

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Petitioner,

6 vs. No. PCB 94-373

7 WAYNE BERGER AND BERGER WASTE

8 MANAGEMENT, INC.,

9 Respondent.

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13 Proceedings held on August 18, 1998 at 9:45 a.m.,

14 at the Olney Public Library, 400 West Main Street,

15 Olney, Illinois, before the Honorable Kathleen M.

16 Crowley, Hearing Officer.

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1           A P P E A R A N C E S

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4   GENERAL

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11       On behalf of Respondent.

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1            P R O C E E D I N G S

2            (August 18, 1998; 9:45 a.m.)

3    HEARING OFFICER CROWLEY: Good morning. This is a  
4 hearing being conducted by the Illinois Pollution  
5 Control Board in the matter of the People of the State  
6 of Illinois versus Wayne Berger and Berger Waste  
7 Management, Incorporated, Docket Number PCB 94-373.  
8 My name is Kathleen Crowley, I am acting as the  
9 Board's Hearing Officer this morning.

10    Seated to my immediate right is Karen Kavanagh, a  
11 new member to the Board's general legal staff.

12    For the record, I would first like to note that  
13 this hearing is commencing today at a different time  
14 and location than was publicly noticed. It was  
15 noticed to schedule -- it was noticed to begin at 9:30  
16 a.m. at the Olney City Hall at 300 Whittle Avenue here  
17 in Olney. We began today at 9:45 at the Olney Public  
18 Library at 400 West Main Street. The changes were  
19 made to accommodate construction that was occurring at  
20 City Hall.

21    I note for the record that there are no members of  
22 the public in attendance at this moment who are not  
23 associated with either one of the parties.

24    We are here today to consider an action that  
25 commenced in 1994. It is a six-count complaint which

1 charges Wayne Berger and Berger Waste Management with  
2 various violations of the Act and Board Regulations.  
3 These allegedly occurred during the course of  
4 operation of a permitted landfill in Noble Township  
5 here in Richland County.

6 For the record, the Hearing Officer in Board  
7 proceedings does not make decisions on the merits of  
8 the case. Instead, we are here to receive evidence  
9 and to create a concise and complete record for the  
10 Board Members to review.

11 This has been a highly contested issue. We have  
12 had various discovery disputes. I would like to  
13 remind the parties and Counsel for the parties that  
14 our purpose here is to shed light and not heat on the  
15 issues that we are considering today. If I find that  
16 we are becoming unduly contentious, I may ask to take  
17 a recess or take other measures to make sure that we,  
18 again, create a concise and complete record of the  
19 issues we have at hand.

20 At this point I will ask Counsel for Complainant  
21 to introduce herself and persons affiliated with the  
22 Office of the Attorney General.

23 MS. MENOTTI: Thank you. Ms. Hearing Officer, my  
24 name is Maria Menotti, and I represent the People of  
25 the State of Illinois.

1 To my left is Josh Gubkin, co-counsel also  
2 representing the People.

3 HEARING OFFICER CROWLEY: And you also have with  
4 you -- I am sorry. Isn't the lady behind you from  
5 your office?

6 MS. MENOTTI: I am sorry. Seated behind me is  
7 Desiree Peri, also an Assistant for the Attorney  
8 General for the Springfield office. She is not  
9 participating as Counsel in this hearing.

10 HEARING OFFICER CROWLEY: Fine.

11 MS. MENOTTI: Did you want me to proceed before  
12 they --

13 HEARING OFFICER CROWLEY: No, let's have  
14 Respondent introduce themselves for the record.

15 MR. BENOIT: How would you like me to address you  
16 during this hearing?

17 HEARING OFFICER CROWLEY: Let's keep it formal.

18 MR. BENOIT: Should it be Ms. Hearing Officer?

19 HEARING OFFICER CROWLEY: That's fine.

20 MR. BENOIT: Thank you. Ms. Hearing Officer, my  
21 name is Joel Benoit, and I represent the Respondents,  
22 Wayne Berger and Berger Waste Management, Inc.  
23 This is Wayne Berger sitting next to me on my  
24 right.

25 HEARING OFFICER CROWLEY: Thank you. Are there

1 any preliminary matters that we need to take care of

2 or can we begin?

3 MS. MENOTTI: Nothing that I have.

4 MR. BENOIT: I was wondering if we might stipulate

5 to some exhibits in order to speed up the process.

6 The exhibits I am referring to are documents that we

7 received from the Agency's file pursuant to

8 discovery.

9 HEARING OFFICER CROWLEY: Ms. Menotti?

10 MS. MENOTTI: I don't have any problem, except for

11 the fact that this should have been done before we

12 were actually commencing with the hearing. I am not

13 going to stipulate to anything until I have the chance

14 to go through the documents to verify that they are

15 accurate copies of what they purport to be in order to

16 cut down on foundation issues. I am not certain

17 whether or not you want us to try and take care of

18 that issue now before we go ahead and start or --

19 HEARING OFFICER CROWLEY: Yes, I would appreciate

20 it if we could do that just to expedite matters. We

21 will go off the record and allow Counsel to confer

22 over the exhibits.

23 MS. MENOTTI: Can we go on the record what

24 exhibits he would like the State to consider, and then

25 we will go back and review them off the record?



1 MR. BENOIT: Okay. What I have done is made  
2 copies. I have made numerous copies and a list, so I  
3 think it would be fairly easy for us to just sit here  
4 and flip through them. They are already premarked,  
5 and I would imagine that the ones that she doesn't  
6 want in or won't agree to the Hearing Officer can take  
7 whatever action you would like.

8 HEARING OFFICER CROWLEY: I would like to go off  
9 the record and have us take a look at this. We are  
10 off the record.

11 (Discussion off the record.)

12 HEARING OFFICER CROWLEY: Back on the record.

13 MS. MENOTTI: I have reviewed the documents that  
14 the Respondent has asked the State to stipulate to. I  
15 have conferred with co-counsel. I will go through the  
16 documents that we will stipulate to first. The People  
17 will stipulate to Respondent's Exhibit 10, which is an  
18 irrevocable letter of credit.

19 We partially stipulate to Respondent's Exhibit  
20 Number 26A. It is the June 1st, 1993 enforcement  
21 notice letter to the Respondent from the Illinois  
22 EPA. The copy that I was shown to review has  
23 highlights on it, and it has been marked. If we are  
24 going to admit something into the record I want a  
25 clean and unmarked copy going into the record without

1 any marking on it.

2 The People stipulate to Respondent's Exhibit  
3 Number 28, which is June 24, 1993 inspection report  
4 conducted by the Illinois EPA, as far as it is an  
5 accurate copy. There are photocopies of photographs  
6 but no photographic originals attached to this  
7 exhibit.

8 The People stipulate to Respondent Exhibit Number  
9 31, which is a letter from Illinois EPA to Mr. Berger  
10 in response to a November 15th, 1993 letter sent to  
11 the EPA from Respondent's Counsel, Mohan, Alewelt,  
12 Prillaman & Adami. The letter is not dated.

13 The People stipulate to Respondent's Exhibit  
14 Number 33, which is an April 18th, 1994 inspection  
15 report, with the same note that there are not original  
16 photographs attached to this exhibit and, therefore,  
17 it is not a fully accurate copy of what is in the EPA  
18 files.

19 The People stipulate to Respondent's Exhibit  
20 Number 34, which is a memorandum generated by field  
21 inspector Sheila Williams regarding a visit to the  
22 landfill, that is the subject matter of this  
23 complaint. Again, there are not original photographs  
24 attached to this exhibit, and the People would note  
25 that for the record, that it is not an accurate copy

1 of what is kept in the EPA files.

2 HEARING OFFICER CROWLEY: Excuse me. The date on  
3 that again was, please?

4 MS. MENOTTI: I am sorry?

5 HEARING OFFICER CROWLEY: The date on that last  
6 exhibit, Respondent's 34?

7 MS. MENOTTI: Oh, I am sorry. It is June 24,  
8 1994.

9 HEARING OFFICER CROWLEY: Thank you.

10 MS. MENOTTI: The People stipulate to Respondent's  
11 Exhibit Number 38, which is an inspection report for  
12 the landfill conducted by the Illinois EPA on August  
13 25th, 1995. Again, with the same note that it is not  
14 completely accurate in that there are only photocopies  
15 of photographs attached, not original copies of the  
16 photographs.

17 As far as Respondent's Exhibit Number 21, the  
18 People will partially stipulate to it in that it  
19 appears to be an attachment to a permit. The  
20 Respondent has not provided a complete copy that -- it  
21 is labeled as attachment two. It is a notice form for  
22 existing landfills required to notify by March 18,  
23 1991. It is an Illinois EPA form. There is a  
24 highlight on the second page of this which we will not  
25 stipulate to any markings that are made on the

1 document. Under the rule of completeness the rest of  
2 this document should be made available for entry into  
3 the record. And if the Respondents are prepared to do  
4 that, then we don't have any problem with Respondent's  
5 21.

6 The People will not stipulate to Respondent's  
7 Number 10, which is a -- appears to be a letter that  
8 was sent to the Illinois EPA from the Olney Trust  
9 Bank.

10 The People will not stipulate to Respondent's 17,  
11 which is a print out and some notes.

12 The People will not stipulate to Respondent's 20,  
13 which is a letter from Crawford & Whiteside Engineers  
14 on May 31 of 1990.

15 The People will not stipulate to Respondent's 32,  
16 which is, again, handwritten notes.

17 The People will not stipulate to Respondent's 39C,  
18 which is a print out and attachment with handwritten  
19 notes on the second page off of a computer system.

20 The People will not stipulate to Respondent's 39B,  
21 which appears to be a meeting log.

22 The People will not stipulate to Respondent's 39A,  
23 in that it is a settlement proposal which is not  
24 admissable into evidence, and we will make the  
25 appropriate objections if the Respondents would try to

1 offer this into the record.

2 Can I have one minute, please?

3 HEARING OFFICER CROWLEY: Yes.

4 (Ms. Menotti and Mr. Gubkin confer briefly.)

5 MS. MENOTTI: The People will not stipulate to

6 Respondent's Number 13, which is an internal

7 memorandum generated by Tom Edmundson. It is a

8 February 24th, 1998 memo regarding the landfill. The

9 State has various objections to that document, as

10 well, and will raise them at such point that they are

11 offered into evidence before the Board.

12 Do you want these back?

13 MR. BENOIT: Let's sort them out so everybody gets

14 a copy. You have them separated out as to these are

15 not okay?

16 MS. MENOTTI: These are not okay. This is the one

17 that we don't have the whole document.

18 MR. BENOIT: That's all I have got. I don't know

19 what it was an attachment to. It came out of the

20 Agency's file. It is not okay unless I can find the

21 attachment?

22 MS. MENOTTI: Well, I am not going to stipulate to

23 it. You are going to have to lay a foundation for it.

24 MR. BENOIT: Okay.

25 MS. MENOTTI: It is signed by your client.

1 MR. BENOIT: Okay. That is fine.

2 MS. MENOTTI: These are the ones we are okay  
3 with.

4 MR. BENOIT: Okay. I just want to note for the  
5 record that as long as Sheila Williams is available  
6 for me to cross-examine, I agree with the State's  
7 stipulation as to the documents she just stated. And  
8 also I have reviewed the State's Exhibits 1, 2 and 3  
9 and I will stipulate to their entry into evidence.

10 Now I just need to --

11 MS. MENOTTI: Would it be helpful if we went into  
12 the record and tell you exactly what the State's 1, 2  
13 and 3 are?

14 HEARING OFFICER CROWLEY: Yes, please.

15 MR. GUBKIN: Okay. People's Exhibit Number 1,  
16 which has been admitted by stipulation, is an  
17 application for a permit to develop.

18 People's Exhibit Number 2 is a March 20th, 1992  
19 letter from the Illinois EPA which grants a  
20 supplemental permit to Wayne Berger.

21 People's Exhibit Number 3 is an October 29, 1992  
22 letter which is an Illinois EPA response to Mr. Wayne  
23 Berger's LP PA 15 notification.

24 HEARING OFFICER CROWLEY: And the State's Exhibit  
25 Number 1, the permit application is dated what, if it

1 is?

2 MR. GUBKIN: It is signed and dated on January

3 30th, 1978.

4 HEARING OFFICER CROWLEY: Okay. Thank you. Are

5 there any additional preliminary matters?

6 MS. MENOTTI: I don't have any other preliminary

7 matters to take up at this time.

8 HEARING OFFICER CROWLEY: Mr. Benoit?

9 MR. BENOIT: I just have one question of

10 clarification, Maria. As far as R26A, was there a

11 partial objection to that?

12 HEARING OFFICER CROWLEY: That was the enforcement

13 notice with the highlighting.

14 MS. MENOTTI: 26A was highlighted.

15 MR. BENOIT: Okay. I don't have a clean copy now,

16 so let's don't stipulate to that.

17 MS. MENOTTI: If you have a clean copy for the

18 record, I don't have any objection.

19 MR. BENOIT: No, I don't have one.

20 MS. MENOTTI: Oh, okay.

21 MR. BENOIT: Did they give you 1, 2 and 3 from the

22 State?

23 HEARING OFFICER CROWLEY: No, I haven't received

24 anything else.

25 MR. BENOIT: Okay.

1 MR. GUBKIN: Okay. I will give her People's 1, 2

2 and 3.

3 HEARING OFFICER CROWLEY: Are you each moving for

4 the admission of the exhibits that you have just

5 handed me?

6 MR. BENOIT: Yes.

7 HEARING OFFICER CROWLEY: We are admitting,

8 pursuant to stipulation, People's Exhibit Number 1,

9 People's Exhibit Number 2, and People's Exhibit Number

10 3, which we have previously identified.

11 We are also admitting at this point Respondent's

12 Exhibit Number 18, Respondent's Exhibit Number 28,

13 Respondent's Exhibit 31, Respondent's Exhibit 33, and

14 Respondent's Exhibit 34, and Respondent's Exhibit

15 Number 38.

16 (Whereupon the above-mentioned documents were

17 admitted into evidence as of this date.)

18 HEARING OFFICER CROWLEY: If there are no other

19 preliminary matters, then we can begin with opening

20 statements.

21 If Complainant would begin, please, Ms. Menotti.

22 MS. MENOTTI: Thank you very much. Ms. Hearing

23 Officer and the Board, we are here today on the

24 People's complaint against Harry Wayne Berger or Wayne

25 Berger and Berger Waste Management, Incorporated,



1 which is an Illinois corporation, regarding violations  
2 at a landfill here in Richland County, in Noble, which  
3 has been operating since about 1979.

4 In 1979 the Respondent, Wayne Berger, submitted an  
5 application to the Illinois EPA to develop a sanitary  
6 landfill. That application was granted by the  
7 Illinois EPA and the Illinois EPA also subsequently  
8 permitted Mr. Berger to operate the landfill. The  
9 development permit is numbered 1979-1-DE. The  
10 operational permit is numbered 1979-1-OP.

11 Mr. Berger operated a landfill that was  
12 approximately 35 acres in area and that was the area  
13 that was permitted by the Illinois EPA. He collected  
14 municipal waste for approximately 15 years from the  
15 Richland County area.

16 During the course of his operation of the  
17 landfill, Mr. Berger was responsible for all of the  
18 operations and, in fact, the landfill is actually  
19 connected to his residential property. It is adjacent  
20 to the property where he lives. And he drove the  
21 trucks and he dug the trenches and he did whatever it  
22 was that needed to be done in the operation of this  
23 landfill. He also kept track of the monies and was  
24 the beneficiary of any profit that was generated by  
25 the landfill while it was accepting waste for

1 disposal.

2 It was not a perfect operation. During the  
3 operating period when they were actually taking waste  
4 for disposal, the Illinois EPA conducted inspections,  
5 as is their practice, at the landfill and noted  
6 several operational violations for litter, lack of  
7 adequate daily cover, improper compacting or failing  
8 to compact the refuse which was being disposed of,  
9 disposal of waste beyond the permitted boundaries,  
10 which are laid out in the Illinois EPA permit which we  
11 will classify as unpermitted disposal, and the  
12 presence of leachate due to improper maintenance.

13 In 1988 the defendant -- the Respondent, excuse  
14 me, was issued an administrative citation, Number  
15 88-26, for operational violations at this landfill and  
16 he paid a \$1,000.00 penalty to the State in March of  
17 that year.

18 Since the landfill has ceased accepting waste but  
19 it is still open for the purposes of analysis. It is  
20 not certified closed, as required by the Act or the  
21 Regulations. There have been problems with inadequate  
22 roadways leading back to the landfill area where the  
23 EPA could not gain access to conduct an inspection.

24 Under the permits that were issued to the  
25 Respondents, a subsequent supplemental permit was

1 issued in 1991, Number 1991-401-SP. All these permits  
2 required the Respondents to undertake certain  
3 maintenance activities at the landfill, and one of  
4 those activities that the Respondent was required to  
5 undertake was groundwater monitoring on a quarterly  
6 basis and submit the results to the Illinois EPA.

7 The Respondent has submitted some groundwater  
8 monitoring reports to the Illinois EPA, but has not  
9 submitted any groundwater monitoring reports since  
10 1994, even though these permits are still in effect.  
11 For the record, the permits were issued and applied  
12 for by Mr. Berger. The corporation, which is Berger  
13 Waste Management, was not actually incorporated until  
14 1993.

15 So the corporation didn't even come into existence  
16 during the time -- most of the time that this landfill  
17 was taking waste for disposal. In fact, the landfill  
18 has not accepted -- has not accepted waste for at  
19 least the last four years, although it has not been  
20 certified closed. In the Agency's eyes, the landfill  
21 is still operational.

22 The Respondent did notify the Illinois EPA, back  
23 in 1992, that they were going to continue taking waste  
24 after September 18th of 1992, and by doing so the  
25 Respondents were required to submit a significant

1 modification permit application to the Illinois EPA.  
2 To date, the Respondent has not submitted any  
3 significant modification permit to the Illinois EPA  
4 for approval for closure and post closure activities  
5 at the landfill.

6 The Respondent was also required to post bond and  
7 financial assurance for closure and post closure  
8 care. A letter of credit was issued on October 31st  
9 of 1988, and subsequently expired on October 31st of  
10 1993. The financial assurance was not adequate and  
11 the Respondent -- neither of the Respondents has  
12 posted any bond or any form of financial assurance  
13 since the expiration of that letter of credit.

14 I think it is important to note, and the State's  
15 evidence will show, that the corporation -- the  
16 subsequent incorporation of the company occurred  
17 during the time period which the State had notified  
18 Mr. Berger that he was going to be subject to an  
19 enforcement action by the State for failure to comply  
20 with the Illinois Environmental Protection Act and the  
21 Pollution Control Board's Regulations at 35 Illinois  
22 Administrative Code, Subtitles A through H. Prior to  
23 that time there was no corporation. It was just Mr.  
24 Berger. Mr. Berger will testify to the fact that he  
25 is the president and the sole shareholder, and he is

1 basically Berger Waste Management.

2 The State will call four witnesses during its case  
3 in chief. First you will hear from Ken Smith, who is  
4 a permit reviewer for the Illinois EPA and he is  
5 currently in charge of this file. He will explain to  
6 the Board what permits were issued by the Illinois EPA  
7 and what they required of the Respondent or the  
8 Respondents, since incorporation in 1993, to do.

9 Next you will hear from Kevin Bryant who is a  
10 financial assurance analyst for the Illinois EPA, who  
11 will explain the financial assurance requirements and  
12 what the Respondent was required to do and what the  
13 Respondents have failed to do by not posting financial  
14 assurance for this landfill.

15 Next you will hear from field inspector Sheila  
16 Williams, who had been assigned to inspect the case  
17 for the time periods referenced in the complaint, and  
18 Ms. Williams will explain the violations, the  
19 operational violations, that she observed during her  
20 visits to the landfill.

21 Lastly, the State will call the Respondent  
22 himself, Mr. Berger, who will testify to the -- his  
23 management of the landfill, the incorporation of  
24 Berger Waste Management, and his subsequent action or  
25 inaction for the alleged violations in the complaint.

1 The State is confident, Ms. Hearing Officer, that  
2 the evidence will show, beyond a preponderance of the  
3 evidence, that the Respondent has violated the  
4 Environmental Protection Act and the Board's  
5 Regulations.

6 HEARING OFFICER CROWLEY: Thank you. Mr. Benoit.

7 MR. BENOIT: As I stated earlier, my name is Joel  
8 Benoit. I represent the Respondents, Wayne Berger and  
9 Berger Waste Management, Inc. The testimony in this  
10 case will show that Wayne is a life-long resident of  
11 Richland County, a solid citizen. Wayne's family  
12 lives in the countryside, approximately five miles  
13 west of Olney, an area of rolling farmland, in a  
14 modest home, and they have lived there for the last 30  
15 years.

16 In the late 1970s, Wayne bought a trash collection  
17 business and decided to start his own landfill on the  
18 farmland behind his house. Getting into the landfill  
19 business, as the testimony will show, has turned out  
20 to be a lot easier than getting out of the landfill  
21 business.

22 In any event, Wayne obtained permission from the  
23 Agency in 1979 to develop and operate a landfill, 34  
24 acres in total. Thereafter he continued his  
25 business. The business consisted of Wayne himself

1 driving his routes in six small towns picking up  
2 household trash and bringing it back to the landfill  
3 behind his house.

4 Although Wayne had help now and again, this was  
5 primarily a one-man operation. Wayne drove the  
6 routes, he loaded the trash himself, he dug the  
7 landfill trenches, he did everything necessary to run  
8 the business, and he did a good job.

9 As the evidence will show, and this Board is well  
10 aware, since 1979, the regulations governing landfills  
11 have changed dramatically. Financial assurance became  
12 a requirement. The number of monitoring wells  
13 increased. The number of required water monitoring  
14 constituents increased. The closure requirements  
15 changed. The post closure period was extended again  
16 and again and again.

17 In short, the regulations were changed in such a  
18 way that no small operator, such as Wayne Berger,  
19 could comply. By design or otherwise, the new  
20 Regulations have resulted in almost every small  
21 landfill in Illinois being run out of business because  
22 they could not afford to comply with the new  
23 requirements. The evidence will show that Wayne  
24 wanted to get out of the landfill business and he  
25 tried to get out of the landfill business, but he

1 failed to do so in time to avoid the impact of the new  
2 requirements.

3 Wayne entered into an option contract with Terra  
4 Tech, Inc. of Indiana in 1991, whereby they would have  
5 the option to purchase the landfill and take over the  
6 permits. For the previous few years before that Wayne  
7 had been having trouble submitting a revised permit  
8 application that was required by the Agency. He had  
9 his local engineers, I believe from Flora, submit four  
10 to six applications, all which were rejected by the  
11 Agency.

12 Then came Terra Tech. They split the cost with  
13 Wayne and had its engineers install new monitoring  
14 wells and prepare a revised permit, the 1991 permit  
15 that the Attorney General referred to. Terra Tech  
16 also prepared the notice form that was submitted to  
17 the Agency by Wayne, stating that he would continue to  
18 accept waste after September of 1992.

19 It is evident from reviewing that notice that  
20 Wayne did not intend to continue to operate the  
21 business. The form states that the cubic yards  
22 accepted would increase from 6,000 cubic yards a year,  
23 the landfill's historic rate, to 100,000 cubic yards  
24 per year. Terra Tech had pretty ambitious plans for  
25 this landfill. After the Agency granted the permit,



1 however, Wayne was required to suddenly provide  
2 financial assurance in the range of \$240,000.00.  
3 Additionally, his water monitoring costs went from a  
4 few hundred dollars a year to \$15,000.00 per year.  
5 Finally, he was required to submit a significant  
6 modification application to the Agency. None of these  
7 requirements would have been a problem if Terra Tech  
8 had gone ahead and exercised its option. That didn't  
9 happen. Terra Tech apparently determined that its  
10 plan to develop a special waste landfill would not  
11 succeed and they did not exercise the option. Wayne  
12 was left holding the bag.  
13 In September of 1993, the landfill stopped  
14 accepting waste. The testimony will further show that  
15 the Agency decided to step up inspections on Wayne  
16 after they had him in their cross-hairs for not fully  
17 satisfying the financial assurance requirements.  
18 Suddenly, four inspectors showed up at the landfill  
19 writing Wayne up for anything and everything. Other  
20 inspections soon followed. Minor alleged violations,  
21 such as litter and grass growing down the middle of  
22 the landfill's gravel road, suddenly became so  
23 serious, that according to the State's discovery  
24 responses, they warrant at least a \$50,000.00 penalty  
25 each.

1 The testimony will show that Wayne could not in  
2 1991, and he cannot now, afford to provide financial  
3 assurance in the amount of \$240,000.00, which is  
4 likely to double if he submits a significant  
5 modification application, which is accepted, pay for  
6 the preparation of that significant modification  
7 application, and he cannot pay for the expense of  
8 implementing the significant modification, nor can he  
9 afford groundwater monitoring at \$15,000.00 a year.

10 The testimony will further show that Wayne  
11 attempted to comply with the Act and the Regulations.  
12 He attended meeting after meeting with the Agency and  
13 the Attorney General in an attempt to resolve this  
14 matter. Wayne informed them that he did not have the  
15 financial wherewithal to comply with the State's  
16 demands. Wayne offered options, within his means,  
17 that would have adequately protected the environment.

18 In response, the State demanded proof of his  
19 income and assets, which he provided, summarily  
20 dismissed that proof, increased its penalty demand,  
21 and never once offered a solution that Wayne could  
22 possibly satisfy, given his financial means. So much  
23 for 31D meetings. This case is not about protecting  
24 the environment. The evidence will show that the  
25 landfill, of which only seven of the permitted 34

1 acres was used in a 14-year period, has not harmed the  
2 environment and poses little threat of doing so.

3 The evidence will demonstrate that this landfill  
4 poses no more threat to the environment than all the  
5 landfills allowed to close under the 807 Regulations  
6 in the past. Due to its size, location, and contents,  
7 the evidence will show that it poses less of a  
8 danger.

9 This case is just about money. The Attorney  
10 General and the Agency's position is that it is no  
11 defense that Wayne cannot afford to do what the Act  
12 and Regulations mandate. Of course, this flies in the  
13 face of Section 31E of the Act, the spirit and purpose  
14 of the 31D meetings, and logic. How can you penalize  
15 someone for not performing an act they are incapable  
16 of performing? Especially when the issue is money.  
17 Either you have the money or you don't.

18 Because Wayne cannot afford the demanded financial  
19 assurance, significant modification application, and  
20 quarterly water monitoring at the landfill, but more  
21 importantly, because Wayne has time and again offered  
22 to take steps within his means to ensure that the  
23 landfill is not harming the environment, Wayne will  
24 request that the Board find in favor of the  
25 Respondents on Counts 1, 2 and 3, because pursuant to

1 Section 31E of the Act, compliance would impose an  
2 arbitrary or unreasonable hardship.

3 Instead, Wayne will request that the Board direct  
4 that the landfill be closed under the 807 Regs, that  
5 the post closure care period be 15 years, that  
6 groundwater monitoring need only be conducted annually  
7 for the constituents set forth in his original  
8 operating permit, and that the financial assurance  
9 fund required of Wayne shall be calculated based on  
10 these requirements.

