

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3 ILLINOIS POLLUTION CONTROL BOARD
4 October 19, 2000

5
6 COMMUNITY LANDFILL COMPANY)
 and CITY OF MORRIS,)
)
7 Petitioners,) PCB 01-48
) PCB 01-49
8 vs.)
) (Permit Appeal-Land)
9 ILLINOIS ENVIRONMENTAL) (Consolidated)
 PROTECTION AGENCY,)
10)
 Respondent.)
11
12

13 The Report of Proceedings, taken before Mary
14 Ellen Kusibab, Certified Shorthand Reporter and Notary
15 Public in and for the County of Cook, State of Illinois,
16 at 100 West Randolph Street, Suite 2-025, Chicago,
17 Illinois, before Hearing Officer Bradley P. Halloran,
18 Illinois Pollution Control Board, commencing at 9:30
19 a.m. on the 17th day of January, A.D., 2001.
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1 APPEARANCES:

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5 On behalf of the Petitioners;

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9 On behalf of the Respondent.

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1 HEARING OFFICER HALLORAN: Good morning. My
2 name is Bradley Halloran. I'm a hearing officer with
3 the Illinois Pollution Control Board. I'm assigned to
4 this consolidated matter: 01-48 and 01-49 in the
5 Community Landfill Company and City of Morris versus the
6 Illinois Environmental Protection Agency. Today is
7 Wednesday, January 17th. It's approximately 9:35 a.m.
8 I note aside from the representatives from the Illinois

9 Pollution Control Board there appears to be no members
10 of public present. The hearing is being held pursuant
11 to Section 105.214 of the Board's procedural rules
12 regarding permanent appeals and is in accordance with
13 Section 101, Subpart F. The hearing was scheduled
14 pursuant to or in accordance with the Illinois
15 Environmental Protection Act and the Board's procedural
16 rules and provisions.

17 I just want to note that I will not be deciding
18 the case. It's the Pollution Control Board that will be
19 the ultimate decision maker. They will review the
20 transcript of this proceeding in the remainder of the
21 record and render a decision in this matter. My job is
22 to ensure an orderly hearing and present a clear and
23 complete record so that the Board will have all the
24 necessary information to make their decision.

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1 After the hearings, the parties will have an
2 opportunity to submit post-hearing briefs. These, too,
3 will be considered by the Board. Before we begin with
4 the introduction of the parties, I'd like to introduce
5 the staff members who are present here on behalf of the
6 Board. We have Mr. John Knittle, who is a chief hearing
7 officer, and we have Miss Cathy Glenn, who is a staff
8 attorney with the Pollution Control Board.

9 With that said, I do note that if members were
10 present, they would be allowed to make public comment.
11 They will have an opportunity to file a public comment

12 after the hearing. And the person speaking will be
13 sworn and be subject to cross-examination.

14 With that said, Mr. LaRose, petitioner's
15 attorney, would you like to introduce yourself?

16 MR. LAROSE: Thank you very much.

17 My name is Mark LaRose, and I am the attorney
18 for Petitioner, Community Landfill Company. I will be
19 referring to them in shorthand as CLC. With me here
20 today as the party representative of CLC is Michael
21 McDermont, a civil engineer with the engineering firm of
22 Andrews Environmental Engineering. And also here as
23 representative of Co-petitioner, City of Morris, is the
24 mayor of the City of Morris, Robert Feeney. The

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1 gentleman sitting behind me and the City of Morris'
2 attorney, Michael Masino.

3 HEARING OFFICER HALLORAN: Mr. Kim?

4 MR. KIM: My name is John Kim. I'm a special
5 assistant attorney general and assistant counsel with
6 the Illinois EPA. With me today is Christine Roque,
7 R O Q U E, a technical reviewer with the Illinois EPA,
8 and Kyle Rominger, R O M I N G E R, an attorney with the
9 Illinois EPA, who is not appearing of record but is here
10 to bear witness to these wonderful proceedings.

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

12 We talked earlier off the record. It's my
13 understanding that there are a few motions before me

14 today, and we have to decide those before we continue
15 with Petitioner's case-in-chief. The first motion was
16 made by Mr. LaRose at the prehearing conference, I
17 believe it was January 9th, I believe, regarding a
18 motion to exclude.

19 Mr. LaRose, would you restate that?

20 MR. LAROSE: The motion, Mr. Hearing Officer,
21 will be the motion to exclude witnesses from the hearing
22 with the exception of a designated party representative.
23 And the purpose for that is to make sure that witnesses
24 aren't allowed to listen to the testimony of the other

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1 experts and have an opportunity to change their
2 testimony or alter their testimony accordingly. In
3 civil courts of the State of Illinois, it's known as a
4 motion; a rule on the exclusion of witnesses.

5 HEARING OFFICER HALLORAN: Mr. Kim, objection?

6 MR. KIM: The Illinois EPA has no objection to
7 that motion.

8 HEARING OFFICER HALLORAN: Motion is granted.

9 I believe there's another motion we can take:
10 The Respondent's motion to quash subpoena duces tecum.

11 Mr. Kim, do you want to stand on your written
12 motion or would you like to elaborate?

13 MR. KIM: The only comment I would make is that
14 just to clarify for the record, it's not a -- the motion
15 was not intended to quash the subpoenas in their
16 entirety, just those portions of the subpoenas which

17 requested certain information. As the motion states,
18 due to time constraints, the Illinois EPA was not able
19 to comply with the full depth of the documents sought by
20 the Petitioners. However, we were able to provide some
21 of the materials; specifically, we were able to provide
22 the current permits for each of the landfills listed and
23 the full complement of information sought for one
24 landfill in particular, which was described by the

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1 Petitioners to us as the landfill that they were the
2 most interested in. They were kind enough to provide us
3 with a prioritized list of landfills. We were only able
4 to provide the full commission from one, but we did do
5 that and we did provide that to counsel for the
6 Petitioners prior to the hearing.

7 HEARING OFFICER HALLORAN: Mr. LaRose?

8 MR. LAROSE: Yes, sir, Mr. Halloran. I did
9 subpoena in accordance with the Board's rules and in
10 accordance with the time frame set forth in the new
11 Board rules three pieces of information from ten
12 different solid waste disposal facilities in the State
13 of Illinois. Those pieces of information were the most
14 recent permit, the most recent closure plan with
15 post-closure and post-closure cost estimates and the
16 most recent NPDES permit for disposal of the leachate
17 from those facilities.

18 I did not do that prior to this and perhaps I

19 should have, but I really, really believed that this
20 wasn't going to be necessary. And, in fact, my belief
21 was not so far off because, as you know, we settled the
22 case one day and unsettled it the next. The import of
23 these documents is crucial, related specifically to two
24 issues in this case. And even though I know Mr. Kim is

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1 just doing his job when he says this is a fishing
2 expedition, it isn't. It is an expedition with a
3 purpose, and the purpose is this: The testimony during
4 the depositions which occurred on the 18th, 19th and
5 20th of December from the Illinois EPA representatives
6 was that two, in order to have one day's leachate
7 storage, which is one of the issues in this case, that
8 two connections to two separate POTWs are necessary and
9 that they've never, in the past, allowed one connection
10 to a single POTW with one storage tank. We want to,
11 need to and believe that we should be given the
12 opportunity to test that testimony. We think that the
13 documents, specifically the NPDES permits, will show
14 that that's not the case.

15 Secondly --

16 HEARING OFFICER HALLORAN: Regarding these
17 other landfills?

18 MR. LAROSE: Regarding the other landfills.
19 The testimony was specific: We require this of
20 everybody. This is our interpretation of the
21 regulation. You need two POTWs or you got to have five

22 days' storage. And I can tell you right now for at
23 least one of these facilities, that's not the case. And
24 we believe that's not the case for several if not all of

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1 them.

2 The second issue that this relates to is the
3 issue of third party costs. The reason why -- one of
4 the major issues in this case is the reduction of
5 financial assurance from 17 million down to 7 million
6 based on the City of Morris's agreement to treat the
7 leachate and condensate -- groundwater for the
8 facility -- at a reduced cost, which would allow that
9 reduction of financial assurance. The government has
10 testified that without any need for legal assistance or
11 having the legal department review this issue, that it
12 is never a third party cost when a city owns a POTW and
13 a city also owns a landfill. We believe that these
14 facilities -- some of them municipal, some of them in
15 which the owner of the landfill is also the owner of the
16 treatments facility -- have been treated differently
17 than our landfill, and we need that information to test
18 it.

19 When Mr. Kim got the subpoena, he told me he
20 was going to have a problem complying. He asked me if I
21 could prioritize the sites. He did say he'd get me the
22 permits. Those were delivered to me today, and I
23 appreciate that. We're going to look at those as

24 quickly as we possibly can and analyze those for the

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1 information that we need. He was able -- when he asked
2 me for the prioritization, I wrote him a letter and I
3 said without waiving our right to compel the production
4 of all of this information, here's our prioritization
5 one through ten; get what you can. They got one, which
6 we, again, appreciate that he got all of the information
7 from the Litchfield landfill, which we had prioritized
8 as number one on our list. We're here at the hearing;
9 they don't have them. I really believe that if they
10 would have just given us the opportunity to either
11 assist them, come over and look at the records or they
12 would have spent more time looking for them than writing
13 these silly motions, we might have the documents today.

14 All that being said, we're here at the hearing
15 and we don't have these documents. My suggestion to
16 Mr. Kim was that provide them as soon as you can. If
17 they're not in time for the hearing, then we can analyze
18 them and include them in the record and include them in
19 post-hearing briefs to the extent that they are relevant
20 and material to the issues in this case. And that's
21 what I think we should do. I issued the subpoenas on
22 time; I tried my best to cooperate with them; I tried my
23 best to be reasonable; I had hoped that we wouldn't even
24 have to be here today. These documents are crucial to

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1 the analysis of this case because I believe the evidence
2 will show that my client's landfill is being treated
3 differently than nine others in the State of Illinois.
4 And when these people testify that this is the
5 regulation and this has always been our interpretation
6 of it, they're wrong.

7 HEARING OFFICER HALLORAN: Mr. Kim?

8 MR. KIM: First, I would like to take issue
9 with your characterization of the motion as silly.

10 I would say, also, that Mr. LaRose has
11 identified these documents as being of interest to him
12 for two reasons: One because he believes that they will
13 demonstrate that other landfills are being treated
14 differently than his client's landfill was as to this
15 issue of five day versus one day leachate storage. He
16 also referenced the question of third party costs as
17 being relevant as well. I don't want to get too much
18 into the argument. The testimony, I'm sure that that's
19 going to come soon enough. But I would say this: On
20 the first point, I believe he's mistaken because I
21 believe that pursuant to the specific regulation that
22 his client's landfill or his clients sought this relief
23 pursuant to, he's mistaken. There's only one other
24 landfill in the state that has received a permit

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1 pursuant to that particular regulation that's going to
2 be at issue here. And I'm not trying to present

3 testimony; this will all come out. But there's only one
4 other landfill. So on that point, I don't think that
5 these permits will be of any use to him. And I say that
6 simply because this is a fairly new regulation, and we
7 have a very fresh institutional memory on this. And
8 there aren't any other landfills, other than the one
9 that's been identified in depositions that has received
10 a permit pursuant to this regulation.

11 The second point sort of goes to a bigger issue
12 or a separate issue which is in addition to the
13 prehearing motions pending, there's also a motion for
14 partial summary judgment that was filed by the Illinois
15 EPA. And I understand that because of some scheduling
16 difficulties we encountered, we weren't able to provide
17 the Board with as much time as we had originally hoped
18 we would be able to review that motion. But, contained
19 within the motion and certainly one of the arguments
20 that will be raised today or tomorrow will be that that
21 issue -- this whole question -- about third party costs
22 is not properly before the Board at this point anyway.
23 And as a result, it doesn't really matter what the
24 merits might be perceived to be by Community Landfill.

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1 The issue really doesn't even get raised here because
2 the issue has not been properly raised to the Illinois
3 EPA. We made no decision on the issue that's trying to
4 be argued. So there's really nothing for us to defend
5 or support. We didn't make any decision on that one way

6 or the other. So in the sense that that's what the
7 documents are being sought for, I really don't think
8 they're going to have any relevance. In addition, I
9 guess I have a problem with the notion that we're going
10 to continue or we would have an obligation to supply
11 these documents even after the hearing is concluded,
12 presumably some time before briefing. I don't think
13 that's the purpose of the subpoena duces tecum. I think
14 those are instruments which require you to bring
15 documents for the hearing for purposes for use at the
16 hearing. This presents not only an evidentiary problem,
17 I think -- this use of documents post-hearing -- but it
18 also opens up the door to the Agency, I think, out of a
19 sense of fair play being able to do the very same
20 thing -- being able to come up with other permits for
21 other situations that we think might be of interest as
22 well and possibly documents that might not have been
23 introduced or described at the hearing.

24 And the last thing I'll say is Mr. LaRose is

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1 correct when he says that I informed him that the real
2 concern, the real problem that we had, was simply a
3 question of time. We had approximately one week to
4 comply with this document request. These are large --
5 each one of the ten landfills that was described has a
6 large file. The reviewers for each one of those
7 landfills has to go through and take a long time. They

8 have to drop all the work that they already have on
9 their desk, and all of our people unfortunately have
10 very time-sensitive projects that require them to work
11 up to the very last minute. So it's a great burden to
12 ask them to put those documents aside and perform a file
13 review, which takes a long period of time. If we had
14 some additional time, we might have been able to get
15 some more documents. If we had some additional time, we
16 might have been able to, as Mr. LaRose mentioned and as
17 I mentioned to him some days ago, allowed them to come
18 in and look at the files themselves so that we wouldn't
19 have to do that. We would just make the files
20 available. But, unfortunately, we just didn't have
21 enough time.

22 HEARING OFFICER HALLORAN: Anything further,
23 Mr. LaRose?

24 MR. LAROSE: Just briefly.

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1 I did issue the subpoena ten days in advance of
2 the hearing, as required by the rules. In that respect,
3 it's compliant with the rules. But I didn't do this as
4 some type of sandbagging or last-minute tactic. I did
5 it because we were under the gun and thought we settled
6 the case and we didn't and I need this information. If
7 Mr. Kim wants to swear himself and get on the witness
8 stand and say that there's only one facility, that's
9 great. But whether he does it or his witnesses do it, I
10 still have the opportunity or should have the

11 opportunity to test that by reviewing these documents.

12 As to Mr. Kim's argument on the subpoena duces
13 tecum usually ending when you comply with it by showing
14 up and bringing the documents, that's true. But they
15 only did a part -- they showed up and only brought a
16 part of the documents. So what I'm suggesting to you as
17 an equitable way to resolve this thing is let's go on
18 with the hearing and have them go to either allow us to
19 go to the file -- we'll do that. We'd be happy to do
20 that. Put us in a room and give us the files. We'll
21 pull the documents post-hearing. And allow us to use
22 them to the extent they're relevant in post-hearing
23 briefs. Or Mr. McDermont tells me that there's a
24 computer that somebody can punch up a nonsigned permit

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1 and just punch up the NPDES permits and the closure
2 plans for these sites. I mean, let's be realistic.
3 They went to each one of these files and pulled out the
4 permits -- the signed permits. How much more difficult
5 would it have been to go to the back of the file and
6 pull out the NPDES permit or the other part of the file
7 and pull out the closure plan? I think that -- I don't
8 know whether it's intentional; I don't know whether it's
9 something that they're trying to hide. But I don't know
10 what facility he's talking about that only has one-day
11 storage.

12 And as far as -- the last point is as far as

13 this motion for summary judgment, I don't know what the
14 Board is going to do with that, Mr. Halloran. I
15 certainly hope it's denied. I certainly think that the
16 financial assurance question is absolutely, positively
17 proper before this Board. We are certainly going to
18 hear testimony on that over the course of the next two
19 or three days. So for Mr. Kim to say we shouldn't
20 comply because the Board might rule in my favor, I don't
21 think that's appropriate. I hope they don't rule in his
22 favor; I hope they rule in my favor. But in the
23 meantime, I think they have an obligation to try their
24 best, both prior to the hearing -- which I'm not saying

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1 that they didn't -- but a continuing obligation to
2 either assist us in supplying us with these documents or
3 let us look ourselves. If we were to go -- I did have
4 the FOYA option. Do you know how long that would take
5 me? Probably past the -- if I went through a regular
6 FOYA, it probably would be past the brief period. It's
7 just not an option. In a contested hearing, I have
8 subpoena power. The clerk of this Board signed the
9 subpoena. I properly issued it and delivered it to Mr.
10 Kim. I'm entitled to the documents now, and I'm
11 agreeing to accept them later and to assist in their
12 production.

13 HEARING OFFICER HALLORAN: Am I correct that a
14 ruling at this point is not imperative? At this point,
15 I would like to reserve ruling on this motion. I would

16 ask Mr. LaRose to file a response to the IEPA's motion
17 to quash the subpoena duces tecum. Since you stated
18 it's so crucial to your case, I would like to have
19 something in writing before me before I make my
20 decision. I think Mr. Kim had served you on Friday, and
21 I don't know if you were in the office or not. But I
22 was hoping you'd have a written response.

23 MR. LAROSE: And I really intended to do it
24 orally today because I just had more important things to

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1 do than write a response to a motion at this time,
2 knowing that no matter what I wrote, it wasn't going to
3 get me the documents today. I guess what we're really
4 talking about is do they have a continuing obligation
5 because I'm not saying that anybody ought to run back to
6 Springfield and get them today. It's just too late.
7 But I don't think it's appropriate for them to say we
8 can't do it so we don't have any more obligation.
9 That's not right.

10 HEARING OFFICER HALLORAN: With that said, I
11 would appreciate a written response by tomorrow.

12 MR. LAROSE: That's not possible. I don't have
13 anybody to -- I'm going to be here all day. I've got
14 witnesses all night. I will not be able to supply a
15 written response by tomorrow.

16 HEARING OFFICER HALLORAN: This hearing may not
17 go on until Friday. So I need something in front of me

18 to make a ruling before the hearing.

19 MR. LAROSE: I guess what I'm telling you is
20 that I don't have any objection to you making a ruling
21 after the hearing because it's not going to make any
22 difference. We're not going to have these documents
23 today, tomorrow or Friday. But in all due respect, sir,
24 I'm working 18 hours a day to do other things rather

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1 than writing responses to the motion I received on
2 Friday. I just don't have time.

3 HEARING OFFICER HALLORAN: I would ask you to
4 file a written response. We'll revisit this tomorrow,
5 and I will reserve my decision on this matter.

6 MR. LAROSE: Okay.

7 HEARING OFFICER HALLORAN: We will proceed to
8 the Respondent's motion to quash -- excuse me -- motion
9 to suppress portions of -- regarding corrections in the
10 deposition.

11 Mr. Kim?

12 MR. KIM: And, again, I regret having to file
13 these motions at the last minute in the manner we did,
14 but we received a copy of the corrections that one of
15 the deponents, Mr. Van Silver, made to his deposition
16 transcript. We received it late Friday afternoon. And
17 the content of his changes go beyond what is clearly
18 allowed by Supreme Court Rule 207(a), which states that
19 a deponent, when he is reviewing a transcript before
20 signing off on the transcript, can only make changes or

21 comments as to errors in transcription made by the court
22 reporter. He cannot make any changes that go to the
23 form or the substance of his answer. Of the thirteen
24 changes that Mr. Silver made, ten of those changes do

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1 change either or both form and/or substance of his
2 answer. Some were greater than others, but every single
3 one of them represents a change from what was testified
4 to. These are not mistakes made by the court reporter
5 in transcribing the deposition. These represent
6 basically for whatever reason Mr. Silver wishes that he
7 had testified in a different manner. And while I can
8 understand that the deponent would like to do that, the
9 Rules first of all do not allow that. Second of all,
10 again, it's -- if they did allow that, I can guarantee
11 you that the agency's witnesses -- the Illinois EPA's
12 witnesses -- certainly would have liked to have their
13 crack at that as well. But I think the Rule is very
14 clear that you're bound to what you testified to, at
15 least as to the transcript. You can only make changes
16 as to the mispronunciation or a technical term perhaps
17 that the court reporter was not familiar with.
18 Obviously, that doesn't prevent any kind of extended or
19 elaborated testimony at hearing. But this does go
20 towards changing the form and substance of the
21 deposition, and that's something that is just clearly
22 not allowed by the Rules and it would defeat the

23 purposes of using that deposition for impeachment
24 purposes, it would defeat the purpose of being able to

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1 attack the credibility of the witness. And for those
2 reasons, we don't think that those changes should be
3 allowed.

4 HEARING OFFICER HALLORAN: Mr. LaRose, your
5 position?

6 MR. LAROSE: We agree with the motion, with a
7 couple of caveats.

8 I want it to be understood that Mr. Silver
9 wasn't trying to pull a sly one on anyone. He called
10 me; he said I remember some things differently than in
11 my deposition. And being the older lawyer that I am, I
12 remember the old form of Rule 211, which allowed you to
13 make not only typographical and transcription changes,
14 but substantive changes as long as you had a reason. So
15 even in the deposition, I told Mr. Silver you can make
16 substantive changes as long as you have a reason. Lo
17 and behold, Mr. Kim is right, that in 1995, Rule 211 was
18 amended to take out that substantive change provision.
19 So his motion is proper. However, the practical effect
20 of it, I just want to make this clear, while the
21 deposition will stand as transcribed in those
22 substantive respects, Mr. Silver is going to get on the
23 stand and say I remember things differently. Mr. Kim is
24 going to be able to use his deposition for the purpose

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1 of impeachment. But the practical effect is really the
2 same. We weren't trying to pull a fast one on anyone.
3 I told Mr. Silver that it was appropriate for him under
4 the Rules to make substantive changes as long as he had
5 a reason for it, and I was mistaken.

6 HEARING OFFICER HALLORAN: And I think Mr. Kim
7 pointed that out in his motion that it was nothing
8 intentional. It could have been --

9 MR. LAROSE: Okay. As long as that's
10 understood. He wasn't trying to fool anyone. And when
11 you see Mr. Silver, I think you'll understand.

12 HEARING OFFICER HALLORAN: The Respondent's
13 motion to suppress is granted. Thank you.

14 And I also want to back up, Mr. LaRose, you
15 stated that you may not be going back to the office
16 today to do the written response to the motion to quash.
17 I just want to let it be known that I may or may not
18 make the ruling with or without the written response.

19 MR. LAROSE: And, sir, that's okay. I didn't
20 mean to get snotty about it. Here's the deal: I stated
21 my argument as best as I could on the record. I am
22 happy to supply you with a written response. It's just
23 that in order to present the materials that I have to
24 present today, tomorrow and Friday, I'll be working

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1 every hour of every day until 10:00, 11:00 or 12:00

2 o'clock at night, and I just don't have time to sit down
3 and write a separate brief. I will be more than happy
4 to accept your ruling post-hearing on this if you'd
5 allow me until early next week to file a brief. I'm not
6 opposed to working hard to file a brief. I just can't
7 do it tomorrow.

8 HEARING OFFICER HALLORAN: At this point,
9 again, I'll reserve, and I'll let you know tomorrow
10 whether I'm going to have a written response or not.

11 MR. LAROSE: That's fine.

12 HEARING OFFICER HALLORAN: With that said, are
13 there any other preliminary matters or motions to be
14 addressed? I think we can go ahead with opening
15 statements.

16 Mr. LaRose?

17 MR. LAROSE: Thank you, sir.

18 OPENING STATEMENT ON BEHALF OF PETITIONER

19 MR. LAROSE: This is a permit appeal. It
20 actually combines and consolidates two permit appeals
21 for two permits that were issued to the Morris Community
22 Landfill. Morris Community Landfill is owned by the
23 City of Morris and operated by Community Landfill
24 Company. The City, as owner, is a co-permittee with CLC

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1 as the operator. I represent the Community Landfill
2 Company or CLC, along with Michael Masino, my co-counsel
3 who represents the City of Morris. Mr. Masino may not
4 be here for the entire hearing, and I have been

5 designated as trial counsel on behalf of the
6 co-permittees.

7 Mr. Hearing Officer, the landfill consists of
8 two parcels. Parcel A is on the east side of Ashley
9 Road, a busy county road that dissects the landfills.
10 It consists of about 55 acres, and it is the currently
11 operating section of the landfill. The permit was
12 issued for this parcel -- a significant modification
13 permit -- on August 4th, 2000, under Permit Log 2155,
14 and that case is PCB 014A.

15 Parcel B is on the west side of Ashley Road and
16 is no longer operational. It consists of 64 acres. A
17 permit was issued for this facility on August the 4th,
18 2000. The appeal number is PCB 01-49.

19 This appeal regards the contest of eight
20 contested conditions regarding the Parcel A permit and
21 four contested conditions regarding the Parcel B permit,
22 some of which overlap. There are probably over 200
23 conditions contained in these two permits, each of which
24 are 50 pages long. And we're appealing only 12 of them.

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1 Let me give you a little bit of background information
2 with respect to the landfill. Parcel A was historically
3 used by the City of Morris as a landfill for many, many
4 years before CLC ever came into the picture. Landfill
5 operations on Parcel A ceased or were suspended in the
6 mid-1970s, and the site has been inactive ever since.

7 It is important to note that the historical fill area in
8 Parcel A contains no liner and has only intermittent
9 cover.

10 Parcel B began operation by CLC in 1982 with a
11 lease agreement between CLC and the City of Morris.
12 Parcel B accepted solid waste and less contaminated
13 soils. And from 1982 to the present, CLC has continued
14 to have operational responsibility for both Parcels A
15 and B under a series of lease agreements and amendments
16 to the lease agreements with the City of Morris.

17 In 1986, local siting for a height increase on
18 both Parcels A and B were obtained. And in 1989, the
19 Agency issued a permit for those expanded sites to
20 operate. In 1994, for the first time -- for the first
21 time since the seventies -- CLC and the City entered
22 into a lease amendment that allowed Parcel A to reopen.
23 So from the late seventies until 1994, no waste had been
24 disposed of in Parcel A. And, in fact, it wasn't until

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1 approximately 1996 when some waste was eventually placed
2 in Parcel A.

3 In 1995, Community Landfill Company and the
4 City of Morris filed for a variance to allow it to file
5 a significant modification application that is, in part,
6 at issue in this case. After a lengthy legal battle
7 that resulted in an order from the Third District
8 Appellate Court, Community Landfill Company and the City
9 of Morris were required and allowed to file a

10 significant modification within 45 days or by
11 August 5th, 1996, and they did.

12 The August 5th, 1996 application and the
13 process of review all of which appear in the record in
14 this case are extremely important to this case because
15 large parts of the decision on the 2000 applications
16 were made with respect to information submitted in the
17 1996 application. The '96 application forms the basis
18 of the 2000 application. It is the appeal on the
19 permits which were issued in this case.

20 In 1996 -- August 5th, 1996 -- over the course
21 of the next three years until August of 1999, Andrews
22 Environmental Engineering met with the Agency, responded
23 to concerns that the Agency had and those responses were
24 submitted in 48 separate written submittals to the

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1 Illinois EPA while this 1996 application was under
2 consideration. And by August, 1999, all of the concerns
3 of the Agency were resolved, and they were ready to
4 issue the permit with specific conditions. One major
5 issue was financial assurance for closure and
6 post-closure care. Since the facility -- Parcel A in
7 particular -- did not pass the groundwater impact
8 assessment model, the corrective action plan for
9 groundwater at the facility called for the treatment of
10 groundwater at the Morris POTW for up to a -- worst-case
11 scenario -- period of 100 years. That treatment cost at

12 approximately \$100,000 could potentially cost \$10
13 million over 100 years. This meant that of the 17
14 million in financial assurance for closure and
15 post-closure care, 10 million of it was attributable to
16 the treatment of leachate, condensate and groundwater
17 from Parcel A and Parcel B.

18 On July 20th, 1999, CLC and the City of Morris
19 entered into an agreement for the City of Morris to
20 treat the groundwater at its POTW at a
21 substantially-reduced charge. This was because the City
22 of Morris, as you'll hear from the mayor in a few
23 minutes, had been receiving and intended to receive
24 substantial financial and noneconomic benefits from the

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1 landfill that they had received for many years, are
2 receiving today and expect to receive for many years.
3 And the other consideration for that agreement was the
4 fact that Morris -- the City themselves -- had some
5 responsibility for the historic fill that had happened
6 up until the late-seventies and any of the contamination
7 of the lower areas of the fill that had occurred as a
8 result of that. Based on this agreement, on August
9 13th, 1999, the permit -- the co-permittees submitted a
10 revised closure plan seeking to amend the cost estimates
11 for closure and post-closure care from approximately 17
12 million to approximately 7 million, the difference being
13 the \$10 million cost to treat the leachate, groundwater
14 and condensate. Within a day or two after that and

15 without consulting legal at the IEPA or anyone else, the
16 land permit manager, Joyce Munie, said no; we're not
17 going to allow that. That's not a third party cost.
18 And on the basis of that, on September 1st, 1999, the
19 EPA called that cost reduction request a fatal flaw, and
20 the permits were denied for both Parcels A and Parcel B.
21 We, of course, appealed the denial of those permits
22 because we thought that A, they should have been issued,
23 and B, that the financial assurance should have been
24 reduced based on Morris's agreement to treat the

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1 leachate in its POTW. Over the course of the next four
2 or five months, the City of Morris, Community Landfill
3 and the IEPA worked out an agreed procedure that would
4 resolve the permits, result in the permits being issued
5 and provide the \$17 million in financial assurance under
6 protest so that we could, like ladies and gentlemen,
7 agree to disagree and bring that issue and that issue
8 alone to the Board.

9 The procedure went like this: We were to
10 resubmit the application substantially similar to the
11 1996 application but reorganized and reformatted so that
12 they were in one group instead of one application with
13 48 different submittals. And, also, to be responsive to
14 some of the criticisms or denial points that had been
15 included in the original denial of the permit. The
16 Agency had agreed to accelerate their review and to let

17 us know if they had any problems. We would respond to
18 any perceived deficiencies as quickly as possible. This
19 is important. We would be given an opportunity to
20 review the permits in draft prior to their issuance a
21 day, two days, a week, two weeks. And the Agency would
22 be given the opportunity prior to the issuance of the
23 financial assurance document to see drafts of those to
24 make sure that they were okay with them. If all the

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1 drafts were okay, our agreement was to exchange the
2 financial assurance for the actual permit. This
3 procedure was memorialized in correspondence between
4 myself and Mr. Kim and is included in the record in this
5 case. It was to have the following effect: We were
6 going to resolve the permit appeals. It did. We
7 resolved those. It was going to result in the issuance
8 of permits. It did. We got the permits on August 4th,
9 2000. It was to give the Agency \$17 million of
10 financial assurance under protest so that we could argue
11 that issue before this Board. It did. And we agreed to
12 protest the financial assurance so that we could bring
13 that very issue here. We think it's probably here; the
14 Agency thinks it isn't. But I don't know how it
15 couldn't. That's the only reason why we established
16 this proceeding.

17 The May 20th submittal was the submittal that
18 was the permit application in this case: We submitted
19 specifically 17 million in financial assurance with a

20 cover letter that said that it was being submitted under
21 protest and that we reserve the right to contest the
22 reduction of that amount. There was some questions back
23 from the Agency; and on June 5th and July 31st of 2000
24 respectively, those questions were answered. There were

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1 no changes in the design elements of the application,
2 just some augmentation, if you will, of some of the
3 information.

