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ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB 04-207
)	(Enforcement-
EDWARD PRUIM and ROBERT PRUIM,)	Land)
)	
Respondents.)	
-----)	
PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB 97-193
)	(Enforcement-
COMMUNITY LANDFILL COMPANY, INC.,)	Land)
)	(Consolidated)
Respondent.)	

REPORT OF PROCEEDINGS taken before Tamara Manganiello, Registered Professional Reporter and Notary Public, at 1320 Union Street, Morris, Illinois, commencing at the hour of 9:00 a.m. on the 2nd day of December, A.D., 2008.

ILLINOIS POLLUTION CONTROL BOARD
 MR. BRADLEY P. HALLORAN, HEARING OFFICER
 100 West Randolph Street
 Suite 11-500
 Chicago, Illinois 60601
 (312) 814-8917

L.A. REPORTING (312) 419-9292

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

2

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6 BY: MR. CHRISTOPHER J. GRANT
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7

Appeared on behalf of the Complainant;

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11 BY: MR. MARK A. LAROSE

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Appeared on behalf of the Respondents;

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15 Chicago, Illinois 60601
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Appeared on behalf of the Respondents;

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21 BY: MR. PETER E. ORLINSKY

22

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24

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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 these matters entitled People of
6 the State of Illinois, Complainant, versus
7 Edward Pruum and Robert Pruum, Respondents,
8 PCB 4-207 and it's consolidated with People
9 of the State of Illinois, Complainant, versus
10 Community Landfill Company, Inc., Respondent,
11 PCB 97-193.

12 It's December 2nd, 2008. It's
13 9:00 o'clock a.m. This hearing was scheduled
14 in accordance with the Illinois Environmental
15 Protection Act and the Pollution Control
16 Board rules and procedures.

17 It will be conducted according to
18 procedural rules found at Sections 101 and
19 103 of the Board's rules. This is an
20 enforcement proceeding.

21 As most of you know, I don't make
22 the ultimate decision in the case, the Board
23 does that. I'm here to rule on evidentiary
24 matters and make sure everything is cordial.

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1 Again, we are here pursuant to the
2 October 3rd, 2002, and April 20th, 2006,
3 Board orders in this case.

4 Before I let the parties introduce
5 themselves, we have some administrative
6 things we have to take care of. I believe on
7 November 12th Respondents filed three motions
8 in limine. The State responded, I believe,
9 on November 17th. In any event, the motion
10 in limine number one is to exclude evidence
11 of Respondents' prior convictions.

12 Based on People versus Montgomery,
13 there doesn't seem to be any dispute that, in
14 fact, the ten-year limitation has run. The
15 State wished to introduce some certain
16 documents related to the Pruim's prior
17 convictions.

18 After the ten-year time limit
19 runs, you cannot use those convictions for
20 impeachment of credibility. The State
21 maintains the State has no intention of using
22 prior felony convictions to impeach the
23 Pruim's overall credibility as a witness, and
24 I'm reading from Page 3 of the November 17th

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1 response. The evidence will only be used if
2 Edward and/or Robert Pruim deny these
3 contentions on direct examinations.

4 I'm going to grant the motion in
5 limine one. I find what the State is arguing
6 is a matter of semantics. It's attacking the
7 Pruim's veracity and I believe that's the
8 definition of impeachment. And as you know,
9 you may appeal my ruling. I believe it's
10 14 days after the transcript, but we can take
11 a look at that.

12 As to the Respondents' motion in
13 limine number two that the Respondents wish
14 to exclude witness John Enger, Respondents
15 state that the witness was disclosed on
16 August 20th, 2008, and the subject matter was
17 not disclosed until October 6th. The State
18 says that the witness was disclosed 89 days
19 ago and it's merely to -- the testimony will
20 relate to the authenticity of the city
21 documents.

22 Additionally, I will note that he
23 was disclosed as recently as August 20th.
24 The Respondents didn't file anything until

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1 November 12th. I find that there's been more
2 than enough time to depose Mr. Enger if they
3 so choose and that I don't think it's unfair
4 surprise or it's going to pose any prejudice
5 or deny the Respondents a fair hearing. I
6 deny motion in limine number two.

7 Same with motion in limine number
8 three, the State was going to -- wishes to
9 introduce eight inspection reports that the
10 Respondents said they did not know of, I
11 believe, until August 20th, 2008.

12 Again, they didn't file anything
13 until November 12th challenging that. And I
14 think they are familiar with that based on
15 past testimony. Again, I don't think there's
16 any unfair surprise or the Respondents will
17 not be prejudiced should these documents be
18 received.

19 We also have another motion and I
20 believe it was filed belatedly yesterday.
21 Respondent, Community Landfill Company,
22 Robert Pruim and Edward Pruim request to
23 incorporate materials from a prior
24 proceeding. There is approximately -- it's

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1 from volume one, day one of hearing,
2 October 15th, 2001, in the PCB 1-170
3 enforcement proceeding.

4 It comprises of approximately
5 three pages of Mark Retzlaff testimony. The
6 State obviously has not filed a response yet.
7 Do you have a position on it at this point?

8 MR. GRANT: Yes. I guess we'd object
9 to it on the basis of relevance. Basically,
10 the scope of the violations in this case run
11 from maybe 1990 or 1993 until about 1999-2000
12 and most of them are, you know, 1993 to 1997.
13 That's what this case is about as opposed to
14 some of the other cases we have at the same
15 landfill.

16 Mark Retzlaff did not become the
17 inspector at the Morris Community Landfill --
18 and I did not talk to him yesterday, but my
19 recollection is it wasn't until 2000 so it's
20 really anything that he had to say. And in
21 the previous case his testimony was relevant
22 because we were dealing with financial
23 assurance from 2000 to the present. And so
24 he was the inspector during that period and

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1 his testimony was relevant.

2 For the purpose of this case, I
3 just don't see that anything he said about --
4 I think it deals with whether or not he ever
5 saw the individual defendants, Robert and
6 Edward Pruum, at the landfill or had
7 interaction with them and his answers were
8 negative.

9 It really has no relevance to this
10 case with the violation. Now just to make
11 sure that I don't mislead you, Tina is here,
12 Tina Kovasznay, who's going to testify, who
13 was the inspector prior to Mark. I mean,
14 maybe we can ask her.

15 Do you remember when Mark took
16 over as the inspector for Morris Community?

17 MS. KOVASZNAY: In 2000.

18 MR. GRANT: So it basically just
19 doesn't have any relevance, so that's our
20 basis for asking that the --

21 HEARING OFFICER HALLORAN: Thanks,
22 Mr. Grant. Anything further, Mr. Larose or
23 Ms. Cutler?

24 MS. CUTLER: We disagree. We think it

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1 is relevant, simply going toward the issue of
2 the allegations of personal liability against
3 the Respondents, Edward and Robert Prum, as
4 to whether another inspector whose testimony
5 to the Board has recognized, you know,
6 whether he ever saw them there. So we
7 disagree and believe that it is relevant.

8 HEARING OFFICER HALLORAN: You know,
9 I'm going to -- and, again, I'm not sure why
10 this was just filed yesterday. Again, it's
11 late. I think all prehearing motions were
12 supposed to be filed earlier. But --

13 MS. CUTLER: Well, if I can interrupt,
14 I can tell you why it was filed yesterday,
15 because we had included it as an exhibit and
16 then when we were discussing the exhibits
17 with Mr. Grant, he mentioned that he was
18 going to object to it.

19 So I decided to simply, since it
20 was such a short and such a small issue, just
21 rather than have to deal with it as an
22 evidentiary objection during the hearing,
23 just to file a motion.

24 HEARING OFFICER HALLORAN: Understood.

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1 And not to be picky, but next time file a
2 motion for leave to file. That'd be great.

3 MS. CUTLER: Will do.

4 HEARING OFFICER HALLORAN: Because I'm
5 getting piecemeal stuff here. But I am going
6 to grant your motion. And pursuant to
7 Section 101.306, the Board will give the
8 incorporated matter the appropriate weight.
9 So the motion to incorporate is granted.

10 Mr. Grant, would you like to
11 introduce yourself and co-counsel?

12 MR. GRANT: Yes. I'm Christopher
13 Grant and I'm an assistant attorney general
14 in the environmental bureau. My address is
15 69 West Washington in Chicago, Suite 1800.

16 And along with me as co-counsel is
17 Jennifer Van Wie, that's V-A-N, W-I-E, who is
18 also an assistant attorney general with the
19 environmental bureau in Chicago.

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

22 MR. LAROSE: Mr. Halloran, Mark Larose
23 on behalf of Community Landfill Company and
24 individual Respondents, Robert Edward Pruum.

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1 I know it's spelled kind of weird, like it
2 might be prim, but it is pronounced prime.

3 HEARING OFFICER HALLORAN: And I was
4 telling the court reporter that I thought it
5 was prim, but it's prime.

6 MR. LAROSE: Right. And with me is
7 Clarissa Cutler, of counsel with our office
8 of LaRose & Bosco and also a principal now at
9 her own firm of the Law Offices of Clarissa
10 Cutler. And we're here to represent the
11 Respondents.

12 HEARING OFFICER HALLORAN: Thank you.
13 My apologies, Mr. Pruim.

14 MR. LAROSE: That's Mr. Pelnarsh.

15 HEARING OFFICER HALLORAN: Oh, well,
16 my apologies again. With that said,
17 Mr. Grant, would you like to go forward in
18 your case in chief or we can have opening
19 statements if you'd like.

20 MR. GRANT: Before we do that, I was
21 wondering, Ms. Cutler and I spoke yesterday
22 about stipulations on documents. Now that
23 this issue has been handled, that one, I just
24 think maybe for the record we should enter

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1 the stipulations, which documents we've
2 agreed to stipulate to as admissible subject
3 only to a relevance objection. And if you
4 don't mind, I'll make sure that we have the
5 same list.

6 (Brief pause.)

7 MR. GRANT: Mr. Hearing Officer, for
8 the record, the parties have agreed to
9 stipulate to the admissibility of
10 Complainant's Exhibits 1A through F, 2A
11 through C, 13A through O, 14A through --

12 HEARING OFFICER HALLORAN: Hold on,
13 Mr. Grant.

14 MR. GRANT: I'm sorry.

15 HEARING OFFICER HALLORAN: I've got 2A
16 through C, 13 --

17 MR. GRANT: A through O, 14A through
18 D, 15A through D, 16A through C and
19 Exhibit 17.

20 HEARING OFFICER HALLORAN: 17A through
21 C?

22 MR. GRANT: It's just 17.

23 HEARING OFFICER HALLORAN: Okay.

24 MR. GRANT: It's a single exhibit.

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1 HEARING OFFICER HALLORAN: All right.

2 MR. GRANT: And the Complainant agrees
3 to stipulate to the admissibility of all of
4 Complainant's exhibits except for 9 and 10,
5 so that's Exhibits 1 through 8 and 11 through
6 32.

7 HEARING OFFICER HALLORAN: So 9 and 10
8 are not stipulated to?

9 MR. GRANT: Right, 9 and 10 are
10 affidavits and we expect they'll be used with
11 the witness on the stand.

12 HEARING OFFICER HALLORAN: Okay. Your
13 opening.

14 MR. GRANT: We'll waive an opening
15 statement.

16 HEARING OFFICER HALLORAN: Ms. Cutler,
17 Mr. LaRose?

18 MR. LAROSE: Very briefly,
19 Mr. Halloran. Counsel, may it please the
20 Board, over 20 counts of allegations have
21 been made for activities ranging back to the
22 time before 1997 when the original complaint
23 was filed.

24 In the early 2000s the claims were

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1 amended to include claims of personal
2 liability against the officers and
3 shareholders of the company, Robert and
4 Edward Pruim.

5 On all counts for personal
6 liability, and all 20 of them are at issue
7 here, we believe that the evidence will be
8 insufficient for the State to meet its burden
9 to prove personal liability of the
10 shareholders and officers of the company.

11 We will contest each and every one
12 of the counts in the complaint that alleges
13 personal liability. If there is any
14 liability to be found and any penalties to be
15 assessed, it should be against the
16 corporation that operated the landfill and
17 not the shareholders.

18 There are several counts in the
19 complaint at which liability is still at
20 issue with respect to even the company.
21 Count I for management of litter; Count III
22 for landscape waste; Count IV alleging water
23 pollution; Count XV alleging operations of a
24 gas managing system without a permit, VXII

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1 alleging leachate from the gas system; and
2 Count XX alleging the failure to obtain an
3 operating permit.

4 Liability is still at stake in
5 these counts because the Board denied the
6 Complainant's motion for summary judgment and
7 ordered a hearing on liability.

8 We believe that the evidence will
9 be insufficient to show a violation of even
10 the corporate entity.

11 The other count -- the remaining
12 counts where the Board has found in favor of
13 the State on summary judgment on the issue of
14 liability, therefore, on those counts the
15 penalty, if any, and the amount of any
16 penalty will be contested.

17 Based on the factors -- the
18 penalty factors set forth in the Act, we
19 believe in this case there should be little
20 penalty, or if there is any, a nominal
21 penalty.

22 So in sum, we believe that at the
23 end of this case and at the end of the
24 briefing there will be sufficient evidence

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1 for the Board to find no liability for the
2 individual shareholders and, therefore, no
3 penalty for them, no liability for CLC on the
4 counts that are still at issue and no or
5 nominal penalty against CLC for the remaining
6 counts.

7 HEARING OFFICER HALLORAN: Thank you,
8 Mr. LaRose.

9 MR. LAROSE: You're welcome.

10 HEARING OFFICER HALLORAN: The state
11 can call your first witness.

12 MR. GRANT: We call Ms. Tina
13 Kovasznay.

14 (Witness sworn.)

15 WHEREUPON:

16 TINA KOVASZNAY

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

19 DIRECT EXAMINATION

20 By Ms. Van Wie

21 Q. Please state your name for the record.

22 A. Tina Kovasznay, but my legal name is
23 Christine Moritz.

24 Q. Is that due to a marriage?

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1 A. Yes.

2 Q. Okay. And when did you take your
3 married name?

4 A. 2002.

5 Q. What is your highest level of
6 education that you've completed?

7 A. College.

8 Q. And where did you graduate from and
9 when?

10 A. University of Illinois
11 Urbana-Champaign and I graduated in 1988.

12 Q. What was your major?

13 A. Ecology, ethology and evolution.

14 Q. Where are you currently employed?

15 A. The Illinois Environmental Protection
16 Agency.

17 Q. And how long have you been employed by
18 the Illinois EPA?

19 A. Since 1990.

20 Q. What is your current title at the
21 Illinois EPA?

22 A. Environmental protection specialist.

23 Q. And what section is that in?

24 A. Field operations section, Bureau of

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1 Land.

2 Q. Is that title more commonly known as a
3 field inspector?

4 A. Yes.

5 Q. How long have you held that specific
6 position?

7 A. Since about 1991.

8 Q. Okay. Did you hold any position prior
9 to that?

10 A. I was a trainee.

11 Q. And how long were you a trainee?

12 A. Six to eight months. I don't recall
13 the exact time.

14 Q. Is that the only position that you've
15 held in the field operations section with the
16 Illinois EPA?

17 A. Yes.

18 Q. Could you please just generally
19 describe your duties as a Bureau of Land inspector?

20 A. I conduct compliance inspections and
21 complaint investigations at both solid and hazardous
22 waste sites including generators, transporters,
23 treatment storages at disposal facilities and
24 landfills.

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1 Q. Are your inspections -- are
2 inspections of sanitary landfills part of your
3 duties?

4 A. Yes.

5 Q. Do you inspect those landfills with
6 compliance with the Illinois Environmental
7 Protection Act and Illinois EPA and the Illinois
8 Pollution Control Board regulations?

9 A. Yes.

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

13 A. Yes.

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

16 A. Yes.

17 Q. And for a period of time were you the
18 primary field inspector for the Morris Community
19 Landfill within the Illinois EPA Bureau of Land?

20 A. Yes.

21 Q. When did you become the primary
22 inspector for the Morris Community Landfill?

23 A. In 1999.

24 Q. Was there another Illinois EPA

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1 inspector assigned to Morris Community Landfill
2 prior to 1999?

3 A. Yes. Warren Weritz.

4 Q. Are you still the primary inspector
5 for the Morris Community Landfill?

6 A. No.

7 Q. Who is?

8 A. Mark Retzlaff.

9 Q. And when did he take over primary
10 responsibility for the landfill?

11 A. In 2000.

12 Q. Could you please just give a general
13 description of the landfill?

14 A. It's a sanitary landfill in Morris,
15 Illinois, Grundy County, and it consists of two
16 different parcels, Parcel A and Parcel B.

17 Q. Do you know if the Morris -- during
18 your period when you were primary inspector do you
19 know if the Morris Community Landfill had any
20 permits?

21 A. Yes, they did.

22 Q. Do you remember what those permits
23 were?

24 A. I don't remember the specific numbers.

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1 Q. Okay. When was the first time you
2 inspected the Morris Community Landfill?

3 A. March 31st of 1999.

4 Q. And how do you know it was that
5 specific date?

6 A. Because I completed an inspection
7 report.

8 Q. Did you review your prior inspection
9 reports in preparing for your testimony today?

10 A. Yes.

11 Q. And do you remember approximately how
12 many times you inspected the Morris Community
13 Landfill including March 31st, 1999?

14 A. Approximately four.

15 Q. We're going to turn to what is marked
16 as Exhibit 13L in the binder in front of you. It
17 would be the second binder. If you could please
18 look at what is Complainant's Exhibit 13L, do you
19 recognize this document?

20 A. Yes. It's my inspection report from
21 March 31st of 1999.

22 Q. Okay. And do you remember if you
23 inspected both Parcels A and B of the Morris
24 Community Landfill during this specific inspection?

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1 A. Yes, I did.

2 Q. Did you take any pictures at the
3 landfill during this inspection?

4 A. Yes, I did.

5 Q. Are they attached anywhere?

6 A. Yes, they're attached to the
7 inspection report.

8 Q. When you arrived at the landfill do
9 you remember if anyone was there?

10 A. Jim Pelnarsh, Sr., was there.

11 Q. And who is that?

12 A. He is the site operator.

13 Q. How do you know that?

14 A. He was just the person we always dealt
15 with and he was always there when we arrived at the
16 landfill.

17 Q. Did Mr. Pelnarsh accompany you around
18 the landfill as you made your inspection?

19 A. Yes.

20 Q. And was anybody else with you during
21 your inspection?

22 A. Loraine Morris was with me. She is
23 solid waste -- she was solid waste coordinator for
24 Grundy County.

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1 Q. Did she usually accompany you on
2 inspections of the landfill?

3 A. No.

4 Q. Was this the only time she accompanied
5 you?

6 A. Yes.

7 Q. If you remember, what did you observe
8 on Parcel A during your March 31, 1999 inspection?

9 A. On Parcel A they were accepting waste,
10 there was also blowing litter and they were also
11 collecting their leachate and adding it to the clay
12 of the liners of their new cells to increase the
13 moisture content.

14 Q. Did you include all these observations
15 in your March 31st, 1999 inspection report?

16 A. Yes, I did.

17 Q. To your recollection, was Parcel A
18 permitted to accept waste material at the time of
19 your inspection?

20 A. It was not.

21 Q. And did you record your observations
22 of the act of landfilling on Parcel A in your
23 inspection report?

24 A. Yes, I did.

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1 Q. Were any pictures taken of this
2 observation?

3 A. Yes, photos six and seven.

4 Q. Okay. Could you please describe what
5 is depicted in picture number six?

6 A. Picture number six shows what I was
7 told were bags of asbestos and construction
8 demolition debris.

9 Q. And?

10 A. I'm sorry, and also some contaminated
11 soil.

12 Q. And could you please describe what is
13 being depict in picture number seven?

14 A. The same thing, it shows that they
15 were actively accepting or landfilling what I was
16 told was asbestos C&D waste and then contaminated
17 soil.

18 Q. Did you record your observations of
19 litter on Parcel A in your March 31st, 1999
20 inspection report?

21 A. Yes, I did. I recorded it in the
22 narrative and then also in photo eight.

23 Q. Okay. If you could just please
24 briefly describe what's depicted in picture number

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1 eight?

2 A. It just shows an overview of a portion
3 of the landfill just covered with litter that had
4 blown over there.

5 Q. Did you ask anyone about the litter
6 blowing around in Parcel A?

7 A. I did. I asked Mr. Pelnarsh.

8 Q. Do you remember what he said about it?

9 A. He said that his worker was not
10 available that day.

11 Q. Okay. And what did you take that to
12 mean?

13 A. I took that to mean that the litter
14 would not be picked up by the end of the day.

15 Q. Is there anything a landfill can do to
16 contain litter?

17 A. Yes, they can put up temporary fences,
18 they can have litter pickers, they can also move to
19 a different location that's not as windy.

20 Q. Did the Morris Community Landfill have
21 temporary fencing erected to contain litter?

22 A. They did not.

23 Q. And what did you specifically observe
24 about the leachate collection?

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1 A. I didn't specifically observe anything
2 but I was told by Mr. Pelnarsh that they were
3 collecting the leachate and then putting it into the
4 new cells to increase the moisture contents of the
5 clay.

6 Q. Was this practice allowed under any
7 Morris Community Landfill permit at that time?

8 A. It was not.

9 Q. And per Morris Community Landfill's
10 permits, how should leachate be collected and
11 disposed?

12 A. It should be collected and taken to an
13 IEPA permitted POTW or a commercially owned
14 treatment or disposal facility.

15 Q. What's a POTW?

16 A. A publically-owned treatment works.

17 Q. Okay. We're going to move to Parcel B
18 now. What did you observe at Parcel B during your
19 March 31st, 1999 inspection?

20 A. I observed that their gas collection
21 system was operating and also that there was severe
22 erosion gullies on the slopes around the whole
23 perimeter of the landfill and on top of the landfill
24 there was ponding water and uncovered refuse.

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1 Q. Was the landfill permitted to run a
2 gas collection system during your inspection?

3 A. No, they were not.

4 Q. What did you observe to determine that
5 the gas collection system was running?

6 A. I heard the engines running.

7 Q. Did you ask anyone about the gas
8 collection system running?

9 A. Yes. I asked Mr. Pelnarsh and he
10 stated that it had been operating for the last
11 month.

12 Q. Did you have any reason to doubt the
13 credibility of Mr. Pelnarsh's statement about the
14 gas collection system running for the past month?

15 A. No.

16 Q. Could the gas collection system
17 running on the day of your inspection have just been
18 a test?

19 A. Not in my opinion based on what I
20 heard and Mr. Pelnarsh's statements.

21 Q. What did you observe with regard to
22 erosion on Parcel B?

23 A. I saw severe erosion gullies around
24 the perimeter of Parcel B.

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1 Q. And did you record your observation of
2 the erosion gullies in your March 31st inspection
3 report?

4 A. I did, in my narrative, and then also
5 in photo two.

6 Q. Does the landfill's state -- does the
7 landfill's permit state what should be done when
8 erosion gullies occur?

9 A. It states that corrective action
10 should be taken.

11 Q. What did you observe on the top of the
12 landfill in Parcel B?

13 A. I observed uncovered refuse and also
14 ponding water.

15 Q. And were those observations included
16 in your inspection report?

17 A. Yes, they were, in my narrative and
18 then also photos three, four and five.

19 Q. If you could, please just give a
20 general description of those photos?

21 A. Photo three just shows uncovered and
22 exposed refuse at the top of the landfill. Photo
23 four shows the same thing, uncovered and exposed
24 refuse and then photo five shows ponding water on

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1 the top of the landfill.

2 Q. Does the landfill's permits state what
3 should be done when uncovered refuse and ponding
4 occur?

5 A. It says corrective action should be
6 taken.

7 MS. VAN WIE: Just a minute.

8 (Brief pause.)

9 BY MS. VAN WIE:

10 Q. When was your next inspection of the
11 landfill?

12 A. May the 11th of 1999.

13 Q. Do you remember if this was a routine
14 inspection?

15 A. It was not a routine inspection.

16 Q. In what way was it not routine?

17 A. I accompanied Fred Lebensorger, who
18 was there to conduct an inspection to determine
19 whether the landfill was operating in compliance
20 with all the NESHAP requirements.

21 Q. And what's NESHAP?

22 A. NESHAP is the requirements that govern
23 asbestos and handling asbestos.

24 Q. Okay. Since this was not a routine

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1 inspection, did you write up an inspection report?

