3 time on that portion of the application?

4 A. Brad Richards was the geologist
5 working on the report of geology and
6 hydrogeology. Mike McDermont was the project
7 manager in charge. Vince Madonia was working
8 on, I believe it was the Parcel B application

9 and Ed Leigh, L-E-I-G-H, was working on the
10 Parcel A application, I think. I'm not real
11 sure about Vince and Ed. I might have those
12 backwards.

13 Q. Following the work that you did in
14 June of 1996, that led up to a permit
15 application being prepared and submitted by
16 Andrews for Community Landfill?

17 A. That's correct.

18 Q. Did you -- do you recall the date of
19 that application submittal?

20 A. August of '96 sometime.

21 Q. Following that application submittal,
22 did you work on any other matters relating to
23 Community Landfill?

24 A. Yes. The Agency had some issues

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1 regarding that application, worked on all those,
2 draft denials that came on, came after that
3 application.

4 Q. And do you know roughly the periods of
5 time that you have worked on the responses to
6 the draft denials?

7 A. The initial one I think was in the

8 winter of '96, '97, not sure about ones after
9 that. There were quite a few. The last things
10 I recall working on were -- the last thing
11 actually was probably May of '98, I believe, and
12 then, of course, field work to prepare that
13 application in December. Is that right? I'm
14 not sure I have these dates right.

15 Q. I understand.

16 MR. LAROSE: And you shouldn't guess,
17 Mr. Limmer. Just to the best of your ability,
18 please.

19 THE WITNESS: Okay. I'm trying to
20 remember.

21 Actually, that last application, I
22 think, was in May of '99. The field work for it
23 was December '98 and January '99. Before that,
24 I don't really recall.

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1 BY MR. KIM:

2 Q. Okay. Did the work that you did
3 response -- in responding to the Illinois EPA's
4 draft denials result in any further submittals
5 by Andrews on behalf of Community Landfill?

6 A. Yes. Each response to the draft

7 denial seemed to generate more comments
8 regarding the application.

9 Q. So there was a sort of continuous
10 give-and-take between your company and the EPA?

11 A. That's correct.

12 Q. What was the -- okay. So I think that
13 what you've just described takes us up through
14 approximately May of 1998?

15 A. Yeah, I think that is -- I think
16 that's right. I'm not sure.

17 Q. I understand. What --

18 MR. LAROSE: Excuse me. I thought he
19 said May of '99.

20 THE WITNESS: Yeah, I'm really trying
21 hard to remember, Mark.

22 MR. LAROSE: So then my clarification
23 is not really an objection. I don't think that
24 your question fairly characterized his

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1 testimony. I don't think he really remembers,
2 so as far as he states, I just want the record
3 to be clear, that he's saying I don't remember,
4 but it might be this.

5 THE WITNESS: That's correct.

6 MR. LAROSE: Okay.

7 THE WITNESS: I'm sure someone has a
8 time line somewhere.

9 BY MR. KIM:

10 Q. And that's my mistake if I said May
11 '98 instead of '99.

12 Up until the time then that you left
13 Andrews, was your work on the matters related to
14 Community Landfill limited to specifically
15 groundwater impact assessment and modeling?

16 A. That's correct.

17 Q. And did your -- the results of your
18 work, were those eventually memorialized in the
19 formal applications that were submitted to the
20 Illinois EPA? And when I say applications, I
21 also include any kind of amendments or anything
22 that would have been characterized by Andrews
23 Environmental as being an amendment to the
24 original application.

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1 A. Yeah. Yes, my work was submitted in
2 report forms included in the reports, amendments
3 and things like that to the sig mod application.

4 Q. Are you aware of pump testing that

5 took place at Community Landfill in early 1999?

6 A. Did you say pump testing?

7 Q. Yes.

8 A. Okay. Yeah. That was the one I was
9 trying to remember, so it was December '98 is
10 when the original -- or when we started drilling
11 and installing these wells and then through
12 early '99 is when the pump testing began.

13 Q. Again, to the best of your
14 recollection, do you recall when the pump
15 testing concluded?

16 A. To the best of my recollection, April
17 of '99.

18 Q. And when that pump testing
19 concluded -- let me step back.

20 Were you involved then with different
21 aspects or with any aspects of the drilling and
22 of the pump testing itself?

23 A. The drilling, installing the wells,
24 doing some fairly quick and qualitative tests of

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1 just adding water to the wells to see which one
2 would take water the fastest compared to the
3 other ones we drilled to try and determine which

4 well would be the best to pump out of and then
5 the pump test, Mike McDermont was running that,
6 but he gave me the data to analyze when that
7 test was finished and I analyzed the data and
8 submitted that in report form.

9 Q. Who did you submit that in report form
10 to?

11 A. To the IEPA. I'm sorry.

12 Q. Do you know if that information was,
13 again, memorialized and put into a formal permit
14 application that was submitted in May of 2000?

15 A. That I don't know. That was beyond my
16 employment time.

17 Q. Okay.

18 A. I know in -- I think May of 1999, I'm
19 not sure, but I think that's when the report of
20 the pump test was submitted.

21 Q. The -- well, you did do the -- some
22 analysis of the pump test results following the
23 conclusion of those, of that testing in April
24 '99 before you left employment with Andrews?

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1 A. That's correct.

2 Q. And can you describe in detail exactly

3 what type of analysis work you did?

4 A. There were a lot of data points,
5 readings of depth of water and time and date,
6 converted all those into time since pumping
7 started to get a drawdown curve and then used, I
8 believe, two separate methods evaluating the
9 data, Theis 1935, drawdown, and Hantush. I'm
10 not sure of the year of his publication, but
11 basically analyzed them following their methods,
12 showing that the landfill could induce drawdown
13 and capture groundwater along the downgradient
14 side of the landfill.

15 Q. Okay. Andy, I'd like you to find that
16 information that was faxed by the EPA down to
17 the regional office.

18 A. Okay.

19 Q. And the first page that I'm referring
20 to is, and these Bates stamps, which are the
21 sort of hand stamps in the bottom right-hand
22 corner, are admittedly a little fuzzy.

23 A. Uh-huh.

24 Q. But if you can flip through and find

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1 Bates stamp page 264. It's 0264.

2 A. Okay.

3 Q. That's also shown as page 10 of the
4 remediation plan.

5 MR. LAROSE: John, might I make a
6 suggestion?

7 MR. KIM: Sure.

8 MR. LAROSE: Why don't we mark this
9 document Group Exhibit A?

10 MR. KIM: I was going to do that.

11 MR. LAROSE: This way we can -- and my
12 other suggestion -- can we go off the record?

13 (Off the record.)

14 (Exhibit No. A was marked for
15 identification.)

16 BY MR. KIM:

17 Q. Andy, before we go any further, I'd
18 like to describe what has been given to you and
19 what's been marked as Group Exhibit A.

20 A. Okay.

21 Q. That is a portion of the
22 administrative record that was filed in this
23 case by the Illinois EPA. The portion that
24 these documents are taken from come from the

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1 Parcel A, Volume 6 book of the administrative
2 record and specifically these pages are taken
3 out of Attachment 25 of that volume.

4 MR. LAROSE: Which is the May 2000
5 submittal.

6 MR. KIM: That's correct. Okay.

7 BY MR. KIM:

8 Q. Andy, have you found Bates stamp page
9 264?

10 A. Yes, I have.

11 Q. Can you take a moment to look over
12 that page?

13 A. All right.

14 Q. Actually, if you can take a moment to
15 look over that page and then the following page
16 after that.

17 A. All right.

18 Q. While you're looking that over, let me
19 also state for the record that in Group Exhibit
20 A, Bates stamp page 265, which is also page 11
21 of the remediation plan, is not included in this
22 exhibit and that is because that is an oversized
23 map, which I did not copy and send down.

24 MR. LAROSE: So you want him to look

1 at page 264 and page 266?

2 MR. KIM: That's correct.

3 MR. LAROSE: I got you.

4 BY MR. KIM:

5 Q. Whenever you're done skimming those,
6 Andy, just let us know.

7 A. Okay.

8 Q. So, Andy, you've had a chance to look
9 over those documents in Group Exhibit A?

10 A. That's correct.

11 Q. Can you --

12 MR. LAROSE: Excuse me. The
13 specific -- not all of them, just 264 and 266?

14 MR. KIM: I'm sorry. Right.

15 THE WITNESS: Right.

16 BY MR. KIM:

17 Q. The page numbers that I asked you to
18 look at.

19 A. Right.

20 Q. Can you describe what information is
21 found on those pages, pages 264 and 266?

22 A. A general description of the pump
23 test, observations during the pump test and then
24 how a long-term pump rate, or using the data

1 from that pump test calculated out, a hydraulic
2 conductivity and storativity for the aquifer in
3 question and then using that data to predict
4 what the long-term pump rate should be to
5 maintain capture of the groundwater on the
6 downgradient side of the landfill.

7 Q. Okay. And I didn't specifically
8 mention this page, but a few pages ahead, page
9 272, Bates stamp 272, could you take a quick
10 look at that page as well?

11 A. Okay.

12 Q. Just let us know when you're done.

13 A. Okay.

14 Q. You've had a chance to look at that
15 page as well, page 272?

16 A. Yeah.

17 Q. Could you describe the information
18 found on that page?

19 A. That is the description for how the
20 pump rate to provide 7 feet of drawdown on the
21 east side of the site was calculated, mentioning
22 that the pumping should reach steady state at
23 some point and away from the surface bodies of
24 water -- the impoundments, should show a steady

1 state drawdown without supply from another body
2 of water near the impoundments. Those are water
3 supply to the aquifer.

4 Q. All right. These pages are part of a
5 permit application that was submitted following
6 your departure from Andrews Environmental.
7 However, in a -- on the beginning page of this
8 particular attachment of the -- of this volume
9 of the permit application, it's represented that
10 basic concepts found in addendums that have been
11 submitted from 1998 through 1999 by Community
12 Landfill through their environmental consultant,
13 Andrews Environmental, have not changed.

