

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Complainant,

6 vs. No. PCB 96-111

7 JOHN CHALMERS, INDIVIDUALLY, and

8 d/b/a JOHN CHALMERS HOG FARM,

9 Respondent.

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13 Proceedings held on June 24, 1999 at 9:10 a.m., at

14 the Menard County Courthouse, Petersburg, Illinois, before

15 the Honorable John Knittle, Hearing Officer.

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20 Reported by: Darlene M. Niemeyer, CSR, RPR

CSR License No.: 084-003677

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22 KEEFE REPORTING COMPANY

11 North 44th Street

23 Belleville, IL 62226

(618) 277-0190

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APPEARANCES

STATE OF ILLINOIS, OFFICE OF THE ATTORNEY
GENERAL

BY: Desiree D. Peri
Assistant Counsel
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
On behalf of the People of the State of
Illinois.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: Bobella Glatz
Assistant Counsel
2200 Churchill Road
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA.

LAW OFFICES OF JERRY TICE

BY: Jerry Tice
Attorney at Law
101 E. Douglas
Petersburg, Illinois 62675
On behalf of Respondent.

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1 PROCEEDINGS

2 (June 24, 1999; 9:10 a.m.)

3 HEARING OFFICER KNITTLE: Good morning. I am, as you
4 all know, John Knittle. We are back on the record. It is
5 day three of the hearing in People versus John Chalmers,
6 Individually and doing business as the John Chalmers Hog
7 Farm, PCB Docket Number 96-111. It is June 24th, 1999, at
8 approximately 9:10 a.m.

9 Once again, there are no members of the public here.
10 As we have just discussed, Mr. Tice is going to continue
11 with direct examination of Mr. Chalmers.

12 Mr. Chalmers, I am going to ask that you be sworn in
13 again.

14 Would you swear him in, please.

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

17 HEARING OFFICER KNITTLE: Mr. Tice, it is your
18 witness.

19 MR. TICE: Okay. I would like to mark this first.

20 (Whereupon said documents were duly marked for
21 purposes of identification as Respondent's Exhibits
22 6A and 6B as of this date.)

23 HEARING OFFICER KNITTLE: Okay. Let's go off the
24 record.

1 (Discussion off the record.)

2 HEARING OFFICER KNITTLE: All right. We are back on
3 the record.

4 DIRECT EXAMINATION (cont.)

5 BY MR. TICE:

6 Q. Mr. Chalmers, I want to hand you what has been
7 marked as Respondent's Exhibits 6A and 6B. Would you take
8 a moment to look at those two exhibits.

9 A. (The witness reviewing documents.)

10 Q. Mr. Chalmers, are those documents, which you
11 received from the Illinois Environmental Protection Agency
12 with regard to an inspection and water sample made by Mr.
13 Dale Brockamp on or about December 18th, 1995, at your
14 farm premises in Oakford?

15 A. Yes, they are.

16 Q. Have you maintained those two documents, Exhibits
17 6A and 6B, as a part of your business records since your
18 receipt of the same?

19 A. Yes.

20 Q. Are Exhibits 6A and 6B exact copies of the
21 documents that you received from the IEPA as a result of
22 the test made by Mr. Brockamp on December 18th of 1995?

23 A. Yes, they are.

24 Q. With respect to Exhibit 6B, does that document

1 reflect that Mr. Brockamp found no detectable problems at
2 your premises on that inspection date of December 18th of
3 1995?

4 MS. PERI: I object. I would just ask for some
5 foundation as to Mr. Chalmers' qualifications on analysis
6 of water quality samples.

7 MR. TICE: I am asking what the report says, what the
8 report says right on the face of it.

9 MS. PERI: I think the document speaks for itself.

10 HEARING OFFICER KNITTLE: Sustained.

11 MR. TICE: All right.

12 (Whereupon a document was duly marked for purposes of
13 identification as Respondent's Exhibit 7 as of this
14 date.)

15 Q. (By Mr. Tice) Mr. Chalmers, I hand you what has
16 been marked as Respondent's Exhibit Number 7. I would ask
17 you to take a moment to look at that document?

18 A. (The witness reviewing document.)

19 Q. Mr. Chalmers, is Exhibit 7 some correspondence
20 that you received from the Cooperative Extension Service
21 by Mr. William Campbell, dated June 24th, 1994?

22 A. That's correct.

23 Q. And have you maintained that document as a part of
24 your business records related to the investigations of

1 your farm by the Illinois Environmental Protection Agency?

2 A. Yes.

3 Q. Is the copy of Respondent's Exhibit Number 7 a

4 part of and has it been maintained as a part of your

5 business records since your receipt of the same?

6 A. Yes.

7 Q. Do you maintain business records, Mr. Chalmers, or

8 did you maintain business records that relate to these

9 inspections by the IEPA of your farm from the time they

10 started in May of 1992 through the present time?

11 A. Yes. It is in front of you.

12 Q. What was the purpose that you maintained those

13 business records?

14 A. So we could document everything that occurred, all

15 correspondence from all parties, including my

16 correspondence to various universities, documenting the

17 correspondence that I became aware of that occurred during

18 this time.

19 Q. Okay. Was this for your benefit as well as giving

20 you a means of maintaining records of what occurred during

21 the inspections?

22 A. It became apparent that this was going to be more

23 than we initially anticipated, and I wanted to make sure

24 that we maintained the paper trail.

1 Q. Okay. Now, Mr. Chalmers, is the Respondent's
2 Exhibit Number 7 an exact copy of the letter as you
3 received it from Mr. Campbell directed to you regarding
4 his comments as made on January 24th of 1994?

5 A. Yes. Bill and I met and conversed several times.

6 Q. Does this document reflect that Mr. Dale Brockamp
7 received a copy of this correspondence between Mr.
8 Campbell and yourself?

9 A. Yes.

10 MS. PERI: I am going to go ahead and raise an
11 objection at this point to Respondent's Exhibit 7 as a
12 hearsay document. It was not prepared by Mr. Chalmers.
13 And his having maintained it in his file for several years
14 is not sufficient foundation for the authenticity of this
15 document.

16 HEARING OFFICER KNITTLE: Mr. Tice, I think we can go
17 over this again after you move to admit it. However, I
18 will give you a chance to respond now since there has been
19 an objection raised.

20 MR. TICE: Well, I think the business records are not
21 only what Mr. Chalmers -- consist of not only what Mr.
22 Chalmers may make from his own records, but also what he
23 maintains with what goes on with respect to his business.
24 This inspection was a business matter with respect to the

1 operation of his business, that is an inspection by the
2 IEPA.
3 The fact that he did not actually write the letter I
4 think is not important here. What is important is that he
5 engaged Mr. Campbell with respect to this inspection. Mr.
6 Campbell made some visits with Mr. Chalmers regarding it.
7 Mr. Campbell then wrote a letter both to Mr. Chalmers and
8 to the IEPA, and Mr. Brockamp, the inspector in this case,
9 explaining certain things with regard to Mr. Chalmers'
10 operation.

11 Mr. Chalmers has maintained that as a part of his
12 business records with regard to this inspection. And I
13 believe it is an exception to the hearsay rule because it
14 is, in fact, a part of his business records. I mean,
15 there is no other way to generate business records other
16 than what you accumulate through your correspondence.

17 HEARING OFFICER KNITTLE: Anything else, Ms. Peri?

18 MS. PERI: Yes. I don't think the business record
19 exception was ever intended to go so far as to allow any
20 letter written by a third party to come into evidence when
21 we can't cross-examine that person on whether they
22 prepared this letter immediately after the events that
23 they report on took place. We simply cannot cross on
24 their memory as to how this was prepared.

1 The business record exception was not intended to go
2 that far. It was intended to go to the person that
3 prepared it so that we can test their memory and the
4 manner in which they prepared it and whether it was
5 prepared in a timely way following the events that it
6 characterizes.

7 MR. TICE: Well --

8 HEARING OFFICER KNITTLE: Mr. Tice, let me interrupt.
9 Are you going to offer these up into evidence?

10 MR. TICE: I am.

11 HEARING OFFICER KNITTLE: Can we do that now, as long
12 as we are having a discussion on it?

13 MR. TICE: Sure. Which ones do you want to take?

14 HEARING OFFICER KNITTLE: Well, the only one --

15 MR. TICE: Respondent's Exhibit Number --

16 HEARING OFFICER KNITTLE: The only one we really seem
17 to have a debate on, as far as I can tell, is Exhibit
18 Number 7. Is that correct?

19 MS. PERI: Well, at this point. We have other
20 additional objections. However, I will reserve those for
21 when they come up.

22 HEARING OFFICER KNITTLE: I am going to allow him to
23 testify. Insofar as there is an objection to his
24 testimony supported by any of these exhibits I am going to

1 allow him to testify. So that objection would be
2 overruled, and I would allow him to testify. But I think
3 if we want to handle these exhibits now it might be a good
4 idea.

5 MR. TICE: Let's handle them now.

6 HEARING OFFICER KNITTLE: Let's start with Number 2,
7 which is the first one I have that has not been moved into
8 evidence.

9 MR. TICE: That's correct. I would ask -- actually,
10 I would ask that Exhibits 2, 3, 4, 5, 6A, 6B and 7 be
11 admitted into evidence.

12 HEARING OFFICER KNITTLE: Okay. Ms. Peri, do you
13 have an objection to Exhibit Number 2, which is a
14 conservation improvement table?

15 MS. PERI: Yes. My objections are to 2, 3, 4 and 5.
16 I am looking for Number 3.

17 HEARING OFFICER KNITTLE: Let's take them one at a
18 time.

19 MS. PERI: Which is Number 3? Oh, that is the
20 letter. I have no objection to Exhibit 3. However, my
21 objections to 2, 4 and 5 are the same. So if I may I will
22 combine my objections as to Exhibits 2, 4 and 5.

23 HEARING OFFICER KNITTLE: You can make one argument
24 about all of them.

1 MS. PERI: Thank you. My arguments are twofold.
2 First, as to all of these documents, the first occasion
3 which I believe they have been provided to the State was
4 yesterday before we ended testimony. In the course of
5 conducting discovery the People made a request for any
6 documents identified in response to its interrogatory
7 number 17, which further goes on to say, do you, that is
8 Mr. Chalmers, your attorney, or any person employed by you
9 or your attorney have any possession of knowledge of or
10 existence of any books or other printed material,
11 drawings, charts, maps or diagrams, other documenting
12 material which the respondent intends to rely on as part
13 of its defense in the allegations of the complaint filed
14 herein.

15 As to People's -- pardon me -- Respondent's Exhibit 4
16 and 5, I have an additional argument that these documents
17 are not relevant to the allegations in the complaint.
18 Finances or the lack thereof, if that is the argument, are
19 not a defense to liability. And that finding, I believe,
20 is consistent with prior Pollution Control Board rules.

21 HEARING OFFICER KNITTLE: All right. Let's take
22 Number 2 first, Mr. Tice. Any comments about Number 2?

23 First of all, I am admitting Number 3. Let's get
24 that on the record.

1 (Whereupon said document was admitted into evidence
2 as Respondent's Exhibit 3 as of this date.)
3 HEARING OFFICER KNITTLE: Then let's go back to
4 Number 2.
5 MR. TICE: Number 2, Mr. Knittle, is a compilation
6 of -- a summary of items similar to what have been
7 provided in Exhibit Number 3, which was in the form of a
8 letter to the Environmental Protection Agency by Mr.
9 Chalmers during the course of the investigation.
10 In addition, I am going to be offering a -- it has
11 not been offered yet or been testified to by Mr. Chalmers
12 yet, but a best management practices report, which was
13 prepared at the request of the Attorney General's Office,
14 as a matter of fact, and submitted to the Attorney
15 General's Office some time ago in this proceeding and
16 during the course of the investigation.
17 Exhibit 2 is a compilation of items of expenditures
18 made by Mr. Chalmers of conservation practices to try to
19 improve the environmental impact of his operation. And
20 those expenses are taken basically from the best
21 management practices report that was given. So I believe
22 that they have had adequate notice of these expenditures
23 that Mr. Chalmers has, in fact, expended with respect to
24 his operation and is represented by Exhibit Number 2. It

1 is in a form that is even more simplified than what
2 appears in the best management practices report.

3 HEARING OFFICER KNITTLE: Mr. Tice, let's stick with
4 Number 2. I take it that you are asserting the
5 information contained in this table was previously
6 provided to the Attorney General's Office?

7 MR. TICE: That's correct. It has been.

8 HEARING OFFICER KNITTLE: Ms. Peri, anything else?

9 MS. PERI: Yes. We have no way of knowing whether it
10 matches up, because we have just been provided with this
11 document. If it is the same as the other documents, why
12 weren't they provided. My suspicion is that it is because
13 foundation can't be provided for those documents today at
14 this hearing.

15 MR. TICE: I am not sure what Ms. Peri -- why she
16 would be raising suspicions about the other documents.
17 But, frankly, Respondent's Exhibit Number 2 -- and I don't
18 think there is even any objection raised to it on the
19 basis of anything other than the fact that they have not
20 seen it before. They have seen these figures on numerous
21 occasions as a result of the reports that have been
22 provided by Mr. Chalmers to both the Environmental
23 Protection Agency and the Attorney General's Office.
24 Exhibit Number 2 is a compilation of those that Mr.

1 Chalmers prepared at my request in order for this hearing
2 to simplify what those costs would be.

3 HEARING OFFICER KNITTLE: I am going to admit this
4 document. Ms. Peri, if after comparison to the other
5 documents that Mr. Tice is referring to that he alleges
6 contain the information provided in this table, you find
7 that the information provided in this table is not
8 contained in those documents I then think you would have
9 an argument to be made to the Board. But based on his
10 assertion that they were provided previously, I am going
11 to admit them.

12 (Whereupon said document was admitted into evidence
13 as Respondent's Exhibit 2 as of this date.)

