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BEFORE THE POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

Community Landfill Corp.

vs.

Illinois Environmental Protection  
Agency

)  
)  
) PCB 95-137  
)  
) (Land  
) Variance)  
)

The following is a transcript of a hearing held in the above-entitled matter, at Grundy County Administrative Center, Board Room, 1320 Union Street, Morris, Illinois, on the 26th of July, 1995, A.D., commencing at the hour of 10:00 o'clock a.m.

BEFORE:

MS. DEBORAH FRANK  
Hearing Officer.

ALSO PRESENT:

Mr. J. Theodore Meyer, Board Member  
Ms. K. C. Doyle,  
Assistant to Board Member Meyer

Sally A. Guardado, C.S.R.  
17369 Highwood Drive  
Orland Park, IL 60462  
(708) 479-6664

## APPEARANCES:

Mr. Mark LaRose and  
Ms. Maria L. Vertuno  
Gessler, Hughes & Socol, Ltd.  
Three First National Plaza  
70 West Madison Street  
Chicago, Illinois 60602

appeared on behalf of the Petitioner;

Mr. Jack Burds  
Division of Legal Counsel  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
and

Mr. Kyle Nash Davis  
Assistant Counsel  
Bureau of Land  
Division of Legal Counsel  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Illinois 62794-9276

appeared on behalf of the IEPA.

## Also Present:

Members of the Public.

Sally A. Guardado, C.S.R.  
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(708) 479-6664

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1		135
2		135

HEARING OFFICER FRANK: Good morning. My name is Deborah Frank and today is July 26th, 1995.

I'm the Board's Hearing Officer for the case before us today which is Community Landfill Corporation versus the Illinois Environmental Protection Agency, PCB 95-137.

One of the first things you should know about this hearing is that I'm not the decisionmaker in this hearing. I am here to help guide the record, so that the Board, which is a seven-member panel, can make a decision in this hearing. After this hearing.

I may ask questions for the record which are allowed by the Board's rules to clarify things.

And, in addition, with us today we have Board Member Ted Meyer, and he is also allowed by the Board's rules to ask questions for clarification of the record. And he may do so.

And with him is his Attorney Assistant, K. C. Doyle.

A few guidelines for this hearing is



that first of all I'm aware that this is a case where there is much public interest and I will do my best to accommodate people who wish to make statements on the record in accordance with the Board's rules.

Anyone wishing to make a statement, must be sworn in and they will be subject to cross-examination by the attorneys.

Additionally, I caution everyone that this is a variance proceeding and, therefore, your statements must be relevant to the proceeding before us.

I will attempt to allow people to make statements at various times during the day in order to accommodate people who may have to leave and can't stay all day.

People who are making statements on the record are not parties to the case and are not allowed to ask questions of witnesses. Only the parties in the case may call witnesses and ask questions of the witnesses.

People in the audience are also

allowed by Board rule to file written statements with the Board. But they're only allowed to do so when the written statement is subject to cross-examination, which means the person must appear here today and be able to be cross-examined by either of the attorneys.

Are there any other questions out there about how this proceeding will work?

(NO RESPONSE.)

HEARING OFFICER FRANK: Okay. Then, I'm going to have the attorneys make their appearance on the record.

MR. LA ROSE: Mark LaRose and Maria Vertuno on behalf of the petitioner, Community Landfill Corporation.

HEARING OFFICER FRANK: Okay.

MR. DAVIS: Kyle Davis with the Illinois Environmental Protection Agency and also filing an appearance today is Mr. John Burda with the Illinois Environmental Protection Agency.

HEARING OFFICER FRANK: Board Member Meyer, is there anything you would like to add for the record?

BOARD MEMBER MEYER: No.

HEARING OFFICER FRANK: Then we will go ahead and begin, if you would make your opening statement.

MR. LA ROSE: Thank you, Miss Frank.

OPENING STATEMENT

BY MR. LA ROSE

MR. LA ROSE: Again, my name is Mark LaRose, along with my assistant, Maria Vertuno, I represent the petitioner in this case, Community Landfill.

Community Landfill Corporation is seeking a variance to allow it to file a Petition for Significant Modification of parcel A -- parcels A and B of the community landfill.

The deadline for filing the Significant Modification Application is set pursuant to Board Regulation 814.104(c) and that deadline passed on September 18, 1994. CLC seeks an approximate one year variance from that deadline to allow it to file the Significant Modification Application within forty-five days of the Board's decision in this case.

If the Board grants the variance,

Significant Modification Application will be filed within forty-five days of that decision.

We are here today to present evidence and testimony to support the petition. We believe that once the Board considers the evidence that we present, the petition that we submitted, our reply to the Agency's response in this case, that it will agree with us that the variance is appropriate in this case.

Just briefly, some background.

This petition was necessitated by prolonged and complicated negotiations between the City of Morris and the Morris Community Landfill Corporation, over the issue of Community Landfill's proposed operation of parcel A of the landfill.

There are presently two parcels out there on Ashley Road. Parcel B is on the west side. Parcel A is on the east side.

The City of Morris owns both parcels and is presently the operator of parcel A which has been basically inactive since 1980.

The Community Landfill Corporation is

the operator of parcel B pursuant to a lease with the City of Morris which was agreed to in 1982.

From June 1994 -- Excuse me. From June 1992 until November 1994, Community Landfill Corporation engaged in extensive negotiations with the City of Morris to amend that lease to allow Community to be the operator of parcel A on the east side of Ashley Road.

The proposal under consideration was an amendment of the lease to allow Community to operate parcel A for the primary disposition or for disposition of primarily construction and demolition material and some specially permitted special waste permitted by the IEPA.

The proposal also was to require Community Landfill Corporation to file the necessary documents with the IEPA to achieve the Significant Modification and to file the permits necessary to do that.

The Significant Modification Application would cover both parcels A and B, would allow Community Landfill to continue to operate

parcel B for a short period of time, until parcel A can be constructed and ready for waste disposition. And then for the proper closure of parcel B and for the proper continuing operation of parcel A.

The negotiations were conducted and culminated in November 1994, just last November when the Morris City Council voted to approve an amendment to the lease.

It was these negotiations that you'll hear about today from the witnesses that necessitated the filing of this variance.

Had Community Landfill Corporation made an application prior to the finalization of the negotiations, it would have been forced to file a Significant Modification Application only for parcel B and then finish the negotiations and file a second and largely, duplicitous application that covered both parcels A and B.

Once the negotiations were finalized, Community Landfill Corporation hired good professional engineers to begin the plans, to open discussions with the IEPA with respect to it, and

hired my firm to present a variance to the Board to basically excuse their failure to file a significant modification.

And that excuse is that it made good economic engineering and administrative sense to wrap up these prolonged negotiations and file a single Significant Modification Application for both parcels. And that's what we propose to do.

For that reason, we now seek the variance. And we hope that after you folks and the Board Members have considered the evidence and testimony in this case, that they'll agree that the variance is proper in this case.

Thank you.

HEARING OFFICER FRANK: Mr. Davis?

MR. DAVIS: Yes.

OPENING STATEMENT

BY MR. DAVIS

MR. DAVIS: The Agency would like to open by noting that the site in question here is 119 acres. It just happens to be bisected by a road, hence, the term parcel A and parcel B.

The Agency has to open with an objection because based on Petitioner's argument this morning and their response on page 3 where they state: Even the narrowest reading of condition number one leads to one conclusion, Morris is the owner and operator of parcel A.

Under this argument, Petitioner has no standing to request for leave for parcel A.

814.104 states the owner or operator has to file a Significant Modification. If this is true, the correct party is not before the Board.

However, keep in mind the Agency still believes that the entire site is 119.2 acres and not parcel A and parcel B.

HEARING OFFICER FRANK: Slow down.

MR. DAVIS: And that's it.

HEARING OFFICER FRANK: Okay. Would you like to call your first witness?

MR. LA ROSE: Yes. The first witness is Mr. Doug Andrews.

HEARING OFFICER FRANK: Would you swear the witness, please?



(The witness was sworn.)

JAMES DOUGLAS ANDREWS

called as a witness, having been first duly sworn,  
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LA ROSE:

Q. Mr. Andrews, could you state your name for  
the record, please?

A. My name is James Douglas Andrews.

Q. And where are you employed, sir?

A. Andrews Environmental Engineering in  
Springfield.

Q. I'm going to hand you what's marked as  
Petitioner's Exhibit 11.

Counsel.

Miss Frank.

Mr. Andrews, I've handed you a copy  
of your Curriculum Vitae.

You are a registered professional  
engineer in the State of Illinois?

A. That's correct.

Q. Any other states?

A. Yes. I'm also registered in Indiana and in Tennessee.

Q. Could you briefly explain for us your experience in the area of solid waste management, sir?

A. Yes. I served from 1971 to 1974 as an employee of the Illinois Environmental Protection Agency. I began there as a Manager of the Permit Section in the Division of Land Pollution Control.

I later became the Division Manager of Land Pollution Control and left the Agency at the end of March 1974.

Since that time, I've been engaged in the engineering of facilities, primarily solid waste facilities in my role as the owner and later President of Andrews Environmental Engineering, Inc.

Q. Let's talk specifically in your role as an employee and later Division Manager for the IEPA regarding a specific experience you had on solid waste disposal sites?

A. Well, my original job was to manage the Permit Section which was a group of geologists and

engineers, primarily, who were reviewing permit applications for solid waste disposal sites.

We reviewed, primarily, applications for sanitary landfills and at that time there were probably 200, 250 landfills active in Illinois.

Q. Those were the initial applications after the enactment of the Illinois Environmental Protection Act?

A. That's correct.

Q. After that, did you have continuing involvement with review of engineering, permitting and enforcement matters as they related to solid waste disposal units in the State of Illinois?

A. Yes. In 1973 when I became Manager of the Division of Land Pollution Control, I had responsibility for all of the regulatory programs of the Illinois EPA related to the solid waste.

Q. After you left the Agency, you became employed with Andrews Environmental Engineering, correct?

A. That's correct.

Q. Have you continued with Andrews

Environmental Engineering with engineering work, with respect to design, permitting, and compliance of solid waste management units in the State of Illinois and elsewhere?

A. Yes.

Q. Is it fair to say, sir, that you've been personally involved in the design, permitting and engineering questions with respect to over a hundred landfills?

A. That's correct.

MR. LA ROSE: Miss Frank, I'd like to submit to the Board, Petitioner's Exhibit Number 11, the curriculum vitae of Mr. Andrews.

HEARING OFFICER FRANK: Before you do that, I understand that you have numbered these as you presented them to the Agency. But for order of the hearing, it makes a lot more sense to make this Petitioner's Exhibit 1, so that the Board Members, when they're reading the transcript, can find the exhibits and they'll be in order as of hearing.

MR. LA ROSE: We don't have any objections to that.

HEARING OFFICER FRANK: So, for the record,  
that will be Petitioner's Exhibit 1.

(Whereupon, Petitioner's  
Exhibit No. 1 was marked for  
identification.)

HEARING OFFICER FRANK: Is there any objection  
to it being admitted?

MR. BURDS: No objection.

MR. DAVIS: No objection.

HEARING OFFICER FRANK: Then the resume of  
James Andrews is admitted.

(Said document, heretofore  
marked Petitioner's Exhibit  
No. 1 for identification, was  
admitted into evidence, to  
wit, as follows:)

MR. LA ROSE:

Q. Mr. Andrews, are you familiar with the Morris Community Landfill; is that correct?

A. Yes.

Q. As a matter of fact, you have been involved in engineering matters with respect to the site since approximately 1985?

A. That's right.

Q. In 1987, both the City of Morris and Morris Community Landfill proposed an expansion to the entire 119 acre site, vertical expansion of some 60 feet; is that correct?

A. That's correct.

Q. And that expansion was the subject of what I'm going to call an SB172 local siting hearing conducted before the City of the Morris in 1987 and early 1988, correct?

A. Best of my recollection, yes, as to the dates. The fact is correct.

Q. You were involved in preparation of the application for the SB172 proceeding for the vertical expansion of parcels A and B?

A. Yes.

Q. You testified in that case?

A. Yes.

(Whereupon, Petitioner's  
Exhibit No. 2 was marked for  
identification.)

BY MR. LA ROSE:

Q. Mr. Andrews, I'm going to hand you what  
has previously been marked as Petitioner's Exhibit  
8 A which we are going to re-mark Board Exhibit 2,  
and ask you to take a look at that, please, sir?

A. Yes.

Q. If you don't mind, I'm just going to look  
over your shoulder for a second, because I don't  
have a copy of it. An extra copy.

That is a certification of siting  
approved for the vertical expansion of parcels A and  
B, which was approved by the City of Morris in  
February 1988 or at least so certified by the City  
of Morris in February 1988?

A. That's correct.

Q. Okay. And the legal description attached

thereto applies to both parcels A and B?

A. Yes, that's correct.

MR. LA ROSE: Ms. Frank, I move for admission of Petitioner's Exhibit 8 A which we are now going to re-mark Board Exhibit 2.

HEARING OFFICER FRANK: Is there any objection?

MR. BURDS: No.

HEARING OFFICER FRANK: It's admitted.

(Said document, heretofore  
marked Petitioner's Exhibit  
No. 2 for identification, was  
admitted into evidence, to  
wit, as follows:)



HEARING OFFICER FRANK: For future reference, if possible, just simply refer to them as their new number, so that -- otherwise it's going to be really confusing because they're going to be looking for 8 A. It's now 2. I know it's complicated.

MR. LA ROSE: It's partially our fault. But it is marked 8 A and when I look at it, I see 8 A.

HEARING OFFICER FRANK: That's fine. I've crossed out 8 A so the Board don't see the 8 A.

MR. LA ROSE: Excuse me a second.

BY MR. LA ROSE:

Q. Mr. Andrews, subsequent to the grant of the local siting expansion for parcels A and B, were you involved in the preparation of a permit application to implement that expansion?

A. Yes.

(Whereupon, Petitioner's Exhibit No. 3 was marked for identification.)

BY MR. LA ROSE:

Q. Mr. Andrews, I'm going to hand you what's been previously marked as Petitioner's Exhibit 3.

HEARING OFFICER FRANK: Thank you.

BY MR. LA ROSE:

Q. That is a copy of the Variance Petition and the exhibits that were submitted in this case, correct?

A. Yes.

The one I have is marked Petitioner's Exhibit 1, not Petitioner's Exhibit 3, but that's correct.

MR. LA ROSE: Right.

BY MR. LA ROSE:

Q. The permit to -- or the application for the permit to implement the expansion was prepared by your office, correct?

A. Yes.

Q. And that application was submitted to the IEPA in January of 1989?

A. That's my recollection, yes.

Q. By the way, Mr. Andrews, in your experience with the site and since you've been involved, is it your understanding that the Community Landfill Corporation has only been the

operator of parcel B pursuant to the lease with the City of Morris?

MR. BURDS: Objection. Although I appreciate counsel's desire to expedite this hearing, I guess I object to the leading nature of all the questions he's asked.

I would like to hear a lot more testimony from the witness instead of counsel.

As far as this question is concerned, I also think it asks for a legal conclusion as to who operates the site. And I don't think this witness is qualified to answer that question.

HEARING OFFICER FRANK: Do you have a response?

MR. LA ROSE: Yes. This witness has been the one that has been involved with the site since 1985. He's prepared applications. He's been involved with compliance issues. He's dealt with the Agency on it. He is certainly qualified to read a permit, to read these documents to make some statement with respect to who the operator is and who the operator isn't. I don't think he's making any legal conclusion.

I do agree that the question was a little bit leading and I'll try to clean that up. I was just trying to expedite the matter.

But I think Mr. Andrews is clearly entitled to make that testimony.

HEARING OFFICER FRANK: As to the leading nature of the questions, you need to be careful.

I think that we will hear Mr. Andrews' opinion as to that.

Please continue, but restate your question.

BY MR. LA ROSE:

Q. Mr. Andrews, in your opinion, since you've been involved in the site, who has been the owner of parcels A and B?

A. City of Morris.

Q. Okay. Who has been the operator since you've been involved with the site to date of parcel A?

A. City of Morris.

Q. Who has been the operator, since you have been involved with the site of parcel B?

MR. BURDS: Objection as to basis of knowledge. I understand that Mr. -- I apologize -- Mr. Andrews has had -- There has been some testimony laid as to his experience with the site and some general statements that he has been involved.

But as to his particular involvement and the nature of these claims that he's making, I guess I would like a little more foundation as to the basis of Mr. Andrews' knowledge of these conclusions and these statements.

MR. LA ROSE: That's fair.

HEARING OFFICER FRANK: Okay.

BY MR. LA ROSE:

Q. Mr. Andrews, what is the basis of your opinion, that the -- Strike that.

Can we at least get his answer to the last question and then we'll go to the foundation; is that fair?

MR. DAVIS: As long as the foundation is laid.

MR. BURDS: There is an ongoing objection until the foundation is laid

HEARING OFFICER FRANK: That's fine

MR. LA ROSE: That's fine.

BY MR. LA ROSE.

Q. Mr. Andrews, just so we have the record clear, based on your experience with the site, what is your opinion as to who has been the operator of parcel B?

A. That would be Community Landfill Corporation.

Q. And the basis of your opinion that the City of Morris owns parcels A and B, operates parcel A, and Morris Community Landfill Corporation operates parcel B, is based on what?

A. Community Landfill Corporation has been our client with respect to permit applications that we've prepared for the site.

And all of our dealings, from a professional standpoint, with a client, has been -- let me say, almost all of our dealings has been with the Community Landfill Corporation.

Q. And you also filed applications on behalf of both the City of Morris and Community Landfill that addressed this very issue, did you not?

A. That's correct.

(Whereupon, Petitioner's  
Exhibit No. 4 was marked for  
identification.)

BY MR. LA ROSE:

Q. I'm going to hand you, Mr. Andrews, the document that we obtained from the IEPA's file which I'm going to mark as Petitioner's Exhibit Number 4, appears to be a letter from your office dated January 5th, 1989, which was to the submission -- cover letter for the submission of the permit application to effectuate the 60 foot expansion on parcels A and B.

Are you familiar with that letter, sir? Take your time and take a look at it.

A. Yes.

Q. In that letter, your office, towards the bottom, apprises the IEPA that your client, Community Landfill, has no right of access to parcel A; is that correct?

A. Let me review this for just one moment.

Yes.

Q. And what was the reason for informing the IEPA that your client had no right of access to parcel A?

A. Considerations with regard to the lease agreements between our client and the City of Morris.

And it was your understanding, was it not, sir, that based on those lease agreements, there was no right of Community Landfill to do anything with respect to parcel A?

MR. BURDS: Objection. I'm going to object again. These are leading questions. That's a leading question. It suggests an answer. And I'm going to object and I want an ongoing objection for leading questions by counsel.

HEARING OFFICER FRANK: Your objection is sustained. You need to not use leading questions.

BY MR. LA ROSE:

Q. What was your understanding, sir, with respect to that?

A. My understanding, was that the lease agreement or the lack of a lease agreement with



respect to parcel A, limited the things that Community Landfill Corporation, our client, can do with regard to parcel A.

Q. Was there some further discussion prior to the issuance of the permit that was the subject of this application between your office and the IEPA, regarding the issue of ownership and operation?

A. Yes. I think that there was some discussion with the permit reviewer.

Q. The permit reviewer, in this case, was Mr. Doug Clay?

A. I believe that's correct.

Q. What communications on this issue of ownership and operation did Mr. Clay have with your office?

A. My recollection is that Mr. Clay made an inquiry of --

MR. BURDS: I'm going to object at this point. Can we have some foundation as to this conversation between Mr. Clay and Mr. Andrews? A time, date, who, when, where, who was part of this conversation?

HEARING OFFICER FRANK: Certainly.

Would you lay a foundation?

BY MR. LA ROSE:

Q. Mr. Andrews, I realize this has been six years ago. But, as best you can, did this communication between your office and Mr. Clay occur after the date of the submission of the application?

A. Yes, to my recollection.

Q. And it occurred prior to the date of the issuance of the application?

A. That's correct.

Q. And a conversation was between Mr. Clay, the permit reviewer at the IEPA, and Mr. McDermott at your office, correct?

A. That's my recollection, yes.

Q. Have you reviewed any records that would summarize the inquiry by the IEPA and the statement from your office?

A. Yes, I have.

(Whereupon, Petitioner's  
Exhibit No. 5 was marked for  
identification.)

B. MR. LA ROSE.

Q. Okay. Mr. Andrews, I'm going to hand you what I've now marked as Petitioner's Exhibit Number 5 which we received from the LEPA's file. These are review comment notes by Mr. Clay with respect to his discussions with Mr. McDermott.

Directing your attention, sir, to item number 4 on page 1, can you read that please?

A. Item 4 reads: "Explain ownership and operation of parcels A and B. Parcels A is --

MR. BURDS: For the record, we are going to state an objection to this document, the witness's reading of this document.

First of all, the document speaks for itself. Second, I don't know if they're planning on introducing it or not. I'm sure they are.

As far as the document, this witness, certainly, as far as the foundation, this is a conversation between a Mr. McDermott and a Mr. Clay with the Agency.

I don't think a sufficient foundation has been established by this witness or the attorney

in this case, as to what the nature of this conversation is and what anything in these review notes refer to. Whether these were just interpretations of Mr. Clay's conversation with this person or whether they're just simply verbatim what he heard from the person on the other end, Mr. McDermott.

I don't think Mr. Andrews has laid the sufficient foundation to establish that he's aware of what happened in that telephone conversation to read this document, let alone testify as to the nature of the conversation.

MR. LA ROSE: This document came from the IEPA's files. We didn't produce it. These are, obviously, Mr. Clay's notes with respect to comments. It says at the top: "Review comments given to Mike McDermott, 3/13/89."

I think we will establish by the next exhibit that these were, in fact, questions asked by Mr. Clay of Mr. McDermott and answers given by Mr. McDermott.

And that's what we intend to present

through this witness.

HEARING OFFICER FRANK: Are you -- Go ahead.

MR. BURDS: All I want to avoid is -- And I don't have any objection to the document being admitted. It is part of the record. We are aware of the document. We are very familiar with the document.

All I'm indicating is, that I don't want this misportrayed or interpreted to be Mr. Clay's comments because I don't think that can be presumed from this document and the conclusions that they're trying to draw from this document is this.

Now, as far as the document, the document speaks for itself. And I've indicated that by itself.

MR. LA ROSE: Ms. Frank?

MR. BURDS: As to Mr. Andrews' opinion about those comments, I think that's objectionable. And we object to Mr. Andrews' opinion, as to what those comments are, and how he interprets those comments.

MR. LA ROSE: We'll clean it up to lay a little

better foundation, but the document does, in fact, speak for itself. It is perfectly acceptable in any court of law and before this board to have a witness read portions of any document into the record to highlight those.

Mr. Andrews was the principal engineer at Andrews Engineering and he can testify as to what his interpretation of this document was based on his conversations with his employee, Mr. McDermott.

That's what we intend to do.

HEARING OFFICER FRANK: I'm going to allow this document into the record.

There is no reason to have extended reading of the document because the Board will have a copy of it.

If you are going to ask a specific question on a specific portion and you feel that highlighting that portion will help, you are certainly free to ask a question based on that and to have the witness read it.

As far as the witness's ability to

interpret this document, you are going to have to lay a better foundation as to why he has the ability to do that, because at this point you have not shown any reason why he should be allowed to interpret this document.

MR. LA ROSE: I understand that and I appreciate that.

I don't know if he ever got it on the record, so I want him, at least -- Maybe it was interrupted by counsel's objection.

I want him to at least read that portion of paragraph four into the record.

BY MR. LA ROSE:

Q. Paragraph four, both the first paragraph and the second paragraph, would you please read that, Mr. Andrews?

A. Paragraph four:

"Explain ownership and operation of parcels A and B.

"Parcel A is owned and operated by the City of Morris.

Parcel B is owned by the City

of Morris and leased (and operated) to Community Landfill Company.

"A permit will be issued with both the City of Morris and the Community Landfill Company as permittees."

Q. Okay. Did you have a discussion, sir, with Mr. McDermott of your office with respect to that document?

A. Not that I recall.

Q. Okay. Did you review in your office the comments or the suggestion -- Strike that.

Did you review the questions or the inquiries that were made by the IEPA with respect to the issue of ownership and operation?

A. I may have. I don't recall that specifically. That's too long ago for me to remember.

(Whereupon, Petitioner's Exhibit No. 6 was marked for identification.)



BY MR. LA ROSE.

Q. Okay. I'm going to show you what has previously been marked as Petitioner's Exhibit 6.

Be careful. The back page is kind of loose on that one.

This is a copy of our Response to the IEPA's recommendation in this case with the exhibits.

And I direct your attention, Mr. Andrews, to Exhibit A.

MR. DAVIS: This is not a copy of the Response. This is a copy of my recommendation.

HEARING OFFICER FRANK: The Agency recommendation.

MR. DAVIS: Maybe I have the wrong one.

MR. LA ROSE: It is incorrect. I'm sorry.

BY MR. LA ROSE:

Q. I will now hand you what's been previously marked as Petitioner's Exhibit 6 which is a copy of our Response to the Agency's recommendation in this matter and direct your attention to exhibit --

MR. BURDS: We are going to mark that now as 6?

BY MR. LA ROSE:

Q. -- 6 B, Supplemental Permit 1989, 005SP.

Are you with me?

A. Yes.

Q. Exhibit B contains permit condition one, correct?

A. That's correct.

Q. We won't read this whole thing into the record, but I would like you to read permit condition one, please?

A. Special condition one reads:

"This permit is for the vertical expansion of both parcel A and parcel B. The City of Morris is the owner and operator of parcel A and the owner of parcel B. Community Landfill Company is operator of parcel B."