14 Does the information that you just
15 read on these pages, is that familiar to you?

16 A. Yes, it is.

17 Q. Did you have any involvement in the
18 preparation of the work that's done on these
19 pages?

20 A. Yeah. This -- not exactly sure but
21 this looks like work that I authorized.

22 Q. Okay. And this would have been
23 authored prior to your leaving Andrews
24 Environmental?

1 A. That's correct.

2 Q. Was this work prepared then sometime
3 between April of 1999 and June of '99 when you
4 left Andrews Environmental?

5 A. That's correct.

6 Q. Did you work with any other employees
7 of Andrews when you prepared this information?

8 A. Mike McDermont reviewed the report and
9 did editing before it was submitted, yes.

10 Q. Did you work with any other outside
11 consultants, people outside of Andrews
12 Environmental, in preparing this work?

13 A. In actual preparation of the report?
14 No.

15 Q. In any other context, did you work
16 with somebody outside of Andrews Environmental?

17 A. In establishing some of the locations
18 for the pumping wells and trying to determine if
19 that would be feasible, yes, an engineer by the
20 name of Marion Skouby, S-K-O-U-B-Y.

21 Q. And when did you work with Mr. Skouby?

22 A. Prior to the field work to do this
23 particular pump test and he was out there for
24 installation of one of the borings.

1 Q. So the -- that -- the work that you
2 just described prior to the installation, that
3 means it would have been sometime prior to
4 December of '98, so it would have been late
5 1998? Does that sound right?

6 A. That's correct, and he was on site,
7 like I said, for one of the first ones, which
8 was December of '98.

9 Q. Okay.

10 MR. LAROSE: When you say he was on
11 site, you mean who?

12 THE WITNESS: Marion Skouby. Well,
13 Mike McDermont was also there for the first
14 boring, just to see how it was going to go.

15 BY MR. KIM:

16 Q. Did you have any other involvement
17 with Mr. Skouby following that time?

18 A. No, not after that time.

19 Q. To the best of your knowledge, did
20 anyone other than Mike McDermont review the work
21 that you prepared?

22 A. To the best of my knowledge, no, not
23 really.

24 Q. Who was -- do you know, and I'm

1 probably going to mispronounce this first name,
2 Mahlon Hewitt?

3 A. Yeah, also known as Ron Hewitt.

4 Q. Okay. Who was Mr. Hewitt?

5 A. Also a hydrogeologist employed by
6 Andrews Environmental Engineering. His
7 employment started in early 1999, I believe.

8 Q. Okay. And I will, for ease of
9 reference, refer to him as Ron Hewitt.

10 A. Okay.

11 Q. Did Ron Hewitt have any involvement
12 with the pump testing work that you were working
13 on?

14 A. I don't believe so, no.

15 Q. Did he have any work or did he have
16 any involvement in any of the calculations or
17 evaluations that you performed?

18 A. I don't believe so, no.

19 Q. And do you know if he reviewed the
20 work that you prepared?

21 MR. LAROSE: Objection to the form of
22 the question. Don't know that he would know
23 that after he left.

24

THE WITNESS: Right.

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1 MR. LAROSE: But you can answer.

2 BY MR. KIM:

3 Q. Well, as of the time that you left, do
4 you know if Mr. Hewitt performed any review of
5 your work?

6 A. No, I don't think he did.

7 Q. Do you know what Mr. Hewitt's
8 involvement was on the project since he was
9 another geologist?

10 MR. LAROSE: Before he left or after
11 he left?

12 BY MR. KIM:

13 Q. I'm sorry. During your time of
14 employment.

15 A. He wasn't involved with Morris
16 Community, while I was there.

17 Q. Okay. Can you explain -- I'm
18 directing your attention now back to page 272,
19 Bates stamp page 272.

20 A. Uh-huh.

21 Q. Can you explain, and I know, if you
22 can't do this because I know this is quite

23 involved, but can you explain in summary fashion
24 how you reached the conclusion that 7 feet of

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1 drawdown will provide capture in the undermined
2 areas, what steps you took to reach that
3 conclusion?

4 A. Without having thoroughly reviewed the
5 report, again, it's a little hard.

6 MR. LAROSE: Don't -- please, don't
7 guess. You can't do it --

8 THE WITNESS: No, I don't know how the
9 7 feet was arrived at.

10 MR. LAROSE: -- without reviewing the
11 additional information.

12 THE WITNESS: Right, without reviewing
13 the additional information.

14 BY MR. KIM:

15 Q. Well, let me see if I -- if I can
16 rephrase it, if it makes it any easier. It's
17 sort of in the abstract. In other words, I
18 don't need to necessarily know the specific
19 calculations, but can you describe, generally
20 speaking, the steps that you took to eventually
21 come up with that particular conclusion? I'm

22 not asking -- this isn't solely for specific
23 numbers, but is it possible for you to just
24 describe what steps you took to eventually reach

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1 a conclusion where you could, you felt you could
2 state what drawdown would provide sufficient
3 capture?

4 A. I believe so, yeah. Looking at page
5 272 and also Bates stamp page 300 where the
6 assumptions are listed right at the top, it says
7 that capture will be provided at approximately
8 500 feet on the east side of the landfill and
9 I'm not sure how the 500 feet groundwater
10 elevation was arrived at, why that -- that one
11 is a valid number.

12 Q. Before you go on, since you're
13 referring to page 300, Bates stamp page 300,
14 those are some handwritten notes that are dated
15 May 1999 pump rate predictions. Is that
16 correct?

17 A. That's correct.

18 Q. Are those your calculations or do you
19 know whose calculations they are, if they're not
20 yours?

21 A. That's mine.

22 Q. And those calculations continue
23 through page, Bates stamp page 304. Are all
24 those calculations your handwritten

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1 calculations?

2 A. Yes, they are.

3 Q. I'm sorry. I didn't mean to interrupt
4 you. I just wanted to make sure we were clear
5 on that.

6 A. That's okay, but basically to arrive
7 at that 7 feet of drawdown, it's using the Theis
8 calculation and it's basically back calculating
9 a pump rate to maintain that 7 feet of drawdown
10 based on the hydraulic conductivity and the
11 storativity analysis of the pumping data
12 generated.

13 Q. And you mentioned the Theis test?

14 A. Right. Right, in the text, basically
15 it's steady state. The storativity and the
16 overlying and underlying aquitards--

17 Q. Are you referring to a specific page
18 or pages?

19 A. Page 272.

20 Q. Okay.

21 A. Again, the storativity in the
22 aquitards effectively become zero so then all
23 the assumptions fit the Theis calculation if you
24 pump on the aquifer long enough so the Theis

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1 method is valid. On Bates stamp page 300,
2 it's -- the calculation is using the Hantush
3 beta solution, which assumes that there's
4 storativity in the aquifer and you're getting
5 some water provided to the aquifer from the
6 aquitards, which means then that your drawdown
7 wouldn't be as great as it would as if you
8 didn't have any water coming through those
9 aquitards, but if you pump long enough, then the
10 aquifer and aquitards respond, as if it's
11 completely confined, no water from the
12 aquitards. The only water you're getting is
13 from the aquifer so, therefore, the Theis method
14 becomes valid and that's what's being shown at
15 the bottom of page 300 and then page 301 going
16 through the same calculation with the Theis
17 method, showing that the result is the same for
18 90 days of pumping, I believe, is the time line.

19 Q. Okay. So the Theis method--

20 A. Is a valid method, is what that's
21 trying to show.

22 Q. Okay. And that was your conclusion
23 and use of the Theis method as a valid method
24 also led you to be able to use or led you to use

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1 the Hantush method in the manner that you did,
2 is that correct?

3 A. No, the other way around.

4 Q. I'm sorry.

5 A. Hantush tries to show that there's
6 going to be water coming from overlying and
7 underlying aquitards during a pump test, but in
8 his paper, he also says that if you pump long
9 enough, basically you're not -- you know, you're
10 not going to get that much water from the
11 overlying and underlying aquitards anymore once
12 you reach steady state and, therefore, the curve
13 then looks like the Theis pump test curve and
14 the Theis is a valid method.

15 Q. Okay. And, Andy, I'm going to, on all
16 these questions, you're going to have to bear
17 with me, I don't have a degree in engineering

18 and this is why I went to law school because I
19 don't understand any of this stuff. So if I ask
20 extremely repetitive or stupid questions, you
21 know, just bear with me.

22 Now, it's my understanding that there
23 are certain assumptions that have to be met or
24 certain conditions that sort of have to be

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1 established before you can use the Theis test
2 and, specifically, let me ask you this. Are you
3 familiar with the general principles and the
4 general conditions in use of that particular
5 test?

6 A. Yes, I am.

7 Q. Okay. Is there a condition or an
8 assumption that has to be made concerning the
9 Theis test concerning infinitely horizontal
10 extended conditions or an infinite horizontal
11 extent? You know what I mean when I refer to
12 that phrase?

13 A. Yes, I do.

14 Q. Can you explain what your
15 understanding of that phrase is?

16 A. That initially to solve the

17 calculation, without having added stress on the
18 aquifer, the aquifer should be infinite in
19 extent, however, that's hardly the case in any
20 natural environment and it has been shown that
21 the Theis method does work for aquifers that are
22 not infinite in extent.

23 Q. And, well, what kind of -- is there a
24 compromise in any evaluation using the Theis

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1 test or in any conclusions that are drawn
2 depending upon --

3 A. Yes, there are, if you are very close.

4 MR. LAROSE: Hold on, hold on. You
5 didn't finish the question and I didn't
6 understand it, so I'm going to object to the
7 question. John, let's take it one step at a
8 time because as dumb as you think you are, I'm
9 way, way, way dumber than both of you guys when
10 it comes to this. Let's take it easy, take it
11 one step at a time.

12 BY MR. KIM:

13 Q. Okay. And let me see if I can phrase
14 this the way I'm trying to think of it. I would
15 assume that there are -- well, let me take it

16 one step back.

17 You said that although that is a
18 condition that has to be or that is a part of
19 using the Theis test, you also stated, I
20 believe, that it's also been demonstrated that
21 if you don't have, you know, basically the
22 perfect type of aquifer that fits into that
23 condition, the Theis test is still an effective
24 and can still be effective in use, is that

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1 correct?

2 A. That's correct.

3 Q. Does it depend -- would the
4 effectiveness of the Theis test be contingent or
5 would it be -- what am I -- would the
6 effectiveness be compromised depending upon just
7 how much of a compromise you have on that
8 infinite horizontal extent? And what I mean by
9 that is, you know, like you say, there might not
10 be a perfect aquifer, but my understanding is
11 that barriers will essentially negate or work
12 against the whole concept of an infinite
13 horizontal extent. Is that correct?

