

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Complainant,

6 vs.

No. PCB 96-209

7 MACON COUNTY LANDFILL CORPORATION,

8 Respondent.

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13 Proceedings held on April 18, 2000, at 9:30 a.m., at
the

14 Macon County Building, 253 East Wood Street, Room 507,
Decatur,

15 Illinois, before the Honorable John Knittle, Hearing
Officer.

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21 Reported by: Darlene M. Niemeyer, CSR, RPR
 CSR License No.: 084-003677

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A P P E A R A N C E S

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STATE OF ILLINOIS, OFFICE OF THE ATTORNEY
GENERAL

4

BY: Thomas Davis
Chief, Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
On behalf of the People of the State of
Illinois.

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

8

BY: Robert J. Scherschligt
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On behalf of the Illinois EPA.

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11

GIFFIN, WINNING, COHEN & BODEWES, P.C.

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BY: Beck S. McCray
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1 West Old State Capitol Plaza, Suite 600
Springfield, Illinois 62701
On behalf of Respondent.

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WITNESS

PAGE NUMBER

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VICKI FLAM

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E X H I B I T S

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(No exhibits were marked.)

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1 P R O C E E D I N G S

2 (April 18 2000; 9:30 a.m.)

3 HEARING OFFICER KNITTLE: On the record. Hello. My
name

4 is John Knittle. I am a Hearing Officer with the Illinois
5 Pollution Control Board. I am also the newly assigned

Hearing

6 Officer to this matter, which is Pollution Control Board
Number

7 96-209, People of the State of Illinois versus Macon
County

8 Landfill Corporation.

9 This matter was previously assigned to another
Hearing

10 Officer, Amy Muran Felton. She has left the Board for,
one would

11 hope, greener pastures and is no longer with the Board.
So I am

12 now going to be the Hearing Officer on this case for this

hearing

13 and any other post hearing relief or information that you
folks

14 need.

15 This is before us today on a stipulation, which was
filed

16 on February 7th of 2000. The Board caused publication in
the

17 Decatur Herald & Review of the stipulation on February 9th
of the

18 year 2000, and pursuant to Section 31 (c)(2) of the
Environmental

19 Protection Act we received four letters in response to
this legal

20 notice requesting that a hearing on this stipulation be
held.

21 (More citizens entered the hearing room.)

22 HEARING OFFICER KNITTLE: Have a seat. As a result
of

23 that, we have scheduled up a hearing and noticed it, and
that's

24 where we are at today. I am going to run this hearing --
we have

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1 not really covered anything too substantive yet, folks, so
that

2 is okay. My name is John Knittle -- this is for the
people who

3 have just walked in -- and I will be the Hearing Officer

in this

4 case. I am newly assigned. The previous Hearing Officer
left

5 the Board.

6 This hearing is going to be run in accordance with
Section

7 103.180 (b) of the Board's regulations, and I want to read
that

8 for the record. It states that when parties submit
stipulation,

9 all interested persons may testify with respect to the
nature of

10 the alleged violation and its impact on the environment
together

11 with their views on the proposed stipulation and
settlement. The

12 Hearing Officer is then charged with transmitting this to
the

13 Board, and that's what we are going to do today. So we
are going

14 to try to run any public comments you have along the lines
of

15 that standard.

16 I want initially to have the parties introduce
themselves,

17 starting with the complainant.

18 MR. DAVIS: Good morning. My name is Thomas Davis.
I am

19 with the Attorney General's Office. I am Chief of the

20 Environmental Bureau, and I represent the Illinois EPA.
With me

21 is an EPA attorney.

22 MR. SCHERSCHLIGT: My name is Bob Scherschligt. I
am a

23 lawyer with the Illinois Environmental Protection Agency.

24 HEARING OFFICER KNITTLE: The Respondent?

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1 MS. McCRAY: I am Becky McCray. I am an attorney at
the
2 law firm of Giffin, Winning, Cohen & Bodewes in
Springfield,
3 Illinois. I am the attorney for the Macon County Landfill
4 Corporation.

5 HEARING OFFICER KNITTLE: Thank you. I do note for
the
6 record that there are a number of citizens. In fact, I
can give
7 you the exact number. There are six citizens present here
today.
8 And you will have an opportunity, as I said, to provide
public
9 comment. First I am going to allow the parties to each
give an
10 opening statement and then maybe formally offer the
stipulation,
11 and then we can get to your public comment.

12 MS. FLAM: I do have one question.

13 HEARING OFFICER KNITTLE: Could you identify
yourself,
14 ma'am, for the record.

15 MS. FLAM: Yes. My name is Vicki Flam, F-L-A-M. I
am

I want 16 curious about the attorney for the Macon County Landfill.
17 a clarification on is this the landfill currently owned by
18 Superior Services or the past owners? I just want a
19 clarification on that.

