

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAHOMET VALLEY WATER AUTHORITY,)
CITY OF CHAMPAIGN, ILLINOIS, a municipal)
corporation, DONALD R. GERARD, CITY OF)
URBANA, ILLINOIS, a municipal corporation,)
LAUREL LUNT PRUSSING, CITY OF)
BLOOMINGTON, ILLINOIS, a municipal)
corporation, COUNTY OF CHAMPAIGN,)
ILLINOIS, COUNTY OF PIATT, ILLINOIS,)
TOWN OF NORMAL, ILLINOIS, a municipal)
corporation, VILLAGE OF SAVOY, ILLINOIS,)
a municipal corporation, and CITY OF)
DECATUR, ILLINOIS, a municipal corporation,)

Complainants,)

v.)

CLINTON LANDFILL, INC., an Illinois)
corporation,)

Respondent.)

PCB No. 2013-022
(Enforcement - Land)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List


PLEASE TAKE NOTICE that on February 21, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, PEOPLE'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

CERTIFICATE OF SERVICE

I hereby certify that I did on February 21, 2013, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and PEOPLE'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS upon the persons listed on the Service List.



THOMAS DAVIS, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
MAHOMET VALLEY WATER AUTHORITY,)
CITY OF CHAMPAIGN, ILLINOIS, a)
municipal corporation, DONALD R. GERARD,)
CITY OF URBANA, ILLINOIS, a municipal)
corporation, LAUREL LUNT PRUSSING,)
CITY OF BLOOMINGTON, ILLINOIS, a)
municipal corporation, COUNTY OF)
CHAMPAIGN, ILLINOIS, TOWN OF)
NORMAL, ILLINOIS, a municipal corporation,)
VILLAGE OF SAVOY, ILLINOIS, a municipal)
corporation, and CITY OF DECATUR,)
ILLINOIS, a municipal corporation,)

Complainants,)

PEOPLE OF THE STATE OF ILLINOIS,)

Intervenor,)

v.)

CLINTON LANDFILL, INC.,)
an Illinois corporation,)

Respondent.)

PCB 2013-022

(Citizens Enforcement - Land)

PEOPLE'S RESPONSE TO RESPONDENT'S MOTION TO DISMISS

NOW COMES the Intervenor, People of the State of Illinois, by LISA MADIGAN, Attorney General of the State of Illinois, and as for its Response to the Respondent's Motion to Dismiss, hereby states as follows:

I. INTRODUCTION

On November 9, 2012, the Complainants filed a citizen's enforcement action against the Respondent Clinton Landfill covering four counts, Count I ("Development, Construction and

operation of Chemical Waste Unit without Local Siting Authority”), Count II (“Disposal of TSCA Regulated PCB Waste Without Local Siting Authority”), Count III (“Disposal of MGP Waste Exceeding Regulatory Levels of 35 Ill. Admin. Code 721.124(b) Without Local Siting Authority”) and Count IV (“Disposal of Hazardous Waste (MGP Waste Exceeding Regulatory Levels of 35 Ill. Admin. Code 721.124(b)) Without RCRA Permit”). On December 21, 2012, the People filed a Motion to Intervene, which was granted on February 7, 2013, allowing the People 14 days to respond to the pending Motion to Dismiss.

The Respondent contends that the instant case is a third party challenge to an Illinois EPA permit, and as such is absolutely not allowed under statute and not within the powers of the Illinois Pollution Control Board to entertain, let alone grant. The Respondent points to a line of cases in an attempt to support its argument that third party challenges to granted permits are never allowed. Under that case law, the only remedy which an aggrieved third party has, whether or not the permit is correct, is to wait until the permit holder actually violates the Act, then bring an enforcement action against the permit holder. While it has been repeatedly held that a third party may not attempt to substitute his or her wishes for the technical expertise of the Agency and try to stop a permit that he or she dislikes, that is not the situation at bar.

The Complainants in this matter have attacked the process by which the Respondent sought and obtained permits, namely, Respondent’s failure to obtain local siting approval from the DeWitt County Board prior to being issued its renewed landfill permit. Complainants argue that the additions and modifications requested by the Respondent in its Permit Renewal and Permit Modification Nos. 9 and 29 constitute the creation of a new pollution control facility. The permitting of a new pollution control facility cannot occur without first acquiring local siting approval. If Respondent’s current additions and modifications to its landfill do create a new pollution control facility, then Respondent was required by statute to obtain local siting approval from the DeWitt County Board. Without such siting approval, Respondent’s permit is invalid and cannot be used as a shield for any violations which may occur at the landfill.

When applying for a permit modification or renewal, the Respondent is not allowed to pick and choose which steps it is willing to complete. A permit is a statutory creation, and the steps involved in creating and filing the application for that permit must be completed correctly in order to give the Agency the required jurisdiction to consider, create and issue a permit. The legislature has refined these statutory steps to include citizens at a very early stage, and the Respondent may not avoid the involvement of local governing bodies merely because that might be problematic, difficult, or unpleasant. If the Respondent wishes to operate as a licensed sanitary landfill, it must comply with each of the statutory requirements established by the legislature.

The fact that the Illinois EPA issued a permit to the Respondent without the DeWitt County Board granting new local siting, does not bar the Complainants from challenging Respondent's lack of proper siting. The line of cases barring third parties from challenging granted landfill permits does not support the proposition that an improperly issued permit is an absolute bar to all challenges. An Illinois EPA permit is only a shield if it was properly issued. In the case at bar, the Respondent and the Agency failed to ensure that the DeWitt County Board approved new local siting to the Respondent for the proposed changes to its landfill. Absent that local siting, issuance of the permit was invalid; consequently, it does not protect Respondent from violations occurring at the landfill. The Complainants are not asking the Board to substitute its judgment for that of the Agency. Instead, the Board is to decide whether Respondent properly followed all of the steps required by the legislature when applying for a landfill permit.