14 HEARING OFFICER KNITTLE: Let's move on to Number 4,
15 Mr. Tice.

16 MR. TICE: Exhibit Number 4 is the balance sheet of
17 Mr. Chalmers'. There was -- there is a requirement on the
18 Pollution Control Board to assess or take -- if they find
19 liability on the part of Mr. Chalmers in this incident or
20 that he has violated the Act in any way to assess -- there
21 is the possibility of an assessment of a civil penalty and
22 other penalties. And there is a criteria as to the extent
23 of which he may have benefited by those -- by his failure
24 to comply with the Environmental Protection Act.

1 Exhibit 4 and Exhibit 5 portray the financial
2 condition of Mr. Chalmers and substantiate what his
3 testimony already has been as to his financial condition,
4 and are offered for the purpose of showing that, in fact,
5 he has not benefited in any way, financially that is, from
6 the alleged lack of compliance with the Environmental
7 Protection Act, as maintained by the People of the State
8 of Illinois. They are going to be arguing that point and
9 assessing any kind of a fine in this case.

10 Secondly, the Environmental Protection Agency and the
11 Attorney General's Office have been provided this
12 information. They requested it in discovery and received
13 all of Mr. Chalmers' income tax returns. I think the last
14 one they have not -- the last return that they may not
15 have received would have been the 1998 return, and I just
16 received that this week before this hearing started. But
17 they had received 1993 through 1997, that is the complete
18 returns.

19 Instead of burdening this record with what are
20 otherwise basically confidential information of those
21 whole returns, which are multiple pages, I chose to
22 present a summary of the relevant gross figures and what
23 they show. That was the basis for Respondent's Exhibit
24 Number 5.

1 Respondent's Exhibit Number 4, which is a balance
2 sheet, is taken directly from Mr. Chalmers' records. Both
3 of these are, as a matter of fact. And the Environmental
4 Protection Agency as well as the Attorney General's Office
5 have requested in discovery and have received complete
6 financial statements of Mr. Chalmers. They requested to
7 go through all of his financial business records related
8 to this hog operation. They did that, and those were
9 numerous financial records that they went through.

10 So they have received this information. They have
11 this information available to them. I believe it is
12 relevant from the standpoint of showing that there has
13 been no financial gain to this operator from any alleged
14 violations of the Act.

15 HEARING OFFICER KNITTLE: Ms. Peri, any further
16 comments?

17 MS. PERI: Yes. As to relevancy, I would simply
18 reiterate that, again, financial resources of a respondent
19 have no bearing on the liability question. If we are
20 going on to the penalty phase and the issue of any
21 economic benefit received by Mr. Chalmers by failing to
22 comply, as we have alleged in our complaint, these
23 documents, 4 and 5, do not in any way, that I can
24 determine at first glance, break down any cost savings or

1 the opposite as they pertain to those violations. They
2 are simply summaries of his net and gross incomes.
3 And as to discovery requests, you know, if -- while I
4 agree that financial documents have been provided to the
5 State pursuant to discovery, even up to the spring of this
6 year, I would question why those documents are not entered
7 into evidence, versus summaries, which beyond the eleventh
8 hour the State is being asked to determine whether they
9 match up with the other documents.

10 HEARING OFFICER KNITTLE: Okay. Mr. Tice, I am going
11 to rule. I am going to admit these two as before, in
12 terms of whether they match up with the other documents.
13 As to the relevancy, I think that they are relevant. Ms.
14 Peri, I don't think this is a bifurcated hearing, where we
15 are here to address both liability and civil penalty, and
16 as far as I recall, one of the factors of civil penalty is
17 the appropriate deterrent, and I think these are relevant
18 to that. So they will be admitted.

19 (Whereupon said documents were admitted into evidence
20 as Respondent's Exhibits 4 and 5 as of this date.)

21 HEARING OFFICER KNITTLE: Okay. We are moving on to
22 6A.

23 MR. TICE: Respondent's 6A and 6B.

24 HEARING OFFICER KNITTLE: Do you want to take them at

1 the same time?

2 MR. TICE: I think they should be.

3 HEARING OFFICER KNITTLE: Let's let Ms. Peri start,
4 because I don't think she has made her --

5 MS. PERI: The State has no objection to those
6 documents.

7 HEARING OFFICER KNITTLE: All right. I have to do
8 some record keeping here. Hold on, please.

9 (Whereupon said documents were admitted into evidence
10 as Respondent's Exhibits 6A and 6B as of this date.)

11 HEARING OFFICER KNITTLE: All right. Which takes us
12 to Respondent's Exhibit Number 7.

13 Ms. Peri, have you made your objections to this?

14 MS. PERI: I have made my objections.

15 HEARING OFFICER KNITTLE: All right. Mr. Tice?

16 MR. TICE: I think that I have argued that. I
17 believe it is part of Mr. Chalmers' business records.

18 HEARING OFFICER KNITTLE: This was the first one that
19 we discussed.

20 MS. PERI: You indicated, Mr. Knittle, that you were
21 going to allow Mr. Chalmers to testify, but I am unclear
22 as to whether you are admitting the document and as to the
23 scope of his testimony.

24 HEARING OFFICER KNITTLE: I have not ruled on whether

1 I am admitting it or not yet, but I am about to.

2 MS. PERI: Okay.

3 HEARING OFFICER KNITTLE: I am going to admit this.

4 I do not think it falls under the business records

5 exception as laid out under the Illinois Civil Code or the

6 Federal Rules of Evidence. However, the Board's

7 evidentiary standards relating to hearsay are less than

8 that to be followed in a circuit court, and I do find this

9 to be a document that is meeting those evidentiary

10 standards.

11 MS. PERI: Is this document then admitted for the

12 truth of the matter asserted within it?

13 HEARING OFFICER KNITTLE: This document is admitted

14 as any other document asserted before the Illinois

15 Pollution Control Board.

16 (Whereupon said document was admitted into evidence

17 as Respondent's Exhibit 7 as of this date.)

18 HEARING OFFICER KNITTLE: Which takes us to --

19 (Discussion off the record when a fax was delivered

20 to Ms. Peri.)

21 HEARING OFFICER KNITTLE: All right. Let's take a

22 couple seconds for you to look at that.

23 Let's go off the record.

24 (Whereupon a short recess was taken.)

1 (Whereupon a document was duly marked for purposes of
2 identification as Respondent's Exhibit 8 as of this
3 date.)

4 HEARING OFFICER KNITTLE: Okay. We are back on the
5 record.

6 All right. Mr. Tice, your witness.

7 Q. (By Mr. Tice) Mr. Chalmers, I have handed you what
8 has been marked as Respondent's Exhibit Number 8. Would
9 you take a look at that for a moment, please?

10 A. (The witness reviewing document.) Yes, I know what
11 this document entails.

12 Q. What is this document, sir?

13 A. This is the best management practices report for
14 the last 30 years on my farm, as requested.

15 Q. Was this report prepared as a result of the
16 request by the Attorney General's Office in this matter?

17 A. Yes, it was.

18 Q. Now, Mr. Chalmers, did you participate in and
19 provide information with respect to this report?

20 A. Yes, these are all my findings.

21 Q. And did you engage Frank & Coles, Incorporated, to
22 assist in the preparation of the report?

23 A. Yes, they put the report in the form that you see
24 today.

1 Q. Okay. Now, with respect to each of the tables
2 that are provided in this report, table one, table two,
3 and table three, can you tell us whether or not you
4 provided the information that is provided in those tables?

5 A. In that table --

6 Q. Which table now?

7 A. Table one.

8 Q. All right.

9 A. These are equip numbers on the left and comes
10 right out of the equip standards from NRCS which
11 correspond to the narrative column in number narrative and
12 their unit cost.

13 Q. When you say narrative, you mean the practice
14 column?

15 A. Well, like, 327 is conservation cover.

16 Q. Okay.

17 A. And the unit cost is \$2.50 an acre.

18 Q. Did you provide the information as to the practice
19 that had been performed by you on your farm?

20 A. If we turn to table two --

21 Q. Mr. Chalmers, with respect to table one did you
22 provide the information that concerns the practice that
23 was provided by you or undertaken by you with respect to
24 your farm?

1 A. No, this is just simply a compilation of the
2 numbers from the equip standards, the narrative, and the
3 unit cost. That comes from their documents, from NRCS
4 documents.

5 Q. All right. Then turning to table two.

6 A. That establishes a foundation for table two.

7 Q. And table two --

8 HEARING OFFICER KNITTLE: Mr. Tice, can I interject?

9 MR. TICE: Yes.

10 HEARING OFFICER KNITTLE: NRCS documents, Mr.
11 Chalmers?

12 MR. TICE: What are the NRCS documents?

13 THE WITNESS: They are the ones that -- they are the
14 federal agency that disperses the equip money.

15 HEARING OFFICER KNITTLE: What does that stand for,
16 NRCS?

17 THE WITNESS: Natural Resource Conservation Service.

18 HEARING OFFICER KNITTLE: All right. Thank you.

19 Please proceed, Mr. Tice.

20 Q. (By Mr. Tice) On table two --

21 A. Table two.

22 Q. -- did you provide the information that appears in
23 table two, Mr. Chalmers?

24 A. Yes.

1 Q. Did that information come from your business
2 records?

3 A. Yes, other than the unit cost.

4 Q. All right.

5 A. The unit cost came from table one.

6 Q. All right. The table two, can you tell us what
7 table two portrays?

8 A. In my dealings with the IEPA over the course of
9 the last several years, we have taken fields and separated
10 those fields into particular cells. That's why they are
11 identified in the left-hand column that way.

12 MS. PERI: I am going to object here. I don't see
13 how this document is relevant to this proceeding.

14 HEARING OFFICER KNITTLE: Mr. Tice?

15 MR. TICE: Mr. Knittle, I believe the document is
16 relevant. It provides the total listing of all of the
17 conservation practices that Mr. Chalmers has undertaken on
18 his farm and the equivalent evaluation of the work that he
19 has done with respect to conservation matters and the
20 environmental matters that impact how he operates his hog
21 operation and his farm. It shows the amount of money he
22 has expended over that 30 year period to try to keep his
23 farm in as top quality a conservation farm as possible.

24 We had -- I had alluded to this exhibit when we were

1 discussing Respondent's Exhibit Number 2, and there was an
2 objection to Respondent's Exhibit Number 2 on the basis
3 that that exhibit had not been provided to the Attorney
4 General's Office prior to today's hearing. And I
5 indicated that it was a more simple compilation or summary
6 of expenditures in a conservation nature made by Mr.
7 Chalmers from the year 1993 through 1997, and those
8 practices would also appear in the overall list of
9 practices, conservation practices made by Mr. Chalmers as
10 reflected by the best management practices report, which
11 was provided to the Attorney General's Office at their
12 request, prepared by Mr. Chalmers and provided to them at
13 their request in this case.

14 So that's the reason I am offering this now, that is
15 Exhibit 8, through Mr. Chalmers.

16 HEARING OFFICER KNITTLE: Anything else, Ms. Peri?

17 MS. PERI: Yes. The State is generally in favor of
18 conservation practice. However, it is not clear from this
19 report how these practices -- nor is it clear through his
20 testimony at this point, how these practices bear on
21 correction of the violations at issue in this case.

22 General conservation practices have no direct bearing on
23 the allegations in the People's complaint.

24 And, secondly, I want to make clear for the record

1 that the State did not request a best management practices
2 report from the respondent. This document was provided to
3 the State in the course of settlement discussions. It was
4 offered for purposes of a supplemental environmental
5 project, and it was subsequently rejected by the State for
6 that purpose. And it was rejected mainly because there is
7 no nexus between the activities set forth in here, in
8 other words, by date, and the manner in which those
9 practices correlate to the violations alleged in the
10 People's complaint.

11 MR. TICE: Mr. Knittle, it was requested by -- this
12 report was requested by the Attorney General's Office.
13 They wanted to know what Mr. Chalmers' conservation
14 practices were. They were not requested by Ms. Peri,
15 because they were requested by her predecessor on this
16 case at the Attorney General's Office.

17 We have no evidence and we have never received any
18 correspondence from the Attorney General's Office that
19 they have rejected this report in any fashion, shape or
20 form. Conservation practices, I think, do have a bearing
21 upon the violations. We have talked about violations here
22 consisting of -- Mr. Brockamp has expressed them or
23 alleged violations of saturated soil, the runoff from
24 pastures as a result of irrigation, etcetera.

1 I think if I am allowed to ask Mr. Chalmers about the
2 impact of these conservation practices upon the alleged
3 nature of the violations, I think that will become
4 relevant.

5 HEARING OFFICER KNITTLE: I am overruling the
6 objection. I think this is relevant, at least to some of
7 the 42H factors in terms of the civil penalties. So I am
8 going to allow this to go in. Whether or not this was
9 requested by the AG or rejected by the AG, I can't make a
10 ruling on that, but is for the Board to consider.

11 Q. (By Mr. Tice) Mr. Chalmers, with respect to
12 table two, now, what does that reflect in the way of
13 conservation practices that have been undertaken at your
14 farm in the last 30 years, in very simple, general terms?

15 A. It just delineates that we have filed a BMP plan
16 under NRCS, which previously was SCS, Soil Conservation
17 Service, guidelines consistently for 30 years.

18 Q. What is BMP?

19 A. Best management practices. That's a consistent --
20 the land grant universities are professing these plans as
21 a means of controlling the things that we are talking
22 about in this hearing today.

23 Q. And by things we are talking about in this
24 hearing, what do you mean?

1 A. Erosion and runoff.

2 Q. Runoff of irrigated water?

3 A. Or surface water from rainfall.

4 Q. All right. What does the report reflect in table

5 two that you have expended over this period of time with

6 respect to these types of conservation practices?

7 A. It just delineates by area what has been done in

8 the area, and also submitted a report by NRCS delineating

9 before and after. When I took over this farm there was 30

10 foot ditches in there. The runoff was horrendous. Those

11 practices that we put forth have eliminated those

12 problems.

13 Q. How much does the report show that you have

14 expended over that period of time in instituting those

15 practices?

