

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Petitioner,

6 vs. No. PCB 94-373

7 WAYNE BERGER AND BERGER WASTE

8 MANAGEMENT, INC.,

9 Respondent.

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13 Proceedings held on August 21, 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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A P P E A R A N C E S

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1 INDEX

2 WITNESSES PAGE NUMBER

3

WAYNE BERGER

4 Direct Examination (cont.) By Mr. Benoit..... 540

Cross Examination by Mr. Gubkin..... 605

5 Redirect Examination by Mr. Benoit..... 624

Recross Examination by Mr. Gubkin..... 634

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1 E X H I B I T S

2 NUMBER ENTERED

3 Respondent's Exhibit 20 637

 Respondent's Exhibit 23 547

4 Respondent's Exhibit 60 557

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1 PROCEEDINGS

2 (August 21, 1998; 9:00 a.m.)

3 HEARING OFFICER CROWLEY: Okay. Good morning.

4 This is the fourth day of hearing being held by the

5 Illinois Pollution Control Board in our Docket PCB

6 94-373, People of the State of Illinois versus Wayne

7 Berger and Berger Waste Management, Inc.

8 Again, no members of the public were in attendance

9 at any point yesterday and none are in attendance

10 today. We have Mr. Berger and Counsel, his Counsel

11 and Counsel for the State present today.

12 Is there anything that we need to attend to before

13 we resume with Mr. Berger?

14 MR. BENOIT: I think yesterday the Hearing Officer

15 required me to bring copies of the photograph that was

16 previously entered into evidence as Respondent's 50.

17 I would like the record to reflect that I am providing

18 the attorneys for the State and the hearing -- well, I

19 guess you don't need one -- with a copy.

20 MS. MENOTTI: Excuse me. Respondent's 50?

21 HEARING OFFICER CROWLEY: Respondent's 50, yes.

22 MR. BENOIT: I believe that is right. That's the

23 only preliminary matter I have.

24 I would like to continue with my direct of Mr.

25 Berger.

1 HEARING OFFICER CROWLEY: Fine.

2 (The witness resumed the stand.)

3 HEARING OFFICER CROWLEY: Again, we will remind
4 you that you are under oath, Mr. Berger.

5 THE WITNESS: Yes.

6 DIRECT EXAMINATION (continued)

7 BY MR. BENOIT:

8 Q I believe yesterday when we concluded the
9 hearing for the day you had testified about a couple
10 different individuals or companies approaching you
11 regarding buying your landfill or the landfill and
12 trash hauling business. We are going to pick up on
13 that train of thought.

14 A Okay.

15 MR. BENOIT: I would like the record to reflect I
16 am showing Mr. Berger Exhibit R23.

17 (The witness reviewing document.)

18 Q (By Mr. Benoit) I will start by asking you
19 the question, did you, in fact, enter into any
20 agreements regarding the selling of the landfill?

21 A Yes, I entered into an agreement.

22 Q You have R23 before you. What is R23?

23 A Well, it is a real estate optional agreement.

24 Q And what date was that agreement entered
25 into?

1 A I don't think it has it on here.

2 Q If I may, it is on the very first paragraph
3 of the first page.

4 A September the 27th, 1991.

5 Q And can you describe generally the terms of
6 that real estate option agreement, R23?

7 A Well --

8 MS. MENOTTI: Objection. Relevance. How does
9 this relate in any way to the allegations in the
10 complaint?

11 MR. BENOIT: This is going to go to show how it is
12 that Mr. Berger ended up keeping the landfill open
13 past September 12th of 1992.

14 HEARING OFFICER CROWLEY: Continue.

15 THE WITNESS: Well, this Mike Johnson of Terra
16 Tech Corporation, he said he would take care of half
17 of the expense to get these wells put in and whatever
18 needed to be done to get whatever -- well, to get
19 the -- I guess they had to put in so many wells in
20 order to get the -- to get it revised so that they
21 could put more trash in the landfill. They was
22 wanting to --

23 Q (By Mr. Benoit) Well, I guess what I am
24 asking is --

25 MR. BENOIT: And, again, I would request that the

1 Hearing Officer allow me a little latitude as far as

2 leading questions. I think it is apparent that --

3 MS. MENOTTI: Ms. Hearing Officer, objection. It

4 is his witness. It is his client. He is not allowed

5 to lead his own client. That rule of evidence is

6 absolutely positively clear. He has established no

7 basis for why he should be allowed to lead his own

8 witness.

9 MR. BENOIT: The rule is not absolute. I think

10 that the Hearing Officer has observed the witness.

11 The only reason that I would want to lead is on such a

12 thing as this. I mean, everybody has a copy of this

13 option agreement. It says what it says. In order to

14 move things along -- I think it is apparent from the

15 observation of the witness that this might take quite

16 some time if he is forced to summarize, you know, the

17 terms of this agreement and to make a coherent record.

18 HEARING OFFICER CROWLEY: For that purpose you may

19 have some latitude to lead the witness. The State is

20 certainly free to renew its objection when we get into

21 matters perhaps of more substance than leading a

22 witness through an option agreement.

23 MS. MENOTTI: Ms. Hearing Officer, can I also

24 suggest, then, too, that if you are going to allow him

25 to lead that he be limited in the testimony, because

1 if he is going to admit this into evidence, the
2 document is going to speak for itself. There is no
3 reason to go into extensive testimony regarding it.
4 If he is going to be allowed to lead his witness
5 through, then I think his examination should be
6 limited.

7 MR. BENOIT: I think --

8 MS. MENOTTI: He can't have his cake and eat it,
9 too, Madam Hearing Officer.

10 MR. BENOIT: Could I add one point? I think the
11 State's witnesses, in particular, the inspector, sat
12 down and read everything out of her inspection
13 report. We sat through all of that. This is a
14 similar type of thing except what I am asking the
15 Hearing Officer to recognize is that Mr. Berger does
16 not have the ability to, as quickly as the inspector
17 did, to look at the notes and say, yes, this is what
18 it says. I am trying to make a coherent record, and I
19 am asking for a little leeway. I don't see --

20 HEARING OFFICER CROWLEY: Thank you. I have said
21 I would allow you some leeway. Please continue.

22 MR. BENOIT: Thank you.

23 Q (By Mr. Benoit) Now, this option agreement
24 was entered into between you and Terra Tech, Inc.; is
25 that correct?

1 A Yes.

2 Q And Terra Tech Inc.'s president is Michael
3 Johnson?

4 A Yes.

5 Q And Terra Tech offered to purchase the land
6 where the landfill is for \$85,000.00 under this
7 option; is that true?

8 A Yes.

9 MS. MENOTTI: Objection. That is not clear from
10 the face of the document. Improper leading question.
11 You said that you would allow him to lead --

12 HEARING OFFICER CROWLEY: I don't have the
13 document in front of me. I can't --

14 MS. MENOTTI: This is not an offer in any way,
15 shape, or form.

16 HEARING OFFICER CROWLEY: To speed this along --

17 MR. BENOIT: Here it is. No, that is not it.

18 (Ms. Menotti passed the document to the Hearing
19 Officer.)

20 HEARING OFFICER CROWLEY: It does appear to be
21 clear from the face of the document.

22 MS. MENOTTI: It does not say it is an offer. It
23 says it is an option and it is an agreement. He is
24 saying that Terra Tech -- didn't Terra Tech offer.

25 That is not what Terra Tech offered. This is a signed

1 agreement. He is mischaracterizing the document.

2 MR. BENOIT: Again, I think the document will
3 speak for itself. I am just trying to lay the --

4 MS. MENOTTI: Then you don't need to go through
5 extensive testimony with the document. The document
6 will speak for itself. The Board will have this in
7 front of them.

8 HEARING OFFICER CROWLEY: I will allow this to
9 continue. But please be concise.

10 MR. BENOIT: Okay.

11 Q (By Mr. Benoit) As part of the option
12 agreement, did Terra Tech agree to begin development
13 of a revised groundwater monitoring program including
14 the installation of wells required by the EPA?

15 A Yes.

16 MS. MENOTTI: May I state an objection for the
17 record that Mr. Berger cannot testify to the state of
18 mind of Terra Tech. He can testify to what his
19 understanding of the agreement is, not what Terra Tech
20 intended.

21 HEARING OFFICER CROWLEY: I don't recall that
22 there was any indication of state of mind in that
23 answer to the question.

24 I will allow Mr. Benoit to continue.

25 Q (By Mr. Benoit) Was the option agreement

1 effective -- hold on a second.

2 Was the option agreement effective until after

3 September 18th, 1992?

4 A Yes.

5 MS. MENOTTI: For the record, the State would like

6 to note that the witness is using -- is reading off of

7 an agreement that has not been entered into evidence.

8 HEARING OFFICER CROWLEY: That's correct.

9 Q (By Mr. Benoit) Is that your signature on

10 page two of the -- of R23?

11 A Yes.

12 Q Is R23 a true and accurate copy of the real

13 estate option agreement?

14 A Yes.

15 MR. BENOIT: I move that it be entered.

16 MS. MENOTTI: It is hearsay. It is hearsay and

17 not subject to any hearsay exclusionary rules.

18 HEARING OFFICER CROWLEY: I am sorry?

19 MS. MENOTTI: I am sorry. Hearsay exception.

20 HEARING OFFICER CROWLEY: I don't understand why

21 it is hearsay.

22 MR. BENOIT: I don't understand either.

23 MS. MENOTTI: Pardon me?

24 MR. BENOIT: I don't understand why it is hearsay.

25 MS. MENOTTI: It is a statement made other than at

1 the time of hearing and it is being offered for the
2 truth of what the contents of the document hold.
3 That's hearsay. Absent some exception, it is not
4 admissable into evidence.

5 HEARING OFFICER CROWLEY: I am admitting the
6 document. Again, the Board's hearsay rules are
7 somewhat relaxed -- evidence rules are somewhat
8 relaxed. This would appear to be a business record,
9 given the nature of Mr. Berger's business at the
10 time.

11 (Whereupon said document was admitted into
12 evidence as Respondent's Exhibit 23 as of this
13 date.)

14 MS. MENOTTI: For the record, the State would note
15 that Mr. Benoit has failed to establish that this is
16 kept in the ordinary course of Mr. Berger's business
17 operation, which is required for admission as a
18 business record.

19 HEARING OFFICER CROWLEY: Continue.

20 Q (By Mr. Benoit) Was this record kept in the
21 normal course of your business? Did you keep this
22 record?

23 A Yes.

24 MR. BENOIT: I move for admission again on R23.

25 HEARING OFFICER CROWLEY: It has already been

1 admitted.

2 MS. MENOTTI: You still have not met -- that still
3 doesn't establish the requirement that it be kept in
4 the ordinary course of the business. Ordinary course
5 of business is defined in the case law and in the
6 rules as being day-to-day business.

7 HEARING OFFICER CROWLEY: The document has been
8 admitted.

9 MR. BENOIT: I would like to show the witness
10 R21.

11 HEARING OFFICER CROWLEY: We have already admitted
12 R21.

13 MR. BENOIT: Right.

14 Q (By Mr. Benoit) Is the Michael E. Johnson,
15 who is listed as the contact person on R21, the same
16 Michael E. Johnson who signed the real estate option
17 agreement with you?

18 A Yes.

19 MS. MENOTTI: Objection. Leading. Mr. Benoit has
20 not been given latitude with regard to Respondent's
21 21.

22 HEARING OFFICER CROWLEY: I will allow it.

23 Q (By Mr. Benoit) Who is listed as the contact
24 person on R21?

25 A Michael Johnson.

1 Q Prior to March 18th, 1991, can you give me an
2 estimate as to how many cubic yards of waste were
3 deposited in the Berger Landfill each year?

4 A Around 6,000 yards.

5 Q Why does -- I believe yesterday that you read
6 in paragraph two of page two of R21, and it indicated
7 that one year after you sent R21 in, you would be
8 accepting approximately 100,000 cubic yards of waste
9 per year?

10 A Yes, that's right.

11 Q Have you ever accepted that much waste in a
12 year?

13 A No.

14 Q Why did you sign and submit R21?

15 MS. MENOTTI: Objection. Asked and answered.

16 This is already in the record from yesterday. There
17 is no need to continue to waste time.

18 MR. BENOIT: I don't think I asked --

19 HEARING OFFICER CROWLEY: Continue. I don't
20 recall that question being asked.

21 THE WITNESS: Would you repeat, please.

22 Q (By Mr. Benoit) If you never had in the past
23 accepted 100,000 cubic yards of waste and you didn't
24 have any plans to, why did you sign and submit R21
25 stating that you planned on accepting 100,000 yards of

1 cubic waste?

2 MS. MENOTTI: Objection to the form of the
3 question. He has not established that he didn't
4 intend to accept 100,000 cubic yards of waste.

