

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.) PCB-98-148
) (Enforcement-Land)
 DOREN POLAND, LLOYD YOHO, and) Volume II
 BRIGGS INDUSTRIES, INC.,)
)
 Respondents.)

BRIGGS INDUSTRIES, INC.,)
)
 Third Party Complainant,)
)
 vs.) PCB-98-148
) (Enforcement-
 LOREN WEST and ABINGDON SALVAGE) Citizens, Land)
 COMPANY, INC.,) Volume II
)
 Third Party Respondents.)

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Gale G. Everhart, CSR-RPR, a notary public within and for the County of Peoria and State of Illinois, before Steven C. Langhoff, Hearing Officer, at 200 South Cherry Street, Galesburg, Illinois, on the 29th day of November, A.D. 2000, commencing at 9:06 a.m.

PRESENT:

HEARING TAKEN BEFORE:
ILLINOIS POLLUTION CONTROL BOARD
200 South Cherry Street
Galesburg, Illinois 61401
(309) 343-3121
BY: MR. STEVEN C. LANGHOFF

APPEARANCES:

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On Behalf of the Complainant.

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On Behalf of the Respondent
Briggs Industries, Inc.

DOREN E. POLAND
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(Appeared PRO SE)

LLOYD F. YOHO
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Abingdon, Illinois 61410
(Appeared PRO SE)

ALSO PRESENT:

Joanne Yoho
Jessica Potts
James Schoenhard

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1 HEARING OFFICER LANGHOFF: Good morning,
2 everyone. It's Wednesday the 29th of November at 9:06
3 a.m. We are here for our second day of hearing in
4 PCB-98-148.

5 This morning we are going to let Mr. Poland
6 take the witness stand for the limited purpose of
7 introducing some of his evidence, photographs and it
8 looks like one other exhibit.

9 Mr. Poland, will you take the stand? And the
10 parties have agreed.

11 (Witness sworn.)

12 DOREN E. POLAND,
13 called as a witness, after being first duly sworn, was
14 examined and testified upon his oath as follows:

15 HEARING OFFICER LANGHOFF: Mr. Poland, you have
16 some photographs that you would like to introduce into
17 evidence?

18 MR. POLAND: Yes.

19 HEARING OFFICER LANGHOFF: What do the photographs
20 depict in general?

21 MR. POLAND: These photographs depict what has
22 happened to Briggs Manufacturing waste over a period of
23 years. I understand it's disposed of around Abingdon.

24 HEARING OFFICER LANGHOFF: Are these an accurate --

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1 MR. POLAND: These are accurate --

2 HEARING OFFICER LANGHOFF: -- depiction --

3 MR. POLAND: -- of the material of the ground now.
4 These were taken within the last year. There is photos
5 going back to 1920 of the ground the way it is now after
6 being covered.

7 HEARING OFFICER LANGHOFF: And would it help the
8 Board in determining this case?

9 MR. POLAND: Yes, it would. I would think so.

10 HEARING OFFICER LANGHOFF: And, Counsel, have you
11 seen those photographs? Do you have any objection to
12 any of the photographs?

13 MR. BENOIT: I do object to their relevancy a
14 little bit. I mean, I don't think they depict --

15 MR. POLAND: The areas that these were taken at
16 originally were waste ground. It wasn't any good for

17 anything. Some of it wasn't even good pasture.

18 HEARING OFFICER LANGHOFF: I see here you have
19 photographs labeled Abingdon Festival Ground,
20 approximately eight acres. Is that the same area that
21 we heard previous testimony about Briggs disposing at?

22 MR. POLAND: Yes. And this is a site that was just
23 closed. It was closure. And this is the site the way
24 it is now.

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1 HEARING OFFICER LANGHOFF: But this is not the
2 site -- this is not your site, is it?

3 MR. POLAND: It is our site.

4 HEARING OFFICE LANGHOFF: This is Abingdon
5 Landfill?

6 MR. POLAND: Abingdon Landfill.

7 HEARING OFFICER LANGHOFF: And this is adjacent to
8 phase 2?

9 MR. POLAND: Yes.

10 MR. BENOIT: Do you have any objection to --

11 MR. BENOIT: Could we maybe number the photographs?

12 HEARING OFFICER LANGHOFF: Sure.

13 MR. BENOIT: I don't have any objections to the
14 ones that have to do with the Abingdon Landfill, the new

15 landfill, waste that was dumped on the Fall Festival
16 ground in '94, '95. I think that was the testimony.

17 HEARING OFFICER LANGHOFF: I'm going to label these
18 photographs as Respondent Poland's 1, 2, 3 and 4. The 1
19 will be the Abingdon festival grounds, shows a building;
20 2, the same, Abingdon festival ground, shows a field; 3
21 is the closed site of the Abingdon landfill; and 4, the
22 phase 2 of the site of Abingdon landfill.

23 And I'm going to -- any objection to the
24 four?

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1 MR. BENOIT: I would object to the bottom two
2 photographs on 1.

3 HEARING OFFICER LANGHOFF: These are the
4 photographs that we are talking about. This is 1. This
5 is 2. This is 3, and this is 4?

6 MR. BENOIT: No. No objection to 1, 2, 3 or 4.

7 MR. DAVIS: None by the State.

8 HEARING OFFICER LANGHOFF: I will admit Poland
9 Respondent's Exhibits 1, 2, 3 and 4. And I'm going to
10 exclude the rest of the photographs on the grounds of
11 relevance.

12 Anything else, Mr. Poland?

13 MR. POLAND: Not at the time, no.

14 MR. DAVIS: I think he had a document.

15 HEARING OFFICER LANGHOFF: And for the record I'm
16 going to be taking the rest of the photographs that have
17 not been marked in case the Board wants to overrule me
18 on this for their review. Mr. Poland, are you done? Do
19 you have anything else?

20 MR. POLAND: Not at this time.

21 MR. DAVIS: Mr. Poland, I thought you had another
22 piece of paper that you wanted to put in? Mr. Yoho or
23 Mrs. Yoho gave you a piece of paper, and I thought you
24 had intended to tender that as an exhibit?

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1 MR. POLAND: This is a total of engineering fees
2 from 1993 to clear through '97.

3 HEARING OFFICER LANGHOFF: Would you show those to
4 Mr. Benoit, please?

5 (Brief pause in proceedings.)

6 HEARING OFFICER LANGHOFF: Would you like to enter
7 that into evidence, Mr. Poland?

8 MR. POLAND: Yes.

9 HEARING OFFICER LANGHOFF: Any objections?

10 MR. BENOIT: I would object to that.

11 HEARING OFFICER LANGHOFF: On what grounds?

12 MR. BENOIT: I think that was a document prepared
13 in anticipation of litigation that was sent to -- I
14 don't know sent by who, but Poland or Yoho to Mr. Davis.
15 And I had seen that before, but I received it from
16 Mr. Davis. I don't know who -- there is no foundation
17 as to who drafted that and what it's based on. I just
18 don't know if it's accurate.

19 MR. POLAND: It's a total of them checks you saw
20 yesterday. It has to be accurate.

21 MR. BENOIT: The bottom total on there doesn't
22 really jibe with the earlier testimony of
23 Mr. Schoenhard. I thought he said -- I think the
24 testimony was between 40 and \$60,000 were spent on

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1 permitting attempts. And it's suggesting it's twice
2 that amount.

3 HEARING OFFICER LANGHOFF: Okay. I'm not going to
4 admit this into evidence. I'm going to take it -- on
5 the objection of counsel, I'm going to take it as tender
6 for the Board record.

7 MR. BENOIT: Was that given a --

8 HEARING OFFICER LANGHOFF: That was given a number,

9 Poland -- Respondent Poland Exhibit 5 has not been
10 accepted, excluded.

11 Okay. Thank you, Mr. Poland.

12 It's my understanding that the parties have a
13 stipulation as to some evidence today. Mr. Benoit.

14 MR. BENOIT: Yes. The stipulation is in regard to
15 excusing the testimony of Joyce Munie who was noticed up
16 for this hearing but who is not available today. The
17 People have agreed to stipulate to the admission of
18 several documents, the majority -- with the exception of
19 one, all of which we have discussed before as business
20 records. And I would move that those documents be
21 admitted. The numbers are -- and these are the ones
22 marked B. They are Briggs. B5, 7, 12, 18, 19, 26, 34,
23 35, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57. And the
24 last one is B59 which was not one of the documents that

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1 we had spoke about earlier. What it is is it's the
2 State's exhibit. They had the front page of this
3 initial facility report. This is, you know, the
4 remainder of the report.

5 MR. DAVIS: What's the date on that?

6 MR. BENOIT: The date is August 18th, 1993.

7 MR. DAVIS: Yes. The cover page was People's
8 Exhibit 22.

9 Mr. Hearing Officer, we wouldn't object to
10 the admission of any of these exhibits. They are all
11 business records. They are all admissible as such. By
12 the parties' agreement, we are not having to have Joyce
13 Munie come to testify, just simply lay a foundation for
14 that. There is an additional part of the agreement,
15 however, if she were to come testify she would be asked
16 a certain question and give a certain answer. This was
17 done in a deposition. And I think I can rely on
18 Mr. Benoit to summarize the substance of that limited
19 testimony.

20 HEARING OFFICER LANGHOFF: Mr. Benoit.

21 (Brief pause in proceedings.)

22 MR. BENOIT: I would like to show Mr. Davis what I
23 am going to read in here.

24 (Brief pause in proceedings.)

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1 MR. DAVIS: Very good. Thank you.

2 MR. BENOIT: This is a portion of the transcript of
3 the Joyce Munie deposition that was taken on August
4 16th, 2000.

5 We have agreed to admit into evidence here in
6 this hearing the following questions and answers.

7 Question, "Would you agree that only an owner
8 or an operator could obtain the necessary permits for
9 the new landfill to come into compliance?"

10 Answer, "Not exactly."

11 Question, "Who could obtain the necessary
12 permits?"

13 Answer, "An owner and operator could obtain a
14 permit."

15 Question, "They both need to work in
16 conjunction and sign off on the permit application?"

17 Answer, "Yes."

18 And that would be pages -- those questions
19 and answers would be found on pages 48 and 49 of the
20 Joyce Munie deposition.

21 HEARING OFFICER LANGHOFF: Okay. Very good. The
22 Board would accept the stipulation. The Board accepts
23 those exhibits.

24 MR. BENOIT: There is one other --

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1 HEARING OFFICER LANGHOFF: The Board accepts all
2 the exhibits offered so far and the testimony -- the

3 deposition testimony that you just read into the record,
4 pages 48 and 49 of James -- excuse me, Joyce Munie's
5 deposition. Sorry, Counsel, go ahead.

6 MR. BENOIT: We have also stipulated that Exhibit
7 B19 is the response to Exhibit B59.

8 MR. DAVIS: Yes. B59 was the facility report. And
9 B19 was the Agency's action on receipt of that document.

10 HEARING OFFICER LANGHOFF: That's accepted.
11 Anything further?

12 MR. BENOIT: No.

13 HEARING OFFICER LANGHOFF: Have the parties had an
14 opportunity to discuss the discovery matter that came up
15 yesterday afternoon?

16 MR. DAVIS: I was simply waiting for your ruling.

17 HEARING OFFICER LANGHOFF: I'm going to take that
18 up now.

19 For the record, some evidence came out during
20 the testimony of Mr. Poland concerning Andrews
21 Environmental Engineering, Inc., being present at the
22 site in question in the recent future. Mr. Davis made a
23 motion to compel any reports that might have been
24 generated as a result of that investigation. It appears

1 that some sort of testing was being conducted with three
2 test wells or test ores.

3 Mr. Davis stated that the document should
4 have been provided to him due to the nature of his
5 interrogatories.

6 And Mr. Benoit, in response, stated that he
7 wasn't going to rely on the documents and didn't intend
8 to call Andrews Environmental Engineering and, in
9 effect, was not sandbagging the witness -- or excuse me,
10 sandbagging the State.

11 After reviewing the Briggs Industries, Inc.,
12 second supplemental response to Complainant's first set
13 of interrogatories, and the Complainant's first set of
14 interrogatories it appears that Briggs answered
15 Interrogatory 19 indicating that it might call Andrew
16 Rathsack and Ken Liss of Andrews Environmental
17 Engineering, Springfield, Illinois, as an opinion
18 witness or witnesses.

19 I'm going to grant Mr. Davis's motion to
20 compel the production of documents as a result of
21 Andrews Engineering investigation of the site.

22 MR. DAVIS: Thank you, Mr. Hearing Officer. I
23 would ask -- well, first of all to clarify this matter,
24 it's my understanding that in certain cases that when an

1 oral motion is made at hearing it must be followed up
2 with a written motion. Would it be your request, sir,
3 to have the State provide a written motion to compel?

4 HEARING OFFICER LANGHOFF: It would.

5 MR. DAVIS: Secondly, the deal now with the use or
6 the potential use of whatever documents may be disclosed
7 to us in response to your ruling, I would ask leave that
8 if I elect to do so, that I could simply make a motion
9 to introduce those written matters into the record. We
10 expect to complete the testimony and evidence today
11 regarding the State's complaint and I suppose the
12 counter-complaint. And, then, of course, as you are
13 well aware, the case will continue with the third party
14 actions. The State doesn't intend to participate in the
15 third party actions. So I just want to have the
16 opportunity, if it's useful information, just to simply
17 introduce it into the record.

18 HEARING OFFICER LANGHOFF: Mr. Benoit, any
19 response?

20 MR. BENOIT: I am not -- I mean, if ultimately
21 after the written motion to compel and the response, the
22 hearing officer comes to the same conclusion and I am
23 required or Briggs is required to turn over any, you
24 know, reports of Andrews Engineering, I'm going to do

1 so. But I am not going to stipulate to the
2 admissibility of those records.

3 HEARING OFFICER LANGHOFF: Okay.

4 MR. BENOIT: Nor am I going to pay whatever cost is
5 necessary to get Andrews to -- if it becomes
6 necessary to testify or whatever, to get those into
7 evidence.

8 Quite frankly, I'm shocked at the hearing
9 officer's ruling. It seems to me that the interrogatory
10 itself is clear as to who it's referring to.

11 HEARING OFFICER LANGHOFF: I'm not going to hear
12 any argument about the ruling. I just wanted a response
13 to Mr. Davis's suggestion. If, after receiving the
14 documents that I have ordered you to produce, Mr. Davis
15 is allowed to file a motion to attempt to introduce
16 those documents into evidence, you will be allowed at
17 that time to respond to his motion.

18 MR. DAVIS: Thank you.

19 HEARING OFFICER LANGHOFF: Thank you.

20 MR. DAVIS: I suppose the only loose end we might
21 tie up is to have a date certain by which those
22 documents are produced to the State.

23 HEARING OFFICER LANGHOFF: Mr. Benoit?

24 MR. BENOIT: I'm going to wait until I see the

1 written order. And I guess it can -- you know, whatever
2 date you say in there I guess would be possible. If the
3 order comes out and says have them in within a week or
4 two weeks or whatever, my intention is to comply. Is
5 that the question?

6 MR. DAVIS: All I want is a date certain. I don't
7 care if it's December 31st or January 3rd, just pick a
8 date.

9 HEARING OFFICER LANGHOFF: Thirty days from today's
10 date. I will set the 29th of December for you to turn
11 all the documents over to Mr. Davis that I have ordered
12 you to turn over.

13 MR. BENOIT: Okay.

14 HEARING OFFICER LANGHOFF: Thank you. Is there
15 anything further this morning that we need to discuss
16 before we get into Briggs' case?

17 Seeing nothing, Mr. Benoit, would you like to
18 call your witness?

19 MR. BENOIT: The first witness I would like to call
20 is Mr. Tripses.

21 (Witness sworn.)

22 HEARING OFFICER LANGHOFF: Thank you. Would you

23 please spell your name for the record, Mr. Tripses?

24 THE WITNESS: First name is John, J-o-h-n. The

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1 last name is Tripses, T-r-i-p-s-e-s.

2 JOHN G. TRIPSES,

3 called as a witness, after being first duly sworn, was

4 examined and testified upon his oath as follows:

5 DIRECT EXAMINATION

6 BY MR. BENOIT:

7 Q What is your current position with the EPA?

8 A I'm the manager of the Peoria Regional Office
9 for the field operations section of the Bureau of Land.

10 Q And how many employees do you supervise in
11 that capacity?

12 A Six.

13 Q Are these six employees all inspectors?

14 A Yes, sir.

15 Q Were you yourself an inspector back in 1990?

16 A Yes, sir.

17 Q I'm going to show you what's been marked as
18 Exhibit B9. Showing you B9, can you tell me what
19 Exhibit B9 is?

20 A B9 is a copy of an inspection report that I

21 prepared.

22 Q Have you been present at this hearing since
23 the beginning? I'm talking about yesterday's testimony
24 and so forth; isn't that correct?

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1 A Yes, sir.

2 Q Do you recall me asking questions of other
3 witnesses concerning their understanding of the
4 difference of what I have been referring to in my
5 questioning as the Abingdon Landfill, the difference
6 between the Abingdon Landfill and the new landfill?

7 A Yes, sir.

8 Q Do you understand the distinction that I am
9 making between those two landfills?

10 A Yes, sir.

11 Q What is that distinction?

12 A That there are -- there is the site that was
13 originally -- the property that was originally permitted
14 in 1979 and then closed around 1992. The original
15 permitted area then the reduced permitted area were in
16 this -- it got -- it was eventually reduced to 4.6
17 acres. And then there is the portion of the property
18 adjacent to that where open dumping occurred after the

19 permitted facility was closed.

20 Q And you agree -- you understand that when I
21 say Abingdon Landfill I am talking about the 4.6-acre
22 permitted, enclosed landfill?

23 A I will try to keep that straight.

24 Q And when I say new landfill I'm talking about

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1 the open dump?

2 A Yes, sir.

3 Q Now turning your attention back to Exhibit
4 B9, what facility were you inspecting on July 11th,
5 1990?

6 A The agency referred to it as the
7 Poland-Briggs Landfill.

8 Q Is that the Abingdon Landfill that we are
9 referring to today before it was reduced in size?

10 A Yes, sir.

11 Q Who were the permittees on June 11th, 1990?

12 A I would have to look at the permit, the
13 original permit to answer that question.

14 Q Does looking at page 1, paragraph 1 of the
15 narrative refresh your recollection as to who the
16 permittees were on July 11th, 1990?

17 A Yes, sir.

18 Q And who were the permittees?

19 A Lloyd F. Yoho, Doren Poland and Briggs
20 Manufacturing Company.

21 Q Now in that inspection report there are
22 numerous violations cited; is that correct?

23 A Yes, sir.

24 Q Is one of the violations cited failure to

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1 control access to the Abingdon Landfill?