20 HEARING OFFICER KNITTLE: Ms. McCray.

21 MS. McCRAY: I am the attorney for the current,
Superior
22 Services, but I also represented the former owners when
they
23 owned the landfill.

24 MS. FLAM: In this case?

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1 MS. McCRAY: In this case. I have been the attorney
2 consistently since this case was filed.

3 MS. FLAM: What I am wanting to know is who you are
4 representing, the past owners or the current owners?

5 MS. McCRAY: The current owners assumed
responsibility for
6 this lawsuit.

7 MS. FLAM: That's fine.

8 MS. McCRAY: But the subject of this hearing and
this
9 complaint is the Waste Control Landfill Facility, not the
current

10 Macon County Landfill facility.

11 HEARING OFFICER KNITTLE: Is that okay, ma'am?

12 MS. FLAM: I am still a little curious about the
complaint,

13 and it is my understanding off the documentation that I
received

14 that the Respondent was --

15 HEARING OFFICER KNITTLE: Well, let's hold up on
this.

16 Let's let them do their opening statements. Maybe that
will

17 clear it up for you.

18 MS. FLAM: Okay.

19 HEARING OFFICER KNITTLE: And then when you provide
your

20 public comment maybe we could see if Ms. McCray or Mr.
Davis

21 would be amenable to answering your questions.

22 MS. FLAM: Okay. Thank you.

23 HEARING OFFICER KNITTLE: Mr. Davis, do you want to
start

24 with your opening?

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1 MR. DAVIS: Thank you, Mr. Hearing Officer. We
would

2 formally offer the stipulation and proposal for settlement
for

public 3 entry by the Board. We hope the Board will consider the
what I 4 comments. And I hope in my opening remarks to focus on
5 think may be a couple of the issues here.
6 First of all, let me tell you that this case
involves an 7 old landfill that was known by a couple of different
names. We 8 call it the Waste Control Facility. It is located near
Moffet 9 Lane. It ceased operating back in 1986. It was operated
by 10 Gerald B. Reynolds, Earl Moore, and it was also owned, or
at 11 least Mr. Moore's wife, Edna, also had some ownership
interest in 12 the landfill.
13 This was a small, old style facility. Old style in
the 14 sense that when landfills first began to be permitted by
the 15 Illinois EPA, the amount of technical requirements were
not that 16 extensive. So it is an old style facility, nothing like
you 17 would see in operation today. It ceased operating, and
final 18 cover began to be provided, that is, the cap on top of the
19 landfill, between the months of April and July of 1986.
20 Now, for whatever reason, and I can go into that a
little 21 bit because I have some knowledge of what happened and
didn't 22 happen, final cover was never completed. So the old Waste

never 23 Control Landfill, and that's what I will call it, was
24 closed in the sense of complying with the final cover

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So even 1 regulations, closure, and then post-closure maintenance.
operating 2 though it closed in the common sense meaning of not
3 anymore, it ceased accepting waste, it was not closed in
the 4 technical sense.

operating, 5 Now, back in 1985, before the landfill ceased
EPA, 6 the State, the Attorney General's Office with the Illinois
Control 7 had sued the present owners and operators of the Waste
& Mrs. 8 Landfill. We had sued Mr. Reynolds, the company, and Mr.
9 Moore -- for your information, that was a Circuit Court
case here 10 in Decatur, and the case number is 85-CH-165 -- subsequent
to 11 operations ceasing at Waste Control, and also during this
time 12 the company itself was involuntarily dissolved by the
Secretary 13 of State.

14 At some point in time, in the late 1980s, I believe,
the
15 Respondent in this enforcement action, the Macon County
Landfill
16 Corporation, bought the old Waste Control Landfill. Now,
Macon
17 County Landfill Corporation never had a permit to operate
the old
18 Waste Control Landfill and, in fact, did not dispose of
any waste
19 at the Waste Control Landfill. During the late 1980s and
the
20 early 1990s the Illinois EPA's inspections, because the
landfill
21 was never closed, the EPA continued to inspect the
facility and,
22 in fact, the County Health Department also did some
inspections.
23 Those inspections showed that there was some problems.
24 If the landfill is not properly closed, capped and
covered

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1 and so forth, and maintained, then there is bound to be
some at
2 least potential for what we call leachate, that is
contaminated
3 water to come out on the surface. The cap itself or the
final
4 cover layer, if it is not maintained, then that allows
rainfall

at 5 and snow melt to go into the landfill, and it can cause or
the 6 least increase the potential for groundwater problems. So
the 7 landfill during a span of time was not, in our view, being
8 properly maintained. And that's why we sued the owner of
the 9 landfill, the Macon County Landfill Corporation.

