

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3

4

5 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

6 Petitioner,

7 vs. No. PCB AC 98-041

8 BRADLEY G. WHITE,

9 Respondent.

10

11

12

13 Proceedings held on October 14, 1998, at 10:02

14 a.m., at the Illinois Pollution Control Board, 600

15 South Second Street, Suite 402, Springfield, Illinois,

16 before the Honorable Amy L. Jackson, Hearing Officer.

17

18

19

20

21 Reported by: Darlene M. Niemeyer, CSR, RPR
22 CSR License No.: 084-003677

23

24 KEEFE REPORTING COMPANY
25 11 North 44th Street
Belleville, IL 62226
(618) 277-0190

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: Robert J. Scherschligt
Assistant Counsel, Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA.

On behalf of Respondent, pro se.

1 INDEX

2 WITNESS PAGE NUMBER

3 KENT JOHNSON

Direct Examination by Mr. Scherschligt.....8

4 Cross Examination by Mr. White.....41

Redirect Examination by Mr. Scherschligt.....68

5

BRADLEY G. WHITE

6 Direct Examination by Mr. Scherschligt.....71

Bradley White testifying on his own behalf.....79

7

8

9 EXHIBITS

10 NUMBER MARKED FOR I.D. ENTERED

11 People's Exhibit 1 -- 41

People's Exhibit 2 -- 41

12 People's Exhibit 3 -- 41

13

14

15

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 (October 14, 1998; 10:02 a.m.)

3 HEARING OFFICER JACKSON: Good morning. My name
4 is Amy Jackson. I am the Hearing Officer assigned to
5 this case. I will note for the record that it is
6 Wednesday, October 14th, 1998, a few minutes after
7 10:00 a.m. I also note that there are no members of
8 the public present at this time.

9 The case before us today is Administrative
10 Citation Number 98-041, Illinois Environmental
11 Protection Agency versus Bradley G. White. The
12 Administrative Citation filed by the Agency alleges
13 that during an inspection of April 29, 1998, it was
14 determined that Bradley White caused or allowed open
15 dumping to result in litter and open burning, both
16 allegedly in violation of the Environmental Protection
17 Act.

18 As a result of the April 29, 1998 inspection an
19 Administrative Citation was filed. Mr. White filed a
20 petition for review disputing the violations, and we
21 are conducting this hearing today as a result.

22 Before we begin with the hearing and for those of
23 you who may not be familiar with the Board's
24 procedures, I would like to briefly explain this
25 process. First of all, you should know that it is the

1 Board and not me that will render a final decision in
2 this case. My job as a Hearing Officer requires that
3 I conduct this hearing in a fair and orderly manner,
4 and that we have a clear record of these proceedings
5 for the Board to review in making their decision.

6 It is also my responsibility to assess the
7 credibility of any witnesses testifying today, and I
8 will do so on the record at the conclusion of these
9 proceedings.

10 At times I may ask for clarification for the
11 record or ask questions which I believe are necessary
12 for the Board to fully understand what is being said
13 today. The Board's procedural rules allow that
14 members of the public shall be allowed to give
15 testimony or allowed to make statements on the
16 record. If any person wishes to do so today, we will
17 call for those statements at the conclusion of the
18 proceeding. As I said before, there are no members of
19 the public present at this time.

20 Finally, I would caution everyone that a Board
21 hearing is very much like being in court, and I would
22 expect everyone to act appropriately and with proper
23 decorum.

24 At this time I will ask the parties to make their
25 appearances for the record.

1 MR. SCHERSCHLIGT: Bob Scherschligt, Assistant
2 Counsel for the Illinois Environmental Protection
3 Agency.
4 HEARING OFFICER JACKSON: Could you spell your
5 last name, please.
6 MR. SCHERSCHLIGT: Yes. It is
7 S-C-H-E-R-S-C-H-L-I-G-T.
8 HEARING OFFICER JACKSON: Mr. White?
9 MR. WHITE: Bradley G. White.
10 HEARING OFFICER JACKSON: You need to keep for
11 voice up so the court reporter can hear you, okay. I
12 do want to note for the record that you are proceeding
13 without an attorney today, correct?
14 MR. WHITE: Yes, ma'am.
15 HEARING OFFICER JACKSON: Okay. Mr. Scherschligt,
16 do we have any preliminary matters to discuss?
17 MR. SCHERSCHLIGT: No, thank you.
18 HEARING OFFICER JACKSON: Mr. White, any
19 preliminary matters to address?
20 MR. WHITE: (Shook head from side to side.)
21 HEARING OFFICER JACKSON: Mr. Scherschligt, do you
22 wish to make an opening statement?
23 MR. SCHERSCHLIGT: Yes.
24 HEARING OFFICER JACKSON: You may proceed.
25 MR. SCHERSCHLIGT: Thank you. Madam Hearing

1 Officer, Mr. White, Members of the Illinois Pollution
2 Control Board, very briefly, the Illinois EPA in this
3 matter will offer evidence, by virtue of direct
4 testimony of Kent Johnson, who is an Illinois
5 Environmental Protection Agency Environmental
6 Protection Specialist.

7 He will testify that on April 29th of 1998 he
8 conducted an inspection of a piece of property owned
9 and operated by the respondent, Mr. Bradley White.
10 And that in the course of his inspection he observed
11 violations of the Illinois Environmental Protection
12 Act, specifically a violation of Section 21(p)(1),
13 which is open dumping resulting in litter, and a
14 violation of Section 21(p)(3), which is open dumping
15 resulting in open burning.

16 Mr. Johnson will be offering testimony as to the
17 report that he prepared in connection with his April
18 29th, 1998 inspection. And also to assist the members
19 of the Illinois Pollution Control Board with a little
20 bit of history and background in this matter, he will
21 also be offering testimony as to a report that he
22 prepared in connection with his inspection on November
23 22nd, 1994.

24 At the close of this matter we will be asking the
25 Board to find Mr. White in violation of Sections

1 21(p)(1) and 21(p)(3). Thank you.

2 HEARING OFFICER JACKSON: Thank you, Mr.

3 Scherschligt.

4 Mr. White, do you wish to make an opening

5 statement?

6 MR. WHITE: No, I do not.

7 HEARING OFFICER JACKSON: Okay. Mr. Scherschligt,

8 you may call your first witness.

9 MR. SCHERSCHLIGT: The State would call Kent

10 Johnson.

11 HEARING OFFICER JACKSON: Please step forward and

12 the court reporter will swear you in.

13 (Whereupon the witness was sworn by the Notary

14 Public.)

15 HEARING OFFICER JACKSON: You may proceed.

16 MR. SCHERSCHLIGT: Thank you.

17 KENT JOHNSON,

18 having been first duly sworn by the Notary Public,

19 saith as follows:

20 DIRECT EXAMINATION

21 BY MR. SCHERSCHLIGT:

22 Q Good morning, Mr. Johnson. Please state your

23 name for the record.

24 A Kent Johnson.

25 Q And that is J-O-H-N-S-O-N, correct?

8

1 A Correct.

2 Q Mr. Johnson, tell us how are you employed?

3 A I am employed by the Illinois Environmental
4 Protection Agency as an Environmental Protection
5 Specialist, III.

6 Q How long have you been employed at the
7 Illinois EPA in that capacity?

8 A Since May of 1992.

9 Q Okay. And can you please describe for us the
10 general nature of your duties and responsibilities as
11 an Environmental Protection Specialist, III?

12 A As a Specialist III I am responsible for
13 conducting inspections, preparing reports, testimony,
14 things of that nature for solid waste sites, hazardous
15 waste sites, tire disposal and tire storage sites on
16 occasion. Basically inspections for Bureau of Land
17 and Division of Land Pollution Control.

18 Q Would that include inspecting sites where the
19 Illinois Environmental Protection Agency believe there
20 to be violations of Sections 21(p)(1) and (p)(3),
21 litter and open burning?

22 A Correct.

23 Q Okay. And can you just give us an idea of
24 approximately how many of these inspections you have
25 conducted in the course of your employment with the

1 Illinois EPA?

2 A I am not certain. I would estimate 200 to

3 300.

4 Q Okay. That would be a conservative estimate?

5 A I believe so.

6 Q Okay. Are you familiar with a site commonly

7 referred to by the Illinois EPA as Janesville/Bradley

8 White?

9 A I am.

10 Q How are you familiar with that site?

11 A I am the assigned inspector for the site for

12 the Division of Land.

13 Q Have you conducted any inspections of that

14 site?

15 A I have.

16 Q Okay. Were you able to ascertain ownership

17 of that property?

18 A Yes.

19 Q And to your knowledge, who is the owner of

20 that property?

21 A Bradley G. White.

22 Q To your knowledge, who is the operator of

23 that piece of property?

24 A Bradley White.

25 Q Is that based upon conversations and

1 observations that you have made in the course of your
2 inspections?

3 A It is.

4 Q Do you recall when you first visited the
5 site?

6 A To my recollection I believe it was November
7 22nd, 1994.

8 Q Okay. What was the purpose of that
9 inspection?

10 A It was in response to complaints alleging the
11 open dumping and open burning of waste.

12 Q Okay. When you inspect a piece of property,
13 is it common procedure to prepare a report which would
14 memorialize your observations and findings?

15 A Yes, it is.

16 Q Do those reports generally contain an
17 inspection checklist?

18 A Yes.

19 Q Do they generally contain a narrative
20 section?

21 A Yes.

22 Q Do they also generally contain photographs
23 which depict your observations on that particular
24 date?

25 A They do.

1 Q Did you prepare a report in connection with
2 your November 22nd, 1994 inspection?

3 A Yes, I did.

4 MR. SCHERSCHLIGT: Permission to approach the
5 witness.

6 HEARING OFFICER JACKSON: Permission granted.

7 Q (By Mr. Scherschligt) I hand to you what I
8 have previously marked as People's Exhibit Number 1,
9 and I would ask you, do you recognize that?

10 A I do.

11 Q Tell us what that is?

12 A It is a report that was prepared as a result
13 of the November 22nd, 1994 inspection.

14 Q Okay. You have testified that it is common
15 practice to prepare reports such as this in connection
16 with your inspection?

17 A Yes.

18 Q Okay. And was this report prepared
19 contemporaneously or shortly after you conducted your
20 inspection on November 22nd, 1994?