2 A. I did not. I only did a memo.

3 Q. Okay. And did the memorandum include
4 your observations of the landfill during your May
5 11th, 1999 inspection?

6 A. Yes.

7 Q. I'd like you to turn to Exhibit 13M.

8 HEARING OFFICER HALLORAN: M as in
9 man?

10 MS. VAN WIE: 13M as in Mary.

11 BY MS. VAN WIE:

12 Q. When you and Mr. Lebensorger arrived
13 at the landfill, was anyone there?

14 A. Yes, Mr. Pelnarsh.

15 Q. And in your inspection memorandum you
16 refer to, quote, active landfill area; is that
17 Parcel A or Parcel B?

18 A. Parcel A.

19 Q. And what did you observe at Parcel A
20 during your May 11th, 1999 inspection?

21 A. I observed that they were accepting
22 asbestos and contaminated soil and construction
23 demolition debris for landfilling and also that
24 there were severe erosion gullies.

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1 Q. Were these the violations you just
2 mentioned -- strike that.

3 Were the observations you just
4 mentioned similar to the ones you observed at Parcel
5 A during your March 31st, 1999 inspection?

6 A. Yes.

7 Q. If you could turn to Exhibit 13N? Was
8 this a routine inspection?

9 A. Yes, it was.

10 Q. And did you complete an inspection
11 report for this inspection?

12 A. Yes, I did.

13 Q. Did your inspection report include all
14 your observations from that date?

15 A. Yes, it did.

16 Q. Did you inspect both Parcels A and B
17 during your inspection?

18 A. Yes.

19 Q. Did you take any pictures?

20 A. Yes, I did. They're attached to the
21 inspection report.

22 Q. Did anyone accompany you on the
23 inspection?

24 A. Mr. Pelnarsh.

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1 Q. And what did you observe at Parcel A
2 during your July 20th, 1999 inspection?

3 A. Parcel A, during that inspection,
4 Mr. Pelnarsh said that that parcel was now over high
5 and, also, they were still accepting waste at the
6 site, there was also uncovered refuse still exposed.

7 Q. As of July 20th, 1999, was Parcel A
8 permitted to accept off-site waste?

9 A. No, they were not.

10 Q. And did you ask Mr. Pelnarsh about the
11 waste --

12 MS. CUTLER: Excuse me, I'd like to
13 makes an objection. And it took me a second
14 to get to this, but I'm going to object to
15 all of the testimony regarding asbestos
16 because summary judgment was granted to the
17 Respondent in favor of that count, which was
18 Count 12. Summary judgment was granted on
19 October 3rd, 2002, in the favor of the
20 respondents. So we move to strike all of the
21 testimony.

22 MR. LAROSE: I think it's Count 11.

23 MS. CUTLER: Pardon me, count -- yeah,
24 it's Count 11.

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1 HEARING OFFICER HALLORAN: What order
2 are you looking at?

3 MS. CUTLER: October 3rd, 2002. And I
4 have copies of our exhibits for the hearing
5 officer.

6 HEARING OFFICER HALLORAN: And what
7 count did they rule --

8 MS. CUTLER: Count 11 in the second
9 amended complaint. I can read it to you.

10 The Board finds that there is no
11 genuine issue of material fact and summary
12 judgment is appropriate. The Board grants
13 respondent's motion for summary judgment.

14 A review of the deposition
15 testimony and affidavits of Ms. Kovaszny
16 established that she based her conclusions on
17 merely observing materials she thought might
18 contain asbestos.

19 No testing was done on materials
20 and the materials were not marked as
21 asbestos. The Board finds that this is not
22 sufficient to support a finding of violation
23 on this count, therefore, summary judgment is
24 granted to respondent.

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1 HEARING OFFICER HALLORAN: What page
2 are you on, Ms. Cutler, please?

3 MS. CUTLER: I'm on Page 14.

4 HEARING OFFICER HALLORAN: Okay.
5 Ms. Van Wie?

6 MR. GRANT: I wonder if I can respond
7 to it because I know that I'm more familiar
8 with that.

9 It's true that -- what she's
10 saying is true that they granted summary
11 judgment on that violation, illegal disposal
12 of asbestos. I don't know how we're going to
13 go back and strike every mention of the word
14 asbestos.

15 I think maybe if you just enter
16 into the record the fact that the parties
17 acknowledge that the Board granted summary
18 judgment against the State and found that
19 there was not sufficient evidence of this
20 asbestos disposal.

21 But I don't think Ms. Kovaszny's
22 testimony really is trying to establish, you
23 know, that there was. And we acknowledge
24 that we lost on that count, but these

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1 inspections are dealing with erosion gullies.
2 All I'm saying is I don't know if you can
3 excise every reference to asbestos from the
4 record except by, you know, noting for the
5 record that the State lost on that count.

6 We're not trying to prove with her
7 testimony that there was asbestos in the
8 landfill. You know, one of the inspections
9 was a NESHAP inspection for asbestos, for
10 example, but her testimony really is going to
11 things like erosion gullies and ponding
12 and --

13 HEARING OFFICER HALLORAN: All right.
14 I'm going to sustain Ms. Cutler's objection
15 to the extent that I will ask the Board to
16 disregard the reference to asbestos if they
17 so choose.

18 And based on the arguments from
19 the parties, the Board will be able to see
20 from the transcript what exactly is going on.
21 So I'm not going to strike it, but I would
22 ask the Board to disregard at their
23 discretion. Ms. Van Wie?

24

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1 BY MS. VAN WIE:

2 Q. We were talking about the July 20th,
3 1999 inspection report and your observations of
4 Parcel A. I will ask the last question again. As
5 of July 20th, 1999 was Parcel A permitted to accept
6 off-site waste?

7 A. No.

8 Q. Did you ask Mr. Pelnarsh about the
9 waste on Parcel A?

10 A. Yes, I did.

11 Q. Do you remember what he said?

12 A. He said that Parcel A was over high,
13 and because the new cells weren't ready, they were
14 filling along the northern edge of the site and he
15 knew that they were filling above their permitted
16 elevation.

17 Q. Did you take any pictures of your
18 observations regarding waste in Parcel A?

19 A. I believe I did. Yes. Photo one is
20 the active area and then photos two and three show
21 more of that area.

22 Q. Okay. If you could please just give a
23 description of what we're looking at in pictures two
24 and three?

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1 A. In photos two and three it's the area
2 that Mr. Pelnarsh stated was above the permitted
3 elevation and there is uncovered waste. And
4 according to Mr. Pelnarsh's statements, the waste
5 had been uncovered for at least five days.

6 Q. Did you observe any continuing
7 violation of leachate disposal?

8 A. I didn't specifically observe it, but
9 from Mr. Pelnarsh's statements he said that they
10 were still disposing of the leachate into the clay
11 of the cells to reduce the moisture content at a
12 rate of approximately 3000 gallons a week.

13 Q. And is this allowed under any Morris
14 Community Landfill permit?

15 A. It is not allowed.

16 Q. What did you specifically observe of
17 erosion in Parcel A?

18 A. There were erosion gullies on the
19 southwest and southeast slopes of Parcel A.

20 Q. And did you take any pictures of your
21 observations?

22 A. I think so. Photo five shows erosion
23 gullies.

24 Q. And does the landfill's permit state

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1 what should be done when erosion gullies occur?

2 A. It states corrective action should be
3 taken.

4 Q. What did you observe on Parcel B
5 during your July 20th, 1999 inspection?

6 A. The gas operating -- the gas
7 management system was still operating and there was
8 uncovered refuse on the top of the landfill and no
9 cover on the majority of the landfill.

10 Q. To your knowledge, was the landfill at
11 that time permitted to operate the gas management
12 system?

13 A. It was not.

14 Q. Was it your understanding that
15 Community Landfill Company could not operate the gas
16 management system until they were issued an
17 operating permit?

18 A. Yes.

19 Q. And is it your understanding that an
20 operating permit had not been issued because
21 Community Landfill had not increased its financial
22 assurance?

23 A. Yes.

24 Q. What did you observe with respect to

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1 uncovered refuse and cover?

2 A. Most of Parcel B did not have cover on
3 it and the top of the landfill still had uncovered
4 refuse.

5 Q. And were there any pictures taken of
6 these observations?

7 A. Yes. Photo six shows uncovered refuse
8 and also an area that needed final cover as did
9 photo seven.

10 Q. And is this allowed under any Morris
11 Community Landfill permit?

12 A. No.

13 Q. If we could turn to Exhibit 130, what
14 was the date of this inspection?

15 A. September 7th, 1999.

16 Q. And was this a routine inspection?

17 A. It was not a routine inspection.

18 Q. In what way was it not routine?

19 A. This inspection was conducted at the
20 request of Paul Purseglove, who is the field
21 operation section manager of the Bureau of Land. He
22 wanted us to go out -- me to go out and see if they
23 were still accepting waste and then to collect names
24 of generators that were bringing waste to the

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1 landfill.

2 Q. And since this was not a routine
3 inspection did you write up an inspection report?

4 A. No. I just did a memo.

5 Q. Did the memorandum include your
6 observations of the landfill during your September
7 7th, 1999 inspection?

8 A. Yes.

9 Q. When you arrived at the landfill was
10 anyone there?

11 A. Yes. Mr. Pelnarsh.

12 Q. And what did you observe during this
13 inspection?

14 A. I observed that they were still
15 operating and still accepting waste.

16 Q. Would you then consider that a
17 continuing violation from your prior inspections?

18 A. Yes.

19 Q. And do you know if CLC had applied for
20 a permit to accept waste?

21 A. They had applied for a permit, but it
22 was denied.

23 Q. And, in your opinion, was the
24 Community Landfill Company allowed to accept waste

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1 after their permit denial?

2 A. It was the Agencies's opinion that
3 they could not accept waste.

4 Q. Do you know if a permit denial was
5 being appealed?

6 A. According to Mr. LaRose, they were
7 planning on appealing it but it had not been done
8 yet.

9 Q. How did you know?

10 A. I spoke to Mr. LaRose over the phone.

11 Q. Was that during your inspection?

12 A. Yes.

13 Q. Okay. In your opinion, was CLC
14 allowed to accept waste during the permit appeal
15 process?

16 A. No. It's the Agency's opinion that
17 they could not accept waste.

18 Q. Did you complete your inspection?

19 A. No.

20 Q. Why not?

21 A. After talking to Bureau of Land
22 management and legal counsel, Mr. LaRose stated that
23 he could not let the inspection continue if my
24 intent was to collect information on their

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1 customers.

2 Q. Okay. What did you do then?

3 A. I left.

4 Q. And was this your last visit as the
5 primary inspector of the Morris Community Landfill?

6 A. Yes.

7 Q. Okay.

8 MS. VAN WIE: Thank you very much.

9 HEARING OFFICER HALLORAN: Thank you.

10 CROSS EXAMINATION

11 By Ms. Cutler

12 Q. Ms. Kovaszny, when you went to the
13 Morris Community Landfill to perform inspections,
14 who did you see there?

15 A. Mr. Pelnarsh.

16 Q. Who from the landfill accompanied you
17 on your inspections?

18 A. I'm sorry, I'm having trouble hearing
19 you.

20 Q. Who from the landfill accompanied you
21 on your inspections?

22 A. Mr. Pelnarsh.

23 Q. Did anyone else from the landfill ever
24 accompany you?

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1 A. No.

2 Q. Were you ever accompanied by Edward
3 Pruim?

4 A. No.

5 Q. Were you ever accompanied by Robert
6 Pruim?

7 A. No.

8 Q. You testified that on March 31st you
9 saw uncovered litter; is that correct? March 31st,
10 1999, Exhibit 13L.

11 A. Yes, there was uncovered refuse and
12 blowing litter.

13 Q. And you stated also that you were
14 familiar with the landfill rules and regulations?

15 A. Yes.

16 Q. Were you aware that Section 21.012 of
17 the Act requires that litter be collected by the end
18 of each operating day?

19 A. Yes.

20 Q. Were you aware that Section 807.306 of
21 the Pollution Control Board Regulations requires
22 that litter be collected by the end of each working
23 day?

24 A. Yes.

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1 Q. What time of day was the inspection on
2 March 31st, 1999?

3 A. It was from 9:30 to 10:40 a.m.

4 Q. Did you return at the end of that day?

5 A. No.

6 Q. Did you observe the site conditions at
7 the end of that day?

8 A. No.

9 Q. Do you have any independent evidence
10 whatsoever that uncovered litter that you said you
11 saw during your inspection on March 31st, 1999, was
12 not covered at the end of the day?

13 A. I just have Mr. Pelnarsh's statements.

14 Q. Do you have any evidence that the
15 shareholders or officers of CLC knew anything about
16 alleged violations of uncovered refuse?

17 A. No.

18 Q. Do you have any evidence that the
19 shareholders or officers of CLC had any direct or
20 personal involvement in the operation of the
21 landfill?

22 A. No.

23 Q. Do you have any evidence that the
24 shareholders or officers of CLC had any prior and

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1 personal involvement in the alleged violations of
2 uncovered refuse and litter?

3 A. No.

4 Q. Was it windy on March 31st, 1999?

5 A. I don't recall offhand. I don't know
6 if it's in my inspection report.

7 Q. If I can refresh your recollection, in
8 your -- do you recall that your deposition was taken
9 on January 15th, 2002?

10 A. Yes.

11 Q. And at Page 34 of that transcript --
12 which I can give you a copy of, if I may, to refresh
13 your recollection?

14 HEARING OFFICER HALLORAN: You can
15 give her a copy, sure.

16 (Brief pause.)

17 MS. CUTLER: This is our Exhibit 34.

18 MR. GRANT: Is it her deposition?

19 MS. CUTLER: Yes.

20 BY MS. CUTLER:

21 Q. I would ask you to take a look at Page
22 34.

23 MR. GRANT: Are you using it or are
24 you refreshing? I mean, I don't have any

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1 problem if you use it.

2 MS. CUTLER: Okay. I'll use it.

3 MR. GRANT: Because, otherwise, you'd
4 have to take it away from her.

5 MS. CUTLER: Okay.

6 BY MS. CUTLER:

7 Q. Do you recall testifying when asked
8 how windy was it that day? Can you read what your
9 answer was?

10 A. Very windy.

11 Q. I would also like to ask you to look
12 again at Exhibit 13L, which is your inspection
13 report from March 31st, 1999.

14 A. Okay.

15 Q. If you could read the first sentence
16 of your narrative?

17 A. On March 31st, 1999, a routine
18 landfill inspection was conducted at Community
19 Landfill, CL, at the time of the inspection it was
20 sunny and very windy.

21 Q. Is it fair to say that when it's windy
22 even the best operators are going to have some
23 litter control problems?

24 A. I don't -- I can't really answer that

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1 with a yes or no question (sic).

2 Q. Well, let me draw your attention,
3 again, to your deposition, which is Defendant's
4 Exhibit 34. I ask you to look at Pages 34 and 35.

5 Do you remember at your deposition
6 being asked the question, was this a day that was
7 windy enough where it would have been difficult even
8 for the best operator to control the blowing of
9 litter, and giving the answer, okay, so it would
10 have been very, very windy in order for that to
11 occur?

12 A. That was not my answer. My answer
13 was, I don't believe so.

14 Q. Well, do you recall stating -- do you
15 recall testifying that you observed the gas control
16 system running?

17 A. Yes.

18 Q. How did you observe that it was
19 running?

20 A. I heard the engine.

21 Q. Do you have any other evidence that on
22 March 31st, 1999, the gas collection system was
23 running beyond you hearing what you believe to be
24 turbines in the building and Jim Pelnarsh allegedly

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1 telling you that it was running?

2 A. No.

3 Q. Do you know very much about the
4 mechanics of gas collection systems?

5 A. No.

6 Q. Do you know who the permittee of the
7 gas collection system was or if there was a
8 co-permittee?

9 A. I don't know.

10 Q. Did you know who owned the land that
11 is occupied by the electric generation facility?

12 A. No.

13 Q. When you looked at the wells on March
14 31st could you tell if they were running?

15 A. The --

16 Q. The gas wells -- the gas collection
17 wells?

18 A. The gas wells, no.

19 Q. Do you have any evidence that the
20 shareholders or officers of CLC knew anything about
21 the alleged violations for running the gas system?

22 A. No.

23 Q. Do you have any evidence that the
24 shareholders or officers of CLC had any direct or

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1 personal involvement in the alleged violations
2 related to the gas collection system?

3 A. No.

4 Q. And you stated in your testimony that
5 on March 31st and July 20th, 1999, in your
6 inspection reports also that leachate was being
7 pumped into Parcel A; is that correct?

8 A. Yes.

9 Q. On March 31st, 1999, Exhibit L, did
10 you see any liquid being placed in any lined areas
11 of the landfill?

12 A. No.

13 Q. On either March 31st, 1999 -- I'm
14 sorry, on either of those days did you ask Jim
15 Pelnarsh where the liquid was coming from?

16 A. Where the liquid was coming from?

17 Q. Correct.

18 A. He said he was pumping the leachate
19 from the landfill.

20 Q. Did you ask him where the liquid was
21 coming from?

22 A. I don't recall.

23 Q. Do you recall your deposition being
24 taken?

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1 A. Yes.

2 Q. And do you recall being asked that
3 question at your deposition, Page 50?

4 A. Yes.

5 Q. Did he tell you that the 3000 gallons
6 were all coming from a particular portion of the
7 landfill?

8 A. No.

9 Q. And you didn't ask him, if you look at
10 Page 51?

11 A. No.

12 Q. At any time did you or anyone else
13 conduct any testing on any liquid that you believed
14 to be leachate?

15 A. No.

16 Q. Do you have any other evidence that on
17 March 31st, 1999 and July 20th, 1999 that leachate
18 was being pumped into Parcel A beyond your claim
19 that Jim Pelnarsh told you it was?

20 A. Only that they didn't have receipts or
21 any other -- anything that showed where it was
22 going.

23 Q. Do you have any evidence --

24 A. No.

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1 Q. -- that it was leachate beyond your
2 claim that Jim Pelnarsh told you it was?

3 A. No.

4 Q. Do you have any evidence that the
5 shareholders or officers of CLC knew anything about
6 the alleged violations relating to leachate?

7 A. No.

8 Q. Do you have any evidence that the
9 shareholders or officers of CLC had any direct and
10 personal involvement in the alleged violations
11 regarding leachate?

12 A. No.

13 Q. Did you have any actual evidence
14 beyond what you claim that Jim Pelnarsh told you on
15 March 31st, 1999, that Parcel A was over height?

16 A. I don't remember saying that during my
17 March 31st inspection.

18 Q. Do you recall your deposition being
19 taken?

20 A. Yes.

21 Q. If you look at Page 51 do you recall
22 being asked, per Mr. Pelnarsh, Parcel A is now over
23 high?

24 A. Yes.

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1 Q. I guess that means over height?

2 A. Yes.

3 Q. He told you that?

4 A. Yes. That was -- I think that was my
5 July 20th inspection.

6 Q. On July 20th?

7 A. I believe so.

8 Q. Okay. Page 52 do you recall
9 stating -- if you look at line four, would you read
10 that answer, Page 52, line four?

11 (Witness peruses

12 document.)

13 BY MS. CUTLER:

14 Q. Do you recall saying that you had no
15 actual evidence that the landfill was over height?

16 A. Yes.

17 Q. Do you have any evidence that the
18 shareholders or officers of CLC knew anything about
19 the alleged violations of overheight?

20 A. No.

21 Q. Do you have any evidence that the
22 shareholders or officers of CLC had any direct and
23 personal involvement in the alleged violations
24 regarding the overheight?

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1 A. No.

2 MR. LAROSE: Can we have a minute,
3 please?

4 HEARING OFFICER HALLORAN: Certainly.
5 We can go off the record for a second.

6 (Brief pause.)

7 MR. LAROSE: I just have a few
8 questions.

9 HEARING OFFICER HALLORAN: Okay,
10 Mr. LaRose.

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

13 BY MR. LAROSE:

14 Q. Ms. Kovaszny, in 1999 when you
15 inspected the landfill didn't it have an 807
16 operating permit for Parcel A?

17 A. It had an operating permit that had
18 expired is my understanding.

19 Q. And what was the basis of your
20 understanding?

21 A. Because the interim permit was no
22 longer valid, but I don't remember why it wasn't
23 valid offhand.

24 Q. The interim permit was no longer

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1 valid? Do you know what the expiration date of the
2 interim permit was?

3 A. No.

4 Q. Didn't Community Landfill Company file
5 a permit for significant modification of the
6 landfill under Part 814 in 1996 pursuant to an order
7 of the Illinois Appellate Court?

8 A. I don't know offhand.

9 Q. Okay. And do you know whether in
10 August, specifically, August 5th, 1996, whether or
11 not the 807 permit for the operation of Parcel A was
12 still effective?

13 A. My understanding was that all permits
14 under 807 were still valid, but that they --

15 Q. In 1996?

16 A. I don't know.

17 Q. Ma'am, just so we can clarify this,
18 your understanding was in August of 1996 that all
19 permits that had been issued under 807 were still
20 valid?

21 A. I have no idea. I didn't inspect the
22 landfill at that time. I don't know.

23 Q. Okay. Just a second ago I thought
24 that's what you said.

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1 A. When I did my inspection, my report
2 says all permits issued under 807 were still valid
3 permits but they do not allow CL to accept waste.

4 Q. And what's the basis of that
5 statement?

6 A. I don't remember.

7 Q. Okay. So they have a valid 807 permit
8 for Parcel A that allows them to do what if they
9 can't accept waste?

10 A. I don't have the permit in front of
11 me, so I can't give you all the specifics.

12 Q. Okay. Take a look at Exhibit 13N,
13 specifically Page 3 of your narrative. You cite on
14 Page 3 part of the regulations, section 814.105(A);
15 do you see that?

16 A. Yes.

17 Q. And you wrote here on your inspection
18 report -- I haven't compared this to the regs, but
19 I'm assuming this is what it says. Permits issued
20 pursuant to 35 Illinois Administrative Code 807
21 prior to the effective date of this part remain in
22 full force and effect until superseded by a permit
23 issued pursuant to this part or until revoked as a
24 result of an enforcement action brought pursuant to

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1 Title VIII of the Act.

2 At the time that you wrote this on
3 or around July 20th, 1999, CLC had an 807 permit
4 that had been issued prior to the effective date of
5 Part 814, correct?

6 A. Correct.

7 Q. That had not been superseded by
8 another permit issued by the Board -- excuse me,
9 issued by the Agency, correct?

10 A. Correct.

11 Q. Nor had it been revoked as a result of
12 an enforcement action, at least not at that time,
13 correct?

14 A. Not to my knowledge.

15 Q. Okay. And when you say in your direct
16 examination that it was the Agency's position that
17 CLC could not continue to fill the landfill, Parcel
18 A, while they were appealing a denial of the SIGMOD,
19 do you know what the basis of that position was?

20 A. No.

21 Q. Okay. You didn't make that
22 determination?

23 A. No.

24 Q. Did somebody tell you that?

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1 A. I don't recall.

2 Q. Did anyone tell you how that position
3 could possibly be consistent with the regulation at
4 Section 814.105(A)?

5 A. I don't recall.

6 Q. Do you know how it could possibly be
7 consistent with Section 814.105(A), that we couldn't
8 continue under the 807 permit in light of the fact
9 that the regulation says just that?

10 MS. VAN WIE: I'm going to object.

11 She's previously testified that she's not the
12 one that created that Agency position about
13 not accepting waste, she was told that that's
14 what the position was.

15 HEARING OFFICER HALLORAN: You have
16 been dwelling on it, but objection overruled.

17 If you could wrap it up.

18 BY MR. LAROSE:

19 Q. Could you just answer that question?

20 A. I didn't understand the question.

21 Q. Okay. I'll try and rephrase it so
22 that you can.

23 Even though no one told you or you
24 don't recall anyone telling you how the Agency's

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1 position that Community Landfill couldn't continue
2 to operate the landfill under the 807 permit during
3 the permit appeal period, no one told you what the
4 basis of that is and no one told you how that could
5 be possibly consistent with 814.105(A), do you know
6 independently how the Agency's position that we
7 couldn't fill the landfill during the appeal period
8 could be reconciled with 814.105(A)?

9 A. I still don't really understand the
10 question.

11 Q. I'll try again. You wrote here on
12 July 20th, 1999, your summation of 814.105(A), Page
13 3 of your narrative.

14 A. (Witness nodding.)

15 Q. Okay. Do you have any independent
16 knowledge of how your position -- it was your
17 position when you were at the landfill that they
18 weren't allowed to accept waste on Parcel A? You
19 cited them for that violation, right?

20 A. It was the Agency's position.

21 Q. Well, before the Agency took that
22 position, you wrote it in your report.

23 A. No.

24 Q. You cited them for filling -- for

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1 continuing to fill on Parcel A.

