



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

2 ILLINOIS POLLUTION CONTROL BOARD,

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5 BY: MR. BRADLEY P. HALLORAN, HEARING OFFICER

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8 BY: MR. MARK A. LaROSE

9 Appeared on behalf of Community Landfill  
10 Company;

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Rockford, Illinois 61105

13 (815) 963-8488

14 BY: MR. CHARLES F. HELSTEN

15 Appeared on behalf of the city of Morris.

16

17 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

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20 BY: MR. JOHN J. KIM

21 Appeared on behalf of the IEPA.

22

ALSO PRESENT: Mr. R. Michael McDermott, P.E.

23

24

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1 HEARING OFFICER HALLORAN: Good morning, my  
2 name is Bradley Halloran. I'm a hearing officer  
3 with the Illinois Pollution Control Board and I'm  
4 also assigned to this matter, this matter being  
5 PCB 01-170, entitled Community Landfill Company and  
6 the city of Morris versus the IEPA.

7 Today is Tuesday, October 16th. It is  
8 approximately 9:10 a.m. There do not appear to be  
9 any members of the public present and I neglected to  
10 mention yesterday at the close that there were no  
11 members of the public then either.

12 This hearing is continued on record from  
13 yesterday, October 15th. It is being held pursuant  
14 to Section 105.214 of the Board's procedural rules  
15 regarding permit appeals and in accordance with  
16 Section 101, subpart F.

17 With that said Mr. LaRose, Mr. Helsten,  
18 Mr. Kim, would you please introduce yourselves  
19 again?

20 MR. LaROSE: Yes. Thank you, Mr. Halloran.  
21 My name is Mark LaRose and I am the attorney for  
22 Community Landfill Company, the petitioner in this  
23 case.

24 MR. HELSTEN: Thank you, Mr. Halloran. Chuck

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1 Helsten on behalf of the city of Morris. Mr. Belt  
2 will not be here, the city attorney, this morning,  
3 but he will be here this afternoon, your Honor.

4 HEARING OFFICER HALLORAN: Thank you,  
5 Mr. Helsten. Mr. Kim?

6 MR. KIM: John Kim, attorney for the Illinois  
7 Environmental Protection Agency.

8 HEARING OFFICER HALLORAN: Thank you, Mr. Kim.  
9 Any preliminary matters we have to discuss before  
10 you call your fifth witness, Mr. LaRose?

11 MR. LaROSE: Maybe there is one preliminary  
12 matter just for planning -- time planning. I have  
13 -- we've agreed that one of the witnesses in this  
14 case is going to be presented by an evidence  
15 deposition and I don't know if you remember, but the  
16 last time we just marked the transcript and gave it  
17 to the reporter, which I have no problem doing that  
18 again. I've marked mine. Were you going to use any  
19 of his? This would be a fellow named Mike Nechvatal  
20 at the Agency.

21 HEARING OFFICER HALLORAN: Was that a  
22 transcript or was that a CD-ROM from last time?

23 MR. KIM: Last time it might have been a disk.

24 HEARING OFFICER HALLORAN: I think it might

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1 have been a disk.

2 MR. KIM: Well, it might have been. I can't  
3 remember.

4 MR. LaROSE: We could do it any way that you  
5 want to. Obviously, the most expeditious way would  
6 be great. What I did was take -- and I only have  
7 one copy, but we can make a copy tonight. I took my  
8 transcript and just merely highlighted the page and  
9 line numbers that I would use. I suppose we can  
10 actually even make a list of the page and line  
11 numbers that she needs to transpose and then give  
12 her a copy of the transcript.

13 MR. KIM: If we can make a copy today, I have a  
14 copy that hasn't been marked up. I mean, I'd like  
15 to keep mine obviously, but I have no problem -- you  
16 know, we can use the copy machine somewhere and make  
17 a few copies of this and maybe at some point on this  
18 mark up what you have on yours.

19 MR. LaROSE: That's fine with me.

20 HEARING OFFICER HALLORAN: That would be great  
21 and so we can give it to the court reporter before

22 she leaves for the day.

23 MR. LaROSE: Okay.

24 HEARING OFFICER HALLORAN: Okay. Mr. LaRose,

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1 your fifth witness, I believe.

2 MR. LaROSE: We call Blake Harris as our fifth  
3 witness.

4 HEARING OFFICER HALLORAN: Mr. Harris, please  
5 take the stand and raise your right hand and the  
6 court reporter will swear you in when you get to the  
7 stand. Thanks.

8 (Witness sworn.)

9 WHEREUPON:

10 B L A K E H A R R I S,  
11 called as a witness herein, having been first duly  
12 sworn, deposeth and saith as follows:

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

14 by Mr. LaRose

15 Q. Sir, could you state your name for the  
16 record, please?

17 A. It's Blake Olin Harris.

18 Q. You need to -- I know you're sitting right  
19 next to the court reporter, but if you can, just  
20 speak up a little bit.

21 A. Blake Olin Harris.

22 Q. Sir, I notice you have some documents in  
23 front of you, what are those?

24 A. These are my note pad here and this is some

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1 of the rulemaking for 811.

2 Q. Okay.

3 A. I believe you have that.

4 Q. Okay. Is there any notes on the note pad?

5 A. It's my Italian homework from a class I'm  
6 taking, but nothing about this.

7 Q. Okay.

8 A. Just a pad I had in the car.

9 Q. Okay. Boungiorgno?

10 A. I'm not that good yet.

11 Q. That means good morning.

12 A. Yes, I know buono sera because that's when  
13 the class starts, in the evening.

14 Q. Good evening.

15 A. Si.

16 Q. Grazie.

17 Sir, you have -- you work for the Illinois  
18 Environmental Protection Agency?

19 A. Yes.



20 Q. You're a -- are you an environmental  
21 protection specialist?

22 A. No, I'm an accountant is my title.

23 Q. You have a business administration degree  
24 from Illinois College?

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1 A. Yes.

2 Q. And you received that in 1992?

3 A. Yes.

4 Q. And that was -- after that, you did a  
5 couple of semesters or quarters at SIU in pursuit of  
6 an environmental master's degree, correct?

7 A. Correct.

8 Q. You didn't finish that degree?

9 A. No, I did not.

10 Q. And that was back in '93 or so?

11 A. '93, yes.

12 Q. Have you had any other formal educational  
13 training since you left SIU -- the master's program  
14 in 1993?

15 A. I've taken a couple master's classes out at  
16 SIU -- UIS in town.

17 Q. Okay. Did any of the education that you  
18 received formally have anything to do specifically

19 with the Illinois regulations regarding financial  
20 assurance?

21 A. No.

22 Q. And other than some on-the-job training,  
23 you never received any formal training with respect  
24 to the Illinois regulations on financial assurance,

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1 correct?

2 A. Correct.

3 Q. You started working with the EPA in 1992 as  
4 an intern in the Bureau of Water, right?

5 A. Yes.

6 Q. And you were sampling lakes and streams at  
7 that time?

8 A. Yes.

9 Q. And, of course, that didn't have anything  
10 to do with financial assurance, right?

11 A. No.

12 Q. In 1993 you started -- were you a contract  
13 employee in the vehicle emissions monitoring  
14 program?

15 A. Correct.

16 Q. Okay. As an intern, you weren't a  
17 full-time employee in '92, right?

18 A. I was full-time, but it was an internship.

19 Q. Okay. As a contract employee, you did some  
20 vehicle emissions monitoring for the Agency in 1993,  
21 correct?

22 A. Correct.

23 Q. And that didn't have anything to do with  
24 financial assurance, right?

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1 A. No.

2 Q. After that, you started working in the  
3 leaking underground storage training program, right?

4 A. Correct.

5 Q. And you were a technical bill reviewer for  
6 the leaking underground storage tank remediations  
7 accounting and procurement unit, correct?

8 A. Yes.

9 Q. And that didn't have anything do with  
10 financial assurance, did it?

11 A. No.

12 Q. Were you a contract employee at that point?

13 A. No, I was full-time at that point.

14 Q. Okay. Up until February of 1999, you still  
15 had not had any exposure of any kind to the  
16 provisions of the Environmental Protection Act or

17 the regulations regarding financial assurance  
18 mechanisms, had you?

19 A. The Environmental Protection Act I had yes,  
20 but not with the financial assurance.

21 Q. Okay. And when I said the Act, I meant the  
22 provisions of financial assurance?

23 A. Correct.

24 Q. You started in February 1999 as a trainee

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1 accountant, correct?

2 A. Accountant trainee, yes.

3 Q. Okay. Did John Taylor train you?

4 A. Yes.

5 Q. Did he train you on the regulations and  
6 the provisions of the Act as they relate to  
7 financial assurance in Illinois?

8 A. Yes.

9 Q. Was he a good teacher?

10 A. Yeah.

11 Q. Other than the training that you received  
12 from Mr. Taylor, the rest of your training was  
13 basically on-the-job training, correct?

14 A. Some was on the job and also my supervisor,  
15 Hope Wright, trained me.

16 Q. Okay. So in addition to Mr. Taylor, you  
17 got some on-the-job training from Hope Wright?  
18 A. Correct.  
19 Q. Okay. She's your boss?  
20 A. She's my supervisor.  
21 Q. Okay. Who's her boss?  
22 A. Dave Walters.  
23 Q. Dave Walters. What's his position?  
24 A. He's the head of the solid waste section.

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1 Q. Okay. Does that mean that he particularly  
2 focuses on financial assurance or all of the issues  
3 related to solid waste, if you know?  
4 A. All related to solid waste, I believe.  
5 Q. Okay. So you wouldn't call him a financial  
6 assurance guy, he's really relying on your unit to  
7 give him that advice, correct?  
8 A. Yes.  
9 Q. Your first contact with the Community  
10 Landfill file would have been about the time that  
11 the EPA was considering issuing notices of violation  
12 regarding the Frontier bonds, correct?  
13 A. Yes.  
14 Q. Okay. Did you participate in answering any

15 discovery in this case?

16 A. Yeah.

17 Q. Mr. Harris, I'm going to hand you what's  
18 been previously marked as Exhibit 50 and ask you to  
19 take a look at that.

20 MR. LaROSE: Mr. Halloran, I'm going to stand  
21 up here because I don't have an extra copy of this.  
22 We can kind of share and then I'll give you this  
23 one.

24

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1 BY MR. LaROSE:

2 Q. Sir, these are the Agency's response to our  
3 interrogatories in this case, correct?

4 A. Yes.

5 Q. If you look at the last page of that, you  
6 signed an affidavit saying that you had read these  
7 and that they were true and accurate to the best of  
8 your knowledge, correct?

9 A. Correct.

10 Q. And that affidavit appears on the last page  
11 of Exhibit 50, right?

12 A. Yes.

13 Q. Flip to page five of this document, the

14 answer to interrogatory number seven, please.

15 A. Pardon me. I'm sorry. Could you restate  
16 the question?

17 Q. Yes. Page five.

18 A. Okay.

19 Q. The answer to interrogatory number seven.  
20 Do you see the second paragraph the begins with the  
21 word -- the name Bill Ingersoll?

22 A. Uh-huh.

23 Q. Okay.

24 MR. KIM: I'm sorry. Before you go on, can we

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1 keep the conversation down in the corner? I can  
2 hear you gentlemen talking and I'm trying to focus  
3 over here. Thank you.

4 BY MR. LaROSE:

5 Q. Sir?

6 A. Yes.

7 Q. Did you supply Mr. Kim with the information  
8 that's contained in that paragraph?

9 A. Yes.

10 Q. Okay. So you had a meeting with Bill  
11 Ingersoll, Michelle Ryan, Chris Perzan in October or  
12 September of 2000 to discuss the financial assurance

13 requirements regarding the Morris Community  
14 Landfill, correct?

15 A. Yes.

16 Q. Okay. Who's Bill Ingersoll?

17 A. Bill Ingersoll is the head of one of the  
18 divisions up in legal.

19 Q. Was this a meeting with the lawyers to  
20 discuss potential enforcement against Community  
21 Landfill regarding the financial assurance?

22 A. Well, the meeting in October was to discuss  
23 the bonding issue with Frontier.

24 Q. Okay. As relates to the potential for

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1 enforcement, correct?

2 A. Yes.

3 MR. LaROSE: Okay. Mr. Hearing Officer, I  
4 would move for admission of Exhibit 50 into  
5 evidence, please.

6 HEARING OFFICER HALLORAN: Mr. Kim?

7 MR. KIM: No objection.

8 HEARING OFFICER HALLORAN: So admitted.

9 Exhibit No. 50 is admitted.

10 BY MR. LaROSE:

11 Q. You said you had a -- the interrogatories



12 say you had a meeting with Mr. Ingersoll in  
13 September or October, but didn't you start  
14 discussing the Frontier issues with Mr. Ingersoll  
15 as early as July of 2000?

16 A. Yes.

17 Q. Okay. And we know that on June the first  
18 of 2000 Frontier was removed from the Department of  
19 Treasury's 570 list of approved sureties, correct?

20 A. Yes.

21 Q. And you found out about that soon after  
22 that -- soon after that date, correct?

23 A. Soon after that date, yes.

24 Q. Do you remember how you found out?

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1 A. Somebody called me from another state's  
2 version of the EPA and asked what we were doing  
3 about the issue and I looked into it at that point.

4 HEARING OFFICER HALLORAN: I'm sorry. Could  
5 you please repeat the question?

6 MR. LaROSE: Sure.

7 BY MR. LaROSE:

8 Q. Sir, how did you find out about the  
9 Frontier delisting?

10 A. Initially, somebody called me from another

11 state and asked what we were doing about the issue.  
12 I checked the 570 circular and they were -- there  
13 was a note on there that they were removed.

14 Q. Do you remember how soon after June the  
15 first that you made this determination?

16 A. Not exactly. Sometime prior to my July 5  
17 memo to legal.

18 Q. Your July 5 memo to legal?

19 A. I believe it was July 5th. I sent them a  
20 memo listing out all of the sites that had Frontier.

21 Q. Okay. I've never seen that.

22 MR. KIM: The information -- the list that he  
23 just described is entirely put into one of the  
24 answers to the interrogatories. What you asked --

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1 what other sites, I basically copied every facility  
2 he had off his list in the answer into the  
3 interrogatory.

4 MR. LaROSE: Understood. I've never seen the  
5 memo, though, and I asked for all memos with respect  
6 to Frontier Insurance.

7 BY MR. LaROSE:

8 Q. Do you have a copy of that memo, sir?

9 A. Not with me, I don't think so.

10 HEARING OFFICER HALLORAN: Mr. Kim, do you have  
11 a copy with you?

12 MR. KIM: I don't know if I do or not. Can we  
13 take a moment?

14 HEARING OFFICER HALLORAN: Yes. Go off the  
15 record for a second. Thank you.

16 (Whereupon, a discussion  
17 was had off the record.)

18 HEARING OFFICER HALLORAN: We're back on the  
19 record after approximately a 15-minute break. We  
20 took the break so that Mr. LaRose could copy the  
21 July 5th, 2000 memo from Blake Harris to Bill  
22 Ingersoll. It's my understanding it was not turned  
23 over during discovery, but, Mr. LaRose, you may  
24 proceed.

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1 BY MR. LaROSE:

2 Q. Mr. Harris, I'm going to hand you what's  
3 been previously marked as Exhibit No. 82.

4 MR. LaROSE: Mr. Halloran, if you don't mind,  
5 I'm going to stand here and share this with you  
6 because it would take another 15 minutes to make  
7 another copy.

8 BY MR. LaROSE:

9 Q. Mr. Harris, is this the July 5th memo to  
10 Mr. Ingersoll that you were referring to?

11 A. Yes, it is.

12 Q. So at some time prior to this, you had  
13 found out that Frontier had been removed from the  
14 list, correct?

15 A. Correct.

16 Q. You had had -- at least had one discussion  
17 with Mr. Ingersoll, correct?

18 A. Yes.

19 Q. He had requested that you compile a list of  
20 facilities using the Frontier bonds, correct?

21 A. Correct.

22 Q. And you tell him in this memo that 811  
23 solid regulations also appear to require bonding  
24 companies to be on the 570 circular?

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1 A. Yes.

2 Q. However, the 807 solid regulations only  
3 require sureties to be licensed by the Illinois  
4 Department of Insurance. Facilities listed below  
5 are under the solid waste regulations unless  
6 otherwise noted.

7 Which solid waste regulations were you

8 referring to in that last sentence?

9 A. 807 and 811.

10 Q. So both of them?

11 A. Yes.

12 Q. Okay. My client's facility appears on the  
13 first page of Exhibit 82?

14 A. Yes.

15 Q. Okay. Had you yet made the determination  
16 that, in fact, the Frontier Insurance bonds for  
17 these facilities were noncompliant with the  
18 regulations?

19 A. Could you rephrase that?

20 Q. Yes.

21 As of July the 5th, 2000, had you made the  
22 determination that the Frontier bonds for these  
23 facilities were noncompliant with the 811  
24 regulations?

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1 A. No. I guess I hadn't made the  
2 determination at that point. At that point I was  
3 requesting an opinion. It appeared that they were  
4 noncomplying at that point.

5 Q. You were requesting legal to give you an  
6 opinion as to whether they were compliant at that

7 point or not?

8 A. No. I had the opinion at that point they  
9 were noncompliant. It appeared that way to me. I  
10 was requesting an additional opinion out of legal.

11 Q. Okay. You had the opinion that it appeared  
12 noncompliant or you had the opinion that they were  
13 noncompliant?

14 A. They were noncompliant.

15 Q. Okay. Do you tell Mr. Ingersoll in your  
16 July 5th, 2000, memo that they were noncompliant?

17 A. No.

18 MR. LaROSE: Okay. I would move into admission  
19 Exhibit 82, please.

20 HEARING OFFICER HALLORAN: Mr. Kim?

21 MR. KIM: I would object on several grounds.  
22 The first it -- this document predates even the  
23 submission of the permit application that's being  
24 contested in this case. Second, this list is a list

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1 that's much broader and encompasses sites that are  
2 much broader than what we've got here. The  
3 petitioner's site is listed on this list, but there  
4 are also facilities subject to 807 regulations,  
5 which are not at issue here. There also, I believe,

6 are some hazardous waste facilities that are listed  
7 on this list that are not at issue here.

8           The information on this list that relates  
9 to 811 facilities that are -- that had performance  
10 bonds from Frontier Insurance Company were included  
11 in a response to discovery that was provided to  
12 opposing counsel and I believe it's in -- I believe  
13 it's in Exhibit 50 on page eight of that document in  
14 response to interrogatory number 12. The  
15 interrogatory sought information concerning every  
16 other site other than Morris Community Landfill,  
17 that had posted as financial assurance a Frontier  
18 Insurance Company bond and the Agency listed in its  
19 response all the sites that are found on this memo.  
20 So I don't think there's any reason for this  
21 particular memo to be introduced as evidence.

22           HEARING OFFICER HALLORAN: Mr. LaRose?

23           MR. LaROSE: Mr. Halloran, the testimony in  
24 this case thus far and will continue to be that this

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1 gentleman is the one that made the determination  
2 that the Frontier Insurance bonds for my client, the  
3 very bonds that were submitted in August, were not  
4 compliant in May. The allegation has also been in

5 this case that the Agency has used the Frontier  
6 Insurance issue merely as a pretext and to side  
7 step, if you will, the enforcement proceedings.  
8 This memo relates both directly to his opinion as to  
9 the compliance of the Frontier Insurance bonds and  
10 directly to the issue of the Agency's efforts or  
11 lack thereof regarding the enforcement on this  
12 issue. I realize it's not in the record. It  
13 certainly was before the Agency. It certainly was  
14 something that this gentleman contemplated and I  
15 think it should be admitted.

16 MR. KIM: Just one quick reply. Mr. LaRose  
17 stated that this is evidence of his determination or  
18 opinion as to compliance. He just asked him a  
19 question and the witness just responded that there's  
20 no statement in this memo of any -- that gives any  
21 indication one way or the other of what his opinion  
22 was concerning whether or not these facilities were  
23 in compliance. This is simply a list. It's nothing  
24 more, nothing less. Furthermore, there's nothing in

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1 this list that makes any reference to any potential  
2 enforcement action, any impending enforcement action  
3 or any possible enforcement action.



4 MR. LaROSE: And we're going to get there in a  
5 second, but the very fact that he wrote a -- he just  
6 testified that he had the opinion that they were  
7 noncompliant at this time. At the time he wrote the  
8 memo, he didn't put that in the memo. I think  
9 that's absolutely the reason why the memo should  
10 come in. If he thought it was noncompliant, why  
11 didn't he write it? This goes directly to the  
12 ultimate issue in this case, whether this  
13 gentleman's opinion was correct, that the Frontier  
14 Insurance bonds didn't comply with the regulations  
15 as they have been delisted from the 570 list. I  
16 think it's germane and I think it ought to be  
17 considered.

18 HEARING OFFICER HALLORAN: Again, Mr. Kim, was  
19 this memo used in the instant permit decision?

20 MR. KIM: I'm not quite sure how to respond to  
21 that. It does predate the decision. It predates  
22 the permit application itself as I stated before. I  
23 don't think that this list, per se, was used as part  
24 of the review application -- or the review process.

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1 I think the witness at some point will testify it  
2 was his interpretation and it was the Agency's

3 interpretation of the regulations that are  
4 applicable that form the basis for the decision that  
5 he made. This is nothing more or less than a list.  
6 The witness has testified and most likely will be  
7 asked to provide further testimony on what his  
8 decision-making process was or what his thought  
9 process was during his period of review and I'm sure  
10 that testimony will come in and that testimony will  
11 be germane, but this is again nothing more or less  
12 than a laundry list. It has no relevance and it  
13 really doesn't have any value.

14 HEARING OFFICER HALLORAN: I'm going to sustain  
15 Mr. Kim's objection. I find it is irrelevant of  
16 what the Agency did in other permit decisions.  
17 It is irrelevant.

18 MR. LaROSE: I would ask that it be accepted as  
19 an offer of proof, please.

20 HEARING OFFICER HALLORAN: Yeah. It will be  
21 accepted as an offer of proof and I'll take it with  
22 the case as such.

23 MR. LaROSE: Thank you.

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1 BY MR. LaROSE:

2 Q. So you gave Ingersoll a list of sites that  
3 were using Frontier, correct?

4 A. Correct.

5 Q. You also were seeking an opinion from legal  
6 as to what should be done, correct?

7 A. Yes.

8 Q. Are you aware of any law, rule or  
9 regulation that instructs the Agency on what to do  
10 when a company is removed from the 570 list?

11 A. Can you rephrase that?

12 Q. Yeah. I'll try.

13 Are you aware of any law, rule or  
14 regulation that guides or instructs the Agency on  
15 what to do when a company is removed from the 570  
16 list?

17 A. No.

18 Q. Okay. And are you aware of any law, rule  
19 or regulation that would require the Agency to take  
20 any action when a company is removed from the 570  
21 list?

22 A. I believe under Section 31 of the Act there  
23 is a time frame once we become aware of  
24 noncompliance that we have to act on that.

1 Q. Okay. So in your opinion, Section 31 of  
2 the Act would require the Agency to take some action  
3 when a company is removed from the 570 list  
4 regarding bonds that have been submitted for  
5 financial assurance?

6 A. I believe after -- I think it's 180 days,  
7 if we become aware of a violation, that we have to  
8 act on that or we lose our rights under Section 31.

9 Q. Okay. Does Section 31 say anything about  
10 the 570 list?

11 A. No.

12 Q. Okay. Does Section 31 instruct the Agency  
13 on what to do if a company is removed from the 570  
14 list?

15 A. No.

16 Q. Does Section 31 require the Agency to do  
17 anything when a company is removed from the 570  
18 list?

19 A. No. It doesn't mention the 570 list.

20 Q. Okay. You said -- Section 31 you had to  
21 take some actions when a company comes into  
22 noncompliance, something like that?

23 A. Once we become aware of a violation, we  
24 have a certain amount of time that we have to act on

1 it.

2 Q. And what law, rule or regulation did you  
3 rely on to determine that removal from the 570 list  
4 is a violation of the Act?

5 A. I don't have it in front of me. It's the  
6 section in 811 that pertains to the bonds.

7 Q. So if a bond is noncompliant with the 811  
8 regulations, that's a violation of the Illinois  
9 Environmental Protection Act?

10 A. Yes.

11 Q. Okay. Is there anything in 811 that  
12 instructs the Agency what to do when a bonding  
13 company is removed from the 570 list?

14 A. I don't believe there's anything that says  
15 what to do at that point.

16 Q. Okay. Is there anything in 811 that says  
17 that the Agency can or should bring enforcement  
18 proceedings if a company is removed from the 570  
19 list?

20 A. I don't believe so.

21 Q. Did you discuss this issue with John  
22 Taylor, the issue of the Frontier Insurance Company  
23 being removed from the 570 list in the summer of  
24 2000?

1 A. Yes.

2 Q. And that was sometime after June 1st and  
3 before the end of July, correct?

4 A. I believe so.

5 Q. As a result of your discussions with him,  
6 was it your impression that he was aware that  
7 Frontier had been removed from the 570 list?

8 A. Yes.

9 Q. Did Mr. Taylor express to you his opinion  
10 as to whether Frontier being removed from the 570  
11 list affected the enforceability of the bonds for  
12 Morris Community Landfill, yes or no?

13 A. Could you please restate that?

14 Q. Sure.

15 Did Mr. Taylor express to you his opinion  
16 as to whether the 570 -- removal from the 570 list  
17 affected the enforceability of the bonds that have  
18 been submitted for Morris Community Landfill, yes or  
19 no?

20 A. John said it did not --

21 Q. Yes or no, sir.

22 A. No.

23 Q. Did Mr. Taylor tell you that he had  
24 investigated the matter, yes or no?

1 A. Yes.

2 Q. Did he tell you that he had spoken to the  
3 Department of Insurance, yes or no?

4 A. Yes.

5 Q. Did he tell you that he was comfortable  
6 that the bonds complied with the regulations even  
7 though they had been delisted, yes or no?

8 A. Yes.

9 Q. At some time you made the determination  
10 that the bonds did not comply with the regulations,  
11 correct?

12 A. Correct.

13 Q. Okay. And your boss, Hope Wright, agreed  
14 with you, right?

15 A. Yes.

16 Q. John Taylor disagreed with both you and  
17 Hope, right?

18 A. Correct.

19 Q. Did Taylor tell you that 17 million dollars  
20 in Frontier bonds were about to be posted for  
21 Community Landfill at the time that you made this  
22 determination, yes or no?

23 A. No.

24 Q. Even after you reviewed the matter with the

1 legal department regarding your opinion of  
2 noncompliance, Mr. Taylor still disagreed with your  
3 position, didn't he?

4 A. Yes.

5 Q. There was then some discussion about  
6 enforcement proceedings, violation notices, et  
7 cetera, correct?

8 A. Yeah.

9 Q. Okay. Did Mr. Taylor express his opinion  
10 to the enforcement attorneys as to whether they  
11 should be issuing notices of violation with respect  
12 to the Frontier Insurance bonds, to your knowledge?

13 A. I don't know whether he did or not.

14 Q. As far as you know, though, Taylor didn't  
15 think the compliance unit should be issuing notices  
16 of violation regarding the Frontier Insurance bonds,  
17 correct?

18 A. Correct.

19 Q. At the time that you made your  
20 determination that the Frontier Insurance bonds were  
21 noncompliant, did you do anything to determine  
22 whether they were collectible or enforceable?

23 A. No.

24 Q. Do you know whether the enforceability of



1 the bonds posted for Community Landfill was in any  
2 way affected by Frontier's removal from the 570  
3 list, yes or no?

4 A. No.

5 Q. And you don't know or didn't know as of May  
6 the 11th, 2001, whether the bonds were collectible,  
7 correct?

8 A. Correct.

9 Q. Do you remember ever receiving any notice  
10 of cancellation, nonrenewal or termination of the  
11 CLC Frontier bonds?

12 A. No.

13 Q. Did you look at Section 21.1(a)(5) of the  
14 Environmental Protection Act in making your  
15 determination that the bonds complied -- or didn't  
16 comply with the regulations?

17 A. I would have to see that section.

18 Q. Okay. I'll show it to you.

19 MR. LaROSE: Mr. Halloran, with your  
20 permission, I'm going to show the witness Section  
21 21.1(a)(5).

22 HEARING OFFICER HALLORAN: Permission granted.

23 BY THE WITNESS:

24 A. Which section again were you talking about?

1 BY MR. LaROSE:

2 Q. 21.1(a)(5), little A, five.

3 A. No, I don't believe we looked at this.

4 Q. And you don't know whether legal looked at  
5 that section either, do you?

6 A. I don't know.

7 Q. Okay. Section 21.1(a)(5) of the Act does  
8 not say anything about the requirement of the 570  
9 listing, does it?

10 A. No.

11 Q. Have you ever looked at the appendix for  
12 the financial assurance regulations where it gives  
13 you the forms of acceptable financial assurance  
14 instruments?

15 A. Yes.

16 Q. Do you have the regulations in front of  
17 you?

18 A. No.

19 MR. LaROSE: Mr. Halloran, with your  
20 permission, I'd like to approach the witness and  
21 show him Section 811, Appendix A, Illustration D,  
22 performance bond.

23 HEARING OFFICER HALLORAN: I'm sorry. 811 --

24 MR. LaROSE: It's 811, Appendix A, Illustration

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1 D, performance bond.

2 HEARING OFFICER HALLORAN: Thank you.

3 MR. LaROSE: You're welcome.

4 BY MR. LaROSE:

5 Q. We looked at that form during your  
6 deposition, didn't we, sir?

7 A. Yes.

8 Q. The form, Appendix A, the financial  
9 assurance form, Illustration D, does not say  
10 anything about requiring the 570 listing, does it?

11 A. No.

12 Q. In your opinion, does that form comply with  
13 the regulation?

14 A. No.

15 Q. Isn't it part of the regulation, sir?

16 A. Yeah, it's the appendix.

17 Q. So how is it that a regulation approved by  
18 the Illinois Pollution Control Board can't comply  
19 with the regulations?

20 MR. KIM: Objection, that calls for a legal  
21 interpretation or a legal conclusion of the  
22 regulations.

23 MR. LaROSE: Well, he just made a legal  
24 conclusion that said it didn't comply and I'd like

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1 to ask him why he thinks that.