11 As to Counts 3, 4 and 6, Wayne would ask only that  
12 the Board consider the evidence and find no  
13 violations. Thank you.

14 HEARING OFFICER CROWLEY: Just one question. Did  
15 I correctly hear you that no waste has been received  
16 after 1993?

17 MR. BENOIT: That is correct.

18 HEARING OFFICER CROWLEY: Thanks.

19 MS. MENOTTI: The State moves to strike portions  
20 of the opposing Counsel's opening arguments. All  
21 comments regarding any settlement meetings should not  
22 be discussed, as they are not admissable. The State  
23 also moves to strike Counsel's argument asking for  
24 relief. It is not proper to make argument during an  
25 opening statement.

1 HEARING OFFICER CROWLEY: Any response?

2 MR. BENOIT: I would respond that we do intend to  
3 put on evidence of the 31D meetings that were held in  
4 this case. There were, I believe, three. The State  
5 was required to hold those meetings. They go to the  
6 42H factors. When the Board sits down and determines  
7 what kind of ruling it is going to issue, it is going  
8 to show the due diligence that Wayne made in  
9 attempting to comply with this Act.

10 Further, as far as the comment about settlement  
11 discussions being inadmissable, that rule is designed  
12 to -- in this case -- protect Wayne. As to the  
13 financial assurance, the significant modification  
14 permit, the failure to submit that, and to the fact  
15 that he stopped submitting groundwater monitoring  
16 reports, there is no dispute that that is true.

17 So for those reasons, I would ask that that  
18 portion of my opening statement not be stricken if  
19 that's the relief requested.

20 MS. MENOTTI: Ms. Hearing Officer, Illinois law is  
21 clear that any evidence or discussion of settlement or  
22 settlement negotiations in a disputed civil claim is  
23 inadmissable into evidence. I have the citation. It  
24 is Hill versus Hyles (spelled phonetically), 309,  
25 Illinois Appellate 321, 1941, an Illinois Supreme

1 Court case, and various other authority, after that  
2 which the State will provide for the Board in writing  
3 at a later time.

4 But I would like the record to reflect that offers  
5 of compromise are not admissable into evidence. The  
6 Supreme Court has recognized that. The Respondent  
7 should not even be discussing that in front of the  
8 Board because it is improper.

9 In regard to -- my other objection was to the fact  
10 that he was arguing during his opening, and I was  
11 asking that his argument be stricken. The State was  
12 not objecting to the fact of what evidence he may or  
13 may not bring in in his defense, just to clarify the  
14 record.

15 MR. BENOIT: I don't understand from that vague  
16 reference to my opening statement exactly which points  
17 she is claiming that were argument. I just stated  
18 what the facts are going to show, the evidence is  
19 going to show in this case. I did ask for, you know,  
20 what kind of relief we are going to be looking for at  
21 the end.

22 HEARING OFFICER CROWLEY: Thank you. We will let  
23 the opening statement stand as delivered. The State's  
24 motion to strike is denied. Section 31D does require  
25 that meetings be held prior to the filing of an

1 enforcement action. I don't find anything improper in  
2 the opening statement as delivered. That's a snapshot  
3 of what the Respondent hopes to present. We will see  
4 whether he, in fact, does present evidence as he has  
5 suggested that he will.

6 If the complainant would be prepared to begin its  
7 case in chief.

8 MR. GUBKIN: The People would like to call Ken  
9 Smith to the stand.

10 Ms. Hearing Officer, I would ask at this time if  
11 it is all right if I remain seated.

12 HEARING OFFICER CROWLEY: Certainly.

13 MR. GUBKIN: Thank you.

14 HEARING OFFICER CROWLEY: I would ask the court  
15 reporter to swear the witness, please.

16 (Whereupon the witness was sworn by the Notary  
17 Public.)

18 KENNETH E. SMITH,  
19 having been first duly sworn by the Notary Public,  
20 saith as follows:

21 DIRECT EXAMINATION

22 BY MR. GUBKIN:

23 Q Would you please state your name for the  
24 record.

25 A My name is Kenneth E. Smith.

1 Q Could you tell us a little bit about your  
2 educational background, Mr. Smith?

3 A I received a Bachelor of Science Degree in  
4 civil engineering in 1984, from Cleveland State  
5 University in Cleveland, Ohio.

6 Q Who are you currently employed with?

7 A I am currently employed with the Illinois  
8 EPA.

9 Q How long have you been with them?

10 A I began employment with the Illinois EPA in  
11 January of 1989.

12 Q What is your current position there?

13 A I am an Environmental Protection Engineer  
14 III.

15 Q Could you explain a little bit what your  
16 duties are?

17 A Essentially, I review permit applications for  
18 nonhazardous waste landfills, nonhazardous waste  
19 transfer stations and nonhazardous waste compost  
20 facilities.

21 Q And how long have you worked in the capacity  
22 as an Environmental Protection Engineer III?

23 A Since January of 1989. Pardon me. As a III  
24 since around 1993, but I have held the same position  
25 at the Agency since January 1989, as far as my



1 responsibilities.

2 Q Okay. Have you had any additional training  
3 beyond your Bachelor's Degree?

4 A The Agency -- it is common for the Agency to  
5 sponsor courses concerning design and operation of  
6 landfills. The U.S. EPA sponsors a lot of courses,  
7 seminars, and it is not uncommon for us to participate  
8 in those seminars.

9 Q Prior to your working with the Illinois EPA,  
10 did you work on landfills?

11 A Yes.

12 Q In what capacity?

13 A I worked as a design engineer for landfills  
14 in my previous employment.

15 Q Could you give us an estimate during your  
16 career of approximately how many landfills you have  
17 worked on?

18 A Oh, 150, give or take ten.

19 Q Okay. Mr. Smith, are you familiar with the  
20 Berger Landfill?

21 A I am somewhat familiar with it. I was a  
22 permit reviewer on a permit application back in 1993.

23 Q Okay. What kind of records does your section  
24 regularly generate and maintain?

25 A Well, we -- as I said earlier, we review

1 permit applications. When we make a decision on a  
2 permit application, the record, the administrative  
3 record, goes to the file and that would include the  
4 application and any review notes, comments from people  
5 inside or outside the Agency and, of course, a copy of  
6 the final decision, whether it is permit or permit  
7 denial.

8 Q Okay. You may have stated this. I was not  
9 sure I heard it. How long have you been working with  
10 the Berger Landfill?

11 A I reviewed a permit application back in 1993,  
12 and I participated off and on in some 31D meetings.

13 MR. GUBKIN: Okay. May the record reflect that I  
14 am showing what I have previously marked as People's  
15 Exhibit Number 4 to opposing Counsel.

16 May I approach the witness?

17 HEARING OFFICER CROWLEY: Yes.

18 Q (By Mr. Gubkin) I hand you Exhibit Number 4,  
19 Mr. Smith. Were you able to review the file before  
20 you came here for your testimony today?

21 A Yes, I was.

22 Q I have just shown you what is marked as  
23 Complainant's Exhibit Number 4. Do you recognize what  
24 that is?

25 A It is an operating permit for the Berger

1 Landfill that was issued back in March of 1979.

2 Q Okay. What does your division make of this  
3 type of document?

4 A I mean, it is obviously a record that this  
5 landfill was permitted to operate back in 1979. It is  
6 common for reviewers -- well, it is mandatory whenever  
7 they get a permit application for the landfill, they  
8 go back to the bureau files and review the permit  
9 history for that particular site.

10 Q Okay. Who enters the information that  
11 appears on a permit application?

12 A Well, the information is typically provided  
13 by the applicant and the Agency makes use of that in  
14 preparing a permit so that a particular permit, such  
15 as this, would be prepared by the reviewer, based on  
16 the information provided by the applicant.

17 Q Okay. How long does the IEPA keep the  
18 applications and permits?

19 A We don't throw them away. We don't discard  
20 them.

21 Q Okay. Are these types of documents regularly  
22 submitted or completed by the Illinois EPA?

23 A The applications?

24 Q I am sorry -- let me go back. Are the  
25 permits, such as the one that that grants, are they

1 regularly completed by the Illinois EPA?

2 A Well, as I said, we prepare them and once a  
3 decision has been made whether a permit is going to be  
4 issued or denied, a letter is prepared, and it is  
5 signed by a manager and a copy of it goes to our  
6 bureau file.

7 Q Okay. I would like to also show you what has  
8 been previously admitted by stipulation as People's  
9 Exhibit Number 1. This would be -- well, what is  
10 that, Mr. Smith?

11 A This appears to be an -- well, it is entitled  
12 application for permit to develop and/or operate a  
13 solid waste management site. This is a somewhat dated  
14 application form that the Agency was using at the time  
15 the permit was issued for the Berger Landfill.

16 Q Okay. People's Exhibit Number 4, the March  
17 29th, 1979 letter, was that written in response to  
18 Exhibit Number 1, the application?

19 A Not directly. The development permit, which  
20 I believe was issued in January of 1979, would have  
21 been issued in direct response to People's Exhibit  
22 Number 1.

23 Q Okay.

24 A The operating permit, of course, follows  
25 after the development permit. So inadvertently -- not

1 inadvertently, but it follows that. Certainly, this  
2 was a basis for the issuance of an operating permit.

3 Q Are there any special requirements on the  
4 operating permit?

5 A Yes, there are some special conditions.

6 There are six special conditions.

7 Q Could you just say a little bit about -- such  
8 as what?

9 A There is condition number one which discusses  
10 that a clay liner is to be built on the bottom and  
11 side walls of each trench. And a clay liner should  
12 exhibit permeability of one times ten to the minus  
13 seventh. Permeable layers are required to be over  
14 excavated and sealed with ten feet of clay.

15 The condition number two discusses controlling  
16 drainage from the site during the development and  
17 operation.

18 Condition number three is a standard condition  
19 which talks about using the best available technology  
20 to minimize equipment noise.

21 Condition number four discusses some sort of  
22 separate trench that would -- it talks about some sort  
23 of separate trench, that it appears the applicant may  
24 have proposed to dispose of some sort of out of the  
25 ordinary waste.

1 Condition number five, this outlines the  
2 groundwater monitoring program back in 1979.  
3 Condition number six is a general condition  
4 provided on most permits that says the Agency may  
5 require the installation of additional monitoring  
6 devices or groundwater monitoring perimeters to  
7 fulfill the intent of the Environmental Protection  
8 Act.

9 Q Do you keep documents, records, such as  
10 these, in the ordinary course of business?

11 A Yes.

12 MS. GUBKIN: The People would like to move Exhibit  
13 Number 4 into evidence at this time.

14 MR. BENOIT: No objection.

15 HEARING OFFICER CROWLEY: Thank you.

16 (Whereupon said document was admitted into  
17 evidence as People's Exhibit 4 as of this date.)

18 HEARING OFFICER CROWLEY: That appears to be a  
19 two-page permit.

20 THE WITNESS: The operating permit from March  
21 1979, yes.

22 HEARING OFFICER CROWLEY: Thank you.

23 MR. BENOIT: Could I have copies of these exhibits  
24 as they are coming in if you have them?

25 MS. MENOTTI: Yes.

1 Q (By Mr. Gubkin) Mr. Smith, were there any  
2 other permits granted to the Berger Landfill?

3 A Well, I believe I already mentioned the  
4 development permit issued in January of 1979. There  
5 was a permit issued in March of 1992, I believe, the  
6 supplemental permit, number 1991-401-SP, which  
7 approved a closure, post closure care plan for the  
8 landfill and an updated groundwater monitoring  
9 program. That is one that comes to mind. There may  
10 have been others also, but I can't recall at this  
11 point in time.

12 Q I would like to, at this time, show you  
13 People's Exhibit Number 2. Is that the permit that  
14 you were referring to or a granting of the permit that  
15 you were referring to?

16 A Yes.

17 Q Mr. Smith, for these various permits, whose  
18 name were these permits in? Who were they issued to?

19 A The supplemental permit from March of 1992  
20 states that it is being issued or granted to Wayne  
21 Berger.

22 Q Thank you. Mr. Smith, who is responsible for  
23 following the requirements of supplemental permit  
24 Number 1991-401-SP, which has been admitted via  
25 stipulation?

1 A It would be the responsibility of the  
2 permitted operator, which would be Wayne Berger.

3 Q Okay. Does Mr. Berger's supplemental permit  
4 contain any special requirements for his landfill?

5 A It contains five conditions in regards to  
6 groundwater monitoring, and 14 conditions regarding  
7 closure and post closure care of the landfill, and  
8 there are three conditions at the end of the permit  
9 taken from previously issued permits.

10 Q In regards to the closure, post closure  
11 requirements, what was the effect of the supplemental  
12 permit on required cost estimates?

13 A Well, the condition number six of the permit  
14 under the closure, post closure care section states  
15 that the current cost estimate for the facility was  
16 \$241,950.00, and financial assurance in that amount is  
17 to be provided to the Agency by July 2nd of 1992.

18 Q Then in regards to groundwater monitoring,  
19 have you been able to review the Berger file with  
20 regards to groundwater monitoring reports?

21 A Yes, I have.

22 Q And could you please tell us what were the  
23 requirements on the Berger Landfill for groundwater  
24 monitoring?

25 A They were required to monitor groundwater on



1 a quarterly basis, meaning four times a year, for --

2 there are six monitoring wells that they were to

3 monitor and also two piezometers.

4 Q I am sorry. What was that?

5 A And also two piezometers. And there is a

6 routine list that they were to perform on a quarterly

7 basis and a somewhat longer list which contains some

8 organics that they were to monitor for once a year.

9 Q And has Mr. Berger done this?

10 A From my review of the groundwater file, it

11 appears that the last time the Agency received a

12 groundwater monitoring report from Mr. Berger was

13 September of 1994.

14 HEARING OFFICER CROWLEY: I am sorry? September

15 of?

16 THE WITNESS: 1994.

17 HEARING OFFICER CROWLEY: Thank you.

18 Q (By Mr. Gubkin) Is Mr. Berger still required

19 to do groundwater monitoring?

20 A Yes.

21 Q If I may approach the witness again, I would

22 like to show you, Mr. Smith, what has been previously

23 marked and admitted as People's Exhibit Number 3.

24 Would you please tell me what that is?

25 A This is a letter from the Agency, signed by

1 Lawrence Eastep, dated October 29th, 1992. It is  
2 addressed to Wayne Berger. It is in regards to the  
3 Berger Landfill. And it is a letter which notifies  
4 Mr. Berger that the Agency, pursuant to the landfill  
5 Regulations, is requesting that he submit an  
6 application for significant modification for his  
7 landfill to the Agency by March 1st of 1993.

8 Q Okay. Why was Mr. Berger requested to submit  
9 a significant modification permit?

10 A It is my understanding that because he  
11 accepted waste past September 18th of 1992, he was  
12 required to comply with the new landfill Regulations  
13 which came into effect September 18th of 1990.

14 Q Since he accepted after 1992, according to  
15 that letter, what was the effect of him accepting?

16 A Well, as I stated, he would have to submit a  
17 permit application, a significant modification permit  
18 application, and in that application he would  
19 demonstrate to us how the development, continued  
20 development and continued operation of this landfill  
21 was going to comply with these new landfill  
22 Regulations.

23 Q Could you briefly mention some of these new  
24 Regulations, what type of things would be involved?

25 A They would be more, what I would deem more,

1 stringent development and operating standards for  
2 landfills, more thicker liners, thicker cover systems,  
3 and in some instances, installation of leachate  
4 collection systems, more groundwater monitoring wells,  
5 possibly more groundwater monitoring perimeters  
6 monitored at each well. Essentially, it would be an  
7 update of all of the environmental control systems at  
8 a landfill.

9 Q And who would be responsible for submitting  
10 the application for significant modification?

11 A It would be the permitted owner, operator Mr.  
12 Wayne Berger in this instance.

13 MR. GUBKIN: Okay. Thank you. No more  
14 questions.

15 HEARING OFFICER CROWLEY: Just for the record,  
16 those are the Board's landfill Regulations found at 35  
17 Illinois Administrative Code, Parts 810 through 814?

18 THE WITNESS: Yes.

19 HEARING OFFICER CROWLEY: All right. Thank you.  
20 Mr. Benoit?

21 CROSS EXAMINATION

22 BY MR. BENOIT:

23 Q Did you bring the Agency's file with you here  
24 today?

25 A No, I didn't.

1 Q Were you noticed to provide that -- bring  
2 that file with you today?

3 A I honestly don't recall. I brought a working  
4 file of my own with me.

5 MS. MENOTTI: I am going to object. Mr. Smith was  
6 never notified to bring anything with him to this  
7 trial by the Respondent.

8 MR. BENOIT: I would like to --

9 MS. MENOTTI: Mr. Benoit's questions are,  
10 therefore, improper.

11 MR. BENOIT: I would just like to show the Hearing  
12 Officer the notice for party's employees appearance.

13 HEARING OFFICER CROWLEY: Okay. This is the  
14 August 7th, 1998 notice for party's employees  
15 appearance.

16 MR. BENOIT: That notice notifies you to produce  
17 originals of all documents or tangible things  
18 previously produced during discovery, including but  
19 not limited to Agency files regarding Respondent.

20 MS. MENOTTI: I am going to object again, Ms.  
21 Hearing Officer. First of all, the notice of party  
22 appearance is issued to a specific list of witnesses  
23 and Mr. Smith is not on that list. Second of all, the  
24 notice is not clear as to who or what files the  
25 Respondent was requesting that the State produce or

1 bring. We have asked for a clarification prior to  
2 hearing this morning.

3 The question as to compliance with the notice of  
4 party appearance is improper. It is irrelevant. I am  
5 not certain if he is attempting to impeach him or if  
6 he is just attempting to make him look like he was  
7 supposed to do something that he was not required to  
8 do, for the record. It has absolutely nothing to do  
9 with his direct examination testimony, and is not at  
10 all relevant.

11 The Respondent's Counsel should not be allowed to  
12 harass my witness at his leisure.

13 MR. BENOIT: She is correct as far as I didn't  
14 name Mr. Smith directly in this, although Scott Kains  
15 and Sheila Williams are both present here today. The  
16 thing is, I want to get the Agency file so as far as  
17 these photographs and the things that are attached to  
18 the inspection report that, you know, we can admit  
19 those into evidence and the witnesses will have  
20 something clear to look at.

21 I also want to know which documents that Mr. Smith  
22 relies on in the Agency files for his testimony and  
23 his work. He mentioned groundwater monitoring reports  
24 is something he looks at, notes submitted by various  
25 other people, and he relies on that during his

1 performing of his duties.

2 I think that the rules governing these hearings  
3 allow for the admission of evidence that is relied  
4 upon, by a reasonably prudent person, in the conduct  
5 of serious affairs as long as they are not  
6 privileged. So I want to use Mr. Smith to get these  
7 documents in that I need to present my defense.

8 HEARING OFFICER CROWLEY: I agree that such  
9 documents are admissible. You have indicated that Mr.  
10 Smith was not subject to that notice for party's  
11 employees appearance that we read from. I would ask  
12 does someone here present for the State today have the  
13 documents, such as originals of the photographs and so  
14 forth, that Mr. Benoit was indicating that he was  
15 trying to get through Mr. Smith?

16 MS. MENOTTI: Well, the State's response is if Mr.  
17 Benoit wanted to ask Mr. Smith certain questions about  
18 documents that he reviewed, then he should have given  
19 us appropriate notice so that Mr. Smith could have  
20 brought everything that he reviewed, prior to driving  
21 down from Springfield to Olney for this hearing. He  
22 was not a matter of that notice.

23 I have copies with me of inspection reports with  
24 pictures. He has the exhibits in front of him. We  
25 have, I think, the development permit that he reviewed

1 that is kept in the file. Without other notice, the  
2 Respondent cannot expect Mr. Smith to have known what  
3 to bring or not to bring to this hearing. And if you  
4 look at the notice of party appearance, the notice of  
5 party appearance is for the witnesses appearance for  
6 the Respondent to call during their defense.

7 It was the State's interpretation that they were  
8 also looking for the production of documents in regard  
9 to calling the State's employees as adverse  
10 witnesses. And that is generally how a notice of  
11 party appearance is used. That is how it is used in  
12 the Circuit Courts and that is how it has generally  
13 been used in practice in front of the Board. I don't  
14 know of any other authority otherwise.

15 We do have some documents available that Mr. Smith  
16 would have reviewed besides the ones that are in front  
17 of him. If the Respondent would like to utilize  
18 those, the State is willing to let Mr. Smith look back  
19 through the things that he has looked through before.  
20 As far as producing the file, I don't think that he  
21 has any grounds for this line of questioning with this  
22 witness.

23 MR. BENOIT: I am being held at the whim -- see, I  
24 have Sheila Williams on here. She was also requested  
25 to bring the same thing, the Agency's file, so I could

1 have these documents. Just because Smith is called  
2 first I can't use them, that does not make any sense.  
3 I think we should try to develop a full record. I  
4 think it is pretty clear here what I want is basically  
5 the Agency file. In discovery that's what I was given  
6 after it was called, I believe, for privileged  
7 documents. I made some copies. But I need to see the  
8 originals.

9 HEARING OFFICER CROWLEY: Mr. Smith was under no  
10 obligation to -- excuse me -- was not under notice to  
11 bring the entire Agency file with him today. So Mr.  
12 Smith, as a witness, does not have that obligation.  
13 Mr. Smith has testified that he has reviewed various  
14 documents. He has also testified that he has brought  
15 with him a working file that may have some of the  
16 information that you want in it. I am not sure.

17 The State has indicated that it does have various  
18 documents here today. It sounds as if it may be  
19 appropriate for us to call a recess so that you can  
20 confer to determine what documents actually are  
21 present that you may need, and then we can come back  
22 and resume questions for Mr. Smith.

23 MS. MENOTTI: May I make one statement for the  
24 record? When we produced our documents during  
25 discovery Respondent's Counsel, Mr. Benoit, came and



1 reviewed the Agency's files. What is in that notice  
2 for party appearance is everything that he took with  
3 him, copies that he made. If he made copies the State  
4 should not have to reproduce them. He marked things  
5 in the file and had copies made for him. I do not  
6 think that we have the copies of the documents with us  
7 today that are in the files, but those should already  
8 be in his possession. The State should not have to  
9 reproduce them, so we won't be hindered by that at  
10 least for this portion of the hearing.

11 MR. BENOIT: I will just go ahead and do a little  
12 bit of cross-examination and see what he can give me  
13 just orally here today.

14 HEARING OFFICER CROWLEY: All right. Go ahead,  
15 Mr. Benoit.

16 Q (By Mr. Benoit) Can you state again how long  
17 you have been working on the Berger file?

18 A It has been intermittent in nature. I was a  
19 permit reviewer for a permit back in 1993, I think the  
20 final -- the permit was denied on August 23rd of  
21 1993. Since that, between then and now, I have  
22 attended at least two meetings at the AG's office in  
23 regards to enforcement on this landfill.

24 Q So your answer would be back to 1993?

25 A Back to 1993, yes.

1 Q And how much financial assurance, again, did  
2 the Agency -- or the last permit, require Mr. Berger  
3 to provide?

4 A \$241,950.00.

5 Q Your testimony was that because he -- and  
6 when I say, "he," Wayne Berger -- stayed open beyond  
7 or accepted waste beyond September 18th, 1992, he was  
8 required to submit a significant modification permit?

9 A Yes.

10 Q And how many significant modification permit  
11 applications have you reviewed?

12 A I would venture a guess in the neighborhood  
13 of ten to twelve.

14 Q In the case of the Berger Landfill, what type  
15 of information would its significant modification  
16 permit application contain?

17 A Well --

18 MS. MENOTTI: Objection. Speculative. There was  
19 no significant modification permit submitted by the  
20 Respondent to the Agency.

21 MR. BENOIT: He just testified that this is his  
22 job reviewing permits. He has done ten to twelve of  
23 them. The State is asking Mr. Berger to submit such  
24 an application. I think it is totally relevant for  
25 the record for the witness to state what he believes

1 would be required in such an application.

2 MS. MENOTTI: My objection was not whether or not  
3 the information was relevant. My objection was that  
4 he was asking the witness to speculate what his client  
5 would or would not submit to the Agency, and Mr.  
6 Smith's job is not to speculate on what an individual  
7 respondent or individual corporation would submit in  
8 the form of a significant modification permit.

9 MR. BENOIT: Let me rephrase it.

10 Q (By Mr. Benoit) What would be required? What  
11 would he have been required to submit?

12 A Well, as I believe I stated earlier, he would  
13 have been required to submit a permit application.  
14 The permit application would include information which  
15 showed how the landfill operator was going to develop  
16 and operate the landfill in accordance with the  
17 landfill Regulations, Parts 810 through 814, which  
18 came out September 18th of 1990.

19 That would be an update of the environmental  
20 control systems of the landfill, an update of the  
21 final cover system and an update of the groundwater  
22 monitoring system. Depending upon whether he was  
23 going to put waste on any parts of the facility that  
24 had not previously contained waste, that would contain  
25 information on liner systems and leachate collection.

1 It would contain information on surface water  
2 control. It would contain information on record  
3 keeping and load checking and reporting to the  
4 Agency.

5 Q Can you provide an estimate of how much it  
6 would have cost Berger to prepare such an application?

7 A I--

8 MS. MENOTTI: Objection. Speculation.

9 Q (By Mr. Benoit) You testified that you  
10 previously worked as a design engineer before coming  
11 to the Agency; is that correct?

12 A Yes.

13 Q And how long have you been with the Agency in  
14 the permit section?

15 A Since January of 1989.

16 MR. BENOIT: I would think this witness is  
17 qualified to give an opinion as to the cost of  
18 providing a significant modification permit based on  
19 that background, and that's what I am asking for, just  
20 the -- I said can you give me an estimate of how much  
21 it would cost to prepare the application for the  
22 Berger Landfill.

23 HEARING OFFICER CROWLEY: That is not quite the  
24 way you proposed it the first time through.

25 Can you answer that?

1 THE WITNESS: I can't, because I would -- there  
2 would have to be a lot of specific information that I  
3 would need to know in order to provide any estimate.

4 Q (By Mr. Benoit) You can't even give a  
5 ballpark?

6 A It would be in the hundreds of thousands of  
7 dollars. I think that is a certainty. How many  
8 hundreds of thousands, I could not begin to guess.

9 MS. MENOTTI: The State would object and moves to  
10 strike the answer. It is still speculation, and it is  
11 not evidence that is admissable or that the Board  
12 should be considering. If the Respondent wants to  
13 offer evidence as to how much a consultant told him it  
14 would cost to submit a significant modification permit  
15 to the Illinois EPA, I think that it is more  
16 appropriate. I don't think that the Respondent has  
17 laid the proper foundation for the question either.