In large part, the Illinois Attorney General concurs with and adopts the arguments put forth by the Complainants in their response to Motion to Dismiss, filed before the Board on December 24, 2012. The instant action is not against the Agency, and seeks no relief from the Agency. The Respondent had the duty to properly submit a permit application. As part of that duty, the Respondent was required to show that it acquired local siting for the new additions to its landfill. The Respondent failed to acquire that local siting prior to the issuance of its permit

and therefore, the Respondent and not the Illinois EPA, is the only party which may remedy the insufficiency.

II. ARGUMENT

The Respondent's characterization of the Complaint and therefore the entire basis for its Motion to Dismiss is fatally flawed. In its Motion to Dismiss, the Respondent misconstrues the Complaint as a third party attack on CLI's landfill permit. Yet, as the People will show, the Complaint is not improper as a veiled attack on the substance of Respondent's landfill permit. The modifications and additions to Respondent's landfill create a new pollution control facility which requires additional permitting. Thus, Complainants have alleged that Respondent's modifications and additions to the landfill are not merely the development, construction, or operation of a landfill or disposal at a facility. On the contrary, Complainants are clearly relying on the legal theory that Respondent's applications asked for new permitting which requires new local siting.

The Respondent misapplies two lines of cases to reach its erroneous conclusions. One line establishes the rule that a third party may not challenge a landfill permit after it has been issued by the Agency. The other line establishes the concurrent authority and duties of local governmental bodies for authorizing local siting. Proper application of these cases supports Complainant's Complaint and Response to Motion to Dismiss.

A. Third Party Appeals; Jurisdiction

The Respondent contends that this Board lacks jurisdiction to hear the Complaint. The Respondent specifically contends that all four counts of the Complaint are "based upon a single incorrect legal theory, namely, that local siting approval is a pre-condition to development, construction, or operations of a landfill and for disposal at a facility." Respondent's Motion to Dismiss, page 2. In essence, the Respondent states that the Complaint is merely an attack on a permit issued by the Illinois EPA, an attempt to destroy a permit and evade the regulatory

agency's control of the permit process. It is clear that the Act does not provide a method for third parties to appeal a landfill permit after it has been issued. However, where an application is incomplete or is not properly filed with the Agency, the Agency itself lacks the jurisdiction to entertain the permit request, and that is precisely the case before the Board.

The Respondents argue that this action is merely a thinly disguised collateral attack on the Agency's permitting authority; an attempt to impermissibly substitute the Board for the Agency's permitting authority. The Respondent would direct the Board to case law forbidding third party challenges to the permitting authority of the Agency. As explained in *Landfill, Inc. v. Pollution Control Board*, 74 Ill.2d 541 (1978), the Agency and the Board have distinctly delineated responsibilities and powers. The Agency is empowered to grant permits, and the Board is to create regulations "defining the requirements of the permit system," *Id.* at 264. The Board is not allowed to substitute its judgement for that of the Agency as to the issuance of a permit, and third parties are not allowed to challenge the Agency's decision to issue permits. Basically, the Court found that the Agency is to create permits, and the Board is to adopt regulations defining requirements of the permit system. However, a permit is no shield allowing wanton violations of the Act.

The Board has followed this direction. In *Anielle Lipe and Nykole Gillette v. IEPA*, PCB 12-95 (May 3, 2012), and in *Anielle Lipe and Nykole Gillette v. Village of Richton Park*, PCB 12-44 (November 17, 2011), the Board determined that third party challenges to the issuance of a permit or to a municipality's zoning decision are outside of the Board's scope of authority. Because the requested relief was something the Board could not grant, the complaints were frivolous and dismissed. Where a third party challenges an issued permit from the Illinois EPA, the lack of standing to seek the requested review means the Board has no jurisdiction to hear the action and no power to grant the requested relief. See also *Mill Creek Water Reclamation District v. IEPA and Grand Prairie Sanitary District*, PCB 10-74 (August 5, 2010), and *Terri D. Gregory v. Regional Ready Mix, LLC*, PCB 10-106(2010).

In addition to the *Lipé* decisions, *Mill Creek Water Reclamation District and City of Waukegan v. IEPA*, 339 Ill. App.3d 963 (2nd Dist. 2003), supports the legal proposition that a third party may not attack an IEPA-issued permit before the Board. However, that is not the situation in this particular matter. Here, the Complainants are not attacking the IEPA's decision to issue a permit. The Complaint filed with the Board does not name the Illinois EPA as a party. The Complaint does not ask the Board to overturn or modify any decisions made by the Illinois EPA regarding Respondent's landfill permit. Complainants are specifically *not* asking the Board to review that actual permit granted to CLI. The Complaint does, however, raise the issue of whether the Respondent sought its permit without obtaining local siting. Complainants are therefore challenging the Respondent's compliance with the statutory requirements established by the legislature. More specifically, Complainants allege that the Respondent failed to obtain local siting from the DeWitt County Board prior to operating its landfill under the conditions of its renewed permit.

B. Permit Process; Local Siting

The People would direct the Board to a second group of case law. The permitting process is clearly laid out in the Illinois Environmental Protection Act. The Agency is created by the Act, and is given the powers outlined in the Act. The Agency and the applicant must comply with the provisions of the Act. A permit is also a statutory creation. The legislature set out the steps which must be completed before attempting to obtain a landfill permit from the Illinois EPA. As such, an applicant must complete all statutory steps to vest the Agency with the jurisdiction to consider, create and issue a permit. If either the Agency or the applicant "skips a step," the Agency would lack the information it needs to consider in order to approve the permit. A permit issued without a review of *all* pertinent information is tainted. To find otherwise, as requested by the Respondent, means that the Agency's failure to follow the law would be shielded from any review. This is obviously an incorrect result.

Some types of permitting decision require that an applicant obtain local siting prior to the

issuance of the permit. Specifically, Section 39 provides that local siting is a necessary prerequisite to obtaining a permit for a new facility.¹ Operating a new pollution control facility prior to completing all necessary steps is a violation of the Act and associated regulations.

