

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 COMMUNITY LANDFILL COMPANY)
and CITY OF MORRIS,)
3)
 Petitioners,)
4)
 vs) No. PCB 01-170
5) (Permit Appeal, Land)
ILLINOIS ENVIRONMENTAL)
6 PROTECTION AGENCY,)
)
7 Respondent.)

VOLUME I

8

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10 Record of Proceedings taken before

11 Hearing Officer Bradley P. Halloran, taken

12 stenographically before GEANNA M. IAQUINTA, CSR,

13 a notary public within and for the County of

14 Cook and State of Illinois, at 1320 Union

15 Street, Morris, Illinois, on the 15th day of

16 October, A.D., 2001, scheduled to commence at

17 9:00 o'clock a.m., commencing at 9:10 a.m.

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1 A P P E A R A N C E S :

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3 ILLINOIS POLLUTION CONTROL BOARD
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 BY: MR. BRADLEY P. HALLORAN, Hearing Officer

5

6 LaROSE & BOSCO, LTD.,
7 734 North Wells Street
8 Chicago, Illinois 60610
9 (312) 642-4414
10 BY: MR. MARK A. LaROSE

11 Appeared on behalf of the Petitioners,

10

11 HINSHAW & CULBERTSON,
12 100 Park Avenue
13 P.O. Box 1389
14 Rockford, Illinois 61105
15 (815) 963-8488
16 BY: MR. CHARLES F. HELSTEN

14

- AND -

15 LAW OFFICES OF SCOTT M. BELT & ASSOCIATES, P.C.,
16 105 1/2 West Washington Street
17 Morris, Illinois 60450
18 (815) 941-4675
19 BY: MR. SCOTT M. BELT

20 Appeared on behalf of the City of Morris,

19

20 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
21 1021 North Grand Avenue East
22 Springfield, Illinois 62794
23 (217) 782-5544
24 BY: MR. JOHN J. KIM

22

Appeared on behalf of the Respondent.

23

ALSO PRESENT:

24

Mr. R. Michael McDermott, P.E.

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1 HEARING OFFICER HALLORAN: Good morning.

2 My name is Bradley Halloran. I'm a hearing
3 officer with the Illinois Pollution Control
4 Board, and I'm also assigned to this matter.
5 The matter is PCB 01-170, Community Landfill
6 Company and the City of Morris versus the
7 Illinois Environmental Protection Agency.

8 Today is Monday, October 15th. It's
9 approximately 9:10 a.m. The hearing is being
10 held pursuant to Section 105.214 of the Board's
11 procedural rules regarding permit appeals and in
12 accordance with Section 101, Subpart F.

13 The hearing was scheduled pursuant
14 to and in accordance with the Illinois
15 Environmental Protection Act and the Board's
16 Procedural rules and provisions. I want to note
17 that I will not be deciding the case. It's the
18 Board that will be the ultimate decision-maker.
19 They will review the transcript of this
20 proceeding and the remainder of the record and
21 render a decision in this matter.

22 My job is to ensure an orderly

23 hearing and present a clear and complete record
24 so that the Board will have all the necessary

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1 information to make their decision.

2 I do want to note -- are there
3 members of the public here?

4 AUDIENCE MEMBER: (Raising hand.)

5 HEARING OFFICER HALLORAN: Sir, do you
6 intend to give testimony?

7 AUDIENCE MEMBER: No.

8 HEARING OFFICER HALLORAN: If there were
9 members of the public here intending to give
10 testimony, they may do so under oath subject to
11 cross-examination. Also, they are allowed to
12 receive public comment at the end of the
13 hearing, and I'll set the briefing schedule
14 then.

15 I guess with that said, Mr. LaRose,
16 would you like to introduce yourself?

17 MR. LaROSE: Yes, Mr. Halloran. Thank
18 you very much. My name is Mark LaRose. I
19 represent the petitioner, Community Landfill
20 Company. With me here today as a representative
21 of the company is Mr. Michael McDermott,

22 environmental engineer, and also two very fine
23 lawyers on behalf of the City of Morris, who
24 I'll let introduce themselves.

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1 HEARING OFFICER HALLORAN: Thank you.

2 Mr. Kim.

3 MR. KIM: Yes. My name is John Kim. I'm
4 assistant counsel and special assistant attorney
5 general representing the respondent, the
6 Illinois Environmental Protection Agency.

7 HEARING OFFICER HALLORAN: Thank you. We
8 do have some preliminary motions to take care
9 of. On October 10th, the petitioner filed a
10 motion for hearing on the issues of fact. The
11 respondent filed a motion -- I believe it was a
12 motion to suppress, and on October 11th, the
13 respondent filed a response to the respondent's
14 motion to suppress.

15 As agreed off the record, I will be
16 reserving my ruling until and if offers of proof
17 come forward.

18 Mr. LaRose, would you like to make
19 an opening statement, please?

20 MR. LaROSE: Yes, sir. Before I do, I

21 just was remiss in not letting these gentlemen
22 introduce themselves.

23 HEARING OFFICER HALLORAN: I'm sorry.

24 MR. LaROSE: That's all right.

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1 HEARING OFFICER HALLORAN: Mr. Helsten.

2 MR. HELSTEN: Mr. Halloran, Chuck Helsten
3 on behalf of the City of Morris. I believe my
4 appearance is on file. One housekeeping matter,
5 we would like to, if you please, enter the
6 additional appearance of Mr. Scott Belt. He's
7 city attorney for the City of Morris.

8 HEARING OFFICER HALLORAN: That is done.

9 MR. BELT: Good morning, your Honor.
10 Scott Belt on behalf of the City. If I may just
11 ask leave to file my appearance on behalf of the
12 City of MORris. I would also note to the Court
13 that Mr. Helsten will be the spokesperson, if
14 you will, on behalf of the City. So he'll be
15 responsible for making opening remarks and
16 cross-examination, et cetera.

17 HEARING OFFICER HALLORAN: Thank you,
18 sir. So noted.

19 MR. LaROSE: Thank you, Mr. Halloran.

20 I'm going to step up here where I have a
21 microphone.

22 HEARING OFFICER HALLORAN: Terrific.

23 Thank you very much, sir.

24 MR. LaROSE: You're welcome. Good

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1 morning. My name, again, Mark LaRose. I
2 represent the petitioner, Community Landfill
3 Company, in this matter. I'd like to just spend
4 a minute or two to let you know what this
5 hearing is about.

6 This is what we call a permit appeal
7 hearing. It involves a permit application that
8 was filed in November of -- November of 2000.
9 It was denied by the Agency on the 11th of May
10 2001. It relates to a series of permits that
11 were issued to the landfill back in August of
12 2000, on August the 4th, 2000, almost four years
13 to the day after the original application was
14 filed.

15 The Agency issued to the city of
16 Morris as the owner and Community Landfill as
17 the operator a permit to operate parcel A and to
18 close parcel B in accordance with the new and

19 much more stringent landfill regulations.

20 Pursuant to that permit, Community
21 Landfill was required to protect the environment
22 with such things as leachate control devices,
23 leachate storage devices, increased groundwater
24 monitoring, gas collection, and monitoring

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1 increased volumes of the final cover, direct
2 sewer connections to the Morris POTW.

3 It also contemplated and approved a
4 very important concept. Since parcel A of the
5 landfill was a historical waste disposal area,
6 Community Landfill, as part of the August
7 permits, was required to build a separation
8 layer consisting of three feet of compacted clay
9 over the old waste to put new waste on top of
10 the separation layer and to install various
11 leachate control devices.

12 It is that portion of the permit
13 that is at issue in this case. The large
14 permit, the permits that were issued in August
15 of 2000, require that each time a pollution
16 control device or a new area of the landfill is
17 constructed for Community Landfill's engineers

18 to submit to the Agency an acceptance report, a
19 report proving that we've built the particular
20 component in the right way in accordance with
21 the permit, in accordance with the plans, in
22 accordance with the specifications.

23 We built the separation layer for
24 the new 1.5 acre cell of the landfill. It was

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1 constructed over the old waste. We sought both
2 approval of the construction of that separation
3 layer and approval to deposit waste on that.
4 Everyone that will testify at this hearing
5 admits that the cell was properly built and that
6 it will be protective of the environment.

7 The permit, however, was denied on
8 May, 11th, 2001, for two reasons totally
9 unrelated to the protection of the environment
10 or the construction of the separation layer
11 itself. It was denied because Robert Pruim,
12 president of Community Landfill, was convicted
13 of a felony in 1993. It was also denied because
14 the company that issued the financial assurance
15 bonds in the amount of approximately \$17 million
16 had been delisted from the U.S. Treasury's list

17 of approved insurers.

18 We believe the evidence in this case
19 will show that those two reasons for denial were
20 just an excuse for the Agency to close down the
21 site, something they've been trying to do,
22 unsuccessfully, for years.

23 Let's talk for a second about the
24 conviction. The evidence in this case will show

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1 that it had absolutely nothing to do with
2 Community Landfill. It had nothing to do with
3 Community Landfill Company. It had nothing to
4 do with the environment. It had nothing to do
5 with waste disposal or waste management in the
6 State of Illinois.

7 The evidence will show that the
8 operator of the site on a day-to-day basis is a
9 gentleman named James Pelnarsh and that he is
10 the person that the City and the government and
11 the Pollution Control Board and that everyone
12 else looked to to be responsible for the
13 operation of the site.

14 The evidence will show that the
15 Agency didn't follow its own procedures with

16 respect to the implementation of Section 39(i)
17 of the Environmental Protection Act, that
18 section that requires it to conduct an
19 evaluation of the permit history and felony
20 conviction history of a prospective
21 owner/operator.

22 The evidence will show that the
23 Agency treated CLC different than it treated
24 others with respect to its 39(i) investigation

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1 and that it treated CLC different with respect
2 to 39(i) from one permit application to the
3 next.

4 The evidence will also show and we
5 will argue to the Board that the Agency should
6 be barred from raising this issue because we
7 will prove that at least seven high-ranking
8 employees from the Agency's legal division,
9 permitting division, field operation section,
10 all of which have responsibility over monitoring
11 the activities of CLC, knew of this conviction
12 from at least 1995 and did absolutely nothing.

13 They allowed us to spend hundreds of
14 thousands of dollars in site improvement and

15 would incur over \$17 million financial liability
16 and then they pull the rug out from under us.
17 With respect to the financial assurance, we will
18 show through the Agency's own past expert, a
19 fellow named John Taylor, who worked for the
20 Agency for over 15 years, has been used by the
21 Agency as a financial assurance expert, we will
22 show through his testimony that the final
23 assurance in place pursuant to the Frontier
24 bonds, indeed, did comply with the regulations.

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1 We will also show that the Agency
2 issued the August 4th, 2000, permits with the
3 exact same financial assurance in place even
4 though they knew at that time that Frontier had
5 already been delisted from the Department of
6 Treasury.

7 In short, the evidence will show
8 that this action by the Agency was nothing more
9 than using permits as enforcement, which they at
10 least admit on the face is illegal. We think
11 that once all the evidence is in, we hope that
12 the Board would agree with us that this was
13 nothing more than an illegal attempt and a

14 pretense to close the site down. Thank you.

15 HEARING OFFICER HALLORAN: Thank you, Mr.

16 LaRose. Mr. Kim.

17 MR. KIM: My name is John Kim. I'm an

18 attorney with the Illinois EPA. I will be

19 representing the Agency in this permit appeal.

20 As Mr. LaRose stated, this case has been brought

21 by Community Landfill Company and the City of

22 Morris challenging a permit decision issued by

23 the Illinois Environmental Protection Agency.

24 This appeal is very focused in

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1 nature and very specific in nature. It turns

2 simply on two issues; one, whether or not

3 Section 39(i) was appropriately applied; and,

4 two, whether or not the financial assurance that

5 was provided by Community Landfill and the City

6 of Morris met all applicable requirements.

7 The burden, as the Pollution Control

8 Board knows, is on the petitioners in this case

9 to demonstrate that the issuance of this permit

10 would not have caused a violation of the Act as

11 to the financial assurance or that the usage of

12 39(i) was improper in this case.

13 We believe that the facts and, more
14 specifically, the law will bear out that, in
15 fact, the Illinois Environmental Protection
16 Agency's decision was correct. This is a case
17 where certainly there will be some discussion of
18 different facts, and certainly there will be an
19 attempt to portray certain extraneous facts as
20 being much more than they are when I think in
21 the end the Board will note and will base its
22 decision on more specifically questions of law
23 as opposed to questions of fact, and I think in
24 this case the questions of law really will bear

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1 out what decision should be reached, and we
2 think that if the Board does take a close look
3 at the law, they will come to the conclusion
4 that our decision was correct.

5 This is not a matter of the Illinois
6 Environmental Protection Agency attempting to
7 bypass enforcements, you know, the bringing of a
8 civil action against the petitioners by use of a
9 permit decision. In fact, there is a pending
10 enforcement matter that's been before the
11 Illinois Pollution Control Board for some years

12 now.

13 That matter has nothing to do with
14 this case. Enforcement matters have nothing to
15 do with this case. This case is nothing more or
16 less than a question of whether or not the
17 permit application and the permit applicant
18 properly presented a package to the Illinois
19 Environmental Protection Agency that would allow
20 us to issue the permits out.

21 The facts and the law will
22 demonstrate that they did not, and we hope and
23 anticipate that the Board will find as such and
24 will affirm to the Illinois Environmental

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1 Protection Agency's decision in this matter.

2 As a side note, I would like to,
3 again, remind the hearing officer that today we
4 will file a motion to supplement the
5 administrative record. I have provided copies
6 of that to the hearing officer and to opposing
7 counsel. We are also filing via U.S. mail
8 delivery originals and the appropriate number of
9 copies to the Board today.

10 The contents of the motion to

11 supplement the record consists of a copy of an
12 order issued by the Board, the final order, and
13 a rulemaking. It consists of -- it also
14 includes a, quote, unquote, Wells letter that
15 was issued by the Illinois Environmental
16 Protection Agency to Community Landfill and to
17 the City of Morris along with certain certified
18 mail receipts related to that letter. Thank
19 you.

20 HEARING OFFICER HALLORAN: Thank you, Mr. Kim.
21 Mr. LaRose, call your first witness.

22 MR. LaROSE: Yes, sir. We call as our
23 first witness Mr. Paul Purseglove, please.

24 HEARING OFFICER HALLORAN: Raise your

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1 right hand and the court reporter will swear you
2 in, sir.

3 (Witness sworn.)

4 WHEREUPON:

5 P A U L P U R S E G L O V E,
6 called as a witness herein, having been first
7 duly sworn, deposeth and saith as follows:

8 C R O S S - E X A M I N A T I O N

9 by Mr. LaRose

10 Q. Good morning.

11 A. Good morning.

12 Q. State your name for the record, please.

13 A. My name is Paul Purseglove.

14 Q. You've worked for the Agency for some 21
15 years; isn't that right, sir?

16 A. That's correct.

17 Q. You were previously the assistant manager
18 of the field operation section for several
19 years, correct?

20 A. That is correct.

21 Q. Then for a five or six-year period in the
22 '90s, you were the manager of the Used Tire
23 Program, right?

24 A. That's correct.

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1 Q. In 1988 or 1989, you became the statewide
2 manager of the field operations section, right?

3 A. You said '89?

4 Q. I'm sorry. '98 or '99?

5 A. That's correct.

6 Q. We were unable at your deposition to pin
7 those dates down.

8 Did you look further to --

9 A. No, I didn't.

10 Q. So it's somewhere between '98
11 or '99 that you became the head of the whole
12 statewide FOS?

13 A. For the Bureau of Land, I became the
14 section manager of field operations.

15 Q. Okay. What regions do you oversee?

16 A. State -- I have statewide
17 responsibilities, all seven bureau of land
18 regional offices.

19 Q. And what are the seven bureau of land
20 regional offices?

21 A. There's an office in Rockford, Des
22 Plaines, Champaign, Peoria, Springfield,
23 Collinsville, and Marion.

24 Q. And does each of those regions have a

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1 regional manager?

2 A. Yes. There is a regional manager in each
3 office responsible for the day-to-day activity.

4 Q. Who is the regional manager in the Des
5 Plaines office?

6 A. Cliff Gould.

7 Q. And is that the office that would be

8 responsible for Morris Community Landfill?

9 A. It is.

10 Q. What does FOS do?

11 A. The field operations section is often

12 referred to as the eyes and the ears of the

13 Agency. One of the responsibilities is to

14 conduct inspections at solid waste management

15 facilities around the state.

16 Q. Okay. So you conduct inspections.

17 Do you also sometimes conduct

18 investigations?

19 A. Yes.

20 Q. Okay. You conduct also what's called

21 preoperational inspections; isn't that correct?

22 A. We do.

23 Q. Do you know what that is?

24 A. Yes, I do.

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1 Q. Could you explain that to the Board,

2 please?

3 A. Well, when a permit application is made,

4 many times the permit section will ask one of

5 the field inspectors to visit a site and confirm

6 that construction activities have been occurring

7 according to the permit.

8 Q. Okay. And then they report back to the
9 permit section, correct?

10 A. They would.

11 Q. You also -- the field operation section
12 has some involvement in the enforcement area,
13 right?

14 A. We do.

15 Q. Okay. You are the ones that are the eyes
16 and ears that find alleged violations, correct?

17 A. That's correct.

18 Q. You would also, at least on the first
19 level, try and resolve those violations with the
20 permittee that's allegedly violating the
21 regulations, correct?

22 A. That is correct.

23 Q. If you're not able to resolve it, you
24 bring it to legal so that they can institute

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1 formal enforcement proceedings, right?

2 A. That is correct.

3 Q. And if formal enforcement proceedings are
4 instituted, you would often be the witnesses for
5 the government, if you will, to prove the

6 charges?

7 A. That's correct.

8 Q. Okay. Are you familiar with Section
9 39(i) of the Act?

10 A. Somewhat.

11 Q. Sir, yes or no, isn't it your duty and
12 responsibility to be familiar with Section 39(i)
13 of the Act?

14 Yes or no, sir?

15 A. Yes.

16 Q. And is it not also the duty and
17 responsibility of every FOS personnel to be
18 aware of the provisions of Section 39(i) of the
19 Act, yes or no?

20 MR. KIM: I'm going to object. I think
21 the witness needs an opportunity to try and
22 answer the question. It may not necessarily be
23 a yes or no answer.

24 MR. LaROSE: Mr. Halloran, it's

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1 cross-examination. I asked him a yes or no
2 question. I'm entitled to a yes or no answer.

3 HEARING OFFICER HALLORAN: I agree. It
4 is -- the witness is an adverse witness, sir.

5 BY MR. LaROSE:

6 Q. Sir, do you need me to ask the question,
7 again?

8 A. Please.

9 Q. Okay. Isn't it the duty and
10 responsibility of all FOS personnel to be aware
11 of Section 39(i) and to understand what it
12 means?

13 A. Yes, it is.

14 Q. Okay. Sir, in the event that an FOS
15 personnel believes that an owner or operator is
16 in violation of Section 39(i), isn't it also his
17 or her duty to bring that to the attention of
18 management and legal, yes or no?

19 MR. KIM: Objection. There is no
20 violation of 39(i) that's imposed upon an
21 outside party. It is not a prohibitory
22 provision. It's impossible to have a violation
23 of Section 39(i) as a matter of law. That's
24 just the truth. There's nothing prohibitory in

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1 Section 39(i).

2 MR. LaROSE: Mr. Halloran, I'm setting
3 the table. He did answer this question yes or

4 no at his deposition exactly that same way with
5 that exact same characterization. He should
6 either be able to answer it now or I should be
7 able to impeach him. So I'd like to have a yes
8 or no answer for that question.

9 HEARING OFFICER HALLORAN: Objection
10 overruled. The witness can answer.

11 BY MR. LaROSE:

12 Q. Do you need me to ask the question again?

13 A. Please.

14 Q. Sir, in the event that an FOS employee
15 believes that an owner or operator is in
16 violation of Section 39(i) of the Act, is it his
17 or her duty to bring that to the attention of
18 management or legal, yes or no?

19 A. Yes.

20 Q. 39(i) evaluations or investigations are
21 the responsibility of permits or FOS, aren't
22 they?

23 A. They could be the responsibility of any
24 Agency employee.

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1 Q. Okay. Including FOS?

2 A. Yes.

3 Q. Okay. FOS should bring -- an FOS
4 employee should bring information about a
5 criminal conviction to legal or management no
6 matter what source that information came from,
7 correct?

8 A. That would be very -- that would be very
9 much the way I would like for it to work. If
10 one of my employees knew about a past criminal
11 conviction that they would be familiar enough
12 with the Environmental Protection Act and
13 Section 39(i) and raise that issue.

14 Q. To legal or management, right?

15 A. Correct.

16 Q. And that doesn't matter whether it comes
17 from a newspaper reporter, right?

18 A. Correct.

19 Q. Or sworn testimony, right?

20 A. Correct.

21 Q. Policeman?

22 A. Yes.

23 Q. Rumor, sir?

24 A. By any means.

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1 Q. Any source.

2 If in 1995 anyone from FOS had
3 information that the owner or operator of
4 Community Landfill had been indicted for a
5 felony, should they have brought that to the
6 attention of legal or management, yes or no?

7 A. Yes.

8 Q. If Warren Weritz had this information as
9 early as 1993, should he have brought it to the
10 attention of legal or management, yes or no?

11 A. Yes.

12 Q. What about a manager of the section,
13 Cliff Gould, if he knew about this conviction as
14 long ago as 1993, should he have brought it to
15 the attention of legal or management, yes or no?

16 A. If any employee would have known about a
17 conviction, he should have brought that to
18 management's attention.

19 Q. Including Cliff Gould, the manager of the
20 section, correct?

21 A. Yes.

22 Q. Mark Retzlaff, he should have brought it
23 to their attention, too, if he knew?

24 A. If he had that knowledge.

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1 Q. You have been directly involved with the
2 enforcement proceedings against CLC, have you
3 not, sir?

4 A. I would say it would be an overstatement
5 to say that I've been directly involved.

6 Q. Let's explore that for a second.

7 You believed that we were operating
8 without a permit, did you not?

9 A. I did.

10 Q. And you gave the order for FOS personnel
11 to go to my client's facility, come onto our
12 property, and log the license plates of my
13 client's customers so that you could have a
14 record of our illegal operation, correct?

15 A. I asked my staff to observe the comings
16 and goings at your client's facility.

17 Q. Okay. Did you or did you not ask them to
18 log the license plates of my client's customers?

19 A. I did.

20 Q. And you did that because you believed we
21 were operating illegally?

22 MR. KIM: Objection. I don't understand
23 the relevance of this question -- of any of
24 these questions having to do -- as far as this

1 permit appeal goes.

2 HEARING OFFICER HALLORAN: Mr. LaRose.

3 MR. KIM: I don't know when those actions
4 took place, in what context this was, or, again,
5 how this has to do with this.

6 MR. LaROSE: Sir, this gentleman was
7 directly -- and we'll get to that in a minute.
8 He was directly involved in the 39(i)
9 investigation in this case. His involvement
10 also in the enforcement proceedings go to show
11 his bias and prejudice against my client with
12 respect to his involvement with the 39(i)
13 investigation. That's the relevance.

14 HEARING OFFICER HALLORAN: Are you going
15 to satisfy Mr. Kim's concern about the context
16 and when and where this allegedly took place?

17 MR. LaROSE: Sure.

18 BY MR. LaROSE:

19 Q. Sir, do you remember giving that
20 particular order to log the license plates?

21 A. I do.

22 Q. And this was after you became the manager
23 of the statewide section?

24 A. It was.

1 Q. And it was after -- right after September
2 1999 when the big SIGMOD permit was denied,
3 correct?

4 A. That's correct.

5 Q. Are you aware that the Board ruled
6 against the Agency on the issue of whether we
7 were operating without a permit or not?

8 A. Only since you've told me.

9 Q. Okay. So you never read the Board's
10 April 5th order in the enforcement case that
11 ruled in our favor?

12 A. I did not.

13 Q. And you haven't since I told you, have
14 you?

15 A. No.

16 Q. Did anyone tell Mark Retzlaff that you
17 lost that issue, that we weren't plating without
18 a permit?

19 A. I'm not aware of it.

20 Q. Do you know that he's still writing in
21 his inspection reports that we're operating
22 without a permit and should be closed down?

23 A. I haven't read any of his inspection
24 reports recently.

1 Q. In the 20 or so years that my clients
2 operated the site, are you aware of a single
3 violation that was ever adjudicated against CLC
4 by a Court or the Board?

5 A. I am not.

6 Q. Do you think CLC should be closed down?

7 A. I think that CLC should operate in
8 compliance with the state law and Board
9 regulations.

10 Q. Okay. And do you think that they're not
11 doing that?

12 A. Yes, I do.

13 Q. Okay. Do you think that they're not
14 doing that even though no Board or Court has
15 adjudicated any violations against them?

16 A. There are concerns that we have over
17 height and there have been concerns raised over
18 the status of their financial assurance.

19 Q. Okay. Do you believe in the legal
20 principle innocent until proven guilty?

21 A. I do.

22 Q. We haven't been proven guilty of
23 anything, have we, sir?

24 A. No.

1 Q. The noncompliance issues, however, or
2 alleged noncompliance issues have been on your
3 radar screen with respect to Community Landfill,
4 right?

5 A. They have been.

6 Q. Okay. They've also been on the radar
7 screen, to your knowledge, of Joyce Munie, the
8 head of the permit section, have they not, sir?

9 A. Yes.

10 Q. And the radar screen of Blake Harris?

11 A. I don't know what -- I don't know about
12 Blake.

13 Q. Being on the radar screen to you means
14 that they have attention focused on them, right?

15 A. They do.

16 Q. Prior to the spring of 2000, you were
17 aware of the pending enforcement case against
18 CLC, correct?

19 A. Yes.

20 Q. And prior to the spring of 2000, you were
21 aware of recent allegations and notices of
22 violation with respect to the Frontier bonding,
23 correct?

24 A. I don't remember.

1 Q. What about the notice of intent to file
2 legal action, were you aware of that prior to
3 the spring of 2001?

4 A. Not specifically.

5 Q. Sir, do you remember your deposition in
6 this case?

7 A. Most of it.

8 Q. Okay. Do you remember that you gave your
9 deposition a couple weeks ago?

10 A. I do.

11 Q. You were under oath at that time?

12 A. Yes.

13 Q. And you've reviewed that deposition?

14 A. I have.

15 Q. And you made one little clerical change
16 and besides that everything else in there was
17 correct?

18 A. It seemed to be fine.

19 Q. Sir --

20 MR. LaROSE: Mr. Kim, page 50.

21 BY MR. LaROSE:

22 Q. Do you remember at your deposition being
23 asked these questions and giving these answers?

24 Question, were you aware prior to

1 the spring of this year that there were recent
2 allegations that resulted in notices of
3 violation regarding the financial assurance,
4 specifically that Frontier Insurance Company was
5 the bonding agent for Community Landfill?

6 Answer, yes.

7 Question, and it even went a little
8 farther than that. The Agency issued a notice
9 of intent to initiate legal action after the
10 violation notice. Were you aware of that?

11 Answer, yes. Question, and this all happened
12 before your meeting with Joyce and Nechvatal,
13 and Christine in which Joyce announced that a
14 reporter had called her about the conviction of
15 Bob Pruiim? Answer, yes.

16 Sir, do you remember being asked
17 those questions and giving those answers under
18 oath at your deposition?

19 A. I do.

20 Q. Let's talk a little bit about the Section
21 39(i) procedures.

22 Were you consulted in the 39(i)
23 investigation or evaluation in this case?

24 A. In the spring of this year --

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1 Q. Sir, it's really just a yes or no
2 question.

3 Were you consulted --

4 A. I can't answer your question yes or no.

5 HEARING OFFICER HALLORAN: He may
6 explain, if he can.

7 BY THE WITNESS:

8 A. In the spring of this year, Joyce Munie
9 asked me to sit in on a meeting with herself and
10 Mike Nechvatal and John Kim --

11 BY MR. LaROSE:

12 Q. Okay. So --

13 A. -- and talk about --

14 MR. LaROSE: Objection. This is not
15 responsive. He can talk about this on redirect
16 examination. It's not responsive. I asked that
17 his comments be stricken and that he be limited
18 to answering the question.

19 MR. KIM: Again, I'm going to -- this is
20 exactly the objection. He was trying to answer
21 the question.

22 HEARING OFFICER HALLORAN: I'm going to

23 let Mr. Purseglove answer your question or
24 attempt to.

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1 BY THE WITNESS:

2 A. During that meeting, Joyce Munie brought
3 to -- brought up the information that she had
4 recently received about Mr. Pruim having a
5 previous felony conviction. The discussion was
6 --

7 MR. LaROSE: Objection, narrative. I
8 think this is just letting him tell his story.
9 I asked a simple question, and I didn't ask for
10 all of this information.

11 HEARING OFFICER HALLORAN: Mr. LaRose,
12 you may continue. Mr. Kim, you may
13 rehabilitate, if necessary.

14 BY MR. LaROSE:

15 Q. You met with Joyce and Nechvatal and Mr.
16 Kim in the spring of this year, correct?

17 A. Yes.

18 Q. As a result of that meeting, you
19 recommended that the conviction of Mr. Pruim
20 should be considered in the permit decision, yes
21 or no?

22 A. It was my recommendation --
23 MR. LaROSE: Objection, nonresponsive. I
24 ask that the answer be stricken and that the

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1 witness be directed to answer the question.

2 HEARING OFFICER HALLORAN: Mr.
3 Purseglove, please answer the question --

4 BY THE WITNESS:

5 A. Yes.

6 HEARING OFFICER HALLORAN: -- yes or no,
7 if you're able. Is that yes?

8 THE WITNESS: Yes.

9 HEARING OFFICER HALLORAN: Thank you.

10 BY MR. LaROSE:

11 Q. This was your first involvement in a
12 39(i) evaluation, was it not?

13 A. It was.

14 Q. There is no written guidance that the
15 Agency has on its implementation of 39(i) that
16 you're aware of, is there?

17 A. No, none that I'm aware of.

18 Q. There's no regulations that you're aware
19 of the implementation of Section 39(i), is
20 there?

21 A. None that I'm aware of.
22 Q. The Agency is supposed to conduct a 39(i)
23 evaluation or investigation of every RCRA or
24 municipal landfill permit, are they not?

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1 A. We do not do that.
2 Q. But are they supposed to do that, sir?
3 A. I don't know.
4 Q. With respect to your interpretation of
5 Section 39(i), isn't it that the Agency shall
6 conduct an evaluation of the prospective owner
7 or operator's prior experience, yes or no?
8 A. That is what it says.
9 Q. And that's your interpretation, is it
10 not, sir?
11 A. Yes.
12 Q. Okay. And in your experience, that
13 doesn't always happen?
14 A. That's correct.
15 Q. Okay. Have you read any Board decisions
16 or case law regarding the Agency's
17 implementation of Section 39(i) of the Act?
18 A. I have not.
19 Q. Should the Agency consider all of the

20 facts relative to its 39(i) investigation, yes
21 or no?

22 A. Yes.

23 Q. That would include the age of the
24 violation, would it not?

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1 A. It could.

2 Q. Could or would?

3 A. It would.

4 Q. It would include whether Mr. Pruim --
5 what Mr. Pruim's role was in the operation of
6 the landfill, yes or no?

7 A. All facts.

8 Q. It would include whether Mr. Pruim's --
9 what Mr. Prime's role was in the operation of
10 the landfill, yes or no?

11 A. Yes.

12 Q. It would include whether he was a
13 certified operator of the landfill, yes or no?

14 A. Yes.

15 Q. It would include whether he actually
16 worked at the landfill or not, yes or no?

17 A. Yes.

18 Q. Whether or not the conviction had any

19 connection to waste disposal of Illinois, that's
20 a fact you should have considered, correct?

21 A. Yes.

22 Q. Are you aware of any obligation under the
23 Acts or the regulations that the Primes violated
24 by not bringing this conviction to the Agency's

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1 attention?

2 A. I am not.

3 Q. And no one is saying that the Primes hid
4 this conviction or somehow secreted it away from
5 the Agency, are they?

6 A. No.

7 Q. So you meet with Joyce, Nechvatal, and
8 Kim, correct?

9 A. Yes.

10 Q. Were you involved because they were
11 keeping you in the loop for some reason?

12 A. Yes.

13 Q. Your understanding as a result of that
14 meeting was that Joyce had been called by a
15 reporter stating that Robert Pruum had been
16 convicted of a felony and that is all you knew
17 at that point, correct?

18 A. That's correct.

19 Q. At that meeting, you recommended that if
20 the Agency has info about a conviction, that it
21 should be considered in the permit decision,
22 correct?

23 A. That is correct.

24 Q. And the extent -- the total extent of the

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1 information that you had when you made that
2 recommendation was, A, a reporter called about a
3 prior felony conviction, and, B, Bob Pruim
4 signed a permit application, right?

5 A. That is correct.

6 Q. You hadn't looked at any documents prior
7 to your recommendation, right?

8 A. That's correct.

9 Q. You never looked at the criminal docket
10 sheet prior to your recommendation, did you?

11 A. No, I did not.

12 Q. You never looked at the criminal
13 complaint or the guilty plea agreement in this
14 case prior to your recommendation, did you?

15 A. I did not review Mr. Pruim's case.

16 Q. You didn't even know what the charges

17 were, did you?

18 MR. KIM: He just answered he didn't
19 review the case.

20 HEARING OFFICER HALLORAN: Sustained.

21 BY MR. LaROSE:

22 Q. Did you know how long ago the conviction
23 was before giving your recommendation that it
24 should be considered?

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1 A. No.

2 Q. Did you know what Mr. Pruiim's -- what
3 role Mr. Pruiim played in the day-to-day
4 operation of the site?

5 MR. KIM: Objection. He just answered he
6 did not look at any of that information.

7 MR. LaROSE: I'm not so sure he did. He
8 said he didn't read anything. I asked him
9 whether he knew what role he played prior to --
10 prior to his recommendation.