4 The permit was issued pursuant to our agreed
5 procedure, except in one important respect. I'm not
6 casting any aspersions, but due to the time constraints
7 involved, CLC was not allowed even a single minute to
8 review the draft permits. That's important because some
9 of the conditions that are under protest today could
10 have very, very easily -- and I think the testimony will
11 show -- been resolved if we were just given an
12 opportunity to say, wait a minute, we didn't expect to
13 see this. How about we do this instead. We never got
14 that opportunity. The permits were to be issued August
15 the 4th; they came through on my fax machine at 4:49
16 p.m., August the 4th, signed. And that's the first time
17 we saw them.

18 Because the permits contain certain conditions
19 or denial points that were either contrary to the
20 applications, not in accordance with or not required by
21 the existing regulations or which CLC could not live

22 with, in addition to the financial assurance issue, we
23 appealed these other conditions. Out of the several
24 hundred conditions contained in the permits -- eight on

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1 A, four on B -- I'd like to just very briefly identify
2 the issues that are -- the matters that are at issue in
3 this case. I'm going to start with Parcel A, which is
4 Case No. 01-48. First condition is that the petitioners
5 be restricted from pumping groundwater from wells T2 and
6 T4. Our position is that those are the best and
7 appropriate means to do so, and we'll present expert
8 testimony to support that.

9 The second condition is that the Petitioners
10 were restricted from using only a one-day leachate
11 storage tank and required to supply a five-day leachate
12 storage tank. Our position is going to be that the
13 regulations don't require any storage tank and that we
14 offered a one-day storage tank as a compromise and that
15 certainly would be appropriate.

16 The third condition is that the Petitioners are
17 restricted from depositing any unpermitted refuse in the
18 landfill or putting any refuse at all in the landfill
19 until the separation layer between the old waste and the
20 new waste is constructed. There is a real problem with
21 that. It conflicts with the approved construction plan
22 which calls for the placement of waste to build the very
23 separation layer that they're talking about. The next
24 condition applies to the timing of the construction of

1 various leachate control methods for the two landfills.
2 We were required to do these things by February 1st,
3 2001. We're just asking for more time to do that.

4 The next condition applies to the horizontal
5 groundwater interceptor trench, and we're saying we
6 shouldn't have to build that because T2 and T4 are the
7 appropriate methods, not the trench.

8 The next condition relates to the same issue.
9 The next condition is really something that kind of, I
10 think agreed between the parties, impossible to follow.
11 The condition required us to maintain leachate levels at
12 below the static groundwater level. And I think you'll
13 hear the Agency get up on the witness stand and admit
14 that 95 percent of the landfill is above the static
15 groundwater level. And, therefore, with respect to 95
16 percent of the landfill, that condition is impossible to
17 comply with.

18 The final condition on Parcel A relates to the
19 financial assurance and the reduction from 17 million
20 down to 7 million.

21 Parcel B conditions are very simple. Parcel B
22 permit is 01-49, and the conditions at issue in Parcel B
23 are the five-day leachate storage, which is the same
24 issue as in Parcel A that the schedule to complete

1 leachate removal systems is too tight and that we would
2 like to have more time. Both of those are similar to
3 the conditions in A. That the financial assurance
4 should be reduced from 17 million down to 7 million --
5 identical condition, as it may. And the only thing in B
6 that's different, and it's really a crucial issue in
7 this case, is that there is without question some
8 overfill material in Parcel B. Parcel B was filled
9 higher than it should have been. Throughout the
10 proceedings, the permit procedures, we had always
11 requested the option and time to obtain local siting
12 from the City of Morris to allow that material to stay
13 in place as opposed to just dig it up and move it across
14 the public highway to Parcel A. When the final permit
15 came down, we were given six months to do that -- simply
16 not enough time. And they said move it in six months or
17 increase the financial assurance. And what we're asking
18 for is a third option -- a little bit more time to allow
19 it to stay in place because it only makes perfect common
20 sense and perfect environmental sense, to leave it right
21 where it's at.

22 Those are the contested conditions. Based on
23 the evidence that's going to be presented in this
24 hearing, Mr. Halloran, you will learn that the Agency

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1 did a hasty and, in some cases, just a plain sloppy job,
2 in including the contested conditions from the denial
3 points. You'll learn that the Agency personnel lacked

4 the sufficient expertise to properly assess some of the
5 conditions, so they just punted and denied or included
6 conditions that they were not expert enough to
7 understand. You will learn that the people making the
8 ultimate decisions never read a single word of either
9 application and have never even visited the site.

10 You will learn that the permits were issued at
11 the last minute without an opportunity for CLC to review
12 them. And if we had that opportunity, many of the
13 issues that we're talking about today we wouldn't be
14 talking about. And you will find that the professionals
15 from Andrews Environmental Engineering -- Mike
16 McDermont, Van Silver, Andy Limmer, Marion Skouby --
17 their testimony clearly supports the appeal, the issues
18 in favor of CLC.

19 You will find that Mayor Feeney's testimony
20 clearly supports the appeal points on leasing the waste
21 in place versus moving it across the street and
22 reduction of the financial assurance based upon the City
23 of Morris's commitment to treat this leachate. You will
24 find that if you grant every single issue in this appeal

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1 in favor of CLC, absolutely no environmental harm will
2 occur. And, in fact, the reverse: If you don't give
3 the relief on some of these points, the risk of
4 environmental harm is greater as the permit exists today
5 than it would be if you changed it.

6 I know that you and the Board members, the
7 staff members that are here, will listen carefully.
8 Once you've heard the evidence, I am confident that you
9 will agree that CLC is entitled to the relief on the
10 points that are requested in this appeal.

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

13 I want to note before Mr. Kim does his opening
14 that Mr. Anad Rao -- he's an employee of the Illinois
15 Pollution Control Board technical unit -- has entered
16 the hearing room.

17 With that said, Mr. Kim?

18 MR. KIM: Thank you.

19 Before I begin my statements, I would like to
20 inform the hearing officer I think there are a few
21 preliminary matters that are not addressed by any
22 motions filed by other parties, but I think that there
23 are -- there's at least one preliminary matter that
24 after the conclusion of my statements I think we should

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1 probably discuss. And that concerns how to -- how you
2 would like us to handle the proposed -- in terms of an
3 evidence deposition, that we would like to offer up.
4 But we can get to that after opening statement.

5 OPENING STATEMENT ON BEHALF OF RESPONDENT:

6 MR. KIM: The position of the Illinois EPA in
7 this case is fairly straightforward. Just as the final
8 decision issued by the Illinois EPA frames the issues on

9 appeal, the application and information submitted to the
10 EPA which leads up to the issuance or denial of a
11 permit, also, for us, frames our issues. We have to
12 make our decisions based upon information included
13 within the permit application submitted by the
14 permittee. There are times where we might look at
15 guidance material or reference materials to assist us in
16 some background, but, essentially, we have to work with
17 the information that is presented to us. What happens
18 is that sometimes, as is the case here, we find
19 applications that are submitted that, based upon our
20 review and our applications of the underlying
21 regulations, do not adequately demonstrate compliance
22 with those regulations, do not include all elements
23 necessary to demonstrate compliance of those
24 regulations. In effect, it comes down to what the

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1 standard is that the Illinois EPA has to weigh before we
2 issue a permit, which is does the issuance of that
3 permit result in a violation of the Environmental
4 Protection Act or the regs promulgated thereunder --
5 regulations promulgated thereunder. If it does, we
6 cannot issue the permit. Similarly, if the permit
7 application is sufficient to demonstrate compliance but
8 there are some aspects of the application which must be
9 adjusted or modified to put the applicant in the best
10 position possible to maintain or demonstrate compliance.

11 And if we can't make a decision on the permit that will
12 reach that conclusion, then we will do so because, there
13 again, that's our obligation. We need to make sure that
14 the application that's submitted to us demonstrates
15 compliance with the Act and the regulations, we need to
16 make sure that the permits that we issue, we do issue
17 them. What we have in this case is a situation where
18 the permit application submitted to us it did not do
19 that -- it did not demonstrate, to the fullest extent
20 possible, compliance on some of the regulations that
21 we've got before us. Through the course of Mr. LaRose's
22 opening statement, which I have to admit was very
23 comprehensive -- and, obviously, I'm not going to call
24 Mr. LaRose to the stand and swear him in. But I

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1 certainly would expect that any factual statements that
2 he made that are not eventually supported or repeated
3 back through testimony from witnesses would obviously be
4 taken as simply that -- argumentative statements as
5 opposed to factual statements.

6 But regarding the conditions that are at issue
7 here, I think that what you have is basically, out of
8 the twelve conditions that have been contested between
9 the two permits, there is one condition in particular
10 which concerns how best to pump groundwater from the
11 landfill, whether it's through the use of deep wells T2
12 and T4 or through the use of a horizontal groundwater
13 collection trench, that issue -- resolution of that

14 issue -- as Mr. LaRose alluded, sort of dictate how
15 several other conditions might be addressed as well.
16 Either those conditions will essentially fall by the
17 wayside, or they will come into play and then the
18 substance of those issues will have to be looked at in
19 more detail.

20 But as we will present testimony, the problems
21 that were encountered by the Agency were insufficient
22 information to demonstrate compliance, missing
23 information to set out time lines and milestones to
24 achieve compliance, and in some situations -- or in one

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1 situation in particular -- simply a lack of any request
2 to have the Agency make a decision on an issue. And
3 this is the adjustment of the cost estimate for
4 financial assurance. So that in the absence of that
5 request, there was no decision made, and the Agency
6 really has nothing to point to in the permit or in the
7 permit application that demonstrates that there was ever
8 any request made. In short, each of the conditions --
9 and I will go through every single one -- but each of
10 the conditions will be demonstrated that they were
11 necessary -- the inclusion of those conditions in the
12 permits were necessary to either maintain compliance
13 with identified regulations or to ensure that the
14 landfill's operation in the future and closure
15 operations in the future would be in compliance and

16 would be consistent with the -- in Part A of the
17 regulations.

18 That's my opening statement. The other items
19 that I wanted to address, one is what Mr. LaRose alluded
20 to. There is one condition that is being contested that
21 the Illinois EPA is basically, at this point, stating
22 that we're not really going to contest that. We'll
23 leave it to the Board how they would like us to best
24 address that. But at the first opportunity given, we

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1 will address that. The condition that I'm referring to
2 specifically is Condition No. -- Roman numeral 8-27 of
3 the Parcel A permit. And the --

4 MR. LAROSE: On Page 42, 8-27.

5 MR. KIM: The Illinois EPA, at this point,
6 agrees that the wording, in hindsight, upon further
7 review, the wording of the condition does not create a
8 situation that's going to be reasonable to expect
9 compliance from the landfill. And we are willing to
10 revise that condition, either through, if asked to,
11 through a request filed by Community Landfill to revise
12 the application or upon the direction of the Board. At
13 this point, we do not expect to present testimony on
14 that condition, and we will essentially leave it to the
15 Board as to how they would like us to address that or
16 correct that.

17 The other issue that I wanted to discuss was by
18 agreement through the parties, then -- and Mr. LaRose

19 can obviously comment on this as well -- one of the
20 depositions taken was of Andrew Limmer. For convenience
21 to Mr. Limmer and because the deposition that was
22 taken -- I believe it was taken to the satisfaction of
23 both parties -- at the time, I think it was probably --
24 the deposition was taken more as a discovery

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1 deposition -- but since that time, I believe Mr. LaRose
2 and I have agreed that we would like to use the
3 deposition as an evidence deposition and, therefore, use
4 portions of the transcript as it provided through
5 testimony.

6 I also believe -- and Mr. LaRose can correct me
7 on this -- what we were going to do was select portions
8 of the testimony -- of the deposition -- that we would
9 like to use for our purposes. And I don't know how you
10 would like us to do that. If you'd like us to -- I have
11 page numbers and line numbers and things like that, but
12 I can recite it into the record if you'd like. I can't
13 read into the record all his testimony because it's
14 several pages; it's quite large. But if you'd like me
15 to do that or if you'd like me to do that, we can do
16 that. Or if you think there's a better way, I'm
17 certainly open to suggestions.

18 HEARING OFFICER HALLORAN: Mr. LaRose?

19 MR. LAROSE: And I have a suggestion.

20 The way that it's done typically in the Circuit

21 Court and Federal Court, what I had in mind was that
22 we'd actually put -- we can use Miss Roque,
23 Mr. McDermont, anybody -- put them on the witness stand,
24 and I would stand up and actually play act with them,

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1 ask the questions, the deposition in there, have them
2 give the answers that I want to get of the portions of
3 the dep that I would use. Mr. Kim then would stand up
4 and read the questions and ask for the answers. And it
5 gives a question and answer format. It's probably a
6 half an hour total. I mean, I think we can probably
7 read the whole dep in half an hour, maybe 20 minutes.
8 And it gives, I think, a better appearance, at least in
9 the hearing room, of what's being presented. Certainly,
10 if we just gave you the pages, they'd be in the record.
11 But that's the way that I suggest we proceed, and I
12 don't think it will belabor the hearing too much, maybe
13 a few extra minutes, to have the testimony read that
14 way.

15 HEARING OFFICER HALLORAN: Any objection?

16 MR. KIM: I guess I do because the Board, in
17 reviewing the transcript, if we do this the way
18 Mr. LaRose has suggested, it's not going to be any
19 different for them than if they would with the
20 transcript of Mr. Limmer. As a matter of fact, it's
21 probably going to be more accurate. Instead of having
22 someone read his testimony, if they simply just use the
23 portions of the testimony by Mr. Limmer, read them,

24 along with Mr. Limmer's corrections and just simply take

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1 that as evidence. And the other reason is it might take
2 a little bit longer. I mean, I can tell you right now
3 that the first 53 pages of his deposition, I would like
4 included among some others. I don't really see any
5 purpose in spending our time having someone simply read
6 53 pages of deposition into the record when we can
7 simply provide that line-by-line identification to the
8 Board. It would make this go a lot quicker.

9 HEARING OFFICER HALLORAN: Mr. LaRose, I would
10 have to agree with Mr. Kim. I think the Board is more
11 than competent to read the deposition in lieu of play
12 acting. But I think we'll do it that way. Mr. Kim or
13 Mr. LaRose could read the page numbers and the line into
14 the record when the time comes. We'll do it that way.

15 MR. KIM: When would you like us to do that?

16 HEARING OFFICER HALLORAN: Well, we could do it
17 now if you want to do that, or is it your offering or --

18 MR. KIM: Well, I think we're both -- he was a
19 third party witness. Mr. Limmer used to work for
20 Andrews Environmental, which is the consulting company
21 that prepared the permit applications. Since that time,
22 he's two jobs removed. And so he's -- I think there are
23 portions I'm sure Mr. LaRose would like to take from
24 that testimony. There are portions I'd like to take.

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1 We can give it to you all at once. We can give it to
2 you at the beginning of each of our respective cases,
3 whatever.

4 HEARING OFFICER HALLORAN: Let's do that -- at
5 the beginning of each respective case-in-chief.

6 MR. LAROSE: Could I do it in my case-in-chief
7 when I want to do it in my case-in-chief? Do I have to
8 do it at the beginning?

9 HEARING OFFICER HALLORAN: No. You can do it
10 when you so choose.

11 MR. LAROSE: And it probably will come -- I was
12 thinking maybe towards the end of the day. We're going
13 to maybe have -- I was thinking we would have half an
14 hour, 45 minutes lag time, rather than start a fresh
15 witness. We would do that at the end of the day. And I
16 don't have any objection at that time, even though John
17 hasn't started his case, if he wants to read his
18 portions at that time, too. So we get them out of the
19 way by the end of today.

20 HEARING OFFICER HALLORAN: That's fine. That's
21 the way we'll do it.

22 Mr. LaRose, do you want to call your first
23 witness?

24 MR. LAROSE: Yes. I'm going to call

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1 Mr. McDermont for some introductory and background
2 testimony only, as long as there is no objection to

3 that. And then he will be coming back later in the
4 hearing for his substantive and opinion testimony.

5 HEARING OFFICER HALLORAN: Take the stand, Mr.
6 McDermont, please. Thank you.

7 The court reporter will swear you in.

8 (Whereupon, the witness was duly sworn.)

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

12 DIRECT EXAMINATION

13 BY MR. LAROSE:

14 Q. Could you state your name for the record,
15 please?

16 A. My name is Mike McDermont.

17 Q. And your employment, sir?

18 A. Employed by Andrews Environmental Engineering
19 in Springfield, Illinois.

20 Q. Sir, I'm going to hand you what's been
21 previously marked and I believe what's been previously
22 used at your deposition as Exhibit G.

23 (Document tendered.)

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1 BY MR. LAROSE:

2 Q. Could you tell the hearing officer what that
3 is, please?

4 A. Yes.

5 THE WITNESS: Mr. LaRose has handed me a copy
6 of my curriculum vitae, marked Exhibit G.

7 BY MR. LAROSE:

8 Q. And, sir, could you just briefly go over your
9 educational qualifications, please? You don't have to
10 read the whole thing because we will have that document
11 in the record.

12 A. I obtained a bachelor of science in
13 environmental engineering from Purdue University in
14 1982.

15 Q. I am listening to you. Go on.

16 A. Upon graduation, I was employed by City Water,
17 Light and Power in Springfield, Illinois, for four
18 years, and in 1987, began employment with Andrews
19 Engineering in Springfield as well. My current title is
20 a senior project engineer. I am a licensed professional
21 engineer in Illinois. I'm also a land surveyor in
22 training, licensed in Illinois.

23 Q. Sir, do you have any other professional
24 affiliations?

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1 A. I'm a member of the National Society of
2 Professional Engineers, the Illinois Society of
3 Professional Engineers, Illinois Professional Land
4 Surveyors Association, American Society of Civil
5 Engineers, Solid Waste Association of North America and
6 a member of the Purdue Alumni Association.

7 Q. What was your involvement in the -- what has

8 been your involvement in the Community Landfill --
9 Morris Community Landfill permitting process?

10 A. My involvement in the permitting process, I was
11 the project manager. The first application was prepared
12 and submitted to the Agency in August of 1996. Probably
13 through most testimony, we refer to that as the August,
14 '96, or the '96 application. After various submittals
15 and upon final action by the Agency of that application,
16 it was denied. And on May 8th, 2000, we resubmitted a
17 consolidated permit application utilizing all the design
18 elements of the August '96 application.

19 Q. So is it fair to say that as far as Andrews
20 Environmental Engineering goes, you were the person
21 ultimately responsible for both the '96 application and
22 the 2000 application?

23 A. I was the senior project manager in charge of
24 the application. Various members of our technical staff

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1 participated in preparing application materials
2 underneath me.

3 Q. Did you also participate in field work at the
4 facility?

5 A. Yes. I had performed field work at the
6 facility since 1988 and predominantly responsible for
7 their consulting needs since that time. It was a lapse
8 in there where most of the activities they were doing
9 were assigned to junior staff, based on the nature of

10 the activities.

11 Q. Since 1988, could you estimate how many times
12 you were physically at Community Landfill performing
13 engineering functions?

14 A. Under oath, probably not. But in general, it
15 would be well in excess of 100, if not a lot more than
16 that.

17 Q. Sir, your professional experience on your
18 curriculum vitae, which is Exhibit G, identifies some
19 additional solid waste facilities that you've done some
20 work for. You have worked for other landfills, then?

21 A. I have worked for quite a few landfills in the
22 State of Illinois, yes.

23 Q. Are they all listed on your C.V., which is
24 Exhibit G?

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1 A. Absolutely not.

2 Q. Can you think of any others off the top of your
3 head?

4 A. Off the top of my head, I worked on a landfill
5 in Belleville, a landfill in DeKalb, a landfill in
6 Streeter, another landfill in Streeter, a landfill in
7 Oglesby, a landfill in Grayslake, another landfill in
8 Decatur, a landfill in Clinton, a landfill in Danville,
9 another landfill in Danville, a landfill in Hoopston, a
10 landfill in Milford, a landfill in Donovan, a landfill
11 in Litchfield, two landfills in Springfield, a landfill
12 in Warsaw, a landfill in Pittsfield, a landfill in

13 Tazewell, Brown County. I'm sure there's still more.

14 Q. Were these all professional engineering
15 services or consulting services that you performed for
16 these various --

17 A. Yes, sir.

18 MR. LAROSE: With that, Mr. Hearing Officer, I
19 move admission of Exhibit G -- Mr. McDermont's
20 curriculum vitae.

21 HEARING OFFICER HALLORAN: Mr. Kim?

22 MR. KIM: No objection.

23 HEARING OFFICER HALLORAN: So granted.

24 Petitioners' Exhibit G is admitted into

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1 evidence.

2 (Whereupon, Petitioner's Exhibit
3 No. G was admitted into evidence.)

4 BY MR. LAROSE:

5 Q. Sir, are you familiar with the Morris Community
6 Landfill configuration?

7 A. Yes, I am.

8 Q. I'm going to show you and hopefully show
9 everybody else what we've previously marked as
10 Exhibit Z.

11 MR. LAROSE: I have this in a smaller version,
12 but if everybody can see this, I won't worry about
13 getting the smaller version out. Can everybody see
14 that?

15 MR. KIM: Do you have that on 8 1/2 x 11
16 sheets?

17 MR. LAROSE: I have it, I think, on 11 x 17.

18 MR. KIM: Can I see a copy of that?

19 MR. LAROSE: Sure. I only have one in color,
20 which I'm going to graciously provide to you. Do
21 you want a smaller one?

22 HEARING OFFICER HALLORAN: I'm fine. I can see
23 it, Mr. LaRose. Thank you very much.

24 MR. RAO: Excuse me. Can I have one?

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1 MR. LAROSE: You certainly may. I don't have a
2 color one. I just have a black and white.

3 MR. RAO: That's all right.

4 MR. LAROSE: If you're going to ask me for
5 copies of every one of these, we're going to be in
6 trouble. But I think we got it. I think I have
7 four copies of everything. Mr. McDermont asked me
8 if I was going to pass them out to the audience, and
9 I told him it wasn't show-and-tell, and he said,
10 yeah, it is.

11 HEARING OFFICER HALLORAN: For the record, that
12 was Mr. Rao that was provided a copy of that.

13 MR. LAROSE: To the extent I have copies, they
14 can all have them. But I only have four of
15 everything.

16 BY MR. LAROSE:

17 Q. Mr. McDermont, referring to Exhibit Z -- is

18 it Z?

19 Referring to Exhibit Z, what is that?

20 A. This is a color quadrangle map that takes the
21 USGS seven and-a-half minute topographic series maps
22 entitled, "Morris, Lisbon, Utica and Cole City
23 Quadrangles," combines them all together and shows the
24 Morris Community Landfill Parcel A and Parcel B, which

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1 are labeled, and the surrounding area.

2 Q. Can you pull out that fancy little pointer that
3 I gave you and show everybody where this Parcel A and
4 Parcel B is? Do I have it?

5 A. Yes, sir.

6 Q. In my pocket?

7 A. I would presume.

8 The landfill is located on the east side of the
9 city -- this is the City of Morris. Parcel B is on the
10 west side of a division road, which is referred to as
11 Ashley Road. Parcel A is on the east side.

12 Q. Okay. In relation to anything that appeared in
13 the permit application and of course that appears in the
14 record in this case, was there something like this in
15 the record?

16 A. This exhibit was previously provided into the
17 record for Parcel A and Parcel B. The record copy
18 contains a little bit more information, such as required
19 setback radiuses and things like that. We have taken

20 some of that information off to make it clearer to read
21 and review.

22 Q. And you added something, too, didn't you?

23 A. We added the labels Parcel A and Parcel B to
24 this drawing.

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1 MR. KIM: Before you go further, could we get a
2 page citation into the record as to where this
3 document exists?

4 HEARING OFFICER HALLORAN: Sure.

5 Mr. LaRose?

6 MR. LAROSE: Hold on. I don't have a page
7 citation for the record.

8 THE WITNESS: If you bear with me, I can get it
9 for you real quick.

10 MR. LAROSE: Are you contesting that this is a
11 map of the facility that was included in the record?

12 MR. KIM: No, but if there's going to be a
13 statement made that this is included somewhere on
14 the record, I think we should identify where in the
15 record this is.

16 HEARING OFFICER HALLORAN: We'll go off the
17 record momentarily until Mr. McDermont finds it.

18 (A short break was had.)

19 HEARING OFFICER HALLORAN: We are back on the
20 record after about a 15-minute break.

21 MR. LAROSE: While we were off the record,
22 Mr. McDermont was kind enough to look at the

23 record -- Mr. McDermont was kind enough to look at
24 the record to see the Bates pages from the record

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1 from which Exhibit --

2 Z, is it, Mike?

3 THE WITNESS: It is Z, yes, sir.

4 MR. LAROSE: -- Z was derived.

5 BY MR. LAROSE:

6 Q. And could you read those pages into the record,
7 please?

8 A. The Bates pages for the color location map as
9 we have called it here are we found it marked in Parcel
10 B Application, Volume 1, Bates Page 092. And it also
11 appears in Parcel A's application, but that page was not
12 stamped with a number.

13 Q. It never -- no, you're wrong. It's stamped at
14 a different place. It's 0097 in the Parcel A
15 Application, Volume 1.

16 Sir, the areas surrounding the landfill, is
17 there another landfill close by?

18 A. North of Parcel A, which is on the east side of
19 the road, north of the railroad track here, is a
20 landfill called Environ-Tech.

21 Q. So just north of the Parcel A parcel and also
22 on the east side of Ashley Road?

23 A. That is correct. It is also in the City of
24 Morris.

1 MR. LAROSE: Sir, I would -- Mr. Halloran, I
2 would move for admission of Exhibit Z into the
3 record, please.

4 HEARING OFFICER HALLORAN: Mr. Kim, any
5 objection?

6 MR. KIM: Not so much an objection, but a
7 statement, just to clarify that this exhibit was not
8 submitted in the permit application in this form. I
9 understand that there's a sort of a derivative from
10 what was in there. And if this is simply for
11 demonstrative purposes, that's fine. But I just
12 want it understood for the record that we did not
13 have this document in its present form when we made
14 our permit decision.

15 HEARING OFFICER HALLORAN: So noted.

16 Petitioners' Exhibit Z will be admitted.

17 (Whereupon, Petitioner's Exhibit

18 No. Z was admitted into evidence.)

19 BY MR. LAROSE:

20 Q. Sir, do you understand the make-ups of Parcel A
21 and B from the 100 or so times that you've been out
22 there?

23 A. Yes, I do.

24 Q. I'm going to show you what we previously marked

1 and blown up as Exhibit Y.

2 MR. LAROSE: Can everybody see that? Can you
3 guys see that? I'm going to hand Mr. Kim a copy.

4 (Document tendered.)

5 HEARING OFFICER HALLORAN: Thank you.

6 MR. LAROSE: You're welcome.

7 BY MR. LAROSE:

8 Q. Mr. McDermont, just so we don't have any
9 confusion on this document, this isn't exactly the way
10 this appeared in the permit application, either, is it?

11 A. No, it is not.

12 Q. The Parcel A side of this document -- correct
13 me if I'm wrong -- appears in Parcel A, Volume 1, Page
14 0114, correct?

15 A. That is correct.

16 Q. And the Parcel A side of this document is
17 exactly as it appears in Parcel A, Volume 1, Page 0114,
18 correct?

19 A. No, that is not correct.

20 Q. What's the difference?

21 A. The difference is for purposes of this drawing,
22 this is a -- we started with the existing condition
23 drawing, which is B3-01. It's the Andrews Engineering
24 drawing number on it. To make it more presentable for

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1 these proceedings, we eliminated the two-foot
2 topographic contour from it and just plotted it with a
3 ten-foot contour, took off a few other items that are

4 required by Board regulations for submittal, again, just
5 to make an easier-to-understand display for this
6 proceeding.

7 Q. In other words, to show everybody in this
8 hearing room and ultimately the Board members that will
9 decide this case, a configuration of both parcels
10 together?

11 A. That is absolutely true.

12 Q. The Parcel B side of this Exhibit Y appears in
13 Parcel B, Volume 10, Page 110, correct?

14 A. Appears in Parcel B, Volume 1, Page 110, yes.

15 Q. And is it exactly the same as it appears in
16 that or have you made some changes to that?

17 A. Again, we have made similar changes to that.
18 We've taken off the two-foot contour interval, we've
19 taken off some of the other miscellaneous notes and just
20 basically shown. As with Parcel A and Parcel B, we're
21 trying to illustrate the property boundary, the waste
22 boundary, monitoring wells, the location of the
23 building. I believe the fences, ditches and ponds are
24 on there. But, again, the major point of our

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1 illustration is to show that Ashley Road runs between
2 the two facilities and that north of Parcel A is the
3 Environ-Tech Landfill, which we talked about previously.

4 MR. LAROSE: With those caveats and testimonial
5 changes to what appeared on those pages of the
6 record, Mr. Hearing Officer, I would offer Exhibit Y

7 into the record.

8 HEARING OFFICER HALLORAN: Mr. Kim?

9 MR. KIM: Again, no objection, but with the
10 same comments. Just so it's noted that this is not
11 the exact form that was in the permit application
12 and that this is, I presume, being used primarily
13 for demonstrative purposes.

14 HEARING OFFICER HALLORAN: So noted.

15 Petitioners' Exhibit Y will be admitted.

16 (Whereupon, Petitioner's Exhibit
17 No. Y was admitted into evidence.)

18 BY MR. LAROSE:

19 Q. Sir, I'm going to show you what we have
20 previously marked as Exhibit X and ask you to take a
21 look at that.

22 (Document tendered.)

23 BY MR. LAROSE:

24 Q. While you're taking a look at that, I'm going

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1 to hand a copy to Mr. Kim, a copy to Mr. Halloran and a
2 copy to Mr. Rao.

3 What is that, Mr. McDermont -- Exhibit X?

4 A. Exhibit X, this is the existing condition
5 drawing that was provided in the permit application for
6 Parcel A east of Ashley Road.

7 Q. Is this the identical drawing as it appears on
8 Parcel A, Volume 1, Page 0014 -- or 114?

9 A. 114. This is exactly that drawing. For a
10 brief overview, you can see this is the ten-foot contour
11 that appeared on the other drawing. This is Ashley Road
12 running through here. Environ-Tech Landfill is up here.
13 You can see that we took off the cross-sections that
14 were on the other drawing. We took off the red, labeled
15 every 500 feet running north and east and basically just
16 cleaned it up a little bit from the previous exhibit for
17 presentation purposes from this exhibit which was
18 identified in the record.

19 Q. Sir, when you say this is a drawing of the
20 existing waste record, what do you mean?

21 A. This is a drawing showing the conditions that
22 existed in 1996 of Parcel A. And what it shows you is
23 that the land slope is gently sloped leading to the
24 perimeter around the facility. This Parcel, as

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1 previously used by the City of Morris to accept solid
2 waste and was an active landfill up until the early
3 1980s.

4 Q. Now, when you say these are the existing
5 conditions in '96, do you mean that that's prior to the
6 reactivation of the site and the operation of it by CLC?

7 A. That's exactly what I mean.

8 Q. So that shows the existing condition of what I
9 termed in my opening statement as historical fill?

10 A. Yes, sir.

11 Q. What if any liner system or collection

12 systems -- leachate collection systems -- existed on
13 that Parcel in '96 and from the time that it was
14 inactive in the late 70s, early 80s, until '96?

15 A. There is no known documentation of a landfill
16 invert liner on the facility. There are currently -- in
17 1996, there was no active leachate collection or removal
18 system at the facility.