Q. That, in fact, condition is the identical language -- I'll get it. Is the identical language that we just read from Mr. Clay's notes on paragraph

four of Exhibit 5, is it not, with respect to the ownership and operation issues?

A. The information is similar, but I'm not sure the wording is identical.

Q. Okay. The information being similar is the information with respect to the ownership and operation of the site?

A. That's correct.

HEARING OFFICER FRANK: I need to interrupt for a second.

MR. LA ROSE: Go ahead.

HEARING OFFICER FRANK: You need to be careful about leading questions.

They have an ongoing objection and you are continuing to use leading questions.

MR. LA ROSE: I'm just trying to get through this as quickly as possible.

HEARING OFFICER FRANK: And I appreciate that. But you need to be aware that this is not an adverse witness.

MR. LA ROSE: Obviously.

HEARING OFFICER FRANK: Please continue.

BY MR. LA ROSE:

Q. Mr. Andrews, when you review permit condition one, as it appears in Petitioner's Exhibit 6, and compare that to Mr. Clay's comments on Petitioner's Exhibit 5, with respect to ownership and operation, do you have an opinion as to whether there is a relationship between his comments on Exhibit 5 and the permit condition on Exhibit 6?

MR. BURDS: Objection. That calls for conjecture and speculation. I ask that it be stricken.

THE WITNESS: Yes.

MR. BURDS: This question, if I understand it correctly, is asking this witness to state an opinion, conjecture or speculate as to what Mr. Clay was referring to in one document and what the Agency was referring to in a special condition on a permit in this case.

This witness has no basis of knowledge and it would be nothing but speculation and conjecture on this witness' part as to how those two documents relate.

I object. These documents speak for themselves. We've indicated that we have no objection to the documents going into the record.

Let the Board determine what the meaning of this document is.

This witness has no basis of knowledge. No foundation has been laid for him to make this type of conjecture or speculation as to how those documents relate to one another or correlate.

MR. LA ROSE: This is exactly the foundation for that type of submission.

Mr. Andrews was not a party to this communication with Mr. Clay, but when his office received this communication and later received the permit, I think it's clear to everyone in this room, and certainly subject to this gentleman's testimony, that the inquiry, regarding the ownership and operation, cleared up the issue and was then, again, incorporated into the permit.

And I think it's proper for him to testify to that.

HEARING OFFICER FRANK: There is no basis of knowledge with this witness. You have not laid a proper foundation to show how the witness would know.

The Board is perfectly capable of looking at the documents and making its own conclusions.

If you would please continue.

BY MR. LA ROSE:

Q. Okay. Mr. Andrews, however, condition number 1 got into 1989 Operating Permit 005, does it, in fact, require as a condition that my client, Community Landfill Corporation, only be the operator of parcel B?

MR. BURDS: I object. That's a misstatement and mischaracterization of the special condition.

As far as the special condition, as I've indicated already. The condition will speak for itself. It's in writing and it's for the Board to determine what it means or doesn't mean.

To me, this is a back-door approach to get the opinion of this witness as to what this

special condition means.

That is laid down in black and white. We have no objection to its admission into the record. Again Mr. LaRose is trying to get the opinion of this witness as to what that condition meant.

The condition's in plain English.

HEARING OFFICER FRANK: Mr. LaRose?

MR. LA ROSE: Yes, Ma'am. If you'll give me just a second.

This testimony is in direct response to Mr. Andrews' opinion with respect to the ownership and operation of the site. It is in direct response to the Agency's conclusion and it is submitted in its response and opposition that my client always has been the owner and operator of both parcels A and B.

MR. DAVIS: His opinion has nothing to do with this document before you. The Board can construe the two documents.

MR. LA ROSE: The Board can construe it, but I think we are entitled to present evidence on this

point.

Counsel for the Agency stated in their response, and I'm reading from note one in paragraph three:

"Although the Agency issued an Expansion Permit on June 5, 1989 which specified that the City was owner of parcels A and B and operator of parcel A, and that the petitioner was operator of parcel B, the June 5, 1989 permit must not be read too broadly."

I think the Agency is conducting in a broad reading to even imply that my client was the operator of A.

That being what it may, we're entitled to present evidence with respect to how broadly or how narrowly that condition should be read.

This gentleman has been reviewing, analyzing, writing, responding to permits in over a



hundred cases like this. I think he's entitled and sufficiently capable, and an expert in the issue of the interpretation of that permit condition.

The Agency's injected this issue into the hearing. They say that the permit condition shouldn't be read the way it actually reads and my questions to the witness are along those lines.

HEARING OFFICER FRANK: Okay. This witness is entitled to give his opinion as to what the permit requirement means. You may call witnesses to give their opinions.

However, from now on, when you're objecting and responding to an objection, let's limit it to the issues.

This is not time for argument. This is not your brief. And, so, let's limit it to the issue of the current objection, so that this hearing could move forward.

BY MR. LA ROSE:

Q. In your opinion, Mr. Andrews, based on special condition number one and operating permit 89-205, was my client required to be only the

operator of parcel B?

A. The Community Landfill Company was identified as the operator of parcel B.

City of Morris is identified as owner and operator of parcels A and the owner of parcel B.

Q. If my client took action subsequent to the issuance of the 1989 permit to be the operator of parcel A or take any operating actions on parcel A, in your opinion, would they have been violative of that person?

A. They would have been violative of that condition, yes.

Q. Mr. Andrews, you're aware, are you not that -- Strike that. I don't want to be leading.

Mr. Andrews, are you aware that there were negotiations conducted between the City of Morris and Community Landfill regarding the proposed operation by Community of parcel A?

A. Yes.

Q. In fact, you helped Community Landfill put together the proposal that was submitted to the City Council in the Summer of 1992, correct?

MR. BURDS: Object. It's a leading question, Ms. Frank.

MR. LA ROSE: I'm sorry. But that -- I'm just trying to lay some foundation here.

If I have to extract every piece of information from this gentleman, especially the background information, we are going to be here all day.

HEARING OFFICER FRANK: For background information and laying foundation, you may ask leading questions.

But you need to be careful because every question you have given so far has been leading and they have a continuing objection.

MR. LA ROSE: I will be careful. I appreciate that.

MR. BURDS: We have no objection to leading questions in foundation, that's proper in any proceeding I have been to before.

All we want is the basis of this witness's knowledge. We haven't cross-examined this witness, but we want the ability to do that. If I

have to do it on cross-examination, I will. But I want to know what the basis of this witness's knowledge of these things are and the time frame.

HEARING OFFICER FRANK: Your objection is noted.

MR. BURDS: Thank you very much.

BY MR. LA ROSE:

Q. Did you have any input into the preparation of the application or the preparation of the proposal for CLC to operate parcel A?

A. I provided information to Community Landfill Corporation that was a part of the negotiation with the City of Morris for operation of parcel A.

Q. Did you perform any preliminary engineering work with respect to the proposal?

A. Yes, I did.

Q. What preliminary engineering work did you do with respect to that proposal?

A. We prepared some drawings which illustrated how the vertical expansion of parcel A would be executed, if it were allowed by the City of

Morris.

Q. What was the time frame proposed by Community Landfill for the amendment of the lease to allow them to operate parcel A?

A. You'll have to restate that. I'm not sure I understand that question.

Q. Was it Community Landfill's proposal to amend the lease as quickly as possible? In other words, to wrap up the negotiations as quickly as possible?

A. Yes.

Q. Okay. Were you involved at all --

MR. BURDS: Ms. Hearing Officer, I have an objection and I ask that the last answer be stricken.

Again, it's just another yes answer to statement made by Attorney LaRose.

I don't want to be an obstructionist or otherwise. But he's testifying as to what CLC's obligations or what their intentions were.

My understanding is Andrews is employed by CLC as a consultant, not as -- nothing

other than a consultant. And for him to give testimony as to what their desires were in trying to finish or complete or get obligations completed, I'm not sure a foundation has been laid for that.

We object.

MR. LA ROSE: I think he's right. I'll clear it up.

BY MR. LA ROSE:

Q. What was your assignment, Mr. Andrews, with respect to the time frame in completing your work and in assisting and completing the negotiations?

A. We were asked to move as quickly as it was reasonably possible to present our part of the documents that were apart of the negotiations.

Q. And did you do so?

A. Yes.

Q. These negotiations were completed and resulted in the amendment of a lease in November 1994.

I say that as a background point.  
That wasn't a question.

Since November 1994 have you been hired by CLC to do anything with respect to the site?

A. Yes, we have.

Q. Can you tell us what your assignment -- The assignment to Andrews Engineering has been from CLC with respect to the site since November 1994?

A. Our assignment has been to prepare the Significant Modification of the permit to allow the closure of parcel B and development and operation of parcel A.

Q. Okay. What was your assignment from CLC with respect to the time frame of completion of your tasks?

A. We were asked to complete our tasks as quickly as we could, given the nature of the assignment.

Q. You have been asked to conduct some engineering tasks with respect to the submission of a Significant Modification Application; is that correct?

A. That's correct.

Q. And what are those tasks?

A. The tasks in general were to make contact with the Illinois Environmental Protection Agency to advise them as to our courses of action and to get whatever guidance we could from them with regard to our work; and to conduct the site investigation work, soil borings and laboratory analyses necessary for a permit application; and to do the engineering work based upon the information that we gathered to prepare the permit application.

Q. Have you suspended this work or delayed this work pending the outcome of this variance?

A. No.

Q. What work have you actually completed in the field in anticipation of a favorable result from the Board?

A. We've completed a series of soil borings on the site. We have the soil samples in the laboratory being analyzed currently.

We have begun some engineering work in preparation of operating plans and that sort of thing. We've conducted -- gathered some water



samples. Those samples are either in the process of being analyzed or have just been analyzed.

Those are the things that I recall off hand that have been undertaken.

Q. You have read and are familiar with the Petitioner's application for variance in the case and the exhibits appended thereto?

A. Yes.

Q. As a matter of fact, you are an affiant supporting the factual statements contained therein in the Petitioner's petition, correct?

A. That's correct.

Q. One of the criteria that the Petitioner needs to address in a variance proceeding is that the grant of the variance will have no adverse environmental impact.

Have you formed an opinion with respect to that portion of the Petitioner's requirement in this variance proceeding?

A. Yes, I have.

Q. And your opinion is what?

A. My opinion is that the granting of the

variance will have no adverse environmental impact.

Q. There is also a condition or a criteria that the Petitioner needs to address, and, that is, that there is no alternative means to achieve compliance with the regulation from which they seek the variance. Have you formulated an opinion with respect to that criteria?

A. Yes, I have.

Q. And that opinion is?

A. My opinion is that there is no alternative available to my client beyond the variance.

Q. Mr. Andrews, I'm going to direct your attention to the cost estimate for the Significant Modification of the permit which was appended as Exhibit F to what we have now marked as Exhibit 3.

This one says one.

MR. BURDS: I'm sorry? I didn't get the reference. I apologize, Counsel.

MR. LA ROSE: It's Exhibit F to our petition, which I think is now Petitioner's Exhibit 3.

MR. BURDS: Thank you very much.

MR. LA ROSE: Is everybody with us? It's

towards the end, Ms. Frank.

BY MR. LA ROSE:

Q. You prepared this cost estimate, did you not, Mr. Andrews?

A. Yes, I did.

Q. Is this a cost estimate that applies to what we proposed to file if the Board grants the variance in this case?

A. That's correct.

Q. This applies, then, both to parcels A and B?

A. Yes.

Q. Could you just run down the -- Strike that.

What's your total estimate of the cost for the submission -- preparation, submission and receipt of the Significant Modification Application for parcels A and B in this matter?

A. The amount of \$275,000.

Q. Okay. And without going into any great detail, you don't have to give me the incremental amounts for each task, what are the basic tasks that

need to be performed in the preparation and submission of this application?

A. The subsurface investigation that I mentioned has been under way, so our laboratory testing which is under way; engineering design which is under way; groundwater impact assessment, including analytical, which has been partially done; preparation of a closure, post-closure care plan and cost estimates, and then there's an item for contingencies which are unforeseen.

Q. In your opinion, sir, if Community Landfill Corporation would have filed a Significant Modification first for parcel B, then concluded the negotiations with the City of Morris for operation of parcel A and filed a second Significant Modification Application covering parcels A and B, would these costs have changed?

A. Yes. The costs would have changed.

Q. Can could you tell us, for example, you've listed "subsurface investigation and monitoring system installation." Why would those costs have changed if they had to file two applications?

A. Well, the purpose of the subsurface investigation is to create an understanding of the physical conditions that exists at the site, the physical and chemical conditions that exist, and the natural materials and the man-made materials.

If an analysis of that type were being made for only parcel B, you might -- you probably would find it necessary to return and do additional analyses for parcel A if, later on, that work or that operation was allowed by the City.

Q. Is it a fair statement that it would be more efficient, both administratively and economically, to do parcels A and B as a whole, rather than separately?

A. Yes. My opinion is that it would be much more efficient.

Q. And is your opinion the same with respect to soil laboratory testing, and testing classification and analysis?

A. Yes.

Q. And the engineering design, operational procedures, gas, leachate characterization and

control systems, stability analysis, quality assurance and quality control plan?

A. Yes.

Q. Same with respect to the groundwater impact assessment, including the analytical?

A. That would be more efficiently done as one task.

Q. Do you have an opinion, sir, as to how much the \$275,000 cost to do the site as a whole would have increased if you had to do it in two segments?

A. I could make an estimate. There is no way of knowing precisely at this point.

Q. Your best estimate would be what?

A. I estimate that the cost could increase by as much as 30 to 40 percent, if you did it in two parts.

Q. In this case, using a rough calculation, somewhere between 90 and \$110,000 in additional cost, if they did it in two parts?

A. Yes.

Q. In your professional opinion, one of the

criteria that the Petitioner needs to meet is arbitrary and unreasonable hardship in the absence of the granting of the variance. Would requiring in your professional opinion -- Strike that.

Do you have an opinion with respect to arbitrary and unreasonable hardship if the petitioner was required, first, to submit an application to operate B, and then a separate application for operation of A and closure of B?

A. Yes, I have an opinion.

Q. And that opinion is?

A. My opinion is that would be an arbitrary and unreasonable imposition on.

MR. BURDS: I'm going to come to the question, as to the nature of the question and how it's been phrased.

I do believe the witness can give opinion testimony. However, I do believe that this calls for the very issue we are here to decide today. I don't think that's proper and I'd ask that the answer to the question and the question be stricken from the record.

HEARING OFFICER FRANK: Sustained. It's the ultimate issue in the case.

BY MR. LA ROSE:

Q. Do you have an opinion, sir, whether the proposal in this variance is a sound environmental means to facilitate this agreement between Morris -- City of Morris and the Community Landfill Corporation?

A. Yes.

Q. And that opinion is?

A. My opinion is that the variance is an environmentally sound way of resolving this problem.

MR. LA ROSE: May I have a moment, please?

HEARING OFFICER FRANK: Certainly.

Actually, can we take a ten minute break?

MR. LA ROSE: Yes. I'm going to be done in one second. I just want to see if my associate has anything.

HEARING OFFICER FRANK: Fine. We will let you finish.

MR. LA ROSE: I have no further questions of



Mr. Andrews at this time.

I would move for admission of --

HEARING OFFICER FRANK: I believe all exhibits have been admitted up to this point.

MR. BURDS: We have no objection to any of the documents.

MR. LA ROSE: I don't think I offered for admission.

I certainly presented them to the Board, but I don't think I formally offered for admission Petitioner's Exhibit 4 which was the January 5, '89 letter; Petitioner's Exhibit 5 which was the review notes of Mr. McDermott; or Petitioner's Exhibit 3 which was the actual petition and the exhibits with respect thereto.

HEARING OFFICER FRANK: I believe the letter was already admitted because I admitted it during the objections. But everything, Exhibits 1 through 6, are admitted into evidence.

(Said document, heretofore  
marked Petitioner's Exhibits  
Nos. 3 through 6 for  
identification, were admitted  
into evidence, to wit, as  
follows:)

MR. LA ROSE: Okay. Thank you.

You want to take a break now?

HEARING OFFICER FRANK: Yes. Please. A ten minute break.

(Whereupon, a short recess was had.)

HEARING OFFICER FRANK: We are going to take a break here from the normal course of the hearing and we're going to take statements from interested people who are in the audience.

We will take up to about five people now and then we'll take some more people later this afternoon.

If there is anyone who can't stay and wishes to make a statement, please make yourself known or otherwise we will make you wait until the end.

Sir, if you'd like to make a statement, you'll need to come up. You'll have to state your name and you'll have to be sworn in by the court reporter.

MR. BECKER: My name is Don Becker. I live

here. I'm a resident of Morris, Illinois,

HEARING OFFICER FRANK: You need to slow down. And you're going to need to have a seat. And you're going to have to be sworn by our court reporter.

MR. BECKER: Oh, I see.

HEARING OFFICER FRANK: It's very official.

Go ahead and swear him, please.

(The witness was sworn.)

HEARING OFFICER FRANK: I remind you that you're under oath and that you will be subject to cross-examination if either side has questions for you. Feel free to make a statement. It needs to be relevant to this petition and you need to speak slowly so our court reporter can get you.

MR. BECKER: All right.

DON BECKER

called as a witness, having been first duly sworn, was examined and testified in the narrative form as follows:

## STATEMENT

BY MR. BECKER

MR. BECKER: My name is Don Becker. I have been interested in the landfill situation in this community for quite some time. We've had -- Of the thirty-seven years that I've lived in this community, about twenty of it was free from landfills coming into this area from other areas.

Now, I've heard a lot of testimony with Community Landfill this morning. And, if my recollection serves me right, Community Landfill is a subsidiary of Excel Transportation in Chicago, Illinois. And Excel Transportation is also a chemical handler owned by the two Prime brothers, I believe their names are.

And approximately a year and a half ago, these two individuals were indicted by the United States government for bribing the City of Chicago officials in the garbage department.

Now, this was all over the newspapers and it's a standard -- everybody knows everything about it. And I just thought I'd get that injected

into this hearing right here, so everyone knows.

If they still are the owners, responsible for this organization, everybody knows who they're dealing with.

HEARING OFFICER FRANK: Okay. Do you have anything further?

MR. BECKER: No. That's all I needed.

HEARING OFFICER FRANK: Are there any questions from the attorneys?

MR. LA ROSE: No.

HEARING OFFICER FRANK: Thank you, sir.

MR. BECKER: Thank you very much.

HEARING OFFICER FRANK: Is there anybody else out there who wishes to make a statement?

Please join us.

Can you give your name to the court reporter, please?

ALDERMAN SEEMAN: Alice JoAnn Seeman,  
S-e-e-m-a-n.

(The witness was sworn.)

## ALDERMAN ALICE JOANN SEEMAN

called as a witness, having been first duly sworn,  
was examined and testified in the narrative form as  
follows:

## STATEMENT

BY ALDERMAN SEEMAN

ALDERMAN SEEMAN: My name is Alice JoAnn  
Seeman. I'm the Alderman for the Third Ward for the  
City of Morris.

I have been asked to appear here by  
several of my constituents -- actually  
fifty-three -- who have called me, who were not able  
to attend this meeting to oppose variance.

HEARING OFFICER FRANK: Okay. Do you have  
anything further?

ALDERMAN SEEMAN: No.

HEARING OFFICER FRANK: Are there any questions  
from either side?

Okay. Thank you.

MR. LA ROSE: Yes. I have a question.

Ms. Seeman, what's the basis of your  
opposition?

ALDERMAN SEEMAN: The basis of the opposition is the fact that nobody knows what is underneath that ground, and they feel that the additional waste and material brought into the area would create problems with our water table. Anything that could cause chemicals being put into the ground would affect our community at a later time, in later generations.

MR. LA ROSE: Is it generally your position that you're anti landfill in the community or is it anti this landfill?

ALDERMAN SEEMAN: No. We're not anti landfills. We have landfills here. Landfills are a necessary business. We all create waste, but it's the idea that we do have our landfills and we have enough of them.

MR. LA ROSE: If the variance is granted in this case, you realize, don't you, that professionals will be hired to test the groundwater, test the soils and find out exactly what it is that's under parcel A? Don't you know that?

ALDERMAN SEEMAN: Yes. Yes.



MR. LA ROSE: Would you be willing to tell your constituents, if the Board grants the variance, to put some faith and trust in professionals and their judgment with respect to the environmental impact of this site?

ALDERMAN SEEMAN: Yes.

HEARING OFFICER FRANK: Okay. We have got testimony going on here from the attorney.

If you want to ask her some questions, that's fine.

MR. LA ROSE: This is cross-examination, Ms. Frank, and I think I'm entitled to ask her.

HEARING OFFICER FRANK: You're entitled to cross-examination. You are not entitled to testify. You're not sworn in.

MR. LA ROSE: Your answer was, Ma'am?

ALDERMAN SEEMAN: Yes.

MR. LA ROSE: Okay. Thank you.

I have no further questions.

HEARING OFFICER FRANK: Thank you.

Is there anyone else who wishes to make a statement?

(NO RESPONSE.)

HEARING OFFICER FRANK: Okay. Ther, Doug Andrews, you need to return.

And I remind you that you're still under oath.

And have you guys concluded with him; is that correct? Petitioners?

MR. LA ROSE: Yes.

HEARING OFFICER FRANK: Cross-examination.

Mr. BURDS: I'll try to keep my voice up so nobody will have any problem hearing. I have never been accused of that, but I've had a couple of requests, so I'll do my best.

Mr. Andrews, if you can't hear me, please let me know.

CROSS-EXAMINATION

BY MR. BURDS:

Q. Mr. Andrews, you said you were employed with the IEPA for a certain period of time. When exactly were you employed by the Illinois Environmental Protection Agency?

A. I began work there in 1971 and left in

1974.

Q. In your employment with the Agency, your capacity was with Land Permits; is that correct?

A. In the beginning it was with Land Permits. Later I became Division Manager of Land.

Q. And the Division Manager for the Illinois Environmental Protection Agency Permit Section for Land Permits, what, in fact, did those job duties entail?

A. We were in the business of reviewing permit applications for landfills. We participated in the preparation of the original landfill regulations and we also reviewed other types of permit applications.

Q. So you are very familiar with the permitting process and how landfill facilities like Community Landfill are required to operate with permits and the types of permits they are required to operate with; is that correct?

A. That's correct.

Q. Now, as far as your involvement with Community Landfill Corporation, how long have you

had a relationship with Community Landfill Corporation?

A. I think about ten years.

Q. Now, when I say "relationship," what is the nature of that relationship with Community Landfill Corporation, and what has it been over the last ten years? I assume that when you say "ten years," that's been the last ten years?

A. That's correct.

That relationship has been that we have served as their consulting engineers for Morris Community Landfill and we've also served their -- the owner's other companies as consultant.

Q. How long have you been involved with the Morris Community Landfill. When did that start, as Andrews Engineering as a consulting environmental engineer?

A. I think that would have been, again, since the beginning of 1985. Mid 1980s.

Q. And that was as a result of a contract with Morris Community Landfill?

A. With Community Landfill Corporation.

Q. How did the relationship start?

A. It began with the work that we were asked to do by Community Landfill Corporation. And I'm trying to think back to what our first assignment was. I can't recall what the first assignment we had would have been.

Q. So now I'm assuming and, correct me if I'm wrong, but you had no prior contract prior to 1985 or had no prior associations with Morris Community Landfill prior to 1985; is that correct?

A. No. I had known of Morris Community Landfill even going back to the days, I think, when I was with the Illinois EPA. I have been aware that there was a Morris Community Landfill.

Q. With this specific site we are dealing with today?

A. I think it would have been with parcel A, yes.

Q. And did you have any direct involvement while employed with the Illinois Environmental Protection Agency with the Morris Community Landfill?

A. Not that I recall. There may have been matters that came to my attention, but I don't recall any of them, specifically.

Q. Now, from 1974 to 1985, what, if any association or relationship did you have or contact did you have with Morris Community Landfill during that period of time?

A. I can recall that one of our other clients made contact with me with regard to Morris Community Landfill, but I don't remember the nature of the inquiry.

Q. Now, during your time with the Agency, if you recall, isn't it true that during your period of employment with the Agency that the landfill was not operated by Morris Community landfill, but by the City of Morris; is that correct?

A. I'm not sure it was operated by the City of Morris. I think there may have been a contractor hired to operate the landfill. That's my recollection.

Q. But that was someone other than Morris Community Landfill; is that correct?

A. I think that's correct, yes.

Q. And do you have any knowledge as to when Morris Community Landfill began to operate this facility?

MR. LA ROSE: Objection. Morris Community Landfill is the site. Does he mean Community Landfill Corporation or the City of Morris?

HEARING OFFICER FRANK: Could you restate your question?

MR. BURDS: I apologize. I will be clear for the record.

When I say "Morris Community Landfill" I mean Morris Community Corporation.

BY MR. BURDS:

Q. What is your understanding when that organization took over operation from the Landfill Corporation?

HEARING OFFICER FRANK: Do you mean Community Landfill Inc?

THE WITNESS: Community Landfill Corporation.

MR. BURDS: I apologize, yes.

THE WITNESS: My understanding is that would

have been in the early '80s, maybe 1982.

BY MR. BURDS:

Q. Now, do you have any direct knowledge as to when that transaction took place or when they assumed operation of that facility?

A. No, I don't.

Q. Now, what is your understanding of this facility? How are you familiar with the Morris Community Landfill site, specifically?

A. We have served as the consulting engineer to Community Landfill Corporation over the period of time that I've mentioned. I've been on the facility, personally, a number of times. I don't know exactly how many times, but I've been there a number of times.

Q. Now, have you been directly involved in the work conducted by your company on this site?

A. On occasions, yes. On many occasions.

Q. Now, as far as the Significant Modification Application in this case, the one you're asking the variance to be submitted for -- what Community Landfill is asking for a variance



for, when were you contracted to conduct that business?