2 A. It was the Agency's position that they
3 couldn't fill. I went out to determine if they were
4 or were not and then documented it in my report.

5 Q. Okay. So do you have -- other than
6 the Agency's position that you didn't make the
7 determination and you don't know what the basis of
8 it is, do you have any independent basis of your own
9 as to how the Agency's position could be reconciled
10 or consistent with 814.105(A)?

11 A. Not offhand.

12 Q. Do you know whether or not -- do you
13 have any independent knowledge or evidence that the
14 shareholders or officers of CLC knew about the
15 alleged violations for continuing to fill Parcel A
16 under the 807 permit?

17 A. I don't know.

18 Q. Same question with respect to whether
19 they had any direct or personal involvement in the
20 alleged violations for continuing to fill Parcel A
21 under the 807 permit?

22 A. I don't know.

23 MR. LAROSE: That's all we have for
24 right now.

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1 HEARING OFFICER HALLORAN: Thank you,
2 Mr. LaRose and Ms. Cutler. Ms. Van Wie?

3 MS. VAN WIE: I just have some very
4 brief redirect.

5 REDIRECT EXAMINATION

6 By Ms. Van Wie

7 Q. After the March 31st, 1999 inspection,
8 did you tell Mr. Pelnarsh to stop using the leachate
9 to wet the clay for new cells?

10 A. Can you repeat the question?

11 Q. Sure. After your March 31st, 1999
12 inspection did you tell Mr. Pelnarsh to stop using
13 the leachate to wet the clay for new cells?

14 A. I don't recall.

15 Q. And at any time during any of your
16 inspections did you have any reason to doubt
17 Mr. Pelnarsh's credibility as to the statements he
18 made about the landfill conditions?

19 A. No.

20 MS. VAN WIE: Thank you.

21 HEARING OFFICER HALLORAN:
22 Respondents, any recross?

23

24

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1 RECROSS EXAMINATION

2 By Ms. Cutler

3 Q. On March 31st, 1999, did you see any
4 liquid being placed in any lined areas of the
5 landfill?

6 A. No.

7 MS. CUTLER: That's all.

8 HEARING OFFICER HALLORAN: All right.

9 You may step down. Thank you so much.

10 (Brief pause.)

11 HEARING OFFICER HALLORAN: Mr. Grant.

12 (Witness sworn.)

13 WHEREUPON:

14 CHRISTINA ROQUE

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

17 DIRECT EXAMINATION

18 By Mr. Grant

19 Q. Ms. Roque, can you state your name for
20 the record, please?

21 A. My name is Christina Roque, R-O-Q-U-E.

22 Q. And where are you employed?

23 A. I'm employed by the Illinois
24 Environmental Protection Agency.

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1 Q. And what is your position?

2 A. My title is environmental protection
3 engineer. I review permit applications.

4 Q. And does that include landfill permit
5 applications?

6 A. That's correct.

7 Q. What is your highest level of
8 education?

9 A. I have a bachelor's degree in
10 engineering.

11 Q. How long have you been employed by
12 Illinois EPA?

13 A. Sixteen years.

14 Q. So you started in what year?

15 A. '92.

16 Q. Are you familiar with the Morris
17 Community Landfill?

18 A. Yes, I am.

19 Q. And have you, as part of your job at
20 Illinois EPA, worked on permits for the Morris
21 Community Landfill?

22 A. Yes, I have.

23 Q. Are you the permit engineer who was
24 assigned specifically to the Morris Community

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1 Landfill?

2 A. Yes.

3 Q. I'd like to have you take a look at
4 what's marked as Exhibit 1A in the book.

5 A. Okay.

6 Q. Can you identify that document?

7 A. It's dated January 5, 1989. It's an
8 application -- it's a permit application.

9 Q. For the Morris Community Landfill?

10 A. For the Morris Community Landfill.

11 Q. Can you turn to the eighth page, the
12 page that's titled applicant information?

13 A. Okay.

14 Q. Were you able to locate it?

15 A. Yes.

16 Q. Who is listed as the operator on this
17 page?

18 A. Operator is Community Landfill
19 Company.

20 Q. And if you turn to the next page, can
21 you identify who signed the application for the
22 operator?

23 A. The operator was signed by Edward
24 Pruum.

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1 Q. And I notice that this page is
2 stamped -- has an engineer's stamp on it; do you see
3 that?

4 A. Yes.

5 Q. What is the significance of an
6 engineer's stamp on an application?

7 MR. LAROSE: Objection. I don't know
8 that she's an engineering expert with respect
9 to (inaudible).

10 THE COURT REPORTER: Can you speak up,
11 please?

12 HEARING OFFICER HALLORAN: Speak up,
13 please.

14 MR. LAROSE: I'm sorry. Objection. I
15 think this is beyond her expertise to say
16 what the significance of an engineer's stamp
17 is on a permit application.

18 MR. GRANT: Well, we can do this on
19 every page. I mean --

20 BY MR. GRANT:

21 Q. Ms. Roque, are you familiar with the
22 requirements for permit applications for the Bureau
23 of Land?

24 A. Yes.

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1 Q. Okay. And as I asked before, I
2 noticed there is an engineer stamp on the
3 application, and what significance does the
4 engineer's stamp have on the application?

5 MR. LAROSE: Same objection. We're
6 not objecting to the fact that it's stamped
7 by an engineer and we would stipulate that.

8 I don't know how she could say
9 what the significance of Mr. Andrews' stamp
10 is on this document.

11 MR. GRANT: I think she should be
12 allowed to answer the question. We've
13 established that she's a permit engineer,
14 that she's familiar --

15 HEARING OFFICER HALLORAN: You know,
16 if she knows, she can answer. I'm going to
17 overrule the objection. She's been around
18 the block. You may proceed.

19 BY THE WITNESS:

20 A. It's a requirement by environmental
21 regulations and the professional regulations.

22 BY MR. GRANT:

23 Q. I want you to look through the
24 application. I apologize, I'll try to find the

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1 page. But I ask you if this permit application
2 identifies the final elevation of the landfill?

3 A. Yes.

4 Q. And where are you in Exhibit A?

5 A. I am -- there's a sketch one in
6 Exhibit 1A.

7 MR. LAROSE: Is there a better way we
8 can locate this?

9 MR. GRANT: This one I had tabbed, but
10 I think I only tabbed it on her book. I
11 apologize. This is the only exhibit we're
12 going to have a problem with.

13 HEARING OFFICER HALLORAN: Okay.

14 MR. GRANT: Just one second if I can
15 take a look at what she has.

16 HEARING OFFICER HALLORAN: Sure.

17 (Brief pause.)

18 HEARING OFFICER HALLORAN: How many
19 pages in is that, Mr. Grant? I'm having
20 trouble finding it. I thought I had found
21 it, but --

22 MR. GRANT: It's about maybe 15 pages
23 in past the application.

24 (Brief pause.)

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1 BY MR. GRANT:

2 Q. And what -- in this permit
3 application, what is specified as the maximum
4 elevation of the landfill?

5 A. It says around 580 feet MSL.

6 Q. And is that above sea level?

7 A. Yes.

8 Q. And does that 580 limit include a
9 vegetative layer and final cover?

10 A. Yes.

11 Q. I ask you to turn to Exhibit 2B. I'm
12 sorry, 2A. Is this the permit that was issued by
13 Illinois EPA in response to that application?

14 A. That's correct.

15 Q. Does it indicate to what address it
16 was sent -- what addresses the permit was sent?

17 A. It was sent to the City of Morris and
18 Community Landfill Company.

19 Q. What is the address for Community
20 Landfill Company?

21 A. It's 4330 West 137th Place, Crestwood,
22 Illinois, 60445.

23 Q. Does this permit incorporate the
24 conditions in the application?

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1 A. Yes.

2 Q. And any addenda to the application?

3 A. Yes.

4 Q. Does this permit incorporate that
5 580-foot maximum elevation?

6 A. Yes.

7 Q. Did Illinois EPA ever issue a permit
8 allowing Parcel B of the landfill to exceed the
9 580-foot limit?

10 A. No.

11 Q. Let me direct you back to Exhibit 1C.
12 Can you describe what this document is?

13 A. It's a permit application for biennial
14 review of closure and post-closure care.

15 Q. Can you tell me who signed the
16 application for the operator?

17 A. The operator signature is Edward
18 Pruiim.

19 Q. And now I apologize for bouncing
20 around, but if you can turn to Exhibit 2B?

21 A. Okay.

22 Q. And is this the permit that was issued
23 by Illinois EPA in response to the previous
24 application?

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1 A. Yes.

2 Q. Does it indicate the amount of
3 financial assurance that's required?

4 A. Yes.

5 Q. How much is that?

6 A. It's 1,342,500.

7 Q. And does it also indicate when that
8 financial assurance was required to be posted?

9 A. Yes.

10 Q. And when was that?

11 A. We did 90 days from the date of the
12 permit.

13 Q. Turning back, just for reference, what
14 was the date of the permit?

15 A. April 20, 1993.

16 Q. And, again, on the first page can you
17 tell me what address is listed for the operator?

18 A. Community Landfill Company, 4330 West
19 137th Place, Crestwood, Illinois, 60445.

20 Q. And now please turn back to
21 Exhibit 1E. Can you identify this document?

22 A. This is an application for initial
23 significant modification to permit Parcel B.

24 Q. Can you tell when it was received by

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1 Illinois EPA?

2 A. It was received August 5th, 1996.

3 Q. And who signed this application for
4 the operator?

5 A. It's signed by Robert Pruum.

6 Q. Is the application also stamped by an
7 engineer?

8 A. Yes.

9 Q. Does the application contain a diagram
10 of the contours of the landfill?

11 A. Yes.

12 Q. And does that diagram indicate an
13 elevation over 580 feet?

14 A. What was your question again?

15 Q. Does the diagram in the application of
16 the existing conditions of the landfill indicate an
17 elevation over 580 feet?

18 A. Yes.

19 Q. And now let me ask you to turn to
20 Exhibit 1F. It should be the next one. Can you
21 identify this document?

22 A. This is an addendum to the application
23 for significant modification to permit Parcel B.

24 Q. Can you please turn to the page marked

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1 Page 11? I don't know if it's the 11th page, but
2 it's 11 at the bottom. Does this indicate the
3 amount of waste over height at the landfill?

4 A. Yes.

5 Q. And how much is identified as over
6 height?

7 A. A total of 475,000 cubic yards.

8 Q. And do you see an estimate for the
9 cost of relocating this overheight?

10 A. It's 950,000.

11 Q. Did Illinois EPA ever receive notice
12 of waste relocation at the landfill?

13 A. No.

14 Q. What would be required prior to the
15 relocation of the waste as far as permits go?

16 A. Prior to waste relocation, I don't
17 think the permit had a requirement to notify us.
18 There's a requirement after they move the waste to
19 submit an application to -- modifying the final
20 grade of Parcel B.

21 Q. Have you ever received that
22 application?

23 A. No.

24 Q. If it was relocated to Parcel A at the

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1 landfill, would Parcel A have to be permitted for
2 the acceptance of that waste?

3 A. Yes.

4 Q. Is there currently an operating permit
5 in place for Parcel A at the landfill?

6 A. I think so.

7 Q. Are they -- is Parcel A currently
8 permitted for the acceptance of waste?

9 A. They are permitted to accept waste in
10 areas that have been certified and permitted by the
11 Illinois EPA to have a liner.

12 Q. Are there any areas of Parcel A that
13 are so certified?

14 A. We have not issued an operating permit
15 for -- additional operating permit for Parcel A.

16 Q. Can you turn to Exhibit 2C? Can you
17 identify this document?

18 A. It's permit -- supplemental permit
19 number 1996-240-SP.

20 Q. And this says supplemental permit also
21 requires certain financial assurance?

22 A. Yes.

23 Q. And what is that -- is the amount of
24 financial assurance?

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1 A. There's a current cost estimate of
2 1,431,360, then there's another cost estimate for
3 1,439,720.

4 Q. When would -- for the first figure,
5 when would that -- when is it required under this
6 permit?

7 A. What was your question again?

8 Q. You mentioned the -- well, first off,
9 why don't you direct me to where you found that
10 1,431,360?

11 A. It's on Page 3 of the permit. It's
12 condition number 13.

13 Q. And does that indicate when the
14 financial assurance of 1,431,360 is required?

15 A. We did 90 days of the issuance of the
16 permit.

17 Q. And when is the financial assurance
18 for a 1,439,720 required?

19 A. Prior to operation of the gas
20 extraction system.

21 Q. Can you turn -- I think it's probably
22 in the second book -- to Exhibit No. 18?

23 A. Okay.

24 Q. Did you prepare this document?

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1 A. Yes, I did.

2 Q. And does it represent Illinois EPA's
3 estimate of the cost savings from a delayed permit
4 application?

5 A. Yes.

6 Q. If you turn to the second page at the
7 bottom, in the column -- the last two columns in
8 that table.

9 A. Okay.

10 Q. And where it says total 44,526, is
11 that Illinois EPA's estimate of the cost of delayed
12 permit application crediting them for filing a
13 variance?

14 A. Yes.

15 Q. And the second number, 80,704, is that
16 Illinois EPA's estimate of the cost of the delayed
17 permit application not giving credit to the
18 variance?

19 A. Yes.

20 Q. How did you calculate these numbers?

21 A. I used the same number -- the same
22 cost estimate provided in the application that they
23 submitted.

24 Q. You mean the 1996 application?

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1 A. That's correct.

2 Q. And the costs that you have in there
3 for ground water monitoring and for gas monitoring
4 and that sort of thing, were those costs that were
5 provided in -- by the applicant in that application?

6 A. No. I take -- it's taken from the
7 2000 166 application -- the 2000 application.

8 Q. The 2000 application, is that -- was
9 that for the permit that was eventually granted?

10 A. Correct.

11 Q. And the cost estimates that you used
12 in calculating this, were they reviewed by Illinois
13 EPA and accepted by Illinois EPA? In other words,
14 the costs themselves?

15 A. Yes.

16 Q. And aside from that, can you just
17 generally describe how you calculated this based on
18 those cost figures?

19 A. Once the facility received their
20 significant modification permit, that means
21 following the new regulations, the more stringent
22 regulations, they're required to do gas monitoring,
23 leachate monitoring and the more extensive
24 groundwater monitoring.

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1 And that is not actually required
2 in 807 -- not specifically required in 807, their
3 previous permit.

4 So I just calculated the required
5 monitoring frequency and the number of monitoring
6 points that they proposed for annually.

7 Q. And based on your calculations, these
8 only represent the costs between either 1993 and
9 1996 or 1993 and the time they filed the variance
10 prior to that; is that --

11 A. Right. If they would have received
12 their significant modification permit in 1996, then
13 they need to do this monitoring, they're required to
14 do the monitoring.

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

16 HEARING OFFICER HALLORAN:

17 Respondents, cross?

18 CROSS EXAMINATION

19 By Mr. LaRose

20 Q. Hi.

21 A. Hello.

22 Q. How are you?

23 A. Not bad.

24 Q. Take a look at Exhibit 1. I guess

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1 it's 1A. And it's the page that counsel referred
2 you to regarding the signature of the operator.
3 It's about six or seven pages in. Tell me when you
4 get there.

5 (Brief pause.)

6 THE WITNESS: Okay.

7 BY MR. LAROSE:

8 Q. You had said Edward Pruim signed on
9 behalf of the operator, right?

10 A. Right.

11 Q. Didn't he also indicate that he was
12 the secretary and treasurer of Community Landfill
13 Company?

14 A. Yes.

15 Q. With respect to -- take a look at
16 Exhibit 1C. It's about the fourth page in. Again,
17 I'm looking for the signature page.

18 A. Okay.

19 Q. You had testified Edward Pruim signed
20 as the operator, but didn't he sign as the
21 secretary-treasurer?

22 MR. GRANT: I think I'm going to
23 object. I think the question was who signed
24 for the operator, not as the operator.

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1 MR. LAROSE: I think it was different.

2 Who signed --

3 HEARING OFFICER HALLORAN: I don't

4 recall, but Mr. LaRose can continue. The

5 transcript will expose that, if need be.

6 Thanks.

7 BY MR. LAROSE:

8 Q. Doesn't he indicate, Ms. Roque, that

9 he's signing as Edward Pruim, secretary-treasurer?

10 A. Yes.

11 Q. Take a look at Exhibit 1E, looking at

12 the second page now.

13 A. Okay.

14 Q. I think you testified that Robert

15 Pruim signed either as the operator or for the

16 operator, I don't remember which one the question

17 referred to, but didn't he also indicate on this

18 document that he was signing as president?

19 A. Yes.

20 Q. Did you ever see any documents in any

21 of the reviews you did for any applications or

22 permits for Community Landfill where Edward or

23 Robert Pruim signed in their individual capacity?

24 A. What do you mean by individual

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1 capacity?

2 Q. Not in their capacity as a
3 representative of the corporation.

4 A. No.

5 Q. With respect to the matters that
6 you've testified to, the height of the landfill, the
7 amount of financial assurance that was required,
8 costs savings for some things related to the gas
9 collection system, do you have any evidence that the
10 shareholders or officers of Community Landfill had
11 any knowledge about those allegations?

12 A. No.

13 Q. Do you have any evidence that the
14 shareholders or officers had any direct or personal
15 involvement in the allegations that we just talked
16 about?

17 A. Shareholders, no.

18 Q. Officers?

19 A. Besides the -- besides Robert Pruum
20 and --

21 Q. No, not besides them.

22 A. Including them?

23 Q. Including them.

24 A. If they have any knowledge?

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1 Q. Yes. Actually, the first question was
2 knowledge and you said no. The second question was
3 direct or personal involvement in the actual alleged
4 violations?

5 A. I don't know.

6 Q. The overheight that you testified to
7 was based on a submission by Community Landfill's
8 engineer who estimated that the amount of cubic
9 yardage that needed to be removed from Parcel A was
10 475,000 cubic yards, right?

11 A. Yes.

12 Q. Okay. Do you have any independent
13 knowledge as to how much, if any, Parcel B is
14 actually over height?

15 A. Independent knowledge?

16 Q. Yes. Independent of what was
17 reported --

18 A. No.

19 Q. -- in that document?

20 A. No.

21 Q. Do you know as we sit here today
22 whether or not Parcel B is over height?

23 A. No.

24 Q. If the waste that's at Parcel B is

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1 allowed to stay there, regardless of what height
2 it's at, there wouldn't be any cost of moving it
3 anywhere, right? The Agency allows it to stay in
4 place?

5 A. The Agency -- I don't understand your
6 question.

7 Q. If the Agency allows the waste that's
8 present on Parcel B to stay there, regardless of
9 what the height of it is, there wouldn't be any cost
10 to move it anywhere, right?

11 A. Right.

12 Q. The 475,000 cubic yard number, are you
13 aware that sometime in the -- after 2000 that the
14 Agency said its engineers went to the site to try to
15 do a survey and they came up with a number of
16 overheight that was significantly lower, somewhere
17 in the 200-cubic yard range?

18 A. I'm not sure if it was the Agency's
19 engineer that was sent out. I'm -- I know that
20 there was a surveyor that was hired either by the
21 Illinois EPA or the AG's office.

22 Q. Okay. And when I said the Agency's
23 engineer, I didn't necessarily mean to imply that it
24 was an Agency employee.

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1 BY MR. LAROSE:

2 Q. Ma'am, take a look at Defendant's
3 Exhibit 11. It looks like an August 30th, 2000
4 survey report from Rapier Survey Company to
5 Assistant Attorney General Mackoff and it attaches a
6 revised volume computation.

7 Take a minute to look at it and
8 I'm going to ask you a question about item number
9 three on the second page that identifies the amount
10 of material above the permitted capacity. Do you
11 see that?

12 A. Yes.

13 Q. Does this refresh your recollection as
14 to the survey that was done on the landfill?

15 A. Yes.

16 Q. Okay. And at that time, August 30th,
17 2000, the surveyor had said that the total volume of
18 material above the permitted capacity was
19 287,321 cubic yards, right?

20 A. Right.

21 Q. But in your testimony you continued to
22 use the 475,000 cubic yards; why is that?

23 A. Because that was submitted in the
24 application.

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1 Q. Even if today there is no material
2 above the permitted capacity, would you still use
3 the 475,000 cubic yards in the penalty figure since
4 that was what was reported by the applicant?

5 MR. GRANT: Let me just mildly object.
6 I wonder if -- I mean, Ms. Roque is just --
7 just testified as to what was in the permit.
8 I don't think she's using a number for
9 penalty, that's me. Do you understand what
10 I'm saying? Can you ask it a different way?

11 MR. LAROSE: Yeah.

12 BY MR. LAROSE:

13 Q. Even though you might just be one
14 little piece of the pie, the 475,000 cubic yard
15 figure that you're using is getting plugged into by
16 other people to come up with an argument of how much
17 penalty CLC should be assessed with respect to the
18 overheight issue, correct?

19 A. Correct.

20 Q. Okay. My question to you is why did
21 you use 475,000 cubic yards if the landfill wasn't
22 over height at all just because that's what was
23 reported to you in 1996?

24 A. That's the amount reported and that's

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1 the amount we permitted. If they believed that
2 there's different numbers, then they can submit an
3 application and revise that number and support that.

4 Q. So the answer is yes?

5 A. Yes.

6 Q. With respect to your calculation --
7 take a look back at your Exhibit 18, plaintiff's
8 Exhibit 18.

9 A. Okay.

10 Q. I'm not sure I understand this. Is it
11 that during these periods of time, either 19 months
12 or 35 months, that none of these things were done?

13 A. None of these things are required.

14 Q. Were done?

15 A. Were done.

16 Q. And how do you know that?

17 A. Well, I didn't know if they were done,
18 but they're not required.

19 Q. Maybe we're getting confused here. I
20 certainly am.

21 I'm talking about the chart that's
22 on Page 2. You've said that for 19 months, if we
23 give them credit for the variance, that the economic
24 benefit to them was 44,526, right?

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1 A. Right.

2 Q. And you said for 35 months, that would
3 be not giving them credit for the variance, the
4 economic benefit would be 80,704, correct?

5 A. Correct.

6 Q. My question to you is are you saying
7 that during these periods these things that were
8 required to be done, gas management, leachate
9 collection, groundwater assessment, were not being
10 done?

11 A. Yes, they were not being done.

12 Q. And how do you know that?

13 A. Because that's the time period that
14 they're -- that they don't even have this system in
15 place. The gas probes, the groundwater monitoring
16 wells that were proposed in the application were not
17 in place in 19 -- prior to 19 months or 35 months.

18 Q. And prior to this they were operating
19 under the 807 permit?

20 A. They were operating under 807 permit.

21 Q. Okay. Take a look at plaintiff's
22 Exhibit 18, the first page. You say for the period
23 of June 15th, 1995 to August 5, 1996, CLC is
24 operating under the 807 permit, correct?

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1 A. Correct.

2 Q. The 807 permit continued in effect
3 until the SIGMOD was ultimately granted in 2000,
4 correct?

5 A. Correct.

6 Q. So just to run down the history, we've
7 got an 807 permit in August of '96, the Board --
8 excuse me, the Appellate Court grants CLC the right
9 to file the SIGMOD permit, that was the variance.
10 They do that, and in '96 the Agency issues a SIGMOD
11 for the landfill, correct?

12 MR. GRANT: Just a second, I think
13 that misrepresents the record. The
14 variance -- The Appellate Court decision, I
15 think, was in 2005. And there was a period
16 of time it wasn't -- this permit was filed
17 well after the Appellate Court decision.
18 Just from a factual standpoint. I'm not
19 saying you're trying to misrepresent her
20 testimony, but --

21 MR. LAROSE: He's wrong about that.
22 And if I can get an answer to my question,
23 maybe we'll find out.

24

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1 BY MR. LAROSE:

2 Q. Prior to '96 we're operating under
3 807, right?

4 A. Prior to '96 they're operating under
5 807.

6 Q. Okay.

7 A. Correct.

8 Q. In '96 they get the right to file the
9 SIGMOD application from the Appellate Court,
10 correct?

11 A. Correct.

12 Q. In '99 that's denied over financial
13 assurance issued, correct?

14 A. Correct.

15 Q. And that is then appealed over the
16 financial assurance issue, correct?

17 A. Correct.

18 Q. And in 2000 they refile the SIGMOD
19 application and it's ultimately granted, right?

20 A. Right.

21 Q. So from 1996 when they were operating
22 under the 807 until the SIGMOD was granted in 2000,
23 they were always operating under the 807, it hadn't
24 been revoked, it hadn't expired, it was in

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1 operation, correct?