16 A. \$204,000.00

17 Q. Now, table three, tell me what table three

18 represents?

19 A. That was in our plans for the future.

20 Q. Okay. Have any of those been done?

21 A. I have to look at the date. There was some land

22 smoothing done in one, and also considerable land

23 smoothing done in seven. As alluded to by I think it was

24 -- no, in the last report from Mr. King, which would be

1 included in Mr. Wells' report in 1998, it alluded to the
2 work that had been done in the area of cell seven to cover
3 up particular pipe and restore that area.

4 Q. Now, the last page is marked tracks one and two
5 and list the best management practices by cell, which is
6 by field, I take it?

7 A. Yes.

8 Q. Do those identify the nature of the conservation
9 practices that you have undertaken by field on your farm?

10 A. That is just simply putting the information from
11 table one specific equip numbers or NRCS numbers and the
12 narrative into the cells.

13 Q. The cells being the field?

14 A. To quantify narratively what happened in table
15 two.

16 Q. Okay. And the cells being the fields; is that
17 right?

18 A. Yes, the breakdown of the fields.

19 Q. Attachment number two is a drawing that was
20 prepared. It is a drawing of what, sir?

21 A. Those are cell locations.

22 Q. What is the picture of, of your farm?

23 A. That's corresponding to People's Exhibit A.

24 Q. Is it a picture of your farm?

1 A. Yes.

2 Q. Does it portray the field numbers or cell numbers

3 on it?

4 A. That is correct.

5 Q. Have you maintained this report as a part of your

6 business records since it was prepared?

7 A. Yes.

8 Q. Okay. Actually, was the picture shown as

9 attachment number two prepared by you, Mr. Chalmers? You

10 have it in your hand. Attachment number two, was that

11 picture prepared by you for the report?

12 A. Yes.

13 MR. TICE: I have no other questions with respect to

14 this exhibit. If you wish to take it up now, Mr. Knittle,

15 that would be fine. I have two other questions I want to

16 ask Mr. Chalmers, and then I am done with him.

17 HEARING OFFICER KNITTLE: Yes, let's move the

18 exhibit, Mr. Tice.

19 MR. TICE: I would ask that Exhibit Number 8 be

20 admitted.

21 HEARING OFFICER KNITTLE: Ms. Peri?

22 MS. PERI: My objection is already on the record.

23 HEARING OFFICER KNITTLE: Okay. Then this is

24 admitted.

1 (Whereupon said document was admitted into evidence
2 as Respondent's Exhibit 8 as of this date.)

3 Q. (By Mr. Tice) Mr. Chalmers, with respect to the
4 Respondent's Exhibit 6A and 6B, which reflects an
5 investigation by Mr. Brockamp on December 18th of 1995,
6 were you present with Mr. Brockamp when he took those
7 samples and made that inspection?

8 A. On December 18th, 1995 I accompanied Mr. Brockamp
9 on his inspection tour.

10 Q. All right. Was that the only time that you were
11 present with Mr. Brockamp when he took samples during an
12 inspection at your farm?

13 A. Yes, this is the only time.

14 Q. Okay. Mr. Chalmers, based on your knowledge of
15 the area that surrounds your farm, do you have any
16 knowledge as to whether or not there is a livestock
17 feedlot located to the west of the Kay Watkins Road and
18 south of the waterway that runs directly west from the
19 dilution pond?

20 MS. PERI: Objection. Leading.

21 HEARING OFFICER KNITTLE: That is sustained. Mr.
22 Tice, you could rephrase that.

23 Q. (By Mr. Tice) What, if any, knowledge do you have,
24 Mr. Chalmers, with respect to the existence of a livestock

1 feedlot west of your farm?

2 MS. PERI: Objection. The same basis.

3 MR. TICE: I am asking what, if any, knowledge he

4 has. If he has some he can say yes, and I can ask him

5 what knowledge he has.

6 HEARING OFFICER KNITTLE: I will allow the question.

7 Q. (By Mr. Tice) Do you have any knowledge?

8 A. Yes, I do.

9 Q. What, if any -- what is that knowledge?

10 A. Directly west and a little south there is a cattle

11 feedlot that drains into the same waterway.

12 Q. Was that livestock operation in existence in 1992?

13 A. Yes, it was.

14 Q. Mr. Chalmers, with respect to the waterway -- or

15 what, if any, waterway is there that exists or drainage

16 area that exists by your house that is depicted on

17 People's Exhibit A as J.C.'s residence?

18 A. Yes, there is a major confluence that impacts the

19 same area west of my farm.

20 Q. Where is --

21 A. May I approach?

22 Q. Yes.

23 (The witness approached the exhibit.)

24 Q. Where does it run from your house?

1 A. Approximately here. It just cuts across my
2 property here (indicating).

3 MR. TICE: I would like the record to show that the
4 witness has -- John, leave Exhibit A down, please.

5 I would like the record to show that the witness is
6 pointing his finger at a location on People's Exhibit A
7 near or very close to the item marked J.C.'s residence,
8 and that his indication runs at a diagonal parallel with
9 the J.C.'s residence from the south boundary of the farm
10 as depicted on that exhibit to the corner of the west
11 boundary of that farm as depicted on that residence.

12 Q. (By Mr. Tice) Now, Mr. Chalmers, where does that
13 drainage way travel after it leaves the west boundary of
14 your farm at the Kay Watkins Road?

15 A. As a point of clarification, my house sits on a
16 plot of land that is 1.6 acres. It is a triangle here
17 that consists of 1.6 acres (indicating).

18 Q. Where? In the very bottom left-hand corner of
19 this exhibit?

20 A. Yes. If you just draw a straight line across here
21 like that (indicating).

22 Q. In the bottom left-hand corner of this exhibit?

23 A. That's correct, yes.

24 Q. Is that where the waterway runs?

1 A. Just east of my home is where the waterway runs.

2 Q. How many feet east?

3 A. Within 20 feet of my line.

4 Q. Of your house?

5 A. Yes.

6 Q. Now, Mr. Chalmers, where does that waterway run

7 after it leaves your property on the west boundary line?

8 Are you looking at People's Exhibit B?

9 A. That is correct.

10 Q. All right. Where does it go?

11 A. On the topo map it shows a large ditch that

12 empties right here on the corner of my property that

13 traverses the road and enters the ditch northwest of my

14 farm approximately, you know, a few hundred yards -- you

15 know, in this area, where the topo map shows this area.

16 It drains right down through there (indicating). I don't

17 know how many feet it is. I have never measured it.

18 MR. TICE: I would like the record to reflect that

19 the witness is showing on the People's Exhibit B, which is

20 a topography map, showing an area to the south of the farm

21 of Mr. Chalmers', designated by an orange square, with

22 orange marked boundaries, and he has noted that this

23 drainage way runs across the very southwest corner of the

24 westerly portion of that farm where the Kay Watkins Road

1 intersects with --

2 Q. (By Mr. Tice) Can you tell me what the other road

3 is that the Kay Watkins Road intersects with, Mr.

4 Chalmers?

5 A. It is all Kay Watkins Road.

6 Q. Where it intersects -- let me ask you this

7 question. Can you show where the Kay Watkins Road is on

8 this topo map?

9 A. The Kay Watkins Road starts here, and it ends

10 approximately a mile past this topo map (indicating).

11 Q. So it is -- the confluence of this waterway

12 running past your house -- where is your house located on

13 the topo map?

14 A. Right in the southwest corner. Virtually none of

15 my land impacts this confluence here (indicating).

16 Q. By the southwest corner you mean the -- what would

17 be the north half of the orange square, is that correct,

18 the southwest corner of that?

19 A. Yes.

20 MR. TICE: I would ask, Mr. Knittle, I think it would

21 be best to make this clear if the witness would be allowed

22 to mark on People's Exhibit B the location of where his

23 residence is located.

24 HEARING OFFICER KNITTLE: Is there an objection to

1 that, Ms. Peri?

2 MS. PERI: There is.

3 HEARING OFFICER KNITTLE: And what is the objection,

4 Ms. Peri?

5 MS. PERI: It is the People's exhibit. If they want

6 to use the original submitted to the Board and make a copy

7 and develop their own map, we are amenable to that.

8 MR. TICE: I would think that the State would be

9 interested in having as fair a presentation of the

10 evidence and exact presentation of the evidence as

11 possible. They have the topo map here. They are the ones

12 that have presented the topo map for the record. We think

13 it should accurately reflect what the witness is trying to

14 testify to.

15 HEARING OFFICER KNITTLE: I am going to sustain the

16 objection. But I will state that I think it is pretty

17 clear that Mr. Chalmers' house is on the northern portion,

18 the southwest corner of that northern portion that is

19 outlined in orange. And to the best of my knowledge, from

20 what he has testified to, there is a ditch running from

21 the southeast to the northwest parallel to his house in

22 that corner.

23 MR. TICE: All right.

24 Q. (By Mr. Tice) Now, Mr. Chalmers, let me ask you

1 one other question. That ditch that you have described,
2 after it crosses the northbound Kay Watkins Road on the
3 west side of your property, can you tell me where it then
4 proceeds to?

5 A. It goes in a northwesterly direction and enters
6 into the waterway west of my property.

7 Q. Okay. Where the samples were taken?

8 A. Here west of location B on Exhibit A (indicating).

9 MR. TICE: All right. I have no other questions of
10 Mr. Chalmers.

11 HEARING OFFICER KNITTLE: All right. Mr. Chalmers,
12 if you will have a seat, you are going to be subject to
13 cross-examination by Ms. Peri.

14 THE WITNESS: Of course.

15 HEARING OFFICER KNITTLE: Ms. Peri, do you have
16 cross-examination?

17 MS. PERI: I do.

18 HEARING OFFICER KNITTLE: You can proceed.

19 CROSS EXAMINATION

20 BY MS. PERI:

21 Q. Mr. Chalmers, have you ever measured the distance
22 from the ditch you just referred to from your home to area
23 B?

24 A. From point -- from my home to B?

1 Q. Yes.

2 A. No. I can tell --

3 Q. Have you --

4 A. -- you what it is.

5 Q. Have you ever measured the distance from the

6 bridge to the point where the confluence you just

7 mentioned reaches area B?

8 A. No. I have no reason to.

9 Q. Okay. Have you ever seen livestock manure on your

10 residential property? And I am specifically referring to

11 what I believe you said was either 1.3 or 1.6 acres?

12 A. No.

13 Q. But the confluence you just mentioned does run

14 across your residential property?

15 A. But it would not drain onto my 1.6 acre lot.

16 Q. Why not?

17 A. The drainage patterns are not that way.

18 Q. Didn't you indicate that it drains in a northerly

19 direction?

20 A. No, I said the ditch runs northwest.

21 Q. Okay. And does --

22 A. My 1.6 acres is higher than the ditch, therefore,

23 it does not run uphill, so there has been no time in the

24 something over 30 years that I have owned that property

1 that water from that ditch has got onto my home lot.

2 Q. So water or any other liquid would not reach the
3 confluence on your property?

4 A. I don't have a confluence on my property.

5 Q. You have indicated that the ditch ran across your
6 property, did you not?

7 A. Yes, but that is not a confluence. A confluence
8 is where two intersecting waterways meet. That is the
9 definition of a confluence.

10 Q. Have you ever seen manure in the ditch on your
11 property? And I am specifically referring to your
12 residential acreage.

13 A. I have testified that that is an impossibility.

14 Q. Okay. How many lagoons are on your property, Mr.
15 Chalmers? And now by property I am referring to all of
16 the property that you own, as reflected in People's
17 Exhibit A?

18 A. The State's definition or my definition?

19 Q. I am asking for your opinion.

20 A. The State has identified lagoon --

21 Q. Mr. Chalmers, I am asking for your opinion.

22 MR. TICE: Your opinion.

23 THE WITNESS: I am answering the question with the
24 exhibition up there. One is identified as a lagoon. And

1 one is, in fact, a holding pond. It has always been
2 designed as a holding pond.
3 Two, three and four are lagoons. Historical testing
4 over time will put the levels of effluent in -- the
5 concentration in one is much higher than the concentration
6 in any of the others. The concentration in four is higher
7 than the concentration in two and three. Two and three
8 have always been treatment pools, as is lagoon four. And
9 by testing over time, it has always put it in that vein.

10 Q. (By Ms. Peri) Historically which of these three
11 structures -- pardon me -- including what is marked as
12 lagoon number four, any of these four structures have you
13 historically irrigated from?

14 A. All of them.

15 Q. Okay. Have you irrigated from one structure more
16 than any other?

17 A. No.

18 Q. You irrigate from lagoons four, one, two and three
19 equally?

20 A. No. Lagoon four has the capacity to -- oh, I
21 would say close to 40 million gallons. The capacity of
22 one, two and three together, without looking at my notes,
23 they don't exceed much over 4 or 5 million gallons. So by
24 comparison, lagoon four, by the simple volume that it will

1 contain, most of the irrigation water would come out of
2 that facility.

3 Q. From lagoon number four?

4 A. Yes.

5 Q. But in the past you have irrigated from lagoon
6 number one; is that right?

7 A. Yes.

8 Q. How many --

9 A. We also irrigated out of our pond.

10 Q. How many swine did you have in 1994?

11 A. Without looking at my records, 10,000 to 12,000.
12 We were in a transition period at that time.

13 Q. How about in 1995?

14 A. Somewhat less than that number.

15 Q. By several thousand?

16 A. Perhaps.

17 Q. Okay.

18 A. I have those records, but I have not reviewed them
19 recently.

20 Q. How about by the end of 1996?

21 A. Zero.

22 Q. Okay. I am going to talk for a moment, Mr.

23 Chalmers, about the alfalfa field. We have previously

24 discussed in this hearing that is located south of the Kay

1 Watkins School Road and south of what is indicated to be

2 four flattened red circles. Do you recall the alfalfa

3 field in that area that we have previously discussed?

4 A. Yes, but it is not in that location.

5 Q. Okay. Would you please approach People's Exhibit

6 A and indicate the location of that field.

7 A. If you take your map and divide it in thirds, it

8 would be on the west one quarter of the middle one-third

9 of that map. Is that sufficient?