2 A Yes, sir.

3 Q And is another one failure to file a closure,
4 post closure care plan?

5 A Yes, sir.

6 Q And is another failure to have financial
7 assurance?

8 A Yes, sir.

9 MR. BENOIT: I would like to move for the admission
10 of B9.

11 MR. DAVIS: No objection.

12 HEARING OFFICER LANGHOFF: It's admitted.

13 BY MR. BENOIT:

14 Q I'm going to show you what's been marked as

15 Exhibit B10. You can hold onto that. Is Exhibit B10 an
16 enforcement decision group referral memorandum drafted
17 by you on July 19th, 1990?

18 A Yes, sir.

19 MR. BENOIT: I would like to move for the admission
20 of B10.

21 MR. DAVIS: No objection.

22 HEARING OFFICER LANGHOFF: It's admitted.

23 Q And does that memorandum, B10, concern your
24 June 11th, 1990, inspection?

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1 A Yes, sir.

2 Q Was it your recommendation in Exhibit B10
3 that the facility be given 60 days to install a gate
4 fence to restrict site access? At least a portion of
5 your recommendation? I'm looking at paragraph 5 bottom.

6 A Yes, 60 days from the AWM to install a gate
7 to restrict site access.

8 Q I'm going to show you what's previously been
9 marked as People's 15. This is a document that I
10 believe has previously been admitted. Did you draft
11 People's 15?

12 A Yes, sir.

13 Q Can you recall the July 2, 1991,
14 preenforcement conference reference to People's 15?

15 A Not directly.

16 Q Would you agree that People's 15, basically
17 the middle paragraph, accurately sets forth the
18 agreement that was reached as a result of the July 2nd,
19 1991, preenforcement conference?

20 A Yes.

21 Q And you can't -- is it your testimony you
22 can't recall the meeting?

23 A I don't remember this particular meeting,
24 sir.

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1 Q I'm going to show you what's been marked as
2 B18. Do you recall seeing Exhibit B18 before?

3 A No, sir, I don't, but that doesn't mean I
4 didn't see it.

5 Q You notice on the bottom you were sent a
6 courtesy copy of this Exhibit B18?

7 A Yes. Yes, sir.

8 Q Can you recall whether or not the Abingdon
9 Landfill had come into compliance about the date of this
10 memorandum which is B18, March 10th, 1993?

11 A I don't remember directly, but this letter
12 wouldn't have been issued had they not.

13 Q Do you see in the body, the first paragraph
14 of Exhibit B18, it says, "John Tripses has recommended
15 closing the case"?

16 A Yes, sir.

17 Q Would you have recommended closing the case
18 if they were -- if the Abingdon Landfill was still out
19 of compliance?

20 A No, sir.

21 Q Would coming into compliance by March 10,
22 1993, mean that some type of gate was put in place at
23 the Abingdon Landfill to control access?

24 A It should have been, but I do not remember if

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1 one was installed.

2 Q But they would have been out of compliance on
3 March 10th, 1993, if they had not put up some type of
4 gate or otherwise controlled access to the site; is that
5 correct?

6 A Yes, sir.

7 Q Coming into compliance also required some
8 type of financial assurance be put in place for the

9 Abingdon Landfill, is that true?

10 A Yes, sir.

11 Q And I believe the earlier testimony in this
12 case and the exhibits indicate that Briggs put up that
13 financial assurance. Is it your recollection that
14 Briggs put up the financial assurance for the Abingdon
15 Landfill?

16 A Sir, I do not review financial assurance
17 documents. That is handled by a separate group at
18 headquarters.

19 Q You don't know who put up the financial
20 assurance?

21 A No, sir.

22 Q No enforcement action was ever brought based
23 on the July 11th, 1990, inspection; isn't that correct?

24 A That's correct.

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1 Q Now you mentioned that you are -- you
2 supervise inspectors in your current position with the
3 EPA. Is one of the people you supervise James Jones?

4 A Yes, sir.

5 Q Were you James Jones's supervisor on March
6 31st, 1995?

7 A Yes, sir.

8 MR. BENOIT: I forgot to move for the admission of
9 B18. That was the March 10th, 1993, memo. I so move
10 now.

11 MR. DAVIS: No objection.

12 HEARING OFFICER LANGHOFF: It's admitted.

13 Q I'm going to show you what's been marked as
14 Exhibit B32. I believe that's previously been admitted.
15 Did you codraft Exhibit B32?

16 A Yes, sir.

17 Q I want you to look at the Exhibit B32, page
18 2, last paragraph. It talks about an inspection that
19 was conducted on March 31st, 1995. Do you see that?

20 A Yes, sir.

21 Q Did James Jones conduct that inspection?

22 A Yes, sir.

23 Q After that inspection, did Mr. Poland contact
24 you requesting a meeting with the Department of Land

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1 Pollution Control, slash, Permits?

2 A Yes, sir. It's Division of Land Pollution
3 Control, Permit Section.

4 Q And why did Mr. Poland want to set up a

5 meeting?

6 A He wanted to discuss the waste from Briggs
7 and see if he could get some kind of an exemption from a
8 permit requirement for the agency.

9 Q And did you arrange for Mr. Poland to have
10 such a meeting?

11 A Sir, I don't remember if I arranged the
12 meeting or if Mr. Poland arranged the meeting. But we
13 had a meeting.

14 Q Okay. When you say "we had a meeting," is
15 this the meeting that is referred to on the top of page
16 3 of Exhibit B32, April 3rd, 1995, meeting?

17 A Yes, sir.

18 Q Were you present at that meeting?

19 A Yes, sir.

20 Q Was that meeting held in Springfield?

21 A Yes, sir.

22 Q Who all was present at that August (sic) 3rd,
23 1995, meeting?

24 A The only ones I remember for sure that was at

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1 that meeting was Mr. Poland, myself, Harry Chappel and
2 the gentleman who was here yesterday for Mr. Poland.

3 And beyond that, amongst the various permit people who
4 may have been there, I don't remember exactly who was
5 there.

6 Q Was this meeting set up by Mr. Poland's state
7 senator and state representative?

8 A I have no knowledge that that occurred.

9 Q Was it kind of unusual for this kind of
10 meeting to be held?

11 A No, sir. We have meetings all the time.

12 Q Well, I realize that the EPA personnel have
13 meetings all the time. Just the way -- you know, there
14 is an inspection on March 31st, 1995, and someone, you
15 know, Mr. Poland asked for a meeting; and all of a
16 sudden we have got, you know, five, six IEPA people
17 meeting with Mr. Poland in Springfield as opposed to
18 Peoria. Is that a little strange?

19 A No. The meeting -- we would have all gone to
20 Springfield for the meeting as a courtesy for our permit
21 section because they are in Springfield. There are more
22 of them at the meeting than there are field operations
23 people. So we meet down there. It only takes me an
24 hour and a half, two hours to get to Springfield.

1 Whereas, if we meet in Peoria, it takes three or four or
2 five of them more man time to come up. And there are
3 more conference rooms available in headquarters than
4 there are at regional offices.

5 Q Now is this the meeting you said you recall
6 seeing Mr. Poland there?

7 A Uh-huh.

8 Q Is this the meeting where Mr. Poland came
9 with a suitcase or a box and had some samples of clay or
10 material that was being placed in the new landfill?

11 A Yes, sir.

12 Q Did Mr. Poland put on his own presentation at
13 this meeting?

14 A Yes, sir.

15 Q Jim Schoenhard was not there?

16 A I don't remember Mr. Schoenhard being there.

17 Q He may have been there?

18 A I don't remember him being there. I don't
19 think he was at that time, but, again, I don't remember.

20 Q Do you recall what the EPA's response to
21 Mr. Poland's presentation given at that April 3rd, 1995,
22 meeting, what the EPA's response was?

23 A We attempted -- "we" the agency, primarily
24 Harry Chappel, who at that time was in the permit

1 section -- that the waste that Mr. Poland had brought
2 needed to be properly disposed of, needed to be disposed
3 of in a permitted landfill. And that we attempted
4 to -- he explained to him that he could apply -- if he
5 could demonstrate that the material was inert waste as
6 defined in the regulations, then there would be less
7 stringent requirements for the disposal of that waste.

8 Q Do you see on B32, page 3, first paragraph,
9 about the middle of the paragraph, indicates that the
10 permit section told Mr. Poland that the waste facility
11 accepts the type of waste the PCB intended to cover
12 under regulations for the disposal of inert waste. Can
13 you recall anybody at the EPA at the meeting on April
14 3rd, 1995, actually telling Mr. Poland that?

15 A Harry Chappel.

16 Q Was it kind of your opinion at that time that
17 this was likely to be the type of waste the PCB intended
18 to be governed by the inert landfill regulations?

19 A It could be if it could be demonstrated that
20 the material met the requirements of the regulation as
21 an inert waste.

22 Q Right. I understand that. Now at that
23 meeting -- and I admit I'm a little confused. We have
24 been talking -- it seems like there is two different

1 meetings that have come out in the testimony and what
2 Mr. Poland was or was not told. But at the April 3rd,
3 1995, meeting, did anybody representing the EPA at that
4 meeting tell Mr. Poland that it was okay for him to keep
5 accepting waste at the new landfill as long as he was
6 attempting to obtain a permit?

7 A No, sir. No one told him that.

8 Q Now you are aware on April 3rd, 1995, that
9 waste, this porcelain waste continued to be accepted at
10 the new landfill; is that right?

11 A Yes, sir.

12 Q Now did your office take any steps at that
13 time to stop the acceptance of this porcelain waste at
14 the new landfill?

15 A We continued our inspections and then
16 ultimately recommended enforcement.

17 Q Would you agree that the decision to actually
18 pursue an enforcement action came long after the April
19 3rd, 1995, meeting?

20 A I believe it was two years. I don't know if
21 that meets your definition of long or not.

22 Q As a result of this March 31st, 1995,
23 inspection, pre-enforcement conference letters were sent
24 to Mr. Poland as operator and Mr. Yoho as owner; is that

1 correct?

2 A I believe that's correct, sir.

3 Q I'm going to show you what's been marked as
4 B28 and 29. Would those appear to be true and accurate
5 copies of the preenforcement conference letters sent to
6 Mr. Poland and Mr. Yoho?

7 A Yes, sir.

8 MR. BENOIT: I would like to move that they be
9 admitted, B28 and B29.

10 MR. DAVIS: I think these already have.

11 Q Now no preenforcement conference letter was
12 sent to Briggs as a result of that March 31st, 1995,
13 inspection; is that correct?

14 A Yes, sir.

15 Q Now, again, focusing on Exhibit B32, page 3,
16 say about two thirds of the way down, it talks about
17 another preenforcement conference held on June 13th,
18 1995; do you recall that meeting?

19 A Yes, sir.

20 Q And did the June 13th, 1995, preenforcement
21 conference also concern the March 31st, 1995,
22 inspection?

23 A Yes, sir.

24 Q Now, again, just continue to focus on Exhibit

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1 B32, page 3. Was the April 3rd, 1995 meeting something
2 else besides the preenforcement conference? In other
3 words, it didn't necessarily deal with the March 31st,
4 1995, inspection?

5 A Not directly. We discussed issues that would
6 have arisen from the March --

7 Q I think it was March 31st, 1995.

8 A March 31st, 1995, inspection. But it was not
9 an enforcement meeting.

10 Q It was kind of a special or unusual meeting?

11 A I don't think it was either special or
12 unusual. It was routine in our course of business to
13 meet with the regulated community to discuss issues on
14 trying to get permits.

15 Q But then let me go back down to the June
16 13th, 1995, inspection. That's more just a
17 run-of-the-mill preenforcement conference meeting?

18 A Yes, sir. That was a meeting held pursuant
19 to section 31D of the Illinois Environmental Protection
20 Act.

21 Q And at that meeting did you tell Mr. Poland

22 that he was operating the new landfill without a permit?

23 A Yes, sir.

24 Q And then you, again, I assume told him the

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1 same information that was given him on the April 3rd,
2 1995, meeting as far as here is what you have to do to
3 get a permit?

4 A Yes sir. If you will notice from the
5 paragraph here, that's the meeting where we had Ron
6 Steward --

7 Q Which meeting are you talking about now?

8 A The June 13th, 1995, the preenforcement
9 conference.

10 Q Okay.

11 A We had Ron Steward come to that meeting so
12 that we could provide assistance to Mr. Poland as to
13 what he needed to do to get a permit.

14 Q And at that meeting Mr. Poland was also told
15 that he needed to get siting for the new landfill?

16 A Yes, sir.

17 Q I'm going to show you what's been marked as
18 Exhibit B30. I believe it's previously been admitted
19 into evidence.

20 HEARING OFFICER LANGHOFF: That's correct.

21 Q Did you draft B30?

22 A Yes, sir.

23 Q And is B30 basically a follow-up letter to
24 Mr. Poland reiterating what happened at the June 13th,

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1 1995, preenforcement conference; would you agree with
2 that statement?

3 A Yes, sir.

4 Q And at the conference, in the middle of the
5 first page of B30, several items were explained to
6 Mr. Poland?

7 A Yes, sir.

8 Q Was it your understanding at the time that
9 the you wrote B30 and at the time of the June 13th,
10 1995, preenforcement conference, that Mr. Poland owned
11 the land where the new landfill is?

12 A I remember at that time I thought the land
13 was owned by Mr. Yoho or owned by Mr. Poland or owned
14 jointly.

15 Q At that time, that same time, I am talking
16 about the June of 1995, is it your understanding that
17 Mr. Poland was the operator of the new landfill?

18 A Yes, sir.

19 Q And was it your understanding in June 1995
20 that Mr. Poland was the person conducting disposal
21 operations?

22 A Yes, sir.

23 Q And then at the preenforcement
24 conference -- and, again, was Mr. Poland the only person

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1 besides IEPA people at the preenforcement conference?

2 A I believe so, sir.

3 Q He didn't have Mr. Schoenhard at that time?

4 A I don't remember Mr. Schoenhard being at that
5 meeting.

6 Q And do you recall Mr. Yoho being there?

7 A No, sir. I never met Mr. Yoho until
8 yesterday.

9 Q At the preenforcement conference Mr. Poland
10 agreed to take the action set forth in Exhibit B30; is
11 that correct?

12 A Yes, sir.

13 Q You can look again at Exhibit B32. At page
14 6, B32, there is a section called Recommendation. And
15 therein you recommend that possibly Briggs Manufacturing

16 Company as generator of the waste be referred to the AG.

17 Can you tell me why you recommended that
18 possibly Briggs be referred?

19 A It was their waste, and it was being disposed
20 of at a site that did not meet the requirements of the
21 active Pollution Control Board regulations.

22 Q I would like to show you what's been marked
23 as Exhibit B40. And I believe that's previously been
24 admitted. Do you recognize B40?

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1 A Yes, sir.

2 Q B40 is a memo drafted by you on March 4th,
3 1997, to Mark Schollenberger at IEPA Permits; is that
4 correct?

5 A Yes, sir.

6 HEARING OFFICER LANGHOFF: Let's take five minutes.

7 (A recess was taken.)

8 HEARING OFFICER LANGHOFF: Back on the record. Now
9 please continue, Mr. Benoit.

10 BY MR. BENOIT:

11 Q I would like you to look at B32 again, just
12 for a second. B32, which was the request for
13 enforcement decision.

14 A Oh I'm sorry, B32.

15 Q And, again, turning back to page 6, what were
16 you requesting the -- or recommending that the Attorney
17 General's Office do?

18 A We were -- we requested that the Attorney
19 General's Office negotiate an enforceable consent
20 agreement that would require the parties to obtain the
21 necessary siting and permits to operate a landfill.

22 Q And what was your rationale for that
23 recommendation?

24 A We wanted the enforcement order because it

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1 was going to take a long time to do all this work. And
2 we wanted to have something in place so that the process
3 wouldn't drag on any longer than it takes.

4 Q Do you see on B32, page 6, section 4, that
5 middle paragraph 2, it says, "The facility is continuing
6 to accept waste while obtaining siting on a permit"?

7 A Yes, sir.

8 Q Was that acceptable to your office that they
9 were continuing to accept waste?

10 A No.

11 Q It looks to me that that's what you are

12 recommending here that a consent agreement be put in
13 place and while that agreement is in place the facility
14 would continue to accept waste while attempting to get
15 siting and obtain a permit. I'm reading that wrong?

16 A Could you -- the start of your sentence, I --

17 MR. DAVIS: Mr. Hearing Officer, I would at this
18 point have to object to the form of the question. There
19 is a certain amount of latitude, of course, but this is
20 not an adverse witness.

21 HEARING OFFICER LANGHOFF: Can you rephrase the
22 question?

23 BY MR. BENOIT:

24 Q You were recommending that an enforceable

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1 consent agreement be obtained by the Attorney General's
2 Office; is that right?

3 A Yes.

4 Q And the reason that you were seeking an
5 enforceable consent agreement is because you knew that
6 it would take a long time for the facility to get siting
7 approval and a permit?

8 A Yes, sir.

9 Q And you knew that while the facility was

10 attempting to obtain siting and a permit they would
11 continue to accept waste?

12 A I knew that -- I knew that they were
13 continuing to accept waste, but we didn't give them
14 permission to do that. I don't want that to be implied
15 in my answer.

16 Q Were you recommending an enforceable consent
17 agreement that would give them permission to do that
18 while they were attempting to get siting and a permit?

19 A No.

20 Q What were you recommending that the
21 enforceable consent agreement would provide?

22 A Dates by which they would do the work
23 necessary to get a permit, would establish milestones so
24 that if they didn't do the work we could come back and

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1 have penalties. At the regional office level I
2 can't -- I don't have the authority to give people
3 forever to come into compliance. I can do it for short
4 periods of time. If it's going to take a long period of
5 time, then I have to run it up the chain of command to
6 Springfield and seek either their concurrence or
7 recommend that we go get a consent agreement to require

8 the work to be done.

9 Q Who would have the authority in Springfield
10 to give the authority to Mr. Poland to continue to
11 accept waste at the new landfill while he was seeking a
12 permit?

13 A I don't believe there is anyone in the agency
14 who has that authority.

15 Q Earlier you mentioned that sometimes you
16 allow people to be in noncompliance status for a short
17 period of time?

18 A No. I don't allow them to be out of
19 compliance. They either are in compliance or they are
20 out of compliance. But we give them time to return to
21 compliance without proceeding with enforcement.

22 Q You have a little bit of discretion?

23 A A little bit, but I don't have the authority
24 to allow them to be out of compliance.

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1 Q Right. I understand that.

2 A I just want to make sure that is clear.

3 Q It's more of a discretion type of thing of
4 whether to set the wheels in motion for an enforcement
5 type action or an administrative citation type action?

6 A Correct.

7 Q And is it your testimony that at no time did
8 you tell Mr. Poland that it was okay for him to accept
9 waste at the new landfill while attempting to obtain a
10 permit?