5 HEARING OFFICER CROWLEY: I will allow the
6 question.

7 THE WITNESS: This Terra Tech, they was planning
8 on buying the landfill. So they was needing this
9 extra yardage in order to buy the business. They
10 wouldn't have went through this optional agreement
11 without doing this here.

12 Q (By Mr. Benoit) So the landfill had to be
13 open or they were not going to sign the option
14 agreement?

15 MS. MENOTTI: Objection. Leading.

16 HEARING OFFICER CROWLEY: Please continue.

17 THE WITNESS: Yes.

18 Q (By Mr. Benoit) Did Terra Tech satisfy the
19 terms of the option agreement?

20 A No.

21 MR. BENOIT: I think the witness is
22 misunderstanding my question. I would like to
23 rephrase it.

24 Q (By Mr. Benoit) I think you testified that --
25 or I summarized -- that one of the terms of the

1 agreement, and I am talking about R23, was to do some
2 work regarding a groundwater monitoring program; is
3 that right?

4 A Yes.

5 Q Did Terra Tech do that work?

6 A Yes.

7 Q What else did they do after that -- after
8 they entered into that option agreement?

9 A Well, they planned on...

10 Q Did they install groundwater monitoring
11 wells?

12 A Yes, they installed groundwater monitoring
13 wells and they done all of the -- everything that
14 needed to be required to send in to the State.

15 Q Did they comply with the terms that they pay
16 for half of that work?

17 A Yes.

18 Q Who actually did the groundwater monitoring
19 and the work that needed to be done?

20 A Mike Johnson of Terra Tech and James
21 Johnson.

22 Q Where is -- who is James Johnson?

23 A He is the guy that -- he is kind of an
24 engineer, I would say, or a site planner they call
25 him.

1 Q Okay.

2 A And he made sure, you know, that, like, the
3 wells were in the right place and how many wells that
4 they needed.

5 Q Did he put together the permit?

6 A Yes.

7 Q Who chose James Johnson to be the engineer?

8 A Mike Johnson.

9 Q That's Mike Johnson of Terra Tech?

10 A Terra Tech.

11 Q What was the cost of doing all of this work
12 that, according to the option agreement, they were
13 going to split with you?

14 MS. MENOTTI: Objection. The witness just
15 testified that he didn't do the work, that Terra Tech
16 did the work.

17 HEARING OFFICER CROWLEY: I will allow him to
18 answer since it was a split cost arrangement.

19 Go ahead.

20 THE WITNESS: \$38,000.00.

21 Q (By Mr. Benoit) And did Terra Tech go ahead
22 and pay for half of that?

23 A They paid for half, yes.

24 Q Then you paid the other half?

25 A Yes.

1 Q Now, previously you testified that your
2 engineers, and this was earlier, on Crawford &
3 Whiteside, they had done some work for you to try to
4 get a new permit put together, right?

5 A Yes.

6 MS. MENOTTI: Objection. We have already covered
7 this. It is asked and answered.

8 Q (By Mr. Benoit) But their efforts to put
9 together a permit application were unsuccessful?

10 A Right.

11 Q But Terra Tech's --

12 MS. MENOTTI: Objection. Asked and answered.

13 HEARING OFFICER CROWLEY: We did cover all of this
14 yesterday.

15 MR. BENOIT: Okay.

16 Q (By Mr. Benoit) Did the Agency issue a permit
17 based on the application submitted by Terra Tech?

18 A Yes.

19 Q And is that the 1991 permit?

20 A Yes.

21 Q What were Terra Tech's plans for the
22 landfill?

23 MS. MENOTTI: Objection. How can he say what
24 Terra Tech intended to do with the landfill if he
25 doesn't work for Terra Tech? Mr. Benoit has not

1 established that this witness has any reason to have
2 person knowledge of Terra Tech's plans.

3 Q (By Mr. Benoit) Were you present when there
4 were any conversations, discussions, or plans
5 presented as to Terra Tech's intentions regarding the
6 landfill?

7 A Yes.

8 Q What did those plans or conversations or
9 whatever lead you to believe that Terra Tech's plans
10 were?

11 A Well, they were wanting to change the
12 landfill to -- so that they would be able to have more
13 cubic yards than now. Like, the way it was, they
14 didn't have enough space. So they was going to have
15 to have more space or, you know, if they couldn't get
16 more space to dump trash, you know, they probably
17 wouldn't have bought it.

18 Q Okay. What kind of landfill was it going to
19 be?

20 A A special waste.

21 Q Did you believe that Terra Tech was going to,
22 in fact, exercise the option and purchase the
23 landfill?

24 A Yes. I thought they were going to purchase
25 it, because they spent approximately two or three

1 years doing the work and had the engineer, James

2 Johnson, do all of the work in order to buy it.

3 Q Did you say two or three years?

4 A I think two or three years there after he

5 started working on it.

6 Q Okay. I thought yesterday we talked about --

7 when did you meet this Michael E. Johnson? Do you

8 recall?

9 A I believe -- well, it is hard to say. Maybe

10 1991. It is kind of hard to remember all of that.

11 Q Yes, it has been quite some time. Do you

12 recall -- well, do you recall any meetings with local

13 officials, county officials, regarding Terra Tech's

14 plans?

15 A Yeah, we had a -- yes, we had a meeting

16 August of 1992. I think it was August the 5th that we

17 had a meeting.

18 Q Okay. And do you recall who was at that

19 meeting?

20 A It was Michael Johnson, James Johnson, and I

21 think Dan Reesly (spelled phonetically). I am not for

22 sure on the other one.

23 MR. BENOIT: I am going to show the witness what

24 has been marked as R60.

25 Q (By Mr. Benoit) Can you tell me what that

1 is? Is that a letter sent to you?

2 MS. MENOTTI: Objection. Leading.

3 HEARING OFFICER CROWLEY: I will allow it.

4 Q Is that a letter sent to you on August 6,

5 1992, from James R. Johnson?

6 A Yes.

7 Q Does that letter contain or have attached to

8 it minutes of an August 5th, 1992 meeting?

9 A Yes.

10 Q Do the minutes or the memo of the meeting

11 discuss a meeting --

12 MS. MENOTTI: Objection. Leading. Mr. Berger can

13 tell the Hearing Officer what the minutes say.

14 MR. BENOIT: Okay.

15 THE WITNESS: Well, we just had a meeting to

16 explain about the site. It was about site planning

17 for this landfill.

18 Q (By Mr. Benoit) Okay. Did you receive that

19 letter?

20 A Yes.

21 Q And was that letter kept in the regular

22 course of your business?

23 A Yes.

24 MR. BENOIT: I move to have it admitted.

25 MS. MENOTTI: Objection. It is a hearsay

1 statement made out-of-court by the declarant and is
2 not available to be cross-examined right now. And Mr.
3 Berger's regular course of business was to take trash
4 and dispose of it. How minutes to a county meeting
5 become kept in the course of his regular course of his
6 business has not been established.

7 MR. BENOIT: I think that it is --

8 MS. MENOTTI: He is not the keeper of the records
9 for the county, and it has not been properly
10 authenticated.

11 HEARING OFFICER CROWLEY: I am going to admit it.

12 Could you articulate again the number, please?

13 MR. BENOIT: It is R60.

14 (Whereupon said document was admitted into
15 evidence as Respondent's Exhibit 60 as of this
16 date.)

17 Q (By Mr. Benoit) Do you know how long Terra
18 Tech continued to work on their plans to possibly
19 purchase the landfill?

20 A It was in 1993. 1992. But I don't know
21 exactly the date or the time, but it had to be after
22 August the 6th of 1992.

23 MR. BENOIT: I have misplaced R59 with the yellow
24 sticker. I am going to show the witness R59.

25 Q (By Mr. Benoit) Do you recognize R59?

1 A Yes.

2 Q What is it? Is it a December 3rd 1992 letter
3 addressed to Edward Bakowski of the IEPA from James R.
4 Johnson?

5 A Yes.

6 Q Is this the same James R. Johnson who is the
7 engineer that prepared the 1991 permit?

8 A Yes.

9 Q Does it indicate that a copy was sent to you
10 at the bottom?

11 A Yes.

12 Q Did you receive this letter?

13 A Yes.

14 Q Did you keep this letter, and not necessarily
15 this copy, but an almost identical letter all except
16 for the fact that this one is dated file stamped, in
17 your files?

18 A Yes.

19 MR. BENOIT: I move that be admitted.

20 MS. MENOTTI: Objection. First of all --

21 HEARING OFFICER CROWLEY: Sustained.

22 Q (By Mr. Benoit) Does looking at this letter
23 refresh your recollection as to how long Terra Tech --

24 MS. MENOTTI: I am going to object. Mr. Berger
25 has not said that he could not recollect anything.

1 HEARING OFFICER CROWLEY: Correct.

2 Q (By Mr. Benoit) Do you know the exact date
3 when Terra Tech stopped working on its plans to
4 possibly purchase your landfill?

5 A I do not know the exact date.

6 Q Okay.

7 A But it had to be some time after August the
8 6th. But I don't know the exact date.

9 Q Okay. Does looking at R59 -- could that
10 assist you in determining a range of possible dates?

11 MS. MENOTTI: Objection. Calls for speculation.

12 HEARING OFFICER CROWLEY: I will let him answer.

13 THE WITNESS: Would you repeat, please?

14 Q (By Mr. Benoit) Does looking at R59 allow you
15 to refresh your memory and allow you to testify as to
16 possible dates that Terra Tech was still working on
17 its plans to purchase your landfill?

18 A They were still working on it, but I don't
19 know about the dates.

20 Q Okay. So that does not refresh your memory
21 then?

22 A No.

23 Q Okay. Terra Tech never did exercise that
24 option agreement?

25 A No.

1 Q And when did they tell you that they were not
2 going to exercise the option?

3 A I don't remember them telling me for sure.

4 Q Okay. So they never sent you a letter or
5 anything?

6 A No.

7 Q Did they ever directly come out and say we
8 are not going to exercise this option?

9 A No.

10 Q What did you do after they didn't exercise
11 the option?

12 MS. MENOTTI: Objection. How can he do something
13 after something never happened?

14 HEARING OFFICER CROWLEY: I will let him answer
15 the question if he can.

16 THE WITNESS: Well, I went ahead operating the
17 landfill.

18 Q (By Mr. Benoit) How long did you continue to
19 accept waste at the landfill?

20 A September the -- it was around September the
21 20th, 1993.

22 Q Can you repeat that?

23 A September, I think it was around the 20th, of
24 1993.

25 Q Okay. From September 18th, 1992 until, as

1 you testified, September 20th of 1993, and say roughly
2 a one year period, how many new trenches did you dig
3 and fill at the landfill?

4 A No new trenches.

5 Q Where did you put the waste?

6 A I don't remember the number of the --

7 MR. BENOIT: I am showing the witness what has
8 previously been admitted as People's 6. I am having
9 the witness refer to the diagram on People's 6 that
10 indicates where trenches are, including numbers.

11 Q (By Mr. Benoit) So your testimony is that you
12 didn't dig any new trenches?

13 A Yes.

14 Q What did you do?

15 A We went ahead and filled this 88D.

16 Q So you just continued to work on 88D?

17 A Yes.

18 Q Okay. How much waste did you put in that
19 trench between September 18th, 1992, and September
20 20th, 1993, when you stopped accepting waste?

21 A I would say around 6,000 yards.

22 Q Okay. How many acres would that be?

23 A That would be --

24 MS. MENOTTI: Objection. No foundation. And
25 cubic yards are not transferable or whatever into

1 acres. Acres is an area. Cubic yards is a volume.

2 MR. BENOIT: I think the testimony before was like
3 how many -- well, maybe not. I mean, if you fill a
4 trench -- the testimony was that it was eleven feet
5 deep.

6 HEARING OFFICER CROWLEY: Rephrase it. Rephrase
7 it.

8 MR. BENOIT: Okay.

9 Q (By Mr. Benoit) How many -- presently, now
10 that the landfill is closed, can you estimate how many
11 acres of land were used to deposit waste?

12 A I would say around seven acres.

13 Q And of that seven acres, how much was used in
14 this period I was referring to, September 18th, 1992
15 to September 20, 1993?

16 A I would say approximately a quarter of an
17 acre.

18 Q Okay. What did you do out at the landfill
19 after you stopped accepting waste?

20 A Well, I packed it all down and put two foot
21 of dirt over the top, two to three foot of dirt. I
22 had a person to do this. And then I fertilized it,
23 seeded it down.

24 Q In the past when you closed other trenches,
25 did you use the same procedure?

1 A Yes.

2 MR. BENOIT: I am going to be needing People's 5.

3 Thank you.

4 Q (By Mr. Benoit) Now, in Count 3, based on the

5 June 24th, 1993 inspection, the State is claiming that

6 you failed to compact and cover litter, that there was

7 litter at the landfill. Let the record reflect --

8 MS. MENOTTI: Is there a question in here

9 somewhere?