2 A. Correct.

3 MR. LAROSE: That's all I have.

4 HEARING OFFICER HALLORAN: Thanks,

5 Mr. LaRose. Mr. Grant, redirect?

6 REDIRECT EXAMINATION

7 By Mr. Grant

8 Q. Mr. LaRose brought up the Rapier

9 survey, the survey that Illinois EPA commissioned to

10 be done out there. It was their exhibit. Do you

11 recall Illinois EPA requesting additional

12 information from CLC to help fine tune the survey?

13 A. My recollection was that the surveyor

14 needed additional information that we requested from

15 Andrews Engineering.

16 Q. Do you know if that was ever received?

17 A. I don't know.

18 MR. GRANT: I think that's all I have.

19 HEARING OFFICER HALLORAN: Thanks.

20 Mr. LaRose.

21 RECROSS EXAMINATION

22 By Mr. LaRose

23 Q. Was it some type of permit condition

24 that the Community Landfill cooperate with the

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1 State-hired surveyor to determine how high the
2 landfill was?

3 A. I don't recall. I don't think so.

4 Q. Okay. Was there any legal obligation
5 for Andrews Engineering to supply any information to
6 Rapier Survey Company?

7 MR. GRANT: I'm going to object as to
8 calls for a legal conclusion.

9 HEARING OFFICER HALLORAN: I'm sorry,
10 could you read that question back, please,
11 Tammi?

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

15 HEARING OFFICER HALLORAN: Objection
16 overruled. She can answer, if she's able.

17 BY THE WITNESS:

18 A. I don't know if there's any legal
19 obligation.

20 MR. LAROSE: That's all I have.

21 HEARING OFFICER HALLORAN: Thank you.

22 MR. GRANT: Just one further question.

23

24

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1 RE-REDIRECT EXAMINATION

2 By Mr. Grant

3 Q. Would it have been helpful in coming
4 up with a more accurate survey to receive all
5 relevant information?

6 A. Sure, yes.

7 MR. GRANT: Okay.

8 RE-RE-CROSS EXAMINATION

9 By Mr. Larose

10 Q. Since it would have been helpful to
11 receive all accurate information, how come nobody's
12 been out there since 2000 to determine what the
13 actual overheight of the landfill is?

14 MR. GRANT: I think that's a statement
15 more than a question.

16 BY THE WITNESS:

17 A. I don't know.

18 MR. LAROSE: That's all I have.

19 HEARING OFFICER HALLORAN: Mr. Grant?

20 MR. GRANT: That's it.

21 HEARING OFFICER HALLORAN: All right.

22 Thank you. You may step down.

23 THE WITNESS: Thank you.

24 HEARING OFFICER HALLORAN: Thank you

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1 so much. Off the record for a minute, Tammi.

2 (Whereupon, after a short

3 break was had, the

4 following proceedings

5 were held accordingly.)

6 HEARING OFFICER HALLORAN: We're back

7 on the record. It's 11:25. The State is

8 going to call their next witness.

9 (Witness sworn.)

10 WHEREUPON:

11 BLAKE HARRIS

12 called as a witness herein, having been first duly

13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Grant

16 Q. Mr. Harris, can you state your name

17 for the record?

18 A. Blake Harris.

19 Q. And where are you employed?

20 A. Illinois EPA.

21 Q. What is your current position?

22 A. I work in the Bureau of Air in air

23 monitoring.

24 Q. What are your responsibilities there?

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1 A. We monitor ambient air conditions for
2 sulfur dioxide, ozone, particulate matter, other
3 pollutants like that that affect people with COPD
4 and asthma.

5 Q. And, personally, what are your
6 responsibilities?

7 A. I edit data. I monitor that on a
8 daily basis throughout the day. At the end of the
9 day we report those numbers to the National Weather
10 Service. We also report them on our website.

11 If you look at the Weather
12 Channel, it has the air index where it's good,
13 moderate; we give that forecast for that.

14 Q. What's your highest level of
15 education?

16 A. College.

17 Q. And what was your degree in?

18 A. Business administration.

19 Q. And how long have you worked for
20 Illinois EPA?

21 A. Since June of '93.

22 Q. Did you previously work in the Bureau
23 of Land?

24 A. Yes, I did.

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1 Q. What period of time were you with the
2 Bureau of Land?

3 A. I started in August of '93 and I went
4 to Bureau of Water in December -- actually, January
5 of 2004.

6 Q. Are you familiar with the financial
7 assurance requirements for solid waste landfills?

8 A. Yes.

9 Q. Are you familiar with the different
10 mechanisms for providing financial assurance?

11 A. Yes.

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

15 A. Yes.

16 Q. Have you testified in other cases
17 related to financial assurance for Morris Community
18 Landfill?

19 A. Yes.

20 Q. Including the permit appeal?

21 A. Yes.

22 Q. And an enforcement case in 2007?

23 A. Yes.

24 Q. Are you aware that the Board has found

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1 that Community Landfill -- has found Community
2 Landfill Company in violation in this case for
3 failure to provide financial assurance?

4 A. Yes.

5 Q. We have exhibit books in front of you.
6 Can you find Exhibit 19? It would be in the second
7 volume.

8 A. Okay.

9 Q. Does this document represent Illinois
10 EPA's opinion of the cost savings due to failure to
11 provide financial assurance?

12 A. For this period of time on here, yes.

13 Q. And if you can look to the second
14 page, the figure at the bottom, \$47,871.33; do you
15 see that?

16 A. Yes.

17 Q. Does that represent Illinois EPA's
18 opinion of the cost savings for failure to provide
19 financial assurance from 1993 to 1996?

20 A. To provide the entire amount required,
21 yes.

22 Q. Did you personally verify the
23 information used in this document?

24 A. Yes.

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1 Q. Can you describe how you arrived at
2 this figure, just generally?

3 A. Generally, there was a permit
4 required, 1,342,500, and it required that within
5 90 days after the issuance of the permit. That date
6 would have been June 20th -- actually, July 19th.
7 Sorry.

8 So then the total amount less what
9 they had in their letter of credit and trust fund
10 combined was a deficiency of 579,290. We took that
11 times the amount of days that they were deficient
12 times 2 percent, which is what the bond rate -- or
13 the premium was on the bond.

14 And there was a second set of
15 figures on here when the letter of credit expired,
16 so they just had the trust fund. So it's that
17 amount times the amount of days in that period times
18 2 percent. That's on the second page here.

19 Q. Let me ask you to turn in the other
20 volume to Exhibit 2B.

21 A. Which exhibit?

22 Q. It's Exhibit 2B. It would be in the
23 other volume.

24 A. Okay.

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1 Q. You mentioned a permit requirement.

2 This is the permit that you're referring to?

3 A. Yes, it is. April 20, '93.

4 Q. Take a look at the second page. Can
5 you identify where the financial assurance amount
6 was required?

7 A. Yes. It's in the special condition
8 number three.

9 Q. And does it also in the next paragraph
10 state when that financial assurance is required?

11 A. Yes. Within 90 days of the date of
12 the permit.

13 Q. If you can go back to Exhibit 19.
14 Leave them both open.

15 A. Okay.

16 Q. Does this calculation indicate the
17 deficiency as of July 19th, 1993?

18 A. Yes.

19 Q. And if you can look at Exhibit 8?

20 A. Okay.

21 Q. Do you recognize this document?

22 A. I've seen it before in the files.
23 It's a letter from the bank saying that it
24 expired -- the letter of credit expired on

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1 April 12th, '95.

2 Q. Is this a true and accurate copy of
3 this document as found in Illinois EPA Bureau of
4 Land files?

5 A. Yes.

6 Q. And is it Illinois EPA's normal
7 procedure to keep these records?

8 A. Yes.

9 Q. You may have already stated, but does
10 it indicate the balance in the trust fund?

11 A. The letter of credit?

12 Q. I'm sorry. Hold on a second. Yes.

13 A. The letter of credit does not say
14 anything about the balance in the trust fund.

15 Q. I'm sorry. What I meant is in the
16 letter of credit. Does it indicate the balance in
17 the letter of credit?

18 A. Yes, it does. It indicates it's for
19 500,000.

20 Q. And if you look to the third page,
21 does it indicate --

22 A. That is an amendment to the letter of
23 credit increasing the amount of 550 and it extends
24 out the expiration date to March 12, '95.

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1 Q. If you can turn to Exhibit 9?

2 A. Okay.

3 Q. Can you identify this document?

4 A. It's a letter saying that Community
5 Landfill intends to provide financial assurance
6 through -- for closure, post-closure through a
7 performance bond in the amount of 1,342,500.

8 Q. If you can look to the third page?

9 HEARING OFFICER HALLORAN: Could you
10 speak up, Mr. Grant? Between my growling
11 stomach and bad hearing, I'm having trouble.
12 Thank you.

13 BY MR. GRANT:

14 Q. Can you look at the third page? Can
15 you identify that?

16 A. Yes.

17 Q. Can you tell me what it is?

18 A. This is the performance bond.

19 Q. And can you tell me what the principal
20 amount was?

21 A. 1,342,500.

22 Q. Looking at the second page, does the
23 bond indicate the annual costs of providing the
24 bond?

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1 A. Yeah. The premium is 26,850.

2 Q. Okay. And does that represent
3 2 percent of the face value of the bond?

4 A. Yes.

5 Q. Okay. Based on your experience with
6 financial assurance at landfills, is 2 percent of
7 face value a reasonable cost for a surety bond?

8 A. It's the lowest I've ever seen.

9 Q. And did Illinois EPA use that
10 2 percent premium as a basis for its estimate --

11 A. Yes.

12 Q. -- of the economic benefit?

13 Can you explain how you used that
14 2 percent, again going back to Exhibit 19?

15 A. We would just take the deficiency
16 amount and the amount of days. For example, in the
17 first one you have 579,000, that was a deficiency
18 times the amount of days in that period, which were
19 1.65 years divided by 365 -- 601 days divided by 365
20 and then that times 2 percent. That's where you
21 come up with your 19,107.

22 And then there's the second set of
23 figures on there between March 12, '95, which is
24 when the letter of credit expires. All they had at

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1 that point was the trust fund.

2 HEARING OFFICER HALLORAN: Mr. Harris,
3 could you speak up, too, please?

4 THE WITNESS: I'm sorry.

5 BY THE WITNESS:

6 A. So it was 466 days in that period
7 divided by 365, that's 1.28, times the deficiency,
8 times 2 percent and that's where you get the
9 28,764.30.

10 MR. GRANT: That's it.

11 HEARING OFFICER HALLORAN: Thanks,
12 Mr. Grant. Mr. LaRose.

13 CROSS EXAMINATION

14 By Mr. LaRose

15 Q. Buongiorno. Are you still taking
16 Italian?

17 A. No. My kids took up everything.

18 Q. Mr. Harris, take a look in your book
19 at People's Exhibit 23. It was Exhibit K to the
20 motion for summary judgment. It's a document that's
21 the affidavit of Blake Harris. Do you have it?

22 A. Yes.

23 Q. Okay. You filed an affidavit in this
24 same case and it was sworn to on the 26th of

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1 September 2001, correct?

2 A. (No verbal response.)

3 Q. Take a look at the last page.

4 A. Okay.

5 Q. Do you see where you swore to it on or
6 around September 26th, 2001? Look at the seal and
7 signature of the notary.

8 A. Well, I see subscribed and sworn to
9 before me on this 27th day of February 2002.

10 Q. We must have different documents.
11 Mine says the 26th day of September, 2001.

12 HEARING OFFICER HALLORAN: Exhibit 23,
13 Mr. Harris?

14 THE WITNESS: I think I'm on the right
15 one. I'm sorry. I'm on Exhibit 24.

16 BY THE WITNESS:

17 A. Yes, September 26th.

18 BY MR. LAROSE:

19 Q. Okay. You said that the 2 percent
20 bond -- or the 2 percent premium which you used on
21 the bond was the lowest that you had ever seen?

22 A. Correct.

23 Q. That's not true, is it? By 2001 you
24 had seen \$17 million worth of bonds issued to CLC by

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1 Frontier Company that had premiums of less than
2 1.25 percent?

3 A. I don't believe they were less than
4 2 percent.

5 Q. Okay. Let's go over them. Do you
6 remember those bonds? You testified in cases about
7 them.

8 A. Yes.

9 Q. Okay. In fact, you're making claims
10 against those bonds right now, are you not?

11 A. I don't know what that section is
12 doing.

13 Q. Okay. You're not involved in making a
14 claim against the Frontier insurance bonds?

15 A. Correct.

16 Q. But you were involved in financial
17 assurance -- in enforcement cases and permit appeals
18 regarding the \$17 million worth of Frontier bonds?

19 A. Yes.

20 Q. And you were of the opinion that those
21 bonds were -- did not meet the regulations because
22 they were -- Frontier had not been on the approved
23 surety list for the U.S. Department of Treasury,
24 correct?

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1 A. Correct.

2 Q. Okay. The bonds in question, do you
3 remember that there was three bonds totaling
4 approximately \$17 million?

5 A. Yes.

6 MR. GRANT: I'm going to object at
7 this point on the basis of relevance. I
8 mean, we tried this case a year-and-a-half
9 ago.

10 We're dealing with this financial
11 assurance from 1993 to 1996. And I don't
12 know that these exhibits are available for
13 him to take a look at. There's no way he's
14 going to remember what happened 14 months
15 ago.

16 HEARING OFFICER HALLORAN: Mr. LaRose?

17 MR. LAROSE: Mr. Halloran, he
18 testified that he's never seen lower
19 premiums. That's what I'm trying to prove.

20 HEARING OFFICER HALLORAN: I agree.
21 Objection overruled.

22 BY MR. LAROSE:

23 Q. Mr. Harris, do you remember that there
24 were three bonds totaling approximately \$17 million?

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1 BY MR. LAROSE:

2 Q. Let me give you the numbers. The
3 amount of the premium is \$217,842. The amount of
4 the bond -- I think you divide the bond into the
5 premium, 17,427,366. Tell me what you come up with.

6 A. 1.25 percent.

7 Q. Okay.

8 MR. LAROSE: For the record, I have
9 given those numbers to Mr. Harris and he has
10 used a calculator to verify that percentage.

11 BY MR. LAROSE:

12 Q. So by September of 2001 -- bonds were
13 issued in June of 2000, right?

14 A. That sounds about right.

15 Q. And they were rejected in March of
16 2001?

17 MR. GRANT: Object. He misrepresented
18 the record.

19 HEARING OFFICER HALLORAN: Mr. LaRose?

20 MR. GRANT: For the record, the bonds
21 were issued -- one of them was issued in
22 1996. This one and there were two other
23 bonds.

24 Frankly, without having them

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1 here -- I'm not trying to interrupt
2 Mr. LaRose's examination. I understand his
3 point. But without having them here, I just
4 don't know how appropriate it for him to
5 make -- speculate about this.

6 HEARING OFFICER HALLORAN: As you
7 know, he opened the door. And I'm not sure
8 how far Mr. LaRose is going to go into this,
9 but I think it's a fair cross at this point.

10 MR. LAROSE: This was all part of a
11 prior proceeding, part of his prior
12 testimony, part of prior exhibits in the
13 case.

14 I can -- I admit I don't have
15 these bonds here. I was just on the phone
16 and I got this information. I can have them
17 here probably this afternoon. I certainly
18 can have them here to incorporate into the
19 record by tomorrow.

20 I'm not making this stuff up. I
21 just want to examine him on whether or not if
22 he used a lesser number which was at his
23 disposal, this number would have changed.

24 HEARING OFFICER HALLORAN: Okay.

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1 MR. LAROSE: I'm happy to try and get
2 them here this afternoon. I might have them
3 by fax probably. By tomorrow morning, these
4 documents will be here and we will present
5 them.

6 Whether or not he recalls the
7 specifics, he can assume for the purpose of
8 my question that the numbers I've given him
9 are correct.

10 HEARING OFFICER HALLORAN: Okay.

11 MR. GRANT: I don't have any objection
12 to this being used as rebuttal, which I think
13 it probably is, especially if they're true.
14 We just remember this differently, but I
15 don't think we need to hold him here to bring
16 these bonds in.

17 MR. LAROSE: I'm not asking that he be
18 held here to bring the bonds in. I have the
19 right to call him in my case. I'm not even
20 asking him do that.

21 I'm going to submit the bonds as
22 evidence that were submitted in a previous
23 case. And, you know, I can have them here
24 this afternoon. We're probably going to be

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1 done with Mr. Harris.

2 The point is had he not said I've
3 never seen lower ones, I probably wouldn't be
4 going down this road. The fact is he did say
5 lower ones and I want to examine him about
6 it.

7 MR. GRANT: It was pretty much
8 identical testimony that he gave under oath
9 in the 2007 hearing and none of this was
10 brought up at that time, so you know --

11 HEARING OFFICER HALLORAN: Well, here
12 we are, it sounds like we're at a meeting of
13 the minds anyway as far as Mr. Harris having
14 to wait around and possibly take the stand
15 again when these documents appear.

16 But I will allow Mr. LaRose to
17 proceed, and hopefully he won't belabor. I'm
18 not sure if he wants to cease that line of
19 questioning now and wait for the documents to
20 come in. But then, again, Mr. Harris may not
21 even be here.

22 MR. LAROSE: I just want to get as far
23 as I can and then, like I said, I'm not
24 trying to hold anybody captive.

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1 BY MR. LAROSE:

2 Q. Mr. Harris, my recollection is -- and
3 I think I'm correct -- that one of the bonds, the
4 one for 1,439,000, was indeed issued in 1996 and
5 renewed again in June of 2000; do you remember that?

6 A. I don't remember when it was renewed.

7 Q. Okay. And the other two bonds were
8 issued in June of 2000; do you remember that?

9 A. That sounds about right.

10 Q. Okay. So at least 15,900,000 of the
11 bonds we're talking about you agree were issued in
12 June of 2000, a year and a couple months before you
13 calculated this penalty?

14 A. Yeah.

15 Q. Okay. And at that time you would have
16 had -- whatever the number is for the premium, at
17 that time you would have had in your possession the
18 amount of the premium for those bonds? When they
19 were submitted to you and when you rejected them as
20 non-conforming, you would have known both what the
21 amounts of the bonds were and the amounts of the
22 premium were?

23 A. Yes.

24 Q. Okay. If you assume for the purpose

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1 of my question that the amounts of the bonds and the
2 amounts of the premium were such that the premium
3 was annually 1.25 percent of the bonds, could you
4 not have used that figure in your calculation?

5 A. Yeah.

6 MR. GRANT: I'm going to object again
7 on the basis of relevance. The only period
8 we're talking about here is 1993 to 1996.
9 You know, if we're talking about bonds that
10 were issued in 2000, it has nothing to do
11 with either the summary judgment that's been
12 granted here or the penalty that we're
13 seeking. We already have a request for
14 penalties for those bonds.

15 So, you know, specifically if --
16 you know, at the time, Frontier Bond was --
17 Bonding Company was going out of business.
18 What Mr. Harris has testified to is the
19 period being 1993 to 1996. So asking him
20 questions about what happened in 2000 and how
21 that would come up with the calculations is
22 just not relevant to this.

23 HEARING OFFICER HALLORAN: Mr. LaRose?

24 MR. LAROSE: I can't see how it's not

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1 relevant, Mr. Hearing Officer. He's
2 testified -- and I think he answered my
3 question. I'd like to get the answer to it.
4 I think he said, yes, I could have used the
5 1.25 percent because I knew about it at that
6 time.

7 He made the calculation in 2001.
8 In 2001 he could have used all of the bonding
9 information that he had in his possession.
10 And his testimony was, I used 2 percent
11 because I never saw a lower one.

12 I'm entitled to his testimony with
13 respect to whether he did, in fact, see a
14 lower one, which I think we've established,
15 and whether he could have used that number.

16 HEARING OFFICER HALLORAN: You know, I
17 agree with Mr. LaRose. Again, Mr. Harris
18 opened the door and I think Mr. LaRose can
19 run with it for a while.

20 Again, I don't think Mr. LaRose is
21 going to belabor the point, he's shaking his
22 head no. Objection overruled.

23 BY MR. LAROSE:

24 Q. Sir, can you answer the question, in

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1 2001, when you made your opinion as to the penalty
2 in this case if, in fact, the numbers were as I told
3 you, that the annual premium for the bonds that were
4 issued in the amount of 17 million were
5 approximately 1.25 percent, you could have used that
6 number, too?

7 A. For this period of time, is that what
8 you're talking about?

9 Q. Yes.

10 A. I don't know how we could have used
11 that because the bond that we're talking about, this
12 1.3 million, says that the premium was 2 percent.

13 If we're using a rate that was
14 paid on bonds that were issued later, that really
15 doesn't have anything to do with this period of
16 time.

17 Q. Okay. The bond that you used the
18 1. -- excuse me, the 2 percent on was issued after
19 the period of time of noncompliance, wasn't it?

20 A. Can we go back to -- what exhibit was
21 that?

22 Q. Exhibit 9. That's when the period of
23 noncompliance stopped, when they issued that bond,
24 wasn't it?

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1 A. Yes, that was when the period of
2 noncompliance stopped.

3 Q. So when you used the 2 percent, you
4 used a bond that was effective for a period after
5 the period of noncompliance, right?

6 A. Correct.

7 Q. And from '96 to 2001 you didn't make
8 any calculations of the financial benefit, correct?
9 You didn't do that until September of 2001?

10 A. Could have been September 2001.

11 Q. By September 2001 you could have used
12 all of the bonding information in your possession to
13 use, in fact, the lowest rate that you have seen,
14 which would have been 1.25 percent?

15 A. Yes, that's true.

16 Q. Okay.

17 MR. LAROSE: That's all I have.

18 HEARING OFFICER HALLORAN: Thank you,

19 Mr. LaRose.

20 REDIRECT EXAMINATION

21 By Mr. Grant

22 Q. During period from 1993 to 1996 did
23 you see any bonds during that period that had a
24 premium less than 2 percent?

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1 A. No.

2 HEARING OFFICER HALLORAN: Are you
3 finished?

4 MR. GRANT: Yeah.

5 HEARING OFFICER HALLORAN: Mr. LaRose?

6 RECROSS EXAMINATION

7 By Mr. LaRose

8 Q. If you would have used the
9 1.25 percent, it would have reduced your penalty
10 calculation proportionately?

11 A. Correct.

12 MR. LAROSE: Thank you.

13 MR. GRANT: That is our last witness
14 at this point. We've got our next guy coming
15 in at 1:00 or 1:15, whenever you want to
16 restart.

17 HEARING OFFICER HALLORAN: 1:00 would
18 be good. You may step down, Mr. Harris.
19 Thank you. We're 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

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1 from lunch. It's approximately 1:04. The
2 State's fourth witness is taking the stand.
3 He will raise his right hand and the court
4 reporter will swear you in.

5 (Witness sworn.)

6 MR. LAROSE: Mr. Halloran, just a
7 housekeeping matter before we get started
8 with Mr. Enger. We had faxed over to us some
9 of the evidence that we had talked about with
10 Mr. Harris before. I don't think we need
11 Mr. Harris. We've stipulated to the
12 admission of these documents, but I'd just
13 like to identify them for the record, please.

14 HEARING OFFICER HALLORAN: Sure.

15 MR. LAROSE: Defendant's Exhibit 45 is
16 a copy of Respondent Community Landfill
17 Company's first supplemental response to the
18 Complainant's first set of interrogatories.
19 This was in case PCB 03-191.

20 This document was admitted at the
21 hearing in that case as Exhibit Number 2 and
22 specifically offered in this case for proof
23 of the bond premiums that were paid on the
24 respective \$17 million worth of bonds. And

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1 that's, in this case, Defendant's Exhibit 45.

2 Defendant's Exhibit 46 is a copy
3 of a bond continuation certificate for the
4 \$1,439,720 bond that was renewed on May 31st,
5 2000. Again, it was Exhibit 15 in case
6 03-191.

7 Exhibit 47 is a copy of the
8 performance bond in the amount of 5,177,016,
9 which was issued on May 31st, 2000. It was
10 Exhibit 17 and admitted as such in case
11 03-191.

12 Exhibit 48 is a copy of the
13 May 31st, 2000 bond in the amount of
14 10,081,630. It was Exhibit 16 and admitted
15 as such in the hearing in case 03-191.

16 And, finally, Defendant's
17 Exhibit 49 is a statement of the premiums
18 paid on those respective bonds showing that
19 in the year 2001 some 217,000 and change were
20 paid premiums on those bond.

21 This document was admitted as
22 Exhibit 18 in 03-151. They are offered here
23 both by stipulation but also as business
24 records of the Respondent and as documents

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1 that the Board could consider from a prior
2 Board proceeding, all of them having been
3 admitted as exhibits in that proceeding.

