

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

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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 20, 1998 at 9:00 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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On behalf of Respondent.

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1 PROCEEDINGS

2 (August 20, 1998; 9:00 a.m.)

3 HEARING OFFICER CROWLEY: Good morning. This is
4 the third day of hearing in the matter of PCB 94-373,
5 the People of the State of Illinois versus Wayne
6 Berger and Berger Waste Management, Incorporated. I
7 am Kathleen Crowley. I am the Hearing Officer in this
8 proceeding.

9 Again, for the record, there have been no members
10 of the public in attendance since this hearing
11 commenced and there are no members of the public here
12 today who are not affiliated with one or the other
13 parties. So I think we can just begin without any
14 further remarks from me.

15 Are there any preliminary matters before we begin
16 today?

17 MS. MENOTTI: No.

18 MR. BENOIT: No.

19 HEARING OFFICER CROWLEY: Mr. Benoit, would you
20 like to present your next witness?

21 MR. BENOIT: Yes, I would like to call the next
22 witness, Steve Schonert.

23 (Whereupon the witness was sworn by the Notary
24 Public.)

25

1 S T E V E N S C H O N E R T ,

2 having been first duly sworn by the Notary Public,

3 saith as follows:

4 D I R E C T E X A M I N A T I O N

5 B Y M R . B E N O I T :

6 Q Would you state and spell your name for the
7 record.

8 A My full name is Steven L. Schonert,
9 S-T-E-V-E-N, S-C-H-O-N-E-R-T.

10 Q And are you a resident of Richland County?

11 A Yes.

12 Q And what is your occupation?

13 A I am a CPA and member of the Kemper CPA Group
14 LCC, an accounting firm.

15 Q How long have you been a CPA?

16 A Since 1981.

17 Q And do you know Wayne Berger?

18 A Yes.

19 Q How long have you known Wayne?

20 A I probably got to know him around 1995. I
21 took over his accounting work for my former partner.

22 M R . B E N O I T : I am going to show the witness a set
23 of documents that has previously been marked R51, R52,
24 R53, R54, R55, R56, R57 and R58.

25 H E A R I N G O F F I C E R C R O W L E Y : Excuse me. Was that R51

1 through R58?

2 MR. BENOIT: Yes.

3 HEARING OFFICER CROWLEY: Thank you.

4 MS. MENOTTI: Could I ask to keep your voice up?

5 You are getting lost in the cooling system. That was

6 R51 through R58 that you wanted him to look at?

7 MR. BENOIT: Right.

8 MS. MENOTTI: We are going to object to the

9 witness using R58. It has not been disclosed in

10 discovery. We only have tax returns for the years

11 1991, 1992, 1993 for the individual, 1994, and 1995

12 for the corporation and -- I am sorry. We have 1991,

13 1992, 1993, 1994 and 1995 for the individual and 1993,

14 1994 and 1995 for the corporation.

15 This information was required to be disclosed

16 during discovery. We have not been able to see them

17 before. So we object to anything besides those

18 exhibits to be shown to this witness or used. I guess

19 I would include a corporate tax return for 1996, R57.

20 We are going to object to R52. We haven't -- oh, I am

21 sorry. R57 and R58 we object to because they were not

22 provided to the State during discovery, it is unfair

23 surprise, and abuse of discovery rules.

24 MR. BENOIT: Those are the last two?

25 MR. GUBKIN: Yes.

1 MS. MENOTTI: R57 and 58 for right now, yes.

2 MR. BENOIT: The discovery request specifically
3 stated that we were to provide information up to
4 1995. We provided it. Well, we can just look at what
5 the discovery request says.

6 MS. MENOTTI: The discovery requested 1986 to
7 present, I believe. And you were required to -- the
8 Respondent was required to update the responses, and
9 they should be barred from using information that they
10 have not disclosed prior to trial.

11 MR. BENOIT: Interrogatory Number 6 of the
12 Complainant's first set of interrogatories says state
13 the amount of your annual income for the tax years
14 1986 through 1995, and state the source of the said
15 income. The request for the production of documents,
16 I will have to read what --

17 MS. MENOTTI: Interrogatory Number 23 requests the
18 accurate books and records of the business for all of
19 the years regarding the complaint. The Berger Waste
20 Management tax returns would be business records that
21 they would be required to keep. 1996 and 1997 were
22 not disclosed under Interrogatory Number 23.

23 Also, depending on whether or not -- what the
24 purpose of using this is, besides the fact the
25 corporation had to file it, if this were relied upon

1 by the Respondent for any other reason to determine
2 financial status it would also fall under disclosure
3 under Interrogatory Number 28.

4 MR. BENOIT: Interrogatory Number 6, again, says
5 state the amount of the annual income for tax years
6 1986 through 1995, and state the source of the said
7 income.

8 HEARING OFFICER CROWLEY: And Number 23, if you
9 could read that to me as well. I believe it was 23 --

10 MS. MENOTTI: Yes. I am sorry. I will --

11 HEARING OFFICER CROWLEY: -- that you had cited.

12 MS. MENOTTI: Number 23 says, state whether or not
13 you have kept accurate books and records of the
14 original business and personal transactions including
15 but not limited to cancelled checks or check stubs,
16 stating any of persons having custody of the records,
17 and if unavailable explain why.

18 Number 28 says, identify any financial statements
19 that were prepared for the Respondent for the purpose
20 of acquiring any loans, monthly reporting, reports on
21 the -- reports to management on financial condition,
22 balance sheets, income statements, changes in equity,
23 or capital or funding for any other purpose from 1986
24 to the present.

25 And there is another interrogatory that requests

1 that all the documents used to answer the
2 interrogatories be produced to the State.

3 MR. BENOIT: My argument would be other than
4 Interrogatory Number 6, the other interrogatories she
5 has referred to are so general and vague they don't
6 really cover income tax statements. Interrogatory
7 Number 6 is specific as to what it is looking for and
8 the type of records that would reflect that. It
9 clearly states that the records to be provided are
10 from 1986 to 1995. That is how we responded to the
11 interrogatory at that time with the tax returns.

12 HEARING OFFICER CROWLEY: I will overrule the
13 objection. We will consider it a continuing objection
14 to those documents, and I assume testimony concerning
15 those documents?

16 MS. MENOTTI: I am sorry?

17 HEARING OFFICER CROWLEY: To those documents and I
18 assume to testimony concerning those documents?

19 MS. MENOTTI: Yes.

20 Q (By Mr. Benoit) Are you familiar with
21 Exhibits R51 through R58?

22 A Yes.

23 Q Are Exhibits R51 through R58 copies of tax
24 returns that you keep in your files?

25 A Yes.

1 Q Are they the kind of forms that a CPA would
2 rely upon?

3 A As far as getting information, summarizing
4 information, yes.

5 Q And you maintain tax returns, such as R51
6 through R58, in the normal course of your business?

7 A Yes. Our policy is to try to keep seven
8 years of tax returns on file or in storage for our
9 clients.

10 MR. BENOIT: I would move for the admission of R51
11 through R58.

12 HEARING OFFICER CROWLEY: We will admit R51
13 through R58, again, noting the Complainant's
14 objections to R57 and R58, as having not been
15 previously disclosed in response to discovery
16 requests.

17 (Whereupon said documents were admitted into
18 evidence as Respondent's Exhibits 51 through 58 as
19 of this date.)

20 Q (By Mr. Benoit) Have you reviewed the federal
21 income tax forms for Wayne and Judy Berger, which
22 would be R51 through R53?

23 A I have seen them, yes.

24 Q Were you able to determine the after tax
25 business income generated by the landfill and trash

1 hauling business for years 1991 through 1993?

2 A Yes.

3 Q And how much -- what was the amount of the
4 after tax business income in 1991?

5 A Approximately \$26,610.00.

6 Q What was the after tax business income in
7 1992?

8 A \$43,800.00.

9 Q What was the after tax business income in
10 1993?

11 A \$45,210.00.

12 Q Did you calculate the average after tax
13 business income for those three years, 1991 through
14 1993?

15 A Yes.

16 Q And what was the result of that calculation?

17 A Approximately \$38,000.00 a year.

18 MS. MENOTTI: For the record, please have the
19 witness state what he is basing the calculations on.

20 All we have is the tax returns if front of us, and I
21 don't know what you are calculating an average off of.

22 THE WITNESS: The income basically is the business
23 income which on like, for instance, 1991 would be line
24 twelve, \$32,573.00 less Social Security tax, less
25 income tax, on the return noted on page two of the

1 form 1040.

2 Q (By Mr. Benoit) Are you aware that Wayne
3 Berger's landfill business and trash hauling business
4 was incorporated in 1993?

5 A Yes.

6 Q And have you reviewed Exhibits R54 through
7 R58 to determine what the corporation's after tax
8 business income was during those years?

9 A Yes.

10 Q What was the corporation's after tax business
11 income in 1993?

12 A For 1993 it was a loss of \$1,800.00.

13 Q For 1994?

14 A It was a loss of \$3,947.00.

15 Q For 1995?

16 A It was a profit of \$6,056.00.

17 Q And for 1996?

18 A It was a profit of \$636.00.

19 Q And for 1997?

20 A It was a profit of \$3,284.00.

21 Q Based on those numbers, were you able to
22 calculate the average after tax business income that
23 the corporation realized in the years 1993 through
24 1997?

25 A It was approximately \$850.00 a year.

1 Q Based on your review of R51 through R58, were
2 you able to calculate the after tax business income
3 from business operations from 1991 through 1997?

4 A When we averaged all of those years
5 approximately it was about \$14,900.00.

6 MS. MENOTTI: For the record, could you please,
7 Ms. Hearing Officer, ask the witness to indicate what
8 exactly it is that he is reading off of up there? He
9 is not doing any calculations and appears to be
10 reading some sort of notes or coaching mechanism to
11 get these figures.

12 HEARING OFFICER CROWLEY: Could you give us the
13 Exhibit Number, please?

14 THE WITNESS: It is Exhibit Number R43.

15 MR. BENOIT: Let me clear things up for the
16 record. I had marked that as R43.

17 MS. MENOTTI: I don't have a copy of R43.

18 MR. BENOIT: No, it is not admitted into
19 evidence. It has never been presented today. This is
20 a --

21 MS. MENOTTI: I think I am entitled to have a copy
22 of it if it is an exhibit that is going to be --

23 HEARING OFFICER CROWLEY: Could we let Mr. Benoit
24 finish, please?

25 MR. BENOIT: Yes. I asked Mr. Schonert to prepare

1 some calculations along the lines that I am having him
2 testify to today. I had him put together the tax
3 returns and make copies for me, which he was nice
4 enough to do, out of his business records. I was
5 trying to make it in a summary fashion without
6 including all the schedules so as to keep the Board's
7 record a little thinner.

8 Due to my experience in this hearing, with the
9 number of objections and everything else, I changed
10 course. I called up Mr. Schonert and had him make
11 entire copies of the tax returns. So I don't really
12 intend to ever admit what I marked R43 and will not
13 be, you know, admitted into evidence. It has never
14 been offered. It is not going to be offered.

15 MS. MENOTTI: I have two objections.

16 HEARING OFFICER CROWLEY: I am sorry.

17 MS. MENOTTI: I thought he was finished.

18 MR. BENOIT: I think that the Hearing Officer can
19 recognize that when we are asking for a lot of
20 calculations it is helpful for the witness to already
21 have the numbers. I asked him if he was able to do
22 the calculations. I don't think it is necessary for
23 him to take all of the time and do them right in front
24 of us. I guess that's it.

25 MS. MENOTTI: Ms. Hearing Officer, two

1 objections. Ms. Hearing Officer, number one, under
2 Interrogatory Number 28, they were required to provide
3 any financial statements and reports prior to
4 hearing. If the witness has produced this prior to
5 hearing today, the Respondents were required to
6 disclose that before this morning. I still don't have
7 a copy of it. It doesn't matter whether or not they
8 are going to use it or put it into evidence. They are
9 still required to disclose under the discovery rules.
10 Number two, if it is not going to be entered into
11 evidence, the witness should not be allowed to rely
12 upon it during his testimony, and if it was prepared
13 solely for the purposes of litigation, we have already
14 established that would not be admissible as evidence.
15 Reports prepared on behalf of the Respondent for
16 this trial either have to be disclosed or can't be
17 used, and I -- the State would object based on that
18 and that the Respondent is depriving the State of
19 information that they are putting into the record.
20 HEARING OFFICER CROWLEY: Mr. Benoit?
21 MR. BENOIT: I think we have established that she
22 has had these tax forms. If she wanted to make the
23 calculations she could have easily done it. He has
24 testified to the amounts for years 1991 through 1997.
25 These are very, very simple calculations, add three

1 numbers together and divide by three. I mean, this is
2 a -- you know, I guess we could have him sit up there
3 with a calculator and do it, but I thought the State's
4 position was move this thing along. I think yesterday
5 we had Bruce Runyon from the bank, the same thing.
6 When you do a large number of calculations it is
7 okay. I don't think there is any rule prohibiting
8 them from looking at their notes that they used to
9 make calculations.

10 MS. MENOTTI: Mr. Benoit is --

11 HEARING OFFICER CROWLEY: Thank you.

12 MS. MENOTTI: -- mischaracterizing my objection.

13 HEARING OFFICER CROWLEY: Thank you. I believe it
14 will move things along if we can use the
15 calculations. Can you provide the State with a copy
16 of R43 at this point?

17 MR. BENOIT: Sure. This has my penciled on notes
18 of what I thought --

19 HEARING OFFICER CROWLEY: For her reference.

20 MR. BENOIT: For the record, this copy and these
21 numbers that are written in pencil are what I wrote on
22 there. I don't care if she has it.

23 HEARING OFFICER CROWLEY: Thank you. Now, if we
24 can -- you may proceed with your questions.

25 MR. BENOIT: Okay. I would like the Hearing

1 Officer to take judicial notice that the financial
2 assurance requirements became effective sometime in
3 1985.

4 MS. MENOTTI: I am sorry? What?

5 MR. BENOIT: I would -- I am asking the Hearing
6 Officer to take judicial notice that the financial
7 assurance requirements became effective sometime in
8 1985.

9 HEARING OFFICER CROWLEY: Can you provide us with
10 the citation of the rules that you would like the
11 Board to take notice of, the effective date of rules,
12 or sections of the statute that you would like the
13 Board to take official notice of, the effective date
14 of?

15 MR. BENOIT: At this point, no.

16 HEARING OFFICER CROWLEY: Then at this point your
17 request is denied.

18 MR. BENOIT: Okay.

19 HEARING OFFICER CROWLEY: If you can specify it,
20 yes, I think that we can.

21 Q (By Mr. Benoit) Assuming, for purposes of
22 your answer or your testimony today, that the
23 financial assurance requirements that are at issue in
24 this case became sometime effective -- became
25 effective sometime in 1985, and assuming that Wayne

1 Berger had known in 1985 that he would have had to
2 provide financial assurance in the amount of
3 \$241,980.00, how much of the income derived from the
4 landfill would he have had to set aside each year
5 including years 1985 through 1997?

6 MS. MENOTTI: I am going to object to the
7 foundation. The Respondent has not established that
8 the witness knows what financial assurance is or
9 calculated any kind of financial assurance estimates
10 in the course of his business as a certified public
11 accountant that prepares tax returns for the
12 Respondent.

13 MR. BENOIT: We have had testimony earlier in this
14 case from an expert that as far as for like a letter
15 of credit it is considered in the same fashion as any
16 other loan. I think the witness is qualified as a CPA
17 to understand --

18 HEARING OFFICER CROWLEY: I agree that the witness
19 is qualified. Could you ask the witness if he is
20 familiar with financial assurance requirements that
21 apply to Mr. Berger's landfill?

22 Q (By Mr. Benoit) Are you familiar with letters
23 of credit?

24 A Yes.

25 HEARING OFFICER CROWLEY: All right. Go ahead.

1 MR. BENOIT: Could you read the question back for
2 him.

3 (Whereupon the requested portion of the record was
4 read back by the Reporter, page 324, line 21.)

5 MS. MENOTTI: The State renews its objection.

6 HEARING OFFICER CROWLEY: You may answer the
7 question if you can.

8 THE WITNESS: Could you repeat that last part
9 again?

10 (Whereupon the requested portion of the record was
11 read back by the Reporter.)

12 MS. MENOTTI: We would object to from 1985 to 1991
13 that there is no facts in evidence regarding the
14 Respondent's financial condition.

15 MR. BENOIT: It is a hypothetical question.

16 HEARING OFFICER CROWLEY: Correct. Go ahead.

17 THE WITNESS: It would be approximately \$18,500.00
18 a year committed evenly each year for those 13 years.

19 Q (By Mr. Benoit) And in your opinion, would
20 that -- if, in fact, he had to set aside the
21 \$18,000.00 you were talking about, would that render
22 the business not a very profitable enterprise?

23 A If I would have been advising Wayne during
24 that time, I probably would have advised him, if he
25 couldn't produce additional revenue, to consider

1 selling out or quitting the business.

2 MS. MENOTTI: For the record, could we clarify
3 that that would still be a hypothetical since the
4 previous question was based on hypothetical financial
5 information?

6 MR. BENOIT: Yes, that's fine.

7 HEARING OFFICER CROWLEY: Excuse me?

8 MR. BENOIT: That's fine.

9 Q (By Mr. Benoit) Are you familiar with IRAs?

10 A Yes.

11 Q And are you familiar with the IRS rules and
12 tax rules governing IRAs?

13 A Yes.

14 Q If someone removes money from an IRA
15 prematurely, what are the tax ramifications?

16 A Normally if a person removes money from an
17 IRA before they reach age 59 and a half, they are
18 subject to a ten percent penalty right off the top,
19 and then in addition they are subject to the regular
20 income tax rates in the year of distribution.

21 Q Hypothetically, if a person is 58 years old,
22 and the person has income of \$15,000.00 per year, and
23 the person removes \$80,000.00 out of his IRA, how much
24 taxes would that person have to pay or what -- strike
25 the last part.

1 What type of tax would the person pay by removing
2 the \$80,000.00 from the IRA?

3 MS. MENOTTI: Objection. How are the income tax
4 payments of an IRA relevant?

5 HEARING OFFICER CROWLEY: I am sorry. I didn't
6 hear what --

7 MS. MENOTTI: I am sorry. I was wondering how the
8 payment of income tax out of an IRA was relevant to
9 the complaint.

10 MR. BENOIT: Do I have to explain my defense in
11 detail to her?

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

14 Q (By Mr. Benoit) Do you want me to restate the
15 question or do you remember it?

16 A I can respond to it.

17 Q Okay.

18 A Basically the calculations determine that you
19 on the 1040 return, and so we have to look at all
20 items of income. Assuming that they had \$15,000.00 of
21 other income in addition to the IRA, of course, the
22 ten percent penalty would be right off the top. So it
23 would be \$8,000.00 plus their tax bracket. And for
24 somebody making \$15,000.00 plus \$80,000.00,
25 \$75,000.00, the tax bracket would probably be 28

1 percent federal. So we would be looking at roughly
2 \$21,000.00 income tax for a total of about \$29,000.00
3 tax associated with that IRA withdrawal if it was
4 premature.

5 MR. GUBKIN: What was that? Was that 21 or 29?

6 THE WITNESS: It is 29. It would be the \$8,000.00
7 penalty plus the \$21,000.00 income tax which would be
8 assuming about a 28 percent tax bracket.

9 HEARING OFFICER CROWLEY: Again, that's on a
10 withdrawal of how much?

11 THE WITNESS: \$80,000.00.

12 HEARING OFFICER CROWLEY: Thank you. I lost
13 something there.

14 Q (By Mr. Benoit) Using exactly the same
15 hypothetical but changing the amount to \$130,000.00,
16 what would be the tax ramifications?

17 MS. MENOTTI: For clarification, which number are
18 you using to get the \$130,000.00?

19 MR. BENOIT: The amount that is taken out of the
20 IRA.

21 THE WITNESS: Again, the ten percent penalty would
22 take out \$13,000.00 first tax and then the tax
23 bracket, again, this is graduated, so we would have a
24 graduated tax bracket. Probably the income tax would
25 be in the neighborhood of 31 percent, estimated. We

1 would probably be looking at approximately \$40,000.00
2 income tax, for a total of probably about \$53,000.00
3 in tax. Again, it depends on his other items of
4 income. But if he had about \$15,000.00 of other
5 income in addition to the IRA withdrawal, that would
6 be a rough estimate.

7 MR. BENOIT: No further questions.

8 CROSS EXAMINATION

9 BY MR. GUBKIN:

10 Q It is not necessary to take all of the money
11 out of an IRA at one point if you are going to
12 withdraw from an IRA; isn't that true?

13 A Right. There are options of withdrawal.

14 Q Whether or not someone wants to remove money
15 from an IRA is a business call, isn't it? It is a
16 personal judgment on their part?

17 A Right.

18 Q Okay.

19 A Except when you get up to 70 and a half, and
20 then once you reach age 70 and a half then you have
21 some minimum distribution rules that the IRS requires.

22 Q I want to clarify one point in this
23 hypothetical. In the \$80,000.00 withdraw and
24 \$130,000.00 withdraw, those amounts, each one, would
25 put you in a different tax bracket because the IRA

1 money would be considered income?

2 A Well, it would be a graduated tax bracket,
3 the way the rules work. The more income you make,
4 that extra income is taxed at a little bit higher
5 rate.

6 Q So, therefore, if you took out a smaller
7 amount then you would be in a lower tax bracket; isn't
8 that correct?

9 A Over a period of time, a number of years,
10 yes.

11 Q In addition, if you took out smaller amounts,
12 the amount that is left would still gain the benefits
13 of being within an IRA; isn't that correct?

14 A Yes.

15 Q Your calculations that you made, the average
16 incomes for Mr. Berger --

17 A Yes.

18 Q -- those were based on income of the
19 business; is that correct?

20 A Right, that's correct.

21 Q Based solely on income from the business?

22 A Right.

23 Q Whether as a proprietorship or as a
24 corporation; isn't that correct?

25 A Right. It is related to the business, yes.

1 Q It is also based solely on what is within the
2 income tax return; isn't that correct?

3 A Right, correct.

4 MR. GUBKIN: Okay. No further questions.

5 HEARING OFFICER CROWLEY: Mr. Benoit?

6 MR. BENOIT: No questions.

7 HEARING OFFICER CROWLEY: Thank you very much, Mr.
8 Schonert.

9 (The witness left the stand.)

10 THE WITNESS: Do I leave these exhibits here?

11 HEARING OFFICER CROWLEY: Yes.

12 MR. BENOIT: I had moved to have them admitted.

13 HEARING OFFICER CROWLEY: Yes, and they have been
14 admitted --

15 MR. BENOIT: Okay.

16 HEARING OFFICER CROWLEY: -- with the objection of
17 57 and 58.

18 MR. BENOIT: Our next witness would be Harry
19 Chappel.

20 (Whereupon the witness was sworn by the Notary
21 Public.)

22 H A R R Y A. C H A P P E L,
23 having been first duly sworn by the Notary Public,
24 saith as follows:
25

1 DIRECT EXAMINATION

2 BY MR. BENOIT:

3 Q Could you state your name for the record.

4 A Harry A. Chappel.

5 Q And can you provide us with your educational
6 background?

7 A I have a Bachelor of Science in Civil
8 Engineering from the University of Missouri. I have a
9 Master of Science in thermal and environmental
10 engineering from Southern Illinois University at
11 Collinsville.

12 Q Do you have any professional licenses?

13 A I am a Registered Professional Engineer in
14 the States of Illinois and Missouri.

15 Q Do you belong to any professional
16 organizations?

17 A I am a member of the American Society of
18 Civil Engineers. I am a member of the Consulting
19 Engineers Council of Illinois, where I serve on the
20 environmental committee. And I am also a Member of
21 the American Consulting Engineers Council, and I am a
22 member of the environmental committee of that
23 organization.

24 Q Where are you presently employed?

25 A I am presently vice president of CSD

1 Environmental Services, Incorporated.

2 Q And what type of work do you perform at CSD?

3 A Primarily environmental consulting services
4 in the area of underground storage tanks, hazardous
5 waste landfills, some waste treatment, some water
6 treatment.

7 Q Where were you employed prior to your present
8 position at CSD?

9 A By the Illinois Environmental Protection
10 Agency.

11 Q What were your duties while you were working
12 for the Agency? Could you start when you first
13 started and kind of give us a summary?

14 A I started with the Agency in 1976. I ended
15 my employment with the State in May of 1995. During
16 that period of time I was a permit review engineer in
17 the Division of Water pollution control. I then moved
18 to what was then called the mine pollution control
19 program. I was manager of the permit section in the
20 mine pollution control program.

21 I then moved to the Division of Land pollution
22 control, now called the Bureau of Land, and was a unit
23 manager in the permit section responsible for landfill
24 permitting in the State of Illinois. I subsequently
25 moved to manager of the underground storage tank

1 section within the Bureau of Land. And following that
2 I was the head of the hazardous waste branch of the
3 permit section, responsible for hazardous waste
4 permitting. After that I left and went to CSD.

5 Q Now, Mr. Berger has hired you to offer
6 opinion witness testimony and other testimony today;
7 isn't that true?

8 A That's correct.

9 Q And I guess by saying he hired you, he is
10 paying you to do this work?

11 A Yes, sir.

12 Q And normally you would hope that all of your
13 clients would pay you for the work that you perform;
14 is that true?

15 A That helps keep us in business, yes.

16 Q What did you do to prepare for the testimony
17 you are going to give today?

18 A I was presented with a box or a folder of
19 information that had been obtained from the Illinois
20 EPA files that were a history of the permitting,
21 groundwater monitoring, field inspection reports, all
22 of the information that was in the Agency files, the
23 hard copy. I reviewed that information. I also did
24 some calculations based on that information to
25 determine relative cost for different scenarios that I

1 was presented with.

2 I visited the landfill site yesterday. I made
3 some rough calculations as to where certain items
4 should or should not be located at the landfill, and I
5 just made general observations of the area around the
6 landfill.

7 MS. MENOTTI: The State objects to further
8 testimony by this witness, because he is acting as an
9 officer, agent, employee, representative of the
10 Respondent, having knowledge of subject matter of the
11 complaint, and was not previously disclosed to the
12 State. It constitutes unfair surprise, in that the
13 State cannot properly prepare for the
14 cross-examination.

15 He was required to give the State this information
16 pursuant to Interrogatory Number 29 of the State's
17 discovery request, and did not. And also by not doing
18 that the State was not able to depose this witness.

19 And I bet if we continue further we will find out that
20 this witness was probably not even hired until after
21 discovery was closed.

22 MR. BENOIT: The State has never asked for the
23 Respondents to identify expert or opinion witnesses.
24 The scheduling order entered in this case has never
25 required the Respondents to disclose expert

1 witnesses. The joint status report filed in this case
2 and signed by Assistant Attorney General, Maria
3 Menotti, indicates that at that time we were looking
4 for experts and opinion witnesses. I would have to
5 dig that out to get the exact date.

6 But shortly thereafter a status conference, a
7 telephone conference was set by then Hearing Officer
8 Jack Burds. At that time I was first informed that
9 Mr. Burds intended to set this matter for hearing in a
10 relatively short period of time. At that time I
11 stated that I was surprised and that, you know, we
12 were going to have opinion witnesses, and I thought
13 there were going to be dates, as in a normal
14 scheduling order, for opinion witnesses to be
15 disclosed.

16 At that time Assistant Attorney General, Maria
17 Menotti, stated, no, she wanted a hearing date and
18 wanted this set and stated that she would try to bar
19 my opinion witnesses. And that's when I looked back
20 to see if she had ever requested them or a scheduling
21 order ever required such disclosure.