10 We filed this enforcement action back in 1996, and
pursuant 11 to negotiations, which were fairly cooperative, the
company, 12 especially as reflected in this settlement document,
acknowledged 13 its responsibility for the landfill, corrected the
problems, 14 corrected the final cover, and has, in fact, certified the
final 15 cover. The landfill has also agreed, through this
settlement, to 16 do additional measures into the future. If you have
copies of 17 this, and I know that Mr. Knittle can make copies
available, 18 these compliance requirements --

19 HEARING OFFICER KNITTLE: Hold on a minute, Mr.
Davis. We 20 are getting motions from the citizens.

21 MR. DAVIS: Okay.

22 HEARING OFFICER KNITTLE: I will walk over here to
hand 23 these to them.

24 MR. DAVIS: I am not going to read this. You can do
that

nine of
are set
County
of the

1 for yourself. But I would direct your attention to page
2 this document. That's where the compliance requirements
3 forth. So the first point to make is that the Macon
4 Landfill Corporation is the owner of the Waste Control --
5 old Waste Control Facility, not the operator. Also, as I
6 mentioned, we had previously undertaken enforcement action
7 against the operators at the time that they were actually
8 conducting operations.

think
Landfill
a
Macon
the
that a
15

9 Another point that I would like to make is that I
10 that you all know, you folks all know that Macon County
11 Corporation and its successor corporation own and operate
12 landfill that is still in operation, which is called the
13 County Landfill. So we realized that there was at least
14 potential for some confusion. And we were not surprised
15 public hearing was requested.

16 And one of my jobs, if you will, or one of my
desires this

17 morning is to make sure that the confusion is resolved so
that
18 you folks can say what you need to say and have your
concerns
19 addressed. At some point in time later in the hearing
through
20 your comments I am sure you can pose questions that I
would be
21 able to respond to. But I want at the outset to tell you
that we
22 are aware that there might be some confusion.

23 This enforcement action pending before the Board in
Number
24 96-209 has nothing to do with the landfill that is still
in

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1 operation known as the Macon County Landfill. But having
said
2 that, I want to tell you that the Attorney General's
Office and
3 the Illinois EPA, back in 1994, had an enforcement action
against
4 Macon County Landfill Corporation for the Macon County
Landfill.
5 And those documents are probably available here at the
6 courthouse. The case number is 94-CH-129. In that
consent
7 order, which is what a court settlement agreement is
called,

8 various other compliance obligations were agreed to by
Macon
9 County Landfill Corporation for that facility.

10 So if you are interested in that aspect, then I
encourage
11 you either to contact me, and I have some additional cards
here,
12 and I will mail you a copy, or you can even get those from
the
13 courthouse here. They will probably have to go down in
the
14 basement or something and get the closed file.

15 So those are the two major points that I want to
make. I
Macon
16 want to tell you about the settlement that we have with
that's
17 County Landfill for the old Waste Control Facility, and
that we
18 why we are here today. And then I want to acknowledge
for the
19 have taken an enforcement action against that corporation
ahead
20 Macon County Landfill. So as I mentioned a minute ago, go
to talk,
21 and save your questions for when you folks have a chance
22 and without -- Bob, do you have anything to add?

23 MR. SCHERSCHLIGT: No thank you.

24 MR. DAVIS: Okay. Without further ado, then, I
would turn

1 it over to Ms. McCray.

2 HEARING OFFICER KNITTLE: Thank you, Mr. Davis. Ms.
3 McCray?

4 MS. McCRAY: I think Mr. Davis has appropriately
summarized
5 why we are here today. I would just like to clarify one
very
6 technical issue, that Macon County Landfill Corporation
has not
7 conceded that we are the owner of Waste Control, as that
term has
8 been defined by the Environmental Protection Act and the
9 regulations adopted thereunder. Macon County Landfill has
taken
10 responsibility under the settlement agreement for doing
what is
11 necessary to make sure that this landfill is closed the
way the
12 State wants it to be closed. And a lot of the work has
already
13 been completed. We are simply waiting for the Pollution
Control
14 Board to enter the order before we can submit forms to the
State.

15 I also want to emphasize that the purpose of our
hearing
16 today is to discuss the old Waste Control Facility. But,
17 certainly, if you have some other comments about the
current
18 facility after our hearing we would certainly be willing
to

19 listen to your comments, and I would pass those on to
Macon

20 County Landfill Corporation and Superior Services.

21 HEARING OFFICER KNITTLE: Is that it?

22 MS. McCRAY: Yes.

23 HEARING OFFICER KNITTLE: Thank you very much.
Okay. Now

24 we are entering the public comment portion of this
hearing. I am

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1 just going to ask if anyone has public comments. Just so
you

2 know, you are going to be asked to come up here and sit
next to

3 the court reporter and -- actually, this is a small enough
room.

