

1 ILLINOIS POLLUTION CONTROL BOARD
2
3 PEOPLE OF THE STATE OF)
 ILLINOIS,)
4)
 Complainant,)
5)
 -vs-) No. PCB 03-191
6)
 COMMUNITY LANDFILL COMPANY,)
7 INC., and CITY OF MORRIS,)
 an Illinois corporation,)
8)
 Respondents.)

9
10 Proceedings held in the above-mentioned
11 cause taken before Tamara Manganiello, Registered
12 Professional Reporter and Notary Public, at 1320
13 Union Street, Morris, Illinois, on the 11th day of
14 September, A.D., 2007, commencing at 9:02 a.m.

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

2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 Suite 11-500
5 Chicago, Illinois 60601
(312) 814-3461
MR. BRADLEY P. HALLORAN, HEARING OFFICER

6 OFFICE OF THE ATTORNEY GENERAL,
7 STATE OF ILLINOIS, ENVIRONMENT BUREAU,
8 69 West Washington Street
9 Suite 1800
Chicago, Illinois 60602
(312) 814-5388
BY: MR. CHRISTOPHER J. GRANT and
MS. JENNIFER A. TOMAS,

10 Appeared on behalf of the Complainant;
11

12 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
13 101 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-8858
14 BY: MR. MICHAEL S. ROUBITCHEK,

15 Appeared on behalf of the Illinois
16 Environmental Protection Agency;

17 HINSHAW & CULBERTSON, L.L.P.,
18 100 Park Avenue
P.O. Box 1389
Rockford, Illinois 61105-1389
(815) 490-4900
19 BY: MR. RICHARD S. PORTER,

20 Appeared on behalf of the Respondent, City
21 of Morris;

22
23
24

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

2 LAW OFFICES OF SCOTT M. BELT & ASSOCIATES, P.C.,
3 105 East Main Street
4 Suite 206
5 Morris, Illinois 60450
6 (815) 941-4675
7 BY: MR. SCOTT M. BELT,

8 Appeared on behalf of the Respondent, City
9 of Morris;

10 LaROSE & BOSCO, LTD.,
11 200 North LaSalle Street
12 Suite 2810
13 Chicago, Illinois 60601
14 (312) 642-4414
15 BY: MS. CLARISSA CUTLER GRAYSON,

16 Appeared on behalf of the Respondent,
17 Community Landfill Company, Inc.

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1 HEARING OFFICER HALLORAN: Good
2 morning, everyone. My name is Bradley
3 Halloran. I'm a hearing officer with the
4 Illinois Pollution Control Board. I'm also
5 assigned to this matter entitled People of
6 the State of Illinois, Complainant, versus
7 Community Landfill Company, Inc., and City of
8 Morris, an Illinois municipal corporation,
9 Respondents. It's docketed with the Board as
10 PCB 03-191 and it's an enforcement matter.

11 It is September 11, 2007. It's
12 approximately 9:03 a.m. This hearing was
13 noticed up for September 10th, 11th, 12th and
14 13th. The record was open yesterday,
15 September 10th, but due to some unforeseen
16 circumstances with the Complainants, it was
17 continued until today.

18 This hearing was scheduled in
19 accordance with the Illinois Environmental
20 Protection Act and the Pollution Control
21 Board rules and procedures. It will be
22 conducted according to procedural rules found
23 at Sections 101 and 103 of the Board's rules.

24 I don't really see any people of

1 the -- citizens of the public or anybody out
2 there not related to the proceeding. But if
3 there were, they'd be allowed to speak when
4 the time allots them.

5 As most of you guys know, I don't
6 make the ultimate decision in the case. The
7 Board does that. I'm just here to rule on
8 evidentiary matters and make sure the hearing
9 goes smoothly.

10 When this is finished, they'll
11 look at the record, the transcript and the
12 post-hearing briefs and render a decision.

13 In this matter, the Board rendered
14 a decision on February 16th, 2006. They
15 granted Complainant's motion for summary
16 judgment in part and directed the parties to
17 present evidence on a specific issue of
18 remedy including penalty, costs and
19 attorneys' fees, if appropriate. The parties
20 are only to present evidence that is relevant
21 under Sections 33C, 42F and 42H of the Act.

22 The Board directs the parties to
23 provide specific figures and justifications
24 of any proposed penalty. And I'm reading

1 that from the February 16th, 2006 Board
2 order, Page 16.

3 With that said, would the parties
4 like to introduce themselves? Mr. Grant?

5 MR. GRANT: Yes. My name is
6 Christopher Grant and I'm an assistant
7 attorney general with the Attorney General's
8 Office.

9 MS. TOMAS: Jennifer Tomas. The last
10 name is spelled T-O-M-A-S. I'm also an
11 assistant attorney general with the Illinois
12 Attorney General's Office.

13 MR. ROUBITCHEK: Michael Roubitchek.
14 I'm assistant counsel with the Illinois EPA.

15 HEARING OFFICER HALLORAN: Thank you.
16 We're going to have to all remember to try to
17 speak up or turn our mics on so that Tammi
18 can hear us. Ms. Grayson?

19 MS. GRAYSON: Clarissa Grayson,
20 counsel for Community Landfill Company with
21 LaRose & Bosco, Limited.

22 HEARING OFFICER HALLORAN: Thank you.
23 Mr. Porter?

24 MR. PORTER: Good morning, Mr.

1 Halloran. Rick Porter on behalf of the City
2 of Morris.

3 MR. BELT: Good morning, your Honor.
4 Scott Belt on behalf of the City of Morris,
5 as well.

6 HEARING OFFICER HALLORAN: Good
7 morning, Mr. Belt.

8 Before we go any farther and the
9 Complainant presents his case in chief, it
10 appears that Community Landfill Company, CLC,
11 filed a request on September 6th, I believe.
12 I didn't find it until yesterday. I had to
13 go into the office after this hearing. It's
14 a request to incorporate documents. I
15 believe they're the testimony from another
16 case. And that case was PCB 01-170. Ms.
17 Grayson, would you like to address that?

18 MS. GRAYSON: Yes, your Honor. We
19 think that it's appropriate for the issue of
20 remedy and penalty to incorporate this
21 testimony and the documents that were related
22 to the testimony pursuant to Board rule
23 Section 101.306, which allows the
24 incorporation of documents by reference upon

1 the written request of any person on its own
2 initiative.

3 The Board or hearing officer may
4 incorporate materials from the record of
5 another Board docket into any proceeding.
6 The Board is then allowed to give the
7 incorporated matter the appropriate weight
8 upon review.

9 And we feel that these documents
10 are appropriate and also to save -- in the
11 interest of judicial economy, to save the
12 time of having these people testify. We felt
13 that since the Board has promulgated this
14 rule, that it was an appropriate use of it.

15 HEARING OFFICER HALLORAN: Thank you,
16 Ms. Grayson. I'll go first to Mr. Grant.

17 MR. GRANT: Mr. Halloran, prior to
18 seeing this, I was unfamiliar with the rule
19 and was prepared to file a response and
20 objection on the basis of hearsay and
21 relevance and that sort of thing.

22 But after looking at the rule,
23 it's obvious that it seems to be at the
24 hearing officer or the Board's discretion do

1 review this. And, certainly, this is sort of
2 the last in a long line of Board proceedings
3 that are related to financial assurance at
4 the Morris Community Landfill Company.

5 So, although, I don't think it's
6 particularly relevant to this case since the
7 issues were different, in other words in the
8 2001 case it was a question of whether the
9 Frontier bonds were valid financial
10 assurance, that's been decided and has gone
11 up through the Third District Court of
12 Appeals. I'm not going to formally object
13 but rather just, you know, point out to the
14 Board that we don't think it's particularly
15 relevant, but not make a formal objection to
16 the use of that section.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. Grant. Mr. Porter?

19 MR. PORTER: We have no objection. As
20 a matter of fact, we would join in the
21 motion. And as to Mr. Grant's point, I just
22 want to make a brief record. Part of this
23 hearing, if not one of the primary bases for
24 this hearing is to show the reasonableness of

1 the conduct, particularly my client, City of
2 Morris.

3 And if, indeed, there was a good
4 faith basis believing the Frontier bonds were
5 valid, that certainly explains my client's
6 conduct and reasonableness of that conduct,
7 therefore, it is certainly relevant to this
8 hearing and we have no objection to the
9 admission of the documents.

10 HEARING OFFICER HALLORAN: Okay.
11 Thank you. CLC and the City of Morris has
12 just recently joined in. Their request is
13 granted. The documents and the testimony
14 that was filed on September 6th will be
15 incorporated into the record. Thank you.

16 Mr. Grant, do you want to give an
17 opening?

18 MR. GRANT: Well, yes. But I have one
19 preliminary matter. I'm going to request
20 that our witness list be amended to add
21 Robert Prium as a witness. And I apologize
22 for doing this at such a late date.

23 It was my intention last week to
24 reach agreement on a few facts that were

1 contained in Community Landfill Company's
2 interrogatory responses. I was unable to do
3 that. And, you know, frankly, a lot of that
4 was my fault that it didn't happen.

5 However, I think it's important
6 that the Board get all of the pertinent
7 facts. We have interrogatory responses that
8 were verified by Mr. Prium on behalf of
9 Community Landfill Company. And I've
10 discussed it with counsel. Mr. Porter
11 doesn't have an objection to just admitting
12 those interrogatories responses, but
13 Ms. Grayson understandably needs to consult
14 with Mr. LaRose before she can agree to that.

15 MS. GRAYSON: If I may interrupt a
16 moment? I have consulted with him and we
17 will stipulate to the amounts that --

18 THE COURT REPORTER: I can't hear you.

19 MS. GRAYSON: I'm sorry. We will
20 stipulate to the amounts that are in the
21 interrogatories.

22 HEARING OFFICER HALLORAN: I'm sorry.
23 Ms. Grayson, I didn't hear again. You will
24 stipulate to the amounts?

1 MS. GRAYSON: Isn't that what --

2 MR. PORTER: Can we go off the record
3 for a moment?

4 HEARING OFFICER HALLORAN: Sure.
5 Let's go off the record.

6 (Whereupon, a discussion
7 was had off the record.)

8 HEARING OFFICER HALLORAN: Before I
9 forget, I'm going to mark Hearing Officer
10 Exhibit A the documents I just accepted into
11 evidence regarding the incorporation of
12 materials. So that will be labeled Hearing
13 Officer A. Mr. Grant?

14 MR. GRANT: Mr. Halloran, we've
15 reached a stipulation which I think will
16 solve my witness problem. We've agreed to
17 stipulate as admissible Community Landfill
18 Company's interrogatory responses. And,
19 specifically, it's Community Landfill's
20 response to Complainant's first set of
21 interrogatories, Community Landfill Company's
22 first supplemental response to Complainant's
23 first set of interrogatories and request for
24 the production of documents, this is also

1 identified as CLC Exhibit No. 2, and also
2 Respondent, Community Landfill Company's
3 response to complainant's second set of
4 interrogatories and the request for
5 production of documents.

6 All except for CLC Exhibit No. 2
7 are contained as part of Complainant's
8 Exhibit No. 13 and the stipulation is that we
9 can admit them as what Robert Prium would
10 have testified to had he been called as a
11 witness.

12 MR. PORTER: So stipulated.

13 MS. GRAYSON: So stipulated.

14 HEARING OFFICER HALLORAN: Do you want
15 to present those now, Mr. Grant?

16 MR. GRANT: Yes, your Honor. I offer
17 the documents that I just described, which
18 include portions of Complainant's Exhibit
19 No. 13, specifically Respondent, Community
20 Landfill Company's response to complainant's
21 first set of interrogatories and requests for
22 the production of documents.

23 HEARING OFFICER HALLORAN: Do you have
24 it physically with you?

1 MR. GRANT: I do. As a matter of
2 fact, we should probably give you an exhibit
3 book.

4 HEARING OFFICER HALLORAN: Ms. Tomas
5 did.

6 MR. PORTER: Mr. Halloran, may we go
7 off the record for one more moment, please?

8 HEARING OFFICER HALLORAN: Sure.
9 We're off the record.

10 (Whereupon, a discussion
11 was had off the record.)

12 HEARING OFFICER HALLORAN: Back on the
13 record.

14 MR. GRANT: Counsel for the parties
15 have met and we've agreed to stipulate to the
16 admissibility of exhibits from all three
17 parties.

18 MR. PORTER: Exhibits 1 through 14 of
19 yours, I think, correct?

20 MR. GRANT: Yes, Plaintiff's Exhibits
21 1 through 14.

22 HEARING OFFICER HALLORAN: You know, I
23 do have this binder and this is going to be
24 presented and taken into evidence.

1 MR. GRANT: Yes.

2 HEARING OFFICER HALLORAN: What I
3 think I will do is label it Complainant's
4 Group Exhibit A.

5 MR. GRANT: And then we'll have A1
6 through A14?

7 HEARING OFFICER HALLORAN: Right. I
8 think might be easier. I don't know.

9 MR. GRANT: Yeah.

10 MR. PORTER: And the state and CLC has
11 agreed to stipulate to the foundation
12 necessary for my Exhibits 1 through 10, which
13 I have tendered to Mr. Halloran along with
14 that exhibit list. I will have the exhibits
15 marked at lunch.

16 HEARING OFFICER HALLORAN: And do we
17 want to name this City of Morris Group
18 Exhibit A?

19 MR. PORTER: Sure. A1 through 10.

20 HEARING OFFICER HALLORAN: Okay.
21 Ms. Grayson?

22 MS. GRAYSON: Yes. We have agreed to
23 the admissibility of CLC's exhibits. Now, 2
24 was previously admitted, so these are

1 Exhibits 3 through 18.

2 MR. GRANT: I don't believe that we
3 got to the point of admitting CLC No. 2. We
4 were just in the process of that.

5 MS. GRAYSON: All right. We were in
6 the process of that. So we have Exhibits 3
7 through 18 for CLC that have been agreed to.

8 MR. GRANT: And, also, CLC Exhibit 2,
9 which is the first supplemental interrogatory
10 responses.

11 MS. GRAYSON: So it would be 2 through
12 18?

13 MR. GRANT: Yes.

14 HEARING OFFICER HALLORAN: When we get
15 this all fleshed out, we're going to have to
16 address them individually for the record so
17 the Board knows what we're talking about.

18 MS. GRAYSON: I'm going to tender a
19 set of our documents to the hearing officer.

20 HEARING OFFICER HALLORAN: I think
21 I'll wait and do all these exhibits together
22 before lunch or before the close of the day
23 just to make sure it's in the record.

24 The exhibits talked about are

1 admitted into evidence pursuant to the
2 stipulation. Any other housekeeping
3 so-to-speak activities?

4 MR. GRANT: I believe we'd like to
5 maybe deal with the City of Morris' motion
6 that was filed last week, at least discuss
7 it.

8 HEARING OFFICER HALLORAN: Sure.

9 MR. GRANT: We were served with the
10 motion. I think you mentioned it was
11 directed to the Board. Should we present
12 this motion at this -- or should they present
13 the motion at this time or should we --

14 HEARING OFFICER HALLORAN: This is the
15 motion for leave to file amended affirmative
16 defense?

17 MR. GRANT: Yes.

18 HEARING OFFICER HALLORAN: Okay. That
19 is directed to the Board. And, secondly, it
20 involves a substantive type ruling, so I
21 cannot do that. But you may make your
22 argument on record and the Board will take a
23 look at it or you can make a written
24 response, as well.

1 MR. GRANT: I think we filed a
2 response, at least a brief response just to
3 have something on the record. Maybe we'll
4 supplement that response. We can talk about
5 it. But I just wanted to know if that was
6 something that you wanted to treat today.

7 HEARING OFFICER HALLORAN: I have no
8 preference.

9 MR. GRANT: That's it. I'm ready to
10 proceed.

11 HEARING OFFICER HALLORAN: Do you want
12 to do an opening?

13 MR. GRANT: Yes. Just for the record,
14 I'm going to do an opening statement.

15 My name is Christopher Grant with
16 the Attorney General's Office. This hearing
17 is set to provide evidence to the Board on
18 the penalty factors from Section 33C and 42H
19 of the Illinois Environmental Protection Act,
20 which I will refer to as the Act.

21 The Board has already determined
22 that the Respondents, Community Landfill
23 Company and the City of Morris, have violated
24 Section 21D(2) of the Act and two sections of

1 the Board's financial assurance regulations.

2 This case is all about financial
3 assurance, foreclosure and post-closure care
4 of the Morris Community Landfill, Morris,
5 Grundy County, Illinois.

6 Financial assurance assures that
7 existing landfills will be properly closed at
8 the end of their working life and monitored
9 thereafter to prevent harm to local residents
10 and to prevent pollution from causing harm to
11 the environment. It's provision is a
12 condition of the privilege of conducting
13 landfill operations.

14 The City of Morris and Community
15 Landfill Company wanted to continue operating
16 a waste disposal at the Morris Community
17 Landfill. This required them to post more
18 than \$17 million of compliant financial
19 assurance.

20 The evidence will show that the
21 City and CLC agreed to this condition and
22 posted over \$17 million using surety bonds
23 issued by the Frontier Insurance Company.
24 More than half of this amount was posted by

1 the City of Morris.

2 We will show that soon afterward
3 these bonds were determined to be inadequate
4 under the Board's regulations.

5 We will also show that despite the
6 requirements of the Act and Board
7 regulations, Community Landfill Company and
8 the City of Morris did not replace these
9 bonds with any other legally sufficient
10 financial assurance. Despite this, they
11 continue to dispose of waste at the landfill
12 they own and operate.

13 The Board has found that these
14 actions institute violations of the Act and
15 the Board's own regulations. The State,
16 after this hearing, will ask that the Board
17 provide an effective and permanent remedy.
18 The State will request that the Respondents
19 be required to post at least \$17.4,
20 compliant, legally sufficient financial
21 assurance for proper closure and post-closure
22 care of the Morris Community Landfill. This
23 relief is a the minimum necessary to protect
24 the public.

1 HEARING OFFICER HALLORAN: Thank you.

2 You may proceed.

3 MS. GRAYSON: Thank you. At issue in
4 this matter are three bonds. Community
5 Landfill is the principal for two of the
6 bonds, which issued by Frontier Insurance
7 Company on June 14th, 1996, and May 31st,
8 2000. The two bonds issued to CLC were in
9 the amounts of -- or totaling \$7,345,736.

10 The third bond that's at issue
11 is -- has the City of Morris as the principal
12 and was issued by Frontier on May 31st, 2000.
13 That bond is in the amount of \$10,081,630.

14 These bonds were purchased, paid
15 for and issued to the Illinois Environmental
16 Protection Agency in good faith based on the
17 Agency's express approval of the bonds as
18 conforming with the regulation.

19 The State is still holding CLC's
20 collateral hostage and is making claims on
21 the very bonds it later rejected as
22 non-conforming.

23 Without an operating permit to
24 dispose of waste, CLC has no funds available

1 to substitute financial assurance. Under
2 these circumstances, any penalty would be
3 inappropriate.

4 Procedure work like this from June
5 to August 2000, a procedure was established
6 between CLC's counsel, John Taylor, and
7 Agency lawyer, John Kim, whereby CLC would
8 tender copies of the bonds that have been
9 issued to Petitioners by Frontier Insurance.

10 Taylor would review the bonds to
11 see if they were acceptable. And if
12 acceptable, the parties would have a closing
13 whereby CLC and the City would tender the
14 original bonds and the Agency would tender
15 the permits.

16 On August 4th, 2000, these bonds
17 were accepted by the Agency pursuant to the
18 recommendation of its own financial assurance
19 expert, John Taylor, who on August 3rd, 2000,
20 wrote, Community Landfill has tendered three
21 acceptable performance bonds totaling
22 \$17,427,363. The bonds appear to comply with
23 the relevant regulations in all respects,
24 signed, John P. Taylor.

1 When the bonds were approved on
2 August 4th, 2000, John Taylor, John Kim and
3 then Bureau of Land permit manager, Joyce
4 Munie, all knew that Frontier had been
5 removed from the Department of Treasury 570
6 list on June 1st, 2000. They all also
7 understood that if the bonds were found to be
8 unacceptable, no permit would issue and no
9 additional financial assurance would be
10 tendered.

11 John Taylor testified that Joyce
12 Munie was aware that if the bonds were not
13 accepted, no additional financial assurance
14 would be tendered and the Agency would be
15 left with only one 1.4 million in financial
16 assurance covering the entire site.

17 Taylor testified that Joyce Munie
18 directed him to, quote, find a way to accept
19 the bonds and put the operators on the hook
20 for 17 million, unquote, in financial
21 assurance.

22 Taylor also testified that he
23 recommended the bonds be accepted in
24 August 2000 because they complied with even

1 the most stringent interpretation of the
2 regulations.

3 When all three of the bonds were
4 issued, Frontier was both licensed by the
5 Illinois Department of Insurance and was on
6 the U.S. Department of Treasury's 570 list of
7 approved sureties.

8 Taylor further testified that he
9 had specific discussions with the Illinois
10 Department of Insurance and received
11 sufficient assurance that Frontier was still
12 licensed and that its bonding operations were
13 viable, sound and well run.

14 Taylor testified there is no law,
15 rule or regulation that allows the Agency to
16 take any action to disprove a bond that was
17 valid when issued, but when the bonding
18 company is later removed from the U.S.
19 Department of Treasury's 570 list of approved
20 sureties.

21 CLC then filed a supplemental
22 permit application to receive approval for
23 the construction of a separation layer and to
24 receive authorization for the acceptance of

1 waste for disposal in a newly constructed
2 area.

3 In spite of the absence of any
4 law, rule or regulation, however, Agency
5 employee, Blake Harris, recommended on May
6 9th, 2001, that the Frontier bonds be denied
7 because Frontier was no longer on the 570
8 list. Harris testified he made this
9 determination without even looking at the
10 bonds or determining their effective dates.

11 Harris' recommendation was
12 accepted without question by permit manager,
13 Joyce Munie.

14 On the contrary, John Taylor's
15 opinion was that the bonds still conformed
16 with the most stringent reading of the Act
17 and regulations as of May 2001 since, one,
18 they were issued when Frontier was listed on
19 the 570 list and, two, there is no
20 requirement -- there's no provision of the
21 Act's rules or regulations that requires or
22 even allows the Agency to deny permits based
23 on subsequent removal from the list.

24 On May 11th, 2001, the Agency

1 denied CLC's supplemental permit in part on
2 the grounds that CLC had failed to comply
3 with Section 811.712(b) of the Illinois
4 Administrative Code which requires that the
5 surety company that guaranties the bond or
6 other financial assurance for a permit be
7 licensed by the Illinois Department of
8 Insurance and approved by the U.S. Department
9 of Treasury in the Circular 570 even though
10 the Agency knew the Frontier had been
11 delisted at the time it pre-approved the
12 bonds in August of 2000.

13 The agency got them. CLC and the
14 City of Morris had done exactly what the
15 Agency had told them to do. They trusted the
16 Agency to keep up their end of the bargain.
17 Instead, in the words of Joyce Munie, they
18 were on the hook. The resulting harm to CLC
19 and the City of Morris was obvious.

20 It's uncontradicted that if the
21 Frontier bonds had not been approved in
22 August 2000, no additional financial
23 assurance would have been tendered by CLC or
24 the City. In that case, CLC would have been

1 responsible for one year's premium on only
2 \$1.4 million or \$26,850.

3 Instead, thanks to Joyce Munie's
4 directive to Taylor, find a way to accept the
5 bonds and the Agency's acceptance of the
6 bonds, CLC and the City tendered an
7 additional is \$15.6 million in financial
8 assurance bonds with a five-year commitment
9 to pay annual premiums totaling more than
10 \$200,000 per year or more than a million
11 dollars over five years.

12 CLC made payments for the bond
13 premiums in 2001 and -- through 2000 and 2001
14 for the following amounts: For the two bonds
15 for which CLC is the principal, CLC paid
16 \$174,532 in fees and premiums. For the bonds
17 for which the City of Morris is the
18 principal, CLC paid \$252,040 in fees and
19 premiums for a total of \$426,572.

20 At the same time, because the
21 permit was denied, CLC was unable to accept
22 ways to which, quote, would certainly
23 eventually shut the facility down in the
24 words of CLC engineer, Mike McDermott.

1 After litigating this matter all
2 the way up to the Supreme Court of Illinois,
3 the People of the State of Illinois filed the
4 present enforcement action on April 17th,
5 2003.

6 The story of the bonds isn't over,
7 however. This is where the story picks up
8 with information that is new to the Board and
9 which must be heard in order for the Board to
10 fully understand exactly what it is the State
11 has and continues to try to accomplish.

12 On January 23rd, 2003, Frontier
13 Insurance Company demanded that CLC pay its
14 premium for bond number 158465 in the amount
15 of \$73,825.

16 By letter dated March 20th, 2003,
17 counsel for CLC explained the foregoing
18 situation to Frontier and asked Frontier to
19 consider its nonpayment of the premiums on
20 the bonds against that backdrop stating that
21 the landfill has been effectively shut down
22 because the agency rejected the Frontier
23 bonds rendering CLC unable to generate the
24 necessary income to pay the premium on the

1 bonds. Even if CLC had the money, it would
2 be difficult to imagine paying premiums on
3 the bonds that the IEPA claims are worthless.

4 In fact, on April 7th, 2003,
5 Frontier agreed with CLC that no further
6 billing premiums were warranted on the bonds
7 since the permit application was denied on
8 May 11th, 2001. Frontier reversed all
9 renewal billings for the above bonds and
10 closed their file based on they May 11th,
11 2001 date.

12 On April 16th, 2003, CLC made a
13 demand to Frontier for the return of its
14 collateral. When Frontier confirmed on May
15 30th, 2003, that Frontier was unable to
16 refund any premiums until authorized by the
17 State Department of Insurance, Frontier and
18 counsel for CLC began exchanging drafts of a
19 proposed release of collateral. CLC sent its
20 proposed form of release to Frontier on
21 June 19th, 2003.

22 On July 2nd, 2003, however,
23 Frontier sent a form to the IEPA to be
24 executed for the release of CLC's collateral.