22 I have the Code of Civil Procedure here that I am
23 referring to as the two means in which someone could
24 be required, and if you want me to I will read that
25 into the record. I also think it is a little

1 ingenious that she had -- she just now brings it up
2 when Mr. Chappel is here, who has been hired, as he
3 has testified, has driven all the way down to Richland
4 County at significant expense to my client, and
5 springs this on us here, you know, at this time when
6 he is on the stand. And also she never objected to my
7 other opinion witnesses who were similarly not
8 disclosed and were not required to be disclosed, and I
9 am referring to Mr. Runyon and Mr. Schonert, who we
10 have just heard from.

11 HEARING OFFICER CROWLEY: Thank you. Ms.
12 Menotti?

13 MS. MENOTTI: First of all, Mr. Runyon and Mr.
14 Schonert were testifying to financial information and
15 not to actual counts of the complaint. And the State
16 can pick and choose who to object to and who it
17 doesn't. That is within our discretion as prosecutor
18 and as the plaintiff in this case.

19 Mr. Benoit is mischaracterizing what happened
20 prior to the end of -- in setting this schedule for
21 hearing. Mr. Burds entered a Hearing Officer order on
22 February 5th of 1998, cutting off deadlines for
23 discovery and depositions. The Hearing Officer order
24 said all depositions concluded and all other discovery
25 closed June 15th, 1998. How the Respondents thought,

1 and how Mr. Benoit got the crazy idea in his head that
2 somehow we were going --

3 HEARING OFFICER CROWLEY: Excuse me, please.

4 MS. MENOTTI: -- to keep this going was -- I don't
5 understand. I can show you a copy of the Hearing
6 Officer order from February if you would like to see
7 it.

8 HEARING OFFICER CROWLEY: I have a copy of that
9 order. I am familiar with it.

10 MS. MENOTTI: It is the State's contention that
11 this witness was required to be disclosed under the
12 discovery rules, and the -- I mean, I couldn't
13 previously object. I apologize for the inconvenience
14 that may have occurred to this witness for having to
15 drive down here from Springfield, but the witness was
16 not disclosed until July 24th. We didn't receive the
17 witness disclosure until July 27th of this year.

18 All we have is a list of people. I didn't know
19 that Mr. Chappel was going to be giving opinion
20 testimony. I can't tell you anything about what he is
21 going to say. For all I know he could be a life-long
22 friend of Mr. Berger. I had no basis for objecting to
23 his inclusion on a witness list that was provided by
24 the Respondent. My objection didn't become ripe until
25 right now, when the witness told me that he is going

1 to testify back to facts in the history and things
2 that relate directly to the allegations of the
3 complaint.

4 MR. BENOIT: Mr. Chappel is going to testify based
5 on the review of the documents and the Regulations and
6 the Act. All of those documents were provided to me
7 pursuant to discovery. In any event, even if I had
8 given him some other documents that Maria doesn't
9 have, the rules don't require that whatever he bases
10 his testimony on as an expert be provided to the other
11 side.

12 I am just going to restate that the State, in
13 their discovery requests, interrogatories, did not
14 comply with Supreme Court Rule 213, and I am referring
15 to 213F -- well, no. I am referring to the wrong
16 rule.

17 Anyway, they could have asked for the identity of
18 the expert or opinion witnesses, which the Respondents
19 did, or the date for disclosing opinion or expert
20 witnesses could have been set forth, as it normally
21 is, in the case management order which it never was.

22 MS. MENOTTI: Would it help if you had a copy of
23 our Interrogatory Number 29 before you?

24 HEARING OFFICER CROWLEY: I do. I will allow
25 testimony to be presented by this witness, again,

1 noting the standing objection by the Complainant to
2 all such testimony.

3 Mr. Benoit?

4 MR. BENOIT: Could I see State's Number 6?

5 Q (By Mr. Benoit) I am showing the witness what
6 has previously been marked as People's Exhibit Number
7 6. Based on your visit to the Berger Landfill, could
8 you describe the landfill for the Board?

9 I am not asking you to base it on Number 6. I am
10 going to talk about that later. Based on your visit
11 to the landfill, can you describe the landfill for us?

12 A Well, in my drive over of the landfill, it is
13 a sloping terrain, and it is relatively rural in
14 Richland County, I believe. The areas where the fill
15 has been placed is -- has a little mound to it, but it
16 is relatively flat and blends into the rolling terrain
17 of the rest of the land that has not been affected.

18 There are areas of the permitted landfill where
19 corn is now growing. The areas where there were
20 actually fill deposited is vegetated in grasses or hay
21 or something. I don't know exactly what it is, but it
22 is well vegetated, the whole side is. Like I said,
23 there is corn on some. Grass is on the other.

24 There are areas where subsidence has occurred at
25 the landfill that have been repaired by Mr. Berger.

1 There is erosion that has occurred in the non filled
2 areas that has received repair from Mr. Berger. Other
3 than those minor repair areas, the rest of the
4 landfill is well vegetated in either corn or grass.

5 Mr. Berger's house is located near the landfill.
6 There are other residences in the area, but they are
7 some distance away, maybe a quarter of a mile from the
8 landfill to a half mile. The monitoring well that I
9 saw, 107, at the landfill. I did not review the
10 location of all of the wells that were there.

11 Q Is the surrounding area farm fields or what
12 is the surrounding area like?

13 A Well, most of the area -- the area to the
14 south of the landfill is a roadway and what you might
15 call forested. It is in trees. To the north I
16 believe it is mostly farmland. Mr. Berger has some
17 corn growing there. I believe the neighbors to the
18 north do also. But on the south and southwest side of
19 the landfill it is heavily forested, trees, shrubs.

20 Q When you drove down the road in front of the
21 Berger's residence could you see the landfill?

22 A No, I could not.

23 Q How does one get from the landfill area from
24 the road that runs south of the landfill?

25 A The road that runs in front of Mr. Berger's

1 house runs east and west. You turn north off of that
2 road to his residence and proceed around the back of
3 his residence to the field where the actual landfill
4 area is located. There is a gravel road back into the
5 landfill.

6 Q If you didn't know that you were going to
7 visit a landfill, would you have realized that this
8 was a landfill when you first drove up to it?

9 A No, I would not.

10 Q Why is that?

11 A Well, if you didn't know it was a landfill it
12 would look like a farm field.

13 Q Now, is this a trench landfill?

14 A From my review of the documents in the Agency
15 files I believe it was permitted to be designed as
16 having trenches approximately 11 feet deep for
17 household waste disposal.

18 Q And did your review of the file indicate what
19 type of liner would be required in those trenches?

20 A I reviewed the hydrogeologic assessment in
21 the permit application that was submitted to the
22 Agency, which resulted in a 1991 permit for closure
23 and post closure of the landfill. From that
24 information, it was -- it is shown that this landfill
25 has a naturally occurring clay liner, and that if they

1 were excavated to the permitted depth, there would be
2 in excess of ten foot of low permeability liner
3 material underneath the landfill. And that the
4 material used for cover, once the landfill was
5 completed, would meet the permeability requirements of
6 the Agency.

7 Q What is the significance of that type of
8 liner?

9 A The ten foot of one times ten to the minus
10 seventh has been an Agency, not standard but
11 guideline. For the years that I worked there all
12 landfills receiving this type of material were
13 required to have a minimum of ten foot of one times
14 ten to the minus seventh permeability clay for
15 permitting purposes, not only in the liner but also
16 for the cover material.

17 The significance is that ten to the minus seventh
18 liner allows movement of leachate of about one foot
19 every ten years. Therefore, if you had a ten foot
20 liner, there would not be any movement out of that
21 landfill for a period of 100 years.

22 Q Are you aware of the dates that this landfill
23 accepted waste?

24 A It is my understanding, from reading the
25 records, that it received waste from 1979 to 1993.

1 Q And, again, how much -- how many acres were
2 permitted for use as a disposal landfill?

3 A I think the 1991 closure, post closure permit
4 covered approximately 35 acres for landfilling.

5 Q And how much of that space was actually used
6 before the landfill stopped accepting waste in 1993?

7 MS. MENOTTI: Objection. Relevance.

8 HEARING OFFICER CROWLEY: I will allow you to
9 answer the question.

10 THE WITNESS: I believe out of the originally
11 permitted 35 acres, about a total of seven acres were
12 actually filled.

13 Q (By Mr. Benoit) Based on your experience with
14 landfills, is a seven acre landfill considered fairly
15 small?

16 A Yes, it would be considered a very small
17 landfill.

18 Q How is the amount of financial assurance for
19 this landfill calculated? And I am referring to the
20 last permit that was issued.

21 HEARING OFFICER CROWLEY: I am sorry. You are
22 referring to --

23 MR. BENOIT: The last permit that was issued. I
24 believe --

25 HEARING OFFICER CROWLEY: I just couldn't hear

1 you.

2 MR. BENOIT: Okay.

3 THE WITNESS: The 1991 permit that I am referring
4 to incorporated the closure, post closure requirements
5 and cost estimates for financial assurance. Those
6 numbers were calculated based on what is called
7 premature closure.

8 During the operation of the landfill, if there was
9 some kind of event that caused the landfill to have to
10 close immediately, you had to estimate the cost for
11 that closure. Also, normal closure costs had to be
12 calculated. And you had to calculate the cost of what
13 it takes to maintain the site for post closure -- for
14 the post closure period.

15 Those costs during the operating period, as I
16 recall in the 1991 permit, the premature closure costs
17 were the most expensive. That is what was used at
18 arriving at the closure cost estimate. The post
19 closure cost estimates were also in that 1991 permit,
20 and I believe the total amount of closure and post
21 closure costs at that time was around \$240,000.00.

22 Q (By Mr. Benoit) Because this landfill
23 accepted waste until September of 1993, would this
24 affect the amount of financial assurance required
25 under the Act or Regulations?

1 A Under the regulatory requirements, I believe
2 a modified permit was required sometime in 1992. That
3 permit would have required a revised closure
4 requirement for the landfill and post closure
5 requirement for the landfill, which would result in
6 increased financial assurance.

7 Q Earlier testimony at this hearing has
8 revealed that the financial assurance requirements for
9 this landfill skyrocketed between 1988 and 1991,
10 somewhere in the range from \$38,000.00 to
11 \$241,000.00. Can you explain why the amount required
12 went up that much?

13 A Well, during that period of time there were
14 changes in the Environmental Protection Act,
15 specifically Section 22.17 dealing with the length of
16 post closure monitoring requirements. Up until 1986,
17 most landfills had to monitor for three years of post
18 closure monitoring before they could apply for final
19 closure, if you will. In 1986 the Act was amended to
20 extend that period to five years. Sometime in 1988,
21 that post closure period was again extended to 15
22 years. And ultimately in 1989, that section was
23 modified to require 30 years post closure monitoring.

24 Now, also during that period of time, there were
25 changes in the rules that required an owner or

1 operator of a landfill to provide for closure and post
2 closure cost estimates to include the cost of these
3 extended periods of post closure. So just looking at
4 post closure alone, if you only have to monitor
5 groundwater for three years versus 30 years, there is
6 a ten-fold increase in the cost of financial assurance
7 by itself.

8 Q And the main cost increase is due to water
9 monitoring?

10 A There are two -- for a landfill that has
11 closed, the two major costs are the increase in cover
12 requirements and the extended groundwater monitoring
13 periods.

14 Q In Count 2 of the State's first amended
15 complaint, it is alleged that the Respondents violated
16 the Act or the Regulations by not submitting a
17 significant modification permit. In your opinion, how
18 much would it have cost the Respondents, while the
19 landfill was open, to prepare this required
20 significant modification permit?

21 A While the landfill was open, it would be -- I
22 would estimate in excess of \$100,000.00 for just the
23 design work on the leachate collection systems, the
24 gas monitoring systems, the revised groundwater
25 monitoring systems, and the final cover requirements,

1 leachate treatment or management systems, gas
2 monitoring or treatment systems, I would just estimate
3 in excess of \$100,000.00 to put the application
4 together.

5 Q Now, that the -- I don't think it is clear
6 yet what type of significant modification application
7 the Agency is demanding, but assuming --

8 MS. MENOTTI: Objection to the characterization
9 that the Agency is demanding some kind of significant
10 modification permit. It is the law.

11 HEARING OFFICER CROWLEY: Could you rephrase?

12 MR. BENOIT: Yes, I can.

13 Q (By Mr. Benoit) Okay. Assuming that the
14 significant -- the requirement to submit a significant
15 modification application permit at the Berger Landfill
16 would not need to address operational issues, but
17 would only need to address closure and post closure
18 care, how much would it cost, in your estimation, to
19 put together such an application?

20 A Assuming that the significant mod consisted
21 only of modifying the closure requirements for cover
22 and the post closure requirement for extended
23 groundwater monitoring, plus as part of a significant
24 modification you do have to do a hydrogeologic
25 assessment of the site in preparing that application,

1 I estimated the costs for preparing that application

2 to be between \$27,000.00 and \$30,000.00.

3 Q That is just to prepare the application?

4 A Yes, sir.

5 Q Were you able to arrive at an estimate of how

6 much it would cost to provide or place the additional

7 cover on the landfill? I am assuming that the

8 significant modification permit application was

9 granted and then Mr. Berger or the Respondents were

10 required to add the cover.

11 A Well, using information provided in the 1991

12 application and permit, I estimated that the cost of

13 doing -- of placing the additional cover on the

14 landfill as about two times what the original permit

15 required, which I don't recall the figures off the top

16 of my head, but I believe it was like \$20,000.00 in

17 the 1991 permit, and it went to maybe \$40,000.00 under

18 a sig mod, just for the cover requirements.

19 Q It would cost \$40,000.00 to put the cover on?

20 A Yes.

21 Q And how much would it -- if the significant

22 modification permit application were granted, would

23 the closure period then be 30 years?

24 A Yes, sir.

25 MS. MENOTTI: I have to object and move to strike

1 that answer. It calls for an improper conclusion.

2 The witness no longer works for the Illinois EPA and
3 cannot say what the EPA would approve or not approve
4 as a closure period.

5 HEARING OFFICER CROWLEY: The witness testified
6 that the statute requires a 30 year post closure
7 monitoring period previously, and I believe that that
8 answer is appropriate.

9 Q (By Mr. Benoit) Were you able to calculate
10 how much financial assurance would be required for a
11 30 year period if a significant modification
12 application permit were granted?

13 A Again, using the 1991 permit and permit
14 application, I used a cost estimate provided there.
15 The original post closure estimate for 15 years was
16 \$192,000.00, as I recall. To go to a 30 year post
17 closure care period, it roughly doubled again to about
18 \$400,000.00.

19 Q So for -- so to put the cap on, and to
20 provide financial assurance for a 30 year period, what
21 type of -- a letter of credit, in what amount, would
22 Mr. Berger and the Respondents have to obtain?

23 A Again, using the 1991 permit and the
24 information contained in it, I believe that the total
25 financial cost for that permit, 15 years post closure,

1 was around \$240,000.00. My estimates to increase the
2 cover to the new requirement plus provide 30 years
3 monitoring roughly doubled that to \$480,000.00 to
4 \$500,000.00, which would be the required closure and
5 post closure financial assurance.

6 Q Have you reviewed the water monitoring
7 reports that the Respondents have submitted to the
8 Agency over the years?

9 A I reviewed the records that were available in
10 the Agency files, yes.

11 Q And what do those records reveal?

12 A Up until the modification of the permit in
13 1991, there were two wells monitoring this landfill,
14 and they were then called G105 and G106. I reviewed
15 the groundwater data from those two wells and saw
16 during that period of time, from 1979 to 1991, no
17 impact in the groundwater quality of the site.

18 MS. MENOTTI: Objection. Move to strike. First
19 of all, from 1979 to 1988 is not even included in the
20 complaint. The State's allegations only go to the
21 fact that groundwater monitoring reports have not been
22 submitted. It is improper testimony.

23 HEARING OFFICER CROWLEY: I will strike the
24 question and the answer.

25 MR. BENOIT: Excuse me?

1 HEARING OFFICER CROWLEY: I said, we will strike
2 the question and the answer.

3 MR. BENOIT: I am trying to bring this in under
4 the -- again, the 42H factors. I am trying to show
5 that the danger that this alleged failure to submit
6 groundwater monitoring reports after a certain date
7 may have the potential threat to the environment or
8 any person, I believe the previous data which the
9 Agency obviously has is relevant. Or possibly I can
10 just ask the expert witness whether or not that is the
11 type of information that he would rely upon as an
12 expert in this field.

13 HEARING OFFICER CROWLEY: Well, Ms. Menotti is
14 correct that this does not relate to an allegation in
15 the complaint. I believe that it is appropriate to
16 allow entry of the information for the purpose for
17 which you have described, Mr. Benoit. So the question
18 and answer will stand.

19 You may continue.

20 MR. BENOIT: I am not sure that he even got
21 started as an answer to that. Could I restate the
22 question and start again?

23 HEARING OFFICER CROWLEY: Fine.

24 Q (By Mr. Benoit) The question was, have you
25 reviewed the water monitoring reports that the

1 Respondent submitted to the Agency over the years?

2 A Yes, I have.

3 Q And what do those reports reveal?

4 A The reports, from 1979 to the 1991 closure,

5 post closure permit, were for what were called wells

6 G105, I believe, and G106. I reviewed the background

7 data for those two wells, the monitoring data

8 collected over the years, and also compared it against

9 the groundwater quality standard of I believe Subpart

10 F, Part 620. In reviewing that for that period I did

11 not see any indication of the groundwater quality

12 impact in the area of the landfill.

13 From the 1991 permit forward there was three or

14 four years, I don't recall exactly, of groundwater

15 monitoring under the 1991 modification. That data I

16 compiled for each well for the inorganic perimeters.

17 The volatile organics I reviewed each quarterly

18 report, I believe. Or those were done on an annual

19 basis. I reviewed the annual reports for volatiles

20 and saw no detects other than one benzene detect in

21 1991 or 1992, which never showed up again. So for

22 purposes of volatiles, I did not see any evidence of

23 any volatiles in the groundwater quality reports.

24 For the inorganics, there were increases in some

25 inorganic perimeters which were slightly above for, as

1 I recall, TDS, sulfate, and iron in one case, at two
2 of the existing wells at the landfill. The other
3 wells at the landfill showed no impact.

4 Q Based on that review, do you have an opinion
5 as to whether this site poses a significant threat to
6 groundwater in the area?

7 A A significant threat to groundwater? No.

8 Q What is the basis for that? Can you explain
9 a little more?

10 A Well, any landfill obviously poses a threat
11 to groundwater. Landfills that are open and operating
12 have different threats to the environment than a
13 closed landfill. For purposes of a landfill that is
14 not closed, the primary areas of concern would be gas
15 formation or leachate migration from the landfill. In
16 my drive over of the site, I saw no evidence of gas
17 migration problems which usually is evidenced by dead
18 vegetation on the landfill. And in terms of the
19 groundwater quality information I reviewed, I did not
20 see any evidence that this facility was leaking
21 leachate into the groundwater.

22 Q If this facility were leaching or affecting
23 the groundwater, when would you expect that or when
24 would it be most likely for the groundwater monitoring
25 reports to show that?

1 A We discussed earlier the permeability of the
2 liner at the landfill and the cover permeability, both
3 of which have to be taken into consideration in the
4 formation of leachate. A good cover on a landfill of
5 low permeability will severely minimize the amount of
6 water that collects within the landfill.

7 The bottom liner and its permeability, providing
8 there are no catastrophic events, such as an
9 earthquake or something like that, you just have to
10 assume that the movement through the liner of the
11 leachate will occur at the same rate that the
12 permeability test shows that water moves through the
13 landfill.

14 And as I said before, a one times ten to the minus
15 seventh permeability is roughly .1 feet per year, so
16 over 100 years it would move through that ten foot of
17 liner, then to the groundwater, and then you would be
18 seeing evidence of it in the --

19 MS. MENOTTI: Objection and move to strike. The
20 witness has not provided any foundation or any
21 evidence background testimony or anything for the 100
22 year calculations that the landfill would not impact
23 it. In fact, I don't even think any scientific
24 evidence exists, since landfills have not been in
25 operation for hundreds of years, on which he can base

1 that opinion.

2 HEARING OFFICER CROWLEY: I believe that the
3 testimony is appropriate based on the qualifications
4 of this witness and his background and experience.

5 Q (By Mr. Benoit) So again, if the -- strike
6 that.

7 If the site were to pose or if the site were to
8 impact groundwater in the area, would you expect to
9 see that impact earlier on in the landfill's life
10 rather than after the landfill has stopped accepting
11 waste and is no longer being disturbed?

12 A Well, it is difficult to predict when any
13 landfill may have a release to the environment.
14 Normally during operation of the landfill, if it is
15 not properly constructed either liner wise or cover
16 wise, that will lead usually to releases to the
17 groundwater. For example, you don't have the proper
18 amount of liner or you don't have the proper
19 permeability or you have a geologic study that you
20 should have made design or construction changes to,
21 those types of problems will appear relatively quickly
22 in the operating life of a landfill.

23 A landfill that is closed, this one for since
24 1991, so it has been closed for nine years, under the
25 new monitoring program, if there was going to be one

1 of those operational problems arise or a problem that
2 would have occurred as a result of improper design or
3 construction of the landfill, I would have expected
4 that you would find some kind of indicator in the
5 groundwater monitoring program by this time.

6 Q Do you understand that the final cover was
7 placed on the landfill sometime in 1993?

8 A My understanding is this landfill closed in
9 1993, and I assume there was a cover placed on it at
10 that time.

11 Q Can you give us a brief history of the
12 regulatory requirements regarding groundwater
13 monitoring?

14 A Regulatory requirements regarding groundwater
15 monitoring? Well, as I recall, there was not any
16 groundwater monitoring requirements in detail in the
17 Environmental Protection Act at any time to date. In
18 terms of the Regulations adopted by the Pollution
19 Control Board, over time there have been groundwater
20 monitoring changes made.

21 As I recall, I think it was in R887 where the
22 groundwater monitoring requirements that now exist in
23 the Board's Regulations were first codified at
24 Regulations. So up until R887 when Sections 811
25 through 814 were adopted by the Board, I don't think

1 there were any detailed groundwater monitoring

2 requirements in the Regulations.

3 Q Based on your review of the permits, can you

4 tell me what the groundwater monitoring requirements

5 were for the Berger Landfill initially?

6 A Up until the 1991 closure, post closure

7 modifications, he was required to monitor for five

8 perimeters, I believe, every quarter at the two

9 wells.

10 Q And do you recall what those perimeters were?

11 A Off the top of my head, I think it was

12 ammonia nitrogen, boron, TDS which is total dissolved

13 solids, sulfate and chloride, I believe.

14 Q In your opinion, are those the most

15 significant constituents that one would look for in

16 groundwater monitoring results to see if a landfill is

17 impacting groundwater?

18 MS. MENOTTI: Objection. The witness is not a

19 geologist.

20 HEARING OFFICER CROWLEY: I believe that that

21 question lies within the areas that Mr. Chappel has

22 been qualified to testify about.

23 You may answer.

24 THE WITNESS: I believe those perimeters -- you

25 know, the Agency used those perimeters up until the

1 1991 permit issued to Mr. Berger, as indicators of
2 potential problems at the landfill for purposes of
3 groundwater monitoring.

4 Q (By Mr. Benoit) Now, in 1991, I think you
5 testified that the list of perimeters went up, I mean
6 as far as the 1991 permit, that Mr. Berger was
7 required to have analysis run on more perimeters?

8 A That's correct.

9 Q And in your review of the groundwater
10 monitoring reports submitted by Mr. Berger to the
11 Agency, after or pursuant to the 1991 permit, were
12 there hits on these other -- these added constituents?

13 A The added constituents, I would have to look
14 back at charts I prepared, but my belief is that for
15 purposes of the volatiles and semi-volatile
16 constituents outside of one benzene hit in the early
17 stages of the monitoring, there were no other
18 volatiles discovered in the wells.

19 For purposes of the inorganics the original five
20 that were monitored up until 1991, there wasn't any
21 indication that there was a problem. When the 1991
22 permit was implemented, when that monitoring started
23 there were different inorganics that were monitored,
24 for example, iron, which was not monitored before.

25 As I recall, if you look at the iron results you

1 will see that the levels are above the water quality
2 standards in a couple of the wells. But when you take
3 into account the background levels that originally
4 existed at the landfill, according to the 1991 permit
5 information, those levels are within what would be
6 considered background for the landfill. So even
7 though they are above the water quality standard, they
8 were there before the landfill existed at those
9 levels.

10 Q Are you aware that the Agency has allowed
11 some Illinois landfills, other than the landfill in
12 question here, to stay open past September 18th, 1992,
13 and by stay open I mean accept waste, but to close
14 under their 807 permits?

15 MR. GUBKIN: Objection.

16 MS. MENOTTI: Objection. Relevance.

17 MR. GUBKIN: We are not talking about other
18 landfills here.

19 MR. BENOIT: This is going to, again, the gravity
20 of the alleged violation, the danger this landfill
21 poses to the environment.

22 MR. GUBKIN: I believe the Illinois EPA is able to
23 take into consideration each landfill on their own as
24 they sit with themselves. Other landfills and the
25 determination of those are not relevant.

1 MS. MENOTTI: We have already established that
2 this situation is site specific, through this witness'
3 testimony, as a matter of fact.

4 MR. BENOIT: Again, I am attempting to --

5 HEARING OFFICER CROWLEY: I will allow the
6 question. It is arguably relevant. I will allow it.
7 Go ahead.

8 MR. BENOIT: I want to restate the question.

9 Q (By Mr. Benoit) Are you aware that the Agency
10 allowed Illinois landfills, other than the Berger
11 Landfill in question in this case, to accept waste
12 past September 18th, 1992, and close under their 807
13 permits without having a significant -- having to file
14 a significant modification permit or application and
15 obtain a sig mod permit?

16 A Yes. I am sorry. After what date did you
17 say?

18 Q After September 18th, 1992?

19 A Yes.

20 Q And how is that? How could the Agency allow
21 them to do that?

22 A There were a couple of provisions, one which
23 was in the Environmental Protection Act. In 1993
24 there was the large flood of the Mississippi, and
25 there was a provision in the Environmental Protection

1 Act that allowed the Agency to extend operation of
2 some of these landfills until I believe October of
3 1994 for purposes of receiving flood waste to do the
4 clean up after that flood was over.

5 There is another provision in the Board's rules
6 currently under 807 that allows a closing landfill to
7 continue to receive waste as part of its closure
8 procedure, which would have been beyond the 1992 date
9 that you referred to.

10 Q Is the Regulation that you are referring to
11 807.509 as far as --

12 A I would have to look at 807 to make sure, but
13 that sounds correct.

14 Q Isn't it true that --

15 HEARING OFFICER CROWLEY: For the record, I would
16 appreciate it if you could have the witness look at it
17 just to make sure.

18 MR. BENOIT: I don't even know --

19 THE WITNESS: I have it in my records.

20 MR. BENOIT: Okay.

21 HEARING OFFICER CROWLEY: If you could take a look
22 and see if it is 807.509.

23 THE WITNESS: Section 807.509, use of waste
24 following closure, so that is the correct citation.

25 HEARING OFFICER CROWLEY: Thank you.

1 Q (By Mr. Benoit) Isn't it true that in order

2 for --

3 MS. MENOTTI: Objection. Leading.

4 Q (By Mr. Benoit) Could you read Section

5 807.509?

6 A After an operator initiates closure of a

7 site, the operator may accept waste for disposal or

8 for use in closure and post closure care, only as

9 authorized in the closure and post closure care plan.

10 Q So the Berger Landfill or Wayne Berger or the

11 Respondents never submitted a permit or an application

12 for a permit, so that they could take advantage of

13 807.509; is that true?

14 A Well, they submitted the 1991 permit, which

15 included closure and post closure care and financial

16 requirements. I don't believe -- I didn't find

17 anything in the records that indicate they

18 specifically asked the Agency to receive waste as part

19 of closure.