11 A Yes.

12 Q And is it your testimony that at no time did
13 you hear any other IEPA employee tell Mr. Poland that it
14 was okay with the EPA that he continue to accept waste
15 at the new landfill until he obtained a permit?

16 A Yes.

17 Q Now we will move on to B40.

18 Do you recognize B40?

19 A Yes, sir.

20 Q B40 is a February 4th, 1997, memo to Mark
21 Schollenberger drafted by you; is that correct?

22 A Yes, sir.

23 Q I want you to take a look at numbered
24 paragraph 3 of B40.

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1 A Yes, sir.

2 Q Did your office review some type of submittal
3 regarding the materials placed at the new landfill

4 regarding whether or not the materials were inert?

5 A I don't remember if this was -- let's see.

6 Q Take your time and look it over.

7 A Yeah. Thank you.

8 (Brief pause in proceedings.)

9 A I don't remember if the submittal asked for
10 an inert waste determination or just a solid waste
11 determination.

12 Q Can you read paragraph 3 again?

13 A It says yes.

14 Q Did your office agree with the submittal that
15 materials are inert?

16 A I guess I would say that perhaps this -- I
17 could have worded this statement a little bit better.
18 The materials -- the inert waste landfill regulations,
19 the 811 regulations were reasonably new. And the
20 material appeared that it could -- that it might be able
21 to qualify as an inert waste if they could make the
22 demonstration of the regulations. I do not have the
23 authority to determine that the waste is inert or not
24 inert.

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1 Q How did you make the determination or why

2 would you state that the Peoria office agrees with the
3 submittal that materials are inert? I mean, what was
4 that based on?

5 A Again, I don't remember specifically. But
6 in -- perhaps it would have been better had I written
7 that it could be inert. It could meet the definition of
8 inert waste.

9 Q Now did you get a chance to review paragraph
10 4?

11 A Yes.

12 Q And are you aware of waste similar to that
13 generated by Briggs and placed in a new landfill that
14 has been generated by other -- well, scratch that
15 question.

16 Tell me what you know about Western Stoneware
17 and the waste they generate.

18 A They submitted a solid waste determination
19 for some material that they generated. And, again, this
20 is -- I didn't review that document prior to coming
21 here. It was a document that they submitted, a solid
22 waste determination to our permit section requesting
23 that this material be determined not to be a solid waste
24 so that they could send it back to this quarry which

1 does not have a permit.

2 Q And was the determination made that Western
3 Stoneware's waste was not waste, porcelain waste was not
4 waste?

5 A I don't know that it was porcelain waste. I
6 don't remember, sitting here, exactly what that material
7 was.

8 Q Do you agree that -- I mean, in B40 you say
9 "similar waste"?

10 A I agree that it says similar, but sitting
11 here today, I don't remember exactly how it was similar
12 or how it may have been different from what Briggs
13 Manufacturing was.

14 Q Paragraph 4 mentions companies, and that
15 refers to one, Western Stoneware. Are you aware of
16 other companies that produce porcelain, ceramic type
17 waste, clay molds, wastes similar to that which Briggs
18 generates?

19 A Okay. Am I aware of companies that generate
20 waste similar to what Briggs generates?

21 Q Yes.

22 A Well, I'm not sure how similar you want. I
23 know of other companies in Western Illinois that
24 generate fired clay items.

1 Q That's fine. What other companies are you
2 aware of that produce fired clay items?

3 A Haeger Potteries and Royal Haeger Lamp
4 Company in Macomb. And I'm not sure if they are still
5 in operation, though. The McGraw Edison Company also in
6 Macomb. They make electrical insulators, ceramic
7 insulators. But, again, I have not personally inspected
8 either the Haeger Lamp Company or the Royal -- Haeger
9 Pottery or Royal Haeger Lamp Company. And I have been
10 at McGraw Edison, but it was a long time ago back in my
11 air pollution days.

12 Q Do any of these three companies, to your
13 knowledge, dispose of their porcelain type waste in
14 unpermitted -- at unpermitted sites?

15 A I don't know that they do.

16 Q So the only one you are aware of is Western
17 Stoneware?

18 A I know that they submitted that solid waste
19 determination. I don't know -- I have not been to
20 Western Stoneware. I have not been to the quarry. I
21 don't know if they did or not.

22 Q You don't know if they did what or not?

23 A Sent materials to the quarry. I don't know
24 that they disposed of any material at an unpermitted

1 facility.

2 Q It states right here the materials were going
3 to a quarry.

4 A Again, I don't know. I know that Western
5 Stoneware requested it and I believe permits were
6 granted. But I do not know that anything ever actually
7 went there.

8 Q If the new landfill were a quarry, would your
9 office have an objection? And I know it would still be
10 unpermitted.

11 MR. DAVIS: I have an objection. That calls for
12 speculation.

13 HEARING OFFICER LANGHOFF: Do you have any
14 response?

15 MR. BENOIT: I'll just rephrase the question.

16 BY MR. BENOIT:

17 Q Do you agree with the statement in
18 B40 -- well, starting off with, in B40, paragraph 4
19 where it says, "DLPC/FOS-Peoria would have less of an
20 objection if the materials," what are you referring to
21 by the word "materials"?

22 A The materials covered by the solid waste
23 determination, the broken toilet fixtures from Briggs

24 Manufacturing.

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1 Q That are placed in the new landfill?

2 A Yeah.

3 MR. BENOIT: I have got to find one more exhibit.

4 (Brief pause in proceedings.)

5 BY MR. BENOIT:

6 Q I will show you what's been marked as B48.

7 Do you recognize B48?

8 A Yes, sir.

9 Q Did you coauthor B48?

10 A Yes, sir.

11 Q Can you turn to page 9? I think it's the

12 last page of B48.

13 A Yes, sir.

14 Q In there it's stated, "Peoria recommends that

15 Doren Poland, Lloyd Yoho and Briggs Industries be

16 referred to the Attorney General's Office for developing

17 and operating solid waste disposal site without a

18 permit"?

19 A Yes, sir.

20 Q Why did you make that recommendation in

21 regard to Briggs?

22 A Because Briggs was sending its waste to an
23 open dump.

24 Q Is that the only reason?

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1 A Yes.

2 MR. BENOIT: Have Exhibits 9 and 10 been admitted?

3 HEARING OFFICER LANGHOFF: Yes.

4 MR. BENOIT: I think that's all I have for this
5 witness.

6 HEARING OFFICER LANGHOFF: Thank you. Mr. Davis.

7 MR. DAVIS: Thank you.

8 CROSS-EXAMINATION

9 BY MR. DAVIS:

10 Q John, isn't it true that you were attempting
11 to take these matters to enforcement beginning on the
12 same day that James Jones made his November 1993
13 inspection?

14 A Yes, sir.

15 Q And, in fact, on that date you sent a request
16 for enforcement decision to the enforcement decision
17 group, did you not?

18 A Yes, sir.

19 Q We have heard testimony on direct

20 examination, the questions by Mr. Benoit, that at least
21 two other requests for enforcement decision were sent by
22 you, his Exhibit B32 from August '95 and then the one
23 that he was just talking to you about which is B48 from
24 July 1997. Were you somewhat frustrated that the case

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1 was not accepted for enforcement?

2 A I'm not sure that frustrated accurately
3 describes it.

4 Q Did it seem to you, John, that this was a
5 clear case of operating without a permit where a permit
6 was clearly needed because the materials were clearly
7 wastes?

8 A Yes, sir.

9 Q And did it appear to you, John, that Briggs
10 Industries was just as involved in these issues as the
11 owners and operators of the landfill?

12 A Yes, sir.

13 Q Let me begin where Mr. Benoit began and ask
14 you to look again at your inspection report from June of
15 1990. That's Exhibit B9.

16 A Yes.

17 Q John, turn to the first page of the

18 narrative. And I will give you a minute to look through
19 this page. What I am interested in asking you about are
20 your contacts with the Briggs Company representatives on
21 that day.

22 (Brief pause in proceedings.)

23 Q Now first of all, did you meet with anyone
24 from Briggs?

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1 A Yes, sir. I met with a Robert Batson and
2 James Willis.

3 Q And was it your understanding that Mr. Batson
4 was then the plant manager and Mr. Willis was then the
5 plant engineer?

6 A Yes, sir.

7 Q Can you indicate whether or not they
8 explained their involvement, their company's involvement
9 with the landfill at that time?

10 A Yes, sir. According to the report, they said
11 that Briggs Manufacturing had nothing to do with the
12 operation of the landfill.

13 Q And did you take that statement at face value
14 or did you inquire further?

15 A No. They were unable to explain how they

16 were uninvolved when they were listed on permits as
17 either owner or operator.

18 Q Now after this discussion -- which I presume
19 took place at the plant, did it not?

20 A Yes, sir.

21 Q Did they accompany you to the landfill site?

22 A Yes, sir.

23 Q And at that time did you further discuss what
24 you perceived to be compliance deficiencies such as the

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1 unrestricted access to the site?

2 A Yes, sir.

3 Q Now is it your understanding, John, that
4 sometime subsequent to that discussion on June 11, 1990,
5 that a gate was constructed at the site? Your
6 understanding would be from any source, either
7 Mr. Jones's subsequent inspection reports or even the
8 testimony that you heard yesterday.

9 A It could have been either through a
10 subsequent inspection where I don't actually remember or
11 they could have provided data information at the
12 preenforcement conference.

13 Q So after mentioning that problem to the

14 Briggs representatives it was later taken care of?

15 A Apparently, yes, sir.

16 Q Now some of the other what I refer to as
17 problems or compliance deficiencies or violations would
18 have included the lack of a closure plan?

19 A Yes, sir.

20 Q And was this later submitted and approved by
21 the agency?

22 A Yes, sir.

23 Q Submitted to and approved by the agency?

24 A Yes, sir.

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1 Q And part of that would have been financial
2 assurance.

3 Let me show you what we have marked and had
4 admitted as People's Exhibits 17 and 19. And I
5 understand that it's not your job to review financial
6 assurance materials.

7 HEARING OFFICER LANGHOFF: Unfortunately, they are
8 not in order anymore.

9 BY MR. DAVIS:

10 Q Mine are. Let me use my copies and show you
11 first Exhibit 17 and then Exhibit 19. Would you agree,

12 first of all, that these two exhibits do relate to the
13 site that we have been talking about?

14 A Yes, sir.

15 Q And does it appear that these matters were
16 provided for or funded by the Briggs Company?

17 A Yes, sir.

18 Q Very good. Now also on June 11, 1990, I
19 believe you have already testified that one of the other
20 violations that you discussed with Briggs pertained to
21 the mixing of wastes, that is, the ceramic and porcelain
22 wastes also included --

23 MR. BENOIT: I'm going to object. We didn't talk
24 about that.

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1 Q Let me ask you, then, John, if Exhibit 9,
2 which is your inspection report from June 11, 1990,
3 cited the mixture of unacceptable wastes as an apparent
4 violation?

5 A Yes, sir.

6 Q And would it be fair to say that you had the
7 porcelain, the waste vitreous china, the broken molds
8 and so forth, and then, on the other hand, you had the
9 so-called unacceptable wastes which would have included

10 wood and metal and other materials?

11 A Yes, sir.

12 Q Did you also discuss this problem with the
13 Briggs representatives?

14 A Yes, sir.

15 Q And is it your understanding, John, that the
16 company began to do a better job in sorting its wastes
17 subsequent to that conversation?

18 A Yes, sir.

19 Q Now one last area of inquiry regarding this
20 inspection. And I'll direct your attention to the last
21 paragraph on the first page of your narrative in Exhibit
22 B9. You have explained already, John, how you had a
23 discussion with Mr. Willis and Mr. Batson at the plant
24 and then they accompanied you to the landfill. Can you

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1 explain to us the discussion that you had with them at
2 the landfill regarding the operation of the landfill?

3 A The waste is hauled from the plant to the
4 site and then dumped there. And then after a sufficient
5 area is covered they -- a sheepsfoot compactor is used
6 to crush the waste and compact it.

7 Q And did Mr. Willis or Mr. Batson also explain

8 that the site is completely covered -- I'm sorry, the
9 crushing of the china that you have just described
10 occurs twice a year?

11 A I don't remember how often they crushed.

12 Q I would direction your attention to the very
13 last line on page 1 of your narrative. I see a
14 reference there.

15 A Okay. Twice a year.

16 Q Did Mr. Batson or Mr. Willis explain any
17 other specifics of the operation of the landfill?

18 A I don't recall.

19 Q Did it appear to you, John -- and I'm asking
20 you to remember something over 10 years ago -- that the
21 Briggs representatives were rather familiar with the
22 operations of the landfill?

23 A Yes, sir.

24 Q Now Mr. Benoit had asked you regarding

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1 preenforcement notices, and I believe you referred to a
2 couple of his exhibits.

3 Let me show you a couple of my exhibits,
4 specifically, these would be People's Exhibit 24 and
5 People's Exhibit 25. These have been admitted. And can

6 you tell us the dates and to which party these
7 preenforcement conference letters went to?

8 A Exhibit Number 24 is a preenforcement
9 conference letter dated March 4th, 1994, and it was sent
10 to Jim Willis of Briggs Industries, Inc. And Exhibit 25
11 is a violation notice dated January 17th, 1997, and it
12 was sent to Joyce Blevins of Briggs Industries.

13 Q Now let me take those back and ask that you
14 look once more at B32, and ask you if this document,
15 B32, indicates on page 2 whether or not Briggs responded
16 to the 1994 preenforcement conference letter?

17 A No, sir. No response from the preenforcement
18 conference letter was received from Briggs Manufacturing
19 Company.

20 Q Now I direct your attention, John, to the
21 immediately following paragraph. Does it appear that
22 something on behalf of Briggs was submitted by somebody
23 else later in March 1994?

24 A Yes, sir. There was a request for a solid

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1 waste determination submitted by Engineers and
2 Surveyors, Inc., for Briggs Manufacturing.

3 Q And to this submittal how would you

4 characterize -- a solid waste determination, is that
5 what you said?

6 A Yes, sir.

7 Q Did it involve the issue of whether the waste
8 was inert?

9 A No, sir, not a waste -- not inert, but
10 whether or not the material was a solid waste.

11 Q And the inert issue came up sometime later, I
12 understand?

13 A Yes, sir.

14 Q Now with a solid waste determination you
15 would look simply at whether or not something is an
16 industrial process product or waste? This is one of the
17 areas of inquiry?

18 A Yes, sir.

19 Q And then would you also look at where the
20 material would be placed or deposited?

21 A Yes, sir.

22 Q If it's determined to be a waste and it's
23 disposed of on-site, is this acceptable without a
24 permit, or was it at that time?

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1 A Acceptable to be disposed of on-site without

2 a permit?

3 Q Yes, sir.

4 A Yes.

5 Q So one of the issues involved in this
6 specific review would have been the location where the
7 wastes were taken to?

8 MR. BENOIT: I'm going to object. I don't think
9 any of these documents he is talking about for this
10 solid waste determination have been admitted into
11 evidence or talked about by anybody except Mr. Davis
12 right now.

13 MR. DAVIS: It's cross-examination, Mr. Hearing
14 Officer.

15 HEARING OFFICER LANGHOFF: I'm going to overrule
16 your objection.

17 BY MR. DAVIS:

18 Q So to rephrase that question, was it
19 pertinent to this review that the disposal site was not
20 where the wastes were generated?

21 A Yes, sir.

22 Q Let me move on then and ask about the
23 meetings that we have had so much testimony and inquiry
24 into. First of all, would it be fair to say that there

1 were two meetings in 1995, the one in April was in
2 Springfield and the one in June was in Peoria?

3 A Yes, sir.

4 Q In looking at Exhibit B32 still, and now we
5 are on page 3, I would suggest -- would I be correct in
6 assuming that when you met with Mr. Poland in April of
7 '95 in Springfield, that one of the issues discussed had
8 been the previous year's attempt by Briggs on the solid
9 waste determination?

10 A Yes.

11 Q And with that issue having been at least
12 determined preliminarily, that the demand made on
13 Mr. Poland was for him to obtain a permit?

14 A Yes, sir.

15 Q Now you have already been asked about a
16 couple different exhibits by Mr. Benoit in between the
17 April meeting and the June meeting, but would it be fair
18 to say, John, that coming out of the April meeting of
19 1995, that you expected Mr. Poland to apply for a
20 permit?

21 A Yes, sir.

22 Q And that one of the reasons that you had to
23 proceed with the pre-enforcement conference in June of
24 1995 was that he had not had a permit application filed?

1 A Yes.

2 Q Let me direct your attention to the bottom
3 paragraph of page 3 of Exhibit B32 and ask whether
4 Mr. Poland relayed any concerns to you about his
5 relationship with the Briggs Company?

6 A Yes, sir.

7 Q What did he say?

8 A He said he was just trying to help Briggs
9 Manufacturing remain in operation by providing them with
10 an affordable disposal service.

11 Q Now let's focus on that issue. From what you
12 have heard from testimony yesterday and from your review
13 of internal agency documents, does it appear that Briggs
14 was getting a pretty cheap --

15 MR. BENOIT: I'm going to object. This is outside
16 the scope of direct examination.

17 HEARING OFFICER LANGHOFF: Overruled.

18 BY MR. DAVIS:

19 Q Does it appear that Briggs was getting a
20 pretty cheap place to dump their wastes?

21 A Yes, sir.

22 Q Do you have any opinion as to, first of all,
23 whether Briggs --

24 MR. BENOIT: I'm going to object. He wasn't

1 disclosed as an opinion witness.

2 MR. DAVIS: That's because I didn't intend to call
3 Mr. Tripses. He has been called by the defense. I am
4 going to ask whatever I want to.

5 MR. BENOIT: He didn't disclose anyone having any
6 knowledge about this. And, secondly, he didn't identify
7 him as an opinion witness or what his basis would be.
8 The people that he has identified as opinion witnesses,
9 to give information on or testimony on cost savings and
10 this and that, didn't have any testimony.

11 MR. DAVIS: Mr. Hearing Officer, he has been called
12 by the respondent. He has heard the testimony from
13 yesterday. He has sat in this trial. He was not
14 identified as one of our witnesses because, at that
15 time, he probably didn't have any opinions. But he has
16 gained a basis from which to give us an opinion or
17 conclusion. This goes to weight not admissibility.
18 This goes to whether --

19 MR. BENOIT: And --

20 MR. DAVIS: I'm really not done, Mr. Hearing
21 Officer.

22 This goes to whether or not they have opened
23 the door to testimony. And when you call somebody as
24 your witness that the other party hadn't intended to

1 call, you can't say, wait a minute, you can't ask them
2 that because you didn't say you were going to call them
3 as a witness. It's not the way it works.

4 MR. BENOIT: That certainly is the way it works.
5 That's what the whole purpose of these rules are and
6 interrogatories asking for who opinion witnesses are,
7 what is the basis of their opinions and their reports.
8 Which Mr. Davis, you know, he has been hammering away on
9 that same rule yesterday afternoon and this morning.