A. Now, are you asking specifically with regard to preparation of the Significant Modification Application?

Q. I'm asking you, when the Community Landfill Corporation asked Andrews Engineering to prepare a Significant Modification Application to the Agency for the Morris Community Landfill?

A. It was sometime shortly after the agreement was made with the City of Morris for operation of parcel A.

Q. I see. So that would be after November of 1994?

A. Yes.

Q. All right. Now, as far as this facility, my understanding is this facility is approximately 119 acres; is that correct?

A. About 119, yes.

Q. Now, you indicated you are familiar with the permitting requirements and permits issued by the Illinois Environmental Protection Agency; is

that correct?

A. Yes.

Q. And you expressed an opinion as to the permit and what's been previously marked as -- and you're going to have to give me just one moment.

And was identified as --

HEARING OFFICER FRANK: I believe it's Exhibit 3 and then --

BY MR. BURDS:

Q. Exhibit 6. It's in Exhibit 6.

And it's Exhibit B of Exhibit 6, Counsel.

You expressed an opinion as to special condition one; is that correct?

A. You want to show it to me?

Q. I apologize, Mr. Andrews.

MR. LA ROSE: I've got a copy here.

THE WITNESS: Yes.

BY MR. BURDS:

Q. Now, your opinion as to that was that if anyone other than the City operated the site, that would be a violation of that condition; is that

correct?

A. I think what I stated was, that if Community Landfill Corporation took action as operator of that site, it may be a violation of this permit condition.

Q. Now, are you aware of a permit requirement that was issued --

I apologize. Miss Franks, if you'll bear with me just one second.

HEARING OFFICER FRANK: Do you need a break?

MR. BURDS: No.

BY MR. BURDS:

Q. Now, you've been involved with the Morris Community Landfill and acting as an environmental engineer and consultant for the site since 1985; is that correct?

A. That's correct.

Q. I'm going to show you what I'll call, I guess, Respondent's Exhibit 1 -- attachment D, counsel -- and it's attached to the Agency recommendation. I'm going to ask you to look at that document.

HEARING OFFICER FRANK: Are you going to give me one?

MR. BURDS: You don't have a copy of the recommendation?

HEARING OFFICER FRANK: I do, but it's my copy. Do you have a copy for me to turn into the Board?

MR. BURDS: I will give you this copy. I apologize.

HEARING OFFICER FRANK: I have a copy that I could look at for now. I just need one to mark.

MR. BURDS: We can do that.

(Whereupon, Respondent's

Exhibit No. 1 was marked for identification.)

THE WITNESS: Yes.

BY MR. BURDS:

Q Have you had an opportunity to review that document, Mr. Andrews?

A. Yes.

Q That document is a letter from the Agency dated when?

A. October 29th of '92.

Q. Now, that is to the City of Morris as to when the Significant Modification Application will be due on that site; is that correct?

A. That's correct.

Q. Now, when did the Agency expect or require the Significant Modification Application to be submitted for the Morris Community Landfill site, in that document?

A. June 15, 1993.

Q. I see. Now, in fact, isn't it true, Mr. Andrews, that was made a special condition to the permit as well?

A. I believe that's correct.

Q. Now, in your opinion, Mr. Andrews, would it be a violation of that permit condition if Morris Community Landfill or Community Landfill Inc. did not file the Significant Modification due for that facility in compliance with that condition?

A. Unless a variance were allowed, yes.

Q. Your answer is "yes"?

A. Unless there was a variance.

Q. I see. And the variance request that was

filed for this, was filed when? If you know.

MR. LA ROSE: April or May.

THE WITNESS: April or May. I don't know. I think it was May.

HEARING OFFICER FRANK: Well, that's on record with the Board.

MR. DAVIS: April 26th, 1995.

BY MR. BURDS:

Q. 1995; is that correct?

A. Sometime in 1995, yes.

Q. So some almost two years after it was due?

A. Yes.

Q. Thank you.

To my knowledge and to your knowledge, has there been a variance granted today as to that requirement?

A. Not to my knowledge.

Q. In fact, do you have any knowledge that that request or requirement has ever been subsided or eased by the Agency in any way?

A. Not to my knowledge.

Q. Thank you.

Following up, Mr. Andrews. I apologize.

Going to the regulatory requirement as to the date in that document, as to the last day that a Significant Modification Application is to be submitted to the Agency. Are you familiar with that requirement within the Regs.?

A. Yes.

Q. And are you familiar with what the date is that the Significant Modification applications are to be filed by?

A. I believe it's September 18th of '94.

Q. 1994?

A. Yes.

Q. Now, are you aware of any variance to that application that has been granted by the Agency to date or the Board?

A. That application?

Q. Or that requirement? I apologize.

A. No, I'm not aware of any.

HEARING OFFICER FRANK: Excuse me.

For the record, can we get the

section number on the record that we are referring to?

MR. BURDS: I believe, but don't hold me to it, but it's --

MR. LA ROSE: 814.104(c).

MR. BURDS: -- 814.104(c); is that correct?

MR. LA ROSE: That's correct.

HEARING OFFICER FRANK: Thank you.

BY MR. BURDS:

Q. You are familiar with that requirement, is that correct, Mr. Andrews?

A. Yes.

Q. In fact, your consulting firm was not even contracted to conduct -- or complete the Significant Modification Application for this facility until after November of 1994; is that correct?

MR. LA ROSE: Objection. Asked and answered.

HEARING OFFICER FRANK: Sustained.

BY MR. BURDS:

Q. Thank you.

Now, as far as the document that's been marked as -- And, again, I'm going to have to



ask for help here. I believe it's Petitioner's Exhibit 5. These are the reviewer notes of Doug Clay with the Agency.

HEARING OFFICER FRANK: Yes.

BY MR. BURDS:

Q. Do you have a copy of that, Mr. Andrews?

A. No.

MR. LA ROSE: Counsel, I might have an extra copy here.

MR. BURDS: That's fine. I don't need to refer to the document.

BY MR. BURDS:

Q. Have you had an opportunity to review it, Mr. Andrews?

A. Yes.

Q. Is that the same document you were referring to on direct testimony when Mr. LaRose was asking you questions about that document?

A. Except for the Post-It note.

Q. I apologize.

We can remove that.

Mr. Andrews, as far as that document

is concerned --

MR. LA ROSE: Did the Post-It note say anything good?

(LAUGHTER.)

MR. DAVIS: Objection.

BY MR. BURDS:

Q. But for the Post-It note, is that the same document, Mr. Andrews?

A. Yes.

Q. Now, as far as that document, do you have -- Were you a party to that conversation in any way?

A. No, I was not.

Q. Now, the basis of your knowledge of that conversation and what transpired in that conversation, do you have any direct knowledge as to that conversation?

A. I may have had a conversation --

Q. I didn't ask you what you may have had. I'm asking, do you have any direct knowledge about that conversation?

MR. LA ROSE: Objection. I think he's

badgering with the witness. He's trying to answer the question. I think if he asked the question, he ought to give him a fair opportunity to answer it.

MR. BURDS: I guess I want to make sure, Ms. Frank, that Mr. Andrews isn't speculating as to what he may have done. I'm only asking what Mr. Andrews does know.

MR. LA ROSE: I think the appropriate procedure is to let him answer the question and then make the objection if the answer doesn't fairly meet the question.

HEARING OFFICER FRANK: Please answer the question as specifically as you can.

THE WITNESS: I don't have any recollection of conversations with regard to this.

BY MR. BURDS:

Q. Now, as to the operation of this facility, and the operation of landfill facilities in general, are you familiar with that?

A. Somewhat.

Q. And I assume that your experience with the Agency --

MR. LA ROSE: That's my copy.

MR. BURDS: I apologize, counsel. Thank you.

BY MR. BURDS:

Q. I assume that experience comes from your contact with the Agency, your employment with the Agency, you've been employed as an environmental engineer; is that correct? Your employment as an environmental engineer?

A. I have been, yes.

Q. Are you familiar with what is required of an operator and what an operator consists of?

A. Generally, yes.

Q. Is it your position that Community Landfill Inc. has never been the operator of the entire facility?

A. Not to my knowledge.

Q. So, are you saying that it's possible they could have been at one time?

A. I became their consultant in 1985.

Since that time, I'm not aware that they operated parcel A.

The facility, yes.

Parcel B of the facility, they've been an operator. But not on parcel A, to my knowledge.

Q. Now, as parcel A and parcel B, what specifically do these two parcels consist of?

A. Parcel B is west of Ashley Road. It consists of a site of about 64 acres.

Parcel A is east of Ashley Road and consists of about 55 acres.

Q. So the entire site consists of about how much?

A. 119 acres.

Q. So, you've indicated that you're not familiar with how the site was operated prior to your relationship in 1985; is that correct?

A. No. I said that I may have had some knowledge of the site.

Q. Let me be more specific. I'm trying to elicit from you something more specific than that.

As far as your familiarity as to who operated the site prior to 1985, you don't have any knowledge as to who specifically operated the site

prior to 1985; is that correct?

A. The City of Morris operated it and I've stated that there may have been a contract operator. I stated that previously.

Q. So if Community Landfill Corporation was the operator of the entire site, you do know now?

A. What part?

Q. I'm asking, are you aware whether or not Community Landfill Corporation operated this facility, and when I say "facility," I mean the entire 119 acre site. Did they operate the site or are you aware of whether or not they operated the site prior to 1985?

A. The only part of the site that I'm aware that they operated is parcel B, the 64 acre part of the facility at any time. That's my knowledge.

Q. Now, prior to 1985, what is the basis of your knowledge of that?

A. My knowledge of that would only be what I would have reviewed or what I've been told by the client.

Q. I see.

Now, as far as the operational status of the Morris Community Landfill and who operated the site, is it your position that one facility can have two operators?

A. Simultaneously or at different times?

Q. I'm just asking what your position is.

A. I think a facility can have more than one operator, yes.

Q. I see. So it's your position that the 119 acre site, commonly referred to as Morris Community Landfill, has two operators and has had two operators since its inception?

A. No. That's not what I stated.

Your question was whether, regardless of time frame, there could be more than one operator. That's the way I understood it.

And my answer to that was, yes, that could occur.

Q. Specifically as to Morris Community Landfill site then, what is your understanding of the operational status of the Morris Community Landfill?

MR. LA ROSE: Objection. Asked and answered now for about the fourth time.

MR. BURDS: Well, Ms. Frank, I think we are talking about different periods of time and I think the question has been asked and answered in specific context of time frames. However, we are asking the extent of this facility and what this witness's understanding is.

MR. LA POSE: And he's answered that four times.

HEARING OFFICER FRANK: I'll allow it because I believe you're moving onto something else. Please show me that you are.

MR. BURDS: I don't plan on standing here long.

BY MR. BURDS:

Q. Do you understand the question, Mr. Andrews?

A. Not really.

Q. I guess what I'm asking you is this, as far as the 119 acre site, what is commonly referred to as Morris Community Landfill, is it your understanding that the City of Morris and the



Community Landfill Corporation are operators of that site?

A. No.

My understanding is that the parcel A of the facility is a part of the facility that's owned by the City of Morris and operated by the Community Landfill Corporation.

Parcel B is owned and operated -- owned by the City of Morris, operated by Community Landfill Corporation.

Parcel A is owned by the City of Morris and is now the subject of an agreement between the City of Morris and Community Landfill Corporation for operation.

But that agreement only came into existence at, I believe, February of 1995.

Q. So your position is, correct me if I'm wrong, and you've answered this question, that parcel A has never been operated by Community Landfill Corporation?

A. Well, that's my understanding. Yes.

Q. Now, as far as that understanding, when --

and I think you've answered this question and I just want to be sure.

My understanding is they became the operators of that parcel only as of November of 1994; is that correct?

A. No. Actually, I think it was February that the agreement was actually signed.

Q. February of when, Mr. Andrews? I apologize.

A. February of 1995.

I think that up until November of 1994, the City of Morris had negotiated for them to be the operator, but had not agreed to them being the operators.

Q. I see. So Community Landfill Corporation only had become the operator of parcel A, to your understanding, as of February of 1995?

A. That's my understanding, yes.

Q. Now, as far as the Significant Modification Applications, what is your understanding as to who may file those documents for the landfill, as in this case?

A. It could be filed by the owner or the operator.

Q. Is it possible for a third party, such as yourself, Andrews Engineering, to file a Significant Modification Application on behalf of those individuals? I apologize, the owner and operator.

A. We can -- Yes. I think that we could be granted authority to make that filing if an owner or operator asked us to do that.

Q. In fact, the only requirement that the Agency requires is that both the owner and operator sign off on it; is that correct?

A. I think that's correct, yes.

Q. So, now, would that necessarily require that an owner/operator have some prior contractual agreement as to the operator status?

MR. LA ROSE: Objection to the form of the question. I don't understand it.

THE WITNESS: I don't either.

HEARING OFFICER FRANK: Can you rephrase it?

MR. BURDS: If Mr. Andrews couldn't understand it, I'll rephrase it.

BY MR. BURDS:

Q. Mr. Andrews, my question is this, you testified, if I understand correctly, that Andrews Engineering or any other environmental consulting firm with the signature of an owner and operator of a landfill, such as Community Landfill, can file a Significant Modification Application as required by 814.104(c) without -- and I'm referring specifically to the regulatory requirement, that an engineering firm, such as yourself, can file a Significant Modification Application with the signatures and the agreement between the owner/operator of that facility; is that correct?

A. Yes. I think that is correct, yes.

Q. Now, my second question was, then is it necessary, in order to file a Significant Modification Application, that there be an understanding as to the operational status of the entire facility, if all the owner and operators have signed on the Significant Modification Application?

A. In this case, I think that may be the case, because they're --

Q. I'm not asking in this case. I'm asking your understanding of the requirements as you understand them as an environmental consultant, Mr. Andrews.

MR. LA ROSE: Objection. He asked the question. This witness began to answer. He interrupted the answer. I ask that the witness be allowed to continue his answer. I think it was a fair answer to a complicated question.

MR. BURDS: Ms. Frank, my question was not specific to this case.

THE WITNESS: I felt the question was specific with respect to this case.

MR. BURDS: I will rephrase the question.

HEARING OFFICER FRANK: Okay.

BY MR. BURDS:

Q. My question is this: Is it necessary in filing a Significant Modification Application to have a private contractual agreement completed in order to submit a Significant Modification Application, as long as we have the owner and operator's signatures?

A. Well, my answer then is that it may be necessary.

Q. So you're saying it's possible that you can go ahead without --

A. It's possible you could, but it may be necessary.

(Whereupon, Respondent's Exhibit No. 2 was marked for identification.)

BY MR. BURDS:

Q. All right. I'm going to hand you what I'm going to mark as Respondent's Exhibit 2, and, Ms. Frank -- All I can tell you is this is what we supplied in discovery and what has been identified and what is entitled, Application for Supplemental Permit to Modify Site Development at the Morris Community Landfill, Morris, Grundy County. Provided to counsel as part of discovery.

HEARING OFFICER FRANK: In other words, you don't have an additional copy?

MR. BURDS: I can make an additional copy, if necessary, other than the copy you have.

HEARING OFFICER FRANK: That's fine. I've got it and it's not marked, so I can submit it to the Board.

MR. BURDS: This is a very big document.

HEARING OFFICER FRANK: You don't have a huge clip, do you?

MR. BURDS: I don't have a big clip, but I will try to be as careful as I can with it.

And I'm going to refer Mr. Andrews to that document.

MR. LA ROSE: Miss Frank, this document is about 200 pages. Is there a portion of it that he wants to direct the witness's attention to?

MR. BURDS: I'm just asking him right now if he's familiar with the document. I apologize, counsel. I just want to make sure that he's familiar with the document and give him an opportunity to familiarize himself, if necessary.

My understanding is it's a document that his company prepared for the site.

THE WITNESS: Yes. It is a document that was prepared by Andrews Environmental Engineering.

BY MR. BURDS:

Q. I'm sorry, Mr. Andrews. You said you agree that is a document prepared by your company.

A. Yes.

Q. And what is that document?

A. It's an application for supplemental permit to modify site development at Morris Community Landfill.

Q. Now, I'm going to ask you to turn to the first tabbed page in that document. And I'm going to give him that document that's tabbed.

(Whereupon, a discussion was held off the record.)

MR. LA ROSE: The signature page?

MR. BURDS: Signature page, page 2 of the applicant information part one.

MR. LA ROSE: Got it.

BY MR. BURDS:

Q. And I'm going to ask you, Mr. Andrews, who was listed as the operator of the facility?

A. The operator is listed as Edward H. Prime of Community Landfill Company.



Q. Now, do you know who Edward H. Prime is?

A. Yes.

Q. Who?

A. He's one of the owners of Community Landfill Company.

Q. Okay. Now, moving on to the next tabbed page of that document -- Before we do that, Mr. Andrews.

You did say that it was signed by Mr. Prim?

A. Yes.

Q. You are familiar with Mr. Prim's signature?

A. Prime. Yes.

Q. Prime. I apologize.

And is that an accurate reflection of that signature?

A. I believe it is, yes.

Q. Is anyone else listed as the operator of that site in that signature page or on that signature page?

A. No.

Q. In fact, you yourself signed that document, did you not, Mr. Andrews?

A. Yes, I did.

Q. As what?

A. As the engineer for Community Landfill Company.

Q. And the date of that document is?

A. January 5th of 1999.

Q. All right. Now, going to the second tabbed page, Mr. Andrews. I'm going to refer you to, and I believe that's going to be page -- Just for the moment I want to be clear for the record.

MR. DAVIS: Three.

BY MR. BURDS:

Q. Page 3, under the introduction after the information, back of the next page, after the signature page.

HEARING OFFICER FRANK: Where "criteria for decision" appears in the middle of the page?

MR. LA ROSE: Introduction at the top of the page.

MR. BURDS: It says "introduction" at the top

of the page.

HEARING OFFICER FRANK: I'm too far, then.  
I've got it.

BY MR. BURDS:

Q. Now, in the description of the facility,  
Mr. Andrews, how is this facility described in the  
introduction?

A. The facility is described in terms of  
size, is that what you're asking?

Q. I'm asking how it's described in that  
document.

Do you see the blue arrow there,  
Mr. Andrews?

A. Yes.

Q. And can you read next to that, please?

A. "The Community Landfill Company operates  
the 119 acre site under provisions of a lease  
agreement with the City."

Q. Thank you.

And, again, that document was dated  
1989; is that correct, Mr. Andrews?

A. That's correct.

Q. Thank you.

Now, you testified on direct and you've testified on cross-examination that the Community Landfill Corporation has never been the operator of parcel A; is that correct?

A. Not to my knowledge.

MR. BURDS: All right. Now, I'm going to show you what I'll mark as Exhibit Respondent's Exhibit 3.

(Whereupon, Respondent's Exhibit No. 3 was marked for identification.)

MR. BURDS: And this is a document that we came across as part of something we received from petitioner yesterday, an application, and I have a copy for you, Miss Frank and counsel. If you'll bear with me a second.

I apologize. There's a third page. It's a three-page document.

BY MR. BURDS:

Q. And for the record, I'm showing you.

Please take an opportunity to review

that, Mr. Andrews.

A. Yes?

Q. Have you had an opportunity to review that document, Mr. Andrews?

A. Yes.

Q. And the date of that document is?

A. March 15, 1993.

Q. And that document is addressed to who?

A. It's addressed to City of Morris.

Community Landfill, City of Morris, 320 Wabansi  
(phonetic) Street, Morris, Illinois.

Q. Now, as far as that document -- And it's related to what facility?

A. It's Morris Community Landfill.

Q. Now, for the record, I would just like you to read condition four on the second page of that document?

A. Condition four reads: "To become the operator of parcel A of the above-referenced facility, the City of Morris needs to provide permit application which includes the separate closure and post-closure care plan, a separate groundwater

monitoring program and a transfer of the operating permit and all applicable supplemental permits for parcel A."

Q. Thank you.

Now, as far as this facility, has your firm, Andrews Environmental, ever been requested by either the City of Morris or by Community Landfill Corporation, to transfer the operational status of this facility?

And when I say "this facility," I'm referring to Community Landfill Corporation -- Community Landfill, I apologize.

Have you ever been asked to submit a transfer application of the operator's status?

A. For the parcel B or parcel A?

Q. Any of the facility?

A. Not that I recall.

Q. All right. As far as the facility, are you, to your knowledge, from 1985 the only environmental consulting or engineering firm that has been used by Community Landfill and by Community Landfill Corporation?

A. No. They've used other consultants.

Q. Let me ask you this. Are you aware of any other consulting firms that has asked for the transfer of the operational status of this facility, either parcel A or parcel B?

A. Not that I'm aware of.

Q. For the entire facility?

A. Not that I know of.

Q. All right. Now, there was some considerable testimony about the cost estimates to be conducted at the site or was to be conducted.

Now, you're aware of the variance requirements and that the condition that the variance -- there be a specific timeline as to when the requirement, i.e., 814.104(c) will be complied with?

A. My recollection is that the variance requested an extension of one year beyond September 18th of 1994.

Q. So that would mean the Significant Modification Application in this case will be filed by September 18, 1995; is that correct?

A. There was, I believe, an alternative of forty-five days after the granting of the variance that was requested.

Q. I see. So that could be sooner or later, depending on when the variance was granted?

A. That's my understanding. Yes.

Q. Now, as far as that requirement, are you, as the environmental engineer and as Andrews, testifying today, that Significant Modification will be filed no later than forty-five days after September 18, 1995?

A. No. My understanding of variance request was that it requested forty-five days after a granting of the variance.

Q. So, then, you will be able to comply with all the variance requirements to meet that deadline?

A. That would be our expectation, yes.

Q. And the groundwater monitoring has been done for the twelve-month period?

A. No, it has not. There has been one sampling and analysis. Another one is planned, but that requirement will not be met.



Q. But you are aware, are you not, Mr. Andrews, that there is a year groundwater monitoring requirement as part of any Significance Modification Application?

A. There is a requirement. There have been exceptions to that requirement.

Q. I see. So you're not only asking for an exception as to when the Significant Modification Application is due, but you're also asking for an exception as to when the groundwater monitoring will be done?

A. No. That is not a part of this variance request.

We may, however, when we submit the Significant Modification, we may ask the Agency to allow the modeling information be submitted at a later time.

Q. I see. But at this point, correct me if I'm wrong, but you testified that you haven't conducted that at this point, or completed that; is that correct?

A. Haven't completed that. We've begun it.

Q. And today's date is July 26, 1995, the year would be after September 18th, 1995; is that correct?

A. The year would be up -- September of '95. The alternative deadline would be forty-five days after granting of the variance.

Q. So you are asking for a variance from 814.104(c) and you may ask for a variance or an exception to the groundwater monitoring requirements, as well as the design and modeling requirements for this facility?

A. I'm not asking for it.

Community Landfill Corporation is.

Q. I apologize. I didn't mean to infer that you were going to.

On Community Landfill's behalf, you will be asking for those exceptions as well?

A. Probably. Yes.

Q. Thank you.

All right. Now, as far as the funding issue, you indicated that --

MR. LA ROSE: What issue?

MR. BURDS: The cost. The document referred to as Exhibit F as part of Petitioner's Petition For Variance, and I don't know what that was marked.

HEARING OFFICER FRANK: I think it's 3.

MR. LA ROSE: 3.

MR. BURDS: So it's Exhibit F of Petitioner's Exhibit 3.

BY MR. BURDS:

Q. For the record, I'll hand you a copy of that document.

You're familiar with that document, Mr. Andrews?

A. Yes.

Q. That document is what?

A. It's a cost estimate for a Significant Modification permit.

Q. Now, you said that a favorable ruling would not disrupt you from filing a Significant Modification application; is that right?

A. I beg your pardon?

Q. In this variance proceeding?

A. I beg your pardon?

Q. In your direct testimony, I believe Mr. LaRose asked you a question as to a favorable ruling from the Board would not disrupt you from preparation of a Significant Modification for the facility; is that correct?

A. I don't think that was the question that I was asked.

I think the question I was asked was whether we were proceeding with that work, regardless of whether the variance was granted or not.

Q. I see. Now -- I apologize. Now, if a variance is not granted, will you continue to proceed with that work?

A. That would depend on what our client instructs us to do.

Q. Now, as far as your understanding of the regulatory requirement, will that requirement go away if the variance request is not provided?

A. No. I don't think the requirement goes away.

Q. So it's your understanding that you will

still have to comply with 814.104(c)?

A. Yes. But it might be in a different form than is specified in this cost estimate.

Q. All right. Now, my understanding of this cost estimate is to complete this, if you receive a favorable ruling?

A. Well, this cost --

Q. I'm trying to understand, Mr. Andrews. I apologize. Let me restate the question.

HEARING OFFICER FRANK: Hang on one second, before you do that.

Can we ask you to either move closer to the mike or speak up. We're having trouble here hearing you.

If it helps to sit in that other chair so you can put the mike directly in front of you, you're welcome to do that.

THE WITNESS: I will try.

BY MR. BURDS:

Q. I want to make sure I understand your testimony about this document, Mr. Andrews.

My understanding of your testimony

regarding this document, is that this is an estimate of the costs that will be required to be incurred to complete the Significant Modification Application for this facility; is that correct?

A. That's correct.

Q. Now, what will change if you get an unfavorable ruling from the Board?

A. Well, if an unfavorable ruling came down, the Significant Modification might simply be for closure of the facility, rather than operation and closure, as contemplated in this estimate.

Q. You are contemplating that possibly the facility then might be closed; is that correct?

MR. LA ROSE: Objection. He didn't say he was contemplating anything. He did say that it related to what his client directed him to do.

I think counsel is now asking him to speculate.

MR. BURDS: What I'm trying to do is find out what exactly he is saying. And I apologize if I misphrased it.