4 Since we had these faxed to us,
5 Mr. Halloran, we're trying to compile enough
6 copies so everybody has them. I don't even
7 know if we're going to use them anymore. Can
8 I hold onto these and make sure the court
9 reporter gets them by the end of the day or
10 so?

11 HEARING OFFICER HALLORAN: Well, I
12 take the exhibits.

13 MR. LAROSE: Okay. However. I just
14 want to make sure that everybody gets a copy.

15 HEARING OFFICER HALLORAN: Now these
16 are going to be offered into evidence?

17 MR. LAROSE: Yes.

18 HEARING OFFICER HALLORAN: And --

19 MR. GRANT: Yeah. And we've agreed to
20 stipulate to them as --

21 HEARING OFFICER HALLORAN: Okay.

22 MR. GRANT: -- business records.

23 HEARING OFFICER HALLORAN: So
24 admitted.

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1 receipts and turn them over to the treasurer's
2 office and attend all city council meetings and
3 committee meetings.

4 Q. Can you look at Exhibit 26?

5 A. Yes.

6 Q. Do you recognize these documents?

7 A. Yes, I do.

8 Q. Could you describe them, please?

9 A. It's a summary of the tickets for
10 January of 1994 of the loads that were dumped at
11 Community Landfill. This report was compiled by
12 Chamlin & Associates.

13 Q. Okay. And the other pages -- are the
14 other pages the same sort of thing for the months of
15 January 1994 through --

16 A. December. Yes, they all appear to be
17 for the calendar year 1994 and they're all very
18 similar.

19 Q. Where did the information -- in other
20 words, the waste information come from originally?

21 A. The daily tickets were delivered to
22 Chamlin & Associates who compiled these reports and
23 then later on tabulated them and sent a bill to
24 Community Landfill.

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1 Q. These were sent to Chamlin by
2 Community Landfill Company?

3 A. That's correct.

4 Q. Does the City of Morris keep these
5 records as a matter of practice?

6 A. Yes.

7 Q. And are these true and accurate copies
8 of the City records?

9 A. Yes.

10 MR. GRANT: At this point I move to
11 admit these as business records.

12 MR. LAROSE: No objection.

13 HEARING OFFICER HALLORAN: Okay.
14 People's Exhibit No. 26 so admitted.

15 MR. GRANT: That's all I have of
16 Mr. Enger.

17 HEARING OFFICER HALLORAN: Mr. LaRose.

18 MR. LAROSE: I have only my well
19 wishes.

20 THE WITNESS: Thank you, sir.

21 MR. LAROSE: You're welcome, sir.

22 HEARING OFFICER HALLORAN: You may
23 step down. Thank you so much, sir.

24 You can call your next witness, if

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1 you so choose.

2 MS. VAN WIE: Our next witness will be
3 Gary Styzens.

4 (Witness sworn.)

5 WHEREUPON:

6 GARY STYZENS

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

9 EXAMINATION

10 By Ms. Van Wie

11 Q. Can you please state your name for the
12 record?

13 A. My name is Gary Styzens,
14 S-T-Y-Z-E-N-S.

15 Q. And can you please tell me a little
16 bit about your undergraduate degree?

17 A. I went to Southern Illinois University
18 in Carbondale from '76 to 1980, received a
19 bachelor's in forestry and environmental sciences.

20 Q. Can you tell me a little bit about the
21 course work that you undertook to obtain your degree
22 in 1980?

23 A. Well, for the bachelor's degree I took
24 a variety of environmental science type of courses,

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1 chemistry, biology, a variety of mathematical
2 courses like statistics and calculus.

3 I also, because I was looking
4 towards maybe pursuing a business degree, I took
5 some electives in accounting, took courses in
6 economics. Some of the business courses were
7 related to the forestry industry, things of that
8 nature.

9 Q. And once you graduated from SIU did
10 you continue on with your education?

11 A. Yes.

12 Q. And what was the next step in your
13 educational process?

14 A. Well, because I received a bachelor's
15 in science and I wanted to pursue a master's in
16 business administration, I had to pick up a series
17 of core business courses, basically junior and
18 senior level core business courses before I could
19 enter the master's of business program.

20 So that consisted of about a
21 year-and-a-half or so from '80 to '81, somewhere in
22 that area, of taking marketing, economics, finance,
23 basic core foundation courses for business-related
24 skills.

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1 Q. From what time period were you
2 undertaking that course work to transition into the
3 MBA?

4 A. It was in the 1980 to '81 period.

5 Q. And did you ultimately attend graduate
6 school?

7 A. Yes. After receiving the basic
8 foundational courses, I entered the master's in
9 business administration program and received a
10 degree I believe in 1983.

11 Q. So you did obtain your MBA degree?

12 A. Yes.

13 Q. And did you specialize in a certain
14 area?

15 A. No. It was a general administration
16 degree covering all of the areas of business, of
17 finance, accounting, marketing, economics,
18 organizational behavior, management, business
19 management.

20 Q. Since you've obtained your MBA have
21 you obtained any professional designations?

22 A. Yes. In 1988 I studied for the -- I'm
23 sorry, 1998. No, I am back at 1988. I studied for
24 the certified internal auditor exam. It's similar

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1 to the certified public accountant exam, CPA exam,
2 except it specializes in auditing skills.

3 Q. Can you give me a general description
4 of the field of internal auditing?

5 A. Well, I've been an internal auditor
6 for about 25 years in that field with the State of
7 Illinois. Internal auditing is basically a support
8 function for management, consulting and an assurance
9 function for the management of an organization.

10 What you provide to management is
11 you cover areas like for internal controls regarding
12 safeguarding assets, the organization's assets,
13 compliance with rules and regulations, making sure
14 the organization is complying with rules and
15 regulations, the reliability and integrity of their
16 information in the organization, the efficiency and
17 effectiveness of operations.

18 So you're basically looking at
19 internal control systems of the organization and
20 also you provide consulting services for a variety
21 of special projects that management may want you to
22 perform.

23 Q. Did you have to take an exam to obtain
24 the certified internal auditor designation?

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1 A. Yes. Again, it's similar to the CPA.
2 It's a two-day exam with four parts and once you
3 complete the exam you become a certified internal
4 auditor.

5 Q. What topics are included within the
6 exam?

7 A. It's very broad-based exam. A little
8 different than the CPA, which focuses more on
9 accounting. The certified internal auditor not only
10 covers areas of internal control systems like EDP
11 computer controls, it covers the basic foundational
12 business areas in finances and economics, capital
13 management.

14 And it generally covers the skills
15 of an internal auditor as far as writing skills and
16 comprehending internal control systems and verifying
17 compliance with internal control type of areas.

18 Q. Are you required to do anything to
19 maintain this professional designation?

20 A. Yes. The State of Illinois has the
21 Fiscal Control and Internal Auditing Act. It
22 requires its auditors along with certified auditors
23 to maintain approximately 100 hours of educational
24 courses over a three-year period to about 30 to

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1 35 hours a year.

2 Q. And are there certain courses you're
3 required to take that fall within that training?

4 A. Well, I take courses -- I'm a member
5 of the Institute of Internal Auditors, Springfield
6 Chapter. And I also have training that I get over
7 my computer with the Institute of Internal Auditors.

8 So by going to those type of
9 training seminars, you're basically covering general
10 training regarding internal auditing concepts, you
11 get refresher courses on internal auditing
12 standards, how to review control systems, how to
13 look for fraud, waste and abuse, things of that
14 nature.

15 Q. And can you give me an example of some
16 of the courses that are included within the training
17 you just discussed?

18 A. We're required to cover our -- some of
19 our internal audit standards. We frequently take
20 courses covering the federal general accounting
21 office, GAO yellow auditing book standards,
22 government auditing standard. And the Institute of
23 Internal Auditors has a series of audit standards.
24 So frequently the courses review things of that

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1 nature regarding internal control systems, sampling
2 methodologies, audit methodologies financial related
3 topics as far as how to audit or look for waste,
4 fraud and abuse in financial statements or
5 operations of organizations.

6 Q. And after you obtained your MBA can
7 you tell me the first job that you had pertaining to
8 that degree?

9 A. Yes. I believe it was around 1984,
10 '85 I started with the State of Illinois as an
11 auditor trainee position.

12 Q. Was that --

13 A. With the Illinois Department of Public
14 Aid.

15 Q. What were your duties as an internal
16 auditor trainee for the Department of Public Aid?

17 A. Basically, you start out as an
18 internal auditor trainee and you work your way up
19 through internal auditor one. And I basically
20 performed basic internal audit projects covering
21 internal controls, areas such as inventory, accounts
22 receivables, just general audits of the Agency.

23 Q. Can you just give me a generalized --
24 can you explain to me in generalized terms the

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1 process that is typically undertaken when you
2 conduct an audit?

3 A. Well, basically, you're functioning
4 for the organization as an expert in the area that
5 you're trying to audit. So you basically start out
6 doing somewhat of a preliminary survey to
7 familiarize yourself with the topic being audited.
8 You speak to some of the staff, learn about the
9 programs and the rules and regulations to some
10 extent and then you basically begin preparing a plan
11 on how you're going to go about performing the audit
12 or the financial project at hand. Sometimes we do
13 consulting projects, financial consulting projects
14 for the agencies.

15 Q. And how long did you hold the auditor
16 trainee position with Department of Public Aid?

17 A. I think the auditor trainee, which
18 kind of goes into the auditor one which is a junior
19 auditor, that whole period was a year-and-a-half or
20 so I think.

21 Q. And so what was the title of your next
22 position?

23 A. Basically, you go from the trainee
24 after six months into the auditor one and then the

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1 next position usually is internal auditor two.

2 Q. And did you hold both of those
3 positions?

4 A. Yes.

5 Q. And were they both within the
6 Department of Public Aid?

7 A. Yes.

8 Q. And as an auditor one were your duties
9 different from when you were an auditor trainee?

10 A. When you go from trainee to auditor
11 one to two basically, the complexity of your audit
12 projects increases. So as you gain experience over
13 time you're provided with more complex, more
14 program-oriented consulting type of services,
15 projects that are a little bit higher level of
16 difficulty.

17 Q. And how long did you hold the auditor
18 one position?

19 A. The auditor one and two, both about a
20 year-and-a-half or so.

21 Q. And were your responsibilities
22 different from auditor one to auditor two?

23 A. Just minimally as far as the audit
24 projects would get a little bit more complex.

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1 Q. What was your next position after
2 auditor two?

3 A. I think it related to an auditor three
4 position which basically is an audit supervisor
5 where you begin to reach the level where you have at
6 that time I think a public aid I had two or three
7 staff that worked under me to perform internal audit
8 projects.

9 And I also worked on internal
10 audit projects on my own, but of a higher level of
11 complexity. Usually, at that level they're what
12 they call program audits, efficiency effectiveness
13 audits where you audit complex programs within the
14 agency and develop recommendations on how to improve
15 procedures and processes and controls.

16 Q. And how long did you hold that
17 position?

18 A. I think that one I held several years
19 over there at the Department of Public Aid until I
20 took a job with the Environmental Protection Agency,
21 I think, in 1990.

22 Q. Prior to arriving at the Illinois EPA
23 had you been exposed either in the Department of
24 Public Aid or in your educational background to the

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1 concept of the time value of money?

2 A. Yes. That's just a basic financial
3 principle that you're taught in your basic college
4 financial courses.

5 Q. Okay. So you were exposed to that
6 concept, as you said, through your both
7 undergraduate and MBA programs?

8 A. Yes.

9 Q. Were you exposed to that concept
10 during your employment with the Department of Public
11 Aid.

12 A. Well, from time to time, probably more
13 so with the Environmental Protection Agency. But
14 from time to time you'll do a financial analysis
15 that compares and contrasts the certain financial
16 scenarios where you have to move the dollar amounts
17 through time, applying the applicable interest
18 rates. So a little bit at Public Aid, but more so
19 at the Environmental Protection Agency.

20 Q. Prior to arriving at the Illinois EPA
21 had you been exposed to the concept of economic
22 benefit?

23 A. Only -- no, not really. Only from the
24 standpoint of the basic financial principles that

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1 make up that particular area of expertise.

2 Q. And what does that term, economic
3 benefit, mean to you?

4 A. Well, economic benefit is a type of
5 financial analysis. It's designated by the US EPA
6 basically as the cornerstone of their enforcement
7 program.

8 And what you're trying to do in an
9 economic benefit analysis is to identify the
10 financial advantages that organizations may accrue
11 from either delaying or avoiding expenditures on
12 environmental compliance related issues.

13 By avoiding or delaying
14 expenditures on environmental related issues,
15 provides companies with an unfair advantage over
16 their competitors that did take the time and did
17 spend the money for environment compliance.

18 So you're trying to identify how
19 did the non-compliant -- or the organization that
20 delayed or avoided expenditures, how did they have a
21 financial advantage over their competitors with the
22 objective of basically leveling the financial
23 playing field, taking those advantages away from the
24 noncompliant organization.

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1 Q. And what was your position when you
2 arrived at the Illinois EPA?

3 A. I was internal audit supervisor.

4 Q. Can you please describe for me your
5 duties as an internal audit supervisor at the
6 Illinois EPA?

7 A. As internal audit supervisor I worked
8 with the chief internal auditor of the Illinois EPA,
9 which was my boss over there at EPA. Worked with
10 the chief internal auditor and I had a staff of
11 three junior auditors that I worked with to
12 basically perform an annual program of internal
13 auditing for the Environmental Protection Agency.

14 Q. What type of audits did you conduct at
15 the Illinois EPA?

16 A. They covered a wide variety of areas.
17 I performed compliance audits as far as is the
18 Agency complying with rules and regulation. We
19 performed internal control reviews on the internal
20 controls systems, which would be the accounting and
21 finance type of controls.

22 I also performed efficiency and
23 effectiveness audits of their programs, their water
24 programs, land programs, air programs. And I also

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1 got into the area in around 1998 I began to provide
2 consulting services, internal audit consulting
3 services in the area of economic benefit analysis.

4 Q. How long did you hold the position of
5 audit supervisor?

6 A. I think I held it for about six,
7 seven years, something like that.

8 Q. What position did you hold after that?

9 A. I became a chief internal auditor.

10 Q. And what were your responsibilities as
11 chief internal auditor?

12 A. Basically as chief internal auditor
13 then I run the Agency's annual program of internal
14 auditing and I guide my junior auditors at that
15 point acting both as an audit supervisor and a chief
16 internal auditor at that point to perform the annual
17 audit program for the Agency.

18 Q. Were you ever -- as part of your
19 responsibilities did you ever supply expert
20 testimony in either Pollution Control Board or
21 circuit court cases?

22 A. Yes.

23 Q. Okay. And do you remember if those
24 were circuit court cases or Pollution Control Board

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1 cases?

2 A. I believe there was one circuit court
3 case and two Pollution Control Board cases.

4 Q. Did the expert testimony in those
5 cases include evaluation of economic benefit in an
6 enforcement case?

7 A. Yes, an evaluation coming up with a
8 reasonable estimate of economic benefit in a
9 particular case.

10 Q. Is it fair to say then that the course
11 of your duties has changed since you've been at the
12 Illinois EPA?

13 A. My current -- versus my current
14 duties?

15 Q. Yes.

16 A. Yes. Now I'm more -- a little bit
17 more focused on not only a general financial analyst
18 for the Agency, but I focus on economic benefit
19 financial analyst.

20 Q. And how long were you a chief internal
21 auditor?

22 A. I was a chief internal auditor up and
23 through 2003 for, I think, a couple of years before
24 I was consolidated to a different type of

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1 consolidated, centralized internal audit function at
2 another agency.

3 Q. And what agency was that?

4 A. That was an agency called Central
5 Management Services where the all the internal
6 auditors in the 40 agencies of the state were
7 consolidated into that agency.

8 Q. And was that in 2003?

9 A. Yes.

10 Q. What were your responsibilities once
11 your position was consolidated?

12 A. I was an audit manager covering about
13 seven different agencies. Instead of just --
14 basically, I was chief internal auditor at seven
15 different agencies instead of just being a chief
16 internal auditor at the Environmental Protection
17 Agency, which was one of my agencies at Central
18 Management Services.

19 I also was over Department of
20 Natural Resources, Department of Agriculture and
21 some of the other agencies of the state.

22 Q. Did you continue to do economic
23 benefit analysis in that position?

24 A. Yes, I did some economic benefit

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1 analysis.

2 Q. And how long did you hold that
3 position?

4 A. I think about two to three years.

5 Q. And where did you go after that?

6 A. I believe it was in 2006 I came back
7 to the Illinois Environmental Protection Agency as a
8 financial analyst and an economic benefit analyst.

9 Q. And is that your current position with
10 Illinois EPA?

11 A. Yes.

12 Q. What do your current duties include?

13 A. Basically, I'm a financial analyst. I
14 not only perform economic benefit analysis, I also
15 perform a general financial analysis for the Agency
16 in areas such as accounts receivables and just
17 general program management type of finances.

18 Q. Generally, how do you perform an
19 economic benefit analysis?

20 A. Basically, you start out by -- you get
21 a referral from our EPA's legal department
22 requesting my assistance in estimating an economic
23 benefit for a particular case.

24 And when you basically start

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1 out you begin to gather some general information and
2 specific information all geared towards identifying
3 delayed or avoided expenditures relating to certain
4 noncompliance issues for particular cases.

5 Q. When you're asked to provide an
6 economic benefit analysis, are you typically given a
7 set of parameters or assumptions to work off of?

8 A. Yes. As you begin to work with
9 gathering the financial information on the case,
10 you're usually obtaining documents relating to the
11 delayed or avoided expenditures.

12 Some of those documents come from
13 the corporations that are being examined, others are
14 provided by the attorneys that they sometimes obtain
15 from the corporation or from areas related to the
16 particular case.

17 So I review those documents and,
18 you know, make some assumptions as to whether they
19 appear to provide accurate estimates of delayed or
20 avoided expenditures.

21 Q. And during your work with the Illinois
22 EPA have you employed the concept of time value of
23 money?

24 A. Yes, I have.

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1 Q. Okay. In what areas of your duties
2 have you employed this concept?

3 A. Throughout my internal audit duties
4 with the Agency for the last ten years or so there
5 are situations where the managers ask me to compare
6 and do economic -- or to do financial analysis on
7 cost benefit of certain financial situations where
8 you have to examine payments of penalties or amounts
9 of money that are being received by the Agency and
10 you have to examine the value of money through time
11 for let's say payment plans where an organization is
12 paying over time or providing different levels of
13 payment.

14 And then, of course, back in 1998
15 I began to get a request from the Agency to perform
16 economic benefit analysis. One of the financial
17 principles in that area includes examining the value
18 of money over time.

19 Q. Since you've become employed with the
20 Illinois EPA have you read any literature related to
21 the concept of economic benefit?

22 A. Yes. There's a variety of documents
23 that I've reviewed over the last ten years or so.
24 Besides your basic financial principles that are

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1 contained in the basic business education textbooks,
2 I reviewed the Federal Register from I think it was
3 June 18th, 1999. It provides a good overview of the
4 US EPA's economic benefit program.

5 I also have used the BEN Manual
6 over time only from the standpoint of, again, the
7 BEN Manual has some sections that provide background
8 information on economic benefit analysis provided by
9 the US EPA.

10 US EPA has general penalty, civil
11 penalty guidelines that they provide to the Agency
12 and I've seen those where they have some discussion
13 of economic benefit.

14 Q. What does BEN stand for?

15 A. BEN is an acronym that is used by the
16 attorneys and to some extent US EPA to -- either
17 references their BEN model, a model that the US EPA
18 has developed to estimate economic benefit or
19 sometimes the attorneys use BEN as an acronym for
20 economic benefit.

21 Q. And what is your -- generally, what is
22 your objective in undertaking an economic benefit
23 analysis for a particular entity?

24 A. I'm trying to develop an objective,

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1 reasonable estimate of the financial advantage that
2 an organization has accrued by delaying or avoiding
3 expenditures on environmental compliance related
4 issues.

5 So the objective is to --
6 basically, you want to level the financial playing
7 field for that particular industry to make sure that
8 the noncompliant organization does not have an
9 economic advantage over those companies in that
10 industry that took the time and spent the money to
11 ensure compliance with either their permits or
12 Illinois rules and regulations on environmental
13 requirements.

14 Q. And, Mr. Styzens, have you prepared a
15 resume that documents the background that we just
16 went over?

17 A. Yes.

18 Q. Okay. And did you include that resume
19 in any documents provided to the Attorney General's
20 office?

21 A. Yes.

22 Q. And where was that included?

23 A. In my -- I did an economic benefit
24 report for this particular case that I provided to

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1 the IEPA chief legal counsel and the Attorney
2 General's office.

3 Q. Okay. Who asked you to prepare that
4 analysis?

5 A. I was requested to perform the
6 analysis by Alec Messina, who is the Illinois EPA's
7 chief legal counsel. And my understanding is that
8 was a request that is also funneled through the
9 Attorney General's office.

10 Q. If you wouldn't mind turning in binder
11 two to Exhibit 17?

12 A. Okay.

13 Q. And if you wouldn't mind looking
14 through that. Have you seen this document before?

15 A. Yes.

16 Q. What is it?

17 A. It appears to be the report that I
18 produced on August 26th, 2008, that was designed to
19 provide an objective, reasonable estimate of
20 economic benefit that occurred in the case for
21 Community Landfill/Pruim.

22 Q. And is this a complete and accurate
23 copy of your economic benefit analysis for this
24 case?

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1 A. Yes.

2 Q. Does Exhibit 17 include the resume you
3 previously testified to?

4 A. Yes.

5 Q. And where is that?

6 A. That's contained on the exhibit,
7 Attachment A, Page 5.

8 Q. What is the purpose of the economic
9 benefit analysis you prepared for Community Landfill
10 Company?

11 A. Well, as US EPA guidance provides on
12 economic benefit, it's the cornerstone of the US
13 EPA's environmental enforcement program.

14 The purposes, again, as I had
15 mentioned previously, of economic benefit analysis
16 is to level the financial playing field between
17 companies in a particular industry that have decided
18 to take the time and spend the money necessary for
19 environmental compliance compared with organizations
20 that may have delayed or avoided expenditures on
21 environmental compliance which allows those
22 companies to invest or use the money for other
23 business related investments thereby giving them an
24 opportunity to use costs for investments or money

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1 for investments that the compliant organization had
2 to spend on environmental compliance.

3 So not only leveling the financial
4 playing field between the industry participants, but
5 you're also basically -- there's a deterrence aspect
6 of economic benefit where you're trying to put the
7 management of an organization -- what you're trying
8 to do is provide them an atmosphere of what they
9 call financial indifference between taking the time
10 and spending the money for environmental compliance
11 or improperly seeking to take that money and invest
12 it in other areas.

13 What you're trying to do is make
14 sure that the economic benefit is properly estimated
15 so it removes any financial advantage from the
16 corporation that they may have accrued, any
17 opportunity that they may have taken improperly to
18 spend money that they should have spent on
19 environmental compliance and spent that on other
20 investments or other operations of their
21 organization.

22 Q. On Page 1 of your analysis you detail
23 three types or categories of avoided costs. Where
24 did you get those figures?

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1 A. That information and associated
2 documentation was provided in some correspondence to
3 me from the Attorney General's office. The
4 attorney, Chris Grant, provided information on those
5 three types of avoided costs that are related to
6 environmental compliance.

7 Q. And so were these three category
8 figures the starting point for your economic benefit
9 analysis?

10 A. Yes, those three categories of avoided
11 costs were the starting point for my analysis on
12 economic benefit -- on estimating economic benefit.

13 Q. Are these starting points sometimes
14 called assumptions?

15 A. Well, only from the standpoint it's
16 documentation and at times you have to make some
17 assumptions that the documentation is reasonable and
18 is accurate. So, I mean, you're relying on supplied
19 documentation from the attorneys that often is
20 received either from the noncompliant organization
21 or the agency experts and to some extent you're
22 making an assumption that the information is
23 reasonable and accurate.

24 Q. Okay. In looking at the first

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1 assumption, the avoidance and removal of excess
2 overheight waste, can you please explain what that
3 means to you?

4 A. Well, in that I think it was a July
5 2008 correspondence that I received from the
6 Attorney General's office through Chris Grant.
7 There was some documentation in there from a --
8 supplied, I believe, by Community/Pruim Corporation.
9 It was a document -- I believe it was an application
10 for an amended permit and it was provided by an
11 organization called, I think, Andrew Consulting.

12 And within that document there was
13 reference to that Andrew Consulting had indicated
14 that the removal of some overheight waste would cost
15 approximately back, I think, in 1997, that time
16 period, approximately \$950,000.