10 HEARING OFFICER LANGHOFF: I'm going to sustain his
11 objection on the grounds that it's outside the scope of
12 the direct examination.

13 MR. DAVIS: Okay.

14 BY MR. DAVIS:

15 Q Now moving on, John, did Mr. Poland indicate
16 to you any further information regarding the costs of
17 alternative sites for disposal of the Briggs' wastes?

18 A Mr. Poland said that he had contacted Knox
19 County Landfill and that their price was too high for
20 Briggs to pay.

21 Q Now subsequent to this meeting we understand
22 from the inquiry on direct and from the Defense Exhibit

23 B48, that you had a July 1997 request for enforcement?

24 A Yes, sir.

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1 Q I take it by that time the issue of a permit
2 was still unresolved?

3 A Yes, sir.

4 Q And that the disposal of the Briggs' wastes
5 had continued through, until at least some point in
6 1997?

7 A Yes, sir.

8 Q Do you have an understanding, John, that
9 Briggs at some point in 1997 ceased having their wastes
10 disposed of at this unpermitted site?

11 A Yes, sir.

12 Q Now during your attendance at the hearing
13 yesterday, did you hear testimony that Briggs had
14 disposed of ceramic wastes at some site near highway
15 construction during 1990 --

16 MR. BENOIT: Objection. There was no evidence that
17 Briggs disposed of wastes anywhere.

18 MR. DAVIS: I would like to respond before you
19 rule.

20 HEARING OFFICER LANGHOFF: Respond, Mr. Davis.

21 MR. DAVIS: There was indeed testimony by the other
22 respondents of the placement of wastes by Briggs. That
23 was the testimony. I would represent that. You know,
24 it was a long day yesterday and I'm sure we can't

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1 remember everything, but there was testimony. My
2 question is whether he heard that testimony. So if you
3 allow that question, that would support my response.

4 HEARING OFFICER LANGHOFF: And I'm going to
5 overrule. I'll sustain the objection on the grounds
6 that it's outside the direct examination. This is
7 Mr. Benoit's witness.

8 MR. DAVIS: Well, sure. No further questions.

9 HEARING OFFICER LANGHOFF: Thank you. Mr. Poland.

10 CROSS-EXAMINATION

11 BY MR. POLAND:

12 Q At that meeting I had in Springfield with the
13 four engineers, Harry Chappel wasn't present. He was no
14 longer with the EPA Association.

15 COURT REPORTER: Who did you say?

16 HEARING OFFICER LANGHOFF: Mr. Poland, can you
17 speak slowly and clearly so the court reporter can hear
18 you? And, Mr. Poland, if possible, could you keep your

19 questions a little shorter so that she can get the
20 question and then we can get the answer?

21 MR. POLAND: Okay.

22 HEARING OFFICER LANGHOFF: Thank you. Go ahead and
23 begin your question again, please.

24 Q Going back to the meeting I had in

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1 Springfield with the engineers -- and Harry Chappel was
2 one of those attending that meeting. And he was the
3 senior public service administrator at that time. Is it
4 possible that he could have been the one that told me he
5 did not see anything wrong with disposing of that
6 material on that site just like we have been doing as
7 long as I was trying to obtain a permit?

8 A No, sir. Mr. Chappel did not say that.

9 Q You don't think he could have said that?

10 A No, sir.

11 MR. POLAND: That's all.

12 HEARING OFFICER LANGHOFF: Mr. Yoho, any questions?

13 MR. YOHO: No questions.

14 HEARING OFFICER LANGHOFF: Mr. Benoit, any
15 redirect?

16 MR. BENOIT: Just a few questions.

17

REDIRECT EXAMINATION

18

BY MR. BENOIT:

19

Q Based on Mr. Davis's cross-examination

20 regarding the financial assurance and the documents that

21 he showed you during that cross-examination, would you

22 agree that Briggs put up the financial assurance for the

23 Abingdon Landfill?

24

A Yes, sir.

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1

Q And that after the financial assurance was

2 provided and the other violations or alleged violations

3 that you noted in your inspection report were corrected,

4 the agency issued a supplemental permit to Mr. Poland;

5 is that your understanding?

6

A I believe a permit was issued. I don't

7 remember exactly whose name was on the permit.

8

MR. DAVIS: This is beyond the scope of

9 cross-examination. I object.

10

HEARING OFFICER LANGHOFF: It's overruled.

11

Q I'm going to show you what's previously been

12 marked and admitted as Exhibit B17.

13

A Yes, sir.

14

Q Would that refresh your recollection as to

15 who the September 1992 supplemental permit was issued
16 to?

17 A Yes, sir.

18 Q And who was that?

19 A It says here in the first paragraph,
20 "Supplemental permit is hereby granted to Doren
21 E. Poland as owner and operator."

22 Q All right. Thank you.

23 The fact that Briggs put up the financial
24 assurance didn't cause the agency to issue the

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1 supplemental permit in Briggs' name as owner and
2 operator, did it?

3 A Apparently not. But I'm -- in my job in the
4 Peoria Regional office, I don't issue permits and I
5 don't review financial assurance documents. You would
6 have to talk to them about that.

7 Q Can you recall the last time -- and I want to
8 ask you a couple of questions about the operations of
9 the Abingdon Landfill or the new landfill and --

10 A Okay. You asked -- go ahead and ask me the
11 question. I'm sorry.

12 Q And Mr. Davis was asking you about

13 conversations that you had with Briggs' officials
14 regarding operations of the Abingdon Landfill in 1990,
15 is that correct?

16 A Yes, sir.

17 Q When is the last time that you were actually
18 out at the Abingdon Landfill or the new landfill?

19 A I don't remember.

20 Q Is your personal knowledge regarding the
21 operations of the Abingdon Landfill limited to your 1990
22 inspection?

23 A No.

24 Q Okay. What other personal knowledge do you

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1 have regarding the operations of the Abingdon Landfill?

2 A Okay. Personal -- I guess, you know, I
3 reviewed subsequent inspections by other inspectors.

4 Q Right. I'm not talking about that. I mean
5 you personally observing what's going on at the site.

6 A I believe the '90 inspection was my only one.

7 Q I believe your testimony was that the basic
8 operation was waste being hauled from Briggs and placed
9 on the land, and about every six months it would be
10 crushed by some type of sheepsfoot roller?

11 A Yes, sir.

12 Q And then that process would start over again?

13 A Yes, sir.

14 Q Would you agree that this is -- scratch that.

15 There are no scales involved in this

16 operation, are there, weigh scales?

17 A I observed no scales at the landfill.

18 Q Did you observe any office or anything at the

19 Abingdon Landfill?

20 A No, sir.

21 Q Could you compare the operations of the

22 Abingdon Landfill with a typical municipal solid waste

23 landfill? For instance, was daily cover required at the

24 Abingdon Landfill?

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1 A No, sir.

2 Q Was blowing litter a problem at the Abingdon

3 Landfill?

4 A I don't remember observing blowing litter at

5 the landfill.

6 Q Were there numerous employees or just

7 numerous people required to be present at the Abingdon

8 Landfill for its operations to your knowledge?

9 A I didn't observe any employees on-site.

10 Q Are you aware of anything that it took to
11 operate the Abingdon Landfill other than driving a truck
12 out there, dumping it and then every six months the
13 waste had to be crushed?

14 A I don't know of anything else.

15 MR. BENOIT: That's all I have.

16 MR. DAVIS: No recross.

17 HEARING OFFICER LANGHOFF: I have a couple of
18 questions, Mr. Tripses.

19 EXAMINATION

20 BY HEARING OFFICER LANGHOFF:

21 Q Concerning the April 3rd, 1995, meeting in
22 the Springfield office at the Illinois EPA, I just want
23 to get an idea of how many people were there. I have
24 heard several different who was there and who was not

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1 there.

2 You were there --

3 A Yes, sir.

4 Q -- from the Peoria office.

5 Mr. Poland was there?

6 A Yes, sir.

7 Q Mr. Skinner, who is Mr. Poland's friend who
8 testified yesterday, was there. Harry Chappel was
9 there?

10 A Yes, sir.

11 Q Anyone else from your Peoria office go down
12 with you?

13 A I don't remember if James went with me or
14 not.

15 Q And agency personnel in Springfield. Who was
16 there from Springfield that you recall?

17 A Other than Harry, I don't remember anyone
18 directly. I don't remember.

19 Q Were there other people there?

20 A There were other people there, but I don't
21 remember who they were.

22 Q How many people were there from the
23 Springfield office?

24 A Two, three, four. Again, I --

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1 Q And on that date, April 3rd, 1995, had there
2 been any determinations made by the agency that the
3 waste was an inert waste?

4 A For anybody?

5 Q For anyone.

6 A I don't know that.

7 Q You don't recall or you don't know?

8 A There were 95 regions in my 14 counties of
9 the 102 counties of the state. But for the rest of the
10 state, I don't know.

11 HEARING OFFICER LANGHOFF: Okay. Thank you.
12 That's all.

13 (Discussion off the record.)

14 HEARING OFFICER LANGHOFF: We are back on the
15 record. Mr. Benoit, please call your next witness.

16 MR. BENOIT: I would like to call Lloyd Yoho.

17 (Witness sworn.)

18 LLOYD F. YOHO,
19 called as a witness, after being first duly sworn, was
20 examined and testified upon his oath as follows:

21 DIRECT EXAMINATION

22 BY MR. BENOIT:

23 Q Would you state your name for the record?

24 A Lloyd F. Yoho, Y-o-h-o.

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1 Q Now, Mr. Yoho, you started working with Doren
2 Poland in the trash hauling business in 1972; is that

3 correct?

4 A I think that's the possible time.

5 Q And your business at that time was called

6 Abingdon Salvage?

7 A Yes, sir.

8 Q And that was a partnership?

9 A Yes, sir.

10 Q And you and Mr. Poland were the only partners?

11 A Yes, sir.

12 Q And you split the profits from that business

13 50/50?

14 A Yes, sir.

15 Q Now that business was incorporated in 1992;

16 is that correct?

17 A I'm not certain. I thought it was 1990, but

18 it could have been '92.

19 Q And after the business was incorporated, you

20 and Mr. Poland each owned a 50 percent interest in the

21 corporation?

22 A Yes, sir.

23 Q You and Mr. Poland split the profits from the

24 corporation equally?

1 A Yes.

2 Q Briggs did not share in the profits of the
3 corporation?

4 A No.

5 Q Could you tell me what the correct name of
6 the corporation is?

7 A Abingdon Salvage Company, Incorporated.

8 Q Now Mr. Poland sold his interest in the
9 corporation at the end of June 1996; is that correct?

10 A All I know is I think so. I don't know the
11 exact date.

12 Q Some type of problem with the sale to the
13 Wests by Mr. Poland, wasn't there?

14 A It's as to my understanding.

15 Q Was the problem that they didn't pay the
16 agreed price to Mr. Poland?

17 A All I can tell you is that is what I heard.

18 Q Did Mr. Poland recover his interest in the
19 corporation from the Wests?

20 A I have no idea. Oh, I'm sorry. Rephrase
21 that again.

22 Q My question is, Did Mr. Poland recover -- in
23 other words, take back his interest in the corporation
24 from the Wests?

1 A Yes, I believe so.

2 Q And then did he, in fact, turn around and
3 resell that interest to Donald and Elaine Brown?

4 A Yes.

5 Q Was that in October of 1999?

6 A I believe that's the correct date.

7 Q Now Abingdon Salvage Company, Inc., is
8 currently an ongoing business?

9 A Yes, sir.

10 Q And it's in the trash hauling business?

11 A Yes, sir.

12 Q Now is Abingdon Salvage the company -- has
13 the company hauled trash to the Knox County Landfill
14 since at least 1990?

15 A Yes.

16 Q And have the tipping fees at the Knox County
17 Landfill risen since 1990?

18 A I can't tell if they -- they were \$25 and
19 then they reduced the price -- because they lost all
20 their business -- down to 22.50. And I don't know what
21 the dates were when they did that.

22 Q I am going to show you what's been previously
23 marked as Exhibit B58. And I would represent that B58
24 is a drawing of the land where both the Abingdon

1 Landfill and the new landfill are situated. Would you
2 agree that B58 accurately depicts the land where the two
3 landfills are situated?

4 A It looks authentic to me, yes.

5 Q That's dated in 1994, that drawing -- or
6 1993. But is it accurate as of today's date?

7 A I believe so, yes.

8 Q Do you know -- there is a portion of the
9 Exhibit B58 that's marked 11.2 acres. Is the new
10 landfill -- the portion of the land used for what we
11 have been referring to as the new landfill -- is it 11.2
12 acres that has been used?

13 A I understand that that permit was terminated
14 and there is only a small portion being used now.
15 You've heard it said 2-point-some acres.

16 Q The portion of the 11.2 acres marked on
17 Exhibit B58, that's actually been used as the new
18 landfill opened up. Do you understand that that's about
19 two and a third acres?

20 A That's what I understand. Just from what I
21 have heard here.

22 Q Now when I'm questioning you today -- and I
23 want to make sure you understand this -- sometimes I'm
24 going to use the phrase the Abingdon Landfill, that

1 term. And that means -- what I mean when I say that is
2 that portion of the land where both landfills are
3 situated that was formerly permitted and now it's
4 closed. It's the 4.6 acres that's marked on there.

5 A Okay. I understand.

6 Q And when I say the new landfill, I'm
7 referring to what the complainant refers to as the open
8 dump or the new landfill, that area you just describe as
9 2.3 acres.

10 A I understand that.

11 Q You understand that. Okay.

12 I'm going to show you what's been marked as
13 Exhibit B1.

14 Is Exhibit B1 a true and accurate copy of the
15 warranty deed grantor Rex D. Johnson Grain Company and
16 grantees Lloyd Yoho and Doren Poland?

17 A Yes, it is.

18 Q And would you agree that you and Mr. Poland
19 purchased the land -- well, back up a little bit. Is
20 this warranty deed the warranty deed showing that you
21 and Mr. Poland have ownership of the land depicted on
22 Exhibit B58, that drawing I gave you previously?

23 A That is the piece of property, yes.

24 Q Yes?

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1 A Yes. That is the piece of property.

2 Q And so you purchased that land in 1975, is
3 that right?

4 A Yes, sir.

5 Q Since 1975, from time to time, have you
6 leased that land out to a farmer?

7 A Yes, sir.

8 Q But that land has never been leased to
9 Briggs, has it?

10 A No, sir.

11 Q Now in June of 1996, Mr. Poland transferred
12 his interest in the land to you and Mr. West; is that
13 correct?

14 A I believe that's the time frame, yes, sir.

15 MR. BENOIT: I would like to move for the admission
16 of Exhibit 1 -- or B1.

17 HEARING OFFICER LANGHOFF: It's admitted.

18 (Brief pause in proceedings.)

19 BY MR. BENOIT:

20 Q I'm going to show you what's been marked as

21 Exhibit B53. Is Exhibit B53 a true and accurate copy of
22 the quit-claim deed in which Mr. Poland transferred his
23 interest in the land depicted on Exhibit B58 to yourself
24 and Loren West?

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1 A This is a true and accurate thing that
2 Mr. Poland transferred to myself and Loren West.

3 MR. BENOIT: I would like to move for admission of
4 B53.

5 MR. DAVIS: No objection.

6 HEARING OFFICER LANGHOFF: It's admitted.

7 BY MR. BENOIT:

8 Q Would you agree that up until August of 1993,
9 you were aware that waste was being placed on the
10 Abingdon Landfill?

11 A Yes.

12 Q And that after August of 1993 you were aware
13 that waste was being placed on the new landfill?

14 A Yes.

15 Q Now did Abingdon Salvage, the company,
16 whether it was a partnership or corporation, always pay
17 the property taxes on the land depicted on Exhibit B58?

18 A Yes.

19 Q When I use the term "the land," I'm referring
20 to the land, you know, depicted on B58 where the two
21 landfills are situated.

22 We have touched upon this, but at least since
23 1990, has this land been cash rented to a farmer?

24 A Yes.

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1 Q And what does the farmer do with the land?

2 A He keeps the weeds down and planted in
3 alfalfa until harvest.

4 Q And the owners of the land, at least since
5 1990, they received cash rent?

6 A Yes. I think \$225 dollars a year.

7 Q \$225 each?

8 A Yes.

9 Q Now from at least 1990 through mid 1997,
10 Abingdon Salvage has hauled waste for Briggs; is that
11 right?

12 A Yes.

13 Q And that waste included regular trash hauled
14 to the Knox County Landfill?

15 A Yes.

16 Q And porcelain, clay, vitreous china type

17 waste?

18 A Yes.

19 Q And in addition to hauling these various
20 waste materials, would Abingdon Salvage also do other
21 hauling for Briggs?

22 A Yes.

23 Q And did this other hauling include like
24 gravel for the parking lot?

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1 A Yes. And cardboard and the metal and
2 pallets, which there was a tremendous amount of pallets.

3 Q There was a contract between Abingdon Salvage
4 and Briggs for this hauling, right?

5 A I'm not aware of whether there was or not.
6 It seemed like during one or two of the particular years
7 that there was. But I'm not really aware if there was
8 at the beginning or after it ended. But I think I seen
9 a paper somewhere one time where there was some kind of
10 a contract between us.

11 Q You are talking about a written contract?

12 A Yes.

13 Q I'm talking about a contract in more of a
14 general sense. And I'll rephrase my question.

15 Was there a hauling agreement between Briggs
16 and Abingdon Salvage, at least since 1990 and continuing
17 up through mid 1997?

18 A Yes.

19 Q And the hauling work we already discussed as
20 far as hauling different types of wastes, gravel,
21 pallets, whatever, that was what Abingdon Salvage agreed
22 to do under the contract?

23 A Yes.

24 Q And Briggs agreed to pay Abingdon Salvage for

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1 those hauling services?

2 A They gave us a flat rate, and this was all
3 included.

4 Q Right.

5 A Yes. This was -- basically we were being
6 paid to haul, to furnish a man and beat the molds down
7 and remove metal and bands and et cetera and haul it
8 away to the landfill. And --

9 Q There was two components to the contract.
10 I'm getting at this because in your deposition I wasn't
11 exactly clear. But the part about the flat rate for all
12 the hauling, that's one component. Was that a daily

13 rate -- a daily flat rate for the various hauling?

14 A I'm not real sure. I'm not so sure but what
15 it wasn't originally by the hour because there was days
16 that -- I think that weren't complete, not often. But
17 we certainly didn't get paid if we only worked a half
18 day or seven hours. We didn't get paid for an
19 eight-hour day.

20 Q So it could have been a daily rate, but on
21 partial days, it may have been an hourly rate?

22 A I believe that's correct. I'm not -- I
23 wasn't really involved that deep in it. I don't really
24 know to tell you the truth.

