



10/24/10

From the desk of K. Bruce Seymore ...
Plant Superintendent

<u>Number of Size</u>	<u>Dumpsters number</u>
---------------------------	-----------------------------

8 YARD

75

3 1/2 YARD

21

6 YARD

12

Win
C
4/6
1-4-56
5

BP

5 Jan

SEIBERS SANITATION AND HAULING CO.
1406 Lebanon Road
Collinsville, Ill.

Proposal for Hauling Manure and Trash From Fairmount Race Track

..... We agree to furnish all containers and equipment for hauling such trash as designated.

We also agree to furnish landfill for dumping trash and manure. Following is an itemized list of such.

12-6 DAILY - 65, 8 yard containers @ \$ 250.00 per month, Total 16250.00
7, 3 yard containers for Grand Stand to be emptied five days a week, \$125.00 per month each. Total \$875.00
1, 3 yard container at Trailer Park, to be emptied once a week for the amount of \$50.00 per month. Total \$50.00
1, 4 yard container for dormitory, emptied once a week for the amount of \$60.00 per month. Total \$60.00
19- 1 1/2 yd 10, 3 yd containers in barn area to be emptied once a week for the amount of \$25.00 each. Total \$475.00.

----- \$200 additional for 10 months

The Grand Total for all above work and equipment per month to be for the amount of \$ 18,715.00. (15,000.00)
(Eighteen Thousand Seven Hundred Ten)

James A Seiber
** Seiber Sanitation
X

** Customer
X

Remainder 80
For 81, 82

Mrs. O
Held in
S. L. & Put
A copy in
MY book
Thanks
EG

A G R E E M E N T

THIS AGREEMENT made this 19 day of July, 1982, by and between OGDEN FAIRMOUNT, INC., hereinafter referred to as Race Track and JAMES SEIBER, d/b/a SEIBER SANITATION AND HAULING, hereinafter referred to as Seiber.

Seiber agrees as follows:

1. To furnish all equipment and manpower necessary to collect, store and remove manure and trash at and from Fairmount Park Race Track in Collinsville, Illinois.

2. To provide the following as the minimum number of containers to be placed at various locations to be designated by the Race Track:

65 - 8 yd. containers
8 - 3 yd. containers
1 - 4 yd. container
19 - 1 1/2 yd. containers

3. Containers shall be emptied and manure removed daily (7 days a week).

4. One 3 yd. container shall be located in the trailer court area of the track and shall be emptied once a week.

5. One 4 yd. container shall be located in the dormitory area of the track and shall be emptied once a week.

6. Nineteen 1 1/2 yd. containers shall be placed in the barn area to be designated by the Race Track for trash collection and each shall be emptied once a week.

7. Seiber shall dispose of all manure and trash in dumping places or landfills approved by any and all appropriate agencies of the State of Illinois.

8. Seiber shall maintain a labor contract with Teamsters Local 525 for the performance of all service and labor required under the terms of this agreement.

9. All containers and equipment used or required hereunder shall be regularly maintained, cleaned and painted to preserve the appropriate health and sanitation standards and shall also be kept in a presentable condition consistent with the dignity of the operation of the Race Track.

10. The following insurance shall be maintained by Seiber to protect him and his agents and the Race Track from any operations by him or anyone directly or indirectly employed by him, or by anyone for whose acts he may be liable:

-2-

- a) Workmen's Compensation and Employers Liability as respects operation to be performed in State of Illinois;
- b) Comprehensive General - Automobile Liability in at least the following minimum limits:
 - Bodily Injury - \$1,000,000 each occurrence-
\$1,000,000 aggregate
 - Property Damage - \$1,000,000 each occurrence-
\$1,000,000 aggregate
- c) The Comprehensive General - Automobile Liability policy must include Ogden Fairmount, Inc., its parent, their subsidiaries and affiliated companies as additional-named insureds.
- d) Contractual Liability Coverage As Respects Section 11.
- e) Independent Contractors Insurance.
- f) The Insurance Required Hereunder Shall Be Primary and not Contributing with any Insurance Carried by Ogden Fairmount, Inc. Ogden Fairmount, Inc. shall be given at least 10 days advance written notice of any material change in or cancellation of the above coverages.
- g) On all of the above policies, SEIBER shall furnish Race Track within fifteen (15) days prior to commencement of the Agreement, Certificates evidencing such coverage in responsible companies licensed in the State of Illinois.

11. Seiber shall hold harmless and indemnify the Race Track from any and all claims, suits, causes of action or liability growing out of its operations and shall defend at its own cost and expense any claims or suits brought against the Race Track by reason of any action or failure to act by Seiber or its agents.

The Race Track agrees as follows:

- 1. To pay Seiber FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00) a month for the services required hereunder. Said sum to be payable on the first day of each month.

IT IS MUTUALLY UNDERSTOOD AND AGREED:

- 1. That the terms of this contract shall be in effect for three years from the date thereof.
- 2. That the Race Track shall have the right to cancel this contract in the event that Seiber does or fails to do any of the following:

- a) Fails to provide the necessary equipment and manpower to perform obligations under this contract;

- 3 -

- b) Violates any law of the State of Illinois or the rules or regulations of any department, agency or board of the State of Illinois with respect to any of the operations required by Sieber under this contract, or does any act or fails to do any act which subjects the Race Track to any disciplinary procedure or action by any agency of the State of Illinois.

3. All manure collected or stored in containers provided by Sieber shall become the exclusive property of Sieber.

This contract dated on the date above written.

OGDEN-FAIRMOUNT, INC.

BY: 

Vice-President and
General Manager

JAMES SEIBER d/b/a SEIBER SANITATION
AND HAULING

BY: 

JAMES SEIBER
1001 South Morrison Avenue
Collinsville, Illinois

ADDENDUM
SEIBERS SANITATION AGREEMENT

This is an addendum to the agreement between SEIBERS SANITATION & HAULING and OGDEN FAIRMOUNT, INC.

The purpose of this addendum is not to alter or preclude any items presently agreed upon and contained in present document dated July 14, 1982.

This addendum is to be in full effect and to run for the term of the present agreement.

This agreement so states that Ogden Fairmount, Inc. agrees to pay Seibers Sanitation & Hauling \$250.00 a month for each container over the contractually agreed 65, 8 yd. containers, for the exclusive purpose of manure handling.

Seiber Sanitation & Hauling also agrees to list separately on each month's billing the amount due for all 8 yd. containers, not to exceed 12 containers per month, handled over the contractually agreed 65 containers.

Law Oliver
Attest

Jack Weaver
Jack Weaver-Vice President
OGDEN FAIRMOUNT, INC.

Law Oliver
Attest

James a Seiber
James Seiber
SEIBERS SANITATION & HAULING

Dated: Oct. 11, 1983

To: Peter Allen/Tan Etter
From: Brian Zander

Please call me when you've had a
chance to review this.

cc: B. Burk
J. MacAnn

A G R E E M E N T

THIS AGREEMENT made this _____ day of _____, 1986, by and between
OGDEN FAIRMOUNT, INC., hereinafter referred to as Race Track and JAMES SEIBER,
d/b/a/ SEIBER HAULING & EXCAVATING, hereinafter referred to as Seiber.

Seiber agrees as follows:

1. To furnish all equipment and manpower necessary to collect, store and
remove manure and trash at and from Fairmount Park Race Track in Collinsville,
Illinois.

2. To provide the following as the minimum number of new containers to
be placed at various locations to be designated by the Race Track:

65 - 8 yd. containers
8 - 3 yd. containers
1 - 4 yd. container
19 - 1½ yd. containers

Additional containers to be supplied upon request and at an additional
rate of \$250.00 per month for each additional container. The old containers
shall be removed and replaced with new containers before March 1, 1987.

3. Containers shall be emptied and manure removed daily (7 days a week).

4. One 3 yd. container shall be located in the trailer court area of
the track and shall be emptied once a week.

5. One 4 yd. container shall be located in the dormitory area of the
track and shall be emptied once a week.

6. Nineteen 1½ yd. containers shall be placed in the barn area to be
designated by the Race Track for trash collection and each shall be emptied
once a week.

7. Seiber shall dispose of all manure and trash in dumping places or
landfills approved by any and all appropriate agencies of the State of Illinois.

8. Any containers damaged by agents of the Race Track shall be replaced
at the expense of the Race Track.

Mailed
8-28-86

9. All containers and equipment used or required hereunder shall be regularly maintained, cleaned and painted to preserve the appropriate health and sanitation standards and shall also be kept in a presentable condition consistent with the dignity of the operation of the Race Track.

10. The following insurance shall be maintained by Seiber to protect him and his agents and the Race Track from any operations by him or anyone directly or indirectly employed by him, or by anyone for whose acts he may be liable:

a) Workmen's Compensation and Employers Liability as respects operation to be performed in State of Illinois;

b) Comprehensive General - Automobile Liability in at least the following minimum limits:

Bodily Injury - \$1,000,000 each occurrence-\$1,000,000 aggregate

Property Damage - \$1,000,000 each occurrence-\$1,000,000 aggregate

The Comprehensive General - Automobile Liability policy must include Ogden Fairmount, Inc., its parent, their subsidiaries and affiliated companies as additional-named insureds.

c) Contractual Liability Coverage as respects Section 11.

d) Independent Contractors Insurance.

e) The insurance required hereunder shall be primary and not contributing with any insurance carried by Ogden Fairmount, Inc. Ogden Fairmount, Inc. shall be given at least 10 days advance written notice of any material change in or cancellation of the above coverages.

f) On all of the above policies, SEIBER shall furnish Race Track within fifteen (15) days prior to commencement of the Agreement, certificates evidencing such coverage in responsible companies licensed in the State of Illinois.

11. Seiber employees will belong to the Teamsters' Local 525 for the performance of all services and labor required under the terms of this agreement.

12. Seiber shall hold harmless and indemnify the Race Track from any and all claims, suits causes of action or liability growing out of its operations and shall defend at its own cost and expense any claims or suits brought against the Race Track by reason of any action or failure to act by Seiber or its agents.

The Race Track agrees as follows:

1. To pay Seiber THIRTEEN THOUSAND AND 00/100 DOLLARS (\$13,000.00) a month for the services required hereunder, provided that the manure can be disposed of on the Seiber Farm. In the event that Seiber must use a public landfill for disposal of the manure, the fee shall go to \$15,000.00 per month. Said sum to be payable on the first day of each month; provided that, if during the course of this agreement, the Race Track decides to put in a manure processing plant, which will be on the property of the racetrack, not more than 3/4 mile from pick-up point, Race Track may do so by notifying Seiber in writing, Seiber will agree to do the hauling, at which time payments shall be re-negotiated by both parties.

IT IS MUTUALLY UNDERSTOOD AND AGREED:

1. That the terms of this contract shall be in effect for three years from the date thereof.

2. That the Race Track shall have the right to cancel this contract in the event that Seiber does or fails to do any of the following:

- a) Fails to provide the necessary equipment and manpower to perform obligations under this contract;
- b) Violates any law of the State of Illinois or the rules or regulations of any department, agency or board of the State of Illinois with respect to any of the operations required by Seiber under this contract, or does any act or fails to do any act which subjects the Race Track to any disciplinary procedure or action by any agency of the State of Illinois.

3. All manure collected or stored in containers provided by Seiber shall become the exclusive property of Seiber, except if Racetrack decides to put in a manure processing plant, then all manure collected becomes property of Race Track.

This contract dated on the date above written.

OGDEN FAIRMOUNT, INC.

JAMES SEIBER d/b/a/
SEIBER HAULING AND EXCAVATING

BY: _____
Vice President & General Manager

AGREEMENT

AGREEMENT made this 24 day of March, 1987 by and between Ogden Fairmount, Inc. ("Ogden") and JAMES SEIBER, d/b/a SEIBER HAULING & EXCAVATING ("Seiber").

WITNESSETH:

WHEREAS, Ogden owns and operates Fairmount Park Race Track in Collinsville, Illinois ("Fairmount Park"); and

WHEREAS, Ogden desires to engage Seiber to provide services relating to the storage, collection and removal from Fairmount Park of manure and other trash generated at Fairmount Park, and Seiber desires to be so engaged on the terms and conditions set for herein.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. During the term of this Agreement, Seiber shall furnish all trucks, containers and personnel necessary for the collection, storage and removal of trash and manure at Fairmount Park that is placed in said containers.

2. The parties acknowledge that Seiber presently has on location at Fairmount Park containers (the "Old Containers") for the collection and storage of trash and manure. Seiber agrees that, not later than six months from the signing of this agreement, Seiber shall, without additional charge to Ogden, remove the Old Containers and replace them with the following new containers:

65 - 8 yard containers

8 - 3 yard containers

1 - 4 yard container

19 - 1½ yard containers

Seiber will supply containers in addition to those listed above for an additional charge of \$250 per month per container if requested to do so by Ogden.

3. One 3 yard container shall be located in the trailer court area of Fairmount Park and shall be emptied by Seiber once a week. One 4 yard container shall be located in the dormitory area of Fairmount Park and shall be emptied by Seiber once a week. Nineteen 1½ yard containers shall be located in the barn area of Fairmount Park as designated by Ogden and shall be emptied by Seiber once a week. All other containers shall be located as directed by Ogden and shall be emptied by Seiber daily (seven days per week).

4. Seiber shall dispose of all trash and manure collected at Fairmount Park in dumping places or landfills in strict compliance with all applicable laws.

5. In the event that any containers are damaged by Ogden's agents or employees, such containers shall be replaced by Seiber at Ogden's expense.

6. All containers and equipment used or required hereunder shall be regularly maintained, cleaned and painted consistent with the dignity of the operations at Fairmount Park and shall, at a minimum, comply with all applicable laws, rules and regulations of any Federal, State or Local government authorities.

7. The following insurance shall be maintained by Seiber in connection with its operations hereunder:

(a) Workmen's Compensation and Employers Liability as respects operations to be performed in the State of Illinois;

(b) Comprehensive General and Automobile Liability in at least the following minimum limits:

Bodily Injury - \$100,000.00 each occurrence - \$100,000.00 aggregate.

Property Damage - \$100,000.00 each occurrence - \$100,000.00 aggregate.

The Comprehensive General - Automobile Liability policy must include Ogden Fairmount, Inc., its parent, subsidiaries and affiliated companies as additional named insureds.

(c) The insurance required hereunder shall be primary and not contributing with any insurance carried by Ogden. Ogden shall be given at least 10 days advance written notice of any material change in or cancellation of the above coverages.

(d) On all of the above policies, Seiber shall furnish Ogden within fifteen days prior to commencement of this Agreement, with certificates evidencing such coverage by responsible companies licensed in the State of Illinois.

8. Seiber agrees to indemnify and hold Ogden harmless from and against any and all damages, losses, costs, claims or expenses, including reasonable attorney's fees, resulting from or arising out of Seiber's services hereunder, including, without limitation, any claims of violations of laws or regulations

relating to disposal of trash and manure; in any such action, Seiber shall defend at its own cost, and with attorneys chosen by Seiber any such claims. Ogden shall take all reasonable action to cooperate with Seiber in the defense of the claim; and if Ogden does not, Seiber shall be released of the obligation to defend, indemnify and hold harmless. If such cooperation by Ogden involves any costs or expenses Seiber shall pay such costs and expenses in advance.

