

1 BEFORE THE POLLUTION CONTROL BOARD

2 STATE OF ILLINOIS

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5 PEOPLE OF THE STATE OF ILLINOIS,

6 Complainant,

7 -vs-

 NO. PCB 96-118

8 DENNIS FULTS, d/b/a ST. CLAIR
9 CONSTRUCTION and PAVING,

9

 Respondent.

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13 Hearing held, pursuant to Notice, on the 29th day
14 of May, 1996, at the hour of 10:00 a.m., at Suite 402,
15 600 South Second Street, Springfield, Illinois, before
16 Mr. Michael Wallace, duly appointed Hearing Officer.

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20 TRANSCRIPT OF PROCEEDINGS

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1 APPEARANCES:

2 MS. AMY L. SYMONS
 3 Assistant Attorney General
 4 Environmental Bureau
 500 South Second Street
 4 Springfield, Illinois

5 on behalf of the Complainant;

6 MR. JAMES J. O'DONNELL
 7 Assistant Counsel
 8 Illinois Environmental Protection Agency
 9 Bureau of Air
 10 Division of Legal Counsel
 2200 Churchill Road
 9 Springfield, Illinois

10 on behalf of the Complainant.

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17 EXHIBITS

IDENTIFIED

ADMITTED

17 Complainant's Exhibit No. 1

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1 HEARING OFFICER: Pursuant to the direction
2 of the Illinois Pollution Control Board, I now call
3 docket PCB 96-118. This is the People of the State of
4 Illinois versus Dennis Fults, doing business as St.
5 Clair Construction and Paving.

6 May I have appearances for the record, please?
7 For the People?

8 MS. SYMONS: For the People, my name is Amy
9 Symons, S-y-m-o-n-s. I represent the Attorney
10 General's office in this matter.

11 HEARING OFFICER: Thank you.

12 Let the record reflect that the Respondent, Dennis
13 Fults, is not present at the hearing this morning.

14 The Hearing Officer has not received any contact
15 from Mr. Fults, and I understand that the Attorney
16 General's office has not had any contact with Mr.
17 Fults either.

18 MS. SYMONS: That's correct.

19 HEARING OFFICER: Pursuant to the Board
20 rules, we will proceed without Mr. Fults present.

21 And, Ms. Symons, do you have any witnesses to call
22 or any evidence to present?

23 MS. SYMONS: Yes, Your Honor -- or Mr.
24 Hearing Officer. I have some evidence to present and

1 I do have an opening statement I would like to make.

2 HEARING OFFICER: All right. You may
3 proceed.

4 MS. SYMONS: All right, thank you.

5 Good morning, Hearing Officer Wallace. My name is
6 Amy Symons and I'm an Assistant Attorney General in
7 the Environmental Bureau of the Illinois Attorney
8 General's office. I'm representing the People of the
9 State of Illinois, the Complainant in the case herein.
10 And with me today is Assistant Counsel James O'Donnell
11 of the Illinois Environmental Protection Agency.

12 As in many of our enforcement cases, the Attorney
13 General's office represents the Illinois Environmental
14 Protection Agency, but in all of our cases our client
15 remains the people of the State of Illinois. And it
16 is the people of the State and the environment of the
17 State that we strive to protect in these enforcement
18 actions.

19 In the case currently before the Board, we're
20 dealing with a couple of different issues arising out
21 of the demolition of a building located in
22 Collinsville, Madison County, Illinois. The
23 individual who is responsible for the demolition of
24 that building is the Respondent herein, Dennis Fults,

1 doing business as St. Clair Construction and Paving.
2 This is a business operated out of St. Clair County,
3 Illinois.

4 It is important to note that on March 12, 1996,
5 the State filed a request for admission of facts
6 directed to the Respondent, Mr. Fults. In the nearly
7 three months since that time we have had no response
8 from Mr. Fults to that request. And therefore, I
9 would just remind the Board that each of those facts
10 for which a request was -- for which an admission was
11 requested are deemed admitted by the Respondent.