11 HEARING OFFICER HALLORAN: Mr. Purseglove
12 may answer.

13 BY THE WITNESS:

14 A. Your question was?

15 BY MR. LaROSE:

16 Q. Did you know what role Mr. Pruim played
17 in the day-to-day operation of the site before
18 you made your recommendation?

19 A. No, I did not.

20 Q. Or whether he was a certified operator of
21 the site?

22 A. No, I did not.

23 Q. Or whether he had been the one that
24 submitted prior conduct certifications for the

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1 site?

2 A. No.

3 Q. Or whether he even worked there?

4 A. No.

5 Q. Okay. Did you do anything prior to your
6 recommendation to verify whether the conviction
7 had anything to do with waste management or
8 waste disposal in Illinois?

9 A. No, I didn't.

10 Q. After that meeting, you really didn't do
11 anything else with respect to Section 39(i), did
12 you?

13 A. That's correct.

14 Q. You didn't conduct any personal

15 investigation, right?

16 A. None.

17 Q. You weren't asked to, were you?

18 A. No.

19 Q. You didn't gather any information?

20 MR. KIM: Objection. He just said he

21 didn't do anything afterwards.

22 HEARING OFFICER HALLORAN: Sustained.

23 BY MR. LaROSE:

24 Q. Forget about you personally.

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1 Did FOS, to your knowledge, have any
2 further involvement in the evaluation or
3 investigation?

4 A. None to my knowledge.

5 Q. Do you have any idea what kind of
6 investigation was conducted after that meeting?

7 A. I do not.

8 Q. Why were you there?

9 A. As manager of the field operation
10 section, I'm one of the management teams for the
11 bureau of land.

12 Q. Okay. You didn't look at any documents,
13 you didn't know any facts, you didn't conduct

14 any investigation.

15 My question again is, what were you
16 doing there?

17 MR. KIM: Objection. He just answered
18 the question.

19 HEARING OFFICER HALLORAN: Sustained.

20 BY MR. LaROSE:

21 Q. Did you consider that when you went into
22 that meeting that the Agency was treading new
23 ground on this 39(i) issue because there was no
24 policy or procedure?

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1 A. Yes.

2 Q. Okay. So we're treading on new ground on
3 a regulation that is -- or not a regulation,
4 statute, that is how old, sir?

5 A. I don't know exactly.

6 Q. Do you know whether it's more than 15
7 years old?

8 A. No, I don't.

9 Q. After the meeting, did you read the
10 complaint or the docket sheet?

11 A. I don't understand that question.

12 Q. After the meeting, did you read the

13 criminal complaint or the docket sheet in the
14 criminal case?

15 A. No, I did not.

16 Q. Mr. Purseglove, I'm going to show you
17 what's been previously marked as Exhibit No. 1
18 in this case, which is the Agency record without
19 the portions of the supplement that Mr. Kim
20 submitted today.

21 MR. LaROSE: Mr. Halloran, do you have a
22 copy of the record in front of you?

23 HEARING OFFICER HALLORAN: I do, Mr.
24 LaRose.

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1 MR. LaROSE: Mr. Kim, do you?

2 MR. KIM: Yes.

3 BY MR. LaROSE:

4 Q. Take a look at -- these pages, sir, after
5 the index, are consecutively numbered. Take a
6 look at page 12, please. Are you with me?

7 A. I am.

8 Q. Okay. Pages 12 and 13 are a May 9th,
9 2001, memo from Joyce Munie to Christine Roque,
10 and it is carbon copied to you, right?

11 A. It is.

12 Q. Do you remember getting that memo?

13 A. I do.

14 Q. You agreed with the ultimate decision to
15 deny the permit in this case, correct?

16 A. I did.

17 Q. And you agreed with the ultimate decision
18 to deny the permit in this case based solely on
19 your attendance at that meeting and the
20 information in this memo, right?

21 A. And the recommendation of Joyce Munie.

22 Q. Okay. Look at page 13, sir, the first
23 full paragraph, the third sentence beginning
24 with the word Act, could you read that sentence,

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1 the Act?

2 A. The Act does not require the Agency to
3 investigate, but rather allows the Agency to
4 conduct an evaluation of the operator's prior
5 experience in waste management operations.

6 Q. Do you agree with that statement, yes or
7 no?

8 A. Yes.

9 Q. Flip the page to page 14, sir. That's an
10 e-mail from Joyce Munie dated 3-30-01?

11 A. Yes, it is.

12 Q. You're copied on that?

13 A. I am.

14 Q. Do you remember receiving that?

15 A. No, I do not.

16 Q. Flip to page 53 of the record, please.

17 That appears to be an e-mail from Mark Retzlaff,

18 your field inspector for the Morris Community

19 Landfill, to the head of permits, Joyce Munie,

20 right?

21 A. Yes.

22 Q. He also copied this to enforcements,

23 correct?

24 A. Yes.

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1 Q. Okay. He says in the last sentence, they

2 seem to get away with quite a bit of sloppy

3 operations with little or no repercussion.

4 Do you have a problem with that

5 statement, yes or no?

6 A. No.

7 Q. Flip the page to page 54. The second to

8 the last paragraph of page 54 reads, this site

9 has been involved in extensive enforcement and

10 seems to disregard the Act regulations and input
11 of the Agency. It's hard to believe that a
12 permit was issued at all under the past and
13 current circumstances.

14 Do you have a problem with that
15 statement, yes or no?

16 A. No.

17 Q. Do you know if anyone ever told Mark
18 Retzlaff in the 12 years that he's worked for
19 the Agency that the Agency doesn't use permits
20 to enforce?

21 A. No, I'm not aware that anybody has told
22 him that.

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

24 HEARING OFFICER HALLORAN: Thank you, Mr.

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1 LaRose. Mr. Kim.

2 MR. KIM: Thank you. Just a few
3 questions. I'm sorry. You'll probably have to
4 bear with me as I go through my notes.

5 R E D I R E C T E X A M I N A T I O N

6 by Mr. Kim

7 Q. Mr. Purselove, you were asked about the
8 duties of members of the field operation section

9 in terms of what they should do when confronted
10 with information of any kind concerning a
11 conviction of somebody that was under
12 regulation.

13 Do you remember those questions?

14 A. I do.

15 Q. And you stated, I believe, that they did
16 have a duty to inform both legal and their
17 management if they came upon that information;
18 is that right?

19 A. Yes, I did say that.

20 Q. What's the basis for your statement of
21 that? Why do you believe that to be true?

22 A. Well, for one thing, it's optimistic for
23 me to believe that all of my employees know
24 what's contained in every section of the

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1 Environmental Protection Act, but, in general, I
2 think that we should be aware of the law and
3 regulations and advise upper management and take
4 it up the ladder when they're aware of
5 violations.

6 Q. But is there any policy or any guideline
7 or guidance documents that's been issued by the

8 bureau of land to its inspectors that instructs
9 them to do that?

10 A. Not to my knowledge. I have never
11 directed staff to specifically do criminal
12 background checks on people who were applying
13 for permits.

14 Q. Okay. And for that matter, are there
15 guidance documents or policies or procedures on
16 every aspect of the Environmental Protection Act
17 as it would relate to the field operation
18 section?

19 A. No, there is not.

20 Q. Why is that?

21 A. Because it would just be so many policies
22 and procedures.

23 Q. And I believe you also stated that it was
24 your opinion that Community Landfill is being

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1 operated out of compliance with the Act and
2 regulations; is that right?

3 A. That is correct.

4 Q. Okay. What is the basis for your
5 statement there?

6 A. My recollection is that through their own

7 permit application, they identified that certain
8 parts of their landfill had been filled above
9 the permitted capacity, and subsequent to that,
10 the Agency retained a civil engineer to go out
11 and survey the landfill, and his report
12 confirmed what their own permit application said
13 in that certain areas of the landfill had been
14 overfilled with -- had been overfilled.

15 Q. Okay. And do you know whether or not
16 that allegation has been made in terms of the
17 pending enforcement case that's now before the
18 Board?

19 A. There is a pending enforcement case in
20 front of the Board.

21 Q. And have you been informed by anyone
22 whether or not that particular issue has yet
23 been resolved?

24 A. No, I have not.

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1 Q. Okay. You also testified about the
2 different roles that the field operation section
3 would have and also the question of whether or
4 not enforcement through permitting was
5 appropriate.

6 Can you explain how enforcement
7 would need to make a -- how enforcement would
8 balance those two concepts in terms of, one,
9 providing information to, for example, the
10 permit staff if they asked for information, and,
11 two, recognizing that you should not conduct
12 enforcement through permitting?

13 MR. LaROSE: Objection to the form of the
14 question. It's compound.

15 HEARING OFFICER HALLORAN: Can you
16 rephrase that, Mr. Kim?

17 MR. KIM: Well, if the witness can
18 answer.

19 HEARING OFFICER HALLORAN: Could you
20 rephrase it, please?

21 MR. KIM: Sure, sure.

22 BY MR. KIM:

23 Q. You testified that the field section
24 performs different functions for different

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1 groups within the bureau of land; is that right?

2 A. That's correct.

3 Q. How is it that the field section would
4 not, in your opinion, run the risk of engaging

5 in enforcement through permitting or how would
6 they make sure that they didn't contribute to
7 that happening?

8 A. Through our inspections, the field can
9 convey information to the permit section. The
10 decision on the permit is ultimately made by the
11 permit section, ultimately the permit section
12 manager, and so inspection reports or memoranda
13 that is written is facts and opinions of the
14 field staff.

15 Q. Is it safe to say that the permit section
16 does not always do what the field operation
17 section would otherwise like them to do?

18 MR. LaROSE: Objection, leading.

19 HEARING OFFICER HALLORAN: He may answer
20 if he's able.

21 BY THE WITNESS:

22 A. That is correct.

23 BY MR. KIM:

24 Q. You also testified that you were at a --

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1 I'm sorry. Strike that.

2 You testified that there was

3 attention, at least on your part, focused on

4 Community Landfill Company. It was -- I believe
5 the term used was on the radar screen.

6 Do you remember that?

7 A. I do.

8 Q. What about this site would make it stand
9 out as compared to any of the other, for
10 example, 811 solid waste facilities in the
11 state?

12 A. The two main issues were the overheight
13 and the financial assurance, lack of -- concern
14 about the lack of adequate financial assurance.

15 Q. Okay. Well, then let's go with the first
16 one there. You said that your understanding is
17 the overheight was the subject of an enforcement
18 case that's now before the Board?

19 A. Yes.

20 Q. Okay. Do you know roughly, off the top
21 of your head, how many 811 solid waste
22 facilities there are in the state right now?

23 A. About 55 or 57 currently operating.

24 Q. Okay. To the best of your knowledge, do

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1 you know how many of those sights are currently
2 the subject of a pending enforcement action

3 before either the Board or the Circuit Court?

4 A. No, I'm not aware of how many enforcement
5 cases are pending. Very few.

6 Q. You testified that you were present at a
7 meeting with Joyce Munie, Mike Nechvatal, and
8 myself, and that through the course of that
9 meeting you made a recommendation.

10 Do you recall that?

11 A. I do.

12 Q. What was the basis for the --
13 specifically, what was the recommendation that
14 you made at that meeting?

15 A. During that meeting, Joyce presented
16 information that had been submitted to her from
17 a reporter that alleged -- that indicated that
18 Mr. Pruim had had previous felony convictions,
19 and I believe that those felony convictions were
20 related to the waste management business.

21 It was my recommendation that we
22 should investigate that allegation made by the
23 reporter, that information that was provided,
24 and if it was found to be true, use that in

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1 considering whether Section 39(i) would apply to

2 this permit decision. That was my
3 recommendation.

4 Q. Did you recommend at that meeting that
5 the permit should be denied?

6 A. No.

7 Q. Okay. You also testified that you don't
8 believe that the Agency conducts an evaluation
9 or investigation for all sights that have
10 submitted a permit application.

11 Do you recall that?

12 A. I do. I do recall that.

13 Q. Who would conduct an evaluation of a
14 permit application? Would it be the field
15 section?

16 A. No.

17 Q. Who would do that?

18 A. That would be the permit section staff.

19 Q. Okay. You also testified that in your
20 opinion you were -- and I may not be using the
21 exact terminology, but just that you were sort
22 of breaking new ground in discussing the 39(i)
23 application for Community Landfill.

24 Do you recall that?

1 A. In my tenure as section manager, the
2 applicability of Section 39(i) had never before
3 come to my attention. So this was new ground
4 for me.

5 Q. Okay. You also testified that your
6 attention was directed to a statement made by
7 Joyce Munie on page 13 of the administrative
8 record.

9 That's found in a memo that she
10 prepared dated May 9th, 2001?

11 A. Yes.

12 Q. Is it your understanding that the
13 Environmental Protection Act requires the Agency
14 to conduct a background investigation of every
15 prospective owner or operator that submits a
16 permit application?

17 When I say background check, I mean
18 for criminal activity.

19 A. I think it allows us to do that.

20 Q. Does it require you to do that?

21 A. No.

22 Q. You also testified that on pages 53 and
23 54 of the administrative record certain
24 statements made by Mark Retzlaff in the e-mail

1 on page 53 and a memo on page 54 that you had no
2 problems with those statements.

3 Why don't you have a problem with
4 those statements?

5 A. I expect my field staff to speak candidly
6 with permit section people about observations
7 that they make, and if these are one of my
8 staff's observations, then so be it.

9 Q. Do you think it's important to have that
10 line of communication between the field section
11 and the permit section?

12 A. Absolutely.

13 MR. LaROSE: Objection, leading.

14 BY THE WITNESS:

15 A. I do believe that it is.

16 MR. KIM: That's a yes or a no question.

17 HEARING OFFICER HALLORAN: Overruled.

18 BY THE WITNESS:

19 A. Yes.

20 Q. And why do you think that's important?

21 A. Because the field staff are in a position
22 to observe firsthand the operations at these
23 facilities, the waste management sites, and they
24 need to be able to and they must convey what

1 they see to the permit section engineers.

2 Q. Do you expect the permit section to Act
3 upon those type of statements, for example, the
4 statements made by Mr. Retzlaff to Ms. Roque?

5 MR. LaROSE: Objection, leading.

6 MR. KIM: It's a yes or a no question.

7 MR. LaROSE: That's exactly what it is.
8 It's a leading question.

9 MR. KIM: I can rephrase.

10 HEARING OFFICER HALLORAN: Thank you.

11 BY MR. KIM:

12 Q. In your opinion, how should the permit
13 section consider statements such as those made
14 by Mr. Retzlaff?

15 A. I think that they should review
16 information that they have and take it alone
17 with any other information that they might have
18 before they make a decision.

19 MR. KIM: Okay. Nothing further.

20 HEARING OFFICER HALLORAN: Thank you, Mr.
21 Kim. Mr. LaRose.

22 MR. LaROSE: I don't know if Mr. -- just
23 as a point of order, Mr. Halloran, I don't know
24 if Mr. Helsten wants to ask any questions before

1 I re-cross.

2 MR. KIM: And actually I was not sure
3 about that. After Mr. LaRose finished, I might
4 have just assumed I should go ahead, but I
5 didn't know if Mr. Helsten also had some
6 questions on direct. I apologize. I probably
7 should have --

8 HEARING OFFICER HALLORAN: I agree, and I
9 don't mean to slight Mr. Helsten. Mr. Helsten,
10 do you have any questions for Mr. Purseglove?

11 MR. HELSTEN: I only have one, your
12 Honor. I didn't know what order you wanted me
13 to go in based upon our limited interest in this
14 deal, which is only limited to one aspect of the
15 financial assurance issue.

16 HEARING OFFICER HALLORAN: Since Mr. Kim
17 has finished with his direct,
18 Mr. Helsten, if Mr. LaRose doesn't have any
19 problem with it, you can go ahead and ask your
20 questions, please.

21 MR. LaROSE: Absolutely not.

22 C R O S S - E X A M I N A T I O N

23 by Mr. Helsten

24 Q. Mr. Purseglove, just out of curiosity,

1 how does the Agency determine when a 39(i)
2 evaluation should take place and when one
3 shouldn't take place?

4 A. We do not have any policy per se that
5 dictates when 39(i) evaluations or background
6 checks would be done.

7 MR. HELSTEN: That's all I have.

8 HEARING OFFICER HALLORAN: Thank you, Mr.
9 Helsten. Mr. LaRose.

10 R E C R O S S - E X A M I N A T I O N

11 by Mr. LaRose

12 Q. Sir, you said on redirect examination in
13 the question to Mr. Kim that you thought it
14 would be optimistic of you to believe that your
15 people would know the regulations and always
16 comply with them.

17 You said something like that, right?

18 A. I don't think that that's what I said. I
19 said --

20 Q. Well, what did you say about overly
21 optimistic?

22 A. What I thought I said was --

23 Q. What was your overly optimistic --

24 A. It would be overly optimistic for my

1 staff to know what every regulation and law in
2 the Act and the Board's regulations were.

3 Q. Is it overly optimistic for them or for
4 you to expect them to know that if a conviction
5 comes to their attention that they're supposed
6 to pick up the phone and call legal or
7 management?

8 A. No, that's not overly optimistic.

9 Q. Okay. And that's all it would have taken
10 in this case, for Cliff Gould or Mark Retzlaff
11 or any of the other people in the field
12 operation like Warren Weritz, all they had to do
13 is pick up the telephone and permits would have
14 been alerted to this, correct?

15 A. That's correct.

16 Q. You said that you didn't have any
17 problems with the statements in 53 or 54 by Mr.
18 Retzlaff. Are you telling me and the Board that
19 it's okay for your field operation sections to
20 send e-mails to the permit section expressing
21 opinion, conjecture, or derogatory comments?

22 A. I think that it's appropriate to use
23 e-mail to convey information from the field

24 staff to the permit section.

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1 Q. Okay. Is it appropriate, in your
2 opinion, for the field staff to convey to the
3 permit section in e-mails, opinion, conjecture,
4 or derogatory comments about the permittee, yes
5 or no?

6 MR. KIM: Before he answers, I'm going to
7 object to just the last reference to a
8 derogatory comment. I'm not quite sure what the
9 basis is for that. I don't think there's been
10 any --

11 HEARING OFFICER HALLORAN: I agree. Mr.
12 LaRose, could you rephrase it?

13 MR. LaROSE: Sure. Let's break it down.

14 BY MR. LaROSE:

15 Q. Is it, in your opinion, okay for your
16 field staff to send the head of landfill -- of
17 the bureau of land permits an e-mail that
18 expresses his opinion?

19 A. I do.

20 Q. His conjecture?

21 A. I'm not sure what that means.

22 Q. Do you know what the word supposition

23 means?

24 A. Yes.

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1 Q. Okay. Is supposition --

2 A. What he supposes?

3 Q. Yes.

4 A. Sure.

5 Q. Okay. Would you consider the last line
6 of this, they seem to get away with quite a bit
7 of sloppy operations with little or no
8 repercussion, is that an opinion or a
9 supposition?

10 A. I don't know what that is.

11 Q. Okay. Is it a derogatory comment? It's
12 certainly not complimentary of my client, is it?

13 A. It's not complimentary.

14 Q. Okay. So was it okay for him to make
15 that not complimentary --

16 A. Yes.

17 Q. -- statement in an e-mail to the head of
18 the permit section when she's considering the
19 very permit that was denied in this case?

20 A. Field --

21 Q. Yes or no?

22 A. Yes, it is. I think it's appropriate for
23 them to relay information that they have.

24 Q. Did you tell them that, your field

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1 operation people, that they could e-mail the
2 head of permits while they're considering permit
3 decisions and make their opinions and
4 uncomplimentary comments about the permittee?

5 A. No, I didn't.

6 Q. Okay. But you would tell them that, you
7 condone that?

8 A. I do condone that.

9 MR. LaROSE: That is all I have.

10 MR. KIM: Nothing further.

11 HEARING OFFICER HALLORAN: Nothing
12 further. Mr. Helsten.

13 MR. HELSTEN: Nothing further.

14 HEARING OFFICER HALLORAN: Thank you, Mr.
15 Purseglove. You can step down. We'll go off
16 the record and take a few minutes break.

17 (Break taken.)

18 HEARING OFFICER HALLORAN: We're back on
19 the record. It's approximately 10:20. We took
20 about a ten minute break. Mr. LaRose will be

21 calling his second witness. You may step up,
22 please. Raise your right hand and the court
23 reporter will swear you in.
24

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1 (Witness sworn.)
2 WHEREUPON:
3 M A R K R E T Z L A F F,
4 called as a witness herein, having been first
5 duly sworn, deposeth and saith as follows:
6 C R O S S - E X A M I N A T I O N
7 by Mr. LaRose
8 Q. Good morning.
9 A. Morning.
10 Q. Could you state your name for the record,
11 please?
12 A. Mark Retzlaff, R-e-t-z-l-a-f-f.
13 Q. Sir, you've worked for the Agency for
14 approximately 14 years?
15 A. Yes.
16 Q. You are what they call an environmental
17 protection specialist three, correct?
18 A. Yes.
19 Q. And you work in the field operation

20 section of the northern region of Illinois,
21 which is headquartered in Des Plaines, Illinois?

22 A. Yes.

23 Q. And as part of your duties, you are
24 currently the field operations inspector for two

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1 landfills, the Morris Community Landfill and its
2 neighbor, the Envirotech Landfill, correct?

3 A. Yes.

4 Q. You conduct routine inspections of the
5 Morris Community Landfill?

6 A. Yes.

7 Q. It is your job to report alleged
8 violations --

9 A. Yes.

10 Q. -- correct? Sir?

11 A. Yes.

12 Q. You would also work as part of your
13 duties with the enforcement people?

14 A. Yes.

15 Q. If you saw an alleged violation and you
16 were unable to resolve it with the operator, it
17 would be part of your job to bring that to the
18 attention of legal?

19 A. Yes.
20 Q. You also do some work with the permit
21 sections with respect to preoperational
22 inspections, correct?
23 A. That's correct.
24 Q. As a result of a preoperational

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1 inspection, you would look at the operating
2 units that are sought to be permitted and see if
3 they comply with your knowledge of the permit
4 requirements, correct?
5 A. Yes.
6 Q. And you would report that to permitting?
7 A. Yes.
8 Q. You are not an engineer, are you, sir?
9 A. No.
10 Q. During part of your stint with the
11 Agency, you were first a field operations
12 inspector, right?
13 A. Yes.
14 Q. And then for a period of time, several
15 years in the '90s, you were assigned to criminal
16 investigations with was it the Illinois
17 Department of Criminal Investigations?

18 A. Well, Illinois State Police.
19 Q. Okay. So the EPA lent you, if you will,
20 to the state police regarding the conduct of
21 criminal investigations, correct?
22 A. Correct, via interagency agreement.
23 Q. And that was for a period of several
24 years in the 1990s?

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1 A. Yes.
2 Q. And then sometime in 1989 or -- I'm
3 sorry, 1998 or '99, you returned to your duties
4 as merely a field inspector?
5 A. Yes.
6 Q. Okay. And you've been the field
7 inspector for Morris Community Landfill for the
8 last couple of years or so, correct?
9 A. Yes.
10 Q. And during that time, you've conducted
11 five or six inspections of the Morris Community
12 Landfill?
13 A. Yes.
14 Q. Okay. When you go there, who do you deal
15 with?
16 A. James Pelnarsh, Senior.

17 Q. Okay.
18 A. Do you want the spelling?
19 Q. No. That's okay.
20 Who do you understand James
21 Pelnarsh, Senior, to be?
22 A. Site operator.
23 Q. When you inspect the Morris Community
24 Landfill, is Mr. Pelnarsh accommodating

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1 regarding your inspections?
2 A. Yes.
3 Q. Cooperative?
4 A. Yes.
5 Q. Has he ever attempted in any way to limit
6 the scope of your inspection?
7 A. No.
8 Q. He's always showed you what you wanted to
9 see, told you what you wanted to know, correct?
10 A. Yes.
11 Q. As far as the Morris Community Landfill
12 and your involvement with it, Jim Pelnarsh, the
13 guy we know as JP, that's your contact, correct?
14 A. Yes.
15 Q. Have you ever had any contact with Robert

16 Pruim?

17 A. No.

18 Q. Would you know Robert Pruim if you saw
19 him?

20 A. No.

21 Q. Have you ever seen Robert Pruim at the
22 Morris Community Landfill?

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

24 Q. Do you have any idea whether Robert Pruim

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1 has any involvement in the day-to-day operations
2 of Morris Community Landfill?

3 A. No.

4 Q. Based on your observation, though, it
5 would be JP that has those responsibilities?

6 A. Yes.

7 Q. Okay. You had some involvement in the
8 permit application in this case regarding your
9 preoperational inspection, correct?

10 A. Yes.

11 Q. And you wrote a preoperational inspection
12 report?

13 A. Yes.

14 Q. You also wrote an e-mail to Joyce Munie

15 regarding your inspection of the landfill?

16 A. Yes.

17 Q. You also wrote a preoperational

18 inspection report to Christine Roque?

19 A. A report, no.

20 Q. I'm sorry. A preoperational memo?

21 A. Memo, yes.

22 Q. Didn't you also write a preoperational

23 inspection report?

24 A. Yes.

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1 Q. Okay. With respect to inspection

2 reports, isn't it a requirement that the reports

3 only contain factual information?

4 A. Yes.

5 Q. Okay. They're not supposed to contain

6 any opinion, right?

7 A. No.

8 Q. Or conjecture, right?

9 A. No.

10 Q. Okay. Or derogatory comments about the

11 permittee, correct?

12 MR. KIM: Same objection to the use of

13 the term derogatory comments.

14 BY MR. LaROSE:

15 Q. Sir, can you answer the question?

16 HEARING OFFICER HALLORAN: Sustained.

17 BY THE WITNESS:

18 A. No.

19 MR. KIM: Move to strike the answer.

20 HEARING OFFICER HALLORAN: The answer is
21 stricken. Mr. LaRose, could you please rephrase
22 that? I think our concern is with the phrase
23 derogatory. I think that's Mr. Kim's concern.

24 MR. LaROSE: And my concern, Mr.

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1 Halloran, is that he did answer the very same
2 question in his deposition. So if he can answer
3 it now, he should, and if he can't, he should be
4 impeached upon it. So I'm just trying to set
5 the table for the question. We used this term
6 probably 30 times during his deposition and
7 neither Mr. Kim nor he had any problem with it.

8 MR. KIM: I was going to say, I mean,
9 whether or not it was objected to in the
10 deposition doesn't mean that it can't be
11 objected to here.

12 MR. LaROSE: Can I try and clear it up

13 just a little bit?

14 HEARING OFFICER HALLORAN: Go ahead, Mr.

15 LaRose.

16 BY MR. LaROSE:

17 Q. Sir, yes or no, your inspection reports
18 should not contain derogatory comments, correct?

19 A. That's correct.

20 Q. Okay. And as far as you know with
21 respect to Morris Community Landfill, in your
22 inspection report, you've attempted at all times
23 to follow that rule?

24 A. Yes.

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1 Q. Okay. Your reports state only the facts,
2 correct?

3 A. Correct.

4 Q. You have in front of you your -- a copy
5 of the record in this case, and I'd like to
6 direct your attention -- after the index
7 section, the pages are consecutively numbered.
8 I'd like to direct your attention to pages 55
9 through 59.

10 Are you with me?

11 A. Yes.

12 Q. Okay. That is your preoperational
13 inspection report with respect to the permit
14 application that's at issue in this case,
15 correct?

16 A. Correct.

17 Q. Your inspection report as it appears at
18 pages 55 through 59 of the record does not list
19 a single violation of the Act or the
20 regulations, does it?

21 A. No.

22 Q. Okay. The entire time that you've been
23 inspecting this landfill, in each one of your
24 inspection reports, you've not noted a single

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1 new violation of the landfill regulations or the
2 Act, have you?

3 A. No.

4 Q. Okay. Sir, are you aware of a single
5 fine or adjudication of a violation levied
6 against Morris Community Landfill in the almost
7 20 years that my clients have been operating the
8 fill?

9 A. No.

10 MR. LaROSE: Mr. Halloran, I'm going to

11 show the witness what we've previously marked as
12 Exhibit No. 77. I've already supplied Mr. Kim
13 with a copy of that.

14 BY MR. LaROSE:

15 Q. All right. Sir, that is your inspection
16 report from April 17th, 2000, correct?

17 A. Yes.

18 Q. I was present at that inspection,
19 correct?

20 A. Yes.

21 Q. At any time during that inspection, was
22 your inspection in any way -- did we attempt at
23 any time to limit the scope of your inspection?

24 A. No.

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1 Q. Was the inspection conducted cordially?

2 A. Yes.

3 Q. Were we cooperative?

4 A. Yes.

5 Q. Did we let you see anything that you
6 wanted to see?

7 A. Yes.

8 MR. KIM: I'm going to object to the
9 reference to this exhibit on relevance grounds.

10 The date is April 17th. This predates the date
11 that the application in question was even
12 submitted. So I fail to see the relevance of
13 this particular document.

14 HEARING OFFICER HALLORAN: Mr. LaRose.

15 MR. LaROSE: The relevance of this
16 document, sir, goes to the old issue of this
17 gentleman's opinion, which we'll get to in a
18 minute, that the site is operating and was
19 operating at this time illegally, which goes to
20 -- which attaches relevance to the statements
21 that he made in his e-mail to Ms. Munie and his
22 memo to Ms. Roque that we were conducting sloppy
23 operations in violation of the Act, disregarding
24 things, and how in the world could we possibly

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1 get a permit. This background goes to his bias
2 and prejudice with respect to those issues.

3 HEARING OFFICER HALLORAN: Mr. Kim.

4 MR. KIM: I don't have anything further.

5 HEARING OFFICER HALLORAN: I'm sorry?

6 MR. KIM: I have nothing to respond to
7 Mr. LaRose. I still think it's irrelevant. I
8 think the witness has testified that he hasn't

9 found any new violations. He can ask questions
10 about those statements if he'd like, but I don't
11 know why it's important to bring in this
12 document. Again, this predates the whole
13 application being submitted to begin with. I
14 just don't think it's relevant.

15 HEARING OFFICER HALLORAN: Is this in the
16 record?

17 MR. KIM: No, it's not.

18 HEARING OFFICER HALLORAN: I'm going to
19 sustain Mr. Kim's objection.

20 MR. LaROSE: Sir, I'd like to make a
21 brief offer of proof then with respect to the
22 relevancy of this document.

23 HEARING OFFICER HALLORAN: You may.

24 MR. LaROSE: Thank you.

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1 BY MR. LaROSE:

2 Q. Okay. Sir, this is your inspection
3 report?

4 A. Yes.

5 Q. Okay. In this inspection report, you've
6 noted there's a portion of it that starts after
7 numbered page six that is your comments.

8 Can you find that for me?

9 A. Numbered -- oh, page six of the --

10 Q. Of the report itself and the page right
11 after that begins your comments, correct?

12 A. Okay. Sure. Yes.

13 Q. Okay. Sir, during this inspection, was
14 it apparent to you that the landfill was -- had
15 been dressed up and was looking much better?

16 A. Yes.

17 Q. You say at the bottom of that first page
18 of your comments, no new apparent violations
19 observed; however, the following continuing
20 violations remain outstanding, correct?

21 A. Yes.

22 Q. And then you list one, two, three, four
23 pages of the alleged continuing violations,
24 correct?

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1 A. Yes.

2 Q. Didn't you just copy those alleged
3 continuing violations out of the inspection
4 reports that were generated by your predecessor
5 inspectors?

6 A. Yes.

7 Q. And you didn't do anything at any time
8 either before this or after this to confirm
9 whether these continuing violations actually
10 existed at the site?

11 A. No.

12 Q. With respect to some of the continuing
13 violations, sir, weren't a lot of these related
14 to operating without a permit after September
15 18th, 1997?

16 A. Yes.

17 Q. Okay. That was the Agency's contention
18 that we should not have been operating after
19 September 18th, 1997?

20 A. Yes.

21 MR. LaROSE: Sir, that's the end of the
22 offer of proof, and with that, I would renew my
23 statement that this document is relevant to this
24 witness' knowledge of the site and the fact that

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1 he did nothing to confirm continuing violations;
2 yet, a year and a half later made e-mails
3 directly to the permit section saying we weren't
4 complying with the law.

5 HEARING OFFICER HALLORAN: Mr. Kim,

6 anything?

7 MR. KIM: No. Just the same objection.

8 HEARING OFFICER HALLORAN: I stand on my
9 ruling.

10 BY MR. LaROSE:

11 Q. Sir, did anyone tell you prior to your
12 deposition about ten days ago that the Board had
13 ruled against the Agency and in our favor on
14 this issue of continuing violations?

15 A. No, not that I'm aware of.

16 Q. And that they had ruled against the
17 Agency and in our favor on this issue of
18 operating without a permit?

19 A. No.

20 Q. Okay. Don't your inspection reports
21 today still contain these violations even though
22 the Board has ruled against you?

23 A. Yes.

24 Q. Have you read the Board's decision?

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1 A. No.

2 MR. KIM: I'm going to object. It's my
3 understanding that -- and, admittedly, I'm not
4 familiar with the enforcement case the way Mr.

5 LaRose is, but it's my understanding that the
6 Board's final decision on what he's discussing
7 came in an order that postdates the decision
8 that's being discussed here.

9 In other words, I believe that the
10 Board's final order in your case that you're
11 referring to was dated after May 11th, 2001; is
12 that correct? It was either July or August,
13 wasn't it?

14 MR. LaROSE: The original decision was
15 April 5th, which was modified by a second
16 decision on a motion to reconsider. I think
17 that was some time in June, which was modified
18 on a motion for a clarification. So the
19 original order dated April 5th ruled on this and
20 it was later clarified, I think, July or August
21 of this year.

22 MR. KIM: And, obviously, we would object
23 to any reference to the enforcement case insofar
24 as it didn't have any bearing on this case, but

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1 if there is going to be reference made, I think
2 the Board should restrict whatever review it
3 decides to give to the enforcement case to

4 whatever decision it made up to May 11th, 2001,
5 the date of this decision, and not take into
6 account any decisions that happened after that
7 date.