The landfill was originally permitted for municipal solid wastes. The most recently issued version of the permit was issued on July 5, 2012, and includes a “chemical waste unit” within the confines of the active cell. Exhibit E to the complaint. Apparently, as designed, the chemical waste unit will eventually be entombed in the municipal waste cell. As in any case where wastes are interred, there are risks of contamination escaping the confines of the site in multiple ways, including leachate that can contaminate groundwater, and the possibility for fire.

The chemical waste unit located within the active municipal solid waste disposal cell is designed to accept a completely new waste stream made up of different constituents with potential hazards and impacts separate from those found in typical municipal solid waste. The facility would not be permitted to accept these wastes as the primary or only waste stream without obtaining a new permit. Although this was attempted via a mere modification, the activity so integrally changes the operations at the facility as to render it a “new” facility.² Since the Respondent’s actions created a new pollution control facility, they were required to obtain

¹ “...no permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the County Board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act. For purposes of this subsection (c), and for purposes of Section 39.2 of this Act, the appropriate county board or governing body of the municipality shall be the county board of the county or the governing body of the municipality in which the facility is to be located as of the date when the application for siting approval is filed.” 415 ILCS 5/39(c)(2010).

² 415 ILCS 5/3.330 (2010):

(a) "Pollution control facility" is any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act.

* * *

(b) A new pollution control facility is:

* * *

- (2) the area of expansion beyond the boundary of a currently permitted pollution control facility; or
- (3) a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste.

local siting under Section 39(c) of the Act.

The legislature has determined that local governing bodies have a concurrent and integral role to play in permitting pollution control facilities. In this case, the Respondent has a permit to operate a municipal solid waste landfill. The Respondent has decided to change the waste streams accepted at the landfill and has applied for a Toxic Substances Control Act (TSCA) permit from the USEPA. This is a fundamental change that was not considered during the local siting process for a municipal solid waste landfill. In the past, a duly authorized representative of Clinton Landfill, Inc. had specifically testified and represented that the site would take municipal solid wastes and non-hazardous special wastes, and not hazardous wastes or wastes containing PCBs regulated by TSCA.³ The fundamental violation alleged by Complainants is that Respondent has created a new pollution control facility and did not obtain the proper and necessary local siting for such a landfill.

Local siting is not optional. Local siting is required for a new pollution control facility under Section 39(c). Issuance of a permit by the Illinois EPA without proper siting is prohibited by the applicable statutes. In *City of Waukegan v. IEPA*, 339 Ill. App. 3d 963 (2nd Dist. 2003), the court ruled that Section 39(c) mandates that the Agency “may not issue a permit for a ‘new pollution control facility’ unless it has received proof from the applicant that it has obtained local siting approval.” *Id.* at 644. “The express language of Section 39(c) instructs the Agency that it may not issue a permit for a new pollution control facility absent proof of local siting approval. Thus section 39(c) requires the Agency to decide, before issuing a permit, whether local siting approval is required and, if it is, to make sure that the applicant has submitted proof thereof.” *Id.* at 645.

To allow the Respondent to merely modify a permit to so fundamentally change the

³ Testimony of Ron L. Edwards, Vice President of Development and Operations, Clinton Landfill, Inc. *DeWitt County Clinton Landfill Siting Transcript*, July 11, 2002, pp. 44-47. An excerpt of this testimony is attached as an exhibit to the Attorney General's response, and is subject to official notice by the Board under Section 101.630 of its Procedural Rules (“Official notice may be taken of all facts of which judicial notice may be taken. . . .”). See Illinois Evidence Rule 201(b) (“A judicially noticed fact must be one not subject to reasonable dispute in that it is . . . (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.”).

character of the facility would lead to bizarre results. Applicants would request permits for a less controversial facility and obtain a permit that could be modified at whim by the Agency and permittee alone, completely avoiding the statutory requirements for public involvement where the facility is “new”. The legislature determined that a local voice was a necessary part of the permitting process to avoid a remote entity - the Agency - from imposing its view on citizens with no voice to oppose the proposed facility. Under the Respondent’s theory, the issuance of a permit, any permit, is an absolute shield to question by anyone other than the Agency and the permittee. Respondent’s arguments in its dismissal request would even lead to a situation where if the Agency erroneously grants a permit to accept hazardous waste without local siting or notification of the Attorney General as required under Section 39.3 of the Act, the permittee could still accept such waste for the term of the permit and no one would have the ability to challenge the activity.

The Courts have disagreed with the Respondent’s position and found that the procedure set out by the legislature is not a mere formality but is a mandatory requirement that must be followed. “The Act was amended in 1981 to require local government siting approval as a precondition to the issuance of an Agency permit.” *City of Elgin v. County of Cook*, 169 Ill.2d 53, 64 (1996). The amendment “made clear all units of local government, home rule and non-home-rule alike, have concurrent jurisdiction with the Agency in approving siting, because section 39(c) now requires local government approval of all proposed pollution control facilities.” *Id.* at 64.

The local government role is integral to permitting, and to giving the Agency the information needed to make an informed, intelligent permit tailored to the facility and the site. “The legislature has charged the county board, rather than the PCB, with resolving the technical issues such as the public health ramifications of a landfill’s design.” *Kane County Defenders, Inc. v. Pollution Control Board*, 139 Ill. App. 3d 588, 592 (2nd Dist. 1985). “This broad delegation of adjudicative power to the county board clearly reflects a legislative understanding that **the county board hearing**, which presents the only opportunity for public comment on the proposed site, is **the most critical stage of the landfill site approval process.**” *Id.* at 593 (emphases added).