12 Even in light of those admissions, we're not going
13 to rest simply on those. We do have evidence that we
14 will be presenting today. During the course of our
15 hearing Mr. Ron Robeen, an Environmental Protection
16 Engineer with the Illinois Environmental Protection
17 Agency, Bureau of Air, will be testifying, and he is
18 prepared to testify that pursuant to the National
19 Emission Standards for Hazardous Air Pollutants
20 Respondent failed to provide prior written
21 notification to the Agency of the impending demolition
22 of the building in Collinsville.

23 In addition, evidence will be presented which
24 indicates that after the demolition of this building

1 Mr. Fults failed to properly dispose of the demolition
2 debris, and in fact, he openly burned some of that
3 demolition debris at the demolition site.

4 And finally, the State is prepared to show that
5 the burning, the open burning of this demolition
6 debris caused, threatened or allowed air pollution in
7 the State of Illinois.

8 Not only is the Respondent in the construction
9 business and in a position where he should know what
10 the regulations require for the proper demolition of a
11 building and disposal of demolition debris, but having
12 been advised of what actions do constitute violations
13 of the environmental laws of the State, he has
14 continued to act in contravention of those laws. We
15 will present testimony today from Mr. Robeen that Mr.
16 Fults is continuing to knowingly violate the
17 Environmental Protection Act and the Board rules and
18 regulations.

19 At the close of our evidence, we will be asking
20 the Board for an order finding the Respondent in
21 violation of the Illinois Environmental Protection Act
22 and the Board rules and regulations as alleged in our
23 complaint. We will be asking the Board for an order
24 compelling Respondent to cease and desist from further

1 violation of the Act and Board regulations. We will
2 be asking the Board to impose a civil penalty in the
3 amount of 10,000 dollars against the Respondent and
4 awarding the State its costs in this action, including
5 reasonable attorney's fees.

6 We are confident that upon consideration of all of
7 this evidence the Board will find in favor of the
8 State and will decide to send a message to the
9 Respondent and others similarly situated which shows
10 them that the Board and the State of Illinois takes
11 these type of violations seriously and that we will
12 not tolerate a continuing violation of the
13 environmental laws of the State.

14 Thank you.

15 HEARING OFFICER: Thank you.

16 All right, your witness then.

17 MS. SYMONS: My witness is Mr. Ron Robeen. I
18 now call you to the stand.

19 HEARING OFFICER: Come up here, sir. Would
20 you please remain standing, raise your right hand.

21

22

23

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1

RON ROBEEN

2

called as a witness herein, having been first duly

3

sworn, was examined and testified as follows:

4

DIRECT EXAMINATION BY

5

MS. SYMONS:

6

HEARING OFFICER: Please speak loudly so the
court reporter can hear you.

8

Q. Please state your name for the record and
spell your last name.

10

A. My name is Ron Robeen, R-o-b-e-e-n.

11

Q. And, Mr. Robeen, where do you currently
reside?

13

A. I reside in the village of Golden Eagle,
Illinois.

15

Q. And is that in Madison County, Illinois?

16

A. No, it's not. It's in Calhoun County.

17

Q. Calhoun County. And with whom are you
currently employed?

19

A. I'm employed by the Illinois Environmental
Protection Agency, the Bureau of Air, in the Field
Office Section.

22

Q. And is that the Collinsville Regional Office?

23

A. Yes, Region 3 in Collinsville.

24

Q. How long have you been employed with the

1 Illinois Environmental Protection Agency?

2 A. A year and nine months.

3 MS. SYMONS: And for the record, when we
4 refer to the Agency, we will be referring to the
5 Illinois Environmental Protection Agency unless
6 indicated otherwise.

7 Q. What is your current job with the Agency?

8 A. I'm a field inspector.

9 Q. And what job duties do you have as a field
10 inspector?

11 A. I inspect industry, do asbestos inspections,
12 assist in citizen complaint investigations.

13 Q. And are you currently -- do you currently
14 hold some sort of certification as far as the asbestos
15 inspection goes?

16 A. Yes, we're required to obtain yearly
17 certification.

18 Q. What's involved in obtaining that
19 certification?

20 A. Initially it's a three day course and then a
21 yearly eight-hour refresher.

22 Q. And what does that certification allow you to
23 do?

24 A. Conduct asbestos inspections on demolition

1 and renovation sites.

