



1 APPEARANCES:

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3 OFFICE OF THE ATTORNEY GENERAL

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1 APPEARANCES (cont'd.)

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17 MR. RICHARD S. PORTER,

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1 APPEARANCES (cont'd.)

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3 SCOTT M. BELT & ASSOCIATES, PC,

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7 MR. SCOTT M. BELT,

8 appeared on behalf of the Respondent,

9 the City of Morris.

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23 REPORTED BY: SHARON BERKERY, C.S.R.

24 CERTIFICATE NO. 84-4327.

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1 THE HEARING OFFICER: Good morning  
2 everybody. My name is Brad Halloran. I'm a  
3 hearing officer with the Illinois Pollution  
4 Control Board.

5 I'm also assigned to the matter,  
6 the People of the State of Illinois,  
7 Complainant, versus Community Landfill  
8 Company Inc., and the City of Morris. It's  
9 docketed at PCB 03-191 with the Board.

10 This hearing is continued from  
11 yesterday, September 11th, 2007. The State  
12 yesterday rested in its case in chief. The  
13 respondents will be proceeding, CLC and the  
14 City of Morris, with theirs.

15 Counsels, would you like to  
16 introduce yourselves?

17 MR. GRANT: Yes, Mr. Halloran.

18 My name is Christopher Grant, and  
19 I'm with the Attorney General's office.

20 MS. TOMAS: General Jennifer Tomas,  
21 last name spelled T-O-M-A-S. I am assistant  
22 attorney general also with the Illinois  
23 Attorney General's office.

24 ROUBITCHEK: Michael Roubitchek,

1 assistant counsel with the Illinois EPA.

2 MS. GRAYSON: Clarissa Grayson,  
3 counsel for Community Landfill Company, with  
4 LaRose and Bosco.

5 MR. PORTER: Good morning. Richard  
6 Porter on behalf of the City of Morris.

7 MR. BELT: Good morning. Scott Belt,  
8 also on behalf of the City of Morris.

9 THE HEARING OFFICER: Good morning,  
10 Counselors. Before we begin, I wanted to do  
11 a little housekeeping, reading in some of the  
12 exhibits that were offered and accepted in  
13 evidence yesterday.

14 Without further adieu, the first  
15 one is hearing officer Exhibit A, which was  
16 the request to incorporate materials from a  
17 prior proceeding. And that was filed with  
18 the Board on September 6, 2007. There was no  
19 objection.

20 The People's exhibits -- there's a  
21 list and I'm going to read them off -- they  
22 were offered and accepted into evidence  
23 yesterday, September 11th, 2007. First of  
24 all, it's entitled People's Group Exhibit A.

1 But within there is:

2 Exhibit 1, Illinois Pollution  
3 Control Board Financial Assurance  
4 Regulations, 35 Ill Adm Code, 811.700.

5 Exhibit 2, People Versus Community  
6 Landfill Company and City of Morris,  
7 PCB 03-191, February 16th, 2006 Board order.

8 Exhibit No. 3, People Versus  
9 Community Landfill Company and the City of  
10 Morris, PCB 03-191, June 1, 2006 Board order.

11 Exhibit 4, Community Landfill  
12 Company and City of MORris versus the IEPA,  
13 PCB 01-170 December 6th, 2001 Board order.

14 Exhibit 5, Community Landfill  
15 Company and City of Morris versus Pollution  
16 Control Board and Illinois Environmental  
17 Protection Agency, No. 3-02-0024. 311 Ill.  
18 App. 3d, 1056. That's obviously an opinion.

19 Exhibit 6 is Community Landfill  
20 and City of Morris versus IEPA, PCB 1-48,  
21 1-49. And that matter was consolidated.  
22 It's an April 5th, 2001, Board order.

23 Exhibit 7, Illinois EPA Inspector  
24 Mark Retzlaff's June 26th, 2007 inspection

1 report.

2 Exhibit 8, Illinois EPA Inspector  
3 Mark Retzlaff's August 29th, 2007 inspection  
4 report.

5 Exhibit 9 includes the Frontier  
6 Bonds. A is Bond No. 91507, B is Bond  
7 No. 158465, C is Bond No. 158466.

8 Exhibit 10, Violation Notice to  
9 the City of Morris.

10 Exhibit 11, Violation Notice to  
11 Community Landfill.

12 Exhibit 12, permits for Morris  
13 Community Landfill: A, Parcel A SigMod, and  
14 B, Parcel B SigMod.

15 Exhibit 13, Community Landfill  
16 Company's Interrogatory Responses and  
17 Production Requests, City of Morris'  
18 Interrogatory Responses and Production  
19 Requests.

20 And finally, Exhibit 14,  
21 Affidavits from Mayor Richard Kopczick.

22 That concludes the State's  
23 exhibits that were submitted and accepted  
24 September 11th, 2007.

1                   We're moving on to CLC's exhibits  
2                   that were offered yesterday and accepted into  
3                   evidence. And, by the way, none of them were  
4                   objected to.

5                   CLC's exhibit list starts with  
6                   Exhibit 1 as Hearing Officer Exhibit A.

7                   So CLC's list starts off with  
8                   Exhibit 2, CLC's First Supplemental Response  
9                   to Complainant's First Set of Interrogatories  
10                  and Request for the Production of Documents  
11                  dated September 28th, 2004.

12                  Exhibit 3, a letter from Frontier  
13                  to CLC, dated January 23rd, 2003.

14                  Exhibit 4, a letter from CLC to  
15                  Frontier dated March 20th, 2003.

16                  Exhibit 5, a letter from Frontier  
17                  to CLC, dated April 7th, 2003.

18                  Exhibit 6, a letter from CLC to  
19                  Frontier, April 16th, 2003.

20                  Exhibit 7, a letter from Frontier  
21                  to CLC, dated May 30th, 2003.

22                  Exhibit 8, a letter from CLC to  
23                  Frontier, dated June 19th, 2003.

24                  Exhibit 9, a letter from Frontier

1 to CLC, dated July 2nd, 2003.

2 Exhibit 10, a facsimile from  
3 Frontier to CLC, dated November 5th, 2005,  
4 with a copy of Exhibit 11 attached.

5 Exhibit 11, a letter from IEPA  
6 Blake Harris through Frontier, August 21st,  
7 2004.

8 Exhibit No. 12, a letter from IEPA  
9 to Frontier, dated January 27th, 2004.

10 Exhibit No. 13, a letter from IEPA  
11 to Frontier, dated May 27th, 2005.

12 Exhibit No. 14, a letter from IEPA  
13 to Frontier, dated May 26th, 2005.

14 Exhibit No. 15, Bond No. 91507,  
15 Continuation Certificate.

16 Exhibit No. 16, Bond No. 158465  
17 Performance Bond.

18 Exhibit No. 17, Bond No. 158466  
19 Performance Bond.

20 Exhibit No. 18, a letter from  
21 Emerald Insurance Services to CLC, dated  
22 April 15th, 2003. And that ends, at least  
23 this far, CLC's exhibits.

24 And now, we get to the City of

1 Morris' exhibits that were tendered and  
2 accepted into evidence without objection on  
3 September 11th, 2007. And I want the Board  
4 to disregard -- originally I labeled it as  
5 City of Morris' Group Exhibit A, but I think  
6 that may be a little confusing. So we're  
7 just going to go as follows:

8 City of Morris' Exhibit 1, July  
9 12, 2007, Updated Closure and Post-Closure  
10 Costs Prepared By Shaw Environmental.

11 Exhibit No. 2, July 12th, 2007,  
12 Updated Closure and Post-Closure Costs  
13 Prepared by Shaw Environmental for the Morris  
14 Community Landfill, Parcel B.

15 If I can back up to Exhibit 1,  
16 that was updated closure and post-closure  
17 costs prepared by Shaw for Parcel A.

18 Exhibit No. 3(a.) The first one  
19 is June 29th, 1982, Application For Permit  
20 Transfer.

21 Exhibit No. 3(b.), July 20th,  
22 1982, a letter from IEPA granting operating  
23 permit to CLC.

24 Exhibit No. 3(c.), A 1974 letter

1 from IEPA granting permit for the initial  
2 development of the landfill.

3 Exhibit No. 4, City of Morris  
4 Independent Auditor's Report, April 2006.

5 Exhibit No. 5, City of Morris  
6 Independent Auditor's April of 2005.

7 Exhibit No. 6, a January 27th,  
8 2004, letter from IEPA to Frontier Insurance  
9 Company.

10 Exhibit No. 7, a lease agreement  
11 between the City of Morris and CLC dated  
12 July 1st, 1982.

13 And subsequent amendments and  
14 addenda as follows:

15 Exhibit No. 7(a.), Addendum to  
16 Lease Agreement.

17 Exhibit No. 7(b.), Amendment to  
18 1982 Lease Agreement.

19 Exhibit No. 7(c.), an  
20 October 26th, 1987, Amendment to the 1982  
21 Lease Agreement.

22 Exhibit No. 7(d.), an October 1st,  
23 1990, Addendum to the 1982 Lease Agreement.

24 Exhibit No. 7(e.), a July 20th,

1 1999, Addendum to the 1982 Lease Agreement.

2 Exhibit No. 7(f.), December 13th,

3 1999, Addendum to the 1982 Lease Agreement.

4 Exhibit 8, August 5th, 2002,

5 SigMod Permit Parcel A.

6 Exhibit 9, August 5th, 2002,

7 SigMod Permit Parcel B.

8 Exhibit No. 10, June 7th, 2006,

9 Closure Plan Drafted By Shaw Environmental.

10 And that sums it up so far of what

11 the City of Morris tendered and were

12 accepted, the exhibits yesterday,

13 September 11th, 2007.

14 With that said, does Community

15 Landfill or the City of Morris want to

16 proceed, and who is first?

17 MR. PORTER: The City of Morris is

18 willing to go first, as CLC, I understand

19 their witness is going to be here this

20 afternoon, so we will go first.

21 THE HEARING OFFICER: If that's okay,

22 Mr. Porter?

23 MR. PORTER: Thank you.

24 THE HEARING OFFICER: Proceed.

1 MR. PORTER: And we would call  
2 William Crawford.

3 THE HEARING OFFICER: Mr. Crawford,  
4 the hot seat is up here.

5 Raise you right hand and Sharon  
6 will swear you in.

7 WILLIAM CRAWFORD,  
8 called as a witness herein, having been first duly  
9 sworn, was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PORTER:

12 Q. Please state your name for the record.

13 A. William J. Crawford.

14 Q. And, Mr. Crawford, how are you  
15 employed?

16 A. I am self-employed. I've owned my own  
17 business since 1995.

18 Q. And what is that business?

19 A. It's a certified public accounting  
20 firm.

21 Q. And, I take it, then -- are you a  
22 certified public accountant?

23 A. That's correct.

24 Q. And you, obviously, hold a

1 professional license with the EPA; is that correct?

2 A. That's also correct.

3 Q. And how long have you been an  
4 accountant ?

5 A. I'm been an accountant since 1983.

6 Q. And how -- strike that.

7 Have you had the opportunity to  
8 perform any work for the City of Morris?

9 A. Yes, I've performed the annual audit  
10 since 1986, with the exception of the years 2003 and  
11 2004.

12 Q. And what is an annual audit?

13 A. The purpose of an annual audit is to  
14 express an opinion of the fairness of the financial  
15 statements and to provide that in an independent  
16 external way.

17 Q. And let me show you some documents  
18 that have been marked Exhibits 4 and 5 for the City  
19 of Morris.

20 First, let me show you what has  
21 been marked as City of Morris Exhibit 4. What is  
22 that document?

23 A. This is the 2005 annual audit report.

24 Q. And is that a true and accurate copy?

1 A. It appears to be.

2 Q. And Exhibit 6 -- I'm sorry, Exhibit 5,  
3 what is that document?

4 A. That's the 2006 annual audit report.

5 Q. And is that a true and accurate copy?

6 A. It appears to be also.

7 Q. And have you done -- strike that.

8 When you say it's the 2006 annual  
9 report, it's actually for the fiscal year ending  
10 April 30, 2006; is that right?

11 A. That is correct.

12 Q. And, likewise, the 2005 annual report  
13 is for the fiscal year ending April 30, 2005; is  
14 that correct?

15 A. Yes.

16 Q. Were you hired to do the 2007 annual  
17 report?

18 A. Yes, I have been.

19 Q. And is that completed?

20 A. I do have a draft copy of the report,  
21 it's not completed at this time. There are some  
22 minor items that need to be cleared, and I'm waiting  
23 for the letter from the attorneys regarding  
24 commitments and contingencies, which I do need, to

1 complete the audit.

2 Q. While conducting these -- strike that.

3 Are you an employee of the City of  
4 Morris?

5 A. No, I'm not.

6 Q. And you've mentioned that it's an  
7 independent auditor's report. What is the import to  
8 it being independent?

9 A. Independent is very important. In  
10 fact, it's the foundation of our profession, as far  
11 as auditors are concerned.

12 You want to be an independent, you  
13 don't want to have any ties to the city. You want  
14 to be able to give an opinion without any  
15 influences.

16 Q. Now, during your time performing these  
17 audits, have you had occasion to review any of the  
18 Illinois regulations concerning financial assurance?

19 A. Yes, I have.

20 Q. In particular, have you reviewed  
21 Sections 811716 and 717?

22 A. Yes.

23 Q. What are those sections?

24 A. Those are relating to the financial

1 assurance for a landfill and also the guarantee for  
2 a landfill.

3 Q. And, in particular, 811716 is entitled  
4 Local Government Financial Test; is that correct?

5 A. Yes.

6 Q. And 811717 is entitled Local  
7 Government Guarantee; is that correct?

8 A. Yes.

9 Q. Now, does 811717 incorporate 716?

10 A. How did you mean that?

11 Q. Well, Exhibit No. 1, I believe, of the  
12 State's exhibits are in that white binder in front  
13 of you.

14 A. Uh-huh.

15 Q. You may want to open that up and take  
16 a look at 811717, but let me reask the question  
17 while you're doing that.

18 Isn't it true that in order to  
19 comply with 811717 one component of that is  
20 complying with the financial test referenced in  
21 811716?

22 A. Yes, that is true.

23 Q. So, in other words, 717 actually  
24 incorporates 716; is that correct?

1 A. Yes.

2 Q. Now, is it your understanding that a  
3 municipality may, under 811717, guarantee that it  
4 will perform closure and post-closure activities for  
5 a third party who happens to conduct a waste  
6 disposal operation if that third party fails to do  
7 so?

8 A. Yes.

9 Q. And 811716 is a financial test that a  
10 municipality, who wants to provide a guarantee, has  
11 to meet; is that correct?

12 A. Yes.

13 Q. Section 811716 may also be used by a  
14 municipality that is conducting an operation itself,  
15 and that, if they meet that test, they meet  
16 financial assurance; isn't that right?

17 A. Yes.

18 Q. What provoked you to review 811716 and  
19 717?

20 A. I was requested by the City.

21 Q. And when did you do that?

22 A. I did that for a deposition that I did  
23 in July of 2006.

24 Q. Section 811716 contains a financial

1 test; correct?

2 A. Correct.

3 Q. And have you performed that financial  
4 test for the year ending -- fiscal year ending 2007?

5 A. Yes, I have.

6 MR. PORTER: May I approach the  
7 witness?

8 THE HEARING OFFICER: Yes, you may,  
9 Mr. Porter.

10 BY MR. PORTER:

11 Q. Let me show you a document I have had  
12 marked Morris Exhibit No. 12.

13 (WHEREUPON, a certain document was  
14 marked Morris Exhibit  
15 No. 12 for identification, as of  
16 9/12/07.)

17 BY MR. PORTER:

18 Q. What is that document?

19 A. This is a worksheet that an auditor  
20 would prepare for a solid waste financial assurance  
21 calculation. It's provided by our service that I  
22 use to prepare audits.

23 Q. And is that a worksheet for the year  
24 ending 2007, fiscal year 2007?

1 A. April 30th 2007; that's correct.

2 Q. Before I get into that, I remembered  
3 one administrative thing I wanted to do earlier.  
4 Let me show you what I have had marked as Morris  
5 Exhibit No. 11.

6 (WHEREUPON, a certain document was  
7 marked Morris Exhibit  
8 No. 11 for identification, as of  
9 9/12/07.)

10 BY MR. PORTER:

11 Q. What is that document?

12 A. Basically, that's my resume, my  
13 listing of experience and education.

14 Q. And is that true and accurate?

15 A. Yes, it is.

16 Q. And likewise, Exhibit 12, is that a  
17 true and accurate copy of the worksheet that you  
18 did?

19 A. Yes, it is.

20 Q. And are Exhibits 11 and 12 documents  
21 that you keep in the normal course of business?

22 A. I'm sorry, can you repeat --

23 Q. Are Exhibits 11 and 12 documents you  
24 keep in the usual course of your business as a CPA

1 performing audits?

2 MR. GRANT: The State will stipulate

3 to a --

4 THE HEARING OFFICER: Thank you,

5 Mr. Grant.

6 MR. PORTER: Move for admission of 11

7 and 12.

8 MS. GRAYSON: I will --

9 THE HEARING OFFICER: Morris Exhibits

10 11 and 12 are admitted into evidence. Thank

11 you.

12 (WHEREUPON, said document,

13 previously marked Morris Exhibit

14 Nos. 11-12, for identification, was

15 offered and received in evidence.)

16 BY MR. PORTER:

17 Q. Does the financial test primarily

18 involve two major components?

19 A. Yes, two ratios.

20 Q. And what are those two ratios?

21 A. Well, the one ratio is in regards to  
22 marketable securities in comparison to expenditures.

23 And that ratio must be greater than .05.

24 Q. Would you call that a liquidity ratio?

1 A. Yes.

2 Q. And have you computed -- well, strike  
3 that. You jumped ahead on me there a little bit.

4 In order to meet the financial  
5 test, the municipality must have a liquidity ratio  
6 that is greater or equal to what number?

7 A. .05.

8 Q. And have you computed the liquidity  
9 ratio for the City of Morris fiscal year ending  
10 2007?

11 A. Yes, I have.

12 Q. And what is the liquidity ratio?

13 A. The liquidity ratio computes to 2.295  
14 for the fiscal year ending April 30th of 2007.

15 Q. Now, as I understand it, you've done  
16 financial audits for the City of Morris for decades,  
17 since the '80s; correct?

18 A. That's correct.

19 Q. And now, I understand that you,  
20 obviously, weren't performing this financial test  
21 each of those years; is that right?

22 A. That is correct, I was not.

23 Q. But from your experience in doing  
24 those audits, do you have a suspicion as to whether

1 or not the City of Morris would meet the liquidity  
2 test since you've been doing the audits?

3 A. Almost assuredly.

4 Q. Upon what do you base that?

5 A. Based on the fact that it's -- that  
6 the ratio is .05 for the City to have less cash than  
7 expenditures, I would have noted that. I would have  
8 noticed that if it were in that great of a ratio.

9 So I don't believe -- you know, I  
10 can't say for certain because I don't have all those  
11 audits in front of me, but it has never been a  
12 problem.

13 Q. In other words, the -- today, as we  
14 sit here, they so easily meet that first component  
15 in the financial test that you believe they probably  
16 met it the entire time you were doing audits?

17 A. I believe so.

18 Q. Now, what is the second ratio that a  
19 municipality must meet in order to meet the  
20 financial test?

21 A. That would be the annual debt service  
22 ratio.

23 Q. And for those of us who don't have a  
24 clue, can you explain when an annual debt service

1 ratio is?

2 A. That is a comparison of the amount of  
3 expenditures for debt service, which include  
4 principal and interest in one year, compared to,  
5 again, the total expenditures of the City. And that  
6 ratio must be less than .2.

7 Q. And have you computed the ratio for  
8 the -- strike that.

9 Have you computed the annual debt  
10 service ratio for the City of Morris fiscal year  
11 ending April 30th, 2007?

12 A. Yes, I have.

13 Q. And what is it?

14 A. It is .0133.

15 Q. So several -- or a couple hundred  
16 times, at least, lower than it needs to be?

17 A. Suffice to say, it's considerably  
18 less.

19 Q. And so, again, does the City of Morris  
20 easily meet that second ratio?

21 A. Yes.

22 Q. And, again, though I understand you  
23 haven't actually done the financial test for every  
24 year that you have been an auditor, do you have a

1 suspicion as to whether or not they made it in the  
2 past? At least -- let's say, through at least 2000,  
3 which is the date of the beginning of this  
4 situation.

5 A. I would say that is probably a  
6 definite. Now, prior years, I would assume that's  
7 the case.

8 However, I really cannot recall  
9 where the expenditures would have been in those  
10 years. So it would be much more difficult for that  
11 ratio for me to recall.

12 Q. You have no reason to believe that,  
13 since the year 2000, they would have failed to meet  
14 that Ratio; is that right?

15 A. No, I do not.

16 Q. So the punch line here is that the  
17 City of Morris does meet two necessary ratios for  
18 the financial test; is that right?

19 A. Yes.

20 Q. Now, does the financial test then  
21 provide how much a municipality can guarantee once  
22 they've met those two ratios?