14 MR. LAROSE: I'm going to object to

15 the whole question, John. We can't have -- I
16 know this is a difficult, technical subject
17 area, we can't have compound questions that have
18 your assumptions put in there. You've got to
19 break it down into simple questions. That one
20 just won't do it.

21 MR. KIM: I thought that was simple.

22 MR. LAROSE: It wasn't because it
23 was -- I mean, if we can read back the question,
24 you'll see how convoluted it was. If you want

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1 to have Julie read it back, we can do that, but
2 if you want to just break it up into simple
3 questions that I can either agree with or object
4 to, but that one had a lot of components,
5 including your own assumptions. We have no idea
6 where they came from because you're not under
7 oath here. It's just an improperly formed
8 question and I can't let him answer that.

9 MR. KIM: Well, you know what? Let me
10 once again try and rephrase this.

11 BY MR. KIM:

12 Q. What is a barrier boundary? Are you
13 familiar with that kind of term, Andy?

14 A. Yeah.

15 Q. What is a barrier boundary?

16 A. It's one that would have a much lower
17 hydraulic conductivity than the aquifer.

18 Q. Would a barrier boundary compromise or
19 would the presence of a barrier boundary
20 basically take away the assumption that you have
21 an infinite horizontal extent?

22 A. Yes. Yes, it would.

23 Q. It would.

24 Okay. You understand what I mean by

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1 that question, don't you?

2 A. Right, and I'd kind of like to answer
3 what I assume to be the next question, but I'll
4 wait for it.

5 MR. LAROSE: I'd like to know when you
6 say you kind of know what I mean by that
7 question, I'd like to know what you mean by that
8 question because his answer doesn't tell me
9 anything.

10 BY MR. KIM:

11 Q. What do you think I'm about to ask
12 you, Andy?

13 A. What effect does a barrier boundary
14 have on the drawdown and the predicted
15 calculations in the aquifer.

16 Q. Thank you. That is my next question.
17 What effect would there be?

18 A. Actually, you would increase your
19 drawdown when you run into an impermeable
20 barrier like that.

21 Q. Okay. What are some examples of those
22 type of boundary barriers or impermeable
23 barriers?

24 A. A text book example is when you have a

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1 river valley full of sand and gravel and it's --
2 you are near the bluff line, which say is a
3 bedrock, so you've got the pumping well in the
4 sand and gravel but near the bedrock bluff. So
5 as the drawdown -- if you're close enough to
6 have the drawdown meet the bedrock bluff line,
7 you're going to increase the drawdown.

8 Q. Okay. Was there a barrier boundary
9 encountered at Community Landfill?

10 A. Not knowing the entire extent of the
11 undermining, I'm not sure where that would be

12 but if you assume that the coal layer has a
13 lower hydraulic conductivity than what the voids
14 do, then yes, there should be, at some point
15 there should be some barrier.

16 Q. Let me turn your attention to -- this
17 is in Group Exhibit A. It would be Bates
18 stamp -- this is a fuzzy Bates stamp, Bates
19 stamp 259, but it's also page 5 of the
20 remediation.

21 MR. LAROSE: Does it start out at the
22 top left with the word specifically--

23 MR. KIM: Yes, it does.

24 MR. LAROSE: -- and there's a

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1 table, table number 2 on the bottom?

2 MR. KIM: That's correct.

3 THE WITNESS: Okay.

4 BY MR. KIM:

5 Q. Did you find that page?

6 A. Yeah, I found that page.

7 Q. Right in the middle of the page is a
8 section that says 2.0 groundwater quality.

9 A. Okay.

10 Q. Can you read -- you do have that page?

11 A. Yes, I do.

12 Q. Right. Can you read the first two
13 paragraphs of that page and when you're done
14 just let me know?

15 A. The one at the top of the page,
16 specifically?

17 Q. Right, the paragraph that begins with
18 the word, specifically, and then the second
19 paragraph that begins with the word, therefore.

20 A. Okay.

21 Q. Okay. When I read this -- well, let
22 me ask you. Can you explain what those two
23 paragraphs are conveying?

24 A. That basically the aquifer is a

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1 confined aquifer, or that the voids react as a
2 confined aquifer.

3 Q. Okay. And what is acting to confine
4 the void of the aquifer?

5 A. The shale above and below the mined
6 area.

7 Q. Okay. Does that also act to laterally
8 bind the aquifer in the void?

9 A. Not sure where the coal would pinch

10 out or things like that, if the shales merge,
11 but I don't know the extent of the aquifer.

12 Q. Okay. Well, can you explain then
13 specifically the first sentence in the second
14 paragraph, the sentence that begins with the
15 word therefore? Let me just read it into the
16 record.

17 "Therefore, the undermined areas act
18 as a confined aquifer; completely confined
19 below, overlain by a leaky confining unit, and
20 laterally bounded by in situ coal."

21 A. Right.

22 Q. What does -- when there's a statement
23 there that something is laterally bounded, what
24 does that reference?

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1 A. That would be in the horizontal
2 direction. Somewhere there is coal that should
3 be in place, still in place, otherwise there
4 would be collapse everywhere.

5 Q. So is the intent or is the meaning of
6 that sentence that the confined aquifer is also
7 confined laterally by the in situ coal?

8 A. I'm not sure what the intent of that

9 sentence is. I think -- what I think it means
10 is that it's confined above and below.

11 Q. Okay. What meaning should be taken by
12 the use of the phrase, laterally bounded?

13 A. I'm not sure. I think it's just a
14 description of the aquifer itself, what the
15 boundary conditions are.

16 Q. That the aquifer is laterally bounded?

17 A. Right, that there is some type of
18 lower permeability material in the horizontal
19 direction.

20 Q. Okay. Is this the type of -- would
21 this be an example of a barrier boundary that we
22 were talking about earlier when we were talking
23 about the infinite horizontal extent?

24 MR. LAROSE: When you say this, John,

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1 what this is that you're talking about? The
2 laterally bounded or the horizontally bounded?

3 MR. KIM: Let me rephrase that.

4 BY MR. KIM:

5 Q. If you have a confined aquifer that
6 is laterally bounded by coal or shale, is that
7 an example of a barrier boundary that would work

8 against the conclusion that you have an infinite
9 horizontal condition or an infinite horizontal
10 extent?

11 A. It could be if it's close enough to
12 the drawdown to be intersected by the drawdown
13 created by the pumping.

14 Q. And that's -- okay. This goes to what
15 I was so inartfully trying to get at before.
16 How close does it have to be before there is
17 some kind of impact that can be seen?

18 A. That would be something that would
19 have to actually be measured, I believe. You
20 would have to show that the drawdown is going
21 to, or does intersect one of these lateral
22 boundaries, lower permeable boundaries.

23 Q. Okay. Well, earlier you said that
24 practically speaking you think it's very

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1 difficult to find a -- sort of the perfect
2 infinitely horizontal extended condition. Is
3 that correct?

4 A. That's correct.

5 Q. Would a confined aquifer laterally
6 bounded by coal or shale, would that be an

7 example of how you would not have that sort of
8 perfect example of infinitely horizontal
9 extended condition?

10 A. That's correct.

11 Q. Did -- was this lateral boundary taken
12 into account by you when you were using the
13 Theis method?

14 MR. LAROSE: I'm going to object to
15 the question. The question assumes that there
16 is a lateral boundary. I think he said they
17 never measured for that. I think you can say
18 whether this sentence was taken into account,
19 but he said with respect to the lateral
20 boundary, but they never found one. Didn't you?

21 THE WITNESS: That's right. I mean,
22 we didn't.

23 MR. LAROSE: My objection is that the
24 question assumes that there actually is a

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1 lateral boundary on site.

2 BY MR. KIM:

3 Q. Okay. So you did not -- when you did
4 your calculations, you did not take into account
5 that there was a barrier boundary?

6 A. That's correct.

7 Q. Okay.

8 A. To account for that boundary there is
9 something called an imaginary well calculation.

10 Q. What is that?

11 A. Where you have, like I explained, the
12 text book example of where you have a river
13 valley high permeability sand and gravel and
14 then a low permeability bedrock bluff or it can
15 apply to any situation where you have a
16 boundary. You have a pumping well and where you
17 have the -- where the drawdown intersects the
18 lower permeable boundary, it reacts as if
19 there's another well actually pumping in the
20 lower permeable material increasing the drawdown
21 and there's a calculation that you have to do to
22 show that the drawdown would probably be
23 increased because of that. It's called an
24 imaginary well. The well doesn't really exist

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1 but it reacts as if there is another pumping
2 well close by. When you have two pumping wells
3 nearby and their drawdowns intersect, you just
4 add them together at that point and that's what

5 that imagine well calculation is trying to
6 portray.

7 Q. Okay. And that's what you used here?

8 A. No. I'm saying if I had taken that
9 into account, there would be an imagine well
10 calculation somewhere in the report.

11 Q. Okay. When you are -- I know you
12 didn't necessarily take into account or factor
13 in that there was a -- that the aquifer was
14 laterally bounded, but from the -- your
15 understanding of the Theis method, would there
16 be an increase of a drawdown near a boundary
17 barrier?

18 A. There should be, yes.

19 Q. Okay.

20 (Off the record.)

21 MR. KIM: Andy, I don't have any other
22 questions for you right now.

23 Mr. LaRose, do you have any questions?

24 MR. LAROSE: Yes.

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1 CROSS-EXAMINATION

2 BY MR. LAROSE:

3 Q. You worked on this application when it

4 was submitted the first time and the pump test
5 that we've just discussed with Mr. Kim for the
6 last several minutes is not the first pump test
7 that was taken on this landfill; is that
8 correct?

9 A. That's correct.

10 Q. There was a previous pump test that
11 used not the well method but what I'm going to
12 call the trench method, correct?

13 A. That's correct.

14 Would you like me to describe that?

15 Q. Well, first of all, let's just get a
16 little background.

17 A. Okay.

18 Q. When was that done, to the best of
19 your recollection?

20 A. I believe the end of August, maybe
21 over Labor Day weekend of 1998.

22 Q. Okay. And when you first submitted
23 the application in 1996, wasn't it true that the
24 landfill could not pass the groundwater impact

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1 assessment?

2 In other words, there was going to be

3 some constituents that were going to be over the
4 regulatory limits no matter what you did?