8 HEARING OFFICER HALLORAN: It's my
9 understanding the motion for reconsideration was
10 more or less, as you state, a clarification. So
11 I'm going to sustain Mr. Kim's objection and
12 limit it to anything prior to May 11th.

13 MR. KIM: Thank you.

14 BY MR. LaROSE:

15 Q. Sir, were you aware that on April 5th the
16 Board issued an order on this issue in our
17 favor?

18 A. No.

19 Q. Okay. And no one has told you that?

20 A. Not that I'm aware of.

21 Q. And when you wrote your memo to Joyce
22 Munie and to Christine Roque, you still believed
23 that we were in violation of operating without a
24 permit, correct?

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1 A. Yes.

2 Q. For the last year and a half, sir, you

3 personally felt that the landfill was operating
4 without a permit, yes or no?

5 A. Yes.

6 Q. And you told Christine Roque in a
7 conversation with her that the landfill should
8 not be granted a permit, correct?

9 A. Expressing my opinion.

10 Q. But you told her that the landfill should
11 not be granted a permit, yes or no?

12 A. I believe so, yes.

13 Q. And you had discussions with the head of
14 the permit section, Joyce Munie, that the
15 facility should not be allowed to operate, and
16 those discussions predated May 11th, 2001,
17 correct?

18 MR. KIM: I'm going to object only on the
19 grounds that if Mr. LaRose is making specific
20 reference to documents in the record, it would
21 be helpful if he could identify it. If he's
22 asking questions outside of the record, then I'd
23 like that clarified as well.

24 HEARING OFFICER HALLORAN: Mr. LaRose.

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1 MR. LaROSE: The information that I'm

2 attempting to elicit in this hearing came from
3 the information that I asked him about at his
4 deposition. There were documents that are in
5 the record as e-mails, but he also said that he
6 had conversations prior to May 11th with Joyce
7 Munie expressing those same opinions, and that's
8 what I'm asking him about now.

9 HEARING OFFICER HALLORAN: I think Mr.
10 LaRose may explore it.

11 MR. KIM: Yeah. I was just looking for a
12 clarification.

13 HEARING OFFICER HALLORAN: Okay.

14 BY MR. LaROSE:

15 Q. Sir, again, so that the record is clear,
16 you and Joyce Munie, the head of the land bureau
17 permit section, had discussions that the
18 facility should not be allowed to operate and
19 those discussions occurred prior to May 11th,
20 2001?

21 A. It's possible my conversation did contain
22 that sort of wording.

23 Q. As of September 1999, when the
24 significant modification permit application was

1 originally denied, you were directed by your
2 boss, the big boss, Paul Purseglove, to go to
3 the site and log trucks in and out of the
4 facility, correct?

5 A. Yes.

6 Q. That was because at the time everybody at
7 the Agency that had responsibility with
8 Community Landfill believed that we were
9 operating illegally, correct?

10 A. Yes.

11 Q. And you actually went out for two days
12 log --

13 MR. KIM: I'm sorry. The same objection
14 as before. I don't think it's ever been
15 established when this happened or what relevancy
16 at all logging license plate numbers has to do
17 with this permit issue.

18 HEARING OFFICER HALLORAN: Mr. LaRose,
19 try to set up the content, the time and the
20 place.

21 MR. LaROSE: Yes, sir.

22 BY MR. LaROSE:

23 Q. The permit was denied -- the first SIGMOD
24 permit was denied September 1st, 1999.

1 Do you remember that?

2 A. Yes.

3 Q. And soon thereafter, you were ordered by
4 your boss to go out to the Morris Community
5 Landfill and actually observe and log license
6 plate numbers of trucks in and out of my
7 client's facility, correct?

8 A. Yes.

9 Q. And that would have happened in the early
10 part of September 1999, correct?

11 A. I believe so, yes.

12 MR. KIM: Again, I'm going to object on
13 the grounds of relevancy. This is now going
14 over -- well over a year before this application
15 came in. This had nothing -- and this actually
16 even predates the last set of appeals that we
17 had a hearing on in January. So I don't see the
18 relevance of this line of questioning at all.
19 This has nothing to do with the case at hand.

20 MR. LaROSE: This is directly related to
21 our argument and position in this case that
22 they're attempting to use these permits to do
23 what they were unable to do in the enforcement
24 case. The fact that this gentleman who sent

1 e-mails attempting to influence the permit
2 decision in this case believed and, in fact,
3 went out to the site to log in trucks because we
4 were operating illegally relates to his later
5 involvement, direct involvement, in the permit
6 action in this case.

7 It's background information that
8 goes all to his bias and prejudice and both to
9 our ability to explore and contest the things he
10 wrote to Joyce Munie in December of the year
11 2000 and later to Christine Roque in March of
12 2001.

13 HEARING OFFICER HALLORAN: It's my
14 understanding Mr. Purseglove testified to the
15 same when he was up here on the stand.

16 MR. KIM: Yeah. I believe I objected,
17 but that the questions were asked, and, again,
18 the grounds there were the same as here.
19 There's no reference in these reports to any
20 activity involving logging down license tags or
21 anything that happened out at the site in 1999,
22 and, again, for that matter, that would predate
23 the August 2000 issuance of the SIGMOD permits
24 that were later appealed.

1 Again, I just fail to see how that
2 has any relevance to what's going on here. If
3 he wants to ask him questions about the
4 statements he made in his e-mails or if he'd
5 like to ask him what his basis was, I think
6 that's fair, but I don't understand how this has
7 any relevance to his statements in the record.

8 MR. LaROSE: And that's just the point,
9 sir. He says on page 54 of the record, the site
10 has been involved in extensive enforcement and
11 it seems to disregard the Act, the regulations,
12 and the input of the Agency.

13 Well, I don't know, but when they
14 went out there, we told them to get the hell off
15 of our property and go out in the street if they
16 wanted to do this illegal activity. This is the
17 testimony and evidence that relates directly to
18 the things that he's writing to the permit
19 people about extensive enforcement disregarding
20 the Acts, the regulations, and the input of the
21 Agency, and his comment that we get a lot --
22 away with quite a bit of sloppy operations with
23 little or no repercussion. I think it's germane
24 to that issue. I think I should be allowed to

1 explore it.

2 HEARING OFFICER HALLORAN: Mr. Kim, I'm
3 going to overrule your objection, but if we
4 could wrap it up in a hurry, Mr. LaRose.

5 MR. LaROSE: Thank you.

6 BY MR. LaROSE:

7 Q. Sir, again, the reason why you were out
8 there was because you and other people at the
9 Agency believed we were operating illegally,
10 correct?

11 A. Yes.

12 Q. You spent two days out at the landfill
13 logging in the trucks?

14 A. Yes.

15 Q. Was the purpose of doing that so that you
16 could contact our customers and tell them that
17 we were operating illegally?

18 A. Not myself. I don't know.

19 Q. Do you know what the purpose was?

20 A. I would assume to document that waste was
21 being received and disposed of at the facility.

22 Q. And as a result of this, didn't we have
23 conversations with your boss that day and
24 ordered you to leave the property?

1 A. Yes.

2 Q. And you went out in the middle of -- not
3 in the middle, but on the side of Ashley Road
4 and continued for two days to log in this
5 activity?

6 A. Yes.

7 Q. Do you know whether the Agency ever
8 contacted any of our customers to tell them that
9 we were operating illegally?

10 A. No, I don't.

11 Q. One way for you to communicate with the
12 permit section is through formal inspection
13 reports which we've already established are
14 required to be factual, correct?

15 A. Yes.

16 MR. LaROSE: Mr. Halloran, I'm going to
17 hand the witness what's previously been marked
18 as Exhibit 78 and ask him to take a look at
19 that, please.

20 BY MR. LaROSE:

21 Q. Sir, that's a package that contains your
22 December 5th inspection report, correct?

23 A. Correct.

24 Q. Now, that is also the same inspection

1 that was the subject of your e-mail to Joyce
2 Munie on December the 7th, which appears on page
3 53 of the record, correct? Take a look at 53.

4 A. Yes.

5 Q. Okay. This inspection report is a public
6 document, right?

7 A. That's correct.

8 Q. This was sent on December the 20th to Mr.
9 Pruum, correct?

10 A. Yes.

11 Q. To Mr. Pelnarsh, Senior, at the landfill,
12 correct?

13 A. Yes.

14 Q. And to the then-mayor of the City of
15 Morris, Robert T. Feeney, correct?

16 A. Yes.

17 Q. Now, your inspection report itself, if
18 you look at the first page after numbered page
19 six, is your comments, correct?

20 A. Yes.

21 Q. Again, you say no new apparent violations
22 were observed. However, the following
23 continuing violations remain outstanding, right?

24 A. Yes.

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1 Q. These are the very same continuing
2 violations that you had copied from your
3 predecessors' reports, correct?

4 A. Yes.

5 Q. And still by this time as of December the
6 5th, 2000, you hadn't done anything to
7 independently verify whether any of these
8 violations existed?

9 A. No.

10 Q. Okay. You've worked for the Agency for
11 14 years, right?

12 A. Almost, yes.

13 Q. Is it true that the first time that
14 anyone told you that the Agency does not use
15 permits as enforcement was a day or two before
16 your October 5th, 2001, deposition?

17 A. Yes.

18 Q. Cliff Gould and John Kim told you that?

19 A. Cliff Gould did.

20 Q. And as of that date, for the first time,
21 you understood that enforcement and permitting
22 should be separate?

23 A. Yes.
24 Q. Okay. Prior to May 11th, that was not

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1 your understanding, was it?
2 A. Correct. Yes.
3 Q. Correct, it was not your understanding?
4 A. Yes. That's true.
5 Q. You contacted Joyce Munie by e-mail on
6 12-7-2001 (sic), correct?
7 A. Yes.
8 Q. Did you understand that as of 12-7-2000 --
9 I'm sorry, 12-7-2000.
10 Did you understand that as of
11 12-7-2000 that it was okay to express conjecture
12 or opinion or derogatory comments in an e-mail
13 to the head of the permit section?
14 A. Repeat that, please.
15 Q. Yes, sir.
16 MR. KIM: I'm going to object, again, to
17 the characterization of derogatory comments. I
18 don't have a problem if Mr. LaRose does what he
19 did before. If you could just say opinions and
20 you can --
21 HEARING OFFICER HALLORAN: Sustained,

22 sustained. Mr. LaRose.

23 BY MR. LaROSE:

24 Q. Did you understand as of 12-7-2000 that

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1 it was okay to express your opinion to the head
2 of permits in an e-mail?

3 A. Yes.

4 Q. Okay. The same question with respect to
5 conjecture?

6 A. Yes.

7 Q. The same question with respect to
8 unfavorable or derogatory comments with respect
9 to the permittee?

10 MR. KIM: Objection as to the second
11 part.

12 MR. LaROSE: Sir, again, 30 times in his
13 deposition, he understood the question and he
14 answered it that way. I'm entitled to --

15 HEARING OFFICER HALLORAN: He may
16 answer.

17 BY MR. LaROSE:

18 Q. Sir?

19 A. Yes.

20 Q. Okay. In fact, it was your understanding

21 that as opposed to inspection reports, you were
22 authorized to use interoffice memos to --
23 interoffice memos or e-mails to express
24 conjecture, opinion, or derogatory comments,

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1 correct?

2 A. That's correct.

3 Q. Okay. What purpose does that serve under
4 the Act or the landfill regulations, do you
5 know?

6 A. No.

7 Q. Was it your supervisor,
8 Mr. Gould, that told you that it was okay to
9 express conjecture or opinion or derogatory
10 comments in e-mails or interoffice memos?

11 A. Yes.

12 Q. And, in fact, didn't he tell you that
13 that was the only place that it was appropriate
14 to do that?

15 A. That's correct.

16 Q. Okay. And these comments that are in the
17 e-mail to Joyce Munie, they don't appear
18 anywhere in your formal inspection report that
19 was sent to my client, do they?

20 A. No.

21 Q. And when you sent Joyce Munie the e-mail
22 at this time, there's no indication that you
23 also sent it to -- I'm sorry, that you also sent
24 her the inspection report that contains only

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1 factual information?

2 A. No.

3 Q. Okay. You also sent your e-mail on page
4 53 of Exhibit 1 to your boss, Clifford Gould,
5 right?

6 A. Yes.

7 Q. And to the enforcement attorney Bruce
8 Kugler, right?

9 A. Yes.

10 Q. If this matter didn't end up in a permit
11 appeal, we wouldn't know that you were sending
12 e-mails that contained these types of opinion to
13 the permit section, would we?

14 A. That's correct, yes.

15 Q. You don't send these to the people you
16 are making opinions about, do you?

17 A. No.

18 Q. Or that you are conjecturing about,

19 right?

20 A. No.

21 Q. Or that you make any derogatory comments
22 about, right?

23 A. Correct.

24 Q. If you're going to do this in the future,

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1 if I gave you my e-mail address, will you send
2 me a copy of them?

3 MR. KIM: Objection.

4 HEARING OFFICER HALLORAN: Sustained.

5 BY MR. LaROSE:

6 Q. Do the opinions or conjecture that are in
7 these e-mails have to have any basis in fact?

8 A. Not if I'm expressing my opinion, no.

9 Q. You have spoken through an e-mail
10 enforcement attorney, Bruce Kugler, prior to May
11 11th with respect to Community Landfill as well,
12 right?

13 A. Yes.

14 Q. And you spoke with -- in addition to the
15 e-mails, you actually spoke with Joyce Munie
16 about the permits in this case?

17 A. Yes.

18 Q. And those conversations were another way
19 in which you expressed your opinions with
20 respect to the permits at issue in this case?

21 A. Yes.

22 Q. When you sent the e-mail to Joyce Munie
23 and the memo to Christine Roque, did you realize
24 that they had never been to the facility?

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1 A. I assumed that was a good possibility.

2 Q. Okay. Did you realize that they were
3 relying on you to be their eyes and ears and
4 accurately report what you saw or heard or took
5 pictures of?

6 A. Yes.

7 Q. At the time that you wrote the memo,
8 which appears on page 54 of the record, did you
9 believe that there was any prohibition against
10 you communicating with permits and enforcement
11 in the same case?

12 A. No.

13 Q. No one ever told you that you shouldn't
14 be doing that, did they?

15 A. No, not prior.

16 Q. As a result of what you were told by

17 Cliff Gould two days before your deposition, you
18 now know that that wasn't proper, correct?

19 A. I know that it's -- that you shouldn't
20 mix enforcement and the permitting issue.

21 Q. Let's talk about the hi, Joyce memo.
22 That appears on page 53 of the record.

23 Had you ever met Joyce Munie before?

24 A. I don't believe so.

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1 Q. When you say in her memo that you
2 observed the cell on 12-5-01, had you done
3 anything prior to that to verify the dimensions
4 of the cell?

5 A. No.

6 Q. Did you measure the cell to see if it
7 conformed to what the permit dimensions were?

8 A. No.

9 Q. Did you measure the eastern perimeter
10 berm at the cell?

11 A. No.

12 Q. Did you measure any of the intercell
13 berms?

14 A. No.

15 Q. Did you physically examine any of the

16 soil at the cell?

17 A. No.

18 Q. Did you take any compaction tests?

19 A. No.

20 Q. Did you look at the soil rain sides?

21 A. No.

22 Q. Did you touch the soil to see if it was
23 clay-like?

24 A. No.

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1 Q. You described -- you described the area
2 in your memo as much like a parking lot.

3 Do you see that on page 53 of the
4 record?

5 A. Yes.

6 Q. Did you know that we were building a
7 separation layer over old waste and new waste
8 was going to be put on top of it?

9 A. Yes.

10 Q. So the idea that it might look like a
11 parking lot actually complied with the permitted
12 requirements in this case, didn't it?

13 A. Yes.

14 Q. During any of your inspections, wasn't

15 Mr. Pelnarsh, including the 12-5 inspection,
16 available to answer any of your questions?

17 A. Yes.

18 Q. When you went out here, you didn't have
19 the acceptance report with you, right?

20 A. That's correct.

21 Q. You hadn't reviewed it yet, right?

22 A. Only briefly with Mr. Pelnarsh.

23 Q. But before you went to the site, you
24 hadn't reviewed it, correct?

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1 A. No.

2 Q. When you went to the site, didn't Mr.
3 Pelnarsh offer and volunteer to make that
4 document available to you because he had it
5 available in his office?

6 A. Yes.

7 Q. And, in fact, you did look at it at his
8 office?

9 A. Yes.

10 Q. On page 53, you say, they seem to get
11 away with quite a bit of sloppy operations with
12 little or no repercussion.

13 Your inspection report dated 12-5,

14 which is Exhibit 78, doesn't say that, does it?

15 A. That's correct.

16 Q. And you say here at the end of the second
17 paragraph on page 53 of the record, this seems
18 completely inadequate and pointless to develop a
19 landfill in this matter.

20 You probably meant manner, right?

21 A. Yes.

22 Q. But that doesn't appear in your
23 inspection report, does it?

24 A. No.

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1 Q. You sent this e-mail to express your
2 opinion, right?

3 A. That's correct.

4 Q. When you said -- when you used the term
5 little or no repercussion, you were attempting
6 to directly refer to the pending enforcement
7 case, right?

8 A. Yes.

9 Q. And your frustration that the enforcement
10 case was taking too long?

11 A. That's a good assumption, yes.

12 Q. Okay. When you sent this e-mail to Joyce

13 Munie, you meant to convey to her that the
14 enforcement case seemed to be going on
15 perpetually or, as you termed it in your
16 deposition, on and on, right?

17 A. Yes.

18 Q. Were you venting your frustration to the
19 head of permits that the enforcement case seemed
20 to be going nowhere?

21 A. It would appear so, yes.

22 Q. At the time that you sent Joyce Munie the
23 e-mail, which appears on page 53 of the record,
24 had you told her or anybody else that you've

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1 never done anything to independently verify
2 whether the continuing violations listed in your
3 inspection reports currently exist?

4 A. No.

5 Q. Did Joyce Munie respond to this e-mail?

6 A. I don't recall. I don't believe so.

7 Q. Did Bruce Kugler respond to this e-mail?

8 A. I don't believe so.

9 Q. Did anyone, after this e-mail, tell you
10 up until just a few days ago stop sending
11 e-mails reporting your conjecture, opinion, or

12 derogatory comments?

13 A. No.

14 Q. Let's look at page 54 of the record.

15 That's a memo to Christine Roque dated March
16 7th, 2001, directly related to her review of the
17 permit in this case, correct?

18 A. Yes.

19 Q. And in this, you were attempting to state
20 your opinion, again, right?

21 A. Yes.

22 Q. You were, again, attempting to vent your
23 frustrations to the permit reviewer with respect
24 to ongoing enforcement actions at the landfill,

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1 correct?

2 A. Yes.

3 Q. Were you, sir, venting your frustration
4 at a system that would allow permits to be
5 issued to folks where pending enforcement
6 actions -- where enforcement actions were
7 pending, but had not yet been adjudicated?

8 A. That would be a fair view.

9 Q. In your opinion, the mere pendency of
10 alleged violations should have resulted in the

11 denial of the permit, yes or no?

12 MR. KIM: I'm going to object as to --
13 I'm going to ask him to specify a frame of -- at
14 what time that opinion would have been formed.

15 MR. LaROSE: I can do that.

16 BY MR. LaROSE:

17 Q. When you wrote this memo on March the
18 7th, 2001, to Christine Roque, was it your
19 opinion that the mere pendency of alleged
20 violations should have resulted in the denial of
21 a permit, yes or no?

22 A. In my opinion, it would be nice if that
23 would be the case, but reality being what it is,
24 it was unrealistic to expect that.

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1 MR. LaROSE: Mr. Hearing Officer, I
2 object to the answer as unresponsive and ask
3 that it be stricken and ask that the witness be
4 directed to answer the question.

5 BY THE WITNESS:

6 A. Can you repeat the question?

7 HEARING OFFICER HALLORAN: I agree. Mr.
8 Witness, yes or no?

9 MR. LaROSE: I can repeat the question.

10 BY MR. LaROSE:

11 Q. At the time that you wrote the March 7th
12 memo to Christine Roque, was it your opinion
13 that the mere pendency of alleged violations
14 should have resulted in the denial of the
15 permit, yes or no?

16 A. Should have, well, I'll go with yes.

17 Q. You say in here planned engineering and
18 construction do not seem to have a role in the
19 construction of this cell.

20 Do you have any idea what
21 engineering involvement there was in the
22 construction of this cell?

23 A. Yes, somewhat, yes.

24 Q. Okay. You read at some point the

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1 acceptance report?

2 A. Yes.

3 Q. Do you now know that engineering did have
4 a role in the construction of the cell?

5 A. Yes.

6 Q. Do you have any criticisms of that
7 engineering?

8 A. No.

9 Q. You say here, it's hard to believe that a
10 permit was issued at all under the past and
11 current circumstances.

12 Was that a direct reference to the
13 pending enforcement case?

14 A. Yes.

15 Q. Let's talk for a minute about the
16 Gonzales Transfer Station.

17 Do you know anything about that?

18 A. Some, little information.

19 Q. There was a 39(i) evaluation of the
20 Gonzales Transfer Station in Chicago, was there
21 not?

22 A. Yes.

23 Q. And that investigation was brought to
24 permitting's attention by the field operation

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1 section, a woman named Anna Van Orden in your
2 office?

3 A. Yes.

4 MR. KIM: I'm going to object to these
5 questions. I don't think any relevance has been
6 established, and I don't think there is any
7 relevance between what happened in the decision

8 that Mr. LaRose is referring to now and the
9 decision at hand.

10 HEARING OFFICER HALLORAN: Mr. LaRose.

11 MR. LaROSE: We've alleged and we think
12 we'll prove, Mr. Halloran, that the Agency
13 treated Community Landfill under similar
14 circumstances differently than it treated the
15 Gonzales Transfer Station, which would then
16 assist us in proving our allegation that this
17 permit denial was really a pretext to closing
18 down the facility.

19 I think I'm entitled to explore this
20 gentleman's involvement in that case, and I
21 think I can establish a similarity of factual
22 circumstances between the two cases.

23 HEARING OFFICER HALLORAN: Mr. LaRose,
24 was this in the record before the Agency at the

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1 time of the permit denial or issues May 11th,
2 2001?

3 MR. LaROSE: Is it in the record in this
4 case? No. Was it in the Agency's files?
5 Absolutely. They did -- the investigation of
6 the Gonzales case was initiated in February of

7 1999 resulting in the issuance of Wells letters
8 in November of 1999 and the issuance of a permit
9 on the 30th of December 1999. So was it in the
10 Agency's files and did they know about it?

11 Absolutely.

12 HEARING OFFICER HALLORAN: Mr. Kim.

13 MR. KIM: I believe when we get to the
14 testimony about a permit, it will be established
15 that each situation in which the use of 39(i) is
16 contemplated is done on a case-by-case basis.
17 That being the case, trying to compare any two
18 sites is really kind of -- the facts, at least,
19 really is pretty much just apples and oranges.
20 One doesn't have anything to do with another.

21 HEARING OFFICER HALLORAN: I'm going to
22 sustain Mr. Kim's objection.

23 MR. LaROSE: I don't think I'm going to
24 -- no. You know what, I think I will. I'm

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1 going to do a brief offer of proof at this
2 time. It's really not -- this witness wasn't
3 involved in this particular 39(i) investigation,
4 but the witnesses that were, Ms. Munie, Ms.
5 Roque, Mr. Liebman had very, very limited 39(i)

6 experience, and I think when we talk to them, we
7 will raise the issue again, but there is a
8 couple of questions that I have for Mr. Retzlaff
9 under an offer of proof for this particular
10 facility.

11 HEARING OFFICER HALLORAN: May proceed,
12 Mr. LaRose.

13 MR. LaROSE: Thank you.

14 BY MR. LaROSE:

15 Q. The field office brought the Gonzales
16 issue to the attention of the Agency?

17 A. Yes.

18 Q. The permit section of the Agency, I
19 should say?

20 A. Yes.

21 Q. And it involved the criminal activity --
22 criminal conviction of the operator of the site,
23 Mr. Gonzales, and potential criminal activity of
24 the owner of the site, a Mr. DiSilvestro?

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1 A. I'm aware that it involved Gonzales. I'm
2 not aware that it involved DiSilvestro.

3 Q. Okay. Were you involved in any
4 investigations with respect to Mr. DiSilvestro?

5 A. Yes.

6 Q. Okay. And you were involved with charges
7 or potential charges that were going to be
8 brought against Mr. DiSilvestro for illegal
9 dumping, correct?

10 A. That's not correct. If I could explain.

11 Q. Go ahead.

12 A. What we were working on, he was not a
13 target of us. He apparently was a target of the
14 FBI.

15 Q. Okay. And the FBI was looking at him for
16 illegal dumping.

17 That's what your knowledge is?

18 A. Partially, yes.

19 Q. And the charges didn't pan out because
20 the wire was faulty and the videotape screwed
21 up?

22 A. That's my understanding, yes.

23 Q. Okay. Is it one of your duties and
24 responsibilities to inform permitting about

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1 felony convictions of owner/operators of
2 sanitary landfills?

3 A. It hasn't been real clear.

4 MR. KIM: Are we still on the offer of
5 proof?
6 MR. LaROSE: We are not. I'm sorry.
7 HEARING OFFICER HALLORAN: Okay.
8 MR. LaROSE: This is the first question
9 that's not part of the offer of proof.
10 HEARING OFFICER HALLORAN: I stand on my
11 ruling. Mr. Kim's objection is sustained.
12 MR. LaROSE: Thank you.
13 HEARING OFFICER HALLORAN: Thank you.
14 MR. LaROSE: Let me ask that question
15 again so that we --
16 HEARING OFFICER HALLORAN: Please do.
17 BY MR. LaROSE:
18 Q. Is it one of your duties and
19 responsibilities to inform permitting about
20 felony convictions of owners and operators of
21 sanitary landfills that come to your attention?
22 A. I suppose it could be, yes.
23 Q. And certainly if you did that, nobody
24 would say you were doing a bad thing?

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1 A. No.
2 Q. You knew about Robert Pruum's conviction

3 for several years, correct?

4 A. Yes.

5 Q. Probably all the way back to 1993, right?

6 A. Yes.

7 Q. There was office talk in Maywood for as

8 many as eight years with respect to Robert

9 Pruum's conviction?

10 A. Yes.

11 Q. Would you characterize that office talk

12 that it was common knowledge in Maywood that Mr.

13 Pruum had been convicted?

14 A. Yes.

15 Q. Okay. Cliff Gould knew, didn't he?

16 A. Yes.

17 Q. You had specific discussions with Mr.

18 Gould about Mr. Pruum's conviction as long ago

19 as 1993?

20 MR. LaROSE: Just give me a minute.

21 BY MR. LaROSE:

22 Q. Did Bruce Kugler know about the

23 conviction?

24 A. Possibly.

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1 MR. KIM: Objection. I don't see the

2 relevancy of an enforcement attorney's knowledge
3 having anything to do with the permit decision.

4 MR. LaROSE: I kind of questioned that,
5 too, when he sent his memo that went to Joyce
6 Munie and Bruce Kugler too, and I think that
7 ties it up.

8 Our position is that everybody at
9 the Agency knew and nobody did their job. So
10 the more people that I can prove that knew -- I
11 mean, Mr. Purseglove got up there and said if
12 you got this knowledge, you've got a duty to
13 report it. I can prove at least seven, and I
14 think Mr. Kugler is probably eight.

15 HEARING OFFICER HALLORAN: Is Mr. Kugler
16 going to be here today as a witness?

17 MR. KIM: Mr. Kugler is not going to be a
18 witness.

19 MR. LaROSE: I was restricted in taking
20 Mr. Kugler's deposition. I was told that I
21 couldn't.

22 MR. KIM: And the reason being there was
23 nothing that Mr. Kugler was going to testify to
24 that would be admissible at a hearing, which I

1 believe is true. Along those same lines, I
2 don't understand, first of all, on a relevancy
3 basis how that question has anything to do with
4 the permit decision at hand, and second -- well,
5 that's the objection.

6 MR. LaROSE: Again, Mr. Halloran, our
7 position is and has been from day one that
8 people knew about this for many, many years and
9 did absolutely nothing about it, slept on their
10 rights, let us spend hundreds of thousands of
11 dollars, incur millions of dollars of liability,
12 and then when some reporter calls them, they all
13 of a sudden get religion and do their job.
14 That's the Laches defense. That's the waiver
15 defense. That's estoppel defense, the defense
16 that we're making in this case. I think I have
17 an opportunity to explore who knew, and there's
18 one other reason why I think I have that
19 opportunity.

20 If you look at page 13 of the
21 record, in the first full paragraph, third line
22 from the bottom, Ms. Munie writes as part of her
23 memo in the permit decision in this case,
24 however, the conviction was not known before the

1 complaint was brought to our attention in
2 April 2001.

3 Case law is absolutely clear that I
4 have the right to present cross-examination and
5 testimony to rebut the reasons that the Agency
6 made in this case. She said, it wasn't known.
7 I have the ability to prove that it was, and
8 that would include Mr. Kugler as a high-ranking
9 person in the legal department who should have
10 done something about this if he knew about it.

11 MR. KIM: In response, I think that first
12 Mr. Kugler would be happy to hear he is now a
13 high-ranking member of legal, and, second, any
14 statement that Ms. Munie made in terms of the
15 wording or what she intended in her memo I think
16 should be directed to her.

17 Again, I don't understand how
18 anything on the part of Mr. Kugler, who had no
19 part in the permit decision, how that bears any
20 relevancy to this.

21 HEARING OFFICER HALLORAN: I'm going to
22 sustain Mr. Kim's objection. You can ask Ms.
23 Munie, if you so choose, when she takes the
24 stand.

1 MR. LaROSE: I'd like to make an offer of
2 proof on this.

3 BY MR. LaROSE:

4 Q. Sir, did Kugler know about it?

5 A. I really don't know.

6 MR. LaROSE: Okay. That's the end of the
7 offer of proof.

8 HEARING OFFICER HALLORAN: Thank you. My
9 ruling stands. Thank you.

10 MR. LaROSE: That's all I have at this
11 time.

12 HEARING OFFICER HALLORAN: I don't want
13 to slight the attorney from Rockford, Mr.
14 Charles Helsten. Do you have any questions for
15 the witness?

16 MR. HELSTEN: Thank you. Mr. Hearing
17 Officer. Just several questions. Maybe this is
18 a better way that both petitioners get their
19 questions out of the way and then Mr. Kim can
20 ask his.

21 C R O S S - E X A M I N A T I O N

22 by Mr. Helsten

23 Q. In summary, Mr. Retzlaff, if you can just
24 clarify, what were your specific reasons for

1 recommending denial of the permit?

2 A. Based on my experience from inspectors,
3 previous inspectors, who cited all those
4 violations on observations over on parcel B with
5 the general site conditions at the time that I
6 had seen them.

7 Q. So you had two bases; one were the
8 observations of the prior inspector, correct?

9 A. Yes.

10 Q. And what was the second basis?

11 A. Personal observations of the site
12 conditions.

13 Q. Okay. What about site conditions
14 concerned you or led you to suggest denial or
15 recommended denial of the permit?

16 A. Based on the conditions at parcel B, the
17 old section, erosion cuts, lack of vegetation,
18 ditches filled up and so forth, the sediments.

19 Q. Anything else?

20 A. Those were the primary.

21 Q. I take it these were not included by Ms.
22 Munie in her denial letter of May 11th, 2001,
23 correct?

24 A. I have no idea what she wrote.

1 Q. Okay. You never saw the denial letter?

2 A. I really don't know. I get a lot of mail
3 that comes through. I scan a lot of it.

4 HEARING OFFICER HALLORAN: Keep your
5 voice up, sir.

6 THE WITNESS: Sure.

7 MR. HELSTEN: That's all, Mr. Hearing
8 Officer.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Helsten. Mr. Kim, your witness.

11 MR. KIM: Just a few questions.

12 R E D I R E C T E X A M I N A T I O N
13 by Mr. Kim

14 Q. Mr. Retzlaff, you testified that your
15 understanding of the Agency's policy concerning
16 enforcement and permitting has changed based
17 upon recent conversations you've had?

18 A. That's correct, yes.

19 Q. What is your understanding now as to who
20 makes -- I'll rephrase that.

21 What is your understanding now as
22 whether or not the Agency can take permitting
23 action to reach an enforcement conclusion?

24 A. That you cannot.

1 Q. Do you know if Joyce Munie intended the
2 permit denial to be a matter of enforcement?

3 A. No.

4 Q. Does the field operation section always
5 agree with decisions that the permit section has
6 made?

7 A. Seldom.

8 Q. There was also some testimony elicited
9 concerning your comments made in certain
10 documents. I believe those are found on pages
11 53 and 54 of the record. If you could, turn to
12 page 53, please.

13 In your opinion, are the comments
14 that you made in the -- well, let me rephrase
15 that question.

16 What parts of the e-mail that you
17 sent to Joyce Munie, in your opinion, are
18 derogatory comments?

19 A. None.

20 Q. What did -- is it safe to say that some
21 of those comments that you made in there were
22 restricted as Mr. LaRose was asking you towards
23 the technical aspects of the landfill?

24 A. Yes.

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1 Q. And what were the other comments that you
2 made in there? How would you characterize them?

3 A. Just opinion.

4 Q. Okay. Do you ever express derogatory
5 comments in what you interpret to be or what you
6 understand to be derogatory comments --

7 MR. LaROSE: Objection, leading.

8 HEARING OFFICER HALLORAN: He may answer,
9 if he can.

10 MR. KIM: I'm sorry. I was going to add
11 to that to finish the question.

12 BY MR. KIM:

13 Q. -- in interoffice e-mails or memorandum?

14 A. No.

15 Q. You were also asked about your
16 understanding of the field operation section's
17 role as the eyes and ears of the Agency and
18 maybe more specifically for the permit section,
19 if necessary.