10 Q. Would you please approach the map and point to the

11 area that you are mentioning.

12 (The witness approached the exhibit.)

13 A. Obviously, this map is not to scale, and I don't

14 know, but probably closer to this area here (indicating).

15 Q. Is there just one alfalfa field on the left half

16 of this map?

17 A. There was only one alfalfa field in those six

18 cells that were delineated on that particular time frame.

19 There was only one field of alfalfa in cell six.

20 Q. And that field is located on the south side of the

21 Kay Watkins School Road?

22 A. That is correct.

23 Q. Were you ever present during the irrigation of the

24 alfalfa field that we are discussing?

1 MR. TICE: I am going to ask --

2 THE WITNESS: Over what time frame?

3 MR. TICE: I am going to ask if Ms. Peri would

4 identify a time frame.

5 MS. PERI: I asked if he was ever present during the

6 land application of manure on that alfalfa field.

7 HEARING OFFICER KNITTLE: I will overrule and let her

8 ask that question. We can narrow it down.

9 THE WITNESS: Okay. The protocol, as established on

10 my farm for a good number of years, and since precisely

11 ever since we started to irrigate, we apply swine waste in

12 a sequence of events to align with the cropping events

13 that are occurring.

14 Q. (By Ms. Peri) Mr. Chalmers, I am going to

15 interrupt you here and ask you to answer the question.

16 A. I am.

17 Q. I am looking for a yes or no. Were you ever

18 present during the land application of manure onto the

19 alfalfa field?

20 A. You stated that question in a way that can't be

21 answered by yes or no.

22 Q. Why not? Were you present? Did you see land

23 application of the alfalfa field or not?

24 A. You are not allowing me to answer the question.

1 MR. TICE: If you can't answer the question --

2 MS. PERI: Mr. Hearing Officer?

3 HEARING OFFICER KNITTLE: Hold on, Mr. Tice. That is
4 a question that can be answered by a yes or no answer, to
5 the best of my knowledge. Mr. Chalmers, I am directing
6 you to answer yes or no to her question.

7 THE WITNESS: May I respond to that, please?

8 HEARING OFFICER KNITTLE: You can tell me whether or
9 not you are going to answer yes or no.

10 THE WITNESS: Historically, over time I --

11 HEARING OFFICER KNITTLE: Hold on, Mr. Chalmers. Are
12 you going to answer yes or no or not?

13 MR. TICE: Mr. Knittle, if the witness says that he
14 cannot answer yes or no, I think he should be asked to
15 explain why he can't answer yes or no.

16 HEARING OFFICER KNITTLE: Well, first I am trying to
17 ascertain whether he is going to answer yes or no, and he
18 is not answering that question. Then I would actually get
19 to why he thinks he could not answer yes or no. But first
20 we have to -- you have to answer my question first, Mr.
21 Chalmers.

22 THE WITNESS: Mr. Knittle, I am perfectly willing to
23 answer the question, but it has to be a way that is
24 relevant.

1 HEARING OFFICER KNITTLE: Well, that is not for you
2 to determine, sir.

3 THE WITNESS: Or truthful, I should say.

4 HEARING OFFICER KNITTLE: Well, truthful. You are
5 under oath, and you are, of course, obligated to tell the
6 truth. But it my determination of what is relevant here
7 that counts and not yours. So, first of all --

8 THE WITNESS: I didn't mean to --

9 HEARING OFFICER KNITTLE: First of all --

10 THE WITNESS: -- to presume that.

11 HEARING OFFICER KNITTLE: Hold on, sir. Are you
12 going to answer the question yes or no?

13 THE WITNESS: Yes.

14 HEARING OFFICER KNITTLE: Okay.

15 THE WITNESS: I will answer the question.

16 HEARING OFFICER KNITTLE: Well, no, no. Are you
17 going to answer -- to the question that she has asked,
18 will you answer yes or no?

19 THE WITNESS: I will answer yes or no. Hopefully we
20 will be able to add to that question to clarify the
21 matter.

22 HEARING OFFICER KNITTLE: I think even if Ms. Peri
23 didn't ask you question to clarify that matter your
24 attorney, Mr. Tice, will be able to ask you a question on

1 redirect.

2 THE WITNESS: Okay.

3 HEARING OFFICER KNITTLE: Ms. Peri, could you ask
4 your question again, please?

5 MS. PERI: I certainly will.

6 Q. (By Ms. Peri) Mr. Chalmers, were you ever present
7 during the land application of manure to the alfalfa field
8 south of the Kay Watkins School Road?

9 A. Yes.

10 Q. Were other employees of yours ever present during
11 the land application of manure to the alfalfa field?

12 A. Yes.

13 Q. You previously testified, Mr. Chalmers, that there
14 are irrigation risers in what is indicated to be the
15 manure application area on People's Exhibit A; is that
16 correct?

17 A. That's correct.

18 Q. And you also testified that the closest riser to
19 the Kay Watkins School Road is located approximately 125
20 feet south of the fence line located along that road; is
21 that correct?

22 A. That's correct.

23 Q. There are irrigation risers outside of this manure
24 application area, are there not?

1 A. Sure.

2 Q. There are irrigation risers in the alfalfa field
3 that we just spoke of?

4 A. They are in the manure application area.

5 Q. There are, then, irrigation risers in the alfalfa
6 field south of the Kay Watkins Road?

7 MR. TICE: I am going to ask Counsel to indicate
8 which alfalfa field. She is pointing to People's Exhibit
9 A at an area which is west of the manure application area.

10 MS. PERI: I am referring to the alfalfa field
11 located west of what is marked manure application area and
12 located south of the Kay Watkins School Road, and has
13 previously been testified to by Mr. Chalmers as being
14 located in that area.

15 THE WITNESS: If you are --

16 HEARING OFFICER KNITTLE: I think there is only one
17 alfalfa field that Mr. Chalmers has testified to.

18 So if you could answer that question, Mr. Chalmers.

19 THE WITNESS: I sure can. If the alfalfa field, as
20 described in the location where I put it is the question,
21 rather than where the red circles are, the answer is yes.
22 If it is where the red circles are, the answer is no.

23 Q. (By Ms. Peri) How close is the closest irrigation
24 riser to Kay Watkins School Road that is located in the

1 alfalfa field?

2 A. Probably 250 feet. I don't know precisely, but it

3 is further than 125 feet.

4 Q. There are irrigation risers in the alfalfa field

5 that are closer to the Kay Watkins Road than in the manure

6 application area, are there not?

7 A. No.

8 Q. When you land apply manure through irrigation

9 risers, do you consider wind direction and speed?

10 A. Obviously. It is in the protocol.

11 Q. Do you consider saturation rates?

12 A. Obviously. It is in the protocol.

13 Q. Yesterday you testified that the irrigation risers

14 in the manure application area have a trajectory of 105

15 feet, correct?

16 A. When run according to protocol, yes, when two guns

17 are rising. I said the trajectory will be reduced by 17.5

18 percent, which will make it approximately 105 feet.

19 That's what I testified to.

20 Q. Does that consider wind?

21 A. That's why there is a margin of error. We have a

22 50 percent margin of error.

23 Q. Does that margin of error consider all reasonable

24 wind gusts?

1 A. Not tornadic winds, which are in excess of 200
2 miles an hour.

3 Q. Do you sometimes get a southerly wind across your
4 property?

5 A. Yes.

6 Q. Do you consider that wind when you are applying
7 manure in the manure application area?

8 A. Yes.

9 Q. When you have a wind running in a southerly
10 direction across the manure application area and you are
11 running an irrigation riser at that time, it can blow more
12 than 105 feet, can't it?

13 A. No, not very much. Maybe an additional ten feet.

14 Q. Have you made measurements to that extent?

15 A. Yes. When you run an irrigation trajectory, it
16 will delineate -- you can do this -- now they have
17 computers to do this. Each time you design an irrigation
18 system, which I have done numerous times, when you know
19 the parameters involved, in other words, the velocity and
20 the gallons per minute, and the size, and the type of gun,
21 you know precisely the trajectory that will occur.

22 When the trajectory comes up, it reads as a maximum
23 point and from that max point it loses velocity and lowers
24 rather quickly to the ground. So for wind to affect it,

1 you know, at the max point of trajectory is the point
2 where wind would affect it the most greatly. At that
3 point, we are talking about 100 percent factor of -- what
4 do I want to say -- safety factor at that point from wind
5 velocity. For the wind velocity to take material at the
6 max trajectory point to the road, would be virtually an
7 impossibility.

8 Q. You are saying it is an impossibility for an
9 irrigation riser located 125 feet south of the Kay Watkins
10 School Road with the right southerly wind to blow manure
11 to the road?

12 A. No. What I said was if protocol is followed and
13 the wind is less than 100 miles an hour the physical
14 characteristics of the design components would say that
15 scenario is virtually impossible.

16 Q. But if protocol is not followed, it is a
17 possibility that an irrigation riser spewing material
18 could exceed 105 feet and reach the Kay Watkins School
19 Road?

20 A. Okay. Let's go to the scenario --

21 Q. Mr. Chalmers, I am looking for a yes or no. Is it
22 possible that the irrigation riser with the right wind
23 could spray material onto the Kay Watkins School Road if
24 protocol is not followed?

1 A. Define what you mean by material.

2 Q. Manure.

3 A. You have not defined the characteristics of the

4 water at that point in time and the physical properties of

5 what is occurring at that moment in time. Define that.

6 Q. Mr. Chalmers, at any time that you would be

7 irrigating manure, having any composition of water versus

8 manure, from those irrigation risers in the manure

9 application area, and protocol is not followed, it is

10 possible that the spray could reach the road, is it not?

11 A. No.

12 Q. Why not?

13 A. Water droplets don't move. Now, when water --

14 Q. Pardon me.

15 A. -- condenses into the atmosphere --

16 Q. Pardon me.

17 MR. TICE: Let the witness finish.

18 THE WITNESS: When water condenses into vapor, at

19 that point in time it may be possible.

20 Q. (By Ms. Peri) When water condenses into vapor?

21 A. Yes. You know, we go from different states of

22 water. It can be frozen. It can be in liquid form. And

23 as it mixes with air it vaporizes into the atmosphere.

24 Today outside there is water vapor in the air. It is

1 virtually 100 percent. That is not water, but that is
2 water vapor. There is water in the air. It is virtually
3 saturated.

4 Q. Mr. Chalmers, are you a hydrologist?

5 A. I am not a hydrologist.

6 Q. Are you a meteorologist?

7 A. No.

8 Q. Have you been out on the manure application area
9 on every day that you use the irrigation risers?

10 A. No.

11 Q. I am going to move then to the May 6th, 1993 visit
12 made by Mr. Brockamp to your property. I am going to
13 refer, then, to his visit that pertained to an inspection
14 of the Kay Watkins School Road in the area that Mr.
15 Brockamp indicated by flattened red circles.

16 Yesterday, Mr. Chalmers, you testified that you met
17 with Mr. Brockamp on that date. Is that a true
18 characterization of your testimony?

19 A. If that's what I said, I would --

20 Q. Is that what you said?

21 A. Yes, I probably did.

22 Q. So you recall visiting with Mr. Brockamp at the
23 Kay Watkins School Road on that date?

24 A. I am assuming that I did, yes.

1 Q. Well, you testified that you did, did you not?

2 A. Yes.

3 Q. Okay. And Mr. Tice showed you what is marked as

4 People's Exhibit D?

5 A. That's correct.

6 Q. From that May 6, 1993 inspection?

7 A. Yes.

8 Q. You indicated through your testimony that you

9 recall standing on the road on that date with Mr.

10 Brockamp?

11 A. Yes.

12 Q. And you testified that you stood on the road with

13 Mr. Brockamp and looked out in the field at what is marked

14 as photo number one on Exhibit D?

15 A. That's correct.

16 Q. Are you certain that you were there with Mr.

17 Brockamp on May 6, 1993?

18 A. Yes.

19 Q. Do you take notes after all of your visits with

20 the Illinois EPA inspectors?

21 A. At that point, yes.

22 Q. On May 6th, 1993, you took notes following that

23 inspection?

24 A. Mental notes, yes.

1 Q. Mental notes.

2 A. Yes. I am blessed with a prodigious memory.

3 Q. I am going to move on then to June 15th, 1993.

4 You testified yesterday that you did not meet with Mr.

5 Brockamp at what is marked as area C on People's Exhibit A

6 on that date; is that correct?

7 A. That's true.

8 Q. Okay. But you did indicate that you went to area

9 C on that date?

10 A. Yes.

11 Q. Why did you go there?

12 A. The man in charge of irrigation paid attention to

13 my meetings. In our meetings -- we knew that Mr. Brockamp

14 was taking tests without our knowledge and inspecting our

15 premise without our knowledge. So my employees were on

16 notice that when they noticed somebody that they did not

17 know doing something on our premises, to inform their

18 immediate supervisor who, in turn, would meet with me and

19 alert me to what was happening.

20 Q. So you learned that an Illinois EPA inspector was

21 on your property and you went to the area that you thought

22 he inspected?

23 A. No, I went to the area I knew he was inspecting.

24 Q. How do you know he was inspecting there?

1 A. I was told that by an employee.

2 Q. So it was based on comments made by an employee?

3 A. Further corroborated by pictures and reports.

4 Q. So you went out to this area C marked on People's

5 Exhibit A on June 15th, 1993?

6 A. Yes.

7 Q. And yesterday you testified that you stood at

8 approximately area C and looked to the north into the

9 grassy waterway, correct?

10 A. No. No, I did not testify to that. I said I

11 physically measured in that waterway with a measuring tape

12 to identify the diffusion point of the effluent, the

13 alleged effluent underneath the road.

14 Q. But you had to stand in the road and look out into

15 it before you walked down into it, did you not?

16 A. No.

17 Q. How did you get there? How did you make a

18 measurement?