5 A. After -- yeah, after going through
6 some of the initial submittals and comments from
7 the Agency, especially regarding the presence of
8 a liner, there isn't a documented one so we
9 couldn't use that in the model, not being able
10 to use any type of liner in the model.

11 Q. So there isn't any liner underlying
12 the old portion of Parcel A, correct?

13 A. That's not entirely correct. There
14 may be some but it's not documented, so,
15 therefore, it can't be used in the groundwater
16 impact assessment.

17 Q. So when you -- you did the groundwater
18 impact assessment -- which you were in charge
19 of, right?

20 A. Yeah.

21 Q. When you did the groundwater impact
22 assessment, you were not able to rely on the
23 fact or use in any way the fact that there was a
24 liner underlying the site, is that correct?

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1 A. That's correct.

2 Q. When you did the groundwater impact
3 assessment without using the assumption that
4 there was a liner underneath the site, it didn't
5 pass the model, did it?

6 A. That's right.

7 Q. And when it didn't pass the model, was
8 it your job to try and figure out some
9 corrective action plan that would allow the
10 landfill to be permitted even though it didn't
11 pass the model?

12 A. That's also correct.

13 Q. The first corrective action plan that
14 you came up with was the groundwater interceptor
15 trench, right?

16 A. Yeah, that was also with Mike
17 McDermont's input as well.

18 Q. Okay. And that was included in -- was
19 that included in the original application in
20 August '96 or with some submittals after that?

21 A. That was much later, some submittals
22 after that.

23 Q. Okay.

24 MR. KIM: Before you go on, do you

1 know roughly what the dates were of those
2 submittals?

3 THE WITNESS: No, that goes back to
4 the earlier questions. I really don't remember.

5 MR. KIM: Okay. I'm sorry.

6 BY MR. LAROSE:

7 Q. Mr. Limmer, or Andy--

8 A. Uh-huh.

9 Q. -- when -- just so I'm clear, when you
10 submitted the application in August 1996
11 pursuant to the Appellate Court's order, had the
12 groundwater impact assessment been completed at
13 that time?

14 A. Yes, it had. There were -- there was
15 documentation from the original, early -- or no,
16 late 70's design in report for the landfill
17 saying that they should have used a liner. It
18 also appeared to only be a strip-mine so we had
19 set up the model, is that the strip-mine was
20 below the water. Once leachate collection began
21 with the liner in place, the impact -- the
22 landfill should pass the groundwater impact
23 assessment.

24 Q. Talking about either the trench,

1 groundwater interceptor trench or the deep well
2 groundwater removal, aren't we talking about a
3 method to remove contaminated groundwater so it
4 can be treated?

5 A. On the remediation system or
6 corrective action plan, yes.

7 Q. And there is a remediation system or
8 corrective action plan for groundwater because
9 you already know it doesn't pass the model,
10 correct?

11 A. That's correct.

12 Q. So your first corrective action
13 measure, if you will, was the groundwater
14 interceptor trench system, right?

15 A. That's correct.

16 Q. And you did a groundwater interceptor
17 trench test in the summer or over Labor Day
18 weekend of 1998 you thought?

19 A. Yeah. Mike McDermont ran that test
20 and I used the data from that test.

21 Q. And what does the data from that test
22 tell you?

23 A. From what I remember, there was a well
24 that was used during that test to observe the

1 results, the drawdown.

2 Q. Okay.

3 A. That was about 1,600 feet away, I
4 think.

5 Q. Yes.

6 A. And its drawdown matched where the
7 pumping test or where the one pumping well was.

8 Q. So a tremendous drawdown.

9 A. Right.

10 Q. From that far away.

11 A. Right, that far away.

12 MR. KIM: I'm going to object.

13 MR. LAROSE: Let me ask it a different
14 way. You're right, John.

15 BY MR. LAROSE:

16 Q. What's the significance of having the
17 drawdown in the well located in the trench equal
18 the drawdown in the well 1,600 feet away?

19 A. At first I didn't understand the
20 significance of that. Just in my experience I
21 hadn't seen that before, but basically that
22 it -- you know, that pumping in one location you
23 should provide capture, is what it appeared to
24 be to me.

1 Q. Okay. And was there something else
2 between 1,600 feet away and the trench that told
3 you that something was amiss?

4 A. Yeah, I think there were two wells
5 maybe one 100 feet around that distance and
6 another one about 200 hundred feet away perhaps,
7 and their drawdown was much less than the one
8 that was very far away.

9 Q. So you've got a pump in the trench,
10 right?

11 A. Right.

12 Q. You've got a certain amount of
13 drawdown in a well 1,600 feet away, right?

14 A. Right.

15 Q. And you've got significantly less
16 drawdown in two wells that are respectively 200
17 and 100 feet away from the trench, right?

18 A. That's correct.

19 Q. What does that tell you?

20 A. Didn't understand the whole system.

21 Q. And what did you do with respect to
22 showing these documents to someone else to see
23 if you could answer the question that you had in
24 your mind about not understanding the system?

1 A. I think we were under a deadline to
2 submit the results from that. They were
3 submitted and the IEPA reviewers also had the
4 same questions but that's when we had called
5 Marion Skouby.

6 Q. Let me back up.

7 A. Okay.

8 Q. You're under a deadline to submit, so
9 you submit the pump test from the groundwater
10 interceptor trench to the IEPA with the results
11 that were still confusing to you. Fair enough?

12 A. Fair enough.

13 Q. Okay. At that point, does the IEPA
14 communicate to you guys that they're confused
15 like you are about how you could have one level
16 of drawdown 1,600 feet away and a different
17 level of drawdown 200 and 100 feet away?

18 A. Yeah. More work needed to be done.

19 Q. Okay. What do you do then? Show it
20 to Marion Skouby?

21 A. Called him and asked him some
22 questions. He had the answer right away.

23 Q. Prior to this calling Marion Skouby,
24 what was your professional opinion as to whether

1 the site had been undermined versus just
2 strip-mined?

3 A. Based on the information we had, I had
4 thought it was only strip-mined.

5 Q. Okay. When you called Skouby, did you
6 send him the documents on the test or the
7 results of the test?

8 A. I think so or maybe just -- maybe it
9 was just even verbal and he knew right away.

10 Q. And what was the answer that he gave
11 you right away?

12 A. He said the site was undermined.

13 Q. Does that, in your mind, explain to
14 you why you were getting these different levels
15 of drawdown in these wells?

16 A. Yes, it does. Not at first. I mean,
17 it was hard to believe because all the data
18 pointed to the site being strip-mined.

19 Q. Did you do anything else to -- so at
20 first, even when he told you that, you were
21 still skeptical?

22 A. Yeah.

23 Q. What did you do to test Skouby's

24 conclusion that the site was undermined?

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1 A. In December we talked to the site
2 personnel. We were going to have them dig three
3 locations through the rock, the shale, to see if
4 we could do some more additional trench,
5 interceptor trench test points but it was just
6 too hard to dig down that far. So then we
7 contracted with the drilling contractor, AEX,
8 and went out there and started installing some
9 of these wells.

10 MR. KIM: Excuse me. December of what
11 year?

12 THE WITNESS: December of '98.

13 BY MR. LAROSE:

14 Q. And what was the purpose of
15 installing -- you say installing some of these
16 wells. That includes T2 and T4?

17 A. Yeah.

18 Q. What was the purpose of installing the
19 wells?

20 A. The same purpose of trying to dig down
21 that deep was to see if we could dig down into
22 one of the mine voids and put in a pump down

23 there and see what would happen or get close to
24 them.

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1 Q. Did the digging and the boring logs
2 that were created from the installation of those
3 wells do anything to your conclusion as to
4 whether the site was undermined?

5 A. Yeah. Yeah. I was there for all of
6 those. The site is undermined. It's -- you
7 know, it's hard to tell when some of the borings
8 do drill through a -- a pillar like some of the
9 older monitoring wells out there have, but on
10 that east side, it's pretty much undermined
11 along the whole way. Also talked to the ISGS
12 personnel that are doing mine subsidence work in
13 the area and they said there's some collapse
14 east of the site that they've been working on.

15 Q. Okay. So at this time, you become
16 convinced as a professional hydrogeologist that
17 the site has been undermined?

18 A. To a certain extent, yes.

19 Q. December of 1998?

20 A. Right. Looking at the aerial
21 photographs from the 40's and 50's where the

22 site's been strip-mined, I think you could draw
23 the line there between strip-mined versus
24 underground mining.

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1 Q. And when I summarize what you've told
2 me, your conclusion at this time is based on the
3 fact that the trench test drawdowns leave some
4 serious questions as to why there was drawdown
5 so far away at one level and less drawdown
6 closer, correct?

7 A. That's correct.

8 Q. Number 2, Marion Skouby tells you in a
9 matter of minutes, after you either relay to him
10 or show him the data, that the site's
11 undermined, correct?

12 A. That's correct.

13 Q. You do additional drilling at the
14 site, drilling five -- at least five wells and
15 you observe the drilling and the boring logs
16 with respect to that, correct?

17 A. That's right.

18 Q. Look at USGS, is it topographical maps
19 that you looked at or aerial photographs or
20 aerial topos that you looked at? What exactly

21 did you look at?

22 A. Aerial photographs.

23 Q. Okay. And as a result of all of those
24 things by December 1998, you conclude that the

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1 site's undermined?

2 A. That's correct.

3 Q. Okay. Is it then that you decide to
4 change your focus from the trench interceptor
5 system to the deep well system and to test that
6 to see if it works?

7 A. That's right.

8 Q. And it's as a result of that that you
9 tested the groundwater removal system using the
10 pump test that we just talked about with Mr. Kim
11 from January, approximately January '99 to April
12 '99?

13 A. That's right.

14 Q. Okay. Sir, based on your professional
15 opinion, based on the information that you
16 prepared and reviewed, does the pumping of
17 groundwater from T2 and T4 work better or worse
18 than the interceptor trench method?

19 A. It would work a lot better because

20 those mine voids are all interconnected, so if
21 you get drawdown, induced drawdown in the mine
22 voids, the shale above, you're going to create
23 drawdown there and, I believe, the shale is
24 about 25 feet thick and that shale does transmit

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1 some water. I think there are shallow wells on
2 that side of the site that also show some
3 impacts. So if you induce drawdown in the mine
4 voids, which are all interconnected, you're
5 going to be getting water not only from off site
6 where the contaminants have spread, but also
7 from above the mine voids as well, which the
8 shale is saturated partially for its thickness
9 and water flows through that as well.