4 Does anyone object if they just stay in their seats?

5 MR. DAVIS: No, not at all.

6 MS. McCRAY: No.

7 HEARING OFFICER KNITTLE: Okay. You will be able to
stay

8 in your seats, but you will have to be sworn in, and you
can

9 provide your public comment.

10 Let's go off the record real quick.

11 (Discussion off the record.)

12 HEARING OFFICER KNITTLE: We are back on the record.

Both

13 attorneys have represented that they would be amenable to
14 attempting to answering any questions you may have
regarding this
15 stipulation and settlement.

16 So that being said, does anyone wish to provide
public
17 comment in this matter?

18 MS. FLAM: Yes.

19 HEARING OFFICER KNITTLE: Ma'am, can you state your
name
20 once more for the record.

21 MS. FLAM: Vicki Flam, F-L-A-M.

22 HEARING OFFICER KNITTLE: Could you swear her in,
please.

23 (Whereupon the witness was sworn by the Notary
Public.)

24 HEARING OFFICER KNITTLE: All right. Ms. Flam, any

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1 comments you have.

2 MS. FLAM: Yes. I was never confused about, you
know,

3 which one was which. But I am a little confused in the
4 information that I received that states that -- and I am
looking

5 at a February 3rd, 2000, document, People versus Macon
County

6 Landfill Corporation. That was what I was responding to,
not
7 People versus Waste Control, or whatever you want to call
that
8 other group that owned it.

9 MR. DAVIS: We can call this the settlement
document.

10 MS. FLAM: Okay.

11 MR. DAVIS: Then that way we will all know what we
are
12 talking about.

13 MS FLAM: Okay.

14 MR. DAVIS: The stipulation and proposal for
settlement
15 agreement.

16 MS. FLAM: Okay. I guess this is going to be posed
to you
17 in the pose of a question.

18 MS. McCRAY: Okay.

19 MS. FLAM: If the landfill does not own this
landfill, why
20 are they taking responsibility financially for it?

21 MS. McCRAY: The Macon County Landfill Corporation
is
22 purchasing the site on contract for deed. That's their
23 connection to the facility.

24 MS. FLAM: What does that mean? They are taking
ownership,

1 correct?

2 MS. McCRAY: Not technically. Well, there is a
technical
3 definition of the term "owner" under the Environmental
Protection
4 Act, and that is what we are -- that's in dispute. There
has
5 been a motion to the Pollution Control Board, and it has
not been
6 decided. But we are certainly purchasing the facility
currently
7 on contract for deed, and Macon County Landfill
Corporation is
8 taking responsibility and doing what needs to be done out
there,
9 and they have for several years.

10 At one point they did attempt to get a permit from
the
11 State and the State refused to give them a permit. So
there are
12 a lot of things that they are not able to do out there,
because
13 they don't have a permit and because the State has never
14 recognized them as a permitted owner or a permitted
operator of
15 the facility.

16 MS. FLAM: It is my understanding that the last
waste that
17 Waste Control, Incorporated took out there was April of
1986; is
18 that correct?

19 MR. DAVIS: Yes, it is.

20 MS. FLAM: Okay. Macon County Landfill, it was
said,

21 purchased this property sometime prior to May 7th of 1986;
is

22 that also correct? I am getting my information out of
this other

23 document that I have here, dated March 29, 1996.

24 MR. DAVIS: Would that be the complaint?

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1 MS. FLAM: Yes.

2 MR. DAVIS: Okay. That was one of our allegations.
To

3 follow-up on what Ms. McCray has been taking about, the
contract

4 for deed, it is kind of like the analogy of buying a car.
Until

5 you pay the bank off you don't have title to it. So the

6 corporation is contesting our allegation, the State's
allegation

7 that they own the landfill. A settlement agreement -- one
of the

8 ways to look at this is a settlement agreement is, in some

9 respects, an agreement to disagree about certain things
but

10 agreeing on the outcome.

11 So as far as the outcome, the corporation is taking

12 responsibility for the landfill, the old Waste Control
Landfill.
13 They are going to do the things that the State EPA insists
be
14 done in order to complete the work that they have already
done,
15 that is, to finish the final cover and to make sure there
are not
16 any environmental threats.