In *M.I.G. Investments, Inc., et al v. Environmental Protection Agency et al*, 122 Ill. 2d 392 (1988), an operating landfill sought permit modification for vertical expansion. The Court found that a vertical expansion was a sufficient change to make the landfill subject to local siting. The County Board must consider the impact of the facility on the site and population, and a change to the facility may change those impacts. The County Board checks the proposed facility against a set of statutory criteria in Section 39.2 of the Act, and determines whether or not the facility is appropriate for the local site. In order to make a meaningful comparison, the Board must know what the facility is. The court found from the plain language of the statute that “it is clear that the legislature intended to invest local governments with the right to assess not merely the location of proposed landfills, but also the impact of alterations in the scope and nature of previously permitted landfill facilities.” *Id.* at 400-401. The change in waste disposal operations pursued by the Respondent is a change that subjects the landfill to local siting. It is inconceivable that an entity may circumvent the statutory safeguards and be rewarded with the permit required to operate. To do so would negate the entire intent of the statutes. The modification of terminology to now include a “chemical waste unit” does not alter the activity - the landfill has changed its character and as a “new” facility it must comply with all steps in the law. To find otherwise would render the local siting provision essentially meaningless because a permittee could achieve anything desired through modification of permits that no one could challenge.

Similarly, where a solid waste management site sought supplemental permits to accept two different waste streams, the Court stated “[t]he siting approval provision protects the public interest in having significant changes in land use subject to scrutiny by its elected representatives. Here, it is clear that BFI’s predecessors made a fair disclosure to IEPA that it would seek to handle special wastes. Furthermore, the local authorities were on notice as to the substances to be handled.” *Browning-Ferris Industries Inc. of Iowa v. IPCB*, 127 Ill. App.3d 509, 511-512 (3rd Dist. 1984). That is precisely the opposite of the case at bar. In 2002, CLI clearly represented at the initial local siting hearings that the site would not accept for disposal any hazardous wastes or

wastes containing PCBs regulated by TSCA. The latest permit allows the Respondent to accept Manufactured Gas Plant (MGP) waste and PCBs in concentrations which are regulated by TSCA. Neither of these new waste streams was envisioned at the time that the DeWitt County Board last approved local siting for the Clinton Landfill. Accordingly, the DeWitt County Board should have had an opportunity to determine if Respondent's new operations were suitable for their location.

Local siting documentation is vitally important to the State's landfill permitting process. Only after receiving the proper local siting documentation may the Agency proceed with a more technical review of the permit application, to use its statutory authority and technical expertise to determine what type of permit - if any - is acceptable and what controls and monitoring would be needed to protect human health and the environment. However, the statute is clear that local siting is a prerequisite. Without the proper local siting documentation, the Agency has no authority to review or grant a landfill permit.

The Respondent was statutorily required to obtain local siting from the DeWitt County Board prior to seeking a permit for the landfill. Local siting notification is a required component of the application for a permit. By failing to obtain this local siting, Clinton Landfill, Inc. deprived the County Board and the citizens represented by the Complainants of any opportunity to determine the appropriateness of the changed landfill character. Due to its failure to obtain local siting, Clinton Landfill failed to vest the Agency with the jurisdiction to review the permit application, create a permit, and issue a permit.

III. CONCLUSION

While the Respondent argues that the omitted steps in the permit application are largely irrelevant, and Complainants' arguments "impermissibly seek to elevate form over substance," the Respondent is not permitted to follow the steps it likes and ignore the rest; Respondent may not substitute its wishes for the legislative pathway to obtaining a permit. This is not some minor issue that may be overlooked without fatally damaging the permit application. The argument is

that the Respondent failed in its application. The local siting provisions are included for a reason and that legislative purpose must be respected.

The Respondent has constructed and is operating a *new* chemical waste unit. Whatever the Respondent chooses to call this construct, it is a *new* operation for the existing landfill, and the Respondent must seek a proper permit for the operation. The disposal of MGP waste and PCB waste at this *new* chemical waste unit means that the Respondent is operating in violation of or threatening violation of the Act and Board regulations.

WHEREFORE, the People of the State of Illinois respectfully request that the Board DENY the Motion to Dismiss.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

J. Homan
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 2/21/13

10:26AM

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my number
County Clerk, DeWitt County

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COUNTY OF DEWITT, STATE OF ILLINOIS

IN RE: SITING APPLICATION OF CLINTON LANDFILL, INC.

COPY

Proceedings had on July 11, 2002 at 201 West Washington Street, Clinton, DeWitt County, Illinois, commencing at the hour of 1:00 P.M. before CHARLES F. HELSTEN, duly appointed hearing officer.

PRESENT: ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C.

BY: ~~Brian J. Meginness, Esq.~~
416 Main Street, Suite 1400
Peoria, Illinois 61602-1153
On Behalf of Clinton Landfill, Inc.

HODGE, DWYER, ZEMAN
BY: Christine G. Zeman, Esq.
3150 Roland Avenue
Springfield, Illinois 62705-5776
On Behalf of the County Staff.

DEWITT COUNTY STATE'S ATTORNEY'S OFFICE
BY: Clark Rogers, Esq.
210 West Washington Street
Clinton, Illinois 61727
On Behalf of the DeWitt County Board.

DeWitt County Board Members:
Pete Daugherty, Roland Schumaker,
Ron Ferguson and Terry Ferguson.

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1 Ms. Zeman.

2 Mr. Meginnes, before we start the
3 presentation of testimony in this matter, I notice
4 there are people sitting in the general public. And
5 I just wanted to ask is there anyone that due to
6 their business, work or personal schedule appeared at
7 this time to offer a public comment that can only
8 appear now and would like to offer that comment and
9 then leave?

10 (No response.)

11 HEARING OFFICER HELSTEN: Okay. Hearing
12 none, Mr. Meginnes would you call your first witness.

13 MR. MEGINNES: My first witness is Ron L.
14 Edwards.

15 HEARING OFFICER HELSTEN: Mr. Edwards, would
16 you please step forward be sworn by the court
17 reporter.

18 (Whereupon the Witness was
19 sworn by the Notary Public.)

20 DIRECT EXAMINATION

21 BY MR. MEGINNES:

22 Q Please state your name and address for the
23 record, please.

24 A Ron L. Edwards. I reside at 704 Bayside

1 Drive, Metamora, Illinois.

2 Q And what is your position with Clinton
3 Landfill, Inc?

4 A I'm Vice President of Development and
5 Operations. I've served in that capacity since 1988.

6 Q And what do your responsibilities include?

7 A My responsibilities include directing the
8 construction and development of the facility,
9 directing operations, environmental health and safety
10 compliance and permitting with regulatory agencies.

