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ILLINOIS POLLUTION CONTROL BOARD
May 9, 2007

CITY OF CHICAGO DEPARTMENT)	
OF ENVIRONMENT,)	
)	
Complainant,)	
)	
vs.)	AC 06-40
)	(CDOE No. 06-03-AC)
JOSE R. GONZALEZ,)	(Administrative
)	Citation)
Respondent.)	

TRANSCRIPT OF PROCEEDINGS held in the
above-entitled cause before Hearing Officer
Bradley P. Halloran, called by the Illinois
Pollution Control Board, pursuant to notice, taken
before Kathy A. O'Donnell, RPR, a notary public
within and for the County of Cook and State of
Illinois, at the James R. Thompson Center, 100 West
Randolph Street, Room 11-512, Chicago, Illinois, on
the 9th day of May, A.D., 2007, commencing at
1:56 p.m.

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15 On Behalf of the Complainant;

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22 On Behalf of the Respondent.

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1 THE HEARING OFFICER: We're back on
2 the record. It's approximately 1:56,
3 May 9th, 2007. We are continuing with the
4 direct testimony of Mr. -- Is it Maciel?

5 THE WITNESS: Maciel, yes.

6 THE HEARING OFFICER: Maciel, I'm
7 sorry. Anyway, Ms. Burke, you may continue.
8 This is the Case No. AC6-40.

9 (Witness previously sworn.)

10 WHEREUPON:

11 RAFAEL MACIEL,
12 called as a witness herein, having been previously
13 duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 (continued)

16 BY MS. BURKE:

17 Q. We were discussing, when we broke off,
18 Exhibit A, your report from March 22nd, and the
19 photographs attached to the report. You mentioned

20 this morning that you saw railroad ties at the site.

21 Where were the railroad ties located?

22 A. Railroad ties were located at --

23 Actually, there was two piles. There was one pile,

24 Photo No. 11, and that would be on the northeast

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5

1 corner. And then there was another second pile --

2 MR. LEVINE: Northwest.

3 BY THE WITNESS:

4 A. -- Photo 12, on the northwest -- no,

5 I'm sorry -- south end of the property, which would

6 be Photo No. 12. Northwest and south.

7 BY MS. BURKE:

8 Q. And you mentioned there was scrap

9 metal on the property. Where did you see scrap

10 metal?

11 A. In Photo No. 1, there's some little

12 pieces of scrap metal there. The material for

13 No. 6, within that pile there, there was some scrap

14 metal. You can see the wood timber there. Within

15 that area, there was some scrap metal. Photo 8

16 would be considered scrap metal. Photo 14 would

17 have some scrap metal product in there.

18 Q. Is photo 14 also the reference you
19 made to there being City property on the site?

20 A. That's correct.

21 Q. Were there any buildings on the
22 property?

23 A. I believe there was only one building
24 there.

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1 Q. And where was the building located?

2 A. The building was located on the
3 southwest corner, close to it.

4 Q. And did you enter the building?

5 A. No. It was secured. There were no
6 open doors; no open bay doors, either.

7 Q. Did you see any standing water on the
8 property?

9 A. Yes, I did.

10 Q. And where was that located?

11 A. The piles would be on the northwest
12 corner of the property too. Northwest, and then
13 there was some on the south, southwest part of it
14 too -- I'm sorry. Yeah, there was some on the

15 southwest part of it, too.

16 Q. And was there waste standing in that
17 water?

18 A. Yes, there was.

19 Q. What type of materials were in the
20 water?

21 A. I believe there was some construction
22 and demolition debris, indicated like in Photo 13,
23 Photo 15, Photo 18, Photo 19. I believe that was
24 it.

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1 Q. And did you see any vehicles on the
2 property while you were there on March 22nd?

3 A. Yes, I did.

4 Q. What vehicles did you see?

5 A. Two dump trucks were on the property.
6 One was there, and then another one arrived shortly
7 after.

8 Q. And the one that was there on the
9 property when you arrived, what was that dump truck
10 doing?

11 A. It was just standing still. It was

12 idling.

13 Q. And were there materials in the dump
14 truck?

15 A. I did not take a look inside the dump
16 truck.

17 Q. And was the back of the dump truck up
18 or down?

19 A. It was down.

20 Q. And where was it located on the site?

21 A. It would be on the southeast -- I'm
22 sorry -- northeast corner of it, I believe, right
23 where the site sketch would indicate there was
24 suspect CTA material.

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1 Q. And the dump truck that arrived later,
2 how long were you at the site when that dump truck
3 arrived?

4 A. Probably about 15, 20 minutes or so.

5 Q. I'm sorry. Let me go back to the
6 first dump truck. What did it look like?

7 A. It was gray. The container itself was
8 gray.

9 Q. Were there any markings on the dump

10 truck?

11 A. Yeah. It said E. King.

12 Q. And was there a driver in the dump

13 truck?

14 A. Yes, there was.

15 Q. Was he sitting in the cab of the

16 truck?

17 A. Yes.

18 Q. Back to the dump truck that arrived

19 15 or 20 minutes later, what did that dump truck

20 look like?

21 A. Basically the same thing.

22 Q. Did it have any markings on it?

23 A. E. King Trucking.

24 Q. And what -- Where did that -- What did

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9

1 that dump truck do? Where did it go when it entered

2 the site?

3 A. When it entered the site, it just

4 parked right behind the other truck.

5 Q. In the area of the suspect --

6 A. CTA material.

7 Q. -- CTA material?

8 A. Yes.

9 Q. And what did the second dump truck do
10 at that point?

11 A. At that point it just stood there
12 until I started giving out directives as far as not
13 to move any of the vehicles for the time being,
14 we're doing an investigation. And after that, I
15 guess he felt that he had to leave, and he left, the
16 second dump truck.

17 Q. Did the second dump truck leave before
18 you left the site?

19 A. That's correct.

20 Q. And what other vehicles were there in
21 addition to the two dump trucks?

22 A. There was a front-end loader, which is
23 a piece of heavy equipment.

24 Q. What was the front-end loader doing --

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10

1 Let me back up.

2 Where was the front-end loader
3 located?

4 A. The front-end loader was located right

5 by the suspect CTA material.

6 Q. And what was the front-end loader
7 doing?

8 A. It was pushing some of the material
9 closer to the big pile that was already there.

10 Q. And what did the pile look like that
11 the front-end loader was working with?

12 A. Photo 17 is pretty accurate as far as
13 how the material looked like.

14 Q. And what kind of things would you say
15 are in that pile?

16 A. There was some dirt, some clay
17 material. There was some broken concrete in there,
18 bit of masonry, brick. There was some clay and
19 discoloration in the color of the dirt and in the
20 clay itself, which would indicate some type of
21 contamination.

22 Q. Were there any other vehicles on the
23 site?

24 A. There was a white pickup truck.

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1 MR. LEVINE: Objection, foundation --

2 THE HEARING OFFICER: Ms. Burke?

3 MR. LEVINE: -- as to when the pickup
4 truck was on the site.

5 BY MS. BURKE:

6 Q. Was the white pickup truck on the site
7 when you arrived at the site?

8 A. I don't recall if it was there exactly
9 at the time. I was preoccupied with looking at the
10 front-end loader and the dump trailer.

11 Q. When did you first notice the white
12 pickup truck?

13 A. I noticed it after I started
14 interviewing the pickup -- I'm sorry -- started
15 interviewing the front-end loader, and the driver
16 started pointing towards the vehicle saying that was
17 the boss over there.

18 Q. And how long after you arrived at the
19 site, then, did you notice the white pickup truck?

20 A. About a good 10, 15 minutes or so.

21 Q. And where was the white pickup truck
22 when you noticed it?

23 A. It was directly on the west -- I'm
24 sorry -- the east side of the property, right by the

1 stone area, I believe. If you look on the site
2 sketch, it would be by the stone pile, close to it.

3 Q. Can you describe the perimeter of the
4 site?

5 A. The perimeter of the site off
6 130th Street, it's a bermed area. It's a bermed
7 area about 4 foot high, has some vegetation growing
8 on top of it. At closer inspection, you would
9 realize that it has some construction debris mixed
10 in there with --

11 MR. LEVINE: Objection, foundation as
12 to where that is.

13 THE HEARING OFFICER: Ms. Burke?

14 BY MS. BURKE:

15 Q. Which berm are you referring to?

16 A. I'm referring to the berm off
17 130th Street.

18 Q. And what did that berm look like?

19 MR. LEVINE: My objection is to
20 specifically where he's talking about.

21 BY MS. BURKE:

22 Q. Referring to page 8 of Exhibit A, can
23 you point on the map as to where you're describing
24 the berm?

1 A. (Complying.)

2 Q. Is it in one particular -- Are you
3 referring to one particular location or along the
4 length of 130th Street?

5 A. It's along the length of 130th Street.

6 Q. And what does that berm look like
7 along 130th Street?

8 A. Basically it's a bunch of sandy
9 debris, some dirt, clay, mixed in with some growth
10 of vegetation on top of it.

11 Q. And what is the -- What does the west
12 edge of the property look like?

13 A. The west edge also has a berm that
14 goes along the edge of the property there too.

15 Q. And what does the berm along the west
16 edge of the site look like?

17 A. Sandy debris, some vegetation growth
18 on the top of it. There's also some dirt, clay with
19 it, mixed, intermingled with it.

20 Q. And what is -- What does the south
21 edge of the property look like?

22 A. South edge of the property is along a
23 railroad track area.

24 Q. And what is along the perimeter of the

1 site to the east?

2 A. To the east is a fenced area, and
3 there's a property next-door to it, a trucking firm,
4 I believe.

5 Q. Who was present on the site when you
6 arrived?

7 A. There were two unknown individuals.
8 One of the unknown individuals was the operator of
9 the heavy equipment, operator of the dump truck.
10 There were two other individuals that were sorting
11 some material in the rear; one which was all the way
12 near the area where the open burning was at, and the
13 other individual was by -- where was it by? -- I
14 believe he was here by the compost material. And
15 there was also another individual in the white
16 pickup truck.

17 MR. LEVINE: I'm going to object on
18 the foundation of the compost material, as to
19 where specifically that would be.

20 THE HEARING OFFICER: Ms. Burke?

21 BY MS. BURKE:

22 Q. Where is the individual that you

23 identified as being near the compost material?
24 Where was the individual?

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1 A. The individual was exactly by our
2 Picture No. 20 on the site sketch.

3 Q. And what was that individual doing
4 when you saw him?

5 A. He was segregating some material
6 there.

7 Q. What was he segregating?

8 A. I believe he was taking wood debris
9 out from the pile of intermingled products. They
10 had some railroad ties, some concrete. I think he
11 was taking up some of the landscape, like shrubby
12 and things.

13 Q. And the person you mentioned that was
14 near the open burning, where are you referring to?

15 A. It would be by Photograph 18 on the
16 site sketch.

17 Q. And what did you see in that area?

18 A. Basically we saw a few piles -- I saw
19 a few piles of construction and demolition debris.
20 There was some standing water there, the material

21 that was in the opening burning, which was some
22 vegetation, landscape material, wood debris. There
23 was broken concrete, a little bit of litter.

24 Q. And in the area of the open burning,

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1 did you see a fire?

2 A. Yes.

3 Q. And did you see smoke?

4 A. Yes, I did.

5 Q. And how many feet across would you say
6 the area of the open burning was?

7 A. It was probably a good 12 to 15 feet.

8 Q. And how high was that pile?

9 A. Probably about 2 to 3 feet.

10 Q. And the person that you saw in this
11 area of the open burning, what was that person
12 doing?

13 A. Basically, by the time we had got
14 there, he was putting out the fire and was throwing
15 some dirt on there with a shovel.

16 Q. Did you speak with that person who was
17 near the open burning?

18 A. I tried to. I tried to get his
19 information. He just started walking away from me.

20 Q. And did you speak with the person who
21 was near the compost?

22 A. Again, we tried on that occasion to
23 speak with the person, and he just started walking
24 away from me.

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1 Q. And did you speak with the operator of
2 the front-end loader?

3 A. Yes, I did.

4 Q. Approximately how long after you
5 entered the site did you speak with the front-end
6 loader operator?

7 A. About 15 minutes.

8 Q. Did you identify yourself as a City
9 employee?

10 A. Yes, I did.

11 Q. And were you wearing clothing that
12 said -- Were you wearing City of Chicago clothing?

13 A. Yes.

14 Q. Did you show the --

15 MR. LEVINE: I'm going to object as to

16 leading. She's got to ask questions, not
17 direct the answers.

18 THE HEARING OFFICER: Overruled. You
19 may proceed, Ms. Burke.

20 BY MS. BURKE:

21 Q. Did you show your badge?

22 A. Yes, I did.

23 Q. And what did you say to the front-end
24 loader operator?

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1 A. I asked him what was going on, what
2 are they doing here, and he flat out was, like,
3 Well, we're working for the City of Chicago.

4 And I say, Oh, really? Can I see
5 any load tickets, I asked him, any load tickets, any
6 paperwork? And that's when he handed over a
7 manifest to me. As I was reading the manifest, I
8 started asking him, So who sent you here to take
9 this material? Did you bring this material here?

10 And he was like basically, Well,
11 the CTA hired us for this job -- He said City of
12 Chicago, to be more approximate on it. He said City

13 of Chicago.

14 I reiterated to him that it's not
15 the City of Chicago, it's the CTA. And I told him,
16 I said I didn't want anybody moving any equipment, I
17 didn't want anybody driving off of the property
18 until I finished interviewing them and finish with
19 this investigation.

20 And he basically said, Well, I'm
21 going to do what my boss tells me, and he pointed
22 over to a white truck.

23 Q. Do you know this person's name?

24 A. Yes, I do.

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19

1 Q. Let me clarify. Do you know the name
2 of the person who was driving the front-end loader?

3 A. No, I do not.

4 Q. Do you know the employer of the
5 front-end loader driver?

6 A. No, I do not.

7 Q. Were there any markings on the
8 front-end loader?

9 A. Not that I recall.

10 (Short interruption.)