10 So, by basically drawing the water
11 down underneath that shale, you're going to
12 create a drawdown in that shale also. You don't
13 have to dewater the mine voids to get that
14 drawdown, that capture.

15 Q. Did you -- so these are reasons why T2
16 and T4 work, would you say? Is it a correct
17 statement to say that they work more efficiently
18 than the trench method?

19 A. I believe so. A trench -- you would
20 still have to -- well, number 1, you'd have to
21 dig it through that rock along that whole
22 length.

23 Q. Let's back up for a second. That's
24 what I wanted to ask you.

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1 Why don't you think the trench method
2 is as efficient?

3 A. It's -- it just doesn't seem that
4 feasible to dig through all that rock. The
5 trench method itself, a trench you don't pump
6 from the entire length of the trench. You just
7 have collection points within the trench.

8 Q. All right.

9 A. When you've got these voids, basically
10 it's a pre-made trench for you and so what
11 you're doing is putting in collection points at
12 the wells. You put in two, you know, and you
13 see how that works, monitor the efficiency. If
14 that's working fine, then you're done. If
15 that's not working fine, you know, you can go
16 add another well or two depending on where you
17 need it and it would take you maybe two or three

18 days to put in a well, whereas if the trench
19 doesn't work, you've got to go then add wells
20 around it or dig more trenching to try and get
21 it to work, you know. The feasibility and ease
22 of flexibility trying to adjust the system
23 through time is what we also looked at.

24 Q. Well, isn't that important because

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1 this is kind of a moving target type thing?
2 You're trying to do what's best, would remove
3 the groundwater most efficiently so that it
4 could be treated and that might have to be
5 adjusted over time, right?

6 A. That's correct.

7 Q. And is what you're saying that if you
8 dig a trench through 25 feet of rock and it
9 doesn't work, it's harder to either relocate
10 that trench than it is to dig a couple of extra
11 wells to adjust your well system of removal?

12 A. That's right.

13 Q. Okay. The whole thing that you went
14 through with Mr. Kim about the aquifer being
15 laterally bounded -- first of all, let's get
16 this straight. Did you ever determine that that

17 aquifer was laterally bounded?

18 A. No, we didn't find any limits to it.

19 Q. Okay.

20 A. That wasn't the point. At that time
21 we just wanted to see if the pumping would
22 capture groundwater from the mine voids.

23 Q. Okay. That whole issue of laterally
24 binding versus infinite horizontal extent,

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1 wouldn't that be the same problem in calculating
2 the efficiency of groundwater removal whether
3 you use the trench or whether you use the well?

4 A. Yeah, you would have the same problem
5 both ways.

6 Q. Okay. So that whole issue of infinite
7 horizontal extent not being present in this
8 aquifer didn't have anything to do with whether
9 you used T2 or T4 versus the interceptor trench,
10 right?

11 A. It shouldn't, no, and basically it's
12 going to increase your drawdown, which as far as
13 I'm concerned is you're better off unless you
14 begin the dewater of the mine voids. Then you
15 should back off the pumping.

16 Q. Okay. Sir, you worked on this
17 application before, the original application
18 before its submittal in 1996, correct?

19 A. Yeah. That's right.

20 Q. Okay. What was your directive from
21 the project manager?

22 A. We got the application in within the
23 time line that we needed, which I think was 45
24 days or a little bit less, the original one, and

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1 then as every draft denial came back, we
2 responded to those right away by their deadline,
3 as far as I remember.

4 Q. As far as you remember, was your
5 instruction to you get this thing done as soon
6 as possible?

7 A. Yeah. I mean, it looks better for the
8 company as well, you know, if you don't have a
9 permit application that takes five years, you
10 know. If you get a permit in the shorter amount
11 of time, it looks much better for the company as
12 well and personally, so, yeah, we wanted to get
13 it done.

14 Q. Okay. Were you aware of any strategy,

15 either inside your company or from the outside
16 from the client, to either delay or slow down
17 the permit process?

18 A. No, and if -- like you mentioned, the
19 pump test that was done in August or
20 September -- I mean, we submitted those results.
21 Like I said, we were under deadline, submitted
22 those results but then we were right back out
23 there in December doing additional work to try
24 and figure out what was really going on.

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1 Q. Right.

2 As you sit here today, are there any
3 other reasons why you would prefer as a
4 hydrogeologist to see the groundwater removed
5 from that site using the T2 and T4 method versus
6 the trench method?

7 A. I think there's a lot more flexibility
8 involved with the pumping wells and as we had
9 talked earlier about where the drawdown of two
10 pumping wells intersect it doubles. There is
11 that flexibility. If you're not getting
12 drawdown in one location, you can add another
13 well and it would be much faster, easier.

14 Q. Let's talk about the results of the
15 pump test. What -- in general, what kind of
16 results were you seeing in terms of the ability
17 of the spring 1999 pump test to drawdown at
18 various locations of the landfill?

19 A. There was good drawdown all along that
20 east side, from what I remember. Even in the
21 wells that are shallowly screened in the shale
22 above the mine voids there was a response.

23 Q. And was the response more consistent
24 than you saw under the trench method?

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1 A. I believe so, yes.

2 Q. And what did it mean to you when you
3 were getting response or drawdown even in the
4 shallow wells?

5 A. That basically we were getting
6 drawdown in the mine voids and then the water
7 that's in the shale above that is also being
8 lowered. I believe it was 2 or 3 feet from what
9 I read this morning in some of those wells above
10 there. So we're inducing drawdown in the
11 confining layer above also.

12 Q. How many applications, sig mod

13 applications have you worked on for landfill in
14 Illinois?

15 A. At least ten.

16 Q. Let me break it down. Were there any
17 other landfills that you were involved in that
18 did not pass their groundwater impact
19 assessment?

20 A. Yes, there are.

21 Q. Okay. And were there any of those who
22 then proposed not to remove leachate from their
23 facilities because -- because the groundwater
24 was already impacted?

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1 A. I know of a landfill that didn't
2 propose to collect leachate. They instead just
3 proposed to put in a barrier wall and trench,
4 collection trench.

5 Q. Was this facility permitted by the
6 IEPA?

7 A. Yes, it was.

8 Q. Without the need for removal of
9 leachate?

10 A. It was never added to the sig mod, no.

11 Q. Now, the issues of contention in this

12 appeal is that the -- CLC would like to
13 temporarily delay the removal of leachate from
14 the landfill until the landfill's development
15 gets to a level that would allow the removal
16 systems to be constructed one time and one time
17 only.

18 Based on your knowledge of the
19 facility, do you believe there would be any
20 significant adverse environmental harm from
21 temporarily delaying the removal of leachate as
22 one issue where pumping and treating groundwater
23 from the site?

24 MR. KIM: I'm going to object to that.

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1 Can you specify what you mean by temporarily
2 delaying? Can you give a time period?

3 MR. LAROSE: Yeah, I think that's
4 good. I think that's good.

5 BY MR. LAROSE:

6 Q. And CLC is saying we're not ready in
7 February 2001 because we want to build these
8 other things up enough so that once we install
9 these correction systems, they'll be installed
10 once and once only. So we need until, let's say

11 the end of 2001 in order to do it, so another 10
12 months.

13 Would delaying these, the
14 installations of these systems, the removal of
15 leachate from the facility, based on your
16 knowledge of the facility, adversely impact the
17 environment, if you were removing and treating
18 the groundwater?

19 A. Can I answer that in two parts?

20 The first part is it's been an IEPA
21 permitted landfill since the late 70's, so
22 you've got all that leachate from that time. I
23 believe it was a berm fill prior to that even.

24 But also the second part of that is,

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1 you know, a permit issued three years ago could
2 have saved a lot of this trouble, I believe,
3 with the installation of the monitoring wells on
4 the downgradient side would have discovered that
5 the problem was there, would have discovered
6 that it was undermined and, you know, prompted a
7 corrective action plan back then under a permit.

8 It just -- so no, the answer is no.
9 Waiting another 8 months on top of 25 to 30

10 years or better, I don't believe it's going to
11 do that much difference, especially since you do
12 have to get the groundwater pumping wells
13 installed.

14 Q. What if you had to wait another year
15 and eight months? Would your conclusion be the
16 same?

17 A. If the remediation plan is installed
18 and pumping, yeah, the conclusion is the same.

19 Q. Assume for the purpose of my
20 question, Mr. Limmer, that we moved for a stay
21 of all the contested conditions.

22 MR. LAROSE: Fair enough, John?

23 MR. KIM: Sure.

24 BY MR. LAROSE:

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1 Q. Assume for the purpose of my question
2 that one of the conditions that we move for a
3 stay of was the use of T2 versus T4, which we
4 promote, versus the use of the groundwater
5 interceptor trench, which the IEPA promotes.

6 MR. LAROSE: Fair enough, John?

7 BY MR. LAROSE:

8 Q. With those two assumptions, Joyce

9 Munie wrote an affidavit in opposition to the
10 motion to stay the contested conditions.

11 MR. LAROSE: Fair enough, John?

12 MR. KIM: Yes.

13 BY MR. LAROSE:

14 Q. Okay. And this paragraph 10, Mr.
15 Limmer, was part of that opposition.

16 Are you with me on all of those
17 assumptions now, Andy?

18 A. I think so.

19 Q. Did I go too fast for you?

20 A. No, I think so -- I think you're
21 saying the Agency is contesting the use of T2
22 and T4 and would rather see -- install a trench,
23 is that right?

24 Q. That's one of the issues in this

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1 appeal, and when this affidavit was written, it
2 was written because we moved to stay, meaning
3 just delay pending a decision by the board all
4 of these contested conditions.

5 In other words, the Agency said you
6 can't use T2 and T4 and build the groundwater
7 interceptor trench now or whenever they're set

8 to build it, I think it was February of 2001.
9 We went to the board and said no, we think we'll
10 win this thing, so don't make us do that right
11 now. Let us try our case.

12 As part of that procedure where we
13 argued back and forth as to whether the board
14 would stay the condition or not stay the
15 condition Joyce Munie submitted an affidavit.