18 HEARING OFFICER CROWLEY: The answer will stand.

19 Q (By Mr. Benoit) Now, you mentioned the  
20 different things that would have been required in a  
21 significant modification permit and you offered an  
22 opinion and I appreciate that, just the ballpark  
23 opinion of what it would cost. I realized that you  
24 don't know because of the details, but it is in the  
25 hundreds of thousands of dollars range.

1 Can you offer an opinion as to the amount of money  
2 it would have cost to implement the significant  
3 modification permit application had it been granted?

4 MS. MENOTTI: Objection. It calls for  
5 speculation. It assumes facts not in evidence and it  
6 is inappropriate -- there is no proper foundation for  
7 the question.

8 MR. BENOIT: I am using him as an opinion  
9 witness. We have established his background to give  
10 the opinions. I have given him the hypothetical. She  
11 is right, there is no facts, but it is -- you know, it  
12 is a hypothetical question for an opinion witness.

13 HEARING OFFICER CROWLEY: I am going to sustain  
14 the objection. What any permit that was issued would  
15 look like is so dependent on the factors of the  
16 specific site that I think it would be speculating  
17 beyond the witness' expertise and ability.

18 Your next question, please.

19 Q (By Mr. Benoit) If Wayne Berger were to  
20 submit a significant modification application -- by  
21 the way, can you tell me when that was due?

22 A The letter from the agency dated October  
23 29th, 1992 sets forth a date of March 1st of 1993.

24 Q In order for that significant modification  
25 application, had it been submitted on that date, to be

1 granted by the Agency, would the post closure care  
2 period have had to be 30 years?

3 MS. MENOTTI: Objection. It calls for a legal  
4 conclusion.

5 HEARING OFFICER CROWLEY: The witness can answer  
6 if he can, based on the content of the rules.

7 THE WITNESS: It is my understanding that a 30  
8 year post closure care period is required for new  
9 landfills. Upon the adoption of the federal  
10 Regulations by the State of Illinois, the federal  
11 Regulations, Subtitle D of RCRA, they state that if  
12 you accept waste past, I believe the date is October  
13 1st of 1993, and you are accepting municipal solid  
14 waste you have a 30 year post closure care period.

15 Q So, again, what was the date? If you  
16 accepted waste after when?

17 A If you are accepting municipal solid waste  
18 past October 1st of 1993, you are assigned a 30 year  
19 post closure care period. And that is a regulation  
20 that has been adopted by the State of Illinois.

21 Q Is it fair to assume that the costs of post  
22 closure care would at least double if the post closure  
23 care period were to double?

24 MS. MENOTTI: Objection. Speculative and assumes  
25 facts not in evidence. The Respondent has not

1 provided the witness with anything on which to make  
2 this determination.

3 MR. BENOIT: Again, I am just asking him a  
4 hypothetical question. You know, based upon those  
5 facts, is it fair to assume that the cost would  
6 double.

7 HEARING OFFICER CROWLEY: Excuse me. Could you  
8 make -- restate the question.

9 Q (By Mr. Benoit) Okay. The question is if  
10 someone had a permit with a 15 year post closure care  
11 period and the financial assurance required for that  
12 period was \$240,000.00, is it fair to assume that if  
13 the post closure care period were extended to 30 years  
14 that the \$240,000.00 would at least double?

15 MS. MENOTTI: We would still object to the  
16 speculation.

17 HEARING OFFICER CROWLEY: You may answer. Go  
18 ahead.

19 THE WITNESS: I would say that would be a fair  
20 assumption. It would be close. It would be a little  
21 under or maybe a little over.

22 HEARING OFFICER CROWLEY: I am sorry. I didn't  
23 hear the rest.

24 THE WITNESS: It may be a little under. It may be  
25 a little over.



1 HEARING OFFICER CROWLEY: Thank you.

2 Q (By Mr. Benoit) Now, you mentioned that you  
3 were present at some of these Section 31D meetings; is  
4 that correct?

5 A Yes.

6 Q Were you present at the meeting held on  
7 September 19th, 1994?

8 A I don't recall if I was in that meeting or  
9 not.

10 MR. BENOIT: I am going to need a second. It  
11 seems I have lost my exhibit list.

12 Let the record reflect I am showing the witness  
13 Exhibit R35E. It is an attendance sheet.

14 HEARING OFFICER CROWLEY: I am sorry. Was that D  
15 as in dog or E as in every man?

16 MR. BENOIT: E. It is R35E.

17 HEARING OFFICER CROWLEY: Okay. Thank you.

18 Q (By Mr. Benoit) Do you recognize that  
19 exhibit?

20 A Yes. This is an attendance sheet from  
21 September 19th of 1994.

22 Q Do you see your signature on that?

23 A I see my name printed, yes.

24 Q Did you print your name on that attendance  
25 sheet?

1 A Yes.

2 MS. MENOTTI: I am sorry. I couldn't hear.

3 MR. BENOIT: I asked him if he printed his name on  
4 that attendance sheet.

5 MS. MENOTTI: Okay.

6 THE WITNESS: Yes, I did.

7 MR. BENOIT: I would move Exhibit R35E be  
8 admitted.

9 MS. MENOTTI: Objection. The exhibit is  
10 irrelevant. The witness has only proven up that his  
11 own name is on there. To the extent that is his name  
12 on the piece of paper, fine. But with regard to  
13 anything else on that piece of paper, you have not  
14 provided proper foundation for it to be admitted as  
15 substantive evidence.

16 MR. BENOIT: I am trying to establish that he was  
17 at the meeting. He could not recall.

18 HEARING OFFICER CROWLEY: You moved it for  
19 admission?

20 MR. BENOIT: Yes, I moved that R35E be admitted.

21 HEARING OFFICER CROWLEY: Thank you. It is  
22 admitted.

23 (Whereupon said document was admitted into  
24 evidence as Respondent's Exhibit 35E as of this  
25 date.)

1 HEARING OFFICER CROWLEY: That is a document that  
2 is entitled attendance sheet. It lists Wayne Berger  
3 as the Defendant, slash, Respondent. It is dated  
4 September 19th, 1994, about a meeting in Springfield.

5 MS. MENOTTI: Is the document admitted as complete  
6 substantive evidence of everyone that attended that  
7 meeting or just to the extent that Mr. Smith was at  
8 the meeting?

9 HEARING OFFICER CROWLEY: The only testimony that  
10 we have had is that Mr. Smith printed his name at that  
11 meeting on this list. So that's what it is admitted  
12 for.

13 MS. MENOTTI: Thank you.

14 Q (By Mr. Benoit) So you were present at the  
15 September 19, 1994 31D meeting?

16 A It appears that I was, yes.

17 Q What was the purpose of that meeting?

18 A I believe it was, as mentioned earlier, a 31D  
19 meeting, in an attempt by the State to negotiate with  
20 Mr. Berger and to --

21 MS. MENOTTI: The State moves to bar any further  
22 testimony regarding the 31D meetings. The witness has  
23 just testified that it was for the purpose of  
24 negotiations regarding settlement. Settlement issues  
25 are not admissable into evidence before Circuit Courts

1 and before the Board. The Respondent should be barred  
2 from further pursuing this line of questioning.

3 MR. BENOIT: My arguments are the same as when the  
4 Attorney General tried to get this type of information  
5 stricken from my opening statement. The State is  
6 required to hold these 31D meetings. What went on at  
7 these 31D meetings is going to, time and again, show  
8 what my client tried to do and offered to do in his  
9 attempt to comply with the Act, which is something  
10 that the Board considers under the 42H factors.

11 MS. MENOTTI: Ms. Hearing Officer, regardless of  
12 the fact that the 42H factors apply, the 42H factors  
13 don't override the Supreme Court's ruling that  
14 discussions regarding settlement are not admissible as  
15 evidence in trials or adjudicative hearings. And the  
16 State relies on keeping settlement negotiations out of  
17 evidence. And the Supreme Court has ruled that way so  
18 that you can wheel and deal and not have to worry  
19 about things that will come in as evidence at a later  
20 date.

21 The Supreme Court has recognized this exception  
22 and denial of admitting settlement discussions into  
23 evidence and the Board has also recognized that. And  
24 unless Mr. Benoit as some authority or some special  
25 exception that applies to him to allow settlement

1 negotiations in as substantive evidence, I don't think  
2 the witness -- any further questions should be allowed  
3 of this witness regarding any kind of settlement  
4 negotiations between the State and Respondent.

5 MR. BENOIT: I do have. I brought some authority  
6 on this point besides, again, the requirements of the  
7 Act and the 42 -- that these meetings be held and the  
8 42H factors. And the authority I have says liability  
9 must be disputed. Negotiations to determine  
10 settlement amount to be paid under admitted liability  
11 do not fall within the rule of exclusion. This is  
12 clear in Grahams Handbook of Illinois Evidence, citing  
13 Tib (spelled phonetically) versus McDonald, 87 Ill. Ap  
14 3d 1087, and Smuthers versus Cosgrove (spelled  
15 phonetically), 264 Ill. Ap 488. The thrust of the --

16 HEARING OFFICER CROWLEY: Section 31D of the Act  
17 does require that these conferences be held. It is  
18 certainly appropriate for the record to reflect that  
19 one or more of these conferences has been held. As to  
20 whether the contents -- not the contents -- whether  
21 the substance of the discussions is admissable, I  
22 would like to see whatever authority each of you has  
23 on that point.

24 I see that you are both looking at or for things.

25 I think it is appropriate to take a short break at

1 this point anyway, so let's take ten minutes and then

2 meanwhile if you can give me whatever you have so I

3 can take a look at it.

4 MR. BENOIT: I don't have copies of the cases.

5 HEARING OFFICER CROWLEY: Okay.

6 MS. MENOTTI: I won't be able to produce copies of

7 the case law.

8 HEARING OFFICER CROWLEY: Okay. I am sorry. You

9 both looked so well prepared I just assumed that you

10 had something in your briefcases.

11 MR. BENOIT: I would ask --

12 MS. MENOTTI: I have citations but not the actual

13 case law.

14 MR. BENOIT: Again, the purpose of this hearing is

15 to put together a record. We could, you know, reserve

16 ruling on this and just go with the offer of proof and

17 then let the Board decide whether it is in or out and

18 whether they want to consider it. This case has been

19 going on a long time. We have a lot of expense in

20 it. I think it would be better just to let the

21 witness answer the questions, and note that it is a

22 general objection.

23 Obviously, from my opening statement, a lot of

24 what I do want to put on is, you know, these 31D

25 meetings and how Wayne tried to comply with the Act.

1 I think I am entitled to put on an offer of proof.  
2 Maybe we can have a standing objection that could be  
3 briefed out at the end, you know, and just note that  
4 here is the main issue in this case as far as the  
5 discovery or evidence objection and let the Board  
6 resolve it.

7 If we make the wrong decision or if you don't  
8 accept an offer of proof, we will be forced to go  
9 through the expense of coming back and doing this all  
10 over again. I think that's the whole idea behind  
11 offers of proof.

12 MS. MENOTTI: It is my understanding that offers  
13 of proof have to be written to the Board and is not  
14 the same as an offer of proof that would be made  
15 before a Circuit Court. The hearing today is to  
16 adjudicate the complaint and not to adjudicate  
17 settlement. We are going to start sliding down the  
18 slippery slope to -- and start discussing, first of  
19 all, issues that are not relevant, issues that are  
20 inadmissible, and the witness should not be required  
21 to testify to any facts or any evidence that is  
22 clearly inadmissible.

23 The testimony is more prejudicial than it is  
24 probative of anything that is offered in the  
25 complaint. The State stipulates to the fact that the

1 31D conference was held. We have to hold -- at that  
2 point in time, we had to hold it under the Act and  
3 pursuant to the requirements of the law. By allowing  
4 the Respondent to continue with this line of  
5 questioning prejudices the State, and not only in this  
6 case but in negotiations in any other case.

7 If the Board were to allow this testimony then the  
8 incentive for the State to negotiate anything with  
9 anyone is nothing because if it is going to come in as  
10 evidence and then the Board is going to rule on it  
11 later, that is potentially harmful to the State and  
12 the State's position.

13 MR. BENOIT: How does that harm the State?

14 MS. MENOTTI: If the Respondent wants to make an  
15 offer of proof then the State is going to request that  
16 the Board rule on that before Mr. Smith gives any  
17 further testimony regarding what was clearly  
18 settlement negotiations between the State and the  
19 Respondent. And if you want to come back in and if  
20 the Board rules that Mr. Smith can testify to that,  
21 then at that point in time we can supplement the  
22 record with an evidentiary deposition or something of  
23 that nature.

24 HEARING OFFICER CROWLEY: Thank you. I would like  
25 to take a ten minute recess. I need to look at the



1 Act and I need to search my memory. Thank you.

2 (Whereupon a short recess was taken.)

3 HEARING OFFICER CROWLEY: We can go back on the  
4 record.

5 Having, again, during the recess reviewed Section  
6 31E as well as Section 42H, I see no relevance to  
7 putting into the record the contents of any Section  
8 31D discussions that were held between the Complainant  
9 and Respondent, though, as I have said, the fact that  
10 such discussions occurred is relevant to the statutory  
11 requirements.

12 Even under the Board's relaxed standards of  
13 relevance, I can't see that such information would be  
14 useful for this record. So I am also going to deny  
15 the request to make an offer of proof.

16 MR. BENOIT: No offer of proof?

17 HEARING OFFICER CROWLEY: (Shook head from side to  
18 side.)

19 MR. BENOIT: Are you going to let my client,  
20 pursuant to 42H, testify how he attempted, and I  
21 believe that's the language of the statute, to  
22 comply?

23 HEARING OFFICER CROWLEY: He can certainly  
24 describe how he attempted to comply. That is  
25 relevant. 31E allows the Respondent to show that

1 compliance would impose an arbitrary or unreasonable  
2 hardship. However, what was offered and what was  
3 refused, during the content of Section 31D  
4 conferences, I don't think is relevant to this case.

5 MR. BENOIT: I would ask the Hearing Officer to  
6 reconsider that at this time in light of 42H and,  
7 again, I am talking about 42H, Subsection 2. It says,  
8 the presence or absence of due diligence on the part  
9 of the violator in attempting to comply with the  
10 requirements of this Act and Regulations thereunder.

11 HEARING OFFICER CROWLEY: Or to secure relief  
12 therefrom as provided by this Act.

13 MR. BENOIT: Right. It is our position, and what  
14 we intended to put evidence on, is that, in fact, when  
15 the requirement of the Act is to put up --

16 MS. MENOTTI: Excuse me. May I interrupt for a  
17 minute? It sounds like he is making an offer of proof  
18 when you have already denied the opportunity for an  
19 offer of proof.

20 HEARING OFFICER CROWLEY: Yes, it does sound as if  
21 you are in the process of making an offer of proof.

22 MR. BENOIT: So you are not going to consider my  
23 arguments?

24 HEARING OFFICER CROWLEY: I will allow you to  
25 complete your statement. Please go ahead.

1 MR. BENOIT: It is our position in this case that  
2 the Board should consider -- that kind of made me lose  
3 my train of thought. The Board should consider what  
4 Wayne did to attempt to comply with the Act. In the  
5 case of money, an attempt would be to put up some  
6 money as to the financial assurance account. As to  
7 the case of water monitoring, for example, an attempt  
8 would be to conduct some water monitoring.

9 HEARING OFFICER CROWLEY: Again, I have no problem  
10 with your testifying as to what Mr. Berger did. The  
11 substance of settlement discussions between Mr. Berger  
12 and the Complainant, as to what might or what might  
13 not be sufficient, I don't think is necessary or  
14 relevant to this record.

15 MR. BENOIT: Okay.

16 HEARING OFFICER CROWLEY: If we can proceed on  
17 that basis.

18 MR. BENOIT: I am looking for a document here. In  
19 light of the Hearing Officer's ruling, it should be  
20 pretty short, as soon as I can find this.

21 Q (By Mr. Benoit) You testified earlier that  
22 you have reviewed the groundwater monitoring reports  
23 submitted by Mr. Berger; is that correct?

24 A Well, perhaps I should be a little bit more  
25 accurate. I reviewed the file to see when the last

1 time was that Mr. Berger filed a groundwater  
2 monitoring report. I didn't necessarily review any or  
3 all of the reports.

4 Q Did the -- do you have any knowledge that the  
5 Respondents, through the operation of the landfill,  
6 impacted beyond the impact allowed by governing rules  
7 or the permit requirements, groundwater or surface  
8 water from 1978 to today?

9 MS. MENOTTI: Could you separate that out, please,  
10 so it is not compound?

11 MR. BENOIT: I don't think it was compound.

12 MS. MENOTTI: You asked for both Respondent and  
13 surface and groundwater, I believe. I believe there  
14 were four separate things.

15 HEARING OFFICER CROWLEY: I didn't find the  
16 question compound. Can you answer?

17 THE WITNESS: Yes.

18 HEARING OFFICER CROWLEY: Did you understand it?  
19 Can you answer it?

20 THE WITNESS: I have no knowledge.

21 Q (By Mr. Benoit) Okay. Do you have any  
22 knowledge that the alleged violations set forth in the  
23 first amended complaint resulted in actual harm to any  
24 water -- wait a minute. Strike that.

25 Okay. Starting over again, do you have any

1 knowledge that the alleged violations set forth in the  
2 first amended complaint resulted in actual harm to any  
3 water including groundwater of the State of Illinois?

4 A I am not familiar with the first amended  
5 complaint, so I am not familiar with what allegations  
6 are or are not in that document.

7 Q Do you have any knowledge that the alleged  
8 violations set forth in the first amended complaint  
9 resulted in actual harm to any real property?

10 A Again, I am not familiar with the first  
11 amended complaint.

12 MS. MENOTTI: Perhaps you could be more specific  
13 in your questions, and he could give you a better  
14 answer.

15 MR. BENOIT: Thank you, Maria.

16 Q (By Mr. Benoit) Do you have any knowledge  
17 that the Respondents, due to the operation or  
18 ownership of the landfill, caused any actual harm to  
19 any water of the State of Illinois?

20 A No, I don't.

21 Q Do you have any knowledge that the  
22 Respondents, while operating or owning the landfill,  
23 caused any actual harm to any identifiable real  
24 property?

25 A No, I don't.

1 Q Do you have any knowledge regarding the  
2 Respondent's ownership or operation of the landfill,  
3 or that the Respondent's ownership or operation of the  
4 landfill have resulted in actual harm to any  
5 identifiable person?

6 A No, I don't.

7 MR. BENOIT: No further questions.

8 REDIRECT EXAMINATION

9 BY MR. GUBKIN:

10 Q Hopefully just a few more for you, Mr.  
11 Smith. I will start off on some of the questions Joel  
12 just finished up with. You just stated that you have  
13 no knowledge as to harm of various aspects, whether  
14 groundwater, surface water, real property. When you  
15 say you have no knowledge, does that mean that there  
16 is no harm or you just don't know whether there is or  
17 isn't?

18 A I just don't know whether there is or isn't.  
19 It is not in my capacity, for instance, in my job to  
20 review groundwater monitoring reports. That's an  
21 example. I review permit applications.

22 Q Okay. And you say your job is to review  
23 permit applications. Do you ever do consulting work  
24 for citizens?

25 A I am not sure what you mean by consulting

1 work.

2 Q Well, Mr. Benoit earlier was asking you for  
3 some estimates. I was wondering how often do you make  
4 cost estimates like he was asking you about?

5 A We review cost estimates. We don't develop  
6 cost estimates. Of course, we are in a position to  
7 make decisions on whether a cost estimate is accurate  
8 or not.

9 Q Okay. Whose responsibility would it be to  
10 come up with a cost estimate for a significant  
11 modification permit or anything else?

12 A It is an engineer's cost estimate. It would  
13 be a professional engineer.

14 Q And do these cost estimates vary?

15 A Certainly they vary from one landfill to  
16 another, particularly here in Illinois because it is a  
17 large state. It varies from one activity to another  
18 depending upon the size of the landfill and what types  
19 of waste go in it. There is a lot of different  
20 factors that go into cost estimates for closure and  
21 post closure.

22 Q Therefore, would it be accurate to say that  
23 each cost estimate would be site specific?

24 A Yes, it would.

25 Q Okay. One last question. Regarding the

1 closure of a landfill, Mr. Benoit touched on that, is

2 Wayne Berger's landfill certified closed?

3 A No, it is not.

4 MR. GUBKIN: Okay. No more questions. Thank

5 you.

6 MR. BENOIT: No questions.

7 HEARING OFFICER CROWLEY: There seem to be no

8 further questions for this witness. So thank you very

9 much, Mr. Smith.

10 (The witness left the stand.)

11 HEARING OFFICER CROWLEY: Let's go off the record

12 for a minute.

13 (Discussion off the record.)

14 HEARING OFFICER CROWLEY: Back on the record. We

15 are taking a lunch break. It is approximately 12:05

16 now, and we would like to begin again at 1:00. Thank

17 you.

18 (Whereupon a lunch recess was taken from 12:05

19 p.m. to 1:15 p.m.)

20

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1           AFTERNOON SESSION

2           (August 18, 1998; 1:15 p.m.)

3    HEARING OFFICER CROWLEY: We are back on the  
4 record after a lunch break.

5    MS. MENOTTI: I am sorry?

6    HEARING OFFICER CROWLEY: We are back on the  
7 record after a lunch break.

8    MS. MENOTTI: Oh. I am sorry.

9    MR. GUBKIN: The People would like to call Kevin  
10 Bryant to the stand.

11   (Whereupon the witness was sworn by the Notary  
12 Public.)

13           K E V I N E. B R Y A N T,  
14 having been first duly sworn by the Notary Public,  
15 saith as follows:

16           DIRECT EXAMINATION

17           BY MR. GUBKIN:

18    Q    Would you please state your name for the  
19 record.

20    A    Kevin E. Bryant.

21    Q    Mr. Bryant, could you tell us a little bit  
22 about your educational background?

23    A    I have a Bachelor's of Science in business  
24 from Eastern Illinois University with a major in  
25 accounting.

1 Q Who is your current employer?

2 A The Illinois EPA.

3 Q And what is your occupation?

4 A My working title is accountant advanced.

5 Q How long have you been an accountant?

6 A Since July of 1994.

7 Q Since July of 1994 you have been an

8 accountant with the Illinois EPA?

9 A Yes.

10 Q Were you an accountant previously?

11 A I was an unemployment insurance auditor for

12 employment security in which I did audits of employers

13 to make sure they met the requirements of that, the

14 unemployment insurance.

15 Q Okay. When did you start doing that?

16 A January of 1990.

17 Q And then you have worked with the Agency

18 since July of 1994; is that correct?

19 A Yes.

20 Q Okay. And what is your current title?

21 A Accountant advanced.

22 Q Okay. What was your position prior to

23 becoming an accountant advanced?

24 A I was a financial assurance auditor.

25 Q How long did you work as a financial

1 assurance auditor?

2 A Since February 15th of 1998.

3 Q And as a financial assurance auditor, what  
4 are your duties?

5 A My duties were to review financial assurance,  
6 that was submitted by both solid waste and hazardous  
7 waste sites, in order to assure that they comply with  
8 the appropriate Regulations that they were required  
9 to.

10 Q Do you work with the permit section?

11 A Yes, I do.

12 Q As a financial assurance auditor, what  
13 documents do you review?

14 A There are several documents, depending on  
15 what type of financial assurance they are using.  
16 There is a letter of credit, trust funds, certificates  
17 of insurance, there is performance bonds, and there is  
18 also sites that are eligible to self-insure. So in  
19 that case, I review the financial statements and  
20 documents that they send in to make sure that they  
21 meet the requirements of self-insured.

22 Q Okay. These documents which you review, are  
23 they ones that the Illinois EPA generates or are they  
24 from outside?

25 A No, all these documents would be generated by

1 owner, operators in order to meet the requirements of  
2 the permits.

3 Q And what type of requirements do you check  
4 for when you are reviewing these documents?

5 A I check -- the main things for solid waste,  
6 which this case is, is to make sure that their  
7 financial assurance is adequate to the last approved  
8 closure and post closure care cost estimates that  
9 would be in their permits. Other things that I check  
10 for is under new Regulations they have to update  
11 annually for inflation. But under this site, it is an  
12 807 site, so we look for the last approved cost  
13 estimate.

14 Q Okay. Are you familiar with the Illinois EPA  
15 financial assurance records for the Berger Landfill?

16 A Yes, I am.

17 Q In what capacity have you become familiar  
18 with them?

19 A I did a financial review at the request of  
20 Scott Kains to determine the current status of the  
21 site and the history of the financial assurance.

22 Q Did you have an opportunity to review that  
23 file before coming here for testimony today?

24 A Yes.

25 Q Okay. Could you tell me what documents you

1 did review for the Berger Landfill?

2 A They had a letter of credit which -- well,  
3 two letters of credit. The original letter of credit  
4 was submitted in 1985, and then a new -- a second  
5 letter of credit which was submitted in 1988. I also  
6 reviewed their last supplemental permit, which had the  
7 last approved closure and post closure care cost  
8 estimates. And reviewing that document I discovered  
9 the letter of credit, when it was in place, was not  
10 substantial enough to cover that closure estimate.  
11 And once it expired, they had no financial assurance  
12 since October of 1994.

13 Q I believe it is in front of you,  
14 Complainant's Exhibit Number 2, which has previously  
15 been admitted into evidence. Do you recognize that?

16 A Yes, I do. It is their last approved  
17 permit. It is issued March 20th of 1992.

18 Q Okay. And this permit, it contained  
19 provisions regarding financial assurance?

20 A Yes, it did under the closure and post  
21 closure care section, requirement number five.

22 Q Okay.

23 A I am sorry. Number six requires that they  
24 provide financial assurance for their current cost  
25 estimates for closure and post closure care in the

1 amount of \$241,950.00.

2 Q Okay. Could you explain a little bit what is  
3 financial assurance?

4 A Financial assurance is a requirement that was  
5 brought about to assure that solid waste -- both solid  
6 waste and hazardous waste sites, were properly closed  
7 and proper post closure care maintenance was performed  
8 in order to assure that there was no endangerment to  
9 the public health or safety, and to make sure that the  
10 taxpayers of Illinois did not have to come up with the  
11 money to do this if the owner or operator walked away  
12 or filed a bankruptcy or whatever reason they could  
13 not properly close the site.

14 Q Okay. I just want to make sure that we cover  
15 this. In this supplemental permit, what financial  
16 assurance requirements apply to this landfill, to  
17 Wayne Berger's landfill?

18 A I am sorry. Could you reask that question?

19 Q Yes. In the supplemental permit before you,  
20 I was just wondering -- you might have stated this,  
21 but I want to make sure that we have it clear. What  
22 financial assurance requirements apply to this  
23 particular landfill?