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1 Q Now this daily rate, did it fluctuate on a
2 day-to-day basis based on the volume of waste hauled?

3 A I don't believe so.

4 Q And was the second component of Briggs'
5 agreement to pay -- an agreement for Briggs to pay one
6 half of engineering and bulldozing fees that Abingdon
7 Salvage incurred at the Abingdon Landfill and the new
8 landfill?

9 A That's my understanding.

10 Q So there is really --

11 A But I can't swear to it, but I think that is
12 what always transpired.

13 HEARING OFFICER LANGHOFF: Okay, Mr. Yoho, please
14 answer the question if you know; and if you don't know,
15 just state that you don't know.

16 A I don't know.

17 Q You don't know what the terms of the contract
18 were?

19 A No.

20 (Discussion off the record.)

21 HEARING OFFICER LANGHOFF: Again, Mr. Yoho, if you
22 know the answer to the question, just please answer the
23 question if you know. And if you don't know, say that
24 you don't know.

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1 MR. YOHO: Okay.

2 BY MR. BENOIT:

3 Q Let me show the witness his deposition
4 transcript of a deposition taken August 24, 2000. Just
5 start reading there. I'm on page 18, line 22 and
6 continuing on to page 19.

7 (Brief pause in proceedings.)

8 Q Does that help refresh your mind as to --

9 A From what I read, yes. And it says "I guess"
10 because I don't think I was certain there either.

11 Q Okay. Would you agree that from 1990 through
12 1997 the daily rate increased?

13 A Yes.

14 Q And those increases were negotiated from time
15 to time by Mr. Poland or Mr. West on behalf of Abingdon
16 Salvage and whoever was the plant manager at Briggs?

17 A What's the last part of that question?

18 Q Were these daily -- are the increases in the
19 flat portion of the contract between Briggs and Abingdon
20 Salvage, were they negotiated between Mr. Poland and the
21 manager at Briggs prior to Mr. Poland selling his
22 interest?

23 A I don't know how to answer that. I just
24 don't understand what you are asking me.

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1 HEARING OFFICER LANGHOFF: Can you rephrase the
2 question, Mr. Benoit?

3 Q Would you agree that the flat rate portion,
4 the daily rate of the agreement between Briggs and
5 Abingdon Salvage increased from time to time from 1990
6 through 1997?

7 A Yes.

8 Q And would you agree that these increases were
9 a result of negotiations between Mr. Poland and Briggs?

10 A Yes.

11 Q And after Mr. Poland sold his interest, did
12 Mr. West do the negotiating on behalf of Abingdon
13 Salvage?

14 A Yes.

15 Q Now from 1990 through mid 1997, you managed
16 the hauling end of Abingdon Salvage's business; is that
17 right?

18 A In conjunction with Mr. Poland, yes.

19 Q Would you agree that from 1990 until
20 Mr. Poland sold his interest in Abingdon Salvage,
21 Mr. Poland handled the landfill end of Abingdon
22 Salvage's business?

23 A Yes.

24 Q And that after Mr. Poland sold his interest,

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1 Loren West took over the landfill end the business?

2 A Yes.

3 Q Now during the period 1990 through mid 1997,
4 from time to time you would observe Abingdon Salvage

5 employees loading and hauling waste from Briggs?

6 A Yes.

7 Q The porcelain type waste?

8 A Yes.

9 Q And Abingdon Salvage activities were the same
10 whether it was hauling out to the Abingdon Landfill or
11 whether it was hauling to the new landfill?

12 A Yes.

13 Q Was the man -- during this time period 1990
14 through 1997, the Abingdon Salvage employee assigned to
15 perform this work generally Jim Jackson?

16 A Yes.

17 Q And he was the man that would help load and
18 then haul the porcelain waste out to either landfill?

19 A Yes.

20 Q Now did Abingdon Salvage provide Mr. Jackson
21 with a dump truck to use?

22 A Yes.

23 Q Was it obvious what Mr. Jackson was loading
24 into his -- or into Abingdon Salvage's dump truck and

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1 hauling?

2 A Yes.

3 Q And was the general process after he loaded
4 the truck he would drive it out to the land where the
5 landfill is situated?

6 A Yes. And we had -- I must say we had two
7 trucks there so if we get behind they could -- their
8 employee which was assigned back there also would
9 commence loading the other truck until he got back. And
10 we did have a lot of flat tires so sometimes that took a
11 little time out.

12 Q Briggs' employees helped load those trucks
13 that Mr. Jackson would drive?

14 A Yes.

15 Q Now after Mr. Jackson drove out to the
16 landfill, carried the first load in the morning, would
17 he unlock the gate when he got there?

18 A I don't know.

19 Q Was there a gate present when the Abingdon
20 Landfill was open?

21 A There has been three different gates there,
22 and they have been destroyed and whatnot. And I don't
23 know at what particular time they would have been there.
24 But to the best of my knowledge, there has always been a

1 gate there except for maybe one period of time.

2 Q After Mr. Jackson got out to the landfill,
3 would he basically just drive out there and dump the
4 load?

5 A I believe so, yes.

6 Q Was it plain to see what he was dumping on
7 the landfill?

8 A Yes.

9 Q On either landfill?

10 A Yes.

11 Q And then he would just go back and this
12 process would just be repeated?

13 A Yes.

14 Q Now did Mr. Poland supervise Jim Jackson's
15 activities?

16 A Basically, yes.

17 Q Now if Mr. Jackson was not available, would
18 Mr. Poland get another Abingdon Salvage employee to
19 perform Mr. Jackson's work?

20 A Yes.

21 Q Now Briggs didn't pay Mr. Jackson's salary,
22 did it?

23 A No, sir.

24 Q And Briggs didn't pay -- purchase Abingdon

1 Salvage trucks?

2 A No.

3 Q I think we have had two estimates in the
4 testimony that's been given in this case as far as
5 crushing porcelain on either of these landfills. One
6 estimate, I think, was yesterday, every eight months.
7 And then today I think there was some evidence that it
8 was every six months. Do you have any idea of the
9 average time period that would pass between crushing
10 operations?

11 A No, I don't. I could only guess.

12 Q Now from time to time Mr. Poland would hire
13 Robinson Construction to bulldoze and crush this
14 porcelain that was placed on either landfill?

15 A That's correct.

16 Q And did Mr. Poland hire people to pick up
17 litter at either landfill?

18 A Yes, he did.

19 Q To your knowledge, is the only litter that's
20 ever been out at these landfills, these metal pipes and
21 plastic things that come out of the molds?

22 A A small amount of that and then occasionally
23 there would be some cardboard slide out between the
24 stacks, and you couldn't get it out of the truck. So

1 after they dumped the truck, they pulled it out and lay
2 it over to the side until we got a pretty good stack of
3 it. But that's really all that was ever -- that I know
4 of that was out there.

5 Q Now when any of this porcelain products that
6 were being hauled on the truck or trucks would get on
7 the road leading to the land, would Mr. Poland hire
8 people to clean that up?

9 A Yes. That was always kept clean.

10 Q Did Mr. Poland -- would you agree Mr. Poland
11 oversaw the landfill operations at the Abingdon Landfill
12 and the new landfill?

13 A I think it was -- I don't know how to answer
14 that. The Abingdon Landfill, yes. The new landfill, I
15 don't think he was involved there very long.

16 Q Is that because he sold his interest?

17 A Yes.

18 Q Prior to the time that he sold his interest
19 in the new landfill, did he oversee the operations at
20 the new landfill?

21 A I can't answer that.

22 (Brief pause in proceedings.)

23 Q I'm going to show the witness page 31 of his
24 deposition.

1 MR. DAVIS: Excuse me, I would object. It's not
2 clear because of the method being employed whether this
3 is for impeachment or to refresh recollection. In
4 either case, it's inappropriate. It's the wrong way to
5 do it. If it's refreshing, the witness hasn't
6 indicated, to my memory, that he can't remember. If
7 it's impeachment, it's on an inconsequential point.
8 And --

9 MR. BENOIT: Who oversaw operations at the
10 landfill --

11 MR. DAVIS: Just a moment. It's on an
12 inconsequential point. And, also, I can see sitting
13 here at my vantage point that the witness is attempting
14 to follow the hearing officer's directions as far as
15 testifying at the hearing. That is, if you are not
16 sure, say you are not sure. Whereas, I was at the
17 deposition; that was for a different purpose. It was a
18 discovery deposition and a different type of latitude
19 about giving information. And, in fact, this gentleman
20 cooperated at the deposition by saying, I'm not sure,
21 but, et cetera, et cetera, et cetera.

22 If it's impeachment, he is doing it wrong.
23 If it's refreshing recollection, he is doing it wrong.

24 HEARING OFFICER LANGHOFF: Okay. Thank you,

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1 Mr. Davis.

2 Mr. Yoho, do you know -- you said you can't
3 answer the question -- and I forgot the question. You
4 don't know because you don't have any information?

5 THE WITNESS: Yes.

6 HEARING OFFICER LANGHOFF: You don't have any
7 personal knowledge?

8 THE WITNESS: All I can say is I suppose, but I
9 don't know.

10 HEARING OFFICER LANGHOFF: So you don't know is the
11 answer?

12 THE WITNESS: Yes.

13 MR. BENOIT: The question had to do with who
14 oversaw the landfill operation.

15 HEARING OFFICER LANGHOFF: And Mr. Yoho says he
16 doesn't know.

17 MR. BENOIT: But he did know previously.

18 HEARING OFFICER LANGHOFF: And what --

19 MR. BENOIT: So I wanted to basically impeach him.
20 He's a party opponent. This is a prior inconsistent
21 statement.

22 HEARING OFFICER LANGHOFF: Okay. Do you want to
23 show him the -- I am going to have to overrule your
24 objection, Mr. Davis.

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1 MR. DAVIS: That's fine. It's still the
2 inappropriate method of impeachment.

3 Do you recall being asked this question at
4 your deposition? Do you recall giving this answer?
5 That is how you do impeachment.

6 MR. BENOIT: My recollection is yesterday when I
7 tried to use that attempt you objected. I can -- I will
8 do it any way I want to do it.

9 HEARING OFFICER LANGHOFF: If you are going to
10 impeach the witness with the prior inconsistent
11 statement, just do so.

12 THE WITNESS: Can I read whatever it was I said?

13 MR. BENOIT: Yes.

14 THE WITNESS: Your question was --

15 MR. BENOIT: To yourself. If you would just read
16 it to yourself.

17 HEARING OFFICER LANGHOFF: Go ahead, Mr. Benoit.

18 BY MR. BENOIT:

19 Q I will start by reasking the question.

20 Do you agree that prior to the time that
21 Mr. Poland sold his interest in Abingdon Salvage, that
22 he oversaw landfill operations at the new landfill?

23 A Yes.

24 Q Did Mr. Poland operate the Abingdon Landfill?

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1 A He was the operator.

2 Q Did Mr. Poland operate the new landfill?

3 A I don't know if that was him or Tom Wagher.

4 I don't know.

5 Q Mr. Poland hired this Tom Wagher,

6 W-a-g-h-e-r?

7 A W-a-g-e-r or W-a -- it was Wagher

8 (emphasizing pronunciation).

9 Q Wagher.

10 Mr. Poland hired Mr. Wagher to be the
11 certified operator of the new landfill; isn't that
12 correct?

13 A I believe that's correct.

14 Q Then you paid Wagher 11 or \$1,200 to be the
15 operator of the new landfill?

16 A Yes.

17 Q But Mr. Wagher really never worked at the new

18 landfill, did he?

19 A I have no knowledge. I don't know.

20 Q Were Mr. West's activities in regard to the
21 new landfill any different than Mr. Poland's?

22 A I don't believe so.

23 Q After Mr. Poland sold his interest, was it
24 Mr. West who supervised Jim Jackson's hauling

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1 activities?

2 A That probably was both of us at that time
3 because I started getting a little more active at that
4 time.

5 Q Now was the new landfill basically operated
6 in the same manner it was, you know, prior to the time
7 Mr. Poland sold out as opposed to after the time he sold
8 out? Were the operations the same?

9 A Yes. There was no difference.

10 Q Would you describe your involvement in
11 seeking permits for either the Abingdon Landfill or the
12 new landfill as minimal?

13 A Yes. I had no involvement at all in that.

14 Q And you signed off on --

15 A Yes. I signed some papers.

16 Q I'm going to show you what has been marked as
17 B51. The last two pages of B51. Are the last two pages
18 one of the applications that you signed in an attempt to
19 get a permit to operate the new landfill?

20 A Yes.

21 Q And that's your signature on there?

22 A Sir?

23 Q That is your signature?

24 A Yes, it is.

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1 MR. BENOIT: I would like to move for the admission
2 of B51. I don't know if it's --

3 HEARING OFFICER LANGHOFF: It's been accepted.

4 MR. BENOIT: It's in.

5 BY MR. BENOIT:

6 Q I'm going to show you what's been marked as
7 B55.

8 Is that another one of the applications to
9 obtain a permit to operate the new landfill that you
10 executed?

11 A It does appear that way to me, yes.

12 MR. BENOIT: Has B55 been admitted?

13 HEARING OFFICER LANGHOFF: Yes.

14 BY MR. BENOIT:

15 Q You have been sitting here for a couple of
16 days listening to this testimony. And during the
17 testimony there were discussions about an EPA meeting
18 that Mr. Poland had in Springfield in -- I believe it
19 was April of 1995.

20 MR. DAVIS: Mr. Hearing Officer, I would object.
21 There is no indication this gentleman was present at the
22 hearing. I believe we are beginning to waste time. And
23 if it's an inquiry where he has no personal knowledge,
24 then it is either going to be hearsay or speculation.

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1 So I am just trying to interpose the objection now
2 rather than later.

3 HEARING OFFICER LANGHOFF: Thank you, Mr. Davis.
4 Mr. Benoit.

5 MR. BENOIT: The question is whether he knows if
6 Mr. Poland went to the meeting in Springfield, I believe
7 it's in April of 1995. The line of questioning is
8 leading to, What did Mr. Poland tell him about that
9 meeting? And the witness's -- the impact of what
10 Mr. Poland told him had on the witness.

11 MR. DAVIS: Well, I'm not trying to forestall the

12 inquiry, just to limit the inquiry to what's within his
13 knowledge.

14 HEARING OFFICER LANGHOFF: The objection is
15 overruled. Go ahead and ask your question, please.

16 BY MR. BENOIT:

17 Q Do you recall Mr. Poland having a meeting
18 with IEPA officials in Springfield, Illinois, in April
19 of 1995?

20 A Yes.

21 Q What did Mr. Poland tell you occurred at that
22 meeting?

23 A He told me that we were okay. Since we were
24 applying for a permit that -- I don't know whether

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1 someone or several or what at the EPA had told him it
2 was okay to keep operating in the fashion that we had in
3 the past as long as we were trying to secure a permit
4 which I think Mr. Schoenhard was trying to get at the
5 time. That's what Mr. Poland told me at the time.
6 Maybe not word for word but that's really close.

7 Q And then attempts were made to obtain a
8 permit after that meeting?

9 A I believe so. I believe we tried all the way

10 up into 1997.

11 MR. BENOIT: Have Exhibits B38 and B39 been
12 admitted?

13 HEARING OFFICER LANGHOFF: Yes.

14 MR. BENOIT: Have Exhibits B43 and 44 been
15 admitted?

16 HEARING OFFICER LANGHOFF: No.

17 MR. BENOIT: These are notices of intent to pursue
18 legal action by the EPA. Any objections to those being
19 admitted, Tom?

20 MR. DAVIS: No objection.

21 HEARING OFFICER LANGHOFF: Those are admitted.

22 BY MR. BENOIT:

23 Q The contract or the agreement between Briggs
24 and Abingdon Salvage, did that end in June of 1997?

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1 A I can't be sure of the date, but I think that
2 was probably in the vicinity. I don't know the date.

3 Q Now did Briggs -- is your understanding of
4 the reason that Briggs ended his contract was because
5 the new landfill had not received a permit?

6 A I'm not aware that I was ever told the reason
7 why exactly. I assume that it was the increase that we

8 had charged them, but I just assume that because we
9 weren't making a dollar on the deal.

10 Q Now after whatever date it was that the
11 contract was terminated or the agreement was terminated
12 between Briggs and Abingdon Salvage, the material that
13 had been placed on the new landfill was not crushed; is
14 that right?

15 A At that time it wasn't. We have since
16 crushed it for safety reasons.

17 Q And you didn't bill Briggs for the cost of
18 that final crushing or their half of the cost, you know,
19 pursuant to the parties' earlier agreement; is that
20 right?

21 A We did, but they didn't pay it. We ended up
22 paying it all.

23 Q You did bill them?

24 A Yes. I think now -- maybe I'm all wet, but

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1 I'm sure we did.

2 MR. BENOIT: I think that's all I have for this
3 witness.

4 HEARING OFFICER LANGHOFF: Mr. Davis.

5 MR. DAVIS: Thank you.

6

CROSS-EXAMINATION

7

BY MR. DAVIS:

8

Q Mr. Yoho, are you aware of any occasion where

9

an employee of Briggs may have driven the truck from the

10

plant to either of the landfills?

11

A I'm not aware of it, no.

12

Q Now you mentioned that there were three

13

different gates. Do you know who constructed or

14

installed these gates?

15

A I believe that originally there was a gate

16

there when we ended up -- first bought the land. And

17

then we leased to a man or we let him farm it. And he

18

got a bulldozer in and tore our fence out which I didn't

19

like that but he did it. But there is such deep

20

ditches, it would really be hard to climb up into it in

21

a lot of places, you know, and get --

22

HEARING OFFICER LANGHOFF: Mr. Yoho, you need to

23

answer the question about the gates.

24

A Okay. We put the second gate in. And Briggs

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1

built and, I think, installed the third gate, the one

2

that is there. A nice iron gate.

3

Q Do you recall what time frame that may have

4 been?

5 A No, I don't.

6 Q Sometime during the '90's?

7 A Yes.

8 MR. DAVIS: Thank you, sir. I have no other
9 questions.

10 HEARING OFFICER LANGHOFF: Mr. Poland, do you have
11 any questions for Mr. Yoho?

12 MR. POLAND: No.

13 HEARING OFFICER LANGHOFF: Mr. Benoit, any
14 redirect?

15 MR. BENOIT: No.

16 HEARING OFFICER LANGHOFF: Thank you, Mr. Yoho.

17 Mr. Benoit, your next witness.

18 MR. BENOIT: Are we going through lunch?

19 HEARING OFFICER LANGHOFF: I think, hopefully, we
20 will stop after we are done with Mr. Poland.

21 MR. BENOIT: Okay. Well, could I have a short
22 break?

23 HEARING OFFICER LANGHOFF: What do you need, five
24 minutes?

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1 MR. BENOIT: Five minutes.

2 HEARING OFFICER LANGHOFF: We are recessed for five
3 minutes.

4 (A recess was taken.)