23 A. Once they've met those ratios, there  
24 is a computation that is done, and it is 43 percent

1 of revenues according to generally accepted  
2 accounting principles. Basically, total revenues  
3 times 43 percent.

4 Q. And what were the -- well, strike  
5 that.

6 Do you know what the total  
7 revenues were for fiscal year ending 2007? I  
8 understand, though, it's not completed yet.

9 A. It is not complete. I do not  
10 anticipate any changes in the revenue figures for  
11 the audit. And 43 percent of the total annual  
12 revenue is \$9,146,954.

13 Q. So let's be sure we have a clear  
14 record.

15 What are the total revenues for  
16 the year 2007, fiscal year ending April 30th, 2007?

17 A. Twenty-one million, two hundred  
18 sixty-nine thousand, six hundred sixty-two.

19 Q. And that comes out to -- 43 percent of  
20 that is about 9.1 million; is that correct?

21 A. Approximately.

22 Q. All right. Have you had the  
23 opportunity to review the most recent cost estimates  
24 that have been filed by Shaw Environmental?

1           A.       Yes, as part of the audit process, a  
2 letter is sent to the engineering firm that is in  
3 charge of the landfill to get those most recent  
4 estimates. And I do have those figures.

5           Q.       So you have in front of you -- let me  
6 show you what we have marked previously as Morris  
7 Exhibits 1 and 2. Are those the revised cost  
8 estimates that you have reviewed?

9           A.       Yes.

10          Q.       And, if you know, what is the cost  
11 estimate for closure activities?

12          A.       It appears, from my analysis of that,  
13 that the closure costs were \$7,347,572. And this is  
14 based on a financial person looking at an engineer's  
15 report.

16          Q.       Right. So as to closure, would you  
17 agree the City of Morris can simply provide, if it  
18 is ordered to do so, its financial assurances by  
19 meeting the financial test?

20          A.       Strictly according to the calculation,  
21 if you were to take out the post-closure figures,  
22 according to the calculations, yes, the City would  
23 meet that.

24          Q.       Now, there are also some post-closure

1 numbers in those cost estimates, as well; is that  
2 correct?

3 A. Yes.

4 Q. And how much is the proposed closure?

5 A. Two million, seven hundred fourteen  
6 thousand, forty-seven dollars.

7 Q. And, by the way, those numbers you  
8 just gave us, seven million and the two plus  
9 million, those were for Parcels A and B combined; is  
10 that right?

11 A. That's correct.

12 Q. So the total closure, post-closure  
13 cost estimate is what?

14 A. Ten million, sixty-one thousand, six  
15 hundred nineteen.

16 Q. Now, as I recall, you indicated that,  
17 using the financial test, the City is free to  
18 guarantee \$9.1 million; is that right?

19 A. Yes.

20 Q. Is there any fund available that could  
21 meet that \$900,000 difference?

22 A. The City has moneys in three other  
23 funds. There is the Sanitary Landfill Contingency  
24 Fund, the Solid Waste Tax Fund and the Garbage Fund.

1                   I believe at the end of my current  
2     audit, they have approximately \$2.7 million in those  
3     funds. However, some of the moneys in the solid  
4     waste are used to pay for the City's recycling, and  
5     the moneys in the garbage fund are used to pay for  
6     their refuse costs for the year.

7                   And the total cost of those in the  
8     year that I have just completed is about \$777,000.

9           Q.       Now, you mentioned some things that  
10    those funds are earmarked toward. Does the City  
11    have other major unusual obligations coming up in  
12    the near future or that they have recently incurred?

13          A.       As far as capital projects; is that  
14    what you're --

15          Q.       That's what I'm trying to get at.

16          A.       Okay.

17          Q.       Thank you. A much better way to put  
18    it.

19                   Do they have any other recent  
20    capital projects or future capital projects that are  
21    on the horizon?

22          A.       Yes.

23          Q.       And what are those?

24          A.       Recently the City purchased land for

1 airport expansion in the amount of \$2.2 million.  
2 They are also in the process of going out for bids  
3 on a new municipal building, which, I believe, the  
4 estimates are ten to \$12 million dollars, due to the  
5 lack of space for their police department and their  
6 city hall.

7                                   And they're also in the process of  
8 a major water and sewer operation -- or capital  
9 improvement, which includes a new sewer treatment  
10 plant, trunk lines, water flow, out flow and some  
11 water main work in that project. Now, that project  
12 is 14 to \$15 million, and it was begun in the year  
13 that I'm auditing.

14                               MR. PORTER: Mr. Halloran, I need to  
15 take a break for a moment.

16                               THE HEARING OFFICER: Very well.  
17 Thank you.

18                                   Off the record.

19                                   (WHEREUPON, a recess was had.)

20                               THE HEARING OFFICER: Back on the  
21 record, Mr. Porter.

22 BY MR. PORTER:

23                               Q.       How are those obligations and capital  
24 projects going to be funded?

1           A.       The future capital projects, for  
2 instance, the sewer project, the City had to do a  
3 bond issue of \$7.4 million. And the city hall  
4 project is being funded from several places, the TIF  
5 fund, it's in the TIF district, and general  
6 city moneys to fund that.

7           Q.       Now, in order -- strike that.

8                       When a municipality meets the  
9 financial test, you understand that even if the  
10 individual or company conducting the waste operation  
11 fails to close, that doesn't mean that the  
12 municipality automatically has to plop down the full  
13 closure costs; isn't that correct?

14                      MR. GRANT: I'm going to object. This  
15 is something outside of his area of  
16 knowledge.

17                      THE HEARING OFFICER: You know, if he  
18 can answer, a little latitude. Overruled.

19                      MR. GRANT: Could I ask -- I'm sorry,  
20 I didn't hear Mr. Crawford. Can I ask,  
21 Mr. Halloran, the court reporter repeat the  
22 question, please?

23                      MR. PORTER: I'm going to withdraw the  
24 question and reask it.

1 THE HEARING OFFICER: All right.

2 BY MR. PORTER:

3 Q. You understand that after a  
4 municipality provides its initial guarantee fee,  
5 even if the third party conducting the waste  
6 operation fails to close, that does not mean that  
7 the municipality has to immediately pay all of the  
8 financial assurance. Do you understand that?

9 A. From my reading of the regulation,  
10 that's what I understand.

11 Q. And as a matter of fact, the  
12 municipality can guarantee that itself will perform;  
13 is that right?

14 A. Yes.

15 Q. And performance -- well, strike that.

16 You said you've reviewed the  
17 documents from Shaw Environmental regarding their  
18 cost estimates. Do you understand those estimates  
19 involve closure activities over a number of years?

20 A. Yes.

21 Q. And that those closure activities are  
22 paid as the activities arise over these numbers of  
23 years; is that right?

24 A. Yes.

1 Q. Do you also -- well, strike that.

2 When a municipality proposes its  
3 own guarantee or meets the financial test, does that  
4 cost the municipality anything? Do they pay for  
5 that?

6 A. It's strictly -- as far as I'm  
7 concerned, as an auditor and a financial person,  
8 it's strictly a test that is required to be met by  
9 them. As for further -- going further with that, I  
10 don't believe I could.

11 Q. If they were to go out and buy a bond  
12 from a third party or an insurance vehicle from a  
13 third party, would that cost money?

14 A. Obviously.

15 Q. Would you then agree that if the City  
16 of Morris had known it was going to be required to  
17 post financial assurance, arguably, since the year  
18 2000, that it could have done so for free by using  
19 the financial test?

20 A. Well, I can say that they would have  
21 used that test first, that's what the City would  
22 have done.

23 Q. And that would not have cost them  
24 anything?

1                   MR. GRANT: I'm going to object on the  
2                   basis of leading.

3                   THE HEARING OFFICER: Sustained.

4 BY MR. PORTER:

5                   Q.       And would that have cost them  
6                   anything?

7                   A.       The financial --

8                   Q.       I will reask the question slightly  
9                   differently. Would that have cost them anything?

10                  A.       The financial assurance calculation  
11                  would not have cost them anything.

12                  Q.       So looking back, in hindsight, if we  
13                  assume that somehow the City had an obligation to  
14                  post financial assurance since 2000, did they  
15                  sustain any economic benefit by not posting their  
16                  own guarantee?

17                  A.       Thinking in terms of a historical  
18                  nature here, as that's what I am as an auditor, I  
19                  don't see that. But that's not my expertise here.

20                  MR. PORTER: I have nothing further.

21                  Thank you.

22                  THE HEARING OFFICE: Thank you.

23                  Mr. Grant and Ms. Tomas?

24                  MR. GRANT: Thank you.

1 CROSS-EXAMINATION

2 BY MR. GRANT:

3 Q. Good morning, Mr. Crawford.

4 A. Good morning.

5 Q. I took your deposition in July of  
6 2006.

7 A. Yes.

8 Q. I appreciate it.

9 I'm sort of curious as to where  
10 you get the information for the audits that you  
11 perform. And rather than go through the entire  
12 audit, specifically, as far as the ongoing  
13 litigation, you're aware that this case has been on  
14 file since 2003 -- or maybe not that, but this case  
15 has been ongoing; correct?

16 A. Yes.

17 Q. And are you also aware that the City  
18 has attained judgment on liability against the State  
19 as they obtained judgment on liability against the  
20 City of Morris and Community Landfill Company  
21 jointly and severely; are you aware of that?

22 A. I'm aware, but not of the particulars.

23 MR. PORTER: I'm going to object to  
24 the extent I believe that mischaracterizes

1 the order that's been entered already.

2 THE HEARING OFFICER: As far as the  
3 interim order?

4 MR. PORTER: Correct.

5 THE HEARING OFFICER: Well, I think  
6 the question was liability.

7 MR. GRANT: Yes, I just said liability  
8 and --

9 THE HEARING OFFICER: I'm going to  
10 overrule it.

11 MR. GRANT: Okay.

12 BY MR. GRANT:

13 Q. I don't know if you're aware it's a  
14 matter of record, but that they obtained that order  
15 from the Pollution Control Board of February 16th,  
16 2006. And the City and Community Landfill  
17 companies' motion for reconsideration was denied on  
18 June 1st, 2006. So just so you're aware of time  
19 frame of it.

20 And, as you (sic) mentioned, I  
21 took your deposition in July of 2006; isn't that  
22 correct?

23 A. Yes.

24 Q. And at your deposition, you actually

1 had prepared one of these financial tests, a similar  
2 document. Do you remember that?

3 A. Yes.

4 Q. And do you happen to remember the  
5 amount -- the bottom line amount, rather than all  
6 the numbers?

7 A. I believe it was \$7.1 million.

8 Q. And what changed between last year  
9 when the figure was 7.1 and now it's, you know, nine  
10 million-something?

11 A. It's strictly a function of revenues.  
12 I mean, it's 43 percent of revenues.

13 Q. All right.

14 A. The City has taken in more revenues.  
15 And it is a two-year period we're talking about.  
16 The period that we talked about in the deposition  
17 was for fiscal year ending April 30th, 2005?

18 Q. That's correct. I believe that you  
19 did not have the 2006 audit at the time?

20 A. Yes.

21 Q. Have the revenues -- the relevant  
22 period here is, basically, from 2000 until the  
23 present.

24 Have the revenues of the City of

1 Morris increased each year from 2000 to 2007?

2 A. I would say yes.

3 Q. So that, if you did perform that  
4 calculation for the years 2000 all the way through  
5 2000, you would expect that to increase every year.  
6 And with the recent 2007 audit figures, that would  
7 be the highest that it's been over that period?

8 A. Yes.

9 Q. Isn't that correct?

10 A. Yes, it is.

11 Q. The reason I ask the question about  
12 the audit that we have -- and I'm going to refer to  
13 the April 30th, 2006, auditor's report.

14 I'm going to ask you to turn to  
15 Page 39 of --

16 MR. PORTER: Exhibit 4, year ending  
17 April 30, 2006 is Exhibit 4.

18 MR. GRANT: Correct.

19 BY MR. GRANT:

20 Q. And at the top of the page it -- in  
21 the first paragraph, you'll notice the second or  
22 third sentence where it says, "The City vigorously  
23 disputes any determination that it has conducted a  
24 waste disposal operation or acted in any capacity as

1 an operator of a landfill" -- et cetera.

2 Do you see that sentence?

3 A. Yes, I do.

4 Q. The date on the top says April 30th,  
5 2006; correct?

6 A. Yes.

7 Q. Are you aware that on February --  
8 well, I just mentioned it. But does it change your  
9 opinion that on February 16th that same year, the  
10 Illinois Pollution Control Board found, in fact,  
11 that the City was liable, had conducted a waste  
12 disposal operation and was liable for closure,  
13 post-closure financial assurances -- it's a long  
14 question.

15 My question is, does it change  
16 your opinion that they had been found -- that the  
17 opposite had, in fact, been found?

18 A. Does it change my opinion on the  
19 financial statements? No.

20 Q. Yes.

21 A. No, it would not.

22 Q. So --

23 A. It is disclosed -- it is disclosed in  
24 the financial statements.

1           Q.       Can you show me where it was  
2 disclosed?

3                   MR. PORTER:  I'm sorry, I object.  
4           Where what was disclosed?  Vague.

5 BY MR. GRANT:

6           Q.       Where it was disclosed that the City  
7 had been found liable -- on February 16th, 2006,  
8 when the Board issued summary judgment --

9           A.       No, I was discussing the financial  
10 side of it.

11          Q.       Okay.

12          A.       I mean, this is not a legal document,  
13 it does not discuss the legal terms.  It is prepared  
14 by the City, it is verified through the attorneys  
15 for the City.

16          Q.       So the way that you get the  
17 information -- and I understand I'm not -- believe  
18 me, I'm not attacking your integrity.  As I  
19 understand it, especially when you're dealing with  
20 lawyers, you're going to have to rely on what you're  
21 told.

22                   But with -- as an auditor -- you  
23 know, in other words, you know, I suppose it's a  
24 fact that the City vigorously disputes.  But the

1 fact that after an administrative process the City  
2 was found, in fact, to be conducting a waste  
3 disposal operation and to be liable, albeit, not  
4 necessarily knowing what the remedy is, that's what  
5 this hearing is for.

6                                 But does that change -- you know,  
7 should that be reflected somewhere in this report?

8             A.       It is reflected -- the figures are  
9 reflected in the report. And in the balance sheet  
10 for the City, there is a potential liability listed  
11 there for the City.

12            Q.       And how much is listed? Do you  
13 remember, or should we look at it?

14            A.       I believe \$7.6 million, which it  
15 states in the next paragraph.

16            Q.       Right. I was going to ask about the  
17 next paragraph, too.

18            A.       Uh-huh.

19            Q.       In the second sentence -- we're  
20 talking -- it essentially refers to \$10.2 million of  
21 financial assurance that's required for leachate  
22 treatment. Are you familiar with that whole issue?

23                                 In other words, if it's from seven  
24 to 17, what is that number?

1 A. I'm sorry?

2 MR. PORTER: I'm sorry. Objection.

3 MR. GRANT: I'll restate.

4 BY MR. GRANT:

5 Q. Are you familiar -- the first sentence  
6 says, Approximately \$10.2 million constitutes the  
7 present value of 100 years of leachate collection  
8 and treatment by a third party for the landfill."

9 Okay. You're familiar with that?

10 A. I'm -- yeah.

11 MR. PORTER: Objection. Are you  
12 asking him if that's what the document  
13 provides?

14 MR. GRANT: It's just really  
15 foundation. I'm going to ask him a question  
16 about 17 point, whatever, versus seven.

17 MR. PORTER: Okay. My objection is  
18 the question is vague.

19 Are you familiar with what?

20 MR. GRANT: I'll restate the question.

21 THE HEARING OFFICER: Thank you,  
22 Mr. Grant.

23

24

1 BY MR. GRANT:

2 Q. In the first paragraph -- I'm sorry,  
3 the second paragraph, first sentence -- it says,  
4 "Approximately \$10.2 million of the \$17.8 million  
5 total constitutes the present value of 100 years of  
6 leachate collection and treatment by a third party  
7 for the landfill." Okay.

8 What does that statement mean to  
9 you?

10 A. It means exactly what it says, it's  
11 the treatment of the leachate. Of course, I am a  
12 financial person here, and I'm relying on the  
13 information that is provided me.

14 But I don't understand what else  
15 you would want me to say about that.

16 Q. That's fine.

17 And the second sentence begins  
18 with, "This amount is in dispute, because the City  
19 is presently treating, and plans to treat in the  
20 future, all leachate collected from the landfill at  
21 its own facilities with no cost to the State."

22 A. That's what it says.

23 Q. So the number that you have been using  
24 in your financial statement says the potential

1 liability is 7.6 not 17 million?

2 A. The 7.6 is disclosed and actually  
3 booked in the financial statements. However,  
4 because the other amount is listed here, it is being  
5 remitted to people who might rely on this to say  
6 that this is in dispute.

7 There is no specific number for  
8 this, it's in dispute, it could be this, it could be  
9 that, but it's there. And it's a possibility.

10 So it is disclosed there as a  
11 possibility, however, there is no specific number  
12 that we can assign to that.

13 Q. Now I understand. And, again, please  
14 understand, I'm not challenging your auditing,  
15 because this is -- I mean, we have ongoing  
16 litigation here, obviously.

17 But are you aware that in 2001,  
18 after an evidentiary hearing, the Pollution Control  
19 Board found that the City's treatment of its own  
20 leachate was not sufficient, and that it did, in  
21 fact, have to put the additional \$10-plus million up  
22 as financial assurance?

23 A. I would be not be party to that.

24 Q. So you were not advised that the

1 Pollution Control Board had already decided that  
2 issue against the City?

3 A. It would have to be through the legal  
4 opinion that I would receive.

5 Q. With that, in fact, the case, isn't it  
6 true that using the financial test and the City's  
7 own revenues, the City cannot use the financial test  
8 or the local government guarantee to guarantee over  
9 \$17 million in financial assurance? That's true;  
10 isn't it?

11 MR. PORTER: Objection.

12 THE HEARING OFFICER: Excuse me.

13 Mr. Porter?

14 MR. PORTER: It's compound.

15 THE HEARING OFFICER: Yeah. Can you  
16 rephrase, restate...

17 MR. GRANT: Sure, I'll try.

18 BY MR. GRANT:

19 Q. Using the financial test with the 2005  
20 figures, you arrived at a maximum value that the  
21 City could guarantee of, approximately, \$7 million  
22 dollars; isn't that true?

23 A. That is true.

24 Q. And with your most recent calculation,

1 using the 2007 audit, you arrived at a maximum  
2 amount that the City of Morris could guarantee at,  
3 approximately, \$9 million dollars; that's true?

4 A. Yes.

5 Q. Do you have any information that the  
6 City of Morris could, at any time between 2000 and  
7 2007, have used this same calculation to guarantee  
8 over \$17 million dollars?

9 A. My function --

10 MR. PORTER: I'll object. They don't  
11 have to guarantee over \$17 million dollars.

12 MR. GRANT: Okay.

13 THE HEARING OFFICER: Mr. Grant?

14 MR. GRANT: Well, you know, for the  
15 record, we tried PCB 0148 and 0149, where  
16 that was decided, that's been decided.  
17 There's been no --

18 MR. PORTER: This hearing is what we  
19 are here to decide.

20 MR. GRANT: No, it isn't. That's not  
21 what we're here to decide.

22 We're here to decide the remedy  
23 for a violation. This hearing is not a  
24 hearing -- this hearing is not for setting

1 the amount of financial assurance.

2 That's done through Illinois EPA.  
3 And if Illinois EPA adopts it, then you file  
4 a permit appeal.

5 That was done in 2001. But,  
6 essentially, in two cases, by the end of the  
7 case, PCB 01-48 combined with 01-49, the  
8 amount of financial assurance was challenged.

9 And, specifically, the City of  
10 Morris said that it could guarantee \$10  
11 million in financial assurance by treating  
12 the leachate for free. The Board heard  
13 testimony on that and rejected that opinion.

14 And if you have any question about  
15 that, we have this attached as Exhibit 4.

16 MR. PORTER: Mr. Halloran, we have not  
17 even broached this subject yet, so I'm not  
18 sure what we're making a record on. My  
19 objection is that counsel is stating, as a  
20 fact, that somehow the City of Morris is  
21 obligated to post financial assurance of  
22 \$17 million.

23 That is not the case. That is  
24 part of what is to be decided here today, is

1           what is the cost estimate for which financial  
2           assurance has to be posted by some entity.

3                         And if the question is, does the  
4           financial test result in an ability to  
5           guarantee \$17 million, I don't have any  
6           problem with that question. But when it's  
7           posed as it was posed, as if it's a fact that  
8           we have to meet that number, that's what I  
9           have an objection to.

10                        THE HEARING OFFICER: You know, I tend  
11           to agree with Mr. Porter. So, you know,  
12           either rephrase or restate, but --

13                        MR. GRANT: I thought that I had. And  
14           I understand that there may be a difference  
15           of opinion about this.