20 Q Would you assume that the landfills that were

21 allowed to continue accepting waste after September

22 12, 1992, in order to come up to their final grade,

23 did get a permit or approval from the Agency to do

24 that?

25 A I believe those that were to receive or

1 wished to receive waste, as part of their closure plan
2 to bring the site up to their permitted final grades,
3 had to have a revised plan approved by the Agency to
4 allow such operation.

5 Q So the only difference between the ones that
6 were allowed to fall under 807.509 and the Berger
7 Landfill, is that the Respondents didn't submit a
8 piece of paper to the Agency and gain the Agency's
9 approval?

10 MS. MENOTTI: Objection. Leading.

11 HEARING OFFICER CROWLEY: To speed this up I will
12 allow you to answer the question if you can.

13 Q (By Mr. Benoit) She is allowing you to
14 answer.

15 A Okay. I have not reviewed what the Agency's
16 decisions were on the other landfills that they have
17 allowed to operate under this provision. I don't know
18 if they impose additional closure, post closure
19 conditions on the landfill or requirements or
20 financial requirements.

21 It would be my opinion that outside of any
22 conditions that may be -- that may have been imposed
23 by the Agency in the closure, post closure approval of
24 that request these landfills would have not been any
25 different than the Berger Landfill.

1 Q Are you aware that the Respondent's defense
2 in this case, as to the financial assurance,
3 significant modification, and water monitoring counts
4 is that they cannot afford to comply?

5 A Afford to comply with which provisions?

6 Q Those three. The defense is that they cannot
7 afford or it would cause them unreasonable hardship to
8 provide the financial assurance required at this time
9 pursuant to the 1991 permit, that they cannot afford
10 to put together a significant modification permit, and
11 that they cannot afford to continue conducting the
12 water monitoring required under the 1991 permit?

13 A I have not reviewed any financial records to
14 make such a determination.

15 Q The question is are you aware that that is
16 the Respondents' defense?

17 A It is my understanding that Mr. Berger does
18 not have the financial capability to apply for or
19 comply with a significant modification.

20 MR. GUBKIN: Objection. I don't believe that is
21 actually --

22 HEARING OFFICER CROWLEY: That is not responsive
23 to the question.

24 THE WITNESS: Could you repeat the question?

25 Q (By Mr. Benoit) Are you aware that the

1 Respondent's defense in this case, as to the financial
2 assurance count and significant modification count and
3 the water monitoring count, is that they cannot afford
4 to comply with the requirements of their permit or the
5 Act or Regulations as far as submitting a significant
6 modification permit?

7 A That is my understanding, yes.

8 Q Do you have an opinion as to measures that
9 could be taken to reduce the cost to Respondents of
10 complying with these measures and, again, I am
11 referring to the financial assurance, the significant
12 modification application and water monitoring, but
13 still adequately protect the environment?

14 A I believe that -- it is my opinion that you
15 could check the cover, assure that there is the proper
16 amount of cover on the landfill. You could use a
17 groundwater monitoring program, either the 1991 that
18 exists now or some modified version, to indicate
19 whether there was any kind of groundwater problem
20 occurring. And also have the routine post closure
21 maintenance of the cover.

22 Q Now, when you talk about alteration to the
23 groundwater monitoring requirements, does that include
24 frequency as well as the perimeters that would be
25 tested for?

1 A Well, the cost obviously primarily revolves
2 around getting the samples analyzed for the required
3 constituents. So if you have more frequent monitoring
4 for less constituents you could end up with the same
5 cost that you would have for less frequent monitoring
6 of more constituents. So, I mean, there is some give
7 and take in terms of how many perimeters should you
8 monitor and how frequently should you monitor, but
9 those costs can be estimated.

10 The 1991 permit that has been approved by the
11 Agency already, I mean, there has been some monitoring
12 done under that permit to show that there is a limited
13 number of constituents of concern at this landfill.
14 So you could devise a monitoring program, based on the
15 frequency at which you would need to monitor for those
16 perimeters, and the perimeters that are of concern at
17 this landfill.

18 Q Do you have an opinion as to an adequate post
19 closure care period for this landfill?

20 MS. MENOTTI: Objection. He has already stated it
21 is a 30 year post closure period. The Respondent --

22 HEARING OFFICER CROWLEY: Sustained.

23 MS. MENOTTI: -- is not allowed --

24 HEARING OFFICER CROWLEY: Sustained.

25 MR. BENOIT: I am not asking him what the post

1 closure required period is. I am asking him if he has
2 an opinion as to what an adequate one would be. We
3 are having -- the testimony is, as far as is there any
4 way we can adequately protect the environment in his
5 opinion, but do it at reduced costs.

6 HEARING OFFICER CROWLEY: If you -- could you
7 answer the question given the fact that the statutory
8 requirements are for a 30 year post closure care
9 period, can you give your opinion as to what an
10 adequate period is?

11 THE WITNESS: Well, the statutory requirements are
12 for 30 years. This landfill has been closed since
13 1993, which is already a period of six years. And
14 from the information that I have gathered, I don't see
15 any indications of groundwater quality problems at the
16 landfill. To be able to set a date and say that in
17 2010 this site will be safe, I can't give that kind of
18 opinion.

19 What I can say is that you could set -- you could
20 devise a monitoring program, since the landfill has
21 already been closed for six years, to monitor the site
22 for an additional four or five years and set up a
23 program whereby, if there are problems indicated
24 during that period, additional steps are taken to find
25 out where that problem is coming from, and what

1 corrective actions may be required. But to be able to
2 say that if they only monitor until 2005 this site
3 will be safe and will pose no further threat, I can't
4 give that kind of opinion.

5 Q (By Mr. Benoit) Now, isn't it true that --

6 MS. MENOTTI: Objection. Leading.

7 Q (By Mr. Benoit) Could Mr. Berger have filed
8 an adjusted standard or a site specific rule if he
9 desired to operate this landfill under different
10 rules?

11 A I believe that's correct, yes.

12 Q What type of information would be included in
13 the application to the Agency to obtain such an
14 adjusted standard?

15 A In the case of Mr. Berger's landfill, I would
16 assume the adjusted standard would be relief from the
17 cover requirements in the current significant
18 modification rules. It would be the cover
19 requirements and the monitoring requirements.

20 I believe in both those cases that you would have
21 to conduct a general hydrogeologic assessment and
22 prepare information to go before the Board to show
23 that this -- that your proposed monitoring program,
24 the site as it exists now, is adequate to protect the
25 environment. The major cost of that would be the

1 hydrologic assessment, the testimony by the
2 consultants that you would have appear before the
3 Board, and I roughly estimated that cost for both of
4 those things between \$25,000.00 and \$30,000.00 which
5 would not include any attorney fees.

6 Q Now, what would happen if the -- where would
7 the Respondents be if that petition were denied, and I
8 am talking about a petition for an adjusted standard,
9 an application for --

10 MS. MENOTTI: Objection. It calls for speculation
11 and an improper conclusion by this witness.

12 HEARING OFFICER CROWLEY: You can answer to the
13 extent that you know.

14 THE WITNESS: The adjusted standard petition to
15 the board would have requested, as I previously
16 stated, relief from the cover requirements and the
17 groundwater monitoring requirements. If such an
18 adjusted standard was not allowed by the Pollution
19 Control Board, it would be my opinion that the Board
20 would require them to comply with the current closure
21 and groundwater monitoring requirements.

22 Q (By Mr. Benoit) So they would be subject to
23 the same rules as they are now?

24 A Yes, that's correct.

25 Q Except that they would have spent the money

1 trying to prepare an application?

2 A Yes, that's correct.

3 Q Do you have an opinion regarding the -- and,

4 again, you might have covered this a little bit before

5 but just to clarify it, do you have an opinion

6 regarding the potential harms this landfill poses to

7 the environment?

8 MS. MENOTTI: Objection. Asked and answered.

9 HEARING OFFICER CROWLEY: I believe you have made

10 your record on that point.

11 MR. BENOIT: Okay.

12 Q (By Mr. Benoit) Does the fact that this

13 landfill stopped accepting waste in September of 1993,

14 instead of September of 1992, significantly increase

15 the potential danger it poses to the environment?

16 A No.

17 Q Does it really change it at all?

18 A In my opinion, no.

19 MR. BENOIT: I would like to take a look at

20 State's Number 6.

21 Q (By Mr. Benoit) I earlier provided you with

22 what has previously been admitted as State's Exhibit

23 Number 6. Are you familiar with that inspection

24 report?

25 A I have reviewed it, yes.

1 Q And what does that inspection report concern?

2 A This concerns the results of an Agency field
3 inspection on April 18, 1994, of the Noble slash
4 Berger Landfill in Richland County.

5 Q I think -- well, can you find that portion of
6 State's Number 6 where it is stated that the
7 Respondents disposed waste outside of the permitted
8 boundary and I believe it says that this was
9 determined based upon the inspector's vantage point
10 from well G107?

11 A In the general remarks section of the
12 inspector's report there are statements which I can
13 read, but the statement in general says that the only
14 violation was that the landfill had gone beyond the
15 permitted boundary based on a map contained in one of
16 the previous reports.

17 Q Okay. Do you see a map attached to State's
18 Exhibit Number 6 that has blue marking on it?

19 A Yes, I do.

20 Q Okay.

21 HEARING OFFICER CROWLEY: That's the map that
22 follows the pink pages in the original exhibit.

23 MR. BENOIT: Thank you.

24 Q (By Mr. Benoit) Now, on your site visit did
25 you locate well G107?

1 A I have drove back and looked at where 107 is
2 located as I understand it. There was not any
3 markings on the well that says it is 107, but given
4 the site layout and where the well is located, I
5 assumed it is 107.

6 Q Okay. Let's talk about the site layout and
7 what you observed. On State's Exhibit Number 6, there
8 are two maps or diagrams, one marked in blue by the
9 inspector during her earlier testimony and another
10 which contains no markings and it depicts the landfill
11 but depicts all the cells also.

12 Do you see -- I am going to be referring to the
13 one that the inspector did not mark with the blue
14 ink. Do you see where it is stated on the map where
15 it says that this area not permitted?

16 A Yes.

17 Q Did you observe that area when you visited
18 the landfill?

19 A This area not permitted --

20 Q Right.

21 A -- was the forested area beyond the landfill,
22 and I saw the tree line. But I didn't go down into
23 the forested area.

24 Q Okay. Were you on the edge of the forest
25 area?

1 A Roughly directly south of where 107 is today,
2 yes.

3 Q Okay. Is monitoring well G107 located where
4 indicated on the map that you are looking at there
5 attached to State's Exhibit Number 6?

6 A No, I don't believe so.

7 MS. MENOTTI: Objection. The map is not to scale,
8 and unless you are going to produce a scaled map to
9 show the exact location of 107, this is an
10 approximation. We have already established this in
11 the record. It is an improper question and calls for
12 an improper opinion.

13 MR. BENOIT: I think we have established when the
14 inspector was testifying that she doesn't know where
15 the map came from. The handwritten thing not to scale
16 does not necessarily mean the rest of the map is not
17 to scale. It may be that the inspector's dashed
18 diagrams and the writings that she made on it while
19 preparing this report are not to scale. I don't think
20 that has ever been clarified.

21 MR. GUBKIN: I would also state it has never been
22 clarified that it is to scale. There is no scale
23 present on the map. It says it is not to scale. If
24 you are going to make assumptions, I would believe the
25 assumption is that the whole map is not to scale. We

1 can't assume it is to scale, because it does not

2 indicate which part.

3 MS. MENOTTI: The witness is going to intend to
4 prove you have to establish through foundation, Madam
5 Hearing Officer, the witness actually has knowledge of
6 what this map is and can prove up the contention, and
7 there has been no foundation in the record to go to
8 that.

9 HEARING OFFICER CROWLEY: I will allow him to
10 answer the question. The record is clear that this is
11 replete with references that the map is not to scale.
12 You may answer the question and the Board can give
13 it whatever weight that it deems appropriate.

14 THE WITNESS: Could you read back the question,
15 please.

16 (Whereupon the question and answer found beginning
17 at page 375, line 3 of the record were read
18 back by the Reporter.)

19 Q (By Mr. Benoit) Again, looking at the same
20 map, do you see a dashed line just southwest of where
21 monitoring well 107 is indicated, and I am referring
22 to the dashed lines put on that map by the inspector,
23 and the legend indicates that that reference is beyond
24 the permitted area?

25 A There is an area with dashed lines. The

1 legend says, signifies beyond permitted area, yes.

2 Q Now, when you are looking at that area that
3 you just referred to, where the inspector indicated on
4 that map beyond permitted area, based on your site
5 visit yesterday, where is that area?

6 A I believe that area extends south from what
7 was permitted, I believe, in the 1991 closure post
8 closure plan. That area extends south from the
9 southern point of the finger as is drawn on the map.

10 Q The permitted boundary as drawn on the map?

11 A Correct.

12 HEARING OFFICER CROWLEY: I am sorry. I didn't
13 hear you.

14 Q (By Mr. Benoit) The permitted boundary as
15 drawn on the map?

16 A Correct.

17 Q And if, in fact, waste was disposed in that
18 area, would that have run into the trees and the brush
19 line that you were talking about earlier?

20 A It is my opinion, as I described before, that
21 the general permitted boundary, as best I could define
22 in the field, was the tree line. And, you know, if,
23 indeed, this permit did not call for any of those
24 trees to be removed, the area referred to here as not
25 permitted would be back within those trees.

1 Q Was there any indication, when you were out
2 at the landfill yesterday, that trees had been cut
3 down, disturbed, and waste had been deposited in that
4 tree line?

5 A No, there wasn't.

6 Q How far -- you testified that you were able
7 to locate G107; is that correct?

8 A Yes.

9 Q And, again, looking at the same map, if you
10 were to draw monitoring well G107, based on the
11 location of monitoring well G107, based upon your site
12 visit yesterday, where would you have placed it?

13 MS. MENOTTI: Objection. Where would you have
14 placed it on what?

15 MR. BENOIT: On the map.

16 MS. MENOTTI: The map is not to scale. He is
17 trying to impeach a not to scale map through a witness
18 that was not at the inspection on the day the map was
19 generated. It is improper.

20 HEARING OFFICER CROWLEY: I will allow him to
21 answer the question as of his visit yesterday.

22 THE WITNESS: If you look at that map there is a
23 number ten. It is indicated on the map with an
24 arrow. I assume that is the inspector's indication of
25 a picture that they took and what direction that

1 picture was taken in. If you go directly north of
2 that number ten, I believe 107 is located to the north
3 of that number ten in the field.

4 Q (By Mr. Benoit) Can you tell in about which
5 cell that would have been in?

6 A The designation on the map, the closest cell
7 would have been 88D, so it would have been to the east
8 of 88D, and maybe -- well, I used a tape measure to
9 measure from the tree line back to well 107 and it was
10 approximately 206 feet along 88D going north.

11 Q So if Mr. Berger deposited waste 70 feet to
12 the south of where you saw monitoring well G107, would
13 he still have been depositing waste within the
14 permitted boundaries of the landfill?

15 A Given that my location is accurate, based on
16 this map that is in front of me, that 70 feet would
17 still have been within the permitted landfill
18 boundary.

19 MS. MENOTTI: For the record, the map the witness
20 is referring to is not to scale.

21 HEARING OFFICER CROWLEY: That's clear in the
22 record.

23 Q (By Mr. Benoit) From your -- getting away
24 from the map -- from your observations of the permit
25 boundaries when you were out there defined by the tree

1 line and your location of monitoring well G107, and

2 assuming that the inspector is correct when she

3 testified that the over fill was to the --

4 MS. MENOTTI: Objection. The witness was not here

5 when the inspector testified.

6 HEARING OFFICER CROWLEY: I am sorry? I didn't --

7 MS. MENOTTI: The witness was not here. He said

8 assuming that the inspector was correct when she

9 testified. He was not here when the witness

10 testified. There is no personal knowledge of the

11 witness' testimony.

12 Q (By Mr. Benoit) Which side of monitoring well

13 G107 did the inspector indicate that the waste was

14 deposited? Was it the west side?

15 A The dashed area on the inspector's notes, I

16 believe which she considered beyond the permitted

17 boundary, is to the west of 107 as it is located on

18 this map.

19 Q Okay. Again, based on your site visit

20 yesterday, which included, I believe you testified, an

21 identification of the permit boundaries and the

22 location of G107, if Mr. Berger had filled 70 feet

23 south --

24 MS. MENOTTI: Objection. Asked and answered. It

25 is the same question.

1 MR. BENOIT: No, it isn't.

2 HEARING OFFICER CROWLEY: Could you complete the
3 question?

4 Q (By Mr. Benoit) Based on your site visit
5 yesterday, and your ability to locate the permit
6 boundaries, and your ability to locate monitoring well
7 G107, if Mr. Berger filled 70 feet south in an area to
8 the west of G107, would he still have been within the
9 permitted boundaries of the landfill?

10 MS. MENOTTI: Objection. Asked and answered. It
11 is --

12 MR. BENOIT: The earlier questions were based on
13 the map which --

14 HEARING OFFICER CROWLEY: Yes, I will allow him to
15 answer the question.

16 THE WITNESS: Based on my observations and
17 estimations of where the permitted boundaries should
18 be, I believe that he was still within his permitted
19 boundary.

20 MR. BENOIT: Okay. That's all I have.

21 HEARING OFFICER CROWLEY: I think that it would be
22 appropriate to take a five minute break. We have been
23 discussing this with Mr. Chappel for the last hour and
24 a half, and have not broken since we commenced at
25 9:00.

1 I think it might be a good idea to do so for the

2 benefit of the court reporter.

3 (Whereupon a short recess was taken.)

4 HEARING OFFICER CROWLEY: All right. We are back

5 on the record.

6 CROSS EXAMINATION

7 BY MS. MENOTTI:

8 Q Mr. Chappel, my name is Maria Menotti. I am

9 an Assistant Attorney General. I am one of the

10 prosecutors on this case. I don't believe that we

11 have previously met. I wanted to introduce myself.

12 Let's start with your work experience at the

13 Illinois EPA. Was that immediately after you

14 graduated college that you started working for the

15 EPA?

16 A Yes, ma'am.

17 Q Okay. And you started as a permit reviewer

18 for the Bureau of Water?

19 A Yes, ma'am.

20 Q Okay. What were your responsibilities as a

21 permit reviewer for the Bureau of Water?

22 A I reviewed industrial and commercial

23 wastewater treatment plants. Well, initially I was in

24 the planning unit responsible for reviewing what we

25 then called facility management plans. I did that for

1 about a year. And then I went to the permit section,
2 and we were responsible for reviewing the design plans
3 and specs for wastewater treatment, both commercial
4 and residential and industrial plants.

5 Q Okay. What kind of engineering degree do you
6 have?

7 A I have a Bachelor's in Civil Engineering and
8 a Masters in Environmental and Thermal.

9 Q Okay. Did your Master's come before you
10 worked for the EPA or while you were working for the
11 EPA?

12 A It was while I was employed at the EPA.

13 Q Okay. Then after you were at the Bureau of
14 Water, you were in the mine pollution control?

15 A Yes, ma'am.

16 Q Okay. What did the mine pollution control
17 do?

18 A The mine pollution control program started
19 out within the permit section, Bureau of Water.

20 Q Okay.

21 A It then split off when the Surface Mining
22 Reclamation Act came into effect. And I assume that's
23 probably 1979, 1978, somewhere in that area. At that
24 time they took the mine -- the review of the coal
25 mines in Illinois for environmental impact, the actual

1 surface and underground mining and the reclamation of
2 coal mines were under the review of the mine pollution
3 control program. We were responsible for reviewing
4 the hydrogeologic impacts, establishing groundwater
5 monitoring programs, reviewing and approving surface
6 runoff design plans for coal mines.

7 Q Okay. Were you a permit reviewer in that
8 capacity, too?

9 A I started as a permit reviewer in water and
10 eventually made my way to permit section manager in
11 the mine program itself.

12 Q Okay. What were you reviewing as the
13 manager?

14 A Well, as the manager it was a very small
15 unit. It was myself and two reviewers. We all
16 reviewed mining permit applications. My
17 responsibility as manager was to sign a final permit
18 that was issued to a coal miner to instruct and then
19 operate.

20 Q Did you have the authority to approve or deny
21 the permit?

22 A Yes, ma'am.

23 Q Okay. Then from there you went to the Bureau
24 of Land or Division of Land pollution control, Bureau
25 of Land?

1 A That's correct.

2 Q Okay. And then was that also as a permit
3 manager?

4 A When I went to the Bureau of Land I was what
5 was called a unit manager within the permit section,
6 responsible for landfill permitting.

7 Q Okay. Can you explain what your
8 responsibilities were as a unit manager?

9 A I had a staff of between six to seven actual
10 permit reviewers that were responsible for all of the
11 landfill permitting activities in the state, and as
12 manager I was responsible for reviewing and approving
13 those before they went to the section manager for
14 final signature.

15 Q What kind of permits did you review before
16 they got sent up to --

17 A Well, it ranged from development permits for
18 new landfills, to operating new permits for new
19 landfills, and supplemental permits for existing
20 landfills.

21 Q Okay. About what year did you go over to the
22 Bureau of Land?

23 A I believe it was in 1983 or 1984.

24 Q And what were the requirements in 1983, 1984
25 for a landfill to get a permit? What was the

1 procedure when you first started for a landfill to get
2 a permit from the EPA?

3 A For a new landfill?

4 Q Yes, for a new landfill.

5 A A new landfill, they had to send in a permit
6 application demonstrating --

7 MR. BENOIT: I am going to object. This is
8 irrelevant.

9 HEARING OFFICER CROWLEY: I will allow him to
10 continue.

11 THE WITNESS: The requirements at that time were
12 that they submit a permit application showing that the
13 development of the landfill would comply with the 807
14 requirements of the Board's Regulations.

15 Q (By Ms. Menotti) Are the 807 Requirements
16 that you are referring to the same as the 807
17 Regulations that are in place right now?

18 A No, they have changed since then.

19 Q Okay. When did they change?

20 A I believe with R887 it became effective
21 September of 1990, and significantly revised the
22 landfill requirements for both existing landfills and
23 the new ones.

24 Q Okay. Can you tell me how the -- well, first
25 let me ask you, were you still working for the Bureau

1 of Land when the Regulations changed?

2 A Yes.

3 Q Okay. And what were the new changes for
4 existing landfills when the Regulations changed?

5 A For existing landfills there were certain
6 compliance deadlines under which they could continue
7 to operate under the existing 807 Regulations, and
8 there were deadlines depending on how long they were
9 going to remain open for when they had to come into
10 compliance with the new design requirements of R887.
11 It was effective in September of 1990, I believe.

12 Q Okay. When you say new design requirements,
13 that didn't include a landfill that was existing
14 having to place a new liner under old trash, did it?

15 A There were no retrofit requirements in the
16 new rules, no.

17 Q Okay. What was the -- how did you determine
18 if the new requirements applied to an existing
19 landfill?

20 A There were certain deadlines, and I don't
21 recall the dates, but I believe after sometime in 1992
22 any landfill that would remain open and continue to
23 receive waste had to be in compliance with the new
24 liner and leachate management and closure, post
25 closure requirements.

1 Q Would you agree with me if I told you that
2 that date was September 18th, 1992?

3 A I would agree. The date they had to come
4 into -- you know, after which if they received waste.
5 The date the rules were actually effective, I think,
6 were two years earlier.

7 Q Okay. If a landfill was going to continue to
8 take waste after September 18th of 1992, if I
9 understand your testimony correctly, they had to
10 comply with the new Regulations; is that right?

11 A I believe they had to submit a significant
12 modification demonstrating compliance by September of
13 1992.

14 Q Okay. What was the procedure by which an
15 operator or -- strike that.

16 How would the Agency know if a landfill was
17 continuing to take waste after September 18th of 1992?

18 A I moved from the mine -- I am sorry -- from
19 the land pollution permitting area into the
20 underground tank area in 1991.

21 Q Okay.

22 A Now, prior to that, I believe there was a
23 notification requirement that an existing landfill had
24 to notify the Agency somehow of what their intention
25 was, whether they wanted to remain open two years or

1 seven years or beyond the seven years.

2 Q Okay. Was the unit manager the only position
3 you have held as far as the Bureau of Land and
4 landfill reviews?

5 A No, I was a unit manager within the permit
6 section --

7 Q Okay.

8 A -- under both Mr. Tom Cavanagh and Mr. Larry
9 Eastep. I then left the permitting section in land
10 and was named compliance section chief for about two
11 years prior to going to the mine program. So I was
12 also in charge of the compliance section.

13 Q What does the compliance section do?

14 A The compliance section at that time had
15 responsibility for tracking all of the manifest data,
16 for reviewing all of the groundwater information
17 submitted to the Bureau both from hazardous and
18 nonhazardous landfills, and also for tracking and
19 monitoring compliance with the financial assurance
20 requirements.

21 Q Okay. While you were working in the Bureau
22 of Land, did you ever have contact with the EPA's file
23 on Wayne Berger or the Berger Landfill?

24 A Not that I recall.

25 Q From your review of the file, did you see

1 anything in the file that you reviewed prior to your
2 testimony today that would indicate that you had
3 contact with that file prior to your testimony --
4 preparing for your testimony for this hearing?

5 A The only portion of the file I reviewed was
6 the groundwater data, the permit data and a little bit
7 of the field inspect notes. I did not see anything in
8 there that indicated that I had been involved with the
9 site.

10 Q Okay. So you didn't review the whole -- all
11 of the documents from the Illinois EPA's actual file
12 then, right?

13 A Right. Correct.

14 Q Okay. I am just trying to make sure that I
15 know what you have reviewed. Let's talk about first
16 your -- what was your first contact with Mr. Berger?

17 A May I review my notes? Do you want the
18 date?

19 Q You can estimate. I don't need the exact
20 date.

21 A He contacted me via a phone call regarding
22 expert testimony in this case.

23 Q Okay.

24 A And that was maybe a month and a half ago, a
25 month ago.

1 Q And so your experience with the information
2 regarding this landfill is limited to that month and a
3 half time period?

4 A Yes, ma'am.

5 Q Okay. And I am presuming that since you did
6 a site visit, they requested that you go out and see
7 the site at some point?

8 A Yes, ma'am.

9 Q Okay. And you did that yesterday?

10 A Yes, ma'am.

11 Q Is that the only time that you visited the
12 site?

13 A Yes, ma'am.

14 Q Okay. Let's talk about your visit. What
15 time did you get to the site?

16 A I think I arrived here in Olney about a
17 quarter to 3:00, and we were probably out there about
18 3:00 in the afternoon.

19 Q Okay. What did you do when you arrived at
20 the site?

21 A Mr. Berger drove me back to the fill areas,
22 and we used People's Exhibit Number 6 map that I had
23 referred to before. He kind of pointed out the areas
24 of the landfill that had actually received fill versus
25 those that had not received fill.

1 Q Okay. Is that all that you did?

2 A I got out of the truck, or out of the car
3 around monitoring well 7 and we walked the tree line.
4 I did some measurements of where 107 was located in
5 relation to the tree line. I went down and looked at
6 what I considered the edge of the permitted boundaries
7 of the site. And we reviewed the areas where he had
8 not filled. He pointed them out. They were grown
9 over in corn.

10 We reviewed the areas where he had filled and the
11 type of vegetation that was growing on those. I
12 walked around generally in the area of 107. We
13 basically drove all of the fill areas, all the areas
14 that had been filled.

15 Q How long did the inspection last?

16 A I would estimate about an hour and 15
17 minutes.

18 Q Okay. Did you leave the landfill after that?

19 A Yes, ma'am.

20 Q Okay. Would you say that that concluded your
21 inspection of the landfill?

22 A Yes, ma'am.

23 Q Okay. How did you -- you said you took some
24 measurements of where the groundwater well was?

25 A Well, 107, as indicated on the map, was

1 pointed out to me by Mr. Berger. I then measured,
2 using a tape measure, from the tree line back to where
3 107 is located at the site.

