

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

COMMUNITY LANDFILL COMPANY))
and CITY OF MORRIS,))
))
Petitioners,))
Vs.) No. PCB 01-170)
) (Permit Appeal, Land))
ILLINOIS ENVIRONMENTAL))
PROTECTION AGENCY,))
))
Respondent.))

VOLUME III

RECORD OF PROCEEDINGS taken before Hearing
Officer, Bradley P. Halloran, taken stenographically
before BELINDA A. HARR, CSR. No. 084-3215, at 1320 Union
Street, Morris, Illinois, on the 17th day of October,
A.D., 2001, scheduled to commence at 9:00 o'clock a.m.,
commencing at 9:12 a.m.

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APPEARANCES

ILLINOIS POLLUTION CONTROL BOARD
100 West Randolph Street
Chicago, Illinois 60601
BY: MR. BRADLEY P. HALLORN, Hearing Officer

LaROSE & BOSCO, LTD.
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BY: MR. MARK A. LaROSE
 Appeared on behalf of the Petitioners;

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100 Park Avenue
Rockford, Illinois 61105-1389
(815) 963-8488
BY: MR. CHARLES F. HELSTEN
 Appeared on behalf of the City of Morris;

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
1021 North Grand Avenue East
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BY: MR. JOHN J. KIM
 Appeared on behalf of the Respondent.

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1 HEARING OFFICER HALLORAN: Good morning everyone.
2 My name is Bradley Halloran. I'm the Hearing Officer
3 with the Illinois Pollution Control Board assigned to
4 this matter, Case No. PCB 1-170, Community Landfill
5 Company and the City of Morris versus the IEPA.

6 Today is Wednesday, October 17, 2001.
7 It's approximately 9:12. There do appear to be members
8 of the public, and we're going to address that shortly.

9 This hearing is continued on the
10 record from yesterday, October 16, and is being held
11 pursuant to Section 105.214 of the Board's procedural
12 rules regarding permit appeals in accordance with
13 Section 101, Subpart F.

14 With that said I would like the
15 parties to introduce themselves, and then we'll go ahead
16 with public comments. Mr. LaRose?

17 MR. LaROSE: Thank you, Mr. Halloran. My name is
18 Mark LaRose, and I'm the attorney for Community Landfill
19 Company.

20 HEARING OFFICER HALLORAN: Mr. Helsten?

21 MR. HELSTEN: Thank you, Mr. Hearing Officer. My
22 name is Chuck Helsten for the City of Morris. Also, we
23 have a city representative too, Mr. Warren Olson, from

24 the city engineers' office.

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1 HEARING OFFICER HALLORAN: Thank you, Mr.
2 Helsten.
3 Mr. Kim?

4 MR. KIM: John Kim. I'm attorney for the
5 Illinois EPA.

6 HEARING OFFICER HALLORAN: With that said, the
7 Board provisions allow and, in fact, welcome comments
8 from the public. However, if you do choose to testify,
9 you will testify under oath and subject to
10 cross-examination.

11 With that said and by prior agreement
12 of the parties, we would like to get the comments first.
13 So if anyone chooses to make a statement, please step
14 forward.

15 (Sworn.)

16 LARRY ROMINES,
17 Having been first duly sworn, offered testimony as
18 follows:

19 MR. ROMINES: Good morning. My name is Larry
20 Romines, and I've lived in the Morris area for over 30
21 years. I'm in the trucking business, and occasionally
22 in the wintertime we donate our trucks to the City of

23 Morris along with the Community Landfill for removing
24 snow, and we do charge a reduced rate and it seems that

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1 we, also, work with the area of the Community Landfill
2 with our trucks to get the conditions ready for what
3 they have to do. And I've worked with JP and his
4 business people for ever since he's been out there, and
5 I believe that he does everything that he's supposed to
6 do as far as experience goes with the landfill.

7 And I think the City of Morris is
8 very fortunate to have this landfill open, and without
9 it I don't understand how they would exercise and
10 operate with getting rid of the materials that they have
11 to get rid of in the city of Morris.

12 And so it's my belief that they need
13 to keep the landfill open to take care of the community
14 and not close it because I don't know what the people
15 would do with their roughage.

16 HEARING OFFICER HALLORAN: Is that it, sir?

17 MR. ROMINES: That's it.

18 HEARING OFFICER HALLORAN: Thank you.

19 Mr. LaRose?

20 MR. LaROSE: Nothing.

21 HEARING OFFICER HALLORAN: Mr. Helsten?

22 MR. HELSTEN: Nothing.

23 HEARING OFFICER HALLORAN: Mr. Kim?

24 MR. KIM: Nothing.

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1 HEARING OFFICER HALLORAN: Thank you, sir. You
2 may step down.

3 (Sworn.)

4 GREG BRANDT,

5 Having been first duly sworn, offered testimony as
6 follows:

7 MR. BRANDT: Greg Brandt from Morris here. I've
8 lived all my life in Morris with the exception of the
9 first four months. I have a business here called Brandt
10 Builders. We do general-contracting work. I married
11 and raised three kids here, as did my brothers, and they
12 are also raising kids.

13 We use the landfill quite frequently
14 in construction debris. They are great people to work
15 with. You're in and out. Any help you need, as with
16 the City of Morris, they are the first ones to be there
17 and give you a hand. I know that when Morris has had
18 emergencies whether it's snow removal, flooding,
19 whatever it may be, they have been there and done it.

20 The big thing that I'm concerned with

21 -- you know, this landfill, obviously, was here long
22 before the other landfill there, and I think the
23 competition is greatedened down there. We have
24 competition. Competition improvement is always good for

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1 all businesses there. I have 32 acres I bought probably
2 a short par five away from the landfill. I invested
3 heavily in it with a recreational building for my kids,
4 a pond. We have had several graduation parties out
5 there, wedding receptions, stuff, you know, all summer
6 long. There's no problems. The landfill is kept neat.
7 You know, I've never had really a comment on the
8 landfill out there. There's, you know, no odor from it,
9 nothing like that. They have just done exceptionally
10 well.

11 And I know some of his employees have
12 built homes in town and made their home here. You know,
13 if this is turned down, their future here in Morris is
14 maybe at risk. And Morris is probably one of the best
15 places to live, you know, in town here. And that's all
16 I have to say and thank you for your time.

17 HEARING OFFICER HALLORAN: Thank you, Mr. Brandt.
18 Mr. LaRose?

19 MR. LaROSE: Mr. Brandt, when you deal with the

20 Morris Community Landfill, who do you deal with?

21 MR. BRANDT: I deal with JP.

22 MR. LaROSE: That's all I have.

23 HEARING OFFICER HALLORAN: Mr. Helsten?

24 MR. HELSTEN: Nothing.

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1 HEARING OFFICER HALLORAN: Mr. Kim?

2 MR. KIM: Nothing other than I'd just like to say
3 that I appreciate anybody that can slip a reference to
4 golf in his testimony. Thank you.

5 HEARING OFFICER HALLORAN: With that said, when
6 say a short par five, is that 460 yards?

7 MR. BRANDT: Yeah, something like that. I've
8 never stepped it off.

9 HEARING OFFICER HALLORAN: Thank you, sir.

10 (Sworn.)

11 JOHN SHAW,

12 Having been first duly sworn, offered testimony as
13 follows:

14 MR. SHAW: Good morning. My name is John Shaw,
15 S-h-a-w. I have worked in the Morris area for 40 years
16 at the Central Limestone Company, formerly the Morris
17 Limestone Products Company. I run a family business
18 that has served the Morris area for 73 years. I own

19 property in Morris, and my son and daughter-in-law and
20 grandchildren live in Morris.

21 Community Landfill has been a
22 reliable participant in the Morris business and
23 residential community. I am always impressed by the
24 curb-side service at my son's home where the City picks

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1 up bulky items free of charge. These items all go to
2 the Morris Community Landfill.

3 I have known JP Pelnarsh for 14
4 years, and he has always been a reliable and honest
5 member of the community and has always extended himself
6 in any community emergency such as removing debris from
7 fires and explosions or and most important for emergency
8 snow removal. Thank you.

9 HEARING OFFICER HALLORAN: Thank you, sir.
10 Mr. LaRose?

11 MR. LaROSE: Nothing.

12 HEARING OFFICER HALLORAN: Mr. Helsten?

13 MR. HELSTEN: Nothing.

14 HEARING OFFICER HALLORAN: Mr. Kim?

15 MR. KIM: I'm sorry, I didn't hear your name. I
16 was whispering something when you said it. Could you
17 state your name again?

18 MR. SHAW: John Shaw, S-h-a-w, like George
19 Bernard.

20 HEARING OFFICER HALLORAN: Thank you, Mr. Shaw.
21 Next?

22 (Sworn.)

23 GREG REDFORD,
24 Having been first duly sworn, offered testimony as

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1 follows:

2 MR. REDFORD: Good morning. My name is Greg
3 Redford. That's spelled R-e-d-f-o-r-d. I am the
4 president of Greg Redford Excavating which is located in
5 Morris, and I have been a resident of Morris for 39
6 years. And I would briefly like to express my opinion
7 of the Morris Community Landfill.

8 They provide a disposal facility for
9 the demolition debris my company generates. The
10 presence of the second landfill in Grundy County keeps
11 disposal rates competitively lower. These cost savings
12 can be passed on to my customers, which is taxpayers.

13 I have been involved with Jim
14 Pelnarsh, the operator of Community Landfill, in various
15 projects that help the community including snow removal,
16 demolition projects for the City of Morris. It's helped

17 them to clean up abandon buildings and buildings that
18 have been vacated and rundown.

19 And I know they're certainly making
20 the landfill a much better facility than the dump I used
21 to visit with my dad years ago. As a business owner I
22 understand the responsibilities. Obviously, with
23 Community Landfill operating the landfill they are
24 reducing the City of Morris' responsibilities and

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1 liabilities. As a city taxpayer I certainly can
2 appreciate that.

3 I understand from the newspaper that
4 one of the issues before you is the conviction of the
5 landfill's company president. I just wanted to say that
6 with all my dealings over the last eight years with the
7 landfill I have always dealt with Jim Pelnarsh who is
8 their day-to-day manager, and as such it is unclear to
9 me what the past conviction has to do with running the
10 landfill. That's all I have to say. Thank you.

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

13 MR. LaROSE: Nothing.

14 HEARING OFFICER HALLORAN: Mr. Helsten?

15 MR. HELSTEN: Nothing.

16 HEARING OFFICER HALLORAN: Mr. Kim?

17 MR. KIM: No questions.

18 HEARING OFFICER HALLORAN: Thank you, sir. You
19 may step down. Any other people who want to make public
20 comment? I think that pretty much sums it up for now.

21 With that said, I believe,
22 Mr. LaRose, you're on to your eighth witness in your
23 case in chief.

24 MR. LaROSE: Yes, sir. We call as our eighth

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1 witness the City Clerk in the City of Morris, John
2 Enger.

3 MR. KIM: Before we go into this witness it's my
4 understanding this is going to go into one of the areas
5 that was addressed in the motion to suppress. This has
6 to do with economic -- I'm assuming that's what this has
7 to do with, economic benefits?

8 MR. LaROSE: It has to do with benefits to the
9 City of Morris, that's correct, and prejudice to the
10 City of Morris in the event that this is turned down.

11 MR. KIM: We would, again, just renew the
12 objection as made in the motion. The testimony here is
13 not something that was taken into consideration by the
14 EPA. It was not information that was before the EPA. I

15 believe that it will be borne out that any exhibits or
16 any documents that will be included with this testimony
17 were not provided to the EPA and as such the testimony
18 and the documents will be irrelevant which should be
19 stricken or should be suppressed, however you want to
20 phrase it.

21 HEARING OFFICER HALLORAN: Mr. LaRose?

22 MR. LaROSE: First of all, the two documents that
23 are being presented to the EPA were in their possession
24 because -- or that are going to be presented through

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1 Mr. Enger were in the EPA's possession because they were
2 exhibits in the hearing we had in January of this year.

3 It is true they were not presented as
4 part of the permit application in this case, but they
5 are not being presented as part of the permit
6 application in this case, nor as something that the
7 Agency considered.

8 This testimony, the testimony of the
9 prejudice to the City of Morris and the prejudice to my
10 client, relates directly to our defense of laches. That
11 defense relates not to what the Agency did but to what
12 they didn't do.

13 The Pollution Control Board -- and I

14 presented you earlier, Mr. Halloran, with a copy of the
15 case decided by the Board on April 5 of 2001 in the case
16 of People of the State of Illinois versus Community
17 Landfill Company, PCB No. 97-193.

18 In that case we raised a laches or
19 waiver or estoppel defense which basically claims that
20 the government didn't do what they were supposed to do,
21 slept on their rights, that we were prejudiced by that,
22 and, therefore, they shouldn't be allowed to take the
23 action at this late date.

24 Now, the Pollution Control Board --

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1 and I'll refer you to page 8 of the decision. The
2 Pollution Control Board in that case considered the
3 laches defense and said to successfully allege laches
4 CLC must show (A) that the complained exhibited a lack
5 of due diligence and (B) that CLC was prejudiced. This
6 particular evidence of what will happen to the City of
7 Morris -- the benefits they received and what will
8 happen to the City of Morris if this permit is not
9 reversed is directly related to the laches defense as is
10 the testimony that will come in from Mr. McDermont
11 regarding the amounts of money my client spent since
12 1996, and during that time period the Agency never ever

13 raised this issue.

14 If we're not allowed to present this
15 evidence with respect to prejudice, you will not be
16 making an evidentiary ruling in this case. You'll be
17 making a legal ruling because you will have precluded us
18 from presenting evidence necessary to prove this legal
19 defense, a defense not related to the decision but a
20 defense related to what they didn't do.

21 The Board didn't hold laches in the
22 1997-193 case, but they did say CLC never discusses the
23 compelling circumstances in this matter. Therefore, the
24 Board finds that the laches argument is thus incomplete.

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1 They didn't even reject laches in that case. They just
2 said it's incomplete. This is the type of evidence that
3 we need to show the compelling circumstances in this
4 case. We think the permit decision was wrong, and we're
5 going to take that head on, but if it was right, it was
6 late. They slept on their rights for eight years, and
7 we should be allowed to show the prejudice to be able to
8 present that defense.

9 It was presented in our petition.
10 The laches argument, in fact, was presented to the Board
11 -- excuse me, to the Agency in the record in this case

12 when I told Ms. Munie in the response to my Wells letter
13 that it's too late, you can't do this. She said I
14 didn't find that compelling.

15 So that whole argument was before
16 them when they decided it. If you look at Ms. Munie's
17 May 9 memo, which appears on page 13 of the record, she
18 says "The letter from Mr. LaRose further claims that" --
19 here. "Mr. LaRose argues that the Agency has issued
20 numerous permits since the conviction. The act does not
21 require the Agency to investigate but rather allows the
22 Agency to conduct an evaluation. However, the
23 conviction was not known before the complaint was
24 brought to our attention."

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1 We know that's false because we
2 presented witness after witness to show that the Agency
3 knew of that. This is something that was directly -- if
4 you look at pages 15 and 16 of the record, which is my
5 response to the Wells letter with the few hours that I
6 got to send it, "Indeed we believe that the IEPA did the
7 right thing by not considering this information in any
8 permit decision that was made by the EPA between 1993
9 and today's date, most notably the significant
10 modifications that were granted on August 4."

11 This issue was raised before them.
12 They considered it. They ignored it. And now this is
13 something that we have the right to pursue in a legal
14 fashion before the Board, and this evidence is directly
15 related to it. I would ask that we be allowed to pursue
16 this avenue and present the evidence related thereto.

17 HEARING OFFICER HALLORAN: Mr. Kim, anything
18 further?

19 MR. KIM: Yes, just briefly. Mr. LaRose states
20 that this testimony will somehow address the Illinois
21 EPA's lack of due diligence, and I think that any
22 demonstration or any kind of testimony or evidence that
23 would be elicited on that issue would have been done
24 through testimony from or documents related to testimony

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1 of agency witnesses.

2 I don't understand how a member of
3 the city government would be able to demonstrate or
4 testify that the Illinois EPA failed to exercise due
5 diligence. Further, as to the second component of what
6 Mr. LaRose is concerned about regarding what needs to be
7 demonstrated to successfully allege laches, again, he's
8 already cited information in the record that he believes
9 there is proof that there was some kind of prejudice or

10 some allegations at least of prejudice on the part of
11 the landfill.

12 Information taken into account or
13 information presented up to the date of the decision is
14 information that the Board should definitely consider.
15 Information generated or testimony provided that has no
16 basis other than after the date of the decision should
17 not be allowed into the record.

18 It should be excluded based upon the
19 very straightforward board guidelines and statutory
20 guidelines and regulatory guidelines, and there's no
21 exception made to make allowances for what people
22 believe is necessary for affirmative defense here or
23 there.

24 The guidelines are very

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1 straightforward as to what information may come in and
2 what information may not come in. And the type of
3 testimony that's being sought here is irrelevant and
4 outside the record and should not be included.

5 HEARING OFFICER HALLORAN: Anything further?

6 MR. LaROSE: Very briefly. I never said this
7 testimony had anything to do with proving the due
8 diligence, the lack of diligence. We have already done

9 that through the Agency's own witnesses. This directly
10 relates only to the second component, which is the
11 prejudice.

12 And, again, it's not an evidentiary
13 ruling; it's a legal ruling. If you don't allow this
14 in, Mr. Halloran, you will have ruled that laches may
15 not, cannot, and does not apply to this case.

16 HEARING OFFICER HALLORAN: Well, if I don't allow
17 it in and I am wrong, the Board will reverse my decision
18 as they have in the past. So you can still get an
19 opportunity --

20 MR. LaROSE: Understood, but I'm making the
21 distinction between a ruling based on evidentiary
22 standards and a ruling based on whether we're allowed to
23 present this defense or not. Because if we can't
24 present evidence of prejudice, then we can't present the

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1 defense. It's really a ruling that says this defense is
2 inapplicable to this case.

3 The testimony of both the city
4 officials also goes to the 39(i) factors in mitigation.
5 Okay. They didn't consider any of the good things that
6 we do for this community. They didn't consider any
7 mitigating factors at all. They say in the Gonzalez

8 Transfer Station case, well, jeez, we did that because
9 this guy was great for the community and he's been a
10 good member of the community.

11 What about us? Did they consider any
12 of this stuff, the fact that we help the City, the fact
13 that we reduce the City's burden from waste disposal?

14 It's another reason why it's relevant
15 and to let it in. I really think this evidence is
16 relevant and germane. It's absolutely crucial to the
17 legal argument, and I think it should be allowed in.

18 HEARING OFFICER HALLORAN: Well, here's my
19 ruling. First of all, 97-193, as correctly stated by
20 you, was an enforcement case. This is a permit appeal.
21 I don't find the laches argument sufficiently addressed
22 in the record, and I find it irrelevant. You may
23 proceed with your offer of proof.

24

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1 (Witness sworn.)

2 JOHN ENGER,

3 Called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LaROSE:

7 Q. Sir, could you state your name for the
8 record please?

9 A. John Enger, E-n-g-e-r.

10 Q. Mr. Enger, what's your position please?

11 A. I'm the elected city clerk of the City of
12 Morris.

13 Q. And how long have you been that?

14 A. Since 1987.

15 Q. Mr. Enger, in your position as the elected
16 city clerk of the City of Morris do you have any
17 responsibilities with respect to the collection of
18 royalties or landfill taxes from the Morris Community
19 Landfill?

20 A. Yes. I receive both of them, process
21 them, receipt them, and turn them over to the city
22 treasurer's office for deposit in the two separate funds
23 that the City has established for those monies.

24 Q. Okay. And how is it, sir, that you

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1 receive those funds?

2 A. Normally the manager, Mr. Pelnarsh,
3 personally delivers them to my office on a monthly
4 basis.

5 Q. And the royalties are paid pursuant to an

6 agreement with the City of Morris; is that correct?

7 A. That's correct. An agreement that was
8 entered into in, I believe, July of 1982.

9 Q. And the solid waste taxes, is that
10 pursuant to -- what?

11 A. The City passed an ordinance to bring it
12 in line with the state statute to impose that tax
13 citywide, and I believe that was in the late eighties at
14 some point.

15 MR. LaROSE: Mr. Halloran, I'm going to show
16 Mr. Enger Exhibits 58 and 59 -- I'm sorry, 57 and 58.

17 BY MR. LaROSE:

18 Q. Mr. Enger, there's 57 and there's 58.
19 Let's look at 57 first, sir. What is that?

20 A. Those are the royalties paid to the City
21 from May of '98 through October of 2000 which totaled
22 \$812,401.12.

23 Q. And the second page of that is what?

24 A. Those are additional royalties from

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1 October 23 of 2000 through September 8 of 2001 which
2 total an additional \$250,284.28.

3 Q. What is that money used for?

4 A. All those funds are placed in the City's

5 garbage fund which pays for the collection of
6 residential and business refuse throughout the city.