2 MR. KIM: That's not the question he was asked.  
3 The question that he was asked was how you can  
4 reconcile that with other language. What he's just  
5 now said -- he can ask -- he can explain why he  
6 doesn't think this is compliant. That's a different  
7 question all together.

8 HEARING OFFICER HALLORAN: Mr. LaRose, can you  
9 tweak that question?

10 MR. LaROSE: I can't.

11 BY MR. LaROSE:

12 Q. Mr. Harris, you said that you didn't  
13 believe that form that you have in front of you,  
14 Appendix A, financial assurance form, Illustration D  
15 complies with the regulations, correct?

16 A. Correct.

17 Q. You also agreed with me in the second  
18 question, though, when I told you that it was part  
19 of the regulations, correct?

20 A. Yes.

21 Q. I want to know how it is that you can form

22 an opinion that part of the regulation approved by  
23 the Illinois Pollution Control Board doesn't comply  
24 with another part of the regulations?

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1 MR. KIM: Objection, same objection. If he  
2 wants to ask why he doesn't think this form is  
3 compliant, he can ask what about this form do you  
4 think is noncompliant. He's asking him to reconcile  
5 one provision in the regulations with another  
6 section of the regulations.

7 HEARING OFFICER HALLORAN: I agree, Mr. LaRose.  
8 Sustained.

9 BY MR. LaROSE:

10 Q. Did you ever look at that form when you  
11 were formulating your opinion that my client's bonds  
12 didn't comply with the regulations?

13 A. No. I just looked at the section that  
14 pertains to the bonds in the 811 regulation.

15 Q. Okay. And the bonds that you reviewed for  
16 my clients were, in fact, issued on the exact form  
17 that was required by the regulation that we just  
18 looked at, correct?

19 A. I don't know. I don't have it in front of  
20 me.

21 Q. Do you want to look at them?

22 A. Yeah.

23 Q. Mr. Harris, I'm going to hand you what's  
24 been previously marked as Exhibits 15, 16, and 17

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1 and I'm also going to give you Exhibit 70.

2 When you examined the Community Landfill  
3 file to make a determination as to whether the  
4 financial assurance complied with the regulations or  
5 did not, did you look at the actual bonds  
6 themselves?

7 A. I don't believe I looked at the actual  
8 bonds, but these -- what you've shown me appear to  
9 be on our forms.

10 Q. Okay. Not on your forms, on the forms  
11 approved and required by the regulations, correct?

12 A. Correct.

13 Q. These aren't your forms, these are the  
14 Board's forms, right?

15 A. Correct.

16 Q. Okay. Let's look at Exhibit 15. That's a  
17 Frontier Insurance performance bond and the  
18 performance bond itself is issued on the Appendix A,  
19 Illustration D form, correct?

20 A. Correct.

21 Q. And the bond, if you look at page three,  
22 was issued on May the 31st, 2000, correct?

23 A. Yes.

24 Q. In the amount of \$5,177,016, correct?

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1 A. Yes.

2 Q. Do you remember whether you looked at these  
3 actual bonds to determine whether they were  
4 complying with the regs prior to telling either  
5 Joyce Munie or Christine Roque that they were not?

6 A. I looked to make sure whether they were  
7 listed on the 570 circular because they are Frontier  
8 bonds, so whether they were on the form or not at  
9 that point really wasn't relevant.

10 Q. That wasn't my question. Did you look at  
11 the bonds themselves, yes or no?

12 A. I'm sure I did.

13 Q. Okay. Look at Exhibit 16, please.  
14 Exhibit 16 is another bond from -- for the Morris  
15 Community Landfill issued May the 31st, 2000, in the  
16 amount of \$10,081,630, correct?

17 A. Correct.

18 Q. And that's on the Board's approved Appendix

19 A, financial assurance form, Illustration D,  
20 correct?

21 A. Correct.

22 Q. And look at Exhibit 17, please. That's a  
23 continuation certificate for a bond that was, if you  
24 look at the second page, issued on the 14th day of

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1 June 1996, correct?

2 A. Yes.

3 Q. And that's in the amount of \$1,439,720,  
4 correct?

5 A. Yeah.

6 Q. Okay. Look at Group Exhibit 70 please and  
7 flip to the third page of that. That's the original  
8 bond that -- the continuation certificate that we  
9 just looked at as Exhibit 70, as Exhibit 17 relates  
10 to, correct?

11 A. Yeah.

12 Q. And that was issued on June the 14th, 1996,  
13 correct?

14 A. Yes.

15 Q. And issued on the Board's 811 Appendix A,  
16 financial assurance, Illustration D form, correct?

17 A. Correct.



18 MR. LaROSE: Mr. Halloran, I would move the  
19 admission of Exhibits 15, 16, 17 and 70.

20 HEARING OFFICER HALLORAN: Mr. Kim?

21 MR. KIM: No objection.

22 HEARING OFFICER HALLORAN: They are so  
23 admitted.

24

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1 BY MR. LaROSE:

2 Q. The 807 regulations as we know from looking  
3 at your July 5th memo and looking at the regulations  
4 don't require the 570 listing, do they?

5 A. No.

6 Q. If a facility is governed by 807  
7 regulations with a performance bond issued by  
8 Frontier Insurance and closure is initiated for a  
9 site, doesn't the bond vest and its acceptable  
10 financial assurance at that time?

11 A. Under 807, I believe it would be  
12 acceptable.

13 Q. Did you do anything to check whether or  
14 when CLC initiated closure on parcel B in making  
15 your determination that the bonds were unacceptable?

16 A. No.

17 Q. In fact, you didn't look at the Frontier  
18 bonds from the standpoint of the site initiating  
19 closure under 807, did you?

20 A. No.

21 Q. Did notices of violation on the Frontier  
22 Insurance bonds go to all of the 811 facilities?

23 A. I believe so, yes.

24 Q. Did you miss any?

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1 A. Not that I know of.

2 Q. Did some of them get notices of violation  
3 and some of them get something less than that like a  
4 noncompliance advisory report or something like  
5 that?

6 A. I don't believe so.

7 Q. Okay. Community Landfill got a notice of  
8 violation, correct?

9 A. Correct.

10 Q. Mr. Harris, I'm going to show you what  
11 we've previously marked as Exhibits 6, 7, 8, and 9.  
12 They may not be in order, but you can do that for me  
13 while I'm getting situated over here.

14 Take a look at Exhibit No. 6, please, sir.  
15 Is that the notice of violation that was sent to the

16 city of Morris on November the 14th, 2000?

17 A. Yes.

18 Q. You were the contact person with respect to  
19 that notice?

20 A. Yes.

21 Q. Okay. And this is the notice that was  
22 generated as a result of at least your initial  
23 determination that the Frontier bonds no longer  
24 complied with the regulations?

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1 A. Correct.

2 Q. In order to -- on page three of this, in  
3 order to resolve this, you were requiring adequate  
4 -- you were requiring the recipient to immediately  
5 provide adequate financial assurance in an amount  
6 that equals or exceeds the current closure,  
7 postclosure cost estimate, right?

8 A. Right.

9 Q. Okay. Did you write that?

10 A. The suggested resolution?

11 Q. Yes.

12 A. I believe so.

13 Q. What did you mean by adequate?

14 A. It meets the requirements in the

15 regulation.

16 Q. I don't have it marked as an exhibit, but  
17 are you aware of whether the same notice was sent to  
18 my client?

19 A. I don't have it. I think it went to both  
20 -- there was an owner and operator --

21 Q. Yes. And I believe that's correct too.  
22 That's your recollection?

23 A. Yes.

24 MR. LaROSE: Mr. Halloran, I would move for

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1 admission of Exhibit No. 6, please.

2 HEARING OFFICER HALLORAN: Mr. Kim?

3 MR. KIM: We would object on the grounds of  
4 relevancy. This is a violation notice that relates  
5 to -- I believe which is the first -- if the state  
6 were ever to take enforcement action against the  
7 recipient. It relates to enforcement matters. It  
8 doesn't relate to permit matters. It wasn't  
9 included in the administrative record and it doesn't  
10 -- this document is not something that was relied  
11 upon in reaching our May 11th, 2001, decision. It's  
12 not germane to these proceedings.

13 HEARING OFFICER HALLORAN: Anything further,

14 Mr. LaRose?

15 MR. LaROSE: Just one thing. On page 211 of  
16 the record -- 211 to 213 of the record contains our  
17 response to this notice and our position has been  
18 all along that this should have been a matter for  
19 enforcement and, in fact, was and not a matter for  
20 permitting and we will be arguing and we believe  
21 proving that just the opposite occurred, they used  
22 permits to do what they should have done through  
23 enforcement and what they still should do through  
24 enforcement if they think the bonds don't comply.

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1 The violation notice is germane to that issue. It  
2 shows that they've initiated enforcement proceedings  
3 and that the permit section went right ahead and  
4 denied the permit on the very issue that we never  
5 had a chance to have adjudicated before the Board.  
6 It relates to matters directly in the record.

7 Let me point your attention to also -- it  
8 will take a second to find it. Pages 45 and 44 of  
9 the record where Mr. Harris writes permit section in  
10 a financial assurance inquiry report and  
11 specifically references this document. So the  
12 document is referenced on page 44. The document is

13 referenced on page 45. Our response to it's  
14 included in the record and it's an enforcement  
15 proceeding, which is exactly what we should be doing  
16 in this case instead of using permits to do  
17 enforcement. I ask that this document be admitted.

18 HEARING OFFICER HALLORAN: Mr. Kim, anything?

19 MR. KIM: Yes. As to his reference to page 211  
20 of the administrative record. Pages 211 and 212 and  
21 213, that particular letter was included in the  
22 record only because it was included as part of the  
23 application that was submitted by the applicant.  
24 That's not something that the Agency relied upon in

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1 terms of information that the Agency prepared.  
2 That's information that the applicant prepared.  
3 Furthermore, as Mr. LaRose testified, a violation  
4 notice itself is not in the application. In terms  
5 of information found on pages 44 and 45, the  
6 reference made to this document in that -- in those  
7 reports, which is essentially printed out of a  
8 database, does not mean that automatically this  
9 document is relevant. This report itself may have  
10 some relevance and the timetable on this report may  
11 have some relevance, but again, the information

12 contained within this exhibit is not something that  
13 was relied upon. It's not something that's germane  
14 to these proceedings.

15 HEARING OFFICER HALLORAN: I'm going to make a  
16 ruling. I am going to allow it in. I'm not 100  
17 percent sold on its relevancy, but it was part of  
18 the record in front of the Agency at the time. Your  
19 objection is overruled.

20 MR. KIM: That's fine. I just wanted to  
21 clarify. You said it was part of the Agency's  
22 files. It was -- when you say record, that sort of  
23 contemplates the information that we prepared as  
24 part of what we relied upon in this document. We

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1 would still take the position that we did not rely  
2 upon this Exhibit No. 6, but I understand your  
3 ruling.

4 HEARING OFFICER HALLORAN: Thank you. Exhibit  
5 6 is admitted over the objection of Mr. Kim.

6 BY MR. LaROSE:

7 Q. Mr. Harris, take a look at Exhibit No. 7,  
8 please. This is our response to the two violation  
9 notices, the one that we just looked at and  
10 presumably the other one that went to Morris

11 Community Landfill, correct?

12 A. Correct.

13 Q. And this is something that -- we disagreed  
14 with your position and we requested a formal  
15 meeting, correct?

16 A. Correct.

17 MR. LaROSE: Mr. Hearing Officer, I would move  
18 admission of this document and just to maybe shorten  
19 it up to remind everyone that it does already appear  
20 in the record at pages 211, 212 and 213.

21 MR. KIM: That was going to be my response. I  
22 think the record's been admitted already so this  
23 document has already been admitted as evidence. It  
24 seems redundant.

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1 MR. LaROSE: And I agree, if it's already in  
2 the record, it's redundant, but just to keep a  
3 continuity of exhibits, I would appreciate if we can  
4 admit it separately.

5 HEARING OFFICER HALLORAN: It's admitted,  
6 Mr. Kim, over your objection.

7 MR. KIM: Not really an objection.

8 HEARING OFFICER HALLORAN: Exhibit No. 7 is  
9 admitted.



10 BY MR. LaROSE:

11 Q. Take a look at Exhibit No. 8, please. This  
12 is Mr. Walters' response to our December 28th  
13 letter, correct?

14 A. Correct.

15 Q. Okay. And apparently the Agency did  
16 disagree -- again, you're the contact person on this  
17 one, are you not?

18 A. Yes.

19 Q. Apparently, the Agency did disagree with  
20 the matters stated in my letter and agreed to  
21 conduct a preenforcement conference meeting under  
22 Section 31 of the Act, right?

23 A. Correct.

24 Q. By the way, the initial violation notice

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1 that was -- we previously referred to and looked at  
2 is Exhibit 6, that was issued under Section 31 of  
3 the Act as well, wasn't it?

4 A. Correct.

5 Q. And this document -- I'm going to put this  
6 document in front of you too, Mr. Harris, it's  
7 Exhibit No. 1, which is the administrative record  
8 and I'm opening the page to page 44, which is your

9 memo to the permit section regarding the compliance  
10 of these particular bonds, correct?

11 A. Could you please restate that?

12 Q. Yeah. Sorry.

13 Take a look at page 44 of Exhibit 1,  
14 please.

15 A. Okay.

16 Q. That's your memo to the permit section  
17 regarding the compliance of the financial assurance  
18 that had been posted for Morris Community Landfill?

19 A. That's actually a printout of the database.

20 Q. It's a printout of a database, but the  
21 database didn't have the word Blake in it, did it?  
22 You're sending them the memo, aren't you?

23 A. Correct.

24 Q. And this references -- this document

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1 references the January 26, 2001 letter that we're  
2 looking at as Exhibit 8, correct?

3 A. Correct.

4 MR. LaROSE: Okay. With that, Mr. Halloran, I  
5 would move admission of Exhibit 8 for the same  
6 purposes, reasons and relevancy that I stated for  
7 Exhibit No. 6 so I don't have to go over that.

8 HEARING OFFICER HALLORAN: Mr. Kim?

9 MR. KIM: Same relevancy objection as No. 6.

10 HEARING OFFICER HALLORAN: I'm going to allow  
11 it in over your objection, Mr. Kim. Exhibit No. 8  
12 is admitted.

13 BY MR. LaROSE:

14 Q. And finally, Mr. Harris, take a look at  
15 Exhibit No. 9, please. Let's back up for a second.

16 Between January 26th and March 16th, 2001,  
17 didn't we have an enforcement conference call?

18 A. What were the two dates?

19 Q. Between January and the date -- January  
20 26th, which was the date of Exhibit 8 and March  
21 16th, which is the date of Exhibit 9, we had a  
22 conference call -- an enforcement conference call?

23 A. Yeah -- yes.

24 Q. Does March the 9th ring a bell to you?

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1 A. I don't know the exact date, but I know it  
2 was sometime prior to March.

3 Q. You participated in that conference call,  
4 correct?

5 A. Yes.

6 Q. And who was on your side of the phone that

7 you remember?

8 A. Bill Ingersoll, Dave Walters and Bruce  
9 Kugler.

10 Q. Kugler and Ingersoll were there from an  
11 enforcement legal standpoint, right?

12 A. Yes.

13 Q. Walters was on the call because he's your  
14 boss, right?

15 A. Correct.

16 Q. And you were on the call because you were  
17 the financial assurance pointman on this, right?

18 A. Correct.

19 Q. During the call we again disagreed with the  
20 Agency's position, didn't we?

21 A. Yes.

22 Q. And during the call the Agency again  
23 disagreed with our position, correct?

24 A. Correct.

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1 Q. As a result of this call, the notice of  
2 intent to pursue legal action, which is dated March  
3 16, 2001, was sent, wasn't it?

4 A. Can you please say that again?

5 Q. As a result of the call and the Agency's

6 continued disagreement with our position it sent --  
7 made the decision to and in fact sent the notice of  
8 intent to pursue legal action dated March 16th,  
9 2001?

10 A. I did not send this.

11 Q. Okay. Do you know anything about the  
12 circumstances under which it was sent?

13 A. No.

14 Q. Were you aware that it was sent?

15 A. No.

16 Q. At some time were you aware that the Agency  
17 intended to pursue legal action against Community  
18 Landfill with respect to this issue?

19 A. No.

20 Q. Were you consulted in that regard?

21 A. Ever?

22 Q. Yes.

23 A. I don't believe pursue legal action. I  
24 mean, I did prepare a penalty -- some penalties for

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1 legal for Bruce Kugler.

2 Q. Okay. Kugler asked you to calculate --

3 A. Calculate penalties and I believe it was  
4 something that I did not initiate. I think John

5 Taylor had been working on the dates, you know, the  
6 permit requirement versus the amount of financial  
7 assurance they actually had and I just reviewed and  
8 went over those dates.

9 Q. Was it your understanding that Kugler was  
10 asking you to do this so he could use your penalty  
11 calculations in an enforcement proceeding?

12 A. I did not know what he was going to do with  
13 it.

14 Q. The penalties that you calculated though  
15 were penalties based on alleged noncompliance with  
16 the regulations as it related to the Frontier bonds,  
17 correct?

18 A. Yes, as it related to the Frontier bonds.

19 Q. Sir, in your calculation of penalty -- in  
20 your calculation of the penalty, were you -- what  
21 numbers were you using to determine how much the  
22 Frontier bond cost versus how much replacement  
23 financial assurance would cost?

24 A. I believe we used two percent. It would

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1 have been the premium on the bonds.

2 Q. Okay. So if the Frontier bonds cost CLC  
3 two percent and the new bonds cost CLC two percent,

4 what were you calculating?

5 MR. KIM: I'm going to object. I think this  
6 line of questioning goes towards methodology  
7 employed by the state in preparing a potential  
8 enforcement action. I don't think that's relevant  
9 to this proceeding. I also think it's potentially  
10 privileged pre-enforcement information. I don't  
11 think it's appropriate to be addressed in this  
12 context.

13 HEARING OFFICER HALLORAN: Mr. LaRose?

14 MR. LaROSE: I think that's exactly what this  
15 proceeding is about is our argument that they're  
16 using permits to enforce and that they should have  
17 been doing enforcement things. I think the fact  
18 that they were -- that fact that they were actually  
19 issuing notices of violation, issuing notices of  
20 intent to sue, issuing responses to compliance  
21 inquiries, holding meetings and now calculating  
22 penalties is exactly our argument. That's the  
23 procedure that should be followed, not a denial of  
24 this permit. So I think I should be able to explore

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1 that procedure.

2 MR. KIM: But the objection is to the specific

3 method of calculating penalties. I don't think  
4 that's appropriate. I haven't objected to him  
5 asking questions about, you know, the information  
6 concerning these exhibits. I'm simply posing a  
7 specific objection to the specific line of  
8 questioning he's just --

9 MR. LaROSE: And maybe -- I don't think it's  
10 an attorney/client privilege issue and I don't think  
11 it's -- but maybe I can get at it a way -- I' not  
12 trying to get at privileged information.

13 HEARING OFFICER HALLORAN: Try to rephrase it  
14 and try --

15 MR. LaROSE: Maybe I can get at it a way --  
16 I'll withdraw the question and try it a different  
17 way.

18 HEARING OFFICER HALLORAN: Thank you, sir.

19 BY MR. LaROSE:

20 Q. Sir, would you agree in a hypothetical  
21 situation that if the Frontier bonds cost my client  
22 two percent and replacement financial assurance cost  
23 my client the same two percent and the bonds are for  
24 the same amount there would be no benefit --

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1 economic benefit to Community Landfill?



2 A. I would agree.

3 Q. Okay.

4 HEARING OFFICER HALLORAN: Thank you.

5 BY MR. LaROSE:

6 Q. Prior to May of 2001 you spoke with the  
7 Illinois Department of Insurance regarding Frontier,  
8 didn't you?

9 A. Yes.

10 Q. Do you remember who you talked to?

11 A. No.

12 Q. You wanted to see if Frontier was still  
13 approved by the Department of Insurance at that  
14 time, correct?

15 A. Correct.

16 Q. And prior to May 11th, they were still  
17 approved by the Illinois Department of Insurance as  
18 you found out on that telephone call, correct?

19 A. Correct.

20 Q. Did you ask the Illinois Department of  
21 Insurance at that time whether the bonds were  
22 enforceable?

23 A. No.

24 Q. All of the Allied facilities have replaced

1 Frontier Insurance bonds with insurance policies,  
2 correct?

3 A. I believe so.

4 Q. Allied had Frontier Insurance bonds, right?

5 A. Yes.

6 Q. Then they substituted them with insurance  
7 that didn't comply with the regulations, correct?

8 A. Yes.

9 Q. Then they supplied them with insurance  
10 policies that you thought did comply with the  
11 regulations, correct?

12 MR. KIM: I'm going to object. I don't think  
13 that there's any relevancy as to other instruments  
14 that other facilities submitted in response to other  
15 violation notices that they might have received. I  
16 think that has nothing to do with the case at hand.

17 HEARING OFFICER HALLORAN: Sustained. I do  
18 find it irrelevant.

19 MR. LaROSE: I would like to make just a short  
20 offer of proof on this issue.

21 HEARING OFFICER HALLORAN: Very well, sir.

22 BY MR. LaROSE:

23 Q. Sir, you believe that they ultimately  
24 supplied insurance policies that did comply with the

1 regulations, correct?

2 A. Yes.

3 Q. And that decision was made by you, Dave  
4 Walters, Hope Wright and attorney Kyle Davis,  
5 correct?

6 A. I believe there were other attorneys  
7 involved, but Kyle Davis, yes, was one of them.

8 Q. So at least those people and maybe some  
9 more lawyers?

10 A. Correct.

11 Q. In coming to the conclusion that the  
12 insurance policies supplied by Allied ultimately met  
13 the regulations, did you read or consult in any way  
14 an October 11th memo prepared by John Taylor?

15 A. Yes.

16 Q. Okay. And did you and the group that made  
17 this decision consult that document?

18 A. I don't recall if we consulted the  
19 document.

20 Q. Okay. Do you recall reviewing the document  
21 yourself?

22 A. Yes.

23 Q. Do you recall discussing the memo with the  
24 people in legal?

1 A. Yeah.

2 Q. Do you recall disagreeing in any way with  
3 anything contained in that memo?

4 A. I don't remember the specifics of the memo.

5 Q. Okay. Do you recall anybody expressing any  
6 disagreement with respect to the memo?

7 A. No.

8 HEARING OFFICER HALLORAN: Was that the end of  
9 your offer of proof or were you still proceeding?

10 MR. LaROSE: I was still proceeding because I  
11 would think that -- it probably ends after we offer  
12 this document, 62.

13 HEARING OFFICER HALLORAN: Thank you.

14 BY MR. LaROSE:

15 Q. I'm going to hand you what's been  
16 previously marked as Exhibit 62, please.

17 Is that the memo that we just spoke about?

18 A. Yes.

19 Q. Okay. And that's the memo that you  
20 consulted or that you at least looked at and  
21 discussed with legal regarding the compliance of the  
22 Allied insurance policies?

23 A. Yes.

24 MR. LaROSE: Okay. Mr. Halloran, I would move

1 for admission of Exhibit 62.

2 HEARING OFFICER HALLORAN: Mr. Kim?

3 MR. KIM: Same objection. This document  
4 relates to financial insurance, i-n-s-u-r-a-n-c-e,  
5 as opposed to assurance documents and I believe as  
6 Mr. Harris just testified to within the offer of  
7 proof, this was something that may have been  
8 consulted by some people regarding other types of  
9 financial assurance that might have been submitted  
10 by other facilities that would have received other  
11 violation notices and this has nothing to do with  
12 the present case. This has nothing to do with the  
13 decision that was reached on May 11th. It's outside  
14 the permit record and it was not relied upon and has  
15 no relevance whatsoever to this case.

16 HEARING OFFICER HALLORAN: Anything further,  
17 Mr. LaRose?

18 MR. LaROSE: Yes, sir. I didn't really get to  
19 speak to the objection last time so just briefly.

20 HEARING OFFICER HALLORAN: And I apologize.

21 MR. LaROSE: That's all right. That's all  
22 right. Just briefly, our position in this case is  
23 that Morris Community Landfill has been singled out  
24 and instead of going through the regular enforcement

1 proceedings, they've used whatever mechanisms,  
2 including this permit, to just shut us down. This  
3 document will show that all -- help show, along with  
4 Mr. Taylor's opinion, that every single one of the  
5 financial assurance mechanisms that were substituted  
6 for the Frontier Insurance bonds don't comply with  
7 the regulations. Allied's being treated differently  
8 than us. Waste Management's being treated  
9 differently than us.

10           Every single facility that gave the -- EPA  
11 substitute financial assurance does not comply with  
12 the regulations. It goes to show the bias and  
13 prejudice against us. It goes to show the different  
14 treatment and it goes to show that we've been  
15 singled out for permit action that was really  
16 nothing more than a vendetta to shut us down.  
17 That's the relevance. That's the basis. I realize  
18 there's a difference between insurance and bonding,  
19 but I don't think there's a difference between bad  
20 bonds and bad insurance and if our bonds are bad and  
21 their insurance is bad, then they should have been  
22 treated the same way we should than we were.

23           MR. KIM: Briefly, and my comment was more for  
24 the benefit of the court reporter. I can't imagine

1 having to make a distinction between insurance and  
2 assurance as we're talking, but what Mr. LaRose is  
3 saying is going to be borne out, then what that  
4 means is he wants to go through not only now examine  
5 the financial assurance that has been submitted by  
6 Community Landfill in this case, which is under  
7 appeal, but now this raises the question as to  
8 whether or not financial assurance documents  
9 submitted by all the other facilities on that 811  
10 list were somehow compliant. Those were different  
11 types of documents that were submitted, so now he's  
12 basically opening up this door that says we have to  
13 take a look at all those other documents because he  
14 says they're noncompliant. Well, if he's going to  
15 pursue that further, that means he's going to have  
16 to go through and we're not going to have to look at  
17 all the -- you know, I don't know how many there  
18 are, between 18 and 20 other potential documents and  
19 other types of instruments and determine whether or  
20 not those are compliant submitted by other companies  
21 pursuant to other regulations. That has nothing to  
22 do with this case. That is completely irrelevant  
23 and it opens up a big door for a lot of extraneous

24 information the Board should not consider.

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1 HEARING OFFICER HALLORAN: You, more than  
2 anybody else, Mr. LaRose, read the opinion 0148,  
3 0149, April 4th, 2001, in Community Landfill versus  
4 IEPA and it's irrelevant, you know, how financial  
5 assurance was treated with other facilities or  
6 permits to the one in hand so I still find the line  
7 of questioning and exhibits irrelevant and I deny,  
8 however, if you want to choose to allow me to take  
9 it with the case with your offer of proof that will  
10 be done.

11 MR. LaROSE: I appreciate that and Mr. Kim's  
12 comment, I didn't intend to go through 20 of these.  
13 We looked -- we did spend like real hours. I  
14 realize that this opens something. I think it opens  
15 more of a can of worms than it opens a door, but I  
16 did spend hours going through each one of these  
17 files to look at them and what we did was compile a  
18 summary of them that Mr. Taylor will then in a  
19 minute or two be able to look at and make an offer  
20 of proof on his opinion as to the compliance. So  
21 we're not going to -- please don't make the ruling  
22 because we're going to spend hours on this. We're



23 not. It's going to be more like minutes.

24 HEARING OFFICER HALLORAN: Thank you.

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1 MR. LaROSE: You're welcome.

2 HEARING OFFICER HALLORAN: So Exhibit No. 62 is  
3 denied. I'll take it with the case with the offer  
4 of proof.

5 MR. LaROSE: Thank you.

6 HEARING OFFICER HALLORAN: Thank you.

7 MR. KIM: Are you done now with the offer of  
8 proof?

9 MR. LaROSE: Yes, I am done with the offer of  
10 proof. I just -- I have about maybe 15 or 20 more  
11 minutes, but could we take five maybe so I can get a  
12 drink of water and go to the washroom?

13 HEARING OFFICER HALLORAN: Sure. I was hoping  
14 to get done with two witnesses before lunch, but  
15 we'll see. Thank you. Five-minute break.

16 MR. LaROSE: Thank you.

17 (Whereupon, after a short  
18 break was had, the  
19 following proceedings  
20 were held accordingly.)

21 HEARING OFFICER HALLORAN: We are back on the

22 record after approximately a 15-minute break.  
23 Mr. Harris is still on the stand and I remind him he  
24 is still under oath. Mr. LaRose?

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1 BY MR. LaROSE:

2 Q. Mr. Harris, when you made the  
3 determination that the Frontier bonds that my client  
4 had submitted did not comply with the regulations,  
5 did you consider the dates on which the underlying  
6 bonds had been issued, yes or no?

7 A. No.

8 Q. Sir, does the Agency have authority to  
9 approve performance bonds, yes or no?

10 A. I can't answer that question that way. We  
11 have the authority to determine if they comply with  
12 the regulations.

13 MR. LaROSE: Okay. Objection, nonresponsive,  
14 ask that the answer be stricken and the witness be  
15 directed to answer the question.

16 MR. KIM: Objection. I believe he said I can't  
17 answer the question that way. Sometimes questions  
18 can't be answered yes or no.

19 MR. LaROSE: That's not all he said, though.

20 MR. KIM: Well, you can strike the second part,

21 but the first part was he couldn't answer the  
22 question as posed.

23 HEARING OFFICER HALLORAN: The answer is  
24 stricken. Mr. LaRose, could you restate or rephrase

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1 that question because otherwise I'll allow him to  
2 explain.

3 BY MR. LaROSE:

4 Q. Sir, do you agree with the statement that  
5 the Illinois EPA has no authority to approve  
6 performance bonds, yes or no?

7 A. Yes.

8 Q. Take a look at page 43 of Exhibit 1, which  
9 is the record in this case, please. This is your  
10 memo dated May 9th, 2001, to Christine Roque,  
11 correct?

12 A. Correct.

13 Q. You were the sole author of this memo,  
14 correct?

15 A. Correct.

16 Q. And as far as you know, Ms. Roque and the  
17 solid waste unit permit section were relying on your  
18 opinion in this memo as a basis to deny the permit  
19 to my client in this case, correct?

20           A. They just asked me for a memo to determine  
21 whether the financial assurance complied with the  
22 regulations. I didn't know what they were going to  
23 do with it.