19 Q. And the 1996 application sought to change that,
20 if you will, correct?

21 A. Yes. The 1996 application sought to add gas
22 monitoring probes, leachate collection, additional
23 groundwater monitoring wells, leachate removal devices,
24 sought to add leachate sampling points, leachate storage

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1 tank, large sedimentation pond, larger grain ditches
2 around the perimeter.

3 Q. Without belaboring -- because I don't want to
4 get into the substantive areas. I'm just trying to give
5 the Board, now, an overview of what I'm talking about,
6 were you involved in putting in the 45-day period that
7 the court gave us to submit the sig mod on August the
8 5th, 1996. Were you involved in that process?

9 A. Yes, I was.

10 Q. Did you get any sleep in the 45 days
11 (Laughter)?

12 A. Very little.

13 Q. You submitted the application August 5th, 1996,

14 correct?

15 A. That is correct.

16 Q. What happened in general in interaction between
17 your office and the Agency over the course of the next
18 three years, bringing us up to August of 1999?

19 A. Generally speaking, we provided our application
20 to the Agency. They looked at it and made various
21 comments upon it. In some cases, we had meetings about
22 those comments. We sought to address the elements they
23 identified as requesting more information on. We
24 provided that to them. In some cases, we may have

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1 needed an extension of time based on the amount of
2 information they needed. And other times, they needed
3 an extension, and we provided it to them on behalf of
4 the client.

5 Q. So there were periods of time where there were
6 either meetings or informational requests. You're
7 responding to those; and at the same time, statutory
8 deadlines are being extended so that you can do your job
9 and the Agency isn't forced to make a decision one way
10 or the other, correct?

11 A. That is correct.

12 Q. How many, approximately, resubmittals or
13 addendums or additional submittals were there from the
14 original '96 app until the time that the app was
15 ultimately denied in September of 1999?

16 A. I believe there was approximately 24 submittals

17 for Parcel A applications and 24 for the Parcel B
18 application as well.

19 Q. When we got to the summer of 1999, what was
20 your impression of whether the Agency was going to grant
21 the permit with conditions or deny the permit?

22 A. It was my understanding that the Agency was
23 going to grant the permit.

24 Q. With conditions?

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1 A. I'm sorry. With conditions, yes.

2 Q. And your understanding at the time was based on
3 financial assurance numbers of what?

4 A. \$17 million.

5 Q. Approximately?

6 A. Approximately. And that is a total. We're
7 going to use that throughout this proceeding, but that
8 is a total of Parcel A and Parcel B cost estimate from
9 the closure plans.

10 Q. Of the \$17 million, what if any of that number
11 was attributable to treatment of groundwater condensate
12 and leachate over the extended period of time that was
13 called for by your remediation plan?

14 A. Approximately \$10 million of the total \$17
15 million is due to the 100-year treatment of groundwater
16 for Parcel A and the treatment of gas condensate and
17 leachate removed from Parcels A and B.

18 MR. KIM: Before we go any further, we're

19 getting close to an area -- I assumed Mr. McDermont
20 is being presented, as Mr. LaRose stated, just to
21 sort of provide an overlay of what's going on. He's
22 now sort of beginning to touch on some issues that I
23 presume the mayor is going to testify to. If he
24 does get into the substance of those or even dances

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1 around the substance, I think it would be
2 appropriate, pursuant to the scope of the motion to
3 exclude, that the mayor leave the hearing room until
4 he concludes those discussions.

5 MR. LAROSE: Not correct. The City of Morris
6 is party in this case. The mayor is the party's
7 representative. The mayor has every right to sit
8 here every minute of this hearing, even though he
9 won't.

10 HEARING OFFICER HALLORAN: Mr. Kim, anything
11 further?

12 MR. KIM: No.

13 MR. LAROSE: We're not going to go much further
14 into this issue. I'm just trying to lay the
15 groundwork.

16 HEARING OFFICER HALLORAN: Okay.

17 BY MR. LAROSE:

18 Q. Mr. McDermont, were you involved in a general
19 sense with meetings and negotiations with the City of
20 Morris about this treatment of leachate issue?

21 A. Yes, I was.

22 Q. And as a result of those meetings, did
23 Community Landfill and the City of Morris enter into an
24 agreement regarding the treatment of leachate?

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1 A. Yes, they did.

2 Q. And that agreement, in basics, was for them to
3 substantially reduce the cost of treating the leachate
4 at the POTW and, therefore, reduce the cost that would
5 be required for financial assurance, correct?

6 MR. KIM: I'm going to object. I mean, I
7 understand you're trying to do this quickly, but
8 these are extremely leading questions.

9 MR. LAROSE: I'll withdraw and ask him in a
10 nonleading fashion.

11 BY MR. LAROSE:

12 Q. What was the purpose of the agreement, sir?

13 A. The purpose of the agreement was to provide CLC
14 with a reduced cost for leachate treatment based on
15 their responsibility of owning the landfill and the
16 historical waste that was placed in it.

17 Q. What if anything did you do after the agreement
18 was reached with respect to an amendment of the
19 application?

20 A. Based on reaching that agreement, we were able
21 to prepare a closure plan, post-closure care plan and
22 cost estimate for the Parcel A application, for the
23 Parcel B application and submit that to the Agency.

24 Q. And how did that differ from the prior 17 --

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1 approximate 17 million closure and post-closure care
2 cost estimate?

3 A. Basically, it reduced the total cost estimate
4 by approximately \$10 million.

5 Q. Was that submitted to the Agency?

6 A. That was submitted to the Agency.

7 Q. Approximately when?

8 A. August, 1999.

9 Q. And what was the agency's response to that?

10 A. The agency's response to that apparently
11 resulted in the denial of Parcel A and Parcel B
12 applications in September of '99.

13 Q. Now, we appealed that denial, correct?

14 A. That is correct.

15 Q. Are you aware of or were you involved with a
16 procedure that was established to attempt to resolve
17 that appeal, result in the issuance of the permit and
18 just argue about the financial assurance?

19 A. Yes, I am.

20 Q. Did we enter into such a procedure without
21 going into the details of it with the IEPA?

22 A. That's my understanding.

23 Q. As a result of that procedure, what if anything
24 did you do in May of 2000 in furtherance of the

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1 agreement that we had with the IEPA?

2 A. In accordance with the agreement, we took the
3 Parcel A and Parcel B application, which had been
4 pending over the three-year period with various
5 submittals of new information, and we attempted or we
6 consolidated the application into a working document for
7 Parcel A and Parcel B. We submitted that application on
8 May 8th, 2000.

9 Q. And the submittal date was in accordance with
10 some things we had worked out with the Agency in terms
11 of timing, correct?

12 A. Generally speaking, yes.

13 Q. Did you have any follow-up conversations
14 between the date that the permit application was
15 submitted on May the 8th and the date that the permits
16 were issued on August the 4th with the IEPA?

17 A. Yes, I did. And in at least one instance, they
18 asked for an additional piece of information, and that
19 was submitted to them. It's identified in the Parcel A
20 permit and the first item that we were requested to come
21 attend a meeting to make sure that they clearly
22 understood our intent on our consolidation of the
23 application.

24 Q. Did you have a couple of follow-up submittals

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1 to the May 8th application?

2 A. Generally speaking, I believe Parcel A had some

3 additional information sent to it that should have been
4 included in the original copy. And the memorandum of
5 the meeting that they requested us to attend was
6 provided to them, too.

7 Q. What was the goal of the submittal in May the
8 8th in terms of your providing the Agency with a package
9 that they could ultimately grant the permit on?

10 A. Our goal was to take the information that had
11 been prepared over the course of three years and
12 consolidate it, if you will -- provide a Reader's Digest
13 version of it so that it was much more concise. The
14 design elements of the 2000 application were to remain
15 the same as the 1996 application, except for some of the
16 points that were identified in the Parcel A and Parcel B
17 denial that we received in September of '99.

18 Q. And what were those points that you were
19 seeking to address by the May application?

20 A. Generally speaking, the largest item was the
21 use of an alternate remediation corrective system that
22 we'd originally proposed in the '96 application. But
23 the Agency had thought that perhaps we needed to
24 demonstrate further that -- some deficient -- technical

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1 deficiencies.

2 Q. So this was the T2 and the T4 issue?

3 A. Yes, sir.

4 Q. You were trying to beef that up a little bit,
5 correct?

6 A. Yes sir.

7 Q. Any other changes?

8 A. Not substantial, no.

9 Q. Did you understand, sir, that part of our
10 agreement with the Agency that if it was possible, we
11 were going to be able to see drafts of these permits?

12 A. That was my understanding.

13 Q. Did we ever get that opportunity?

14 A. No, we did not.

15 Q. When you were asked to review the permit after
16 it was issued for whether or not the conditions or the
17 denial points met with the regulatory requirements,
18 whether or not they comported with our requests in the
19 application, whether or not we can live with them, did
20 you perform that task?

21 A. Yes, I did.

22 Q. Did you then advise me as to certain conditions
23 that you did not believe we should be required to comply
24 with, some in total and some in the time frames set

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1 forth?

2 A. That is correct.

3 Q. Now, I'm not going to ask you to recite them
4 because I thought I did a pretty good job in my opening
5 statement, but do you concur that the items that you
6 suggested to me were either not in compliance with the
7 regulation, not required by the regulation, didn't

8 comport with our application or that we couldn't live
9 with are included in the respective paragraphs of the
10 permit appeals in Case No. 048 and 049 in this case?

11 A. That is correct.

12 Q. And in general, sir, our purpose here today is
13 trying to get relief from some of those conditions?

14 A. That is correct.

15 MR. LAROSE: With that, Mr. Halloran, I think
16 that concludes at least my introductory portion of
17 Mr. McDermont. If Mr. Kim wants to ask him some
18 questions, I have no objection. Otherwise, we would
19 call the mayor and try to get him out of here before
20 the break.

21 HEARING OFFICER HALLORAN: Thank you,
22 Mr. LaRose.

23 Mr. Kim?

24 MR. KIM: In the interest of getting the mayor

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1 up as quickly as possible, I don't have any
2 questions for Mr. McDermont at this time, with the
3 understanding that at the next opportunity for
4 cross-examination after he goes into his substantive
5 testimony, if you will, I'll be able to
6 cross-examine him then on that testimony as well as
7 the testimony he just provided.

8 MR. LAROSE: No objection.

9 HEARING OFFICER HALLORAN: So ruled.

10 Mr. McDermont, you can step down. Thank you.

11 MR. LAROSE: If you just give me a second to
12 reorganize myself here.

13 HEARING OFFICER HALLORAN: We'll go off the
14 record.

15 (A short break was had.)

16 HEARING OFFICER HALLORAN: We're back on the
17 record.

18 Mayor Feeney has taken the stand and will be
19 sworn in by the court reporter.

20 (Whereupon, the witness was duly sworn.)

21 ROBERT FEENEY,
22 called as a witness herein, having been first duly
23 sworn, was examined and testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. LAROSE:

3 Q. Could you state your name for the record,
4 please?

5 A. Robert Feeney.

6 Q. Mayor, I appreciate your coming here today. I
7 understand you have a busy and tight schedule and some
8 travel plans. We're going to try to get you in and out
9 of here as soon as possible. I appreciate you coming.

10 Sir, what is your employment position?

11 A. I'm the mayor of the City of Morris.

12 Q. Is that a full-time position?

13 A. Yes, sir.

14 Q. How long have you been the mayor of the City of
15 Morris?

16 A. Approximately eight years.

17 Q. Prior to that eight-year period, had you held
18 any other elected office in the City of Morris?

19 A. Yes. For approximately 15 and-a-half years, I
20 was an alderman.

21 Q. So for a little bit less than the last 24
22 years, you've either been an alderman or the mayor?

23 A. Yes.

24 Q. Sir, how long have you lived in the City of

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1 Morris?

2 A. All my life.

3 Q. How long is that?

4 A. 48 years.

5 Q. Do your children attend school in the City of
6 Morris?

7 A. Yes.

8 Q. And what ages are they and what grades are they
9 in?

10 A. I've got a 5 year old in kindergarten and a 12
11 year old in 6th grade.

12 Q. Are you familiar with the Morris Community
13 Landfill, sir?

14 A. Yes, sir.

15 Q. And who owns that landfill?

16 A. City of Morris.

17 Q. And has the City of Morris owned the landfill
18 for as long as you can remember?

19 A. As long as I can remember.

20 Q. Who operates the landfill presently?

21 A. Community Landfill.

22 Q. The company that I've been referring to as --

23 A. CLC.

24 Q. What agreements -- by virtue of what agreements

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1 or by virtue of what documents does CLC operate the
2 Morris Community Landfill for the City?

3 A. We have a lease agreement I think that goes
4 back to 1982 with some addendums in there.

5 Q. Addendums and amendments --

6 A. Amendments.

7 Q. Does the City receive any benefits from the
8 operation of the landfill?

9 A. Benefits?

10 Q. Yes.

11 A. Yes.

12 Q. Do they receive any economic benefits?

13 A. Yes, sir.

14 Q. Can you describe those, please?

15 A. We receive royalties, a tax.

16 Q. Mayor Feeney, I'm going to hand you what's been
17 previously marked as Exhibit 00 and ask you to take a

18 look at that, please.

19 (Document tendered.)

20 BY MR. LAROSE:

21 Q. Sir, what is that document?

22 A. It's a computer printout from my city clerk of
23 the -- looks like the royalties for the years '98, '99
24 and 2000.

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1 Q. And is that a document that's kept in the
2 regular course of business for the City of Morris?

3 A. Yes.

4 Q. And that was generated by the city clerk?

5 A. Yes.

6 Q. How much royalty did the City of Morris receive
7 from the Morris Community Landfill in the years 1998,
8 1999 and 2000?

9 A. Approximately \$812,402.

10 MR. LAROSE: Mr. Hearing Officer, I move
11 admission of Exhibit 00 into the record, please.

12 HEARING OFFICER HALLORAN: Mr. Kim?

13 MR. KIM: I'm going to object to this exhibit
14 unless --

15 Is this exhibit found somewhere in the
16 permit application?

17 MR. LAROSE: No.

18 MR. KIM: Then we would object. This wasn't
19 before us. This wasn't anything that we acted upon.
20 It has no relevancy in the boardroom in reviewing

21 the agency's decision.

22 HEARING OFFICER HALLORAN: Mr. LaRose?

23 MR. LAROSE: Sir, it's entirely relevant. Part
24 of the argument before this Board is that the City's

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1 agreement to treat the leachate should result in a
2 reduction in the financial assurance. This, as the
3 mayor will testify in a minute, is the consideration
4 for that agreement. And as the agreement itself
5 says, the agreement is part of the record, the issue
6 is part of the record. And Mr. Kim, if we're going
7 to be here for three days objecting to things that
8 aren't in the record, has the law wrong. The law of
9 this Board is that extraneous matters not in the
10 record can be and should be reviewed by the Board to
11 the extent that they're relevant to the issues.
12 This is clearly relevant to the issue of financial
13 assurance.

14 HEARING OFFICER HALLORAN: Mr. Kim, anything
15 further?

16 MR. KIM: Other than to say Mayor Feeney can
17 obviously testify as to what the City's financial
18 involvement is with the landfill. But, again, this
19 is a document that was not before the Agency. We
20 have never seen this up until today and it has
21 played no role, obviously, in the decision that's
22 under review right now and, therefore, it shouldn't

23 be considered by the Board.

24 HEARING OFFICER HALLORAN: I think I will allow

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1 Exhibit OO over the objection of the Respondent.

2 So admitted.

3 (Whereupon, Petitioner's Exhibit

4 No. OO was admitted into evidence.)

5 MR. LAROSE: Thank you.

6 BY MR. LAROSE:

7 Q. Mayor Feeney, I'm going to hand you what's been

8 previously marked as Exhibit PP.

9 (Document tendered.)

10 BY MR. LAROSE:

11 Q. Can you tell me what that document is, please?

12 A. Yes. This is a copy of our landfill tax from

13 Community, which would be the same time period -- the

14 years of 1998, '99 and 2000 -- December of 2000.

15 Q. Now, sir, is the tax separate from the royalty?

16 A. Yes.

17 Q. And this is a landfill tax just on Morris

18 Community Landfill?

19 A. Right.

20 Q. This isn't real estate taxes in general?

21 A. Oh, no.

22 Q. Completely different than that?

23 A. Yes, sir.

24 Q. What was the amount of the tax that the City of

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1 Morris received from the landfill tax that they received
2 from the Morris Community Landfill in the years 1998,
3 '99 and 2000?

4 A. About \$228,964.

5 Q. Sir, is this document kept in the regular
6 course of business of the City of Morris?

7 A. Yes, sir.

8 Q. And this was prepared for you by the city
9 clerk?

10 A. The city clerk and budget director.

11 MR. LAROSE: Mr. Halloran, with that, I would
12 move admission of Exhibit PP -- under the same basis
13 as Exhibit PP, under the same basis as, and for the
14 same relevancy, as Exhibit OO.

15 HEARING OFFICER HALLORAN: Mr. Kim?

16 MR. KIM: Same objection.

17 HEARING OFFICER HALLORAN: Overruled. I will
18 allow Exhibit PP into evidence.

19 (Whereupon, Petitioner's Exhibit
20 No. PP was admitted into evidence.)

21 BY MR. LAROSE:

22 Q. Sir, are there any other economic benefits in
23 terms of --

24 MR. LAROSE: Strike that.

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1 BY MR. LAROSE:

2 Q. Could you explain to the Board the program that
3 the City of Morris has with respect to collection of
4 nontrash, nonappliance items from its residents?

5 A. Yes. We run approximately five days a week, 52
6 weeks a year what we call a junk truck -- we have two
7 men on -- that we pick up nongarbage -- no white goods,
8 tires, batteries or anything like that -- parcels from
9 all over town. We make -- we just run it randomly. I
10 mean, usually a lot of times if you got something,
11 they'll call -- people will call us and say we got junk
12 out. We run a program where if you get a new couch,
13 they just automatically put it out by the street and we
14 pick it up.

15 Q. Put the old one out, you mean?

16 A. Yeah. Put the old one out when you get a new
17 one.

18 Q. So it's more like couches --

19 A. Couches, box springs, TVs -- you name it.
20 Anything but the white goods, and we don't take tires or
21 batteries -- things like that.

22 Q. Do you charge your residents for this?

23 A. No, we don't.

24 Q. And how does this have a relation to a benefit,

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1 if at all, that you receive from Community Landfill?

2 A. Well, it's a benefit I think -- we're a growing
3 community. The number of people who have moved to the
4 community, it's a service that I've been told that they

5 don't recollect any other community around that does
6 that. It's a service. People, I think, are spoiled to
7 be honest with you with this opportunity. But it's a
8 service that, like I said, I don't know of any other
9 community that can do that without charging.

10 Q. What does Community Landfill do for you with
11 respect to this pick-up service?

12 A. We get no charge.

13 Q. You're able to take materials to the landfill
14 and dump them there free of charge?

15 A. (Nodding.)

16 Q. Sir?

17 A. Yes.

18 Q. Do you have even a guesstimate of how many
19 loads of material went to the Morris Community Landfill
20 from pick up of these larger materials from your
21 residents on an annual basis?

22 A. There was over 1,000 last year. I would state,
23 though, for the record, I don't know if many people
24 realize that on July 10th, we had seven inches of rain

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1 in a four-hour period. A lot of basements flooded. It
2 was a mess. I know they picked up extra then. But it's
3 in the hundreds. I know it was over. I checked with
4 the Public Works before I came up; there was over 1,000
5 pick-ups.

6 Q. In addition to doing this on a daily basis, do

7 you accelerate this program at any time during the
8 course of the year?

9 A. Yes. To try to keep us from spending so much
10 time picking up, we run a spring clean-up every June.

11 Q. And how does that work?

12 A. We pretty much divide it by railroad tracks in
13 town: The South Side and the North Side. We run two
14 weeks -- we say South Side -- first two weeks of June,
15 South Side; the next -- the last two weeks in the North
16 Side.

17 Q. And is that material picked up from your
18 residents free of charge, too?

19 A. Yes.

20 Q. And is it also disposed of at Morris Community
21 Landfill free of charge?

22 A. Yes.

23 Q. Sir, did you receive any noneconomic benefits
24 in terms of, you know, supplying equipment or emergency

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1 relief or demolition or any of those types of issues?

2 A. We have for years. Ever since I can remember
3 since being on the Council, they've always participated
4 in our snow removal.

5 Q. When you say they, who do you mean?

6 A. Community Landfill -- the operator.

7 Q. How have they participated in your snow
8 removal?

9 A. The heavy equipment, which we don't have.

10 Q. What do they do?

11 A. They usually use a blade, a grater and an end
12 loader. I have to hire trucks, but they will get --
13 blade the snow off the middle of the street. Not the
14 whole town -- the Downtown area, which is our main
15 concern during snow removal. We have snow removal
16 nights, and we always use their equipment. They donate
17 in.

18 Q. And they donate the equipment?

19 A. Yes.

20 Q. And the operator?

21 A. Yes. Usually two operators.

22 Q. Did they help you this December?

23 A. It was a lifesaver for us, to be honest with
24 you.

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1 Q. What about any other noneconomic issues --
2 demolition or --

3 A. We've been the last few years tried to, with
4 our growing community, tried to upgrade our parking
5 Downtown. You can never have too much parking. We've
6 been in the process of buying older homes and tearing
7 them down within a block each way of our main -- Liberty
8 Street, Downtown. Yes, they've used their loader -- end
9 loader -- and we, obviously, have to hire the trucks to
10 haul it away, but we haul for free. We've tore down a
11 number of houses.

12 Q. Do they actually tear the houses down for you?
13 A. Yes.
14 Q. Coming with what? A bulldozer?
15 A. Bulldozer.
16 Q. End loader loads the trucks?
17 A. Yes.
18 Q. Where do the trucks go?
19 A. Community Landfill.
20 Q. How much do you pay for that?
21 A. Nothing.
22 Q. How much do you pay for the disposal?
23 A. Nothing.
24 Q. How much do you pay for tearing down houses?

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1 A. Just for the trucks, which has nothing to do
2 with Community Landfill. But we have to pay for it to
3 haul away.
4 Q. A third party for the trucks to haul it to the
5 landfill?
6 A. It cuts our costs down to a quarter to a third
7 probably.
8 Q. Sir, are you familiar with the process under
9 the Illinois Environmental Protection Act called the
10 local siting process?
11 A. Yes, sir.
12 Q. And how are you familiar with that?
13 A. We're in a process right now of expansion of
14 siting with Environ-Tech Landfill.

15 Q. So the City of Morris is going through a siting
16 process right now?

17 A. Yes, sir.

18 Q. Where is that -- is it -- the hearing is over,
19 getting ready to make a decision?

20 A. We're getting ready. After our comment period,
21 I guess, is the 19th of this month. And then we will be
22 having a vote probably in February, I would be looking
23 for.

24 Q. So the applications have been filed; the

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1 hearings have been held. Now, you got comments and then
2 a decision?

3 A. (Nodding.)

4 Q. Are you aware that there is some waste in
5 Parcel B on the west side of Community Landfill that is
6 over the permitted height?

7 A. Yes, sir.

8 Q. Has there been any discussions -- informal
9 discussions -- between Community Landfill and you
10 regarding obtaining a local siting for that material as
11 opposed to moving it across the street?

12 A. Yes.

13 Q. And in general, what have those discussions
14 entailed?

15 A. Informal discussions with the operator and
16 Mr. McDermont and yourself concerning the concern of

17 moving.

18 Q. Do you, in general -- without making any
19 political commitments on behalf of the City, in general,
20 do you support the idea of local siting to leave this
21 material in place as opposed to shipping it across the
22 street?

23 A. Without question.

24 Q. Why?

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1 A. Why? A number of factors. It's very close to
2 our residential east side of town. Nobody knows, other
3 than you fellas, that it's too high. It's there; I
4 don't want to disturb it, to be honest with you, for a
5 number of reasons.

6 Q. And can you expound on any of the reasons or
7 concerns that you might have?

8 A. Well, we discussed once on Ashley Road, a very
9 high-traveled county road, bringing it for one side --
10 from B to A -- it is a problem. The smell would be --
11 I'm very concerned. I have no problems. I've had no
12 complaints, but I'm afraid with the residential right
13 next door to it, if they start to dig it up, obviously,
14 the garbage is going to smell.

15 Q. What about, like, concerns about the --

16 A. The dirt and dust. We've had a new company
17 move in right next to it that is putting on a
18 half-a-million dollar addition and glass block design,
19 and I'm sure they wouldn't be too happy.

20 Q. To cut to the chase: It just makes good sense
21 to leave it where it's at?

22 A. It makes all the sense in the world to me and
23 everybody in Morris that I've discussed it with to leave
24 it where it is.

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1 Q. We've been criticized by the EPA for not doing
2 the siting process so far. That's why they don't want
3 to give us any more time to do that. Why haven't we
4 done the siting process so far?

5 A. Well, we've been waiting for permit.

6 Q. So from '96 to '99, wait to see if we get a
7 permit?

8 A. (Nodding.)

9 Q. Sir?

10 A. Yes.

11 Q. Why was it important to you that we had a
12 permit before we went to the siting process?

13 A. Well, because of -- I was getting a lot of
14 flack. There was some opposition. One person on our
15 Board stating and going to the press all the time
16 stating that we were operating an illegal landfill at
17 the time.

18 Q. And who was that?

19 A. Alderman Brian Feeney.

20 Q. Any relation to you?

21 A. No, sir.

22 Q. Political opponent of yours?

23 A. Yes, very active.

24 Q. Was he your opponent in the last election?

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1 A. My only two elections as mayor, yes.

2 Q. It's a good thing they didn't have that

3 election down in Florida.

4 A. Yes.

5 Q. I'm going to hand you what's been previously
6 marked as Exhibit MM and ask you to take a look at that.

7 (Document tendered.)

8 BY MR. LAROSE:

9 Q. What is that, sir?

10 A. This is a letter from it looks like your law
11 offices to Alderman Feeney.

12 Q. Did you ask me to write that letter to Alderman
13 Feeney?

14 A. Yes, I did.

15 Q. And the purpose of that letter was to explain
16 to him that he was wrong to --

17 A. To give him --

18 Q. Go ahead.

19 A. Right. To explain to him -- he was the one
20 that went to the press, I feel, that stated and blew
21 this out of proportion that we were running an illegal
22 landfill. And I felt that yourself as a lawyer would
23 try to guide him in the right direction and give him the
24 right information.

1 Q. So you're copied on that letter?

2 A. Yes.

3 Q. You were to receive a copy of it and the
4 attachments?

5 A. Yes.

6 MR. LAROSE: Mr. Hearing Officer, with that, I
7 would like to move the admission of Exhibit MM into
8 the record, please.

9 HEARING OFFICER HALLORAN: Mr. Kim?

10 MR. KIM: As clarification, are these in the
11 letter -- the April 30, 1999 letter -- and the
12 attachments, are those all included in the permit
13 application?

14 MR. LAROSE: I don't know. I don't know. I
15 think some of it might be. I don't know if it all
16 is, to be honest with you.

17 HEARING OFFICER HALLORAN: What we could do is
18 I could reserve ruling and we could take a look and
19 see if it is in the permit over lunch.

20 MR. LAROSE: And I guess if -- and that's okay
21 with me, but I guess our position would be even if
22 none of it was in the permit, it's relevant and
23 germane to the issue of why we didn't do this ahead
24 of time, which is the criticism that we're facing

1 from the Agency.

2 HEARING OFFICER HALLORAN: Mr. Kim?

3 MR. KIM: Well, again, this is the -- if this
4 is not -- and I honestly don't know if this is or is
5 not in the record. If it is in the record, we have
6 no objection. If it is not in the record, the
7 objection is very clear. We cannot be -- our
8 decision cannot be judged when taking into
9 consideration information that we did not have
10 before us. It puts us at a huge disadvantage to
11 offer up documents after the fact that we never had
12 the benefit of review. If this is not in the
13 record -- and, again, I'm conditioning it on those
14 terms -- but if this or any other document is not in
15 the record, they were not submitted to us up to the
16 day of our decision, it had nothing to do with what
17 we found because we did not review it. We did not
18 base our decision upon it; we did not give it
19 consideration; and it has nothing to do with our
20 decision.

21 MR. LAROSE: Sir, I wanted to know one thing.
22 I don't know if it's going to resolve this problem
23 or not. The attachments to this document or letter
24 from the Agency to me and a letter back to the AG

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1 from me is copied to Mr. Kim: January 13th, 1999.

2 The point is that the Board has made a
3 decision -- excuse me -- the IEPA has made a

4 decision that said move the waste or up it, but you
5 only got six months to do it. And the reason why we
6 didn't give you siting is you didn't do it prior to
7 that. This document is germane. Whether or not it
8 was before them or not, it's germane to the Board's
9 decision of why we didn't do it prior to that.
10 Certainly, we should be able to present evidence
11 of -- that we contest the reason why they denied
12 that point in the application. And all of the Board
13 case law -- if you like it, sir, I'd be happy to
14 provide it to you -- all of the Board case law says
15 new materials can be admitted to the extent that
16 they're relevant and germane -- the issues before
17 the Board -- clearly an issue before the Board.

18 I don't think all this appears in the record,
19 but the fact is that the IEPA has been saying we've
20 been operating without a permit. This man said the
21 reason we didn't go to hearing is -- we didn't go to
22 siting is that's why. We wanted to get our permit
23 first.

24 MR. KIM: As a separate matter, there's no --

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1 any references made to any pending enforcement case
2 has no bearing on this permit appeal. That's a
3 separate matter under a separate docket. This
4 decision is not based in any way, shape or form on
5 the pending enforcement case and the two should not

6 be sought.

7 HEARING OFFICER HALLORAN: I would agree, and I
8 would sustain Mr. Kim's objection. Exhibit MM will
9 not be admitted into evidence.

10 MR. LAROSE: I would like it to be included in
11 the record as an offer of proof, then, please.

12 HEARING OFFICER HALLORAN: Very well. It's so
13 noted.

14 MR. KIM: And, again, if Mr. LaRose can show
15 that all the documents are in the application or in
16 the record, I have no objection.

17 HEARING OFFICER HALLORAN: We can revisit this
18 after lunch, but somebody take a look in the record.

19 MR. LAROSE: The mayor's asking to take --

20 THE WITNESS: Ten seconds. I just want to ask
21 you a question.

22 HEARING OFFICER HALLORAN: Off the record.

23 (Discussion held off the record.)

24 HEARING OFFICER HALLORAN: Back on the record.

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1 BY MR. LAROSE:

2 Q. Mayor, we just took a break, and you reminded
3 me or brought to my attention an additional reason why
4 you didn't want material to go from Parcel B to Parcel
5 A. Can you explain that to Mr. Kim and the Hearing
6 Officer, please?

7 A. Yes. That was a concern when the city council
8 voted to ask to get sited for -- to permit the east

9 side. The conditions in the ordinance that we passed
10 for the City was that there would be no garbage taken in
11 on the east side -- Parcel A. It's only supposed to be
12 open for demolition, concrete, construction stuff. And
13 I felt then and the city council felt that really that
14 would be against our ordinance at the time. If he would
15 take the garbage, which we're not -- I've got the -- I
16 didn't bring it with me, but the ordinance states that
17 the opening of the -- the reopening of A -- the east
18 side -- is for demolition and construction only, not
19 garbage.

20 Q. Sir, back to this issue of negative publicity
21 and people saying we were operating without a permit,
22 was there actual publicity on that?

23 A. Very much so.

24 Q. Okay. Newspaper articles?

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1 A. Yes, sir.