7 Q. Could you explain that a little bit more?

8 A. Currently our contract with Waste
9 Management is \$426,000 annually. The landfill will
10 normally generate between 250- to \$350,000 a year.
11 Those funds are placed or those royalties are placed in
12 the garbage fund to offset the cost of the collection
13 contract.

14 Q. When you say to offset the cost, does that
15 help the households and the businesses in the city of
16 Morris?

17 A. That's correct. We impose a small
18 property tax that makes up the difference. This current
19 year I believe it's \$75,000 citywide.

20 Q. And if this money wasn't available, what
21 would happen?

22 A. The City would have to look for
23 alternative sources of revenue whether it be sales tax or
24 increasing the property tax, but we definitely would

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1 have to find other sources of revenue.

2 MR. LaROSE: Mr. Halloran, with that I move
3 admission of Exhibit 57 into evidence.

4 HEARING OFFICER HALLORAN: Mr. Kim?

5 MR. KIM: Same objection as I stated before, and
6 this more clearly demonstrates that. A great deal of
7 information included in Exhibit 57 postdates the
8 decision at hand.

9 HEARING OFFICER HALLORAN: I have the same
10 ruling. The exhibit is denied but will be taken with
11 the offer of proof, sir.

12 MR. LaROSE: Thank you.

13 BY MR. LaROSE:

14 Q. With respect to Exhibit 58, Mr. Enger,
15 could you take a look at that please? What is that?

16 A. Those are the solid waste tax funds that
17 have been collected on the same dates from Community
18 Landfill which total approximately \$240,000.

19 Q. Okay. And that's the first page and the
20 second page added together?

21 A. That's correct.

22 Q. What are the taxes used for?

23 A. Those taxes have to be placed in a special
24 fund that is restricted by state statute as to how they

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1 are spent, and the City uses them for environmental
2 purposes.

3 Q. So that money goes directly to benefit the
4 environment?

5 A. That's correct.

6 MR. LaROSE: With that, Mr. Halloran, I would
7 move for the admission of Group Exhibit 58 please.

8 HEARING OFFICER HALLORAN: Mr. Kim?

9 MR. KIM: Same objection as to Exhibit 57.

10 HEARING OFFICER HALLORAN: Sustained. Same
11 ruling. Exhibit 58 is denied but will be taken with the
12 case with your offer of proof.

13 BY MR. LaROSE:

14 Q. In your dealings over the last 20 years,
15 or so, with Morris Community Landfill who do you deal
16 with?

17 A. The onsite manager, Jim Pelnarsh.

18 Q. Sir, the obligations of Community Landfill
19 Company in the City of Morris, are they current on all
20 those obligations, do you know?

21 A. Yes, they are.

22 Q. If this decision is not reversed and the
23 site is no longer able to accept waste, what, if any,
24 effect do you think that will have on the City of

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1 Morris?

2 A. Well, the obvious effect, first, would be
3 a very detrimental economic impact due to the fact that
4 we would have to raise property taxes for our collection
5 cost.

6 Also, Community does more than just
7 pay royalties. The City utilizes their heavy equipment
8 quite often, especially for our snow removal projects,
9 demolition of older properties in town. They will come
10 in and tear them down for us and dispose of them at
11 Community at no charge to the City.

12 We currently are trying to improve
13 our canal -- our river-front property. There's several
14 structures that have to be torn down which Community
15 will be asked to do for us, and they have never denied
16 us use of their equipment or have never charged us for
17 dumping fees for those types of operations.

18 They have, also, used their heavy
19 equipment for expanding parks and they were instrumental
20 in clearing property for a Lions Club community park.
21 So it's more than just the royalties, but they sure
22 help.

23 MR. LaROSE: Thank you. That's all I have.

24 HEARING OFFICER HALLORAN: Thank you, sir.

1 Mr. Helsten?

2 MR. HELSTEN: Nothing.

3 HEARING OFFICER HALLORAN: Mr. Kim?

4 MR. KIM: Nothing.

5 HEARING OFFICER HALLORAN: You may step down.

6 Thank you very much for your time. That concludes

7 Mr. LaRose's offer of proof.

8 MR. LaROSE: The next witness is Warren Olson.

9 (Witness sworn.)

10 WARREN OLSON,

11 Called as a witness herein, having been first duly

12 sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LaROSE:

15 Q. Mr. Olson, would you state your name for
16 the record please?

17 A. My name is Warren Olson, O-l-s-o-n.

18 Q. What's your occupation, sir?

19 A. I'm an engineering aide for the firm of
20 Chamlin & Associates. I'm a project manager.

21 Q. And does Chamlin & Associates do any
22 services for the City of Morris?

23 A. We perform a number of services related to
24 public works and capital improvements.

1 Q. And Chamlin & Associates is an engineering
2 firm?

3 A. Yes, sir.

4 Q. Specifically, have you had any experience
5 with working with the people at Morris Community
6 Landfill?

7 A. Yes, sir, for probably the past 20 years.

8 MR. KIM: Mr. Hearing officer, would you mind if
9 I close that door?

10 HEARING OFFICER HALLORAN: Let the record reflect
11 that I was closing the doors, something I probably
12 should have done earlier. You may proceed, Mr. LaRose.

13 BY MR. LaROSE:

14 Q. When you had contact over the years with
15 Community Landfill Company, who did you deal with?

16 A. Always Jim Pelnarsh.

17 Q. And what were the nature of your dealings
18 with Mr. Pelnarsh?

19 A. Generally, I was responsible for
20 contacting Mr. Pelnarsh for things like snow removal,
21 and I'd get his equipment. I actually asked him for
22 favors when we were doing some city parks and some
23 river-front improvement.

24 Q. Can you discuss in a little bit more

1 testify even outside an offer of proof as to the
2 dealings that he had with Community Landfill over the
3 last 20 years.

4 MR. KIM: I have no objection to that, and I
5 didn't say anything initially, but his testimony began
6 to go into and the landfill provided us with -- you
7 know, and that's the kind of thing I think is outside
8 the record.

9 HEARING OFFICER HALLORAN: Make your objection, I
10 guess, --

11 MR. KIM: My objection was to the answer that was
12 just given and to the question that was just given. If
13 Mr. LaRose would like to ask about his dealings with
14 Mr. Pelnarsh and get that out of the way, we're not
15 going to have any objection to that.

16 MR. LaROSE: Okay. But it's hard for me -- his
17 dealing with Mr. Pelnarsh dealt with snow removal and
18 building the parks and cleaning the canals. I mean, how
19 can I separate the two?

20 HEARING OFFICER HALLORAN: I don't know. It
21 sounds to me like you're going to have to based on my
22 prior ruling.

23 MR. LaROSE: Let's see if I can get at what the
24 dealings were first and just the nature of the dealings

1 without describing exactly what they did, and then I'll
2 get into what -- because I want that testimony in anyway
3 regardless of whether it's going to be admitted or an
4 offer of proof.

5 So let me see if I can split it up so
6 we can talk about the dealings and it will at least be
7 in the record.

8 HEARING OFFICER HALLORAN: Mr. Kim, how does that
9 sound?

10 MR. KIM: That's fine.

11 HEARING OFFICER HALLORAN: Thank you very much.

12 BY MR. LaROSE:

13 Q. Sir, when you dealt with the Morris
14 Community Landfill, you dealt with Jim Pelnarsh you
15 testified; is that correct?

16 A. That's correct.

17 Q. Without telling me what exactly was done
18 can you describe to me the categories of dealings that
19 you had with him in terms of, you know, you said one was
20 snow removal, that type of thing?

21 A. Yes. We have a tributary to the east
22 branch of Nettle Creek. It's an important drainage shed
23 for the northeast part of town, and I asked Mr. Pelnarsh
24 to assist in the cleaning of that tributary and they did

1 so...

2 Q. Hold on. I want you to say what you're
3 going to say and you're ultimately going to say it, but
4 we as lawyers have got to chop this thing up because of
5 some evidentiary rules. You shouldn't be concerned with
6 that. All I want you to tell me first is just the
7 subject matter of the dealings. So in this respect it
8 would be dealt with Jim Pelnarsh regarding the canal,
9 dealt with Jim Pelnarsh regarding -- is that fair
10 enough, fellows?

11 HEARING OFFICER HALLORAN: That's fair.

12 MR. KIM: Yes.

13 BY MR. LaROSE:

14 Q. So we dealt with Mr. Pelnarsh with respect
15 to the east branch of Nettle Creek?

16 A. Correct.

17 Q. What other subcategories of dealings did
18 you have with Mr. Pelnarsh?

19 A. Snow removal.

20 Q. What else?

21 A. Public improvements.

22 Q. What else?

23 A. Urban renewal.

24 Q. What else?

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1 A. It would be too generalized. I can't
2 break it down by category. Just a number of other
3 things.

4 Q. If I was to say improvement to the parks,
5 or whatever, would that be something?

6 A. That was the public improvements.

7 Q. Okay. Pavement issues?

8 A. Payment?

9 Q. Pavement.

10 A. Yes.

11 Q. Would emergency services be another
12 category?

13 A. Yes, sir.

14 MR. LaROSE: At this time I would like to now
15 discuss with him the nature of those.

16 HEARING OFFICER HALLORAN: Mr. Kim?

17 MR. KIM: At this point we would renew the
18 objection we had as to the other information. If this
19 is something that's being offered in furtherance of the
20 laches defense or to demonstrate some kind of prejudice
21 that would somehow befall the petitioner, then we think
22 that's outside the record and that's not information

23 that was before us. This information probably wasn't
24 either.

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1 I have no problem with him putting
2 what his dealings with Mr. Pelnarsh were in, but I think
3 anything beyond this is clearly within the scope of what
4 you had previously sustained our objection to.

5 MR. LaROSE: And they -- just briefly in
6 response, they definitely knew about this. This was all
7 testimony that was given in January, and they were all
8 sitting there. So if they say we didn't know, that was
9 just wrong.

10 Secondly, it's not just -- it's
11 certainly offered for the prejudicial portion of the
12 laches. If they can do this permit thing after --
13 permit denial after waiting eight years and sitting on
14 their hands and doing nothing, this is the prejudice
15 that's going to happen.

16 So it's definitely related, but it's,
17 also, related to the 39(i) issue. Are these guys good
18 guys? Do they do good things? That's what they are
19 saying that made the difference in the Gonzalez case.

20 Well, they gave me four hours to
21 write a letter in this case, and I didn't really have a

22 chance to spell out all the things that maybe we have
23 been doing right, and I think this is germane to that
24 issue.

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1 So he's renewed his objection. I
2 renew my response. You're going to make your ruling,
3 and then we're going to move on.

4 HEARING OFFICER HALLORAN: I renew my position
5 and sustain Mr. Kim's objection based on the irrelevancy
6 ruling from the last witness. You may proceed with your
7 offer of proof.

8 MR. LaROSE: Thank you.

9 BY MR. LaROSE:

10 Q. Tell me about the snow removal.

11 A. Almost on an annual basis due to the size
12 of the city we have to either contract out or request
13 assistance with snow removal and generally on an
14 emergency basis such as last December.

15 While I do not handle the removal
16 proper it is sometimes my job to call and get this
17 assistance from various contractors and equipment
18 suppliers. I have constantly contacted Mr. Pelnarsh,
19 JP, and he has responded with equipment.

20 Q. Last year when we had all that snow, did

21 they help you?

22 A. Yes, for several days.

23 Q. And was that service provided at a cost to
24 the City?

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1 A. I believe it was free of charge, but I
2 would not get the invoices. I believe it was free of
3 charge.

4 Q. Tell me about the Lions Park and the
5 river-front park.

6 A. Again, built by the Lions on a volunteer
7 basis, and Mr. Pelnarsh furnished some heavy equipment
8 for doing site grading, hauling materials in and out,
9 cleaning up old trees and removing dead trees.

10 Q. What about the river-front park? Same
11 thing?

12 A. Yes, sir.

13 Q. Tell us about the cleaning up of the
14 branch of Nettle Creek.

15 A. Several years ago we had a drainage
16 problem in the northeast side of Morris. One of those
17 problems was an unnamed ditch. It's a tributary to the
18 east branch of Nettle Creek and it runs behind the
19 landfill to a point or to the landfill actually.

20 We had had a project estimate to
21 clean that of approximately \$40,000. When Mr. Pelnarsh
22 was approached, his firm or the landfill cleaned that
23 entire ditch for us at no charge.

24 Q. Issues with respect to demolition. Please

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1 tell Mr. Halloran and the Board about that.

2 A. The way the city is growing we're removing
3 a lot more downtown structures, old structures.
4 Property that we have purchased for use as parks
5 Mr. Pelnarsh has, again, consistently operated a piece
6 of equipment and disposed of that demolition debris free
7 of charge.

8 Q. If this permit is not reversed and the
9 site is no longer able to accept waste, Mr. Olson, what,
10 if any, effect do you think it will have on the City of
11 Morris?

12 A. The way we're going it's going to have a
13 devastating effect. We need the space at -- quite
14 frankly at no charge is of great benefit to us to take
15 all this demolition debris to the landfill and have
16 somebody take care of it for us.

17 In addition to all this, you know, we
18 remove thousands of square feet of sidewalks and

19 driveways each year. That's demolition debris that the
20 City does on their own, and that is the place we take
21 all the demolition debris.

22 Q. What about the folks that get curb-side
23 waste removal? Do you know anything about that?

24 A. Yes. In July, I believe, of 2000 we had a

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1 terrible storm here. It was in all the papers and on
2 the television sets. There were literally hundreds of
3 truckloads of things from basement, couches from
4 basements, and those kinds of things that were put on
5 the curb, and the City picked them up and hauled it to
6 Community Landfill and they disposed of that free of
7 charge.

8 Q. The City picked it up from the citizens
9 free of charge?

10 A. Yes.

11 Q. And it was brought to Community Landfill's
12 disposal free of charge?

13 A. Correct.

14 Q. If we close that down, that goes away too;
15 right?

16 A. I would think knowing the rates of other
17 area landfills it would have cost the individual

18 residents here a substantial sum to have to do that on
19 their own.

20 Q. Any other detrimental effects that you can
21 think of if this permit is not reversed?

22 A. Well, I do assist in the budget with the
23 City for capital improvements, and Community Landfill
24 has put a lot of money out in that area. Like I'm

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1 saying, it's an important thing to this whole community.
2 I don't just stand up here and say that. It is
3 important, and we need to keep that thing open, and we
4 need to do whatever we can do to keep it open.

5 MR. LaROSE: Thank you, sir. That's all I have.

6 HEARING OFFICER HALLORAN: Mr. Helsten?

7 MR. HELSTEN: Nothing.

8 HEARING OFFICER HALLORAN: Mr. Kim?

9 MR. KIM: Nothing.

10 HEARING OFFICER HALLORAN: Thank you, Mr. Olson.
11 You can step down. That concludes Mr. LaRose's offer of
12 proof with his ninth witness, Mr. Olson.

13 Mr. LaRose, are you ready to call
14 Mr. McDermont?

15 MR. LaROSE: Here's my suggestion. We could
16 Read the stip. and then take maybe five minutes just

17 to get a drink of water and go to the washroom and put
18 Mr. McDermont on and go right through.

19 HEARING OFFICER HALLORAN: Sounds like a great
20 idea. Mr. LaRose or Mr. Kim, either one, is going to
21 read the Exhibit 19 stipulation of facts into the
22 record.

23 MR. LaROSE: This is a stipulation of facts that
24 was entered into by petitioners and the IEPA. "Now

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1 comes petitioner, Community Landfill Company, and the
2 respondent, the Illinois Environmental Protection
3 Agency, by their counsel and hereby stipulate to the
4 following facts.

5 1) Community Landfill Company, a/k/a
6 Community Landfill Corporation, initiated a variance
7 proceeding against the Illinois EPA before the Illinois
8 Pollution Control Board captioned Community Landfill
9 Company versus Illinois Environmental Protection Agency,
10 PCB 95-137 ("variance proceeding").

11 2) In that variance proceeding a hearing
12 was held on at least July 26, 1995, at the Grundy County
13 Administrative Center in Morris, Illinois.

14 3) Present during at least that day of
15 hearing on behalf of the Illinois EPA were Jack Burds,

16 B-u-r-d-s, Kyle Nash Davis, Sally Springer, and Warren
17 Weritz.

18 MR. KIM: Why don't you spell that?

19 MR. LaROSE: W-e-r-i-t-z.

20 4) Mr. Burds and Mr. Davis were present
21 in their capacity as attorneys representing the Illinois
22 EPA in the variance proceeding.

23 5) Sally Springer was present in her
24 capacity as a permit reviewer then assigned to review

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1 applications and other matters relating to Community
2 Landfill in Morris, Illinois.

3 6) Mr. Weritz was present in his capacity
4 as an inspector then assigned to conduct periodic
5 as-needed inspections of Community Landfill in Morris,
6 Illinois.

7 MR. KIM: I think that's periodic and as-needed.

8 MR. LaROSE: Thank you.

9 7) On July 26, 1995, during the variance
10 proceeding an interested member of the public attended
11 the hearing named Don Becker was sworn in and then made
12 a comment on the record.

13 8) Mr. Becker's statements included the
14 following comments. 'Now I've heard a lot of testimony

14 specifically -- but do not as of this date specifically
15 recall Mr. Becker's testimony.

16 10) Following the variance proceeding
17 neither Ms. Springer nor Mr. Weritz took any steps to
18 independently verify any of the allegations raised by
19 Mr. Becker from July 26, 1995, until April of 2000.

20 MR. KIM: No, no, no. That's -- put the word
21 and. And also it's 2001.

22 MR. LaROSE: You're right. Let me start again
23 with 10. I was never good at public reading. I have a
24 flashback to second grade.

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1 10) Following the variance proceeding
2 neither Ms. Springer nor Mr. Weritz took any steps to
3 independently verify any of the allegations raised by
4 Mr. Becker and from July 26, 1995, to April of 2001
5 neither Ms. Springer nor Mr. Weritz conducted nor caused
6 or requested the Illinois EPA to conduct any evaluation
7 of the criminal background of Community Landfill
8 Company, its officers, owners, or employees pursuant to
9 Section 39(i) of the Illinois Environmental Protection
10 Act.

11 11) On an unspecified date at least
12 several years prior to April of 2001 Mr. Weritz had

13 heard that the owners of Community Landfill Company had
14 been convicted of a felony."

15 And that's the end of the
16 stipulation.

17 HEARING OFFICER HALLORAN: Thank you, Mr. LaRose.
18 You did an excellent job. Ten-minute break.

19 (Brief break.)

20 HEARING OFFICER HALLORAN: Back on the record at
21 approximately 10:15. Mr. LaRose?

22 MR. LaROSE: Thank you, Mr. Halloran. Our last
23 witness is Michael McDermont.

24

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1 (Witness sworn.)

2 MICHAEL McDERMONT,

3 Called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LaROSE:

7 Q. Good morning.

8 A. Good morning.

9 Q. Would you state your name for the record
10 please?

11 A. My name is Mike McDermont.

12 Q. Mr. McDermont, you're a registered
13 professional engineer; correct?

14 A. Yes, I am.

15 Q. Who do you work for?

16 A. I work for Andrews Environmental
17 Engineering.

18 Q. And have you in that capacity performed
19 any services on behalf of Morris Community Landfill?

20 A. Yes, I have been their engineer for 14
21 years.

22 MR. LaROSE: I'm going to just offer
23 Mr. McDermont's CV. We're all pretty familiar with his
24 qualifications.

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1 MR. KIM: No objection.

2 MR. LaROSE: Maybe we can short-circuit going
3 through it.

4 MR. KIM: That's fine.

5 MR. LaROSE: His CV is Exhibit No. 2, and I would
6 offer that into evidence at this time.

7 MR. KIM: No objection.

8 HEARING OFFICER HALLORAN: Exhibit No. 2 is
9 admitted.

10 BY MR. LaROSE:

11 Q. Mr. McDermont, were you involved in the
12 significant modification permit process in this case?

13 A. Yes, I was.

14 Q. Just briefly and by way of background
15 could you explain for the Board the steps -- first of
16 all, when did that process begin?

17 A. That process began in -- earnest in 1994.

18 Q. And what was the beginning stage of that
19 process?

20 A. The beginning stage of that process was
21 approaching the Illinois Environmental Protection Agency
22 to file the facility's initial significant modification
23 permit application.

24 Q. As a result of that approach what was the

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1 next thing that happened?

2 A. As a result of that it was recommended
3 that a variance petition be filed before the Pollution
4 Control Board.

5 Q. Was that done?

6 A. That was done.

7 Q. What was the result of that proceeding?

8 A. The result of that proceeding was that the
9 Board denied the petition.

10 Q. And what happened next?

11 A. That Board decision was appealed to the
12 appellate court.

13 Q. And what happened then?

14 A. The appellate court reversed the Board's
15 decision.

16 Q. And what was the result of the appellate
17 court's decision?

18 A. The result of the appellate court decision
19 was that the applicant, Community Landfill Company and
20 the City of Morris, could file their significant
21 modification permit applications within 45 days.