9. In consideration for the services to be rendered by Seiber hereunder, Ogden agrees to pay Seiber THIRTEEN THOUSAND AND 00/000 (\$13,000.00) per month; provided, however, that if during the term of this Agreement it shall become unlawful for Seiber to dispose of the manure from Fairmount Park at Seiber Farm, and as a result, Seiber is required to dispose of manure at a public landfill, the monthly payment hereunder shall increase to FIFTEEN THOUSAND AND 00/000 (\$15,000.00) per month. Notwithstanding the foregoing, Seiber acknowledges that Ogden is considering the construction of a manure processing plant on the Fairmount Park property. If Ogden shall determine to proceed with such construction and such plant is to be located within 3/4 mile from the pick-up point for the manure, Ogden shall so notify Seiber, and the parties shall renegotiate the price to be charged by Seiber hereunder. If the parties shall fail to reach agreement with respect thereto, this amount to be paid to Seiber shall be submitted to binding arbitration following the rules of the American Arbitration Association, with three arbitrators to be chosen locally; one by each side and the third by the other two arbitrators. The decision of the arbitrators shall be binding on each party.

10. In the event that horse racing is suspended at Fairmount Park during the term of this Agreement due to labor disputes, acts of God or any other reason whatsoever, the parties' obligations hereunder shall also be suspended for the duration of such suspension, and Ogden shall not be required to make any payments hereunder to Seiber during such period.

11. The term of this Agreement shall commence on the date hereof and shall continue for a period of three years.

12. Ogden shall have the right to cancel this Agreement before the expiration of its full term in the event that:


- (a) Seiber fails to perform its obligations hereunder, or
- (b) (1) Seiber violates any valid law, rule or regulations of any Federal, State or Local governmental authority applicable to Seiber's operations hereunder; or

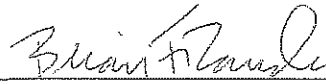
(2) Commits any acts, or omits to perform any act; either of which (b 1 or b 2) subjects Ogden to any disciplinary procedure or action of any Federal, State or Local governmental authority. Provided that if Seiber fails to perform under the Agreement, he shall be so notified in writing and be allowed 30 days to correct the violation of the Agreement.

13. All manure collected or stored in containers provided by Seiber shall become the exclusive property of Seiber, except that if Ogden constructs the manure processing plant referred to in Section 9, such manure shall thereafter remain the property of Ogden.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement on the date and year first above written.

OGDEN FAIRMOUNT, INC.


JAMES SEIBER, d/b/a SEIBER
HAULING AND EXCAVATING

By: 

AGREEMENT

AGREEMENT made this 9th day of February 1990, by and between Ogden Fairmount, Inc. ("Ogden") and JAMES SEIBER, d/b/a/ SEIBER HAULING & EXCAVATING ("Seiber").

WITNESSETH:

WHEREAS, Ogden owns and operates Fairmount Park Race Track in Collinsville, Illinois ("Fairmount Park"); and

WHEREAS, Ogden desires to engage Seiber to provide services relating to the storage, collection and removal from Fairmount Park of manure and other trash generated at Fairmount Park, and Seiber desires to be so engaged on the terms and conditions set for herein.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. During the term of this Agreement, Seiber shall furnish all trucks, containers and personnel necessary for the collection, storage and removal of trash and manure at Fairmount Park that is placed in said containers.

2. The parties acknowledge that Seiber presently has on location at Fairmount Park containers for the collection and storage of trash and manure, the following:

- 65 - 8 yard containers
- 8 - 3 yard containers
- 1 - 4 yard container
- 19 - 1½ yard containers.

Seiber will supply containers in addition to those listed above for an additional charge of \$250 per month per container if requested to do so by Ogden.

3. One 3 yard container shall be located in the trailer court area of Fairmount Park and shall be emptied by Seiber once a week. One 4 yard container shall be located in the dormitory area of Fairmount Park and shall be emptied by Seiber once a week. Nineteen 1½ yard containers shall be located in the barn area of Fairmount Park as designated by Ogden and shall be emptied by Seiber once a week. All other containers shall be located as directed by Ogden and shall be emptied by Seiber daily (seven days per week).

4. Seiber shall dispose of all trash and manure collected at Fairmount Park in dumping places or landfills in strict compliance with all applicable laws.

5. In the event that any containers are damaged by Ogden's agents or employees, such containers shall be replaced by Seiber at Ogden's expense.

6. All containers and equipment used or required hereunder shall be regularly maintained, cleaned and painted consistent with the dignity of the operations at Fairmount Park and shall, at a minimum, comply with all applicable laws, rules and regulations of any Federal, State or Local government authorities.

7. The following insurance shall be maintained by Seiber in connection with its operations hereunder:

(a) Workmen's Compensation and Employers Liability as respects operations to be performed in the State of Illinois;

(b) Comprehensive General and Automobile Liability in at least the following minimum limits:

Bodily Injury - \$100,000.00 each occurrence -

\$100,000.00 aggregate.

Property Damage - \$100,000.00 each occurrence -
\$100,000.00 aggregate.

The Comprehensive General-Automobile Liability policy must include Ogden Fairmount, Inc., its parent, subsidiaries and affiliated companies as additional named insureds.

(c) The insurance required hereunder shall be primary and not contributing with any insurance carried by Ogden. Ogden shall be given at least ten days advance written notice of any material change in or cancellation of the above coverages.

(d) On all of the above policies, Seiber shall furnish Ogden within fifteen days prior to commencement of this Agreement, with certificates evidencing such coverage by responsible companies licensed in the State of Illinois.

8. Seiber agrees to indemnify and hold Ogden harmless from and against any and all damages, losses, costs, claims or expenses, including reasonable Attorney's fees, resulting from or arising out of Seiber's services hereunder, including, without limitation, any claims of violations of laws or regulations relating to disposal of trash and manure; in any such action, Seiber shall defend at its own cost, and with Attorneys chosen by Seiber any such claims. Ogden shall take all reasonable action to cooperate with Seiber in the defense of the claim; and if Ogden does not, Seiber shall be released of the obligation to defend, indemnify and hold harmless. If such cooperation by Ogden involves any costs or expenses Seiber shall pay such costs and expenses in advance.

9. In consideration for the services to be rendered by Seiber

hereunder, Ogden agrees to pay Seiber THIRTEEN THOUSAND FIVE HUNDRED AND 00/100 (\$13,500.00) per month; provided, however, that if during the term of this Agreement it shall become unlawful for Seiber to dispose of the manure from Fairmount Park at Seiber Farm, and as a result, Seiber is required to dispose of manure at a public landfill, the amount to be paid Seiber under this Agreement shall be re-negotiated. If the parties shall fail to reach Agreement with respect thereto, this amount to be paid to Seiber shall be submitted to binding arbitration following the rules of the American Arbitration Association, with three arbitrators to be chosen locally; one by each side and the third by the other two arbitrators. The decision of the arbitrators shall be binding on each party.

10. In the event that horse racing is suspended at Fairmont Park during the term of this Agreement due to labor disputes, acts of God or any other reason whatsoever, the parties' obligations hereunder shall also be suspended for the duration of such suspension, and Ogden shall not be required to make any payments hereunder to Seiber during such period.

11. The term of this Agreement shall commence on the date hereof and shall continue for a period of three years. Further, Ogden grants an option to renew this Agreement with Seiber at the end of the three-year period and Ogden shall not enter into a contract, with anyone else, to do this work, until it is unable to negotiate an Agreement with Seiber.

12. Ogden shall have the right to cancel this Agreement before the expiration of its full term in the event that:

(a) Seiber fails to perform its obligations hereunder;
or

(b) (1) Seiber violates any valid law, rule or regulations of any Federal, State or Local governmental authority applicable to Seiber's operations hereunder; or

(2) Commits any acts, or omits to perform any act; either of which (b1 or b2) subjects Ogden to any disciplinary procedure or action of any Federal, State or Local governmental authority. Provided that if Seiber fails to perform under the Agreement, he shall be so notified in writing and be allowed thirty days to correct the violation of the Agreement.

13. All manure collected or stored in containers provided by Seiber shall become the exclusive property of Seiber.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement on the date and year first above written.

James A. Seiber
JAMES SEIBER, d/b/a SEIBER
HAULING AND EXCAVATING

OGDEN FAIRMOUNT, INC.
BY: Brian H. Zander

Pay the 1st of working day of Nov 1992

AGREEMENT

AGREEMENT made this ___ day of November, 1992, by and between Ogden Fairmount, Inc. ("Ogden") and JAMES SEIBER, d/b/a SEIBER HAULING & EXCAVATING ("Seiber").

WITNESSETH:

WHEREAS, Ogden owns and operates Fairmount Park Race Track in Collinsville, Illinois ("Fairmount Park"); and

WHEREAS, Ogden desires to engage Seiber to provide services relating to the storage, collection and removal from Fairmount Park of manure and other trash generated at Fairmount Park, and Seiber desires to be so engaged on the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto hereby agree as follows:

1. During the term of this Agreement, Seiber shall furnish all trucks, containers and personnel necessary for the collection, storage and removal of trash and manure at Fairmount Park that is placed in said containers.

2. The parties acknowledge that Seiber presently has on location at Fairmount Park containers for the collection and storage of trash and manure, the following:

- 65 - 8 yard containers
- ~~8 - 3 yard containers~~
- ~~1 - 4 yard containers~~
- ~~19 - 1½ yard containers.~~

Seiber will supply containers in addition to those listed ^{*already*} ~~above for an additional charge of \$250.00 per month per container~~ if requested to do so by Ogden.

3. One 3 yard container shall be located in the trailer court area of Fairmount Park and shall be emptied by Seiber once a week. One 4 yard container shall be located in the dormitory area of Fairmount Park and shall be emptied by Seiber once a week. Nineteen 1½ yard containers shall be located in the barn area of Fairmount Park as designated by Ogden and shall be emptied by Seiber once a week. All other containers shall be located as directed by Ogden and shall be emptied by Seiber daily (seven days per week).

4. Seiber shall dispose of all trash and manure collected at Fairmount Park in strict compliance with all applicable laws; the manure may be stored at Fairmount Park for a period not to exceed seven days.

5. In the event that any containers are damaged by Ogden's agents or employees, such containers shall be replaced by Seiber at Ogden's expense.

6. All containers and equipment used or required hereunder shall be regularly maintained, cleaned and painted consistent with the dignity of the operations at Fairmount Park and shall, at a minimum, comply with all applicable laws, rules and regulations of any Federal, State or Local government authorities.

7. The following insurance shall be maintained by Seiber in connection with its operations hereunder:

(a) Workmen's Compensation and Employer's Liability as respects operations to be performed in the State of Illinois;

(b) Comprehensive General and Automobile Liability in at least the following minimum limits:

Bodily Injury - \$100,000.00 each occurrence;
\$100,000.00 aggregate.

Property Damage - \$100,000.00 each occurrence;
\$100,000.00 aggregate.

The Comprehensive General-Automobile Liability policy must include Ogden Fairmount, Inc., its parent, subsidiaries and affiliated companies as additional named insureds.

(c) The insurance required hereunder shall be primary and not contributing with any insurance carried by Ogden. Ogden shall be given at least ten days advance written notice of any material change in or cancellation of the above coverages.

(d) On all of the above policies, Seiber shall furnish Ogden within fifteen days prior to commencement of this Agreement, with certificates evidencing such coverage by responsible companies licensed in the State of Illinois.

8. Seiber agrees to indemnify and hold Ogden harmless from and against any and all damages, losses, costs, claims or expenses, including reasonable Attorney's fees, resulting from or arising out of Seiber's services hereunder, including, without limitation, any claims of violations of laws or regulations relating to disposal of trash and manure; in any such action, Seiber shall defend at its own cost, and with Attorneys chosen by Seiber any such claims. Ogden shall take all reasonable action to cooperate with Seiber in the defense of the claim; and if Ogden does not, Seiber shall be released of the obligation to defend, indemnify and hold harmless. If such cooperation by Ogden involves any costs or expenses Seiber shall pay such costs and expenses in advance.

9. In consideration for the services to be rendered by Seiber hereunder, Ogden agrees to pay Seiber (a) \$641.00 per day for each day that horses are present at the Fairmount Park Racetrack; Ogden shall not be required to pay when horses are not at Fairmount Park and Seiber is not removing manure; plus (b) \$2,000.00 per month, each and every month for removal of all material other than manure.

10. In the event that horse racing is suspended at Fairmount Park during the term of this Agreement due to labor disputes, acts of God or any other reason whatsoever, the parties' obligations hereunder shall also be suspended for the duration of such suspension, and Ogden shall not be required to make any payments hereunder to Seiber during such period.

11. The term of this Agreement shall commence on December 1, 1992 hereof and shall continue for a period of three years. Further, Ogden grants an option to renew this Agreement with Seiber at the end of the three-year period and Ogden shall not enter into a contract, with anyone else, to do this work, until it is unable to negotiate an Agreement with Seiber.

12. Ogden shall have the right to cancel this Agreement before the expiration of its full term in the event that:

(a) Seiber fails to perform its obligations hereunder; or

(b)(1) Seiber violates any valid law, rule or regulations of any Federal, State or Local governmental authority applicable to Seiber's operations hereunder; or

(2) Commits any acts, or omits to perform any act; either of which (b1 or b2) subjects Ogden to any disciplinary procedure or action of any Federal, State or Local governmental authority.

Provided that if Seiber fails to perform under the Agreement, he shall be so notified in writing and be allowed thirty days to correct the violation of the Agreement.

12. All manure collected or stored in containers provided by Seiber shall become the exclusive property of Seiber.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement on the date and year first above written.

OGDEN FAIRMOUNT, INC.

JAMES SEIBER, d/b/a SEIBER
HAULING AND EXCAVATING

BY: _____

AGREEMENT

AGREEMENT made this _____ day of April, 1994, by and between Ogden Fairmount, Inc. ("Ogden") and JAMES SEIBER, d/b/a SEIBER HAULING & EXCAVATING ("Seiber").

WITNESSETH:

WHEREAS, Ogden owns and operates Fairmount Park Race Track in Collinsville, Illinois ("Fairmount Park") and

WHEREAS, Ogden desires to engage Seiber to provide services relating to the storage, collection and removal from Fairmount Park of manure and other trash generated at Fairmount Park, and Seiber desires to be so engaged on the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto hereby agree as follows:

1. During the term of this Agreement, Seiber shall furnish all trucks, containers and personnel necessary for the collection, storage and removal of trash and manure at Fairmount Park that is placed in said containers.

2. The parties acknowledge that Seiber presently has on location at Fairmount Park containers for the collection and storage of trash and manure, the following:

- 65 - 8 yard containers
- 8 - 3 yard containers
- 1 - 4 yard containers
- 19 - 1½ yard containers.

Seiber will supply additional containers, as may be deemed necessary by Ogden, in addition to those listed above for no additional charge.

3. One 3 yard container shall be located in the trailer court area of Fairmount Park and shall be emptied by Seiber once a week.

One 4 yard container shall be located in the dormitory area of Fairmount Park and shall be emptied by Seiber once a week.

Nineteen 1½ yard containers shall be located in the barn area of Fairmount Park, as designated by Ogden, and shall be emptied by Seiber once a week.

Two 3 yard containers shall be located outside the fence in the near vicinity of Barn 2 and shall be emptied by Seiber as *OK* needed, or upon specific direction of Ogden's representatives.

All other containers shall be located as directed by Ogden and shall be emptied by Seiber *daily* (seven days per week, subject to subsequent provisions concerning suspension of operations discussed below). *manure, garbage, debris container*

4. Seiber shall dispose of all trash and manure collected at Fairmount Park in strict compliance with all applicable laws and the order of permanent injunction issued by the Circuit Court of St. Clair County, Illinois. Seiber shall be permitted to compost and windrow manure at such locations as may be designated by Ogden, it being clearly understood that all such procedures shall be in compliance with applicable regulations and guidelines of the Illinois Environmental Protection Agency, and subject to the "hold harmless" provisions set forth in Paragraph 8 of this Agreement.