2 Q. Radio coverage?

3 A. Every half hour.

4 Q. TV coverage?

5 A. We don't have TV. They dumped in Chicago when
6 they covered it, obviously.

7 Q. I'm going to hand you what's been previously
8 marked as Exhibit NN and ask you to take look at that,
9 sir.

10 (Document tendered.)

11 BY MR. LAROSE:

12 Q. What is that document?

13 A. This is a Joliet Herald.

14 Q. And it's an edition -- looks like the front
15 page edition from Saturday, September 4th, 1999.

16 A. Yes.

17 Q. "State Landfill in Morris Must Close," and then
18 the first paragraph identifies the source as the
19 Illinois Environmental Protection Agency, correct?

20 A. Yes.

21 Q. Is this an example of the publicity that you
22 were talking about?

23 A. Yes.

24 Q. Is this an example of the reason why you didn't

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1 want to go to a siting hearing until we got a permit?

2 A. Yes.

3 MR. LAROSE: Mr. Hearing Officer, I move for
4 admission of Exhibit NN, please.

5 MR. KIM: Again, this is -- I'm pretty certain
6 this is not a document included within the record.
7 Therefore, it should not be considered by the Board.
8 It has no relevance, especially as it relates to the
9 denial of permit applications that are no longer
10 under appeal.

11 HEARING OFFICER HALLORAN: Mr. LaRose?

12 MR. LAROSE: It's not in the record, and it is
13 absolutely germane to the issues. According to the

14 case of Jurack -- J U R A C K -- versus IEPA, which
15 is an Illinois Pollution Control Board case permit
16 appeal, new evidence which is relevant to the
17 Board's inquiry in a permit appeal may be
18 considered. The same ruling was made in People in
19 the State of Illinois versus The Panhandle Eastern
20 Pipeline Company. The same ruling was made in IBP,
21 Inc., versus IPCB and the IEPA. This idea that we
22 can't submit evidence or documents that weren't in
23 the record is clearly ridiculous. Otherwise, we
24 wouldn't have to be here. All we do is read the

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1 record and give briefs. This gentleman has given
2 testimony and submitted evidence germane to the
3 issue in this case. Why? Can't give this to you
4 because you didn't do it already. You should have
5 done it already. We're offering evidence why we
6 didn't do it. And the EPA shoots its mouth off
7 and says we should close. And I present that in
8 evidence in this case, and they should be able to
9 stand up for the things that they told the press,
10 incorrectly as it was.

11 I move for admission of these documents in
12 evidence, pursuant to the Board precedent that
13 clearly supports it and pursuant to the relevance of
14 that document in this proceeding.

15 HEARING OFFICER HALLORAN: When you say these

16 documents, you mean Exhibit NN?

17 MR. LAROSE: That's correct.

18 HEARING OFFICER HALLORAN: This exhibit does
19 pertain to the matter 01-48 and 49 at the end?

20 MR. KIM: No.

21 HEARING OFFICER HALLORAN: It does not?

22 MR. KIM: It pertains to what used to be
23 docketed as, I believe, 00-64 and 00-65.

24 MR. LAROSE: That was the denial of the
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1 previous permit, which is clearly part of the record
2 in this case. The permit denials are part of the
3 record in this case. And Mr. Feeney is saying we
4 need this sig mod permit before we can go forward,
5 and they're saying -- the Government is telling us
6 in the paper and to anybody who will listen, they
7 should be closed.

8 MR. KIM: Objection. First of all, there's no
9 reason for Mr. LaRose to go and characterize the
10 statements made by the director of the Agency
11 shooting his mouth off or anything like that.

12 HEARING OFFICER HALLORAN: I agree with you.

13 MR. KIM: Second of all, again, this document
14 as it relates to two permit denials which were
15 previously the subject of appeals before this court
16 which have since been dismissed with prejudice.
17 There's nothing relative to those denials, other
18 than anything that would be carried over from the

19 old permit applications into this present permit
20 application. This article has nothing germane or
21 relevant to do with the decision in this case.

22 MR. LAROSE: I respectfully disagree. The
23 permit denials are A, part of the record in this
24 case; they are the basis of the application in this

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1 case; they are the reason why the application was
2 filed in this case; and that document, according to
3 this gentleman under oath, is the reason why we
4 didn't go to local siting before, which is the
5 reason why the Agency said we're not entitled to
6 more time now.

7 HEARING OFFICER HALLORAN: I'm going to grant
8 Mr. Kim's objection. Mr. LaRose, it will be
9 admitted as an offer of proof. The Board will then
10 take a look at it and review my ruling.

11 MR. LAROSE: Is the basis for the objection
12 that nothing that's in the record in this case can
13 be a concern?

14 HEARING OFFICER HALLORAN: No, not at all.
15 It's an entirely different case than this and in as
16 the last Exhibit, MM, is involved, as Mr. Kim
17 said -- 65 and 66?

18 MR. KIM: I believe those are the cites. I
19 could be wrong. But the previous case on appeal.

20 MR. LAROSE: And I'm not going to belabor the

21 point, sir, but when you say it's an entirely
22 different case, I would like at least an
23 acknowledgment on the record that the denials of
24 those permits are part of the record in this case.

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1 They're in the record.

2 MR. KIM: In response to the issues that were
3 raised in those permit denials, those have nothing
4 to do with this case in that those appeals were
5 withdrawn, were dismissed with prejudice. There is
6 nothing before the Board related to this. The only
7 thing that has any -- that has carried over from the
8 previous applications are the parts of the old
9 application, which they incorporated into this new
10 application. And anything that is in this new
11 application, again, is obviously fair grounds for
12 discussion and argument. It's because it was before
13 us and it had to do with what we reviewed. But
14 anything that was not a part of that, anything that
15 has to do with some reporting of a previous denial
16 that's long since over, that has nothing relevant to
17 do with the proceeding.

18 HEARING OFFICER HALLORAN: I stand by my
19 ruling.

20 MR. LAROSE: I appreciate that.

21 MR. KIM: Just as an inconvenience, Mr. LaRose,
22 can you give me a cite to the Juror or whatever,
23 first page or the second page?

24 MR. LAROSE: Yes. The three cases I cited were
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1 Jurack, J U R A C K, versus IEPA, West Law, 1989,
2 125 464.

3 The second case I said was People versus
4 Panhandle Eastern Pipeline Company, 2000 West Law,
5 890 186.

6 The third case was IBP versus IPCB and IEPA,
7 204 Illinois Appellate Thrid 797, 563 Northeast
8 Second 72.

9 MR. KIM: Thank you.

10 BY MR. LAROSE:

11 Q. Regardless of whether we've been able to submit
12 proof of your concern, did you still have a concern that
13 we should have the permit before we go forward?

14 A. Yes.

15 Q. Is that one of the reasons why we didn't do it?

16 A. I would say that would be the reason.

17 Q. We got the permits in August of 2000, correct?

18 A. Yes.

19 Q. Was there continuing concerns about the timing
20 once we received -- the timing of the siting application
21 once we received those permits?

22 A. Yes.

23 Q. And what were those?

24 A. There was concern because we're going to be in

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1 the process of another siting.

2 Q. And what siting process was that?

3 A. It was Environ-Tech.

4 Q. And the Environ-Tech siting process began when?

5 A. 1st of September.

6 Q. Why couldn't we do them both at the same time?

7 A. We're just a small community. We don't have

8 the resources to be able to do two at once.

9 Q. Are you up for reelection this year?

10 A. Yes.

11 Q. When?

12 A. April 3rd.

13 Q. Does the fact that you're up for reelection --

14 by the way, do you have an opponent? Are you running

15 opposed?

16 A. Yes.

17 Q. Who is that opponent?

18 A. Alderman Dick Kupchek (phonetic).

19 Q. Does he support the operation of the landfill

20 the way that you do?

21 A. No.

22 MR. KIM: Objection as to the relevance of this

23 questioning.

24 HEARING OFFICER HALLORAN: Do you want to

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1 rephrase that, Mr. LaRose, please?

2 MR. LAROSE: Yes, sir.

3 BY MR. LAROSE:

4 Q. Are you aware of your opponent's position with
5 respect to the landfill operations?

6 A. Yes.

7 Q. And what is that?

8 MR. KIM: I'm sorry. The objection goes to the
9 form of the question, but also to the subject
10 matter. I don't understand the relevance.

11 HEARING OFFICER HALLORAN: I agree, I agree.

12 Sustained.

13 BY MR. LAROSE:

14 Q. Sir, is there a concern about timing of this
15 siting application as it relates to the election?

16 A. Obviously.

17 Q. After the election occurs, how quickly could we
18 do the siting to allow the material to remain in place?

19 A. Well, I can only answer on my part. Hopefully,
20 if I was reelected, we could get this done by the end of
21 the year, easily by the first part of 2002.

22 Q. So your position would be let me get this
23 election out of the way and we'll do the siting process?

24 A. I feel we could iron out all the problems, I

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1 would think, with myself there.

2 Q. In general, is it a fair statement, sir, that
3 you, as the presiding mayor of the City of Morris,
4 support leaving the material in place instead of moving

5 it across the street?

6 A. Definitely.

7 Q. Are you aware that the IEPA and the City of
8 Morris and CLC disagree with respect to the financial
9 assurance aspect of the landfill?

10 A. Yes.

11 Q. The IEPA says it should be 17 million, and we
12 say it should be 7 million, correct?

13 A. Yes.

14 Q. Do you know what the \$10 million difference
15 relates to?

16 A. Yes, I do.

17 Q. And what does that relate to?

18 A. That would be the treating of the leachate.

19 Q. Sir, did you -- did the City of Morris enter
20 into an agreement with Morris Community Landfill for the
21 treatment of leachate, condensate and groundwater at its
22 facility?

23 A. Yes.

24 Q. I'm going to hand you what's been previously

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1 marked as Exhibit LL.

2 (Document tendered.)

3 BY MR. LAROSE:

4 Q. Sir, that's an addendum to the July, 1982 lease
5 which was entered into on July 20th, 1999, correct?

6 A. Yes.

7 Q. Is that the agreement for the City of Morris to

8 treat the leachate and condensate at its POTW at a
9 reduced charge?

10 A. Yes.

11 Q. And those reduced charges appear in Paragraph 4
12 on Page 1 and continued onto Paragraph 1, Page 2,
13 correct?

14 A. Yes.

15 MR. LAROSE: Sir, I would move the admission of
16 my Exhibit LL.

17 MR. KIM: No objection.

18 HEARING OFFICER HALLORAN: So admitted.

19 Exhibit LL is admitted.

20 (Whereupon, Petitioner's Exhibit
21 No. LL was admitted into evidence.)

22 BY MR. LAROSE:

23 Q. And, sir, did the City also enter into an
24 agreement to supply the Government with certain

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1 financial assurance up to \$17 million so we could get
2 the permit and then fight about a reduction later?

3 A. Supply the Government?

4 Q. Supply the IEPA.

5 A. Yes.

6 Q. And was that agreement entered into and then
7 supported by resolution?

8 A. Yes.

9 Q. I'm going to hand you what's been previously

10 marked as Exhibit KK. I'll ask you to take a look at
11 that, please.

12 (Document tendered.)

13 BY MR. LAROSE:

14 Q. Is that the agreement that was entered into on
15 December 13th, 1999, whereby we agreed to supply the
16 \$17 million in financial assurance and later contest a
17 reduction down to \$10 million?

18 A. Down to 7 million.

19 Q. I'm sorry. Down to 7 million.

20 A. Yes.

21 MR. LAROSE: I move the admission of
22 Exhibit KK.

23 HEARING OFFICER HALLORAN: Mr. Kim?

24 MR. KIM: No objection.

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1 HEARING OFFICER HALLORAN: It will be
2 admitted -- Exhibit KK.

3 (Whereupon, Petitioner's Exhibit
4 No. KK was admitted into evidence.)

5 BY MR. LAROSE:

6 Q. Finally, sir, I'm going to hand you what's been
7 previously marked as Exhibit JJ and ask you to take a
8 look at that, sir.

9 (Document tendered.)

10 BY MR. LAROSE:

11 Q. Is that the resolution that approved the
12 December 13th, 1999 amendment to the lease agreement?

13 A. Yes.

14 Q. That's Resolution R-99-6?

15 A. Yes.

16 Q. Unanimously passed on December 13th, 1999?

17 A. Yes.

18 MR. LAROSE: Mr. Hearing Officer, I move
19 admission of Exhibit JJ into the record, please.

20 HEARING OFFICER HALLORAN: Mr. Kim?

21 MR. KIM: The -- I don't think -- is this part
22 of the application, or is this the administrative
23 end?

24 MR. LAROSE: I don't know.

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1 MR. KIM: To the extent that it's -- if it is,
2 no objection. If it's not, I don't have an
3 objection to the work in particular as evidence,
4 although I would -- I assume this is essentially an
5 amendment -- an initial copy -- of the decision that
6 was made by the City and it does predate our final
7 decision. I would have no problem with the Board
8 accepting this.

9 MR. LAROSE: I can clear this up.
10 Mr. McDermont just pointed out to me that this
11 document appears in Parcel A, Volume 3, Page 0370
12 and 0371 --

13 MR. KIM: No objection.

14 MR. LAROSE: -- as did the prior two exhibits.

15 HEARING OFFICER HALLORAN: Exhibit JJ will be
16 admitted without objection.

17 (Whereupon, Petitioner's Exhibit
18 No. JJ was admitted into evidence.)

19 BY MR. LAROSE:

20 Q. Sir, it was the result -- it was the intent of
21 these agreements to do what we had to do to get the
22 permit but still fight the financial assurance, correct?

23 MR. KIM: Objection. Leading.

24

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1 BY MR. LAROSE:

2 Q. Sir, what was the intent of these agreements?

3 A. To hopefully get the financial assurance
4 reduced.

5 Q. And do you, as mayor of the City of Morris,
6 support such reduction?

7 A. Yes.

8 MR. LAROSE: I have nothing further.

9 HEARING OFFICER HALLORAN: Mr. Kim, any cross?

10 MR. KIM: Yes.

11 CROSS-EXAMINATION

12 BY MR. KIM:

13 Q. Mayor, again, I also would like to thank you
14 for taking time out of your very busy schedule and
15 coming to court today. I will try to keep my questions
16 as brief as possible.

17 A. That's okay. This is very important to us, so

18 whatever you need to ask.

19 Q. Good, good.

20 Exhibits OO and PP, which I believe were the
21 printouts of the tax receipts and royalty receipts to
22 the City from Community Landfill for the years 1998,
23 1999 and the year 2000. Who prepared those documents?

24 A. Who prepared --

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1 Q. The printouts.

2 A. Deputy city clerk.

3 Q. And when were those prepared?

4 A. What's today? Fairly -- right after Christmas.

5 Q. You stated that -- and as I was listening to
6 you describe your nontrash, nonwhite goods pick up
7 program, I, just as a side note, I think that's a very
8 good program. You said that that's something that is of
9 benefit to the City that's derived from Community
10 Landfill. Did -- let's take a step back.

11 You did sign the permit application that was
12 submitted in May of 2000; did you not?

13 A. I'm sure I did.

14 MR. KIM: Let me uniformly -- I'm going to
15 show the witness what's been -- what is found on
16 Pages -- it's found in the administrative record for
17 Parcel A, Volume 1, Bates stamp 0019 and 1120.

18 MR. LAROSE: Can I see that, please?

19 MR. KIM: Sure.

20 MR. LAROSE: Thank you.

21 BY MR. KIM:

22 Q. Are those your -- is that your signature at the
23 bottom?

24 A. That is my signature.

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1 Q. And on the next -- you're looking at 0019; is
2 that correct?

3 A. Yes, sir.

4 Q. And on Page 0020, is that your signature?

5 A. Yes.

6 Q. You signed the permit application in your
7 official capacity as mayor of the City of Morris; is
8 that right?

9 A. Yes, sir.

10 Q. And you were doing so as the legal
11 representative of the owner of the landfill; is that
12 correct?

13 A. Yes, sir.

14 Q. Did you review the permit application?

15 A. Personally?

16 Q. Yes.

17 A. Not really.

18 Q. Are you aware that the permit application
19 contains any reference to the nontrash, nonwhite goods
20 pick up program that you just described?

21 A. I would have to say no, I'm not aware.

22 Q. Are you aware if the permit application has any

23 reference to the participation of Community Landfill
24 personnel and/or equipment in snow removal?

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1 A. No, I'm not aware of it.

2 Q. Are you aware if the permit application has any
3 reference to Community Landfill's assistance with your
4 handling of demolition debris?

5 A. I'm not aware.

6 Q. You also stated that you are in support of
7 seeking local siting approval to site the over-height
8 waste in Parcel B in place; is that right?

9 A. Yes.

10 Q. And you said that you've been mayor for the
11 City for the past eight years; is that correct?

12 A. Yes.

13 Q. Has that been your opinion the entire time
14 you've held that position?

15 A. I'd have to say yes.

16 Q. So that would date back to approximately --
17 this is year 2001 -- the early parts of -- at least the
18 early part of year 19 --

19 A. '93, '94.

20 Q. Thank you. My math is a little slow.

21 A. That's all right. When you're running for
22 election, you remember them years.

23 Q. And, in fact, certainly as of August of 1996,
24 when the permit application that was referenced by

1 Mr. LaRose was submitted to the Illinois EPA for review,
2 at that time, you were aware that local siting approval
3 was an option to address the over-height waste in Parcel
4 B; were you not?

5 A. Yes.

6 Q. And were you in support of it at that time?

7 A. Yes.

8 Q. And I believe you stated that it was because of
9 political concerns and negative publicity concerns that
10 you did not believe that the City should resume local
11 siting of the landfill; is that right?

12 MR. LAROSE: Objection. That's a
13 mischaracterization of his testimony. Objection to
14 the form.

15 MR. KIM: I've asked him a question; he can
16 answer no if it's not.

17 MR. LAROSE: I think he still has to ask it
18 properly.

19 HEARING OFFICER HALLORAN: Can you ask a --
20 rephrase that, Mr. Kim?

21 BY MR. KIM:

22 Q. Did you state that political concerns were one
23 of the reasons that you did not believe that local
24 siting approval should be resumed until a permit had

1 been granted?

2 A. I don't remember.

3 Q. Was that one of your concerns -- political
4 concerns?

5 A. I would have to say no.

6 Q. So you were not concerned that there would
7 be -- okay. So there were no political concerns; is
8 that correct?

9 A. In '96?

10 Q. Let's talk about the time period from 1996 to
11 August of 2000.

12 A. Okay.

13 Q. During that period of time, did you have any
14 political concerns that prevented you from seeking local
15 siting approval to site the over-height waste of Parcel
16 B in place?

17 A. Well, when you're in politics, you always got
18 political concerns. You try to please everybody, but
19 you're not going to. So I would have to say when you're
20 dealing with waste and landfills, you always got to
21 think a little bit of political concerns.

22 Q. Was that a major force in why you did not seek
23 local siting approval?

24 A. I couldn't tell you for sure.

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1 Q. Did you testify that negative publicity was
2 another reason that you wouldn't seek local siting
3 approval? And I'm talking, again, from the time period

4 between August, 1996, and August, 2000.

5 A. Did I state what?

6 Q. That negative publicity concerns were another
7 reason why you would not want to seek local siting
8 approval until the Illinois EPA had issued a permit to
9 the landfill?

10 A. You've always got to be concerned about
11 negative publicity.

12 Q. I understand that. But what I'm asking you is
13 was that your testimony just a few minutes ago?

14 A. That I was concerned about -- give me that
15 question again.

16 Q. I'll try to make it even clearer.

17 Opposing counsel showed you a copy of what was
18 labeled as Exhibit NN, which I think you have before
19 you.

20 A. Okay.

21 MR. LAROSE: Mr. Hearing Officer, at this
22 point, if this gentleman is going to refer to this
23 document after he objected to its admission and
24 after his objection was sustained, I think he's

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1 opened the door and I think he's now opened the door
2 to questioning with respect to this and the
3 admission of this document.

4 MR. KIM: I am not offering this as evidence.
5 I am trying to refresh the witness's recollection as
6 to the questioning that he just had on direct

7 examination.

8 MR. LAROSE: I think this is entirely
9 inappropriate. He's stated that this entire issue
10 is irrelevant, and now he's questioning the witness
11 on it and showing him the very document that he
12 objected to. I think the objection should be
13 reversed, I think the document should be entered and
14 I think he should be able to question him about it
15 or else he should stop questioning him about it.

16 MR. KIM: For the same reason as I said earlier
17 what the issue about the royalties and the taxes
18 came up. I stated the mayor can certainly testify
19 as to the benefit, he can testify that they received
20 royalties, he can testify that he was concerned
21 about negative publicity. What I objected to was
22 the inclusion of those specific documents as
23 evidence. That's different.

24 MR. LAROSE: Then he shouldn't ask him

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1 questions about those documents.

2 MR. KIM: I'm simply asking cross-examination
3 on the subject matter of his direct testimony. He
4 can't recall what I know he was testifying as to
5 negative publicity. I'm simply trying to jog his
6 memory back. Besides that -- or we can ask the
7 court reporter to go back and read his testimony.

8 HEARING OFFICER HALLORAN: I'll overrule your

9 objection, Mr. LaRose.

10 Limit your questioning.

11 MR. LAROSE: Thank you.

12 BY MR. KIM:

13 Q. Mayor, what I'm trying to get at is what
14 prevented you from August of 1996 to August of 2000 from
15 seeking local siting approval for the over-height waste
16 in Parcel B? What were the factors that you believe
17 prevented you from doing that? And when I say you, I'm
18 referring to you as the representative of the owner of
19 the landfill.

20 A. What prevented us? Give me that question one
21 more time.

22 Q. What factors prevented you from seeking local
23 siting approval for the over-height waste of Parcel B
24 from the time period of August of 1996, to the time

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1 period of August, 2000?

2 A. I couldn't answer that question, to be honest
3 with you.

4 Q. Do you recall giving any testimony just a few
5 minutes ago on direct examination?

6 A. Yes.

7 Q. Do you recall making any references to negative
8 publicity concerns?

9 A. No, not negative publicity. I was concerned
10 that the publicity was stating that -- it wasn't
11 negative. It was stating that we were doing something

12 illegal. And I wanted to get the facts out that we were
13 not illegal.

14 Q. So I'll ask you again: What were th reasons
15 why local siting approval was not pursued from August,
16 1996, to August, 2000? You say you can't give an
17 answer?

18 A. No.

19 Q. Were there any legal restrictions that
20 prevented you from doing that, to the best of your
21 knowledge?

22 A. Legal restrictions?

23 Q. Were you informed by counsel for the City or
24 counsel for the landfill -- when I say the landfill, I

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1 mean Community Landfill Company, the operator -- were
2 you informed by counsel that there was a legal
3 restriction or there was a legal impediment to seeking
4 local approval any time between August of 1996 and
5 August of 2000?

6 A. Not that I can remember.

7 Q. So your testimony is you don't have any
8 recollection of any legal reason why you couldn't do
9 that as it would have been told to you, and you can't
10 think of any other reason why you didn't pursue the
11 local siting approval; is that right?

12 A. Right.

13 Q. Thank you.

14 You testified that there was an ordinance that
15 would prohibit garbage from being taken in on the east
16 side of something. And the east side of what?

17 A. This would be Parcel A.

18 Q. And I'm sorry. Could you just briefly describe
19 again what the ordinance prohibited?

20 A. We could only take in demolition and
21 construction material.

22 Q. And you felt that that prohibition would --

23 A. And I can't remember if it was contaminated
24 waste, but I know it was stated to garbage.

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1 Q. And how did you feel that that ordinance would
2 work against moving the waste?

3 A. People didn't want, supposedly, smelly
4 garbage -- more coming in.

5 Q. When was that ordinance passed; do you recall?

6 A. '95 or '96.

7 Q. Do you know if that ordinance is still in
8 effect?

9 A. Yes. That might have been a resolution.

10 Q. So it's either an ordinance or resolution?

11 A. Right. It would be on the books.

12 Q. And as far as local siting approval goes, are
13 you familiar with the procedure? You probably are,
14 since you're in the middle of one now. But are you
15 familiar with the procedure on how a party seeks local
16 siting approval?

17 A. I'm learning. I'm not an expert on it, that's
18 for sure.

19 Q. Understandable. Do you understand that at the
20 conclusion of the local unit of government's decision,
21 there's an opportunity for appeal of that decision?

22 A. Yes.

23 Q. And do you understand that that appeal goes to
24 the Pollution Control Board?

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1 A. Yes.

2 Q. And do you understand that an appeal can be
3 taken of the Pollution Control Board's decision to the
4 Illinois Appellate Court?

5 A. What I understand.

6 Q. Can you guarantee, in your capacity as mayor of
7 the City of Morris, that any party coming in seeking
8 local siting approval will receive local siting
9 approval?

10 A. Can I guarantee it myself?

11 Q. Yes.

12 A. I would have to say no.

13 Q. On the question of financial assurance again,
14 do you have Exhibit KK before you?

15 A. JJ? KK, yes.

16 Q. Would you look at Paragraph 5 of that exhibit?
17 And that's on Page 3 of the exhibit. Would you take a
18 moment to read it, and when you've concluded reading,

19 just let me know.

20 A. Okay.

21 Q. Did you sign this lease amendment?

22 A. Yes.

23 Q. And, presumably, you reviewed the term of the
24 lease amendment before you signed it; is that correct?

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1 A. Yes.

2 Q. Paragraph 5, I'm going to read the first
3 sentence into the record. It states, "Lessor and lessee
4 will file an application with the IEPA to reduce the
5 financial assurance from \$17,159,346 to \$7,077,716 after
6 the significant modification permit applications have
7 been approved for Parcels A and B."

8 Is that a fair reading of that first sentence?

9 A. Yes.

10 Q. What was your understanding of that sentence as
11 to the timing of events that would take place for
12 seeking the reduction to the cost estimate? Would that
13 happen before or after the significant modification
14 permit application had been approved?

15 A. Give me that question one more time.

16 Q. What I'm asking is this: Isn't it correct that
17 this statement states -- that sentence states that after
18 the sig mod -- significant modification -- permit
19 application has been approved, that another application
20 would be filed seeking to reduce the financial assurance
21 amount from 17 million to \$7 million?

22 A. Yes.

23 MR. LAROSE: Objection to the form of the
24 question. The document speaks for itself, and that

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1 wasn't a verbatim recitation of what the document
2 says. He read the document first, and now he's
3 mischaracterized it.

4 MR. KIM: The witness just answered the
5 question. He didn't have any --

6 MR. LAROSE: I didn't have a chance to object.
7 He answered it before I objected. The objection
8 stands.

9 HEARING OFFICER HALLORAN: The objection is
10 overruled. The answer stands.

11 BY MR. KIM:

12 Q. Mayor, I'm going to --

13 HEARING OFFICER HALLORAN: Mr. Kim, what
14 exhibit are we looking at here?

15 MR. KIM: I'm sorry. It's Exhibit KK.

16 HEARING OFFICER HALLORAN: I thought you had
17 said Exhibit JJ.

18 MR. KIM: I'm sorry, no. They're close.

19 BY MR. KIM:

20 Q. Mayor, I'm going to show you what is identified
21 as a portion of the administrative record that's Parcel
22 A, Volume 1, Page 0002.

23 MR. LAROSE: Can you wait until I get my copy?

24 MR. KIM: Yes, yes.

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1 MR. LAROSE: Okay. I'm ready.

2 BY MR. KIM:

3 Q. Mayor -- and, actually, this is a document
4 which continues through Page 0003. Do you recognize
5 that document?

6 A. Yes.

7 Q. What is that document?

8 A. It looks like a document from Andrews
9 Engineering to Miss Munie from the EPA or to the EPA.

10 Q. That is the cover letter that accompanied the
11 May, 2000 permit application; isn't that right?

12 A. I couldn't tell you for sure.

13 Q. If you look at Page 0004, what does the top
14 line of that page read?

15 A. Application for Significant Modification to
16 Permit.

17 Q. And what does the received stamp on Page 0002
18 show as a date received?

19 A. May 8th, 2000.

20 Q. And would you read the bottom paragraph on Page
21 0002 yourself? And when you finish that, just let me
22 know.

23 A. Okay.

24 Q. Did you review this letter when you signed the

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1 permit application?

2 A. I'm sure I did.

3 Q. Doesn't this bottom paragraph state that
4 although Community Landfill and the City are reserving
5 their right to seek a reduction of the closure and
6 post-closure care costs at a later date, that they are
7 agreeing to submit bonds in the amount of \$17 million
8 and change --

9 MR. LAROSE: Objection to the form.

10 BY MR. KIM:

11 Q. -- solely as a means in this matter to receive
12 the permit?

13 MR. LAROSE: Objection to the form of the
14 question. The document says what it says, and he
15 misread it.

16 MR. KIM: I'm asking for the mayor's
17 understanding of what that document was. This is a
18 cover letter to the permit application which he
19 signed. I'm asking --

20 MR. LAROSE: He can ask that question. He
21 can't mischaracterize the document. The document
22 speaks for what it speaks for. It's an improperly
23 formed question. My objection.

24 MR. KIM: I can ask a leading question. I'm

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1 doing that.

2 HEARING OFFICER HALLORAN: You're saying

3 Mr. Kim is mischaracterizing the paragraph he's
4 reading? He misread it?

5 MR. LAROSE: That's right. Do you have it in
6 front of you?

7 HEARING OFFICER HALLORAN: I do not because I
8 don't have the --

9 MR. LAROSE: He did not read -- he can ask the
10 mayor's understanding of that paragraph. He can ask
11 the mayor to read that paragraph into the record.
12 He can read the paragraph into the record himself.
13 He can't mischaracterize the paragraph and then ask
14 the mayor's understanding of it.

15 MR. KIM: On cross-examination, I can ask the
16 mayor leading questions. I am asking the mayor
17 whether or not what I asked him is his understanding
18 of what that paragraph states. If he says no, he
19 can say no.

20 HEARING OFFICER HALLORAN: Mr. Mayor, would you
21 read that paragraph into the record, please?

22 THE WITNESS: Yes.

23 "Community Landfill Company and the City of
24 Morris are including a \$17,427,366 closure,

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1 post-closure care cost estimates in these
2 applications and are agreeing to submit bonds in
3 that amount at the time of issuance of the permits
4 solely as a means to resolve this matter and without
5 prejudice to its rights to seek a reduction of the

6 closure and post-closure care cost estimates at a
7 later date and through appropriate available
8 procedures."

9 MR. KIM: I'll rephrase my question.

10 BY MR. KIM:

11 Q. Isn't it correct that what that says is -- and
12 I'm going to break this up into parts -- that Community
13 Landfill and the City are agreeing to post bonds in the
14 amount of \$17 million and change; is that right?

15 MR. LAROSE: Objection to the form of the
16 question. He can ask the mayor's understanding. He
17 can't characterize what the document says.

18 HEARING OFFICER HALLORAN: I agree.

19 Mr. Kim --

20 BY MR. KIM:

21 Q. Mr. Mayor, what is your understanding of that
22 paragraph?

23 A. My understanding of the paragraph is that we
24 had agreed to post the bond the City would sign with the

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1 thought of later on negotiating it down to \$7 million.

2 Q. Was it your understanding that that would be
3 done through a separate application?

4 A. I don't think it was a separate application.

5 Q. How would that be done; do you know? What was
6 your understanding of how that would be done?

7 A. Once we got the application, then we would

8 proceed to negotiate it down.

9 Q. When you say once you got the application, you
10 mean once you got the permit that was based on the
11 application? You prepared the application; we issued
12 the permit.