22 Q. Okay. And do you remember what date the
23 deadline was for the 45 days?

24 A. Yes. August 5, 1996.

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1 Q. And was the application filed on that
2 date?

3 A. Both applications were filed on that date,
4 yes, sir.

5 Q. How long was that application pending
6 before the Agency?

7 A. That application was pending before the
8 Agency for in excess of three years.

9 Q. And during that three-year period were you
10 making contact with and submittals to the IEPA?

11 A. Yes, I was.

12 Q. And they were responding to your comments
13 and you were having conversations with them; correct?

14 A. Yes, sir.

15 Q. What was the result of that -- final
16 result of that first permit application?

17 A. The first permit application was
18 ultimately denied in September of 1999.

19 Q. What happened next?

20 A. After negotiation with the City we refiled
21 the permit application for A and B in May of 2000.

22 Q. And what was the result of refiling the
23 significant modification permit applications in May of
24 2000?

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1 A. They were ultimately approved by the IEPA.

2 Q. And do you remember when that was?

3 A. They were ultimately approved in August of
4 2001.

5 Q. Okay. Mr. McDermont, you have some larger
6 exhibits that generally relate to the landfill itself.

7 I'm going to ask you to put on the easel the site

8 location map which we have marked as Exhibit 55.

9 Mr. Halloran, I'm going to hand you
10 what's previously been marked as Exhibit No. 55.

11 HEARING OFFICER HALLORAN: Thank you, sir.

12 BY MR. LaROSE:

13 Q. What is Exhibit 55, Mr. McDermont?

14 A. Exhibit 55 is a topographical quad map
15 showing the city of Morris as well as the landfill
16 location in the city of Morris.

17 Q. How is the landfill location identified on
18 that map? I can't see it from here but --

19 A. The landfill is identified as parcel A and
20 parcel B and the heavy outline for both of those parcels
21 is labeled facility boundary. It is on the east side of
22 the city of Morris.

23 MR. LaROSE: With that, Mr. Halloran, I would
24 move for admission of Exhibit 55 please.

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1 HEARING OFFICER HALLORAN: Mr. Kim?

2 MR. KIM: I'm not going to have an objection to
3 the document, but could -- I have no objection, but
4 could you clarify again where on this map that is. I
5 think it's just the copy that I have here is a little
6 bit --

7 THE WITNESS: (Indicating).

8 MR. LaROSE: Show Mr. Halloran too.

9 MR. KIM: No objection.

10 HEARING OFFICER HALLORAN: Thank you. Exhibit 55
11 will be admitted into evidence.

12 BY MR. LaROSE:

13 Q. Mr. McDermont, could you pull the chart
14 that we have commonly referred to as the parcel A/parcel
15 B chart please. John, that's 53. Mr. Halloran, I'm
16 going to hand you what's been marked as Exhibit No. 53.
17 What is Exhibit No. 53, Mr. McDermont?

18 A. Exhibit No. 53 is a plan view of the
19 parcel A portion of the landfill in relation to the
20 parcel B portion of the landfill.

21 Q. What's the line that divides those two, do
22 you know?

23 A. The two lines dividing the landfill or the
24 line dividing the landfill into two units is Ashley Road

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1 which transects the site at a north/south direction
2 roughly approximately in half.

3 MR. LaROSE: Okay. With that, Mr. Halloran, I
4 would move for admission of Exhibit No. 53 please.

5 HEARING OFFICER HALLORAN: Mr. Kim?

6 MR. KIM: I have no objection based on one
7 question that wasn't asked, and I assume I should have
8 asked this for 55 as well. Is it true that these are
9 depictions of the facility as it existed on May 11 of
10 2001?

11 MR. LaROSE: I don't know the answer to that
12 question, but I think that's correct.

13 MR. KIM: If You could ask the witness and if he
14 says yes, then I have no objection.

15 BY MR. LaROSE:

16 Q. Does Exhibits 53 and 55 depict the --
17 let's break it down. Exhibit 55 which was the location
18 map, was the location of the facility the same on May
19 11, 2001, as depicted on Exhibit 55?

20 A. Could you ask that one more time?

21 Q. Sure. Take a look at 55 again so we don't
22 get confused. That's the facility location map. That
23 location map is accurate as to the location of the
24 facility as of May 11, 2001; correct?

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1 A. Yes, they are, and a reduced copy appears
2 in the record.

3 MR. KIM: The same that is true for 53?

4 BY MR. LaROSE:

5 Q. And the same question with respect to 53,
6 sir. That would depict the boundaries of the landfill
7 as May 11, 2001; correct?

8 A. Yes, sir.

9 Q. Okay.

10 MR. KIM: No objection.

11 HEARING OFFICER HALLORAN: Exhibit 53 is admitted
12 into evidence.

13 BY MR. LaROSE:

14 Q. Take a look at what we call, Mike, the
15 historical document. It's 56, John. Sir, Exhibit
16 No. 56 is what?

17 A. Exhibit No. 56 is a plan view drawing of
18 parcel A of the east side of the road which shows the
19 topographic contours of the existing land parcel as they
20 existed in the 1980's.

21 Q. And that's before any improvements were
22 made to parcel A; correct?

23 A. That's correct.

24 Q. What was the purpose of including that

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1 document in the sig. mod. permit application?

2 A. The purpose of this document illustrates
3 the existing land surface of parcel A as it existed

4 during the permit application preparation, and it also
5 illustrates the surface condition of the previously
6 deposited waste into parcel A.

7 MR. LaROSE: With that, Mr. Halloran, I would
8 move admission of Exhibit No. 56 please.

9 HEARING OFFICER HALLORAN: Mr. Kim?

10 MR. KIM: No objection.

11 HEARING OFFICER HALLORAN: Thank you. Exhibit 56
12 is admitted.

13 BY MR. LaROSE:

14 Q. With respect to the significant
15 modification permit applications that were issued in
16 August of 2000 what, if any, pollution control devices
17 or environmental protection devices were required
18 pursuant to that permit?

19 A. The permit required the installation of
20 drainage ditches, sedimentation ponds, installation of
21 groundwater monitoring wells, perimeter gas probes,
22 leachate removal devices, groundwater collection
23 devices, separation layer, enhanced final cover design.

24 Q. Okay. Let's talk about the separation

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1 layer for a second. What is that?

2 A. A separation layer is a layer of 36 inches

3 of compacted clay soil which has been constructed or is
4 constructed to be impermeable to resist the flow of
5 liquid from it.

6 That layer is to be placed over the
7 previously deposited waste, and additional waste would
8 then be -- additional new waste would then be placed
9 over the separation layer.

10 Q. Sir, take a look at the next map that we
11 have -- oh, you already have it up there. Very good.
12 You're a step ahead of me, Mr. McDermont. Exhibit
13 No. 54, John. Mr. Halloran, I'm handing you what's been
14 marked as Exhibit No. 54. What's 54, Mr. McDermont?

15 A. Exhibit 54 is another plan view of
16 Parcel A which shows the finished surface of the
17 separation layer and the surface has been designed to
18 promote leachate drainage to the outside perimeter
19 leachate collection devices.

20 Q. In your opinion as an environmental
21 professional what, if any, effect did the separation
22 layer and the design of the leachate collection have on
23 environmental protection?

24 A. The leachate collection system in

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1 combination with the separation layer is the most

2 significant environmental control item in the design of
3 the parcel A landfill.

4 Q. During the pendency of the applications
5 that ultimately resulted in the issuance of the permit
6 in August of 2000 from August of '96 to August of 2000
7 how many contacts in writing would you say that you had
8 with the permit section of the EPA?

9 A. Contacts in writing would be certainly in
10 excess of 50.

11 Q. And conversations with the permit reviewer
12 Christine Roque, same question during that period of
13 time?

14 A. Certainly in excess of 30 times.

15 Q. Same question with respect to
16 conversations during that period of time that you may
17 have had with the permit section manager Joyce Munie?

18 A. In excess of five times.

19 Q. During any of these contacts with the
20 Agency during the pendency of this application, whether
21 they be oral or in writing, did the Agency ever give you
22 any indication that they intended to or might raise a
23 39(i) issue with respect to Mr. Pruiem's 1993 conviction?

24 A. Absolutely not.

1 Q. If they had done that, what would you have
2 done?

3 A. Had they done that we would immediately
4 have stopped all work on the applications or landfill
5 construction, whatever we were doing. We would have
6 immediately contacted the client and informed him of the
7 recent developments, and we would have stopped spending,
8 if you will, the client's money.

9 Q. Let's move forward to the permit
10 application that was the subject of the denial in this
11 case, the application log of 2000-438. What was that
12 application for?

13 A. That application was seeking approval of a
14 constructed portion of the separation layer and leachate
15 collection system.

16 Q. Okay. What, if any, relation did the
17 permit application that's at issue in this case have to
18 the August 2000 sig. mods.?

19 A. They are absolutely related.

20 Q. And how?

21 A. The August 2000 application contained
22 special conditions for parcel A required as to prepare
23 acceptance reports for the construction -- the
24 incremental construction of the separation layer and to

1 seek agency approval before we could start operating or
2 filling that area.

3 Q. Okay. If this permit would be granted,
4 would it have been a modification of the August permits?

5 A. Yes, it would have.

6 Q. And other than the approval of this
7 construction of this new cell, the new separation layer,
8 would the permit, if granted, have been identical at all
9 in respect to the August 2000 permit?

10 A. Yes, it would have.

11 Q. Take a look, Mr. McDermont -- you have a
12 copy of the record in front of you. Would you flip to
13 page 202 of the record please?

14 MR. KIM: Did you introduce 54?

15 MR. LaROSE: I may not have, but I should. I
16 would move 54 into evidence please.

17 MR. KIM: No objection.

18 HEARING OFFICER HALLORAN: Exhibit 54 is
19 admitted.

20 BY MR. LaRose.

21 Q. Mr. McDermont, I have a reference here to
22 page 202, but I'm not finding what I want. I'm looking
23 for the map in the record that would relate to the
24 construction of the separation layer. What page is it

1 on?

2 A. 202.

3 MR. LaROSE: I must have pulled it out of my
4 copy.

5 MR. KIM: Do you not have it?

6 MR. LaROSE: You know, I don't have it.

7 MR. HELSTEN: Here.

8 BY MR. LaROSE:

9 Q. What is the document that is depicted on
10 202, Mr. McDermont?

11 A. This drawing is entitled Area 2000-A
12 Record Drawing parcel A.

13 Q. What appears up in the right-hand corner
14 of that?

15 A. The upper right-hand corner is a small
16 plan view of parcel A which we have entitled the Area
17 Location Map.

18 Q. Do you see a little black -- I guess you
19 would call it a trapezoid within the area of parcel A of
20 the landfill? What does that represent?

21 A. That dark area is the area of the
22 separation layer which is being discussed in this
23 report, Area 2000-A.

24 Q. And above that and kind of diagonally to

1 the right of that you see some diagonal lines kind of
2 like shading. What does that represent?

3 A. That is labeled the previously constructed
4 separation layer area which means that the area of
5 parcel A which was previously constructed -- the area of
6 the separation layer on parcel A previously constructed.
7 Excuse me.

8 Q. So that's done; correct?

9 A. That is done, yes, sir.

10 Q. And that's been approved by the Agency?

11 A. The permit application that that was built
12 under did not contain a requirement that we seek permit
13 approval on each incremental area.

14 Q. But is that either areas of the landfill
15 that have already been filled or are currently in active
16 operation?

17 A. That is true.

18 Q. When this construction -- I'm sorry. When
19 this separation layer was built what did you do with
20 respect to the construction?

21 A. The separation layer was built under
22 observation of a construction quality assurance officer.
23 That officer is required to be a professional engineer
24 in Illinois. As such I was the engineer in charge of

1 the project. I was assisted by a technician from
2 another of our offices.

3 Personally my role consisted of on a
4 frequent or weekly basis visiting the site as required
5 to check on the proper construction. I took compaction
6 testing. I oversaw construction of it. I performed
7 material procurement for the purchased items. I visited
8 and reviewed the clay borrows source, looked at the
9 soil, confirmed the construction was proceeding
10 appropriately, prepared the report when we were done,
11 prepared this drawing, certified that the development
12 was in accordance with the permitted design.

13 Q. The report that you're talking about is
14 that the report that was submitted for acceptance with
15 respect to this permit?

16 A. Yes. It's called the acceptance report.

17 Q. As far as you know and in your discussions
18 with the Agency and your listening to their testimony
19 here today, they don't quibble with the fact that you
20 built it right, do they?

21 A. No, they do not.

22 Q. So we don't have an issue here as to
23 whether this was built in an environmentally proper
24 manner or in accordance with the permits or in

1 accordance with the specifications; correct?

2 A. Right.

3 Q. In the 14 years that you've been the
4 engineer for Morris Community Landfill who do you deal
5 with when you go out there?

6 A. I deal with Jim Pelnarsh or he's nicknamed
7 JP.

8 Q. What's JP's role at the landfill?

9 A. JP is the site manager of the landfill.

10 Q. Is he, also, the person that submitted
11 prior conduct certifications in this matter?

12 A. Yes, he is.

13 Q. What's a prior conduct certification?

14 A. A prior conduct certification is an
15 application that is made to the Agency to reflect that
16 the person is free from convictions, that it's not
17 operating the site in a negligent fashion.

18 Q. Do you know what, if any, regulations
19 apply to this concept of a prior conduct certification?

20 A. Yes. I believe it's 35 Illinois
21 Administrative Code 745.

22 Q. Do you have that in front of you?

23 A. Yes.

24 Q. Could you open your regulations to that

1 portion of the regulation that relates to the prior
2 conduct cert.? So what's the exact -- 745.101, I guess?

3 A. Uh-huh.

4 Q. Yes or no, sir?

5 A. Yes.

6 MR. KIM: Before we go on does the hearing
7 officer have a copy of the rules?

8 MR. LaROSE: I don't know.

9 HEARING OFFICER HALLORAN: I do not.

10 MR. LaROSE: I can share. I kind of know what
11 I'm going to talk to about so use this.

12 BY MR. LaROSE:

13 Q. Mr. McDermont, does the regulation say
14 anything about who is to file this prior conduct cert.?

15 A. Yes, it does.

16 Q. What does it say about that and what part
17 of the regulation are you referring to?

18 A. Under Section 745.102 entitled Definitions
19 the chief operator is defined, and would you like me to
20 read it into the record, sir?

21 Q. Sure.

22 A. "Chief operator means the one natural
23 person in responsible charge of a waste disposal site on

24 a 24-hour basis. Chief operator also means any person

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1 who may from time to time and in the regular course of
2 business be designated by a waste disposal site's chief
3 operator during periods of vacation, accident, illness,
4 or the like."

5 Q. Okay. And does the regulation in any way
6 further define or expound on the concept of responsible
7 person or responsible person in charge?

8 A. Yes. The regulation contains a definition
9 for "A person is in responsible charge if the person:
10 is normally present at a waste disposal site; directs
11 the day-to-day overall operation of the site; and either
12 is the owner or operator or is employed by or under
13 contract with the owner or operator to assure the
14 day-to-day operations at the site are carried out in
15 compliance with" -- we'll paraphrase that --
16 "various board rules governing operations at waste
17 disposal sites."

18 Q. Mr. McDermont, who was the responsible
19 person -- who is the responsible person in charge at the
20 Morris Community Landfill?

21 A. James Pelnarsh.

22 Q. And who was the responsible person in

23 charge on May 11, 2001?

24 A. James Pelnarsh.

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1 Q. And who was the responsible person in
2 charge in September of 1993?

3 A. James Pelnarsh.

4 MR. LaROSE: Mr. Hearing Officer, based on
5 Mr. McDermont's testimony I am going to renew my offer
6 into the evidence of Exhibit No. 20, which was admitted
7 for an offer of proof and it is a group exhibit of the
8 prior conduct certifications that have been submitted to
9 the Agency and were in the Agency's possession prior to
10 May 11, 2001.

11 HEARING OFFICER HALLORAN: Mr. Kim?

12 MR. KIM: Can you give me just a moment to find
13 it?

14 MR. LaROSE: Sure.

15 MR. KIM: We would renew our objection to this
16 document. I'll be perfectly honest with you. I can't
17 remember all the bases that we stated earlier when it
18 was offered initially, but to the extent that I can
19 either supplement that or at the risk of being redundant
20 these documents do not relate to the permit application
21 at hand.

21 testimony has already been elicited from at least two
22 agency witnesses and possibly more that the Agency
23 recognized that Jim Pelnarsh was the certified operator.

24 MR. LaROSE: And if they did, then why doesn't it

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1 come in? They, also, admitted this in a request to
2 admit. It was Document No. 51 that was submitted
3 yesterday. I don't understand this.

4 They admitted that he's the certified
5 operator. They admitted that that was a fact that they
6 should have considered. This document just shows the
7 Board that he was, in fact, the certified operator, and
8 they should have maybe taken a look at it.

9 MR. KIM: The Agency did not -- I think
10 Mr. LaRose's first characterization is correct that we
11 acknowledge that he was the certified operator, but I
12 think everything after that goes into his argument as
13 opposed to what was testified to.

14 HEARING OFFICER HALLORAN: I think there was
15 sufficient testimony that he was the certified operator.
16 And I do stand on my position, I believe it was
17 yesterday, and I sustained Mr. Kim's objection. And I
18 will accept it as an offer of proof Exhibit 20 and I'll
19 take it along with the case.

20 MR. LaROSE: Thank you.

21 BY MR. LaROSE:

22 Q. In the course of the 14 years that you
23 have been working for Community Landfill Company how
24 many times have you been to the landfill?

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1 A. At least in excess of a hundred.

2 Q. And when you go to the Morris Community
3 Landfill in those excess of a hundred times is it Jim
4 Pelnarsh that you deal with?

5 A. Yes, it is.

6 Q. How is he to deal with? I'll withdraw
7 that question. Sir, the record in this case does not or
8 did not contain the Wells letter that the Agency sent to
9 us, but it is contained in a supplement to the record
10 that was filed by Mr. Kim and not objected to by me and
11 allowed into evidence. So I'm going to hand you what's
12 been previously marked as Group Exhibit 81 and ask you
13 to take a look at that please. The Wells letter appears
14 towards the back of Group 81. Do you find it, Mike?

15 A. Yes, I did. It seems to be on a page
16 labeled 0275.

17 Q. I'm sorry, I forgot these pages were
18 labeled. It begins on page 0275 of the record. That is

19 the Wells letter that was sent by the Agency to the City
20 of Morris in this case and Community Landfill Company;
21 correct?

22 A. This is the Wells letter that is addressed
23 to those two entities.

24 Q. Do you know whether it was ever received

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1 by Community Landfill Company?

2 A. No, I do not know.

3 Q. Do you know whether it was even sent to
4 them?

5 A. I do not know.

6 Q. And the record in this case contains no
7 evidence that it was either sent or --

8 MR. KIM: Objection, leading question.

9 BY MR. LaROSE:

10 Q. Have you reviewed the record in this case,
11 sir?

12 A. Yes, I have.

13 Q. What, if any, evidence appears in the
14 record in this case regarding proof that it was either
15 sent or received -- sent to or received by Community
16 Landfill Company?

17 A. There is no record of that in the record

18 that it was received by or sent to Community Landfill
19 Company.

20 Q. It indicates in the second page that you
21 were carbon-copied on this document?

22 A. Yes.

23 Q. The Grundy County Office of Solid Waste
24 was carbon-copied on this document?

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1 A. That's what it says, yes.

2 Q. And then there's a bunch of ECC's, Bureau
3 file, DesPlaines Region, John Kim, Chris Leibman, Joyce
4 Munie, and Christine Roque; correct?

5 A. Yes.

6 Q. Did the Agency know I was Community
7 Landfill's lawyer at the time they sent this letter?

8 A. Yes, they did.

9 Q. All too painfully they knew that, didn't
10 they?

11 A. No comment.

12 Q. This letter does not appear to have been
13 addressed to me, does it?

14 A. No, it was not.

15 Q. Or carbon-copied to me?

16 A. No.

17 Q. Do you remember when you received it?
18 A. I received this letter on April 9.
19 Q. And how did you receive it?
20 A. I received it via regular U.S. mail --
21 Q. Okay.
22 A. -- to our office.
23 Q. What was your impression when you opened
24 that letter and read this?

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1 A. I was completely shocked.
2 Q. Anything else?
3 A. Utterly dismayed. I felt like perhaps we
4 were being set up.
5 Q. In what way?
6 A. The application filed in May of 2000
7 contained various improvements for parcel A. Those
8 improvements included leachate removal devices both
9 above the separation layer, below the separation layer,
10 and penetrating through the separation layer. When the
11 permit was issued in the case, the time allowed to
12 construct some of these devices was shorter than I would
13 have liked as the application was based on installing
14 those devices along with the separation layer.
15 So our first application to construct

16 the separation layer is before the Agency, and this is
17 one of the responses we get at the same time I found
18 shocking.

