

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 ILLINOIS ENVIRONMENTAL

5 PROTECTION AGENCY,

6 Complainant,

7 vs.

 PCB No.: AC 01-042

8 ALAN SMITH (URBANA/ALAGNA,

9 NATALIE),

10 Respondent.

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15 Proceedings held on March 19, 2002 at 9:07 a.m., at City

16 Council Chambers, 102 North Neil Street, Champaign, Illinois,

17 before Hearing Officer Steven C. Langhoff.

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

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A P P E A R A N C E S

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E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
Complainant Exhibit 1	11	17
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(Hearing exhibits were retained by Hearing Officer Steven C. Langhoff.)

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P R O C E E D I N G S

(March 19, 2002; 9:07 a.m.)

HEARING OFFICER LANGHOFF: Good morning, everyone. My name is Steven Langhoff. I am the Pollution Control Board Hearing Officer who has been assigned this matter and will be holding the hearing today. This is AC 01-042, Illinois Environmental Protection Agency versus Alan Smith. For the record, it is Tuesday, March 19th, 2002, and we are beginning at 9:07 a.m.

I want to ask are there any members of the public here today? I would note for the record that there is one member of the public present today. Members of the public are encouraged and allowed to provide public comment if they so choose.

On May 11th of 2001 the Illinois Environmental Protection Agency, the Agency or the complainant, filed an administrative citation against the respondent. On July 26th of 2001 the respondent filed an amended petition for review. The Board accepted this matter for hearing on December 6th of 2001.

At issue in this case is an allegation made in the administrative citation filed by the Agency against Mr. Smith. The violation, as alleged in the administrative citation, is for open burning in violation of 21(p)(3) of the Environmental Protection Act, 415 ILCS 5/21(p)(3), year 2000. The alleged violation occurred at a site located in Urbana, Champaign County.

I want to take a brief moment to let you know what is going

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1 to happen today and after the proceeding today. You should know
2 that it is the Pollution Control Board, and not me, that will be
3 making the ultimate decision in this case. My job as the Hearing
4 Officer requires that I conduct the hearing today in a neutral
5 and orderly manner so that the Board has a clear record of the
6 proceedings here today. It is also my duty to assess the
7 credibility of any witnesses testifying today, and I will do so
8 on the record at the conclusion of the proceedings.

9 We will begin with an opportunity for opening statements
10 from both of the parties, and then we will proceed with the
11 Agency's case followed by Mr. Lanto having an opportunity to put
12 on a case in his client's behalf. We will conclude with any
13 closing arguments, if any, that the parties wish to make. Then
14 we will discuss off the record a briefing schedule which will be
15 set on the record at the conclusion of the proceedings.

16 MR. LANTO: May I interrupt just a moment? I suppose we
17 could cover this at the time, but would it be possible to do the
18 closing arguments with the briefing?

19 HEARING OFFICER LANGHOFF: Yes. That's usually what
20 happens.

21 MR. LANTO: Okay. I would prefer to do that myself.

22 HEARING OFFICER LANGHOFF: Okay. If you want to make one,
23 I would certainly allow you to make a brief closing argument.
24 Anything else?

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1 MR. LANTO: No.

2 HEARING OFFICER LANGHOFF: Okay. The Board's procedural
3 rules and the Act provide that members of the public shall be
4 allowed to speak or submit written statements at hearing. Any
5 person offering such testimony today shall be subject to
6 cross-examination by both of the parties. Any such statements
7 offered by members of the public must be relevant to the case at
8 hand. I will call for any statements from members of the public
9 at the conclusion of the proceedings.

10 This hearing was noticed pursuant to the Act and the
11 Board's rules and regulations and will be conducted pursuant to
12 Sections 101.600 through 101.632 and Part 108 of the Board's
13 procedural rules.

14 Before beginning, I would like to remind everyone that this
15 Board hearing is much the same as being in court and everyone
16 should act with the proper decorum and with due respect for each
17 other. During the course of the hearing please feel free to call
18 me either Mr. Langhoff or Mr. Hearing Officer.

19 At this time I will ask the parties to make their
20 appearance on the record beginning with the Agency.

21 MS. RYAN: Michelle Ryan, Special Assistant Attorney
22 General for the Illinois EPA. I have my written appearance here.
23 These are the Board's copies, and that is your copy.

24 HEARING OFFICER LANGHOFF: Thank you.

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1 MR. LANTO: Thank you.

2 HEARING OFFICER LANGHOFF: Anything else, Ms. Ryan?

3 MS. RYAN: No.

4 HEARING OFFICER LANGHOFF: Okay. Your appearances will
5 become part of the record.

6 Okay. Mr. Lanto, would you make an appearance on the
7 record.

8 MR. LANTO: Reino C. Lanto, Jr., Attorney at Law, Rantoul,
9 Illinois, on behalf of the respondent, Alan Smith.

10 HEARING OFFICER LANGHOFF: Thank you. Are there any
11 preliminary matters outstanding or prehearing motions that need
12 to be discussed on the record?

13 MS. RYAN: No.

14 MR. LANTO: We have none.

15 HEARING OFFICER LANGHOFF: Thank you. Would the Agency
16 like to give a brief opening statement on behalf of their client?

17 MS. RYAN: Yes. We believe the evidence today will show
18 that on March 27th of 2001 Alan Smith caused or allowed open
19 dumping resulting in open burning in violation of 21(p)(3) of the
20 Environmental Protection Act at a property located on North Oak
21 Street in Urbana, Champaign County, Illinois.

22 HEARING OFFICER LANGHOFF: Thank you. Mr. Lanto, any
23 opening?

24 MR. LANTO: No, sir.

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1 HEARING OFFICER LANGHOFF: Thank you. Okay. Ms. Ryan.

2 MS. RYAN: We call Ken Keigley.

3 HEARING OFFICER LANGHOFF: Mr. Keigley, I will ask you to
4 sit in that chair right there so that the court reporter can get
5 your testimony.

6 HEARING OFFICER LANGHOFF: Darlene, would you swear Mr.
7 Keigley, please.

8 (Whereupon the witness was sworn by the Notary Public.)

9 K E N N E T H K E I G L E Y,

10 having been first duly sworn by the Notary Public, saith as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. RYAN:

14 Q. Mr. Keigley, can you spell your name for the record.

15 A. Kenneth, K-E-N-N-E-T-H, Keigley, K-E-I-G-L-E-Y.

16 MS. RYAN: Do you mind if I stand over that way?

17 HEARING OFFICER LANGHOFF: Certainly.

18 MS. RYAN: I am just afraid that if he keeps talking toward
19 me that Darlene won't be able to hear him.

20 HEARING OFFICER LANGHOFF: Okay.

21 Q. (By Ms. Ryan) What is your job, Mr. Keigley?

22 A. I am an inspector with the Illinois Environmental
23 Protection Agency.

24 Q. How long have you been an inspector?

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1 A. About seven years.

2 Q. And what are your duties as an inspector for the EPA?

3 A. I inspect open dump sites, hazardous waste sites, and

4 landfills.

5 Q. Approximately how many inspections have you conducted

6 during your career with the EPA?

7 A. About 895 with about 350 of them open dumping

8 inspections.

9 Q. What is your educational background?

10 A. I have got an MBA from Eastern Illinois University, and

11 I am pursuing a Master's degree in environmental biology at

12 Governor's State.

13 Q. Do you have any other training besides that educational

14 background you just mentioned?

15 A. We have a work-related training and inspecting sites and

16 40-hour hazardous materials training and various other training.