19 A. Either on a motorcycle, a horse or a four-wheeler.

20 Q. Okay. So you did go down into the grassy

21 waterway?

22 A. I couldn't have measured without being in the

23 waterway.

24 Q. So you went along the road to the east on Kay

1 Watkins, and then you drove down with your four-wheeler

2 into the grassy waterway?

3 A. I have no knowledge of how I got to that

4 particular area at this date.

5 Q. You don't remember how you got into that area?

6 A. No.

7 Q. But you remember how far you measured out into the

8 grassy waterway?

9 A. Oh, yes. Mode of transportation to a particular

10 area has no bearing on the fact that I measured because,

11 obviously, we were under scrutiny. I wanted to make sure

12 that --

13 Q. Mr. Chalmers, how would you measure it, with a

14 measuring tape?

15 A. Yes.

16 Q. Wouldn't you have to get out and walk that out

17 with the measuring tape?

18 A. Sure.

19 Q. So you walked out in the grassy waterway?

20 A. Yes. I testified to that.

21 Q. And you testified you went out about 18 feet?

22 A. No, I went out much further than that. What I

23 testified to is from the egress of material from the

24 culvert to the diffusion point, I measured that and found

1 it to be 18 feet. I traversed, you know, another couple
2 hundred yards of the waterway to make sure that there was
3 no evidence of any disbursement of liquid from my
4 operation at any subsequent time, and I found there to be
5 none.

6 Q. So you followed the stream from the culvert on the
7 north side of the Kay Watkins School Road and measured out
8 18 feet into the grassy waterway?

9 A. No. I didn't measure the stream. There is no
10 stream there. There is a grass waterway there.

11 Q. I am sorry. The 18 feet, then, is the distance
12 from the culvert to --

13 A. The diffusion point.

14 Q. What is the diffusion point?

15 A. That's the point when a liquid ceases to run and
16 disburses into the soil. That's the definition.

17 Q. Was there liquid there that was diffusing?

18 A. I have already testified to that.

19 Q. What was the liquid?

20 A. It was effluent from my farm.

21 Q. Was it in part manure?

22 A. I do not know the dilution concentration of that
23 particular sample because I did not take it.

24 Q. I am not asking you for the dilution factor. I am

1 asking you whether it was in part manure, based on your
2 experience of 30 years in the hog farming business?

3 A. From every indication -- I don't know what your
4 definition of manure is. There was no question that there
5 was irrigation water that had some component of sediment
6 in the material at that point in time, yes.

7 Q. There had been irrigation risers operating in the
8 manure application area on that date, had there not?

9 A. Yes.

10 Q. And what were they spraying onto the fields?

11 A. One of three things. Well, really one of four
12 things. It could have been fresh water from the pond. It
13 could have been material from lagoon one or the holding
14 pond one. Or it could have been one of two blends from
15 the other things therein. We have blending valves in our
16 system that can change the concentration of effluent. We
17 can go anywhere from fresh water to 100 percent holding
18 pond water or two steps in between utilizing holding
19 valves.

20 Q. Well, it is interesting to know what you could
21 have done. But I am asking you what you actually
22 irrigated with on June 15th, 1993, when those risers were
23 operating. There was manure coming out of them, wasn't
24 there?

1 A. Without testing the material I have no way of
2 knowing the concentration of the effluent. As I have
3 testified, the material in question had very little odor.
4 It did have some sediment in it. It could have been from
5 any of the particular concentrations that I talked about
6 previously.

7 Q. But in part the risers were shooting manure, were
8 they not?

9 A. They were shooting one of those four components.
10 Do I know which ones precisely from which riser at that
11 particular time on that particular day, no, I do not.

12 Q. Is that because you don't make decisions about
13 what is sprayed out of the irrigation risers?

14 A. For me to sit here and tell you that I have
15 absolute control over every moment of every employee and
16 control all their actions at all times, the answer to that
17 is no.

18 Q. So you really don't remember what was sprayed on
19 the manure application area on June 15th, 1993?

20 A. I have testified that I could not precisely tell
21 you that number.

22 Q. Yesterday, though, you did testify that when you
23 were up in area C, or on that date, June 15th, 1993, you
24 did recognize a problem with manure leaving irrigation

1 guns and going too long in one place?
2 A. What I testified to was the fact that some
3 effluent of whatever concentration -- of unknown
4 concentration traversed 18 feet into a neighbor's
5 waterway. And that was inconsistent with my protocol, so
6 I brought it to the attention of the people that were
7 involved and got that changed. And, subsequently, from
8 that day forward there has never been a time, nor previous
9 to that time, has there ever been any testimony to
10 document that that ever happened.

11 Q. So you don't remember testifying just yesterday
12 that the irrigation guns were going too long in the manure
13 application area in one place?

14 A. Of course I did. I just testified to that again.

15 Q. Are there steep slopes in the manure application
16 area?

17 A. Are there what?

18 Q. Steep slopes?

19 A. There are slopes anywhere from zero to 12 percent.

20 Q. When you land apply manure in any concentration,
21 and I will use your term effluent, it will rundown these
22 slopes if you apply too much in one place, won't it?

23 A. Obviously.

24 Q. Okay. It will rundown hill to the north, won't

1 it?

2 A. No.

3 Q. Where will it go?

4 A. It will go to the lowest point in the field.

5 Q. Where is that?

6 A. You are pointing to location C, but you -- but the

7 question you asked is where does the effluent travel in a

8 particular field, and the water will --

9 Q. I am asking you --

10 A. -- travel in the direction from a high point to

11 the low point, and that depends on where the field is.

12 Q. Okay. Mr. Chalmers, in this entire manure

13 application area there are slopes, are there not?

14 A. That is correct.

15 Q. Okay. When you land apply on these slopes and

16 apply to the point that liquid is standing on those

17 slopes, where is it going to go?

18 A. Liquid can't stand on a slope. That is a physical

19 impossibility.

20 Q. Okay. So it is going to go downhill, isn't it?

21 A. Absolutely.

22 Q. And it is going to go downhill to the north, isn't

23 it?

24 A. No.

1 Q. It is not going to travel north?

2 A. At some point in time it will travel north.

3 Q. On the slopes that lead to the north --

4 A. No, there is no slopes leading to the north until

5 it reaches the last 30 feet of that particular drainage

6 system.

7 Q. Okay. So there are some slopes that lead to the

8 north and --

9 A. No.

10 Q. -- when liquid runs --

11 A. No, there are no slopes that lead to the north.

12 Q. So no material will drain to the north?

13 A. That is not what you asked.

14 Q. I am asking you now.

15 A. The material will drain to the north, yes.

16 Q. Thank you. You testified yesterday, Mr. Chalmers,

17 that you walked out or rode out from area C into the

18 grassy waterway and measured out about 18 feet. At that

19 point you have referred to what you have called the -- is

20 it a diffusion area; is that correct?

21 A. Yes, I have answered that. Yes, a diffusion

22 point.

23 Q. Do you consider it a best management practice with

24 regard to livestock waste disposal to rely on filtration

1 in sand?

2 A. Sand is one of nature's most perfect filters, and

3 there is a 75 foot filter there. May I --

4 Q. On February --

5 A. -- clarify?

6 Q. -- 9th, 1994, do you recall visiting with the

7 Illinois EPA on that date?

8 A. Yes.

9 Q. Okay. The EPA arranged a visit in advance with

10 you; is that correct?

11 A. Yes, that is correct.

12 Q. On that date when they arrived there was an

13 overflow across the berm of lagoon number one? I will

14 rephrase. Holding pond number one?

15 A. Yes. They said there was about 15 gallons that

16 overflowed.

17 Q. Okay. Actually, there was 15 gallons per minute

18 traveling over the berm, wasn't there?

19 A. No. They testified 15 gallons in total.

20 Q. Mr. Chalmers, I am not asking you to characterize

21 the testimony of other witnesses in this case. I am

22 asking --

23 A. I apologize for that.

24 Q. Was there 15 gallons per minute traveling over the

1 berm from holding pond number one?

2 A. I didn't have a gallon per meter gauge with me. I
3 have no knowledge of how much was traversing that slope
4 going over the road at that point in time.

5 Q. There was not just 15 gallons sitting out on your
6 property, though, was there?

7 A. I am not sure how I can answer that. All I was --
8 all I was doing was parroting what was in the report. I
9 didn't measure it. I didn't measure the gallons per
10 minute. I didn't measure the gallons. All I knew was
11 that it was not going anyplace.

12 Q. Okay. So when you said yesterday that there was
13 10 to 15 gallons, you really didn't know because you
14 didn't take any measurements; is that correct?

15 A. That's correct.

16 Q. Okay. When the EPA left the property there was
17 still a flow over the berm of holding pond number one,
18 correct?

19 A. I don't know that.

20 Q. When did you fix the pump?

21 A. There was nothing wrong with the pump.

22 Q. You have not previously indicated that a pump
23 broke?

24 A. No.

1 Q. Okay. Why did this holding pond number one
2 overflow?

3 A. When you have a ten below zero night, and as --
4 the temperature during the day was somewhere between 10
5 and 20 degrees. I don't know what the temperature was
6 that day. I do know it was a ten degree below zero night.
7 It is impossible to pump under those conditions. Pumps
8 won't work under -- pumps don't work very well in under 20
9 degrees. Somebody had pulled the plug and before we got
10 it stopped a little material ran over that dike, but it
11 was contained within area D.

12 Q. You don't recall if it was still running over the
13 berm when the EPA left the property?

14 A. No, I do not.

15 Q. You didn't consider it to be an important factor
16 during your visit?

17 A. It did not -- there was not sufficient quantity
18 that ever left that particular area to do anymore than
19 disburse after it froze into the sand that was in lot D.
20 There was no chance it was going to traverse the berm and
21 get into what you are calling an intermittent stream.

22 Q. You mentioned that --

23 A. And it was testified that that never occurred that
24 day either. There was no -- there was no testimony given.

1 Q. Mr. Chalmers, again, I will ask you not to --
2 A. Excuse me.
3 Q. -- reiterate or recharacterize any testimony other
4 than your own. You mentioned the berm in what is marked
5 as area D on People's Exhibit A. You said that you
6 constructed a four foot high berm. Is it correct to say
7 that it is running in an east-west direction on the north
8 side of that area D?
9 A. That is correct.
10 Q. This is a sow lot; is that correct?
11 A. Yes.
12 Q. Okay. There are sows that on that date were in
13 the lot?
14 A. You must remember I pointed out D is incorrectly
15 put on that particular map.
16 Q. Okay. Well, let's just generally refer to the sow
17 lot --
18 A. That's fine.
19 Q. -- where you have indicated that you constructed a
20 berm. Do the sows roam freely in that area?
21 A. That's correct.
22 Q. All right. So the berm is not fenced off from the
23 sows?
24 A. No.

1 Q. Okay. Yesterday you testified, I believe a couple
2 of times, that you had problems with the performance of
3 your employees?

4 A. What I testified to is the same thing I said
5 earlier today. No manager in whatever occupation can
6 totally control what every employee does at all moments of
7 time.

8 Q. You are still responsible --

9 A. Everybody makes --

10 Q. -- for their actions, though, aren't you?

11 A. Absolutely.

12 Q. And you indicated in your testimony yesterday that
13 the use of irrigation guns on the property by your
14 employees was sometimes improper?

15 A. Obviously. I testified today point C occurred one
16 time.

17 Q. Do you have any training on how to use irrigation
18 guns?

19 A. Yes, extensive.

20 Q. Do you provide extensive training to your
21 employees?

22 A. Yes.

23 Q. Every one of them?

24 A. Every one that is responsible -- here is how that

1 works, if I may. Jim Short from Central Illinois
2 Irrigation shows staff members that are involved, plus the
3 immediate supervisor, exactly how that equipment should be
4 maintained and utilized. That is put into the protocol
5 book, and that is what we expect our people to do and the
6 supervisors to make sure that that happens.

7 Q. You expect them to read the book?

8 A. They read the book in our presence.

9 Q. Is there any hands-on training?

10 A. Absolutely. Most of the training is hands-on.

11 Q. Is that under your direction?

12 A. No, it is under either Ron Jackson, or in 1992 it
13 would have been under the maintenance foreman, which his
14 name would have been Chris Bishop.

15 Q. Do you know whether in 1992 through 1994 a school
16 bus would travel along the Kay Watkins School Road from
17 the northwest corner of your property towards the east?

18 A. Yes.

19 Q. You have seen the school bus out there on
20 occasion?

21 A. Yes, go both ways.

22 Q. Okay. Did you ever hear of any complaints of
23 manure getting onto that road?

24 A. No.

1 Q. You were never told of any complaints by any of
2 your employees?

3 A. No.

4 Q. When you observed manure on the north side of the
5 Kay Watkins School Road, near area C, did you ever make
6 any inquiries as to whether problems were posed to traffic
7 traveling along that road?

8 A. The effluent in question has not been defined
9 as -- or it has been defined as effluent of unknown
10 concentration. And, no, it does not get on the road. It
11 went underneath the road.

12 Q. So you didn't know of any problems of overspray of
13 any concentration of manure from your irrigation guns onto
14 the Kay Watkins School Road?

15 A. In the 30 years that I have been there I have
16 never had a neighbor complain to me about any of my
17 effluent. In the documentation present that we presented
18 to you was statements from all four neighbors involved.

19 Q. Mr. Chalmers, I will have to stop you there. That
20 is hearsay.

21 A. Yes, it was. Excuse me.

22 Q. But you indicated that you never received any
23 complaints from your neighbors. Did you ever receive any
24 complaints from anyone else about manure?

1 A. No, other than the IEPA. From the IEPA, yes.

2 Q. Yesterday you testified that there had been some
3 problems with livestock waste management on the property.
4 And you indicated that at some point you started to react
5 to those problems, and you would have meetings; is that
6 right?

7 A. I don't believe I said we had livestock waste
8 problems. What I said was I believe that, obviously, we
9 were under scrutiny. When one is under scrutiny, one
10 tightens the reins and makes sure people are aware of what
11 is happening and react to that.