11 Q Could you tell us what your experience is in
12 the waste business.

13 A Yes. I have more than 18 years of
14 experience in the environmental management of solid
15 and hazardous wastes.

16 I've served in the capacities of
17 Construction Manager, Facility Manager, Director of
18 Operations, and Vice President of Development and
19 Operations for a variety of waste treatment storage
20 and disposal facilities.

21 In addition to the responsibilities I have
22 with Clinton Landfill, I also serve as Vice President
23 of Development and Operations for Peoria Disposal
24 Company's landfill in Peoria, Illinois; for Pike

1 County Landfill, Inc.'s, landfill in the County of
2 Pike; for Washington Landfill Inc.'s landfill in
3 Washington, Illinois.

4 I also serve as Vice President of Regulatory
5 Affairs for two solid waste transfer stations in the
6 Peoria area.

7 Q Would you please describe for us generally
8 the proposed facility.

9 A Clinton Landfill Incorporated is seeking
10 approval from DeWitt County to expand its existing
11 solid waste landfill, which is located approximately

12 two miles south of Clinton on Route 51. The proposed
13 parcel of land is approximately 269 acres.

14 Q Was an application for local siting approval
15 of a pollution control facility prepared under your
16 direction?

17 A Yes, it was.

18 Q And what date was it filed with the DeWitt
19 County Clerk?

20 A April 11, 2002.

21 Q Was the filing fee of \$100,000 paid to the
22 DeWitt County Clerk?

23 A Yes. A check for the \$100,00 filing fee did
24 accompany the application to the County Clerk.

1 Q Were 24 copies filed with the clerk?

2 A Yes.

3 Q Are you familiar with the DeWitt County
4 siting ordinance?

5 A Yes. I have read the ordinance.

6 Q Does the siting application you've caused to
7 be filed contain all of the required information by
8 the DeWitt County siting ordinance?

9 A Yes. All information required by the DeWitt
10 County siting ordinance to be contained in the
11 application has been addressed in the application.

12 Q As required by section 39.2 of the Illinois
13 Environmental Protection Act, did Clinton Landfill
14 Inc., provide written notice of the intent to file
15 the application to adjoining landowners at least 14
16 days prior to April 11, 2002?

17 A Yes.

18 Q As required by Section 39.2 of the Illinois
19 Environmental Protection Act, did Clinton Landfill,
20 Inc., provide written notice of the intent to file
21 the application to members of the general assembly at
22 least 14 days prior to April 11, 2002?

23 A Yes.

24 Q As required by Section 39.2 of the Illinois

1 Environmental Protection Act, did you cause a notice
2 of the intent to file the application to be published
3 in a newspaper of general circulation in DeWitt
4 County at least 14 days prior to April 11, 2002?

5 A Yes.

6 Q Are you familiar with the boundary survey of
7 the proposed location which is contained in the
8 siting application?

9 A Yes, I am.

10 Q Does the boundary survey legally describe
11 the location of the proposed expansion landfill?

12 A Yes, it does.

13 Q Does the boundary survey legally describe
14 the parcel of real estate which Clinton Landfill,
15 Inc., is requesting to be approved for a new
16 pollution control facility?

17 A Yes, it does. And I would like to reference
18 that on the boundary survey, Clinton Landfill No. 3,
19 sheet one of one.

20 The legal description of the boundary of the
21 proposed facility is located on the boundary survey.
22 This is approximately 269 acres.

23 The north is to the top of this drawing.
24 This would be Route 51 south of Clinton location.

1 Beginning at a point near the entrance on Route 51,
2 proceed to the east to Township Road 1050 East, then
3 proceed south a bit of an angle out here (indicating)
4 in this location, proceeding back towards the west,
5 then north alongside the existing facility and back
6 to a point, again, near the entrance to the facility
7 off Route 51.

8 Also on the boundary survey is another legal
9 description of the actual waste limits. The waste
10 limits are approximately 157 1/2 acres. This dashed
11 line would demonstrate the boundary of the waste
12 limits. So this would be the only area that waste
13 could be placed, the additional areas for ancillary
14 structures that are required to be placed.

15 Q Would you please describe for us Clinton
16 Landfill, Inc.'s current operations at the site.

17 A Yes. Clinton Landfill operates a solid
18 waste landfill, and it's projected to be filled in
19 2008.

20 Also located at the facility is a waste
21 transfer station that's used for recycling cardboard
22 at this time.

23 There's also a transportation facility. And
24 it's used to support collection of waste to be hauled

1 to the landfill.

2 The facility currently employs approximately
3 65 people in both the landfill and transportation
4 operations.

5 Q Could you please describe for us the history
6 of the operations of Clinton Landfill, Inc., at the
7 site.

8 A Yes. And I'd like to reference another
9 exhibit.

10 Q Now, that exhibit is contained in the siting
11 application; is that correct?

12 A Yes, it is. It's drawing S-FP1, which is
13 the facility plan at closure.

14 This area here is the existing facility for
15 Clinton Landfill. Located in this area was Municipal
16 Landfill No. 1, which is operated by the City of
17 Clinton and closed in 1981. Post closure care was
18 certified and deemed to be complete by IEPA in 1985.

19 Clinton Landfill Incorporated did purchase
20 Clinton Municipal Landfill 1, along with Clinton
21 Landfill 1, which was located at this point. Also
22 purchased at that time was the facility to be
23 developed, which is Clinton Landfill No. 2, the
24 existing landfill.

1 Clinton Landfill No. 1 one operated in the
2 1980s, and it was closed on June 6th of 1990. We
3 believe that in 2002 post closure care will be deemed
4 complete by IEPA for Clinton Landfill No. 1.

5 Also located at this point is the Clinton
6 transfer station. This operated in the 1980s for
7 consolidating wastes coming into the facility that
8 were then hauled off to other landfills throughout
9 the state and throughout the area. As I mentioned,
10 this is only being used now -- and since 1990 -- for
11 recycling activities.