16 BY MR. GRANT:

17           Q.         But, you know, Mr. Crawford, based on  
18           your information, the information available to you  
19           in the audits you performed and the information that  
20           you reviewed, could the City of Morris have  
21           guaranteed \$17 million or more of financial  
22           assurance at any time between 2000 and 2007?

23                        THE HEARING OFFICER: I will accept  
24           that question.

1 BY THE WITNESS:

2 A. Based on my calculation, the figures  
3 that I am sure of are the 43 percent of revenues.  
4 Those figures you have. Those are accurate.

5 I have no idea, as far as what  
6 you're going to agree as, to what the closure,  
7 post-closure costs are.

8 BY MR. GRANT:

9 Q. Well, let's not worry about -- let's  
10 not worry about those costs.

11 A. In answering your question --

12 Q. No, you're not really. I think you're  
13 anticipating my question.

14 A. No, I'm not.

15 MR. PORTER: No, I object. I'd like  
16 him to allow the witness to finish his answer  
17 and then do a follow-up.

18 MR. GRANT: I move to strike the  
19 response so far as nonresponsive.

20 THE HEARING OFFICER: You know, don't  
21 do this legal -- okay.

22 Mr. Grant?

23 BY MR. GRANT:

24 Q. Mr. Crawford, my question is this:

1 And I'm afraid to give you any background, because I  
2 don't want to confuse it. But you did testify that  
3 revenues had increased from 2000 through 2007.

4 And 2007 is the highest revenues  
5 during that period; correct?

6 A. I assume that, yes.

7 Q. And twice you've prepared this  
8 financial test. And based on the highest revenues,  
9 I think the 2007 revenues, you've come up with a  
10 figure of \$9 million, approximately, that it could  
11 be guaranteed, at a maximum?

12 A. That's correct.

13 Q. So my question is, could the City of  
14 Morris have, based on its financial condition at any  
15 time between 2000 and 2007, used this guarantee for  
16 \$17 million or more of financial assurance?

17 A. Obviously, \$9.1 million would be the  
18 maximum.

19 Q. I wonder if you can give me a yes or  
20 no answer to that question.

21 MR. PORTER: He's answered it  
22 appropriately, Mr. Halloran.

23 THE HEARING OFFICER: Yes or no,  
24 Mr. Crawford.

1 MR. GRANT: Repeat the question.

2 THE HEARING OFFICER: Sharon?

3 (WHEREUPON, the record was  
4 read by the reporter.)

5 BY THE WITNESS:

6 A. No.

7 BY MR. GRANT:

8 Q. Thank you.

9 In general -- let's see. I think  
10 your audit practice is largely local governments;  
11 isn't that correct, and municipalities, in general?

12 A. That is correct.

13 Q. Would you say that the City of Morris  
14 is in a pretty strong financial condition?

15 A. Yes.

16 Q. As far as the other -- are you aware  
17 of the other ways of providing financial assurance  
18 for closure, post-closure?

19 A. I'm aware of the different methods.  
20 I'm not aware of how they can be combined.

21 Q. I understand.

22 Are you aware of the surety bonds?

23 A. (No audible response.)

24 Q. And just -- you know, I'm not sure of

1 how much of this case you've been, but are you aware  
2 of the Frontier surety bonds that were posted by --  
3 one by the City of Morris and two by the Community  
4 Landfill Company?

5 A. That was discussed in the deposition.

6 Q. Are you aware of the annual fee for  
7 the surety bonds?

8 A. No. The City -- if the City had been  
9 paying the fee, I would have seen what it was. I  
10 have no idea what the fee for those bonds are.

11 Q. Based on your knowledge of the City's  
12 financial affairs, could the City afford to put up  
13 surety bonds totaling \$7.4 million, for example?

14 A. Well, why would they?

15 MR. PORTER: I --

16 THE HEARING OFFICER: Mr. Porter?

17 MR. PORTER: I'm sorry, I need that  
18 read back.

19 THE HEARING OFFICER: Sharon?

20 (WHEREUPON, the record was  
21 read by the reporter.)

22 THE HEARING OFFICER: Mr. Porter?

23 MR. PORTER: No objection.

24

1 BY THE WITNESS:

2 A. Well, my first question is why would  
3 they. And my second is, I'm not aware of what the  
4 fees for these bonds are, so I would not be able to  
5 answer that.

6 BY MR. GRANT:

7 Q. Hypothetically, in you assume an  
8 annual premium rate of two percent of the face value  
9 of bonds per year, could the City afford to -- so,  
10 essentially, you know, say, approximately, \$350,000  
11 a year. Could the City afford to pay that?

12 A. I really don't know if I can answer  
13 that. Because the City -- I'm not involved with the  
14 decisions of the City, and I don't know what their  
15 future plans are and how they are going to be  
16 spending the moneys, especially with the capital  
17 projects. So I really can't answer that.

18 Q. What are the net assets of the City of  
19 Morris as reported in your 2006 report?

20 A. The net assets are \$35 million.  
21 However, you have to understand that a good part --  
22 part of that is invested in capital assets,  
23 basically it's not available.

24 Q. Could they be used to finance -- in

1 other words, could you borrow against those capital  
2 assets?

3 A. Again, I don't --

4 Q. And how -- what sort of change in the  
5 total amount of assets was there between 2005 and  
6 2006?

7 A. Four million, nine hundred forty-six  
8 thousand.

9 Q. And that was a positive?

10 A. Yes.

11 Q. So a little over a \$4 million increase  
12 in net assets between 2005 and 2006?

13 A. That is correct.

14 Q. Again, indicative of a fairly strong  
15 financial position of the City of Morris?

16 A. A strong financial position but may  
17 not always be indicative of a strong cash position.

18 Q. There's a -- yeah, I understand.

19 There was an issue that came up in  
20 our deposition regarding the State's lending limit.  
21 I think that was the term we used. Is that  
22 accurate?

23 MR. PORTER: I'm going to object.

24 That there's a question that we want to pose

1           here today, fine. But we keep referring back  
2           to the deposition without impeachment.

3                         THE HEARING OFFICER: Mr. Grant?

4     BY MR. GRANT:

5           Q.        Can you tell me what the State's --  
6     I'm sorry, what the City's lending limit is or  
7     borrowing limit?

8           A.        For the year ending 2006?

9           Q.        Yes, please.

10                       And also, if you can, tell me  
11     where you would find that on Exhibit 4.

12           A.        Page 91 of the 2006 audit. This  
13     schedule is prepared by the City, it is not audited  
14     by me. But the bottom line legal debt margin on  
15     this schedule is \$18,351,000.

16           Q.        It says, Legal debt margin." Is that  
17     somehow set by a statute?

18           A.        Yes, the statutory debt limitation is  
19     8.625 percent of the assessed valuation.

20           Q.        If the City was to take out surety  
21     bonds, would that have to be reflected against the  
22     legal debt limit?

23           A.        I don't know.

24           Q.        As far as the capital project that you

1 were discussing -- in other words, the city hall and  
2 the sewer project and that sort of thing -- would  
3 those be reflected against the legal debt margin?

4 A. The recent capital project that was  
5 financed through bonds, originally we did not know  
6 for certain. Now it is an alternate revenue bond,  
7 and the City is planning on paying that with user  
8 fee -- part of the user fees.

9 So I would assume that it would  
10 not affect the debt margin.

11 Q. What sorts of -- well, my guess is,  
12 you've got some of the stuff right here in Debt  
13 Outstanding. You show -- but, again, indicative of  
14 the City's strong financial condition, you show a  
15 statutory limit of a little less than \$20 million  
16 and a total net of only \$1.6 million.

17 A. Yes.

18 Q. Is that accurate?

19 A. Yes.

20 Q. Has that changed in the 2007 audit?

21 A. The debt has changed.

22 Q. What's happened with the debt?

23 A. They did these revenue bonds for  
24 \$7.4 million, and that was completed in the physical

1 year ending April 30th, 2007.

2 Q. And when were those bonds issued?

3 A. I can look it up, if you would allow  
4 me to do that.

5 Q. If you could. If you have it with  
6 you, sure.

7 (WHEREUPON, the witness complies.)

8 BY THE WITNESS:

9 A. September 5th of 2006.

10 BY MR. GRANT:

11 Q. In your direct testimony, Mr. Porter  
12 asked you if you realized that closure of  
13 landfill -- the funds to be expended could take --  
14 would be done over a period of years. Do you recall  
15 that?

16 A. Yes.

17 Q. Are you aware of the fact that for  
18 parcel -- well, do you know what Parcel A and  
19 Parcel B of the landfill are? Are you aware that  
20 there are two of them?

21 A. I am aware that there are two of them.

22 Q. Are you aware that one parcel closure  
23 is overdue, that really it should have been closed a  
24 long time ago, and closure would have to be done

1 immediately?

2 A. No. That's not relevant to my audit,  
3 so...

4 Q. Well, as far as the City's ability  
5 to -- you know, to guarantee closure, in that  
6 instance -- you know, what I'm saying is, that this  
7 is something that wouldn't be years down the road,  
8 it would be, essentially, due immediately.

9 Are you aware of Illinois  
10 Pollution Control Board regulations that require  
11 closure to be performed within six months?

12 A. That's not my function. I'm not...

13 Q. Would the City be able to perform  
14 closure and spend the money -- which you have listed  
15 here in Paragraph 13, \$7.347 million. Would the  
16 City be able to expend those funds over a six month  
17 period?

18 A. Not with funds available.

19 Q. And I think we discussed it, but  
20 you're also aware that the State does not agree with  
21 the estimated cost of post-closure that you have  
22 listed in your calculation sheet?

23 A. Yeah, as I've stated, the figure that  
24 I provide, the 43 percent of revenue, is certain.

1 The other figure is what you are discussing at this  
2 time, so...

3 Q. Right. Is it --

4 A. I'm going with the most recent  
5 estimate because the other estimate was seven years  
6 old.

7 Q. And the estimate was provided to you  
8 by counsels; is that true?

9 A. No, it is not. As part of my audit, a  
10 letter is sent to the engineers for the landfill --

11 Q. Okay.

12 A. -- to get the most recent information.

13 Q. And that was Shaw Environmental?

14 A. I'm sorry?

15 Q. That was Shaw Environmental?

16 A. That is correct.

17 Q. Were you aware that that figure had  
18 not been approved by Illinois EPA or by the State of  
19 Illinois?

20 A. Yes, at this time I am aware of that.

21 Q. I'd like to ask you to look at the  
22 financial assurance regulations. And  
23 specifically -- it's in my binder, it's Page No. 1.

24 And, unfortunately, it doesn't

1 have a page number, but it's in the third page of  
2 11716.

3 Do you see Subparagraph B, Public  
4 Notice Component?

5 A. Yes.

6 Q. Subparagraph 1 under B refers to,  
7 essentially -- well, I will read it.

8 It says, "The unit of local  
9 government, owner or operator, must place a  
10 reference to the closure and post-closure tier costs  
11 assured through the financial test into the next  
12 comprehensive annual financial report or prior to  
13 the initial receipt of waste of the facility,  
14 whichever is later."

15 Do you understand it would be the  
16 obligation of the City -- if it was to use the  
17 financial test or the financial guarantee for  
18 closure, post-closure, this would have to be listed  
19 in the financial statements?

20 A. Yes, when it determined that they use  
21 that test, I understand that.

22 Q. Would this have any effect on your  
23 ability to borrow funds or the City's ability to  
24 borrow funds?

1           A.       Again, I've answered that before. I  
2 wouldn't know.

3           Q.       Okay.

4                        When will the 2000 report be  
5 finalized and made available to the public?

6                        MR. PORTER: 2007.

7 BY MR. GRANT:

8           Q.       2007?

9           A.       As soon as possible.

10          Q.       Does it normally come out before the  
11 end of the year?

12          A.       Yes.

13          Q.       Okay.

14                        MR. GRANT: If I could, just one  
15 minute.

16                        That's all I have.

17                        THE HEARING OFFICER: Thank you.

18                        Ms. Grayson, any questions?

19                        MS. GRAYSON: I do not have any  
20 questions.

21                        THE HEARING OFFICER: Thank you.

22                        Mr. Porter, any redirect?

23                        MR. PORTER: Very briefly.

24

1 REDIRECT EXAMINATION

2 BY MR. PORTER:

3 Q. Counsel was mentioning that in 2005,  
4 2007 the revenues had increased. The expenditures  
5 have also increased; is that correct?

6 A. Yes.

7 Q. The counsel -- there was also some  
8 reference to an alternative bond that had to be  
9 issued for a combined water and sewer project. Do  
10 you remember that testimony?

11 A. Yes.

12 Q. Are you aware that that project was,  
13 in part, necessitated due to the treatment of the  
14 leachate for the site of this facility?

15 A. Yes, I am.

16 Q. And --

17 MR. PORTER: Nothing further. Thank  
18 you.

19 THE HEARING OFFICER: Thank you.

20 Mr. Grant, any re-cross?

21 MR. GRANT: No, thank you.

22 THE HEARING OFFICER: Thank you.

23 You may step down. Thank you,

24 Mr. Crawford.

1 (WHEREUPON, the witness was  
2 excused.)

3 THE HEARING OFFICER: We can go off  
4 the record for a second.

5 (WHEREUPON, a recess was had.)

6 THE HEARING OFFICER: All right. We  
7 are back on the record.

8 We took about a 35-minute break.  
9 The City of Morris is about to call their  
10 second witness, I believe.

11 MR. PORTER: That is correct. We call  
12 Devin Moose, please.

13 THE HEARING OFFICER: Mr. Moose, will  
14 you please raise your right hand and Sharon  
15 will swear you in.

16 (WHEREUPON, the witness was duly  
17 sworn.)

18 DEVIN MOOSE,  
19 called as a witness herein, having been first duly  
20 sworn, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. PORTER:

23 Q. Please state your name for the record.

24 A. Devin Moose.

1 Q. And what your is your address?

2 A. 1150 North 5th Avenue, St. Charles,  
3 Illinois.

4 Q. How are you employed?

5 A. I'm sorry, I moved. I'm 1607 East  
6 Main. Sorry about that.

7 I'm the director of the  
8 St. Charles office for Shaw Environmental.

9 Q. And do you hold any professional  
10 licenses?

11 A. Yes. I am a registered professional  
12 engineer in Illinois and nine other states.

13 Q. If you would, briefly describe for us  
14 your educational background.

15 A. I have a bachelor of science degree  
16 from University of Missouri at Rolla in civil  
17 engineering.

18 Q. And, please, briefly describe your  
19 work history.

20 A. Okay. I graduated with a degree in  
21 civil engineering, emphasis in geotechnical and  
22 geological engineering. I began work in the late  
23 '70s for a geotechnical firm, doing mostly soils and  
24 foundation work.

1                   I got involved in solid  
2 waste-related work in about 1983, helping facilities  
3 with construction-related problems, construction  
4 dewatering, slope stability-type issues, for large  
5 landfills across the country. And I eventually  
6 found myself more and more immersed in solid waste.

7                   In probably about '87, '88, I,  
8 pretty much, switched full-time to environmental  
9 engineering. I focused initially on solid  
10 waste-related projects.

11                   I've designed dozens upon dozens  
12 of landfills, worked on compliance problems at  
13 dozens of landfills, designed and permitted many  
14 transfer stations. I have written or participated  
15 in authorship of over 60 solid waste management  
16 plans.

17                   I've worked in over 60 counties in  
18 Illinois, I've worked for nearly 75 municipalities  
19 within Illinois. I was elected for several years as  
20 the chairman of the environmental committee for the  
21 Consulting Engineer's Council in Illinois,  
22 representing 200 -- at the time -- 23 private  
23 consultants in Illinois.

24                   My position as chairman of the

1 environmental committee was to rewrite --  
2 participate with a lot of other groups, but  
3 representing the engineers in the rewrite of the  
4 underground storage tank regulations, commonly  
5 referred to as LUST, L-U-S-T, regulations. I also  
6 participated very heavily in the SRP program and  
7 TACO program, T-A-C-O, rewriting those regulations.

8 I am a diplomat, awarded the level  
9 of diplomat by the American Academy of Environmental  
10 Engineers, which is a higher level of accreditation  
11 with specialty in solid waste. And, currently, I'm  
12 working in ten states, throughout the United States  
13 today on landfills, transfer stations, remediation  
14 projects and planning.

15 Q. That covers it very nicely. But I  
16 guess I'd like you to also, off the top of your  
17 head, just list some of the landfills that you  
18 personally have consulted about in Illinois.

19 A. Woodland Landfill in South Elgin,  
20 Settler's Landfill in Geneva, Zion Landfill, CID  
21 Landfill, Mallard Lake Landfill, Settler's  
22 Hill Landfill. Let's go over to Ogle County, Davis  
23 Junction Landfill, Rochelle Landfill, Winnebago  
24 Landfill in Winnebago County, Lee County Landfill,

1 Land Comp Landfill in LaSalle County, Streator  
2 Landfill in Livingston County, Pontiac Landfill in  
3 Livingston County, Kankakee Landfill in Kankakee  
4 County.

5 Let's go down to southern  
6 Illinois. The Saline County Landfill, Metropolis  
7 Landfill, Herrin Landfill down in the southern  
8 portion of the state.

9 Q. I'm going to interrupt here. That's  
10 very impressive.

11 How many times, approximately,  
12 have you testified concerning environmental issues  
13 on landfills?

14 A. Dozens.

15 Q. Was your firm -- strike that.

16 Has your firm done any work  
17 concerning the Community Landfill in Morris  
18 Illinois?

19 A. Yes.

20 Q. And how did that come about?

21 A. We were contacted initially by Chuck  
22 Helston in 2003 to inquire about what our knowledge  
23 of the facility was, whether we had done any work on  
24 that facility. We had not been involved in that



1 within -- you know, fairly soon after they received  
2 that report, I think within a day or so, asking me  
3 to start investigating the allegations within that  
4 inspection report.

5 Q. That inspection report was the third  
6 quarter of 2003?

7 A. I think it was 2004.

8 Q. And what work did your company do to  
9 determine if there was some type of an imminent  
10 threat?

11 A. We did numerous things. First, we did  
12 visit the site, did a visual site inspection. That  
13 really only allows an engineer to evaluate the  
14 threat to the environment to a certain limited  
15 degree.

16 We also filed a Freedom of  
17 Information request and obtained the entire IEPA  
18 file on the site, which at the time consisted of  
19 over 35 lineal feet of submittals and records and  
20 files.

21 Q. Why did you do that?

22 A. I wanted to understand the design of  
23 the facility, I wanted to understand how the  
24 facility had been operating, I wanted to see how the

1 monitoring results of the facility had shown the  
2 performance of the facility. So it was important to  
3 understand the infrastructure, if you will, of the  
4 facility, not just the visual observations of the  
5 facility.

6 Q. And what else did you do, initially,  
7 after receiving the phone call from Mr. Helston and  
8 Mayor Kopczick?

9 A. Well, besides the site visit and  
10 inspecting the file, we made recommendations to the  
11 City on additional things that ought to be completed  
12 to really evaluate the question of whether this was  
13 posing a threat to the environment.

14 Q. And what were those additional things?

15 A. We recommended that the leachate  
16 collection system be evaluated, that the landfill  
17 gas system be evaluated and the groundwater  
18 monitoring system be evaluated.

19 Q. And did the City of Morris authorize  
20 you to make those evaluations?

21 A. Yes, they did.

22 Q. And were those evaluations done?

23 A. Yes, they were.

24 Q. And, ultimately, did you come to some

1 conclusion as to whether there was some imminent  
2 threat posed by the Community Landfill?

3 A. We did come to a conclusion. If we --  
4 we also recommended and were approved to begin some  
5 monitoring, groundwater monitoring, landfill gas  
6 monitoring and leachate monitoring at the facility.

7 What we found in those evaluations  
8 of the three systems is that all three of those  
9 systems were in disrepair, or in some cases, never  
10 constructed. And that those systems were vital to  
11 help measure those issues.

12 We also found from the groundwater  
13 monitoring system that there were measurable -- or  
14 no significant impacts to the groundwater that  
15 caused any immediate threat to the public health,  
16 safety and welfare. We also found that -- and I  
17 think this is -- I wish it was more scientific than  
18 this -- I didn't really notice any significant  
19 presence of landfill gas.

20 And you can pretty much tell --  
21 beyond the facility limits, you can pretty much tell  
22 that by odors.

23 Q. In other words, you didn't smell a  
24 significant amount of landfill gas; is that right?

1 A. Not beyond the facility limits.

2 Q. And, obviously, you have smelled  
3 landfill gas in your career; isn't that correct?

4 A. Yes.

5 Q. So you know what it smells like, you  
6 didn't see it there?

7 A. Yes.

8 MR. GRANT: I wonder if I could ask  
9 for a clarification of what time we're  
10 talking about?

11 MR. PORTER: Okay.

12 BY MR. PORTER:

13 Q. What time span did it take to complete  
14 this evaluation that you performed?

15 A. We had visited the sights, being  
16 either myself or staff working under my direction,  
17 numerous times. I want to say, probably, a dozen  
18 times between early 2005 and presently.