11 BY MS. BURKE:

12 Q. And what did the front-end loader
13 operator tell you that he was doing?

14 A. That they were bringing material onto
15 the site.

16 Q. And did you talk with the dump truck
17 driver?

18 A. I talked with the dump truck driver.

19 Q. That was the dump truck that was on
20 the site when you arrived at the site?

21 A. That's correct.

22 Q. And did you identify --

23 MR. LEVINE: I'm going to object to
24 the statements of what the drivers are saying

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1 as hearsay, and I move to strike them. We
2 don't know who these people are. They're not
3 identified. They're not witnesses.

4 THE HEARING OFFICER: Ms. Burke?

5 MS. BURKE: I think that they are
6 hearsay, but they are reliable. And I would
7 ask that the Board admit the statements. The

8 testimony has shown that they didn't have
9 time to fabricate a response, that they
10 didn't have any reason to think that they
11 were in trouble, that there was no reason for
12 them to not tell the truth, and argue that
13 they're reliable.

14 MR. LEVINE: I would counter that
15 there's no indicia of reliability. In fact,
16 when they're confronted by an individual with
17 a badge from the City of Chicago who is out
18 there, obviously, to charge people with
19 violations, that it's reasonable that they
20 would give false or incorrect testimony in
21 order to avoid prosecution.

22 THE HEARING OFFICER: You're saying,
23 Ms. Burke, it is hearsay but it's okay?

24 MS. BURKE: I'm saying it is hearsay,

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1 but I'd ask for it be admitted because it is
2 reliable.

3 THE HEARING OFFICER: Mr. Levine?

4 MR. LEVINE: There's no indicia of
5 reliability. This is a criminal

6 investigation with liability seeking to
7 attach. He's wearing a badge; he's obviously
8 doing an investigation to seek culpability.
9 For the response, I would say it's obvious
10 that they would deny or make false statements
11 to avoid liability for themselves and their
12 employer.

13 THE HEARING OFFICER: Okay. I'm going
14 to sustain Mr. Levine's objection. But,
15 Ms. Burke, you may proceed like we did before
16 with an offer of proof, and the Board can
17 take a look at it and make its own decision,
18 or you can file a motion. I think you have
19 14 days after the Board gets the transcript.
20 But just let the record reflect when you're
21 entering this offer of proof and when you're
22 finishing the offer of proof.

23 MR. LEVINE: And, your Honor, I would
24 also like to exclude all of these statements

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1 of what these people are telling Mr. Maciel
2 and would include in my oral motion to

3 exclude these, the prior testimony given
4 where different statements -- different
5 versions of the statements are given, and
6 that they're not included in the report.

7 THE HEARING OFFICER: And that
8 testimony happened 5, 10 minutes ago?

9 MR. LEVINE: 5, 10 minutes ago as well
10 as the -- Right, yes. And in comparison with
11 this testimony with Mr. Maciel's prior
12 testimony this morning, where different
13 conversations are now occurring than he's
14 previously testified to.

15 MS. BURKE: I object to the motion to
16 the extent that we're going back to the prior
17 hearing in the other matter.

18 MR. LEVINE: I'm saying --

19 THE HEARING OFFICER: You're going
20 back to AC6-39 now?

21 MR. LEVINE: I am arguing now, but
22 because these statements appear to be
23 different than his prior testimony. It's a
24 further indication that there's no indicia

1 for reliability with regard to the testimony
2 regarding any statements.

3 THE HEARING OFFICER: I can't recall
4 with any specificity what the prior testimony
5 was in AC6-39. You can address that in any
6 kind of motion after the Board gets the
7 transcript.

8 MR. LEVINE: That's fine. I just want
9 to make my record.

10 THE HEARING OFFICER: Okay. Fair
11 enough. Ms. Burke, this is under an offer of
12 proof, correct?

13 MS. BURKE: No, I'm not going to. I'm
14 finished with that line of questioning. I'm
15 not going to make an offer of proof.

16 THE HEARING OFFICER: Okay. Thank
17 you.

18 BY MS. BURKE:

19 Q. You mentioned that there was a white
20 truck on the property. Was there a person in the
21 white truck?

22 A. Yes, there was.

23 Q. And did you speak with the person in
24 the white truck?

1 A. Yes, I did.

2 Q. And did you identify yourself as a
3 City employee to the person in the white truck?

4 A. Yes, I did.

5 Q. Did you recognize the person in the
6 white truck?

7 A. Yes, I did.

8 Q. And who was the person in the white
9 truck?

10 A. It was Jose "Speedy" Gonzalez.

11 Q. And you knew -- How is it that you
12 recognized Mr. Gonzalez?

13 A. I recognized him. I knew him
14 personally from a few years back and also from
15 previous incidents with the City of Chicago,
16 specifically with the Department of Environment.

17 Q. And what was Mr. Gonzalez doing when
18 you saw him in the white truck?

19 A. He was on his phone.

20 Q. And did you initiate the conversation
21 with Mr. Gonzalez?

22 A. Actually, no. He drove up to us.

23 Q. And what did you say to Mr. Gonzalez?

24 A. I asked Mr. Gonzalez, What seems to be

1 going on here at the property?

2 And he just rebutted with, This is
3 private property. What are you guys doing out here?

4 And I started questioning him
5 about the material on the property here. I said,
6 What is it you're running here? Are you running a
7 transfer station?

8 He rebutted that with, I don't
9 know what you're talking about. This is not a
10 transfer station. He kept reiterating that it was
11 private property and we needed to leave.

12 Pretty much I told him, I said,
13 Well, do you know where this came from, this
14 manifest came from?

15 He said, I don't know what you're
16 talking about. I didn't give you those papers. And
17 he rolled up his window and drove off.

18 Q. Did you know who owned the property
19 when you arrived on March 22nd?

20 A. No, I did not.

21 Q. Did you know Mr. Gonzalez had any
22 connection to the property when you arrived on
23 March 22nd?

24 A. No.

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1 Q. And did Mr. Gonzalez leave the site
2 before you left the site?

3 A. Yes, he did.

4 Q. Do the photographs -- Do the
5 photographs in Exhibit A on pages 9 through 22
6 accurately depict the appearance of the property
7 when you were there on March 22nd?

8 A. Yes, they do.

9 MS. BURKE: I would move to admit the
10 report that we've marked as Exhibit A into
11 evidence.

12 MR. LEVINE: I would object. One,
13 it's been offered as a complete report. We
14 know that the uniform hazardous waste
15 manifests are not included. It's an
16 important portion of the investigation.

17 Two, I would object to the
18 testimonial hearsay from the First
19 Environmental Laboratories, which is pages 24
20 through 31.

21 And three, that with the -- I

22 would also object based on the fact that
23 the -- If I can just have a second? The
24 prior notes of the witness, the street notes,

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1 have not been included.

2 So it's not, as indicated, the
3 complete report of the Department of
4 Environment. And I apologize, I don't find
5 the reference to the notes that were not
6 included.

7 THE HEARING OFFICER: The field notes?

8 MR. LEVINE: Field notes, thank you,
9 are not included. And therefore, what was
10 offered as the complete report of the
11 investigation is missing actual portions of
12 the investigation, including the manifest,
13 the field notes, and the testimony hearsay
14 with regard to the lab reports.

15 THE HEARING OFFICER: Anything
16 further, Ms. Burke?

17 MS. BURKE: Mr. Maciel has testified
18 that this is the official report of the

19 Department of Environment, the report that's
20 kept in the ordinary course of business. And
21 as to the fact -- As to the document at pages
22 24 to 31, that's a document that's considered
23 to be part of the official report. And as to
24 the document -- the two items that Mr. Levine

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1 claims are missing, the waste manifest and
2 the field notes, those are not considered to
3 be part of the report. And the fact that he
4 thinks that they should have been included is
5 not relevant.

6 THE HEARING OFFICER: I find it is
7 complete such as it is, such as it's offered.
8 And as in AC6-39, I am going to admit it but
9 note Mr. Levine's objections. Exhibit A is
10 admitted over Mr. Levine's objections.

11 MS. BURKE: I have no further
12 questions.

13 THE HEARING OFFICER: Thank you.
14 Mr. Levine?

15 CROSS-EXAMINATION

16 BY MR. LEVINE:

17 Q. Sir, didn't you testify previously
18 that the uniform hazardous waste manifests were part
19 of your reports?

20 A. Part of my investigation.

21 Q. And as part of the investigation, was
22 it not part of the reports?

23 A. I assume that they should have been,
24 but they weren't --

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1 Q. Was that a yes or a no, sir?

2 A. No.

3 Q. That it is part of the report or it's
4 not part of the report?

5 A. It's not part of the report.

6 Q. Why was not -- Why was the manifest
7 not part of your report?

8 A. I don't know.

9 Q. Well, would the manifest indicate the
10 generator's -- the originator of the waste and the
11 transportor of the waste in a designated facility?

12 A. Yes, it would.

13 Q. Wouldn't that be of interest when you

14 were preparing a report if you were going to be fair
15 to all parties involved?

16 A. Actually, it was duly noted in our
17 open dump inspection checklist as the person
18 interviewed, Chuck Weber from CTA, and there was an
19 E. King representative too along with my narrative.

20 MR. LEVINE: I'll move to strike that
21 as unresponsive, an unresponsive response to
22 the question, and seek the Court to direct
23 the witness to answer the question put to
24 him.

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1 THE HEARING OFFICER: Ms. Burke, any
2 response?

3 MS. BURKE: I would like to hear the
4 question again.

5 THE HEARING OFFICER: Can you read
6 back the question, please?

7 (Record read as requested.)

8 THE HEARING OFFICER: That's a yes or
9 a no. Objection is sustained. Witness?

10 BY THE WITNESS:

11 A. That would be partial to it, yes.

12 BY MR. LEVINE:

13 Q. And the reason it was not included in
14 your report would be?

15 A. Because it wasn't pertinent to the
16 fact that the material ended up on the property
17 itself. At that time being, we were still in
18 discussion as far as whether or not the material was
19 deriving from the CTA or from some other area.

20 Q. Isn't an issue of your entire
21 investigation who caused or allowed the waste to be
22 placed on the property on that day and time?

23 MS. BURKE: Objection to the extent
24 that it calls for a legal conclusion on the

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1 meaning of cause or allow.

2 THE HEARING OFFICER: It's funny, this
3 was going on in AC6-39, but all of a
4 sudden -- I sustain Ms. Burke's objection.
5 It is a legal conclusion.

6 BY MR. LEVINE:

7 Q. Well, wouldn't your investigation be
8 interested in the entity that generated the waste?

9 A. Sure. Yes.

10 Q. And wouldn't your investigation be
11 interested in the entity that transported the waste?

12 A. Yes.

13 Q. And didn't you want to know the
14 designated facility of where the waste was going to?

15 A. Yes.

16 Q. And wouldn't the uniform hazardous
17 waste manifest indicate all of those things?

18 A. Yes, but it was also indicated in my
19 narrative too.

20 Q. And wouldn't the fact that Chuck Weber
21 had signed and dated the manifest have indicated
22 whether or not Mr. Weber was telling the truth or
23 not?

24 A. Basically when I had got to the site

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1 and had the manifest --

2 Q. That's a yes or a no, sir.

3 A. Could you repeat the question?

4 Q. Wouldn't the fact that Chuck Weber had
5 signed the manifest on behalf of the CTA and
6 indicated where the waste was generated from,

7 transported by, and going to indicate whether or not
8 he was telling the truth when you spoke to him?

9 A. That would not indicate if he was
10 telling the truth or not to me.

11 Q. Do you know whether -- Do you think
12 that Chuck Weber was telling the truth, sir?

13 A. Do I know?

14 Q. When he told you that there was an
15 agreement with regard to the waste.

16 A. Per the partial interview that I had
17 with him, it was undetermined to know whether or not
18 he was lying to me.

19 Q. Would a document signed by him be
20 indicative and help you determine whether or not he
21 was telling the truth or lying to you?

22 A. Basically, from what he was telling
23 me, he was telling the truth to some degree, that
24 per this verbal agreement, that they were supposed

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1 to --

2 Q. Sir, that's a yes or no as well.

3 A. Repeat it again.

4 Q. Would the document help you determine
5 whether or not Mr. Weber was telling the truth as to
6 the agreement of where the waste was coming from and
7 where it was going?

8 A. No, it wouldn't.

9 Q. I'm showing you what's been marked for
10 identification as Defendant's B. What is that, sir?

11 A. That is a manifest.

12 MR. LEVINE: I'm sorry.

13 Respondent's ...

14 MR. LEVINE: Respondent's B -- Or
15 should I do Respondent's A?

16 THE HEARING OFFICER: A.

17 BY MR. LEVINE:

18 Q. What is that, sir?

19 A. A manifest.

20 Q. And what is a manifest?

21 A. A manifest is a log, pretty much, that
22 tells you the whereabouts of the material, from
23 either hazardous or special waste material. That's
24 pretty much letting you know who -- It gives you all

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1 the specific information as far as the generator and

2 who's transporting the material and where it's
3 designated arrival is supposed to be at.

4 Q. And in this case, on March 22nd, what
5 did the manifest show -- where did the manifest show
6 the material was coming from?

7 A. For this case, it showed the material
8 was coming from 567 West Lake Street in Chicago.

9 Q. Is that the CTA?

10 A. That is correct.

11 Q. And do you have any information that
12 the material is not coming from that location, from
13 the CTA?

14 A. The only information was through the
15 rebuttal --

16 Q. Yes or no, sir.

17 A. Yes, I do have information.

18 Q. What is that information?

19 A. That information is that Paschen,
20 which is a subcontractor for CTA, rebutted, saying
21 that the material -- it was suspected that it didn't
22 come from a CTA project, that it probably came from
23 another project.

24 Q. But you didn't take a picture of the

1 Paschen guy and you never got his information, so we
2 don't know who that Paschen guy is, do we?

3 A. I did not take that information down,
4 but I gather that the information was taken through
5 my supervisors.

6 Q. Well, if it was taken by your
7 supervisors, I'm assuming it would appear somewhere
8 in your investigation report.

9 A. Not necessarily so.

10 Q. Why would that information be left out
11 of your investigation report?

12 A. I would have no idea. I was just told
13 to -- I was just told to specifically cite
14 Mr. Gonzalez, being that he was the property owner.