5. In the event that any containers are damaged by Ogden's agents or employees, such containers shall be replaced by Seiber at Ogden's expense. Seiber is to provide written notice of such damage, in compliance with the terms of this Agreement as set forth

following, said notice to include the identity and location of each container, and the damage to each said container.

In the event that any property, real or personal, possessed by Ogden or any patron thereof, are damaged by Seiber's agents or employees, such property shall, upon written notice again stating the identity and nature of said damaged property, be repaired or compensated for at fair market value by Seiber at Seiber's expense.

6. All containers and equipment used or required hereunder shall be regularly maintained, cleaned and painted, by Seiber, consistent with the dignity of the operations at Fairmount Park and shall, at a minimum, comply with all applicable laws, rules and regulations of any Federal, State or Local government authorities. .

7. The following insurance shall be maintained by Seiber in connection with its operations hereunder:

(a) Workmen's Compensation and Employer's Liability as respects operations to be performed in the State of Illinois;

(b) Comprehensive General and Automobile Liability in at least the following minimum limits:

Bodily Injury - \$100,000.00 each occurrence;

NU \$1,000,000.00 aggregate.

100,000 Property Damage - \$100,000.00 each occurrence;

NU \$1,000,000.00 aggregate.

The Comprehensive General and Automobile Liability policy must include Ogden Fairmount, Inc., its parent, subsidiaries and affiliated companies as additional named insureds.

(c) The insurance required hereunder shall be primary and not contributing with any insurance carried by Ogden. Ogden

shall be given at least ten days advance written notice of any material change in or cancellation of the above coverages.

(d) On all of the above policies, Seiber shall furnish Ogden, within fifteen days prior to commencement of this Agreement, with certificates evidencing such coverage by responsible companies licensed in the State of Illinois.

8. Seiber agrees to indemnify and hold Ogden harmless from and against any and all damages, losses, costs, claims or expenses, including reasonable Attorney's fees, resulting from or arising out of Seiber's services hereunder, including, without limitation, any claims of violations of laws or regulations relating to disposal of trash and manure; in any such action, Seiber shall defend at its own cost, and with Attorneys chosen by Seiber, any such claims. Ogden shall taken all reasonable action to cooperate with Seiber in the defense of the claim; and if Ogden does not, Seiber shall be released of the obligation to defend, indemnify and hold harmless. If such cooperation by Ogden involves any costs or expenses Seiber shall pay such costs and expenses in advance.

9. In consideration for the the services to be rendered by Seiber hereunder, Ogden agrees to pay Seiber (a) \$600.00 per day for each day that horses are present at the Fairmount Park Racetrack; ^{at Seiber is removing manure} Ogden shall not be required to pay this amount when horses are not at Fairmount Park and Seiber is not removing manure (it being contemplated that all manure is to be removed within a day of the last presence of horses at Fairmount Park); plus (b) \$1,600.00 per month, each and every month for removal of all material other than manure;

Provided that there is no horse barn at Fairmount Park, Seiber shall be required to remove all trash from the Clubhouse & Grandstand area

100

In the event that the horse population housed and boarded at Fairmount Park falls below 500 horses for any reason, Ogden shall have the right to renegotiate the daily rate for removal of manure (as specified in (a) above) upon seven days notice to Seiber.

Provised

10. In the even that horse racing is suspended at Fairmount Park during the term of this Agreement due to labor disputes, acts of God or any other reason whatsoever, the parties' obligations arising under 9(b) shall also be suspended for the duration of such suspension, and Ogden shall not be required to make any payments pursuant to Paragraph 9(b) to Seiber during such period. The obligations and duties of the parties arising pursuant to Paragraph 9(a) shall be determined by the provisions of Paragraph 9 . pertaining to the presence of horses at Fairmount Park.

5/1/11

11. The term of this Agreement shall commence on December 1, 1993 hereof and shall continue for a period of three years. Further, Ogden grants an option to renew this Agreement with Seiber at the end of the three-year period, with Seiber to exercise his option to renew in writing no later than thirty days before the expiration of this Agreement. If Seiber so fails to exercise this option, Ogden shall not enter into a contract with anyone else to do this work until it is unable to negotiate an agreement with Seiber. It will be deemed a failed negotiation if no agreement is reached with Seiber after thirty days, at the latest, after this present contract has expired.

Notified
Clear
to Sub

12. Ogden shall have the right to cancel this Agreement before the expiration of its full term in the event of a default by Seiber, including:

(a) Seiber fails to perform its obligation hereunder; or
(b)(1) Seiber violates any valid law, rule or regulations of any Federal, State or Local governmental authority applicable to Seiber's operations hereunder; or

(2) Commits any acts, or omits to perform any act; either of which [(b)(1) or (b)(2)] subjects Ogden to any disciplinary procedure or action of any Federal, State or Local governmental authority.

Provided that if Seiber fails to perform under this Agreement, he shall be so notified in writing and shall be required to correct the condition immediately, or within a time period as specified by the government authority, as may be applicable.

13. All manure collected or stored in containers provided by Seiber shall become the exclusive property of Seiber.

14. No extension, change, modification or amendment of this Agreement of any kind whatsoever, shall be made or claimed by any party unless it shall be endorsed in writing on this Agreement and signed by the parties hereto.

15. It is mutually agreed by Ogden and Seiber that waiver by Ogden of any breach of any obligation or duty of Seiber under this Agreement should not be a waiver of any other breach of obligation or duty by Seiber, or of any subsequent breach of the same obligation or duty.

16. Seiber shall not have the right to assign this Agreement, or any part thereof, without the express written permission of Ogden. *and to be signed JRS Jr.*

17. Any notices as referred to and called for by this

Agreement shall be in writing and it shall be, when directed to Ogden, mailed to Ogden Fairmount, Inc., Fairmount Park Race Track, Route 40, Collinsville, Illinois.

Any notices as referred to and called for by this Agreement shall be in writing and it shall be, when directed to Seiber, mailed to James Seiber, d/b/a Seiber Hauling & Excavating, 100 Blackjack, Collinsville, Illinois 62234.

18. This Agreement is to be construed and interpreted according to the Laws of the State of Illinois, with venue for any matter arising under this Agreement between Ogden and Seiber to be found in Madison County, Illinois.

19. The original of this Agreement is executed in duplicate, with one original being given each to Ogden and to Seiber.

JAMES SEIBER, d/b/a SEIBER
HAULING AND EXCAVATING

FRED HAIDA
OGDEN FAIRMOUNT, INC.

AGREEMENT

AGREEMENT made this ___ day of ~~February~~, 1995, by and between Ogden Fairmount, Inc. ("Ogden") and JAMES SEIBER, d/b/a SEIBER HAULING & EXCAVATING ("Seiber").

WITNESSETH:

WHEREAS, Ogden owns and operates Fairmount Park Race Track in Collinsville, Illinois ("Fairmount Park"); and

WHEREAS, Ogden desires to engage Seiber to provide services relating to the storage, collection and removal from Fairmount Park of manure and other trash generated at Fairmount Park, and Seiber desires to be so engaged on the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto hereby agree as follows:

1. During the term of this Agreement, Seiber shall furnish all trucks, containers and personnel necessary for the collection, storage and removal of trash and manure at Fairmount Park that is placed in said containers.

2. The parties acknowledge that Seiber presently has on location at Fairmount Park containers for the collection and storage of trash and manure, the following:

- 65 - 8 yard containers
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- 19 - 1½ yard containers.

Seiber will supply additional containers, as may be deemed necessary by Ogden, in addition to those listed above for no

additional charge.

3. One 3 yard container shall be located in the trailer court area of Fairmount Park and shall be emptied by Seiber once a week.

One 4 yard container shall be located in the dormitory area of Fairmount Park and shall be emptied by Seiber once a week.

Nineteen 1½ yard containers shall be located in the barn area of Fairmount Park, as designated by Ogden, and shall be emptied by Seiber once a week.

Two 3 yard containers shall be located outside the fence in the near vicinity of Barn 2 and shall be emptied by Seiber as needed, or upon specific direction of Ogden's representatives.

All other manure, grandstand and clubhouse containers shall be located as directed by Ogden and shall be emptied by Seiber daily (seven days per week, subject to subsequent provisions concerning suspension of operations discussed below).

4. Seiber shall dispose of all trash and manure collected at Fairmount Park in strict compliance with all applicable laws and the order of permanent injunction issued by the Circuit Court of St. Clair County, Illinois. Seiber shall be permitted to compost and windrow manure at such locations as may be designated by Ogden, it being clearly understood that all such procedures shall be in compliance with applicable regulations and guidelines of the Illinois Environmental Protection Agency, and subject to the "hold harmless" provisions set forth in Paragraph 8 of this Agreement.

5. In the event that any containers are damaged by Ogden's agents or employees, such containers shall be replaced by Seiber

at Ogden's expense. Seiber is to provide written notice of such damage, in compliance with the terms of this Agreement as set forth following, said notice to include the identity and location of each container, and the damage to each said container.

In the event that any property, real or personal, possessed by Ogden of any patron thereof, are damaged by Seiber's agents or employees, such property shall, upon written notice again stating the identity and nature of said damaged property, be repaired or compensated for at fair market value by Seiber at Seiber's expense.

6. All containers and equipment used or required hereunder shall be regularly maintained, cleaned and painted, by Seiber, consistent with the dignity of the operations at Fairmount Park and shall, at a minimum, comply with all applicable laws, rules and regulations of any Federal, State or Local government authorities.

7. The following insurance shall be maintained by Seiber in connection with its operations hereunder:

(a) Workmen's Compensation and Employer's Liability as respects operations to be performed in the State of Illinois;

(b) Comprehensive General and Automobile Liability in at least the following minimum limits:

Bodily Injury - ~~\$100,000.00 each occurrence;~~
\$1,000,000.00 aggregate.

Property Damage - ~~\$100,000.00 each occurrence;~~
\$1,000,000.00 aggregate.

The Comprehensive General-Automobile Liability policy must include Ogden Fairmount, Inc., its parent, subsidiaries and

affiliated companies as additional named insureds.

(c) The insurance required hereunder shall be primary and not contributing with any insurance carried by Ogden. Ogden shall be given at least ten days advance written notice of any material change in or cancellation of the above coverages.

(d) On all of the above policies, Seiber shall furnish Ogden within fifteen days prior to commencement of this Agreement, with certificates evidencing such coverage by responsible companies licensed in the State of Illinois.

8. Seiber agrees to indemnify and hold Ogden harmless from and against any and all damages, losses, costs, claims or expenses, including reasonable Attorney's fees, resulting from or arising out of Seiber's services hereunder, including, without limitation, any claims of violations of laws or regulations relating to disposal of trash and manure; in any such action, Seiber shall defend at its own cost, and with Attorneys chosen by Seiber, any such claims. Ogden shall take all reasonable action to cooperate with Seiber in the defense of the claim; and if Ogden does not, Seiber shall be released of the obligation to defend, indemnify and hold harmless. If such cooperation by Ogden involves any costs or expenses, Seiber shall pay such costs and expenses in advance.

9. In consideration for the services to be rendered by Seiber hereunder, Ogden agrees to pay Seiber (a) \$600.00 per day for each day that horses are present at the Fairmount Park Racetrack; Ogden shall not be required to pay when horses are not at Fairmount Park and Seiber is not removing manure (it being contemplated that all

manure is to be removed within a day of the last presence of horses at Fairmount Park); plus (b) \$1,600.00 per month, each and every month for removal of all trash from containers other than manure; PROVIDED that when no horses are present, Seiber shall only be required to remove paper and trash from the Clubhouse and Grandstand containers; plus (c) \$600.00 per month to defer insurance expense.

10. In the event that horse racing is suspended at Fairmount Park during the term of this Agreement due to labor disputes, acts of God or any other reason whatsoever, the parties' obligations arising under 9(b) shall also be suspended for the duration of such suspension, and Ogden shall not be required to make any payments pursuant to Paragraph 9(b) to Seiber during such period. The obligations and duties of the parties arising pursuant to Paragraph 9(a) shall be determined by the provisions of Paragraph 9, pertaining to the presence of horses at Fairmount Park. PROVIDED that if Ogden requests Seiber to remove trash during a period of time that racing is suspended, Ogden shall pay Seiber for such removal according to the terms of this Agreement.

11. The term of this Agreement shall commence on ^{Jan}~~March~~ 1, 199~~6~~⁶ hereof and shall continue for a period of three years. Ogden shall notify Seiber, in writing, at least 60 days prior to the expiration of this Agreement, that this Agreement will expire. Further, Ogden grants an option to renew this Agreement with Seiber at the end of the three-year period for an additional three year period. Seiber to exercise his option to renew in writing no later

than thirty days before the expiration of this Agreement. If Seiber so fails to exercise this option, Ogden shall not enter into a contract with anyone else to do this work, until it is unable to negotiate an agreement with Seiber. It will be deemed a failed negotiation if no agreement is reached with Seiber after ninety days, at the latest, after this present contract has expired.

12. Ogden shall have the right to cancel this Agreement before the expiration of its full term in the event of a default by Seiber, including:

(a) Seiber fails to perform its obligations hereunder; or

(b)(1) Seiber violates any valid law, rule or regulations of any Federal, State or Local governmental authority applicable to Seiber's operations hereunder; or

(2) Commits any acts, or omits to perform any act; either of which [(b)(1) or (b)(2)] subjects Ogden to any disciplinary procedure or action of any Federal, State or Local governmental authority.

Provided that if Seiber fails to perform under the Agreement, he shall be so notified in writing and shall be required to correct the condition immediately, or within a time period as specified by the government authority, as may be applicable.

13. All manure collected or stored in containers provided by Seiber shall become the exclusive property of Seiber.

14. No extension, change, modification or amendment of this Agreement of any kind whatsoever, shall be made or claimed by any party unless it shall be endorsed in writing on this Agreement and

signed by the parties hereto.

15. It is mutually agreed by Ogden and Seiber that waiver by Ogden of any breach of any obligation or duty of Seiber under this Agreement should not be a waiver of any other breach of obligation or duty by Seiber, or of any subsequent breach of the same obligation or duty.

16. Seiber shall not have the right to assign this Agreement, or any part thereof, without the express written permission of Ogden, to anyone except his son, James A. Seiber, Jr.

17. Seiber shall be allowed to construct, on property owned by Ogden, commonly known as 147 Simpson Street, Collinsville, Illinois, a 36' by 60' Pole Barn Building for Seiber's own use. Seiber shall pay to Ogden the sum of \$1.00 per year, as and for rent, of the real estate. ^{Ogden shall provide, at his expense, standard 110v electrical wiring.} The building shall remain the exclusive property of Seiber and if this agreement is not renewed; Seiber shall be allowed to remove the building from the real estate. Alternatively, Ogden may purchase the building at its fair market value. ^{Seiber shall not be allowed to store equipment and material not related to this contractual obligation, on Ogden's property.}

18. Any notices as referred to and called for by this Agreement shall be in writing and it shall be, when directed to Ogden, mailed to Ogden Fairmount, Inc., Fairmount Park Race Track, Route 40, Collinsville, Illinois.

Any notices as referred to and called for by this Agreement shall be in writing and it shall be, when directed to Seiber, mailed to James Seiber, d/b/a Seiber Hauling & Excavating, 100 Blackjack, Collinsville, Illinois 62234.