2 Q. Are the asbestos inspections conducted
3 pursuant to the National Emission Standards for
4 Hazardous Air Pollutants and the Clean Air Act?

5 A. Yes.

6 Q. Now, in your year and nine months with the
7 Agency have you been a field inspector all that time?

8 A. Yes.

9 Q. And did you do any work prior to joining the
10 Agency?

11 A. Yes.

12 Q. What did you do prior to that?

13 A. I was an asbestos removal worker and an
14 electrical engineer.

15 Q. And how many years were you employed as an
16 asbestos remover?

17 A. One summer.

18 Q. And I want to talk a little bit about your
19 educational background, Mr. Robeen. Would you tell us
20 a little bit about that?

21 A. I have a bachelors degree in electrical
22 engineering from SIU Edwardsville.

23 Q. And when did you obtain that degree?

24 A. December 1993.

1 Q. Have you had any special training or courses
2 other than the asbestos inspection certification you
3 talked about since joining the Agency?

4 A. The Agency requires me to take proactive
5 educational courses at least one per year and I've
6 taken several since my employment here with the
7 Agency.

8 Q. So the Agency does require a continuing
9 education type of program for its employees?

10 A. Yes, they do.

11 Q. And are those classes provided by the Agency
12 or do you go outside the Agency for the classes?

13 A. Normally the classes are provided through the
14 USEPA national testing and stuff.

15 Q. Can you briefly give us some idea of what
16 types of continuing education courses you have had in
17 the past year and nine months?

18 A. I've taken Course 450, source sampling for
19 particulate pollutants in Chicago. It was a
20 four-and-a-half-day course. I've taken PSD regulation
21 review and a couple others that I can't remember off
22 the top of my head.

23 Q. Okay. And any special training that you have
24 taken to assist you in the asbestos inspection line of

1 your work?

2 A. Just the three-day initial and the one
3 eight-hour refresher, although I was certified
4 previous to my employment with the Agency in order to
5 remove the asbestos.

6 Q. Okay. When you worked for the summer in
7 removing?

8 A. Yes.

9 Q. Now, as part of your duties I think you
10 mentioned that you conduct inspections of industrial
11 facilities in the State?

12 A. Yes.

13 Q. Do you focus on a certain region of the
14 State?

15 A. I work in Region 3, specifically Districts
16 300, 301 and 302 in Region 3. That consists of the
17 Metro East area and an area extending to Effingham,
18 Illinois.

19 Q. And that does include, does it not, Madison
20 County and St. Clair County, Illinois?

21 A. Yes, it does.

22 Q. When you conduct an inspection of a facility,
23 is there something that prompts you to go to that
24 facility? For example, a complaint or a report from

1 someone?

2 A. Certainly a citizen complaint would be
3 thoroughly investigated by us, yes.

4 Q. Now, are you familiar with the facts
5 surrounding the case that we're here on today
6 involving Mr. Dennis Fults?

7 A. Yes, I am.

8 Q. Have you had an occasion to inspect a
9 facility where Mr. Fults was working?

10 A. Yes, on several times.

11 Q. Okay. Now, the particular occasion that
12 we're talking about today was on what date?

13 A. November 28th, 1994.

14 Q. Okay. And what prompted your inspection on
15 that day?

16 A. A visual drive-by by my Regional Manager,
17 John Justice, and he informed me of that.

18 Q. And what -- are you aware of what Mr. Justice
19 observed that prompted him to send you out to inspect
20 the facility?

21 A. Yes, the demolition was active and in
22 progress and some open burning was going on at the
23 site.

24 Q. Okay. And we're talking about the site. Can

1 you give us an idea of exactly where the site was
2 located?

3 A. It's located in Collinsville along Belt Line
4 Road, 401 I believe Belt Line Road. The site is in a
5 residential/commercial strip mall area.

6 Q. And was this a weekday, November 28, 1994?

7 A. Yes, it was.

8 Q. And do you remember what time of the day you
9 conducted your inspection?

10 A. Not off the top of my head, no.

11 Q. Do you remember the delay in time between
12 when Mr. Justice drove by and when you were able to go
13 out and conduct the inspection?