1 However, it was not until November 5th, 2003,
2 some three or four months later, that
3 Frontier informed CLC it would be unable to
4 proceed with the return of any collateral
5 based on the August 21st, 2003 letter from
6 Agency employee, Blake Harris.

7 In that letter, Mr. Harris
8 informed Frontier the Agency could not
9 release Frontier from claims on bonds
10 numbered 191507, 158465 and 158466 because
11 alternate financial assurance had not been
12 received.

13 The Board should find that because
14 the Agency has already rejected the bonds as
15 invalid and, in fact, filed the present
16 enforcement action to that effect, it is
17 inevitable for the Agency to at the same time
18 refuse to release the bonds simply because
19 alternate financial assurance has not been
20 received.

21 The story is not over yet,
22 however. Apparently, the Agency was not sure
23 of the situation. On January 27th, 2004,
24 Beverly Anderson, an accountant in the

1 Compliance Unit of the IEPA Bureau of Land
2 wrote to surety underwriting manager,
3 Frontier, and stated, our records indicate
4 that Morris Community Landfill is providing
5 financial assurance for closure and
6 post-closure costs through three Frontier
7 performance bonds.

8 CLC has offered the collateral
9 numerous times to the State if it will only
10 agree to release that, which it will not.

11 On May 27th, 2005, the Agency,
12 through its former director, Renee Cipriano,
13 made a demand on bonds for which CLC is the
14 principal, specifically demanding that
15 Frontier pay the Agency the penal sum of the
16 bond, \$7,345,736.

17 Similarly, on May 26th, 2006, the
18 Agency, through its director, Douglas Scott,
19 made a demand on the bonds for which the City
20 of Morris is the principal, demanding that
21 Frontier pay the Agency the penal sum of the
22 bonds, \$1,081,630.

23 The Board should consider the
24 Agency has already elected its remedy, which

1 in this case is making a demand on Frontier
2 for the sum of the bonds. Bonds which, by
3 the way, determined were no good more than
4 six years ago.

5 In summary, CLC should not be
6 penalized for simply doing in good faith what
7 it was told to do by the Agency. These bonds
8 were purchased and paid for by CLC and issued
9 to the Environmental Protection Agency in
10 good faith based on the Agency's express
11 approval of the bonds as conforming with the
12 regulation.

13 The State is still holding CLC's
14 collateral hostage and is making claims on
15 the very bonds that it later rejected as
16 non-conforming.

17 Without an operating permit to
18 dispose of waste, CLC has no funds available
19 to substitute financial assurance. And,
20 therefore, under these circumstances, any
21 penalty assessed to CLC would be unfair and
22 inappropriate.

23 HEARING OFFICER HALLORAN: Thank you,
24 Ms. Grayson. Mr. Porter?

1 MR. PORTER: Thank you, Mr. Halloran.
2 Good morning. My name Richard Porter and I
3 and Mr. Scott Belt and Charles Helston
4 represent the respondent, City of Morris.

5 The Pollution Control Board has
6 directed a hearing be held to discuss whether
7 to impose a remedy, if any, considering the
8 Section 33(c) factors, and to address a civil
9 penalty, and I'll quote, if any, considering
10 the 42(h) factors.

11 In this case, the State alleges
12 that Community Landfill Company, CLC, and the
13 City of Morris failed to provide adequate
14 financial assurance for closure and
15 post-closure operations. CLC and the City of
16 Morris have filed motions for summary
17 judgment in this matter.

18 The City of Morris hereby adopts
19 and incorporates all the pleadings and
20 arguments associated with those summary
21 judgment motions by way of reference into
22 this record.

23 In its order regarding those
24 motions for summary judgment, the Illinois

1 Pollution Control Board found that Morris
2 Community Landfill is approximately 119 acres
3 and divided into two parcels designated as
4 Parcel A consisting of 55 acres and Parcel B
5 consisting of approximately 64 acres.

6 The Board also found that CLC --
7 and, again, I will quote, CLC operates the
8 Morris Community Landfill and manages the
9 day-to-day operations of both parcels at the
10 site. Therefore, the City of Morris is not
11 responsible for implementation of a fine
12 remedy.

13 In addition to those arguments
14 stated in the summary judgment motion, the
15 City of Morris will present a post-hearing
16 brief establishing that under the Tort
17 Immunity Act, the City is immune from
18 liability from penalties and attorneys fees,
19 which are being sought by the state of
20 Illinois.

21 Furthermore, because the PCB has
22 relied upon certain permits given by a prior
23 city official who was never authorized to
24 obligate the City of Morris to pay for

1 closure and post-closure care, said acts were
2 done ultra vires and cannot be the basis for
3 imposition of final remedy against the City
4 of Morris.

5 Nonetheless, we will present
6 evidence during this hearing that the
7 \$17 million closure/post-closure cost
8 estimates that the government is utilizing to
9 formulate its proposed remedy are excessive
10 and unnecessary.

11 We'll present testimony from Shaw
12 Environmental, which is a highly reputable
13 environmental consultant experienced in the
14 landfill industry, that the closure and
15 post-closure costs will total about
16 \$10 million, not \$17 million.

17 Furthermore, we'll present
18 testimony from an independent auditor,
19 William Crawford, that the City of Morris may
20 avoid posting any bond or paying any
21 insurance vehicle by merely posting a
22 municipal guaranty.

23 Therefore, the evidence will be,
24 unlike what Mr. Grant indicated earlier, that

1 the City of Morris enjoyed absolutely no
2 financial gain or realized any economic
3 benefit from failing to post financial
4 assurance.

5 The evidence will be it could
6 have -- or it could do so by merely posting a
7 municipal guaranty, but it's been the
8 position of the City of Morris and continues
9 to be the position of the City of Morris that
10 closure and post-closure is the
11 responsibility of CLC.

12 We'll also present evidence of the
13 impracticability of purchasing a bond or
14 insurance vehicle at this stage, as the
15 government -- the state of Illinois is of the
16 position that Parcel B of the landfill must
17 be closed immediately. And from what I heard
18 in opening statements, it appears that the
19 government has taken the position that the
20 entire landfill must be closed immediately.

21 Well, if we have to close the
22 landfill now, it makes absolutely no sense to
23 be spending money on an insurance vehicle or
24 a bond. Rather, any funds that are available

1 from any source ought to be used to close the
2 landfill.

3 Logic dictates that the money
4 shouldn't be given to an insurance company or
5 a bonding company and instead it should be
6 used to protect the environment.

7 It would simply be detrimental to
8 the public health, safety and welfare to
9 impose the remedy that the State is
10 suggesting. The posting of financial
11 assurances should have occurred in the
12 30 years that the landfill was in operation.

13 And, indeed, it was the
14 understanding of the City of Morris that it
15 was being accomplished by Community Landfill
16 Company, which was the only entity that had
17 the operating and developing permits for the
18 landfill.

19 It was entirely reasonable for the
20 City to believe that it bore no
21 responsibility for the posting of financial
22 assurances, as the State has never indicated
23 a difference until these proceedings
24 commenced. And it wasn't until June 1 of

1 2006 that the PCB has ruled that financial
2 assurance must now be accomplished by the
3 City of Morris.

4 Therefore, the City of Morris has
5 not had the opportunity to establish a fund
6 that can even come close to paying for the
7 financial assurances, which the State says
8 must be posted in this case.

9 Furthermore, the government has
10 indicated that Parcel B at a minimum of the
11 landfill should have been closed within
12 90 days of reaching its allowable height.
13 That was over a decade ago. Therefore, the
14 State should have required the timely closure
15 of the landfill by CLC, its operator and
16 developer. And if CLC had failed to do so
17 ten years ago, the Frontier bonds could have
18 been utilized at that time to pay for closure
19 and post-closure.

20 It wasn't until 2000 or 2001 that
21 we came to the conclusion that the Frontier
22 bonds were no longer valid. Therefore, the
23 City sitting on its -- excuse me, therefore
24 the State sitting on its rights is what got

1 us to the position we are today.

2 Further, if the State had required
3 closure of Parcel B and it became apparent
4 that CLC wasn't accomplishing it, that at
5 least would have alerted my client of the
6 issue and perhaps we could have established a
7 fund at that time to pay for closure and
8 post-closure a decade later.

9 Of course, we did not have an
10 opportunity to do so because, again, the
11 State sat on its rights.

12 Therefore, the State should be
13 barred and estopped from now trying to impose
14 this liability upon the City of Morris.

15 However, if the Pollution Control
16 Board is going to demand the City fund this
17 remedy, that remedy should only utilize the
18 most reliable and recent closure/post-closure
19 numbers which have been submitted by Shaw
20 Environmental and, further, it should allow
21 the City to post its municipal guaranty of
22 closure/post-closure. That way, funds are
23 not siphoned away from closing and rather
24 we'll post a guaranty. And if we have funds

1 available, they could be used and actually
2 fund the closure.

3 The State should further assign
4 any of its right under the Frontier insurance
5 to the City of Morris and allow the City of
6 Morris to continue to operate Parcel A, which
7 has not yet met its height and, thereby, use
8 those proceeds from said parcel to defray any
9 closure costs. That's the most reasonable
10 remedy that could be accomplished here if
11 they're going to impose one against the City
12 of Morris, which it should not.

13 Section 33(c) requires the PCB to
14 consider the technical practicability and
15 economic reasonableness of requiring the City
16 to post financial assurance now.

17 It would be completely
18 unreasonable at this stage to require the
19 City to use its funds to buy an insurance
20 bond or buy an insurance vehicle.

21 Section 33(C) also requires the
22 PCB to consider that the City has been
23 spending its assets on closure activities
24 since February of 2006.

1 Once it became apparent that the
2 State was taking the position that it was,
3 indeed, our responsibility, the City has
4 since then been moving toward closure and has
5 hired Shaw Environmental at a substantial
6 expense to perform the initial tests required
7 to determine what has to be done at the
8 landfill.

9 In conclusion, no remedy should be
10 imposed against the City of Morris. The only
11 party responsible for closure/post-closure
12 here is Community Landfill Company.

13 If the State was of the position
14 it was the City of Morris's problem to close
15 this landfill, it should have alerted the
16 City of Morris to that fact ten years ago.

17 However, if any remedy is allowed
18 or ordered by the Pollution Control Board,
19 the City of Morris should be able to use
20 whatever funds it has available to actually
21 close the facility, thereby protect the human
22 health, safety and welfare and our
23 environment.

24 Using those funds to buy an

1 insurance vehicle or a bond makes absolutely
2 no sense. And, as a matter of fact, the
3 course of such a vehicle is likely to be the
4 entire cost of closure because the State is
5 taking the position that we have to close
6 now. So any insurance company is going to
7 say, well, in order for us to give you a
8 \$10 million insurance vehicle, you've got to
9 pay a \$10 million premium. That makes
10 absolutely no sense to give that money to
11 insurance companies instead of protecting the
12 environment.

13 I have nothing further. Thank
14 you.

15 HEARING OFFICER HALLORAN: Thank you,
16 Mr. Porter. It's my turn. We're going to go
17 off the record for five minutes for a break.
18 Thanks.

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

23 HEARING OFFICER HALLORAN: We're back
24 on the record. We just finished with opening

1 statements. Ms. Tomas?

2 MS. TOMAS: We'd like to call our
3 first witness, Mark Retzlaff.

4 MR. PORTER: Mr. Halloran, before that
5 commences, we would make a motion to exclude
6 witnesses.

7 MS. GRAYSON: And we would join in
8 that motion.

9 MR. GRANT: No objection.

10 HEARING OFFICER HALLORAN: Okay.

11 (Whereupon, a discussion
12 was had off the record.)

13 MR. GRANT: This lady is not our
14 witness.

15 HEARING OFFICER HALLORAN: And you
16 are, ma'am?

17 UNIDENTIFIED SPEAKER: I work for the
18 solid waste department here.

19 HEARING OFFICER HALLORAN: Okay.
20 Thank you. So there's nobody to sequester.
21 Okay.

22 If you would just raise your right
23 hand, sir, and Tammi will swear you in.

24 (Witness sworn.)

1 HEARING OFFICER HALLORAN: Thank you.

2 You may have a seat.

3 WHEREUPON:

4 MARK RETZLAFF

5 called as a witness herein, having been first duly

6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 By Ms. Tomas

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

11 A. Mark Retzlaff. It's R-E-T-Z-L-A-F-F.

12 Q. And where do you live, Mark?

13 A. Lombard.

14 Q. And where how long have you lived in
15 Lombard?

16 A. Approximately 12 years.

17 Q. What is your highest level of
18 education?

19 A. Bachelor's of science.

20 Q. And where did you get that from?

21 A. Eastern Illinois university.

22 Q. When did you graduate?

23 A. 1982.

24 Q. Where are you currently employed?

1 A. State Environmental Protection Agency.

2 Q. And that's commonly known as Illinois
3 EPA?

4 A. That's correct, yes.

5 Q. How long have you been with the
6 Illinois EPA?

7 A. About 18 years.

8 Q. And what is your title there?

9 A. Inspector.

10 Q. And how long have you held the
11 position of inspector?

12 A. Eighteen years.

13 Q. Okay. Since you began with the
14 Illinois EPA?

15 A. Yes.

16 Q. And is that with the Bureau of Land?

17 A. That's correct. Yes.

18 Q. If you could please describe your
19 duties as a Bureau of Land inspector?

20 A. To conduct RCRA hazardous waste and
21 solid waste inspections in facilities for compliance
22 with the Act, the Environment Protection Act and
23 Regulations.

24 Q. Are sanitary landfill inspections part

1 of your duties?

2 A. Yes.

3 Q. And you said you inspect those
4 landfills for compliance with the Illinois
5 Environmental Protection Act, the Illinois EPA and
6 Illinois Pollution Control Board Regulations,
7 correct?

8 A. Yes.

9 Q. Do you also inspect for compliance
10 with terms and conditions of Illinois EPA issued
11 landfill permits?

12 A. Yes.

13 Q. Is the Morris Community Landfill
14 within your inspection region?

15 A. Yes.

16 Q. And are you the primary field
17 inspector for the Morris Community Landfill within
18 the Bureau of Land?

19 A. Yes.

20 Q. If you could please just give me a
21 general description of the Morris Community
22 Landfill?

23 A. It's situated in a semi-rural area
24 adjacent and across the street from another

1 landfill, EnvironTech Landfill. It consists of two
2 parcels; Parcel A, which is what I consider the
3 newer section and Parcel B, which is the older,
4 historical section.

5 Q. Do you know approximately when the
6 last time Parcel B took in waste?

7 A. I've been told approximately 2002.

8 MR. PORTER: Objection, hearsay.

9 HEARING OFFICER HALLORAN: Ms. Tomas?

10 BY MS. TOMAS:

11 Q. Who told you that?

12 A. James Pelnarsh, Sr., the site
13 operator.

14 MR. PORTER: Same objection,
15 Mr. Hearing Officer.

16 HEARING OFFICER HALLORAN: Ms. Tomas?

17 BY MS. TOMAS:

18 Q. And who do you know --

19 MR. PORTER: I guess I'll move to
20 strike. He did testify to something and it
21 turned out it was something that somebody
22 told him, so I'll move to strike that
23 testimony.

24 MS. GRAYSON: I'll join in that

1 motion.

2 MS. TOMAS: And we would state that
3 Mr. Pelnarsh is -- it's an admission by a
4 party deponent. And we will show that
5 through the (inaudible).

6 THE COURT REPORTER: You need to
7 repeat that. I can't hear you.

8 MS. TOMAS: We will show that Mr.
9 Pelnarsh is -- it's an admission by a party
10 deponent and we will show that through his
11 direct testimony of his understanding of who
12 Mr. Pelnarsh is.

13 HEARING OFFICER HALLORAN: Mr. Porter?

14 MR. PORTER: Unless there's a
15 foundation that Mr. Pelnarsh is a member of
16 the control group of CLC, which we all know
17 he is not, it is not an admission of a party
18 deponent. The party is CLC.

19 MS. TOMAS: Control group has nothing
20 to do with it. He is an agent of CLC and
21 authorized to speak on behalf of the company.

22 MS. GRAYSON: And I'll object --

23 HEARING OFFICER HALLORAN: Okay. I'm
24 going to sustain the City and CLC's

1 objection, however, I'm not going to strike
2 it. The Board will take note. You may
3 proceed.

4 BY MS. TOMAS:

5 Q. What surrounds the area near the
6 Morris Community Landfill?

7 A. Additional landfill, some commercial
8 and very little residential. Primarily rural.

9 Q. Would you say that the Morris
10 Community Landfill is suited to the area in which
11 its situated?

12 A. Yes.

13 Q. And do you know if the Morris
14 Community Landfill has any land permits?

15 A. Yes, they do.

16 Q. Do you know who owns the Morris
17 Community Landfill?

18 A. It's my understanding, based on
19 documents, the City of Morris.

20 Q. Okay. And do you know who
21 operates the Morris Community Landfill?

22 A. Yes.

23 Q. Who is that, please?

24 A. Community Landfill --

1 MR. PORTER: Well, I'm going to object
2 to the relevancy, Mr. Halloran. If we're
3 going to get into whether or not we are the
4 owner/operator of the landfill, that's going
5 to make this hearing a heck of a lot longer.

6 I thought we were trying to limit
7 this to the 33(c) and 42(h) factors. If we
8 want to open that door, I'm willing to walk
9 through it, but my understanding is that's
10 beyond the scope of this hearing.

11 HEARING OFFICER HALLORAN: Ms. Tomas?

12 MS. TOMAS: Your Honor, I'll just move
13 on.

14 HEARING OFFICER HALLORAN: Okay.
15 Sustained.

16 BY MS. TOMAS:

17 Q. When was the first time you inspected
18 the Morris Community Landfill?

19 A. Approximately 2000. Spring of 2000.

20 Q. How do you know it was in 2000?

21 A. A document review.

22 Q. What would be included in that
23 document review?

24 A. My inspection reports.

1 Q. Okay. Do you recall giving a
2 different first inspection date on other occasions?

3 A. Yes.

4 Q. Can you please explain that?

5 A. On a previous hearing that I
6 participated in, I believe I stated that my first
7 time out there was 2002. And upon file review, I
8 realized it was 2000.

9 Q. So would you like to correct those
10 prior statements to reflect the fact that you
11 discovered an earlier inspection report that
12 confirms your first inspection of the Morris
13 Community Landfill was in 2000?

14 A. Yes.

15 MR. PORTER: Mr. Halloran, I realize
16 that this is an administrative hearing but
17 we've got to have some -- I object to
18 leading.

19 HEARING OFFICER HALLORAN: Okay. You
20 know, I'm going to ask Tammi to read the
21 question back. I'm having a hard time
22 following you, Ms. Tomas you have slow down.
23 Tammi might be able to understand, but...

24

1 (Whereupon, the requested
2 portion of the record
3 was read accordingly.)

4 HEARING OFFICER HALLORAN: You know,
5 I'll overrule it for now and I think the
6 witness answered.

7 BY MS. TOMAS:

8 Q. Approximately how many times have you
9 inspected the Morris Community Landfill since 2000?

10 A. Approximately 18 times.

11 Q. And how many of those times did you
12 inspect it in 2007?

13 A. Twice.

14 Q. Did you inspect both Parcels A and B
15 every time you inspected the site?

16 A. No.

17 Q. When was your first inspection in
18 2007?

19 A. June 26th.

20 Q. And did you inspect both parcels
21 during that inspection?

22 A. No.

23 Q. What parcel did you inspect?

24 A. Parcel A only.

1 Q. When you arrived at the landfill, was
2 anyone there?

3 A. Yes.

4 Q. Who was that?

5 A. An employee by the name of Tricia
6 Banks, I believe, is the last name.

7 Q. And who do you know Tricia Banks to
8 be?

9 A. She's an employee of Community
10 Landfill Company that I would describe as
11 administrative-related, clerical, take tickets and
12 so forth.

13 Q. Do you know who she works for?

14 A. I assume Community Landfill Company.

15 Q. Did she accompany you as you made your
16 inspection?

17 A. No.

18 Q. Did you speak with anyone else during
19 your inspection?

20 A. I spoke with James Pelnarsh, Sr., via
21 telephone.

22 Q. And who was Jim Pelnarsh?

23 A. The site operator of the landfill.

24 Q. And do you know who he works for?

1 A. Community Landfill Company.

2 Q. If you could please describe what you
3 observed at the landfill during your June 2007
4 inspection.

5 MR. PORTER: Objection, irrelevant.

6 MS. GRAYSON: Objection.

7 MS. TOMAS: Mr. Halloran, it goes
8 directly to 42(h) and 33(c) factors as to
9 diligence and gravity and duration.

10 HEARING OFFICER HALLORAN: I agree.
11 Overruled.

12 MR. PORTER: May I make a brief
13 record, Mr. Halloran?

14 HEARING OFFICER HALLORAN: You may,
15 Mr. Porter.

16 MR. PORTER: My understanding is the
17 issue here today is whether or not financial
18 assurances should have been posted by CLC and
19 the City of Morris.

20 We're now getting into apparently
21 physical inspections of the property and, I
22 guess, alleged violations concerning other
23 environmental regulations. That goes beyond
24 the scope of whether or not 33(c) -- the

1 33(c) and 42(h) factors as applies to posting
2 of financial assurance.

3 HEARING OFFICER HALLORAN: Ms. Tomas?

4 MS. GRAYSON: And I would also like to
5 make a record, Mr. Halloran. The testimony
6 of the current condition of the landfill
7 should be irrelevant here. It's not a
8 defense to not have financial assurance if
9 the landfill is beautiful. It doesn't make
10 any difference whether you have -- whether
11 the landfill is a beautiful landfill or not
12 in terms of whether there's adequate
13 financial assurance posted.

14 Any testimony regarding the
15 condition of the landfill should be reserved
16 for a separate enforcement action. It's a
17 whole separate matter.

18 MR. GRANT: May I respond?

19 HEARING OFFICER HALLORAN: Mr. Porter,
20 go ahead.

21 MR. GRANT: This is Mr. Grant.

22 HEARING OFFICER HALLORAN: Mr. Grant,
23 go ahead.

24 MR. GRANT: The issue here isn't

1 whether or not there's financial assurance.
2 That's already been determined. It's really
3 the case that there is no compliant financial
4 assurance and that the Respondents have both
5 violated the sections of the Act in the
6 complaint.

7 The 33(c) factors and the 42(h)
8 factors deal with the gravity of the offense.
9 We will show at this hearing that there is no
10 financial assurance that's been posted at any
11 time and that the condition of the landfill
12 is degrading significantly.

13 If financial assurance had been in
14 place, the State would be able to trigger the
15 financial assurance and these problems that
16 will be described with Mr. Retzlaff's
17 testimony would have been taken care of.

18 The fact that there is no
19 financial assurance is directly related to
20 the failure of the Respondents to take any
21 responsibility for maintaining the landfill
22 and for the current conditions of the
23 landfill.

24 HEARING OFFICER HALLORAN: Mr. Porter,

1 you know, under 42(h), duration and gravity
2 and presence or absence of due diligence,
3 those are two of the factors that the Board
4 will look at. My understanding is they're
5 talking about the 2007 inspection and I find
6 it relevant. So objection overruled. You
7 may continue.

8 MR. PORTER: Mr. Halloran, I've
9 noticed somebody entered the room.

10 HEARING OFFICER HALLORAN: We have
11 sequestered and excluded witnesses, so exit
12 stage left or stage right.

13 (Whereupon Mr. Blake Harris
14 left the proceedings.)

15 HEARING OFFICER HALLORAN: You may
16 proceed, Ms. Tomas.

17 BY MS. TOMAS:

18 Q. Can you please describe the
19 observations you made at the landfill during your
20 June 2007 inspection?

21 A. In Parcel A, there was a freshly
22 disposed load of waste consisting of demolition
23 debris, remodeling materials, general refuse,
24 wastewater treatment sludge apparently from the city

1 and the other assorted materials.

2 Q. Did you observe these materials during
3 any prior inspection of Parcel A?

4 A. No.

5 Q. Is Parcel A currently permitted to
6 accept construction demolition debris waste?

7 A. No.

8 Q. Is Parcel A currently permitted to
9 accept general refuse?

10 A. No.

11 Q. Did you include these observations in
12 your inspection report?

13 A. Yes.

14 Q. At this time I'd like to turn to
15 Complainant Group Exhibit A, Exhibit No. 7. If you
16 can look at the narrative section of your inspection
17 report, which is I believe the third page, the
18 second to last sentence says, no new apparent
19 violations were cited.

20 Can you please explain that
21 statement given your observations?

22 A. Basically, that the violations are
23 documented via photographs and through the narrative
24 that new violations aren't cited because in our

1 opinion or my opinion the existing violations that
2 are on the books are there, so they're ongoing
3 violations versus new violations. The same old
4 violations.

5 Q. And did you take any pictures while
6 you were inspecting Parcel A?

7 A. Yes.

8 Q. Are they attached to your inspection
9 report?

10 A. Yes, they are.

11 Q. At this time I'd like to -- it's, I
12 believe, Page 4. Looking at exposure number one,
13 could you please describe what this picture is
14 depicting?

15 A. That's a freshly disposed load of what
16 I described as demolition debris and general refuse
17 approximately 20 feet by 10 feet by 6 feet in size
18 at the southeastern slope, south end of the site.

19 Q. Again, this is just Parcel A?

20 A. Yes.

21 Q. Is exposure number two the same?

22 A. Yes, it is. It's just a close-up.

23 Q. Exposure number three?

24 A. That's an additional area at the outer

1 edge of the slope where soils have been partially
2 pushed on it to cover it up. So it's an additional
3 disposal area.

4 Q. So that is a separate area from the
5 pile depicted in pictures number one and two?

6 A. Yes. That's correct.

7 Q. What about picture number four?

8 A. That's an additional area extending to
9 the southeast along the outer slope of general
10 refuse and debris.

11 Q. Exposure number five?

12 A. A close-up. Another additional photo
13 of that same area as depicted in four -- photo four.

14 Q. And exposure number six?

15 A. Wastewater treatment sludge from the
16 City of Morris.

17 Q. Exposure number seven?

18 A. Kind of an overview of that southern
19 slope looking to the east.

20 Q. And exposure number eight?

21 A. This was just a pile of what I -- I'm
22 assuming they're water meters. I can't say, but
23 it's some sort of meter device that were just
24 disposed of on the ground to the side of the road.