21 A Yes, it was.

22 Q Was it prepared at a time when your findings
23 and observations were fresh in your mind?

24 A Yes.

25 Q Okay. Do you prepare this report in the

1 regular course of business as an Illinois
2 Environmental Protection Specialist for the Agency?

3 A I do.

4 Q Okay. I would like to have you take a look
5 at that, People's Exhibit Number 1.

6 HEARING OFFICER JACKSON: Mr. Scherschligt, if I
7 could, is there a copy of that report for Mr. White?

8 MR. SCHERSCHLIGT: A copy has been provided to Mr.
9 White in the past. However, I don't have an
10 additional copy for him here today. He is welcome to
11 take a look at the report if and when he decides to
12 cross-examine the witness. I have provided him with
13 photographs for the most recent inspection on April
14 29th.

15 HEARING OFFICER JACKSON: Mr. White, do you have a
16 copy of this inspection?

17 MR. WHITE: No, I do not.

18 HEARING OFFICER JACKSON: Would you like a copy of
19 it right now?

20 MR. WHITE: Yes.

21 HEARING OFFICER JACKSON: Okay. Why don't we go
22 off the record

23 (Whereupon a short recess was taken.)

24 HEARING OFFICER JACKSON: Back on record. Please
25 continue with your questioning.

1 Q (By Mr. Scherschligt) I believe I asked you
2 if you prepared a checklist in connection with the
3 November 22nd, 1994 report, correct?

4 A I did, yes.

5 Q Now, realizing that this report is not the
6 basis for the Administrative Citation in this cause, I
7 would like to briefly go through it just to provide
8 the Pollution Control Board with some background
9 history of the site.

10 That being the case, I would like to focus on the
11 violations dealing with open dumping, litter, and open
12 burning. So I would ask you, did you cite any
13 violations of Sections 21(a) 21(p)(1) or 21(p)(3)?

14 A I did.

15 Q Okay. What was the basis for you citing
16 violations of open dumping, litter, and open burning?

17 A There was evidence that waste had been dumped
18 and burned at the site.

19 Q Okay. Now, I believe you prepared
20 photographs as part of this report?

21 A Yes.

22 Q Okay. First of all, I would like you to take
23 a look at that report and tell me, is that a true and
24 accurate and complete copy of the report that you sent
25 to the Illinois EPA's division file?

1 HEARING OFFICER JACKSON: While he is checking
2 that, I will just ask that the record reflect that
3 copies of this exhibit were provided to Mr. White when
4 we came back on the record.

5 THE WITNESS: It is a true and accurate and
6 complete copy.

7 Q (By Mr. Scherschligt) Okay. I would like you
8 to turn to page one of that report, and I believe you
9 indicate in the very first paragraph in your
10 inspection narrative that you took 12 photographs; is
11 that correct?

12 A Yes.

13 Q I think the best way to go through this, to
14 make it clear, would be to go through the photographs
15 as they relate to the materials that you believe to be
16 open dumped and open burned. Okay?

17 A Okay.

18 Q So I would like to start with the first
19 photograph, and I believe that is roll 96?

20 A Yes.

21 Q I would like you to take a look at that
22 photograph and tell us what is depicted in that
23 photograph?

24 A Roll 96, photo 1 depicts a van in the right
25 part of the picture. The materials that appear to be

1 open dumped include several tires in the central part
2 of the picture.

3 Q Okay. Anything else?

4 A There is a few other materials there of which
5 I am really not sure what they are.

6 Q Okay.

7 A As far as open dumping.

8 Q Okay. Take a look at photo number 2. And
9 what is depicted in photograph number 2?

10 A Photo number 2 is a close up of some tires.

11 Basically it was also taken -- actually, I have got
12 this -- I have mounted these slightly different. Let
13 me change that. Photo two is -- photos 2 and 3 are a
14 panoramic view of the site basically taken from the
15 south pointing towards the north.

16 It shows various materials: a pile of bricks,
17 dimensional lumber; tires, some on rims, some not;
18 some metal, some white goods, in the right part of the
19 picture of photo 3 you can tell that there is a mostly
20 burned home and various other type of materials.

21 Q Okay. How about photograph number 4. What
22 is depicted in photograph number 4?

23 A Photograph number 4 of roll 96 is the one I
24 was referring to before, a close-up of tires basically
25 taken to show that there was water accumulation in the

1 tires at the time of the inspection.

2 Q How about photograph number 5?

3 A Photograph 5 is a picture of what appeared to
4 me to be an old burn pile. I say old because there
5 was some vegetation on top of it. Included in the
6 pile was some different -- some wire. At least in
7 here I can see basically what appeared to be two tire
8 beads. The tires had been burned. And just some ash
9 residue.

10 Q Okay. Photograph number 6?

11 A Photograph 6 and 7, again, are a panoramic
12 view basically from the west part of the property
13 pointing to the northeast for photo 6, and east
14 southeast for photo 7, depicting the general condition
15 of the site. There is a drum lying on its side in
16 photo 7 that did have some liquid in it at the time.
17 There is another photo, actually photo 8, that I will
18 get to in just a minute. But photo 8 is a close-up of
19 that drum.

20 Q Does that drum appear to be leaking? Were
21 you able to tell?

22 A It had a small amount of seepage from one of
23 the bungholes. That was photo 9, was taken from
24 that. There was a small amount of what appeared oil,
25 oil consistency type material, leaking from the

1 bung hole.

2 Q So 7, 8 and 9 depict the drum; is that
3 correct?

4 A Yes, the drum is depicted in all three of
5 those.

6 Q Okay.

7 A As I indicated, 6 and 7 are basically an
8 overview of the site, with wood and some automobile
9 bodies. I would note that in photo 6 and 7 the road
10 is visible at about the central part, at about halfway
11 up of the photo, that is the site boundary. That is
12 the street there in Janesville.

13 Q Okay. How about photograph number 10? What
14 is depicted in that photograph?

15 A Photograph 10 and 11, again, are a panoramic
16 view taken of -- taken toward the house from basically
17 the northeast part of the property depicting several
18 automobile bodies, some wood, some different metal
19 objects stacked around. This was more of a general
20 overview condition -- or a picture to show the
21 condition of the site.

22 Q Okay. Finally, photograph number 12, what is
23 depicted in that photograph?

24 A Photograph 12 is a picture of basically the
25 western half or a western portion of the burned home,

1 showing material that is on the ground and laying on
2 the ground, that included wood, charred wood, charred
3 metal, evidence from a fire.

4 Q Now, did you take all 12 of those
5 photographs?

6 A I did.

7 Q Okay. Did those photographs fairly and
8 accurately depict your observations on November 22nd
9 of 1994?

10 A They do.

11 Q Now, as a follow-up to your inspection, did
12 you attempt to contact Mr. White?

13 A Yes, I did.

14 Q Were you successful?

15 A Not initially.

16 Q Okay.

17 A In my initial phone call I made contact with
18 someone and left a message for Mr. White. I did not
19 receive a return phone call at that time.

20 Q Now, that individual who you spoke to, was
21 that person a male or female?

22 A Male.

23 Q Okay. And did that individual identify
24 himself at that time?

25 A No, he did not.

1 Q Did you explain to him the purpose of your
2 inspection, why you were there?

3 A Yes, I explained the nature of the visit,
4 what I observed, asked for a return phone call and I
5 asked for the identify of the person I was speaking
6 to.

7 Q Did that person provide you with his
8 identity?

9 A No, he did not.

10 Q Did you have occasion to contact anybody else
11 shortly after you conducted that inspection on
12 November 22nd?

13 A After the inspection I also contacted the
14 State Fire Marshal's office.

15 Q Okay. What was the purpose for contacting
16 them?

17 A It was my belief, based on what I had been
18 able to ascertain, that there had been -- that the
19 home that was burned was -- there had been an arson
20 investigation done on the home, and that the State
21 Fire Marshal had been involved. I contacted them to
22 see what the status of their investigation was.

23 Q Okay. Now, after you prepared and completed
24 your report -- well, first of all, I am sorry. Let me
25 back up.

1 Based upon those observations on November 22nd,
2 the observations of the materials and the manner in
3 which they were being stored, did you then believe
4 that there were violations of Section 21(p)(1), which
5 would be open dumping resulting in litter?

6 A I did.

7 Q Did these materials appear to be consolidated
8 from one or more sources?

9 A As consolidated, they appear to be in some
10 piles.

11 Q Okay.

12 A Things of that nature.

13 Q All right. How about the open burning
14 violation that you noted?

15 A The open burning violation was primarily in
16 relation to roll 96, photo 5 of the burn pile.

17 Q Okay.

18 A Where there is evidence of the ash debris.
19 Vegetation had been reestablished that was not
20 consistent with vegetation around it. And also the
21 tire bead that was in the pile, and things of that
22 nature.

23 Q Is it fair to say that it appeared as though
24 tires had been placed in that location and then
25 burned?

1 A Yes.

2 Q And consolidated from one or more other
3 sources?

4 A Yes.

5 Q Okay. And so based on those observations you
6 cited Mr. White for violations of open dumping
7 resulting in litter, and open dumping resulting in
8 open burning?

9 A Yes, that would be --

10 Q Among other violations?

11 A Among others, yes.

12 Q Okay. Now, after you prepared your report,
13 did you then provide Mr. White with a copy of it?

14 A Yes, a copy of the report was provided with
15 what is called an Administrative Warning Notice.

16 Q And is it standard procedure to provide a
17 property owner with a copy of the report after you
18 prepare it?

19 A Yes.

20 Q Okay. You stated that when you provided a
21 copy of the report you generally also send some sort
22 of correspondence to the Respondent; is that correct?

23 A The correspondence sent in this instance is
24 what is called an Administrative Warning Notice.

25 Q All right. I hand to you what has previously

1 been marked as People's Exhibit Number 2, and I would

2 ask, do you recognize that?

3 A I do.

4 Q What is that?

5 A It is the Administrative Warning Notice

6 prepared in response to the November 22nd, 1994

7 inspection.

8 Q What is -- let me back up a little bit. Is

9 it routine practice for the Illinois Environmental

10 Protection Agency to prepare and mail letters such as

11 this?

12 A Yes, it is.

13 Q Was this prepared in the regular course of

14 business?

15 A Yes, it is. It was.

16 Q Okay. Did you prepare the substance of that

17 letter?