20 What steps do you take in order to
21 act as the eyes and ears for the permit section
22 when you perform landfill inspections?

23 A. File review, discussions possibly with
24 previous inspectors, site visit, maybe

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1 discussions with permitters as well.

2 Q. Okay.

3 A. The writers.

4 Q. And specifically as to the inspection
5 that you conducted on December 5th, why did you
6 conduct an inspection on that day?

7 A. James Pelnarsh, Senior, had asked me to
8 because the site was ready. Basically, they had
9 finished it. He had asked me to do it then.

10 Q. And I don't recall if you answered this
11 question or not, but what is your understanding
12 of any Agency policy or any Agency guideline as
13 to how you are supposed to pass on information,
14 rumors, what have you, of potential criminal
15 convictions of permit applicants?

16 A. I'm not aware of any formal policy.

17 Q. Are you aware of any formal guidance or
18 any documents?

19 A. No, none.

20 MR. KIM: No further questions.

21 MR. LaROSE: Thank you, Mr. Kim. Mr.

22 LaRose.

23

24

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1 R E C R O S S - E X A M I N A T I O N

2 by Mr. LaRose

3 Q. How about the telephone, sir, would that
4 have been a good mechanism to convey your
5 knowledge of the conviction?

6 A. Sure.

7 Q. E-mail?

8 A. Yes.

9 Q. Candigram?

10 MR. KIM: Objection.

11 HEARING OFFICER HALLORAN: Sustained.

12 BY MR. LaROSE:

13 Q. You had any number of means at your
14 disposal to convey this to management or legal,
15 correct?

16 A. Yes.

17 Q. There was no impediment to that, correct?

18 A. No.

19 Q. Did anyone need to write a policy that
20 said you should pick up the phone and call them

21 and give them this information?

22 A. No.

23 Q. Okay. Look at page 53 of your -- of the
24 record. Quite a bit of sloppy operations, while

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1 up wouldn't characterize that as a derogatory
2 comment, it's certainly not complimentary, is
3 it?

4 A. No.

5 Q. When you came out there to have the
6 inspection with me when we spent an hour and a
7 half back in April of 2000, did you tell me that
8 you thought the operations were sloppy?

9 A. No.

10 MR. KIM: Objection. That's beyond the
11 scope.

12 BY MR. LaROSE:

13 Q. Have you ever told Jim Pelnarsh that the
14 operations were sloppy?

15 A. Not in so many words.

16 Q. If you really believed that, why wouldn't
17 you tell the guy that you were doing the
18 inspection with?

19 A. I have asked him to correct areas that

20 needed attention.

21 Q. Okay. And if you asked him to do that,
22 when you came back the next time, had he done
23 it?

24 A. Yes.

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

2 HEARING OFFICER HALLORAN: Thank you, Mr.
3 LaRose. Mr. Helsten.

4 MR. HELSTEN: Nothing.

5 HEARING OFFICER HALLORAN: Mr. Kim.

6 MR. KIM: Nothing further.

7 HEARING OFFICER HALLORAN: Okay. Thank
8 you. You may step down. Let's go off the
9 record.

10 (Discussion had
11 off the record.)

12 HEARING OFFICER HALLORAN: All right.
13 We're back on the record. It's approximately
14 11:25 -- 11:27. We're going to take a 60-minute
15 lunch break. Everybody be back here by no later
16 than 12:30.

17 MR. LaROSE: Before I lose my track, I
18 would like to offer into evidence Exhibit No.

19 78, which is Mr. Retzlaff's December 5th, 2000,
20 inspection report.

21 MR. KIM: No objection.

22 HEARING OFFICER HALLORAN: Exhibit No. 78
23 is admitted into evidence.

24 MR. LaROSE: I suppose I don't need to do

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1 this, but since I've marked it separately as an
2 exhibit, I would also move into evidence Exhibit
3 No. 1, which is the originally filed
4 administrative record in this case.

5 MR. KIM: No objection.

6 HEARING OFFICER HALLORAN: That's granted
7 as well.

8 MR. LaROSE: And then I would move into
9 admission Exhibit No. 7 -- I'm sorry, 77, which
10 is Mr. Retzlaff's April 17th, 2000, inspection
11 report in this case.

12 MR. KIM: Same objection as before.

13 HEARING OFFICER HALLORAN: I'll take it
14 with the case under the condition it is for the
15 offer of proof.

16 MR. LaROSE: So admitted for the --

17 HEARING OFFICER HALLORAN: Admitted for

18 the purpose --

19 MR. LaROSE: Denied, but admitted for the
20 offer of proof only.

21 HEARING OFFICER HALLORAN: Correct.

22 (Whereupon, further proceedings
23 were adjourned pursuant to the
24 lunch break and reconvened

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1 as follows.)

2 HEARING OFFICER HALLORAN: We're back on
3 the record. It's approximately 12:42 in case
4 number 01-170, and I believe Mr. LaRose was
5 going to call his next and third witness.

6 MR. LaROSE: Yes, sir. I call Joyce
7 Munie.

8 HEARING OFFICER HALLORAN: If I may note,
9 there are no members of the public present and
10 there haven't been throughout the proceedings.
11 There's a couple members of the press. Thank
12 you. Would you please raise your right hand,
13 please?

14 (Witness sworn.)

15 WHEREUPON:

16 J O Y C E M U N I E,

17 called as a witness herein, having been first
18 duly sworn, depose and saith as follows:

19 C R O S S - E X A M I N A T I O N

20 by Mr. LaRose

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. State your name for the record, please?

24 A. Joyce Munie.

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1 Q. Joyce, you're a professional engineer?

2 A. Yes.

3 Q. You are currently the manager of the
4 permit section of the bureau of land?

5 A. Yes.

6 Q. Permit decisions on land permits are your
7 authority only, correct?

8 A. Yes.

9 Q. You have been delegated that authority by
10 the director of the EPA?

11 A. Yes.

12 Q. And unless he took away that delegation
13 not even he could reverse your decision?

14 MR. McDERMOTT: She.

15 BY MR. LaROSE:

16 Q. She. Formerly he. Not even she could
17 reverse your decision, correct?

18 A. Yes.

19 Q. Okay. You denied the permit in this
20 case, right?

21 A. Yes.

22 Q. In front of you, is a copy of the record
23 that we've marked as Exhibit No. 1. I'd like
24 you to take a look at that. The pages are

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1 consecutively numbered after the index. Take a
2 look at pages one and two, please, Ms. Munie.

3 Is that the permit denial in this
4 case?

5 A. Yes.

6 Q. You signed that?

7 A. Yes.

8 Q. It's dated May 11th, 2001?

9 A. Yes.

10 Q. The permit was denied for two reasons;
11 one, Frontier Insurance had been delisted by the
12 Department of Treasury, correct?

13 A. Removed from the list.

14 Q. Okay. So one of the reasons was Frontier

15 Insurance had been removed from the 570 list of
16 approved insurers?

17 A. Correct. Yes.

18 Q. The second reason was that Robert Pruim
19 had been convicted of a felony in 1993, correct?

20 A. Yes.

21 Q. And you made the sole and ultimate
22 decision with respect to that conviction,
23 correct?

24 A. With respect to this denial?

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1 Q. Yes.

2 But with respect to the denial, you
3 made the decision with respect as it related to
4 Mr. Pruim's conviction?

5 A. Yes.

6 Q. Look at page -- numbered paragraph two.
7 You say here about five lines down, based upon
8 the felony conviction of Robert J. Pruim, comma,
9 which is directly related to management of waste
10 in Illinois, are you the one that wrote those
11 words?

12 A. Yes.

13 Q. And that's your interpretation of the

14 information that you received and the documents
15 that you reviewed during your 39(i) evaluation
16 in this case?

17 A. Yes.

18 Q. You also were the person that granted
19 permits to Community Landfill in August of 2000,
20 correct?

21 A. Yes.

22 MR. LaROSE: Mr. Halloran, I'm going to
23 show the witness what we previously marked as
24 Exhibit No. 32, please.

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1 HEARING OFFICER HALLORAN: Thank you.

2 BY MR. LaROSE:

3 Q. Ms. Munie, Group Exhibit 32 is the cover
4 letter for the May 8th permit application for
5 parcel. A couple of pages back is the LPCPA-1,
6 and the rest of it is the actual permit itself
7 granted on August 4th, 2000, correct?

8 A. Yes.

9 Q. Bob Pruij was the president of Community
10 Landfill that signed the LPCPA-1 as contained in
11 Exhibit 32?

12 A. Yes.

13 Q. And the Frontier Insurance bonds, the
14 same ones that were the subject of your May 11th
15 denial, were the bonds that were issued to
16 support this permit application, correct?

17 A. That's my understanding.

18 Q. Take a look at page two of the permit,
19 please. Under item C on page two, it says the
20 operation, paren, i.e., waste disposal, end
21 paren, within the permitted boundaries of the
22 existing landfill unit.

23 Did that mean that this permit was
24 approving that activity?

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1 A. This is the -- for significant
2 modification to operate.

3 Q. Okay. But was it approving the activity
4 listed on page two, item number C?

5 A. Yes.

6 Q. And if you look at item number B, it was
7 approving an in place net disposal capacity of
8 approximately 1,459,400 cubic yards, correct?

9 A. Design of that, yes.

10 Q. And it was requiring, in the second
11 paragraph of paragraph B, for us to reserve up

12 to 475,000 cubic yards in parcel A to dispose of
13 excess waste that there might be in parcel B,
14 correct?

15 A. Yes.

16 Q. The permit at issue in this case was for
17 the approval of an acceptance report for the
18 separation layer and -- for portions of the
19 separation layer and to place waste in the new
20 cell, correct?

21 A. Yes.

22 Q. The separation layer was designed to
23 control pollution at the site, was it not?

24 A. Yes.

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1 Q. At least part of the concept behind the
2 August 2000 permit was to place the separation
3 layer over the old waste, to place waste on top
4 of the separation layer, and to have pollution
5 control devices, such that leachate control --
6 leachate would be controlled in the site,
7 correct?

8 A. For the new area, yes.

9 Q. And all of those things, in your opinion,
10 were designed to protect the environment, yes or

11 no?

12 A. Yes.

13 Q. It is also your opinion, is it not, that
14 the grant of the August 2000 permit was
15 preferable for the environment rather than
16 leaving the site the way it was? Ma'am?

17 A. The word preferable is confusing.

18 Q. Okay. Can you not answer that question?

19 A. No.

20 Q. Okay. Do you remember your deposition a
21 week and a half ago?

22 A. Yes.

23 Q. Okay.

24 MR. LaROSE: Page nine, Mr. Kim.

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1 BY MR. LaROSE:

2 Q. Do you remember being asked this question
3 and giving this answer? Question, you told me
4 -- I think you told me the last time we spoke
5 on the record that you believe that the grant of
6 the August SIGMODs was preferable for the
7 environment rather than leaving the site just
8 the way it was? Answer, yes.

9 Do you remember being asked that

10 question and giving that answer?

11 A. Yes.

12 Q. You didn't have a problem with the word
13 preferable two weeks ago, but you do now?

14 A. I had a problem with the word then, but
15 it was deposition, and you were looking for a
16 yes or no answer.

17 Q. And I still am.

18 A. Okay.

19 Q. And you're under oath?

20 A. Okay.

21 Q. Do you understand what preferable means
22 now?

23 A. I understand what preferable means.

24 Q. So was it -- was the grant of the August

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1 2000 permits more preferable for the environment
2 than leaving the site the way it was?

3 A. More preferable?

4 Q. Yeah.

5 A. Yes.

6 Q. Is it the Agency's obligation to conduct
7 a Section 39 evaluation every time a sanitary
8 landfill permit is filed?

9 A. Yes.

10 Q. Every single application for sanitary
11 landfill, the Agency is required to evaluate the
12 application pursuant to Section 39(i), right?

13 A. Yes.

14 Q. And that means that the Agency goes into
15 the evaluation mode the minute an application is
16 filed, right?

17 A. Yes.

18 Q. You interpret the regulations as meaning
19 that you only have to evaluate, but you don't
20 have to investigate every application, right?

21 A. Could you ask that question again?

22 Q. Yes.

23 Your interpretation of section 39(i)
24 is that you only have to evaluate every

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1 application, not investigate every application?

2 A. Yes.

3 Q. Okay. Take a look at page 13 of Exhibit
4 1, ma'am. The first full paragraph, the
5 sentence that starts with the words about three
6 lines -- I'm sorry. Are you with me --

7 A. Yes.

8 Q. -- on page 13? The first full paragraph
9 on page 13, I believe it's the fourth sentence
10 that begins with the word the Act, could you
11 read that into the record please, that sentence?

12 A. The Act does not require the Agency to
13 investigate, but rather allows the Agency to
14 conduct an evaluation of the operator's prior
15 experience in waste management operations.

16 Q. You wrote that statement, right?

17 A. Yes.

18 Q. Do you believe that to be an accurate
19 interpretation of Section 39(i) of the Act?

20 A. Yes.

21 Q. If Sally Springer -- who is Sally
22 Springer, by the way?

23 A. She's a reviewer in the permit section
24 solid waste unit.

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1 Q. She works for you, right?

2 A. She works for someone who works for me,
3 yes.

4 Q. Ultimately, you're her boss?

5 A. Yes.

6 Q. Okay. If Sally Springer was in a hearing

7 where she heard sworn testimony that the Primes
8 had been indicted for bribing city officials,
9 should she have brought that to somebody's
10 attention in the permit section so that a 39(i)
11 evaluation or investigation could be conducted?

12 A. If she heard what?

13 Q. If she heard sworn testimony that the
14 Primes had been indicted for bribing city
15 officials, should she have brought that to
16 someone's attention in the permit section so it
17 could be evaluated or investigated, yes or no?

18 A. Not necessarily.

19 Q. What about if Clifford Gould heard the
20 same information?

21 A. Not necessarily.

22 Q. What about March Retzlaff, if he heard
23 the same information?

24 A. Not necessarily.

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1 Q. What about John Taylor?

2 A. Not necessarily.

3 Q. What about Kyle Davis?

4 A. Not necessarily.

5 Q. What about Jack Burds?

6 A. Not necessarily.

7 Q. In your deposition, when I asked you the
8 same question, you told -- instead of saying not
9 necessarily, you said possibly.

10 Is there a reason why you're
11 answering that question differently today than
12 you did in your deposition?

13 A. It's two weeks later. The same word
14 didn't come to my mind.

15 Q. Would you equate the not necessarily to
16 the possibly?

17 A. Yes.

18 Q. In your mind, you're meaning to convey
19 the same thought?

20 A. Yes.

21 Q. The August 2000 -- the application that
22 resulted in the August 2000 permit, did you
23 conduct a 39(i) evaluation of that application?

24 A. Yes.

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1 Q. And your evaluation was an evaluation of
2 only what was in front of you, correct?

3 A. In the application, yes.

4 Q. You did not go outside the four corners

5 of the application in conducting your 39(i)
6 evaluation of that particular application?

7 A. No.

8 Q. Is it fair to say, ma'am, that the
9 evaluation in that case amounted to evaluating
10 the absence of information?

11 A. Yes.

12 Q. Did my clients have any obligation under
13 any law, rule, or regulation that you're aware
14 of to bring the conviction to your attention?

15 A. No.

16 Q. Do you feel like they hid anything from
17 you?

18 A. No.

19 Q. If you had the same information in front
20 of you in August of 2000 as you did in April of
21 2001, would you have made the same decision?

22 A. I can't say.

23 Q. You don't know?

24 A. I can't say. I don't know what I would

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1 do if the situation is not in front of me.

2 Q. 39(i) applies to every permit for either
3 a sanitary landfill or a waste disposal site,

4 correct?

5 A. Yes.

6 Q. 39(i) makes no distinction between the
7 types of permits for sanitary landfill or waste
8 disposal sites as regards whether you are
9 supposed to conduct an evaluation or not,
10 correct?

11 A. Correct.

12 Q. Do you have discretion under Section
13 39(i) to grant or deny permits?

14 A. Yes.

15 Q. Do you take that discretion seriously?

16 A. Yes.

17 Q. As a good environmental professional, do
18 you have an obligation, do you believe, to use
19 your discretion wisely, fairly, and equitably?

20 A. Yes.

21 Q. Out of the thousand permits or so that
22 you've reviewed or signed, you've conducted only
23 three 39(i) investigations, correct?

24 A. Yes.

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1 Q. One was in the ESG Watts case, correct?

2 A. Yes.

3 Q. Their permits were denied regarding the
4 criteria under 39(i) about operating history,
5 right?

6 A. Not necessarily.

7 Q. Okay. Tell me about the denial in ESG
8 Watts?

9 A. There were permits that were issued.

10 Q. Okay. In ESG Watts, permits were issued,
11 not denied under 39(i)?

12 A. Yes.

13 Q. So your involvement in Watts resulted in
14 you using your discretion to grant the permits
15 rather than deny them?

16 A. Actually, I was not the permit manager at
17 that time.

18 Q. Okay. But you did -- you just told me
19 you had some involvement in conducting the 39(i)
20 investigation in that case?

21 A. Yes.

22 Q. Didn't the 39(i) investigation in that
23 case result in the denial of several permits for
24 the Sangamon County Landfill?

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1 A. Some permits. Oh, excuse me. For which

2 landfill?

3 Q. Sangamon Valley.

4 A. Oh, I can't recall.

5 Q. All right. The other one that you were
6 involved in, you couldn't remember the name of
7 it, but it was a transfer station in Chicago?

8 A. Yes.

9 Q. Was it the Gonzales Transfer Station?

10 A. It could be.

11 Q. Do you know what the Gonzales -- what
12 factor of 39(i), which of the three areas of
13 information under 39(i), you were evaluating in
14 the Gonzales case?

15 MR. KIM: I'm going to object. I think
16 the same issue came up with a previous witness
17 concerning the Gonzales Transfer Station. We
18 object on the grounds that it was not relevant.
19 The Hearing Officer sustained the objection and
20 allowed Mr. LaRose at that time to conduct an
21 offer of proof. We would make the same
22 objection as to relevancy for the same reasons.

23 HEARING OFFICER HALLORAN: Mr. LaRose.

24 MR. LaROSE: I think this is not only

1 relevant to show that we were treated
2 differently than the Gonzales situation, but
3 it's relevant to show that this lady's
4 experience with the implementation of Section
5 39(i).

6 Of the thousand or so permits that
7 she's been involved in, she's only conducted
8 three evaluations, and I think it's germane to
9 the issue of whether they followed the
10 appropriate procedures in this case.

11 MR. KIM: I don't think she said
12 evaluations. I think she said investigations.

13 MR. LaROSE: I agree with that. I
14 correct myself. She said she conducts an
15 evaluation of every single application, which is
16 just looking at it. If information comes to her
17 possession, she shifts into the investigative
18 mode.

19 Of the thousand or so, she's only
20 done only three. We're claiming they didn't
21 follow appropriate procedures in this case, and
22 I think I should be able to explore her
23 experience with the implementation of 39(i).

24 MR. KIM: And just in brief response,

1 again, the testimony has been and will continue
2 to be that there are no set procedures for this
3 type of evaluation, that it's done on a
4 case-by-case basis, and as we objected to
5 before, it's trying to compare apples and
6 oranges.

7 The facts there are not going to be
8 the same as the facts here, and so it's not as
9 if you're comparing identical situations.
10 They're completely different, and I don't think
11 they have any bearing on this particular case,
12 and they have no relevance to this case.

13 MR. LaROSE: First of all, the fact that
14 there are no policies and procedures should be a
15 reason more so to investigate how she's
16 evaluating or investigating 39(i) with respect
17 to other sites, but I haven't even had an
18 opportunity to show any comparison,
19 similarities, or likenesses between this case
20 and Gonzales.

21 I think before -- I think maybe
22 that's a good foundational objection, but can we
23 at least get to the similarities and likenesses
24 before we make a ruling?

1 HEARING OFFICER HALLORAN: I think I'm
2 going to sustain Mr. Kim's objection, and then
3 you may make your offer of proof, if you so
4 choose.

5 MR. LaROSE: Let's do that.

6 HEARING OFFICER HALLORAN: Mr. LaRose
7 just handed me Exhibit No. 75.

8 BY MR. LaROSE:

9 Q. Ms. Munie, I'm going to hand you what's
10 been previously marked as Group Exhibit No. 75,
11 which are excerpts from the Agency's file in the
12 Gonzales case. It looks like the second and
13 third pages of that document are the permit that
14 was issued in this case on December the 14th,
15 1999, correct?

16 A. No.

17 Q. Maybe you don't have the same one that I
18 have. Oh, I'm sorry. You're right. It isn't
19 the permit. Flip back about six pages to the
20 December 30th, 1999, permit.

21 A. Are those six full pages or six front and
22 back pages?

23 Q. Flip back to the permit, ma'am, dated
24 December 30th, 1999. You know what it looks

- 1 like.
- 2 A. Yes.
- 3 Q. Okay. Did you sign that permit?
- 4 A. Yes.
- 5 Q. The permit is for the operation --
- 6 development and operation of a transfer station?
- 7 A. No.
- 8 Q. For the development of a transfer
- 9 station?
- 10 A. Yes.
- 11 Q. To develop a transfer station in Cook
- 12 County, Illinois?
- 13 A. Yes.
- 14 Q. The second and third pages were a
- 15 December 14th letter -- December 14th, 1999,
- 16 letter to trust officer Mr. Gonzales.
- 17 Is this what you've commonly
- 18 referred to in the past as a Wells letter?
- 19 A. Yes.
- 20 Q. This was a letter by which you were
- 21 telling Mr. Gonzales that you were going to
- 22 consider his prior convictions, correct?
- 23 A. Yes.
- 24 Q. In the Gonzales case, the issue was a

1 prior felony conviction, right?

2 A. Yes.

3 Q. So that it was subcategory two, number
4 two, of Section 39(i) that you were being
5 involved in in this case?

6 A. Yes.

7 Q. And this information came to you from the
8 field operation section?

9 A. Yes.

10 Q. It's really troublesome -- I mean
11 burdensome because we don't have these pages
12 numbered, but if you flip back past the permit,
13 you'll see a February 19th, 1999, memo to you
14 from Anna Van Orden.

15 Did you find that?

16 A. Yes.

17 Q. Okay. This is your first knowledge of
18 the felony conviction of Mr. Gonzales in this
19 particular case, correct?

20 A. Yes.

21 Q. And this comes to you from the field
22 operation section?

23 A. Yes.

24 Q. Ms. Van Orden says that the applicant is

1 a disbarred attorney found guilty of extortion
2 and tax evasion, correct?

3 A. Yes.

4 Q. She also says that he was involved in an
5 investigation where hazardous waste disappeared
6 while under his charge, correct?

7 A. Yes.

8 Q. She also says that Mr. Gonzales is
9 involved in a case that has been referred to the
10 Attorney General's Office, correct?

11 A. Yes.

12 Q. Then she talks about the property owner,
13 Mr. DiSilvestro, being involved in a Silver
14 Shovel investigation and criminal activities
15 investigated by DCI, right?

16 A. Yes.

17 Q. She's saying she doesn't feel comfortable
18 giving the transfer station
19 to -- giving this transfer station permit to
20 individuals with this background, correct?

21 A. Yes.

22 Q. You ultimately made the decision that it
23 was okay to do so, right?

24 A. Yes.

1 Q. And that was based, at least in part, on
2 their lawyer's response to your Wells letter,
3 right?

4 A. Yes.

5 Q. And that appears in this record on the
6 fifth page or it starts on the fifth page?

7 MR. KIM: Is that a question?

8 MR. LaROSE: Yes.

9 BY THE WITNESS:

10 A. Oh, that was a question?

11 BY MR. LaROSE:

12 Q. Yes.

13 A. What was the question? I'm sorry.

14 Q. That's all right.

15 It appears -- the response to your
16 Wells letter appears on the fifth page or begins
17 on the fifth page of this Exhibit 75?

18 A. Fifth physical page, yes.

19 Q. And it goes on for four pages, correct?

20 A. Yes.

21 Q. Do you know how long you gave Mr.
22 Gonzales' lawyer to respond to the allegations
23 of his client's felony?

24 A. No.

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1 Q. Read the -- flip to the last page of his
2 letter, Mr. Slobig's letter.

3 A. Uh-huh.

4 Q. It says in the beginning of the second
5 full paragraph, we requested in November 1999 an
6 opportunity to see and respond to the matters
7 raised in Ms. Munie's December 14th, 1999,
8 letter.

9 Does that refresh your recollection
10 as to whether Mr. Slobig was aware of your
11 intent to consider the felony conviction as
12 early as November 1999?

13 A. It would appear that way.

14 Q. So even though this gentleman had been
15 convicted of a felony, disbarred as an attorney,
16 and had hazardous waste investigations against
17 him, and the owner of the property had other
18 investigations against him, you thought it was
19 okay to issue them a permit?

20 A. The hazardous waste investigation was not
21 an adjudicated violation, and it's my
22 understanding that Mr. DeSilva (sic) is not a

23 permittee.

24 Q. DiSilvestro?

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1 A. DiSilvestro.

2 Q. Right.

3 Wasn't his trust a permittee and
4 wasn't he the sole beneficiary of that trust?

5 A. Not that I'm aware of.

6 Q. Who was -- look at the permit, ma'am,
7 December 30th, 1999.

8 The owner was the trust, right?

9 A. Yes.

10 Q. LaSalle National Bank Trust with certain
11 trust numbers.

12 Do you know who the beneficiary of
13 that was?

14 A. Not offhand.

15 Q. In making your decision in this case, you
16 looked at Ms. Van Orden's memo, the document
17 that's behind it regarding lawyers charged under
18 Graylord, a two-page document behind that which
19 appears to be some print-out information
20 regarding Mr. Gonzales, and the response to the
21 Wells letter, correct?

22 A. Is this the entire file?

23 Q. I don't think so. I think this is just
24 excerpts from it, but the permit reviewer's

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1 notes are in there. I mean, it's certainly not
2 the entire Agency's file.

3 MR. KIM: Maybe just to clarify, was your
4 question to her was this all that you looked at
5 or was your question interpreted as whatever you
6 looked at, was this included in your review?

7 MR. LaROSE: I think I can clean it up a
8 little. I think you're probably right.

9 BY MR. LaROSE:

10 Q. In making your decision in this case, you
11 definitely looked at the lawyer's response to
12 the Wells letter?

13 A. Yes.

14 Q. Okay. And you would have looked at the
15 information sent to you by Anna Van Orden,
16 correct?

17 A. Yes.

18 Q. And you would have looked at the permit
19 reviewer's notes, correct?

20 A. Yes.

21 Q. Other than those things, do you remember
22 whether you looked at anything else in making
23 your decision?

24 A. Not that I can recall.

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1 MR. LaROSE: That's the end of the offer
2 of proof, sir.

3 HEARING OFFICER HALLORAN: This Gonzales
4 permit, my understanding it was not part of the
5 -- part of the record presented to the IEPA.

6 MR. KIM: This was not part of the permit
7 application presented to us. It was not part of
8 our compilation review of the administrative
9 record. That's correct.

10 HEARING OFFICER HALLORAN: I stand on my
11 ruling. We'll take it as an offer of proof.

12 MR. LaROSE: Okay. Then I would offer
13 Exhibit 75 for that purpose.

14 HEARING OFFICER HALLORAN: Exhibit 75 is
15 accepted for the purposes of the offer of
16 proof.

17 BY MR. LaROSE:

18 Q. Ma'am, are there any rules or regulations
19 or guidelines regarding how you're supposed to

20 implement Section 39(i) of the Act?

21 A. There is a Board proceeding in the Watts,
22 I believe the Taylor Ridge case, and it
23 specifically points to 745, which is a section
24 in the regulations which is generally used for

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1 prior conduct certifications.

2 Q. Didn't you tell me at your deposition
3 that there were no rules, regulations, or
4 guidelines regarding the implementation of
5 Section 39(i)?

6 A. And there are no rules, regulations, or
7 guidelines that are specific to the
8 implementation of 39(i).

9 Q. So the answer to that question would be
10 yes, right?

11 A. I don't believe I understood your
12 question then.

13 Q. Okay. Maybe you didn't. Let me ask it
14 again.

15 Yes or no, are there any rules,
16 regulations, or guidelines relating to the
17 implementation of Section 39(i), yes or no?

18 A. No.

19 MR. KIM: Objection. Guidelines as to
20 Agency produced or guidelines as to outside
21 sources?

22 HEARING OFFICER HALLORAN: Mr. LaRose?

23 MR. LaROSE: Just guidelines.

24 MR. KIM: She may have the same answer,

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1 though.

2 MR. LaROSE: Well, she did. She said
3 no.

4 BY MR. LaROSE:

5 Q. Are there any guidance documents that
6 you're aware of from the Agency regarding the
7 implementation of Section 39(i)?

8 A. Of 39(i)? No.

9 Q. The same question with respect to Board
10 regulations?

11 A. No.

12 Q. When you were doing your investigation in
13 this case, were you kind of winging it in terms
14 of how to interpret Section 39(i)?

15 A. I used my professional judgment.

16 Q. Okay. And that's all you used?

17 A. And the information in front of me.

18 Q. You used your professional judgment to
19 evaluate the information in front of you,
20 correct?

21 A. Yes.

22 Q. You used no other guidance documents,
23 correct?

24 A. Correct.

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1 Q. What's the Agency's obligation under the
2 mandates of the Wells Manufacturing case?

3 A. If we want to consider anything outside
4 of the four corners of the application in front
5 of us, we must inform the applicant that we're
6 going to do that.

7 Q. And that's to give them an opportunity to
8 respond to the fact that you are going to look
9 at something outside the four corners of the
10 application, correct?

11 A. I don't know if that's the specific
12 purpose of it.

13 Q. Do you know what the purpose is?

14 A. I thought the purpose was to inform them
15 that we were looking outside the four corners of
16 the application.

17 Q. And that's the only purpose that you
18 think it is?

19 MR. KIM: I'm going to object. I think
20 the whole question calls for a legal
21 interpretation of that case. He's asking what
22 does that case impose upon the Agency. I don't
23 know that that's a fair question for the
24 witness. It's a question of law, not a question

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1 of fact. He can ask her interpretation of it.

2 MR. LaROSE: And that's what I am asking
3 her. She's -- maybe I can get to it this way.

4 HEARING OFFICER HALLORAN: Very well.

5 BY MR. LaROSE:

6 Q. Do you understand that you, as the permit
7 manager, have certain obligations under the
8 Wells case?

9 A. Yes.

10 Q. Okay. What do you understand those
11 obligations to be, ma'am?

12 A. To inform the applicant that we're
13 considering something outside the four corners
14 of the application.

15 Q. And what do you understand the purpose of

16 that obligation to be?

17 A. So that the applicant knows that we're
18 going to be looking outside the four corners of
19 the application.

20 Q. And is that the extent of it?

21 A. Extent of what?

22 Q. The extent of the purpose, ma'am.

23 A. Of my purpose in informing them?

24 Q. Yes.

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1 A. Yes.

2 Q. Is part of the purpose, do you know, to
3 give them an opportunity to respond to the fact
4 that you're going to look at stuff outside the
5 four corners of the application?

6 A. I didn't know that that was a purpose,
7 but that's usually the result, and that's what I
8 assume someone would do with the information I
9 give them.

10 Q. Have you ever read the Wells
11 Manufacturing case, ma'am?

12 A. No.

13 Q. So you don't know whether the Wells
14 Manufacturing case requires you to give the

15 applicant an opportunity to respond?

16 MR. KIM: Again, objection. It calls for
17 a legal conclusion.

18 MR. LaROSE: She's the one that
19 implemented it, Mr. Halloran.

20 HEARING OFFICER HALLORAN: She can
21 answer, if she's able?

22 BY MR. LaROSE:

23 Q. Ma'am?

24 A. Ask the question again.

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1 Q. You don't know whether the Wells
2 Manufacturing case requires you, as the permit
3 manager, to give the permittee an opportunity to
4 respond to the fact that you're looking at
5 things outside the permit application?

6 A. No.

7 Q. In the Wells letters that you sent in
8 this case, you gave us -- the letter says you
9 have until a certain time to respond, correct?

10 A. Yes.

11 Q. And you gave us until 5:00 p.m. on
12 April the 9th to respond?

13 MR. KIM: Which case are you referring

14 to?

15 MR. LaROSE: This case.

16 MR. KIM: Does she have the --

17 MR. LaROSE: Yes.

18 HEARING OFFICER HALLORAN: What are we
19 looking at?

20 MR. LaROSE: You know what, I'm sorry.
21 I'm sorry. She doesn't. She doesn't. Let me
22 back up. I need 81. You're right. Thank you.

23 Mr. Halloran, I'm going to hand you
24 what's been previously marked as Exhibit No.

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1 81. Do you have one?

2 MR. KIM: I've got one. I gave you
3 three.

4 MR. LaROSE: Chuck, can I share with
5 you?

6 MR. HELSTEN: You may have this one.

7 MR. LaROSE: Okay.

8 BY MR. LaROSE:

9 Q. Ms. Munie, I'm going to give you what's
10 been previously marked as Group Exhibit No. 81,
11 which is your lawyer's supplement to the record
12 in this case. Don't -- try not to take the clip

13 off because that's the only thing holding these
14 together?

15 A. I just moved it to the corner so I could
16 actually look at more than the front page.

17 Q. Thanks.

18 The Wells letters, do you know
19 whether the Wells letters were -- the Wells
20 letter to me -- Strike that, the Wells letter to
21 my client and to the City of Morris were
22 originally included in the record or not?

23 A. I don't know.

24 Q. Okay. The Wells letters I asked your

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1 lawyer to find them because they were not
2 included in the record, and you if you look
3 at -- these look like they are consecutively
4 numbered down at the right-hand corner. If you
5 look at document number 0275, that's the Wells
6 letter, right?