17 Q. Are you familiar with the property known as

18 Urbana/Alagna, Natalie?

19 A. Yes, I am.

20 Q. Where is that property located?

21 A. It is a short distance north of Interstate 74 on North

22 Oak Street in Urbana.

23 Q. Who owns that property?

24 A. Natalie Alagna.

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1 Q. And who was leasing the property on March the 27th of
2 2001?

3 A. Mr. Smith.

4 Q. How many inspections have you conducted at this
5 property?

6 A. Just one.

7 (Whereupon a document was duly marked for purposes of
8 identification as Complainant Exhibit 1 as of this date.)

9 MS. RYAN: That's your copy.

10 MR. LANTO: Thank you.

11 MS. RYAN: I will give you the Board's copy.

12 Q. (By Ms. Ryan) I am going to hand you what I have marked
13 for identification as Exhibit Number 1. Do you recognize that
14 document?

15 A. Yes, I do.

16 Q. What is it?

17 A. That is a copy of the inspection report that I wrote
18 after I did the inspection.

19 Q. Could you look through each of the pages there for me?

20 A. (Witness complied.)

21 Q. Is that a fair, accurate, and complete copy of your
22 report?

23 A. Yes, it is.

24 Q. Can you describe the property at North Oak Street

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1 generally?

2 A. Generally it is a recycling facility. It has been about
3 a year since I was there, but I believe that it was partially
4 fenced.

5 MR. LANTO: I am going to object to the characterization
6 unless there is another foundation for his conclusion that this
7 was a recycling facility.

8 HEARING OFFICER LANGHOFF: Can you lay a foundation, Ms.
9 Ryan?

10 MS. RYAN: Yes.

11 Q. (By Ms. Ryan) What activity did you observe on the
12 property that led you to the conclusion that this was a recycling
13 facility?

14 A. Consolidation of what looked like to be scrap metal and
15 other items and, of course, I am familiar with Mr. Smith, and I
16 know that is his business.

17 MR. LANTO: I am going to object to that.

18 HEARING OFFICER LANGHOFF: What grounds?

19 MR. LANTO: It is irrelevant what prior contacts he has had
20 with Mr. Smith as to what occurred on this particular occasion
21 with regard to the operative allegation.

22 HEARING OFFICER LANGHOFF: Can you make your question more
23 particular with regards to this particular property?

24 Q. (By Ms. Ryan) I think -- what I was trying to actually

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1 get at, Mr. Keigley, was just for you to give me a description of
2 the scope of the property. You mentioned there was a fence. Was
3 there any other features on the property that would be of note if
4 you were driving by?

5 A. There was a building there, and the day that I was there
6 there were fires burning on the property.

7 Q. There are photographs, I believe, attached to Exhibit
8 Number 1 on the last page there. Can you tell me who took those
9 photographs?

10 A. Yes, I did.

11 Q. What do those photographs show?

12 A. They show open -- burning of refuse in two different
13 piles.

14 MR. LANTO: I am going to object to the characterization of
15 the material being supposedly burned as refuse. There is no
16 foundation for that in the record at present since that is a term
17 of art.

18 HEARING OFFICER LANGHOFF: Ms. Ryan?

19 MS. RYAN: I think we will get to that in just a moment
20 here.

21 HEARING OFFICER LANGHOFF: I am going to sustain the
22 objection then.

23 Q. (By Ms. Ryan) You mentioned that these were two separate
24 piles, that these photographs show?

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1 A. Yes, they were.

2 Q. Can you describe the pile in photograph number one, the
3 approximate size of that pile?

4 A. Of course, this is approximate, but it looked to me to
5 be about two foot by three foot, maybe four inches high, with
6 burning material.

7 Q. That material, was it burning when you arrived at the
8 property?

9 A. Yes, it was.

10 Q. Could you determine from your observations what was in
11 that pile?

12 A. I could see in there some materials that looked to be
13 three inches wide, about, maybe three-quarters of an inch thick,
14 and maybe three or four feet long. I couldn't determine if they
15 were wood or plastic.

16 Q. Were there any other types of materials that you saw in
17 the pile?

18 A. It looked to be like -- some of them I could determine
19 were small scraps of wood.

20 Q. The second pile on the second picture, can you describe
21 the approximate size of that pile?

22 A. That pile was approximately the same size, about three
23 foot by four foot, and four or five inches in height.

24 MR. LANTO: Excuse me. For clarification, so that we know

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1 what we are talking about, is photograph one at the top and
2 photograph two at the bottom?

3 MS. RYAN: Yes. I apologize. The numbers -- the photo
4 file name does indicate a number, and that last number just
5 before the indication jpeg is the number that I am using, before
6 number one at the top and number two at the bottom.

7 MR. LANTO: Thank you.

8 Q. (By Ms. Ryan) I am sorry. You just described the size
9 of the pile. Could you determine what materials were in that
10 pile?

11 A. Again, it looked like plank looking material, three or
12 four inches wide, maybe, and three-quarters of an inch thick and
13 three to four feet long. And it did appear that most of the
14 material in the fire was this type of material.

15 Q. Could you determine from your observation how long this
16 material had been burning there before you arrived?

17 A. Actually, no.

18 Q. Okay. Going back to photo number one, which is on the
19 top, I believe there is other material also indicated in that
20 picture. Can you describe what that material was?

21 A. It looks like a metal air conditioner and like some
22 sewer tile.

23 Q. Okay. And in photograph number two, the material?

24 A. Oh, I am sorry. Number two.

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1 Q. No, no. I was on number one. I am turning now to
2 number two?

3 A. Okay.

4 Q. In number two what other material do you see there
5 besides what you have already described?

6 A. Just what looks like some long plank looking material,
7 like. I can't really identify what it is.

8 Q. You don't recall at this time what that material was
9 when you were out there?

10 A. I don't recall if that was scrap metal or if that was
11 some of the material that was being burned.

12 Q. Do these photographs accurately depict what you saw at
13 the property on that day?

14 A. Yes, they do.

15 Q. When you wrote your report, did you site any violations?

16 A. Yes, I did.

17 Q. Can you describe those violations?

18 A. 9(a), 9(c), 21(a), 21(e), 21(p)(1), and 21(p)(3) of the
19 Environmental Protection Act.

20 Q. Do you recall when this report was generated in relation
21 to the date of the inspection?

22 A. I wrote this report within two days after -- of the
23 inspection.

24 Q. Does the Illinois EPA keep these reports in the regular

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1 course of its business?

2 A. Yes, they do.

3 MS. RYAN: At this time I would move Exhibit Number 1 into
4 evidence.

5 HEARING OFFICER LANGHOFF: Mr. Lanto?

6 MR. LANTO: May I have a moment? I have no objection as
7 long as the record is clear that we are dealing with the open
8 burning violation of 21(p)(3), as stated by the Hearing Officer,
9 as the operative charge and allegation of this particular
10 proceeding.

11 HEARING OFFICER LANGHOFF: Ms. Ryan, that is correct?

12 MS. RYAN: That is correct.

13 HEARING OFFICER LANGHOFF: Okay. It will be admitted.

14 (Whereupon said document was duly admitted into evidence as
15 Complainant Exhibit 1 as of this date.)

16 Q. (By Ms. Ryan) Mr. Keigley, did you talk to anyone on the
17 property about the conditions on the property that day you were
18 there?

19 A. Mr. Smith.

20 Q. Did you discuss the pictures that you took there of the
21 opening burning that was occurring on the property?

22 A. I believe regarding the open burning I did make one
23 statement that I thought he knew that open burning was in
24 violation of the Illinois Environmental Laws.

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1 MS. RYAN: Thank you. I have nothing further.