24           Q. Fair enough. Flip the page to page 44.

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1 This is a permit financial assurance inquiry report.  
2 This was generated as a result of an inquiry from  
3 the permit section with respect to this particular  
4 permit application, correct?

5           A. I believe so.

6           Q. Okay. And you issued this to the permit  
7 section on March the 6th, 2001, with respect to  
8 that, correct?

9           A. I'm not sure if I printed this out or not.  
10 Anybody with access to the database could have  
11 printed this out for the permit section.

12           HEARING OFFICER HALLORAN: Mr. Blake (sic),  
13 could you keep your -- Mr. Harris, I'm sorry.

14           THE WITNESS: I know what you mean.

15 BY MR. LaROSE:

16           Q. Look at the section here that starts with  
17 the two asterisks VN and on down. Didn't you write  
18 that portion of the memo?

19 A. Yes.  
20 Q. Okay. So from the asterisks on down next  
21 to the letters VN, you wrote that, correct?  
22 A. Correct.  
23 Q. You don't tell the permit section in this  
24 particular memo that Frontier Insurance bonds fail

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1 to comply with 811.700(f), do you?  
2 A. No.  
3 Q. In fact, you didn't tell them that at any  
4 time, did you?  
5 A. I don't know.  
6 Q. On page 45 of Exhibit 1, the record in this  
7 case, did you write that document as well at least  
8 from the asterisks on down?  
9 A. Yes.  
10 Q. And this was a -- this was a permit  
11 financial assurance inquiry report generated by the  
12 permit section to you, correct?  
13 MR. KIM: Objection.  
14 MR. LaROSE: Strike that. You're right. It's  
15 not clear.  
16 BY MR. LaROSE:  
17 Q. This is generated as a result of an inquiry

18 from the permit section regarding financial  
19 assurance, correct?

20 A. Yes.

21 Q. On page 45 you don't state anywhere on this  
22 particular memo that as of January 2001 the site is  
23 in noncompliance with the regulations, do you?

24 A. No.

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1 Q. Do you still have Exhibit 82 in front of  
2 you, sir?

3 A. I don't think so.

4 Q. You probably don't have it in front of you  
5 because we only had a couple of copies. It's the  
6 one that's got color on it. I'll give you my copy.

7 Sir, are you familiar with a site in Cook  
8 County called the Harbor View Landfill?

9 A. Not offhand, no.

10 Q. Do you know whether they got a violation  
11 notice with respect to the Frontier Insurance bonds?

12 A. I don't know.

13 Q. Do you know whether they had Frontier  
14 Insurance bonds as financial assurance vehicles at  
15 any time?

16 A. What was the name of the site again?

17 Q. Harbor View Landfill, site No. 031600034,  
18 Cook County.

19 A. I don't know if they had Frontier or not.

20 Q. They're not on your list as it appears in  
21 Exhibit 82, are they?

22 A. No.

23 MR. LaROSE: That's all I have right now,  
24 Mr. Halloran.

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

3 MR. HELSTEN: Yes. I just have several  
4 questions. I'm going to need Mr. Hearing Officer to  
5 find a couple of exhibits here.

6 HEARING OFFICER HALLORAN: I'm at your  
7 disposal.

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

9 by Mr. Helsten

10 Q. Mr. Harris, I draw your attention to  
11 Exhibit 6, which Mr. LaRose asked you about before,  
12 more specifically to the suggested resolution  
13 section of that exhibit, and I believe you said you  
14 drafted the language that is included in the first  
15 paragraph under suggested resolution, which reads

16 immediately provide adequate financial assurance in  
17 an amount that equals or exceeds the current  
18 closure, postclosure cost estimate, correct?

19 A. I believe so.

20 Q. What did you consider to be adequate  
21 financial assurance? I'd like you to focus on that  
22 portion of the sentence.

23 A. Something that would comply with the  
24 regulations.

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1 Q. Okay. I believe this is also in evidence,  
2 Mr. Harris, maybe we can look for it, Exhibit No.  
3 16, which is one of the bonds?

4 HEARING OFFICER HALLORAN: Number 16?

5 MR. HELSTEN: Sixteen, 1-6, Mr. Hearing  
6 Officer.

7 BY MR. HELSTEN:

8 Q. Is that one of the bonds which Mr. LaRose  
9 provided to you?

10 A. Yes.

11 Q. Okay. Now, this is a bond in the amount of  
12 ten thousand --

13 A. Ten million.

14 Q. \$10,081,630, correct?



15 A. Correct.

16 Q. Do you know what that represents financial  
17 assurance for, what closure, postclosure activities?

18 A. Actually I don't understand the question.

19 Q. Okay. This bond secures or backs  
20 performance of certain closure, postclosure  
21 activities, correct?

22 A. Correct.

23 Q. Okay. Do you know what closure,  
24 postclosure activities that this bond secures?

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1 A. That would be in the permit. I don't know.

2 Q. Okay. So you don't know anything about  
3 that?

4 A. Right.

5 Q. Okay. Mr. Harris, Mr. LaRose asked you  
6 about certain other forms of financial assurance  
7 that can be posted. Could you just tell me offhand  
8 other than bonds and insurance the other types of  
9 financial assurance that an owner/operator can post?

10 A. Yes. You can do -- have a trust fund,  
11 insurance, you could do self-insurance like a  
12 financial test.

13 Q. Okay. What I call the individual net worth

14 or the balance sheet test?

15 A. I guess.

16 Q. Where you supply an independent auditor's  
17 opinion as to your net worth and your ability to  
18 perform, correct?

19 A. Right.

20 Q. You can submit a local government guarantee  
21 as well?

22 A. I believe so. I'd have to check with the  
23 regulation.

24 Q. Okay. If you were to submit proof of

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1 individual net worth adequate to meet all closure,  
2 postclosure costs, what would you deem to be the  
3 effective date of that guarantee, when it's  
4 submitted to you?

5 A. Well, I'm not sure on the form if there's  
6 an effective date or not. I don't know.

7 Q. Okay. You don't know what the effective  
8 date of that vehicle financial assurance would be?

9 A. I would assume the date on the form when it  
10 comes into us.

11 Q. Okay. Drawing your attention to the  
12 record, Mr. Harris, and more specifically page 43.

13 Could you take a look at that? I would draw your  
14 attention to the last sentence of the second  
15 paragraph of your memorandum that says, therefore,  
16 this facility is not in compliance with 811.700  
17 small F. Is that an accurate reading of the last  
18 sentence of your memo?

19 A. Yes.

20 Q. Okay. Was your opinion contrary to  
21 Mr. Taylor's opinion --

22 A. Yes.

23 Q. -- on this issue?

24 A. Yes.

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1 Q. Okay. Why did you disregard Mr. Taylor's  
2 opinion, just out of curiosity?

3 A. We had a difference of opinion. I  
4 disagreed with him.

5 Q. Okay. Why is it you didn't agree with him?

6 A. Because I think the way the regulations  
7 read that they do require the 570 circular and  
8 looking back at the Board's rulemaking when they  
9 were modifying 811, they clearly show that one of  
10 their intents was to have 570 be a requirement.

11 Q. Anything else?

12 A. No.

13 MR. HELSTEN: Okay. That's all I have.

14 HEARING OFFICER HALLORAN: Thank you, Mr.

15 Helsten? Mr. Harris, could you move up to the

16 microphone, I'm having a little difficulty hearing

17 you. Mr. Kim, witness.

18 MR. KIM: Thank you.

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

20 by Mr. Kim

21 Q. Mr. Harris, I just have a few questions for

22 you. You were asked some questions concerning your

23 discussions with attorneys within the Illinois EPA

24 regarding financial assurance and specifically

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1 financial assurance that was provided by Frontier

2 Insurance Company, do you remember those questions?

3 A. The questions that the attorneys asked me?

4 Q. That Mr. LaRose was asking you earlier

5 today?

6 A. Yes.

7 Q. When you were having those discussions with

8 the attorneys within the Agency, were you focusing

9 on specific facilities or were you focusing on

10 Frontier Insurance Company bonds?

11 A. Focusing on Frontier bonds.

12 Q. And you also testified, I believe,  
13 concerning the -- you were asked some questions  
14 concerning whether or not there is any law, rule or  
15 regulation that provides what the Illinois EPA  
16 should do if a company is taken off the 570  
17 circular, do you recall those questions?

18 A. Yes.

19 Q. I believe your answer made reference to  
20 Section 31 of the Act. What is your understanding  
21 of how Section 31 of the Act should be utilized and  
22 when it should be utilized?

23 A. Section 31 of the Act is what the  
24 compliance unit uses for enforcement.

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1 Q. Does that section -- let me rephrase that.  
2 Does Section 31 of the Act identify specific  
3 violations by regulation?

4 MR. LaROSE: Objection, leading.

5 HEARING OFFICER HALLORAN: Mr. Kim?

6 MR. KIM: Let me rephrase it.

7 BY MR. KIM:

8 Q. How is Section 31 -- based upon your  
9 understanding, how is Section 31 to be applied in

10 terms of what types of violations would be subject  
11 to the Section 31 process?

12 A. Could you please rephrase that question?

13 Q. Yes.

14 What type of violations would be subject  
15 to the Section 31 process?

16 A. Financial assurance violations for one,  
17 there's other violations, I believe permit  
18 violations. It's a section that pertains to  
19 compliance.

20 Q. Okay. Compliance of what specifically, do  
21 you know?

22 A. I would have to see Section 31, but --

23 MR. KIM: Okay. If I may approach the witness,  
24 I'm just going to show him Section 31 of the Act.

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1 HEARING OFFICER HALLORAN: You may approach and  
2 when you do approach, Mr. Kim, could you move the  
3 microphone a little closer to Mr. Harris.

4 MR. KIM: I will.

5 HEARING OFFICER HALLORAN: Thank you.

6 BY MR. KIM:

7 Q. And the question would then be, what types  
8 of violations does Section 31 of the Act address?

9           A. Permit violations, financial assurance  
10 violations.

11           Q. Is there any wording in Section 31 that  
12 defines what type of violations it addresses?

13           A. I don't believe so.

14           Q. Okay. But is that the Section 31 that --  
15 that's fine. That's fine. Strike that last  
16 question.

17                       When you were -- you were also asked some  
18 questions concerning the notices of violation that  
19 were issued to 811 facilities that had financial  
20 assurance provided by Frontier Insurance Company, do  
21 you remember those questions?

22           A. Yes.

23           Q. How did you prepare the list of facilities  
24 that should receive notices of violation?

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1           A. I went through the database and picked out  
2 the facilities that were 811 sites and also had  
3 Frontier Insurance bonds.

4           Q. Is it possible you might have missed one or  
5 two sites?

6           A. It's possible.

7           Q. What was your intention, though, in terms

8 of when you prepared that list?

9 A. To get every 811 site that had Frontier  
10 Insurance bonds.

11 Q. Okay. There were also asked some questions  
12 concerning your involvement with the preparation of  
13 a possible or potential future enforcement action  
14 that might be brought by the state against the  
15 petitioners here concerning their financial  
16 assurance, do you recall those questions?

17 A. Yes.

18 Q. Do you know if any final decision has been  
19 made regarding whether or not such an enforcement  
20 action would be brought?

21 A. I don't know.

22 Q. You were also asked a question concerning  
23 whether or not the EPA has approval to -- I'm sorry,  
24 has authority to approve performance bonds. What is

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1 your understanding of how the EPA reviews and acts  
2 upon performance bonds submitted as financial  
3 assurance?

4 A. We determine if they comply with the  
5 regulations.

6 Q. Once that determination has been made, what



7 steps are taken then if, for example, it's  
8 determined that a facility is not in compliance?

9 A. If they're not in compliance?

10 Q. Yes.

11 A. If they're not in compliance typically we  
12 send a violation notice.

13 Q. Is there a process that's followed once a  
14 violation notice is sent out pursuant to Section 31  
15 of the Act?

16 A. Yeah. There's deadlines in Section 31. I  
17 believe they have 45 days to respond and then we  
18 have 30 days after their response.

19 Q. Okay. Could you please find the  
20 administrative record that's before you, I think  
21 it's the large document and if you could turn to  
22 page 44 and look briefly at page 45 also.

23 Can you explain why there's more  
24 information on page 44 than there is on page 45?

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1 A. Because the date it was updated was a  
2 couple months after page 45.

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

5 HEARING OFFICER HALLORAN: Thank you, Mr. Kim.

6 Mr. LaRose?

7 MR. LaROSE: Briefly.

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

9 by Mr. LaRose

10 Q. Mr. Harris, to your knowledge, the only  
11 law, rule or regulation that you can site to us that  
12 applies to what the Agency shall do if a company is  
13 removed from the 570 list is Section 31 of the Act,  
14 right?

15 A. Correct.

16 Q. And that's the section that requires or  
17 allows the Agency to initiate enforcement, correct?

18 A. Correct.

19 Q. And if a company is in noncompliance with  
20 the financial assurance regulations, that's the  
21 provision of the Act that would allow you to enforce  
22 beginning with violation notices and ending with  
23 full blown enforcement proceedings, correct?

24 A. Correct.

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

2 HEARING OFFICER HALLORAN: Mr. Helsten?

3 MR. HELSTEN: Nothing, Mr. Hearing Officer.

4 HEARING OFFICER HALLORAN: Mr. Kim?

5 MR. KIM: Yes, just one or two.

6 R E C R O S S E X A M I N A T I O N

7 by Mr. Kim

8 Q. Mr. Harris, could you please look to page  
9 43 of the administrative record. What did you base  
10 the conclusions reached in this memo on?

11 MR. LaROSE: Objection, this is technically  
12 beyond the scope.

13 MR. KIM: I understand. Let me try and tie it  
14 closer to what --

15 MR. LaROSE: You know what, I'm going to  
16 withdraw my objection because I think he's got the  
17 right to call this guy anyway.

18 MR. KIM: And let me try and rephrase that  
19 question because that was probably a purely worded  
20 question.

21 BY MR. KIM:

22 Q. What was the basis for your conclusion  
23 reached in your May 9 memo on page 43 of the  
24 administrative record?

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1 A. The basis for the conclusion was that  
2 811.712, the section that pertains to bonds,  
3 requires the 570 listing so these did not comply

4 with the regulations at that point.

5 Q. And why did you send that memo to Chris  
6 Roque?

7 A. She requested it.

8 Q. And what section within the Agency does  
9 Christine Roque work for?

10 A. She works for Joyce Munie. It's the permit  
11 section.

12 Q. Do you know if -- well, let me rephrase  
13 that.

14 Where are the financial assurance  
15 regulations found within the regulations?

16 A. What section?

17 Q. What section, yes.

18 A. 811.700.

19 Q. And --

20 MR. KIM: That's it. Nothing further.

21 HEARING OFFICER HALLORAN: Thank you, Mr. Kim.  
22 Anybody else? Thank you, Mr. Harris. You may step  
23 down.

24 MR. LaROSE: Thank you sir. I'm just going to

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1 gather these exhibits over here.

2 HEARING OFFICER HALLORAN: We can go off the

3 record for a second.

4 (Whereupon, a discussion  
5 was had off the record.)

6 HEARING OFFICER HALLORAN: Mr. LaRose wanted to  
7 address Exhibit No. 9.

8 MR. LaROSE: Yes. I would move for the  
9 admission of Exhibit No. 9 into evidence, Mr.  
10 Halloran for the same reasons that I offered  
11 exhibits -- reasons, arguments, relevancy that I  
12 offered Exhibits 6, 7, 8.

13 HEARING OFFICER HALLORAN: Mr. Kim?

14 MR. KIM: We would have relevancy objections,  
15 but we also recognize that since the other documents  
16 that Mr. LaRose just identified were admitted, it  
17 seems like this does complete the picture that was  
18 started by those.

19 HEARING OFFICER HALLORAN: Okay. I'm going to  
20 admit it into evidence. I think it's a continuation  
21 of documents in the record so it's admitted over the  
22 respondent's objection.

23 MR. KIM: Could we go off the record for just a  
24 moment.

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1 (Whereupon, a discussion

2 was had off the record.)

3 HEARING OFFICER HALLORAN: We are back on the  
4 record. It's approximately 11:25. I do note -- I  
5 do want to note again for the record that there are  
6 no members of the public in the room.

7 Mr. LaRose, you may call your sixth  
8 witness.

9 MR. LaROSE: Mr. Liebman is our sixth witness.

10 (Witness sworn.)

11 WHEREUPON:

12 C H R I S T I A N L I E B M A N, P.E., P.G.,  
13 called as a witness herein, having been first duly  
14 sworn, deposeeth and saith as follows:

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

16 by Mr. LaRose

17 Q. Good morning again.

18 A. Good morning, Mark.

19 Q. May I call you Chris?

20 A. Sure.

21 Q. Okay. State your name for the record  
22 please, Chris.

23 A. My name is Chris Liebman, L-i-e-b-m-a-n.

24 Q. You have worked for the Agency for how

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1 long, sir?

2 A. Sixteen years.

3 Q. And from 1985 to 1989 you were a permit  
4 reviewer in the Bureau of Land, correct?

5 A. Yes, that's correct.

6 Q. And from February of 19 -- I'm sorry. Did  
7 I say '85 to '89? Was it '85 to '99?

8 A. It was '85 to '99.

9 Q. Okay. And from February of '99 until now  
10 you were manager of the solid waste unit in the  
11 Bureau of Land?

12 A. Yes, in the Bureau of Land's permit  
13 section.

14 Q. Okay. Is it fair to say that you are the  
15 second in command in the permit section to Joyce  
16 Munie?

17 A. No, it's not.

18 Q. Okay. Is there somebody in between you  
19 guys?

20 A. No. But Joyce has several other managers  
21 that report to her.

22 Q. Okay. But in your unit, the chain of  
23 command would go from you to Joyce?

24 A. Yes, that's correct.

1 Q. Okay. Is it your understanding, sir, that  
2 under Section 39(i) of the Act, the Agency is to  
3 conduct an evaluation of the owner and operator's  
4 prior experience in waste management facilities in  
5 every single case?

6 A. Yes.

7 Q. And you've been the permit reviewer on  
8 probably more than 2,000 permits, correct?

9 A. That's correct.

10 Q. Okay. And you have conducted an evaluation  
11 under Section 39(i) with respect to every one of  
12 those 2,000 permits, correct?

13 A. Yes.

14 Q. Your evaluation however doesn't extend  
15 beyond your own knowledge and the four corners of  
16 the application in front of you, correct?

17 A. Well, it depends on how you define the four  
18 corners of the application. If you're including  
19 comments that we get with regard to the permit  
20 application, yes, what you said is true.

21 Q. Okay. Basically, in order to conduct your  
22 2,000 evaluations of various permits you would first  
23 do a mental check in your own mind to see if you  
24 were aware of whether the owners and operators had



1 adjudicated violations, correct?

2 A. Or felonies, yes.

3 Q. Okay. And the second thing that you did  
4 was look at the information in front of you, yes or  
5 no?

6 A. That's true.

7 Q. Would you typically go to any outside  
8 source other than your own mind or the four corners  
9 of the application, yes or no?

10 A. No.

11 Q. Unless information came to you from another  
12 source, you wouldn't do anything else in these 2,000  
13 39(i) evaluations that you did, correct?

14 A. Correct. Unless I had knowledge of my own.

15 Q. Right. If in doing your -- one of the  
16 2,000 evaluations you had no personal knowledge of  
17 adjudicated violations or felonies and there was  
18 nothing that indicated that information in the four  
19 corners of the application, you didn't go any  
20 further, correct?

21 A. That's correct.

22 Q. And if that was the circumstances, you  
23 wouldn't go any further unless information came to  
24 you from an outside source?

1           A. That's correct.

2           Q. And you believe that this procedure that  
3 you followed on these 2,000 applications complied  
4 with your obligations under Section 39(i) of the  
5 Act, correct?

6           A. Yes.

7           Q. If you had heard sworn testimony that an  
8 owner or operator had been indicted for a felony, is  
9 that the type of information that might make you go  
10 outside the application and extend your evaluation?

11          A. Yes.

12          Q. If an employee of the Agency had  
13 information of a felony conviction, would it have  
14 been good for them to pass that information on to  
15 somebody who could then conduct a 39(i) evaluation  
16 or investigation?

17          A. I think it would be good, but I think, as I  
18 said in my deposition, I don't think if they failed  
19 to do that they would have failed to have done their  
20 job properly.

21          Q. Okay. The corollary to that's true,  
22 though, if they did it, they wouldn't have done  
23 their job improperly?

24          A. Yes, that's true.

1 Q. Okay. When we talked a couple weeks ago in  
2 your deposition we talked about the difference  
3 between an evaluation and an investigation, correct?

4 A. Yes.

5 Q. Okay. In your mind, the 39(i) evaluation  
6 is using your own mind, canvassing your own thoughts  
7 and looking merely at the permit application in  
8 front of you, that's an evaluation, correct?

9 A. Yes.

10 Q. And if you go beyond that, that's when it  
11 becomes an investigation, correct?

12 A. Yes.

13 Q. You conducted 2,000 evaluations, but only  
14 two investigations, right?

15 A. I think there would have been three  
16 investigations.

17 Q. I'm sorry. You're right. Two besides the  
18 one in this case?

19 A. That's correct, yes.

20 Q. Okay. Let's leave this case aside for a  
21 second and talk just briefly about the other two.

22 One was the ESG Watts case, right?

23 A. Right.

24 Q. And that investigation resulted in denial

1 of several permit applications, correct?

2 A. Yes.

3 Q. Were you the reviewer on those?

4 A. At least a few of them, yes.

5 Q. And what was the 39(i) -- you understand  
6 the 39(i) has three subcomponents of the type of  
7 information that the Agency may consider?

8 A. Yes.

9 Q. Do you remember which of the three  
10 subcomponents it was that you were investigating in  
11 the Watts case?

12 A. Yes. Past adjudicated violations of the  
13 Environmental Protection Act and the environmental  
14 regulations.

15 Q. Sir, 39(i), subsection one, says repeated  
16 violations of federal, state or local laws,  
17 regulations, standards or ordinances in the  
18 operation of waste management facilities or sites.  
19 Would that be the one that you were looking at in  
20 Watts?

21 A. Yes, I believe so.

22 Q. Okay. The other 39(i) investigation that  
23 you were involved in regarded a transfer station in  
24 Chicago, correct?

1 A. Yes.

2 Q. And that inspection -- that was the  
3 Gonzales case, right?

4 A. Yes.

5 Q. That investigation involved subparagraph  
6 two of 39(i), felony conviction, right?

7 MR. KIM: I'm going to object. I believe that  
8 past information on Gonzales when brought up was  
9 objected to on grounds of relevancy and being  
10 outside the record and I believe those objections  
11 were sustained and I would just renew those  
12 objections to any line of questioning concerning  
13 that site with this witness.

14 HEARING OFFICER HALLORAN: Mr. LaRose?

15 MR. LaROSE: Yes, Mr. Halloran. I'm going to  
16 make an additional offer of proof on Gonzales, but  
17 not right this second. These questions really just  
18 go to his -- I wasn't going to get into a whole lot  
19 of detail, they go to his experience with respect to  
20 39(i).

21 MR. KIM: If that's all it's going to, that's  
22 fine and knowing Mr. LaRose will do an offer of  
23 proof, that's fine. I withdraw the objection.

24 HEARING OFFICER HALLORAN: Thank you. You may

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1 proceed Mr. LaRose.

2 MR. LaROSE: Thank you.

3 BY MR. LaROSE:

4 Q. The investigation in the Gonzales case  
5 regarded felony convictions, subsection two of  
6 39(i), correct?

7 A. As I recall, yes, that's correct.

8 Q. And in the Gonzales case, unlike the Watts  
9 case, the investigation did not result in the denial  
10 of the permit, correct?

11 A. That's correct.

12 Q. In the Gonzales case, the information came  
13 to the possession of Springfield by way of a field  
14 inspector from the Maywood office, correct?

15 MR. KIM: Now I am going to object. I think  
16 now this goes more towards the information that's  
17 found within the file itself. I'm not obviously  
18 going to --

19 MR. KIM: You know what, I'll withdraw that  
20 question and see if I can tie it in as just general  
21 procedures in 39(i).

22 HEARING OFFICER HALLORAN: Thank you.

23 MR. LaROSE: Your welcome.

24 BY MR. LaROSE:

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1 Q. Sir, what are the ways that information  
2 could come to you that would cause you to go from  
3 the evaluative mode into the investigative mode?

4 A. Well, comments from anyone with the Agency  
5 or really anyone else.

6 Q. Okay. You could get a phone call from  
7 somebody within the Agency, correct?

8 A. Yes.

9 Q. Or an e-mail or a letter or just have a  
10 personal conversation with them, correct?

11 A. Correct.

12 Q. You could get -- have those same types of  
13 contacts with anybody -- with really anybody that  
14 would cause you to go into the investigative mode,  
15 correct?

16 A. Correct.

17 Q. A reporter, a policeman, a stranger, even  
18 an anonymous call could cause you to go into that  
19 mode, correct?

20 A. Perhaps, yes.

21 Q. Okay. Do you recall whether you read the

22 Watts decision, the permit appeal and the Appellate  
23 Court decision that resulted in the denial of the  
24 permits in that case?

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1 A. No, I don't recall.

2 Q. Are there any procedures, written  
3 procedures, regarding the Agency's implementation of  
4 Section 39(i)?

5 A. No.

6 Q. How long has 39(i) been around?

7 A. At least as long as I've been with the  
8 Agency. I think it was already there when I  
9 started.

10 Q. So at least as long as 1989, correct -- or  
11 '85, correct?

12 A. I think that's correct, yes.

13 Q. Chris, why aren't there any procedures with  
14 respect to Section 39(i) if it's been around for 16  
15 years at least?

16 A. I don't know.

17 Q. Should there be?

18 A. Perhaps.

19 Q. There are no rules or guidance documents  
20 that you're aware of with respect to Section 39(i),



21 are there?

22 A. No.

23 Q. There isn't any Board rule that talks  
24 specifically about the implementation of Section

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1 39(i) of the Act, is there?

2 A. Not that I know of.

3 Q. Is it a fair statement that while you  
4 believe evaluations at least in your experience  
5 occur on every sanitary landfill permit application  
6 that investigations are very rare under Section  
7 39(i)?

8 A. Yes.

9 Q. Case in point of the 2,000 permit  
10 applications that you reviewed or were involved in,  
11 you did only three -- or were involved in only three  
12 investigations, sir?

13 A. I'm not sure what the question was.

14 Q. It was probably confusing so I'll withdraw  
15 it and try it again.

16 Of the 2,000 permit applications that you  
17 were involved in, you only were involved in three  
18 39(i) investigations, this case, the Watts case and  
19 the Gonzales case?

20           A. Well, that's sort of true. The reason I'm  
21 hesitating is that the 2,000 figure I gave was based  
22 on permit applications I actually reviewed myself  
23 and both Gonzales and this one for Morris Community  
24 Landfill, I was not the reviewer on.

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1           Q. Okay. So even better, of the 2,000 that  
2 you actually reviewed, you were involved in one,  
3 39(i) investigation?

4           A. For one operator, yes, that's true.

5           Q. And since you've been the manager you've  
6 been involved in two others?

7           A. That's correct.

8           Q. Do you know how many 39(i) investigations  
9 the Agency's ever conducted?

10          A. No, I don't.

11          Q. Just run down the procedure that you at  
12 least follow with respect to 39(i). The application  
13 comes in, correct?

14          A. Yes.

15          Q. You're then automatically in the evaluation  
16 mode, correct?

17          A. When the review of the permit application  
18 starts, yes.

19 Q. Okay. And the evaluation under 39(i)  
20 consists of the information in your mind and review  
21 of the four corners of the application and comments  
22 from any outside sources?

23 A. Yes.

24 Q. Okay. If the procedure results in no

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1 information that would give rise to a 39(i)  
2 investigation, at that point that's the end of it,  
3 right?

4 A. Yes.

5 Q. If during the evaluation information comes  
6 to you from your own mind, from the four corners of  
7 the permit application or from any other source,  
8 that triggers an investigation, correct?

9 A. Yes.

10 Q. That would also trigger the obligation of  
11 the Agency to send out what's called a Wells letter,  
12 correct?

13 A. Only if we decide that the applicant is  
14 potentially subject to 39(i).

15 Q. Okay. So there could be an interim step.  
16 Even if information comes to your attention, you can  
17 make the decision not to consider that information

18 and therefore not conduct a 39(i) investigation,  
19 correct?

20 A. Well, we would have conducted a preliminary  
21 investigation, but then decided not to send out the  
22 Wells letter.

23 Q. Because you weren't going to consider the  
24 denial of the application pursuant to the

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1 information you investigated, correct?

2 A. Yes.

3 Q. And if you do -- if you do make the  
4 decision to go forward and consider the information  
5 in front of you pursuant to Section 39(i), then you  
6 have an obligation to send a Wells letter?

7 A. That's correct.

8 Q. Do you know what the Agency's obligations  
9 are with respect to the Wells Manufacturing case?

10 A. I don't know many of the specifics with  
11 regard to that case, but --

12 Q. Let me see if we can get at it a different  
13 way.

14 What do you think the purpose of the Wells  
15 letter is?

16 A. To give a person who we think may be

17 subject to 39(i) a chance to give us information to  
18 help us or to -- well, merely to give his side of  
19 the case.

20 Q. Okay. Is part of that -- is part of the  
21 reason why you send a Wells letter so that you would  
22 have enough information to fairly and equitably use  
23 your discretion?

24 A. Yes.

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1 Q. And is part of that procedure that you want  
2 to give the person a sufficient opportunity in terms  
3 of a reasonable period of time with which to present  
4 you with that information?

5 A. Yes.

6 Q. Were you aware that we received our Wells  
7 letter on -- through a fax by Mr. McDermott on the  
8 morning of April the 9th and that it was required to  
9 be filed by 5:00 p.m. that day?

10 A. I don't recall.

11 Q. Did you review my response to the Wells  
12 letter?

13 A. I believe so, but it's been a while.

14 Q. Okay. If, in fact, the Agency gave us less  
15 than eight hours to respond to this eight-year-old

16 criminal violation and the potential denial of our  
17 permit, do you think that was a fair, reasonable and  
18 equitable time period in which we were allowed to  
19 respond?