18 A Yes, I did.

19 Q Okay. Who signs that letter?

20 A This letter was signed by Glenn Savage.

21 Q And who would Glenn Savage be?

22 A At that time he was the Manager for the Field

23 Operations Section for the Division of Land of the

24 Agency.

25 Q So you prepared the letter and then Mr.

1 Savage signed the letter?

2 A Yes.

3 Q Mr. Savage is no longer employed with the

4 Agency; is that correct?

5 A That's correct.

6 Q Who is the current Bureau of Land Manager for

7 the Field Operations Section?

8 A The Acting Manager for the Field Operation

9 Section is Paul Purseglove.

10 Q Now, what is the purpose of an Administrative

11 Warning Notice?

12 A The Administrative Warning Notice is sent to

13 the responsible party to make them aware of the

14 violations along with the inspection report, and to

15 advise them that civil penalties may be imposed.

16 Basically it establishes a deadline at which time

17 waste needs to be removed by, and it gives them

18 directives as far as in what manner they need to

19 remove the waste.

20 Q Did this particular letter require Mr. White

21 to remove the materials that you observed on November

22 22nd of 1994?

23 A It did.

24 Q What was the deadline that was imposed in

25 that letter?

1 A March 10th of 1995.

2 Q Did it also require Mr. White to cease and
3 desist from all open dumping and open burning at the
4 site?

5 A Yes, it did.

6 Q Now, is it customary for you also to check
7 and see whether or not these sites have the necessary
8 permits if they want to open dump and open burn?

9 A Yes.

10 Q To the best of your knowledge did Mr. White
11 have the necessary permits to allow him to open dump
12 and open burn at this site?

13 A To the best of my knowledge, he did not have
14 any such permits.

15 Q So this letter is dated January 9th, 1995?

16 A Correct.

17 Q So is it fair to say that it would be mailed
18 on or about that date to the Respondent, Mr. White?

19 A I believe it would have been mailed on that
20 date, yes.

21 Q Okay. After you mailed that Administrative
22 Warning Notice, did you then have occasion to inspect
23 the site again?

24 A The site was -- the next time the site was
25 inspected was April 29th of 1998.

1 Q What was the purpose for that inspection?

2 A To ascertain ongoing compliance, whether or
3 not the initial materials had been removed, and also
4 we had received additional complaints regarding open
5 dumping and open burning.

6 Q All right. I hand to you what has previously
7 been marked as People's Exhibit Number 3, and I ask
8 you, do you recognize that?

9 A I do.

10 Q What is that?

11 A It is a report prepared as of -- as a result
12 of the April 29th, 1998 inspection.

13 Q Okay. And was that prepared shortly after
14 your inspection and at a time when your observations
15 were fresh in your mind?

16 A It was.

17 Q Okay. Was it prepared in the regular course
18 of your business as an Illinois EPA employee?

19 A It was.

20 Q Are there any photographs made part of that
21 report?

22 A There are 12.

23 Q Okay. Those photographs depict your
24 observations on April 29th of 1998?

25 A They do.

1 Q Okay. Now, again, I would like you to first
2 take a look at your checklist on the very front of the
3 report, and I would like to focus on violations of
4 Sections 21(p)(1) and 21(p)(3) of the Act. Do you
5 notice whether or not you cited any of those
6 violations?

7 A Sections 21(p)(1) and 21(p)(3) are both cited
8 in both the checklist as well as the narrative.

9 Q Okay. I would like you to turn to the first
10 page. In the very first sentence of your narrative
11 you indicate that this is an unpermitted site. What
12 do you mean by that?

13 A Meaning that the site does not have a permit
14 to conduct open dumping or open burning. It is not a
15 land disposal site nor is it a permitted burn site.

16 Q Now, again, you indicate that you took 12
17 photographs in the course of this inspection?

18 A Yes.

19 Q Was there anybody else with you on that date
20 when you did your inspection?

21 A On that date I was -- actually, I was met at
22 the site by members of the Kimball & Clark Bicounty
23 Health Department, namely Jeff Murphy and Mark Miller.

24 Q All right. Anybody else?

25 A Other people came by during the inspection.

1 I do not know the last names. There was a woman named

2 Judy.

3 Q Okay.

4 A And I believe there is a tenant who lives

5 just north of the site. His first name is Steve.

6 Again, I do not know the last name.

7 Q All right. Now, also under the general

8 remarks and site history section of your report, I

9 notice that you made mention of the Administrative

10 Warning Notice that was issued on January the 9th of

11 1995?

12 A Yes.

13 Q Okay. And it also mentions that you

14 initially inspected the site on November 22nd of 1994,

15 correct?

16 A Correct.

17 Q Okay. I would like you to take a look at

18 photograph number 1 of that report.

19 A Okay.

20 Q And tell us what is depicted in photograph

21 number 1 of this report?

22 A Photograph 1 is a picture looking east from

23 the west part of property of the burned home.

24 Q This is the same burned home that you

25 observed on November 22nd of 1994?

1 A The same burned home, yes.

2 Q Okay. Is there anything else depicted in
3 photograph number 1?

4 A Photograph 1, in the edges of the picture,
5 there is a trailer with some dimensional lumber in
6 it. You can also see what appears to be a well
7 curbing, a well head on what would be west of the
8 house, more toward the foreground of the photo. I am
9 not positive that that is the well head, but it
10 appears to be. And there is some other materials,
11 some metal material toward the lower left corner of
12 the photo.

13 Q All right. How about photograph number 2,
14 what is depicted in photograph number 2?

15 A Photograph 2 is a close-up looking down,
16 basically looking toward the northwest but mainly
17 down, of burned debris in a pit. The burned debris
18 includes tire bead, mattress springs, remnants of
19 shingles, and some other basically ash residue.

20 Q Now, did those shingles depicted in
21 photograph number 2 that you saw in the burn pit, did
22 they appear to be consistent with the shingles on the
23 burned home?

24 A To me they did, yes.

25 Q So it appeared as though somebody took the

1 shingles off of the burned home and consolidated them

2 into the burn pit and then burned them?

3 A Correct.

4 Q Among other items?

5 A Among other items.

6 Q This observation, is that one of the basis

7 for you citing open dumping resulting in litter and

8 open burning?

9 A It is.

10 Q Now, how about photograph number 3, what is

11 depicted in there?

12 A Photograph 3 is another view of the burn pit

13 looking west from the east of it. Again, it is

14 showing the same materials as I described before, the

15 mattress springs, residue. And you can see the

16 scorched earth in the top -- toward the top of the

17 photo. There are also some various materials in the

18 background, a chair, some dimensional lumber, things

19 of that nature.

20 Q Did it appear to you that the open burning

21 had occurred contemporaneous with your inspection or

22 at least within the few days preceding it?

23 A It appeared to be recent, yes.

24 Q Okay. How did you make that determination?

25 A By a combination of the condition of the ash

1 residue, the materials that were burned in the hole,

2 the scorched earth, things of that nature.

3 Q How large was this burn pit?

4 A I would estimate -- I don't know exactly.

5 Let me check my report and see.

6 Q Would the report refresh your recollection?

7 A It may. I will take a look. I am trying to

8 see. My inspection basically did not give exact

9 dimensions. I would estimate that the pit was

10 probably six foot wide by five to ten foot long.

11 Q Okay. Now, how about photograph number 4.

12 What is depicted in that photograph?

13 A It is a view of the pit from a distance. It

14 shows that there is a fence around the pit, the fresh

15 earth at the sides of the pit. You can see some

16 burned -- some burned debris up toward the right of

17 the photo, the scorched earth, again toward the back,

18 to the back of the hole from that. The background

19 there, again, there is a chair and there is also a

20 tank back there with a hole cut in it.

21 Q Did many of these materials appear to be

22 household items?

23 A No, as far as --

24 Q How about the chair and the mattress springs,

25 did they appear to be something that you might find in

1 a home?

2 A They would be in a home, yes.

3 Q Okay. How about photograph number 5?

4 A Again, this is a different angle. This was
5 taken to the southwest. It is kind of looking over
6 the fence, a close-up of the debris.

7 Q So you have several photographs of the burn
8 pit and the debris that has been burned in the pit,
9 correct?

10 A Correct.

11 Q Is that also the case with photograph number
12 6 with the shingles?

13 A Photograph 6 was basically a photo of the
14 shingles. Given that the shingles in the pit did not
15 appear to burn completely, and given the age of the
16 home, it made me think that there was possibly -- that
17 the shingles could be asbestos containing material.
18 So basically photo 6 is somewhat a close-up of the
19 side of the shingle to determine at a later date
20 whether or not it was, indeed, asbestos.

21 Q Did you have any -- I am sorry. Photograph
22 number 7, then, depicts what?

23 A Basically the condition of the site. There
24 is automobile bodies. There is a truck topper. There
25 is some dimensional lumber stacked. There is some

1 landscape -- some landscape wood as in firewood or

2 landscape waste. There are various other items.

3 Q What about photograph number 8?

4 A Photograph 8 depicts -- again, you can

5 somewhat see the same -- in the left portion of photo

6 8 shows the same truck that is in the right portion of

7 photo 7. You can see the burn pit. At the right side

8 of the photo kind of in the shadow, the central part

9 of the photo shows a mobile home that is leaning to

10 one side that appears not to have anyone living in

11 it. It just appears to be sitting on the site.

12 Q How about photograph number 9?

13 A Photograph 9 is an accumulation of materials

14 involving wood, basically, including wood, metal,

15 various types of debris and metal and things of that

16 nature.

17 Q Okay. How about photograph 10?

18 A Photograph 10 shows basically two mobile

19 homes. There is a dog house and some other material

20 there. There is a small gas can in the -- towards the

21 lower right portion of the photo.

22 Q Okay. Photograph number 11?

23 A Photograph 11 is taken to the northwest from

24 the southeast -- actually, from the southeast of the

25 site. Again, it is showing the general condition.

1 There is an automobile body. There is a trailer.
2 There is some type of a kind of flatbed trailer and
3 also the mobile home that was previously depicted and
4 a boat that is in the right central part of the -- the
5 right edge central as far as going up the boat on a
6 trailer. Other than that, there is some materials
7 that are laying scattered around.