BY MR. BURDS:

Q. Mr. Andrews, I guess what I'm trying to understand is, you are saying that the costs will go up if what happens?

A. The cost would increase -- According to the testimony I gave earlier, the cost will increase if two different Significant Modifications Permit Applications were filed, rather than one.

Q. Then, assuming that the Board comes back that only one Significant Modification is required and that Community Landfill Corporation has been the operator of the entire site and has only required one Significant Modification Application, will those costs go up?

A. I'm not sure I understand that question.

What was the -- I didn't understand the part about assuming that Community Landfill was the operator.

MR. LA ROSE: Objection to the form of the question.

Could he maybe rephrase it and clear it up, because I don't understand what he's asking.

MR. BURDS: Sure. Let me withdraw the question and rephrase it. I want to be clear.

BY MR. BURDS:

Q. As far as the facility, assuming that Community Landfill Corporation has been the operator of the site the entire time and that only one Significant Modification Application was required to be submitted for the site, neither parcel A or B exists, but it is treated as one facility, would those costs go up?

MR. LA ROSE: Objection to the form of the question. It's multi-faceted and I think it includes improper assumptions.

HEARING OFFICER FRANK: I think the question is proper.

I believe what counsel is trying to get at is would there be a change in pricing if you were to assume that sites A and B were one facility.

And he's asking for your opinion on that, whether or not they would cost more to submit an application.

Is that what you are trying to get



at?

MR. BURDS: That's exactly it. Thank you, Miss Frank.

THE WITNESS: The cost estimate that's here contemplates closing parcel B and presenting a Significant Modification Permit to develop and operate on parcel A.

I don't understand your question well enough to know whether that answers it, but that's what this cost estimate is based upon.

BY MR. BURDS:

Q. Well, assuming that Community Landfill Corporation has been the operator of both parcel A and parcel B, will any of those things change?

MR. LA ROSE: I'm going to object to the form of the question. I don't understand what he's getting at and I don't think the witness does either.

MR. BURDS: Well, I think the witness --

HEARING OFFICER FRANK: You need to speak up, too.

MR. BURDS: I apologize.

You want me to rephrase the question?

HEARING OFFICER FRANK: Try it once, try it  
again.

MR. BURDS: I'll try it one more time.

BY MR. BURDS:

Q. Just so I'm clear, Mr. Andrews, this is  
for closure of the entire site, parcel A and B; is  
that correct?

A. It includes --

Q. Not closure.

This is a Significant Modification  
Application for the 119 acre facility; is that  
correct?

A. That's correct.

Q. Thank you.

The conclusion that those costs would  
increase are based on an assumption on your part  
that parcel A and parcel B would then require two  
separate applications; is that correct?

A. No. I didn't assume that they would  
require two separate applications. What I said was  
that if I proceeded to permit the two parcels

separately, then additional costs would be needed.

Q. But that's only if they are submitted separately; is that correct?

A. That's correct.

MR. BURDS: Thank you, Mr. Andrews.

If I could just consult for one second.

MR. BURDS: That's all I have.

HEARING OFFICER FRANK: Before we do redirect, let's go off the record for a moment.

(Whereupon, a discussion was held off the record.)

#### REDIRECT EXAMINATION

BY MR. LA ROSE

MR. LA ROSE: Just briefly, Mr. Andrews, with respect to the cost estimate, that cost estimate, correct me if I'm wrong, relates to what Community Landfill Corporation intends to do in the event that the Board grants the variance, correct?

A. That's correct.

Q. Your testimony, both on direct and under cross-examination is, that cost estimate would have

been increased in two separate applications, one for B and one for A, needed to be filed, correct?

A. That's correct.

Q. Is your opinion in that regard based on your understanding that if we did not wait for the negotiations to be completed, that, in fact, you would have been required to file two separate applications?

A. That's right.

Q. With respect to this document, the permit that you submitted to --

HEARING OFFICER FRANK: Respondent's Exhibit 2.

BY MR. LA ROSE:

Q. Right. Respondent's Exhibit 2. The permit application you submitted to the Agency in 1989.

Directing your attention to page 3 that begins at the top of "introduction." I'm going to peek over your shoulder, if you don't mind.

The sentence that reads:

"Community Landfill Company  
operates the 119 acre site under

the provisions of a lease arrangement with the City of Morris."

Was that, in fact, an accurate statement, sir?

A. Yes.

Q. Okay. As a matter of fact, that issue was a matter of clarification -- Strike that.

Was the issue of ownership and operation, a matter of clarification sought by the Agency when they reviewed that permit application?

MR. BURDS: Objection. If I understand the question correctly, he's asking what the Agency's interpretation and what the Agency's object of clarification was.

MR. LA ROSE: Let me try and clear up the question.

BY MR. LA ROSE:

Q. Was the issue, to the best of your knowledge, ownership and operation of the site, a clarification inquiry from the Agency to your office prior to the issuance of the permit?

A. That's my understanding, yes.

Q. And based on that inquiry, the permit was issued in this matter with condition number one that reads:

"The City of Morris is the owner and operator of parcel A and the owner of parcel B. Community Landfill Company is the operator of parcel B."

Is that not correct?

A. That's correct.

Q. And the document that Mr. --

MR. BURDS: Burds.

BY MR. LA ROSE:

Q. That counsel showed you, that they marked as Respondent's Exhibit 3, this permit denial to the City of Morris regarding the gun range and the composting and the cars, did that, in any way, in your opinion, the permit denial, affect the ownership or operation status of the site?

A. Not in my opinion.

Q. And it did not, in your opinion, affect

condition number one as it appeared in Operating Permit 1989-005 and as it still exists today, right?

MR. DAVIS: Objection. Counsel is testifying here.

HEARING OFFICER FRANK: You are asking --

MR. LA ROSE: I'm trying to get through it. I know what his opinion is.

HEARING OFFICER FRANK: I understand that.

MR. LA ROSE: And everybody here knows what his opinion is. I'll ask it in a non-leading fashion.

MR. BURDS: Then why can't we just ask what his opinion is.

BY MR. LA ROSE:

Q. What is your opinion with respect to the ownership and operation status of the site as it exists today, sir?

A Still, as I stated before, that the City of Morris is the owner of parcel A and parcel B, the operator of parcel A.

Community Landfill Company is the operator of parcel B.

Q. And although the note -- Strike that.

In November of 1994, the amendment to lease was approved by the City Council to now allow Community Landfill to be the operator of that, correct?

A. That the motion went through the City Council in November of 1994 allowing the lease agreement to be signed.

Q. Okay. As a matter of fact, until the Significant Modification is filed, seeking Significant Modification for closure of B and operation of A, who is still the operator of the site, of parcel A?

A. That would be spelled out in the lease agreement and I'm not sure what the lease agreement says.

Q. You're not privy to the terms of the lease agreement?

A. No.

Q. Will part of the Significant Modification Application be to request approval from the Agency to allow Community Landfill Corporation to operate parcel A?



HEARING OFFICER FRANK: You are continuing with leading questions.

MR. BURDS: Just so the record is clear, I have an objection to make and I apologize, counsel, for interrupting you.

MR. LA ROSE: Go ahead.

MR. BURDS: My objection is this. He just testified that he's not privy to the condition of the lease agreement and the lease agreement itself, but has testified that he's aware that the lease agreement says a certain set of facts.

Those seem contradictory to me. I don't know if that's contradictory. I don't know what that interpretation is, but we object then to any testimony about the lease agreement from this witness and the contents of that lease agreement.

HEARING OFFICER FRANK: I don't believe -- This witness has stated he is not qualified to testify about the lease agreement and I don't believe that was what the next question was about.

MR. BURDS: Then, for the record, may I just ask that any testimony be stricken as to his

knowledge of the lease agreement, as to what the contents of the lease agreement are. I'm just making that motion for the record.

MR. LA ROSE: Can I go on?

HEARING OFFICER FRANK: Yes.

BY MR. LA ROSE:

Q. With respect to the Significant Modification Permit Application that you intend to file, what, if anything, will Andrews Engineering request of the Agency regarding the ownership and operation status of parcel A and parcel B?

A. We'll ask that the operational permit be issued to Community Landfill Company for parcel A.

Q. And, what, with respect to the ownership status of parcels A and B?

A. That won't change.

MR. LA ROSE: That's all I have.

HEARING OFFICER FRANK: Will there be cross?

MR. DAVIS: None.

MR. BURDS: If I can have a moment?

HEARING OFFICER FRANK: Okay.

(Whereupon, a discussion was

held off the record.)

MR. DAVIS: We have no further questions for this witness.

HEARING OFFICER FRANK: Is there anything else for this witness at this time?

MR. LA ROSE: Not unless Board Member Meyer or the Hearing Officer has any questions for him.

HEARING OFFICER FRANK: Okay. At this time -- Are we going to need to recall this witness for anything or can he be excused?

MR. DAVIS: We don't know at this point in time. We reserve the right to call him.

HEARING OFFICER FRANK: Then you'll need to stick around, unfortunately.

(The witness was excused.)

HEARING OFFICER FRANK: Are there any members of the public who wish to make a statement on the record at this time?

Okay. You need to come forward and be sworn and give your name to the court reporter.

You need to state your name.

MR. REDFORD: My name is Greg Redford.

HEARING OFFICER FRANK: Okay. And why you have a seat back there near the mike.

(The witness was sworn.)

HEARING OFFICER FRANK: Please tell us what you're here to say.

GREG REDFORD

called as a witness, having been first duly sworn, was examined and testified in the narrative form as follows:

STATEMENT

BY MR. REDFORD

MR. REDFORD: I own and operate an excavating business in Morris. And a lot of my work is done for private homeowners, you know, retired people also is included.

And I just -- I feel there's a need for this variance. And that's why I'm here, to support it.

We haul -- These people have, you know, sewers that are plugged and stuff. We have to have a place to haul it. Concrete, and, you know, dirt and debris that comes off the wrecking jobs,

too.

I just feel there's a need to have a place to dispose of all this stuff.

HEARING OFFICER FRANK: Is there anything else?

MR. REDFORD: No.

That's it.

HEARING OFFICER FRANK: Are there any questions?

(No audible response.)

HEARING OFFICER FRANK: Other side?

MR. LA ROSE: No.

HEARING OFFICER FRANK: Okay. Thank you very much.

Is there anybody else who wishes to make a statement at this time?

(No response.)

HEARING OFFICER FRANK: Okay. Let's take a lunch break, until -- Why don't we come back at 1:15.

(Whereupon, a lunch recess was had until 1:15 p.m. on July 26, 1995.)

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

Community Landfill Corp. )  
 )  
 vs. ) PCB 95-137  
 )  
 Illinois Environmental Protection ) (Land  
 Agency ) Variance)  
 )

July 26, 1995, A.D.  
1:30 o'clock p.m.

Grundy County Administrative Center  
Board Room  
1320 Union Street  
Morris, Illinois

Report of proceedings had pursuant to  
lunch recess.

BEFORE:

MS. DEBORAH FRANK  
Hearing Officer.

ALSO PRESENT:

Mr. J. Theodore Meyer, Board Member  
 Mr. K. C. Doyle,  
 Assistant to Board Member Meyer

Sally A. Guardado, C.S.R.  
17369 Highwood Drive  
Orland Park, IL 60462  
(708) 479-6664

## APPEARANCES:

Mr. Mark LaRose and  
Ms. Maria L. Vertuno  
Gessler, Hughes & Socol, Ltd.  
Three First National Plaza  
70 West Madison Street  
Chicago, Illinois 60602

appeared on behalf of the Petitioner;

Mr. Jack Burds  
Division of Legal Counsel  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
and

Mr. Kyle Nash Davis  
Assistant Counsel  
Bureau of Land  
Division of Legal Counsel  
2200 Churchill Road  
P.O. Box 19276  
Springfield, Illinois 62794-9276

appeared on behalf of the IEPA.

## Also Present:

Members of the Public.

Sally A. Guardado, C.S.R.  
17369 Highwood Drive  
Orland Park, IL 60462  
(708) 479-6664

HEARING OFFICER FRANK: Let's go back on the record.

Once again I apologize to everyone for being late. It was unintentional.

It has come to my attention that we have members of the public who are interested in making a statement for the record, so if you would like to come forward at this time, we will take a couple of people now and then we'll take some more people towards the end of the hearing.

Is there anybody in the audience now who would like to speak?

Okay. You need to come forward and give the court reporter your name and then you can have a seat back there.

MR. HANSON: Ron Hanson. I work for American Development Incorporated.

(The witness was sworn.)

HEARING OFFICER FRANK: Please begin.

RONALD HANSON

called as a witness, having been first duly sworn, was examined and testified in the narrative form as



follows:

STATEMENT

BY MR. HANSON

MR. HANSON: My name is Ron Hanson. I own American Development Incorporated from Morris, Illinois. I'm a local contractor.

And I also brought with me two letters from some people who couldn't show up today. One is from Larry Romaines (phonetic). And the other one, Rick Cordrig (phonetic). So I would like to present these.

My opinion, as far as an additional landfill is that we need it and myself or my company is doing business in town and it would help us tremendously and the cost as far as any work that we do in the area, because trucking is a major cost in any job in this day and age.

We do a lot of streets and sewer and water in town. And a lot of times we need an area to dispose of the curb, sidewalk or whatever.

And we do some building demolition, not that much. But we could also, you know, use an

additional landfill.

HEARING OFFICER FRANK: Is there any question?

MR. DAVIS: We have no objection as to what Mr. Hanson has said, but he was going to introduce statements, statements made by parties who aren't subject to cross, we'd like to reserve the right to make a statement later.

MR. LA ROSE: We have no objection to that.

And we were involved with talking to these witnesses. They would have liked to be here today. And they asked if, in their absence, they couldn't be here, they could submit a letter. We understand that they're not under oath.

We ask that they be accepted and the fact that they're not under oath taken into consideration regarding their weight.

And no objection to counsel's statement regarding the ability to either respond or cross-examine.

HEARING OFFICER FRANK: What we're going to do is, versus having you strike it from the record, we are going to accept it as a public comment and in

that nature, so it is not -- does not have the same weight as evidence that is subject to cross-examination, but the Board will take it as a public comment.

They will be marked Public Comment 1, and 2.

(Whereupon, Public Comment Exhibits Nos. 1 and 2 were marked for identification.)

HEARING OFFICER FRANK: Public Comment 1 will be from -- I can't read their handwriting.

MR. HANSON: It would be Rick Cordrig (phonetic).

HEARING OFFICER FRANK: And Gary?

MR. HANSON: Delrose.

HEARING OFFICER FRANK: Delrose.

Public Comment Number 2 is from Larry

MR. HANSON: Romaines.

HEARING OFFICER FRANK: Romaines.

MR. BURDS: If we could just get copies.

HEARING OFFICER FRANK: That's fine.

It's going to have to happen after

the hearing.

MR. BURDS: That's fine.

MR. DAVIS: Fine.

HEARING OFFICER FRANK: Do you have anything further?

MR. HANSON: No. That's all I have.

MR. LA ROSE: Thank you.

MR. BURDS: Thank you.

HEARING OFFICER FRANK: Is there anyone else?

Yes. You may come forward.

MS. DUNBAR: Wilma Dunbar.

(The witness was sworn.)

MR. LA ROSE: State your name?

MS. DUNBAR: Wilma Dunbar.

WILMA DUNBAR

called as a witness, having been first duly sworn, was examined and testified in the narrative form as follows:

STATEMENT

BY MS. DUNBAR

MS. DUNBAR: I didn't mean to speak, but I think I'm speaking for the citizens and residents in

the County.

I don't have anything really that pertinent other than the fact that as a life-long resident. I have heard and cannot prove all the things that are buried in that landfill.

And as Mrs. Seeman says, we all have great fear of the additional weight on top of that and what it will do to our water and to the pollutants of our County.

HEARING OFFICER FRANK: We need you to stay for just a second.

Are there any questions?

MR. DAVIS: No.

MR. LA ROSE: No.

Thank you, Ma'am.

HEARING OFFICER FRANK: Is there anyone else who is waiting to speak?

(NO RESPONSE.)

HEARING OFFICER FRANK: There will be another opportunity before the end of the hearing. So if you decide you wish to make a comment, we will give you another opportunity.

MR. LA ROSE: Petitioner would call Mr. Richard Schweickert to the stand, please.

(The witness was sworn.)

RICHARD SCHWEICKERT

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LA ROSE:

Q. Mr. Schweickert, could you state your name for the record, please?

A. Richard Schweickert. I live at 603 Brentwood Drive in Morris, Illinois.

(Whereupon, Petitioner's

Exhibit No. 7 was marked for identification.)

BY MR. LA ROSE:

Q. Mr. Schweickert, I'm going to hand you what we've previously marked as Petitioner's Exhibit Number 7 and ask you to take a look at that.

Counsel. Ms. Frank.

Sir, that's a copy of your resume, is it not?

A. Yes, it is.

Q. Since we are going to submit that as an exhibit, we're not going to waste a lot of time going over the particulars of it.

Let me just cover a couple of points. You are a Registered Professional Engineer with the State of Illinois?

A. Yes, I am.

Q. You have been employed from 1959 to the present with Shamblin & Associates (phonetic)?

A. Yes, sir.

Q. Let's talk about your experience as a Registered Professional Engineer, specifically as it relates to the Morris Community Landfill?

A. I've been city engineer, as you've said, for some thirty-five years. And I've been involved with the landfill out there since 1959.

Q. Your involvement with the landfill, has it entailed your capacity -- or has it been involved with your capacity as the City Engineer for the City of Morris?

A. Well, both. Also as a consultant engineer

with Shamblin & Associates.

Q. What have you done with respect to the Morris Community landfill just in general? Give us some highlights with respect to your involvement with Morris Community Landfill from the beginning of it until the present?

A. Well, when the EPA came about in 1970, '71, the City then had to apply, at that time, for the development permit, which our firm developed for both sides, 119, 120 acres.

And received the development permit and an operating permit in 1974.

And at that time the City had went out for bids for an operator. And we were only on parcel A. And we had an operator that operated the landfill until 1977.

Q. When you say "we were only on parcel A," who does the "we" refer to.

A. "We," meaning the City of Morris.

And the City went out for bids and hired an operator for parcel A through a bid run.

Q. Let me interrupt you for a second. As



City Engineer during that period that it was operated by a private contractor from '74 to '77, did you have any duties for oversight of the operation?

A. Not a whole lot. I was out there, you know, at least several times a week.

It was real small volume sort of an operation at that time.

Q. What happened after 1977, Mr. Schweickert?

A. At about that time a lot of the neighborhood communities were closing their landfills. That would be in Coal City and I believe Manooka had one. So we were getting a lot of garbage from a lot of the other communities within Grundy County and a few on the fringe areas.

So the City at that time then decided to buy equipment and to operate the landfill with City personnel, which they did from 1977 through 1980.

Q. Which side of the landfill did they operate from 1977 to 1980?

A. Primarily the east side. But we did move

over at the end in early '80 to the west side and we operated some cells there for city garbage for a short period of time.

Q. What happened in 1980?

A. Then the City closed. The last year of operation by City personnel, we had a loss of \$150,000. The City could not afford to continue that way. So the landfill was closed for several years and our garbage, trash, was hauled to the Joliet landfill.

Q. Up until this time that the City closed the landfill in 1988, was there --

A. 1980.

Q. I'm sorry, 1980.

Was there any arrangements with the City with Community Landfill Corporation to do anything with respect to the site?

A. No.

Q. Community Landfill Corporation had not entered the picture at this point?

A. We never heard of them.

Q. The City closes the landfill for how long?

A. Approximately two years.

Q. Then what happens?

A. And then that's when a lease with Community Landfill, or Community, was undertaken. I believe the lease was commenced in July, 1982. July 1st.

Q. Are you generally familiar with the provisions of that lease?

A. Right.

Q. The provisions of the lease leased to Community Landfill the rights to do what?

A. Operate the landfill on parcel B or the west side of Ashley Road, Homer.

When the City closed -- I'm going back here. When the City closed the landfill in 1980, there was a requirement of the City by the EPA to put final cover then on the east side.

Final cover at that time was 2 feet. And the City did comply with that and we hauled fill and spent a tremendous amount of money covering the east side with the 2 feet of fill.

The EPA inspectors then drilled it,

saw something which improved it, and sent a letter to the City to that effect.

And the final cover on the east side was approved as being adequate.

Q. Since 1980 when the City closed the landfill on both the east and the west sides, have there ever, to date, been active landfill operations on the east side of the landfill?

A. No, there hasn't.

Q. The City's lease with the Community Landfill Corporation has continued from July of 1982 to the present; is that's correct?

A. That's correct.

Q. Have you continued on behalf of the City, as City Engineer, to have involvement with the site through the term of that lease?

A. Yes, I did.

Q. And what's the nature of that involvement?

A. Periodic inspections. Tabulations of tickets, billings, et cetera.

Q. The City, as I understand it, obtains both royalties and taxes from the Community Landfill

Corporation's operation of the west side of the landfill on parcel B, correct?

A. That's correct.

Q. Do you have responsibilities with respect to that income that comes from the rental of the west side of the landfill to Community?

A. Yes. We call it royalty, and not a rental. But the City derives a royalty per cubic yard from everything going in there, with the exception of City warrants.

Our fees into the landfill are free and, of course, we don't charge a royalty on our home trash or garbage.

Then we also receive a tax per cubic yard on the material that's brought in, except that material that is exempt by the IEPA.

Q. From 1982 to the present, has the City of Morris realized any non-economic benefits from Community Landfill Corporation's operation of the west side of the landfill?

A. I don't understand the question.

Q. Has there been anything donated or work

performed by the community on behalf of the City as a result of their operation of the landfill?

A. Yes. All the equipment that they have, and not only Community Landfill, but our other landfills are very helpful with the City of Morris.

Snow removal, they donated all their equipment free of charge to the City. Community and Environtech, the other two landfills, paid approximately 3 or \$400,000 on road repairs out by the landfill.

Many landfill personnel did grade all City alleys for us.

They've been very helpful in development of the -- what's called the Morris/Lyons Park, as far as grading, hauling fill.

And, more recently, the River Front Park that has been constructed by the City in the last year. Very helpful and at no cost to the City.

Q. In your experience with the site, do you continue to have obligations with respect to the site today, Mr. Schweickert?

A. Yes.

Q. Your experience with the site, has the Community Landfill Corporation ever been the operator of parcel A on the east side of Ashley Road?

A. No.

Q. The operator of parcel A is whom today and whom has it always been?

A. Well, the permit that was issued back in the mid '70s were listing the City of Morris.

And, as I indicated, the City had operated it, even though they let it out for bids for a three-year period, that was done by a private contractor. But, since then, when it was closed in about 1980, no one operated it. But the City still owns the permit.

Q. When the SB172 expansion for the 60 foot height increase on both sides, both parcel A and parcel B, was being contemplated and submitted back in 1988, did you have some involvement in that?

A. Yes.

Q. Did the City participate in that SB172 proceeding as an owner and proposed operator of the

landfill?

A. Yes, they did.

Q. Did the City employ -- Strike that.

Who paid the cost of engineering and submission of that application for the SB172 expansion?

A. Well, the City paid their share to Andrews Engineering on the east side of the road.

Then the City paid costs for constructing, I believe it was three monitoring wells on the east side of the road. And I can't remember the firm, but it was the same firm that was hired by Community to construct the monitors on the west side.

Q. Community paid for the west side. The City paid for the east side?

A. That's correct.

Q. Six, were you involved with the negotiations with respect to the proposal for Community Landfill to now operate parcel A on the east side of Ashley Road?

A. Yes.



Q. Okay.

A. By being at committee meetings, et cetera.

Q. And those negotiations started when?

A. I don't know the exact date. Probably several years ago.

Q. If I told you that the application for the proposal was submitted in July of 1992, does that refresh your recollection?

A. That's probably close. I don't remember the exact date.

Q. Was it the -- Strike that.

Over the course of the negotiations, we know now that the negotiations culminated in an agreement in November of 1994, correct?

A. Yes.

Q. And the negotiations span through administrations, first Mayor Washburne and then Mayor Feeney?

A. Yes, sir.

Q. Were you involved with --

MR. BURDS: Objection. I've let it go for a long time, Miss Frank.

This is leading, continues to be leading. The witness isn't testifying. Counsel is testifying. It's not how these proceedings proceed.

HEARING OFFICER FRANK: The objection is sustained.

Could you please rephrase your questions?

MR. LA ROSE: Yes.

BY MR. LA ROSE:

Q. How many administrations did the negotiations span?

A. At least two.

Q. Were you involved in the negotiations from the beginning and through their fruition in November of 1994?

A. Yes, sir.

Q. What were the points of concern on behalf of the City regarding the negotiations?

A. Well, I think, originally, some alderman didn't think there was a need for it, since shortly before that there was Environtech, which was an important landfill in the same area.

And the administrators at that time didn't think that garbage should be hauled in, especially out-of-town garbage or out-of-county garbage.

Q. What, if any, considerations or concerns did the City have with regard to engineering issues, if any?

A. They had concerns and they had meetings with Doug Prime and some of his engineers. And he kind of explained it to the community at that time.

Q. Was there -- Strike that.

What, if any, concerns were there with respect to the types of waste that were proposed to be disposed of in parcel A?

A. Well, I think that was a big stumbling block.

The Community Landfill people wanted to bring garbage primarily the same as they had the right to on the west side.

And the committee and the Mayor didn't want garbage hauled in. And they only consented to demolition debris, storm debris,

whether it's trees or what-have-you, and some special waste.

Q. And that was a concession made during the course of the negotiations, was it not?

A. Yes, sir.

Q. Was there -- Strike that.

What, if any, concerns did the City have regarding the payment of rent or royalties to the City from Community Landfill during the course of negotiations?