24 A There are two requirements that fall under  
25 financial assurance. They were required to provide

1 financial assurance for the current cost estimate for  
2 closure and post closure care which was \$241,950.00.  
3 That had to be submitted by July 2nd of 1992. And  
4 then number six states that they shall submit a  
5 revised cost estimate for closure and post closure  
6 care at least every two years, with the first revised  
7 cost estimate being due on December 12th of 1992.

8 Q Was that December 12th of 1992?

9 A December 12th, 1992.

10 Q Thank you. What is the purpose of closure  
11 cost estimates?

12 A It is a cost estimate to give us a valid  
13 number of what it would cost to properly close the  
14 landfill so that there would be no future problems  
15 such as leaking or whatever.

16 Q How does that differ from post closure  
17 estimates?

18 A The post closure cost estimate is usually  
19 just monitoring to make sure after it has been  
20 certified closed that no additional things come up in  
21 water testing, or so forth, that would require  
22 additional work to be done at the site. So they have  
23 to pay for groundwater monitoring.

24 Q Okay. Who is responsible for submitting  
25 these estimates?

1 A The owner or operators of the site.

2 Q Okay. So in this case, who would be  
3 responsible for this landfill?

4 A Wayne Berger.

5 Q Okay. What means are available to a landfill  
6 to provide financial assurance and in what ways can  
7 they provide it?

8 A There is a letter of credit, and they can  
9 provide a trust fund, performance bond. They can  
10 obtain a certificate of insurance to cover the closure  
11 costs.

12 Q Okay.

13 A I can't remember if I mentioned them all.  
14 There is six.

15 Q Okay. And was Wayne Berger required to  
16 provide information or documentation regarding closure  
17 costs to his landfill?

18 A Yes. As I said on December 12th, 1992, he  
19 was required to file another cost estimate and then  
20 under 807 they require a biannual, or every two  
21 years. So on December 12th of 1994, and December 12th  
22 of 1996, he had other closure cost estimates due.

23 Q Okay. Did Mr. Berger ever provide this  
24 information to the Illinois EPA?

25 A In my record review I found no revised



1 closure cost estimate.

2 Q Did Mr. Berger ever provide information on  
3 financial assurance?

4 A He provided the letter of credit in --

5 Q Okay.

6 A -- 1988, which expired October 31st of 1993.

7 HEARING OFFICER CROWLEY: Excuse me. For the  
8 record, is that the document that we have accepted  
9 into evidence as Respondent's Exhibit Number 18?

10 MR. GUBKIN: I am sorry. What are you referring  
11 to?

12 HEARING OFFICER CROWLEY: Is the letter of credit  
13 that we are talking about here the one that we have  
14 already admitted into evidence as Respondent's Exhibit  
15 Number 18?

16 MR. GUBKIN: Yes, it is.

17 HEARING OFFICER CROWLEY: Fine. Thank you.

18 Q (By Mr. Gubkin) Based on your review of the  
19 file, has financial assurance been posted -- has there  
20 been any financial assurance for Wayne Berger's  
21 landfill since the expiration of the letter of credit  
22 on October 31st of 1993?

23 A No.

24 Q Okay. How much financial assurance was  
25 provided in the letter of credit that Wayne Berger had

1 presented originally?

2 A I believe it was \$38,338.00. I am not sure.

3 I don't have the document right in front of me.

4 Q Okay.

5 (The Hearing Officer passed the document to the

6 witness.)

7 THE WITNESS: Thank you.

8 Q (By Mr. Gubkin) Does that refresh your

9 recollection?

10 A I am sorry. It is \$38,398.00.

11 Q Between the dates of March 30th, 1992 and

12 October 31st of 1994, how much financial assurance was

13 provided by Wayne Berger?

14 A In the amount of \$38,398.00.

15 Q How much was required during that time

16 period?

17 A Two thousand -- I am sorry. \$241,950.00.

18 Q Does Wayne Berger presently have financial

19 assurance of \$241,950.00?

20 A No.

21 Q Has Wayne Berger had any financial assurance

22 since October 31st of 1993?

23 A No.

24 Q Earlier you mentioned something about having

25 to do estimates every two years; is that correct?

1 A Yes.

2 Q In reviewing the financial assurance file for  
3 Mr. Berger, did Wayne Berger submit biannual revisions  
4 of cost estimates due in 1992?

5 A No.

6 Q How about 1994?

7 A No.

8 Q Did he submit them for 1996?

9 A No.

10 Q When has Mr. Berger submitted cost estimates?

11 A The last submitted cost estimate was with the  
12 March -- the supplemental permit that was issued in  
13 March of 1992.

14 Q What about Berger Waste Management? Have you  
15 received any cost estimates from Berger Waste  
16 Management, Incorporated?

17 A No.

18 Q Ever?

19 A No.

20 Q Okay. Mr. Bryant, what is the problem with  
21 failing to comply with providing financial assurance?

22 MR. BENOIT: This has already been asked and  
23 answered.

24 HEARING OFFICER CROWLEY: One of several that has  
25 been asked and answered.

1 MR. BENOIT: I know. It is getting repetitive.

2 MR. GUBKIN: Sorry about that.

3 MS. MENOTTI: What did you say?

4 HEARING OFFICER CROWLEY: That was an objection

5 which I have sustained.

6 MS. MENOTTI: Okay.

7 Q (By Mr. Gubkin) Mr. Bryant, has Mr. Berger

8 gained any kind of benefit from not complying with the

9 financial assurance requirements?

10 MR. BENOIT: Objection. That calls for an

11 opinion, and Mr. Bryant was not listed as one of the

12 opinion or expert witnesses.

13 MS. MENOTTI: The State supplemented its

14 interrogatory. Mr. Bryant took over the position of

15 financial assurance analyst in place of John Taylor.

16 Mr. Taylor was disclosed as a witness, and the State

17 subsequently notified the Respondents that Mr.

18 Bryant's testimony would be the same as what Mr.

19 Taylor's testimony would have been because he was now

20 in that position. We notified that Mr. Bryant would

21 be taking Mr. Taylor's place on the witness list. And

22 the benefit goes to Section 42H factors that the Board

23 is required to consider in assessing civil penalties.

24 MR. BENOIT: I don't believe that he was

25 substituted.

1 MS. MENOTTI: I sent a letter to the Respondent  
2 stating that Mr. Taylor was no longer in the financial  
3 assurance position and that Kevin Bryant was in charge  
4 of the financial assurance, and that the witness would  
5 be -- the person would be substituted. The testimony  
6 would be --

7 HEARING OFFICER CROWLEY: Without getting into  
8 whether letters were sent or received, I think this is  
9 within the scope of the witness' position.

10 Could you repeat the question?

11 MR. GUBKIN: Certainly.

12 Q (By Mr. Gubkin) Mr. Bryant, the question was,  
13 has Mr. Berger gained any kind of benefit from not  
14 complying with the financial assurance requirements?

15 A Yes.

16 Q Could you explain this a little bit?

17 A He gained the benefit of if he would have  
18 provided a letter of credit in the amount that was  
19 required, from my experience a letter of credit, and  
20 from review of past files, it is usually two to three  
21 percent. I took a middle number of two and a half  
22 percent.

23 The benefit he would have received from taking  
24 that payment, for the cost of the letter of credit  
25 from his taxes, I estimated that approximately two

1 percent of the face value of the letter of credit  
2 would be what it would have cost him to maintain a  
3 letter of credit for financial assurance.  
4 I believe from the original letter of credit which  
5 should have been amended on July 2nd, 1992 until it  
6 expired in October of 1993, he was short a little over  
7 \$203,000.00. Two percent of that is approximately  
8 \$4,100.00 a year. It would be somewhere around  
9 \$8,200.00 for those two years.  
10 And since the time of the letter of credit has  
11 expired until the current time is four years, and two  
12 percent of the total cost of financial assurance,  
13 which was \$241,950.00, if I remember right, somewhere  
14 around 85 -- I mean, \$4,800.00 a year. Altogether I  
15 estimate that he saved approximately \$27,500.00.  
16 MR. GUBKIN: Okay. Thank you, Mr. Bryant. No  
17 more questions.

18 CROSS EXAMINATION

19 BY MR. BENOIT:

20 Q Can you tell me when it is that you reviewed  
21 the Berger file at Scott Kains' request?

22 A It was reviewed approximately two weeks ago.

23 Q Can you tell me -- well, let's back up a  
24 little bit. Again, you stated that there were six  
25 ways in which someone could satisfy the financial

1 assurance requirements. Could you restate those six  
2 for me?

3 A Sure. We will try. It is a letter of  
4 credit, post a trust fund, a performance bond, a  
5 certificate of insurance for closure, post closure  
6 care, and there is a surety bond, or they could  
7 self-insure. That was the last one. I am sorry.

8 Q Are you -- besides self-insurance -- well, do  
9 you know of any landfills that provide financial  
10 assurance through self insurance?

11 A Yes, I know there is some that provide  
12 assurance through self-insurance. Off the top of my  
13 head I can't think of the names.

14 Q Are these fairly large corporations?

15 A Yes, it is.

16 MS. MENOTTI: Objection. Relevance. I don't  
17 think it is relevant to other corporations, how they  
18 post financial assurance to how the defendant did or  
19 did not.

20 MR. BENOIT: He already answered.

21 Q (By Mr. Benoit) Can you tell me what type of  
22 business issues performance bonds?

23 MR. GUBKIN: Excuse me. I couldn't hear.

24 Q (By Mr. Benoit) What type of business entity  
25 would issue a performance bond?

1 A Usually it is an insurance company.

2 Q Do you know what factors an insurance company  
3 would consider before they would issue a performance  
4 bond?

5 MS. MENOTTI: Objection. Relevance.

6 MR. BENOIT: Again, the primary defense to three  
7 of the counts in this case are that the Respondents  
8 were financially unable to satisfy the requirements  
9 that are asked in those counts.

10 HEARING OFFICER CROWLEY: Thank you. You may  
11 answer if you know.

12 THE WITNESS: It would be my assumption that they  
13 would look at the site, what has been disposed there,  
14 the risk factors, before deciding whether they would  
15 issue a performance bond.

16 Q (By Mr. Benoit) Would they consider the  
17 income flow of the person seeking the bond?

18 A Yes, I am sure they would.

19 Q Would they consider the assets of the person  
20 seeking the performance bond?

21 A Yes.

22 MS. MENOTTI: Objection. It calls for  
23 speculation. This witness does not work for an  
24 insurance company or for anyone that issues the  
25 bonds. This whole line of questioning is calling for



1 a speculative answer from this witness, who, from the  
2 first question, I have heard that he said, yes, I  
3 guess they would, or I guess they wouldn't. So,  
4 clearly, he is speculating.

5 It is not information that the Board should be  
6 considering. If the Respondent wishes to offer  
7 definitive testimony showing that that is how it would  
8 go about, they could properly do so in their defense,  
9 but it is improper to do it through speculation by  
10 this witness.

11 MR. BENOIT: I think that this witness, the  
12 educational background he gave, as far as a bachelor's  
13 in business and a major in accounting, and his work  
14 history, he should be qualified to offer some type of  
15 opinion, as far as what financial institutions or  
16 insurance companies or banks will consider when  
17 issuing any one of these six types of financial  
18 assurance.

19 HEARING OFFICER CROWLEY: I asked the witness to  
20 answer the questions if he knows. It appears that  
21 what we are getting is speculation in response to each  
22 of these questions, so I will sustain the objection as  
23 to further questions of this type.

24 MR. BENOIT: You are not going to let him answer  
25 questions of this type?

1 HEARING OFFICER CROWLEY: I am sorry. You may ask  
2 the questions and if he knows he can answer. If he  
3 does not know he can answer that.

4 Q (By Mr. Benoit) Do you understand the  
5 principles of basic financing?

6 A Yes.

7 Q When a financial entity is determining  
8 whether to make a loan, do they consider the loan  
9 applicant's income?

10 A Yes.

11 Q Do they consider the loan applicant's assets?

12 A Yes.

13 Q In this case, in the Berger case, did you  
14 have the opportunity to review the Respondent's  
15 financial statement and income tax forms that were  
16 provided to the State?

17 MS. MENOTTI: Objection as to -- first of all,  
18 beyond the scope of direct. Second of all, we need  
19 identification as to what tax returns or anything that  
20 you are referring to, because they are not before the  
21 witness. I think it is unclear as to what you are  
22 asking with regard to that. Those are my two  
23 objections.

24 MR. BENOIT: I am just asking for the facts. Did  
25 he review them or not.

1 HEARING OFFICER CROWLEY: Can you answer?

2 THE WITNESS: Yes, I can answer. No, I didn't

3 review his financial statements.

4 Q (By Mr. Benoit) Now, your testimony is that

5 the Respondents, by not putting up the approximately

6 \$241,000.00 in financial assurance saved an estimated

7 \$27,500.00; is that correct?

8 A Yes.

9 Q Does that estimate assume that they could

10 have, in fact, obtained the financial assurance if

11 they had applied for it?

12 MS. MENOTTI: Objection. Calls for speculation on

13 the part of the witness. He has already testified

14 that he has not reviewed any assets or financial

15 documents tendered by the Respondents in discovery.

16 MR. BENOIT: That is not my question.

17 HEARING OFFICER CROWLEY: Could you read the

18 question back, please.

19 (Whereupon the requested portion of the record was

20 read back by the Reporter.)

21 HEARING OFFICER CROWLEY: I believe the question

22 is appropriate.

23 MS. MENOTTI: I am sorry. I misunderstood the

24 question.

25 THE WITNESS: Yes, it is assuming that they could

1 obtain insurance.

2 Q (By Mr. Benoit) So if, in fact, the

3 Respondents could not obtain the financial assurance,

4 would they have derived any benefit?

5 MS. MENOTTI: Objection. Calls for speculation.

6 MR. BENOIT: It does not call for speculation.

7 MS. MENOTTI: You are asking facts that are not in

8 evidence.

9 Then I will change my objection to assuming facts

10 not in evidence. You have not shown any financial

11 ability either way.

12 MR. BENOIT: I am asking him a hypothetical

13 question.

14 MS. MENOTTI: A hypothetical question calls for

15 speculation.

16 HEARING OFFICER CROWLEY: You may answer the

17 question if you can.

18 THE WITNESS: Whether the defendant refuses to do

19 it or is unable to do it, he still gains economic

20 benefit of not doing it.

21 HEARING OFFICER CROWLEY: I don't think that that

22 answer was responsive to the question. Could you read

23 the question again, please.

24 (Whereupon the requested portion of the record was

25 read back by the Reporter.)

1 THE WITNESS: Yes.

2 Q (By Mr. Benoit) They would?

3 A Yes.

4 Q Can you explain that answer?

5 A If they were unable to obtain assurance --

6 that's a requirement that he has financial

7 assurance --

8 Q I understand that.

9 A -- according to the rules. Therefore,

10 whether he is providing it voluntarily or due to the

11 fact that he could not obtain it because of whatever

12 means, he is obtaining -- he is getting a benefit of

13 not having to pay for the financial assurance.

14 MR. BENOIT: Okay. We will go with that answer.

15 No further questions.

16 REDIRECT EXAMINATION

17 BY MR. GUBKIN:

18 Q Mr. Bryant, why didn't you review Mr.

19 Berger's financial statements?

20 A Because that was not required. He submitted

21 a letter of credit, and had submitted nothing since

22 that letter of credit expired. The only time I would

23 have reviewed the financial statements is if he would

24 have been trying to qualify or submit financial

25 assurance through self-insurance.

1 Q And did Mr. Berger try and do this?

2 A No.

3 MR. GUBKIN: No further questions.

4 MR. BENOIT: No questions.

5 HEARING OFFICER CROWLEY: Thank you, Mr. Bryant.

6 (The witness left the stand.)

7 HEARING OFFICER CROWLEY: Do you need a moment?

8 MR. GUBKIN: One moment please, yes.

9 MR. BENOIT: Could we break for five minutes?

10 HEARING OFFICER CROWLEY: That is fine.

11 (Whereupon a short recess was taken.)

12 HEARING OFFICER CROWLEY: After a five minute

13 break, we are back on the record.

14 All right. Does the Complainant have another

15 witness for us?

16 MR. GUBKIN: Yes, we do. The People would like to

17 call Sheila Williams to the stand, please.

18 (Whereupon the witness was sworn by the Notary

19 Public.)

20 S H E I L A R E N E W I L L I A M S,

21 having been first duly sworn by the Notary Public,

22 saith as follows:

23 DIRECT EXAMINATION

24 BY MR. GUBKIN:

25 Q Would you please state your name for the

1 record.

2 A Sheila Rene Williams.

3 Q And, Ms. Williams, would you please tell us a  
4 little bit about your educational background?

5 A I have a Bachelor of Arts Degree from  
6 Greenville College in biology.

7 Q Who is your current employer?

8 A The Illinois EPA.

9 Q And how long have you worked for the Illinois  
10 EPA?

11 A Just over eight years.

12 Q I am sorry? Over eight?

13 A Yes.

14 Q What is your current position there?

15 A I am an Environmental Protection Specialist.

16 Q What are your duties?

17 A Primarily I work in the solid waste unit. I  
18 inspect permitted and unpermitted facilities.

19 Q How long have you worked in that capacity?

20 A Just a little over five years.

21 Q Approximately how many landfill inspections  
22 would you say you have completed?

23 A About 20.

24 Q Have you had any additional training beyond  
25 your Bachelor's Degree?

1 A Yes, various training courses and workshops  
2 provided through the Agency.

3 Q Okay. Did this training include work  
4 regarding the landfills?

5 A Some of it did.

6 Q Are you familiar with the Berger Landfill?

7 A Yes.

8 Q Okay. How have you been involved in that  
9 site?

10 A I have inspected the site in the past.

11 Q Okay. What kind of records does your section  
12 regularly generate and maintain?

13 A We regulate -- I am sorry -- we generate  
14 records pertaining to compliance of facilities. We  
15 keep those records there. We have some at -- we keep  
16 a copy at our office and then send a copy of it to the  
17 Springfield office as well.

18 Q How long have you been working on Wayne  
19 Berger's landfill doing inspections?

20 A I conducted the first inspection in June of  
21 1993.

22 Q You said your first inspection was in June of  
23 1993?

24 A Yes.

25 Q Could you, for the record, describe what the



1 Berger landfill is like?

2 A Presently, or I mean -- it was a permitted  
3 landfill that accepted municipal waste, if that's what  
4 you mean.

5 Q Could you tell us a little bit about how big  
6 is the landfill and where is it located, some general  
7 information?

8 A It is near Noble, Illinois. I believe the  
9 original application said it would be approximately 30  
10 acres. I don't know that it ever grew to that size,  
11 though.

12 MR. GUBKIN: Okay. May the record reflect that I  
13 am now showing to opposing Counsel what has been  
14 previously marked as People's Exhibit Number 5.

15 MR. BENOIT: Is that one of those that we  
16 stipulated to that had an R number to it?

17 MR. GUBKIN: Yes, it would be the same one except  
18 that this is an original with the pictures within it.

19 MR. BENOIT: Okay.

20 HEARING OFFICER CROWLEY: I am sorry? It is the  
21 same as Exhibit Number --

22 MR. BENOIT: I believe it would be --

23 HEARING OFFICER CROWLEY: R28.

24 MR. BENOIT: Yes, R28.

25 HEARING OFFICER CROWLEY: Okay. Fine.

1 MR. GUBKIN: May I approach the witness?  
2 HEARING OFFICER CROWLEY: Yes.  
3 MR. GUBKIN: Thank you.  
4 (Ms. Menotti and Mr. Gubkin confer briefly.)  
5 HEARING OFFICER CROWLEY: Do you need a moment?  
6 MS. MENOTTI: No. We were just discussing whether  
7 or not since this exhibit -- we stipulated to this  
8 exhibit -- whether or not we can ask the Respondent  
9 whether or not they will stipulate to this, for the  
10 record, being an accurate copy with the original  
11 photographs, and admitted directly into evidence or we  
12 can go through and lay the foundation. We were  
13 thinking it might save time if we stipulate to the  
14 inspection report.  
15 MR. BENOIT: Can I just flip through it real  
16 quick?  
17 HEARING OFFICER CROWLEY: Sure.  
18 MR. BENOIT: I am willing to move things along.  
19 HEARING OFFICER CROWLEY: I appreciate everyone's  
20 attempt to move this along, particularly since the  
21 stipulation that the People made to what we accepted  
22 as Respondent's Exhibit Number 28 was with the  
23 exception of the copies of the photographs.  
24 MR. BENOIT: Exactly.  
25 MR. GUBKIN: For the record, you might want to do

1 that for the other two inspections, which would be

2 People's Exhibit 6 and 7. Those would be the April

3 18, 1994 inspection and the --

4 HEARING OFFICER CROWLEY: Let's take five minutes

5 and let this comparison be made.

6 (Whereupon a short recess was taken.)

7 HEARING OFFICER CROWLEY: Back on the record.

8 MR. GUBKIN: Are these now admitted into

9 evidence?

10 HEARING OFFICER CROWLEY: I am not sure we had

11 that all on the record. People's Exhibit Number 5 is

12 the same as what we had previously marked as

13 Respondent's Exhibit Number 28, but with the original

14 photographs, correct?

15 MR. GUBKIN: Correct.

16 HEARING OFFICER CROWLEY: Okay. What else did you

17 have?

18 MR. GUBKIN: People's Exhibit Number 6 which is

19 the April 18th, 1994 inspection, but with original

20 photographs. Then the same thing in regard to

21 People's Exhibit Number 7, which is the August 25th,

22 1995 inspection.

23 HEARING OFFICER CROWLEY: Okay. So People's

24 Exhibit Number 6 is the original of what we had

25 previously marked as Respondent's Exhibit Number 33.

1 And People's 7 is what we had previously marked as

2 Exhibit Number 38; is that right?

3 MR. BENOIT: That's correct.

4 HEARING OFFICER CROWLEY: Okay. Fine. You moved

5 them, and we are admitting those original copies into

6 evidence.

7 (Whereupon said documents were admitted into

8 evidence as People's Exhibits 5, 6 and 7 as of

9 this date.)

10 MR. GUBKIN: Thank you, Ms. Hearing Officer.

11 Q (By Mr. Gubkin) Okay. Now that you have

12 those three inspections before you, I would like to

13 take them one at a time. If we could first go to the

14 June 24th, 1993 investigation. During that time was

15 Wayne Berger accepting waste?

16 A Yes, he was.

17 Q Okay.

18 HEARING OFFICER CROWLEY: Again, we are looking at

19 People's Exhibit Number 5.

20 MR. GUBKIN: Yes. Thank you.

21 Q (By Mr. Gubkin) During your inspection on

22 June 24th of 1993, do you recall making any site

23 observations?

24 A Yes.

25 Q Okay. Could you tell us a little bit about

1 what they were?

2 A Some of the apparent violations that were  
3 observed was that the trenches were not being filled  
4 in sequential order. There was inadequate spreading  
5 and compacting of waste. Uncovered refuse had been  
6 left from the day before. There was an inadequate  
7 depth of daily cover over the waste.

8 MR. BENOIT: I am going to move to strike any  
9 answer involving the not filling the trenches in  
10 sequence. It is not a charge here, and it is not  
11 relevant.

12 HEARING OFFICER CROWLEY: And why is that?

13 MR. BENOIT: It is not charged in the complaint.  
14 It is not included in the complaint.

15 MS. MENOTTI: The violations that are listed, and  
16 may not be specifically listed on the complaint, go to  
17 show the way that the landfill was or was not  
18 maintained. It goes to the due diligence and the rest  
19 of the 42H factors, which the Board is required to  
20 consider under the Environmental Protection Act. So  
21 part of what is in the report goes directly back to  
22 allegations of the complaint. The rest of it goes to  
23 the operation, maintenance, due diligence, and  
24 everything of the violator in maintaining the landfill  
25 and doing what he was required to do under Illinois

1 law.

2 HEARING OFFICER CROWLEY: The document speaks for  
3 itself. We can strike that portion of the oral  
4 testimony that is not covered by the complaint.

5 Q (By Mr. Gubkin) Okay. Ms. Williams, you had  
6 mentioned adequate spreading and compacting and  
7 problems with uncovered refuse and inadequate cover.  
8 Were there other things that you wanted to say that  
9 you had observed as well before?

10 A There was litter in the areas of the site,  
11 and I had also marked that they did not have the  
12 proper financial assurance documents.

13 Q Okay. I would like to go and take those one  
14 at a time. Let's see. The first thing that we are  
15 able to talk about that you had mentioned was  
16 inadequate spreading and compacting. Could you talk a  
17 little bit about that? What did you see that day?

18 A As I recall, there were two areas of waste.  
19 They were not -- they were in different areas of the  
20 landfill. The area that was not receiving waste that  
21 day had different materials that were expanded in  
22 their original manner, such as I believe there were  
23 boxes and things like plastic jugs that had not been  
24 compacted. It was obvious that they had not been  
25 compacted.

1 Q Did you document that in your inspection  
2 report?

3 A I believe so. Let me take a look here.

4 Q How was it documented?

5 A In the narrative.

6 Q Okay. Was it in there in any other way? In  
7 the pictures?

8 A There is a checklist that goes with the  
9 inspection reports that lists the various violations  
10 to look for when doing an inspection. It was in  
11 there.

12 Q Are there any pictures that would show --

13 A Yes, there are.

14 Q -- the problems? Could you please point out,  
15 and I believe on there it is stated that the pictures  
16 are numbered. If you could identify that for the  
17 record, what would show it?

18 A Yes. In photo -- or actually roll M645,  
19 photo number two, if you look closely, there is a box  
20 that has obviously not been compacted.

21 HEARING OFFICER CROWLEY: Excuse me. Where is  
22 that located in the photo? The middle of the photo?  
23 The upper left?

24 THE WITNESS: It is towards the upper left of the  
25 center, slightly upper left of center. Then there are

1 other materials that appear like they would compact.  
2 There is also another box in the central portion of  
3 the photo to the right. There is some yellow, what  
4 appears to be yellow plastic bottles that are in their  
5 original form.

6 Q (By Mr. Gubkin) Okay. Any other pictures  
7 that would point out that especially well or is that  
8 it?

9 A Yes, photo M645 -- I am sorry. That is roll  
10 M645, photo number four, there are, again, what  
11 appears to be yellow oil bottles as well as pop  
12 bottles that are still expanded, completely expanded.  
13 And those are spread across just the central line of  
14 the photo. In the upper right of that photo is  
15 another box that is in its original shape.

16 Q Okay. Thank you, Ms. Williams. Could you  
17 tell us what is the problem with not spreading and  
18 compacting properly?

19 A When waste is not spread and compacted  
20 properly it can -- it will -- you will have air  
21 pockets in the waste, and then when it comes time to  
22 cover the material with soil it will eventually kind  
23 of droop down in the earth, in the terrain, it will,  
24 and that will cause cracks and erosion of the cover.