15 Q. Would you agree with me that leaving
16 this information out of an investigation report with
17 regard to the generation, point generation of the
18 waste, the transportor, and the subsequent -- where
19 it was going, not taking down Paschen's information,
20 not taking photos of E. King's trucks, or
21 identifying individuals from Paschen or E. King,
22 would you agree with me that that would be a way to
23 target the investigation towards Mr. Gonzalez and
24 avoid culpability for the other parties in this

1 manner?

2 A. No.

3 Q. And why would you say -- Why would you
4 not -- For what reasons would your investigation
5 report not include that type of information?

6 A. Being that there was still a pending
7 conclusion to what the narrative was entitled. This
8 is pretty much the facts of the case that I saw that
9 day. There's still a conclusionary part, where the
10 aftereffects of what happens after -- I'm sorry --
11 as far as the cleanup process, where the material is
12 supposed to end up at.

13 Q. Well, aren't some of the facts what
14 you saw today, those CTA manifests?

15 A. This was one piece of documentation,
16 yes.

17 Q. And those were facts you observed on
18 the 22nd, correct?

19 A. That's correct.

20 Q. And those do not appear in the
21 investigation report, correct?

22 A. That's correct.

23 Q. And you were responsible for creating
24 that investigation report, correct?

1 A. No. I was not the only sole person.

2 Q. I'm just asking if you had
3 responsibility to create the investigation report.

4 A. I had some responsibility, yes.

5 Q. And you signed it, didn't you?

6 A. Yes, I did.

7 Q. And your signature is on there as
8 certifying the information you took?

9 A. Yes.

10 Q. Why did your investigation, as you --
11 as it appears in Exhibit A, preclude information
12 regarding the CTA, E. King, and Paschen?

13 A. It was duly noted in my narrative; but
14 as far as any other information, I don't understand
15 why it wasn't on there.

16 Q. Did you put it in there?

17 A. Did I put it in there? No.

18 Q. Why didn't you put it in there?

19 A. Basically, like I said, this was just
20 what are the facts of the day that I received from
21 the material.

22 Q. And aren't the facts of the day the

23 manifest? Don't they include the manifest, the
24 facts of the day?

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1 A. That would be part of it, yes.

2 Q. That was a document you received on
3 that day, was it not?

4 A. That is correct.

5 Q. And another fact of the day would be
6 the license number of the truck on E. King, correct?

7 A. That is correct.

8 Q. And you took that down, didn't you?

9 A. I don't believe I did. It might have
10 been a different inspector.

11 Q. Did someone do it at your direction,
12 sir?

13 A. I think I did tell one of our
14 inspectors to take that information down.

15 Q. And yet that information occurs
16 nowhere in your investigation report, correct?

17 A. Correct.

18 Q. Can I have that back?

19 A. Sure.

20 Q. Were you out to get Speedy Gonzalez?
21 A. No.
22 Q. Personally?
23 A. No.
24 Q. Would you have reason to do that, sir?

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1 A. I have none.
2 Q. If you were out to get him, would it
3 be helpful to avoid the mentioning of all other
4 individuals and witnesses at the site on March 22nd,
5 2006?
6 A. Would you repeat that again?
7 Q. If you sought to concentrate your
8 investigation only towards Jose Gonzalez, would it
9 be helpful to avoid listing all other witnesses that
10 you contacted and information you saw on that date?
11 MS. BURKE: Objection, calls for
12 speculation.
13 THE HEARING OFFICER: Overruled. He
14 may answer if he's able.
15 BY THE WITNESS:
16 A. No. Basically, I mean, he has
17 responsibility because he's the owner of the

18 property.

19 BY MR. LEVINE:

20 Q. But other people would have
21 responsibility as well, correct?

22 A. Some responsibility, yes.

23 Q. In fact, there's a defense to this if
24 he did not cause or allow it, correct?

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1 MS. BURKE: Objection again to the
2 phrase cause or allow. It's calling for a
3 legal conclusion.

4 THE HEARING OFFICER: Sustained.

5 BY MR. LEVINE:

6 Q. Do you know whether or not the
7 violation alleges that Mr. Gonzalez caused or
8 allowed these violations?

9 MS. BURKE: Same objection.

10 MR. LEVINE: I'm asking whether he
11 knows it.

12 THE HEARING OFFICER: Excuse me.

13 Mr. Levine, I think I already sustained

14 Ms. Burke's objection regarding legal

15 conclusion.

16 MR. LEVINE: All right. I'll move on.

17 THE HEARING OFFICER: Thank you.

18 BY MR. LEVINE:

19 Q. Did you have a conversation with
20 individuals at the site?

21 A. Yes.

22 Q. Did you have conversations regarding
23 what the agreement was with regard to the suspect
24 CTA waste?

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1 A. I gathered some information to begin
2 with, and then I was pulled away from there to
3 follow up on the other areas of the property.

4 Q. Who pulled you away from there?

5 A. Actually, my supervisor, Stanley
6 Kaehler.

7 Q. Why do you think Stanley Kaehler only
8 wanted to target Jose Gonzalez and not concentrate
9 on other potential violators such as the CTA,
10 E. King, or Paschen Construction?

11 A. I can't answer that question.

12 Q. Have you ever seen him to be biased

13 before?

14 A. No.

15 Q. Was it unusual that he would do
16 something like that?

17 A. It was just unusual for me as far as
18 not pursuing everybody, to hold everybody
19 accountable for it.

20 Q. And as your job in enforcement, isn't
21 it your job as a senior environmental inspector to
22 find out all the culpable individuals at the scene?

23 A. Correct.

24 Q. But all the culpable individuals at

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1 the scene were not investigated at this site,
2 correct?

3 A. They were pretty much all there, and
4 they've agreed to what extent they were involved in
5 it, which is noted in my narrative.

6 Q. Well, Mr. Weber told you that it was
7 CTA material, correct?

8 A. That is correct.

9 Q. And the manifest, Respondent's

10 Exhibit A, demonstrates that, in fact, there is a
11 waste manifest for the CTA, correct?

12 A. Correct.

13 Q. And would that -- Would the manifest
14 support Mr. Weber's statement or go contrary to it?

15 A. To some degree, it would support it.

16 Q. But you still thought Mr. Weber was
17 lying, correct?

18 A. I wouldn't say that he was lying.

19 Q. Do you think he was being untruthful
20 with you?

21 A. I wouldn't say he was untruthful.

22 Q. What was the agreement that you
23 determined as an investigator on March 22nd with
24 regard to the suspect CTA material?

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1 A. Can you repeat that again?

2 Q. What was the agreement that you
3 discussed with the parties with regard to the
4 suspect CTA material on March 22nd, 2006?

5 A. I specifically did not discuss any
6 agreement. The only agreement that was under
7 discussion was the agreement -- this hearsay

8 agreement with CTA, Paschen Construction, E. King,
9 and with Mr. Gonzalez.

10 Q. Sir, you don't know what hearsay is,
11 do you?

12 A. Hearsay is basically what people --
13 It's like you telling me something; and you could
14 tell me specifically something about Ms. Burke that
15 might not be truthful or so, but based on -- the
16 only way you're going to be able to know is with
17 some legal documentation or what have you.

18 Q. Are you a lawyer?

19 A. No.

20 Q. Do you know what the definition of
21 hearsay is in legal terms?

22 A. No, I do not.

23 Q. Okay. So you don't really -- When you
24 say it was hearsay information, you're just saying

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1 it wasn't in writing, correct?

2 A. In legal terms.

3 Q. Now, do agreements have to be in
4 writing?

5 A. Per se with the environment, yes.

6 Q. What was the agreement that was, as
7 you say, hearsay that you heard on that day, as you
8 testified to in your December 6th deposition?

9 A. That there was an agreed commitment
10 with Paschen, CTA, E. King, and the property owner,
11 Mr. Gonzalez, that the material was to be stored on
12 the property.

13 Q. And how was it to be stored on the
14 property?

15 A. According to them, it was supposed to
16 be stored in roll-off boxes.

17 Q. Was there any -- If I can just go a
18 little further, the agreement, as you learned it to
19 be through talking with the un-named Paschen
20 representative, Chuck Weber of the CTA, and, I'm
21 assuming, the driver from the E. King truck?

22 A. Not the driver, no. It was one of the
23 owners of E. King.

24 Q. Was that Mrs. King?

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1 A. I'm not sure.

2 Q. Elaine King?

3 A. Maybe, yes.

4 Q. Was she there that day?

5 A. I believe she was; late, I think she
6 was.

7 Q. That's funny. You didn't mention her
8 in your report, did you, sir?

9 A. No.

10 Q. Was there a reason you would not
11 mention Elaine King showing up and discussing the
12 agreement in the investigation report?

13 A. Is there a reason why? No.

14 Q. Were there other things that occurred
15 that you did not put in your investigation report?

16 A. No. This is basically it.

17 Q. Did you think it was not important to
18 put the fact that Elaine King was there with regard
19 to what the agreement was between the CTA, Paschen,
20 E. King, and Mr. Gonzalez, that you did not put in
21 the report?

22 A. Can you repeat that again?

23 Q. Was there other material other than
24 the fact that Elaine King was discussing the

1 agreement between Paschen, E. King, and Mr. Gonzalez
2 regarding the suspect CTA waste material that you
3 learned throughout the investigation but also chose
4 not to put in your report?

5 A. No. It was not a choosing. It was
6 just I didn't put it in there. It wasn't beneficial
7 to the investigation at the time.

8 Q. Well, who decides whether something is
9 beneficial to the investigation?

10 A. Basically, my supervisors.

11 Q. You weren't really doing an
12 investigation there, were you?

13 A. That's what an investigation was.
14 Yes, I was there for an investigation.

15 Q. Well, you were selectively leaving
16 information out of the investigation, correct?

17 A. No.

18 Q. Well, you selectively left out the
19 fact that Elaine King was a part of the
20 conversation?

21 A. She was not part of the conversation.

22 Q. You said she was there and discussed
23 the --

24 A. She was there on the property, but she

1 did not discuss anything with the individuals there.
2 She was off to the side. She was preoccupied with
3 getting her vehicles out of the property and not
4 getting them impounded.

5 Q. And did you discuss that with her?

6 A. I just told her to hold on because we
7 were basically running around still trying to get
8 the information, gathering information from all
9 these other individuals.

10 Q. Well, if the E. King trucks were
11 dumping on the property, wouldn't they have been
12 impounded?

13 A. Most definitely, yes.

14 Q. And they were not impounded, so can we
15 conclude that the E. King trucks were not dumping at
16 the location on March 22nd, 2006?

17 A. I can't draw that conclusion from
18 that, no. I was just told to let them go, and
19 that's it.

20 Q. So, in fact, sir, by not including
21 that, you were not conducting an investigation for
22 the Illinois Department of -- Chicago Department of
23 Environment, you were just doing what your superiors
24 told you to do that day; is that correct, sir?

1 A. I was doing my investigation; and then
2 once they arrived, they told me that they were going
3 to take over from there as the lead investigators.

4 Q. Before they got there, did you notice
5 that Ms. King was there?

6 A. No, she was not there.

7 Q. And after your supervisor -- And who
8 was this that told you they were taking over?

9 A. Stanley Kaehler and John Kryl.

10 Q. Did you finish drafting your
11 investigation report?

12 A. No.

13 Q. Did you finish it at a later point?

14 A. Yes, I did.

15 Q. And yet you left out the fact that
16 Elaine King was there and discussing that she did
17 not want her trucks impounded, correct?

18 A. Correct.

19 Q. So what you did, you selectively
20 included and excluded material in your investigation
21 report based on what you felt was important,
22 correct?

23 A. Not what I felt important, no.

24 Q. Were you told what to put in the

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1 investigation report?

2 A. No. Basically they told me just to
3 fill in what the facts were of what I saw, and I put
4 in as much as I could that I could remember and
5 recall.

6 Q. And the facts of what you saw included
7 the fact that Elaine King was at the site discussing
8 not having her trucks impounded, correct?

9 A. Correct.

10 Q. That did not make it to the
11 investigation report, correct?

12 A. I didn't feel it was pertinent to the
13 investigation.

14 Q. Why not?

15 A. Because basically it was decided that
16 they weren't going to be impounded, so there was no
17 need for me to put that in there.

18 Q. So you're saying you decided, rather
19 than doing an investigation, factual investigation,
20 you -- the Chicago Department of Environment picked

21 a target and you only included information that
22 would target that one specific respondent, correct?

23 A. Basically I was just told to write it
24 up as such from what I saw, take my photos, gather

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1 the information.

2 Q. Well, you didn't actually take the
3 photos, did you, sir?

4 A. I took some photos.

5 Q. And you didn't get any information
6 down of the individuals from Paschen, correct?

7 A. No.

8 Q. And that was another reason -- Did you
9 think that was pertinent as well?

10 A. I would assume so. John Kryl and
11 Stanley Kaehler were there, and they did receive
12 business cards from those gentlemen.

13 Q. And those are not in the investigation
14 report, correct?

15 A. No. It's not practice to do so.

16 Q. And how did you learn to do your
17 investigations and leave out certain things that you
18 think are not pertinent?

19 A. How did I do my investigation?
20 Q. How did you learn to do investigations
21 and leave out specific items that you believe were
22 not pertinent?
23 A. Basically that's how I've been taught.
24 Q. And you've been doing these type of

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1 investigations for how long?
2 A. Seven years.
3 Q. Thousands of them?
4 A. Correct.
5 Q. And you leave out specific information
6 that doesn't target a specific respondent because
7 that, to you, is not pertinent, correct?
8 A. Not to say that it's not pertinent to
9 me, but that's under specific supervision.
10 Q. Are there guidelines that list that
11 you should decide what you think is pertinent, what
12 to include in the investigation report?
13 A. No.
14 Q. So this is something you're doing
15 based on someone telling you, correct?

16 A. Basically.

17 Q. And who told you to leave out
18 nonpertinent information in this investigation?

19 A. Nobody told me to leave out not
20 pertinent information.

21 Q. So you forgot to put in the part about
22 Elaine King being on-site and arguing not to impound
23 her trucks?

24 A. Actually, it was based -- If you look

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1 on the open dump inspection checklist, it was noted
2 on there as an E. King representative that was on
3 the property, right next to Mr. Chuck Weber, CTA.
4 Her name specifically wasn't put on there, basically
5 because we didn't have that information probably at
6 the time of writing the state report.