4 Q Okay. You measured with a tape measure?

5 A Yes, ma'am.

6 Q Okay. Did you have any surveying equipment
7 out there with you at the site?

8 A No.

9 Q How did you determine where -- you said you
10 went and looked at the area where waste had been and
11 waste hadn't been. Did you do soil borings to
12 determine if the areas were filled?

13 A No.

14 Q Did you rely on what Mr. Berger told you as
15 far as what areas were filled?

16 A I relied on what Mr. Berger told me while I
17 was there plus I looked at in terms of the map that is
18 in Exhibit Number 6.

19 Q Okay. The map in Exhibit Number 6 is not to
20 scale, right?

21 A That is what it says, yes.

22 Q Okay. Did you review any maps that were to
23 scale during your site visit?

24 A No, I did not.

25 Q Okay. You said that your perception is that

1 the trees were the boundary line. How did you
2 formulate that opinion?

3 A I used the topographic lines that were
4 indicated on the Exhibit 6 map.

5 Q The not to scale map?

6 A Which are not to scale.

7 Q Okay. Thank you. And you then determined --

8 A I used that to estimate that the boundaries
9 of what -- of what are indicated as the permitted area
10 I estimated the tree line was probably pretty close to
11 what those boundaries would be.

12 Q Okay. You don't know if the site conditions
13 have changed since April of 1994, do you?

14 A No, I do not.

15 Q Okay. Did you take groundwater samples
16 yesterday?

17 A No, ma'am.

18 Q Did you do any determination as to whether
19 there was compacted cover on top of the areas where
20 refuse was in place?

21 A No, ma'am.

22 Q Based on your visual observations, you said
23 it looked like farmland. Can you explain to the
24 Board, for the record, the constituency of what you
25 saw on the surface, what kind of material was on the

1 surface of the filled areas?

2 A The areas that Mr. Berger had pointed out to
3 me as having been filled were covered with soil. I
4 don't know how deep it was or whether it was
5 compacted. But that soil looked like clay. There
6 were areas where he had done subsidence maintenance
7 and some drainage maintenance.

8 And the clay that was in those subsident areas, or
9 the soil that was in those subsident areas and
10 drainage areas was very similar to the soil that was
11 over what he indicated were fill areas. And growing
12 on top of those fill areas was the grass, the
13 vegetation. I don't know exactly what type.

14 Q Okay. How tall was the grass?

15 A I would say maybe three feet tall.

16 Q Okay. Was this uniform across the area that
17 Mr. Berger told you was filled with trash?

18 A Except for the one or two small areas where
19 he had done subsidence maintenance and the drainage
20 area that he had repaired was not on the fill area,
21 from what I could tell.

22 Q Okay. What was the condition of the areas
23 that were not filled with refuse, as far as what you
24 saw on top?

25 A In those areas, he had corn that was maybe

1 four or five feet high and, again, these grasses or
2 hay or whatever they were, about three or four feet
3 deep on the other area also.

4 Q Okay. Can you tell me how far groundwater
5 well 107 was from the tree line when you measured?

6 A I measured approximately 206 feet.

7 Q Okay. I am going to ask you to pick up
8 People's 6 -- I think you have in front of you -- with
9 the map. And turn to the pictures at the back. And I
10 am wondering if this is similar to what you viewed
11 yesterday or not. If you look at picture number six,
12 I believe -- is that the groundwater monitoring well
13 that you saw yesterday?

14 A I believe so, yes.

15 Q Okay. And is that -- does that look accurate
16 to -- I know it is a picture, but as far as distance
17 from the trees?

18 A No, those trees you see in this picture are
19 to the west --

20 Q Okay.

21 A -- of the monitoring well. My measurement
22 was to the south from the well down to the tree line
23 that you can't see in this picture.

24 Q Okay. That's what I was trying to
25 determine. So you went to monitoring well number 107

1 and measured straight due south to the tree line?

2 A Approximately straight south, yes.

3 Q Okay. And how did you go about taking that
4 measurement?

5 A I stood at the tree line and had Mr. Berger
6 walk 100 feet out, and I had a 100 foot tape. He then
7 marked that spot and I came up and we continued
8 measuring n that fashion until I reached 107.

9 Q Okay. Were you doing this through the grass?

10 A Yes.

11 Q You also said you made some other
12 calculations yesterday. What other calculations did
13 you make yesterday besides the measurements?

14 A I didn't make any other calculations or site
15 measurements. What I did was review the general site
16 plan in this exhibit versus, you know, the tree line
17 and what would be considered the permitted boundary
18 while I was in the field. I didn't make any other
19 measurements.

20 Q Okay. You didn't actually determine for
21 certain where the permitted boundary was, did you?

22 A No, ma'am.

23 Q Did you do any independent investigation
24 yesterday without Mr. Berger present?

25 A No, I did not.

1 Q When did you review the permit, the
2 groundwater reports and the historical information
3 regarding this site?

4 A The documents reviewed -- I started on those
5 shortly after Mr. Benoit had contacted me and
6 basically I have been reviewing them up until this
7 point in time.

8 Q Okay. When you were a permit reviewer, did
9 you ever have the opportunity to review permit
10 applications, whether initial or supplemental, for
11 municipal solid waste landfills?

12 A Yes.

13 Q Okay. When you were reviewing a permit --
14 tell me how you went about reviewing a permit. Did
15 you --

16 A Well, there were a couple things. There were
17 Agency checklists and you had the Regulations of 807
18 at that point in time.

19 Q Okay.

20 A You would review to insure that the
21 information that was required to be submitted that,
22 first of all, it was complete. If it was not complete
23 you had a 45 day time period to notify the applicant
24 that something was missing from the application.
25 After that period if it was complete, you then did

1 your detailed review to insure that the landfill liner
2 requirements were met, that they were proposing the
3 proper amount of final cover, that they had operating
4 procedures that would prevent blowing litter and fires
5 and all of that, that they had load checking problems,
6 whatever the Regulations required that they provide in
7 the application.

8 Q Okay. Wasn't it one of the requirements that
9 landfill monitoring wells -- that they mark their
10 monitoring wells for identification?

11 MR. BENOIT: I am going to object. This is
12 irrelevant. It has nothing to do with what is in the
13 complaint.

14 HEARING OFFICER CROWLEY: I didn't quite
15 understand the question. So could you --

16 MS. MENOTTI: I was asking if one of the
17 requirements would be that a groundwater monitoring
18 well be marked. He testified that when he went out to
19 the landfill --

20 HEARING OFFICER CROWLEY: Yes, I understand. I
21 just don't know what you mean by marked. Marked on
22 the map, marked physically, marked --

23 MS. MENOTTI: I am sorry. The actual well at the
24 site. I don't know what it is called. There is like
25 a casing that goes around the monitoring well.

1 Q (By Ms. Menotti) Doesn't one of the
2 Regulations require that they be marked for
3 identification?

4 A Prior to the amendments of 1990, I don't know
5 if -- I don't recall if they had to actually be marked
6 in the field.

7 Q What about after 1990?

8 A After 1990 I think there was a requirement
9 that there be some kind of indicator on the well.

10 Q Did you find an indicator on the well
11 yesterday?

12 A I didn't look that closely at the well.

13 Q How did you determine it was well number 107?

14 A Based on Mr. Berger's statement and the map.

15 Q When did you formulate the opinions that you
16 have been testifying about today regarding the
17 landfill? Before or after the inspection?

18 A Which opinion?

19 Q Well, let's go through them. You said that
20 it was -- well, first let me clarify something. In
21 your direct testimony you kept referring to the
22 landfill as having been closed for six years. Based
23 on your file review this landfill is not certified
24 closed, is it?

25 A I did not find anything in the file that I

1 reviewed that indicated that the Agency had certified
2 it closed, no.

3 Q Okay. And this landfill, then, wouldn't be
4 in post closure, would it?

5 A Under the Regulations the post closure period
6 would not have started, that is right.

7 Q Would it be accurate to say that when you
8 were saying that the landfill has been closed for six
9 years that it has not been accepting waste for almost
10 six years?

11 A Well, I assume it means it has not been
12 accepting waste and whatever cover is there has been
13 in place for six years.

14 Q Okay. And it is your understanding that the
15 last time they took waste was in September of 1993?

16 A That's correct.

17 Q Okay. And that would be approximately five
18 years ago?

19 A Five years ago, yes.

20 Q Okay. Do you know what kind of cover
21 material was put in place in 1993?

22 A No, I do not.

23 Q And is it the same cover that was in place
24 when you visited there yesterday?

25 A I would assume that, yes.

1 Q Did Mr. Berger tell you that that was the
2 cover he placed there in 1993?

3 A No, he did not.

4 Q You don't know whether or not any compacted
5 cap has been put on top of the fill areas?

6 A I do not know how the cap was placed over the
7 landfill, no.

8 Q How many permits did you review for your
9 testimony? What was in the permit file that you
10 reviewed?

11 A Permits, I don't recall the exact number. I
12 looked at the original operating permit from 1979. I
13 looked at the -- I believe two supplemental permits
14 after that, and the 1991 modification which
15 incorporated the closure, post closure plans.

16 Q Okay. Did the original operating permit
17 require groundwater monitoring?

18 A I don't recall off the top of my head. I
19 believe so.

20 Q Okay. Is groundwater monitoring normally
21 done on a quarterly basis?

22 A I don't recall what the permit actually
23 required, but normally it would have been quarterly,
24 yes.

25 Q I am going to hand you what has been marked

1 as People's 4. Can you tell me if that was the
2 operating permit that you reviewed for your testimony
3 today?

4 A Yes, it is.

5 Q Okay. Can you tell me what kind of
6 groundwater monitoring is required by that permit?

7 A Condition number five of the permit requires
8 monitoring of wells five and six for five different
9 perimeters.

10 Q Okay. You also said that you reviewed a
11 supplemental permit, and just to clarify the record, I
12 am not certain -- I want to make certain that we are
13 talking about the same supplemental permit. I am
14 going to hand you what has been marked as People's
15 Exhibit Number 2. Can you tell me if that is the
16 supplemental permit that you reviewed and that you
17 have been referring to in your testimony?

18 A Exhibit 2 is the modification that
19 incorporated the closure and post closure plans that I
20 have been referring to as the 1991 permit, yes.

21 Q It is the same thing?

22 A Yes, ma'am.

23 Q Okay. What kind of groundwater monitoring
24 does this permit require?

25 A This permit required the installation of I

1 believe six new wells, a couple new piezometers, the
2 elimination of existing well 105. It required -- it
3 has two or three different tables of monitoring
4 perimeters for the landfill and --

5 Q How often are they required to do groundwater
6 monitoring?

7 A I am sorry?

8 Q How often are they required to do groundwater
9 monitoring under that permit?

10 A Item number 25 lays out the quarterly
11 samplings and which of the tables they had to sample
12 during that quarter.

13 Q This permit was issued by the EPA to Mr.
14 Berger; is that right?

15 A Yes, that's correct.

16 Q Okay. And how long are they required to
17 comply with the permit? Is there an expiration date
18 on the permit?

19 A There is not an expiration date on the
20 permit.

21 Q Okay. During your review of the groundwater
22 information, what was the last groundwater information
23 that you had available to you?

24 A I believe it was monitoring from either 1993
25 or 1994.

1 Q Okay. You didn't have any information beyond
2 that?

3 A No.

4 Q You didn't pull groundwater samples
5 yesterday; is that right?

6 A That's correct.

7 Q So the last information that you have
8 regarding the condition of the groundwater is from
9 almost four years ago, at least?

10 A That's correct.

11 Q Okay. When we were talking about groundwater
12 before you said that you had gone through and reviewed
13 the results that had been submitted to the Agency; is
14 that right?

15 A That's correct.

16 Q Okay. You said that sometime after you
17 thought 1991 that one of the wells hit for benzene.
18 Do you remember saying that?

19 A Yes, ma'am.

20 Q Okay. Can you tell me what benzene is
21 please?

22 A Benzene is a volatile. I am not a chemist.
23 Benzene is a volatile organic constituent. It is a
24 carcinogen. Other than that, that's all I can tell
25 you.

1 Q That was present in the groundwater, if you
2 called it a hit?

3 A There was -- in the sample results that I
4 reviewed, it indicated that there was a level of
5 benzene in the groundwater.

6 Q Did you review that to compare it to the
7 regulatory standards in 620 of the Illinois Pollution
8 Control Board Regulations?

9 A No, I did not.

10 Q Okay. You also said that there was a hit on
11 sulfate. What is sulfate?

12 A Sulfate is an inorganic perimeter that you
13 find in groundwater.

14 Q Okay. Why do we monitor for sulfate?

15 A It is an indicator of potential problems at a
16 landfill.

17 Q What about -- is it total dissolved solids?

18 A Correct.

19 Q There was a hit for that, too. Why do you
20 monitor for total dissolved solids?

21 A For the same reason, an indicator perimeter
22 for potential groundwater problems at a landfill.

23 Q Okay. You mentioned that there was certain
24 background levels. Do you know what -- for the
25 groundwater perimeters. Do you have actual knowledge

1 of what the background levels are for the background
2 levels of benzene, sulfate, and TDS for the
3 groundwater underneath the Berger Landfill?

4 A The background data that I reviewed did not
5 have benzene in it. But I believe it did have
6 background values for sulfate and TDS, yes.

7 Q Do you know what the background levels were?

8 A Off the top of my head, no.

9 Q Okay. You talked a little bit about the fact
10 that the -- or you stated that the Environmental
11 Protection Act does not have a requirement for
12 groundwater monitoring, but the Pollution Control
13 Board Regulations did; is that right?

14 A That's correct.

15 Q Are the landfill operators required to comply
16 with the Pollution Control Board Regulations in
17 operating their landfill?

18 A That's correct.

19 Q Are landfill operators required to comply
20 with permits issued by the Illinois EPA in operating
21 their landfills?

22 A That's correct.

23 Q Are landfill operators allowed to not comply
24 with the permit by Illinois EPA and still be deemed in
25 compliance without EPA approval?

1 A No.

2 Q Do you know why the People's Exhibit Number
3 2, the supplemental permit, was submitted to the
4 Illinois EPA?

5 A Based on the information I have been given
6 regarding this case I understand that this
7 supplemental permit was submitted in an attempt to
8 have a 35 acre landfill permitted by the Agency, which
9 somebody else would then purchase and take over
10 operations of.

11 Q Okay. So would the permit be so that they
12 could continue operating the landfill?

13 A That's correct.

14 Q You were not -- your firm, CSD, didn't
15 prepare the supplemental permit, did they?

16 A No.

17 Q Have you reviewed the actual application or
18 is your knowledge just based on the permit that the
19 Agency granted?

20 A No, I reviewed the application and the permit
21 itself.

22 MS. MENOTTI: Okay. I can stop now if you would
23 like to break for lunch.

24 HEARING OFFICER CROWLEY: If this is a convenient
25 spot for you, that is fine.

1 MS. MENOTTI: Yes.

2 HEARING OFFICER CROWLEY: Okay. Off the record
3 for a minute.

4 (Discussion off the record.)

5 HEARING OFFICER CROWLEY: All right. Back on the
6 record. We will break for lunch. We will return at
7 1:00.

8 During the period in which we were off the record,
9 the Complainant has asked that Mr. Chappel and Mr.
10 Benoit not discuss the testimony that has been given
11 or the cross-examination that has been had.

12 I will request that such conversation not occur
13 and trust that Mr. Chappel and Mr. Benoit will see to
14 it that it does not occur. Thank you.

15 (Whereupon a lunch recess was taken from 12:00
16 p.m. to 1:00 p.m.)

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1 AFTERNOON SESSION

2 (August 20, 1998; 1:00 p.m.)

3 HEARING OFFICER CROWLEY: We will go back on the
4 record. It is now 1:00.

5 We are continuing with cross-examination questions
6 for Mr. Chappel.

7 MS. MENOTTI: For the record, the Agency was asked
8 to produce their files pursuant to a notice of party
9 appearance, and which we discussed on Monday as being
10 completely on microfilm. Just for the record, we do
11 have the microfilm in our possession, if it becomes
12 necessary to go through it at all or if the facility
13 is available or whatever. But I will keep it in my
14 procession, and I will be the custodian for the
15 Agency's files up until the end of this hearing.

16 HEARING OFFICER CROWLEY: Okay.

17 MS. MENOTTI: I have been given the authority by
18 them to do so.

19 HEARING OFFICER CROWLEY: Thank you. I will also
20 note for the record that we have determined that there
21 is no microfiche reader accessible to us at this
22 location.

23 MS. MENOTTI: May I continue?

24 HEARING OFFICER CROWLEY: Yes.

25 Q (By Ms. Menotti) Okay. I think when we left

1 off we were talking about the groundwater at the
2 site. Do you know how big the groundwater table is
3 that is underneath the site?

4 A No, I don't.

5 Q Were there any maps or anything in the file
6 that you reviewed that showed the geological layout of
7 the groundwater?

8 A There was information contained in the permit
9 application that resulted in the 1991 closure, post
10 closure permit. That consisted of a hydrogeologic
11 study that gave water level elevations, and I believe
12 a map designating the flow line of the groundwater as
13 well as a geologic cross section of the site.

14 Q Okay. But you don't remember if it was
15 underneath the whole landfill area or not?

16 A If what was under?

17 Q The groundwater table, if it extends under
18 the whole area, the permitted area of the landfill?

19 A I would assume that it does, but I didn't
20 review anything.

21 Q Okay. When you were there yesterday you
22 stated that you didn't see any leachate leaching into
23 the groundwater during your hour and a half
24 observation; is that right?

25 MR. BENOIT: I think she is misstating the

1 witness' testimony.

2 MS. MENOTTI: I am asking. If I am wrong, please
3 correct me.

4 THE WITNESS: I don't remember saying anything
5 about leachate leaching into the groundwater.

6 Q (By Ms. Menotti) Okay. I have notes that say
7 that you mentioned you did not see any leachate. Did
8 you see any leachate yesterday?

9 A Yesterday, no.

10 Q Did you see any groundwater yesterday?

11 A No.

12 Q Groundwater is not generally visible from the
13 surface, right?

14 A Correct.

15 Q Do you know what activities have been
16 undertaken since this landfill has ceased accepting
17 waste in 1993?

18 A No.

19 Q I believe that you stated that your opinion
20 was that the Respondent could ascertain some
21 environmental impact of the landfill if they monitored
22 for four to five more years; is that accurate?

23 A No, I believe my testimony was there is no
24 way to accurately predict how long monitoring must
25 occur at the landfill, because they are there forever.

1 Q Okay.

2 A Currently the Regulations require 30 years
3 post closure monitoring.

4 Q Okay.

5 A What is magic about 30 years? Nothing.

6 Q Based upon your experience with the Illinois
7 EPA, they are bound to follow the requirements of the
8 law, isn't it?

9 A I am sorry? Could you repeat that.

10 Q Based upon your employment with the Illinois
11 EPA, the Illinois EPA is required to follow the
12 perimeters and constraints of the law in setting
13 closure and post closure --

14 MR. BENOIT: It calls for a legal conclusion.

15 HEARING OFFICER CROWLEY: Which I believe that the
16 expert can give based upon the question that was
17 posed.

18 Go ahead.

19 THE WITNESS: Well, I am aware that in general
20 application when you are talking about the Agency you
21 are including enforcement staff. And there are
22 situations where Regulations are not strictly followed
23 in settling enforcement cases, either through consent
24 decrees or judge's orders or hearing officer orders.

25 So the Agency --

1 MS. MENOTTI: I am not talking about adjudication.

2 THE WITNESS: -- in terms of the review, the
3 people sitting there reviewing a permit application,
4 they are required to make sure that the application
5 complies with the requirements of the Regulations plus
6 the Environmental Protection Act.

7 Q (By Ms. Menotti) That is what your unit did
8 when you were over in permits, right, is to make sure
9 that the applications complied with the provisions of
10 the law; is that right?

11 A That is correct.

12 Q The Agency is not a legislative body, is it?

13 A No.

14 Q And they don't write laws? They didn't write
15 the Environmental Protection Act, did they?

16 A I don't know if they --

17 HEARING OFFICER CROWLEY: I believe he has
18 answered that the Agency is not a legislative body.

19 THE WITNESS: The Agency may have been involved in
20 the drafting of the Environmental Protection Act, so
21 to that extent they could have been involved in
22 writing it. I know in my experience we were involved
23 in writing a lot of Pollution Control Board
24 Regulations and a lot of legislation. We did not
25 enact that legislation and we did not pass those

1 Pollution Control Board Rules, but we certainly had a
2 hand in their drafting and in their implementation.

3 Q (By Ms. Menotti) That is outside the Agency's
4 authority, isn't it?

5 A What?

6 Q To enact laws?

7 A Correct.

8 Q In your review of the file, and the
9 information that the respondent gave to you, did you
10 find any information that they had applied for an
11 adjusted standard for the site?

12 A No, I did not find anything like that.

13 Q What about information regarding their
14 application for a variance at the site?

15 A I did not see anything to that effect, no.

16 Q I think you said that you know that they took
17 waste until September of 1993, and in response to Mr.
18 Benoit's question, if there was an added danger
19 because they accepted waste past the 1992 deadline,
20 you said there was not any added danger, right?

21 A Correct.

22 Q Okay. That doesn't excuse the Respondent
23 from complying with the provisions of the Act and
24 Regulations, though, does it?

25 A No, it does not.

1 Q Was it just you and Mr. Berger yesterday that
2 were at the -- when you did the site visit?

3 A Yes, ma'am.

4 Q Just for clarification, regarding placement
5 of the groundwater monitoring, where are groundwater
6 monitoring wells normally located at a landfill?

7 A Various locations. It depends on the geology
8 and groundwater flow directions. But usually there
9 are wells located what is considered upstream of the
10 flow and downstream of the groundwater flow.

11 Q Are they normally put inside the area where
12 trash is disposed of?

13 A They are -- no, they are not put in areas
14 where there is actual fill.

15 Q Okay. We were talking about Part 807.509
16 regarding the flood provisions. Do you remember that?

17 A 807.509 deals with receipt of waste following
18 closure. The flood --

19 Q I am sorry.

20 A -- provisions are in the Environmental
21 Protection Act. I also -- I am not sure if they are
22 in the Board regs or not. I believe they were.

23 Q If you want to -- you have that in front of
24 you. If you feel you need to refer to it to feel more
25 comfortable, please feel free to.

1 A I know 807.509, Subtitle G, deals with use of
2 waste following closure.

3 Q Okay.

4 A The flood provisions --

5 Q This is not what we were talking about when
6 you were talking about the flood provisions? This is
7 different? This is different from the flood
8 provisions that you were referring to in your direct
9 testimony?

10 A Yes.

11 Q Okay. Let's talk about this one. Don't go
12 to the flood provisions. 807.509, did you ever apply
13 this when you worked for the Agency, this section?

14 A No, it was not in effect when I was involved
15 with the land permits.

16 Q Okay. Have you ever had any occasion to
17 utilize this in your work as an environmental
18 consultant?

19 A No, I was not -- this provision, no.

20 Q I think when you read this on your direct
21 testimony you said that this was -- this applied after
22 closure was initiated; is that right?

23 A That's what it says, yes.

24 Q Okay. And this landfill has not been closed
25 yet as far as certified closed with relation to the

1 Regulations; is that right?

2 A It has not -- from my review of the files it
3 has not been certified closed by the Agency yet, no.

4 Q Okay. When you were reviewing the file did
5 you find any documentation that the Respondents have
6 generated regarding 807.509?

7 A No, I did not.

8 Q Was the supplemental permit, marked as
9 People's Number 2, is that the last permit, the most
10 recent permit that you reviewed?

11 A Yes, I believe so.

12 Q Okay. Could you pick up People's 2. Feel
13 free to refer to it if you need to. That permit
14 requires the generation and submission of cost
15 estimates to the Agency, doesn't it?

16 A No, it does not.

17 Q It does not?

18 A I am sorry. I take that back. It requires
19 updates on a certain frequency of the closure and post
20 closure cost estimates that have been approved.

21 Q Okay. How often are they supposed to be
22 updated?

23 A At least every two years or when something
24 changes at the landfill that would require a revised
25 estimate.

1 Q Okay. What was the last set of cost

2 estimates that you reviewed?

3 A It would have been the cost estimates in the

4 application for this 1991 permit that was submitted by

5 Schaefer Krimmel, et al.

6 Q When would those cost estimates have been

7 generated then?

8 A From the date of the permit and the permit

9 number, I would assume sometime in 1991.

10 Q Okay. Were there any cost estimates after

11 that?

12 A Not that I recall seeing.

13 Q When you were basing -- you did some

14 calculations during your direct testimony, and you

15 refer to cost estimates. Were you referring to the

16 cost estimates that were provided with this permit

17 when you were making your calculations for closure and

18 post closure care?

19 A My cost estimates were -- I used the ones

20 that were in the application for the 1991 permit. I

21 used those as my basis for calculating what the cost

22 would be -- I used those as the basis for complying

23 with the financial assurance before 1992. I then used

24 the same assumptions to calculate what it would cost

25 to have the revised groundwater monitoring for 30

1 years and the revised closure requirements.

2 Q Okay. Now, did you make any special -- did
3 you change the estimates in any way in order to
4 compute the estimates?

5 A The original estimates, I used what was in
6 the 1991 applications for closure and post closure.

7 Q What amount was that?

8 A I believe the total amount was \$192,000.00.

9 Q And that was for closure and post closure
10 care?

11 A Yes, ma'am.

12 Q Okay.

13 A And then based upon the increase in
14 groundwater monitoring requirements and the increase
15 in the closure, cover requirements, the vegetative
16 requirements, I then calculated, using the same
17 estimates for how much it cost to move dirt, how much
18 it cost to move vegetative cover. I used the exact
19 same numbers to calculate what it would take to add an
20 additional four feet of cover and do an additional 15
21 years of monitoring.

22 Q Okay. You didn't independently verify
23 whether the original estimates were accurate?

24 A No, ma'am.

25 Q Now, is the reason that 30 years -- you said

1 30 years would apply in post closure for this

2 landfill; is that right?

3 A Under a significant modification, yes.

4 Q Well, based upon your reading of the

5 Regulations, is a significant modification permit

6 required for this landfill?

7 A Yes.

8 Q And due to the significant modification,

9 that's what causes the increase in costs because you

10 have a longer time period you have to take care of the

11 landfill for?

12 A You also have increased cover costs, but the

13 majority of it is the additional groundwater

14 monitoring.

15 Q Okay. Who decided to accept -- to keep this

16 landfill open past September of 1992?

17 A I do not know.

18 Q Based on your experience at the Illinois EPA,

19 does the Illinois EPA make the decision about whether

20 landfills continue -- for the landfill whether or not

21 they continue to try to operate?

22 A I don't think that the EPA has any authority

23 to tell someone whether they do or do not have to

24 close.

25 Q Okay. When was the significant modification

1 permit required to be submitted by the Respondent to
2 the Illinois EPA?

3 A I believe the Regulations were adopted in
4 September of 1990, and they had -- if they ceased
5 operating within two years they could remain under
6 their existing permit. However, a sig mod was
7 required, a significant modification was required to
8 be submitted by September or October of 1992. And
9 that's in the Pollution Control Board Regs.

10 Q Okay. Did you find the significant
11 modification permit when you reviewed the permits?

12 A I didn't find the permit, no.

13 Q Are you aware that the Respondents notified
14 the Illinois EPA that they intended to take waste
15 after September 18th, 1997?

16 A I don't recall seeing that notification.

17 Q Based on your experience, and specifically
18 based on your experience at the Illinois EPA, the
19 Respondents lack of money to do things that they were
20 required to do under the law and its permit, does not
21 excuse them from actually complying with the law, does
22 it?