8 Q That concludes all of the photographs then?

9 I am not sure if you mentioned what was in photograph
10 12?

11 A Photograph 12 I did not mention. Again, it
12 was taken to the northwest from the southeast, from
13 the southeast of the site. Basically, that is just
14 showing site conditions. It shows the east side of
15 the home through the trees that are on site.

16 Q Now, getting back to the burn pit and the
17 materials that you saw in the burn pit, and
18 specifically the shingles from the home --

19 A Yes.

20 Q -- in your opinion, what did it appear was
21 going on at this site, in general terms?

22 A It was my belief that given my knowledge of
23 the history of the site, that the home -- that the
24 health department has been trying to have the home
25 basically disposed of, removed, that materials were

1 being burned for volume reduction.

2 Q What do you mean by volume reduction?

3 A Basically, the materials were being placed in

4 the pit and burned to an ash residue so that it would

5 minimize the amount of material that would have to be

6 handled for disposal.

7 Q And that would explain why you saw the

8 shingles in the burn pit?

9 A Yes.

10 Q And the mattress springs?

11 A Yes.

12 Q And the burnt wood from the home?

13 A Correct.

14 Q And so forth and so on?

15 A Correct.

16 Q All of the things that are depicted in the

17 photographs and that you have testified to here today?

18 A Correct.

19 Q Based upon those observations, did you then

20 believe that there were violations of Section 21(p)(1)

21 and (p)(3)?

22 A I did.

23 Q Okay. Did you do anything as a follow-up to

24 this inspection?

25 A As follow-up to the inspection, basically I

1 prepared the report. And the report was sent to
2 Springfield at that time. I did contact, and left a
3 message on an answering machine and subsequently
4 received a return phone call from Mr. White. I
5 believe the phone call is on May 5th. It is not
6 indicated in this report.

7 Q So that follow-up phone call on May 5th --
8 was it May 5th?

9 A I believe so.

10 Q That was -- you received that after you had
11 prepared this April 29th, 1998 report?

12 A Correct.

13 Q And it was a phone call from Mr. White, the
14 Respondent?

15 A It was a return phone call, yes.

16 Q What, if anything, did he say at that time?

17 A At the time of that discussion Mr. White and
18 I discussed the nature of my visit. I told him that
19 there were violations of the Environmental Protection
20 Act, 21(p)(1) and 21(p)(3), including others. And
21 that my report was prepared and would be sent to
22 Springfield and he would be receiving documentation of
23 that report.

24 Q Did he make any statements or indication to
25 you that he was engaged in open burning at the site?

1 A Basically, to the best of my recollection,
2 believe that Mr. White initially indicated that he was
3 just burning the wood from the house to help to get
4 rid of it.

5 Q So did he admit to you that he was
6 consolidating wood from the burnt home, placing it in
7 the burn pit and lighting it on fire?

8 A To the best of my recollection, yes.

9 Q What about tire beads and mattress springs
10 and other things that you have testified to that you
11 observed in the burn pit?

12 A When I mentioned that there were other
13 materials in the burn pit in addition to wood debris,
14 mainly the things that I specifically mentioned were
15 the shingles, the tire bead, and the mattress springs,
16 Mr. White did not seem to know that the tire bead had
17 been in there or at least did not indicate that. The
18 mattress springs, he indicated, had come from another
19 property, just as a clean up measure.

20 Q So he knew where the mattress springs came
21 from?

22 A Yes.

23 Q And he admitted to you that they came from
24 another piece of property?

25 A Yes.

1 Q What was the purpose for them being there on
2 his property?

3 A I would assume, as he indicated, that they
4 were part of a clean up effort. I am assuming to
5 clean out another home or something like that.

6 Q Did you at any time tell Mr. White that it
7 was okay to dig a pit and burn waste in that pit?

8 A No, not that I recall at all.

9 Q That would be inconsistent with your function
10 as an Illinois Environmental Protection Agency
11 inspector, would it not?

12 A Yes, it would.

13 Q To instruct somebody that it was okay to
14 commit violations of the Illinois Environmental
15 Protection Act, that would be inconsistent, would it
16 not?

17 A That would be inconsistent, yes.

18 Q You at no time made any statements to that
19 effect, that it was okay to do what he was doing?

20 A To my recollection I have never told anyone
21 that in my tenure with the Agency.

22 Q After the report was prepared and a copy was
23 provided to Mr. White, did you then have any
24 recommendations as to how this facility should be
25 handled or what the next step should be?

1 A Basically when Mr. White and I discussed it
2 on May 5th and again on I believe June 18th, when I
3 hand delivered the Administrative Citation, the
4 discussion revolved around that the materials could
5 not be burned on the site, but they would need to be
6 taken to an appropriately permitted landfill or
7 disposal site.

8 Q So you felt it prudent to recommend that Mr.
9 White be issued an Administrative Citation by the
10 Illinois EPA?

11 A Yes, that was my recommendation.

12 Q And that subsequently occurred; isn't that
13 correct?

14 A Correct.

15 Q And you personally hand delivered that
16 citation to Mr. White, correct?

17 A I did.

18 Q At that time again you advised him of the
19 violations and that it was illegal for him to engage
20 in those activities at the site, correct?

21 A Correct, and the Administrative Citation
22 package also includes a copy of the inspection report.

23 Q All right. Those violations cited in your
24 April 29th, 1998 report are based upon your direct
25 observations at the site on that date, correct?

1 A Correct.

2 Q Mr. White has at no time ever denied owning
3 or operating this piece of property?

4 A Not to me, no.

5 Q Have you gone to the site since April 29th of
6 1998?

7 A No, I have not.

8 Q Have you --

9 A I have been by it when I hand delivered the
10 Administrative Citation, but I have not conducted any
11 inspections.

12 Q Is that the last contact that you had with
13 the site?

14 A Yes, it is.

15 Q Is that the last communication that you had
16 with Mr. White?

17 A Yes, June 18th would have been the last time
18 I spoke to Mr. White.

19 Q When you delivered the Administrative
20 Citation?

21 A I did receive a telephone call with regard to
22 the petition for review, I believe on about the 33rd
23 day after the Administrative Citation was issued.

24 Q Okay.

25 A That was from -- and I apologize on the last

1 name -- Grenda?

2 MS. GREENDA: Yes.

3 MR. SCHERSCHLIGT: That's all right. That's all
4 of the questions that I have for Mr. Johnson.

5 I would move to have People's Exhibits 1, 2 and 3
6 admitted into evidence.

7 HEARING OFFICER JACKSON: Any objection?

8 MR. WHITE: No objection.

9 HEARING OFFICER JACKSON: People's Exhibits 1, 2
10 and 3 are admitted into evidence.

11 (Whereupon said documents were admitted into
12 evidence as People's Exhibits 1, 2 and 3 as of
13 this date.)

14 HEARING OFFICER JACKSON: Mr. White, you have the
15 opportunity to question Mr. Johnson now based on the
16 direct examination that Mr. Scherschligt has
17 conducted. Do you wish to question the witness?

18 MR. WHITE: Yes, I do.

19 HEARING OFFICER JACKSON: Okay. You may proceed.
20 Please make sure you keep your voice up so that the
21 court reporter can hear you.

22 MR. WHITE: Okay.

23 CROSS EXAMINATION

24 BY MR. WHITE:

25 Q Now, what do you mean by owning? I

1 understand that. By operating, what do you mean by
2 operating a site?

3 A Operating meaning that the property is under
4 your control, meaning that it is not someone else that
5 is on site doing activities. That either you have
6 done those activities yourself or someone has done
7 them with your knowledge and consent.

8 Q Now, according to People's Exhibit Number 1,
9 on your site inspection report, on your checklist, it
10 says allowing open dumping, abandoned used waste
11 tires?

12 A Yes. The checklist used in this instance was
13 the tire disposal site checklist, basically which was
14 used because of the fact that there was tire bead that
15 was in the burn piles, the burn pile.

16 Q That was on your third report. I am talking
17 about your first report.

18 A Yes. I am talking about the first report
19 also.

20 Q The hole was not there on the first report.

21 A I am talking about in photo 5 of roll 96, of
22 the one taken there, and that is not going be on the
23 photos that are shown there, because --

24 Q On your first report?

25 A The first report.

1 Q Okay. Was the tires removed from the
2 property?

3 A Those -- that same burn pile was not observed
4 on April 29th of 1998, no.

5 Q I am not talking about the burn pile.

6 A Okay. I am --

7 Q I am talking about it says allowing open
8 burning and used tire waste. There was none on the
9 site, according to your first report, correct?

10 A My first report of November 22nd of 1994, it
11 was cited for the open dumping and open burning of
12 used or waste tires as well as other waste because of
13 the -- primarily because of the burn pile that is
14 depicted in photo 5. There is a burn pile there.
15 There were a couple tire beads in it, and had some
16 wire on top of it that had not been burned. I am not
17 sure if the photocopy can show that or not.

18 Q So you say in photo 5?

19 A Uh-huh.

20 Q It looks like -- how do you get tire beads --
21 how can you tell that is tire beads? It looks like
22 just some wire from a high line.

23 HEARING OFFICER JACKSON: Mr. White, if you need
24 to see a color photograph, we do have the color
25 photograph attached to the original exhibit.

1 THE WITNESS: Yes, you can take a look at this

2 one. Should I hand it to him?

3 HEARING OFFICER JACKSON: He can approach the

4 witness if he would like to see a copy.

5 MR. WHITE: Sure.

6 THE WITNESS: There you go.

7 (The witness passed the report with the color

8 photographs to Mr. White.)

9 THE WITNESS: Basically in photo 5, operating from

10 recollection, there are kind of the rust red rings

11 that are in the photo there of the burn pile.

12 Basically when a tire is burned, the tire bead that

13 remains is -- what it is is a collection of thin wires

14 and given several inspections --

15 Q (By Mr. White) Has this been removed? Was

16 that cleaned up on the second report?

17 A To my knowledge, it has been. I have not

18 seen receipts for the disposal of the waste, but it

19 was not observed on April 29th, no.

20 Q But you don't have no evidence of seeing

21 anybody put this there?

22 A November 22nd of 1994, no, I did not observe

23 anyone burn. I did not observe anyone place the

24 material there, no.

25 Q Anytime have you ever observed anybody

1 burning anything?