5 HEARING OFFICER LANGHOFF: Okay. We are back on
6 the record. Mr. Benoit, your next witness, please.

7 MR. BENOIT: I would like to call Mr. Doren Poland.

8 HEARING OFFICER LANGHOFF: Okay. Mr. Poland, I
9 remind you that you are under oath. And I would like to
10 again reiterate, please answer Mr. Benoit's questions if
11 you know the answer. And if you don't, say so.

12 DOREN E. POLAND,
13 called as a witness, having been previously sworn, was
14 examined and testified upon his oath as follows:

15 DIRECT EXAMINATION

16 BY MR. BENOIT:

17 Q State your name for the record.

18 A Huh?

19 Q Could you state your name for the record?

20 A Doren Poland, Abingdon, Illinois.

21 Q Mr. Poland, you started working in the trash
22 hauling business in 1972?

23 A Yes.

24 Q Your business was called Abingdon Salvage?

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1 A Yes.

2 Q It was a partnership?

3 A Yes.

4 Q You and Mr. Yoho were the only partners?

5 A Yes.

6 Q You split the profits 50/50?

7 A Yes.

8 MR. BENOIT: Wait until I finish the question

9 before you answer.

10 Q Now that business was incorporated; is that

11 correct?

12 A Yes.

13 Q Was it incorporated on January 17th, 1992?

14 A Approximately.

15 Q After it was incorporated, was Mr. Yoho the

16 corporate president?

17 A Yes.

18 Q And were you the corporate secretary?

19 A Yes.

20 Q Did you and Mr. Yoho each own a 50 percent

21 interest in the corporation up until July 1st, 1996?

22 A Yes.

23 Q Up until that date, did you and Mr. Yoho

24 split the profits from the corporation equally?

1 A Yes.

2 Q Did Briggs Industries ever share in the
3 profits of the partnership or the corporation?

4 A No.

5 Q You sold your interest in Abingdon Salvage
6 Company, Inc., to Loren and Michelle West on July 1st,
7 1996; is that correct?

8 A Yes.

9 Q West never paid you the agreed price for your
10 interest in the corporation?

11 A Say that again.

12 Q Is it true that the Wests never paid you the
13 money they agreed to pay you for your 50 percent
14 interest in the corporation?

15 A Yes.

16 Q After it became apparent that they weren't
17 going to pay you the money due you, you recovered your
18 interest in the corporation?

19 A Yes.

20 Q Do you know when that was?

21 A July 1st, 1999.

22 Q July 1st, 1999, okay.

23 Once you recovered your interest in the
24 corporation, you resold your 50 percent interest in the

1 corporation to Donald and Elaine Brown?

2 A Yes.

3 Q And that was on October 1st, 1999?

4 A Yes.

5 Q You also have been sitting through this
6 hearing yesterday and so far today. You understand, do
7 you not, what it means when I use the phrase Abingdon
8 Landfill as opposed to when I use the phrase the new
9 landfill?

10 A Yes.

11 Q I'm going to show you what has previously
12 been entered as Exhibit B58.

13 MR. BENOIT: If I could see the original,
14 Mr. Hearing Officer. Would it be permissible for me to
15 ask the witness where the 2.3 -- do you have an
16 objection to him marking on the exhibit?

17 HEARING OFFICER LANGHOFF: Yes. I have already
18 accepted that into evidence. And I would -- yes. You
19 can mark on another exhibit and introduce it.

20 MR. BENOIT: Okay.

21 MR. DAVIS: Here is another copy.

22 HEARING OFFICER LANGHOFF: Thank you, Mr. Davis.

23 You can mark it as 58(A).

24 MR. BENOIT: I will be marking this as Exhibit

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1 B58(A).

2 HEARING OFFICER LANGHOFF: Thank you.

3 BY MR. BENOIT:

4 Q I'm showing you what's been marked as B58(A).

5 Is that an accurate drawing of the land where the
6 Abingdon Landfill and the new landfill are situated?

7 A Yes. That's the old landfill.

8 Q Okay. When I use the term Abingdon
9 Landfill --

10 A This is the Abingdon Landfill.

11 Q Let me finish.

12 When I use the term the Abingdon Landfill,
13 I'm talking about that portion of the property -- and if
14 you look at Exhibit B58(A) -- that's marked closed and
15 covered 4.6 acres, okay, that was the formerly -- well,
16 I guess, it is still currently, it's permitted but it's
17 in closure now. That's the one that had the permit.
18 When I say new landfill, I mean the other portion of
19 Exhibit B58 where it says 11.2 acres. Do you understand
20 that?

21 A It's not 11.2 acres, though.

22 Q I'm leading to that question.
23 A Okay. Yes.
24 Q How much of the area marked 11.2 acres has

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1 actually been used for the disposal of waste?

2 A 2.3 acres.

3 Q Could you mark on Exhibit B58(A) where that
4 2.3 acres is located? And I'm handing the witness a red
5 pen, and he is marking it in red.

6 (Witness complies.)

7 Q Could you put your initials inside that,
8 please?

9 (Witness complies.)

10 MR. BENOIT: I would like to move for the admission
11 of Exhibit B58(A).

12 MR. DAVIS: No objection.

13 HEARING OFFICER LANGHOFF: It's admitted.

14 BY MR. BENOIT:

15 Q Now in 1975, you and Mr. Yoho purchased the
16 land depicted on Exhibit B58(A); is that correct?

17 A Yes.

18 Q On July 1st, 1996, you transferred your
19 interest in that land to Mr. Yoho and Mr. West?

20 A To Mr. Yoho, yes -- Mr. West, yes.

21 Q Just to Mr. West?

22 A Just to Mr. West.

23 Q I'm going to show you what's been marked as
24 Exhibit B53. Is that the quit-claim deed in which you

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1 transferred your interest in the land, at least, to
2 Mr. West?

3 A Yes.

4 Q And that deed is dated June 30th, 1996?
5 That's on the second page.

6 A Yes.

7 Q Are Mr. Yoho and West the current owners of
8 the land where the Abingdon Landfill and the new
9 landfill are located?

10 A Yes.

11 Q Did Abingdon Salvage stop placing waste on
12 the Abingdon Landfill on August 15th, 1993?

13 A Yes.

14 Q After August 15th, 1993, and at least until
15 the time that you sold your interest in Abingdon Salvage
16 to the Wests -- I think you said that was July 1st,
17 1996 -- Abingdon Salvage disposed of waste on the new

18 landfill?

19 A Yes.

20 Q Now yesterday during the testimony of
21 Mr. Schoenhard, he stated that in 1994 and 1995 you had
22 some of the porcelain waste trucked to and dumped at the
23 Fall Festival ground?

24 A Yes.

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1 Q Now all the material that Abingdon Salvage
2 dumped on both the Abingdon Landfill and the new
3 landfill was porcelain type wastes and molds?

4 A Yes.

5 Q From 1990 through July 1st, 1996, Abingdon
6 Salvage had a hauling contract with Briggs?

7 A Excuse me, say that again.

8 Q From 1990 through July 1st, 1996, when you
9 left or when you sold your interest in Abingdon Salvage,
10 Inc., did Abingdon Salvage have a hauling contract with
11 Briggs?

12 A Verbal contract, yes.

13 Q Just to clarify, when I use the word
14 "contract," I don't necessarily mean a written contract,
15 just an agreement, okay?

16 A Okay.

17 Q And I went through this with Mr. Yoho; would
18 you agree that that contract had two components, one
19 being a flat rate for hauling and the second component
20 being an agreement to pay half of the engineering and
21 bulldozing expenses at either landfill?

22 A Yes.

23 Q During the time period that you owned an
24 interest in Abingdon Salvage, were you the person that

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1 would negotiate with Briggs regarding the price, the
2 flat rate portion of the agreement, the hauling
3 agreement?

4 A Yes.

5 Q Did Mr. Yoho testify that the flat rate
6 portion of the contract may have been a flat rate per
7 hour, and there has also been some testimony that it was
8 a flat rate per day. Do you know what the agreement
9 was?

10 A He started out with the hourly and it ended
11 up being a day. It wasn't very long by the hour. I
12 mean, I'm talking years.

13 Q Okay. How many years are you talking about?

14 A I would say probably changed it, oh,
15 probably, '85.

16 Q And so then after '85, the flat rate portion
17 of the contract --

18 A After '85.

19 Q -- was by the day, okay.

20 Now did that flat daily rate part of the
21 agreement, did that ever vary, you know, from day to day
22 based on the amount of porcelain wastes that Abingdon
23 Salvage was hauling to either landfill?

24 A Very seldom. Once in a while, but very

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1 seldom.

2 Q Okay.

3 A It might be more if they had a breakdown and
4 had an emergency and we had to work at night sometimes.
5 Then we did.

6 Q But, generally, the flat sum amount did not
7 vary from day to day based on the volume of porcelain
8 type waste hauled?

9 A Yes.

10 Q Would you agree that the flat rate portion of
11 the contract was around \$290 per day in 1994?

12 A Yes.

13 Q And by June of 1996 it was \$500 per day?

14 A Yes.

15 Q And as far as billing, I think your testimony
16 was, and you can correct me if I'm wrong, but each
17 Friday would you deliver an invoice to Briggs?

18 A I did.

19 Q And those invoices would include -- well,
20 from time to time would at least include half the charge
21 for bulldozing or engineering expenses that Abingdon
22 Salvage had incurred the previous week?

23 A Yes.

24 Q Now for tax purposes, did Abingdon Salvage

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1 consider the landfill expenses as far as bulldozing and
2 engineering and consulting fees to be expenses of the
3 corporation?

4 A Our half.

5 Q Your half of them you would expense?

6 A (Witness nodding head up and down.)

7 Q I'm going to show you what's been marked as
8 People's Exhibit 1.

9 There has been some testimony, I believe,

10 regarding People's Exhibit 1. That is an application
11 for a permit to develop or operate a landfill that was
12 submitted to the agency back in 1978. This is before
13 your operations started at the Abingdon Landfill and a
14 permit was being sought.

15 Did you agree at that time -- well, let me
16 direct your attention to paragraph 35(A) of People's 1.
17 Do you want me to help you find it? It's deep in the
18 body of the exhibit.

19 A What page?

20 Q There are no page numbers.

21 A Where are we at?

22 Q Paragraph 35(A).

23 At the time that this permit application was
24 submitted, was there an understanding between you and

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1 Briggs that the property owner -- at this time that
2 would be you and Mr. Yoho -- and the contract hauler
3 which would be Abingdon Salvage would supervise the
4 landfill operations?

5 A Yes.

6 Q In fact, you represented to the IEPA on many
7 occasions that you were the operator of the Abingdon

8 Landfill; is that correct?

9 A Say that again.

10 Q Have you represented to the IEPA on several
11 occasions that you were the operator of the Abingdon
12 Landfill?

13 A Yes.

14 MR. BENOIT: Just in the interest of speeding
15 things up I have got a -- I would like to see if certain
16 exhibits have been admitted.

17 HEARING OFFICER LANGHOFF: Certainly.

18 MR. BENOIT: Exhibit B2?

19 HEARING OFFICER LANGHOFF: No.

20 MR. BENOIT: B3?

21 HEARING OFFICER LANGHOFF: No.

22 MR. BENOIT: B5?

23 HEARING OFFICER LANGHOFF: Yes.

24 MR. BENOIT: B7?

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1 HEARING OFFICER LANGHOFF: Yes.

2 MR. BENOIT: B12?

3 HEARING OFFICER LANGHOFF: Yes.

4 MR. BENOIT: 14?

5 HEARING OFFICER LANGHOFF: Yes.

6 MR. BENOIT: 15?
7 HEARING OFFICER LANGHOFF: Yes.
8 MR. BENOIT: 22?
9 HEARING OFFICER LANGHOFF: Yes
10 MR. BENOIT: And 25?
11 HEARING OFFICER LANGHOFF: Yes.
12 MR. BENOIT: I'll take a look at B2 and B3.
13 (Pause in proceedings.)
14 BY MR. BENOIT:
15 Q I'm going to show you what's been marked as
16 Exhibit B2.
17 A Yes.
18 Q Is that your signature on the second page of
19 B2?
20 A Yes.
21 Q Move for the admission of B2.
22 MR. DAVIS: No objection.
23 HEARING OFFICER LANGHOFF: It's admitted.
24 A You know, I don't think that is my signature.

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1 It's got my name spelled wrong for one.
2 Q Is that your signature on the last page where
3 it says -- well, at the top?

4 A Yes.

5 Q It's signed twice. One says site owner?

6 A Yep, that's me.

7 MR. BENOIT: I move for the admission of B2.

8 HEARING OFFICER LANGHOFF: It's been admitted.

9 MR. BENOIT: Oh, has it?

10 HEARING OFFICE LANGHOFF: I just admitted it.

11 MR. BENOIT: Oh, okay.

12 THE WITNESS: Might I make a statement here?

13 MR. BENOIT: No. But you can. You will have a

14 chance when I am done.

15 BY MR. BENOIT:

16 Q I'm going to show you what's been marked as

17 Exhibit B3.

18 To start with, are those your signatures on

19 the last page of Exhibit B3?

20 A Yes.

21 Q Do you see where this document is dated

22 February 28, 1985? At least it's stamped "received" on

23 the very first page?

24 A Yes.

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1 Q Do you recall ever seeing this document

2 before?

3 A No. I don't remember.

4 Q Does that look like your printing on page 1
5 of B3?

6 A Yes.

7 Q Would you agree that this is some -- it's at
8 least a draft of a document that you filled out sometime
9 in 1985?

10 A Yes.

11 Q Would you agree that it concerns closure,
12 post closure for the Abingdon Landfill?

13 A Yes.

14 MR. BENOIT: I would move that B3 be admitted.

15 MR. DAVIS: No objection.

16 HEARING OFFICER LANGHOFF: It's admitted.

17 BY MR. BENOIT:

18 Q I'm going to show you what's been marked as
19 B4.

20 (Brief pause in proceedings.)

21 Q Is B4 a letter drafted by you?

22 A Yes.

23 Q Does B4 concern putting up financial
24 assurance for the Abingdon Landfill?

1 A Yes.

2 Q And Abingdon Salvage Company agreed to put
3 up -- or did Abingdon Salvage Company put up an
4 irrevocable standby letter of credit in the amount of
5 \$15,000?

6 A A letter of credit, yes.

7 MR. BENOIT: I would move for the admission of B4.
8 I must have misunderstood you. I move for the admission
9 of B4.

10 MR. DAVIS: No objection.

11 HEARING OFFICER LANGHOFF: It's admitted.

12 Q Now are you the person who had prior conduct
13 certification? That is, the operator for the Abingdon
14 Landfill prior to the time you sold your interest in
15 Abingdon Salvage, Inc.?

16 A Yes.

17 Q While the Abingdon Landfill is operating, you
18 were its chief operator?

19 A Yes.

20 Q As the chief operator of the Abingdon
21 Landfill, you made sure that landfill work was performed
22 correctly?

23 A Yes.

24 Q You made sure that Mr. Jackson dumped the

1 porcelain in the correct locations?

2 A Yes.

3 Q And, when necessary, you would hire Robinson
4 Construction to crush the porcelain?

5 A Yes.

6 Q While you had an ownership interest in
7 Abingdon Salvage, would you agree that you and Mr. Yoho
8 supervised the Abingdon Salvage employees who were
9 assigned to haul the porcelain away from Briggs?

10 A Yes.

11 Q And would you agree that the employee who was
12 generally -- at least from 1990 until you left was
13 generally Jim Jackson?

14 A Yes.

15 Q And his work was the same during the time
16 period that the Abingdon Landfill was being used as to
17 when the new landfill was being used?

18 A Yes.

19 Q And from 1990 until you sold your interest in
20 Abingdon Salvage, the work you performed supervising Jim
21 Jackson and overseeing landfill operations was the same?

22 A Yes.

23 Q And the operation at the new landfill was the
24 same as the operation at the Abingdon Landfill?

1 A Yes.

2 Q And you actually observed Mr. Jackson perform
3 his duties?

4 A Yes.

5 Q Abingdon Salvage provided Mr. Jackson with a
6 dump truck to haul the porcelain waste?

7 A Yes.

8 Q Was it obvious what was being loaded on the
9 truck?

10 A Yes.

11 Q And after the truck was loaded, Mr. Jackson
12 would drive out to the Abingdon Landfill and unlock the
13 gate and drive out onto the landfill and dump the
14 porcelain waste?

15 A Yes.

16 Q This hauling -- is it true that Briggs would
17 sometimes -- Briggs' employees would sometimes help
18 Mr. Jackson load the truck?

19 A Yes.

20 Q But as far as this part of the process where
21 he is driving out to the landfill, either landfill and
22 dumping the waste, it was a one-man operation?

23 A Except the loading.

24 Q Except the loading.

1 It was a one-man operation except for the
2 loading?

3 A Yes.

4 Q Would you agree that the only material that
5 was dumped on either landfill was this porcelain waste
6 and molds?

7 A Yes.

8 Q And that the rest of Briggs' trash went to
9 Knox County Landfill?

10 A Yes.

11 Q Now do you agree -- I think I asked a
12 question before -- there is a little bit of difference
13 of opinion or testimony as to how often this crushing
14 the porcelain waste occurred at either the Abingdon
15 Landfill or the new landfill. I think the estimates
16 were every six months to every eight months. Do you
17 know about the intervals between these crushing
18 operations?

19 A Their business kept increasing. So it kept
20 being more, but I would say an average of eight months.

21 Q About every eight months.

22 And you would hire Robinson Construction to

23 do this crushing?

24 A Yes.

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1 MR. BENOIT: I'm sorry. I seem to have lost

2 exhibit --

3 HEARING OFFICER LANGHOFF: What are you looking

4 for, Mr. Benoit?

5 MR. BENOIT: This is an exhibit that I haven't

6 introduced yet.

7 HEARING OFFICER LANGHOFF: What number is it?

8 MR. BENOIT: It's going to be B60. I had it just a

9 second ago.

10 MR. DAVIS: The facility report?

11 MR. BENOIT: No. It's an invoice.

12 HEARING OFFICER LANGHOFF: Right there. With the

13 yellow sticky on it. I thought I saw an exhibit sticker

14 on there.

15 BY MR. BENOIT:

16 Q I'm going to show you a copy of what has been

17 marked as B60.

18 A Uh-huh.

19 Q The last page of B60, it appears to be some

20 invoice from Robinson Construction?

21 A Yes.

22 Q Can you see on that page where it says the
23 type of work done?

24 A Yes.

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1 Q Does it say crushed pottery ware?

2 A Uh-huh.

3 Q Is this the typical kind of invoice that
4 Robinson Construction would send you after they had
5 crushed the pottery?