12 This shows a location of the office and
13 maintenance area.

14 Then this is the 68 acres, Clinton Landfill
15 No. 2, which, again, is an operating landfill and
16 scheduled to be closed in 2008.

17 Q Would you describe to us in a little bit
18 more detail about Clinton Landfill No. 2, Ron.

19 A Yes. Clinton Landfill No. 2 is a landfill
20 accepting nonhazardous waste including municipal
21 solid waste, commercial and industrial nonhazardous
22 waste, construction and demolition debris and special
23 waste. The average ton-per-day volume accepted to
24 the facility is approximately 900 tons per day.

1 Q Would you please describe for us the
2 proposed expansion landfill Clinton Landfill would
3 like to develop.

4 A Yes. Again, I'd like to refer the facility
5 plan at closure, S-FP1.

6 Clinton Landfill proposes to develop a
7 treatment storage and disposal facility to manage
8 nonhazardous, including municipal solid waste. The
9 facility would be planned to open in 2008 as Clinton
10 Landfill No. 2 accepts its final volume of waste.

11 The proposed facility consists of 269 acres
12 of which the 157 1/2 acres approximately would be
13 used for landfilling. In addition to the landfill,
14 there's ancillary structures such as the roadway off
15 of Route 51 that would come to the facility.

16 There's three surface impoundments to manage
17 surface water; one located here; one located here;
18 and another one just to the south.

19 Q For planning purposes, how much does the
20 facility expect to receive on average?

21 A It's expected that we would receive on
22 average 1400 tons per day. We're anticipating 18
23 million ton capacity here and that that would last
24 approximately 45 years.

1 Also, I do want to add that we would expect,
2 as this is being developed, that there would be an
3 increase of employment with the new operations.

4 Q After siting is approved would you please
5 describe for us the timetable and process for
6 developing the expansion landfill.

7 A Yes. Upon approval of siting, a sanitary
8 landfill must file within three calendar years an
9 application for a developmental permit with the IEPA
10 or risk losing their siting approval.

11 Clinton Landfill intends to prepare an
12 application for developmental permit within one year
13 of approval of siting. If it -- it is anticipated
14 that the developmental permit would take 12 to 18
15 months of IEPA review prior to the approval.

16 Clinton Landfill would then be required
17 within two calendar years to begin construction of
18 the operation or risk losing its developmental
19 permit. It's anticipated that construction of
20 ancillary components of the expansion area would
21 begin in 2006 with construction of the initial phase
22 of the facility to be completed in 2007 ahead of the
23 closing of the current landfill in 2008.

24 Q Now, did Clinton Landfill, Inc., enter into

1 a Host County Agreement with the County of DeWitt on
2 April 20th, 2001?

3 A Yes.

4 Q Is a copy of the Host County Agreement
5 contained in the siting application?

6 A Yes, as required by the DeWitt County Solid
7 Waste Management Plan and the DeWitt County Pollution
8 Control facility siting application.

9 Q Did Clinton Landfill agree to pay DeWitt
10 County a host fee?

11 A Yes, we did.

12 Q And how is that gonna be calculated under
13 the Host County Agreement?

14 A Each time dispose at the expanded landfill
15 shall be subject to a fee calculated on daily
16 receipt. For 0 to 500 tons per day, the host fee
17 shall be \$1.80 per ton. For 501 to 650 tons per day,
18 the fee shall be \$2.10. For 651 to 800 tons per day,
19 the fee shall be \$2.25. For 801 to 1000 tons per
20 day, the fee shall be \$2.50 per ton. For 1001 tons
21 and greater, the fee shall be \$2.75 per ton.

22 Q How much money will be generated per year on
23 on average under that Host County Agreement?

24 A As an example, if Clinton Landfill should

1 realize its expected flow of 1400 tons per day, the
2 fee for that day would be \$3152.50.

3 Assuming this flow over 280 days per year,
4 which is an average of 5.5 days per week, the revenue
5 realized to the county should be approximately
6 \$882.700 per year. And these fees shall be adjusted
7 annually for inflation.

8 Q Now, in the Host County Agreement did
9 Clinton Landfill Inc., agree to maintain disposal
10 capacity for DeWitt County?

11 A Yes, we did.

12 Q For how long?

13 A We agreed to 20 years, which is not a random
14 number. Our agreement was based on the State of
15 Illinois mandate that counties certify 20 years of
16 disposal capacity.

17 The 20-year requirement is also specified in
18 the DeWitt County Solid Waste Management Plan.
19 Therefore, Clinton Landfill agreed to provide for the
20 20 years to satisfy these requirements.

21 Q In the Host County Agreement did Clinton
22 Landfill agree to allow DeWitt County access to its
23 records?

24 A Yes.

1 Q In the Host County Agreement did Clinton
2 agree to maintain to pollution liability insurance?

3 A Yes, we did. We agreed to maintain
4 environmental pollution liability insurance in an
5 amount not less than 5,000,000 for each occurrence
6 and not less than 5,000,000 for all losses at the
7 expanded landfill.

8 Q Did Clinton Landfill also agree to certain
9 design and operations restriction in the Host County
10 Agreement?

11 A Yes, we did. We agreed to the following

12 restrictions: The waste footprint shall not be
13 closer than 130 feet from the western edge of 1050
14 East Township Road, which is located here.

15 The footprint shall not exceed 225 acres in
16 area and shall not piggyback onto the existing
17 landfill operated by Clinton Landfill.

18 Just so you know, piggybacking would be if
19 we had developed the existing landfill by raising the
20 vertical elevation and then proposing a contiguous
21 landfill to that. That would be piggybacking.

22 What we did was we are proposing two
23 separate facilities and no vertical expansion of the
24 existing landfill.

1 Waste also shall not be placed above
2 elevation 865 mean sea level. Hours of waste receipt
3 must be 6 to 6 Monday through Friday, 6 to 3 on
4 Saturdays and closed Sundays unless emergency
5 requires opening.

6 All vehicles hauling waste and/or
7 construction-related vehicles must enter off of Route
8 51. The only entrance to the facility would be off
9 Route 51 and to the expanded landfill. No use of
10 1050 East Township Road.