19 We had conducted gas monitoring in  
20 the atmosphere, we had conducted gas monitoring in  
21 the gas probes surrounding the facility and had  
22 received some minor hits at certain locations. But  
23 that doesn't necessarily mean that there's an  
24 immediate threat to the public health, safety and

1 welfare.

2                                 What I'd really like to understand  
3 is whether we're getting odors that leave the limits  
4 of the facility, putting a gas probe or PID meter  
5 three feet from the edge of the waste that had  
6 broken off a leachate head or a ravine that has, you  
7 know, exposed its refuse, isn't necessarily  
8 indicative of what people are exposed to.

9                 Q.         Understood.

10                                 And I think the question then was,  
11 when did this evaluation that's been done -- strike  
12 that.

13                                 Would you agree that all those  
14 evaluations and tests that have been performed are a  
15 necessary precursor to a closure, post-closure plan?

16                 A.         Well, on this particular facility, it  
17 does, yeah. And it was clear from my first  
18 inspection of the file and first inspection of the  
19 field that the actual field conditions didn't --  
20 were not congruent with what was originally  
21 permitted.

22                                 So that the closure plan -- well,  
23 at least partially that was in the application,  
24 which was approved, in some instances, didn't

1 represent on the ground real-world conditions of  
2 what existed out there at the time.

3 MR. GRANT: I'm going to object a  
4 little bit. Just on the basis that he's  
5 testifying in a narrative fashion.

6 Which is fine with me, as long as  
7 maybe you can be a little more specific. I  
8 don't know want to object to every little  
9 thing, but, for example, if he's talking  
10 about a permit application, I'm not sure  
11 which one it was.

12 THE HEARING OFFICER: I agree,  
13 Mr. Porter.

14 MR. PORTER: Okay.

15 BY MR. PORTER:

16 Q. All right. Which permit application  
17 or report are you referring to?

18 A. I'm referring to permits issued by the  
19 IEPA on August 4th, 2000, 2000155-LFM for Parcel A  
20 and 2000155-LFM, same date, for Parcel B.

21 Q. During your review of this mass amount  
22 of records, did you have the opportunity to review  
23 the cost estimates that had been filed with those  
24 applications?

1           A.       Yes.

2           Q.       And those cost estimates totaled,  
3 approximately, \$17.4 million dollars; is that right?

4           A.       Yes.

5           Q.       Did those cost estimates give you any  
6 concern?

7           A.       I didn't think they were reflective of  
8 the field conditions at the time. And I don't think  
9 that they represented -- I think they were a  
10 manifest of improper modeling, or probably better  
11 said, the incapability of the modeler, the person  
12 conducting the model, to actually get the model to  
13 meet the regulations, as opposed to what's actually  
14 best for that particular piece of ground.

15          Q.       Can you elaborate as to what you felt  
16 was improper or erroneous about the modeling?

17          A.       One of the examples is -- regulations  
18 require that the model demonstrate that there is no  
19 impact to the groundwater 100 feet from the edge of  
20 the waste 100 years after closure. Over a period of  
21 several years, the modeler, a man by the name of  
22 McDermott, had continuously submitted, received  
23 denials, submitted additional information, received  
24 denials from the IEPA, trying to get the model to

1 pass.

2                               When I looked at the model, I  
3 believe that the inputs in the modelings were  
4 completely wrong and inappropriate. And it appears  
5 to me that after several years of attempting to get  
6 the model to pass, that the modeler agreed to -- or  
7 suggested, I'm not sure how it came about, it's not  
8 clear in the record -- that instead of getting the  
9 model to pass, we will pump the groundwater within a  
10 hundred feet of the landfill for a hundred years.

11                              So we will pump the groundwater  
12 out, we will treat it for a hundred years, and,  
13 therefore, we will meet the regulation and, pretty  
14 much, skip the modeling altogether.

15               Q.       Do you believe that was a reasonable  
16 solution to one's ineffectiveness in performing  
17 modeling?

18               A.       It's a ridiculous approach.

19               Q.       And what was the result of that  
20 approach to the cost estimates?

21               A.       It was a significant impact, that  
22 alone was on the order of \$10 million.

23               Q.       And, specifically, what do you mean  
24 that alone was --

1           A.       Pumping and treating the groundwater.

2           Q.       And is there any necessity to pump and  
3 treat the groundwater at the site for that extended  
4 period of time?

5           A.       I don't think so, no.

6           Q.       Has your company, Shaw Environmental,  
7 had the opportunity to provide revised cost  
8 estimates?

9           A.       Yes.

10          Q.       I'd like to direct your attention to  
11 Morris Exhibits 1 and 2, which I believe are in  
12 front of you, and I will come up there and show you.

13                   MR. GRANT: I'm going to object at  
14 this point to introduction of these on the  
15 basis of relevance. I know we stipulated to  
16 their admissibility, but on the basis of  
17 relevance, I don't believe this testimony is  
18 relevant to this matter.

19                   This is a hearing to determine the  
20 remedy for or failure to supply financial  
21 assurance, and this is not the place where  
22 we're going to be deciding what future work  
23 needs to be done at the landfill. I believe  
24 an objection to that question was sustained

1 by the Hearing Officer when Mr. Russ Lawton  
2 was on the stand.

3 And I don't think we ought to go  
4 through, you know, a new closure plan or a  
5 new permitting plan. That's the province of  
6 Illinois EPA and really is outside the scope  
7 of this hearing.

8 THE HEARING OFFICER: Mr. Porter?

9 MR. PORTER: Well, I simply disagree.  
10 The Pollution Control Board has ordered that  
11 the parties discuss the appropriate remedy to  
12 be issued in this case, assuming that the  
13 City of Morris is responsible for posting  
14 financial assurance, that is what we are here  
15 to do, to determine what that remedy should  
16 be.

17 Our position is that a remedy  
18 should be -- if you're going to pose one on  
19 the City of Morris, that the most recent cost  
20 estimates be utilized. And, you know, the  
21 goal here is to protect the public health,  
22 safety and welfare, which is exactly what  
23 Mr. Moose and his plan proposes to do.

24 THE HEARING OFFICER: You know,

1 Mr. Grant, yesterday I gave great latitude to  
2 both sides regarding the testimony of the  
3 witnesses and also regarding the 42 age and  
4 33(c) factors. As I stated, I found it to be  
5 relevant in exploring these factors and it  
6 may assist the Board in doing so.

7 I found that much of the testimony  
8 regarding the remedy or penalty somewhat  
9 overlapped the liability portion. You know,  
10 the Board can so choose to disregard it, your  
11 objection is noted.

12 But, again, and I state, I gave  
13 great leeway to both parties yesterday and  
14 this morning. So objection is overruled.

15 Do you have something else to say,  
16 Mr. Grant?

17 MR. GRANT: No.

18 THE HEARING OFFICER: All right.

19 Thank you, sir.

20 THE WITNESS: Mr. Hearing Officer, can  
21 I -- I left my glasses over there?

22 THE HEARING OFFICER: Oh, certainly.

23 BY MR. PORTER:

24 Q. If you would, Mr. Moose, what is the

1 cost estimate for closure of Parcel A? Not  
2 post-closure, just closure of Parcel A.

3 A. Which documents are you referring to  
4 specifically? I want to make sure I'm not grabbing  
5 the wrong ones, because these do not have an exhibit  
6 number on them.

7 THE HEARING OFFICER: Just as an  
8 aside, Mr. Grant, you mentioned that I did  
9 sustain one -- your first witness. I think  
10 that was on the topic of settlement. And it  
11 was an offer of proof.

12 But, in any event, I know you're  
13 shaking your head, Ms. Tomas, but we can look  
14 on the record, and my ruling stands.

15 MR. GRANT: Okay.

16 THE HEARING OFFICER: Thank you.

17 MR. GRANT: Just for clarification, I  
18 have two documents that look to be identical,  
19 and I just wanted to --

20 MR. PORTER: Actually, I'm going to  
21 withdraw that question.

22 BY MR. PORTER:

23 Q. What was the cost estimate for closure  
24 of Parcels A and B combined?

1           A.       Ten million, sixty-one thousand  
2 dollars, six hundred nineteen.

3           Q.       And that's for closure and  
4 post-closure care; is that correct?

5           A.       Correct.

6           Q.       Now, you're aware that the original  
7 cost estimates done by Andrews Engineering was for  
8 \$17.4 million dollars; is that right?

9           A.       That's correct.

10          Q.       Why the difference?

11          A.       If I can refer to my notes, please?

12                   Parcel A on the Andrews' estimate,  
13 was for \$11,103,346. That included groundwater  
14 treatment, which equaled \$10,117,800.

15                   The cost did not include cost for  
16 repair and/or installation of leachate, gas  
17 collection and groundwater monitoring, which our  
18 investigations revealed were necessary on Parcel A.  
19 Parcel B, the Andrews' cost estimate, totaled  
20 \$1,927,680. That included, approximately, \$900,000  
21 for waste relocation, taking waste from an overfill  
22 area on the -- and relocating it to the other  
23 parcel.

24                   The cost did not account for

1 leachate gas and groundwater monitoring, repair and  
2 installation. And it also included pumping and  
3 treating ground -- I'm sorry -- leachate for a  
4 hundred years also. And that accounted for over a  
5 million dollars.

6 Q. And how did your cost estimates  
7 differ?

8 A. Well, our cost estimate took into  
9 account that the leachate collection, gas collection  
10 and groundwater monitoring systems were not  
11 sufficient at the given time, and we incorporated  
12 into our closure costs the necessary cost to go in  
13 and repair those facilities. It also included -- or  
14 did not include groundwater pumping and treating for  
15 a hundred years, and it also did not include  
16 leachate pumping and treating for a hundred years.  
17 And it also did not include relocation of waste.

18 Q. Why didn't it include relocation of  
19 waste?

20 A. Because I think that will cause  
21 potentially more environmental harm than it will  
22 potentially save. The portion of the landfill is  
23 overfilled.

24 I've got to keep referring to my

1 notes so I don't screw this up.

2                   The Section B -- Parcel B, which  
3 is located on the west side, is overfilled. And the  
4 plan was to relocate that to the Parcel A on the  
5 east side.

6                   The problem with that is the  
7 overfill as it exists -- because of the overfill,  
8 relocation would not reduce the footprint of the  
9 waste, it really provides no additional  
10 environmental protection at Parcel B by picking up  
11 that elevated waste and moving it over. Moreover,  
12 by picking it up and moving it over, although  
13 there's no specific plan, it's actually more likely  
14 that you're going to increase the waste footprint,  
15 or the boundary over on Parcel A as a result of that  
16 relocation.

17                   And Parcel A was the parcel that  
18 couldn't get them out of the past. So we would be  
19 taking waste from an area of the landfill of  
20 Parcel B that was overfilled in the model passed and  
21 placing it over into Parcel A, the east side, where  
22 the model failed.

23                   You know, at least, as an  
24 engineer, it's intuitively obvious to me that that's

1 not a good thing, that's not what we ought to be  
2 doing. And relocation of waste, in and of itself,  
3 is not always without risk.

4                   And especially in this particular  
5 case, where we're going to be taking the waste out  
6 into the public right of way, crossing it over the  
7 road, I just didn't think that was an appropriate  
8 course of action.

9           Q.       Did you notice any mistakes or errors  
10 concerning the characterization of the groundwater  
11 in the Andrews' cost estimates?

12           A.       Well, in the model I did.

13           Q.       And what were those  
14 mischaracterizations?

15           A.       Well, again, because we did look at  
16 the model and some of the inputs, I -- it became, at  
17 least in my opinion, that the modeler -- it was some  
18 kind of disconnection, either between the facts of  
19 the case or inexperience on the part of the modeler.  
20 Two instances -- the groundwater in the model,  
21 certain parameters, the groundwater modeler utilized  
22 a Class II groundwater.

23                    But, in fact, the groundwater in  
24 and around the site is a Class IV groundwater, which

1 created a higher standard for the modeler to pass  
2 than is necessary. Sticking just to the class of  
3 groundwater, this is an abandoned coal mine, strip  
4 mine area.

5                   The water is not potable, in and  
6 around the immediate vicinity of the landfill.  
7 There are no potable wells in the immediate vicinity  
8 of the landfill.

9                   The landfill -- or the area around  
10 there being strip mined for the last 40 years or  
11 more has been filled, and it's just an old  
12 industrial strip mine area. So the water is of very  
13 low, poor quality.

14                   We also looked at the Darcy  
15 velocity below the site.

16           Q.       What do you mean by that?

17           A.       The rate at which groundwater moves  
18 below the site.

19                   And within the model, the modeler  
20 selected or assumed a Darcy velocity that is off by  
21 a factor of 40,000 compared to what I measured at  
22 the site during our period of 2006. So I have -- I  
23 don't have much faith in the model.

24           Q.       With your revised cost estimates, did

1 Shaw Environmental draft a schedule of closure  
2 activities -- a closure plan?

3 A. Yes.

4 MR. PORTER: And if I may approach,  
5 Mr. Halloran?

6 THE HEARING OFFICER: Yes, you may,  
7 Mr. Porter.

8 BY MR. PORTER:

9 Q. Let me show you what was previously  
10 marked and admitted into evidence as Exhibit 10.

11 It's that the closure plan of Shaw  
12 Environmental?

13 A. It's the closure schedule, the  
14 schedule of closure activities.

15 Q. And attached to that document is a  
16 draft letter?

17 A. Yes.

18 Q. Was -- first of all, why don't you  
19 briefly describe for us what your proposed schedule  
20 is for closure activities?

21 A. It includes a series of investigations  
22 and repairs to existing facilities out there so that  
23 we can more accurately focus in and refine the  
24 precise amount of work that needs to be done. And

1 then, over a period of five to six years, take  
2 incremental steps to close out both Parcels A and B.

3 Q. And, if you would, what are those  
4 incremental steps?

5 A. Well, there are dozens and dozens  
6 here. But, generally, what we want to do is get the  
7 leachate collection system, gas collection system  
8 and groundwater monitoring system repaired and fully  
9 functional. We want to go out and perform what we  
10 call cover probes.

11 Portions of the facility have a  
12 significant amount of cover over the waste. Our  
13 cost estimate assumes that we're going to put cover  
14 over the entire landfill.

15 If our cover probes demonstrate  
16 that there is a portion of the landfill where there  
17 is sufficient cover of sufficient low permeability,  
18 those areas can be certified in place, we can save a  
19 significant amount of money and utilize the soils  
20 that are in place. That investigation will help us  
21 define the amount of soil that we need at the site.

22 The covering of the landfill is  
23 one of the largest cost items that we have in our  
24 cost estimate -- Shaw. And it is a little bit of a

1 fuzzy number, because we're assuming that all of the  
2 soil needs to be brought in when, in fact, that may  
3 not be the case.

4                   We're also assuming that the soil  
5 is going to arrive on the site for free. We don't  
6 have a source identified and established for cover  
7 of this facility yet. So that soil does not exist  
8 on-site.

9           Q.       Excuse me for interrupting. Has the  
10 City recently approved Shaw's request to do a cover  
11 assessment?

12           A.       The City has done two things. One,  
13 they've passed ordinances within the municipality  
14 that requires any development project within the  
15 City of Morris to bring excess fill and start  
16 stockpiling at the landfill.

17                   So they've been proactive trying  
18 to bring soil at various series of construction  
19 projects from the City to the site so that we can  
20 reduce our ultimate costs. The City has also  
21 approved Shaw to go out and perform the soil cover  
22 study where we have, I think, 48 or 46 -- no, I'm  
23 sorry that's wrong.

24                   I think it's literally hundreds of

1 different probe locations, to probe the cover,  
2 measure the permeability of that cover so that we  
3 can more accurately predict, not only the final  
4 contours, but the precise volume of soil that we're  
5 going to need to get.

6 Q. And then I interrupted you. You were  
7 continuing with the closure plan?

8 A. And then it's -- you know, it works  
9 its way down through hooking up the gas and repair  
10 of the storm water ditches. The big cost item is  
11 the cover at issue.

12 Q. Why six years?

13 A. A couple reasons. One is, I don't  
14 know where I'm going to get the soil from.

15 Soil for these types of projects,  
16 usually it comes in, and a facility is usually  
17 closed as the facility is developed. Landfill  
18 developers that are working on soil-poor sites --  
19 sites that don't have a lot of soils -- are  
20 constantly soliciting for soil and working out deals  
21 with contractors to bring soils to the site.

22 We haven't started that yet. I  
23 guess, arguably, we started it within the last  
24 couple of months or a year or so. But that process

1 of finding a large amount of soil needs to be  
2 embarked on, and I don't want to get myself on a  
3 schedule that we can't meet because of lack of soil,  
4 or alternatively, pay an extreme premium for soil at  
5 the cost of the taxpayers.

6                   There are also things that need to  
7 be done sequentially. It doesn't make any sense for  
8 us to start covering the facility until we've  
9 completed the soil cover study. It doesn't make any  
10 sense then for us to design a final cover of the  
11 system until we get the results from the cover study  
12 back.

13                   So there are certain things that  
14 need to be done in sequence in order to spend  
15 people's money efficiently. And then, there is also  
16 the construction season.

17                   We're not going to -- the ability  
18 to actually do stuff out in the field isn't 12  
19 months a year, 52 weeks a year. We are interrupted  
20 by winter and we are interrupted by months, like  
21 August, where very little earth work would have  
22 gotten done.

23           Q.       Thank you very much.

24                   Now, are you familiar with the

1 regulations concerning the -- to have financial  
2 assurance?

3 A. Yes.

4 Q. Briefly, if you would, describe what  
5 those regulations accomplish?

6 A. They require an engineer to develop  
7 premature closure, closure and post-closure care  
8 cost estimates. Those cost estimates are then  
9 reviewed by the IEPA, and ultimately a permit is  
10 issued. It also requires that the operator of the  
11 facility post financial assurance equal to those  
12 amounts in one of a given number of approved  
13 financial mechanisms before the facility is allowed  
14 to operate.

15 Q. Were your revised cost estimates  
16 submitted to the Illinois Environmental Protection  
17 Agency?

18 A. Yes.

19 Q. And to whom were they sent?

20 A. I think it was Christine Rokay.

21 Q. And has the EPA responded?

22 A. Not on that particular issue.

23 Q. Has the EPA given you an explanation  
24 as to why they did not respond before today?

1 A. I have not -- I'm not aware of that.

2 Q. If I may, I'd like to direct your  
3 attention to Sections 811716 and 811717. And  
4 notice, right in front of you, there is a white  
5 binder, Mr. Moose?

6 A. Okay.

7 THE HEARING OFFICER: Up on top of  
8 the --

9 BY MR. PORTER:

10 Q. And regulations are contained in  
11 Exhibit 1.

12 A. I have them in front of me, 715 and  
13 716.

14 Q. 716 and 717. 716 would be the  
15 financial test.

16 A. Okay.

17 Q. And 717 would be the local municipal  
18 guarantee.

19 A. All right.

20 Q. Is it your understanding that if a  
21 municipality meets the financial test, it can post a  
22 guarantee of a third-party operator? I'll withdraw  
23 it and ask again.

24 Is it your understanding that

1 under Section 717, if a municipality meets the  
2 financial test, it can guarantee that closure and  
3 post-closure care will be performed by the  
4 municipality or the municipality will pay a third  
5 party to so perform?

6 A. That's my understanding, yes.

7 Q. In your experience -- well, strike  
8 that.

9 You have had the opportunity to  
10 deal with the posting of financial assurance  
11 throughout years; is that correct?

12 A. Correct.

13 Q. Is there any cost -- hard financial  
14 cost to a municipality in merely posting its own  
15 guarantee?

16 A. No, I don't believe so.

17 Q. Therefore, assuming that -- strike  
18 that.

19 You would, therefore, agree that  
20 there is no cost savings in failing to provide your  
21 own municipal guarantee; is that correct?

22 A. The municipal guarantee demonstrates  
23 that the financial worth of the municipality is  
24 strong enough to guarantee the performance if

1 they're the operator, and they are liable for those  
2 costs. And so, since there is no cost, I don't see  
3 where there would be a cost savings.

4 Q. Are you aware that the City has been  
5 performing some leachate maintenance concerning the  
6 landfill?

7 A. Leachate treatment or leachate  
8 maintenance?

9 Q. Treatment.

10 A. Yes.

11 Q. And is that part and parcel -- well,  
12 strike that.

13 Do you know how long it's been  
14 going on?

15 A. For quite some time. I don't recall  
16 the precise number of years.

17 Q. Do you have -- well, strike that.

18 Do you believe that the City  
19 should be required to purchase some type of bond or  
20 insurance vehicle rather than using its funds toward  
21 closure, if ordered to do so?

22 A. No.

23 Q. Why?

24 A. I don't -- I think it's a waste of

1 money. If the -- especially if the municipality  
2 meets the 81117, if they meet the government's test,  
3 the self-guarantee test. Producing a bond does  
4 nothing but give money to some insurance company or  
5 some bonding agency and directs vital resources --  
6 directs vital public resources from this facility to  
7 some suit sitting down on LaSalle Street.

8 I don't think that's where we  
9 ought to be spending the money. The money needs to  
10 be spent on this piece of ground.