A. Well, the City derives a lot of money with the tax on the royalty from the present west side landfill, and they do use that money for garbage pick up, recycling, and our City vehicles that pick up every day. We have crews that pick up, whether it be bricks or concrete or sofas, what-have-you, we pick up everyday and haul out to the landfill. And we're entitled to do that free of charge.

And so the Mayor and the council then passed that onto the residents where they have all their pick up, whatever it may be, we pick it up free of charge.

And we also recycle free of charge, too. And then have -- Our people are furnished large plastic bags for recycling. And, also, toters for the garbage, but that also was free of charge. Pick up containers. We have the best service as far as the residents are concerned.

Q. How would you characterize the negotiations, Mr. Schweickert, in terms of the timing of them, how long they took?

A. Well, it went on for a two-year period, at least, off and on.

Q. How would you characterize the negotiations in terms of the seriousness or the diligence of the parties in approaching the negotiations?

A. In what regard?

Q. Were they -- Let me ask it a different way.

Did people drag -- Did the parties to those negotiations drag their feet or were they constantly involved in the negotiating process to resolve these constructs?

A. I thought it was pretty steady. There were lapses. And there were disagreements.

Q. Was it, in your opinion, necessary for the concerns of the City to be somehow negotiated or resolved before this matter could be put to the Board?

A. Well, definitely. It had to have brought to the Board that the City works through committees. And there's three alderman on each committee, then, that would be meeting on it, negotiating on it, and bring their recommendations to the full council.

Q. Are you satisfied -- You have reviewed the terms of the amendment to the agreement, sir?

A. Yes.

Q. Are you satisfied as a City Engineer -- strike that.

What is your opinion as the City Engineer as to the terms of that and whether they're good for the City or the City of Morris?

A. Well, I think that they eliminated the garbage, the household garbage that is going to the east side, that -- All I can do is give examples, I

guess.

Q. Go ahead.

A. The City just let a \$700,000 contract with State funds involved, with a State grant involved, to tear out half a mile of concrete street, downtown Morris.

The contractor is able to haul that out to Community Landfill and save a tremendous amount of money to the City, that's passed on to the residents of the City.

I realize we have another landfill that they could haul that, too, but the cost would have been tremendous.

Q. So I guess your answer to the question of your opinion is that your opinion is it's good for the City?

A. That it's good for all residents, as prior contractors attested to, that when people take out their sidewalks and driveways and porches and what-have-you, and the City can find a place to dispose of them at no cost, well, that benefit is then passed on to all the residents of the

community.

Q. We've had some discussion -- Strike that.

We haven't had any discussion, but there have been some public comments filed with respect to consistency of the plan for the Community to operate parcel A with the Grundy County solid waste plan. Are you aware of those general objections?

A. No. I don't quite understand the question.

Q. Are you aware that someone has made a public comment that the amendment of the lease between Community Landfill and the City of Morris is not consistent with the Grundy County solid waste --

A. No. That's not correct.

I've been a member of the plan since it's inception and the plan -- And one of the first things that Grundy County Waste Plan did, was put up moratorium on any expansions or new landfills for expansion, whether they be vertical or horizontal or whatever.

But it was spelled out that it did



not affect the present landfills that were in the City of Morris that were already permitted.

Q. So do you have an opinion as to whether the amendment to the contract between the City and the Community Landfill Corporation is consistent with the Grundy County Plan?

A. Yes. The landfill, as I indicated, not only this one but the privately owned one, was exempt from the moratorium that was brought into effect by the Grundy County Waste implemented by the Board in 1988.

MR. LA ROSE: May I have one second, please?

BY MR. LA ROSE:

Q. Mr. Schweickert, with respect to this variance proceeding itself, as a City Engineer, do you support the variance and ask the Board to grant the variance in this case so that the City can move forward with its plan?

A. Right. I'm retained by the Mayor and the City Council, and, you know, that's their desire, then that's what I'm retained to do.

And, as I indicated, as long as its

not garbage or other stuff, I really feel its a benefit to the taxpayers of Morris.

MR. LA ROSE: I have nothing further.

I would just like to offer into evidence Petitioner's Exhibit 7, which is the curriculum vitae or the resume of Mr. Schweickert.

HEARING OFFICER FRANK: Any objection.

MR. BURDS: No objection.

HEARING OFFICER FRANK: It's admitted.

(Said document, heretofore marked Petitioner's Exhibit No. 7 for identification, was admitted into evidence, to wit, as follows:)

HEARING OFFICER FRANK: Yes?

BOARD MEMBER MEYER: What is the compensation to the City?

MR. LA ROSE: Pardon?

MR. LA ROSE: What is the compensation to the City?

THE WITNESS: I should have bought -- The tax is a \$1.27 -- No. 60 cents a yard, because they have no scale.

It would be a \$1.27 if it was by the ton.

We have one landfill that has a scale and one that does not.

That's the tax and that was set by the State.

So the royalty last month was \$31,000 to the City. And then it goes by -- It's really -- I didn't bring the schedule, but it goes by truckloads and anything over ten trucks is a flat fee -- 10 yards is a flat fee. And we go down to pick up trucks, you know, \$5 or something like that.

BOARD MEMBER MEYER: But the tax goes to the

State?

THE WITNESS: No. No. The tax, you know, that was a State law that the City could tax for -- could tax, and that was set up -- the amounts were set up by the State legislatures.

So we have two. We have what we call a royalty and then a State tax, waste tax.

BOARD MEMBER MEYER: And this is only for non-butressible (phonetic) waste?

THE WITNESS: No. It's for all waste.

MR. LA ROSE: You mentioned the tax or the royalty, Mr. Schweickert?

THE WITNESS: We tax both?

The only thing that's exempt in the tax is some special waste, like soil, contaminated soil or I believe compost and stuff is exempt. From the tax, not the royalty.

BOARD MEMBER MEYER: Is there a limitation to out of County, to the taxes out-of-county waste, that may be brought in?

THE WITNESS: No. Just what's permitted by the Illinois EPA.

Now, as we indicated, on the new amended contract on the east side, that would be limited to the type, there would be no residential garbage.

Maybe I didn't understand your question, but, presently, what's coming in on the west side, it's whatever is permitted on their permit by the EPA.

On the new portion that's been amended on the east side, the parcel we're talking about, parcel A, they will not be allowed to bring in any residential garbage. Even though the permit would allow it. But the City contract will not allow it.

BOARD MEMBER MEYER: Is there any aspect -- Is there any cost of living increase in these?

THE WITNESS: To the City?

BOARD MEMBER MEYER: Yes.

THE WITNESS: Yes.

I don't have the amended contract, but it goes up every year, I think, based -- Our present one has increased every year. Our royalties

are increased every year, based on the increases of all the surrounding landfills.

BOARD MEMBER MEYER: Does the operator pay real estate taxes, an equivalent amount of real estate taxes?

THE WITNESS: No, because the real estate -- The land is owned by the City of Morris and there is no real estate tax.

BOARD MEMBER MEYER: But they don't pay any fee to the schools?

THE WITNESS: I think what they do, in lieu of real estate tax, the City started a special fund some many years ago, and I believe the landfill people, they just started throwing in \$2500 a year, and the City matches it and puts it into special contingency.

And then, the City, then it will add some tax money to it. And I think there's several hundred thousand dollars in that contingency, just in case they needed it for some problem.

HEARING OFFICER FRANK: Anything else?

BOARD MEMBER MEYER: Thanks.

MR. LA ROSE: And, for the record, Miss Frank, the entire addendum to the July 1, 1982 lease agreement, which was enacted back on November 14th, is attached as Exhibit C to the Petition for variance, so that the Board can look at it at a later date. It does include the royalty payments and the payment of tax provisions.

Also, we will be presenting some documents later on taxes and the royalties that have been paid to date.

HEARING OFFICER FRANK: Do you have anything further for that witness?

MR. LA ROSE: Nothing further.

HEARING OFFICER FRANK: Any cross-examination?

MR. DAVIS: May I have two minutes?

HEARING OFFICER FRANK: Certainly.

(Whereupon, a discussion was  
held off the record.)

HEARING OFFICER FRANK: We are going to begin with cross-examination.

## CROSS-EXAMINATION

BY MR. BURDS

BY MR. BURDS:

Q. Mr. Schweickert, I'm trying to understand your relationship with the City.

You are employed or you are contracted with the City to be the City Engineer. What is your specific relationship?

A. An appointment by the Mayor with the consent of the Council to be the City Engineer.

Q. And you have been appointed in that capacity for the last thirty-five years, is that your testimony?

A. Yes.

Q. As the City Engineer, what are your responsibilities?

A. Well, we design all the streets, water sewers and city sewers for the treatment plant, water lines, sanitary lines, storm sewer lines, and whatever is needed by the City.

Q. And you are paid by the City as the City Engineer, not as a contracted agency with the City?



A No. We are paid by whatever they hire us to do. Not on a retainer.

Q Who's hired?

A Well, I work for Shamblin & Associates (phonetic). But then I do attend all the Council meetings and was appointed by the Mayor as City Engineer.

Q But the work you do you do for Shamblin & Associates which is then paid for by the City?

A That's correct.

Q I see. And you have been familiar with and you've been involved with -- And I want to make sure -- the landfill that's known as what, the name of the landfill?

A Well, it's Morris Community Landfill.

Q You have been familiar with that City, and have been involved with it for the last thirty-five years; is that correct?

A Yes, sir.

Q And you testified, did you not, that the operational rights of parcel A had never been transferred to Community Landfill Corporation; is

that correct?

A. That's correct.

Q. Now, can you point to a permit which establishes that the City is the operator of parcel A?

A. Well, the City received the permit in '74 and an operating permit in '74 or '75.

Q. I see. And then, when was that operational status transferred to Community Landfill Corporation?

A. It was transferred to the west side only, to operate the west side only on July 1, 1982 by a contract with the City.

Q. I'm sorry?

A. By the City of Morris.

Q. Now, I'm going to show you a document, and what is identified as Attachment A in what I believe we've called Respondent's Exhibit 2. It is our Agency recommendation.

HEARING OFFICER FRANK: That's Respondent's Exhibit 1.

MR. BURDS: I apologize. Respondent's

Exhibit 1, attachment A. Do you have a copy of that, Mr. Schweickert?

THE WITNESS: No, I don't believe so.

HEARING OFFICER FRANK: While he's looking at that, for the record, when we refer to the west side we are talking about parcel B, and the east side is parcel A?

MR. LA ROSE: Correct.

HEARING OFFICER FRANK: Because we are interchanging those terms now.

BY MR. BURDS:

Q Have you had an opportunity to review that document, Mr. Schweickert?

A. Yes.

Q. Do you recognize the document?

A. Yes.

Q. That, in fact, was the permit that was issued in 1982, is it not, Mr. Schweickert?

A. Yes.

Q. And the first sentence of that permit says what, Mr. Schweickert?

A. "Permit is hereby granted to Community

Landfill to operate a solid waste disposal site consisting of 119.2 acres."

Q. Now, were you here during the testimony of Mr. Andrews?

A. Yes.

Q. And do you agree with Mr. Andrews' testimony that the entire site, including parcel A and parcel B, consists of the 119 acres?

A. That's correct.

Q. Where in that permit does it identify the City as operator of parcel A?

A. This permit was sent by the EPA.

Q. I'm asking you, Mr. Schweickert, does that permit anywhere identify the City as the operator of parcel A?

A. I don't see it. No.

Q. Thank you.

Does it distinguish anywhere in that permit that the facility shall be parcelled out and operated as parcel A or parcel B?

A. All I testified to is Community has no right to go on the east side of the road.

MR. BURDS: This is nonresponsive.

THE WITNESS: I don't know what the EPA said.

BY MR. BURDS:

Q. I'm asking you, Mr. Schweickert, anywhere in that permit is this site, 119 acre site parcelled? "Parcelled" meaning parcel A or parcel B.

A. No, it doesn't. I don't see where it distinguishes one side from the other?

Q. Where is that, Mr. Schweickert?

A. I said I don't know where it does.

Q. Thank you. I apologize.

Now, you also testified in direct that this facility closed -- parcel A, stopped accepting waste in 1980; is that correct?

A. Yes.

Q. And was closed?

A. Yes.

Q. And no other activity was conducted on that parcel?

A. That's correct.

Q. And I want to make clear for the record,

as Miss Frank I think may have already done so, but I want to be clear.

Parcel A consists of what portion of the facility?

A. By what other activity, what are you referring to?

Q. I'm trying to understand your testimony, Mr. Schweickert.

A. What I said was there was no garbage hauled in to parcel A, which is the east side, since the time it was closed and covered and received a letter from the EPA saying that it was covered according to their rules and regulations.

You said, was there any other activities on that site.

Yes, there were other activities. The City constructed a pistol range for the Police Department. The police then stored some stolen cars, if you will, until they could get proper titles.

The City did apply to the EPA to get that permitted to be able to do that, and they

denied the City at that time.

Q. Now, as far as the facility, this parcel A, that consists of the east half of the site; is that correct?

A. It's not quite half, but yes. The east side actually, yes.

Q. Your testimony is that was closed in 1980; is that correct?

A. Right.

Not officially. It was closed by the City. But it wasn't closed by the EPA.

Because we tried to get it closed by the EPA, and they said no way, because you've got one permit for both sides. You've got one permit number, so they would not allow us to close it.

Q. Now, as far as Respondent's, I believe Exhibit 5 --

HEARING OFFICER FRANK: 4.

MR. BURDS: 4. I apologize.

MR. BURDS: And this -- Again, I'm not as prepared as Mr. LaRose. I'm used to just using the original or one document, Miss Frank, and I thought

that we can make copies. I apologize.

MR. LA ROSE: I'm sure I've seen it already. I just --

MR. BURDS: It's a copy of the letter, October 21st from Shamblin & Associates. It was a document turned over during discovery.

HEARING OFFICER FRANK: I have it, also?

MR. DAVIS: It was turned over in our first response to discovery. Letter dated on October 21st.

HEARING OFFICER FRANK: I have December.

MR. DAVIS: 1983.

MR. LA ROSE: Do you want me to give this to him?

MR. BURDS: Yes.

HEARING OFFICER FRANK: And I have July.

(Whereupon, Respondent's Exhibit No. 4 was marked for identification.)

MR. BURDS: Would the record please reflect that document marked as Respondent's Exhibit 4 was handed to the witness.



BY MR. BURDS:

Q. Would you take a look at that,  
Mr. Schweickert?

HEARING OFFICER FRANK: When you're done with  
that, I'm going to have to have that one because I  
don't have a copy of it. At least I can't find it.

MR. BURDS: Okay.

THE WITNESS: That's correct.

BY MR. BURDS:

Q. You recognize the document,  
Mr. Schweickert?

A. Yes. I wrote it. I signed it. That's  
what I was just referring to.

Q. That's the document that you are asking  
the facility -- What happened to the facility?

A. Pardon?

Q. What is that document?

A. This document says that we received --  
that on the east side of Ashley Road, which is  
parcel A, that the City put the final cover on, the  
final two foot of cover and that was approved by  
Rick Peterson of the EPA in 1983, has when graded

and sealed and the City is anxious to receive a closure permit for this portion of the landfill?

And we were denied.

Q. You were asking to do what?

A. To close it.

Q. You are asking to change the grade on the contours of the landfill; is that correct?

A. Yes. That's correct. Because we did not fill up to the grades that were on file. In other words, the landfill was only half filled. It never filled up to the permitted height.

Q. And the date of that document is what?

A. 1983.

MR. BURDS: Thank you.

I'm going to show you what I will mark as Respondent's Exhibit -- 5?

HEARING OFFICER FRANK: 5.

(Whereupon, Respondent's

Exhibit No. 5 was marked for identification.)

HEARING OFFICER FRANK: May I have Exhibit 4, please?

(The document was tendered.)

HEARING OFFICER FRANK: Is that 4?

MR. BURDS: Yes.

BY MR. BURDS:

Q. Isn't that document an approval,  
Mr. Schweickert?

A. For closure? No.

HEARING OFFICER FRANK: Can you tell me what  
document we are talking about, just in case I do  
have it?

BY MR. BURDS:

Q. Do you recognize the document,  
Mr. Schweickert?

A. Yes.

Q. What is it?

A. It's from the EPA to the City of Morris.

Q. Dated?

A. Dated 1983.

Q. And what does the document --

A. In response to the letter I just read.

HEARING OFFICER FRANK: December 5th of 1983?

THE WITNESS: Yes.

HEARING OFFICER FRANK: Thank you.

BY MR. BURDS:

Q. Would you please read the first sentence, Mr. Schweickert?

A. "Supplemental permit is hereby granted for Community Landfill Company to modify the final contours, all in accordance with the plans prepared by Richard Schweickert. Dated October 21st, 1983 and received by the Agency October 25, 1983.

"This permit is subject to the following conditions:"

Q. That's all I need you to read, Mr. Schweickert.

As far as the document, where in there is the City of Morris granted authority to operate on parcel A?

A. What do you mean "to operate?" I don't follow you.

Q. Is the City of Morris identified anywhere

in that permit, Mr. Schweickert?

A. It's sent to the City of Morris.

Q. Are there anywhere -- My question, Mr. Schweickert, is this, is the City of Morris permitted to operate at the landfill in this permit?

A. Well, can I explain this? It's not a permit.

MR. BURDS: Miss Frank, I ask that the witness respond to the questions asked. If he wants to offer other testimony, he's got counsel to adequately represent him here today.

I would ask that he only answer the questions that I've asked him now.

HEARING OFFICER FRANK: Mr. Schweickert, if you don't understand the question, please, let us know, otherwise answer the question to the best of your ability.

THE WITNESS: I answered according to this letter.

BY MR. BURDS:

Q. Do you understand the question, Mr. Schweickert?

A. Repeat the question.

Q. The question is this, anywhere in that permit is the City of Morris granted the authority to operate at Community Landfill?

A. No. That's not what the letter was written for.

MR. BURDS: I object. It's nonresponsive.

And we've got the response.

Thank you, Mr. Schweickert.

BY MR. BURDS:

Q. Mr. Schweickert?

A. Yes, sir.

Q. You've already testified that you were here during Mr. Andrews' testimony; is that correct?

A. Yes.

We had difficult hearing back there. I didn't hear much of what he had to say.

Q. All right. I'll ask. Mr. Andrews testified that, in fact, the operator's status of parcel A was not even agreed to or signed by the City until February of 1995, do you agree with that?

A. Parcel A?

Q. Yes. Change parcel A's operational status to Community Landfill Corporation.

A. Well, it was approved by the Council in November of '94, I believe. But I don't know when it was signed.

MR. BURDS: Thank you.

Nothing further.

HEARING OFFICER FRANK: Okay. Redirect?

MR. LA ROSE: Yes.

REDIRECT EXAMINATION

BY MR. LA ROSE

BY MR. LA ROSE:

Q. Mr. Schweickert, I'm going to show you what's been previously --

HEARING OFFICER FRANK: If you tell me what it is, I can tell you the number.

MR. LA ROSE: It's our response to the Agency's recommendation.

HEARING OFFICER FRANK: 6.

BY MR. LA ROSE:

Q. I'm going to show you what's been previously marked as Petitioner's Exhibit Number 6

and direct your attention to Exhibit B of that document and ask you to read to yourself the first special condition.

A. Yes.

Q. Does that special condition, in your opinion, accurately reflect the ownership and operation status as you understood it from 1982 to the present?

A. Yes, it does.

Q. Okay. Can I have that last exhibit back that you had?

Thank you, Mr. Schweickert.

MR. BURDS: Sure.

MR. LA ROSE: Number 5.

HEARING OFFICER FRANK: Just a minute. We have a question from Board Member Meyer.

BOARD MEMBER MEYER: Are you going to read it?

MR. LA ROSE: Yes. We'll have him read it.  
I'm sorry. It's been read into the record before.  
I didn't want to burden the record.

THE WITNESS: "It says this permit  
is for vertical expansion of



both parcel A and B. The City of Morris is the owner and operator of parcel A and the owner of parcel B. Community Landfill is the operator of parcel."

And this letter was from the EPA to the City of Morris.

BY MR. LA ROSE:

Q. And, in fact, sir --

A. This is correct.

Q. It is the permit from the City of Morris in permit number 1989-005 that allowed the vertical expansion of parcels A and B for the 60 foot height vertical increase?

A. That's correct.

Q. And, in your opinion, the statement in special condition number one, is the correct ownership and operation status since you have been involved in the site and since Community has been involved in 1982?

A. That's correct.

Q. I'm going to hand you back Respondent's Exhibit 5, which is this letter dated December 5th, 1983, from the IEPA to the City of Morris.

Counsel wanted you to answer just the questions that he wanted you to answer, and you indicated that you wanted to say something else.

What else did you want to say about that document?

A. I don't have it here, the letter that I wrote to the EPA requesting modification for final contours. As I indicated, we never completely filled in the east side by a long shot. So our final contours were a lot lower than the development plans that were on file with the EPA.

And all we were requesting is to move out of there, move out of the east side. This is our final contours at some 12, 15 feet lower than what was permitted for at that time, because we were just loosing too much money and got out of the business.

And that was the letter that I wrote and it came back approving the final contours. And

why it was granted to Community Landfill is beyond me. I don't know. Because they had nothing to do with the east side.

And then, what they said in the letter -- And, by the way, the EPA lost the letter that said that the final cover was approved and Mayor Feeney had to bring them up to Maywood --

MR. BURDS: Objection. This is a narrative response to a question that I'm not sure there is a real question before the Agency. I don't know that this witness has any knowledge as to what the Agency lost or didn't lose.

HEARING OFFICER FRANK: Could the witness please stop while we are getting our objections.

MR. LA ROSE: Maybe I could interpose a question or two and let him go on.

HEARING OFFICER FRANK: Thank you.

BY MR. LA ROSE:

Q. Sir, is there anything else you would want to say with respect to Respondent's Exhibit Number 5 which was that December 5th, 1983 document from the EPA?

A. Well, item number three, on this letter. After the City did all this and spent a considerable amount of money, in fact, as I indicated, they lost \$150,000 last year.

And then they came back and said, now we would like the City to establish groundwater monitoring programs for the entire site. The groundwater monitoring programs shall meet the requirements in the attached groundwater network, July 1993, so on and so forth.

And that's when the City Council voted not to go any further and never did.

Q. What is it that you wanted to say, if anything, with respect to the correspondence regarding the final contours for the cover?

A. The final contours that are on file at the courthouse and recorded at the courthouse, and approved by letter by the EPA, the Mayor was called up to Maywood some year and a half ago.

MR. BURDS: This is all hearsay. We object.

HEARING OFFICER FRANK: Do you have a response?

MR. LA ROSE: I think he's entitled to talk

about what the final contours were.

He was cross-examined with respect to this. He was cross-examined with respect to closure. I think he's entitled to testify to this.

MR. BURDS: Objection.

HEARING OFFICER FRANK: The witness can only testify to things which he has direct knowledge of.

If you have a specific question of something he has direct knowledge of, you're free to ask it. But this rambling testimony is not going to be allowed.

MR. LA ROSE: Can I have number 4, please?

MR. DAVIS: I believe we gave it to the Hearing Officer.

MR. BURDS: We gave it to Deb.

HEARING OFFICER FRANK: This is Number 5.

BY MR. LA ROSE:

Q. Mr. Schweickert, Number 4 is the October 21 letter that you wrote to the Agency requesting the change to the final contours, right?

A. That's correct.

Q. That letter was written on behalf of the

City of Morris and had nothing to do the Community Landfill Corporation, correct?

MR. BURDS: Objection. Leading.

HEARING OFFICER FRANK: Please rephrase your question.

MR. LA ROSE: Yes, sir -- Yes, ma'am.

BY MR. LA ROSE:

Q. Who was that letter written on behalf of?

A. City of Morris. It says "the City of Morris is hereby requesting."

Q. What, if anything, did that letter have to do or relate to Community Landfill Corporation?

A. Nothing.

MR. LA ROSE: Could we mark this as Petitioner's Exhibit A, please?

I don't have a copy. Mr. Schweickert just gave it to me. You guys have a copy in your file. It's the original operator's permit.

MR. BURDS: That's from 1974?

MR. LA ROSE: Yes.

Hearing OFFICER FRANK: It's actually dated 1976.

MR. BURDS: Right.

(Whereupon, Petitioner's  
Exhibit No. 8 Was marked for  
identification.)

BY MR. LA ROSE.

Q. Mr. Schweickert, I'm going to hand you what we've marked Petitioner's Exhibit 8, which you have gave me out of your files. Could you identify that for the record, please?

A. That is the original permit granted to the City of Morris to operate a solid waste disposal site consisting of 119 acres, dated July 30th, 1976.

Q. And is that the permit on which the City has operated and continues to have ownership and operation rights with respect to the Morris Community Landfill?

MR. BURDS: I don't have any objection to this witness testifying as to his opinion, by as to what this permit allows or maybe what his impression of that permit, but as far as the conclusion, I think -- I don't have any objection as to this document being entered into the record. I want

everything before the Board so the Board can make an appropriate decision.

But if this witness is going to testify as to what this permit does or does not do, I don't think that's permissible.

MR. LA ROSE: That wasn't the question.

The question was, is that the document under which the City maintains the authority to operate and continue operation with Community Landfill?

HEARING OFFICER FRANK: This witness is qualified only to speak for his opinion and the City's.

The Agency is the permitting authority who decides whether or not they have the authority.

This witness doesn't decide whether or not they have the authority.

So if you want to phrase it as an opinion question, that's fine.

MR. BURDS: Thank you.



BY MR. LA ROSE:

Q. Is it your opinion -- I didn't mean to let this witness speak for the Agency. I thought the question was phrased that he was speaking for the City of Morris.

It was under this permit that the City of Morris, in your opinion, has the right to ownership and operation rights with respect to the Morris Community Landfill?