11 And, finally, an odor complaint procedure
12 was required. Our application complies with all of
13 these restrictions.

14 Q Does the Host County Agreement provide for a
15 property value guarantee plan?

16 A Yes. In fact, the program does conform to
17 the siting ordinance and DeWitt County Solid Waste
18 Management Plan requirements.

19 Q Does the Host County Agreement provide for a
20 sodible water supply well protection program?

21 A Yes, it does. And, again, it conforms with
22 the requirements of the siting ordinance and DeWitt
23 County Solid Waste Management Plan.

24 Q Is Clinton Landfill, Inc., a corporation?

1 A Yes. It's incorporated in the state of
2 Illinois.

3 Q And who is the owner?

4 A Area Disposal Service, Inc..

5 Q And who owns Area Disposal Service Inc.

6 A Coulter Companies Inc., which is the
7 ultimate corporate parent of Clinton Landfill.

8 Q And what solid waste management facilities
9 are owned by Clinton Landfill Inc?

10 A Clinton Landfill Inc. owns the closed land
11 Municipal Landfill No. 1, closed Clinton Landfill No.

12 1.

13 We have Clinton Landfill No. 2, an active
14 landfill. Clinton transfer station. It's an active
15 facility used for recycling. And also area transfer
16 station. It's a currently permitted transfer station
17 in Lincoln, Illinois.

18 Q What is Clinton Landfill Inc.'s
19 environmental compliance record at these facilities?

20 A Clinton Landfill Inc., has an excellent
21 reputation in environmental management at its
22 facilities.

23 The siting requirements provide that Clinton
24 Landfill must list any convictions in the area of

1 solid waste management at its facilities located in
2 state of Illinois during the past five years.

3 Clinton Landfill has no convictions.

4 Five violation notices have been received
5 from IEPA by Clinton Landfill operations in the past
6 five years. All but one of these were resolved
7 without penalty.

8 The unresolved violation notice alleges
9 improper receipt of hazardous waste. The violation
10 notice was received in January 2001. It alleges
11 violations as a result of receiving five drums of

12 hazardous waste material at Clinton Landfill and
13 receipt of waste material bag house dust from Alloyed
14 Foundry that IEPA alleges was hazardous.

15 Clinton Landfill had self-reported the
16 receipt of the five drums from the customer who had
17 shipped the material in error. Upon receiving notice
18 from the customer that the material had been shipped
19 in error, Clinton Landfill notified IEPA and
20 mobilized to remove the five drums and additionally
21 potentially contaminated material from the landfill
22 was taken for proper disposal at a hazardous waste
23 facility.

24 Regarding the foundry dust, Clinton Landfill

1 has no knowledge that waste it received was hazardous
2 and has received no analytical information to lead it
3 to conclude that any hazardous waste was received
4 from Alloyed.

5 Clinton Landfill is in the process of
6 resolving this alleged violation with IEPA and with
7 the Attorney General and while continuing to believe
8 that no violation has occurred.

9 And although Clinton Landfill believes no
10 violation had occurred, it heightened our concern
11 regarding foundry waste. And Clinton Landfill has
12 already implemented a special procedure to ensure
13 that no hazardous waste from foundries would be
14 accepted at the facility.

15 These same procedures are included in the
16 proposed siting application.

17 Q Have any of the joining property owners
18 filed written comments in this proceeding?

19 A Yes, they have.

20 Q What do they say?

21 A I'd like to refer to the aerial exhibit
22 which has some plats of property around the landfill.

23 Q And that aerial exhibit is contained in that
24 the siting application, isn't it, Ron?

1 A Yes, it is. Aerial exhibit sheet number
2 one.

3 Q Okay.

4 A Again, this shows the location of the
5 existing Clinton landfill. The green highlights the
6 proposed area for siting.

7 I'd first like to point your attention to
8 this home here, which is located directly across from
9 the existing facility not too far from the entrance.
10 It's the home of Rob and Lucy Nord.

11 And they wrote a letter in -- interestingly
12 enough, Rob Nord's family has been in the landfill
13 business, so he goes on to say our family owned the
14 McLean County Landfill for many years. I can
15 honestly say that the Clinton Landfill appears to be
16 run well and is a clean and environmentally conscious
17 neighbor. We support the expansion of this project
18 and would urge your approval of the CLI siting
19 application.

20 MS. ZEMAN: Mr. Hearing Officer, I
21 appreciate that so many people sent the
22 recommendation letters, but 39.2 and the ordinance
23 themselves both require that the committee shall
24 consider all of these letters. And I hate to extend

1 the hearing for something that has to be done anyway.

2 So since the record already reflects that
3 letter, can we move on?

4 MR. MEGINNES: Well, I'd just like to say
5 there's only four more. And granted there's over 75
6 letters in the record, I don't think it hurts if we
7 call the committee's attention -- I don't know if
8 they're gonna go through and read every single
9 letter.

10 HEARING OFFICER HELSTEN: Well, Ms. Zeman,
11 since Mr. Meginnes has indicated there are only

12 several more, I will allow some latitude and allow
13 Mr. Edwards to testify briefly as to the other ones
14 and then we can move on.

15 MR. MEGINNES: Thank you.

16 A What I'll do is show you the locations of
17 the other four letters. This home here, which,
18 again, is directly across from existing facility and
19 near the entrance, Kenneth Carter urges approval of
20 that the siting application.

21 Also the property owner of this piece of
22 ground due north of the proposed expansion owned by
23 the Penningtons. And, again, Robert Pennington urges
24 approval of that the siting application.

1 We also received one from the homeowners
2 here, Maryann and Gerold Ryan, again, urging approval
3 of the application.

4 And, finally, this home located here in this
5 property owned by Phillip and Alice Poland, again,
6 urging approval.

7 Q Does Clinton Landfill Inc., own any other
8 property surrounding the expansion facility?

9 A Yes, it does. Again, I'd like to reference
10 this aerial exhibit.

11 We own, of course, the existing landfill
12 that we talked about already. Due south of that, we
13 own the property down to Salt Creek. We own a little
14 parcel of property here as well as the proposed
15 facility.