2 HEARING OFFICER LANGHOFF: Thank you, Ms. Ryan. Mr. Lanto?

3 MR. LANTO: May I have a moment.

4 CROSS EXAMINATION

5 BY MR. LANTO:

6 Q. Mr. Keigley, you didn't just happen upon that property
7 that particular day on your own, did you?

8 A. No, sir, I did not.

9 Q. How did you happen to show up at that property?

10 A. A coworker in a different bureau advised me that there
11 was a case of open burning occurring on this property.

12 Q. And that coworker being whom?

13 A. Mr. Darwin Fields.

14 Q. Mr. Darwin Fields, to your knowledge, had been out at
15 the premises that day earlier?

16 A. Yes.

17 Q. Did Mr. Fields advise you who was present on the
18 premises when he was there?

19 A. Actually, no.

20 Q. Did you ask?

21 A. No.

22 Q. So you have no personal knowledge, then, of exactly when
23 Alan Smith arrived at the property in question that day; is that
24 right?

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1 A. No, sir, I don't.

2 Q. Now, about how big a piece of property are we talking
3 about here, acreage-wise?

4 A. This is an estimate, but I would say maybe two to three
5 acres.

6 Q. All right. You determined that this particular property
7 had been leased by Mr. Smith?

8 A. Yes, sir.

9 Q. And when was that lease effective? When did he take
10 possession of the property?

11 A. I am not sure, sir.

12 Q. And when in point of time prior to him taking possession
13 of that property had you inspected this particular premises or
14 even driven by and looked at it?

15 A. I had not.

16 Q. So you have no personal knowledge of what was on the
17 premises when Mr. Smith took possession of the property under the
18 lease; is that right?

19 A. No, I don't.

20 Q. Now, you indicated that it was your opinion or
21 impression that this was a recycling operation?

22 A. Yes, sir.

23 Q. For consolidation of materials, was it or --

24 A. For recycling.

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1 Q. But you used the term consolidation, did you not?

2 A. Yes. As -- from what I could see that is what --

3 Q. What does recycling meaning to you?

4 A. Recycling to me means the use of a material, the reuse

5 of waste material.

6 Q. And does that also not of necessity, by definition, in

7 your area of expertise require the processing of materials coming

8 on to the site from off the site?

9 A. Some sort I would say, but it does not require that.

10 Q. All right. But wouldn't that be the normal case?

11 A. Yes, it would. At least --

12 Q. Wasn't that what you meant by your characterization of

13 this as a recycling area?

14 A. Actually, the impression I had in mind that scrap metal

15 was being brought to the site and consolidated from other --

16 Q. From other locations?

17 A. From other locations, and then resold or reused.

18 Q. But you don't know firsthand whether that is true?

19 A. No, sir, I don't.

20 Q. Because you have not been on this premises prior to him

21 taking possession during the lease?

22 A. No, sir.

23 Q. So as far as you know, all these particular materials,

24 in some form or another, were on the premises when Mr. Smith took

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1 possession?

2 A. Yes, sir, they could have been.

3 Q. Now, we have your statement that says that you arrived

4 after Darwin Fields called you. You arrived at the premises

5 somewhere around 3:00 or 3:30 that day?

6 A. Yes, sir.

7 Q. Do you happen to know the approximate time frame that

8 Mr. Fields was there that day?

9 A. Before I was there?

10 Q. Yes.

11 A. No, I don't, sir.

12 Q. Okay. Did Mr. Fields indicate whether there were any

13 other individuals present at the site that day prior to you

14 getting there?

15 A. He did tell me that there were some employees at the

16 site, yes, sir.

17 Q. And when you arrived did you see any employees at the

18 site?

19 A. Yes, sir.

20 Q. Or persons that represented themselves to be employees?

21 A. Yes, sir, I did.

22 Q. How many?

23 A. Two, I believe.

24 Q. And looking around the room today, do you see anybody

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1 that looks familiar with regard to the employees you saw on the
2 premises that day?

3 A. If has been a year, but I believe those two fellas were
4 there.

5 MR. LANTO: All right. He is indicating the two persons
6 seated to the left of Mr. Smith, who will be testifying in the
7 defense case.

8 Q. (By Mr. Lanto) Now, when you got to the premises that we
9 are talking about that day --

10 A. Uh-huh.

11 Q. -- who else was present besides the two persons you have
12 identified as employees?

13 A. Darwin Fields was with me.

14 Q. All right.

15 A. The other inspector. I believe there was a third
16 person, but I think that -- maybe other than Mr. Smith. But
17 that's kind of vague. I don't quite remember that.

18 Q. So Mr. Smith was there when you arrived?

19 A. Actually, I can't say that. I believe so because one of
20 the fellas said that he was going to go talk to Mr. Smith. So,
21 yes, I would say he was there. As I recall --

22 Q. I realize this is a small point. But could Mr. Smith
23 have just been arriving about the same time that you did?

24 A. Yes, sir, he could have been.

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1 Q. All right. Now, you have testified at some length about
2 the composition of the fires that we see in Photographs 1 and 2.
3 Am I correct in saying that you have absolutely no idea whether
4 those materials that you found burning were brought on to the
5 site from elsewhere or were part of or integral to the site when
6 Mr. Smith took over?

7 A. No, I would not have that knowledge.

8 Q. I believe you said that on Number 1, some of the
9 materials looked like they might have been wood or plastic?

10 A. Yes.

11 Q. Either?

12 A. Either.

13 Q. And I may have missed it, but with Picture Number 2,
14 what did you -- what was your identification of the burning
15 material, what was the nature of the burning material?

16 A. To me it looked like the same materials being burned in
17 both fires. It was a material that was about, like I said, I
18 don't know, three or four inches wide, three-quarters of an inch
19 thick, three or four feet long. It did look like that both fires
20 contained the same material.

21 Q. Did you have occasion to speak with either of the
22 employees, these gentlemen seated down to my left down here, that
23 day?

24 A. No. Mr. Fields spoke to one of the employees and was

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1 going over supposedly to get Mr. Smith.

2 Q. All right.

3 A. I actually did not speak to one of the employees.

4 Q. So Mr. Fields did, in fact, speak to one of the
5 employees in your presence?

6 A. Yes, he did.

7 Q. However, you didn't hear what was the nature of the
8 conversation?

9 A. Just that he wanted to see Mr. Smith to talk to him.

10 Q. All right. Did you hear Mr. Fields ask them anything
11 about the origin of the fire?

12 A. No, sir.

13 Q. Does that mean he didn't or you just did not hear?

14 A. I did not hear.

15 Q. So the materials that were being burned there, in your
16 opinion, they were not garbage within the meaning of the Act?

17 A. No, sir.

18 Q. They were not sludge, within the meaning of the Act?

19 A. No, sir.

20 Q. They obviously were not commercial mining or
21 agricultural by-products; is that right?

22 A. That's right.

23 Q. Or materials resulting from community activities?

24 A. No, sir.

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1 Q. They were relatively compact solids of some sort?

2 A. Yes.

3 Q. Flammable, apparently flammable solids?

4 A. Yes, sir.

5 Q. You also, I believe, in Photo Number 1 identified what

6 you thought may have been an air conditioner?

7 A. Just above the fire, a little to the right.

8 Q. But that was not part of the fire?

9 A. No, sir.

10 Q. And was not being burned; is that correct?

11 A. That's correct.

12 MR. LANTO: May I have a moment?

13 HEARING OFFICER LANGHOFF: Certainly.

14 THE WITNESS: Can I talk to Michelle for a second?

15 HEARING OFFICER LANGHOFF: No.

16 THE WITNESS: Okay.

17 HEARING OFFICER LANGHOFF: Sorry.

18 THE WITNESS: That's okay. You are the boss.

19 Q. (By Mr. Lanto) Now, in your statement, which I believe

20 has been admitted as a business record, in general comments you

21 indicate that the inspection consisted -- it is on page one --

22 consisted of walking around the site, taking pictures and talking

23 to Alan Smith, the site operator?