20 A. I don't know.

21 Q. That's for somebody else to decide, right?

22 A. I don't know that either.

23 Q. Do you know whether the Wells letter in  
24 this case regarding Section 39(i) was ever even

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1 actually received by my client?

2 A. I do not.

3 Q. Okay. Did you ever do anything to look to  
4 see whether there was a return receipt -- these  
5 things are sent out by registered mail, right?

6 A. Yes.

7 Q. Or certified mail with a return receipt,  
8 correct?

9 A. Yes.

10 Q. And that procedure is followed so that you  
11 can document when it goes out and when it's actually  
12 received by the addressee, correct?

13 A. I believe that's the case, yes.

14 Q. And it would be your procedure to take that

15 document, the return receipt from the post office,  
16 and put it in the permit file as proof of receipt,  
17 correct?

18 A. Yes. I think that's what our clerks do,  
19 yes.

20 Q. Okay. Did your clerks do that in this  
21 case?

22 A. I don't know.

23 Q. Did you check that?

24 A. At what point?

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1 Q. Any point.

2 A. I think during the deposition or after we  
3 did try to find the receipt.

4 Q. Okay. Did you ever find the receipt for  
5 the Wells letter that was addressed to my client,  
6 Robert Pruim?

7 A. I don't know.

8 Q. Did you ever find the receipt that was  
9 addressed to Mr. Helsten's client, the city of  
10 Morris?

11 A. I don't know.

12 Q. That wasn't originally included in the  
13 record, was it?

14 A. I don't know.

15 Q. Sir, as a good environmental professional,  
16 and believe me, I think you are, do you think it's  
17 -- do you think that -- do you think that you need  
18 to take the discretion that you have with respect to  
19 Section 39(i) seriously?

20 A. Yes, I do.

21 Q. And do you think that as a good  
22 environmental professional that you should -- you  
23 have the obligation to use that discretion fairly,  
24 wisely and equitably?

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1 A. Yes.

2 Q. Because we know that no matter what you  
3 find out under Section 39(i), you still have the  
4 discretion not to deny the permit, correct?

5 A. Yes.

6 Q. No matter what the felony conviction is, no  
7 matter how old or how recent, no matter how serious  
8 or how inconsequential, you still have that  
9 discretion, correct?

10 A. I believe that's correct, yes.

11 Q. Section 39(i) doesn't make any distinction  
12 between the types of sanitary landfill permits that



13 it applies to, does it?

14 A. No.

15 Q. It applies to any permit for either a  
16 sanitary landfill or a waste disposal facility  
17 regardless of the type, correct?

18 A. Well, I'm not sure. I haven't read it.  
19 There may be some special provisions with regard to  
20 management of hazardous waste.

21 Q. And there are and this isn't a trick. I  
22 would be happy to show it to you. When you're done  
23 taking a look at it, let me know.

24 (Brief pause.)

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1 BY THE WITNESS:

2 A. I'm done.

3 BY MR. LaROSE:

4 Q. Okay. With respect to the sanitary  
5 landfill or waste disposal permits it makes no  
6 distinction of any subcategories of those permits,  
7 correct?

8 A. Yes, that's correct.

9 Q. It would apply to a sig.mod to operate, it  
10 would apply to a regular sig.mod, it would apply to  
11 a supplemental permit, any type of permit, correct?

12 A. That's correct.

13 Q. In using your discretion in a fair and  
14 equitable manner, is it a fair statement that you  
15 would want to have as much information as you could  
16 in making your 39(i) either decision or  
17 recommendation?

18 A. As much pertinent information, yes.

19 Q. You never considered Section 745.141(b) in  
20 conducting your evaluation or investigation in this  
21 case, did you?

22 A. No.

23 Q. You don't know whether Joyce did either or  
24 anyone else at the Agency, correct?

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1 A. That's correct.

2 Q. You concurred with Joyce Munie's decision  
3 to deny the permit based on Section 39(i) in this  
4 case, correct?

5 A. Yes.

6 Q. Do you recall whether the age of the  
7 conviction was part -- played a part in your  
8 concurrence?

9 A. No, I don't recall.

10 Q. You weren't aware at the time that you

11 concurred with Ms. Munie's decision what Mr. Pruim  
12 -- what role Mr. Pruim played in the day-to-day  
13 operations of the landfill, did you?

14 A. No.

15 Q. And that wasn't important to you, was it?

16 A. No.

17 Q. You weren't aware whether Mr. Pruim was a  
18 certified operator of the landfill at the time that  
19 you concurred with her decision, were you?

20 A. No.

21 Q. And that wasn't important to you, was it?

22 A. No.

23 Q. You didn't know whether Mr. Pruim was the  
24 one who had submitted prior conduct certifications

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1 at the time that you concurred with Ms. Munie's  
2 decision, correct?

3 A. That's correct.

4 Q. And that didn't matter to you with respect  
5 to Section 39(i), did it?

6 A. No.

7 Q. You didn't even know whether Mr. Pruim  
8 actually worked at the facility on a daily basis,  
9 did you?

10 A. No.

11 Q. And that wasn't something that would have  
12 been important to you, was it?

13 A. No.

14 Q. You didn't know whether the conviction  
15 related in any way to the operation of CLC, Morris  
16 Community Landfill, correct?

17 A. Well, I think in one of the documents we  
18 had there was an indication that Mr. Pruim was  
19 involved with the Morris Community Landfill.

20 Q. That was the application that you had in  
21 front of you, he didn't hide that from you, did he?

22 A. No, not the application. In one of the  
23 documents concerning his felony.

24 Q. Yes or no, sir, whether the conviction

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1 related in any way to the operation of Morris  
2 Community Landfill, would that have been something  
3 that was important to you, yes or no?

4 A. Yes, it could have been.

5 Q. Okay. Do you remember giving your  
6 deposition in this case a couple weeks ago, Chris?

7 A. Yes, I do.

8 MR. LaROSE: Mr. Kim, page 41.

9 BY MR. LaROSE:

10 Q. At that time do you remember me asking you  
11 this question and you giving this answer?

12 Question: Okay. Whether the conviction  
13 related in any way to the operation of Community  
14 Landfill, would that have been something that was  
15 important to you? Answer: No.

16 Do you remember me asking you that  
17 question and you giving that answer?

18 A. No, I don't.

19 Q. Whether the conviction related in any way  
20 to waste disposal or environmental matters in  
21 Illinois would have been something that was  
22 important to you, correct?

23 A. Yes.

24 Q. At that time that you made the concurrence

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1 you didn't know whether any waste from the city of  
2 Chicago had been transported or disposed of at CLC,  
3 did you?

4 A. No, I didn't.

5 Q. Or whether any waste from XL Disposal had  
6 been deposited or transported to Morris Community  
7 Landfill?

8 A. No, I didn't.

9 Q. You received the totality of the  
10 information regarding your concurrence from reading  
11 the docket sheet and the complaint that are included  
12 in the record in this case, correct?

13 A. Yes.

14 Q. And at your deposition we reviewed the  
15 docket sheet and the complaint and you didn't see  
16 anything in there that related to waste disposal in  
17 Illinois, did you?

18 A. Not with regard to the complaint, no.

19 Q. Or the docket sheet?

20 A. I don't recall.

21 MR. LaROSE: Page 46, Mr. Kim, starting at line  
22 nine.

23

24 BY MR. LaROSE:

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1 Q. Mr. Liebman, at your deposition a couple  
2 weeks ago you were under oath, correct?

3 A. Yes.

4 Q. You were doing your best to tell the truth,  
5 correct?

6 A. Yes.

7 Q. And you're doing your best right now,  
8 correct?

9 A. Correct.

10 Q. Page 46, line nine, do you remember me  
11 asking you this question and you giving your answer?

12 Mr. Liebman, have you reviewed the docket  
13 sheet and the complaint to determine what  
14 information in there you believe led you to concur  
15 -- strike that -- you believe was germane to the  
16 issue of whether the conviction had anything to do  
17 with waste disposal in Illinois?

18 Answer: I didn't see anything in either  
19 document regarding waste disposal in Illinois.

20 Do you remember me giving you that  
21 question and you giving me that answer?

22 A. Yes.

23 Q. You did not consult any documents on this  
24 issue besides the complaint and the docket sheet nor

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1 did you speak with anyone about the issue, correct?

2 A. I don't recall.

3 Q. Sir, was there anything in the docket sheet  
4 to your recollection that related to waste  
5 management activities in Illinois, yes or no?

6 A. As I recall there were several.

7 Q. In the docket sheet? You have it in front  
8 of you. It's in the administrative record. I  
9 believe the docket sheet begins on page 18 and I  
10 believe the complaint begins on page 28.

11 A. Okay. I'm there.

12 Q. Does that refresh your recollection as to  
13 whether there's anything in the docket sheet that  
14 relates to waste management activities in Illinois?

15 A. Yes, it does.

16 Q. And there isn't in there?

17 A. Not in the docket sheet.

18 Q. Okay. Take a look at the complaint itself.

19 A. Okay.

20 Q. Was XL Disposal charged with anything that  
21 you know of?

22 A. Not that I know of.

23 Q. And as far as you know, Community Landfill  
24 Company wasn't charged with anything that you know

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1 of, correct?

2 A. Correct.

3 Q. Subparagraph -- take a look at page 29 of  
4 the record, please.



5 A. Okay.

6 Q. Subparagraph F as it appears on page 29 of  
7 the record does make a reference to Community  
8 Landfill Company, doesn't it?

9 A. Yes.

10 Q. Do you know why CLC or Community Landfill  
11 Company was even named in this complaint at all?

12 A. No.

13 Q. And as to the remainder of the entire  
14 complaint, Community Landfill Company isn't even  
15 mentioned, are they?

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

17 Q. And as far as you know, Community Landfill  
18 Company has never been adjudicated by any  
19 administrative body as guilty of any crime  
20 environmental or otherwise, correct?

21 A. I'm not sure.

22 MR. LaROSE: Mr. Kim, page 56, line 17.

23

24 BY MR. LaROSE:

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1 Q. Back to your deposition, Mr. Liebman.  
2 Do you remember me a couple weeks ago asking you  
3 this question and you giving this answer?

4                   As long as you're making that, as far as  
5 you know, there's never been adjudicated any --  
6 Community Landfill's never been adjudicated by any  
7 administrative body as guilty of any environmental  
8 crime, correct?

9                   Answer: Correct, but I've not done any  
10 investigation or research.

11                   Do you remember me giving you that  
12 question and you giving me that answer a couple  
13 weeks ago?

14                   A. Yes, I do.

15                   MR. KIM: And I'm just going to pose a minor  
16 objection, I think it says actually that's correct  
17 instead of correct.

18                   MR. LaROSE: Agreed. I'm sorry. We should  
19 have copies of this for you and I just didn't think  
20 of that.

21                   HEARING OFFICER HALLORAN: That's fine.  
22 Objection sustained. By all means, Mr. LaRose,  
23 don't get a copy now.

24                   MR. HELSTEN: Mr. Halloran, permission to

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1 approach the hearing officer. You may use my copy.

2                   MR. LaROSE: I don't know why I didn't think

3 about this yesterday. Sorry.

4 HEARING OFFICER HALLORAN: Thank you, sir.

5 BY MR. LaROSE:

6 Q. You took subparagraph F as appears on page  
7 29 into consideration in making your concurrence  
8 with Joyce's permit decision in this case, did you  
9 not?

10 A. I don't recall.

11 Q. Did you believe that subparagraph F as  
12 appears on page 29 of the record was information by  
13 which you concluded that the conviction was related  
14 to waste management activities in Illinois?

15 A. Yes.

16 Q. Do you know whether the information  
17 contained in subparagraph F of the complaint was  
18 part of the facts that my client pled guilty to in  
19 the written plea agreement?

20 A. No, I don't.

21 Q. Should that have been taken into  
22 consideration?

23 A. I don't know.

24 Q. Do the words waste management appear

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1 anywhere in the complaint or the docket sheet?

2           A. As I recall during the deposition I looked  
3 for that and could not find it.

4           Q. Do you think it would be a good idea for  
5 the LPC-PA1 form to include a box that asks the  
6 owner and operator if any officer had been convicted  
7 of a felony?

8           A. Perhaps.

9           Q. And if that box was on that form on each  
10 one of the permit applications that were signed by  
11 Mr. Pruim, if he was being honest he would have had  
12 to check it yes, correct?

13          A. Correct.

14          Q. Did you take into consideration that from  
15 1993, the date of the conviction, to 2001, that  
16 there were several applications submitted on --  
17 submitted to and ruled on by the Agency without  
18 conducting a 39(i) investigation of my client or its  
19 company?

20          A. I don't recall.

21          Q. Did you take into consideration whether or  
22 not any Agency personnel either from the field  
23 office, the permit section or legal knew about this  
24 conviction as early as 1995?



1 or the Board to decide?

2 A. Yes, I recall this question and my answer.

3 Q. That's what you said then and is that what  
4 you believe now?

5 A. Yes.

6 Q. Okay.

7 You were involved in the granting of a  
8 significant modification permit, a big LFM permit to  
9 this facility in August of 2000, correct?

10 A. Yes.

11 Q. You actually initialed the permits that  
12 were issued on August the 4th to Community Landfill,  
13 correct?

14 A. Yes.

15 Q. If the same information had been brought to  
16 your attention during that review process, you would  
17 have been able to find the exact same documents that  
18 you found in this case and presumably reached the  
19 same decision, correct?

20 A. Yes.

21 Q. Would you say that it's a fair statement  
22 that Community Landfill is more on the Illinois  
23 EPA's radar screens than other sites?

24 A. Depending on how you define radar screens,

1 I would say yes.

2 Q. Okay. At your deposition you defined it by  
3 telling me that if it's on my radar screen that  
4 means I wouldn't have forgotten it in less than a  
5 year?

6 A. That's correct.

7 Q. Okay. So when was the first time you heard  
8 about Community Landfill?

9 A. I don't recall.

10 Q. Several years ago?

11 A. Probably, yes.

12 Q. Okay. Under your definition of the term  
13 radar screen, from the first time that you were  
14 involved in any way with Morris Community Landfill  
15 hasn't been on your radar screen?

16 A. No.

17 Q. When was the first time that something came  
18 to your attention about Morris Community Landfill  
19 that would cause you not to forget about them in  
20 less than a year?

21 A. When I became Christine's manager she was I  
22 think already reviewing the permit application and  
23 I became aware how much work it was for her.

24 Q. Were you aware that Mr. Taylor was involved

1 in accepting the very same financial assurance  
2 documents that Mr. Harris said were unacceptable in  
3 May of 2001?

4 A. Yes.

5 Q. Okay. And Mr. Taylor was involved in the  
6 decision of reviewing those documents for the August  
7 permits that you signed off on, correct?

8 A. Yes.

9 Q. Did it bother you at all that one financial  
10 assurance expert from the Agency said one thing on  
11 the exact same bonds and the other one said another  
12 thing?

13 A. Yes.

14 Q. It did?

15 A. Yes.

16 Q. Did you believe that the difference in the  
17 opinions given to you by Mr. Taylor in August of  
18 2000 and Mr. Harris in May of 2001 could be  
19 reconciled on the basis of events that occurred  
20 between those two dates?

21 A. I would have guessed that.

22 Q. Did you believe that?

23 A. I don't recall.

24 Q. Do you know whether any events occurred



1 that would have in any way affected the issue of  
2 whether the Frontier bonds were acceptable or  
3 unacceptable between August 2000 and May 2001?

4 A. No.

5 Q. There was no conviction of the operator of  
6 this site as far as you know, correct?

7 A. Correct.

8 Q. The August sig.mod had the concept that  
9 they -- that Community Landfill was going to put a  
10 cap or a separation layer over some old waste in  
11 parcel A, put new waste over the separation layer  
12 with leachate control devices, cap the whole thing  
13 off and have within that scheme 1.4 million cubic  
14 yards of available waste disposal space within the  
15 boundaries of the facility, do you remember that?

16 A. Not really.

17 Q. Does that sound like something that's  
18 totally foreign to you?

19 A. No, not totally foreign, but I don't  
20 remember the specifics.

21 Q. Do you remember, in fact, though that the  
22 August sig.mods contemplated the continuing  
23 operation of the site and when I mean operation, I  
24 mean waste disposal?

1 A. Yes.

2 Q. Okay. Do you remember that the August  
3 sig.mods contemplated that the site would be  
4 continuing to operate at least for over a million  
5 cubic yards of available air space?

6 A. I don't really recall the square yardage,  
7 no -- or cubic yardage.

8 MR. LaROSE: At this point, Mr. Halloran, I  
9 would like to begin two offers of proof, one on the  
10 Gonzales matter and one on the June permitting  
11 matter. I'll start with Gonzales if that's okay  
12 with you.

13 HEARING OFFICER HALLORAN: Terrific.

14 BY MR. LaROSE:

15 Q. Mr. Liebman, I'm going to hand you what we  
16 previously marked as Exhibit 75. Mr. Liebman, these  
17 are excerpts from the Gonzales station -- Gonzales  
18 transfer station permit file, correct?

19 A. Yes.

20 Q. Do you remember at your deposition you were  
21 kind enough to pull the file for us and you and I  
22 went through it and pulled out things that you  
23 thought were pertinent to the 39(i) investigation in

24 that case?

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1 A. I remember getting the file and I remember  
2 going through the file with you standing over my  
3 shoulder, but I don't recall looking for things that  
4 were pertinent to 39(i).

5 Q. Come on, tell everybody, it was nice and  
6 friendly, wasn't it?

7 A. Yes.

8 Q. Okay. I was standing over your shoulder  
9 because we just had one copy, right?

10 A. Yeah. You asked my permission before you  
11 did it.

12 Q. Okay. Thank you.

13 The Wells letter in the Gonzales file is  
14 the second document in this case, correct, or in  
15 this exhibit, Exhibit 75?

16 A. Yes.

17 Q. Okay. And the Wells letter is dated  
18 December the 14th, 1999, correct?

19 A. Yes.

20 Q. Okay. In that case the information had  
21 come to the Agency's attention from the field  
22 operation section, correct?

23 A. Yes.

24 Q. And it had come to the Agency's attention

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1 back in February of 1999, correct?

2 A. Yes.

3 Q. The next document -- by the way, in  
4 Gonzales, we've got the return receipts right in the  
5 back of the Wells letter, correct?

6 A. Yes.

7 Q. The next document after that is the  
8 attorney's response to the Wells letter, correct?

9 A. Yes.

10 Q. Flip to the third page of the letter to  
11 Mr. Cima from Mr. Slobig. In the second full  
12 paragraph he says we requested in November 1999 an  
13 opportunity to see and respond to the matters raised  
14 in Ms. Munie's December 14th, 1999 letter?

15 MR. KIM: I'm sorry. Maybe I'm on the wrong  
16 page.

17 HEARING OFFICER HALLORAN: Page four.

18 MR. LaROSE: Is it the fourth page? Did I say  
19 the third page.

20 HEARING OFFICER HALLORAN: It's page four as  
21 paginated.

22 MR. LaROSE: It's the last page of the response  
23 to the Wells letter. Everybody with me?  
24 BY MR. LaROSE:

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1 Q. Okay. He says in the second full paragraph  
2 we requested in November 1999 an opportunity to see  
3 and respond to the matters raised in Ms. Munie's  
4 December 14th, 1999 letter. Does that indicate to  
5 you that he had this information -- that he knew you  
6 guys were considering this at least as early as  
7 November 1999?

8 A. Yes, that's the way I would read it.

9 Q. Did he get a draft Wells letter?

10 A. I don't know.

11 Q. Flip about five or six pages from the back  
12 of Exhibit 75, please. It's the draft Wells letter  
13 of November 4th, 1999. Do you find that?

14 A. I see a draft that indicates it was sent  
15 September 27th.

16 Q. No. It's -- I think it's --

17 A. I think I found it.

18 Q. It's the next document.

19 A. Okay. Yes.

20 Q. November 4th, 1999, it says up in the upper

21 right-hand corner draft Wells letter for Gonzales?

22 A. Yes.

23 Q. Do you know whether this draft was sent to

24 Mr. Gonzales or his representatives in November?

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1 A. I would assume that it was, but I don't  
2 know.

3 Q. Okay. Why didn't anybody send us a draft  
4 Wells letter in this case?

5 A. I don't know.

6 Q. Okay. Let's look at -- flip back to the  
7 front of the document and right after the permit  
8 there is a February 19th -- it's about in the middle  
9 of the document actually -- February 19th memo --  
10 1999 from Anna Van Orden to Joyce Munie.

11 A. Yes.

12 Q. Do you see that?

13 A. Yes.

14 Q. Is that the memo that initiated the 39(i)  
15 investigation in the Gonzales case?

16 A. I believe so, yes. She may have had some  
17 handwritten comments as well.

18 Q. Okay. Prior to this you think?

19 A. I don't know. I'm not sure that she did,

20 but she may have.

21 Q. Okay. So at the time -- and up in the  
22 right-hand corner CJL, that's your initials, right?

23 A. Yes.

24 Q. Did you write that on there?

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1 A. No.

2 Q. Do you know who did?

3 A. Probably our clerk, Tress Achas.

4 Q. Is this -- what is this -- what does the  
5 fact that your initials appear on the right-hand  
6 corner of this document signify, if you know?

7 A. It would indicate that this document should  
8 come to me.

9 Q. Okay. Do you remember seeing it?

10 A. Yes.

11 Q. Okay. Now, she reports to you that the  
12 operator of the site, Alfons C. Gonzales, is a  
13 disbarred attorney found guilty of extortion and tax  
14 evasion, correct?

15 A. Yes.

16 Q. She also indicates that Mr. Gonzales is  
17 involved in some hazardous waste investigation,  
18 correct?

19 A. Yes.

20 Q. And that his case has been referred to the  
21 Illinois Attorney General's Office, correct?

22 A. Yes.

23 Q. Then she talks about the owner of the  
24 property, Joe DiDilvestro and she talks about him

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1 being involved in silver shuffle investigations and  
2 criminal activities investigated by DCI, correct?

3 A. Yes.

4 Q. You ultimately concurred with the decision  
5 not to deny the permit in this case?

6 A. Yes.

7 Q. Flip back four or five pages there's a  
8 supplemental reviewer note dated December 30th, 1999  
9 that you authored. It's only about four or five  
10 pages beyond that Anna Van Orden memo.

11 A. Yes, I found it.

12 Q. Did you author that?

13 A. Yes.

14 Q. Okay. And as a result of your review of  
15 everything, you concurred that the permit should be  
16 granted?

17 A. That's correct, yes.



18 Q. Sir, when you send out Wells -- do you  
19 believe that you used your discretion in a fair and  
20 equitable manner in the Gonzales case?

21 A. Yes.

22 MR. LaROSE: That's the end of my offer of  
23 proof on Gonzales, Mr. Halloran. Before I go into  
24 the next offer of proof if I could have a couple

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1 interim questions that will just be regular on the  
2 record.

3 HEARING OFFICER HALLORAN: Okay. On your first  
4 offer of proof, I still stand on my ruling as  
5 yesterday, I find it irrelevant, but any way proceed  
6 Mr. LaRose. Thank you.

7 BY MR. LaROSE:

8 Q. Mr. Liebman, when you send out what you  
9 guys call Wells letters, do you tell the -- or do  
10 you write in there that it's a Wells letter?

11 A. No.

12 Q. Okay. Do you tell the folks in there that  
13 it's sent pursuant to the Agency's obligations under  
14 the Wells Manufacturing case?

15 A. I don't believe so. I'd have to check to  
16 make sure.

17 Q. Let's look at the one in this case.

18 A. Sure.

19 Q. I'm going to show you what's been  
20 previously marked as Group Exhibit 81. We're done  
21 with 75. You can put that aside. Group Exhibit 81  
22 is a supplement to the record because the  
23 quote/unquote Wells letter to us never originally  
24 got into the record. Let's see if we find it in

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1 here. It's a letter dated April 4th, 2001, and it  
2 appears down at the right-hand corner of these pages  
3 anyway there's some numbers and it appear at page  
4 number 0275, correct?

5 A. Yes, I'm there.

6 Q. Okay. This letter doesn't say anything  
7 about Wells?

8 A. No.

9 Q. Okay. It doesn't say anything about the  
10 Wells Manufacturing case, right?

11 A. No, you're right.

12 Q. It doesn't address in any way the Agency's  
13 obligations under the Wells Manufacturing case, does  
14 it?

15 A. No.

16 Q. Nor does it inform the recipients that they  
17 have any rights with respect to the Wells  
18 Manufacturing case, right?

19 A. I believe that's the case, yes.

20 Q. If you're issuing these things,  
21 specifically pursuant to the Wells Manufacturing  
22 case, why don't you tell folks that that's what  
23 you're doing?

24 A. I don't know.

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1 Q. That would be a good idea, don't you think?

2 A. Perhaps.

3 Q. Let's flip back to the record -- the record  
4 in this case to pages 15 and 16. That's my response  
5 to the so-called Wells letters in this case dated  
6 April the 9th, 2001. Did you read that document?

7 A. I don't recall.

8 Q. Okay. In the first paragraph towards the  
9 bottom I inform Ms. Roque, Ms. Munie's letters were  
10 received only this morning via fax by Mr. McDermott  
11 who were copied on the letters and the letters  
12 require a response prior to 5:00 p.m. today and then  
13 raise an objection to the unreasonable time frame in  
14 which to respond. When you concurred with the

15 decision, did you know that we were only given less  
16 than eight hours to respond to this eight-year-old  
17 felony conviction information?

18 A. I probably was aware, but I don't recall.

19 Q. Okay. Did you do anything with respect to  
20 analyzing my statement that we thought this was an  
21 unreasonable time frame in which to respond?

22 A. I'm not sure what you mean.

23 Q. Okay. Did you do anything with respect to  
24 statements in this letter claiming that we weren't

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1 given a fair or reasonable opportunity to respond to  
2 Joyce's letters?

3 A. I still don't quite understand what you're  
4 getting at.

5 Q. Okay. The letter says we thought you were  
6 giving us an unreasonable time, correct?

7 A. Yes.

8 Q. Okay. You don't remember whether you read  
9 the letter. My question to you is, did you do  
10 anything with respect to our statement that it was  
11 an unreasonable time?

12 A. No.

13 Q. Do you know whether anyone at the Agency

14 ever considered calling, writing, faxing or  
15 e-mailing us to tell us you're right, we didn't know  
16 you just got it today, you can have a little more  
17 time?

18 A. I don't know.

19 Q. You didn't do that?

20 A. No.

21 MR. LaROSE: Okay. I'm going to go now into  
22 the second offer of proof. Mr. Halloran, I'm going  
23 to show Mr. Liebman Exhibit No. 73.

24 BY MR. LaROSE:

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1 Q. Mr. Liebman, I'm handing you what we have  
2 previously marked as Exhibit No. 73. Sir, Exhibit  
3 73 is excerpts from the record of a permit log  
4 2001-051 regarding a permit that was issued by the  
5 Agency on June the 29th, 2001, are you familiar with  
6 that?

7 A. Not really.

8 Q. Okay. Do you want to see the permit  
9 itself, would that help you?

10 A. Well, it depends on what you're going to be  
11 asking me.

12 Q. Everything. No, I'm just kidding. I'm

13 going to be asking you about the decision that was  
14 made in that case.

15 A. Okay.

16 Q. Would you like to see the permit?

17 A. That would help, yes. Just the permit  
18 letter.

19 Q. The permit itself?

20 A. Yes, the permit letter the Agency issued.

21 Q. Okay. Mr. Liebman, I'm going to hand you  
22 what's been previously marked as Exhibit 37.

23 Thirty-seven consists of the cover letter for the  
24 permit application, the LPC-PA1 and then the permit

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1 itself. Do you want to take a minute and take a  
2 look at that?

3 (Brief pause.)

4 BY MR. LaROSE:

5 Q. Are you ready, Mr. Liebman?

6 A. Yes.

7 Q. Okay. Exhibit 37 contains the permit that  
8 was issued to my client on June 29th, 2001, correct?

9 A. Yes.

10 Q. And we flip to the last page of that, your  
11 initials appear below Joyce Munie's signature,

12 correct?

13 A. Yes.

14 Q. And like the permit at issue in this case,  
15 this would merely be a modification of the August  
16 2000 permit, correct?

17 A. I'm not sure what your question was.

18 Q. Okay. The permit at issue in this case was  
19 the --

20 MR. KIM: When you say this case, can you  
21 specify --

22 BY MR. LaROSE:

23 Q. I'm sorry. I mean in docket No. 0438,  
24 which is the case that we're here talking about, the

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1 May 11th, 2001 denial.

2 A. Okay.

3 Q. The permit that was requested in this case  
4 would just have been a modification of the LFM  
5 permits that were issued in August of 2000, right?

6 A. Yes.

7 Q. Just like the permit in Group 37 was,  
8 correct?

9 A. Well, no. Both of these two permits --  
10 permit applications were proposing modifications to

11 the original LFM, but they were --

12 Q. They were proposing different things?

13 A. Yes, significantly different.

14 Q. Okay. And let's talk about that for a  
15 second. The permit application in this case was  
16 proposing acceptance of the separation layer that  
17 was contemplated in the 2000 permit applications,  
18 correct?

19 A. Yes.

20 Q. And installation of leachate control  
21 devices with respect to that new area of the  
22 landfill, correct?

23 A. Yes.

24 Q. And to deposit waste into the new area of

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1 the landfill, correct?

2 A. Yes.

3 Q. And that's all done pursuant to an  
4 environmental scheme that was part of the 2000  
5 permits, correct?

6 A. Yes.

7 Q. And if done in accordance with that scheme,  
8 it would be waste disposal that was protective of  
9 the environment, correct?



10           A. To a degree acceptable under the  
11 regulations, yes.

12           Q. You weren't going to issue a permit for  
13 waste disposal that wasn't protective of the  
14 environment, were you?

15           A. We would not approve something that didn't  
16 meet the requirements of the regulations, no.

17           Q. Okay. And back to the question. When you  
18 approved the significant modification in August of  
19 2000, you approved a scheme for waste disposal that  
20 was protective of the environment in compliance with  
21 the regulations, right?

22           A. Yes.

23           Q. Okay. This permit, permit No. 37, was to  
24 operate and for the acceptance and approval of the

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1 installation and operation of gas monitoring wells,  
2 correct -- gas monitoring probes?

3           A. That's correct, yes.

4           Q. Okay. But it also included all of the  
5 exact same information that was in both -- that was  
6 in both the August 2000 permit, right?