7 A. Yes.

8 Q. Okay. And that was maybe not signed by
9 you, but certainly approved by you?

10 A. Yes.

11 Q. Okay. Your signature appears or a

12 signature of a Joyce L. Munie appears on the
13 second page of this document, but you didn't
14 actually sign that, somebody else did?

15 A. That's correct.

16 Q. And you authorized them to do so?

17 A. Yes.

18 Q. Okay. It says here on the second page,
19 this information must reach the EPA by 5:00 p.m.
20 on April the 9th, 2001, and down below that, it
21 says failure to submit information addressing
22 the aforementioned issue by 5:00 p.m. on April
23 9th, 2001, may result in a denial of your
24 application.

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1 You were giving us opportunity to
2 respond by that time, correct?

3 A. Yes.

4 Q. Now, the letter is dated April the 4th
5 and said it was sent by certified mail, right?

6 A. Yes.

7 Q. Do you know what day of the week April
8 the 4th is?

9 A. No.

10 Q. I've got a calendar right here. Let's

11 take a look at it. If you look down the
12 left-hand side of this calendar, take a look and
13 tell me what day of the week April the 4th was
14 of 2001?

15 A. Wednesday.

16 Q. Okay. So you were going to send these
17 out on Wednesday. There was going to be at
18 least a weekend between April the 4th and
19 April the 9th, correct?

20 A. Yes.

21 Q. Okay. Do you know when these documents
22 were delivered by certified mail to my client?

23 A. No.

24 Q. You don't know that because that's not in

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1 the record, is it, ma'am?

2 A. Okay.

3 Q. Okay. Does the record or this
4 supplemental record contain any evidence that my
5 client ever received this document?

6 A. Can I take a minute to look through the
7 supplemental record?

8 Q. You can look through it all you want.

9 A. I've never seen it before.

10 Q. You know what, focus your attention on
11 pages 0275 to 0280 because I can promise you
12 it's not before that.

13 A. It appears that it was received by the
14 City of Morris on April 9th, 2001.

15 Q. That doesn't answer the question.

16 When was it received by my client?

17 My client is Community Landfill Company.

18 A. I'm sorry. I thought you were
19 representing the permittee.

20 Q. Okay.

21 A. I do not see anything that indicates that
22 this was received by Community Landfill
23 Corporation.

24 Q. Okay. And what you do see on page 0279

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1 was that it was received by the City of Morris
2 on 4-9-01, the very date that you set the
3 deadline on at 5:00 o'clock for them to respond?

4 A. Yes.

5 Q. Did you think that was a fair enough or
6 reasonable enough time for them to respond to
7 this serious allegation?

8 A. I think that they could have picked up

9 the phone on April 9th, yes.

10 Q. Didn't I write you on April the 9th and
11 say this was an unreasonable time frame?

12 A. I don't recall that.

13 Q. Okay. Well, let's flip to page 15 of the
14 record, which is Exhibit 1, and see if that
15 refreshes your recollection.

16 A. Yes. It would appear that
17 you -- on April 9th that these letters had been
18 sent.

19 Q. That wasn't the question.

20 Wasn't I objecting to the short time
21 frame because this letter had been given to me
22 by my consultant, Mike McDermott, by fax that
23 morning because he had received it by a CC and
24 not by certified mail.

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1 MR. KIM: Objection. I think that's a
2 fine line between leading and testifying. If he
3 wants to ask her to read the letter and then ask
4 her questions, that's fine, but I think he's
5 putting information into his questions that's
6 not found in this letter.

7 MR. LaROSE: I think he's probably

8 right. I think he's probably right. Let me see
9 if I can break it down.

10 BY MR. LaROSE:

11 Q. I say here in this letter the first
12 paragraph, Ms. Munie's letters were received by
13 me only this morning via fax by Mr. McDermott
14 who is copied on these letters, yet the letters
15 require a response prior to 5:00 p.m. today. We
16 object to the unreasonable time frame in which
17 to respond.

18 Was that as good as a telephone
19 call, ma'am?

20 A. This letter, yes.

21 Q. So you knew that as of April the 9th we
22 had less than 24 hours to respond to this
23 information. You knew we were objecting to it.

24 Did you ever call me up and say,

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1 Mark, you can have a little more time?

2 A. Did you not ask for a little more time in
3 this letter?

4 Q. No, I didn't.

5 A. Why not?

6 Q. Ma'am, answer the question.

7 Did you ever call me and say we
8 could have a little more time?

9 A. No.

10 Q. Okay. Weren't we saying here, the
11 instant permit applications have been pending
12 for several months, and all of a sudden we are
13 required to respond within hours to the EPA's
14 intent to consider the 1993 guilty plea. We
15 think such a requirement is unfair, improper,
16 and illegal.

17 Did you ever respond to that in any
18 way?

19 A. No.

20 Q. Okay. Was it a fair opportunity to
21 respond by sending these letters to my client
22 having no proof that they were ever received and
23 having me have a few hours to respond when Mr.
24 McDermott sent it to me by fax?

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1 MR. KIM: Objection. That's an
2 argumentative question.

3 HEARING OFFICER HALLORAN: Mr. LaRose,
4 could you please rephrase?

5 BY MR. LaROSE:

6 Q. Do you think you gave my client fair
7 opportunity to respond to your Wells letter in
8 this case?
9 A. Yes.
10 Q. Did you consider the pending enforcement
11 case in making your permit decision?
12 A. No.
13 Q. Did you consider the notice of violation
14 that had been issued on the Frontier bonds?
15 A. No.
16 Q. Did you consider the notice of intent to
17 pursue legal action on the Frontier bonds?
18 A. No.
19 Q. Did you consider any of the enforcement
20 matters pending against my client in making your
21 permit decision?
22 A. No. I cannot use permits for
23 enforcement.
24 Q. Did you consider any of our responses in

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1 any of the permit matters in making your
2 decision?
3 A. Yes.
4 Q. You considered our responses in the

5 enforcement case?

6 MR. KIM: Objection.

7 BY THE WITNESS:

8 A. You said the permit case.

9 MR. KIM: The question was to the permit
10 case, not to the enforcement case.

11 MR. LaROSE: I don't believe.

12 HEARING OFFICER HALLORAN: Sustained.

13 BY MR. LaROSE:

14 Q. Okay. Ma'am, did you consider our
15 responses to the enforcement case in making your
16 permit decisions in this case?

17 A. No.

18 Q. Was the fact that the Frontier Insurance
19 Company had been removed from the 570 list
20 considered by you in denying this permit?

21 A. Not specifically.

22 Q. Okay. That was part of the permit
23 denial, though, wasn't it?

24 A. Yes.

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1 Q. Was the delisting or the removal from the
2 list something that was in the permit
3 application?

4 A. No.

5 Q. So that would have been something outside
6 of the permit application that you considered,
7 correct?

8 A. It's part of the file.

9 Q. Okay. Answer the question, ma'am.
10 Yes or no, was the delisting from
11 the 570 list something outside the application
12 that you considered?

13 A. Yes.

14 Q. Did we get a Wells letter on that one?

15 A. No.

16 Q. In this case, you received a phone call
17 from a reporter, Chuck Pelkie, regarding
18 information about my client's criminal
19 conviction, right?

20 A. Yes.

21 Q. You had spoken to Mr. Pelkie before,
22 hadn't you?

23 A. Yes.

24 Q. In fact, you had spoken to him several

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1 times before, probably more than ten times, had
2 you not?

3 A. Can you say before what?

4 Q. Before he called you with the criminal
5 conviction information.

6 A. Yes.

7 Q. The first time you spoke to Mr. Pelkie
8 was right after the last time we had a hearing,
9 permit hearing, in the Community Landfill
10 matter, right?

11 A. It was during the last day of the
12 hearing.

13 Q. And when you spoke to him on that day,
14 you talked to him for more than two hours?

15 A. Up to two hours.

16 Q. And in this two-hour conversation, you
17 were giving him, I think you called it, a
18 landfill 101 lesson?

19 A. Yes.

20 Q. When he called you to tell you about the
21 information on the criminal conviction, were you
22 embarrassed that this had to be brought to your
23 attention by a reporter?

24 A. No.

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1 Q. Do you remember your deposition in this

2 case, ma'am?

3 A. Yes.

4 Q. You swore to tell the truth back then two
5 weeks ago?

6 A. Yes.

7 MR. LaROSE: Page 138, Counsel.

8 BY MR. LaROSE:

9 Q. Ma'am, do you remember this question and
10 giving this answer? Question, were you at all
11 embarrassed or was anyone else that you talked
12 to embarrassed that this had been brought to the
13 Agency's attention by a reporter? Answer, that
14 might be a good way to put it, yes.

15 Do you remember being asked that
16 question and giving that answer?

17 A. Yes.

18 Q. You included Mr. Purseglove in this 39(i)
19 issue because he was the field section manager,
20 correct?

21 A. Yes.

22 Q. Did he provide you with any information
23 that you used in your evaluation or
24 investigation?

1 A. Not that I can recall.

2 Q. You didn't ask him to conduct any part of
3 the evaluation or investigation, did you?

4 A. No.

5 Q. He was included to sit there, listen, and
6 volunteer information if he had any, right?

7 A. Yes.

8 Q. Let's take a look at page 14 of the
9 record, please. This is your e-mail of 3-30-01,
10 8:08 a.m., to Mike Nechvatal, Scott Phillips, a
11 carbon copy to John Kim, Chris Liebman, Paul
12 Purseglove, Christine Roque, and Sue Schroeder,
13 right?

14 A. Yes.

15 Q. Do you remember -- this is the first
16 document that you generated after you talked to
17 Mr. Pelkie, the reporter, regarding the
18 conviction, right?

19 A. Yes.

20 Q. How many -- when you talked to Pelkie the
21 ten or so times before 3-30-01, was it spread
22 out from January all the way to March or were
23 they kind of more clustered in January and then
24 you didn't talk to him for a while?

1 A. They were clustered, but I would say I
2 hadn't talked to him for a while.

3 Q. Did he ever tell you anything about the
4 upcoming April election of the mayor of the City
5 of Morris? Did you guys talk about that at all?

6 A. No.

7 Q. He never mentioned it to you?

8 A. Not that I can recall.

9 Q. Did he explain to you what the purpose of
10 him -- Strike that.

11 When you talked to him ten or so
12 times before March the 30th, would he always
13 call you or sometime you would call him?

14 A. Sometimes I would call him at the request
15 of my public information officer.

16 Q. But your recollection is that he always
17 initiated the call and then sometimes you would
18 call him back?

19 A. Yes.

20 Q. Did you ever just initiate a call like,
21 hi, Chuck, how are you doing, let me tell you
22 some more about the landfill?

23 A. No.

24 Q. So, again, the question is in the ten or

1 more times that he talked to you or called you
2 before 3-30-01, do you remember whether they
3 were clustered early on or more spread out over
4 the time period between January 2001 and March
5 the 30th?

6 A. They were mostly clustered.

7 Q. Early on now?

8 A. Yes.

9 Q. Did he ever tell you what his purpose
10 was?

11 A. To write an article.

12 Q. About what?

13 A. About the appeal hearing and Community
14 Landfill.

15 Q. Okay. And the appeal hearing and
16 Community Landfill?

17 A. The appeal hearing for Community
18 Landfill.

19 Q. Okay. And was that the limitation of the
20 ten or so conversations that you had with him
21 before 3-30-01?

22 A. Can you ask that question a different
23 way?

24 Q. Yeah, I can. I knew you were going to

1 have a problem with that one.

2 Was that the extent of the content
3 of the conversations that you had with him,
4 information about the permit hearing?

5 A. And the landfill.

6 Q. And the landfill itself?

7 A. Yes.

8 Q. You spent two hours with him the first
9 time.

10 Would you say that you spent maybe
11 more than ten hours with him on the telephone?

12 A. No.

13 Q. More than five?

14 A. I doubt it.

15 Q. What part of your job is it that
16 authorizes you to spend hours talking to the
17 press about pending cases?

18 A. That authorizes me?

19 Q. Yeah.

20 A. I have no specific authorization to speak
21 to anyone.

22 Q. Your recollection, referring back to page
23 14 of the record, Exhibit 1, is that he called
24 you the evening before this, right, late in the

1 evening of the 29th of March?

2 A. Yes.

3 Q. Okay. As of 8:08 a.m. on 3-30-01, you're
4 now in the investigative mode, right?

5 A. Could you say that a different way?

6 Q. No.

7 As of 8:08 on 3-30-01, are you in
8 the investigative mode, yes or no?

9 A. No.

10 Q. Ma'am, do you remember your deposition
11 again?

12 A. Yes.

13 Q. You swore to tell the truth a couple of
14 weeks ago?

15 A. Yes.

16 MR. LaROSE: Mr. Kim, page 148.

17 BY MR. LaROSE:

18 Q. At your deposition when you were under
19 oath and you swore to tell the truth a couple of
20 weeks ago, do you remember being asked this
21 question and giving this answer?

22 Question, not my question. Are you
23 in the investigative mode as of 8:08 on 3-30-01,
24 comma, correct? Answer, yes.

1 Do you remember being asked that
2 question and giving that answer?

3 A. Yes.

4 Q. So do you want to change your answer here
5 today?

6 A. I believe that you were in a line of
7 questioning and I had to give a yes or no answer
8 to move on. I don't think I'd use the term
9 investigative mode.

10 Q. But you agreed with it under oath two
11 weeks ago?

12 A. I agreed with that line of questioning,
13 yes.

14 Q. From that time on, from 8:08 on 3-30-01,
15 did you ever assign anyone from permits, legal,
16 or FOS to look at the Agency's CLC file to see
17 if there was any information on these
18 convictions?

19 A. Not specifically.

20 Q. Not even generally, did you, ma'am?

21 A. Generally, the reviewer is looking at the
22 file when they are reviewing applications.

23 Q. Okay. But you didn't assign anyone

24 generally to look at the Agency's file to see if

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1 there was information on these convictions?

2 A. Generally, a reviewer is looking at the
3 permit file, and as part of that review, they
4 are considering everything that's being
5 considered under the application. We had
6 Wells'd this issue. So it was then under
7 evaluation.

8 Q. Okay. Let's try it one more time.

9 Yes or no, ma'am, did you assign
10 anyone to look at the Agency's file to determine
11 whether there was information in the file on
12 these convictions, whether that would be
13 generally or specifically, yes or no?

14 A. Ask the question again.

15 Q. Yes.

16 From 3-31-01 at 8:08 a.m. and at any
17 time thereafter, did you assign anyone from
18 permits, legal, or FOS, whether generally or
19 specifically, to look at the Agency's file on
20 CLC to see if there was information on these
21 convictions?

22 A. Yes.

23 Q. Back to the deposition, again, ma'am, two
24 weeks ago under oath again, remember?

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1 A. Yes.

2 MR. LaROSE: Page 148, Mr. Kim, line 22.

3 BY MR. LaROSE:

4 Q. Do you remember being asked this question
5 and giving this answer? From that time forward,
6 did you, as part of your investigation, assign
7 anybody, whether they be from legal, permits,
8 FOS, or anybody, to look at the entirety of the
9 Community Landfill file to see if there's any
10 information in the file regarding these
11 convictions? Answer, no.

12 Do you remember being asked that
13 question and giving that answer?

14 A. Yes, and I believe that that was the
15 answer I gave to the question before the one
16 asking generally or specifically.

17 MR. LaROSE: Objection, nonresponsive,
18 and ask that the answer be stricken and that the
19 witness be instructed to answer the question.

20 HEARING OFFICER HALLORAN: Excuse me, Ms.
21 Munie. Just answer the question, please.

22 BY THE WITNESS:

23 A. Can you give me the question again?

24

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1 BY MR. LaROSE:

2 Q. Do you remember being asked that question
3 and giving that answer --

4 A. Yes.

5 Q. -- yes or no?

6 A. Yes.

7 Q. Okay. Do you believe that the more
8 information you have in your possession with
9 respect to your 39(i) investigation, the better?

10 A. Yes.

11 Q. Your entire evaluation in this case
12 consisted of your May 9th memo, right?

13 A. Did you ask if that's my entire
14 evaluation?

15 Q. No, no. I'm going to give you a list of
16 things. Let's do it this way. I'm going to try
17 and get what the entirety of your investigation
18 was in this case, and part of that, at least,
19 was your May 9th memo as it appears on pages 12
20 and 13 of the record, correct?

21 A. That was part of my evaluation, yes.
22 Q. And part of your evaluation was also your
23 March 30th e-mail as appears on page 14 of the
24 record, correct?

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1 A. Yes.
2 Q. And you also wrote a memo on April the
3 2nd regarding your investigation that didn't
4 make it into the record the first time around,
5 but that we located later, and now we're going
6 to supplement the record with it.
7 Do you remember that?
8 A. Kind of.
9 Q. Okay. Let me show it to you.
10 MR. LaROSE: Mr. Halloran, I'm going to
11 give you and the witness what we've marked as
12 Exhibit 74? Do you have a copy, John?
13 MR. KIM: Yeah.
14 BY MR. LaROSE:
15 Q. That's a memo that you wrote on April the
16 2nd regarding your investigation, correct?
17 A. Yes.
18 Q. That wasn't included in the record, but
19 it probably should have been, right?

20 A. Yes.

21 Q. Okay.

22 MR. KIM: I agree with Mr. LaRose, I
23 mean, it should have been part of the record.
24 We can either do an oral motion or we can -- we

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1 won't object to its inclusion as evidence.

2 Let's put it that way.

3 HEARING OFFICER HALLORAN: Okay.

4 MR. LaROSE: I think it's best to
5 actually move it into the record in this case so
6 that there's no question that it should have
7 been part of the record, and I'm not claiming
8 that this was secreted or anything like that. I
9 just think that it was an oversight and we found
10 it later and it should be --

11 HEARING OFFICER HALLORAN: Being there's
12 no objection, Exhibit 74 is admitted into the
13 record.

14 MR. LaROSE: Thank you.

15 BY MR. LaROSE:

16 Q. Then you looked at my -- in addition
17 to -- right now, we've got the May 9th memo, the
18 March 30th e-mail, the April 2nd memo. You

19 looked at my Wells response, which appears on
20 pages 15 and 16 of the record, correct?

21 A. Yes.

22 Q. You looked at the docket sheet in the
23 criminal case, which appears on pages 18 through
24 27 of the record, correct?

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1 A. Yes.

2 Q. You looked at the complaint, which
3 appears on pages 28 through -- 28 through 42 of
4 the record, correct?

5 A. Correct.

6 Q. And you looked at Christine's reviewer
7 notes?

8 A. Yes.

9 Q. And that was -- those things that we just
10 talked about was the entire extent of the
11 information that you reviewed in your 39(i)
12 investigation in this case?

13 A. In my evaluation, yes.

14 Q. Evaluation or investigation, right?

15 A. It doesn't make sense.

16 Q. Okay. I know it doesn't make sense to
17 you, and sometimes this whole thing doesn't make

18 sense to me, but let's see if we can clear it up
19 for the record.

20 You only evaluate the four corners
21 of the application, correct?

22 A. Correct.

23 Q. So when you looked at all of these
24 things, you were investigating under 39(i),

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1 correct?

2 A. When I looked at them, I was evaluating.
3 When I went out to search for them, I was
4 investigating.

5 Q. All right. So your entire 39(i)
6 evaluation of this case consisted of the
7 application and these things that we just talked
8 about?

9 A. Yes.

10 Q. Okay. Did you ever talk to anybody from
11 Community Landfill during your entire 39(i)
12 investigation?

13 A. No.

14 Q. Anybody that represented them?

15 A. Not that I can recall.

16 Q. Okay. You didn't call Mr. McDermott or I

17 to discuss this?

18 A. Not specifically.

19 Q. Not generally either, did you?

20 A. Not on this issue.

21 Q. Right.

22 And no nobody that worked at
23 Community Landfill, you didn't call and talk to
24 them?

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1 A. I didn't, no.

2 Q. Mr. Pruiim?

3 A. No.

4 Q. Nobody from the Agency did, did they?

5 A. Not that I'm aware of.

6 Q. Okay. You didn't look at the guilty plea
7 agreement in conducting your evaluation, did
8 you?

9 A. If that's not one of the documents here,
10 no.

11 Q. Did you read the docket sheet, which
12 appears -- it starts on page 22 of the record?
13 That's one of the things that you evaluated in
14 this case.

15 A. It starts on page 18?

16 Q. I'm sorry. It starts on page 18?
17 A. Yes.
18 Q. Did you read it in its entirety?
19 A. Yes.
20 Q. Take a look at page 22, the second to the
21 last entry, docket entry number 14, 9-24-93,
22 plea agreement as to Robert J. Pruim.
23 Do you see that?
24 A. Yes.

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1 Q. Okay. Did you ever look at anything
2 that's called a plea agreement?
3 A. No.
4 Q. Okay. Isn't it a fact, ma'am, that you
5 thought what you were reviewing was the plea
6 agreement when you looked at the complaint?
7 A. Not necessarily.
8 Q. Okay.
9 MR. LaROSE: Page 91, Mr. Kim.
10 BY MR. LaROSE:
11 Q. Do you remember being asked this question
12 and giving this answer under oath?
13 Question, so when you thought you
14 had the guilty plea in front of you, what you

15 really had was the charging document and the
16 Court's docket sheet, correct? Answer, yes.

17 Do you remember under oath giving
18 that answer to that question not just two weeks
19 ago?

20 A. Yes.

21 Q. Okay. So did you think you had the
22 guilty plea in front of you or didn't you?

23 A. Yes.

24 Q. Okay. You were mistaken, weren't you?

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1 A. To what?

2 Q. That you didn't have the guilty plea in
3 front of you.

4 You were mistaken in your belief
5 that you had it in front of you, correct?

6 A. Yes.

7 Q. In retrospect, would you think that you
8 should have looked at that or somebody from
9 legal should have given it to you?

10 A. Possibly.

11 Q. Again, back to your deposition, ma'am.

12 MR. LaROSE: Page 91, Mr. Kim.

13 BY MR. LaROSE:

14 Q. Do you remember being asked this question
15 and giving this answer? Question, in
16 retrospect, should you have looked at the guilty
17 plea? Answer, in retrospect, I would have
18 thought the lawyer would have sent me the guilty
19 plea.

20 Do you remember being asked that
21 question and giving that answer?

22 A. Yes.

23 Q. Ms. Munie, flip to page 29 of the record,
24 please.

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1 Is this -- this is the complaint
2 that you reviewed in making your decision
3 against my client on the 39(i) issue?

4 A. Yes.

5 Q. Did subparagraph (f), as it appears on
6 page 29, in any way factor into your decision as
7 to whether this conviction was related to either
8 waste management activities in Illinois or
9 related to Community Landfill?

10 A. Yes.

11 Q. Do you know whether or not my client pled
12 guilty to the facts contained in paragraph (f)

13 as they appear on page 29?

14 A. It's my understanding he was convicted of
15 a felony in this case.

16 Q. Okay. Not really the question. So let's
17 try it again.

18 Yes or no, do you know whether or
19 not my client pled guilty to the facts contained
20 in paragraph (f) on page two of the complaint?

21 A. No.

22 Q. Ma'am, I'm going to hand you what is a
23 certified copy from the National Archives and
24 Records Administration of the guilty plea

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1 agreement entered into by Bob Pruim on September
2 the 24th, 1993.

3 MR. KIM: I'm going to pose my objection
4 now and get that in. This is one of the
5 documents that was the subject of a motion to
6 suppress. This was -- this document was not a
7 part of the Agency's review. This was not --
8 this was only in the Agency's possession when
9 Mr. LaRose provided it to the Agency.

10 It was, therefore, not a part of
11 anyone's review during this -- of the decision

12 at hand. So by clear Board precedent, by
13 regulations, and statute, this document should
14 not be included in the record and should not be
15 an exhibit.

16 MR. LaROSE: I have several responses to
17 that. My not only right, but my obligation is
18 to present evidence and cross-examination that
19 would be -- that would rebut the reasons given
20 by the Agency in denying the permit in this
21 case.

22 I direct your attention to page 13
23 of the record where Ms. Munie writes, however,
24 the 1993 guilty plea -- however, the 1993 guilty

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1 plea is directly related to bribing a city
2 official in their capacity as it relates to
3 waste management. Further, the company named in
4 the complaint is related to CLC as stated in the
5 complaint.

6 Ms. Munie has also testified that
7 she thought she had the guilty plea in front of
8 her, but she didn't, but she definitely had in
9 front of her the docket sheet on page 22 that
10 specifically references the guilty plea.

11 If she's going to make statements
12 about the guilty plea in this case and she
13 didn't even take the chance to look at it or was
14 mistaken and she was looking at the wrong
15 document, I think I should be able to show that
16 the actual plea agreement in this case, A, had
17 nothing to do with Community Landfill; B, had
18 nothing to do with waste management activities
19 in Illinois; and, C, had nothing to do with the
20 environment.

21 With that statement -- and this is
22 really the point of order that we've made in Mr.
23 Kim's motion to suppress. With that statement,
24 I would like this document to be examined by Ms.

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1 Munie, and I would like it to be accepted into
2 the record.

3 HEARING OFFICER HALLORAN: Mr. Kim,
4 anything further?

5 MR. KIM: Yes, just briefly. I think Mr.
6 LaRose brought up a very good point, and that is
7 that Ms. Munie stated it was her understanding
8 that the docket sheet that is in the record is
9 what she considered to be the guilty plea.

10 Therefore, any reference she made in
11 her memo goes to the document within the record,
12 which is as it should be. Her memo references
13 only the documentation that she looked. Now,
14 Mr. LaRose is incorrect if he's saying he has an
15 opportunity to rebut our decision based upon the
16 introduction of evidence outside of the record.

17 That, in fact, is not what the Board
18 case law says. The Board case law is very clear
19 and the Board regulations are very clear in
20 stating that the Agency's decision should be
21 reviewed by the Board based upon the information
22 that it had at the time of the decision.

23 The Agency did not have this guilty
24 plea, and, therefore, it should not be

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1 considered. He can address was it the docket
2 sheet. He can address was it the information he
3 provided. He can make his comments as to those
4 documents, but he cannot bring in new documents
5 that we did not include as part of our review to
6 somehow question our review that we never had in
7 our possession to begin with.

8 HEARING OFFICER HALLORAN: Although the

9 plea agreement is quite possibly immaterial and
10 irrelevant in and of itself because a felony is
11 a felony under 39(i); however, I think it is
12 relevant, and I think it is part and parcel of
13 the guilty plea. It qualifies -- the plea
14 agreement qualifies the guilty plea. So on that
15 basis, I do find it relevant, and I will allow
16 further testimony and allow Exhibit 18 to come
17 into evidence.

18 MR. KIM: Just for clarification, this
19 has been admitted then?

20 HEARING OFFICER HALLORAN: I believe Mr.
21 LaRose offered it, and it has been admitted.

22 MR. KIM: Okay. Thank you.

23 BY MR. LaROSE:

24 Q. Ma'am, would you take a look at page --

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1 the cover page is just a certification of this
2 document.

3 Would you take a look at numbered
4 page two of this particular document?
5 Subparagraph five, it says, in pleading guilty,
6 defendant admits the following facts and that
7 those --

8 A. Wait a minute. I'm not at the same
9 place. My paragraph five starts with
10 defendant.

11 Q. I'm sorry. I'm down to the next sentence
12 in paragraph five. Sorry.

13 A. Okay.

14 Q. The second sentence of paragraph five on
15 page two of Exhibit 18 states, in pleading
16 guilty, defendant admits the following facts and
17 that those facts establish his guilt beyond a
18 reasonable doubt, and then it goes on on page
19 two, page three, page four, page five, page six,
20 and page seven down to numbered paragraph six
21 reciting the facts that my client actually pled
22 guilty to.

23 MR. KIM: Objection. Is there a question
24 there?

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1 MR. LaROSE: I just want her to get with
2 me.

3 BY THE WITNESS:

4 A. I'm up to page seven.

5 BY MR. LaROSE:

6 Q. Okay. So all of paragraph five recites

7 the facts that my client pled guilty to.

8 Could you review all of paragraph
9 five, please, and tell me whether any of those
10 facts talk about Community Landfill Company,
11 Morris Community Landfill, waste management
12 activities in Illinois, or the management of
13 waste in Illinois?

14 A. Again, you want me to just read paragraph
15 five on page seven?

16 Q. No, no, no. Paragraph five runs from
17 page two to page seven.

18 A. Okay.

19 MR. KIM: Mr. Hearing Officer, can we
20 take a five-minute break while she reads this?

21 HEARING OFFICER HALLORAN: Sure. We're
22 off the record?

23 (Discussion had
24 off the record.)

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1 (Break taken.)

2 HEARING OFFICER HALLORAN: We're back on
3 the record. It's approximately 2:05. Mr.
4 LaRose.

5 BY MR. LaROSE:

6 Q. Ma'am, flip back to page 29 of the
7 record, which is Exhibit 1, please.

8 A. Yes.

9 Q. You had told me earlier under
10 cross-examination that you considered subsection
11 -- subparagraph (f) as it appears on 29 as part
12 of your evaluation and investigation in this
13 case, correct?

14 A. Yes.

15 Q. And that's the paragraph or at least one
16 of the paragraphs you used to make a connection
17 between this conviction and both Community
18 Landfill and waste activities in Illinois,
19 correct?

20 A. Yes.

21 Q. Does the information contained in
22 paragraph -- subparagraph (f) on page 29 appear
23 anywhere in Exhibit 18?

24 A. Excuse me?

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1 Q. Does the same information that's
2 contained on subparagraph (f) on page 29 of the
3 record appear anywhere in the guilty plea
4 agreement that's now been admitted as Exhibit

5 18?

6 A. I'm sorry. I've only gotten up to page
7 five. You're going to have to give me a few
8 minutes.

9 Q. Okay.

10 HEARING OFFICER HALLORAN: We're going to
11 go off the record for a second while Ms. Munie
12 reads approximately another two pages of Exhibit
13 18.

14 (Discussion had
15 off the record.)

16 MR. LaROSE: Mr. Kim and I have had a
17 discussion off the record, and, Mr. Kim, I'll
18 state the stipulation, and then you can tell me
19 whether I've stated it correctly or not. The
20 parties are -- have agreed to stipulate that
21 none of the words -- none of the information
22 contained on subparagraph (f) of the complaint
23 as it appears on page 29 of the record is
24 contained in paragraph -- is contained in

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1 Exhibit 18, correct?

2 MR. KIM: Give me two seconds to confirm
3 that. I was focusing primarily on paragraph

4 five, but let me see.

5 We would stipulate late to that.

6 MR. LaROSE: And we've also agreed to
7 stipulate, Mr. Halloran, that the words
8 influence an employee with the City of Chicago
9 in his responsibilities related to removal and
10 disposal of waste do not appear in the plea
11 agreement.

12 HEARING OFFICER HALLORAN: Mr. Kim.

13 MR. KIM: We would stipulate that those
14 exact words in that phrase are not included in
15 the plea agreement.

16 MR. LaROSE: Or that the words bribing a
17 city official in their official capacity as
18 relates to waste management activities do not
19 appear in the plea agreement.

20 MR. KIM: Again, we would agree that
21 those words in that phrase -- used as that
22 phrase do not appear in the plea agreement.

23 MR. LaROSE: And that the words Robert J.
24 Prum pled guilty to violations specifically

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1 referencing CLC as related to the hauling
2 company do not appear in the plea agreement.

3 MR. KIM: We would agree that those words
4 as used in that specific phrase are not included
5 in the plea agreement.

6 MR. LaROSE: And, finally, that the
7 phrase which is directly related to management
8 of waste in Illinois is not contained anywhere
9 in the plea agreement.

10 MR. KIM: We would agree that that
11 specific phrase is not included with those exact
12 words in the plea agreement. Although, we would
13 reserve the -- we do not extend that stipulation
14 to mean that that concept is not included in the
15 plea agreement.

16 MR. LaROSE: I'm only asking them to
17 stipulate that the words don't appear in there.

18 MR. KIM: We stipulate to that.

19 HEARING OFFICER HALLORAN: So
20 stipulated.

21 BY MR. LaROSE:

22 Q. With that, Ms. Munie, I'm finished with
23 Exhibit 18.

24 Ma'am, you made the determination,

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1 did you not, that Mr. Pruim's conviction

2 directly related to waste management in
3 Illinois, did you not?
4 A. Waste management activities.
5 Q. Flip to page two of the record, please.
6 Subparagraph number two, the actual phrase was
7 which is directly related to the management of
8 waste in Illinois, that's your phrase, correct?
9 A. Yes.
10 Q. That's the determination that you made,
11 correct?
12 A. Yes.
13 Q. You can't recall anybody that was
14 involved in the evaluation or investigation
15 using those exact words, can you?
16 A. No.
17 Q. Mr. Pelkie didn't use those words to you,
18 did he?
19 A. No.
20 Q. And none of the documents that we've read
21 in this case -- that you've read in this case,
22 the docket sheet or the complaint, used those
23 exact words, did they?
24 A. No.

1 Q. The term, quote, directly related to
2 waste management in Illinois, end quote, was
3 based on your interpretation of the common words
4 that appeared in both the complaint and the
5 docket sheet, correct?

6 A. The words used in those, yes.

7 Q. When I say common words, at our
8 deposition, we were kind of making a distinction
9 between the wherefores and the hereas as opposed
10 to just the common -- commonly understood words,
11 correct?

12 A. Yes.

13 Q. So when you said related to -- directly
14 related to management of waste in Illinois, that
15 was based on your understanding of the words or
16 your interpretation of the words contained in
17 the complaint and the docket sheet?

18 A. Yes.

19 Q. And when you said influence an employee
20 with the City of Chicago in his responsibilities
21 relating to removal and disposal of waste, that
22 was based on your interpretation of the words
23 contained in the complaint and the docket sheet,
24 correct?

1 A. Yes.

2 Q. Take a look at pages -- page 16 of the
3 record, please. I stated in response to the
4 Wells letter on page 16 of the record that the
5 guilty plea and the conviction had absolutely no
6 connection to Community Landfill, Community
7 Landfill Company, Mr. Prime's status as an
8 officer and shareholder of Community Landfill
9 Company, the operation of Community Landfill, or
10 other matters related to environmental
11 concerns.