10 HEARING OFFICER CROWLEY: Please continue.

11 Q (By Mr. Benoit) Let the record reflect that I

12 am showing the witness what has previously been

13 admitted as People's Exhibit Number 5. It you could

14 just review that for a minute.

15 A (Witness complied.)

16 Q Do you recall that inspection?

17 A Yes.

18 Q You were on site that day?

19 A Yes.

20 Q How many inspectors came out to inspect that

21 day?

22 A I believe there was four inspectors.

23 Q Could you turn to the page on People's 5,

24 again, the trench diagram?

25 A (Witness complied.)

1 MR. BENOIT: Let the record reflect that he is

2 looking at the trench diagram on People's 5.

3 Q (By Mr. Benoit) Do you see on that diagram

4 two areas marked A and B, that were written on that

5 diagram by the inspector?

6 A Yes.

7 Q Are areas A and B correctly identified as far

8 as being in the correct trenches in the correct

9 location?

10 MS. MENOTTI: Objection. The witness did not

11 generate this map. This map says it is not to scale.

12 You are trying to impeach the exhibit, which is an

13 improper impeachment.

14 HEARING OFFICER CROWLEY: I will let him answer

15 the question.

16 THE WITNESS: Repeat it again, please.

17 Q (By Mr. Benoit) Are areas A and B correctly

18 identified as far as being in the correct trenches?

19 Are A and B located in the trenches where the

20 inspector marked them on that map?

21 A Well, that wouldn't be in the correct place

22 that -- what she said about where the well was at.

23 Q No, I am not talking about the well.

24 A This inspection report --

25 HEARING OFFICER CROWLEY: I am sorry. He answered

1 the question that you asked him.

2 MR. BENOIT: He answered something about wells,

3 but I didn't ask anything about a well.

4 HEARING OFFICER CROWLEY: Could you read back the

5 witness' answer, please.

6 (Whereupon the requested portion of the record was

7 read back by the Reporter.)

8 MR. BENOIT: I stand corrected. I misspoke.

9 Q (By Mr. Benoit) Do you see where area A is

10 marked on the map?

11 A Yes.

12 Q Have you ever deposited waste in that area of

13 the landfill?

14 A No.

15 Q Do you see where area B is identified on the

16 map?

17 A Yes.

18 Q Have you ever deposited waste in that area of

19 the landfill?

20 A No.

21 Q On June 24th, 1993, where were the two

22 trenches that the inspector saw during her site

23 inspection?

24 A Well, the trench that she inspected would

25 have to be 88D.

1 Q Okay. What direction is that from where she
2 indicated on the map that the -- where A and B were?

3 A That would be west.

4 Q Okay. Now, do you understand that -- and you
5 were here -- the inspector claims that she saw litter
6 that day?

7 A Yes, there was litter.

8 Q You agree that there was litter that day?

9 A Yes.

10 Q Okay. Could you look at the photographs, and
11 I think I am referring to photo five. I think the
12 photographs are numbered as they go through. Is there
13 litter shown on photo five?

14 A Yes, there is litter.

15 Q Okay. And just based on being out there and
16 working on June 24, 1993, did you observe that litter
17 yourself?

18 A Yes.

19 Q And how much litter was there?

20 A I would say approximately maybe a Wal-Mart
21 bag, oh, maybe pretty close to full.

22 Q Can you describe what a Wal-Mart bag is?

23 A Probably I would say a foot in diameter and,
24 oh, maybe a foot or so deep.

25 Q So would you consider that a minor amount of

1 litter?

2 A I would say it would be minor, yes.

3 Q For a landfill?

4 A Yes.

5 MS. MENOTTI: Objection. Move to strike.

6 Improper opinion. First of all, we have not sustained

7 that this witness has worked at any other landfills.

8 And second of all, he did not generate the report.

9 Third --

10 HEARING OFFICER CROWLEY: We will allow it to

11 stand for whatever weight the Board may choose to give

12 it based on this witness' experience and his

13 qualifications.

14 Q (By Mr. Benoit) Do you see a fence depicted

15 in photo five?

16 A Yes.

17 Q What is the purpose of that fence?

18 A Oh, this is like -- it would be like -- I

19 guess you would call it a secondary fence. I usually

20 put it there because that's where I backed up and

21 unloaded the trash. And then when you unload the

22 trash, you have to unhook the back part of the truck,

23 you raise the hopper up and a lot of times you have

24 loose trash. So I would try to put that there so it

25 would keep the trash close to the pit.

1 Q Okay.

2 A Or the paper. Sorry.

3 Q So in photo five is that fence working as
4 designed?

5 A Yes.

6 Q To catch the litter?

7 A Yes.

8 Q On June 24th, 1993, were there any other
9 fences put up around the landfill to control litter?

10 A Yes. There was a fence at the north side of
11 the landfill.

12 Q Okay.

13 A And then also I usually always put a
14 secondary fence like where I am unloading.

15 Q Okay. I want you to again review the
16 inspector's photos, or the photos attached to People's
17 5?

18 A Okay. Right here.

19 Q And I am referring to --

20 MS. MENOTTI: Objection. What is Mr. Benoit
21 doing? Is he going to direct the witness to
22 something? He can direct him. He asked him to review
23 the photographs and he is sitting there flipping
24 through them for him.

25 Q (By Mr. Benoit) Mr. Berger, can you read

568

1 through the inspection report and determine which
2 photographs the inspector was relying upon or took
3 pictures of where she said that there was uncompacted
4 waste and inadequate cover?

5 MR. GUBKIN: Objection. I don't believe the
6 inspector relies upon the photographs to determine
7 violations. She relies upon her observations and
8 makes a photograph to document that. I think that is
9 an improper characterization of the testimony.

10 HEARING OFFICER CROWLEY: Mr. Gubkin has correctly
11 characterized it.

12 Q (By Mr. Benoit) The inspection report states
13 that in area A, the area not being worked, there was
14 uncompacted and uncovered and inadequately covered
15 waste?

16 A Right.

17 Q Can you explain why that condition existed in
18 area A?

19 A The reason I didn't get it covered is because
20 I had to -- I pumped the water out, but it had too
21 much water there. So I had to wait so I could get
22 over it with the dirt. I had to pack it down before I
23 covered it, and there would be no more trash put in
24 this area. I would have put the final cover over it
25 without putting anymore trash in it.

1 Q It was too wet to cover it?

2 A It was a little too wet. I couldn't get my
3 dirt put over it at that time. I had to let it dry
4 before I could smash the trash down and get it
5 covered. And then I would put the -- I would put the
6 two foot of dirt over the top.

7 Q Did you -- well, I mean, did conditions dry
8 out?

9 A Yes, later, and I packed her down and I
10 didn't put no more trash in there. I covered it up
11 and put the two foot of dirt -- I packed her down, put
12 the two foot of dirt over the top and seeded it down,
13 fertilized it.

14 Q How come there were two areas, you know,
15 being worked or open, two areas of the same trench at
16 that time?

17 A Well, this is, like I say, in the
18 wintertime. This is a road where I would dump.

19 Q Okay.

20 A And then in the summertime I wouldn't have
21 rock back there, so I would drive back around to the
22 other end and dump trash down there.

23 MR. BENOIT: Let the record reflect that I am
24 showing the witness what has previously been admitted
25 as People's 6 or State's 6.

1 MS. MENOTTI: Did you say People's 6?

2 MR. BENOIT: Yes, People's 6.

3 Q (By Mr. Benoit) Count 6 is based on the April
4 18, 1994 inspection. It is claimed that you deposited
5 refuse in an unpermitted area of the landfill. Again,
6 it is based on the April 18, 1994 inspection. Do you
7 recall that inspection?

8 A Yes.

9 Q Is the inspector correct when she states that
10 you deposited waste outside the permitted boundaries
11 of the landfill?

12 A I don't believe she is correct.

13 Q Okay. Why do you say that? Why do you think
14 that she is wrong?

15 A Well, because the well on this map, 107, she
16 has that the well is south -- or this map shows that
17 the well is south of where she said the well was at.

18 Q Okay. Are you familiar with the boundaries,
19 the permitted boundaries of the landfill, the area
20 where your permit allows you to dispose waste?

21 A Yes.

22 Q Okay. Are you familiar with the actual
23 location of monitoring well G107 or 107?

24 A Yes.

25 Q And is that monitoring well placed on the

1 border of the landfill, as indicated on the exhibit

2 you are referring to attached to People's Number 6,

3 the exhibit with the trenches on it?

4 A Yes.

5 Q It is located there?

6 MS. MENOTTI: Objection. He already answered the

7 question.

8 HEARING OFFICER CROWLEY: Yes, he did answer the

9 question.

10 MR. BENOIT: I think the witness is confused. I

11 want to ask a few follow-up questions to clarify.

12 MS. MENOTTI: Objection. You can't --

13 HEARING OFFICER CROWLEY: I am sorry. That is

14 more latitude than I can grant you.

15 Q (By Mr. Benoit) Did you go out to the

16 landfill to determine the location of monitoring well

17 G107?

18 A Yes.

19 Q Where is monitoring well G107 located?

20 MS. MENOTTI: Objection. I think we have already

21 covered this.

22 HEARING OFFICER CROWLEY: We have covered this but

23 minutes ago.

24 Q (By Mr. Benoit) On the map you are referring

25 to, and it is the map with the -- it is attached to

1 People's Number 6.

2 HEARING OFFICER CROWLEY: I am sorry. I can't
3 hear you. You were speaking with your back to me.

4 MR. BENOIT: Okay. I am just trying to clarify
5 which map he is looking at. He is still looking at
6 the map attached to People's Number 6, indicating the
7 trenches.

8 Q (By Mr. Benoit) Have you ever deposited waste
9 in the areas marked 83D, 80D, or 79D?

10 A No.

11 Q Have you ever deposited waste anywhere south
12 of 83D, 80D, or 79D, as indicated on the map?

13 A No.

14 MR. BENOIT: Let the record reflect that I am
15 showing the witness what has previously been marked
16 and admitted as People's Exhibit Number 7.

17 Q Can you review that for a second?

18 A Okay. (Witness complied.)

19 MS. MENOTTI: Is there a question pending?

20 MR. BENOIT: I am letting him have a chance to
21 review the exhibit.

22 MS. MENOTTI: I thought maybe there was a question
23 pending.

24 HEARING OFFICER CROWLEY: I am sorry. I can't
25 hear you.

1 MS. MENOTTI: I was asking if there was a question
2 pending. I thought maybe I missed something because
3 we were just sitting.

4 Q (By Mr. Benoit) Okay. In Count 6 the State
5 alleges that based on an August 25th, 1995 inspection,
6 the landfill roads were inadequate. Were you present
7 when the inspector said she was on site on August
8 25th, 1995?

9 A I was not present.

10 Q Okay. From earlier testimony, do you
11 understand the basis for the charge that the road was
12 inadequate?

13 MS. MENOTTI: Objection. There was no charge that
14 the road was inadequate. He is making it sound like
15 it is some kind of like criminal interrogation.

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

18 Please answer, Mr. Berger.

19 THE WITNESS: Repeat, please.

20 Q (By Mr. Benoit) Do you understand why the
21 inspector claims that the road was inadequate?

22 A Yes. She said she was not able to drive down
23 through there.

24 Q Okay. And why did she say that? What was
25 the basis for that?

1 A Well --

2 MS. MENOTTI: Objection. He can't testify to the
3 witness' state of mind.

4 HEARING OFFICER CROWLEY: Sustained.

5 MR. BENOIT: Okay.

6 Q (By Mr. Benoit) Are you familiar with the
7 condition of the landfill's roads on or about August
8 25th, 1995?

9 A Yes.

10 Q What was the condition of the roads?

11 A Well, it was a rock road, and it had grass
12 down the center of the road.

13 Q Were you able to drive down the landfill road
14 on or about August 25th, 1995?

15 A Yes.

16 MS. MENOTTI: Objection.

17 HEARING OFFICER CROWLEY: That was a leading
18 question, but I will allow it.

19 THE WITNESS: Yes.

20 Q (By Mr. Benoit) On August 25th, 1995, could
21 the inspector have driven her car down the road if she
22 had attempted to?

23 MR. GUBKIN: Objection.

24 MS. MENOTTI: Objection.

25 HEARING OFFICER CROWLEY: Sustained.

1 Q (By Mr. Benoit) On or about August 25th,
2 1995, what kind of vehicle were you able to drive down
3 the road?

4 A I drove a pickup truck down the road.

5 Q Did you have any problem?

6 A No.

7 MR. BENOIT: State's Number 5, let the record
8 reflect that I am showing the witness People's Exhibit
9 Number 5.

10 A (The witness reviewed document.)

11 Q (By Mr. Benoit) Can you turn about five pages
12 into People's Number 5, the page that starts out on
13 the top, it says, State of Illinois Environmental
14 Protection Agency, narrative inspection report
15 document. Do you see that?