14 A. I visited the site twice on that day. The
15 first time was approximately 20 minutes to a half hour
16 after I was informed of it.

17 Q. Okay. And the second occasion was?

18 A. Approximately three hours or two hours.

19 Q. After your initial inspection?

20 A. Yes.

21 Q. And did you prepare a report following your
22 November 28, 1994 inspections of this facility?

23 A. Yes, I did.

24 Q. Okay. I'm going to hand you what's

1 previously been marked as Complainant's Exhibit Number
2 1. Would you please identify this document for the
3 record?

4 A. Yes, this is the document that I prepared for
5 that case.

6 Q. Is that your inspection report?

7 A. Yes, it is.

8 Q. When did you prepare this report?

9 A. On December 2nd.

10 Q. And is this the type of report that is
11 prepared in the normal course of your business in your
12 duties as an inspector the Agency?

13 A. Yes.

14 Q. And is this the type of report that is
15 normally kept in the business files of the Agency?

16 A. Yes, it is.

17 MS. SYMONS: I would now move that this
18 exhibit be entered into evidence as Complainant's
19 Exhibit Number 1.

20 HEARING OFFICER: Complainant's Exhibit
21 Number 1 is admitted into evidence.

22 (Complainant's Exhibit Number 1
23 admitted.)

24 MS. SYMONS: Thank you.

1 Q. Now, Mr. Robeen, do you have recollection of
2 the November 28, 1994 inspections aside from the
3 information contained in your report?

4 A. Uh-huh, yes.

5 Q. I want to talk a little bit about your
6 recollections of your observations on that day.

7 Upon visiting the site of the demolition were you
8 able to talk to Mr. Fults?

9 A. Not on the first occasion but on the second
10 occasion of my visit I was.

11 Q. Okay. And were you able to determine who was
12 responsible for the demolition of this building?

13 A. Yes, I was.

14 Q. And who was that?

15 A. Mr. Fults stated that he was responsible for
16 that.

17 Q. All right. Were you able to talk to any
18 other employees that were present or any other persons
19 that were there at the site?

20 A. Yes. I spoke to one gentleman that was not
21 involved in the demolition at the site and I also
22 spoke to one employee of St. Clair County -- St. Clair
23 Construction and Paving.

24 Q. Okay. And were these persons able to confirm

1 or support your belief that Mr. Fults was the person
2 responsible for the demolition?

3 A. Yes. The employee of St. Clair Construction
4 and Paving did indicate that was the case.

5 Q. Okay. Were you able to determine how long
6 the demolition had been progressing?

7 A. No.

8 Q. Was it your understanding that it was a
9 one-day event or were you even able to reach an
10 understanding on that point?

11 A. With my understanding of the nature of the
12 buildings on the site, I don't believe it could have
13 been a one-day occurrence.

14 Q. Okay. Now, you said you did have an
15 opportunity to speak to Mr. Fults during your
16 inspection.

17 A. Yes.

18 Q. And what if anything did you learn from your
19 conversation with Mr. Fults?

20 A. Mr. Fults stated that a notification was sent
21 into the Agency.

22 Q. What type of notification are we talking
23 about?

24 A. The ten-day working notification that's

1 required by the asbestos NESHAP.

2 Q. And did you have an opportunity to review any
3 Agency files to determine whether such notification
4 had been received by the Agency?

5 A. Yes.

6 Q. And what did you determine from your review
7 of those files?

8 A. No notification was on file with the Agency.

9 Q. Did Mr. Fults provide you with a copy of the
10 notification that he had sent in?

11 A. No, they did not. And may I point out that
12 his -- the developer on the site and site owner,
13 Coleman Properties, indicated in their response letter
14 to our compliance inquiry letter that no notification
15 was sent in by anyone.

16 Q. So were you able to make a conclusion based
17 upon your examination of the file and your discussions
18 with the site owner as to whether a notification had
19 actually been sent in or not?

20 A. Yes, I was.

21 Q. What was your conclusion?

22 A. That no notification was sent in for this
23 particular site.

24 Q. Now, what is the purpose of sending in a

1 ten-day notification pursuant to the National Emission
2 Standards for Hazardous Air Pollutants?