7 Q. You didn't know that was Elaine King
8 who was there?

9 A. I didn't know. I didn't know exactly
10 her exact name at the time probably.

11 Q. Did she introduce herself when you met
12 her?

13 A. I've met her before from a previous

14 site.

15 Q. So you knew Elaine King, correct?

16 A. Just from a previous incident.

17 Q. So when you said you didn't know her
18 name to include it on the report, you actually did
19 know her name, correct?

20 A. No, I did not. I knew her by facial
21 recognition, not by her name.

22 Q. Did you know she worked for E. King?

23 A. Yes, I did.

24 Q. Did you know she ran things at

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1 E. King?

2 A. She was one of the people, I believe,
3 that ran it.

4 Q. Now, the agreement was for CTA waste
5 to be stored at Mr. Gonzalez's facility by E. King
6 in roll-off trucks, correct?

7 A. According to their agreement, yes.

8 Q. Did Ms. King tell you this?

9 A. No.

10 Q. Did Mr. Weber tell you this?

11 A. Mr. Weber was speaking of this.

12 Q. And did you have cause and reason not
13 to believe him?

14 A. Did I have cause and reason not to
15 believe him?

16 Q. Yes.

17 A. There was some doubt. But like I
18 said, I didn't get to conclude anything because of
19 the fact that our interview was short, my interview
20 was short with him.

21 Q. And was there some doubt because that
22 statement didn't match up with the manifests?

23 A. There was some doubt altogether, all
24 around it.

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1 Q. Was one of the basis for the doubt the
2 fact that Mr. Weber's story did not match up with
3 the manifest?

4 A. No. Basically he was -- Like I said,
5 there was some doubt altogether in it, flat out.

6 Q. Did his information that he gave you
7 regarding the agreement match the manifest?

8 A. No.

9 Q. Did they tell you the material was
10 generated from the CTA Brown Line?

11 A. Mr. Weber indicated that the material
12 was supposed to be coming from the Brown Line.

13 Q. And did that manifest match up to
14 that, the generator's name and address?

15 A. Correct, it did.

16 Q. And you saw the transporter of the
17 material. The trucks were E. King trucks, right?
18 You testified to that?

19 A. That's correct.

20 Q. Did the E. King transporter, No. 1,
21 match up to the manifest?

22 A. Can I see your manifest, please?
23 Actually, there was no indicators other than what it
24 says, E. King is a transporter, marking on the

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1 truck; but there is no clear written indicator
2 for -- as far as the number or license plate number
3 of the vehicle itself.

4 Q. Did Mr. Weber's story telling you that
5 E. King was the transporter working as a

6 subcontractor for Paschen match up to the manifest,
7 yes or no?

8 A. E. King was the transporter for the
9 manifest, yes.

10 Q. And the designated facility for the
11 waste, that was CID, as listed on the manifest,
12 correct?

13 A. That's correct.

14 Q. And that's what Chuck Weber told you,
15 isn't it?

16 A. That's correct.

17 Q. What about Chuck Weber's story did you
18 find false or untruthful?

19 A. Like I said, I couldn't make that
20 conclusion whether or not it was false or untruthful
21 because we didn't get to finish our interview.

22 Q. But you did make that conclusion when
23 you said you didn't believe what Mr. Weber told you,
24 correct?

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1 A. There was some doubt, yes.

2 Q. And you're a professional in
3 determining whether people are telling the truth or

4 not, are you not?

5 A. I would not say that I'm a
6 professional.

7 Q. Well, you've had past training in that
8 area, have you not?

9 A. Yes.

10 Q. Okay. Could you tell us about your
11 past training having to do with how people --
12 whether or not people are telling the truth? And
13 give us as many specifics as you can, please.

14 A. Basically the training was a course
15 that I took on my own to try to benefit me with my
16 job as far as how to indicate when people are not
17 telling the truth. It's not 100 percent effective.
18 But to some degree, you have some indicators on how
19 a person can distinguish whether or not a person is
20 truthfully being honest on questions.

21 Q. What date did you take that course?

22 A. This was about four years ago. I
23 really don't recall the date.

24 Q. And what are the indicators of whether

1 or not someone is telling the truth or not as you
2 learned them?

3 A. One of the indicators was twitching of
4 the eyes, shakiness, unrestfulness while they're
5 sitting in their chair.

6 Q. Would that also indicate nervousness
7 as well?

8 A. Yes, it would.

9 Q. Is lack of specificity an indicator as
10 to whether or not someone is telling the truth or
11 not?

12 A. That could be one, yes.

13 Q. And with regard to this story about
14 you taking this class, you can give us no
15 specificity as to the date, the person that taught
16 it, the other individuals in the class, the location
17 of where that class was taught, and how you paid for
18 it, correct?

19 A. I couldn't recall that right now. It
20 was four years ago.

21 Q. You don't even know the building you
22 took it in, do you?

23 A. It was in a federal building, but I
24 don't recall exactly --

1 Q. You don't know which federal --

2 A. I don't recall the exact address.

3 Q. And you don't know who taught it?

4 A. I don't recall the name of the person.

5 Q. And you don't know -- You said you
6 paid for it with a money order?

7 A. Correct.

8 Q. And did you write it off on your
9 taxes?

10 A. No.

11 Q. Wouldn't that be work-related?

12 A. But it wasn't something that I would
13 write off on my taxes. I don't specifically write
14 off things from work on my taxes.

15 Q. Do you have a certificate of
16 completion from the class?

17 A. I believe I do have it still.

18 Q. You have that?

19 A. Yes.

20 Q. You told us at the previous hearing
21 that you no longer had that.

22 A. No. I didn't say that specifically.
23 I said I don't have it with me, on me now.

24 Q. But you do have that?

1 A. I probably do have that.

2 Q. You probably have that, okay. Do you
3 know where it is?

4 A. Probably somewhere in my house.

5 Q. Where would you keep something like
6 that?

7 A. I have many different certificates for
8 different other pieces of training I've had across
9 my years of work.

10 Q. Any other indicators as personal
11 training in truthfulness that Mr. Weber was not
12 telling the truth regarding the agreement?

13 A. Basically that's all that you can do.
14 I mean, I didn't have enough of an interview to
15 conclude anything with him.

16 Q. Would you agree with me that his story
17 matched up perfectly with the hazardous waste
18 manifest?

19 A. It matched up to, like I said, what he
20 told me, yes.

21 Q. And wasn't the agreement, as you
22 learned from these people, for E. King to store the
23 waste in roll-off containers or trucks on
24 Mr. Gonzalez's property?

1 A. Per Mr. Weber's agreement and Paschen
2 Construction, the so-called agreement, they said
3 that, yes, it was supposed to be in a roll-off box
4 on the property.

5 Q. So Paschen agreed as well that that's
6 how the material is supposed to be stored, correct?

7 A. Correct.

8 Q. And then Paschen denied that it was
9 even its material, correct?

10 A. They said that there was a probability
11 that the material didn't even derive from the CTA
12 project.

13 Q. And they would have said that because
14 they're seeking to avoid liability, correct?

15 A. It could be the case. I couldn't tell
16 you that.

17 Q. Have people ever told you something
18 false to avoid liability?

19 A. Of course.

20 Q. In the course of your investigation --
21 Let me say this. You testified previously that the

22 photographs that were in your report, Exhibit A,
23 accurately described the conditions of the field,
24 correct?

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1 A. The site there, yes.

2 Q. There are no photographs of any
3 E. King trucks or individuals. Why are there no
4 photographs?

5 A. I believe when we started taking the
6 photographs, the trucks had already left, and the
7 front-end loader was already leaving too.

8 Q. While you -- Before -- When you pulled
9 up, the white pickup was not at the scene, correct?

10 A. Correct. I really don't even recall
11 if he was there or not. Like I said, my attention
12 was drawn to the dump truck and the front-end
13 loader.

14 Q. When you first saw him, he was at the
15 entrance of the property, correct?

16 A. Close to the entrance.

17 Q. And you would have seen him as you
18 pulled into the entrance had he been there, correct?

19 A. That's incorrect.

20 Q. That's incorrect?

21 A. Yeah. Actually, he was more so by the
22 pile of stone, which was --

23 Q. By the entrance, correct?

24 A. Yeah.

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1 Q. When you first saw him, he was by the
2 pile of stone by the entrance, correct?

3 A. When I first saw him?

4 Q. Yes.

5 A. Yes. It was more so probably, if you
6 look down on -- if you look on the site sketch, he
7 was closer --

8 Q. Page 8?

9 A. Yes. He was closer to the CTA
10 material but further east.

11 Q. Needless to say, you didn't notice him
12 when you pulled into the entrance?

13 A. No.

14 Q. Did you notice how many buildings were
15 on the property?

16 A. I noticed that one building was on the

17 property.

18 Q. And how long were you there, sir?

19 A. I was there for approximately -- Let
20 me see. From 10:00 a.m. to 1:30.

21 Q. So you were there half a day, correct?

22 A. If you split it in half, yeah.

23 Basically we were there for some part of the

24 morning, maybe for like an hour or so, and then we

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1 had to run off and go to another site.

2 Q. Sir, as a senior environmental
3 inspector, is one of your jobs noticing how many
4 buildings are on certain property?

5 A. No.

6 Q. Is it something you could miss?

7 A. Could be.

8 Q. Because buildings are small and you
9 wouldn't notice them?

10 A. Some buildings could be small. There
11 could be -- Like I said, your focus point is usually
12 on other things.

13 Q. You want to look at the site map on
14 page 8 and see how many buildings you see now?

15 A. Sure. Specifically the building
16 you're talking about on the right-hand side is on a
17 different property. It's not on the property line.

18 Q. How do you know where the property
19 line is, sir?

20 A. Because I know that building is not
21 there. That building there belongs to the other
22 property next-door to it.

23 Q. How about the railroad ties, sir? Are
24 those on the property within the property line,

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1 Photograph No. 12?

2 A. Which ones are you talking about?
3 There's two piles there.

4 Q. Photograph 12.

5 A. I'm assuming that the railroad ties
6 closest to the slag material, that would be railroad
7 property. And I'm assuming that the railroad ties
8 directly underneath it would be on the property that
9 Mr. Gonzalez owns.

10 Q. You said Mr. Gonzalez owns. Why did
11 Speedy Gonzalez Landscaping get tickets in this

12 matter?

13 A. Speedy Gonzalez?

14 Q. Landscaping.

15 A. Landscaping?

16 Q. Yes.

17 MS. BURKE: Objection as to relevant.

18 MR. LEVINE: It goes to motive and
19 bias of the witness, your Honor.

20 THE HEARING OFFICER: Let's go off the
21 record.

22 (Discussion off the record.)

23 THE HEARING OFFICER: We're back on
24 the record. There was an objection out, and

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1 I'm not sure what the objection was or what
2 it was to.

3 MR. LEVINE: I think I can clarify. I
4 asked why the landscaping company received
5 tickets in this case. Counsel objected.

6 I'm thinking, relevance?

7 MS. BURKE: On relevance, yes.

8 MR. LEVINE: And I responded that it
9 goes to motive and bias of the witness in

10 this case. My position is that these tickets
11 were given as a form of harassment by
12 Mr. Maciel when there was absolutely no
13 ownership interest of the landscaping
14 company.

15 THE HEARING OFFICER: Overruled. I'll
16 allow it.

17 BY MR. LEVINE:

18 Q. Why was the landscaping company
19 ticketed, sir? Were they the owners of the
20 property?

21 A. Basically you would have to ask that
22 to Mr. Stanley Kaehler and John Kryl.

23 Q. Did you tell Jose Gonzalez that you
24 were giving him tickets for his landscaping to stop

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1 him from -- to preclude him from -- to preclude that
2 company from doing business with the City of
3 Chicago?

4 A. No, I did not.

5 Q. Did you have a conversation with
6 Mr. Gonzalez outside on the property?

7 A. No.

8 Q. Did you testify you spoke with him?

9 A. Did I testify that I spoke with him?

10 Q. Sure. Didn't you just testify you

11 spoke with him?

12 A. Outside of when, that day?

13 Q. On that day.

14 A. I spoke with him that day, yes.

15 Q. And you said he was on the phone when

16 you spoke to him?

17 A. He was on a phone prior to me talking

18 to him.

19 Q. He pulled up to you when he pulled in

20 the property, correct?

21 A. No. He pulled up to us -- well,

22 okay -- after we finished talking with the operator

23 and the truckdriver.

24 Q. Did he indicate to you that these

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1 trucks were cleaning the site?

2 A. No.

3 Q. Did trucks continue to fill material

4 with the front-end loader while you were on the

5 site?

6 A. No. Not that I recall, no.

7 Q. Is it possible that that happened and
8 you didn't see it?

9 A. Possible.

10 Q. And, in fact, doesn't it say that in
11 your report, sir? The first paragraph, I
12 observed -- it was observed the trucks from E. King
13 Hauling were in the process of receiving loads.
14 That's the first paragraph, sir.

15 A. Proceed to investigate the smoke; and
16 upon driving up, it was observed the trucks from
17 E. King Hauling in the process of receiving loads of
18 what looked -- Yeah.

19 Q. Okay. Receiving loads means trucks
20 were loading up, correct?

21 A. I made the assumption that that's what
22 they were probably doing, was receiving loads.

23 Q. You made more than an assumption, sir.
24 You made a narrative evaluation that you signed,

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1 correct?

2 A. Correct.

3 Q. Was that correct when you made the
4 narrative evaluation?

5 A. That is correct to some point. But
6 like I said --

7 Q. Would that be pertinent, sir?

8 A. It was an assumption that I made that
9 the gentleman was receiving loads, looking like they
10 were going to pull out with them.

11 Q. Did you qualify this by saying I
12 assumed that E. King Hauling was in the process of
13 receiving loads?

14 A. I did not specifically put that word
15 in there, no.

16 Q. But you wish to amend the report, the
17 evaluation, now to say you assume that's what
18 happened, correct?

19 A. No.

20 Q. And you told them not to remove the
21 material from the site until further notice?

22 A. Correct.

23 Q. What material were they told not to
24 remove from the site?

1 A. Anything from the site.

2 Q. How would they have removed material
3 from the site if not in an E. King dump truck?

4 A. They could have -- He could have
5 gotten his own vehicles and removed it. He could
6 have hired some other contractor to remove the
7 material. Like I said, we were trying to find
8 out --

9 Q. Isn't that speculation, sir?

10 A. Basically we were still in the
11 investigation as far as trying to find out what was
12 exactly going on with what little information we
13 were gathering.