19 Q. When you say you were going to -- you
20 wanted to install -- wanted more time to install the
21 leachate control devices incrementally as you
22 constructed the separation layer, did that incremental
23 -- what, if anything, did that incremental sequence have
24 to do with whether waste was going to be deposited on

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1 top of the layer?

2 A. The separation layer allows additional
3 waste to be deposited in that area. My comment refers
4 to in the case in -- the application narrative stated
5 that things below the separation layer would be
6 installed as the separation layer developed and reached
7 that point in the spacial location of those devices.
8 The vertical leachate withdrawal wells, for instance,
9 were going to pass through the separation layer. I
10 wanted to build the separation layer, install waste, and
11 then drill through the waste and the separation layer
12 before installing those to increase the longevity of
13 those devices.

14 Q. Mr. McDermont, was there any doubt in your

15 mind that both Joyce Munie and Christine Roque and
16 basically everybody in the permit section knew that the
17 concept behind the 2000 sig. mod. was to put a
18 separation layer and put more waste on top of it?

19 A. There was no doubt in my mind they knew
20 that to be the case.

21 Q. And how do you know that?

22 A. Obviously, through the record drawings
23 which showed it, very clearly the narrative which
24 detailed it very clearly as well, along with the

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1 development and acceptance by the Agency of the
2 reservation of disposal capacity.

3 Q. And is that part of the reason why you
4 felt you were being set up?

5 A. Yes, in combination with their comments in
6 the previous application. This development in terms of
7 constructing the separation layer and the overall length
8 of the permits under review by the Agency all ran
9 together in my mind to lead me to that conclusion or
10 thought.

11 Q. After you got over your initial shock and
12 dismay what did you do with the letter on April the 9th?

13 A. After I got over my shock I faxed it to

14 you and -- no, just to you.

15 Q. Did we have a telephone conversation?

16 A. We most certainly did.

17 Q. Without using the exact words that I used
18 in that telephone conversation, what was my reaction?

19 A. I believe you were equally shocked,
20 dismayed, and similarly frustrated.

21 Q. What did we do then?

22 A. We proceeded to prepare a letter back to
23 the Agency as they requested it by 5 o'clock the same
24 day.

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1 Q. And we got that in as best we could in the
2 few hours that we had; right?

3 MR. KIM: Objection, leading.

4 BY MR. LaROSE:

5 Q. Sir, what did we do?

6 A. I believe we faxed a response to the
7 Agency and the three applications it referenced at
8 approximately 3:30 that afternoon on April 9.

9 Q. The response complained about the time
10 frame and said we didn't think that was fair; right?

11 A. That's correct.

12 Q. At any time after the response was

13 received by the Agency did anyone ever call you, write
14 you, email you, telegram you, or communicate with you in
15 any other way that, you know, you're right, maybe a
16 couple of hours isn't enough, why don't you guys take a
17 couple of more days or even a couple more hours to flush
18 out additional information regarding this conviction?

19 A. No, they did not.

20 Q. Did anyone respond to you in any mechanism
21 talking to you, writing to you, emailing to you at all
22 in response to the Wells letter?

23 A. Nothing was received in response to the
24 Wells letter.

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1 Q. Typically in the permitting process when
2 the Agency has additional questions or would like
3 additional information, is it typical for them to call
4 or write you to request that that information be
5 submitted?

6 A. Yes.

7 Q. And that didn't happen with respect to the
8 Wells letter that we responded to in a couple of hours;
9 right?

10 MR. KIM: Objection, leading question.

11 BY MR. LaROSE:

12 Q. What, if anything, happened with respect
13 to the Wells letter that we responded to in a couple of
14 hours?

15 A. I'll have to check the record, but
16 additional draft denial comment letters were sent
17 following that submittal date, and I do not believe that
18 there was any mention of it.

19 Q. You submitted additional documents which
20 gave the Agency a 30-day extension; right?

21 A. That is correct, yes.

22 Q. During that 30-day period did anyone
23 request any information from you regarding the Wells
24 letter?

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1 A. I do not believe so.

2 Q. Sir, you sat here and heard the testimony
3 from several agency people where they say we don't use
4 permitting to do enforcement. Do you remember that?

5 A. Yes, sir.

6 Q. Even prior to your listening to it here
7 today had you heard that before?

8 A. Yes, sir.

9 Q. Based on your experience with the
10 Community Landfill file and your interaction with the

11 Agency personnel do you believe that they practiced that
12 mandate in this particular circumstance?

13 A. Based upon my entire professional
14 experience I do not believe that they do practice that
15 separation.

16 Q. And what's that -- well, when you say your
17 entire professional experience, do you mean with this
18 site and other sites?

19 A. Yes, sir.

20 Q. Let's just stick to this site. Is that
21 your impression with respect to how they have acted in
22 this site?

23 A. Yes, sir.

24 Q. That they haven't separated the permitting

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1 from enforcement?

2 A. Right.

3 Q. And what's that based on?

4 A. That's based on various discussions with
5 the field office people and the permitting people where
6 they all seem to be under an impression that we were
7 operating parcel A without a permit despite them issuing
8 a permit for us to operate parcel A, the comments --
9 after reviewing the record the comments -- derogatory

10 and certainly inaccurate comments of the inspector,
11 Mr. Retzlaff.

12 Q. Let's back up a second. Let's take them
13 one at a time. What did you say about talking to people
14 about shutting down the site?

15 A. The field operations people -- the three
16 inspectors as well as the Maywood field office manager
17 at that time all felt we were operating the facility
18 illegally.

19 Q. What, if any, conversations did you have
20 about that with the permit people?

21 A. The permit people, I spoke with them
22 regarding it as well.

23 MR. KIM: Objection just as to foundation. There
24 are no time frames being provided here to these answers

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1 so it's unclear when these conversations took place.

2 MR. LaROSE: I think that's fair. I'll withdraw
3 the question and clean it up.

4 BY MR. LaROSE:

5 Q. Mr. McDermont, we submitted the
6 application, and it was originally denied in September
7 1999; correct?

8 A. That's correct.

9 Q. In relation to the denial of that permit
10 when was the conversations that you had or reports that
11 you had read from the field office with respect to this
12 issue of us operating illegally and them wanting to
13 close us down?

14 A. That was various correspondence between
15 CLC and the field office in '97 and '98. Even to this
16 day even the most recent permit inspect -- excuse me --
17 facility inspection provided to CLC by the DesPlaines
18 field office from an inspection probably in September of
19 2001 contains information that the facility --

20 MR. KIM: Objection. Any testimony related to
21 something that happened September of 2001 clearly
22 postdates the decision at hand. You can testify about
23 any --

24 MR. LaROSE: I don't think I need -- I mean, I

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1 guess I would agree with that objection. I don't think
2 I need -- I'm not asking him really to go there right
3 now.

4 HEARING OFFICER HALLORAN: Thank you. Sustained.

5 BY MR. LaROSE:

6 Q. Mr. McDermont, do you remember when the
7 conversations were in relation to the September 1999

8 denial about when they wanted to shut us down?

9 A. The conversations with the permit sections
10 were back in '97 and '98.

11 Q. Okay. About wanting to shut us down?

12 A. Yes, sir.

13 Q. And your review of the record related to
14 documents both at that time and since then?

15 A. Yes, sir.

16 Q. Do you remember reviewing the Agency's
17 file in this case?

18 A. I remember reviewing a portion of the
19 Agency's file in this case.

20 Q. I'm going to hand you what's been
21 previously marked as Exhibit -- Mr. Hearing Officer, I'm
22 going to hand you what's been marked as Exhibit 79.
23 Mr. McDermont, what is that document, sir?

24 A. This document appears to be an internal

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1 IEPA memorandum from Tina Kovaszny from the Bureau of
2 Land Field Operations Section in the Maywood office to
3 the Division File for Community Landfill Company.

4 Q. What's the date of that memo?

5 A. The date of that memo is September 7,
6 1999.

7 Q. Read the last sentence of the first
8 paragraph please.

9 A. "It is the current position of the Agency
10 that the effect of the permit denial is again that the
11 facility cannot accept waste for disposal at this time."

12 Q. Ms. Kovaszny indicates in this memo in
13 the first paragraph that she was out at Community
14 Landfill to document that they were accepting waste and
15 who they were getting it from; correct?

16 A. That is correct.

17 Q. This document references a Paul
18 Purseglove. Do you know who he is?

19 A. Yes, I do.

20 Q. Bruce Kugler, who's he?

21 A. He is the divisional legal counsel
22 attorney for the Bureau of Land.

23 Q. Do you know whether he has any relation to
24 the pending enforcement action against CLC?

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1 A. I believe he's heavily involved in
2 enforcement action.

3 Q. Bill Ingersoll?

4 A. Bill Ingersoll is, also, an attorney with
5 the Bureau of Land and involved in enforcement

6 activities.

7 Q. And this document indicates this was
8 carbon-copied to Joyce Munie at the Bureau of Land?

9 A. Correct.

10 Q. By the way, this wasn't sent to us, was
11 it?

12 A. No, it was not.

13 Q. We found it because why?

14 A. Because of the discovery request in this
15 matter.

16 Q. And when you reviewed this document did
17 that have any effect on your opinion that they haven't
18 separated permitting and enforcement in this case?

19 A. It simply reinforces my opinion.

20 MR. LaROSE: Okay. Mr. Halloran, I would move
21 admission of Exhibit 79.

22 HEARING OFFICER HALLORAN: Mr. Kim?

23 MR. KIM: We would object to the entry of this
24 document on the basis that it predates -- first of all,

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1 it predates the application submitted in this particular
2 case by over two years.

3 Second, there's no indication that
4 this document -- there's been no testimony elicited that

5 this document was relied upon in any way by any member
6 of the Illinois EPA in making its decision in this case,
7 and the document itself is irrelevant and is not germane
8 to these proceedings.

9 HEARING OFFICER HALLORAN: Anything further,
10 Mr. LaRose?

11 MR. LaROSE: It's relevant to the issue of
12 whether they use permits to enforce period.

13 HEARING OFFICER HALLORAN: I sustain Mr. Kim's
14 objection and Exhibit 79 is denied.

15 MR. LaROSE: I ask that it be taken with the case
16 as an offer of proof please.

17 HEARING OFFICER HALLORAN: As would Mr.
18 McDermont's testimony regarding this exhibit.

19 MR. KIM: I was going to say I assume the
20 testimony related to the exhibit --

21 MR. LaROSE: I didn't hear any objection. Are
22 you making the objections now? I mean, it was just an
23 objection --

24 HEARING OFFICER HALLORAN: I'm sorry, Mr. LaRose?

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1 I'm making objections?

2 MR. LaROSE: I don't know, but there wasn't an
3 objection to Mr. McDermont's testimony with respect to

4 this document.

5 HEARING OFFICER HALLORAN: I don't know if you
6 were being sarcastic or --

7 MR. LaROSE: I was kind of.

8 HEARING OFFICER HALLORAN: The record will
9 clearly note that.

10 MR. LaROSE: I mean, there was no objection to
11 Mr. McDermont's testimony in this case. That would be
12 my objection to your comment.

13 HEARING OFFICER HALLORAN: Would you make an
14 offer of proof with Exhibit 79, sir?

15 MR. LaROSE: Yes, sir, I did. I made an offer of
16 proof with respect to Exhibit 79.

17 HEARING OFFICER HALLORAN: You did --

18 MR. LaROSE: I asked that Exhibit 79 be accepted
19 as an offer of proof.

20 HEARING OFFICER HALLORAN: Will you make an offer
21 of proof verbally regarding this, sir?

22 MR. LaROSE: Yes, sir.

23 HEARING OFFICER HALLORAN: Thank you, Mr. LaRose.

24 MR. LaROSE: You're welcome, Mr. Halloran.

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1 BY MR. LaROSE:

2 Q. Mr. McDermont, take a look at 79 again.

3 This is the document that you reviewed that related to
4 your opinion that the permit section is using
5 enforcement -- using permits to do enforcement in this
6 case; correct?

7 A. Yes.

8 Q. And it relates to that because the people
9 that you talked to at the Agency in permits and field
10 operations said we were operating illegally; right?

11 A. Yes, sir.

12 MR. LaROSE: That's the end of the offer of
13 proof, Mr. Halloran.

14 MR. KIM: Just so -- I understand what
15 Mr. LaRose's statement was directed towards, but just so
16 the record is clear I did not have a chance to make an
17 objection, but following the objection being sustained
18 as to the exhibit itself the Agency would have made an
19 objection on the record that accordingly all the
20 evidence that had been elicited up to that point as to
21 Exhibit No. 79 would, also, have been excluded from the
22 record.

23 MR. LaROSE: Mr. Halloran, I want to apologize
24 for my comment on the record. I don't think it was

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1 appropriate. I said it out of frustration, but fairness

2 is fairness. We're the participants in this case, and
3 we should be making the objections and --

4 HEARING OFFICER HALLORAN: I understand, sir, but
5 you don't throw sarcasm at the bench, and I take issue
6 with that.

7 MR. LaROSE: And I apologize for that.

8 HEARING OFFICER HALLORAN: Do you want to respond
9 to Mr. Kim's remark?

10 MR. KIM: Again, I probably should have made my
11 objection on the heels of my statement concerning the
12 exhibit, and I probably would have taken care of all of
13 that. So in that sense I wish I would have made a more
14 comprehensive objection at that time.

15 HEARING OFFICER HALLORAN: I'm going to allow
16 Mr. McDermont's testimony to stand since the objection
17 was very belated. I will take Mr. LaRose's offer of
18 proof verbally of Mr. McDermont and Exhibit 79 with the
19 offer of proof.

20 MR. LaROSE: And will you accept my apology?

21 HEARING OFFICER HALLORAN: Apology accepted.

22 MR. LaROSE: Thank you, sir.

23 BY MR. LaROSE:

24 Q. Mr. McDermont, the issue of whether we

1 were operating without a permit or not has now been
2 decided in our favor by the Illinois Pollution Control
3 Board; correct?

4 A. Yes.

5 Q. Did the Agency's reaction to that decision
6 or your observation of their reaction to that decision
7 have anything to do with your opinion that they are
8 using permits to enforce?

9 A. Can you ask the question one more time?

10 Q. Yes. Based on what you've observed from
11 the Agency's reaction to that decision does that have
12 anything to do with your opinion that in this case they
13 are using permits to enforce?

14 MR. KIM: I'm going to object. There has been no
15 testimony given as to what the Agency's reaction was to
16 that decision. He's formed that as part of his
17 question, but this witness has never testified as to
18 what he understand the Agency's reaction to be.

19 MR. LaROSE: I agree. I'll withdraw the question
20 and try to clear it up.

21 HEARING OFFICER HALLORAN: Thank you, sir.

22 BY MR. LaROSE:

23 Q. Do you know how the Agency has reacted to
24 that opinion?

1 A. No, I do not from the testimony I've sat
2 here and witnessed. I'm not sure that any of them or
3 very many of them at least had even read the decision.

4 Q. And the fact that your impression is that
5 they didn't even read or react to the decision, does
6 that have anything to do with your opinion that they are
7 using permits to enforce in this case?

8 A. Yes.

9 Q. Let's talk about the "Hi Joyce" email and
10 the memo to Christine Roque written by Mark Retzlaff in
11 pages 53 or 54 of the record, 53 and 54. First, the
12 email to Joyce Munie from Mark Retzlaff, did that have
13 anything to do with your opinion that they're using
14 permits to enforce in this case?

15 A. Yes, it did.

16 Q. Why?

17 MR. KIM: I'm going to object to that. This
18 opinion that he's apparently formed could only have been
19 formed after the conclusion -- well after the conclusion
20 of the decision at hand since presumably he did not
21 receive a copy of this email until after he received the
22 administrative record in this case.

23 There's no indication that this email
24 was sent to any party outside of the Illinois EPA;

1 therefore, it's impossible for him to have any
2 understanding for any impressions formed until well
3 after the decision in this case.

4 HEARING OFFICER HALLORAN: Belinda, could you
5 please read back Mr. LaRose's question?

6 (Record read as requested.)

7 HEARING OFFICER HALLORAN: The objection, Mr.
8 Kim?

9 MR. KIM: The objection would be that whatever
10 opinion he would have formed in conjunction or based
11 upon this email could only have been done after the
12 receipt of the administrative record in this case
13 because he did not have a copy of this email until we
14 provided him a copy of the administrative record.

15 HEARING OFFICER HALLORAN: I'm going to allow
16 Mr. McDermont to answer. Thank you.

17 BY MR. LaROSE:

18 Q. Mr. McDermont?

19 A. I hate to do this to you. Would you
20 repeat the question?

21 Q. Are you awake? Did the Retzlaff memo to
22 Joyce Munie -- the email to Joyce Munie have anything to
23 do with your opinion that they have used permits to
24 enforce in this case?

1 A. Yes, sir.

2 Q. Okay. In what way?

3 A. It's more confirmation based on
4 Mr. Retzlaff's comment here in the last paragraph, and I
5 quote "They seem to get away with quite a bit of sloppy
6 operations with little or no repercussion."

7 Q. Okay.

8 A. Also, with the fact that he carbon-copied
9 this memo to Clifford Gould and Bruce Kugler.

10 Q. How did the fact that he carbon-copied the
11 memo to Gould and Kugler play into your opinion?

12 A. Gould, as I understand, is his boss in
13 Maywood. Mr. Kugler is an enforcement attorney in
14 Springfield.

15 Q. With respect to the information or the
16 statements that he makes in the second full paragraph of
17 this document did you read those?

18 A. Yes, I did.

19 Q. And what's your impression of those
20 comments?

21 A. My impression of those comments is he has
22 never reviewed the application or certainly does not
23 understand the application and --

24 MR. KIM: Objection. This is speculation on the

1 part -- he has no idea what Mr. Retzlaff thought or what
2 Mr. Retzlaff reviewed. That's a question better left
3 for Mr. Retzlaff, and Mr. Retzlaff has already been
4 questioned on this memo.

5 HEARING OFFICER HALLORAN: Mr. LaRose?

6 MR. LaROSE: I think I can clean it up without
7 him talking about what Retzlaff did or Retzlaff thought.

8 HEARING OFFICER HALLORAN: Please try. Thank
9 you.

10 MR. LaROSE: I will.

11 BY MR. LaROSE:

12 Q. Mr. McDermont, without talking about what
13 you think he did or what you think he didn't do, did you
14 believe these comments to be either accurate or
15 appropriate?

16 A. I believe the comments are inaccurate, and
17 based on the first line of the second paragraph which
18 says I observed the cell which to me seems inadequate
19 like most things that go on at this site.

20 Q. And what did that statement tell you?

21 A. The statement tells me that he does not
22 seem to appreciate the facility design.

23 Q. Look at page 54 please. That's the May 7
24 memo from Retzlaff to Christine Roque. Did that memo

1 have anything to do with your opinion that they're using
2 permits to enforce in this case?

3 A. Yes, it did.

4 Q. And how so?

5 A. Two items appear in this document from
6 Mr. Retzlaff. In the third paragraph there's a line
7 that reads "It's hard to believe that a permit was
8 issued at all under the past and current circumstances."

9 MR. KIM: I'm going to renew my objection. I
10 don't know whether it will be overruled or not, but,
11 again, I'm going to renew any objection as to his
12 testimony concerning his impressions being formed based
13 on this memo for the same reasons as previously stated
14 that he could not have seen this memo until after the
15 receipt of the administrative record.

16 HEARING OFFICER HALLORAN: Your objection is
17 noted but overruled. Thank you, Mr. Kim.

18 BY MR. LaROSE:

19 Q. Sir.

20 A. The second item is that in the second
21 paragraph another statement reads "Planned engineering
22 and construction do not seem to have a role in the
23 construction of this cell."

24 Q. Okay. What else?

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1 A. Flipping back to page 53, this email sent
2 to Joyce Munie was the subject of a conversation with
3 Christine Roque and myself during the review of this
4 application wherein she passed on to me the two bullet
5 points labeled one and two specifically where he's --
6 Mr. Retzlaff is questioning the integrity of the
7 so-called liner or his "liner word and side walls."

8 Q. Okay.

9 A. Based on further discussion with Ms. Roque
10 she did not understand his concern, and we agreed that
11 perhaps the first order of business was since
12 Mr. Retzlaff was in Maywood and she was in Springfield
13 that I would simply just take pictures of the site and
14 give them to her and then we could have a more informed
15 discussion.

16 Q. Did you do that?

17 A. I did that. Those pictures appear as part
18 of the record. When she saw the pictures, there were no
19 more questions from her on the subject.

20 Q. Look at the third full paragraph on page
21 54 please.

22 A. Uh-huh.

23 Q. The third full paragraph, did the
24 information in there have anything to do with your

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1 opinion or impression that they're using permits to
2 enforce in this matter?