17 So in a sense, we have agreed to disagree about
these other
18 issues, such as ownership. For all intents and purposes,
they
19 are the owner. We have charged them with being the owner.
For
20 all intents and purposes, they have disputed that, but
they have
21 agreed to be responsible. So I hope that addresses your
22 question.

23 MS. FLAM: Actually, I am still confused on we agree
to
24 disagree. They say they don't want to be the owners, but
yet you

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1 are saying they are the owners. I am still unclear if
they
2 definitely are.

3 MR. DAVIS: Well, you know, if we had a hearing and
we

4 resolved through adjudication all of the various
allegations,

5 then there would be a verdict, if you will, an outcome,
where

6 these contested issues were resolved. The parties might
still

7 disagree, but at least there would be an adjudication.
Here

8 there is no need for an adjudication, because they have
agreed to

9 do what we have been insisting be done. Now, the date,
May of

10 1986, that may have been when the contract for deed was
first

11 executed. But it is not until a contract for deed has
been

12 completed that you can say that there is 100 percent
transfer of

13 ownership.

14 MS. FLAM: Sure.

15 MR. DAVIS: Another way of looking at it is you may
-- as

16 with the car analogy, you may accrue equity in that or a
home

17 mortgage. I mean, you know, we all own our homes even
though we

18 may have mortgages. We own the equity in our homes. They
have

19 enough of an interest in this old landfill through the
contract

20 for deed to take responsibility. That's all we care.

21 MS. FLAM: Okay. You did say that the final cover
is now

22 complete; is that correct?

23 MS. McCRAY: Yes, I believe it has been done and has
been

24 certified. We are just waiting to submit the
certification until

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1 the Board order is entered.

2 MS. FLAM: Okay. One of the other stipulations was
in the
3 complaint about a lack of financial assurance and closure,
4 post-closure care. Who is responsible for that?

5 MR. DAVIS: Well, with this -- that was an
allegation in
6 the complaint. And with the completion of the final cover
and,
7 there again, I would point you to the settlement document.
8 Exhibit A is the cover certification. So even though that
is not
9 a document that is dated, it shows that at the date that
we filed
10 this it was completed. So the final cover is taken care
of.

11 The allegation on financial assurance we decided not
to
12 pursue. We are not insisting on any posting of the trust
fund.

13 This landfill, for all intents and purposes, is now closed
and
14 the compliance obligations agreed to in the settlement
document

15 will be the post-closure maintenance. And then in another
16 situation -- well, let's contrast it to the Macon County
17 Landfill. It is still in operation. The financial
assurance
18 required for that facility is an important part of its
regulation
19 by the State. And I would imagine that there are many
hundreds
20 of thousands if not millions of dollars posted as
financial
21 assurance for that facility. It is no where near closure.
In
22 contrast, Waste Control has been non-operational for 14
years and
23 is now completely closed. So, in our view, there is no
real need
24 for financial assurance.

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1 MS. McCRAY: If I may add something, something that
may not
2 be clear from the documents and was very important for our
3 negotiations, the United States EPA went out to the Waste
Control
4 Facility and did a very in-depth study. They sampled
ground
5 water and they sampled soil. And the United States EPA
concluded
6 that there is no threat of an environmental problem at the

7 landfill. That was submitted to the State. After they
reviewed
8 it, the State had a few other things that the U.S. EPA
didn't do
9 that the IEPA technical people wanted done.
10 Macon County Landfill Corporation went out and did
those
11 things and submitted another report to the State to
supplement
12 the United States EPA's report, and the technical experts
at the
13 Illinois EPA have concluded from all of the data submitted
to
14 them, as have the technical people from the Macon County
Landfill
15 Corporation, that there is no environmental threat from
the Waste
16 Control Landfill Facility. And because of those studies,
I think
17 that that is a factor which led to the conclusion that
financial
18 assurances won't be necessary.

19 MS. FLAM: Isn't that a stipulation in the
Environmental
20 Protection Act, that any landfill has to have this
financial
21 closure money set aside?

22 MR. DAVIS: Under Section 21.1, I believe the
language is
23 that any person conducting operations must have financial
24 assurance. And the operations here are long over. The
closure

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1 has been completed. In the typical scenario and, again,
let's
2 use Macon County Landfill. When they do cease operating
and they
3 do go through closure and complete closure, at that time
they can
4 start getting back from let's say the trust fund the
monies that
5 they have posted for financial assurance. And then at the
end of
6 the post-closure period, which for a landfill that is
currently
7 in operation is 30 years, they will get back the rest of
the
8 money.