11 Q. Are you aware that the State has taken  
12 the position that this landfill needs to be closed  
13 now?

14 A. I am.

15 Q. Do you believe that would have an  
16 impact on what it would cost to even purchase a bond  
17 or insurance vehicle now?

18 A. Of course it would.

19 Q. How so?

20 A. If the insurance company or the  
21 bonding agency understood that the bond would be  
22 called or the insurance would be called upon to pay  
23 the cost immediately after issuance, of course it's  
24 going to affect the rate -- it's going to affect the

1 rate significantly.

2 Q. Have you ever even heard of such a  
3 situation where someone had to purchase, or try to  
4 purchase, a bond that was going to be called  
5 immediately?

6 A. Not that I'm aware of, no.

7 Q. Do you believe that that is a  
8 practical solution?

9 A. No.

10 Q. And again, why not?

11 A. We should -- we're spending -- if  
12 Morris is going to be spending money as opposed to  
13 the operator, we're spending public money. I work  
14 for a lot of units of government, and people are  
15 pretty stingy.

16 The truth of the matter is, all  
17 governments today have a lot of needs to spend  
18 money, public health and safety, police, fire,  
19 sewage treatment, water supply. There is precious  
20 little public money to squander on stuff.

21 And we all agree -- at least I  
22 certainly agree, that this landfill needs some  
23 attention. Morris does not have a bottomless pit of  
24 money, and we ought to -- if Morris is going to be

1 spending the money, spend it as wisely and as  
2 efficiently as possible to protect the public  
3 health, safety and welfare, as opposed to giving it  
4 to bankers and financiers down on LaSalle Street.

5 Q. The government has -- excuse me, the  
6 State of Illinois has suggested that the City of  
7 Morris should pay some type of penalty. Do you have  
8 an opinion as to whether or not that's reasonable?

9 A. I do.

10 MR. GRANT: I'm going to object.  
11 That's not really the subject for any  
12 testimony.

13 THE HEARING OFFICER: Yeah. I will  
14 sustain it.

15 BY MR. PORTER:

16 Q. You are aware that Community  
17 Landfill -- strike that.

18 I want to direct your attention,  
19 if I may, to Defendants' Exhibits 3A, B and C.

20 A. That's in this book here (indicating)?

21 Q. I'll bring it to you.

22 THE HEARING OFFICER: When you say  
23 Defendants' Exhibits 3A, B and C, that's  
24 Respondent Morris' Exhibits 3A, B, C?

1 MR. PORTER: Yes.

2 THE HEARING OFFICER: Thank you. Just  
3 to clarify.

4 BY MR. PORTER:

5 Q. Do you recognize those documents to be  
6 the transfer of the operating and developing permit  
7 for the Community Landfill from the City of Morris  
8 to CLC?

9 A. Yes.

10 Q. And that transfer of both the  
11 operating and development permit was accomplished in  
12 1982; is that right?

13 A. That's when it was granted by Tom  
14 Cavanaugh, manager of the land permit section.

15 Q. Of the Illinois Environmental  
16 Protection?

17 A. Correct.

18 Q. Do you have an opinion as to whether  
19 or not it was reasonable in light of  
20 that transfer -- strike that.

21 Were you aware that there's also a  
22 lease on the real property at issue in this case?

23 A. Yes.

24 Q. And that also occurred in 1982?

1           A.       I have to refer to the lease. I don't  
2 recall the date.

3           Q.       That would be, by the way, Morris  
4 Exhibit 7. And I can bring you a copy, if it will  
5 help.

6           A.       I have a copy. It's July 1st, 1982.

7           Q.       Do you have an opinion as to whether  
8 or not it was reasonable, up until the motion to  
9 reconsider was denied by the Pollution Control  
10 Board, for the City of Morris to take the position  
11 that it was not responsible for posting financial  
12 assurance?

13          A.       Yes.

14          Q.       Why?

15          A.       The lease agreement specifically  
16 requires the operator, or in this case CLC, to --  
17 for that obligation. And there's a contract between  
18 the two parties that specifically requires that bond  
19 to be purchased by CLC.

20                   Including all closure and  
21 post-closure responsibility for the site shall be  
22 the response -- are also the lessee's  
23 responsibility. Those are all laid out in the lease  
24 agreement.

1                   The City is not experienced at  
2 operating. They never operated the landfill in the  
3 last 20 years or so.

4                   They don't have any licensed  
5 landfill operators, to my knowledge, on their  
6 payroll. And I just don't -- I think they've leased  
7 that out, decided to, if you will, get out of the  
8 landfill business by leasing the operations out.

9           Q.       Mr. Moose, is there anything that you  
10 would like to add regarding the State's claim that  
11 \$17.4 million worth of financial assurances should  
12 now be posted, plus penalties and attorneys fees,  
13 against the City of Morris?

14                   MR. GRANT: I object. I mean, he's  
15 just asking for him to be able to say  
16 whatever he wants. If he has questions, he  
17 can ask them. But he's asking him do you  
18 have anything that you want, just invites him  
19 to make a speech.

20                   THE HEARING OFFICER: Mr. Porter?

21                   MR. PORTER: He's an expert witness in  
22 his field, and I am, admittedly, asking him  
23 if there is any area that he believes I  
24 should have covered that has not been

1 covered.

2 THE HEARING OFFICER: Well, I've  
3 already sustained the State's objection to  
4 his opinion about the penalties, and I don't  
5 think attorney fees are in his field either.  
6 So that just leaves maybe just one question,  
7 and that is, do you have any opinions --

8 BY MR. PORTER:

9 Q. Is there anything else that you would  
10 like to add concerning the State's assertion that  
11 \$17.4 million in financial assurances should now be  
12 posted by the City of Morris?

13 MR. GRANT: I object again. This is  
14 not -- this is just giving him the  
15 opportunity to talk on and on, and --

16 THE HEARING OFFICER: Well, let's see.

17 MR. GRANT: -- we've pretty much  
18 covered the subject, I think.

19 THE HEARING OFFICER: Overruled.

20 Mr. Moose?

21 BY THE WITNESS:

22 A. I don't see any substantiation for the  
23 \$17.4 million, other than the closure cost estimate  
24 that was put in the application. If the work is

1   executed the way it's permitted to, in accordance  
2   with the 17.4, I don't think it's protective of the  
3   public health, safety and welfare. I don't think  
4   that's where we ought to be spending the money.

5   BY MR. PORTER:

6           Q.       And you don't believe it's protective  
7   because it doesn't even include any monitoring of  
8   what?

9           A.       It doesn't include repair to the  
10   leachate collection system for one. It doesn't  
11   include repair and installation of the gas  
12   collection system, which is flooded. Over 50  
13   percent of it is not functioning.

14                    It also takes money and spends it  
15   where it ought not to be spent. There's no reason  
16   to pump Class IV ground water from an abandoned  
17   strip mine and send it to a sewage treatment plant.  
18   I don't think that's what we ought to be doing with  
19   anybody's money.

20                    And it also doesn't -- it also  
21   doesn't, you know, really address the problems that  
22   are really out there as they exist today. And if  
23   you look at the amount of money compared to other  
24   closures that I'm familiar with, if you look at the

1 amount of money compared to what the State spends to  
2 close landfills within its program, it's very high  
3 on a per acre basis.

4                   So the amount of money, just  
5 compared empirically to other facilities, is twice  
6 what it ought to be. And the way it's dictated in  
7 the closure plan, is not the best for this  
8 particular piece of ground.

9           Q.       Do you agree that it's reasonable for  
10 the City of Morris to have not agreed to guarantee  
11 or post financial assurance of a cost estimate that  
12 doesn't protect the health, safety and welfare --

13                   MR. GRANT: I --

14 BY MR. PORTER:

15           Q.       -- and includes costs that are  
16 incurred unnecessarily?

17                   MR. GRANT: I object to his testimony,  
18 he is an opinion witness. He can't testify  
19 as to what the City of Morris did.

20                   I mean, he's not an employee to  
21 the City of Morris, he's not a representative  
22 of the City of Morris, he's a paid consultant  
23 to City of Morris. I don't think he can  
24 answer that question.

1 THE HEARING OFFICER: Mr. Porter?

2 MR. PORTER: I'm asking for his expert  
3 opinion.

4 THE HEARING OFFICER: I'm not going to  
5 fight on that. If you want to ask it within  
6 an offer of proof, that's fine.

7 MR. PORTER: Can you read it back as  
8 an offer of proof, please?

9 (WHEREUPON, the record was  
10 read by the reporter.)

11 BY THE WITNESS:

12 A. Sure. These are elected officials  
13 that take their own oath of office. They have a  
14 responsibility to the elected people.

15 They live in this community.  
16 They're the ones that are actually living here and  
17 responsible.

18 If they received advice from  
19 technical experts, including myself, that says, I  
20 don't think you ought to be spending the money this  
21 way and here's why, and we're able to articulate we  
22 shouldn't be digging up an overfill and sticking  
23 it -- and driving it across the street and sticking  
24 it in another area that's failing, I think -- you

1 know, that's pretty self-explanatory. We have  
2 limited public funds and we ought to spend them to  
3 do good things.

4 MR. PORTER: That's it for the offer  
5 of proof.

6 THE HEARING OFFICER: Thank you.

7 BY MR. PORTER:

8 Q. Have you advised the City of Morris  
9 that they should not be spending their money as  
10 identified in the cost estimates that are being  
11 advocated by the State of Illinois?

12 A. No, I didn't. The City spends their  
13 money through their typical approval process.

14 What I advised the City is that we  
15 should not conduct the work plan that's permitted  
16 out there for closure, Because it doesn't address  
17 the actual field conditions out there today, and  
18 it's not the best course of action for that  
19 particular piece of ground.

20 Q. We touched earlier briefly upon what  
21 the cost of a bond or insurance vehicle would be  
22 now. Do you have an opinion as to how much  
23 collateral would have to be designated by the City  
24 of Morris to get a \$17 million bond that's going to

1 be called up immediately?

2 A. As part of the process, the engineer  
3 has to produce a cost estimate. A cost estimate has  
4 to be done with full disclosure.

5 You have to disclose everything to  
6 the company or to the bank or whomever -- whatever  
7 institution you're dealing with. I have not been in  
8 this situation, but I can't imagine anybody not  
9 requiring full collateralization of the bond if it's  
10 going to get called immediately.

11 MR. PORTER: I'm sorry. Could you  
12 read that back? Just the last sentence.

13 (WHEREUPON, the record was  
14 read by the reporter.)

15 BY MR. PORTER:

16 Q. So it's your opinion that the bonding  
17 company would require full collateralization. In  
18 other words, we have a \$17 and a half million  
19 figure, they're going to require it to collateralize  
20 \$17 and a half million?

21 A. If it's going to get called  
22 immediately.

23 Q. I have nothing --

24 A. It's a risk-based business.

1 MR. PORTER: Nothing further. Thank  
2 you.

3 THE HEARING OFFICER: Mr. Grant or  
4 Ms. Tomas?

5 MR. PORTER: Can I suggest maybe a  
6 minute break, just to get some water before  
7 we start? Or do you want to keep going?

8 THE HEARING OFFICER: By all means,  
9 take a break. We're off the record.

10 (WHEREUPON, a recess was had.)

11 THE HEARING OFFICER: All right. We  
12 are back on the record.

13 Mr. Grant, cross?

14 CROSS-EXAMINATION

15 BY MR. GRANT:

16 Q. Mr. Moose, we've been through a couple  
17 depositions together, one, I think, this year, in  
18 January or February, and one last July. But the one  
19 last July was the one we took in this case.

20 But, I guess, my question to start  
21 off with is, you have had these figures, which were  
22 recently submitted to Illinois EPA for more than a  
23 year?

24 A. Yes.

1           Q.       I mean, the \$10 million closure  
2 figure, for example, which you testified to really  
3 in some detail at your deposition. Obviously, those  
4 numbers were available at the time?

5           A.       At what time is this?

6           Q.       At -- last summer when we had the  
7 deposition in this case.

8           A.       Yes.

9           Q.       Why didn't you submit those to  
10 Illinois EPA as a revised cost estimate at that  
11 time?

12          A.       We were working in concert with the  
13 counsel, and based on their recommendation, we  
14 revised the existing permitted cost estimates in  
15 lieu of submitting a different closure plan.

16          Q.       Did you submit a closure plan -- a  
17 revised closure plan -- let's see -- with this --  
18 July is when you submitted the revised cost  
19 estimate; is that correct?

20          A.       I believe so.

21          Q.       Did you submit a revised closure plan  
22 with that?

23          A.       Just the cost estimates and a summary  
24 of the closure plan. But we did present the closure

1 plan to the EPA in a meeting in Morris, probably a  
2 year before that, maybe -- you know, some -- quite a  
3 few months before that.

4 Q. Well, that was just Mr. Bill Chadde  
5 (phonetic), wasn't it, from EPA?

6 A. Yes.

7 Q. And I think he's -- I'm not even sure,  
8 but I know he's very senior in the Bureau of Land,  
9 but he's not in the permit section?

10 A. You know, they work for him.

11 Q. Did you give him a written closure  
12 plan at that time?

13 A. We gave him the same plan that, I  
14 believe, is the subject of your questions.

15 Q. Now, what I'm trying to get at is -- I  
16 mean, permit applications are pretty extensive  
17 documents?

18 A. Yes.

19 Q. Have you provided Illinois EPA with  
20 the form of revised closure plan for approval that  
21 you would, for example, for a new landfill?

22 A. No.

23 Q. And why wouldn't you -- would it be  
24 more extensive, less extensive?

1           A.       It would be different.

2           Q.       How --

3           A.       I think the scope of work that we  
4 would recommend is the same. It would be formatted  
5 different to try and approach -- or try and address  
6 each specific section of the regulations.

7                        You know, up until June of '06,  
8 the City didn't believe it was liable for closures,  
9 so I don't think they were willing to even pay us to  
10 do that. We're really interested in working with  
11 the City.

12                       The City was really interested in  
13 us focusing on things that we can assess whether  
14 there was a threat to the public health, safety and  
15 welfare.

16           Q.       So, you know, has the City supplied a  
17 sufficiently detailed revised closure plan to  
18 Illinois EPA?

19           A.       We've supplied two. We supplied one,  
20 we received comments back, we resubmitted that and  
21 we've recently submitted another one, which we have  
22 not received comments on.

23           Q.       I think -- were you involved in the  
24 permit renewal for the SigMod that I think was done

1 in 2005?

2 A. Yes.

3 Q. Was that Shaw's responsibility?

4 A. Some of it, yes.

5 Q. Which portions did Shaw --

6 A. I don't know what all was submitted.

7 Q. At what --

8 A. The ones that are on Shaw letterhead

9 are the ones that were responded to.

10 Q. Okay. Well, the reason --

11 A. I don't know what else was submitted.

12 Q. But who else was involved besides Shaw

13 in submitting that permit application, what other

14 engineer?

15 A. Well, why don't you -- I don't know

16 what you're talking about.

17 Q. Well, I don't really --

18 A. Are you talking about the file

19 generally or are you talking about something

20 specifically that was done by Shaw?

21 Q. The 2005 renewal application for the

22 SigMod permits, did Shaw participate in that?

23 A. Shaw did permit SigMod applications, I

24 don't know if other stuff was submitted to the

1 agency that you're referring to, we had nothing to  
2 do with it.

3 Q. Are you aware of any other engineering  
4 firm, whether Andrews or Mr. McDermott or anybody  
5 else, who contributed to that 2005 permit renewal  
6 application?

7 A. I guess you need to be more specific  
8 about what application.

9 Q. Well, I was -- this -- my information  
10 was really that I was told that there had to be  
11 renewal application in 2005, and that was submitted  
12 in -- and, in fact, what you submitted to Illinois  
13 EPA on July, whatever -- July of this year, was not  
14 a new permit application, it was an addendum to a  
15 renewal application.

16 A. We did submit something this summer  
17 that was an addendum to a renewal, yes.

18 MR. PORTER: Mr. Grant, may I approach  
19 the witness and allow him to have this file  
20 regarding the rule applications?

21 MR. GRANT: Sure.

22 BY MR. GRANT:

23 Q. That's the only question I have about  
24 that, so you don't have to look it up.

1           A.       Okay. My point was, we did this work  
2 product, but I don't know if there was other stuff  
3 that you were referring to.

4           Q.       I think that -- well, one of the  
5 things I think that's --

6           A.       If it has Shaw's name on it, I did it,  
7 it was under my responsibility and control.

8           Q.       And you're not aware of any other  
9 engineering firm being involved in that?

10          A.       Not if it had Shaw's name. Something  
11 else was submitted to the agency, I'm not aware --

12          Q.       I understand.

13                    Now, as far as submission of the  
14 revised cost estimate that you submitted in July,  
15 have you submitted -- I mean, do the regulations  
16 require cost estimates for landfills, don't they,  
17 for closure, post-closure?

18          A.       It was biannual.

19          Q.       Biannual? Okay.

20                    Have you prepared those yourself?

21          A.       They were done under my direction and  
22 control, people within my office.

23          Q.       Is a document that you submitted to  
24 Illinois EPA in July, does it, essentially, meet the

1 standards of the revised cost estimate, in your  
2 opinion?

3 A. I haven't heard back from the agency  
4 yet.

5 Q. I'm thinking as far as testing data  
6 that you might have to provide or something like  
7 that.

8 A. Testing data that we had to --

9 Q. If you had to supply test data or --  
10 in other words, it wasn't --

11 A. The cost estimate doesn't require test  
12 data.

13 Q. Does the cost estimate require  
14 verification of the third-party costs?

15 A. Yes.

16 Q. Did you submit this application based  
17 on third-party cost estimates?

18 A. Yes.

19 Q. Are you aware that the cost estimate  
20 that you supplied in July of this year is the first  
21 one -- the first revised cost estimate that's been  
22 provided since the SigMod was granted?

23 A. I don't think that's accurate.

24 Q. What -- the SigMod I'm talking about

1 is the one that was -- that was issued in 2000?

2 A. Correct.

3 Q. Are you saying that a revised cost  
4 estimate was submitted by some party between then  
5 and the time that you submitted this one in July?

6 A. Yes.

7 Q. Well, can you tell me what -- when  
8 that was?

9 A. I believe Shaw submitted a previous  
10 cost estimate prior to July.

11 Q. Do you know when that was?

12 A. August of 2005. And it was --  
13 received comments on it from the IEPA, and we  
14 resubmit filed it in November of 2005.

15 Q. Was that a request to change -- in  
16 other words, was it a request to modify the closure,  
17 post-closure costs?

18 A. Yes.

19 Q. And it was substantially different  
20 from the one that you provided in July of this year?

21 A. What do you mean by "substantially"?

22 Q. The costs. You know, ten percent or  
23 more different?

24 A. Yes, it was different.

1 Q. Was the 2005 submittal a higher  
2 estimate or a lower estimate?

3 A. The November 2005 estimate utilized,  
4 approximately, the same work plan that was approved  
5 in the 2000 SigMod, and, essentially, just updated  
6 the costs, the unit costs, based on what we believe  
7 are more accurate numbers. It had a closure cost  
8 for Parcel A of approximately \$5.7 million, and for  
9 Parcel B approximately \$9.4 million, for a total of  
10 about 15.1 or \$15.2 million.

11 Q. Did that include post-closure care, as  
12 well?

13 A. Yes. Including waste relocation, a  
14 hundred years of groundwater pumping.

15 Q. Let's talk about the leachate.

16 A. And it's just -- I think that's just  
17 still pending with the agency.

18 Q. And as far as permit applications or  
19 requests for approval of estimates, it's common with  
20 Illinois EPA permit applications to go back and  
21 forth a few times before they're finally granted;  
22 isn't it?

23 A. Yes.

24 Q. I mean, are you troubled at all by the

1 fact that Illinois EPA hasn't given you a final  
2 answer on your July submittal? Is that unusual?

3 A. You're asking me if I'm troubled that  
4 I haven't heard from the agency today?

5 Q. No. Let me modify the question --

6 A. No, I'm kidding.

7 Q. It's too much from me and not a lot  
8 from them.

9 A. You know, this is a unique case. I  
10 think it's a challenge for all people involved in  
11 it.

12 People at the agency are very  
13 professional and very thorough and do work in many  
14 states. They're a pleasure to work with, they are  
15 burdened.

16 And not only are they burdened by  
17 just the amount of work and time to do it, I think  
18 this case, in particular, has got us all going down  
19 a little bit of a new path. So I'm not burdened by  
20 it.

21 Q. You don't see -- for example, the fact  
22 that you haven't gotten a final answer yet to be  
23 unusual or out of the ordinary for these types of  
24 permits submissions; is that accurate?

1           A.       That's accurate.

2           Q.       Have you seen the recent inspection  
3 reports? I know that you mentioned that you've seen  
4 the 2004 inspection reports, but have you seen the  
5 recent inspection reports?

6           A.       I have them in my possession. I have  
7 to be honest with you, the most recent one I believe  
8 was at the end of August.

9                         And the copy of the one that I  
10 have is not the best copy, but I have deciphered as  
11 much of it as I can, given the quality of the copy  
12 that I have.

