

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS)

Complainant,)

vs.)

COMMUNITY LANDFILL COMPANY,)
INC., an Illinois corporation, and the CITY OF)
MORRIS, an Illinois municipal corporation,)

Respondents.)

Case No. PCB No. 03-191

NOTICE OF FILING

TO: All counsel of Record (see attached Service List)

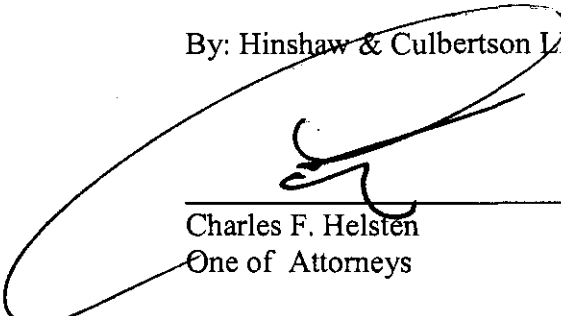
Please take notice that on October 3, 2005, the undersigned filed with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601, City of Morris' Response to Complainant's Motion for Summary Judgment and Cross-Motion for Summary Judgment

Dated October 3, 2005

Respectfully Submitted,

On behalf of the CITY OF MORRIS

By: Hinshaw & Culbertson LLP



Charles F. Helsten
One of Attorneys

HINSHAW & CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

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2. Section 21(d)(2) of the Act provides that “[n]o person shall * * * Conduct any waste-storage, waste-treatment, or waste-disposal operation * * * in violation of any regulations or standards adopted by the Board under this Act. 415 ILCS 5/21(d)(2) (emphasis added).

3. Furthermore, Illinois Administrative Code (Code) Section 811.700(f) provides: “On or after April 9, 1997, no person other than the State of Illinois, its agencies and institutions, shall conduct any disposal operation at an MSLF unit that requires a permit under subsection (d) of Section 21.1 of the Act, unless that person complies with the financial assurance requirements of this part.” 35 Ill. Adm. Code §811.700(f) (emphasis added).

4. As is made clear by the plain language of Section 21(d)(2) of the Act and Section 811.700(f) of the Code, the requirements of those sections only apply if a person “conduct[s]” a waste disposal operation.

5. It is well-settled that words in a statute must be given their plain and ordinary meaning. *King v. First Capital Financial Services Corp.*, 215 Ill.2d 1, 828 N.E.2d 1155, 1169 (2005).

6. According to Black’s Law Dictionary, the plain and ordinary meaning of “conduct” is “[t]o manage; direct; lead; have direction; carry on; regulate; do business.” Black’s Law Dictionary, 295 (6th Ed. 1990).

7. In this case, there is no question that the City of Morris does not “conduct” a waste disposal operation, as it is not managing, leading, directing, carrying on, regulating or doing business as a waste disposal facility. Rather, the City of Morris is merely the owner of/fee title holder to property that has been used for waste disposal activities for Community Landfill Company (CLC).

8. Community Landfill Company (CLC), not the City of Morris, is the entity that “conducts” the waste disposal operations at Morris Community Landfill. In fact, CLC is specifically listed as the operator of the Morris Community Landfill in the permits issued by the IEPA, and, as such, has been expressly recognized by IEPA as the party who is conducting waste disposal operations at the facility in question. Moreover, in his recent deposition testimony, Brian White (the principal Affiant relied upon by the State of Illinois in support of its Motion for Summary Judgment) specifically testified that: 1) permits issued by IEPA draw a distinction between the owner and operator, 2) the City of Morris has never been the permitted operator of the landfill and 3) the City is not identified as the operator on the permits for the site in question. See deposition of Brian White, pgs. 33-36 attached hereto as Exhibit B. Moreover, White specifically testified that the owner of a facility does not necessarily have to post closure/post closure financial assurance. See *Id.*, pages 37-38. See Complainant’s Exhibits A and B.

9. Furthermore, CLC has admitted that, as the operator of the facility, it “manages” (i.e. conducts) the day-to-day waste disposal operations of the facility. See CLC Answer, par. 5; see also Black’s Law Dictionary, 295.

10. Moreover, Mark Retzlaff, an employee of the Illinois Environmental Protection Agency, and one of the State’s own Affiants, stated under oath that CLC operates the Morris Community Landfill, and that CLC’s employees manage it. See Complaint’s Exhibit I, paras. 3, 7.

11. Based on all of the evidence in this case, it is clear that the City of Morris does not “conduct” a waste disposal operation, and, therefore, is not required to comply with Section 21(d)(2) of the Act or Section 811.700(f) of the Code.

12. The Complainant attempts to present evidence of “activities” that the City of Morris has engaged in with respect to the Morris Community Landfill, such as applying for a bond, participating in permit appeals and receiving royalties for waste dumped at the landfill, in an attempt to establish that the City of Morris is actively conducting a waste disposal operation. However, none of these “activities” establish that the City of Morris “conducts” a waste disposal operation. Rather, these “activities” merely reflect the City of Morris’ interest in the landfill as fee title owner of the land upon which the facility is located and operated.

Moreover, the fact that the City does not “conduct” waste handling, waste management or waste disposal activities as defined by Section 21(d)(2) of the Act or Section 811.700(f) is more than adequately pointed out by one of the State’s own Affiants, Helen Robinson.

Ms. Robinson’s Affidavit in support of the State’s Motion for Summary Judgment (which is attached as Exhibit H to that Motion) is authored as proof that the Annual Report and certification of Solid Waste Landfill Capacity for the Morris Community Landfill facility was not filed for the years 2003 and 2004.

As noted by Ms. Robinson in her Affidavit (and as further noted by the State in the text of its Motion), in her capacity as Project Manager in the Waste Reduction and Compliance Section of the IEPA Bureau of Land, she was directly responsible for writing the annual report on solid waste management activities which take place within the State of Illinois (generally referred to as the Non-Hazardous Solid Waste Management Landfill Capacity in Illinois Annual Report).

As also alluded to both in Ms. Robinson’s Affidavit and the text of the State’s Motion, that report outlines solid waste management and disposal activity which occurs each year within the State of Illinois. Interestingly enough, Ms. Robinson also acknowledges she is familiar with

the Morris Community Landfill. Furthermore, notwithstanding the fact that she is responsible (at least in part) for: (1) monitoring and reporting on the status of landfill activity in the State of Illinois, and (2) by her own sworn admission, is familiar with the Morris Community Landfill facility, in her Affidavit, Ms. Robinson does not allege that the City of Morris is required to submit such annual certifications. Rather, Ms. Robinson merely alleges that: “CLC is required to submit a certification entitled “Solid Waste Landfill Capacity Certification (“Certification”) on an annual basis” (see paragraph 6 of Exhibit H attached to State’s Motion).

The City believes that Ms. Robinson’s lack of reference to any similar obligation on the part of the City is both deliberate and telling. The City will submit that the reason Ms. Robinson has failed to include any reference to the City in the Affidavit she has executed in support of the State’s Motion for Summary Judgment is because she is full well aware of the fact that the City does not “conduct” any waste handling, waste management or waste disposal activities at the Morris Community Landfill site and, as such, is not responsible for any of the reporting requirements she alleges in her Affidavit that CLC has failed to submit.

The substance of other Affidavits offered by representatives of IEPA in support of the State’s Motion are equally as telling. For example, aside from various references to the fact that the City of Morris is listed as the owner on various applications and reports that have been submitted and permits that have been issued for the Morris Community Landfill in the past, Brian White does not provide any definitive evidence that the City actually “conducts” waste disposal operations at the Site as specifically required by Section 21(d)(2) of the Act and Section 811.700(f). Moreover, in addition to the lack of specific reference to any facts that would conclusively establish that the City “conducts” waste disposal operations at the Morris Community Landfill, Brian White’s Affidavit only includes several general, conclusory

statements to the effect that the City is responsible for obtaining closure/post closure financial assurance for the landfill in question. However, as noted above, in his subsequent deposition, Brian White testified that to his knowledge, the City has never operated the facility in question.

Moreover, the Affidavit of Mark Retzlaff (again one of the State's own Affiants) asserts that Community Landfill Company operates the landfill facility in question. Nothing is included within Mr. Retzlaff's Affidavit which alleges that the City is involved in the active operation of or otherwise "conducts" waste disposal operations at the facility.

Likewise, the Affidavit of Cristina Roque is devoid any facts whatsoever which would demonstrate or establish that the City "conducts" waste disposal operations at the landfill facility in question. In fact, none of the Affidavits submitted by IEPA representatives include any factual basis whatsoever which establishes that the City of Morris conducts waste disposal operations at the facility in question, all as specifically required by Section 5-21(d)(2) of the Act, as well as specifically required by Section 811.700(f). In fact, a close reading of these Affidavits reveals that the State's Affiants step all the way around and deliberately avoid any reference to the specific manner and form in which the City of Morris allegedly "conducts" waste disposal operations at the landfill; the seminal, touchstone basic requirement that must be met before a party is liable for posting of closure/post closure financial assurance under Illinois law.

13. The Complainant's assertion that the City of Morris is required to comply with Section 21(d)(2) of the Act and Sections 811.700(f) of the Code merely because it is an owner of the property on which the landfill is located would require a wholesale re-writing of those sections. In effect, the Complainant is suggesting that the word "conduct" contained in Section 21(d)(2) of the Act and Section 811.700(f) of the Code be replaced with the word "own."

14. Clearly, it was not the intention of the Legislature for the Section 21(d)(2) of the Act or its regulations to apply to entities that passively own land upon which waste disposal operations are (or have been) conducted, as the plain language of these provisions requires that an entity must actively "conduct" a waste disposal operation in order for those laws and regulations to apply.

In keeping with the Act's definitions of "owner" and "operator," which make clear that it is operators who conduct waste disposal operations, this Board has held that where a waste disposal operation is owned and operated by separate entities, it is the operators of such sites, not the owners, who are responsible for posting of the requisite financial assurance.

As noted by this Board in *People v. Wayne Berger and Berger Waste Management*, PCB 94-373 (May 6, 1999), 1999 WL 304583:

[T]he regulations and statutes at issue [in an action for failure to maintain financial assurance pursuant to Section 21(d)] either specifically apply to operators, or prohibit persons from "conduct[ing] a waste disposal operation" unless certain actions are taken. [citation omitted]. An "operator" is defined in 35 Ill. Adm. Code 807.104 as "[a] person who conducts a waste disposal operation."

In *Berger*, the owner of a landfill site, Wayne Berger, transferred title to the landfill to Berger Waste Management ("BWM"), a corporation he had formed for that express purpose. *Id.* Thereafter, Berger acted as the site's operator, continuing to conduct operations on a day-to-day basis, while BWM was the site's owner. Berger and BWM were eventually charged with a number of violations with respect to the site, including a failure to provide the statutorily required financial assurance for closure and post-closure care.

BMW argued that it was not liable under 21(d), because it was merely the owner, and therefore was not the party with the obligation to provide financial assurance. The hearing officer disagreed, and held both operator and owner (Berger and BWM) liable for all violations charged, including the failure to provide financial assurance.

On appeal, however, the Illinois Pollution Control Board rejected the hearing officer's finding with respect to Count I (the financial assurance violation), holding that "Berger was the operator of the landfill, and BWM did not become the operator when it received title to the property. Consequently, BWM is not liable for the violations alleged in count I." *Id.* at *8. Thus the PCB found that where there is an active operator of the site, it is only the operator, not the uninvolved owner, who is liable for failure to provide the required financial assurance.

15. It is not the role of this Board to re-write legislation, as the Complainant would like this Board to do; rather, this Board must simply interpret the language as it exists in Section 21(d)(2). *See King*, 828 N.E.2d at 1169, *citing In re Marriage of Beyer*, 324 Ill.App.3d 305, 309-10, 753 N.E.2d 1032 (2001) (explaining that "a court may not supply omissions, remedy defects, annex new provisions, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of language employed in the statute").

16. In summary, and as set forth above, the plain language of Section 21(d)(2) of the Act and Section 811.700(f) of the Code clearly does not require the City of Morris, who does not "conduct" a waste disposal operation, to satisfy the requirements of those sections.

WHEREFORE, Respondent, CITY OF MORRIS, respectfully requests that this Board grant this Motion for Summary Judgment, as there is no genuine issue of material fact that CITY OF MORRIS does not conduct a waste disposal operation and, therefore, is not in violation of Section 21(d)(2) of the Act or Section 811.700(f) of the Code.

B. THE CITY OF MORRIS HAS COMPLIED WITH 35 ILL.ADM.CODE SECTIONS 811.706 AND 811.717.

17. Section 811.706 of Title 35(a) of the Illinois Administrative Code provides:

The owner or operator of a waste disposal site may utilize any of the mechanisms listed in subsections (a)(1) through (a)(10) to provide financial assurance for closure and post closure care, and for corrective action at an MSWLF unit. * * * The mechanisms are as follows:

- 1) A trust fund (see Section 811.710);
- 2) A surety bond guaranteeing payment (see Section 811.711);
- 3) A surety bond guaranteeing performance (see Section 811.712);
- 4) A letter of credit (see Section 811.713);
- 5) Closure insurance (see Section 811.714);
- 6) Self-insurance (see Section 811.715);
- 7) Local government financial test (see Section 811.716);
- 8) Local government guarantee (see Section 811.717);
- 9) Corporate financial test (see Section 811.719); or
- 10) Corporate guarantee (see Section 811.720).

35 Ill.Adm.Code 811.706(a) (emphasis added).

18. Despite the fact that Section 811.706(a) provides many mechanisms to provide financial assurance, interestingly enough, the Complainant cites to only one such mechanism in its Motion, Section 811.712, and alleges that the City of Morris has failed to provide financial assurance in compliance with that one particular mechanism.

19. However, the Complainant fails to acknowledge that the City of Morris can and would provide financial assurance in compliance with the mechanism set forth in Section 811.717 (the local government guarantee) if required by law to do so.

20. Section 811.717 provides:

An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Section 21.1(a) of the Act and 811.Subpart G, by obtaining a written guarantee provided by a unit of local government. The guarantor shall meet the requirements of the local government

financial test in Section 811.716, and shall comply with the terms of a written guarantee.

- a) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before November 27, 1997, whichever is later, in the case of closure or post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of Sections 811.319(d) and 811.325. The guarantee must provide that:
 - 1) If the owner or operator fails to perform closure, post-closure care or corrective action of a facility covered by the guarantee, the guarantor must:
 - A) Perform, or pay a third party to perform, closure, post-closure care, or corrective action as required; or
 - B) Establish a fully funded trust fund, as specified in Section 811.710, in the name of the owner or operator.

35 Ill.Adm.Code 811.717(a)(1) (emphasis added).

21. As is clearly set forth in Section 811.717(a)(1), a local government guarantor may itself perform or pay a third party to perform. A local government is not required to do both.

22. In fact, Blake Harris, an IEPA employee who was a member of the Financial Assurance Unit of the Solid Waste Section for many years and was personally responsible for determining if the Morris Community Landfill had adequate financial assurance, testified that a local unit of government may “perform or pay” pursuant to Section 811.717(a)(1). See Deposition of Blake Harris, p. 53, attached hereto as Exhibit A (emphasis added).

23. According to Mr. Harris, a unit of local government is not required to hire a third party to perform. See *id.*

24. If a local unit of government files a guarantee that it will perform if the operator fails to do so, such a guarantee is sufficient financial assurance, and nothing more is required. See Exhibit A, pp. 54, 56-57, 60-61, 67, 73. There is no requirement that the local unit of

government also post a bond or some other alternate financial assurance, as the local government guarantee itself is adequate. See Exhibit A, p. 54, 56-57, 60-61, 67.

25. In fact, to the contrary, the plain language contained in Section 811.717(a)(1) expressly allows a “unit of local government” to provide a written guarantee to perform closure and post-closure care. See 35 ILCS 811.717. (Emphasis added).

26. Based on the foregoing, it is clear that the City of Morris could comply with Section 811.706 through the posting of local government guarantee to perform closure/post closure activities as they arise, a mechanism that is specifically allowed by Section 811.706, and fully set forth in Section 811.717 if required by law to do so.

WHEREFORE, Respondent, CITY OF MORRIS, respectfully requests that this Board grant this Motion for Summary Judgment, as there is no genuine issue of material fact that CITY OF MORRIS can and will comply with all applicable rules and regulations by providing financial assurance in the form a local government guarantee.

C. COLLATERAL ESTOPPEL DOES NOT APPLY BECAUSE NEITHER THIS BOARD NOR ANY COURT HAS EVER RULED THAT THE CITY OF MORRIS FAILED TO COMPLY WITH ANY REGULATION OTHER THAN SECTION 811.712.