14 Q. Well, you conducted -- you drafted a
15 narrative evaluation which you signed?

16 A. That's correct.

17 Q. And then that's truthful, sir?

18 A. That is truthful.

19 Q. And you left out what you thought was
20 nonpertinent, correct?

21 A. I wouldn't say that it wasn't
22 pertinent.

23 Q. Well, I'm saying you left out what you
24 thought was nonpertinent.

1 A. But I wouldn't say that it wasn't
2 pertinent.

3 Q. Elaine King, would you say that was
4 nonpertinent?

5 A. I would say it wasn't pertinent; but
6 like I said, it was noted that E. King was on the
7 property.

8 Q. But you did put in the pertinent
9 information, correct?

10 A. That is pertinent, E. King is part of
11 the narrative evaluation.

12 Q. And it was also pertinent that you
13 told them not remove material from the site,
14 correct?

15 A. I told them for the time being, not to
16 remove any of the material.

17 Q. And what happened was the employees
18 continued the loading of the trucks, correct?

19 A. It looked like they were about to
20 start loading the vehicles, yes.

21 Q. It doesn't say that, sir, does it?

22 A. Where are you looking at specifically?

23 Q. That's the last sentence in the third
24 paragraph.

1 A. Correct.

2 Q. Now, you say that he let his employees
3 continue the loading of the trucks, correct?

4 A. Correct.

5 Q. So the trucks were loading and not
6 dumping, correct?

7 A. No. At the time, it looked like they
8 were -- I mean, the case could have been that he was
9 trying to get rid of the evidence there, that could
10 be one suggestion that he was trying to do,
11 probably, on the property.

12 Q. Oh, come on. Doesn't your report say
13 he continued the loading of the trucks?

14 A. Yes.

15 Q. And are you going to stick with that,
16 or do you want to change that now?

17 A. I'm sticking with what it says there.

18 Q. And loading of the trucks indicates
19 cleaning of the property, correct?

20 A. That would not indicate it there,
21 so --

22 Q. Well, it's not dumping, is it?

23 A. Well, you need -- In order for you to
24 remove material from one site to another, you need a

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1 permit from the Department of Environment. You
2 can't move one piece of material -- Once it leaves a
3 specific area or leaves a specific piece of real
4 estate, it's considered waste. It has to go to
5 either a landfill or a transfer station or some kind
6 of recycler. He didn't have any of that paperwork
7 other than what was manifested there for that
8 material there at the site.

9 MR. LEVINE: Move to strike the
10 narrative, request the Court to direct the
11 witness to answer the question put to him.

12 THE HEARING OFFICER: I'll allow the
13 narrative, but answer the question Mr. Levine
14 puts to you, please.

15 BY THE WITNESS:

16 A. Could you repeat that?

17 MR. LEVINE: Could you read it back,
18 please?

19 (Record read as requested.)

20 BY MR. LEVINE:

21 Q. If they're loading the trucks, it's
22 not dumping, correct?

23 A. If they're loading the trucks, it's
24 not dumping --

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1 Q. Correct?

2 A. -- for that time being, no.

3 Q. So at that point the trucks were being
4 loaded, correct?

5 A. Correct.

6 Q. That means that waste was coming off
7 that property onto somewhere else, correct?

8 A. That means that they were about to
9 leave the site there with material.

10 Q. And you knew where the material was
11 going because you had a manifest, correct?

12 A. The material originally was supposed
13 to go to CID landfill.

14 Q. And do you know where it went?

15 A. Pardon me?

16 Q. Do you know where the material went
17 when the loaded truck left the yard?

18 A. No.

19 Q. Did you have any of your six or eight
20 employees or helpers follow any of the trucks?

21 A. That is not my job to do that.

22 Q. I'm just asking if you did it or not.

23 A. No.

24 Q. Do you have any information that --

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1 You indicate here that it was his employees who
2 continued the loading of the trucks, correct?

3 A. Correct.

4 Q. But we don't know who those people
5 are, do we?

6 A. No, I don't.

7 Q. We don't have any photographs of those
8 people to identify them, correct?

9 A. I don't, no.

10 Q. How many people had cameras those
11 days -- that day?

12 A. That day, I believe myself and then
13 just another inspector.

14 Q. And any of the -- The other inspector
15 and you could have both taken pictures of the

16 individuals in the E. King trucks, correct?

17 A. I can't answer for -- For myself, I
18 could have taken a picture.

19 Q. But you didn't, and we don't know who
20 that person is today, correct?

21 A. No, I did not.

22 Q. Do you continue to maintain the trucks
23 were dumping on March 22nd?

24 A. I would assume that they were because

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1 of the manifests that were given to me, that they
2 were dumping.

3 Q. What is your basis for continuing to
4 maintain that the E. King trucks were dumping on
5 March 22nd?

6 A. Because of the conversation I had with
7 the driver and the heavy equipment operator, they
8 pretty much told me that the material was -- they
9 were working for the City of Chicago and they were
10 bringing the material there.

11 Q. In fact, they were, in a sense,
12 working for the City of Chicago, for the CTA, were

13 they not?

14 A. City of Chicago and CTA are two
15 different entities.

16 Q. Well, they were confused, weren't
17 they?

18 A. They probably were.

19 Q. What does C stand for in CTA?

20 A. Chicago.

21 Q. That would provide for the
22 inconsistency, correct?

23 A. It's two different entities, though.

24 Q. But they don't know that, do they?

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1 A. I would assume that they don't, but I
2 can't make that assumption for them.

3 Q. And they knew they were moving CTA
4 waste off -- E. King was moving CTA waste off
5 Mr. Gonzalez's property, taking it to a landfill,
6 correct?

7 A. They were supposed to in the long run,
8 I would assume, because of their agreement.

9 Q. And that's what you did your
10 investigation around. Your investigation was to

11 determine where the waste came from, how it happens
12 to be on the property, where it was going, and
13 whether or not a potential violator caused or
14 allowed it, correct?

15 A. Basically all of the people who were
16 on --

17 Q. Is that correct or not, sir?

18 A. Can you repeat the question?

19 MR. LEVINE: Could you read it back?

20 THE HEARING OFFICER: You can ask me
21 the next time, and I'll ask the court
22 reporter.

23 MR. LEVINE: Okay. Thank you.

24 THE HEARING OFFICER: It's a

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1 formality.

2 (Record read as requested.)

3 MS. BURKE: Objection to the extent
4 that it uses the phrase caused or allowed.

5 BY THE WITNESS:

6 A. That was partial to my --

7 THE HEARING OFFICER: Sustained.

8 BY MR. LEVINE:

9 Q. What did your investigation seek to
10 determine on March 22nd, 2006?

11 A. My investigation seeked to determine
12 who was the culprit that was burning the material on
13 the property, which is how we first started off,
14 which was the open burning. And as soon as I
15 started walking --

16 Q. And who was the person burning?

17 A. We couldn't tell because the person
18 did not give me an identification. He walked away
19 from us.

20 Q. Did you take his picture?

21 A. I'm not sure if I did or not. I don't
22 think so, no.

23 Q. Did you ask Elaine King who the person
24 was?

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1 A. No.

2 Q. Did you ask Mr. Gonzalez who the
3 person was?

4 A. No.

5 Q. What sort of investigation did you

6 conduct to determine who the person was who was
7 doing the burning?

8 A. It wasn't a completely thorough
9 investigation, mostly because of the fact that a lot
10 of the individuals were not willingly giving
11 information to us, nor were they showing us any
12 identification.

13 Q. So you had to just charge Mr. Gonzalez
14 with everything because you couldn't do a completely
15 thorough investigation?

16 A. That's not -- Like I said, the
17 liability as far as giving him a citation, I was
18 told specifically to give him a ticket.

19 Q. By who?

20 A. By Stanley Kaehler, John Kryl.

21 Q. And what is he charged with, sir?

22 A. I believe what the municipal codes are
23 on page ...

24 Q. 2, No. 8?

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1 A. Page 4 and page 5, the list of
2 apparent state violations, and then you have the

3 municipal violations.

4 Q. Okay. On page 4, do most of them
5 start with caused or allowed?

6 A. Some of them do.

7 Q. Most of them?

8 A. Some of them.

9 Q. 9 out of 14, correct?

10 A. I believe so.

11 Q. Now, you didn't even know if
12 Mr. Gonzalez was on the property when you pulled up,
13 correct?

14 A. I didn't look in that direction.

15 Q. But you did see someone, and you said
16 he was -- I think you testified this time that he
17 was putting the fire out with a shovel --

18 A. Not Mr. --

19 Q. -- when you pulled up?

20 A. Not Mr. Gonzalez.

21 Q. The person by the fire.

22 A. Yes.

23 Q. Didn't you previously testify that he
24 was taking branches and throwing them on the fire

1 when you pulled up?

2 A. Well, when I pulled up, that's what he
3 was doing. But by the time I made my trip down to
4 the area, walking to that area, he was dying it out
5 already with a shovel.

6 Q. And you could see all the way down to
7 where the fire was when you pulled in?

8 A. Yeah, it was a pretty decent fire when
9 we were pulling in.

10 Q. How many cubic yards was the fire --
11 of material was the fire?

12 A. Close to 15.

13 Q. 15 cubic --

14 A. Maybe cubic feet, if anything, instead
15 of yards.

16 Q. That's 15 feet high?

17 A. No.

18 Q. So not cubic feet. It would be square
19 feet, correct?

20 A. Square feet.

21 Q. When you previously testified cubic,
22 did you mean square?

23 A. Maybe I might have meant square.

24 Q. When was the first time you noticed

1 waste on the property in March of 2006?

2 A. Maybe two weeks prior to, I believe.

3 Q. Did you watch the property for two
4 days before, seeing if loads would come on the
5 property?

6 A. No.

7 Q. Where were you the 21st and the 20th?

8 A. I don't recall right now.

9 Q. Were you at the site?

10 A. No.

11 Q. Would your log from work detail where
12 you were on those days?

13 A. It would show definitely where I was
14 at the time.

15 Q. Where is that log, sir?

16 A. I don't have it on me.

17 Q. Where is it?

18 A. It would be with the City of Chicago
19 Department of Environment. It should be called a
20 vehicle sheet.

21 Q. Was the vehicle sheet part of your
22 investigation that week?

23 A. It's part of -- yes, my daily process,
24 yes.

1 Q. Did you tell Mr. Gonzalez that he was
2 running a transfer site on that date?

3 A. Yes, I did.

4 Q. An illegal transfer site?

5 A. That's correct.

6 Q. Did you make any attempts to help him
7 avoid the citations?

8 A. He started stating right away, cutting
9 off my conversation, telling me he's not running an
10 illegal transfer station, not running anything
11 illegal there, and pretty much that's all he was
12 rebutting to.

13 Q. And what was his position as to --
14 What was your understanding of his position of why
15 he believed he was not doing anything illegal?

16 A. I don't know. I can't make that
17 assumption for him.

18 Q. Don't you usually try to find out
19 what's going on at a property and work it out before
20 ticketing?

21 A. Basically, if they're doing
22 something, like I said, of this magnitude of
23 material there, no.

24 Q. What if he had purchased a lot with

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1 that type of material on it, would you be able to
2 work something out with him?

3 A. Probably, if he would have called us
4 in. We've had scenarios on other sites where people
5 have called us in to go inspect their site and ask
6 us what they need to do exactly to be in compliance
7 with the City of Chicago as far as environmentally.

8 Q. Wouldn't that be just inviting you to
9 come out to give them a ticket?

10 A. No, not necessarily so.

11 Q. Couldn't he proceed to clean the site
12 himself without your gracious assistance?

13 A. He didn't -- When I asked him for any
14 other paperwork, he didn't provide it at the time.
15 I took the assumption that he was just doing
16 something illegal.

17 Q. What did you base that assumption on?

18 A. Based on that he didn't provide me
19 with the information that I needed, which was load
20 tickets or any manifests. He acknowledged that the
21 manifest was not his and he doesn't know who gave me

22 those manifests, and that's when he rolled up the
23 window.

24 Q. Well, weren't there manifests from CTA

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1 having E. King haul it?

2 A. E. King, yes.

3 Q. And you thought there were better
4 manifests that you should receive other than the one
5 that the driver gave you?

6 A. Well, if he was doing a cleanup, he
7 would have basically gave me, like I said, any -- he
8 would have gave me a manifest if it was going to a
9 landfill. He would have gave me --

10 Q. Didn't this manifest say it was going
11 to a landfill?

12 A. But it's coming from the CTA, not
13 coming from that site.

14 Q. And you understood there was an
15 agreement to store it in roll-offs on Mr. Gonzalez's
16 property, right?

17 A. For that specific material.

18 Q. I'm just talking about the suspect CTA

19 material. And you understand that there was a break
20 in the agreement with someone and E. King's
21 individuals dumped it on that site previously;
22 didn't you learn that?

23 A. Per their conversation, yes.

24 Q. So you did learn that, and you

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1 discounted that, correct? You didn't believe that?

2 A. I couldn't say that I discounted it,
3 no.

4 Q. Well, if that were the case, wouldn't
5 E. King be responsible and not Mr. Gonzalez?

6 A. I would say that CTA, Paschen,
7 E. King, Mr. Gonzalez were all responsible.

8 Q. If Mr. Gonzalez knew about it,
9 correct?

10 A. No. Even so, if the City of Chicago
11 ordinance states that you're technically responsible
12 for that lot, that lotted area, you're supposed to
13 secure it, supposed to have a fence around. If
14 someone comes and fly-dumps on there, you are held
15 responsible for the cleanup.

16 Q. Which ordinance, and what does it

17 specifically state?

18 A. I believe it would be dumping on real
19 estate, would be one part to it.

20 Q. Look on page 5 at the top, dumping on
21 real estate without a permit.

22 A. Dumping on real estate without a
23 permit.

24 Q. Does that state caused and allowed the

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1 open dumping?