25 Q Okay. Another thing that you had mentioned



1 was uncovered refuse?

2 A Uh-huh.

3 Q What are the potential problems related to  
4 that violation?

5 A If refuse is not covered, you are going to  
6 likely have problems with windblown litter, possibly  
7 vectors being attracted to it.

8 Q I am going to stop you there for a second.  
9 Could you explain, for the record, what is a vector?

10 A A vector can be a variety of animals, such as  
11 birds or rodents or insects, that are capable of  
12 transmitting either directly or indirectly diseases to  
13 humans or an animal host.

14 Q Okay. And as to litter, you stated that  
15 Berger did, in fact -- you did observe litter that  
16 day?

17 A Yes, windblown litter.

18 Q What's the importance of daily cover?

19 A Again, if you don't have daily cover then you  
20 have -- you run the risk of having windblown litter,  
21 bad odors, attracting vectors.

22 Q Okay. I would like to move on to another  
23 inspection report.

24 HEARING OFFICER CROWLEY: Just one moment,  
25 please. I want to take a quick look before we move on

1 to other subject matter.

2 (The Hearing Officer reviewed document.)

3 HEARING OFFICER CROWLEY: Okay. Thank you.

4 Q (By Mr. Gubkin) I would like to direct your  
5 attention now to State's Exhibit Number 6. I believe  
6 that's the April 18th, 1994 report, the inspection  
7 report.

8 A Uh-huh.

9 Q You were the inspector for this report; is  
10 that correct?

11 A Yes.

12 Q Okay. And was Mr. Berger accepting waste on  
13 this day?

14 A No, not to my knowledge.

15 Q Okay. Do you recall making any site  
16 observations on your 18th inspection?

17 A Yes. I observed that -- what appeared as if  
18 a portion of the landfill that was beyond the  
19 permitted area had been filled with waste. I also  
20 observed that there were five areas where leachate was  
21 bubbling up from the surface of the soil --

22 Q Okay.

23 A -- of the ground.

24 Q Could you explain what leachate is?

25 MR. BENOIT: I am going to move to strike this

1 line of questioning. Again, this is not included in  
2 the complaint.

3 MR. GUBKIN: Are you talking about leachate not  
4 being included?

5 MR. BENOIT: Yes, leachate.

6 MR. GUBKIN: We, again, would say that this is one  
7 of the things that goes to the 42H factors. Also we  
8 believe that Ms. Williams' testimony will show that  
9 leachate is derived from other problems which were  
10 part of the complaint, and so it goes as evidence  
11 towards those, even though leachate itself might not  
12 have been put in the complaint.

13 HEARING OFFICER CROWLEY: I will allow the  
14 question.

15 MR. BENOIT: Excuse me?

16 HEARING OFFICER CROWLEY: I will allow the  
17 question.

18 Q (By Mr. Gubkin) Could you please explain what  
19 leachate is?

20 A Basically leachate is what you get when  
21 liquids, even such as rain water, comes in contact  
22 with the waste. It is the liquid that results from  
23 that.

24 Q Okay. And what does it indicate when there  
25 is leachate at a landfill?

1 A If it is observable, then, as it was on that  
2 day, apparently the cap or the covering in the  
3 landfill isn't sufficient to contain the contents of  
4 the landfill.

5 Q If there is leachate at a landfill, what is  
6 the problem with that?

7 A It can -- it could vary. It could be  
8 hazardous material and nonhazardous material, even  
9 though it is a nonhazardous landfill there is that  
10 potential for that to be there. And then there is --  
11 it could cause problems should it run off site, run  
12 into waterways, seep through the ground, and  
13 contaminate groundwater.

14 Q Okay. The other thing that you had mentioned  
15 marking on your inspection report was filling beyond  
16 the permitted area. Could you please tell us how far  
17 beyond the permitted area was Mr. Berger?

18 A I estimated that it had gone about 70 feet  
19 further south of the permitted boundary.

20 Q Okay. While you were doing your inspection,  
21 how did you know that Mr. Berger had gone beyond his  
22 boundary?

23 A There is a report, and it is called the soils  
24 and hydrogeologic investigation and recommended  
25 groundwater monitoring system report, which was

1 prepared on behalf of Mr. Berger. And that includes a  
2 map which shows that the permitted boundary of the  
3 landfill is directly west of, but no further south of,  
4 monitoring well G107. And that area went further  
5 south, approximately 70 feet south of monitoring well  
6 G107.

7 Q Okay. Thank you. Are those boundaries shown  
8 in the report, in the investigation report that you  
9 have?

10 A I included a copy of that map in this  
11 inspection report, and it does indicate it on here.

12 MR. GUBKIN: May I approach the witness?

13 HEARING OFFICER CROWLEY: Yes.

14 Q (By Mr. Gubkin) I am going to hand you this  
15 green highlighter. I was wondering if you could mark  
16 on the map there where monitoring well G107 is?

17 A Okay. (Witness complied.)

18 Q And about where -- I will give you this blue  
19 highlighter, and if you could mark the area where Mr.  
20 Berger had filled beyond the permitted area, a rough  
21 idea?

22 A Roughly (Witness complied.)

23 Q Okay.

24 MR. BENOIT: May I approach the witness and see  
25 what she is marking?

1 HEARING OFFICER CROWLEY: Yes. And could you

2 please initial those marks either in pen or --

3 Q (By Mr. Gubkin) Let me give you a pen.

4 A Thanks. (Witness complied.)

5 Q Okay. Let's move on now to your final

6 inspection report that we have there, Exhibit Number

7 7. That's the August 25th, 1995 inspection report?

8 A Uh-huh.

9 Q Do you recall making any site observations

10 during this 1995 inspection?

11 A Yes.

12 Q Okay.

13 A I noticed that vegetation had started to grow

14 over parts of the landfill. It appeared as if the

15 area that had gone beyond the permitted boundary

16 remained. I noticed that the roads there were

17 inadequate. I was not able to drive my vehicle on the

18 roads on the landfill.

19 This was more of, I guess, an in-house part of

20 that was to check our files to find out when the last

21 quarterly monitoring reports for the groundwater had

22 been received, and those were not on schedule, and

23 that the financial assurance documents were not

24 up-to-date.

25 Q Thank you. Again, I would like to take those

1 one at a time. In regards to filling beyond the  
2 permitted area --

3 A Uh-huh.

4 Q -- was this the same as in the previous  
5 inspection or were there other areas as well?

6 A It was the same area.

7 Q Okay. What work on the landfill did it  
8 appear that Mr. Berger had undertaken to correct the  
9 past violations that you had marked?

10 A I did not observe any leachate seeps as I had  
11 previously. It was not noted as a violation before,  
12 but I noticed that he had vegetated a lot of the  
13 landfill.

14 Q Okay. This inspection report that you did,  
15 did you go and do a full inspection -- maybe I should  
16 back up a little bit. Generally when you went to do  
17 an inspection of the landfill, was it normally custom  
18 for you to walk around, or did you do a drive by? How  
19 did you do your observation to do these inspections?

20 A Typically I would -- it varied. It varies.  
21 There were -- I note on the initial one I inspected  
22 the monitoring well to see what kind of shape they  
23 were in. I try to observe any cracks or erosion in  
24 the covering of the landfill to determine if waste was  
25 being accepted and, if so, what violations might be

1 involved with that, how they are filling.

2 Q During this 1995, August 25, 1995 inspection,  
3 did you do an inspection as you would normally do?

4 A I did not check out all of the monitoring  
5 wells, and because the vegetation was so high and  
6 thick it was not feasible to look over the surface of  
7 the landfill completely. However, there were some  
8 areas where it was apparent, such as I believe it was  
9 this one, where the area where the -- where it had  
10 gone beyond the permitted boundary, that was  
11 apparent. Like I said, the inadequate road, that was  
12 obvious.

13 Q Okay. Moving on to the groundwater  
14 monitoring, you mentioned a problem with that?

15 A What I checked were our files that we have.  
16 We receive those analysis at our office just so we  
17 have a copy of it. I don't review those records  
18 except to -- because I have a checklist to fill out  
19 and it has that on there, and it addresses failure to  
20 monitor things such as gas and water. I had checked  
21 our records and determined that they had not at least  
22 sent us copies of that information, which would  
23 indicate that they had not monitored that information.

24 Q Could you explain for us what is the  
25 significance of Mr. Berger not doing groundwater



1 monitoring, from an inspector's point of view?

2 A Okay. First of all, that is not typically my

3 background, groundwater. But it would --

4 MR. BENOIT: I am going to object. This calls for

5 an opinion and she just stated that she doesn't have

6 the background to offer the opinion.

7 (Ms. Menotti and Mr. Gubkin confer briefly.)

8 HEARING OFFICER CROWLEY: Is there any response?

9 MS. MENOTTI: I believe her answers indicated that

10 she doesn't evaluate the analytical results of

11 groundwater monitoring. It is in the checklist, and

12 she has marked it. It is her inspection report. I

13 think she could competently testify as to why she

14 checked that violation, and what the reason is for

15 monitoring or not for monitoring. Her experience is

16 not as a geologist but as an inspector, and this is

17 included in her report.

18 HEARING OFFICER CROWLEY: I am going to sustain

19 the objection to the question as posed.

20 You may try to rephrase.

21 Q (By Mr. Gubkin) When you do your inspections,

22 you have mentioned that you look for things such as

23 improper cover. You look for leachate, and you look

24 for improper compacting. What is the reason for

25 looking for those types of problems?

1 A Because -- well, all that is -- it is in the  
2 permit and there are reasons for the information that  
3 a permit requires certain ways that things are  
4 handled, the way that it is operated. It would help  
5 us to determine if there are currently problems at the  
6 landfill or if they might occur in the future to help  
7 us look for those.

8 Q In your 1995 inspection report -- sorry if I  
9 am jumping around a little -- but you mentioned  
10 something about problems with vegetation in the road.  
11 Are there any pictures and whatnot that depict this  
12 especially well?

13 A It was not -- the only area that I had  
14 problems with vegetation was on the roads. It made it  
15 difficult to get around to the site and to get to  
16 different areas and it would also make it difficult  
17 for someone else to do the same.

18 Q Is there anything within your inspection  
19 report, pictures or whatnot, that point that out well?

20 A Yes.

21 Q Could you for the record, please state which  
22 pictures those would be?

23 HEARING OFFICER CROWLEY: You are looking at  
24 Exhibit 7?

25 MR. GUBKIN: Yes, Exhibit 7, the August 25th, 1995

1 report.

2 THE WITNESS: Roll M1054, photo number four and  
3 photo number five, both indicate that vegetation was  
4 significantly high on the roadways. Those are the two  
5 that showed that.

6 MR. GUBKIN: Okay. Thank you. No more questions.

7 CROSS EXAMINATION

8 BY MR. BENOIT:

9 Q Did you bring with you today the Agency file  
10 pursuant to this notice?

11 A I don't believe I have seen that notice. I  
12 have brought with me some -- I have brought with me  
13 portions of the file.

14 MR. BENOIT: Maybe you brought what I am looking  
15 for.

16 HEARING OFFICER CROWLEY: I am sorry. I didn't  
17 hear the part when you --

18 MR. BENOIT: Maybe she brought what I am looking  
19 for today or maybe somebody has it.

20 Q (By Mr. Benoit) You mentioned soils and a  
21 hydro -- a recommended groundwater monitoring report  
22 or something. I think that's where you got the map  
23 that is attached to your inspection reports. Do you  
24 have that?

25 A I would have to check. I am not sure.

1 Q Is it --

2 MS. MENOTTI: Which inspection report and which  
3 map are you talking about?

4 Q (By Mr. Benoit) Can you identify for me which  
5 one I am talking about? You read it off when you were  
6 talking about the first inspection report. I think  
7 you referred to where you got that map.

8 A It is out of the April 18th, 1994 inspection  
9 report.

10 Q Okay.

11 A And I referred to it as the soils and  
12 hydrogeologic investigation and recommended  
13 groundwater monitoring system report.

14 Q I was wondering if you had that map?

15 A Do you want me to check?

16 Q Yes, if you could.

17 MS. MENOTTI: Could we have the record reflect  
18 that Ms. Williams brought the file that she keeps in  
19 her custody in the Marion regional office and that's  
20 the file that we will check to see if there is a full  
21 copy of the map that is included in the inspection  
22 report.

23 HEARING OFFICER CROWLEY: That is reflected in the  
24 record. We are pausing for a minute here.

25 (Whereupon a short recess was taken.)

1 HEARING OFFICER CROWLEY: Okay. We are back on the  
2 record.

3 Ms. Menotti.

4 MS. MENOTTI: Thank you, Ms. Hearing Officer. The  
5 State has reviewed Ms. Williams' file that she brought  
6 with her from the Marion regional office, which is the  
7 file that she keeps as an inspector in order to keep  
8 the file current and updated, and that she relies on  
9 in doing her inspections. What we have in that file  
10 are maps of the landfill. They appear to be  
11 development maps which were submitted by the  
12 Respondent to the EPA.

13 As far as they relate to Exhibit Number 6, the two  
14 maps are incorporated therein as part of Ms. Williams'  
15 inspection report. They are maps that are similar but  
16 not exact. The originals would be kept in  
17 Springfield, in the division file. Some of that  
18 information is kept on microfilm as part of the  
19 Agency's administrative record keeping procedures.

20 The one thing that we can say is that the maps  
21 that are included herein, that we don't have complete  
22 big copies of, were submitted to the Agency by the  
23 Respondent. So the Respondent should have some sort  
24 of copies of these in their possession. If we can  
25 determine that it is the same map, the State will not

1 object to the Respondent asking questions, if they can

2 produce their copy of the map right here while Ms.

3 Williams is testifying.

4 MR. BENOIT: Okay. Are we ready to proceed?

5 Q (By Mr. Benoit) Which IEPA office do you work

6 out of?

7 A The Marion office.

8 Q The Marion office?

9 A Uh-huh.

10 Q What did you do to prepare for your testimony

11 here today?

12 A I reviewed some of our files and spoke with

13 Maria Menotti and Josh Gubkin.

14 Q When you say some of your files, can you be a

15 little more specific as to what you reviewed?

16 A I glanced through the permit file and I went

17 through portions of the field file. That is the one

18 that contained the inspections that I did and I

19 reviewed those.

20 Q Is the field file what Maria just referred to

21 as your personal file that you use?

22 A That would be part of it.

23 Q Are there two sets of files kept at the

24 Marion office, one for you and one for the office?

25 A No, there is just one file and that's the

1 office files.

2 Q Who is your supervisor?

3 A Gary Steel.

4 Q How long has he been your supervisor?

5 A Just over five years. Well, I did have  
6 another supervisor for a short time before he became  
7 my supervisor, but about five years.

8 Q Was he your supervisor at all times that you  
9 made inspections of the Berger Landfill?

10 A I believe during my first inspection, during  
11 June of 1993, Leonard Hopkins was my supervisor.

12 Q For the remaining inspections that you  
13 conducted, was Gary Steel your inspector -- or your  
14 supervisor?

15 A I believe so.

16 Q How many landfills are you assigned to  
17 inspect?

18 A They are not assigned specifically. We have  
19 inspectors that we -- it varies. If one inspector  
20 inspects a landfill and then he or she might do a few  
21 inspections and possibly, if job duties change,  
22 someone else might start inspecting a landfill.

23 Q I am talking about the Marion office policy  
24 between June 24th, 1993 and August 25th, 1995, there  
25 was no policy to assign a certain inspector to a

1 certain landfill?

2 A I don't believe so. My duties are primarily  
3 as a solid waste inspector, so I would most likely be  
4 the inspector for that. That is not to say that  
5 someone else might do an inspection at a landfill,  
6 although I was the inspector between those -- at those  
7 times.

8 Q What do your duties include beside inspecting  
9 landfills?

10 A I respond to complaints. I inspect a lot of  
11 unpermitted landfills and open dumps. Those would be  
12 my primary duties.

13 Q What equipment do you bring along when you  
14 inspect a landfill?

15 A Typically I have a clipboard with note pad  
16 and a pen, a camera, my boots, bug spray, and that's  
17 about it.

18 Q Do you bring anything to make measurements  
19 with?

20 A No, I don't. I do usually have a tape  
21 measure with me, but I usually pace off areas.

22 Q Now, from your past experience inspecting the  
23 Berger Landfill, are you familiar with what it looks  
24 like?

25 A For the most part.



1 Q Is the last time that you were out to the

2 Berger Landfill August 25th, 1995?

3 A Yes.

4 Q What did the -- why don't you just describe

5 the landfill at that time?

6 A As I said earlier, the roads had heavy

7 vegetation over them, and made it difficult to get

8 around. There was vegetation covering a lot of the

9 landfill. I believe there was a monitoring well G107.

10 Q Okay. I guess what I am looking for is -- I

11 am trying to give the Board a general idea of what

12 this landfill looks like. Is this a landfill -- what

13 is the elevation, the top elevation of the landfill?

14 A I don't know what it is.

15 Q This is a trench type landfill?

16 A Trenches were used for -- to put waste in.

17 Q Can you describe to the Board what a trench

18 would look like when it was filled? In your

19 description assume that the land is flat around it and

20 then it is filled. I mean, does it mound up, you

21 know, ten feet?

22 A I don't know how much. It would depend on

23 how much waste was put in there. And then you should

24 have two feet of compacted soil on top of that.

25 Q I am asking what did it look like on August

1 25th, 1995?

2 A Okay. There were a few areas that it was  
3 apparent that it had been mounded.

4 Q Okay. Does this landfill more resemble a  
5 pasture or a mountain?

6 A I would say a rolling pasture.

7 Q And if you were driving by this landfill on  
8 August 25th, 1995, and looked out into it, would the  
9 normal person assume it is a pasture?

10 MS. MENOTTI: Objection. Calls for speculation.  
11 He hasn't established personal knowledge. Assumes  
12 facts not in evidence.

13 Q (By Mr. Benoit) If you didn't know it was a  
14 landfill, and you were driving by this landfill, what  
15 would you think it was?

16 MS. MENOTTI: Objection. Calls for speculation  
17 and it is asking the witness about facts that are not  
18 in evidence. It is also asking the witness to  
19 disregard knowledge that she has, and presume that she  
20 is in someone else's position. It is improper  
21 questioning.

22 HEARING OFFICER CROWLEY: I am going to sustain  
23 the objection.

24 MR. BENOIT: Okay.

25 Q (By Mr. Benoit) Isn't it true that your

1 office inspected the Berger Landfill on September

2 21st, 1982, and did not inspect it again until

3 February 17, 1988?

4 A I would have to review the files.

5 MR. GUBKIN: Excuse me. I am sorry. What were

6 those dates?

7 MR. BENOIT: The first date was September 21st,

8 1982, and then the next date was February 17th of

9 1988.

10 MR. GUBKIN: Thank you.

11 MS. MENOTTI: Objection. Relevance.

12 HEARING OFFICER CROWLEY: Any response?

13 MR. BENOIT: I think it is relevant as far as the

14 frequency of inspections. It shows the concerns that

15 the Agency might have had about this landfill.

16 HEARING OFFICER CROWLEY: It is outside the period

17 of the complaint, so I will sustain the objection.

18 Q (By Mr. Benoit) How many times has the

19 landfill been inspected between September of 1992 and

20 August of 1995?

21 A I don't know.

22 Q Would you believe five times?

23 A I would have to check the file.

24 Q Do you want to check your file?

25 A I was not even at the Marion office until May

1 of 1993. I don't know off the top of my head when it  
2 was inspected prior to that.

3 Q Okay. Now, you have reviewed the Marion  
4 file?

5 A I have gone through it, yes.

6 Q And that file contains all the inspection  
7 reports?

8 A To the best of my knowledge.

9 Q Now, the Attorney General has asked you  
10 questions regarding Counts 3, 4 and 5 of the first  
11 amended complaint. I am going to just follow-up on  
12 those questions. Count 3, just to refresh your  
13 memory, generally involves litter compaction and cover  
14 problems. And that's based on the inspection you  
15 conducted on June 24th, 1993; is that correct?

16 A I believe so.

17 Q Now, without having reviewed your inspection  
18 report, would you even recall this inspection  
19 conducted over five years ago?

20 A Yes.

21 MS. MENOTTI: Objection. Relevance. It is past  
22 recollection recorded. Whether or not she would  
23 independently remember it, asks her to speculate and  
24 pretend that she had not prepared for her testimony  
25 and had not reviewed the file in the course of her

1 duties at the Illinois EPA.

2 MR. BENOIT: I just thinks it goes to her

3 credibility.

4 HEARING OFFICER CROWLEY: Well, she had already

5 answered the question, and the answer was yes before

6 the objection was interposed.

7 Q (By Mr. Benoit) So you remember that

8 inspection?

9 A I probably wouldn't be able to remember the

10 date, but I remember it especially since it was my

11 first one. I remember going there.

12 Q Okay. And who directed you to make this

13 inspection?

14 A It was either Leonard Hopkins or Gary Steel.

15 Q Why did they direct you to make this

16 inspection?

17 A I suppose because they thought it needed to

18 be inspected. I don't know what they were thinking

19 specifically.

20 Q But they did direct you to make this

21 inspection?

22 A I believe so.

23 Q Why is it that four inspectors were sent out

24 to inspect a landfill of this size?

25 A There were actually three inspectors. One of

1 them was Bart Hagsten (spelled phonetically) and he  
2 was a summer intern. And then there were three  
3 inspectors. The other two were inspectors that had  
4 been to the landfill before, and they were there to  
5 familiarize me -- to help me become familiar with that  
6 specific landfill.

7 MR. BENOIT: I am going to hand the exhibit,  
8 Exhibit R25, to the witness, which is a memo dated --

9 MS. MENOTTI: Can you speak up so we can hear  
10 you? Your voice doesn't carry.

11 MR. BENOIT: Okay. I am going to hand the witness  
12 Exhibit R25. It is a March 25th memo, a March 25th,  
13 1993 memo to Bernie Jern, Division of Legal Counsel,  
14 from John Taylor, Bureau of Land.

15 Q (By Mr. Benoit) Is that document included in  
16 your files at the Marion office?

17 A I would assume it is. I don't know that for  
18 a fact.

19 Q Do you see at the bottom of the document?

20 A That's why I am assuming it is, yes.

21 Q Do you rely on the documents in your files in  
22 the normal course of carrying out your duties?

23 MS. MENOTTI: Could you speak up, please?

24 Q (By Mr. Benoit) Do you rely on the documents  
25 in your file in the normal course of performing your

1 duties as an inspector?

2 A Yes.

3 Q Those files are kept in the normal course of  
4 business?

5 A Yes.

6 MS. BENOIT: I am going to move to have that  
7 admitted.

8 HEARING OFFICER CROWLEY: Can I see it?

9 MR. BENOIT: Sure.

10 MS. MENOTTI: I have an objection to the admission  
11 of that document into evidence. First of all, he has  
12 not established that this witness relied upon it. He  
13 has not laid proper foundation for the admission of  
14 it. He has not laid the foundation for who generated  
15 it. And he has not established that it is otherwise  
16 relevant to this witness' testimony.

17 MR. BENOIT: I am just looking at the rules  
18 governing these Board hearings. The Hearing Officer  
19 may receive evidence which is material, relevant and  
20 would be relied upon by a reasonably prudent person in  
21 the conduct of serious affairs. She relies on her  
22 files. She indicates it was received by the Marion  
23 office. She already testified that there is only one  
24 file. It is not like her file and somebody else's  
25 file.

1 HEARING OFFICER CROWLEY: Thank you. Section  
2 103.208, admission of business records in evidence,  
3 would also lead me to admit this document which is a  
4 document on Illinois EPA letterhead, which appears to  
5 be an internal memorandum which was copied to the  
6 division file and to the Marion region file.

7 So we will accept into evidence Respondent's  
8 Exhibit Number 25.

9 (Whereupon said document was admitted into  
10 evidence as Respondent's Exhibit 25 as of this  
11 date.)

12 MR. BENOIT: Can I give it back to the witness to  
13 look at for a second?

14 (Document passed to the witness.)

15 Q (By Mr. Benoit) Now, your supervisor at that  
16 time, either Leonard Hopkins or Gary Steel, did not  
17 direct you to go out to the landfill as a result of  
18 your office receiving that memo, did they?

19 A I don't know.

20 MS. MENOTTI: Objection. He has not established  
21 the witness' personal knowledge. The witness cannot  
22 testify to what someone else was thinking.

23 HEARING OFFICER CROWLEY: She has already answered  
24 the question. She has said she doesn't know.

25 Q (By Mr. Benoit) What does Exhibit Number 25



1 refer to or what is the general gist of that memo?

2 A It looks like it states that the Berger

3 Landfill has failed to provide certain financial

4 information or financial assurance, and has failed to

5 provide the current cost estimate, as required.

6 Q Before you ventured out on your inspection of

7 June 24th of 1993, it is your testimony that you

8 didn't know anything about that exhibit; is that

9 right?

10 A I don't recall if I knew about it or not.

11 MR. BENOIT: Okay. I am going to next show her

12 26A, which is what we talked about stipulating to, and

13 you say no because --

14 MS. MENOTTI: It has been marked by someone prior

15 to being entered into evidence.

16 MR. BENOIT: Right. I am going to get a new copy

17 and have it introduced by Wayne Berger and --

18 MS. MENOTTI: It is still marked up.

19 MR. BENOIT: No, I am just showing you what I am

20 going to show her now. I realize that you object to

21 it.

22 MS. MENOTTI: Can I have a copy, please?

23 MR. BENOIT: I don't have any copies. That is why

24 this note says no copies.

25 MS. MENOTTI: I don't know what your writing

1 means. I presume a copy will be made available?

2 MR. BENOIT: If I can find a copier. I am going

3 to show the witness what I have marked as Exhibit

4 R26A. It is a June 1st, 1993 enforcement notice

5 letter sent to Mr. Berger by Joe Sabota (spelled

6 phonetically) General Counsel, Division of Legal

7 Counsel at the IEPA. It is a two-page document.

8 Q (By Mr. Benoit) Do you recognize that

9 document?

10 A To the degree that it is a form letter on

11 Agency stationery. I imagine if it is in our files

12 that I have reviewed it before.

13 Q Did you have knowledge of that document

14 before you went out on your inspection on June 24th,

15 1993?

16 A I don't recall.

17 Q All right. Now, other than what you

18 testified to earlier to my questions, did anybody give

19 you any reason as to the purpose behind the June 24th,

20 1993 inspection?

21 A I don't remember.

22 Q Okay. Now, you still have all of the

23 inspection reports before you?

24 A Yes.

25 Q Okay. Now, on June 24th, 1993, you arrived

1 at the landfill at 9:50 a.m.; is that correct?