3 A. Yes. Another point of this inspection
4 report Mr. Retzlaff says this site has been involved in
5 extensive enforcement and seemed to disregard the act,
6 regulations, and input of the Agency.

7 Q. In your opinion what did that have to do,
8 if anything, with this separation --

9 A. Nothing. Absolutely nothing.

10 Q. What about the next sentence?

11 A. Again, it just shows me that he seems to
12 have a hard time understanding how Community Landfill
13 Company could have even gotten a permit. Add that to
14 the fact that its inspection reports prior to March 7,
15 the date of this letter, prior to the final action on
16 this matter all said we were operating illegally.

17 MR. KIM: I'm sorry, did you say legally?

18 MR. LaROSE: He said illegally.

19 MR. KIM: Illegally?

20 THE WITNESS: Uh-huh.

21 MR. KIM: Thank you. I'm sorry.

22 BY MR. LaROSE:

23 Q. Sir, what about the 39(i) investigation
24 itself in this case? Did anything about the 39(i)

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1 investigation lead you to believe that they were using
2 permits to enforce in this case?

3 A. Yes, it did.

4 Q. And was it the conduct of the
5 investigation itself or who was involved in it or --

6 MR. KIM: Objection. This is a leading question.

7 HEARING OFFICER HALLORAN: Sustained.

8 BY MR. LaROSE:

9 Q. What was it about the conduct of the 39(i)
10 investigation in this case that led you to believe that
11 they were using permits to enforce?

12 A. If I recall correctly, Joyce sent an
13 internal email to Paul Purseglove, the head of the field
14 operations section, as well as carbon-copying several
15 enforcement attorneys involved in enforcement at the
16 Agency.

17 Q. Take a look at page 14 of the record
18 please. Is that the email you were speaking of?

19 A. Yes, it is.

20 Q. Who's Scott Phillips, do you know?

21 A. Scott Phillips is an attorney with the
22 Illinois Environmental Protection Agency in Bureau of
23 Land.

24 Q. We know who Mr. Kim is; right?

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1 A. We certainly do.

2 Q. And Ms. Schroeder, who is she?

3 A. Ms. Schroeder, also, works in legal
4 counsel, and I believe she is a manager of some sort.

5 Q. What, if anything, did the fact that
6 Mr. Purseglove was invited to participate in this 39(i)
7 investigation have to do with your impression that they
8 were using permits to enforce?

9 A. My impression was that for years the
10 Maywood or DesPlaines field office had repeatedly had
11 the position we were operating without a permit and this
12 email is going to the head of the DesPlaines office or
13 the DesPlaines office under his control. It just seems
14 to reinforce concern on that matter.

15 Q. Okay. You sat here during testimony. Not
16 only did she email him, but he sat in on the meetings;
17 right?

18 A. That's my understanding, yes.

19 Q. And did anything about the financial

20 assurance issue, the way it was handled by the Agency,
21 lead you to believe that they were using permits to
22 enforce?

23 A. The financial assurance matter was being
24 handled both from permitting comment and from potential

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1 enforcement comment by the Agency's representative Blake
2 Harris.

3 Q. Take a look at -- I think it's 43, 44, and
4 45 of the record please. Page 44 references the
5 violation notices; correct?

6 A. Yes.

7 Q. Page 45 references a violation notice
8 recommendation; correct?

9 A. Yes.

10 Q. You've seen those violation notices and
11 the subsequent notice of intent to pursue legal action;
12 right?

13 A. Yes.

14 Q. Who was the contact person on those?

15 A. I believe it was the City and the
16 Community Landfill Company.

17 Q. But who was the contact person for the
18 Agency?

19 A. I'm sorry. Blake Harris.

20 Q. So what was it about the fact that they
21 were letting the fellow that was the enforcement contact
22 make the decision on the financial --

23 MR. KIM: Objection. This is a leading question.
24 He's putting all the elements of the answer into the

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1 question.

2 BY MR. LaROSE:

3 Q. What happened next, Mr. McDermont?

4 A. I think you just -- you have two separate
5 actions by the Agency sharing in the same time line.
6 You throw in the fact that the decision-maker or the
7 person in responsible charge is the same person, Blake
8 Harris, for both actions.

9 Q. Do you know who has the burden of proof in
10 this proceeding?

11 A. I believe we do.

12 Q. If this was an enforcement case, do you
13 know who would have the burden of proof?

14 A. I believe it would be the Agency or the
15 Attorney General's office.

16 Q. So, Mr. McDermont, if, in fact, they used
17 permits to enforce in this case, didn't they just shift

18 the burden of proof?

19 MR. KIM: Objection, leading question.

20 BY MR. LaROSE:

21 Q. Sir, what about the --

22 HEARING OFFICER HALLORAN: Sustained.

23 BY MR. LaROSE:

24 Q. What about -- what, if anything, about the

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1 burden of proof in this case would lead you to believe

2 that they were using permits to enforce?

3 A. The burden of proof in this case is upon
4 us. The burden of proof in an enforcement case would be
5 upon the Agency. Therefore, it seems that defending
6 this allegation makes it much harder in this setting as
7 opposed to an enforcement case.

8 Q. We don't have any burden of proof in the
9 enforcement case, do we?

10 MR. KIM: Objection, leading question.

11 BY MR. LaROSE:

12 Q. Do you know --

13 HEARING OFFICER HALLORAN: Sustained.

14 BY MR. LaROSE:

15 Q. Do you know what the burden of proof on
16 the respondent is in the enforcement case?

17 A. Yes.

18 Q. And what is that?

19 A. It would be none.

20 Q. Mr. McDermont, look at page 81 of the

21 record please. What is that?

22 A. This is an IEPA document dated May 10,

23 2001, entitled Permit Application History for Site

24 Number, which it gives, which refers to the Morris

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1 Landfill.

2 Q. I'm not going to go over this whole

3 document with you, but look about 12 or 14 lines down

4 where it says Community Landfill and then the log number

5 is 1996-196. Okay?

6 A. Yes, sir.

7 Q. I would like to talk briefly about that

8 application and those applications that appear from

9 there to the top of the page. Okay?

10 A. Okay.

11 Q. Do you know what the application for Log

12 No. 1996-196 was for?

13 A. Yes, I do.

14 Q. What?

15 A. It was a supplemental permit requesting

16 disposal of contaminated soil under what we termed then
17 a generic permit.

18 Q. And that permit was ultimately issued?

19 A. Yes. It says it was issued and mailed on
20 9/17/96.

21 Q. Do you remember who signed the LPC-PA1
22 form for that application?

23 A. It was Bob Pruum and Mayor Bob Feeney.

24 Q. The next one up from there is Log

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1 No. 1996-218. Do you know what that permit was for?

2 A. That was the permit requesting transfer of
3 operatorship of parcel A from the City of Morris to
4 Community Landfill Company.

5 Q. Prior to that permit being issued did
6 Community Landfill Company have any legal status to
7 operate parcel A?

8 A. No, they did not.

9 Q. And that was issued by the Agency when?

10 A. It was issued on October 11, 1996.

11 Q. About two months after the filing of the
12 original sig. mod.; right?

13 A. That is correct.

14 Q. Do you remember who the permit manager was

15 at the time that that was issued?

16 A. I believe it was Ed McKowsky.

17 Q. If the Agency had raised the 39(i) issue
18 regarding Bob Pruim's 1999 conviction at that point and
19 considered it to deny that permit, what would have
20 happened with our operation of parcel A?

21 A. I'm sorry, can you re-ask the question?

22 Q. Yes. When that permit Log No. 1996-218
23 was under consideration, if the Agency had conducted a
24 39(i) investigation of Bob Pruim's conviction and used

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1 that conviction like they have today to deny the permit,
2 what would have happened to our operating rights on
3 parcel A?

4 A. We would have not had any operating rights
5 to parcel A.

6 Q. And as a result of that what would have
7 happened to your engineering services and the other
8 things with respect to parcel A?

9 A. The parcel A responsibilities for
10 engineering, if any, would have fallen on behalf of the
11 City of Morris.

12 Q. The next one up from that, Log No.
13 1996-240 --

14 A. Yes.

15 Q. Do you know what that was about?

16 A. That is a development -- I'm sorry, we
17 nickname it a development permit for installing a gas
18 system for parcel B of the landfill.

19 Q. I want to back up for a second because I
20 don't remember if I asked you this question. With
21 respect to 1996-218, do you remember who signed the
22 LPC-P1 for that one?

23 A. That would have been signed by Mayor
24 Robert Feeney and Bob Pruim.

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1 Q. And the same question with respect to
2 1996-240?

3 A. Again, Mayor Robert Feeney and Bob Pruim.

4 Q. The next one up from that, 1997-213, what
5 type of permit was that?

6 A. That is a renewal of the generic permit
7 allowing acceptance of special waste in the facility.

8 Q. And who signed the LPC-PA1 on that one?

9 A. It was signed by Mayor Bob Feeney and Bob
10 Pruim.

11 Q. I'm going to take the next two in a group,
12 1996-255 and 1996-256. Were those the original sig.

13 mods. that were filed?

14 A. Those are the original sig. mods. filed in
15 August of 1996.

16 Q. And those were denied as we discussed
17 earlier in September of 1999; correct?

18 A. That's correct.

19 Q. If the Agency had considered 39(i) at that
20 point and you found out that they were considering that
21 as a conviction, what, if anything, would you have done?

22 A. I'm sorry, can you ask the question again?

23 Q. Yeah, I think I screwed it up. If you
24 were informed during the pendency of that permit

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1 application that the Agency was considering Bob Pruim's
2 conviction as a means to deny the permit, what would you
3 have done, if anything?

4 A. We certainly would have stopped work and
5 talked to the client about what we wish to do to combat
6 that information.

7 Q. And what would your recommendation have
8 been?

9 A. Assuming that we were unsuccessful in
10 overturning the Agency's position, we would have simply
11 stopped work and walked away.

12 Q. What's the next permit up from that,
13 1999-175?

14 A. That is the supplemental permit which let
15 us operate the gas system.

16 Q. And who signed the LPC-PA1 on that one?

17 A. Again, Mayor Feeney and Bob Pruiim.

18 Q. The next one up, 1999-354?

19 A. Yes, sir.

20 Q. What type of permit was that?

21 A. That was the denial of a permit
22 application to accept special waste in the landfill.

23 Q. Okay. Do you know whether the denial of
24 that had anything to do with the Agency's position that

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1 we were operating without a permit at that time?

2 A. I certainly believe they are related.

3 Q. And how so?

4 A. As best as I recall the Agency did not
5 want us to be able to accept special waste in this
6 landfill because we had not obtained our initial
7 significant modification permit which had just been
8 denied previous to that by a couple of days.

9 Q. The next two permits above that are the
10 sig. mods. that were issued on August of 2000; correct?

11 A. That's correct.

12 Q. And who signed the LPC-PA1's for those?

13 A. Again, Mayor Robert Feeney and Bob Pruim.

14 Q. Sir, if at any time during between May of
15 2000 and August of 2000 Joyce Munie, Christine Roque, or
16 anybody from the Agency told you that they might deny
17 those permits based on 39(i), what would you have done?

18 A. Again, we would have stopped any work on
19 follow-up, stopped any work on spending money, and
20 talked to the client about the development.

21 Q. Specifically, with respect to the tender
22 of any increased financial assurance, what would your
23 recommendation have been?

24 A. We certainly would not have tendered any

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1 new financial assurance under the circumstances.

2 Q. The next two permits above that relate to
3 the first modification of the August sig. mods.;
4 correct?

5 A. That is correct.

6 Q. Who signed the LPC-PA1 on that one?

7 A. Again, Robert Pruim and Mayor Robert
8 Feeney.

9 Q. The next one above that, Log No. 2000-438,

10 that's the permit in this case; correct?

11 A. That is correct.

12 Q. The next one above that is a permit that's
13 still pending before the Agency; correct?

14 A. Correct.

15 Q. And the next one above that is a permit
16 that was issued by the Agency -- the first one in the
17 list 2001-051 is a permit that was issued by the Agency
18 on June 29 of 2001; correct?

19 A. Yes.

20 MR. LaROSE: Mr. Halloran, I think now is
21 probably as good a time as any to go into the offer of
22 proof regarding the June 29 permit.

23 HEARING OFFICER HALLORAN: Mr. Kim, any
24 objection?

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1 MR. KIM: No.

2 HEARING OFFICER HALLORAN: Proceed, Mr. LaRose.

3 MR. LaROSE: I'm going to begin my offer of proof
4 with respect to the June 29 permit as regards
5 Mr. McDermont's testimony with 73 and 37.

6 BY MR. LaROSE:

7 Q. Mr. McDermont, I'm going to hand you
8 what's been previously marked as Exhibits 73 and 37.

9 They have actually been offered into evidence and
10 received only as an offer of proof. Look at 37 for a
11 second please. What is that document?

12 A. This document appears to be the cover
13 letter of the application that was filed for the
14 acceptance report for the gas perimeter probes at the
15 landfill.

16 Q. What's the two or three pages or the two
17 pages behind that?

18 A. The two pages behind that are the PA1 form
19 that show Robert Pruiam and Robert Feeney signing for
20 operator and owner.

21 Q. Okay. And the rest of the document is
22 what?

23 A. The rest of the document is the parcel A
24 permit.

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1 Q. That's a parcel A permit for the gas
2 probes; correct?

3 A. Approving the gas probes, yes.

4 Q. Issued on --

5 A. June 29.

6 Q. -- June 29, 2001?

7 A. Right.

8 Q. Okay. Take a look at Exhibit 73 please.

9 A. Yes, sir.

10 Q. It appears that in Exhibit 73 we have the
11 same May 9 memo from Joyce Munie to Christine Roque
12 regarding the conviction of Robert Pruum; correct?

13 A. Yes.

14 Q. She even says that the permit should be
15 denied in that memo in this log; correct? Look at the
16 second page, bottom of the second page.

17 A. Yes.

18 Q. And she contains in this log the same
19 language --

20 MR. KIM: Objection. This is a leading question.

21 HEARING OFFICER HALLORAN: Sustained.

22 BY MR. LaROSE:

23 Q. Mr. McDermont, pull out the record please.

24 A. Yes.

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1 Q. Take a look at page 13. Does the exact
2 same language -- strike that. Compare for me the
3 language that appears in the last paragraph of page 13
4 of the record to the language that appears in the last
5 paragraph of the second page of Exhibit 73.

6 A. I have previously compared it, and it is

7 identical.

8 Q. Okay. Exhibit 73, also, contains my
9 response to the Wells letter dated April 9, 2001;
10 correct?

11 A. Yes.

12 Q. It contains the same criminal docket sheet
13 that was included in the record in this case at pages 17
14 through 28?

15 A. Yes.

16 Q. The result of this decision was different
17 than the other decision; correct?

18 A. Yes.

19 Q. When I say the other decision, the one
20 made on May 11 in this case.

21 A. Yes.

22 Q. Read for me the -- go to the last two
23 pages of this document and read for me the last
24 paragraph as it appears on the second to the last page

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1 extending on to the remainder of that paragraph onto the
2 last page. Read it to yourself.

3 A. I'm sorry, could you --

4 Q. Yeah. The second to the last page of the
5 document.

6 A. Exhibit 73?

7 Q. Yes, I'm sorry. Exhibit 73.

8 A. Uh-huh.

9 Q. The last paragraph starting with the word
10 also.

11 A. Thank you.

12 Q. Continuing on to the top of page 3.

13 A. Yes, sir.

14 Q. Sir, Ms. Roque says, "Since this
15 application is for the installation of gas monitoring
16 probes and is beneficial to the environment, does not
17 pose threat -- potential threat to human health in the
18 environment and expands neither the operation nor the
19 operation of the life of the facility." Do you see that
20 clause?

21 A. Yes, I do.

22 Q. What is your impression of that statement
23 as it relates to the grant of this permit compared to
24 the denial of the permit on May 11?

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1 A. Would you mind asking that again please?

2 Q. Yes. Would you mind paying attention to
3 me?

4 MR. KIM: I would just -- for clarification when

5 you say this permit, maybe you could identify the log.

6 MR. LaROSE: Yes, I will.

7 BY MR. LaROSE:

8 Q. Are you ready?

9 A. Yes.

10 Q. What is your impression of that statement
11 as it relates to the grant of the June 29 permit versus
12 the denial of the May 11 permit?

13 A. My impressions of this application versus
14 that application in light of this sentence -- breaking
15 down the sentence, she says "since this application is
16 for the installation of gas monitoring probes and is
17 beneficial to the environment." I believe without any
18 doubt that both the gas perimeter probes are beneficial
19 to the environment as well as the construction and
20 placement of the separation layer.

21 She says "does not pose potential
22 threat to human health." I do not believe the gas
23 probes nor the separation layer pose a potential threat
24 to human health. And, again, the same, neither propose

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1 a threat to the environment.

2 And she states further that "the gas
3 perimeter probe expands neither the operation nor

4 operational life of the facility." Obviously, the
5 operational life of the facility was already approved by
6 the August 2000 permits and seems to not be relative to
7 this Permit Application 2000-438.

8 Q. Unless they just wanted to shut us down;
9 right?

10 MR. KIM: Objection, leading question.

11 BY MR. LaROSE:

12 Q. What relevance could it possibly have?

13 A. Not being able to accept waste in new
14 areas would certainly eventually shut the facility down.

15 Q. If you were to compare the environmental
16 benefits of the gas probes to the environmental benefits
17 of the separation layer even including the placement of
18 waste on top of it, how would you do that?

19 A. I would term the gas perimeter probes as a
20 passive device only there to monitor potential buildup
21 of landfill gas escaping from the landfill.

22 The separation layer and the
23 perimeter leachate collection system I would term as
24 active mitigation agents to prevent threats to the

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1 environment.

2 Q. In your opinion which one is more

3 protective of the environment?

4 A. I would rather have the separation layer.

5 Q. Do you know whether the financial
6 assurance that was in place for the June 29th denial was
7 the same as -- I'm sorry, the June 29th grant of the
8 permit was the same as the June 29th denial?

9 A. The financial assurance was the same.

10 MR. KIM: Objection. You said the same date both
11 times in your question.

12 MR. LaROSE: Thank you. I'll clear it up for the
13 record.

14 MR. KIM: I assume you mean the May 11?

15 MR. LaROSE: Yeah, yeah, yeah. Give me a second.

16 BY MR. LaROSE:

17 Q. Mr. McDermont, are you aware of whether
18 the same financial assurance was in place for the June
19 29th grant of the permit as was for the May 11th denial
20 of the permit?

21 A. The same financial assurance was in place
22 for both permit applications.

23 Q. In your opinion is there any way that a
24 good environmental engineer could reconcile the grant of

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1 the June 29th permit with the denial of the May 11th

2 permit?

3 A. No.

4 MR. LaROSE: That concludes, Mr. Halloran, the
5 offer of proof on the June 29th permit, and I would
6 renew my request that both Exhibit 37 and 73 be admitted
7 into the record.

8 HEARING OFFICER HALLORAN: Mr. Kim?

9 MR. KIM: We would renew our objections to those
10 documents on the same grounds as previously stated that
11 they postdate the decision at hand and are irrelevant to
12 the decision at hand.

13 HEARING OFFICER HALLORAN: I renew my position,
14 and I deny Exhibits 73 and 37 on the evidence, but I'll
15 take them with the case as an offer of proof.

16 MR. LaROSE: Thank you. Mr. Halloran, I'm going
17 to hand the witness what's been marked as Exhibit 49 and
18 give you a copy.

19 MR. KIM: I'm a little concerned about the fact
20 that the attorney is whispering to the witness on the
21 stand.

22 THE COURT: Mr. LaRose?

23 MR. LaROSE: He was just pointing something out
24 to me.

1 MR. KIM: I think that's --

2 MR. LaROSE: Well, we can go over it now on the
3 record. I wasn't trying to do anything improper.

4 MR. KIM: I'm sure you weren't. I was just
5 wondering.

6 BY MR. LaROSE:

7 Q. We need to look back at Exhibit 73 then.
8 Mr. McDermont, you were just showing me something and
9 whispering something to me. We weren't trying to hide
10 anything from the Board, were we?

11 A. No, sir, we weren't.

12 Q. What is it that you showed me and
13 whispered to me?

14 A. I was pointing to the fact that in Exhibit
15 73 on the page next to the last page which, I believe,
16 are Christine Roque's notes she said that the
17 applicant's response to Wells letter was received
18 4/11/01.

19 Q. So your point to me was what?

20 A. My point to you was I had never noticed
21 that they did not receive our response to the Wells
22 letter on 4/9 as they requested in their Wells letter to
23 the City of Morris and CLC.

24 Q. So now in addition to the fact that we

1 don't know if we ever received the letter we now know
2 that they never received our response on time?