3 A. The ten-day notice allows us time to review
4 the notice to determine if any discrepancies in what
5 our knowledge of the site is and also allows us to go
6 out and inspect for asbestos contamination or evidence
7 of asbestos in the building.

8 Q. Now, in this situation we're talking about a
9 demolition that occurred on or around November 28,
10 1994. Was the Agency able to conduct an inspection of
11 any of the demolished buildings to determine if there
12 was asbestos present?

13 A. No, we were not.

14 Q. Were you given any indication or based on
15 your investigation at the site and your discussions
16 with other employees, were you given any indication as
17 to whether there was asbestos in the building or not?

18 A. The first employee I spoke to at the site
19 indicated that there was asbestos in the building and
20 it was removed prior to demolition.

21 Q. Did he indicate to you who did the asbestos
22 removal?

23 A. No, he did not.

24 Q. Did he indicate to you where they had

1 disposed of the asbestos?

2 A. No, he did not.

3 Q. But during your investigation you did not
4 actually inspect for asbestos?

5 A. No, I did not.

6 Q. Were you able to ask Mr. Fults about the
7 presence of asbestos in the demolished buildings?

8 A. Yes.

9 Q. What if anything did you learn from this
10 conversation with him?

11 A. He stated that there was no asbestos located
12 in the building.

13 Q. And who is responsible for submitting this
14 prior notification to the Agency?

15 A. Normally it's either the site owner or the
16 demolition contractor who will fill out the form and
17 the site owner will sign it.

18 Q. And in this case Mr. Fults was the demolition
19 contractor?

20 A. Yes.

21 Q. Now, Mr. Robeen, have you had an opportunity
22 to review the complaint that was filed in this case?

23 A. Yes, I have.

24 Q. And you're familiar with the facts

1 surrounding the violations contained in that
2 complaint?

3 A. Yes.

4 Q. Now, let's try to go through these one at a
5 time. Based on your experience as an inspector with
6 the Agency's Bureau of Air, is it your opinion that
7 there was a threat of air pollution as a result of the
8 open burning that was occurring at the site?

9 A. Yes.

10 Q. And what would make you say that?

11 A. Without the ten-day working notice, there
12 could have possibly been the contamination of the
13 debris with asbestos and also open burning releases
14 particulate matter and other contaminants.

15 Q. What is your general understanding of the
16 definition of a contaminant?

17 A. A contaminant is any solid, liquid or gaseous
18 or odor or any other energy matter.

19 Q. Okay. And is it something that can be
20 emitted into the environment?

21 A. Yes.

22 Q. And is it your opinion based on your
23 investigation at the site and your experience with the
24 Agency that there was or there were contaminants being

1 emitted into the environment as a result of the open
2 burning at this facility?

3 A. Yes, there was.

4 Q. Now, was there one instance of open burning
5 going on at this facility or more than that?

6 A. No, there was more than one.

7 Q. Okay. Do you have an idea as far as how
8 many?

9 A. No. There was one centrally located around a
10 55 gallon barrel and there was other scattered
11 location of smoldering debris on the site.

12 Q. Now, when you inspected the site, did it
13 appear that the open burning had been progressing for
14 a while, that it had been going on for a while?

15 A. Yes, it had.

16 Q. And in fact, you indicated that your
17 supervisor had mentioned that to you?

18 A. Yes.

19 Q. And that was one of the reasons for your
20 inspection that day?

21 A. Yes.

22 Q. Were you able to determine what quantity of
23 debris Mr. Fults had burned at the site?

24 A. No, I was unable to.

1 Q. Now, is this open burning of demolition
2 debris, is that a proper way to dispose of the debris?

3 A. No, it's not.

4 Q. What would be a proper way to dispose of it?

5 A. In an Agency approved landfill.

6 Q. And do you know whether Mr. Fults utilized
7 that option at all?

8 A. I have no knowledge of where the debris went.

9 Q. He didn't provide you with any receipts for
10 disposal?

11 A. No.

12 Q. Did you observe smoke coming from the burning
13 demolition debris?

14 A. Yes, I did.

15 Q. Can you describe that smoke for us, please?

16 A. The smoke from the scattered debris on the
17 site was grayish in nature and the smoke from around
18 the barrel I would consider black.