19. This Agreement is to be construed and interpreted according to the Laws of the State of Illinois, with venue for any matter arising under this Agreement between Ogden and Seiber to be found in Madison County, Illinois.

20. The originals of this Agreement is executed in duplicate, with one original being given each to Ogden and to Seiber.

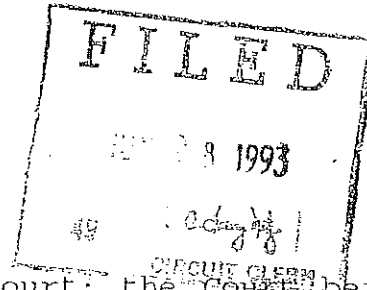
JAMES SEIBER, d/b/a SEIBER
HAULING AND EXCAVATING

FRED HAIDA
OGDEN FAIRMOUNT, INC.

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
and)
)
PEOPLE OF ST. CLAIR COUNTY,)
)
Plaintiffs,)
vs.)
)
JAMES A. SEIBER)
)
Defendant(s).)

NO. 85-CH-216



ORDER

This cause coming before the Court; the Court being fully advised in the premises through pleadings and hearings on the Plaintiff's Complaint and Motion for Permanent Injunction, and having jurisdiction of the subject matter and of Defendant;

This Court finds as follows:

The Defendant having been found in violation of the Illinois Environmental Protection Act as previously determined by this Court; the Plaintiff being without an adequate remedy at law; The People of the State of Illinois will be irreparably injured and the violations will continue unabated if not for the equitable relief established in this Court.

A permanent injunction is necessary and appropriate to prevent the defendant from continuing to improperly dispose of horse manure and general refuse and to specifically set forth the appropriate measures to abate the nuisance and stop the violations of the Environmental Protection Act.

IT IS THEREFORE ORDERED:

PERMANENT INJUNCTION

Defendant shall properly dispose of all horse manure in accordance with the following provisions:

Land application and soil incorporation of horse manure and straw for agricultural purposes is allowed as long as that

land application is at or below agronomic rates and with a growing crop (which may include grass) in accordance with Subtitle E of Title 35 Illinois Administrative Code. Absolutely no horse manure is to be disposed of on land without applying it at agronomic rates with a growing crop.

The defendant is to segregate out and remove all trash and general refuse from the horse manure and straw before using the horse manure and straw for beneficial uses.

The defendant is allowed to tub grind the horse manure at the point of generation. The resulting material must be utilized in a lawful and beneficial manner and must be managed in accordance with the other provisions of this Order.

The defendant may compost the horse manure and straw so long as the defendant first obtains an Illinois Environmental Protection Agency issued permit.

The defendant may store straw and horse manure on the ground at the site where these materials are generated for a period of no longer than six months in accordance with Subtitle E of Title 35 of the Illinois Administrative Code. This storage must be conducted in a manner that does not result in any violations of the Environmental Protection Act or the regulations adopted thereunder.

All refuse and trash (all waste other than horse manure and straw) must be taken to a permitted sanitary landfill. The defendant may dispose of this waste directly at a landfill or through a pick up service but all garbage and waste other than horse manure and straw must be disposed of at a permitted landfill.

CIVIL PENALTY

Furthermore, this Court orders the defendant to pay a civil penalty in the amount of \$5000.00

(five thousand DOLLARS) in accordance with the Section 33(c) and Section 42(h) Factors found in the Illinois Environmental Protection Act as demonstrated at hearing.

The civil penalty shall be paid according to the following schedule:

1. \$ 500⁰⁰ shall be paid ^{on or before July 1, 1993} ~~the day this order is signed.~~
2. \$ 500⁰⁰ shall be paid on the ^{1st} ~~20th~~ of each month following the signing of this Order until the full amount is paid.

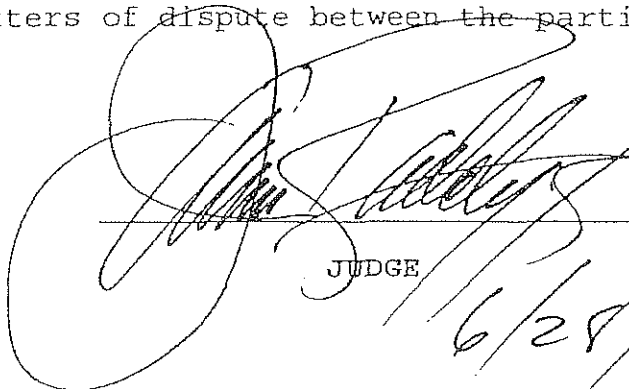
10+ 3. Any payment which is received more than ten days past the 28th of each month shall include a late fee of an additional One Hundred Dollars (\$100.00).

4. Payments shall be made by money order or certified check to the Treasurer, St. Clair County and designated to the Environmental Safety Fund #7864. Said payments may be paid in person or sent to:

Treasurer, St. Clair County
Attention: Goldia Wallace
St. Clair County Government Center
10 Public Square
Belleville, Il. 62220

RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter for the purpose of interpreting, implementing, and enforcing the terms and conditions of this ~~Consent~~ Order and for the purpose of adjudicating all matters of dispute between the parties.


JUDGE
6/28/13

AGREEMENT

AGREEMENT made this ___ day of ~~February~~, 1995, by and between Ogden Fairmount, Inc. ("Ogden") and JAMES SEIBER, d/b/a SEIBER HAULING & EXCAVATING ("Seiber").

WITNESSETH:

WHEREAS, Ogden owns and operates Fairmount Park Race Track in Collinsville, Illinois ("Fairmount Park"); and

WHEREAS, Ogden desires to engage Seiber to provide services relating to the storage, collection and removal from Fairmount Park of manure and other trash generated at Fairmount Park, and Seiber desires to be so engaged on the terms and conditions set forth herein.

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3. One 3 yard container shall be located in the trailer court area of Fairmount Park and shall be emptied by Seiber once a week.

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All other manure, grandstand and clubhouse containers shall be located as directed by Ogden and shall be emptied by Seiber daily (seven days per week, subject to subsequent provisions concerning suspension of operations discussed below).

* → 4. Seiber shall dispose of all trash and manure collected at Fairmount Park in strict compliance with all applicable laws and the order of permanent injunction issued by the Circuit Court of St. Clair County, Illinois. Seiber shall be permitted to compost and windrow manure at such locations as may be designated by Ogden, it being clearly understood that all such procedures shall be in compliance with applicable regulations and guidelines of the Illinois Environmental Protection Agency, and subject to the "hold harmless" provisions set forth in Paragraph 8 of this Agreement.

5. In the event that any containers are damaged by Ogden's agents or employees, such containers shall be replaced by Seiber

at Ogden's expense. Seiber is to provide written notice of such damage, in compliance with the terms of this Agreement as set forth following, said notice to include the identity and location of each container, and the damage to each said container.

In the event that any property, real or personal, possessed by Ogden of any patron thereof, are damaged by Seiber's agents or employees, such property shall, upon written notice again stating the identity and nature of said damaged property, be repaired or compensated for at fair market value by Seiber at Seiber's expense.

6. All containers and equipment used or required hereunder shall be regularly maintained, cleaned and painted, by Seiber, consistent with the dignity of the operations at Fairmount Park and shall, at a minimum, comply with all applicable laws, rules and regulations of any Federal, State or Local government authorities.

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The Comprehensive General-Automobile Liability policy must include Ogden Fairmount, Inc., its parent, subsidiaries and

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(d) On all of the above policies, Seiber shall furnish Ogden within fifteen days prior to commencement of this Agreement, with certificates evidencing such coverage by responsible companies licensed in the State of Illinois.

8. Seiber agrees to indemnify and hold Ogden harmless from and against any and all damages, losses, costs, claims or expenses, including reasonable Attorney's fees, resulting from or arising out of Seiber's services hereunder, including, without limitation, any claims of violations of laws or regulations relating to disposal of trash and manure; in any such action, Seiber shall defend at its own cost, and with Attorneys chosen by Seiber, any such claims. Ogden shall take all reasonable action to cooperate with Seiber in the defense of the claim; and if Ogden does not, Seiber shall be released of the obligation to defend, indemnify and hold harmless. If such cooperation by Ogden involves any costs or expenses, Seiber shall pay such costs and expenses in advance.

9. In consideration for the services to be rendered by Seiber hereunder, Ogden agrees to pay Seiber (a) \$600.00 per day for each day that horses are present at the Fairmount Park Racetrack; Ogden shall not be required to pay when horses are not at Fairmount Park and Seiber is not removing manure (it being contemplated that all

manure is to be removed within a day of the last presence of horses at Fairmount Park); plus (b) \$1,600.00 per month, each and every month for removal of all trash from containers other than manure; PROVIDED that when no horses are present, Seiber shall only be required to remove paper and trash from the Clubhouse and Grandstand containers; plus (c) \$600.00 per month to defer insurance expense.

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11. The term of this Agreement shall commence on ^{Jan}~~March~~ 1, 1996 hereof and shall continue for a period of three years. Ogden shall notify Seiber, in writing, at least 60 days prior to the expiration of this Agreement, that this Agreement will expire. Further, Ogden grants an option to renew this Agreement with Seiber at the end of the three-year period for an additional three year period. Seiber to exercise his option to renew in writing no later

than thirty days before the expiration of this Agreement. If Seiber so fails to exercise this option, Ogden shall not enter into a contract with anyone else to do this work, until it is unable to negotiate an agreement with Seiber. It will be deemed a failed negotiation if no agreement is reached with Seiber after ninety days, at the latest, after this present contract has expired.

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(b)(1) Seiber violates any valid law, rule or regulations of any Federal, State or Local governmental authority applicable to Seiber's operations hereunder; or

(2) Commits any acts, or omits to perform any act; either of which [(b)(1) or (b)(2)] subjects Ogden to any disciplinary procedure or action of any Federal, State or Local governmental authority.

Provided that if Seiber fails to perform under the Agreement, he shall be so notified in writing and shall be required to correct the condition immediately, or within a time period as specified by the government authority, as may be applicable.

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signed by the parties hereto.

15. It is mutually agreed by Ogden and Seiber that waiver by Ogden of any breach of any obligation or duty of Seiber under this Agreement should not be a waiver of any other breach of obligation or duty by Seiber, or of any subsequent breach of the same obligation or duty.

16. Seiber shall not have the right to assign this Agreement, or any part thereof, without the express written permission of Ogden, to anyone except his son, James A. Seiber, Jr.

17. Seiber shall be allowed to construct, on property owned by Ogden, commonly known as 147 Simpson Street, Collinsville, Illinois, a 36' by 60' Pole Barn Building for Seiber's own use. Seiber shall pay to Ogden the sum of \$1.00 per year, as and for rent, of the real estate. ^{Ogden shall provide, at his expense, standard 110/2 electric service to this building} The building shall remain the exclusive property of Seiber and if this agreement is not renewed; Seiber shall be allowed to remove the building from the real estate. Alternatively, Ogden may purchase the building at its fair market value. ^{Seiber shall not be allowed to store equipment and material not related to this contractual obligation, on Ogden's property.}

18. Any notices as referred to and called for by this Agreement shall be in writing and it shall be, when directed to Ogden, mailed to Ogden Fairmount, Inc., Fairmount Park Race Track, Route 40, Collinsville, Illinois.

Any notices as referred to and called for by this Agreement shall be in writing and it shall be, when directed to Seiber, mailed to James Seiber, d/b/a Seiber Hauling & Excavating, 100 Blackjack, Collinsville, Illinois 62234.

19. This Agreement is to be construed and interpreted according to the Laws of the State of Illinois, with venue for any matter arising under this Agreement between Ogden and Seiber to be found in Madison County, Illinois.

20. The originals of this Agreement is executed in duplicate, with one original being given each to Ogden and to Seiber.

JAMES SEIBER, d/b/a SEIBER
HAULING AND EXCAVATING

FRED HAIDA
OGDEN FAIRMOUNT, INC.

AGREEMENT

AGREEMENT made this 30th day of November 1995, by and between Ogden Fairmount, Inc. ("Ogden") and Keller Farms, Inc. ("Keller").

WHEREAS, Ogden is the operator of Fairmount Park Race Track in Collinsville, Illinois ("Fairmount Park"); and

WHEREAS, Ogden desires to engage Keller to provide services relating to the storage, collection and removal from Fairmount Park of manure generated at Fairmount Park, and Keller desires to be so engaged on the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto hereby agree as follows:

1. During the term of this Agreement, Keller shall furnish all trucks, equipment and personnel necessary for the collection, storage and removal of manure at Fairmount Park that is placed in bulk bunkers to be constructed by Fairmount Park within a reasonable time after the execution by both parties of this Agreement.

2. Keller shall dispose of all manure collected at Fairmount Park in strict compliance with all applicable laws and the order of permanent injunction issued by the Circuit Court of St. Clair County, Illinois. Keller shall be permitted to compost and windrow manure at such locations as may be designated by Ogden, it being clearly understood that all such procedures shall be in compliance with applicable regulations and guidelines of the Illinois Environmental Protection Agency, and subject to the "hold harmless" provisions set forth in Paragraph 5 of this Agreement.

3. All equipment used or required hereunder shall be regularly maintained, cleaned and painted, by Keller, consistent with the dignity of the operations at Fairmount Park and shall, at a minimum, comply with all applicable laws, rules and regulations of any Federal, State or Local government authorities.

4. The following insurance shall be maintained by Keller in connection with its operations hereunder:

(a) Workmen's Compensation and Employer's Liability as respects operations to be performed in the State of Illinois.

(b) Comprehensive General and Automobile Liability in at least the following minimum limits:

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Bodily Injury - \$1,000,000.00 each occurrence; \$1,000,000.00 aggregate.

Property Damage - \$1,000,000.00 each occurrence; \$1,000,000.00 aggregate.

The Comprehensive General and Automobile Liability policy must include Ogden Fairmount, Inc. its parent, subsidiaries and affiliated companies as additional named insured.

(c) The insurance required hereunder shall be primary and not contributing with any insurance carried by Ogden. Ogden shall be given at least ten(10) days advance written notice of any material change in or cancellation of the above coverage.

(d) On all of the above policies, Keller shall furnish Ogden within fifteen (15) days prior to commencement of this Agreement, with certificates evidencing such coverage by responsible companies licensed in the State of Illinois.

5. Keller agrees to indemnify and hold Ogden harmless from and against any and all damages, losses, costs, claims or expenses, including reasonable Attorney's fees, resulting from or arising out of Keller's services hereunder, including, without limitation, any claims of violations of laws or regulations relating to disposal of manure; in any such action, Keller shall defend at its own cost, and with Attorneys chosen by Keller, any such claims. Ogden shall take all reasonable action to cooperate with Keller in the defense of the claim; and if Ogden does not, Keller shall be released of the obligation to defend, indemnify and hold harmless. If such cooperation by Ogden involves any costs or expenses, Keller shall pay such costs and expenses.

6. In consideration for the services to be rendered by Keller hereunder, Ogden agrees to pay Keller \$600.00 per day for each day that horses are present at the Fairmount Park Race Track; Ogden shall not be required to pay when horses are not at Fairmount Park and Keller is not removing manure (it being contemplated that all manure is to be removed within a day of the last presence of horses at Fairmount Park).

7. The term of this Agreement shall commence on December 11, 1995 hereof and shall continue for a period of three (3) years. Ogden shall notify Keller, in writing, at least sixty (60) days prior to the expiration of this Agreement, that this Agreement will expire. Further, Ogden grants an option to renew this Agreement with Keller at the end of the three-year period for an additional three-year period. Keller to exercise his option to renew in writing no later than thirty (30) days before the expiration of this Agreement. If Keller so fails to exercise this option, Ogden shall not enter into a contract with anyone else to do this work, until it is unable to negotiate an agreement with Keller. It will be deemed a failed negotiation if no agreement is reached with Keller after ninety (90) days, at the latest, after this present contract has expired.