23 MR. BENOIT: Objection.

24 HEARING OFFICER CROWLEY: I will let him answer
25 the question as posed.

1 THE WITNESS: I don't understand what you mean by
2 lack -- excuse them from complying.

3 Q (By Ms. Menotti) If the landfill -- if the
4 Respondents don't have enough money to do what they
5 are statutorily required to do or required to do under
6 a permit, they can't just decide not to do it and be
7 in compliance with the law, can they?

8 A No.

9 MS. MENOTTI: I don't have anything further.

10 HEARING OFFICER CROWLEY: Mr. Benoit?

11 REDIRECT EXAMINATION

12 BY MR. BENOIT:

13 Q Why did Mr. Berger request that you do your
14 site visit yesterday?

15 MS. MENOTTI: Objection as to the form of the
16 question. He is asking the witness to testify to his
17 client's state of mind.

18 HEARING OFFICER CROWLEY: He can answer if he was
19 told or if he knows.

20 THE WITNESS: I was asked to visit the site and
21 review the existing conditions of the landfill as it
22 sits today.

23 Q (By Mr. Benoit) Do you recall conversations
24 we had regarding the cost of your services?

25 A Yes.

1 Q And did you provide me with a ballpark
2 estimate of the costs of those services?

3 A Yes, I did.

4 Q Did that estimate include two trips from
5 Springfield to Richland County?

6 A I believe it did, yes.

7 Q Do you recall a discussion whereby we agreed
8 to make it one trip to save the Respondents expert
9 fees?

10 MS. MENOTTI: Objection. This is not relevant.
11 Beyond the scope of cross-examination. We didn't
12 discuss Mr. Chappel's fees at all.

13 MR. BENOIT: She is implying, in trying to
14 discredit my witness, by asking him questions about
15 when he made the trip down, as if he would have made
16 the trip a month ago his opinions would be more valid
17 than now.

18 HEARING OFFICER CROWLEY: I will allow him to
19 answer.

20 MR. BENOIT: Could you read the question back,
21 please.

22 (Whereupon the requested portion of the record was
23 read back by the Reporter.)

24 THE WITNESS: I had discussions with Mr. Benoit
25 regarding my original estimate. I figured one trip to

1 Richland County for the hearing itself, and one trip
2 to Richland County to review the site conditions. But
3 those discussions were with Mr. Benoit.

4 Q (By Mr. Benoit) In Maria's cross-examination
5 she mentioned that you had testified to a benzene hit,
6 a sulfate hit, and a total dissolved solids hit in
7 your review of the groundwater monitoring reports
8 submitted by the Respondents. Were those hits noted
9 more than once? In other words, I think your original
10 testimony was the benzene was once and that went away
11 and --

12 A As I recall, the benzene detection was one
13 time, and I believe there were two samplings after
14 that where benzene was not detected. But TDS and I
15 believe sulfate, that you mentioned, as I discussed in
16 my original testimony, those were above what is
17 considered the water quality standard in Subpart F,
18 Part 620.

19 But you also have to look at the background water
20 quality of the site in the area to determine whether
21 or -- or at least have an opinion as to whether those
22 levels that are found in the groundwater constitute a
23 release at the landfill.

24 Q Do you have such an opinion as to whether or
25 not they constitute a release from the landfill?

1 A It is my opinion, looking at the groundwater
2 data to date, that there has not been an impact in the
3 groundwater at the landfill.

4 Q In the cross-examination you were also asked
5 whether you were aware of any activities that went on
6 at the landfill after it stopped accepting waste, and
7 you stated no. Based on your review of the file, are
8 you aware that the Respondents did submit groundwater
9 monitoring reports after 1993?

10 A I would have to review the file, but there
11 may have been one or two groundwater monitoring
12 reports after that date. Of course, from what I saw
13 during my field visit, there was cover on the
14 landfill.

15 MS. MENOTTI: What date was that?

16 HEARING OFFICER CROWLEY: 1993.

17 MS. MENOTTI: 1993. Thank you.

18 Q (By Mr. Benoit) I believe the -- would a
19 review of the groundwater monitoring reports refresh
20 your memory? I think that the other testimony was
21 that the groundwater was submitted until the third
22 quarter of 1994. Did you bring that material with you
23 today?

24 A I have it with me and I have a summary sheet
25 that I can find it a lot quicker than trying to go

1 through the groundwater reports, if that is
2 acceptable. It is just a summary of the actual
3 reports that were submitted.

4 MS. MENOTTI: Can I see the summary sheet before
5 he reads off of it? Or do you have another copy?

6 THE WITNESS: I didn't bring -- I brought only the
7 original. Mr. Benoit, I believe, has -- I don't even
8 know if he has a copy.

9 MR. BENOIT: I don't have a copy.

10 MS. MENOTTI: Can I look at it before the witness
11 testifies about it, Ms. Hearing Officer? Is that all
12 right?

13 MR. BENOIT: I am going to object to her looking
14 at it.

15 MS. MENOTTI: Then I am going to object to him
16 using it for his testimony.

17 MR. BENOIT: He is an opinion witness. We don't
18 have to provide documents that he bases his decision
19 on. All these groundwater monitoring reports Maria
20 has in microfiche. If she wants to look at them, have
21 at it. All I am asking -- this is really simple, and
22 she is making it difficult. I think earlier witnesses
23 have stated that it was the third quarter of 1994. I
24 am trying to establish that, in fact, that is the
25 case. I don't think we need to have World War III

1 over it.

2 MS. MENOTTI: If he is going to rely on something
3 besides the document, I think we are entitled to know
4 what it is he is relying on. Otherwise, he has those
5 reports with him. Let him go through the original
6 reports.

7 THE WITNESS: Fine. I believe the last sampling
8 results submitted to the Agency was in September of
9 1994 for a sampling event that occurred on August
10 25th, 1994.

11 Q (By Mr. Benoit) Then you state that you also
12 assume from your visit yesterday that after they
13 stopped accepting waste in 1993 some type of cover was
14 applied, because it was there yesterday?

15 A The question was originally asked, it could
16 have been inferred that once the site stopped
17 receiving waste there wasn't anything done with it.
18 My answer should have been that once they stopped
19 receiving waste at some point in time somebody put
20 some cover on the landfill, and they did do some
21 further groundwater monitoring after that date.

22 Q Okay. That's just what I was trying to
23 clarify. And then on the cross-examination, and I
24 believe on direct, you testified that your
25 calculations, as far as adding additional cover,

1 conducting groundwater monitoring, et cetera, are
2 based on the 1991 cost estimates; is that correct?

3 A For purposes of trying to estimate what the
4 new financial requirements for the closure and post
5 closure would be, yes.

6 Q Those original cost estimates were acceptable
7 to the Agency?

8 A The Agency --

9 MS. MENOTTI: Objection. He can't testify as to
10 what was or was not acceptable to the Illinois EPA
11 unless he was in a reviewing capacity of the Agency,
12 which he has already testified he is not.

13 MR. BENOIT: I will withdraw that.

14 Q (By Mr. Benoit) The permit was granted based
15 on those estimates; is that correct?

16 A Yes, the permit specifically refers to the
17 closure and post closure amount of \$241,950.00.

18 MR. BENOIT: Okay. No further questions.

19 RE CROSS EXAMINATION

20 BY MS. MENOTTI:

21 Q With regard to the benzene, when did the
22 benzene show up in the groundwater monitoring
23 reports? Can you flip through your reports and tell
24 me?

25 A (The witness reviewing documents.)

1 HEARING OFFICER CROWLEY: If you would refer to
2 your notes, would it allow you to locate the original
3 document?

4 THE WITNESS: Yes, it would.

5 HEARING OFFICER CROWLEY: Would you do so,
6 please.

7 THE WITNESS: Yes. It was during the 05-26-94
8 sampling event at well G114, and the level was 40
9 micrograms per liter.

10 Q (By Ms. Menotti) Okay. That was 05-26-94?
11 Do I have the date right?

12 A Yes, ma'am.

13 Q How many sampling events were taken after
14 05-26-94?

15 A None.

16 Q Can benzene, if it is in the groundwater,
17 migrate through -- from its position when it is drawn
18 as a sample? Do the constituents disburse in the
19 groundwater, I guess is what I am asking. Do you
20 know?

21 A Benzene will move with the groundwater, yes.

22 Q Okay. Can you tell me what well that was
23 again?

24 A G114.

25 Q Where is G114 located?

1 A It is located just north of where G105 is,
2 which I believe was the old 105 in the monitoring
3 program. So prior to the 1991 permit it would have
4 been monitoring well 105. G114 is just north of
5 that. If you look at the 1991 application, the
6 applicant's designation of the well was G104. When
7 the Agency issued the permit they redesignated it as
8 G114.

9 MS. MENOTTI: All right. I don't have anything
10 else.

11 MR. BENOIT: Nothing else.

12 HEARING OFFICER CROWLEY: Thank you very much, Mr.
13 Chappel.

14 (The witness left the stand.)

15 HEARING OFFICER CROWLEY: I would like to take a
16 five minute break. I assume that you have another
17 witness?

18 MR. BENOIT: Yes. I am going to call Scott here
19 next and then as -- do you want to do this off the
20 record?

21 HEARING OFFICER CROWLEY: Yes. We are off the
22 record.

23 (Whereupon a short recess was taken.)

24 HEARING OFFICER CROWLEY: We are back on the
25 record.

1 MR. BENOIT: The Respondents now call Scott Kains.
2 (Whereupon the witness was sworn by the Notary
3 Public.)

4 SCOTT KAINS,
5 having been first duly sworn by the Notary Public,
6 saith as follows:

7 DIRECT EXAMINATION

8 BY MR. BENOIT:

9 Q Could you state your name for the record.

10 A My name is Scott Kains, K-A-I-N-S.

11 Q Could you state who your employer is?

12 A I am employed by the Illinois Environmental
13 Protection Agency.

14 Q In what capacity?

15 A I am an attorney. My title is Assistant
16 Legal Counsel. Pay roll title is technical adviser
17 III.

18 Q Can you describe your duties in regard to the
19 Agency's Berger file since 1994?

20 A Since 1994 I was involved in a couple of
21 settlement negotiations. I don't recall how many. I
22 was involved in reviewing inspection reports generated
23 by the field. And I was involved in I believe one
24 additional enforcement referral to the Attorney
25 General's office.

1 Q Was that additional referral something that
2 is included in the first amended complaint?

3 A The violations contained in the first amended
4 complaint went over to the Attorney General in two
5 different referrals, I believe; one that was generated
6 prior to my arrival, and one after my arrival in March
7 of 1994 at the EPA. They are all contained in the
8 complaint, though.

9 Q All right. That's what I was just trying to
10 find out.

11 A Yeah.

12 Q Are you the Agency representative who was
13 responsible for answering the Respondent's written
14 discovery requests?

15 A Yes.

16 Q Were those discovery requests -- well, strike
17 that.

18 And while answering those discovery requests under
19 oath you swore that the information provided in
20 response to the Respondent's written discovery
21 requests was complete and accurate to the best of your
22 knowledge, information, and belief?

23 A Yes.

24 Q You understood when you received Respondent's
25 written discovery requests that you had a duty to, as

1 the Agency's representative, make a diligent inquiry
2 to Agency staff and review the Agency's files in order
3 to offer complete --

4 A Yes.

5 Q -- and accurate responses?

6 A Yes.

7 Q I am going to start with Respondent's Request
8 to Admit, the response thereto. Do you need a copy of
9 that?

10 A I don't have it in front of me.

11 Q Okay. I don't have extra copies. They are
12 included in the --

13 HEARING OFFICER CROWLEY: Could I have the date on
14 that, please?

15 MR. BENOIT: It is dated May 14th, 1998.

16 HEARING OFFICER CROWLEY: I do have a copy if the
17 extra copy helps out anybody.

18 MR. BENOIT: You do not have a copy?

19 HEARING OFFICER CROWLEY: I do have a copy if you
20 need to use it.

21 MR. BENOIT: Okay. Can I give him your copy
22 then?

23 HEARING OFFICER CROWLEY: Yes. It is unmarked.
24 Do you need to see it?

25 MS. MENOTTI: I believe yours is a true and

1 accurate copy.

2 Q (By Mr. Benoit) The People denied request to
3 admit 1, 3, 4 and 5 in this response dated May 14th,
4 1998; is that correct?

5 HEARING OFFICER CROWLEY: I am sorry. Now I am
6 giving you -- I gave him the request to admit. Now I
7 have handed him a copy of the response.

8 MR. BENOIT: Let me strike my question and start
9 again.

10 Q (By Mr. Benoit) Are you aware of discovery
11 disputes regarding Complainant's Answer to
12 Respondent's Request to Admit, which were resolved by
13 Hearing Officer Jack Burds pursuant to an August 4th,
14 1998 order?

15 MS. MENOTTI: Objection. Relevance. If it is
16 already resolved, why do we need to discuss it? It
17 does not relate to anything that the State alleged in
18 the complaint.

19 MR. BENOIT: These questions are relevant. Part
20 of what the Board considers is actual or potential
21 harm to the environment when issuing its orders. We
22 were trying to determine through these requests to
23 admit, which the Hearing Officer, pursuant to the
24 order I am referring to, August 4th, 1998, deemed them
25 all denied.

1 If the present Hearing Officer will look at them,
2 they object and deny all except Number 2, which they
3 admitted. This was followed up by a set of
4 interrogatories basically saying that if you deny that
5 you don't have evidence of harm to persons,
6 environmental, tell us who it is.

7 That is where this is leading. I am trying to
8 establish that, in fact, they should have admitted all
9 of these and they did not. I really don't know of any
10 other avenue to present that.

11 HEARING OFFICER CROWLEY: I am just not sure how
12 the question that is pending relates to what you said
13 that you were trying to get to.

14 MR. BENOIT: Okay. If they have no evidence, that
15 is what I want to establish. None of the witnesses --

16 HEARING OFFICER CROWLEY: Yes, I understood that
17 part.

18 MR. BENOIT: Okay.

19 HEARING OFFICER CROWLEY: Could you read back the
20 question that is pending.

21 (Whereupon the requested portion of the record was
22 read back by the Reporter, at page 435, line 10.)

23 HEARING OFFICER CROWLEY: I will give you some
24 latitude here, but let's get there.

25 MR. BENOIT: Okay. I know. I am trying.

1 Q (By Mr. Benoit) Are you -- have you ever seen
2 this August 4th, 1998 order issued by Jack Burds?

3 A Yes.

4 Q Okay. Does that order say, the Complainant's
5 responses shall be treated as denials, and where the
6 Respondents are able to prove the truth of the matter
7 of those facts ought to be admitted appropriately from
8 the Hearing Officer or the Board.

9 A If that's what it says, yes.

10 Q Okay. Then as to the second set of
11 interrogatories and your response and your
12 supplemental response thereto -- there was not a
13 supplemental response after this order. I believe I
14 can just simplify this by going through one of them.
15 Request to admit number one was denied. The
16 request to admit says, the Complainant has no evidence
17 of Respondent or either Respondents, through the
18 operation of the landfill, impacting beyond the impact
19 allowed by governing perimeters, groundwater or
20 surface water, from 1978 to 1998.

21 MS. MENOTTI: Objection. It is a
22 mischaracterization of the response. The Complainant
23 has objected. The Hearing Officer's order
24 specifically states that the response will be treated
25 as denials only where the Respondents can prove

1 otherwise. The Respondent has not proved otherwise,
2 therefore, the objection still stands. The State may
3 change its objection to the interrogatory and based on
4 that, the question is -- Mr. Benoit is not only
5 mischaracterizing the response, but his question is
6 improper.

7 Q (By Mr. Benoit) If I may, the follow-up
8 question in the second set of interrogatories as to
9 request to admit number one is, if Complainant denies
10 request to admit number one for any year, 1978 through
11 1998, identify for each year denied, 1978 to 1998, the
12 evidence in Complainant's possession or control which
13 tends to prove Respondent or either Respondents
14 operation of the landfill impacted beyond the impact
15 allowed by governing perimeters, groundwater or
16 surface water.

17 In Jack Burd's August 4th, 1998 order on page two
18 he directs that they -- that the Complainant respond.
19 It says, if the information sought by the Respondent
20 within Interrogatories 2, 3, 4, 5, 6, 7, 8 and 9
21 exist, or the Complainant will attempt to introduce it
22 at hearing, the Complainant shall provide that
23 information to the Respondents. Nothing has been
24 provided, and I am trying to determine why not.

25 MS. MENOTTI: Ms. Hearing Officer, we were

1 required to produce things to the Respondent where we
2 specifically denied. Our responses were in the
3 alternative, and the Hearing Officer accepted the
4 objection and the alternative denial, and he said that
5 he --

6 MR. BENOIT: He did not accept any objections.

7 MS. MENOTTI: The Hearing Officer in this order
8 did not rule on whether or not the objections were
9 proper or not. And under that, that the objection in
10 the request to admit should stand. It has not been
11 stricken from the record.

12 In the response to the second set of
13 interrogatories, we also objected in response to the
14 second set of interrogatories. We have not produced
15 any evidence at trial, and any existence or
16 nonexistence --

17 MR. BENOIT: It just --

18 MS. MENOTTI: -- could have been dealt with
19 outside of calling the witness at trial to try to --
20 the order said that he has to prove the truth of the
21 admissions that he saw. He has not proven the truth
22 of any of the admissions. So further inquiry into
23 this should be barred based on them not complying with
24 what the Hearing Officer said they were required to do
25 before further inquiry.

1 MR. BENOIT: They denied via the Hearing Officer's
2 order that they had no evidence. Then the follow-up
3 interrogatory asks what is that evidence. They don't
4 provide it although the Hearing Officer ordered them
5 to provide it.

6 HEARING OFFICER CROWLEY: I will ask the witness
7 to answer the question.

8 THE WITNESS: What was the question?

9 HEARING OFFICER CROWLEY: I will allow the
10 testimony and also note for the record that I am doing
11 so in part because this witness has severe time
12 constraints, and I would like to have a record made
13 while we have the opportunity to do so.

14 (Ms. Menotti left the hearing room.)

15 MR. GUBKIN: Can we hold on one moment? Ms.
16 Menotti had to step out.

17 (Whereupon a short recess was taken.)

18 THE WITNESS: Could you please read back the
19 question?

20 HEARING OFFICER CROWLEY: Unless you care to
21 rephrase it.

22 MR. BENOIT: I think what I am going to do is take
23 a more direct approach to this and just, you know, hit
24 him with the -- ask questions based on the request to
25 admit.

1 HEARING OFFICER CROWLEY: Fine.

2 MR. BENOIT: Okay.

3 Q (By Mr. Benoit) Starting with the first one,
4 the Complainant has no evidence that the Respondents
5 or either Respondent, through the operation of the
6 landfill, impacted beyond the impact allowed by
7 governing perimeters, groundwater or surface water
8 from 1978 through 1998, and then I want you to --
9 isn't that true?

10 MS. MENOTTI: Objection. Relevance.

11 HEARING OFFICER CROWLEY: Overruled. Please
12 answer.

13 THE WITNESS: No, that is not true.

14 Q (By Mr. Benoit) That's not true. What
15 evidence do you have for each year in question?

16 A We don't have groundwater monitoring reports
17 from Wayne Berger that would give us -- for the last
18 four to five years that would give us an indication of
19 whether --

20 Q Does this request to admit say anything about
21 for the last four or five years?

22 MS. MENOTTI: Ms. Hearing Officer, will you please
23 direct Mr. Benoit to allow my witness to answer the
24 question before he interrupts and harasses and screams
25 at him?

1 HEARING OFFICER CROWLEY: It was not clear if the
2 witness was through, but I would ask that everyone
3 allow everyone to complete their statements before
4 interrupting or instead of interrupting.

5 THE WITNESS: For the last four or five years we
6 don't have groundwater monitoring reports. Prior to
7 that, I don't have specific knowledge whether there
8 was groundwater -- I believe the term you used was
9 impact. I don't have that knowledge.

10 Now, I don't know who within the Agency reviewed
11 these reports from -- if they were, and I don't know
12 if they were submitted as far back as 1978 or not,
13 because I know the permit was not issued until, I
14 believe, 1979. I don't know who it was who would have
15 reviewed these reports.

16 Q (By Mr. Benoit) Did you make any inquiry to
17 find out?

18 A Oh, sure, sure.

19 Q Who did you talk to?

20 A I talked to Ken Smith. I talked to his
21 supervisor, I believe, Joyce Munie, about who would be
22 reviewing these things. And they said permit section
23 does not review -- they are not geologists who review
24 the groundwater monitoring reports. I believe Mr.
25 Chappel testified that he was in charge of the

1 compliance section and that they reviewed those
2 reports.

3 Now, I don't know if our compliance section
4 currently does that or not. I am not sure that they
5 do. We have a groundwater assistance unit that is
6 like a permits unit for groundwater.

7 Q So the -- as you are stating here today, your
8 correct answer would be you don't know? It is not
9 correct to deny it?

10 A I don't know that that is true, because -- I
11 don't know where I could have gotten the information,
12 I guess, is what I am getting at. I endeavored to get
13 the information and...

14 Q Why was it denied, if you didn't know?

15 A I didn't deny it. I didn't verify this.

16 Q It was deemed --

17 MS. MENOTTI: Objection. There is not a denial --

18 MR. BENOIT: I don't know how --

19 MS. MENOTTI: -- in this answer. The answer is --

20 MR. BENOIT: I don't know how it can be any
21 clearer than Jack Burd's order saying they are all
22 deemed denied. If you have something, turn it over to
23 Mr. Benoit by August 10th, 1998 at 4:30 p.m.

24 MS. MENOTTI: That is a mischaracterization. The
25 order says they shall be treated as denials where

1 Respondents are able to prove the truth of the matter
2 of the facts sought.

3 MR. BENOIT: And I am trying to prove the truth of
4 the matter of the facts sought, and he is being
5 evasive.

6 HEARING OFFICER CROWLEY: I believe that the
7 witness has answered the question to the best of his
8 ability.

9 Q (By Mr. Benoit) Turn to -- I am not going to
10 ask a question on Number 3 because it is very similar
11 to Number 1, and I will probably get the same type of
12 answer.

13 Turning to Number 4, will you admit here, under
14 oath, that the Complainant has no evidence that the
15 alleged violations set forth in the first amended
16 complaint resulted in actual harm to any identifiable
17 real property?

18 A From what are you reading?

19 Q It is the request to admit, Number 4.

20 A I was not under oath when --

21 Q You are under oath now.

22 A Oh.

23 Q I am asking you --

24 MS. MENOTTI: For the record, the State objected
25 to this because the terms "identifiable real property"

1 and "actual harm" are vague.

2 MR. BENOIT: I would ask that --

3 HEARING OFFICER CROWLEY: Please answer the
4 question if you can.

5 THE WITNESS: I don't know what actual harm
6 meant. I know that we have not received complaints
7 from neighbors about their water tasting different or
8 vegetation dying, if that's what you mean by actual
9 harm.

10 Q (By Mr. Benoit) You understand under the Act,
11 I think, that there is actual harm to the environment
12 and threatened harms?

13 A (Nodded head up and down.)

14 Q An actual harm would be, you know, to
15 identifiable real property and it might be leachate
16 running off on to somebody's else's property or
17 whatever.

18 A I don't know.

19 Q Well, what kind of investigation did you
20 conduct to -- with Agency personnel or Agency files to
21 reach your denial?

22 A I reviewed the file. I spoke with Ken Smith,
23 Joyce Munie, Sheila Williams, Kevin Bryant, John
24 Taylor. Those are the folks I talked to.

25 Q And did any of those people provide you with

1 evidence in their possession of actual harm to any
2 identifiable real property stemming from the alleged
3 violations set forth in the first amended complaint?

4 A No, they did not.

5 MS. MENOTTI: We are going to object and move to
6 strike based on the fact that the question calls for
7 hearsay.

8 HEARING OFFICER CROWLEY: Overruled. The Board's
9 hearsay definition is somewhat relaxed.

10 Q (By Mr. Benoit) Will you admit now under oath
11 that the Complainant has no evidence that the alleged
12 violations set forth in the first amended complaint
13 resulted in actual harm to any identifiable person?

14 A I am not aware that there has been any actual
15 harm to an identifiable person.

16 Q As to Agency's representative, will you admit
17 that the Complainant, the People of the State of
18 Illinois, the Agency, whoever you talked to, has no
19 evidence that the alleged violations set forth in the
20 first amended complaint resulted in actual harm to any
21 identifiable person?

22 MS. MENOTTI: Objection. He has just answered the
23 question.

24 MR. BENOIT: No, he rephrased it. This calls for
25 a --

1 MS. MENOTTI: It is the same question.

2 MR. BENOIT: It calls for --

3 HEARING OFFICER CROWLEY: The answer was not
4 directly responsive to the question. I will allow his
5 question to be asked.

6 Please answer the question that he poses.

7 THE WITNESS: Could you rephrase the question,
8 please?

9 Q (By Mr. Benoit) Will you admit that the
10 Complainant has no evidence that the alleged
11 violations set forth in the first amended complaint
12 resulted in actual harm to any identifiable person?

13 A I don't know if there has been any harm, any
14 actual harm to an identifiable person.

15 Q I am not asking you if you don't know.
16 Through your diligent inquiry through the Agency and
17 all the people that you talked to related to the State
18 of Illinois who filed this action, and who you
19 represent, were you able to find any evidence that the
20 alleged violations set forth in the first amended
21 complaint resulted in actual harm to any identifiable
22 person?

23 A Based upon my review of the file and
24 discussing the violations with the four or five people
25 that I mentioned previously, I did not find that there

1 was any actual harm to an unidentifiable person.

2 Q So you will admit it?

3 HEARING OFFICER CROWLEY: The question has been
4 answered. I think the record is clear.

5 Q (By Mr. Benoit) The second set of
6 interrogatories, Number 2, asks what analysis the
7 Agency performed on the groundwater monitoring reports
8 submitted to the Agency by the Respondents over the
9 years, and Number 3 asks for the identity of the
10 person conducting this analysis.

11 In your supplemental answer you state that because
12 the Respondents have failed to submit groundwater
13 monitoring reports, no analysis has been performed.
14 Do you stand by your statement that the Respondents
15 have failed to submit groundwater monitoring reports?

16 A The Respondent has not submitted groundwater
17 monitoring reports, according to Ken Smith, since
18 September of 1994.

19 Q Does interrogatory Number 2 state --

20 MS. MENOTTI: Which set are you on, please?

21 MR. BENOIT: I am on the second set.

22 MS. MENOTTI: Okay.

23 Q (By Mr. Benoit) (continuing) -- anywhere that
24 the question is limited to groundwater monitoring
25 reports submitted after 1994 or any other date?

1 HEARING OFFICER CROWLEY: Excuse me. Is this the
2 document dated July 31st, the answer to the second set
3 of interrogatories?

4 MR. BENOIT: The answer is dated June 1st, 1998.

5 HEARING OFFICER CROWLEY: I am sorry. I was --

6 MS. MENOTTI: There is a supplement on July 30th,
7 1998, that goes with it.

8 HEARING OFFICER CROWLEY: I was just trying to
9 give the witness a document to try to speed this up a
10 little, if that helps.

11 THE WITNESS: This is not the second
12 interrogatory.

13 HEARING OFFICER CROWLEY: Oh, okay.

14 THE WITNESS: Thank you.

15 MS. MENOTTI: For the record, there is two answers
16 to the second set of interrogatories, one that was
17 filed on June 1st and one that was filed on July
18 30th. I believe the question Number 2 was answered in
19 both sets of interrogatories.

20 HEARING OFFICER CROWLEY: I believe he now has
21 both sets.

22 THE WITNESS: I don't have anything with an answer
23 to -- okay. The second set of interrogatories, Number
24 2. I think I am there. Okay. The answer to your
25 question is no.