27. The Complainant vaguely and generally contends that collateral estoppel should apply in this case because “noncompliance with 811.712 has previously been decided.” See Complainant’s Motion, p. 10.

28. The City of Morris agrees that the issue of the City’s compliance with Section 811.712 has been previously decided by this Board and the Illinois Appellate Court for the Third District. However, noncompliance with Section 811.712 is not the issue now presented in this case. Rather, the issue now to be determined in this case is whether the City of Morris can post financial assurance by using any of the mechanisms specified in Section 811.706, not just some form of surety bonds that meet the requirements of Section 811.712.

29. While this Board and the Third District Court held that the surety bonds obtained by the City of Morris did not comply with Section 811.712, neither this Board nor any Court has ever held that the City of Morris could not use another mechanism specifically allowed by Section 811.706 to fulfill its financial assurance obligations. In fact, this Board and the Appellate Court focused exclusively on Section 811.712, because performance bonds were the financial instrument directly in issue in that case. See Complainant's Exhibits E and F.

30. IEPA also focused exclusively on Section 811.712 as if it were the sole method of demonstrating financial assurance. Mr. Harris specifically testified that he only considered whether the City of Morris fulfilled its financial assurance obligations by examining the surety bonds that it obtained, and merely found that those bonds violated Sections 811.700(f) and 811.712. See Exhibit A, pp. 37-38. However, Mr. Harris never advised the City of Morris that it could have fulfilled its financial assurance obligations by providing a local government guarantee. Exhibit A, p. 69.

31. As even conceded by the Complainant in its Motion for Summary Judgment, collateral estoppel only applies where: 1) the issue decided in the prior adjudication is identical with the one presented in the instant matter; 2) there was a final judgment on the merits in the prior adjudication; and 3) the party against whom estoppel is asserted was a party or a party in privity with a party to the prior adjudication. *People v. Community Landfill Co.*, PCB 03-191, slip op. at 4-5 (Oct. 16, 2003), *citing ESG Watts, Inc. v. IEPA*, PCB 96-191 and 97-210, slip op. at 2-3 (July 23, 1998) (emphasis added).

32. In this case, the first element of collateral estoppel cannot be met because the issue presented here is not identical to the issue presented in the cases of *Community Landfill Company v. Illinois Environmental Protection Agency*, PCB 01-170 (Dec. 6, 2001) and

Community Landfill Company v. Pollution Control Board, 331 Ill.App.3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

33. In those case neither, this Board and the Illinois Appellate Court examined whether the City of Morris met or could meet its financial assurance obligations under Section 811.717, which is the issue directly presented in this case. Rather, the Board and Court limited their inquiries to whether or not the surety bond previously obtained by the Respondents met the requirements of Section 811.712. See Complainant's Exhibits E and F.

34. Because the issue previously decided by this Board and Appellate Court was clearly distinct from the issues presented in this case, collateral estoppel does not apply.

WHEREFORE, Respondent, CITY OF MORRIS, respectfully requests that this Board grant this Motion for Summary Judgment, as there is no genuine issue of material fact that collateral estoppel does not preclude CITY OF MORRIS from establishing that it can and will comply with Section 811.706.

D. CITY OF MORRIS HAS NOT WILLFULLY, KNOWINGLY OR REPEATEDLY VIOLATED ANY LAW OR REGULATION.

1) City of Morris is not in violation of Section 811.700(f).

35. The Complainant alleges that the City of Morris has violated Section 811.700(f) of the Board regulations by failing to have adequate, compliant financial assurance for closure and post-closure care of parcels A & B of the Morris Community Landfill, and further gratuitously alleges that this fact is "indisputable."

36. First, and most importantly, the City of Morris cannot, as a matter of law, be in violation of Section 811.700(f), because, as noted above, that Section only applies to entities that "conduct any disposal operation." 35 Ill.Adm.Code 811.700(f). As specifically and thoroughly

explained in Part A above, the City of Morris does not “conduct” a waste disposal operation but, rather, simply owns property upon which a waste disposal facility is located.

37. Therefore, Section 811.700(f) is inapplicable to the City of Morris.

38. Moreover, the City of Morris has indicated that if required to post closure/post closure financial assurance it would in fact comply with Section 811.706 (and, likewise, 811.700(f)) by posting a local government guarantee to “perform” leachate collection and treatment activities for the landfill at its local POTW at no cost to the State, to unconditionally reserve that capacity needed for 100 years to address this need, and to implement other closure/post closure measures as the need arises over the applicable closure/post closure period.

39. While the City of Morris has not yet filed the requisite form for the local government guarantee, it has not done so only because: 1) it does not believe it is obligated by law to do so, and 2) moreover, IEPA has advised the City that the form would not be accepted as adequate financial assurance. However, as repeatedly explained by IEPA’s employee (whose specific responsibility it was to determine the adequacy of financial assurance), the local government guarantee alone would constitute adequate assurance. See Exhibit A, pp. pp. 54, 56-57, 60-61, 67, 73.

40. Therefore, even if Section 811.700(f) did apply to the City of Morris, which it clearly does not, the City of Morris has complied with that Section.

WHEREFORE, Respondent, CITY OF MORRIS, respectfully requests that this Board grant this Motion for Summary Judgment, as there is no genuine issue of material fact that CITY OF MORRIS has not violated Section 811.700(f) of Title 35 of the Illinois Administrative Code.

2) City of Morris is not in violation of Section 21(d)(2) of the Act.

41. The Complainant asserts that City of Morris has violated Section 21(d)(2) of the Act by violating Sections 811.712 and 811.700(f).

42. However, as explained in Part C above, Section 811.712 is now irrelevant, as that Section focuses only on one specific mechanism allowed to be used to post financial assurance. However, the City of Morris is able to provide financial assurance through other mechanisms as well (specifically, a local government guarantee), which the City of Morris is willing and able to provide. Therefore, compliance with Section 811.712 is not at issue.

43. Furthermore, as set forth above, the City of Morris cannot be in violation of Section 811.700(f), as that Section only applies to entities that “conduct any disposal operation,” and the City of Morris does not, as a matter of law, “conduct any disposal operation.”

44. Finally, the City of Morris cannot be in violation of Section 21(d)(2) of the Act because, like Section 811.700(f), Section 21(d)(2) only applies to entities that “conduct any waste-storage, waste-treatment, or waste-disposal operations.” 415 ILCS 5/21(d)(2). Because the City of Morris does not “conduct any waste-storage, waste-treatment, or waste-disposal operations,” but merely owns property on which a waste disposal facility is located, the City of Morris is not in violation of Section 21(d)(2).

WHEREFORE, Respondent, CITY OF MORRIS, respectfully requests that this Board grant this Motion for Summary Judgment, as there is no genuine issue of material fact that CITY OF MORRIS has not violated Section 21(d)(2) of the Act.

3) City of Morris’ Alleged Violations Were not Willful, Knowing or Repeated.

45. As set forth above, the City of Morris has not violated any applicable laws or regulations; therefore, it certainly cannot be found to have done so willfully, knowingly or repeatedly.

46. Nevertheless, even if this Board finds that the City of Morris has violated some law or regulation, any such violation would not have been willful, knowing or repeated.

47. Because the City of Morris is aware that its performance bonds have been found to be inadequate financial assurance by this Board and the Appellate Court, the City of Morris has attempted to provide compliant financial assurance for closure and post-closure care of the facility in the form of a local government guarantee. However, the City of Morris' attempts to do so have been thwarted by IEPA's incorrect interpretation of Section 811.717.

48. Because the City of Morris is attempting to comply with all applicable laws and regulations, any alleged violations should not be considered willful, knowing or repeated.

WHEREFORE, Respondent, CITY OF MORRIS, respectfully requests that this Board grant this Motion for Summary Judgment, as there is no genuine issue of material fact that CITY OF MORRIS has not willfully, knowingly and repeatedly violated any applicable law or regulation.

II. THE RELIEF REQUESTED BY THE COMPLAINANT SHOULD BE DENIED, AND SUMMARY JUDGMENT SHOULD BE GRANTED FOR CITY OF MORRIS.

49. As set forth in Section 101.516 of the Board Procedural Rules, a party is entitled to summary judgment "[i]f the record, including pleadings, depositions and admissions on file, together with any affidavits, show that there is no genuine issue of material fact." 35 Ill.Adm.Code 101.516.

50. In this case, all of the evidence shows that the City of Morris has not violated any law or regulation and, therefore, is entitled to summary judgment. Therefore, this Board should grant summary judgment in favor of the City of Morris.

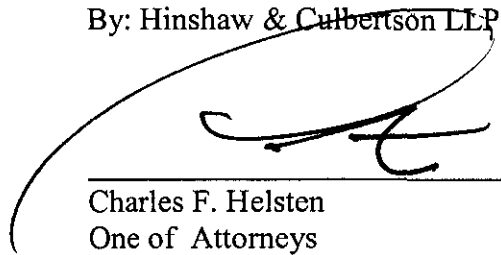
WHEREFORE, Respondent, CITY OF MORRIS, respectfully requests that this Board grant its Motion for Summary Judgment against the Complainant, PEOPLE OF THE STATE OF ILLINOIS, and take such other action as the Board believes to be appropriate and just.

Dated: 10/3/05

Respectfully Submitted,

City of Morris

By: Hinshaw & Culbertson LLP



Charles F. Helsten
One of Attorneys

HINSHAW AND CULBERTSON LLP
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
815-490-4900

AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury under the laws of the United States of America, certifies that on October 3, 2005, she served a copy of the foregoing upon:

VIA OVERNIGHT MAIL
Mr. Christopher Grant
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Fl.
Chicago, IL 60601

Scott Belt
Scott Belt and Associates, PC
105 E. Main Street, Suite 206
Morris, IL 60450

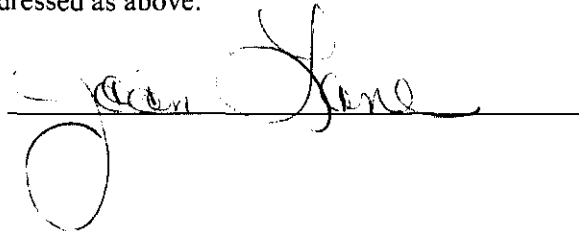
VIA OVERNIGHT MAIL
Clarrisa Grayson
Mark LaRose
LaRose & Bosco, Ltd.
200 N. LaSalle Street, Suite 2810
Chicago, IL 60601

VIA OVERNIGHT MAIL
Ms. Dorothy Gunn, Clerk
Pollution Control Board
100 W. Randolph, Suite 11-500
Chicago, IL 60601

VIA OVERNIGHT MAIL
Bradley Halloran
Hearing Officer
Pollution Control Board
100 W. Randolph, Suite 11
Chicago, IL 60601

By depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 P.M., addressed as above.

HINSHAW & CULBERTSON
100 Park Avenue
P.O. Box 1389
Rockford, IL 61105-1389
(815) 490-4900

A handwritten signature in dark ink, appearing to read "Jean Gunn", is written over a horizontal line. Below the line, there is a large, stylized circular mark or flourish.

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant)
 -vs-) NO. PCB03-191
)
 COMMUNITY LANDFILL COMPANY, INC.,)
 an Illinois corporation, and the)
 CITY OF MORRIS, an Illinois)
 municipal corporation,)
 Respondents)

Discovery deposition of BLAKE OLIN HARRIS
taken at the instance of the Respondent, the
City of Morris, on the 25th day of August,
2004, at the Illinois Environmental Protection
Agency, 1340 North Ninth Street, Springfield,
Illinois, before Sandra K. Haines, CSR and
Notary Public, pursuant to notice, the
applicable rules of the Illinois Code of Civil
Procedure and the Illinois Pollution Control
Board.

CSR NO. 084-002423

INDEX

Examination by Mr. Porter	4 - 69
Examination by Ms. Grayson	69 - 70
Examination by Mr. Grant	70 - 71
Re-Examination by Mr. Porter	71 - 74
Re-Examination by Mr. Grayson	74
Re-Examination by Mr. Grant	75

EXHIBITS

Blake Harris Exhibit Number 1 45
(Exhibit retained by Mr. Porter.)

EXHIBIT

tabbies

A

APPEARANCES

STATE OF ILLINOIS
Office of the Attorney General
Environmental Bureau
188 West Randolph Street
20th Floor
Chicago, Illinois 60601

BY: MR. CHRISTOPHER J. GRANT
Assistant Attorney General
Appearing on behalf of the
Complainant

LAROSE & BOSCO, LTD.
Attorneys at Law
200 North LaSalle Street
Suite 2810
Chicago, Illinois 60601

BY: MS. CLARISSA CUTLER GRAYSON
Appearing on behalf of the
Respondent, Community Landfill
Company, Inc.

HINSHAW & CULBERTSON, LLP
Attorneys at Law
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105

BY: MR. RICHARD S. PORTER
Appearing on behalf of the
Respondent, the City of Morris

BLAKE OLIN HARRIS

called as a witness herein, for discovery
purposes, at the instance of the Respondent,
having been first duly sworn on his oath, was
examined and testified as follows, to-wit:

EXAMINATION BY
MR. PORTER:

Q. Good morning. Can you state your
name for the record, please.

A. Blake Olin Harris.

Q. Let the record reflect this is the
deposition of Blake Olin Harris taken pursuant
to all of the applicable rules of the Illinois
Code of Civil Procedure and the Illinois
Pollution Control Board.

Mr. Harris, can you give me your date of
birth?

A. 11-20-69.

Q. What was the -- what is your address?

A. 2129 South Lincoln Avenue,
Springfield, Illinois.

Q. How long have you lived there?

A. Three and a half years.

Q. How long have you lived in

1 Springfield?

2 A. Most of my life, 32 years.

3 Q. What was the last year of education
4 that you completed?

5 A. I got my Bachelor's in '92. I have
6 taken Master's level classes up through, I
7 think it was '97.

8 Q. Did you acquire any degree other than
9 a Bachelor's Degree?

10 A. No.

11 Q. Where did you get your Bachelor's
12 Degree from?

13 A. Illinois College, Jacksonville.

14 Q. What was that degree?

15 A. Business administration.

16 Q. You said you have taken Master's
17 level classes since or up to 1997. Did I hear
18 that correctly?

19 A. Yes.

20 Q. What classes did you take?

21 A. Well, I started on environmental
22 studies degree, Master's at S.I.U.
23 Edwardsville, did not complete that. I have
24 taken other environmental Master's classes at

1 the University of Illinois Springfield since
2 then.

3 Q. Are you still taking -- strike that.

4 You haven't had any classes since 1997
5 though, is that right?

6 A. No.

7 Q. And so how far are you from acquiring
8 a Master's Degree, if you know?

9 A. Quite a bit. I don't know.

10 Q. You have no intention of acquiring a
11 Master's Degree at this time?

12 A. Probably not.

13 Q. Other than your business
14 administration Bachelor's, any other secondary
15 education of any type?

16 A. Like seminars, that kind of stuff?

17 Q. Anything.

18 A. Okay, financial analysis seminar
19 about a year ago.

20 Q. What is your present occupation?

21 A. I work for the Financial Assistance
22 Infrastructure Section as an accountant. We
23 do low interest loans for communities doing
24 water treatment improvement or water

1 distribution.

2 Q. Do you have a title?

3 A. Accountant is the title.

4 Q. You work at the Illinois
5 Environmental Protection Agency, correct?

6 A. Yes.

7 MR. GRANT: Just to clarify you
8 might want to, you work for the Bureau of
9 Water now.

10 A. Bureau of Water, yes.

11 Q. How long have you worked for the
12 Bureau of Water?

13 A. Eight months.

14 Q. Prior to that what was your job at
15 the IEPA -- strike that.

16 How long have you been at the IEPA?

17 A. Since '93.

18 Q. When did you graduate from college,
19 '92?

20 A. '92.

21 Q. So, was this your first job out of
22 college?

23 A. I had an internship with Bureau of
24 Water at the IEPA prior to that.

1 Q. Then after your internship you then
2 began your employment at the IEPA, and what
3 was that?

4 A. I worked for Bureau of Air doing
5 vehicle emissions, basically the office work,
6 the office component of the emission tests
7 like up in the Rockford area, those areas. We
8 reviewed the results that would come in from
9 emissions tests. I did that for two months,
10 and then started working in the Leaking
11 Underground Storage Tank Section as a project
12 manager.

13 Q. How long did you work as a project
14 manager for the LUST Section?

15 A. Little over two years, and then I
16 started doing the technical billing reviews
17 for the Accounting Section that did the
18 reimbursement for LUST claims, like if you
19 had a release at an underground storage tank
20 site.

21 Q. You said you did the technical
22 billing reviews. When did you start doing
23 that for the LUST Section?

24 A. I started doing that in September of

'95 I think it was.