8. Ogden shall have the right to cancel this Agreement before the expiration of its full term in the event of a default by Keller, including:

Electronic Filing - Received, Clerk's Office, July 13, 2010

(a) Keller fails to perform its obligations hereunder; or

(b) (1) Keller violates any valid law, rule or regulations of any Federal, State or Local governmental regulations of any Federal, State or Local governmental authority applicable to Keller's operations hereunder; or

(2) Commits any acts, or omits to perform any act; with of which [(b)(1) or (b)(2)] subjects Ogden to any disciplinary procedure or action of any Federal, State or Local government authority.

Provided that if Keller fails to perform under the Agreement, he shall be so notified in writing and shall be required to correct the condition immediately, or within a time period as specified by the government authority, as may be applicable.

9. All manure collected or stored by Keller shall become the exclusive property of Keller.

10. No extension, change, modification or amendment of this Agreement of any kind whatsoever, shall be made or claimed by any party unless it shall be endorsed in writing on this Agreement and signed by the parties hereto.

11. It is mutually agreed by Ogden and Keller that waiver by Ogden or any breach of any obligation or duty of Keller under this Agreement should not be a waiver of any other breach of obligation or duty by Keller, or of any subsequent breach of the same obligation or duty.

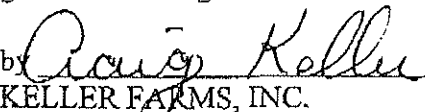
12. Keller shall not have the right to assign this Agreement, or any part thereof, without the express written permission of Ogden.

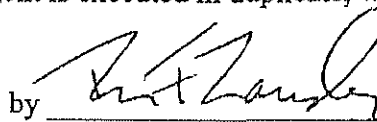
13. Any notices as referred to and called for by this Agreement shall be in writing and it shall be, when directed to Ogden, mailed to Ogden Fairmount, Inc., Fairmount Park Race Track, Route 40, Collinsville, Illinois.

Any notices as referred to and called for by this Agreement shall be in writing and it shall be, when directed to Keller, mailed to Keller Farms, Inc., 423 Hillside Drive, Collinsville, Illinois.

14. This Agreement is to be construed and interpreted according to the Laws of the State of Illinois, with venue for any matter arising under this Agreement between Ogden and Keller to be found in Madison County, Illinois.

15. The originals of this Agreement is executed in duplicate, with one original being given each to Ogden and to Keller.

by 
KELLER FARMS, INC.

by 
OGDEN FAIRMOUNT, INC.

COPY

Deposition of
Fred Haida

Caseyville Sport Choice, LLC

-VS-

Erma I. Seiber, et al

PCB 2008-030

June 22, 2009

Reporter: Amy Schuhardt, CSR

Keefe Reporting Company
618-277-0190 or 800-244-0190
Reporter@KeefeReporting.com

1 State of Illinois
 2 Pollution Control Board
 3 James R. Thompson Center
 4 100 W. Randolph Street, Suite 11-500
 5 Chicago, IL 60601
 6 In the Matter of:)
 7 CASEYVILLE SPORT CHOICE,)
 8 LLC, An Illinois Limited)
 9 Liability Company,)
 10 Complainant,)
 11 vs.) No. PCB 2008-030
 12 ERMA I. SEIBER,)
 13 ADMINISTRATRIX OF THE)
 14 ESTATE OF JAMES A. SEIBER,)
 15 DECEASED, AND ERMA I.)
 16 SEIBER, IN HER INDIVIDUAL)
 17 CAPACITY, and FAIRMOUNT)
 18 PARK, INC., (formerly)
 19 known as OGDEN FAIRMOUNT,)
 20 INC.) A Delaware)
 21 Corporation,)
 22 Respondents.)
 23
 24 Discovery Deposition of
 FRED HAIDA
 taken on behalf of the Complainant
 on June 22, 2009.
 INDEX
 Questions By: Page:
 Mr. Long 4, 31, 35
 Mr. Urban 25
 Ms. Livingston 34
 Reporter: Amy Moore Schuhardt, CSR, RPR
 IL CSR #084-003197

1 IT IS STIPULATED AND AGREED by and between
 2 counsel for Complainants and counsel for Respondents
 3 that the deposition of FRED HAIDA may be taken for
 4 discovery purposes, pursuant to and in accordance with
 5 the provisions of the Illinois Code of Civil Procedure
 6 and Supreme Court Rules pertaining to such depositions,
 7 by and on behalf of the Complainants on June 22, 2009,
 8 at the offices of Livingston Law Firm, 5701 Perrin
 9 Road, Fairview Heights, Illinois, before Amy Moore
 10 Schuhardt, a Certified Shorthand Reporter and
 11 Registered Professional Reporter; that the issuance of
 12 notice is waived and that this deposition may be taken
 13 with the same force and effect as if all statutory
 14 requirements had been complied with.
 15 IT IS FURTHER STIPULATED AND AGREED that the
 16 signature of the deponent is waived.

17
 18 FRED HAIDA, produced, sworn and examined as
 19 a witness on behalf of the Complainants, testified and
 20 deposed as follows:
 21
 22
 23
 24

1 State of Illinois
 2 Pollution Control Board
 3 James R. Thompson Center
 4 100 W. Randolph Street, Suite 11-500
 5 Chicago, IL 60601
 6 In the Matter of:)
 7 CASEYVILLE SPORT CHOICE,)
 8 LLC, An Illinois Limited)
 9 Liability Company,)
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 12 ERMA I. SEIBER,)
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 15 DECEASED, AND ERMA I.)
 16 SEIBER, IN HER INDIVIDUAL)
 17 CAPACITY, and FAIRMOUNT)
 18 PARK, INC., (formerly)
 19 known as OGDEN FAIRMOUNT,)
 20 INC.) A Delaware)
 21 Corporation,)
 22 Respondents.)
 23
 24 APPEARANCES:
 For Complainant: BELSHEIM & BRUCKERT, LLC
 By John P. Long,
 Attorney at Law
 SPRAGUE & URBAN
 By Donald Urban,
 Attorney at Law
 For Respondents: LIVINGSTON LAW FIRM
 By Penni S. Livingston,

1 CROSS-EXAMINATION
 2 BY MR. LONG:
 3 Q. Would you state your name, please, sir.
 4 A. Fred D. Haida.
 5 Q. And would you spell your last name? I'm
 6 sure the court reporter --
 7 A. H-a-i-d-a.
 8 Q. And what's your age, Mr. Haida?
 9 A. 72.
 10 Q. Are you still working or are you retired?
 11 A. No, I'm retired.
 12 Q. And when did you retire?
 13 A. 2001.
 14 Q. And did you retire from Fairmount Park?
 15 A. Fairmount Park, yes.
 16 Q. Throughout this deposition, I'll just --
 17 I'll refer to the corporation that owns Fairmount Park
 18 as Fairmount Park. I know it used to be Ogden
 19 Fairmount, but rather than have to deal with whether
 20 it's Ogden Fairmount or Fairmount Park, I'll just call
 21 it Fairmount Park.
 22 A. Okay.
 23 Q. Then if I'm talking about the racetrack,
 24 I'll just say the racetrack. What was the title of the

<p>1 position that you last held with Fairmount Park?</p> <p>2 A. I was director of operations and security.</p> <p>3 Q. Director of operations and security?</p> <p>4 A. Uh-huh.</p> <p>5 Q. What did the operations part concern? I</p> <p>6 mean it's kind of self-explanatory, I guess.</p> <p>7 A. Well, the operating of the track to do with</p> <p>8 the unions. We had many labor unions.</p> <p>9 Q. All right. And the security, what was the</p> <p>10 security side of your work?</p> <p>11 A. Security was security in place, having</p> <p>12 security officers at different places, going to the</p> <p>13 barns and --</p> <p>14 Q. And for what length of time had you been the</p> <p>15 director of operations and security at Fairmount Park?</p> <p>16 A. I think since 1989, I believe.</p> <p>17 Q. So that was '89 through --</p> <p>18 A. 2001.</p> <p>19 Q. -- 2001? What had you been before you</p> <p>20 became the director of operations and security in '89?</p> <p>21 A. I was a police officer in Belleville.</p> <p>22 Q. Okay. So you didn't work for Fairmount Park</p> <p>23 then?</p> <p>24 A. I worked for Fairmount part-time from 1982</p> <p style="text-align: right;">5</p>	<p>1 Q. And would you describe that involvement that</p> <p>2 you had in negotiating that contract?</p> <p>3 A. Well, it was dealing with the removal of</p> <p>4 horse manure, the cost.</p> <p>5 Q. Now Seiber was -- had you known Seiber</p> <p>6 before you dealt with him over this contract?</p> <p>7 A. Well, he worked at the racetrack as a</p> <p>8 teamster.</p> <p>9 Q. And you had perhaps met him when you were</p> <p>10 working as -- in a part-time capacity as --</p> <p>11 A. No, not at that time, not until I started</p> <p>12 full-time.</p> <p>13 Q. All right. Is it fair to say that the</p> <p>14 removal of the manure from the racetrack is an ongoing,</p> <p>15 an ongoing problem and a big problem, too; I mean it's</p> <p>16 something that does take some thought and --</p> <p>17 A. It's something that goes on as long as there</p> <p>18 is horses there, there is going to be horse manure</p> <p>19 so --</p> <p>20 Q. Did you actually get involved in negotiating</p> <p>21 the contract with Seiber?</p> <p>22 A. To a certain point. Brian Zander was the</p> <p>23 final word because it was Ogden Fairmount at that time.</p> <p>24 Q. Uh-huh.</p> <p style="text-align: right;">7</p>
<p>1 until I retired from the police department in 1988.</p> <p>2 Q. All right. And what did you do in that</p> <p>3 part-time capacity?</p> <p>4 A. I was just a detective down there. I worked</p> <p>5 on the nights that they ran live races.</p> <p>6 Q. Did you provide some security? Was that</p> <p>7 what you were doing as a part-time?</p> <p>8 A. Yes. Yes.</p> <p>9 Q. Now, did Brian Zander appoint you the</p> <p>10 position of director of operations and security?</p> <p>11 A. Yes.</p> <p>12 Q. And what's Brian's title now with Fairmount</p> <p>13 Park, if you know?</p> <p>14 A. I have no idea.</p> <p>15 Q. What was he when you were last associated</p> <p>16 with Fairmount?</p> <p>17 A. He was the -- I'm not saying he was</p> <p>18 president of the company, I'm not sure. Bill Stirets,</p> <p>19 I guess, would be the president, I'm not really -- he</p> <p>20 was general manager. How is that?</p> <p>21 Q. That's fine. Did you have any involvement</p> <p>22 with negotiating a contract with James Seiber when you</p> <p>23 were the director of operations and security?</p> <p>24 A. Yes.</p> <p style="text-align: right;">6</p>	<p>1 A. And yes, we got the prices and the -- when</p> <p>2 the pick-ups would be made, what times.</p> <p>3 Q. Did, did you ever talk with Seiber about</p> <p>4 where he was dumping the manure that he was taking from</p> <p>5 the racetrack?</p> <p>6 A. I really never questioned him. According to</p> <p>7 the contract, he was to legally dispose of it.</p> <p>8 Q. Now, isn't it also correct that Seiber was,</p> <p>9 was hauling not only manure but the trash that was</p> <p>10 generated there at the racetrack?</p> <p>11 A. He did for a while haul some trash, yes.</p> <p>12 Q. I'm going to hand you what's been marked as</p> <p>13 Complainant's Deposition Exhibit No. 7 and in a second</p> <p>14 I'll hand you also what's been marked as No. 8, and</p> <p>15 I've marked them this way because I have numbered all</p> <p>16 of the contracts that Penni sent to me as one through</p> <p>17 eight, and these happen to be the last two, so that</p> <p>18 will explain why it's not one and two on this</p> <p>19 deposition, but would you look at the document that's</p> <p>20 been marked as Complainant's Deposition Exhibit No. 7.</p> <p>21 MR. LONG: Penni, do you need to see that</p> <p>22 before I ask him any more?</p> <p>23 MS. LIVINGSTON: I'm good. If you've got an</p> <p>24 extra, I'll read along.</p> <p style="text-align: right;">8</p>

<p>1 MR. LONG: I think I do, although I was 2 going to read it while I was asking him. 3 MS. LIVINGSTON: That's fine, go right 4 ahead. 5 Q. (By Mr. Long) Do you recognize that, 6 Mr. Haida? 7 A. Yes, I do. 8 Q. And is that one that you had personally been 9 involved in negotiating, when I say one, I mean one of 10 the contracts with -- between Fairmount Park and 11 Seiber? 12 A. Yes. 13 MR. URBAN: What year are we talking about? 14 THE WITNESS: '93, '94. 15 Q. (By Mr. Long) It says this blank day of 16 April, 1994. 17 A. Right. 18 Q. Yeah. 19 A. Farther back in here, it's talking about 20 '93. 21 Q. Hmm. Okay. Well -- 22 MS. LIVINGSTON: Well, and I don't know that 23 Mr. Haida, this many years later, would remember it, 24 but it's my memory that in '94, the contract was</p> <p style="text-align: right;">9</p>	<p>1 could have swore I read '93. 2 Q. That's fine. I just -- I thought there 3 might have been something in there that I had missed 4 and I just didn't want to let that go by. 5 MS. LIVINGSTON: The old block and move. 6 Q. (By Mr. Long) In paragraph four here, take 7 a look at that for a second. It appears to refer to -- 8 well, it doesn't appear; it does refer to the order of 9 permanent injunction issued by The Circuit Court of 10 St. Clair County, Illinois. Do you remember having 11 gotten any information about an injunction action 12 brought by St. Clair County against James Seiber with 13 respect to his dumping of horse manure and trash on 14 Seiber Farm? 15 A. No, I really don't recall that, I don't. 16 Q. Well, I assume did you have any discussions 17 with Brian Zander about any sort of lawsuit brought by 18 the county against James Seiber? 19 A. I don't really recall. I'm not saying we 20 didn't, I just don't recall it. 21 MS. LIVINGSTON: Fifteen years is a long 22 time. 23 Q. (By Mr. Long) I know. I know. Do you have 24 any knowledge of -- as to whether the manure and trash</p> <p style="text-align: right;">11</p>
<p>1 terminated and Mr. Seiber actually sued Fairmount for 2 not renewing the contract, and it may be this '94 3 contract that didn't get renewed. 4 MR. LONG: I think it was actually '95, so 5 I'll ask him about that. 6 MS. LIVINGSTON: Okay. 7 Q. (By Mr. Long) Before I move on to that, let 8 me ask you this, Mr. Haida. This particular contract 9 doesn't have any signatures on it, but we have no 10 reason to doubt that that's the actual contract that 11 the parties were operating under, but would you have 12 any, any knowledge as to why this document hasn't been 13 signed? 14 A. No, I have no idea. 15 Q. Do you have a recollection of having signed 16 an actual contract with Seiber back in 1994? 17 A. No, I don't. 18 Q. Now, you refer to the fact that it mentions 19 1993 in here. 20 A. I thought I seen it. 21 Q. It may. It may, just that I didn't catch 22 that. If you could point me to that, I would 23 appreciate it. 24 A. I'm sorry I said that. I don't see it. I</p> <p style="text-align: right;">10</p>	<p>1 from Fairmount Park had been dumped by Seiber on Seiber 2 Farm, his farm in or near Caseyville before this 3 injunction order was issued by The Circuit Court of 4 St. Clair County, which I would say like before 1994? 5 A. No. 6 Q. Okay. Let me show you a similar contract 7 that has been marked as Deposition Exhibit No. 8. 8 Would you take a look at that for a second. 9 A. Is this primarily the same thing? 10 Q. It seems like it's about the same thing, but 11 I -- 12 A. I recall how many containers we required him 13 to have and that sort of thing. 14 Q. You say you do recall that? 15 A. Well, we needed so many. 16 Q. Yeah. 17 A. Yes, when I see them listed here, I -- 18 Q. It says -- well, it says 65 -- well, it 19 actually speaks for itself but 65 8-yard containers, 20 eight 3-yard containers, one 4-yard container, and 19 21 1-1/2-yard containers. 22 A. Well, when you are talking about 900 horses, 23 that's a lot of manure per day. 24 Q. And how often, how frequently was Seiber</p> <p style="text-align: right;">12</p>

1 there at Fairmount Park Racetrack with his trucks to
2 empty those container?