7           A. Are you referring to the special conditions  
8 in the --

9 Q. No. I'm referring to the whole thing.

10 A. I don't follow your question, though.

11 Q. Okay. For example, look at all of the  
12 information on page two of exhibit -- of the permit  
13 that is part of Exhibit 37.

14 A. Okay.

15 Q. With the exception of the last paragraph on  
16 that page, doesn't all of that information appear in  
17 the August 2000 permit, every single word of it?

18 A. I would assume so, yes.

19 Q. And with the exception of -- look on page  
20 three -- with the exception of the information on  
21 page three down to Roman Numeral I construction,  
22 quality assurance, doesn't every single word of that  
23 permit all the way to the end appear in the August  
24 2000 permit?

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1 A. I don't think that's correct. Can you  
2 repeat your question.

3 Q. Yes, sir. With the exception of the  
4 information that starts at the top of page three of  
5 Exhibit 37 -- page three of the permit of Exhibit 37  
6 down to Roman Numeral I, construction, quality  
7 assurance, every word of this permit after that is

8 taken directly out of the August permit, is it not?

9 A. It's from the August permit, but I think  
10 there are some differences. For one thing, going  
11 back to the bottom of page two, I don't think that  
12 wording would have appeared in the original permit.

13 Q. I said that a minute ago.

14 A. I thought we were starting at the top of  
15 page three.

16 Q. No. On page two we said every single thing  
17 on page two except the last paragraph was right from  
18 the permit, right?

19 A. Okay.

20 Q. And with the exception of the information  
21 that starts at the bottom of page two and goes on to  
22 page three down to Roman Numeral I, everything else  
23 is word for word out of the August permit, correct?

24 A. Well, no. The table refers to a change to

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1 the special conditions.

2 Q. But that's part of what I'm saying isn't in  
3 the August.

4 A. Okay.

5 Q. Maybe we're not communicating here.

6 With the exception of the last paragraph

7 on page two and the information that starts from the  
8 top of page three down to Roman Numeral I, that's  
9 new, right, that stuff is new?

10 A. Right.

11 Q. Everything else is exactly the same as the  
12 August permit?

13 A. Except for condition Roman Numeral 9.1,  
14 it's different.

15 Q. Right, right, right.

16 A. It's different.

17 Q. The 9.1 changes because of the gas probes?

18 A. Right.

19 Q. With that exception, everything else is the  
20 same?

21 A. Yes.

22 Q. The same financial assurance was in place  
23 under this particular permit as was in place under  
24 the permit that was denied in this case, correct?

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1 A. As far as I know, yes.

2 MR. KIM: And when you say this, I know Mr.  
3 LaRose is pointing towards Exhibit 37, but that's  
4 not going to be clear.

5 MR. LaROSE: Right. Thank you.

6 MR. KIM: Maybe you could just reference the  
7 June permit and the August permit. I think the  
8 years are clear.

9 BY MR. LaROSE:

10 Q. Okay. The same financial assurance that  
11 was in place when you denied the May permit was also  
12 in place when you granted the June permit, correct?

13 A. As far as I know, yes.

14 Q. And that was the same financial assurance  
15 that was in place in August of 2000 when you granted  
16 that permit, correct?

17 A. As far as I know, yes.

18 Q. And as far as you know, Mr. Pruim, who we  
19 know was convicted of a felony in 1993 was the  
20 president of Morris Community Landfill and signed  
21 the LPC-PA1 forms for the August 2000 application  
22 for the May 11th denial and for the June 29th, 2001,  
23 permit that you granted, correct?

24 A. Yes.

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1 Q. Mr. Liebman, is what you're saying that  
2 Mr. Pruim in his status with his conviction is  
3 acceptable to spend his money to put things into the  
4 landfill that are protective of the environment, but

5 he's not acceptable to put more waste into the  
6 landfill, yes or no?

7 A. Basically, yes.

8 Q. And you justified the grant of the June  
9 permit versus the denial of the May permit on the  
10 financial assurance issue because in June we're not  
11 putting more waste into the landfill, yes or no?

12 A. Yes.

13 MR. LaROSE: That concludes the offer of proof  
14 on this issue and again, I would renew my request  
15 that that June 29th permit application and decision  
16 be considered. I think it is absolutely crucial  
17 that the Board in this case be allowed to consider  
18 the directly contradictory and in my mind totally  
19 irreconcilable permit decisions that were made in  
20 this case.

21 HEARING OFFICER HALLORAN: June 29th, that's  
22 the Exhibit 73?

23 MR. LaROSE: Yes, sir.

24 HEARING OFFICER HALLORAN: Mr. Kim?

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1 MR. KIM: Our objection is that the Board  
2 rules, the statute, the Act, and Board case law is  
3 very clear in stating that documents which postdate

4 the decision under appeal should not be considered  
5 by the Board when reviewing the decision under  
6 appeal since it places the Illinois EPA in a  
7 completely unfair position of being reviewed by the  
8 decision which at that point was never made. The  
9 Board rationale on this is clear. The Board case  
10 law on this is clear. There's no reason at all why  
11 this exception should be made.

12 MR. LaROSE: Only that the offer would relate  
13 to the admission of both 37, which would be the  
14 permit itself and 73, which would be the permit  
15 record and I don't know if this matters, I'm not --  
16 I think these document should come in, but I'm not  
17 so sure that it would matter to me if the documents  
18 came in as long as my questioning of these people as  
19 to their reasons for making the decision was allowed  
20 to come in, and I think the Board does make a  
21 distinction between documentary evidence being  
22 limited to the record and still the ability to cross  
23 examine and give testimony on the reasons. I think  
24 it's good cross-examination and good testimony that

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1 I can say how can you make this decision this day  
2 and that decision that day. While I would like both

3 the documents and the testimony to come in, I think  
4 at least the testimony should come in.

5 HEARING OFFICER HALLORAN: I'm going to renew  
6 my position from yesterday and I find both the  
7 testimony and the exhibits irrelevant. What  
8 happened in one permit decision is not relevant to  
9 the permit decision at hand and, however, I will  
10 take Exhibit No. 37 again and 73 along with the case  
11 to assist in the offer of proof.

12 MR. LaROSE: Thank you. That's all I have for  
13 Mr. Liebman.

14 HEARING OFFICER HALLORAN: Thank you,  
15 Mr. LaRose.

16 MR. LaROSE: Thank you.

17 HEARING OFFICER HALLORAN: Mr. Helsten?

18 MR. HELSTEN: Yes. Thank you, Mr. Hearing  
19 Officer.

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

21 by Mr. Helsten

22 Q. Mr. Liebman, I just have several questions  
23 for you. As I understand your answers to  
24 Mr. LaRose's questions, Mr. John Taylor was of one

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1 opinion as to whether the Frontier bonds complied



2 with Section 811.700 and Mr. Blake Harris was of a  
3 different opinion, correct?

4 A. Yes, I believe that's correct.

5 Q. Okay. Do you have an opinion as to who was  
6 correct, Mr. Harris in his reading of 811.700 or  
7 Mr. John Taylor in his reading?

8 A. Well, I don't think that -- as far as I  
9 know, they didn't have differing opinions at the  
10 same time or they didn't present the solid waste  
11 unit with differing opinions at the same time.

12 Q. When did Mr. Taylor present his opinion as  
13 to the applicability of the -- as to whether the  
14 Frontier bonds complied with 811.700?

15 A. Back when we issued the permit for the  
16 original sig.mod or the LFM.

17 Q. When was that?

18 A. I'm not sure.

19 Q. Approximately?

20 A. I think it was in 1999, but I'm not sure.  
21 It may have been in 2000. It was before the permit  
22 application for operating authorization to put new  
23 waste in.

24 Q. Okay. Do you recall why Mr. Taylor felt

1 that the Frontier bonds complied with 811.700?

2 A. No, I don't.

3 Q. Okay. Do you recall why Mr. Harris felt --  
4 well, first of all, when to the best of your  
5 recollection did Mr. Harris give his opinion or  
6 render his opinion or his view that the Frontier  
7 bonds did not comply with 811.700?

8 A. I don't really recall when.

9 Q. You don't recall when?

10 A. No. It was sometime and I don't think it  
11 was very much before we issued the denial of the  
12 permit application.

13 Q. Okay. Do you recall what his basis was?

14 A. No.

15 MR. HELSTEN: Okay. Thank you.

16 HEARING OFFICER HALLORAN: Thank you,  
17 Mr. Helsten. Let's go off the record for a second.

18 (Whereupon, a discussion  
19 was had off the record.)

20 HEARING OFFICER HALLORAN: We're back on the  
21 record. We decided by mutual agreement we're going  
22 to be back here shortly at 2:00 p.m. Thank you.

23 MR. LaROSE: Thank you.

24 (Whereupon, after a short

1 break was had, the  
2 following proceedings  
3 were held accordingly.)

4 HEARING OFFICER HALLORAN: All right. We're  
5 back on the record. It's approximately 1:55 and I  
6 appreciate everybody getting back here on time and  
7 perhaps five minutes earlier. I thank you. I  
8 notice there is a member -- appears to be a member  
9 of the public. Sir, are you a member of the public?

10 MR. PELKIE: I'm a member of the press.

11 HEARING OFFICER HALLORAN: Do you wish to give  
12 any kind of testimony or --

13 MR. PELKIE: No.

14 THE REPORTER: Could you identify him, please?

15 HEARING OFFICER HALLORAN: Sir, would you  
16 identify yourself, please?

17 MR. PELKIE: Chuck Pelkie, a reporter with the  
18 Harold News, P-e-l-k-i-e.

19 HEARING OFFICER HALLORAN: Thank you, sir.  
20 With that said, I believe Mr. LaRose's sixth witness  
21 is still on the stand and I remind him that he's  
22 still under oath. Mr. LaRose, you may proceed.

23 MR. LaROSE: I think I was finished and Mr. Kim  
24 was going to start.

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

2                   by Mr. Kim

3           Q. Mr. Liebman, I'll probably lead you from  
4 one section of questioning to another so if you're  
5 not sure what I'm getting at, just let me know.

6                   You were asked some questions concerning  
7 the different modes that you go through when you  
8 review a permit application in conjunction with  
9 Section 39(i), do you recall those questions?

10           A. Yes.

11           Q. And can you again explain what happens?  
12 And I know you went through sort of almost like a  
13 flow chart of how things go and but without  
14 restructuring all that, could you explain what steps  
15 you take if through either your information or  
16 through an outside source you have reason to believe  
17 that you need to conduct some sort of investigation  
18 pursuant to 39(i)? Can you explain again what steps  
19 you take and what documents you evaluate as part of  
20 that -- part of those steps?

21           A. Let me make sure I understand where you're  
22 at. It's after we've -- go ahead.

23           Q. You've got a permit application submitted  
24 to you, through the course of your evaluation of the

1 permit application I think you made a statement that  
2 might be some kind of -- well, then it may turn out  
3 that either based upon your own personal knowledge  
4 or some source either within the Agency or outside  
5 of the Agency, some additional information might be  
6 brought to your attention what -- at that point,  
7 what steps do you take?

8 A. Well, someone in the permit section would  
9 make contact with our division of legal counsel and  
10 ask them for any adjudicated violations against the  
11 applicant or felony convictions.

12 Q. Okay. And when you've gathered in all the  
13 information that comes from your investigation, what  
14 do you do with that information?

15 A. Make a decision as to whether or not we  
16 should send out the Wells letter.

17 Q. Okay. Let me fastforward I guess. So  
18 let's say the Wells letter has been sent out and you  
19 received a response to the Wells letter and you  
20 might also have received information from an outside  
21 source or from within the Agency, what happens from  
22 that point to the date that the decision -- that the  
23 permit is either issued or denied?

24 A. A determination is made as to whether we

1 should deny the permit application based on 39(i).

2 Q. Okay. And based on what information is  
3 that determination made?

4 A. Based on the information that was revealed  
5 through the investigation.

6 Q. Okay. Does that -- what about the permit  
7 application itself, is that considered as well?

8 A. Yes.

9 Q. Okay. You also testified to whether or not  
10 information from an outside contact would cause you  
11 to look into additional information and I believe  
12 one of your answers to a question of whether or not  
13 outside contact would cause you to look into other  
14 information was perhaps. What did you mean when you  
15 said perhaps?

16 A. Well, I think there could be instances  
17 where we for some reason didn't think it merited  
18 further investigation.

19 Q. Okay. You also testified that pursuant to  
20 Section 39(i), the Illinois EPA had no procedures or  
21 regulations beyond what's found within the Act  
22 itself, do you recall that line of questioning?

23 A. Yes.

24 Q. Do you know why there are no rules or no

1 procedures in place that further spell out what  
2 should be done with Section 39(i)?

3 A. No, not really.

4 Q. You testified during your direct  
5 examination that it might be -- I think your words  
6 were it could be important as to whether or not the  
7 conviction of Mr. Pruim related to the operation of  
8 Community Landfill, do you recall that line of  
9 questioning?

10 A. Yes.

11 Q. What did you mean when you said it could be  
12 important?

13 A. I think that would be the type of thing we  
14 would take into consideration when the decision was  
15 made as to whether or not to deny the permit  
16 application based on 39(i).

17 Q. And you were also asked some questions I  
18 believe concerning information found within the  
19 administrative record on page 29 and specifically as  
20 to paragraph F on that page, do you see that  
21 paragraph?

22 A. Yes.

23 Q. What type of facility is XL Disposal?

24 A. I believe it's a waste transfer station.

1 Q. And where is that facility located?

2 MR. LaROSE: Objection to the form of the  
3 question, today, then. Foundation.

4 MR. KIM: I don't believe the facility has  
5 moved. I'm just asking him.

6 MR. LaROSE: There is no such facility any  
7 more, sir.

8 MR. KIM: Let me rephrase.

9 BY MR. KIM:

10 Q. Are you aware of a facility that was at one  
11 point called XL Disposal?

12 A. Yes.

13 Q. And during the time that you were aware of  
14 that facility existing, where was it located?

15 A. I believe it was somewhere in the Chicago  
16 area, but I don't know the address.

17 MR. KIM: I have nothing further.

18 HEARING OFFICER HALLORAN: Thank you, Mr. Kim.  
19 Mr. LaRose?

20 MR. LaROSE: Nothing further.

21 HEARING OFFICER HALLORAN: Mr. Helsten?

22 MR. HELSTEN: Nothing further.

23 HEARING OFFICER HALLORAN: Mr. Liebman, you can



24 step down. Thank you very much.

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1 MR. LaROSE: Thank you, Mr. Liebman.

2 HEARING OFFICER HALLORAN: Step over, I guess.

3 THE WITNESS: Okay.

4 HEARING OFFICER HALLORAN: That pretty much  
5 concludes -- the prior six witnesses were adverse  
6 and Mr. LaRose, you were going to call your seventh  
7 witness.

8 MR. LaROSE: I think so. Let me get him.

9 HEARING OFFICER HALLORAN: Okay. Off the  
10 record.

11 (Whereupon, a discussion  
12 was had off the record.)

13 HEARING OFFICER HALLORAN: We are back on the  
14 record. Mr. LaRose?

15 MR. LaROSE: Our next witness would be John P.  
16 Taylor, please.

17 HEARING OFFICER HALLORAN: Thank you.  
18 Mr. Taylor, would you please raise your right hand  
19 and the court reporter will swear you in?

20 (Witness sworn.)

21

22

23

24

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1 WHEREUPON:

2 J O H N T A Y L O R,

3 called as a witness herein, having been first duly  
4 sworn, deposeth and saith as follows:

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

6 by Mr. LaRose

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

9 A. John Taylor.

10 Q. Mr. Taylor, I'm going to hand you what's  
11 been previously marked as Exhibit No. 3, which is a  
12 copy of your resume or curriculum vitae or whatever  
13 we're calling it these days.

14 Could you describe briefly for  
15 Mr. Halloran and for the Board's edification your  
16 educational background, please?

17 A. Yes. I have a bachelor's degree in  
18 economics from the University of Illinois,  
19 Springfield and a master's in business  
20 administration from Washington University, St.  
21 Louis, School of Business and a law degree from St.

22 Louis University, School of Law.

23 Q. Okay. And what's your present occupation,  
24 sir?

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1 A. I'm an attorney in private practice in  
2 Springfield, Illinois.

3 Q. How long have you been doing that?

4 A. Exclusively since last February, but before  
5 that since the summer of 1999.

6 Q. Okay. And before -- from the summer of '99  
7 until last February it was more sporadic?

8 A. Yes, I did it part-time.

9 Q. And the other -- what did you do for a job  
10 the rest of your time during that period?

11 A. I worked for the Illinois Environmental  
12 Protection Agency.

13 Q. So when you started being a lawyer  
14 part-time you were still a part-time contract person  
15 with the EPA?

16 A. No. I worked full-time for the  
17 Environmental Protection Agency.

18 Q. Okay. Let's describe for Mr. Halloran and  
19 the Board briefly your employment history with the  
20 Illinois Environmental Protection Agency.

21           A.  Okay.  From 1975 until 1980 I was a field  
22 inspector for the Bureau of Land and then from --

23           Q.  What division did you work at?

24           A.  Bureau of Land, then it was called the

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1   division of land pollution control, but it's  
2   effectively what is now the Bureau of Land.

3           Q.  And what region?

4           A.  Central region -- at the time it was about  
5   the central third of Illinois.

6           Q.  And that was headquartered out of  
7   Springfield?

8           A.  Yes, it was.

9           Q.  And in that job you had duties and  
10 responsibilities of a field inspector?

11          A.  Yes, exactly.

12          Q.  Were you an environmental protection  
13 specialist at that point?

14          A.  Yes.  For part of my employment during that  
15 time I was.  I started at some other title, became  
16 an environmental protection specialist for most of  
17 the time between 1975 and 1980.

18          Q.  Okay.  What did you do after 1980 with the  
19 IEPA?

20           A. I returned to the Illinois EPA in January  
21 of 1990 again as an environmental protection  
22 specialist and was in that general classification  
23 until I left last -- at the end of last February.

24           Q. Okay. What did you -- from 1990 until last

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1 February, what were your job duties and  
2 responsibilities?

3           A. Primarily throughout that 11 years I was a  
4 financial assurance analyst for the Bureau of Land  
5 with a brief period in 1999 where I was performing  
6 other duties.

7           Q. Okay. What does a financial assurance  
8 analyst do?

9           A. There's not a specific title as such, but  
10 basically what we did was review financial assurance  
11 documents and related submissions, monitored  
12 financial assurance requirements for various hazard  
13 and solid waste disposal facilities, tire disposal  
14 facilities, underground injection wells and like  
15 that.

16           Q. When you say you reviewed financial  
17 assurance documents, would that be in relation to  
18 permits or enforcement or a combination?

19           A. Probably all of those and any other reason  
20 why we might have some financial documents that need  
21 some form of analysis or review.

22           Q. And when you review, in your experience,  
23 the ten or 11 years -- nine or ten years I should  
24 say that you did it, when you review financial

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1 assurance documents, what are you trying to  
2 accomplish?

3           A. In effect, we're trying to attempt to  
4 ascertain whether or not the document that was  
5 tendered met certain of the Agency requirements as  
6 to form, type, what it guaranteed, how much it  
7 guaranteed, for how long and whether or not it  
8 comported with some specific set of rules.

9           Q. How many financial assurance documents  
10 would you say that you reviewed in the nine years  
11 that you worked for the Agency in this capacity?

12           A. It would be difficult. It would be several  
13 thousand I would assume if not more.

14           Q. With respect to permit related financial  
15 assurance review, could you guesstimate for the  
16 Board how many of those that you performed in your  
17 capacity as a financial assurance analyst at the

18 IEPA?

19 A. Thousands, I suppose.

20 Q. Okay. Have you ever been presented by the  
21 IEPA as an expert witness in any cases?

22 A. Yes.

23 Q. Okay. In what capacity?

24 A. Generally with regard to financial assurance

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1 matters and related fields.

2 Q. In what type of cases?

3 A. I believe they were virtually all  
4 enforcement cases, although there may have been one  
5 or two permit appeals.

6 Q. Okay. So if there was an enforcement case  
7 you have -- or in an enforcement case you have been  
8 called by the Agency as an expert to render an  
9 opinion as to whether financial assurance documents  
10 comply with the applicable provisions of the Act and  
11 the regulations, is that a fair statement?

12 MR. KIM: I'm going to object. I have no  
13 problem establishing some of his basic education and  
14 background. These are leading questions. I think  
15 we're getting more to substance now. That's a  
16 leading question.

17 HEARING OFFICER HALLORAN: He may answer if  
18 he's able.

19 BY MR. LaROSE:

20 Q. Sir?

21 A. Could you repeat the question?

22 Q. Sure.

23 When you were an expert witness, what was  
24 it that you were being asked to give an opinion on?

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1 A. Whether or not some subject facility,  
2 usually a defendant in an enforcement action,  
3 whether or not they have provided financial  
4 assurance, cost savings, penalty-related things,  
5 interpretations of the rules and regulations and how  
6 they would have -- be -- how they would relate to  
7 the defendant in a particular enforcement case.

8 Q. Okay. It says here testified -- on page  
9 one of Exhibit 3 -- testified as an expert witness  
10 and provided technical assistance and regulatory  
11 interpretations to agencies of other states and the  
12 federal government. Let's focus on that for a  
13 minute, giving regulatory interpretations through  
14 agencies of other states and the federal government.  
15 What experience do you have in that regard?



16           A. In the years that I worked for the  
17 Environmental Protection Agency I spent time with  
18 counterparts in Indiana, Kentucky, Kansas, to name a  
19 few, talking about how we interpreted some of the  
20 federal pass-through regulations, what we did about  
21 -- they would ask questions about if we had an  
22 opinion of their program or what they were trying to  
23 do and if we had similar experiences and troubles  
24 and that sort of thing.

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1           Q. And that's other states. What about the  
2 federal government, what did you do in that regard?

3           A. I spent some amount of time working with  
4 the USEPA representatives years ago when they were  
5 formerly -- some of their additional financial  
6 assurance requirements asking us what our experience  
7 had been. We had solid waste financial assurance  
8 rules many years before they did, but ours were  
9 sort of a pass-through of their old -- their  
10 hazardous waste rules, provided some help in that  
11 regard.

12          Q. Did you also provide any regulatory --  
13 strike that.

14                   Were you involved in any regulatory

15 proceedings in this state, any other or with respect  
16 to the federal government?

17 A. Yes. We commented on a number of federal  
18 proposals, basically provided comments and input  
19 into the Board's rulemaking procedures and I think  
20 it was R 93-10, which included financial assurance  
21 requirements under subpart 811. I believe used tire  
22 site financial assurance, compost financial  
23 assurance regulations and so on. I was active and  
24 provided comments and language for a number of those

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1 things.

2 Q. Okay. Do you know Blake Harris?

3 A. Yes.

4 Q. How do you know him?

5 A. Blake Harris was a fellow employee at the  
6 EPA.

7 Q. What interaction did you have with  
8 Mr. Harris, if any, with respect to your financial  
9 assurance duties?

10 A. From 1999 on, we were both working as  
11 financial assurance analysts. I provided some  
12 training for Mr. Harris I believe in 1999.

13 Q. Okay. You were involved, were you not,

14 sir, with financial assurance compliance issues  
15 regarding Community Landfill for many years?

16 A. Yes.

17 Q. Okay. I'm going to turn the clock back to  
18 1993. Do you remember being involved in a meeting  
19 regarding financial assurance compliance in 1993?

20 A. Yes, I do.

21 MR. LaROSE: Okay. Before I forget,  
22 Mr. Halloran, I would move the admission of Exhibit  
23 No. 3, which is Mr. Taylor's CV.

24 HEARING OFFICER HALLORAN: Any objection,

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1 Mr. Kim?

2 MR. KIM: No objection.

3 HEARING OFFICER HALLORAN: Exhibit No. 3 is  
4 admitted.

5 MR. LaROSE:

6 Q. Where was the meeting, sir?

7 A. I was at the Illinois Environmental  
8 Protection Agency's field office in Maywood,  
9 Illinois, a Chicago suburb.

10 Q. When was the meeting?

11 A. September 29th, 1993.

12 Q. How do you remember that?

13           A. I remember the meeting. I looked through  
14 my old calendar inserts and after some time found  
15 the entry for that meeting.

16           Q. Okay. Who was at the meeting as best as  
17 you can recall?

18           A. I recall in the meeting itself I believe  
19 Bob Pruim, Mayor Feeney from Morris, I believe it  
20 was an engineer, I don't remember who else was there  
21 from Community Landfill, Cliff Gould, Warren Weritz  
22 and myself.

23           Q. From the IEPA?

24           A. There were three of us from the IEPA.

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1           Q. Okay. Did you either at or prior -- strike  
2 that.

3                   Did you either at or after that meeting  
4 have any discussions with Mr. Weritz about  
5 Mr. Pruim?

6           A. Yes, I did.

7           Q. And what did you discuss with Mr. Weritz  
8 about Mr. Pruim in September of 1993?

9           A. The thing that stands out and the reason I  
10 remember this is we were aware that Mr. Pruim had in  
11 some way been indicted or convicted of a -- what we

12 thought or had heard was paying monies to a Chicago  
13 alderman or something and kind of a running joke I  
14 suppose you could say up there was is that he  
15 obviously was set up because -- it's a cynical thing  
16 to say, but that's pretty much what everybody does.

17 Q. Did you have a specific conversation with  
18 Mr. Weritz about it at that meeting or after the  
19 meeting?

20 A. It wasn't during the meeting in front of  
21 the people from Community Landfill. It was, I  
22 believe, directly before or after the meeting.

23 Q. Okay. Did you know what Mr. Weritz' role  
24 with respect to Community Landfill was at that time?

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1 A. Yes. I'm fairly certain he was the site  
2 inspector.

3 Q. Okay. Was Mr. Gould present during the  
4 conversations about the criminal information about  
5 Mr. Pruim?

6 A. I don't recall that he was. I'm not sure.

7 Q. When you returned to Springfield from that  
8 meeting, do you remember having any further  
9 discussions with anybody from the IEPA with respect  
10 to that conversation or the concept of the criminal

11 activity?

12 A. I'm sure that I told everybody that I had  
13 any contact within the Bureau of Land about it,  
14 specifically in the permit section.

15 Q. Who did you talk to that you can recall in  
16 the permit section?

17 A. I believe I discussed it with Sally  
18 Springer, who was a permit writer at the time. It  
19 was directly connected to Community Landfill. I  
20 believe she was a permit reviewer then.

21 Q. Can you remember anyone else specifically  
22 other than Warren Weritz and Sally Springer that you  
23 talked to about it?

24 A. Not specifically. I would suggest I

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1 probably told most everybody I knew, but I don't  
2 recall any specific conversations.

3 Q. Okay. As a result of you hearing this  
4 information, did you formulate an impression of how  
5 widespread the information was at the Agency?

6 A. Yes.

7 Q. And what was that impression?

8 A. It was my impression that everybody in the  
9 Bureau of Land, in the headquarters office that had

10 anything to do with solid waste landfill sites, knew  
11 about it. It was basically common knowledge.

12 Q. Okay. You were involved with more recent  
13 financial assurance compliance issues with CLC as  
14 well, correct?

15 A. Yes.

16 Q. There was a time period in the mid '90s  
17 where you had determined that they were out of  
18 compliance?

19 MR. KIM: Objection, leading question.

20 MR. LaROSE: I'm just trying to get him to the  
21 point, but I can ask him --

22 HEARING OFFICER HALLORAN: Thank you,

23 Mr. LaRose.

24

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1 BY MR. LaROSE:

2 Q. Do you remember that there was a period of  
3 time when you had determined they were out of  
4 compliance because --

5 MR. KIM: Objection, that's a leading question.  
6 It's asking for a yes or no conclusion.

7 HEARING OFFICER HALLORAN: Sustained.

8 BY MR. LaROSE:

9 Q. What do you know about the noncompliance  
10 issues of Community Landfill?

11 A. Community Landfill, as I recall, was in  
12 violation of financial assurance requirements in the  
13 mid 1990s.

14 Q. Okay. Did they come into compliance?

15 A. Yes, they did.

16 Q. I'm going to hand you what's been  
17 previously marked as Exhibit 70 and ask you to take  
18 a look at that, please. This exhibit has already  
19 been admitted into evidence.

20 Mr. Taylor, have you seen any of the  
21 documents that comprise Exhibit 70 before?

22 A. Yes, I have.

23 Q. Okay. The second page of that is a letter  
24 from Mr. Pruim, the president of Community Landfill

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1 Company, to you dated June 19th, 1996, correct?

2 A. Yes.

3 Q. Okay. Do you recall receiving that letter?

4 A. Not specifically, but I'm sure I did.

5 Q. Okay. Have you seen the performance bond  
6 that appears in the three pages after that letter?

7 A. Yes, I have.



8 Q. Did you make any determination as to  
9 whether that bond complied with the regulations or  
10 not?

11 A. Yes.

12 Q. As a result of your review of that bond,  
13 did you -- what, if anything, did you do with  
14 respect to the release of a financial assurance  
15 trust fund that was posted for Community Landfill?

16 A. I recall that Community Landfill had a  
17 trust fund in some amount and that they submitted  
18 this bond and also asked for a release of the monies  
19 that were in the trust fund, which we subsequently  
20 did send some form of written communication to the  
21 trustee authorizing the release.

22 Q. Was the release of the fund in any way  
23 related to their submission of this particular bond?

24 A. Yes. Prior to release of one form of

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1 financial assurance an operator such as Community  
2 Landfill Company would have to provide an acceptable  
3 alternative form or alternate form.

4 Q. I'm going to hand you what's been  
5 previously marked and I think admitted as Exhibits  
6 15, 16 and 17 and ask you to take a look at those,

7 please. Let's start with Exhibit 17, sir. Do you  
8 know what that is?

9 A. Yes. This was -- it's described as  
10 continuation certificate. It's an amendment to an  
11 existing bond, the bond that you previously asked me  
12 about.

13 Q. That would be Exhibit 70?

14 A. I believe so, yes. It's part of Exhibit  
15 70, yes.

16 Q. Okay. And did you review this particular  
17 bond in the summer of 2000 to determine whether it  
18 complied with the regulations?