3 MR. KIM: He can answer that question, but I'm
4 assuming all these questions since this regards that
5 exhibit is all in the context of the offer of proof, and
6 we would want to make sure that our objections to his
7 previous testimony would also be included in this
8 testimony as well.

9 MR. LaROSE: I would like just a minute on that
10 because I want to see if this is in the record in this
11 case, and if it is, we'll take it outside the offer of
12 proof. It does not appear that that same language
13 appears in the record in this case, at least not in
14 Ms. Roque's notes. So I think it's appropriate for it
15 to be included as part of the offer of proof.

16 HEARING OFFICER HALLORAN: That will be done.
17 Thank you, Mr. LaRose.

18 MR. LaROSE: You're welcome.

19 BY MR. LaROSE:

20 Q. Where were we, Mr. McDermont?

21 A. You have handed me Exhibit 49.

22 Q. What is that document, Mr. McDermont?

23 A. This document reflects the accounting
24 records of my firm Andrews Environmental Engineering in

1 relation to Morris Community Landfill.

2 Q. And it runs from what period of time to
3 what period of time?

4 A. It appears to begin with the amount and
5 the amount bill date of 8/16/96 which would be for the
6 month of July '96 and concludes on 9/14/01 would be for
7 work through the end of August 31, 2001.

8 Q. Is that a document kept and maintained and
9 generated in the ordinary course of business at Andrews
10 Environmental Engineering?

11 A. Yes, it is.

12 Q. Mr. McDermont, since you began preparing
13 the sig. mod. in the summer of 1996 through August of
14 this year how much money has my client spent in the
15 engineering fees?

16 A. The client has spent approximately
17 \$900,000.

18 Q. Sir, if we were able to relate the
19 summaries included in this document to any of those
20 permit periods that we've talked about earlier when we
21 reviewed all of the permit applications, at any time we
22 would be able to see how much they had spent to date and
23 how much they were going to spend after that; correct?

24 A. Yes, and I would just like to clarify that

1 this document only pertains to Andrews Engineering, not
2 other charges and expenses incurred.

3 Q. Such as what?

4 A. Laboratory analysis of groundwater,
5 drilling, investigations, installation of monitoring
6 wells, perimeter probes, laboratory testing of soils.
7 Things like that as well as day-to-day operational and
8 equipment expenses.

9 Q. Is that all subcontracted all those things
10 that you just talked about?

11 A. All but the day-to-day operations, yes.

12 Q. And when you say the day-to-day
13 operations, meaning --

14 MR. KIM: Objection, leading.

15 BY MR. LaROSE:

16 Q. What do you mean by the term day-to-day
17 operations?

18 A. Day-to-day operations would, obviously, be
19 personnel salary, equipment cost, fuel cost, maintenance
20 supplies, things like that.

21 Q. None of the client's legal fees are
22 included in this document; correct?

23 A. No.

24 Q. Sir, we talked about the permit to

1 transfer the operating rights on parcel A from the City
2 of Morris to Community Landfill Company that was issued
3 in October of 1996; correct?

4 A. Yes.

5 Q. So if we look to the date of October 1996
6 as it appears on page 1 of Exhibit 49 and the operating
7 rights were not transferred to us at that time based on
8 an 39(i) evaluation and rejection of the application, we
9 could just forget about all --

10 MR. KIM: Objection, leading.

11 BY MR. LaROSE:

12 Q. What would happen to all of the
13 engineering costs after that date as appears on page 1
14 of 49?

15 A. Had the operator's permit not been issued
16 on 10/11 or the operating -- permit transfer not been
17 issued on October '96 all of the costs in this document
18 approximately totalling \$900,000 would not have been
19 spent except for the first five lines under the category
20 Amount Billed Amount.

21 MR. LaROSE: Mr. Hearing Officer, I would move
22 the admission of Exhibit No. 49 into evidence.

23 HEARING OFFICER HALLORAN: Mr. Kim?

24 MR. KIM: We would object on the basis that none

1 of the information on any of the pages of this document
2 were ever presented to the Illinois EPA for their review
3 or consideration at any time, and, obviously, it is not
4 standard practice for consultants to provide the
5 Illinois EPA with copies in these type of cases of how
6 much money they have billed to their client.

7 We did not have this information
8 before us, and it does not factor into our decision,
9 and, therefore, it's not relevant, it's not germane, and
10 it should not be included.

11 HEARING OFFICER HALLORAN: Anything further,
12 Mr. LaRose?

13 MR. LaROSE: Just that it's relevant and germane
14 to prove the prejudice to our client that's necessary to
15 prove the legal defense of laches which is the defense
16 that, obviously, should but perhaps may not apply in
17 this case.

18 HEARING OFFICER HALLORAN: The document was not
19 in the record before the Agency at the time of the
20 permit decision. Therefore, I find it irrelevant, and
21 I'll deny No. 49.

22 MR. LaROSE: I ask that it be taken as an offer
23 of proof with the case please.

24 HEARING OFFICER HALLORAN: It will be done.

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1 objection? MR. KIM: We object to the entry of all of
2 these documents, and I can give the specific reasons.

3 As to Exhibit No. 22 I believe
4 looking at the bottom left-hand corner of that page
5 there's a date 6/25/01. I'm assuming that's the
6 preparation date of this document, and if that is the
7 case, this document was prepared after the decision at
8 hand. We, obviously, never had it in our possession at
9 the time we made our decision. Therefore, it's
10 irrelevant and should not be considered as part of the
11 record.

12 MR. LaROSE: With respect to Exhibit 22,
13 Mr. Halloran, this is just a compilation of the exact
14 same information that's on page 81 of the record. All
15 that it does is additionally show that Bob Pruim was the
16 signatory under this. It's illustrative for the Board
17 to give them without having to review in detail the next
18 ten exhibits that I'm asking to be submitted a one-page
19 summary that adds only one piece of information to
20 what's on 81 and that's that Mr. Pruim signed the
21 application which is what Mr. McDermont already
22 testified to.

23 HEARING OFFICER HALLORAN: Is that correct, Mr.
24 Kim?

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1 MR. KIM: I believe it's correct that he
2 testified to that. I believe Mr. LaRose is also correct
3 that Exhibit No. 22 is not a summary of the information
4 on 81 of the administrative record, specifically,
5 because as he first stated it includes additional
6 information not found on that document.

7 Second, there is a reference to a
8 different type of permit that is not included on this
9 page 81, and I'm referring at the very bottom to in
10 capital letters the line Title Five Air Permit. That's
11 not referenced in the administrative record.

12 And, again, because there is
13 information on this document that's not included in the
14 administrative record because it was prepared after the
15 fact it should not be included in the record.

16 HEARING OFFICER HALLORAN: I agree. Exhibit No.
17 22 is denied. Do you want it to be taken as an offer of
18 proof, Mr. LaRose?

19 MR. LaROSE: Yes, sir, please.

20 MR. KIM: As to -- let me see if I can bundle my
21 objection.

22 MR. LaROSE: Maybe if I can bundle an explanation
23 of what these are you can bundle your objection. These
24 are nothing more than permit packages of the permits

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1 that are listed on Exhibit 22.

2 Each package consists of the cover
3 letter, the application, the LPC-PA1, and the permit --
4 either the permit itself or the denial itself. They are
5 offered for the same reasons as 22 were and to show the
6 permit history in this case so that we can show how many
7 times the Agency didn't do its job in this case, and
8 that's the purpose of it.

9 And they are offered as a package
10 fully cognizant of the fact that they will probably not
11 be accepted, but I would like them to be accepted as an
12 offer of proof.

13 HEARING OFFICER HALLORAN: Mr. Kim?

14 MR. KIM: The grounds for objection to these
15 documents would be, first of all, that they are
16 irrelevant. The Hearing Officer, we believe, correctly
17 ruled earlier that a permit that was issued by the EPA
18 in August of 2000 would be excluded from the record as
19 being irrelevant. Similarly, these are documents which
20 go back to June of 1996 so these are going back even

21 four years before that excluded document.

22 So from a relevancy standpoint we
23 don't think they are germane to this proceeding and
24 should be included in the Board's consideration.

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1 The second objection would be this is
2 an incomplete compilation of information as depicted,
3 and by that this is not -- it's incorrect to state that
4 -- and, for example, I'm looking right now at Exhibit
5 No. 24. You go in one, two, three, four, five, six,
6 seven pages which is a page dated October 11, 1996, and
7 this is the letter that approves the permit, I believe.

8 If you look at the first full
9 paragraph at the last sentence of that paragraph it
10 reads "Final plans, specifications, application, and
11 supporting documents as submitted and approved shall
12 constitute part of this permit and are identified on the
13 records of the Illinois Environmental Protection Agency
14 Bureau of Land by the permit numbers and log numbers
15 designated in the heading above."

16 The permits that are approved that
17 are referenced on page 81 of the administrative record
18 include not only the approval letter that the Illinois
19 EPA issued but also by incorporation the permit

20 applications themselves.

21 This is not a copy of the approved
22 permit because to have a copy of the complete approved
23 permit not only would you need this letter but you would
24 need the supporting application and documents that were

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1 submitted as part of that application. And I believe
2 that language should be included in almost every one of
3 these letters.

4 So the second basis or another basis
5 for the objection would be that these are not complete
6 depictions of the permits that were described in
7 Mr. McDermont's testimony when he was going through the
8 information found on page 81 of the administrative
9 record.

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

12 MR. LaROSE: Only that I wouldn't dare make you
13 get a trailer to bring all of the permit applications
14 that relate to this case home with you and stack them in
15 your office. So, no, I think these are the permits. I
16 think to suggest that we need a permit application -- or
17 that the fact that the applications aren't appended to
18 these affect in any way the admissibility of these

19 documents.

20 HEARING OFFICER HALLORAN: Side stepping the
21 trailer problem, I do find the exhibits irrelevant.
22 They were not in the record before the Agency.
23 Therefore, I'll deny entry of these exhibits, but I will
24 take Exhibits 23, 24, 25, 26, 27, 28, 29, 30, 31, and

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1 was that 34 as well?

2 MR. KIM: I believe 34 and 35.

3 MR. LaROSE: Correct.

4 HEARING OFFICER HALLORAN: And 34 and 35 with the
5 case as an offer of proof.

6 MR. LaROSE: Thank you. That's all I have for
7 Mr. McDermont at this point.

8 THE COURT: Thank you. Mr. Helsten?

9 MR. HELSTEN: Thank you, Mr. Hearing Officer.
10 Just several questions.

11 FURTHER EXAMINATION

12 BY MR. HELSTEN:

13 Q. Mr. McDermont, Mr. LaRose asked you some
14 questions about Exhibits 53, 55, and 56 and referred to
15 the term the facility. What is the facility in this
16 case? Do you know?

17 A. Could I have one of those exhibits please?

18 Q. Sure. Let the record show I'm tendering
19 to the witness Exhibits 53, 55, and 56 that Mr. LaRose
20 previously tendered to him. Are you familiar with those
21 exhibits?

22 A. Yes, I'm very sorry, I am.

23 Q. And they refer to the facility; correct?

24 A. Yes, they do.

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1 Q. Can you tell me what the facility is in
2 this case?

3 A. The facility in this case is Morris
4 Community Landfill which is made up of two regulated
5 units, parcel A on the east side of Ashley Road and
6 parcel B on the west side of Ashley Road.

7 Q. So this would include both parcel A and
8 parcel B; correct?

9 A. Yes, sir.

10 Q. And as of May 11, 2001, have you prepared
11 certain closure/post-closure certified cost estimates
12 for the facility?

13 A. Yes, I have.

14 Q. Okay. Can you turn, Mr. McDermont, to
15 page 214 of the record? Have you reviewed this
16 document?

17 A. Yes, I have.
18 Q. Are you familiar with it?
19 A. Yes, I am.
20 Q. What is it, if you know?
21 A. This document contains a listing of three
22 performance bonds for the Morris Community Landfill
23 facility.
24 Q. Do these pertain to closure/post-closure

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1 performance?
2 A. Yes. The total of the three bonds is
3 \$17,427,366 which is the sum of the closure and
4 post-closure care obligations of Morris Community
5 Landfill.
6 Q. How was that expense or that total arrived
7 at?
8 A. That total was arrived at by taking
9 consideration of closure and post-closure care expenses.
10 Closure expenses are the costs associated with closing
11 the landfill. Post-closure care costs are the costs
12 associated with taking care of the landfill and doing
13 monitoring during the post-closure care period.
14 Those costs are derived based on a
15 third-party cost estimate and my knowledge of those

16 costs in the area of the landfill.

17 Q. You calculated those costs then?

18 A. I certainly calculated those costs, yes.

19 Q. Those costs were certified by you then as
20 a third-party independent professional engineer?

21 A. Yes.

22 Q. They were submitted to IEPA?

23 A. Yes.

24 Q. They were approved by the IEPA and

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1 accepted by IEPA?

2 A. Yes.

3 Q. I would like to draw your attention to the
4 first bond number, Bond No. 158455. Do you see that
5 number?

6 A. Yes, I do.

7 Q. Do you see the corresponding dollar amount
8 of \$10,081,630?

9 A. Yes, I do.

10 Q. Are you familiar with that figure?

11 A. Yes, I am.

12 Q. Okay. How are you familiar with that
13 figure?

14 A. That figure represents the cost for

15 leachate groundwater and gas condensate disposal and
16 treatment costs from those waste waters being generated
17 by Morris Community Landfill.

18 Q. Okay. Presently how is waste water,
19 leachate, and condensate being treated?

20 A. Leachate and condensate are being treated
21 by the Morris -- City of Morris POTW via a connection
22 with the city sewer.

23 Q. And I take it by your answer there's no
24 groundwater being treated?

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1 A. Not at this time, and those arrangements
2 for that treatment are under contract as well.

3 Q. Okay. So they would be -- if groundwater
4 was to be treated it would be treated at the Morris POTW
5 as well?

6 A. Yes.

7 Q. Is that presently?

8 A. Presently we are not withdrawing any
9 groundwater for treatment.

10 Q. Okay. Maybe I didn't make myself clear.
11 Presently any leachate, any condensate, or any
12 groundwater that would need to be treated is being
13 treated at the Morris POTW; correct?

14 MR. KIM: Objection, leading.

15 HEARING OFFICER HALLORAN: Sustained.

16 MR. HELSTEN: Okay. We'll go through them one at
17 a time.

18 BY MR. HELSTEN:

19 Q. Mr. McDermont, is leachate presently being
20 treated at the Morris POTW?

21 A. Yes, it is.

22 Q. Okay. Is condensate presently being
23 treated -- from the landfill presently being treated at
24 the Morris POTW?

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1 A. Yes, it is.

2 Q. Is groundwater presently being treated at
3 the Morris POTW?

4 A. No, it is not.

5 Q. Why is that?

6 A. Because we are not removing any
7 groundwater.

8 Q. If groundwater was removed in the future,
9 would it be treated at the Morris POTW?

10 A. Yes, it would.

11 Q. Would leachate be treated in the future at
12 the Morris POTW?

13 A. Yes.
14 Q. Would condensate be treated at the Morris
15 POTW?
16 A. Yes.
17 Q. And would this be for the entire closure/
18 post-closure period?
19 A. Yes.
20 MR. HELSTEN: Thank you. Nothing further.
21 HEARING OFFICER HALLORAN: Mr. Kim?
22 MR. KIM: Thank you.
23
24

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1 CROSS-EXAMINATION
2 BY MR. KIM:
3 Q. Mr. McDermont, I will not only endeavor to
4 speak slowly but I will try to make sure -- I'm going to
5 jump around subject matter to subject matter so if you
6 don't understand a question or something like that, just
7 let me know.
8 You testified that had you known in
9 your role as a professional engineer performing services
10 for Community Landfill Company if you had known earlier
11 on that the Illinois EPA was intending to consider

12 Section 39(i) as a potential denial that certain steps
13 by the landfill might not have been taken. Do you
14 recall that testimony?

15 A. Yes.

16 Q. Let me get a little bit of background.
17 How long have you -- I believe your resume states that
18 you have performed work for Community Landfill as a part
19 of your employment with Andrews Environmental
20 Engineering since 1988; is that correct?

21 A. Yes. Late '87, early '88, yes.

22 Q. Can you just briefly describe from that
23 point up until May of 2001 what your responsibilities
24 were and how those evolved over the time as it relates

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1 to what you did for Community Landfill?

2 A. Certainly. I was the engineering
3 consultant for Community Landfill Company my first
4 assignment for the facility.

5 Prior to my employment Andrews
6 Engineering had obtained a vertical expansion for parcel
7 A and parcel B of the landfill. I believe that was in
8 approximately 1986, 1987. In 1988, which was ultimately
9 approved in 1989, we received a permit approving the
10 design of the vertical expansion on parcels A and B.

11 From then on we proceeded to install
12 the separation layer on parcel B which was part of that
13 permit.

14 Q. You know what, I think you may have
15 misunderstood my question. Let me ask it again. Let's
16 try it this way. The application that was submitted to
17 the Illinois EPA that was ultimately denied on May 11,
18 2001, you were the professional engineer that assigned
19 the application; is that correct?

20 A. Yes.

21 Q. Were you responsible for all aspects of
22 the preparation of that application?

23 A. Yes.

24 Q. How long have you been in that role for

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1 Community Landfill's permit application submittals as a
2 part of your employment with Anderson Environmental?

3 A. I have prepared permit applications for
4 Morris Community Landfill Company for 14 years and have
5 been certifying them as registered professional
6 engineers since I was licensed.

7 Q. And when was that?

8 A. If you wouldn't mind looking at my CV to
9 get the exact date, I would appreciate it.

10 Q. Would that be 1992?

11 A. Yes, sir.

12 Q. So is it safe to say that from 1992 up
13 through May 2001 you were signing permit applications
14 that were submitted by Morris Community Landfill in your
15 capacity as a professional engineer?

16 A. Yes.

17 Q. And that as such you were responsible for
18 all aspects of the preparation of those permit
19 applications?

20 A. Generally speaking, yes.

21 Q. And when you prepared permit applications
22 for a client, do you take into consideration -- let me
23 rephrase that.

24 When you prepare permit applications

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1 for a client, do you insure to the best of your ability
2 that the application will satisfy all applicable
3 requirements?

4 A. Yes.

5 Q. And those requirements may include
6 statutory requirements?

7 A. Yes.

8 Q. And those requirements may include

9 regulatory requirements; is that correct?

10 A. Yes.

11 Q. And for this particular facility the
12 application that you submitted that led to the denial on
13 May 11 of 2001 the regulations that you referred to were
14 specifically in the Part 8 regulations of the Board's
15 rules; is that correct?

16 A. I'm sorry, you'll have to rephrase your
17 question or ask it again.

18 Q. Let me rephrase it. What do the Board's
19 rules at Part 8-11 of Title 35 of the Illinois code
20 address, what type of facilities?

21 A. Sanitary landfill.

22 Q. And is Morris Community Landfill subject
23 to Part 8-11 of those regulations?

24 A. Via Section 8-14, yes.

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1 Q. Thank you. I understand your dilemma.
2 Thank you. But Part 8-11 provides specific requirements
3 that must be addressed and they must be satisfied in
4 permit applications that would be submitted for
5 Community Landfill; is that correct?

6 A. Generally speaking, yes.

7 Q. And that would include the permit

8 application and addendums that were ultimately denied on
9 May 11, 2001; is that correct?

10 A. Yes.

11 Q. So in your role as making sure that the
12 permit applications comply with all applicable statutory
13 regulatory requirements it's incumbent upon you, isn't
14 it, to review all possible statutes or regulations that
15 might be relevant to that application?

16 A. Yes.

17 Q. And did you do so in the permit
18 application that was ultimately denied on May 11, 2001?

19 A. I certainly did not review all the
20 statutes or --

21 Q. No. Did you review all the applicable
22 statutes and regulations that would be relevant to the
23 permit application that you submitted that was
24 ultimately denied on May 11, 2001?

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1 A. Through my experience and the best of my
2 abilities, yes.

3 Q. And since at least 1992 when you were
4 certified as a professional engineer you employed the
5 same process for all the permit applications submitted
6 by Community Landfill; is that correct?

7 A. Yes.

8 Q. When did you first learn that Robert Prui
9 had a felony conviction? And when I say the felony
10 conviction, I'm assuming there's only one and I'm
11 referring to the conviction that is documented in the
12 administrative record.

13 MR. LaROSE: Mr. Halloran, I'm going to object to
14 the relevance of this line of questioning. The Agency
15 personnel candidly and readily admitted that my clients,
16 including Mr. McDermont, didn't have any obligation
17 under any law, rule, or regulation to bring this matter
18 to their attention, nor did they violate any law, rule,
19 or regulation by not doing so, nor did they try to hide
20 anything from them. I don't know where he's going or
21 what Mr. McDermont's knowledge of this conviction has
22 anything to do with this case.

23 HEARING OFFICER HALLORAN: Mr. Kim?

24 MR. KIM: Well, Mr. McDermont has stated that had

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1 he known about this going back to as early as 1996 he
2 would have advised the client -- had he known the Agency
3 was going to consider Section 39(i), he would have
4 advised his client to take alternate steps.