3 A. I would say he was there every day. He
4 almost had to be.

5 Q. Would --

6 A. Now whether he was there every day, as long
7 as the containers were picked up, we didn't have any
8 complaints from the horsemen. I assume Seiber was
9 doing his job.

10 Q. Back in '94 and '95, do you remember how
11 many days per year the horses would have been at the
12 racetrack?

13 A. When did the casinos open? We ran --

14 MS. LIVINGSTON: That was close.

15 A. We ran, we ran like 100 some days of
16 thoroughbred racing and then we raced harness racing,
17 we'd be down two weeks, one at the beginning and one at
18 the end to change the track over, but there would still
19 be horses coming and going, so we raced primarily
20 12 months out of the year.

21 Q. (By Mr. Long) So then that suggests that
22 Seiber would have, would have been coming on a daily
23 basis to empty these containers then, with the
24 exception of maybe one or two weeks?

13

1 that, Ogden would send down representatives to
2 negotiate, help negotiate contracts, labor contracts,
3 teamsters.

4 Q. Let's talk about that for a second. Was
5 there a parent corporation for, over and above Ogden
6 Fairmount? I mean was there another corporation just
7 named Ogden, Incorporated at that time?

8 A. As far as I know, there was, yes.

9 Q. And where was that headquartered?

10 A. New York.

11 Q. And Ogden Fairmount was a subsidiary of that
12 corporation?

13 A. That's my understanding.

14 Q. Well, the contract between Fairmount Park
15 and Seiber at some point was not extended or renewed;
16 it came to an end. Do you know anything about when it
17 came to an end and why it came to an end?

18 A. We had bids from different people to haul
19 trash and haul manure and Keller had at the time a
20 better way, I thought, to dispose of the manure and
21 Waste Management came in with a contract to do all of
22 the trash.

23 Q. So you basically let the contract to some
24 other party?

15

1 A. Yes.

2 Q. Did you ever meet with James Seiber and
3 Brian Zander and some attorneys to discuss a
4 renegotiation of the contract or terms for the -- for a
5 new contract between Fairmount Park and Seiber?

6 A. Hmm. I don't recall but I, you know, it's
7 very possible we did.

8 Q. Do you have any recollection of lawyers
9 coming from New York to sit in on that meeting with --
10 between Fairmount Park and Mr. Seiber?

11 A. No. We normally, we meaning the racetrack,
12 normally use a firm in St. Louis.

13 Q. Do you remember the name of the firm that
14 you used?

15 A. No, I don't, I don't remember, and I'm not
16 saying that people from New York didn't come down
17 there, but I don't recall any special meeting.

18 Q. At that time, did Fairmount Park have
19 lawyers from New York that ever advised, and I'm not
20 asking what they advised Fairmount Park, but did it
21 have lawyers from New York that advised Fairmount Park
22 on anything?

23 A. If they did, it would be advised Brian
24 Zander because my negotiations like with the unions and

14

1 A. That's it.

2 Q. During the two contracts that you
3 negotiated, one from '94 -- and, you know, strike that.
4 Let me ask this question. I suppose I need to ask you
5 if this contract that bears the date February of '95,
6 if it was actually ever, ever signed by Fairmount Park
7 and by Seiber?

8 A. If it's not signed, it probably wasn't.

9 Q. Well, this one isn't signed and I -- do you
10 remember the year when the -- when Fairmount Park
11 ceased its relationship with Seiber?

12 A. No, I'm not positive on the year.

13 Q. I'm thinking it's about 1995. That's why
14 I'm wondering if this one was actually signed or not.
15 Well, under the contract that you negotiated with
16 Seiber from 1994, which was marked as Deposition
17 Exhibit 7, did you ever require Seiber to bring in
18 dumping tickets to demonstrate, to prove that he was
19 dumping the manure and the trash in a permitted public
20 landfill?

21 A. No.

22 Q. To your knowledge, had Fairmount Park ever
23 attempted to monitor where Seiber was dumping the
24 manure and the trash collected from the racetrack by

16

<p>1 asking for the dumping tickets in order to see that he</p> <p>2 was, in fact, dumping them in a permitted public</p> <p>3 landfill?</p> <p>4 A. No, I don't recall anybody ever talking</p> <p>5 about that; not saying they didn't but --</p> <p>6 Q. Do you happen to know James Seiber's son,</p> <p>7 James Seiber, Jr.?</p> <p>8 A. From being around the racetrack, yes.</p> <p>9 Q. He worked around the racetrack, also?</p> <p>10 A. Well, he did most of the truck driving.</p> <p>11 Q. So you would see him come in there driving</p> <p>12 the truck and then driving the truck away loaded, I</p> <p>13 suppose?</p> <p>14 A. Yes.</p> <p>15 Q. How frequently did you see James Seiber,</p> <p>16 Jr., down there doing that?</p> <p>17 A. Every day.</p> <p>18 Q. So you probably saw him -- well, probably</p> <p>19 more times than you can remember?</p> <p>20 A. True.</p> <p>21 Q. It was a regular, just a regular occurrence.</p> <p>22 Do you know a man named Frank Killian, K-i-l-l-i-a-n?</p> <p>23 A. Yes, I do.</p> <p>24 Q. And who is Frank Killian?</p> <p style="text-align: right;">17</p>	<p>1 with Fairmount Park?</p> <p>2 A. As far as I know, he is, yes.</p> <p>3 Q. Was he the, was he the superintendent</p> <p>4 throughout the time that you were the director of</p> <p>5 operations and security?</p> <p>6 A. Yes.</p> <p>7 Q. Mr. Haida, do you know a man named Jim</p> <p>8 DeValle, the way I've got it spelled is capital D,</p> <p>9 small e, capital V, small a-l-l-e, which may or may not</p> <p>10 be the correct spelling?</p> <p>11 A. Yes, I know him.</p> <p>12 Q. And is he associated with -- does he work</p> <p>13 for Fairmount Park or did he work for Fairmount?</p> <p>14 A. He did.</p> <p>15 Q. And in what capacity did he work for</p> <p>16 Fairmount?</p> <p>17 A. He was Frank's assistant.</p> <p>18 Q. Frank Killian's assistant?</p> <p>19 A. Yes.</p> <p>20 MS. LIVINGSTON: Got a first name on him?</p> <p>21 Jim, Jim DeValle.</p> <p>22 A. James DeValle.</p> <p>23 Q. (By Mr. Long) Is he still living so far as</p> <p>24 you know?</p> <p style="text-align: right;">19</p>
<p>1 A. He was the superintendent in charge of</p> <p>2 basically the repairs on the track, the expertise that</p> <p>3 we needed to get things fixed, laying down the track,</p> <p>4 picking up the track again. He would call in whatever</p> <p>5 firm we were going to use to do that, and I'm talking a</p> <p>6 time when we used to change the track twice a year,</p> <p>7 changing meaning we would pick up the dirt and put down</p> <p>8 crushed limestone, he would order it from the quarries,</p> <p>9 and then in the spring, we would put the track back</p> <p>10 together and have a dirt track.</p> <p>11 Q. Was that change connected with the different</p> <p>12 kind of racing, the harness racing?</p> <p>13 A. Yes.</p> <p>14 Q. So you needed a different surface for the</p> <p>15 harness racing?</p> <p>16 A. Yes, crushed limestone.</p> <p>17 Q. So you needed the pressed limestone for the</p> <p>18 harness racing?</p> <p>19 A. Right.</p> <p>20 Q. And what was his title again? Perhaps you</p> <p>21 said it.</p> <p>22 A. I think, I think it was superintendent, I</p> <p>23 believe that's what he was, I'm not positive.</p> <p>24 Q. To your knowledge, is he still associated</p> <p style="text-align: right;">18</p>	<p>1 A. As far as I know, he is, yes.</p> <p>2 Q. And is he still in the area?</p> <p>3 A. As far as I know, he still lives in</p> <p>4 Collinsville. I haven't seen him for some time, but I</p> <p>5 assume he does.</p> <p>6 Q. Do you know where Seiber's Farm was near</p> <p>7 Caseyville?</p> <p>8 A. General, that's all, between South Morrison</p> <p>9 and Hollywood Heights Road.</p> <p>10 Q. That's pretty good. Actually I think that's</p> <p>11 where it is.</p> <p>12 A. Somewhere in there I knew it was.</p> <p>13 Q. Did you ever personally go to that farm?</p> <p>14 A. No.</p> <p>15 Q. To your knowledge, did Frank Killian ever go</p> <p>16 to that farm?</p> <p>17 A. I don't know.</p> <p>18 Q. To your knowledge, did Jim DeValle or</p> <p>19 Devalle ever --</p> <p>20 A. It's DeValle.</p> <p>21 Q. DeValle. Did Jim DeValle ever go to that</p> <p>22 farm?</p> <p>23 A. That, I don't know, either.</p> <p>24 Q. Did Brian Zander ever indicate to you while</p> <p style="text-align: right;">20</p>

<p>1 you were director of operations and security that,</p> <p>2 that -- I may be asking you something I've already</p> <p>3 asked you, forgive me if I'm repeating myself, but did</p> <p>4 Brian Zander ever indicate to you that Seiber at least</p> <p>5 in the past had dumped manure and trash from the</p> <p>6 racetrack on his farm there in Caseyville?</p> <p>7 A. Did Brian ever say that to me?</p> <p>8 Q. Yes.</p> <p>9 A. Not that I recall, no.</p> <p>10 Q. Did anybody else at the racetrack ever say</p> <p>11 that to you?</p> <p>12 A. Not that I recall, no.</p> <p>13 Q. Did Brian Zander ever indicate to you that,</p> <p>14 that he had some concerns about whether Seiber may have</p> <p>15 been violating the Illinois Environmental Protection</p> <p>16 Act or any of the regulations implementing that act by</p> <p>17 the way that he was dumping the manure and the trash</p> <p>18 from the racetrack?</p> <p>19 A. Not that I recall him saying to me, no.</p> <p>20 Q. Mr. Haida, I've noticed that the language in</p> <p>21 these contracts varied from one contract to the next.</p> <p>22 That's such a general question. Who is responsible on</p> <p>23 Fairmount Park's side for deciding on what language</p> <p>24 should be in the contract?</p> <p style="text-align: right;">21</p>	<p>1 there was several general managers as I recall before</p> <p>2 that. I never had anything to do with them anyway, so</p> <p>3 I mean I just knew who they were.</p> <p>4 Q. Do you remember who the immediate</p> <p>5 predecessor to Brian Zander was as the general manager?</p> <p>6 A. No, I don't.</p> <p>7 Q. Did anybody ever mention to you that in the</p> <p>8 early '80s, the Illinois Environmental Protection</p> <p>9 Agency had informed the racetrack that Seiber was, in</p> <p>10 fact, dumping the manure and trash on his farm there in</p> <p>11 Caseyville?</p> <p>12 A. You are saying they informed the racetrack?</p> <p>13 Q. Well, I'm just wondering if you were aware</p> <p>14 of that fact?</p> <p>15 A. No, huh-uh, no, I'm not.</p> <p>16 MS. LIVINGSTON: Which would mean he also</p> <p>17 wouldn't be aware of the fact of whether or not that</p> <p>18 was ever resolved.</p> <p>19 MR. LONG: You know, we need to mark this</p> <p>20 somehow. Let's mark this as -- I should have marked</p> <p>21 this before I came here, I guess, but let's mark this</p> <p>22 as nine, if you don't mind, because I've got these --</p> <p>23 I'll be using these contracts in Brian's deposition one</p> <p>24 through eight so let's mark this as nine.</p> <p style="text-align: right;">23</p>
<p>1 A. It would be Brian.</p> <p>2 Q. So even when you were the director of</p> <p>3 operations and security, Brian had the final say over</p> <p>4 the language?</p> <p>5 A. Always the final say.</p> <p>6 Q. All right. And to your knowledge, would</p> <p>7 that have been true, also, with respect to the various</p> <p>8 contracts that were negotiated before, before 1994 with</p> <p>9 Seiber?</p> <p>10 A. As long as Brian was the general manager, he</p> <p>11 was the final say.</p> <p>12 Q. Do you know when Brian first became the</p> <p>13 general manager of Fairmount Park?</p> <p>14 A. Not exactly, no.</p> <p>15 Q. Do you have -- well, just a rough idea,</p> <p>16 within three or four years?</p> <p>17 A. I'd say in the '90s, early '90s, maybe,</p> <p>18 might have been late '80s, I'm not positive.</p> <p>19 Q. Did he become the general manager after you</p> <p>20 began working there full-time in '89?</p> <p>21 A. Yes. Yes.</p> <p>22 Q. So it was after '89 he became the general</p> <p>23 manager?</p> <p>24 A. There was -- I started there in '82 and</p> <p style="text-align: right;">22</p>	<p>1 (Complainant's Exhibit No. 9</p> <p>2 was marked for identification.)</p> <p>3 (A discussion was held off the record.)</p> <p>4 Q. (By Mr. Long) I think I know what your</p> <p>5 answer to this is, Mr. Haida, but this appears to be a</p> <p>6 letter sent by the Collinsville Office of the Illinois</p> <p>7 Environmental Protection Agency to a gentleman named</p> <p>8 Bill Chester, but on the second page, there is a cc</p> <p>9 covering copy that apparently was addressed to</p> <p>10 Fairmount Park Racetrack, and it's dated, I think,</p> <p>11 June 4 of 1981. Had anybody at the -- well, first of</p> <p>12 all, have you ever seen that letter or a copy of that</p> <p>13 letter while you were associated with Fairmount Park?</p> <p>14 A. No, I've never seen this before.</p> <p>15 Q. And did anybody -- well, I think I've</p> <p>16 already asked you this, but did anybody ever mention to</p> <p>17 you the fact that the Illinois Environmental Protection</p> <p>18 Agency at any time had contacted Fairmount Park with</p> <p>19 respect to the location where Seiber was dumping the</p> <p>20 manure and trash hauling from the racetrack?</p> <p>21 A. No. Mr. Seiber was aware of all of this,</p> <p>22 right?</p> <p>23 Q. Well, I think he was, I mean --</p> <p>24 A. It's got him down as a copy.</p> <p style="text-align: right;">24</p>

1 Q. Yeah. I believe that, I believe that he was
2 aware of it.
3 MR. LONG: I don't have any other questions.
4 MR. URBAN: Give me just a second.
5 CROSS-EXAMINATION
6 BY MR. URBAN:
7 Q. Mr. Haida, you are related to Bob how?
8 A. That's my oldest son.
9 Q. Your oldest son, okay. And when did Bob
10 become state's attorney, by the way, if you remember?
11 A. I'm not really sure.
12 Q. I assume Penni would know because I think
13 she was employed by him for a while, wasn't she?
14 MS. LIVINGSTON: Before I got here, so more
15 than 16 years ago.
16 A. He's going on his 20 so --
17 Q. (By Mr. Urban) Wow, it doesn't seem
18 possible. And just a couple of questions I've got.
19 These contracts that John has been giving you here,
20 your testimony is that you are not sure, for example,
21 the '95 contract which I believe is the Deposition
22 Exhibit 8, you don't, as you sit here today, you don't
23 have any knowledge as to whether this was ever executed
24 or not?