2 A That's what it says.

3 Q I am not asking what it says. Is that  
4 correct?

5 A I am assuming that is correct since that is  
6 what it says.

7 Q Okay. What was going on when you arrived at  
8 the landfill?

9 A The narrative reflects that Mr. Westbrook and  
10 I and one of the other inspectors spoke with Mr.  
11 Berger to let him know that --

12 Q Do you recall speaking with Mr. Berger?

13 A Not at that time.

14 Q Okay. Go on.

15 A To let him know that we were going to conduct  
16 an inspection.

17 Q Was Mr. Berger hostile to you in any way at  
18 that time?

19 A Not that I recall.

20 Q At that time the landfill was operating; is  
21 that correct?

22 A Yes.

23 Q And I think the report states, does it not,  
24 that the areas not being worked were in good  
25 condition?

1 A Let's see. Yes. Appears to be in good

2 condition.

3 Q You had no trouble driving down the landfill

4 road at that time?

5 A I don't believe so.

6 Q Do you recall having any trouble driving down

7 the landfill road?

8 A No.

9 Q Did you drive down the landfill road?

10 A I was in a vehicle. I don't know if I was

11 the one driving, but I was in a vehicle driving around

12 the landfill.

13 Q Look at the pictures that are attached. It

14 is picture number nine. You see a vehicle in that

15 picture. Is that the vehicle that the inspectors were

16 in?

17 A Yes.

18 Q Were you driving that vehicle?

19 A I don't remember if I was driving or not.

20 Q Okay. Also attached to the inspection report

21 and, again, I think we are referring to State's Number

22 5; is that correct?

23 A Yes, June of 1993.

24 Q There is a diagram of the landfill or a map;

25 is that correct?

1 A Yes, a site sketch.

2 Q And on that drawing there is an area marked A

3 and an area marked B. Do you see where that is at?

4 A Yes, I do.

5 Q Are you the person that made the marks on

6 this map?

7 A Yes, I am.

8 Q Okay.

9 HEARING OFFICER CROWLEY: For the record, this is

10 the first map that follows the end of the narrative

11 inspection report. This is not the document that was

12 previously marked at this hearing.

13 Q (By Mr. Benoit) She is looking at State's 5,

14 right?

15 A Yes, the first one.

16 Q Okay.

17 HEARING OFFICER CROWLEY: I am interested that the

18 record make this fully clear, because it is sometimes

19 hard to follow when you are reading the transcript,

20 which exhibits are being referred to and exactly which

21 of several maps that may be attached.

22 Q (By Mr. Benoit) Do you see or do you notice

23 on the map that some of the cells have hash marks

24 through them?

25 A Uh-huh.

1 Q What does that indicate?

2 A At the bottom of the map it says that these  
3 are closed cells.

4 Q Okay. Now, looking at the map, and going  
5 west of monitoring well 107, where it is marked there,  
6 you see a curved line designating the contours of the  
7 permitted area; is that correct?

8 A I would think that it -- I am sorry. Can you  
9 be more specific which lines you are talking about?

10 Q I am referring to this portion of the map  
11 (indicating).

12 A I know the area, but I can't see what  
13 specifically you are talking about.

14 Q Okay. There is monitoring well 107, and  
15 there is a curve here (indicating).

16 A The top line?

17 Q Yes.

18 A Okay.

19 Q It curves generally in a northwest direction,  
20 right?

21 MS. MENOTTI: Could I see what it is you are  
22 talking about? I don't know what part of the map you  
23 are pointing to.

24 MR. BENOIT: Right here (indicating).

25 MS. MENOTTI: Could we maybe clarify, for the

1 record, Ms. Hearing Officer, maybe on the exhibit or  
2 something, so that when the Board sees this in the  
3 transcript they know.

4 HEARING OFFICER CROWLEY: That would be helpful.  
5 That is a map that is very dense with information.

6 MR. BENOIT: Yes, I understand. Would it be  
7 permissible for me to mark the map and ask for her to  
8 describe the area that I am marking?

9 MS. MENOTTI: I am sorry. I didn't hear the  
10 question.

11 MR. BENOIT: Would it be okay with you if I marked  
12 the map and say describe the --

13 MS. MENOTTI: I would prefer that she mark it.  
14 She is the witness, and she would have to initial it  
15 in order for it to go before the Board.

16 MR. BENOIT: Okay.

17 MS. MENOTTI: As Counsel you can't testify and you  
18 can't initial the exhibit for what you are talking  
19 about.

20 MR. BENOIT: I understand that. I am just trying  
21 to think of the easiest way to do it.

22 MS. MENOTTI: I don't have any objection if you  
23 tell her what part you want marked and what part you  
24 want to talk about.

25 MR. BENOIT: Okay.

1 MS. MENOTTI: I just think she has to do it.

2 MR. BENOIT: Starting where monitoring well 107

3 is, right along that line, if you could draw a yellow

4 line for me in a westerly direction?

5 A That line?

6 Q The one inside. The one that I am assuming

7 is the boundaries of the landfill.

8 MS. MENOTTI: Ms. Hearing Officer, may I approach

9 to make sure that I have my exhibit marked right as to

10 what she is marking for the Board?

11 HEARING OFFICER CROWLEY: Yes.

12 MS. MENOTTI: Thank you.

13 HEARING OFFICER CROWLEY: If you would just

14 double-check that she has marked what you wanted

15 marked.

16 MR. BENOIT: Okay. Yes, that's fine. Let the

17 record reflect that the witness just put a yellow line

18 towards the western boundary of the map, or plan,

19 attached to State's Exhibit Number 5, and has placed

20 her initials next to that yellow line.

21 Q (By Mr. Benoit) Now, starting on the property

22 line on the western most portion of the map where you

23 have marked that yellow line, can you describe what is

24 the land just south of that yellow line? In other

25 words, just to give an example to let you know, is



1 there grass growing there or is it a forest or what is

2 it?

3 A It doesn't show that on this map.

4 Q I understand that. You are familiar with the

5 Berger Landfill, right?

6 A You are just asking me?

7 Q Right.

8 A I believe there was -- part of it was just

9 thick with vegetation and then I believe there was a

10 tree line set back a ways.

11 Q Okay. When you say vegetation, what do you

12 mean?

13 A Grass, weeds, growing.

14 Q Okay. Did that continue -- these cells are

15 marked on this map. Can you tell me how far along

16 this grass and weeds and stuff, you know, about where

17 the yellow line is, under which cell did that grass

18 and weeds stop at, or did it stop? Or did it go all

19 the way to monitoring well 107?

20 A I am sorry. I am not following you.

21 Q What I am trying to get you to describe for

22 the Board is what type of vegetation, trees, or

23 nothing, maybe it is a lake for all I know, borders

24 the boundary of the landfill on the areas I have had

25 you mark yellow?

1 A I don't know the specific types. There were  
2 not -- there was not a tree line bordering the  
3 permitted area. There was grass along that area.

4 Q Okay. So is the answer to my question that  
5 you don't know or --

6 A What was your question?

7 Q There is just grass bordering this. Is it  
8 your testimony that the whole yellow line would be  
9 outside the permitted area, which is south of the  
10 yellow line, would be grass?

11 A I would tend to say yes. I am -- I don't  
12 know exactly because I am -- I tried to observe the  
13 permitted area, the area that was being filled and  
14 designated as the area to accept waste.

15 Q Okay. This is kind of a lead in question,  
16 too. One of the counts alleged, obviously, is outside  
17 the permitted area.

18 A Uh-huh.

19 Q So I am trying to establish why we have this  
20 map. You know, how could you tell if you were in or  
21 out? Are these maps accurate and things along that  
22 line. I guess what you are telling me is that at this  
23 time on this map you think it was grass outside the  
24 permitted area?

25 A I would think so.

1 Q But you are not sure?

2 A I don't remember.

3 Q Could it have been brush?

4 A It could have been any kind of vegetation  
5 just growing there.

6 Q All right. Now, again, on this same map and  
7 it is the map that you marked the yellow line on  
8 again, there is areas marked A and B; is that correct?

9 A Yes.

10 Q Are you certain that areas A and B are  
11 located in the trenches numbered 83D and 80D?

12 A I am not certain. Those were the approximate  
13 locations.

14 Q How did you determine that those were the  
15 approximate locations?

16 A I tried to take into account the location of  
17 the roads and monitoring well 107, and try to just  
18 estimate from the -- from those kinds of landmarks.

19 Q But you didn't measure anything?

20 A No.

21 Q It is just an estimation?

22 A No, they were not marked off.

23 Q The reason I am asking these questions is I  
24 think that later testimony is going to show --

25 MS. MENOTTI: Objection. Is this argument of  
139

1 Counsel?

2 MR. BENOIT: Never mind. I will withdraw that.

3 Q (By Mr. Benoit) Okay. The report states that

4 A, area A, was not being worked at the time of the

5 inspection; is that correct?

6 A I believe so. Let me check. Yes, that's

7 right.

8 Q Was work being conducted on area B while you

9 were there?

10 A Yes.

11 Q What type of work?

12 A There was a piece of heavy equipment in area

13 B. I believe it was going over the refuse in that

14 area.

15 Q What do you mean by going over?

16 A So as to compact it.

17 Q It was compacting it?

18 A (Nodded head up and down.)

19 Q Okay. Now, as to area A, your report states

20 that refuse in area A was not compacted and that there

21 was inadequate daily cover on area A; is that right?

22 A I believe that was right. I will try to

23 confirm it here. Area A, inadequate spreading and

24 compacting, uncovered refuse, yes.

25 Q You don't really have a clear recollection of

1 this inspection, do you?

2 A I remember going there. I remember these  
3 photos, the things that I had seen. I am trying to  
4 make sure that what you are saying is true and  
5 correct. What I put in this report is true and  
6 correct to the best of my knowledge, and that's what I  
7 am referring to to make sure I am answering accurately  
8 at this time.

9 Q Okay.

10 MS. MENOTTI: For the record, the inspection  
11 report is her past recollection recorded for this  
12 inspection.

13 Q (By Mr. Benoit) Now, in area A there was some  
14 cover present; is that true?

15 A It looks like in photo M -- I am sorry --  
16 roll M645, photo one, it looks like there is dirt,  
17 soil, that has been mixed with some of the waste.  
18 That is on the left side of the photo.

19 Q Would your answer be that there was some  
20 cover?

21 A I don't know if this was cover or if it was  
22 just -- if it just got mixed in with the soil as it  
23 was being placed in the area.

24 Q I guess the reason I am asking these  
25 questions is, is there a difference between -- I mean,

1 when I read the word inadequate, inadequate daily  
2 cover, it means that there was some, or is there  
3 another violation that you would check off for no  
4 cover?

5 A Okay. The daily cover would -- it would  
6 require, I believe, that six inches of cover be placed  
7 over refuse at the end of each day. Okay. Now, I  
8 don't know if the Regulations specify if it is -- if  
9 there is a difference between inadequate and there is  
10 absolutely none or -- I just don't know.

11 Q Is your answer that there was some cover?

12 A Like I said, it is not possible to determine  
13 if this was cover or if it was -- it had just been  
14 mixed in with the soil as the trash was being  
15 deposited.

16 Q Now, the inspection report states that area A  
17 was approximately 30 foot by 60 foot in size; is that  
18 right?

19 MS. MENOTTI: While she is looking, I am going to  
20 have to object for the record. It appears that  
21 Counsel is just basically asking her to reiterate what  
22 is in this report. If we are going to go through the  
23 report piece by piece, the report is already in  
24 evidence for the Board to consider. I don't object to  
25 the Respondent asking questions regarding the pictures

1 or how she generated things, but merely reading the  
2 violations and the narrative into the record is only  
3 wasting our time.

4 MR. BENOIT: I am just setting the groundwork for  
5 the other questions that I am asking. I am trying to  
6 see what she has in that report and whether her  
7 answers are going to correspond with that report.

8 HEARING OFFICER CROWLEY: I certainly agree that  
9 the document is in the record. It speaks for itself.  
10 If you are moving towards something then we will allow  
11 the questioning to continue.

12 MR. BENOIT: Okay.

13 Q (By Mr. Benoit) What was the size of the area  
14 of uncompacted refuse in area A?

15 A Approximately 30 feet by 60 feet.

16 Q Okay. The inspection report says area A was  
17 that size. So the whole entire area A was covered  
18 with uncompacted refuse, is that your testimony?

19 A Based on the photos, yes.

20 Q Can I see those photos?

21 A Sure. It may have been with the exception of  
22 roll M645, photo number one. There may have been some  
23 waste that was compacted. It looks like it was a  
24 minor amount, and it is possible that it was done just  
25 from the deposition of the rest of the waste.

1 Q Do you recall the depth of area A?

2 A It was not measured as far as I know.

3 HEARING OFFICER CROWLEY: I am sorry. I didn't  
4 hear you.

5 THE WITNESS: It was not measured as far as I  
6 know.

7 HEARING OFFICER CROWLEY: Okay. Thank you.

8 Q (By Mr. Benoit) At the time of the  
9 inspection, did you ask Wayne Berger why area A was in  
10 the condition you observed?

11 A I don't recall.

12 Q The inspection report also notes that -- or  
13 notes a litter violation. What was the volume of that  
14 litter?

15 A It was not measured.

16 Q Well, can you describe it for us here today?  
17 Was it a handful?

18 A A little more. It was a fence line. If you  
19 want to refer to roll M645, photo number five, you can  
20 see various windblown litter along that fence line.

21 Q What was the purpose of that fence?

22 A Possibly to mark off the property line.  
23 Possibly to help contain some of the litter.

24 Q Was there also other fences on site to  
25 contain litter during that inspection?



1 A I don't recall.

2 Q So the fence where you saw the litter, was  
3 designed to catch litter?

4 A I think it may have been. I don't know that  
5 it was, for a fact.

6 Q Again, can you describe, again, the amount of  
7 litter you observed?

8 MS. MENOTTI: Objection. Asked and answered.

9 MR. BENOIT: She didn't give me a full answer.

10 HEARING OFFICER CROWLEY: I believe she did.

11 MR. BENOIT: Can you read it back for me, please.

12 (Whereupon the requested portion of the record was  
13 read back by the Reporter, the question and answer  
14 found at page 143, line 8 through 12.)

15 MR. BENOIT: I don't think that describes the  
16 quantity.

17 Q (By Mr. Benoit) A little more than a handful,  
18 is that your --

19 A I --

20 MS. MENOTTI: Excuse me. Objection. He already  
21 asked her to try to quantify the volume, and she  
22 answered the question. Unless there is the  
23 determination that her answer is not responsive, the  
24 question has been asked and has been answered. He  
25 just reasked the question.

1 MR. BENOIT: This guy is being persecuted here,  
2 and we are talking about a handful of litter. I want  
3 to show that this is a de minimis violation. I think  
4 I am entitled to know whether is it a little Wal-Mart  
5 bag full, is it five pieces of paper, is it a truck  
6 load.

7 HEARING OFFICER CROWLEY: I believe that we have  
8 testimony that refers us to a photograph which  
9 portrays the amount of litter that there was. I  
10 believe the witness has said it was more than a  
11 handful, in response to your question was it a  
12 handful.

13 If you have anything to add to what was in the  
14 photo you may do so. If you don't, please tell us  
15 that.

16 THE WITNESS: Okay. This photo, or roll M645,  
17 photo five, it just indicates that there was windblown  
18 litter. However, that is not to say that there was no  
19 more than what is shown in this photo.

20 Q (By Mr. Benoit) How much was there?

21 A I believe I already said that I don't  
22 remember it being measured at that time.

23 Q Was there litter in other places in the  
24 landfill that you didn't note in your inspection  
25 report?

1 A Not that I remember.

2 Q Okay. The inspection report states that at  
3 the time of that inspection Berger had financial  
4 assurance filed with the Agency in the amount of  
5 \$38,398.00. How is it that you were aware of the  
6 financial assurance situation and chose to include it  
7 in the inspection report? This was your first  
8 inspection, right?

9 A Yes, at this landfill it was. I believe that  
10 information had been in our files in our -- in the  
11 files at our office. I am sorry. What was the second  
12 part of your question?

13 Q That's it. How is it that you were aware of  
14 this, and the information was in your files?

15 A Yes.

16 Q So you were aware that there was a financial  
17 problem going on there before you went out on the  
18 inspection?

19 A No.

20 Q No?

21 A No, I am not saying that is the case. It was  
22 not -- it is not required that the files be reviewed  
23 prior to going out to the site. I typically review  
24 the files after doing an inspection. And the reason  
25 why -- I believe that was the second part of your

1 question, and I don't remember how you worded it, but  
2 something to the effect of why I mentioned it or  
3 something like that. It came up because it was in the  
4 checklist. Since it was in the checklist that I was  
5 to go through, I referred back to the files which  
6 indicated that there were some problems with financial  
7 assurance.

8 Q So when you are out at a landfill you make  
9 notes but not necessarily on a document that looks  
10 like State's Number 5, the actual inspection report?

11 A No, I don't take that out with me.

12 Q Okay. So you do make notes when you are out  
13 on the site?

14 A Yes.

15 Q That's on the clipboard that you talked about  
16 before?

17 A Right.

18 Q What happens to those notes?

19 A They are transcribed into an inspection  
20 report, and then they are thrown away.

21 MS. MENOTTI: Excuse me. Could we go off the  
22 record for one minute?

23 HEARING OFFICER CROWLEY: Certainly. Let's take a  
24 five minute break.

25 (Whereupon a short recess was taken.)

1 HEARING OFFICER CROWLEY: We are back on the  
2 record after a short break.

3 Q (By Mr. Benoit) I am finished asking  
4 questions regarding the June of 1993 inspection. And  
5 I am going to move on to what would be State's Exhibit  
6 Number 6 before you, involving -- it is your  
7 inspection report stating that the Respondent  
8 deposited waste outside the permitted boundaries of  
9 the landfill. That inspection was conducted on April  
10 18th, 1994, correct?

11 A Yes.

12 Q Why were you back out inspecting the landfill  
13 so soon?

14 A Just to do another inspection. I don't  
15 recall any certain reason.

16 Q Who directed you to conduct the inspection on  
17 April 18th, 1994?

18 A It may have been my supervisor, Gary Steel.  
19 I may have been in the area for other inspections. I  
20 just don't remember.

21 Q Before you went out to inspect on April 18th,  
22 1994, were you aware that the landfill had stopped  
23 accepting waste?

24 A I don't remember if I was aware of that or  
25 not. I may have been.

1 Q The inspection report states that the  
2 landfill was covered with soil and appeared in good  
3 condition; isn't that right?

4 A Yes.

5 Q And the only apparent violation noted was  
6 that the landfill had gone beyond its permitted  
7 boundary on the southwest region; is that correct?

8 A Yes.

9 Q Did you advise Mr. Berger of your  
10 observation?

11 A I don't remember if he was at the site or  
12 not. Oh, I guess that was the time I spoke with his  
13 wife, Mrs. -- no. Let's see. I guess I did speak  
14 with Mr. Berger. I don't remember if I spoke with him  
15 after the inspection or not.

16 Q What is your normal practice? After you  
17 finish an inspection and you find what you call an  
18 apparent violation, do you advise the owner or  
19 operator of that if they are on site at that time?

20 A Yes, I usually do.

21 Q Do you generally tell them how to correct  
22 what you deem an apparent violation?

23 A I may make suggestions.

24 Q Did you do that in this case?

25 A As I said, I don't remember if I spoke to him

1 after the inspection or not.

2 Q Have you ever told Mr. Berger how to correct  
3 this alleged depositing waste outside the permitted  
4 boundaries of the landfill violation?

5 A I don't remember that I have told him how to  
6 do that.

7 Q Now, attached to the inspection report is a  
8 map. You have previously marked on the map for Mr.  
9 Gubkin; is that correct?

10 A Yes.

11 Q In blue ink indicating the area where you  
12 state the alleged disposing outside the permitted area  
13 boundary occurred; is that right?

14 A Yes, it is rough, but that's what I  
15 attempted.

16 Q Do you see the curving lines of -- I want you  
17 to flip to the other map that is attached to that, the  
18 one that shows the cells.

19 A Uh-huh.

20 Q Do you see the curving lines in the -- on the  
21 map, and around the -- within those curving lines it  
22 says, this area not permitted?

23 A Yes.

24 Q What do those curving lines represent?

25 A Those are elevation levels.

1 Q And do those elevation levels correspond with  
2 your recollection of the area marked this area not  
3 permitted?

4 A What do you mean? I don't know what you  
5 mean.

6 Q Are the elevation lines on the map accurate,  
7 as far as your recollection of that not permitted  
8 area?

9 A I am assuming that they are accurate. I  
10 don't know for a fact that they are.

11 Q Based on your inspections at the landfill,  
12 and you are familiar with the landfill, do those lines  
13 show that the land is dropping from the point of  
14 groundwater monitoring well 107 or G107, however it is  
15 marked there?

16 A It is difficult to see, for me anyway, to  
17 tell from this map.

18 Q Okay. Let's look at it another way. If you  
19 were standing at monitoring well G107, and you were --  
20 well, actually, on this map you are looking at 107 --  
21 I think the G is blocked out -- and you were looking  
22 south. Would the land drop off?

23 A From what I remember, yes.

24 Q And when you were out at the landfill and  
25 standing there, in fact, that's how it was?



1 A From what I remember, yes.

2 Q You didn't measure where groundwater  
3 monitoring well 107 or G107 was located?

4 A Measure it in regards to what?

5 Q Step it off? I think you testified earlier  
6 you would step it off. To see that, in fact, where  
7 this map shows 107 is where, in fact, it is?

8 A This map is not to scale.

9 Q Okay.

10 A Okay. These are approximate areas. But when  
11 I was at the landfill, I think it was during this  
12 inspection, I stepped off from monitoring well G107 in  
13 a southward manner. I stepped off approximately 70  
14 feet.

15 Q Did you ever ascertain through stepping off,  
16 measuring, or anything else, whether or not G107 is  
17 correctly placed as indicated on this map? In other  
18 words, could G107, in fact, be further north indicated  
19 on this map or further south?

20 A Since this map is not to scale, yes, I would  
21 tend to agree with that.

22 Q Which portion of this map is not to scale?

23 A I wouldn't know for a fact that any of it is  
24 to scale.

25 Q Do you know whether it is or is not?

1 A Some of it may be, but not all of it would  
2 be.

3 Q Do you know where you got this map?

4 A It came out of our files. I don't know which  
5 specific report or permit application or specifically  
6 where it came from, but it came from our files.

7 Q When you say, "our files," you are talking  
8 about the Marion office?

9 A Yes, I am sorry. The Marion files.

10 Q But earlier when you looked for it you could  
11 not find this map in the file you brought today?

12 MS. MENOTTI: Objection. That is an inaccurate  
13 characterization. We said that we could not find the  
14 original map from which this copy was made, the one  
15 that was submitted by the Respondent. The original is  
16 not included in the Marion file.

17 MR. BENOIT: Okay.

18 Q (By Mr. Benoit) Back to this map. You say  
19 the map is not to scale. The only line you drew on  
20 the map is the beyond permitted area dash line  
21 southwest of monitoring well 107; is that correct?

22 A I also drew in the photographs, approximately  
23 where they were taken. Is that what you mean? Are  
24 you asking me if that's the only thing I drew on this  
25 map.

1 Q I am asking why are you assuming that the  
2 rest of the map is not to scale?

3 MS. MENOTTI: Objection. The inspection report is  
4 entered into evidence. On the bottom of the map she  
5 has indicated that it is not to scale. He is trying  
6 to -- I don't know if it is impeachment or what with  
7 regard to whether or not it is to scale. It does not  
8 matter whether or not it is to scale as to whether or  
9 not she observed a violation. He keeps asking the  
10 same questions over and over and over again, and she  
11 keeps giving the same answers, and it is redundant and  
12 we are wasting the Board's time.

13 MR. BENOIT: The witness' testimony is that her  
14 observation is based on the location of monitoring  
15 well 107. I am trying to establish that she does not  
16 know, in fact, whether monitoring well 107 is where it  
17 is indicated on this map.

18 MS. MENOTTI: What she has testified to, Ms.  
19 Hearing Officer, and what the State has shown is that  
20 when she was at the site she saw the monitoring well.  
21 That is in the permitted boundary. She paced off from  
22 there. Whether or not it is accurately depicted on  
23 this map, it is not impeachable as far as this  
24 exhibit.

25 MR. BENOIT: Let me make a demonstration. If

1 monitoring well 107 were, in fact, not here but here  
2 (indicating) and Wayne Berger were to go 70 foot  
3 beyond that, he would not be outside the permitted  
4 area.

5 MR. GUBKIN: You are talking about on the map, but  
6 the monitoring well itself --

7 MR. BENOIT: I think the State is assuming that  
8 the monitoring well is, in fact, in the location where  
9 indicated on the map; is that correct?

10 MR. GUBKIN: I believe our assumption is that the  
11 monitoring well forms a border. It is a border point  
12 for this landfill.

13 MS. MENOTTI: My objection is that we are wasting  
14 time arguing about why this is not to scale. We are  
15 not putting it into evidence as to whether or not it  
16 is to scale. It is her reference which is reference  
17 for the pictures and for the general area where the  
18 unpermitted waste was observed. And arguing about  
19 whether or not it is to scale is not relevant to the  
20 violations that we are talking about.

21 MR. BENOIT: Evidence is going to show that there  
22 is no waste deposited in 87D, 84D, 83D, 80D, 79D, you  
23 know, basically covering this whole area where she  
24 marked this.

25 HEARING OFFICER CROWLEY: We have testimony that

1 the map is not to scale. I believe she testified that  
2 the monitoring well may not be where it appears to be  
3 on that map.

4 If I am putting words in your mouth, please do let  
5 me know.

6 Evidence will show what evidence shows.

7 MR. BENOIT: Again, the question, I think that was  
8 the last question, was how does she know whether or  
9 not this is to scale or not, you know, besides her own  
10 little line drawing, and I am assuming most maps are  
11 to scale.

12 MS. MENOTTI: My objection is whether or not it is  
13 to scale is not relevant to the violations that we are  
14 talking about. My objection is for the record and to  
15 try and save us from wasting time so that we can get  
16 through this witness today.

17 HEARING OFFICER CROWLEY: If I may ask the  
18 witness, I don't believe that you testified that you  
19 drew this map; is that correct? Wait. That was a  
20 double negative. Did you draw the map?

21 THE WITNESS: I believe I had copied it from  
22 information in the files at the Marion office,  
23 portions of it. Some of it I have drawn in.

24 HEARING OFFICER CROWLEY: Okay. Do you know  
25 whether that map was created by someone at the Agency

1 or whether it was submitted by the Respondent?

2 THE WITNESS: I am pretty sure it was -- it looks  
3 like maps that we have received large blueprints of  
4 submitted by the Respondent and I am guessing it was  
5 shrunk down. And that may have also been submitted by  
6 the Respondent as well. I just don't --

7 HEARING OFFICER CROWLEY: But you don't know for a  
8 fact?

9 THE WITNESS: Right.

10 HEARING OFFICER CROWLEY: Okay. I don't know if  
11 we --

12 MR. BENOIT: I have to have the follow-up answer  
13 whether or not she knows whether monitoring well 107  
14 is where it is indicated on this map.