16 MR. LAROSE: Is that all fair enough,
17 John?

18 MR. KIM: Yes.

19 MR. LAROSE: Okay. Is that enough
20 context in which he can answer this question?

21 MR. KIM: I think that's a little more
22 foundation, yeah.

23 BY MR. LAROSE:

24 Q. The statement contained in paragraph

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1 10 of Joyce Munie's affidavit is for the purpose
2 of this affidavit, it is my firm belief that a
3 stay of the contested conditions would result in
4 a potential threat to human health and the
5 environment.

6 Do you have an opinion with respect to

7 that statement?

8 A. Installing T2 and T4 would harm the
9 human health and environment? Is that --

10 MR. KIM: Okay. I don't think we need
11 to belabor Joyce's affidavit today.

12 Andy, if you can answer that question,
13 go right ahead.

14 THE WITNESS: I think using T2 and T4
15 for the reasons we've already spoken about, the
16 ease, the speed of installing them and hooking
17 them together versus the trench, I believe the
18 trench will take about six to eight months to
19 actually construct, and as long as the pump rate
20 on the wells, or the trench, if that's the case,
21 is maintained at the proper level so you don't
22 dewater the mine voids, there shouldn't -- you
23 shouldn't create any harm that way to the
24 environment or to human health by causing

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1 collapse.

2 If the mine voids are fully saturated,
3 they should have support. I'm not an expert on
4 that. I believe we talked to Van Silver to redo
5 his calculations after we found out the site was

6 undermined on that side and he came back and
7 said that --

8 BY MR. LAROSE:

9 Q. Let's talk about that issue for a
10 second. At any time during the three months
11 that you pumped continuously from the deep well
12 until you ran your pump test in the winter and
13 spring of 1999, did you ever dewater any of the
14 voids?

15 A. No, not from what I remember. I don't
16 have all of the information in front of me but I
17 don't remember seeing any of that at all.
18 Looking at that, what the levels of the drawdown
19 were and what the top of the mine void was as
20 noted on the boring logs.

21 Q. Okay. You didn't do any of the actual
22 stability work with respect to the site,
23 correct?

24 A. That's right. Van Silver did that.

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1 Q. Are you familiar with Mr. Silver's
2 work with respect to stability?

3 A. Yeah.

4 Q. How would you characterize that?

5 A. He's pretty conservative.

6 Q. What do you mean, pretty conservative?

7 A. He would err on the side of the
8 landfill's collapsing before he'd ever extend
9 himself to say it was stable.

10 Q. Okay. So he would input factors in
11 his calculations that might be different in
12 terms of the landfill collapsing than what the
13 actual conditions of the site are?

14 A. Yeah, he's done that in the past also.
15 He really takes, like I said, a conservative
16 approach, a worse case scenario approach.

17 Q. As far as you were aware, based on
18 your actual work prior to the time that you left
19 Andrews, you had not yet determined that the
20 site was laterally bounded by in situ coal,
21 correct?

22 A. Correct. If you assume that that coal
23 layer that's been mined so extensively
24 throughout the area exists, somewhere you should

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1 run into coal or it should pinch out, one of the
2 two.

3 (Off the record.)

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REDIRECT EXAMINATION

BY MR. KIM:

Q. Back on the record.

Andy, I believe when you were speaking with Mr. LaRose at one point you were talking about conversations that you had with Marion Skouby, which led to the conclusions that the site was undermined and that as sort of a confirmation of that conclusion you spoke with a third party. Was it the ISGS or USGS?

A. Illinois State Geological Survey.

Q. And did they convey to you that they did have evidence of mine subsidence in that area that confirmed your, your and Marion Skouby's conclusions that there was undermining?

A. Somewhere east of the site, yeah. They weren't -- I can't remember what road they said it was on but one of the roads east of the site they were having mine subsidence problems with.

Q. Did they indicate if that information

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1 was formalized in any record or any kind of
2 report?

3 A. They were still doing the field work
4 and research on it.

5 Q. Okay. Do you know how close that was
6 to the site?

7 A. A quarter mile maybe. I'm not real
8 sure and that's -- they just had told me an area
9 and it was hard to pinpoint on the map so no, I
10 don't have true numbers.

11 Q. Okay. You mentioned also briefly that
12 you were talking about dewatering at the site?

13 A. Right. That's not the intent of the
14 remediation system.

15 Q. And why isn't that the intent?

16 A. Because if you dewater those mine
17 voids, then you would probably open them up for
18 collapse.

19 Q. And would a greater drawdown than --
20 the greater the drawdown, the greater the chance
21 that the -- that you would lead to dewatering,
22 is that correct?

23 A. Right. And that's something that
24 would have to be monitored through time.

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1 Q. And I understand that you have said

2 that wells are a more efficient and more
3 flexible method in your opinion, but what I'm
4 asking about is what -- and then we've talked
5 about dewatering and the problems associated
6 with dewatering.

7 Would the installation of a trench
8 create any problems that might lead to
9 dewatering or would the installation of a trench
10 lead to any problems that might lead to
11 increased instability at the site, and what I
12 mean at the site of the landfill foundation?

13 A. Actually, during construction, when
14 you have that trench open along that site, I
15 mean, hopefully, the plan would be to backfill a
16 drop as you dig, but at some point there's going
17 to be an open trench near the edge of the fill
18 area which yeah, could pose some problems but I
19 think those are questions, again, for Van Silver
20 more than myself.

21 Q. Okay. And would those types, would
22 that potential impact in your opinion be as
23 great or greater than the potential impact of
24 dewatering the mine void?

1 A. It's only my opinion, but
2 digging through that rock, that rock is
3 approximately 20 to 30 feet thick, the shale,
4 above the mine voids, and it's intact, if you
5 dig through it, then I believe you've created a
6 point of movement. It's not intact. It's not
7 connected to the rest of the shale any more
8 holding it in place from lateral pressures and
9 the point of the dewatering is to not -- or the
10 point of the remediation system is to not
11 dewater. It's just to provide capture and as
12 long as the system is maintained that way so
13 that it's not dewatering the voids, then yeah,
14 the trench does create more problems.

15 Q. What lateral pressures were you just
16 referring to?

17 A. From the waste itself and just earth
18 pressures, which, again, I'm not somebody to ask
19 detailed questions about that.

20 Q. Okay. And you said that you weren't
21 sure who prepared that paragraph that Mr. LaRose
22 and I've both drawn your attention to?

23 A. It is possible that I wrote it but
24 it's been a while since I've seen it last, so.

1 Q. Let me ask you this. I'm a little bit
2 unclear as to exactly what your answer was
3 regarding whether or not there's a lateral
4 boundary for this confined aquifer. Did you say
5 that you did --

6 A. We did not find one.

7 Q. So you didn't take steps to
8 investigate whether or not there was one?

9 A. Correct. The coal to the west of that
10 area has been strip-mined so that's gone. East
11 of there there's been undermining. We don't
12 know how far that undermining goes. Talking to
13 the ISGS, they have undermining much farther
14 away, like I said, probably a quarter mile. I'm
15 not sure on that, but the area has been
16 extensively mined so we don't know where the
17 edge is.

18 Q. Okay. So what -- and you're saying
19 you might have written this language on Bates
20 stamp 259, you just don't recall if you did or
21 not?

22 A. Correct.

23 Q. If you did write this, you don't right
24 now have any recollection what was intended by

1 the use of the words laterally bounded by in
2 situ coal? I'm reading -- I'm taking that from
3 the first sentence in the second paragraph on
4 that page.

5 A. Right. I can make an assumption about
6 what it means, but I don't know if that was the
7 intent. So do you want me to answer?

8 Q. What's your assumption?

9 A. The assumption is that somewhere there
10 should be coal where it hasn't been mined out,
11 you know, whether it's 2 miles, 5 miles, who
12 knows where it's at, 200 feet, not sure, but at
13 some point -- I mean, it's not going to be
14 undermined forever.

15 Q. Okay. Well, let's look at the first
16 phrase of that sentence where it says,
17 therefore, the undermined areas act as a
18 confined aquifer.

19 A. Right.

20 Q. What's the meaning of that phrase?

21 A. Confining units are typically a lower
22 permeable bed above and below the aquifer that
23 you're interested in, so, and I think that's
24 what that sentence there is saying, completely

1 confined below and then overlying by a leaking
2 confining unit.

3 Q. So the use of the word confined there
4 is referring only to a vertical confinement, not
5 a horizontal confinement?

6 A. Correct.

7 Q. And if for some reason your
8 recollection is wrong, and you did not write
9 that particular page and if -- let me -- let's
10 just put it this way. If there was a lateral
11 boundary at this site, a lateral boundary on the
12 aquifer, would the drawdown calculations of the
13 drawdown conclusions be different than what was
14 presented in the application?

15 A. You'd have greater drawdown.

16 MR. KIM: Okay. Okay. I can't think
17 of anything else that I have right now.

18 MR. LAROSE: I have some follow-up
19 questions.

20 REDIRECT EXAMINATION

21 BY MR. LAROSE:

22 Q. Sir, are you saying when you answered
23 Mr. Kim's question about mine subsidence in T2
24 versus T4, T2 and T4 versus the trench, are you

1 saying that the actual construction of the
2 trench itself could cause mine subsidence?

3 A. Not mine subsidence, that things could
4 move, slide, you know. You've got waste on --
5 directly on top of that shale and in that shale
6 and if you cut through it, it's possible that it
7 could move to the side. I'm not sure, looking
8 at how close the waste boundary is to where the
9 way that trench is designed to be.

10 Q. You could negatively affect the
11 stability of the landfill just by cutting the
12 trench?

13 A. I believe so, but those are questions
14 to verify with somebody else.

15 Q. Well, they were Silver's questions
16 when he asked you, so I got to follow-up.

17 A. Okay.

18 Q. I still think they're Silver questions
19 but as long as you answered his, I'd like you to
20 answer mine.

21 This whole idea of the confined
22 aquifer -- let me see if I get this straight
23 because I really am dumb when it comes to this
24 stuff.

1 The confined aquifer concept is a
2 negative when you're using the Theis method
3 because the Theis method would like to see an
4 infinite aquifer, is that right?

5 A. Your question isn't phrased right.

6 One of the assumptions of the Theis
7 method is that the aquifer is completely
8 confined above and below and that laterally
9 there are no boundaries.