2 A. Caused and allowed the open dumping.

3 Q. So wouldn't a violator have to cause
4 or allow the open dumping in order to be held
5 responsible for that violation?

6 MS. BURKE: Objection, calls for a
7 legal conclusion.

8 THE HEARING OFFICER: Overruled. I
9 agree. He can answer it.

10 BY THE WITNESS:

11 A. Basically you're causing and allowing
12 if you're not securing the area.

13 BY MR. LEVINE:

14 Q. So it's your position -- Haven't you
15 previously testified that this lot was secured?

16 A. It was secured usually all the time,
17 yes, by lock and a chain, chain-link fence and a
18 chain around the fence.

19 Q. So if someone violates an agreement
20 and dumps without being allowed to on Mr. Gonzalez's
21 property, is he held responsible for allowing the
22 open dumping of debris?

23 A. If he's there and he's allowing it
24 willingly, I would assume so. They pointed out that

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1 he was the boss, he was the supervisor.

2 Q. I'm saying if they went outside the
3 agreement and he didn't allow it, is he responsible
4 for allowing open dumping?

5 A. Partially, yes.

6 Q. How?

7 A. It says owner responsible for removal,
8 7-28-450.

9 Q. Owner is responsible for removal of
10 debris?

11 A. 11-4-1500, treatment and disposal of

12 solid waste.

13 Q. Well, wait. Let's go there. Weren't
14 there trucks picking up material with a loader and
15 dumping them in dump trucks, and they were removing
16 it from the property? Isn't that what the owner was
17 there -- Isn't that what was happening on this
18 property, they were removing it on the 22nd?

19 A. Like I said, I can't assume that.
20 There was nothing to conclude to that, that that's
21 exactly what he was doing, other than what Mr. --
22 what you're telling me now, that Mr. Speedy Gonzalez
23 was there for.

24 Q. And yet you can't assume that he was

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1 in violation of these acts, correct?

2 A. It was his property.

3 Q. Did you testify they were bringing
4 material onto the site -- I'm sorry. Let me
5 withdraw that.

6 When you say the fire -- You
7 testified the fire was 5 feet across, correct?

8 A. 5 feet? The fire was not 5 feet

9 across.

10 Q. I'm sorry. 12 to 15 feet across?

11 A. The fire itself was probably 3 to 4
12 feet, but the material that it was burning or the
13 material that was to be burned was about 15 feet
14 across, probably, about.

15 Q. Did you see Mr. Gonzalez there when
16 the individual who you saw in front of the fire --

17 A. No, I didn't witness him at the time.

18 Q. You saw Mr. Gonzalez later, correct?

19 A. After the interview with the front-end
20 loader operator and the truckdriver.

21 Q. You testified there was gravel at the
22 entrance?

23 A. Correct.

24 Q. Was gravel -- Was there clean gravel

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1 on the site?

2 A. Was there clean gravel on the site?
3 Yes, Photo No. 7 would indicate that.

4 Q. And you testified there was gravel at
5 the entrance, correct?

6 A. Right at the entrance, yes.

7 Q. I'm directing your attention to
8 Photograph 11. There's gravel in front of those
9 ties, correct?

10 A. On the ground?

11 Q. Yes.

12 A. Yes.

13 Q. And on Photograph 5, there's a picture
14 of the guy burning -- or by the burning, correct?

15 A. By the burning, no.

16 Q. There's a picture of a guy, correct?

17 A. Correct.

18 Q. Did you take that photograph?

19 A. No, I did not.

20 Q. There's gravel to the left of where
21 the individual is standing, correct?

22 A. Correct.

23 Q. And could you tell the gravel was
24 being spread on the property, clean gravel?

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1 A. I can't determine that right now with
2 that photo. But during that day, I mean, it looked
3 like it was already worn down, so ...

4 Q. Were there treads going up to the
5 piles of gravel on No. 7, and were there depressions
6 in the piles?

7 A. There was depressions all over the
8 property.

9 Q. I'm talking about Photograph 7,
10 depressions in the piles of clean gravel.

11 A. There is indicating in the photo
12 there.

13 Q. And that would indicate to you that
14 gravel is being spread at the site, correct?

15 A. That would indicate that gravel was
16 dumped on the site, yes.

17 Q. Photograph 7 shows piles of gravel
18 dumped at the site, correct?

19 A. Correct.

20 Q. There are tracks coming up to the
21 gravel in the photograph, correct?

22 A. Correct.

23 Q. In the middle of the pile of gravel,
24 there's a depression where there was a previous hump

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1 of gravel, correct?

2 A. I can't determine that from this
3 photo.

4 Q. Did you see it when you were there?

5 A. I don't recall that.

6 Q. Do you know whether or not the gravel
7 depicted in Photograph 11 and 5 was being spread to
8 clean the site?

9 A. I would assume that it wasn't, only
10 because of the wood debris that you see commingled
11 with the gravel on the ground there. This is a
12 dirtier gravel on the ground with the wood debris.

13 Q. Is it the same color as the gravel in
14 Photograph 11 -- or Photograph 7?

15 A. I would say it's closely similar but
16 not exactly the same.

17 Q. And you can tell?

18 A. You can tell that the gravel on Photo
19 No. 7 is a finer material, smaller material, and you
20 can tell in Photo 11 that the gravel on the ground
21 there is a bigger and coarser material.

22 Q. What was this property prior to the
23 purchase?

24 A. I have no idea.

1 Q. Do you know whether it was wetlands?

2 A. I have no idea.

3 Q. Do you know where the material from
4 the berm came from?

5 A. I have no idea.

6 Q. Do you know whether or not the
7 previous owner of the property scraped the top of
8 the property and used that material to make the
9 berms?

10 A. I have no idea.

11 Q. If he had done that, would the berms
12 be considered waste?

13 A. Depending on what type of material he
14 was scraping off the ground, depending on what type
15 of property that was on there.

16 Q. Well, the property was obviously
17 something before it was an empty lot, correct?

18 A. Quite possibly.

19 Q. In fact, much of Chicago was something
20 else before what it is now, correct?

21 A. Quite possibly.

22 Q. And commingled in the dirt as a result
23 of the fire and previous construction, there's other
24 material in the dirt, correct?

1 A. There probably is, yes.

2 Q. And that includes rocks, cement,
3 correct?

4 A. You're talking about, what, 60 years
5 ago?

6 Q. Could be a hundred.

7 A. The Chicago fire?

8 Q. It could be a hundred years, right?

9 A. Could be.

10 Q. And could you describe that material
11 as C&D?

12 A. Actually, no.

13 Q. What's the difference if broken pieces
14 of concrete and asphalt are in the soil as opposed
15 to whether or not -- from previous buildings from
16 100 years ago as opposed to --

17 A. Actually, a lot of the product from
18 back then has carcinogens in it, so it would be
19 considered hazardous waste material. Like most of
20 the material that was from the Chicago fire was
21 considered -- well, by today's standards, would be
22 considered hazardous materials.

23 Q. How about concrete? Would that be
24 considered hazardous waste?

1 A. If it's commingled with the other
2 material, yes, it is.

3 Q. And is an owner responsible for
4 lifting up 4 feet of his soil on property and
5 sifting it to get out the concrete, asphalt, and
6 other construction and demolition material in the
7 property?

8 A. Well, he would have to have an
9 analysis report first as far as what kind of
10 contamination he has on his property.

11 Q. You're assuming there's contamination,
12 correct?

13 A. No, I'm not assuming. We're going
14 for -- We're speculating, I guess, right? Is that
15 what we're doing here?

16 Q. Well, my question is whether or not
17 soil in Chicago has what you describe as C&D
18 material in it.

19 A. Could be.

20 Q. So when the berm was built, if it was
21 built from soil in the area, that soil would contain
22 what you call C&D material, correct?

23 A. Could you repeat that?

24 Q. If the soil was pushed up to make the

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1 berm around the property, that would include in that
2 soil what you conclude to be C&D material, correct?

3 A. Depending, but you did have some big
4 bulky pieces of concrete in there, in the berms.
5 You're talking 6 to 12 inches of concrete.

6 Q. And that could have been from
7 buildings from 100 years ago, for all you know,
8 correct?

9 A. I couldn't tell you that.

10 Q. Now, you talk about discoloration of
11 soil?

12 A. Correct.

13 Q. Does that automatically mean that it's
14 contamination, or could it mean that it's wet?

15 A. No, it could be that there is some
16 contamination to it. That's a flag indicator for
17 us.

18 Q. Could it also mean that it's just
19 damp?

20 A. Dampness does change some color to it,
21 but you can tell specifically in Photos No. 9 and 10
22 that there is some type of contamination in there.

23 Q. How can you tell?

24 A. You have three different shades of

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1 material there.

2 Q. How do you know it's not just
3 different topsoils as opposed to clay?

4 A. Well, there is different topsoils in
5 there, of course.

6 Q. How could you tell from the photograph
7 that that's topsoil -- that that's not topsoil
8 instead of clay?

9 A. How can I tell?

10 Q. Yeah.

11 A. You can't tell from the photograph,
12 but you can tell when you were right next to it.

13 Q. And you could tell that was
14 contaminated material?

15 A. Yes.

16 Q. Didn't you indicate possible
17 contaminated material?

18 A. Possibly contaminated, but you can't
19 ultimately determine that until you get an analysis
20 report. To get a better picture, a closeup view of
21 the picture, look at Photo 22. That would give you
22 pretty much an indicator as far as what type of
23 material was in that CTA waste -- suspected CTA
24 waste.

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1 Q. As you sit here today, do you think
2 that waste was CTA waste?

3 A. It's still in question for me, not
4 with all the remaining factors.

5 Q. Now, you've mentioned there's some C&D
6 debris throughout the site, correct?

7 A. Right.

8 Q. Do you know who put that material on
9 the site?

10 A. No, I do not.

11 Q. Do you know whether the site was
12 purchased with fly-dumped material?

13 A. No, I do not.

14 Q. Do you know whether there were

15 previous instances of fly-dumping on the property?

16 A. No, I do not.

17 Q. Do the piles, the small piles, appear
18 to be fly-dumped, for instance, 3, 4, 5, and 6?

19 A. It could be a possibility, but it
20 looks more like a landscape waste material.

21 Q. What if it was landscape waste
22 material fly-dumped?

23 A. Could be.

24 Q. You don't know how that material got

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1 on that property?

2 A. No, I do not.

3 Q. You don't know whether or not
4 Mr. Gonzalez put that waste on that property,
5 correct?

6 A. No, I do not.

7 Q. And you don't know whether
8 Mr. Gonzalez allowed that waste to be put on the
9 property, correct?

10 A. No, I do not.

11 Q. You don't know whether he caused that
12 waste to be put on the property?

13 A. No, I do not.

14 Q. With regard to the temperature that

15 day, how cold was it, if you remember?

16 A. About 35 degrees, around there.

17 Q. And that's listed in one of the

18 reports, correct?

19 A. Correct.

20 Q. Do you know whether or not the

21 individual -- that the water occurred from snow

22 melting in the last day or so?

23 A. It could have been a possibility.

24 Q. Do you know whether or not that was a

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1 low area, previously a wetland, in Photograph 18 or

2 19?

3 A. No, I do not know if it was a wetland.

4 Q. What would indicate that that area was

5 wetland?

6 A. Vegetation growth.

7 Q. Like pussy willows?

8 A. Commonly, right in the area here, you

9 would notice it.

10 Q. In Photograph 18, right in the center
11 between all the arrows, do you see pussy willows
12 growing?

13 A. Near the railroad tracks, yes.

14 THE HEARING OFFICER: Excuse me. Are
15 those cattails?

16 MR. LEVINE: I'm sorry. We call
17 them -- Cattails, thank you.

18 BY MR. LEVINE:

19 Q. The scrap metal, do you know whether
20 Mr. Gonzalez caused the scrap metal to be placed on
21 the property?

22 A. No, I do not.

23 Q. Do you know whether Mr. Gonzalez
24 allowed the scrap metal to be placed on the

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1 property, specifically in Photographs 1, 6, 8, and
2 14?

3 A. I'm assuming that since it was his
4 property, that he would have knowledge. Since it
5 was his property, he would know exactly what's on
6 his property.

7 Q. Unless someone fly-dumped it, right?

8 A. If they had the key to get inside,
9 yes.

10 Q. Or if they cut the lock or knocked
11 down the fence?

12 A. Correct. But he didn't produce a
13 police report to me to suggest otherwise.

14 Q. Would that prove that someone
15 fly-dumped, a police report?

16 A. If someone goes on the property, I
17 would assume that he would have written out a police
18 report which then would have pretty much took the
19 investigation into another direction. Then it would
20 have been just a general fly-dump. He still would
21 have been responsible for the cleanup.

22 Q. Did you ask him for a police report?

23 A. He didn't give me a chance to.

24 Q. Did you go to the police and pull all

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1 the police reports on the property?

2 A. No.

3 Q. What would be the point of filing a
4 police report if you didn't write it off your

5 insurance?

6 A. What would be the point?

7 Q. Yeah. Why would someone do a --
8 conduct a police report for throwing garbage on
9 their property?

10 MS. BURKE: Objection, speculation.

11 THE HEARING OFFICER: Could you read
12 the question back, please?

13 MR. LEVINE: I'm just saying why would
14 someone fill out a police report if someone
15 were to throw garbage on the property.

16 THE HEARING OFFICER: Objection
17 sustained.

18 BY MR. LEVINE:

19 Q. Now, the waste is not actually in the
20 standing water. The standing water is between the
21 waste, correct? Photograph 19 -- Photograph 18.

22 A. Right about -- right around the other
23 side of that photo --

24 Q. Which photo are we talking about?

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1 A. Photograph 18.

2 Q. Okay.

3 A. Around the other side, there was --

4 Q. The part that doesn't appear in the

5 photograph?

6 A. Correct. There was some water there.

7 And if you look there, directly in front of the

8 photo there, it's all damp.

9 Q. I see that. You can see the bottom,

10 correct?

11 A. Correct.

12 Q. About half an inch of water, quarter

13 inch?

14 A. Probably about half an inch.

15 Q. How deep was the water?

16 A. In some spots it was standing, like,

17 2 to 3 inches.