6 A Yes.

7 Q Then do you see on the second page of Exhibit
8 B60?

9 A Yes.

10 Q It's the portion that's the invoice from
11 Abingdon Salvage Company business dated April 22, 1994?

12 A Yes.

13 Q Do you see on there where it says that it
14 looks like half of the landfill bulldozing was charged
15 to Briggs?

16 A Yes.

17 Q Is that typically the way that you would bill
18 Briggs for Robinson's work?

19 A Yes.

20 Q And does the first page of Exhibit B60 appear
21 to be the check that Briggs would submit to you in
22 payment of the invoices indicated on the second page of
23 Exhibit B60?

24 A For two weeks, yes.

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1 MR. BENOIT: I would like to move for the
2 introduction of B60.

3 MR. DAVIS: This is the same as Complainant's 36.
4 I don't object.

5 HEARING OFFICER LANGHOFF: You are not objecting?

6 MR. DAVIS: It is the same.

7 HEARING OFFICER LANGHOFF: Are you objecting?

8 MR. DAVIS: No.

9 HEARING OFFICER LANGHOFF: It's admitted.

10 BY MR. BENOIT:

11 Q Now you hired a farmer to mow the new
12 landfill once, didn't you?

13 A Beg pardon?

14 Q Did you hire a farmer to mow that new
15 landfill once?

16 A I don't recall.

17 Q I'm going to show the witness page 91,
18 transcript of his discovery deposition taken August 24,
19 2000. Would you like you to look at lines 10 through
20 14?

21 (Brief pause in proceedings.)

22 A I must have.

23 Q So your answer to the question?

24 A I still don't remember.

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1 Q You still don't recall?

2 A No.

3 MR. BENOIT: I would like to introduce his
4 deposition testimony into the record.

5 MR. DAVIS: Mr. Hearing Officer, it's not
6 admissible as past recollection report. I can think of
7 no other theory, but perhaps Counsel can enlighten us
8 what his theory is.

9 HEARING OFFICER LANGHOFF: Mr. Benoit?

10 MR. BENOIT: It's admissible as an inconsistent
11 statement by party opponent.

12 MR. DAVIS: No.

13 HEARING OFFICER LANGHOFF: No. It's not
14 admissible. I will sustain Mr. Davis's objection.

15 BY MR. BENOIT:

16 Q After you sold your interest in Abingdon
17 Salvage, Inc., to the Wests, did Abingdon Salvage
18 continue to haul waste out to the new landfill?

19 A Yes.

20 Q Now you hired Jim Schoenhard to perform
21 permitting work relating to the Abingdon Landfill and
22 the new landfill; is that right?

23 A Yes.

24 Q Is that right?

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1 A Yes.

2 MR. BENOIT: Has B21 been admitted?

3 HEARING OFFICER LANGHOFF: No, it has not.

4 BY MR. BENOIT:

5 Q Showing you what's been marked as B21.

6 HEARING OFFICER LANGHOFF: Are you moving to have
7 that exhibit admitted?

8 MR. BENOIT: Yes.

9 HEARING OFFICER LANGHOFF: Mr. Davis?

10 MR. DAVIS: No objection.

11 HEARING OFFICER LANGHOFF: It's admitted.

12 Q Is Exhibit B21 the preenforcement conference

13 letter you received from the agency?

14 A It looks like it.

15 Q And that's related to the November 29th,
16 1993, inspection?

17 A Yes.

18 MR. BENOIT: Can we switch copies? I accidentally
19 handed you my copy.

20 Q There has been quite a bit of testimony in
21 this case about a meeting held on April 3rd, 1995, in
22 Springfield, with you being present and several
23 representatives of the IEPA. Do you recall a meeting?

24 A Yes.

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1 Q Do you recall who set up that meeting?

2 A Yes.

3 Q Who was that?

4 A I had State Representative Don Moffitt and
5 State Senator Hawkinson set it up for me.

6 Q And why --

7 A Because I didn't know how to do it.

8 Q Why did they set that meeting up for you?

9 A To find out -- I wanted to try to find out
10 everything I could in order to be able to get a permit.

11 To be able to operate and keep operating because there
12 was no way I could shut the pottery down.

13 Q So these two -- a representative and a
14 senator arranged for this meeting in Springfield?

15 A Yes.

16 Q Now did you go to that meeting by yourself or
17 did you bring someone along with you?

18 A I took someone with me.

19 Q Who did you take with you?

20 A Paul Skinner.

21 Q So Mr. Schoenhard wasn't present at that
22 meeting?

23 A No.

24 Q What occurred at that meeting?

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1 A We discussed several things. I had with me
2 all the literature I could have up to that date. I told
3 them of my meeting in Peoria with Mr. Tripses. And then
4 he suggested -- I don't remember what went on. But we
5 talked for about an hour or probably. And I had samples
6 of the material that was going to be disposed of on the
7 landfill. And they could not find anything definitely
8 wrong with it. And they did assure me at that time that

9 as long as I was trying for a permit, that I could
10 continue to use that fill area to dispose of this
11 material from Briggs rather than close the plant down
12 and lay off 350 people.

13 Q Now was this at the time when the new
14 landfill was accepting waste?

15 A This was the new landfill.

16 Q Did these EPA employees impose a time limit
17 which you had to obtain a permit?

18 A They did not.

19 Q Now after that meeting with the IEPA, you
20 advised Briggs personnel that it was okay with the IEPA
21 if you kept using the new landfill as long as you were
22 attempting to obtain a permit?

23 A I did. Can I say something?

24 Q No.

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1 Now you tried to get a permit for the new
2 landfill; isn't that right?

3 A Yes.

4 Q And you sought and obtained local siting for
5 the new landfill from the City of Abingdon?

6 A Yes.

7 Q Let me show you what's been marked as B33.
8 Is that a letter that you sent to Mr. Bakowski of the
9 IEPA regarding your attempt to get siting for the new
10 landfill?

11 A Yes.

12 MR. BENOIT: I would move that B33 be admitted.

13 MR. DAVIS: No objection.

14 HEARING OFFICER LANGHOFF: It's admitted.

15 Q I'm going to show you what's been marked as
16 B45. Is that your signature on the second page of B45?

17 A Yes.

18 Q Did you sign this permit application as owner
19 and operator?

20 A Yes.

21 Q And this permit application is related to the
22 new landfill? It seeks to obtain a permit for the new
23 landfill?

24 A I don't see a date.

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1 Q It's dated next to your signature, April
2 18th, 1997.

3 A Okay. That is my signature.

4 Q Is that a request --

5 A It was a mistake.

6 Q Huh?

7 A We have a mistake, though, because I didn't
8 own it. I was no longer the operator. But I think the
9 reason for this is because James Schoenhard, my
10 engineer, who lives better than 100 miles away from
11 me -- I signed this before he sent it in. I presigned a
12 few of them ahead of time, and then he would fill them
13 out and send them in. I'm sure that's what happened
14 here. I can't -- but I was not the owner or the
15 operator because I had already sold it. This is '97.

16 Q Uh-huh.

17 A Somewhere there is a mistake. Well, I did
18 continue to try to help in any way possible to get a
19 permit. And it might be the fact that I signed it for
20 him in order if we was to try to change anything that we
21 had already previously sent --

22 Q Well, I was going to get to that.

23 A -- to the EPA.

24 Q I was going to get to that.

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1 In your deposition you described the plan,
2 quote, unquote, the plan --

3 MR. DAVIS: I object.

4 HEARING OFFICER LANGHOFF: On what grounds,
5 Mr. Davis?

6 MR. DAVIS: Well, Counsel is reading from the
7 deposition. If there is a question, ask the question.
8 But you just can't recite something from a document.
9 That's not admissible.

10 HEARING OFFICER LANGHOFF: Do you have a question,
11 Mr. Benoit?

12 Q Yeah. I'm not reading from the deposition
13 but -- was the plan as far as submitting these permit
14 applications with you named as operator -- was the plan
15 that you would be named as operator until the permit was
16 issued and then it would transferred to Mr. West?

17 A It would be transferred to a legal operator.

18 Q To a legal operator?

19 A You have to be a legal operator. I was a
20 grandpa operator. I started out and they let me
21 continue. But if I was going to sell it, it was going
22 to have to be a legal operator.

23 Q But did you agree to be named as operator on
24 the permit application --

1 A Yes.

2 Q Let me finish.

3 Did you agree to be named as operator on the
4 permit applications for the new landfill with the idea
5 that after a permit was issued, it would be transferred
6 to someone else?

7 A Yes.

8 Q And was the second part of the plan to have
9 you listed as the certified operator until the permit
10 was issued? And I'm talking about certified operator
11 for the new landfill until the permit was issued and
12 then go out and find another certified operator?

13 A Yes.

14 MR. BENOIT: Has B51 been admitted?

15 HEARING OFFICER LANGHOFF: Yes, it has.

16 BY MR. BENOIT:

17 Q I'm going to show you B51 just for the
18 limited purpose of seeing if that's your signature on
19 it.

20 A Yes.

21 Q I guess it would be the third page.

22 A That's my signature.

23 Q Now I'm going to show you what's been marked
24 as B55. Take a second and look at that.

1 (Brief pause in proceedings.)

2 Q Is that your signature on page 3 of B55?

3 A Yes.

4 Q And on this permit application -- or is this
5 another permit application for the new landfill?

6 A Yes.

7 Q Now on this permit application you signed
8 only as owner, correct?

9 A Yes.

10 Q And where it asks who the operator is, it's
11 listed as Thomas D. Wagher; is that correct?

12 A Yes.

13 Q Why did the plan change from the earlier
14 permit application? You said the plan was to have you
15 on as operator until the permit was issued and then
16 transfer to somebody. But why is it that the plan
17 changed and somebody else is listed there as the
18 operator?

19 A Anything to hurry the EPA. If we changed in
20 the middle of the stream -- they would have a hard time
21 anyway of getting anything done. It takes them forever.

22 Q So you thought by naming Mr. Wagher --

23 A That would hurry it along.

24 Q That would hurry it along.

1 Who is Mr. Wagher?

2 A He is the Knox County operator of the
3 landfill.

4 Q Is he a certified operator?

5 A He is a certified operator.

6 Q Did he agree to be the operator of the new
7 landfill?

8 A Yes, he was going to be.

9 Q Now are you the person that hired Mr. Wagher?

10 A On behalf of Loren West and Lloyd Yoho, yes.

11 Q Because you knew Mr. Wagher?

12 A I knew him.

13 Q But did you pay Mr. Wagher to do this, to
14 sign this application?

15 A Abingdon Salvage paid him.

16 Q Can you recall if you hired Mr. Wagher around
17 the time that Exhibit B55, that portion of Exhibit B55,
18 that is, the application was executed? And it was
19 executed May 8th, 1998. So my question is, did you hire
20 him around May 8th, 1998?

21 A No. I think I hired him -- I think I hired
22 him in the latter part of '96 to start with. I went to
23 him and -- boy, I don't really remember. But it wasn't
24 this late.

1 Q It wasn't in May of 1998?

2 A No. I already contacted him before then.

3 Q Now you testified that the new landfill is
4 about two and one third acres in size?

5 A Yes.

6 Q Do you know how deep the new landfill is?
7 Not the new landfill, the waste that's actually on the
8 new landfill?

9 A Three foot.

10 Q It's three foot deep?

11 MR. BENOIT: Can we go off the record for a second?

12 HEARING OFFICER LANGHOFF: Okay.

13 (Discussion off the record.)

14 MR. BENOIT: I would now like to offer Exhibits B1
15 through 60 into evidence or move to have them admitted.

16 HEARING OFFICER LANGHOFF: Objections?

17 MR. DAVIS: No. They are all business records. We
18 would reserve the right to argue against weight.

19 HEARING OFFICER LANGHOFF: All those records are
20 admitted, B1 through B60, inclusive.

21 MR. BENOIT: No further questions on direct for
22 this witness.

23 HEARING OFFICER LANGHOFF: Okay, Mr. Davis.

24 MR. DAVIS: Thank you.

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1 CROSS-EXAMINATION

2 BY MR. DAVIS:

3 Q Mr. Poland, let me show you my copy of
4 Exhibit B2 and ask that you look at the second page.

5 Now who has signed their name as owner?

6 A I have. I didn't sign it, but it is my
7 signature.

8 Q The first line --

9 A Jim Willis.

10 Q Okay. Let me back up.

11 A Okay. Okay.

12 Q It appears that someone has signed your name
13 as site operator; isn't that true?

14 A Yeah.

15 Q Because that's not your signature, is it?

16 A No.

17 Q You make your D's differently and you spell
18 your first name correctly?

19 A Right.

20 Q Now with that in mind, as site owner who has

21 apparently signed that?

22 A Jim Willis that works for the pottery.

23 Q And he is an agent of Briggs?

24 A Yes. He was the one that always helped me in

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1 signing for permits and stuff like that before I had

2 James Schoenhard.

3 Q I think we had some testimony that he was the
4 plant engineer?

5 A Right.

6 Q Do you have any idea why he signed as site
7 owner?

8 A No.

9 HEARING OFFICER LANGHOFF: Thank you, Mr. Poland.

10 Any other questions, Mr. Davis?

11 MR. DAVIS: Yes. One more area of inquiry.

12 Q To your knowledge, did any Briggs employee
13 ever drive one of your trucks to your landfill?

14 A Not that I recall. There might have been an
15 emergency time or something that they would have.

16 Like --

17 Q Well, I don't want you to speculate. But we
18 heard sometimes that two trucks were used, and sometimes

19 one truck went out of service for whatever reason.

20 A Yeah.

21 Q Are you aware of any time where a Briggs
22 employee may have driven that other truck?

23 A It has happened, yes.

24 Q It has happened?

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1 A It has happened.

2 Q So where the Briggs employee has transported
3 Briggs' waste to your landfill?

4 A Yes.

5 MR. DAVIS: Thank you, sir. No other questions.

6 HEARING OFFICER LANGHOFF: Mr. Yoho, do you have
7 any questions for Mr. Poland?

8 MR. YOHO: No, sir.

9 HEARING OFFICER LANGHOFF: Mr. Poland, I'm going to
10 let you basically cross-examine yourself. Go ahead and
11 testify as to anything that Mr. Benoit has asked you on
12 his direct examination but stay within the bounds of
13 what he asked you.

14 Do you have any statements to make to perhaps
15 more fully answer the question the way you want to? Do
16 you have anything, Mr. Poland?

17 MR. POLAND: I believe not.

18 HEARING OFFICER LANGHOFF: Okay, thank you.

19 Mr. Benoit, do you have redirect?

20 MR. BENOIT: Yes.

21 (Brief pause in proceedings.)

22 REDIRECT EXAMINATION

23 BY MR. BENOIT:

24 Q I just have a question. I think you

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1 testified in response to Mr. Davis's question that there
2 was a time when Briggs employees or an employee of
3 Briggs may have driven the Abingdon Salvage truck to the
4 land where these landfills are situated?

5 A Yes.

6 Q When was that?

7 A Oh, I don't know. Gee, it may have been 10
8 years ago, but it has happened.

9 Q You don't know when it happened?

10 A No.

11 Q Do you know which Briggs employee may have
12 driven the truck? I'm not asking you to guess. I mean,
13 do you know?

14 A No.

15 (Brief pause in proceedings.)

16 HEARING OFFICER LANGHOFF: Anything else,

17 Mr. Benoit?

18 MR. BENOIT: No. I think that's it.

19 HEARING OFFICER LANGHOFF: I have one question or

20 one area of questions that I would like to ask you,

21 Mr. Poland.

22 EXAMINATION

23 BY HEARING OFFICER LANGHOFF:

24 Q You gave a quit-claim deed June 30th, 1996?

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1 A Uh-huh.

2 Q To Lloyd Yoho and Loren West?

3 A Uh-huh.

4 Q And it appears that it was recorded May 21st,

5 1998; is that correct?

6 A Uh-huh. Now I don't know why it was recorded

7 so long.

8 HEARING OFFICER LANGHOFF: Okay. Thank you.

9 That's all I have. You can step down.

10 MR. POLAND: I can't say nothing?

11 HEARING OFFICER LANGHOFF: No, sir.

12 (Discussion off the record.)

13 HEARING OFFICER LANGHOFF: Back on the record. We
14 are going to break for 45 minutes for lunch and start at
15 2:05.

16 (Whereupon, a luncheon recess was
17 taken.)

18 HEARING OFFICER LANGHOFF: We are back on the
19 record. Welcome back from lunch. It's 2:05, and we are
20 continuing with Briggs' case.

21 Mr. Benoit, call your next witness.

22 MR. BENOIT: Yes. I would like to call Bob Orton.

23 HEARING OFFICER LANGHOFF: Okay.

24 (Witness sworn.)

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1 ROBERT ORTON,
2 called as a witness, after being first duly sworn, was
3 examined and testified upon his oath as follows:

4 DIRECT EXAMINATION

5 BY MR. BENOIT:

6 Q Could you state your full name for the
7 record?

8 A Robert Orton.

9 Q Are you an employee of Briggs?

10 A Yes.

11 Q Before I get into your examination, I want
12 you to take a look at the exhibit that has previously
13 been entered. It's Exhibit B58.

14 And previous testimony in this case is that
15 B5 accurately depicts the property where the landfills
16 that we have been discussing in this case are located.
17 Now have you reviewed the complaint in this case?

18 A Yes.

19 Q The complaint talks about two landfills, one
20 of them being the Abingdon Landfill and the other
21 landfill being the new landfill or the open dump.

22 Previous testimony has indicated that on
23 Exhibit B58, where it's marked, "closed and covered 4.6
24 acres," that's the Abingdon Landfill. So if I'm asking

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1 you questions about the Abingdon Landfill, that's what
2 I'm referring to. Do you understand that?

3 A Yes.

4 Q That's the landfill that has been permitted
5 and certified closed. When I say the new landfill, I'm
6 referring to that portion that never had a permit. Do
7 you understand that distinction?

8 A Yes.

9 Q When did you first start working at Briggs?
10 A I started November of 1995.
11 Q And what was your position at that time?
12 A Process manager.
13 Q What's a process manager do?
14 A Basically, they just tend to troubleshooting.
15 Wherever the highest loss area was at that time, I was
16 assigned to that.
17 Q What's your current position with Briggs?
18 A I'm the plant manager.
19 Q When did you become the plant manager?
20 A March 1st of 1996.
21 Q What are your duties as plant manager?
22 A I have total responsibility for the
23 day-to-day operation of the Abingdon facility.
24 Q Who was Briggs' waste hauler when you started

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1 working at Briggs?
2 A Abingdon Salvage.
3 Q What was the payment arrangement for the
4 hauling services at that time?
5 A We paid them a flat daily fee, and then we
6 agreed to pay half of the cost of bulldozing the

7 landfill and half the cost of the consulting services
8 necessary to permit the landfill.