16 MR. BENOIT: Can I turn to the page for him that I
17 am referring to?

18 HEARING OFFICER CROWLEY: Yes, please show him the
19 page you are referring to.

20 Q (By Mr. Benoit) Now, do you see where it says
21 general remarks?

22 A Yes.

23 Q Okay. Can you read the sentence that begins
24 at the end of the fifth line?

25 MS. MENOTTI: Objection. This is already in

1 evidence. It does not need to be read into the

2 record.

3 MR. BENOIT: It is only six words.

4 HEARING OFFICER CROWLEY: I will allow you to

5 continue. Go ahead.

6 Q (By Mr. Benoit) it starts out with the team?

7 A Yes.

8 Q Could you read that?

9 A Yes. The team proceeded to drive on site.

10 Only small --

11 Q That is all I wanted you to read. Do you see

12 any photographs of the road attached to State's Number

13 5?

14 MR. GUBKIN: Objection.

15 MS. MENOTTI: Objection. Relevance.

16 MR. GUBKIN: The road was not in question during

17 this inspection report. I don't know why he is asking

18 questions about it.

19 MR. BENOIT: I am trying to make a point.

20 MS. MENOTTI: We are wasting time.

21 HEARING OFFICER CROWLEY: I will allow it. Please

22 continue.

23 MR. BENOIT: Can I help him try to find it?

24 MS. MENOTTI: Is Mr. Berger supposed to be

25 reviewing the document or is Counsel going to stand

1 there and continue to review documents?

2 MR. BENOIT: I am going to withdraw this line of
3 questioning as far as the exhibit.

4 I am going to request a short break.

5 HEARING OFFICER CROWLEY: As we have been going
6 for about an hour and fifteen minutes with the same
7 witness, I will allow that. I will ask that during
8 the break, Counsel, that you consider what you can do
9 to move this questioning along.

10 MS. MENOTTI: During the break the State requests
11 that Mr. Benoit not confer with his client. It is
12 improper for him to coach his client, to take a break
13 to take his client outside to coach him for further
14 testimony.

15 MR. BENOIT: I can tell you that as far as
16 anything that we have talked about so far --

17 MS. MENOTTI: Or anything else regarding his
18 testimony. He is on the stand. He is not allowed to
19 take a break to confer with his client.

20 HEARING OFFICER CROWLEY: Agreed. Please refrain
21 from conferring with one another during this break.

22 MR. BENOIT: Okay.

23 MS. MENOTTI: Thank you.

24 HEARING OFFICER CROWLEY: Thank you.

25 (Whereupon a short recess was taken.)

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

3 Mr. Benoit.

4 MR. BENOIT: Okay.

5 Q (By Mr. Benoit) Count 1 of the first amended
6 complaint alleges that you did not provide financial
7 assurance for the landfill in the amount of
8 approximately \$241,000.00; is that true?

9 A Yes.

10 Q Did you -- why didn't you provide financial
11 assurance in that amount?

12 A Because I didn't have the finances to get the
13 letter of credit.

14 Q Can you describe what happened as far as the
15 profitability of the landfill trash hauling business
16 after you stopped accepting waste?

17 A Well, after I stopped, there was hardly no
18 profit mostly.

19 Q Were you still going around to these six
20 little towns and picking up the trash?

21 A No, the -- yes, I was still picking the towns
22 up, but I had to haul so far to the landfills. It was
23 like -- there was two different landfills, one at
24 Fairfield and one at Effingham. They were like 45
25 miles away. And that would be at least a 90 mile

1 round trip without counting running your town. And by
2 the time you would pay your expense of running your
3 trucks, the mileage, paying your help the extra hours
4 for going to the landfill, because it would take two
5 and a half hours just to go to the landfill, and that
6 cut my profit down to almost nothing.

7 Q Do you understand that the figures used to
8 calculate the \$241,000.00 financial assurance amount
9 consists of closure cost estimates and post closure
10 cost estimates?

11 A Yes.

12 Q Have you already performed most of the
13 closure requirements?

14 MS. MENOTTI: Objection. Relevance. We have
15 already determined that this landfill has not been
16 certified closed.

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

19 Q (By Mr. Benoit) Have you already performed
20 most of the closure requirements required by the 1991
21 permit?

22 A Yes.

23 Q What have you done to --

24 A I have put the two foot of cover or three
25 foot, and then I seeded it down, put lime on it, put

1 fertilizer on it, compacted it.

2 Q What does the landfill look like now?

3 A Well, it looks just about like a normal part
4 of your ground, it is maybe a little higher but it is
5 sloped and seeded.

6 Q And is it vegetated now?

7 A Yes.

8 Q In Count 2 it is claimed that you failed to
9 submit a significant modification permit. Do you know
10 what a significant modification permit is?

11 A Well, I guess that would be a quite a bit of
12 change in your landfill. It would cost quite a bit of
13 money to do that.

14 Q Do you know what would be included in a
15 significant modification permit?

16 A Well, I would say -- repeat that again.

17 Q Do you know what kind of information would be
18 included in a significant modification permit
19 application that the Agency -- that you were required
20 to submit?

21 A Well, I don't think I would. I would have to
22 have an engineer or somebody to do it. I mean, I
23 wouldn't --

24 MS. MENOTTI: Objection. Move to strike. He is
25 narrating and there is no question pending.

1 HEARING OFFICER CROWLEY: I will allow it to
2 stand.

3 Q (By Mr. Benoit) Earlier witnesses testified
4 that the cost of preparing a significant modification
5 application permit could, depending upon the work
6 required, cost anywhere in the range from \$30,000.00
7 to hundreds of thousands of dollars. Can you afford
8 that kind of expense?

9 A No.

10 MS. MENOTTI: Objection. I don't think that is a
11 correct characterization of the testimony that was
12 given by Mr. Chappel.

13 MR. BENOIT: I --

14 HEARING OFFICER CROWLEY: I think that there is
15 evidence to that effect presented by various witnesses
16 in this record. So I will allow it to stand.

17 Q (By Mr. Benoit) In Count 5 it is alleged that
18 you failed to submit groundwater monitoring reports to
19 the Agency since at least January 15th, 1995; is that
20 true?

21 A Yes.

22 MS. MENOTTI: Objection. Madam Hearing Officer,
23 could you please direct Mr. Benoit to refrain from
24 leading his witness yet again.

25 MR. BENOIT: One, I don't understand why she would

1 object to that question. Two, I think it is clear
2 that I am just directing the witness' attention to
3 what we are going to be discussing and making a clear
4 record.

5 HEARING OFFICER CROWLEY: I will again state for
6 the record that I am allowing Counsel and this witness
7 some latitude in the interest of having the record
8 contain his explanation for the events that have
9 occurred. I am granting this latitude in part because
10 the -- this of the several witnesses who have appeared
11 is a witness who does not appear to have testified in
12 this type of proceeding before, if ever. The witness'
13 educational experience is considerably less than that
14 of the previous witnesses.

15 I am aware that the Board prefers to have a record
16 where, if possible, the Respondent is given an
17 opportunity to explain his situation. On the other
18 hand, I am not willing to entirely throw out the rules
19 of evidence that apply to examination of one's own
20 witness.

21 All of that said, I will allow the witness to
22 answer the question, but I do advise Counsel for
23 Respondent to bear all of that in mind and bear in
24 mind that I cannot continue granting ever and ever
25 greater latitude towards this witness. Thank you.

1 THE WITNESS: Repeat, please.

2 Q (By Mr. Benoit) Did you fail to submit
3 groundwater monitoring reports to the Agency since at
4 least January 15th, 1995?

5 A Yes.

6 Q How much did it cost you each year to monitor
7 groundwater prior to the issuance of your 1991 permit?

8 MS. MENOTTI: Objection. Relevance.

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

11 THE WITNESS: I would say each quarter it would
12 have cost approximately \$100.00, and that would be
13 \$400.00 a year.

14 Q (By Mr. Benoit) How much each year it cost
15 you to monitor groundwater after the issuance of your
16 1991 permit?

17 A \$15,000.00.

18 Q Why did you stop submitting groundwater
19 monitoring reports to the Agency?

20 A Because I could not afford paying the
21 \$15,000.00 per year from the \$4,000.00 a year. That's
22 quite a bit a raise in a short length of time.

23 MR. BENOIT: Could you read that back, just the
24 answer.

25 (Whereupon the requested portion of the record was

1 read back by the Reporter.)

2 Q (By Mr. Benoit) Can you clarify what you are
3 referring to in your answer when you said \$4,000.00?

4 A I meant \$400.00.

5 Q Thank you.

6 A Sorry.

7 Q Has anyone from the Illinois Environmental
8 Protection Agency been out to monitor the water since
9 you stopped groundwater monitoring?

10 MS. MENOTTI: Objection. Relevance. He can't
11 testify what the Agency has or has not done.

12 MR. BENOIT: Well, I think it goes to are you
13 aware of -- I think it goes to the danger.

14 HEARING OFFICER CROWLEY: I will allow him to
15 answer.

16 Q (By Mr. Benoit) To your knowledge, has
17 anybody from the Illinois Environmental Protection
18 Agency been out to the landfill to monitor groundwater
19 since you stopped monitoring?

20 A I never have seen anybody.

21 Q Okay. Do you know what your net worth was in
22 1992, you and your wife's?

23 A \$460,000.00, around that.

24 Q Can you tell me what your assets consisted
25 of, what type of assets?

1 A Okay. There was three rental houses, a 100
2 acre farm, 43 acres where the landfill is, plus the
3 house, a bulldozer, a John Deere 1982. I believe
4 there was five trucks and one car. The car was a
5 1991, 98 Olds. I had IRAs, my wife and I.

6 Q Okay.

7 A I think that was around \$70,000.00. I think
8 that's about all I can recall.

9 Q Would those numbers you just gave me be your
10 best recollection of your assets that you can recall
11 in March of 1992?

12 A Yes.

13 Q At that time, did you consider the landfill
14 itself to be of value or a valuable asset?

15 A I --

16 MS. MENOTTI: Objection.

17 HEARING OFFICER CROWLEY: Your grounds?

18 MS. MENOTTI: The Respondent has not been
19 qualified to give the opinion as to whether the
20 landfill was a valuable asset with regard to whether
21 something -- what the exact value of it is.

22 HEARING OFFICER CROWLEY: He can testify as to
23 whether he considered it an asset, which was the
24 question that was posed.

25 THE WITNESS: I would say it would be an asset,

1 because I was still hauling trash to the landfill in

2 1992.

3 MR. BENOIT: I am going to show the defendant what

4 has been marked as R61. It is a personal financial

5 statement dated 03-08-96.

6 Q (By Mr. Benoit) Do you recognize that

7 document?

8 A Yes.

9 Q What is it?

10 A It is a financial statement.

11 Q Did you fill that statement out?

12 A Yes.

13 Q Do you recall why you filled that statement

14 out?

15 A I think I was borrowing some money at the

16 time and had to give a financial statement.

17 Q Is that a record that you would normally keep

18 in the normal course of your business?

19 A Yes.

20 MR. BENOIT: I am going to move that it be

21 admitted.

22 MS. MENOTTI: Objection. First of all, it is a

23 personal financial statement, so I don't know how he

24 could possibly argue that it is kept in the ordinary

25 course of the landfill business.

1 Second of all, the document is not signed, but it
2 is being moved into evidence.

3 Third, it is inadmissible under the hearsay
4 rules. It is being offered for the proof that all of
5 this stuff in this document is true.

6 And lastly, there is calculations in this document
7 that are made, and based upon the fact that you are
8 allowing Mr. Benoit to lead due to the witness' lack
9 of expertise, I don't see how we can allow that in
10 without adequate foundation. This appears to be
11 something that would be in the custody of the bank.

12 HEARING OFFICER CROWLEY: Mr. Benoit?

13 Q (By Mr. Benoit) Was a signed copy of that
14 document given to the bank?

15 MS. MENOTTI: That's not the objection. The
16 objection is that the copy being sent to the Board is
17 not signed.

18 MR. BENOIT: I would be willing to just use it to
19 refresh his memory as to the assets.

20 MS. MENOTTI: It is still hearsay. He has not
21 established that these calculations -- who they were
22 made by, and they are not subject to
23 cross-examination. I bet if I asked the Respondent if
24 he did the calculations that he is going to say no.
25 It is inadmissible hearsay. It is being offered for

1 the truth of the matter asserted.

2 MR. BENOIT: He just stated that he filled it out.

3 MS. MENOTTI: It is a personal financial

4 statement. It is not a business financial statement.

5 It is a personal financial statement.

6 HEARING OFFICER CROWLEY: In 1996 the --

7 MR. BENOIT: Pardon?

8 HEARING OFFICER CROWLEY: In 1996 the landfill was

9 owned and operated by Berger Waste Management,

10 Incorporated.

11 MR. BENOIT: Right.

12 HEARING OFFICER CROWLEY: I am not going to admit

13 this document.