13                         THE HEARING OFFICER: I think it's  
14 also in the State's exhibit. Was it  
15 Exhibit 8 -- 7 or 8?

16                         MR. GRANT: I'm not going to use them  
17 extensively. But, yeah --

18 BY THE WITNESS:

19           A.       I think I have a fax of a fax kind of  
20 thing.

21 BY MR. GRANT:

22           Q.       And I'm not going to take you through  
23 the inspection reports. But perhaps --

24           A.       Yeah.

1 Q. -- I will ask if you agree with it,  
2 that they demonstrate that the landfill needs to  
3 have some work done on it?

4 A. Oh, I agree.

5 Q. You, several times -- and this was in  
6 response to Mr. Porter's questions -- you stated  
7 that this was or was not an imminent and substantial  
8 endangerment or an imminent threat to the  
9 environment, or that sort of thing. You understand  
10 that this case is about violation of the  
11 regulations; don't you?

12 A. I understand.

13 Q. And you understand that -- as an  
14 engineer, we've discussed this in depositions, I  
15 know -- you know, I have a lot of confidence in your  
16 ability -- whatever else you do, it's never  
17 permissible to violate the regulations of the Act;  
18 is that correct?

19 MR. PORTER: Objection.

20 THE HEARING OFFICER: Sustained.

21 BY MR. GRANT:

22 Q. If something does not pose an imminent  
23 endangerment to the environment but is a violation  
24 of the regulations, is it acceptable for a landfill

1 to do that?

2 MR. PORTER: Same objection.

3 Acceptable to whom?

4 BY MR. GRANT:

5 Q. We've had --

6 MR. PORTER: My objection is, is it  
7 acceptable to whom? And I believe the  
8 unspoken word is acceptable under law, which  
9 clearly calls for a legal conclusion.

10 THE HEARING OFFICER: Well, there's  
11 been a lot of legal conclusion earlier. So  
12 Mr. Moose can answer if he can.

13 Overruled.

14 BY THE WITNESS:

15 A. Can you restate the question?

16 BY MR. GRANT:

17 Q. I'll try, although, I'm sure it won't  
18 be the same question.

19 THE HEARING OFFICER: I just want the  
20 parties to know I have full faith and  
21 confidence in the Board that they can  
22 interpret the writings in the Act. So  
23 proceed, Mr. Grant.

24 MR. GRANT: Thank you.

1 BY MR. GRANT:

2 Q. In your business you consult landfills  
3 on landfill issues, and you said you design  
4 landfills. You obviously work with owners and  
5 operators of landfills.

6 You've also prepared landfill  
7 siting hearings, you participated extensively in all  
8 those sorts of things. So based on your experience  
9 with landfills and deciding what needs to be done,  
10 what can be done and what is acceptable and what is  
11 not acceptable, is it acceptable to violate one of  
12 the Bureau of Land regulations, even if it doesn't  
13 cause an imminent threat environment?

14 MR. PORTER: Again, acceptable to  
15 whom? Calls for conjecture.

16 BY MR. GRANT:

17 Q. In your opinion --

18 MR. GRANT: He is an opinion witness  
19 who testified broadly about everything,  
20 including, you know, policies of Illinois  
21 EPA.

22 THE HEARING OFFICER: Mr. Porter, go  
23 ahead.

24 MR. PORTER: My point is you're --

1           acceptable to whom? I mean, he -- clearly  
2           you're asking him to give conjecture about  
3           some unknown individual.

4 BY MR. GRANT:

5           Q.       Is it acceptable to you, Mr. Moose?

6           A.       I think there are numerous occasions  
7           where the regulations don't squarely fit with the  
8           situation at hand. And I have participated in other  
9           projects where consent decrees have been negotiated  
10          to put the public health, safety and welfare, in  
11          practicality of the solution, above a particular  
12          code within a regulation.

13                        So we always try to design and  
14          operate a facility to be in complete compliance with  
15          the regulations. This facility, to some degree, in  
16          my opinion, has legally fallen into the category  
17          almost of an abandoned landfill, in my opinion.

18                        And if you were to look at the  
19          closure of the 33 landfills that the State conducted  
20          themselves, I don't think you'll find every  
21          particular landfill regulation was adhered to in the  
22          closure of those 33 landfills. I don't think this  
23          is much different.

24                        We have a situation here that

1 needs to be cleaned up, and that's what we -- you  
2 know, that's how I approached the problem. And  
3 that's what I was asked to do by the City.

4 Q. Sure. And I appreciate your answer.

5 In reviewing your permit  
6 applications, including the application that you  
7 just submitted to Illinois EPA, the burden is on the  
8 applicant to prove that the granting of the permit  
9 is not going to cause a violation of the  
10 Environmental Protection Act or the regulations.  
11 That's true, isn't it?

12 A. Yes.

13 Q. So that's the standard that Illinois  
14 EPA will use in evaluating --

15 A. Yes.

16 Q. -- your application?

17 I'm not going to go into too much  
18 detail. Obviously, you said work needs to be done  
19 on the landfill.

20 We have another case -- and I  
21 don't want to mix the cases up, but we have another  
22 case coming to trial in October, the end of October  
23 of this year, regarding the landfill gas situation.  
24 I believe you testified that 50 percent of the wells

1 don't work or things to those -- and you have been  
2 providing reports, which Mr. Porter has passed on to  
3 me.

4                   But one of the things I wanted to  
5 ask you about was about the methane content in the  
6 gas probes. That's a serious -- potentially serious  
7 problem; isn't it?

8           A.       It can be, depending on the frequency,  
9 the concentration, the location of the probes  
10 relative to a sensitive receptor, as well as the  
11 location of the probes and the geology groundwater  
12 surrounding it. So you can't just look at a data  
13 point, look at concentration and say we have a  
14 serious problem.

15                   You may have regulatory opinions,  
16 but you don't necessarily pose a threat to the  
17 public health, safety and welfare.

18           Q.       And it also depends on the site of the  
19 landfill, if it's adjacent to residences or  
20 businesses?

21           A.       That's part of the -- that's part of  
22 what, I guess, I was referring to.

23           Q.       All right. And you know and I know  
24 that you represented a company adjacent to the

1 Congress Landfill in Hillside, Illinois?

2 A. Yes.

3 Q. And subsurface migration of gas from  
4 that landfill was causing a threat to --

5 MR. GRANT: Objection. Irrelevant.

6 This is -- now you've gotten off the present  
7 landfill, and we're talking about a whole  
8 other landfill.

9 THE HEARING OFFICER: Mr. Grant, have  
10 you got any response before I sustain  
11 Mr. Porter's --

12 MR. GRANT: No. I'll move on.

13 THE HEARING OFFICER: Okay. Thank  
14 you.

15 BY MR. GRANT:

16 Q. I have a recent report that I don't --  
17 that we haven't used as an exhibit or anything like  
18 that -- but let me take a quick look. Okay.

19 Has Shaw done testing that shows  
20 that you have had exceedances of approximately 300  
21 percent on methane LEL and gas probes recently, or  
22 probe? If you have the document I'm looking at, the  
23 August 23rd, 2007 letter to Mayor Kopczick.

24 MR GRANT: While he's looking,

1 Mr. Halloran, do you want to continue through  
2 312 or --

3 THE HEARING OFFICER: We can go off  
4 the record for a minute.

5 (WHEREUPON, a recess was had.)

6 THE HEARING OFFICER: Back on the  
7 record.

8 BY THE WITNESS:

9 A. I'm sorry, the date of that?

10 BY MR. GRANT:

11 Q. It was August 23rd, 2007. If you  
12 like, I can refresh your recollection with a copy  
13 that I have.

14 A. I believe I have it.

15 I've got it.

16 Q. Do you see the reference to, I think,  
17 it's Probe 118, with a lower exposure limit of  
18 300 percent?

19 A. Yes.

20 Q. What remedial action did the City take  
21 in response to that?

22 A. Well, it's fairly recent. We are  
23 watching the gas probe information closely.

24 I plot the gas probe information

1 as we get it on a regular basis and look for trends  
2 in a particular probe or probes over time. They're  
3 plotted on a graph, such as this, so that I can  
4 monitor what I believe is a good device to see if  
5 there's a threat or a trend. I do not see any  
6 threat or trend from this particular one at this  
7 time.

8                               We also look at the aerial extent,  
9 where this probe is located and what potential  
10 mitigating factors there might be to prevent that  
11 probe from moving on -- that gas from moving out,  
12 such as a storm water conveyance device, like a  
13 ditch or something that may interrupt the flow of  
14 gas.

15                              On this particular one, we're  
16 watching it closely at this time. It has not over  
17 time had that kind of level, and we just haven't  
18 been out there -- or I haven't seen the results  
19 since August.

20                              So we went out there in September,  
21 but I just haven't -- or if we haven't, we will.

22                              THE HEARING OFFICER: I'm sorry,  
23                              Mr. Grant, was that the exhibit that  
24                              Mr. Moose was referring to?



1 amount of money with Shaw to monitor the health of  
2 the landfill, if you will, to see and take  
3 deliberate, precise steps, as we recommended to  
4 them, to kind of make sure this thing isn't creeping  
5 beyond its facility limits.

6 Q. Sorry. Just to clarify, is the City  
7 taking the position that they're not going to do any  
8 work themselves or they're not going to hire any  
9 contractors themselves to go out, but rather fund  
10 operations by Community Landfill Company?

11 MR. PORTER: Objection. Conjecture.

12 And, furthermore, Mr. Moose is not an  
13 employee or direct agent of the City.

14 BY MR. GRANT:

15 Q. Let me ask you to clarify your  
16 response to my question.

17 I believe that you stated that the  
18 City is not the operator of the facility, and you  
19 eluded to the fact that they, therefore, don't have  
20 any access; is that correct?

21 A. I didn't mean that they didn't have  
22 access. What I meant is they're not a licensed  
23 operator, they can't go out there and run around  
24 with equipment, as I understand it.

1                   They can probably go into closure,  
2 but I think -- you know, I think that's who pays  
3 what, where and how that occurs as part of the  
4 results of these proceedings.

5           Q.       And Community Landfill Company hasn't  
6 denied them access to fix problems; have they?

7           A.       I don't know.

8           Q.       So let's talk about actual work  
9 performed by the City in the year 2007. Has the  
10 City itself, whether through their employees or  
11 through contractors they hire at your direction or  
12 at somebody else's direction, gone on to the  
13 landfill to repair anything?

14          A.       I believe that they've funded repair  
15 activities that were conducted by CLC.

16          Q.       So the answer to my question, which  
17 was related to the City itself doing it, it would be  
18 no; is that true?

19          A.       Well --

20          Q.       I'm not talking about funding.

21          A.       You mean City employees, and, you  
22 know --

23          Q.       City employees --

24                   MR. PORTER: I object. Mr. Grant is

1 talking over the witness.

2 MR. GRANT: Okay. I apologize.

3 THE HEARING OFFICER: Yeah, let's be a  
4 little more --

5 BY THE WITNESS:

6 A. Do you mean sending public works  
7 employees out, kind of thing?

8 BY MR. GRANT:

9 Q. Okay. Listen closely, because I'm not  
10 talking about paying for CLC to do things. Start  
11 with the City itself.

12 Either through its employees or  
13 through Shaw's contractors or contractors that they  
14 hire, is the City itself gone onto the landfill and  
15 repaired anything during year 2007?

16 A. I can't be sure on the date, but,  
17 certainly, we've done some monitoring, repair.  
18 We're monitoring the gas, we're keeping an eye on  
19 the groundwater, leachate treatment obviously is  
20 occurring.

21 I believe that the City is funding  
22 repair activities to CLC to do on a limited basis.  
23 But we, Shaw, I do not have any knowledge where the  
24 City has authorized us to hire a contractor to go



1 the direction of the operator, is my understanding.

2 Q. And was signed by the City of Morris?

3 A. As an owner.

4 Q. So you're saying they didn't submit  
5 it?

6 A. I'm saying all they did was sign the  
7 application as an owner.

8 Q. The legal effect of that is the City  
9 and CLL were applying for the permit; wasn't it?

10 MR. PORTER: Objection. Not only  
11 calling for the opinion, you're asking him to  
12 be the judge now.

13 THE HEARING OFFICER: Mr. Grant, we  
14 are kind of going askew. I would agree with  
15 Mr. Porter.

16 BY MR. GRANT:

17 Q. Have you determined the cost of  
18 treating leachate from the landfill?

19 A. I have investigated it, yes.

20 Q. And have you come up with a number for  
21 how much it costs -- it will cost the City to treat  
22 leachate?

23 A. Yes.

24 Q. And is there a way of -- I mean, when

1 you -- you know, currently the process calls for  
2 100 years of leachate treatment.

3                   Have you calculated the cost of  
4 leachate treatment for an extended period of time?

5           A.       Yes.

6           Q.       Is that 30 years?

7           A.       Well, it depends on which application  
8 you're looking at. If you're looking at the  
9 applications that were done in '05, we've done it  
10 for 30 years plus or 100 years for leachate  
11 treatment and 100 years for groundwater treatment,  
12 in accordance with the currently approved closure  
13 plan.

14          Q.       Do you understand the purpose of  
15 financial assurance?

16          A.       I do.

17          Q.       And it's provided -- I mean, it's  
18 provided to the State?

19          A.       Correct.

20          Q.       And how would you describe the purpose  
21 of financial assurance?

22          A.       I think the purpose of financial  
23 assurance, especially on newer facilities, is to  
24 provide the State a means to go in and effectively,

1 responsibly close the facility, in premature  
2 closure, that an operator would walk away --  
3 literally walk away from a site at the least  
4 opportune time. At closure, it would be when the  
5 facility has achieved it's, you know, virtually  
6 everything but capping and closure.

7                                   And post-closure is to take care  
8 of the facility after closure has been completed.

9           Q.       Do you consider it to be a requirement  
10 of conducting a waste disposal operation -- in other  
11 words, if you -- today, if you were -- I'll  
12 withdraw that question.

13                                   Today, if you were going to -- if  
14 you wanted to open up a landfill and you wanted to  
15 be in the waste disposal business, one of the  
16 conditions is you have to post financial assurance;  
17 is that correct?

18           A.       Yeah, you can do a corporate guarantee  
19 or a municipal guarantee. There's five or six  
20 different mechanisms that you're allowed to use.

21                                   Large companies are allowed to use  
22 their corporate bigness, if you will. And  
23 municipalities are allowed to use, you know, their  
24 ability, their financial strength, as opposed to

1 just putting up a bond or some other type of  
2 mechanism.

3 Q. Are you aware of the Frontier  
4 Insurance Company bonds that were posted for this  
5 landfill?

6 A. Generally aware.

7 Q. And are you aware of the fact that at  
8 the time, in 2000, there were 30 municipal solid  
9 waste landfills in Illinois that were using Frontier  
10 bonds?

11 A. I didn't know the -- I knew it was a  
12 large number, I didn't know it was 30.

13 Q. Were you doing any work for any of  
14 those companies at that time?

15 A. I may have been, I don't know.

16 Q. Were you involved in replacing any of  
17 the financial assurance for a company who had  
18 Frontier bonds at the time?

19 A. I don't recall.

20 Q. Are you aware of the fact that of  
21 those 30 -- or approximately 30 companies, all but  
22 the Morris Community Landfill and I think the Dowdy  
23 Landfill replaced the Frontier bonds?

24 A. Were there other municipalities?

1           Q.       I don't know.  But just to testify  
2 myself, I think Envirotech and Morris was one of the  
3 ones.

4                   MR. PORTER:  I object.  Move to  
5 strike.

6                   THE HEARING OFFICER:  Sustained.

7                   MR. GRANT:  I'll strike that.

8 BY MR. GRANT:

9           Q.       You said -- based on the lease that  
10 you reviewed, you said that you considered it  
11 extremely unfair for the City to be stuck with  
12 closing it when they had a lease with the Community  
13 Landfill Company, or words to that effect; is that  
14 accurate?

15           A.       I think so.  I'd have to go back and  
16 read -- I'm not sure -- you know, I have to look at  
17 the transcript.  I'm not sure unfair was the best  
18 characterization.

19                   I think we were talking about --  
20 well, I'll leave it at that.

21           Q.       Well, you agree that the regulations  
22 themselves apply to owners or operators?  In other  
23 words, that owners or operators must provide  
24 financial assurance?

1                   We can get it out and look at the  
2 regulations specifically if you'd like.

3                   MR. PORTER: I have been subjected to  
4 numerous objections on the topic of whether  
5 or not we're going to get into the issues of  
6 allegedly are they going to be decided by  
7 the Pollution Control Board, that's the exact  
8 issue is, you know, was the owner or  
9 operator.

10                  MR. GRANT: Well, no --

11                  MR. PORTER: And I'm also going to  
12 voice an objection, it's beyond the scope.

13                  THE HEARING OFFICER: I will sustain  
14 based on Mr. Porter's objection of beyond the  
15 scope.

16 BY MR. GRANT:

17                  Q.        The law requires owners or operators  
18 to obtain financial assurance if you're going to be  
19 in the landfill business, essentially; right?

20                  A.        Correct.

21                  Q.        And you can't assign that away by  
22 designing a contract with another party; can you?

23                  MR. PORTER: Objection. Calls for a  
24 legal conclusion and it's beyond the scope.

1                   THE HEARING OFFICER: Well, you know,  
2                   what's good for the goose is good for the  
3                   gander. And I think -- I think it's within  
4                   the scope and he may proceed. Overruled.

5                   MR. PORTER: Let me make one more  
6                   statement.

7                   THE HEARING OFFICER: Yes, sir.

8                   MR. PORTER: We're going now beyond  
9                   the expertise, for which I've -- we all know  
10                  Mr. Moose has. We're actually asking a  
11                  general contract question as to whether or  
12                  not a term in a contract is effective.

13                  I mean, that's clearly a question  
14                  for a lawyer and not necessarily one  
15                  practicing in the environmental field.

16                  THE HEARING OFFICER: Sharon, can you  
17                  read the question back, please?

18                  And off the record.

19                  (WHEREUPON, discussion was had  
20                  off the record.)

21                  (WHEREUPON, the record was  
22                  read by the reporter.)

23                  THE HEARING OFFICER: You know what,  
24                  that is way into legal conclusion, and beyond

1 his education and experience, so...

2 MR. GRANT: I'll restate it when we  
3 come back. I think that I will find a way to  
4 tie into the question that was asked on  
5 direct.

6 THE HEARING OFFICER: All right.  
7 Thank you.

8 We're taking a break until 1:00.

9 (WHEREUPON, a recess was had.)

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1                    ILLINOIS POLLUTION CONTROL BOARD  
2 PEOPLE OF THE STATE OF ILLINOIS, )  
3                    Complainant,            )  
4            vs.                                    ) No. PCB 03-191  
5 Community Landfill Company,            )  
6 INC., and CITY OF Morris, an            )  
7 Illinois municipal corporation, )  
8                    Respondents.            )

9

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11                    DATE: 9/12/07

12                    TIME: 1:00 p.m.

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1 APPEARANCES (p.m. session):

2

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17 MR. MICHAEL S. ROUBITCHEK,

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18 MR. RICHARD S. PORTER,

19 and

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7 MR. SCOTT M. BELT,

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9 the City of Morris.

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23 REPORTED BY: SHARON BERKERY, C.S.R.

24 CERTIFICATE NO. 84-4327.

1                   THE HEARING OFFICER: Back on the  
2                   record from a lunch break. We're in the  
3                   middle of Mr. Grant's thorough  
4                   cross-examination.

5                   Mr. Grant, you may proceed.

6                   MR. GRANT: Thank you, Mr. Halloran.

7 BY MR. GRANT:

8                   Q. Mr. Moose, to your knowledge, did the  
9                   City ever take any action to enforce its contract  
10                  and compel Community Landfill Company to provide  
11                  financial assurance?

12                  A. I have no knowledge of that.

13                  Q. Is the City of Morris willing to close  
14                  Parcel B at the landfill?

15                  MR. PORTER: Objection. Mr. Moose  
16                  does not speak for the City of Morris.

17                  MR. GRANT: Okay.

18 BY MR. GRANT:

19                  Q. To your knowledge, is the City of  
20                  Morris willing to close Parcel B of the Morris  
21                  Community Landfill?

22                  A. I don't know.

23                  Q. How long do the Board regulations  
24                  allow for the closure of a missile silo waste

1 landfill once it's initiated?

2 A. I don't recall if there's a time  
3 limit.

4 Q. Are you aware that the City of Morris  
5 is now denying that it owns the landfill?

6 A. I'm not aware of that, no.

7 MR. GRANT: That's it.

8 THE HEARING OFFICER: Thank you,  
9 Mr. Grant.

10 Mr. LaRose?

11 MR. LaROSE: Nothing, Mr. Halloran.

12 THE HEARING OFFICER: Nothing, okay.

13 Mr. Porter, any redirect?

14 MR. PORTER: None, thank you.

15 THE HEARING OFFICER: Thank you.

16 Mr. Moose, you may step down.

17 THE WITNESS: Thank you.

18 (WHEREUPON, the witness was  
19 excused.)