19 A. Yes, I did.

20 Q. Okay. Look at No. 16, please. Do you know  
21 what that is?

22 A. Yes sir.

23 Q. Okay. Did you review -- strike that.

24 What is that?

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1 A. It's a bond that was tendered to the  
2 Illinois EPA by Community Landfill Company and the  
3 city of Morris providing financial assurance for the  
4 subject site.

5 Q. Okay. Did you review that bond in the

6 summer of 2000 to determine whether it complied with  
7 the Act and the regulations?

8 A. Yes, I did.

9 Q. And finally Exhibit 15, please. Do you  
10 know what that is?

11 A. Yes. It's also a bond tendered by  
12 Community Landfill Corporation for -- as financial  
13 assurance for the subject site.

14 Q. Did you review that document to determine  
15 whether it complied with the Act or the regulations  
16 regarding financial assurance in the summer of 2000?

17 A. Yes, I did.

18 Q. These documents were submitted to you by  
19 me, correct?

20 A. Yes.

21 Q. Okay. And you and I and Mr. Kim had a  
22 series of correspondences with respect to these,  
23 correct?

24 A. Yes.

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1 MR. LaROSE: Mr. Halloran, I'm going to hand  
2 the witness what's been previously marked as  
3 Exhibits 64, 65, and 66 and I'm going to give you a  
4 copy in a second.

5 HEARING OFFICER HALLORAN: Thank you, sir.

6 MR. LaROSE: You're welcome.

7 BY MR. LaROSE:

8 Q. Have you ever seen these documents before,  
9 Mr. Taylor?

10 A. Yes, I have.

11 Q. Okay. Let's start with 64. That appears  
12 to be my letter dated July 5th, 2000, addressed to  
13 you, correct?

14 A. Yes, it is.

15 Q. Do you remember receiving that?

16 A. Yes, I remember that I received it. I  
17 don't remember exactly when.

18 Q. During this period of time around July the  
19 5th, 2000, what, if any, procedures were you and I  
20 going through with respect to financial assurance  
21 for this particular facility?

22 A. The owner/operator of the facility had  
23 applied for a permit that required additional  
24 financial assurance from the owner and operator and

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1 they had -- the operators had purchased some bonds  
2 and upgraded a third bond and at that point as I  
3 recall you were sending me copies of the bonds that

4 Community Landfill Corporation had purchased asking  
5 for our approval prior to issuance of the permit.  
6 As I recall, the issuance of the permit basically  
7 was down to the final issue of adequate financial  
8 assurance and that you wanted assurances that these  
9 bonds would be acceptable prior to tendering them to  
10 the Agency and receiving the permit.

11 Q. So was it your understanding that that  
12 procedure was designed to accomplish that result?

13 A. Yes.

14 Q. Okay. Was Mr. Kim aware of this procedure,  
15 to your knowledge?

16 A. Yes.

17 Q. And involved in it to your knowledge?

18 A. Yes.

19 Q. Was there some concern on my part, if you  
20 know, as to whether I should give the Agency --

21 MR. KIM: Objection, leading question.

22 HEARING OFFICER HALLORAN: Mr. LaRose?

23 MR. LaROSE: If I could finish it.

24 MR. KIM: Well, he's going to explain what his

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1 concern is and he's going to elicit a yes or no  
2 answer.

3 HEARING OFFICER HALLORAN: Let Mr. LaRose  
4 finish the question. Thank you.

5 BY MR. LaROSE:

6 Q. Were you aware whether or not I had any  
7 concerns about tendering the original bonds to the  
8 Agency?

9 A. Yes. As I recall, you stated some concerns  
10 along these lines.

11 Q. And what did I tell you in that regard?

12 A. That these bonds were very expensive, they  
13 obligated Community Landfill and the city of Morris  
14 to 17 million dollars in financial assurance for  
15 closure, postclosure of the facility and you were  
16 reluctant to tender these things to the Agency until  
17 such time as you were assured that you were going to  
18 receive a permit.

19 Q. Okay. And was Mr. Kim aware of that  
20 particular position?

21 A. I believe so, yes.

22 Q. What did you understand the procedure was  
23 going to be if and when I tendered the original  
24 bonds to the Agency?

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1 A. My understanding was it was going to be

2 something like a real estate closing where a  
3 representative of Community Landfill Company would  
4 meet with someone from our permit section and  
5 effectively trade documents.

6 Q. I give you the financial assurance --

7 MR. KIM: Objection, leading question.

8 HEARING OFFICER HALLORAN: Mr. LaRose, Mr. Kim  
9 had an objection.

10 MR. LaROSE: I understand he had an objection.  
11 I don't know how he could object until I finish my  
12 question.

13 HEARING OFFICER HALLORAN: Well, when he  
14 objects, just kind of stop and we'll see where we  
15 are.

16 MR. KIM: The objection is his statement began  
17 in the form of a narrative, I was going to give you  
18 and so forth and so on and that's when I began to  
19 object.

20 HEARING OFFICER HALLORAN: I agree.

21 Mr. LaRose, could you please rephrase?

22 BY MR. LaROSE:

23 Q. What happened next, sir?

24 A. I believe that the -- that must have taken

1 place because the Agency came into possession of the  
2 bonds and the permit was issued.

3 Q. Exhibit 64, was this a document that was  
4 issued, if you know, as part and parcel of that  
5 procedure?

6 A. Yes, I believe so. If I understand your  
7 question correctly yes, it was part of the  
8 negotiations and part of the procedure to gain  
9 Agency acceptance prior to tendering the bonds.

10 Q. Exhibit 65, take a look at that. That's my  
11 letter to Mr. Kim dated July 18th, 2000 carbon  
12 copied to you. Do you remember receiving a copy of  
13 that?

14 A. Yes, I remember that I did receive a copy.

15 Q. Do you remember whether that was part and  
16 parcel of the procedure that we had established for  
17 the exchange of these bonds for the permit?

18 A. Yes, it was.

19 Q. Exhibit 66, my letter dated July 24th, 2000  
20 to Mr. Kim?

21 A. Okay.

22 Q. You're copied on this as well?

23 A. Yes.

24 Q. And was it your understanding that this was



1 -- document was submitted as part and parcel of  
2 procedure that we established?

3 A. Yes, it was.

4 MR. LaROSE: Okay. I would move the admission  
5 of 64, 65 and 66.

6 HEARING OFFICER HALLORAN: Mr. Kim?

7 MR. KIM: I would object on the grounds of  
8 relevancy. I believe his testimony has already  
9 described how and to his knowledge at least how  
10 Morris Community Landfill came to submit the bonds  
11 in question. The documents that are incorporated  
12 here predate the submission of the application  
13 that's under review right now by the Board. They  
14 don't relate to the permit application in hand and  
15 I don't think they're relevant to these proceedings.

16 HEARING OFFICER HALLORAN: Mr. Taylor testified  
17 that, if my understanding is correct, that the  
18 Agency -- when he was an employee of the IEPA,  
19 relied on these documents in its procedure,  
20 negotiations for issuing the bond.

21 MR. KIM: And if he did, that would relate to  
22 the August 2000 permit not the May 2001 denial  
23 that's under appeal right now.

24 MR. LaROSE: Mr. Halloran, maybe I can short

1 circuit this. These documents are in the record in  
2 this case. They appear in the record on pages 215,  
3 219 and 20 and 223. Funny how they didn't consider  
4 them.

5 MR. KIM: And I would just note for the record  
6 that those documents are included as attachments to  
7 the permit application and were not included in the  
8 record as documents that the Agency relied on its  
9 own. We have no control over what documents are  
10 included in the permit application submitted by the  
11 permit applicant.

12 MR. LaROSE: Are they really saying they didn't  
13 consider the application in this case, Mr. Halloran?

14 MR. KIM: That was not statement that was made  
15 and if these documents are already in the  
16 administrative record, which has been admitted, then  
17 we would withdraw the objection on that basis alone.

18 HEARING OFFICER HALLORAN: So you have no  
19 objection for the admittance?

20 MR. KIM: That's correct.

21 HEARING OFFICER HALLORAN: Exhibits 64, 65 and  
22 66 are admitted.

23 BY MR. LaROSE:

24 Q. Mr. Taylor, did you come to the ultimate

1 conclusion that the --

2 MR. KIM: Objection, leading question. He can  
3 ask what his conclusion was, but he can't describe  
4 it.

5 HEARING OFFICER HALLORAN: Could you try and  
6 rephrase, Mr. LaRose?

7 MR. LaROSE: Yes. But I think this is a little  
8 ridiculous. I can at least ask him if he came to a  
9 conclusion about a subject matter.

10 MR. KIM: And he can do that, but he was about  
11 to give the conclusion he wanted -- there's a  
12 difference between -- he can't testify. He can't  
13 insert his own words and simply have the witness say  
14 yes or no.

15 HEARING OFFICER HALLORAN: I understand.  
16 Mr. LaRose, could you --

17 MR. LaROSE: I'm trying my best.

18 HEARING OFFICER HALLORAN: Thank you. I know  
19 you are.

20 BY MR. LaROSE:

21 Q. Did you form any opinions with respect to  
22 the acceptability of the three bonds that were  
23 tendered to you in the summer of 2000?

24 A. Yes, I did.

1 Q. And what conclusion did you reach, sir?

2 A. Ultimately reached the conclusion that they  
3 were acceptable to the Agency.

4 Q. Did you reach that conclusion -- strike  
5 that.

6 At the time that you reached that  
7 conclusion, what, if any, information did you have  
8 with respect to whether or not the Frontier  
9 Insurance Company had been removed from the 570  
10 surety list?

11 A. Sometime prior to making this decision, I  
12 was aware that Frontier Insurance Company had been  
13 delisted by the U.S. Department of Treasury as an  
14 acceptable surety.

15 Q. Did Mr. Kim know that?

16 A. Yes.

17 Q. Did Ms. Munie know that?

18 A. Yes.

19 Q. How was it, sir, that you could possibly  
20 have approved these bonds as meeting the regulations  
21 if they had been removed from the 570 surety list?

22 A. The surety -- Frontier surety obviously had  
23 been removed from the list by that time. There was  
24 some question and ambiguity about what applied --

1 whether or not they were supposed to have both an  
2 Illinois Department of Insurance license, which they  
3 did, or whether they were listed as an acceptable  
4 surety by the U.S. Treasury, which they were when  
5 the bonds were issued. So if you take the most  
6 stringent approach, they had to comply with both  
7 requirements. At the time the bonds were issued,  
8 they were an acceptable surety to the U.S. Treasury.

9 Q. Okay. Exhibit No. 17 is a Frontier  
10 Insurance Company bond for about a million four,  
11 correct?

12 A. Number 70?

13 Q. Seventeen?

14 A. Yes.

15 Q. And the underlying bond was issued when?

16 A. On June 14th, 1996.

17 Q. What, if any, information did you have in  
18 the summer of 2000 as to whether Frontier was on the  
19 570 surety list as of June 1996?

20 A. Frontier was on the approved list -- the  
21 570 list in the summer of 1996 when we accepted this  
22 bond initially.

23 Q. When did they -- when were they removed

24 from the 570 list?

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1 A. My understanding is they were removed June  
2 1st, 2000.

3 Q. Okay. Look at Exhibit 16, please.

4 A. Okay.

5 Q. That's the performance bond in the amount  
6 of approximately ten million dollars, correct?

7 A. Yes.

8 Q. And that's one of the ones that you  
9 reviewed in this case, correct?

10 A. Yes.

11 Q. What was the date of the underlying bond in  
12 that case?

13 A. May 31st, 2000.

14 Q. What, if any, information did you have in  
15 the summer of 2000 as to whether Frontier was on the  
16 570 list as of May 31st, 2000?

17 A. I recall that it was my opinion that --  
18 that was the last day Frontier was on the approved  
19 surety list, but there again, they were on the list  
20 May 31st.

21 Q. And Exhibit 15, sir.

22 A. Yes.

23 Q. That's a bond for \$5,177,000 approximately?

24 A. Yes.

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1 Q. And what was the date of the issuance of  
2 the underlying bond on Exhibit 15?

3 A. May 31st, 2000.

4 Q. Sir, are you aware of any laws, rules or  
5 regulations that would require or even allow the  
6 Agency to take any action if a company that issues  
7 financial assurance bonds is removed from the 570  
8 list?

9 A. I'm not aware of any such statute or  
10 regulation.

11 Q. You said a little bit earlier that there  
12 was some question or controversy or something as to  
13 whether both 570 listing and licensure by the  
14 Department of Insurance was required, right?

15 A. Yes.

16 Q. Let's back up for a second.

17 In the summer of 2000, what, if anything,  
18 did you do to verify whether or not Frontier  
19 Insurance was licensed by the Illinois Department of  
20 Insurance?

21 A. About this time -- I would have to look at

22 my calendar to determine exactly which day -- I  
23 contacted someone from the Illinois Department of  
24 Insurance to inquire about Frontier's license and

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1 their viability and basically to the extent possible  
2 get an opinion from the Illinois Department of  
3 Insurance, who was in the business of regulating  
4 insurance companies and I reached the appropriate  
5 reviewer or the person that followed Frontier  
6 Insurance and had a 20, 30-minute conversation with  
7 him about this issue.

8 Q. As a result of that conversation, what, if  
9 anything, did you learn about whether they were  
10 licensed by the Illinois Department of Insurance?

11 A. I recall at the time the person I talked  
12 to, Andrew Noyes is his name, N-o-y-e-s, told me  
13 that Frontier had an Illinois license, they were  
14 under no immediate danger of losing their Illinois  
15 license. The Illinois Department of Insurance had  
16 recently audited their financial statements and that  
17 sort of thing, whatever it is they do, and that they  
18 were satisfied with them, although they were  
19 obviously keeping an eye on them because there had  
20 been a change in their treasury 570 status and then



21 he further -- I believe from other sources I found  
22 out why -- or the underlying cause as I understand  
23 it as to why Frontier had been delisted and we  
24 discussed that also. And --

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1 MR. KIM: Objection, I think he's answered the  
2 question.

3 HEARING OFFICER HALLORAN: Sustained.

4 BY MR. LaROSE:

5 Q. Anything else you wanted to add, sir?

6 A. Yes. At the time, the Illinois Department  
7 of Insurance people felt that Frontier's bonding  
8 operations were viable and sound and well run, but  
9 the parent corporation had suffered some huge losses  
10 in other forms of insurance and lost a lot of their  
11 equity backing, that was the reason they had been  
12 delisted, although apparently from what I recall the  
13 bonding operations were still quite viable and, as I  
14 said, well run. That was their opinion.

15 Q. Was any of this information important to  
16 you in the conduct of your review of the bonds?

17 A. Yes. We had obviously a kind of an unusual  
18 situation here with a company that had just -- was  
19 coming off the treasury list and we were looking for

20 some assurance that the bonds were viable and  
21 acceptable and would be honored if necessary.

22 Q. As a result of your conversation with the  
23 Department of Insurance, did you get that level of  
24 assurance?

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1 A. Yes.

2 Q. Now, we talked briefly about the procedure  
3 that you and I and Mr. Kim followed regarding these  
4 bonds. What, if anything, was your understanding of  
5 what would occur if you didn't accept the bonds?

6 A. At this time, the Illinois Environmental  
7 Protection Agency had one bond in the amount of --  
8 just a little under 1.4 million dollars. If we  
9 didn't accept these bonds, the permit obviously  
10 would not issue and all the financial assurance we  
11 would have would be again from Frontier Insurance  
12 Company and would be something right at 1.4 million  
13 dollars. That's what would happen if we didn't  
14 accept the bonds.

15 Q. You wouldn't get the 17 million?

16 A. Yeah. We wouldn't get the 17 million worth  
17 of bonds or I suppose you could say the additional  
18 15-and-a-half million.

19 Q. Right. You and I specifically discussed  
20 that, correct?

21 MR. KIM: Objection, leading question.

22 BY MR. LaROSE:

23 Q. Sir, what did we discuss in that regard?

24 A. You made your -- you made your thoughts on

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1 the subject known to me that if we didn't accept  
2 these things, we would be stuck with 1.4 million --  
3 a one, 1.4 million dollar Frontier bond. If we  
4 accepted them, our position would be much better  
5 because we would then have 17 million dollars worth  
6 of Frontier bonds.

7 Q. Did Mr. Kim know that?

8 A. Yes.

9 Q. Did you have any other discussions about  
10 that particular issue with anybody in permits?

11 A. Yes.

12 Q. Who?

13 A. Joyce Munie.

14 Q. And what was the nature of your discussion  
15 in that regard with Joyce Munie?

16 A. Apparently, someone in the permit section,  
17 perhaps Joyce Munie, had more or less come to the

18 same conclusion you had that if we didn't accept  
19 these bonds we had a 1.4 million dollar Frontier  
20 bond and if we did accept them, we would have three  
21 bonds totaling 17 million by a third-party surety  
22 guaranteeing closure and postclosure care of this  
23 landfill.

24 Q. Did Ms. Munie give you any direction in

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1 that regard?

2 A. Yes. She wanted me to find a way to accept  
3 the bonds and put the operators on the hook for the  
4 17 million.

5 Q. Did she specifically tell you that?

6 A. Yes.

7 Q. Let's talk for a second about what you  
8 mentioned briefly, which was some question or  
9 controversy over whether both of these requirements  
10 were necessary under the regs, whether you needed  
11 both the 570 listing and the licensure by the  
12 Department of Insurance. What do you know about  
13 that?

14 A. The surety 570 listing requirement came  
15 from the USEPA rules as part of subtitle D. The  
16 Board added that late in the rulemaking, I think it

17 was in R 93-10 before -- after the Agency had  
18 tendered all our comments and things like that.  
19 They added the 570 requirement to the 811 rules,  
20 however, there would be a lot of sites closing for  
21 example under the 807 rules and they didn't extend  
22 the treasury 570 requirement to the 807 bonds and  
23 there was also some language in the Environmental  
24 Protection Act that talks -- that talks about the

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1 surety being licensed in one or more states, but not  
2 necessarily Illinois and so and on so forth, which  
3 leads to a lot of questions to what exactly the  
4 minimum standard is.

5 Q. Sir, would you flip to page 214 of the  
6 administrative record. It's in that book right  
7 under there. The pages are consecutively numbered  
8 down at the -- on the bottom on the right-hand side.

9 A. Yes.

10 Q. Okay. Is that your handwriting on that  
11 page?

12 A. Yes, it is.

13 Q. And what is that page?

14 A. It's some sort of a note that I wrote to  
15 the permit reviewer telling the permit reviewer that

16 the bonds were acceptable to the Agency. That  
17 speaks for itself.

18 Q. Okay. The bond numbers up on the  
19 right-hand side, do you know whether those  
20 correspond to the Exhibits 15, 16 and 17 that we  
21 looked at?

22 A. On the upper left-hand corner, I believe  
23 they do.

24 Q. Okay. And the dates that they were

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1 effective to May 31st of 2000, May 31st of 2000 and  
2 June 14th of 1996. Do those correspond to the  
3 issuance dates of those three bonds, Exhibits 15, 16  
4 and 17?

5 A. Yes, I believe so.

6 Q. And the expiration dates, do those  
7 correspond to those three, do you know?

8 A. As I recall, those were the amended  
9 expiration dates, yes.

10 Q. Okay. And the amounts correspond to the  
11 amounts of the bond?

12 A. Yes.

13 Q. Okay. As a result of -- we know that the  
14 permit was issued the next day. Do you know whether

15 this memorandum had anything to do with that?

16 A. It was my understanding, as I recall, that  
17 the only requirement that hadn't been met by the  
18 landfill operator at that time was the financial  
19 assurance requirement and this was what was required  
20 to issue the permit. All other requirements had  
21 been satisfied.

22 Q. Okay. Sir, you reviewed the decision that  
23 was made by the Agency in this particular case  
24 regarding the May 11th denial of the financial

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1 assurance, did you not?

2 A. Yes, I believe I read it.

3 Q. Okay. And the same financial assurance  
4 bonds that you approved in August, with the same  
5 dates, same amounts, were disapproved in May of this  
6 year, correct?

7 A. Yes, that's my understanding.

8 Q. Okay. Did you formulate an opinion as to  
9 whether the same bonds that you approved in August  
10 should have been approved by the Agency in May?

11 MR. KIM: Objection, this question by its  
12 nature calls for an answer that was not -- calls for  
13 information that would no have been prepared until

14 after May 11th, 2001. Furthermore, Mr. Taylor was  
15 not at that time an employee of the Illinois EPA and  
16 was not a part of the decision-making process that  
17 led to the May 11th, 2001, decision. Information  
18 could not have been generated until after the fact.  
19 He was not part of the review that led up to that --  
20 the permit log that was part of -- that led to the  
21 May 11th, 2001, decision, therefore, his testimony  
22 should be -- his testimony should not be allowed.  
23 It's not relevant. It postdates the decision and  
24 it's not germane to these proceedings.

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1 HEARING OFFICER HALLORAN: His testimony or his  
2 potential opinion?

3 MR. KIM: Well, any testimony that he might  
4 give as to what he formulated after May 11th, 2001.  
5 It's information that was not available to anybody  
6 up until that date.

7 MR. LaROSE: How could he have formulated it  
8 before then, sir? This is expert testimony that was  
9 specifically disclosed -- opinion testimony that  
10 specifically disclosed to Mr. Kim pursuant to  
11 Supreme Court Rule 214, pursuant to interrogatories  
12 he tendered to me and we hired this gentleman to



13 formulate an opinion whether the Agency's financial  
14 assurance decision was right or wrong. His opinion  
15 as an expert on the issue of financial assurance  
16 certainly would assist the Board in rendering their  
17 decision in this case. It is absolutely ludicrous  
18 for anyone to suggest that we can't present expert  
19 testimony because the testimony was developed after  
20 the decision that was made in this case when the  
21 very testimony itself is designed to test the  
22 decision that was made in this case.

23 HEARING OFFICER HALLORAN: Mr. Kim, anything  
24 further?

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1 MR. KIM: No. We stand on our objection.

2 HEARING OFFICER HALLORAN: Objection overruled.  
3 You may answer if you're able.

4 BY THE WITNESS.

5 A. Absent some change in the financial  
6 assurance that was tendered in the summer of 2000,  
7 I believe if it was good then, it's good now.

8 BY MR. LaROSE:

9 Q. And for the same reasons that you thought  
10 it was good in the summer of 2000, correct?

11 A. Yes.

12 Q. Okay. Sir, when we tendered these bonds in  
13 their final and original form to the Agency at the,  
14 as you termed it, closing, when we got the permit  
15 and they got the bonds, what, if any, information  
16 did you have at that time that we were incurring  
17 additional expenses or liability?

18 MR. KIM: Objection as to the relevance of his  
19 question. Whether or not they were incurring  
20 additional liability or expenses assuming that is  
21 part and parcel of submitting what would be required  
22 by permit regulations has nothing to do with whether  
23 or not the May 11th, 2001, permit was proper or not.  
24 I'm referring back to whether or not they were

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1 incurring expenses back in August apparently of  
2 2000. It's irrelevant.

3 HEARING OFFICER HALLORAN: Mr. LaRose, anything  
4 further?

5 MR. LaROSE: It does relate to one issue,  
6 Mr. Kim and Mr. Harris and Ms. Munie and everybody  
7 else has argued that they're right and Mr. Taylor is  
8 wrong, meaning he was wrong then and he's wrong now.  
9 Well, our argument is we relied on what he told us  
10 to our detriment and, therefore, the Agency should

11 be -- we think he's right, but if he is wrong, the  
12 Agency should be estopped or the Doctrine of Laches  
13 should prevent them from raising this argument and  
14 we need to show that as a result of the reliance on  
15 Mr. Taylor's opinion and acceptance of these bonds  
16 that we were subjected to substantial prejudice and  
17 the way to show that is the increased liability and  
18 obviously the increased premiums that we had to pay  
19 for the next five years on these bonds.

20 HEARING OFFICER HALLORAN: This question  
21 references the 2000 permit?

22 MR. KIM: Yes, sir.

23 HEARING OFFICER HALLORAN: I'm going to sustain  
24 Mr. Kim's objection.

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1 MR. LaROSE: For right now, I think that's all  
2 I have.

3 HEARING OFFICER HALLORAN: Okay. Thank you,  
4 Mr. LaRose. Mr. Helsten?

5 MR. HELSTEN: Thank you, Mr. Hearing Officer.  
6 Mr. Taylor, I just have several questions to clarify  
7 some of your testimony.

8 DIRECT EXAMINATION

9 by Mr. Helsten

10 Q. Would you please refer to page 214 again of  
11 the record in this matter?

12 A. Yes, sir.

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

14 A. Yes, sir.

15 Q. That lists the three bonds that were  
16 tendered in the summer of 2000, is that correct,  
17 that you and Mr. LaRose have been talking about?

18 A. Yes, sir.

19 Q. Okay. And was it your understanding that  
20 those three bonds were intended to secure  
21 performance of different closure, postclosure  
22 components for this facility?

23 A. No. I don't specifically recall that I  
24 knew anything about that.

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1 Q. Okay. Well, for example, did you know why  
2 there were three different bonds here?

3 A. I was told that obviously the original 1996  
4 bond was posted by Community Landfill Corporation -

5 MR. KIM: Objection, hearsay. I don't know who  
6 he's saying he was told by.

7 HEARING OFFICER HALLORAN: Sustained.

8 BY MR. HELSTEN:

9 Q. Were you told by someone in the Agency?

10 A. The June 1996 bond was tendered by  
11 Community Landfill Corporation. The 5.9 million  
12 dollar bond was tendered by Community Landfill  
13 Corporation and the ten million dollar bond was  
14 tendered by the city of Morris.

15 Q. Do you know what the ten million dollar  
16 bond was tendered for? What it was intended to  
17 secure performance of?

18 A. No, not exactly.

19 MR. HELSTEN: Okay. Nothing further.

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

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

23 by Mr. Kim

24 Q. Mr. Taylor, I'm going to bounce around from

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1 topic to topic so if it's not clear from one subject  
2 matter of the questioning to the next, just let me  
3 know and I'll try and clarify. I'm not going to ask  
4 you about everything that you testified to  
5 previously. I'm going to just move -- jumping over  
6 certain areas of questioning.

7 Mr. Taylor, it's true, isn't it, that the

8 Agency's review of the performance bonds that were  
9 submitted by Frontier Insurance that led up to the  
10 denial in May 11, 2001, would have been based  
11 exclusively on whether or not the bonds satisfied  
12 all applicable requirements of Section 811 of the  
13 Board's rules and of any applicable requirements in  
14 the Act, is that right?

15 A. I'm sorry. Could you repeat that please?

16 MR. KIM: Could I have the question simply read  
17 back?

18 HEARING OFFICER HALLORAN: Sure. Terry?

19 MR. LaROSE: Objection to the form of this  
20 question. How would this witness have a basis of  
21 that knowledge?

22 MR. KIM: This is the witness that just  
23 testified he formulated an opinion after the fact as  
24 to whether or not that decision was correct. I

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1 think this is more than fair game.

2 MR. LaROSE: Except the question is what did  
3 Mr. Harris do. I think Mr. Kim should ask  
4 Mr. Harris that question. He can ask Mr. Taylor  
5 what did he do to formulate his opinion, but how  
6 would Mr. Taylor know what Mr. Harris did or what

7 thought processes he went through.

8 HEARING OFFICER HALLORAN: I agree, Mr. Kim.

9 The question was kind of confusing.

10 MR. KIM: Well, I can rephrase.

11 BY MR. KIM:

12 Q. Mr. Taylor, the Agency's review of the  
13 performance bonds that were issued by Frontier  
14 Insurance that were the subject of the May 11, 2001,  
15 denial would have been performed pursuant to Section  
16 811 of the Board's regulations and applicable  
17 requirements of the Act, isn't that correct?

18 MR. LaROSE: Same objection. How would he know  
19 what they did.

20 MR. KIM: And the response is if he doesn't  
21 know what the bases were for the decision, he's in  
22 no position to render an opinion as to whether or  
23 not that decision was properly made. If he says he  
24 doesn't know the answer, that's fine I can take that

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1 in conjunction with the fact that he doesn't know.

2 His opinion really means nothing then.

3 HEARING OFFICER HALLORAN: I think you can  
4 rephrase it would or should following applicable  
5 procedures.

6 MR. KIM: I can try.

7 MR. LaROSE: That's my point. Should they have  
8 or could they have, but did they, how would he know?

9 HEARING OFFICER HALLORAN: I agree.

10 MR. KIM: I understand. Let me rephrase it.

11 BY MR. KIM:

12 Q. Mr. Taylor, should the Agency's review of  
13 the performance bonds submitted by Frontier  
14 Insurance Company that led up to the denial issued  
15 on May 11, 2001, have been performed pursuant to  
16 Section 811 of the Board's rules and applicable  
17 requirements found in the Environmental Protection  
18 Act?

19 A. I still don't follow your question. Any  
20 review of the bonds should be done in accordance  
21 with the applicable rules and the Environmental  
22 Protection Act.

23 Q. And is there anything else -- are there any  
24 other statutory, regulatory requirements other than

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1 Part 811 of the regs and any portion of the Act that  
2 would need to be taken into account, in your  
3 opinion, by the Agency in reviewing those bonds?

4 A. None that I know of.



5 Q. Thank you. I apologize for taking so long  
6 to get to that answer.

7 Mr. Taylor, would you please look again to  
8 page 214 of the administrative record?

9 A. Yes.

10 Q. That page is a copy of a note that you  
11 prepared to be submitted to the permit section as  
12 part of their review in the summer of 2000, is that  
13 correct?

14 A. That's my recollection, yes.

15 Q. And you signed that note yourself, did you  
16 not?

17 A. Yes.

18 Q. And are there any other parties identified  
19 on that note as having contributed or having  
20 prepared that note in addition to you?

21 A. Obviously not, no.

22 Q. And it was your responsibility, was it not,  
23 as part of your job functions to make the  
24 determination that is found on page 214 of the

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1 administrative record?

2 A. Yes.

3 Q. I don't know if you have a copy of this,

4 I'm going to show you a copy of the Board's  
5 regulations and I'm going to specifically reference  
6 Section 811.712, subsection B. You can take a  
7 moment and just look over that provision.

8 A. Certainly.

9 (Brief pause.)

10 BY THE WITNESS:

11 A. Yes.

12 BY MR. KIM:

13 Q. Thank you. It's your understanding that  
14 there might be a difference of opinion between the  
15 Agency's position now -- I'm sorry. Let me rephrase  
16 that.