15 MS. MENOTTI: The questions you are asking is  
16 whether or not this map is to scale. We are not  
17 offering it for --

18 MR. BENOIT: She keeps saying to scale. I am not  
19 saying that.

20 MS. MENOTTI: Whether it is to scale is not  
21 relevant.

22 HEARING OFFICER CROWLEY: Can you try to answer  
23 the question that he just posed? You may have  
24 answered it already, but will you please try again.

25 THE WITNESS: I think this may help clarify. I am

1 not sure. The reason why I integrated this map that  
2 came before the one that I drew in the permitted  
3 boundary going beyond monitoring well 107, the one  
4 that I highlighted, I integrated the highlighted map  
5 because this was submitted by the Respondent and it  
6 indicates that the permitted waste boundary line is  
7 directly west of but no further south of monitoring  
8 well 107.

9 HEARING OFFICER CROWLEY: Okay. What you mean  
10 there is the page that you previously highlighted in  
11 Exhibit 6, right?

12 THE WITNESS: Yes.

13 HEARING OFFICER CROWLEY: Okay. So then moving to  
14 the following page, there is the question that Mr.  
15 Benoit has been asking, on that map is the location of  
16 monitoring well G107 accurately depicted.

17 THE WITNESS: I would have to say in accordance  
18 with the map submitted by the Respondent it would at  
19 least be very, very close, if not accurately.

20 Q (By Mr. Benoit) Why would you have to say  
21 that?

22 A Well, I would assume that the Respondent  
23 would submit accurate information.

24 Q The only thing I want to -- you don't know?

25 You didn't measure or find out where monitoring well

1 107 truly was?

2 A There was not a survey done, if that's what  
3 you mean.

4 Q And you didn't step it off? You assumed  
5 monitoring well 107 was where it is indicated on the  
6 map?

7 MR. GUBKIN: Which map are you referring to?

8 MR. BENOIT: I am referring to the one that she  
9 did not mark, the one with the cells on it.

10 THE WITNESS: Yes, I would assume that it is  
11 fairly accurate.

12 Q (By Mr. Benoit) But you don't know?

13 A No, I don't know.

14 Q All right. Now, is it your testimony that  
15 waste was deposited in cells 83D and 80D?

16 MS. MENOTTI: Objection. Assuming facts not in  
17 evidence. He is asking if she previously testified to  
18 that, and he is assuming that -- he is putting words  
19 in the witness' mouth.

20 HEARING OFFICER CROWLEY: I don't recall that  
21 there has been any testimony specifically to those  
22 points.

23 Q (By Mr. Benoit) Okay. Based on your  
24 inspections of the landfill and specifically the April  
25 18th, 1994 inspection, was waste deposited in the



1 areas marked 83D and 80D on the map or plan attached  
2 to State's Number 6? And I am not talking about the  
3 map that you marked on.

4 A Okay. I believe that -- well, I believe -- I  
5 would have to say yes because it was -- what I have  
6 indicated as going beyond the permitted area was a  
7 continuation of what would be it looks like of 83D and  
8 80D.

9 Q So when you say a continuation of the area,  
10 do you mean that 87D and 84D were also filled?

11 A I don't know.

12 Q What did you mean by a continuation of the  
13 area?

14 A The area southwest of monitoring well 107,  
15 that appeared to have accepted -- appeared to have  
16 waste deposited there, appeared to be the same as that  
17 of the area that went north of monitoring well 107.

18 Q Do you recall what the condition of the area  
19 directly south of the dash line you placed on the map,  
20 indicating beyond permitted area, was like?

21 A You mean the area within that dash line I  
22 drew or beyond?

23 Q South of the dash line that you drew?

24 A I believe it was -- it had vegetation growing  
25 on it, such as grass. And roll M784, photo four, to

1 some degree, indicates that on the far left-hand side  
2 of the picture. There is grass over here, and it is  
3 tapering off right there (indicating). Also, roll  
4 M784, photo number seven, shows that as well.

5 Q Now, referring to the same map within the  
6 dashed line that you drew, how did you determine that  
7 waste was, in fact, placed in that area?

8 A The soil in that area was at an elevated  
9 level, much more so than the natural terrain of the  
10 landfill. It was at an elevated level such as in  
11 other areas where waste had already been deposited.  
12 And the -- it was apparent that the soil had been  
13 disturbed. There was no vegetation growing on it.  
14 There was also areas of erosion.

15 Q Did you probe the earth to determine what was  
16 below this area?

17 A No.

18 Q Is it possible that what you observed, or at  
19 least a portion of this seven foot area was, in fact,  
20 just dirt hauled in for final cover?

21 A I suppose it is possible.

22 Q Just to refresh my memory -- it is getting  
23 late in the afternoon and I am getting tired -- you  
24 stepped off the 70 feet to get the estimate; is that  
25 correct?

1 A Yes.

2 Q On the map where these areas that you  
3 discussed where you put numbers and arrows, how did  
4 you determine -- indicating where you took  
5 photographs, how did you determine where you were at  
6 when you took the photographs?

7 A I tried to use landmarks such as roads or  
8 monitoring wells to estimate where I was taking the  
9 photographs from.

10 Q Okay. So if the monitoring well was not in  
11 the location you thought it was in, then you wouldn't  
12 be -- then these numbers wouldn't be accurate; is that  
13 correct?

14 A What numbers?

15 Q For instance, the landmarks, as you referred  
16 to them, closest to photos nine, eight, seven, four,  
17 five, six, is monitoring well 107?

18 A Yes.

19 Q So if monitoring well 107 was not in that  
20 location, then all of these numbers indicating where  
21 you took photographs would be wrong also, wouldn't it?

22 MS. MENOTTI: I am going to object. It is  
23 improper impeachment. We are not saying that this map  
24 is to scale. And unless the Respondent establishes  
25 otherwise, he is improperly trying to impeach the

1 witness and the exhibit.

2 HEARING OFFICER CROWLEY: I think you have made  
3 your record on this point, Mr. Benoit.

4 MR. BENOIT: Okay.

5 HEARING OFFICER CROWLEY: I would like to ask one  
6 question, though. When you were at the site, is  
7 monitoring well -- well, at the time you were at the  
8 site and made this inspection, was monitoring well  
9 G107 visible or marked in any way at the site?

10 THE WITNESS: I believe it is either this one or  
11 maybe the next one. Yes, it was -- I don't remember  
12 if it had markings on it to indicate monitoring well  
13 107, but based on prior inspections and knowing that  
14 that is where it was, having seen the maps, that  
15 appeared to be monitoring well 107. And it also had a  
16 piece of clothing or something flagged on it to help  
17 locate it.

18 HEARING OFFICER CROWLEY: Okay. You were  
19 referring to a photograph there.

20 THE WITNESS: Yes, roll M784, photo number six.

21 Q (By Mr. Benoit) Now, during this inspection,  
22 the April --

23 HEARING OFFICER CROWLEY: Thank you.

24 MR. BENOIT: Oh, I am sorry.

25 Q (By Mr. Benoit) During this same inspection

1 that we were just discussing, were you able to drive  
2 down the landfill roads?

3 A Yes.

4 MR. BENOIT: Okay. Did we stipulate to what would  
5 be Attorney General's Number 5? It is a June 24th,  
6 1994 inspection.

7 MR. GUBKIN: June 24th, 1994?

8 MR. BENOIT: Yes, 1994.

9 MS. MENOTTI: It is 1993.

10 MR. GUBKIN: June 24th, 1993.

11 MS. MENOTTI: It is People's Number 5.

12 MR. GUBKIN: There is an April 18th, 1994, and  
13 then the August 25th, 1995. Those are the only three  
14 inspection reports that we stipulated to.

15 MR. BENOIT: Okay. I am sure there was another  
16 inspection report.

17 HEARING OFFICER CROWLEY: I don't think we talked  
18 about People's Exhibit Number 7, which is the same as  
19 Respondent's Exhibit 38, the August 25th, 1995  
20 inspection.

21 MR. BENOIT: I believe there was one before that.

22 Okay. Can I have five minutes? I obviously have  
23 something missing here.

24 HEARING OFFICER CROWLEY: Yes.

25 (Whereupon a short recess was taken.)

1 HEARING OFFICER CROWLEY: Okay. Back on the  
2 record.

3 Q (By Mr. Benoit) Now, your next inspection of  
4 the landfill was conducted on June 24th, 1994; is that  
5 correct?

6 MS. MENOTTI: Objection. Beyond the scope.

7 HEARING OFFICER CROWLEY: Would you like to --

8 MR. BENOIT: We stipulated to --

9 MS. MENOTTI: It is still beyond the scope of  
10 direct.

11 MR. BENOIT: -- this exhibit. I am going to use  
12 this exhibit to -- it is not going to go beyond the  
13 point. The questions I have have to do with the  
14 landfill roads. That exhibit also talks about the  
15 over fill. So it is not beyond the scope.

16 MS. MENOTTI: We didn't talk about that. I am  
17 still going to object as to beyond the scope. If the  
18 Hearing Officer wants to allow it, it is certainly  
19 within her discretion. That's why she is here.

20 HEARING OFFICER CROWLEY: Could I see the  
21 document, please?

22 MR. BENOIT: It is Exhibit 34.

23 HEARING OFFICER CROWLEY: Okay. I am sorry.

24 MR. BENOIT: Exhibit 34 talks about the over  
25 fill. It is another inspection that has relevant

1 photographs in it.

2 HEARING OFFICER CROWLEY: This is beyond the scope  
3 of the direct examination. It appears we earlier  
4 admitted the document pursuant to stipulation.

5 Have you called Ms. Williams as a witness?

6 MR. BENOIT: Yes, and we -- again, we discussed  
7 about the breadth of the scope of my  
8 cross-examination. And my understanding was that I  
9 would be granted a little latitude in exchange for not  
10 calling her back. This is going to be very short. It  
11 is going to concern two of the violations that were  
12 covered. One of them is the over fill and second is  
13 the roads.

14 HEARING OFFICER CROWLEY: I am going to ask the  
15 witness to answer the questions. This, again, is a  
16 document that she herself prepared.

17 Q (By Mr. Benoit) The question was, was your  
18 next inspection of the landfill conducted on June  
19 24th, 1994?

20 A No. It was a site visit that was conducted  
21 on June 15th of 1994.

22 Q Okay. What is the difference between a site  
23 visit and a site inspection?

24 A There is not a big difference. A full  
25 inspection would include going through the checklist

1 which denotes -- where you can denote apparent  
2 violations, a thorough narrative, and that's about it.

3 Q Okay. Were you able to drive down the road,  
4 the landfill's roads, during this site visit on June  
5 15th, 1994?

6 A I think so. I don't remember for sure.

7 Q Could you review the pictures attached to  
8 that exhibit and see if there is any that might  
9 refresh your memory as to whether or not you were able  
10 to drive down the road?

11 A It is kind of tough to tell from these  
12 pictures, because these are copies. Xerox copies.

13 HEARING OFFICER CROWLEY: Photocopies of the color  
14 photos?

15 THE WITNESS: Yes.

16 Q (By Mr. Benoit) Did you bring the original  
17 photos?

18 A I do have some, I believe, with me.

19 Q Okay. Can you grab those?

20 A Yes.

21 MS. MENOTTI: I am going to hand the Hearing  
22 Officer the originals of the photographs that the  
23 Respondent has photocopies attached and entered in the  
24 exhibits. This is part of the EPA's file. They did  
25 not request original photographs. If the Board needs



1 original photographs to undertake its determination,

2 we will make every effort to get copies to the Board.

3 Just let either Josh or I know.

4 HEARING OFFICER CROWLEY: Thank you. So you would

5 like me to return this to you at end of the hearing

6 day?

7 MS. MENOTTI: I am sorry?

8 HEARING OFFICER CROWLEY: You would like me to

9 return this to you?

10 MS. MENOTTI: Yes. I believe that she was having

11 problems seeing the --

12 HEARING OFFICER CROWLEY: These are the photos

13 which you will be needing to testify with right now?

14 THE WITNESS: Yes.

15 HEARING OFFICER CROWLEY: Okay. Thank you.

16 (Photographs were passed to the witness.)

17 Q (By Mr. Benoit) Okay. Do you see the --

18 would you take a look at photo two? That is attached

19 to the -- I don't know how to refer to it. It is

20 attached to the June 15th, 1994 site visit report.

21 A Yes.

22 Q Does that photo show vegetation growing down

23 the middle of the landfill road?

24 A Yes, it does.

25 Q How tall is that vegetation?

1 A It is hard to tell for sure. It looks like  
2 it is -- I guess it is at least a couple feet high,  
3 give or take.

4 Q Refresh my memory. Were you or were you not  
5 able to drive down the landfill road at that time?

6 A I don't remember.

7 Q May I see this?

8 A Sure.

9 Q If you were not able to drive down the  
10 landfill road at that time, would it have been noted  
11 in your June 15th, 1994 site visit report?

12 A I don't know that it would have. Like I said  
13 earlier, I didn't go through the checklist,  
14 specifically go through to search out apparent  
15 violations, so there is no way to tell from this  
16 whether we were able to or not.

17 Q Do you recall that June 15th, 1994 site  
18 visit?

19 A Faintly.

20 Q Okay. Does it list the times that you were  
21 there?

22 A From 11:30 a.m. to 12:00 noon.

23 Q So 45 minutes?

24 A Half an hour.

25 Q Oh, 12:00, noon, a half hour. Would that

1 indicate to you one way or the other, given the  
2 photographs there, whether or not you drove down the  
3 road?

4 A We may have been able to walk the areas to  
5 take the photographs. It looks like there -- with the  
6 exception of photos one and two, they are pretty much  
7 concentrated -- well, I guess three, four, five, too.  
8 It looks like there were three specific areas that we  
9 covered.

10 Q So your testimony is you can't recall whether  
11 or not you drove down the landfill road that day?

12 A I don't remember.

13 Q Okay.

14 MS. MENOTTI: Could I ask a question for  
15 clarification? The copy of the exhibit, Respondent's  
16 Number 34, that was given to the State, has some kind  
17 of sticky note or something on it on the photocopy.  
18 Is that part of the exhibit right now?

19 THE WITNESS: It is not on my copy.

20 MS. MENOTTI: Okay.

21 Q (By Mr. Benoit) Okay. Moving on to Count 6,  
22 failure to adequately maintain the landfill roads,  
23 that would be based on State's Exhibit Number 7; is  
24 that correct?

25 A Yes.

1 Q Who directed you to make that inspection?

2 A Again, I don't remember.

3 Q What were you looking for during that  
4 inspection at a site that was closed?

5 A I suppose to see if closure was taking  
6 place.

7 Q What was going on at the landfill when you  
8 drove out there?

9 A They were not accepting waste, if that is  
10 what you mean.

11 Q Was there any activity?

12 A No.

13 Q Okay. Are you familiar with Section  
14 807.314(b) of the Administrative Code governing  
15 landfill roads?

16 A I know it refers to inadequate roads. I  
17 don't know specifically what it says.

18 MS. MENOTTI: Could you clarify what version of  
19 the Regs you are talking about?

20 MR. BENOIT: Yes. I am looking for it here. I  
21 believe this is it.

22 Q (By Mr. Benoit) I am going to show you a copy  
23 of 807.314 of the Regs. I have highlighted Section B  
24 concerning the landfill roads.

25 A Okay (Witness reviewed document.)

1 Q Could I see it?

2 A Uh-huh.

3 MR. BENOIT: Can I read this into the record?

4 HEARING OFFICER CROWLEY: As I recall, it is not a  
5 long section. Please do. It is easier to follow in  
6 the transcript that way.

7 MR. BENOIT: All right. I will read that  
8 section. 807.314(b), except as otherwise authorized  
9 in writing by the Agency, no person shall cause or  
10 allow the development or operation of a sanitary  
11 landfill which does not provide roads adequate to  
12 allow orderly operations within the site.

13 Q (By Mr. Benoit) Was this site in development  
14 on August 25th, 1995?

15 A In development?

16 Q Yes.

17 A I don't believe I would refer to it that way,  
18 no.

19 Q Was it in operation?

20 A They were not accepting waste.

21 Q So was it in operation?

22 A Not in the sense that they were accepting  
23 waste.

24 Q Okay. In Complainant's answer to our  
25 interrogatories, the first set, Interrogatory 60, the

1 State of Illinois stated that the terminology, orderly  
2 operations within the site as used in that section, is  
3 unclear and vague.

4 Do you personally have an opinion as to what that  
5 terminology means?

6 MS. MENOTTI: Objection. This witness did not  
7 answer the interrogatories, and she has no personal  
8 knowledge of this document. The question is  
9 improper.

10 MR. BENOIT: I will withdraw it.

11 Q (By Mr. Benoit) Do you find the terminology,  
12 orderly operations within the site, as used in that  
13 section, vague?

14 MS. MENOTTI: Objection. Calls for a legal  
15 conclusion. The witness is not the State Legislature,  
16 the Pollution Control Board, a judge, or an attorney  
17 qualified to make these conclusions as to what the  
18 Board meant when it promulgated those rules.

19 HEARING OFFICER CROWLEY: Could you rephrase that  
20 question?

21 Q (By Mr. Benoit) What do you understand  
22 orderly operations within the site to mean?

23 A I would think it would include those things  
24 that are required of the part of, whatever it is,  
25 operations, follow-ups, anything that involves the

1 site that is required of the Respondent or of the  
2 operator.

3 Q You said follow-ups. What does that mean?

4 A I am sorry. I was thinking of such as a  
5 facility being closed as the follow-up to the  
6 operations of accepting waste, such as monitoring well  
7 information that is required or looking over the site  
8 from time to time to observe site conditions.

9 Q On the day that you were out there, August,  
10 what was it, the 25th of 1995, it was good weather,  
11 wasn't it?

12 A I believe so.

13 Q And what type of vehicle were you driving  
14 that day?

15 A It would have been a car or a van.

16 Q Is there a photograph of the vehicle you were  
17 driving attached to the inspection report?

18 A Let me see. No, there is not.

19 Q There is no car?

20 A Not that I see.

21 Q So you don't know what type of vehicle you  
22 were driving?

23 A It was a standard car or a standard van.

24 MR. BENOIT: Okay. I am going to have to look at  
25 the discovery responses that identified the vehicle

1 just to see if I can --

2 HEARING OFFICER CROWLEY: I am sorry. I didn't  
3 hear the part when you were facing the back of the  
4 room.

5 MR. BENOIT: I am going to have to stop again to  
6 look at the discovery responses to see what type of  
7 vehicle she --

8 MS. MENOTTI: Ms. Williams didn't answer the  
9 discovery responses, and if he wants to bring it up  
10 with a different witness if there is a different  
11 answer that is fine, but she didn't answer the  
12 discovery responses. She is not the one who signed  
13 the affidavit in response to the interrogatories. He  
14 is talking about the interrogatories with her and it  
15 is improper. She doesn't have any personal knowledge  
16 regarding those answers. It is just going to delay  
17 this. It is five till 5:00.

18 MR. BENOIT: I am trying to establish that based  
19 on her car, you know, if it was a truck and it  
20 couldn't go through or if it was a little sports car,  
21 when do you have inadequate roads. They answered in  
22 their discovery what she was driving. Now she doesn't  
23 know. Who would know what she was driving besides her  
24 that was --

25 MS. MENOTTI: All I am saying is that she didn't



1 answer the interrogatories. If you are going to try  
2 to use the interrogatories to prove an inconsistent  
3 statement you can't do that because she is not the one  
4 that answered the interrogatories. It is improper  
5 impeachment and improper use of inconsistent  
6 statements.

7 MR. BENOIT: I disagree. I thought Scott answered  
8 the interrogatories. We have to go out and find out  
9 who drove it? She is the --

10 MS. MENOTTI: That's not Scott.

11 MR. BENOIT: They can't shield the discovery in  
12 this manner.

13 HEARING OFFICER CROWLEY: Just a moment. Would  
14 the two of you --

15 MR. KAINS: May we just have a moment?

16 HEARING OFFICER CROWLEY: Yes.

17 (Whereupon a short recess was taken.)

18 HEARING OFFICER CROWLEY: Back on the record.

19 MS. MENOTTI: The State will stipulate that it was  
20 a Chevy Caprice station wagon, a state vehicle, that  
21 was driven on the date of August 25th, 1995, during  
22 the inspection, and that that should be consistent  
23 with the State's answer to the interrogatories that  
24 were answered by Mr. Kains during the discovery  
25 process.

1 Q (By Mr. Benoit) Are you familiar with the  
2 type of car they are talking about as far as the Chevy  
3 Caprice station wagon?  
4 MS. MENOTTI: Objection. Relevance. The type of  
5 car being driven is not relevant to whether or not the  
6 roads were overgrown.  
7 HEARING OFFICER CROWLEY: You have made your  
8 record.  
9 Could you repeat that question, please.  
10 Q (By Mr. Benoit) Are you familiar with the  
11 type of Chevy Caprice station wagon that has just been  
12 stipulated to that you were driving?  
13 A Yes.  
14 Q It is one of the types of cars you normally  
15 drive?  
16 A We no longer have that vehicle, but yes.  
17 Q Back then?  
18 A Yes.  
19 Q Okay. Do you have any idea how much  
20 clearance that car has?  
21 MS. MENOTTI: What was the question?  
22 MR. BENOIT: How much clearance the car has.  
23 THE WITNESS: Not exactly.  
24 Q (By Mr. Benoit) An estimate?  
25 A Maybe --

1 MS. MENOTTI: It calls for speculation. She said  
2 she doesn't know.

3 Q (By Mr. Benoit) Your inspection report states  
4 that a truck was blocking the road. Did you try to  
5 drive around the truck so you could have driven down  
6 the landfill road?

7 A I don't know that I tried to drive around  
8 it. I think if I didn't try to drive around it I  
9 believe I did walk to see if I could -- if I might be  
10 able to get through, because there was -- by looking  
11 beyond that I was able to -- I would not have  
12 attempted it if that truck had not been in the way.

13 Q Okay. So you never tried to drive down the  
14 road?

15 A No.

16 Q And the vegetation on the road, it was just  
17 grass?

18 A Grass, weeds.

19 Q It was not like bushes or trees?

20 A I think -- there weren't any trees. There  
21 might have been some brush.

22 Q Okay. This vegetation is depicted in  
23 pictures four and five?

24 A Yes.

25 Q Can you compare the grass in photo four with

1 the picture of the grass on the road in photo two,  
2 taken on June 15th, 1994, when you were able to drive  
3 down the road?

4 A First of all, I thought that I had said I was  
5 not sure if I drove around or not --

6 Q You are right.

7 A -- on June 15th of 1994.

8 Q Okay.

9 A You wanted me to compare photo two of the  
10 1994 with which one of the --

11 Q Photo four.

12 A Okay. Photo two from 1994, there is  
13 vegetation growing down the middle of the road, but it  
14 is apparent that there is still gravel or brick along  
15 the roadway where your tires would typically go. On  
16 photo four from the 1995 inspection, there is some  
17 gravel that is visible, but as it angles on to the  
18 north or to the right of the picture, it looks like it  
19 gets thicker and covers more of the gravel.

20 Q How tall is the grass in photo four?

21 A It is -- it varies. It looks like it  
22 probably goes from a few inches to -- well, further on  
23 back up to the north it looks like it could -- it  
24 looks like it is as tall as the dumpster there.

25 Q How tall is that, the dumpster?

1 A Maybe four feet.

2 Q Four feet tall grass? Are you still looking  
3 at the road?

4 A I believe so.

5 Q Are you sure?

6 A Well, it looks like there is a road. It is  
7 growing up that way. I think it is safe to say that  
8 it is the road.

9 Q At what height does the vegetation -- well, I  
10 think your testimony was earlier, and correct me if I  
11 am wrong, but on June 15th, 1994, you said it was  
12 about two foot tall. Now you are saying it varies  
13 from inches to four foot tall. At what height does  
14 the vegetation growing down the middle of the road get  
15 to the point where it is a violation of the  
16 Regulations?

17 MS. MENOTTI: Objection. It calls for a legal  
18 conclusion.

19 MR. BENOIT: I am just asking how she determined  
20 there was a violation.

21 HEARING OFFICER CROWLEY: As an inspector she can  
22 give her description of how she prepares her reports.

23 MS. MENOTTI: My objection was to the form of the  
24 question. He asked at what height did it become a  
25 violation.

1 HEARING OFFICER CROWLEY: You can answer it as to  
2 how you prepare your reports.

3 THE WITNESS: Okay. If the vegetation is high  
4 enough to inhibit access to the site then we consider  
5 that an apparent violation of inadequate roads.

6 Q (By Mr. Benoit) Even when you don't try to  
7 drive down the road?

8 A If it is high enough that -- it is a judgment  
9 call. If I am afraid that if I drive on the road and  
10 I am afraid it is going to create problems for my  
11 vehicle to continue to operate, then I would not drive  
12 down the road.

13 Q Would your answer be different if the State  
14 provided you with a four-wheel drive pickup truck?

15 MS. MENOTTI: Objection. Calls for speculation.  
16 It is not what she was driving that day. It is not  
17 relevant to the count of the complaint.

18 MR. BENOIT: I am still trying to assess how she  
19 determines whether there is a violation or not.

20 HEARING OFFICER CROWLEY: I will allow her to  
21 answer the question.

22 If you can, as you can.

23 THE WITNESS: Since the time of this inspection,  
24 we have gotten a four-wheel drive vehicle. And I know  
25 that -- I believe the situation was an inspector drove

1 on a site that was heavily vegetated, and I don't know  
2 how high the vegetation was, but they drove on the  
3 site and it created problems for the vehicle.

4 Q (By Mr. Benoit) Is it your testimony that on  
5 August 25th, a four-wheel drive pickup truck could not  
6 have driven down the road at the Berger Landfill?

7 A I don't know. It would probably depend how  
8 high up off the ground. If we had a Monster truck  
9 then it probably could have. But, you know, if it is  
10 just a regular four-wheel drive vehicle it may not  
11 have.

12 Q If the State provided you with a low sports  
13 car, that was only an inch clearance --

14 MS. MENOTTI: Objection. Relevance.

15 HEARING OFFICER CROWLEY: That --

16 MR. BENOIT: Well, I am just trying to establish  
17 whether or not there is a violation.

18 Q (By Mr. Benoit) It depends upon the vehicle  
19 you are driving, correct?

20 MS. MENOTTI: Objection. Relevance.

21 HEARING OFFICER CROWLEY: I don't think that was  
22 her prior testimony, and if you have another question  
23 you can continue.