9 Q What type of hauling services did Abingdon
10 Salvage provide?

11 A They would haul our porcelain waste and our
12 trash.

13 Q Now where are these landfills located in
14 relationship to Briggs' facility?

15 A The new landfill is about a half mile north
16 of the facility.

17 Q And the facility is in Abingdon, Illinois?

18 A Yes.

19 Q What was the permit status of the new
20 landfill when you started at Briggs?

21 A It was not permitted, but Mr. Poland was
22 trying to get -- was in the process of getting a permit.

23 Q Were you concerned that Briggs' porcelain
24 waste was being hauled to an unpermitted landfill?

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1 A No.

2 Q Why is that?

3 A Well, Mr. Poland assured me that the
4 permitting process was going on and that he had

5 permission from the EPA to dump while he was permitting,
6 during the process of getting the permit.

7 Q Now this payment arrangement that you
8 described as daily rate and paying half of these other
9 charges, why did Briggs agree to pay half of these
10 landfill expenses?

11 A Well, it was my understanding that that's the
12 way it always had been in the past prior to me. That
13 was the arrangement. They would pay a fee and
14 the -- half of the costs.

15 And when we, Briggs, looked at it, if the
16 cost for bulldozing the landfill and the cost for the
17 consulting services were reasonable, it was a good deal
18 for the plant. It was, you know, a good cost.

19 Q When did -- you testified that Abingdon
20 Salvage was hauling the waste when you started at
21 Briggs. When did Abingdon Salvage stop hauling waste
22 for Briggs?

23 A June of 1997.

24 Q And why did Abingdon Salvage stop hauling

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1 Briggs' waste?

2 A Well, there was two reasons. The first one

3 was that the -- at the time the EPA had claimed
4 that -- was claiming that Briggs was going to be held
5 responsible for the landfill. And after numerous
6 attempts to permit the landfill unsuccessfully, I got
7 concerned that we were going to get in trouble with the
8 EPA. So I didn't want to continue dumping because they
9 weren't getting permitted.

10 And then the second was at that particular
11 time again, they raised their fees from, I think it was
12 to 500 -- approximately 500 to \$700 per day. And,
13 again, plus the cost of the consulting services and the
14 bulldozing -- so quite high. And I had in-house quotes
15 from other haulers that were lower than that. So it was
16 an easy switch.

17 Q Did the EPA contact Briggs and say, you know,
18 this new landfill shouldn't be accepting waste?

19 A I received a citation notice and a letter in
20 the mail on January 17th of 1997.

21 Q Now what did you do when you got this letter?

22 A I called Mr. Poland at that time and asked
23 him about it and he assured me that Mr. Schoenhard was
24 going to get the permit for the landfill. It wasn't a

1 problem.

2 Q After that time did Schoenhard submit some
3 type of permit application for the new landfill?

4 A I believe so, but obviously it was
5 unsuccessful.

6 Q While this new landfill was accepting waste,
7 were Briggs employees assigned to work out at the new
8 landfill?

9 A No.

10 Q Did you ever see Briggs employees working out
11 at the new landfill?

12 A No.

13 Q Were Briggs trucks used to haul the waste out
14 to the new landfill?

15 A No. We didn't have any trucks.

16 Q Did you ever see Briggs employees -- well,
17 whose trucks were used to haul the porcelain waste to
18 the new landfill?

19 A I believe they were Mr. Poland's.

20 Q Did you ever see any of Briggs' employees
21 driving Mr. Poland's truck or Abingdon Salvage's trucks
22 out to the --

23 A No.

24 MR. BENOIT: You need to wait until I'm finished.

1 THE WITNESS: I'm sorry.

2 Q Did you ever see any of Briggs' employees
3 driving Mr. Poland's trucks or Abingdon Salvage's trucks
4 out to the new landfill?

5 A No.

6 Q Since you have been at Briggs, how has Briggs
7 been involved with the new landfill other than the fact
8 that its waste was disposed there?

9 A We would pay half of the cost of bulldozing
10 the landfill and half of the cost of the consulting
11 services.

12 Q Is there anything else?

13 A No.

14 Q Were you involved in any meetings with Jim
15 Schoenhard concerning the new landfill?

16 A No.

17 Q Were you aware that Mr. Schoenhard was
18 working -- putting together permit applications for the
19 new landfill?

20 A Yes.

21 Q Who hired Mr. Schoenhard?

22 A Mr. Poland.

23 Q Was Briggs Schoenhard's client?

24 A We paid half of his fees, but I don't believe

1 we were a client of his. I believe we were a client of
2 Mr. Poland or Abingdon Salvage.

3 Q How did you pay a portion of Mr. Schoenhard's
4 fee?

5 A Mr. Poland would bring an invoice into the
6 plant and have it divided in half and bring it into our
7 comptroller or myself.

8 Q Do you know who made the determination as to
9 what type of permitting approach to take in regard to
10 the new landfill?

11 A I don't know.

12 Q While you were at Briggs, did Briggs save
13 money by using Abingdon Salvage's services as far as
14 disposal of porcelain waste?

15 A No.

16 Q Why do you say that?

17 A Well, over the course of -- between 1996 and
18 '97 through that period of time, they raised the price
19 significantly from -- up to \$700. And then with all the
20 permitting attempts, we were getting charged for half of
21 that service. So there wasn't any savings.

22 Q Now did you say it was June 1997 when Briggs
23 stopped using Abingdon Salvage?

24 A Yes.

1 Q And then who did Briggs use to haul the
2 porcelain waste after June 1997?

3 A Waste Management.

4 Q And as opposed to using Abingdon Salvage to
5 dispose of the porcelain waste, was it cheaper to use
6 Waste Management?

7 A Yes.

8 Q Can you explain that?

9 A Yeah. They were charging us \$700 a day plus
10 half of the bulldozing fees and half of the consulting
11 services and Waste Management's bid was way under that.
12 So it was definitely going to be cheaper to use them.

13 Q If the rate hadn't went up to \$700 a day and
14 was still at \$500 day, would Briggs still have saved
15 money by using Waste Management?

16 A Yes. Even at \$500 a day Waste Management's
17 bid was better.

18 Q Now did Briggs recently authorize me as its
19 attorney to hire Andrews Engineering?

20 A Yes.

21 Q And why did Briggs authorize me to hire
22 Andrews Engineering?

23 A Well, we were hoping to help Mr. Poland and

24 Mr. Yoho get a permit for the landfill so we could make

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1 this whole issue go away.

2 Q Do you know what work Andrews Engineering
3 provided; what services they provided?

4 A Yes.

5 Q And what was that?

6 A They were going to take samples from the
7 landfill for permitting.

8 MR. BENOIT: I think that's all I have.

9 HEARING OFFICER LANGHOFF: Mr. Davis.

10 MR. DAVIS: Thank you. Mr. Orton, my name is Tom
11 Davis. I'm assistant attorney general.

12 Could I have this marked as -- I believe it's
13 Number 72 for us. It's Bates stamped 469 through --

14 HEARING OFFICER LANGHOFF: Is that 71?

15 MR. DAVIS: I think it is. Let me look.

16 (Brief pause in proceedings.)

17 MR. DAVIS: It would be 72.

18 MR. BENOIT: Did you make copies of those, Tom?

19 MR. DAVIS: No. Like I said, it's Bates stamped.

20 COURT REPORTER: Are you saying Bates stamped?

21 MR. DAVIS: I thought we were off the record.

22 HEARING OFFICER LANGHOFF: We were on the record,
23 but now we are off the record.

24 (Off the record.)

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1 HEARING OFFICER LANGHOFF: We are on the record,
2 gentlemen.

3 CROSS-EXAMINATION

4 BY MR. DAVIS:

5 Q Let me show you, Mr. Orton, what we have just
6 marked as People's Exhibit Number 72 and ask if this
7 appears to be -- and I'll certainly let you take your
8 time to look through it -- but it appears to be several
9 pages of invoices from the Waste Management Company to
10 your company.

11 (Brief pause in proceedings.)

12 Q Okay. Would you agree with that statement,
13 sir?

14 A Yes.

15 Q Would you also agree, sir, that this exhibit
16 reflects the bills given to Briggs by Waste Management
17 for the month of December 1999?

18 A Yes.

19 Q Was December 1999 a fairly representative

20 month as far as production and waste generation?

21 A That's probably hard for me to answer, not
22 having production records here, you know. In my mind
23 that time frame, we were probably at full production at
24 the facility.

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1 Q I guess what I'm really asking you, sir, is
2 there a reason why we shouldn't consider December 1999
3 as a typical month for your plant? At least for the
4 year 1999, let's say?

5 A Again, without knowing if we were at full
6 production or less, it's hard for me to answer because
7 if it was -- you know, our production goes up and down
8 through the year. So it may not be a good example of
9 monthly costs. It could be high. It could be low.

10 Q Is there any seasonal variation in
11 production? I realize there is other business
12 pressures, but as far as the season of the year?

13 A Yeah, there can be. Again, it's hard for me
14 to go back to that date because if our sister plant was
15 closed at that time, I'm sure we were at full
16 production, but --

17 Q Your sister plant is the one in Robinson?

18 A Yes.

19 MR. DAVIS: Okay. I really don't have any other
20 questions. I move the admission of Exhibit 72.
21 Obviously the testimony of this gentleman may affect the
22 weight of it, but it was our intention to simply choose
23 a typical month.

24 HEARING OFFICER LANGHOFF: Mr. Benoit.

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1 MR. BENOIT: I believe he testified that was -- no
2 objection.

3 HEARING OFFICER LANGHOFF: It's admitted.

4 Mr. Poland, do you have any questions for
5 Mr. Orton?

6 MR. POLAND: No, I have none.

7 HEARING OFFICER LANGHOFF: Mr. Yoho?

8 MR. YOHO: Yes.

9 CROSS-EXAMINATION

10 BY MR. YOHO:

11 Q Mr. Orton, do you recall meeting with my
12 present partner, Donald Brown, and myself in your office
13 I believe early in this year?

14 A Yes.

15 Q If I recall correctly, that meeting was to

16 secure -- to try to secure a permit perhaps through
17 Andrews. And did you not tell me that Waste Management
18 was killing you in price and if I would give you a much
19 more reasonable fee, which I agreed to, if we would
20 secure the permit, that would put it back out to the new
21 landfill?

22 A Okay. You asked me a couple of questions.

23 As far as when we met, it had nothing to do
24 with Andrews Engineering. I had met with the state

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1 people, Congressman -- or Don Moffitt and Carl
2 Hawkinson. And I had asked for their help and if they
3 could do anything to get the landfill permitted. And I
4 asked you and your partner to come in and told you that
5 they would help us if you guys would approach the
6 Attorney General's Office and see about getting it
7 permitted. And I said if we could help out, or you got
8 it permitted, I could possibly come back to you if you
9 had a good rate.

10 Q Okay. That's pretty well the way I remember
11 it other than I did think --

12 HEARING OFFICER LANGHOFF: Did you have another
13 question, Mr. Yoho?

14 MR. YOHO: I guess not.

15 HEARING OFFICER LANGHOFF: Mr. Benoit, anything
16 else?

17 MR. BENOIT: No.

18 HEARING OFFICER LANGHOFF: Thank you.

19 COURT REPORTER: Is your name H-o-r-t-o-n?

20 HEARING OFFICER LANGHOFF: Would you spell your
21 name?

22 THE WITNESS: O-r-t-o-n.

23 HEARING OFFICER LANGHOFF: Mr. Benoit, any other
24 witnesses?

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1 MR. BENOIT: No. I think Briggs will rest now.

2 HEARING OFFICER LANGHOFF: Mr. Davis, do you have
3 anything in rebuttal?

4 MR. DAVIS: Excuse me a moment. Let me confer with
5 my associates.

6 (Brief pause in proceedings.)

7 MR. DAVIS: Mr. Hearing Officer, the State would
8 offer no rebuttal evidence. However, we would just
9 simply remind you and counsel that we do intend, upon
10 receipt of whatever documents we get in accordance with
11 your ruling this morning, that we will probably tender

12 those, but I would suggest that that type of evidence
13 should be considered as case in chief type of evidence.

14 HEARING OFFICER LANGHOFF: Thank you.

15 MR. BENOIT: Mr. Hearing Officer?

16 HEARING OFFICER LANGHOFF: Yes.

17 MR. BENOIT: Could you remind me, again, was it

18 December 29th I'm supposed to --

19 HEARING OFFICER LANGHOFF: Yes.

20 (Discussion off the record.)

21 HEARING OFFICER LANGHOFF: We have just had a brief

22 off-the-record discussion about filing of post hearing

23 briefs. The parties have agreed to a briefing schedule.

24 And before we get to any closing arguments, I will go

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1 ahead and read that briefing schedule into the record.

2 The State's brief will be due January 12th,
3 2001. The Respondents' briefs, Mr. Poland, Mr. Yoho and
4 Briggs Industries, Inc., will be due February 12th,
5 2001. If Mr. Poland or Mr. Yoho should choose to file a
6 response, Briggs Industries will have seven days to file
7 a response to their response being February 19th, 2001.

8 And Mr. Davis with the State, the
9 Complainant, will file a reply brief February 19th,

10 2001.

11 The transcript of these proceedings will be
12 available from the court reporter by December 11th,
13 2000.

14 I will establish a short comment period,
15 public comment period of seven days. As the transcript
16 will be available on December 11th, 2000, we usually put
17 it on the Board's web site within a few days of the
18 availability. I would like to note our web site address
19 as www.ipcb.state.il.us. Please contact the Board's
20 office if you have a problem with the transcript on the
21 web site.

22 Now we will proceed with closing arguments.

23 MR. BENOIT: Mr. Hearing Officer?

24 HEARING OFFICER LANGHOFF: Yes, Mr. Benoit.

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1 MR. BENOIT: I am having a hard time finding it
2 here, but do you recall Briggs filed a counterclaim
3 against --

4 HEARING OFFICER LANGHOFF: Abingdon Salvage, Inc.?

5 MR. BENOIT: In this case that we are concerned
6 with today against Mr. Poland and Yoho.

7 HEARING OFFICER LANGHOFF: Yes. I'm sorry, uh-huh.

8 MR. BENOIT: And I believe that counterclaim, our
9 claim regarding Count 3, was inadvertently left out
10 because for one reason or another I had a draft copy of
11 the complaint in this case. And I would like to move
12 now for leave to amend that counterclaim to conform with
13 the proof.

14 HEARING OFFICER LANGHOFF: Is there any objection?

15 MR. DAVIS: No.

16 HEARING OFFICER LANGHOFF: Your motion is granted.

17 Anything else, Mr. Benoit?

18 MR. BENOIT: I don't think so.

19 HEARING OFFICER LANGHOFF: Okay, Mr. Davis, do you
20 have any closing argument?

21 MR. DAVIS: No, sir. We intend to cover all of the
22 factual legal issues in our brief.

23 HEARING OFFICER LANGHOFF: And, Mr. Poland, do you
24 have any closing arguments?

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1 MR. POLAND: Only that I have in front of me from
2 Prairie Analysis out of Springfield which gives the
3 determination of the products on the landfill as being
4 inert.

5 HEARING OFFICER LANGHOFF: Mr. Poland, I take it

6 you want to introduce -- I forgot about this -- you want
7 to try and introduce two more exhibits into the record
8 before the close of the proceedings. Do you want to
9 introduce those two documents into evidence?

10 MR. POLAND: Yes.

11 HEARING OFFICER LANGHOFF: Would you show
12 Mr. Benoit that?

13 MR. DAVIS: I have seen it, thank you.

14 HEARING OFFICER LANGHOFF: Okay, Mr. Davis, for the
15 record, you have seen those documents?

16 MR. DAVIS: Yes, I have.

17 HEARING OFFICER LANGHOFF: Is there any objection?

18 Mr. Davis, do you have any objection?

19 MR. DAVIS: This appears to qualify as a business
20 record and would seem to be admissible under the Board's
21 rules. So we don't object.

22 HEARING OFFICER LANGHOFF: Mr. Benoit?

23 MR. BENOIT: No objection.

24 HEARING OFFICER LANGHOFF: No objection. Okay.

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1 The Board will go ahead and take those exhibits and
2 admit them. And I will be marking them Exhibits 9 and
3 10.

4 MR. BENOIT: They are all stapled together. I
5 think it's a letter that refers to the attachment. So,
6 it's probably just one exhibit.

7 HEARING OFFICER LANGHOFF: I will label it Exhibit
8 9 for the record. For the record, the exhibits that
9 have been tendered and not admitted I will be placing in
10 a sealed envelope in the file.

11 Okay, Mr. Poland, do you have any kind of
12 closing argument? Would you like to sum up your case?

13 MR. POLAND: No.

14 HEARING OFFICER LANGHOFF: Mr. Yoho?

15 MR. YOHO: I have nothing.

16 HEARING OFFICER LANGHOFF: Mr. Benoit?

17 MR. BENOIT: Briggs will make its arguments in the
18 briefing also.

19 HEARING OFFICER LANGHOFF: Okay. Thank you. Any
20 other motions today?

21 MR. DAVIS: None by the State.

22 HEARING OFFICER LANGHOFF: Thank you. Mr. Poland?

23 MR. POLAND: No.

24 HEARING OFFICER LANGHOFF: Mr. Yoho?

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1 MR. YOHO: No.

2 HEARING OFFICER LANGHOFF: Mr. Benoit?

3 MR. BENOIT: Are you going to make a credibility
4 determination?

5 HEARING OFFICER LANGHOFF: I'm going to, yes.

6 No more motions?

7 Okay, at this time I would like to ask again, are
8 there any members of the public present that wish to
9 make a statement on the record?

10 (No audible response.)

11 HEARING OFFICER LANGHOFF: Seeing none, I'm
12 required to make a statement as to the credibility of
13 the witnesses testifying during this hearing. The
14 statement is to be based on my legal judgment and
15 experience. And, accordingly, I state that I found all
16 the witnesses testifying to be credible. Credibility
17 should not be an issue for the Board to consider in
18 rendering a decision in this case.

19 At this time I will conclude our proceedings.
20 It is Thursday -- excuse me -- it is Wednesday, November
21 29th, 2000. It's approximately 2:42 p.m. and we stand
22 adjourned. Thank you all very much.

23 (Whereupon, the hearing concluded
24 at 2:42 p.m.)

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

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4

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CERTIFICATE OF REPORTER

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7

8

I, GALE G. EVERHART, CSR-RPR, Notary Public

9

in and for the County of Peoria, State of Illinois, do

10

hereby certify that the foregoing transcript, consisting

11

of pages 236 through 391, both inclusive, constitutes a

12

true and accurate transcript of the original

13

stenographic notes recorded by me of the foregoing

14

proceedings had before Hearing Officer Steven C.

15

Langhoff, in Galesburg, Illinois, on the 29th of

16

November, A.D. 2000.

17

18

19

Dated this 6th day of December, A.D. 2000.

20

21

22

23

GALE G. EVERHART, CSR-RPR
Illinois License No. 084-004217

24