19 Q. Okay. At the time you observed the open
20 burning, was the smoke would you call it heavy or
21 light or how would you describe it as far as the
22 consistency of the smoke?

23 A. Light.

24 Q. Okay. Now, even if a smoke is light in

1 consistency, can there still be a threat of air
2 pollution?

3 A. Yes.

4 Q. Was there an odor coming from the burning
5 debris?

6 A. Yes.

7 Q. And based on your experience as an inspector
8 for the Bureau of Air, were these emissions from the
9 burning demolition debris of such quantity,
10 characteristic or duration so as to threaten injury to
11 human health, to plant life or animal health?

12 A. Yes.

13 Q. And were they of such quantity,
14 characteristic or duration so as to threaten an
15 unreasonable interference with the enjoyment of life
16 or property?

17 A. Yes.

18 Q. Okay. Now, we've been talking about open
19 burning a little bit. What is meant by open burning?

20 A. Open burning is the burning of any matter in
21 the open.

22 Q. And that's what was occurring at this site?

23 A. Yes.

24 Q. Was there any type of equipment controlling

1 the emissions and the smoke from the open burning?

2 A. No, there was not.

3 Q. Were you able to determine during your
4 investigations who was responsible for the open
5 burning of this demolition debris?

6 A. Yes, I was.

7 Q. Who was that?

8 A. Dennis Fults or St. Clair Construction and
9 Paving.

10 Q. Did you speak to Mr. Fults about the open
11 burning?

12 A. Yes, I did.

13 Q. What conversation did you have with him?

14 A. I suggested that he cease and desist from all
15 further burning.

16 Q. What was his response to you?

17 A. That he would do that.

18 Q. Did you in fact have an opportunity to
19 determine if he did stop the open burning?

20 A. He did not give any indication that he would
21 while I was on-site.

22 Q. Okay. Did you have an occasion to go back
23 and inspect after that conversation?

24 A. No, I did not.

1 Q. What are the potential environmental
2 consequences of open burning such as this?

3 A. Air pollution and contaminants can lead to
4 injury to health, life and enjoyment of property.

5 Q. And it's the -- is that threat increased when
6 you don't know exactly what was contained in the
7 debris?

8 A. Of course, yes.

9 Q. Are you familiar with the acronym of NESHAP?

10 A. Yes, I am.

11 Q. What does that stand for?

12 A. NESHAP stands for National Emission Standards
13 for Hazardous Air Pollutants.

14 Q. Is there a relationship between the Clean Air
15 Act and the NESHAP regulations?

16 A. Yes. The NESHAPs were adopted pursuant to
17 the Clean Air Act.

18 Q. And does the Illinois Environmental
19 Protection Act does it provide a rule against the
20 violation of certain provisions of the Clean Air Act?

21 A. Yes, it does.

22 Q. And does this prohibition apply to the NESHAP
23 regulations?

24 A. Yes, it does.

1 Q. Now, what if anything do the NESHAP
2 regulations say about demolition activities such as
3 that undertaken by Mr. Fults in Collinsville on
4 November 28, 1994?

5 A. Any demolition activity such as this one must
6 be given a notice, ten-day working notice to the
7 Agency so we can inspect the site prior to demolition.

8 Q. And we've already established through earlier
9 testimony that a review of your Agency file indicated
10 that there was no notice?

11 A. Yes.

12 Q. And from your perspective as a field
13 inspector for the Agency, can you explain to us the
14 importance of providing this ten-day prior notice?

15 A. Yes. Asbestos is a known human carcinogen
16 and if we do not -- we are not given the opportunity
17 to inspect the building prior to demolition, we won't
18 be able to adequately determine if asbestos is present
19 and if there's going to be an emission during the
20 demolition.

21 Q. And as you sit here today do you know for
22 sure one way or the other whether asbestos was present
23 in that building in Collinsville?

24 A. No, I do not know.

1 Q. And as far as a violation of the notice
2 requirement pursuant to the NESHAP regulations, does
3 it matter whether or not asbestos is actually present?