14 MR. BENOIT: Okay.

15 Q (By Mr. Benoit) Wayne, can you tell me what

16 assets you and your wife owned and what liabilities

17 you had outstanding on March 8th, 1996?

18 MS. MENOTTI: Objection. Relevance.

19 HEARING OFFICER CROWLEY: And the relevance?

20 MR. BENOIT: I am trying to establish --

21 HEARING OFFICER CROWLEY: The relevance of this

22 particular time, given the fact that we do have other

23 financial statements in the record.

24 MR. BENOIT: I don't know that we have other

25 financial statements in the record.

1 MS. MENOTTI: We have tax returns.

2 MR. BENOIT: We have tax returns for a limited --

3 HEARING OFFICER CROWLEY: I am sorry. Yes. I
4 stand corrected. I was thinking of the tax returns
5 when I said financial statements.

6 MR. BENOIT: Again, the defense is as to certain
7 number of the counts in the complaint, that it would
8 cause unreasonable hardship to comply. Obviously --

9 MS. MENOTTI: How is that relevant in the --

10 MR. BENOIT: -- in the nature of financial --

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

13 MR. BENOIT: Do you remember the question?

14 THE WITNESS: Just repeat, please.

15 Q (By Mr. Benoit) Can you tell me the assets
16 and liabilities of you and your wife on March 8th,
17 1996 with any certainty? Would it refresh your
18 recollection to look at a personal financial statement
19 that you filled out on or about that date?

20 A I would need to look at the financial
21 statement.

22 MR. BENOIT: Can the witness review it?

23 HEARING OFFICER CROWLEY: I am sorry. I did not
24 quite hear the answer.

25 THE WITNESS: I need to look at the statement.

1 HEARING OFFICER CROWLEY: All right.

2 THE WITNESS: Okay. We have \$90,000.00 for IRAs.

3 We have a 1991 Olds.

4 MS. MENOTTI: I am going to object to the witness

5 reading the document into evidence. If it refreshing

6 his recollection and helps him remember, that is

7 fine.

8 HEARING OFFICER CROWLEY: There is no question

9 pending.

10 Q (By Mr. Benoit) Did you get a chance to

11 review that?

12 A (The witness reviewing document.)

13 HEARING OFFICER CROWLEY: Can you answer yes or

14 no, Mr. Berger?

15 THE WITNESS: Yes, I reviewed it.

16 Q (By Mr. Benoit) Did reviewing that document

17 refresh your memory?

18 A Yes.

19 Q Can you tell me what assets and liabilities

20 you and your wife Judy had in March of 1996?

21 A Well, we had around \$253,000.00 of assets.

22 We would have had the house, approximately

23 \$100,000.00. We had approximately two rental houses,

24 \$35,000.00. We had IRAs, \$80,000.00.

25 Q Okay. Anything else?

1 A One 98 Olds. It is a 1991 98 Olds,
2 approximately \$6,000.00. There were four trucks.
3 There were five trucks, I believe around \$80,000.00.
4 I think that is about all I can recall.

5 Q Okay. I think when you started out did you
6 say the net worth was about \$253,000.00.

7 A Yes.

8 Q In 19 -- well, you can tell me, if you can,
9 what year was it that the corporation was formed?

10 A The corporation was formed on July the 1st,
11 1993.

12 Q And about when was it that the -- or was a
13 land trust --

14 MS. MENOTTI: Objection. Leading. He is putting
15 words into the witness' mouth --

16 MR. BENOIT: Okay.

17 MS. MENOTTI: -- by asking him about the specific
18 type of trust.

19 HEARING OFFICER CROWLEY: Can you rephrase that?

20 Q (By Mr. Benoit) Was a trust formed about that
21 same time?

22 A Yes.

23 Q Was it a land trust?

24 A Yes.

25 MS. MENOTTI: Objection. It is leading. It is

1 the same question again. He is putting words into the
2 witness' mouth.

3 Q (By Mr. Benoit) What type of trust was it?

4 A It was a land trust.

5 Q As you sit here today -- as we sit here
6 today, what assets do you, Wayne Berger, currently
7 own?

8 A The only assets that I have at this time is
9 an IRA, worth approximately \$80,000.00, and the
10 landfill, which is worth zero. I think that's about
11 all the assets I got. Maybe \$1,000.00 on personal
12 property.

13 Q Do you own the landfill?

14 A The Berger Waste --

15 MS. MENOTTI: Objection. He has already answered
16 the question and listed the assets that he owns.

17 HEARING OFFICER CROWLEY: I will let him answer.

18 THE WITNESS: Berger Waste owns the landfill.

19 Q (By Mr. Benoit) Okay. Can you recall what
20 assets were placed in the land trust in 1993?

21 A Could you repeat that again. I want to make
22 sure I get it.

23 Q Can you recall what assets were placed in the
24 land trust in 1993?

25 A Okay. One farm, 100 acres. The residential

1 where I live, the house and buildings and
2 approximately nine acres. Approximately six -- I
3 believe six rental houses. I believe that's all I had
4 in the trust.

5 Q Okay. Who owned those assets before they
6 were placed in the trust?

7 A I would say Wayne and Judy Berger.

8 Q As of this week, here now, what is the value
9 of the assets you owned plus the value of any assets
10 the corporation owns, plus the value of -- strike
11 that. In 1993, -- strike that.

12 Who owns the car you are driving today?

13 A Judy Berger owns the car.

14 Q When did she become the owner of the car?

15 A I think July the 1st of 1993.

16 Q Who owned the car before that date in July of
17 1993?

18 A I think Judy and I owned it.

19 Q Okay. In July of 1993 you transferred your
20 interest in the car to Judy?

21 A Yes.

22 Q And at that time, did you transfer your
23 ownership interest and any other assets you owned or
24 you and Judy jointly owned to Judy?

25 A Yes.

1 Q What were those assets? I mean, if you can
2 recall?

3 A Well, I guess it would be like I said awhile
4 ago, the house, the -- repeat, please.

5 Q Okay. You testified that in July of 1993 you
6 transferred your ownership interest in your car, the
7 car you are driving today, to your wife Judy. I am
8 asking if there is any other personal property or
9 assets which before July of 1993 either you owned
10 alone or you and she owned together that you
11 transferred into ownership for her only, excluding the
12 property that we talked about with the trust?

13 A I don't believe.

14 Q Okay. As of this week, right now, what is
15 the value of the assets you own plus the value of any
16 assets the corporation owns, plus the value of the
17 assets transferred to either Judy or the trust in
18 1993?

19 A Okay. Around \$80,000.00 for the 100 acres of
20 farmland. Approximately \$65,000.00 where the house
21 and landfill is. There is two rental properties. One
22 is valued at \$30,000.00. The other one is
23 \$18,000.00. That would be \$38,000.00. Around
24 \$130,000.00 IRAs. I think around -- I have got like
25 \$20,000.00 in a money market and approximately

1 \$1,000.00 personal. I believe that -- I think that's
2 about everything.

3 Q I think you mentioned earlier, you testified
4 that there was a car transferred and that's the car
5 that you referred to that you are driving today. Do
6 you have any idea what it is worth?

7 A It is worth probably about \$4,000.00 because
8 it has a lot of miles, over 100,000.

9 MR. BENOIT: Can you read back -- he said
10 something that I didn't catch when I was writing my
11 notes down as far as value of the -- I think he called
12 it the house and landfill.

13 (Whereupon the requested portion of the record was
14 read back by the Reporter, at page 595, line 19.)

15 Q (By Mr. Benoit) Do you have any liabilities
16 or outstanding debts right now?

17 A I would say mostly the liability would be my
18 wife, and --

19 Q Well -- go ahead.

20 A Paying her hospital bills that I owe. I owe
21 probably like a month.

22 Q Do you have some outstanding bills regarding
23 that now?

24 A Yes, approximately for a month is what I owe.

25 Q Okay.

1 A Plus the lawyers. I don't know what I owe
2 yet on the lawyers. That would be a liability, I
3 guess.

4 Q I guess that's true. Okay. Are there any
5 other -- well, I will strike that.

6 Since -- what has been the primary source of your
7 income since 1979?

8 A The landfill. I mean, not the landfill.
9 Picking up the trash, the trash business.

10 Q Okay. And from 1979 to 1990, can you give me
11 a ballpark figure as far as how much income the
12 landfill would generate per year?

13 MS. MENOTTI: Objection. How is 1979 to 1990
14 relevant?

15 HEARING OFFICER CROWLEY: I will let him answer.

16 THE WITNESS: Well, I would say -- are you
17 counting the landfill plus the picking up the trash?

18 MR. BENOIT: Yes.

19 THE WITNESS: Okay. I would say approximately
20 \$40,000.00 or \$41,000.00.

21 Q (By Mr. Benoit) Are you presently employed?

22 A No.

23 Q Why not?

24 A Well, I have been busy with this -- with the
25 EPA on this issue. And my wife is at Charleston in

1 treatment, and I have been up there.

2 Q Okay. Once this is behind you, do you intend
3 to find employment to generate income?

4 A Yes.

5 Q How much do you expect in income you could
6 generate per year?

7 MS. MENOTTI: Objection. Speculative. Mr. Berger
8 has testified that --

9 HEARING OFFICER CROWLEY: I will sustain it.

10 Q (By Mr. Benoit) What kind of -- given your
11 background, and your employment history, and your age,
12 what kind of job do you think you could find in this
13 area?

14 MS. MENOTTI: Objection. That is still
15 speculative.

16 MR. BENOIT: I think he is -- he is a life-long
17 resident of Richland County. I think he would be
18 familiar with available jobs.

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

21 THE WITNESS: Okay. I would say probably in this
22 area I would find probably about \$6.00, probably from
23 \$5.00 to \$7.00. So I would say probably \$15,000.00 a
24 year.

25 MS. MENOTTI: Objection and move to strike. The

1 dollar amount is unsubstantiated and is speculation
2 unless the Respondent can establish some knowledge as
3 to who would hire him and how much those people would
4 pay.

5 HEARING OFFICER CROWLEY: That is correct. Would
6 you care to develop that information, Mr. Benoit?

7 Q (By Mr. Benoit) What are some of the
8 employers around here where you could possibly gain
9 employment?

10 A Well, I went to Wal-Mart awhile back, and
11 they would pay \$6.00 an hour, but I haven't heard from
12 them. And I think the reason I haven't heard from
13 them is because of my age.

14 MS. MENOTTI: Objection. Move to strike.

15 THE WITNESS: At my age --

16 MS. MENOTTI: It is irrelevant. That was not the
17 question. It is unresponsive. The question was where
18 had he looked in the --

19 HEARING OFFICER CROWLEY: Correct.

20 THE WITNESS: Okay.

21 HEARING OFFICER CROWLEY: We will strike the
22 portion after the hourly wage that is being paid by
23 Wal-Mart.

24 Q (By Mr. Benoit) Is there any other likely
25 employers in Richland County?

1 A Well, there is Brunswick. Their wages are
2 probably \$6.50 an hour. And then there is a Wal-Mart
3 distribution center. They start out at about \$8.50,
4 but you have to handle heavy stuff so, you know, I
5 might not --

6 MS. MENOTTI: Objection. Move to strike. That
7 was not the question. The job --

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

10 Q (By Mr. Benoit) Are there any other
11 employers?

12 A Well, there is really not much in this area.
13 I mean for my qualifications, you know, that's
14 probably about it.

15 Q If you -- do you think it is likely or is
16 that your plan to get a job at one of these places
17 once this matter is resolved?

18 A I would say yes, if I stay in this area, you
19 know. But I don't know, you know, for sure whether I
20 will stay in this area on account of my wife.

21 Q So based on those hourly wages, how much
22 yearly income would you expect to generate per year?

23 MS. MENOTTI: I am going to object to this as
24 speculative.

25 HEARING OFFICER CROWLEY: I will allow him to

1 answer.

2 MS. MENOTTI: It would be dependent upon a certain
3 job.

4 HEARING OFFICER CROWLEY: I will allow him to
5 answer.

6 THE WITNESS: I would say if you was making around
7 \$300.00 a week -- I mean, really if you make \$300.00
8 you wouldn't clear \$300.00. I would say \$15,000.00.

9 Q (By Mr. Benoit) You mentioned I think it was
10 yesterday and then again today that your wife is being
11 treated for alcoholism and --

12 MS. MENOTTI: Objection. Relevance.

13 MR. BENOIT: This is going again to the expense
14 and financial burden and the defense.

15 HEARING OFFICER CROWLEY: I will let you complete
16 the question, and then we will see where it is taking
17 us.

18 Q (By Mr. Benoit) How much is it currently
19 costing you and/or your wife for her treatment?

20 A It costs I would say approximately \$700.00 a
21 month.

22 Q And how long has she been being treated this
23 time?

24 A Let's see. This is going on the third
25 month.

1 Q And you said she is in Charleston. Where is
2 she at exactly?

3 A She is in treatment --

4 MR. GUBKIN: Objection. I don't see the relevance
5 of that. We have already gotten the costs that are
6 related to this.