13 A. Right.

14 Q. So what you meant to say once you got the
15 permit, then you would try and address the revision
16 downward; is that correct?

17 A. I would say yes.

18 MR. KIM: Sorry that was so difficult. I
19 apologize.

20 I have nothing further.

21 MR. LAROSE: Just a couple questions, then
22 you'll be on your way, Mayor.

23

24

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1 REDIRECT EXAMINATION

2 BY MR. LAROSE:

3 Q. Mr. Kim kept asking you why didn't we do this
4 from -- why didn't we site this -- do local siting from
5 '96 to '99. Did the decision not to do that -- what if
6 any part of the decision not to do that had anything to
7 do with the fact that we didn't receive a permit?

8 A. Well, that's it. It was tied up in court. Am
9 I right?

10 Q. Right.

11 So at least part of the decision not to proceed
12 to siting from '96 to '99 had to do with the fact that
13 we didn't get the sig mod, right?

14 A. Right.

15 MR. LAROSE: That's all I have.

16 MR. KIM: Just a follow-up.

17 REXCROSS-EXAMINATION

18 BY MR. KIM:

19 Q. So there were some reasons, weren't there,
20 Mayor, why you didn't -- that you can now recall why you
21 didn't seek local siting approval; is that correct?

22 A. That I can recall?

23 Q. Didn't you just now testify that the fact that
24 you did not have a permit that -- I think you just said

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1 something was tied up in court, that was the reason that
2 prevented you from seeking local siting approval; is
3 that right?

4 A. No.

5 Q. So that was not a reason that prevented you
6 from seeking local siting approval; is that correct?

7 A. Give me that question -- give me that first
8 question again.

9 Q. Did Community Landfill have an approved permit
10 between August of 1996 until the permit was approved in
11 August of 2000, to the best of your understanding?

12 A. Did they have an approved permit? As far as I

13 know.

14 Q. So there was no permit -- was there any permit
15 question that was unanswered or that was unresolved that
16 prevented you from seeking local siting approval between
17 August of '96 until August of 2000?

18 A. I couldn't tell you that. I can't answer that.

19 Q. Mr. LaRose just asked you the fact that you
20 didn't have a permit was a factor, did he not?

21 A. Did he ask what was that?

22 MR. KIM: Other than having the testimony read
23 back, I'm not sure what to do here.

24 HEARING OFFICER HALLORAN: Try one more time,

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1 Mr. Kim, please.

2 BY MR. KIM:

3 Q. Was the fact that the significant modification
4 permit, the fact that that permit had not yet been
5 issued, did that prevent you from seeking local siting
6 approval between August of '96 and August of 2000?

7 A. I would say yes.

8 Q. Why did that prevent you from seeking local
9 siting approval? Let me put it to you this way: Is it
10 your understanding that you needed to have an approved
11 significant modification permit to seek local siting
12 approval?

13 A. I would say yes.

14 Q. And on what authority?

15 A. What do you mean what authority?

16 Q. Who told you that you needed to have a
17 significant modification permit approved before you
18 could seek local siting approval?

19 A. I don't know if anybody told me. I don't
20 remember.

21 Q. So it would just be your belief -- your
22 personal belief?

23 A. Yes.

24 Q. And what would that be based on?

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1 A. Just the way I would feel, I guess. That's --

2 Q. No political concerns related to that that you
3 can think of?

4 A. No.

5 Q. No negative publicity concerns that you can
6 think of?

7 A. There's always negative publicity concerns.
8 You're always going to be concerned with -- nobody in
9 their right mind wouldn't be concerned about negative
10 publicity. I mean, if you were in my spot, any -- one
11 person with negative publicity would bother you a little
12 bit -- you would think, anyway.

13 Q. I understand.

14 Did anyone -- did either counsel for the City
15 or counsel for the Community Landfill Company tell you
16 that the fact that the significant modification permit
17 not being approved prevented you from seeking local

18 siting approval?

19 MR. LAROSE: Objection. Invades the
20 attorney-client privilege.

21 MR. KIM: I believe I asked him the very same
22 question on cross-examination before.

23 HEARING OFFICER HALLORAN: Can you read that
24 back, please -- Mr. Kim's question?

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1 (Whereupon, the record was read as requested.)

2 HEARING OFFICER HALLORAN: Mr. LaRose, what's
3 your objection?

4 MR. LAROSE: It invades attorney-client
5 privilege. Something that was told to him by the
6 city attorney -- his lawyer -- I don't think it's
7 subject to disclosure in this proceeding.

8 HEARING OFFICER HALLORAN: Mr. Kim?

9 MR. KIM: I can rephrase the question.

10 BY MR. KIM:

11 Q. Were you ever told by counsel for Community
12 Landfill Company that the fact that there was no
13 approved significant modification permit prevented you
14 from seeking local siting approval?

15 A. Yes.

16 Q. You were told that?

17 A. I can't remember that, but that's the way I
18 would feel. I always felt that we needed the sig mod
19 before we got the siting.

20 Q. And, again, I'm not asking you for who -- from

21 where you got this advice -- but did you think that
22 there were legal reasons why you couldn't do that?

23 A. There could possibly have been.

24 Q. But did you think --

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1 A. I don't remember either legal counsel talking
2 to me about it, to be honest with you.

3 Q. So you didn't hear from legal counsel from
4 Community Landfill that there was a legal reason that
5 you couldn't do that; is that right?

6 A. I can't remember offhand. I mean, I'm sure --
7 there might have been; I don't know. But we should -- I
8 can't remember if Mark talked to me, but I definitely
9 feel that there had to have been a sig mod before a
10 siting.

11 Q. But not for political reasons and not for
12 negative -- aside from the standard negative publicity
13 reasons, not for those reasons; is that correct?

14 A. What was that? One more time.

15 Q. Not for political reasons; is that right?

16 A. I can't answer that. I mean, what are
17 political reasons?

18 Q. Well, concerns that you might have had over
19 whether or not the local aldermen -- or the aldermen --
20 would be more or less inclined to approve that based
21 upon whether or not there was or was not an approved
22 permit application?

23 A. I suppose that might have come into it a little
24 bit. I mean, it always does -- any kind of decision you

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1 make.

2 Q. But that was not an overriding factor in your
3 mind?

4 A. I couldn't tell for sure. I don't know if it
5 was overriding or not.

6 Q. So you don't have any strong opinion on that?
7 You can't say for sure that was a big reason; is that
8 right?

9 A. No. It's hard to say.

10 MR. KIM: Nothing further.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. LAROSE:

13 Q. Mr. Kim told you to use the word "prevent" --
14 we prevented, legally or otherwise, from siting -- doing
15 a siting application. There wasn't anything to prevent
16 us from doing the siting, was there?

17 A. As far as I know, no.

18 Q. When we talked about doing the siting, did we
19 talk about giving it the best chance of being
20 successful?

21 A. Obviously.

22 Q. And did the fact that the sig mod had not been
23 issued yet, in your mind, have anything to do with the
24 issue of whether we might be successful or unsuccessful?

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1 A. Yes.

2 Q. And how did it affect that issue?

3 A. How did it --

4 Q. How did the fact that we didn't have the sig
5 mod affect your thinking on whether we would be
6 successful or unsuccessful if we went to siting without
7 the sig mod?

8 A. I didn't think we'd get it.

9 MR. LAROSE: No further questions.

10 HEARING OFFICER HALLORAN: Mr. Kim, any
11 re-recross? I guess that's where we're at.

12 FURTHER RECROSS-EXAMINATION

13 BY MR. KIM:

14 Q. Why didn't you think you would get it if you
15 had no sig mod permit?

16 A. That was just my opinion. I didn't think we'd
17 get it.

18 Q. So although it was just your opinion, there was
19 no legal reason that you can think of, there was no
20 political reason you can think of, there's no negative
21 publicity reasons you can think of; is that right?

22 MR. LAROSE: Objection to the form of the
23 question. It's compound.

24 MR. KIM: I can break it down.

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1 BY MR. KIM:

2 Q. So the fact that you didn't have a sig mod
3 permit -- when I say sig mod, I mean significant
4 modification.

5 A. Right.

6 Q. The fact that you didn't have the sig mod
7 permit, there was no political reasons why the failure
8 to have that would reduce the likelihood of getting
9 local siting approval; is that right?

10 A. I don't know where you keep coming up with this
11 political --

12 Q. I'll be honest with you. I'm coming up with
13 that because that was a term that was used in direct
14 examination of you earlier. I'm simply using the phrase
15 that was used earlier.

16 So you have no -- other than the fact that
17 there was no sig mod permit, you have no other real
18 reason, in your mind, why you could not -- or why it was
19 not a good idea to seek local siting approval between
20 August of '96 and August of 2000; is that right?

21 A. What was that one more time?

22 MR. KIM: Could you read that back?

23 (Whereupon, the record was read as requested.)

24

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1 BY THE WITNESS:

2 A. I felt we needed local modification before
3 siting. That's --

4 BY MR. KIM:

5 Q. But you can't really articulate why you think
6 that or why you thought that; is that correct?

7 A. No.

8 MR. KIM: Okay. Nothing further.

9 MR. LAROSE: Nothing further.

10 HEARING OFFICER HALLORAN: Re-re-redirect,

11 Mr. LaRose?

12 MR. LAROSE: I think you put one too many re's
13 in there, but no.

14 HEARING OFFICER HALLORAN: You may step down,

15 Mr. Mayor. Thank you very much.

16 Off the record.

17 (Discussion held off the record.)

18 HEARING OFFICER HALLORAN: Back on the record.

19 I want to talk about one thing. Reading the
20 evidence testimony into evidence, Mr. LaRose, is, I
21 think you said, playacting.

22 I think I'm going to reconsider that and take
23 Mr. LaRose's advice. I think it may be -- it may
24 take 20, 30 minutes, but it may be a little clearer

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1 for the Board to take a look at that so they will
2 have everything in front of them instead of going
3 back and forth.

4 With that said, I think we'll take an hour
5 lunch. We'll be back here at 20 to 2:00.

6 Thank you very much.

7 (Whereupon, the taking of the
8 within deposition was recessed
9 until 2:40 p.m.)

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1 HEARING OFFICER HALLORAN: And we are back on
2 the record. It's approximately 1:50.

3 MR. LAROSE: There was a question with respect
4 to Exhibit MM, which was denied for admission and
5 allowed to go in as an offer of proof. And the question
6 was what if any of that document appeared in this case.
7 It doesn't all appear in the record, but most it does.
8 We can go over that. We can at least get what appears
9 in the record identified.

10 HEARING OFFICER HALLORAN: All right.

11 MR. LAROSE: Do you have MM in front of you?

12 MR. KIM: We can do that, Mr. Hearing Officer.

13 But just to forewarn you, this does speak to the bigger

14 picture, and I'm going to -- I would like the

15 opportunity to address what should or should not be

16 allowed as evidence. I looked up the cases that

17 Mr. LaRose cited to, and I found some additional cases.

18 And I think, at least in my opinion, that things like

19 this should not be included before or after we get

20 into --

21 HEARING OFFICER HALLORAN: Let's address it

22 after. Find out which ones were in the record.

23 MR. LAROSE: Sir, if I look at Exhibit MM, the

24 first two pages did not appear in the record. The

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1 third, fourth and fifth pages, which are a letter from

2 myself to Tom Gaziak, Parcel A, reviewer notes, Pages

3 0492 to 0494. The next two pages, which were permits

4 issued by Mr. Bakowski --

5 HEARING OFFICER HALLORAN: I'm sorry. Mr.

6 LaRose, you said the letter to Mr. Bakowski, which was

7 copied to Mr. Kim, appears in the record as 0492 to

8 0494?

9 MR. LAROSE: The next two pages relate to --

10 excuse me -- the next two pages are a permit issued to

11 Mr. Bakowski, and they appear in the record at 0495 and

12 0496.

13 And the last page is just a page out of the
14 regulations that occurred at that time.

15 Am I missing some pages or did I recite them
16 all?

17 MR. KIM: No, you did, although on my copy, I
18 then have two pages consisting of what looks like a fax
19 log.

20 MR. LAROSE: Right. And I don't care if those
21 go in the record or not go in the record.

22 MR. KIM: Reserving comment on the first two
23 pages of this exhibit if we strike out the last three
24 pages, which are this fax log, and things on the

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1 citation to the regs.

2 MR. LAROSE: I don't have any objection to
3 striking those and citations to the regulations.
4 Certainly the fax logs. The regulations are the
5 regulations. I don't see a need for that to actually go
6 in.

7 MR. KIM: Other than the first two pages, we
8 have no objection.

9 MR. LAROSE: And, again, now that we know that
10 the attachments to this document are in the record, I do
11 think that asking to at least reconsider your position
12 on whether the first two pages that relate directly to
13 the remainder of the document, which is in the record,
14 is relevant and germane to these proceedings.

15 HEARING OFFICER HALLORAN: Mr. Kim, would you
16 like to address that?

17 MR. KIM: Yes.

18 Mr. LaRose -- and I'm not going to try and
19 characterize it -- but my understanding of what he
20 stated is that he says that it's relevant, that it bears
21 the Board's attention, and he cited two, three cases,
22 which he said supported the notion that he could include
23 documents as evidence which were found outside of the
24 administrative record. And those three cases that he

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1 cited, I believe, were the -- the one case was Jurack
2 versus IEPA, PCB No. 85-137; the date of the decision
3 was September 28, 1989. That case involved a review of
4 an NPDES permit -- National Pollutant Discharge
5 Elimination System permit. The review of NPDES permits
6 is unique in that those are de novo reviews by the
7 Board. The Board considers anything and everything in
8 those cases. That is not the case. This is a permit
9 appeal, and that is not the scope of the Board's review.
10 So that case really doesn't apply.

11 The second case that he cited to was the case
12 of The People of the State of Illinois versus Panhandle
13 Eastern; PCB No. 99-191. The date of the decision is
14 June 22nd of 2000. That case is distinct because that
15 case was an enforcement case where there was a motion to
16 incorporate portions of a related permit appeal, and

17 those were specifically portions of the administrative
18 record and hearing transcript in the permit appeal to
19 the enforcement case. That is not at all the situation
20 we have here. We're not talking about incorporating
21 documents from any other pending matter.

22 The last case Mr. LaRose cited to was IBP
23 versus Illinois Pollution Control Board. That's an
24 Appellate case before the Third District. The citation

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1 to that was 204 Illinois Appellate Third 797. There,
2 again, that was a review of an NPDES permit, which was,
3 again, a de novo review.

4 I would, instead, draw the Hearing Officer's
5 attention to cases that I think are much more on point.
6 For example -- let me see if I can put this in
7 chronological order. I'll work oldest to newest. The
8 case of Alton Packaging Corporation versus Illinois
9 Pollution Control Board. This is a case out of the
10 Fifth District Appellate Court, 162 Illinois Appellate
11 Third 731. The parallel cite is 516 Northeast Second
12 275. That case states that in that case, the court
13 reviewed a request by the petitioner in the permit
14 appeal to introduce new evidence that was not part of
15 the record before the Agency. In that case, the
16 Appellate Court denied the request -- or the request was
17 denied, and the Appellate Court upheld that position
18 because they said that it was not a de novo review
19 before the Board. The Board was not in a position,

20 then, to accept new evidence, and it would have been
21 error on the part of the Board to do that.

22 The next case is Joliet Sand and Gravel Company
23 versus Illinois Pollution Control Board. This is out of
24 the Third District of Illinois Appellate Court, 163

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1 Illinois Appellate Third, Page 830. The parallel site
2 is 516 Northeast Second 955. That case stated what has
3 always, I think, been understood to be the Board's scope
4 of review in a permit appeal, and that is that the sole
5 question before the Board is whether the applicant
6 proves that the application as submitted to the Agency
7 demonstrates that no violation of the Act would have
8 occurred if the requested permit had been issued. The
9 scope is limited to the record -- or to the -- I'm
10 sorry. To the record and to the application that was
11 submitted to the Agency.

12 The last case that I'll cite to is a permit
13 appeal before the Illinois Pollution Control Board.
14 That case is Panhandle Eastern Pipeline Company versus
15 Illinois Pollution Control Board, PCB No. 98-102. That
16 was decided on January 21st of 1999. In that case, both
17 the petitioner and respondent attempted offers of proof
18 to submit the documents that were prepared after the
19 date of the agency's denial. And the Board specifically
20 rejected both those requests because the Agency could
21 not have considered them when it made its permit

22 decision. The Board, making that decision, cited to the
23 Alton Packaging Case; to the case of American Waste
24 Processing versus IEPA, which is PCB 91-38, decided on

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1 October 1st of 1992.

2 So I think it's fairly clear that these cases
3 state that the scope of the Board's review is just
4 limited to the application and to the administrative
5 review -- or the administrative record that was before
6 the Agency at the time; that the Board has rejected past
7 attempts to include documents that were prepared after
8 the date; and by the same reasoning, there's no reason
9 to include documents that were not part of the record,
10 even if they were prepared before the date. The Agency
11 didn't have them. It's not part of the record. The
12 Board does not consider that in its review.

13 So I would therefore ask that not only would
14 the first two pages of Exhibit MM be denied entry as
15 evidence, but, again, I would ask you to go back and
16 revisit Exhibits OO and Exhibit PP, which both were
17 prepared, by the mayor's own testimony, in December of
18 2000, which is some -- almost eight months -- I'm sorry,
19 not eight months -- four months after the decision was
20 entered in this case.

21 HEARING OFFICER HALLORAN: Mr. LaRose,
22 anything?

23 MR. LAROSE: Yes, sir.

24 I have not had an opportunity to read the cases

1 that Mr. Kim cited in addition to the cases I cited, but
2 I certainly had an opportunity to read the ones that I
3 cited. And they don't quite say what Mr. Kim cited them
4 for. I'm going to cite from -- verbatim -- from the
5 Pollution Control Board's case in Jurack versus IEPA.
6 I'm reading from Page -- the third page of my copy. And
7 the Board in that case said, "Only new evidence which is
8 relevant to the Board's inquiry in a permit appeal may
9 be considered."

10 The Board in that case made absolutely no
11 distinction between an NPDES permit appeal or any other
12 permit appeal. It said, "Evidence of the fact that the
13 village may now accommodate Jurack's water treatment
14 needs is irrelevant to whether the imposition of
15 Condition No. 8 is necessary to achieve compliance with
16 the Act." They said if it was relevant, they would
17 listen to them.

18 Likewise, in the Appellate Court case that I
19 cited, IBP, Inc., versus The Illinois Pollution Control
20 Board, 563 Northeast Second 72, the Board made -- or the
21 court made absolutely no distinction between an NPDES
22 permit and otherwise when it wrote on Page 2 of its
23 opinion, "We agree with the Board and the Agency that
24 evidence presented at a permit appeal must be relevant

1 to the issue at hand before it is admitted as evidence
2 and considered by the Board."

3 I offer, I think, a common sense reason for
4 this. The cases Mr. Kim cited -- and he showed them to
5 me before we spoke, so I did get a chance to look at
6 them. And it seems to make sense that if the evidence
7 wasn't available -- if it didn't exist -- then the
8 Agency couldn't have made its decision on it. But
9 evidence that existed at the time it made its decision
10 and was relevant to the decision is admissable.

11 Let me give you a perfect example. In this
12 case, one of the issues is whether we use T2 or T4
13 versus the deep well trench. The Agency experts --
14 Miss Roque and Miss Thompson -- in this case consulted
15 with documents outside the record -- a Streeter EIS
16 report and a report of the dewatering -- I think it's
17 called, "The New Report on Leaky Aquifers" -- in
18 reaching their decision that T2 and T4 were not in
19 accordance with the regulations. Certainly, I'm able to
20 question them and show you the Morris EIS, even though
21 it wasn't contained in the record because they looked at
22 it. Just like in this case the documents in MM, most of
23 which were in the record and they were able to look at
24 them, the fact that I sent a letter to Alderman Feeney

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1 ought to be considered as well. Just like when the
2 Agency says Morris Community Landfill is operating
3 without a permit in the press, and they say, listen,

4 guys, you should have done this already. And the mayor
5 says I got some negative press, not only was that
6 document available at the time that they made their
7 decision, they spoke to the press. How could they claim
8 that they didn't know about it?

9 So the distinction Mr. Kim makes is a valid
10 one: Stuff that didn't exist, that couldn't have
11 existed, that couldn't have been relevant to the
12 decision, is one that I think the Board and the courts
13 have properly made. But they have made no distinction
14 in NPDES permits versus other cases that relevant
15 evidence that's not in the record but that could have
16 been considered and probably should have been considered
17 would be admissable in this case.

18 I submit to you, Mr. Halloran, that if that
19 wasn't the case, why would we be here? If it was the
20 case that we just needed the record in this case, there
21 would be no need to augment it with testimony or
22 anything else because the record would be sufficient on
23 which we would write legal briefs when we compare the
24 record to the regulations in this case. It is not the

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1 law of this Board or the law of the State of Illinois
2 that this proceeding is limited to matters included in
3 the record. Again, if that was the case, they could
4 look at reference documents in making their decision,
5 and I could never bring those reference documents into

6 this proceeding. I think that there is a relevancy and
7 materiality standard; I think we've met that. And I
8 think a blanket ruling that this -- the documents
9 submitted in this case -- have to be in the record in
10 this case is patently wrong and legally doesn't make
11 sense.

12 MR. KIM: I have just two comments, Mr. Hearing
13 Officer, if I may.

14 HEARING OFFICER HALLORAN: Go ahead, Mr. Kim.

15 MR. KIM: First of all, I take issue with
16 Mr. LaRose's representation that in the Jurack case
17 there was no distinction made. The Board opinion
18 states -- and I'm reading from it -- "Recently, the
19 Appellate Court addressed the issue of whether new
20 evidence may be introduced at a hearing before the Board
21 in an NPDES permit appeal. Relying on Dean Foods versus
22 IPCB -- citation number -- the court concluded that new
23 evidence which is relevant to the determination of
24 whether the applicant has demonstrated that no violation

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1 of the Act would occur if the permit is granted without
2 imposition of additions, may be considered by the Board
3 in a NPDES permit appeal."

4 The second point I'd like to bring to your
5 attention is in the IBP case, it's pointed out there,
6 and this is correct as well.

7 HEARING OFFICER HALLORAN: What cite is that,
8 Mr. Kim?

9 MR. KIM: The one I just read to you?
10 HEARING OFFICER HALLORAN: Right.
11 MR. KIM: The Jurack.
12 HEARING OFFICER HALLORAN: And the cite is?
13 MR. KIM: I'm sorry? I didn't hear you.
14 HEARING OFFICER HALLORAN: That cite is?
15 MR. KIM: I'm sorry. PCB 85-137, and the
16 decision date was September 28 of '89.

17 So that clearly says that they're talking about
18 rulings in matters in NPDES permit appeals. And the
19 reason for that is in the IBP case that Mr. LaRose cited
20 to you, the Appellate Court there notes -- and, again,
21 I'm reading it straight from the opinion -- "Moreover,
22 35 Illinois Administrative Code, Section 105.102(b)(8)
23 is the procedural regulation governing NPDES permit
24 appeals before the Board. That rule states -- " and it

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1 goes on to cite the rule. And then the last sentence
2 says, "If any party desires to introduce evidence before
3 the Board with respect to any disputed issue of fact,
4 the Board shall conduct a de novo hearing and receive
5 evidence with respect to said issue of fact."

6 That is not -- that's a special regulation.
7 Those procedural rules are unique to the NPDES permit
8 procedures. It's a de novo review. That's what the
9 Jurack case was -- it's an NPDES case. That is not the
10 case in a permit appeal. In a permit appeal, the Board

11 does not conduct a de novo review; they conduct a
12 manifest weight review. And in this case, which is a
13 permit appeal, the Board's scope will be limited, as
14 they said in the past, to the permit application in the
15 administrative record that's before the Agency and
16 nothing else. So none of these documents should be
17 allowed in because they should not be considered by the
18 Board; they're not relevant. The cases Mr. LaRose is
19 citing to say what he's saying, but they're for
20 different types of cases. If this was that type of
21 case, I would agree. He could put these things in.

22 HEARING OFFICER HALLORAN: Do you have anything
23 further, Mr. LaRose?

24 MR. LAROSE: Yes.

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1 And I do understand the distinction between
2 NPDES and de novo review and manifest weight of the
3 evidence. It's not escaping me, but there isn't a
4 single Board rule or case where the Board has
5 specifically held that the evidence in any permit
6 appeal, including this one, is limited to the matters in
7 the record. It does say the issues are limited to
8 matters of consideration whether the application met the
9 Board -- met the regulations of the Act. That would
10 mean that any decision that they made with respect to
11 that and the things that they considered in the record
12 or not were things that they should have considered in
13 the record or not are subject to testimony in this case.

14 Otherwise, I submit to you this whole proceeding would
15 be meaningless. It's really a fundamental fairness
16 test.

17 HEARING OFFICER HALLORAN: I disagree, and I'm
18 going to stand by my ruling regarding Exhibit MM. As
19 far as the first two pages that were not part of the
20 record and were not considered by the Agency when
21 deciding to grant or deny the permit is beyond the
22 scope. The other attachments -- the letter to
23 Mr. Gaziak of January 13th, 1999, and the letter of
24 October 11th, 1996, regarding the permit, will be

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1 admitted.

2 MR. KIM: Mr. Hearing Officer, what about
3 Exhibits OO and PP?

4 HEARING OFFICER HALLORAN: For right now, they
5 will stand as admitted.

6 MR. KIM: Can I ask that the Hearing Officer at
7 least review the Panhandle Eastern permit appeal that I
8 just cited to, and I can give you the citation again,
9 and possibly reconsider your ruling? Because I think if
10 you read that, you will see the Board very clearly said
11 information that was prepared after the date of the
12 decision should not be considered, and they rejected
13 that in that case.

14 HEARING OFFICER HALLORAN: Would it be possible
15 for you to give me a copy of that case? In fact, if

16 both attorneys would like to give me copies of the cases
17 they're relying on, it would help me out immensely. I
18 can look it over on the way home today.

19 MR. LAROSE: I'll get you what I have. I only
20 have -- you can have the copies that I have. I need to
21 get copies of the cases that John cited. So as soon as
22 I get them, I'll --

23 HEARING OFFICER HALLORAN: Maybe during our
24 next recess, we'll --

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1 MR. KIM: If we have a long enough recess, I
2 can give you Mr. LaRose's three cases, and I can give
3 you copies of the cases we need.

4 HEARING OFFICER HALLORAN: Terrific.

5 MR. LAROSE: Just so I understand, is it the
6 Hearing Officer's position that documents not included
7 in this record are not admissible in a permit appeal
8 that's a non-NPDES situation, or are you reserving
9 ruling on that?

10 HEARING OFFICER HALLORAN: No, no. My ruling
11 right now, as I stated a few times, is that if it's not
12 in the record, the Agency cannot rely on it when it made
13 a decision to grant or deny the permit. It's outside
14 the scope.

15 MR. LAROSE: What if it's not in the record and
16 they did rely on it, like the Streeter EIS report?

17 MR. KIM: Information that we provided through
18 the course of discovery, which is, I think, where we

19 turned over that document to Mr. LaRose, would certainly
20 be considered fair game here. That's distinct, and
21 that's not the same thing.

22 MR. LAROSE: But I guess I don't understand
23 that. How could they say -- and you'll see this a
24 little bit more clearly in a few minutes when Miss Roque

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1 gets on the stand -- they said, we made a decision on
2 this case and I looked at the EIS report. It's a big
3 fat report, and it didn't get included in the record.
4 So when I asked them in discovery what did you rely on,
5 they gave me that report. It's not included in the
6 report, but they certainly relied on it. It's not a
7 matter of record; it doesn't have a Bates stamp on it.
8 It's clearly something that we should be able to examine
9 Miss Roque on. And I don't see how that differed from
10 other things that affect the issues that they decided
11 that aren't in the record but that could have been
12 available for their review.

13 MR. KIM: It's a very clear distinction.
14 Miss Roque will testify she reviewed that document prior
15 to making her decision -- prior to her final decision.
16 That means the standard that the Board considers when
17 they look at evidence as to determine whether or not the
18 agency's decision was appropriate or not. Was it
19 something that we considered before the decision? Yes,
20 it was. Arguably, should that have been included in the

21 record? You know, it certainly could have been. And if
22 that's an oversight on anyone's part, that's an
23 oversight on my part. But it was produced in the course
24 of discovery, and it is something that had been

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1 provided, and it is something that is distinct from what
2 Mr. LaRose is representing as to these other documents.
3 These were not reviewed by us before the time. Some of
4 these other documents were prepared after the time since
5 it's obviously impossible for us to have reviewed those
6 as of the decision. That's a completely different
7 thing.

8 HEARING OFFICER HALLORAN: And perhaps I
9 misspoke. Anything the Agency relied on when making the
10 decision, that's the whole gist of -- what was in the
11 record. They looked at it and they relied on it before
12 making the decision. That is relevant, and that would
13 be admissible.

14 MR. KIM: As a matter of fact, that's the
15 standard the Board has set out for what should be
16 included in the administrative record -- everything that
17 the Agency didn't rely upon. So again, if there is a
18 mistake in anything, I certainly would agree that it
19 probably should have included the Streeter Environmental
20 Impact Statement in the administrative record. But
21 these other documents, we did not rely upon. They
22 should not be.

23 MR. LAROSE: It makes some sense. I'm just

24 grappling with the notion of the issue that was before

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1 us when the mayor was up there. Miss Roque and
2 Miss Munie said, "I'm not going to give them any more
3 time to site this because they've had enough time and
4 didn't do anything."

5 Why shouldn't we be able to submit the evidence
6 on the reason why we didn't do anything? Now, I agree
7 when Mr. Kim said the mayor can testify to that, but
8 what's the difference between him saying that and him
9 showing you proof? Because I've been before the Board
10 in courts before; they say, well, the mayor just said
11 it. That was self-serving. Where's the documents that
12 will prove that you didn't want to go before the Board
13 because of bad publicity or that you didn't want to go
14 siting because of political concerns or whatever.
15 That's really the distinction I'm making here. If they
16 draw the line and say, here's my ruling, here's the
17 reason and the rationale behind my ruling, shouldn't we
18 be able to rebut that rationale with competent, relevant
19 documents and testimony? Mr. Kim seems to say he can
20 say the words but I can't support his words with
21 documentation. And as you've seen many, many times
22 before the court and this Board, sometimes they reject
23 people's testimony just because it's not supported with
24 documents. Am I to be left in that position? Now, I do

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1 appreciate that you've lobbied to make an offer of proof
2 so that it's there for somebody to look at so we're not
3 just, you know, making this up. But I do see that to be
4 a distinction with a difference.

5 MR. KIM: But -- and Mr. LaRose has presented
6 the question perfectly, I think. Why shouldn't he be
7 allowed the opportunity to give us documentation which
8 explains why they didn't do something that we thought
9 they should have done. And what he's basically saying
10 is let us give you more information than what you had so
11 we can show why you were wrong. Of course, the response
12 is that's not what the Board is reviewing the agency's
13 determination on. You can't review our decision based
14 on well, okay, we see what you had, but you know what?
15 They also might have had this. But we know you didn't
16 have that, but they had that. We see them now, and that
17 makes perfect sense. You know what, Agency? You were
18 wrong. We're going to be reviewed. Our decision is
19 going to be reviewed based upon information we never
20 had. That makes no sense whatsoever. That's the whole
21 idea behind keeping out information that we didn't have.
22 You can't base our decision on it. For example, if we
23 said that there was a key report missing and that's why
24 we had to deny the permit -- we had to put a condition

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1 in it. And if the testimony is oh, I had that report;
2 I've got it right here. It was prepared before the

3 date, see? Mr. LaRose's argument is, well, you should
4 be able to show that to the Board, and if it's a perfect
5 report, the Board should be able to then say, Agency,
6 this report looks good; you shouldn't put that in there.
7 Of course, our response is we never had that report, so
8 you can't judge us on information we didn't have.
9 That's the whole rationale. It makes perfect sense.