A. Yes. The permit says it's been granted to the City of Morris.

MR. LA ROSE: Okay. That's all I have.

HEARING OFFICER FRANK: Do you want to offer that into evidence?

HEARING OFFICER FRANK: Yes. I offer that into evidence as Petitioner's Exhibit Number 8.

MR. BURDS: No objection.

MR. DAVIS: No objection.

MR. LA ROSE: This is the only copy we have. When we get done today, can we make a couple of copies so I can return it to Mr. Schweickert.

HEARING OFFICER FRANK: Do you have someone to

see if there's an office available to do that?

Mr. DAVIS: There's a copier straight behind this wall.

MS. SPRINGER: You want me to take those other documents?

(Whereupon, a discussion was held off the record.)

HEARING OFFICER FRANK: You have nothing further for this witness?

MR. BURDS: If I might just have a minute.

No further questions.

Thank you, Mr. Schweickert.

HEARING OFFICER FRANK: Wait. Mr. Meyer?

MR. LA ROSE: I'm sorry.

Mr. Meyer, do you have any questions?

BOARD MEMBER MEYER: No.

HEARING OFFICER FRANK: Thank you. That's all for that witness.

(The witness was excused.)

MR. LA ROSE: Our next witness is Mayor Bob Feeney.

(The witness was sworn.)

## MAYOR ROBERT FEENEY

called as a witness, having been first duly sworn,  
was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. LA ROSE

BY MR. LA ROSE:

Q. Mayor Feeney, could you state your name  
for the record?

A. Robert Thomas Feeney.

Q. And you are the Mayor of the City  
of Morris?

A. Yes, sir.

Q. When did you assume that position? When  
were you elected to that position?

A. When I was elected or when did I assume  
it?

Q. Let's start with when were you elected.

A. That was April 26th, I think, of 1993.  
And I took office -- I think it was the 23rd. I  
took office May 1st of 1993.

Q. Now, prior to you taking office, being  
elected first and then taking office as Mayor, did

you hold any other office in the City of Morris?

A. Yes. I was an Alderman for fifteen years.

Q. In your capacity as an Alderman for fifteen years and later as a Mayor, are you familiar with the operation of Morris Community Landfill?

A. Yes, sir.

Q. Since 1982, when Community Landfill was first granted a lease with respect to the operation of the Morris Community Landfill, can you tell me who owned the landfill and who operated either parcels A or B?

A. Since 1982?

Q. Yes.

A. Is when we agreed to the agreement with Community Landfill Corporation. And it was operated -- We owned both parcels on both sides of Ashley Road. And Community Landfill was only involved with the west side operation.

Q. To date, are they only involved in the west side operation?

A. Yes.

Q. In November of 1994, there was an

amendment to the lease agreement approved by the Morris City Council?

A. Yes. It began before my term as Mayor.

I knew there was ongoing negotiations. I wasn't involved. I wasn't there. And I wasn't on the Health and Sanitation Committee, but I knew there was ongoing negotiations between the City of Morris and Community Landfill.

And once I did take office, I assumed the contact with Community Landfill with the negotiations and for as long as negotiations, like I said it was going on before me, May 1st of '93, and it ended approximately -- and I can't remember. The first vote in November or the second. Either the second Monday in November or the fourth Monday in November. The City Council did.

Q. 1994?

A. 1994.

Q. In general, are you familiar with what, if any, benefits the City derived from Community Landfill's present operation of the Morris Community Landfill?

A. There are a number of benefits.

Q. Like what?

A. Financial and I guess you could say taxpayer wise, taking care of the taxpayers.

The big thing is this demolition, wood and things. On the weekends, people tear down the garage or shed and put it out in the street. Concrete driveways are taken out. A lot of times they are taken out by private individuals.

Most of the time we agree to take out the concrete because we can save the residents money because we take it out and haul it to the landfill so we're saving taxpayers a lot of money right there.

Q. Are you able to save the taxpayers money because of the fact that Community Landfill allows you to dispose of the construction and demolition material free of charge?

A. Yes. That's very obvious. We wouldn't be able to replace sidewalks in the last two years. I've spent thousands of dollars in replacing sidewalks in town. Mainly because we can take it

out and haul it with no expense to the people.

Our men pour the concrete and all we have to do is pay for the new concrete. It doesn't cost us anything to get rid of the old stuff.

Q. What, if any, benefit do the normal citizens get, say, with respect to old carpeting they throw out or anything else they might throw out with respect to Community Landfill Corporation's operation of the landfill?

A. We are very fortunate to be able to dispose of things like that.

We have had problems, we have corrected I think now on the east side of the town. The old east side of town we spent a million, a million and a half dollars on storm sewer.

And there was just a combination sanitary storm sewer on the east side.

There were a lot of times we had flooded basements and garbage was thrown out. People were hot enough as it was, but we were fortunate enough to help them. They didn't have to pay to haul it away. They put it out on the curb

and we would haul it away for them.

Q. Not only is the City involved with the disposal for the community free of charge, they actually pick it up?

A. We pick it up, yes.

Q. Has there been any recent incidents that you are aware of?

A. Just yesterday we got a call from Public Works. I was called to come up and take a look at it. A lady was moved to a rest home up on First Avenue --

MR. BURDS: For the record, I'm going to object to this line of testimony. I don't want to be held over, but there has been some desire to move this hearing along. We're not here to decide what the benefit is. We're not trying to close the facility.

All we are trying to determine is whether a variance should be granted to a permit requirement, a Significant Modification Application. Obviously, there has been testimony on both sides of the fence as to the benefit or non-benefit of this facility. We're not arguing that.



We are here to determine whether or not a variance should be granted and at nowhere in the criteria is there anything as to what benefit this facility is to the community.

MR. LA ROSE: I strongly, strongly disagree.

One of the criterion for the variance is the unnecessary or unreasonable hardship that my client went through.

The benefits -- The testimony that the Mayor has given, that Dick Schweickert has given, with respect to the benefits are directly corresponding to the negotiations that were ongoing which resulted in the unnecessary hardship.

You will hear from the Mayor in a minute, and I'm beginning to lay a foundation, just how these factors, these benefits played a part in the negotiations.

The negotiations were the reason -- The prolonged negotiations were the reason why we didn't file the Significant Modification Application to begin with.

HEARING OFFICER FRANK: I believe that the

testimony that we are hearing now is potentially relevant at best. If you are using it as a foundation for future testimony, then let's get through it quickly and move on to the more relevant testimony.

BY MR. LA ROSE:

Q. Okay. Mayor, let's cut to the chase. Did the fact that you're able to provide these services to your constituency free of charge play any part in your negotiations with Community Landfill to allow them to operate A?

A. It was a major consideration.

Q. Why?

A. Why was it a consideration?

Q. Yes.

A. Well, because if we didn't have the landfill -- You know how it is when people are used to having things given to them. If you take something away, I'm going to get cooked. It's my fault. You, as Mayor, for years we've had this stuff picked up for free. Now, we call you and you tell us we have got to hire somebody to haul it?

It's all your fault. I don't want that.

Q. Was it important to you in the negotiations -- Strike that.

What, if any, importance did the fact that you needed to make provisions for the continuing services to your citizenry play in the negotiations with Community Landfill?

A. Give me that one more time.

Q. What, if any, consideration did the fact that you wanted to continue to provide these services to your citizenry play when you sit down across the table with Community to negotiate the amendment to the lease agreement?

A. To me that's what we did. We need it.

Q. Well, and you also have a program for spring clean up?

A. Yes. Well, this past May we had four runners in the city. We did a week in each ward. We did over 300 truck loads of stuff. Not garbage. And this is what we are talking about. People clean out their garage and basements.

There was over 300 truck loads. And,

if I remember right, over 800 residents participated in this spring clean up that we had. It was very fortunate for the people. I don't think there's another town around, they tell me, that does this. But we picked up a lot of stuff out of local homes and the only reason why is because we have a place to take it at no charge to the taxpayers.

Q. Mayor, I'm going to hand you what's been previously marked as --

HEARING OFFICER FRANK: 9.

MR. LA ROSE: Petitioner's Exhibit 9.

(Whereupon, Petitioner's Exhibit No. 9 was marked for identification.)

BY MR. LA ROSE:

Q. Mayor, that is what?

A. This looks like our fees and royalties from Community Landfill.

This looks like it's the royalties from Community Landfill that they pay.

Q. That is, in fact, the print-out of the royalties paid by Community Landfill from May of

1992 through June of 1995, correct?

A. Yes.

Q. Now, going to the bottom of the second page, Mayor, how much royalties did they pay the City of Morris from May -- did the Morris Community Landfill pay to the City of Morris from May of 1992 through June of 1995?

A. \$1,248,150.08

Q. Did the continuing or the anticipation that the royalties would continue, play any part in your negotiations with Community Landfill Corporation holding the amendment to the lease?

A. Yes, it did play an immediate part.

MR. LA ROSE: Move for admission of  
Petitioner's Exhibit Number 9.

HEARING OFFICER FRANK: Is there any objection?

MR. BURDS: No objection.

HEARING OFFICER FRANK: Then it's admitted.

(Said document, heretofore

marked Petitioner's Exhibit  
No. 9 for identification, was  
admitted into evidence, to  
wit, as follows:)

BY MR. LA ROSE:

Q. What are the royalties used for?

A. We use the royalties to pay for the garbage pickup in town and recycling.

Q. So in addition to free disposal of construction and demolition material, is the amount of royalties sufficient to provide the citizenry of the City of Morris free garbage pickup?

A. Yes.

Q. Does it also assist in providing them with free recycling services?

A. Yes. We do not charge for recycling.

Q. So, why was it important, if at all, in your negotiations to consider the issue of royalties?

A. Well, where you used to come up with the approximate 4 to \$500,000 a year that we were getting from royalties, you are going to have to tax for that. It's very important to me, as to the citizens of Morris.

Q. If you don't get this money from the Community Landfill Corporation through its future

operation, there will be no more free garbage pickup?

A No. You've got to haul it someplace.

Q I'm going to hand you what's been previously marked as Petitioner's Exhibit Number 10 and ask you to take a look at that.

(Whereupon, Petitioner's Exhibit No. 10 was marked for identification.)

BY MR. LA ROSE:

Q Mayor, what's that?

A This looks like the landfill tax.

Q That is, if I can peek over your shoulder for a second, a print-out of the State taxes collected by the City of Morris in the Morris Community Landfill from May of 1992 through June of 1995, correct?

A Yes, sir.

Q Turning to the second page of that, how much cash did the City collect on the Morris Community Landfill during that time period?

A \$723,107.21



Q. What, if any, role did the collection and continuing anticipation of the collection of these taxes play in your negotiations with the Morris Community Landfill regarding their proposed operation on A?

A. This was a major concern on my part of the negotiations.

Q. Why?

A. Just like anything else, I didn't know where to come up with the money, if we don't have the taxes coming in.

Q. What's the tax money used for?

A. The tax money is used for city services. Like I said, garbage pick up.

Q. So, without the continuing acceptance of this tax money or continuing receipt of this tax money by the City of Morris for the Morris Community Landfill, would you be able to provide the same municipal services to your constituents at no cost?

A. No, there is no doubt. We can't do that.

Q. How would you characterize, Mayor, the course of negotiations between Community Landfill

and the City of Morris during your term, since May of 1993?

A. Well, they were talking to the wrong crowd, and there was -- The major consideration that I was concerned about was the dealing with the garbage itself.

Q. And what were your concerns about the dealings with the garbage itself?

A. I wasn't in favor of adding garbage. I thought Environtech would take care of that. I was more concerned about taking care of my constituents with the demolition and concrete that we had been doing for years, and picking up the sofas and things like that.

We used to pick up the washers and dryers, but since there's no white goods allowed, we can't do that.

But that was my major concern. And I thought it would be easier for the City Council to swallow if there was no garbage or trash, you could say, in this contract, but we could use it for just demolition and concrete and some special waste, as

contaminated dirt.

Q. Was that a point of contention in the negotiations, what type of waste we are going to put into the landfill?

A. Yes. It was a major point. Like I said, during discussions I thought the only way it would fly with the City Council was to specify no garbage.

Q. Wasn't Community Landfill Corporation's original proposal to allow them to accept municipal garbage from all over the State?

A. Yes. What it was, I think, was a continuing operation from the west side just to go up to the east side.

Q. And did the agreement that you reached with them in November of 1994, result from them making a concession with respect to the type of waste that was put in there?

A. Yes. I think they were confident with my idea that it had to be voted on by the City Council and I didn't think it would fly with garbage in there. They had to take the garbage out of that deal.

Q. Did the City drag its feet in negotiations with Morris Community Landfill regarding the expansion?

A. I don't know that we dragged our feet, really. I wasn't real thrilled at first, like I said, when we were considering garbage.

But, like I said, once we got to the point that they were considering allowing us to take out the garbage in the agreement, then things got almost smoother.

Q. Did the issues of concern regarding the negotiations continue right up to the date of the vote?

A. Yes.

Q. Was it a close vote to accept the amendment of the contract?

A. Yes.

MR. LA ROSE: I'm going to move for admission of Petitioner's Exhibit Number 10, please.

HEARING OFFICER FRANK: Any objection?

MR. BURDS: No.

HEARING OFFICER FRANK: Admitted.

(Said document, heretofore  
marked Petitioner's Exhibit  
No. 10 for identification, was  
admitted into evidence, to  
wit, as follows:)

BY MR. LA ROSE:

Q. Mayor, is it your opinion, as Mayor of the City of Morris, that the granting of this variance, allowing it the continuing operation on parcel A by Community Landfill Corporation was in the best interest of the City of Morris?

A. Yes, it is.

MR. LA ROSE: That's all I have.

HEARING OFFICER FRANK: I have a couple of questions, and then I'll let you.

MR. DAVIS: Thank you.

#### EXAMINATION

BY HEARING OFFICER FRANK

HEARING OFFICER FRANK:

Q. Can you give us the date when you actually began negotiations on the lease agreement?

A. When I myself began?

Q. Well, when the City and Community.

Can you give us an approximate month?

MR. LA ROSE: During his tenure?

THE WITNESS: No. She's asking before.

All I can go by is hearsay. I wasn't

on the Health and Sanitation Committee or the Mayor at that time.

See. We have committees. There's three member committees.

Q. Would you, as part of the Council, would you have known?

A. Yes. I knew. But I wasn't directly involved so I really couldn't tell you. It was, I would say, springtime of 1992 if I remember right.

Q. Okay. And who in City government is in charge of dealing with the Agency in response to the landfill and its permitting requirements?

A. It would be the engineer along with the Health and Sanitation Committee Chairman.

HEARING OFFICER FRANK: Okay. Let's go off the record for a second.

Can we take a five-minute break and then we can come back and you can do your cross-examination.

MR. DAVIS: Sure.

(Whereupon, a discussion was held off the record.)

HEARING OFFICER FRANK: We are returning with cross-examination of Mayor Feeney.

MR. LA ROSE: Feeney.

HEARING OFFICER FRANK: That's right. The good Irish name.

CROSS-EXAMINATION

BY MR. DAVIS

BY MR. DAVIS:

Q. I just really have one question for you.

Would it be a correct statement to say that the revenues, the taxes and the benefits you described derived from the private contract between Community Landfill Corporation and the City?

A. Could you repeat that?

Q. Sure.

Would it be a correct statement to say that all the revenues which you spoke of, all the taxes which have been derived and all the benefits that you described, are basically a derivation from the private contractual dealing between CLC and the City?

A. Yes.



MR. DAVIS: Thank you.

HEARING OFFICER FRANK: Do you have anything?

MR. LA ROSE: One further question.

REDIRECT EXAMINATION

BY MR. LA ROSE

BY MR. LA ROSE:

Q. And the benefits and the revenue and the taxes that are derived from that private contractual relationship are used by the City to provide services to its constituents, correct?

A. All of it is used for services.

MR. LA ROSE: That's all I have.

HEARING OFFICER FRANK: Thank you, Mayor.

THE WITNESS: Thank you.

(The witness was excused.)

HEARING OFFICER FRANK: Call your next witness.

MR. LA ROSE: Yes.

Mr. Kevin Rogers.

(The witness was sworn.)

KEVIN ROGERS

called as a witness, having been first duly sworn,  
was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. LA ROSE

BY MR. LA ROSE:

Q. Mr. Rogers, could you state your name for the record, please?

A. My name is Kevin William Rogers.

MR. LA ROSE: I've almost caught up.

(Whereupon, Petitioner's  
Exhibit No. 11 was marked for  
identification.)

BY MR. LA ROSE.

Q. Mr. Rogers, I'm going to hand you what I've marked as Petitioner's Exhibit Number 11 and ask you to take a look at that, please?

HEARING OFFICER FRANK: Would it help you to skip 12 so that everything is on now? We can do that.

MR. BURDS: No. He'll probably go to 20 then.

BY MR. LA ROSE:

Q. Mr. Rogers, that's a copy of your resume?

A. Yes, it is.

Q. I understand that this was a draft dated

1991 and has been updated since then, correct?

A. Yes.

Q. Can you tell us a little bit about your qualifications with respect to your profession, sir?

A. I am a geologist. I have practiced geology in the State of Illinois since receiving my degree from Illinois State University at Normal in 1983.

I've been a member of several geological associations in the State. I'm also a member of the Groundwater Association and the Association of Groundwater Science and Engineers.

Q. Sir, were you formally employed by the Illinois Environmental Protection Agency?

A. Yes.

Q. In what capacity?

A. I was on staff at the Illinois Environmental Protection Agency from 1986 to 1991.

Q. What was your first job?

A. I worked initially for a unit of the Division of Land called the Hydrogeologic Investigation and Evaluation Unit.

Q. What were your duties with respect to the hydrogeologic Evaluation and Investigation Unit?

A. For that unit, I conducted field investigations of Superfund sites or suspected pollution sources and did soil borings, soil sampling, monitoring system installations, sampling of groundwater for determination of groundwater quality or impact from that facility.

I collected the information, presented it to staff, to the regulated Community, and participated in various enforcement hearings.

Q. Okay. What was your next job with respect to your employment with the IEPA?

A. From the Field Unit, I moved to a position in the Compliance Section of the Division of Land, and I worked in a subunit called the Technical Compliance Unit of the Compliance Section.

And I worked again as a hydrogeologist. I reviewed permit applications, variance petitions, submittals of groundwater data from all the solid waste facilities in the State.

Q. Was your work as a hydrogeologist in the

Technical Compliance Unit primarily involving solid waste management units or what we've come to know as landfills?

A. Yes.

Q. You listed on your resume, looks to be almost every county in the State of Illinois, did you work with solid waste management units in every county in the State of Illinois?

A. Every county that had a landfill.

Q. How long did you hold the job in the Technical Compliance Unit of the IEPA?

A. The Technical Compliance Unit evolved into the Groundwater Assistance Unit of the Permit Section. And I was involved in both Technical Compliance and the Permit Section for three of the five years that I was there.

Q. Let's talk first about the technical compliance aspect of it, and then we'll talk about the Groundwater Assistance Program for the permits.

Basically what did you do in the Technical Compliance Section?

A. Basically, I reviewed the groundwater

quality information that was submitted in all the solid waste sites in the State, and assisted in the technical review of subsurface investigations and groundwater monitoring programs for all of the permit applications to the Division of Land.

Q. So, did your activities as Compliance Officer and permit assistance in the Permit Section kind of intertwine?

A. That's correct. The Technical Compliance Unit was composed of the staff geologists or hydrogeologists, and our work was very closely supportive of the Permit Section.

And at one point during a restructuring of the Division, our unit became a part of the Permit Section.

Q. We know that you have some familiarity with the site recently. We will talk about that in a minute.

Did you have any contact or familiarity with the site during your job with the IEPA and the Technical Compliance Unit or the Groundwater Assistance Program as it was

assisting --

A. Yes. I would have been the groundwater reviewer for the applications that came in during that period of time while I was there.

Q Sir, were you involved on behalf of the IEPA in making proposals for the Pollution Control Board with respect to the new landfill regulations as they related to groundwater provisions?

A. Yes.

Q In particular, can you just tell us what it is that you did with respect to the new landfill recollections?

A. I participated by providing comments to the Board during the hearings for Docket R 88-7.

Q Sir, have you testified as an expert witness in various cases or proceedings on behalf of the IEPA as they relate to groundwater and groundwater permitting issues?

A. Yes.

Q How many times?

A. I'd say about seven times.

MR. LA ROSE: I'm going to move for admission

of Petitioner's Exhibit 10?

HEARING OFFICER FRANK: It's actually 11.  
Mr. Rogers' resume.

MR. LA ROSE: Is it 11 now? Mr. Rogers'  
resume.

BY MR. LA ROSE:

Q. Mr. Rogers, since you left the IEPA, what  
was the next position that you took?

HEARING OFFICER FRANK: Just a minute. You  
moved for admittance.

Is there an objection?

MR. LA ROSE: I'm sorry.

MR. BURDS: I'm sorry?

HEARING OFFICER FRANK: He moved to admit the  
resume.

MR. BURDS: The resume?

HEARING OFFICER FRANK: Any Objection?

MR. DAVIS: No objection.

HEARING OFFICER FRANK: It's admitted.



(Said document, heretofore  
marked Petitioner's Exhibit  
No. 11 for identification, was  
admitted into evidence, to  
wit, as follows:)

BY MR. LA ROSE:

Q. What have you been doing since you left the EPA in 1991?

A. In '91, I left with another engineer from the Permit Section staff and formed a company called Environmental Management?

Q. Your position with Environmental Management was what?

A. At the time we started the Company, I was vice president. At the present time I'm president.

Q. How long were you vice president?

A. For a little over two years.

Q. And since then you've been president?

A. Yes. That's correct.

Q. What type of business does Environmental Management engage in?

A. Environmental consulting work.

Q. Could you be a little more specific?

A. The scientific and engineering aspects of solid waste, primarily the solid waste industry.

Q. Have you been involved in, for example, the design of solid waste management units?

A. Yes.

Q. Have you been involved in the investigation from a geologic and hydrogeologic standpoint of solid waste management units?

A. Yes.

Q. Have you been involved in the engineering, with respect to solid waste management units?

A. I'm not an engineer, but I've completed some preliminary design work under the supervision of a professional engineer.

Q. Who is your primary client for Environmental Management, Inc.?

A. Andrews Environmental Engineering.

Q. So Andrews Environmental Engineering, if I can correctly characterize this, subcontracts its tasks to you to perform as its environmental consultant?

A. That's correct.

Q. In this case, did Andrews Environmental Engineering hire you to do anything with respect to the Morris Community Landfill?

A. Yes, they did.

Q. When?

A. It would have been March of this year.

Q. Okay. Prior to March of this year, have you been asked by Community Landfill Corporation to do anything with respect to their proposed operation of parcel A?

A. No.

Q. Didn't you have a meeting in February of 1985 -- 1995?

A. I'm sorry. I thought that was March.

Q. Now that I've told you that you've had a meeting with the IEPA in February of '95, does that refresh your recollection as to when you were asked to do anything with respect to the Morris Community Landfill?

MR. BURDS: I'm being very good about this and I'm trying to expedite it as best I can and I want this to go quickly, but I don't want Mr. LaRose to do any testifying. I don't think that's an unfair request.

MR. LA ROSE: I think I'm entitled to refresh his recollection.

MR. BURDS: Refreshing recollection --

HEARING OFFICER FRANK: You are entitled and in the case of speeding this up versus having him identify the documents, let's move on.

But, be warned, that you are continuing to testify and ask leading questions.

THE WITNESS: I apologize. I was mistaken.

I believe I initially started work on this project in February of 1995.

BY MR. LA ROSE:

Q. Okay. And what project was it that you started work on in February 1995?

A. The Significant Modification for permit for Morris Community Landfill.

Q. And what was it, specifically, Mr. Rogers, that you were asked to do with respect to Significant Modification Application?

A. Mr. Andrews asked me to manage the development of the application for submittal to the Agency.

Q. By "manage the development of the application," what, if anything, did that have to do

with field work?

A. Well, a major part of the application requirements are the site characterization and groundwater impact assessment.

Q. Did your task to manage the Significant Modification Application also include preparation of the application itself?

A. Yes.

Q. You were aware -- Strike that.

Were you aware, when you received the task, whether there was any timing problems with the plan to submit Significant Modification Application at this time?

A. At that time I initially reviewed the files that Mr. Andrews brought to me and determined that this facility had a significant non-compliance issue.

Q. And that significant non-compliance issue was what?

A. Failure to submit the Sig. Mod. -- the Significant Modification -- by the required date.

Q. When you realized that the Significant

Modification Application had not been submitted by the date required by the regulations, what did you do, if anything?

A. I made a call to the Permit Section staff of the EPA and arranged a meeting to discuss technical aspects of the Significant Mod. Application and the non-compliance issue.

Q. So your purpose for calling the meeting was to address both of those issues?

A. It was to ask questions of the Agency staff about non-compliance and propose our outline of -- for preparing the Significant Modification.

Q. Did that meeting ever occur?

A. Yes, it did.

Q. And the meeting occurred sometime in February 1995?

I don't mean to put words in your mouth or anything like that.

MR. BURDS: I think that's what he's doing.

THE WITNESS: I apologize. I don't recall the date. I believe it was in February.

HEARING OFFICER FRANK: Mr. LaRocce, you are

continuing to do that. You must ask the witness to testify. This is a continuing problem. We have a continuing objection. And I really don't want to have to warn you again, so please be careful.

BY MR. LA ROSE:

Q. Who was at the meeting?

A. Two members of the Permit Section staff who are Joyce Munie who is a Professional Engineer from the Permit Section and Glenda Thompson who is a hydrogeologist in the Groundwater Unit, and myself, and Dan Zimmen from Andrews Environmental Engineering.

HEARING OFFICER FRANK: While they're looking for their document, can I ask you a quick, easy question?

THE WITNESS: Yes.