1 MR. BENOIT: I am sorry. I was looking for my
2 document. I don't remember what the last question
3 was.

4 HEARING OFFICER CROWLEY: Could you please read it
5 back?

6 (Whereupon the question on page 448, line 19 of
7 the record was read back by the Reporter.)

8 MR. BENOIT: All right. Maria, are you saying
9 that there is more than one answer to the
10 Interrogatory Number 2, the answer to the second set
11 of interrogatories?

12 MS. MENOTTI: I am saying that we filed two
13 separate -- one we filed on June 1st of this year and
14 one was filed on July 30th of this year in the form of
15 supplemental answers.

16 MR. BENOIT: I don't see that -- all right. I
17 see.

18 Q (By Mr. Benoit) Do you stand by your
19 statement that the Respondents did not submit
20 groundwater monitoring reports?

21 A Yes. The Respondents have not submitted
22 groundwater monitoring reports since September of
23 1994.

24 Q Does the Interrogatory Number 2 say anything
25 about after 1994?

1 A I answered that no.

2 Q Okay. Why did you choose to limit the
3 question in that fashion through your answer?

4 A No analyses were conducted by the Illinois
5 EPA of groundwater monitoring reports submitted prior
6 to September of 1994. All that is done is they are
7 reviewed and compared with the applicable standards
8 contained in 35 Illinois Administrative Code, Part
9 620.

10 Q Is that placed in some type of chart or
11 something, say, if there was a problem they would put
12 a little X and make a form on that?

13 A I found nothing in the file to that extent.

14 Q Would that be the practice?

15 A I don't know what the practice is on
16 groundwater. But I did not find anything in our file.

17 Q Well, I think knowing that would have been
18 helpful to me in this case. I think you stated
19 earlier the Agency has never received a complaint
20 regarding the Berger Landfill?

21 A That is correct.

22 Q There has been various testimony in this case
23 regarding what type of significant modification permit
24 the Agency or the State is requesting or that is the
25 basis of this complaint, they failed to submit it. If

1 possible, can you clarify what the demand is as far as
2 is it just for closure and post closure or operations
3 closure and post closure?

4 MS. MENOTTI: Objection. The law speaks for
5 itself. And this is going towards -- a significant
6 modification permit is required under the Act or the
7 Regulations because the Respondent took waste after
8 the date specified, September 18th, 1992. Anything
9 requiring any kind of Agency demand or anything like
10 that, and first of all, it is a mischaracterization of
11 the way that the Act and the Regulations work. And
12 second of all, goes toward any sort of settlement
13 discussions which were had in an attempt by the State
14 to settle this matter without litigation. That didn't
15 happen, and those discussions are inadmissible.

16 HEARING OFFICER CROWLEY: Okay. Ms. Menotti,
17 thank you.

18 Do the Illinois landfill Regulations specify the
19 contents of an application for a significant permit
20 application?

21 THE WITNESS: I don't know the answer to that.

22 HEARING OFFICER CROWLEY: Okay. Thank you.

23 THE WITNESS: I am not --

24 HEARING OFFICER CROWLEY: Thank you.

25 THE WITNESS: -- aware that they do.

1 MR. BENOIT: I think there is some confusion as
2 far as the different witnesses giving different
3 estimates. I was just trying to clarify that point.

4 Q (By Mr. Benoit) This significant modification
5 permit, whatever type it was, it was due on April 9th,
6 1994?

7 A I believe the call in date was March 1,
8 1993. That may have been extended, but I am not
9 certain.

10 HEARING OFFICER CROWLEY: I am going to hand this
11 gentleman People's Exhibit Number 3.

12 MS. MENOTTI: Okay. Thank you.

13 THE WITNESS: On People's 3 the sig mod
14 application was to be submitted to the Illinois EPA by
15 March 1, 1993. Based upon the LP PA 15 notification
16 that Wayne Berger submitted -- this is People's 3. It
17 was in response to that notification that he intended
18 to stay open.

19 Q (By Mr. Benoit) So what date was it due,
20 now? What is your testimony now?

21 MS. MENOTTI: Objection. Asked and answered.
22 Could we please move on?

23 MR. BENOIT: I am looking through a lot of dates
24 here. If he could just clarify what date he is
25 stating now that it is due.

1 HEARING OFFICER CROWLEY: Read it again, please.

2 THE WITNESS: Based upon the LP PA 15 notification
3 form submitted to the Illinois EPA, indicating that he
4 intended to operate the facility, stay open past
5 September 18, 1992, People's Exhibit 3, a letter to
6 Mr. Berger from Lawrence W. Eastep, Permit Section,
7 Manager for the Bureau of Land, Illinois EPA, it says
8 here, requiring that the application for significant
9 modification for this facility be submitted by March
10 1, 1993.

11 Q (By Mr. Benoit) Your answer to Interrogatory
12 Number 23 --

13 A Which set?

14 Q -- states it was due on April 9, 1994. Do
15 you know which one of those dates is correct, either
16 your sworn answer or your testimony today?

17 MS. MENOTTI: What number are you looking at,
18 please?

19 MR. BENOIT: I am looking at the answer to
20 Interrogatory Number 23.

21 THE WITNESS: Which set?

22 MR. BENOIT: The first set.

23 THE WITNESS: The first set.

24 Q (By Mr. Benoit) It is the first set. It is

25 on page -- I am using the answers so it is on page

1 nine at the top.

2 A If the response in the interrogatories was
3 April of 1994, the only reason I can think of for
4 extending that date was the flood waste from the
5 Mississippi River. There was a flood wastes extension
6 for landfills to accept waste. And I don't know how
7 that affected. It may have affected the date that the
8 sig mod was due. But that is something that if I
9 answered that in the interrogatory it would be based
10 upon discussion that I had with Ken Smith and/or Joyce
11 Munie.

12 Q (By Mr. Benoit) So as you sit here today you
13 are not sure which date is correct?

14 A No, I am not. I would have to ask the
15 engineers.

16 MR. BENOIT: Okay. I mean, it is fairly important
17 to determine some recent Board cases, you know, if
18 there is a date of the violation and then they will
19 start counting days, and I think that's part of the
20 requested --

21 MS. MENOTTI: I think it is already on the record
22 from one of the witnesses the dates that apply. We
23 determined that Mr. Berger has not submitted one to
24 date, so that is irrelevant as to which date applies
25 to the --

1 HEARING OFFICER CROWLEY: I understand the
2 relevance.

3 Q (By Mr. Benoit) Okay. Count 6 is the
4 allegation regarding that the roads were inadequate.
5 I would like you to look on the first set, your answer
6 to Interrogatory 60.

7 A I don't have that in front of me.

8 HEARING OFFICER CROWLEY: I am sorry. Which one
9 is that?

10 THE WITNESS: The first set would be the thickest
11 pile of paper. Thank you. Number 60?

12 Q (By Mr. Benoit) Yes, it is on the top of page
13 17 that the answer starts.

14 A Do you want me to read that?

15 Q Yes, if you would like.

16 A The landfill is not under development but is
17 operating. See also number 31, quote, orderly
18 operations within the site, close quote, is unclear
19 and vague, thus, the Complainant cannot further
20 respond.

21 Q Isn't the phrase orderly operations within
22 the site the same phrase used in the Regulation
23 assigned to 807.314(b)?

24 A I don't know. I haven't read 314(b). But if
25 that's what it says, then it may be defined in there.

1 Q Who did you consult with in the Agency before
2 formulating your response? And I am specifically
3 directing you to the part where it says, orderly
4 operations within the site is unclear and vague.

5 A I believe I may have spoken with Sheila
6 Williams about this issue.

7 Q So as to the Agency's representative, is it
8 the Agency's position that the Regulation's use of
9 that phrase renders the Regulation vague?

10 A I think --

11 MS. MENOTTI: Objection. It calls for a
12 determination based upon whether or not a Regulation,
13 which is promulgated by the Board and passed by the
14 state legislature, is vague or not. Now, Mr. Kains
15 does have a law degree. But constitutional and vague
16 issues are made by Circuit Courts, and he is not a
17 judge.

18 HEARING OFFICER CROWLEY: He can give an opinion
19 if he has one.

20 THE WITNESS: I didn't find orderly operations in
21 any definition within Part 807 or Part 811. To me it
22 was vague.

23 MR. BENOIT: Could I see Respondent's 35E?

24 MS. MENOTTI: What number, please?

25 MR. BENOIT: Respondent's 35E.

1 MS. MENOTTI: Okay. That's fine.

2 Q (By Mr. Benoit) Do you recognize Respondent's
3 35E?

4 A Yes, I do.

5 Q Do you see a signature on that?

6 A I have my name printed on there. My
7 signature is not legible.

8 Q Did you print your name on that?

9 A Yes, I did.

10 Q You participated in the September of 1994 31D
11 meeting?

12 A Yes, I did.

13 MS. MENOTTI: I am sorry. I can't hear Mr. Benoit
14 when his back is turned.

15 Q (By Mr. Benoit) That meeting concerned the
16 first four counts in the --

17 MS. MENOTTI: Objection. I think we have already
18 established that this was a settlement meeting, and
19 that the discussions, the content of the meetings were
20 not admissible.

21 MR. BENOIT: I think you ruled earlier I could
22 establish who was there.

23 MS. MENOTTI: There was also a ruling --

24 HEARING OFFICER CROWLEY: I agreed that you could
25 establish who was there, yes.

1 THE WITNESS: Yes, I was there. I don't recall
2 which counts were discussed but I know that Counts 1
3 and 2, at least, were discussed. I don't recall if
4 the other --

5 MS. MENOTTI: Objection and move to strike. They
6 are discussing the content of the meeting. He has
7 established that he was there.

8 MR. BENOIT: I am not discussing it. There wasn't
9 even a question. He just offered the answer.

10 MS. MENOTTI: That is what the question called
11 for.

12 HEARING OFFICER CROWLEY: He offered the
13 information. It is in the record. Let's go on.

14 MR. BENOIT: I would like to -- I think that this
15 has been previously admitted, but I want to also admit
16 it for the purposes of Mr. Kains.

17 Q (By Mr. Benoit) And you also participated in
18 the November 4th, 1996, 31D meeting; is that correct?

19 A I don't recall dates. I know there was a
20 second meeting to discuss the possibility of
21 settlement.

22 MR. BENOIT: I am going to show Mr. Kains what has
23 previously been marked as Respondent's 39B.

24 MS. MENOTTI: I don't have a copy of that. I am
25 going to object and move to bar any testimony

1 regarding this, because Mr. Kains has just testified

2 it was a settlement meeting. Settlement meetings and

3 negotiations are not admissable into evidence.

4 HEARING OFFICER CROWLEY: And I have ruled

5 previously that whether 31D conferences did occur is

6 relevant to the requirement of the statute.

7 Q (By Mr. Benoit) Do you recognize Respondent's

8 39B?

9 A Yes, I do.

10 Q What is it?

11 A It is an attendance sheet for a 31D meeting

12 regarding the Berger Landfill dated November 4, 1996.

13 My name is printed on there. So I was in attendance

14 at that meeting.

15 MR. BENOIT: I move that 39B be admitted.

16 MS. MENOTTI: Only to the extent -- the State

17 would object unless it is only to extent to verify

18 that Mr. Kains was in attendance, and that that is his

19 name printed on the sheet, not to prove that the

20 meeting was -- any substance or anything else of the

21 meeting or that any of the other individuals were

22 there or to verify the substantiation of their

23 signatures or their printed names.

24 HEARING OFFICER CROWLEY: It is admitted. It is

25 also admitted for the purpose of proving that the

1 meeting did occur on that date.

2 All right. Go ahead.

3 (Whereupon said document was admitted into
4 evidence as Respondent's Exhibit 39B as of this
5 date.)

6 Q (By Mr. Benoit) Do you recall reviewing --
7 well, strike that.

8 As part of your duties regarding the Berger file,
9 this matter, did you review pleadings before they were
10 sent out for accuracy?

11 MS. MENOTTI: Objection. Attorney-client
12 privilege.

13 HEARING OFFICER CROWLEY: Sustained.

14 Q (By Mr. Benoit) Did you see the amended --
15 the first amended complaint prior to the November 4th,
16 1996, 31D meeting?

17 MS. MENOTTI: Objection. It is attorney-client
18 privilege. It calls for things that were taken up
19 between counsel and the client and --

20 MR. BENOIT: I am not asking --

21 HEARING OFFICER CROWLEY: I will let him answer
22 that.

23 THE WITNESS: I don't know. I don't know when the
24 first amended complaint was filed.

25 Q (By Mr. Benoit) Did you know that it was

1 placed in the mail for service upon Respondents on
2 November 4th, 1993?

3 A No, I did not.

4 MR. BENOIT: That's all I have for this witness,
5 but I would like to reserve the issue of bringing up a
6 motion based on what I think the witness' testimony
7 has shown as a discovery abuse for a later time.

8 HEARING OFFICER CROWLEY: You are certainly able
9 to make any motion that you deem necessary.

10 Do you have anything?

11 MS. MENOTTI: I have one question, and then you
12 can get out of here.

13 CROSS EXAMINATION

14 BY MS. MENOTTI:

15 Q Can the Agency perform an analysis on
16 groundwater monitoring reports that do not exist?

17 A No.

18 MS. MENOTTI: Okay. I don't have anything else.

19 HEARING OFFICER CROWLEY: Thank you.

20 (The witness left the stand.)

21 MR. BENOIT: Can we go off the record?

22 HEARING OFFICER CROWLEY: Yes, we are off the
23 record. We will take a short break.

24 (Whereupon a short recess was taken.)

25 HEARING OFFICER CROWLEY: We are back on the

1 record.

2 Are the Respondents ready to call their next
3 witness?

4 MR. BENOIT: The Respondents will call Gene
5 Diesser.

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

8 GENE DIESSER,

9 having been first duly sworn by the Notary Public,

10 saith as follows:

11 DIRECT EXAMINATION

12 BY MR. BENOIT:

13 Q Could you please state your name for the
14 record.

15 A Gene Diesser.

16 Q Could you spell your last name for the court
17 reporter?

18 A D-I-E-S-S-E-R.

19 Q How old are you, Mr. Diesser?

20 A I am 63 years old.

21 Q And how long have you been a resident of
22 Richland County?

23 A All my life.

24 Q Do you know Wayne Berger?

25 A Yes, I do.

1 Q How do you know him?

2 A He was a neighbor all my life, friend, and I
3 went to school with him.

4 Q Is that grade school?

5 A Grade school.

6 Q And high school?

7 A I was out of high school before he started
8 high school, I think.

9 Q What kind of person do you know Wayne Berger
10 to be?

11 A Well, a good, honest person. All of his
12 family has always been honest and everything, always
13 been church-going people, and like that, the whole
14 family.

15 Q How are you employed?

16 A I am a self-employed farmer.

17 Q And where do you live? What is your address?

18 A 4394 North Midway Road, Olney.

19 Q Are you familiar with the Berger Landfill?

20 A Yes.

21 Q Is the Berger Landfill near your home?

22 A Yes, and then I have land that joins it on
23 the north.

24 Q Now, on the board here there is a map,
25 entitled Richland County wall map. It has been marked

1 as Exhibit R49. Would you mind getting up and seeing
2 if you can locate your house?

3 (The witness approached the board.)

4 Q This is where Mr. Cantrell says he lives and
5 there is the landfill.

6 A Yes, right there (indicating). I own this
7 land here and here. I own land on both sides of it,
8 the farmland right here. And my farm is here, and I
9 have more land up in here. I have a house over here
10 where I live now, but I lived right there during the
11 time the landfill was going.

12 Q Okay. I am going to have you mark that map
13 with red ink, and if you will notice how Mr. Cantrell
14 marked it, he kind of went away from where his house
15 was and then he initialed it.

16 A Uh-huh.

17 Q If you could do the same thing with the house
18 you lived in during the time the landfill was in
19 operation, I would appreciate it.

20 MS. MENOTTI: Could you also have him mark the
21 year that he lived at that -- from what date to what
22 date?

23 A From 1962 to 1996.

24 MR. BENOIT: Okay. Let's do that. I think that
25 is a good idea.

1 THE WITNESS: Let's see. The landfill is right

2 here. Do you want me to mark it?

3 Q (By Mr. Benoit) No, I don't want you to mark
4 the landfill?

5 A Oh.

6 Q I want you to find where your house is on the
7 map.

8 A Oh, okay. Right there.

9 Q Okay. And then you can swing out on an arch
10 in this direction. Go ahead and do that.

11 A This way?

12 Q Yes.

13 A (Witness complied.)

14 Q Okay. Now, if you can put an arrow on this
15 end of the mark on your house?

16 A All right. (Witness complied.)

17 Q And then if you can initial it?

18 A Okay. (Witness complied.)

19 Q And then if you could place the years you
20 just mentioned, I believe 1962 through 1996?

21 A Okay. (Witness complied.)

22 MS. MENOTTI: Is that in red?

23 MR. BENOIT: It is red.

24 Q (By Mr. Benoit) Now, you mentioned that you
25 owned certain farmland or farms?

1 A I own this farm, these two farms here. They
2 are still in that. That was in my name. This one
3 farm is in Willis Berger's name. I bought it, and I
4 just got it paid for a few years ago, and they haven't
5 got it -- I just got it reported and this is an older
6 flat map. They have not got it on the new plat map in
7 my name. In fact, it is in my wife's name, Alberta.

8 Q Can you initial on the farms that you own or
9 farm?

10 A Yes (Witness complied.)

11 Q Again, it is in red ink.

12 A Just around the landfill?

13 Q Yes, just the ones that are close to the
14 landfill.

15 A I have one right here, too.

16 MS. MENOTTI: Are we going to identify how we are
17 identifying it?

18 MR. BENOIT: His initials at the end of an arch
19 with the arrow represents -- it ends at a square block
20 that indicates residences on this map, and I am
21 referring to R49. On the arch coming off the -- it is
22 an arrow, and it is written 1962 through 1996 and
23 initialed and that indicates where the witness lived
24 during those years.

25 MS. MENOTTI: Okay. I just saw a lot of red, and

1 I didn't know. Thank you.

2 MR. BENOIT: Does the Hearing Officer have any
3 suggestions as to --

4 HEARING OFFICER CROWLEY: No, I just wanted to get
5 a look at it while the witness was here in case I had
6 questions later.

7 MR. BENOIT: Okay. Thank you.

8 Q (By Mr. Benoit) Now, the farms that you
9 initialed that run north of the landfill but south of
10 the road that is marked 1200 North, were you farming
11 those farms in 1979 through 1996, or when did you
12 start farming them?

13 A About I think --

14 HEARING OFFICER CROWLEY: Excuse me. Can you turn
15 around and speak towards the reporter? Thanks.

16 THE WITNESS: Okay. I don't know -- I can't
17 remember dates just for sure, but I think I bought
18 this Willis Berger farm and started farming it in
19 about 1980. And this other farm here --

20 Q (By Mr. Benoit) Can you state which one?
21 What does it say on the map?

22 A It says Ronnie Diesser. Is used to be
23 Hysmith (spelled phonetically). I bought it off of
24 Don Hysmith. I bought it sometime in the 1980s, I
25 think. It was after I bought this farm.

1 Q Okay. How about this one where it says Jack
2 Harrell?

3 A Let's see. I have been farming that probably
4 about the last ten years, give or take.

5 Q Okay.

6 A This farm right here, I have been farming
7 that ever since back in the 1960s sometime. It is
8 Copeland. It goes by the daughter. I will think of
9 it in a minute.

10 Q Okay. Now, can you recall approximately what
11 year Wayne Berger started operating the landfill?

12 A Not exactly. It seems to me like it was
13 probably in the late 1970s, though. Does that sound
14 about right?

15 Q Okay. Since the late 1970s, and going up to
16 1993, have you been fairly familiar with the landfill?

17 A Yes.

18 Q How did you become familiar with the
19 landfill?

20 A Well, when I farm back there, that field, it
21 joins it. It is probably not over 100 feet from the
22 boundary line or so. You know, up on the tractor you
23 can see way over, way out, you know, and over.

24 Q What kind of land is that?

25 A It has a -- it is a little bit rolling. It

1 is not level farmland. It is a little rolling, you

2 know.

3 MS. MENOTTI: Request to clarify. Are you talking

4 about Mr. Diesser's land or Mr. Berger's land?

5 Q (By Mr. Benoit) Okay. Well, let's talk about

6 your land first. The land that you farm directly

7 north of --

8 A It is a little bit rolling.

9 Q How about the land where the landfill is at?

10 A It is a little rolling. Mine is probably a

11 little more rolling than where the landfill is.

12 Q Okay. During the time period that the

13 landfill was opened and you were farming the farms

14 north of the landfill, did you ever have problems with

15 litter or complaints?

16 A No. Wayne always watched it pretty close.

17 Q During the time period that the landfill was

18 opened and you were farming on those farms north of

19 the landfill, did you have any problem or complaints

20 with the landfill?

21 A No.

22 Q Did you ever have occasion to actually drive

23 out on to the landfill or visit the landfill?

24 A Yes. I have needed dirt, like a truck load

25 of dirt or something once in awhile and, of course, he

1 would always have extra dirt. And I would take my
2 truck back there and get some dirt and haul it out of
3 there.

4 Q Are you familiar with the roads that go
5 through the landfill?

6 A Yes.

7 Q Can you describe those roads?

8 A Well, he had -- they are rock and they are
9 all weather roads I would say.

10 Q Have you ever had any trouble driving down
11 the roads?

12 A No. You mean the township road there?

13 Q No, I mean the road that is in the landfill.

14 A No.

15 Q Okay.

16 A I go back there -- I have went back there in
17 the wintertime before and got dirt.

18 Q Have you ever -- did you ever notice that the
19 operation of the landfill caused problems with
20 attracting mice or vermin or birds?

21 A I never did see nothing. He always pretty
22 well had it covered up every time I was ever down
23 there. It was always covered up.

24 Q Is it your testimony that you have and do
25 drive down the road that runs in front of Wayne's

1 house and the landfill quite often?

2 A Yes.

3 MS. MENOTTI: Objection. Asked and answered.

4 Q (By Mr. Benoit) And have you ever noticed

5 harm to the road due to the landfill's operation? I

6 am referring to litter and mud.

7 A No.

8 Q Has it always been a fairly, you know, neat

9 and clean --

10 A Yes.

11 MS. MENOTTI: Objection. Calls for improper

12 opinion.

13 HEARING OFFICER CROWLEY: I am sorry?

14 MS. MENOTTI: It calls for an improper opinion.

15 HEARING OFFICER CROWLEY: He can answer.

16 THE WITNESS: What?

17 HEARING OFFICER CROWLEY: You may answer, sir.

18 THE WITNESS: Could you ask me that question again

19 now.

20 Q (By Mr. Benoit) Did Wayne always do a pretty

21 good job keeping the landfill neat and clean?

22 A Yes.

23 Q Did he run a clean operation?

24 A Yes, I would say so.

25 Q Have you been out to the -- well, I asked you

1 to -- strike that.

2 Can you recall if you had occasion to drive out on
3 to the landfill road in the summer of 1996?

4 A Well, I can't recall it.

5 Q You can't recall whether you were or you
6 weren't?

7 A I can't say whether I was or wasn't. I have
8 been back there in the summertime before.

9 Q Okay. Are you familiar with how the landfill
10 appears right now?

11 A Well, it has got grass growing on all of it
12 now. There is just a few raised places, where it is
13 kind of rolling where he buried the trash, you know,
14 kind of a curve, you know, a ridge kind of up there.

15 Q How much do those curves raise above the
16 ground?

17 A I would say about like this table or a little
18 higher or so.

19 Q So they are kind of humped up maybe --

20 A Yes, but the sides slope down. You can drive
21 a tractor on them. I cut some hay back in there. You
22 can run a tractor over them.

23 HEARING OFFICER CROWLEY: Sir, how high off the
24 ground would you estimate the table to be?

25 THE WITNESS: Oh, probably about 36 inches, I

1 would say.

2 HEARING OFFICER CROWLEY: Okay. Thank you.

3 THE WITNESS: It is 36 to 48 inches probably.

4 Q (By Mr. Benoit) Did you say that you cut the
5 grass to bale it?

6 A We cut some grass on it, and Wayne had
7 already cut some, too. He had some pasture on it.

8 Q What kind of grass is that?

9 A Oh, it is just some grass. Like, it had some
10 fescue in it, fescue grass, and some foxtail and stuff
11 like that. I feed it to the cows.

12 Q So you can drive a tractor across this with
13 some type of mower to cut the grass?

14 A Yes.

15 Q What kind of tractor is that?

16 A It is a 76, a little Allis Chalmer tractor.

17 Q Can you give us an idea how big a tractor
18 that would be?

19 A It is a 160 horse tractor. It is a pretty
20 fair size tractor.

21 Q You don't have any trouble driving that
22 across the landfill?

23 A No, we drive it back in there.

24 Q Okay.

25 A And then one time I planted some seed in

1 there for him and I went and disked it.

2 Q So you don't sink into the landfill or
3 anything?

4 A No.

5 Q Even where the trenches are, even where it is
6 mounded up?

7 A No, no.

8 Q After you cut the grass and you bale it -- is
9 this the round bales?

10 A Uh-huh.

11 Q Okay.

12 MS. MENOTTI: Objection. Relevance.

13 MR. BENOIT: I am trying to demonstrate that this
14 is just like a farm field.

15 HEARING OFFICER CROWLEY: You can continue.

16 Q (By Mr. Benoit) So right now growing on the
17 landfill, or at least a portion of it where the waste
18 was disposed, is some type of grass?

19 A Yes.

20 MS. MENOTTI: Objection. Leading.

21 THE WITNESS: Yes, tall grass.

22 Q (By Mr. Benoit) You are planning on baling
23 that grass?

24 A Well, we have already baled some of it.

25 Q What is on the rest of the land on Wayne's

1 landfill? I think it is 43 acres, and it is not all
2 used for landfill space. What is growing on the rest
3 of it?

4 A Farm crops. He has corn. There is corn
5 growing on it this year.

6 Q Does the landfill ground look significantly
7 different than the ground that you farm?

8 MS. MENOTTI: Objection. He has not established
9 personal knowledge of the ground of the landfill.

10 MR. BENOIT: I am talking just about the surface
11 of the ground of the landfill.

12 HEARING OFFICER CROWLEY: I believe he has
13 answered the question. I believe he answered earlier
14 that his land is a little more rolling than Mr.
15 Berger's.

16 Q (By Mr. Benoit) Can you see the landfill when
17 you are driving down the road that runs south of
18 Wayne's --

19 A No.

20 Q That runs in front of Wayne's house?

21 A Yeah. No.

22 MR. BENOIT: Okay. I think that's all I have.

23 MS. MENOTTI: Can we take one minute?

24 HEARING OFFICER CROWLEY: Yes.

25 (Whereupon a short recess was taken.)

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

3 Please proceed.

4 MR. GUBKIN: Thank you.

5 CROSS EXAMINATION

6 BY MR. GUBKIN:

7 Q It appears from the map that you own quite a
8 bit of land around Mr. Berger's landfill?

9 A I only farm three.

10 Q Okay. You farm all those parts of land?

11 A Yes, I do.

12 Q And you said you are self-employed, correct?

13 A Yes.

14 Q Have you ever worked doing anything else
15 other than being a farmer?

16 A Back in my younger days I used to work in the
17 oil field.

18 Q Have you ever worked for Mr. Berger on his
19 landfill?

20 A No, outside of the time that I done some
21 disking and sowed some wheat and stuff for him one
22 year.

23 Q Okay. You are good friends with Mr. Berger,
24 then?

25 A Yes, I have known him all of my life. I went

1 to school with him.

2 Q Do you socialize with him, then?

3 A No, I don't really socialize, you know.

4 Q Do you ever --

5 A Just a friend.

6 Q Okay. Did you ever have your garbage taken

7 to Mr. Berger's landfill?

8 A No.

9 Q Do you have any experience with landfills?

10 A No, just what I saw.

11 Q You haven't had any training with regards to

12 the landfills?