10 MR. LAROSE: But in this case, they had the
11 information that we tried to submit through the mayor,
12 which was the very information they fed to the press.
13 How can they say they didn't have the information when
14 the EPA is quoted in that document? And wouldn't it
15 have been -- what did they expect to do? In this permit
16 application say we can't go to siting until we get the
17 permit. You know what? That's what we said. And
18 you'll see through the testimony. The permit
19 application says as soon as we get this permit, here's
20 our time line. We need this much time to go to siting.
21 And they just dropped the ball and said, no, you don't
22 get that much time because you've already had enough
23 time. What were we supposed to do, Mr. Halloran? Tell
24 them that we needed to confirm it before we went to

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1 siting? That's what we did.

2 HEARING OFFICER HALLORAN: I think all the
3 parties' comments are duly-noted in the record. And I
4 think the Board, if they want to reverse my decision,

5 they -- if Mr. LaRose or Mr. Kim appeal it, then they
6 can do so. But at this point, at this time, I'm
7 standing by my ruling.

8 If we can move on with your first witness -- we
9 could be here all afternoon. And I appreciate your
10 comments, and there's pages upon pages the Board will
11 have to take a look at.

12 MR. KIM: I'm getting half my brief done right
13 now.

14 MR. LAROSE: And I appreciate your patience on
15 the issue. I'm just trying to flush out -- and it makes
16 sense to do this now, Mr. Kim said that, so that we have
17 a consistent theme throughout this. I want to know
18 where we're going. Am I restricted from doing this or
19 am I restricted from doing that? And I think I
20 understand your ruling. I certainly respect it. I
21 don't necessarily agree with it, but if that's what it
22 is.

23 HEARING OFFICER HALLORAN: One further note. I
24 noticed a person walked into the room while we were

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1 discussing this motion.

2 Are you --

3 MR. LAROSE: She's the killer witness in this
4 case. That's my assistant.

5 HEARING OFFICER HALLORAN: Thank you.

6 MR. LAROSE: The next witness will be Christine
7 Roque, please.

8 (Whereupon, the witness was duly sworn.)

9 CHRISTINE ROQUE,

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

12 DIRECT EXAMINATION

13 BY MR. LAROSE:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Because this room has kind of got bad
17 acoustics, you're going to have to speak up a little bit
18 when you answer. I'm going to stand up because I've got
19 to give you a bunch of documents back and forth. I'm
20 not doing that to be intimidated. In fact, I'm doing
21 it, really, to be respectful, but I'm going to be moving
22 back and forth. So just bear with me on the stand.

23 Could you state your name for the record,
24 please?

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1 A. My name is Christine Roque.

2 Q. Miss Roque, you work for the Illinois EPA,
3 correct?

4 A. That's correct.

5 Q. And your position is what?

6 A. My job title is environmental protection
7 engineer.

8 Q. You are here today, ma'am, pursuant to
9 subpoena, correct?

10 A. That's correct.

11 Q. Ma'am, I'm going to hand you what's been
12 previously marked as Exhibit L and ask you to take a
13 look at that, please.

14 (Document tendered.)

15 BY MR. LAROSE:

16 Q. Is that the subpoena that you're here pursuant
17 to today?

18 A. Yes.

19 Q. Ma'am, directing your attention to the third
20 page of that subpoena, it requested, pursuant to the
21 Board rules, that you bring certain documents with you
22 here today. You've already heard some arguments that
23 we've had -- gentlemanly arguments that we've had --
24 about the documents that were or were not produced. Did

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1 you have anything to do with the work and gathering the
2 documents that were produced today?

3 A. No.

4 Q. Were you asked to do anything to gather
5 documents to be produced today?

6 A. I was asked by Joyce Munie to ask our clerical
7 person to bring up the most recent permit.

8 Q. So as a permit reviewer -- are you the permit
9 reviewer on -- or permit reviewer or writer on any of
10 these facilities listed on the rider to Exhibit L?

11 A. I have probably worked on some of these
12 sites -- some applications for this site, but I'm not

13 the most familiar reviewer for the sites.

14 Q. But in terms of responding to the rider, Joyce
15 asked you to call somebody else to see if they could
16 pull the stuff, right?

17 A. That's right.

18 Q. And that's all you did?

19 A. Right.

20 Q. Do you know whether the NPDES permits -- the
21 most recent ones -- are computerized? In other words,
22 you can punch a button and call those up without a
23 signature on them?

24 A. I'm not -- no. I don't know. Because NPDES is

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1 issued by Bureau of Water.

2 Q. So the answer is you're not sure?

3 A. I'm not sure.

4 Q. You were the permit reviewer for the sig mod --
5 permit reviewer and writer for the sig mod permit for
6 Morris Community Landfill, correct?

7 A. Correct.

8 Q. And if I understand the sequence of events, the
9 initial application got filed in '96, right?

10 A. That's correct.

11 Q. There was another permit reviewer for a while,
12 but you were the last permit reviewer on the '96 app,
13 correct?

14 A. That's correct.

15 Q. And, then, you were the only and last permit
16 reviewer on the 2000 app, correct?

17 A. As far as the engineering portion, that's
18 correct.

19 Q. But when I say permit reviewer, do you
20 understand that to mean the person overall responsible
21 for, you know, coordinating and drafting the permit for
22 Joyce Munie's signature?

23 A. Yes. I coordinate comments from other units.

24 Q. And that would have been --

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1 MR. KIM: I'm sorry. Before you go any
2 further, are you going to -- are we going to
3 introduce L?

4 MR. LAROSE: I wasn't.

5 MR. KIM: That's fine. I just wanted to make
6 sure. I'm sorry. I didn't mean to interrupt.

7 MR. LAROSE: It's already --

8 MR. KIM: It's a part of the pleas. Oh, well,
9 no, it's not.

10 MR. LAROSE: You know what, maybe we should.
11 If he has no objection, I would move for
12 introduction of L just to make sure it gets in the
13 record.

14 MR. KIM: No objection. It may not be.

15 HEARING OFFICER HALLORAN: Exhibit L is so
16 admitted.

17 (Whereupon, Petitioner's Exhibit

18 No. L was admitted into evidence.)

19 BY MR. LAROSE:

20 Q. I'm sorry, ma'am.

21 As the permit reviewer, you were the one that
22 coordinated the different sections review, drafted the
23 permit and kind of submitted it to Joyce for her review
24 and finalization, correct?

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1 A. That's correct. I put together the draft
2 permit.

3 Q. And in the '96 application, you put together
4 draft permits, right?

5 A. That's correct.

6 Q. And, then, you also wrote the denials of the
7 '96 application, which were written -- which were issued
8 in September, 1999, correct?

9 A. Correct.

10 Q. And with respect to the 2000 app, there was no
11 separate draft, right?

12 MR. KIM: Objection. Separate draft from what?

13 MR. LAROSE: Yeah, that's not a very clear
14 question.

15 BY MR. LAROSE:

16 Q. You used the '96 draft permits as your drafts
17 for the 2000 permit. Is that a fair statement?

18 A. Yes. I have a draft -- basically all letters
19 that I give to Joyce will be in the form of a draft

20 until she signs them.

21 Q. Is it fair to say, ma'am, that with respect to
22 the 2000 application, you used the '96 draft permits as
23 the starting point to draft the permits for 2000?

24 A. Yes. I used the '96 draft permit as my

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1 template for the 2000 permit.

2 Q. Thank you. Ma'am, I'm going to hand you what's
3 been previously marked as Exhibit C. I know we're
4 jumping all over the board with these letters, but I ask
5 you to take a look at that, please.

6 (Document tendered.)

7 BY MR. LAROSE:

8 Q. That is your current resume or what at least
9 was supplied to me in the discovery in this case as your
10 current resume, correct?

11 A. That's correct.

12 Q. Does everything with respect to your
13 employment, education and environmental training and
14 seminars that you've been involved with up to the
15 present date appear on here?

16 A. That's correct.

17 Q. Ma'am, you have a bachelor's of science degree
18 in industrial management engineering from the University
19 of -- U of I at Chicago, correct?

20 A. That's right.

21 Q. And if I read this correctly, you don't have
22 any formal post-graduate education?

23 A. That's right.

24 Q. You haven't attended graduate school anywhere?

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1 A. No.

2 Q. And one of the environmental training seminars
3 that you attended was a workshop on slope stability of
4 solid waste landfills, and that was in 1999, correct?

5 A. That's correct.

6 Q. And that was put on by a company called
7 Geosynthec Consultants?

8 A. That's right.

9 MR. LAROSE: I would move admission of Exhibit
10 C into the record, please.

11 MR. KIM: No objection.

12 HEARING OFFICER HALLORAN: Exhibit C is
13 admitted.

14 (Whereupon, Petitioner's Exhibit
15 No. C was admitted into evidence.)

16 BY MR. LAROSE:

17 Q. Ma'am, I'm going to hand you what's been
18 previously marked as Exhibit YY. I didn't copy
19 everything you gave me from this seminar because I
20 didn't want to contribute to global deforestation. I
21 copied just the first two pages of it.

22 (Document tendered.)

23 BY MR. LAROSE:

24 Q. Is this the outline or syllabus, if you will,

1 from the slope stability workshop that you attended in
2 1999?

3 A. Yes, it is.

4 Q. And this was a one-day seminar; is that
5 correct?

6 A. Yes, as far as I remember.

7 Q. This is the only formal education you've had on
8 the issue of slope stability, correct?

9 A. That's the only formal lessons I have for the
10 use of the program.

11 Q. For the use of the Stable 5 program?

12 A. Actually, they used a different program in this
13 seminar. They used X STABL and UTech.

14 Q. Okay. Do you have any field experience --
15 experience in the field -- in the field of slope
16 stability engineering or geotechnical engineering?

17 A. Field experience?

18 Q. Yes, ma'am.

19 A. No.

20 Q. What about field experience in the area of mine
21 subsidence? Do you have any of that?

22 A. No.

23 MR. LAROSE: Mr. Hearing Officer, I move for
24 admission of Exhibit YY into the record, please.

1 HEARING OFFICER HALLORAN: Mr. Kim?

2 MR. KIM: No objection.

3 HEARING OFFICER HALLORAN: So admitted --

4 Exhibit YY.

5 (Whereupon, Petitioner's Exhibit

6 No. YY was admitted into evidence.)

7 BY MR. LAROSE:

8 Q. Ma'am, have you ever been to the Morris

9 Community Landfill?

10 A. No, I haven't.

11 Q. The original application was submitted in 1996.

12 When were you assigned as the permit reviewer, if you

13 recall, for the '96 application?

14 A. I would say around December or November of

15 1996.

16 Q. And, then, you were the permit reviewer from

17 '96 until -- from November or December of '96, until the

18 permit was denied in September of '99, correct?

19 A. That's correct.

20 Q. Are you familiar with the 811 Landfill

21 regulations?

22 A. Yes, I am.

23 Q. Is it a fair statement that those landfill

24 regulations are more stringent than their predecessor --

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1 the 807 regulations?

2 A. Yes, it is.

3 Q. Because of that, in your opinion as a

4 professional, is it more desirable for a landfill to be
5 governed by the 811 regs or 807 regs?

6 A. The 811 regs.

7 Q. After submittal of the '96 application, wasn't
8 there additional submittals of supplemental information
9 periodically from Andrews to you and the EPA?

10 A. Yes.

11 Q. Is it a fair statement that Andrews always
12 tried to answer the questions you were asking or resolve
13 your concerns?

14 A. Yes.

15 Q. Is it a fair statement that Andrews always met
16 the deadlines that were set for the submittal of
17 information or else they gave you an extension of your
18 statutory deadline?

19 A. That's correct.

20 Q. You were aware that there was historical fill
21 in Parcel A, correct?

22 A. Right.

23 Q. I'm going to show you what's already been
24 previously admitted into the record as Exhibit X. Have

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1 you ever seen that document before? Take your time to
2 take a look at it -- before today, I guess.

3 A. Yes, I have.

4 Q. You heard Mr. McDermont characterize that as a
5 drawing from the permit application that depicted the
6 historical fill area on Parcel A. Is that your

7 understanding of that document?

8 A. That's the existing conditions at Parcel A.

9 Q. Prior to the new operation of it, correct?

10 A. That's correct.

11 Q. So prior to, that would have been the
12 conditions that existed historically from whenever waste
13 operations were ceased until '96 when they resumed?

14 A. Until they submitted the application.

15 Q. Were you aware that the original condition of
16 the landfill did not contain any liner system and only
17 intermittent clay cover?

18 A. Yes, I am.

19 Q. The sig mod proposed to put a separation layer
20 of clay over the old fill and then place waste on top of
21 that, correct?

22 A. Correct.

23 Q. And in order to build the separation layer,
24 they were going to build an invert, kind of a hill, if

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1 you will, so that they could build a separation layer
2 with an invert elevation, correct?

3 A. Correct.

4 Q. And part of what they were going to do to build
5 the hill was relocate some waste material, correct?

6 A. I'm not aware of that relocation of waste
7 material.

8 Q. We'll get back to that in a minute.

9 Is there any doubt in your mind, ma'am, that
10 what was proposed in the significant modification
11 application was environmentally more desirable than
12 leaving the landfill as it is depicted in Exhibit X?

13 MR. KIM: Objection. When you say what was --
14 can you define what you mean by what was described
15 or what was -- it's a vague question.

16 MR. LAROSE: I'll rephrase.

17 HEARING OFFICER HALLORAN: Could you?

18 BY MR. LAROSE:

19 Q. Is there any doubt in your mind that what was
20 proposed in the sig mod was environmentally more
21 desirable than leaving the landfill as it was prior to
22 the sig mod being submitted?

23 A. Monitoring -- yes. Monitoring for gas and
24 extracting leachate would be more environmentally

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1 beneficial.

2 Q. So the answer to the question is there's no
3 doubt in your mind that what was proposed in the sig mod
4 was more desirable?

5 A. Yes.

6 Q. Were you aware of any agreement between CLC and
7 the IEPA to exchange drafts of the 2000 permit before
8 they came out?

9 A. I'm not aware of that.

10 Q. And, in fact, ma'am, no drafts were exchanged,
11 were they?

12 A. Between the Agency and --

13 Q. CLC or Andrews or -- or anyone.

14 A. No.

15 Q. We got the permit the day it was issued,
16 correct?

17 A. I believe so.

18 Q. I'm going to show you what's been previously
19 marked was Exhibit R. Keep this one handy because we're
20 going to keep on going back to this one.

21 That's the Parcel A permit, correct, ma'am?

22 A. Correct.

23 Q. I hope that all the pages are there. That's
24 our intent. If you see one that's not there, you let us

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1 know. But I'm only going to be referring to a couple of
2 pages of this.

3 Look at Page 42.

4 MR. KIM: Just a point of clarification, this
5 is also the -- I think when you referred to the page
6 numbers on your Exhibit R, as the pages -- the Bates
7 stamped pages -- in Parcel A, IEPA reviewer's notes,
8 in the administrative record.

9 MR. LAROSE: Just for a point of clarification,
10 Mr. Hearing Officer, this permit application appears
11 in A, Parcel A reviewer's notes, 0001 to 0050.

12 MR. KIM: So any page -- when you say 42 of
13 your exhibit, that's the same thing as --

14 MR. LAROSE: Is it the same?

15 MR. KIM: It is.

16 MR. LAROSE: Okay. Good, good.

17 MR. KIM: That's what I was trying to find out.

18 HEARING OFFICER HALLORAN: Just as points of
19 clarification and housekeeping, Exhibit X was never
20 offered into evidence. I don't have it marked as
21 such; I have it set aside. If you want to make an
22 offer?

23 MR. LAROSE: And that's fine. I had it marked
24 as such, but that's okay.

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1 MR. KIM: I did, too, for some reason.

2 MR. LAROSE: Well, we'll mark it again just so
3 the record is clear.

4 We would move X into evidence.

5 HEARING OFFICER HALLORAN: It's moved into
6 evidence.

7 (Whereupon, Petitioner's Exhibit
8 No. X was admitted into evidence.)

9 MR. LAROSE: Thank you.

10 BY MR. LAROSE:

11 Q. Ma'am, I'm directing your attention to Page
12 42 -- a Permit Condition 27. Now, that permit
13 condition -- at least the first paragraph -- reads, "The
14 permittee must maintain leachate levels within Parcel A
15 below the static groundwater levels at all times."

16 Did I read that correctly?

17 A. Yes.

18 Q. Ma'am, are you aware that there are areas of
19 the landfill where the bottom of the landfill is above
20 the static groundwater level?

21 A. Yes.

22 Q. Do you know that approximately 95 percent of
23 the bottom of the landfill is above the static
24 groundwater level?

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1 A. I don't know that.

2 MR. KIM: I'm going to object, simply on the
3 basis that we've already stated in our opening
4 remarks that we're not contesting the further
5 validity of this condition, and we've already agreed
6 that he would change that.

7 HEARING OFFICER HALLORAN: She can answer.

8 Overruled.

9 MR. LAROSE: And I'm not going to belabor the
10 point. I've just got a couple of questions. But it
11 does kind of add to the entire flavor of all of the
12 rulings in this case.

13 BY THE WITNESS:

14 A. Can I have a comment?

15 BY MR. LAROSE:

16 Q. Sure.

17 A. This condition, 27, is, I believe, in the
18 groundwater section of the permit, which I did not put

19 together.

20 Q. That wouldn't be your area of concentration?

21 A. That's correct.

22 Q. You just collected that from somebody else?

23 A. That's correct.

24 Q. But in your capacity as the permit reviewer in

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1 this case and an engineer for the IEPA, would you agree,
2 ma'am, that to the extent that portions of the landfill
3 bottom are higher than the static groundwater elevation,
4 this standard is impossible to comply with?

5 A. Yes. I agree that --

6 Q. It's really a yes or no question, ma'am.

7 A. Yes.

8 Q. Thank you.

9 Take a look at Page 5 of Exhibit R.

10 MR. LAROSE: By the way, while we're on this so
11 I don't forget, could we admit Exhibit R into the
12 record, please, Mr. Hearing Officer?

13 HEARING OFFICER HALLORAN: Any objection,

14 Mr. Kim?

15 MR. KIM: None.

16 HEARING OFFICER HALLORAN: Exhibit R is

17 admitted.

18 (Whereupon, Petitioner's Exhibit

19 No. R was admitted into evidence.)

20 BY MR. LAROSE:

21 Q. Page 5, Miss Roque, Condition -- Roman Numeral

22 II (I). Do you see that?

23 A. Yes.

24 Q. It says that, "The operator of this solid waste

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1 facility shall not conduct the operation in a manner
2 which results in any of the following." Let me skip
3 down to (I), and it says, "Disposition of refuse in any
4 unpermitted (i.e., without an Illinois EPA approved
5 significant modification authorized operation) portion
6 of the landfill."

7 Was that something that was within your purview
8 to put into this permit?

9 A. Yes. This is part of my review.

10 Q. I'm going ask you, then, to flip back to Page
11 3, Roman Numeral I, Subpart 2, which reads in part, "No
12 part of the unit shall be placed into service or accept
13 waste until an acceptance report for all of the
14 activities listed below has been submitted and approved
15 by the Illinois EPA as a significant modification." I'm
16 going to delete the section with the references to the
17 regulations.

18 And then we skip down to "A", "Preparation of
19 the separation layer to design parameters." Do you see
20 that?

21 A. Yes, I do.

22 Q. So when we read those two conditions
23 together -- the ones we read on Page 5, the ones we read

24 on Page 3 -- it says that they can't place waste in this

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1 fill until they've built the separation layer, right?

2 A. That's right.

3 Q. Doesn't the construction plan call for the
4 placement of waste to achieve the separation layer's
5 invert elevation? In other words, aren't they telling
6 them they've got to place waste to build the separation
7 layer?

8 A. Could you repeat your question?

9 Q. Yes, ma'am.

10 First of all, the permit application contained
11 a construction plan, correct?

12 A. Right.

13 Q. Did you approve that construction plan as part
14 of this permit application?

15 A. Correct, yes.

16 Q. Didn't the construction plan tell you that in
17 order to build the separation layer, they had to put
18 trash underneath?

19 A. They need to --

20 Q. It's really a yes or no question, ma'am.

21 A. Yes.

22 Q. So my question to you, then, is how can they
23 possibly comply with these conditions requiring no
24 placement of waste until they build the separation layer

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1 if they need to place waste to build the separation
2 layer?

3 A. Condition I or 2I on Page 5 --

4 Q. Yes, ma'am.

5 A. -- talks about -- except -- they're not allowed
6 to put waste in any unpermitted portion of the landfill.
7 That is a general condition that's taken directly from
8 the Act.

9 Q. Okay. Section 21(0) of the Act, to be precise?

10 A. Right. And it applies to all landfills, such
11 that they cannot place waste over unpermitted portions.

12 Q. But when we look at Page 3, it says they can't
13 place waste until they've submitted a completion report
14 and gotten your approval after they've built the
15 separation layer. My question to you is how could they
16 possibly comply with Condition No. -- Roman Numeral I,
17 Subparagraph 2(a) on Page 3 of Exhibit R if they need to
18 place the waste to build the separation layer?

19 A. Their permit allows them to go up to a certain
20 elevation to reach the separation layer's invert. Then
21 they're not operating without a permit -- they're not
22 going beyond unpermitted portion.

23 Q. So if their construction plan that you approved
24 calls for the placement of waste, they're not in

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1 violation of this permit if they place the waste while
2 they're building the separation layer? Is that what

3 you're telling me?

4 A. That's correct.

5 Q. I'm going to hand you what's been previously
6 marked as Exhibit WW and ask you to take a look at that,
7 please.

8 (Document tendered.)

9 BY MR. LAROSE:

10 Q. I'm directing your attention, ma'am, to the
11 second paragraph from the bottom, second sentence -- by
12 the way, do you know where this document came from?

13 A. It's from Parcel A.

14 Q. This is from the construction -- this is part
15 of the construction plan for the Parcel A application,
16 correct?

17 MR. KIM: You wouldn't happen to have a cite,
18 would you?

19 MR. LAROSE: I do.

20 BY MR. LAROSE:

21 Q. Is this part of the construction plan for the
22 Parcel A application?

23 A. Yes.

24 MR. LAROSE: Trust me on this one -- not a

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1 trick. This -- at least this one's not.

2 This came, Mr. Halloran, from Parcel A, Volume
3 1, Bates No. 0054.

4 BY MR. LAROSE:

5 Q. Ma'am, directing your attention to the second

6 to the last paragraph or the second -- I guess the last
7 full paragraph on this page, second sentence, begins,
8 "This process will involve stripping off portions of the
9 in-place cover in areas that are higher than the base
10 grade, placing waste or fill materials in areas that are
11 lower than the base grade and grading the entire area to
12 achieve a smooth and uniform subgrade for the placement
13 of the separation layer."

14 Do you see that, ma'am? Did it read it
15 correctly?

16 A. Yes.

17 Q. That's where they told you in the construction
18 plan they had to place waste in order to build the
19 separation layer, right?

20 A. Okay, right.

21 MR. LAROSE: Mr. Halloran, I would move
22 admission of Exhibit WW, please?

23 HEARING OFFICER HALLORAN: Mr. Kim?

24 MR. KIM: No objection.

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1 HEARING OFFICER HALLORAN: Exhibit WW will be
2 admitted.

3 (Whereupon, Petitioner's Exhibit
4 No. WW was admitted into evidence.)

5 BY MR. LAROSE:

6 Q. Ma'am, directing your attention back to Exhibit
7 R, please. Look at Page 2, Item 2, down at the bottom.

8 And that's where you denied the request to use one day's
9 leachate storage and instead, required them to have five
10 days' leachate storage, correct?

11 A. Correct.

12 Q. This was really a denial point, not a
13 condition, correct?

14 A. Correct.

15 Q. They were requesting to do one day, and instead
16 of conditioning it, you just said no, you guys got to do
17 five days', right?

18 A. We also conditioned it in the leachate
19 section --

20 Q. We'll get to that in a minute. But this
21 page -- Page 2, Item No. 2 of Exhibit R -- this was a
22 denial point, correct?

23 A. Yes.

24 Q. Then flipping back to Page 31, ma'am. I

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1 believe it's Section -- Roman Numeral VII, Item No. 11.
2 Is this where you're talking about where you say the
3 permit does not approve the one day's worth of leachate
4 storage and that we should maintain the tank with not
5 less than five days'; is that right?

6 A. That's correct.

7 Q. This is the condition that you're talking
8 about?

9 Ma'am, in this condition -- Condition No. 11 --
10 you cite 811.309(d)(6), correct?

11 A. Correct.

12 Q. Have you ever read 809.311(e)?

13 A. I must have read it.

14 Q. I hand you what has been previously marked as

15 Exhibit RR. Take a minute and read 809.311(e).

16 (Document tendered.)

17 BY MR. LAROSE:

18 Q. Have you finished?

19 A. Yes.

20 Q. Ma'am, this cite was proposing to treat

21 leachate off-site, correct?

22 A. Correct.

23 Q. 809.311(e) is the standards for discharge to an

24 off-site treatment work, correct?

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1 A. Correct.

2 Q. And this cite was proposing to transfer

3 leachate off-site by a direct sewer connection to a

4 POTW, correct?

5 A. Correct.

6 Q. Could you read for me, please, Condition --

7 excuse me -- the regulation in Section 809.311 -- I'm

8 sorry -- 809.311(e)(6), please?

9 A. Where leachate is not directly discharged into

10 a sewage system, the operator shall provide storage

11 capacity sufficient to transfer all leachate to an

12 off-site treatment works. Storage systems shall meet

13 the requirements of Subsection D."

14 Q. Under that subsection, ma'am, isn't it true
15 that since they had a direct connection to the POTW,
16 they didn't need storage at all?

17 A. No.

18 Q. 811.309(d)(6) is the section that you cited on
19 Page 31 of Exhibit R, Condition 11, correct?

20 A. Correct.

21 Q. The regulation says that in order to have less
22 than five days' -- and I'm paraphrasing -- that there
23 must be at least --

24 MR. KIM: I'm going to object. Why don't you

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1 just read it?

2 MR. LAROSE: Sure. I'll read it.

3 BY MR. LAROSE:

4 Q. "Such options shall consist of not less than
5 one days' worth of storage capacity for accumulated
6 leachate plus at least two alternative means of managing
7 accumulated leachate through treatment or disposal or
8 both treatment and disposal, each of which means is
9 capable of treating and disposing all leachate generated
10 at the maximum generation date on a daily basis."

11 That's the regulation you cited, correct?

12 A. Correct.

13 Q. That regulation says two alternative means, not
14 two POTWs, right?

15 A. Right.

16 Q. Now, Joyce Munie is saying that two POTWs are
17 required, correct? Yes or no, ma'am?

18 MR. KIM: Objection as to the question. Does
19 she mean asked to the comment on what testimony was
20 provided by Miss Munie or is she asking to -- I'm
21 sorry. My objection was it's a -- I would object to
22 the question. She can comment -- she can be asked
23 about what the final decision was or what the reason
24 was that went into it, but she's being asked to

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1 comment on what somebody else thought of --

2 MR. LAROSE: I think that's fair. I think
3 that's fair. And we'll get around to that in a
4 minute.

5 HEARING OFFICER HALLORAN: Before we move on,
6 could you -- you were referring to 811.309. And,
7 occasionally, I think you were saying 809.311, and I
8 think you corrected yourself sometimes. But the
9 whole last five minutes, you've been referring to
10 811.309; is that correct?

11 MR. LAROSE: That is exactly right.

12 HEARING OFFICER HALLORAN: And not 809.311?
13 Just for the record.

14 MR. LAROSE: I don't even know what 809.311 is.

15 HEARING OFFICER HALLORAN: Thanks, Mr. LaRose.

16 MR. LAROSE: For the last month or so, I didn't
17 know what 811.309 was.

18 I would ask, Mr. Hearing Officer, we can do it
19 one of two ways. We can either introduce Exhibit RR
20 or just have the Board take judicial notice of its
21 own regulations.

22 This is from the '99 most recent version of the
23 811 regs, and Exhibit RR is 811.309 in its entirety.

24 HEARING OFFICER HALLORAN: Mr. Kim?

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1 MR. KIM: I would just suggest we just ask the
2 Board to take judicial notice.

3 MR. LAROSE: Either is okay with me.

4 HEARING OFFICER HALLORAN: I'll allow into
5 evidence Exhibit RR.

6 (Whereupon, Petitioner's Exhibit
7 No. RR was admitted into evidence.)

8 BY MR. LAROSE:

9 Q. Ma'am, do you understand now that the IEPA's
10 position as of August of 2000 is that two POTWs are
11 required? Yes or no?

12 A. That was my understanding.

13 Q. That's new, isn't it? Never before August of
14 2000 was a landfill required to have two POTWs in order
15 to have one day's storage, right?

16 MR. KIM: Objection. Is that a question?

17 BY MR. LAROSE:

18 Q. Let me ask it a little bit different.

19 Just so we get this clear, as of August, when
20 you -- when Joyce Munie and the IEPA signed this permit

21 denying the one day's leachate storage, the position of
22 the IEPA is you need two separate POTWs, correct? Yes
23 or no?

24 A. That's my understanding.

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1 Q. And what I'm asking you is that wasn't your
2 understanding prior to August of the year 2000, correct?

3 A. When I submitted my -- that's correct. When I
4 submitted my draft.

5 Q. Has the Agency ever approved a one-day storage
6 tank with only one POTW?

7 A. I don't know.

8 Q. The call that was made on requiring two POTWs,
9 that was Joyce Munie's call, right? Yes or no, ma'am?

10 A. Let me back up to the previous question.

11 Q. Sure.

12 A. The Agency had approved --

13 Q. Let me rephrase it so you don't get -- let me
14 ask it again so you don't get confused.

15 My question was: Has the Agency ever approved
16 one day's leachate storage for solid waste landfill with
17 only one POTW connection?

18 A. I'll keep my answer. I don't know if we've
19 approved one day before this.

20 Q. The August 2000 call that two POTW connections
21 were necessary to qualify for only one day storage was
22 Joyce Munie's call, correct?

23 A. Correct.

24 Q. Prior to August, 2000, you understood that you

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1 only needed two means to get the leachate to one POTW,

2 right?

3 A. That's correct.

4 Q. And in that instance, for example, a sewer

5 connection to the POTW and a tank truck to the POTW

6 would have been sufficient, correct?

7 A. That's correct.

8 Q. I'm going to show you what's previously

9 been marked XX.

10 (Document tendered.)

11 MR. LAROSE: This document comes from Parcel A,

12 Volume 2, Page 0062.

13 BY MR. LAROSE:

14 Q. Ma'am, this is part of the leachate management

15 plan, correct?

16 A. Correct.

17 Q. The document in the last paragraph states as

18 follows: "Therefore, a pump may be necessary to

19 discharge the contents of the tank into the force main,

20 depending on the operating and anticipated future design

21 pressure of the force main. In addition, a valve and

22 lay-inch connection will be provided to facilitate

23 transfer of the liquid to a tanker truck as may be

24 needed. The transfer pump will alternately allow

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1 loading of the tank truck should it become necessary."