17 And so then I took that \$950,000
18 what I'm referring to as an avoided compliance
19 expenditure, and then analyzed the financial impact
20 of avoiding that cost on the organization.

21 Q. And where in this document is your
22 financial analysis for that avoided cost?

23 A. It's on an Excel spreadsheet labeled
24 Page 1 in the upper right-hand corner.

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1 Q. I'm going to have you kind of walk me
2 through this spreadsheet. If you could, please
3 explain cell number B12? There's a date,
4 April 30th, 1997. Can you please explain what that
5 is?

6 A. Yes. In Column B you're basically
7 looking at a period of time and examining when a
8 potential cost was avoided, a cost necessary for
9 compliance with environmental rules and regulations
10 or permit regulations.

11 And on B12, the April 30th of '97
12 was basically the date that was contained on the
13 permit application where the Andrews Consulting had
14 identified that that was -- the 950,000 was an
15 approach for remediation or compliance at the site
16 for removing the overheight waste.

17 Q. And that number is reflected in Cell
18 C12; is that correct?

19 A. Yes. The date on the document from
20 Andrews is April 30th of '97.

21 Q. And, I'm sorry, cell C12 represents
22 that \$950,000 amount that was listed in that
23 document, correct?

24 A. Yes, correct.

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1 Q. What is in cell D12?

2 A. D is for the tax implications for
3 environmental compliance expenditures. The
4 corporations and organizations that are spending
5 money for environmental related compliance receive a
6 tax break and so that is an estimate of the
7 corporate tax rate for Illinois corporations.

8 In that Column D there, the title
9 33 percent would be equivalent to the potential tax
10 break that an organization would get on an
11 expenditure of \$950,000 for environmental
12 compliance.

13 And then applying that 33 percent
14 to that 950,000 then in D12 the tax break would be
15 313,500.

16 Q. Okay. And what is represented in Cell
17 E12?

18 A. Basically, that's the after-tax
19 avoided expenditure that would have been made back
20 on April 30th of '97 by a compliant organization or
21 that could have been made by Community/Pruim
22 Corporation in order to attempt to come into
23 compliance with their permit requirements.

24 Q. So basically E12 is the initial

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1 \$950,000 and then subtracting the tax break that
2 would be received?

3 A. Yes. So it's equivalent to the net
4 after tax economic benefit expenditure related item
5 back in '97.

6 Q. Okay. And what is represented in Cell
7 F12?

8 A. Well, that whole column including F12,
9 basically when you're analyzing economic benefit and
10 you're bringing that amount of financial information
11 through time, you have to use an interest rate that
12 relates to the time value of money for a particular
13 period of time.

14 And in this case what I've been
15 using, unless I have the weighted average cost of
16 capital, company specific cost of capital
17 information, which I did not have at this point, I'm
18 using the bank prime loan rate as a benchmark for
19 the time value of money interest rate for my
20 analysis.

21 It's usually a conservative
22 figure. It's frequently a lower amount than is
23 obtained by if you would look at an agency or an
24 organizational specific weighted average cost of

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1 capital figure.

2 It basically assumes that the
3 organization is raising capital by 100 percent
4 borrowing from a bank or a lending institution at
5 the prime lending rate, which is the best rate that
6 an organization can get from a bank usually.

7 Q. And how did you determine what the
8 prime loan rate would be over the given period?

9 A. It's taken from a Federal Reserve
10 website. The federal government -- Federal Reserve
11 sets a prime lending rate and that's published on
12 the internet as well as other documentation. So I
13 just obtained it from the federal reserve websites.

14 Q. Did you include anything in your
15 analysis to represent what you viewed on the
16 website?

17 A. Yes. There's a schedule called prime,
18 it's Page 4, which is basically a list that I keep
19 from 1995 to 2008 of the monthly prime lending rates
20 that are published by the Federal Reserve. That
21 schedule, called prime, which is on Page 4 of the
22 Excel spreadsheet is the information I used to
23 estimate the time value of money interest rate.

24 Q. And can you please explain what's in

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1 Cell G12?

2 A. Basically, then what you're doing is
3 you're using the avoided expenditures in Column E
4 starting with E12, the 636,500 and you're working
5 that figure through time using Column F, interest
6 rates. And Column G then is the interest earned on
7 the avoided expenditure of principal through time.

8 And you're simply taking the
9 figures in Column E and multiplying them by the
10 interest rates in Column F and then you're adding
11 the interest through time, so you're basically
12 charging interest on both the principal and the
13 interest through time.

14 Q. And what is your ultimate conclusion
15 as to the total benefit received by avoiding the
16 initial compliance investment for overheight?

17 A. I estimated that because the Community
18 Landfill/Pruim did not expend that avoided
19 expenditures of money for environmental compliance,
20 that they accrued a total benefit of \$1,339,793,
21 which is the bottom of Column E.

22 And that includes basically the
23 636,500 avoided principal at the top of Column E in
24 E12 and adds to it the interest earnings over

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1 basically a ten-year period, the interest earnings
2 on that avoided capital expenditure through time.
3 So interest and principal then totals \$1,339,793.

4 Q. And just to be clear, when you say
5 Community/Pruim Corporation, do you mean Community
6 Landfill Company?

7 A. Yes.

8 Q. Okay. So it is your opinion that
9 Community Landfill Company, by avoiding the initial
10 \$950,000 for the overheight had then accrued a
11 benefit of \$1,339,793?

12 A. Yes. And I just want to make it
13 clear, too, that that's over a ten-year period. So
14 the period that I'm examining is exceptionally long
15 and that, you know, adds to the economic benefit
16 that's accrued.

17 Q. So the noncompliant period that you
18 were looking at was from April 30th, 1997 to July
19 31st of 2008?

20 A. Correct.

21 Q. Okay. We're going to now look at your
22 second avoided cost, which was post-closure costs
23 significant modification application. Where did you
24 analyze that information?

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1 A. That is contained in my report on the
2 Excel spreadsheet labeled Page 2 in the upper
3 right-hand corner.

4 Q. And is the analysis you employed for
5 the first assumption of avoided costs approximately
6 the same as you used for this avoided cost?

7 A. Yes.

8 Q. Okay. So we're going to walk through
9 your analysis again, but it won't be as detailed.

10 MR. LAROSE: Which one are we on now?

11 MS. VAN WIE: It's the second
12 spreadsheet labeled Page 2.

13 BY MS. VAN WIE:

14 Q. If you could, please, what is the
15 noncompliance period for this avoided cost?

16 A. Again, the documents that I've
17 received from the Attorney General's office from
18 Chris Grant contained documentation showing that
19 there was an avoidance of some post-closure
20 monitoring costs stemming for some regulation
21 changes back in 1992.

22 And on those documents that I
23 received from the Attorney General's office it
24 highlighted that there was \$44,526 of avoided

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1 post-closure costs relating to monitoring of
2 groundwater, leachate and gas. And that figure is
3 contained at the top of Column C there.

4 Q. And your analysis covers what period
5 of noncompliance?

6 A. From the documentation I received from
7 the Attorney General it indicated that a variance
8 relating to the modifications, the application for
9 the additional requirement, was filed by Community
10 Landfill/Pruim on April 26th, 1995, when it should
11 have been dealt with back in June of '93. So I
12 basically started my period with the April 26th,
13 1995 filing of the variance.

14 Q. And you took that up to July 31st of
15 2008?

16 A. Correct.

17 Q. If we look just again briefly, Cell
18 D10, what does that number represent?

19 A. That, again, is the corporate tax
20 break on environmental compliance related
21 expenditures at 33 percent.

22 Q. And Cell E10 represents Cell C10 minus
23 D10?

24 A. Yes, yes. And so that represents a

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1 net after tax avoided expenditures.

2 Q. So E10, again, is the federal prime
3 loan rate for that period of time?

4 A. I'm sorry, you're in F.

5 Q. F10?

6 A. F10 is, again, an examination of the
7 federal prime loan rate as a reasonable benchmark of
8 the time value of money.

9 Q. And in your opinion what was the total
10 economic benefit that Community Landfill Company
11 received by the late filing of the significant
12 modification application for the noncompliance
13 period listed here?

14 A. Basically, by delaying the -- avoiding
15 the expenditure of \$29,832 at the top of Column E
16 there through the period I examined from '95 through
17 2008, the total economic benefit from the
18 opportunity to invest that money in other areas was
19 \$73,950, which is the bottom of Column E.

20 Q. And that figure represents both the
21 capital investment as well as the interest; is that
22 correct?

23 A. Yes.

24 Q. And the third analysis of avoided

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1 costs was what?

2 A. The third grouping of avoided costs
3 related to financial assurance costs that were
4 avoided back from '93 to '96 period, 1993 to '96.
5 And, again, this information was provided to me in a
6 correspondence from Attorney General's office
7 through Chris Grant.

8 Q. And where is your analysis of that
9 avoided cost?

10 A. That's marked on the -- that's the
11 spreadsheet marked Page 3.

12 Q. And, again, is the analysis that you
13 employed for this avoided cost similar to the one
14 you employed for the first two?

15 A. Yes.

16 Q. Okay. Rather than going through
17 everything again, I will just say what is your
18 opinion of the total economic benefit realized by
19 Community Landfill Company?

20 A. By avoiding the expenditures of
21 \$32,074 at the top of Column E through the period I
22 examined from June of '96 through July of 2008 I
23 estimated the corporation had an economic benefit of
24 \$72,336.

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1 Q. And, again, that number includes both
2 the initial capital investment as well as the
3 interest?

4 A. Yes.

5 Q. So in looking at all three of the
6 avoided cost areas, what is your opinion was the
7 total economic benefit that Respondent derived from
8 all avoided costs?

9 A. Because of the extensive length of the
10 noncompliance period, the total for the avoidance of
11 those three groupings of categories of costs that I
12 examined, the total estimate of economic benefit
13 that I developed was \$1,486,079.

14 Q. And how did you calculate that
15 particular number?

16 A. On Page 1 of my report it basically
17 takes those three spreadsheets that we just
18 discussed and added together the estimated economic
19 benefit for each of the three categories of costs.
20 And on Page 1 of my report you can see it added for
21 the overheight waste plus the post-closure costs
22 plus the financial assurance costs, totalled that
23 figure.

24 Q. And, in your opinion, that is the

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1 total avoid costs or economic benefit that
2 Respondent received from their noncompliance up to
3 July 30th of 2008?

4 A. Yes.

5 Q. And what is Attachment C?

6 A. Attachment C provides an overview of
7 the key documents that I consulted in order to
8 familiarize myself with this particular case as far
9 as developing an estimate of economic benefit.

10 Q. And do you know if these documents
11 were provided to Respondents?

12 A. Yes, I believe they were.

13 MS. VAN WIE: Thank you. That's all.

14 HEARING OFFICER HALLORAN: Is
15 everybody okay? We've been at this for an
16 hour.

17 MR. LAROSE: I'm cool.

18 HEARING OFFICER HALLORAN: Okay.

19 Let's go with cross Mr. LaRose.

20 CROSS EXAMINATION

21 By Mr. LaRose

22 Q. Good afternoon. Did we meet at SIU?
23 I was down there from 1975 to 1982.

24 A. We could have. We could have.

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1 Q. Those days are a bit blurry.

2 A. I would have met you probably in the
3 library.

4 Q. I was in the lab sometimes, too.

5 Anyway, did you use Section 42(H)
6 of the Act in calculating your economic benefit or
7 refer to it?

8 A. I mean, I believe -- I mean, what I
9 used to calculate economic benefit, I basically
10 relied on the US EPA guidance. The area of the
11 Illinois Administrative Code, I'm familiar with that
12 particular area but I really don't -- there really
13 isn't enough information in that particular area to
14 really calculate an estimate of economic benefit.

15 Q. Okay. Are you aware of the provision
16 allowing for calculation of penalties in the
17 Illinois Environmental Protection Act?

18 A. I'm aware there's reference to
19 recovering economic benefit.

20 Q. Okay. May I?

21 HEARING OFFICER HALLORAN: Yes, you
22 may, Mr. LaRose.

23 BY MR. LAROSE:

24 Q. I'm going to hand you what is a

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1 Does it mention interest or not?

2 A. Indirectly, it does.

3 Q. And where indirectly does it?

4 A. Because it mentions the term economic
5 benefit.

6 Q. Does the term interest appear in
7 42(H)(3)?

8 A. Only indirectly in the context of the
9 word economic benefit, otherwise, no, it doesn't say
10 it.

11 Q. So in order for interest to appear in
12 42(H)(3), we have to pretend like it's there or
13 assume that it's there because it's not in there,
14 right? The word interest doesn't appear in that
15 provision, does it?

16 A. I stand by my previous answer. The
17 concept of interest is a subpart of the term
18 economic benefit. Just because it doesn't
19 specify -- this section probably doesn't have a lot
20 of words in it.

21 But my analysis and understanding
22 of the words that are in there include the concept
23 of interest and that term is related to the concept
24 of economic benefit.

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1 Q. Okay. So your answer is even though
2 the words aren't in there, you -- I can't use any
3 other word -- pretend like they are?

4 MS. VAN WIE: I object. I think that
5 mischaracterizes the witness' testimony.

6 BY THE WITNESS:

7 A. The problem is you're oversimplifying
8 what the words are in this particular part of the
9 law.

10 BY MR. LAROSE:

11 Q. Except I didn't write the law, but I
12 can read it. And my question is whether or not the
13 words interest appear in the statute or they don't?

14 A. And my answer as an expert in economic
15 benefit is that the concept of interest is included
16 in that complex term of economic benefit.

17 Q. Is the concept of bank prime rate
18 included in there, too?

19 A. Yes. In economic benefit analysis,
20 yes. You have to identify an appropriate rate
21 through a period of time in order to develop an
22 economic benefit.

23 Q. So bank prime rate is in 39(H)(3) by
24 osmosis, too?

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1 MS. VAN WIE: Objection,
2 mischaracterizes.

3 BY MR. LAROSE:

4 Q. I'm sorry, 42(H)(3)?

5 A. The concept of developing a reasonable
6 estimate --

7 HEARING OFFICER HALLORAN: Overruled.

8 BY THE WITNESS:

9 A. -- of the time value of money is
10 included in that concept of economic benefit.

11 BY MR. LAROSE:

12 Q. I'm asking you whether or not -- we
13 talked about interest and you said that was in
14 there, even though it's not. I want to know if the
15 concept of bank prime rate, which you applied in
16 this case to establish some time value of money, is
17 part of that statute, as well. Did the statute
18 require you to apply the bank prime rate?

19 A. Economic benefit requires me to apply
20 an interest rate.

21 Q. Okay. Did it require you to apply the
22 bank prime rate, yes or no?

23 A. It requires me to apply an interest
24 rate --

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1 MR. LAROSE: Objection.

2 HEARING OFFICER HALLORAN: You know, I
3 think a lot of these questions are yes and no
4 questions.

5 MR. LAROSE: And he really needs to
6 try to do that. Objection, nonresponsive. I
7 ask that the answer be stricken.

8 BY MR. LAROSE:

9 Q. Did 42(H) require you to apply the
10 bank prime rate, yes or no?

11 A. No, not that particular rate.

12 Q. Did 42(H) require you to apply
13 interest in this case from the date of the
14 noncompliance -- actually, you did it from the date
15 of the compliance all the way forward until today.
16 Was that required by 42(H)(3)?

17 A. Yes.

18 Q. When does interest on a noncompliance
19 issue stop?

20 A. It stops when the organization stops
21 to obtain a financial advantage over their
22 competition on a delayed or avoided expenditure.

23 Q. Okay. So with respect to the \$950,000
24 that you assumed that they saved, that was your

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1 assumption, right? You didn't calculate that
2 yourself, it was given to you, right?

3 A. That figure was given to me in that
4 Andrews Engineering document from, I believe, the
5 corporation.

6 Q. With respect to the \$950,000, if they
7 had spent the \$950,000 a year after the
8 noncompliance was determined, then that interest
9 would accrue for only a year, correct?

10 A. Yes, I believe that's correct. And I
11 have a footnote on that spreadsheet that indicates
12 that if there was an expenditure of the capital --

13 Q. There's no pending question, sir. It
14 was correct or not correct.

15 A. Yes, that's correct.

16 Q. So to the extent that Community
17 Landfill spent any of that \$950,000 to address any
18 alleged overheight or overfill on Parcel B, your
19 interest calculation should have stopped on the date
20 that they spent those monies, correct?

21 A. That is an oversimplification. I
22 mean --

23 Q. Is it true or is it not true?

24 A. It's not true because --

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1 Q. Okay. That was the answer, it was not
2 true. Let me see if I can get at it this way.

3 On your calculation of the
4 overheight at \$1,339,793, of that amount, 703,293
5 was interest, right?

6 A. That was the interest on the avoided
7 expenditure.

8 Q. Yes. Of the 1,339,793, 703,239 was
9 interest, right?

10 A. Yes.

11 Q. Okay. You said that they avoided the
12 cost as of April 30th, '97 of \$950,000, right?

13 A. Yes.

14 Q. Okay. If in 1998 they spent that
15 \$950,000 and moved the waste across the street, it
16 would have been improper for you to accrue interest
17 after that date, correct?

18 A. If the organization, whatever point
19 that they spent the money and it was no longer
20 considered an avoided expenditure, that's when I
21 would have stopped.

22 So, yeah, if they would have spent
23 the money and achieved compliance back in a previous
24 period to my ending period of July 31 of '08, I

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1 would have stopped my analysis at the point that
2 they achieved compliance by no longer avoiding the
3 necessary expenditures.

4 Q. Would they have to totally achieve
5 compliance or could they have partially achieved
6 compliance in order to affect your calculations?

7 A. Again, any avoided expenditures. So
8 as I began to gather additional information that
9 there was expenditures being made, I would begin to
10 make some adjustments on the level of avoidance for
11 this particular case.

12 Q. If, for example, in 1998 they spent
13 \$100,000 moving this waste across the street, then
14 your calculation would be affected by that, you
15 couldn't accrue interest on the whole 950 then?

16 A. Yes, that's correct.

17 Q. Okay. And it would be that same way
18 for every year, right?

19 A. As the avoided -- amount of avoided
20 expenditures was reduced, I would make adjustments
21 on spreadsheet, correct.

22 Q. Do you have any idea, sir, whether or
23 not any of these amounts that you put in here were
24 actually reduced during any of these years?

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1 A. What is the question again?

2 Q. Do you have any idea whether or not
3 Community Landfill Company spent any money to reduce
4 their noncompliance in the years 1998 to July of
5 '08?

6 A. No.

7 Q. The figures that you used, the
8 950,000, that was just given to you, right? It was
9 given to you by the government, correct?

10 A. It was given to my by Andrews
11 Engineering in a document, I believe, from the
12 corporation through the Attorney General's office is
13 my understanding.

14 Q. I'm going to hand you what's been
15 previously marked as Defendant's Exhibit No. 43.
16 Have you seen that before?

17 MR. GRANT: We don't have 43.

18 MS. CUTLER: Here's a copy.

19 MR. LAROSE: Sorry. It came from you,
20 but that's okay.

21 MR. GRANT: Oh, it's from the dep.

22 MR. LAROSE: I don't know if it's from
23 the dep or not.

24

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1 BY MR. LAROSE:

2 Q. You've seen this before, Exhibit 43?

3 A. Yes.

4 Q. This is the cover letter that was
5 supplied to you by Chris Grant on July -- on or
6 about July 14th, 2008, and the attachments that were
7 attached to that, correct?

8 A. Yes.

9 Q. Chris Grant tells you on Page 1 that
10 the amount is 950,000 plus interest, right? Yes or
11 no, sir?

12 A. As it relates to the Andrews document
13 that's contained in that -- in this packet.

14 Q. On Page 1 of the document, Chris Grant
15 tells that you that it's 950,000 plus interest, yes
16 or no?

17 A. Yes.

18 Q. He also tells you that the benefit
19 from the failure to upgrade the financial assurance
20 on several occasions is 47,871.33 plus interest,
21 correct?

22 A. Yes.

23 Q. And, similarly, he tells you that the
24 avoided costs related to the late filing of the

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1 SIGMOD is 44,526, correct?

2 A. Yes.

3 Q. If those numbers were different, if
4 you had been supplied with different numbers and
5 different backup documents, whether they'd be higher
6 or lower, that would have affected your calculation?

7 A. As long as they're accurate and
8 reasonable, they would affect my calculations, yes.

9 Q. Basically, what you did was take the
10 numbers that were supplied to you, assumed them to
11 be correct, applied a reduction of those for the
12 current tax benefit and then extrapolate out the
13 cost of that money by applying a bank interest rate
14 all the way until today?

15 A. Yes.

16 Q. Of the \$1,486,079 that you say they
17 saved, approximately 787,000 of that was interest?

18 A. What was your figure?

19 Q. I took your figure off of Page 1 of
20 your report, the total figure of 1,486,079, then I
21 took your interest figures that I added up in my
22 head kind of off of the three reports, and my
23 question to you was out of the approximately 1.4
24 million in total penalty, 787,000 of that is

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1 interest?

2 A. Yes, approximately.

3 Q. If we don't calculate any interest,
4 the penalty figure that you calculate is cut in
5 half, right?

6 A. I don't understand the question.

7 Q. Without the interest figure in your
8 calculation, the penalty figure reduces by \$787,000?

9 A. Only if the calculation is inaccurate.

10 THE COURT REPORTER: Isn't accurate?

11 THE WITNESS: Is inaccurate.

12 BY MR. LAROSE:

13 Q. Is inaccurate?

14 A. Is inaccurate. That's a true
15 statement if the calculation that I'm -- and the
16 analysis I'm doing is not appropriate or is
17 inaccurate.

18 Q. Well, that's kind of what we're here
19 to talk about. But my basic question to you is if
20 we discount -- say that the interest isn't
21 appropriate in this calculation, it cuts the penalty
22 figure in half, doesn't it?

23 A. If that assumption is used by someone,
24 that would be true.

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1 Q. Okay. Let's look at the economic
2 benefit for the financial assurance upgrade.
3 According to the documents that were supplied by you
4 in Exhibit 44 -- excuse me, supplied to you. Let me
5 start again.

6 In accordance with the documents
7 that were supplied to you as part of Defendant's
8 Exhibit 43, specifically Blake Harris' economic
9 benefit analysis for noncompliance, according to him
10 they had come into compliance by June of 1996,
11 right?

12 A. I believe around June of '96, yes.

13 Q. Okay. So by June of '96 they had to
14 spend the money on the bond that they were being
15 charged with not getting for some period prior to
16 that, correct?

17 A. That appears what the documents are
18 telling me.

19 Q. Okay. So that when Blake Harris said
20 they came into compliance by spending this money and
21 saved \$47,000, how come you applied interest to that
22 figure if they already spent it? They saved 47 by
23 not spending it before, they spent the 47 by coming
24 into compliance; how come's interest applied to that

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1 figure?

2 A. Because my understanding was that they
3 avoided spending \$47,000 for financial assurance
4 during, I think, a 19-month period.

5 Q. Okay. And then they spent the money.
6 Didn't they come into compliance and spend the very
7 money that you're now charging them interest on
8 ad infinitum?

9 A. My understanding from the way it was
10 presented to me is that they -- after the 19 months
11 of noncompliance of not spending money for financial
12 assurance for the surety bond, let's say that then
13 they -- there was a gap there that then they did
14 come into compliance and begin providing funding for
15 a surety bonding or financial assurance from June
16 of '96 forward. So I was just examining the period
17 of time that was provided to me as that expenditures
18 were avoided on performance bonding.

19 Q. Wrongo, because you added 40 grand to
20 that number from June -- excuse me, from 1997 until
21 July of 2008. Why did you apply interest after they
22 spent the money to come back into compliance?

23 A. Because what I'm saying is that they
24 avoided spending \$47,000 in financial assurance and

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1 they will not be spending that money and so
2 basically the time period for the financial
3 advantage of avoiding that expenditure for that 19
4 months will not stop until the economic benefit
5 penalty is paid.

6 Q. Are we still accruing interest today?

7 A. Yes.

8 Q. If it takes the Board five years to
9 rule on this matter, are they entitled to add five
10 more years onto this?

11 A. It's up to the corporation how long
12 they want to keep that \$47,000 invested in their
13 corporation.

14 Q. Why isn't this like the \$950,000, to
15 the extent that they spent money to come into
16 compliance, it reduces the amount to which you apply
17 interest? They weren't in compliance, they saved
18 47,000, they spent the 47,000 to come into
19 compliance, how come it's not a zero?