24 A. Yes.

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1 Q. That is the next to the last sentence of paragraph one.

2 A. Yes, sir.

3 Q. Is that your normal type of inspection, or is there
4 something different about this one?

5 A. No, that is pretty much standard operation.

6 Q. All right. Your conclusion, then, that Mr. Smith caused
7 or allowed burning, open burning in violation of the Act is based
8 upon what?

9 A. Based upon the fact that --

10 Q. Your firsthand knowledge, please?

11 A. That I walked on to the property, saw material being
12 burned in the fire that was not exempted by the Act, and to me,
13 that's open burning.

14 Q. All right. Mr. Smith, as far as you can recall, may
15 have been just arriving about the same time you were?

16 A. He may have been yes, sir.

17 MR. LANTO: All right. Nothing further.

18 HEARING OFFICER LANGHOFF: Thank you, Mr. Lanto. Ms. Ryan?

19 REDIRECT EXAMINATION

20 BY MS. RYAN:

21 Q. Mr. Keigley, you mentioned the dimensions of the
22 material that you saw burning in the two piles. Would you
23 describe this material, if, in fact, it was wood, as more similar
24 to dimensional lumbar such as two-by-fours or more similar to

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1 tree branches?

2 A. No, it definitely was not tree branches. It would have
3 been dimensional lumbar. I was actually told that it was
4 plastic --

5 MR. LANTO: I am going to object unless there is some
6 hearsay exception for this particular statement.

7 HEARING OFFICER LANGHOFF: Ms. Ryan?

8 MS. RYAN: I was not expecting him to say that.

9 THE WITNESS: Sorry.

10 HEARING OFFICER LANGHOFF: I will sustain the objection.

11 Q. (By Ms. Ryan) And the air conditioner that you
12 mentioned, that I believe was in Photograph Number 1 --

13 A. Uh-huh.

14 Q. -- would you describe that as an operating air
15 conditioner?

16 A. No.

17 MR. LANTO: Objection.

18 HEARING OFFICER LANGHOFF: Grounds?

19 MR. LANTO: How could he possibly know by looking at
20 something sitting on the ground?

21 MS. RYAN: Mr. Keigley was at --

22 MR. LANTO: Conclusionary.

23 HEARING OFFICER LANGHOFF: I am sorry, Ms. Ryan.

24 MS. RYAN: I am sorry.

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1 HEARING OFFICER LANGHOFF: Anything else, Mr. Lanto?

2 MR. LANTO: No.

3 HEARING OFFICER LANGHOFF: Ms. Ryan?

4 MS. RYAN: Mr. Keigley was out at the property. He could
5 observe whether this was an operable air conditioner. I think
6 that is within his scope of ability to observe.

7 HEARING OFFICER LANGHOFF: Anything else, Mr. Lanto?

8 MR. LANTO: No.

9 HEARING OFFICER LANGHOFF: I will overrule that objection.
10 You can answer the question.

11 THE WITNESS: It did not appear to be an operating air
12 conditioner.

13 Q. (By Ms. Ryan) The two piles that you described in
14 Photographs Number 1 and 2 that were burning, would you describe
15 these as naturally occurring piles of material?

16 A. No, I would not.

17 Q. How do you believe those piles would have come to be,
18 then, if they had not occurred naturally?

19 A. I believe someone consolidated the material.

20 MR. LANTO: I am going to object again for the record,
21 based upon conclusion.

22 HEARING OFFICER LANGHOFF: Ms. Ryan?

23 MS. RYAN: To the extent that Mr. Keigley has performed 350
24 open dump inspections in his career, he is familiar with this

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1 type of situation, and I believe that his past experience gives
2 him the expertise in describing what he sees at the site.

3 HEARING OFFICER LANGHOFF: I am going to sustain the
4 objection.

5 MS. RYAN: Okay.

6 Q. (By Ms. Ryan) Mr. Keigley, you previously testified that
7 you believe recycling constituted the reuse of waste material.
8 Would you consider open burning to be a form of recycling?

9 A. No.

10 Q. Do you have any opinion, based upon your past
11 experience, on why material -- I am sorry. Strike that.

12 From your observations on the property and of these two
13 burning piles, could you determine the apparent purpose of the
14 fires in this situation?

15 MR. LANTO: I am going to object. Well, could we have that
16 question again? I may have missed it.

17 MS. RYAN: Could you read it back, because I am not sure
18 exactly what I said.

19 HEARING OFFICER LANGHOFF: Please
20 (Whereupon the requested portion of the record was read back
21 by the Reporter.)

22 MR. LANTO: That is totally outside -- that is speculation
23 totally outside of the realm of this witness' or any witness'
24 ability to properly answer under oath.

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1 HEARING OFFICER LANGHOFF: Okay. Thank you. Ms. Ryan?

2 MS. RYAN: I disagree. I think Mr. Keigley could very
3 easily determine whether or not this was a cooking fire or a camp
4 fire or a --

5 HEARING OFFICER LANGHOFF: I will sustain the objection.
6 If you want to pursue that kind of questioning, feel free to.

7 Q. (By Ms. Ryan) Mr. Keigley -- hold on one second. Sorry.
8 Mr. Keigley, the fires on the property, did they appear to be
9 used for cooking purposes?

10 THE WITNESS: No, they --

11 MR. LANTO: I am going to object again.

12 THE WITNESS: -- didn't.

13 HEARING OFFICER LANGHOFF: On what grounds?

14 MR. LANTO: Again, it is speculation outside of the realm
15 of this witness' expertise.

16 MS. RYAN: I am just asking him what he observed when he
17 was there.

18 HEARING OFFICER LANGHOFF: I am going to allow the
19 question. I believe that Mr. Keigley has the knowledge and the
20 opportunity to observe the fire and determine if it is a cooking
21 fire.

22 THE WITNESS: I didn't see any cooking utensils or any
23 material that -- I believe one of the people there had a rake in
24 their hand. It did not appear to be a cooking fire.

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1 Q. (By Ms. Ryan) Thank you. From your discussions with Mr.
2 Smith and your -- well, I guess you said Darwin had a discussion
3 with one of the employees. From those conversations that you
4 heard, who did -- from your understanding of what was happening
5 at the property on that date, who was in charge of the property
6 at that time?

7 MR. LANTO: Objection. Calls for a conclusion and implied
8 hearsay when she is asking his conclusion of what he drew from
9 the conversation of Mr. Fields with people on the property.

10 HEARING OFFICER LANGHOFF: Ms. Ryan?

11 MS. RYAN: I disagree. I am not asking about the truth of
12 what someone has told him. I am asking him what was the
13 impression he drew from what he has heard at the property.

14 HEARING OFFICER LANGHOFF: Can you ask the question
15 addressing those concerns in the objection, personal knowledge?

16 MS. RYAN: I can try.

17 Q. (By Ms. Ryan) From all of the information that you
18 gained during your inspection, Mr. Keigley, who did you determine
19 was in control of the property on the day that you inspected it?

20 MR. LANTO: I am going to object again, because that
21 encompasses hearsay, which is improper in this particular
22 proceeding.

23 HEARING OFFICER LANGHOFF: I am going to sustain the
24 objection.

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1 Q. (By Ms. Ryan) Mr. Keigley, how did you determine that
2 Mr. Smith was leasing the property?

3 A. I spoke to the property owner when -- was one way that I
4 gained this knowledge. When we were on the property, one of the
5 employees says, I will go get the boss and Mr. Smith came out of
6 the building. And that was two of the reasons why I thought that
7 he was in charge of the property.