17 It's your understanding that there's a  
18 difference of opinion as to the Agency's  
19 interpretation of that regulation on May 11, 2001,  
20 and the interpretation that you took on the date  
21 that you prepared your note on August 3rd of 2000,  
22 is that correct?

23 MR. LaROSE: Objection, I don't think that's a  
24 fair characterization of his testimony. Objection

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1 to the form of the question.

2 HEARING OFFICER HALLORAN: Mr. Kim, could you

3 somehow rephrase that?

4 MR. KIM: I can try to rephrase that. Let me  
5 go at it a different way.

6 BY MR. KIM.

7 Q. The language in 811.712(b), is that  
8 mandatory language, in your opinion? Does that  
9 impose an obligation, in other words?

10 A. I don't see how it would impose any kind of  
11 an obligation on anyone. It's one of the  
12 requirements that an acceptable surety must meet to  
13 provide a surety bond for an operator or what would  
14 be the producer of a surety bond that would be  
15 tendered by an operator to the Agency would have to  
16 conform with this rule, yeah.

17 Q. So whatever the interpretation of the  
18 latter part of that section, you would agree,  
19 wouldn't you, that a surety must meet the  
20 requirements found in Section 811.712(b), is that  
21 correct?

22 A. Yes.

23 Q. Okay. And you don't know what the standard  
24 is for issuance of a permit pursuant to the

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1 Environmental Protection Act, do you?

2 A. I didn't hear all that. I'm sorry.

3 Q. You don't know what the standard is for the  
4 Agency to consider when issuing a permit pursuant to  
5 the Environmental Protection Act, do you?

6 MR. LaROSE: I'm going to object. What does he  
7 mean by standard?

8 MR. KIM: There is a standard articulated in  
9 the Environmental Protection Act for issuance of  
10 permits and I'm asking him -- I'm stating, he  
11 doesn't know what it is.

12 HEARING OFFICER HALLORAN: Mr. Taylor can  
13 answer.

14 BY THE WITNESS:

15 A. No, I cannot -- I cannot repeat it  
16 verbatim.

17 BY MR. KIM:

18 Q. Mr. Taylor, the question is you don't know  
19 the standard, do you, yes or no?

20 A. No, I can't repeat it verbatim. No, I  
21 cannot.

22 Q. I'm going to ask a yes or no question, do  
23 you know the standard or not?

24 MR. LaROSE: I don't think that's fair. I

1 think he's answered the question. I'm going to  
2 object. He's badgering the witness.

3 MR. KIM: No. I'm trying to get a yes or no  
4 answer. If you'd like to push it out on redirect,  
5 you can do that.

6 MR. LaROSE: Then he should ask a yes or no  
7 question in a kind and courteous manner and not  
8 badger the witness. It's really an unfair thing, do  
9 you know the standard. I mean --

10 HEARING OFFICER HALLORAN: Let's try this  
11 again, yes or no, Mr. Taylor.

12 BY MR. KIM:

13 Q. Mr. Taylor, do you know what the standard  
14 is for the Agency to employ when issuing a permit  
15 pursuant to the Environmental Protection Act, yes or  
16 no?

17 A. No.

18 Q. Thank you. And, Mr. Taylor, at the time  
19 you prepared the note on August 3rd, 2000, that's  
20 found on page 214 of the administrative record,  
21 Joyce Munie was not your supervisor, was she?

22 A. No.

23 Q. And, Mr. Taylor, is it a fair statement  
24 that your understanding of Blake Harris'

1 interpretation of Section 811.712(b) is different  
2 than your interpretation of Section 811.712(b)?

3 A. I'm not sure that that's my understanding.

4 Q. Do you know what Mr. Harris' interpretation  
5 of 811.712(b) is?

6 A. Not exactly, no.

7 Q. Is it your interpretation that Section  
8 811.712(b) does not require that a surety must in  
9 addition to whatever else is required also be on the  
10 U.S. Department of Treasury's 570 circular?

11 A. Yes, I believe that's what it says, yes.

12 Q. If, in fact, that interpretation was found  
13 to be incorrect by the Board and the Board  
14 determined that that was a requirement, then your  
15 decision reached on August 3rd of 2000 would not  
16 conform with the Board's position, would it?

17 A. I don't even understand the question.

18 MR. LaROSE: I don't either.

19 BY MR. KIM:

20 Q. If the Board -- I'll strike that. I'll let  
21 that go.

22 Mr. Taylor, you testified that -- you  
23 testified that you basically told everybody that you  
24 could think of in the Bureau of Land or everybody

1 that you knew in the Bureau of Land that you had  
2 heard that Robert Pruum had been convicted of a  
3 felony upon your return from your meeting in 1993,  
4 is that correct?

5 A. Indicted or convicted, one or the other,  
6 yes.

7 Q. Do you specifically recall telling Joyce  
8 Munie that?

9 A. I don't recall if Joyce Munie even worked  
10 for the Bureau of Land then.

11 Q. In 1993?

12 A. I don't remember when she came over there.

13 Q. So the answer is, you don't recall telling  
14 Joyce Munie that, is that correct?

15 A. No, I don't.

16 Q. Do you recall telling Chris Liebman that?

17 A. Not specifically, no.

18 MR. KIM: I have nothing further.

19 HEARING OFFICER HALLORAN: Thank you, Mr. Kim.

20 Mr. LaRose?

21 MR. LaROSE: Yes.

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

23 by Mr. LaRose

24 Q. Sir, I'm going to show you the

1 Environmental Protection Act and specifically  
2 Section 39, the section that relates to the standard  
3 under which the Agency is to issue permits. Could  
4 you read Section 39 sub A to yourself, please.

5 A. All of it or just the first paragraph?

6 Q. Just the first paragraph that says  
7 something about what the Agency's obligation is to  
8 issue a permit. In fact, you can read it into the  
9 record if you want.

10 A. I've read this many times over the 20 some  
11 -- 25 years.

12 Q. Is that the standard under which the Agency  
13 is required to issue permits?

14 A. Yes, that's what it says.

15 Q. Okay. And would that standard have been  
16 violated, in your opinion, if the Agency had issued  
17 the May 11th permit to our client based on the  
18 financial assurance that is in place regarding the  
19 Frontier bonds? Maybe I can rephrase that?

20 A. That was a little long.

21 Q. It is.

22 Do you believe that that standard was  
23 complied with first when the Agency issued the  
24 August 2000 permit?



1 A. Yes.

2 Q. Okay. And do you believe that that  
3 standard would have been complied with had the  
4 Agency granted not denied our May 11th -- our permit  
5 application on May 11th in this case?

6 A. Yes.

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

8 HEARING OFFICER HALLORAN: Thank you, Mr.  
9 LaRose. Any more redirect, Mr. Helsten?

10 MR. HELSTEN: No.

11 HEARING OFFICER HALLORAN: Mr. Kim, any more  
12 recross?

13 MR. KIM: Nothing further. Thank you,  
14 Mr. Taylor, you may step down. While we're taking a  
15 break here between witnesses, I notice a new member  
16 came into the room while Mr. Taylor was on the  
17 stand. Sir, are you a member of the public or do  
18 you wish to make testimony?

19 AUDIENCE MEMBER: (No verbal response).

20 HEARING OFFICER HALLORAN. All right. Thank  
21 you very much. If you do choose to make testimony,  
22 you can come up here and do so under oath and be  
23 subject to cross-examination. Thank you. We can go  
24 off the record.

1 (Whereupon, a discussion  
2 was had off the record.)

3 HEARING OFFICER HALLORAN: We're back on the  
4 record. It's approximately 3:55. Mr. LaRose?

5 MR. LaROSE: Thank you, Mr. Halloran. During  
6 the break, Mr. Kim and I have agreed to submit by  
7 agreement certain exhibits for entry into the  
8 record. The first is a stipulation of facts signed  
9 by both of us and it is Exhibit 19. The second is a  
10 copy of excerpts of a transcript from Pollution  
11 Control Board case 95-137 which occurred on the 26th  
12 day of July 1995, which is Exhibit 4 and finally the  
13 last is Exhibit 51, which is the Agency's response  
14 to petitioner's request for admission of facts. I  
15 give these to you and offer them into the record for  
16 admission.

17 HEARING OFFICER HALLORAN: There being no  
18 objection, they're admitted into the record.

19 MR. LaROSE: Okay. Last order of business for  
20 today is we had agreed -- we've taken the deposition  
21 of Mike Nechvatal a couple weeks ago and Mr. Kim and  
22 I agreed that we would in lieu of calling him live  
23 use his deposition as an evidence deposition and  
24 submit portions of it to the record. What we've

1 done is prepared for Terry, our wonderful court  
2 reporter, a page and line designation of those pages  
3 and lines that we'd like her to type into the  
4 record in this case as well as provided her with a  
5 copy of the transcript itself, the same of which  
6 we've provided to yourself, Mr. Halloran.

7 HEARING OFFICER HALLORAN: Thank you. So noted  
8 and that is allowed.

9 MR. LaROSE: And there was one more just point  
10 of business, I'm aware that there might be a couple  
11 of people, just two or three, for a minute or two  
12 that might want to give public comment and some  
13 people have asked me when that might occur. Can I  
14 tell them, if they ask me tonight, that that could  
15 occur right at the start of business tomorrow? We  
16 could reserve a couple of minutes for that and get  
17 that out of the way so they don't have to hang  
18 around until, you know, 11:00 or noon.

19 HEARING OFFICER HALLORAN: If there's no  
20 objection.

21 MR. KIM: No objection.

22 HEARING OFFICER HALLORAN: Fine.

23 MR. LaROSE: And I don't even know if it's

24 going to occur, but somebody asked me last night

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1 and, you know, I was like, I'm not really sure,  
2 let's see how it goes, but it would be great if I  
3 could say if you can be here at 9:00 o'clock, we can  
4 get you in.

5 HEARING OFFICER HALLORAN: That's fine. Thank  
6 you.

7 MR. LaROSE: Thank you.

8 HEARING OFFICER HALLORAN: If there's nothing  
9 further, this concludes the hearing for today,  
10 October 16th. We'll continue tomorrow on record at  
11 9:00 a.m., same place, same channel. Thank you.

12 MR. LaROSE: Thank you.

13 MR. KIM: Thank you.

14 MR. LaROSE: Drive safely.

15 (Whereupon, the deposition was adjourned for the day  
16 to be continued at 9:00 a.m. on October 17th, 2001.)

17 \_\_\_\_\_  
18 (Whereupon, the following typed portion from the  
19 deposition of Michael Nechvatal has been entered  
20 accordingly pursuant to the request of Mr. LaRose  
21 and Mr. Kim).

22

23 (There are just portions so the testimony may not  
24 flow. Mr. LaRose is the examiner throughout the

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1 testimony)

2 (Whereupon the Deponent was  
3 sworn by the Notary Public.)

4 M I C H A E L N E C H V A T A L  
5 having been first duly sworn by the Notary Public,  
6 deposeth and saith as follows:

7 EXAMINATION

8 BY MR. LaROSE:

9 Q. State your name for the record,  
10 please.

11 A. Michael Nechvatal, N-e-c-h-v-a-t-a-l.

12 Q. Mike, tell me a little bit about your  
13 education?

14 A. Got a bachelor's degree in physics from  
15 Western Illinois University in 1972, a master's  
16 degree in public administration from what was then  
17 Sangamon State University now University of Illinois  
18 Springfield in '75 or '76, I don't remember right  
19 now. And I've completed a number of master degree  
20 courses in environmental engineering from Southern  
21 Illinois University but do not have a degree from

22 there.

23 Q. Edwardsville?

24 A. No, Carbondale.

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1 Q. How long have you worked for the Agency?

2 A. Since mid '72 so that's 29 years.

3 Q. Roughly, briefly give me the rundown from  
4 '72 til now of your different job titles and the  
5 rough dates that go along with them.

6 A. Well, I was hired as a noise control  
7 specialist in 1972 and worked in what was the  
8 Division of Noise Pollution Control in a variety of  
9 positions for approximately eight to nine years  
10 doing noise control evaluations on noise control  
11 studies and taking noise measurements.

12 Q. That brings us up to 1981 or so?

13 A. Something like that. And in about that  
14 time I was hired-- transferred over at that time to  
15 the Division of Land Pollution Control and was in  
16 charge of a group called the open dump inventory. We  
17 evaluated federal criteria for-- a series of federal  
18 criteria for landfills--.

19 Q. Hold on, slow down a little.

20 A. All right. Open dump inventory. That

21 lasted for several years. After which I became  
22 manager of the what was then the compliance section  
23 of the Bureau of Land which switched from a division  
24 to a bureau about that time.

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1 Q. Do you remember about when that was, Mike?

2 A. Mid eighties. And that group was in charge  
3 of evaluating compliance efforts and tracking  
4 compliance for all the waste control programs.

5 Q. Okay.

6 A. Late eighties, right about 1990, I think it  
7 was late eighties, I was changed over to the manager  
8 of the Solid Waste Management section and the focus  
9 of that was wholesale switch collections, local  
10 planning, enforcement grants. I'm sure a few other  
11 things.

12 Q. So late eighties, early nineties you're the  
13 manager of the solid waste?

14 A. Manager of the section.

15 Q. Manager of the section. Of the Bureau of  
16 Land?

17 A. Correct.

18 Q. Got it.

19 A. And say about four years ago, so late

20       nineties, I became the manager of the Division of  
21       Land Pollution Control within the Bureau of Land and  
22       my responsibilities include the waste control  
23       programs, excluding the cleanup programs.

24           Q.   And that's your current title?

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1           A.   Correct.

2           Q.   You report to the manager of the land--.

3       I'm sorry, you--.

4           MR. KIM:   You can ask him if you're familiar.

5           MR. LaROSE:   Q   You report to Bill Child?

6           A.   Correct.

7           Q.   And he reports to the director?

8           A.   Yes.

9           Q.   Any time prior to late March, early April  
10       of this year have you had any involvement in any way  
11       in your official capacity, any of your official  
12       capacities, with the Morris Community Landfill?

13          A.   I suppose there's some review of just  
14       actions that people are taking.

15          Q.   Permit review actions?

16          A.   It'd be generally because the permit  
17       section reports to me.

18          Q.   Enforcement review actions?



19           A. The FOS section reports to me so I have  
20 general review of that, yes.

21           Q. So you've got field operations and  
22 permitting reporting to you on Community Landfill.  
23 You've been in this position since 1995?

24           A. I think a little later than that. I think

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1 around '97, '96 or '97, something like that.

2           Q. Okay. What about any of the lawyers, do  
3 they report to you?

4           A. No.

5           Q. I understand that enforcement is made up of  
6 kind of a different group of folks, some of them  
7 lawyers, some of them non-lawyers. Did any of the  
8 enforcement people report to you with respect to  
9 Community Landfill?

10          A. Explain who you--. I don't understand what  
11 you mean.

12          Q. You tell me. Who makes up enforcement?

13          A. I'm a little unclear who makes up  
14 enforcement. We have a Division of Legal Counsel,  
15 those are our lawyers. We have people in field  
16 operations who investigate complaints and tell  
17 people when they're in violation.

18 Q. So legal counsel could be involved in  
19 enforcement, right?

20 A. I suppose.

21 Q. Not you suppose you know, right?

22 A. Yes.

23 Q. The lawyers are involved in  
24 enforcement?

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1 A. Yes.

2 Q. Field operations involved in enforcement?

3 A. Yes.

4 Q. Anybody else involved in enforcement that  
5 might report to you?

6 A. The sections within Solid Waste Management  
7 section which reports to me can be involved with  
8 enforcement tracking and identifying, reporting  
9 violations and such.

10 Q. Did any of those folks report to you with  
11 respect to Community Landfill prior to April of this  
12 year?

13 MR. KIM: Report to him about what?

14 MR. LaROSE: Q About anything with respect to  
15 Community Landfill.

16 A. Probably in an oversight component, just

17 reviewing what's going on.

18 Q. Were you involved in any decisions  
19 regarding the permit appeal that went to trial  
20 earlier this year?

21 A. Not directly, no.

22 Q. Any time prior to April had you heard  
23 anything from any source, TV, radio, newspaper,  
24 rumor, innuendo, local bar, about anybody associated

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1 with Community Landfill being involved in any  
2 criminal activity?

3 A. No.

4 Q. That was a surprise to you in April?

5 A. Yes.

6 Q. Were you surprised that a reporter had to  
7 call you guys and tell you about it?

8 A. I don't know if surprised is the right--.

9 Q. Were you embarrassed?

10 A. No.

11 Q. Do you know whether anybody from field  
12 operations had knowledge of criminal activity or the  
13 alleged criminal activity as early as 1995?

14 A. No.

15 Q. If they did should they have brought it to

16 somebody's attention regarding section 39(i)?

17 A. Perhaps if they knew a permit was being  
18 handled or something. I don't know. Sometimes  
19 permits are different than--. Permit people are  
20 different workers than field people but--.

21 Q. But if a field person--. Let me tell you  
22 exactly what happened in this case.

23 A field person was at a hearing where  
24 sworn testimony was given that the owners of

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1 Community Landfill had been under federal  
2 indictment. He was the field person that was  
3 assigned to that site from Field Operations.  
4 Should he have brought that information to  
5 somebody's attention in permitting?

6 A. Maybe. I don't know if it's a specific job  
7 duty but maybe.

8 Q. What if somebody from permitting was  
9 sitting in the same hearing and heard the same  
10 testimony and they were the person assigned to  
11 review the permit that was going to be filed in the  
12 case, should they have raised the 39(i) issue at  
13 that point?

14 A. They could.

15 Q. Should they have?

16 A. Probably. They certainly could.

17 Q. Is that your answer, Mr. Nechvatal,  
18 probably?

19 A. Yes. I'm not sure of the full  
20 circumstances but probably.

21 Q. You were involved in the 39(i) evaluation  
22 in this case?

23 A. We discussed it, yes.

24 Q. Do you have an understanding of the

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1 requirements of section 39(i) of the Act?

2 A. Well, I would go to the Act and read it if  
3 I needed to. I have a general understanding I think  
4 but I don't know it verbatim.

5 Q. It's pretty short. I think I marked the  
6 page. It's pretty short. This isn't a trick. It  
7 really isn't.

8 Here's section 39. This is (i), it  
9 goes from here to here. Go ahead and read it to  
10 yourself.

11 A. Okay.

12 Q. How many 39(i) evaluations--. Let me back  
13 up for a second.

14                   When I use the term 39(i) evaluation or  
15 investigation I mean an evaluation of the  
16 prospective owner or operator's prior experience in  
17 waste management operations, okay, so I don't have  
18 to keep on saying that. Is that fair enough?

19           A. I guess so. I hope so.

20           Q. So how many 39(i) investigations or  
21 evaluations have you had any involvement in besides  
22 the one that occurred in April of this year?

23           A. I don't know I have a specific number but  
24 there have been other 39(i) denials-- I don't know

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1 if that's the right term.

2           MR. KIM: I think it's understood.

3           MR. LaROSE: Q But that you've had personal  
4 involvement in?

5           A. Yes.

6           Q. Can you remember any of them?

7           A. Yes.

8           Q. Watts, is that one of them?

9           A. I don't--. No, that's not one of them.

10          Q. Can you remember any of them?

11          A. Yes.

12          Q. Can you tell me one of them?

13           A. The C. Grantham Company.  
14           Q. C--?  
15           A. C period Grantham Company.  
16           Q. Okay.  
17           A. A gentleman out of--. A gentleman. A  
18 person out of Indiana who I cannot remember his  
19 name, Industrial Waste Hauling or something like  
20 that. And J. R. Bliss.

21           Q. That's a blast from the past.

22           A. That's quite awhile ago but those are the  
23 three that I can remember. If there are others I do  
24 not remember them.

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1           Q. In those cases just in general how did the  
2 information come to the Agency's attention?

3           A. Through somebody reading an article or  
4 reading something or a field person notices--  
5 knowing that this person had been in violation.  
6 Mr. Bliss was not hard to find publicity on him. The  
7 others were a little less in the paper but somehow  
8 somebody told us about it.

9           Q. So in those cases it was either the  
10 information come to the Agency's attention by  
11 someone from the Agency finding out about it through

12 the newspaper or rumor or--?

13 A. Something like that. The specifics of how  
14 we learned about those I kind of lost my memory, but  
15 generally it came through a field person or somebody  
16 who read about it in the paper.

17 Q. Okay. In those three cases were the  
18 permits denied at least in part based on 39(i)?

19 A. Yes.

20 Q. Based on your interpretation of  
21 section 39(i), your understanding of it, does the  
22 Agency have any discretion as to whether it conducts  
23 an evaluation under section 39(i) once a permit  
24 application is filed for sanitary landfill?

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1 A. Yeah, we can look into somebody's history I  
2 guess if we have a reason to do that. We certainly  
3 don't do that in most cases.

4 Q. So in most cases you don't conduct an  
5 investigation?

6 A. Because there's no evidence to get us  
7 started I suppose is the way I want to say it.

8 Q. Do you interpret 39(i) then to mean that  
9 you don't have to conduct an investigation every  
10 time a sanitary landfill permit is filed?



11 A. Certainly we don't do it.

12 Q. That's a little bit different than whether  
13 you're supposed to. You don't do it but does your  
14 interpretation of the regulations in your opinion  
15 allow you not to do it?

16 A. Yes. You know, we've issued many, many  
17 permits and evaluated many, many, many permit  
18 applications without challenge on that-- I don't  
19 know, without it being part of our normal operating  
20 procedure.

21 Q. Doesn't the regulation say that you shall  
22 conduct the investigation?

23 MR. KIM: Objection. Regulation or Act?

24 MR. LaROSE: Q I'm sorry. 39(i) of the Act?

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1 A. The word shall is there, right.

2 Q. But in your interpretation that means you  
3 don't have to do it?

4 A. Our practice over many, many, many years  
5 and many thousands of applications is that we only  
6 do it when we feel that there is a root cause to do  
7 that investigation.

8 Q. As you said before a root cause would be  
9 someone from the Agency having knowledge of

10 something to trigger a need for the investigation?

11 A. Somebody bringing it to the person  
12 evaluating that permit and looking at that permit  
13 and them having a reason to look into this.

14 Q. Would it have to be somebody bringing it to  
15 the person evaluating the permit? Couldn't somebody  
16 just bring it to you for example and say hey I heard  
17 this guy was convicted, we ought to look into it?

18 A. I suppose it could be. That would be one  
19 way then to get to that person involved in the  
20 permit decision. Somehow it has to get to that  
21 person or that group of people.

22 Q. Couldn't it even go this way, Mike:  
23 Couldn't it be that once you have the knowledge you  
24 put that information somewhere in the file so that

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1 if a permit application came in it could  
2 automatically be triggered? Wouldn't that be a  
3 smart way to do it?

4 A. It could be.

5 Q. Do you follow that procedure?

6 A. I don't know that there is a job objective  
7 for everyone learning about every person's  
8 conviction to put in a file just in case they'd be

9 part of a permit application some day. The answer is  
10 no.

11 Q. Are there any procedures that you file with  
12 respect to 39(i)-- that you follow?

13 A. We follow--. I don't know about written  
14 procedure because it's so seldom--.

15 Q. Let's start with that. Do you have any  
16 written procedures, whether they be rules,  
17 regulations, guidance documents, or anything else in  
18 writing on how you implement 39(i)?

19 A. I do not but Permit section has a number of  
20 internal or guidelines, but I don't know that there  
21 are any specific for that.

22 Q. They say they don't. Do you have any  
23 reason to doubt that?

24 A. No.

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1 Q. So if there are no rules with respect to  
2 this has anyone here to your knowledge consulted  
3 board opinions or the court opinions with respect to  
4 how section 39(i) is to be implemented?

5 A. I don't know if there are such opinions and  
6 I don't know if anybody has looked into that.

7 Q. Do you know whether anyone from the Agency

8 has consulted other provisions of the Act or the  
9 regulations as it relates to the Agency's  
10 implementation of section 39(i)?

11 A. I'm afraid I don't understand that  
12 question.

13 Q. Okay. The board, trust me on this one, has  
14 said that there are other provisions of the Act and  
15 the regulations that they will look to to see if the  
16 Agency has filled its responsibility under section  
17 39(i). Do you know if anyone has looked at those  
18 provisions of the Act or the regulations to  
19 determine whether they're properly implementing  
20 39(i)?

21 A. I guess the answer is no.

22 Q. Let's get to the actual quote/unquote  
23 evaluation in this case. How did you first come to  
24 learn about it?

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1 MR. KIM: Objection. About what? What are you  
2 referring to?

3 MR. LaROSE: About the issue of the Pruum  
4 conviction.

5 MR. KIM: Okay.

6 THE DEPONENT: Our permit section manager came

7 to me and said she'd just found-- just become aware  
8 of information concerning a felony conviction for  
9 someone on this permit-- listed on a permit  
10 application for this landfill.

11 MR. LaROSE: Q Did she tell you how she came  
12 into possession of that information?

13 A. She probably did. I don't really remember  
14 how she said--. Somebody told her about it. I  
15 don't remember the exact--.

16 Q. Would it refresh your recollection if I  
17 told you that a reporter told her or told somebody  
18 else in the Agency about it?

19 A. That may be very well how. She probably  
20 told me, I don't really remember.

21 Q. Why was she bringing that to your  
22 attention, do you know?

23 A. She wanted to let me know that they were  
24 going to evaluate this site with that information in

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1 mind.

2 Q. She was advising you that she was going to  
3 do that or was she seeking your advice as to whether  
4 she should do that?

5 A. I don't know if I'd make a distinction and

6 I don't know if I remember which of those  
7 descriptions would be better. We just talked about  
8 it briefly and kind of conferred that's the way to  
9 go.

10 Q. To evaluate the information?

11 A. To go and look at--. Yeah, to see if it's  
12 right. Just because somebody tells you something  
13 you don't know if it's right.

14 Q. Did you have a meeting with her?

15 A. She came down to my office as I recall.

16 Q. Do you remember who else was there?

17 A. No.

18 Q. Do you remember if anyone else was there?

19 A. No. Might have been but I don't know.

20 Q. She comes to your office and tells you  
21 somebody told me this. Either she says this is what  
22 I'd like to do or what do you think and the result  
23 of that conversation is yeah let's verify it; is  
24 that correct?

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1 A. Something like that, yes.

2 Q. Okay. You don't know who else is in that  
3 particular conversation but is that the extent of  
4 it? Does it literally last a minute or two minutes?

5           A. Two, yes, the evaluation whether to go  
6 check out a fact. It was very short, yes.

7           Q. Do you have any further involvement in the  
8 issue, you personally?

9           A. I believe I was in a couple discussions  
10 about then what to do with the information once it  
11 was confirmed.

12          Q. And what discussions were you in?

13          A. Again primarily with our permit section  
14 manager, Joyce, and her relaying to me that this  
15 information was confirmed as correct and how she was  
16 preceding in her evaluation of the permit  
17 application.

18          Q. And who else was in any of these  
19 conversations that you had with Joyce?

20          A. If there was somebody else there I don't  
21 remember. I just remember Joyce being there but I  
22 don't know.

23          Q. Were you ever at any meetings where Mr. Kim  
24 was present?

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1           A. Not at that point. I'd say yes we had  
2 discussions more on the phone I think I talked to  
3 John.

4 Q. What about Paul Purselove, do you remember  
5 any meetings where he was present?

6 A. He could have been there. His office is  
7 also right next to me. We could have discussed it  
8 together.

9 Q. You don't remember that?

10 A. Not really, no.

11 Q. The permit in this case was ultimately  
12 denied. Did you concur in that decision?

13 A. She told me that that was the evaluation by  
14 the permit section. And I don't really formally  
15 concur with them but I knew about it, yes.

16 Q. Okay. So, she just told you that?

17 A. Yes. She first relayed that that was the  
18 conclusion of this investigation and the evaluation  
19 by the permit section and I--. That's just kind of  
20 the normal thing, if they want to let me know  
21 something about a permit they let me know to see if  
22 I want to do anything.

23 Q. What does that mean to see if you want to  
24 do anything? Could you override their decision?

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1 A. Not really. The authority as I understand  
2 it is directly conveyed from the director who has



3 official authority to sign permits to the permit  
4 section manager who is a professional engineer. I  
5 do not override their decisions.

6 Q. But this wasn't an engineering decision?

7 A. Same authority as far as I know.

8 Q. But this wasn't shouldn't we deny this  
9 permit because the guy got convicted of mail fraud?

10 A. No, it's not a specific engineering issue,  
11 no.

12 Q. In fact, it doesn't have anything to do  
13 with that, right?

14 A. Not that conviction.

15 Q. Or not any decisions as relates to that  
16 conviction, correct?

17 A. Well it does and should relate to the  
18 evaluation of the site owner and operator's ability  
19 to run a landfill which is an engineering  
20 decision. But actual conviction is not an  
21 engineering decision. I'm not trying to be evasive  
22 but I guess that's my answer.

23 Q. You're doing all right.

24 I guess I wonder why you have to be an

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1 engineer to determine whether a particular

2 conviction should result in the denial of a permit?

3 A. Because our permit section manager is the  
4 one given the authority and responsibility to  
5 evaluate the permits and part of the job  
6 requirements is to be a professional engineer.

7 Q. So you didn't have any authority to say  
8 yes, no, or to override her, is that your testimony?

9 A. Correct.

10 Q. Why were you even involved?

11 A. So she could keep me informed.

12 Q. Why? I mean, if you don't have--. If  
13 you've got no authority over her she's going to do  
14 what she wants to do and you don't have anything to  
15 say about it, why were you even involved?

16 MR. KIM: I don't think he said he didn't have  
17 authority over her. I think he was defining her  
18 duties as far as permits.

19 MR. LaROSE: Well, let's clear that up.

20 Q Mike, if she came to you and said  
21 I'm denying this permit could you say no you're not?

22 A. I do not think so. I could go to the  
23 director and ask that person to override, because  
24 that's the director's authority to do that. I do

1 not believe I have authority to change the  
2 professional engineering judgment, whether it be an  
3 engineering issue and to override the permit  
4 decision.

5           But she does keep me involved. We have  
6 to--. You know, I'm involved with writing resources  
7 for-- make sure the resources to evaluate permits  
8 are there and things like that. I have general  
9 supervisory authority over her but not this  
10 specific.