1 Q. Exposure number nine?

2 A. A close-up of one of the meters.

3 Q. And exposure number ten?

4 A. It's an overview looking to the
5 southwest of kind of the active area, but it's being
6 secondary use for like a brick salvage operation.

7 Q. And when was your most recent
8 inspection of the Morris Community Landfill?

9 A. August 29th of 2007.

10 Q. Did you inspect both Parcels A and B
11 at that inspection?

12 A. Yes.

13 Q. When you arrived at the landfill, was
14 anyone there?

15 A. Yes.

16 Q. Who was that?

17 A. James Pelnarsh, Sr.

18 Q. Did he accompany you as you made your
19 inspection?

20 A. Yes. On B only.

21 Q. On Parcel B only?

22 A. Yes.

23 Q. What did you observe at Parcel A
24 during your August 2007 inspection?

1 A. Again, general refuse strewn on the
2 surface, refuse that was partially exposed through
3 the soil on the southern slope, what I described as
4 a leachate seep on the south end, erosion cuts,
5 areas that lack vegetation, appropriate cover and so
6 forth, exposed refuse.

7 Q. Okay. What is a leachate seep?

8 A. Leachate is contact water, rain water,
9 groundwater that comes in contact with refuse or
10 garbage/waste that seeps out of a landfill that
11 isn't contained.

12 Q. What does a leachate seep tell you
13 about the landfill?

14 A. That it's not being maintained
15 properly.

16 Q. Were there any other observations you
17 made that indicated the lack of maintenance?

18 A. Yes.

19 Q. What were those?

20 A. Just on the eastern slope, erosion
21 cuts, areas that lacked vegetative cover that
22 contribute to the erosion and then the exposed
23 refuse.

24 Q. Did you include those observations in

1 your inspection report?

2 A. Yes.

3 Q. I'd like to turn now to Complainant
4 Group Exhibit A that's marked as Exhibit 8. And
5 we'll go again to your narrative section, which is
6 Page 2 of the narrative.

7 Again, you note no apparent
8 violations. Is that for the same reason as in your
9 June inspection report?

10 A. Yes.

11 Q. Did you take any pictures while you
12 were at Parcel A in August 2007?

13 A. Yes.

14 Q. Turning now to Page 9 of 13 of Exhibit
15 A, Exhibit No. 8, could you please explain what's in
16 exposure number 17?

17 A. That's Parcel A. That's a photograph
18 of leachate at the southeastern slope, outer edge.

19 Q. How do you know it's leachate?

20 A. From 18 years experience inspecting
21 landfills.

22 Q. And what is exposure number 18?

23 A. Eighteen is the southeastern slope
24 showing exposed refuse that lacks cover.

1 Q. Exposure number 19?

2 A. It's just an overview of the general
3 area, again, showing the brick salvage operation.

4 Q. Have you noticed any changes to this
5 area from your June 2007 inspection?

6 A. Yes.

7 Q. What were those?

8 A. Again, additional refuse that wasn't
9 previously observed was observed on the 29th.

10 Q. And exposure number 20?

11 A. That's the top portion looking
12 northwest just showing lack of vegetative cover.

13 Q. Number 21?

14 A. It's a photograph of the eastern slope
15 looking north/northeast showing pretty decent cover
16 established.

17 Q. Number 22?

18 A. On top of the landfill, northeastern
19 section, just showing uncovered refuse, exposed
20 refuse.

21 Q. Number 23?

22 A. Again, that general area looking
23 northeast on top of the landfill showing exposed
24 asphalt shingles, refuse.

1 Q. And number 24?

2 A. That's back to the Parcel A again.
3 The southeastern slope. Just newly deposited refuse
4 that's exposed.

5 Q. Number 25?

6 A. That's the southeastern slope of
7 Parcel A, sandbags that apparently came from the
8 Morris Hospital from the previous week's flooding.

9 Q. How do you know that?

10 A. James Pelnarsh, Sr., told me. In
11 addition, there's drywall and other, like,
12 demolition type debris there.

13 MS. GRAYSON: Objection to hearsay.

14 HEARING OFFICER HALLORAN: Ms. Grayson?

15 MS. GRAYSON: Objection as to how does
16 he know, because Mr. Pelnarsh told him.

17 HEARING OFFICER HALLORAN: Ms. Tomas?

18 MS. TOMAS: Your Honor, it's an
19 admission of a party deponent.

20 MS. GRAYSON: He's not a party.
21 Mr. Pelnarsh is an employee of the landfill.
22 He is not a party.

23 MS. TOMAS: He is an agent of CLC
24 authorized to speak on their behalf at the

1 landfill.

2 HEARING OFFICER HALLORAN: Ms. Grayson?

3 MS. GRAYSON: We stand on our
4 objection that it's hearsay testimony.

5 HEARING OFFICER HALLORAN: Overruled.

6 You may answer.

7 BY MS. TOMAS:

8 Q. You said Mr. Pelnarsh?

9 A. Yes. James Pelnarsh, Sr.

10 Q. And exposure number 26?

11 A. That's, again, the southeastern slope
12 of Parcel A with what appears to be a sofa or a
13 related item, some drywall, plastic tubing, wood
14 exposed.

15 Q. Are there any other observations you
16 can recall on Parcel A from your August 2007
17 inspection?

18 A. Not that I can recall. No.

19 Q. Let's move to your inspection of
20 Parcel B in August of 2007. You stated that Jim
21 Pelnarsh accompanied you on the inspection of this
22 particular parcel, correct?

23 A. Yes.

24 Q. And what were your observations on

1 Parcel B during your August 2007 inspection?

2 A. Again, Parcel B, there were some
3 significant erosion cuts, areas that weren't
4 properly vegetated, there were noticeable gas odors,
5 leachate collection wells were not properly covered
6 allowing gas to escape. The southeastern corner of
7 the slope, based on Mr. Pelnarsh's words, had a
8 significant collapse. It was -- you could see
9 erosion and the area lacked vegetation, as well --
10 there was leachate seeps, as well, at that location.

11 Q. You stated that you noticed odors
12 while you were inspecting Parcel B?

13 A. Yes.

14 Q. Did you use any instruments while you
15 were inspecting that parcel to determine the
16 composition of those odors?

17 A. Yes.

18 Q. And what was that?

19 A. It's a Foxboro TVA 1000.

20 Q. What does TVA stand for?

21 A. Toxic vapor analyzer.

22 Q. Can you please explain what that is
23 and how it works?

24 A. Well, it's an instrument that -- it

1 analyzes organic vapors. So if a gas were to be
2 generated, it would potentially read that gas and
3 give you readings on parts per million.

4 Q. Did you take any background readings
5 prior to your inspection on Parcel B?

6 A. Yes.

7 Q. Where did you take those?

8 A. At the entrance of the facility.

9 Q. Do you remember what they were?

10 A. There were two readings. The TVA has
11 two components, a PID and FID. And I believe one
12 was six-point-something and the other was
13 two-point-something.

14 Q. What is PID?

15 A. Photo ionization detector.

16 Q. What does that mean?

17 A. It just -- it reads for vapors,
18 organic vapors. There's different -- I can't get
19 into it too much. I don't know all the technical
20 aspects. But there's different bulbs that they use
21 or lamps that can read different vapors.

22 Q. So the PID would read a different
23 vapor than an FID?

24 A. Yes.

1 Q. Did you take any pictures while you
2 were at Parcel A?

3 A. Yes.

4 Q. I'm sorry. Parcel B?

5 A. Yes.

6 Q. Are they attached to your inspection
7 report?

8 A. Yes, they are.

9 Q. At this time I'd like to look at
10 Complainant's Group Exhibit A, Exhibit No. 8,
11 beginning Page 1 of 1 of the pictures. And can you
12 please explain exposure number one?

13 A. That's a leachate collection well that
14 was identified as L104 and it's uncovered.

15 Q. And did you take a TVA reading at this
16 location?

17 A. I believe so. I don't have -- I'm not
18 looking at my narrative. I don't recall. I do
19 recall odors were noted and I indicated that in the
20 photo description.

21 Q. In exposure number two?

22 A. That's an erosion cut on Parcel B at
23 the northern slope and about two feet wide by
24 three feet deep.

1 Q. Did you take a TVA reading at this
2 location?

3 A. Yes, I did.

4 Q. And what were the results of that?

5 A. Thirty parts per million.

6 Q. What does that tell you?

7 A. It tells me that there's gases being
8 generated and escaping and odors were noticeable.

9 Q. Okay. Exposure number three?

10 A. Again, that's Parcel B on the north
11 slope. It's just an additional erosion cut, a
12 gully.

13 Q. Did you take a TVA at this location?

14 A. Yes. I didn't -- no reading.

15 Q. I'm sorry. What was your answer?

16 A. There were no readings at that
17 location.

18 Q. Exposure number four?

19 A. It's an additional erosion cut along
20 the northern slope. And these were about 50 to
21 100 feet apart in some areas.

22 Q. For each, if you made a TVA reading,
23 would you have noted it in the notes that
24 accompanied the photographs?

1 A. Yes.

2 Q. Okay. Exposure number five?

3 A. Again, that's Parcel B, the northern
4 slope. It's just showing another erosion gully and
5 lack of vegetative cover.

6 Q. Is erosion number six the same?

7 A. Exposure number six?

8 Q. Exposure number six.

9 A. Yes. That's an additional area along
10 the northern slope of Parcel B.

11 Q. Exposure number seven?

12 A. That is a leachate collection well
13 identified as L103. Again, with the lid off.

14 Q. You note that -- in your notes next to
15 the exposure, can you tell me whether or not you
16 took a TVA reading?

17 A. Yes, I did.

18 Q. And what were the results of that?

19 A. It's hard to say because the device
20 started to climb rapidly because of the strong gas
21 that was being generated and it flamed out. It
22 knocked it out.

23 Q. What does that tell you?

24 A. That it was -- the concentrations of

1 gas were higher than oxygen. That it displaced the
2 oxygen.

3 Q. Exposure number eight?

4 A. Number eight is Parcel B, the
5 southwest slope that apparently had a slope collapse
6 and some significant erosion.

7 Q. Exposure number nine?

8 A. Parcel B, that's identified as
9 leachate collection well L102. It's been damaged
10 and it's uncovered.

11 Q. Exposure number ten?

12 A. Ten is the -- is, again, Parcel B, the
13 southern slope now as we're coming around. Just an
14 erosion gully starting on the edge of the road.

15 Q. Exposure number 11?

16 A. Parcel B, southern slope showing a
17 leachate seep along the road.

18 Q. Exposure number 12?

19 A. That's the south slope looking to the
20 east just showing some erosion issues and lack of
21 maintenance.

22 Q. Exposure number 13?

23 A. Parcel B, it's just a gas collection
24 well on the southern slope.

1 Q. Do you know if that was operating?

2 A. I can't say. No.

3 Q. Exposure number 14?

4 A. Parcel B, south slope, a leachate seep
5 along the road and additional seeping.

6 Q. Exposure number 15?

7 A. Parcel B side, that's the gas flare
8 which was operating at the time of the inspection.

9 Q. And exposure number 16?

10 A. That's a sign that's affixed to the
11 side of the maintenance building, general office for
12 the landfill.

13 Q. Are there any other observations that
14 you can recall on Parcel B from your August 2007
15 inspection?

16 A. No.

17 Q. Based on your observations of the
18 Morris Community Landfill for the past seven years,
19 what in your opinion needs to happen at Parcel A to
20 come into compliance with the Act and Board land
21 regulations?

22 A. Stop taking --

23 MR. PORTER: Objection, irrelevant.

24 MS. GRAYSON: Objection.

1 HEARING OFFICER HALLORAN: I'm sorry.

2 Mr. Porter?

3 MR. PORTER: Objection, irrelevant.

4 HEARING OFFICER HALLORAN: Ms. Tomas?

5 MS. TOMAS: Mr. Halloran, again, it
6 goes to duration, gravity, what exactly that
7 site looked like and what needs to be done to
8 get it to a position to close.

9 HEARING OFFICER HALLORAN: Mr. Porter?

10 MR. PORTER: That question wasn't
11 asked. The question that was asked is over
12 the past seven years, in your observations
13 there, what violations have you seen.

14 HEARING OFFICER HALLORAN: Sustained.

15 Ms. Tomas, do you want to rephrase?

16 MS. TOMAS: Absolutely.

17 BY MS. TOMAS:

18 Q. Based on your observations at the
19 Morris Community Landfill for the past seven years,
20 what do you believe needs to happen in the future to
21 get this landfill into compliance?

22 A. Stop taking in refuse.

23 MR. PORTER: I'm going to object to
24 the question being vague and unanswerable.

1 HEARING OFFICER HALLORAN: I agree,
2 Mr. Porter. Sustained. Ms. Tomas, can you
3 rephrase. That is rather vague and general.

4 BY MS. TOMAS:

5 Q. Are you familiar with the Illinois
6 Environmental Protection Act and Illinois Pollution
7 Control Board regulations as they relate to
8 landfills?

9 A. Yes.

10 Q. And during your observations of
11 sanitary landfills, do you observe -- make
12 observations based on the Act and the Board
13 regulations and requirements?

14 A. Yes.

15 Q. Based on the Act and the Board land
16 and pollution regs and your understanding of them,
17 what does Morris Community Landfill need to do to
18 come in compliance with the Act and Board land
19 regulations?

20 MR. PORTER: Again --

21 MS. GRAYSON: Objection.

22 HEARING OFFICER HALLORAN: Ms.
23 Grayson?

24 MS. GRAYSON: Well, I'm going to

1 object on the basis that it hasn't been
2 established that he's an expert on the Board
3 regulations nor has he been identified as an
4 opinion witness to testify about those
5 regulations or about the Act.

6 HEARING OFFICER HALLORAN: Okay. I'm
7 going to overrule that objection. I think he
8 is well versed in the Act and regulations.
9 He's been an inspector for 18 years, so I
10 think he's probably pretty familiar with it.
11 He can give his opinion on any acts. In any
12 event, Mr. Porter?

13 MR. PORTER: My position is similar.
14 One, it's overbroad. It's still vague. I
15 don't know what violation she's asking about
16 and it's just an open-ended, give us a
17 discussion question.

18 Beyond that, if it's intended to
19 elicit testimony as to what needs to happen
20 from a design perspective to close Parcel B,
21 he is not qualified and they have not laid
22 the qualifications to provide that testimony.

23 He is not an engineer or at least
24 I haven't heard that he's an engineer with

1 the expertise of designing a closure plan for
2 a landfill.

3 So the problem starts with the
4 question being so broad that I'm not entirely
5 certain as to where we're going with it. But
6 if it is elicited -- if the object is to elicit
7 testimony which he's not qualified to opine,
8 I object.

9 HEARING OFFICER HALLORAN: With that
10 explanation, I understand Ms. Grayson's
11 objection a little better, I think.
12 Ms. Tomas?

13 MS. TOMAS: Your Honor, I am trying to
14 elicit testimony as to regards to compliance
15 with the Board regulations and the acts. It
16 has nothing to do with closure or what needs
17 to be done for closure or design capacity at
18 all. It's just what needs to be done to fix
19 the problems that he observed at the
20 landfill, in his opinion.

21 HEARING OFFICER HALLORAN: You know,
22 I'll allow a little latitude. It is rather
23 open-ended. And Ms. Grayson and Mr. Porter
24 already objected, so it was noticed. Thank

1 you.

2 MS. TOMAS: Thank you, Mr. Halloran.

3 BY MS. TOMAS:

4 Q. Based on your observations of Parcel B
5 (sic) and your familiarity with the Illinois
6 Environmental Protection Act and Board regulations,
7 what would you say needs to be done to remedy the
8 violations that you noted at Parcel A?

9 A. Based on my observations, I would
10 say --

11 MR. PORTER: I'm sorry, but I have to
12 object. I did not hear him testify as to
13 what Board regulations he believes were
14 violated.

15 I heard him describe a bunch of
16 photos of which may or may not depict a
17 violation, but I certainly didn't hear any
18 particular regulation that he identified as
19 having been violated. And so the fact -- the
20 question assumes facts which are not in
21 evidence, I guess, is my objection.

22 HEARING OFFICER HALLORAN: Ms.
23 Grayson?

24 MS. GRAYSON: I would agree with

1 Mr. Porter's objection.

2 HEARING OFFICER HALLORAN: I somewhat
3 agree and I think that the Board -- I ask the
4 Board to take notice of those objections.
5 However, I am going to overrule them. And,
6 again, this is a little latitude I'm leaving
7 the Complainant and the witness. But we may
8 proceed.

9 MS. TOMAS: Can you please read back
10 the question?

11 (Whereupon, the requested
12 portion of the record
13 was read accordingly.)

14 THE WITNESS: Parcel B or A?

15 BY MS. TOMAS:

16 Q. As to Parcel A.

17 A. Cease taking in waste and get adequate
18 cover in place and vegetate the area that needs to
19 be vegetated.

20 Q. And based on your observations, what
21 in your opinion needs to happen at Parcel B to come
22 into compliance with the Act and Board land and
23 pollution regulations?

24 A. Again --

1 MR. PORTER: Same objection.

2 HEARING OFFICER HALLORAN: Overruled.

3 You may answer.

4 BY THE WITNESS:

5 A. Again, get proper cover in place,
6 prevent erosion, get the appropriate areas properly
7 vegetated, keep the gas wells covered.

8 Q. Do you know why this work hasn't been
9 completed to date?

10 MR. PORTER: Objection, conjecture.

11 HEARING OFFICER HALLORAN: Sustained.

12 MS. TOMAS: That's it.

13 HEARING OFFICER HALLORAN: Thank you.

14 Ms. Grayson, do you want CLC to go first
15 since you're the first on the caption if you
16 so choose to cross?

17 MS. GRAYSON: That would be fine.

18 Could I take a couple of minutes?

19 HEARING OFFICER HALLORAN: Sure.

20 We're off the record.

21 (Brief pause.)

22 HEARING OFFICER HALLORAN: Back on the
23 record. Ms. Grayson is going to cross the
24 witness.

1 MS. GRAYSON: Mr. Retzlaff, I'm
2 Clarissa Grayson and I represent Community
3 Landfill Company. I have a few questions for
4 you.

5 CROSS EXAMINATION

6 By Ms. Grayson

7 Q. Regarding your inspection report on
8 Page 2 where you state -- and this is Exhibit 1
9 for -- this is Exhibit 8, which would be your
10 inspection report of August 29th, 2007. This is the
11 People's Exhibit A/8. When you say that no new
12 apparent violations were cited, is there a reason
13 why you don't describe that as continuing violations
14 as the way that you said to Ms. -- in response to
15 Ms. Tomas' questions?

16 A. No. It's just the way we phrase --
17 the way I phrased it.

18 Q. So no new apparent violations were
19 cited is your statement, though, however --

20 A. Correct. Yes.

21 Q. -- correct?

22 How much time did you spend at the
23 landfill on August 29th, 2007?

24 A. If I may look at my front sheets, I

1 can tell you approximately.

2 Q. You may.

3 A. About three hours for both sites
4 total.

5 Q. Three hours for both sites total?

6 A. Yes.

7 Q. How did you travel from one end of the
8 landfill to the other?

9 A. On Parcel A?

10 Q. Well, let's start with Parcel A.
11 Parcel A is how big did you say? Earlier you
12 testified as to its size.

13 A. I don't believe I did testify to the
14 size --

15 Q. I thought you did.

16 A. -- on Parcel A.

17 Q. Do you have an approximate idea of how
18 large Parcel A is?

19 A. I believe somebody threw out the
20 figure of 51 acres, possibly on A. I'm guessing.

21 Q. And how much time did you spend on
22 Parcel A?

23 A. Probably about an hour.

24 Q. So 1 hour for 50 acres; is that

1 correct -- approximately 50 acres?

2 A. That's correct.

3 Q. And how did you -- what was your mode
4 of transportation?

5 A. Foot and vehicle.

6 Q. Can you describe a little bit of what
7 your travels were like on that day in Parcel A?

8 A. Very difficult. I did not go
9 throughout the entire site because of the
10 difficulty.

11 Q. What was difficult about it?

12 A. The weeds were very high and thick,
13 erosion cuts and so forth, mud, standing water.

14 Q. So you were on Parcel A for about
15 one hour and then what did you do?

16 A. Well, actually, that was the second
17 phase of my inspection. I then left.

18 Q. So you started at Parcel B?

19 A. That's correct. Yes.

20 Q. And how much time did you spend at
21 Parcel B?

22 A. I would say approximately two hours.

23 Q. And, again, what was your mode of
24 transportation?

1 A. Vehicle and foot.

2 Q. How do you know something is leachate?

3 A. Based on experience from something
4 that's coming out of a landfill, emitting from a
5 landfill.

6 Q. Does it have an odor to it?

7 A. It may have an odor at times.

8 Q. And what were the wind conditions on
9 that day.

10 A. I don't recall.

11 Q. Did you make a note of that in your
12 report as to what the weather was?

13 A. Probably temperature and maybe soil
14 conditions or clarity of the cloud coverage. I
15 don't believe I got into wind issues.

16 Q. Would it make a difference if you --
17 if there was wind and the wind was blowing and you
18 weren't exactly sure of where the odor -- an alleged
19 odor was coming from?

20 A. It's possible. Yes.

21 Q. So that would make a difference?

22 A. It could, yes.

23 Q. Isn't Community Landfill -- didn't you
24 testify that Community Landfill is adjacent to

1 another landfill?

2 A. Yes.

3 Q. Is it possible that any of the odors
4 that you detected actually came from another
5 landfill site?

6 A. Not all of them. No.

7 Q. Is it possible that some of them did?

8 A. It's possible. Yes.

9 Q. And but without knowing what the
10 condition of the wind was that day, you can't be
11 sure?

12 A. That's correct. Yes.

13 Q. So you can't be absolutely sure that
14 any of the odors that you detected were coming from
15 Community Landfill?

16 A. Some I could. Yes.

17 Q. But not all of them?

18 A. That's correct. Yes.

19 Q. And would that be the same for the
20 previous inspection report -- inspection that you
21 conducted -- was that Exhibit 7, June 21st, 2006?

22 A. Yes.

23 Q. I'm sorry. That would be Exhibit 8.
24 We're talking about Exhibit --

1 HEARING OFFICER HALLORAN: Exhibit 7,
2 perhaps?

3 MS. GRAYSON: Yes. Okay. I'm sorry.
4 I'm looking at the wrong date.

5 BY MS. GRAYSON:

6 Q. We have June 26th, 2007. How much
7 time did you spend at the landfill on that day?

8 A. Approximately, based on this,
9 two hours.

10 Q. And could you describe what your --
11 what the sequence of events was on that day?

12 A. I checked in at the front office. I
13 believe I met with Tricia Banks. Identified, you
14 know, why I was there, to conduct an inspection and
15 so forth.

16 Then I went over to Parcel A,
17 drove on and got out of the vehicle and walked what
18 I perceived as the active area, the area of recent
19 dumping.

20 Q. And you did not go to Parcel B on that
21 day; is that correct?

22 A. No.

23 Q. Parcel A only. And I'll ask you just
24 the same question about why wouldn't you put in

1 there -- or your statement is that no new apparent
2 violations were cited; is that correct?

3 A. Correct.

4 Q. So you chose not to make note of any
5 new apparent violations?

6 A. The violations, by simply having
7 photographs and describing them, technically are
8 there, I just am not engaging it into a new
9 enforcement action.

10 Q. And that would be the same for the
11 inspection that was conducted on August 29th,
12 correct?

13 A. That's correct. Yes.

14 Q. And do you have any idea of the
15 financial condition of Community Landfill?

16 A. Not specifically. No.

17 Q. Do you know whether or not they're
18 intentionally not providing financial assurance or
19 whether it's not providing and it's simply because
20 it can't afford it?

21 A. No.

22 Q. Are you aware of the fact that a
23 permit was denied for a new cell --

24 A. Yes.

1 Q. -- some years ago?

2 A. Uh-huh.

3 Q. How do you think that they make any
4 money?

5 A. I would guess that they don't make any
6 money.

7 Q. Would you think that not being able to
8 dispose of waste would hamper their ability to make
9 money?

10 A. Yes.

11 MS. GRAYSON: I have nothing further.

12 HEARING OFFICER HALLORAN: Thank you,
13 Ms. Grayson. Mr. Porter?

14 MR. PORTER: Thank you, Mr. Halloran.

15 CROSS EXAMINATION

16 By Mr. Porter

17 Q. You've never seen anyone from the City
18 of Morris take waste to the Community Landfill, have
19 you?

20 A. Not physically, no.

21 Q. And you've never spoken with anyone
22 from the City of Morris indicating that they've
23 taken waste to Community Landfill, correct?

24 A. No. Not that I recall.

1 Q. You are aware that the operating and
2 development permits for the Community Landfill were
3 transferred from the City of Morris to CLC back in
4 the early 1980s, right?

5 A. Yes.

6 Q. You're aware that that was approved by
7 the Illinois EPA, correct?

8 A. Yes.

9 Q. The landfill still has an operating
10 permit; isn't that right?

11 A. It's my understanding that they do not
12 have an operating permit.

13 Q. Well, on what do you base that
14 understanding?

15 A. The May of '01 denial.

16 Q. Well, they were denied the right to
17 start a new cell, but that did not destroy their
18 previously permitted rights, correct?

19 A. That's correct, yes.

20 Q. And do you know if they have met --
21 strike that.

22 Do you know if they have gotten to
23 their allowable height on Parcel A?

24 A. I really don't know.

1 Q. Let me ask you this way: Isn't it
2 true that there is substantial height left and
3 available for Parcel A?

4 A. It's possible.

5 Q. And so isn't it true that they can
6 accept waste, they just can't build a new cell?

7 A. I would say yes.

8 Q. So you would agree then that your --
9 strike that.

10 So you would agree that they have
11 not violated any permit condition or regulation
12 concerning the acceptance of waste, correct?