Q. When you say technical billing reviews, were you checking to be sure that the bills that entities were submitting to the LUST fund were accurate? What did your job entail in technical billing reviews?

A. It was basically what a project manager could do. I understood the technical side from being a project manager, and you would review the reports that were submitted, and totally separate from that you would receive claims in the Accounting Unit, and I was comparing what was actually reported as being done on the site to what was being billed from the LUST fund. So, you would determine if they were legitimate costs, if they were billing 200 hours for a one page report sort of thing.

Q. You said if they were billing, the project managers?

A. No, they being the consulting firm who did the work for the owner operators of the stations.

Q. So, you started that in '95?

10

A. Yes.

Q. And you continued that for two years?

A. No. I started doing the technical bill reviews for the Accounting Section from '95 up through February of '99.

Q. Okay. So, through February of '99 am I correct in indicating you had absolutely no experience with financial assurances for solid waste facilities?

A. Correct.

Q. What did you do after '99?

A. After February of '99 I started working doing the financial assurance.

Q. What department were you with at that time?

A. It was called the Solid Waste Section.

Q. Solid Waste Section of what?

A. Of the Bureau of Land.

Q. Who was your immediate supervisor?

A. At the time it was Hope Wright.

Q. What was her title?

A. I don't know Hope's title. I am not sure what her title was.

Q. What was your title in the Solid Waste Section as of February of '99?

A. I think it was called accountant trainee. I did that for six months of probation, and then went into accountant after that.

Q. Now, you are not a certified public accountant, correct?

A. No.

Q. So, in the terms of the IEPA what does accountant mean?

A. It seems to vary widely depending on your job. It always involves a financial component.

Q. Okay. How many accountants are there under the Bureau of Land, do you know?

A. I don't know.

Q. What's your best estimate?

A. Pardon.

Q. What's your best estimate?

A. Best estimate I would say there is probably 20.

Q. And how long were you accountant trainee or accountant for the Bureau of Land?

12

A. From February '99 through January of 2004.

Q. Your title for that entire time was either accountant trainee or accountant, correct?

A. Correct.

Q. And then in January of 2004 you moved onto the Bureau of Water, is that right?

A. Yes.

Q. Did you receive any special training -- strike that.

You have had some role in regard to the Community Landfill Company, Incorporated and the landfill that it operates, is that correct?

A. Yes.

Q. What has your role been in general terms?

A. It is one of the many sites I reviewed, I did a financial review on when I worked for the Financial Assurance Section of the Solid Waste, or the Unit of the Solid Waste Section.

Q. And the Financial Assurance Section

1 of the Solid Waste Section you worked at that
2 since February of '99, correct?

3 A. Correct, right.

4 Q. And what training did you receive
5 from the Financial Assurance Section of the
6 Bureau of Land?

7 A. I was trained by, well, combination
8 of Hope Wright, my supervisor, and John
9 Taylor, who had previously been a financial
10 assurance reviewer for many years. In
11 addition to that I reviewed technical manual
12 of USEPA training of previous people.

13 Q. How long did your training last from
14 Hope Wright and John Taylor, from when to
15 when?

16 A. Well, training is sort of ongoing
17 here at the Agency. I don't know when it
18 ended exactly.

19 Q. Was there a formal training program
20 when you first started?

21 A. No.

22 Q. So, when you were an accountant
23 trainee for the Financial Assurance
24 Department, there was no specific class,

1 guarantee, is that correct?

2 A. That sounds right. I haven't looked
3 at the regulations for financial assurance for
4 almost nine months.

5 Q. In the four years that you were in
6 that department -- strike that -- is that
7 right, was it four years or five years?

8 A. Almost five.

9 Q. In that five years that you were
10 in that Department, did you ever have any
11 experience with a local governmental guarantee
12 to comply with financial assurances as opposed
13 to some other method?

14 A. I believe there were a couple
15 facilities that used a local government
16 guarantee.

17 Q. Which ones?

18 A. I don't know the names of them. I
19 don't remember them.

20 Q. When was it?

21 A. Somewhere over that five years. I
22 don't know. The local government guarantee is
23 pretty uncommon. That's why I say I don't
24 really remember the facilities.

1 or article, or document that you used in
2 order to become familiar with what the job
3 entailed?

4 A. Just doing reviews on the individual
5 facilities, and working with Hope and John,
6 and comparing that to the regulations and the
7 Environmental Protection Act. That was the
8 training.

9 Q. How many facilities did you work on
10 when you were within that Department?

11 A. Hundreds, I couldn't give you an
12 exact number.

13 Q. Of those hundreds of facilities did
14 you ever have any experience with Section
15 811.717?

16 A. I would have to take a look at that
17 section.

18 Q. When I tell you 811.717, does that
19 ring a bell as to --

20 A. It is within the financial assurance
21 regulations, but I don't know that specific
22 one.

23 Q. You don't know that as the section
24 that involves a local governmental unit

1 Q. You mentioned that you dealt with
2 hundreds of different facilities and the
3 financial assurances that they posted,
4 correct?

5 A. Right.

6 Q. How many hundreds? Are we talking
7 900, or are we talking 100?

8 A. I don't know the total number of
9 facilities between hazardous waste,
10 underground injection wells, tires, I don't
11 know the total number.

12 Q. And you understand all those to be
13 facilities as defined by RCRA and the regs, is
14 that correct?

15 A. Yes.

16 Q. And so what is your, give me your
17 best estimate. Is it closer to 900 than 100?

18 A. I seem to recall on our database
19 there was over 800 facilities.

20 Q. And did you review the financial
21 assurances at one point or another of all
22 those facilities?

23 A. Probably not all of them, because it
24 was not just myself.

1 **Q.** How many other accountants were there
2 within the Financial Assurance Department?

3 A. Over that period of time there was
4 John Taylor, Greg Yurevich. I think that was
5 it over that period of time.

6 **Q.** At any specific period of time how
7 many accountants were employed? I understand
8 there were three of you over the five years,
9 but at one particular time how many
10 accountants were there?

11 A. At no time were there more than two.

12 **Q.** So, would it be safe to say that you
13 must have reviewed at least half of the 800
14 facilities of which you recall, correct?

15 A. Yes.

16 **Q.** And so, out of those at least 400
17 facilities you only have a recollection of two
18 ever using the provisions of 811.717, is that
19 right?

20 A. Correct.

21 **Q.** So, it is safe to say that it was
22 highly unusual for that section to be used,
23 correct?

24 A. Yes.

1 **Q.** And you had no specific training
2 regarding that section, correct?

3 A. Other than reading the regulations,
4 right.

5 **Q.** And the only time you would ever read
6 the regulations is when someone would attempt
7 to use that section, right?

8 A. Right, and the forms which are also
9 part of the regulations, you would have to
10 review those as well.

11 **Q.** So, am I correct that you probably in
12 that four years only reviewed that regulation
13 twice?

14 A. Probably, but that regulation is very
15 close to a financial test in almost every
16 respect from what I recall, and I have looked
17 at many financial tests. There are certain
18 ratios that have to be passed.

19 **Q.** Right. I mean the regulation in
20 order to post the guarantee part of that is
21 that you have to meet the financial test
22 aspect of 811.716, correct?

23 A. I don't know the section again, but
24 you have to have tangible net worth of six

1 times your cost estimate or more, and there is
2 various other ratios that have to be passed
3 that are bond ratings.

4 **Q.** Other than what we have already
5 spoken about did you have any training
6 regarding the use of 811.717?

7 A. No.

8 **Q.** As you sit here today you cannot
9 recall what other facilities attempted to use
10 that section?

11 A. No.

12 **Q.** Correct?

13 A. Correct.

14 **Q.** Are you aware of whether or not the
15 Bureau of Land Financial Assurance Section
16 approved the use of that section for any other
17 facilities?

18 A. I am not sure.

19 **Q.** Is there anything that you can review
20 that would refresh your recollection on what
21 facilities attempted to use it, and whether or
22 not the Bureau allowed it?

23 A. I would have to talk with a
24 supervisor of that section and see what they

1 had listed in their databases, communities
2 using that, and actually look at those to give
3 you an accurate answer.

4 **Q.** So, there is a database where you
5 could somehow determine if indeed that has
6 ever been used?

7 A. Yes.

8 **Q.** Who would have access to that
9 database presently?

10 A. Presently I think the acting
11 supervisor of that unit is Greg Bouillon. I
12 don't know how to spell his last name.

13 **Q.** Are you affiliated with any political
14 party?

15 A. No.

16 **Q.** What do you understand the major
17 issues to be in the case that I am here to
18 talk to you about today?

19 MR. GRANT: I am going to object, and
20 ask for a more specific question. He has been
21 named as a witness.

22 **Q.** Unless your Counsel tells you not to
23 answer --

24 MR. GRANT: I am sorry, Blake.

1 A. Please, can you restate the question.

2 **Q.** What do you understand the major
3 issues to be in this case?

4 A. I know of some permit issues, but
5 primarily financial assurance, I believe.

6 **Q.** What about financial assurance do you
7 understand to be an issue?

8 A. I believe they have inadequate
9 financial assurance currently.

10 **Q.** Who?

11 A. The landfill, Morris Community
12 Landfill.

13 **Q.** And how did you come to a belief that
14 there was inadequate financial assurance for
15 the Morris Community Landfill?

16 A. I have reviewed the permit, and I
17 have reviewed the financial assurance they
18 have submitted, and it does not satisfy the
19 regulations.

20 **Q.** When did you last review the permit?

21 A. It has been a couple years at least.

22 **Q.** When did you last review the
23 financial assurance that was posted or
24 attempted to be posted?

1 A. Back in February I looked at the
2 bonds that were posted.

3 **Q.** Have you looked at anything other
4 than bonds that were previously posted
5 regarding this case as to financial assurance?

6 A. Yeah, at one point I did.

7 **Q.** What did you see other than bonds
8 being posted?

9 A. Do you mean before the bonds were
10 issued?

11 **Q.** At any time.

12 A. I think at one point there was a
13 letter of credit or more that were issued for
14 this. At one point there was a trust first.

15 **Q.** My understanding is that -- strike
16 that.

17 Did you prepare at all for your deposition
18 here today?

19 A. I looked at stuff yesterday on this.

20 **Q.** What stuff did you look at?

21 A. Some of the bonds, the bonds and the
22 riders to those bonds.

23 **Q.** So, earlier when you said you had
24 been, it had been since February that you

1 looked at the bonds, that was inaccurate, is
2 that correct?

3 **MR. GRANT:** I object to the
4 characterization. I am going to object to the
5 question.

6 A. Could you state the question again,
7 please.

8 **Q.** I thought you just told me a few
9 minutes ago that you hadn't seen the bonds for
10 quite sometime.

11 **MR. GRANT:** I am going to object to
12 the question. I think that you are harassing.

13 A. No.

14 **MR. GRANT:** I think he has answered
15 every question honestly and straightforward
16 that you have asked.

17 A. The permits, I have not looked at
18 those permits in a while. I don't know an
19 exact date. When you said the financial
20 assurance, I said I looked at those bonds in
21 February.

22 **Q.** And you also looked at them
23 yesterday, is that correct?

24 A. Well, I looked at photocopies from

1 my own personal file that I have on this
2 site yesterday. I didn't look at the bonds
3 themselves.

4 **Q.** Why did you think it was important to
5 look at the copies of the bonds yesterday?

6 A. I just wanted to refresh my memory.
7 I haven't looked at this facility for a long
8 time.

9 **Q.** So, there was nothing in particular
10 about the bonds that you felt relevant to the
11 present lawsuit, is that correct?

12 A. Well, no, I think the bonds, don't
13 they tie into this? I mean you're talking
14 about financial assurance and is it adequate.

15 **Q.** My question is why you thought it
16 was important to look at those bonds.

17 A. To refresh my memory, because I
18 haven't looked at those bonds for a long
19 time.

20 **Q.** Okay. Other than the bonds did
21 you look at anything else?

22 **MR. GRANT:** What time are we
23 talking about here? Talking about back in
24 February, or talking about when he was

1 evaluating the permit, or are we talking about
2 yesterday?

3 **Q.** I am talking about in preparing for
4 your deposition. Other than looking at the
5 bonds, did you look at anything else?

6 **A.** I looked at some of the testimony
7 from this deposition back however many years
8 ago.

9 **Q.** What exactly within the testimony of
10 your deposition did you review?

11 **A.** Majority of it. I don't know. I
12 read through it. Looked at the background,
13 looking for dates on when I switched jobs, and
14 that kind of stuff.

15 **Q.** Was there anything within that
16 deposition that you felt was particularly
17 relevant?

18 **A.** I guess the bond issue, the 570
19 circular. I thought that was relevant.

20 **Q.** Other than that?

21 **A.** No.

22 **Q.** Did you look at any other documents
23 other than your dep, previous dep testimony in
24 an underlying case, and the bond documents?

1 Other than those two documents did you look at
2 anything else?

3 **MR. GRANT:** I am going to ask to
4 clarify. Are you talking about in preparing
5 for the deposition?

6 **Q.** Right now all my questions are with
7 regard to preparing for your deposition, okay.

8 **MR. GRANT:** All right.

9 **Q.** Until we move onto another topic.

10 **A.** So, the bonds I looked at, or the
11 copies of them, the riders to those bonds, and
12 the previous deposition.

13 **Q.** Did you review any submissions from
14 the Community Landfill Company, Incorporated
15 to the IEPA?

16 **A.** I don't know. What do you mean by
17 that?

18 **Q.** Did you review any documents that
19 were submitted by Community Landfill Company,
20 Incorporated to the IEPA?

21 **A.** I am not sure if those, the copies of
22 the bonds had maybe cover letters or something
23 from them. They might have. I don't
24 remember.

1 **Q.** Did you ever review any cost
2 estimates from -- strike that.

3 When you were preparing for your
4 deposition, did you review any cost estimates
5 from Community Landfill Company, Incorporated?

6 **A.** No.

7 **Q.** Did you review any cost estimates
8 from any consultants concerning the Morris
9 Landfill?

10 **A.** No.

11 **Q.** What do you -- excuse me for having
12 come into this case somewhat late -- what do
13 you refer to the Morris Landfill as? Is that
14 what you guys call it?

15 **A.** I have heard it called Morris
16 Community Landfill or CLC.

17 **Q.** Throughout this deposition I will
18 call it Morris Community Landfill, okay?

19 **A.** Okay.

20 **Q.** So, other than your deposition and
21 the bond documents, you reviewed nothing else
22 in preparation for your deposition today,
23 correct?

24 **A.** Correct.

1 **Q.** Now, my understanding is you met
2 with Counsel before this deposition, is that
3 right?

4 **A.** Yes.

5 **Q.** That meeting took place when?

6 **A.** Back in February, I think it was.

7 **MR. GRANT:** We are going to have to
8 clarify, Counsel. There is internal IEPA
9 counsel, and there is me.

10 **Q.** Back in February who did you meet
11 with?

12 **A.** Bruce Kugler.

13 **Q.** Did anybody else attend that meeting?

14 **A.** No.

15 **Q.** The purpose of the meeting was to
16 prepare for this deposition?

17 **A.** It was some interrogatories that
18 I was just giving information to Bruce,
19 regarding like bonds or answering questions
20 like that.

21 **Q.** How long did that meeting take?

22 **A.** I don't recall, a couple hours maybe.

23 **Q.** Other than that one meeting with Mr.
24 Kugler have you met with any other counsel in

1 preparing for your deposition today?
 2 A. I met with Bruce and Chris Grant
 3 yesterday.
 4 Q. Did anybody else attend that meeting?
 5 A. No.
 6 Q. Where did that meeting take place?
 7 A. In this room.
 8 Q. How long did that meeting take?
 9 A. Maybe 45 minutes.
 10 Q. Other than your deposition and the
 11 bonds did you review any other documents in
 12 either of those meetings?
 13 A. I can't honestly tell you from back
 14 in February. I don't remember what we
 15 reviewed at that time.
 16 Q. Okay. Yesterday did you review any
 17 other documents other than the bonds and your
 18 dep?
 19 A. I looked at the bonds and the riders
 20 to those bonds.
 21 Q. You did not look at your deposition
 22 yesterday?
 23 A. I looked at the deposition too.
 24 Q. Other than the bonds, the riders of

1 the bonds and the deposition, anything else
 2 that you looked at yesterday?
 3 A. I don't believe so.
 4 Q. You did not review the regulations
 5 under 811.700, is that right?
 6 A. Actually let me correct something.
 7 Joyce Munie was also at the meeting yesterday,
 8 and I did have to ask her for a copy of the
 9 regulations to look at one of these parts,
 10 because I haven't looked at it in, you know,
 11 seven, eight months. So, I did look at 811 I
 12 think it was 700F.
 13 Q. Why did you look at 811.700F?
 14 A. That's where the financial assurance
 15 regulations start, I believe.
 16 Q. Well, assurance regulations start at
 17 811.700, correct? Why did you particularly
 18 look at F?
 19 A. F just comes to mind. I may be wrong
 20 about that. I would have to look at it.
 21 Q. Well, so you don't recall
 22 specifically -- well, here, let me show you
 23 811.700F.
 24 MR. GRANT: Do you know how current

1 this is? These things do change.
 2 MR. PORTER: I printed it off
 3 yesterday. Current enough?
 4 MR. GRANT: I don't think they have
 5 taken any action since then.
 6 A. I think it was F.
 7 Q. That's just the general section that
 8 says someone has to post financial assurance,
 9 correct?
 10 A. Correct.
 11 Q. Other than that one section of
 12 811.700F did you review any other sections
 13 within those regulations?
 14 A. There is another section I looked at.
 15 I will have to look at the regulations to tell
 16 you though.
 17 MR. PORTER: Off the record.
 18 (Whereupon there was then had an off
 19 the record discussion.)
 20 MR. PORTER: Back on the record.
 21 Q. After having reviewed 811.700 et
 22 seq., you have now seen or refreshed your
 23 recollection that you also reviewed 811.707
 24 yesterday, is that correct?