HEARING OFFICER FRANK: When you say Solid Waste Unit, do you mean Landfill?

THE WITNESS: Yes.

MR. LA ROSE: We are looking for the documents since we want to do this formally and I can't ask him a leading question about a background matter.



We will look for the document and establish the date of the meeting.

BY MR. LA ROSE:

Q. Mr. Rogers --

MR. BURDS: Just so -- May we make this easier for counsel?

All we want is whatever foundation can be laid. Who, when, where, as far as a specific date. I'm not looking for a specific date of the meeting. We will agree and stipulate the meeting occurred, but we just want to know what meeting we are talking about.

MR. LA ROSE: I think it is important to find out the date of the meeting.

MR. BURDS: Then that's fine.

BY MR. LA ROSE:

Q Sir, I'm going to hand you a document and ask you to take a look at that and tell me if that refreshes your recollection as to when the meeting occurred?

HEARING OFFICER FRANK: Can you tell us what the document is.

MR. DAVIS: Can you tell us what the document is and allow counsel to see it?

MR. LA ROSE: It's a document that I'm just using to refresh his recollection.

HEARING OFFICER FRANK: We still need to know what it is.

MR. DAVIS: But counsel hasn't seen it.

Counsel, to my knowledge, you are not allowed to hand anything to the witness and refresh his memory.

HEARING OFFICER FRANK: Let's go off the record for a minute.

(Whereupon a discussion was held.)

HEARING OFFICER FRANK: Back on the record.

MR. LA ROSE: I can hand him a plate of Fetticini Alfredo and ask him if that refreshes his recollection. I have no obligation to identify the document. This is a privileged document from my file. I've given it to him to see if it refreshes his recollection. The procedure is for him to then hand it back to me and I ask you a question, "does that document refresh your recollection?" Answer,

"yes." And he answers the question. It doesn't have to be tendered to counsel. It does not have to be submitted for the record and it can be shown inconspicuously to the witness.

MR. BURDS: I object. That is not the law. The law is you hand a document to a witness, counsel and the other parties get to see any document presented as an exhibit -- I apologize -- to refresh the recollection or otherwise. Co-counsel, opposing counsel, may request to see the exhibit or the document, regardless of what the purpose is.

We have no idea what this document is, what it refers to, why it is refreshing this person's recollection. Is it something he prepared or Mr. Rogers prepared?

MR. LA ROSE: And it's does --

MR. BURDS: Who's recollection is it refreshing?

HEARING OFFICER FRANK: I'm the person who gets to make the decision on this and you may continue your objection and you may continue to object before the Board if you so choose, but, for purposes of

this hearing, if you wish to show that document to the witness, you need to let opposing counsel see what it is.

MR. LA ROSE: All right. Then I won't show it to him.

HEARING OFFICER FRANK: Okay.

MR. LA ROSE: Okay.

BY MR. LA ROSE:

Q. Mr. Rogers, you identified the people that were at the meeting. Where did the meeting take place?

A. The meeting took place in the Conference Room of the IEPA office on 9th Street in Springfield.

Q. Approximately how long did the meeting last?

A. My recollection is that the meeting lasted approximately an hour and a half.

Q. And what, if any, discussions were had with respect to the technical components of the application?

A. We had general discussions of the

technical issues related to groundwater, and groundwater investigation, groundwater modeling, groundwater monitoring of the facility. The engineering requirements for stability, slopes, leachate collection and the non-compliance issue.

Q. At some point in time, did the discussions turn away from the technical components of the application and turn towards the non-compliance issue?

A. Yes.

Q. How did that occur?

A. As we opened the discussion, we began with technical issues about the site, until that point where it became apparent that the non-compliance with the deadline requirement would be a hurdle that the Agency would not be able to get past and review the technical issues. And so that became the focus.

Q. Was the Agency saying, unless the non-compliance issue was resolved, we won't even review the application?

A. That's correct.

MR. BURDS: Objection. I ask the answer be

stricken. As to what Mr. Rogers can testify to, I have no problems as to what Mr. Rogers' position is or what he said at the meeting.

But what the Agency was saying and the general proposition or general opinion as to the Agency's position, I object to any answer in that regard by Mr. Rogers be stricken.

MR. LA ROSE: It's an admission. It's not hearsay at all.

MR. BURDS: I think it's asking for an opinion as to what the Agency's position was based on this meeting.

As far as the Agency's position, the Agency has laid out their position very plainly in the recommendation and at this hearing.

MR. LA ROSE: Maybe that's a proper point. I think I did ask it that way.

I should ask him what they said and not what their position was. I think that's a proper objection.

HEARING OFFICER FRANK: Yes.

BY MR. LA ROSE:

Q. What did the Agency say with respect to this, what we call a stumbling block or hurdle of the non-compliance issue?

A. Joyce Munie is a senior staff member and has a very clear understanding of the non-compliance issue and the Agency's limitations of reviewing the application with this type of non-compliance.

She's stated to us that the Agency would not be able to review an application with this type of a problem and that this must be resolved before the Agency can accept and entertain such an application.

Q. Were there then -- What, if any, discussions occurred, at that point, regarding proposed resolutions for the non-compliance matter?

A. There was a general consensus that the Agency was not the authority to provide relief for this type of non-compliance, and that the only course would have to be to appeal to the Pollution Control Board for a variance.

Q. Who made that suggestion?

A. I think it was Joyce.

Q. Joyce Munie on behalf of the IEPA?

A. Yes.

Q. Did you concur -- Strike that.

What, if anything, was your response to Joyce Munie's suggestion that you go to the Board for a variance?

A. Everyone at the meeting agreed that it's the Board's to make such a decision. We were all in general agreement, and Joyce was strongly in concurrence with the meeting's decision.

Q. What, if any, did Joyce Munie or the other IEPA representative at the meeting say they would do regarding the permit, if, in fact, you got a variance from the Board excusing the failure to file the Significant Modification Application on time?

A. Probably the only reference would be that it would have to be -- it would be acceptable to the Agency after the approval of the variance.

Q. We don't mean to imply here, do we, Mr. Rogers, that Joyce Munie agreed that you were entitled to a variance?



A. No.

Q. Is it your testimony, however, that she suggested and was in concurrence that that was a proper method of procedure to resolve this non-compliance issue?

A. That's correct.

Q. What did you do as a result of the --  
Strike that.

Did anything else occur at the meeting of substance other than what we already discussed?

A. No. We had a general -- The nature of the meeting was a general agenda to discuss the technical issues for the Sig. Mod. Application and the method to resolve non-compliance.

Q. As a result of this meeting, did you have an opinion as to whether proceeding with the variance in this case was an appropriate method to attempt to resolve the non-compliance issue?

A. Yes.

Q. And that opinion was what?

A. That appeared to be the only resolution to

the non-compliance issue.

Q. Okay. One of the criteria that the Petitioner needs to establish in this case is that there are no alternative means to achieve compliance.

Do you have an opinion as to whether or not there are alternative means to achieve compliance in this case?

A. At that meeting I believe we all concurred that there was no physical way to resolve this non-compliance issue. The only recourse would be to petition the Pollution Control Board for a variance deadline.

Q. After this meetings, did you report either to your client, Mr. Andrews, and/or my client, Community Landfill Corporation, the results of the meeting and the issue regarding the non-compliance and the suggested variance?

A. Immediately after the meeting, I drafted a memo to Mr. Andrews to brief him on the suggested course of action for this project.

Q. Was it, in fact, your recommendation that

the variance be pursued?

A. Yes.

Q. Since that date, sir, have you conducted any field work out at the site?

A. Yes.

Q. Can you tell us about that, please?

A. Starting on May 1st, we began a drilling program of the parcel A, east side of Ashley Road.

And during that May and June, we conducted 17 significant soil borings, ranging in depth from 20 to 92 feet below surface, to characterize the material below the site, to conduct pressure tests on material below the site, and to construct groundwater monitoring wells around the perimeter of the site for the purpose of collecting groundwater quality information.

Q. When you say "the site," what are you referring to?

A. At this point I'm referring to parcel A, on the left.

Q. On the east side of Ashley Road?

A. East side.

Q. Did, in the course of your hydro -- In the course of your site investigations with borings, did you come to some conclusions with respect to what underlies the site?

A. Yes.

Q. Those conclusions are what, sir?

A. I conducted a number of borings to a significant depth beneath the site and find that material is very consistent and uniform across the east to west and north to south across the site, and that material is a shale. It's a relatively tight, sedimentary deposit that has a fairly low hydraulic conductivity or transmittivity [sic], and it's relatively good material for underlying a landfill site.

Q. Based on your examination, how far down under the site did you find the shale?

A. We found shale from near surface to 92-1/2 feet.

Q. From near surface to 92-1/2 feet, did you find any drinking water sources under the site, based on your investigation?

A. No.

Q. Did you make any determinations, preliminary or otherwise, with respect to the rate of flow of groundwater through the 90 feet of shale?

A. We conducted Packard Tests which are pressure tests of specific zones within that -- within nearly all the borings.

And from the results of the pressure test, we can calculate what the hydraulic conductivity of the material is. And that, combined with the review of data from the file, we can tell that the groundwater flow and the shale would be in the range of one times ten to the minus four to one times ten to the minus seven centimeters per second.

Q. What does that mean to the lay person?

A. It's relatively slow.

Q. Is that a specific conductivity rate that favors the siting of a landfill or disfavors the siting of a landfill in your opinion?

A. I believe you can site a landfill over the tops of many different types of material.

Shale happens to be a type of

material that is a very firm, very solid, and develop tight. And so groundwater movement through it is very slow and it would limit the extent of any impact, hypothetically, a leaking landfill would cause.

Q. You have heard two public comments earlier. Maybe you didn't, but there were two public comments earlier with respect to "we, the citizens of the City of Morris, suspect but can't prove that there are bad things under the landfill." And I'm paraphrasing. Did you hear that?

A. Yes, I did.

Q. Based on the investigations that you conducted, could you say with any scientific certainty that those concerns are well taken or unfounded?

A. Well, I can say that I can tell the citizens that the material beneath the site is neither exotic or scary. It's just simply shale. And that shale is the type of material that has coal in it, and that's why this area has mined coal over the years.

But it's a very tight material and it's not the type of material you characterize as being a aquifer where people can draw drinking water from, and, hence, it would be very good material to have underneath the landfill.

Q. And at what intervals did you do visual observation of the soil borings down to 92 feet?

A. We continually sampled from surface to 90 feet and we collected all the samples, and right now they're in the laboratory undergoing analysis and they're in the sample library of the drilling company that conducted the drilling.

Q. Did you find anything of a -- Strike that.

With respect to those soil borings, do you have an opinion as to whether people of the City of Morris should be concerned about what's underneath that landfill?

A. Certainly people should be concerned about conditions around landfills.

In this case, I would suggest that the shale is a good material for underlying a landfill site. That groundwater monitoring wells

arranged around the perimeter of the site would be attacking any leaks. And the real technical issues would be reviewed by the staff of the Permit Section of the IEPA.

Q. Did you also conduct some groundwater monitoring quality test?

A. Yes.

Q. Can you tell us about what you did?

A. As part of our phase one of the investigation, we installed ten groundwater monitoring wells around the perimeter of the site and they're stainless steel and with screens, set in specific intervals to collect groundwater samples,

We've developed those wells after installation and sampled them.

Q. Did you receive results back from your initial sampling?

A. Yes, we have.

Q. Can you tell us about the general results of the quality of the groundwater underlying the site?

A. We sampled the wells for the background



list of constituents which was composed of all of the groundwater quality requirements, of the groundwater standards that are in Part 620 of the regulations.

We also sampled the wells for the federal list of constituents. And all of the requirements necessary for determining background water quality of the site.

We found only a few trace, very low level, and I'm talking usually 2 to 4 parts per billion levels of constituents that would have made it through from the landfill.

Q. Are these results what you propose to submit as part of the Significant Modification Application if the Board grants a variance in this case?

A. Yes.

Q. Did the groundwater quality analysis results -- Strike that.

Based on the groundwater quality analysis results that you received, should the citizenry of the City of Morris have any need for

concern?

A. I found nothing in any of the monitoring wells that would be a major concern to any of the citizens.

Q. One of the criteria, sir, that my client needs to establish in order to have the Board issue this variance, is that there will be no adverse environmental impact as a result of the issuance of the variance.

Have you formulated an opinion with respect to that criteria?

A. At present, we just have one round of groundwater quality.

Scientifically, I would prefer to see additional rounds of groundwater data before I draw an absolute conclusion.

But the preliminary results show that the site is, at least the parcel A area that I investigated, was not a major cause of pollution source.

Q. In your opinion, would there be, based on what you reviewed today, both geologically and

hydrogeologically, any adverse environmental impact if the Board grants the variance in this case?

A. No.

HEARING OFFICER FRANK: May we take a second?

(Whereupon, a short recess was had.)

BY MR. LA ROSE:

Q Sir, we heard under the cross-examination of Mr. Andrews, counsel for the Agency question, how Significant Modification Application can possibly be submitted within forty-five days of the grant of the variance, if twelve months of groundwater monitoring had not been completed within that time frame. Did you hear that testimony?

A. Yes, I did.

Q Is it your -- Strike that.

Are you the person that's going to be primarily responsible for completing and filing this Significant Modification Application, if, in fact, the Board grants the variance in this case?

A. Yes.

Q What is your intent with respect to the

submission of that document in terms of time frame, if the Board grants a variance in this case? When will you do it, in other words?

A. My intent is to get the application in by the deadline. Board variance deadline.

Q. By whatever deadline is set forth by the Board variance?

A. That's correct.

Q. If the Board does as we request it to do, which is to give us forty-five days from the date of the Board's decision to submit the Significant Modification Application, assuming that that decision happens at the August 18th Board meeting, how in the world are you going to submit this application if you haven't done twelve months of groundwater monitoring?

A. Well, the requirement is for four quarters of monitoring. And by the time we prepare the application to submit, we'll have two of the four quarters of data.

My plan is to supplement the data we have on groundwater with the groundwater quality

data from Environtech site with is immediately to the north and upper east of parcel B. And with that data, propose to submit to the Agency that data as preliminary data and to continue to accumulate background data during the review period.

Q. What will happen to the data that continues to accumulate after the date of the submission of the Significant Modification Application?

A. We will continue to collect the background water quality data from the monitoring wells, and we will update and recalculate the MAPC's and the other calculations that are required from that background data set.

So that by the time that the Agency has completed their review, they will have all four quarters of data, plus the data from the neighboring site.

Q. Just so I got this straight. You are going to submit two quarters with the application by the Board deadline?

A. Correct.

Q. Additional groundwater monitoring data from the adjacent site with the application?

A. Correct.

Q. And supplement your application with additional groundwater data and calculations as they become available during the Agency's review period?

A. That's correct.

Q. In your -- Strike that.

Is it your intent that -- Or would it be your recommendation to my client that we seek some sort of additional variance to allow this to occur?

A. No. I don't think we'll need to. I think it's a reasonable method to accumulate data for background water quality.

Q. Can you tell us a little bit about the background water quality or the water quality data that you have with respect to the adjacent Environtech site in terms of how you are going to use that in terms of the Significant Modification Application?

A. Well, I have the water quality data from

the adjacent site.

Q. And what is that?

A. They also have a perimeter groundwater monitoring detection system consisting of monitoring wells around their site. And they have recently completed their Significant Modification Application and it was approved recently.

And so, we plan, for the Agency files -- I have copies of their groundwater quality data and they are immediate up gradient of parcel A which would make that very critical groundwater quality data.

Q. So, do you have an opinion as to whether it would be sound scientific practice to use that data as part of your Significant Modification Application when that is combined with your plan to later supplement it with the actual third and fourth quarter results?

A. I think it's a sound practice and I think it's also included in the spirit of the regulations as included in the discussion documents during Docket R 88-7, that groundwater quality from an

adjacent landfill sites should be reviewed when preparing an application of this nature.

Q. Mr. Rogers, have you formulated an opinion as to whether the granting of the variance in this case is a sound environmental means to resolve the non-compliance issue with respect to the filing of the Significant Modification Application in this case?

A. Yes.

Q. And your opinion is what, sir?

A. My opinion is this is a good approach, a reasonable approach to resolve the non-compliance issue and to move forward with the Significant Modification.

MR. LA ROSE: Thank you. That's all I have.

HEARING OFFICER FRANK: I just have a question to clarify for the record. I think I understand, but I want to make sure.

When you are talking about the adjacent landfill, you are talking about the Environtech and not parcel B; is that correct?

THE WITNESS: Environtech is immediately north



of parcel A, across the railroad tracks.

HEARING OFFICER FRANK: And that's the groundwater monitoring results you were planning on using, is the Environtech?

THE WITNESS: To supplement the data that we are currently collecting at the parcel A.

THE WITNESS: Okay. I just wanted to make sure that was clear.

HEARING OFFICER FRANK: Do you have cross-examination?

MR. BURDS: Just a couple questions.

CROSS EXAMINATION

BY MR. BURDS

BY MR. BURDS:

Q. Mr. Rogers, you're then admitting that you cannot comply with the regulatory requirements for the Significant Modification Application of twelve months of groundwater monitoring or four-quarter requirement, by September 1995 or when the issue goes to the Board on August 18, 1995 and they grant the variance, I think you are admitting you cannot comply with those requirements; is that correct?

A. No. I'm saying that I have an alternative approach to collecting groundwater quality data to submit with the Sig. Mod. Application.

Q. As far as your alternative approach, I heard it.

I'm asking, can you comply with the regulatory requirements under the Act or under the Act and regulations, requiring you to do four quarters of groundwater monitoring in a Significant Modification Application, if they grant a variance by September 18, 1995, or if the Board grants this as of August 18, 1995?

A. I'm saying that the rules and regulations allow the use of groundwater quality data from the adjacent landfill site.

Q. That's not my question, Mr. Rogers.

My question is, can you comply with the regulatory requirements of four quarters worth of sampling by those dates?

MR. LA ROSE: I'm going to object to the question. It's been asked now, twice. I think his answer was fair.

I think it's improperly -- I think it's worded in a way that Mr. Rogers has given the ~~full~~ answer, which is within his understanding of the regulations. His alternative meets the regulations.

HEARING OFFICER FRANK: Mr. Rogers has not answered the question.

The question is yes or no, can you comply.

THE WITNESS: Yes.

BY MR. BURDS:

Q. How, Mr. Rogers?

A. I already answered that.

Q. And that is by your alternative basis, is that correct?

A. That's correct.

Q. Under the regulations, is there such an alternative basis as you've described?

A. Yes.

Q. Where do the regulations allow you to submit an alternative as to the four quarters? Show me the regulations that point those out?

A. Show me the regulations.

MR. LA ROSE: Don't argue with him.

THE WITNESS: I don't have a copy of the regulations in front of me

BY MR. BURDS:

Q. I'm asking you now, Mr. Roger, where in the regulations do you have any knowledge as to where your alternative is provided for?

Let the record reflect I'm handing a copy of the regulatory requirements 807 through 815 to Mr. Rogers.

MR. LA ROSE: Excuse me.

For the record, Mr. Rogers was reviewing something that was given to him by the Agency. What is that?

MR. BURDS: What I've identified, is what Mr. Rogers asked for. A copy of the regulations.

MR. LA ROSE: Does that include the background documents with respect to the regulations?

MR. BURDS: What I provided Mr. Rogers is a copy of the current regulations now in effect regarding these facilities and Significant

Modification Application requirements for the type of facility they are seeking a variance for.

MR. LA ROSE: And my question is, does what he handed him include background documents for those regulations?

HEARING OFFICER FRANK: What background documents?

MR. LA ROSE: There are background documents that relate to those regulations that may have relation to this issue.

MR. BURDS: If he's asking --

BOARD MEMBER MEYER: Not in the Illinois Pollution Control Board.

HEARING OFFICER FRANK: The Agency may have documents. But what we're dealing with, right here, is the Board regulations, and there are no background documents other than Board opinions which may have been promulgated.

THE WITNESS: That's not correct.

HEARING OFFICER FRANK: Yes, it is correct.

THE WITNESS: No. Background documents are Appendix A 1, A 2 and A 3 in Docket R 88-7 and they

are to be used in review of the nature of --

HEARING OFFICER FRANK: If you're asking if the appendices to the rules are a part of the regulations, they are not printed as part of the regulations.

THE WITNESS: That's correct.

HEARING OFFICER FRANK: There are no background documents explaining the regulations. There are appendices that are referred to in the rules.

THE WITNESS: Right. But in the Board opinion, on the day that they promulgated the 811 rules, they included three Appendices, documents, background documentation for R 88-7.

MR. LA ROSE: Are they in there?

THE WITNESS: I don't know.

MR. LA ROSE: Are the appendices in your copy of the regulations?

HEARING OFFICER FRANK: They won't be.

MR. BURDS: They won't be.

HEARING OFFICER FRANK: They won't be. The rules are the rules. You know, a Board Order which explains the rules, is something completely separate

than the promulgated rule.

We are getting really far afield at this point.

MR. DAVIS: Have we basically resolved the issue that he may not be able find what he's relying on for his application, within the regulation?

MR. LA ROSE: We have not.

MR. DAVIS: Within what we have given him, he's not going to find --

MR. LA ROSE: I will stipulate to this, that he will not be able to submit four quarters of background groundwater data within forty-five days of August 18th or by September 18, 1995

The question that he was asked is a completely different issue, whether in his opinion he can submit his alternative means and still comply with the regulations.

HEARING OFFICER FRANK: Now, the Board promulgates the rules and the Board is very aware of the rules. We don't need this witness to tell the Board what the rules are. We have a stipulation, let's get going.

MR. DAVIS: We have counsel's stipulation, we will agree to that.

MR. LA ROSE: Right. And I think that was never at issue.

MR. DAVIS: Not until it was raised.

MR. LA ROSE: Correct.

THE WITNESS: Here they are.

In Section 811.320, Groundwater Quality Standards, D, establishment of background concentrations, 4, says:

"If background concentrations cannot be determined on the site, then alternative background concentrations may be determined for accurate monitoring data from the aquifer of concern, which concludes but is not limited to, data from another landfill site that over lies the same aquifer."



BY MR. BURDS:

Q. Mr. Rogers, what it says is: "If groundwater cannot be determined at the site"; is that correct?

A. Yes.

Q. The reason you are unable to do that is based upon the fact that you do not have the time to submit the four quarters; is that correct?

A. Can you repeat that? I was reading this.

Q. The reason you are not able to comply or determine -- The reason you are not able to comply with the groundwater data or monitoring required under the four quarters is because you do not have the time to comply by September 18th or within forty-five days of August 18, 1995; is that correct?

A. Yes.

MR. DAVIS: Thank you.

HEARING OFFICER FRANK: We have a request, just so that you know.

The Board meeting is going to be moved from August 18th to August 24th. I don't think it changes the tenor of your question, because

what you mean is forty-five days from the granting of the variance.

MR. LA ROSE: That's right.

MR. BURDS: That's fine.

MR. LA ROSE: Are you done?

MR. BURDS: All done.

MR. LA ROSE: I have no further questions of this witness.

MR. DAVIS: All done. I'm sorry.

MR. LA ROSE: I have no further questions of this witness.

(The witness was excused.)

MR. LA ROSE: And may I have just a minute, please?

HEARING OFFICER FRANK: Certainly.

MR. LA ROSE: Just going to be one second.

(Whereupon, a discussion was held off the record.)

MR. LA ROSE: Petitioner's rest their case in chief at this point, Miss Hearing Officer.

HEARING OFFICER FRANK: Is the Agency prepared to call its first hearing or do you need a second?

MR. DAVIS: At this point in time, I would like to again, restate --

HEARING OFFICER FRANK: You are going to need to speak up.

MR. DAVIS: At this point in time I would again like to state that the Agency does not believe that if what the Petitioner has claimed is true, it does not have standing to request relief before the Board.

Counsel, and his documents and through every witness he has presented, has elicited the fact that they have claimed that they are neither the owner or operator of parcel A.

What they are requesting for is variance relief for the filing of Significant Modification for parcel A.

The regulations say that the owner or operator must file for Significant Modification. The correct party, under the Petitioner's argument is not before the Board.

The Agency has not had an opportunity to engage this party. The Board does not have

authority over it and we do not believe they have standing to request relief for parcel A if they have split the operation rights to this facility.

The Agency still believes the facility is 119.2 acres in size and the Petitioner does have standing to be here.

We will address most of this in your closing argument.

And we would like to have a running objection based on standing at this point in time.

HEARING OFFICER FRANK: Okay. That is something also that is a legal objection that you will have to address in your briefs.

MR. BURDS: Fine. We just wanted to make our ongoing objection in the trial. The City of Morris is not here. It is not a party to this proceeding. They are the proper party.

MR. LA ROSE: I would like to make a brief response to that since there may be no briefs in this case.

HEARING OFFICER FRANK: Just a moment. I think he has something to finish and then you will

certainly get to respond.

MR. BURDS: The appropriate party to ask for a variance on a Significant Modification Application by counsel's own admission and by every witness that testified, is that the owner/operator of parcel A, from 1974 on, has been the City of Morris.

The City of Morris is not before the Board asking for a variance.

If that is true, they have a Significant Modification Application filing requirement according to the law. Regulatory -- And they're the proper party before the Board.

HEARING OFFICER FRANK: What is your response?

MR. LA ROSE: My brief response is that if this is to be an issue to be considered by the Board, it should not be because the Respondent has clearly waived this issue.

We filed a petition. We filed responses. And at this hearing, this is the first time that this matter has been raised, the matter of standing with respect to the Petitioner's standing regarding the bringing of this variance or the

seeking of this variance for parcel A.

Regardless of the waiver, however, the Agency fails to understand that the very variance that is sought is to bring the site into compliance by filing the Significant Modification Application on behalf of Community Landfill, not only for it to become the operator of the site, but for the Agency to formally approve that operation.