16 We do have a contract to purchase this, and
17 that was included in the applications.

18 HEARING OFFICER HELSTEN: Please let the
19 record show that Mr. Edwards is indicating a
20 approximate rectangle immediately east of the
21 facility.

22 A And it's the Poland property as well.

23 And we also own 160 acres due north of the
24 existing facility and of the roadway portion of the

1 proposed sited facility.

2 And we also have a contract for purchase of
3 this agricultural property located due north of the
4 proposed landfill.

5 Q Ron, will the proposed expansion landfill be
6 treating, storing or disposing of hazardous waste?

7 A No, it will not.

8 Q Therefore, criteria seven of Section 39.2 of
9 the Act does not apply to this expansion landfill?

10 A That's correct.

11 Q Now, Ron, what is described in section 2.5
12 of the siting application?

13 A The operating plan.

14 Q And what siting criterion does it address?

15 A Addresses criterion two, which states the
16 facility is so designed, located and proposed to be
17 operated that the public health, safety and welfare
18 will be protected.

19 Q And what is the operating plan?

20 A It describes how the facility will be
21 operated in order to ensure compliance with the
22 facility's permits and with appropriate regulations.
23 The operating plan becomes a part of the facility
24 permit issued by IEPA.

1 Q And what will the operating hours be for
2 acceptance of waste at the expanded landfill?

3 A The operating plan establishes waste
4 acceptance hours which conform to those required by
5 the DeWitt County Host Agreement, which was 6 to 6
6 Monday through Friday, 6 to 3 on Saturdays and closed
7 Sundays.

8 Q Would you please describe for us the
9 personnel that will be directly responsible for
10 operating the landfill.

11 A Yes. The staff will include a landfill

12 director who has overall responsibility for
13 development and operation of the facility. The
14 landfill director will have substantial knowledge of
15 all regulatory requirements pertaining to the
16 landfill.

17 A facility manager will be responsible for
18 day-to-day operations and will report to the landfill
19 director. The facility manager will be responsible
20 for ensuring that the facility is operated and
21 maintained in accordance with the permits.

22 A gate control officer will operate the
23 facility scale and maintain scale tickets and perform
24 load inspections.

1 Equipment operators and laborers will
2 operate earth handling equipment, perform repairs and
3 maintenance tasks and conduct other activities as are
4 directed by the facility manager.

5 Q Does the operating plan provide for a
6 training program for these personnel?

7 A Yes, it does. Appendix 2.5-1 of the
8 application personnel training program outline is
9 included in the application.

10 This program details the routine and annual
11 training requirements to be provided to employees at
12 the landfill.

13 Q And what types of waste will be accepted at
14 the expansion landfill?

15 A Municipal solid waste; commercial and
16 industrial nonhazardous waste; construction and
17 demolition debris; nonhazardous special waste and
18 certified non-special waste all will be accepted.

19 Certain waste with free liquid may be
20 accepted only if they're solidified on-site with
21 appropriate reagents. Otherwise, waste with free
22 liquids may not be accepted at the site.

23 Q What other types of waste will not be
24 accepted?

1 A Hazardous waste as defined by Illinois
2 Administrative Code Title 35, Section 721, will not
3 be accepted. Radioactive waste will not be accepted.
4 Waste containing PCBs regulated by the Toxic
5 Substances Control Act will not be accepted.
6 Potentially infectious medical waste will not be
7 accepted. Asbestos-containing materials will not be
8 accepted.

9 White goods components, landscape waste,
10 lead acid batteries and intact tires will not be
11 accepted at the landfill.

12 Q Will there be a formal load checking program
13 at the expansion landfill?

14 A Yes. A load checking program will be
15 implemented to detect and discourage attempts to
16 dispose of unauthorized waste at this facility.

17 All loads of special waste arriving to the
18 facility will be checked for the presence of
19 unacceptable materials.

20 In addition, at least three randomly
21 selected loads of solid waste will be checked each
22 week. The randomly selected loads will be discharged
23 at a designated location and reviewed for
24 unacceptable materials.

1 If unacceptable materials are suspected, the
2 operator will notify the generator, hauler or other
3 responsible party to determine the identity of the
4 waste. Nonconforming materials will be shipped
5 off-site to appropriate facilities.

6 Q You mention the facility would accept
7 special waste. Would you tell us what are special
8 wastes.

9 A Special wastes are nonhazardous industrial
10 wastes designated by IEPA to have special management
11 procedures such as chemical analysis and

12 recordkeeping. The wastes are disposed in the
13 landfill under the same manner as general refuse.

14 Q Will there be special procedures at the
15 landfill for management of special waste?

16 A Yes. All special wastes will be required to
17 be accompanied with the manifest. It will be
18 designating the generator, the hauler and waste
19 information as required by IEPA.

20 All special waste will require permitting
21 review by Clinton Landfill and development of a
22 profile identification record prior to the shipment,
23 any shipment, to the facility. The special waste
24 will require chemical analysis as required by IEPA

1 and the facility's waste analysis plan.

2 And then as I previously mentioned, all
3 special wastes entering the facility will be
4 inspected for any nonacceptable wastes.

5 Q Would you please describe for us the
6 proposed acceptance criteria for special waste at the
7 expansion landfill.

8 A Yes. Special waste will have the following
9 criteria to meet:

10 They must not contain a listed hazardous
11 waste or PCBs in concentrations regulated by the
12 Toxic Substances Control Act; must not contain
13 asbestos-containing material; must not exhibit the
14 characteristic of hazardous waste as defined by
15 Illinois Administrative Code Title 35, Section 721;
16 also must not contain total phenol greater than 1000
17 parts per million.

18 Q Would you please describe for us the manner
19 of waste placement at the expansion landfill.

20 A Yes. Solid waste will be landfilled in
21 lifts generally 10 to 15 feet in thickness.

22 Prior to waste placement previously placed
23 daily or intermediate cover soil will be at least
24 partially removed to allow for leachate.