18 Q. How do you know? Did you walk in it?

19 A. No. We stuck a stick in the water.

20 Q. Who stuck a stick in the water?

21 A. I did.

22 Q. Really?

23 MR. LEVINE: If I could have a moment?

24 MS. BURKE: Can we go off the record

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1 for a moment?

2 THE HEARING OFFICER: Yes.

3 (Discussion off the record.)

4 THE HEARING OFFICER: Back on the
5 record.

6 BY MR. LEVINE:

7 Q. One way to stop standing water on
8 property is to put clean stone down, correct?

9 A. I wouldn't say it would stop it.

10 Q. Well, would that fill in the low areas
11 where the water was collecting?

12 A. It can, but it's still going to
13 overlap. I mean, water still tends to find its way
14 through areas that are not specifically solid.

15 Q. The City objects to water standing by
16 itself, correct?

17 A. Yes, it does.

18 Q. So if clean stone were filled in the
19 low areas, that would stop the water from standing
20 by itself and we'd just have wet clean stone,
21 correct?

22 A. Correct.

23 Q. You took the time to stick a stick in
24 the water, right?

1 A. I was just walking through there, just
2 checking to see if there was any sheen in the water
3 that would indicate some type of fuel product on top
4 of there.

5 Q. Did you see any sheen on the water?

6 A. I did not see any sheen on the water.

7 Q. You said another dump truck arrived
8 while you were there, correct?

9 A. Correct.

10 Q. And you did not look in the truck?

11 A. No.

12 Q. Can you tell by looking at a truck as
13 an experienced investigator whether the truck is
14 full or empty by looking at the load on its tires?

15 A. No.

16 Q. You can't tell?

17 A. I don't make a determination like
18 that. I usually look in the bed of the truck.

19 Q. I'm asking can you tell by looking and
20 seeing whether the tires are down, see how low the
21 thing is riding, whether there's material in the
22 truck.

23 A. No. That's an overweight. If you get
24 an overweight vehicle, yeah, you can determine that.

1 Q. Did you have an opportunity to look in
2 the back of the truck that arrived?

3 A. No, I did not.

4 Q. Would that have indicated whether the
5 truck was dumping or cleaning the property?

6 A. As far as what, me looking inside of
7 it?

8 Q. Yeah, whether the truck was empty or
9 full.

10 A. It could have if he had just arrived,
11 yes.

12 Q. Why didn't you do that?

13 A. I was busy with the investigation
14 still.

15 Q. And one of the things you were busy
16 with was with sticking a stick in the water,
17 correct?

18 A. One of the things among others, yes.

19 Q. Okay. And the second dump truck was
20 filled before leaving, correct?

21 A. I wouldn't say that it was filled.

22 Q. Didn't you testify the second dump
23 truck was filled before leaving?

24 A. I wouldn't say it was filled. I would

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1 say that it was probably being loaded.

2 Q. And after it was loaded, it left,
3 correct?

4 A. It left after the fact that I told
5 them that they needed to stay pending our
6 investigation, and the driver decided not to stay
7 around.

8 Q. And we don't know what the license
9 plate number of that truck is?

10 A. I don't have that information with me.

11 Q. But someone from the City did take
12 that information down, correct?

13 A. I would assume yes, they did.

14 Q. Now, the vegetation you talked about
15 along the berm along 130th Street, that vegetation
16 was vegetation that grows there, correct?

17 A. Yes.

18 Q. So no one caused to put it there,
19 correct?

20 A. Along the berm?

21 Q. Yeah.
22 A. No, I can't make that assumption.
23 Q. Well, if vegetation grows, does
24 someone allow it to grow?

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1 A. It's just part of human nature, I
2 would believe, isn't it?
3 Q. Well, it's really part of nature.
4 A. Nature itself, yes.
5 Q. So you're not contending that the
6 vegetation growing on the berm was waste, are you?
7 A. No, but there is a clause in there
8 that says that it's supposed to be at a certain
9 height if they're going to have vegetation on the
10 property.
11 Q. How long have you been looking at this
12 property? Didn't you work at CID previous to this?
13 A. Yes, I have.
14 Q. CID is the big hill in the back of
15 Picture No. 21?
16 A. Mm-hmm.
17 Q. Is that a yes?
18 A. That's correct. That's CID landfill.

19 Q. And your job at CID for six years in a
20 row would be to get on top of those landfills and
21 check the methane levels, correct?

22 A. Methane level, yes.

23 Q. So you could look down on this site
24 when you were up there, correct?

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1 A. You can.

2 Q. You could look all around the
3 surrounding area, correct?

4 A. You can.

5 Q. And there's really nothing up on that
6 berm, is there -- on top of the landfill, except for
7 some explosive gas, right?

8 A. Explosive gas and leaching wells.

9 Q. Do you know whether or not the CID
10 landfill was leaching out to the property that
11 Mr. Gonzalez purchased?

12 A. No, I do not.

13 Q. Could you see from on top of the
14 landfill, when you worked at CID, the property that
15 Mr. Gonzalez purchased?

16 A. Can you see it?
17 Q. Yeah.
18 A. If you're on the north -- I believe
19 the northwest corner of the landfill, you probably
20 can.
21 Q. Weren't you up there about six days
22 prior to March 22nd, 2006?
23 A. I can't recall exactly what date it
24 was.

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1 Q. About a week before?
2 A. I can't recall if it was a week or so.
3 Q. Was it a week, a month, a couple
4 weeks?
5 A. I don't recall. I do a monthly
6 inspection at the site.
7 Q. So you're there every month?
8 A. Yeah.
9 Q. And every month you're there, you
10 could see the property, correct?
11 A. Not all the time. Like I said, it
12 depends on that specific area you're talking about
13 where you can see the property. If you look at it

14 closely, they were doing work on the right-hand side
15 there, which is the area you could only come in
16 through. You can't come in through the left side;
17 you would have to come in through the right side
18 only.

19 Q. What picture are you talking about?

20 A. 21. This would be what they call a
21 lift on the landfill.

22 Q. That's a road going up?

23 A. That's a road -- No. A lift is what
24 they call -- It's kind of, like, what they make on

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1 the landfill. They make, like, certain steps on the
2 landfill in order to prevent erosion from coming
3 down.

4 Q. You could see down to the property the
5 month before when you were there, correct?

6 A. I don't recall if I did or not.

7 Q. Did you see a truck down there?

8 A. I don't recall if I did or not.

9 Q. Did you see a truck that said

10 Mr. Gonzalez's name on the property?

11 A. I don't recall if I did or not during
12 that time frame.

13 Q. You don't remember seeing a truck?

14 A. I could have possibly have seen it,
15 but I don't recall if I did or not.

16 Q. Because you testified that you didn't
17 know that the site was Mr. Gonzalez's prior to
18 pulling on the property, correct?

19 A. Correct.

20 Q. When you pulled on the property and
21 you saw the Gonzalez name on the truck, did you have
22 an indication at that point?

23 A. It was an assumption that it could
24 have been, that he could have maybe been storing or

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1 leasing something on the property.

2 Q. What is your -- What evidence did you
3 see of standing water violations at the site?

4 A. Evidence would be Photograph No. 19,
5 Photograph No. 18.

6 Q. How about a barrel? Did you see a
7 barrel?

8 A. Did I see a barrel?

9 Q. A drum or a container. I'm going to
10 give you a hint. It's not in the photographs.

11 A. I don't see it.

12 Q. Do you remember flowing water at the
13 site?

14 A. I don't recall seeing any flowing
15 water.

16 Q. Do you remember flowing water
17 December 6 of '06?

18 A. I don't recall if I did or not.

19 Q. Is there something that would have
20 caused you to forget flowing water from December to
21 this date?

22 A. I -- Like I said, I don't recall
23 seeing any flowing water on the property itself.

24 Q. Well, you testified you saw flowing

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1 water that came from a container. Do you remember
2 that?

3 A. No, I don't remember that.

4 Q. Was that false?

5 A. I wouldn't say it was false if it was

6 a statement that I made.

7 Q. Was it your contention that --

8 THE HEARING OFFICER: Could you read
9 the question and the answer to the dep?

10 MR. LEVINE: I'm sorry. Do you want
11 me to repeat it?

12 THE HEARING OFFICER: Yes.

13 MR. LEVINE: Could you read it back?

14 THE HEARING OFFICER: Were you going
15 to impeach the witness?

16 MR. LEVINE: No, I wasn't.

17 THE HEARING OFFICER: Disregard. You
18 may continue.

19 BY MR. LEVINE:

20 Q. Were there any violations coming from
21 the Porta-Potties on the site?

22 A. No.

23 Q. Did you believe -- Did you previously
24 state in testimony that water came from the

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1 Porta-Potties?

2 A. There looked to be some water. There
3 was some dampness around there.

4 Q. But as you sit here today, you don't
5 believe any of the water came from the
6 Porta-Potties, correct?

7 A. Not to my knowledge, no.

8 Q. The decision to cite the defendant
9 with not having special weight stickers on the
10 trucks, whose decision was that?

11 A. That was based on Stanley Kaehler and
12 John Kryl's decision.

13 Q. Would that have been Mr. Gonzalez's
14 violation?

15 A. If he owned the vehicles, yes.

16 Q. Did he own the vehicles that said
17 E. King on them?

18 A. No, I believe not.

19 Q. Did you ever check that?

20 A. Did I ever check that? No.

21 Q. Did anyone ever check that?

22 A. I can't answer. To the best of my
23 knowledge, no.

24 Q. In the six years you worked at CID,

1 you never saw debris on this property?

2 A. I never paid attention to the property
3 in the six years that I worked there.

4 Q. You never saw the condition it was in
5 prior to March 22nd, 2006?

6 A. Possibly maybe I have as an inspector.

7 Q. Well, when?

8 A. I can't recall right now.

9 Q. My question is: You only became
10 interested in the property after Jose Gonzalez
11 acquired the property, correct?

12 A. I had no idea that he had owned the
13 property or he owns the property or even leased it
14 or what have you other than from that day that I
15 seen him. He stated himself that it was his
16 property and that we were on there illegally.

17 Q. And you never saw his truck with his
18 name on it when you were on top of the CID landfill,
19 correct?

20 A. Probably I might have seen it, if
21 anything maybe once, but it was more so -- I don't
22 even recall if I did see it or not. It might have
23 been -- If I did see it, it might have said Speedy
24 or something on there.

1 Q. So you might have seen where it says
2 Speedy and then just happened to be driving down
3 with a couple City of Chicago lawyers in the car,
4 correct, on March 22nd?

5 A. We were going to 136th and Hoxie.

6 Q. You just happened to drive by there
7 with ten minutes to spare, correct?

8 A. That's the only area that's -- That's
9 the only way to get to that area.

10 Q. Okay. Did you see evidence of
11 scrapping at this site?

12 A. Other than Photograph No. 8, No. 14,
13 No. 16, that's the only scrapping that I saw.

14 Q. Did you see any burn marks on any of
15 the wires?

16 A. In photograph No. 8, there was some
17 burn mark, actually, right above -- right in between
18 where that white part is on Photograph 8 and the
19 ending colors, where you see the red and the yellow
20 on there.

21 Q. How many acres is this site?

22 A. I don't recall.

23 Q. Is it more than one acre?

24 A. I don't recall.

1 Q. Is it more than one block?

2 A. I think it is probably close to a
3 block, if anything.

4 Q. You walked the whole site?

5 A. I didn't get to walk the entire site,
6 no.

7 Q. Is that the only evidence you saw of
8 scrapping, is Photograph 8?

9 A. That's the only evidence that I saw.
10 There were other issues that I was more involved
11 with than that.

12 Q. Any other evidence of scavenging?

13 A. Not that I saw.

14 Q. Do you remember previously testifying
15 that you didn't see any burn marks on the wire
16 itself?

17 A. I don't recall if I did or not.

18 Q. Did you see any other evidence of
19 scrapping?

20 A. Other than what I just said, no.

21 Q. Were there residential homes next to
22 the property?

23 A. I didn't see any residential homes
24 other than the Altgeld Gardens, which is across

1 130th Street there.

2 Q. Was there grease and oil being
3 released in the sewers?

4 A. I didn't notice there was that either.

5 Q. How about salt or asbestos?

6 A. I did not observe that.

7 Q. Do you believe that violations --
8 there's significant evidence to charge violations of
9 salt or asbestos on the site?

10 MS. BURKE: Objection to the extent
11 that question calls for a legal conclusion.

12 THE HEARING OFFICER: I'll allow it.

13 BY MR. LEVINE:

14 Q. Did you see any evidence of salt or
15 asbestos on the site?

16 A. I'm not an asbestos expert; but I did
17 not see it, no.

18 Q. How about salt?

19 A. Salt, I didn't observe any salt.

20 Q. How about grease and oil into the
21 sewers?

22 A. I didn't observe that myself during my
23 inspection.

24 Q. And yet there's -- CID landfill,

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1 you're familiar with them?

2 A. Yes, I am.

3 Q. Is it possible for them to reject a
4 load if there's copper in the waste?

5 A. They would reject it outright.

6 Q. The entire load?

7 A. The entire load.

8 Q. So if someone was taking a load to CID
9 landfill and there was copper, if the copper wasn't
10 taken out, the whole load would be rejected,
11 correct?

12 A. Correct.

13 Q. How about PVC tubing? Is the same
14 true with PVC tubing?

15 A. They would reject the load.

16 Q. An entire load of waste would be
17 rejected if PVC tubing was in it, correct?

18 A. It would be rejected if there's
19 anything other than what's described in the

20 analytical result and the description of the waste
21 material.

22 Q. Okay. Railroad ties, does CID
23 landfill require separation of railroad ties?

24 A. Railroad ties are not allowed in the

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1 CID landfill.

2 Q. So you couldn't bring a load in with
3 railroad ties, correct?

4 A. No.

5 Q. Do you have any evidence that --

6 THE HEARING OFFICER: Let's go off the
7 record for a minute.

8 (Discussion off the record.)

9 BY MR. LEVINE:

10 Q. Mr. Maciel?

11 A. Yes.

12 Q. I asked you numerous questions in this
13 deposition with regard to Jose R. Gonzalez, correct?

14 A. Correct.

15 Q. Would your answers be the same to all
16 those questions if I asked those with regard to

17 1601-1759 East 130th Street, LLC?