2 A Not actively burning on site. I have only
3 observed the evidence of that.

4 Q Now, on photo -- do you want this back?

5 A I have a photocopy that I can work off of
6 right now.

7 Q Okay. On photo 1, did you observe any of
8 this on your inspection?

9 A Okay. When you say "your inspection," I am
10 assuming that you are referring to the April 29th of
11 1998 inspection.

12 Q Yes, the April 29th, yes.

13 A No, I did not observe this same material.

14 Q It was cleaned up?

15 A It was not at the site. I did not observe it
16 on site. As far as receipts --

17 Q If it was not at the site, it was cleaned up?

18 A It had been removed, apparently, yes.

19 Q What about photo 4?

20 A Okay. Photo 4, again, it was not observed at
21 the time of the April 29th, 1998 inspection.

22 Q What about the tires and -- do you see all
23 the rubbish in the center of the picture --

24 A Okay.

25 Q -- in photo 2?

1 A In the center of photos 2 and 3 the material
2 in the central part of that?

3 Q And the van and all of that have been
4 removed?

5 A Okay. Again, they were not observed on April
6 29th of this year.

7 Q Would you say most of these materials would
8 be the result of a house fire?

9 A Many of the household items, as far as some
10 of the white goods, things of that nature, and the
11 wood debris, I would agree that that is what that is.
12 The automobiles, some of the metal that was around and
13 things of that nature, did not appear to have come
14 from a fire. But a lot of the materials here, and,
15 again, I am working off of --

16 Q So what would you --

17 HEARING OFFICER JACKSON: I am sorry. Mr. White,
18 why don't we let the witness finish his answer and
19 then you can ask another question. Okay?

20 THE WITNESS: Just what I was going to say is I am
21 working off a black and white photocopy, so I am not
22 real clear as to everything that is in the central
23 part of that photo, but what was observed on that
24 date, is what I believed to be in this particular
25 photo, I would concur that most of that is probably

1 from the home.

2 HEARING OFFICER JACKSON: If you would like to see

3 the color copy we can pass it back and forth between

4 the two of you.

5 THE WITNESS: Okay.

6 Q (By Mr. White) When you say most of it, all

7 of it basically?

8 A I would say most of it.

9 Q From a house fire or from a garage fire?

10 A Some from some type of a fire.

11 Q Okay. What do you describe as open dumping?

12 Do you mean somebody bringing something on to the

13 site?

14 A Open dumping means the disposal of waste at a

15 site not permitted as a disposal site. It is not

16 permitted as a landfill or a transfer station. It

17 does not necessarily mean it was brought from another

18 site. It means that it has been open dumped and

19 disposed of on the property.

20 Q But you are saying like open dumping would be

21 from bring it from another place.

22 A Open dumping could occur in either instance.

23 It could either be from like materials brought out of

24 the home and put on the ground. It could be from

25 materials brought from off site. It could be from

1 materials that were allowed to sit on site in their
2 original place that just were never handled
3 appropriately.

4 Q Wouldn't you say that most of the materials
5 that you saw on this inspection and most of these
6 photographs were burnt --

7 A I would say --

8 Q -- from a house fire?

9 A I would say most of them -- I would limit it
10 somewhat to the fact that it was mostly from stuff
11 immediately around the house. Because like the
12 automobiles and a lot of stuff that was further away
13 from the home it was not scorched in any way.

14 HEARING OFFICER JACKSON: Again, for the record,
15 we are still talking about the November 22nd, 1994
16 inspection, correct?

17 MR. WHITE: Yes.

18 HEARING OFFICER JACKSON: Okay.

19 Q (By Mr. White) In the November 22nd, 1994
20 inspection, picture 8, this drum has been removed?

21 A It was not observed. To my recollection I
22 believe that you had indicated that it was a fuel oil
23 or something like that that had been purchased and was
24 yet a product, is what I believe that I recall that we
25 discussed during the one telephone conversation in

1 January of 1995, I believe it would have been.

2 Q So you would say basically 90 percent of this
3 in one photograph have been removed and in --

4 A I don't know that I could put a percentage on
5 it, but I would say most of it. As far as the photos
6 2 and 3 and the materials that the drum was not
7 observed as far as photo 8.

8 HEARING OFFICER JACKSON: Again, so the record is
9 clear, we are talking about it had been removed or you
10 did not observe it in April of 1998?

11 THE WITNESS: I did not observe it on April 29th
12 of 1998. As far as documented disposal with receipts,
13 I don't think I have receipts for anything.

14 HEARING OFFICER JACKSON: Thank you.

15 Q (By Mr. White) Now, what is considered open
16 burning? Is that considered anywhere on the site?
17 Does it necessarily have to be on top of the ground or
18 in a pit?

19 A Open burning as far as an actual definition,
20 I don't know that I have that in my head. But open
21 burning basically occurs when it is -- there is
22 material being burned, and it is not an incinerator of
23 any sort and it is being burned on the ground.

24 Q On top of the ground?

25 A On soil surface. As far as whether it is --

1 Q On top the surface of the ground?

2 A As far as whether it is in a pit or on the
3 top of the ground, to me I don't think there is a
4 distinction.

5 MR. SCHERSCHLIGT: Excuse me. The witness has
6 been asked a question of law, and I don't have any
7 problem with him reciting what the law is. But I
8 would ask that the Board take administrative notice of
9 the definition of open burning and open dumping as
10 cited in the Illinois Environmental Protection Act.

11 I don't have any problem with him being permitted
12 to read those definitions if that would assist you,
13 Mr. White. But other than that, I would ask the
14 witness not to testify as to his --

15 MR. WHITE: If he has it, yes, I would like the
16 definition of it.

17 HEARING OFFICER JACKSON: Okay. If we have a copy
18 of the -- I have a copy in front of me of the
19 Environmental Protection Act that I can hand to the
20 witness and ask that he read the definitions of open
21 burning and open dumping. The record will reflect,
22 however, that the Board can take administrative
23 notice, official notice of these definitions contained
24 in the Act. I believe what the witness was testifying
25 to was just his understanding of what those

1 definitions are.

2 But if it would help to clarify the record, I can
3 certainly give him my copy of the Environmental
4 Protection Act, and ask him to read those definitions.

5 MR. WHITE: Sure. No problem.

6 HEARING OFFICER JACKSON: Okay. I will ask that
7 the record reflect that I am now handing the witness a
8 copy of the January 1998 edition of the Illinois
9 Environmental Protection Act. And, Mr. White, you
10 would like for him to now read the definitions of open
11 burning and open dumping?

12 MR. WHITE: Yes, I would.

13 HEARING OFFICER JACKSON: Okay.

14 THE WITNESS: Basically, for reference, it is
15 Section 3.23 of the Environmental Protection Act.
16 Open burning is the combustion of any matter in the
17 open or in an open dump. It is not defined further.

18 HEARING OFFICER JACKSON: Is there a definition of
19 open dumping as well?

20 THE WITNESS: Open dumping is Section 3.24. It
21 means the consolidation of refuse from one or more
22 sources at a disposal site that does not fulfill the
23 requirements of a sanitary landfill.

24 HEARING OFFICER JACKSON: Thank you. Now, Mr.
25 White, you did receive a copy of the Environmental

1 Protection Act in the mail?

2 MR. WHITE: Yes, I have it here.

3 HEARING OFFICER JACKSON: Okay.

4 THE WITNESS: The ones I was reading from are on
5 page three, toward the front of the --

6 MR. WHITE: I was thinking I had an older book,
7 and I had a smaller book.

8 MR. SCHERSCHLIGT: I am sorry. I have to object
9 to you testifying --

10 MR. WHITE: I didn't object to anything you said.
11 Okay?

12 MR. SCHERSCHLIGT: If you want to ask Mr. Johnson
13 a question, that is fine. I would object to you
14 offering testimony at this time.

15 HEARING OFFICER JACKSON: That objection is
16 sustained. Mr. White, you will be given an
17 opportunity to testify during your case in chief. Mr.
18 Scherschligt has every right to object to anything
19 that you might say at this point. And I did sustain
20 his objection. So if you have any other questions for
21 the witness, you may ask those questions at this
22 time.

23 Q (By Mr. White) So you would say basically
24 that open burning would be on top of the soil surface?

25 A Open burning, as it was defined there, it is

1 basically open burning meaning combustion of any
2 material of any waste in an open dump situation. And
3 it would not be limited to on top of the ground or
4 that it could be -- it could certainly be in a hole.

5 Q But you said soil surface, correct?

6 A I said that as far as my interpretation, but
7 the --

8 Q Isn't it usually when people -- well, when
9 contractors demo a house they dig a hole and push the
10 house in it?

11 A That's --

12 MR. SCHERSCHLIGT: I am going to object to
13 relevance as to what a contractor may or may not do.

14 HEARING OFFICER JACKSON: I will allow the witness
15 to answer if he has any knowledge of what the
16 contractor's practices are.

17 THE WITNESS: As far as what contractor's do, I do
18 know it is a practice I have observed certainly where
19 they will demolish into a hole and burn in that way.
20 Again, it is something I think we have discussed on
21 other occasions, and that it is my interpretation that
22 is also open burning. If they demolish onto the
23 ground or if they demolish into a hole it makes no
24 difference.

25 Q (By Mr. White) So it is okay if they burn in

1 a hole?

2 A No. If they demolish into a hole --

3 Q And burn it?

4 A If they demolish into a hole and then burn

5 it, it is still open burning.

6 Q Have you ever cited for any contractors doing

7 that, then?

8 A Yes, I have.

9 Q Within the area, that area?

10 A By saying area, I am not sure if you are

11 talking about within a one mile radius of that, but I

12 don't know what all counties I have cited in, but I

13 have cited in several of the 19 counties that we

14 cover.

15 Q Okay. On your report on People's Exhibit

16 Number 2 --

17 HEARING OFFICER JACKSON: Are you talking about

18 the Administrative Watching Notice?

19 MR. WHITE: Yes.

20 HEARING OFFICER JACKSON: Okay.

21 Q (By Mr. White) Was everything pretty well

22 satisfied on your follow-up?