1 A. Yes.
 2 Q. Why did you review 811.707?
 3 A. Because this facility has multiple
 4 performance bonds issued, and mechanisms
 5 guaranteeing performance cannot be combined
 6 with other mechanisms.
 7 Q. That's your understanding of what
 8 811.707 provides?
 9 A. Yes.
 10 Q. Isn't it true that 707 actually
 11 provides an owner operator may satisfy the
 12 requirements of this sub-part by establishing
 13 more than one financial mechanism per site?
 14 A. They may unless those guaranteeing
 15 performance. See the part that says except
 16 those guaranteeing performance.
 17 Q. Show me what it is you are talking
 18 about.
 19 A. Except the mechanisms guaranteeing
 20 performance rather than payment may not be
 21 combined with other instruments. So, if you
 22 have a performance bond, it cannot be combined
 23 with any other instrument.
 24 Q. Why did you believe that that section

1 was important to review in regard to this
2 case?

3 A. Because they have three performance
4 bonds.

5 Q. Who has three performance bonds?

6 A. CLC or Morris Community Landfill.

7 Q. So, it is your understanding there
8 are presently pending three performance bonds,
9 is that correct?

10 A. Correct.

11 Q. And do you think that that somehow
12 violates 811.707?

13 A. Yeah.

14 Q. Why?

15 A. Because they have combined three
16 performance instruments.

17 Q. Well, the statute -- strike that.

18 The regulation nowhere indicates that
19 performance instruments cannot be combined,
20 does it?

21 A. Except the mechanisms guaranteeing
22 performance rather than payment may not be
23 combined with other instruments.

24 Q. The other instruments referencing

1 instruments other than performance
2 instruments, is that correct?

3 A. No, meaning one instrument is a
4 performance bond. When you are combining that
5 with another instrument, that's another
6 performance bond in this case.

7 Q. Well, where does it say that in the
8 regulation?

9 A. I can read it to you again. It says
10 except the mechanisms guaranteeing performance
11 rather than payment may not be combined with
12 other instruments. A performance bond,
13 whatever number it is, call it number one, is
14 an instrument. You have performance bond
15 number two. Here is another instrument.

16 Q. No. It is the same class of
17 instrument, correct?

18 A. But they don't say class of
19 instrument. You may not combine a performance
20 bond with any instrument. An instrument is
21 one bond. An instrument is another bond.

22 Q. Actually doesn't the statute provide
23 that except the mechanisms, plural,
24 guaranteeing performance rather than payment

1 may not be combined with other instruments,
2 plural? So, wouldn't you agree that the
3 statute -- strike that -- the regulation in
4 and of itself contemplates you can have plural
5 multiple performance bonds?

6 A. I don't interpret that that way.

7 Q. What possible interpretation could
8 there be for the word mechanisms in plural?

9 A. I don't interpret that that way.

10 Q. Is that your understanding of the
11 purported violation of this landfill that they
12 have combined performance bonds?

13 A. No. This is just something separate.
14 The violations with the bonds are because they
15 are not listed on the 570 circular, and they
16 are currently not approved by the Illinois
17 State Department of Assurance. Those are both
18 components of the performance bond and the
19 payment bond requirements for 811.

20 Q. Okay.

21 A. So, this is something separate. I am
22 just telling you this is a section I also
23 looked at yesterday.

24 Q. And other than this section and the

1 one we referenced before you looked at no
2 other sections, is that correct?

3 A. That's correct.

4 Q. Now, did you review any statutes?

5 A. I don't -- no.

6 Q. Procedurally what is your
7 understanding of how we got to where we are
8 today in this case?

9 A. There was a permit issued based on
10 financial assurance that was later determined
11 to be inadequate. We still don't have
12 adequate financial assurance after however
13 many years that's been, and that's a
14 requirement of the permit.

15 Q. Did you or your Department at the
16 time request that the Attorney General file
17 the instant lawsuit?

18 A. I don't recall.

19 Q. Do you know how it came about the
20 instant lawsuit was filed?

21 A. No.

22 Q. You were not involved in any
23 conversation with the Attorney General's
24 Office about filing this lawsuit, is that

1 correct?

2 A. Not that I recall.

3 Q. I am correct that you were the
4 individual that was responsible for
5 determining whether or not financial
6 assurances -- strike that.

7 I am correct that you were the individual
8 that was responsible for determining whether
9 or not that financial assurance regulations
10 had been violated, correct?

11 A. Correct.

12 Q. At some point did you ever make a
13 determination in this case that there was some
14 violation of the financial assurance
15 regulations?

16 A. Yes.

17 Q. What regulation did you believe was
18 violated?

19 A. I have to look at the section again,
20 but it is the section pertaining to the bonds.
21 So, it would be 811.700F, but 811.712 is the
22 section that talks about the performance
23 bonds.

24 Q. Okay. Other than 811.700F and 712,

1 violated?

2 A. Possibly with the permit. I don't
3 know what that regulation is though.

4 Q. You don't anticipate ever providing
5 any testimony on some permit violation,
6 correct?

7 A. No.

8 Q. You don't have any intention of
9 providing such testimony, correct?

10 A. No.

11 MR. GRANT: I object. We haven't put
12 together our case yet. We have disclosed him
13 as a witness in the case. So, we are going to
14 reserve the right to amend that if we need to
15 later on.

16 Q. Well, as you sit here today you
17 don't know of any other section other than
18 the two you just mentioned of 35 Illinois
19 Administrative Code that has been violated,
20 correct?

21 A. Correct.

22 Q. You don't know of any other
23 environmental statute or regulation that in
24 your opinion has been violated, correct?

1 at no time have you concluded that any other
2 section of the regulations was violated, is
3 that correct?

4 MR. GRANT: I object to the question.
5 I don't think he testified to anything like
6 that.

7 MR. PORTER: I am not trying to
8 characterize any previous testimony.

9 A. Could you state your question again,
10 please.

11 (Whereupon the reporter then read the
12 requested testimony.)

13 A. No, I don't believe any other
14 sections or regulations.

15 Q. So, my statement is correct you don't
16 have any opinion that any other section of the
17 regulations was violated, correct?

18 A. Of the financial assurance
19 regulations, that's what you're talking about?

20 Q. Right.

21 A. Yes, you are correct.

22 Q. And now let's broaden it from
23 there. Do you have an opinion that any other
24 environmental regulation of any type has been

1 A. Probably the Act, probably the
2 Environmental Protection Act.

3 Q. What section of the Act do you have
4 an opinion has been violated?

5 A. I would have to look at that section,
6 something in 21.

7 Q. Are you talking now about the section
8 that references financial assurances need to
9 be posted, and the regulations will be drafted
10 by the EPA?

11 A. Right.

12 Q. Perhaps that's 21.1A?

13 A. Yeah, I would have to look at it.
14 That could be.

15 Q. Other than the section -- strike
16 that.

17 Am I correct that as you sit here today
18 you don't know even the section number of the
19 Illinois Compiled Statutes that references
20 financial assurance, correct?

21 A. No. I would have to look at them
22 again.

23 Q. But other than that possible section
24 in the Illinois Environmental Protection Act

1 you have no other opinion that any other
2 section has been violated, correct?

3 A. Correct.

4 Q. At no time in preparation for your
5 deposition did you review 811.715, 16, or 17,
6 is that right?

7 A. I don't believe so. I may have
8 back in February looked at it. I don't
9 remember.

10 Q. You understand that there are other
11 methods that an owner or operator can meet
12 financial assurances other than 811.712,
13 correct?

14 A. Yes, correct.

15 Q. As a matter of fact, would you agree
16 that the purpose of Section 21.1A of the
17 Illinois Environmental Protection Act and
18 sub-part G of the regulations or the 811.700
19 regs is to assure that resources are available
20 to perform closure and post closure
21 activities, correct?

22 A. Correct.

23 Q. To your knowledge are there any
24 closure or post closure activities that my

1 regulations to see all of the different ones
2 they could use. Oh, insurance, I am sorry,
3 that's another one.

4 Q. Anything else to your knowledge?

5 A. No.

6 Q. At any time have you done any
7 analysis of whether or not the City of Morris
8 meets the financial test?

9 A. No, I have not.

10 Q. You understand what I meant by the
11 financial test?

12 A. Uh-huh.

13 Q. Is that yes?

14 A. Yes, that's yes.

15 Q. What is your understanding of the
16 financial test as it relates to the 700
17 regulations?

18 A. Financial test you are calling the
19 corporate guarantee I am assuming, right?

20 Q. I just want to know what you
21 understand the financial test to be.

22 A. Financial test is showing you pass
23 certain ratios, that you can afford to do
24 closure. You have so much tangible net worth

1 client, the City of Morris, or the operator,
2 the Community Landfill Company, Incorporated,
3 have failed to perform?

4 A. I don't know.

5 Q. You are not aware of any such
6 activities that have not occurred, correct?

7 A. I am not aware.

8 Q. No one has ever told you that they
9 failed to perform some closure or post closure
10 activity, correct?

11 A. No.

12 Q. My statement was correct?

13 A. Your statement is correct.

14 Q. To your knowledge what different ways
15 could the operator and the owner meet the
16 financial assurance requirements of the Act in
17 the regs?

18 A. If they could pass the ratios or the
19 bond rating, possibly they could use a local
20 government guarantee. They could do a letter
21 of credit, trust fund. I think that's about
22 it, performance or payment bond.

23 Q. Anything else?

24 A. I would have to review the

1 or strong enough bond rating that you can pass
2 the financial test, and provide some guarantee
3 that you can provide closure and post closure
4 care.

5 Q. And to your knowledge the City of
6 Morris meets that financial test, correct?

7 A. I don't know.

8 Q. Why haven't you performed that
9 analysis?

10 A. To my knowledge they have not
11 submitted anything to try to pass those
12 ratios.

13 Q. Well, isn't it true that at one point
14 the City offered to post the guarantee
15 referenced in Section 717?

16 A. I don't know about that.

17 Q. At some point isn't it true that you
18 offered an opinion that 717 could not be used
19 by the City of Morris?

20 A. I don't remember.

21 Q. You don't recall ever doing that,
22 correct?

23 A. Correct.

24 Q. So, as you sit here today you have

1 no reason to believe that the City of Morris
2 could not use Section 717, which is the local
3 government guarantee section, correct?

4 A. Correct.

5 Q. You understand -- strike that.

6 Let me show you a document that I am going
7 to have marked as Exhibit One.

8 (Whereupon said document was duly marked,
9 for purposes of identification, as
10 Blake Harris Exhibit Number One, as of
11 this date.)

12 Q. Let me show you the document I have
13 had marked Blake Harris Exhibit Number One
14 with today's date on it. Have you seen that
15 document before?

16 A. I don't recall if I have seen this
17 before or not.

18 Q. Would you agree that that is the cost
19 estimate concerning the landfill at issue?

20 A. It appears to be a cost estimate.

21 Q. Did you not review that cost estimate
22 prior to this deposition, correct?

23 A. Right.

24 Q. Do you know whether or not that cost

1 estimate was ever approved by the Financial
2 Assurance Department of the Bureau of Land?

3 A. Financial Assurance Department does
4 not approve cost estimates.

5 Q. Do you know if the Financial
6 Assurance Department ever objected to that
7 cost estimate?

8 A. I don't know. They don't review
9 them. So, I don't know why they would.

10 Q. Who does review the cost estimates?

11 A. Permit Section.

12 Q. Do you know if that cost estimate was
13 ever objected to, denied, or even responded to
14 by the Permit Section?

15 A. I don't know.

16 Q. Do you have any understanding of how
17 much financial assurance was supposed to be
18 posted by the owner or operator?

19 A. I believe it was something around
20 17 million. I would have to look at the
21 individual permits to tell you though.

22 Q. You mentioned that you reviewed the
23 permits before your dep, correct?

24 MR. GRANT: I don't think he said

1 that. I think that's mischaracterizing his
2 testimony. He reviewed the bonds and bond
3 riders I believe he said.

4 Q. February you reviewed the permits, or
5 am I remembering that incorrectly?

6 A. I don't remember if we reviewed the
7 permits at that time or not.

8 Q. You don't -- strike that.

9 How did you come to the conclusion that
10 17.8 million dollars was the amount of
11 financial assurance that was supposed to be
12 posted?

13 A. It was a number that the Permit
14 Section would have given me, or I could have
15 determined looking through the permits, either
16 way.

17 Q. Do you know if the operator,
18 Community Landfill Company, Incorporated, or
19 the City of Morris ever submitted a cost
20 estimate that total, 17.8 million dollars?

21 A. No, I haven't seen the actual cost
22 estimate.

23 Q. So, Exhibit Number One, that may have
24 been the first time you ever saw that

1 document, is that correct?

2 A. Today, yes.

3 Q. Well, at any time.

4 A. At any time, I don't recall seeing
5 this document ever before.

6 Q. Okay. So, if I understand when you
7 were doing your job as accountant for the
8 Financial Assurance Department, you would just
9 accept what the Permit Department would tell
10 you the level of financial assurance needed to
11 be, correct?

12 A. They would say this is the amount
13 that we need. Here is the permit that it is
14 coming from. We would look at the permit,
15 find that section, and then of course,
16 document that, and then compare what they
17 provided in financial assurance to that
18 amount.

19 Q. Do you know whether or not the actual
20 closure costs -- strike that.

21 Did you ever learn that there were two
22 different parcels at issue in regard to the
23 landfill?

24 A. At one point I found out there were

1 two different parcels.
 2 **Q.** When did you learn that?
 3 A. Sometime year or two ago. I don't
 4 recall the exact time.
 5 **Q.** And there was a Parcel A and a Parcel
 6 B, is that right?
 7 A. That's what I have heard.
 8 **Q.** Do you know if those parcels were on
 9 the east and west side of a specific road?
 10 A. I do not know.
 11 **Q.** I take it then you do not know
 12 whether or not the total cost estimate for
 13 Parcel A of 2.27 million dollars is accurate
 14 or not as reflected by Exhibit One, correct?
 15 A. Correct.
 16 **Q.** You also don't know if the total cost
 17 estimate for Parcel B is \$4,807,000.00, is
 18 that correct?
 19 A. I don't know.
 20 **Q.** Did you ever learn whether or not one
 21 of these parcels had some substantial space
 22 available?
 23 A. I don't know whether it did or not.
 24 **Q.** Did you ever learn that one of these

1 parcels only accepted clean construction
 2 debris?
 3 A. Don't know that.
 4 **Q.** Did you ever learn -- strike that.
 5 I take it then you have no idea how full
 6 Parcel A is and Parcel B is?
 7 A. Correct. I have no idea about that.
 8 **Q.** And you never had any idea about
 9 that, correct?
 10 A. Right.
 11 **Q.** Now, is it your understanding that
 12 cost estimates assume that a landfill will be
 13 completely filled?
 14 A. Cost estimates vary over time. I
 15 don't know. I don't review the cost
 16 estimates. I imagine at one point they would
 17 assume completely being filled.
 18 **Q.** Do you know whether or not an actual
 19 cost will be less if a landfill is never
 20 filled?
 21 A. Yes, I don't know.
 22 **Q.** You have absolutely no role in
 23 determining -- strike that.
 24 You have absolutely no knowledge or

1 expertise in determining how much it will cost
 2 to close a landfill, correct?
 3 A. Correct.
 4 **Q.** Am I to understand that you are
 5 unaware that the City of Morris has offered to
 6 provide some sort of local government
 7 guarantee?
 8 A. I don't recall whether they did or
 9 not.
 10 **Q.** At any time?
 11 A. At any time I don't recall whether
 12 they did or not.
 13 **Q.** You would agree that the City of
 14 Morris as the owner of the property where the
 15 landfill is located can be a local government
 16 guarantee for that landfill, correct?
 17 A. They could provide a local government
 18 guarantee, yes, I would guess they could.
 19 **Q.** I don't want you to guess. You spent
 20 years --
 21 A. Without me looking at the regulations
 22 specifically --
 23 **Q.** I would like you to. What I want you
 24 to do is take a look at in particular Section

1 811.717A1A, and see if that refreshes your
 2 recollection.
 3 A. What was your question then?
 4 **Q.** My question is would you agree that
 5 the City of Morris could provide a local
 6 government guarantee to meet the financial
 7 assurance requirements, correct?
 8 A. Yes, I think they should be able
 9 to.
 10 **Q.** And that's because they are an owner,
 11 and they can certainly provide a guarantee as
 12 long as they meet the financial tests of a
 13 local government entity, correct?
 14 A. Yes.
 15 **Q.** You're just unaware of whether or not
 16 they have ever attempted to do that to date,
 17 correct?
 18 A. Correct.
 19 **Q.** And if they were to file that
 20 guarantee tomorrow, it would be your opinion
 21 that that would meet the financial assurance
 22 requirements, correct?
 23 A. I would have to look at it. I would
 24 have to see the bond rating, the different

1 ratios. I don't know.