13 A No.

14 MR. BENOIT: Objection. This is outside the scope

15 of direct.

16 MR. GUBKIN: I believe it goes to Mr. Diesser's

17 knowledge about the landfill and his opinions as to

18 whether the landfill is clean and whatnot. I am just

19 establishing a foundation for that.

20 HEARING OFFICER CROWLEY: I will let it stand. Go

21 ahead.

22 Q (By Mr. Gubkin) Mr. Diesser, do you know what

23 constitutes, in your terms, a clean landfill according

24 to the State of Illinois?

25 A No.

1 Q When is the last time that you have driven
2 down Mr. Berger's -- the roads to the landfill?

3 A Probably about three weeks ago, baling hay.

4 Q Okay. And how often do you go down that
5 road?

6 A I don't have too many -- you mean back to the
7 landfill?

8 Q Yes.

9 A I don't have just too many occasions to go
10 back there, because it is not my property. I don't go
11 back there all the time.

12 Q Do you recall whether you were there on June
13 24th of 1993?

14 A (Shook head from side to side.)

15 Q You are going to have to say --

16 A I don't know. I doubt it. I don't imagine
17 that I was.

18 Q Do you remember if you were there on April
19 18th of 1994?

20 A I don't imagine.

21 Q How about August 25th of 1995?

22 A I don't know.

23 Q That's fine. How would you characterize your
24 relationship with Mr. Berger?

25 MR. BENOIT: Asked and answered.

1 MR. GUBKIN: I am sorry.

2 HEARING OFFICER CROWLEY: Yes, that has been
3 answered.

4 Q (By Mr. Gubkin) When you have driven on Mr.
5 Berger's -- on the road leading back to the landfill,
6 do you normally drive your car or do you drive your
7 tractor, or have you done both?

8 A My pickup mostly.

9 Q I am sorry?

10 A My pickup truck.

11 Q Your pickup truck?

12 A Uh-huh.

13 MR. GUBKIN: Okay. I have no other questions.
14 Thank you.

15 MR. BENOIT: I have a few follow-up questions.

16 REDIRECT EXAMINATION

17 BY MR. BENOIT:

18 Q Do you know what litter is?

19 A Well, I have a pretty good idea. It is
20 trash. I call it trash.

21 Q If you see litter you know what it is?

22 A Yeah.

23 Q And you know what a bird is, right?

24 A Yeah.

25 Q And you know what a rat is?

1 A Yeah, sure do.

2 Q A mouse?

3 A Yes.

4 Q Okay. Can you recall anytime when you were
5 driving down the landfill road in your pickup truck,
6 where there may have been -- I am going to strike
7 that.

8 Does the landfill road -- is it constructed out of
9 gravel?

10 MS. MENOTTI: Objection. Beyond the scope of
11 cross.

12 MR. BENOIT: I am just clarifying for the record.
13 He said he was familiar with the road and --

14 HEARING OFFICER CROWLEY: I will allow it. Go
15 ahead.

16 MS. MENOTTI: It is still beyond the scope of
17 cross-examination.

18 HEARING OFFICER CROWLEY: I will allow the
19 question.

20 Q (By Mr. Benoit) Again, can you describe what
21 the landfill road is made out of?

22 A Crushed rock and some brick, crushed brick.

23 Q And does grass grow up the middle of that
24 gravel road?

25 A It is starting to anymore, yeah.

1 Q And have you ever driven down that road when
2 there was grass growing down the middle of it?

3 A There was here a while back, yes.

4 Q And how tall was it?

5 HEARING OFFICER CROWLEY: I am sorry. I couldn't
6 hear that answer.

7 THE WITNESS: Yes, it was.

8 HEARING OFFICER CROWLEY: Okay. Thank you.

9 Q (By Mr. Benoit) Can you estimate how tall
10 that grass was?

11 A Oh, it was just about like that (indicating).

12 Q Can you say --

13 A Eight to ten inches tall.

14 Q Eight to ten inches tall?

15 A Yes.

16 Q Have you ever driven down there when the
17 grass was taller than that?

18 A No.

19 MR. BENOIT: Okay. No further questions.

20 HEARING OFFICER CROWLEY: Do you have anything
21 else?

22 MR. GUBKIN: I just wanted to make a
23 clarification, because I didn't hear.

24 RECROSS EXAMINATION

25 BY MR. GUBKIN:

1 Q Did you say the grass got to be eight to ten
2 inches tall?

3 A Yes, probably.

4 Q I was just wondering, do you know what
5 leachate is?

6 A What?

7 Q Are you familiar with what leachate is?

8 A No.

9 MR. GUBKIN: Okay. I am all done. Thank you.

10 MR. BENOIT: I have one more follow-up.

11 MS. MENOTTI: Objection. It is twice per side,
12 and that's it.

13 HEARING OFFICER CROWLEY: I will let him ask his
14 question.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. BENOIT:

17 Q Have you ever seen the landfill road where
18 the grass growing down the middle of it was taller
19 than eight to ten inches?

20 A No.

21 MR. BENOIT: Okay. No further questions.

22 HEARING OFFICER CROWLEY: Thank you very much,
23 sir. We appreciate you coming today.

24 THE WITNESS: Okay.

25 (The witness left the stand.)

1 MR. BENOIT: Could we go off the record for a

2 second.

3 HEARING OFFICER CROWLEY: Yes.

4 (Discussion off the record.)

5 HEARING OFFICER CROWLEY: Let's go back on the

6 record.

7 We will take a break now. Let's start back at

8 3:25.

9 (Whereupon a short recess was taken.)

10 HEARING OFFICER CROWLEY: We are back on the

11 record.

12 (Whereupon the witness was sworn by the Notary

13 Public.)

14 MR. BENOIT: Could I ask a question?

15 HEARING OFFICER CROWLEY: Yes.

16 MR. BENOIT: Why was he resworn? Was he sworn in

17 before?

18 HEARING OFFICER CROWLEY: The reporter asked if

19 she should. It made sense to me. We occasionally do

20 that. There is no special significance, no

21 implication on credibility or anything like that.

22 MR. BENOIT: I mean, has he testified before? Am

23 I missing something or --

24 HEARING OFFICER CROWLEY: He testified yesterday.

25 MR. BENOIT: Wayne has never testified before.

1 HEARING OFFICER CROWLEY: Off the record.

2 (Discussion off the record.)

3 HEARING OFFICER CROWLEY: All right. Back on the
4 record.

5 W A Y N E B E R G E R,

6 having been first duly sworn by the Notary Public,

7 saith as follows:

8 DIRECT EXAMINATION

9 BY MR. BENOIT:

10 Q Okay. Could you state your name for the
11 record.

12 A Wayne Berger.

13 Q And how old are you, Wayne?

14 A I am 58 years old.

15 Q And can you give us your educational
16 background?

17 A Well, I have got 12 years of education. I
18 graduated from high school.

19 Q Where did you go to high school?

20 A Noble High School.

21 Q Have you always been a resident of Richland
22 County?

23 A Yes.

24 Q And are you married?

25 A Yes.

1 Q And what is your wife's name?

2 A Judy. Or Judith.

3 Q Do you have any children?

4 A We have one boy. He is approximately 26.

5 Q Okay. I am going to show you an exhibit that
6 has previously been admitted, R35E. Can you tell me
7 what that is?

8 A This is an attendance sheet when we were up
9 at Springfield, and we had to sign up there, we had to
10 sign in when we were up there.

11 Q Is that your signature on the bottom of R35E?

12 A Yes.

13 Q Do you see your wife's name?

14 A Yes, her name is just right underneath my
15 name.

16 Q Are you familiar with her signature?

17 A Yes, that's her signature.

18 Q Okay. I am next going to show you R39B.

19 MS. MENOTTI: What is that? We still don't have a
20 copy of that exhibit. Do you have one?

21 MR. BENOIT: You can use this and I will get you
22 one.

23 MS. MENOTTI: As long as I get it before we close
24 today.

25 MR. BENOIT: Well, let me see if I got it. Here

1 it is right here.

2 MS. MENOTTI: Thank you.

3 Q (By Mr. Benoit) Do you want to tell me what
4 that is?

5 A This is a meeting we had. It is dated
6 November 4th, 1996. This was up at Springfield. We
7 had to sign in up there at the courthouse.

8 Q Did this meeting, and the last meeting on
9 September 19, 1994, where were those meetings held?
10 Do you recall?

11 A Let's see. I don't think this was at the
12 courthouse. It was in your office there in that
13 building.

14 Q Okay.

15 A Sorry.

16 Q Is that your wife's signature on 39B?

17 A Yes.

18 Q She was at the meeting also?

19 A Yes.

20 Q Prior to both of these meetings was there a
21 meeting with the Attorney General on August 6, 1993?

22 A I think so.

23 Q And did your wife also attend that meeting?

24 A Yes.

25 Q Now, your wife has not been present at these

1 hearings and she is not present today, is she?

2 A No.

3 Q Where is she?

4 A Well, she is up at Charleston.

5 MS. MENOTTI: Objection. Relevance to the

6 whereabouts of Mr. Berger's wife to the hearing.

7 MR. BENOIT: I will tie it up.

8 Q (By Mr. Benoit) What is she doing in

9 Charleston?

10 A She is at a treatment center.

11 Q And what is she being treated for?

12 A Alcoholism.

13 MS. MENOTTI: Objection. Relevance to Mrs.

14 Berger's condition to the hearing and the complaint in

15 this matter.

16 MR. BENOIT: It is going to be relevant. I am

17 going to tie it up, going back to unreasonable

18 hardship.

19 HEARING OFFICER CROWLEY: Fine. Go ahead.

20 Q (By Mr. Benoit) Have you ever attempted to

21 hide, from either the Attorney General's office or the

22 Illinois EPA, the fact that the trash hauling landfill

23 business was incorporated in 1993?

24 A Repeat that, please.

25 Q Have you ever tried to -- well, maybe I can

1 just rephrase it. Your corporation was formed in

2 1993?

3 A Yes.

4 MS. MENOTTI: Objection. Leading.

5 HEARING OFFICER CROWLEY: I will allow it. Go

6 ahead.

7 Q (By Mr. Benoit) And in order to incorporate

8 you had to file records with the Secretary of State?

9 A Yes.

10 Q And at a certain point in time, and I don't

11 recall exactly when, but you or your attorneys

12 submitted a request to the Illinois EPA to transfer

13 the --

14 MS. MENOTTI: Objection. Leading.

15 HEARING OFFICER CROWLEY: It is a leading

16 question.

17 MR. BENOIT: I agree. I am just looking for a

18 little latitude again to move things along.

19 HEARING OFFICER CROWLEY: All right. I believe we

20 have had the substance of this testified to before,

21 but go ahead.

22 Q (By Mr. Benoit) In 19 -- well, I don't know

23 the date. Did you file with the Agency a request

24 asking that the permit, that the 1991 permit be

25 transferred to the corporation?

1 A Yes.

2 Q Have you ever tried to hide the fact, and I
3 am talking about hiding from anybody in the State of
4 Illinois, that your ownership interest in certain
5 assets were transferred to either your wife Judy or a
6 land trust?

7 MS. MENOTTI: Objection. Facts not in evidence
8 and assets is vague.

9 HEARING OFFICER CROWLEY: And what?

10 MS. MENOTTI: Assets is vague. I don't know what
11 kind of assets he is talking about --

12 MR. BENOIT: She has asked him --

13 MS. MENOTTI: -- so I can't cross-examine him with
14 regard to assets.

15 MR. BENOIT: She has already asked him about this
16 stuff.

17 MS. MENOTTI: They have not established that there
18 was a land trust. That fact is not in evidence.

19 HEARING OFFICER CROWLEY: It has been established
20 that there is a trust. It has not been established
21 necessarily that it is a land trust.

22 MR. BENOIT: I will strike the word land. Do I
23 have to restate it?

24 THE WITNESS: Yes, repeat it, please.

25 Q (By Mr. Benoit) I will just rephrase it. Did

1 you make the Attorney General's office aware of the
2 fact that your ownership interest in certain assets
3 were transferred to either Judy your wife or a trust?

4 A Yes.

5 Q Was that through the discovery process in
6 this case through me?

7 A Yes.

8 Q Did you provide me with the documentation for
9 me to provide to the State regarding these transfers?

10 MS. MENOTTI: Objection. Can Counsel please stop
11 leading his witness. This is direct examination of
12 his client. He should be able to ask the question
13 without leading.

14 HEARING OFFICER CROWLEY: Would you refrain from
15 leading questions.

16 MR. BENOIT: I don't really think it is leading.

17 Q (By Mr. Benoit) How did you make the Attorney
18 General's office or the Agency aware that your
19 ownership interest in certain assets were transferred
20 to either Judy or a trust?

21 A Well, my lawyer, he took care of that, Paul
22 Kroger.

23 Q And was your lawyer, Paul Kroger, working
24 with attorneys in my office, including me?

25 A Yes.

1 MS. MENOTTI: Objection. Leading.

2 HEARING OFFICER CROWLEY: I will allow it.

3 THE WITNESS: Yes.

4 Q (By Mr. Benoit) Wayne, can you give us your
5 employment history starting from the time that you
6 graduated from high school?

7 A Yes. When I got out of high school -- my dad
8 was a farmer, and I helped him farm until 1963. And I
9 was drafted into the Army for two years, and I served
10 about 18 months of it over in Germany, and then the
11 rest of it was in Fort Polk, Louisiana. And then I
12 worked 12 years at AMF, which was later Roadmaster and
13 now it is Brunswick. And I also farmed, too. And
14 then after that I bought into the business, which was
15 1977, July the 1st, and then --

16 Q I am more interested in prior to the
17 landfill. So you say you worked with your dad and you
18 farmed, and then you were in the Army for a little bit
19 and then you worked at AMF?

20 A Yes.

21 Q What did you do at AMF?

22 A Well, we assembled bicycles. We had to put
23 them together and box them up.

24 Q So it was more assembly line work?

25 A Yes.

1 Q Okay. At the same time you were farming?

2 A Yes.

3 Q Okay. How many acres were you farming?

4 A Oh, I would say probably 100 acres.

5 MS. MENOTTI: Objection. Relevance to the acres

6 that were being farmed prior to the operation of the

7 landfill. How is that relevant?

8 HEARING OFFICER CROWLEY: I will allow you to

9 continue.

10 Q (By Mr. Benoit) What was the answer, Wayne?

11 How many acres?

12 A Oh, 100 acres, I would say. And then I

13 raised hogs and had cattle.

14 Q Okay. When and how is it that you became

15 interested in working in the landfill or trash

16 collection business?

17 A Well, in 1977 I decided -- I was about 37 at

18 that time, and I decided that I couldn't do two jobs,

19 you know, I was getting older. And so this guy at our

20 church he had this business and he said he would sell

21 it to me. So I thought, well, that's a good chance

22 for me to get into the business. So in 1977, July the

23 1st, I bought the business and I gave him -- I gave

24 him \$40,000.00 just for the contracts for the towns.

25 Q Okay.

1 A And he also had one truck.

2 Q So you bought a truck and then the contracts
3 for how many towns?

4 A For six towns.

5 Q Okay.

6 A I think back then it was five towns and then
7 I added another town later.

8 Q Okay. And at that time you didn't have a
9 landfill?

10 A Right.

11 Q Where did you bring the trash after you
12 collected it?

13 A I hauled the trash over to the Olney Sanitary
14 Landfill here in Olney. The reason I got into the
15 landfill business is, I didn't know how to take the
16 guy that had the landfill, so I thought, well, I got
17 the land out there, and I thought, well, I will just
18 see if I can get a permit. So I got in touch with
19 Jack Fagetti (spelled phonetically) and it was real
20 easy to get the permit.

21 MR. BENOIT: May I see State's 6?

22 MS. MENOTTI: Did you say Number 6?

23 MR. BENOIT: Yes, Number 6.

24 MR. BENOIT: I must have wrote down the wrong
25 number. I guess it would be Number 4.

1 Q (By Mr. Benoit) I am showing you what has
2 previously been admitted as People's Number 4. Do you
3 recognize that?

4 A Yes.

5 Q Okay. What is that?

6 A This is the permit to operate the landfill.

7 Q What is the date on that?

8 A It is March the 29th, 1979.

9 Q Does that permit require you to post
10 financial assurance?

11 A No, I don't see it on here.

12 Q How did you -- you may have said it. How did
13 you obtain the land where the landfill is located?

14 A Well, I bought -- the same year I was going
15 into the Army in May I bought this 43 acres. I gave
16 \$5,000.00 for it, and I didn't think I would ever get
17 it paid off. And in August I got drafted into the
18 Army, which really made it harder. I think I made
19 about \$80.00 a month.

20 Q Okay. Like the other witnesses, I am going
21 to refer you to R49, which is the Richland County wall
22 map. I am going to have you mark the location of the
23 landfill, if you can. If you can just take this
24 highlighter, and just shade in the 43 acres where the
25 landfill is.

1 A (Witness complied.)

2 HEARING OFFICER CROWLEY: Is that a yellow
3 highlighter?

4 MR. BENOIT: Yes, it is a yellow highlighter.

5 MS. MENOTTI: Is he coloring where his house is or
6 where the landfill is?

7 THE WITNESS: Do you want me to cover the whole
8 thing or just the part maybe where the --

9 MR. BENOIT: Just go ahead and do the whole 43.
10 Go ahead and fill it in.

11 (The witness complied.)

12 Q (By Mr. Benoit) Then with this -- do you see
13 where your house is located on that map?

14 A Yes, it is -- do you want me to tell?

15 Q Well, I am going to have you mark the map
16 with a black pen. And just like the other people did,
17 draw an arch away and then initial the line.

18 A Okay. (Witness complied.)

19 Q Okay.

20 A Do you want me to put my initials on the
21 other one?

22 Q You have to initial the yellow line with
23 black ink also.

24 A Okay. (The witness complied.)

25 MR. GUBKIN: The yellow line represents the land,

1 and the black line represents your house?

2 MR. BENOIT: Right.

3 MR. GUBKIN: Okay. Thank you.

4 THE WITNESS: Now I will sign my initials on this
5 yellow line, too.

6 MR. BENOIT: I would like to move for the
7 admission of R49.

8 MS. MENOTTI: Objection. It has not been properly
9 authenticated, but the State will stipulate to it for
10 the purposes of demonstrative evidence for the Board
11 to use as reference. The map has not been
12 authenticated by anyone.

13 MR. BENOIT: I think the first person that marked
14 on it testified that it was --

15 MS. MENOTTI: He said it looked like --

16 MR. BENOIT: -- an accurate depiction of Richland
17 County. He is familiar with Richland County.

18 HEARING OFFICER CROWLEY: Yes, he did so testify.

19 We will admit it. I am sorry. Can you give me that
20 number again, please?

21 MR. BENOIT: The map is R49.

22 HEARING OFFICER CROWLEY: Thank you.

23 (Whereupon said document was admitted into

24 evidence as Respondent's Exhibit 49 as of this

25 date.)

1 MS. MENOTTI: Ms. Hearing Officer, the State at
2 this time would request that if it is going to be
3 admitted as substantive evidence that the Respondents
4 be required to produce a copy for the State, because
5 it is going to become an exhibit the Board has to
6 consider so it is going to be something that we are
7 going to have to be able to argue in our closing and
8 in our briefing.

9 The State should be provided with such an exhibit
10 with the same markings as has been provided to the
11 Board. We have provided copies of all of our exhibits
12 to the Respondent. The Respondent should be required
13 to do the same.

14 MR. BENOIT: I don't have the resources when I am
15 away from Springfield, and I would have to look in
16 Springfield to figure out how to reproduce that map
17 with the markings.

18 MS. MENOTTI: We are --

19 MR. BENOIT: Let the record reflect that we are at
20 a library. Possibly we could copy the relevant
21 section for the parties to have. I mean, I can't just
22 produce it on the spot.

23 MS. MENOTTI: I can understand that maybe Mr.
24 Benoit didn't want to spend the money to do it. That
25 does not relieve him of the obligation of producing a

1 copy to the State.

2 MR. BENOIT: I think the State also had an
3 obligation to bring me something besides a file full
4 of microfiche.

5 MS. MENOTTI: That is not what we are arguing
6 about. We are arguing about Respondent's Exhibit
7 Number 49.

8 HEARING OFFICER CROWLEY: Thank you. We will ask
9 that before we leave that -- there is a small
10 photocopier here in the library. I will ask that the
11 Respondent provide a copy of the segment of the map
12 that has been marked by all of the witnesses. That
13 looks like as if it is one photocopy.

14 MR. BENOIT: I would note that there is one
15 problem with copying. I had the witness mark with the
16 highlighter, which I know, for a fact, it will not
17 show up.

18 HEARING OFFICER CROWLEY: Then perhaps before Mr.
19 Berger leaves today or tomorrow, whenever that may be,
20 we could get a copy of the relevant portion and we can
21 have him highlight it in yellow.

22 MR. BENOIT: Okay. Can I also get the witness,
23 just to make the record even clearer, to read what is
24 in yellow? It says something that would help identify
25 it, even if there --

1 HEARING OFFICER CROWLEY: Yes, could you read it,
2 please.

3 Q (By Mr. Benoit) Could you get up again,
4 Wayne, and could you read what is printed on the map
5 in the block that you highlighted yellow?

6 A It has got Wayne Berger, 43 acres, and there
7 is a three -- it is pretty well in that square.

8 HEARING OFFICER CROWLEY: That is written on the
9 map itself or is that --

10 MR. BENOIT: For the record --

11 HEARING OFFICER CROWLEY: Or is that --

12 MR. BENOIT: -- it actually says, Wayne Berger,
13 43. Superimposed on that, the entire map contains a
14 grid system that is numbered, and the number three is
15 superimposed on that particular section of the map.

16 HEARING OFFICER CROWLEY: Okay. These markings
17 that are on the map are not markings that were made by
18 Mr. Berger?

19 MR. BENOIT: Correct.

20 HEARING OFFICER CROWLEY: Okay.

21 Q (By Mr. Benoit) Okay. Now, you have marked
22 R49 as far as where the 43 acres is and where your
23 house is. Where is the landfill in relationship to
24 the house?

25 A It would be northwest.

1 Q Okay. I am going to show you what has been
2 marked as R50, and I believe I will be able to get
3 copies of this.

4 A Yes, I have a whole -- I must have 10 or 12.

5 MS. MENOTTI: The People would --

6 THE WITNESS: I think I took them in the house.

7 MR. BENOIT: I will get you one.

8 MS. MENOTTI: Okay. That's fine.

9 MR. BENOIT: I will be able to bring in copies.

10 HEARING OFFICER CROWLEY: Okay.

11 Q (By Mr. Benoit) Okay. I am showing you what
12 has been marked R50. Can you tell me what that is?

13 A This is the residential, where I live, and
14 the two machine sheds where I keep equipment, and the
15 back of this ground, the back of the buildings is
16 where the landfill starts. And there is 34 or so
17 acres permitted landfill. And this road that goes
18 north, that is -- it is off on the left-hand side --
19 that is landfill road that goes back to the landfill.

20 MR. BENOIT: I would move that that be admitted.

21 MS. MENOTTI: I don't think it has been properly
22 authenticated. We have not established who has taken
23 it and when it has been taken, anything like that.

24 And there has also been no chain of custody evidence.

25 So until that has been established, the State would

1 ask the Hearing Officer not to admit it into evidence.

2 MR. BENOIT: Maria, are you --

3 HEARING OFFICER CROWLEY: For the record, who took
4 the picture? Who took the photo and when was it
5 taken?

6 MR. BENOIT: I looked up the rules of foundation
7 for photographs. What the witness -- the witness does
8 not have to take the photograph. They only have to
9 say this is an accurate depiction of whatever it
10 represents. I think he has stated what this
11 represents.

12 MS. MENOTTI: The State does not have any
13 objection to its use as demonstrative evidence, but
14 absent the proper authentication foundation it is not
15 admissible as substantive evidence.

16 HEARING OFFICER CROWLEY: Before I admit it, I
17 would like the record to indicate roughly when it was
18 taken, whether that is an accurate depiction of
19 conditions now or whether this is a 20 year old photo.

20 MR. BENOIT: Okay.

21 Q (By Mr. Benoit) Do you know when this photo
22 was taken?

23 A Yes, I know. This photo was taken -- I
24 picked it up on a Monday.

25 Q No, not --

1 A Oh, when this was --

2 Q The actual photograph was taken. It appears
3 to have been taken from an airplane. Do you recall --

4 A Yes. I would say this here, it has probably
5 been 15 years ago, approximately.

6 Q Okay. Does that photo accurately depict your
7 house and the surrounding buildings 15 years ago?

8 A Yes.

9 MR. BENOIT: I move for its admission.

10 HEARING OFFICER CROWLEY: Fifteen years ago would
11 have been roughly 1984, 1983.

12 MS. MENOTTI: The State objects. It is
13 irrelevant, because 1984 is not referenced in the time
14 period of the complaint. Number two, it has still not
15 been properly authenticated for the purposes of
16 substantive evidence.

17 HEARING OFFICER CROWLEY: Can you tell me for what
18 purpose you would have us submit this photograph,
19 please?

20 MR. BENOIT: Yes. I want to get it admitted into
21 evidence, and then I am going to have -- you know,
22 just to give the Board an idea of what we are talking
23 about, the road going back to the landfill. I think
24 it is important for the Board to have an idea of what
25 we are talking about here. I also want to use it to

1 demonstrate as evidence of I think we are going to
2 have valuation questions, or we have, as far as what
3 this house is worth.

4 MS. MENOTTI: Is this an offer of proof or what is
5 the --

6 MR. BENOIT: The Hearing Officer asked me what I
7 was --

8 MS. MENOTTI: I was just curious whether it was an
9 offer of proof or it was a response.

10 HEARING OFFICER CROWLEY: He is responding to my
11 question as to what --

12 MR. BENOIT: Again, going back to --

13 HEARING OFFICER CROWLEY: -- he is seeking to have
14 this admitted for.

15 Go ahead. I wanted to finish my answer to Ms.
16 Menotti.

17 MR. BENOIT: It is for the purposes of -- for all
18 the things I just said, and back to the defense of
19 unreasonable hardship. I think this house has been
20 referenced by other witnesses.

21 MS. MENOTTI: This has not been --

22 HEARING OFFICER CROWLEY: We will admit this
23 photograph of -- we will admit the photograph, which
24 Mr. Berger has indicated was an accurate depiction of
25 what existed some 15 years ago, and which would be

1 1983, 1984.

2 (Whereupon said photograph was admitted into
3 evidence as Respondent's Exhibit 50 as of this
4 date.)

5 MS. MENOTTI: 1983.

6 MR. BENOIT: Okay.

7 MS. MENOTTI: I am sorry. Can I ask -- I want to
8 make sure I understand the ruling correctly. The
9 exhibit is being admitted as substantive evidence to
10 show the conditions on the property in 1983?

11 HEARING OFFICER CROWLEY: Or 1984, whatever, but
12 roughly 15 years ago.

13 MS. MENOTTI: 1993 or 1983, because you said 15
14 years ago. So 1983, 1984?

15 HEARING OFFICER CROWLEY: That's what my fuzzy
16 math at this point would say, yes.

17 MS. MENOTTI: I just wanted to make sure I am
18 clear. Thank you.

19 Q (By Mr. Benoit) Now, in comparison, when you
20 look at that photo and from your knowledge of what the
21 residential area looks like right now, your
22 residential area and the out buildings, what would be
23 changed now as compared to that photo?

24 A Well, I tore the old barn down, destroyed
25 it. I have added on approximately three rooms on the

1 back of the house; one is a family room, and a utility
2 room, and a bathroom with a shower.

3 Q Are the red sheds shown on R50 still there?

4 A Yes.

5 Q On the photo there is depicted a green area,
6 and it appears to be a lawn area, surrounding the
7 outlying buildings. How far away from that area is
8 the landfill? Does the landfill start right where the
9 old barn that you tore down is?