9 So at some point there is no need for financial
assurance.
10 That point comes a lot sooner with a very old landfill.
Back in
11 the late 1980s -- back in the mid 1980s when this facility
12 closed, the post-closure period was only five years. So
to
13 follow-up on what Ms. McCray has said, the type of
monitoring and
14 investigation that would routinely be done during a post-
closure
15 period has already been done, and probably a lot better
job of it
16 because the State and the Federal EPA undertook some of
the

17 investigation. Usually with an operational facility it is
the

18 permitted operator that does the monitoring.

19 So here we are very confident that there is no
problem that

20 we should know about that we don't know about. We have
done a

21 thorough investigation. The company has done everything
that we

22 have insisted upon. And for the next, it looks like
twelve and a

23 half months, they will have additional work to do, and
then at

24 that point in time the post-closure is finished.

21

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1 MS. FLAM: This money that is supposed to be paid or
2 whatever, this -- I don't know what you want to call it.

This

3 payment --

4 MR. DAVIS: Of penalty.

5 MS. FLAM: -- of settlement or penalty or whatever,
this is

6 money you are saying that is going into a trust fund for
that

7 landfill?

8 MR. DAVIS: No, this is a penalty, and this would go
to the

9 Environmental Protection Trust Fund. This is a State

fund, as

10 opposed to a financial assurance trust fund, which would
be a
11 facility specific fund, an account in a bank. The routine
12 operation with financial assurance may have a trust fund
which is
13 just a trust account in a bank. They can put deposits
into it,
14 but they can't make withdrawals. Only with State approval
could
15 money be paid out of that trust fund.

16 But our trust fund, the State trust fund, is where
17 penalties go. So the \$37,500.00 is a penalty. There
again, it
18 was agreed to. Instead of going through the hearing
process, the
19 company agreed to pay a penalty. They probably weren't
happy
20 about it, but we insisted on a penalty, as well as these
other --

21 MS. FLAM: Excuse me.

22 HEARING OFFICER KNITTLE: Note for the record that a
23 citizen's cell phone is making strange noises.

24 MS. FLAM: Pardon me.

22

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1 HEARING OFFICER KNITTLE: Okay. Let's take a five
minute

2 recess. The citizen whose cell phone went off is the
citizen who

3 is currently asking questions, Ms. Flam.

4 (Whereupon a short recess was taken.)

5 HEARING OFFICER KNITTLE: We are back on the record
after a

6 brief interruption.

7 Ms. Flam, did you have any further comments or any
8 comments?

9 MS. FLAM: Well, yes, I do. I am concerned about
this

10 uncontrolled leachate that I saw that was leaking into
Stevens

11 Creek. Is that now -- that has all been taken care of and
that

12 is no longer a threat; is that correct?

13 MR. DAVIS: The last inspection that showed that
problem

14 was back in 1992.

15 MS. FLAM: Okay.

16 MR. DAVIS: And it has long since been controlled.
The

17 best way to control leachate is to make sure you have a --
that

18 the integrity of the final cover is complete, that is, it
is the

19 right thickness, it is the right compaction and it is
maintained,

20 of course. They have done that. We are satisfied that
they have

21 done that. The certification of those efforts is attached
to the

22 settlement document. The EPA will have the ability to
stop in

23 and check it out.

24 MS. McCRAY: Just to clarify, what is attached as
Exhibit A

23

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1 is what we agreed that we would need to do to get
certification

2 of cover. Our engineers have gone out and done that, and
there

3 is a form certification that will be submitted to the
State in

4 accordance with one of the provisions of the settlement
agreement

5 within a certain number of days after the Pollution
Control Board

6 accepts this, if it is accepted.

7 MR. DAVIS: The company will be responsible until
April

8 30th of next year to continue to maintain the final cover.

9 MS. FLAM: Who is responsible beyond that?

10 MR. DAVIS: Well, from a regulatory standpoint, once
a

11 facility has completed post-closure, there is no
regulatory

12 responsibility. You are not required to. That's the way
things

13 are with landfills. This is an old landfill that would
have only

14 had a five year post-closure period under the Pollution

Control

15 Board regulations. A landfill that is currently operating
will

16 have at least 30 years.

17 MS. FLAM: So there won't be any groundwater
monitoring or

18 anything like that?

19 MR. DAVIS: That's right.

20 MS. FLAM: And then no one will be going out to
check to

21 see if there is anymore leachate flows, none of that is
going to

22 happen?

23 MR. DAVIS: That's right.

24 MS. FLAM: What happens if it does start leaking? I
mean,

24

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1 let's just say what happens if it starts leaking?

2 MR. DAVIS: We have experience with other landfills
3 throughout the State. Many, many landfills closed in the
1980s

4 to avoid the increase in regulations. Then in 1992 many
5 additional landfills closed to avoid that additional
increase in

6 the regulations. Those landfills are being periodically
7 inspected, and the ones that were properly closed and that
have

8 the final cover certified, those are not showing problems.