2 **Q.** Let's give a hypothetical then.
3 Assuming that the City of Morris meets the
4 bond rating and the specific ratios of the
5 financial test, you would agree that if they
6 file a guarantee in the near future, that
7 would meet the financial assurance
8 requirements in this case, correct?

9 A. I think they could do that.

10 **Q.** You agree that a unit of local
11 government does not have to hire a third party
12 to perform. It can guarantee performance
13 itself, correct?

14 A. They can guarantee performance
15 themselves.

16 **Q.** And a local unit of government does
17 not have to guarantee that it will pay a third
18 party for performance, rather it will
19 guarantee that it will perform?

20 A. Perform or pay.

21 **Q.** So, your statement is yes, they can
22 agree to perform or pay, correct?

23 A. Correct.

24 MR. PORTER: Can you read back the

1 **Q.** Likewise a municipal owner of a
2 landfill can be the guarantor for the
3 operator, correct?

4 A. Correct.

5 **Q.** Are you aware that the City of Morris
6 has been providing leachate treatment for the
7 facility?

8 A. No.

9 **Q.** You don't have any reason to believe
10 that the City of Morris -- strike that.

11 Are you aware that there is an agreement
12 between the City of Morris and the operator
13 regarding the leachate treatment?

14 A. No, not aware of that.

15 **Q.** I take it then you have no knowledge
16 of whether or not the City of Morris has ever
17 failed to provide leachate treatment?

18 A. I don't know.

19 **Q.** Would you agree that if there is
20 actual performance of closure, post closure
21 activities, that relieves any responsibility
22 to provide financial assurance of those
23 activities, correct?

24 A. Could you state that question again.

1 question before the last question that I
2 asked.

3 (Whereupon the reporter then read the
4 requested testimony.)

5 **Q.** Let me ask the question again. Would
6 you agree that once a unit of local government
7 guarantees performance, they do not have to
8 post any other financial assurance, correct?

9 A. If they have passed this test, it
10 does not appear that they have to provide any
11 other financial assurance.

12 **Q.** So, once they pass the financial
13 test, which is actually referenced in 811.716,
14 they no longer have to post a bond or
15 assurance vehicle, correct?

16 A. Correct.

17 **Q.** As you sit here today you do not know
18 whether or not the City of Morris passes the
19 financial test, correct?

20 A. Correct.

21 **Q.** It is perfectly appropriate for a
22 municipality that owns a landfill to guarantee
23 its own landfill, correct?

24 A. Yes, correct.

1 **Q.** Probably not. You would agree that
2 if indeed there is actual performance of a
3 closure, post closure activity, that there is
4 no need to provide financial assurance for
5 that activity, correct?

6 A. Are you saying if the municipality
7 is, they close the landfill and provide all of
8 the post closure care, is there a need for
9 them for post financial assurance?

10 **Q.** That's a slightly different question,
11 but I will ask that one too.

12 A. I don't understand your question.

13 **Q.** You would agree that if indeed the
14 City of Morris is treating the leachate
15 emanating from the facility, if any, that
16 there is no need to post financial assurances
17 for leachate treatment, correct?

18 A. No. I would not say that's correct,
19 because what if tomorrow they abandon the
20 facility.

21 **Q.** Well, you would agree that if a
22 municipality provides an agreement or a
23 guarantee that they will perform --

24 A. If they have provided the guarantee.

1 Q. -- that's all that's required,
2 correct?

3 A. If they pass this test, they do
4 not have to provide alternate financial
5 assurance.

6 Q. And so if they provide a guarantee
7 that they will perform --

8 A. Uh-huh.

9 Q. -- and they are indeed performing,
10 obviously there is no need to provide any
11 other financial assurance, correct?

12 A. If they can pass this financial test,
13 they do not need to provide alternate
14 financial assurance.

15 MR. GRANT: I ask that we clarify
16 which test that you are talking about as far
17 as this test.

18 Q. Let me ask the question. It will be
19 easier for you. You are talking about the
20 financial test that's referenced in 811.716,
21 correct?

22 A. Correct.

23 Q. It is actually referenced in 811.717,
24 but it says that the guarantor shall meet the

1 hypothetical. Let's assume that the City of
2 Morris meets the financial test of 811.716.
3 They offer to guarantee that the leachate
4 treatment will be done by the City of Morris,
5 that it will perform leachate treatment for a
6 hundred years. Then there is no need to post
7 10.8 million dollars of financial assurance,
8 correct?

9 A. Is your question if they have asked
10 that or guaranteed to do that, do they not
11 have to pass the financial test?

12 Q. No. I am posing the hypothetical
13 that the City of Morris passes the financial
14 test. You don't know that right now, if
15 they pass that test. So, I am posing a
16 hypothetical that they do indeed pass it.
17 Now, assuming the City of Morris passes that
18 financial test, and they have offered to
19 guarantee the leachate treatment for a hundred
20 years, you would agree that there is no need
21 to post financial assurance for that leachate
22 treatment, correct?

23 A. No. I would not say that. I would
24 say they still have to post financial

1 requirements of the local government financial
2 test in Section 811.716, correct?

3 A. Correct.

4 Q. And so whenever you are saying meets
5 this test, you are talking about that
6 financial test referenced in 811.716?

7 A. Correct.

8 Q. Through this dep whenever you said
9 meets this test, that's what you meant,
10 correct?

11 A. Correct.

12 Q. So, assume then that the City has
13 offered to guarantee that the leachate will be
14 treated for a hundred years, and that they
15 agree to do that free of charge. You would
16 agree there is no need to post 10.8 million
17 dollars of financial assurance for that
18 leachate treatment, correct?

19 A. If they have passed the financial
20 test and satisfied the requirements of 811.716
21 or 717 like we are talking about, I would
22 agree there is no need to post an alternate
23 instrument.

24 Q. Let me ask that more complete

1 assurance. The point of financial assurance
2 is if tomorrow they leave the town, that we
3 have money to pay a third party to do this
4 work. In this case they are posting assets
5 that they have, bonds or something like that,
6 that we have. I mean do you --

7 Q. You would agree that posting the
8 financial guarantee referenced in 811.717 is
9 the only financial assurance that's required,
10 correct?

11 A. If they can pass this, this would
12 be the only financial assurance that's
13 required.

14 Q. And so when they meet that financial
15 test, they don't actually have to post a bond.
16 They just have to guarantee performance?

17 A. They would have to have a bond rating
18 or something like that to show that they could
19 actually come in here and do this work. If
20 they are monitoring leachate, which is a
21 requirement anyway probably of their permit,
22 that's a side issue.

23 Q. Right. When the City posts its
24 guarantee, and it meets the financial test, no

1 other financial assurance is required,
2 correct?

3 A. Correct.

4 **Q.** Are you aware that \$950,000.00 of the
5 cost estimate is for exhumation of waste off
6 of an existing parcel and onto another parcel
7 for an alleged over height?

8 A. No.

9 **Q.** Are you aware that it is the policy
10 of the Illinois Environmental Protection
11 Agency not to correct over heights merely for
12 the sake of correcting an over height?

13 MR. GRANT: Is that a question? I
14 mean can you ask that as a question?

15 MR. PORTER: I am asking if he is
16 aware of that.

17 MR. GRANT: I am going to object.

18 A. Would you mind restating it another
19 way, please.

20 **Q.** Are you aware that there is a policy
21 of the Illinois Environmental Protection
22 Agency to allow over heights to remain in
23 place as long as they don't pose an additional
24 risk of run-off or degradation of the site due

62

1 to improper slope?

2 A. I am not sure that would be a Permit
3 Section decision.

4 **Q.** So, you do not know if that's the
5 policy of the EPA or not, correct?

6 A. I am not sure.

7 **Q.** Are you aware that the IEPA has
8 recently taken over 33 abandoned sites?

9 A. I don't know the number. I know
10 there are some sites that they have had to
11 take over because the owners have abandoned
12 the facilities.

13 **Q.** Do you know if any of those sites
14 have over height?

15 A. I don't know.

16 **Q.** You understand what I mean by over
17 height is where the site has grown higher
18 than it was permitted to under the permit,
19 right?

20 A. Yes.

21 **Q.** So, I take it you don't know how
22 the EPA has reacted or responded to any over
23 heights of those sites, is that correct?

24 A. That's correct.

1 **Q.** Would you agree that if -- strike
2 that.

3 You are aware that the City of Morris is
4 the siting authority for the landfill?

5 A. What do you mean by that?

6 **Q.** Well, you understand that under
7 Section 39.2 of the Illinois Environmental
8 Protection Act a local municipality has the
9 authority and duty to permit new or expanded
10 facilities -- strike that -- has the duty to
11 determine whether or not a site is appropriate
12 for new or proposed expansions of facilities?
13 Do you understand that?

14 A. That would be a Permit Section
15 decision. I don't really know that much about
16 it.

17 **Q.** You don't know anything about local
18 municipalities and whether or not they have
19 to approve a site location application,
20 correct?

21 A. Right. That's a Permit Section
22 decision.

23 **Q.** You don't know whether or not the
24 Permit Section usually allows permits to be

64

1 amended or modified to allow for an over
2 height if it occurs?

3 A. I don't know.

4 **Q.** Assume that the City of Morris
5 performs the necessary tasks to accomplish a
6 permit change for this landfill such that
7 there is no longer an over height. Would you
8 agree that there is no need to post financial
9 assurance then for an over height?

10 A. Could you state that question another
11 way.

12 **Q.** Assume that the City of Morris has
13 the permit at issue amended such that the
14 present height of the landfill is permitted.
15 You would agree then that there is no need to
16 post financial assurances for an over height,
17 correct?

18 A. I guess I don't know how to answer
19 that question. Could you state it in another
20 way?

21 **Q.** I thought I did. Do you have a
22 specific problem with the question?

23 A. I guess what I don't understand is
24 you are saying if they amend this over height,

1 which I don't even know about, if there is an
2 over height at a landfill, they amend it in
3 what way?

4 **Q.** If they amend or modify -- strike
5 that.

6 If they get a permit change such that
7 the present height of the landfill is
8 permitted.

9 A. Permitted, but does not affect the
10 cost estimate, is that what you're --

11 **Q.** Strike that. In your review of
12 various financial assurance documentation
13 over the four years that you were in that
14 department, did you ever see cost estimates
15 for correction of over height?

16 A. I don't recall if those dealt with
17 correction of over height.

18 **Q.** In the entire time that you worked in
19 the Financial Assurance Department did you
20 ever see an owner operator have to pay
21 financial assurances based upon an over
22 height?

23 A. I did not determine technically what
24 went into that cost estimate. So, I can't say

1 if it was for an over height or not in that
2 period of time.

3 **Q.** All that you did was to determine
4 whether or not the financial assurances that
5 were posted met the bottom line number that
6 you were given, is that correct?

7 A. Correct.

8 **Q.** And so again you don't recall ever --
9 strike that.

10 I think my record is clear, but you would
11 agree that under Section 811.717 the City of
12 Morris can simply agree to performing the post
13 closure activities, and that's all that's
14 required in the financial assurance
15 regulations, correct?

16 A. If they meet the components of the
17 financial test that you were referring to
18 previously, that's all they have to post for
19 financial assurance.

20 **Q.** Let me ask it that way. Assuming the
21 City of Morris meets the financial test, it is
22 your understanding that all it has to do is
23 guarantee that it will perform the post
24 closure activities and closure activities, and

1 no further financial assurance is required,
2 correct?

3 A. Correct.

4 MR. PORTER: I have nothing further.

5 MS. GRAYSON: Let's take a short
6 break.

7 (Whereupon the deposition was in
8 recess.)

9 MR. PORTER: I actually have a couple
10 others. I withdraw my no further question
11 statement.

12 EXAMINATION BY

13 MR. PORTER (CONTINUED):

14 **Q.** Assuming that the owner or operator
15 posts financial assurance in the short term,
16 are you aware of any environmental damage or
17 other damage caused by the lack, or alleged
18 lack of financial assurance up to today?

19 A. I am not aware of any.

20 **Q.** And you are not aware of any damage
21 to the Illinois Environmental Protection
22 Agency or the State of Illinois caused by the
23 lack of financial assurance, correct?
24

1 A. Other than the hours I seem to spend
2 on this particular site over the last five
3 years, no.

4 **Q.** At any time did you ever suggest to
5 the City of Morris to file under 811.717?

6 A. I don't remember if I suggested that
7 or not.

8 **Q.** Do you know if anybody did?

9 A. I don't know. The options are there.
10 They can get them right off our web site.

11 **Q.** Well, you are aware that the operator
12 was responsible for posting financial
13 assurance for many years, and then paying the
14 premium to the City subsequent to that, is
15 that correct?

16 A. I don't know who he paid the premium
17 to, he or they.

18 **Q.** So, you don't know between the owner
19 operator who it was that was acquiring the
20 financial assurance historically for this
21 site, correct?

22 A. Last I recall one of the bonds was
23 paid for by the City, and the two others were
24 from CLC.

1 Q. And when those bonds were being
2 posted, at any time did you ever have any
3 conversations with anyone from CLC or the City
4 indicating that those bonds could have been
5 avoided simply by following 811.717?

6 A. Did I ever propose that to them?

7 Q. Right.

8 A. I don't recall. If they would have
9 asked me for options, I would have explained
10 what they could have done under all of them,
11 but I don't recall having any conversations
12 with them.

13 Q. Other than what you have testified to
14 today, do you have any other opinions
15 concerning this case?

16 A. No.

17 MR. PORTER: I will go ahead -- I
18 have no further questions.

19 MS. GRAYSON: Just a few questions.

21 EXAMINATION BY

22 MS. GRAYSON:

23 Q. Do you have any opinions regarding
24 penalties in this case?

1 A. No.

2 Q. Have you reviewed any of the records
3 regarding penalties?

4 A. Any records involving penalties with
5 this case?

6 Q. Yes.

7 A. No.

8 MS. GRAYSON: I have no further
9 questions.

10 MR. GRANT: Just a couple.

12 EXAMINATION BY

13 MR. GRANT:

14 Q. Mr. Harris, you are aware that I have
15 named you as a potential witness in this case,
16 isn't that correct?

17 A. Yes.

18 Q. If I would provide you with
19 information as to the avoided cost of
20 providing financial assurance, would you be
21 able to come up with an opinion as to money
22 that was saved by failure to provide financial
23 assurance?

24 A. Yes.

1 Q. If I was to provide you with cost
2 estimates for or provided by the City of
3 Morris and Community Landfill Company as to
4 the cost of financial assurance, would you be
5 able to come up with, provide me with some
6 sort of opinion as to the amount of financial
7 assurance, the cost of financial assurance
8 that would have been paid during the period
9 that we are talking about, which is 2000 and
10 2004 at this point?

11 A. Yes.

12 MR. GRANT: That's it.

13 MR. PORTER: I have a couple quick
14 follow-ups on that.

16 RE-EXAMINATION BY

17 MR. PORTER:

18 Q. As you sit here today you have no
19 such opinions, correct?

20 A. Correct.

21 Q. Isn't it true that back in 2000 the
22 City of Morris could have utilized 811.717,
23 which would have cost nothing?

24 A. I don't know whether they could have

1 or not.