10 A The landfill starts just a few feet behind.

11 I don't know whether it would be probably 100 feet or
12 maybe not quite 100 feet, around in there.

13 Q Okay. Now, when the landfill was in
14 operation, you were living in the home depicted on
15 R50; is that right?

16 A Yes.

17 Q Did you ever have any problem, in the
18 residential area around your home, living that close
19 to a landfill with litter?

20 A No.

21 Q With vectors? With mice?

22 A No.

23 MS. MENOTTI: I am going to object. This is
24 improper bolstering of his own witness.

25 HEARING OFFICER CROWLEY: I will allow it.

1 Q (By Mr. Benoit) From 1979 -- well, have any
2 of your neighbors ever complained to you about the
3 landfill's operation?

4 A No.

5 Q Which towns, when you were running this trash
6 hauling business, did you provide services to?

7 A There was six towns. One of them was Noble.
8 There was Clay City, Louisville, Cisne, Xenia, West
9 Salem.

10 Q Can you describe how that business, the trash
11 hauling aspect of the business would work?

12 A Well, I would get up -- do you mean the time
13 that I would get up and go out on the route and all of
14 that?

15 Q Yes, just one day, just a snapshot of how you
16 ran that aspect of it?

17 A Well, I would usually get up about 4:00, and
18 I would leave by 5:00. I had one truck, and there was
19 three of us. And I had -- there was two of us that
20 were drivers, and then the other -- well, the two
21 guys -- well, three of them were drivers. They could
22 drive or throw on trash. So we would take time
23 different, you know, if one would get a little tired
24 or something we could switch.

25 And we would go -- like, on Mondays we would go to

1 Cisne. That was a town with a of population of 600
2 people. But we would pick up all of the residential
3 and all of the businesses in that town, and then we
4 would head back home. And as we would go home, we
5 would have to pick up trash along the highway on our
6 way back to the landfill. And after we got that done,
7 we would go to the landfill and we would back up to
8 where the pit was --

9 Q Just to clarify for a second, what type of
10 waste were you collecting?

11 A It was just nonhazardous. No special waste.
12 It was just residential trash.

13 Q I think I misunderstood this. So when these
14 trucks went out, you didn't go by yourself. You had
15 two guys?

16 MS. MENOTTI: Objection, leading.

17 THE WITNESS: There was three guys.

18 Q (By Mr. Benoit) Three guys on the truck.

19 Okay. Then when you got back to the landfill --

20 MS. MENOTTI: Objection. Leading. Counsel is
21 continually testifying for the witness. It is his own
22 witness. He should not be permitted to lead his own
23 witness.

24 HEARING OFFICER CROWLEY: He is covering ground
25 that had already been covered. I will allow the

1 answer to stand.

2 Please continue.

3 MR. BENOIT: Okay.

4 Q (By Mr. Benoit) So the answer was household
5 waste?

6 A Yes.

7 Q Did you ever take in any special waste?

8 A No.

9 Q Okay. So when you got back to the landfill,
10 I would kind of like you just to describe, so that I
11 don't lead, you know, what type of landfill this was?

12 A Well, it was -- it didn't have a permit like
13 a special waste permit or nothing like that.

14 Q I guess how would you prepare the landfill
15 for acceptance of waste?

16 A Well, you would have a good road going back
17 to the landfill where you are going to dump. And then
18 you would have a pit where you are going to dump. And
19 if you had bad weather, you would dump and then you
20 would have to push it back. But if it was nice
21 weather you could maybe go around the side or whatever
22 and put the trash in, and they were pits where you
23 dump.

24 Q How deep were the trenches?

25 A Well, I would say from eight to maybe

1 eleven. --

2 Q Okay.

3 A -- feet deep.

4 Q What did you do after I mean, just a normal
5 day's operation after you would dump the waste in the
6 trench?

7 A Well, you would take the -- you would raise
8 the hopper part on the back of the truck and get on
9 the side and then you got a big cylinder with a blade
10 on it that kicks the trash out the back. You would
11 clean off the back. You would pull the truck
12 forward. You take your bulldozer that has a bucket on
13 it and you push the track in the pit. You pack it
14 down after you get done.

15 Q Do you pack it down with the bulldozer?

16 A Yes, you have to run over it with the
17 bulldozer approximately three times to pack it down.
18 And then you have to haul the dirt in. And then you
19 put the dirt over the top, and then you pack the dirt
20 down.

21 But before you do that, you have to rake it.
22 Where you dumped, you have to rake that in first and
23 then you pack it. And you take the truck up to the
24 house and fill it up with gas and --

25 Q Well, I don't need that many details. But

1 what did you do -- did you ever have a problem with
2 litter at the landfill?

3 MS. MENOTTI: Objection. Asked and answered.

4 HEARING OFFICER CROWLEY: I don't think this
5 question has been asked of this witness.

6 Go ahead.

7 THE WITNESS: Well, I didn't have -- maybe a
8 little trash.

9 Q (By Mr. Benoit) What did you do to try to
10 control any litter problem?

11 A Well, you would just -- well, there is a
12 fence at the end of the field, there is one fence.
13 And most of the time I would try to stick up another
14 little fence pretty close to where you were dumping.
15 Because when you dumped there is so much trash that is
16 loose, the wind blows and you try to catch quite a bit
17 of it close to where the pit is. But if not, there
18 was another fence back further on the north.

19 Q What did you do if the fence did not work and
20 the litter got away?

21 A Well, if it went past the second fence I
22 would have to go up there and pick it up. A lot of
23 times you would have to chase her down when the wind
24 was blowing. I went as far north as the Cantrells,
25 approximately a quarter or so north, in order to pick

1 up the trash.

2 And sometimes it was like ten below zero and there

3 I was out there chasing that paper. The only thing

4 that would stop it after it got over that fence is if

5 maybe they had beans and the stubble would catch it,

6 or the corn stalks.

7 Q Can you describe the road that is in the

8 landfill? I mean, how was it constructed?

9 A Well, it was well constructed, because these

10 trucks they weigh nine ton empty. When you fill it up

11 you have another approximately nine ton on there. So

12 you are talking probably, oh, maybe 12 ton or -- oh,

13 it would weigh more than that. Approximately 30 ton.

14 Not 30 ton. 30,000 would be the gross weight.

15 Q Okay. I understand it had to be a sturdy

16 road. But how was it constructed? What was it made

17 out of?

18 A Well, we put down two inch rock and then some

19 places where the heavy trucks would go over, it might

20 push it down more. So we took and put like a two by

21 eight brick, and a lot of times we laid them by hand.

22 And we had a good solid foundation. And that's what

23 we drove back over. And then as it would settle more,

24 I would have more rock, the two inch rock hauled in

25 just where your tracks are, not the whole road.

1 Q So that -- I mean, there would be some grass
2 growing down the middle of the road?

3 A Yes, because I tried to cut down on expense
4 so I just had a truck come out and they would stick a
5 block in the center and your rock would come out on
6 each side right down where your truck tracks went.

7 Q Besides, you know, compacting, covering the
8 trash, picking up litter, the things that you just
9 talked about, what else -- what other steps did you
10 have to take to maintain the landfill, and I am
11 talking about from 1979, when it opened to --

12 MS. MENOTTI: Objection. 1979 to 1988 does not --
13 is not at all relevant to the complaint. From 1988 to
14 the present -- the first date in the complaint is the
15 administrative citation from 1988, and the dates move
16 forward from there, with regard to operational
17 violations, aren't even alleged in 1993. Everything
18 before that is completely irrelevant to the complaint.

19 MR. BENOIT: I think evidence of his normal
20 practices of running and operating the landfill are
21 probative as to his later practice. I didn't include
22 in the question the dates alleged in the complaint.

23 HEARING OFFICER CROWLEY: I will allow it for
24 whatever it may be worth.

25 THE WITNESS: Would you repeat it again, please.

1 Q (By Mr. Benoit) Well, I was just saying that
2 you testified about bringing the trash in, covering
3 it, compacting it, picking up litter. What other
4 things did you have to do around the landfill to
5 maintain it?

6 A Well, you had to -- like, when you would get
7 so much done, you would have to cover it and, you
8 know, put two foot of dirt. And then after that you
9 had to seed it down in grass and fertilize it.

10 Q Was there any maintenance work regarding
11 trenches settling?

12 A Later on, you know -- later on you would have
13 trouble maybe with a little settling where your pit
14 was dug. So I hired a guy with an earth mover. He
15 gets the dirt from part of the landfill and he fills
16 in what needs to be filled in at about the same
17 level.

18 Q Did you send in water monitoring reports to
19 the Agency?

20 A Yes. Well, I didn't -- yes, they were sent
21 in. But I had a person to do the testing and they
22 made the reports out.

23 Q Okay. Did you see those reports before they
24 were sent out?

25 A I don't think I ever remember signing it. I

1 mean, they would send them to the State and then they
2 would come back, but I don't know -- I can't remember
3 signing any of them.

4 Q Okay. These trenches that you referred to,
5 they are -- did you say they are eight to eleven feet
6 deep or --

7 A Yes, they would be about eight to eleven feet
8 deep.

9 Q Okay. How wide are they?

10 A I would say around 20 to maybe 25 feet wide.

11 Q I am going to show you what has previously
12 been admitted as People's Exhibit Number 6. Attached
13 to People's Exhibit Number 6 is a diagram purporting
14 to show the landfill, and it has a bunch of cells and
15 has all of the cells on it and they are numbered.

16 Does that diagram accurately depict how the
17 trenches were laid out?

18 A Yes.

19 Q What was the -- were there spaces between the
20 trenches?

21 A There was like around ten feet in between
22 each cell.

23 Q Okay.

24 MS. MENOTTI: Can I ask that the Hearing Officer
25 qualify, for the record, that that is Mr. Berger's

1 interpretation of the exhibit, and not -- that he did
2 not create the exhibit and he can't actually testify
3 what the spaces in between represent.

4 MR. BENOIT: He can testify how much space was
5 between the cells because he was there.

6 MS. MENOTTI: I am not objecting to his saying
7 that there was space in between the trenches when he
8 built them. I am objecting to the fact that he is
9 saying that the space on the map shows the amount of
10 space in between the trenches.

11 MR. BENOIT: I agree with her objection.

12 Q (By Mr. Benoit) Were the landfill's roads
13 laid out as depicted on that diagram that you are
14 referring to attached to State's Exhibit 6?

15 A Yes.

16 Q Now, did the IEPA inspect the landfill often
17 prior to 1988?

18 A I think in the 1980s they did not inspect
19 very often.

20 MS. MENOTTI: Objection. Very often is vague.

21 THE WITNESS: I would say they did a few
22 inspections.

23 Q (By Mr. Benoit) Okay. I am going to grab an
24 exhibit here. Do you recall an inspection on February
25 17th, 1988?

1 A Yes.

2 MS. MENOTTI: Objection. Relevance.

3 MR. BENOIT: Earlier the State --

4 MS. MENOTTI: The Agency is not on trial.

5 HEARING OFFICER CROWLEY: Earlier the State --

6 MR. BENOIT: Can I respond to her objection?

7 HEARING OFFICER CROWLEY: Yes.

8 MR. BENOIT: Earlier the State requested that the

9 Board and the Hearing Officer take judicial notice of

10 some other Board proceeding which resulted in an

11 administrative citation. This is the -- in fact, the

12 inspection report we got from the Agency's files

13 regarding that inspection.

14 MS. MENOTTI: That is improperly being used with

15 this witness if that is the purpose he intends to use

16 it for.

17 MR. BENOIT: I intend to not even admit it. I was

18 going to use it to refresh his recollection as to what

19 the violations were. It seems that --

20 MS. MENOTTI: His recollection is not what is at

21 issue here.

22 HEARING OFFICER CROWLEY: She is correct.

23 MR. BENOIT: Okay. I will take that back.

24 Q (By Mr. Benoit) You state that you recall an

25 inspection on February 17th, 1988; is that right?

1 A Yes.

2 Q Did that inspection result in you being
3 charged via an administrative citation?

4 A Yes.

5 Q And what were the alleged violations?

6 MS. MENOTTI: I am going to object to the
7 characterization. First, the administrative citation
8 has been already recognized by the Board, and an
9 administrative citation is not alleged. It is actual
10 violations.

11 Q (By Mr. Benoit) What were the violations
12 alleged in the inspector's report underlying the
13 administrative citation? If you were to look at the
14 inspection report, would that help refresh your
15 memory?

16 A Yes, I think it would help.

17 MR. BENOIT: May I show the witness the inspection
18 report.

19 HEARING OFFICER CROWLEY: Please do.

20 Q (By Mr. Benoit) I am showing you what is the
21 inspection report under general remarks?

22 A (The witness reviewing document.) It has on
23 here financial assurance documents and closure, post
24 closure plans. That's one of them.

25 Q Is there another one?

1 A It also has uncovered refuse and inadequate
2 depth of daily cover.

3 Q Okay.

4 A That's it.

5 Q I am going to show you what has been marked
6 as Respondent's Exhibit 15. Could you review that?

7 A (The witness reviewed document.)

8 Q Do you recognize Respondent's Exhibit 15?

9 A Yes.

10 Q What is it?

11 A Well, it has got like I didn't go by the
12 numbers, you know, like your low numbers as far as the
13 filling. Like, say, one, if you started at the low
14 numbers and then filled up, like, if you start with
15 six, seven, on down the line.

16 Q Did you send Respondent's 15 in response to
17 the February 17th, 1988 inspection?

18 A I did not send anything. I just called him
19 up and talked to him.

20 Q You never mailed that letter to anyone?

21 A No.

22 Q Okay.

23 A But I just talked to the guy. I gave him a
24 ring. I forget his name now. Edmundson I think was
25 his name.

1 Q Okay.

2 A I gave him a ring, and kind of complained
3 about, you know, putting them in the numbers like they
4 had on this map. And the reason I didn't go over the
5 numbers was that I wanted to keep up on this northwest
6 corner. And that was a higher part. And that's the
7 reason I wanted to fill that part first.

8 Q Do you see on the lower right-hand corner of
9 R15 a stamp that is partially covered by the exhibit
10 number that says received?

11 A Yes.

12 Q Does that change your opinion as to whether
13 or not you sent that letter?

14 MS. MENOTTI: Objection. Is he trying to impeach
15 his own witness? The witness already testified that
16 he didn't mail this letter, and that he doesn't
17 remember doing so.

18 HEARING OFFICER CROWLEY: I sustain the
19 objection.

20 THE WITNESS: Okay. That's --

21 Q (By Mr. Benoit) That's fine. Just to clarify
22 again, the February 17th, 1988 inspection resulted in
23 an administrative citation; is that correct?

24 A Yes.

25 Q Did you hire an attorney to defend against

1 that administrative citation?

2 A No.

3 Q Did you formally contest that administrative
4 citation in any way?

5 A Well, I just called about it, so I -- called
6 about that, and I just went ahead and paid whatever
7 the fine was.

8 Q Okay.

9 A I think it was -- I think the fine was like
10 \$1,000.00.

11 HEARING OFFICER CROWLEY: For the record, we are
12 speaking of the Board's Docket Number AC88-26.

13 MR. BENOIT: I would ask if you have a better
14 list. I am not sure if R19 has been admitted before.
15 I don't think so.

16 HEARING OFFICER CROWLEY: No, I don't believe this
17 has been -- just one second. This has not been
18 mentioned.

19 MR. BENOIT: Okay. Let the record reflect that I
20 am showing the witness R19.

21 Q Could you take a look at this document?

22 A (The witness reviewed document.)

23 Q Do you recognize R19?

24 A Yes.

25 Q And is it a compliance inquiry letter sent to

1 you on May 22nd, 1990, by the IEPA?

2 A Yes.

3 Q And on the third page of Respondent's 19
4 there is a caption, Attachment A. Can I go ahead and
5 read this?

6 HEARING OFFICER CROWLEY: Please.

7 MR. BENOIT: It says, "pursuant to 35 Illinois
8 Administrative Code, 807.501 (b) and (c), a closure
9 plan, a post closure care plan, cost estimates and
10 financial assurance, which will become permit
11 conditions, are required for sanitary landfills. You
12 are in apparent violation of 807.501(b) and/or (c)
13 because your closure plans or financial assurance may
14 not have been received by this Agency."

15 Is that correct?

16 A That was 1990.

17 Q And you received this letter?

18 A Yeah.

19 MR. BENOIT: I will move that R19 be admitted.

20 THE WITNESS: Yes, I received it.

21 MS. MENOTTI: I don't have any objection to its
22 admission.

23 HEARING OFFICER CROWLEY: All right. Respondent's
24 Exhibit Number 19 is admitted.

25 (Whereupon said document was admitted into

1 evidence as Respondent's Exhibit 19 as of this
2 date.)

3 Q (By Mr. Benoit) As a result of receiving R19,
4 did you hire some professionals to try to help you
5 resolve these alleged violations?

6 A Yes.

7 MR. BENOIT: Let the record reflect I am showing
8 the witness R20.

9 Q (By Mr. Benoit) Okay. Do you recognize that
10 letter?

11 A (The witness reviewed document.) Yes, I
12 recognize it.

13 Q Did you hire Crawford & Whiteside?

14 A Yes, I hired them, and it seemed like they
15 worked -- or he worked a good while trying to get this
16 done, plus it cost me a lot of money, but it was
17 really kind of --

18 MS. MENOTTI: I am going to object to the
19 relevance. The issuance of the 1991 permit is not at
20 issue. It is actually in evidence, and it does not go
21 to any of the allegations of the complaint.

22 MR. BENOIT: I am trying to show Mr. Berger's
23 attempts, you know, to comply with the Act, and the
24 steps that he took to do so. Apparently, he got this
25 compliance inquiry letter, and then subsequently he

1 hired these engineers to assist him. I think it is

2 totally relevant.

3 HEARING OFFICER CROWLEY: May I see the letter?

4 MS. MENOTTI: It doesn't make it any more relevant

5 to the allegations of the complaint or any less

6 relevant.

7 MR. BENOIT: It is just.

8 HEARING OFFICER CROWLEY: I had earlier stated

9 that Mr. Berger could testify to what he did in

10 pursuit of compliance. At the same time I said that

11 we would not consider the content of Section 31D

12 settlement negotiations.

13 So it is relevant and he may testify.

14 Q (By Mr. Benoit) So were Crawford & Whiteside

15 ever able to put together a permit for you to resolve

16 the alleged violations on R19?

17 A No, they never could get it --

18 Q You did receive this letter or a courtesy

19 copy of this letter?

20 A Yes.

21 MR. BENOIT: I move that 20 be admitted.

22 MS. MENOTTI: Objection. That letter is hearsay.

23 It is not subject to any exception under the hearsay

24 rules. In addition, it was not generated by the

25 witness, and it is not subject to any appropriate

1 cross-examination without the party who generated it
2 present.

3 MR. BENOIT: You know, this is -- I am running out
4 of steam here. I don't know if she is right or wrong,
5 to be honest with you. I would just like to reserve
6 its admission until tomorrow to see if it is -- I will
7 reintroduce it tomorrow.

8 Was 19 admitted?

9 HEARING OFFICER CROWLEY: Yes, 19 was admitted.

10 That was the CIL?

11 MR. BENOIT: Yes.

12 HEARING OFFICER CROWLEY: Yes.

13 Q (By Mr. Benoit) Around the time period of
14 1990 through 1991, were you beginning to consider
15 getting out of the landfill business?

16 A Yes, I was planning on getting out of the
17 landfill business because the landfill business was
18 getting such a -- getting to be such a big expense.
19 They were wanting so many new Regulations, and many of
20 the small operators could not afford those bigger
21 expenses to operate the landfill.

22 Q During this time period did anybody approach
23 you regarding buying the business?

24 A I had two guys that were wanting to buy it.
25 Bill Scuba (spelled phonetically) was one. He was

1 from Pennsylvania, but I do not know what town. And
2 also there was Terra Tech. Mike Johnson was the
3 president of it. He was also wanting to buy it.

4 Q What is Mike Johnson's business? You
5 mentioned Terra Tech.

6 A Well, I think he -- well, I think he is kind
7 of like an engineer. He goes around and he did my
8 wells. He tested my wells for me. Really I don't
9 know what all he does. But they were wanting to buy
10 the landfill. He might be an engineer. I don't
11 really know.

12 Q I am going to show you what has previously
13 been admitted as R21.

14 MS. MENOTTI: Can you tell me what the exhibit is,
15 please?

16 MR. BENOIT: It is the notice where you say I am
17 going to --

18 MS. MENOTTI: Are you sure it was admitted as
19 R21?

20 MR. BENOIT: No, I am not sure. Oh, you mean it
21 could be numbered as the State's?

22 MS. MENOTTI: I know that I admitted it. I don't
23 know if you have admitted it.

24 MR. BENOIT: Okay.

25 MS. MENOTTI: I don't have a copy of R21.

1 HEARING OFFICER CROWLEY: I am not finding --

2 MS. MENOTTI: The letter is in the record. I

3 don't care if you use the State's exhibit. I believe

4 you are talking about People's Number 2. No, it is

5 People's Number 3. It was an October 22, 1993

6 letter.

7 Is that what you are looking for, Joel?

8 MR. BENOIT: No, I am looking for the March 18,

9 1991 notice.

10 HEARING OFFICER CROWLEY: That was a document that

11 there was a problem with because there were highlights

12 on it?

13 MR. BENOIT: No that one was 26A, and that was the

14 one I gave you copies of and you admitted that

15 yesterday. Well, let me see if I can find it. Okay.

16 This is what it looks like. If I have not admitted

17 it, I thought we stipulated to it.

18 MS. MENOTTI: No, you asked us to stipulate to it,

19 and we would not stipulate to it because it is an

20 attachment.

21 MR. BENOIT: Okay.

22 HEARING OFFICER CROWLEY: Something about it being

23 a notice form for landfills. That you wanted the

24 whole document and there was something about

25 highlights on it, too, as I recall.

1 MS. MENOTTI: I don't know. I thought the
2 highlights were with regard to the 1993 letter. I
3 don't remember what my specific objections to that was
4 besides the whole document was not there.

5 HEARING OFFICER CROWLEY: Well, I am afraid --

6 MS. MENOTTI: If we didn't stipulate to that
7 document, then the Hearing Officer probably doesn't
8 have it.

9 HEARING OFFICER CROWLEY: I am afraid that I do
10 not have a copy of that.

11 MS. MENOTTI: We did not stipulate to it. That's
12 why.

13 MR. BENOIT: Did you keep the copy that I gave
14 you, though, as far as for your records?

15 MS. MENOTTI: I gave everything back.

16 MR. BENOIT: Okay.

17 MS. MENOTTI: I only kept things we stipulated to
18 in case you decided not to use the exhibits.

19 MR. BENOIT: Okay. Let the record reflect that I
20 am showing the witness the Exhibit R21, which has not
21 been previously admitted.

22 Q (By Mr. Benoit) Could you review that and
23 tell me what it is?

24 A (The witness reviewed document.) This is the
25 development permit for expansion. They sent it off to

1 get the landfill expanded. It is the development
2 permit.

3 Q Okay. What does it say right here at the top
4 of R21? Could you read that line, please?

5 A Illinois Environmental Protection Agency
6 notice form of existing landfill is required to notify
7 by March the 18th, 1991.

8 Q Okay. What site is identified on R21?

9 A Berger Landfill.

10 Q Okay. And can you flip to the second page of
11 R21?

12 A (Witness complied.)

13 Q Okay. Can you read paragraph two of page two
14 to me?

15 MS. MENOTTI: Objection to the witness reading
16 something into evidence without proper foundation. He
17 should not be allowed to read portions of the exhibit
18 into the record until it has been admitted as
19 substantive evidence.

20 HEARING OFFICER CROWLEY: I am going to allow him
21 to continue.

22 THE WITNESS: Approximately 6,000 yards.

23 Q (By Mr. Benoit) Can you read the question
24 before that?

25 A Provide the anticipated date the landfill

1 will initiate closure. The month is March. Year,
2 2000. Also discuss how this information was derived
3 including remaining capacity to cubic yards, rate of
4 waste received, schedule for closure activities, and
5 revised final contours if closing prematurely.

6 Q Then what is typed in immediately below the
7 short paragraph you just read?

8 A It says, approximately 6,000 yards filled
9 over next 12 months, plus approximately 1,000 yards
10 per year thereafter to complete 810,000 --

11 Q Can you go back and reread that?

12 A Approximately 6,000 yards filled over next 12
13 months, plus approximately 100,000 yards per year
14 thereafter to complete 810,887 by about March 2000.
15 Closure activities will begin about March 2000, and
16 complete closure by September 2000.

17 Q Can you tell me who is listed as the contact
18 person on that document?

19 A It has got Michael E. Johnson.

20 Q Is that your signature on the bottom of the
21 document?

22 A Yes.

23 Q Okay. Who prepared that document for you?

24 A Mike Johnson, and I believe his name is James
25 Johnson.

1 MR. BENOIT: I move that R21 be admitted.

2 MS. MENOTTI: The State will not object to its
3 admission based upon the Board taking notice of the
4 fact that the exhibit is apparently an attachment two
5 to something, and the Respondent has indicated that it
6 is not subject to the rule of completeness. So we
7 don't know what other information this went with, and
8 it would, therefore, not normally be admissible.

9 But if the Board will take notice of the fact that
10 this is not a complete document that was submitted to
11 the Illinois EPA, but there were apparently another
12 portion of it, another attachment, the State will not
13 object to its admission as is.

14 HEARING OFFICER CROWLEY: This appears to be a
15 complete notice form, although what was attached to it
16 is not -- what it was attachment two of is not
17 indicated. I will admit this as being a notice form
18 for existing landfills required to notify by March 18,
19 1991, which is form LP PA 15.

20 (Whereupon said document was admitted into
21 evidence as Respondent's Exhibit 21 as of this
22 date.)

23 Q (By Mr. Benoit) On R21, can you tell me what
24 the date is that it is marked received by the Illinois
25 EPA?

1 MS. MENOTTI: Objection. This is cumulative. The
2 document is already in evidence.

3 HEARING OFFICER CROWLEY: I am sorry. I was
4 occupied. I just didn't hear the question.

5 MR. BENOIT: I asked him to take a look at it and
6 asked if he would read the date that it was stamped
7 that it was received by the IEPA.

8 HEARING OFFICER CROWLEY: Go ahead and read it.

9 THE WITNESS: This has March the 19th of 1991.

10 Q (By Mr. Benoit) Okay. Can you recall when
11 you first met Michael E. Johnson?

12 A I would say approximately -- I don't know.
13 Between 1991 and 1992. 1990 and 1991. But I don't
14 know exact.

15 Q Okay. And is he one of the -- I believe you
16 only mentioned one -- you mentioned two people and he
17 was one of the two people who had approached you
18 regarding buying the business; is that correct?

19 A Right.

20 HEARING OFFICER CROWLEY: Off the record for a
21 moment.

22 (Discussion off the record.)

23 HEARING OFFICER CROWLEY: We will go back on the
24 record.

25 While we were off the record we determined that

1 this would be a good subject matter stopping point
2 since we had committed to ending by 5:00 today, and it
3 is now approximately eight minutes till 5:00. So we
4 will resume again tomorrow morning at 9:00. If that
5 is -- I believe we agreed to that earlier, at 9:00,
6 right?

7 MR. BENOIT: Yes.

8 MS. MENOTTI: That is fine.

9 HEARING OFFICER CROWLEY: Fine. Thank you.

10 (Exhibits retained by Hearing
11 Officer Crowley.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3

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 533 pages comprise a true,
9 complete and correct transcript of the proceedings
10 held on the 20th 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
22 Certified Shorthand Reporter and
23 Registered Professional Reporter

24 CSR License No. 084-003677
25 My Commission Expires: 03-02-99

24

25