9 Now, the State is responsible in the sense that we
are

10 dealing with a lot of other landfills that were not
properly

11 closed that have no responsible party. The operator is
dead.

12 The owner is dead. In the corporate sense, the entities
may have

13 gone out of business, and there is no one left. So the
State has

14 undertaken -- in fact, this year there is a list of 30 or
so

15 landfills that are being taken care of through State
money.

16 So we have experience on both extremes. I am not
trying to

17 tell you that problems will not occur, but I am trying to
tell

18 you that if proper measures are completed that problems
are

19 unlikely. And that if proper measures over here are not
do

20 completed, then it is likely that the State will have to
do

21 something. That's what we do. We sue to make sure that
the

22 responsible parties take responsibility. And where there
are no

23 responsible parties, then the State ends up, and sometimes
it is

24 through the monies from the Environmental Protection Trust
Fund

1 and sometimes it is through other State funds. We have to
go out

2 and hire contractors and get the work done.

3 There is landfills in this county, Waste Hauling
Landfill,

4 a much bigger facility than Waste Control, and it was
poorly

5 operated for a number of years. We got an injunction from
the

6 Circuit Court back in May of 1992. We shut it down. We
took an

7 enforcement action with the Pollution Control Board,
because even

8 after it was shut down, the owners and operators were not
doing

9 what they should have been doing to make sure that it was
closed.

10 We sued them. So that is not unusual for us.

11 Where problems arise and there is somebody to sue,
we will

12 sue them. Where there is no one to sue then the State
will have

13 to spend State funds, taxpayer money, and take care of the
14 problems.

15 MS. McCRAY: And to follow up, here no waste has
been taken

16 for over 14 years, and after 12 or 13 years of no final
cover, no

17 proper cover, the U.S. EPA went out, we went out, and we
did the

18 study and found that it was not leaking. There is not a
19 groundwater problem and everything is okay, even without
the
20 extra precautions that we are now agreeing to undertake
and have
21 undertaken.

22 So we really believe that we are not -- that there
should
23 not be a problem in the future with this landfill, and
that the
24 investigation and the work that has already been done, the
focus

26

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1 of that is to ensure that there is no problem there. It
has been
2 over 14 years.

3 MS. FLAM: Okay. I don't know if I totally trust in
that,

4 but I guess I have no other choice. You have to
understand that

5 I have read numerous things recently pertaining to the
Macon

6 County Landfill, not necessarily just this facility, that
lead me

7 to believe that what is supposed to be done and what
actually

8 gets done are two different things, okay. I have many
reasons to

9 believe that.

10 So I don't exactly trust what I hear, and I am not
saying I
11 don't believe you folks. I am not saying that. I want to
12 believe you. I am hoping that you people are doing your
job.
13 But that is not what I am seeing evidence of around my
home.
14 That's why I am here today.

15 MS. McCRAY: Well, here we have the stipulation that
we
16 have agreed to that the tasks that we have agreed to
undertake,
17 and we have Mr. Davis and Mr. Scherschligt and many other
people
18 at the EPA making sure that we do do the things that are
required
19 to --

20 MS. FLAM: Thank you.

21 MS. McCRAY: -- get the Waste Control Facility
properly
22 closed.

23 MS. FLAM: Thank you.

24 HEARING OFFICER KNITTLE: Any other comments, Ms.
Flam?

27

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1 MS. FLAM: No.

2 HEARING OFFICER KNITTLE: Thank you very much for

your

3 comments. Does anybody else have any public comments that
they

4 wish to provide? Nobody?

5 Seeing none, I am going to move forward at this
point and

6 ask the parties if they have any closing statements that
they

7 wish to make.

8 MR. DAVIS: Thank you, Mr. Hearing Officer. I would
just

9 like to try to assure people as best I can that the
Attorney

10 General's Office, especially under the leadership of
Attorney

11 General Jim Ryan, is very concerned about environmental

12 enforcement. The previous Attorneys General were
concerned about

13 environmental enforcement, as well. Many of the actions
that I

14 have mentioned were undertaken prior to Mr. Ryan. It is
not

15 something new for us. As long as there is landfills there
is

16 going to be landfills that need to be sued.

17 There are many other environmental problems in the
State

18 and in Macon County. We have taken enforcement actions
against

19 various local industries. I won't name them by name, but
--

20 well, sure I will. There is ADM, A.E. Staley, Wagner
Castings.

21 That's just to name a few. The City of Decatur itself is
subject

22 to some enforcement action for excessive nitrates in the
water
23 supply.