8 MS. RYAN: Thank you. That's all I have.

9 HEARING OFFICER LANGHOFF: Anything further on cross?

10 RE CROSS EXAMINATION

11 BY MR. LANTO:

12 Q. You just said that one of these individuals said I will
13 go get the boss and Mr. Smith came out of the building?

14 A. That is what I recollect, yes.

15 Q. But during my cross-examination you admitted that you
16 were not certain whether Mr. Smith was just arriving at the
17 property at the same time you were or not?

18 A. Well, I had been on the property a little while, so he
19 could have arrived and gone into the building and came back out.

20 Q. All right. About how long had you been there at that
21 point?

22 A. Three or four minutes, I suppose.

23 MR. LANTO: No further questions.

24 MS. RYAN: Nothing further.

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1 HEARING OFFICER LANGHOFF: Thank you, Mr. Keigley.

2 (The witness left the stand.)

3 HEARING OFFICER LANGHOFF: Anything further, Ms. Ryan?

4 MS. RYAN: No.

5 HEARING OFFICER LANGHOFF: All right. Thank you. Mr.

6 Lanto, do you need a minute?

7 MR. LANTO: Yes, if I could have five minutes.

8 HEARING OFFICER LANGHOFF: Let's take a five minute break

9 and be back at 9:48, please.

10 (Whereupon a short recess was taken.)

11 HEARING OFFICER LANGHOFF: Mr. Lanto, call your first

12 witness, please.

13 MR. LANTO: Larry Jean.

14 (Whereupon the witness was sworn by the Notary Public.)

15 L A R R Y N A T H A N I E L J E A N ,

16 having been first duly sworn by the Notary Public, saith as

17 follows:

18 DIRECT EXAMINATION

19 BY MR. LANTO:

20 Q. State your full name.

21 A. Larry Nathaniel Jean.

22 Q. You are a resident of where?

23 A. Rantoul, Illinois.

24 Q. And what is your current employment?

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1 A. I am with Roessler Construction.

2 Q. All right. And were you at some time employed by Mr.

3 Smith, the respondent in this case, seated next to me?

4 A. Yes.

5 Q. Were you employed by him on the 27th of March of 2001?

6 A. Yes.

7 Q. When this incident took place?

8 A. Yes.

9 Q. Could you tell us about when you arrived at the premises

10 that we are talking about that day?

11 A. Between the neighborhood of 8:00 and 8:30.

12 Q. And was there anybody else with you at that time?

13 A. Yes, Tom.

14 Q. Tom?

15 A. (Nodded head up and down.)

16 Q. That is Tom Pilkington?

17 A. Tom Pilkington.

18 Q. Who is seated over here; is that correct (indicating)?

19 A. Yes, seated to your left.

20 Q. He was also at that time employed by Mr. Smith?

21 A. Yes.

22 Q. Was Mr. Smith there at that time?

23 A. He was at 8:00.

24 Q. At 8:00?

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1 A. Yes.

2 Q. All right. And did Mr. Smith at that time give you and
3 Mr. Pilkington any directions about what your job or your tasks
4 were going to be for that day?

5 A. There was a pile of steel that we wanted to cut down to
6 shorter lengths.

7 Q. All right. Did he direct you to go about that task and
8 cut the steel down?

9 A. Yes.

10 Q. I assume you had cut steel for him before; is that
11 right?

12 A. Yes.

13 Q. How were you going to accomplish that job of cutting
14 steel?

15 A. A cutting torch.

16 Q. All right. Not a saw, a cutting torch?

17 A. Yes.

18 Q. What was Mr. Pilkington directed to do with regard to
19 his work at the premises?

20 A. The same also.

21 Q. The same thing?

22 A. Yeah.

23 Q. Was he helping you, or were you independently cutting?

24 A. There was two different piles of steel. I was working

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1 on one and he was working on the other.

2 Q. All right. How long were these pieces of steel? Did
3 they vary?

4 A. They varied in size.

5 Q. From what to what, roughly?

6 A. Anywhere from five to twelve foot.

7 Q. All right. In the course of cutting those, particularly
8 the longer ones especially, did you have occasion to prop them up
9 or did you cut them directly on the ground?

10 A. I cut them directly on the ground.

11 Q. All right. Now, after Mr. Smith gave you and Mr.
12 Pilkington your directions on what you were to do that day at the
13 site, where did Mr. Smith go?

14 A. He said that he had to go to town, that he would be back
15 later.

16 Q. So he left shortly after he told you and Mr. Pilkington
17 what to do?

18 A. Yes.

19 Q. What, if any, directions did he give you to burn
20 anything --

21 A. None.

22 Q. -- on the premises?

23 A. None.

24 Q. So you and Mr. Pilkington undertook to cut the steel

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1 with a cutting torch?

2 A. Yes.

3 Q. Could you tell us, please, about when or do you know the
4 origin of the two fires that we spoke about here today?

5 A. The origin?

6 Q. Well, do you know when they started and how they
7 started?

8 A. Well, they were started by a torch, by the sparks coming
9 from the cutting of the steel.

10 Q. Okay. I don't know if you have had a chance to look at
11 the photographs, Exhibit Number 1 and Exhibit Number 2.

12 MS. RYAN: I have an extra one.

13 MR. LANTO: This will be okay.

14 MS. RYAN: Okay.

15 Q. (By Mr. Lanto) Exhibit Number 1 is the top one. Number
16 2 is the bottom one.

17 A. (Nodded head up and down.)

18 Q. Do they appear to be the fires that occurred there that
19 particular day?

20 A. Yes.

21 Q. All right. Down in Exhibit Number 2, above the fire,
22 somewhat obscured by the smoke, there is a pile of something
23 behind it. Do you see that?

24 A. That would be steel.

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1 Q. Is that the steel?

2 A. (Nodded head up and down.)

3 Q. Or the type of steel that you were cutting?

4 A. Yes.

5 Q. Up in Exhibit Number 1, can you identify the white -- it

6 looks like a white metal object, up above the fire?

7 A. Right there (indicating)?

8 Q. Yes.

9 A. That would be --

10 Q. It has been referred to as an air conditioner. To your

11 knowledge, was it an air conditioner?

12 A. No. It is a blower with a motor. It is scrap metal.

13 Q. Some sort of blower, scrap metal?

14 A. Yes.

15 Q. All right. How did those fires start, then, that day?

16 A. It would have had to have been from the sparks from when

17 we was cutting the steel.

18 Q. But at some point you did notice fire and smoke; is that

19 correct?

20 A. Yes.

21 Q. Does that tend to be somewhat common when you are

22 cutting steel around anything?

23 A. Always, yeah.

24 Q. Now, you have heard testimony about Mr. Fields showing

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1 up?

2 A. Yes.

3 Q. Did this person identify himself by name to you?

4 A. Yeah, when he walked on the property he talked to me.

5 Q. Do you know about what time that would have been?

6 Afternoon?

7 A. Yeah. Estimated, about 3:00.

8 Q. All right. Now, he identified himself as an agent of

9 the EPA; is that right?

10 A. Yes.

11 Q. And he likewise determined that you were an employee; is

12 that right?

13 A. Yes.

14 Q. And he was, of course, interested in the fires, was he

15 not?

16 A. Yes.

17 Q. Did he ask you how they occurred?

18 A. No.

19 Q. He told you that was a violation of some of the

20 regulations, did he not?

21 A. Yes.

22 Q. Now, was Mr. Pilkington present when he was talking to

23 you?