13 A. Yes, they have.

14 Q. All right. I'll bite. How so if they
15 can take waste and they're allowed to take waste
16 under their current permit have they violated such a
17 right?

18 A. It would appear based on years of
19 going out there that they've exceeded the permitted
20 area by filling to the southeastern slope. The
21 materials that I observed on June 26th and
22 August 19th would be outside of that permitted area.

23 Q. Have you had a survey done to
24 determine whether or not it's outside of the

1 permitted area?

2 A. No.

3 Q. So have you done anything to
4 corroborate your eyeball opinion that it's outside
5 of the permitted area?

6 A. No.

7 Q. Do you have any information that
8 the City of -- strike that.

9 You're aware the City of Morris
10 has leased the premises to Community Landfill
11 Company, correct?

12 A. I'm not sure on the details.

13 Q. Well, you're not aware of any rights
14 that the City of Morris would have to come onto
15 Community Landfill's property and dictate to them
16 what waste they can take and shouldn't take, right?

17 A. Right.

18 Q. You would agree that in order to close
19 a landfill, the operator has to take waste to meet
20 the appropriate slopes and stability, correct?

21 A. It's possible, yes.

22 Q. Now, you intimated that there may have
23 been violations on this June and August 2007
24 instances by taking us through a litany of

1 photographs. But you're not indicating that each
2 one of those photographs depicts a violation, are
3 you?

4 A. Yes. Not every one, but some do, yes.

5 Q. Well, okay. There are some
6 photographs that depict some areas that have erosion
7 issues, correct?

8 A. Correct.

9 Q. Well, it's understood and allowable
10 for land to erode, right?

11 A. Correct.

12 Q. The issue is whether or not there's
13 sufficient cover over the waste, correct?

14 A. Correct.

15 Q. And the vast majority of your
16 photographs don't depict any waste, they just show
17 some erosion, right?

18 A. Correct.

19 Q. And did you do any tests to determine
20 whether or not there were 12 inches of cover over
21 the existing waste?

22 A. No.

23 Q. And that's the magic number, right?

24 A. Not necessarily. No.

1 Q. Okay. But whatever the magic number
2 may be, you did not make any determination of
3 whether or not that number had been reached or not
4 reached, correct?

5 A. Correct.

6 Q. So there were no borings done to tell
7 us whether or not there's sufficient cover?

8 A. No.

9 Q. My statement was correct, right?

10 A. Yes.

11 Q. We heard earlier some, in opening
12 statements, testimony concerning a \$17 million
13 figure for closure/post-closure. That figure was
14 determined way before your June and August
15 inspections, correct?

16 A. I would assume, yes.

17 Q. So your inspections have absolutely no
18 import upon the dollar figure that the government is
19 seeking, correct?

20 A. I would assume that also.

21 Q. You have no information that the City
22 of Morris in any way willfully or intentionally
23 violated any regulation, correct?

24 A. I suppose, yes.

1 Q. I'm sorry. My statement was correct?

2 A. Yes.

3 Q. Okay. Do you even know when financial
4 assurances were last posted and acceptable to the
5 Illinois Environmental Protection Agency?

6 A. No.

7 Q. So you don't know if there's an
8 ongoing violation concerning financial assurance
9 then, correct?

10 A. I only know through letters that I
11 have seen in the file.

12 Q. Okay. But it's not your job to make
13 that determination, right?

14 A. No.

15 Q. That's somebody else's job?

16 A. Correct. Yes.

17 Q. So you have no opinions on whether or
18 not there are financial assurances presently posted,
19 correct?

20 A. That's correct. Yes.

21 Q. Now, you're not suggesting that the
22 City of Morris has sustained any economic benefit
23 from the violations you may or may not have seen,
24 correct?

1 A. Correct.

2 Q. If I heard you right, you agree that
3 this is a good place for a landfill, right?

4 A. Correct, yes.

5 Q. You also agree that landfills
6 themselves have -- are positive as far as providing
7 a benefit to the public, correct?

8 A. Yes.

9 Q. If I heard you right, your proposed
10 solutions for Parcel A were to stop taking in waste
11 and that was based upon your conclusion that they
12 weren't permitted, but we're no longer sure about
13 that, right?

14 A. In that contested southeastern area,
15 that's correct, yes.

16 Q. So they can keep taking in waste in
17 Parcel A, so are you now amending your proposed
18 solution for Parcel A?

19 A. Not completely, no.

20 Q. If I understand, then your solution is
21 you can take in waste, but don't do it beyond your
22 permitted area?

23 A. Correct. Yes.

24 Q. Okay. You mentioned get adequate

1 cover, and in the photos I didn't see many
2 depictions of the lack of adequate cover. Would you
3 agree with that, first of all?

4 A. No. I don't agree.

5 Q. Well, over 50 acres I saw one or two
6 instances of some erosion issues. But were there
7 specific instances of a lack of adequate cover?

8 A. Yes.

9 Q. And did you quantify that?

10 A. I took a couple token photos, but the
11 cover, the weeds were so thick, it doesn't show up
12 in the photos.

13 Q. Well, let's talk about that for a
14 minute. There's certainly nothing wrong with a
15 landfill having weeds, right?

16 A. In my opinion, yes.

17 Q. Well, are you aware of any description
18 under the regulations for a landfill having weeds?

19 A. No.

20 Q. And as a matter of fact, weeds
21 actually can and do maintain the soil, keep it in
22 place, right?

23 A. Not in this case.

24 Q. Well, as a general statement, you

1 would agree with that, right?

2 A. It's not a very good cover source.

3 Q. Well, let's put this way: It's better
4 to have some weeds there than just have blank soil,
5 right?

6 A. I guess, yes.

7 Q. I mean, if you've got blank soil,
8 you're going to have much more erosion than if you
9 had weeds?

10 A. That's true.

11 Q. Okay. Did you -- do you have any
12 opinion as to what it would cost to provide adequate
13 cover, whatever that may mean, as to Parcel A?

14 A. No.

15 Q. And as for vegetation, do you have any
16 opinion as to what it would cost to get rid of the
17 weeds or provide what you believe is appropriate
18 vegetation?

19 A. No.

20 Q. And, again, you have no opinion that
21 my client sustained any economic benefit from the
22 alleged failure to have adequate cover if there is a
23 failure, right?

24 A. That's correct. Yes.

1 Q. And, likewise, you have no opinion my
2 client sustained any economic benefit for the
3 alleged failure to have appropriate vegetation on
4 Parcel A if, indeed, there isn't appropriate
5 vegetation, right?

6 A. Correct.

7 Q. Now, as to Parcel B, you don't have
8 any evidence or see any evidence that waste has been
9 taken there, correct?

10 A. Recently?

11 Q. Right.

12 A. No.

13 Q. Now, are you aware that -- strike
14 that.

15 Do you believe Parcel B is over
16 height?

17 A. Just based on what I've been told or
18 read in letters.

19 Q. You don't have any personal
20 information of that?

21 A. No.

22 Q. And you've never been asked to
23 determine that, correct?

24 A. No.

1 Q. Do you have any knowledge or opinion
2 as to when height was initially reached as to Parcel
3 B?

4 A. No.

5 Q. Now, you mentioned, again, that the
6 things that you think should happen at Parcel B are
7 proper cover, prevent erosion, vegetate and keep gas
8 wells covered. Proper cover and prevent erosion are
9 the same thing, right?

10 A. They're tied in.

11 Q. And, again, you don't have any
12 specific instance where cover was less than the
13 mandated depth, correct?

14 A. It's not a matter of depth. It's
15 whether cover is there or not. Inadequate cover is
16 inadequate cover and that can mean vegetative or
17 erosion cuts, whether it's a foot or two feet.

18 Q. Well, there has to be a certain amount
19 of depth of cover over the refuse, correct?

20 A. That's correct. Yes.

21 Q. And you don't know if that depth was
22 reached as to Parcel B, correct?

23 A. No. But I'm talking vegetative cover,
24 greenery versus soil depth.

1 Q. Okay. So you have no opinion that
2 there's inadequate soil out on Parcel B, you're
3 talking about vegetation, right?

4 A. It's both. If you have an erosion
5 cut, it's inadequate cover, period.

6 Q. Okay. Well, let's talk about the soil
7 first.

8 A. Okay.

9 Q. Again, you have no specific soil
10 borings or tests to show a lack of the regulatory
11 mandated amount of cover over the refuse, correct?

12 A. That's correct. Yes.

13 Q. Now, as to vegetation, you can't point
14 us to any particular regulation that requires there
15 to be no weeds in a landfill, correct?

16 A. That's correct, that I'm aware of.

17 Q. And is there any specific regulation
18 that you're aware of -- strike that.

19 Overall, you would agree that
20 there is greenery over the vast majority of Parcel
21 B, correct?

22 A. Yes.

23 Q. And were there any areas where you did
24 not see some type of greenery on the soil on Parcel

1 B?

2 A. Yes.

3 Q. And did you quantify or determine how
4 much it would cost to plant sufficient greenery on
5 those areas?

6 A. No.

7 Q. So, again, you have no evidence of the
8 economic benefit to either CLC or the City of Morris
9 concerning the purported lack of vegetative cover,
10 correct?

11 A. Correct.

12 Q. Now, you mentioned keeping gas wells
13 covered. That's a pretty simple matter, just
14 picking up the lid and sticking it on the gas well,
15 right?

16 A. Correct.

17 Q. And you saw one that was uncovered?

18 A. All were uncovered.

19 Q. Do you know why?

20 A. Don't know.

21 Q. There are times when it's necessary to
22 uncover the gas wells, correct?

23 A. Possibly. Yes.

24 Q. All right.

1 (Brief pause.)

2 BY MR. PORTER:

3 Q. Co-counsel has reminded me you saw
4 evidence of leachate wells uncovered, not gas wells,
5 correct?

6 A. That's correct, yes.

7 Q. All right. And there are times when
8 one needs to uncover a leachate well; is that right?

9 A. That's correct.

10 Q. Okay. And as far as cost, we're
11 talking negligible to go around and put the cap back
12 on the well cover, right?

13 A. I would think so. Yes.

14 Q. Now, I believe the purpose of your
15 testimony was to somehow indicate that things are
16 getting worse out there. Isn't it actually true
17 that --

18 MR. GRANT: I object. I think that
19 improperly mischaracterizes testimony. He
20 hasn't said that that was his purpose for
21 testifying.

22 HEARING OFFICER HALLORAN: I will
23 allow him to answer.

24

1 BY MR. PORTER:

2 Q. Isn't it true that since the fall of
3 2006 the gas flare has been in operation?

4 A. Yes.

5 Q. Isn't it true since the summer of 2005
6 monthly sampling of perimeter gas probes has
7 occurred?

8 A. Yes.

9 Q. Isn't it true that since January of
10 2007 quarterly sampling of surface -- there has been
11 quarterly sampling of the surface stands?

12 A. Surface?

13 (Brief pause.)

14 BY MR. PORTER:

15 Q. Would you agree that since January
16 of 2007 there has been quarterly sampling of surface
17 methane?

18 A. That's my understanding. Yes. I
19 haven't seen any reports.

20 Q. Since 2005 there has been sampling of
21 groundwater monitoring wells, right?

22 A. Yes.

23 Q. Since March of '07 there's been
24 sampling of landfill gas extraction wells, correct?

1 A. I've heard, yes.

2 Q. All of this work, by the way, has been
3 performed by Shaw Environmental; is that right?

4 A. Correct.

5 Q. And to your knowledge, that's been at
6 the expense of the City of Morris; isn't that
7 correct?

8 A. I believe so. Yes.

9 Q. You would agree that the involvement
10 of Shaw Environmental has been a very positive
11 development as it's concerning this landfill; is
12 that right?

13 A. Absolutely. Yes.

14 MS. GRAYSON: If I could just
15 interrupt one minute? I would just like to
16 clarify testimony that the gas flare was
17 actually provided by (inaudible).

18 THE COURT REPORTER: I didn't hear
19 you.

20 MS. GRAYSON: I'm sorry. I just
21 wanted to clarify that the gas flare was
22 actually paid for, purchased and installed by
23 Community Landfill Company.

24 MR. GRANT: I object to -- you know,

1 without a witness, to putting that into
2 evidence.

3 MR. PORTER: I'll just ask the
4 question. That will make it easier.

5 BY MR. PORTER:

6 Q. Do you know who paid for the gas
7 flare?

8 A. No. I don't.

9 Q. Okay. That could have been paid by
10 CLC, not the City of Morris; is that right?

11 A. It's possible. Yes.

12 Q. Okay. And I have no knowledge one way
13 or the other. I'm asking you.

14 A. I don't know.

15 Q. Since summer of 2005 there's been an
16 evaluation done of the leachate management system by
17 Shaw; is that right?

18 A. I believe so. Yes.

19 Q. Since summer 2005 there's been an
20 evaluation of all monitoring systems; is that right?

21 A. Yes.

22 Q. There's also been an evaluation of the
23 landfill gas systems in February of '06; is that
24 correct?

1 A. Yes.

2 Q. And, as a matter of fact, Shaw
3 Environmental drafted and devised and developed a
4 revised closure plan and any cost estimates; is that
5 correct?

6 A. Yes.

7 Q. And those cost estimates have been
8 submitted to the EPA; is that right?

9 A. I believe so. Yes.

10 Q. And the EPA has not responded to those
11 cost estimates; is that correct?

12 A. I don't know.

13 MR. PORTER: I have nothing further.

14 HEARING OFFICER HALLORAN: Thank you,
15 Mr. Porter. Ms. Tomas, any redirect?

16 MS. TOMAS: Yes. Thank you,
17 Mr. Halloran.

18 RE-DIRECT EXAMINATION

19 By Ms. Tomas

20 Q. Mr. Retzlaff, can CLC or the City of
21 Morris dispose of waste without an operating permit?

22 A. No.

23 Q. Do they currently hold an operating
24 permit for Parcel A?

1 A. No.

2 Q. And the waste accumulations you noted
3 in your photographs, are those being used for
4 contouring?

5 A. Well, in an unorthodox way, yes.

6 Q. And is daily cover required for
7 contouring?

8 A. Yes.

9 Q. Are they -- is CLC or the City of
10 Morris providing daily cover on the contouring waste
11 piles?

12 A. No.

13 MR. PORTER: I'll object to the extent
14 it calls for a conclusion that the City of
15 Morris has any responsibility to do so. They
16 don't have a permit to do so.

17 HEARING OFFICER HALLORAN: Ms. Tomas?

18 MS. TOMAS: They are listed as the
19 owner of the landfill on multiple permits.

20 MR. PORTER: They do not have an
21 operating or developing permit for this
22 landfill. They can't provide for cover.

23 HEARING OFFICER HALLORAN: I'm going
24 to allow the witness to answer. Overruled.

1 If he's able.

2 THE WITNESS: Restate the question,
3 please.

4 MS. TOMAS: Can you please repeat the
5 question?

6 HEARING OFFICER HALLORAN: You can ask
7 me and then I'll ask the court reporter.
8 Just a bit of a formality. Thanks.

9 MS. TOMAS: I apologize,
10 Mr. Halloran. I request to have it read
11 back.

12 (Whereupon, the requested
13 portion of the record
14 was read accordingly.)

15 BY THE WITNESS:

16 A. No.

17 BY MS. TOMAS:

18 Q. Do landfills that are unable to take
19 in waste provide a benefit to the community?

20 A. To the community?

21 Q. Yes.

22 A. No.

23 Q. And in your opinion, is there a
24 difference between weeds and vegetative cover?

1 A. Yes.

2 Q. And is adequate vegetative cover
3 required by the regulations?

4 A. Yes.

5 Q. Okay. Are leachate seeps prohibited
6 by the regulations?

7 A. Yes.

8 Q. And is exposed waste in areas not
9 covered by an operating permit prohibited by the
10 regulations?

11 A. Yes.

12 MS. TOMAS: That's all.

13 HEARING OFFICER HALLORAN: Thank you.

14 Mr. Grayson, re-cross?

15 MS. GRAYSON: I have nothing further.

16 HEARING OFFICER HALLORAN: All right.

17 Thank you. Mr. Porter, I'm sure you have
18 re-cross questions.

19 MR. PORTER: A couple.

20 RE-CROSS EXAMINATION

21 By Mr. Porter

22 Q. Vegetative cover is required after
23 closure, right?

24 A. It's during operation as well.

1 Q. Well, to your knowledge, is there
2 insufficient vegetative cover on Parcel B assuming
3 it's still an operating landfill?

4 A. Is there a lack of proper vegetation?

5 Q. Let me ask it this way: Final
6 vegetative cover happens after closure, correct?

7 A. It occurs after the receipt of the
8 final load of refuse. There's clocks that kick in.

9 Q. And so in Parcel A we haven't had
10 receipt of the final load of refuse yet, as a matter
11 of fact, we're far from that, correct?

12 A. Well, it's a little different in
13 Parcel A if they lack the operating permit and yet
14 still continue to take in refuse, you know.

15 Q. Well, again, you don't have any
16 information they lack an operating permit, right?
17 They have an operating permit?

18 A. Not for -- to operate that parcel to
19 take in waste. It was denied in 2001.

20 Q. But, again, you haven't -- strike
21 that.

22 You don't have any opinions that
23 they've started a new parcel, do you?

24 A. It appears that they have. Obviously,

1 that's being contested, but it appears that they're
2 outside the historical area.

3 Q. And not to retread it, but you have
4 not done any survey or taken any measurements to
5 determine if they're outside the historical area?

6 A. That's correct. Yes.

7 Q. So you would agree you don't have the
8 basis as you sit here today to make that conclusion,
9 correct?

10 A. Technically, no.

11 Q. Assuming that the government is
12 correct that Parcel B is over height, you would
13 agree that technically there may need to be some
14 waste relocation, correct?

15 A. Yes.

16 Q. And then, obviously, you don't want to
17 have your final cover down -- final vegetative cover
18 down at a time if you're going to have to remove it,
19 right?

20 A. Correct.

21 MR. PORTER: Nothing further,

22 Mr. Halloran. Thank you.

23 HEARING OFFICER HALLORAN: Thank you,

24 Mr. Porter. Ms. Tomas?

1 MS. TOMAS: Nothing further,
2 Mr. Halloran.

3 HEARING OFFICER HALLORAN: Thank you.
4 You may step down. Thanks a lot. Off the
5 record.

6 (Whereupon, a discussion
7 was had off the record.)

8 HEARING OFFICER HALLORAN: We're going
9 to adjourn until noon.

10 (Whereupon, after a lunch
11 break was had, the
12 following proceedings
13 were held accordingly.)

14 HEARING OFFICER HALLORAN: We're back
15 on the record. It's approximately 12:06,
16 September 11th, 2007. The State just
17 finished with their first witness and I
18 believe they're ready to proceed to call
19 their second witness.

20 MR. GRANT: Yes, Mr. Hearing Officer.
21 The State calls Blake Harris.

22 HEARING OFFICER HALLORAN: Mr. Harris?
23 (Witness sworn.)

24

1 WHEREUPON:

2 BLAKE HARRIS

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

5 DIRECT EXAMINATION

6 By Mr. Grant

7 Q. Mr. Harris, would you state your name
8 and spell your name for the record, please?

9 A. Blake Olin Harris, B-L-A-K-E, O-L-I-N,
10 H-A-R-R-I-S.

11 Q. Where are you employed?

12 A. Pardon me?

13 Q. Where are you employed?

14 A. Illinois EPA.

15 Q. How long have you been employed with
16 Illinois EPA?

17 A. Since June of '93.

18 Q. Can you give us some idea of your
19 educational background?

20 A. A business degree, Illinois College,
21 '92. I've done some graduate work at SIU
22 Edwardsville, environmental studies, taken a couple
23 masters classes out at UIS in Springfield in
24 geology, that kind of thing.

1 Q. What is your current position?

2 A. I work for air monitoring. I'm an
3 environmental protection specialist. We do
4 forecasting for ozone and particulates for people
5 who are asthmatics and have similar conditions.

6 HEARING OFFICER HALLORAN: Could you
7 speak up, please?

8 THE WITNESS: Okay. I'll try. I have
9 a cold. I'll try.

10 HEARING OFFICER HALLORAN: Thanks.

11 BY MR. GRANT:

12 Q. And what was your position before the
13 one you have?

14 A. I was an accountant with the Bureau of
15 Water. Worked with low interest loans for
16 wastewater, drinking water improvement projects.

17 Q. And what sorts of things would you do
18 working with the low interest loans?

19 A. People would come in with bids. We
20 would issue them a loan. Along the process they
21 would do change orders when things would change in
22 the project if they had to add additional meters or
23 something like that to extend out water service.
24 And eventually we would close those loans out at the

1 end of the project.

2 Q. And prior to being with the Bureau of
3 Water, were you with the Bureau of Land?

4 A. Yes. I worked with financial
5 assurance, Bureau of Land from February or March of
6 '99 up through the end of '03.

7 Q. What were your responsibilities, sir?

8 A. I reviewed financial assurance
9 instruments for landfills, hazardous waste
10 facilities, underground injection wells, tire
11 reclamation facilities to determine compliance with
12 the regulations.

13 Q. Are you familiar with this case, that
14 is this Pollution Control Board case?

15 A. Yes.

16 Q. Have you been deposed by the City of
17 Morris and Community Landfill Company in this case?

18 A. Yes.

19 Q. Did you also testify before regarding
20 financial assurance issues for the Morris Community
21 Landfill?

22 A. Yes.

23 Q. And can you describe that testimony?
24 Or rather, what case or what matter was it given in?

1 A. My recollection there was a permit
2 appeal back in 2001 I think it was. They just
3 wanted to know the status of the financial
4 assurance.

5 Q. Are you familiar with the financial
6 assurance regulations pertaining to municipal solid
7 waste landfills?

8 A. Yes.

9 Q. If you can turn to Exhibit 1, I ask
10 you to take a look at what's there.

11 A. Okay.

12 Q. Are these the financial assurance
13 regulations pertaining to municipal solid waste
14 landfills?

15 A. Yes.

16 Q. And it's at 35 Illinois Administrative
17 Code 811.707?

18 A. Yes.

19 Q. Okay. You mentioned tires and
20 underground injection, that sort of thing. Are
21 there other financial assurance requirements not
22 pertaining to municipal solid waste landfills?

23 A. Correct. They apply to underground
24 injection facilities, people who have shredded,

1 like, tires, that kind of thing and hazardous waste
2 disposal. They all require financial assurance.

3 Q. Does Illinois EPA consider financial
4 assurance to be important?

5 A. Yes.

6 Q. Why?

7 A. Well, it's kind of like a safety net.
8 If the owners don't clean up the facilities or close
9 them properly, we have the ability to pay a third
10 party to go in and properly clean up and close the
11 facility.

12 Q. Are you familiar with the financial
13 assurance requirements at the Morris Community
14 Landfill?

15 A. Yes.

16 Q. How did you become involved with
17 financial assurance issues for this landfill?

18 A. Initially, I was not working on this.
19 I worked with another person and he had his sites
20 and I had mine and we just tried to evenly divide
21 them out.

22 I started working at this facility
23 because he was not in the office one day and the
24 permit section -- someone there had asked me what

1 the current status was on the financial assurance
2 for this site.

3 HEARING OFFICER HALLORAN: Mr. Harris,
4 can you turn this way just a tad and move the
5 mic kind of over my way little so we can see
6 you, as well.

7 THE WITNESS: Sure.

8 HEARING OFFICER HALLORAN: Thank you.
9 You have a great profile, but...

10 THE WITNESS: My mother says thank
11 you.

12 (Brief pause.)

13 BY MR. GRANT:

14 Q. You mentioned that you worked at --
15 you were working on -- or there was a division of
16 the work. Can you estimate how many separate
17 facilities you've evaluated the financial assurance
18 for?

19 A. Hundreds.

20 Q. Specific to the Morris Community
21 Landfill at the time you became aware of it, did the
22 Bureau of Land permit section advise you of the
23 amount of financial assurance required?

24 A. Prior to when I started working with

1 them?

2 Q. No. At the time when you first became
3 involved with the Morris Community Landfill.

4 A. Yeah. It was when we worked with the
5 permit section. They would just want to know if we
6 had adequate financial assurance that was posted to
7 cover whatever the cost estimate was. So their
8 reviewers would come to me and say, you know, do
9 they have a million dollars, whatever it might be.
10 We would make sure they had adequate financial
11 assurance to cover that.

12 Q. Now, when you say the cost estimate,
13 can you describe what that is?

14 A. The cost estimate would be for closing
15 and doing post-closure care on a landfill, in this
16 case. It's a permit requirement to have a cost
17 estimate.

18 Q. Now, does the permit section come up
19 with the cost estimate or approve the cost estimate?

20 A. No. The facility provides the cost
21 estimate --

22 Q. Okay.

23 A. -- to the permit section. They
24 approve it or disapprove it or tweak it, whatever

1 they have to do.

2 Q. Did you have any involvement with
3 actually coming up with a specific amount of
4 financial assurance required, in other words, the
5 dollar amount?

6 A. Did I come up with a cost estimate?
7 Is that what you're --

8 Q. Yeah. As part of your responsibility?

9 A. No.

10 Q. How did the City of Morris and
11 Community Landfill Company provide financial
12 assurance for the Morris Community Landfill?

13 A. From what I recall, at one point they
14 had used a trust fund or something like that. But
15 at the point when I became involved with it, they
16 were using performance bonds.

17 Q. Can you turn to Exhibit No. 9, please?
18 Are these the financial assurance instruments that
19 were posted by Community Landfill Company and the
20 City of Morris for the Morris Community Landfill?

21 A. Yes.

22 Q. And what type of estimates are these?

23 A. These are performance bonds.

24 Q. And how do these bonds work? In other

1 words, how do they work as far as the Agency is
2 concerned?

3 A. Well, like I was saying earlier,
4 they're sort of a safety net. It's really the
5 owner's ideal responsibility for them to close and
6 do the post-closure care.

7 But if you go to the second page
8 on the bottom there are triggers there that if they
9 don't do that, if they abandon the site, if they're
10 adjudicating, bankrupt, that type of thing, we have
11 the money then to pay a third party to go do the
12 clean-up work. Is that your question?