10 Q. Okay. So no lateral boundaries for
11 the aquifer?

12 A. Right. Right, because you would --
13 you would show increased drawdown than what you
14 should have.

15 Q. Okay. Now, you did the Theis method
16 to calculate the drawdown for -- for the deep
17 well pumping that occurred in the winter and
18 spring of 1999, correct?

19 A. No. The data was analyzed. I believe
20 it's on page 264. No, page 266.

21 Q. Okay.

22 A. The data were analyzed using the
23 methods of Hantush, Neuman and Walton --

24 Q. Okay.

1 A. -- based on the data and some of the
2 assumptions, and then that data, hydraulic
3 conductivity and storativity of the aquifer, we
4 know what the drawdown we want to create is,
5 which is 7 feet from those calculations.

6 Q. Okay.

7 A. We have this hydraulic conductivity
8 and storativity from the actual pump test and
9 basically you just back calculate what you want
10 your pump rate to be.

11 Q. So This is the method that uses the
12 back calculations?

13 A. Correct.

14 Q. Comes up with the back calculation?

15 A. Right. Just trying to show that
16 that's valid because pumping for so long, you're
17 going to reach steady state and the overlying
18 storativity in the confining layer isn't
19 providing any more water after a certain length
20 of time of pumping.

21 (End of insert.)

22 HEARING OFFICER HALLORAN: In any
23 event, we're going to start on closing

24 arguments, and then after that we'll take a

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1 break, and discuss the post-hearing briefing
2 schedule.

3 So, Mr. LaRose.

4 MR. LAROSE: Thank you, Mr. Halloran.

5 HEARING OFFICER HALLORAN: Thank you.

6 MR. LAROSE: Before I get started, I'd
7 just like to thank everyone for the patience,
8 the lady and the gentlemanly way that this
9 hearing was handled. I think the Hearing
10 Officer, the EPA's lawyers, Ms. Roque, people on
11 my side of the table, the court reporter,
12 whatever the outcome, and despite my obvious
13 disagreement with some of the rulings in this
14 case, was handled in an orderly, very
15 professional, well run manner and it was a
16 pleasure to appear before the board in this
17 case.

18 The evidence and the testimony in this
19 case supports the Petitioner's request for all
20 of the relief.

21 You heard Mr. McDermont describe in
22 detail the contaminants that we seek to control

23 by the leachate control devices contained in the
24 permits of this case, the groundwater, leachate,

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1 condensate from the gas wells and the gas
2 collection itself. And you heard him describe
3 in details the methods to control those
4 particular contaminants. They were specifically
5 identified by Mr. McDermont and depicted in the
6 applicant's Exhibits BBB, CCC, TTT and EEE as
7 well as in other portions of the record.

8 With respect to these specific
9 conditions, I'll start with the easiest one.

10 There is a condition that we maintain
11 leachate below the static groundwater levels.
12 Even the EPA admits that for 95 percent of this
13 landfill this condition is impossible to comply
14 with, that is because the bottom of the
15 landfill, 95 percent of it, is above the static
16 ground. This condition is telling, however,
17 because the EPA didn't make this admission until
18 three days ago. In fact, when they were given
19 the opportunity earlier in this case, when we
20 moved for a stay of this condition, to admit
21 that they had made a mistake, they didn't. They

22 contested this condition and the stay. It adds
23 credence to our argument and our theory that the
24 Agency has acted hastily and unreasonably with

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1 respect to aspects of this permit and the
2 conditions that they put in.

3 The relief we ask for in this case is
4 that the condition be amended to only apply to
5 those portions of Parcel A where the bottom of
6 the landfill is below the static groundwater
7 level.

8 When I say the relief we request in
9 this case, again, make a general statement
10 during closing argument, I believe, it is my
11 intent in the brief in this case specifically
12 either rewrite, suggest revisions or
13 eliminations of certain conditions in this case
14 in a specific request for relief. So while I'll
15 state that generally here, again, my intent is
16 for the board to clearly look at the brief,
17 we'll append an exhibit to it, actually
18 suggesting languages how this -- how relief
19 could be granted in a fair and equitable manner.

20 Second condition, no waste can be

21 accepted until you build and permit the
22 separation layer. And there is only one problem
23 with that. They approved a construction plan
24 that says we need to place waste in order to

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1 build the separation layer. Ms. Roque quite
2 candidly testified that she thought that that
3 was an unreasonable condition. Now, this is the
4 second condition that is not only unreasonable
5 but impossible to comply with and shows the
6 general and the lack of understanding and
7 reasonableness of the Agency in dealing with
8 this permit.

9 Joyce Munie said, unbelievably so, you
10 can place waste, you just can't accept waste.
11 Her theory or rationale that this condition was
12 a reasonable one is wrong for two reasons.

13 The corollary condition, one condition
14 on page 2 of the Parcel A permit does say accept
15 waste, the corollary condition on page 5 says
16 deposit waste. It doesn't matter whether it is
17 accept or deposit, the conditions read together,
18 as they must be, say we can't deposit waste
19 until we build a separation layer, even though

20 we need to deposit waste to build a separation
21 layer. It is more than a catch-22.

22 The second reason why Ms. Munie is
23 incorrect, as testified to by Mr. McDermont,
24 she's right, we're out of business. If we need

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1 to accept waste in order to build the separation
2 layer, the condition says we can't accept waste,
3 we are out of business. It is patently
4 unreasonable for the IEPA to argue and issue a
5 sig mod permit after four years of review and
6 impose the condition that is both impossible to
7 comply with and would put the applicant out of
8 business. Conditions should be amended to allow
9 the placement of waste and acceptance of waste
10 to achieve the separation layers invert
11 elevation in accordance with the construction
12 plan.

13 Financial assurance. Really two
14 issues before the board. First is before this
15 board on a summary judgment and there was
16 testimony generated on that issue today and that
17 is whether the issue of reduction of financial
18 assurance is properly before the board. It has

19 always been, as the testimony clearly revealed,
20 the intent of not only the applicant but of the
21 EPA to bring this issue before the board. No
22 matter what we did and no matter when we did it,
23 Joyce Munie was not going to agree to a
24 reduction in this financial assurance based on

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1 Morris' agreement to treat the leachate, no
2 matter what happened, we were coming to this
3 board. We were before the board in the '99
4 case. We're here now and if the board doesn't
5 rule on it now, they're just going to rule on it
6 later. We are coming to this board to decide
7 this issue, no matter what, and no matter what
8 this board decides, whether it is against me or
9 in favor of me, either I'm going to appeal or
10 the IEPA is going to appeal, and this decision
11 is going to be decided by the appellate court,
12 if not the supreme court of the State of
13 Illinois.

14 The Agency admits, they even admit
15 that if you don't decide it here, it is still
16 going to be decided in another floor setting.
17 They don't say that this is an inappropriate

18 issue to be decided, they just say it should be
19 decided based on another procedure, file an app,
20 we'll deny that, and then it will be decided.
21 If nothing else, everybody is here. The request
22 for the reduction is in the 1999 application,
23 and it's in the record in this case. The denial
24 of that reduction was in the 1999 and it's in

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1 the record in this case. All of the testimony
2 and exhibits with respect to this issue are now
3 before the board, if nothing else, based on the
4 theory of judicial economy and so that we don't
5 waste public and private funds retrying this
6 issue, this issue should be decided now before
7 the board so that the courts of the State of
8 Illinois can take a look at the ruling,
9 whichever way it goes.

10 Now, to the substance of the argument.
11 The reasons why it should be decided in our
12 favor, if in fact the board rules on it, is that
13 while the regs require a third-party cost, this
14 is a little bit different situation. With
15 respect to the operation of the POTW the City of
16 Morris is clearly a third-party. Don't really

17 have any other option but to go to the Morris
18 POTW. It's the closest. It's the one that
19 everybody would go to. The closest municipal
20 POTW is where all the landfills go. It is
21 standard operating practice. The negotiations
22 regarding this agreement were absolutely arm's
23 length and there was real consideration for
24 those. The POTW is a separate entity. The IEPA

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1 accepted the cost of the Morris POTW as a
2 third-party cost. They have accepted a
3 reservation of disposal capacity agreement from
4 the City of Morris even though Morris owns the
5 landfill and even though Morris gave them that
6 agreement, and that agreement contains no
7 third-party cost. Most importantly, I think the
8 testimony was telling that the -- if the IEPA
9 received the benefit of the free leachate
10 disposal agreement on the one hand and \$10
11 million of financial assurance on the other
12 hand, they will have received the benefit of \$20
13 million. That was the purpose of the agreement,
14 to supply them with an alternative way to
15 support this financial assurance. The argument

16 of the Agency that the Morris POTW may some how
17 cease to exist is an argument that I tell you
18 and argue to you is one that I think will never
19 happen. I think we would have to have a
20 catastrophic seismic event, some kind of weather
21 disaster, some kind of nuclear disaster before
22 this POTW can go down. And I submit to you, Mr.
23 Halloran, if this POTW goes down, this little
24 bit of leachate from this landfill is going to

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1 be the least of the City of Morris or the IEPA's
2 problems. You're talking about absolutely
3 catastrophic event. There is -- the same thing
4 would occur, even if there was financial
5 assurance, for third-party cost of Morris, the
6 same thing would occur, they don't have a permit
7 to go elsewhere. So we've got \$10 million,
8 Morris POTW blows up, they're in the same exact
9 position. I think their position is wrong. I
10 think that they're double-dipping by this. They
11 should either accept the \$10 million in free
12 leachate or require the \$10 million dollars in
13 financial assurance but not both, it is
14 double-dipping, and we would ask that the board

15 reduce the financial assurance from \$17 million
16 down to 10 million based on the City of Morris'
17 arm's length agreement to accept some
18 responsibility for this landfill and treat the
19 leachate free of cost.

20 Moving the waste versus siting the
21 waste, that date, as Joyce Munie testified, was
22 picked arbitrarily. They just said, you know
23 what, you've had enough time, I'm going to give
24 you until February 1st to move it or give us \$4

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1 million. They had enough time, argument might
2 have been okay except there has been clear and
3 cogent testimony in this case that while we
4 could have moved for siting prior to the permit,
5 the likelihood of our success as the mayor and
6 Mr. McDermont testified were minimal. The
7 likelihood of success of SP172 hearings is
8 minimal, even if you're in a good setting. I
9 don't think since '82, I would venture to say of
10 the solid waste landfills who sought SP172
11 proceedings, probably less than 10 percent of
12 them have been successful. And some of them,
13 had they been successful, gone to the Illinois

14 supreme court, some of them have been
15 unsuccessful, gone to the Illinois supreme
16 court. It is a hotly contested issue. So in
17 this climate of criticism from the EPA, in this
18 climate of political criticism for us to have
19 gone through the SP172 process before we
20 received this sig mod permit would have been
21 suicide to the process. We just wouldn't have
22 been successful. We're ready to do it now. And
23 most importantly, absolutely, positively no
24 environmental harm in waiting another 6 or 9

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1 months to give us an opportunity to do this
2 siting process.