12 Did you read that?

13 A. Yes.

14 Q. You didn't find that to be compelling,
15 did you?

16 A. No.

17 Q. Did you find it to be accurate, yes or
18 no?

19 A. No. Wait a minute. What all sentences
20 are you including in there?

21 Q. Just the second sentence of the first
22 full paragraph on page 16?

23 A. Okay. Just the second sentence starting
24 the guilty plea --

1 Q. The guilty plea?

2 A. -- and ending with or any other matters
3 relating to environmental concerns?

4 Q. Yes.

5 Did you find that to be an accurate
6 statement, yes or no?

7 A. No.

8 Q. Okay.

9 MR. LaROSE: Pages 85 and 86, Mr. Kim.

10 BY MR. LaROSE:

11 Q. Back to your deposition,
12 Ms. Munie, do you remember being asked this
13 question and giving this answer? Well, forget
14 about whether you really liked it or not, did
15 you find it to be accurate? Answer, I believe
16 it's your opinion that I find it accurate in
17 your opinion.

18 Do you remember being given that
19 question and giving that answer at your
20 deposition?

21 A. Yes.

22 Q. Did the complaint have anything to do
23 with the environment?

24 A. Yes.

1 Q. Back to your deposition, ma'am, page 87.
2 Do you remember being asked this question and
3 giving this answer? Question, did the complaint
4 have anything to do with the environment,
5 anything?

6 MR. KIM: Objection. That is not what
7 the question states.

8 MR. LaROSE: You're exactly right. I'm
9 sorry.

10 BY MR. LaROSE:

11 Q. Question, did the complaint say anything
12 about the environment, question, anything?
13 Answer, no.

14 Do you remember being asked that
15 question and giving that answer?

16 A. Yes.

17 Q. These were not environmental crimes, were
18 they, ma'am?

19 A. It's related to transfer stations, which
20 is an environmental activity.

21 Q. Yes or no, ma'am, were these
22 environmental crimes?

23 MR. KIM: Objection. What does the term
24 environmental crimes mean?

1 HEARING OFFICER HALLORAN: I'm a little
2 confused myself, Mr. LaRose.

3 MR. KIM: That's a vague term.

4 MR. LaROSE: She wasn't confused when she
5 answered the question at her deposition. I'm
6 setting the table to ask her a question. Either
7 she's going to say she agrees with it, disagrees
8 with it, or can't answer it, and then we'll read
9 her deposition.

10 BY THE WITNESS:

11 A. I can't answer it.

12 BY MR. LaROSE:

13 Q. Do you remember your deposition, ma'am?

14 MR. LaROSE: Page 87, Mr. Kim.

15 BY MR. LaROSE:

16 Q. Question, did it mention illegal dumping
17 or any waste, physical waste-related activities
18 -- let me rephrase that. That's a bad
19 question. These were not environmental crimes,
20 correct? Answer, not that I'm aware of.

21 Do you remember being asked that
22 question and giving that answer?

23 A. Yes.

24 Q. Was the fact that the guilty plea was

1 eight years old -- Strike that.

2 Did you factor into your evaluation
3 or investigation the fact that the guilty plea
4 was eight years old?

5 A. Yes.

6 Q. And one of the things that you considered
7 when you consider an eight-year-old conviction
8 was that it wasn't 20 years old, correct?

9 A. Yes.

10 Q. If it had been 20 years old, would it
11 have been better for us?

12 A. Yes.

13 Q. If it was more than ten years old, would
14 you have still denied the permit?

15 A. I can't say.

16 Q. If it had been more than 20 years old,
17 would you still have denied the permit?

18 A. I can't say.

19 Q. Did you tell me in your deposition the
20 answer to both of those questions possibly?

21 A. Possibly.

22 Q. Did you say possibly or are you saying
23 you said possibly?

24 Ma'am, is it possible that you would

1 have still denied the permit if it was ten or 20
2 years old?

3 A. Yes.

4 Q. You characterized the eight-year-old
5 conviction as relatively recent, didn't you?

6 A. Yes.

7 Q. And, in your opinion, that was a negative
8 in terms of your evaluation of this permit
9 application, correct?

10 A. Yes.

11 Q. Did you do anything to verify whether or
12 not Bob Pruim was the president of Community
13 Landfill in 1993?

14 A. No.

15 Q. You didn't go through a checklist of the
16 factors listed in Section 745.141 of the Board
17 regulations, did you, ma'am, yes or no?

18 A. No.

19 Q. Do you know how much control Mr. Pruim
20 exerted over the operations at Community
21 Landfill at any time from 1993 to the present?

22 A. No.

23 Q. Did you know whether he worked at the

24 site on a daily basis?

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1 A. No.

2 Q. Did you know whether he had ever been to
3 the site?

4 A. No.

5 Q. Did you know that he wasn't the certified
6 operator of the site?

7 A. No.

8 Q. Did you know that he wasn't the person
9 that had submitted prior conduct certifications?

10 A. No.

11 MR. LaROSE: Can I have Exhibit 20,
12 please?

13 BY MR. LaROSE:

14 Q. Have you read the ESG Watts decision from
15 the Board regarding 39(i)?

16 A. Yes.

17 Q. Did you read it recently?

18 A. No.

19 Q. Did you read it since our deposition?

20 A. No.

21 Q. Do you know what it says about your
22 obligation to consider mitigating factors with

23 respect to Section 39(i) investigations?

24 MR. KIM: Again, objection as to any

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1 legal conclusions having drawn from that case,
2 any burdens that that case might impose upon the
3 Agency. It calls for a legal conclusion.

4 HEARING OFFICER HALLORAN: Mr. LaRose,
5 could you rephrase that somehow?

6 MR. LaROSE: Could you read that back and
7 let me see what I said to see how I can rephrase
8 it?

9 HEARING OFFICER HALLORAN: Thank you, Mr.
10 LaRose. I'll ask her if she can read it back.

11 MR. LaROSE: Thank you.

12 (Record read.)

13 MR. LaROSE: I don't know how else --

14 HEARING OFFICER HALLORAN: I think she
15 can answer it based on her opinion.

16 BY MR. LaROSE:

17 Q. Ma'am, it's really a yes or a no
18 question, and then we can get to your
19 understanding after that.

20 A. Do I understand my obligation? Is that
21 what the question said?

22 HEARING OFFICER HALLORAN: Mr. LaRose.
23 MR. LaROSE: I thought I said it really
24 good. I want to say it in the same way.

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1 Geanna, please. Mr. Hearing Officer.
2 (Record read.)
3 BY THE WITNESS:
4 A. I don't know the specific words in the
5 case, so no.
6 MR. LaROSE: I'm going to hand the
7 witness Exhibit 20, Mr. Halloran.
8 BY MR. LaROSE:
9 Q. Ms. Munie, Exhibit 20 contains some
10 documents regarding prior conduct certifications
11 submitted by my -- by representatives of my
12 client. Look at page -- the first page of that,
13 which is a March 16th letter under your
14 authority, if not your signature, correct?
15 A. Yes.
16 Q. Okay. You didn't actually sign that?
17 A. No.
18 Q. Somebody did on your behalf?
19 A. Yes.
20 Q. And you delegated the authority to them

21 to sign that?

22 A. That authority was delegated to them,
23 yes.

24 Q. And this says that Mr. Pelnarsh is the

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1 one that submitted the prior conduct
2 certification, correct?

3 A. Yes.

4 Q. And the second page of that is the same
5 type of letter dated about a year earlier on
6 March 21st, 2000, where, again, Mr. Pelnarsh had
7 submitted and the Agency had accepted the prior
8 conduct certification for Community Landfill,
9 correct?

10 A. Correct.

11 MR. LaROSE: With that, Mr. Hearing
12 Officer, I move for the admission of Exhibit 20
13 into the record.

14 MR. KIM: Objection. I fail to see any
15 relevance between a prior conduct certification
16 submitted by Mr. Pelnarsh to any of the issues
17 presented here. Mr. Pelnarsh's qualifications
18 were not a part of the denial that was issued
19 here. It was never contended that they've been,

20 and this document has no relevance to the case
21 at hand.

22 HEARING OFFICER HALLORAN: Mr. LaRose,
23 anything further?

24 MR. LaROSE: The ESG Watts decision in

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1 this case specifically --

2 MR. KIM: Just as a clarification, when
3 you say the ESG Watts decision, which decision
4 are you referring to because there are several
5 decisions? Are you referring generically to all
6 case law surrounding that?

7 MR. LaROSE: No. No, I'm not. I'm
8 referring to the Pollution Control Board's
9 decision dated March 21st, 1996, cited here as
10 -- in cases PCB 94-243, 94-306, 94-307, 94-308,
11 94-309 95-133, 95-134 all consolidated cited as
12 1996 WL 154102.

13 MR. KIM: Thank you.

14 MR. LaROSE: Mr. Hearing Officer, this
15 case specifically instructed the Agency to
16 consider factors set forth in 745.141, prior
17 conduct certification law, in making its
18 analysis of the -- in making its analysis of the

19 Section 39(i).

20 I direct your attention to page 35
21 of that opinion. The Agency may in its
22 discretion grant prior conduct certification if
23 mitigating factors such as certification should
24 issue. Mitigating factors should include, and

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1 then it talks about, one, the severity of the
2 misconduct; two, how recently the misconduct
3 took place, and, three, the degree of control
4 exerted over waste disposal operations at the
5 site by the applicant at the time the misconduct
6 described in Section A3 was committed.

7 MR. KIM: I'm sorry. When you say page
8 35, the numbering may be different.

9 MR. LaROSE: I'm sorry. Do you have
10 Exhibit 67, John? That will be the easiest
11 way.

12 HEARING OFFICER HALLORAN: Off the
13 record.

14 (Discussion had
15 off the record.)

16 MR. LaROSE: Mr. Halloran, I'm going to
17 hand you a copy of Exhibit 67 and Exhibit 69 so

18 that you have it in front of you. Sixty-nine is
19 the Appellate Court's decision in ESG Watts.

20 Mr. Halloran, up in the right-hand
21 corner on Exhibit 67, you'll see some
22 pagination, and I'm looking at page number 35 up
23 in the right-hand corner. This is where the
24 Board is making an analogy because of the fact

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1 that there are no written rules or regulations
2 making an analogy to the prior conduct
3 certification and instructing the Agency to
4 consider mitigating factors with respect to
5 that.

6 That decision was affirmed by the
7 Appellate Court in Exhibit No. 69, the ESG Watts
8 versus Illinois Pollution Control Board and
9 Illinois Environmental Protection Agency, 767
10 N.E. 2d, 229, dated February 6th, 1997.

11 So the fact that Mr. Pruim was not
12 the certified operator under the very law that
13 the Board instructed the Agency to consider is
14 certainly relevant to the issue of whether or
15 not Mr. Pruim exerted any control over the waste
16 disposal facility. With that, I would ask that

17 Exhibit No. 20 be admitted.

18 MR. KIM: Well, in response, the case
19 does not say that. The case does not say that
20 the Board has determined that the Agency should
21 look at that. As a matter of fact, what the
22 case says is, and I'm reading from what I
23 believe is the paginated page 14 of the opinion,
24 and it says there are no administrative rules by

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1 the Agency to govern the Agency's process in the
2 solid waste disposal permit application or to
3 govern the mandatory Section 31(i) -- I'm sorry
4 39(i) evaluation, and since the Agency has not
5 proposed rules to the Board for adoption, we
6 find it helpful to examine other relevant
7 portions of the Act and Board regulations in
8 analyzing this case.

9 Then they go on to say that the
10 Board has simply stated that the Appellate
11 Court, without reading into that, also notes
12 that the Board or the Agency did not adopt
13 procedures and neither did the Board nor the
14 Appellate Court have any fault in the fact that
15 there were no regulations promulgated. There's

16 no statutory requirement to do that.

17 All the Board said was for their
18 purposes in analyzing our decision, they find it
19 helpful to do that. That does not impose any
20 burden upon us to review or to impose prior
21 conduct certification review under a 39(i)
22 process. The case clearly does not say that.
23 If that's the only grounds for including these
24 prior conduct certification documents, then

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1 that's all the more reason -- there's no reason
2 for those to be in here.

3 The Board's opinion does not impose
4 that burden upon us. The Board simply states
5 they found it helpful to look at those rules.
6 That does not mean that that's something that
7 we're subject to. As a matter of fact, there's
8 no specific direction in that opinion in any
9 way, shape, or form that directs the Agency to
10 use those guidelines.

11 MR. LaROSE: And whether or not it's a
12 specific directive to do it, how can we say that
13 if the Board finds it helpful to analyze that
14 criteria to determine whether 39(i) was

15 appropriately applied in this case, then the
16 prior conduct certifications aren't relevant to
17 the Board's review.

18 I quote from page eight of Exhibit
19 69, which is the Third District Appellate
20 Court's decision affirming the Board's decision,
21 however -- about halfway down on the first
22 paragraph on the right-hand side of the page,
23 the Court notes, however, Section 745.141(b)
24 permits certain mitigating factors to be taken

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1 into account when enforcing Section 22.5.
2 Specifically, the Agency may consider the
3 severity of the conduct, how recently the event
4 took place, and the degree of control exerted
5 over the disposal operations by the applicant.

6 If they didn't do that in this case,
7 I don't think they did their job, and if they
8 didn't do that in this case, I think the Board
9 should know about it. That's why I think the
10 fact that Mr. Pelnarsh was the person that was
11 certified as the operator of this site is
12 important to the Board's consideration of this
13 issue.

14 MR. KIM: I'm going to grant Mr. Kim's
15 objection. I'll sustain his objection. Excuse
16 me. I will deny entry of Exhibit No. 20 into
17 evidence, Mr. LaRose.

18 MR. LaROSE: I would offer 20 then as an
19 offer of proof.

20 HEARING OFFICER HALLORAN: Then you've
21 pretty much given your offer of proof.

22 MR. LaROSE: So it's done.

23 HEARING OFFICER HALLORAN: So granted.
24 Exhibit No. 20 is admitted as only an offer of

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1 proof.

2 MR. LaROSE: Thank you.

3 BY MR. LaROSE:

4 Q. Under this permit application, if the
5 decision is not reversed, there's not going to
6 be any more waste put into this landfill, is
7 there?

8 A. Excuse me?

9 Q. Under this particular permit application,
10 if this decision is not reversed, there's not
11 going to be any more waste put into this
12 landfill, correct?

13 A. I can't answer that question.

14 Q. Did you answer that question at your
15 deposition, ma'am?

16 A. Not that I can recall.

17 Q. Okay.

18 MR. LaROSE: Page 101, Mr. Kim.

19 BY MR. LaROSE:

20 Q. Do you remember being asked these
21 questions and giving these answers? Question,
22 would you agree with me that as a result of your
23 action, if it's not overturned, there's not
24 going to be any more waste put into this

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1 facility? Answer, no. Question, why not? This
2 -- under this permit, under this application, I
3 agree with that statement.

4 Do you remember being asked those
5 questions and giving those answers?

6 A. Yes.

7 Q. Okay. Was that true when you said that
8 and what you just told me now untrue?

9 A. No.

10 Q. They were both true even though you gave
11 me completely different answers?

12 A. You gave me completely different
13 questions.

14 Q. Did the permit denial have anything to do
15 with whether the cell was constructed properly
16 or not?

17 A. Not that I know of.

18 Q. As far as you know, the cell was
19 constructed properly and in accordance with the
20 plans and specifications that was contained in
21 the permit application, correct?

22 A. Yes.

23 Q. When you granted the SIGMOD in August of
24 2000, was it your understanding that the

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1 facility had no capacity left?

2 A. It's possible.

3 Q. It's possible that that was your
4 understanding?

5 A. No. It's possible it had no capacity
6 left.

7 Q. Okay. Ma'am, yes or no, when you granted
8 the SIGMOD in August of 2000, was it your
9 understanding that the facility had no capacity
10 left?

11 A. I can't answer that question.

12 MR. LaROSE: Page 114 of the deposition,
13 Mr. Kim.

14 BY MR. LaROSE:

15 Q. Ma'am, do you remember being asked this
16 question and giving this answer? Joyce, when
17 you granted the permit in 2000, August of 2000,
18 the big SIGMODs LFM permits, did you contemplate
19 that this facility would be allowed to accept
20 waste pursuant to the permit application that
21 they filed and the permit that you issued?

22 Answer, actually it was my
23 understanding that they had no capacity left,
24 but I did not do a specific review on that, but

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1 that was not -- it was not a question to me.

2 Do you remember being asked that
3 question and giving that answer?

4 A. Yes.

5 Q. Was it the fact that this permit sought
6 the disposition of waste that caused you to deny
7 the May 11th permit, yes or no?

8 A. No.

9 MR. LaROSE: Page 122 of the deposition,

10 Mr. Kim.

11 BY MR. LaROSE:

12 Q. Do you remember being asked these
13 questions under oath a couple weeks ago, this
14 question and giving this answer? Okay. So --
15 so the -- so it's really the further disposition
16 of waste in the site that you targeted when you
17 used your discretion to deny the May 11th
18 permit? Answer, I don't know if you could use
19 the term targeted, but that was the reason.

20 Do you remember being asked that
21 question and giving that answer?

22 A. Yes.

23 Q. Did you ever do anything to investigate
24 Ed Prime's conviction?

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1 A. No.

2 Q. If the information that Mr. Pelkie gave
3 to you came to you from any source, would you
4 have conducted an evaluation?

5 A. Yes.

6 Q. If it came to you from Warren Weritz or
7 Sally Springer or Cliff Gould or John Taylor,
8 Kyle Davis, Jack Burds, or Mark Retzlaff, would

9 you have conducted an investigation?

10 A. His name is Jack Burds, but yes.

11 Q. Was it important to you if anyone from

12 the field office had any prior knowledge of this

13 conviction?

14 A. No.

15 Q. Did you know that we were running out of

16 space --

17 A. Yes.

18 Q. -- at the landfill?

19 A. Yes.

20 MR. LaROSE: Pages 150 and 151, Mr. Kim.

21 BY MR. LaROSE:

22 Q. At your deposition, ma'am, do you

23 remember being asked this question and giving

24 this answer? Question, did you know that they

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1 were running out of space at the landfill?

2 Answer, no.

3 Do you recall being asked that

4 question and giving that answer?

5 A. Yes.

6 Q. Do you care?

7 A. No.

8 Q. That's the right answer.
9 MR. KIM: She had a 50/50 shot.
10 MR. LaROSE: She did.
11 BY MR. LaROSE:
12 Q. When you use your discretion under
13 Section 39(i), ma'am, are you required to take
14 into consideration any mitigating factors?
15 A. No.
16 Q. It's the required part that you're having
17 a problem with, aren't you?
18 A. Yes.
19 Q. May you consider mitigating factors?
20 A. Yes.
21 Q. In the sound and equitable exercise of
22 your discretion, should you?
23 A. Yes.
24 Q. One mitigating factor would be what the

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1 felony conviction actually is for, correct?
2 A. Yes.
3 Q. Another mitigating factor would be how
4 recently it took place, correct?
5 A. Yes.
6 Q. Another mitigating factor would be the

7 degree of control exerted over the waste
8 disposal operation by the applicant?
9 A. Yes.
10 Q. Did you consider these factors in this
11 case?
12 A. Yes.
13 Q. Do you know what type of waste went into
14 CLC at any time prior to your May 11th
15 application --
16 A. No.
17 Q. -- excuse me, denial?
18 A. No.
19 Q. And prior to May 11th, did you know
20 whether any of it came from the City of Chicago?
21 A. No.
22 Q. Let's look at page 53 of the record,
23 please, ma'am. That's the hi, Joyce, e-mail
24 from Mark Retzlaff dated 12-7-01.

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1 Does he e-mail you often?
2 A. Not that I'm aware of.
3 Q. Is this the first time that it occurred?
4 A. Possibly.
5 Q. Did you think this was appropriate?

6 A. I think it was his observations of the
7 site and he's an inspector.

8 Q. Did you think it was appropriate for him
9 to be e-mailing you with this information?

10 A. Yes.

11 Q. Did you read the 12-5 inspection report?

12 A. I don't recall specifically reading it,
13 no.

14 Q. Is it included in the record in this
15 case?

16 A. Yes.

17 Q. Where is it included in the record?

18 A. It starts two pages back from where you
19 are. Page 55.

20 Q. Take a look, again, ma'am. That's not
21 the 12-5 inspection report. That's the March
22 7th inspection report.

23 A. Sorry.

24 Q. The 12-5 inspection report, is it

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1 contained in the record?

2 MR. KIM: To save time, we would
3 stipulate that it's not.

4 MR. LaROSE: I would accept that

5 stipulation, Mr. Hearing Officer.

6 HEARING OFFICER HALLORAN: I'll accept
7 it.

8 BY MR. LaROSE:

9 Q. Did you respond to Mr. Retzlaff's memo?

10 A. Not that I recall.

11 Q. Do you remember either writing him or
12 calling him with respect to this memo?

13 A. No.

14 Q. Do you remember ever telling him that you
15 didn't think it was appropriate for him to be
16 sending you memos expressing his opinions on
17 pending permit applications?

18 A. No.

19 Q. You don't think that's inappropriate, do
20 you?

21 A. Can you ask that again?

22 Q. Do you think it was inappropriate for him
23 to have sent you a memo expressing his opinions
24 on pending permit applications?

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1 A. No.

2 Q. How many field operation inspectors have
3 e-mailed you about pending permit applications

4 other than Mr. Retzlaff?

5 A. Probably all of them.

6 Q. So this is a common practice that the
7 field inspectors would e-mail the permit manager
8 about pending permit applications?

9 A. Yes.

10 Q. Would it be equally common that they
11 would -- that it would be appropriate for them
12 to put into these e-mails their opinions
13 regarding the permit applications?

14 A. I'm sorry. I heard double negatives in
15 there.

16 Q. I'm sure you did. Let's try it again.

17 Would it be -- Strike that. In the
18 e-mails that you received from the other
19 inspectors, do any of them -- have any of them
20 expressed their opinions as to the pending
21 permit applications?

22 A. Yes.

23 Q. And that's okay with you?

24 A. Yes.

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1 MR. LaROSE: Mr. Halloran, I'm going to
2 skip forward a section, and then the last

3 section that I have relates to the June 29th
4 permit. Maybe we can just stop and make that
5 the offer of -- the offer of proof. Okay?

6 HEARING OFFICER HALLORAN: Okay.

7 MR. LaROSE: I'm going to go ahead to
8 another section. Then I'll come back to that.

9 HEARING OFFICER HALLORAN: Is that fine
10 with you, Mr. Kim?

11 MR. KIM: That's fine.

12 BY MR. LaROSE:

13 Q. The other reason for the denial other
14 than the 39(i) was the financial assurance
15 question, correct?

16 A. Yes.

17 Q. You relied on Blake Harris'
18 recommendation regarding the financial
19 assurance, yes or no?

20 A. Yes.

21 Q. The August 2000 -- in August 2000,
22 another accountant from the Agency told you that
23 the Frontier bonds complied with the
24 regulations, correct?

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1 A. No.

2 Q. Did he write you that?

3 A. That it complied -- that the Frontier
4 bonds complied with the regulation?

5 Q. Yes.

6 A. I don't think he wrote that.

7 MR. LaROSE: Page 116, Mr. Kim.

8 BY MR. LaROSE:

9 Q. At your deposition where you were under
10 oath a couple of weeks ago, Ms. Munie, do you
11 remember being asked this question and giving
12 this answer? Question, and did your accountant
13 tell you, in fact, that the bonds that were
14 submitted did comply with the accurate rules,
15 the regulations, and were in the proper
16 amounts? Answer, yes.

17 Do you remember being asked that
18 question and giving that answer?

19 A. Yes.

20 Q. Okay. You relied on that information
21 from Mr. Taylor in August 2000, correct?

22 A. Yes.

23 Q. When Mr. Harris gave you different
24 information about the Frontier bonds in May of

1 2000, did you assume that the difference in his
2 recommendation between the recommendation made
3 by Mr. Taylor in August of 2000 was because
4 something had occurred during the passage of
5 time?

6 A. Yes.

7 Q. So you thought that there was a change in
8 circumstances regarding the Frontier bonds from
9 August 2000 when
10 Mr. Taylor told you they were okay to May of
11 2001 when Mr. Harris told you that they weren't?

12 A. It's possible, yes.

13 MR. LaROSE: Mr. Halloran, at this point,
14 I'm going to go into the June 29th permit and
15 would use the next three exhibits and this
16 examination as an offer of proof.

17 HEARING OFFICER HALLORAN: So noted.

18 Thank you.

19 MR. KIM: Are you done then questioning
20 on all information that would be outside -- that
21 would be -- you know what I'm saying, not
22 included in an offer of proof?

23 MR. LaROSE: That is correct, subject to
24 re-examination.

1 MR. KIM: Sure.

2 MR. LaROSE: I'm going to hand the
3 witness what's been previously marked as
4 Exhibits 37 and 73. I'll hand you a copy as
5 well.

6 HEARING OFFICER HALLORAN: Thanks.

7 MR. KIM: Can you wait just a second?

8 MR. LaROSE: No problem. Take your
9 time. It's 37 and 73.

10 BY MR. LaROSE:

11 Q. Ma'am, first, I want to direct your
12 attention to -- back to page 12 of the record in
13 this case. Your memo references three permit
14 log numbers, correct?

15 A. Yes.

16 Q. The 2000-438 was the permit log in this
17 particular case, correct?

18 A. Yes.

19 Q. And the 2001-012 and 2001-051 were two
20 other permit applications, right?

21 A. Yes.

22 Q. Okay. Directing your attention to Group
23 Exhibit 37, please, the first two pages of that
24 are a cover letter with a permit application

1 dated February 1, 2001. The next two pages are
2 the LPCPA-1s, and the rest of it are the permits
3 -- two permits or one -- is the permit that you
4 issued for parcel A on June 29th, 2001, correct?

5 A. Yes.

6 Q. And that is log number 2001-051, which is
7 referenced at least as one of the log numbers in
8 your May 9th memo as it appears on page 12 of
9 Exhibit 1?

10 A. Yes.

11 Q. This permit was for the acceptance
12 approving the construction and operation of gas
13 perimeter probes at the landfill, correct?

14 A. Yes.

15 Q. Okay. And do you know whether you
16 evaluated the same information for the June 29th
17 permit as for the May 11th denial as regards to
18 Section 39(i)?

19 A. I'm sorry. You lost me in that question.

20 Q. Okay. Did you conduct the same 39(i)
21 investigation for the June 29th permit as for
22 the May 11th denial?

23 A. Yes.

24 Q. Okay. The June 29th permit was granted;

1 the May 11th was denied, correct?

2 A. Yes.

3 Q. Take a look now at Group Exhibit 73,
4 please. Group Exhibit 73 are excerpts that we
5 took out of the 2001-051 permit file when we
6 were down at the Agency a week or so ago taking
7 depositions.

8 The first two pages of that contain
9 your June -- your May 9th memo, correct?

10 A. Yes.

11 Q. So this permit, the one for the gas
12 probes, was under consideration prior to May the
13 11th, correct?

14 A. The application was.

15 Q. That's correct?

16 A. Yes.

17 Q. The second page is some exempt document
18 that I'm sure that's the smoking gun to nail
19 this case down, but we didn't get it. I'm just
20 kidding. The next two pages are my same
21 response to the Wells letter dated April 9th,
22 correct?

23 A. Yes.

24 Q. The next pages are the docket sheet in

1 the criminal case, the same one that appeared in
2 this file, correct?

3 A. Yes.

4 Q. And the next pages are Christine Roque's
5 reviewer notes, correct?

6 A. Yes.

7 Q. The financial assurance, as far as you
8 were aware, was exactly the same for the May
9 11th denial as it was for the June 29th grant
10 for the permit?

11 A. I would assume.

12 Q. You don't know any differently that it
13 wasn't?

14 A. Correct.

15 Q. If you look at the LPCPA-1 as contained
16 in Exhibit 37, Bob Pruim was still the president
17 of Community Landfill under this application?

18 A. Yes.

19 Q. You used your discretion in the June 29th
20 application to grant the permit even though Bob
21 Pruim was still the president, the information
22 on the conviction was exactly the same, and, to
23 the best of your knowledge, the financial
24 assurance bonding was exactly the same, correct?

1 A. Yes.

2 Q. But you came to a different result,
3 correct?

4 A. Yes.

5 Q. And the difference in the result and the
6 using of your discretion was one permit was to
7 put waste into the landfill and the other permit
8 was to operate a gas monitoring system, correct?

9 A. Yes.

10 MR. LaROSE: That's all with the offer of
11 proof, and with that, I would seek the admission
12 of Exhibits 37 and 73 into the record.

13 HEARING OFFICER HALLORAN: Mr. Kim.

14 MR. KIM: Again, same objection. These
15 relate to a decision that took place well after
16 the permit decision at issue. It postdates the
17 decision, and by Board regulation and statute,
18 it should not be included in the record in this
19 case.

20 HEARING OFFICER HALLORAN: Anything
21 further, Mr. LaRose?

22 MR. LaROSE: I don't think so, Mr.
23 Halloran. I just think that, just briefly, they

24 examined the same information at the exact same

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1 time and within a month of each other came to
2 two different conclusions. I think that the
3 implication is clear.

4 Mr. Pruim is a convicted felon and
5 the Frontier Insurance bonds are somehow good
6 enough for them to run and pay their money for
7 pollution control devices at the facility, but
8 not good enough to put waste into the facility.
9 I think this exposes the fatal flaws that the
10 Agency has committed in this case, and I think
11 that the Board should consider it.

12 MR. KIM: There is no provision that
13 allows just close in time or it's very close in
14 sequence to the decision that is under appeal.
15 I mean, it postdates the decision. There's a
16 ream of case law that says that that kind of
17 thing should not be considered.

18 HEARING OFFICER HALLORAN: I think I'm
19 going to sustain Mr. Kim's objection, and at
20 this point, I'm relying on case law that it was
21 not part of the record before the Agency at the
22 time. However, I will accept Exhibit 73 and

23 Exhibit 37 as your offer of proof, Mr. LaRose.

24 MR. LaROSE: Mr. Halloran, just a point

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1 of order. I think we're really, I think, done
2 with Ms. Munie on this issue no matter what you
3 rule, but I've yet to get a ruling on the issue
4 of whether I can have a separate hearing under
5 this -- under the provisions of 105.214. I
6 don't know that I need that ruling right now
7 because I would use the same offer of proof as
8 the information in that separate hearing, if you
9 know what I mean.

10 HEARING OFFICER HALLORAN: Right. I'm
11 ready to rule. I just thought it was agreed
12 that you would use your offer of proof as a
13 substitute to the motion for a supplementary
14 hearing.

15 MR. KIM: From a practical standpoint, I
16 mean, that's basically going to serve the same
17 purpose, isn't it?

18 MR. LaROSE: No, no, and here's why,
19 because if the Board holds a separate hearing,
20 that isn't an offer of proof. That's a separate
21 hearing where admissible evidence is allowed.

22 An offer of proof is for somebody, Mr. Halloran,
23 as he knows, and I respect his decisions, and
24 he's made a decision and the offer of proof is

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1 for someone else to look at and see if he made
2 the right decision.

3 It's a completely separate issue as
4 to whether I'm entitled to a separate hearing on
5 this, and I think that I am, and I'm willing to
6 let the evidence set forth in the offer of proof
7 be that separate hearing, and we already have it
8 segregated as an offer of proof in this case,
9 and if the ruling is that I'm allowed a separate
10 hearing, that's the evidence that I would stand
11 on and submit.

12 MR. KIM: The only response is that even
13 if the Board were to determine that some
14 separate hearing separate and apart from what
15 we're doing right now would be warranted, I
16 disagree. I think my motion states that I don't
17 think that's necessary.

18 I still don't think that that just
19 automatically throws out the rules of
20 admissibility or any other evidentiary rules and

21 guidelines that the Board has established by
22 case law. I don't think that's a way around
23 being able to present to the Board information
24 that the Board has repeatedly said is not

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1 information that it should consider in reviewing
2 a permit decision.

3 I strongly disagree that that
4 language should somehow be allowed to be used as
5 a backboard in allowing in evidence that would
6 not otherwise be included.

7 HEARING OFFICER HALLORAN: My ruling on
8 Mr. LaRose's motion to hold a separate hearing
9 subject to Section 105.214(a) of the Board's
10 procedural rules is denied. I find that the
11 second sentence -- actually, it's the third, if
12 any party desires to introduce evidence before
13 the Board with respect to any disputed issue of
14 fact nearly modifies Section 40(d) in which a
15 hearing is to be held regarding any disputed
16 facts.

17 MR. LaROSE: Can I respond to that
18 briefly?

19 HEARING OFFICER HALLORAN: Briefly.

20 MR. LaROSE: Again, I respectfully
21 disagree with your opinion because if, in fact,
22 the parties had agreed to amend the record under
23 Section 43 -- 40(d) of the Act, there would be
24 no need for a separate hearing because the

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1 record in the case would contain the information
2 that we need.

3 If, in fact, your ruling is correct,
4 that this sentence modified 40(d) of the Act,
5 then the entirety of this language is absolutely
6 unnecessary and superfluous. The only reason
7 that this could possibly be in there is to allow
8 a separate hearing on issues of fact related to
9 matters that aren't in the record.

10 The history of this particular rule
11 is that this provision was formerly in the
12 provision that was related only to NPDES permit
13 appeals, which were normal hearings and not
14 related to the record. When the Board adopted
15 this rule at first notice, it did not have this
16 information in there and at second notice it
17 did.

18 The only conclusion that anyone can

19 reach is whether the Board abolished the
20 difference between the NPDES permit appeals and
21 any other permit appeals in adopting the rule to
22 allow separate hearings on the issues of fact.
23 If, in fact, 40(d) was followed in this case,
24 and Mr. Kim and I agreed to amend the record,

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1 like we have already in this case, there
2 wouldn't be a need for a separate hearing.