2 Is that the document that was submitted as part
3 of the May, 2000 application?

4 A. Yes.

5 Q. So they identified the sewer and the tank truck
6 in the May, 2000 application. And at least as of May,
7 2000, your understanding as a professional from the IEPA
8 was that was sufficient to allow for one-day storage,
9 correct?

10 A. We need a dedicated tanker truck to haul
11 leachate.

12 Q. So did this not -- did the language here not
13 suffice?

14 A. No.

15 Q. Why?

16 A. Because it did not commit to having a dedicated
17 tanker truck that will be used exclusively to haul
18 leachate that will be available if the sewer connection
19 to the City would happen to fail.

20 Q. Does it say that that's not what this tank
21 truck is?

22 A. It says as necessary? As needed?

23 Q. Right.

24 A. It doesn't imply to me that the truck will be

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1 on the site 24 hours a day.

2 Q. Does it mean to you that if the truck is on the
3 site 24 hours a day, it has to sit there and do nothing?

4 A. That's my understanding.

5 Q. So it just has to sit there. It can't be used
6 for any our purpose but being ready in the case of a
7 leachate transport emergency?

8 A. That's correct.

9 Q. Where is the dedicated tanker truck discussed
10 in the regulations?

11 A. It's not.

12 MR. LAROSE: Mr. Hearing Officer, I move
13 admission of Exhibit XX.

14 HEARING OFFICER HALLORAN: Mr. Kim?

15 MR. KIM: No objection.

16 HEARING OFFICER HALLORAN: Exhibit XX is
17 admitted.

18 (Whereupon, Petitioner's Exhibit
19 No. XX was admitted into evidence.)

20 BY MR. LAROSE:

21 Q. By the way, ma'am, everything we just discussed
22 with respect to the one-day versus five-day leachate
23 storage tank applies equally for Parcel B as it did for
24 Parcel A, correct?

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1 A. Correct.

2 Q. So I don't have to go through all the testimony
3 we just talked about is equally applicable to the other
4 application, right?

5 A. Correct.

6 Q. The August -- in August, 1999, the permits for
7 Parcels A and B were ready to be issued based on --
8 issued with conditions -- based on 17 million in
9 financial assurance, right?

10 A. I have a draft for the 1999.

11 Q. So drafts were ready to be issued? Drafts had
12 been written and the permit was ready to be issued with
13 conditions, right?

14 A. It would still have to go to Joyce. That's
15 just my draft.

16 Q. In August 13th -- on August 13th, 1999, the
17 applicant submitted a revised closure and post-closure
18 care cost estimate. Are you aware of that?

19 A. Yes.

20 Q. And the revision requested a reduction from 17
21 million down to 7 million. Are you aware of that?

22 A. Yes, I am.

23 Q. Based on -- this was based on --

24 MR. LAROSE: Strike that.

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1 BY MR. LAROSE:

2 Q. The request for a reduction was based upon the
3 City of Morris's agreement with CLC that Morris would
4 treat the leachate and groundwater at the facility at a
5 substantially reduced cost, correct?

6 A. Correct.

7 Q. And that agreement was submitted to you as
8 well, right?

9 A. That's correct.

10 Q. When the reduction -- when the request for the
11 reduction came through, you thought it was necessary to
12 have the legal department of the IEPA -- Mr. Kim and his
13 good fellows over there -- review it, correct?

14 A. Yes.

15 Q. And, in fact, you submitted or prepared for
16 submission a memoranda to the legal department asking
17 them whether or not the reduction was approvable,
18 correct?

19 A. Correct.

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

22 (Document tendered.)

23 MR. LAROSE: For the record, Mr. Hearing
24 Officer, this document appears in the record at

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1 Parcel A, reviewer's notes, Pages 327, 328 and 329.

2 HEARING OFFICER HALLORAN: Thank you.

3 BY MR. LAROSE:

4 Q. Ma'am, is that your confidential memo to Bill
5 Ingersoll of the department of legal counsel, dated
6 August 16th, 1999?

7 A. Yes, it is.

8 Q. And that is from you to Ingersoll requesting a
9 legal opinion on whether the reduction in financial

10 assurance was acceptable based on the lease amendment,
11 correct?

12 A. Correct.

13 Q. And you attached to this document the amendment
14 to the lease dated July the 20th, 1999, correct?

15 A. Correct.

16 Q. And on Pages 328 and 329 of Exhibit TT -- or,
17 excuse me, on Page 328 -- that's your writing on the
18 top, correct?

19 A. That's correct.

20 Q. It says, "This is the supporting document for
21 the reduced cost estimates," right?

22 A. That's correct.

23 Q. The bottom last full paragraph -- second to
24 last full paragraph of this states, "I am asking for

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1 DLC." That's Division of Legal Counsel?

2 A. Right.

3 Q. "DLC's legal opinion as to whether the lease
4 amendment (attached) satisfies Section 811.704(d). If
5 the lease amendment is acceptable, the cost estimates
6 may be approved and, consequently, the above-referenced
7 applications. Please advise."

8 When you say "and consequently the
9 above-referenced applications," you mean the
10 above-referenced applications may be approved as well,
11 correct?

12 A. Right.

13 Q. Who's your direct supervisor or who was your
14 direct supervisor on August 16th, 1999?

15 A. At the time, it was -- it is -- Chris Liebman.

16 Q. Is today and was then?

17 A. Right.

18 Q. That's Christian Liebman?

19 A. Liebman.

20 Q. L I E B M A N?

21 A. That's correct.

22 Q. Did Mr. Liebman concur in your decision to send
23 this issue to legal counsel, at least initially?

24 A. He said to show it to Joyce.

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1 Q. So he didn't have -- he didn't tell you not to
2 do it, right?

3 A. Right.

4 Q. You actually put this in an envelope and put it
5 in Mr. Ingersoll's mailbox or at least in the
6 interoffice mail, right?

7 A. That's correct.

8 Q. And then the next day, your boss told you go
9 get it; we're not sending anything to legal, right?

10 A. It could have been the same day; I don't
11 recall.

12 Q. It could have been that day or the same day
13 Joyce Munie said we're not sending this issue to legal,
14 right?

15 A. Right.

16 MR. LAROSE: We move for admission of TT,
17 please.

18 HEARING OFFICER HALLORAN: Mr. Kim?

19 MR. KIM: No objections.

20 HEARING OFFICER HALLORAN: Exhibit TT is
21 admitted.

22 (Whereupon, Petitioner's Exhibit
23 No. TT was admitted into evidence.)

24

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1 BY MR. LAROSE:

2 Q. Ma'am, I'm going to hand you what has been
3 previously marked as Exhibit UU. Take a look at that.

4 (Document tendered.)

5 BY MR. LAROSE:

6 Q. Ma'am, this is part of your notes from the
7 permit reviewer file, correct?

8 A. That's correct.

9 MR. LAROSE: And Mr. Hearing Officer and
10 Mr. Kim, this document comes from Parcel A, reviewer
11 notes, Pages 325 and 326, for the record.

12 BY MR. LAROSE:

13 Q. Ma'am, about halfway down on the first page,
14 you make a note on 8-17-99. And I'm going to let you
15 try and read that so that I don't have to try and read
16 it. Do you see where I'm talking about? There's a

17 paragraph entry there.

18 A. 8-17-99 per JM and CJL with raw deal, see
19 comment request. The proposal to reduce cost of PCC
20 (free contaminated groundwater and gas condensate and
21 leachate treatment) based on agreement between owner and
22 operator is not acceptable.

23 Q. And then underneath that it says --

24 A. And Denial Point No. 2.

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1 Q. And that became a denial point of the actual
2 permit, correct?

3 A. Correct.

4 Q. The initials JM, what do those stand for?

5 A. JM is for Joyce Munie; CJL is Chris Liebman.

6 Q. And PCC?

7 A. Post-closure costs -- post-closure care costs.

8 Q. Now, you -- did you put the request to legal
9 counsel in the mailbox the same day you wrote it?

10 A. According to this, I mailed it or I put it in
11 the mail or sent it on 8-16, and then 8-17, when I took
12 it out.

13 Q. So you got it in the mailbox on 8-16, the day
14 you wrote it, right?

15 A. Could be. I don't -- yeah, it could be I put
16 it in the mail on 8-16.

17 Q. I mean, I don't know exactly what happened, but
18 this document says 8-16-99, sent Bill -- does it say
19 sent Bill or send Bill?

20 A. I think it's send.

21 Q. Send Bill, okay. But then it says "(also faxed
22 copy to John Kim.)" Faxed with an "ed". Did you
23 retrieve it out of the fax machine, too?

24 A. Probably not if I faxed it.

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1 Q. So we're not sure whether legal counsel even
2 got this document, right?

3 A. Right.

4 Q. You think for the Ingersoll not only didn't get
5 to Ingersoll --

6 A. Right.

7 Q. -- because you pulled it out of the mail. And
8 for the Kim, you're not sure whether he got it or not?

9 A. That's correct.

10 Q. Did Joyce give you any reason why she was so
11 certain that this was not acceptable without even
12 running it by legal counsel?

13 A. That it's not third party costs.

14 Q. So Joyce was certain that it wasn't a third
15 party cost?

16 A. That's correct.

17 Q. That issue on third party costs wasn't as clear
18 to you as it was to Joyce, was it?

19 A. The third party --

20 Q. Yes or no, ma'am?

21 A. Yes.

22 Q. It was --

23 A. It's not as clear.

24 Q. It wasn't as clear to you as it was to Joyce?

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1 A. That's correct.

2 Q. This particular request for reduction was the
3 fatal flaw -- that's your word, not mine -- the fatal
4 flaw that resulted in the denial of the '96 application
5 in September, '99, correct?

6 A. That's correct.

7 MR. LAROSE: Mr. Hearing Officer, I don't know
8 if I moved admission of UU, but if I didn't, I'd
9 like to.

10 HEARING OFFICER HALLORAN: Mr. Kim?

11 MR. KIM: No objection.

12 HEARING OFFICER HALLORAN: It's granted.

13 Exhibit UU is admitted.

14 (Whereupon, Petitioner's Exhibit

15 No. UU was admitted into evidence.)

16 BY MR. LAROSE:

17 Q. Ma'am, I'm going to hand you what's been
18 previously marked as Exhibit SS.

19 (Document tendered.)

20 BY MR. LAROSE:

21 Q. Ma'am, this is part of your reviewer's notes,
22 correct?

23 A. Correct.

24 Q. This is from the Parcel A reviewer note file --

1 Parcel A application reviewer notes, Page 0111, correct?

2 A. Correct.

3 Q. The last paragraph of that relates to this

4 fatal flaw issue, right?

5 A. Right.

6 Q. It says, "Review of Application Log No. 2,155."

7 That's the Parcel A 2000 application, right?

8 A. That's right.

9 Q. "Is limited to topics addressing the denial

10 letter dated September 1, 2000, as previously agreed

11 (for quick turnaround review). This application will

12 address only the fatal flaw in the previous Application

13 Log 1996-255, which is the third party cost estimates

14 for treatment/disposal of leachate, condensate and

15 contaminated groundwater and acceptable financial

16 assurance and other remaining issues will be special

17 conditions."

18 Did I read that correctly?

19 A. Yes.

20 Q. Says here, "As previously agreed." That was a

21 reference to our agreement to submit this new

22 application as a means to resolve the prior permit

23 appeal, correct?

24 A. Correct.

1 Q. And as part of that, you guys were agreeing to
2 do a little bit of a quick turnaround, correct?

3 A. Correct.

4 Q. And the fatal flaw in the prior application
5 that you reference is the request for the reduction in
6 financial assurance, correct?

7 A. That's correct.

8 MR. LAROSE: I move admission of Exhibit SS
9 into the record, Mr. Halloran.

10 HEARING OFFICER HALLORAN: Mr. Kim?

11 MR. KIM: No objection.

12 HEARING OFFICER HALLORAN: Exhibit SS is
13 admitted.

14 (Whereupon, Petitioner's Exhibit
15 No. SS was admitted into evidence.)

16 MR. LAROSE: I don't know about you guys, but
17 if this is a good time for anybody else to take five
18 minutes, this is a good time for me to take five
19 minutes.

20 MR. KIM: No objection.

21 HEARING OFFICER HALLORAN: Off the record.

22 (A short break was had.)

23 HEARING OFFICER HALLORAN: We're back on the
24 record. We took approximately a 15-minute break. I

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1 do want to note as I neglected to note after the
2 lunch break that Anad Rao, Miss Cathy Glenn and John
3 Knittle from the Board are in the audience and are

4 present in the hearing room.

5 Mr. LaRose?

6 MR. LAROSE: Thank you, Mr. Halloran.

7 BY MR. LAROSE:

8 Q. Ma'am, the 2000 application was a procedure to
9 have the permit issued with 17 million financial
10 assurance, put in conditions and then fight about the
11 financial assurance later on, right?

12 A. Right.

13 Q. I'm going to hand you what's been previously
14 marked as Exhibit T.

15 (Document tendered.)

16 BY MR. LAROSE:

17 Q. Is that the cover letter from the 2000
18 application?

19 A. Yes, it is.

20 Q. And the last paragraph on Page 1 of Exhibit T
21 identifies that the applicants were submitting
22 17,427,366 -- well, let me read it so we don't get any
23 problems with it.

24 "Community Landfill Company and the City of

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1 Morris are including a 17,427,366 closure, post-closure
2 care cost estimate in these applications and are
3 agreeing to submit bonds in that amount at the time of
4 the issuance of the permits solely as a means to resolve
5 this matter and without prejudice to its rights to seek

6 a reduction of the closure and post-closure care costs
7 at a later date and through appropriate available
8 procedures."

9 Did I read that correctly?

10 A. That's correct.

11 MR. LAROSE: Mr. Hearing Officer, I move
12 admission of Exhibit T into evidence.

13 HEARING OFFICER HALLORAN: Mr. Kim?

14 MR. KIM: No objection.

15 HEARING OFFICER HALLORAN: Exhibit T is
16 admitted.

17 (Whereupon, Petitioner's Exhibit
18 No. T was admitted into evidence.)

19 BY MR. LAROSE:

20 Q. Ma'am there was a similar -- well, let me just
21 show you this, too, just so we don't have any confusion.
22 I'm going to show you Exhibit U.

23 (Document tendered.)

24

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1 BY MR. LAROSE:

2 Q. And to cut this short a little bit, this is the
3 cover letter for the Parcel B application submitted
4 May 8th, 2000, correct?

5 A. Correct.

6 Q. And this document has the identical language on
7 the last paragraph of the first page, correct?

8 A. Correct.

9 MR. LAROSE: I move admission of Exhibit U into
10 the record, please.

11 HEARING OFFICER HALLORAN: Mr. Kim?

12 MR. KIM: No objection.

13 HEARING OFFICER HALLORAN: Exhibit U is
14 admitted.

15 (Whereupon, Petitioner's Exhibit
16 No. U was admitted into evidence.)

17 BY MR. LAROSE:

18 Q. Each of these parcels or each of these
19 applications also contain an executive summary, correct?

20 A. Correct.

21 Q. I'm going to hand you what has been previously
22 marked as Exhibit V and ask you to take a look at that.

23 (Document tendered.)

24

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1 BY MR. LAROSE:

2 Q. The underlying language --

3 MR. LAROSE: Strike that.

4 BY MR. LAROSE:

5 Q. This is part of the executive summary from the
6 2000 Parcel A application, correct?

7 A. Correct.

8 MR. LAROSE: For the record, Mr. Halloran, this
9 appears in Parcel A, Volume 1, Page 0036.

10 BY MR. LAROSE:

11 Q. The underlying language in the middle of that
12 page was contained in that executive summary, correct?

13 A. Correct.

14 MR. LAROSE: I would move admission of
15 Exhibit V.

16 HEARING OFFICER HALLORAN: Mr. Kim?

17 MR. KIM: No objection.

18 HEARING OFFICER HALLORAN: Exhibit V is
19 admitted into evidence.

20 (Whereupon, Petitioner's Exhibit
21 No. V was admitted into evidence.)

22 BY MR. LAROSE:

23 Q. Coming right on the heels of Exhibit V,
24 Exhibit W.

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1 (Document tendered.)

2 HEARING OFFICER HALLORAN: That last exhibit
3 was Exhibit V, as in Victor.

4 MR. KIM: We have no objection to this being
5 admitted as well, just to speed things along.

6 BY MR. LAROSE:

7 Q. Exhibit W is part of the Parcel B executive
8 summary, correct?

9 A. Right.

10 MR. LAROSE: For the record, Mr. Halloran, this
11 appears in Parcel B, Volume 1, Page 035.

12 BY MR. LAROSE:

13 Q. The underlying language in the second full

14 paragraph on Exhibit W appeared in the executive summary
15 of the Parcel B 2000 application, correct?

16 A. Correct.

17 Q. And just to make this clear, with respect to
18 both parcels -- excuse me -- both V and W -- I didn't
19 underline this. When you received the application, this
20 was underlined, correct?

21 A. Correct.

22 Q. Did you understand that the underlining in the
23 application was designed to be an indication to you of
24 new things that were in the application that weren't in

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1 the '96 app?

2 A. That's right.

3 Q. And that was designed by Mr. McDermont who
4 assisted your review so that you could pick out the new
5 things fairly readily, correct?

6 A. That's correct.

7 Q. Did that, in fact, assist your review?

8 A. Yes, it did.

9 MR. LAROSE: I would move admission of
10 Exhibit W.

11 HEARING OFFICER HALLORAN: If Mr. Kim has no
12 objection, Exhibit W admitted.

13 (Whereupon, Petitioner's Exhibit
14 No. W was admitted into evidence.)

15 BY MR. LAROSE:

16 Q. The most recent application was supposed to be
17 substantially the same as the 1996 app and addendum with
18 the full 17 million financial assurance, correct?

19 A. Correct.

20 Q. Let's examine the third party costs issue for a
21 second. The City of Morris owns the landfill, correct?

22 A. Correct.

23 Q. The City of Morris owns the publicly-owned
24 treatment works to which the landfill sought to send its

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1 leachate, condensate and groundwater, correct?

2 A. Correct.

3 Q. Therefore, Joyce's position or the EPA's
4 position is that the City of Morris's cost to treat the
5 leachate at their own POTW is not a third party cost
6 because they own both the landfill and the POTW. Do I
7 summarize that correctly?

8 A. I don't think so.

9 Q. I thought you told me that there was no third
10 party cost with the Morris agreement because they own
11 the landfill and the POTW. Is that not correct?

12 A. It's not because they owned it. It's the
13 reduced cost estimate. That's not --

14 Q. It didn't have anything to do with them owning
15 both of them?

16 A. No. The landfill can take the leachate to the
17 facility that can receive that leachate.

18 Q. Ma'am, do you remember your deposition in this

19 case?

20 A. Yes.

21 Q. And it was given on the 19th day of December,
22 just a few weeks ago, of the year 2000, correct?

23 A. Correct.

24 Q. You were under oath at that time?

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1 A. Right.

2 Q. And you actually had a chance to read and
3 review your deposition prior to coming here today,
4 correct?

5 A. Correct.

6 Q. And you, after reviewing it, made a couple of
7 typographical error corrections, and then you signed it,
8 right?

9 A. That's correct.

10 MR. LAROSE: Page 30, Counsel.

11 BY MR. LAROSE:

12 Q. Do you remember being asked this question and
13 giving this answer at your deposition:

14 "Okay. So it was all over this third party
15 cost deal, right? The fact that Morris owned the
16 POTW, Morris owned the landfill, so their cost
17 wasn't a third party cost, correct?

18 Answer: Correct."

19 Do you remember being asked that question and
20 giving that answer?

21 A. I remember.

22 Q. Hadn't the IEPA already approved Morris's POTW
23 cost as a third party cost for treating the condensate
24 from the gas system in 1999?

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1 A. Yes.

2 Q. And you approved that cost of the Morris POTW
3 even though Morris owned both the landfill and the POTW,
4 correct?

5 A. Correct.

6 Q. Based on --

7 MR. LAROSE: Strike that.

8 BY MR. LAROSE:

9 Q. Are you aware that there was a reservation of
10 disposal capacity agreement in this case?

11 A. Yes.

12 Q. And that reservation of disposal capacity
13 agreement was an agreement by CLC and the City of Morris
14 to reserve disposal capacity in Parcel B for the
15 overfill in Parcel A, correct?

16 A. I think it's the other way around. Overfill in
17 Parcel B to go to Parcel A.

18 Q. I think that's what I said, but if I didn't,
19 you're right and I'm wrong. Let me make sure that the
20 record is straight.

21 The reservation of disposal capacity agreement
22 was an agreement by Morris and CLC committing to the
23 IEPA to reserve space in A to accommodate the overfill

24 in B?

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1 A. That's correct.

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

4 (Document tendered.)

5 BY MR. LAROSE:

6 Q. Ma'am, is that the reservation of disposal
7 capacity agreement?

8 A. Yes.

9 MR. LAROSE: By the way, this comes from Volume
10 A, Parcel 3, Pages 0351 to 0353, Mr. Halloran.

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

13 BY MR. LAROSE:

14 Q. This agreement -- based on this reservation of
15 disposal capacity agreement, you approved the disposal
16 of the overflow from Parcel B to be deposited in Parcel
17 A without any third party disposal costs, correct?

18 A. Correct.

19 Q. Even though Morris owned the landfill, correct?

20 A. Correct.

21 Q. So you accepted their agreement to reserve
22 space in their own landfill without any disposal costs,
23 even though they weren't a third party, right?

24 A. Correct.

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1 MR. LAROSE: Mr. Hearing Officer, I move
2 admission of Exhibit O into the record, please.

3 HEARING OFFICER HALLORAN: Mr. Kim?

4 MR. KIM: No objection.

5 HEARING OFFICER HALLORAN: Exhibit O admitted.

6 (Whereupon, Petitioner's Exhibit
7 No. O was admitted into evidence.)

8 BY MR. LAROSE:

9 Q. Is Morris POTW the closest POTW to the
10 landfill?

11 A. I don't know.

12 Q. If it was -- assume for the purposes of the
13 question that it was -- is that where you would expect
14 them to go with their leachate with a sewer connection?

15 A. Sure.

16 Q. Ma'am, if they decided to take their leachate
17 by sewer to another municipality's POTW, and that
18 municipality agreed to take that leachate free of
19 charge, would that be a third party cost?

20 A. No.

21 Q. Did you ever consider allowing the overfill in
22 Parcel B to be sited in place, pursuant to local siting,
23 as an option?

24 A. That's an option for Community Landfill.

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1 Q. The answer is then yes, you considered allowing
2 that in the permit?

3 A. Could you rephrase that, please?

4 Q. Sure.

5 Did you ever consider allowing the overfill to
6 be sited in place to be an option for the permit?

7 A. That is an option.

8 Q. The draft denial in 1999 and the actual denial
9 of the '99 application said get local siting or revise
10 the cost estimate, right?

11 A. Right.

12 Q. If they had submitted local siting and the
13 financial assurance had not changed in 1999, the permit
14 would have allowed the material to remain in place,
15 correct?

16 A. Correct.

17 Q. Your answer was correct?

18 A. Correct.

19 Q. Both the '96 application and the 2000
20 applications ask for a period of time to allow them to
21 obtain siting or move the waste, correct?

22 A. Correct.

23 Q. So when they submitted the '96 app, they asked
24 for some time to do local siting or move the waste, if

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1 they hadn't done it by that time period, right?

2 A. That's correct.

3 Q. And in 2000, they were still asking for some
4 time after you issued the permit to do local siting or

5 move the waste, correct?

6 A. Correct.

7 Q. Is it true, Miss Roque, that the request for
8 siting was not approvable because you believed and Joyce
9 Munie believed that the time frame requested was simply
10 too long?

11 A. The --

12 Q. It's really a yes or no --

13 A. No, it's not true.

14 Q. Ma'am, again, to your deposition on the 19th of
15 December, 2000 --

16 MR. LAROSE: Counsel, Page 43.

17 BY MR. LAROSE:

18 Q. Do you remember being asked this question and
19 providing this answer:

20 "Question: Okay. So is what you're saying is
21 it's not approvable now because they weren't trying
22 to site it since 1997?

23 Answer: Well, it's not approvable because of
24 the length of time involved."

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1 Do you remember being asked that question and
2 providing that answer three weeks ago?

3 A. Yes.

4 Q. So it wasn't necessarily the concept of leaving
5 the waste in Parcel B that you were objecting to, just
6 the length of time? Ma'am?

7 A. Right.

8 Q. Miss Roque, I'm going to hand you what has been
9 previously marked as Exhibit S, as in Sam, which is the
10 Parcel B permit that was issued on August the 4th, 2000.

11 (Document tendered.)

12 BY MR. LAROSE:

13 Q. Does that look like the Parcel B permit?

14 A. Yes.

15 MR. LAROSE: I think all of the pages are
16 there. It is, as far as the record goes,
17 Mr. Halloran, Parcel B, reviewer's notes, 001 to
18 038. This document is not Bates stamped, but those
19 are the Bates stamps from the record.

20 BY MR. LAROSE:

21 Q. Ma'am, I'd like to direct your attention to
22 Page 2.

23 MR. KIM: Are you going to offer this into
24 evidence?

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1 MR. LAROSE: Yes.

2 MR. KIM: We can just go ahead and do that. No
3 objection.

4 MR. LAROSE: Then it's offered into evidence.

5 HEARING OFFICER HALLORAN: Exhibit S is
6 admitted.

7 (Whereupon, Petitioner's Exhibit
8 No. S was admitted into evidence.)

9 BY MR. LAROSE:

10 Q. Ma'am, directing your attention to Page 2,
11 numbered Paragraph 2, it reads, "The placement of excess
12 waste on Parcel B at any time -- "

13 MR. LAROSE: Strike that.

14 BY MR. LAROSE:

15 Q. You really have to go up to the language before
16 that so it makes sense.

17 "Permit 2000-156-LFM does not approve the
18 following." Then I jump down to Paragraph 2 below that.
19 It says, "The placement of excess waste on Parcel B at
20 any time notwithstanding the proposed waste removal
21 schedule. Before February 1, 2001, the permittee shall
22 remove the 475,000 cubic yards of excess waste from B
23 identified in Application Log 2000-156."

24 I jump down to the paragraph below that, it

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1 says, "If the excess waste has not been removed by
2 February 1, 2001, the owner and operator shall submit a
3 revised cost estimate for the removal and disposal in
4 excess of the excess waste based on the IEPA hiring a
5 third party cost to -- " and then it cites the
6 regulation.

7 Did I read that correctly?

8 A. That's correct.

9 Q. So you were giving us six months to either get
10 local siting or to move this waste or increase the
11 financial assurance, correct?

12 A. Correct.

13 Q. Your decision to give us just six months to
14 move this waste wasn't based on environmental concerns,
15 was it?

16 A. No.

17 Q. Do you have any concerns as to whether exhuming
18 up to 475,000 cubic yards of waste, moving it across the
19 street, could cause any environmental problems?

20 A. If it's not done properly, yes.

21 Q. For example, in order to do this, we're going
22 to have to physically dig up the waste, right?

23 A. That's correct.

24 Q. And even if that's done properly, it could

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1 create dust and dirt problems, right -- particulate
2 problems?

3 A. If it's done properly, it should not.

4 Q. But digging up the waste could create dust and
5 dirt problems, right?

6 A. Right. Within the landfill.

7 Q. Digging up the waste could cause problems with
8 blowing litter, correct?

9 A. Correct.

10 Q. Digging up the waste could cause problems with
11 the neighboring industries and residences complaining,
12 right?

13 A. (Nodding.)

14 Q. Ma'am?

15 A. Right. If it's not done properly.

16 Q. Digging up the waste, properly or otherwise,
17 could cause odor problems, correct?

18 A. Correct.

19 Q. And digging up the waste, even if you do it
20 very carefully, could cause some hazard problems because
21 of the additional traffic and trucks that are going to
22 have to go from one side of the landfill, across the
23 busy county road, to the other side of the landfill,
24 correct?

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1 A. Correct.

2 Q. The speed limit on that county road, do you
3 know what it is?

4 A. 30, 35.

5 Q. It's actually 55, but -- so you don't know what
6 the speed limit is?

7 A. No.

8 Q. The reservation and disposal capacity agreement
9 was significant to you because the people that own and
10 operate the landfill agreed in writing to reserve that
11 capacity, correct?

12 A. Correct.

13 Q. Ma'am, Environ-Tech Landfill is just to the
14 north of this, right?

15 A. Right.

16 Q. If we submitted a third party cost, would
17 Environ-Tech Landfill's third party cost for disposal be

18 acceptable?

19 A. Repeat your question, please.

20 Q. If we submitted a third party cost for the
21 disposal of this overfill material, would it be
22 acceptable to use Environ-Tech Landfill?

23 A. Third party -- yeah, I would think so.

24 Q. So we could send it across the railroad tracks

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1 for \$15 a yard, or we can send it across the road in six
2 months for no dollars a yard, but we can only have six
3 months to go through the process to leave it where it's
4 at. Is that what you're telling us?

5 A. Yes.

6 Q. The EPA recommended with respect to Parcel A
7 that leachate removal begin immediately, correct?

8 A. I didn't get your question. I'm sorry.

9 Q. The EPA recommended that leachate removal begin
10 immediately on Parcel A, correct?

11 A. Right.

12 Q. In order for leachate removal -- in order for
13 them to begin removing leachate, they have to do several
14 things, right?

15 A. That's right.

16 Q. First thing they have to do is buy and
17 construct the storage tank, if in fact they're going to
18 use one, correct?

19 A. That's one component.

20 Q. And even under their application, even though
21 they conceded that they would do a one-day storage tank,
22 there was still going to be a storage tank under their
23 application, whether or not the regs require any storage
24 at all, right?

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1 A. That's correct.

2 Q. They would also have to hook the force main up
3 to the sewer, correct?

4 A. Correct.

5 Q. And they would have to hook the storage tank up
6 to the force main, correct?

7 A. Correct.

8 Q. They would also have to install all the piping
9 and vertical wells necessary to collect and extract the
10 leachate and get it to the tank and/or the sewer, right?

11 A. That's correct.

12 Q. You understood from the application that
13 they -- it was your understanding of the application
14 that they were going to begin all these tasks
15 immediately, and when they were done, they were going to
16 remove leachate? Ma'am?

17 A. Right.

18 Q. And you gave them, in your permit, six months
19 to do all of that, right?

20 A. Right.

21 Q. Would a delay of a couple months, in addition
22 to the six months, have caused any environmental harm?

23 A. I don't know.

24 Q. How about six months in addition to the six

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1 months? Would that have caused any environmental harm?

2 A. I don't know.

3 Q. What about a year in addition to the six

4 months? Would that have caused any environmental harm?

5 A. Again, I don't know the answer.

6 Q. Is there any period of time that I could give

7 you in which you would have an opinion as to whether a

8 delay in time would cause environmental harm?

9 A. No.

10 Q. No or I don't know?

11 A. I don't know.

12 Q. So in six months, you expected them to install

13 and get approved the tank, hook up the force main, build

14 the leachate collection piping, connect that to some

15 pumping device, do the vertical wells and hook up the

16 sewer, right?

17 A. Right.

18 Q. Now, they say in this permit appeal, that's not

19 enough time. Do you think they should be given a little

20 bit more time?

21 A. I did say that I will review a proposal.

22 Q. Do you think that they should be given a little

23 bit more time in this permit appeal by the Board?

24 Ma'am?

1 A. I can't tell.

2 Q. If you knew that Mr. McDermont here wasn't
3 proposing to do all this in six months, but to build a
4 tank in six months and then start the other things after
5 that, would you have given him a little more time to do
6 so?