18 MS. BURKE: I'm going to object to
19 that question. It's too broad and vague. I
20 object.

21 THE HEARING OFFICER: Objection
22 sustained.

23 BY MR. LEVINE:

24 Q. Okay. Let me ask you this: Did you

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1 later learn that the 1601-1759 East 130th Street,
2 LLC, was the company that Mr. Gonzalez owned the
3 property under?

4 A. No. I didn't do the title search.

5 Q. Is that in your violation report in
6 Exhibit A?

7 A. Where exactly?

8 Q. Look at page 33. Did anyone at the
9 Department of Environment ever learn that the title
10 of the property was held in 1601-1759 East 130th
11 Street, LLC?

12 A. I couldn't answer that. Like I said,
13 I didn't draw this information.

14 Q. Okay. Did the property commit any

15 acts on its own?

16 A. Did the property itself commit any
17 acts? Could you be more specific?

18 Q. I don't think I could. The property
19 is inert, correct? It just sits there?

20 A. Correct.

21 Q. So it really couldn't commit any acts,
22 correct?

23 A. No.

24 Q. Would you agree that the reason the

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1 LLC is charged with violations in this case is
2 because the property was owned by the LLC on the
3 date in question?

4 A. I would believe that being one of the
5 owners of the property is LLC, yes.

6 Q. Okay. That's good. Now, do you know
7 whether or not Mr. Gonzalez caused or allowed open
8 burning on his property?

9 MS. BURKE: Objection to the phrase
10 cause or allow. It calls for a legal
11 conclusion.

12 THE HEARING OFFICER: Sustained.

13 BY MR. LEVINE:

14 Q. Could you previously answer that
15 question, sir?

16 MS. BURKE: Same objection.

17 BY MR. LEVINE:

18 Q. On December 6th, 2006, did I ask you
19 the following questions and did you give the
20 following answers --

21 MS. BURKE: I'm going to object if
22 he's going to read deposition testimony of
23 something that we've just excluded.

24 THE HEARING OFFICER: Mr. Levine?

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1 MR. LEVINE: Well, he answered it
2 previously, and he answered it at the prior
3 hearing. I asked him whether he knew of
4 whether or not Mr. Gonzalez caused or allowed
5 the burning and I went through all these
6 different acts, and he responded. And as my
7 offer of proof, he responded no to all of
8 them. And as I did in the previous hearing,
9 subsequent to closing the hearing, I asked

10 the chief -- the senior environmental
11 inspector whether he had information that the
12 particular individual or entity caused or
13 allowed the act. This was not objected to in
14 the deposition. It was not objected to at
15 the prior hearing. It is not a legal
16 determination; it is a factual determination
17 based on his investigation and what he knows.

18 MS. BURKE: May I respond?

19 THE HEARING OFFICER: Oh, yes.

20 MS. BURKE: The standard at the
21 deposition is different from the standard
22 here today in terms of what is admissible
23 evidence. And what happened at the prior
24 hearing is similarly irrelevant.

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1 MR. LEVINE: I would agree. But as
2 the investigator -- If I could respond?

3 As the senior environmental
4 inspector, he can testify whether or not he
5 has information that he viewed particular
6 actions and whether these particular actions

7 were caused or allowed -- if he has
8 information or evidence whether these matters
9 were caused or allowed by Mr. Gonzalez.

10 THE HEARING OFFICER: Well, I'm kind
11 of in a quandary based on my prior rulings.
12 I'm looking at Section 101.626: The hearing
13 officer may admit evidence that is material,
14 relevant, and would be relied upon by prudent
15 persons in the conduct of serious affairs.
16 Mr. --

17 I'm sorry. Maciel?

18 THE WITNESS: Maciel.

19 THE HEARING OFFICER: (Continuing) --
20 is a senior environmental investigator, and I
21 think he's been around the block. So I am
22 going to allow him to answer, and I overrule
23 the City's objection.

24

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1 BY MR. LEVINE:

2 Q. Sir, with regard to the open burning,
3 do you have any information that Jose Gonzalez
4 caused or allowed the open burning?

5 A. Other than he's the property owner,
6 no.

7 Q. Now, you qualified that he was the
8 property owner. How would being the property owner
9 indicate whether he caused or allowed it?

10 A. He was there. It's a secured site.
11 The chain on the fence and the lock itself didn't
12 show that there was any breakage or anything on it.
13 It just looked like it was unlocked. As a matter of
14 fact, when we were leaving the property, everybody
15 was leaving the property, they did lock the gate
16 back up.

17 Q. Sir, on December 6th were you asked
18 the following questions and did you give the
19 following responses?

20 QUESTION: Do you know whether
21 he was aware that there was open
22 burning?

23 ANSWER: No.

24 QUESTION: Okay. Do you know

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1 whether he caused it?

2 ANSWER: No.

3 QUESTION: Do you know whether he
4 allowed it?

5 ANSWER: No.

6 Were you asked those questions,
7 and did you give those answers?

8 A. If it says that in the deposition, I
9 did.

10 Q. And was that truthful when you gave
11 it?

12 A. On the deposition, yes.

13 Q. And, sir, do you have any information
14 that Mr. Gonzalez allowed L. King [sic] not to keep
15 the suspect CTA material in roll-off boxes and dump
16 it on the site?

17 A. No, I don't have any information on
18 that.

19 Q. Sir, do you have information that Jose
20 Gonzalez caused or allowed open dumping in his yard?

21 A. In his yard? What yard are you
22 speaking of?

23 Q. The property located at 1601 East
24 130th Street.

1 A. No, I don't have information on that.

2 Q. Do you know whether or not

3 Mr. Gonzalez caused or allowed the material to be
4 dumped there on his lot?

5 A. No, I don't.

6 Q. Sir, do you have any information that
7 Jose Gonzalez caused or allowed the railroad ties to
8 be on the property at 130th Street?

9 A. No. Other than him being the owner of
10 the property, no.

11 THE HEARING OFFICER: Can you speak
12 up, please? I'm 51 years old.

13 THE WITNESS: I said, no, other than
14 him being the owner of the property, that's
15 all.

16 MR. LEVINE: He's been old for
17 20 years.

18 BY MR. LEVINE:

19 Q. Do you have any information, sir, that
20 Jose Gonzalez caused or allowed the fly-dumping of
21 the small piles on the property?

22 A. No, I do not have any information.

23 Q. Do you have any information that
24 Mr. Gonzalez caused or allowed any of the illegal

1 dumping to take place on his property?

2 A. Other than him being the owner of the
3 property, no.

4 Q. How about the 50 waste tires? Do you
5 have any information that Mr. Gonzalez caused or
6 allowed the material to be placed in the yard?

7 A. I have no idea, no.

8 Q. With regard to the timber with
9 creosol, do you have any information that
10 Mr. Gonzalez caused or allowed the material to be
11 placed in his property?

12 A. Not that I know of, no.

13 Q. Do you have any information, sir, that
14 Jose Gonzalez caused or allowed concrete blocks to
15 be placed on his property?

16 A. No.

17 Q. And do you have any information that
18 Mr. Gonzalez caused or allowed Porta-Johns to be
19 cleaned out on his property?

20 A. No.

21 Q. And finally, sir, do you have any
22 information that the LLC, 1601-1759 East 130th
23 Street, LLC, caused or allowed any of those matters
24 to be placed on that property? What I'm asking you,

1 sir, is the same questions to all those I just asked
2 you; but instead of Jose R. Gonzalez, I'm asking
3 with regard to the LLC, 1601-1759 East 130th Street,
4 LLC.

5 A. No.

6 MR. LEVINE: Now, I have no further
7 questions with regard to this witness, but I
8 just want to make clear on the record that to
9 allow Mr. Maciel's testimony to be used in
10 the LLC action, does not include the action
11 titled AC 07-25. I have nothing further for
12 this witness.

13 THE HEARING OFFICER: Okay. I'm
14 sorry. Mr. Levine, you move that
15 Mr. Maciel's testimony today in 6-40, you're
16 moving for it to be transplanted, if you
17 will, into 6-41, the other case?

18 MR. LEVINE: AC 06-41, yes, your
19 Honor, that is my motion, so we can preclude
20 Mr. Maciel from testifying again with regard
21 to the same.

22 THE HEARING OFFICER: Ms. Burke, you

23 can either state your position now or if you
24 want to wait.

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1 MS. BURKE: I'd like to redirect.

2 THE HEARING OFFICER: Okay.

3 REDIRECT EXAMINATION

4 BY MS. BURKE:

5 Q. When you first arrived at the site,
6 how long were you there before you needed to leave
7 for your next meeting?

8 A. Actually, we got there at -- We were
9 supposed to be there at 10:00 o'clock, at the other
10 property, but it was maybe about -- I'm sorry. I
11 think we were supposed to be there at 11:00 o'clock.
12 Let me double-check.

13 I think we were there maybe
14 half-hour, 20, 30 minutes or so, before we left to
15 go to the other property.

16 Q. And then when you returned after your
17 other meeting, how long were you at the site on
18 130th Street?

19 A. We were there for a few hours.

20 Q. And the exhibit -- the document that

21 Mr. Levine marked as Respondent's Exhibit A, on this
22 document, is Jose Gonzalez's name on this document?

23 A. No, it's not.

24 Q. Is the address 1601 or 1759 East 130th

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1 Street on this document?

2 A. No, it is not.

3 MS. BURKE: No further questions.

4 THE HEARING OFFICER: Thank you.

5 Mr. Levine, any recross?

6 MR. LEVINE: I don't know if it's
7 proper if I have to call him as a witness to
8 put the document into evidence, but I would
9 suggest I can do that now. We could open up
10 my case to put that in, or we could call
11 Mr. Maciel back and I could call him as a
12 witness and seek to admit the Respondent's
13 Exhibit A as a work record.

14 THE HEARING OFFICER: Unless Ms. Burke
15 has an objection on the timing of you
16 offering it into evidence, I'm fine with
17 that.

18 MS. BURKE: I don't have an issue as
19 to the timing, but I do have a substantive
20 objection.

21 MR. LEVINE: Let's hear it.

22 THE HEARING OFFICER: You want to
23 address that now?

24 MS. BURKE: I'm happy to deal with

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1 that now. I object on two grounds. One is
2 on the grounds of relevance. It does not go
3 to Jose Gonzalez or 1601 East 130th Street,
4 LLC, the charges that have been brought
5 against those two entities in these two
6 cases. And then my second objection would be
7 that it's hearsay.

8 THE HEARING OFFICER: Mr. Levine, any
9 response?

10 MR. LEVINE: Yes. It's relevant as
11 indicated by Mr. Maciel's testimony in that
12 it goes to them -- it goes to -- first, it is
13 part of the investigation process, number
14 one, and Ms. Burke testified that the
15 complete report -- she sought to offer the

16 complete report, Exhibit A. I would say,
17 one, this document is part of the complete
18 report; two, it compliments -- There was a
19 question of whether or not Mr. Maciel
20 accepted the veracity of Mr. Weber and the
21 agreement of the matters as to the storage of
22 the waste in question. It's my contention
23 that this document does support Mr. Weber's
24 story and it is contrary to Mr. Maciel's

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1 testimony that Mr. Weber was not forthright
2 or truthful in his testimony, that the record
3 was kept in the ordinary course of business
4 by the City of Chicago Department of
5 Environment in its investigation and relates
6 to who was responsible for the waste being at
7 the property on the date in question, as it
8 indicated it was owned by the CTA and
9 transported by E. King, whose trucks
10 Mr. Maciel testified were on the scene
11 loading material.

12 So it is both relevant and

13 nonhearsay as a business record.

14 THE HEARING OFFICER: Any follow-up,
15 Ms. Burke?

16 MS. BURKE: On the hearsay point, it
17 does not meet the requirements for a business
18 record. It's a document that's generated by
19 another entity, and we do not have that
20 entity here to testify.

21 MR. LEVINE: Similar to the --

22 THE HEARING OFFICER: If I may address
23 Ms. Burke's objection, Section 101.626 -- we
24 all know the administrative rules are a

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1 little more lax -- all other circumstances of
2 the making of the writing or record,
3 including lack of personal knowledge by the
4 entrant or maker, may be admitted to affect
5 the weight of the evidence, but will not
6 affect admissibility.

7 I will allow it in. Respondent's
8 Exhibit A is admitted over objection.

9 MR. LEVINE: Can we make a copy here
10 before we leave?

11 THE HEARING OFFICER: Yes. Let's make
12 a copy here.

13 Off the record.

14 (Discussion off the record.)

15 THE HEARING OFFICER: Back on the
16 record.

17 We're not finished with AC6-40.
18 We're going to continue it, hopefully, on the
19 record until May 17th. It is definitely
20 May 17th unless I hear otherwise.

21 MR. LEVINE: At what time, Judge
22 Halloran? We could do 9:00.

23 THE HEARING OFFICER: 9:00 a.m.

24 MR. LEVINE: That's beautiful.

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1 THE HEARING OFFICER: On May 17th.

2 Also, I am going to note that
3 Ms. Burke from the City is going to -- we
4 only have one exhibit, A, and I've already
5 admitted it in AC6-39 and 6-40. She's going
6 to bring some copies on May 17th.

7 With that said, anything else we

8 need to discuss?

9 MR. LEVINE: Nothing from the
10 Respondents.

11 MS. BURKE: No.

12 THE HEARING OFFICER: Thank you.
13 Thank you for your professionalism and
14 civility. I'll see you in a couple of weeks.

15 (Which were all the proceedings
16 had in the above-entitled cause.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3

4 Kathy A. O'Donnell, being first duly sworn,
5 on oath says that she is a Registered Professional

6 Reporter doing business in the City of Chicago,
7 County of Cook and the State of Illinois;

8 That she reported in shorthand the
9 proceedings had at the foregoing hearing;

10 And that the foregoing is a true and
11 correct transcript of her shorthand notes so taken
12 as aforesaid and contains all the proceedings had at
13 the said hearing.

14

15

16

17

KATHY A. O'DONNELL, RPR

18

CSR No. 084-004466

19

20 SUBSCRIBED AND SWORN TO
21 before me this _____ day of
_____ , A.D., 2007.

22

23

24

NOTARY PUBLIC