24 Q (By Mr. Benoit) As to the August 25th  
25 inspection you also note that -- you previously noted

1 as going beyond the permitted boundaries and not being  
2 disturbed. During this inspection, what steps did you  
3 take to determine that the waste was in an unpermitted  
4 area?

5 A As I -- as I believe my report indicates, the  
6 area had not been disturbed. It appeared to have  
7 vegetation growing on it, as the area going north of  
8 monitoring well G107. It was still at the elevated  
9 level in comparison to the natural terrain at the  
10 site.

11 Q Okay. So, essentially, you just relied on  
12 your earlier report, the fact that things were  
13 undisturbed?

14 A Yes, I believe so.

15 Q Okay. The last time you were out at the  
16 landfill and it was closed, how much of the permitted  
17 landfill space was used?

18 A I don't know.

19 MS. MENOTTI: Objection. Beyond the scope and  
20 irrelevant.

21 HEARING OFFICER CROWLEY: She has answered the  
22 question that she does not know.

23 Q (By Mr. Benoit) Would you agree that it is  
24 somewhere between five and seven acres?

25 A I don't know.



1 Q Okay. Has this site, based on your review of  
2 your files, ever received any complaints from the  
3 public?

4 A Not to my knowledge.

5 Q Has there ever been a problem with vectors at  
6 the site?

7 A Not to my knowledge.

8 Q Has there ever been a problem with odors at  
9 the site?

10 MS. MENOTTI: Objection. Beyond the scope. Not  
11 relevant. It does not relate back to any of the  
12 violations in the complaint.

13 MR. BENOIT: Her earlier testimony had to do with  
14 vectors, and the definition of it.

15 MS. MENOTTI: We never talked about odors.

16 HEARING OFFICER CROWLEY: This question is about  
17 odor.

18 MR. BENOIT: Okay.

19 Q (By Mr. Benoit) Have you received any  
20 complaints regarding leachate running off the site?

21 A Not that I am aware of.

22 Q Okay. Just a few more questions. Do you  
23 have any knowledge that the Respondent's operation of  
24 the landfill resulted in actual harm to any water of  
25 the State of Illinois?

1 A I am not aware of that.

2 Q Do you have any knowledge that the  
3 Respondent, through the operation of the landfill,  
4 harmed any identifiable real property?

5 A I am not aware of it.

6 Q Do you have any knowledge that the  
7 Respondent, through the operation of the landfill,  
8 harmed any identifiable person?

9 A I am not aware of it.

10 MS. MENOTTI: Objection. Relevance.

11 HEARING OFFICER CROWLEY: It has been answered.

12 MR. BENOIT: It is relevant. It is part of the  
13 Board's determination.

14 Sorry I am keeping you away from important things,  
15 Maria.

16 MS. MENOTTI: I didn't say anything.

17 MR. BENOIT: Has Respondent's 29A been admitted  
18 into evidence?

19 HEARING OFFICER CROWLEY: I don't believe 29A has  
20 been mentioned.

21 MR. BENOIT: Okay.

22 HEARING OFFICER CROWLEY: It is not part of the  
23 group that was the subject of the discussion this  
24 morning.

25 MR. GUBKIN: Excuse me. What are we referring to

1 now?

2 HEARING OFFICER CROWLEY: I am sorry?

3 MR. GUBKIN: I was wondering what we are referring

4 to now.

5 MR. BENOIT: Has Respondent's 35E?

6 MR. GUBKIN: 35E?

7 HEARING OFFICER CROWLEY: The question is have

8 various exhibits been entered into the record as

9 evidence.

10 MR. GUBKIN: Okay. Thank you.

11 HEARING OFFICER CROWLEY: I am sorry. Did you ask

12 about --

13 MR. BENOIT: 35E.

14 HEARING OFFICER CROWLEY: On 35E, yes, that has

15 been --

16 MR. BENOIT: Okay.

17 HEARING OFFICER CROWLEY: That has been admitted,

18 basically for the purpose that Ken Smith signed it or

19 printed it.

20 MS. MENOTTI: That was my understanding.

21 MR. BENOIT: 39B, has that been admitted? Well,

22 that is all right.

23 No further questions.

24 HEARING OFFICER CROWLEY: Okay.

25 MR. GUBKIN: We will try to get through these and

1 get you out of here before tomorrow.

2 REDIRECT EXAMINATION

3 BY MR. GUBKIN:

4 Q You stated during your testimony that you  
5 have done approximately 20 inspections in your five  
6 plus years with being with the solid waste area doing  
7 inspections. Do you recall all of the details of all  
8 of the inspections that you --

9 MR. BENOIT: Objection. I think he is misstating  
10 the testimony.

11 THE WITNESS: Actually, it is about 20 inspections  
12 of permitted landfills.

13 Q (By Mr. Gubkin) Okay. You are saying that  
14 you also did inspections of unpermitted landfills as  
15 well, so there is actually more than 20 places that  
16 you have done inspections of in the past five years;  
17 is that true?

18 A Many, many more.

19 Q Okay. I will ask in regard to those. Do you  
20 recall all of the details of all of those inspections,  
21 whether you talked to people, what you said to them,  
22 and things such as that?

23 A No.

24 Q I will try to take this in order. When you  
25 were doing these inspections, the June 1993

1 inspection, it was you who did the inspection?

2 A Yes, I was the primary inspector.

3 Q Okay. Were you the one who took the  
4 pictures?

5 A Yes.

6 Q Did you write the narrative?

7 A Yes, I did.

8 Q Did you mark the checklist?

9 A Yes.

10 Q That is your signature on there?

11 A Yes, it is.

12 Q Okay.

13 HEARING OFFICER CROWLEY: That was People's 5,  
14 correct?

15 THE WITNESS: Yes.

16 HEARING OFFICER CROWLEY: Thank you.

17 MR. GUBKIN: Thank you.

18 Q (By Mr. Gubkin) Mr. Benoit said something  
19 about certain closed cells marked off on the map from  
20 Exhibit 5, the 1993 inspection. At this time, June  
21 24th, 1993, was the landfill certified closed?

22 A No.

23 Q Okay. When we were looking at the June 24th,  
24 1993, the map, the one that is not to scale, what is  
25 that used for?

1 A It is more of a site sketch used for  
2 reference points.

3 Q Okay. The groundwater monitoring well on Mr.  
4 Berger's landfill, is that a constant, though, that  
5 stays in the same position at the actual landfill?

6 A Yes, they don't move around.

7 Q Okay. Is that groundwater monitoring well  
8 that is marked on there, marked as G107, I believe,  
9 that you highlighted, is that considered a boundary  
10 for Mr. Berger's landfill?

11 A With regards to the other map submitted by  
12 the Respondent or on behalf of the Respondent, it  
13 appears to be right there at the southern boundary of  
14 the permitted area.

15 Q Okay. When you saw refuse in the unpermitted  
16 area and you paced it off, why did you pace it off?

17 A It appeared to be an area where refuse had  
18 been deposited, again, because the soil had been  
19 disturbed. It was not with the natural terrain. It  
20 was elevated to the approximate level of the other  
21 trenches. And I wanted to get an idea of how far  
22 south, how far beyond the permitted portion of the  
23 landfill that area went.

24 Q Okay. And in regards to inadequate cover,  
25 which you talked about before, could you tell me what

1 measure of cover -- how much cover is considered to be  
2 adequate cover?

3 A Can you tell me specifically which --

4 Q I am still referring to the June 24th, 1993  
5 report.

6 A Okay. There is uncovered refuse remaining  
7 from the previous operating day, and there is also  
8 inadequate depth of daily cover which --

9 Q I am referring to the daily cover. Sorry.

10 A I believe it is six inches.

11 Q Okay. And then anything that is less than  
12 six inches, would that be considered inadequate cover,  
13 then?

14 A From my understanding, yes.

15 Q Are you required to take measurements of how  
16 much cover they have if it is less than six inches?

17 A No.

18 Q Your checklist doesn't have a spot for  
19 measurements?

20 A No, it does not.

21 Q When you were doing the 1993 inspection, did  
22 you review the file before or after the inspection?

23 A I reviewed it afterwards.

24 Q Why did you review it afterwards?

25 A Because I had already been to the site and

1 that way I could go through the file and see what was  
2 required -- outside of this checklist, what was  
3 required or not necessary for the operations or  
4 activities there.

5 Q Okay. Are you responsible for reviewing  
6 financial assurance for a landfill?

7 A From what I understand only to the extent of  
8 what the checklist states, and actually I -- this is  
9 based on what other inspectors have done in the past.  
10 It is allowable to fill in the blank either like NR,  
11 not reviewed at this time. So that is not my primary  
12 duty to do that.

13 Q Okay. Is it your job as an inspector to  
14 probe the earth to find out what is under what you see  
15 at a landfill?

16 A No. And we prefer to -- we would really  
17 hesitate to do that, because it would disturb the  
18 integrity of the overlying protective covering of the  
19 waste.

20 Q Is it your job as an inspector to tell people  
21 that you have marked off violations for their  
22 landfills and is it your job to tell them how to  
23 correct the violations?

24 A No, it is not.

25 Q Okay. Let's move on now to the June 24th,



1 1994 inspection. It is Respondent's Exhibit Number

2 34. That was a drive-by inspection, correct, a

3 drive-by visit?

4 A It is considered a site visit, a field visit.

5 Q And that was conducted on June 15th

6 actually. Who was with you during that visit?

7 A Ryan Warren. He was a summer intern.

8 Q Why did you take Mr. Warren with you?

9 A He was out with me that day just so he could

10 observe how inspections are conducted, whether at

11 permitted facilities or unpermitted sites.

12 Q Why didn't you do a full site inspection with

13 a checklist on that date?

14 A Part of it was probably because he was with

15 me. We may have just been in the area. I don't

16 recall exactly why, but just to see what the current

17 conditions of the site were.

18 Q Okay. Then just a few more. These will

19 mostly pertain to People's Exhibit Number 7, the

20 August 25, 1995 inspection report. Mr. Benoit was

21 asking you some questions regarding whether the

22 landfill was operational. Can a landfill still be

23 operational if it is not accepting waste?

24 A I would say yes in the sense that there are

25 certain operations or activities that are to be

1 conducted there even after the site is no longer

2 accepting waste.

3 Q Is a landfill operational if it is in closure

4 or post closure?

5 MR. BENOIT: I am going to object. This is some

6 kind of legal conclusion to define the word operation.

7 MS. MENOTTI: It has already been determined that

8 Ms. Williams is able to, with her knowledge, make

9 other similar observations based on her experience,

10 and the State would suggest that the same amount of

11 latitude should be allowed with this question.

12 MR. GUBKIN: In addition to that, I would like to

13 say we are just trying to clarify a point that Mr.

14 Benoit brought up.

15 HEARING OFFICER CROWLEY: I will allow her to

16 answer the question. I believe that she had

17 previously been asked something similar during her

18 questioning.

19 THE WITNESS: Can you please repeat the question?

20 Q (By Mr. Gubkin) Sure. Is a landfill

21 operational if it is in closure or in post closure?

22 A In my opinion, yes.

23 Q Okay. As of August 25th, 1995, was Mr.

24 Berger's landfill in closure or post closure?

25 A I believe the landfill was to the point that

1 it needed that, but I don't know that -- I don't  
2 believe it had been submitted or perhaps -- or at  
3 least not approved by the Agency.

4 Q Maybe this will clear it up. Is the Berger  
5 Landfill certified closed?

6 A Not that I am aware of.

7 Q In regards to the road, the vegetation on the  
8 road, why didn't you drive down the road? Why didn't  
9 you attempt it?

10 A I was afraid that it would do damage to the  
11 vehicle to the point that it would not be drivable.

12 Q Okay. And you had stated in earlier  
13 testimony about -- Mr. Benoit was asking you if you  
14 had seen any vectors at the landfill, which you stated  
15 no. I guess my question is why were vectors an  
16 issue? You brought them up in my original direct.  
17 Why did you mention them if you didn't actually see  
18 them?

19 A I think that you may have asked me or someone  
20 asked me what might be the potential impact if say the  
21 proper amount of cover was not applied or if erosion  
22 were to occur, and that was one of the reasons,  
23 because it could attract vectors.

24 Q Okay. Do you know -- offhand could you give  
25 an estimate if you have any idea where Mr. Berger's

1 closest neighbor is?

2 A I am not sure.

3 Q Okay. Do you know if they are close enough  
4 that they would be able to see leachate at Berger's  
5 landfill?

6 A I think it would be unlikely for them to be  
7 able to see it.

8 MR. BENOIT: I am going to object. She doesn't  
9 even know where the neighbors are. How would she know  
10 if they could see anything.

11 HEARING OFFICER CROWLEY: Strike that question and  
12 answer. She did say she didn't know.

13 Q (By Mr. Gubkin) Okay. You were able to  
14 observe leachate on one of your past inspections. I  
15 believe that was Exhibit 6, though I am not positive  
16 on that one.

17 MR. BENOIT: I am going to object to this line of  
18 questioning. Leachate is not even charged here.

19 HEARING OFFICER CROWLEY: I believe that we tied  
20 it up, that it is related to cover, so you may  
21 continue.

22 Q (By Mr. Gubkin) How were you able to observe  
23 leachate at the Berger Landfill?

24 A I walked over around the site and throughout  
25 that time I saw five areas -- I believe it was five

1 different areas -- from which leachate was seeping  
2 through the soil.

3 Q Okay. You may want to use the map from the  
4 April 18th, 1993 inspection here. I am going to use  
5 it to help me out, at least.

6 A Okay.

7 Q The leachate that you observed, was it near  
8 the outer boundaries of the landfill, within, in both  
9 areas? You said there were multiple areas.

10 A Just a minute. Is it okay if I tear it apart  
11 so I can see?

12 MR. GUBKIN: Would you like a different --

13 HEARING OFFICER CROWLEY: If you can do it without  
14 damaging it.

15 THE WITNESS: Okay. I don't think I will have to  
16 take it apart to see. Okay. It looks like most of  
17 the areas were in the more westerly portion of the  
18 landfill.

19 Q (By Mr. Gubkin) Okay. Would a normal  
20 passerby, someone who is walking by the Berger  
21 Landfill, be able to see leachate without entering the  
22 property of the Berger Landfill itself?

23 MR. BENOIT: Objection. This line of questioning  
24 is totally irrelevant. I don't understand what he is  
25 trying to get at.

1 HEARING OFFICER CROWLEY: I am not sure quite what  
2 you are trying to achieve either.

3 MR. GUBKIN: Well, Mr. Benoit had asked on his  
4 cross-examination whether anyone had reported --

5 MS. MENOTTI: Whether there was any harm to land  
6 or to people.

7 MR. GUBKIN: Well, he also asked --

8 MR. BENOIT: That she --

9 MR. GUBKIN: In regards to leachate, whether  
10 people had seen it, I believe.

11 MR. BENOIT: No.

12 MR. GUBKIN: Whether there had been -- I am  
13 sorry. I don't have the transcripts. I just have it  
14 from my notes.

15 HEARING OFFICER CROWLEY: I believe were there any  
16 complaints and --

17 MR. GUBKIN: In regards to leachate. I believe he  
18 said leachate specifically on that point. I am trying  
19 to establish whether or not anyone who didn't go and  
20 inspect that landfill, whether they would be able to  
21 see it. And, therefore, I think it is relevant as it  
22 directly deals with a question that Mr. Benoit asked  
23 on cross.

24 HEARING OFFICER CROWLEY: I will let you answer  
25 the question if you can.

1 THE WITNESS: They may be able to see the leachate  
2 that was shown in Roll M784, photo 12, and 780, photo  
3 1A. They looked like they were fairly close to the  
4 permitted area of the site, but the -- a couple of the  
5 other areas of leachate, I think it would be difficult  
6 for someone to observe from off site.

7 Q (By Mr. Gubkin) Okay. The last thing I  
8 wanted to talk to you about was that Mr. Benoit was  
9 talking about -- asking you about various harms, harms  
10 to the water of the State, harms to property. The  
11 violations which the State has alleged of the Berger  
12 Landfill, do these indicate harm to the environment  
13 themselves?

14 MR. BENOIT: Objection. I don't even understand  
15 what that question was.

16 MR. GUBKIN: I am sorry. I will try and rephrase  
17 that.

18 Q (By Mr. Gubkin) Do the violations alleged of  
19 Berger Landfill, are those things, such as improper  
20 cover, litter, the uncovered refuse being in the  
21 unpermitted area, are those all factors of potential  
22 harm to the environment?

23 A Vectors and uncovered refuse, are those  
24 potential harms, is that what you are asking?

25 Q Basically.

1 A Yes, there is that potential there.

2 MR. GUBKIN: Okay. We are done at this time.

3 Thank you.

4 RE CROSS EXAMINATION

5 BY MR. BENOIT:

6 Q Is your testimony that monitoring well G107

7 is the boundary of the landfill?

8 A It appears to me, based on the map taken from

9 the soils and hydrogeologic investigation and

10 recommended groundwater monitoring system report,

11 submitted on behalf of the Respondent, that it appears

12 to me that the property boundary -- or the, I am

13 sorry, the permitted waste boundary in that area of

14 G107 does not go further south than monitoring well

15 G107.

16 Q Okay. I want --

17 HEARING OFFICER CROWLEY: Again, that's the map in

18 People's 6, right?

19 THE WITNESS: Yes, it is.

20 MR. GUBKIN: I just want to clarify. There is two

21 different maps that we have had on here. I want to

22 make sure we are talking about the same one.

23 THE WITNESS: The one taken from that report

24 submitted on behalf of the Respondent, not the one

25 that I drew in photo numbers.



1 MR. GUBKIN: Okay. The map that is to scale, and

2 not the not to scale one that we talked about.

3 THE WITNESS: I'm assuming it is to scale. It

4 shows a scale at the top of it.

5 Q (By Mr. Benoit) Okay. I am going to ask the

6 question again, and I want you to listen to me.

7 A Okay.

8 Q Is the well that we talked about, G107, the

9 boundary -- and this is going to be a compound, but

10 just to give an idea of what I am getting at -- or is

11 the well located just south of the boundary? So let's

12 just start with the first question.

13 Is well G107 the boundary? Do you understand?

14 The distinction is -- I don't know how to get this

15 out.

16 HEARING OFFICER CROWLEY: Your question was is it

17 the boundary --

18 MR. BENOIT: Is it the boundary or --

19 HEARING OFFICER CROWLEY: -- or is it south of the

20 boundary.

21 MR. BENOIT: Or is it located at the boundary. Do

22 you know, under the permit?

23 THE WITNESS: Is it the boundary or is it located

24 at the boundary sounds like the same question to me.

25 HEARING OFFICER CROWLEY: That did sound like the

1 same question. You had earlier asked was it the

2 boundary or is it located south of the boundary.

3 MR. BENOIT: Okay. Let me see if I can rephrase.

4 Q (By Mr. Benoit) The permitted -- the area

5 that Berger was permitted to put waste in is

6 designated by a boundary; is that true?

7 A I believe so.

8 Q Okay. And which exhibit are we on now?

9 A Exhibit 6.

10 Q Exhibit Number 6, and I am talking about the

11 map that shows the cells. Well, let's go back to the

12 one that you marked that doesn't show the cells.

13 There is a line on there that shows the permitted

14 boundary; is that correct?

15 A Do you want to look at this one or a

16 different one?

17 Q We are back to the exhibit where you marked

18 with a blue line. Is there a line on there that shows

19 the permitted boundary?

20 A It is marked as permitted waste boundary.

21 Q Okay. So the monitoring well could be placed

22 incorrectly north of the permitted boundary; is that

23 true?

24 MS. MENOTTI: Objection. Assumes facts not in

25 evidence.

1 HEARING OFFICER CROWLEY: Could you rephrase that  
2 question? I had a problem with the way it was posed.

3 MR. BENOIT: Okay.

4 Q (By Mr. Benoit) Is it possible that the  
5 engineers did not put the monitoring well on the  
6 border of the permitted boundary but instead put it  
7 north of it?

8 MS. MENOTTI: Objection. Calls for speculation.

9 Also, it is not established that the witness has  
10 personal knowledge of what the engineers did at this  
11 site.

12 MR. BENOIT: I have established that she doesn't  
13 know where the monitoring well is located.

14 MS. MENOTTI: That was not the question asked.

15 HEARING OFFICER CROWLEY: I will instruct the  
16 witness not to answer the question. Is it possible?  
17 Anything is possible.

18 MR. BENOIT: Okay.

19 HEARING OFFICER CROWLEY: You have -- the witness  
20 has indicated that she knows physically where on the  
21 site the monitoring well is located. We did have some  
22 back and forth as to whether particular maps correctly  
23 located it, but, again, those are not maps prepared by  
24 the witness.

25 MR. BENOIT: My recollection is that she never

1 established that she knew or measured or has any idea  
2 of where that monitoring well is, other than walking  
3 up to it and saying it is there. As far as measuring  
4 it and making it correspond to map, she has never done  
5 that.

6 HEARING OFFICER CROWLEY: I don't believe that she  
7 has ever established correspondence on the map, but  
8 physically she knows where it is located on the site.  
9 She has visually observed it. That is, I believe,  
10 what the testimony shows.

11 MR. BENOIT: I agree with that. I am just -- I  
12 don't know how to phrase this any different. I am  
13 just trying to establish that there could be a  
14 permitted boundary, and somebody could put a well --

15 MS. MENOTTI: Objection. Is Counsel's narrative a  
16 question?

17 MR. BENOIT: And the permitted boundary does not  
18 move just because the well moves.

19 MS. MENOTTI: Is this a question for the witness  
20 or are you asking the Hearing Officer how you can  
21 present your evidence? Objection and move to strike  
22 Counsel's --

23 MR. BENOIT: I am asking her to allow me to  
24 continue this line of questioning until the witness  
25 can understand what the question is.

1 HEARING OFFICER CROWLEY: I am going to strike the  
2 last question. And I really don't see the relevance  
3 of the line of questioning. I will not ask the  
4 witness to speculate whether something could have  
5 happened at --

6 MR. BENOIT: Can I ask one more question?

7 HEARING OFFICER CROWLEY: -- that site. Yes.

8 MR. BENOIT: It is another hypothetical. Let me  
9 ask it and see if there is an objection.

10 Q (By Mr. Benoit) If monitoring well G107 were  
11 moved north, would that change the permitted area of  
12 the landfill?

13 MS. MENOTTI: Objection. Vague. How far north?  
14 Which way north?

15 HEARING OFFICER CROWLEY: I am sorry?

16 MS. MENOTTI: Well, north is vague. He asked if  
17 the groundwater monitoring well was moved north, would  
18 that change her opinion. He has not established how  
19 far north, directly north.

20 HEARING OFFICER CROWLEY: I think that he has  
21 asked a question that is understandable.

22 Can you answer? Does the permitted boundary of  
23 the landfill move if the location of a monitoring well  
24 moves?

25 THE WITNESS: I wouldn't think so.

1 MR. BENOIT: Thank you. No further questions.

2 MR. GUBKIN: I have just a couple.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. GUBKIN:

5 Q Referring to State's Exhibit Number 6, the  
6 April 18th, 1994 report, the map that is to scale  
7 where you marked off the unpermitted refuse. Who was  
8 this map -- where did this map come from?

9 A I believe it came from information submitted  
10 on behalf of the Respondent.

11 Q And how did you use this map in determining  
12 that Mr. Berger disposed of refuse beyond the  
13 permitted area?

14 A This map shows that the permitted waste  
15 boundary west of monitoring well G107, it runs  
16 directly west of monitoring well G107, but goes no  
17 further south than monitoring well G107.

18 Q Okay. Now, cross-referencing this map with  
19 your actual site inspection that you took, the actual  
20 walk through, was it evident that Mr. Berger disposed  
21 of refuse beyond the permitted boundary of his  
22 landfill?

23 A Yes, it appeared that that was the case.

24 MR. GUBKIN: No further questions.

25 MR. BENOIT: No further questions.

1 HEARING OFFICER CROWLEY: Thank you, Ms.  
2 Williams.  
3 (The witness left the stand.)  
4 HEARING OFFICER CROWLEY: It now being 5:42, and  
5 given that we are required to be out of the room by  
6 6:00, I am not going to ask if anyone wants to present  
7 any additional witnesses today. I will ask if there  
8 is anything else that we need to attend to before we  
9 adjourn or recess.  
10 MS. MENOTTI: Are we going to start at 9:00  
11 tomorrow morning?  
12 MR. BENOIT: I thought we were starting at 8:30 in  
13 the morning.  
14 HEARING OFFICER CROWLEY: I had said that I was  
15 available, that we were available to start as early as  
16 8:30.  
17 MS. MENOTTI: We can try and be down here that  
18 early. We have got --  
19 HEARING OFFICER CROWLEY: If the witness can't be  
20 available until 9:00 that's fine.  
21 MR. BENOIT: Is there other people besides Wayne  
22 in your case?  
23 MS. MENOTTI: The witnesses are coming in from  
24 Springfield and from other places, and are not going  
25 to be here. We are coming in from Effingham. So I am

1 saying that we have got travel to consider in

2 conjunction with -- I mean, we are not right here.

3 MR. BENOIT: I guess my question is, is Wayne your

4 last witness in your case in chief?

5 MS. MENOTTI: He is the last witness that we have

6 to call.

7 MR. BENOIT: Okay. And just so I can -- let's

8 see. You have got John Taylor coming in about 10:00?

9 MS. MENOTTI: Actually, can we go off the record

10 and make the decisions and then put it back on the

11 record.

12 HEARING OFFICER CROWLEY: Oh, I am sorry. Yes.

13 (Discussion off the record.)

14 HEARING OFFICER CROWLEY: All right. We will go

15 back on the record.

16 We will reconvene at 9:00 tomorrow morning.

17 Again, we will be forced to close tomorrow at 2:00.

18 Thank you.

19 (Exhibits retained by Hearing

20 Officer Crowley.)

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1 STATE OF ILLINOIS )  
                                  ) SS  
2 COUNTY OF MONTGOMERY)

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4           C E R T I F I C A T E

5

6    I, DARLENE M. NIEMEYER, a Notary Public in and for  
7 the County of Montgomery, State of Illinois, DO HEREBY  
8 CERTIFY that the foregoing 208 pages comprise a true,  
9 complete and correct transcript of the proceedings  
10 held on the 18th of August A.D., 1998, at The Olney  
11 Public Library, Olney, Illinois, in the case of The  
12 People of the State of Illinois v. Wayne Berger and  
13 Berger Waste Management, Inc., in proceedings held  
14 before the Honorable Kathleen M. Crowley, Hearing  
15 Officer, and recorded in machine shorthand by me.

16    IN WITNESS WHEREOF I have hereunto set my hand and  
17 affixed my Notarial Seal this 31st day of August A.D.,  
18 1998.

19

20

21           Notary Public and  
              Certified Shorthand Reporter and  
22           Registered Professional Reporter

23           CSR License No. 084-003677  
              My Commission Expires: 03-02-99

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