20 THE HEARING OFFICER: We're off the  
21 record.

22 (WHEREUPON, a recess was had.)

23 THE HEARING OFFICER: All right. Back  
24 on the record.

1                   Mr. Porter informs me that the  
2                   City of Morris has rested in their case in  
3                   chief.

4                   MR. PORTER: That is correct.

5                   THE HEARING OFFICER: Thank you,  
6                   Mr. Porter.

7                   It's CLC's turn.

8                   MR. LaROSE: Mr. Halloran, we would  
9                   call Ed Pruim.

10                  THE HEARING OFFICER: Mr. Pruim, it's  
11                  good to see you out and about, sir.

12                  MR. PRIUM: It's good to be up and  
13                  about, sir.

14                  (WHEREUPON, the witness was duly  
15                  sworn.)

16                  EDWARD PRUIM,  
17                  called as a witness herein, having been first duly  
18                  sworn, was examined and testified as follows:

19                  DIRECT EXAMINATION

20                  BY MR. LaROSE:

21                  Q.       Mr. Pruim, I'm going to ask you to try  
22                  to keep your voice up. It's a big room, just so  
23                  that everybody can hear your testimony; okay?

24                  A.       It might be hard to do, but I'll try.

1 Q. Can you state your name for the  
2 record, please.

3 A. My name is Edward H. Pruim, P-R-U-I-M.

4 Q. And what is your affiliation with the  
5 Community Landfill Company?

6 A. Secretary Treasurer of Community  
7 Landfill.

8 Q. And have you held that position since  
9 the inception of the Community Landfill Company?

10 A. Yes, I have.

11 Q. Just as a matter of background, this  
12 is the hearing on the penalty and remedy phase for  
13 the Pollution Control Board case where Community  
14 Landfill was adjudicated to have not provided  
15 adequate financial assurance for the landfill.

16 Do you understand that?

17 A. Yes, I do.

18 Q. Do you think that a penalty should be  
19 imposed by the Board in this case?

20 A. No.

21 Q. Why not?

22 A. Community Landfill at this time has no  
23 funds available, we have no business going on there.  
24 So we don't have the cash flow that we did at one

1 times, years ago.

2 Q. Any other reasons why you think a  
3 penalty would be inappropriate in this case?

4 A. We feel that we complied with all the  
5 regulations when we -- that we were, you know,  
6 required to do when we got the bonds back in 2000.  
7 And then the EPA said the bonds were no good after  
8 we went and, you know, got the bonds.

9 Q. Let's back up and walk through that a  
10 little bit.

11 Before Community Landfill Company  
12 applied for the first significant modification  
13 application, how much financial assurance was in  
14 place for the landfill?

15 A. I think our bond at that time for  
16 closure and post-closure was about \$1.4 million.

17 Q. And that was a bond issued to  
18 Community Landfill Company; is that right?

19 A. Yes, that is correct.

20 Q. In 1999, CLC first proposed a SigMod  
21 application to the EPA. In that application, what  
22 was the amount of the financial assurance that was  
23 proposed, if you remember?

24 A. It was about \$7 million.

1 Q. And that was going to be posted by  
2 whom?

3 A. By Community Landfill.

4 Q. As part of the closure and  
5 post-closure on that application, was there an  
6 additional task, if you will, that was going to be  
7 taken care of by the City of Morris?

8 A. The City had agreed to handle the  
9 collection and treatment of all the waste water and  
10 leachate coming off the landfill.

11 Q. And pursuant to, at least, that permit  
12 application that was issued at that time, how much  
13 was that going to cost over the post-closure life of  
14 the landfill?

15 A. I believe the requirement was,  
16 approximately, \$10 million dollars.

17 Q. And the City agreed to do that?

18 A. Yes, they did.

19 Q. As far as you know as you sit here  
20 today, has the City lived up to that agreement?

21 A. They have lived up to all the  
22 agreements we have had with them up to this point.

23 Q. And other than actually performing the  
24 treatment of the groundwater, leachate and the

1 condensate, were you looking to -- in the landfill,  
2 looking to the City of Morris for any other  
3 financial obligations for the closure or  
4 post-closure of the landfill?

5 A. I believe originally they were just  
6 going to handle the waste but then the EPA required  
7 a bond to be in place for that.

8 Q. And we'll go over that in a second,  
9 but let's leave that bond aside. Other than  
10 handling the leachate and condensate, that's what  
11 you wanted the City to do; right?

12 A. That's correct.

13 Q. The original application for  
14 significant modification filed in 1999 with the  
15 proposed 7 million in financial assurance, what  
16 happened to that?

17 A. We filed the application. The EPA, I  
18 believe, rejected it at that time, and we  
19 appealed --

20 Q. Let's back up for a second. Do you  
21 know -- do you remember when they rejected it?

22 A. I believe that there was a time --  
23 there was a time element that we didn't get it --  
24 get the application in at a certain time. The

1 reason being, we did not have a lease from the City  
2 at that time for the expansion.

3 Q. I think we're getting a little bit  
4 confused here. You actually went back to a prior  
5 application where we had to take it up to the  
6 Appellate Court. Are you recalling that now?

7 A. Yes.

8 Q. When you finally got the Appellate  
9 Court to allow you to file the SigMod application  
10 and you filed it with the \$7 million financial  
11 assurance, what did the EPA say about that, if you  
12 remember?

13 A. Well, they said we had to fund the  
14 \$7 million with a bond, which we did at that time.

15 Q. Did they say anything about the  
16 additional \$10 million at that time?

17 A. They said they were requiring a bond  
18 to be in place for the \$10 million.

19 Q. So they rejected the \$7 million  
20 proposal and wanted a bond for the whole \$17  
21 million; right?

22 A. That's right.

23 Q. At that time, did you approach the  
24 City to make some type of arrangement with respect

1 to the additional \$10 million in bonding?

2 A. Yes, we did.

3 Q. And do you remember what that  
4 arrangement was?

5 A. The arrangement with the City, we  
6 would have the bond for the \$7 million in the name  
7 of Community Landfill. We would fund it. The \$10  
8 million bond would be in the name of the City.

9 And we worked out an agreement  
10 with the City that would we would pay the annual  
11 premium on that bond for five years.

12 Q. And was the five year time period --  
13 did that correspond to the life of the bond?

14 A. Yes. We expected to have the landfill  
15 closed within five years.

16 Q. Did the City agree to that?

17 A. Yes, they did.

18 Q. But -- now back to the point we talked  
19 about earlier. Other than them putting their name  
20 on the bond, were you looking for them to provide  
21 any other financial support for the bond?

22 A. No.

23 Q. So the deal was, if I can summarize,  
24 CLC would take out a \$7 million bond and pay the

1 premiums on that; right?

2 A. Correct.

3 Q. And the City would take out a  
4 \$10 million bond and CLC would pay the premiums on  
5 that, too?

6 A. That's correct.

7 Q. Do you remember, Mr. Pruiam, what the  
8 approximate annual premiums were for the two bonds  
9 put together, the \$17 million worth of bonds?

10 A. I think it was slightly more than  
11 \$200,000 per year.

12 Q. Was there any other cash requirements  
13 from Frontier in order for them to get you the bond?

14 A. They required collateral, a little bit  
15 short of \$200,000, I believe.

16 Q. So you were proposing to -- you being  
17 CLC, was proposing to pay a little bit short of  
18 \$200,000 in cash collateral as well as a little bit  
19 more than \$200,000 a year for five years in  
20 premiums?

21 A. That's correct.

22 Q. Do you know whether or not this  
23 concept of the \$17 million in bonds from Frontier  
24 was presented to the IEPA?

1 A. Yes, it was.

2 Q. Do you know whether or not the IEPA  
3 actually reviewed drafts of the bonds before they  
4 were issued?

5 A. It's my understanding they did.

6 Q. And was the concept -- correct me if  
7 I'm wrong -- that you would purchase the bonds, give  
8 them to the EPA in exchange for the SigMod program?

9 A. That's correct.

10 Q. Did the EPA approve those bonds before  
11 you committed to purchasing them?

12 A. Yes. We -- I don't recall who  
13 presented them, if it was the engineer or an  
14 attorney, but they were presented to the EPA, to  
15 make sure they met their requirements.

16 Q. And did they approve them?

17 A. Yes.

18 Q. There was an issue about Frontier as a  
19 company being removed from the treasury's approved  
20 surety list; do you remember that?

21 A. Yes.

22 Q. Do you remember whether at the time  
23 the EPA approved the bonds, they knew that fact?

24 A. It's my understanding from testimony

1 at various times since then, that the EPA did know  
2 that.

3 Q. At the time that you were presenting  
4 these bonds to the EPA, what was the financial  
5 assurance that was posted on the landfill?

6 A. The \$1.4 million we talked about  
7 earlier.

8 Q. If the EPA had rejected the bonds,  
9 what would you have done?

10 A. We would have closed the landfill,  
11 done all the closure, you know, requirements we had  
12 per our permits, gone on into a post-closure mode at  
13 a given time after we met all those requirements,  
14 and our \$1.4 million bond would have been reduced  
15 to -- and I don't recall what that number was.

16 Q. After the EPA -- IEPA approved the  
17 bonds, did you then go ahead and purchase the bonds?

18 A. Yes, we did.

19 Q. And by purchase the bonds, do you  
20 remember initially what you had to pay?

21 A. Well, we put up the collateral money,  
22 and we had to purchase the bonds for the \$200,000  
23 for the first year premium.

24 Q. So you get the bonds, you get the

1 SigMod permit, what happens then?

2 A. Well, we worked with the engineer,  
3 proceeding to build and develop the cell that we  
4 were going to open, you know, per the application.  
5 That process took us probably close to a year.

6 Q. What happened next?

7 A. We approached the EPA about a permit  
8 to operate that cell. And at that time the EPA --  
9 and I don't remember the exact date -- told us that  
10 the bonds were no good, that we had to get other --  
11 you know, other financial bonds.

12 Q. Were these the same Frontier bonds  
13 that they had approved some months before?

14 A. Yeah, it could have been a year prior  
15 to, but they were the same bonds.

16 Q. So what did the EPA do with the  
17 request to approve opening the new cell so that you  
18 could accept waste?

19 A. They turned down the application for  
20 the expansion of the new cell.

21 Q. What did you do at that time with  
22 respect to the permit denial?

23 A. We presented our case to the Pollution  
24 Control Board at that time.

1 Q. Did you go further than the Pollution  
2 Control Board, if you remember?

3 A. Yes, we went to the Appellate Court  
4 also.

5 Q. And, ultimately, the appeals in that  
6 case were not favorable to you. In other words, the  
7 Pollution Control Board and the Appellate Court  
8 sustained the agency's denial of the permit?

9 A. That's correct.

10 Q. In the meantime, did you have to pay  
11 additional money to Frontier?

12 A. Yeah, the time frame after that first  
13 year, in mid-2000, when our first one-year premium  
14 came due, we were into a second-year premium, so we  
15 paid another \$200,000 plus.

16 Q. So, in rough numbers, by this time CLC  
17 has paid either in premiums or in cash collateral,  
18 roughly, \$600,000?

19 A. Correct.

20 Q. And the EPA is telling you that was a  
21 waste of money?

22 A. Yes. And they're telling us we  
23 couldn't operate the landfill.

24 Q. After you were advised that the

1 Frontier bonds, at least in IEPA's opinion, were no  
2 good, what, if anything, did Community Landfill do  
3 to investigate the possibility of obtaining  
4 substitute financial assurance?

5 A. Well, we had the broker that acquired  
6 or helped us acquire the Frontier bonds search  
7 through other bonding companies, and then the period  
8 of time lapsed from when we originally did the  
9 Frontier bonds. We found out that the collateral  
10 was going to be in the range of 70, 80 percent of  
11 the bond value.

12 Q. So in order to obtain a \$17 million  
13 bond, Community Landfill would have had to post cash  
14 of 70 to 80 percent of it?

15 A. Yeah, that number was -- I don't  
16 remember exactly, but somewhere in the 14,  
17 \$15 million range.

18 Q. Did Community Landfill have funds  
19 anything like that at that time?

20 A. No, not at all.

21 Q. Did -- strike that.

22 Did you ask the broker to exhaust  
23 the possibilities of financial assurance that  
24 Community Landfill could possibly afford?

1           A.       Yeah, I believe at the time we -- you  
2 know, the only way we could have done it was through  
3 a bond. We didn't have the collateral, and we asked  
4 them if there was any other type of bond that the  
5 EPA would accept, and there was none.

6           Q.       After the EPA said that you couldn't  
7 operate the landfill, denied the operating permit  
8 for the new cell, what happened to the operating and  
9 financial condition of Community Landfill Company?

10          A.       Well, there was a time that we had to  
11 a let all our people go. We had, I think, seven or  
12 eight employees out there at the time.

13                         We had 150 operators, and we had  
14 clean-up people and part-time people doing  
15 maintenance on the equipment. We kept the general  
16 manager there just to oversee and to maintain the  
17 landfill while we hoped we could resolve some of  
18 these issues. And then we had a secretary that  
19 worked part-time.

20          Q.       What about the income?

21          A.       There was minimal income. We did  
22 accept some soils in there. There was a little  
23 revenue, but that was -- it was hard making our  
24 payments.

1                   We had insurances, maintenance on  
2 the equipment, fuel, labor. It's been a struggle.

3           Q.       When you compare the -- what you  
4 characterized as minimal revenue to your expenses,  
5 was there even anything left over for financial  
6 assurance?

7           A.       No, absolutely not.

8           Q.       In fact, did the income even pay the  
9 bills?

10          A.       A lot of times it didn't. At this  
11 point even, we have a lot of outstanding bills that  
12 we can't pay.

13          Q.       You said that you continued to take  
14 contaminated soil at the landfill. What did you use  
15 that for?

16          A.       To dress up the top of the fill where  
17 there was voids from settlement and various, you  
18 know, things, just to dress the landfill up.

19          Q.       Do you continue to do that  
20 periodically today?

21          A.       Yes, we do.

22          Q.       At this time, you were no longer  
23 paying -- you being CLC -- no longer paying the  
24 premiums for Frontier bonds; right?

1 A. No.

2 Q. And you -- no, meaning you're no  
3 longer paying them; right?

4 A. No, we're no longer paying -- the last  
5 payment, I believe, was in 2001.

6 Q. So you didn't make any more payments  
7 after the second year's premium?

8 A. That's correct.

9 Q. And after the EPA said the bonds were  
10 no good, did you talk to Frontier about the premiums  
11 that you had paid?

12 A. We had various conversations with them  
13 about releasing the collateral money, and I believe  
14 there was even a question about some of the premium  
15 could be released to us because the dates that fell  
16 in place when the EPA said the bonds were no good,  
17 Frontier was willing to release the money to us.  
18 But they contacted the EPA, and the EPA said the  
19 funds could not be released until this thing was  
20 resolved.

21 Q. When you say "release the funds," are  
22 you talking about the cash collateral?

23 A. Yes.

24 Q. But what's your understanding -- the

1 cash collateral is a little less than \$200,000, but  
2 was it your understanding that that money was to be  
3 invested by Frontier and to grow over time?

4 A. That's correct.

5 Q. What's your understanding of what the  
6 status of the amount of those funds are today, just  
7 in round numbers?

8 A. I don't know the exact number, but  
9 it's somewhere between three and \$400,000, I  
10 believe.

11 Q. And that's the money that Frontier  
12 said you were entitled to get released?

13 A. That's correct. And they would  
14 release it if the EPA said that it would be okay.

15 Q. And what did the EPA say?

16 A. They said they wouldn't release the  
17 funds.

18 Q. So have you received any of the cash  
19 collateral back?

20 A. No.

21 Q. What about the premiums, did you get  
22 any of that back?

23 A. No.

24 Q. Even though Frontier agreed that you

1 were probably entitled to that, they haven't paid  
2 you any of that money?

3 A. No, they said they would if they could  
4 get the EPA to say it would be okay to sign off on  
5 it.

6 Q. So the \$600,000 or so cash out of  
7 Community Landfill's pocket for these Frontier  
8 bonds, none of that's ever come back?

9 A. No.

10 Q. If the Pollution Control Board said to  
11 the Community Landfill Company today that it had to  
12 find a way to substitute \$17 million in financial  
13 assurance, could you do that?

14 A. I don't believe we could have at this  
15 time, no.

16 Q. If it said that you had to fund  
17 the \$7 million portion of the bonds that you guys  
18 had, that the Community Landfill had issued to do,  
19 could you do that?

20 A. No.

21 Q. If the Board chose to impose a penalty  
22 against Community Landfill Company for not  
23 substituting other financial assurance for the  
24 Frontier bonds, could it pay the penalty?

1           A.       No.

2           Q.       With respect to your turning back the  
3 clock to the 1999 time frame when you first applied  
4 for the SigMod, what was Community Landfill's intent  
5 for the landfill going forward?

6           A.       Prior to the SigMod?

7           Q.       Yeah.

8           A.       Or after the SigMod?

9           Q.       Well, when you were applying for the  
10 SigMod, your plan was what?

11          A.       Well, our plan was, we estimated we  
12 could close the landfill in four to five years, with  
13 the capacity there and what we felt would be a waste  
14 strain coming in. That was the reason we talked  
15 about the five-year bond, because we felt by 2005 or  
16 2006 everything would be closed and we'd go into a  
17 post-closure mode.

18          Q.       What was your intent, with respect to  
19 posting adequate financial assurance, pursuant to  
20 your application?

21          A.       Well, there was our reason to work  
22 with Frontier with the bond, they agreed to the  
23 amount that we were required to put up for a bond.  
24 And we explained to them that it would be a

1 five-year bond and then we'd be done and go into  
2 post-closure.

3 Q. Was it ever the intent, Mr. Pruim, of  
4 Community Landfill Company to run or operate this  
5 landfill without proper financial assurance?

6 A. Absolutely not.

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

8 THE HEARING OFFICER: Thank you,  
9 Mr. LaRose.

10 MR. LaROSE: Thank you, Mr. Halloran.

11 THE HEARING OFFICER: The State?

12 CROSS-EXAMINATION

13 BY MR. GRANT:

14 Q. Mr. Pruim, do you recall that -- Mr.  
15 Pruim, the Frontier bonds were issued by Frontier on  
16 May 31st, 2000; is that correct?

17 A. I know it was 2000, I thought it was a  
18 little later in the summer. I'm not sure on the  
19 date.

20 Q. Let me -- rather than make you guess,  
21 we've got the bonds admitted as an exhibit, why  
22 don't I just have you take a look at them.

23 A. Okay.

24 THE HEARING OFFICER: They're up there

1 on your right, Mr. Pruim.

2 BY MR. GRANT:

3 Q. It's Exhibit 9.

4 A. Okay.

5 Q. The first one, I think, was a  
6 continuation of the bond that was in place at the  
7 time. So I've got -- let's see.

8 You have to go about halfway  
9 through, it's -- Surety Bond 158465 is the one I'm  
10 looking at.

11 MR. LaRose: Mr. Halloran, we'd  
12 stipulate that two of the bonds were issued  
13 on May 31st, 2000. And the third one, I think  
14 the \$1.4 million one, was issued on June  
15 14th, 2000.

16 THE HEARING OFFICER: So stipulated.

17 BY MR. GRANT:

18 Q. Mr. Pruim, did you know at the time  
19 that the bonds were issued that Frontier was going  
20 to be removed from the treasury circular 570 list  
21 the next day?

22 A. No.

23 Q. Are you aware of other landfills that  
24 used Frontier bonds about the same time that you

1     acquired yours in 2000?

2             A.     Not personally, no.

3             Q.     If you can turn to Exhibit 11 please.

4     Do you recognize -- are you there yet?

5             A.     Yes.

6             Q.     Do you recognize that -- this  
7     document?

8             A.     I might have seen it. I don't  
9     recognize it.

10            Q.     It was a few years ago. It's a  
11     violation notice; isn't it?

12            A.     Yes, it is.

13            Q.     And can you tell from looking at it if  
14     it was a violation notice related to the Frontier  
15     bonds?

16            A.     Do you want me to read through it to  
17     answer that?

18            Q.     Yeah, or maybe --

19                    MR. GRANT: Mark, are you willing to  
20     stipulate that it was a DM for the Frontier  
21     Bonds?

22                    MR. LaROSE: I've just got to take a  
23     quick look at it.

24                    MR. GRANT: Okay.

1                   MR. LaROSE: Yes. So stipulate -- I  
2 would stipulate that.

3                   THE HEARING OFFICER: So stipulated.

4                   MR. GRANT: A date of November 14th,  
5 2000 on the document?

6                   MR. LaROSE: Yeah.

7 BY MR. GRANT:

8                   Q. Mr. Pruim, if you turn to the third  
9 page, Attachment A. On the bottom it has Suggested  
10 Resolution. And, you know, is it, basically,  
11 Illinois EPA asking you to replace the Frontier  
12 bonds with another method of financial assurance?

13                   A. Yes, that's what that first paragraph  
14 states.

15                   Q. And do you know of any other landfills  
16 that received violation notices for Frontier bonds  
17 about this same period?