23 A As far as -- well, the only follow-up, as I

24 indicated before, the only inspection I conducted

25 after this would have been on April 29th of this year

1 was the next follow-up inspection. As far as whether
2 material was removed from the site after November 22nd
3 of 1994, again, I testified before that that material
4 was not observed. I don't know exactly what happened
5 to it, but it --

6 Q So if you didn't observe it, it was removed?

7 A It is removed from the site. To where I am
8 not sure, but it had been removed.

9 Q Okay. On People's Exhibit Number 3, you have
10 marked, caused, threatened to allow air pollution?

11 A Correct. Section 9(a) of the Environmental
12 Protection Act. Basically Sections 9 --

13 HEARING OFFICER JACKSON: Let's wait until there
14 is a question posed.

15 THE WITNESS: I am sorry.

16 Q (By Mr. White) What was your purpose in
17 marking this?

18 A The Sections 9(a), 9(c), as well as 21(p)(3)
19 are commonly cited in cases where open dumping
20 resulting in opening burning is -- where evidence of
21 that is observed, basically meaning that material was
22 burned in such a way that it could cause or allow open
23 burning in a way that would cause, threaten or allow
24 air pollution.

25 Q On number 5, Section 21(a), you have causing

1 to allow open dumping. To allow open dumping is to
2 bring stuff in, like allow open dumping like trash
3 sites like you see maybe along a ravine?

4 A If I understand your question correctly, open
5 dumping would not be limited to someone bringing trash
6 in from another site. Open dumping in the definition
7 basically means the disposal of waste at a site not
8 meeting the sanitary landfill requirement. So it
9 could be material that is generated on site. It could
10 be material brought in from off site.

11 Q Would that be considered littering, too?

12 A Yes.

13 HEARING OFFICER JACKSON: I am sorry? What was
14 that.

15 Q (By Mr. White) Wouldn't that be considered
16 littering, too, as 21(p)(1)?

17 A 21(p)(1), as far as open dumping, the
18 materials that are open dumped, it would be considered
19 litter, yes.

20 Q So that is basically the same thing?

21 A It is much the same, yes. In fact, Section
22 21(p)(1) basically says in violation of Subsection
23 21(a), cause or allow.

24 Q So if you say it is the same thing, why do
25 you have two citations of the same thing?

1 A The way the Act is written, Section 21(a)
2 basically says no person shall cause or allow the open
3 dumping of any waste. Section 21(p)(1), again, not
4 verbatim, but basically says that in violation of
5 Subsection 21(a), cause or allow the open dumping of
6 waste in a manner resulting in litter, it is
7 specifically referencing litter versus open dumping of
8 any material.

9 Q So you would say they are the same thing?

10 A They are cited consistently together.

11 Q Now, when you go to these sites, do you ever
12 ask permission to go on the property, or is it custom
13 to go on the property?

14 A It depends on the site. In an instance such
15 as this, where the site is visible from the road and I
16 have an open field view of materials on site, Sections
17 (4)(c) and (4)(d) of the Environmental Protection Act
18 do give Agency personnel the authority to enter a
19 site. If the property owner is on site I typically
20 ask for permission.

21 Q So you didn't have permission?

22 A I did not ask permission on April 29th.

23 Q Why not?

24 A There wasn't -- you were not on site.

25 Q Didn't you have my phone number from Mr.

1 Murphy?

2 A As far as at that time I am not sure if I had
3 your phone number handy or not. I probably did
4 somewhere. Typically, if I can see evidence from the
5 road and no one is on site, then I will not
6 necessarily ask permission. Especially on a complaint
7 type basis where we are responding to a complaint,
8 oftentimes we don't even know who the property owner
9 is.

10 Q How many complaints did you have?

11 A April 29th I believe we had one or two. I
12 believe it was one.

13 Q Just one. On this photograph, photo 1 --

14 HEARING OFFICER JACKSON: Which exhibit are you
15 referring to?

16 Q (By Mr. White) On exhibit November 22nd,
17 1994.

18 A People's Exhibit Number 1? Okay.

19 Q Up in the left-hand corner what do you see?

20 A A no trespassing sign.

21 Q But you don't -- you just ignored it?

22 A As I indicated, Sections (4)(c) and (4)(d) of
23 the Environmental Protection Act allow Agency
24 personnel the right to enter a property in an instance
25 like this where it is a remote property and there is

1 no one living on the site, and I don't have occasion
2 to ask permission I will use my observations from the
3 road and enter the site.

4 Q Do you ever ask permission?

5 A As I indicated, if someone is on site I will
6 ask permission. That is basically somewhat as a
7 courtesy, I guess.

8 Q On People's Exhibit Number 3, Illinois
9 Protection Agency dumping inspection checklist, Number
10 (1)(g)(a), it says threaten or allow air pollution.

11 A Okay. You are referring --

12 Q Did you see -- air pollution comes from, I
13 would say, smoke or fire and --

14 MR. SCHERSCHLIGT: I am going to object to Mr.
15 White testifying. I don't hear a question here.

16 HEARING OFFICER JACKSON: Please direct -- the
17 objection is sustained. Please --

18 MR. WHITE: Did you see --

19 HEARING OFFICER JACKSON: Excuse me for a minute
20 please. Please direct a question at the witness.

21 MR. WHITE: I will.

22 Q (By Mr. White) Did you see a fire allowing
23 air pollution?

24 A There was no ongoing fire at the time of the
25 inspection. There was evidence of open burning.

1 Q Open burning, you mean on top of the ground?

2 A As we have discussed before, open burning
3 meaning meeting the definition of open burning as it
4 is defined in the Act.

5 Q Okay. Now, in People's Exhibit 3, the first
6 picture, number 1, what was your reason for taking
7 that?

8 A The picture of the house?

9 Q Yes.

10 A Basically some of my pictures are taken to
11 show general site conditions. Some show specific
12 violations. Some show specific materials. This was
13 basically to establish just the presence of the home
14 and also somewhat to establish that it is still
15 remaining and has not been addressed, per se, from the
16 November 22nd of 1994 inspection, and it is still
17 standing.

18 Q On your 1994 inspection wouldn't you say a
19 considerable amount of debris has been removed, I
20 would say very considerable?

21 A As far as the materials depicted in the
22 photo, the photo taken on November 22nd of 1994, I
23 would say a considerable amount of that waste has been
24 removed.

25 Q How much would you say has been removed?

1 A I would say -- I would probably say most of
2 it.

3 Q So you -- you could tell that there was an
4 effort in clean up on this site?

5 A I could tell that the site conditions had
6 changed, yes.

7 Q Considerably?

8 A Considerably? It may be a little subjective
9 but, yes.

10 Q For better or worse?

11 A As far as the materials that were observed in
12 1994 being removed, I would say it would be better.

13 As far as there being a pit dug on site I would
14 characterize that as being much worse.

15 Q Now, you say in photograph 3 --

16 HEARING OFFICER JACKSON: On which inspection
17 report? I am sorry.

18 MR. WHITE: Well, it looks like it would be the
19 April 29th inspection.

20 THE WITNESS: To clarify, it is April 29th of
21 1998.

22 Q (By Mr. White) You say there is shingles in
23 the hole?

24 A What appeared to me to be part of shingles,
25 parts of shingles.

1 Q Appear?

2 A That's the way I would characterize it. In
3 photo 3 at the top of the photo, or actually toward
4 the top of where the hole is, you can see part of a
5 shingle there. Also the flat white somewhat flaky
6 material in the central part of the photo on the
7 mattress springs I believe to be residue from
8 shingles.

9 Q That looks like plastic.

10 HEARING OFFICER JACKSON: Well, again, Mr. White,
11 you need to direct a question to the witness.

12 MR. WHITE: All right.

13 Q (By Mr. White) So you are saying that white
14 is shingles?

15 A I am saying that there appeared to be --

16 Q Appear?

17 A That there appeared to be residue from that.

18 At the time of the inspection --

19 Q At the end of the hole --

20 MR. SCHERSCHLIGT: Excuse me. I would ask that
21 the witness be allowed to finish answering the
22 question.

23 THE WITNESS: I was just going to say at the time
24 of the inspection, the white material that is on top
25 of the mattress springs I thought was shingles, yes.

1 Q (By Mr. White) You thought?

2 A I didn't crawl in the hole to see.

3 Q So you didn't take any evidence from this
4 site as far as --

5 A As far as taking samples?

6 Q -- physical evidence?

7 A As far as taking physical samples of the
8 burned debris, no, I did not. I took photos only
9 during this inspection.

10 Q I see. Now, in photograph number 6, what was
11 the purpose of taking this photograph?

12 A Photograph 6, to clarify, was for the April
13 29th, 1998 inspection. The purpose of the photo was
14 to show basically a close up of the shingles on the
15 house, and also a side view of a broken shingle.

16 That photo was shown to a gentleman who is with
17 our Bureau of Air. He is an engineer that was trained
18 in asbestos inspections. It was shown to him for the
19 purposes of trying to determine whether or not there
20 was a belief that that could be asbestos containing
21 material.

22 Specifically, the concern was that if it was
23 asbestos containing shingles and it is being burned
24 that if the asbestos materials became airborne in an
25 area where there is a lot of residential homes and

1 that, that it could impact people.

2 Q But, yet, that is still the side of a house

3 where it was burned?

4 A That is the side of the house. It was taken

5 to try to determine and get a rough idea of what the

6 shingle is made of.

7 Q So do you think that the owner of the

8 property would have anything to do with the fire of

9 the house?

10 MR. SCHERSCHLIGT: I am going to object to that

11 question as being wholly irrelevant as to how that

12 house burned down, and what that has to do with the

13 issue of whether or not he has committed litter or

14 open burning at the site.

15 MR. WHITE: I would say it has a lot to do with

16 it, because he is representing a photograph here

17 saying open burning.

18 HEARING OFFICER JACKSON: Not the photograph. I

19 think there is a misunderstanding. I am going to

20 sustain the objection. And if you need to ask further

21 questions to kind of clarify what the witness is

22 getting at, you can.

23 I am going to sustain the objection and the

24 witness will not answer the question.

25 Q (By Mr. White) What is the purpose of

1 photograph number 7?

2 A Photograph number 7, as I have indicated
3 previously, basically shows general site conditions,
4 some of the materials on site, and basically to
5 stipulate -- as I have said before, sometimes I take a
6 picture to show a general site condition and not
7 necessarily to show a violation, per se. To show
8 other materials on site for reference.