4 A. No, it does not.

5 Q. So what you're saying is the actual presence
6 of asbestos is irrelevant as far as the notice
7 requirements are concerned?

8 A. Yes.

9 Q. Do you consider it a serious violation for an
10 individual to fail to give this prior notice?

11 A. Yes, I do.

12 Q. Now, Mr. Robeen, are you aware of any prior
13 instances of noncompliance or violations of
14 environmental laws of the State by Mr. Dennis Fults?

15 A. Yes, I am.

16 Q. Can you briefly describe those prior
17 instances of noncompliance for the Board?

18 A. I believe he was involved in open dumping and
19 open burning in Madison and Monroe or some counties,
20 I'm not very specific on the cases.

21 Q. Okay. Is it your understanding that those
22 were county ordinance violations?

23 A. Yes, I believe so.

24 Q. Okay. And those were for open burning and

1 open dumping to the best of your recollection?

2 A. Yes.

3 Q. And is it your understanding that both of
4 those instances occurred prior to November 28, 1994?

5 A. Yes, they did.

6 Q. Okay. Now, subsequent to November 28, 1994,
7 have you had any other contact with Mr. Fults?

8 A. Yes, on two occasions.

9 Q. Do you remember the dates of those occasions?

10 A. No, I do not know the specific date.

11 Q. Were they in close proximity to November 28,
12 1994 or have they been spread out in the years since
13 then?

14 A. No, one was in '95 and one was in this year,
15 1996.

16 Q. Okay. And so is it -- am I correct in
17 assuming that the contacts you've had with him since
18 November of 1994 have been on other unrelated matters?

19 A. Yes.

20 Q. Can you describe for us your contact with Mr.
21 Fults in 1995, why you were in contact with him?

22 A. I received a photograph in the newspaper of a
23 demolition in action and I went out to check the site
24 out and Mr. Fults was doing the demolition on that

1 building.

2 Q. Okay. And where was that building located?

3 A. In Belleville, Illinois.

4 Q. And is that also Madison County?

5 A. No, that's St. Clair County.

6 Q. St. Clair.

7 And did you have an occasion to talk to Mr. Fults?

8 A. Not on that occasion, no.

9 Q. Did you speak to anyone else at the site?

10 A. Several of his employees were on-site.

11 Q. Did you -- were you able to learn anything
12 about Mr. Fults' activities through your conversations
13 with his employees at that time?

14 A. No, just that he was involved in the
15 demolition of the building.

16 Q. Okay. And was a prior notification submitted
17 to the Agency for that demolition activity?

18 A. On this occasion it was.

19 Q. Were there any other violations of the Act or
20 Board regulations you observed at that time?

21 A. Yes, open burning of demolition debris was
22 also occurring at this location.

23 Q. Okay. And did you communicate to Mr. Fults'
24 employees that this was an activity that should cease?

1 A. Yes.

2 Q. And do you know whether that activity ceased
3 at that time?

4 A. It did not while I was on-site.

5 Q. Okay. Now, you said you had contact with Mr.
6 Fults again on a third occasion in 1996?

7 A. Yes.

8 Q. And what was the nature of that contact?

9 A. Open burning of large amounts of trees and
10 demolition debris.

11 Q. And where was this occurring?

12 A. Swansea in St. Clair County.

13 Q. Did you have an opportunity to speak to Mr.
14 Fults at that time?

15 A. Yes, I did.

16 Q. And what was the nature of your conversation
17 with him?

18 A. We informed him that this was not the proper
19 way to dispose of trees, landscape waste and
20 demolition debris.

21 Q. And what was Mr. Fults' response, if any?

22 A. That "Go ahead and send me another letter.
23 I'll ignore it like the other ones that you sent me."

24 Q. Based on your contacts with Mr. Fults and on

1 the three inspections you've done of facilities where
2 he has been the demolition contractor, do you have an
3 opinion as to whether Mr. Fults is going to continue
4 violating the environmental laws of this State?