12 Q. Is it the best management practice with respect to
13 livestock waste handling to react to problems rather than
14 to proactively prevent them?

15 A. We have always been proactive.

16 Q. And yet you still had manure running off into the
17 grassy waterway on area C on June 15, 1993, did you?

18 A. We have testified to that numerous times, and we
19 did have effluent of unknown concentration that escaped my
20 premise 18 feet beyond the egress of that said culvert in
21 the disbursement point, yes, we did.

22 Q. Do you have any specific training in the
23 collection of water quality samples?

24 A. I can't remember where and when, but I can

1 remember numerous times in the last 40 years that I have
2 been present at a variety of labs in the midwest. The
3 most frequent would be at Prairie Analytical in
4 Springfield, Illinois.

5 Q. You were present in the lab?

6 A. Yes.

7 Q. But you didn't collect samples?

8 A. Yes. I have collected samples numerous times over
9 the last 30 years.

10 Q. Who trained you to do that?

11 A. It was probably the ag engineering department at
12 the U of I.

13 Q. Were those water quality samples?

14 A. Yes.

15 Q. Okay. Did you ever have any specialized training
16 in the analysis of water quality samples?

17 A. I have 26 hours of chemistry through bio. Yes, I
18 am qualified to do that.

19 Q. Those were general chemistry courses, weren't
20 they?

21 A. No, I had 26 hours of chemistry, biochem at the
22 University of Illinois.

23 Q. Those are general biochemistry courses?

24 A. No, that is -- those are the same courses that a

1 chemistry major would take. I have virtually the same
2 number of hours that a chem major would take in getting a
3 degree in chemistry from the University of Illinois. Yes,
4 ma'am, I am qualified.

5 Q. In your opinion, then, you are qualified to
6 analyze water quality sampling results?

7 A. Have I done the procedures versus am I qualified,
8 no, I do not -- no, I have not taken the test to be a
9 qualified technician in the State of Illinois, no. Have I
10 done it, yes, I have.

11 Q. I am going to go on to what has been entered into
12 evidence, I believe, as Respondent's Exhibit Number 7. It
13 is the best management practices report that you
14 previously discussed with Mr. Tice.

15 In here, Mr. Chalmers, there are a number of what you
16 described as conservation efforts or tasks that you or
17 others have performed on your property. Do you recall
18 that exhibit?

19 A. Yes.

20 Q. As we look at table two, and I can show you
21 another copy if it would refresh your recollection.

22 A. I know table two.

23 Q. Okay. It is titled past best management practices
24 costs. And there are in column a list of what seems to be

1 a repeated list with respect to various cells on the
2 property, and there are several activities which read as
3 follows; dry dams, conservation cover, fencing, grade
4 stabilization structure, grass waterway, underground low
5 pressure irrigation, land smoothing, pasture and haylage
6 management, pasture and haylage planting, and nutrient
7 management.

8 Mr. Chalmers, isn't it true that the items I have
9 just listed and any work performed in relation to those
10 items are made to increase production on a farm?

11 A. Of course.

12 Q. So it increases production and, therefore,
13 increases your profits; isn't that right?

14 A. Those two are not necessarily mutually compatible.

15 Q. But they sometimes are?

16 A. That's correct.

17 Q. And you hope that they are?

18 A. Oh, absolutely.

19 Q. In performing some of these tasks that you have
20 listed, you received some governmental financial
21 assistance, didn't you?

22 A. No. I have never received penny one of financial
23 help from NRCS.

24 Q. Not from any federal organization or agency?

1 A. Never.

2 Q. Not from any state or local agency or

3 organization?

4 A. Never.

5 Q. Aren't you required under federal, state or local

6 laws and regulations to actually perform some of these

7 activities?

8 A. No.

9 Q. No?

10 A. No, I am not -- the law does not say I have to do

11 those things, no.

12 Q. You are not required to perform some of these

13 conservation tasks?

14 A. No. I proactively did them on my own, which in

15 turn met guidelines that the Soil Conservation Service had

16 to minimize erosion. So I was ahead of the game since I

17 bought my land.

18 MS. PERI: No more questions.

19 HEARING OFFICER KNITTLE: Mr. Tice, I think you are

20 going to have some redirect, correct?

21 MR. TICE: Short, yes, very short.

22 HEARING OFFICER KNITTLE: I want to take about a five

23 minute break.

24 (Whereupon a short recess was taken.)

1 HEARING OFFICER KNITTLE: We are back on the record
2 after a short recess.

3 Mr. Tice, you can commence with redirect.

4 REDIRECT EXAMINATION

5 BY MR. TICE:

6 Q. Mr. Chalmers, you were asked a series of questions
7 on cross-examination with respect to the area marked
8 manure application area and the location of C on People's
9 Exhibit A, Mr. Chalmers, and on -- which relate to, I
10 believe, an occasion of June 15th, 1993.

11 With respect to that occasion, Mr. Chalmers, did any
12 of the -- are you aware of any irrigation water,
13 irrigation spray, or effluent from the irrigation going
14 past, that is in the air past the north boundary of that
15 manure application area?

16 A. The water -- the effluent itself never traversed
17 the fence on the north border of the property. As to the
18 water vapor, I can't speak to that. That's a possibility.

19 Q. I am going to show you People's Exhibit E, which
20 consists of four photographs taken by Mr. Brockamp on June
21 15, 1993. I want you to look at photograph number two, if
22 you would, please, at the bottom. It is photograph number
23 two, please.

24 A. (Witness complied.)

1 Q. Mr. Chalmers, which direction is photograph number

2 two looking?

3 A. We are looking to the south.

4 Q. All right. Does that look onto your field, your

5 ground?

6 A. Yes.

7 Q. And does that look into the general area of what

8 is marked as the manure application area on People's

9 Exhibit A?

10 A. That is correct.

11 Q. All right.

12 A. It is showing the trajectory of the irrigation

13 pattern, and it is showing precisely the falloff point and

14 the arc of the circle that that would make as it traverses

15 from the gun to the ground.

16 Q. All right. Does that picture accurately reflect

17 the general slopes of that field in the manure application

18 area?

19 A. Yes.

20 Q. Can you tell by looking at that picture and based

21 upon your knowledge of that ground that you own, can you

22 tell us approximately what the slope is, as depicted by

23 that picture?

24 A. That picture is showing cells one through three.

1 The nearest cell to the north is cell one, which is
2 anywhere from zero slope to a seven percent slope on the
3 top of the center portion of cell one. None of those
4 slopes are to the north. They all slope to the grass
5 waterway that traverses eventually to point C on the map.

6 Q. Now, Mr. Chalmers, there was a reference in the
7 report by Mr. Brockamp about the use of -- I think it was
8 his report of May 11th, 1992, which is People's Exhibit 2,
9 a reference by Mr. Brockamp of the use of the big guns.
10 Do you know what the -- do you have any idea of what he
11 may have been referring to, the characterization of --

12 A. Our irrigation guns are all Reinberg (spelled
13 phonetically) guns. They are all the same size.

14 Q. How do you handle -- are those moveable, the guns
15 themselves?

16 A. The risers are permanent. The guns are moveable.

17 Q. How do you operate the irrigation, then?

18 A. The procedure is as follows. The man that is in
19 charge of irrigation would go out and set two guns, and go
20 back and turn the irrigation on, and would then set the
21 next two guns, and in his movement through various cells
22 would have two on and two off throughout the course of his
23 irrigation time. And each one of those are in our
24 protocol timed to go X minutes.

1 Q. In duration?

2 A. In duration, yes.

3 Q. So the gun -- so this characterization of a gun,
4 then, is a piece of machinery that is placed in the
5 permanent riser so that you can irrigate from that riser;
6 is that correct?

7 A. Yes. The riser is permanent. The gun is
8 moveable.

9 Q. And you don't have enough guns or you don't have
10 as many guns as there are risers, I take it?

11 A. No, there is 64 risers and four guns.

12 Q. Now, how many people live along the Kay Watkins
13 Road from the point where your residence is, and your
14 residence is depicted on People's Exhibit A, around to the
15 north side of your farm and then traversing that road to
16 the east?

17 A. On the north road past my house there is the
18 yellow house that has been alluded to in the reports,
19 which we own -- which I should say my farm owns. And
20 there is one other residence on that road.

21 Q. And that other residence is someone else's?

22 A. Yes.

23 Q. So, in effect, then, there are two other homes on
24 that road that are north and east of your farm?

1 A. And the other farm, which is a hog farm as well.

2 Q. Do you have any idea, besides the traveling of
3 that road by the school bus on two times a day during the
4 school year, how much other traffic there would be, that
5 is vehicular traffic that there would be on the Kay
6 Watkins Road north of your home and traversing east?

7 A. Almost none. The only time that there is much in
8 the way of traffic is at harvest when neighbors are
9 hauling the crops out of the field. There would be more
10 traffic at that point in time.

11 Q. What type of traffic would that be?

12 A. That would be truck traffic.

13 Q. And farm implement traffic?

14 A. Yes, trucks, combines, tractors. This is a road
15 district road.

16 Q. Do the conservation practices that you have
17 undertaken on your farm since you owned it also assist you
18 in handling your waste management from your hog farm?

19 A. Historically the hog operation has provided 90
20 percent of the gross income to my operation. As a point
21 of management, you want to maximize the nutrient input to
22 the soil from the swine operation, at the same time
23 minimizing the environmental impact of effluent to the
24 land and maximize production. Every business tries to

1 maximize the use of its dollars. We, in turn, did that.

2 We also tried to maximize the nutrient utilization of our

3 fields over time.

4 Q. Did the conservation practices that you instituted

5 over the period that you have owned the farm assist you in

6 doing that?

7 A. Yes.

8 Q. Is that the reason why you put those conservation

9 practices into place?

10 A. Yes.

11 Q. Okay. Is that the reason why you expended the

12 amount of dollars that you did for those conservation

13 practices?

14 A. Yes.

15 MR. TICE: I have no other questions for Mr. Chalmers

16 at this time.

17 HEARING OFFICER KNITTLE: Ms. Peri, do you have any

18 re-cross?

19 MS. PERI: Yes, very brief.

20 HEARING OFFICER KNITTLE: All right. Please proceed.

21 MS. PERI: Thank you.

22 RE-CROSS EXAMINATION

23 BY MS. PERI:

24 Q. Mr. Chalmers, let's briefly look again at People's

1 Exhibit E and we will go back into the June 15, 1993
2 incident where you were at area C and you measured the
3 grassy waterway flow.

4 A. Certainly.

5 Q. In looking at photo one of People's Exhibit E, do
6 you see a liquid in that photograph?

7 A. Yes.

8 MR. TICE: Mr. Knittle, I am going to object to this
9 re-cross. It is beyond the scope of my redirect. My
10 redirect was centered on the photograph number two only.

11 HEARING OFFICER KNITTLE: Ms. Peri?

12 MS. PERI: My cross is going to go to slopes, and
13 that was specifically addressed with regard to this
14 exhibit and these fields that we are looking at in this
15 exhibit.

16 HEARING OFFICER KNITTLE: Is this photo number one
17 looking into Mr. Chalmers' field?

18 MS. PERI: Yes.

19 HEARING OFFICER KNITTLE: Okay. The objection is
20 overruled.

21 Q. (By Ms. Peri) Mr. Chalmers, in photo number one we
22 are looking into your field, aren't we?

23 A. Yes, we are.

24 Q. Okay. Is there liquid in that picture?

1 A. Yes, there is.

2 Q. Okay. Does the liquid appear to be flowing, to

3 you?

4 A. Yes.

5 Q. What is the direction of flow?

6 A. It would have to be flowing north.

7 Q. Okay. In photo number two, at the bottom of that

8 exhibit, what are we looking at?

9 A. We are looking at cells one through three.

10 Q. In your opinion --

11 A. With cell one being the closest to --

12 Q. Now, in your opinion, is that picture taken from

13 the Kay Watkins School Road and looking south into your

14 field?

15 A. That is correct.

16 Q. Okay. If you are standing on the Kay Watkins

17 School Road and looking south into your field, are you

18 standing at a position that is lower in elevation than the

19 location of that riser that is spraying at the top of the

20 photograph?

21 A. That is correct.

22 MS. PERI: Okay. Thank you. I have no more

23 questions.

24 HEARING OFFICER KNITTLE: Mr. Tice, do you have any

1 redirect?

2 MR. TICE: No redirect.

3 HEARING OFFICER KNITTLE: All right. Mr. Chalmers,
4 thank you very much. You may step down.

5 THE WITNESS: Thank you.

6 (The witness left the stand.)

7 HEARING OFFICER KNITTLE: Mr. Tice, do you have
8 another witness?

9 MR. TICE: One short witness.

10 HEARING OFFICER KNITTLE: Okay. Let's go off the
11 record.

12 (Whereupon a short recess was taken.)

13 HEARING OFFICER KNITTLE: All right. We are back on
14 the record.

15 Sir, you can have a seat, please.

16 Mr. Tice, can you identify this witness for us,
17 please?

18 MR. TICE: This is Mr. Ronald Jackson.

19 HEARING OFFICER KNITTLE: Thank you. Could you swear
20 the witness in, please.

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

23 HEARING OFFICER KNITTLE: Okay. Mr. Tice, your
24 witness.

1 MR. TICE: Thank you.

2 RONALD C. JACKSON, JR.

3 Having been first duly sworn by the Notary Public, saith

4 as follows:

5 DIRECT EXAMINATION

6 BY MR. TICE:

7 Q. Sir, would you state your name, please.

8 A. Ronald Carl Jackson, Jr.

9 Q. And where do you reside?

10 A. Rural Route 1, Chandlerville, Illinois.

11 Q. What is the nature of your employment at the

12 present time?

13 A. I am production manager of a swine unit.

14 Q. What is the name of the unit?

15 A. Brauer Pork.

16 Q. How long have you been working there?

17 A. Approximately four years in October.

18 Q. Okay. What is the nature of your duties there?

19 A. Training new personnel and overseeing production.

20 Q. Ron, did you used to work for John Chalmers?

21 A. Yes, I did.

22 Q. Did you work between the time of approximately

23 1984 and 1995 for John?