13 Q. Yeah. Basically, I was wondering, you
14 know, how they function. Do the financial assurance
15 regulations for landfills, specifically the ones we
16 have in Exhibit 1, do they specify conditions of
17 performance bonds?

18 A. Conditions of when those would be
19 used? Is that what you're --

20 Q. Or the sort of performance bonds that
21 may be used. Do the regulations, you know, have
22 requirements for what types of performance bonds can
23 be used?

24 A. In types, what do you mean?

1 Q. As far as what the requirements are
2 for a compliant performance bond.

3 A. Yes. They do state that. They have
4 to be on the forms that are within the regulations,
5 that are part of the regulations.

6 Q. Can you turn in Exhibit No.1 to
7 811.712?

8 A. Okay.

9 Q. Is that the specific section that
10 pertains to performance bonds?

11 A. Yes.

12 Q. Let me ask you -- I'm sorry to bounce
13 you around. Let me ask you to turn back to number
14 nine.

15 MR. GRANT: And for the record, that's
16 Complainant's A(9).

17 HEARING OFFICER HALLORAN: Group A,
18 Exhibit 9?

19 MR. GRANT: Group A, Exhibit 9. Thank
20 you.

21 BY MR. GRANT:

22 Q. Now, I think you stated that you had
23 seen these -- you'd reviewed these bonds before?

24 A. Yeah.

1 Q. Based on your review of the bonds, can
2 you determine the amount that the Respondents,
3 specifically the Community Landfill and the City of
4 Morris paid for the bonds?

5 A. Yeah. The premium is listed on the
6 second page there. It's 2 percent of this current
7 amount.

8 Q. Okay. So you mean 2 percent of the
9 face value of the bond?

10 A. Two percent of the amount guaranteed
11 by the bond, the face value.

12 Q. Is that your understanding that that
13 is an annual premium?

14 A. Yes.

15 Q. And based on your experience with
16 other financial assurance instruments, including
17 surety bonds, is that a representative rate?

18 MR. PORTER: (Inaudible.)

19 BY THE WITNESS:

20 A. That's the lowest rate I --

21 HEARING OFFICER HALLORAN: Excuse me.

22 Mr. Porter?

23 MR. PORTER: I'm going to object to
24 foundation. I don't believe there's been

1 sufficient foundation laid that he knows the
2 various rates paid on these financial bonds.

3 HEARING OFFICER HALLORAN: Mr. Grant?

4 MR. GRANT: He testified that he
5 reviewed hundreds of financial assurance
6 instruments and it was part of his job, he
7 was familiar with doing it and -- well, I can
8 ask one more question.

9 BY MR. GRANT:

10 Q. Did you look at other -- during the
11 time that you were reviewing financial assurance
12 instruments, did you see bonds that were not issued
13 by the Frontier Insurance Company?

14 A. Yes.

15 Q. In other words, from other companies?

16 A. Yes.

17 HEARING OFFICER HALLORAN: I'm going
18 to overrule Mr. Porter's objection. You may
19 proceed. Thanks.

20 BY MR. GRANT:

21 Q. And just to finish up that question,
22 did those bonds also show the annual premium on the
23 face of the bond?

24 A. Yeah.

1 Q. Did there come a time in 2000 when the
2 Illinois EPA determined that the Frontier bonds were
3 no longer acceptable for closure/post-closure
4 financial assurance?

5 A. Yes. It was -- they were delisted
6 from the Federal 870 circular, June 1 of 2000. And
7 soon after that I met with my supervisor and the
8 section manager and legal counsel, as well, to see
9 if they concurred with my interpretation of the
10 regulations that said that they needed that as well
11 as the Department of Insurance listing. So sometime
12 after June 1 of 2000 we made that determination.

13 Q. Did other landfills besides the Morris
14 Community Landfill have Frontier bonds as surety?

15 A. Yes.

16 Q. Approximately how many?

17 A. We sent out violation notices to
18 approximately 30 landfills that were regulated under
19 811 regulations. The 807 regulations did not
20 specify that the circular -- the 570 Circular was a
21 requirement. But of the 811s, there was
22 approximately 30 that used Frontier.

23 Q. Okay. After making this
24 determination, what action -- you sort of partially

1 answered this question, but what action did Illinois
2 EPA take?

3 A. Once we had basically come to the
4 conclusion that everyone agreed that they did not
5 meet the requirements of the regulations, we sent
6 out violation notices to all of those facilities.

7 Q. Do you recall when the violation
8 notices were sent out?

9 A. Sometime around late October I think
10 they started. Maybe towards of end of November. In
11 that one month period. That was quite a few to get
12 out in a short period of time, so...

13 Q. And that was 2000 -- in the year 2000?

14 A. That was 2000, yes.

15 Q. Okay. Can you please turn to Exhibits
16 10 and 11 and take a look at them. Let's do one at
17 a time. Why don't we just go to Exhibit 10. Can
18 you identify this document?

19 A. It's a violation notice.

20 Q. And who was it sent to?

21 A. City of Morris.

22 Q. Okay. What date was this violation
23 notice sent out?

24 A. November 14th, 2000.

1 Q. And does it refer to what -- the
2 violation that Illinois EPA was considering? In
3 other words, what is the violation? What violation
4 is it noticing?

5 A. On Attachment A, it's a violation of
6 811.700(f) and 21(d)(2) of the Environmental
7 Protection Act.

8 Q. And does it relate to the Frontier
9 bonds?

10 A. Yes.

11 Q. And does it provide a suggested
12 resolution?

13 A. Yes, it does.

14 Q. And what does it suggest as the
15 resolution?

16 A. To provide adequate financial
17 assurance in the amount that equals or exceeds the
18 current closure, slash, post-closure cost estimate.

19 Q. Okay. Please turn to Exhibit No. 11.
20 And can you identify this document?

21 A. It's a violation notice.

22 Q. And who was it sent to?

23 A. Community Landfill Company.

24 Q. And is this violation notice also

1 related to the Frontier bonds?

2 A. Yes.

3 Q. And does it also have a suggested
4 resolution?

5 A. Yes, it does.

6 Q. Okay. Are these violation notices,
7 Exhibits 10 and 11, similar to the violation notices
8 that were sent out to all of the landfills that had
9 Frontier surety bonds?

10 A. As far as I recall, they were all
11 identical as far as the attachment because it was
12 all the same violation. The only thing that was
13 different was the contact on the front page.

14 Q. Did they all have a similar suggested
15 resolution?

16 A. Yes.

17 Q. Okay. Of the 30 landfills or
18 approximately 30 landfills that you referred to, how
19 many of them subsequently replaced the Frontier
20 bonds with compliant financial assurance?

21 A. All of them did. There was one
22 exception from what I remember. A little landfill
23 called Dowty. And as far as I know, they're now on
24 the state's list of abandoned landfills.

1 Q. But the Dowty location did not?

2 A. They did not substitute alternate
3 financial assurance.

4 Q. Did Community Landfill Company or the
5 City of Morris ever replace the Frontier bonds with
6 compliant financial assurance?

7 A. No.

8 MR. GRANT: That's all I have.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Grant. Ms. Grayson, cross?

11 MS. GRAYSON: Mr. Harris, my name is
12 Clarissa Grayson. I'm the attorney for
13 Community Landfill Company. I have a few
14 questions for you.

15 CROSS EXAMINATION

16 By Ms. Grayson

17 Q. Who was working on the Morris
18 Community Landfill before you started working on it?
19 You mentioned that you took it over from someone
20 because that person wasn't there that day.

21 A. I answered the questions for the
22 permit section because that person wasn't there that
23 day. It was John Taylor.

24 Q. John Taylor. You also testified that

1 everyone agreed with the decision that Frontier
2 bonds were no longer good? Was that your testimony
3 before?

4 A. I believe I said everybody I spoke
5 with as far as Hope Wright, my supervisors, Dave
6 Walters and legal counsel agreed with that.

7 Q. Did you speak with John Taylor?

8 A. Yes. John did not agree with them.

9 Q. So, in fact, everyone did not agree
10 with the decision that the Frontier bonds were no
11 longer any good; is that correct?

12 A. Correct.

13 Q. John Taylor, in fact, disagreed with
14 that decision?

15 A. John Taylor felt that the 570 Circular
16 from what I recall, while it was a requirement, that
17 Frontier was in receivership, they had some medical
18 malpractice claims or something to that effect and
19 that they would be eventually put back on that list.
20 And my opinion was it doesn't really matter if they
21 are eventually put back on. The regulations say it
22 requires it.

23 Q. Didn't he, in fact, believe that there
24 was no law, rule or regulation that allowed the

1 Agency to take the actions to disprove a bond that
2 was valid when it was issued, but when the bonding
3 company was later removed from the U.S. Department
4 of Treasury's list?

5 A. Could you repeat that, please?

6 Q. Sure. Didn't he believe that there
7 was no law or rule or regulation that allowed the
8 Agency to take the action to disprove the bond
9 because it was valid when the -- it was issued, but
10 then only simply because the company later was
11 removed from the Treasury's 570 list of approved
12 sureties?

13 MR. GRANT: I'm going to object to
14 that question. First off, it's a multiple
15 question. Second off, I think that, as a
16 whole, it's vague.

17 BY MS. GRAYSON:

18 Q. Did he originally recommend --

19 HEARING OFFICER HALLORAN: Yeah. I
20 sustain and overrule. So just rephrase it.
21 Thank you.

22 MS. GRAYSON: I'll rephrase it.

23 BY MS. GRAYSON:

24 Q. Did he recommend -- do you know

1 whether he recommended that the bonds be accepted?

2 A. At what point?

3 Q. In August of 2000.

4 A. I don't know. I recall there was some
5 note that he had handwritten to Joyce or someone
6 from the permit section that said he thought they
7 should be exempted.

8 Q. In Exhibit --

9 MS. GRAYSON: Let's see. That would
10 be in our Exhibit 1 or is that that Hearing
11 Officer Group Exhibit?

12 HEARING OFFICER HALLORAN: Hearing
13 Officer Exhibit A incorporated --

14 BY MS. GRAYSON:

15 Q. In Hearing Officer Exhibit A --

16 MS. GRAYSON: If I could? It will
17 take me a second to locate it.

18 (Brief pause.)

19 HEARING OFFICER HALLORAN: I was going
20 to use that as my copy.

21 MS. GRAYSON: I have a copy. I'm
22 sorry. I can give this back to you.

23 (Brief pause.)

24 MS. GRAYSON: I'll try to direct

1 everyone's attention to where this particular
2 document is. After the deposition testimony
3 excerpts is a group marked Exhibit 1
4 excerpts. Does everyone have that?

5 MR. GRANT: It's at my offices.

6 MS. GRAYSON: Well, I can pass it
7 around.

8 HEARING OFFICER HALLORAN: I gave
9 Mr. Harris a copy of mine.

10 MS. GRAYSON: He has a copy. Okay.
11 Just for the record, it is part of Hearing
12 Officer Exhibit A, the group marked Exhibit 1
13 excerpts and it's the last page of that
14 exhibit with the numbers 214 and 0053 marked
15 in the lower right-hand corner.

16 BY MS. GRAYSON:

17 Q. Could you describe what this document
18 is, Mr. Harris?

19 A. I don't know what this is. It looks
20 like maybe John typed these on a page or something
21 like that to list out their bond numbers. And then
22 it says opinion and then it says the bonds appear to
23 comply with the relevant regulation in all respects.

24 Q. That's correct.

1 MR. GRANT: I'm going to object at
2 this point, basically, as to the relevance of
3 this testimony.

4 It's -- the invalidity of the
5 bonds has already been decided in the '01
6 permit appeal and that was upheld on appeal.

7 In this case, the Pollution
8 Control Board has affirmed the fact that the
9 Frontier bonds are not compliant. So as far
10 as, you know, evidence that goes to the
11 contrary, I think it's irrelevant. It's
12 also, you know, barred by collateral
13 estoppel.

14 HEARING OFFICER HALLORAN: Ms.
15 Grayson?

16 MS. GRAYSON: My point in this would
17 simply be that the witness testified that
18 everybody agreed that the bonds weren't any
19 good and I was simply trying to make -- and
20 it was his testimony that brought this up,
21 otherwise, I wouldn't have raised it.

22 HEARING OFFICER HALLORAN: Okay. I
23 think he clarified that and then we went on
24 to this exhibit.

1 MR. PORTER: Mr. Halloran, may I
2 comment?

3 HEARING OFFICER HALLORAN: Sure,
4 Mr. Porter.

5 MR. PORTER: Part, if not the heart of
6 the issue here is deciding the reasonableness
7 of everyone's conduct. And how the City of
8 Morris and even CLC acted depends greatly
9 upon what the beliefs were as to the validity
10 of the Frontier bonds. And even though we
11 finally had a final decision on that in June
12 of 2006, clearly, the conduct up to that time
13 is relevant in this proceeding when the State
14 is seeking penalties and attorneys fees.

15 HEARING OFFICER HALLORAN: I
16 understand that, Mr. Porter. I'm just
17 stating that Ms. Grayson has already brought
18 it out that, in fact, everybody did not
19 agree, and then Ms. Grayson went on to cite
20 these incorporated documents, which was John
21 Taylor's handwritten note.

22 But given the fact that -- you
23 know, I will allow a little latitude. And
24 given the fact that the State did not object

1 to the incorporation, I'll allow a little
2 latitude and let the answer stand.

3 Were you in the middle of a
4 question?

5 BY MS. GRAYSON:

6 Q. Just that -- just wanted to -- if you
7 can just read the notes that are on here and the
8 date on there?

9 A. August 3, 2000, Community Landfill has
10 tendered three acceptable performance bonds totaling
11 17,427,366. The bonds appear to comply with the --

12 MR. PORTER: Mr. Halloran, I can't
13 hear the witness.

14 BY THE WITNESS:

15 A. The bonds appear to comply with the
16 relevant regulations in all respects.

17 BY MS. GRAYSON:

18 Q. Thank you. Didn't the Agency accept
19 and then later reject the bonds?

20 A. I don't know if the bonds were
21 actually accepted. I wasn't really working on the
22 financial assurance review at the time. I mean --

23 Q. Do you have knowledge of what the
24 procedure was that was established by which the CLC

1 would provide the bonds for the review of the IEPA
2 who then agreed with them and so CLC went ahead and
3 purchased the bonds and then at that point the bonds
4 were rejected? Is that your understanding?

5 A. Well, typically, with financial
6 assurance, they -- whoever, landfill, hazardous
7 waste facility would purchase the bonds, submit them
8 to the Agency and then we would approve them.
9 Although, I don't know because I didn't work on it.
10 Back then I didn't work on this when this note was
11 written. Does that make sense to you? I wasn't the
12 one who said this. I don't know.

13 Q. Okay. Are you aware of the financial
14 condition of Community Landfill --

15 A. No.

16 Q. -- Company?

17 Do you know whether CLC had any
18 intent to not provide financial assurance?

19 A. No.

20 Q. Do you have any knowledge as to
21 whether CLC can afford financial assurance?

22 A. No.

23 Q. Do you have any idea how CLC makes
24 money?

1 A. I can guess, as they're a landfill, by
2 accepting waste. But I don't know what they do to
3 make money.

4 Q. And do you think that their ability to
5 make money has been hampered by the fact that
6 they're not permitted to put waste in certain areas,
7 yet are required to post significant --

8 MR. GRANT: I'm going to object to
9 this question. I think it calls for him to
10 speculate in areas. He already testified he
11 has no knowledge.

12 HEARING OFFICER HALLORAN: He can
13 answer if he's able. Overruled.

14 BY THE WITNESS:

15 A. I don't know.

16 BY MS. GRAYSON:

17 Q. Well, you said that you had an idea of
18 how they made money?

19 A. I have an idea of how landfills in
20 general make money, but I don't know if that's
21 hampered their ability to make money.

22 Q. But do you think that their ability to
23 make money would be hampered by not being allowed to
24 deposit waste that would allow them to make money in

1 order to come up with the financial assurance that
2 is required?

3 A. I don't know if it would or not. I
4 mean, I suppose a landfill could accept waste
5 illegally and they would still make money.

6 Q. I'd like to draw your attention to CLC
7 Exhibit 11. I believe you have a copy of that or
8 perhaps the Hearing Officer?

9 A. Is it a violation notice?

10 Q. No. It's CLC's Exhibit 11.

11 MR. GRANT: It's not in the book.

12 Mr. Halloran, do you have a copy of the
13 exhibit?

14 HEARING OFFICER HALLORAN: I do have a
15 copy. Thank you.

16 BY MS. GRAYSON:

17 Q. Do you recall writing this letter,
18 Mr. Harris?

19 A. I can see what I've written here but,
20 no, I don't really remember writing that letter.

21 Q. Do you recall the circumstances of
22 this letter?

23 A. Well, by reading it, it appears that
24 they were requesting that alternative assurance had

1 not been received and we couldn't release their
2 bonds.

3 Q. Maybe I should start with a different
4 exhibit to --

5 A. Yeah. I haven't looked at this for a
6 long time.

7 HEARING OFFICER HALLORAN: What
8 exhibit were we just on?

9 MS. GRAYSON: This was CLC's Exhibit
10 11.

11 HEARING OFFICER HALLORAN: Thank you.

12 (Brief pause.)

13 BY MS. GRAYSON:

14 Q. I'll give you a slightly better chain
15 of events. Let -- I have two documents marked CLC
16 Exhibit 9 and CLC Exhibit 10.

17 MS. GRAYSON: If I could approach and
18 give this to you?

19 HEARING OFFICER HALLORAN: You may.

20 (Brief pause.)

21 MS. GRAYSON: Do you have Exhibits 9
22 and 10?

23 HEARING OFFICER HALLORAN: Yes. Thank
24 you.

1 BY MS. GRAYSON:

2 Q. Mr. Harris, Exhibit 9 is a letter from
3 Deborah Monforte of Frontier Insurance Company --
4 and this is just by way of background information
5 for you -- wherein she sent a form to be executed by
6 the IEPA, Dave Jansen, she sent it to the Bureau of
7 Land, to release the collateral that Frontier
8 Insurance Company was holding on behalf of CLC.

9 A. Okay.

10 Q. And Exhibit 10 is a fax coversheet
11 from Ms. Monforte at Frontier Insurance Company,
12 which attaches a copy of your letter?

13 A. Where are we at now? Which exhibit?

14 Q. Exhibit 10 is a fax coversheet from
15 Ms. Monforte of Frontier Insurance Company and
16 attached to the fax coversheet is a copy of your
17 letter which is marked Exhibit 11.

18 A. Okay.

19 Q. So your letter is here twice. Once
20 as an attachment to the fax coversheet and then the
21 second time as an individual exhibit. But as you
22 can see, it's the same letter. Do you have any
23 recollections surrounding this?

24 A. To be honest, no. But what it looks

1 like to me is they're just requesting we release
2 their bonds.

3 Q. Can you read the letter -- Exhibit 9,
4 can you read the first paragraph of that?

5 A. Enclosed please find New York State
6 Department of Insurance form to be executed by your
7 department for release of collateral, Frontier
8 Insurance Company, in rehabilitation is in
9 possession of for the above-mentioned. And I don't
10 know -- it says enclosed. What was enclosed?

11 Q. Well, enclosed was a release of
12 collateral, but it's not attached to this exhibit.
13 It's just the letter.

14 A. Just curious what it said.

15 Q. It's a form to release the collateral.
16 Is that the same thing as far as you're concerned as
17 release the bond?

18 A. That's what it appears to be to me.

19 Q. So do you have any recollection of why
20 you would have written this letter on August 21st?

21 A. However, alternate financial assurance
22 of the above-mentioned bonds has not been received.
23 So if we didn't have anything in our possession to
24 replace the bonds, we would not have released their

1 financial assurance.

2 Q. Does it matter that the bonds already
3 had been determined -- didn't you previously testify
4 the bonds had been determined to be no good?

5 A. Well, they don't comply with the
6 regulations. I didn't say they were no good.

7 Q. How is there a difference?

8 A. Well, I guess it doesn't mean maybe
9 that they would not pay on the bonds, you know, but
10 it still doesn't really satisfy the requirements of
11 regulation. That's what I am saying.

12 The bonds did not meet the
13 requirements of the regulations, so they were not
14 acceptable from that perspective.

15 Q. Then what would be the rationale
16 between not refunding the collateral? If the bonds
17 were not any good, as you're saying, that they don't
18 comply with the regulations, why wouldn't you give
19 the collateral back?

20 A. Well, we would have absolutely nothing
21 then. So I guess if there's a potential that we
22 could really still get something out of these bonds,
23 if we were to release them without having any
24 alternate financial assurance at all, we would have

1 nothing. What would be the replacement?

2 Q. Well, that's the point is that if the
3 bonds are no good, you don't have anything to begin
4 with.

5 A. Well --

6 Q. How can you collect --

7 A. I wouldn't --

8 Q. How can the Agency collect on
9 something --

10 A. I wouldn't agree with that. I would
11 say if the bonds don't meet the regulations, they're
12 not acceptable financial assurance. But from a
13 practical perspective, if we have to clean up an
14 abandoned landfill, you know, maybe we could get
15 something out of these bonds. That would have been
16 our way of thinking at the time with any landfill.

17 Q. Your way of thinking at the time?

18 A. With any landfill. If somebody -- a
19 landfill comes in and says, oh, just give us back
20 our financial assurance, what would we have to clean
21 it up if they skipped the state?

22 Q. But if -- you're talking about bonds
23 that -- I mean, normally, the bonds are in place and
24 there is not a reversal of a determination that the

1 bonds are good; is that correct? That's the -- it's
2 not normal what happened in this situation?

3 A. It hadn't happened before that I know
4 of.

5 Q. So in this situation there really
6 aren't any regulations -- there's no regulation that
7 says that the State may keep the collateral for
8 bonds that are determined to not be compliant; is
9 that correct?

10 A. I don't know that.

11 Q. Are you familiar with any regulation
12 that allows the State to do that?

13 A. Without looking back through all the
14 regulations, I don't know.

15 Q. In your experience as with a number of
16 years in financial assurance and with reviewing the
17 numbers of financial assurance documents that you
18 did and with the work that you did with the number
19 of landfills, are you familiar with any regulation
20 that would allow the State to keep -- or to prohibit
21 release of collateral when bonds have been
22 determined to not be compliant?

23 A. I think within the regulations there
24 is a section that does say that they have to provide

1 acceptable alternate financial assurance before we
2 release the mechanism.

3 Q. And what regulation is that?

4 A. Somewhere in 811, which I haven't
5 looked at for four years.

6 Q. So there's something that you think
7 may require that, but you're not sure?

8 A. I think there is something within the
9 regulations that requires we have alternate
10 financial assurance before we release a mechanism,
11 yes.

12 MS. GRAYSON: I have nothing further.

13 HEARING OFFICER HALLORAN: Thank you,
14 Mr. Grayson. Mr. Porter?

15 MR. PORTER: Thank you, Mr. Halloran.

16 CROSS EXAMINATION

17 By Mr. Porter

18 Q. You don't know whether or not CLC or
19 City of Morris has failed to perform any closure or
20 post-closure activities, correct?

21 A. Correct.

22 Q. Do you know what closure activities
23 the City has performed since June of 2006?

24 A. No.

1 Q. Are you aware the City has expended
2 substantial funds in hiring Shaw Environmental to
3 conduct several closure activities?

4 A. No.

5 Q. Do you know if Frontier Insurance
6 Company is licensed to transact the business of
7 insurance by the Department of Insurance?

8 A. Currently, no, I don't know that.

9 Q. Do you know if they ever lost their
10 license to transact business of insurance by the
11 Department of Insurance?

12 A. I seem to recall that they did.

13 Q. Isn't it true that as of June 1, 2000,
14 Frontier Insurance Company indeed had a license to
15 transact business of insurance by the Illinois
16 Department of Insurance which is now handled by the
17 Illinois Department of Financial and Professional
18 Regulation?

19 A. Yes.

20 Q. So at the time that you are asserting
21 that Frontier Insurance Company -- strike that.

22 So at the time that you're
23 asserting CLC first failed to provide financial
24 assurance, Frontier was actually licensed to

1 transact business, correct?

2 A. With the Illinois Department of
3 Insurance?

4 Q. Let me ask it again otherwise our
5 record is difficult. I should have completed the
6 question.

7 You would agree that at the time
8 the State is alleging that CLC first failed to
9 provide financial assurance, Frontier Insurance
10 Company was licensed to transact business by the
11 Illinois Department of Insurance, correct?

12 A. Correct.

13 Q. And you don't know when they lost that
14 license, correct?

15 A. I don't know the exact date or even if
16 they have at this point.

17 Q. Now, if you would, take a look at
18 811.712(b) for me, which is one of the exhibits that
19 the State has given you which is in front of you.

20 A. Okay.

21 Q. Now, 712(b) actually provides, does it
22 not, that a surety company that is licensed to
23 transact the business of insurance by the Department
24 of Insurance may provide a bond, correct?

1 MR. GRANT: I'm going to object on the
2 basis of relevance because it seems we're
3 going to whether or not the Frontier bonds
4 are valid, adequate financial assurance and
5 that's been decided. And it was decided, you
6 know, through denial asserted by Illinois
7 Supreme Court in 2002.

8 I guess maybe I'm asking
9 Mr. Porter to explain where he's going with
10 this because if we're going to get into
11 whether or not the Frontier bonds are valid,
12 that issue is gone.

13 HEARING OFFICER HALLORAN: Mr. Porter?

14 MR. PORTER: My response -- and I
15 somewhat sound like a broken record, but part
16 of this -- the major part of this is
17 determining the reasonableness of the conduct
18 of the parties involved.

19 And I will prove through this
20 witness that not only is it reasonable for
21 the City of Morris to believe the Frontier
22 bonds were sufficient and CLC to believe it
23 was sufficient, intelligent minds clearly
24 have reason to disagree with any contrary

1 conclusion that may have been reached by the
2 Pollution Control Board or even a court of
3 further jurisdiction.