24 A. Yes.

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1 Q. All right. When you learned that these fires that
2 started from the acetylene torch he believed were a violation of
3 the Act, you asked him something, didn't you?
4 A. Yes.
5 Q. What was that?
6 A. I asked him if I should put them out or if I should just
7 let them burn out.
8 Q. What did he say?
9 A. He said if they are only going to burn about 15 to 30
10 minutes, he said, just go ahead and let them burn themselves out,
11 and I said, okay.
12 Q. Thereafter, did you add anything to the fires?
13 A. No.
14 Q. Why did you leave them burn?
15 A. Because he said it was fine.
16 Q. Now, Mr. Fields was there, and Mr. Smith had not
17 returned yet; is --
18 A. No.
19 Q. -- that right?
20 A. (Shook head from side to side.)
21 HEARING OFFICER LANGHOFF: I am sorry. Was that a --
22 that's a no?
23 THE WITNESS: That's a no, he was not there.
24 HEARING OFFICER LANGHOFF: Okay. Thank you.

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1 Q. (By Mr. Lanto) Now, you were also present, were you not,
2 when Mr. Keigley, seated over here, returned?

3 A. Yes.

4 Q. Can you recall at this point in time whether Mr. Smith
5 had returned before the two of them came back or about the same
6 time?

7 A. He showed up -- Mr. Keigley showed up just a few --
8 probably a few minutes after Mr. Smith showed back up, and
9 then --

10 Q. All right. You did have time to talk to Mr. Smith about
11 the fires and about Mr. Fields' visit --

12 A. Yes.

13 Q. -- before Mr. Keigley got there; is that right?

14 A. Yes.

15 Q. And was there some discussion about putting the fire
16 out?

17 A. Yes.

18 Q. Between you and Mr. Smith?

19 A. Yes.

20 Q. And you informed Mr. Smith what about the fires?

21 A. I informed him that the first EPA guy said that it was
22 fine if they were only going to burn 15 to 30 minutes, that he
23 said let them burn.

24 Q. So you told Mr. Smith that?

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1 A. Yeah.

2 Q. Because of that, you and Mr. Smith just let them burn;
3 is that right?

4 A. Yeah.

5 MR. LANTO: May I have a moment?

6 HEARING OFFICER LANGHOFF: Yes.

7 MR. LANTO: Nothing further.

8 HEARING OFFICER LANGHOFF: Thank you. Ms. Ryan?

9 CROSS EXAMINATION

10 BY MS. RYAN:

11 Q. Mr. Jean, can you tell me what was in those piles that
12 were burning?

13 A. It would have been various material that was on the
14 ground.

15 Q. What kind of material was on the ground?

16 A. I can't really say for sure. I mean, it was there when
17 we took over the property. And we had done a bunch of raking
18 earlier that week, because we was trying to get all this stuff
19 off the ground so that people wouldn't get flat fires when they
20 brought scrap metal in.

21 Q. So you were raking this material into a pile?

22 A. Uh-huh.

23 Q. These two piles, you raked both of those?

24 A. Uh-huh.

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1 Q. This steel that you were cutting, you said in Photo
2 Number 2, was that part of the pile that -- I am sorry. You
3 don't have the picture with you. Photo Number 2, is that steel
4 that you described at the top of the photograph, is that some of
5 the steel that you or Mr. Pinkerton were cutting?

6 A. That's the type of steel we were cutting, yes.

7 Q. Were you cutting in that area, as well?

8 A. Yes.

9 Q. I believe that's what caused the fire in that pile in
10 the lower picture?

11 A. Yes.

12 Q. Was that where the steel was when Mr. Smith was on the
13 property at 8:00?

14 A. Yes.

15 MS. RYAN: Okay. Thank you. That's all.

16 HEARING OFFICER LANGHOFF: Thank you. Mr. Lanto, anything
17 further?

18 MR. LANTO: Nothing further.

19 HEARING OFFICER LANGHOFF: Thank you, Mr. Jean.

20 (The witness left the stand.)

21 MR. LANTO: We call Mr. Pilkington.

22 HEARING OFFICER LANGHOFF: All right. Please swear in the
23 witness.

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

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1 Q. All right. So you and Mr. Jean were independently
2 working on separate piles; is that right?
3 A. Yes.
4 Q. About how far apart were they?
5 A. I don't know, four or five feet maybe, something like
6 that.
7 Q. Okay. You, likewise, were using the acetylene torch?
8 A. Yes, I was.
9 Q. Approximately how long after you began working on the --
10 well, what did Mr. Smith do after he gave you your instructions?
11 A. A friend of his showed up and they had to go to town to
12 do something, and he left and said he would be back later.
13 Q. At that point in time had Mr. Smith at any point told
14 you to burn anything?
15 A. No, he didn't.
16 Q. Or set any fires?
17 A. No, he did not.
18 Q. Had you or Mr. Jean in your presence told Mr. Smith that
19 you were going to burn anything?
20 A. No, we did not.
21 Q. Did you, in fact, plan to burn anything?
22 A. No, we didn't.
23 Q. But at some point after you began cutting with these
24 torches and Mr. Smith left, you had occasion to notice fires

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1 burning?

2 A. Yeah.

3 Q. You let those burn for some time; is that right?

4 A. Yes, we did.

5 Q. Now, do you recall Mr. Darwin Fields showing up?

6 A. Yes, I do.

7 Q. Do you recall approximately when that may have been,
8 before or after lunch?

9 A. It was after lunch. It was probably between 3:00 and
10 3:30.

11 Q. Were you present to hear Mr. Fields talking about the
12 fires with Mr. Jean?

13 A. Yes, I was.

14 Q. And by that I mean within hearing distance?

15 A. Yes.

16 Q. So you heard Mr. Fields warn Mr. Jean and you that those
17 fires constituted a violation of the EPA Act; is that right?

18 A. Yes, I did.

19 Q. What, if anything, did you or Mr. Jean offer to do at
20 that point?

21 A. We offered to go ahead and put them out.

22 Q. What did Mr. Fields say?

23 A. He told us to leave them burn if they were just going to
24 burn for a little while or whatever. And he said just not to add

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1 no more to it.

2 Q. Did Mr. Fields ask how they started?

3 A. No, he did not.

4 Q. Then Mr. Smith arrived; is that right?

5 A. Yes, he did.

6 Q. Shortly before Mr. Fields and Mr. Keigley got there?

7 A. Yes.

8 Q. Did you have occasion to talk with Mr. Smith or was the

9 conversation between Mr. Jean and Mr. Smith in your presence

10 after Mr. Smith arrived?

11 A. It was between Mr. Smith and Mr. Jean with me present.

12 Q. You were within hearing distance?

13 A. Yes, I was.

14 Q. Okay. Mr. Smith was ready to put the fires out, was he

15 not?

16 A. Yes, that was the first thing he said, was get some

17 water and put them out.

18 Q. Why didn't anybody put them out?

19 A. Because we told him that the first guy that was there

20 said that we could leave them burning if they were just going to

21 burn out, so we left them burn.

22 MR. LANTO: No further questions.

23 HEARING OFFICER LANGHOFF: All right. Thank you. Ms.

24 Ryan?

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CROSS EXAMINATION

BY MS. RYAN:

Q. Mr. Pilkington, I apologize that previously I got your name wrong. Mr. Jean previously testified that he had helped to rake this material into these two piles. Were you also involved in that activity?

A. Yes. It was not that day, but prior to that.

Q. Right. Previous days. He said you had been raking it for a little while?

A. Yes.

Q. Do you recall what type of material that was that you raked into a pile?

A. It was just -- not really. It was just all kinds of different stuff out there. When Mr. Smith took over the yard, you know, there was a lot of stuff laying around that we didn't want catching on fire, so we was trying to get rid of it so that wouldn't happen no more.