24 There is a variety of environmental problems that
the

28

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1 State, the Illinois EPA, and the Attorney General's Office
are
2 addressing. Some of them get resolved very cooperatively,
where
3 the so-called violator is eager and willing to do the
right
4 thing, especially with the City of Decatur with its
drinking
5 water. In other cases you have to chase people down, and
as I
6 mentioned a few minutes ago, sometimes there is no one
left. You
7 can't find anyone to take responsibility.

8 So the State has a variety of ways that we try to
protect
9 the environment. First and foremost it is the permitting,
the
10 regulatory system, that is the bread and butter of the
Illinois
11 EPA, the inspections and so forth. Where problems don't
get
12 sorted out through the administrative process, then the
Attorney

13 General's Office and the Pollution Control Board or the
local
14 courts get involved. And then there is the next large
category,
15 where the problems can't be resolved, either
administratively or
16 through enforcement, because there is no one left, and
then the
17 State increasingly, through the ability, you know, with a
good
18 economy, to make State funds available.
19 With this latest endeavor we have a list of 30 or 31
20 landfills that are, in our view, orphan landfills, and
nobody is
21 taking responsibility for them and they have problems, so
the
22 State is going to be spending millions of dollars to
correct
23 those problems. So I just want to assure you as best I
can that
24 the State takes environmental protection and environmental

29

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1 enforcement very seriously, and there is different ways
that we
2 go about doing that huge job.
3 In this specific case, we filed an enforcement
action
4 claiming that Macon County Landfill Corporation, for all

intents

5 and purposes, is the owner of this other landfill, and
they
6 agreed to take responsibility. So we are pleased in this
7 outcome, because we think it is a win-win situation. We
don't
8 have to -- anytime you litigate something there are risks;
you
9 are either going to win or lose. Here we have agreed to
disagree
10 on some minor points. We have agreed on the more
important
11 points, that is, what needs to be done will be done, if it
hasn't
12 already.

13 So I want to thank you folks for coming. You will
14 probably, as the Hearing Officer will indicate, have a
chance to
15 send in written comments. But I hope if you had concerns
that we
16 have tried to address those and that you feel better about
this
17 particular landfill and this particular case.

18 HEARING OFFICER KNITTLE: Thank you, Mr. Davis. Ms.
19 McCray, any closing comments?

20 MS. McCRAY: I have nothing further.

21 HEARING OFFICER KNITTLE: Let's go off the record
for just
22 one second.

23 (Discussion off the record.)

24 HEARING OFFICER KNITTLE: All right. We are back on
the

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1 record.

2 Pursuant to an off-the-record discussion we have
agreed

3 that all public comments -- we are going to allow a post
hearing

4 public comment period. That means if you have any public
5 comments that you want to make in written form, you can
send

6 those into the Board. That will be two weeks from today
that we

7 will accept them up to. I should have done this while we
were

8 off the record, but now I have to figure out when that
date is.

9 It is May 2nd. All written comments will be due on
May

10 2nd, 2000, at the Board's offices in Chicago. You have to
file

11 those with the Clerk of the Board. We do welcome you to
file

12 those public comments. We are interested in hearing what
you

13 have to say.

14 Mr. Davis stole my thunder a little bit. I did want
to

15 thank you all for coming and attending and showing
interest in

16 this situation. And the Board does welcome all public
comments.

17 I am going to take Ms. Flam's public comments back, and
the Board

18 is going to consider those and any other comments we
receive at

19 the end of the written public comment period.

20 Also, formally Mr. Davis offered the stipulation. I
will

21 accept the stipulation and take it back to the Board along
with

22 public comments. I want to note for the record that both
parties

23 agreed to waive post hearing briefs.

24 Is that correct, Mr. Davis?

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1 MR. DAVIS: Yes.

2 HEARING OFFICER KNITTLE: And Ms. McCray?

3 MS. McCRAY: Yes.

4 HEARING OFFICER KNITTLE: So that is all we have
here

5 today. Thank you very much for your attendance.

6 (Whereupon, the proceedings concluded at
approximately

7 10:15 a.m.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E

4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for

the

6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY

that

7 the foregoing 32 pages comprise a true, complete and
correct
8 transcript of the proceedings held on the 18th of April
A.D.,
9 2000, at the Macon County Building, 253 East Wood, Room
507,
10 Decatur, Illinois, in the case of People of the State of
Illinois
11 v. Macon County Landfill Corporation, in proceedings held
before
12 the Honorable John Knittle, Hearing Officer, and recorded
in
13 machine shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and
affixed
15 my Notarial Seal this 19th day of April A.D., 2000.

16
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23
24

Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter
CSR License No. 084-003677
My Commission Expires: 03-02-2003