4 We're getting now into penalty and
5 remedy and it has to do with reasonableness
6 of conduct.

7 HEARING OFFICER HALLORAN: You know, I
8 agree with Mr. Porter. Reliability and the
9 remedy portions, especially to 33(c) and
10 42(h) some what overlap. I do find it
11 relevant and I will give the Respondents a
12 little latitude like I gave the Complainant
13 latitude on their first witness. So
14 objection overruled.

15 BY MR. PORTER:

16 Q. I'm going to get to it a different
17 way. You mentioned that there was a meeting that
18 was had where a decision was made that not only did
19 Frontier Insurance Company have to have a license,
20 but they also had to be on the 570 Circular?

21 A. Yes.

22 Q. And so who was that meeting with?

23 A. It's been over seven years, but I
24 remember Bill Ingersoll was there, myself and I

1 think it was Chris Perzan at the time. And they
2 worked for the legal department.

3 Q. Now, isn't it true that that meeting
4 was necessitated because the language of 811.712(b)
5 arguably provides that the company need only be
6 licensed to transact business or it may be an excess
7 carrier and be beyond the circular?

8 A. Could you rephrase that question? I
9 don't quite understand what you're saying.

10 Q. Let me try to attack it this way. I'm
11 trying to avoid having to read the whole paragraph
12 into the record, but maybe that's where we're going
13 to have to go.

14 If you can take a look at
15 811.712(b). It provides a variety of requirements
16 for the bonding company, right?

17 A. Yes.

18 Q. And as a matter of fact, the first
19 requirement is that the surety company issuing the
20 bonds shall be licensed to transact the business of
21 insurance by the Department of Insurance pursuant to
22 the Illinois Insurance Code, right?

23 A. Yes.

24 Q. And then there is an "or". The next

1 word is "or" and there's discussion of how else an
2 insurance company can meet the requirement, correct?

3 A. Correct.

4 Q. And that "or" is that they may provide
5 a minimum -- at a minimum, the insurer must be
6 licensed to transact the business of insurance or to
7 provide insurance as an excess or surplus lines
8 insurer and be on the circular. So there are two
9 ways. One, they can be licensed to transact
10 business or, two, it can be an excess carrier and on
11 the circular, right?

12 A. That's not how we interpreted that
13 because it's any of those first combination of
14 things, comma, and approved by the U.S. Department
15 of the Treasury as an acceptable surety.

16 And part of the basis for -- I
17 mean, not only does reading it how it appeared to us
18 that it was requiring both things, but the Board
19 rulemaking when 811 was being, you know, put
20 together specifically mentioned that as a
21 requirement, the 570 Circular.

22 Q. Again, the 570 Circular is a
23 requirement if, indeed, it's just an excess or
24 surplus line and isn't licensed to transact in

1 Illinois, right?

2 A. I don't know how to answer that
3 question.

4 Q. Let me ask it this way: You would
5 agree that that section is susceptible to different
6 interpretations as to what's required, correct?

7 A. Sure.

8 Q. As a matter of fact, you had to have a
9 meeting with several individuals to decide, okay, do
10 they have to be licensed to transact and on the
11 Circular or do they just have to be licensed to
12 transact?

13 A. Yes. I agree with that.

14 Q. And, ultimately, you guys came to the
15 conclusion you had to be both?

16 A. Correct.

17 Q. But you understand that the statute
18 can be read a different way, right?

19 A. I'm sure you could interpret it that
20 way.

21 Q. And it's perfectly reasonable for the
22 City of Morris or CLC to interpret it that way,
23 correct?

24 A. I don't know how to answer that. I

1 mean, I guess someone could have a different
2 opinion. They don't -- you know, if you disregard
3 the comma, it doesn't seem like that's --

4 Q. I mean, we're not making a big stretch
5 here. It says "or". It doesn't say "and", right?

6 A. Well, it has all these first parts you
7 were talking about and then it says, comma, and
8 approved by the U.S. Department of the Treasury as
9 an acceptable surety.

10 Q. Okay. But before all that --

11 A. It's any of those first things, comma,
12 plus this second component, which is the 570
13 Circular.

14 Q. Okay. So you're reading the last
15 clause, the "and" as applying to all of the language
16 in that entire paragraph, including that that comes
17 before the first "or", right?

18 A. I'm reading that this is an additional
19 requirement to any of the first things.

20 Q. Now, did you ever take a different
21 position on that issue?

22 A. Did I believe that it could be
23 interpreted that they don't need the 570 Circular
24 requirement?

1 Q. Right.

2 A. I don't even remember back at the
3 time. I mean, I wanted to meet with, you know --

4 Q. Who in the room took the position that
5 you only had to be licensed to transact business in
6 Illinois?

7 A. I don't know if anyone in the room
8 when we had that meeting took that position.

9 Q. You don't know when or if the City of
10 Morris has ever been informed that Frontier
11 Insurance Company is not licensed to transact
12 business in Illinois, correct?

13 A. Correct.

14 Q. Isn't it true that the bonds that were
15 issued in this case were valid, at a minimum,
16 through the end of May 2005?

17 A. What exhibit is that?

18 Q. Well, I don't have a particular
19 exhibit. If I need to, I'm going to refresh your
20 recollection with your affidavit.

21 But right now my question is
22 simply would you agree that the Frontier bonds were
23 valid through, at a minimum, May of 2005?

24 MR. GRANT: I object.

1 BY THE WITNESS:

2 A. If I could see the bonds and see when
3 they were issued, I could tell you that.

4 MR. GRANT: I think -- Actually, I
5 think there was a mistake. I think you meant
6 2000, didn't you, not 2005?

7 MR. PORTER: No. I meant 2005.

8 BY THE WITNESS:

9 A. Can I look at the bond?

10 BY MR. PORTER:

11 Q. Absolutely. I don't know what
12 exhibit --

13 A. Which exhibit are we on?

14 Q. -- Counsel has marked that as.

15 MR. GRANT: Exhibit 9.

16 BY MR. PORTER:

17 Q. In other words, as you sit here today,
18 you don't recall but you need to look at something
19 to refresh your recollection; is that right?

20 A. I would need to look at this to
21 refresh my recollection, yes.

22 Q. Okay. Please feel free to look at
23 whatever you need to.

24 HEARING OFFICER HALLORAN: I'm looking

1 at the last page of Exhibit 9. I'm not sure
2 if there's more in there regarding the
3 expiration date.

4 BY THE WITNESS:

5 A. Expiration date amended to 6/14/05
6 through this rider, yes.

7 BY MR. PORTER:

8 Q. Okay. So you would agree that those
9 bonds are valid through 2005 at a minimum, right?

10 A. Yeah.

11 Q. And as a matter of fact, and I believe
12 Ms. Grayson has pointed this out, the government has
13 filed a claim under those bonds, correct?

14 MR. GRANT: I'm going to ask that
15 Mr. Porter either say "state" or -- I mean,
16 we're dealing with two governments here. One
17 is city government and --

18 MR. PORTER: I agree and will withdraw
19 the question.

20 HEARING OFFICER HALLORAN: Sustained.

21 BY MR. PORTER:

22 Q. Furthermore, as Ms. Grayson has
23 pointed out, you would agree that the state of
24 Illinois has filed a claim under those bonds,

1 correct?

2 A. I don't know if they have or not.

3 Q. Okay. You have no reason to dispute
4 that, right?

5 A. I don't have enough information to
6 dispute that.

7 Q. You have not been called upon to give
8 any counsel regarding the claim that the state of
9 Illinois has filed concerning those bonds?

10 A. No.

11 Q. Now, you would agree, would you not,
12 that one of the methods for providing financial
13 assurance of closure/post-closure activities is for
14 a local governmental entity to provide its guarantee
15 that closure will occur?

16 A. Is the question can they use a local
17 government guarantee?

18 MR. PORTER: I don't normally do this.

19 Mr. Halloran, can I have the question read
20 back, please?

21 HEARING OFFICER HALLORAN: Yes, you
22 may. Tammi?

23 (Whereupon, the requested
24 portion of the record

1 A. Right.

2 Q. And what that provides is that if a
3 local municipality meets the financial test, that
4 all they need to do then to post financial assurance
5 is to guarantee that the local government itself
6 will perform or pay a third party to perform
7 closure/post-closure care or corrective action as
8 required, right?

9 A. And they have to also meet the
10 requirement 811.716.

11 Q. I think I prefaced that. Let's do it
12 again.

13 A. Okay.

14 Q. They have to meet a financial test
15 that's referenced in 811.716, correct?

16 A. Well, that or a bond rating.
17 There's -- I think there's options.

18 Q. Okay. They have to meet certain
19 financial requirements before they're going to be
20 allowed to post --

21 A. Correct.

22 Q. -- their own guarantee?

23 A. Right.

24 Q. And assuming that they meet those

1 requirements, then all they have to do is say we
2 will perform or we'll pay a third party to perform
3 any closure and post-closure or corrective action
4 that might be required, right?

5 A. I guess is the question could any
6 community who's got the bond rating or the financial
7 wherewithal do this test; is that right?

8 Q. I want you to assume a hypothetical --

9 A. Okay.

10 Q. -- that the local municipal entity
11 meets the financial test of 811.716.

12 A. Okay.

13 Q. Once they've met that, all they have
14 to do is say we will guarantee performance or we'll
15 pay a third party to perform, right?

16 A. I think they additionally have to
17 submit the form and their financial statements, all
18 that stuff, but yeah.

19 Q. Right. The form is where they would
20 indicate that they'll perform?

21 A. That's where they would indicate that,
22 correct.

23 Q. Now, you are aware, are you not, that
24 the City of Morris long ago offered to provide a

1 guarantee, correct?

2 A. No.

3 Q. You would agree that assuming the City
4 of Morris meets the financial test, we spoke about
5 811.716, that there is no cost savings for failing
6 to give a local municipal guarantee, right?

7 A. I guess could you please rephrase that
8 question?

9 Q. Well, you don't have to pay any money
10 to get a local guarantee, correct?

11 A. Correct.

12 Q. And you don't have to go to a bonding
13 company, you don't have to go to an insurance
14 company, you don't have to shell out hundreds of
15 thousands of dollars a year as a municipality if you
16 meet the financial test; all you have to do is say
17 we'll perform if the operator fails to, right?

18 A. Correct. If you're assuming they
19 could meet the test, yes.

20 Q. Now, have you done the analysis to
21 determine if the City of Morris meets the financial
22 test?

23 A. No.

24 Q. And at any time from the time that the

1 violation notices were sent out through today have
2 you ever done that analysis?

3 A. No.

4 Q. So, again assuming that the City of
5 Morris does meet that test and they for some reason
6 believe that they were responsible for posting
7 financial assurance, they could have done so by
8 merely issuing this municipal guarantee, right?

9 A. Yes.

10 Q. So had the City of Morris known that
11 it was going to be called upon to post financial
12 assurance, they could have done so for free,
13 correct?

14 A. I don't know if I would consider it
15 free, but they could have done so.

16 Q. Well, they could have -- you would
17 agree that they have not enjoyed any financial
18 benefit for failing to post their own guarantee,
19 right?

20 A. If they would have posted the
21 guarantee, would they have been coming up with money
22 to do that; is that sort of the question?

23 Q. That's another way to look at it. You
24 would agree that they would not have to come up with

1 any money to post their own guarantee?

2 A. Correct.

3 Q. And so they didn't save any money by
4 failing to post their own guarantee, right?

5 A. Well, I guess I don't know how to
6 answer that. I mean, they didn't do it, so I don't
7 know. I mean, if they had done that, would they
8 have had to pay any money? No.

9 Q. Okay. You would agree that there have
10 been no savings to the City of Morris for allegedly
11 failing to post financial assurances for 2000 to the
12 present, correct?

13 A. If they would have used that guarantee
14 you mean, right?

15 Q. (Nodding.)

16 A. If they had used that guarantee, I
17 guess there would be no savings.

18 Q. You're not aware of the City ever
19 having any history of environmental violations, are
20 you?

21 A. Well, the violation notices. Is that
22 what you're speaking of?

23 Q. Other than this case with the
24 violation notices arising out of financial

1 assurance, you're not aware of the City having any
2 history of being an environmental violator, are you?

3 A. Correct. I am not.

4 Q. You don't have any reason to believe
5 the City has not been diligent in attempting to
6 comply with closure/post-closure once they found out
7 in June of 2006 they were going to be required to do
8 so, correct?

9 MR. GRANT: I object to the date. I
10 don't think -- you're assuming that 2006 was
11 when they found out. I think this witness
12 has testified it was November 14th, 2000 that
13 Illinois EPA notified them.

14 HEARING OFFICER HALLORAN: You can
15 re-direct him on that, Mr. Grant. He may
16 answer if he's able.

17 BY THE WITNESS:

18 A. Could you please state the question
19 another way then? I just didn't understand.

20 BY MR. PORTER:

21 Q. I guess I want you to be aware of
22 where I'm coming up with that date. June of 2006 is
23 when the Pollution Control Board decided a motion to
24 reconsider filed by the City concerning the

1 financial assurance issue.

2 You're not aware of any failure in
3 diligence of the City of Morris since July of 2006
4 in effectuating closure and post-closure of the
5 landfill itself, are you?

6 A. I don't know anything about it.

7 Q. You're not aware of any environmental
8 damage or damage to personal health, safety or
9 welfare caused by the lack of alleged posting of
10 financial assurance, are you?

11 A. No.

12 Q. You're not aware of any discharge or
13 emissions caused by the alleged failure to post
14 financial assurance, correct?

15 A. Correct.

16 Q. You would agree that the landfill is
17 in a suitable location, right?

18 A. That it is in a suitable location?

19 Q. Right. We've heard today it's in a
20 rural area by other landfills. You'd agree that
21 that's an appropriate place for a landfill, correct?

22 A. Sure.

23 Q. And you would agree landfills have
24 great social and economic value, in general?

1 A. Yes.

2 Q. You would agree that it's reasonable
3 for the City of Morris to take the position that if
4 it's going to be required to pay any money, it ought
5 to be used for closure/post-closure rather than
6 buying some bond or insurance vehicle at this time?

7 A. I missed the first part of that
8 question.

9 Q. You would agree -- strike that.
10 Are you aware that the government
11 has taken the position that the landfill should be
12 closed now?

13 A. No.

14 Q. All right. Then I'm not going to
15 bother asking the next question.

16 Earlier on in Ms. Grayson's
17 testimony there was a reference to a Mr. John
18 Taylor. Who is that?

19 A. Somebody who worked at the EPA in the
20 solid waste section.

21 Q. Well, actually, he's an attorney that
22 advises concerning compliance with financial
23 insurance; isn't that right?

24 A. He is now; is that what you're saying?

1 Q. Well, wasn't he that at the time that
2 he issued that letter?

3 A. No. I don't believe --

4 Q. Okay. He became an attorney after
5 that date; is that right?

6 A. I think so.

7 Q. Okay. At the time, he was tasked or
8 responsible for giving advice concerning compliance
9 with financial assurance, and since then he got his
10 law degree?

11 A. Yes.

12 Q. Have you seen the updated
13 closure/post-closure costs prepared by Shaw
14 Environmental?

15 A. No.

16 Q. You don't have any opinion as to
17 whether or not the \$17 million figure that the State
18 is advocating is reasonable, do you?

19 A. No.

20 Q. Let me direct your attention, if I
21 may, to City of Morris Exhibit Number A6, which I
22 will hand you a copy. It is the January 27, 2004
23 letter from Beverly Anderson to Frontier Insurance
24 Company.

1 THE COURT REPORTER: What was the date
2 on that?

3 MR. PORTER: January 27th, 2004.

4 MR. GRANT: May I see it?

5 MR. PORTER: Sure. Let me show
6 Counsel for a minute.

7 (Brief pause.)

8 MR. PORTER: Mr. Halloran, do you mind
9 if I stand here because that's my only copy
10 right now.

11 HEARING OFFICER HALLORAN: That's
12 fine.

13 (Witness peruses document.)

14 BY MR. PORTER:

15 Q. I really only have one question on it.

16 A. Okay.

17 Q. You would agree that as recent as
18 January 27, 2004, the Bureau of Land for the
19 Illinois Environmental Protection Agency was taking
20 the position that Frontier Insurance Company was
21 providing financial assurance for closure and
22 post-closure costs, correct?

23 A. That's what it says.

24 Q. And so you would agree that it was

1 reasonable for the City of Morris to believe that
2 financial assurance was being provided at least as
3 late as 2004, right?

4 A. Do I agree that they were providing
5 financial assurance?

6 Q. You would agree that it was reasonable
7 for City of Morris to believe that financial
8 assurance was being provided at least as late as
9 2004, correct?

10 A. Well, I would agree that it would be
11 reasonable for them to say they were providing
12 financial assurance, not that it satisfies the
13 requirement of the regulations, but...

14 Q. And, also, as a matter of fact, those
15 bonds were valid through 2005. We heard that
16 earlier on the expiration date, right?

17 A. Right.

18 Q. And isn't there a rule that there's a
19 way that they can be extended for 12 months if
20 there's no alternative vehicle employed?

21 A. Correct.

22 Q. And so you would agree that it was
23 reasonable for the City of Morris to believe
24 financial assurances were still in place through the

1 end of 2006, correct?

2 A. Yes.

3 MR. PORTER: Nothing further.

4 HEARING OFFICER HALLORAN: Thank you.

5 Mr. Grant, re-direct?

6 MR. GRANT: Yes.

7 RE-DIRECT EXAMINATION

8 By Mr. Grant

9 Q. Mr. Harris, you testified that the
10 violation notices were sent to the City of Morris on
11 November 14th, 2000; do you recall that?

12 A. Yes.

13 Q. After November 14th, 2000, until the
14 time that you left the financial assurance job with
15 the Bureau of Land in 2003, did the City of Morris
16 ever offer any other compliant financial assurance
17 for the Morris Community Landfill?

18 A. No.

19 Q. In fact, I think you mentioned that
20 you testified at that permit appeal that was related
21 to financial assurance in 2001; do you recall that?

22 A. Could you say that again, please?

23 Q. I believe you testified earlier that
24 you -- or that you stated earlier that you actually

1 testified at a permit appeal that was held in 2001
2 regarding financial assurance for the Morris
3 Community Landfill --

4 A. Yes.

5 Q. -- is that correct?

6 A. Yes.

7 Q. And in that permit appeal, were the
8 City of Morris and Community Landfill Company still
9 attempting to defend the compliance of the Frontier
10 Insurance bonds?

11 A. Yes.

12 Q. And do you recall the outcome of that
13 permit appeal?

14 A. I believe the permit was not granted
15 or was denied.

16 Q. Do you believe that it would be
17 reasonable after receiving a violation notice from
18 Illinois EPA after losing a permit appeal on the
19 basis of the same Frontier bonds and after failing
20 to supply any other financial assurance for the
21 Morris Community Landfill for the City of Morris to
22 believe that financial assurance was effective and
23 in place for the landfill?

24 A. I guess they could believe it was in

1 place, but I don't know how they could think it was
2 acceptable.

3 Q. Okay.

4 MR. GRANT: That's all I have.

5 HEARING OFFICER HALLORAN: Ms. Grayson?

6 MS. GRAYSON: I have nothing further.

7 HEARING OFFICER HALLORAN: Thank you
8 Mr. Porter?

9 MR. PORTER: Very briefly. Thank you.

10 RE-CROSS EXAMINATION

11 By Mr. Porter

12 Q. That permit appeal was regarding
13 opening a new cell at the landfill; is that right?

14 A. I don't know.

15 Q. Okay. You don't know if it was the
16 understanding of CLC and the City of Morris that
17 financial assurance that had been in place for the
18 existing landfill was still in place, correct?

19 A. Could you say that again?

20 Q. Actually, no.

21 MR. PORTER: I'm going to withdraw
22 the question. I have nothing further. Thank
23 you.

24 HEARING OFFICER HALLORAN: Thank you.

1 Mr. Grant?

2 MR. GRANT: Nothing.

3 HEARING OFFICER HALLORAN: Thank you.

4 You may step down, Mr. Harris. Thanks.

5 We're taking a short five-minute break.

6 (Whereupon, after a short

7 break was had, the

8 following proceedings

9 were held accordingly.)

10 HEARING OFFICER HALLORAN: We're back

11 on the record. It's approximately 1:26. I

12 believe the State is going to direct their

13 third witness.

14 (Witness sworn.)

15 WHEREUPON:

16 BRIAN WHITE

17 called as a witness herein, having been first duly

18 sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 By Ms. Tomas

21 Q. Could you please state and spell your
22 name for the record?

23 A. Sure. It's Brian, B-R-I-A-N, White,
24 like in the color or absence thereof, W-H-I-T-E.

1 Q. And, Brian, where do you live?

2 A. I live in Chatham, Illinois.

3 Q. How long have you lived there?

4 A. Approximately ten years.

5 Q. And what was the last year of
6 education that you completed?

7 A. I've got 44 hours towards a master's
8 in public administration. I have a bachelor's from
9 Illinois State University in environmental health in
10 1983.

11 Q. And how many hours do you have left
12 before you get your master's degree?

13 A. Four hours.

14 Q. And what is that in?

15 A. Public administration.

16 Q. Where are you currently employed?

17 A. I'm employed by the Illinois
18 Environmental Protection Agency, Bureau of Land.

19 Q. And how long have you been with the
20 Illinois EPA?

21 A. Since 1988.

22 Q. What's your title and the Illinois
23 EPA?

24 A. My working title is compliance unit

1 manager.

2 Q. Okay. And that's within the Bureau of
3 Land?

4 A. Yes, it is.

5 Q. And how long have you held that
6 position?

7 A. Since January of 1991.

8 Q. So approximately 16 of the 19 years?

9 A. Yes.

10 Q. And could you please describe your
11 duties as a compliance unit manager?

12 A. As compliance unit manager, I've got
13 two programs. A compliance program which is
14 involved with compliance enforcement tracking up
15 until the point of formal enforcement and the
16 financial assurance program.

17 Q. Are you familiar with the Morris
18 Community Landfill?

19 A. Yes, I am.

20 Q. And please tell us how you're familiar
21 with that particular landfill.

22 A. Through the ongoing enforcement case,
23 reviewing their permits, reviewing their violation
24 notice and on-site visit.

1 Q. Are you familiar with the financial
2 assurance obligations of the landfill?

3 A. Yes, I am.

4 Q. And do you know who is responsible for
5 the financial assurance obligations of the Morris
6 Community Landfill?

7 MR. PORTER: Objection, calls for a
8 legal conclusion.

9 HEARING OFFICER HALLORAN: I'm sorry.
10 Could you read the question back, Tammi?

11 (Whereupon, the requested
12 portion of the record
13 was read accordingly.)

14 HEARING OFFICER HALLORAN: Mr. White
15 can answer. Overruled.

16 BY THE WITNESS:

17 A. The owner or operator would be
18 responsible for the financial assurance obligations.

19 BY MS. TOMAS:

20 Q. And do you know who the owner of the
21 Morris Community Landfill is?

22 A. The owner would be the City of Morris.

23 Q. And do you know who the operator of
24 the Morris Community Landfill is?

1 A. Community Landfill. CLC.

2 Q. Please explain the financial assurance
3 obligations for the Morris Community Landfill.

4 A. The financial assurance obligations
5 are required by a statute in the regulations and
6 then the permit covers. And it would be the August
7 of 2000 permit is the one I reviewed with the costs
8 and the permit for the landfill.

9 Q. Would that 2000 permit be the
10 significant modification known as a SIGMOD?

11 A. Yes.

12 Q. And there was SIGMOD for Parcel A; is
13 that correct?

14 A. Yes.

15 Q. And there was also one for Parcel B?

16 A. That is correct.

17 Q. And how much -- what amount of
18 financial assurance was listed within those SIGMODs?

19 A. I would have to take a look at the
20 permit, but the total was somewhere around 17.4
21 million.

22 Q. How is the amount of financial
23 assurance determined?

24 A. The owner or operator submits a permit

1 application and it's reviewed by our permit section.

2 Q. Can an owner or operator request to
3 change the amount of financial assurance required
4 for a landfill?

5 A. Yes.

6 Q. So that is the obligation of the owner
7 or operator?

8 A. Yes.

9 Q. Are there any regulations related to
10 maintaining financial assurance for a landfill?

11 A. Yes. In the case of the Morris
12 Community Landfill, it's under 35 Illinois
13 Administrative Code, Part 811, Subpart G.

14 Q. Okay. And are you familiar with the
15 Board financial assurance regulations?

16 A. Yes.

17 Q. What sections of Section 811.700
18 require the City and CLC to maintain financial
19 assurance for the Morris Community Landfill?

20 A. If I could look at the --

21 Q. It would be Complainant's Exhibit --
22 the big binder -- Exhibit 1.

23 A. All right. We have 811.700(f) and
24 811.701(a).

1 Q. Okay. Let's start with 811.701(a).
2 The regulation requires the owner or operator shall
3 maintain financial assurance. What do you take the
4 term owner or operator to mean?

5 A. That is, it's the obligation of the
6 owner and the operator to maintain financial
7 assurance.

8 Q. So if the operator of a landfill did
9 not maintain financial assurance, who would be
10 required to maintain it?

11 MR. PORTER: Objection. Again, this
12 calls for a legal conclusion. The statute
13 speaks for itself. The Pollution Control
14 Board is in a much better position to decide
15 what that language means than this witness.

16 HEARING OFFICER HALLORAN: Mr. White
17 can give his opinion, if he's able. He's
18 been a manager for how long, 16 years?

19 THE WITNESS: Yes.

20 HEARING OFFICER HALLORAN: Overruled.

21 BY THE WITNESS:

22 A. Could you repeat the question, ma'am,
23 please?

24

1 BY MS. TOMAS:

2 Q. If the operator of a landfill did not
3 maintain financial assurance, who would be required
4 to maintain it?

5 A. It would be the owner.

6 Q. And vice versa if the owner did not
7 provide it?

8 A. The operator, yes.

9 Q. Okay. And what does section -- if we
10 turn to Section 811.706, what does that provide?

11 A. These are the various mechanisms that
12 an owner or operator can use to provide financial
13 assurance.

14 Q. Have either CLC or the City ever
15 utilized any one of these ten mechanisms for
16 financial assurance at the Morris Community
17 Landfill?