Q. So could there have been wood and plastic and metal and different things in there?

A. Oh, yeah.

Q. You testified that you noticed the fires at some point. I don't know if you have seen the pictures in Exhibit Number 1. I will show those to you there. Is that what the fires looked like when you first noticed them?

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1 A. Yes, it did.

2 Q. So you didn't notice them when they first started
3 sparking, I guess, then? It was sort of pretty much the whole
4 pile was going by the time you guys notice it? By the time you
5 personally noticed them? I am sorry.

6 A. Well, it was probably not this size when I first noticed
7 it. It was probably a little smaller and just kept getting
8 bigger.

9 Q. Okay.

10 A. We just let it burn.

11 Q. Okay. Do you happen to know how long they might have
12 been burning?

13 A. Not offhand. I don't know.

14 Q. Do you remember how long it was between the time you
15 noticed it and the time that Mr. Fields showed up?

16 A. Maybe 30 minutes.

17 MS. RYAN: Okay. That's all I have. Thanks.

18 MR. LANTO: Nothing further.

19 HEARING OFFICER LANGHOFF: Thank you, Mr. Pilkington.

20 (The witness left the stand.)

21 MR. LANTO: We call Mr. Smith.

22 HEARING OFFICER LANGHOFF: Mr. Smith.

23 MR. SMITH: Let me state for the record before we start I
24 won't swear or affirm. I am a Christian. It is my duty to tell

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1 the truth here today according to God's laws.

2 HEARING OFFICER LANGHOFF: Do you have some sort of other
3 oath?

4 THE COURT REPORTER: Usually I just affirm if they prefer
5 not to swear.

6 HEARING OFFICER LANGHOFF: Will you affirm to tell the
7 truth?

8 MR. SMITH: Okay.

9 (Whereupon the witness was affirmed by the Notary Public.)

10 HEARING OFFICER LANGHOFF: Thank you, Mr. Smith.

11 A L A N K E I T H S M I T H,
12 having been first affirmed by the Notary Public, and saith as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. LANTO:

16 Q. Would you state your full name.

17 A. Alan Keith Smith.

18 Q. Where do you reside?

19 A. Rantoul, Illinois.

20 Q. What is your profession?

21 A. I am a scrap dealer, I guess.

22 Q. All right. You, at some point, leased the premises that
23 we are talking about known as the Alagna site, did you not?

24 A. The site is leased to Richard Miller.

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1 Q. All right.

2 A. I co-signed that lease because I am his father.

3 Q. All right. Now, you employed these two gentlemen over
4 here?

5 A. Yes.

6 Q. That being Mr. Pilkington and Mr. Jean; is that right?

7 A. Yes.

8 Q. And we are talking about on or about the 27th of March
9 of 2001?

10 A. That's correct.

11 Q. That particular site that we are speaking of, when you
12 first entered into possession under that lease, you and Mr.
13 Miller, could you briefly describe what that site looked like?

14 A. The site was in horrendous condition. There had been a
15 gentleman there prior to us for over a year recycling appliances
16 there. And when he left the site they brought in a crusher and
17 they literally just took all of the metal and etcetera that was
18 there on the site and crushed it there and left the debris that
19 fell out of the crusher, where they were trying to move this
20 material about. And it was -- it was just in horrendous
21 condition.

22 Q. Was there other debris that had been left by this
23 operation?

24 A. Yes, there was an old camper, there was a garbage truck,

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1 there were tires, some insulation, wood pallets, just an
2 assortment of everything.

3 Q. So some flammable materials were there; is that correct?

4 A. Oh, yes.

5 Q. Let me direct your attention to the morning of March the
6 27th of 2001. You had occasion to be at the site with Mr. Jean
7 and Mr. Pilkington that morning; is that right?

8 A. Yes.

9 Q. And you had occasion to give them some directions as to
10 what they were to do that day in the course of their work for
11 you; is that right?

12 A. That's right.

13 Q. What were those directions?

14 A. To go out and prepare the steel. In other words, cut it
15 up in shorter lengths. There were two different piles. They
16 were about 20 or 30 feet apart. And that was what they were to
17 do that day.

18 Q. Now, was this some of the steel that you said was left
19 there after the crushing?

20 A. No, this was some steel that we had purchased --

21 Q. All right.

22 A. -- and brought into the site.

23 Q. Okay. Now, there was how many piles of that?

24 A. There were two piles.

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1 Q. Two piles?

2 A. Yeah.

3 Q. All right. And what were they to use to cut those
4 pieces of metal?

5 A. Cutting torches.

6 Q. There were a couple of cutting torches there?

7 A. Two cutting torches, yes.

8 Q. Okay. What, if anything, did you tell them about
9 burning any of the debris or matter on that property that day?

10 A. Well, it is --

11 Q. Prior to your leaving?

12 A. It is my policy not to cause any fires, but under the
13 circumstances there I told them to be very careful and try not to
14 have any fires.

15 Q. What if any directions did you give them to actually
16 start fires?

17 A. I didn't give them any directions to start fires.

18 Q. All right. So you left the premises on other business
19 and came back approximately when?

20 A. About 4:00.

21 Q. When you arrived, was Mr. Keigley there?

22 A. No.

23 Q. Mr. Keigley and Mr. Fields arrived pretty close to the
24 time of your arrival?

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1 A. Very shortly thereafter, because I came back to the site
2 with a truck driving friend of mine and actually had the truck on
3 the scale, and we got out of the truck and walked in the
4 building. And I am going to say a minute or two afterwards, and
5 I don't remember whether it was Tom or Larry that came in and
6 said that, hey, there is a guy out there taking pictures of the
7 fires.

8 Q. So you noticed fires when you got back?

9 A. Yes.

10 Q. Did you have occasion to speak with Larry or Tom about
11 those fires before Mr. Fields and Mr. Keigley got there?

12 A. Yes, I did.

13 Q. What was said?

14 A. I told them to put them out, and they said --

15 Q. And what did they say?

16 A. They said the EPA had been there and that they said let
17 them burn out. I said, well, that's not, you know, our policy.
18 Let's put them out.

19 Q. All right.

20 A. And before we got them out, Mr. Keigley had returned to
21 the site.

22 Q. All right. With Mr. Fields?

23 A. Yes.

24 Q. Now, you heard Mr. Keigley testify that you had a

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1 conversation with him?

2 A. I had no conversation with him. He entered in on the
3 premises and was taking pictures. That's the first notice that I
4 had that he was there.

5 Q. All right. Neither he nor Mr. Fields questioned you
6 about the origin of the fire?

7 A. No.

8 Q. Did you have any knowledge, whatsoever, that there was a
9 fire there prior to returning that afternoon and seeing the
10 fires?

11 A. No, I had no knowledge.

12 MR. LANTO: No further questions.

13 HEARING OFFICER LANGHOFF: Thank you. Ms. Ryan?

14 MR. LANTO: Oh, I am sorry. If we could take a few moments
15 and maybe mark some pictures.

16 HEARING OFFICER LANGHOFF: How many photographs? You would
17 like to introduce or attempt to introduce some photographs, is
18 that your intent?

19 MR. LANTO: Yes.

20 HEARING OFFICER LANGHOFF: Okay. Is there a problem if we
21 don't -- we don't have to have a witness on the stand?

22 MR. LANTO: Oh, no, there is no problem whatsoever.

23 HEARING OFFICER LANGHOFF: Okay. Can I allow Ms. Ryan to
24 do her cross-examination?

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1 MR. LANTO: If I might ask a couple of questions about the
2 photos first.