9 Q Well, would you say a wood pile would be
10 littering?

11 A It depends on the wood pile and what it is
12 being used for. If a wood pile is being used for, you
13 know -- like, say, to the left of the photo there is
14 landscape waste that could be used for firewood, to me
15 that would not be littering, if it is being stored for
16 the purpose of firewood.

17 Toward the center of the photo there is some
18 dimensional lumber that is stacked there. If there is
19 a legitimate use for it and it is being stored prior
20 to that use, that is one thing. If it is just being
21 stored there and vegetation allowed to grow up around
22 it and nothing is going to be done with it, it could
23 be litter, yes.

24 Q In picture number 9, would you say that most
25 or all of these materials had rust on them considering

1 to a fire?

2 A I don't know that I could contribute it to a
3 fire. They did appear, most of them, to have some
4 rust on them. Sometimes the rust can be from general
5 weather and sometimes they could be from a fire. I
6 really can't say for sure.

7 Q Would you say in picture number 10 -- do you
8 see the gas can in the center? Wouldn't you say the
9 yard had freshly been mowed recently?

10 A Yes, the yard had been mowed. In fact, I
11 think I indicated in the report in the narrative
12 section that Judy had indicated that she had mowed the
13 property. I am trying to find the specific reference
14 to the --

15 Q I read it in the report.

16 A Okay. It is on page two under inspection
17 findings, the first paragraph.

18 Q Anytime that you had talked with me, and we
19 discussed open burning, did I ever indicate that I was
20 mislead on this situation?

21 A You had indicated that you had been told that
22 you could open burn as long as you dug a hole. And I
23 believe you had indicated that I had said that and
24 also that Mr. Murphy of the health department had said
25 that. As I indicated before, I don't recall ever

1 saying that to you. What Mr. Murphy said or did not

2 say, I don't know.

3 I would say that I have had discussions with him

4 regarding what is legal in these matters. And it has

5 been consistent with what I have testified to. I

6 don't think I have ever told him that this would be

7 legal.

8 Q That we discussed it?

9 A That you and I had discussed it, yes.

10 Q Yes. And I told you that I was mislead?

11 A Yes, I believe that is --

12 Q Now, in the center of photograph number 1 --

13 HEARING OFFICER JACKSON: For which inspection

14 report?

15 MR. WHITE: The same inspection report I have been

16 talking about.

17 HEARING OFFICER JACKSON: April of 1998?

18 MR. WHITE: Yes, ma'am.

19 Q (By Mr. White) You mentioned the well curb

20 earlier?

21 A What I believed to be, yes.

22 Q Wouldn't you say that had freshly been redone

23 as far as sealing the well, as far as the brick and

24 mortar around it?

25 A There is some mortar that is lighter than

1 other mortar. As far as how old the mortar is, I
2 really couldn't tell you for sure. I am not
3 positive. At least I am not absolutely positive that
4 it is a well head. But it did appear that there was
5 some mortar lighter than other.

6 Q It is a well head.

7 HEARING OFFICER JACKSON: Mr. White, please
8 refrain from offering any testimony at this point.
9 You have not been sworn in as a witness. Limit your
10 remarks to questions to the witness.

11 MR. WHITE: I don't think I have any further
12 questions for Steve (sic). Thank you.

13 HEARING OFFICER JACKSON: Okay. Mr. Scherschligt,
14 do you have any redirect?

15 MR. SCHERSCHLIGT: Just a few redirect, if I
16 could.

17 HEARING OFFICER JACKSON: All right.

18 REDIRECT EXAMINATION

19 BY MR. SCHERSCHLIGT:

20 Q Now, Mr. Johnson, it is fair to say that some
21 of the materials and waste that you observed in
22 November of 1994, some of those had been removed,
23 correct?

24 A It is fair to say, yes.

25 Q But you don't have any idea what happened to

1 those materials, do you?

2 A I have not seen any documentation of receipts
3 or anything.

4 Q You received no evidence which would suggest
5 that they were properly disposed of?

6 A No.

7 Q Okay. Now, the Administrative Warning
8 Notice, I believe that is Exhibit Number 2. There is
9 a provision in there that requires Mr. White to cease
10 and desist from open dumping and open burning at the
11 site?

12 A Correct.

13 Q Based upon your observations on April 29th of
14 1998, did it appear to you that Mr. White had ceased
15 his operations of open dumping and open burning?

16 A No, it did not.

17 Q All of the violations that are cited in the
18 Administrative Citation are based upon your
19 observations of April 29th of 1998, correct?

20 A Correct.

21 Q And part of the reason why you took a
22 photograph of the burnt home on April 29th of 1998,
23 was because you believed it to be a potential source
24 of some of the materials that were being burned; isn't
25 that correct?

1 A Agreed, yes.

2 Q I believe Mr. White asked you a question
3 about some shingles that you believed were in the burn
4 pit?

5 A Uh-huh.

6 Q And you testified that you believed that
7 those were shingles. Regardless of whether or not
8 they were or were not shingles, it did appear to be
9 some sort of waste, correct?

10 A Correct.

11 Q Either way it would be a violation of the
12 Environmental Protection Act to burn that waste in
13 that pit, correct?

14 A Correct.

15 Q Unless it was on site generated landscape
16 waste?

17 A Correct.

18 Q Did it appear that it may have been on site
19 generated landscape waste?

20 A No.

21 MR. SCHERSCHLIGT: That's all I have. Thank you.

22 HEARING OFFICER JACKSON: Okay. May this witness
23 be excused?

24 MR. SCHERSCHLIGT: Yes, I am finished with him

25 (The witness left the stand.)

1 HEARING OFFICER JACKSON: Okay. Mr. Scherschligt,
2 do you have any other witnesses?

3 MR. SCHERSCHLIGT: Yes, I would call Mr. White.

4 HEARING OFFICER JACKSON: Mr. White, would you
5 please step forward and have the court reporter swear
6 you in.

7 (Whereupon the witness was sworn by the Notary
8 Public.)

9 HEARING OFFICER JACKSON: Please take a seat next
10 to the court reporter.

11 Mr. Scherschligt, you may begin.

12 MR. SCHERSCHLIGT: Thank you.

13 BRADLEY G. WHITE,
14 having been first duly sworn by the Notary Public,
15 deposeeth and saith as follows:

16 DIRECT EXAMINATION

17 BY MR. SCHERSCHLIGT:

18 Q Mr. White, I am looking at the petition for
19 review that you filed in this matter. You do recall
20 filing a petition for review?

21 A Yes, I do.

22 Q And in that petition for review, you indicate
23 that your home burnt down in 1994, correct?

24 A Yes, it did.

25 Q That's the home that we have been seeing in

1 these photographs here today?

2 A Yes, I lost everything I owned there.

3 Q Okay. So you don't deny that you own this
4 piece of property, correct?

5 A No, I don't.

6 Q Okay. Now, you have also indicated in your
7 petition that you hired an individual to dig a pit for
8 you so that you could burn the wood from the burnt
9 home in that pit; is that correct?

10 A Yes.

11 Q And that pit was approximately four foot wide
12 by nine feet deep and eight foot long; is that
13 correct?

14 A That's correct.

15 Q And you put fencing around it so that no one
16 would fall in the pit?

17 A Correct.

18 Q So you have been burning wood from that home,
19 that burnt home, in the pit, correct?

20 A Yes.

21 Q Is it fair to say that part of the reason why
22 you are doing that is to cut down on disposal costs of
23 the home, volume consolidation, volume reduction?

24 A No, not really.

25 Q You just feel like burning wood in the pit?

1 A No, the reason was it was for to clean it up.

2 Q Trying to clean up the appearance of the
3 property?

4 A Yes, because my insurance company, you know,
5 didn't settle because my attorney blew the case.

6 Q All right. Now, you would admit that there
7 are other items depicted in these photographs from
8 April 29th of 1998 other than wood from that home,
9 correct?

10 A Yes. When I did the checklist and I made a
11 list of stuff that was in the garage and stuff I sat
12 everything over like in piles. And then I went
13 through it, and I hauled most of the ashes and stuff
14 that I could to a landfill.

15 Q But there were materials in that burn --

16 A I had them removed.

17 Q -- pit other than burnt wood, correct?

18 A There was some springs.

19 Q Okay. Where did those come from?

20 A And a little bit of fencing in there.

21 Q Where did those springs come from? Was that
22 from a mattress in the home that burnt?

23 A Yes, it was a partial burnt mattress that I
24 drug out.

25 Q You said some fencing?

1 A Well, yes, there was some fencing in there.

2 Q Okay. How about shingles? Did you ever put
3 any shingles in there?

4 A No, I did not.

5 Q You never burned any shingles in there?

6 A No.

7 Q How long have you been burning the wood from
8 the home in that pit on the site?

9 A Oh, I was trying to get the wood from the
10 house cleaned up. That way I could get like the ashes
11 and shingles and other stuff from the inside of the
12 home hauled away, because I had a 12 yard dumpster
13 there.

14 Q Okay. Give me a time period.

15 A Oh, probably --

16 Q A year, two years?

17 A No. I probably did it about a week.

18 Q It just happened to be the week that --

19 A I only worked three days down there.

20 Q It just happened to be the week of April 29th
21 when Mr. Johnson was out there that you were burning?

22 A Well, that's -- I had an individual -- well,
23 the health department was on me to get it cleaned up,
24 and I did to the best of my ability.

25 Q So you were burning the week that Mr. Johnson

1 came out there?

2 A Well, the hole was there. I was not -- I

3 don't know if I remember burning that week.

4 Q But within a short period of time, prior to

5 him arriving on April 29th, you had been burning at

6 that site; is that fair to say?

7 A I was there cleaning up within -- somewhere

8 within that time limit, approximately.

9 Q Okay. Now, is the original Exhibit Number 3

10 still over there or has it been returned?

11 HEARING OFFICER JACKSON: I believe it is on the

12 table in front of the witness.

13 MR. SCHERSCHLIGT: All right. Thank you.

14 Q (By Mr. Scherschligt) We have heard Mr.

15 Johnson testify about the November 22nd of 1994

16 inspection, and it indicates in his report that he

17 called your number and an individual answered the

18 phone but failed to give his identity. Was that you

19 that he spoke with?

20 A I have no recollection.

21 Q You don't have any recollection?

22 A I have no recollection of it.

23 Q If the information that was provided to Mr.

24 Johnson was pretty specific as far as the activities

25 of the property, it would not surprise you that it

1 would have been you that he spoke with, would it?