11           Q. Did you get the impression she was keeping  
12 you advised from a public relation standpoint, that  
13 this might have some press notoriety or something?

14           A. Well, I think that could be. I don't want  
15 to speak for Joyce's intentions but I think that  
16 this is an infrequent occurrence and so she's  
17 keeping me involved in being updated on the status  
18 of it.

19           Q. What information did you particularly  
20 review with respect to the evaluation itself?  
21 Let's start with written information. Did you read  
22 anything about the evaluation?

23           A. I think it was mostly verbal updates from  
24 her. If I read something I really don't remember

1 reviewing anything.

2 Q. Did you read the--. She wrote a couple  
3 memos on those, did you read those? And I'll show  
4 them to you in a minute.

5 A. Possibly. I don't remember right now.

6 Q. She gathered a complaint in the criminal--  
7 in the 1993 criminal case, did you read that?

8 A. Again I don't remember. I might have.

9 Q. They sent what they call Wells letters to  
10 my client on three pending permit applications and I  
11 wrote a response to that, do you remember whether  
12 you read that?

13 A. I don't think so. I remember saying that  
14 they were sending Wells letters but I don't remember  
15 reading them.

16 Q. Do you remember whether there was a docket  
17 sheet that they got from the criminal case? Do you  
18 remember looking at that?

19 A. I don't remember looking at anything.

20 Q. Do you remember her telling you or writing  
21 to you that this conviction related directly to the  
22 management of waste or waste management in Illinois?

23 A. I don't remember either way.

24 Q. Would that be something that would be

1 important to the evaluation do you think?

2 A. It might.

3 Q. When you're going to deny a permit that  
4 basically--. Did you understand that the denial of  
5 this permit would basically shut down the facility?

6 A. Well, I guess landfills without permits  
7 shouldn't be operating so I guess so.

8 Q. Well, it's still got a big, big  
9 permit. This was a permit to allow it to actually  
10 put waste in the landfill which is kind of the whole  
11 reason for the thing. They'd have to close the  
12 facility if this permit was denied, right?

13 A. Again landfills without permits aren't  
14 supposed to be operating whether they be developing  
15 a permit or permit to develop or permit to operate.

16 Q. So the answer to the question is yes,  
17 without this permit they're going to close down,  
18 right?

19 A. I guess so.

20 Q. Before you close somebody down do you think  
21 that when you're conducting one of these evaluations  
22 it would be important if you're going to comply with  
23 your duties under section 39(i) to look at all the  
24 facts?

1           A. All relative facts I suppose that you can  
2 get. There may be facts you can't get.

3           Q. Right. For example, would the age of the  
4 violation be something that she should have looked  
5 at, how old it was?

6           A. I suppose that would be something to  
7 consider.

8           Q. Something you considered?

9           A. That I considered? I don't think so.

10          Q. What about the role that--. The fellow  
11 that was convicted, what about what role he played  
12 in the actual operation of the landfill, would that  
13 be something that should have been considered in  
14 this case?

15          A. Well, what role he plays--. Could you  
16 maybe explain that a little bit further for me?

17          Q. Yes. Does he work at the landfill on a  
18 daily basis? Is he ever at the landfill? Does he  
19 live in Mexico and is an absentee owner? What role  
20 does he play with respect to the operation of the  
21 landfill, whether that's an active role or an  
22 inactive role, would that be something that might be  
23 an important factor to be determined in this case?

24          A. I think it's whether he's an officer of the

1 company or whether he's--. I don't think we look at  
2 every bulldozer operator if that's what you mean.  
3 If I'm not following--?

4 Q. Not really.

5 A. Okay.

6 Q. I suppose you can be an officer, I suppose  
7 you could be the president of a company like in fact  
8 this guy was and really have nothing to do with the  
9 day-to-day operation of the landfill. Would that be  
10 something that would be important to you?

11 A. I don't know how that could be but I  
12 suppose if somebody--. I don't know how you could  
13 be president of the company and sign the permit  
14 applications and have nothing to do with the  
15 landfill. I'm not following something.

16 Q. Maybe you're not but regardless of--.  
17 I mean, people are the president of corporations all  
18 the time and do nothing. Nothing. Are you not  
19 familiar with that? Do you own any corporations?

20 A. No.

21 MR. LaROSE: Q Is it an important factor to  
22 you to determine what role the convicted person  
23 played in the day-to-day operation of the  
24 landfill? In other words, whether he had a very

1 active role or no role at all or something in  
2 between.

3 A. No, I don't think so.

4 Q. And you didn't look at that in this case?

5 A. I did not, no.

6 Q. And you don't know if Joyce did?

7 A. No.

8 Q. Whether or not the person convicted was  
9 actually the certified operator of the landfill,  
10 would that be something that would be important to  
11 the 39(i) determination?

12 A. I don't think so.

13 Q. And you didn't look at that in this case?

14 A. No, I did not.

15 Q. And Joyce didn't look at it in this case?

16 A. I can't answer that.

17 Q. You don't know whether Joyce did?

18 A. Right.

19 Q. Whether or not the person that was  
20 convicted is the person that was certified by the  
21 Agency through prior conduct certifications, would  
22 that be something that would be important to you?

23 A. I don't know. I don't think so, no.



24 Q. It's not something that you looked at in

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1 this case?

2 A. No.

3 Q. And you don't know whether Joyce did?

4 A. No, I don't know.

5 Q. Whether or not the guy convicted actually  
6 works at the landfill or not, would that be  
7 something that would be important to you?

8 MR. KIM: Objection. I think you asked him  
9 about whether or not he played any active role the  
10 very first question. But you can answer the  
11 question if you want.

12 THE DEPONENT: Whether he's an officer or not,  
13 one of the-- one of the criteria--. You know,  
14 officer, employee, one of those criteria in the Act,  
15 that's what we would be looking for.

16 Q. Are you telling me that if any employee in  
17 a sanitary landfill or officer of a sanitary  
18 landfill is convicted of a felony that's the only  
19 criteria that matters?

20 A. That's the primary criteria, correct.

21 Q. If that occurs, if you find out and  
22 determine that an officer, an operator or an

23 employee of an operator has been convicted of a  
24 felony in this state or under federal law are you

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1 required to deny the permit?

2 A. No.

3 Q. So you have discretion in denying the  
4 permit?

5 A. Right.

6 Q. If based on--. You said the main criteria  
7 is conviction itself and whether they are an  
8 employee or an officer, right?

9 A. Correct.

10 Q. If that's the main criteria yet you have  
11 discretion using that criteria as to whether to  
12 grant the permit or deny the permit what factors do  
13 you use to exercise your discretion or should Joyce  
14 have used to exercise her discretion?

15 A. I don't know if I have any criteria to  
16 suggest.

17 Q. Nor did you in this case?

18 A. No.

19 Q. And you don't know whether she did, use any  
20 criteria?

21 A. You'd have to ask her.

22 Q. Okay, I will. Whether or not the  
23 conviction related to waste disposal activities,  
24 environmental activities in the state of Illinois,

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1 would that be something that would be important to  
2 you?

3 A. I suppose in some hypothetical--. It could  
4 be something but I don't know that that's part of  
5 the review in this case.

6 Q. And as far as you know that wasn't part of  
7 the review in this case? You didn't review that?

8 A. No.

9 Q. Whether or not the person was found guilty  
10 by a jury or pled guilty and the terms of his plea  
11 agreement, would that be something that you should  
12 have looked at maybe?

13 A. I don't know and I don't know the  
14 difference to tell you the truth.

15 Q. If you go to trial and say I'm not guilty  
16 and the jury finds you guilty or if you make a deal  
17 and there's a document that you deal, would that be  
18 something that you would look at?

19 A. I don't think so.

20 Q. Did you ever look into any of the Waste

21 Management convictions in the 29 years that you've  
22 been here?

23 A. No.

24 Q. Did anybody ever conduct a 39(i) evaluation

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1 of any of the Waste Management people that went to  
2 jail?

3 A. Not to my knowledge.

4 Q. Was any Waste Management permits ever  
5 denied on the basis of section 39(i) because their  
6 officers or employees were convicted of a felony or  
7 federal crimes?

8 A. Not that I know of.

9 Q. What about silver shovel, all the silver  
10 shovel convictions, any 39(i) investigations with  
11 respect to that?

12 A. I don't know of any permit evaluations in  
13 that general issue at all.

14 Q. Let's take a look in front of you. In that  
15 gray folder is the administrative record in this  
16 case. Take a look at pages one and two.  
17 Pages one and two of Exhibit 1.

18 It says on page two under numbered  
19 paragraph two about three lines down, the Illinois

20 EPA conducted an evaluation of Community Landfill  
21 Corporations' prior experience in waste management  
22 operations. Is that true?

23 A. Joyce said that. I have confidence that  
24 she's correct.

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1 Q. Do you have any independent verification of  
2 that fact?

3 A. No.

4 Q. Community Landfill Corporation, do you know  
5 whether they were convicted of anything?

6 A. No.

7 Q. In fact do you know the opposite, they  
8 weren't convicted of anything?

9 A. No.

10 Q. You don't know one way or the other?

11 A. Correct.

12 Q. Does it matter to you?

13 A. In what way?

14 Q. In the way that you're going to put them  
15 out of business. I mean, it just astounds me that  
16 you guys take such a cavalier attitude in putting  
17 people out of business.

18 MR. KIM: Objection.

19 MR. LaROSE: Q Does it matter to you that  
20 Community Landfill was convicted of a crime or  
21 not?

22 A. Well, I guess it could be but I think her  
23 statement here and the way I understood it it's  
24 based on the conviction of a person rather than the

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1 corporation.

2 Q. Okay. What about the company's track  
3 record in terms of compliance with the regulations,  
4 would that have been an important consideration  
5 irrespective of the conviction of the president?

6 A. Might be important, but I don't know for  
7 39(i) it is. It's felony convictions I believe.

8 Q. Well, it's not just felony  
9 convictions. Section 2 is felony convictions, the  
10 other two sections relate to overall operating  
11 record, correct?

12 A. It can be, yes.

13 Q. Turn to page 12 and 13 of Exhibit 1. This  
14 is Joyce's memo to Christine. Did you ever see this  
15 one?

16 A. I guess so.

17 Q. You're copied on it.

18 A. Uh-huh.  
19 Q. Did you read this document?  
20 A. I probably did.  
21 Q. Did you concur with it?  
22 A. I think so, yes.  
23 Q. The bottom of page one and the top of page  
24 two she says phones and other things of value in

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1 order to influence an employee with the City of  
2 Chicago in his responsibilities relating to removal  
3 and disposal of waste. Did you take that statement  
4 at face value?  
5 A. Yes. Did I argue with her? No, I did not  
6 argue with her.  
7 Q. Did you do anything to independently verify  
8 it was the truth?  
9 A. No. No, I took her-- the memo as being  
10 accurate.  
11 Q. If, in fact, none of the documents in the  
12 criminal case state that it was to influence an  
13 employee with the City of Chicago in his  
14 responsibilities related to removal or disposal of  
15 waste would that have effected your concurrence with  
16 her opinion in this case?

17 A. I don't know.

18 Q. Even if she stated it inaccurately?

19 A. I would expect it to be accurate, but I  
20 don't know one way or the other.

21 Q. If that would have mattered?

22 A. I don't know.

23 Q. It says here Mike, Paul, and I further  
24 discussed mitigating factors as enumerated in the

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1 April 9, 2001, letter from Mark LaROSE. That's two  
2 pages later. You can take a minute and read it if  
3 you want or we can just go right on to the  
4 questioning.

5 She says that two lines down the Act  
6 does not require the Agency to conduct-- I'm sorry,  
7 the Agency to investigate but rather allows the  
8 Agency to conduct an evaluation of the operator's  
9 prior experience in waste management operations.  
10 Do you agree with that statement?

11 A. That's exactly what it says.

12 Q. I know that's what it says. Do you agree  
13 with Joyce's statement as she wrote it  
14 there? Is that what--. That's her opinion what the  
15 Act says.



16           A. And that is exactly what I said before, we  
17 investigate when we have a reason to look into  
18 something but we do not investigate this in every  
19 case.

20           Q. Okay, again, and I don't mean to be  
21 nitpicky on this, I know what you do. I personally  
22 think what you do is violative of the law every  
23 single time you don't do an investigation.

24                   My question is she says the Act doesn't

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1   require you to do that. I'm asking you whether you  
2   agree with her statement. Yes or no?

3           A. Yes.

4           Q. It says however the conviction was not  
5   known before the complaint was brought to our  
6   attention in April of 2000. If, in fact, the permit  
7   section knew about the conviction--.

8           A. That's not what it says, it's 2001.

9           Q. Sorry. You're right.

10                   However, the conviction was not known  
11 before the complaint was brought to our attention in  
12 April of 2001. If you knew as she was writing this  
13 memo that both the permit section and field  
14 operation section had sworn testimony that these

15 gentlemen had been indicted of federal crimes as  
16 early as 1995 would that have changed your opinion  
17 with respect to this memo and the actions to be  
18 taken?

19 A. I suppose it could tell me that that  
20 statement was wrong, but no it would not have  
21 changed my opinion of the further actions to be  
22 taken.

23 Q. So, Mike, let me get this straight. From  
24 1996 to 2001 you've issued between 10 and 15 permits

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1 without conducting any evaluation even though the  
2 Agency people had knowledge of the indictments?

3 MR. KIM: Objection. Just to make it clear  
4 when you say issue permits, to Community Landfill?

5 MR. LaROSE: To Community Landfill, that's  
6 correct.

7 Q Community Landfill's spent millions  
8 of dollars and obligated itself for tens of millions  
9 of other dollars that it would not have spent if it  
10 had known that the Agency was ultimately seven years  
11 later going to take this action. Is that a fair use  
12 of the Agency's discretion in this case  
13 realistically?

14 A. I don't know.

15 Q. She is right here, the next two sentences:  
16 Nor does the Act require that we deny under this  
17 provision. Rather it allows us to consider and deny  
18 if appropriate. Do you agree with those two  
19 statements?

20 A. Correct. Yes.

21 Q. And I do too. It says here however the  
22 1993 guilty plea--. This is the next paragraph,  
23 second sentence. The 1993 guilty plea is directly  
24 related to bribing a city official in their official

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1 capacity as it relates to waste management  
2 activities. Do you know whether she even looked at  
3 the guilty plea?

4 A. No.

5 Q. Do you know whether the guilty plea says  
6 anything about bribing a city official in his  
7 official capacity as it relates to waste management  
8 activities?

9 A. I've never read the guilty plea.

10 Q. If, in fact, the guilty plea doesn't say  
11 anything close to that and this is an incorrect  
12 statement would that effect your decision as to

13 whether this was a fair treatment of my client under  
14 section 39(i)?

15 A. I don't know. I don't know.

16 Q. Do you guys just want to close this site  
17 down, Mike? I mean, is that what this was all  
18 about, let's find a reason to close them down?

19 A. No, we evaluated the permit application and  
20 acted as we thought we should.

21 Q. Did you know that for four years from  
22 August 5 of 1996 til August 4 of 2000 your people,  
23 compliance people, have spent hundreds of hours and  
24 thousands and thousands and thousands of State

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1 dollars and private dollars reviewing a huge  
2 significant modification for this particular permit  
3 or for this particular facility?

4 A. I don't know precise time frame or precise  
5 hours and dollars, I know they've been evaluating a  
6 permit application.

7 Q. Big one, right?

8 A. I suppose so.

9 Q. And it took four years?

10 A. It's taken awhile. I don't know the time  
11 frame.

12 Q. And it took a lot of time from a lot of  
13 people that work for you, right?

14 A. Yes.

15 Q. And we've been to the Appellate Court not  
16 once but now twice, right?

17 A. I guess so.

18 Q. I'm going to direct your attention  
19 to Exhibit Number 4 please, Mike. It's a transcript  
20 of a hearing that was involved in Pollution Control  
21 Board case 95-137. It's only a portion of it.

22 Present at the hearing were on behalf  
23 of the Agency Jack Burns and Kyle Nash Davis. Also  
24 present but not indicated on the transcript, and Mr.

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1 Kim's been kind enough to stipulate to it so I don't  
2 have to call these people as witnesses, were a guy  
3 named Warren Waritz of the field operation section  
4 that was inspector for this landfill and a lady  
5 named Sally Springer who works for the Bureau of  
6 Land Permits who was the permit reviewer for this  
7 particular file.

8 This was the preceding for variance  
9 that was to allow us the permission, the right, to  
10 file that big application. In fact we had to go to

11 the Appellate Court to get that proceeding.

12 Any of that I just said you got any  
13 questions about?

14 A. Not yet.

15 Q. Okay. Assume for the purpose of my  
16 questions that everything I just said is correct?

17 A. Sure.

18 Q. Given that take a look at Mr. Becker's  
19 testimony on page 64, 65, and 66 of that particular  
20 transcript.

21 MR. LaROSE: Q Okay, 65 and 66. Read it to  
22 yourself.

23 A. Okay.

24 Q. Hold on, I want to show you one more thing.

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1 Mr. Kim and I have yet to sign a stipulation and  
2 agree to the language of it. I want you to read  
3 this. I'm going to hand you what's been previously  
4 marked as Exhibit Number  
5 19.

6 A. Okay.

7 Q. Based on the information that you just read  
8 in Exhibit 4 and Exhibit 19 is there any question in  
9 your mind that at least two lawyers, a field

10 operation section person, and a permit writer from  
11 the Agency knew about at least allegations of  
12 indictments of the people who own this company as  
13 far back as 1995?

14 A. It looks like they were there when that was  
15 said. Whether they knew it I can't answer that.

16 Q. Doesn't Warren say that he knew about  
17 convictions of these people at least several years  
18 ago? Or haven't we stipulated that Warren would  
19 have said that if he didn't go on vacation?

20 A. It says here that he had heard the owners  
21 of Community Landfill had been convicted of a  
22 felony.

23 Q. Several years ago?

24 A. That's what it says here, yes.

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1 Q. Given the fact that this was the very  
2 proceeding that led up to the filing of the  
3 significant modification permit application that the  
4 Appellate Court allowed us to file a year later do  
5 you really think that it wasn't the Agency's duty to  
6 conduct a 39(i) investigation at that point in time  
7 based on this information and take some action then  
8 and not five years later or six years later?

9           A. I don't know. The investigation I know of  
10 it was done as soon as evidence of a conviction was  
11 brought to the attention of the permit section  
12 manager.

13           Q. Is that the answer to your question, you  
14 don't know?

15           A. If I know the question I think it is.

16           Q. Did somebody screw up by not bringing this  
17 information to somebody's attention to conduct a  
18 39(i) investigation earlier? Sally Springer, Warren  
19 Waritz, Kyle Nash Davis, Jack Burns, did they do the  
20 job in this case?

21           A. I don't know. I don't know what they  
22 really knew.

23           Q. Had you ever seen this before?

24           A. No, not that I know of.

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1           Q. Did you know that these folks had heard  
2 about the conviction or at least that Warren had and  
3 did you know that the other folks were present  
4 during this testimony? Actually the lawyers were  
5 questioning people at this thing.

6           A. No.

7           Q. Take a look at page 14, please. Do you



8 remember seeing a copy of that? It's tough but  
9 that's the best copy. I got the bad copy from him.

10 A. I got one eye that's bad for reading close.  
11 I wouldn't have remembered it but I--.

12 Q. Probably got it?

13 A. Yeah.

14 Q. We have been through this with a couple  
15 people. I'm going to try to read this the best I  
16 can. I think this is what this says. The last  
17 sentence of the first paragraph says: I told him  
18 that it had been-- I'm sorry, that it had not but we  
19 do have an obligation under 39(i) to consider and I  
20 think it says this or it. Do you concur with my  
21 reading of it?

22 A. That's as good a guess as to what those  
23 last words are as I could do.

24 Q. The second to the last word it's pretty

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1 clear that it's consider, right?

2 A. I'm pretty sure that's correct.

3 Q. And the last word is really tough, it's  
4 either it or this?

5 A. Yes.

6 Q. If it's either it or this it doesn't really

7 change the meaning, right?

8 A. No.

9 Q. So read the sentence with whatever word you  
10 want to plug in, it or this, and tell me whether you  
11 agree with that statement.

12 A. Yes, I agree with the statement I guess  
13 maybe with some qualifications.

14 Q. What would the qualifications be?

15 A. That having come upon some information I  
16 think she felt obligated to proceed with it, with an  
17 investigation. I think it's her personal obligation  
18 that I think she felt. That's my interpretation.

19 Q. Why is Paul Purseglove involved in any of  
20 this, do you know? What duty does he have with  
21 respect to the 39(i) investigation?

22 A. I don't know that there's any specific line  
23 of--. There is no specific line of  
24 authority. I think she was just keeping him

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1 informed of what was going on as a courtesy.

2 Q. Are you aware that--. The denial in this  
3 case happened on May 11 and this was for approval of  
4 a separation layer, some leachate control devices,  
5 and to deposit waste on top of the new cell if you

6 will, okay?

7 A. Okay.

8 Q. The denial happened on May 11 of 2001,  
9 correct?

10 A. I'll take your word for it, I don't  
11 remember. I believe you.

12 Q. Flip back to page one and two.

13 A. I believe you. I'll take you on your word  
14 for it. May 11.

15 Q. On June the 29 of 2001 based on an  
16 application that was pending at this same time we  
17 got another permit to accept and operate gas  
18 monitors, gas probes, at the facility. We still had  
19 the same president. He was still convicted of the  
20 same crime. How could that be?

21 THE DEPONENT: Okay, I'm not sure I'm familiar  
22 with all the decision making that went into either  
23 one of those evaluations so I don't know that I can  
24 answer that.

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1 A. I suppose it depends on what the next one  
2 was to do and if it was to--. Depends on what the  
3 next application was to do.

4 Q. The next one was to approve and operate a

5 portion of a gas collection system at the landfill.  
6 The first one was to approve the separation layer,  
7 leachate collection system, and to operate that cell  
8 as a waste disposal unit.  
9 Fair characterization?

10 MR. KIM: Yes.

11 MR. LaROSE: Okay.

12 Q So should this--. Having picked  
13 your poison if you will by denying this one based on  
14 the conviction what should have been done with the  
15 next one?

16 A. Evaluate it and then a determination  
17 whether that same conviction should have been used--  
18 should be used to deny the next  
19 application. In this case it was not.

20 Q. How do you reconcile those two? How can a  
21 guy's 1993 criminal conviction be used to deny one  
22 portion of the facility's permit but then the next  
23 portion it's not used at all?

24 A. No. Can you say it again?

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1 Q. How can you have a permit application to  
2 approve the construction of a separation layer  
3 between old waste and new waste, installation of

4 leachate control devices, and approval to put waste  
5 on top of the separation layer on May 11 based on  
6 this conviction and then not three months later on  
7 June 29 grant a permit application, one that was  
8 already pending as of May 11, to operate a gas  
9 collection system, to approve the installation and  
10 operation of a gas collection system, even though  
11 the same guy is still the president of the company  
12 and still has on his record the 1993 conviction?

13 A. Again different permit types and different  
14 permit applications that do different things.

15 Q. So is it the Agency's position that Bob  
16 Pruum, the convicted criminal, is okay as the  
17 president of the company to operate pollution  
18 control devices that will protect the environment  
19 for the next 100 years pursuant to the closure of  
20 the plant but he isn't okay to operate the pollution  
21 control devices that will also allow him to place  
22 trash in the landfill to be able to make some money  
23 to pay for all this? Is that the Agency's position?

24 A. I don't know if I can answer that exact

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1 thing but the two permit applications were reviewed  
2 independently and yes one was approved to do the gas

3 collection and the other one was not approved.

4 Q. I understand that that happened. I'm  
5 wondering how in the hell it could possibly be fair  
6 or in accordance with the regulations? How can the  
7 convicted criminal be good enough to protect the  
8 environment by running these pollution control  
9 devices but not good enough to run other pollution  
10 control devices that include placing waste into the  
11 landfill and making some money?

12 A. I guess by the evaluation by the permit  
13 section of the permit and the information they had  
14 of both of those permit applications the one  
15 conclusion at one end and a different conclusion at  
16 the other end.

17 Q. He's good enough to spend his money to  
18 protect the environment but he's not good enough to  
19 put some waste in the landfill so he can pay for it,  
20 is that what you're telling me?

21 A. No, I'm not saying that. I'm saying that  
22 he was approved to get one application--. His  
23 application to do one activity was approved. His  
24 application to do another activity was denied.

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1 Q. Do you know why?

2           A. Well, the evaluation--. Not specifically.  
3 Not specifically.

4           Q. Do you know whether anybody conducted an  
5 evaluation of the June-- an evaluation under section  
6 39(i) of the June 29 permit for the gas monitoring  
7 system?

8           A. I also know that Joyce who signed both  
9 letters I assume knew about the-- knew and  
10 evaluated-- knew about this new information about  
11 the conviction for both, yes.

12          Q. Let me just look at my notes. I appreciate  
13 your patience.

14                        Take a look at pages one and two of the  
15 record, please. There were two reasons for the  
16 denial in this case. The second reason was the  
17 39(i) conviction. The first reason was the fact  
18 that the bonding company that supplied the financial  
19 assurance, Frontier, bonds were the posted financial  
20 assurance and in the Agency's opinion they no longer  
21 comply with the  
22 regulations. Is that your understanding?

23          A. Yes.

24          Q. Same question with respect to those two

1 permits. Actually let me give you a few more  
2 permits. Frontier company got delisted on the 570  
3 treasury list on June 1 of 2000, right?

4 MR. KIM: Is that a question or are you just  
5 telling that to him?

6 MR. LaROSE: I'm telling him something to  
7 assume for the purpose of my question.

8 MR. KIM: Okay.

9 MR. LaROSE: Q Fair enough?

10 A. It might be.

11 Q. It is. Trust me on this.

12 On August 3 John Taylor--. Do you know  
13 him, Taylor?

14 A. Yes.

15 Q. Was he a good financial assurance officer  
16 for the Agency?

17 A. He worked here. I don't know.

18 Q. No opinion as to whether--.

19 A. No.

20 Q. He worked for you didn't he?

21 A. Well not directly but he worked within a  
22 section that worked for me.

23 Q. Were you up the chain of command from him?

24 A. Yes.



1 Q. Did you think he did a good job?

2 A. I guess so.

3 Q. No complaints?

4 A. (No verbal response.)

5 Q. If you had any complaints to lodge about  
6 his activities or his employment practices or the  
7 way he did his job you'd tell me about that right  
8 now?

9 MR. KIM: Are you asking if he knows of  
10 any?

11 MR. LaROSE: Yes.

12 MR. KIM: Why don't you ask him that.

13 MR. LaROSE: Q Do you have any complaints  
14 about the way John Taylor did his job?

15 A. Did I personally?

16 Q. Yes.

17 A. He didn't report to me directly and I don't  
18 know his personnel records.

19 Q. Do you know as you sit here of any  
20 complaints with respect to John Taylor's work in the  
21 many years that he worked here?

22 A. Yeah.

23 Q. Who complained about him?

24 A. I don't know, just general complaints but

1 not--. I could not give you a specific--.

2 Q. Complaint or person that complained?

3 A. No. He was here a long time.

4 Q. On August 3 Taylor knew about the delisting  
5 of Frontier and wrote a memo to the permit section  
6 that said--. This is his notes dated August 3,  
7 2000, which are contained in the permit log for  
8 these particular permits that were issued a day  
9 later.

10 Taylor writes: When your landfill has  
11 tendered three acceptable performance bonds totaling  
12 17,427,366 the bonds appear to comply with the  
13 relevant regulations in all respects. John P.  
14 Taylor. And on the basis of that Christine Roque  
15 and Joyce Munie testified they issued the permits in  
16 this case August 4.

17 So we've got delisting in June, permit  
18 August 4, we've got another permit that's issued on  
19 February 1-- actually two more permits issued  
20 February 1 for--. What were they for, Mike?

21 MR. MCDERMOTT: I'm sorry?

22 MR. LaROSE: February 1 permits.

23 MR. MCDERMOTT: February 1 permits were a  
24 submittal of maps.

1           MR. LaROSE: Q Submittal of maps. We've got  
2 them. The May 11 denial based on the financial  
3 assurance. And then the June 29 permit to operate  
4 the gas probes based on that particular permit  
5 application. So you've got delisting in June,  
6 permit in August--. Strike that--.

7                       Here's the time line: Delisting in June,  
8 knowledge of the delisting almost immediately  
9 thereafter, permit approved with Frontier bonds in  
10 August, permit approved with Frontier bonds in  
11 February 2001, permit denied because of the Frontier  
12 bonds in May of 2001, and permit approved with the  
13 Frontier bonds in June of 2001.

14                      Are the Frontier bonds good or bad  
15 depending on what permit you're submitting?

16           A. I don't know.

17           Q. I mean that's--.

18           A. I don't think so.

19           Q. In your position of director of the whole  
20 section or division manager does the financial--  
21 does whether the financial assurance instrument on  
22 file with the Agency meet the Act and the  
23 regulations depend on what type of permit you're  
24 seeking?

1 A. I don't think so.

2 Q. It's either good or it's not good no matter  
3 whether you're seeking to fill the cell or put in  
4 gas probes, right?

5 A. I suspect so, right.

6 Q. How could you possibly have granted the  
7 second one then if it was no good in May but it's  
8 now, what, magically good in June? How could you  
9 possibly have done that, Mike?

10 MR. KIM: Objection. Mike did not do that.

11 MR. LaROSE: Q How could the permit section  
12 have possibly taken those inconsistent positions and  
13 reconciled that within some regulatory framework  
14 that you guys are supposed to follow?

15 A. I don't know.

16 (That concludes the submitted testimony).

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1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF C O O K )  
4  
5

6 I, TERRY A. STRONER, CSR, do  
7 hereby state that I am a court reporter doing  
8 business in the City of Chicago, County of Cook, and  
9 State of Illinois; that I reported by means of  
10 machine shorthand the proceedings held in the  
11 foregoing cause, and that the foregoing is a true  
12 and correct transcript of my shorthand notes so  
13 taken as aforesaid.

14

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17

Terry A. Stroner, CSR

18

Notary Public, Cook County, Illinois

19

20 SUBSCRIBED AND SWORN TO  
21 before me this \_\_\_ day  
22 of \_\_\_\_\_, A.D., 2001.

22

23

\_\_\_\_\_  
Notary Public

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