5 What I'm trying to find out is when

6 Mr. McDermont, the person responsible for preparing the
7 permit applications, discovered that information to
8 determine what responsibilities he may have had to his
9 client. I'm not going in to what information he needed
10 to provide to the Illinois EPA.

11 This goes toward his testimony that
12 he was the person responsible for preparing permit
13 applications on behalf of his client.

14 HEARING OFFICER HALLORAN: I'm going to sustain
15 Mr. LaRose's objection.

16 BY MR. KIM:

17 Q. Mr. McDermont, I'm going to direct your
18 attention to Section 39(i) of the Act. May I approach
19 the witness?

20 HEARING OFFICER HALLORAN: Yes, you may.

21 MR. KIM: Oh, you've got a copy. Thank you.
22 Could you please find Section 39(i) in your copy of the
23 Environmental Protection Act.

24 Before we go any further I would like

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1 to make an offer of proof just to ascertain when
2 Mr. McDermont first learned of the conviction of
3 Mr. Pruim. It's a one-question offer of proof.

4 HEARING OFFICER HALLORAN: You may proceed.

5 BY MR. KIM:

6 Q. Mr. McDermont, when did you learn that
7 Mr. Pruim had been convicted of a felony as is referred
8 to in the administrative record?

9 A. I learned of it in late 1993, early 1994.

10 MR. KIM: Thank you. That concludes the offer.

11 HEARING OFFICER HALLORAN: I stand on my ruling
12 and find it irrelevant.

13 MR. KIM: Thank you.

14 BY MR. KIM:

15 Q. Mr. McDermont, have you had a chance to
16 look over Section 39(i) of the Act?

17 A. Yes, I have.

18 Q. And have you reviewed this provision
19 before today?

20 A. Yes, I have.

21 Q. How long would you say you have been aware
22 of the provisions or the information contained within
23 the Section 39(i)?

24 MR. LaROSE: Objection, Mr. Halloran, again, to

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1 this line of questioning. Mr. McDermont nor my client
2 have any obligations with respect to Section 39(i) of
3 the Act, none. It is the Agency's obligation to

4 implement the procedures thereunder.

5 Mr. McDermont has not offered any
6 opinion as to the procedure used under 39(i). He's
7 offered an opinion that he thought they were using this
8 as enforcement and he thought that it wasn't fair to do
9 it at this time based on the failure to do it earlier.
10 He didn't say he should have looked at this or should
11 have looked at that or they should have looked at
12 anything else.

13 This is really outside the scope of
14 his opinions, and whether or not Mr. McDermont has any
15 opinions as to how the Agency should implement 39(i) is
16 not part of this hearing.

17 HEARING OFFICER HALLORAN: Mr. Kim?

18 MR. KIM: Well, in fact, Mr. McDermont has been
19 testifying as to how he thinks the Agency should have or
20 did not apply Section 39(i), and I believe as Mr. LaRose
21 stated that forms the basis of the foundation for their
22 case, that being that we somehow failed to properly
23 follow provisions of Section 39(i).

24 Mr. McDermont has stated that he has

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1 an opinion as to how the Agency failed to properly take
2 those steps and as a result of that failure what he

3 believes his client would or would not have done had he
4 been made aware of that information.

5 I'm simply trying to find out -- all
6 I'm trying to do is flush out his understanding of what
7 Section 39(i) relates to, and, also, he testified as to
8 certain information concerning Mr. Pruim and Mr. Pruim's
9 involvement at the landfill. I would like to flush that
10 out a little bit with this section as well.

11 MR. LaROSE: I think he's totally entitled to ask
12 him about Mr. Pruim and Pruim's involvement with the
13 landfill.

14 I think he's totally entitled to ask
15 him about why he thinks it's unfair to have not done
16 this, not implemented this procedure at all for these
17 types because that's what he did testify to. I think he
18 can ask him about why the conduct of the 39(i)
19 investigation in this case by means of who was involved
20 in this led to his opinion that they were using
21 enforcement -- or using permits to enforce.

22 Beyond that he hasn't criticized the
23 way they implemented. My criticism of that, which is
24 stark, came exactly from the witnesses when I

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1 cross-examined them from the Agency about how they

2 either implemented or didn't implement the program.

3 He didn't say -- Mr. McDermont hasn't
4 said they should have looked at this or should have
5 looked at that or should have looked at that.

6 HEARING OFFICER HALLORAN: Mr. Kim, I somewhat
7 agree with Mr. LaRose trying to narrow the question so I
8 am going to sustain.

9 MR. KIM: Actually, I'll just save everyone some
10 time and I'll move on.

11 BY MR. KIM:

12 Q. Mr. McDermont, you testified that it was
13 your understanding that if -- and I may get this -- I'm
14 not going to try and summarize your testimony.

15 You were asked some questions about
16 what the sake of a permit would have been had it been
17 issued upon the same application that was denied in May
18 2001, and I believe your response was it would be
19 identical to the previous August 2000 permit except for
20 reference to the approval of the separation layer; is
21 that correct? Do you recall that line of questioning?

22 A. I would appreciate a little more
23 background on it.

24 Q. I think what Mr. LaRose -- and if I

1 mischaracterized Mr. LaRose's question, I apologize.
2 What I'm trying to get at was he asked you a series of
3 questions concerning what would a permit have looked
4 like had it been approved for the separation layer. In
5 other words, if we would have approved the permit in May
6 instead of deny it -- and I believe he asked you to make
7 a comparison to how would that look compared to the
8 August 2000 permits that were approved.

9 And I believe your testimony was
10 something to the effect of it would be identical but for
11 the language approving the separation layer. Do you
12 recall that testimony?

13 A. Yes, I do.

14 Q. But we haven't issued an approval permit
15 for the separation layer as was proposed in the
16 applications referenced by Permit Log No. 2000-438 yet,
17 have we?

18 A. No, you have not.

19 Q. And until that permit is issued, assuming
20 at some point it would be issued, you don't really know
21 exactly what's going to be in that permit, do you?

22 A. No, I do not.

23 Q. Mr. McDermont, if you could find please
24 Exhibit 81. I believe you were asked some questions

1 concerning this exhibit, and among the questions you
2 were asked related to whether there was any evidence
3 that a Wells letter was either sent to or received by
4 Community Landfill Company. Do you recall those
5 questions?

6 A. Yes, I do.

7 Q. Can you identify for me what is found on
8 page 0277 of that exhibit?

9 A. 0277 is a certified mail receipt addressed
10 to the City of Morris.

11 Q. Okay. Can you identify for me what is
12 found on page 0278?

13 A. 0278 is a certified mail receipt addressed
14 to Community Landfill Company.

15 Q. Is there any proof in this exhibit that a
16 Wells letter was sent to -- strike that. Let me
17 rephrase the question. Doesn't the certified mail
18 receipt found on page 0278 evidence the fact that a
19 Wells letter was sent to Community Landfill Company?

20 A. No.

21 Q. It does not in your opinion?

22 A. No.

23 Q. Thank you. I would like to refer you to
24 page 0275 of that exhibit. And I, also, would like to

1 note for the record that in this exhibit, at least on my
2 copy, it appears there's a blank page between 275 and
3 274. I think that's nothing more or less than just an
4 inadvertent page placed in there. I don't want the
5 Board to think --

6 HEARING OFFICER HALLORAN: That's what it looks
7 like.

8 MR. LaROSE: I've got the same thing in mine.
9 What page, John?

10 MR. KIM: Page 275. Actually, I apologize.
11 That's not the page I intended. Could you turn to page
12 15 and 16 of the administrative record?

13 MR. LaROSE: Are we done with 81?

14 MR. KIM: Yes. I'm sorry.

15 BY MR. KIM:

16 Q. Could you look at page 15 and 16 of that
17 exhibit?

18 A. Yes.

19 Q. That is the response to the Wells letter
20 that you testified to earlier; is that correct?

21 A. Yes.

22 Q. And when I use the term Wells letter, you
23 understand that the Wells letter is the letter that we
24 have just now put away that is found in Exhibit 81; is

1 that correct?

2 A. Yes.

3 Q. This letter does not ask for additional
4 time to respond to the Wells letter, does it? Let me
5 rephrase that. There's no request made in this letter
6 for additional time by which to respond to the Wells
7 letter, is there? Yes or no?

8 A. No.

9 Q. Thank you. And do you know what the due
10 date was? This letter is dated April 9, 2001; is that
11 correct?

12 A. Yes.

13 Q. And at that time wasn't the due date for
14 the Illinois EPA to act on the permit application April
15 12 of 2001?

16 A. I believe so.

17 Q. And that date was later extended when you
18 submitted additional information on April 12, 2001; is
19 that correct?

20 A. Yes.

21 Q. And after that date after you submitted
22 that additional information -- and I believe that
23 information is found on page -- let me strike that.

24 Would you please turn to page 233 of

1 the administrative record? Is page 233 and 234 the
2 information that you submitted on April 12, 2001, to the
3 Illinois EPA?

4 A. Yes, it is.

5 Q. And there's no request in this information
6 that you submitted, is there, for additional time to
7 respond to the Wells letter? Yes or no?

8 A. No.

9 Q. And you did not make any additional
10 requests for any additional time after the date of this
11 letter up until the date that the permit was denied, did
12 you?

13 A. No.

14 Q. And, in fact, you did not submit any
15 additional information in response to the Wells letter
16 other than the April 9, 2001, letter prepared by
17 Mr. LaRose; isn't that correct?

18 A. That's correct.

19 Q. I would like to draw your attention now
20 to, if I can find it, Exhibit No. 79, and if you could,
21 also, turn to page -- you may know this quicker than I
22 do, Mike. Do you know in the administrative record
23 where the summary was that you were testifying to, the
24 permit summary, the list?

1 MR. LaROSE: 81, I believe it is.

2 MR. KIM: Okay. Thank you very much.

3 MR. LaROSE: You're welcome.

4 MR. KIM: Page 81, yes. Thank you.

5 BY MR. KIM:

6 Q. This exhibit was not included in the
7 record, but there was some testimony that you provided
8 that was included in the record, and specifically you
9 testified as to your impressions of the last sentence of
10 the first full paragraph on that exhibit; is that
11 correct?

12 A. Yes.

13 Q. And I believe you testified that it was
14 your understanding that that was proof that the Agency
15 was engaging in a practice of enforcement through
16 permitting; is that correct?

17 A. Yes.

18 Q. What is the date of that memorandum?

19 A. September 7, 1999.

20 Q. If you look at page 81 of the
21 administrative record and you look at the entry for
22 Permit Log No. 1996-255 and 256, that indicates that
23 those denials were issued on September 1, 1999; is that

24 correct?

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1 A. Yes.

2 Q. And at the time in 1999, September of
3 1999, there was an enforcement case pending that had
4 been brought by the People of the State of Illinois
5 versus Community Landfill Company and the City of
6 Morris; is that correct?

7 A. Yes.

8 Q. And portions of that enforcement case were
9 still pending before the Pollution Control Board; is
10 that correct?

11 A. I believe so.

12 MR. LaROSE: At that time or at this time?

13 BY MR. KIM:

14 Q. Up to may 11 of 2001 portions of that
15 enforcement case were still pending before the Board; is
16 that correct?

17 A. Uh-huh, yes.

18 Q. You've, also, testified to your
19 understanding concerning the decision that the Board
20 reached in the enforcement case on April 5 of 2001. Do
21 you recall that?

22 A. Yes.

23 HEARING OFFICER HALLORAN: Could you speak up,
24 Mr. McDermont, please?

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1 THE WITNESS: I'm sorry. Yes.

2 BY MR. KIM:

3 Q. Isn't it true, Mr. McDermont, that a
4 portion of the decision that the Board reached on April
5 5 of 2001 in the enforcement case did find a violation
6 on the part of Community Landfill Company and the City
7 of Morris?

8 A. I do not specifically recall.

9 Q. You don't know that information, do you?

10 A. No.

11 Q. Thank you. You, also, testified to your
12 impressions formed concerning certain statements made by
13 a member of the field operations section that were sent
14 via interoffice email and interoffice memorandum to
15 other members of the Illinois EPA. Do you remember
16 that?

17 A. Yes, I do.

18 Q. And the individual I'm speaking of from
19 the field operations section is Mark Retzlaff; is that
20 correct?

21 A. Yes.

22 Q. The field operations section doesn't issue
23 permits, does it?

24 A. No, they do not.

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1 Q. You, also, testified that -- could you
2 look on page 14 of the administrative record? I believe
3 you testified that this email was sent to enforcement
4 attorneys in addition to Mr. Purseglove. Do you recall
5 that testimony?

6 A. Yes.

7 Q. Who were the enforcement attorneys that
8 you see listed on that email?

9 A. I believe that Scott Phillips is an
10 enforcement attorney.

11 Q. Are there any other enforcement attorneys
12 listed on that email?

13 A. Susan Schroeder perhaps could be, but I
14 think, again, her role is managerial.

15 Q. If I told you that Susan Schroeder was my
16 supervisor, would you agree that she is not an
17 enforcement supervisor?

18 A. I could not agree or disagree with that
19 statement.

20 Q. I understand. Do you understand what

21 Mr. Phillips' position is within the division of legal
22 counsel?

23 A. No, I do not.

24 Q. Do you know what groups of attorneys he

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1 oversees?

2 A. No, I do not.

3 Q. Could you look on pages 44 and 45 of the
4 administrative record? Actually, you just need to look
5 at page 44. I believe you testified that the contact
6 person identified by the Illinois EPA in the violation
7 notice letter was Mr. Blake Harris. Do you recall that
8 testimony?

9 A. Yes.

10 Q. I believe you, also, characterized
11 Mr. Harris as the decision-maker and the person in
12 charge. Do you recall that characterization?

13 A. Not specifically that way.

14 Q. Do you think Mr. Harris was in charge of
15 the enforcement decisions being made that were
16 referenced in the violation notice?

17 A. Yes.

18 Q. Do you believe that decision is Mr.
19 Harris' and Mr. Harris' alone as to whether or not

20 enforcement should be brought?

21 A. No.

22 Q. Could you explain why you believe
23 Mr. Harris was then the decision-maker in the
24 enforcement notice that you referred to?

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1 A. Mr. Harris was in my opinion the
2 decision-maker in terms of whether acceptable compromise
3 was reached in regards to the financial assurance
4 matters.

5 Q. Okay. But he was not the sole person
6 responsible for determining whether or not enforcement
7 action would be brought against Community Landfill and
8 the City of Morris; is that correct?

9 A. That is correct.

10 Q. And as of May 11, 2001, you do not -- you
11 did not know whether or not an enforcement action would
12 be brought against Community Landfill Company and the
13 City of Morris concerning alleged violations regarding
14 financial assurance; is that correct?

15 A. That is correct.

16 Q. But it is true, isn't it, that a violation
17 notice addressing that allegation was sent to the City
18 and to Community Landfill Company?

19 A. Yes.
20 Q. And that a notice of intent to pursue
21 legal action on that subject was sent to the City and to
22 Community Landfill Company?
23 A. Yes.
24 MR. KIM: I have nothing further.

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1 HEARING OFFICER HALLORAN: Thank you, Mr. Kim.
2 Mr. LaRose, any redirect?
3 MR. LaROSE: Just briefly.
4 REDIRECT EXAMINATION
5 BY MR. LaROSE:
6 Q. I direct your attention to page 15 of the
7 record please. What appears on the bottom right-hand
8 corner of the Wells letter?
9 A. In the Bottom right-hand corner is the
10 Bates stamp of the record and it appears to be an IEPA
11 permit log-in or received stamp.
12 Q. What's the date that appears on that?
13 A. April 11, 2001.
14 Q. Mr. McDermont, after you have received the
15 Wells letter demanding a response by 5 p.m. on April the
16 9th did anyone from the Agency suggest to you at any
17 time through any mechanism that you could have more time

18 to respond to that letter?

19 A. No, they did not.

20 Q. And did you feel like it was incumbent
21 upon you after the Agency had set that deadline to
22 request one?

23 A. No, I did not.

24 MR. LaROSE: That's all I have other than -- just

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1 give me a second. Mr. Hearing Officer, I'm going to
2 renew my offer to present Exhibit No. 79 in the record
3 based on Mr. Kim's questioning of Mr. McDermont with
4 respect to that document.

5 It seems to me that -- this is the
6 Tina Kovaszny memo of September 7. It seems to me
7 having made an objection that this is irrelevant to
8 these proceedings he has now opened the door to its
9 relevancy by questioning Mr. McDermont on it.

10 I quite frankly don't recall whether
11 when you rejected -- I wish I did and that's why I was
12 looking through my notes -- when you rejected 79 if you
13 also rejected as an offer of proof Mr. McDermont's
14 testimony with respect to 79, but I'm not so sure it
15 matters.

16 Certainly, if you rejected both and

17 now he's questioning him about it, the document ought to
18 come in. But if you let the testimony come in, Mr. Kim
19 objects to its relevance and then he asks him a question
20 about it, I'm not so sure he can have it both ways. I
21 think the document ought to come in based on Mr. Kim
22 opening the door.

23 HEARING OFFICER HALLORAN: Mr. Kim?

24 MR. KIM: As I believe I stated prior to my

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1 asking him questions concerning that exhibit, my
2 understanding of your ruling -- and I could be wrong,
3 but my understanding of your ruling was that the exhibit
4 itself -- the document itself would not be included in
5 the record.

6 However, due to the timing of the
7 objection as to that and more specifically as to my
8 objection of his testimony concerning that exhibit, I
9 believe your ruling was because your objection to his
10 testimony was delayed I will allow his testimony in.

11 THE COURT: That's correct.

12 MR. KIM: But I won't let the exhibit in.
13 Therefore, I was simply asking him -- it was in the
14 course of his testimony, not in the offer of proof, that
15 he testified as to his impressions formed on that

16 sentence that I asked him about. That's the only thing
17 that I asked him about.

18 HEARING OFFICER HALLORAN: That's my recollection
19 as well.

20 MR. LaROSE: Now that refreshes my recollection,
21 but even more so if he objected to the document as
22 irrelevant -- albeit a delayed objection, or whatever,
23 if he objected to the document as irrelevant and then
24 asked him questions about the document, I think he's

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1 opened the relevance door. If it's really irrelevant,
2 he shouldn't have asked him any questions about it.

3 MR. KIM: And, again, my question related to his
4 testimony that he provided concerning the exhibit. If I
5 could have that stricken out, I would more than be happy
6 to have my question to him stricken as well, but my
7 understanding was despite my objection you overruled me
8 and you allowed that in.

9 So despite the fact that I might have
10 objected to it, it would, obviously, be remiss on my
11 part if after you let in something, regardless of
12 whether or not I feel it's relevant or not, for me to
13 not have a follow-up question. That's all I was doing.

14 HEARING OFFICER HALLORAN: I'm going to leave it

15 out. I still deny Exhibit 79 into evidence.

16 MR. LaROSE: I have nothing further for
17 Mr. McDermont.

18 HEARING OFFICER HALLORAN: Mr. Helsten?

19 MR. HELSTEN: Nothing further.

20 HEARING OFFICER HALLORAN: I assume --

21 MR. KIM: Mr. Halloran, I just have a couple of
22 questions in recross.

23 HEARING OFFICER HALLORAN: I'm sorry, Mr. Kim.

24

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1 RE-CROSS-EXAMINATION

2 BY MR. KIM:

3 Q. Mr. McDermont, would you look again to
4 page 15 of the administrative record and the date stamp
5 on the bottom right-hand corner?

6 A. Uh-huh.

7 Q. You don't know whether Christine Roque put
8 that stamp on that letter, do you?

9 A. No.

10 Q. You don't know whether Joyce Munie put
11 that stamp on that letter, do you?

12 A. No.

13 Q. And you don't know whether Chris Leibman

14 put that stamp on that letter, do you?

15 A. No.

16 Q. And isn't it possible that somebody other
17 than those three people put that stamp on the letter?

18 A. Yes.

19 HEARING OFFICER HALLORAN: Any re-redirect?

20 MR. LaROSE: No, sir.

21 HEARING OFFICER HALLORAN: Mr. Helsten?

22 MR. HELSTEN: No, sir.

23 HEARING OFFICER HALLORAN: I assume, Mr. LaRose,
24 that your chase in chief has been presented?

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1 MR. LaROSE: I would just like two minutes to
2 review the exhibit list to make sure I didn't forget
3 anything and would maybe now be -- the answer is yes
4 unless I missed something that I didn't offer that I
5 intended to exhibit-wise.

6 HEARING OFFICER HALLORAN: Let's go off the
7 record for two minutes.

8 (Off the record.)