7 HEARING OFFICER CROWLEY: Agreed.

8 Q (By Mr. Benoit) Have the people in Charleston
9 who are treating your wife given you any idea of how
10 long this treatment will last?

11 A No, they haven't at this time.

12 Q Has your wife been treated for this condition
13 in the past?

14 MR. GUBKIN: Objection. Relevance.

15 HEARING OFFICER CROWLEY: I don't see the
16 relevance of that. You have had him testify
17 previously to his liabilities. I don't see the
18 relevance.

19 MR. BENOIT: Okay. I am going to ask again to go
20 back to that line of questioning. I need to establish
21 that there were previous treatments to --

22 MR. GUBKIN: Objection. I believe that the ruling
23 has already been made.

24 MS. MENOTTI: You have already ruled on it. Mr.
25 Benoit is merely wasting our time.

1 HEARING OFFICER CROWLEY: I am sorry. No.

2 Q (By Mr. Benoit) Do you believe that your wife
3 will incur similar or require similar treatment as to
4 what she is receiving now in the future?

5 MS. MENOTTI: Objection.

6 MR. GUBKIN: Objection. That is vague.

7 MS. MENOTTI: And relevance.

8 HEARING OFFICER CROWLEY: Sustained.

9 Q (By Mr. Benoit) Can you provide me with an
10 estimate of the legal fees and expenses you have
11 incurred as a result of this enforcement action?

12 MS. MENOTTI: Objection. Relevance.

13 HEARING OFFICER CROWLEY: The relevance is?

14 MR. BENOIT: Unreasonable hardship. The same
15 thing to the finances.

16 HEARING OFFICER CROWLEY: I will allow it.

17 THE WITNESS: I would say approximately \$30,000.00
18 to \$35,000.00.

19 MR. BENOIT: Okay. No further questions.

20 MR. GUBKIN: Ms. Hearing Officer, at this time I
21 would suggest that we go to break for lunch. I think
22 that that will give us time to organize and make
23 things go more quickly.

24 HEARING OFFICER CROWLEY: I was going to suggest
25 that we do that. It is approximately 11:20 now and

1 Mr. Berger has been testifying all morning. I would

2 like to start again at 12:20, if that is agreeable

3 with everyone.

4 MR. BENOIT: Fine.

5 MR. GUBKIN: That is fine.

6 HEARING OFFICER CROWLEY: Okay. Thank you.

7 (Whereupon a lunch recess was taken from 11:20 a.m

8 to 12:30 p.m.)

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1 AFTERNOON SESSION

2 (August 21, 1998; 12:30 p.m.)

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

5 The People will cross-examine Mr. Wayne Berger.

6 CROSS EXAMINATION

7 BY MR. GUBKIN:

8 Q Mr. Berger, I am going to try to take these
9 subject by subject so that things will go a little bit
10 more smoothly. I would like to talk first about some
11 of the operational violations that Mr. Benoit was
12 asking you about.

13 You stated that sometimes litter went as far as
14 Mr. Cantrell's house; is that correct?

15 A Yes, at times, you know, it will fly over the
16 fence.

17 Q Okay. Could you tell me what the surface
18 area of cell 88D is?

19 A I would have to --

20 Q I can give you an inspection report, but I
21 don't believe --

22 A -- have some kind of note.

23 Q You said your trenches -- we have talked a
24 little bit about how wide and how deep they are.

25 A I need sort of a map to --

605

1 Q You stated before that you had filled about a
2 quarter acre of 88D; is that correct?

3 A Yeah.

4 Q But you don't know what the full acreage of
5 any one cell is?

6 A No, I don't. I mean, that's just a rough
7 estimate.

8 Q Can you give me a rough estimate of the
9 acreage of 88D?

10 A I would say a quarter, probably a quarter of
11 an acre.

12 Q Okay.

13 A Around that.

14 Q Okay. Thank you. I will show you now
15 State's Exhibit Number 5. It is one of the inspection
16 reports. The only questions I have for you on that --
17 oh, I am sorry. I will give you the marked exhibit
18 and not this copy.

19 HEARING OFFICER CROWLEY: Number 5.

20 MR. GUBKIN: Yes, please. Okay. Here it is.

21 Q (By Mr. Gubkin) You didn't mark that
22 inspection report, did you?

23 A No.

24 Q You are not the inspector for that report,
25 are you?

1 A No.

2 Q You don't know what Sheila Williams was
3 thinking when she was doing that inspection, do you?
4 You don't think for her, do you?

5 A No.

6 Q You can't claim that you know what she
7 actually saw when she was out there, can you?

8 A No.

9 Q So you can't really say that she marked it
10 improperly, can you?

11 A I would say she marked it properly.

12 Q Okay. In that -- when Mr. Benoit was talking
13 to you about that report and you said something about
14 uncovered refuse in a box marked A on the map of the
15 trenches in there, you had said that it was too wet on
16 that date to take care of that.

17 I am going to ask you to flip to the front page of
18 Exhibit Number 5 of that inspection report.

19 A (Witness complied.)

20 Q And tell me, just for the record, what is the
21 date that is listed on that inspection? It should be
22 near the top somewhere.

23 A It has got 06-24-93.

24 Q And below there there is a line on that page
25 that says weather. Do you see where I am talking

1 about?

2 A Let me look here.

3 Q It is right above where it says type of
4 operation, which is in bold?

5 A Yes, I see.

6 Q Okay. Could you read for me what was the
7 weather on that date, how it was recorded?

8 A It has got sunny and 88 degrees.

9 Q Okay. Thank you. Isn't it true, Mr. Berger,
10 that you had stated in your deposition that you had
11 put refuse outside the permitted boundary?

12 MR. BENOIT: I am going to object unless you refer
13 to where you are reading from in the deposition.

14 HEARING OFFICER CROWLEY: Excuse me. You object
15 on --

16 MR. BENOIT: Where is he referring to in the
17 deposition? I guess I object that without knowing
18 where he is referring to, he may be misstating what
19 the deposition says.

20 MR. GUBKIN: Well, I haven't stated --

21 HEARING OFFICER CROWLEY: I will let the witness
22 answer the question.

23 MR. GUBKIN: I am sorry? You said you would let
24 him answer?

25 HEARING OFFICER CROWLEY: Yes.

1 THE WITNESS: Okay. Please repeat.

2 Q (By Mr. Gubkin) Do you remember stating in
3 your deposition that you had put refuse outside the
4 permitted boundary?

5 A Yes, I did, but I went down and --

6 Q Okay.

7 A -- I looked at it later, and I found out
8 different.

9 MR. GUBKIN: I would like to object to everything
10 after --

11 HEARING OFFICER CROWLEY: We will strike that
12 portion, yes.

13 MR. GUBKIN: Thank you.

14 Q (By Mr. Gubkin) You said something about the
15 steps you have taken to close your landfill during
16 your direct testimony. But your landfill is not
17 certified closed, is it, Mr. Berger?

18 A I guess it wouldn't be by the EPA rules.

19 Q You haven't left compacted clay on the
20 landfill, have you?

21 A No.

22 Q You have not done the groundwater monitoring,
23 have you?

24 A No.

25 Q You have not provided financial assurance

1 either, have you?

2 A No.

3 Q You have not submitted revised cost
4 estimates, have you?

5 A No.

6 Q In regards to groundwater monitoring, Mr.
7 Berger, you had others test and send groundwater
8 monitoring reports for you, didn't you?

9 A Yes.

10 Q And you stated during your direct examination
11 that you didn't look at those reports before they were
12 sent; isn't that correct?

13 MR. BENOIT: Objection. I think he is misstating
14 what he stated.

15 MR. GUBKIN: I believe if we read the testimony he
16 had stated that he didn't remember seeing them. He
17 never signed them before they went out.

18 MR. BENOIT: Okay. Go ahead. He might be right.

19 THE WITNESS: No, I didn't. I never seen them.

20 Q (By Mr. Gubkin) Okay. So you never actually
21 yourself did any of the work for groundwater
22 monitoring, did you?

23 A No.

24 Q You never oversaw it to make sure it was
25 being done correctly, did you?

1 A No.

2 Q Okay.

3 A But these people --

4 Q Okay. Now, Mr. Benoit had asked you a
5 question whether the Illinois EPA had done any
6 groundwater monitoring. But it is not their job to do
7 groundwater monitoring at your landfill, is it?

8 A I don't really know. I don't really know
9 after, say, 1993.

10 Q Well, it was still your landfill at that
11 time, wasn't it, Mr. Berger?

12 A Right.

13 Q And according to the permit that you had it
14 required you to do the groundwater monitoring, didn't
15 it?

16 A Right.

17 Q It was your choice to start this landfill
18 business, wasn't it, Mr. Berger?

19 A Right.

20 Q And it was your choice to continue beyond
21 September 18th of 1992, wasn't it?

22 A Yes, I guess.

23 Q It was also your choice to stop taking waste
24 in 1993. I can't remember the exact date, but
25 whenever it was, it was your choice to stop collecting

1 waste to bring in to your landfill, right?

2 A Yes, that was 1993 that I stopped, I

3 believe.

4 Q Okay. Now, in regards to Terra Tech, you

5 said you were considering selling the business to

6 Terra Tech. You also state that you don't know what

7 Mike Johnson with Terra Tech does; is that correct?

8 A Well, I think he is in like to advanced

9 waste.

10 Q But you don't know for sure what kind of

11 business he does?

12 A Well, not for sure.

13 Q But you were going to sell your landfill to

14 him without knowing what he actually did?

15 A Yes, because he wanted to buy it.

16 Q You didn't get the permits changed into the

17 name of Mike Johnson or Terra Tech, did you?

18 A Not yet, but they were working, trying to.

19 Q But you never did get those permits changed

20 over? They are still in your name, aren't they?

21 A As far as I know.

22 Q I would like to show you Exhibit R21. That's

23 the attachment two, the notice form for existing

24 landfills required to notify by March 18th, 1991. On

25 the second page, I would like to you state for the

1 record what the signature is at the bottom of that.

2 Whose signature is that, Mr. Berger?

3 A That has got Wayne Berger.

4 Q And the line under that says, name, title.

5 What does it say there, Mr. Berger?

6 A It says Wayne Berger, owner.

7 Q It doesn't say that the corporation owns the

8 landfill there, does it, Mr. Berger? It says you do,

9 doesn't it?

10 A Yes. I don't see it on there where it has

11 got it.

12 Q Okay. Thank you. You entered into a real

13 estate option agreement with Terra Tech, correct?

14 A Yes.

15 Q I would like to show you that. It is Exhibit

16 R23. Take a moment to look at that if you want to,

17 Mr. Berger.

18 A (Witness complied.)

19 Q It is an option agreement isn't it, Mr.

20 Berger?

21 A That's what it says on here.

22 Q There is no indemnity clause in there, is

23 there, Mr. Berger?

24 A Now, what do you mean by indemnity, please?

25 Q An indemnity clause would be where, in this

1 case, Terra Tech would pay for things if you got in
2 trouble for it, basically. Is that a -- I hope that's
3 a good enough working definition.

4 MR. BENOIT: I am sorry. Can you repeat that
5 definition?

6 MR. GUBKIN: You can define it for him yourself if
7 you want to.

8 MR. BENOIT: It is not my question.

9 Q (By Mr. Gubkin) Basically you don't have any
10 agreement in there that would protect you if the
11 agreement fell through, did you, Mr. Berger? You
12 didn't put that in there?

13 A No, I didn't put it in there, no.

14 Q You signed that option agreement, didn't you,
15 Mr. Berger?

16 A Yes, I signed it.

17 Q You didn't have to, though, did you?

18 A I don't think I had to, but I was wanting to
19 get rid of the business. He was wanting to buy it.

20 Q Well, that's an option agreement, not a
21 contract, correct?

22 MR. BENOIT: Objection. That calls for some type
23 of legal conclusion.

24 MR. GUBKIN: Well, it says on the top it is an
25 option agreement.

1 MR. BENOIT: You said that's an option agreement
2 not a contract.

3 HEARING OFFICER CROWLEY: Sustained.

4 MR. GUBKIN: Okay.

5 Q (By Mr. Gubkin) As an option agreement, Terra
6 Tech didn't have to exercise that agreement, did they?

7 A I don't think they had to.

8 Q They were not required by that --

9 MR. BENOIT: I am going to object. That calls for
10 a legal conclusion, contract interpretation. I don't
11 believe that the witness is qualified to answer it.