25

1 A. No, I'm not sure, I'm not sure.
2 Q. For example, though, and I'm just going to
3 refer to this contract, it calls for the parties
4 acknowledge that Seiber presently has on location at
5 Fairmount containers for collection and storage of
6 trash and manure. So it was clearly envisioned by
7 Fairmount by this document that he was going to be
8 picking up more than just manure; is that correct?
9 A. Yes.
10 Q. Okay. And it's even referenced in the
11 document here.
12 A. Uh-huh.
13 Q. Now 65 8-yard containers, now I'm familiar
14 with 40-yard dumpsters and different sizes. An 8-yard
15 dumpster, what size would that be, in relationship to
16 this table, for example, if you know?
17 A. They are huge.
18 Q. An 8-yard is huge, too? I know a 40-yard is
19 huge, I know a 20-yard is huge. Is an 8-yard what we
20 would see behind an office building, you know, one of
21 the -- you can't picture that, can you?
22 A. I don't see them anymore because they pick
23 them up, they roll them off of the truck, but the way
24 they used to be picked up, they were beveled and they

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1 would chain them, pick them up and dump them.
2 Q. Okay. And so it calls for 65 8-yard
3 containers, eight 3-yard containers, one 4-yard
4 container and 19 1-1/2-yard containers. And I'm not
5 familiar with the 1-1/2-yard containers. What would --
6 can you give me an example of what that might be, is
7 that just a giant trash can, basically?
8 A. Basically, yes.
9 Q. And then I notice that the contract
10 specifically calls for where these items are placed.
11 A. Well, it's by different barns.
12 Q. By the different barns? Okay. So the 19
13 1-1/2-yard containers shall be located in the barn area
14 of Fairmount and shall be emptied by Seiber once a
15 week. These 1-1/2-yard containers, were they designed
16 for manure or manure and trash or just whatever anybody
17 dropped in them?
18 A. It wasn't a combination, they were one or
19 the other.
20 Q. It wasn't, okay.
21 A. No.
22 Q. So is there any way to tell from this
23 contract or any of these contracts when we see 19
24 1-1/2-yard containers whether that was for manure or

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1 whether that was for trash?
2 A. I'm sorry, I really don't recall.
3 Q. The same situation then, two 3-yard
4 containers shall be located outside the fence in the
5 near vicinity of Barn 2. Once again, as you sit here,
6 do you know whether this was designated for manure or
7 trash?
8 A. How big was it?
9 Q. Three-yard, two 3-yard containers shall be
10 located outside the fence in the near vicinity of Barn
11 2 and shall be emptied by Seiber as needed, if you
12 know.
13 A. I don't know.
14 Q. All other manure, grandstand and clubhouse
15 containers shall be located as directed by Ogden and
16 shall be emptied by Seiber daily. Now I assume when we
17 are talking about grandstand and clubhouse containers,
18 that we are not talking about manure, are we?
19 A. No.
20 MS. LIVINGSTON: I wouldn't think you would
21 be outside of the fence, either, but --
22 MR. URBAN: Well --
23 MS. LIVINGSTON: Sounds pretty small.
24 A. I was trying to picture, I know where Barn 2

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<p>1 is and I was -- why we had it that way, I'm not sure.</p> <p>2 Q. (By Mr. Urban) And I think you testified</p> <p>3 that you yourself had no knowledge as to where the</p> <p>4 dumping sites of any of this stuff was?</p> <p>5 A. No.</p> <p>6 Q. Do you know why Seiber was trying to</p> <p>7 renegotiate contracts in '95 with the racetrack?</p> <p>8 A. Do I know why?</p> <p>9 Q. Right.</p> <p>10 A. I assume he wanted to keep the business.</p> <p>11 Q. Do you know as you sit here why, why Ogden</p> <p>12 was looking elsewhere other than Seiber? I know you</p> <p>13 got estimates, but I mean was it strictly a cash</p> <p>14 situation or were there any other factors involved?</p> <p>15 A. No, I think it was what Keller could do for</p> <p>16 us.</p> <p>17 Q. Okay.</p> <p>18 A. Keller was better equipped to do this sort</p> <p>19 of thing because he was land applying it all around the</p> <p>20 racetrack. I mean he owns or he leases land and that's</p> <p>21 what he informed me he was going to do with it, he was</p> <p>22 going to land apply it.</p> <p>23 Q. And I'm not the EPA person, Penni is the EPA</p> <p>24 person so -- but when you talk about land apply it, do</p> <p style="text-align: right;">29</p>	<p>1 see a ticket, no.</p> <p>2 Q. That's fine. And if I'm understanding your</p> <p>3 testimony correctly, everything stopped with Brian</p> <p>4 Zander; in other words, the buck stopped there as far</p> <p>5 as --</p> <p>6 A. Buck meaning if there was any money to be</p> <p>7 spent, Brian had to know about it, what we were doing</p> <p>8 with it.</p> <p>9 Q. Right.</p> <p>10 A. How it was being spent and he was the final</p> <p>11 say, and I mean we knew that.</p> <p>12 Q. Sure.</p> <p>13 A. Had no problem with that, that's --</p> <p>14 Q. Sure.</p> <p>15 A. -- he was responsible.</p> <p>16 MR. URBAN: I don't think I have anything</p> <p>17 further.</p> <p>18 RECROSS EXAMINATION</p> <p>19 BY MR. LONG:</p> <p>20 Q. I do have just a follow-up question.</p> <p>21 Mr. Haida, I think you had said you became the director</p> <p>22 of operations and security in '89; is that correct?</p> <p>23 A. I believe that's, that's approximate.</p> <p>24 Q. Let me ask you about number six here. We</p> <p style="text-align: right;">31</p>
<p>1 you know what that means? I just don't understand.</p> <p>2 A. Yes, he would wind row it down, let's say a</p> <p>3 40-acre field, he had a road going in there and he</p> <p>4 would wind row it down, and then probably in the late</p> <p>5 fall, they would push it in, incorporate it into the</p> <p>6 dirt, into the soil.</p> <p>7 Q. Okay. So all of the -- so all of these</p> <p>8 containers then would be wind rowed, and am I using the</p> <p>9 term right?</p> <p>10 A. Uh-huh. I assume he's doing that with most</p> <p>11 of them.</p> <p>12 Q. Right.</p> <p>13 A. I had seen him in a few of the close acreage</p> <p>14 that he had to the racetrack, I noticed that's what he</p> <p>15 was doing with it. Now he also took it from their</p> <p>16 sewage plant in Collinsville, he -- Keller also took</p> <p>17 that sludge and land applied it at a different place,</p> <p>18 and how he applied that, I don't know.</p> <p>19 Q. Sure. And I know John asked you as far as</p> <p>20 Seiber as to whether you had ever seen any dumping</p> <p>21 tickets. Did you ever see any, any official documents</p> <p>22 from Keller as to where he was taking it?</p> <p>23 A. To my knowledge, he took it on his own</p> <p>24 property or property that he leased, but I never did</p> <p style="text-align: right;">30</p>	<p>1 have another contract here that -- there it is. Let me</p> <p>2 just ask you about this one, too. This is, well, not</p> <p>3 completely similar, not identical to the others but</p> <p>4 similar. Let me show you that, and after you've had a</p> <p>5 chance to look at it, my question is would that have</p> <p>6 been a contract that you negotiated and signed while</p> <p>7 you were the director of operations and security, just</p> <p>8 based on the fact that it was -- that it came from '92?</p> <p>9 A. I'm not sure. I would have to tell you '92.</p> <p>10 Q. It doesn't have your name listed at the end</p> <p>11 where Exhibit 7 and 8 have your name typed in. This</p> <p>12 one doesn't have your name listed.</p> <p>13 A. As time went on, I had more and more duties</p> <p>14 at the racetrack and I think that's why you see my</p> <p>15 signature on some of the other contracts.</p> <p>16 MS. LIVINGSTON: John, do you know who put</p> <p>17 the cross-outs on this particular draft?</p> <p>18 MR. LONG: I don't.</p> <p>19 MS. LIVINGSTON: Where it crosses out what</p> <p>20 the dumpsters look like? Because later on, you still</p> <p>21 have those listed in future contracts, seems a little</p> <p>22 odd.</p> <p>23 MR. LONG: Well, this is just what -- I</p> <p>24 think I took this right off of the disc that you sent</p> <p style="text-align: right;">32</p>

1 to me, Penni, so I don't know what the source of those
2 cross-outs is.

3 MS. LIVINGSTON: Hmm.

4 A. Well, I guess the key is that number four,
5 Seiber shall dispose of all trash manure collected at
6 Fairmount in strict compliance with all applicable
7 laws. And he did store at Fairmount behind the fence,
8 he would store up to seven days of manure, but then he
9 had to remove it. That's when days would rain, he
10 couldn't get in and out, it was just sort of emergency.

11 Q. (By Mr. Long) How did he store it? Did he
12 just pile it out in the open?

13 A. Just pile it. We had a large, huge area in
14 the back.

15 Q. So seven days worth of manure was -- would
16 make a rather big pile when you looked at it?

17 A. You could see it.

18 MR. LONG: I don't have any other questions.
19 I do want to advise you, Mr. Haida, that you've got a
20 right to receive a copy of the transcript and to review
21 it for accuracy and then sign it if you think it was
22 accurate or you can waive your signature. It's just
23 the choice is entirely up to you.

24 THE WITNESS: Penni can look at it.

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1 dumping, I'm just talking about at the racetrack.

2 MR. LONG: Uh-huh.

3 THE WITNESS: Because, you know, people
4 would bring in their grass clippings and they would --
5 horsemen, I'm talking about, coming through the back
6 side, and Jim was pretty good about that. He --

7 FURTHER EXAMINATION

8 BY MR. LONG:

9 Q. You are saying that you actually went with
10 Jim Seiber, Sr., to talk to some security guards about
11 that problem?

12 A. Oh, sure.

13 Q. How often did you do that?

14 A. Oh, I don't know, when it happened, whenever
15 somebody would -- usually it was a new trainer would
16 come in that didn't realize the rules because they were
17 given -- everyone, trainer, when they would come in to
18 the track and brought horses to the track, would give
19 them copies of the rules on the back side, which is
20 what to do with your manure, what to do with your
21 trash, how to conduct yourself.

22 Q. Would Fairmount Park have copies of those
23 rules from -- dating from back then?

24 A. I don't know.

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1 MS. LIVINGSTON: Yeah, I think we can waive
2 signature. I would like to ask a question.

3 MR. LONG: Oh, I'm sorry.

4 MS. LIVINGSTON: That's all right.

5 CROSS-EXAMINATION

6 BY MS. LIVINGSTON:

7 Q. Were there different containers for trash
8 than the containers for manure?

9 A. Different color?

10 Q. Oh, were they?

11 A. No, not that I remember, no, no.

12 Q. But I mean were there separate places where
13 people disposed of their trash --

14 A. Right.

15 Q. -- from where people scooped up and disposed
16 of their manure?

17 A. Right.

18 MS. LIVINGSTON: That's it.

19 MR. LONG: I have no further questions.

20 THE WITNESS: Excuse me. As I remember, Jim
21 was very strict about this. If somebody would dump
22 something in the manure, he would come and get the
23 guards and we'd go find the people and make them clean
24 it out, you know, he was -- now what he -- as far as

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1 MS. LIVINGSTON: We will look for them.

2 MR. LONG: All right. I have no further
3 questions.

4 MR. URBAN: Nothing.

5 (Signature waived.)

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1 STATE OF ILLINOIS)
) SS

2 COUNTY OF ST. CLAIR)

3 I, Amy Moore Schuhardt, a Notary Public in
4 and for the County of St. Clair, State of Illinois, DO
5 HEREBY CERTIFY that pursuant to agreement between counsel
6 there appeared before me on June 22, 2009, at the offices
7 of Livingston Law Firm, 5701 Perrin Road, Fairview
8 Heights, Illinois, FRED HAIDA, who was first duly sworn
9 by me to tell the whole truth of all knowledge touching
10 upon the matter in controversy aforesaid so far as the
11 witness should be interrogated concerning the same; that
12 the witness was examined and said examination was taken
13 down in shorthand by me and afterwards transcribed upon
14 the computer, not being signed by the deponent, signature
15 having been waived by agreement of counsel, and said
16 deposition is herewith returned.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and affixed my Notarial Seal this 23rd day of
19 June, 2009.

20

21

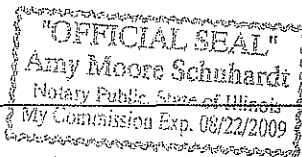
Amy Moore Schuhardt

22

Notary Public, CSR, RPR
My Commission Expires August 22, 2009.
IL CSR #084-003197

23

24



37

Deposition of
Frank Killian

COPY

Caseyville Sport Choice, LLC, et al

-VS-

Erma I. Seiber, et al

PCB 2008-030

August 7, 2009

Reporter: Jenna L. Higgins, CSR

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STATE OF ILLINOIS
POLLUTION CONTROL BOARD
JAMES R. THOMPSON CENTER
100 W. RANDOLPH STREET, SUITE 11-500
CHICAGO, ILLINOIS 60601

IN THE MATTER OF:)
CASEYVILLE SPORT CHOICE,)
LLC, AN ILLINOIS LIMITED)
LIABILITY COMPANY,)
) No. PCB 2008-030

Complainant,)

)

vs.)

ERMA I. SEIBER,)
ADMINISTRATRIX OF THE)
ESTATE OF JAMES A.)
SEIBER, DECEASED, AND)
ERMA I. SEIBER, IN HER)
INDIVIDUALLY CAPACITY,)
AND FAIRMOUNT PARK,)
INC., (FORMERLY KNOWN AS)
OGDEN FAIRMOUNT, INC.,)
A DELAWARE CORPORATION,)

)
Respondent,)

)
Discovery Deposition of
FRANK KILLIAN
taken on behalf of the Complainant
on August 7, 2009

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Mr. Long	51

NO EXHIBITS WERE MARKED
Reporter: Jenna L. Higgins, CSR
IL CSR #084-004398

Keefe Reporting Company
11 North 44th Street
Belleville, IL 62226

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1 IT IS STIPULATED AND AGREED by and between
2 counsel for Complainant and counsel for Respondents that
3 the deposition of FRANK KILLIAN may be taken for
4 Discovery purposes, pursuant to and in accordance with
5 the provisions of the Illinois Code of Civil Procedure
6 and Supreme Court Rules pertaining to such depositions,
7 by and on behalf of the Complainant on August 7, 2009, at
8 the offices of Penni S. Livingston, 5701 Perrin Road,
9 Fairview Heights, Illinois, before Jenna L. Higgins, a
10 Certified Shorthand Reporter; that the issuance of notice
11 is waived and that this deposition may be taken with the
12 same force and effect as if all statutory requirements
13 had been complied with.