24 A. Yes, I did.

1 Q. Okay. And in what general capacities did you work

2 for John?

3 A. Training new employees, overseeing production and

4 the basic care of the buildings.

5 Q. Okay. Do you have two children?

6 A. Yes.

7 Q. What are their names?

8 A. Brandon and Brittany.

9 Q. While you were working for John Chalmers, can you

10 tell us generally where you resided?

11 A. I lived right directly on the farm. It would be

12 west of the farm home.

13 Q. Did your two children, Brittany and Brandon, go to

14 the PORTA School District?

15 A. Yes, they did.

16 Q. Did they ride the school bus?

17 A. Yes, they did.

18 Q. Do you know who -- were they riding the school bus

19 between the time period of 1991 through 1995?

20 A. Yes.

21 Q. Okay. Where were they picked up by the school

22 bus?

23 A. Pretty close to where John had his house, there at

24 the curve.

1 Q. Okay. Do you know during the time period of 1991

2 to 1995 who their school bus driver was?

3 A. Yes, I do.

4 Q. Who was it?

5 A. Linda Brown.

6 Q. Okay. Now, Ron did you ever receive any kind of

7 notice that there were any difficulties that your children

8 were experiencing on the bus driven by Mrs. Brown?

9 A. First by my kids, yes. They came home very upset.

10 Q. Okay. Did you receive notice of it from any other

11 source other than your children?

12 A. No.

13 Q. Okay. Do you know about what time your children

14 started coming home upset with respect to their school bus

15 experiences?

16 A. Yes, it would have been 1991 or 1992.

17 Q. Okay. How upset were they?

18 A. Well, my daughter would be in tears. She would be

19 pretty upset.

20 Q. How old was she at that time?

21 A. Seven, eight. Maybe seven, I believe.

22 Q. Do you know why she was upset?

23 A. Yes, Linda Brown would make some pretty bad

24 comments about --

1 MS. PERI: Objection. Hearsay.

2 HEARING OFFICER KNITTLE: Mr. Tice?

3 MR. TICE: I think it goes to the state of mind of

4 his daughter at this time, Mr. Knittle. She is a young

5 child of seven or eight years old at that time. I am not

6 offering --

7 MS. PERI: The state of mind --

8 HEARING OFFICER KNITTLE: Pardon?

9 MR. TICE: I am not offering it for the proof of what

10 was said by Mrs. Brown.

11 MS. PERI: Mr. Knittle, the state of mind exception

12 to hearsay would go to the person giving the testimony

13 here today.

14 HEARING OFFICER KNITTLE: Mr. Tice?

15 MR. TICE: No, it goes to the testimony of the person

16 that is involved giving the statements.

17 HEARING OFFICER KNITTLE: The hearsay statements, Mr.

18 Tice?

19 MR. TICE: Yes.

20 HEARING OFFICER KNITTLE: I am going to overrule the

21 objection and let him answer the question.

22 Q. (By Mr. Tice) Do you know what your daughter said

23 to you with regard to the experience she had with Mrs.

24 Brown?

1 A. Yes. Mrs. Brown constantly made comments directly
2 to all of the kids, but mostly toward my kids, on the bus
3 that she couldn't stand the smell of a hog farmer and this
4 and that. And it was pretty upsetting to my kid. It was
5 real upsetting.

6 Q. Did you ever talk to Mrs. Brown about this?

7 A. Yes.

8 Q. Do you recall approximately where it occurred,
9 where that conversation occurred?

10 A. Yes. I drove my kids one morning to the bus stop
11 and talked to her on the school bus.

12 Q. Okay. What did you say to Mrs. Brown?

13 A. Well, I didn't appreciate the language she used in
14 front of my kids, let alone anyone else's kids. And she
15 constantly used filthy language, and I let her know I
16 didn't appreciate that. And she would make comments to my
17 kids about having your dad thrown in jail if he couldn't
18 get the problems, the odor, or whatever, resolved on the
19 hog farm. And I told her I would appreciate it if the
20 comments would stop. That was basically it.

21 Q. What kind of response was made by Mrs. -- what
22 kind of reaction did you have from Mrs. Brown as a result
23 of that conversation?

24 A. First of all, she was shocked that I confronted

1 her, I think. But she was, for the most part, denying the
2 statements, and then she went to admitting and then
3 apologizing.

4 Q. All right. Did you ever have any other
5 confrontations or run-ins with Mrs. Brown after that?

6 A. No.

7 Q. Okay. Now, Mr. Jackson, I want to show you what
8 was marked as People's Exhibit Number 2 in this
9 proceeding?

10 A. Okay.

11 MR. TICE: Well, I will withdraw the question. I
12 have no other questions.

13 HEARING OFFICER KNITTLE: No more questions, Mr.
14 Tice?

15 MR. TICE: No more questions.

16 HEARING OFFICER KNITTLE: Ms. Peri, do you have
17 cross-examination?

18 MS. PERI: Yes, I do. If I could have one moment,
19 please.

20 HEARING OFFICER KNITTLE: Mr. Jackson, you will be
21 subject to some questions by Ms. Peri about the questions
22 that Mr. Tice asked.

23 THE WITNESS: Okay.

24

1 CROSS EXAMINATION

2 BY MS. PERI:

3 Q. Mr. Jackson, you have indicated that you worked
4 for Mr. Chalmers in the period of 1992 to 1994, correct?

5 A. Yes.

6 Q. You were the supervisor --

7 A. Yes.

8 Q. -- for the farm?

9 A. Yes.

10 Q. As the supervisor for the farm, were you
11 responsible for livestock waste management?

12 A. Not initially, no. I was production manager and I
13 overseen that at times during a period where we never had
14 the personnel that normally would be assigned to that
15 project.

16 Q. Did you oversee activities related to the spraying
17 of manure onto crop fields?

18 MR. TICE: I am going to object to this line of
19 questioning. It is beyond the scope of direct, Mr.
20 Knittle.

21 HEARING OFFICER KNITTLE: Ms. Peri?

22 MS. PERI: This goes right to the heart of Mr. Tice's
23 (sic) testimony, which seems to indicate that Mr. Jackson
24 did not know or objected to any complaints of overspray.

1 Mrs. Brown's testimony was direct on the issue of
2 overspray onto the road, and the purpose of the direct
3 examination here today was to undercut Mrs. Brown's
4 testimony.

5 HEARING OFFICER KNITTLE: Mr. Tice, I will let you
6 respond.

7 MR. TICE: The testimony was offered simply as to the
8 credibility of Mrs. Brown and the motivation of Mrs.
9 Brown, and it related solely to the confrontation that
10 this witness had with Mrs. Brown regarding his children
11 and the comments that she had made to his children.

12 Quite frankly, there was never any testimony by Mrs.
13 Brown yesterday about overspray on the road. She just
14 said that there was water or effluent on the road. I
15 don't think -- I think it is beyond the scope of the
16 direct examination that I made of this witness.

17 HEARING OFFICER KNITTLE: I don't want to get into
18 Mrs. Brown's testimony yesterday, but I do think that
19 question is beyond the scope of direct examination, so I
20 am sustaining the objection.

21 MS. PERI: Okay. Would you please read back that
22 question.

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

1 HEARING OFFICER KNITTLE: Ms. Peri, I would allow you
2 to make an offer of proof about what you expect this
3 witness will testify to.

4 MS. PERI: I will proceed in a slightly different
5 way.

6 HEARING OFFICER KNITTLE: All right.

7 Q. (By Ms. Peri) Mr. Jackson, did you receive direct
8 complaints from Ms. Brown?

9 MR. TICE: Again, I am going to object as to the
10 question being beyond the scope of the direct examination.
11 It was strictly about comments of Mrs. Brown to his
12 children and the handling of the difficulties of the
13 children on the bus, and the comments of Mrs. Brown to the
14 children.

15 HEARING OFFICER KNITTLE: I am overruling this
16 objection.

17 Ms. Peri, you may proceed.

18 Q. (By Ms. Peri) Mr. Jackson, will you please answer
19 the question?

20 A. And the question was?

21 MS. PERI: Would you please read back the question
22 for the witness.

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

1 THE WITNESS: Not to me. They were all directed
2 towards my kids.

3 Q. (By Ms. Peri) And what was the nature of those
4 complaints?

5 A. Pretty much that she was complaining of odors on
6 the hog farm and --

7 Q. I am sorry?

8 A. Complaining of odors on the hog farm when she
9 drove out there.

10 Q. She also complained of manure being on the road
11 when she was on the bus, didn't she?

12 A. Not directly to me, no.

13 Q. But through your children?

14 A. Yes.

15 Q. And, in fact, you observed manure on the Kay
16 Watkins School Road that the bus traveled on at one point,
17 didn't you?

18 MR. TICE: Objection. That is beyond the scope of
19 the direct examination.

20 MS. PERI: They have challenged the credibility of
21 Mrs. Brown's testimony. Mr. Jackson can provide testimony
22 on whether her observations were correct.

23 MR. TICE: It challenged the motivation of Mrs.
24 Brown, and now she is going into what he saw on the road,

1 and not what Mrs. Brown saw.

2 HEARING OFFICER KNITTLE: Anything else, Ms. Peri?

3 MS. PERI: Yes, Mr. Knittle. This goes to, as Mr.

4 Tice has raised the credibility issue as to Mrs. Brown, we

5 have to have an opportunity to examine Mr. Jackson on how,

6 in fact, his opinion is different from hers. There is an

7 obvious difference of opinion and a controversy between

8 the two witnesses, and I need an opportunity to develop

9 whether and to what extent the testimony he has provided

10 should be given weight as compared with hers.

11 MR. TICE: This does not have anything to do with

12 opinion. He has testified strictly as to the comments

13 made by Mrs. Brown to him or to his children and back to

14 him at the time of the incidents on the school bus. It

15 does not have anything to do with his opinions or

16 conclusions about the alleged violations in this

17 situation. He was not asked about those.

18 MS. PERI: Mr. Knittle, Mr. Jackson has implied that

19 Ms. Brown's complaints are unsubstantiated.

20 HEARING OFFICER KNITTLE: I don't know if that's

21 necessarily true, but I am willing to overrule the

22 objection on a limited basis and let you proceed. But,

23 Ms. Peri, I will caution you that I will be inclined to

24 grant further objections if this goes very far into his

1 testimony about what he saw or what he did or things like
2 that at the hog farm that do not relate more directly to
3 the complaints in question.

4 MS. PERI: Okay.

5 Q. (By Ms. Peri) Mr. Jackson, you have observed
6 manure on the county road that the bus traveled on on at
7 least one occasion, haven't you?

8 A. Let's say liquid. I can't say it was really truly
9 manure.

10 Q. Where did the liquid come from?

11 A. It would have come from either one of the lagoons
12 or guns in the irrigation process.

13 Q. Okay. Do you generally put manure in what you
14 shoot out of those guns?

15 MR. TICE: I am going to object. She is now getting
16 into the substance of the complaint alleged in this
17 proceeding. It is beyond the scope of direct, Mr.
18 Knittle.

19 HEARING OFFICER KNITTLE: I will sustain that one as
20 beyond the scope of the direct.

21 MS. PERI: All right. I will end there.

22 HEARING OFFICER KNITTLE: Mr. Tice, do you have any
23 further redirect?

24 MR. TICE: I have no redirect.

1 HEARING OFFICER KNITTLE: Mr. Jackson, thank you very

2 much.

3 THE WITNESS: You are welcome.

4 HEARING OFFICER KNITTLE: You can step down.

5 (The witness left the stand.)

6 HEARING OFFICER KNITTLE: Mr. Tice, do you have any

7 other witnesses?

8 MR. TICE: I have no other witnesses.

9 HEARING OFFICER KNITTLE: I take it you are closing

10 your case-in-chief?

11 MR. TICE: Yes.

12 HEARING OFFICER KNITTLE: Ms. Peri, do you have a

13 witness in rebuttal?

14 MS. PERI: Yes. The State would like to recall Dale

15 Brockamp.

16 HEARING OFFICER KNITTLE: Do you need some time, Ms.

17 Peri?

18 MS. PERI: As soon as the witness arrives we will be

19 ready.

20 HEARING OFFICER KNITTLE: All right. We will take

21 five minutes.

22 (Whereupon a short recess was taken.)

23 HEARING OFFICER KNITTLE: Okay. We are back on the

24 record.

1 Mr. Tice has closed the respondent's case-in-chief
2 and Ms. Peri has a rebuttal witness and that is Mr.
3 Brockamp.

4 Mr. Brockamp, I will ask that you be sworn again.
5 (Whereupon the witness was sworn by the Notary
6 Public.)

7 HEARING OFFICER KNITTLE: Okay, Ms. Peri.

8 MS. PERI: Thank you.

9 DALE W. BROCKAMP,
10 having been first duly sworn by the Notary Public, and
11 saith as follows:

12 DIRECT EXAMINATION

13 BY MS. PERI:

14 Q. Mr. Brockamp, do you know of or did you ever
15 observe a waterway that crosses John Chalmers' residential
16 property?

17 A. There is a very small waterway that goes
18 immediately behind his house.

19 Q. What do you mean by behind his house?

20 A. Should I show you?

21 Q. Please approach People's Exhibit A.

22 (The witness approached the exhibit.)

23 A. There is a -- it cuts right behind his backyard by
24 his pool and crosses underneath that road, in that area

1 (indicating).

2 MS. PERI: Let the record show that Mr. Brockamp has
3 used a yellow highlighter to indicate the direction of the
4 waterway he has referred to from across the northeast side
5 of John Chalmers' residential property and crossing the
6 road marked as 400 East.