3 HEARING OFFICER LANGHOFF: Please.

4 DIRECT EXAMINATION (continued)

5 BY MR. LANTO:

6 Q. Mr. Smith, you have given me a series of colored
7 photographs of the premises that we are talking about?

8 A. That's correct.

9 Q. Were these taken on or about March the 27th of 2001 or
10 prior to that?

11 A. They were taken prior to that.

12 Q. Do these represent, as best you can -- you took these
13 pictures?

14 A. Yes, I did.

15 Q. Do they truly and accurately depict the condition of the
16 premises on that prior occasion?

17 A. They do.

18 Q. Was that at or about the time that you took over the
19 property under the lease that we have talked about, the Alagna
20 property?

21 A. Yes, it was in -- I believe it was in the early part of
22 September of the prior year.

23 HEARING OFFICER LANGHOFF: Okay. Will you hand those to
24 Ms. Ryan?

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1 MR. LANTO: Sure.

2 HEARING OFFICER LANGHOFF: Thank you.

3 MS. RYAN: Thank you.

4 HEARING OFFICER LANGHOFF: Do you have any further
5 questions?

6 Q. (By Mr. Lanto) The pictures generally show debris and
7 material littering the ground, piles of materials --

8 A. Yes.

9 Q. -- here and there? Various pieces of large scrap; is
10 that correct?

11 A. Yes.

12 Q. That's what you have testified to previously --

13 A. Yes.

14 Q. -- as the condition of the property?

15 A. (Nodded head up and down.)

16 MR. LANTO: I have nothing further.

17 HEARING OFFICER LANGHOFF: Thank you. Ms. Ryan?

18 CROSS EXAMINATION

19 BY MS. RYAN:

20 Q. Mr. Smith, did you supply those cutting torches to your
21 two employees?

22 A. I did.

23 Q. Did you also instruct them to rake up that debris that
24 is shown in the pictures that you have provided here today?

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1 A. We had been cleaning up the site on numerous occasions.
2 There were piles throughout the site where we had been raking it
3 up.

4 Q. In the pictures there I observed a bunch of material
5 laying sort of flat by itself. Is that the type of material that
6 you had them raking together? I know you don't have them in
7 front of you. I am sorry.

8 HEARING OFFICER LANGHOFF: Would you like to see them?

9 THE WITNESS: I have got --

10 Q. (By Ms. Ryan) No, those are my pictures. I was talking
11 about the ones you gave to your attorney.

12 A. Oh, I am sorry.

13 Q. The ones that were previously --

14 A. Okay. The question again.

15 HEARING OFFICER LANGHOFF: Here, Mr. Smith. Here is the
16 photographs.

17 Q. (By Ms. Ryan) If you look at the pictures there, it
18 looks like there is material sort of scattered around the site.
19 That is the material that everyone was talking about that was
20 raked up; is that right?

21 A. Yes, it was raked up, yes.

22 Q. You said that you had no conversation with Mr. Keigley
23 when he was out there on the property?

24 A. Not until after I confronted him about taking the

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1 pictures.

2 MS. RYAN: Okay. That's all I have. Thanks.

3 HEARING OFFICER LANGHOFF: All right. Anything further,
4 Mr. Lanto?

5 MR. LANTO: Nothing further.

6 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Smith.

7 (The witness left the stand.)

8 MR. LANTO: Subject to marking and admitting the
9 photographs, we would rest.

10 HEARING OFFICER LANGHOFF: All right. Do you want to offer
11 all of them?

12 MR. LANTO: Yes, we might as well.

13 HEARING OFFICER LANGHOFF: Okay. Ms. Ryan, the photographs
14 will be marked as Group Exhibit Number 1, ten photographs.

15 MS. RYAN: Okay.

16 HEARING OFFICER LANGHOFF: Any objection?

17 MS. RYAN: No, there is no objection.

18 HEARING OFFICER LANGHOFF: Okay. Group Exhibit Number 1
19 will be admitted.

20 (Whereupon said photographs were duly marked for purposes of
21 identification as Respondent's Group Exhibit 1 and admitted
22 into evidence as of this date.)

23 HEARING OFFICER LANGHOFF: All right. Ms. Ryan, anything
24 in rebuttal?

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1 MS. RYAN: No. Thank you.

2 HEARING OFFICER LANGHOFF: Okay. Thank you. At this time
3 I would ask if there are any members of the public present that
4 want to make statements on the record? Okay. There are none.

5 At this time I will go off the record to discuss
6 availability of the record and to discuss the schedule for the
7 submission of briefs. We are off the record.

8 (Discussion off the record.)

9 HEARING OFFICER LANGHOFF: Okay. We are back on the
10 record. Thank you.

11 We have just had an off-the-record discussion regarding the
12 filing of post hearing briefs. The parties have agreed to a
13 briefing schedule. I will go ahead and read that schedule into
14 the record. The transcript of these proceedings will be
15 available from the court reporter by March the 28th of 2002. I
16 will establish a public comment period of 14 days.

17 The parties know to talk to the court reporter following
18 the hearing regarding the availability of the transcript. Let me
19 state that the transcript is usually put on the Board's web site
20 within a few days after its availability. I would like to note
21 that our web site address is www.ipcb.state.il.us.

22 The Agency's brief will be due by April the 11th of 2002,
23 and the mailbox rule will not apply.

24 The respondent's brief will be due by May 2nd of 2002, and

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1 the mailbox rule will not apply.

2 Any posthearing comments, public comments must be filed in
3 accordance with Section 101.628 of the Board's procedural rules.
4 Public comments must be filed by April the 2nd of 2002. The
5 mailbox rule set forth at 35 Ill. Adm. Code 101.102(d) and
6 101.144(c) will apply to these posthearing public filings.

7 Anything further from either of the parties before we
8 conclude?

9 MS. RYAN: No. Thank you.

10 MR. LANTO: No. If you could give me the web site again.
11 I missed it.

12 HEARING OFFICER LANGHOFF: Certainly. It is www.ipcb.
13 That is for Illinois Pollution Control Board.

14 MR. SMITH: Is that B or D?

15 HEARING OFFICER LANGHOFF: B as in boy.

16 MR. SMITH: Okay.

17 HEARING OFFICER LANGHOFF: For Illinois Pollution Control
18 Board, ipcb.state.il.us.

19 MR. LANTO: Thank you.

20 MR. SMITH: Thank you.

21 HEARING OFFICER LANGHOFF: I am required to make a
22 statement as to the credibility of the witnesses testifying today
23 during the hearing. This statement is to be based on my legal
24 judgment and experience. And, accordingly, I state that I found

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1 all of the witnesses testifying to be credible. Credibility
2 should not be an issue for the Board to consider in rendering its
3 decision in this case.

4 At this time I will go ahead and conclude our proceedings.
5 It is Tuesday, March the 19th of 2002, at approximately 10:20 in
6 the morning. We stand adjourned.

7 Thank you all for your participation and wish everyone to
8 have a good day.

9 MR. LANTO: Thank you.

10 MS. RYAN: Thank you.

11 (Hearing exhibits were retained by
12 Hearing Officer Steven C. Langhoff.)

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

3 C E R T I F I C A T E
4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for the
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that
7 the foregoing 62 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 19th of March A.D.,
9 2002, at 102 North Neil Street, Champaign, Illinois, in the case
10 of Illinois Environmental Protection Agency v. Alan Smith, in
11 proceedings held before Hearing Officer Steven C. Langhoff, and
12 recorded in machine shorthand by me.

13 IN WITNESS WHEREOF I have hereunto set my hand and affixed
14 my Notarial Seal this 22nd day of March A.D., 2002.
15
16
17
18
19

20 Notary Public and
21 Certified Shorthand Reporter and
22 Registered Professional Reporter

23 CSR License No. 084-003677
24 My Commission Expires: 03-02-2003

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