20 A. Because my understanding is that
21 similar to a periodic or an annual avoided cost,
22 let's say utility bills or other types of
23 operational costs, that if you do not -- for a
24 certain period if you don't have the financial

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1 assurance for that period, you've avoided that
2 amount.

3 And then when you pick up the
4 financial assurance again, it does not include that
5 avoided period, it begins to pick up the financial
6 assurance from a point of compliance forward, but
7 that there's still a period of time of noncompliance
8 that the corporation will never had spent an
9 expenditure for financial assurance during that
10 avoided period of time, that 19 months.

11 Q. It can't make it up is what you're
12 saying?

13 A. Only in the form of giving up the
14 economic benefit they accrued by avoiding that
15 expenditure.

16 Q. What if they paid more for the -- to
17 come into compliance than they would have paid had
18 they been in compliance in the first place? In
19 other words, it cost them more in 1996 to be in
20 compliance than it would have been in 1993?

21 A. Then it's just a poor business
22 decision as far as I can tell.

23 Q. So they don't get credit for that?

24 A. Not for poor business decisions that

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1 were avoidable. If they would have complied on
2 time, they wouldn't have had these expenditures.

3 Q. Okay. And this is different than the
4 overheight issue. I'm still not sure why. Let's
5 see if I can get this straight. Because in the
6 overheight issue there's not an annual cost to that?

7 A. That's really a one-time remediation
8 cost. That could have been spent within, you know,
9 a few months probably back in 1997, I believe.

10 Once the corporation was made
11 aware that in order to come into compliance with
12 their permits that they needed to spend 950,000,
13 that's when they should have spent the money.

14 Q. And when they were told that they
15 needed to come into compliance by getting financial
16 assurance and they did spend the money, they still
17 continued to get penalized under the Styzens method
18 of benefit --

19 A. Because that's a traditional avoided
20 cost similar to utilities or maintenance. If you
21 don't perform maintenance, if you don't spend money
22 on utilities during a certain period of time, you've
23 totally avoided that expenditure and you can't go
24 back if time and make it up because that time period

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1 no longer exists. That's the concept.

2 Q. When you used the \$950,000 figure it
3 related to 475,000 cubic yards of material that
4 needed to be moved, right?

5 A. That's what's contained in the Andrews
6 Environmental Engineering document.

7 Q. That's what you used, right?

8 A. The figure in the Andrews
9 Environmental Engineering document, I used that
10 figure, 400 --

11 Q. 475,000 cubic yards?

12 A. Related to the \$950,000 cost of
13 removal.

14 Q. If that number, the 475,000 cubic
15 yards was less than that that needed to be moved,
16 that would affect your calculation, correct?

17 A. Yes.

18 Q. Were you aware that as recent as
19 2000 -- the Andrews figure was 1997, correct?

20 A. Yes.

21 Q. Were you aware that as recently as
22 2000 the government's hired surveying crew estimated
23 a different amount of cubic yards over the
24 overheight issue?

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1 A. No.

2 Q. I'm going to hand you what's been
3 marked as Defendant's Exhibit No. 11. This is a
4 report to the government, to the AG's office in this
5 case by Rapier Surveying Company. I direct your
6 attention to the second page, item number three
7 under volumes not assuming placement of a 1.5 foot
8 cap, it's total volume of material above permitted
9 capacity, 287,321. Again, under Item 3, assuming
10 the cap is 288,198, if you had used that figure
11 instead of the \$450,000 figure, it would have
12 reduced your penalty calculation proportionately,
13 correct?

14 A. If I determined that the figure was
15 appropriate and accurate, yes, it would have reduced
16 it.

17 Q. Well, you figured that Andrews is in
18 1997 with no verification whatsoever. You didn't do
19 anything to verify that number, right? You just
20 read the number and said it must be true because
21 Andrews said it?

22 A. No, that's not accurate.

23 Q. What did you do to verify it?

24 A. I was under the impression that this

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1 document from Andrews Environmental Engineering was
2 a document that was provided to Community
3 Landfill/Pruim and that they did review that
4 document and sent that to the Attorney General or
5 the Illinois EPA that it was filtered through the
6 corporation.

7 Q. Where did you get that information?

8 A. That was what I believed.

9 Q. Based on?

10 A. That the corporation -- that this
11 Andrews consulting report was a document that was
12 reviewed by the corporation.

13 Q. Was your belief based on anything but
14 your rank speculation?

15 A. That was my understanding -- and I'd
16 be happy to be corrected -- that the corporation
17 never saw that report.

18 Q. But you don't know whether they did or
19 not?

20 A. That was my understanding.

21 Q. But you're just guessing, right, yes
22 or no?

23 MR. GRANT: Let me just interrupt. I
24 sort of lost track about what he's guessing

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1 about.

2 MR. LAROSE: He's guessing about
3 whether or not the Andrews figure was
4 filtered through the corporation, approved by
5 them and then submitted to the IEPA.

6 BY THE WITNESS:

7 A. That was my understanding. I don't
8 consider it a guess. But that was what I was led to
9 believe was where the document came from.

10 BY MR. LAROSE:

11 Q. Okay. Who led you to believe that?

12 A. That was what I believed Chris Grant
13 was indicating to me, that that document was
14 obtained from the corporation. But you're right,
15 there could be a chance that that's not accurate.

16 Q. Other than Chris Grant leading you to
17 believe that, do you have any other evidence that
18 the Andrews document was submitted to and approved
19 by the corporation prior to its submittal to the
20 IEPA?

21 A. No.

22 Q. So, basically, without doing any
23 calculations or verifications on your own, you took
24 the Andrews figure at 950,000 based on 475,000 cubic

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1 yards at face value?

2 A. I made the assumption that Andrews
3 Environmental Engineering was a professional
4 company.

5 Q. Okay. And why then wouldn't you make
6 the assumption that Rapier Surveying, Inc., who was
7 hired by your client or your employer, was the same
8 type of reputable company that report accurate
9 information?

10 A. Because as an internal auditor when I
11 get information of two conflicting amounts I have to
12 basically reconcile the conflict between the two
13 amounts.

14 So if I could go from a
15 reconciliation from the 475,000 yards down to the
16 lower amount of yards that's presented by this other
17 expert company, if I can do some kind of
18 reconciliation as to why that reduction occurred and
19 have documentation to support that, then that's how
20 you go about trying to verify accuracy of the
21 information.

22 I made the assumption, again, that
23 Andrews Engineering had an accurate figure in there
24 because I believed it was passed through the

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1 corporation.

2 Q. We already talked about that. I won't
3 belabor that point. The volume computations set
4 forth in Defendant's Exhibit 11, Chris Grant or
5 nobody from the Agency ever showed you that, did
6 they?

7 A. What was the document?

8 Q. Exhibit 11, the Rapier survey that
9 has --

10 A. I've never seen that before, correct.

11 Q. Okay. And you don't know what the
12 difference is between Andrews 1997 estimate of
13 475,000 cubic yards and Rapier's 2000 estimate of
14 288,000 cubic yards; you don't know what makes up
15 that difference?

16 A. Not at this point.

17 Q. Okay. And could it be that they were
18 both accurate? Could it be that in 1997 the
19 estimate of 475,000 cubic yards was accurate and
20 because of things that occurred like moving the
21 waste across the street the 288,000 three years
22 later could be accurate too?

23 A. I do not have sufficient information
24 to answer that question.

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1 Q. If the Rapier document is accurate at
2 288,000 cubic yards, then as of at least
3 August 30th, 2000, it would have been inappropriate
4 for you to apply your interest rate to the entire
5 \$950,000, correct? It's really a yes or no
6 question.

7 A. Yes, with the assumption that I was
8 able to verify why there was a difference between
9 the amounts.

10 Q. But you didn't try and verify anything
11 about the Andrews document. You just assumed that
12 it was accurate and your assumption was based on
13 Mr. Grant telling you that the corporation looked at
14 it before it got submitted to the EPA, right?

15 A. That's correct, on that figure.

16 Q. You didn't do anything to verify my
17 client's engineer's numbers, but you used them to
18 calculate interest not only until today but until
19 tomorrow and maybe until 20 years from now if we
20 still haven't paid, right? Interest is still going
21 to accrue under your analysis, correct?

22 A. If what?

23 Q. If we don't pay.

24 A. No.

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1 Q. If we don't --

2 A. Interest is going to accrue as long as
3 the corporation continues to avoid costs. Once the
4 costs are no longer avoided, then my analysis stops.

5 Q. So the point is you did nothing to
6 verify Andrews and you somehow need to do something
7 to verify the numbers or reconcile the numbers from
8 the State's own surveyor to ensure that your numbers
9 didn't need to be reduced?

10 A. Well, I mean, as an auditor I can only
11 use the best available information at the time. At
12 the time, the information contained in the Andrews
13 document was the best information I had.

14 But as an auditor, if I get better
15 information, then I'm required to use the better
16 information.

17 Q. In all due respect, sir, this wasn't
18 an audit, was it?

19 A. This is financial --

20 Q. It's a simple question, yes or no, was
21 this an audit --

22 A. Yes, it is.

23 Q. -- that you performed?

24 A. I'm an auditor.

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1 Q. I'm a lawyer. I also ride a bicycle.
2 That's not lawyering. Was this a certified audit?

3 MR. GRANT: I think we're getting to
4 the point where Mr. LaRose is intentionally
5 harassing the witness and I don't think it's
6 deserved. If he's got legitimate questions,
7 then certainly. But I don't think he needs
8 to badger the witness.

9 HEARING OFFICER HALLORAN: I agree. I
10 sustain the objection.

11 MR. LAROSE: You're right.

12 HEARING OFFICER HALLORAN: Mr. LaRose,
13 I sustained Mr. Grant's objection.

14 MR. LAROSE: You're right.

15 THE WITNESS: I can answer that if you
16 want me to.

17 MR. LAROSE: I apologize. It's really
18 a simple --

19 MR. GRANT: Make sure you understand
20 the question. That's fine.

21 BY THE WITNESS:

22 A. You're not understanding what internal
23 auditing is. Internal auditing is a management
24 consulting and attestation function, it's not just

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1 traditional auditing projects.

2 We are able to provide management
3 with consulting services and to attest to a variety
4 of special requests for analysis of financial type
5 of situations.

6 What you're referring to is what
7 we normally talk about external auditors, outside
8 auditors, they do more traditional audits.

9 But internal auditors -- part of
10 the definition of internal auditor is to provide
11 consulting services to management. That's what I'm
12 doing here. So from that perspective, an internal
13 audit is the key to what you're saying.

14 BY MR. LAROSE:

15 Q. Okay. If you were to have -- I mean,
16 I don't want to quibble with you about
17 internal/external. Really what you did was math,
18 right?

19 A. No.

20 Q. Let's break it down. You took numbers
21 that were given to you, right, \$950,000, 44,526 and
22 47,871, you took those numbers at face value, you
23 did nothing to recalculate them, correct?

24 A. There was the assumption that those

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1 numbers were accurate.

2 Q. You did nothing to recalculate them,
3 correct?

4 A. Correct.

5 Q. You then applied to them a marginal
6 tax rate to show some reduction of each one of those
7 three numbers, correct?

8 A. Correct.

9 Q. That's math, right?

10 A. That's financial analysis.

11 Q. Okay. It's X times Y. I call it
12 math.

13 A. I call it economic benefit analysis.

14 Q. Okay. And then you took that number
15 and every year applied a bank prime interest rate to
16 it, took the number, times a percentage, came up
17 with that amount, added that amount to the next
18 year, all the way to 2008?

19 A. Yes, economic benefit includes
20 mathematical calculations.

21 Q. But that's all you did. What I just
22 described was your entire economic benefit analysis,
23 wasn't it, and then adding the three together to
24 come up with \$1.4 million?

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1 A. No. That's an oversimplification.

2 Q. What else did you do?

3 A. I performed an economic benefit
4 estimate.

5 Q. I want to know what else you did other
6 than the five tasks that I just described, the five
7 simple mathematic calculations?

8 A. From review of the documentation and
9 some communication with the attorneys, I was
10 provided information that this particular
11 corporation violated some environmental related
12 rules and regulations and permit requirements, that
13 they avoided making expenditures to come into
14 compliance with those expenditures. Yes, at some
15 point I was given the avoided amount.

16 Q. Everything you just said --

17 A. Yes.

18 Q. -- is part one, is that you took these
19 figures at face value, right? Everything you just
20 said is they gave me figures and then I used them?

21 A. No, that's not true. I mean, I'm
22 relying on the professional judgment of the Attorney
23 General attorneys, the Illinois EPA attorneys and
24 then their communication with the experts within the

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1 Agency.

2 Q. You did absolutely nothing
3 mathematically or audit-wise to confirm that those
4 numbers are accurate other than to rely on the
5 professional judgment of the lawyers in this case?

6 A. Only from the perspective that that
7 was the best information available to me at the
8 time.

9 But, again, I have to say that as
10 an internal auditor if I'm provided with better
11 documentation, better numbers, more accurate
12 information, then I'm going to have to make some
13 adjustments to what I did.

14 Q. As an internal auditor did you ask
15 them whether or not there were any other estimates
16 of the overheight on Parcel B? We know there is
17 one, did you ask them about that?

18 A. No.

19 Q. Okay. As an internal auditor did you
20 ask Blake Harris whether or not the application of a
21 2 percent premium to the bond that they ultimately
22 obtained could have been lower than that?

23 A. No.

24 MS. VAN WIE: Objection.

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1 BY MR. LAROSE:

2 Q. If, in fact, the --

3 HEARING OFFICER HALLORAN: Excuse me,
4 Ms. Van Wie?

5 MS. VAN WIE: That's beyond the scope
6 of cross. We didn't even talk about the
7 2 percent bond issue on direct.

8 And I don't know why this witness
9 would have any knowledge about what's on the
10 face of the bonds whatsoever, so I object to
11 beyond the scope of direct.

12 MR. LAROSE: He said that he
13 calculated this amount. Just like if
14 overheight was less than \$950,000, his
15 calculation or benefit analysis would be
16 affected. If the interest rate applied was
17 different, it would be affected as well.

18 MS. VAN WIE: And interest rate he's
19 using is the prime rate. It has nothing to
20 do with the face of the bond.

21 MR. LAROSE: That's not what I'm
22 talking about. I'm talking about the
23 interest rate on the face of the bonds. In
24 other words, his reliance -- it's akin to his

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1 reliance of the 950,000.

2 If the 950,000 figure isn't right
3 because there's not 475,000 cubic yards, that
4 affects his calculation.

5 If Blake Harris' number of 2
6 percent where he comes up with the 44 or
7 47 --

8 HEARING OFFICER HALLORAN: You know
9 what, I do find it somewhat relevant and just
10 within scope. And if Mr. Styzens can answer,
11 he may do so.

12 BY MR. LAROSE:

13 Q. Mr. Styzens, looking at Exhibit 43,
14 you relied on Blake Harris' number of 47,871.33 and
15 he comes up with that number by applying a 2 percent
16 premium rate to his calculation of what they saved?

17 A. Yes. And I think I meant to say it if
18 I didn't say it up front that I made the assumption
19 that the financial information contained in the
20 Attorney General's letter was reasonable and
21 accurate. I did rely on that information.

22 If I'm provided with better
23 numbers or more accurate figures, I would be happy
24 to use those in my analysis.

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1 Q. Did you ask Mr. Harris whether or
2 not -- well, let's back up for a second.

3 You relied on three documents.
4 You relied on something written by Christine Roque
5 regarding the failure to file the SIGMOD in time
6 where she comes up with a figure of 44,526. You
7 used that as the baseline of part of your report,
8 correct?

9 A. Correct.

10 Q. Did you even speak to Ms. Roque about
11 it? It's really a yes or no. Did you talk to
12 Ms. Roque about it or not?

13 A. No.

14 Q. Same thing with respect to Blake
15 Harris, when you looked at his numbers with respect
16 to the financial assurance where he calculated
17 47,871.33, did you talk to him about it?

18 A. No.

19 Q. And same question with respect to the
20 Andrews document, did you talk to anybody at Andrews
21 with respect to their estimate of 475,000 cubic
22 yards at \$2 a yard costing \$950,000?

23 A. No.

24 Q. Okay. Did you -- so, obviously, you

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1 didn't ask Mr. Harris whether or not he was aware of
2 sources of information that would have offered a
3 better premium rate for the bonds, for example,
4 1 percent or 1.25?

5 A. I was told by Chris Grant that the
6 information and numbers in the memo supplied to me
7 from the IEPA experts were reasonable and accurate.

8 Q. Okay.

9 A. And I used that assumption that Chris
10 Grant and the Attorney General's office worked with
11 the Agency experts to come up with the best
12 available information at the time. Again, if I get
13 better information, more accurate information, I'd
14 be happy to use that.

15 Q. Did you do any independent
16 investigation or surveying to find out if there was
17 a better premium bond rate available at the time
18 that they came into compliance --

19 A. No.

20 Q. -- in 1996?

21 What about now whether -- any time
22 between then whether there was a better bond rate
23 available?

24 A. Back in the avoided period?

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1 Q. Any time between the avoided period
2 and now.

3 A. I was just dealing with the avoided
4 period back in '97, '96.

5 Q. No matter when, with respect to this
6 project, you didn't do any independent investigation
7 of bond rates to determine whether --

8 A. Correct. No, I did not.

9 Q. Okay. So if Blake Harris' 2 percent
10 could have been -- the bonds could have been
11 purchased at 1.25 percent, for example, that would
12 have affected his number which would, in turn, have
13 affected your number?

14 A. Back in the 1990s you're talking
15 about?

16 Q. Back in whenever.

17 A. Well, I'm only focusing on the short
18 period of time that the financial assurance was
19 avoided.

20 Q. I understand.

21 A. What the bond rate would have been
22 back in 1995-'6, whenever that was.

23 Q. Except Mr. Harris' calculation was
24 performed in 2001. In 2001 he applied a 2 percent

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1 bond premium.

2 My question to you is if that
3 2 percent could have been something less than that,
4 that would have affected his number and would have,
5 in turn, affected your number?

6 A. Yes.

7 Q. And it affected it downward, his
8 47,000 would have been less and your 72,000 would
9 have been less?

10 A. Yes.

11 Q. I'm glad counsel corrected you. And I
12 know you didn't mean this, but when you say
13 Community/Pruim Corporation, you understand that
14 that's not the name of the company or do you
15 understand that there are a corporate defendant and
16 individual defendants in this case?

17 A. I haven't gotten that deeply into that
18 aspect of the case.

19 Q. Okay. When you say Community/Pruim
20 Corporation --

21 A. I meant to say Community
22 Landfill/Pruim is what I meant to say.

23 Q. Okay. When you say Community
24 Landfill/Pruim Corporation, do you have any idea

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1 whether that's the name of the corporation that
2 actually operated the landfill?

3 A. It's my understanding that's the
4 parties in this particular case.

5 Q. Okay. So you were referring to the
6 parties, whether they be corporate or individuals?

7 A. Yes.

8 Q. Okay. You don't have any evidence, do
9 you, sir, that the corporate shareholders had any
10 direct or personal involvement in the allegations of
11 violation that you calculated an economic benefit
12 for, do you?

13 A. What was the question?

14 Q. You don't have any evidence regarding
15 any direct or personal involvement by the
16 shareholders of the corporation in the allegations
17 that you've calculated economic benefit for?

18 A. That particular line of questioning
19 has nothing to do with my economic benefit analysis.

20 Q. I guess the answer would be no then?

21 A. I don't understand your question
22 because I have a very limited focus here. I'm doing
23 economic benefit analysis on avoided expenditures.

24 If you start to bring in some

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1 complexities of how the corporation is owned or
2 operated, I don't address those issues.

3 Q. Okay.

4 A. It's outside the scope of my project,
5 so I have no information or comment on that area.

6 Q. I think that might be good enough.
7 Let me just make sure I get it clear. You didn't
8 render any opinion that any of the personal -- that
9 any shareholders in this case were personally
10 responsible for paying back this economic benefit?

11 A. I was not involved in those issues.

12 Q. Okay. And did not render any opinion
13 and have not?

14 A. Correct.

15 Q. I'm a little bit confused about the
16 prime lending rate. I think you said -- and I wrote
17 it down -- I'm assuming that all of the capital that
18 the corporation raised came from bank lending; do
19 you remember saying that?

20 A. Yes.

21 Q. I'm not getting it. How does that
22 factor into your opinion? If they borrowed the
23 capital that you're saying that they saved,
24 shouldn't you apply the prime lending rate as a

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1 deduction to the economic benefit, not as an
2 increase to it?

3 A. No.

4 Q. Why?

5 A. Because the concept there is basically
6 a concept of capital management. Corporations, in
7 order to operate, have to raise capital. In these
8 situations, it's long-term capital when you're
9 investing in -- over a long -- many years.

10 Companies usually hire a capital
11 manager that decides what's the best way for the
12 company to go about raising capital. They can issue
13 bonds, they can borrow from lending institutions,
14 they can issue stock. There are several different
15 ways that a company can raise capital to invest in
16 their corporation.

17 The concept -- the reason I -- you
18 know, since I don't have -- I would prefer to use a
19 company specific weighted average cost of capital.
20 In other words, I would have to examine along with
21 Dr. John Desari the financial statements to develop
22 a company specific weighted average cost of capital.
23 I'd be happy to do that.

24 But in lieu of that I use as a

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1 benchmark my best conservative estimate of what the
2 organization used to raise capital is the prime
3 lending rate, which is the best rate that a
4 corporation could get from a lending institution.

5 Again, if the corporation would
6 provide me with additional information on how they
7 raised capital during this period of time back in
8 the 1997 forward, I'd be happy to use that
9 information to make adjustments in my rates used to
10 rate capital.

11 But the assumption being that for
12 a company to operate, they have to invest their
13 money at least at the same -- earn a rate of return
14 on investment of their money at the same rate as the
15 cost of raising capital, otherwise, they would go
16 bankrupt and it wouldn't be a going concern.

17 If you borrow money at 10 percent,
18 invest it in your company and only earn 5 percent,
19 eventually you're going to go out of business. So
20 that's the financial -- that's the financial concept
21 that whatever the cost of raising capital is for an
22 organization, that would be a reasonable return on
23 their investment to use as an estimate of what the
24 opportunity was for that company to invest that

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1 money in their own company versus environmental
2 compliance. It's kind of a business going concern
3 type of capital concept.

4 Q. Again, that's why I'm not getting it.
5 If they borrowed a hundred grand at 5 percent and
6 they made 5 percent, at the end of the day what do
7 they have left?

8 A. Well, they're a going concern.
9 They're not -- they can continue to operate as a
10 business. If they -- again, if they raise capital
11 at 10 percent and only earn 3 percent, they're
12 eventually going to go bankrupt because the cost of
13 doing business is more than what they're investing
14 in their own company.

15 Q. How about trying my question? If they
16 borrow 100,000 at 5 percent and they're -- they have
17 to pay that 5 percent to the bank and they have a
18 net income of 5 percent -- or a net capital gain of
19 5 percent on \$100,000, what do they got left at the
20 end of the year? They still got a hundred grand,
21 right, they don't have a hundred-and-five grand?

22 A. If their rate of return on investing
23 of their capital is 5 percent and they're raising
24 capital at 5 percent, then they're basically at a

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1 break-even point, they're a marginal company that
2 would have a going concern issue there, but it would
3 still be, you know, operating at a break-even point.

4 Q. Did you look at any of their tax
5 returns?

6 A. No, I don't believe I studied tax
7 returns.

8 Q. Did you ask for them?

9 A. No.

10 Q. Did you know that the government has
11 them going back all the way to 1992?

12 A. No, I don't believe I had that
13 information.

14 Q. Did they tell you that?

15 A. I don't recall that they did.

16 Q. Would the tax returns tell you what
17 their profit margin would have been in any one of
18 the years in question?

19 A. I wasn't concerned with their profit
20 margin.

21 Q. Well, you were concerned about trying
22 to establish a fair interest rate to apply to these
23 base figures so that basically over the course of
24 the next ten years you could double them, right? I

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1 mean, that's what happened, the interest doubled the
2 penalty. We know that, right? We've already
3 established that the interest doubled the penalty?

4 A. The --

5 Q. The interest that you applied in this
6 case over the course of the last ten years doubled
7 the base economic benefit?

8 A. No, that's not how I look at it. The
9 economic benefit analysis associated with this case,
10 it always examines what expenditures were delayed or
11 avoided and a period of time that the expenditures
12 were delayed and avoided and applies a cost of
13 capital rate as an assumption as what the
14 opportunity was that the company took to invest in
15 their company rather than investing in pollution
16 control like they should have.