7 Q. (By Ms. Peri) And, Mr. Brockamp, where does it
8 flow from there?

9 A. It flows in a general northwest direction towards
10 the intermittent stream.

11 Q. Where does it connect with the intermittent
12 stream?

13 A. Somewhere off my map.

14 Q. Where does it reach the stream in reference to
15 where you took your samples to the west of the bridge?

16 A. This small tributary enters this intermittent
17 stream west of where I collected my samples.

18 Q. On each of the occasions that you collected your
19 samples?

20 A. On all of the occasions I collected my samples.

21 Q. All right. Thank you. Mr. Brockamp, you
22 previously testified about your reporting practices?

23 A. Yes.

24 Q. You typically take reports after your inspections?

1 A. Yes.

2 Q. Do you usually take notes before you write up a
3 typewritten report?

4 A. In most instances I do.

5 Q. And with reference to your inspection conducted on
6 May 6th of 1993 at Mr. Chalmers Hog Farm did you make
7 written notes before you drafted your typewritten report
8 marked as People's Exhibit 4?

9 A. I believe I jotted down some stuff on a scratch
10 piece of paper, yes.

11 Q. When after your inspection would you typically
12 make handwritten notes?

13 A. Either the end of that day or if I made the
14 inspection in the morning I might do it over my lunch hour
15 or a break in the afternoon, but usually that day before I
16 go home.

17 Q. Then what do you do with the written notes?

18 A. I save them until I have an opportunity to write a
19 formal inspection report.

20 Q. Again, is this the formal written report you made
21 of the May 6, 1993 inspection?

22 A. Yes, it is.

23 Q. Okay. In your reports do you generally indicate
24 persons that you spoke with at the time of your

1 inspection?

2 A. Yes, I do.

3 Q. Did you make such an indication in your report in
4 this case on the May 6, 1993 inspection report?

5 A. I believe I did.

6 Q. Okay. Do you recall who you indicated that you
7 spoke with during that inspection?

8 A. I spoke with Ron Jackson.

9 Q. Did you speak with any other persons associated
10 with the John Chalmers Hog Farm?

11 A. Not on that date.

12 Q. Did you speak with Mr. Chalmers?

13 A. Not on that date.

14 Q. Did you see Mr. Chalmers?

15 A. Not on that date.

16 MS. PERI: I have no more questions.

17 HEARING OFFICER KNITTLE: Mr. Tice, do you have
18 cross-examination?

19 MR. TICE: Is this the May 6th, 1993 one?

20 MS. PERI: Right.

21 CROSS EXAMINATION

22 BY MR. TICE:

23 Q. Mr. Brockamp, do you still have those handwritten
24 notes that you made as a result of your May 6th of 1993

1 inspection?

2 A. Probably not, no. I know I do not. I don't think
3 they are in the file.

4 Q. What do you do with them after you make those
5 handwritten notes?

6 A. After I complete and sign-off on my formal field
7 investigation they are thrown away.

8 Q. You throw them away?

9 A. Yes, I do.

10 Q. I thought you told me that they may be in the
11 file?

12 A. I generally throw everything away.

13 Q. What did you do with the handwritten notes from
14 the May 6th, 1993 inspection?

15 A. Since I did not locate them in the file, I must
16 assume that I threw them away, as I do most of them.

17 Q. Is this a file that you maintain yourself?

18 A. No.

19 Q. Who maintains that file?

20 A. Well, I guess when I was working for the EPA --
21 the file was a regional office file. Everyone has access
22 to it. What do you mean by maintain?

23 Q. Well, I don't know. I am not there. I don't have
24 access to the file. I didn't have access to the file at

1 the time. I am simply trying to find out how it -- and it
2 was a file that you used in making your inspections at the
3 John Chalmers' farm?

4 A. Yes.

5 Q. I presume you had access to it?

6 A. Yes, yes.

7 Q. Okay. I am trying to find out how you handled
8 that file and what you did with these notes, handwritten
9 notes that you made of your May 6, 1993 inspection. Now,
10 how soon after you made the inspection would you make
11 these handwritten notes?

12 MS. PERI: That has been asked and answered. I will
13 object to that question.

14 MR. TICE: I don't believe I have asked him that.

15 HEARING OFFICER KNITTLE: I will let him answer the
16 question, so overruled.

17 Q. (By Mr. Tice) How soon after you made the
18 inspection on May 6th, 1993, did you make these
19 handwritten notes?

20 A. By the end of the work day.

21 Q. By the end of the work day, what do you mean?

22 A. At that time I got off at 5:00, so I wrote them by
23 5:00 that day.

24 Q. Do you know what time of the day you made the

1 inspection on May 6, 1993?

2 A. Not exactly, without referring to my inspection
3 report.

4 Q. You mean People's Exhibit 4?

5 A. The May 6th inspection report.

6 MR. TICE: Do you have your copy? Could I show him
7 your copy, Ms. Peri?

8 Q. (By Mr. Tice) I show you what has been marked as
9 People's Exhibit 4.

10 A. (The witness reviewing document.) There is nothing
11 in here that indicates. I generally in the first
12 paragraph of my observation -- I have three sections. In
13 the first paragraph I typically say morning or afternoon,
14 but I didn't.

15 Q. But you didn't on this occasion?

16 A. No, I did not on that occasion.

17 Q. Do you have any independent recollection, as you
18 sit here today, with respect to the time of day that you
19 may have made the inspection on May 6th, 1993 of the
20 Chalmers' farm?

21 A. I almost always went there in the morning, but I
22 can't confirm that.

23 Q. Would it be fair to say, then, that there would be
24 a period of two or three or four hours that would

1 transpire between the time you made the actual physical
2 inspection and the time that you made your handwritten
3 notes?

4 A. Yes.

5 Q. And how voluminous would these handwritten notes
6 be?

7 A. One sheet of paper, in general.

8 Q. What size is the sheet of paper?

9 A. Eight and a half by eleven.

10 Q. Would there be three or four notes on that sheet
11 of paper, or would this sheet of paper be full of
12 handwritten notes?

13 A. On this particular case, on this particular date?

14 Q. On this particular date.

15 A. I would say no more than half a page.

16 Q. Would that consist of maybe three or four
17 sentences or partial sentences?

18 A. Yes. It wasn't anything formal. It was just
19 scribbles and scratches. There was no formal complete
20 sentences.

21 Q. And you would wait until you got back to the
22 office in Springfield to make those; is that correct?

23 A. On occasion.

24 Q. Is that the procedure that you believe that you

1 followed on May 6, 1993?

2 A. Yes, it is.

3 Q. And those handwritten notes would not be a

4 complete or detailed recollection of the various things

5 that you either did, saw, or heard during that inspection

6 on May 6th, would they?

7 A. No, there is no way that it is complete in detail.

8 Q. How long after you made those handwritten -- what

9 would you do with the handwritten notes after you jotted

10 them down at the end of the day? What would you do with

11 them after you jotted them down at the end of that day?

12 A. I would keep them until I drafted my formal

13 inspection report.

14 Q. Okay. And by keep them, what do you mean? Where

15 would you put them?

16 A. I had a stack of -- I had like an in box

17 basically.

18 Q. So you had a box on your desk that was an in box

19 and you put these notes in there; is that correct?

20 A. Uh-huh.

21 Q. And I presume that you made inspections virtually

22 every day; is that correct?

23 A. Three days a week probably.

24 Q. You would have notes, the same type of notes --

1 A. Yes.

2 Q. -- handwritten notes, with respect to each of
3 those inspections that you would make three times a week
4 or whatever number that it was?

5 A. Yes.

6 Q. Is that correct?

7 A. Yes, it is.

8 Q. You would put all those in the in box also; is
9 that correct?

10 A. Yes.

11 Q. Okay. How long after the inspection of May 6th,
12 1993 did you sit down and pull out these handwritten notes
13 that you made in the afternoon of May 6, 1993, to draft
14 your written report that is represented by People's
15 Exhibit 4?

16 A. Well, if I could review my report, it would be
17 either that day or the prior day. (The witness reviewing
18 document.) This is dated June 22, 1993, so I started
19 writing it either June 21st or June 22nd.

20 Q. Now, that is some seven weeks after the actual
21 inspection, isn't it?

22 A. It would be -- yes, that would be approximately
23 right.

24 Q. You are relying strictly on your mental

1 recollections or whatever you may have placed in your
2 handwritten notes in drafting the report dated June 22nd,
3 1993, of your inspection of May 6th, 1993, that is
4 People's Exhibit 4; is that correct?

5 A. That is correct.

6 Q. Okay. And your handwritten notes did not reflect
7 everything that occurred during the course of your
8 inspection, did they?

9 A. No, they do not.

10 Q. So it is possible, then, that your handwritten
11 report -- that your written report does not disclose
12 everything accurately as to what may have occurred on that
13 day of the inspection, isn't it?

14 A. I wrote down everything that I recalled. I
15 included that in my report.

16 Q. You were relying upon your recollection of some
17 seven weeks before of the event that occurred some seven
18 weeks before?

19 A. Yes.

20 MR. TICE: Okay. I have no other questions.

21 HEARING OFFICER KNITTLE: Ms. Peri, any redirect?

22 REDIRECT EXAMINATION

23 BY MS. PERI:

24 Q. Mr. Brockamp, you indicated that you relied on

1 your recollection from a seven week period?

2 A. Yes.

3 Q. Did you also rely on your handwritten notes?

4 A. Yes, I did.

5 Q. Aside from your notes, do you have a personal
6 recollection of whether or not Mr. Chalmers was present
7 during your May 6th, 1993 inspection?

8 A. Yes.

9 Q. What is that recollection?

10 A. I know he was not present, because I know the
11 first time I ever met Mr. Chalmers was on June 15th, a
12 couple weeks later.

13 Q. Why do you know that?

14 A. Because we kind of had it out on that date.

15 Q. Did you make a report of your inspection on that
16 date?

17 A. Yes, I did.

18 Q. And that is People's Exhibit 5, is it not?

19 A. Yes, it is.

20 MS. PERI: Okay. No more questions.

21 HEARING OFFICER KNITTLE: Mr. Tice, anything on that
22 re-cross?

23 MR. TICE: That last question was with reference to
24 the June 15th, 1993 report?

1 MS. PERI: Yes.

2 MR. TICE: I am going to move to strike that question
3 and that answer, Mr. Knittle. I mean, it was beyond the
4 scope of cross and beyond the scope of the initial direct
5 on rebuttal. And there was no dispute, I don't think,
6 about the June 15th, 1993 report or anything else. I
7 think the whole purpose of this witness' testimony was
8 with regard to recollections of he and Mr. Chalmers
9 regarding the May 6th, 1993 report.

10 HEARING OFFICER KNITTLE: I am going to overrule that
11 objection, Mr. Tice. I think that the June 15th report is
12 impacting upon his recollection of the earlier meeting
13 when he met Mr. Chalmers the first time, and whether or
14 not that was on May 6th or June 15th.

15 Anything else, Mr. Tice?

16 MR. TICE: Just a moment.

17 HEARING OFFICER KNITTLE: All right.

18 MR. TICE: I have no other questions.

19 HEARING OFFICER KNITTLE: Mr. Brockamp, once again,
20 thank you very much. You may step down.

21 THE WITNESS: Okay.

22 (The witness left the stand.)

23 HEARING OFFICER KNITTLE: Ms. Peri, any further
24 rebuttal witnesses?

1 MS. PERI: No.

2 HEARING OFFICER KNITTLE: I want to note for the
3 record that there are no interested citizens here to
4 present statements, so that section of the hearing will
5 not be occurring.

6 Ms. Peri, Mr. Tice, we have not talked about closing
7 arguments yet. Do you want to go off the record and talk
8 about those?

9 MS. PERI: Sure.

10 HEARING OFFICER KNITTLE: Let's go off the record.

11 (Discussion off the record.)

12 HEARING OFFICER KNITTLE: We are back on the record
13 after an off-the-record discussion concerning closing
14 arguments and briefs.

15 It is my understanding, based on representation of
16 Counsel, that they are both going to waive their closing
17 arguments.

18 Ms. Peri, is that correct?

19 MS. PERI: Yes.

20 HEARING OFFICER KNITTLE: Mr. Tice?

21 MR. TICE: That's correct.

22 HEARING OFFICER KNITTLE: They we will be addressing
23 any arguments that they have in their post hearing briefs.
24 Also, pursuant to an off-the-record discussion, the post

1 hearing briefs will be scheduled as follows. The
2 complainant's brief will be due on August 10th of 1999.
3 The respondent's brief will be due on September 10th of
4 1999. The complainant's reply brief will be due on
5 September 24th of 1999.

6 The mailbox rule will apply, so if you get them in
7 the mail by that date it should be sufficient. I was
8 going to ask you each to overnight to each other, but that
9 won't be a problem. If there are any difficulties, please
10 contact each other and make sure you get it as soon as
11 possible.

12 That's all I have. I am required to make a
13 credibility statement about the witnesses in this hearing,
14 and based on my legal judgement and experience, I do not
15 find any credibility issues with any of the witnesses
16 presented. There are no motions outstanding that we have
17 to address at this time. And also one last time, for the
18 record, there are no members of the public here who wish
19 to provide a statement.

20 That being said, I want to thank you all very much
21 for your attention to this matter, and you too, Darlene.

22 (Hearing Exhibits were retained by Hearing Officer
23 John Knittle.)

24

1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 CERTIFICATE

4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for
6 the County of Montgomery, State of Illinois, DO HEREBY
7 CERTIFY that the foregoing 629 pages comprise a true,
8 complete and correct transcript of the proceedings held on
9 the 24th of June A.D., 1999, at the Menard County
10 Courthouse, Petersburg, Illinois, in the case of the
11 People of the State of Illinois v. John Chalmers,
12 Individually and d/b/a John Chalmers Hog Farm, in
13 proceedings held before the Honorable John Knittle,
14 Hearing Officer, and recorded in machine shorthand by me.

15 IN WITNESS WHEREOF I have hereunto set my hand and
16 affixed my Notarial Seal this 9th day of July A.D., 1999.

17

18

19

20

21 Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

22

CSR License No. 084-003677
23 My Commission Expires: 03-02-99

24