18 A. The only one I'm aware that they've
19 ever used was a performance bond.

20 Q. Okay. And do those bonds still comply
21 with the Board financial assurance regulations?

22 A. No, they haven't. They don't comply
23 with the Board regulations and haven't since 2000.

24 Q. Can you please explain why?

1 A. Yes. They used a performance bond
2 from Frontier Insurance Company. And in 811.712(g)
3 it requires that the bonds be on the U.S. Department
4 of Treasury Circular 570, and Frontier was
5 terminated from that circular back in June of 2000,
6 therefore, it no longer complies with the
7 requirements of 811.

8 Q. So is it your opinion that CLC and the
9 City had non-compliant financial assurance since
10 June of 2000?

11 MR. PORTER: Objection, leading.

12 HEARING OFFICER HALLORAN: Mr. Porter?

13 MR. PORTER: Objection, leading.

14 HEARING OFFICER HALLORAN: Yes, it was
15 leading. Sustained.

16 BY MS. TOMAS:

17 Q. Do you know who the beneficiary of the
18 Frontier bonds was?

19 A. The beneficiary would be the Illinois
20 Environmental Protection Agency.

21 Q. And do you know if any claim has been
22 made by the Illinois EPA on those Frontier bonds?

23 A. Yes.

24 Q. And what does it mean to make a claim

1 on those bonds?

2 A. Well, on a performance bond,
3 there's -- we first have to give the surety an
4 opportunity to perform closure or post-closure.

5 And if they don't perform closure
6 or post-closure, then they have to pay the penal sum
7 of the bonds.

8 Q. Will Frontier be performing closure
9 and post-closure at the Morris Community Landfill?

10 A. No.

11 Q. And do you know if Frontier will be
12 paying on those claims then?

13 A. I've received information that
14 Frontier has offered to settle the case at \$400,000.

15 MR. PORTER: Object, Judge. It's
16 hearsay. It wasn't offered --

17 HEARING OFFICER HALLORAN: I agree.
18 Sustained.

19 (Brief pause.)

20 BY MS. TOMAS:

21 Q. Has Frontier offered to pay on a
22 claim, to your knowledge?

23 A. Yes, they made an offer.

24 Q. Okay. Do you know how much that offer

1 was for?

2 MR. PORTER: Well --

3 BY THE WITNESS:

4 A. The offer was for --

5 MR. PORTER: Same objection.

6 MR. GRANT: This is personal
7 knowledge. He has personal knowledge of
8 this.

9 HEARING OFFICER HALLORAN: I agree.
10 The question is phrased differently.

11 MR. PORTER: I still have a problem
12 with, I guess, two things. Number one, I'm
13 thrilled to hear that the government agrees
14 that the Frontier bonds are valid and
15 enforceable and they're trying to settle on
16 them. But, number two, how they're
17 negotiating in a lawsuit and whether or not
18 that's going to settle is irrelevant and
19 inadmissible in these proceedings. That's
20 settlement negotiations for another lawsuit.

21 HEARING OFFICER HALLORAN: How is that
22 relevant, Ms. Tomas?

23 MS. TOMAS: I can answer. It's
24 relevant in the fact that Frontier is in

1 rehabilitation and what is being negotiated
2 in settlement is substantially less than what
3 would be required for closure and
4 post-closure.

5 MR. GRANT: I think it goes to gravity
6 and also goes to our common benefit. The
7 position of CLC and the City of Morris is
8 that we have made a claim on the bonds or the
9 bonds are valid, and I think it's highly
10 relevant as to how valid are the bonds.

11 I mean, frankly, if we can claim
12 on these bonds for the full amount of closure
13 and post-closure care, then that limits our
14 penalties substantially.

15 However, if nothing more than a
16 de minimis settlement offer has been made on
17 these bonds, it shows, you know, the amount
18 of damage to the State, the gravity of the
19 violation. The only financial assurance
20 that's ever been provided for \$17.4 million
21 is now worth \$400,000.

22 I mean, we've heard testimony that
23 it's been -- that it's not compliant
24 financial assurance at which point, you know,

1 the Respondents have challenged us --

2 HEARING OFFICER HALLORAN: Excuse me,
3 Mr. Grant. I kind of do find it somewhat
4 relevant. But the problem is that this
5 settlement is still up in the air and it's
6 heavy in conjecture and there's nothing that
7 I don't think from what I've heard so far is
8 substantive.

9 So I'm going to sustain
10 Mr. Porter's objection. However, I will let
11 it in as an offer of proof, if you so choose,
12 and the Board can consider it in their own
13 way.

14 MR. GRANT: Yes. We'd like to
15 continue on as an offer of proof.

16 HEARING OFFICER HALLORAN: Okay. Let
17 me know when the offer of proof is finished.
18 Thank you.

19 MS. TOMAS: Do you know if Frontier
20 will be paying on those claims?

21 THE WITNESS: I don't know if Frontier
22 will be paying on those claims, no.

23 MS. TOMAS: To your knowledge, have
24 they made an offer to pay on those claims?

1 THE WITNESS: Yes.

2 MS. TOMAS: And what was that amount?

3 THE WITNESS: 400,000.

4 MS. TOMAS: That's the end of the
5 offer of proof.

6 HEARING OFFICER HALLORAN: Thank you.

7 BY MS. TOMAS:

8 Q. If CLC or the City provided compliant
9 financial assurance tomorrow with one of the ten
10 mechanisms listed within Section 811.706, would the
11 Illinois EPA still be able to make a claim on the
12 Frontier bonds?

13 A. No.

14 Q. And why is that?

15 A. Because we'd have substitute alternate
16 financial assurances. And, basically, that's what
17 we're looking for is that we have money that's
18 obligated to close and to go through post-closure of
19 the landfill.

20 Q. Okay. But as we sit here today, have
21 either CLC or the City ever provided compliant
22 financial assurance since those bonds?

23 A. No.

24 Q. To your knowledge, are they currently

1 violating their SIGMOD permits and Board financial
2 assurance regulations as they relate to financial
3 assurance?

4 A. Yes.

5 Q. We're going to look now at
6 Section 811.706, Subsection 8, the local government
7 guarantee.

8 A. Okay.

9 MR. PORTER: That's 716.

10 MS. TOMAS: It's listed as 706.

11 MR. PORTER: I'm sorry. Excuse me.

12 BY MS. TOMAS:

13 Q. Do you know if the City of Morris
14 could provide a local government guarantee to meet
15 the financial assurance regulations?

16 A. I don't -- as the local government, it
17 doesn't really make a lot of sense for them to.

18 Generally, the local government
19 guarantee is designed for a situation where the
20 local government is neither the owner or the
21 operator. But they do have to pass the local
22 governmental financial test, which is 811.716 as
23 part of the local government guarantee. So they
24 need to comply with both -- in order to do that,

1 they would need to comply with both 811.716 and 717.

2 Q. And do you know if they currently meet
3 those requirements?

4 A. No, I do not.

5 Q. Has the City ever submitted
6 information to the Illinois EPA, to your knowledge,
7 for an evaluation of the local government guarantee
8 for the Morris Community Landfill?

9 A. To my knowledge, they have not.

10 Q. And has the City provided any
11 information for any of the ten mechanisms since the
12 Frontier bonds were deemed non-compliant?

13 A. No, they have not.

14 Q. Has CLC provided any information for
15 any of the ten mechanisms since the Frontier bonds
16 were deemed non-compliant?

17 A. No, they have not.

18 Q. So is it your opinion as of today's
19 date that no compliant financial assurance exists
20 for the Morris Community Landfill?

21 A. Yes.

22 Q. And what would either the City or CLC
23 need to do to provide compliant financial assurance
24 for the Morris Community Landfill?

1 A. They would need to provide financial
2 assurance that is compliant with the Act and the
3 regulations in the amounts of the most recent
4 approved closure cost estimate and post-closure cost
5 estimate and they would need to use one of the ten
6 mechanisms that are applicable to them that are
7 listed in 811.706.

8 Q. And the most up-to-date financial
9 assurance closure/post-closure amount was for 17.4
10 million?

11 A. Yes.

12 Q. Okay.

13 MS. TOMAS: I'm finished.

14 HEARING OFFICER HALLORAN: Thank you,
15 Ms. Tomas. Ms. Grayson?

16 MS. GRAYSON: Could I take a couple
17 minutes? Just a few.

18 HEARING OFFICER HALLORAN: Sure.

19 Two minutes. Off the record.

20 (Whereupon, after a short
21 break was had, the
22 following proceedings
23 were held accordingly.)

24 HEARING OFFICER HALLORAN: We're back

1 on the record. Mr. Porter has volunteered to
2 cross first. Thank you, Mr. Porter.

3 CROSS EXAMINATION

4 By Mr. Porter

5 Q. Are you aware that there have been
6 revised cost estimates provided to the state of
7 Illinois?

8 A. No.

9 Q. Assume hypothetically those were
10 provided in July of this year, have you had any --
11 strike that.

12 Have you had any discussions as to
13 why the State has not responded to those revised
14 cost estimates?

15 MS. TOMAS: Objection, your Honor. He
16 said he's not aware of them.

17 HEARING OFFICER HALLORAN: Sustained.

18 BY MR. PORTER:

19 Q. You would agree, would you not, that
20 if the City of Morris meets the financial tests and
21 had they posted their municipal guarantee, that
22 would not have cost them anything?

23 A. I have really no opinion on that, I
24 mean, if it would affect their bond rating, for sure

1 if they did something -- if they were to -- if they
2 were to give the financial test -- local government
3 financial test.

4 Q. Well, you said affect their bond
5 rating. Do you mean it might affect their bonding
6 authority?

7 A. Their ability to borrow. I'm sorry.

8 Q. And you don't know whether or not the
9 City of Morris has adequate bonding authority to
10 also meet the financial tests, correct?

11 A. I'm not sure what the City of Morris
12 has because I haven't received anything from them.

13 Q. Now, whether or not it affects the
14 bonding authority might be an interesting topic, but
15 that doesn't mean it would cost the City of Morris
16 any money to give their financial guarantee, right?

17 A. I'm not sure about that.

18 Q. In your experience, have you ever
19 heard of any municipality paying itself, I guess, to
20 post a financial guarantee?

21 A. Once again, I'm not aware of the
22 municipality's innerworkings.

23 Q. You're not aware of any financial gain
24 that the City of Morris has enjoyed for failing to

1 post its own financial guarantee assuming they had a
2 responsibility to do so, right?

3 A. Could you repeat the question?

4 Q. Well, are you aware that it wasn't
5 until June of 2006 that we had a final ruling that
6 would suggest the City of Morris is responsible now
7 for posting financial assurance?

8 A. I have -- I'm not familiar with that.

9 Q. Now, assuming that the City of Morris
10 meets the financial test and could have posted its
11 own financial guarantee, you would agree that it did
12 not enjoy any cost savings for failing to do that,
13 right?

14 A. I don't have an opinion on that.

15 Q. So, likewise, you don't have any
16 opinion that there's been any economic benefit to
17 the City of Morris for failing to post financial
18 assurance, correct?

19 A. Well, the only thing I can think of,
20 it might affect their ability to borrow because I
21 have to list the financial obligation of \$17.4
22 million in their comprehensive annual financial
23 report filed with the comptroller's office of the
24 state of Illinois.

1 Q. Well, that's assuming, number one,
2 that the 17.4 is the most recent cost estimate,
3 right?

4 A. It is the most recent approved cost
5 estimate. Yes.

6 Q. Okay. How do you know that?

7 A. From reviewing the most recent
8 approved permit.

9 Q. And when did you do that?

10 A. The last time I looked at the permit
11 was this week.

12 Q. And when you went to look at the
13 permit, did you speak to Ms. Roque about it?

14 A. I spoke with Ms. Roque regarding
15 access to the August 4, 2000 permit because the
16 files were in her office.

17 Q. And the files were in her office
18 because a revised cost estimate had been sent to
19 her, right?

20 A. I'm not sure.

21 Q. Did you tell her you were looking at
22 it to determine whether or not financial assurance
23 had been posted for the most recent cost estimate?

24 A. I just asked her to see the

1 August 4th, 2000 permit.

2 Q. Okay. You personally had no
3 involvement in the issuance of violation notices in
4 this case, right?

5 A. With the violation notice, in my other
6 part as a compliance unit manager, we track the
7 notice going out and any subsequent actions after
8 the notice.

9 Q. Well, the individual who actually
10 reviewed the financial assurance records and issued
11 the notice of violation was Blake Harris, right?

12 A. That is correct.

13 Q. You had no part in that, correct?

14 A. Well, I had no part in actually
15 issuing that particular notice. As far as doing the
16 reviews, no comments on it.

17 Q. Okay. So my statement is correct, you
18 had no part in issuing the notices here for
19 violation, right?

20 A. Once again, we track the violation
21 notice. In other words, we put the violation notice
22 into our tracking system.

23 Q. All right. Do you recall I took your
24 deposition in 2005, the 20th day of September of

1 that year?

2 A. I recall doing a deposition, yes.

3 Q. And you told the truth in that
4 deposition, correct?

5 A. Yes.

6 Q. As a matter of fact, your recollection
7 back in 2005 of the events around the year 2000
8 would have been fresher than they are today,
9 correct?

10 A. Reasonable to assume.

11 Q. And isn't is it true at Page 30, Line
12 5 I asked you: So you had absolutely no input of
13 whether or not that notice of violation should be
14 issued; is that correct? And you responded: That
15 is correct.

16 A. I have to see my deposition.

17 Q. Okay. Do you recall making that
18 answer to that question?

19 A. No, I do not recall.

20 Q. Have you ever been to the site?

21 A. Yes.

22 Q. And when you were at the site, you
23 didn't notice any violations, correct?

24 A. That -- I'm not there to evaluate the

1 site for compliance at that time.

2 Q. Well, you certainly have no opinion as
3 to whether closure/post-closure activities which
4 need to be performed were or were not being
5 performed at that time, correct?

6 A. Once again, that is not my
7 responsibility with the Agency to make that
8 determination.

9 Q. My statement is right?

10 A. Could you repeat the question?

11 Q. So you have no opinion as to whether
12 closure/post-closure activities which allegedly need
13 to be performed were or were not being performed,
14 correct?

15 A. No, I don't have an opinion -- an
16 official opinion on that.

17 Q. While you were there, you didn't see
18 any waste being taken at the facility; is that
19 right?

20 A. I did not see any waste that day, no.

21 Q. To your knowledge, the City of Morris
22 has never been the permitted operator; is that
23 correct? Strike that.

24 To your knowledge, the City of

1 Morris has not been the permitted operator since
2 1982; is that correct?

3 A. I'm not sure because I haven't
4 reviewed the file that far back.

5 Q. You've never seen anywhere where the
6 City of Morris was the permitted operator then,
7 right?

8 A. I have not seen that, no.

9 Q. The statute actually provides that the
10 operator or owner shall post financial assurance; is
11 that correct?

12 A. The regulations say the owner or
13 operator shall provide financial assurance. The
14 statute says the same.

15 Q. And as the owner or operator of the
16 facility; is that right?

17 A. The responsibility would be the
18 owner's and the operator's to make sure that it's
19 provided one or the other or both.

20 Q. Okay. My question now is it's the
21 owner or operator of the facility, correct?

22 A. It's, yes, the owner or operator.

23 Q. And you would agree then that if the
24 operator posts financial assurances, there's no

1 responsibility of the owner to do so, correct?

2 A. One or the other has to provide it.
3 It doesn't matter which one does. Either one can do
4 it or both can do it.

5 Q. And at least through when we took your
6 deposition at all times Community Landfill Company
7 had indeed posted financial assurance; isn't that
8 right?

9 A. Once again, without seeing the
10 deposition, I know that the bonds were issued, that
11 a bond came -- one of the bonds was with the City of
12 Morris and two of them were with CLC from Frontier,
13 so both had provided financial assurance.

14 Q. Well, actually, the City of Morris
15 guaranteed the leachate collection; isn't that
16 correct?

17 A. Not to my knowledge.

18 Q. Now, you would agree the bonds were in
19 full force and effect through at least 2006,
20 correct?

21 A. No, I would not agree.

22 Q. When did the bonds no longer become in
23 effect, in your opinion?

24 A. The bonds ceased to be considered

1 acceptable financial assurance when Frontier was
2 terminated from the U.S. Department of Treasurer's
3 Circular 570, which would have been June of 2000.

4 Q. Okay. But the bonds were in full
5 force and effect through the end of 2006? I'm not
6 talking now about whether or not you believe that
7 they were not adequate as far as the EPA is
8 concerned.

9 A. That would probably be a question
10 better answered by the Department of Insurance and
11 the State of New York.

12 Q. Well, don't the bonds have a date on
13 them by which they're effective?

14 A. I would have to see the bonds. But
15 the bonds did have an expiration date, yes.

16 Q. And that expiration date was sometime
17 in 2005, right?

18 A. I believe so.

19 Q. And there's a statutory provision that
20 allows for that expiration date to be extended by
21 12 months if there is no alternative financial
22 assurance posted; is that correct?

23 A. That is correct.

24 Q. So the bonds were good through 2006,

1 correct?

2 A. Once again, that's something that the
3 Department of Insurance and state of New York are
4 probably better suited to answer.

5 Q. You don't know?

6 A. I don't know the Frontier case.

7 Q. That isn't what I asked you. You
8 don't know if the bonds were valid in 2006, correct?

9 A. I do not know.

10 Q. All right. Do you know when
11 Frontier -- strike that.

12 Do you know when or if Frontier
13 Insurance Company ever lost or had its license
14 suspended by the Illinois Department of Insurance?

15 A. I'm not aware of their dealings with
16 the Illinois Department of Insurance.

17 Q. So it's possible that they still have
18 a license with the Illinois Department of Insurance?

19 A. I have no opinion on that.

20 Q. Wouldn't you agree that Section 712 of
21 the financial assurance regulations provides that a
22 bonding company is acceptable if it's licensed by
23 the Illinois Department of Insurance?

24 A. There is more to the statement than

1 that. There's a conjunction in there. It says that
2 the -- and approved by the U.S. Department of
3 Treasury is an acceptable surety.

4 Q. All right. Let's take a look at it.
5 Section 811.712 says if you're licensed by the
6 Department of Insurance or, and then it provides the
7 language that you were talking about, correct?

8 A. Yes.

9 Q. Okay. But you've never determined
10 whether or not Frontier Insurance Company is indeed
11 licensed by the Illinois Department of Insurance,
12 right?

13 A. I personally have not.

14 Q. Do you know if anybody has at the
15 state of Illinois?

16 A. I'm not sure.

17 Q. You are aware that the City at one
18 time offered or discussed with the state of Illinois
19 that it would post financial assurance by providing
20 its guarantee of performance, correct?

21 A. I'm not sure that you mean by that,
22 guarantee of performance.

23 Q. Well, you know what a municipal
24 guarantee is, right?

1 A. A local government guarantee.

2 Q. Okay. Do you know what a local
3 governmental guarantee is, correct?

4 A. Yes.

5 Q. And that is a guarantee that the local
6 governmental body will either perform or see to it
7 that a third party performs, right?

8 A. Could you repeat that, please?

9 Q. And what that provides -- what that
10 means is a local governmental body will guarantee
11 that the body itself will perform or see to it that
12 a third party performs, correct?

13 A. For the local government guarantee --
14 once again, I explained before with the local
15 government guarantee, this is an unusual case
16 because generally that's designed for somebody
17 that's neither the owner or operator to use the
18 guarantee because they have to qualify under the
19 local government financial tests first.

20 And if they qualify under the
21 local government financial tests and they are an
22 owner or operator -- in this case, they're the
23 owner -- it really wouldn't make a whole lot of
24 sense to use the local government guarantee, just

1 complete the necessary work for the local government
2 financial test, which is 811.716.

3 Q. You're saying it wouldn't make sense
4 for a local governmental entity to post its own
5 guarantee that it will perform. Upon what do you
6 base that?

7 A. The local government guarantee
8 requires that they guarantee for an owner or
9 operator that they'll put up the money or they'll
10 insure an owner or operator and, generally, they are
11 not the owner or operator of the situation and that
12 they have to comply with 811.716, which is the local
13 government financial test first. And then as part
14 of that, they provide the local government
15 guarantee.

16 Q. You would agree that the City of
17 Morris, had it known that it was going to be
18 responsible for posting financial assurance, could
19 have provided its own guarantee, correct?

20 A. I'm not really sure what the City of
21 Morris' financial situation is.

22 Q. Okay. Assuming the City of Morris
23 meets the financial test, you would agree that they
24 could post their own financial guarantee, correct?

1 A. I can't assume that they'd meet the
2 local government financial test.

3 Q. I'm asking you to assume. It's a
4 hypothetical for the purpose of this question.

5 Assume that the City of Morris
6 meets the financial test. If, indeed, they meet
7 that, they could post a local municipal guarantee,
8 correct? It doesn't matter that they are the owner,
9 according to the PCB, of the facility, right?

10 A. Well, if they meet the local
11 government financial tests, they could stop there
12 much. They wouldn't need to provide the guarantee
13 because --

14 Q. Upon what do you base that?

15 A. Because the local government guarantee
16 generally is used for somebody when a local
17 government guarantees something for which they are
18 neither the owner or the operator because they have
19 to meet the local government financial tests first.

20 If they meet local government
21 financial tests, it doesn't make any sense to go for
22 the guarantee after that. I mean, they meet all the
23 requirements by that point.

24 Q. Okay. We clearly had a

1 miscommunication. You're indicating that financial
2 assurance can be met merely by the City of Morris
3 meeting the financial tests; is that right?

4 A. If they meet the local government
5 financial tests, they could post that as acceptable
6 financial assurance. That's one of the ten items
7 listed in 811.706.

8 Q. And do you know if they meet that
9 financial test?

10 A. I don't know because they haven't
11 provided us with anything to evaluate them on.

12 Q. You are aware that early on in this
13 case there was discussion of the City of Morris
14 providing its own municipal guarantee, which was
15 rejected, correct?

16 A. I have no knowledge of that because,
17 to my knowledge, they've never submitted anything
18 for us to evaluate.

19 Q. You're aware that there was talk of
20 it; is that right?

21 A. I know they had talked about a local
22 government guarantee, yes.

23 (Brief pause.)

24 MR. PORTER: Nothing further. Thank

1 you.

2 HEARING OFFICER HALLORAN: Thank you.

3 Ms. Grayson?

4 MS. GRAYSON: Yes. A few questions.

5 Mr. White, I'm Clarissa Grayson, counsel for
6 Community Landfill Company.

7 CROSS EXAMINATION

8 By Ms. Grayson

9 Q. Are you aware of the financial
10 condition of Community Landfill Company?

11 A. No, I'm not.

12 Q. Do you know whether CLC had any intent
13 to not pay the financial assurance?

14 A. The only thing I know is that there
15 isn't financial assurance by the owner or operator
16 at this time that complies with the statutes or the
17 regulations.

18 Q. Do you know how much in premiums that
19 CLC has paid over the years for financial
20 assurance --

21 A. No, I do not.

22 Q. -- for the Frontier bonds?

23 Do you have any knowledge as to
24 whether Community Landfill Company can afford to

1 provide financial assurance?

2 A. I have no knowledge.

3 Q. Do you think that the company's
4 ability to make money and generate income is
5 hampered by the fact that they're not allowed to
6 deposit waste in certain parts of the landfill?

7 A. I have no opinion on that.

8 Q. When did you visit the landfill?

9 A. I would have to look back at the
10 records to say with any certainty.

11 Q. Who were you with?

12 A. I was with Mark Retzlaff, Chris
13 Liebman, who is with our permit section. Mark is
14 with our field operations section. And Beverly
15 Anderson was there.

16 Q. What was the purpose of the visit?

17 A. Because Mark was going up there to
18 evaluate the landfill. Chris Liebman, from our
19 permits section, went up there to -- and somebody
20 else might have been up there, too, I don't really
21 recall -- as a permit reviewer to get a better idea
22 and we just came along with him, the financial
23 assurance folks.

24 Q. The financial assurance folks just

1 came along?

2 A. Yes.

3 Q. And did you have a reason to go?

4 A. Just become familiar with where the
5 landfill was, get a little better idea about the
6 landfill.

7 Q. Do you normally go and visit
8 landfills? Is that part of your job?

9 A. It certainly could be part of the job.
10 Do we normally do it? No.

11 Q. And why did you do it this time?

12 A. Because there was an ongoing
13 enforcement case.

14 Q. Do you ever visit other landfills
15 where there are ongoing enforcement cases?

16 A. There is the possibility that we
17 would, yes.

18 Q. Have you ever?

19 A. No, I have not.

20 MS. GRAYSON: I have nothing further.

21 HEARING OFFICER HALLORAN: Thank you.

22 Mr. Grant or Ms. Tomas?

23 MS. TOMAS: Nothing further.

24 HEARING OFFICER HALLORAN: All right.

1 Sir, you may step down. Thank you so much.

2 We're off the record.

3 (Brief pause.)

4 HEARING OFFICER HALLORAN: We're back
5 on the record. It's approximately 2:20. I
6 believe the State will call their fourth
7 witness.

8 MR. GRANT: Yes, Mr. Halloran. This
9 is our final witness.

10 (Witness sworn.)

11 WHEREUPON:

12 CHRISTINE ROQUE
13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Grant

17 Q. Ms. Roque, would you please state your
18 name and spell it for the record, please?

19 A. My name is Christine Roque,
20 C-H-R-I-S-T-I-N-E, R-O-Q-U-E.

21 Q. And where do you reside?

22 A. I reside in Springfield, Illinois.

23 Q. And who are you employed with?

24 A. I'm with the Illinois Environmental

1 Protection Agency.

2 Q. How long have you been with the
3 Agency?

4 A. I started in July 1992.

5 Q. Can you give me a description of your
6 educational background, please?

7 A. I received my bachelor of science in
8 industrial engineering management from U of I in
9 Chicago in 1991.

10 Q. And what is your current position at
11 Illinois EPA?

12 A. My current title is environmental
13 protection engineer III.

14 Q. And do you work in the permit section?

15 A. Yes, I do.

16 Q. Okay. What are your responsibilities?

17 A. I work in the solid waste unit of the
18 permit section. I review applications for
19 development, operation and closure of non-hazardous
20 waste facilities.