2 Q. Assuming they meet the financial
3 tests, you would agree that back in 2000 the
4 City of Morris could have posted financial
5 assurance merely by using 811.717, which would
6 have cost nothing?

7 A. If they passed the ratios, sure.

8 Q. And then there would have been
9 absolutely no savings to the City of Morris
10 for not posting financial assurance from the
11 year 2000 through today, correct?

12 A. Well, you could say that, but they
13 also have to tie up a certain amount of
14 tangible to pass the test.

15 Q. Where within the statute do you
16 see that any amount of the City's bonding
17 authority would in any way have to be tied up
18 merely by passing a financial test?

19 A. Put it this way, you have X amount of
20 tangible net worth that cannot be used for
21 something else. Say like with my job now they
22 wanted to get a loan for water treatment
23 improvement. They couldn't get that loan
24 because of the bonding authority.

1 Q. Show me within the regulation where
2 there is any indication that the City of
3 Morris's bonding authority would have to be
4 tied up in order to provide a guarantee under
5 811.717.

6 A. It would not say that it would have
7 to be tied up.

8 Q. It doesn't say that on the financial
9 assurance test either, does it? I am sorry,
10 strike that.

11 It doesn't say that under the financial
12 test referenced in 811.716 either, correct?

13 A. Right. Tangible though meaning they
14 can get it, right?

15 Q. Well, isn't it true that 811.715
16 would be the method that would necessarily tie
17 up their bonding authority, which is posting a
18 bond without a surety?

19 A. Right.

20 Q. And so wouldn't you agree that under
21 811.717 you do not have to post a bond without
22 a surety or with a surety? You merely have to
23 file a guarantee that you will perform?

24 A. Right.

RE-EXAMINATION BY
MR. GRANT:

1 Q. Mr. Harris, in evaluating the
2 financial assurance for the Morris Community
3 Landfill did you ever see anything that
4 suggested that the City of Morris had applied
5 for local government guarantee as defined in
6 the regulations?

7 A. No, I don't recall if they had or
8 not.

9 Q. Did you ever see any bonds,
10 performance bonds provided by the City of
11 Morris for the Morris Community Landfill?

12 A. Yes.

13 MR. GRANT: That's all that I have
14 got.

15 MR. PORTER: I have no follow up.
16 Thank you very much.

17 MR. GRANT: We reserve.

18 (Witness Excused)

1 Q. And therefore, their bonding
2 authority is in no way tied up, and there is
3 no savings whatsoever to the City of Morris
4 from allegedly failing to post financial
5 assurances since 2000 to today's date,
6 correct?

7 A. Yes.

8 MR. PORTER: Nothing further.

9 MR. GRANT: Mr. Harris -- go ahead.

10
11 RE-EXAMINATION BY
12 MS. GRAYSON:

13 Q. Just something further, have you been
14 asked to prepare a report in this matter?

15 A. No.

16 MS. GRAYSON: I guess we would just
17 like to reserve the right to continue the
18 deposition if he does prepare a report.

19 MR. GRANT: You can make that
20 request. There has been, the reason that
21 there is no report is because of what I
22 believe are discovery issues with the
23 Respondents in this case. We will see what
24 the Board has to say about it.

1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF CHRISTIAN)

4 I, Sandra K. Haines, a Notary Public and
5 Certified Shorthand Reporter, associated with
6 Stewart-Haines Court Reporting, do hereby
7 certify that prior to the taking of the
8 deposition herein, and on the 25th day of
9 August, 2004, the Deponent, BLAKE OLIN HARRIS
10 was, by me, duly sworn to testify to the truth
11 in relation to the matter in controversy
12 herein. That on said date the foregoing
13 deposition was taken down stenographically by
14 me and afterwards reduced to typewritten form
15 by me, and that the foregoing transcript
16 contains a true and accurate translation of
17 all such shorthand notes.

18 Given under my hand and seal this 27th
19 day of August, 2004 at Taylorville, Illinois.



Notary Public and CSR

BEFORE THE ILLINOIS POLLUTION

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

- vs -)

NO. PCB 03-191

COMMUNITY LANDFILL COMPANY, INC.,)

an Illinois corporation, and the)

CITY OF MORRIS, an Illinois)

municipal corporation,)

Respondents.)

DISCOVERY DEPOSITION

The discovery deposition of BRIAN WHITE,
taken by the Respondent, on the 20th day of
September, 2005, at the Illinois Environmental
Protection Agency headquarters, 1340 North Ninth
Street, Springfield, Illinois, before Tamara C.
Leesman, Certified Shorthand Reporter of the State
of Illinois.

CSR #84-3929

BRIAN WHITE,

a witness, having been first duly sworn upon his
oath, testified as follows:

MR. PORTER: Let the record reflect this is
the discovery deposition of Brian White, taken
after notice, pursuant to all applicable rules of
the Illinois Pollution Control Board and the
applicable rules of the Illinois Supreme Court.

EXAMINATION CONDUCTED

BY MR. PORTER:

Q Mr. White, my name is Rick Porter, and
I'm going to be asking you a few questions today.
Have you given a deposition before?

A No.

Q All right. I'm sure that you've been
told the process, but it's pretty simple. I'm
going to ask questions, and you need to answer
them. I'd like you to wait until I'm done talking
before you answer because that's going to be easier
for the reporter to take down what you said. Also,
if I ever ask a question and you don't understand
it or it's unclear, just tell me that and I will
rephrase it; but if you answer it, we're all going
to assume that you understood it. Is that

Page 2

APPEARANCES

Office of the Attorney General
State of Illinois
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

BY: Mr. Christopher J. Grant
Appearing on behalf of Complainant,
People of the State of Illinois

LaRose & Bosco, Ltd.
Attorneys at Law
200 North LaSalle, Suite 2810
Chicago, Illinois 60601

BY: Ms. Clarissa Grayson (via telephone)
Appearing on behalf of Respondent,
Community Landfill Company, Inc.

Hinshaw & Culbertson
Attorneys at Law
100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389

BY: Mr. Richard S. Porter
Appearing on behalf of Respondent,
City of Morris

INDEX

Examination by Mr. Porter 3
Examination by Ms. Grayson 48

EXHIBITS

Identified

Exhibit No. 1 17
Exhibit No. 2 15
Exhibit No. 3 15

Page 4

1 acceptable?

2 A Yes.

3 Q All right. State your whole name for the
4 record.

5 A My name is Brian Stephen, S-T-E-P-H-E-N,
6 White.

7 Q And your age and date of birth please?

8 A My age is 46. I was born June 7, 1959.

9 Q And your present address?

10 A It's 814 Cypress, C-Y-P-R-E-S-S, Drive,
11 in Chatham.

12 Q And last year of education you completed?

13 A Last year of education would be towards a
14 masters in Public Administration.

15 Q So you have a bachelor's degree?

16 A I have a bachelor's degree in
17 Environmental Health.

18 Q And where is that from?

19 A From Illinois State University.

20 Q And when did you get that?

21 A 1983.

22 Q And then you've taken some classes since
23 then toward a masters degree, is that correct?

24 A Yes.

Page 5

Page 7

1 Q Where at?
 2 A Started out at Sangamon State University.
 3 It's now University of Illinois at Springfield.
 4 Q And what masters degree are you going for?
 5 A It's a masters in Public Administration.
 6 Q How far are you from acquiring that?
 7 A Four hours.
 8 Q And when do you expect to finish that up?
 9 A When I finish my paper.
 10 Q What's your best estimate on that?
 11 A I'm hoping this fall.
 12 Q Okay. What's your paper on?
 13 A It's on the meaning of Public
 14 Administration.
 15 MS. GRAYSON: I'm sorry. Did you say the
 16 meaning?
 17 A Yes. I forgot we had somebody on the
 18 phone.
 19 Q All right. Other than your masters work,
 20 any other secondary education that you have had
 21 since 1983?
 22 A No.
 23 Q Ever been charged with or convicted of a
 24 crime?

1 of the names. So it was somewhere around '94 for
 2 the Public Service Administrator title.
 3 Q Since January of 1991 have you been
 4 employed in any other way other than for the state
 5 of Illinois?
 6 A No.
 7 Q Prior to 1991 where were you employed?
 8 A I was employed at the EPA.
 9 Q In what capacity?
 10 A In the Compliance Unit.
 11 Q And that's again the IEPA?
 12 A Yes.
 13 Q In the Compliance Unit. And what was
 14 your title there?
 15 A Environmental Protection Specialist I,
 16 Environmental Protection Specialist II,
 17 Environmental Protection Specialist II.
 18 Q And chronologically when did you have
 19 those positions?
 20 A I started with EPA in 1988, and basically
 21 by probably '89 I was an EPS II, by '90 I was an
 22 EPS III, and by '94 I became an EPS IV, which then
 23 turned into the broadbanded title of PSA, Public
 24 Service Administrator.

Page 6

Page 8

1 A No.
 2 Q Please -- well, what's your present
 3 occupation?
 4 A My payroll title is Public Service
 5 Administrator. My working title is Compliance Unit
 6 Manager for the Bureau of Land.
 7 Q I'm sorry. Can you repeat that, the last
 8 part? What's your working title?
 9 A My working title is Compliance Unit
 10 Manager for the Bureau of Land.
 11 Q And what's the difference between your
 12 working title and your actual title?
 13 A My payroll title is one given to us by
 14 the Central Management Services. Everybody has a
 15 title in the state of Illinois which may not be as
 16 descriptive as their working title.
 17 Q Got you. How long have you been employed
 18 as the Compliance Unit Manager?
 19 A Since January of '91.
 20 Q And how long have you had your payroll
 21 title?
 22 A Oh, boy, since probably '94. They --
 23 what they did in the state of Illinois was they did
 24 some broadbanding of titles, so they changed some

1 Q Okay. But basically since 1991 you've
 2 had the same duties?
 3 A No, the duties were expanded in 2002 to
 4 take on another program.
 5 Q All right. What were your duties from
 6 '91 to 2002?
 7 A It was as Compliance Unit Manager
 8 basically doing the compliance enforcement
 9 activities, overseeing those, for the Bureau of
 10 Land.
 11 Q What do you mean by the enforcement
 12 activities? Enforcement activities of what?
 13 A It's the informal enforcement activities
 14 from tracking the inspection reports, information
 15 about violation notices. We used to issue the
 16 violation notices directly out of the Compliance
 17 Unit when it was all centralized. We would issue
 18 return compliance letters, a variety of other
 19 informal enforcement letters at that time.
 20 Q Okay. Since 1991 has your role been to
 21 see to it that the notices of violation are issued,
 22 or are you literally inspecting an order to
 23 determine whether or not a notice is warranted?
 24 Does that make sense?

1 A If you could repeat it please.
 2 Q I guess what I'm asking is: Is your
 3 function primarily, since 1991, procedural, or are
 4 you literally substantively making determinations of
 5 whether or not a notice of violation is warranted?
 6 A It's procedural.
 7 Q And what department makes the
 8 determination of whether or not a notice of
 9 violation is warranted?
 10 A It actually comes from the people that
 11 either do the inspections or do the reviews of
 12 records.
 13 Q And what are their titles? Well, let's
 14 narrow it down. It sounds to me like your function
 15 is for any violation that falls under Bureau of
 16 Land, is that correct?
 17 A All violation notices would've somehow
 18 been handled by our unit in some way.
 19 Q Okay. And what various -- are there
 20 various subdepartments that conduct the reviews and
 21 inspections to issue notices of violations? For
 22 example, someone that's reviewing financial
 23 assurances is in the Financial Assurance
 24 Department, is that correct?

1 A They're generally -- we don't necessarily
 2 have a unit called that, but it has been called
 3 that at varieties of times -- at different times.
 4 We've gone through a variety of reorganizations,
 5 and we've had different labels put on it.
 6 Q All right. So break it down for me.
 7 What -- your unit is what again, just Bureau of
 8 Land, Financial Compliance -- or I'm sorry, Bureau
 9 of Land, what?
 10 A I'm part of the Waste Reduction and
 11 Compliance Section.
 12 Q Okay. And is there a subsection to that?
 13 A It's the Compliance Unit.
 14 Q And within the Compliance Unit, are there
 15 any subsets that report to that unit?
 16 A No.
 17 Q How many inspectors and reviewers are
 18 there that would be turning in inspection and
 19 review reports to your unit?
 20 A There are three accountants in the --
 21 MS. GRAYSON: Did you say three accountants?
 22 A Yes. Three accountants in the Compliance
 23 Unit at this time and one accountant supervisor.
 24 Q And are you the boss of the accountant

1 supervisor?
 2 A Yes.
 3 Q And have you ever acted as a reviewer or
 4 accountant?
 5 A I've completed financial record reviews
 6 in the past.
 7 Q And when was the last time you did that?
 8 A On my own probably, and this is my best
 9 guess, about 1989 or '90.
 10 Q Okay. In preparation for your deposition
 11 today did you review any documents?
 12 A Yes.
 13 Q What documents did you review?
 14 A Basically the documents that are
 15 associated with the affidavit.
 16 Q And what documents are those?
 17 A I reviewed some of the permits. I
 18 reviewed the notice of violation. I reviewed some
 19 of the financial documents.
 20 MS. GRAYSON: Reviewed what? I'm sorry. I
 21 didn't hear the last one.
 22 A Some of the financial documents.
 23 Q What financial documents did you review?
 24 A I reviewed the bonds from Frontier. I

1 reviewed the record review by Blake. I reviewed
 2 the responses to the violation notice.
 3 Q Anything else?
 4 A There's probably some other stuff in
 5 there.
 6 Q Did you review Blake Harris's deposition?
 7 A Yes, some of it.
 8 Q And after having reviewed that deposition
 9 do you have any criticisms or concerns?
 10 A I didn't really look at it that closely.
 11 I didn't read the whole thing, just kind of skimmed
 12 through it.
 13 Q So as you sit here today you have no
 14 reason to disbelieve anything that Blake Harris
 15 testified to, is that correct?
 16 A I haven't read through it very carefully,
 17 so I don't have an opinion on that.
 18 Q You mentioned that you reviewed Blake
 19 Harris's record reviews. I did not see those, or
 20 if I did I didn't recognize those, in the stack of
 21 documents that's been provided to me today. Are
 22 they here?
 23 A Actually his -- it was more the singular
 24 than the plural. So it was record review, and

Page 13

1 there really isn't a whole lot to the review
 2 itself. There isn't a lot of narrative to it. So
 3 you probably saw it. You just didn't recognize it.
 4 Q Can you show it to me please out of the
 5 documents that are in front of me here.
 6 A So there would be two. One for the
 7 owner. One for the operator.
 8 Q Okay. Now those were -- happen to be a
 9 couple of the documents that I segregated as ones I
 10 wanted to talk to you about, and I also notice a
 11 couple of documents entitled status of violations
 12 worksheet. What are those?
 13 A Status of violation worksheet is a
 14 document that basically summarizes somebody's
 15 review of a submittal. The submittal date is put
 16 at the top, it's called the date of response, and
 17 it shows the date that it was received, so you
 18 would have to go to the file to look for that
 19 document.
 20 MR. PORTER: All right. Chris, I'd like to
 21 mark the record reviews. How do you want to handle
 22 that?
 23 MR. GRANT: Those are original, aren't they?
 24 MR. PORTER: Yes.

Page 14

1 MR. GRANT: We'll make copies.
 2 MS. GRAYSON: Can you fax to me -- maybe mark
 3 the ones that you're going to be using and then fax
 4 them to me so I can have them also?
 5 MR. PORTER: You know, Clarissa, they're
 6 really abbreviated. I mean it's going to take me
 7 all of five minutes to go through them, but do you
 8 want them faxed to you?
 9 MS. GRAYSON: I guess afterwards is fine.
 10 MR. PORTER: Okay.
 11 MS. GRAYSON: Well, it's hard for me to say
 12 wait until afterwards because I don't know what's
 13 even in there.
 14 MR. PORTER: Well, let me -- I'll describe
 15 them to you for the record here. First of all, can
 16 we just mark them on the back? Will that work?
 17 MR. GRANT: You know, they're Illinois EPA
 18 files, and I don't know what their policies are.
 19 I'd prefer just to make copies.
 20 MR. PORTER: Why don't we make copies real
 21 quick --
 22 MR. GRANT: Yeah.
 23 MR. PORTER: -- otherwise we can't refer to
 24 them in the record.