9 HEARING OFFICER HALLORAN: We're back on the
10 record.

11 MR. LaROSE: That concludes the petitioner for
12 Community Landfill Company's case in chief.

13 HEARING OFFICER HALLORAN: I assume that's your
14 case in chief as well, Mr. Helsten?

15 MR. HELSTEN: Yes. The City has no additional
16 evidence to offer, Mr. Halloran.

17 THE COURT: Thank you, Mr. Helsten. Mr. Kim, I
18 assume your case in chief was intertwined with
19 petitioner's case in chief, so to speak.

20 MR. KIM: Yes, we're done. The issues that we
21 would have raised in our case in chief were addressed in
22 cross-examination so we have no further witnesses to
23 present at this time.

24 HEARING OFFICER HALLORAN: Anything in rebuttal,

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1 Mr. LaRose? I want to cover all the bases.

2 MR. LaROSE: No.

3 HEARING OFFICER HALLORAN: All right. You know,
4 I'm supposed to make a credibility determination and I
5 will and based on my legal and professional experience
6 throughout these -- the witnesses throughout these last
7 three days of hearing I find there are no issues of
8 credibility.

9 What I want to do right now is I just
10 want to get into the record our pre-discussed
11 post-hearing briefs, and we'll take a short break and

12 present closing arguments.

13 For the post-hearing schedule we have
14 anticipated that the hearing -- the record transcript
15 will be published, I guess, or completed on or before
16 October 26 and, hopefully, on the web site by then.

17 In any event the petitioner's and
18 respondent's post-hearing briefs are simultaneously due
19 on or before November 2. Any responses are
20 simultaneously due on November 6. Of course, fax filing
21 is okay with hard copies to follow. I should say filed
22 and served on those respective dates, and I, also, would
23 set the public comment due date. That would be November
24 2, 2001. Is that correct, Counsel?

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1 MR. LaROSE: I think that's what we agreed to. I
2 just -- I heard it, and it went right over my head. Do
3 we fax it to each other or do we fax it to the Board or
4 everybody?

5 HEARING OFFICER HALLORAN: Everybody.

6 MR. KIM: Everybody?

7 HEARING OFFICER HALLORAN: Everybody.

8 MR. LaROSE: Does that go to you if it's faxed?
9 I mean, we'll file it with the Board too, but maybe not
10 that day. If it's going to be faxed to somebody, does

11 that go to you?

12 HEARING OFFICER HALLORAN: Yeah, you can make it
13 to me, and I'll informally get it over to the
14 appropriate people.

15 MR. LaROSE: Mr. Halloran, one other point. I
16 don't remember -- there's something about the objections
17 to HEARING OFFICER HALLORAN's rulings. There's a time
18 limit on that too. Will these have the same time frames
19 to respond to that? I think if my recollection --

20 HEARING OFFICER HALLORAN: I think it's 14 days.

21 MR. LaROSE: It's 14 days after the record;
22 right?

23 HEARING OFFICER HALLORAN: You should know this
24 by heart, Mr. LaRose.

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1 MR. LaROSE: I've only done it one time before,
2 but I am getting good practice at it.

3 HEARING OFFICER HALLORAN: I thought it was 501.

4 MR. LaROSE: Here, 502. Fourteen days after the
5 Board receives the hearing transcript. Could I have --
6 I would like to try and get that done at the same time.
7 Could I have, though, until the 6th to do that or --

8 HEARING OFFICER HALLORAN: So you want to
9 November 6 to file any kind of appeal?

10 MR. LaROSE: Yeah. I don't remember what we
11 called it last time. Motion directed to the Hearing
12 Officer.

13 HEARING OFFICER HALLORAN: Well, it doesn't say
14 that I can't extend the time. Mr. Kim, do you have any
15 objection to that, extending that.

16 MR. KIM: Well, actually if we're talking about
17 November 6, doesn't that say that it's got to be within
18 14 days after the Board gets the transcript. If the
19 transcript is not going to be received until the 26th
20 then actually the 14 days wouldn't run until the 9th so,
21 it's within that time frame.

22 MR. LaROSE: I would even shorten it up and do it
23 by the 6th. I'm just wondering if I've got to do them
24 both them by the 2nd, that's really shortening it up

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1 quite a bit. If I could have to until the 6th to do
2 this motion, that would really help.

3 HEARING OFFICER HALLORAN: Oh, sure. Like John
4 said, I think you're entitled to at least 14 days. I
5 guess I'm missing your question.

6 MR. LaROSE: If I have to the 9th, that's great.
7 I was under the understanding that we had shortened up
8 all the time frames in this because we had asked for an

9 expedited hearing. So I'm just trying to accommodate --
10 I mean, I don't want to get this to the Board in a time
11 where it's not going to be considered by them.

12 HEARING OFFICER HALLORAN: Mr. Kim, do you plan
13 on having any kind of motions for my rules prior to
14 November 6?

15 MR. KIM: There's only -- I only made one offer
16 of proof, and that's the only potential issue that I may
17 bring to the Board's attention. And if I do, it will be
18 by short memo or by a short motion.

19 HEARING OFFICER HALLORAN: By November 6.

20 MR. KIM: By November 6.

21 MR. LaROSE: Mr. Halloran, obviously, the two key
22 issues in this case that I would address to your rulings
23 are the June 29th permit and the things that happened
24 with respect to that permit and the evidence with

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1 respect to the prejudice as it relates to laches. So
2 it's a pretty limited thing. Some of these exhibits --
3 multiple exhibits may fall into that category, but
4 that's really what I contemplate.

5 HEARING OFFICER HALLORAN: If it's agreed then,
6 motions to appeal any of my evidentiary rulings here
7 today will be due on or before November 6, same served

8 and filed by November 6.

9 MR. LaROSE: That just gives the Board 30 days,
10 and I don't want anybody to say I didn't give them
11 enough time to consider.

12 HEARING OFFICER HALLORAN: Right. And that is
13 part and parcel of the whole case as you suggested.

14 MR. LaROSE: I appreciate that.

15 HEARING OFFICER HALLORAN: We'll go off the
16 record for -- be back here by -- how long do you need to
17 prepare for closing?

18 MR. LaROSE: I don't need any time.

19 HEARING OFFICER HALLORAN: All right. Be back
20 here in five minutes.

21 (Brief break.)

22 HEARING OFFICER HALLORAN: We're back on the
23 record. It's approximately 1:10. I neglected to
24 observe are there any members in the public -- there's

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1 two gentlemen here -- to give public testimony in this
2 case? Okay. Thank you very much. We're going to
3 proceed to closing arguments. Mr. LaRose?

4 MR. LaROSE: Thank you. Mr. Halloran, Mr. Kim,
5 Mr. Helsten, members of the audience, may it please the
6 Court.

7 The evidence and testimony presented
8 over the last three days has proven the Agency's denial
9 in this case was improper. The evidence shows that
10 Community Landfill Company was targeted by the Agency to
11 be closed down and, in fact, they used the permit in
12 this case to do it.

13 Specifically regarding the 39(i)
14 issue and the eight-year-old conviction of Bob Pruum the
15 Agency decision should be reversed because the Agency
16 knew about this violation for eight years, did nothing
17 and slept on its rights.

18 Warren Weritz, site inspector, knew
19 about it in 1993. Cliff Gould, regional manager of the
20 Northern Region of the Field Operation Section of the
21 IEPA, knew about it in 1993. John Taylor, financial
22 assurance analyst, knew about it in 1993. Sally
23 Springer, Community Landfill Company permit reviewer,
24 knew about it in 1995. Kyle Davis, attorney from the

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1 Division of Legal Counsel of the IEPA, knew about it in
2 1995. Jack Burds of the Division of Legal Counsel of
3 the IEPA knew about it in 1995, and Mark Retzlaff, the
4 site inspector knew about it in 1993.

5 Two of these people testified that

6 everyone knew about it. Their term was common
7 knowledge. Paul Purseglove was candid in his admission
8 when he admitted that all of these people or any other
9 agency employee had the obligation to bring this
10 information to the management or legal of the IEPA to
11 conduct a 39(i) investigation, and it failed to do so.

12 The EPA tries to excuse this by
13 saying we don't have any procedures, we don't have any
14 policies. This is painfully obvious, but this is no
15 excuse. This law has been in effect for more than 15
16 years. Why don't they have any policies? Why don't
17 they have any procedures? And by the way I think it's,
18 also, obvious and common knowledge that you don't need a
19 policy or procedure to know that you can pick up the
20 telephone or send a note or send an email.

21 The Agency's entire 39(i)
22 implementation was exposed in this case as inadequate
23 and inept and an absolute failure to meet their
24 obligations to investigate these matters. Chris Leibman

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1 and Joyce Munie tried to rationalize this failure by
2 saying they do an evaluation on every application. What
3 was the evaluation? We look in our own mind and we look
4 at the application. An amazing statement.

5 They analyze Section 39(i) based on
6 the absence of information. That's not an evaluation.
7 It's not an investigation. That's not what the law
8 requires. They're supposed to do this with respect --
9 do this evaluation under Section 39(i) each time an
10 application comes in, but the evidence from the IEPA
11 people was that this almost never occurs.

12 Chris Leibman, 2000 permits. He's
13 conducted three 39(i) investigations. Joyce Munie,
14 1,000 permits, three 39(i) investigations. Christine
15 Roque, 1,000 permits, two 39(i) investigations. Paul
16 Purselove, the head of the whole inspectional services
17 for the whole state of Illinois for the IEPA, and he's
18 never done a single 39(i) investigation before this
19 case, and, in fact, in this case he didn't do one
20 either. He sat. He listened. He wasn't asked for his
21 input. He didn't give his input. Yet with no
22 information in front of him at all he concurred in the
23 decision to conduct an investigation and concurred in
24 the denial of this permit. All they would have had to

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1 do was do their job and conduct an investigation into
2 any one of the over 13 permit applications and we
3 wouldn't be here, but they waited. They slept on their

3 they should look at all the facts, they never looked at
4 who actually ran Community Landfill Company. They never
5 actually looked at the age of the violation. They never
6 actually looked at who the certified operator of the
7 site was. They never actually looked at the degree of
8 control or lack thereof that Mr. Pruim exerted over the
9 site, and they never really looked at whether this
10 conviction had anything to do with the environment.

11 Most telling, they didn't look at and
12 they didn't care whether they should have acted earlier
13 on information that had been in their possession for the
14 entire eight-year period.

15 And the Agency's procedures regarding
16 the mandates of the Wells management case were virtually
17 nonexistent in this case. Wells Manufacturing says that
18 if the Agency is going to consider anything outside the
19 permit application they have to notify the applicant and
20 give them a reasonable opportunity to respond. This is
21 not a procedure to be taken lightly. It is due process.
22 So what did they do? They sent a Wells letter on April
23 the 4th demanding a response by 5 p.m. on April the 9th.
24 The only problem was Community Landfill Company never

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1 received the letter. No return receipt was ever

2 returned to the Agency, produced by it, or included in
3 the record in this case.

4 The City of Morris did receive their
5 letter by certified mail on 4/9 of 2001, the date that
6 it was due. Even though they know I've been Community
7 Landfill Company's lawyer for years they didn't send me
8 a copy or give me an opportunity to respond. I received
9 it on the morning of 4/9 through the diligence of our
10 environmental consultant Michael McDermont who sent it
11 to me by fax after he got over his shock of receiving
12 the document.

13 And after I got over my shock of
14 receiving the document I scrambled to make a response as
15 best as I could with the information that I had in my
16 possession, and I stated specifically in that letter
17 that this was an unreasonable time frame with which to
18 respond and that it did not give us a reasonable time
19 frame with which to respond.

20 When I complained about this, no
21 call, no fax, no extension of time, no nothing. The
22 Wells letter was sent on the 39(i) issue only even
23 though the fact that Frontier Insurance Company had been
24 de-listed from the 570 was completely outside the

1 application and should have triggered a Wells letter.
2 We didn't get one on that one.

3 The EPA seems to agree on the surface
4 that they must keep permits and enforcement separate.
5 The evidence in this case is clear that behind the
6 scenes permitting and enforcement is one in the same.

7 Everyone in permits, Roque, Munie,
8 Leibman, thought that the site should close down because
9 we were operating without a permit. Everyone in field
10 operations, Purselove, Weritz, Kovasznay, Retzlaff,
11 thought that the site should be closed down because we
12 were operating without a permit. The legal department
13 knew this too, enforcement attorney Bruce Kugler and
14 Bill Ingersoll.

15 They spent government dollars in the
16 middle of Ashley Road for two days logging the trucks in
17 and out of our facility so that they could establish
18 proof of this violation of the Act. There was only one
19 problem with it. They were wrong. The Pollution
20 Control Board ultimately ruled that we operated at all
21 times with a permit. That didn't matter to them. In
22 fact, none of them even remember reading the decision.
23 None of them bothered to tell the field inspector that
24 that was no longer an issue, and the reports he's

1 writing today still contain the very violation that the
2 Board has held against.

3 Retzlaff's reports in this case tell
4 a big part of the story. In two years he hasn't noted a
5 single violation of the Act or the regulations. He only
6 notes the series of pages of continuing violations but
7 he admitted candidly under oath in this case that he
8 just copied those from the reports of his predecessors.
9 He never took any steps to independently verify whether
10 a single continuing violation existed at the facility.

11 All EPA personnel admit that
12 they weren't aware of a single adjudicated violation
13 against my client in the 19 years that its operated the
14 site.

15 But the reports that go to the
16 clients and the permittees that are put into the public
17 record only tell half of the story. They only contain
18 the facts. The opinions, the conjecture, the derogatory
19 comments, they come in secret emails, internal memos,
20 conversations between the permit people and the
21 enforcement. Amazingly, even though everyone seemed to
22 agree that permits should not be influenced by
23 enforcement the high level ranking people at the EPA
24 including Ms. Munie and Mr. Purseglove condoned and even

1 encouraged the enforcement people to send emails to the
2 head of permits complaining that the permits should be
3 denied.

4 One other amazing fact. Even though
5 Mr. Retzlaff worked for the EPA for 14 years not a
6 single person ever told him that you shouldn't use
7 permits to enforce. That happened the day before his
8 deposition when his boss and the lawyer for the EPA,
9 Mr. Kim, prepared him.

10 Having condoned this conduct, they
11 say, but don't worry, we don't really consider this
12 stuff. We look right past the opinions, the conjecture,
13 and the derogatory comments. If that's true, what is
14 the purpose to be served by these comments under the
15 Illinois Environmental Protection Act or the
16 regulations.

17 The purpose to be served according to
18 Mr. Retzlaff was to express his frustration at a system
19 that would issue permits to people that have pending
20 cases against them but those cases have yet to be
21 resolved. The purpose of Mr. Retzlaff sending these
22 documents was to show his frustration at a system that
23 is based on the principle contrary to what this country
24 stands for, innocent until proven guilty. And who do

1 the emails go to? The field operations section, the
2 head of permits, the permit reviewers, and the
3 enforcement attorneys.

4 We have finally, I believe, exposed
5 in this case what we have always suspected, that the
6 Agency says they don't use permits to enforce when, in
7 fact, there is absolutely no distinction between the
8 permit writers and the people that think you are guilty
9 before you are proven guilty.

10 The Agency's desire to close the site
11 is evident from their grant of the permit on June 29,
12 2001, and even though it was only taken in this case as
13 an offer of proof the facts do not lie and hopefully the
14 Board or the courts will see them for what they are.

15 Here is the amazing testimony of
16 Christine Roque and Joyce Munie and Paul Purseglove.
17 Bob Pruim, the convicted felon, is okay to spend his
18 money to put in pollution control devices but not okay
19 to deposit waste in a new cell that everyone agrees was
20 properly built in accordance with the permits, the
21 plans, and the specifications. Bob Pruim, the convicted
22 felon, is okay to post 17 million dollars in financial
23 assurance to obligate himself to pay the premiums of
24 that for five years to put in gas probes, but he's not

1 okay to post that same financial assurance to put waste
2 into a new cell on the landfill that everyone agrees was
3 designed, constructed, and proposed to be operated in
4 accordance with the permits and the applications.

5 The financial assurance decision of
6 the Agency is equally erroneous. Perhaps the most
7 compelling testimony on this point came from financial
8 assurance expert John Taylor who worked for the Agency
9 for 16 years and approved the very same financial
10 assurance documents in the August 2000 permit.

11 At the time that he approved that he
12 knew that Frontier had been de-listed from the 570 list.
13 Joyce Munie knew that Frontier Insurance had been
14 de-listed from the 570 list, and Attorney John Kim knew
15 that the Frontier Insurance had been de-listed from the
16 570 list.

17 He said that Joyce Munie came to him
18 and acknowledged that if the permits were denied and the
19 financial assurance rejected that they would only have
20 1.4 million dollars in financial assurance, but if they
21 could find a way to accept the financial assurance, they
22 could have 17 million. What happened next? Taylor
23 testified that Munie directed him to find a way to
24 accept the bonds so that the Pruims could be on the hook

1 for 17 million dollars. Once she said that and once we
2 had our little closing and tendered the bonds for the
3 permit she denied the permit to open the very waste
4 management cell -- very first waste management cell that
5 was approved under the permit that was issued in August
6 of 2000.

7 The financial assurance decision is
8 also erroneous because the bonds when issued even under
9 the most strict interpretation of the regulations met
10 the regulations because at the time of their issuance
11 they were -- Frontier was both licensed by the Illinois
12 Department of Insurance and on the 570 U.S. Department
13 of Treasury assuery list.

14 The Agency's witnesses admitted that
15 there wasn't a single law, rule, or regulation that
16 instructed them, required them, or allowed them to do
17 anything to a bond once it came off the 570 list.
18 Mr. Harris said our only recourse is Section 31 of the
19 Act. That's the section that relates to enforcement.
20 That's the section that should have been and should be
21 followed in this case. They started that procedure, but
22 why wait for an enforcement action if you're Joyce
23 Munie and why give CLC an opportunity to be heard when
24 you can just use the permit denial to close them down.

1 And it makes a big difference, and
2 the difference is this. If they deny the permit, we
3 have to stand here with the burden of proof. If they
4 deny the permit, they get to compile what they think is
5 the record and limit the evidence that's relevant in
6 this case.

7 But if they bring an enforcement
8 case, they have the burden of proof. In fact, the
9 prohibition against using permits as enforcement is a
10 due process prohibition, and that's why the Board and
11 the courts have consistently reprimanded the Agency for
12 doing the very thing that they did in this case. All
13 they did, Ladies and Gentlemen, was shift the burden.

14 It is frustrating and aggravating
15 that our state's resources are being used by the
16 Illinois EPA to put people out of business with permit
17 denials without affording those same persons the due
18 process that our country demands, innocent until proven
19 guilty. And what's more frustrating is that they don't
20 care. We hope and we are confident that when the Board
21 has reviewed the record in this case supplemented by
22 briefs that will be filed by Community Landfill and City
23 of Morris that they will find under any of a number of

24 grounds that the Agency's decision in this case was

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1 improper and should be reversed. Thank you.

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

3 MR. LaROSE: You're welcome.

4 HEARING OFFICER HALLORAN: Mr. Helsten?

5 MR. HELSTEN: Mr. Halloran, the City does not
6 have any closing statement at this time. We will set
7 our position forth in our brief.

8 HEARING OFFICER HALLORAN: Mr. Kim?

9 MR. KIM: Thank you. Thank you, Mr. Hearing
10 Officer. The closing statement by the Illinois EPA is
11 brief and that is that the facts and the evidence that
12 was accepted at hearing in conjunction with arguments
13 that will be submitted in the form of post-hearing
14 briefs and responses on the part of the Illinois EPA
15 will demonstrate to the Board that the permit decision
16 that was reached on May 11, 2001, was correct and should
17 be affirmed.

18 The use of Section 39(i) by the
19 Environmental Protection Act was correct, was in
20 accordance with the applicable statutory guidelines and
21 the case law guidelines that were before the Agency at
22 the time of its decision, that the Agency exercised its

23 discretion in a proper manner, and the Board should
24 determine that there was no improper use of that

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1 provision.

2 Further, the Illinois EPA's basis for
3 denial regarding the financial assurance that had been
4 provided by Community Landfill Company and the City of
5 Morris was also correct. And once the Board takes a
6 look at the underlying regulations at issue in
7 conjunction with the testimony provided we believe that
8 the Board will come to the same conclusion.

9 The various theories and legal
10 defenses that will be presented to the Board by the
11 petitioner will certainly warrant some attention and
12 some consideration; however, the Illinois EPA strongly
13 believes that once those issues are considered in their
14 true light and in conjunction with the facts and the
15 evidence that has been provided the Board will determine
16 that there is no sufficient basis on those grounds to
17 overturn the decision. Thank you.

18 HEARING OFFICER HALLORAN: Thank you, Mr. Kim.
19 Mr. LaRose, any rebuttal?

20 MR. LaROSE: No, sir.

21 HEARING OFFICER HALLORAN: Mr. Helsten?

22 MR. HELSTEN: No, sir.

23 HEARING OFFICER HALLORAN: Thank you. That
24 concludes this hearing on PCB 01-170.

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