3 Joyce Munie said it would have been
4 against the regulations for me to give you more
5 time. Well, that is not a good argument at all.
6 If it's not against the regulations to give us
7 six months, then it wouldn't have been against
8 the regulations to give us a year. Really
9 that's all we were asking for.

10 We would ask that the board strike
11 that condition, give us until the end of the
12 year 2001 and allow the mayor to be elected or

13 not and for us to get the best chance to have
14 this material sited in place. Also allow the
15 City of Morris to get through the siting
16 procedure that they're going through right now.

17 With respect to the activities on A
18 and B, construction activities, we just need
19 more time, just need more time to do it. We
20 can't put in the pipe, put in the forced main,
21 build the tank, move the waste, and do all of
22 these things that they just put us on a tight
23 leash. Rather than address the specific time
24 frame here, because I can't specifically

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1 remember what Mr. McDermont testified to, I
2 propose that our brief will set forth a
3 reasonable and specific time frame for the board
4 to give us a little bit more time.

5 With respect to the one day versus
6 five days' leachate storage tank. I think it
7 was absolutely evident that no storage tank,
8 none, was required in this case because of the
9 811.309(d)(6) regulation that says no storage
10 tank is required if there is a direct connection
11 to a sewer. Actually says it a little bit

12 differently, it says unless there is a direct
13 connection to the sewer, you need storage tanks,
14 which the corollary to that is what I just said.
15 If you have a direct connection, in this case,
16 you don't need a storage tank. Mr. McDermont
17 told the EPA that. They said we don't agree.
18 The plate came down, he proposed one day storage
19 with two means to get it to the Morris POTW.
20 The one day -- the means were a tank truck and a
21 direct connection to the sewer. Those two means
22 satisfy the regulations. Ms. Munie's statement
23 that two POTWs are necessary, is a new
24 statement -- is a new statement that she just

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1 came up with in August, and I submit just came
2 up with for this particular case. Ms. Roque
3 said in her experience in reviewing permits this
4 was something new. This was Joyce's call.
5 Before this, two means to get it to the same
6 POTW was required, now all of a sudden we need
7 two POTWs. And most telling of that is the
8 Rochelle permit that was issued about a month
9 ago where Ms. Munie authorized storage tank, one
10 day storage tank with only one POTW. Why do

11 they get treated differently than Morris,
12 Community Landfill? I ask the board to ask that
13 question. I think the condition should be
14 amended to allow one day leachate storage and
15 probably, probably most importantly in this
16 hearing, we presented absolutely sound credible
17 evidence from experts having -- between Mr.
18 Limmer, Mr. Silver, and Mr. Skouby, these
19 experts have almost 100 years of expertise in
20 the area of dewatering, the area of subsidence,
21 the area of groundwater remediation. These
22 gentlemen testified, I think clearly, I think
23 cogently that this was absolutely the best
24 method to treat groundwater. The Agency was

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1 concerned about it because of subsidence, but
2 you know what, there isn't a single person at
3 the Agency that reviewed this application that
4 has any qualifications necessary to make these
5 decisions.

6 Ms. Roque, like her a lot, really got
7 permit reviewer, good engineer, this just isn't
8 her specialty. She said she took a one day
9 seminar. I'm sorry, against the expertise of

10 the gentlemen that testified in this case, the
11 expertise of the gentlemen that actually did the
12 calculations and the field work in this case,
13 the expertise, I don't think Ms. Roque's
14 concerns should substantiate terminating
15 decommissioning the wells that are already in
16 place and requiring the landfill to dig a 2,000
17 foot trench through 25 feet of rocks that might
18 cause subsidence and problems in and of itself.

19 I want to back up just a second, with
20 respect to the moving of the waste or leaving it
21 in place, absolutely no environmental harm to
22 leave it in place but the testimony from
23 everybody, the mayor kind of said it the best,
24 it just makes sense, leave it where it's at.

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1 And even the EPA kind of grudgingly said there
2 could be some problems with smell and there
3 could be some problems with traffic and there
4 could be some problems with dust, if we move
5 this stuff. It just doesn't make sense like the
6 mayor said.

7 In summary, and I think most
8 importantly, the board need not be concerned if

9 they grant us this relief for any potential or
10 threat to human health or the environment to the
11 State of Illinois if the relief is granted.

12 I would ask that after due
13 consideration of the transcript in this case,
14 post-hearing briefs and the rulings that were
15 made, and I don't know, perhaps some
16 post-hearing motions, that the board grant the
17 relief requested by CLC.

18 HEARING OFFICER HALLORAN: Thank you,
19 Mr. LaRose.

20 MR. LAROSE: You're welcome.

21 HEARING OFFICER HALLORAN: Mr. Kim?

22 MR. KIM: Thank you. I'd also like to
23 thank all of the participants in this hearing.
24 I know it has been a long and drawn out process

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1 and hopefully those efforts have not gone on to
2 waste and I don't think they have.

3 The first statement I'd like to make
4 is that the IEPA did file a motion for a partial
5 summary judgment in this matter in December of
6 2000. We acknowledge that the board has not had
7 sufficient time to make a ruling upon that

8 motion, however, we would like to, at this
9 point, incorporate, and we will in our
10 post-hearing brief incorporate those arguments
11 to the extent that they have not been yet ruled
12 upon, and we would, again, suggest that the
13 board seriously consider the arguments and the
14 requests made in that motion.

15 As to the testimony and as to the
16 arguments that have been made in -- regarding
17 the conditions that have been identified as
18 contested conditions, the IEPA states in summary
19 fashion that its actions were in accordance with
20 applicable Illinois Pollution Control Board
21 guidelines, guidelines set forth under the EPA
22 Act and in observance and we believe correct
23 interpretation of the relevant underlying
24 regulations. The IEPA will make further more

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1 comprehensive arguments in its post-hearing
2 brief and at this point has nothing further to
3 add.

4 HEARING OFFICER HALLORAN: Thank you,
5 Mr. Kim.

6 The closing reminded me I'm suppose to

7 make a statement of credibility of the
8 witnesses. And based on my professional and
9 legal experience, I find that there are no
10 issues with credibility with any of the
11 witnesses.

12 With that said I think we will go off
13 the record for a few moments to discuss the
14 post-hearing briefs.

15 (Off the record.)

16 HEARING OFFICER HALLORAN: We're back
17 on the record.

18 We've worked out a post-hearing
19 briefing schedule and it has been decided and
20 agreed to that simultaneous open briefs will be
21 due by February 21st.

22 MR. KIM: I hate to do this, can I
23 ask -- can the briefs be due to the board by the
24 21st but not to the parties until the 22nd?

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1 Would you agree to that? You can get it done,
2 then you can send it to me, e-mail or fax it, if
3 you want, on the 22nd. My only problem is this,
4 I have -- under that schedule he potentially can
5 look at my brief before he gets to file his. I

6 don't get that opportunity. That is my concern.
7 That's always the concern we have when we
8 file --

9 MR. LAROSE: I told him that I would
10 accept his brief by fax. I don't want to wait
11 another day just because we have this dichotomy
12 between Chicago and Springfield. I will accept
13 his brief by fax on the 21st, accept it by
14 overnight mail on the 22nd. They can send me
15 the brief the same way they sent me the permit
16 at 4:55 p.m. on the 21st.

17 MR. KIM: So you will accept overnight
18 mail --

19 MR. LAROSE: Overnight mail on the
20 22nd, fax on the 21st.

21 MR. KIM: Okay. That's fine.

22 MR. LAROSE: I might be good but I
23 don't know if I'm that good to respond to his
24 brief in a matter of minutes.

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1 HEARING OFFICER HALLORAN: Let's try
2 this again.

3 We're going to have simultaneous
4 opening briefs due on February 21st. Mr. Kim

5 from the Agency will fax his opening brief to
6 Mr. LaRose on February 21st. Filing with the
7 board will be due on February 22nd, is that my
8 understanding?

9 MR. LAROSE: That's fine.

10 MR. KIM: Well, filing with the board
11 on the 21st, faxed copy on the 21st, hard copy
12 on 22nd.

13 HEARING OFFICER HALLORAN: My mistake.

14 MR. LAROSE: I'll do the exact same
15 thing.

16 MR. KIM: That's fine.

17 HEARING OFFICER HALLORAN: Written
18 public comment will be due by February 14th.
19 February 28th, there will be simultaneous reply
20 briefs due. Do you want to handle that the same
21 way or --

22 MR. KIM: If possible.

23 HEARING OFFICER HALLORAN: Okay.

24 Handle the same way as the opening briefs, fax

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1 by the 28th to the respective parties.

2 Before we sign off, I want to thank
3 the parties for their professionalism and their

4 civility, and I'll go one farther, beyond
5 reproach and I appreciate it and you all have a
6 safe trip home and a great weekend.

7 MR. LAROSE: Thank you.

8 MR. KIM: Thank you.

9 MR. LAROSE: You, too.

10 MR. KIM: Thank you, Mr. Hearing
11 Officer.

12 (Which were all the proceedings held
13 in the above-entitled cause.)

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L.A. REPORTING, 312-419-9292

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1 STATE OF ILLINOIS)
)SS:
2 COUNTY OF DU PAGE)

3 I, ROSEMARIE LA MANTIA, being first
4 duly sworn, on oath says that she is a court
5 reporter doing business in the City of Chicago;
6 that she reported in shorthand the proceedings
7 given at the taking of said hearing, and that
8 the foregoing is a true and correct transcript
9 of her shorthand notes so taken as aforesaid,
10 and contains all the proceedings given at said
11 hearing.

12

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ROSEMARIE LA MANTIA, CSR
License No. 84 - 2661

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Subscribed and sworn to before me
this day of , 2001.

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Notary Public

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