Page 15

1 (Whereupon a short break was
 2 taken.)
 3 MR. PORTER: For the record, we have now
 4 marked as Exhibit 2 the record review done by Blake
 5 Harris on October 31, 2000 concerning the city of
 6 Morris.
 7 MR. GRANT: Do you have two of those? Are
 8 they identical?
 9 MR. PORTER: Yeah, she -- somehow we ended up
 10 with --
 11 A You've got one for an owner and one for
 12 an operator, but you have two owners.
 13 MR. PORTER: Yeah.
 14 MR. GRANT: I don't have copies of them, but
 15 I've seen them. You can go ahead.
 16 MR. PORTER: Yeah, but when I -- let's go off
 17 the record real quick.
 18 (Whereupon a short break was
 19 taken.)
 20 Q After some confusion we now have marked
 21 as Exhibit No. 2 the record review for the operator
 22 and Exhibit No. 3 the record review for the owner,
 23 is that correct?
 24 A Yes.

Page 16

1 MS. GRAYSON: And what is Exhibit No. 1?
 2 MR. PORTER: Exhibit 1 was his affidavit. Did
 3 I not identify that?
 4 MR. GRANT: I don't think you did.
 5 MR. PORTER: Okay. We will.
 6 Q Attached to Exhibit No. 2 appears to be a
 7 memo. What is that?
 8 A It's a listing of the violations he's
 9 alleging.
 10 Q And was that memo ever forwarded to the
 11 operator?
 12 A No.
 13 Q Okay. Was it then subsumed into some
 14 type of notice of violation?
 15 A Yes, those were -- those violations,
 16 alleged violations were then listed in the
 17 attachment to violation notice.
 18 Q And the violation specifically was
 19 811.700(f) and 21(d)(2), is that right?
 20 A That is correct.
 21 Q And it was the same for both the owner
 22 and the operator, is that correct?
 23 A That is correct.
 24 Q In preparing -- other than what we've

Page 17

1 already talked about, have you reviewed any other
 2 documents in preparation for your deposition today?
 3 A I just looked at the regulations again.
 4 Q And in particular, was there any
 5 particular -- strike that. Was there any
 6 particular regulation that you reviewed?
 7 A Not really.
 8 Q Well, I imagine you reviewed Section 811?
 9 A 811.700 for financial.
 10 Q Okay. Did you review 717?
 11 A No.
 12 Q Any particular section within the 700
 13 series that you reviewed?
 14 A 712 probably the closest.
 15 Q And why 712?
 16 A Because that has to do with performance
 17 funds.
 18 Q All right. Let me show you what we've
 19 had marked as Deposition Exhibit No. 1. What is
 20 that?
 21 A That's my affidavit.
 22 Q Is that a true and accurate copy of your
 23 affidavit?
 24 A Yes.

Page 18

1 Q And for what purpose was that affidavit
 2 prepared, if you know?
 3 A I'm not exactly sure of the actual
 4 purpose on that one.
 5 Q Did you draft the text, or did you have
 6 the text drafted for you and then executed?
 7 A I drafted most of the text.
 8 Q Did you meet with anyone in preparation
 9 for your deposition today?
 10 A Yes.
 11 Q Who did you meet with?
 12 A I met with Bruce Kugler and Chris Grant.
 13 MR. PORTER: And, counsel, be prepared for
 14 this.
 15 Q What did you discuss?
 16 MR. GRANT: Okay. I'm going to object.
 17 Generally I'll let you answer and I'll stop if we
 18 start to get into something that I consider to be
 19 privileged.
 20 A We talked about in general what a
 21 deposition is, what your role would be, what the
 22 court reporter's role would be, and what Chris's
 23 role would be in this, and what my role would be.
 24 Q Did you talk about your expected

Page 19

1 testimony?
 2 A We talked about things that might be
 3 asked.
 4 Q And what did you -- strike that. What
 5 was said might be asked?
 6 MR. GRANT: This is the point I think I'm
 7 going to object and ask him not to answer the
 8 question.
 9 MR. PORTER: And I guess the reason I moved
 10 forward with the questioning is I wasn't sure if
 11 you were going to assert that he is indeed your
 12 client. Is that your --
 13 MR. GRANT: Yeah, we're going to claim
 14 attorney/client privilege on all communications,
 15 which for this purpose includes attorney general's
 16 office, department of legal counsel personnel,
 17 anybody on an enforcement decision group that
 18 includes an attorney, and Mr. White.
 19 And as long as you raise that, there's
 20 one other thing that may come up. I want just to
 21 let you know ahead of time. As you know we've
 22 got -- we've made a claim under the Frontier bonds,
 23 and it's possibly going to be it will end up in
 24 litigation. In any event, it's a matter on which

Page 20

1 we're adverse with Frontier and also I think
 2 adverse with both the city and with the Community
 3 Landfill Company on because of the possible impact
 4 of us making a claim on the Frontier bonds and any
 5 litigation on.
 6 So as far as discussing the Frontier
 7 bonds, it's fair game in this until we get to the
 8 point as to any actions that we're going to take in
 9 the future or decision makings or our belief in --
 10 or in the way we're reviewing legal strategy as far
 11 as trying to collect on the Frontier bond. So just
 12 in case that comes up.
 13 MR. PORTER: Well, that does beg a couple of
 14 questions.
 15 Q Have you made any determination or do you
 16 have any opinion whether or not any closure or
 17 post-closure activities have not been performed at
 18 the site?
 19 A Is that question directed at me?
 20 Q Uh-huh.
 21 A That is for other people in the Bureau of
 22 Land to determine, not to me.
 23 Q So you have no such opinion, is that
 24 correct?

Page 21

Page 23

1 A I have no opinion on that.

2 Q Has anyone from your department issued a
3 letter to Frontier Insurance Group asserting that
4 any amounts need to be paid based on a bond held
5 concerning the CLC landfill?

6 MR. GRANT: Okay. I'm not going to -- I'm not
7 going to object to that question because we've
8 copied both the city and the Community Landfill
9 Company on when we sent that communication to
10 Frontier Insurance Company, but I'm not waiving the
11 right to claim privilege on those questions.

12 Q Do you need it read back?

13 A Yes.

14 MR. PORTER: If you would.

15 (Whereupon the reporter then
16 read the requested testimony.)

17 MR. GRANT: You can go ahead and answer.

18 A Yes.

19 Q Okay. Now I've seen in the documents
20 that are at our table here a June 28, 2005 letter
21 to Frontier Insurance informing them that the
22 period of the bond should be automatically extended
23 for 12 months, but I am not seeing a letter, at
24 least in the materials in front of me here, making

1 The role expanded into other programs for
2 the Bureau of Land outside of the hazardous waste,
3 the LUST program, which is leaking underground
4 storage tanks, tires program, and solid waste,
5 which includes landfills and open dumps. So
6 basically the unit itself tracks the compliance
7 enforcement activities up until the point of a
8 formal enforcement process.

9 And at one time too all the violation
10 notices and any other informal enforcement notices
11 all were sent out of the Compliance Unit. That
12 role has now been decentralized and has expanded
13 into our regional offices. And then in 2002, under
14 the Compliance Unit, the Financial Assurance
15 Program also moved under the Compliance Unit at
16 that time.

17 Q Okay. So at the time that the records
18 reviews were done by Blake Harris that was not part
19 of the Compliance Unit Manager's responsibility?

20 A That is correct.

21 Q And in his deposition he indicated that
22 there were never more than two accountants that
23 were involved in reviewing financial assurances in
24 the time that he worked there from -- which I

Page 22

Page 24

1 a claim on any funds from the bond. Are you
2 certain that such a letter has been sent?

3 A Yes.

4 Q And do you know when it was sent?

5 A No.

6 Q Is it in the material in front of me, and
7 I just missed it?

8 A I'm not sure.

9 Q Can you take a quick look for me please?

10 MR. PORTER: Off the record.

11 (Whereupon an off-the-record
12 discussion was held.)

13 Q Directing your attention now to the
14 affidavit, explain to me again --

15 MR. GRANT: Do you want to identify this as
16 Exhibit 1 now?

17 MR. PORTER: Yeah.

18 Q -- which is exhibit 1. Explain to me
19 again what a Compliance Unit Manager does.

20 A Compliance Unit Manager for the Bureau of
21 Land, the role has evolved over time. It started
22 out as making sure the requirements for USEPA's
23 hazardous waste program, the RCRA Subtitle C, that
24 those obligations were filled for reporting.

1 believe was '99 through 2004. Do you have any
2 reason to dispute that testimony?

3 A No.

4 Q He indicated that his immediate
5 supervisor was a Ms. Hope Wright. Is that
6 information correct?

7 A Yes.

8 Q You were not Hope Wright's supervisor at
9 the time that this report was issued on 10-31-00,
10 is that correct?

11 A That is correct.

12 Q Are you now the supervisor -- well,
13 strike that. What is Hope Wright's title now, if
14 you know?

15 A She is an Environmental Protection
16 Specialist IV.

17 Q And is that the same position she had at
18 the time that the record review was done?

19 A Yes.

20 Q And are you now her supervisor?

21 A No.

22 Q Okay. Who is her supervisor?

23 A Her supervisor is Dave Walters.

24 Q And where would he -- are these people

1 within your department, or are they in a different
 2 department?
 3 A They're -- Hope and Dave, Dave is the
 4 section manager for the Waste Reduction and
 5 Compliance Section, which the Compliance Unit is
 6 part of.
 7 Q Okay. So Dave would be your boss?
 8 A Yes.
 9 Q And so are you kind of on the same tier
 10 then as Hope, Ms. Wright?
 11 A Hope is a bargaining unit member. I am
 12 not.
 13 Q Okay. So she would be -- she's not -- is
 14 she your immediate supervisor?
 15 A No.
 16 Q Okay. But she is on a supervisory
 17 position to people that are at the same level as
 18 you, is that correct?
 19 A Could you repeat that please?
 20 Q I'm not sure I could. She is not in your
 21 department, is that right?
 22 A She's in my section. She's not in my
 23 unit.
 24 Q Okay. And likewise, Blake Harris, at the

1 correct?
 2 A Yes.
 3 Q But at the time that these records
 4 reviews were done they were not?
 5 A That is correct.
 6 Q And that change happened in 2002?
 7 A Towards the end of 2002.
 8 Q Do you know why that -- why did that
 9 change happen?
 10 A Like in everything else in state
 11 government, you can't keep things static, so they
 12 went through a reorganization.
 13 Q Have you been involved in the training at
 14 all of the individuals that now perform records
 15 review?
 16 A I'm involved in some of the training,
 17 yes.
 18 Q And exactly what is your role in training
 19 those people?
 20 A My role is -- at first was to set the job
 21 objectives for them, to describe what needs to be
 22 in a record review as far as when they write it
 23 up. So through the job objectives I was able to
 24 define the role for them, and then I would review

1 time he drafted this report, was not in your unit,
 2 is that correct?
 3 A That is correct.
 4 Q And as a matter of fact, none of the
 5 accountants that issued the records reviews
 6 presently are in your unit, is that right, or is
 7 that not right? I don't know.
 8 A Could you re-ask the question?
 9 Q Blake Harris said that he was an
 10 accountant at the time he issued this review in the
 11 way that that's defined by the IEPA. Is that your
 12 understanding as well, that he was an accountant at
 13 the time he issued this records review on 10-31-00?
 14 A I'm not positive.
 15 Q Okay. Who issues the records reviews
 16 presently?
 17 A The financial record reviews are
 18 conducted by the accountants in the Compliance
 19 Unit.
 20 Q And -- and I'm sorry, are you in charge
 21 of the Compliance Unit?
 22 A Yes.
 23 Q So now the accountants are, that issue
 24 the records review, are within your unit, is that

1 the work that they did after they completed a
 2 record review.
 3 Q Is there any training course that's
 4 provided regarding implementation of the financial
 5 assurance regulations to the records reviewers?
 6 A There was a course in 2004 offered by the
 7 USEPA. The course generally focused on RCRA
 8 Subtitle C, which is hazardous waste. RCRA is
 9 R-C-R-A. And the training course was put on by the
 10 USEPA, and it was offered up in Chicago. It was a
 11 four day, four and a half day course. And
 12 basically a lot of the instruments used in the
 13 hazardous waste program and the solid waste program
 14 were the same. There's credits, bonds, insurance,
 15 financial tests, trust funds.
 16 Q To your knowledge has there ever been a
 17 course or study concerning the use of municipal
 18 guarantees?
 19 A Not to my knowledge.
 20 Q In --
 21 MS. GRAYSON: I'm sorry. Was that a no?
 22 MR. PORTER: He said not to my knowledge.
 23 Q In -- strike that. Do you ever review
 24 the records reviews that are done?

1 A Yes.
 2 Q And do you review them all?
 3 A No.
 4 Q Which ones do you review?
 5 A Generally anything that's going to result
 6 in a violation notice and some of the reviews for
 7 people that are just starting out.
 8 Q And you've only been reviewing the record
 9 reviews since 2002, is that correct?
 10 A Yes.
 11 Q So you did not review Blake Harris's
 12 record reviews concerning this landfill, is that
 13 right?
 14 A Not prior to him completing it.
 15 Q And eventually there was a notice of
 16 violation issued concerning these records reviews,
 17 is that correct?
 18 A Yes.
 19 Q And do you know the date of that notice
 20 of violation?
 21 A It's November --
 22 Q Feel free to look at anything you need to
 23 look at to refresh your recollection.
 24 A I wasn't exactly sure of the date, but

1 November 14, 2000.
 2 Q And again, you did not review that notice
 3 of violation before its issuance, is that correct?
 4 A That is correct.
 5 Q So you had absolutely no input of whether
 6 or not that notice of violation should be issued,
 7 is that correct?
 8 A That is correct.
 9 Q All right. Paragraph five of your
 10 affidavit, Respondent's Exhibit No. 1, indicates
 11 that you are familiar with the landfill generally
 12 known as Morris Community Landfill. Is that
 13 information correct?
 14 A Yes.
 15 Q How have you become familiar with the
 16 Morris Community Landfill?
 17 A I've been familiar by looking at their
 18 permits, by looking at the violation notice issued
 19 by Blake, and I did an on-site visit.
 20 Q Now when you looked at the permits and
 21 the violation notice, that was recently in regard
 22 to preparation for your affidavit, is that correct?
 23 A Yes.
 24 Q Had you done it before you prepared your

1 affidavit?
 2 A Yes.
 3 Q When was the first time that you had ever
 4 become familiar with the Morris Community Landfill?
 5 A I can't recall.
 6 Q What's your best recollection?
 7 A Probably somewhere between 2002 and 2004.
 8 Q You indicated you also did a site
 9 review. When did that happen?
 10 A In May of this year.
 11 Q Was there any report issued concerning
 12 that site review?
 13 A I don't know.
 14 Q Who attended that with you?
 15 A Mark Retzlaff from our field office,
 16 Chris Liebman from our permit section, Beverly
 17 Anderson from the compliance unit, and myself.
 18 Q And at that time did you have any opinion
 19 whether any closure or post-closure activity that
 20 should've been performed was not being performed?
 21 A That's not for me to evaluate.
 22 Q You have no such opinion, is that
 23 correct?
 24 A I have no opinion on that.