12 It would be a legal conclusion whether or not they had
13 the right under the terms of this agreement.

14 MR. GUBKIN: It states on there that it is --

15 MR. BENOIT: As was objected earlier, the document
16 has been admitted. It states what it states.

17 HEARING OFFICER CROWLEY: I sustain that. You may
18 ask him to read a portion of the document if you care
19 to. The document does state what it states.

20 Q (By Mr. Gubkin) Would you look at paragraph
21 one of that option agreement, Mr. Berger?

22 A Yes. (Witness complied.)

23 Q And would you read that first paragraph, the
24 one that is titled consideration of granted option?

25 A It says, owner hereby grants, due to option

1 lien, its successors and assigns its sole and
2 exclusive right an option to purchase the real estate
3 in Richland County, Illinois, described in Exhibits A
4 and B attached hereto.

5 Q Okay. That's fine. You don't have to read
6 beyond there. Thank you. After you had signed this
7 option agreement, it was still your landfill, wasn't
8 it, Mr. Berger?

9 A Yes, it was still mine.

10 Q You were still responsible for it, weren't
11 you?

12 A Yes.

13 MR. GUBKIN: I would like to show you R60,
14 Respondent's Exhibit Number 60.

15 HEARING OFFICER CROWLEY: It was marked as R60 but
16 not admitted.

17 MR. GUBKIN: Excuse me.

18 MR. BENOIT: I am going to object to them using my
19 document that was not admitted into evidence and it
20 was not returned to me.

21 MS. MENOTTI: Can we go off the record for a
22 minute?

23 HEARING OFFICER CROWLEY: Yes.

24 (Discussion off the record.)

25 HEARING OFFICER CROWLEY: Let's go back on the

1 record.

2 Q (By Mr. Gubkin) Let me show you R60. We will
3 look at the second page and the first paragraph.

4 Would you just read what the first sentence is of that
5 first paragraph.

6 A The purpose for the meeting was to informally
7 discuss the possibility of a new siting action with
8 the County Board for the expansion of the Berger
9 facility.

10 Q Now, that doesn't say anything about the sale
11 of -- that the transfer of the landfill to Terra Tech
12 was definite, does it? It says a possibility, doesn't
13 it?

14 MR. BENOIT: Objection. He is mischaracterizing
15 what this says.

16 HEARING OFFICER CROWLEY: It certainly doesn't say
17 anything about Terra Tech.

18 MR. BENOIT: It doesn't say anything like that.

19 MR. GUBKIN: That's true. It doesn't.

20 (The Hearing Officer passed Mr. Berger a
21 document.)

22 MR. GUBKIN: Thank you. I appreciate that. All
23 of that for nothing. Never mind.

24 HEARING OFFICER CROWLEY: Excuse me?

25 MR. GUBKIN: I said all of that for nothing.

1 Q (By Mr. Gubkin) You had stated on your direct
2 that there was no profit when you stopped using your
3 own landfill; is that correct? That you made no
4 profit once you stopped using it?

5 A Yes, it was all liability.

6 Q It was your choice to continue collecting
7 waste and sending it to other landfills, though,
8 wasn't it?

9 A Yes, I was trying to make a living.

10 Q You didn't have to go to the other landfills,
11 did you?

12 A Well, I had to if I wanted to dump the
13 trash.

14 Q On direct Mr. Benoit had you give testimony
15 about how you had informed the Attorney General and
16 the Illinois Environmental Protection Agency of the
17 trust and corporation upon discovery. Do you remember
18 having talked about that?

19 A Yes, this morning, yes.

20 Q You were bound by law, though, to provide
21 information in response to the discovery process,
22 weren't you?

23 A I don't really know. It is beyond me.

24 Q Mr. Benoit had you look at a financial
25 statement, something titled financial statement from

1 1996, talking about your assets. Do you remember

2 looking at that this morning?

3 A Yes.

4 Q Those were your own estimates, though,

5 weren't they?

6 A Yes, that was my own estimate.

7 Q That is nothing --

8 A That is my own estimates to the bank in order

9 to get a loan.

10 Q It was nothing official, though, was it?

11 A What do you mean official?

12 Q Well, you didn't sign it, did you?

13 A I think I did sign that. Usually you have to

14 sign it.

15 Q Mr. Berger, you stated that you have a land

16 trust; is that correct?

17 MR. BENOIT: Objection. He is misstating the

18 witness' testimony. Mr. Berger never said he had a

19 land trust.

20 MR. GUBKIN: I am sorry.

21 Q (By Mr. Gubkin) Mr. Berger, you stated that

22 you had put your assets into a land trust; isn't that

23 correct?

24 A Yes.

25 Q How do you know it is a land trust?

1 A I really don't know. I don't know much about
2 trusts.

3 Q Okay. Mr. Benoit asked you about several
4 different -- what other expenses you may have had.
5 Did you have to hire a law firm to represent you in
6 this proceeding?

7 MR. BENOIT: Objection. Well, go ahead. Strike
8 the objection.

9 THE WITNESS: Repeat it, please.

10 Q (By Mr. Gubkin) Did you have to hire a law
11 firm to represent you in this proceeding?

12 A You mean to get the trust?

13 Q No, no. For here today, did you have to hire
14 a lawyer to be with you today?

15 A Yes, I suppose. I hired one. I suppose I
16 had to hire one.

17 Q Well, you went through an administrative
18 citation before, correct? You had an administrative
19 citation against you?

20 A I suppose I have, yes.

21 Q I believe you testified then that you didn't
22 hire a lawyer to contest that; is that correct?

23 A Could you repeat the question, please.

24 Q I had said that in your testimony earlier
25 today about the administrative citation, you didn't

1 hire a lawyer to represent you in that, did you?

2 A I don't guess.

3 Q Okay. Whether or not to hire a law firm is a
4 business decision, isn't it? It was your decision,
5 correct?

6 A Yes, it was my decision.

7 Q And which firm you hire is your decision,
8 right?

9 A Yes.

10 Q So whether you hire a law firm that charges
11 this amount or that amount is partly based upon your
12 decision, isn't it?

13 A Yes.

14 Q You stated in your testimony earlier today
15 that you had all of your asset transferred around July
16 1st, 1993?

17 MR. BENOIT: Objection. He is misstating the
18 witness' testimony again. The witness never said he
19 had all of his assets transferred in 1993.

20 HEARING OFFICER CROWLEY: That's correct.

21 Q (By Mr. Gubkin) Could you state for me which
22 assets you hold today, Mr. Berger?

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

24 MS. MENOTTI: It has not been asked and answered.

25 HEARING OFFICER CROWLEY: I will allow him to

1 answer it. He was given some latitude in the prior

2 testimony. I will allow the State the same.

3 THE WITNESS: Let's see. I believe \$80,000.00.

4 Q (By Mr. Gubkin) Is that from the IRA?

5 A That's from the IRA, if I remember right.

6 Q Okay. That's the only asset that you now

7 have in your name, is that correct?

8 A Yes. The landfill is a liability.

9 MR. GUBKIN: I would like to have that portion

10 stricken.

11 HEARING OFFICER CROWLEY: Yes, it can be

12 stricken.

13 Q (By Mr. Gubkin) All your other assets have

14 been transferred out of your name; is that correct,

15 Mr. Berger?

16 A Yes.

17 Q You didn't want to have your name attached to

18 those assets; is that correct?

19 MR. BENOIT: I am going to object or just ask him

20 to rephrase it. What does he mean, attached to those

21 assets?

22 MS. MENOTTI: It doesn't matter if Mr. Benoit

23 understands the question. What matters --

24 HEARING OFFICER CROWLEY: I am sorry?

25 MS. MENOTTI: It doesn't matter if Mr. Benoit

1 likes the question. It matters whether or not the

2 witness can answer the question.

3 HEARING OFFICER CROWLEY: The witness shall answer

4 the question.

5 THE WITNESS: Repeat, please.

6 Q (By Mr. Gubkin) I said you didn't want to

7 have your name attached to those assets that you had

8 transferred, did you?

9 A No.

10 Q You still have control of all of those

11 assets, though, don't you?

12 A No, I don't believe I would have control of

13 them.

14 Q Who does have control, Mr. Berger?

15 A Well, my wife would have the control of

16 them.

17 Q Okay. You are still with your wife, correct?

18 A I am not with her exactly, but I am still

19 married to her.

20 Q Mr. Berger, who has control of those assets

21 while your wife is in rehab?

22 A Well, I would say the bank actually has

23 control of them in the trust. Is that right?

24 Q I don't know. I am asking the question.

25 A I think that the bank would have control of

1 the --

2 Q Do you not know who has control?

3 A The Olney Trust Bank. They would have the
4 control. I mean, that's what I think. Like I say,
5 trusts, you know, I am really not -- I don't know that
6 much about a trust.

7 MR. BENOIT: Is this line of questioning relevant
8 to -- I mean, is it adding something to this case? I
9 don't understand where this is going.

10 HEARING OFFICER CROWLEY: Relevance?

11 MR. GUBKIN: Well, I am done with all my questions
12 at this point in time. There was no question pending
13 for him to object to.

14 HEARING OFFICER CROWLEY: Thank you. You are
15 correct. I am sorry.

16 MR. GUBKIN: That's fine.

17 HEARING OFFICER CROWLEY: I lost where we were for
18 a moment there. So --

19 MR. GUBKIN: I am all done with questions.

20 HEARING OFFICER CROWLEY: Okay. Do you have
21 additional questions, Mr. Benoit?

22 REDIRECT EXAMINATION

23 BY MR. BENOIT:

24 Q When did you go out to the landfill to --
25 strike that.

1 Do you know where monitoring well G107 is
2 located?

3 MR. GUBKIN: Objection. I don't remember asking
4 about monitoring well G107 on my cross-examination.
5 Beyond the scope.

6 MR. BENOIT: He tried to impeach the witness based
7 on his statement in the deposition having something to
8 do with admitting in the deposition that he had gone
9 outside the boundary permitted.

10 MS. MENOTTI: That is a mischaracterization of the
11 questions that were asked. He did not ask anything
12 about the deposition. The witness was never shown the
13 deposition transcript. Counsel merely asked whether
14 or not he remembered the testimony that was given
15 during his deposition.

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

18 Do you have another question, Mr. Benoit?

19 MR. BENOIT: I am sorry. The objection is that I
20 mentioned what he allegedly said in his deposition?

21 HEARING OFFICER CROWLEY: The objection that I am
22 sustaining is that it is beyond the scope of the
23 cross-examination.

24 MR. BENOIT: Is it the ruling that the
25 cross-examination did not involve placing --

1 HEARING OFFICER CROWLEY: G107.

2 MR. BENOIT: The cross-examination did not involve
3 the depositing of waste outside the boundaries of the
4 landfill?

5 HEARING OFFICER CROWLEY: The cross-examination
6 did involve depositing waste outside the boundaries of
7 the landfill. It did not relate to the location of
8 monitoring well G107. There were no questions in that
9 area during the cross-examination.

10 Q (By Mr. Benoit) After your deposition, did
11 you go out to the landfill to determine whether or not
12 you had placed waste in unpermitted areas of the
13 landfill?

14 A Yes.

15 MS. MENOTTI: Objection.

16 HEARING OFFICER CROWLEY: I will allow it. Go
17 ahead.

18 Q (By Mr. Benoit) What did you determine?

19 MS. MENOTTI: This witness has not been qualified
20 to --

21 HEARING OFFICER CROWLEY: I will allow it.

22 THE WITNESS: I determined that the waste didn't
23 go beyond the permitted area.

24 Q (By Mr. Benoit) How did you make that
25 determination?

1 A Well, because of the map, and I don't know

2 what the --

3 Q Would you like to reference the inspection

4 report with that map in it?

5 A Yes.

6 MR. BENOIT: I am going to show the witness what

7 has previously been admitted as State's 6.

8 MS. MENOTTI: Objection. This is beyond the

9 scope. We didn't talk about Exhibit Number 6 at all

10 during the cross-examination, not once.

11 MR. BENOIT: I believe it has to do with the

12 subject matter and not whether or not you used the

13 exhibit.

14 MS. MENOTTI: The question on cross-examination

15 was did he remember giving testimony at a deposition

16 about not -- about disposing waste outside the permits

17 of the landfill. That was the question.

18 MR. BENOIT: Right.

19 MS. MENOTTI: As far as I remember.

20 MR. BENOIT: The purpose of the question was to

21 impeach him. Now I am trying to demonstrate --

22 MS. MENOTTI: It was not impeachment.

23 MR. BENOIT: -- why he may have made a statement

24 at one point and now he no longer believes that

25 statement is true.

1 HEARING OFFICER CROWLEY: I will allow the witness

2 to refer to the map. I will allow the question.

3 Please continue.

4 Q (By Mr. Benoit) Again, I think the pending

5 question, before you were asked to look at State's

6 Exhibit Number 2, was how did you determine that you

7 had not placed waste outside the permitted boundaries?

8 HEARING OFFICER CROWLEY: We are referring to

9 People's Exhibit Number 6.

10 THE WITNESS: Because the well on this map is 206

11 feet south of the waterway.