3 There isn't a need for a separate
4 hearing on the things that I allowed him to
5 amend the record with. It's absolutely -- it
6 would be absolutely superfluous and meaningless
7 language, and I would like you to at least
8 consider that argument when you're making your
9 ruling in this case.

10 HEARING OFFICER HALLORAN: I've made my
11 ruling. The record will so note your objections
12 and comments, and you can and I'm sure you will
13 appeal my ruling. With that said, based on your
14 motion to allow certain evidence in, Mr. LaRose,
15 we have one more in question, the evidence of
16 expenditures?

17 MR. LaROSE: Yes, sir. We haven't gotten

18 to that one yet.

19 HEARING OFFICER HALLORAN: All right. I
20 just wanted to clear that up.

21 MR. LaROSE: That will be coming in
22 through probably a city personnel and through
23 Mr. McDermott.

24 HEARING OFFICER HALLORAN: Very well.

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1 Thank you.

2 MR. LaROSE: Thank you. That's all I
3 have of Ms. Munie.

4 HEARING OFFICER HALLORAN: Mr. Helsten.

5 MR. HELSTEN: I've got two or three
6 things pending before Ms. Munie, and I'm not
7 sure if I want to ask any questions. Just a
8 couple, just a couple, Ms. Munie.

9 C R O S S - E X A M I N A T I O N

10 by Mr. Helsten

11 Q. Could you look at Exhibit No. 32 that
12 Mr. LaRose previously asked you questions
13 about? Do you have that in front of you, Ms.
14 Munie?

15 Was this submitted in support of the
16 SIGMOD application that was ultimately denied on

17 May 11th, 2001?

18 A. I believe that this was the May 11th
19 application. I'm sorry. Give me a second.

20 Q. Yeah. Take whatever time you need to
21 look at it.

22 A. I'm sorry. Ask that question again.

23 Q. Let me ask it differently.

24 This is a submittal dated May 8th,

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1 2000, by Andrews Engineering,, correct?

2 A. Correct.

3 Q. And was this submittal in support of the
4 pending application for SIGMOD that was
5 ultimately denied on May 11th 2000 -- 2001?

6 Excuse me.

7 A. No.

8 Q. Okay. This is different?

9 A. Yes.

10 Q. Oh, okay. One last question. Just out
11 of curiosity, Joyce, why doesn't the LPCPA-1
12 form include a section that asks for the
13 information in 39(i)(2)?

14 A. The information required by the 39(i)(2),
15 it asks for every employee of a company and

16 every employee of a company is a rather large
17 list of people. If I were to ask them to submit
18 information regarding every felony committed
19 from every employee of a company, that would be
20 a rather large submittal.

21 I would also presume that I would
22 have to ask for any violations in accordance
23 with 39(i)(1), and, offhand, I don't remember
24 what 39(i)(3) refers to, but I would presume I

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1 would have to ask for all that information for
2 all the employees from everybody. It would be a
3 lot of information.

4 HEARING OFFICER HALLORAN: Thank you, Mr.
5 Helsten. Mr. Kim.

6 MR. KIM: Well, Mr. Helsten brought up a
7 point. Is Exhibit 32 being offered? It is the
8 -- I believe it relates to the August 2000
9 SIGMOD permit that was issued. Is this being
10 offered in this case?

11 MR. LaROSE: Yes.

12 MR. KIM: We would object to the entry of
13 it, again, as to relevance. This relates to
14 appeal. This is not related to this particular

15 appeal. The information that this relates to
16 was already the subject of an appeal. It is now
17 before the Appellate Court. What's in this
18 application has no bearing on what we decide in
19 this case.

20 MR. LaROSE: That's absolutely false.
21 It's exactly what it has to do with. This is
22 the very permit that required us to submit the
23 permit application in this case. Mr. Hearing
24 Officer, I would direct your attention to page

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1 three of the permit itself which appears about
2 six or seven pages back on Exhibit 32, Roman
3 numeral number I two --

4 HEARING OFFICER HALLORAN: I'm sorry, Mr.
5 LaRose. Where is it in the record?

6 MR. LaROSE: Exhibit 32.

7 HEARING OFFICER HALLORAN: Okay. I got
8 it.

9 MR. LaROSE: If you look one, two, three,
10 four, five, six pages back on Group Exhibit 32,
11 which is page three of the permit, number (i)(2)
12 is the very provision that required us to submit
13 the permit application in this case. No part of

14 the unit shall be placed into service or accept
15 waste until an acceptance report for all
16 activities listed below has been submitted to
17 and approved by the Illinois EPA as a
18 significant modification to 35 IAC Sections
19 811.505(d) and 813.203.

20 Subparagraph A of that is
21 preparation of the separation layer. This is
22 the permit that forms the basis of the permit in
23 this case. I understand these rulings about the
24 -- about the record in this case, but if

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1 they're telling you that they didn't know about,
2 consider, or have in their position the fact
3 that we had to submit this application pursuant
4 to this, I think that's just ludicrous, and I
5 think if the rules of this -- of the Board are
6 going to this extent to say we've just got to
7 look at with a microscope this particular thing
8 and nothing that happens before that directly
9 relates to it, that's equally ridiculous. I
10 move for the admission of Exhibit 32.

11 MR. KIM: And that's not the objection.
12 The objection is, as Mr. LaRose stated, that the

13 permit that he referred to in that group exhibit
14 requires the submission of the permit
15 application that was ultimately denied in this
16 case. There's no issue that's been raised as to
17 why that permit application that we received
18 here was submitted or that it was required or
19 wasn't required.

20 The only issue goes to whether or
21 not the permit application that was submitted,
22 and we have no problem -- nothing in that permit
23 application relates to the decision at hand.

24 HEARING OFFICER HALLORAN: Nothing in

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1 what permit application?

2 MR. KIM: I'm sorry. The May 2000 permit
3 application, which is in the exhibit that he's
4 referring to, had nothing to do with the
5 November 2000 application, which is actually the
6 one in our administrative record in this case,
7 which is the one that formed the basis for our
8 decision.

9 The only link is, as Mr. LaRose
10 stated, that the previous permit required that
11 this application be submitted, and, I mean,

12 that's not an issue. The issue of why this
13 permit application was submitted has not been
14 raised as an issue. How we handled the permit
15 application once it was submitted, that's
16 obviously been called into question, but the
17 necessity of that permit application means that
18 it's never been raised as an issue.

19 So I don't understand why we need to
20 have the old permit, and it's not to say that --
21 we're not trying to be nitpicky, but the thing
22 is you've got to draw the line somewhere, and
23 there's no reason for that document to be
24 admitted as an exhibit in this case. It's not

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1 relevant to the decision at hand.

2 MR. LaROSE: I direct your attention to
3 page 85 of the record, Mr. Halloran. Are you
4 with me?

5 HEARING OFFICER HALLORAN: Yes, sir.

6 MR. LaROSE: The first paragraph, about
7 three lines down, the acceptance report is being
8 submitted in accordance with special condition
9 Roman number II of permit number 2000-1559(1)
10 and (f). That's the very permit that we seek

11 admission of in this case.

12 Moreover, it has been our position
13 since day one in my response to Ms. Munie -- Ms.
14 Munie and in our permit appeal in this case that
15 each one of these prior applications from 1996
16 until now should have been subject to a 39(i)
17 evaluation and investigation and if, in fact,
18 they were, we would probably not be here today
19 because we wouldn't have spent millions of
20 dollars in developing this landfill and incurred
21 several million dollars worth of liability.

22 The fact that they reviewed this
23 application and the fact that they didn't
24 conduct a 39(i) investigation is absolutely

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1 crucial for the presentation of our Laches
2 defense. In Laches defense, the Board has
3 specifically held under certain circumstances we
4 are entitled to bring. That's what this case is
5 about.

6 HEARING OFFICER HALLORAN: I'm sorry, Mr.
7 LaRose. Did you cite any of those cases in your
8 motion or response as far as the Laches?

9 MR. LaROSE: I cited my -- well my,

10 response wasn't related to this because he
11 didn't move to keep this out, but I cited the
12 Board's case, and I cited the Board's decision
13 April 5th, 1993, in case number -- I'm sorry.
14 April 5th, 2001, in case number 97-193, which
15 specifically held that under certain
16 circumstances Laches could apply.

17 They did hold that Laches did not
18 apply in that particular case, but they cited
19 the circumstances in which they could, and I
20 think I have that opinion here. I could show it
21 to you.

22 HEARING OFFICER HALLORAN: Mr. Kim, it's
23 your position that the Agency did not rely on
24 the May 8th, 2000 --

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1 MR. KIM: That's correct. We only relied
2 on the application that's included within the
3 administrative record.

4 HEARING OFFICER HALLORAN: I'm going to
5 sustain your objection. I'll deny Exhibit No.
6 32 into evidence.

7 MR. LaROSE: And is the ruling that this
8 isn't relevant to the issue of Laches? Because

9 you must understand the defense of Laches isn't
10 based on what they reviewed. It's based on what
11 they didn't do.

12 HEARING OFFICER HALLORAN: I understand.

13 MR. LaROSE: So how can I present a
14 defense of Laches based on what they didn't do
15 without presenting the applications that they
16 didn't act upon?

17 HEARING OFFICER HALLORAN: Perhaps the
18 Board in its infinite wisdom will decide
19 differently, but for now, I will deny it.

20 MR. LaROSE: I would ask that it be
21 admitted as an offer of proof.

22 HEARING OFFICER HALLORAN: It will be
23 admitted for an offer of proof. Go off the
24 record.

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1 (Discussion had
2 off the record.)
3 (Break taken.)

4 MR. LaROSE: We're back on the record.
5 Mr. Kim.

6 MR. KIM: Thank you.

7 R E D I R E C T E X A M I N A T I O N

8

by Mr. Kim

9

Q. Ms. Munie, you were asked earlier in your
10 testimony questions as to whether the grant of
11 the August 2000 permit was more preferable than
12 leaving the site as was?

13

MR. LaROSE: Objection. If he's going to
14 ask her about the August 2000 permit and it's
15 not been admitted in this case, then it's as
16 irrelevant for him to ask her the questions as
17 it was for me to ask her the questions.

18

HEARING OFFICER HALLORAN: Mr. Kim.

19

MR. KIM: Well, I have no problem
20 expanding my relevancy objection on the exhibit
21 and ask that all the questions that he posed
22 regarding the August 2000 permit would be
23 stricken.

24

Mr. LaRose is stating how can he

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1

possibly expect to put on a defense and so forth
2 if all those documents can't come in? I think
3 he answered his own question. He's been asking
4 Ms. Munie -- he's elicited a great deal of
5 testimony from Ms. Munie about all this.

6

I don't think that the document is

7 necessary. He asked her the circumstances
8 regarding the issuance of the document, how it's
9 been handled, and so forth and so on. I don't
10 think the document is needed for that. I think
11 all you need is her testimony. I'm simply
12 asking to cross -- redirect, I guess, a question
13 based on testimony that he elicited.

14 MR. LaROSE: Based on that, I agree, and
15 I would withdraw my objection.

16 HEARING OFFICER HALLORAN: Thank you, Mr.
17 LaRose. Mr. Kim, you may proceed.

18 BY MR. KIM:

19 Q. Again, Ms. Munie, you were asked a
20 question concerning the grant of the August 2000
21 permit, and I believe there was a question as to
22 your use of the word preferable, that permit
23 being -- issuing the permit being more
24 preferable than leaving the site as is.

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1 Do you recall those line of
2 questions?

3 A. Yes.

4 Q. What did you mean when you said you
5 thought it would be more preferable to issue the

6 permit than not?

7 A. Actually, that was Mr. LaRose's words
8 being more preferable, and in answering it --

9 Q. Well, let me ask you this. How would you
10 characterize it then?

11 A. I would characterize it as the permit
12 that was issued in August of 2000 was to bring
13 -- to allow the site to be brought up to the
14 new standards for landfills. With that permit
15 in place, with all the conditions from that
16 permit in place, the site would be operated in a
17 more environmentally friendly manner.

18 Q. And you were also asked a question
19 concerning -- and I'm going to skip around a
20 little bit here. So if I ask a leading question
21 or two, it's just to get you to a point.

22 You were also asked some questions,
23 I believe, concerning what certain members of
24 the Agency staff, past or present, should have

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1 done if they had information concerning a past
2 indictment. Included among the people that you
3 were asked about was Sally Springer.

4 Do you recall that line of

5 questioning?

6 A. Yes.

7 Q. What policy or what guidance do you have
8 in place that directs -- that -- let me rephrase
9 that.

10 What policy does the permit section
11 have concerning what permit reviewers should do
12 with that kind of information?

13 A. There is no policy on that.

14 Q. What guidance documents does the permit
15 section have as to what permit reviewers should
16 do if they have that information?

17 A. There is no guidance document.

18 Q. You were also asked some questions, I
19 believe, concerning Wells letters, and
20 generically Wells letters -- when I use that
21 phrase, I'm referring to letters that are sent
22 taking heed of the decision that was issued in
23 the Wells Manufacturing case.

24 You know what I mean when I refer to

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1 Wells letters, don't you?

2 A. Yes.

3 Q. Are the forms for the Wells letters

4 standard forms?

5 A. You mean the response letters that I
6 sent?

7 Q. Well, the Wells letters themselves. How
8 do you prepare a Wells letter? What goes into
9 preparing a Wells letter?

10 A. There's some basic canned language in the
11 front and at the bottom and with the legal
12 description itself being the most variable and
13 the dates of when these are received, variables.

14 Q. Somewhere in front of you, do you have
15 Exhibit 81?

16 A. Yes.

17 Q. Okay. Could you look to page 0275 of
18 that exhibit?

19 A. Yes.

20 Q. Is that the document that goes on to page
21 0276 of the Wells letter?

22 A. Yes.

23 Q. Is this typical, aside from the, you
24 know, specifics, typical of the general form of

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1 the Wells letter that the Agency sends?

2 A. Yes.

3 Q. Okay. As far as the Wells letter -- and
4 let's keep your attention on that particular
5 document, page 275.

6 What is the date of that document?

7 A. April 4th, 2001.

8 Q. And what was the deadline that the Agency
9 provided for taking action? I'm sorry. Let me
10 rephrase that.

11 What was the Agency's permit
12 deadline on that date for issuing a decision on
13 this permit application?

14 A. According to the letter, it's April 12th,
15 2001.

16 Q. And what was the date in the letter that
17 the Agency allowed for a response time by
18 Community Landfill Company or the City of
19 Morris?

20 A. Until 5:00 o'clock on April 9th, 2001.

21 Q. How was the date April 9th arrived at?
22 How was that chosen?

23 A. I don't know specifically, but it looks
24 like it's giving them more than halfway between

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1 the two days.

2 Q. Okay. And I believe you answered this
3 question, but just let me clarify this.

4 In the administrative record, page
5 -- which is the big book, pages 15 and 16, this
6 is a response from Mr. LaRose addressed to you
7 or to Ms. Roque; is that correct?

8 A. Yes.

9 Q. Was this included in your -- this was
10 included as part of your review of the permit
11 application in making this decision?

12 A. Yes.

13 Q. I believe you also testified on some
14 questions concerning what you do when you
15 receive an inquiry from a member of the press.

16 Do you recall those questions?

17 A. Yes.

18 Q. And I think specifically the question was
19 related to Chuck Pelkie; is that right?

20 A. Yes.

21 Q. What do you do if a reporter calls you
22 with a question about a site or facility that's
23 within your section's domain?

24 A. If they call me directly, I try and get

1 my public information officer on the line. If
2 I'm not able to do that, I will answer the
3 questions that are put to me stating the facts.

4 Q. And why do you answer the questions as
5 opposed to just choosing not to? What are your
6 reasons for answering?

7 A. The reason I answer is because we've been
8 directed by the Agency in the form of my direct
9 supervisor Mike Nechvatal and Bill Child stating
10 that it's their preference that we answer
11 questions.

12 Q. There was also some question as to the
13 use of the phrase investigative mode in the
14 context of -- let's see. I believe it was page
15 -- if you could turn to page 14 of the
16 administrative record. I think there was a
17 question concerning whether or not you were in
18 the investigative mode as of 8:08 a.m. on March
19 30th, 2001.

20 Do you recall that question?

21 A. Yes.

22 Q. How would you characterize -- well, let's
23 put it this way.

24 Was investigative mode your phrase?

1 A. No.

2 Q. Okay. How would you characterize the
3 status of the evaluation or investigation at
4 that time?

5 A. I would say that this is initiating an
6 investigation.

7 Q. Okay. If you could now turn to pages 12
8 and 13 of the administrative record.

9 Who prepared the words in that memo?

10 A. I did.

11 Q. Did you copy any of these words verbatim
12 out of any document or group of documents?

13 A. I quoted Mr. LaRose's April 9th letter.

14 Q. Okay. Other than that quote, were there
15 any other direct quotations that you took from
16 any other source?

17 A. There is a further quote pursuant to
18 39(i) for the denial point of 39(i), but that's
19 it.

20 Q. Okay. If you could look now to Exhibit
21 18, which is the guilty plea, and specifically
22 page 30 of that exhibit.

23 A. Okay.

24 Q. Is there any information on this page

1 that, in your mind, relates to waste management
2 activities?

3 A. Am I on the same page? Page three --
4 page two of ten?

5 Q. I'm sorry. It's Exhibit 18, page --

6 A. Oh, I'm sorry. It's on page 18.

7 HEARING OFFICER HALLORAN: This is the
8 plea agreement, correct?

9 MR. KIM: Plea agreement.

10 HEARING OFFICER HALLORAN: Not the guilty
11 plea?

12 MR. KIM: Right.

13 HEARING OFFICER HALLORAN: I think
14 everyone is using it interchangeably.

15 MR. KIM: I apologize.

16 HEARING OFFICER HALLORAN: Oh, no. Don't
17 apologize.

18 BY MR. KIM:

19 Q. Exhibit 18, which is the plea agreement,
20 page three.

21 A. Yes.

22 Q. Is there any information on that page
23 that you believe relates to waste management?

24 A. Excel Disposal is a transfer station,

1 which is a waste management activity or waste
2 management facility in the State of Illinois.

3 MR. LaROSE: Excuse me. Where is she
4 quoting from?

5 THE WITNESS: Page three, the second
6 paragraph discussing their company, Excel
7 Disposal and their business dealings.

8 MR. LaROSE: Just a point of order here.
9 I don't understand if she's quoting from the
10 document or interpreting the document. So
11 objection to the form of the question and her
12 answer.

13 MR. KIM: That's fine. I can clarify. I
14 can rephrase the question.

15 BY MR. KIM:

16 Q. What information on page three of Exhibit
17 18, in your opinion, relates to waste management
18 activities in the State of Illinois?

19 A. Excel Disposal Company being a transfer
20 station.

21 Q. And look now, please, if you could, back
22 to the administrative record. I apologize for
23 doing this to you. I'm trying to do this in the
24 order they were raised. Page 16 of the

1 administrative record.

2 A. Okay.

3 Q. The second full sentence that begins with
4 the guilty plea and ends with the words matters
5 related to environmental concerns, you were
6 asked some questions concerning whether or not
7 you believe that statement to be accurate or
8 what -- how you use that statement in your
9 review process.

10 Do you recall those questions?

11 A. Yes.

12 Q. Do you believe that statement is
13 completely accurate, in your opinion?

14 A. No.

15 Q. Okay. And why is that?

16 A. A transfer station is related to
17 environmental concerns.

18 Q. And the transfer station?

19 A. Being Excel Disposal.

20 Q. Based on your understanding of the
21 information that you had at the time you made
22 your decision in this case, and that means not
23 looking at Exhibit 18 because we did not have
24 that, did you think that the allegations made in

1 the complaint related to environmental matters?

2 MR. LaROSE: Objection, leading.

3 HEARING OFFICER HALLORAN: Mr. Kim, can
4 you rephrase, please?

5 MR. KIM: I can try.

6 BY MR. KIM:

7 Q. What in the information that was before
8 you at the time of your decision related, in
9 your opinion, to Mr. Pruim and environmental
10 concerns?

11 A. It was the facts or the relationship
12 between him and Excel Disposal, Excel Disposal
13 being a transfer station.

14 Q. Okay. You were also asked about what
15 options the -- what means the facility might
16 have to somehow, again, be able to accept
17 waste. I think the question concerned reversal
18 of its decision.

19 What other ways would this facility
20 ultimately be able to accept waste in
21 conjunction with the constructed separation
22 layer from this day forward?

23 A. Resubmit an application for a significant
24 modification to operate that addressed the two

1 denial points.

2 Q. And just as a point of clarification, I
3 might have misheard because I think I heard your
4 answer different ways, what is your opinion as
5 to whether or not the field operation section
6 should -- let me rephrase that.

7 What is your opinion as to whether
8 or not it is appropriate for the field operation
9 section to forward comments or opinions to the
10 members of the permit section, yourself
11 included?

12 MR. LaROSE: Objection as to calls for
13 her opinion. I didn't know she was here as an
14 opinion witness.

15 MR. KIM: In her role as department
16 manager of the permit section.

17 MR. LaROSE: I think she can testify as
18 to what her interpretation is. I don't know if
19 giving her opinion on anything in this case,
20 other than the permit decision itself, is
21 appropriate.

22 MR. KIM: Well, I think a lot of the
23 questions that have been asked so far have been

24 what's your opinion of what does this case say

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1 or that case say. I think if she's qualified to
2 somehow give opinions on case law, she can at
3 least give her opinion on what type of
4 information her staff should receive from field
5 operation.

6 HEARING OFFICER HALLORAN: I agree. You
7 may ask the question again or if you know the
8 answer, you may answer.

9 BY THE WITNESS:

10 A. Try again.

11 BY MR. KIM:

12 Q. I can try again, sure.

13 What is your opinion as to the
14 appropriateness of members of the field
15 operation section sending comments -- their
16 comments or opinions to your staff regarding a
17 pending permit application?

18 A. We actually encourage the field staff to
19 send information to us including their
20 opinions. They are the people actually seeing
21 the site and viewing the site and can give us
22 much more information than we can glean from an

23 application.

24 Q. What will your people do with that

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1 information once they receive it?

2 A. If it's strictly an opinion, they'll look
3 at it and move on. Facts that are directly
4 related to the application in front of them,
5 they will consider, and if it calls for a
6 specific response, they would either give them
7 an oral or written response.

8 MR. KIM: Okay. I have nothing further.

9 HEARING OFFICER HALLORAN: Mr. LaRose.

10 R E C R O S S - E X A M I N A T I O N

11 by Mr. LaRose

12 Q. Ms. Munie, look at page three of Exhibit
13 18 again. You said that you thought that the
14 information on this page related to waste
15 management activities because of the Excel
16 Transfer Station?

17 A. Yes.

18 Q. Okay. I must have missed it, and maybe I
19 did, where does the words transfer station
20 appear on page three?

21 A. Excel Disposal is a transfer station and

22 was a transfer station.

23 Q. But you got that from reading page three?

24 A. The company Excel Disposal and the

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1 information I had previously.

2 Q. Okay. Does the words transfer station
3 appear anywhere on page three of Exhibit 18, yes
4 or no?

5 A. No.

6 Q. You said that you encouraged the field to
7 communicate with the permit writers, right?

8 A. Yes.

9 Q. If it's just their opinion, permit people
10 aren't supposed to consider that, they look at
11 it and completely move on, correct?

12 A. Yes.

13 Q. So what would be the purpose of them
14 expressing their opinion to you at all?

15 A. Just to express it.

16 Q. Okay. So it's okay for them to express
17 their opinion, but it's not okay for you to
18 consider it, correct?

19 A. Correct.

20 Q. Okay. And no one has ever told them

21 don't write us stuff expressing your opinion
22 because we can't consider it, right?

23 A. Correct.

24 Q. In fact, you encourage just the opposite,

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1 don't you?

2 A. Yes.

3 Q. You said that you sent the Wells letter
4 in enough time to give us half -- more than half
5 time between April the 4th and April the 12th.

6 Did that include the time it was
7 going to take the U.S. Post Office to deliver
8 these certified mail receipts?

9 A. That was just calendar days.

10 Q. And if, in fact the Wells letter didn't
11 get to my client at all, let alone by April the
12 9th, they didn't have an opportunity to respond,
13 did they?

14 A. No.

15 Q. Okay. And, ma'am, the permit decision in
16 this case was made on May the 11th, correct?

17 A. Yes.

18 Q. So we can assume that the April 12th
19 deadline was either extended or you blew it and

20 you didn't make the deadline?

21 A. I would assume it was extended.

22 Q. When it was extended so that you could
23 make your decision by May the 11th, did you ever
24 rewrite anybody from Community Landfill or from

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1 the City of Morris or me or Mr. McDermott saying
2 we got a little more time, do you have anything
3 else you want to tell us about the conviction?

4 A. No.

5 Q. You said that the permit that was granted
6 in August of 2000 was good for the environment
7 because it would require the landfill to come up
8 to the new landfill standards I think you said,
9 correct?

10 A. Yes.

11 Q. It also contemplated and, in fact,
12 allowed the continuing operation of parcel A to
13 the tune of 1.4 million yards of cubic waste
14 being deposited in parcel A, right?

15 A. Yes.

16 Q. So it wasn't just bringing the landfill
17 up to the regulations, it contemplated the very
18 thing that we sought approval of in May of 2001,

19 correct?

20 It contemplated that we would build
21 a separation layer and put waste on top of the
22 separation layer, didn't it?

23 A. Yes.

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

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1 HEARING OFFICER HALLORAN: Thank you, Mr.
2 LaRose. Mr. Helsten.

3 MR. HELSTEN: Nothing.

4 HEARING OFFICER HALLORAN: Mr. Kim.

5 MR. KIM: Nothing further.

6 HEARING OFFICER HALLORAN: Ms. Munie, you
7 may step down. Thank you very much. Let's go
8 off the record, please.

9 (Discussion had
10 off the record.)

11 (Break taken.)

12 HEARING OFFICER HALLORAN: We're back on
13 the record. It's approximately ten until 4:00.
14 Mr. LaRose.

15 MR. LaROSE: Ms. Roque as our next
16 witness, please.

17 HEARING OFFICER HALLORAN: Ms. Roque,

18 could you please step up, raise your right hand,
19 and the court reporter will swear you in.
20
21
22
23
24

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1 (Witness sworn.)
2 WHEREUPON:
3 C H R I S T I N E R O Q U E,
4 called as a witness herein, having been first
5 duly sworn, deposeth and saith as follows:
6 C R O S S - E X A M I N A T I O N
7 by Mr. LaRose
8 Q. Good afternoon.
9 A. Good afternoon.
10 Q. Okay. You particularly, and I'm not
11 chastising you, you have to speak up otherwise
12 she's not going to be able to hear you. Maybe
13 pull that mike a little closer to you.
14 A. Okay.
15 Q. Could you state your name for the record,
16 please?

17 A. It's Christine Roque, R-o-q-u-e.
18 Q. You were the permit reviewer for the
19 permit at issue in this case, correct?
20 A. Correct.
21 Q. And you are a professional engineer?
22 A. I'm an engineer. I'm not a professional
23 engineer.
24 Q. You're not a registered professional

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1 engineer?
2 A. No.
3 Q. But you have an engineering degree?
4 A. Yes, I do.
5 Q. You also were the permit reviewer on the
6 August 2000 SIGMOD, correct?
7 A. Correct.
8 Q. And you agreed with the issuance of the
9 August 2000 SIGMOD because you thought it was
10 better for the environment to grant the permit
11 than to leave the site the way it was, right?
12 A. Right.
13 Q. This permit, the permit in this case, was
14 part of the overall scheme that was permitted in
15 August 2000, correct?

16 A. Correct.

17 Q. Part of the overall permitted scheme in
18 August 2000 was to build a separation layer over
19 the old waste, put waste on top of it, and
20 install leachate control devices, correct?

21 A. Correct.

22 Q. And if built correctly, the separation
23 layer was going to be protective of the
24 environment, right?

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1 A. Right.

2 Q. The permit also called for installation
3 of leachate collection devices, correct?

4 A. Correct.

5 Q. Leachate storage tank, correct?

6 A. Correct.

7 Q. Direct sewer connections to the Morris
8 POTW, correct?

9 A. Correct.

10 Q. Increased groundwater monitoring, both in
11 terms of the number of Wells and the parameters
12 to be monitored for?

13 A. That's correct.

14 Q. And an increased requirement for final

15 cover for the facility?

16 A. That's correct.

17 Q. Of the many, many permits that you've
18 reviewed, you've only been involved in one other
19 39(i) investigation, correct?

20 A. Correct.

21 Q. And that was something to do with the
22 Watts case, right?

23 A. Right.

24 Q. Your interpretation of Section 39(i) is

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1 that the Agency may conduct an evaluation,
2 right?

3 A. That was my understanding.

4 Q. Okay. And that was your understanding at
5 the time that you reviewed this particular
6 permit application, right?

7 A. Right.

8 Q. And that was your understanding at the
9 time that you gave your deposition a couple
10 weeks ago, right?

11 A. That's correct.

12 Q. There are no written procedures as to
13 when the Agency is to conduct an evaluation,

14 correct?

15 A. Yeah. We do not have a procedure for
16 39(i).

17 Q. 39(i) makes no distinction between the
18 types of permits it applies to, correct?

19 A. Correct.

20 Q. Any permit for a sanitary landfill or a
21 waste disposal site applies to Section 39(i)?

22 A. That's correct.

23 Q. Even though Section 39(i) says that the
24 Agency shall conduct, from your experience, that

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1 doesn't always happen, right?

2 A. My interpretation is different.

3 Q. Okay. Even though Section 39(i) says
4 shall conduct, from your experience, you don't
5 always do a 39(i), yes or no?

6 MR. KIM: Objection. When you say 39(i),
7 what are you referring to? You said a 39(i).

8 MR. LaROSE: Right.

9 BY MR. LaROSE:

10 Q. A 39(i) evaluation, yes or no, ma'am?

11 A. I do not always do a 39(i).

12 Q. Of the thousand or so permits that you've

13 been involved in, in 998 of them, you didn't
14 conduct a 39(i) evaluation?

15 A. That's correct.

16 Q. There is no Agency written guidance or
17 memos on the implementation of Section 39(i), is
18 there?

19 A. No.

20 Q. Even if the owner or operator is
21 convicted of a felony, you still have discretion
22 whether or not to deny the permit, correct?

23 A. Correct.

24 Q. And, in your opinion, if the permit is

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1 protective of the environment, you would grant
2 the permit regardless of whether there was a
3 conviction, right?

4 A. I believe that's how we've been doing it.

5 Q. Okay. I don't know about how you've been
6 doing it. I want to know what your
7 interpretation is right now.

8 Please answer the question yes or
9 no. If the permit was protective of the
10 environment, you would recommend granting the
11 permit regardless of a conviction, yes or no?

12 A. Yes.

13 Q. Have you read the Board's decisions or
14 court cases regarding the implementation of
15 Section 39(i)?

16 A. No, I have not.

17 Q. In conducting your evaluation, did you
18 look at any other provisions of the Act?

19 A. No.

20 Q. When you conducted your evaluation in
21 this case, you knew that Jim Pelnarsh was a
22 certified operator of the site, not Bob Pruim,
23 correct?

24 A. I did not do the 39(i) evaluation --

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1 investigation.

2 Q. Okay. At the time that you -- Strike
3 that.

4 You concurred with the 39(i)
5 decision in this case, correct?

6 A. Correct.

7 Q. At the time that you concurred with the
8 39(i) decision in this case, you knew that the
9 certified operator was Jim Pelnarsh, not Bob
10 Pruim?

11 MR. KIM: Objeciton. I don't think any
12 foundation has been made as to what time he's
13 referring to.

14 HEARING OFFICER HALLORAN: Mr. LaRose.

15 MR. LaROSE: Okay.

16 BY MR. LaROSE:

17 Q. Ma'am, when the decision was made on
18 April -- I'm sorry, May 11th, 2001, did you
19 concur with that decision?

20 A. Yes.

21 Q. Okay. And you concurred with it at least
22 as of May 11th, 2001, or sometime before,
23 correct?

24 A. Correct.

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1 Q. Okay. At the time that you concurred,
2 either on or prior to May 11th, 2001, did you
3 know that the certified operator was Jim
4 Pelnarsh, not Bob Pruim?

5 A. Yes, I did.

6 Q. Okay. You didn't make the 39(i) decision
7 in this case, but you agreed with it, right?

8 A. Right. I accepted it in final letter.

9 Q. You didn't accept it only, you agreed

10 with it, correct?

11 A. Correct.

12 Q. The information that you had was Joyce's
13 memo of May the 9th, my letter, and the criminal
14 case docket at the time that you concurred,
15 correct?

16 A. Correct.

17 Q. You didn't even have the complaint in
18 front of you at the time that you concurred with
19 the decision, did you?

20 A. I don't believe so.

21 Q. When you agreed with the decision, did
22 you know whether Mr. Pruim worked at the
23 landfill?

24 A. I know he's the president of the company.

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1 Q. Okay. Did you know whether he worked at
2 the landfill?

3 A. No.

4 Q. Did you know what decisions he made
5 regarding the day-to-day operations?

6 A. No.

7 Q. Did you believe that the conviction
8 related to Community Landfill based only on

9 reading Joyce's memo of May the 9th?
10 A. Can you repeat that?
11 Q. Did you believe that the conviction
12 related to Community Landfill based only on your
13 reading of Joyce's memo dated May the 9th?
14 A. That's correct.
15 Q. You've never seen the guilty plea
16 agreement, have you?
17 A. No.
18 Q. Other than Joyce's memo, you don't have
19 any independent knowledge of whether the
20 conviction had anything to do with waste
21 management in Illinois, do you?
22 A. No.
23 Q. Did you hear people from the Agency
24 saying that CLC was operating without a permit?

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1 A. Yes.
2 Q. You heard it from people that had
3 involvement with CLC, including Joyce Munie,
4 Paul Purseglove, Bruce Kugler, Bill Ingersoll,
5 and John Kim, correct?
6 A. Correct.
7 Q. In your opinion, the site should have

8 stopped accepting waste in 1997, correct?