1 Q And did anybody in that group have such
 2 an opinion or verbalize such an opinion to you?
 3 A No, they did not.
 4 Q Did you see any waste being taken in at
 5 that time?
 6 A At the time I was there I did not see any
 7 waste being taken in.
 8 Q Did you see the evidence of waste being
 9 taken in in the recent past?
 10 A It's not an area I'm really familiar with
 11 and stuff, so I'm not comfortable answering that.
 12 Q I guess that kind of begs the question
 13 of: Why did you go? I mean I understand your job
 14 to be mainly records review, is that correct, as
 15 opposed to --
 16 A Yes.
 17 Q -- on-site inspections?
 18 A Yes.
 19 Q And so what was the purpose of having you
 20 there?
 21 A Just become familiar with the site, where
 22 it was, what it looked like.
 23 Q Paragraph five also indicates that the
 24 permitted owner of the landfill is the city of

Page 33

1 Morris. Upon what do you base that?
 2 A On the permit.
 3 Q And which permit are you referring to?
 4 A You can look at the August of 2000. You
 5 can look at the modifications since then through
 6 the August of 2002.
 7 Q Your affidavit also provides that the
 8 permitted operator is Community Landfill Company,
 9 also known as CLC. Upon what do you base that?
 10 A On the permit.
 11 Q So the permits draw a distinction between
 12 the owner and operator, is that correct?
 13 A Yes.
 14 Q Now the motion for summary judgment
 15 that's been filed in this case, have you reviewed
 16 that?
 17 A No.
 18 Q Well, take my word for it that that
 19 document suggests that the landfill was operating
 20 as recently as May of 2005. Do you know if that
 21 information is correct or not?
 22 A I don't know if it's correct or not.
 23 Q Do you have any information of whether
 24 CLC was operating the landfill as recently as May

Page 34

1 of 2005?
 2 A It's not something I review.
 3 Q At any time to your knowledge has the
 4 city of Morris ever been the permitted operator of
 5 the landfill?
 6 A Not to my knowledge.
 7 Q Do you have any information that the city
 8 of Morris has ever physically operated the
 9 landfill?
 10 A It's not something I review.
 11 Q You mentioned in paragraph six that you
 12 reviewed the Illinois EPA files regarding this
 13 matter that relate to CLC. What Illinois EPA files
 14 did you review other than what you've already
 15 described?
 16 A I reviewed the -- well, pretty much what
 17 I described. I reviewed the bonds, I reviewed
 18 the -- Blake's review, I looked at the violation
 19 notice, and I looked at the responses to the
 20 violation notice.
 21 Q Anything else?
 22 A There might've been, but nothing I can
 23 recall at this time.
 24 Q Okay. Those documents you just described

Page 35

1 are the documents that you primarily relied upon in
 2 order to come to your conclusions stated in your
 3 affidavit, is that correct?
 4 A In part those are, yes.
 5 Q Is there anything else that you relied
 6 upon to come to the conclusions you came to in your
 7 affidavit?
 8 A The permits and the regulations.
 9 Q Paragraph seven indicates that CLC and
 10 the city were issued various permits, including
 11 closure and post-closure care permits. Upon what
 12 do you base that, a review of the permits
 13 themselves?
 14 A Yes.
 15 Q And again, at no time in those permits is
 16 the city of Morris identified as the operator, is
 17 that correct?
 18 A I don't recall.
 19 Q Do you need to look at the permit in
 20 order to refresh your recollection?
 21 A Sure.
 22 Q And I think you probably have it in front
 23 of you here.
 24 A In the permit the city of Morris is not

Page 36

1 identified as the operator.
 2 Q Okay. In paragraph number nine your
 3 affidavit indicates that CLC and the city were
 4 required to have financial assurance for its
 5 significant modifications. To your knowledge did
 6 the city ever perform any significant modifications
 7 to the landfill?
 8 A There were significant modifications,
 9 which is a type of permit.
 10 Q But isn't it true that those significant
 11 modifications were performed by CLC rather than the
 12 city?
 13 A That's for the permit reviewer to
 14 determine.
 15 Q You don't have an opinion one way or the
 16 other on that issue --
 17 A No.
 18 Q -- is that correct?
 19 A That's correct.
 20 Q That same paragraph indicates that CLC
 21 and the city were required to have financial
 22 assurance. Isn't it true that actually only the
 23 operator need post financial assurance?
 24 A No.

1 Q Well, if an -- well, strike that. In
 2 your years, at least since 2002, reviewing these
 3 financial assurance record reviews have you had
 4 occasion to see that operators often post financial
 5 assurance and the owners do not?
 6 A I don't really recall. I haven't thought
 7 of it in those terms.
 8 Q Well, you're aware that the regulations
 9 provide that an operator or an owner may post
 10 financial assurance, is that correct?
 11 A That is correct.
 12 Q You would agree then that an owner of
 13 land does not necessarily have to post financial
 14 assurance, isn't that right?
 15 A It's the owner or operator.
 16 Q So the owner himself does not necessarily
 17 have to post financial assurance, is that correct?
 18 A The owner or operator.
 19 Q So was my statement correct?
 20 A It's the owner or operator. That's the
 21 way the regs read.
 22 Q And so you would agree that the owner
 23 himself does not necessarily have to post financial
 24 assurance, right?

1 A It would be the owner or operator.
 2 Q Is there a reason you can't answer that
 3 with a yes or a no?
 4 A I'm just restating what the regs say.
 5 Q Okay. If you can, please answer with a
 6 yes or a no. Isn't it true that the owner does not
 7 necessarily have to post financial assurance?
 8 A Yes.
 9 MS. GRAYSON: I'm sorry. I couldn't hear your
 10 answer.
 11 MR. GRANT: He answered yes.
 12 A It was in the affirmative.
 13 Q Now paragraph ten provides that CLC and
 14 the city provided financial assurance by obtaining
 15 performance bonds. What was your basis of that
 16 statement?
 17 A A review of the bonds.
 18 Q And when you say that they provided
 19 financial assurance, for the record, what does that
 20 mean?
 21 A They submitted bonds to the Illinois EPA
 22 from Frontier.
 23 Q Well, the terms financial assurance as
 24 they're used in the realm of Illinois regulations

1 is a term of art, is that right?
 2 A I'm not sure what you're asking.
 3 Q Well, when we say financial assurance, we
 4 mean that they posted some type of financial
 5 mechanism that complies with the statutes that can
 6 guarantee closure or post-closure activities, is
 7 that correct?
 8 A That is correct, or corrective action.
 9 Q So isn't it true then that CLC did indeed
 10 post some sort of vehicle to assure closure or
 11 post-closure activities?
 12 A They have posted financial assurance,
 13 yes.
 14 Q And to your knowledge has there been any
 15 failure to perform any closure or post-closure
 16 activity?
 17 A That's not up for me to decide.
 18 Q So you're unaware of any such failure, is
 19 that correct?
 20 A I'm unaware, yes.
 21 Q Are you aware that the largest component
 22 of the financial assurance requirement is for
 23 leachate collection and management?
 24 A I haven't evaluated it that closely.

1 Q Are you aware that the leachate
 2 collection and management has actually been
 3 performed -- well, strike that. Are you aware that
 4 the city has accepted the leachate from the
 5 facility?
 6 A I've heard that.
 7 Q And where did you hear that from?
 8 A From discussions on the site with -- that
 9 we had with Mr. Helsten.
 10 Q And isn't it true that there are a
 11 variety of mechanisms by which one may post
 12 financial assurance?
 13 A Yes.
 14 Q As a matter of fact, I think the regs
 15 called for ten different vehicles, is that right?
 16 A Yes.
 17 Q Is one of those vehicles actual
 18 performance?
 19 A No.
 20 Q Is one of those vehicles a municipal
 21 guarantee?
 22 A Yes.
 23 Q Are you aware that the city of Morris has
 24 offered to provide a municipal guarantee?

1 A I'm aware that they have talked about it.

2 Q And are you aware that the IEPA has
3 rejected that offer?

4 A I'm not aware of that.

5 Q If indeed the city were to provide a
6 municipal guarantee, you would agree that that
7 would meet the financial assurance requirements, is
8 that correct?

9 A If they provide a municipal guarantee
10 that complies with the regulations, yes.

11 Q And Mr. Harris testified that a municipal
12 guarantee --

13 MR. GRANT: I'm going to object at this
14 point. I don't think, unless you have a deposition
15 transcript or something like that to show, neither
16 he nor I know what Mr. Harris testified to.

17 MR. PORTER: Well, I can fix that problem.

18 MR. GRANT: All right.

19 MR. PORTER: I think I have an extra copy
20 even.

21 Q Isn't it true that the city of Morris
22 could provide a municipal guarantee without tying
23 up the bonding authority in your opinion?

24 A I would have to look at what they would

1 A There's no financial assurance that
2 complies with the regulations.

3 Q And upon what do you base that opinion?

4 A On the fact that the Frontier bonds have
5 been delisted from the Treasury Circular 570.

6 Q Anything else?

7 A And the regulations themselves.

8 Q I'm sorry. I didn't follow the last
9 part. What do you mean by and the regulations
10 themselves?

11 A Well, I mean it's part of the regulations
12 and stuff that they need to comply or that the
13 bonding company has to be listed on the Treasury
14 Circular 570. It's part of 712(b).

15 Q Well, actually doesn't 712(b) provide
16 that if the surety company is licensed to transact
17 business by the department of insurance that it
18 need not be on that Circular 570?

19 MR. GRANT: Can he look at the regulations?

20 MR. PORTER: Absolutely.

21 A I don't need to.

22 MR. GRANT: This is -- I mean I understand,
23 and I don't want to interfere with your
24 examination, but I mean that was settled three

1 submit and compare it to the regulations. They
2 have to comply with the regs. 817 requires -- or
3 717 requires that they also comply with the
4 financial tests in 716.

5 Q And do you know whether or not the city
6 of Morris complies with the financial test?

7 A I have no idea.

8 Q Have you personally rejected the city of
9 Morris's offer to provide a municipal guarantee?

10 A To the best of my knowledge they haven't
11 submitted anything for us to evaluate.

12 Q Now you would agree that if indeed the
13 city of Morris had provided -- well, strike that.
14 At the present time the Frontier bonds had been
15 extended, is that correct?

16 A We have requested that the bonds be
17 extended, yes.

18 Q Well, and the statute provides that they
19 will be extended automatically, is that right?

20 A Yes, or the regs do.

21 Q So would you agree that it's the IEPA's
22 position that there is still financial assurance
23 for this landfill concerning closure or
24 post-closure care?

1 years ago.

2 MR. PORTER: I understand your position.

3 A There's a three letter word in 712(b),
4 and it's a conjunction. It's and, A-N-D, and it
5 says and needs to be listed on the Treasury
6 Circular 570.

7 Q But doesn't that conjunction relate to
8 the clause immediately before it, which is that it
9 only needs to be on the Circular 570 if it -- if
10 the insurer is merely licensed to transact business
11 in a state as opposed to being --

12 MR. GRANT: I'm going to object again, and I'm
13 going to --

14 MR. PORTER: Let me finish the question.

15 MR. GRANT: All right.

16 Q -- as opposed to being approved by the
17 department of insurance?

18 MR. GRANT: I'm going to object again on the
19 basis that this has been settled by the courts.
20 You can go ahead and answer the question.

21 A In my opinion no.

22 Q Upon what do you base that opinion?

23 A On reading the regulations.

24 Q Okay. So strictly the only thing you're

1 basing it upon is a plain language reading of
 2 811.712(b), correct?
 3 A Yes.
 4 Q And you would agree that reasonable minds
 5 can disagree as to whether or not that clause
 6 and -- or I'm sorry, that conjunction and relates
 7 to the clause immediately in front of it or relates
 8 to the entire sentence, correct?
 9 MR. GRANT: Objection again. You're asking
 10 him to make a legal conclusion about a statute.
 11 MR. PORTER: Well, I think he's gone there
 12 because he's provided an opinion that the financial
 13 assurances don't comply with that specific section
 14 of the statute.
 15 MR. GRANT: I disagree with your
 16 characterizing that as an opinion. It's a
 17 conclusion. There's no reason to relitigate a case
 18 that was tried before the board and appealed.
 19 There's no question about that paragraph. It's
 20 been done. His opinion on it doesn't really add
 21 anything to it.
 22 MR. PORTER: I understand your objection.
 23 MR. GRANT: Obviously he disagrees with you.
 24 MR. PORTER: I don't know if I got an answer

1 or not.
 2 MR. GRANT: All right.
 3 MR. PORTER: Could you read it back please
 4 because I don't recall if he answered or not or
 5 just tell me if he answered.
 6 (Whereupon the reporter then
 7 read the requested testimony.)
 8 Q Unless your attorney directs you not to
 9 answer --
 10 MR. GRANT: You can go ahead and answer. You
 11 can respond to the question.
 12 Q Do you want her to read it one more time?
 13 A Yeah, please.
 14 (Whereupon the reporter then
 15 read the requested testimony.)
 16 A I guess people can always disagree with
 17 things. Whether or not I agree it's reasonable or
 18 not is a whole different thing.
 19 Q Has Frontier failed to honor its bonds to
 20 your knowledge?
 21 A To my knowledge no.
 22 Q And your last and final paragraph is that
 23 CLC and the city do not currently have any
 24 financial assurance in place for the landfill.

1 Upon what do you base that considering the fact
 2 that the city has offered to provide a guarantee
 3 and in the IEPA's opinion the bonds have been
 4 extended automatically?
 5 A Basically once the bonds got delisted --
 6 Frontier got delisted, that the bonds did not
 7 satisfy the requirements or the regulations as
 8 adequate financial assurance. The city was
 9 supposed to provide back in 2000 within 90 days
 10 substitute alternate financial assurance. Five
 11 years later we still don't have that, nothing in
 12 writing, no documents, no information.
 13 Q Well, you said the city was to provide
 14 that, but isn't it true again that the city is not
 15 the permitted operator?
 16 A That is correct.
 17 MR. PORTER: I don't have anything further.
 18 MR. GRANT: Clarissa, how are you doing?
 19 MS. GRAYSON: Sure.
 20 MR. GRANT: I thought you'd walked out. That
 21 was just a test. Now do you have some questions?
 22 Do you want to take a quick break and ask a couple
 23 of questions? What do you want to do?
 24 MS. GRAYSON: A couple of minute break if you

1 don't mind.
 2 MR. GRANT: No, I don't because actually I'd
 3 like to go get some more water.
 4 MS. GRAYSON: Just let me know when you guys
 5 are back.
 6 MR. GRANT: Okay.
 7 (Whereupon a short break was
 8 taken.)
 9 EXAMINATION CONDUCTED
 10 BY MS. GRAYSON:
 11 Q My name is Clarissa Grayson, and I'm the
 12 attorney for Community Landfill Company or one of
 13 the attorneys.
 14 A Okay.
 15 Q I have a few questions. I had a hard
 16 time hearing some of the testimony, but I think I
 17 got most of it. I want to go back to the questions
 18 that Mr. Porter was asking you regarding paragraph
 19 nine of your affidavit.
 20 A Okay.
 21 Q You cited the actual regulations that you
 22 were discussing or that he asked you about
 23 regarding the owner or operator requirements for
 24 posting financial assurance. Could you tell me

1 which section of the regulations you were talking
 2 about?
 3 MR. GRANT: Do you mind if we refer to the
 4 regulations? We don't have it as an exhibit, but
 5 we've got a book of them right here.
 6 MS. GRAYSON: Sure. I have a book also.
 7 MR. GRANT: Okay.
 8 A Yeah, basically you can look at 811.700.
 9 It talks about the owner or operator. You can look
 10 at 811.701. The owner or operator shall maintain
 11 financial assurance equal to or greater than the
 12 current cost estimate calculated pursuant to
 13 Section 811.704 at all times. And it's basically
 14 throughout all of Subpart G, financial assurance.
 15 Q Okay. So when it says owner or
 16 operator --
 17 A Yes.
 18 Q -- that means that neither -- I mean
 19 doesn't that mean that neither -- that the operator
 20 also isn't required to post it or the owner?
 21 A Could you repeat that question please?
 22 Q Meaning the term owner or operator mean
 23 either one of them shall maintain financial
 24 assurance. So in other words, if the operator

1 doesn't post financial assurance, then the owner is
 2 required to, is that correct?
 3 A It means one or the other shall provide
 4 it.
 5 Q So neither is required to post it, it's
 6 either one or the other?
 7 A Either one or the other?
 8 Q Yeah, either one or the other.
 9 A Yeah, either one or the other can provide
 10 it, or they both can provide it.
 11 MS. GRAYSON: Okay. I think that's all I
 12 have.
 13 MR. PORTER: I have no follow-ups.
 14 MR. GRANT: I'm done.
 15 MR. PORTER: I am going to make a copy of some
 16 of the or I have a copy of these documents. I only
 17 marked two of them as an exhibit, Clarissa.
 18 MS. GRAYSON: Okay.
 19 MR. PORTER: So if you want a copy, I can copy
 20 what I'm taking and I'll send them over to you.
 21 All right?
 22 MS. GRAYSON: Okay.
 23 MR. PORTER: Great. Thank you.
 24 (DEPOSITION CONCLUDED)

1 CERTIFIED SHORTHAND REPORTER'S CERTIFICATION

2

3 I, TAMARA C. LEESMAN, Certified Shorthand
 4 Reporter and Notary Public of the State of
 5 Illinois, do hereby certify that BRIAN WHITE came
 6 before me on the 20th day of September, 2005, and
 7 swore before me to testify to the truth, the whole
 8 truth, and nothing but the truth regarding his
 9 knowledge touching upon the matter in controversy.

7 I do further certify that I did take
 8 stenographic notes of the questions propounded to
 9 said witness and his answers thereto and that said
 10 notes were reduced to typewritten form under my
 11 direction and supervision.

10 I do further certify that said deposition
 11 was taken at the Illinois Environmental Protection
 12 Agency headquarters, 1340 North Ninth Street,
 13 Springfield, Illinois.

12 I do further certify that I am not
 13 related in any way to any of the parties involved
 14 in this action and have no interest in the outcome
 15 thereof.

15 Dated at Springfield, Illinois this 23rd
 16 day of September, 2005, and given under my hand and
 17 seal.

17

18 *Tamara C. Leesman*
 19
 20 Tamara C. Leesman
 21 Certified Shorthand Reporter

22 "OFFICIAL SEAL"
 23 Tamara C. Leesman
 24 Notary Public, State of Illinois
 My Commission 08/29/2006