21 Q. Okay. Approximately how many
22 non-hazardous solid waste facilities have you been
23 responsible for?

24 A. Over the course of 15 years, probably

1 around 30 I've worked on.

2 Q. And are you familiar with the
3 Environmental Protection Act and the Board
4 regulations pertaining to municipal solid waste
5 landfills?

6 A. Yes, I am.

7 Q. Do you refer to the Environmental
8 Protection Act and these regulations on a regular
9 basis?

10 A. Yes, I do.

11 Q. Are you familiar with the Morris
12 Community Landfill?

13 A. Yes, I am.

14 Q. Are you responsible for that landfill
15 in the permit section?

16 A. Yes, I am.

17 Q. How long has it been your
18 responsibility?

19 A. I believe I started working on it in
20 1996.

21 Q. Can you tell me who the permitted
22 owner and permitted operator of the Morris Community
23 Landfill is?

24 A. The permitted owner is the City of

1 Morris and the permitted operator is the Community
2 Landfill Company.

3 Q. Approximately how many Bureau of Land
4 permits have been issued to the City of Morris as
5 owner -- strike that.

6 Approximately how many land
7 permits have been issued to the City of Morris for
8 the landfill?

9 A. Approximately, around 50 or 55.

10 Q. And, likewise, approximately how many
11 permits have been issued by Illinois EPA to
12 Community Landfill Company for the Morris Community
13 Landfill?

14 A. As operator, I believe around 50.

15 Q. Okay. And I'm going to ask you to
16 turn in that binder in front of you to Exhibit
17 No. 12.

18 A. Exhibit 12?

19 Q. Yes.

20 A. Okay.

21 Q. Can you take a look. They're
22 separated by a gold sheet. There's actually two
23 documents there. Can you take a look at them?

24 A. Okay.

1 Q. Can you just briefly describe what
2 they are?

3 A. One document is the permit number
4 2000-156 LFM for Parcel B and the other permit is
5 permit number 2000-155 LFM for Parcel A.

6 Q. And these are the two parcels of the
7 Morris Community Landfill?

8 A. Yes.

9 Q. And do the permits themselves identify
10 the owner and the operator?

11 A. Yes.

12 Q. And what does it list?

13 A. The owner is City of Morris and the
14 operator is Community Landfill Company.

15 Q. Did the City of Morris and Community
16 Landfill Company apply for these permits?

17 A. Yes.

18 Q. Do the permits identify the amount of
19 closure/post-closure financial assurance required
20 for the Morris Community Landfill?

21 A. Yes.

22 Q. Okay. And about how much is that
23 approximately?

24 A. The total for both is 17.4 million,

1 approximately.

2 Q. Okay. How are figures for the amount
3 of closure and post-closure financial assurance
4 arrived at?

5 A. The applicant will propose the cost
6 estimate in an applications and the EPA will review
7 it and approve it eventually.

8 Q. Okay. Can these amounts be modified?

9 A. Yes.

10 Q. How would you modify the amount of
11 financial assurance? How would somebody who had a
12 permit modify of amount of financial assurance?

13 A. The applicant needs to submit a
14 significant modification application revising the
15 cost estimate, then we will review it, meaning the
16 IEPA will review it.

17 Q. Do these permits require annual
18 updates of closure and post-closure costs?

19 A. Yes.

20 Q. For the cost estimate I think is the
21 term?

22 A. Yes.

23 Q. Okay. And are annual updates also
24 required under the Pollution Control Board

1 regulations?

2 A. Yes.

3 Q. Have the City of Morris or Community
4 Landfill Company ever submitted annual updates?

5 A. No.

6 Q. Between the time that the permit was
7 issued and July of 2007, did either of the City of
8 Morris or Community Landfill Company ever seek a
9 permit modification for reduction in financial
10 assurance?

11 A. July of 2007?

12 Q. Yes. Up to July of 2007.

13 A. No.

14 Q. Has the City of Morris now submitted a
15 new estimate of closure and post-closure costs?

16 A. There is an addendum to the renewal
17 application for a revised cost estimate.

18 Q. Do you know when the renewal
19 application was submitted, the application itself?

20 A. The original submittal was in 2005, I
21 believe. Around April 2005.

22 Q. So just so we're clear, though, there
23 has been a new cost estimate for
24 closure/post-closure submitted this year as an

1 addendum to 2005 renewal application; is that
2 accurate?

3 A. Yes.

4 Q. And is this new estimate of
5 closure/post-closure costs currently under review by
6 Illinois EPA?

7 A. It's under review.

8 Q. Okay. And is that under review in the
9 permit section?

10 A. With the permit section.

11 Q. Okay. If Illinois EPA was to accept a
12 new cost estimate, how would it become effective?

13 A. If we were to accept a new cost
14 estimate, then we -- it will be reflected in the
15 permit that will be issued.

16 Q. So you would issue a new permit?

17 A. Yes.

18 Q. Okay. And until that new permit was
19 issued, would the old -- the former cost estimate
20 still be effective?

21 A. Yes.

22 Q. Looking at Exhibit 12, which is the
23 permits, and specifically permit number 156 for
24 Parcel B, at the time that it was issued, what did

1 this permit approve?

2 A. Permit 2000-156 LFM for Parcel B
3 approved the development and closure of Parcel B.

4 Q. Okay. And does it also deal with
5 overhead issues at Parcel B?

6 A. Yes.

7 Q. Okay. To the best of your knowledge,
8 has closure of Parcel B been accomplished?

9 A. Not to my knowledge.

10 Q. To the best of your knowledge, has the
11 over-height issues before been resolved pursuant to
12 the permit's terms?

13 A. Not to my knowledge.

14 Q. Based on your knowledge, is closure
15 now due for Parcel B?

16 A. I believe so.

17 Q. Are any operating permits in place now
18 for disposal of waste in Parcel A at the landfill?

19 A. We have not issued any new operating
20 permits for Parcel A.

21 Q. Okay. Did the City of Morris and
22 Community Landfill Company apply for an operating
23 permit for Parcel A back in 2001?

24 A. Yes, they did.

1 Q. Okay. Was that permit denied?

2 A. Yes.

3 Q. Did they appeal that denial?

4 A. Yes.

5 Q. Did you testify at the Board hearing
6 on that permit appeal?

7 A. Yes.

8 Q. Does a permit for Parcel A allow the
9 acceptance of hazardous, non-petroleum contaminated
10 soil -- I'm sorry -- non-hazardous petroleum
11 contaminated soil?

12 MR. PORTER: I'm sorry. I need that
13 read back.

14 MR. GRANT: Let me withdraw the
15 question and restate it.

16 BY MR. GRANT:

17 Q. Does the permit -- and, specifically,
18 I'm taking about the permit that's in Exhibit 12 for
19 Parcel A. Does it allow the acceptance of
20 non-hazardous petroleum contaminated soil?

21 MR. PORTER: Objection, irrelevant.

22 HEARING OFFICER HALLORAN: Mr. Grant?

23 MR. GRANT: I think we're talking
24 about continuing waste disposal. It's -- I'm

1 going to go on to show that they have been
2 disposing of non-hazardous petroleum soil and
3 some other substances without a permit which
4 shows continued waste disposal.

5 The continued violation we've
6 alleged is operating -- is conducting a waste
7 disposal operation in violation of the
8 financial assurance regs. And where we're
9 going with this is to show continued waste
10 disposal, so a continual operation of a waste
11 disposal operation.

12 HEARING OFFICER HALLORAN: That pretty
13 much coincided with my ruling earlier. Mr.
14 Porter?

15 MR. PORTER: And I'm going to stand by
16 the same objection I made earlier. But this
17 one and another one. No foundation. We
18 haven't heard that this witness was ever at
19 that site.

20 MR. GRANT: I'm asking about the
21 permit.

22 MR. PORTER: But this is the last
23 witness and he's now -- you know, we don't
24 have any evidence that any of this is

1 happening that he's alluding to. And this
2 witness -- we haven't laid the foundation
3 he's ever been there or a witness to any of
4 this.

5 MR. GRANT: And, actually, now that
6 you mention it, I don't think that came into
7 testimony today.

8 MR. PORTER: I didn't hear it.

9 MR. GRANT: There was -- in the
10 inspection reports that were admitted as an
11 exhibit, there was a report of a disposal of
12 sewage sludge from the City of Morris. I
13 think that was testified to today.

14 HEARING OFFICER HALLORAN: I think
15 Mr. -- the first witness.

16 MR. GRANT: Yes. Mr. Retzlaff
17 testified to that. And so the question is is
18 this allowed? In other words, are they
19 disposing of waste -- the permit itself --
20 there's sort of a question of what is waste
21 and what isn't waste because the permit
22 itself does allow under certain circumstances
23 this material to be brought in and disposed
24 of.

1 You know, what we're going to show
2 is that those conditions were not met and so,
3 therefore, what they brought in and discarded
4 there was waste. So it goes to show
5 continuing waste disposal. My question was
6 about petroleum-contaminated soil and I'm
7 going to withdraw that --

8 MR. PORTER: Okay.

9 MR. GRANT: -- specifically.

10 HEARING OFFICER HALLORAN: Go ahead,
11 Mr. Grant.

12 BY MR. GRANT:

13 Q. Onto the next one. Does the permit
14 for Parcel A allow the acceptance at Parcel A of dry
15 sewage sludge?

16 MS. GRAYSON: Objection.

17 MR. PORTER: Same objection. Counsel,
18 I know we've stipulated to some documents. I
19 don't recall seeing any document that
20 referenced dry sewage sludge, therefore, I
21 don't believe there's the foundation
22 necessary to get into this. If you could
23 quickly show it to me, I might be able to --

24 MR. GRANT: Yeah. Sure. And I

1 appreciate the stipulation. But I think
2 Mr. Retzlaff also testified that when he
3 was -- it could have been the June inspection
4 that he saw an accumulation of sewage sludge
5 that had been deposited at the face of the
6 landfill. So it's not just a matter of --
7 it's somewhere in the exhibits we stipulated
8 to.

9 MR. PORTER: I don't recall it,
10 Mr. Halloran. I'll just object.

11 HEARING OFFICER HALLORAN: You know,
12 I think I do recall that, Mr. Porter. And
13 I've allowed latitude so far and I will
14 continue to allow a little latitude. So
15 overruled. Mr. Grant?

16 MR. GRANT: And just for the record,
17 this is the June 26th, 2007 inspection
18 report, which is People's Exhibit 7 and it's
19 exposure number six. I believe that when we
20 were going through the photographs that
21 Mr. Retzlaff testified that he saw sewage
22 sludge there.

23 HEARING OFFICER HALLORAN: Proceed.

24 MR. GRANT: Okay.

1 BY MR. GRANT:

2 Q. Ms. Roque, does the permit for Parcel
3 A allow for the acceptance of sewage sludge at the
4 landfill for Parcel A?

5 A. The permit for Parcel A allows for
6 acceptance of municipal waste and non-hazardous
7 special waste, which includes sewage sludge and
8 petroleum-contaminated soil.

9 Q. Okay. I think you testified that
10 there's no current operating permit at the
11 landfill -- or, I'm sorry, for Parcel A of the
12 landfill?

13 A. We haven't issued any new permit for
14 any new area to place waste.

15 MR. GRANT: Okay. That's all I have.

16 HEARING OFFICER HALLORAN: Thank you.

17 Ms. Grayson, do you need a few minutes? Do
18 you want Mr. Porter to proceed?

19 MS. GRAYSON: I wouldn't mind a few
20 minutes.

21 HEARING OFFICER HALLORAN: Take your
22 time. Mr. Porter, are you ready?

23 MR. PORTER: Sure.

24

1 CROSS EXAMINATION

2 By Mr. Porter

3 Q. Your duties don't normally involve
4 determining whether or not any permit condition has
5 been violated; isn't that correct?

6 A. No.

7 Q. My statement was right?

8 A. Your statement was right.

9 Q. That's normally a job for the Bureau
10 of Land inspectors; is that right?

11 A. Yes.

12 Q. At this time, you don't have any
13 opinion as to whether or not adequate financial
14 assurances have been posted, right?

15 A. No.

16 Q. So my statement is correct, you don't
17 have any opinion whether or not or not adequate
18 financial assurance has been posted? Let me ask it
19 this way. It's easier. Do you have any opinion
20 that adequate financial assurances have not been
21 posted?

22 A. I have an opinion.

23 Q. Okay. Do you recall when we took your
24 deposition in -- I'm sorry. I have to get it out.

1 I actually don't have it right in front of me. I
2 believe it was 2005 we when took your deposition.
3 Do you remember giving a deposition in this case?

4 A. Yes.

5 Q. And at that time do you remember
6 telling me you had no opinion as to whether or not
7 adequate financial assurance had been posted at Page
8 96, Line 24?

9 A. In 2005, I mean, I have an opinion,
10 but now too.

11 Q. Okay. You understand that the
12 violation notices went out in 2000?

13 A. I believe so.

14 Q. And so something has happened since
15 2005 that has changed your opinions regarding this
16 case?

17 A. Yes.

18 Q. What was it that happened?

19 A. I've read my transcript of my -- I
20 read about the case.

21 Q. You don't have any opinion today, do
22 you, that there's been any environmental damage or
23 endangering of health, safety or welfare by an
24 alleged failure to comply with any environmental law

1 at issue in this case; is that correct?

2 A. Can you repeat your question?

3 Q. You don't have any opinion that
4 anything the City of Morris has done has in any way
5 caused any environmental damage or endangering of
6 health, safety or welfare, do you?

7 A. No.

8 Q. You don't have any opinion that the
9 City has enjoyed any cost savings concerning the
10 alleged violations identified in this case, do you?

11 A. As far as cost savings? No.

12 Q. Now, there was a mention of a revised
13 cost estimate that apparently was issued in July of
14 2007. Do you recall that testimony?

15 A. Issued in July 2007 or submitted in
16 July of 2007?

17 Q. Understood. Let me show you what
18 we've had marked as City of Morris Exhibits Nos. 1
19 and 2.

20 (Document tendered to the
21 witness.)

22 BY MR. PORTER:

23 Q. Are those the revised cost estimates
24 that were submitted on July 12 of 2007?

1 A. Maybe.

2 Q. Isn't it true that those were sent
3 directly to you?

4 A. Yes.

5 Q. And you do have a recollection of
6 having reviewed those cost estimates, right?

7 A. Preliminary. I have not reviewed the
8 whole technical review.

9 Q. Okay. When was it that you learned we
10 were going to hearing today?

11 A. About a week ago.

12 Q. All right. And at that time -- strike
13 that.

14 You got the cost estimates on or
15 about July 12, 2007, but haven't yet reviewed them;
16 is that correct?

17 A. That's correct.

18 Q. And at least a week ago you knew that
19 the State was going to be presenting a case
20 asserting that the cost of closure/post-closure care
21 in this matter was \$17.4 million, right?

22 A. Right.

23 Q. So isn't it true that you should have
24 looked at the revised cost estimates and determined

1 if they were reasonable?

2 A. I looked at them.

3 Q. You don't have any reason -- strike
4 that.

5 You would agree that those cost
6 estimates submitted by Shaw on July 12, 2007 are
7 reasonable, correct?

8 A. I cannot make a determination today if
9 they're reasonable or not.

10 Q. Well, what process is involved in
11 making a determination of reasonableness of a cost
12 estimate?

13 A. For this revised cost estimate
14 submitted as part of the renewal, it involves us
15 reviewing a revised closure plan that corresponds to
16 the cost estimate.

17 Q. Okay. And the closure plan was also
18 provided; is that right?

19 A. No.

20 Q. Okay. Have you requested a closure
21 plan from CLC or Shaw or the City?

22 A. In one of the draft denials that was
23 sent to them, we requested an operational plan and,
24 consequently, a closure plan that would support the

1 cost estimate.

2 Q. No denial has been sent, has it?

3 A. It's a draft denial.

4 Q. Okay.

5 A. For this pending application. The
6 renewal application.

7 Q. And so if I understand correctly then,
8 it's your intent to deny the revised cost estimates?

9 A. I'm not intending to deny cost
10 estimates. We are reviewing it. I'm not the only
11 one reviewing this cost estimate. The groundwater
12 section also has to review the groundwater
13 monitoring portion of that cost estimate.

14 Q. When do you expect to get a
15 determination on the revised cost estimate?

16 A. I don't know.

17 Q. Is there any statutory requirement as
18 to when you're supposed to provide a review of the
19 cost estimate?

20 A. We have a 90-day review period for
21 each application.

22 Q. And do you expect to at least meet the
23 90-day review period?

24 A. Before the 90-day period is up, we

1 will make a determination whether it's going to be
2 approved or we will send them a draft denial letter
3 allowing them to respond or correct the deficiency.

4 Q. Wouldn't you agree that it would be
5 reasonable to await your determination before we try
6 to craft a remedy in this case?

7 A. Could you repeat that, please?

8 Q. Wouldn't you agree that it would be
9 reasonable for the Pollution Control Board, this
10 body, to await your determination on the revised
11 cost estimates before we try to craft a remedy?

12 A. I don't know.

13 Q. Now, you did say you preliminarily
14 reviewed the cost estimates. Was there anything in
15 those that jumped out at you as unreasonable?

16 A. Just there's no operational plan
17 submitted with the renewal application. We
18 cannot -- the cost estimate should be based on and
19 consistent with the current operation of the
20 landfill, current condition. We're not -- we don't
21 have that information right now.

22 Q. Let me direct your attention to what
23 we've had marked as Morris Exhibit No. 10.

24 MR. PORTER: May I see yours to make

1 sure I marked them correctly?

2 HEARING OFFICER HALLORAN: Yes.

3 (Brief pause.)

4 BY MR. PORTER:

5 Q. Let me show you what we've had marked
6 as Exhibit 10, which is a schedule of closure
7 activities at the Morris Community Landfill, Parcels
8 A and B, drafted by Shaw Environmental and a draft
9 letter also drafted by Shaw Environmental that is
10 admittedly own in draft form at this time. Have you
11 seen either of these documents before today?

12 A. I don't remember.

13 Q. Are you aware that those documents
14 have been shared with the state of Illinois well
15 before this day?

16 A. I don't know.

17 Q. Other than the failure to have an
18 operational plan -- well, strike that. Let me cut
19 to the chase.

20 The revised cost estimates are
21 \$7 million less than the previous cost estimates.
22 Did you notice that?

23 A. Yes.

24 Q. And did that reduction in amount give

1 you any pause or concern?

2 A. Yes.

3 Q. And has it been explained to you as to
4 how it is that that reduction has occurred?

5 A. Not through the application.

6 Q. Well, that wasn't my question. Has it
7 been explained to you how that reduction has
8 occurred?

9 A. No.

10 Q. Have you been informed that there has
11 now been the testing to determine that the leachate
12 monitoring system that was included in the prior
13 cost estimate was actually amended in this cost
14 estimate because the groundwater is a Class IV
15 rather than Class I and there's a different system
16 to be employed by Shaw? Has any of that been
17 explained to you?

18 A. No.

19 Q. Are you familiar with Shaw
20 Environmental?

21 A. Yes.

22 Q. And you would agree that they are a
23 highly reputable organization when it comes to
24 designing and implementing closure/post-closure

1 plans?

2 A. I don't know.

3 Q. You would agree that they are one of
4 the, if not the common engineering firm utilized for
5 that purpose in Illinois?

6 A. I don't know.

7 Q. Do you have any reason to not trust
8 Shaw Environmental's cost estimates?

9 A. No.

10 Q. When is it -- strike that.

11 Counsel brought up to you some
12 statements in the SIGMOD permit concerning
13 over-height. Do you remember that testimony?

14 A. Yes.

15 Q. And in particular -- strike that.

16 When is it that you believe
17 over-height was reached in regard to Parcel B?

18 A. When was it reached?

19 Q. Correct.

20 A. I don't know when exactly it was
21 reached. But during the review of the initial
22 SIGMOD in 1996, that's when I questioned them.

23 Q. So as early as 1996 the EPA was aware
24 or believed anyway that Parcel B was at over-height,

1 correct?

2 A. Yes.

3 Q. At any time did you or anybody at the
4 EPA direct CLC to close the landfill in 1996 or
5 1997?

6 A. I informed or questioned the
7 application in 1996 -- that's the application
8 submitted by CLC's consultant at the time -- in
9 question about the over-height.

10 Q. Okay. But you would agree, would you
11 not, the regulations call for the closure of a
12 landfill once it meets its height? As a matter of
13 fact, it's supposed to be closed in 90 days; isn't
14 that correct?

15 A. Correct.

16 Q. And at any time did you direct CLC to
17 close Parcel B?

18 A. No. It was proposed in their
19 application.

20 Q. And do you or did anybody at the EPA,
21 to your knowledge, ever direct the City of Morris
22 that it should somehow close the landfill as early
23 as 1996?

24 A. No.

1 Q. You would agree that the EPA had the
2 authority to direct CLC to close that landfill as
3 early then as 1996, correct?

4 A. Could you repeat your question?

5 Q. You would agree that the EPA had the
6 authority to direct CLC to close Parcel B of the
7 landfill as early at 1996, correct?

8 A. I believe so.

9 Q. And to your knowledge, the EPA never
10 did that, correct?

11 A. I'm not aware.

12 Q. Okay. Would you agree, therefore,
13 that the environment would be better protected by
14 closing the landfill now rather than buying some
15 insurance or a bond?

16 A. I don't know.

17 MR. PORTER: Nothing further.

18 HEARING OFFICER HALLORAN: Thank you,

19 Mr. Porter. Ms. Grayson?

20 MS. GRAYSON: Yes.

21 CROSS EXAMINATION

22 By Ms. Grayson

23 Q. Did you work on reviewing the -- did
24 you work on the permit review for the significant

1 modification in August 2000?

2 A. Yes.

3 Q. And do you have any knowledge as to
4 why CLC was required to post \$17 million in
5 financial assurance back in August 2000?

6 A. That was the cost estimate that they'd
7 come up with.

8 Q. And what was included in that cost
9 estimate? Do you have any recollection?

10 A. Closure of Parcel A. Pretty much a
11 closure of Parcel A, closure of Parcel B, removing
12 of -- there's some waste relocation costs and
13 post-closure monitoring costs for up to 100 years.

14 Q. Part of the reason why that
15 significant modification was granted, however, was
16 because they posted the adequate financial assurance
17 at the time; is that correct?

18 A. At the time, yes.

19 Q. In August 2004?

20 A. Yes.

21 Q. The permit was granted because there
22 was adequate financial assurance?

23 A. Yes.

24 Q. I'm sorry. In August 2000. Not

1 August 2004.

2 A. 2000.

3 Q. It was August 4th, 2000, just to
4 clarify the record.

5 Did you then later review the
6 supplemental permit application for the separation
7 layer in the new cell that CLC submitted after that?
8 It was sometime after that. Sometime before May
9 of 2001.

10 A. It's the significant modification
11 application for operating permit, Parcel A.

12 Q. Correct?

13 A. Yes.

14 Q. And you reviewed that. And do you
15 know why that permit was denied?

16 A. One of the reasons is the financial
17 assurance, they didn't have adequate -- or the right
18 financial assurance document.

19 Q. So at the time that the permit was --
20 the permit. I'm sorry significant modification was
21 issued in August 2000, the financial assurance was
22 adequate, and then nine months later it was not
23 adequate; is that correct?

24 A. That's correct.

1 Q. And do you know how much financial
2 assurance was posted by CLC prior to the issuance of
3 the significant modification permit in August 2000,
4 just roughly?

5 A. Okay. I'm not -- I don't remember the
6 exact amount.

7 Q. Was it less?

8 A. I don't know.

9 Q. Okay. Do you have any knowledge of --
10 are you aware of the financial condition of
11 Community Landfill Company?

12 A. No.

13 Q. And do you know whether Community
14 Landfill Company ever had any intention to not pay
15 for financial assurance?

16 A. No.

17 Q. Do you have any knowledge as to
18 whether CLC can afford financial assurance?

19 A. No.

20 Q. Do you think that the ability of the
21 landfill -- of the company to make money has been
22 hampered by the fact that they're not able to accept
23 waste pursuant to the supplemental permit
24 application?

1 A. Can you repeat that?

2 Q. Sure. Do you think that the company's
3 ability to generate income has been hampered by the
4 fact that that supplemental permit application was
5 denied?

6 A. I don't know.

7 Q. Okay.

8 MS. GRAYSON: I have nothing further.

9 HEARING OFFICER HALLORAN: Is that
10 all, Ms. Grayson?

11 MS. GRAYSON: That's it.

12 HEARING OFFICER: Mr. Grant, redirect?

13 MR. GRANT: No.

14 HEARING OFFICER HALLORAN: Okay. You
15 may step down. Thank you so much. We can go
16 off the record for a second.

17 (Brief pause.)

18 HEARING OFFICER HALLORAN: We're back
19 on the record. Mr. Grant, do you have
20 anything to say?

21 MR. GRANT: Mr. Halloran, the State
22 has presented all of its evidence and rests
23 its case in chief.

24 HEARING OFFICER HALLORAN: Thank you

1 very much. I think what we'll do is we'll
2 adjourn today. It's approximately 3:00
3 o'clock. We'll resume tomorrow at 9:00 a.m.,
4 September 12th. Thank you. Drive safely.

5 (Which were all the
6 proceedings had in the
7 above-entitled cause
8 on this date.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF WILL)

3

4 I, Tamara Manganiello, RPR, do hereby
5 certify that I reported in shorthand the proceedings
6 held in the foregoing cause, and that the foregoing
7 is a true, complete and correct transcript of the
8 proceedings as appears from my stenographic notes so
9 taken and transcribed under my personal direction.

10

11

TAMARA MANGANIELLO, RPR
License No. 084-004560

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16

17 SUBSCRIBED AND SWORN TO
18 before me this ____ day
19 of _____, A.D., 2007.

18

19

20 _____
Notary Public

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24