9 A. Correct.

10 Q. Mark Retzlaff is the inspector for our
11 site, right?

12 A. Right.

13 Q. Didn't he question why you should be --
14 why you should issue a permit to this site?

15 A. Yes.

16 Q. Didn't he say it was hard to believe that
17 somebody could get a permit under these
18 circumstances?

19 A. Yes.

20 Q. You drafted -- you drafted three Wells
21 letters with respect to the 39(i) issue and Mr.
22 Pruim's convictions, did you not?

23 A. Yes, I did.

24 MR. LaROSE: John, 10, 11, and 12. Mr.

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1 Halloran, I'm going to hand you and Ms. Roque
2 Exhibits 10, 11 and 12.
3 BY MR. LaROSE:
4 Q. Ms. Roque, I'm going to hand you 10, 11,
5 and 12, please. Let's start with No. 12.
6 That's the Wells letter that was

7 issued in this particular case, correct?
8 A. Correct.
9 Q. And 11 is the Wells letter that was
10 issued under docket number 2000-051, correct?
11 A. Correct.
12 Q. And Exhibit 10 is the docket -- the Wells
13 letter that was issued under docket 2000-012,
14 correct?
15 A. Correct.
16 Q. Okay. The docket 2000-051, Exhibit 11
17 Wells letter, that's the permit that was issued
18 on June the 29th, 2001, correct?
19 A. Correct.
20 Q. And the Exhibit 10, the docket number
21 2000-012, that's the permit that has yet to be
22 issued, correct?
23 A. 2001-012?
24 Q. Yes.

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1 A. It's still pending.
2 Q. Okay. All of these Wells letters,
3 Exhibits 10, 11, and 12, related to the criminal
4 conviction of Mr. Pruim, correct?
5 A. Correct.

6 Q. What is your understanding of the
7 Agency's obligations under the Wells
8 Manufacturing case?

9 A. That if we are going to consider factors
10 outside of the scope of the application, we are
11 required to -- we should send them a Wells
12 letter notifying them of our intent to consider
13 factors outside the scope of the application.

14 Q. Isn't that also an opportunity for the
15 person to respond to that information?

16 A. Yes.

17 Q. Okay. Wasn't this a short time for us to
18 respond if we received the document on April 9th
19 and we had to respond on April 9th?

20 A. We mailed it April 4th.

21 Q. Okay. Do you have Exhibit 81 in front of
22 you?

23 A. Yes.

24 Q. Did you compile the record in this case,

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1 Ms. Roque?

2 A. Yes, I did.

3 Q. When you first compiled the record,
4 neither the Wells letters nor the return

5 receipts for the certified mail were included in
6 the record, right?

7 A. Right.

8 Q. That wasn't on purpose, was it?

9 A. No.

10 Q. Did you -- that was just a mistake?

11 A. I believe so. The letter went directly
12 to the file. So if it went directly to me, I
13 would have included it in the record.

14 Q. Take a look at number page 0279 of
15 Exhibit 81.

16 Doesn't that show that the Wells
17 letter was delivered to the City of Morris on
18 April the 9th, '01, the same date that the
19 response was due?

20 A. Yes.

21 Q. And you looked in the file, didn't you,
22 at Mr. Kim's request to see if there was a
23 return receipt as to when my client received the
24 Wells letter?

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1 A. Yes.

2 Q. And you couldn't find one, could you?

3 A. No.

4 Q. And you called the post office, didn't
5 you?

6 A. Yes.

7 Q. And they couldn't find one either, could
8 they?

9 A. That's right.

10 Q. As you sit here, you don't know whether
11 the Wells letter dated April the 4th ever was
12 received by anyone from Community Landfill,
13 right?

14 A. Right.

15 Q. Okay. And if it was received -- we know
16 that I got a copy from Mr. McDermott by fax on
17 that day, right, and I had to respond by that
18 afternoon, right?

19 A. Right.

20 Q. Did you think that was a sufficient
21 enough opportunity for us to respond to the
22 allegations regarding the serious eight-year-old
23 criminal conviction?

24 A. I don't know.

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1 Q. Did you consider the pending enforcement
2 case during your review of the permit

3 application?

4 A. No.

5 Q. Did you consider the notices of violation
6 that were issued on the financial assurance
7 documents?

8 A. No.

9 Q. Did you consider the notice of intent to
10 file suit with respect to the financial
11 assurance documents when you did the permit
12 activities in this case?

13 A. No.

14 Q. Did you consider any of the petitioners,
15 Community Landfill's or the City of Morris',
16 responses to any enforcement documents in making
17 the permit decisions that you made in this case?

18 A. No.

19 Q. The Wells letters that you sent only
20 related to Section 39(i), correct?

21 A. Correct.

22 Q. They didn't in any way address the issue
23 of the delisting of Frontier, did they?

24 A. No.

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1 Q. You weren't at the meeting with Joyce

2 Munie, Mike Nechvatal, Paul Purseglove, and John
3 Kim, were you?

4 A. No.

5 MR. LaROSE: I'm sorry. Mr. Hearing
6 Officer, before we get too far afield, I'm going
7 to move for admission of Group Exhibit 81 and
8 admission of Exhibits 10, 11, and 12.

9 HEARING OFFICER HALLORAN: Mr. Kim.

10 MR. KIM: No objection to 81, and, again,
11 I'm not sure procedurally how the Board will
12 handle it. This is something I've mailed to the
13 clerk. I don't know how it's going to be
14 handled.

15 HEARING OFFICER HALLORAN: Right. I'll
16 allow into evidence Exhibit Group 81 with no
17 objection.

18 MR. KIM: No exhibit as to exhibit -- no
19 objection, it's getting late, as to Exhibit 12.
20 No objection.

21 HEARING OFFICER HALLORAN: No objection
22 to Exhibits 10, 11, and 12. Exhibits 10, 11,
23 and 12 are so admitted.

24 BY MR. LaROSE:

1 Q. Do you know why the permit reviewer,
2 being you, wasn't at the meeting, but the head
3 of field operations was?
4 A. I don't know.
5 Q. Okay. Do you know what he did?
6 A. Who did?
7 Q. Purseglove, at the meeting.
8 A. No, I don't.
9 Q. Let's look at the -- do you have the
10 record in front of you, Christine?
11 A. Yes.
12 Q. We've looked at that before. It's
13 consecutively numbered after the abstract in the
14 front.
15 A. Okay.
16 Q. Look at pages 12 and 13, please. At the
17 bottom of page 12 -- are you with me?
18 A. Yes.
19 Q. (Continuing.) -- and the top of page 13,
20 there's a clause influence an employee with the
21 City of Chicago in his responsibilities related
22 to removal and disposal of waste.
23 Do you know where Joyce came up with
24 that statement?

1 A. I believe from her investigation.

2 Q. Okay. But do you know where she got it
3 from, yes or no?

4 A. No.

5 Q. Did you do anything to verify that
6 information?

7 A. No.

8 Q. Look at page 13, please. The fourth
9 sentence of the first full paragraph beginning
10 with the word the Act, do you see that?

11 A. The first paragraph?

12 Q. First full paragraph, fourth sentence,
13 which is the third line down beginning with the
14 word the Act.

15 A. Okay.

16 Q. Okay. Do you agree with that sentence?

17 A. Yes.

18 Q. Ma'am, the first sentence of that
19 paragraph says, Mike, Paul, and I discussed
20 mitigating factors as enumerated in the
21 April 9th letter from Mark LaRose.

22 Do you know whether or not Joyce
23 considered any other mitigating factors other
24 than those contained in my letter?

1 A. I don't know.

2 Q. If you knew about the criminal activity
3 in August of 2000, would you have recommended a
4 39(i) investigation at that time?

5 A. It's Joyce's call to do an investigation.

6 Q. Okay. If you had to make a
7 recommendation to Joyce with respect to that,
8 would you have recommended for her to do an
9 evaluation?

10 A. An investigation?

11 Q. Investigation or evaluation.

12 A. Yes.

13 Q. Okay. What about -- you were the permit
14 reviewer for the September '99 denial, correct?

15 A. Correct.

16 Q. The same question, if the same
17 information came to you in September '99, would
18 you have recommended to Joyce to conduct an
19 evaluation or investigation?

20 A. That's correct.

21 Q. Okay. Is it your position as an
22 environmental professional that a convicted
23 felon is okay to receive a permit to protect the
24 environment, but he's not okay to receive a

1 permit to deposit waste pursuant to a permitted
2 scheme, yes or no, ma'am?

3 MR. KIM: I object to the form of the
4 question. It's a compound question. If you
5 could break it up into two, maybe that would be
6 --

7 MR. LaROSE: I could, except I asked her
8 the same question before. Let me try and ask it
9 again and see if she can follow me. Okay?

10 HEARING OFFICER HALLORAN: Very well, Mr.
11 LaRose.

12 BY MR. LaROSE:

13 Q. Is it your position as an environmental
14 professional that a criminal is okay to receive
15 a permit to protect the environment, but he's
16 not okay to receive a permit to deposit waste
17 pursuant to a permit that he's already been
18 issued, yes or no?

19 A. I'd say yes.

20 Q. Adding more waste was all part of the
21 permitted scheme in August of 2000, correct?

22 A. Correct.

23 Q. Adding up to 1.4 million cubic yards of
24 more waste was part of that scheme, right?

1 A. Right.

2 Q. The permit denied in this case was to
3 approve the construction of the separation layer
4 and to approve putting waste on top of it,
5 correct?

6 A. Correct.

7 Q. And the permit would have included
8 installation of leachate control devices,
9 correct?

10 A. Correct.

11 Q. And approving the construction of a
12 three-foot impermeable clay layer that would be
13 the separation layer, correct?

14 A. Correct.

15 Q. So part of the permit was at least to
16 improve the environment, right?

17 A. Right.

18 Q. Did the denial -- Strike that.

19 Did the fact that you concurred with
20 the denial have anything to do with trusting
21 Community Landfill or Community Landfill Company
22 one way or the other?

23 A. Trusting?

24 Q. Trusting them to run these pollution

1 control devices in the right manner.

2 A. The decision is based on what's being
3 applied for, the scope of the application. It
4 has nothing to do with trust.

5 Q. Okay. So just to clarify the question,
6 the fact that you concurred with the denial
7 wasn't because you didn't trust us to do the
8 right thing?

9 A. Right.

10 Q. You would recommend issuing a permit that
11 was protective of the environment even though
12 the president of the company was a convicted
13 felon, correct?

14 A. Correct.

15 Q. The separation layer that was constructed
16 by Community Landfill with the oversight of Mr.
17 McDermott was built in accordance with the
18 design and permit specifications, correct?

19 A. Correct.

20 Q. And you felt that way even though the
21 fellow from field operations tried to tell you
22 differently, right?

23 A. Right.

24 Q. Did you ever consider the fact in your

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1 concurrence with the permit decision that the
2 Board had ruled in our favor on April 5th on the
3 issues of operating without a permit?

4 MR. KIM: I'm going to object. That
5 question assumes she has some foundation or
6 knowledge of that opinion, and I don't think
7 that it's been established that she does.

8 MR. LaROSE: I agree with that. I'll
9 withdraw the question and try it again.

10 HEARING OFFICER HALLORAN: Thank you, Mr.
11 LaRose.

12 BY MR. LaROSE:

13 Q. Did you have knowledge about the Board's
14 April 5th order in the enforcement case?

15 A. The enforcement case?

16 Q. Yes.

17 A. Or the appeal?

18 Q. The enforcement case. They did make --
19 I'm not trying to be confusing.

20 They made two decisions on the same
21 day.

22 A. Yeah. I think that's where I'm getting

23 confused.

24 Q. Okay.

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1 A. I think I read the decision on the
2 appeal.

3 Q. Because that's the one you were involved
4 in?

5 A. Right.

6 Q. And do you remember whether or not you
7 read the one in the enforcement case?

8 A. No, I'm not sure if I've read the
9 enforcement case.

10 Q. Okay. Look at page 53 of the record,
11 please. Yes or no, ma'am, did you consider this
12 memo at all in making your decisions this case?

13 A. Parts of it.

14 Q. Yes or no, ma'am?

15 A. Yes.

16 Q. Flip to the next page to page 54 of the
17 record. You looked at this memo, too, in
18 regards to your obligations in reviewing the
19 permit in this case, correct?

20 A. Correct.

21 Q. When you talked to Retzlaff -- you did

22 speak with him over the telephone regarding this
23 particular permit, right?

24 A. I believe so.

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1 Q. Okay. When you spoke with him prior to
2 May 11th, would he say things like the site has
3 been involved in extensive enforcement, seems
4 like they disregard the Act and input of the
5 Agency, quite a bit of sloppy operations with
6 little or no repercussions? Would he say things
7 like that?

8 A. I think so.

9 Q. Is he making these statements, in your
10 impression, because he keeps questioning why you
11 keep issuing permits?

12 A. I believe so.

13 Q. Take a look at pages 55 through 59 of the
14 record, please. That's Mr. Retzlaff's
15 preoperational inspection report of March the
16 7th, 2001, correct?

17 A. Correct.

18 Q. That accompanied his memo which appears
19 on page 54 of the record, correct?

20 A. Correct.

21 Q. There isn't a single violation of the Act
22 or the regulations noted in the preop
23 inspection, is there?
24 A. No.

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1 Q. Have you ever been to Community Landfill?
2 A. No.
3 Q. Did you drive by it today?
4 A. No. I didn't have time.
5 Q. Okay.
6 MR. KIM: I think he's there.
7 HEARING OFFICER HALLORAN: I'm still
8 here, Mr. LaRose.
9 MR. LaROSE: I didn't know whether I
10 killed you with boredom.
11 BY MR. LaROSE:
12 Q. Financial assurance, Blake Harris made
13 the determination that the landfill was not in
14 compliance with financial assurance, correct?
15 A. Correct.
16 Q. You had no input on that?
17 A. No.
18 Q. You made no independent determination
19 regarding financial assurance, right?

20 A. Right.
21 Q. Joyce didn't either, did she?
22 A. No.
23 Q. As we sit here today -- as we sit here
24 today, the presently applicable permits for this

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1 facility were the two SIGMODs issued on August
2 4th modified by the permits issued on 2-1-2001
3 and June 29th, 2001, correct?
4 A. Correct.
5 Q. The Agency has not yet issued any revised
6 SIGMOD permits pursuant to the Board's April 5th
7 order, right?
8 A. Right.
9 Q. Why not?
10 A. I think because it's still under appeal.
11 Q. Okay. Were you asked to do anything with
12 respect to that?
13 A. No.
14 MR. LaROSE: John, No. 5. Mr. Halloran,
15 I'm going to show the witness what's been
16 previously marked as Exhibit 5.
17 BY MR. LaROSE:
18 Q. Ms. Roque, in the August 4th permits --

19 permit application, didn't Mr. Taylor tell you
20 that the Frontier Insurance bonds complied with
21 the Act and the regulations in all respects?

22 A. This doesn't tell me what kind of bonds
23 they have. It just tells me that they have
24 acceptable final assurance documents.

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1 Q. Okay. Without referring to Exhibit 5 for
2 a second, yes or no, did Mr. Taylor render an
3 opinion in August of 2000 that the Frontier
4 bonds complied with all regulations?

5 A. Whatever financial assurance they have
6 complies with the regulations.

7 Q. Okay. But he didn't specifically say
8 Frontier bonds?

9 A. I don't know.

10 Q. Now, Mr. Harris is telling you that the
11 financial assurance doesn't comply with the
12 regulations, right?

13 A. The document says that.

14 Q. You didn't do anything to attempt to
15 reconcile those two positions, did you?

16 A. No.

17 Q. Did it personally bother you that there

18 were two conflicting opinions by two
19 environmental professionals who work for the
20 Agency with respect to the same bonds?

21 A. I think my answer during the deposition
22 was, yes, personally it bothers me that there's
23 inconsistencies in making decisions.

24 Q. Ma'am, yes or no, whether a financial

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1 assurance mechanism is in compliance with the
2 regulations, in your opinion, depends on what
3 the permit application is for?

4 A. That's correct.

5 Q. Okay.

6 MR. LaROSE: The only thing I have left
7 is the June 29th stuff.

8 HEARING OFFICER HALLORAN: Okay.

9 MR. LaROSE: So I'll go through that
10 quickly and then that's it.

11 HEARING OFFICER HALLORAN: All right.
12 For the record, this is Mr. LaRose's offer of
13 proof, I believe, for the June 29th.

14 BY MR. LaROSE:

15 Q. You have in front of you Exhibit -- I
16 think you have -- I hope you have in front of

17 you Exhibit 37 and Exhibit 73. I just had it in
18 front of me.

19 A. Yes.

20 MR. LaROSE: Give me a minute, fellows.
21 I had it all stacked up here.

22 MR. HELSTEN: Which one do you need?

23 MR. LaROSE: 37 and 73.

24 MR. HELSTEN: I've got it.

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1 MR. LaROSE: Thanks.

2 BY MR. LaROSE:

3 Q. Let's refer for a second to Exhibit 73 --
4 I'm sorry, Exhibit 37. That's a small portion
5 -- that's the cover letter for the permit
6 application, the LPCPA-1, and then the permit
7 that was issued on June 29th, 2001.

8 MR. KIM: Is that a question?

9 MR. LaROSE: Yes.

10 BY MR. LaROSE:

11 Q. Correct?

12 A. Correct.

13 Q. Okay. And you, even though Joyce signed
14 this permit, you signed off on it on the last
15 page, page 48, correct?

16 A. Correct.

17 Q. And you concurred with this particular
18 permit decision, correct?

19 A. Correct.

20 Q. This was to operate an acceptance report
21 for the installation and operation of gas
22 monitoring probes at the site, correct?

23 A. Correct.

24 Q. As far as you know, the exact same

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1 financial assurance was in place for this
2 particular application?

3 A. I believe so.

4 Q. And the same Bob Pruim was president of
5 the corporation, the same one that you conducted
6 or the Agency conducted a 39(i) evaluation on
7 with respect to the prior application?

8 A. Yes.

9 Q. Okay. Take a look at Exhibit 73,
10 please. These are excerpts from the Agency's
11 record under log number 2001-051, which was the
12 permit that was ultimately issued on June the
13 29th, 2001, correct?

14 A. Part of the record?

15 Q. Yes, ma'am.
16 A. Yes.
17 Q. It contains in Exhibit 73
18 Ms. Roque's May 9th memo, right?
19 A. Right.
20 Q. That's the same exact memo that's
21 contained in the record in this case, right?
22 A. Right.
23 MR. KIM: You're referring to Ms. Munie's
24 memo, right?

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1 MR. LaROSE: Who did I --
2 MR. KIM: You said Ms. Roque's.
3 MR. LaROSE: Sorry.
4 BY MR. LaROSE:
5 Q. The memo from Ms. Munie to Ms. Roque
6 dated May the 9th, 2001?
7 A. Right.
8 Q. Okay. And that's the same document that
9 appears in the record in this case, correct?
10 A. Correct.
11 Q. My Wells letter response, April 9th,
12 2001, that's the same letter that is included in
13 the record in this case, correct?

14 A. Correct.

15 Q. The docket sheet in the criminal case,
16 that's the same docket sheet that's included in
17 the record in this case?

18 A. Correct.

19 Q. And then your permit reviewer notes where
20 you take a position on the final action,
21 correct?

22 A. Correct.

23 Q. Okay. And in the final action section,
24 pages two and three -- that appear on pages two

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1 and three of your permit reviewer notes, you
2 include in there your justifications for
3 granting this permit even though he's been
4 convicted of a felony, correct?

5 A. Correct.

6 Q. You don't say anything in here about why
7 you granted the permit even in light of the
8 Agency's position that the financial assurance
9 is no good, though, do you?

10 A. No, I did not.

11 Q. Okay.

12 MR. LaROSE: Mr. Halloran, that concludes

13 the offer of proof with respect to Exhibits 37
14 and 73 as they relate to Ms. Roque's testimony.

15 HEARING OFFICER HALLORAN: Mr. Kim,
16 briefly, do you want to renew your objection?

17 MR. KIM: The same objection. The
18 subject matter of those exhibits and of her
19 testimony relates to a decision that was issued
20 on June 29th, 2001, which is over a month after
21 the decision in this case was rendered.

22 It is outside the record, and it
23 postdates the decision, and the Board should not
24 consider it in its deliberations concerning the

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1 review of the May 11th, 2001, decision.

2 HEARING OFFICER HALLORAN: I agree. Mr.
3 Kim's objection is sustained. I find it
4 irrelevant for the purposes of the hearing
5 today, and the permit was 00-438?

6 MR. KIM: That's the one we had before
7 us. I think 00- --

8 MR. LaROSE: 051.

9 MR. KIM: -- 051 is the June 29th.

10 HEARING OFFICER HALLORAN: Right, and I
11 don't think it's relevant to the hearing today.

12 MR. LaROSE: But we've already -- I
13 believe we've already offered as an offer of
14 proof Exhibits 73 and 37.

15 HEARING OFFICER HALLORAN: Correct.

16 MR. LaROSE: I would add to that the
17 questioning -- ask that you allow me to add to
18 that the questions and answers that we just went
19 over with Ms. Roque.

20 HEARING OFFICER HALLORAN: So noted.

21 MR. LaROSE: That's all that I have for
22 Ms. Roque at this time.

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

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1 MR. HELSTEN: Nothing, your Honor.

2 HEARING OFFICER HALLORAN: Mr. Kim.

3 MR. KIM: Hopefully, just a few
4 questions.

5 R E D I R E C T E X A M I N A T I O N

6 by Mr. Kim

7 Q. Ms. Roque, when you receive a permit
8 application that's assigned to you, what steps
9 do you take to review that application?

10 A. What steps do I take?

11 Q. Yes.

12 A. We review for completeness of forms, of
13 the application forms, that they're properly
14 signed by the owner and operator, and we review
15 the technical portion of the application, and if
16 there are required reviewers from other units
17 like groundwater or financial assurance, then we
18 get -- I get their comments.

19 I usually get comments from FOS or
20 our field operation section and combine all
21 comments together and make a decision based on
22 that and make a recommendation based on all the
23 comments and my review.

24 Q. Okay. And in the -- in all the permit

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1 applications that have been assigned to you,
2 have those steps been followed?

3 A. Yes.

4 Q. You also testified that it was your
5 opinion that the landfill should have stopped
6 accepting waste in 1997.

7 Do you recall that?

8 A. Yes.

9 Q. What's the basis for that statement or

10 for your opinion?

11 A. Based on my knowledge that they have not
12 received their significant modification,
13 significant modification by September 18th,
14 1997, and that they have not timely filed their
15 application.

16 Q. Okay. You were also asked some questions
17 concerning the timeliness of the Wells letters
18 that were sent out to the city and Community
19 Landfill Company in the present case.

20 Do you know why the deadlines that
21 were imposed for them to respond to the Agency,
22 how they were selected that were included in the
23 Wells letters?

24 A. I believe it was April 2nd when Joyce

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1 sent me that -- sent me a memo to go and write a
2 Wells letter, and it was April 4th when we
3 mailed it, and the due date of the application
4 was April 12th. So I just picked, like, an
5 arbitrary number in the middle to allow us time
6 to review their response. So that's how I
7 picked April 9th.

8 Q. And what happened to push the deadline

9 back in this case from April -- whatever the
10 original date was to May 11th?

11 A. Well, yeah. When the time -- the time I
12 wrote the Wells letter, there were some pending
13 engineering issues at the time, and Mike
14 McDermott had sent me additional information on
15 the 12th.

16 Q. Of what month?

17 A. April 12th. That extended the due date
18 another 30 days.

19 Q. Okay. You were also asked some questions
20 concerning two different situations involving
21 someone who had been convicted of a felony
22 receiving a permit for control devices and
23 receiving a permit for accepting waste.

24 What is your -- let me rephrase

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1 that. Why is it, in your opinion, acceptable
2 for a convicted felon to receive a permit that
3 would allow for the operation or installation of
4 pollution control devices compared to his
5 receiving a permit to authorize the acceptance
6 of additional waste?

7 A. First of all, just because they have a

8 39(i) investigation does not mean we're never
9 going to give them a permit, we're never going
10 to issue them a permit, and, second, if it's
11 more beneficial for the environment, we give
12 them a permit.

13 Q. Is a -- why would a permit to accept
14 additional waste not necessarily be beneficial
15 to the environment?

16 MR. LaROSE: Objection, leading.

17 HEARING OFFICER HALLORAN: Mr. Kim.

18 MR. KIM: I asked why. I'm not asking
19 for a yes or a no. I'm asking her why wouldn't
20 it be beneficial.

21 HEARING OFFICER HALLORAN: You may
22 answer, if you're able.

23

24 BY THE WITNESS:

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1 A. It will generate more leachate and more
2 operational issues.

3 BY MR. KIM:

4 Q. Okay. Could you please look to the
5 administrative record in this case and turn to
6 page 53? That's an e-mail that was sent to

7 Joyce Munie from Mark Retzlaff and apparently
8 you received a copy of that as well; is that
9 correct?

10 A. That's correct.

11 Q. What portions of this e-mail did you
12 consider helpful and what portions did you
13 consider not helpful in your review of the
14 permit application?

15 A. I only considered portions of this e-mail
16 that relates to the constructed cell, which is
17 his comment on the site, the liner, and side
18 walls.

19 Q. Okay. What portions of this e-mail did
20 you not consider in your review of the permit
21 application?

22 A. Anything that sounds like his opinion.

23 Q. How common is it for permit reviewers to
24 receive opinions or comments from members of the

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1 field operation section in the context of a
2 pending permit application?

3 A. It's quite common.

4 Q. And when you receive those, how do you --
5 how do you take those comments or opinions from

6 the field staff in conjunction with your permit
7 review?

8 A. We listen to their opinions because we
9 want to know more about the particular facility,
10 but we try to separate it. We try to just focus
11 on the scope of the application, and we do not
12 consider any opinions in making our decision.

13 Q. Okay. Turn to page 54 of the
14 administrative record.

15 A. Thirty-four?

16 Q. I'm sorry, 54.

17 A. Okay.

18 Q. This is a memo addressed to you from Mark
19 Retzlaff; is that right?

20 A. That's right.

21 Q. The same set of questions, what portions
22 of this memo from Mark to you did you consider
23 helpful in the course of your review of the
24 permit application?

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1 A. Only the portion that talks about how the
2 cell was constructed.

3 Q. What portions of this memo did you
4 consider not so helpful in your review of the

5 permit application?

6 A. Anything that he gives his opinion on.

7 Q. Could you, for example, pick out some
8 portion of the memo that you're referring to?

9 A. Yeah. The side wall slopes of the cell
10 are at an inadequate height along three of the
11 four sides.

12 Q. Okay. Are there any other comments in
13 the memorandum that you think were not
14 particularly helpful in the course of your
15 review?

16 A. I think the rest of this are his
17 opinions.

18 Q. I'm sorry?

19 A. The rest of the memo are Mr. Retzlaff's
20 opinions.

21 Q. Okay. Maybe I'll rephrase -- maybe I
22 asked my question ambiguously.

23 What I meant to ask you was what
24 portions of this memo did you not find helpful

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1 when you were conducting your permit review?

2 A. Oh, did I not find helpful?

3 Q. Yes, yes.

4 A. The third paragraph.

5 Q. Beginning where?

6 A. This site has been involved in extensive
7 enforcement and seems to disregard the Act.

8 Q. Okay. The last question I had for you
9 was you were asked a question concerning whether
10 financial assurance was compliant and whether or
11 not that depends on the type of permit that was
12 issued.

13 What is your position as to whether
14 financial assurance depends upon the type of
15 permit that's issued?

16 A. Financial assurance -- compliance with
17 financial assurance is required for any waste
18 disposal application. That's specifically
19 stated in 811.700, and that is -- that's why we
20 consider that financial assurance or the
21 noncompliance with financial assurance as a
22 denial point in the 2000-438 application and not
23 really the gas probes.

24 Q. And is the gas probe the permit decision

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1 that was issued in February 2001?

2 A. I think that was issued in June.

3 Q. Okay. What was the decision -- what was
4 the permit decision issued in February of 2000,
5 do you recall? I don't know if I've got that.

6 MR. LaROSE: Maps or something, facility
7 maps.

8 BY THE WITNESS:

9 A. Yeah. The February 2001, I think that's
10 just the submission of facility maps showing
11 monitoring locations in both areas.

12 BY MR. KIM:

13 Q. Was financial assurance reviewed in
14 conjunction with that permit application?

15 A. No.

16 Q. And why not?

17 A. Because it's not asking to place waste in
18 an area.

19 MR. KIM: I have nothing further.

20 HEARING OFFICER HALLORAN: Mr. LaRose.

21 MR. LaROSE: Briefly.

22 R E C R O S S - E X A M I N A T I O N

23 by Mr. LaRose

24 Q. You said that these memos that you get,

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1 some parts of it are helpful and some parts of

2 it aren't in your investigation, correct?

3 A. Correct.

4 Q. Don't you have to read the whole thing to

5 determine which part is helpful and which part

6 is not?

7 A. Yes. I read the whole thing.

8 Q. And you said that you listen to the

9 opinions to learn more about the facility; is

10 that right?

11 A. Right.

12 Q. Okay. So you do consider the opinions as

13 part of your information gathering with respect

14 to the facility, right?

15 A. Information gathering, but not

16 necessarily the decision.

17 Q. Okay. But information gathering, the

18 answer to that question is yes, right?

19 A. Yes.

20 Q. If the rest of it's not helpful in making

21 your decision, does that mean that it somehow

22 makes your decision harder to weed through that

23 information?

24 A. No.

1 Q. Okay. So the corollary is not true, if
2 it's not helpful in making your decision, it
3 doesn't make your decision more difficult?

4 A. If it's not what?

5 Q. Yeah. I'm not so sure -- I'll withdraw
6 that question. It's getting late.

7 You said that giving a -- you said
8 that giving a convicted felon a permit to put
9 more waste on the site would be potentially
10 harmful to the environment because it would
11 generate more leachate, correct?

12 A. Correct.

13 Q. Wasn't part of this permit to install the
14 very separation layer and the leachate control
15 devices that were designed to control that
16 leachate?

17 A. Yes.

18 Q. Okay. Why in the world would anyone want
19 to spend their money to put leachate control
20 devices to control leachate from waste if they
21 couldn't put waste into the facility?

22 MR. KIM: Objection. That's speculation
23 on the part of the witness.

24 BY MR. LaROSE:

1 Q. Ma'am?

2 MR. KIM: She's not a --

3 HEARING OFFICER HALLORAN: Mr. LaRose.

4 MR. LaROSE: You know, I think I'm
5 getting soft in my old age. I think he's
6 right. I'll withdraw the question.

7 BY MR. LaROSE:

8 Q. Ma'am, when you approved the permit in
9 August of 2000, it was certainly contemplated by
10 that permit application that they would not only
11 spend their money to install pollution control
12 devices, but they might be able to actually make
13 some money by depositing waste into the
14 landfill, correct?

15 A. Correct.

16 Q. And part of the scheme for depositing
17 waste into the landfill was to do it all within
18 a manner and a permitted fashion that would
19 protect the environment, right?

20 A. Right.

21 Q. Okay. You said that the Wells letter was
22 mailed on April the 4th.

23 When Mr. McDermott submitted
24 additional information on April the 12th, is

1 there some rule that gives you an automatic
2 extension when he submits additional?

3 A. Yes.

4 Q. So if before the due date the consultant
5 or the permit applicant submits additional
6 information, you guys get an automatic 30-day
7 extension, right?

8 A. Right.

9 Q. When that happened, did anybody write me
10 another Wells letter or call me up or do
11 anything to say you've got a little bit more
12 time to respond?

13 A. No.

14 Q. Okay. Ma'am, flip the page to page 235
15 of the record, please.

16 Is this Mr. McDermott's cover letter
17 to you with the submittal of the additional
18 information?

19 A. Yes.

20 Q. And this is the April 12th stuff, right?

21 A. Right.

22 Q. It says in accordance with our discussion
23 yesterday.

24 Do you remember whether he called

1 you or you called him on April the 11th?

2 A. I don't remember.

3 Q. Okay. But somebody had a telephone
4 conversation on April 11th that resulted in the
5 submittal on April the 12th, right?

6 A. Right.

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

8 HEARING OFFICER HALLORAN: Thank you, Mr.
9 LaRose.

10 MR. LaROSE: You're welcome.

11 HEARING OFFICER HALLORAN: Mr. Helsten?

12 MR. HELSTEN: Nothing.

13 HEARING OFFICER HALLORAN: Mr. Kim.

14 MR. KIM: No, nothing.

15 HEARING OFFICER HALLORAN: Thank you, Ms. Roque.
16 You can step down.

17 THE WITNESS: Thank you.

18 HEARING OFFICER HALLORAN: Thank you.

19 We'll go off the record briefly, please.

20 (Discussion had
21 off the record.)

22 HEARING OFFICER HALLORAN: We're back on
23 the record. It's approximately ten until 5:00.
24 We're going to close this hearing today, October

1 15th, and we're going to continue it on the
2 record tomorrow, October 16th, at 9:00 a.m. in
3 the same place. Thank you very much. Have a
4 safe trip to your hotels.

5 (Whereupon, these were
6 all the proceedings held
7 in the above-entitled matter.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

4 I, GEANNA M. IAQUINTA, CSR, do
5 hereby state that I am a court reporter doing
6 business in the City of Chicago, County of Cook,
7 and State of Illinois; that I reported by means
8 of machine shorthand the proceedings held in the
9 foregoing cause, and that the foregoing is a
10 true and correct transcript of my shorthand
11 notes so taken as aforesaid.

12

13

14 _____
GEANNA M. IAQUINTA, CSR
Notary Public, Cook County, IL
15 Illinois License No. 084-004096

16

17 SUBSCRIBED AND SWORN TO
before me this _____ day
18 of _____, A.D., 2001.

19

Notary Public

20

21

22

23

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