17 Q. Okay. So then this is where we're
18 getting confused. And I understand that's the
19 Styzens theory.

20 A. No, that's not. That's an inaccurate
21 statement. That's a basic financial principle
22 that's taught in college.

23 Q. You applied in 1997 a prime lending
24 rate of 8 1/2 percent, right?

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1 A. As an estimate of the company's cost
2 of capital.

3 Q. Okay. If the company ended up
4 borrowing the -- let's look at the first one, the
5 overheight. If in 1998 the company borrowed 672,819
6 at 8 1/2 percent, how much would they have to make
7 in order for that \$672,819 to have increased by
8 \$57,000?

9 Wouldn't they have to make
10 17 percent on their money because they had to pay
11 back the 8 1/2 percent? If they only made 8 1/2
12 percent, then they would have broken even?

13 MR. GRANT: I'm going to object here.
14 I'm really losing track of the relevance of
15 this. It's certainly -- you know, I
16 understand there's a broad scope of cross
17 examination of an expert, but this is --

18 HEARING OFFICER HALLORAN: Mr. LaRose?

19 MR. LAROSE: I'm only a couple minutes
20 away. I'm really not trying to confuse the
21 issue. I'm trying to understand it.

22 MR. GRANT: He's asking for him to
23 state hypothetical figures and estimate
24 something and --

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1 MR. LAROSE: No, no, these aren't
2 hypothetical figures at all. They're
3 actually figures that he applied to this.

4 THE WITNESS: I think there's some
5 confusion between -- you're talking about
6 profitability. I'm talking about capital
7 management, which is a different concept.

8 HEARING OFFICER HALLORAN: If you'll
9 allow me, it is rather confusing and I think,
10 Mr. LaRose, we have been over this a few
11 times. Although, with all due respect, the
12 answers from the witness weren't yes or no or
13 perfect clarity and maybe sometimes that was
14 reasonable. But, Mr. LaRose, do you plan to
15 wrap this up?

16 MR. LAROSE: Yes, I do. If you want
17 to take a break, we can do that, too. I've
18 got probably --

19 HEARING OFFICER HALLORAN: Anybody
20 want to take a ten-minute break?

21 MR. GRANT: Fine with me.

22 MR. LAROSE: That would be fine.

23 HEARING OFFICER HALLORAN: Okay.

24 Thank you.

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1 (Whereupon, after a short
2 break was had, the
3 following proceedings
4 were held accordingly.)

5 HEARING OFFICER HALLORAN: Back on the
6 record.

7 MR. LAROSE: I'm going to try and wrap
8 up this interest rate thing. And, trust me,
9 maybe I'm asking smart questions, maybe I'm
10 not, but I really don't understand it.

11 BY MR. LAROSE:

12 Q. Is borrowing money from a bank raising
13 capital?

14 A. It's one method of raising capital.
15 You can issue bonds, you can issue stock or you can
16 borrow from lending institutions; those are the
17 three primary ways that corporations raise long-term
18 capital to invest in their operations.

19 Q. Okay. And the loan from the bank is
20 classified as capital or is it classified as a loan
21 payable?

22 A. It's an understanding of what the
23 purpose of borrowing the money is. If you're
24 investing in the long-term operation of -- not the

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1 day-to-day working capital, but the long-term
2 operation of your company, you know, the millions
3 that you have to raise in order to build the
4 landfill and, you know, put in the monitoring
5 systems whether it's gas, leachate, you know,
6 groundwater, I mean, it's the infrastructure and the
7 long-term operation of the corporation's activities.

8 Q. You're not saying that in -- if you
9 look, again, at your report, let's use the portion
10 on the overheight, that grid. You're not saying
11 that in 1998, for example, they borrowed \$57,000?

12 A. No.

13 Q. Or in any of those other years they
14 borrowed those amounts of money?

15 A. The whole concept deals with the
16 concept of opportunity cost. What I'm saying there
17 is that the company had the opportunity to use the
18 money on investing in the corporation rather than
19 investing in pollution control or environmental
20 compliance.

21 Q. Does that assume that there's money to
22 invest? You do this cost -- or this economic
23 benefit analysis, but aren't you assuming that by
24 saving, for example, \$950,000, that they actually

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1 had \$950,000 to invest?

2 A. No. What you're -- when you look at
3 the financial playing field that Community Landfill
4 was operating on, what you do in economic benefit
5 analysis is you're trying to level the playing field
6 to their competitors. What I'm saying is that a
7 compliant competitor or a competitor that found
8 themselves in this situation would have spent the
9 950,000 or whatever was necessary to come into
10 compliance with their permit. They would have spent
11 that money back in 1997 when they found out they
12 were out of compliance with their permit.

13 But by Community Landfill not
14 spending that money on environmental compliance, it
15 gave the opportunity -- that's a key financial
16 principle, opportunity costs. It gave Community
17 Landfill an opportunity to use that money for other
18 types of investments, whether it's in their own
19 corporation, buying additional equipment, raising
20 additional staff, whatever. But the compliant
21 company didn't have that money because they spent it
22 on environmental compliance.

23 Q. Okay. But doesn't your -- and I think
24 this is a yes or no question. Doesn't your analysis

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1 assume that the noncompliant company actually has
2 the money? In order to take advantage of an
3 opportunity, don't they have to have the dough?

4 A. No, because you keep on bringing it to
5 the -- back to your corporation, Community Landfill.
6 What you're comparing them against is their
7 compliant competitors.

8 The corporation that didn't spend
9 the 950,000 would have that additional -- those
10 additional funds available to them versus the
11 compliant company.

12 Now whether the company goes out
13 and borrows that 950,000 or however they want to
14 raise the 950,000 is a different issue. But they
15 have the opportunity to borrow the 950,000 and
16 invest it in their company whereas the compliant
17 company borrows the 950,000 and pays for
18 environmental compliance. So there's the
19 difference.

20 You have to compare the
21 noncompliant entity with what a compliant entity
22 would do or should do.

23 Q. Your application of the interest rate
24 to my client's economic benefit analysis in this

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1 case bears no relation to what actually occurred in
2 my client's company, correct?

3 A. No, that's not correct.

4 Q. Okay. What if my client didn't move
5 any of the overweight waste, but had zero capital,
6 operated at a loss every year and borrowed no money,
7 do they still have an opportunity to make
8 fifty-seven grand a year by saving \$950,000?

9 A. Again, your competitor that's in the
10 exact same situation would have had to borrow
11 950,000 and spend it on --

12 Q. Excuse me, you're not listening.

13 A. Okay.

14 Q. We're not talking about the
15 competitor. I'm asking you whether your analysis
16 has nothing to do with the reality of my client's
17 financial situation. You're comparing what might
18 occur or what should occur to other companies, not
19 what actually occurred with CLC?

20 A. No, that's not true.

21 Q. Okay. Do you know that CLC borrowed
22 \$672,819 in 1998?

23 A. I know that they had the opportunity
24 to use that much capital to invest in other

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1 investments rather than environmental compliance.

2 Q. And that's based on -- we know it's
3 not based on your review of their financial records
4 because you haven't looked at any of them or their
5 tax returns. What's that based on?

6 A. It's based on a comparison to a
7 competitor that was operating in compliance with
8 their permit and in compliance with environmental
9 regulations.

10 There's a difference between how
11 those two entities have the opportunity to invest
12 whatever money they choose to borrow or issue bonds
13 or issue stock.

14 You're right, I mean, I'm not
15 looking at the day-to-day financial operations of
16 Community Landfill, but I am comparing the financial
17 advantage that Community Landfill has over their
18 compliant competitors.

19 Q. Under your analysis -- under your
20 analysis, if your comparison of Community Landfill
21 to their financial competitors is correct, there
22 ought to be a pot of money sitting around of
23 \$1,339,793 just on the overheight issue? That money
24 ought to be somewhere?

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1 A. If you have two landfills, the
2 compliant one would have -- could have gone out and
3 borrowed \$950,000 and spent it on environmental
4 compliance. But the noncompliant company could go
5 out and borrow 950,000 and spent -- and invest it in
6 their own company.

7 So there's the opportunity,
8 there's the financial advantage and that's what I'm
9 trying to remove from the noncompliant company.

10 Q. Under your analysis, the noncompliant
11 company ought to have a pool of money of over \$1.3
12 million that the compliant company does not have?

13 A. Correct.

14 Q. Okay. But you don't know whether
15 Community Landfill Company has two cents in its pot
16 of money or what they did with any of the money that
17 they might have saved by not being compliant?

18 A. The only thing I know is that the
19 noncompliant company Community Landfill had a
20 financial advantage, a financial opportunity that
21 wasn't available to a compliant company and that's
22 what I'm trying to remove from this company because
23 unless we level that financial playing field,
24 there's no incentive for the noncompliant company to

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1 borrow that money and come into compliance.

2 Q. If you were to use a lower interest
3 rate than the bank prime rate, the figures that you
4 used would have been lower?

5 A. Yes.

6 Q. Of course, if you used the higher
7 interest, your figures would have been higher?

8 A. Yes.

9 Q. So are you saying is it kind of like a
10 rate of return -- let's look at 1998 where you say
11 that the prime lending rate was 8 1/2 percent. Are
12 you saying that that's a good rate of return if I
13 was to take my money and invest it, that I should be
14 happy with 8 1/2 percent?

15 A. I'm saying that during that period a
16 company that has the opportunity to invest that
17 money, that during that period the value of money is
18 8 1/2 percent.

19 Now I have a footnote in my report
20 that says if -- you know, if the company would
21 provide the documentation necessary to develop a
22 weighted average cost of capital, the bond rates,
23 the short-term, long-term interest rates, you know,
24 we could -- that's what we did in the Pan Handle

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1 Pipeline, we developed a company specific weighted
2 average cost of capital. I have at that footnote in
3 my report that says I'm using the prime lending rate
4 just as a conservative benchmark of the value of
5 money overtime.

6 Q. I got that. Back to the point that
7 you just made, though, you said if the company would
8 provide. We provided all the tax returns, you
9 didn't even look at those.

10 A. I didn't have sufficient -- the tax
11 returns will not give me sufficient information to
12 develop a cost of -- weighted average cost of
13 capital.

14 Q. Okay. But the tax returns would have
15 given you some information about how much money they
16 made, how much money they spent, what their net
17 profit was, what their gross margin was.

18 A. I'm not looking at that.

19 Q. Okay. Did you make any requests of
20 the Attorney General's office, of me or of my client
21 to supply you with any financial documentation?

22 A. No. The only thing I pointed out was
23 that I don't have sufficient financial information
24 to develop a company specific weighted average cost

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1 of capital.

2 So in lieu of that I'm using the
3 prime lending rate as a benchmark -- conservative
4 benchmark rate as the cost of capital assuming that
5 this company would raise capital 100 percent by
6 borrowing from a lending institution, whereas in
7 reality if we had the information -- additional
8 information, we may find that they used some bonding
9 or issued some stock.

10 But irregardless, I mean, the rate
11 we used is very reasonable and conservative. And
12 normally a company specific WACC would be either a
13 little bit higher or just slightly lower so the end
14 result would be not -- usually not a material
15 difference in the estimate of economic benefit.

16 Q. What information would you need to do
17 that -- what did you call it?

18 A. Weighted average cost of capital?

19 Q. Yes. Do tax returns have anything to
20 do with that?

21 A. They have some. They have some.

22 Q. So they do?

23 A. They have some.

24 Q. Okay. Like how much they make?

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1 A. No.

2 Q. How much they spent?

3 A. You're just strictly looking at the
4 interest rates that they're using to issue -- you
5 know, receive bonds, receive loans, issue stock.
6 You're just looking at interest rates. You're not
7 looking at profits.

8 Q. If they -- if on their balance sheet
9 because of whatever, maybe their credit rating or
10 whatever, they could only borrow money at
11 20 percent, would you apply that rate to your
12 interest calculation?

13 A. Unless I had complete information on
14 what their weighted average cost of capital was, you
15 know, I wouldn't -- I would basically use my
16 benchmark until such time I was given sufficient
17 financial information about all their long-term,
18 short-term borrowing rates, whether they obtained
19 any corporate bonds, whether they issued any kind of
20 preferred stock.

21 You know, I mean, I really would
22 have to have a complete set of information on stock
23 issuance, bond issuance, borrowing, both short and
24 long-term. And all that information is used to

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1 develop a weighted average cost of capital over
2 time.

3 But, again, usually it's not that
4 far from the prime lending rate, maybe a percent or
5 so lower or a percent or so higher. But the
6 material impact is usually not -- you know, as far
7 as the estimate of economic benefit, is usually not
8 that far off from what I calculate with the prime
9 lending rate.

10 Q. And you would expect in your
11 calculation of economic benefit for the the company
12 to pay the government \$1,486,079 regardless of
13 whether they borrowed that money, saved that money
14 or regardless of whether how much money they have on
15 hand?

16 A. Yes.

17 Q. If they're broke, you still want them
18 to pay \$1,486,079?

19 A. Whatever their ability is, that would
20 have to be assessed in a separate issue.

21 Q. How is that assessed? Is that part of
22 the cost benefit analysis?

23 MR. GRANT: I think we're getting a
24 little bit over the area. Now we're talking

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1 about penalty, which is different from
2 economic value. Are you talking about BEN?

3 HEARING OFFICER HALLORAN: Mr. LaRose?

4 MR. LAROSE: I am. I mean, I want to
5 know whether or not their ability to pay has
6 any effect on his calculation. I was hearing
7 no until now when he said, I don't know, that
8 might be another issue. I'd like, at least,
9 to explore that.

10 MR. GRANT: Okay. The reason I
11 objected was because you said penalty.
12 That's different from his estimate. I mean,
13 who knows what the Board is going to do. I
14 understand what you mean --

15 MR. LAROSE: I got it.

16 BY MR. LAROSE:

17 Q. Your focus was the economic benefit
18 portion of the penalty, correct?

19 A. The economic benefit component of the
20 penalty.

21 Q. Okay. You are recommending as your
22 personal and professional -- excuse me, as your
23 professional opinion that the Board consider in its
24 penalty calculation the economic benefit of

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1 \$1,486,079 and that recommendation is irrespective
2 of the company's ability to pay?

3 A. I didn't -- yeah. I did not analyze
4 anything related to that.

5 Q. Nor were you asked to?

6 A. I was not asked to.

7 MR. LAROSE: Give me one minute.

8 (Brief pause.)

9 MR. LAROSE: That's all I have.

10 HEARING OFFICER HALLORAN: Your
11 witness, Mr. Grant.

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

14 REDIRECT EXAMINATION

15 By Mr. Grant

16 Q. Mr. Styzens, take a look at
17 Defendant's Exhibit 43. Is that the letter where
18 you were asked to come up with an economic benefit
19 analysis?

20 A. Yes.

21 Q. Okay. And you were provided with
22 three numbers and three dates, weren't you, to do
23 the analysis?

24 A. Yes.

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1 Q. And you weren't asked to do an
2 independent investigation of other options or other
3 numbers or the reasonableness of these assumptions,
4 you were just asked to use these numbers and do it;
5 isn't that accurate?

6 A. Yes.

7 Q. Okay. So you did not, in fact, do an
8 independent investigation of the overheight at the
9 landfill, for example?

10 A. No.

11 Q. Or of the estimates that were provided
12 for the saving from doing financial assurance or
13 from a late permit filing or anything like that;
14 isn't that true?

15 A. Yes, that's true. I did not.

16 Q. And since you were provided with those
17 numbers, if those numbers were wrong then chances
18 are your estimate is wrong; isn't that true?

19 A. Yes.

20 Q. Okay. Regarding the alternate survey
21 that -- this is Complainant's Exhibit No. 11, the
22 Michael Rapier -- I mean, Respondent's Exhibit
23 No. 11. You don't know if that survey is accurate
24 or not, do you?

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1 A. Okay.

2 Q. Do you see where it says Respondent's
3 answers to complaint and second set of
4 interrogatories? Now turn back to 13.

5 A. Yes.

6 Q. Do you see that the Respondent's
7 response to interrogatory number eight that shows
8 gross receipts and taxes, that sort of thing?

9 A. Yes.

10 Q. Okay. Now this information was, in
11 fact, provided to you prior to your developing the
12 opinion, wasn't it?

13 A. Correct.

14 Q. And isn't this -- that's what this
15 document is, it's what we produced at your
16 deposition on information that you relied on?

17 A. Yes.

18 Q. So you had this information before
19 developing your opinion?

20 A. Yes.

21 Q. Okay. Do you see -- again, back on
22 Page 13 do you see for 1993, the report, a loss of
23 \$275,000 approximately?

24 A. Yes.

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1 Q. Okay. And for 2000 it also shows a
2 loss of \$635,000?

3 A. Yes.

4 Q. Okay. And just confirm for me that of
5 the eight years reported, that six of the eight
6 showed a loss and it's a loss for Community Landfill
7 Company?

8 A. What's the question?

9 Q. Well, would you agree that of the
10 eight years reported, that in six years they
11 reported a net loss?

12 A. Yes.

13 Q. Okay. Based on your knowledge of BEN
14 and of banking and of finance, do you think that a
15 company that lost money six out of eight years at
16 this rate would be able to even get the prime rate?

17 A. If that's accurate information, no.
18 Usually, the prime rate is only given to
19 corporations that are in the upper few percentile of
20 profitability and a strong financial condition.
21 Based on this type of profit/loss statement, I would
22 doubt that this corporation could get a prime rate
23 from a lending institution.

24 Q. So wasn't the use of the prime rate

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1 conservative, in other words, it came -- would come
2 up with a lower than expected BEN?

3 A. I believe it's very conservative and
4 very reasonable, yes.

5 Q. And when you say conservative, you
6 mean you're sort of giving them a break, correct?

7 A. That's what I believe, yes.

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

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Grant. Mr. LaRose, recross?

11 RECROSS EXAMINATION

12 By Mr. LaRose

13 Q. When I asked you earlier if you looked
14 at any of the financial information in developing
15 your analysis, you said no. Are you saying now that
16 you did use Page 13 of Exhibit 43 in developing your
17 analysis?

18 A. No, I didn't use these numbers. No, I
19 did not use this. I don't need to know the
20 profitability of the corporation in order to develop
21 an economic benefit estimate. That has nothing to
22 do with economic benefit.

23 Q. So even though you had these in the
24 package that was given to you in Exhibit 43, you did

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1 not use them in developing your economic benefit
2 analysis?

3 A. Well, only from the standpoint of
4 getting back to that I determined that the prime
5 lending rate as a benchmark for the cost of capital
6 would be a reasonable rate. That did go through my
7 analysis as far as I doubt -- I would doubt that
8 this corporation could get a prime lending rate from
9 a bank that -- it probably would be higher than the
10 prime, prime plus one let's say.

11 Q. So you're saying then that because
12 they're an unprofitable corporation, that the
13 interest rate that should be applied to escalate the
14 economic benefit to them should be increased?

15 A. I think I'm saying what my previous
16 answer was, that given the potential that this
17 company isn't in the top few percent of
18 profitability, a lending institution may not give a
19 lending rate at the prime, it would probably be
20 higher.

21 Q. You should have then, in your opinion,
22 tagged them with a higher rate of interest to make
23 their economic benefit penalty even higher?

24 A. No.

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1 Q. It should have been lower?

2 A. No. It should be whatever financial
3 information I need to develop a -- the only other
4 figure I would use in my analysis besides the prime
5 lending rate would be an actual company specific
6 weighted average cost of capital. That's the only
7 other rate I would use.

8 The fact that I didn't have
9 sufficient information to develop that, I go to my
10 benchmark rate which is the prime lending rate.

11 Q. Okay. So the information contained
12 for the tax years 1993 to 2000 Page 5, Exhibit 43
13 would not have affected your application of the
14 prime lending rate, correct?

15 A. I needed additional information to
16 develop a company specific weighted average cost of
17 capital.

18 Q. Without additional information, the
19 information on Page 5 -- I'm sorry, it's actually
20 Page 13 of Exhibit 43 for those years would not have
21 affected your application of the prime lending rate
22 to the interest calculation --

23 A. Right.

24 Q. -- for economic benefit?

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1 A. Correct.

2 MR. LAROSE: That's all I have.

3 HEARING OFFICER HALLORAN: Thank you,
4 Mr. LaRose. Mr. Grant?

5 MR. GRANT: (Shaking head.)

6 HEARING OFFICER HALLORAN: Nothing?

7 You may step down, Mr. Styzens. And thank
8 you for keeping your voice up. You get an
9 A-plus. We can off the record for a second.

10 (Brief pause.)

11 HEARING OFFICER HALLORAN: We're back
12 on the record. I think we're going to go
13 through some exhibits.

14 MR. GRANT: We move into evidence
15 Complainant's Exhibits 1A, 2A, 1C, 2B --

16 HEARING OFFICER HALLORAN: Wait.

17 MR. GRANT: I'm sorry.

18 HEARING OFFICER HALLORAN:

19 Complainant's Exhibit 1A?

20 MR. GRANT: 1A, 2A, 1C, 2B, 1E, 1F, 2C
21 and 18.

22 HEARING OFFICER HALLORAN: N, as in
23 Nancy, 18?

24 MR. GRANT: And 18. Exhibit 19, 2B --

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1 MS. VAN WIE: You've already got 2B.

2 MR. GRANT: Well, I don't think we
3 moved it into admission. And then Exhibits
4 8 --

5 HEARING OFFICER HALLORAN: So I've
6 heard Exhibit 19, Exhibit 8?

7 MR. GRANT: Yeah. Actually, it's 7, 8
8 and 9, all three.

9 And Exhibit 24 has already been
10 admitted as a business record. That was John
11 Enger's testimony.

12 MS. CUTLER: That's 26.

13 MR. GRANT: I'm sorry, 26. And then
14 Exhibit 17, it's the expert report.

15 MS. VAN WIE: As well as Exhibits 13L,
16 M, N and O.

17 MS. CUTLER: 13L, M and O?

18 MR. GRANT: M and O.

19 MS. VAN WIE: Now those are not in
20 order, I will just say that right now. Those
21 are not in order as to how they were used.

22 MS. CUTLER: Right.

23 HEARING OFFICER HALLORAN: That's fine
24 for my purposes.

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1 MS. VAN WIE: I didn't know if you
2 needed to have some sort of like, you know,
3 what we were using when.

4 HEARING OFFICER HALLORAN: This will
5 be fine.

6 MS. VAN WIE: Okay.

7 HEARING OFFICER HALLORAN: Thanks.

8 MS. CUTLER: And then we'll move into
9 evidence Respondent's Exhibit 11 and
10 Exhibit 43, Exhibit 45 --

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

13 MS. CUTLER: So that's, for the
14 record, Exhibits 45, 46, 47, 48 and 49.

15 HEARING OFFICER HALLORAN: Is that it?

16 MR. GRANT: Yeah.

17 HEARING OFFICER HALLORAN: Any
18 objections to any of the exhibits either by
19 Complainant or Respondent being offered?

20 (No verbal response.)

21 HEARING OFFICER HALLORAN: Okay. They
22 are also admitted into evidence.

23 MS. CUTLER: Actually, I'm sorry,
24 there are two -- three more. I'm sorry. The

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1 deposition transcripts I'd like to admit into
2 evidence for Blake Harris, No. 33. These are
3 defendant's exhibits.

4 MR. GRANT: Okay. The portions that
5 you asked him about?

6 MS. CUTLER: Yes.

7 MR. GRANT: Well, I guess I think
8 that's fine. Go ahead.

9 MS. CUTLER: Thirty-four, 35 and then
10 37.

11 MR. GRANT: Okay.

12 HEARING OFFICER HALLORAN: 33, 34, 35
13 and 37?

14 MS. CUTLER: Correct.

15 HEARING OFFICER HALLORAN: Okay. No
16 objection?

17 (No verbal response.)

18 HEARING OFFICER HALLORAN: So admitted
19 into evidence. Anything else administrative?

20 MR. GRANT: That's all.

21 HEARING OFFICER HALLORAN: While we're
22 still on the record, I think that's all that
23 we have today. We're going to meet back
24 tomorrow. So if there's no other further

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1 issues or whatever, I think we'll close the
2 hearing now and continue on the record
3 tomorrow, December 3rd at 9:00 a.m. Any
4 questions, statements, issues?

5 (No verbal response.)

6 HEARING OFFICER HALLORAN: All right.
7 Thanks. Have a good drive home.

8 (Which were all the
9 proceedings had in the
10 above-entitled cause
11 on this date.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF WILL)

3

4 I, Tamara Manganiello, CSR, 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 _____
12 TAMARA MANGANIELLO, CSR, RPR
License No. 084-004560

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19 SUBSCRIBED AND SWORN TO
20 before me this ____ day
21 of _____, A.D., 2008.

22 _____
Notary Public

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