5 A. Yes. Mr. Fults in my opinion will continue
6 to violate it as long as he can make money at it.

7 Q. And as far as the proper disposal of this
8 demolition debris that he is alleged openly burning,
9 is it very -- what is the economic feasibility of him
10 properly disposing of that debris?

11 A. I really have no knowledge of cost involved
12 in landfilling material.

13 Q. Is it a matter of him simply hauling the
14 debris to a landfill and disposing of it there?

15 A. Yes.

16 Q. And in your opinion you believe that Mr.
17 Fults is not going to voluntarily comply with the Act
18 and Board regulations, is that correct?

19 A. Yes, that's correct.

20 MS. SYMONS: That's all the questions I have
21 right now. Thank you, Mr. Robeen.

22 HEARING OFFICER: Mr. Robeen, would you spell
23 the acronym NESHAP for the record, please?

24 A. State it again?

1 HEARING OFFICER: No. What letters are you
2 using?

3 A. N-E-S-H-A-P.

4 HEARING OFFICER: Okay, thank you.

5 On the latter two dates, '95 and '96, you don't
6 recall the date that you --

7 A. No. I think one was in April and one in
8 September. September '95 and April '96 but --

9 HEARING OFFICER: And did you take any
10 further action on those two?

11 A. A compliance inquiry letter was sent on both
12 occasions.

13 HEARING OFFICER: And anything -- that's
14 the --

15 A. He never gives us a response so --

16 HEARING OFFICER: Okay. Is there any open
17 burning that is permissible at a construction site?

18 A. Yes. Landscape waste can be open burned if
19 you obtain a permit from the Agency and use an air
20 curtain destructor and follow other rules and
21 regulations that we set forth in the permit.

22 HEARING OFFICER: An air current what?

23 A. Air curtain destructor.

24 HEARING OFFICER: And in the '96 instance

1 where you said there were trees and landscape waste,
2 had Mr. Fults obtained this permit?

3 A. No, he had not.

4 HEARING OFFICER: And you checked with the
5 Agency to see if such a permit had been issued?

6 A. Yes.

7 HEARING OFFICER: And from the first instance
8 in November of '94, the odor that you noticed from the
9 burn, did it have any particular smell to it or what
10 do you mean by odor?

11 A. No. It was mostly wood-type burning smell.

12 HEARING OFFICER: And the prior instances of
13 violating county ordinances, do you know any more
14 specifically when those occurred?

15 A. No, I do not.

16 HEARING OFFICER: Or any disposition of
17 those?

18 A. Just for open burning and open dumping, no.

19 HEARING OFFICER: Was he ticketed by some
20 agency?

21 A. Yes, by the counties.

22 HEARING OFFICER: Okay. Thank you, Mr.
23 Robeen.

24 (Witness excused)

1 HEARING OFFICER: Anything further?

2 MS. SYMONS: That is all.

3 HEARING OFFICER: All right. There being
4 nothing further, pursuant to the Board's rules and
5 regulations, I find that Mr. Robeen was a credible
6 witness, and this hearing is closed.

7 Thank you.

8 MS. SYMONS: Will there be a brief schedule?

9 HEARING OFFICER: Off the record.

10 (Discussion off the record.)

11 HEARING OFFICER: Prior to closing this
12 hearing record, the People request to file a
13 posthearing brief. That brief will be due in two
14 weeks and that does close the record -- close the
15 hearing anyway, thank you.

16 (Which were all of the proceedings had
17 on the hearing of this cause on this
18 date.)

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1 STATE OF ILLINOIS)
)SS
 2 COUNTY OF SANGAMON)

3

4

CERTIFICATE

5 I, Dorothy J. Hart, affiliated with Capitol
 6 Reporting Service, Inc., do hereby certify that I
 7 reported in shorthand the foregoing proceedings; that
 8 the witness was duly sworn by me; and that the
 9 foregoing is a true and correct transcript of the
 10 shorthand notes so taken as aforesaid.

11 I further certify that I am in no way associated
 12 with or related to any of the parties or attorneys
 13 involved herein, nor am I financially interested in
 14 the action.

15

16

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 and Notary Public

17

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19

20 Dated this 31st day of

21 May, A.D., 1996, at

22 Springfield, Illinois.

23

24

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