12 Q (By Mr. Benoit) South?

13 A Yes.

14 MS. MENOTTI: Could you please identify which map

15 you are referring to? There is two maps in this

16 exhibit. Is it the one with all the trenches?

17 MR. BENOIT: Yes, he is looking at --

18 MS. MENOTTI: The one that is not to scale.

19 MR. BENOIT: The trench one.

20 HEARING OFFICER CROWLEY: The one that is marked

21 not to scale.

22 MS. MENOTTI: Thank you.

23 MR. GUBKIN: Could we have the answer read back?

24 I didn't quite catch it.

25 (Whereupon the requested portion of the record was

1 read back by the Reporter at page 628, lines 4
2 through 13.)

3 Q (By Mr. Benoit) Can you see where it is
4 indicated on the map you are looking at which
5 direction is north?

6 A Yes, I can tell. It is where that ten is.
7 Yes, this would be north.

8 Q So you can tell what side of the map is
9 north?

10 A Yes, I can tell which side of the map is
11 north. North would be up here on this map
12 (indicating).

13 HEARING OFFICER CROWLEY: For the record, he is
14 pointing to the corner that is the stapled corner.

15 Q (By Mr. Benoit) Where did you determine the
16 monitoring well was actually located?

17 A It is actually located now approximately, oh,
18 probably 100 feet from the tree line.

19 Q Which direction?

20 A Where it is at right now it would be --

21 MS. MENOTTI: Objection. Move to strike. The
22 location of the monitoring well is not what is at
23 issue.

24 HEARING OFFICER CROWLEY: I will let him answer.

25 Q (By Mr. Benoit) Which direction is it

1 actually located from the tree line?

2 A It is north.

3 Q And how many feet north of the tree line is
4 it?

5 A Approximately 206 feet.

6 Q Okay. Who did you hire to conduct
7 groundwater monitoring from 1979 to 1991, if you can
8 recall?

9 A Jack Fagetti (spelled phonetically) was the
10 engineer, so his helper went out and done the -- got
11 the samples and all of that and sent the report in to
12 the State of Illinois.

13 Q And Mr. Fagetti is an engineer?

14 A Yes.

15 Q Okay.

16 A He worked for I think Edmundson Associates
17 out of Flora at the time.

18 Q Okay. I am going to show you what has
19 previously been admitted as R23, the option
20 agreement. Did you draft that option agreement? Did
21 you write it?

22 A No, I never wrote it.

23 Q How much -- what was the amount of the
24 penalty that you had to pay --

25 MR. GUBKIN: Objection. I don't remember any

1 questioning about penalties. It is beyond the scope.

2 MR. BENOIT: He had a question regarding --

3 HEARING OFFICER CROWLEY: It is related to the
4 administrative citation.

5 MR. BENOIT: Right.

6 HEARING OFFICER CROWLEY: Please continue.

7 Q (By Mr. Benoit) Do you recall the
8 administrative citation?

9 A No. What was the date?

10 Q Okay. I don't really know off the top of my
11 head.

12 A There was one in 1988.

13 Q I believe it was --

14 A 1988.

15 Q 1988. Do you recall that administrative
16 citation?

17 A Yes.

18 Q What was the size of the penalty that you
19 ultimately paid?

20 A I believe I had to pay a \$1,000.00 penalty.

21 Q Do you know the size of the penalty that the
22 State of Illinois is seeking in this complaint
23 according to the prayer for relief in the complaint?

24 MS. MENOTTI: Objection. Relevance. Beyond the
25 scope.

1 HEARING OFFICER CROWLEY: Sustained.

2 MR. BENOIT: I am trying to demonstrate why Mr.

3 Berger might need a lawyer in a case like this as

4 opposed to an administrative citation. Mr. Gubkin

5 suggested that is a business decision. I think in any

6 business decision you would look at the size of

7 potential liability before deciding whether to --

8 HEARING OFFICER CROWLEY: I don't think that is

9 relevant.

10 MR. BENOIT: Okay. I am going to show the witness

11 what has been marked as State's Number 5.

12 MS. MENOTTI: Are you finished with State's Number

13 6?

14 MR. BENOIT: Yes. I would like to ask the witness

15 to hold the map with north pointing towards the court

16 reporter.

17 HEARING OFFICER CROWLEY: Which map is that?

18 MR. BENOIT: We are looking at the cell map,

19 People's 5.

20 Q (By Mr. Benoit) On cross-examination when you

21 answered yes to Mr. Gubkin's question as to whether

22 the inspector marked this map correctly, do you know

23 whether --

24 MR. GUBKIN: Objection. I don't believe that that

25 was the question that I asked. I didn't ask whether

1 the map was marked correctly.

2 HEARING OFFICER CROWLEY: Right.

3 MR. BENOIT: Okay. I am sorry. He never asked
4 that question?

5 HEARING OFFICER CROWLEY: He asked whether the
6 report was marked correctly.

7 MR. BENOIT: The report.

8 HEARING OFFICER CROWLEY: That was the question,
9 whether the inspector's report was marked correctly.

10 Q (By Mr. Benoit) Do you understand what Mr.
11 Gubkin asked you, during his cross, as to whether or
12 not the inspection report that we are talking about,
13 State's Number 5, was marked correctly?

14 A (The witness reviewed document.)

15 Q Wayne, they clarified that he was not talking
16 about the map, so I withdraw my direction to have you
17 look at the map.

18 My question is do you understand what Mr. Gubkin
19 asked you when he asked you whether this entire report
20 is marked correctly?

21 MS. MENOTTI: I am going to object. The witness
22 answered the question and --

23 THE WITNESS: I don't believe --

24 MS. MENOTTI: -- Mr. Benoit is doing this because
25 he was not paying attention and does not know what the

1 question was.

2 HEARING OFFICER CROWLEY: The question was asked
3 and answered. I don't believe this is a proper
4 question.

5 MR. BENOIT: Okay. No further questions.

6 RE CROSS EXAMINATION

7 BY MR. GUBKIN:

8 Q Mr. Berger, do you still have in front of you
9 State's Exhibit Number 6? That's the April 18th, 1994
10 report.

11 A Yes.

12 Q If you would turn, once again, to the map
13 with the trenches marked on it?

14 A (Witness complied.)

15 Q That map indicates that it is not to scale,
16 doesn't it?

17 A Yes, I can see where it has not to scale.

18 Q Okay. There is no markings on this map that
19 indicate where there is a waterway, is there?

20 HEARING OFFICER CROWLEY: Where there is a what?

21 MR. GUBKIN: Where there is a waterway.

22 MR. BENOIT: Objection. He is getting beyond the
23 scope. There has never been any discussion in this
24 whole case about a waterway.

25 MR. GUBKIN: No, during your redirect he was

1 referring to this map and he mentioned a waterway.

2 HEARING OFFICER CROWLEY: He did.

3 MR. BENOIT: Okay.

4 Q (By Mr. Gubkin) So I will reask the question,

5 Mr. Berger.

6 A Okay.

7 Q Is there a waterway indicated anywhere on

8 this map? There isn't, is there?

9 A There wouldn't be a waterway where the --

10 actually where the landfill is, no.

11 Q There is no tree line that is marked on this

12 map, is there?

13 A Well, it is not marked, but it looks like it

14 would be right here (indicating).

15 Q Okay.

16 A There is a tree line here. I am just going

17 by this map.

18 Q Now, you indicated on your -- just a few

19 moments ago, you said something about the well, the

20 monitoring well being 206 feet south of the waterway;

21 isn't that correct?

22 A I don't think that -- I didn't mean that. I

23 meant it was 206 feet from the well where it is at

24 now.

25 Q Would you flip forward one page to the other

1 map with the scale on it?

2 A (Witness complied.)

3 Q Do you know if this map was submitted to the

4 Illinois EPA on your behalf?

5 A I guess. It is there.

6 MR. GUBKIN: Thank you. No further questions.

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

8 Berger.

9 MR. GUBKIN: Thank you.

10 (The witness left the stand.)

11 HEARING OFFICER CROWLEY: I would like to go off

12 the record for a little bit and ask Darlene if she

13 will continue searching for the spot in the record

14 where we dealt with Respondent's Exhibit Number 60.

15 (Discussion off the record.)

16 HEARING OFFICER CROWLEY: Back on the record. We

17 have determined that my handwriting is bad and that

18 Respondent's Exhibit Number 60 was, in fact, admitted

19 into the record.

20 I believe that I had not, in fact, ever ruled on

21 Respondent's Exhibit Number 20. That was the letter

22 from Crawford & Whiteside that you had asked me to

23 reserve ruling on.

24 MR. BENOIT: I think the objection was hearsay on

25 Maria's part.

1 MS. MENOTTI: I am sorry. On which one?

2 HEARING OFFICER CROWLEY: Respondent's 20.

3 MR. BENOIT: Respondent's 20.

4 MS. MENOTTI: Right. We objected that it was

5 hearsay. The person that generated it was not subject

6 to cross-examination. It is not a business record.

7 HEARING OFFICER CROWLEY: I will admit it. So

8 Respondent's Exhibit 20 is also part of the record.

9 (Whereupon said document was admitted into

10 evidence as Respondent's Exhibit 20 as of this

11 date.)

12 MS. MENOTTI: Is it being admitted as substantive

13 evidence?

14 HEARING OFFICER CROWLEY: No, it is being admitted

15 for the fact that the letter was sent and received.

16 MS. MENOTTI: Can we clarify that the letter was

17 sent and received as far as that Mr. Berger received a

18 carbon copy, because this was sent to the Illinois EPA

19 and --

20 HEARING OFFICER CROWLEY: Yes, yes.

21 MS. MENOTTI: Oh, okay.

22 HEARING OFFICER CROWLEY: It was cc'd to Mr.

23 Berger.

24 MS. MENOTTI: Okay.

25 HEARING OFFICER CROWLEY: I thought I recalled

1 carbon copy on here, but I just walked over to check.

2 Did you have anything else to present, Mr.

3 Benoit?

4 MR. BENOIT: No, I don't.

5 HEARING OFFICER CROWLEY: Thank you. The parties

6 have --

7 MS. MENOTTI: I have one thing. It is not a

8 rebuttal witness, but before the State closes its

9 record, so the Hearing Officer and the Board are

10 aware, we will be filing affidavits regarding

11 attorney's fees in accordance with the Environmental

12 Protection Act, and we seek leave to request witness

13 fees for Mr. Kains having to drive down and appear at

14 the hearing on behalf of the Respondents.

15 MR. BENOIT: Are these going to be written

16 motions?

17 MS. MENOTTI: The attorney's fees affidavit are

18 submitted to the Board to supplement the record. The

19 request for witness fees, I don't -- during our

20 pretrial conversations the Hearing Officer indicated

21 that she wanted to see the authority for that, so I

22 suppose I have to do a motion for the Hearing Officer.

23 HEARING OFFICER CROWLEY: I would prefer a written

24 motion.

25 MS. MENOTTI: That is fine.

1 MR. BENOIT: I will respond in writing, too.

2 HEARING OFFICER CROWLEY: Fine.

3 MS. MENOTTI: Okay. The People have nothing
4 further besides those two issues.

5 HEARING OFFICER CROWLEY: Okay. The parties have
6 waived closing arguments here on the record. They
7 will be including them in their final briefs and
8 statement. We have determined that the schedule,
9 while not entirely agreeable, but the schedule that we
10 will follow, based on the transcript being available
11 no later than September 15th, is that the People's
12 brief will be due October 15th. The Respondent's
13 brief will be due November 5th, and any reply by the
14 State to the People's brief will be due on November
15 20th.

16 Is there anything else from the parties?

17 MS. MENOTTI: Just for the record, Ms. Hearing
18 Officer, I think that we have also waived closing
19 arguments on the record in lieu of the briefing
20 schedule.

21 MR. BENOIT: I think she stated that.

22 HEARING OFFICER CROWLEY: I thought that is what I
23 indicated, but that is fine.

24 MS. MENOTTI: I missed it. I am sorry.

25 HEARING OFFICER CROWLEY: That's fine.

1 MS. MENOTTI: I don't have anything further.
2 HEARING OFFICER CROWLEY: Fine. The only thing
3 that I think that I would like to mention is that the
4 copy of Respondent's 18 that is being submitted to the
5 Board is a copy that does not have the original
6 exhibit sticker on it. That is due to the fact that
7 at some point I seem to have lost track of
8 Respondent's Exhibit 18, so I am accepting a copy in
9 lieu of the original marked exhibit.
10 Thank you all very much. We will adjourn the
11 hearing.

12 MR. BENOIT: Thank you.

13 MS. MENOTTI: Thank you.

14 (Exhibits retained by Hearing
15 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 640 pages comprise a true,
9 complete and correct transcript of the proceedings
10 held on the 21st 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

26

27