7 A. I would have asked him his intention.

8 Q. Why didn't you?

9 A. When I read the application, it did propose to
10 have the tank installed in six months and begin leachate
11 extraction after they received a permit to operate the
12 tank.

13 Q. Why didn't you speak with him about it?

14 A. To me, that implies that once they get the
15 permit to operate the tank, they're ready to extract
16 leachate.

17 Q. So in addition to building the tank, you
18 expected them do all these other things and, at the same
19 time, we were supposed to be moving waste across the
20 street during that same six-month period, right?

21 A. Right.

22 Q. Do you have any experience in oversight or
23 construction of leachate management devices?

24 A. No.

1 Q. Do you know whether they were going to perform

2 the construction of this leachate system and all the
3 component parts with internal labor or with external
4 labor?

5 A. I don't know that.

6 Q. Take a look at the Parcel A permit, please.
7 It's Exhibit R. I'm going to direct your attention,
8 again, to Page 2.

9 Page 2, Item 1, talks about the denial point
10 for Wells T2 and T4, correct?

11 A. Correct.

12 Q. It reads, "The proposed pumping wells -- T2 and
13 T4 -- as part of the facility's -- "

14 MR. LAROSE: Strike that.

15 BY MR. LAROSE:

16 Q. Again, we've got to go back up to the lead-in
17 language to make this make sense.

18 "Permit No. 2000-155-LFM does not approve the
19 following: The proposed pumping wells, T2 and T4, as
20 part of the facility's contingent remediation program."

21 And then you go on to describe why, and it has
22 to do with mine subsidence and potential dewatering,
23 correct?

24 A. Correct.

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1 Q. Flip to Page 41 of the Parcel A permit, Item
2 No. 24. This is a condition, right, with respect to T2
3 and T4? Take your time. When you get there, let me

4 know.

5 A. Correct.

6 Q. And this condition says that even though they
7 have already installed T2 and T4, you're not going to
8 let them use it, and they should decommission them or
9 something in accordance with the regulations, right?

10 A. Yes. Again, this is from the groundwater
11 portion of the permit.

12 Q. T2 and T4 were denied because of stability
13 concerns, correct?

14 A. Correct.

15 Q. They were denied because you were concerned
16 from a stability standpoint that pumping too much
17 groundwater from T2 and T4 could cause subsidence,
18 right?

19 A. Correct.

20 Q. And that concern was especially heightened in
21 the event that the voids in the underground mining were
22 going to be dewatered, right?

23 A. That's correct.

24 Q. You were the only one from the EPA that

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1 reviewed stability prior to the issuance of the permit,
2 correct?

3 A. Correct.

4 Q. Concerns that you had were based solely on a
5 comparison of the conclusion in the Streeter
6 Environmental Impact Assessment versus the information

7 contained in the application, correct? It's really a
8 yes or no answer, ma'am.

9 A. Yes.

10 Q. You consulted no other documents, other than
11 the application and the Streeter EIS, correct?

12 A. Correct.

13 MR. LAROSE: Give me just a moment.

14 HEARING OFFICER HALLORAN: We can go off the
15 record.

16 (A short break was had.)

17 HEARING OFFICER HALLORAN: Back on the record.

18 BY MR. LAROSE:

19 Q. Ma'am, would you say that it's a fair statement
20 that you could agree 100 percent with the conclusions of
21 the Streeter EIS, but just as equally say that they're
22 not applicable to the Morris site?

23 A. Yes.

24 Q. Did you do anything to determine whether the

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1 geological conditions at Morris were the same as those
2 at Streeter?

3 A. No.

4 Q. Do you know whether the geological conditions
5 at Morris were the same as those investigated at
6 Streeter?

7 A. I don't know.

8 Q. Do you know if the Streeter EIS conclusions

9 would apply to Morris if the geological conditions
10 underlying those two sites were different?

11 A. Could you repeat that, please?

12 Q. Do you know whether the Streeter EIS
13 conclusions would apply to the Morris site if the
14 stratigraphy and geology underneath these sites were
15 different?

16 A. I would think the conclusion would apply.

17 Q. You think it would apply, even if they were
18 different?

19 A. The geologic condition.

20 Q. If the geological conditions were different --

21 MR. LAROSE: Strike that.

22 BY MR. LAROSE:

23 Q. Just get this straight. Are you telling this
24 Board that if the geological conditions under Morris are

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1 different than the geological conditions under Streeter,
2 the Streeter conditions would still apply to Morris?

3 MR. KIM: Objection. What conditions are you
4 referring to when you say Streeter?

5 MR. LAROSE: The geological conditions -- the
6 subsurface strata.

7 MR. KIM: But you said the Streeter conditions
8 would apply to Morris. You mean the Streeter
9 conclusions?

10 MR. LAROSE: Maybe I asked it incorrectly.

11 I'll try and clarify.

12 HEARING OFFICER HALLORAN: Could you rephrase
13 that? Thank you.

14 BY MR. LAROSE:

15 Q. Are you trying to tell this Board that if the
16 geological conditions under the Streeter investigatory
17 site are different than under the Morris Community
18 Landfill, that the conclusions of the Streeter EIS
19 report would apply to Morris?

20 A. The conclusion on the dewatering of mine voids
21 would still be applicable to Morris.

22 Q. Do you know whether the mine voids were ever
23 dewatered at the Morris Community Landfill during their
24 four-month deep water pump test?

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1 A. No, I don't know that.

2 Q. Did you ever do anything to find that out?

3 A. No.

4 Q. If the conditions that appear in the
5 conclusions in the report of the EIS do not appear in
6 the Parcel A Morris application, is it true that the
7 conclusions of the EIS may not apply?

8 A. The conclusion on dewatering the mine voids, I
9 believe, would still apply to Morris.

10 Q. Back to your deposition, again.

11 MR. LAROSE: Page 74, Counsel.

12 BY MR. LAROSE:

13 Q. Do you remember being asked this question and

14 giving this answer on the 19th of December, 2000:

15 "Question: Again, I'm not going to read these
16 because I probably wouldn't understand them if I
17 did. But if the conditions that these conclusions
18 were based on do not appear in Parcel A of Morris,
19 the conclusions here may not be applicable to the
20 site, correct?"

21 Answer: Correct."

22 Ma'am, do you remember being asked that
23 question and giving that answer?

24 A. Yes, I remember.

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1 Q. Andrews uses a computer program to calculate
2 the factor of safety, correct?

3 A. Correct.

4 Q. That's the PC STABL, S T A B L, dash 5 program,
5 right?

6 A. That's right.

7 Q. IEPA doesn't have that program, do they?

8 A. No, we don't.

9 Q. You didn't run that program to test their
10 calculations, did you?

11 A. No, I didn't.

12 Q. There are regulations that establish factors of
13 safety for both slope stability and load-bearing
14 stability under the 811 regs, correct?

15 A. Correct.

16 Q. The regulations are 811.304(c) and (d). C is

17 the load-bearing; D is the slope stability, right?

18 A. That's correct.

19 Q. Didn't Andrews' calculations meet the factors
20 of safety required by those regulations at groundwater
21 elevation 509?

22 A. That's correct.

23 Q. And at 506 and 503 groundwater elevations, they
24 passed the slope stability regulation as well, correct?

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1 A. That's correct.

2 Q. You just don't know if it passed for lower
3 groundwater elevations, right?

4 A. That's correct.

5 Q. Didn't the calculations at 509, 506 and 503
6 show the stability -- slope stability -- of the landfill
7 getting greater, not lesser?

8 A. I believe so.

9 Q. So as the groundwater was pumped lower, the
10 stability increased, correct?

11 A. Correct.

12 Q. The factor of safety increased, correct?

13 A. Correct.

14 Q. They complied with the regulations more, not
15 less, correct?

16 A. Correct.

17 Q. Wouldn't you expect that trend to continue if
18 the groundwater continued to get lower and lower?

19 A. It depends on where they're pumping at.

20 Q. So the answer is it depends?

21 A. Yes.

22 Q. You want them to use the trench method --
23 groundwater trench -- right?

24 A. Groundwater prefer that.

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1 Q. But the permit said they must use that,
2 correct?

3 A. Correct.

4 Q. Do you know if the stability factors of safety
5 were met with respect to the use of the trench?

6 A. I believe that the trench will be at elevations
7 5 -- 510 -- or 5 -- in the 500. And so they did
8 stability for -- at elevations 503, and it passed. So
9 that's --

10 Q. Have you seen any slope stability or
11 load-bearing capacity stability calculations for the
12 groundwater interceptor trench?

13 A. Could you repeat that?

14 Q. Yes.

15 Have you seen any slope stability or
16 load-bearing capacity stability calculations for the
17 groundwater interceptor trench that you're requiring
18 them to use pursuant to the permit?

19 A. The only factor of safety calculation is at
20 elevations 509, 506 and 503.

21 Q. So you're saying it's okay at 509, so you are

22 guesstimating that it will be okay at 510, right?

23 Ma'am?

24 A. Yes.

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1 Q. And while it's okay for you to apply a known
2 factor at 509 to the unknown factor at 510, you're
3 telling them they can't do the same thing from 503 down
4 to 501 or 499?

5 A. 510 is not the mine voids, compared to 480,
6 which is the water in the mine voids.

7 Q. In all honesty, ma'am, having a one-day seminar
8 on stability, do you think that you're really qualified
9 to make stability decisions with respect to load-bearing
10 capacity and the slope stability of this landfill?

11 A. Well, all my decisions go to my supervisor,
12 which they may agree or disagree.

13 Q. But you were the only one -- the only one -- in
14 the whole Agency that looked at the issue of stability,
15 correct?

16 A. Right. But I put it in my notes, which they
17 read.

18 Q. Understood. My question is: You reviewed
19 stability; you're the person that makes recommendations
20 with respect to stability; I believe that you are a good
21 professional in the engineering business. In all
22 honesty, do you think you're qualified to make these
23 decisions?

24 A. I believe so.

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1 Q. Do you think you're more qualified than Van
2 Silver -- the person who did the calculations?

3 MR. KIM: Objection. Under what standards are
4 we talking about here? More or less qualified than
5 what?

6 HEARING OFFICER HALLORAN: Mr. LaRose?

7 MR. LAROSE: Well, if I can make the slope
8 stability and load-bearing capacity decisions,
9 contrary to the calculations that were submitted to
10 me. I don't know how else to put it.

11 MR. KIM: Well, the objection is that these are
12 two different decisions that are being made. She's
13 reviewing his work; he's preparing the work. It's
14 kind of apples and oranges.

15 MR. LAROSE: He concluded that they met the
16 regulations; she concluded they didn't. I asked her
17 whether she thinks she's more qualified than Van
18 Silver. I think it's a fair question.

19 HEARING OFFICER HALLORAN: If she can answer,
20 she may answer.

21 Overruled.

22 BY MR. LAROSE:

23 Q. Ma'am?

24 A. I cannot answer that.

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1 Q. What about Marion Skouby?

2 A. Same thing. I can't answer that.

3 MR. LAROSE: I have nothing further at this
4 time.

5 HEARING OFFICER HALLORAN: Off the record.

6 (Discussion held off the record.)

7 HEARING OFFICER HALLORAN: We are back on the
8 record.

9 CROSS-EXAMINATION

10 BY MR. KIM:

11 Q. Miss Roque, you testified that Chris Liebman is
12 your direct supervisor; is that correct?

13 A. That's correct.

14 Q. And that Joyce Munie is Chris's supervisor; is
15 that right?

16 A. That's correct.

17 Q. So is it fair to say that Joyce has the final
18 say on how a permit will look before she signs it?

19 A. That's right.

20 Q. Is it unusual for Joyce or, for that matter,
21 your supervisor to make changes to draft permits that
22 you've created before they become final?

23 MR. LAROSE: Objection. Leading.

24 HEARING OFFICER HALLORAN: Mr. Kim?

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1 MR. KIM: I'll rephrase.

2 Again, I'm trying to speed along. I'll go

3 slow.

4 BY MR. KIM:

5 Q. Is it unusual for your supervisor or your
6 supervisor's supervisor to make changes to your draft
7 permits?

8 MR. LAROSE: Objection. Leading.

9 MR. KIM: I'm asking if it's unusual for that
10 to happen.

11 HEARING OFFICER HALLORAN: Overruled.

12 BY THE WITNESS:

13 A. It's not unusual.

14 BY MR. KIM:

15 Q. Is that considered part of the permit review
16 process?

17 MR. LAROSE: Objection. Leading.

18 He's asking her yes or no questions. This is
19 redirect examination. He can't lead the witness.

20 HEARING OFFICER HALLORAN: Mr. Kim?

21 MR. KIM: I'll rephrase.

22 BY MR. KIM:

23 Q. How does the permit review process work when --
24 after you've prepared a draft permit?

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1 MR. KIM: I'd also like to revoke my 20 to 30
2 minute estimate, by the way.

3 BY THE WITNESS:

4 A. We put together a permit package with our notes
5 and recommendation and give it to our supervisor, which

6 he will review and make changes if he see fit. Or if he
7 approves of it, it will go to the section manager for
8 signature, which she can also agree or disagree with our
9 recommendations.

10 BY MR. KIM:

11 Q. Does she sometimes agree -- or does she
12 sometimes disagree with your conclusions?

13 A. Yes.

14 Q. You testified to the memo that you prepared in
15 anticipation of sending to the Division of Legal Counsel
16 concerning a review of the question of third party
17 costs; do you recall that?

18 A. Yes, I do.

19 Q. Do you know if the Division of Legal Counsel
20 ever received your memorandum?

21 A. I don't know, but since I did not get any
22 response, I assume that they didn't.

23 Q. Was that a problem that you never heard back
24 from DLC?

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1 A. No.

2 Q. And why not?

3 A. Because it was in my notes, too, that our
4 intention is to withdraw that request, and Joyce made
5 the decision that it's not third party costs.

6 Q. Do you recall some questions concerning what
7 your understanding or whether or not you were aware of

8 an agreement between the parties -- and when I say the
9 parties, I mean Community Landfill and the Illinois
10 EPA -- on a procedure that would be followed concerning
11 submission of permit applications and review and things
12 like that? Do you remember being asked things like
13 that?

14 MR. KIM: What I'm referring to is -- and I'm
15 going to lead just a little just to get her --
16 because I'm bouncing from topic to topic. It's not
17 flowing very smoothly here.

18 BY MR. KIM:

19 Q. What I'm asking about is Mr. LaRose, I believe,
20 asked you a question stating that there was an
21 understanding that the sig mod application would come
22 in, there would be an approval and then there would be a
23 cost revision. He asked you if that's right, and you
24 answered correct. Do you recall that question and that

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1 answer? If you don't specifically, that's fine.

2 What I'm asking -- this is the topic I want to
3 ask you about right now. Did you have an understanding
4 as to what was going to happen between Community
5 Landfill and the Illinois EPA concerning their applying
6 for one or maybe more significant modification permits?

7 A. This is the May, 2000 application or after?

8 Q. Beginning with the May, 2000 application.

9 A. Yes, I'm aware of the understanding that they
10 will submit an application -- May 2000 application --

11 with the 17 million cost estimate, and we will issue the
12 permit with conditions.

13 Q. And then did you have an understanding as to
14 what might happen after that?

15 A. They will submit separate application to reduce
16 the cost.

17 Q. When you reviewed the permit application, did
18 you find any request in the permit application asking to
19 revise the cost estimate relating to the POTW charges?

20 MR. LAROSE: Objection. Leading.

21 MR. KIM: I'm asking if she found a request.

22 HEARING OFFICER HALLORAN: Overruled.

23 BY THE WITNESS:

24 A. Not in the May, 2000 application.

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1 BY MR. KIM:

2 Q. I think you also testified as to what's been
3 sort of referred to as the fatal flaw with the August,
4 1996 permit application. Did you prepare the last draft
5 of what would have been the permit had it been issued
6 prior to your drafting the denial?

7 A. Yes, I did.

8 Q. Based upon how you described the -- based upon
9 what you just described not too long ago about how the
10 permit review process works, if that last-minute cost
11 estimate had not come in, what would have happened with
12 the draft permit that you prepared?

13 A. For the 1996 application?

14 Q. Yes.

15 A. It would go to Chris Liebman; then it would go
16 to Joyce.

17 Q. And could they have made changes to it?

18 A. Oh, yes.

19 Q. So do you believe that the draft permit -- the
20 draft -- 1996 permit -- when I say that, what I'm
21 referring to is the last draft before the 1996
22 application was denied. Do you consider the 1996 draft
23 permit to have been in final form?

24 MR. LAROSE: Objection. Leading.

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1 BY MR. KIM:

2 Q. Was it in final form?

3 A. No, it was not.

4 MR. LAROSE: Objection. Leading.

5 HEARING OFFICER HALLORAN: Want to rephrase
6 that, Mr. Kim?

7 BY MR. KIM:

8 Q. Was there a final permit that was prepared in
9 response to the 1996 permit application?

10 A. No.

11 Q. Mr. LaRose asked you a question concerning your
12 deposition testimony, and maybe he can assist me.

13 MR. KIM: Do you recall the page number which
14 you asked her about the siting and length of time
15 involved -- that question -- what the page was?

16 MR. LAROSE: One of the impeachment points?

17 MR. KIM: Yes. 22? I found it. I'm sorry.

18 BY MR. KIM:

19 Q. I'm going to read back the question and the
20 answer. This is on Page 43.

21 MR. LAROSE: Objection. This is improper
22 examination. You can't read a deposition into the
23 record. Ask her a question.

24 MR. KIM: Can I ask the court reporter to go
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1 back and reread the question and answer that
2 Mr. LaRose gave in his testimony then?

3 MR. LAROSE: This is improper rehabilitation.
4 He can't read her deposition into the record.

5 MR. KIM: I'm more than willing --

6 MR. LAROSE: He can ask her a question.

7 MR. KIM: I'm more than willing to have the
8 court reporter read back the question and the
9 answer.

10 HEARING OFFICER HALLORAN: We can do that.

11 MR. LAROSE: I didn't ask her a question.

12 MR. KIM: No, I'm sorry. What I meant to say
13 is I'm more than willing to have the court reporter
14 read back testimony from her deposition that he read
15 into the record.

16 MR. LAROSE: That was impeachment. That wasn't
17 a question. He's not entitled to -- that's improper

18 rehabilitation to read her deposition. He can ask
19 her a question about the subject matter. He can't
20 read the dep into the record unless she says
21 something different after an appropriate question.

22 Objection.

23 HEARING OFFICER HALLORAN: I would have to
24 agree and sustain the objection.

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1 BY MR. KIM:

2 Q. Was there a problem with timing in terms of why
3 you couldn't approve a local siting approval or why you
4 couldn't give them the option to pursue local siting
5 approval in the August, 2000 permit?

6 A. The timing is in my notes. The timing is my
7 opinion, my --

8 Q. When you say --

9 A. My -- sorry.

10 Q. No, go ahead.

11 A. It's my opinion that they already have -- we
12 informed them of the over-height issue in 1997. And in
13 the 2000 application, one of the -- and the schedule
14 that they proposed is they still need one year from
15 permit issuance to think if they would go for siting or
16 not.

17 But that's not the main reason why we did not
18 give them option for siting when we issued a permit.
19 The reason for not giving them the option when we issued
20 the permit is we will be violating the regulations if we

21 give them that option to go for siting after they
22 already expanded.

23 Q. And why is that?

24 A. The rules -- the regs -- require us to --

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1 requires the applicant to provide proof of local siting
2 approval for expansion. And we see the over-height in
3 Parcel B as an expansion because they went over their
4 permitted waste boundary. So if we approved -- so we
5 can't approve the permit with getting sitings and --
6 siting as an option because we will be violating that
7 regulation.

8 Q. Would there have been a problem if they had
9 provided proof of local siting along with the May, 2000
10 application?

11 A. No. Then we will review that as an expansion.

12 Q. So even with the permit conditions right now or
13 as the permit conditions stand right now, could they
14 still seek local siting approval?

15 MR. LAROSE: Objection. Leading.

16 HEARING OFFICER HALLORAN: Overruled.

17 MR. LAROSE: It's a yes or no question.

18 BY THE WITNESS:

19 A. Yes, they can still seek local siting approval.

20 BY MR. KIM:

21 Q. How would they do that?

22 A. They provide us -- well, just meet the -- the

23 conditions as it is right now with -- they either
24 increase their cost estimate to show third party costs

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1 or remove the waste. Or if they want to pursue local
2 siting approval, like I stated in my dep, that they can
3 do so with third party costs.

4 Q. You're familiar with the Part 811 regulations?

5 A. Yes, I am.

6 Q. Do you have any familiarity with the local
7 siting provisions in the Environmental Protection Act?

8 A. Yes. 39.2.

9 Q. Does a facility need to receive approval from
10 the Illinois EPA before they seek local siting approval?

11 A. No.

12 Q. And the regulations that you just -- or the
13 requirements that you were just talking about in terms
14 of having to --

15 MR. KIM: Strike that.

16 BY MR. KIM:

17 Q. How did you come up with the time period of six
18 months as a requirement for them to either move the
19 over-height waste of Parcel B or revise the cost
20 estimate?

21 A. I just -- they'll be doing all the work --
22 during the course of review of the application, we
23 agreed to place the accessories from B to A, provided
24 that they have -- provided that Parcel A gets permitted

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1 first and there's this reservation of capacity and
2 within an acceptable schedule.

3 Q. Okay. So how does the six months play into
4 that?

5 A. The acceptable schedule that's came up with six
6 months, I -- that's my recommendation to Joyce if six
7 months would be enough time for them to move the waste.

8 Q. I believe Mr. LaRose asked you a question where
9 you stated that -- or made a comment that intimated that
10 the Illinois EPA recommended that the leachate removal
11 begin immediately. Can you tell me where the word
12 "immediately" appears in the permit application or the
13 permit?

14 A. I don't -- I don't think it's in the permit.

15 Q. Do you know if it's in the permit application?

16 A. I believe it's in the permit application that
17 says they will extract leachate as soon as they get a
18 permit to operate the leachate tank.

19 Q. But that term is not in the permit itself?

20 A. No, it's not.

21 Q. And have you reviewed -- how many landfill
22 permit applications do you review in a given year --
23 roughly?

24 A. In a given year?

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1 Q. Any given year.

2 A. Permit section, I think, receives approximately
3 300 to 400 permit applications for just the nonhazardous
4 facilities, and there's about eight of us reviewing the
5 applications. So that's about 50.

6 Q. Ball park 40 to 50?

7 A. Right.

8 Q. Do some of those applications -- how many of
9 those applications would -- may make a reference to
10 leachate collection systems and leachate storage?
11 Again, roughly.

12 A. I don't know. It's hard to tell.

13 Q. More than 10?

14 A. Oh, yeah. Uh-huh.

15 Q. And how long have you been reviewing solid
16 waste, nonhazardous landfill permit applications for the
17 Illinois EPA?

18 A. Eight and-a-half years.

19 Q. What sequence of events do you customarily see
20 when people propose leachate construction and leachate
21 storage tank installation -- I'm sorry -- leachate
22 collection and leachate storage tank installation?

23 A. Based on my experience of reviewing this type
24 of application, the tank is usually the last one built.

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1 Q. What comes before the tank?

2 A. They will install all their pipings and the
3 header before that will lead to the tank, so the tank is
4 usually the last one that they build.

5 Q. Did this permit application include any dates
6 or any milestones concerning dates for completion of
7 construction for any of the leachate collection system?

8 A. No, besides the tank, which is six months.

9 Q. Moving on to the question about stability now.
10 Did -- who are the -- what aspects of the -- when I
11 refer to Wells T2 and T4, we denied the use of those
12 wells; is that correct?

13 A. That's correct.

14 Q. Were there general reasons why we denied that?
15 What were the general reasons that we denied the use of
16 T2 and T4?

17 A. T2 and T4 are wells that are part of the
18 remediation -- groundwater remediation plan. So the
19 construction and geology of T2 and T4, this was reviewed
20 by the groundwater assistant, Julie. Based on their
21 review, they gave me a memo that says that we cannot
22 approve T2 and T4 because it will be pumping in the mine
23 voids and possibly the water in the mine voids that
24 could cause stability problems.

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1 Q. Who reviewed the pump test information related
2 to Wells T2 and T4?

3 A. I believe it's Vicki Brunhead and then reviewed
4 by Gwenyth Thompson.

5 Q. The last question that I have -- or last series
6 of questions -- concerns the use of the PC STABL program

7 to determine slope stability and load-bearing factors.
8 Do believe that those calculations were run -- or that
9 the program was run correctly?

10 A. Well, yes, I believe they're run correctly
11 under the given assumptions that Mr. Silver used.

12 Q. Do you think the assumptions were correct?

13 A. The assumptions did not include what we were
14 looking for, which is that dewatering of T2 --
15 dewatering of the mine voids for the use of T2 and T4.

16 Q. Did you ever -- what do you mean when you say
17 the dewatering?

18 A. That they'll be pumping from the mine voids.

19 Q. Did you know that that was going to happen?

20 A. Did I know that that's going to happen?

21 Q. Well, let me ask you this: Was that an issue
22 reviewed by you directly?

23 A. That's an issue reviewed by the groundwater.

24 Q. Then I'll reserve my questions for that.

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1 MR. KIM: At this point, I have nothing
2 further.

3 MR. LAROSE: I've just got, like, two
4 questions.

5 HEARING OFFICER HALLORAN: Hurry up, Mr.
6 LaRose. Redirect?

7 MR. LAROSE: Yes, thank you.

8 REDIRECT EXAMINATION

9 BY MR. LAROSE:

10 Q. Ma'am, Mr. Kim asked you whether the word
11 "immediately," with respect to the removal of leachate,
12 appeared in the application or in the permit, and you
13 said no. It does appear in your reviewer's notes,
14 though, doesn't it? Let me show it to you. I'm
15 directing your attention to Parcel A, reviewer's notes,
16 Page 126. That's your writing on that page, isn't it,
17 ma'am?

18 A. Yes.

19 Q. I don't want to get in your space here or
20 anything, but I'm going to peek over your shoulder
21 because I don't have a copy of this.

22 About halfway down, there is a handwritten
23 paragraph with a line on the left-hand side. I put that
24 line there; you didn't. I just wanted to be able to

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1 mark the page. Is that your handwriting?

2 A. Yes, that's mine.

3 Q. Could you read the first -- well, read the
4 whole sentence, please.

5 A. "Since no construction schedule was submitted
6 or proposed, IEPA recommends that leachate extraction
7 shall begin immediately; that is, construction of
8 required system and since this is an existing landfill."

9 Q. So you were suggesting, in your notes,
10 anyway -- in your permit reviewer notes -- that leachate
11 extraction begin immediately, correct?

12 A. Correct.

13 Q. I think with respect to the local siting issue,
14 is what you're saying it's okay if we do it; you just
15 don't want to give us time to do it in the permit,
16 right?

17 A. Right. We cannot issue a permit that approves
18 an expansion prior to the proof of local siting.

19 Q. Understood. But isn't what you're saying you
20 can't give us time in the permit to even go to the local
21 siting, because if you mention that in the permit,
22 you're saying that it would be in violation of the
23 regulations, correct?

24 A. Correct.

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1 Q. But if the permit was silent, like it is right
2 now -- it's completely silent with respect to local
3 siting, right? Correct?

4 A. Correct.

5 Q. And as we sit here right now, we could have at
6 least until the time period of the stay and arguably
7 some time period after that to go to local siting,
8 correct?

9 MR. KIM: Objection. She may not be
10 familiar --

11 MR. LAROSE: Yes. And I think that's probably
12 the problem.

13 BY MR. LAROSE:

14 Q. Let's back up. We're sitting here on August

15 the 4th, 2000. Assume that for me, okay?

16 A. Okay.

17 Q. Your permit says by February 1, move it or
18 increase it. But you also mean to say and you can go to
19 local siting; we're just not going to say that, correct?

20 A. That's not what my -- the permit says.

21 Q. Understood. See if I can get this. You told
22 me under cross-examination the first time that we had
23 three options by February 1, in your opinion: We could
24 move it; increase the financial assurance -- both of

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1 which are in the permit, right -- or we could go to
2 local siting, which isn't in the permit, right?

3 A. Show us proof of local siting.

4 Q. Right. Which means we could go and get proof
5 of local siting, correct?

6 A. Correct.

7 Q. So you could have written the permit condition
8 without ever mentioning local siting and just changed
9 the February 1 date to a date later for us to either
10 move the waste or increase financial assurance, correct?

11 A. Correct.

12 Q. Ma'am, the regulations didn't require you to
13 put in a February 1 deadline for us to either move the
14 waste or increase the financial assurance, did they?

15 A. No.

16 MR. LAROSE: Thank you.

17 HEARING OFFICER HALLORAN: Mr. Kim?

18 MR. KIM: Nothing further.

19 HEARING OFFICER HALLORAN: All right.

20 MR. LAROSE: Thanks for your patience.

21 HEARING OFFICER HALLORAN: Thank you,
22 gentlemen.

23 Ma'am, you can step down. Thank you.

24 MR. LAROSE: Thank you.

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1 HEARING OFFICER HALLORAN: I want to note for
2 the record, too, there has been no members of the public
3 present all morning or afternoon in the hearing room.

4 With that said, I would like to conclude the
5 hearing for today and go back on record tomorrow morning
6 at 9:30. That would be January 18th, 2001. And, I
7 believe, is the room -- is the room changed? It's
8 9-031. Is that kosher with everybody? Yes -- 9-031 at
9 9:30 a.m. the hearing will resume.

10 With that said, unless there's any other --

11 MR. KIM: Just so I can inform my people,
12 what's the expected order of witnesses and so forth
13 tomorrow then?

14 HEARING OFFICER HALLORAN: Mr. LaRose?

15 MR. LAROSE: I would think that we'll get Miss
16 Thompson accommodated right away. Since Miss Munie has
17 asked to be accommodated for the afternoon only, I would
18 think that we will then go to Mr. Silver and Mr. Skouby
19 so that they can get on their way. And then Miss Munie.

20 And that probably takes us through the better
21 part of tomorrow and leaves us with just Mr. McDermont
22 and Mr. Limmer or however we're going to handle that; is
23 that right?

24 MR. KIM: I believe that's -- well, and then

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1 the State's case. Yes, that's fine. I just was trying
2 to get an idea of when --

3 MR. LAROSE: Is the State -- I understood from
4 the prehearing conference -- and it's certainly your
5 prerogative to present it any way you want -- I
6 understood that the State's case was going to at least
7 try to come in during redirect examination of my adverse
8 of your people.

9 MR. KIM: That's -- that's --

10 MR. LAROSE: And -- and during cross of my
11 people, which are going to be up anyway.

12 MR. KIM: That was my intention.

13 MR. LAROSE: Okay. So we're not going to try
14 to recall all these folks if we don't have to?

15 MR. KIM: If I don't have to call anybody, I
16 certainly won't.

17 MR. LAROSE: I want to know.

18 MR. KIM: But I haven't made that decision yet.

19 MR. LAROSE: I just want to know because, like,
20 the mayor, he's not coming back. He's leaving town, and
21 I'd like to get Mr. Skouby and Mr. Silver on their way

22 tomorrow.

23 MR. KIM: The only people I would consider
24 would be Agency employees.

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1 MR. LAROSE: Okay.

2 HEARING OFFICER HALLORAN: I'd like to adjourn
3 this hearing.

4 Thank you very much. Have a safe trip home.

5 (Whereupon, the hearing was recessed
6 until 9:30 a.m., January 18, 2001)

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