2 A I don't remember talking to him on the phone
3 as far as around that time.

4 Q Okay. Are you still burning the wood from
5 the home in that pit to date?

6 A No.

7 Q You ceased?

8 A I ceased it the day that Steve (sic) come to
9 my house and let me know that it was wrong, which it
10 was a misunderstanding.

11 Q All right.

12 A My thoughts on open burning was on top of the
13 surface of the ground.

14 Q All right.

15 A Now, I had a pamphlet.

16 Q I realize that you maybe are -- you know,
17 maybe you misunderstood what the law is. How about
18 the other materials that are depicted in the
19 photographs from the April 29th report? Has that
20 waste been removed from the site?

21 A I cleaned all the hole out.

22 Q Okay.

23 A And I filled it all in.

24 Q How about the waste tires on site? Have you
25 properly removed those?

1 A I removed them before.

2 Q After the November 22nd inspection?

3 A Yes, there has not been any tires down there
4 after the first inspection.

5 Q How about some of the miscellaneous wood on
6 site? Has that been removed, the miscellaneous wood
7 that was observed on April 29th of 1998, has that been
8 removed?

9 A What do you mean, miscellaneous wood?

10 Q Well, I believe there was some testimony that
11 there was some waste wood on site.

12 A Waste wood?

13 Q I believe it is depicted in photographs 7
14 through 12?

15 A I wouldn't -- that's a firewood pile there.
16 I wouldn't call that waste wood.

17 Q Okay. Do you know if those shingles are
18 asbestos -- whether they contain asbestos?

19 A I have no idea.

20 Q You don't have any idea?

21 A No.

22 MR. SCHERSCHLIGT: That's all I have. The State
23 would rest.

24 HEARING OFFICER JACKSON: Okay. May the witness
25 be excused?

1 MR. SCHERSCHLIGT: Yes.

2 HEARING OFFICER JACKSON: You may step down.

3 Since this is kind of a different situation than we
4 are used to, normally the Respondent would be allowed
5 to cross-examine one of the State's witnesses. But
6 since you are the named Respondent, I will let you
7 step down as the State's witness.

8 Then if you wish to come back on the stand and
9 testify in your own case you may do so. Okay?

10 MR. WHITE: Okay

11 (The witness left the stand.)

12 HEARING OFFICER JACKSON: So at this time the
13 State has rested. Do you wish to give testimony on
14 your own behalf or introduce any exhibits into the
15 record or call any witnesses?

16 MR. WHITE: Sure, I would like to testify on my
17 own behalf.

18 HEARING OFFICER JACKSON: Okay. Please recall
19 that you have been sworn in, and you are still under
20 oath.

21 MR. WHITE: All right.

22 HEARING OFFICER JACKSON: And try to limit your
23 remarks to what is relevant to the case before us.

24 Okay?

25 Then Mr. Scherschligt will have an opportunity, if

1 he wishes, to cross-examination you as a witness on
2 behalf of the Respondent. Okay.

3 MR. WHITE: Well, back in 1994 is when I lost my
4 house and it was, you know, everything I owned. And I
5 have been fighting with the insurance company ever
6 since. And my lawyer lost the case. Or he didn't
7 lose the case, but he blew it. He let the statute of
8 limitations run out. But I do have another lawyer on
9 there. And I have been trying to get enough money to
10 finish cleaning this up and to start rebuilding part
11 of it.

12 I didn't know it was illegal to burn in, like, a
13 pit. I thought that open burning was considered on
14 top of the ground or in -- you know, that's what I
15 considered open burning. Now, I thought in a trash
16 can or in a container or a hole, which it would be
17 safe where the fire wouldn't spread or cause any
18 damage to other -- anything else, around it, that's
19 the reason that I dug a hole and I burnt wood in it.
20 If I knew it was illegal, I wouldn't have never done
21 it.

22 HEARING OFFICER JACKSON: Is that the only
23 statement you wish to make?

24 MR. WHITE: Yes.

25 HEARING OFFICER JACKSON: Mr. Scherschligt, do you

1 have any cross?

2 MR. SCHERSCHLIGT: No cross-examination. Thank
3 you.

4 HEARING OFFICER JACKSON: You may step down.

5 (The witness left the stand.)

6 HEARING OFFICER JACKSON: Mr. White, do you have
7 any other evidence you would like to put on or any
8 other witnesses you would like to call?

9 MR. WHITE: No, I don't.

10 HEARING OFFICER JACKSON: Okay. Do you have a
11 case in rebuttal, Mr. Scherschligt?

12 MR. SCHERSCHLIGT: No, no case in rebuttal.

13 HEARING OFFICER JACKSON: All right. At this
14 point the hearing appears to be concluded.

15 Why don't we go off the record for one second and
16 we will talk about whether the parties wish to submit
17 any post hearing briefs or make any closing arguments
18 on the record.

19 Okay. Off the record.

20 (Discussion off the record.)

21 HEARING OFFICER JACKSON: Okay. Back on the
22 record.

23 It is about a quarter till 12:00. We have just
24 been discussing the filing of post hearing briefs or
25 the submission of closing arguments on the record.

1 The Respondent has indicated his desire to submit a
2 post hearing brief, and he will let the Board and/or
3 the court reporter know whether he needs a copy of the
4 transcript from us. But a copy of the Board's address
5 will be provided to the Respondent before we leave
6 today.

7 Mr. Scherschligt has reserved his right, and it is
8 noted on the record, to submit a reply brief once the
9 Respondent's brief has been filed if he so desires.
10 As far as the Agency submitting a post hearing brief
11 initially, they will not do so. Mr. Scherschligt will
12 make a closing argument on the record.

13 Before we proceed with that, I would like for the
14 record to reflect the presence of an individual at
15 Respondent's table. If you could just please state
16 your name for the record.

17 MS. GREENDA: Susan Grenda, G-R-E-N-D-A.

18 HEARING OFFICER JACKSON: You are not an attorney,
19 are you?

20 MS. GREENDA: No.

21 HEARING OFFICER JACKSON: You are just here with
22 the Respondent today?

23 MS. GREENDA: Yes.

24 HEARING OFFICER JACKSON: Okay. At this time I
25 will ask Mr. Scherschligt to make his closing argument

1 for the record.

2 MR. SCHERSCHLIGT: Thank you. Madam Hearing
3 Officer, Mr. White, Members of the Illinois Pollution
4 Control Board, I believe that we have heard sufficient
5 evidence here today to support a finding by the Board
6 that Mr. White did cause or allow open dumping
7 resulting in litter and open burning. I would cite
8 the testimony of Inspector Kent Johnson of the
9 Illinois Environmental Protection Agency.

10 I would call to attention his testimony based upon
11 his direct observations at the site on April 29th of
12 1998, and in addition the supporting photographs which
13 corroborate his personal observations on that date.
14 We have got 12 photographs that were made part of that
15 April 29th report, and that report is into evidence,
16 it has been admitted into evidence.

17 Each one of those photographs supports a finding
18 of litter and open burning. Those photographs depict
19 a burnt home, which the Respondent admits that he has
20 been taking the wood from that burnt home,
21 consolidating it into a burn pit, and burning it on
22 site.

23 There is also evidence that other materials have
24 been burned in that burn pit, including tires. There
25 appears to be some tire beads that Mr. Johnson

1 observed, as well as some shingles that appear to be
2 being burned at the site. In addition to that, the
3 mattress spring and other miscellaneous debris that is
4 being burned in that burn pit.

5 The photographs also show other waste scattered
6 about the property. And while some of the materials
7 depicted in those photographs may not be waste, there
8 is a substantial amount of materials that I believe
9 are waste. Mr. Johnson has testified in his opinion
10 they are waste.

11 The Illinois Pollution Control Board has adopted
12 the definition of litter as found in the Litter
13 Control Act, and that was in St. Clair County versus
14 Louis Mund, an August 22nd, 1991, Pollution Control
15 Board opinion. That was 125 Pollution Control Board,
16 381. And I believe that the materials that Mr.
17 Johnson has testified about here today and the
18 materials that are depicted in those photographs do
19 fall within the definition of litter in the Litter
20 Control Act.

21 I believe the evidence is that there has been a
22 consolidation of materials, of waste, to a disposal
23 site, specifically the burn pit, and those materials
24 have been lit on fire, and it does amount to a
25 combustion of materials into the air. So I believe

1 that there is sufficient evidence here.

2 We have established that Mr. White owns the
3 property. That it does not have a permit to open dump
4 or open burn, and that based upon Mr. Johnson's direct
5 observations on April 29th, 1998, we do believe there
6 is sufficient evidence to support a finding of
7 violation for litter and open burning. So we would
8 ask the Board to enter such finding. Thank you.

9 HEARING OFFICER JACKSON: Thank you, Mr.
10 Scherschligt.

11 Mr. White, do you wish to make a closing argument
12 on the record? You can reserve your closing argument
13 for your post hearing brief if you would like.

14 MR. WHITE: I will just reserve it.

15 HEARING OFFICER JACKSON: Okay. Very good. One
16 quick thing. Let's go off the record for a second.

17 (Discussion off the record.)

18 HEARING OFFICER JACKSON: Back on the record. As
19 far as the post hearing brief schedule is concerned,
20 the transcript will be available in eight days. The
21 Respondent's brief will be then due on November 15th.
22 If a reply brief is to be submitted by the Agency, it
23 will be due on November 30th.

24 Are there any other questions or any other matters
25 we need to address on the record? Seeing none, I will

1 conclude the hearing. It is October 14th. It is ten
2 till 12:00. We are adjourned. Thank you all.
3 (Discussion off the record.)
4 HEARING OFFICER JACKSON: Let's go back on the
5 record briefly.
6 I apologize to the parties. We are back on the
7 record. I am required to make a statement of
8 credibility at the conclusion of the proceeding.
9 Pursuant to Board regulations, the statement is to be
10 based upon my legal judgment and experience. And I
11 state that I have found the witnesses to be credible.
12 I don't believe credibility should be at issue in
13 these proceedings for the Board.
14 Having said that, the hearing is concluded. Thank
15 you all again.
16 (People's Exhibits 1 through 3
17 retained by Hearing Officer
18 Jackson.)
19
20
21
22
23
24
25