18                   A. No.

19                   Q. Now, you applied for the operating  
20 permit for Parcel A sometime in early 2001, I  
21 believe; isn't that correct?

22                   A. No, I believe it was in 2000.

23                   Q. I'm not talking about the SigMod, I'm  
24 talking about the operating permit for Parcel A --

1 A. After the work was completed.

2 Q. Correct, yeah.

3 A. Correct.

4 Q. To start a waste disposal of Parcel A?

5 A. I'm not sure of the dates, but I  
6 believe you're --

7 Q. Would you agree that it was after you  
8 received this violation notice?

9 A. Well, I -- again, I said I don't  
10 recall receiving it.

11 Q. After the date of the violation  
12 notice.

13 A. Yeah, the dates are different.

14 Q. Now, in the process -- I'm going to  
15 change permits, I'm going to try not to confuse you  
16 because there's been so many I know. But when you  
17 were in the process of applying for the SigMod  
18 permit and obtained the SigMod permit, didn't you  
19 have to -- didn't you arrive at a cost estimate for  
20 closure, post-closure of \$17.4 million?

21 A. At the time --

22 Q. Through the process, I mean, isn't  
23 that why the bonds that were required totaled \$17.4  
24 million?

1           A.       The engineer calculated those numbers.

2           Q.       Right. I understand.

3                        But did you understand that to be  
4 a number the Illinois EPA was willing to accept as  
5 the cost of closure and to take care of post-closure  
6 care?

7           A.       Yes.

8           Q.       You mentioned that you -- you obtained  
9 five-year bonds because you expected five years of  
10 continued waste disposal, at which point you'd close  
11 the landfill; correct?

12          A.       Well, I'm not sure that's the reason  
13 we got the five-bond. But it's my -- if I remember,  
14 we anticipated a four to five-year closure.

15                        And I don't know who plugged that  
16 five year number in, if it was us or the bond  
17 people, why we didn't get a ten or a 20 year-bond.  
18 It was a five-year bond, I believe, because we  
19 intended on closing the landfill within five years.

20          Q.       Now, based on your knowledge of the  
21 finances when you obtained the SigMod permit, was it  
22 logical that once the bonds expired in five years,  
23 that you actually were going to have \$17.4 million  
24 in cash to replace those and close the landfill and

1 perform post-closure care?

2 A. Well, when you go into post-closure,  
3 the bond requirements are different than  
4 \$17 million.

5 Q. Once you close the landfill, then that  
6 would come off of the amount right away. In other  
7 words, you wouldn't need to secure something that's  
8 already been done?

9 A. Correct.

10 Q. But for long-term care of the  
11 landfill -- I mean, was CLC -- did you expect that  
12 CLC, say, in 2005, would have sufficient resources  
13 to perform long-term land care of the landfill?

14 A. I'm sure we did. I don't remember  
15 what the requirements were for post-closure.

16 Q. Now, the SigMod application that  
17 you -- for the permit that was awarded in -- strike  
18 that. I'll ask another question.

19 How much money does CLC have  
20 available to it at the present time?

21 A. I don't have the checkbook. I know  
22 it's a struggle every month just to pay our bills,  
23 and I know there's a lot of payables that have not  
24 been paid.

1                   So I would say at the present  
2 time, if you paid out what would happen to be in the  
3 checking account, it would be zero, and there still  
4 would be bills to pay.

5           Q.       Will CLC allow the City of Morris to  
6 take over the landfill?

7           A.       Yeah, we've talked about that. We've  
8 haven't got into any negotiations about it.

9                   We even brought people in to take  
10 our place if the City would -- you know, would allow  
11 that.

12          Q.       But would you allow the City of Morris  
13 to actually perform closure of the landfill, I mean,  
14 beginning at any time, today or?

15          A.       Yes.

16                   THE HEARING OFFICER: Thank you,  
17 Mr. Grant.

18                   Mr. Porter, any questions of  
19 Mr. Pruiim?

20                   MR. PORTER: Yes.

21                   DIRECT EXAMINATION

22 BY MR. PORTER:

23          Q.       If I understand correctly, you agreed  
24 that the financial responsibility of closure,

1 post-closure was to always be borne by Community  
2 Landfill Company, not the City of Morris; correct?

3 A. That's correct.

4 Q. You never informed the City that  
5 Community Landfill Company did not have funds  
6 sufficient to pay for closure, post-closure; did  
7 you?

8 A. I didn't personally, no.

9 Q. You never expected the City to amass a  
10 fund to pay for closure, post-closure; did you?

11 A. No.

12 Q. Isn't it true that it was presented to  
13 the City of Morris that the only thing CLC was  
14 asking of it was to assure that they would accept  
15 the leachate from the landfill into its water  
16 treatment facility and the value of that, according  
17 to your cost estimates, was about \$10 million?

18 A. Yes, that was an estimated number.  
19 I'm -- I don't have those figures in front of me.

20 Q. The City never agreed to pay  
21 \$10 million worth of closure costs; did it?

22 A. The City agreed to treat the water for  
23 a period of time, that was the agreement.

24 Q. Right. But it never agreed to pay

1 \$10 million to CLC or the State or anyone for  
2 closure costs; right?

3 A. No, I don't believe so.

4 Q. To your knowledge, the City counsel  
5 never authorized Mayor Feeney to agree to pay  
6 \$10 million of closure costs; correct?

7 A. I don't know that.

8 MR. PORTER: I have nothing further.

9 Thank you.

10 THE HEARING OFFICER: Mr. LaRose, any  
11 redirect?

12 MR. LaROSE: Just a couple.

13 REDIRECT EXAMINATION

14 BY MR. LaROSE:

15 Q. Mr. Grant, asked you whether on May  
16 31st you were aware that Frontier was going to be  
17 delisted the next day and your answer was no; right?

18 A. Correct.

19 Q. You did find out sometime between that  
20 date and the issuance of the SigMod that Frontier  
21 did get delisted; right?

22 A. That's correct.

23 Q. Didn't the EPA tell us that?

24 A. I believe that's correct.

1 Q. And during that period of time, with  
2 the knowledge that Frontier had, in fact, been  
3 delisted, isn't that when we approached the EPA and  
4 asked them for their approval of the bonds?

5 A. Yes. Sometime in that period we did,  
6 yes.

7 Q. And they approved the bonds with the  
8 knowledge that Frontier had already been delisted?

9 A. It's my understanding they did.

10 Q. Mr. Grant asked you about posting the  
11 \$17 million in financial assurance as something that  
12 the EPA wanted in order to issue the SigMod; right?

13 A. Correct.

14 Q. Wasn't it Community Landfill's  
15 position at that time, even though it posted the  
16 \$17 million that you really didn't meet that much?

17 A. Well, the question was -- and the  
18 problem we had with the amount of the bond was the  
19 \$10 million for the water treatment end of it. The  
20 City had agreed to treat the water.

21 The reason to have a bond, that's  
22 my understanding, is so in case the company goes out  
23 of business, there's somebody to step up and pick up  
24 the cost of whatever your bonding for. Well, I

1 don't believe the City of Morris is going to go out  
2 of business in the next few years, so their water  
3 treatment plant is always going to be there.

4 Q. Is it true, Mr. Pruim, that you issued  
5 the \$17 million in order to get the permit but  
6 intended to dispute whether or not that amount was  
7 necessary?

8 A. Yes.

9 Q. And, in fact, you did that; right?

10 A. Yes.

11 Q. You took that back to the Pollution  
12 Control Board and ultimately up to the Appellate  
13 Court; right?

14 A. That's correct.

15 Q. And, again, the decision was  
16 ultimately not favorable to CLC, but at no time did  
17 you agree that the \$17 million was the appropriate  
18 amount of financial assurance?

19 A. That's correct.

20 Q. Back to Mr. Porter's question, very  
21 briefly. Even though you weren't looking for the  
22 City to provide any cash for closure or  
23 post-closure, were you, in fact, looking for them to  
24 provide the treatment of the leachate and the

1 condensate from the landfill?

2 A. Yes.

3 Q. And when Mr. Grant asked you whether  
4 or not you would let the City perform closure and  
5 post-closure activities, that's not really for you  
6 to say, you don't own the landfill; do you?

7 A. The City owns the landfill, we operate  
8 under a lease.

9 Q. And while you might allow them to do  
10 that, have you ever asked them to take those  
11 actions? Have you ever asked the City to actually  
12 come in and take closure or post-closure care  
13 responsibilities, except for treating the leachate?

14 A. No, we did not.

15 MR. LaROSE: That's all we have.

16 THE HEARING OFFICER: Mr. Grant, any  
17 recross?

18 MR. GRANT: Just a little bit.

19 RE-CROSS-EXAMINATION

20 BY MR. GRANT:

21 Q. Mr. Pruim, doesn't the -- let's see.  
22 You signed a lease agreement with the City, or CLC  
23 did, in 1982, I believe. Wasn't that when you took  
24 over?

1 A. I'm sorry, what date did you say?

2 Q. In 1982, I'm sorry.

3 A. Approximately. I'm not sure of the  
4 date.

5 Q. Doesn't your contract call for the  
6 City of Morris to set aside at least \$5,000 a year  
7 from the royalties that you paid them for closure of  
8 the landfill?

9 A. I don't know that. I don't recall,  
10 it's been a long time since I looked at the lease.

11 MR. GRANT: I wonder if this is --  
12 it's not an unsubstantial issue, I believe  
13 the lease is in evidence. And I also want to  
14 make sure I -- did you put the lease in?

15 MR. PORTER: (No audible response.)

16 MR. GRANT: Do you have a copy of it?  
17 I have a copy of it if you put it in.

18 MS. GRAYSON: Exhibit 7.

19 MR. GRANT: Mr. Hearing officer, I'm  
20 sorry, I'm going to withdraw my question.

21 THE HEARING OFFICER: Thank you,  
22 Mr. Grant.

23 BY MR. GRANT:

24 Q. Mr. Pruim, it was your understanding

1 that without obtaining the \$17 million plus  
2 financial assurance, you would not have gotten the  
3 SigMod permits; is that correct?

4 A. Yes.

5 Q. And at that time both CLC and the City  
6 of Morris wanted that landfill to continue  
7 operating; is that correct?

8 A. Yes.

9 MR. GRANT: Thanks. That's it.

10 THE HEARING OFFICER: Thank you.

11 Mr. Porter?

12 REDIRECT EXAMINATION

13 BY MR. PORTER:

14 Q. Before Mayor Feeney signed a document  
15 that CLC was going to give to Frontier Insurance in  
16 order to secure some bonds for CLC, was he informed  
17 that Frontier was about to be delisted?

18 A. I don't believe he was.

19 MR. PORTER: Thank you. Nothing  
20 further.

21 THE HEARING OFFICER: Mr. LaRose,  
22 any --

23 MR. LaROSE: No, sir. I'm done.

24 THE HEARING OFFICER: You may step

1 down, Mr. Pruum. Thank you so much.

2 (WHEREUPON, the witness was  
3 excused.)

4 THE HEARING OFFICER: We can go off  
5 the record for a second.

6 (WHEREUPON, discussion was had  
7 off the record.)

8 THE HEARING OFFICER: We're back on  
9 the record. We've been discussing a couple  
10 of things.

11 The first, is a briefing schedule,  
12 a post-hearing briefing schedule. The way I  
13 calculate, the transcript is due on or before  
14 September 26th. With that in mind, it was  
15 agreed that the complainant's brief is due on  
16 or before October 19th.

17 The respondents', both CLC and the  
18 City of Morris, responding brief is due on or  
19 before November 20th. The complainant's  
20 reply, if any, is due on --

21 MS. GRAYSON: Mr. Halloran, it was  
22 November 30th.

23 THE HEARING OFFICER: Oh, November  
24 30th, you're right. Excuse me.

1                    Respondents' brief is due on or  
2                    before November 30th. Complainant's reply,  
3                    if any, due December 7th. I set  
4                    public comment due by -- written public  
5                    comment due by October 9th, 2007.

6                    And there was some discussion off  
7                    the record regarding attorney fees. And,  
8                    Mr. Grant, would you like to address that and  
9                    I'll let the respondents respond?

10                   MR. GRANT: Yes, Mr. Halloran. It's  
11                   the State's intention to file a verified  
12                   petition for attorney's fees and costs,  
13                   pursuant to Section 42(f) of the Act, along  
14                   with our post-hearing brief.

15                   I did not believe that we could  
16                   really get an accurate description of the  
17                   costs of, you know, until we finish the  
18                   hearing. And so, really, we are not prepared  
19                   today to provide any testimony on that.

20                   But we will be filing that along  
21                   with our post-hearing brief.

22                   THE HEARING OFFICER: Mr. Porter?

23                   MR. PORTER: My response is that the  
24                   February 2006 Pollution Control Board

1 directed that this hearing was not only to be  
2 considering remedy, but whether or not  
3 penalties and attorney fees, if any, should  
4 be imposed. Obviously our position is that  
5 none should be imposed, however the  
6 government is going to seek them.

7 This was our opportunity for that  
8 cross-examination, and, therefore, I would  
9 object to it occurring by verifying the  
10 petition later.

11 THE HEARING OFFICER: Thank you,  
12 Mr. Porter.

13 MS. GRAYSON: I would join in that  
14 objection.

15 MR. GRANT: I think that we're  
16 distinguishing between -- the State's  
17 distinguishing between whether or not  
18 attorney's fees are due and the actual  
19 hearing on attorney's fees themselves. I  
20 think that maybe there's a little confusion.

21 I think the Board wanted us to  
22 provide evidence of intentional, willful and  
23 noncompliance with the Act, and I think we've  
24 done so. But I don't think that the February

1 order requires to put it in evidence today.

2 MR. PORTER: There's little point to  
3 belabor it now, but the order will speak for  
4 itself. The order specifically required that  
5 the party suggest the specific numbers, and,  
6 therefore, I think it's clear in what it  
7 requires.

8 And it certainly makes no sense  
9 for us to have a subsequent hearing. We're  
10 here, this is the time to do it, why pile on  
11 expense?

12 But, again, I think all of that  
13 argument can be addressed in the post-hearing  
14 briefs.

15 THE HEARING OFFICER: Terrific. And I  
16 thank you, and it will be on the transcript  
17 and the record, and the Board will take a  
18 look at it and figure out what to do with it  
19 in their infinite wisdom.

20 Mr. Porter, you suggested you have  
21 a public comment to read into the record?

22 MR. PORTER: I certainly can do that.  
23 I have a written public statement of John  
24 Swezy, and I'm happy to read it into the

1 record. It's not too long, and then I will  
2 hand it up to you, Mr. Halloran, if that's  
3 appropriate?

4 THE HEARING OFFICER: And I'll take it  
5 as Hearing Officer Exhibit E.

6 How do you spell the name,  
7 Mr. Porter?

8 MR. PORTER: S-W-E-Z-Y. And the  
9 statement reads as follows:

10 "Public statement of John Swezy,  
11 former City of Morris alderman.

12 My name is John Swezy, and I'm a  
13 former alderman of the City of Morris. I was  
14 initially elected alderman in 1979 and served  
15 continuously as alderman for the City until  
16 2007, which accounts for 28 years of public  
17 service.

18 I hoped to present my statement  
19 personally, however, due to a medical  
20 condition, I'm unable to appear personally.  
21 It is my hope and desire that the Pollution  
22 Control Board will consider my statement as  
23 an informed and firsthand accounting of the  
24 history in the operations of the Community

1 Landfill site.

2 I'm familiar with the Community  
3 Landfill Corporation, and the history  
4 associated with both Parcel A and Parcel B  
5 during my terms as alderman. It is  
6 uncontested that the City owns the land which  
7 underlies the Community Landfill. The City  
8 did not, however, conduct any waste disposal  
9 operations after entering into a lease and  
10 operating agreement with Community Landfill  
11 Corporation in 1982.

12 The events leading up to this  
13 hearing are extremely unfortunate, and the  
14 Illinois EPA should never allow this to  
15 happen. Simply put, to now look to the  
16 taxpayers of the City of Morris to finance  
17 the remaining closure and post-closure  
18 activities at the CLC site is a gross  
19 injustice.

20 Based upon the provisions of the  
21 lease and operating agreement, which the City  
22 Council approved, CLC is solely responsible  
23 for all closure, post-closure obligations.  
24 Moreover, the Morris City Council is aware of

1 the fact that all development and operating  
2 rights for the facility have been transferred  
3 from the City of Morris to CLC, which is  
4 consistent with the terms of the lease and  
5 the operating agreement. The City council  
6 had no reason whatsoever to believe that it  
7 would ever, or should be called upon to  
8 post-closure financial assurance, whether  
9 it be \$10 million or \$17 million or any  
10 amount.

11 In 1996 then Mayor Feeney  
12 explained that the Frontier Insurance bond  
13 was simply an insurance policy. There was no  
14 indication nor was it my understanding that  
15 the City would become a principal on a  
16 performance bond.

17 Frankly, Mayor Feeney was never  
18 authorized by the City council at any time to  
19 execute any documents related to CLC's  
20 operation of the landfill in any other  
21 capacity, other than owner of the land  
22 underneath the waste. As both by contract  
23 and EPA permits, all the operation  
24 development rights had been transferred to CLC

1 in 1982 and 1983."

2 MR. LaROSE: Excuse me, Mr. Halloran,  
3 this isn't public comment, this is testimony.  
4 This is factual testimony about what happened  
5 in this case.

6 THE HEARING OFFICER: Granted.  
7 Anything else, Mr. LaRose?

8 MR. LaROSE: No.

9 THE HEARING OFFICER: The Board will  
10 weigh it accordingly. He's not sworn to --

11 MR. LaROSE: My objection would be, if  
12 he was sworn, I might have ask him a few  
13 questions about this.

14 THE HEARING OFFICER: I'm sure you  
15 would, sir.

16 MR. GRANT: Just to sort of it follow  
17 up on that, I want to point out that  
18 Mr. Swezy was named as a witness in the  
19 City's case as recently as August 29th. And  
20 just as long as the Board is able to  
21 distinguish testimony from citizen comment --

22 THE HEARING OFFICER: I think they  
23 can. It's public comment. Thank you.

24 MR. PORTER: "To the best of my

1 knowledge, the EPA never called upon or  
2 looked to the City to initiate closure of  
3 Parcel B or post any financial responsibility  
4 to become involved in any way until late 2002  
5 or early 2003 when this whole mess arose. If  
6 Parcel B really had reached its capacity in  
7 the mid-to-late 1990s, why wasn't it the  
8 EP" -- I have to start that sentence over,  
9 excuse me.

10 "If the Parcel B really had  
11 reached its capacity in the mid-to-late  
12 1990s, why wasn't the EPA compelling CLC as  
13 the permanent operator to close it at that  
14 time point in time? If the EPA had done its  
15 job, the City wouldn't be in the predicament  
16 it finds itself in today.

17 Thank you for considering my  
18 statement. I truly hope the Pollution  
19 Control Board holds CLC responsible for its  
20 obligation to post financial assurance.

21 It is also my hope that through  
22 this Board's decision, EPA is put on notice  
23 it has an obligation to protect the  
24 environment and has failed to adequately

1 protect the citizens of the City of Morris.  
2 As stated above, it is an injustice to now  
3 burden our taxpayers with a ten or  
4 \$17 million obligation because of the EPA's  
5 failure to enforce it's own regulations.

6 Respectfully submitted, John  
7 Swezy, Morris alderman, 1979 to 2007."

8 (WHEREUPON, a certain document  
9 was marked Hearing Officer  
10 Exhibit E for identification,  
11 as of 9/12/07.)

12 THE HEARING OFFICER: Thank you,  
13 Mr. Porter. And again, Mr. LaRose and  
14 Mr. Grant, you can respond to that public  
15 comment if you so choose in your briefs.  
16 But, again, the Board will weigh it  
17 accordingly. Mr. Swezy was not under  
18 oath.

19 Anything else for me to discuss?  
20 And, as usual, thank you so much, your  
21 civility and professionalism were beyond  
22 reproach, and it was fun. So have a safe  
23 drive home.

24 This concludes this hearing in the

1 matter. The September 13th date scheduled  
2 for the hearing is canceled. Thank you so  
3 much.

4 (WHICH WERE ALL THE MATTERS  
5 HEARD IN THE ABOVE-ENTITLED  
6 CAUSE THIS DATE.)

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1 STATE OF ILLINOIS)

2 ) SS:

3 COUNTY OF COOK )

4 I, SHARON BERKERY, a Certified Shorthand  
5 Reporter of the State of Illinois, do hereby certify  
6 that I reported in shorthand the proceedings had at  
7 the hearing aforesaid, and that the foregoing is a  
8 true, complete and correct transcript of the  
9 proceedings of said hearing as appears from my  
10 stenographic notes so taken and transcribed under my  
11 personal direction.

12 IN WITNESS WHEREOF, I do hereunto set my  
13 hand at Chicago, Illinois, this 7th day of  
14 September, 2007.

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16

17 Certified Shorthand Reporter

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19 C.S.R. Certificate No. 84-4327.

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