Just because there is a lease between Community Landfill and the City of Morris, and just because there has been an amendment to that lease between Community Landfill and the City of Morris, my client is still not the operator of that site.

That's the reason why we've brought the variance.

The City of Morris is clearly, while not a party to this proceeding, has participated in every aspect.

The Mayor has filed affidavits. The Mayor has been here to testify. The City Council has been here to -- excuse me. The City Engineer has been here to testify. They have been subject to

cross-examination. And I think this is a specious objection.

We are trying, through this variance, to do the very thing that counsel says we are unable to do, which is have the Board approve and the IEPA sanction the transfer of parcel A operation to my client.

The testimony of Mr. Andrews has been that's going to be part of the Significant Modification Application.

That's what we're trying to do today.

HEARING OFFICER FRANK: Standing is a jurisdictional issue that may be brought at any time.

Again, I remind everyone that I am not the decisionmaker. The Board is. It is an ultimate issue in this case. I cannot rule on it.

If you wish to address this, besides oral argument, you know, in the transcript, you're going to have to file briefs. Because it is a legal issue for the Board to decide.

It is time for us to move on with

this hearing. If you want to bring things up in your closing arguments, you are certainly welcome to do so.

But we need to get this hearing completed and then you can file legal briefs addressing all of these issues.

MR. BURDS: Miss Frank, can we have three minutes to discuss whether -- We may not be calling anybody.

HEARING OFFICER FRANK: Certainty. Let's go off the record until 4:35

(Whereupon, a short recess was had.)

HEARING OFFICER FRANK: Would the Agency like to call its first witness?

MR. DAVIS: At this point in time, the Agency would first like to move that the Board admit as evidence all the attachments attached to our Agency recommendation filed in this action.

HEARING OFFICER FRANK: They are considered all a part of Agency Exhibit 1, which is the recommendation.



MR. BURDS: Right.

MR. DAVIS: We also have a document turned over to counsel that we'd like to admit, which is a letter requesting the transfer for Community Landfill Corporation for 1974-220P.

HEARING OFFICER FRANK: Got that memorized.

So far Exhibit 1 has been admitted, as long as there is no objection.

MR. LA ROSE: No. I don't have any objection to all this stuff.

(Said document, heretofore marked Respondent's Exhibit No. 1 For identification, was admitted into evidence, to wit, as follows:)

MR. LA ROSE: This whole thing?

MR. DAVIS: Yes. I believe this is the permit.

MR. LA ROSE: This is the permit, right?

MR. DAVIS: The permit will be entered.

I'm going to request that the Board also admit anything the Agency used in cross-examination.

HEARING OFFICER FRANK: So Exhibits 2 through 5 you are requesting?

Is there any objection?

MR. LA ROSE: No.

HEARING OFFICER FRANK: Okay.

MR. LA ROSE: What's this one here? Is this 6?

MR. DAVIS: 6. It was turned over to the Board during our production at discovery. Petitioner's discovery.

HEARING OFFICER FRANK: What's the front page? Is this it?

MR. DAVIS: This is it, right here.

HEARING OFFICER FRANK: Okay.

MR. BURDS: Ms. Frank, what's the date?

HEARING OFFICER FRANK: July 20th, '76.

Are you moving for Exhibit 6 which is dated July 20, '76 and July 20, 1982, at the top, to be admitted into evidence?

MR. DAVIS: Correct. That whole attachment.

HEARING OFFICER FRANK: Is there any objection?

MR. LA ROSE: No.

HEARING OFFICER FRANK: Okay.

MR. DAVIS: Also, the voluminous document that we admitted already.

HEARING OFFICER FRANK: Yes. Agency Exhibits 1 through 6 are in.

(Said document, heretofore marked Respondent's Exhibits Nos. 1 through 6 for identification, were admitted into evidence, to wit, as follows:)

HEARING OFFICER FRANK: The first one is the Agency's recommendation. The second is the application for the supplemental --

MR. LA ROSE: I'm sorry. Could you start again?

HEARING OFFICER FRANK: The Agency's recommendation.

The application for the supplemental permit dated 1989 is Agency Exhibit 2.

Respondent Exhibit 3 is a March 15th, 1993 letter from Mr. Eastep of the Agency.

Agency Exhibit 4 is an October 2nd or 21st, 1983 letter for from Mr. Schweickert.

Agency Exhibit 5 is a December 5th, '83 letter from the Agency.

And Exhibit 6 is what we just referred to which is the permit transfer which has two dates on it, and the attachments which are included.

MR. DAVIS: And all the attachments in the Agency's recommendations.

HEARING OFFICER FRANK: Right. It's all part

of one exhibit.

HEARING OFFICER FRANK: We also have the two public comments.

We have the Agency's appearance from Mr. Burds.

And we have Petitioner's Exhibit 1 through 11.

Are we missing anything?

Does the Agency wish to call its first witness?

MR. DAVIS: At this time the Agency does not wish to call a witness.

HEARING OFFICER FRANK: Okay.

MR. LA ROSE: Then I guess we don't have any rebuttal.

HEARING OFFICER FRANK: Do we want to go off the record for a moment before we do closing arguments to talk about briefing?

Go off the record.

(Whereupon, a discussion was held off the record.)

HEARING OFFICER FRANK: Because we have the

benefit of having the Board Member here, I have been allowed to give you guys a little bit more time than I would normally give.

I mean, this is the crew that has to write the case and they're saying that they're willing to do it in less time in order to meet some of the deadlines.

But, again, Petitioner holds the cards here. And, so, I'm not going to allow a briefing schedule which is unfair to the Agency, simply because you hold the waiver.

So I would like to hear from the Agency what their proposal is.

We've heard from the Petitioner what their proposal is.

Assuming we have a waiver until September 7th, what is the Agency's briefing proposal?

While the Agency is in discussion, just for the record, we did have a proposal from Petitioner that they will file simultaneous briefs on August 7th with the transcript being due on

August 2nd. And that discussion was had off the record.

MR. BURDS: We are just trying to get some figuring on dates.

HEARING OFFICER FRANK: The transcript is due August 1st then.

HEARING OFFICER FRANK: Why don't you go ahead and listen to the proposal?

MR. DAVIS: What we are thinking is, if the transcript comes on the 2nd for expedited considerations, we figure that the 2nd, 3rd and 4th will be a review for Petitioner and they can fax us their filing, and we can have it in hand by --

MR. LA ROSE: Are we on the record?

HEARING OFFICER FRANK: Yes.

MR. LA ROSE: When is the next Board meeting after September 2nd?

HEARING OFFICER FRANK: There is a scheduled Board meeting for September 21st. You would have to provide a waiver for the 22nd.

MR. LA ROSE: What's the Agency's proposal because I was out of the room.

HEARING OFFICER FRANK: We were in the process of finding that out.

MR. DAVIS: We were just going to basically do three day intervals from the 2nd. Wednesday the 2nd, Thursday the 3rd, Friday the 4th. And we have a reply within that time. And we would take the 7th, 8th and 9th to fax our response.

And then you would have only two days, the 10th and the 11th. And that's the only way we could get in.

MR. LA ROSE: If we wait until September 21st, does that assist the Board in the decision timing and it would also assist us in giving a little more schedule if we want to do the opening brief, response brief, reply brief.

Board Member Meyer, is that something that --

HEARING OFFICER FRANK: We had a discussion while you were out of the room.

I think what would be acceptable, is since the transcripts are due on the 1st, are you willing to waive until the 21st?



MR. LA ROSE: We just considered that and it would just depend on what the proposal is, then, with respect to the briefing schedule.

But, yes, we're definitely willing. If we can reach an agreeable briefing schedule, we're willing to waive until the 21st.

HEARING OFFICER FRANK: Because what we could basically do then is, basically, give everyone a week. So you would have the first brief due on the 8th. The second brief due on the 15th. And the third brief due on the 22nd.

MR. BURDS: Just so it's clear, Miss Frank. And I'm sure it is. I want to avoid any confusion as to filing briefs, that the briefs will be due and we get those briefs by that date.

HEARING OFFICER FRANK: The Hearing Officer Order will state, "on or by" and that means you have to have it to them, Federal Express, by 4:30 that day.

MR. LA ROSE: I think that's acceptable.

HEARING OFFICER FRANK: And if you guys agree to do it by fax or mail, that's fine. That's up to

you, but you must get it to the Board. You are across the street, so it's not a big problem.

MR. LA ROSE: Yes.

I think that's acceptable and I don't have any problem with that, if my clients have no problem.

HEARING OFFICER FRANK: For the record, then the briefing schedule will be that Petitioner's brief is due on August 8th. The Respondent's brief is due on August 15th. And any reply brief is due on the 22nd.

This is if there is a waiver received by the Board by August 1st.

MR. LA ROSE: Can we put the waiver on the record right now?

HEARING OFFICER FRANK: No. You have to file a written --

MR. LA ROSE: Does it have to be in writing?

HEARING OFFICER FRANK: And so, if there is not a waiver received by August 1st, 1995, you guys have waived briefs.

MR. LA ROSE: 9/22. We are going to waive

until 9/22?

HEARING OFFICER FRANK: 9/22, right.

MR. LA ROSE: '95.

MR. DAVIS: And that's by the end of the day on the 8th, by the end of the day on the 15th, and by the end of the day on the 22nd.

HEARING OFFICER FRANK: On or by.

MR. LA ROSE: And what provisions can I make to make sure that I give the transcript on the 1st?

HEARING OFFICER FRANK: You will need to speak with the court reporter.

MR. BURDS: The 1st or 2nd?

HEARING OFFICER FRANK: According to our court reporter, the 1st.

I'm supposed to mention that the Board does supply copies of the transcript at 75 cents a page.

In this case, it's probably not appropriate because the Board will not supply them in four days.

MR. LA ROSE: Right.

HEARING OFFICER FRANK: Is there anything else

that needs to go on the record?

MR. DAVIS: Closing.

HEARING OFFICER FRANK: Okay. Then, let's go ahead and hear closing arguments.

Thank you.

CLOSING ARGUMENTS

BY MR. LA ROSE

BY MR. LA ROSE: May it please the Board, Mark LaRose, again, on behalf of petitioner.

Now, that all the evidence is in, the testimony has been heard and the documents have been submitted, I just wanted to make a brief summation.

The petition, the evidence and the exhibits show that Community Landfill is entitled to the variance in this case.

The variance requirements as set forth in 35 IAC 104.121 have been satisfied.

Petition, the exhibits and the testimony taken as a whole have satisfied these criteria.

We are required by the variance petition requirements as set forth in the Board

regulations to set forth the statement of relief.

We've done that.

We've asked for a one year variance from the provisions of 814.104(c) to file a Significant Modification Application for the continuing operation of parcel A and the closure of parcel B.

We've asked the Board to grant the variance to September, 18, 1995, or forty-five days from the date of the variance decision, whichever is later. In this case I suspect it will be later.

The petition has set forth a request for relief. Testimony of Doug Andrews, Mayor Feeney Dick Schweickert, Kevin Rogers have set forth our request for relief and our exhibits, they support our request for relief.

We are required to present a description of the business activities that CLC engages in. The business that they propose to engage in is the operation of parcel A on the east side of Ashley Road for the primary disposition of construction and demolition material and some

specifically permitted IEPA special waste. That was set forth in the petition. The Mayor testified to that, Dick Schweickert testified to that, as did Doug Andrews.

We're required to set forth in the petition the quantity and types of material for which the variance is sought.

The petition sets forth, even though we had no testimony about that, that presently the landfill accepts approximately 590,000 cubic yards of waste per year.

That waste volume will be substantially reduced because we won't be talking about any solid waste, but merely construction and demolition material, and specifically permitted special waste.

That information was set forth, both in the petition and in the testimony you heard today.

We're required to talk about the quantity and types of material discharged from the site.

There are none.

Disposition of waste in the landfill and the collection of runoff in the retention ponds are the only potential discharges. Point source discharges, disposition of waste in the landfill, and the collection of the run off. Those were set forth in the petition. I don't believe that area is in dispute.

The factual statement justifying compliance.

Perhaps this is the most important area of this proceeding.

We heard that for a two-year and some-month period, negotiations were ongoing between my client and the City of Morris for an extension of this agreement. We heard that from the testimony of the City of Morris, Mayor, and City Engineer, that there were serious concerns on the part of the City that needed to be resolved in order for this matter to go forward. Those concerns included the types of waste to be disposed into the landfill, the royalties to be received. There was some

engineering concerns and that this was a topic of hot discussion, and that the negotiations proceeded, while diligently, much slower than expected, and were prolonged longer than expected.

My client made the decision to wait for the negotiations to be resolved, rather than file a separate permit application for B. And then a second and duplicatous application for A.

We did make that business decision and we are here to stand by that business decision. It's the same business decision made by two other landfills in the State of Illinois. And the same business decision that's been supported by the Agency in two other cases and the Board in two other cases, and that's the Atkinson Landfill case and Envirite case that I'm going to talk about in a little bit.

We need to demonstrate as part of the petition description of the proposed methods to achieve compliance.

In the past, there has really been no issues with respect to compliance. The Agency



hasn't submitted any evidence to refute statements in our petition that we are in substantial compliance with the site, with the exception of the failure to file the Significant Modification Application on a timely basis.

The present compliance or efforts to achieve compliance. We didn't just sit there and wait.

My client conducted arm's length prolonged negotiations. And as soon as those negotiations were over, they hired Andrews Engineering who, in turn, hired Kevin Rogers. He realized his problem. He went to the Agency. He discussed it with them. He sought their guidance. He received their guidance. Proceeded in this manner. We haven't just waited for a favorable result for the Board.

My client has expended thousands and hundreds of thousands of dollars going forward to do field work in the landfill in the hopes and wishes that the Board does the right thing here and grants the variance.

We will be able to file the Significant Modification Application within forty-five days of the Board's order.

There is going to be some difficulty with respect to the groundwater. But our expert says that he's confident that we can get around that.

We are required to show that there will be no adverse environmental impact.

We've heard from two professionals, one, a groundwater professional, the other, a Registered Professional Engineer, that their professional opinion is that the granting of this variance will result in no adverse environmental impact.

We need to discuss in the petition and show that we have made past efforts to achieve compliance.

We, again, operated the site with substantial compliance with the regulations and continue to do so. We have met with the IEPA, contrary to the assertion by the Agency and its

response, we have in no way inhibited the Agency's ability to inspect the site, control the site, review permits. And the Agency submitted no evidence whatsoever to support the condition or to support that contention, as set forth in their petition -- or response to the petition.

Alternative measures to achieve compliance also need to be addressed in the petition for variance in this proceeding.

It's a short answer. There simply are none.

The Agency's chief permit person, Joyce Munie, we heard Mr. Rogers' testify, agreed and strongly concurred that there was no other means to achieve compliance.

The Agency simply threw up its hand and said without the approval of the Board, we simply will refuse to review your application.

Measures taken during the variance period.

During the forty-five day period, we will prepare the application. We'll continue to

operate the site in substantial compliance with the regulations. And we'll continue to do the things necessary to submit a Significant Modification Application within the time period.

Probably, the biggest issue in this case is, the statement of unreasonable or arbitrary hardship that would occasion on my client in the event that this variance wasn't granted.

I didn't file an exception to the Hearing Officer's sustaining of the objection upon that point, even though I should have.

Clearly that is an ultimate issue in the case and I agree with that, but, clearly, that is an issue that our experts should be allowed to advise the Board on.

Mr. Andrews did file his affidavit supporting that position in the petition.

It is uncontroverted that if CLC had not waited for the negotiations to culminate and come to a fruition that they would have had to file first one application for parcel B to continue to operate it for a while and then close it. And then

after the negotiations were completed, a second application at the uncontroverted point of an additional \$100,000 in costs. An additional period of time to conduct the engineering work necessary. And the Agency has not, in any way, refuted our contention that we'd be saving the Agency time in reviewing those applications.

In other words, that there would be duplication of effort at the Agency as well.

We only need mention two cases to establish this point. The Atkinson Landfill case and the Envirite case. Those cases are just like this case.

And in both Atkinson and Envirite, the Agency agreed and the Board agreed that those petitioners would have suffered a reasonable hardship had they not been granted the variance from the very provision that my client seeks a variance from in this case.

Both in Envirite and Atkinson, they had existing landfill space. Both Envirite and Atkinson, both companies made an economic decision

to pursue applications under SB172 for expansions of their existing site.

Both in Atkinson and Envirite, they saw the variance to file a Significant Modification Application, not on one site and then the other, but to wait until the SB172 proceedings had been resolved.

Proceedings that were hotly contested and also the subject of negotiation, so that they could submit a single application that included both the existing site and the proposed expansion site.

The Agency -- excuse me. Both claimed as arbitrary and unreasonable hardship, the fact that without the variance, they would have had to file duplicative Significant Modification Applications. One, for the existing site and a second one for the expansion site. They claimed extra costs. They claimed extra time. They claimed extra administrative burden.

That's exactly what's happened in this case. The Agency agreed that that was arbitrary and unreasonable hardship. The Board

agreed that that was arbitrary and unreasonable hardship.

The Agency says and I expect that they're going to say, yes, but they did things quicker. Yes, but they did things different than what you did. Yes, but their compliance was not -- non-compliance wasn't as bad as yours.

But let me tell you in Atkinson, the landfill company was given a variance until January 18th, 1996 to file its Significant Modification Application.

Regardless of this statement about 27 months delay and years and years of non-compliance, the fact of the matter is we will file our Significant Modification Application, before Atkinson Landfill will. That was agreed to by the Agency. That was agreed to by the Board.

Envirite was given until September 18th, 1995. But for our waivers or whatever, we would have been in substantial compliance with that date, too. We are here. We are the same issue. We're the same company. We want to do the right

thing -- Not the same company. But we are in the same position as these companies. We want to do the right thing. And the standard for unreasonable hardship with respect to this provision of the regulations was set. The precedence was made and there was absolutely no distinction between those cases and this.

The last point that we need to establish, is consistency with federal law. There is no dispute about that. Federal law doesn't come into question in this case. The Agency doesn't dispute that.

All of the evidence establishes that the variance should be granted in this matter.

The Agency's position basically says two things: Number one, you've always been the operator of parcel A and, therefore, you could have submitted it at any time. Even though, out of the other side of their mouth they say, if you haven't, then you've got no standing in this case.

I'm not going to address the standing issue here. I'll do that in my brief. I think it



is an important one and I will address that in my brief. And I think the Agency is clearly wrong on the standing issue. I'll let that be, what it may.

But I think the documents in this case clearly establish that my client had no right to seek Significant Modification Application for parcel A until November 1994, when they were given that right by the City.

The Agency can say whatever they want about 1982. They can say whatever they want about 1983. They can't say anything about the permit condition number one, in the 1989.005 application and permit that says: "The City of Morris is the owner and operator of A and B, and the operator of A. Morris Community Landfill Corporation is the operator of B only."

That was a permit condition. It's never been revoked. It's never been changed. And while I will admit there has been some ongoing confusion about the ownership and operator status, I submit that on that date and time in 1995, the ownership and operation status was finally resolved.

The Agency finally understood it. Everybody was clear on it and it hasn't changed since then.

They also say that the 20 -- Now, we have a twenty-seven month delay since we were required -- the Agency called in the permit at a earlier date. They called in the permit on June 15, 1993, instead of the August 18, 1994 deadline.

We will still, in this case, I repeat, file a Significant Modification by the time that Envirite will and nearly five months prior to the time that Atkinson Landfill will. How untenable can it be.

In the meantime, we ran the landfill with substantial compliance. We worked diligently to resolve the negotiations. And we met with the Agency who suggested this very proceeding as a proper means to resolve this non-compliance issue. The delay is not only excusable, it's reasonable and it certainly is not untenable.

The Agency says this isn't unreasonable and arbitrary hardship because, A, it's self-imposed and, B, it's economic. Two words,

Atkinson and Envirite. Read them. I'm sure you are familiar with them. Those set the standards and in that case, not only did the Board do the right thing, but the Agency agreed with it. They were economic and they were both self-imposed in those cases.

They could have, in Atkinson and Envirite, spent the extra money to file the Sig. Mod. in parcel A. They made the economic decision to wait for the whole parcel to be sited, because it made good economic sense and because there was no adverse impact in filing this piece of paper a few months later than it was supposed to be filed.

The unreasonable hardship, which was agreed to by the Agency, is the same in this case.

It's no less self-imposed. It's no less economic. It's sufficient under the law.

Now, based on that and subject to our right to make a brief response to the Agency's comments and our right to file briefs, we respectfully request that the Board issue the variance in this case to allow my client to file a

Significant Modification Application to become the operator of parcel A and to continue its operation in accordance with the laws, rules and regulations of the State of Illinois.

Thank you.

HEARING OFFICER FRANK: Okay. Mr. Davis?

CLOSING ARGUMENT

BY MR. DAVIS

Mr. DAVIS: Thank you.

The Agency would like to thank the Board for scheduling this hearing initially. We would also like to thank the members of public for their patient attendance throughout the day.

What is before the Board for is basically a landfill that is 119 acres in size. Basically, there are two permits at issue: 197422DE which is a developmental permit, and 197422OP.

Over the years there have been several supplements to these two permits, but to that end, no one can show you an IEPA operating permit to what is referred to as parcel A. It doesn't exist.

Parcel A doesn't exist except for a description of a 55 acre piece of Community Landfill. Likewise, under Petitioner's argument, if you request to see its IEPA operating permit for what it refers to as parcel B, it cannot show you an IEPA operating permit for parcel B's 64 acres.

What can be found is 197422OP, a permit for the operation of the site which is 119 acres in size and a permit which Petitioner requested for in 1982.

If, however, Petitioner's argument is true that CLC does not hold an IEPA operating permit to operate parcel A, Petitioner has no standing to seek relief. Thus, only if CLC is a holder of 197422OP, an operating permit for 119 acre site, can CLC have standing to request variance relief for what it defines as parcels A and parcels B.

The Agency reviewed the petition for variance assuming standing.

Since CLC is the holder of 197422OP, the request for relief is based on an argument that the November 1994 agreement with the City of Morris

only gives CLC the right to apply for Significant Modification for what is referred to as parcel A. This claim is phrased best by Petitioner, itself, in its response on page 3, and I quote:

"Any suggestion by the Agency that CLC could apply for Significant Modification of permit for parcel A prior to November 1994 is wrong."

Again, there is no parcel A or parcel B.

Arguendo, if there were, and if CLC had standing, this argument is unpersuasive. Any one can file for a Significant Modification for what is referred to as parcel A if it files for the owner/operator.

Under Petitioner's argument, what stood in the way of the filing of the Significant Modification was the fact that CLC wanted to be the private contractual operator of this facility.

Again, you do not have to have a private contractual operation to file, nor an IEPA

permit to file for Significant Modification on behalf of an owner/operator. This becomes clear when viewed in light of the cases cited by Petitioner in its response.

Petitioner sites Atkinson and Envirite, PCB 94-259, and PCB 94-161, respectively. Initially, just because the Board has granted relief in the past does not preclude the Board from denying in this case.

But in any event, both Atkinson and Envirite were filed before the deadline within Section 814.104. To my knowledge, neither was a call inside either. This site was, for we requested Significant Modification by June 15, 1993.

The issue of facts and the review before the Agency were not similar either. In both Atkinson and Envirite, the question was "I can't file a Significant Modification for the entire site because I don't know the size of the project. I'm awaiting an SB172."

In this action, CLC files twenty-seven months late and the reason offered for

establishing an arbitrary and unreasonable hardship is not sufficient.

In this action, we know the size of the facility. It's 119.2 acres. CLC and the City of Morris just couldn't decide on who would operate the site and in what manner. The facts do not rise to an arbitrary and unreasonable result on the application of the Board's regulations to this site.

Thank you.

HEARING OFFICER FRANK: Is there a response?

MR. LA ROSE: No, Ma'am. Except that I would like to -- I am not going to be one-upped.

I would like to thank you all for your attendance and everybody for their patience and the court reporter for being patient with the acoustics in here, too, and Board Member Meyer, his assistant and for attending, too.

HEARING OFFICER FRANK: Before we leave, are there any members of the public who wish to make a statement on the record?

I am required by the Board's rule to give a statement of witness credibility.



I found all the witnesses in this case to be credible and will be issuing a written statement to that effect, along with the briefing schedule that was agreed to. Assuming that a waiver is put into the Board.

The exhibits also will be transmitted.

Is there anything else?

BOARD MEMBER MEYER: I would just like to say that it was commendable of counsel. It was an interesting legal battle and I think it was well done.

MR. LA ROSE: Thank you.

MR. BURDS: Thank you, sir.

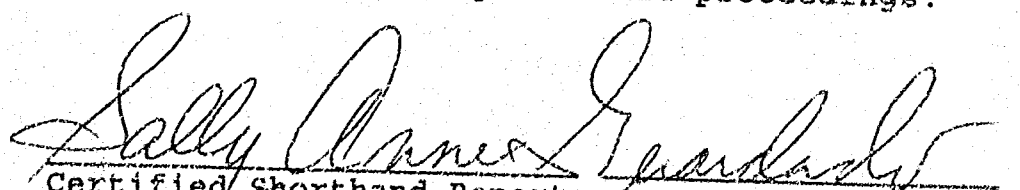
HEARING OFFICER FRANK: Then this hearing is adjourned.

Thank you very much.

(HEARING CLOSED.)

STATE OF ILLINOIS           )  
                                  )  
COUNTY OF C O O K        )    SS:

Sally A. Guardado hereby certifies that she is the Certified Shorthand Reporter who reported in shorthand the proceedings had in the above-entitled matter, and that the foregoing is a true and correct transcript of said proceedings.

  
Certified Shorthand Reporter  
Notary Public, County of Cook, State of Illinois