15 IT IS FURTHER STIPULATED AND AGREED that the
16 signature of the deponent is waived.

18 FRANK KILLIAN, produced, sworn and examined as a
19 witness on behalf of the Complainant, testified and
20 deposed as follows:

STATE OF ILLINOIS
POLLUTION CONTROL BOARD
JAMES R. THOMPSON CENTER
100 W. RANDOLPH STREET, SUITE 11-500
CHICAGO, ILLINOIS 60601

IN THE MATTER OF:)
CASEYVILLE SPORT CHOICE,)
LLC, AN ILLINOIS LIMITED)
LIABILITY COMPANY,)
) No. PCB 2008-030

Complainant,)

)

vs.)

ERMA I. SEIBER,)
ADMINISTRATRIX OF THE)
ESTATE OF JAMES A.)
SEIBER, DECEASED, AND)
ERMA I. SEIBER, IN HER)
INDIVIDUALLY CAPACITY,)
AND FAIRMOUNT PARK,)
INC., (FORMERLY KNOWN AS)
OGDEN FAIRMOUNT, INC.,)
A DELAWARE CORPORATION,)

)
Respondents,)

APPEARANCES:

For Complainant:
BELSHEIM & BRUCKERT, L.L.C.
By John P. Long,
Attorney at Law

For Respondent, Erma I. Seiber, Administratrix of the
Estate of James A. Seiber, Deceased, and Erma I. Seiber,
In Her Individual Capacity:
SPRAGUE AND URBAN,
By Donald Urban,
Attorney at Law

For Respondent, Fairmount Park, Inc., formerly known as
Ogden Fairmount, Inc., a Delaware Corporation:
LIVINGSTON LAW FIRM,
By Penni S. Livingston,
Attorney at Law

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1 DIRECT EXAMINATION 2 BY MR. LONG:

4 **Q. Would you state your name, please, sir?**

5 A. Frank R. Killian.

6 **Q. And would you spell your last name for the
7 court reporter?**

8 A. K-i-l-l-i-a-n.

9 **Q. And what is your address, Mr. Killian?**

10 A. No. 4 Hillsboro Drive, Collinsville,
11 Illinois.

12 **Q. What's your age, Mr. Killian?**

13 A. I will be 58 next Thursday.

14 **Q. Happy birthday. Are you still working?**

15 A. Yes.

16 **Q. And do you work for Fairmount Park still?**

17 A. Yes.

18 **Q. What's the title of your position?**

19 A. I'm director of properties.

20 **Q. And what does that mean? What are the
21 duties of that position?**

22 A. Well, it encompasses all the racetrack
23 holdings. I go to -- I go to the parlors to do things.
24 I go to, you know, the -- I take care of all the facility

<p>1 at Fairmount Park.</p> <p>2 Q. When you say parlors, are you talking about</p> <p>3 the off track betting parlors?</p> <p>4 A. Yes. Yes.</p> <p>5 Q. With respect to the park itself, the</p> <p>6 racetrack itself and the area immediately surrounding it,</p> <p>7 what are your duties?</p> <p>8 A. Maintenance. I have electrical, plumbing,</p> <p>9 carpentry, laborers, cleaning.</p> <p>10 Q. For what length of time have you held that</p> <p>11 position?</p> <p>12 A. I became management in 1982.</p> <p>13 Q. Have you been director of properties since</p> <p>14 that time?</p> <p>15 A. No. I was assistant track superintendent at</p> <p>16 that time.</p> <p>17 Q. Let me go back further than that and ask you</p> <p>18 when did you first begin to work for Fairmount Park or</p> <p>19 its predecessor Ogden Fairmount?</p> <p>20 A. I started working at Fairmount Park in late</p> <p>21 1969 just part-time and became full-time as a laborer in</p> <p>22 1970.</p> <p>23 Q. Could you tell us what progression of</p> <p>24 offices that you have experienced? I mean, I know you</p> <p style="text-align: right;">5</p>	<p>1 became assistant track superintendent?</p> <p>2 A. 1982.</p> <p>3 Q. 1982. And what was your next step up from</p> <p>4 that?</p> <p>5 A. Well, in two years I became track</p> <p>6 superintendent.</p> <p>7 Q. So that was 1984?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And then what was your next step</p> <p>10 up from track superintendent?</p> <p>11 A. Well, I was track superintendent until I</p> <p>12 would say early '90s. Then I became plant</p> <p>13 superintendent.</p> <p>14 Q. So you became the plant superintendent in</p> <p>15 the early '90s?</p> <p>16 A. Yes.</p> <p>17 Q. When you say early '90s, can you zero in on</p> <p>18 a particular year? I mean, I don't if you. If you</p> <p>19 can't --</p> <p>20 A. I really can't remember when they did that.</p> <p>21 Q. Okay. All right. And then after plant</p> <p>22 superintendent what's the next position that you had?</p> <p>23 A. Director of properties.</p> <p>24 Q. All right. So that's the one you hold now?</p> <p style="text-align: right;">7</p>
<p>1 worked you way up from laborer to director of properties.</p> <p>2 Say from 1969 to the present, can you tell us what</p> <p>3 different titles you've had and the periods during which</p> <p>4 you held those titles?</p> <p>5 A. Okay. When I first started working there, I</p> <p>6 was just filling in for people that were sick, and then</p> <p>7 as a laborer, and then I started full-time on the</p> <p>8 starting gate as a laborer. It was -- well, it was</p> <p>9 full-time as long as the track was open because they used</p> <p>10 to split the meets back then between Cahokia Downs and</p> <p>11 Fairmount Park, and I worked that for about six or</p> <p>12 seven years, and then I went to the clean-up crew on the</p> <p>13 inside of the building.</p> <p>14 Q. So it would have been in the mid '60s or</p> <p>15 late '60s?</p> <p>16 A. It would have -- no. It would have been mid</p> <p>17 '70s.</p> <p>18 Q. Oh, I'm sorry. Okay. Well, then, what was</p> <p>19 your first management position that you held?</p> <p>20 A. Assistant track superintendent.</p> <p>21 Q. And that's what you were talking about</p> <p>22 before?</p> <p>23 A. Yes.</p> <p>24 Q. All right. And what year was that that you</p> <p style="text-align: right;">6</p>	<p>1 A. Yes.</p> <p>2 Q. So you have held this position director of</p> <p>3 properties from the early '90s until the present close to</p> <p>4 20 years now?</p> <p>5 A. No. I haven't been director of properties.</p> <p>6 I was plant superintendent.</p> <p>7 Q. Sorry. Well, I thought -- obviously I'm</p> <p>8 mistaken. I thought you said that you became director of</p> <p>9 properties in the --</p> <p>10 A. You asked me what the next step was. You</p> <p>11 didn't ask me what year.</p> <p>12 Q. Oh, you became plant superintendent in the</p> <p>13 early '90s and then -- okay. So, again, when did you</p> <p>14 become the director of properties? Sorry to repeat</p> <p>15 myself.</p> <p>16 A. 2001.</p> <p>17 Q. 2001, okay. Let me ask you about what your</p> <p>18 duties were as track superintendent? I assume that they</p> <p>19 were slightly different than your duties as director of</p> <p>20 properties?</p> <p>21 A. Yes.</p> <p>22 Q. And, well, can you tell me what the scope of</p> <p>23 your duties was as track superintendent?</p> <p>24 A. As track superintendent, I was in charge of</p> <p style="text-align: right;">8</p>

<p>1 maintaining the racing surface and maintaining the barn 2 area.</p> <p>3 Q. And what was involved in maintaining the 4 barn area?</p> <p>5 A. Just general clean-up and road repairs, 6 stuff like that.</p> <p>7 Q. Would the general clean-up of the barn area 8 have included disposing of the horse manure that the 9 track had?</p> <p>10 A. No. That was a contract that was awarded 11 from the front office.</p> <p>12 Q. All right. So you had no jurisdiction over 13 that particular task?</p> <p>14 A. No. Other than the fact if there was a 15 horseman that wasn't putting manure in the dumpster at 16 the time we used dumpsters back then, we would get on 17 them and they would clean it up.</p> <p>18 Q. Was the horse manure to be put in a separate 19 dumpster? By that, I mean a dumpster separate from the 20 dumpsters used for ordinary trash.</p> <p>21 A. Yes.</p> <p>22 Q. Did the dumpsters look any different?</p> <p>23 A. Yes.</p> <p>24 Q. All right. What was the difference in the</p> <p style="text-align: right;">9</p>	<p>1 manure was something that was handled strictly by the 2 front office?</p> <p>3 A. Yes. They did all the contracts.</p> <p>4 Q. When you say front office, who were the 5 individuals in the front office that --</p> <p>6 A. Well, it depends on the year.</p> <p>7 Q. Well, this will be great if you can remember 8 this far back. But say from 1980 up through about 1995, 9 can you tell me what people would have had the 10 responsibility in the front office for handling matters 11 concerning the contract for the disposal of horse manure?</p> <p>12 A. In 1980 it probably would have been Bruce 13 Seymour (phonetic).</p> <p>14 Q. And what would his position have been?</p> <p>15 A. He was the track superintendent at that time 16 and he was also assistant manager.</p> <p>17 Q. All right. After Bruce -- well, do you 18 remember how long Bruce Seymour would have been in the 19 picture? During what period would he have been handling 20 contracts for the disposal of horse manure?</p> <p>21 A. I don't know how long -- when he started, 22 but I know that he was there when I was brought on and --</p> <p>23 Q. In '69?</p> <p>24 A. No.</p> <p style="text-align: right;">11</p>
<p>1 appearance of the dumpsters?</p> <p>2 A. Well, the manure dumpsters were large. I'd 3 say probably six- or seven-yard containers, and they had 4 no top on them.</p> <p>5 Q. And so --</p> <p>6 A. The trash containers were small, three- and 7 four-yard containers.</p> <p>8 Q. And, I assume, they had a top on them?</p> <p>9 A. Yes. They had lids on them.</p> <p>10 Q. Did Fairmount Park ever mix the trash with 11 the manure there at the park? Did it ever allow those 12 things to be mixed together in a single dumpster?</p> <p>13 A. No. They was even told -- the horsemen were 14 even told to make sure they didn't mix them.</p> <p>15 Q. Let me ask you about your duties as 16 assistant superintendent. What was the nature of your 17 duties as assistant track superintendent?</p> <p>18 A. At that time, I was strictly in charge of 19 the racing surface.</p> <p>20 Q. And did you have any jurisdiction over the 21 -- or any responsibility for cleaning up the barn area at 22 that time?</p> <p>23 A. No.</p> <p>24 Q. Now, you said that the disposal of the horse</p> <p style="text-align: right;">10</p>	<p>1 Q. I'm sorry.</p> <p>2 A. No. In 1982.</p> <p>3 Q. Oh, I see. Okay.</p> <p>4 A. I don't know how long he held that position 5 before I got there.</p> <p>6 Q. Well, after Bruce Seymour had left, who had 7 the authority in the front office for handling these 8 contracts for the disposal of horse manure?</p> <p>9 A. The general manager. There was several 10 because he left under a cloud.</p> <p>11 Q. Bruce Seymour did?</p> <p>12 A. Yes. And that's how I got promoted.</p> <p>13 Q. Okay. Well, who would the general manager 14 have been? There may have been more than one, but --</p> <p>15 A. He was the general manager when he left.</p> <p>16 Q. Bruce Seymour was the general manager?</p> <p>17 A. Yes.</p> <p>18 Q. After he left, who became the general 19 manager?</p> <p>20 A. There was several of them. Jack Weaver 21 (phonetic), he might have been later, though. I'm sorry. 22 Ray Poirier (phonetic).</p> <p>23 Q. How do you spell that last name?</p> <p>24 A. I really can't tell you.</p> <p style="text-align: right;">12</p>

<p>1 Q. Ray Poirier you said?</p> <p>2 A. Poirier, yeah.</p> <p>3 Q. That's Foirier with an F or Poirier --</p> <p>4 A. Poirier. He's from Boston. The company</p> <p>5 sent him down to manage it.</p> <p>6 Q. Okay.</p> <p>7 A. And then there was Bill Borke (phonetic).</p> <p>8 Q. Bill Borke?</p> <p>9 A. Yes.</p> <p>10 Q. All right.</p> <p>11 A. He was just there for a couple of years.</p> <p>12 Q. Okay.</p> <p>13 A. And then I think it was Jack Weaver.</p> <p>14 Q. You mentioned Jack Weaver first.</p> <p>15 A. Yeah. He was -- well, I believe I was</p> <p>16 mistaken there when I said Jack Weaver before. It was</p> <p>17 Jack Weaver came after Bill Borke.</p> <p>18 Q. All right. After Jack Weaver who was the</p> <p>19 general manager then?</p> <p>20 A. Brian Zander.</p> <p>21 Q. And I believe Brian is still the general</p> <p>22 manager?</p> <p>23 A. Yes.</p> <p>24 Q. I believe that you knew -- well, let me just</p> <p style="text-align: right;">13</p>	<p>1 Q. Where was your mother's restaurant just out</p> <p>2 of curiosity? I've been around this area my whole life.</p> <p>3 A. It was right up on Main Street. It was</p> <p>4 called Nancy's Fine Foods or they also called it the</p> <p>5 Greeks or they also called it the Candy Kitchen.</p> <p>6 Q. In Collinsville?</p> <p>7 A. Yes.</p> <p>8 Q. Before 1980 do you know how Fairmount Park</p> <p>9 disposed of horse manure that was generated there at the</p> <p>10 track?</p> <p>11 A. No, I don't. Oh, yes I do. I'm sorry.</p> <p>12 They used to send it to Valmeyer, Illinois. They used to</p> <p>13 come and pick it up.</p> <p>14 Q. Valmeyer?</p> <p>15 A. Kanalyse Mushroom Company (phonetic).</p> <p>16 Q. Kanalyse Mushroom Company?</p> <p>17 A. Yes. They used to have caves over there</p> <p>18 that they used to grow mushrooms in.</p> <p>19 Q. And do you know how many years they used</p> <p>20 Kanalyse Mushroom Company as the entity that disposed of</p> <p>21 the horse manure?</p> <p>22 A. No, I don't. They were there before I got</p> <p>23 there.</p> <p>24 Q. And in about 1980 were you aware that James</p> <p style="text-align: right;">15</p>
<p>1 ask you rather than say and put it that way. Did you</p> <p>2 know James Seiber, Senior, the father, not the son?</p> <p>3 A. Yes.</p> <p>4 Q. And when did you first meet James Seiber?</p> <p>5 A. He was working at the track when I started</p> <p>6 there.</p> <p>7 Q. What kind of work did he do at the track?</p> <p>8 A. At the time, he was running the starting</p> <p>9 gate tractors.</p> <p>10 Q. What does that mean? I mean, I kind of</p> <p>11 sense -- well, obviously it has something to do with the</p> <p>12 starting gate, but what exactly did he have to do?</p> <p>13 A. He had to move the gate between races from</p> <p>14 one starting point to another.</p> <p>15 Q. Right. And when did you first meet</p> <p>16 Mr. Seiber?</p> <p>17 A. I met him long before I was working at</p> <p>18 Fairmount Park.</p> <p>19 Q. Even before 1969?</p> <p>20 A. Yes.</p> <p>21 Q. Did you -- were you friends as young men, as</p> <p>22 boys?</p> <p>23 A. No. He used to come in my mother's</p> <p>24 restaurant.</p> <p style="text-align: right;">14</p>	<p>1 Seiber's company began to handle the disposal -- the</p> <p>2 removal of horse manure from Fairmount Park?</p> <p>3 A. Yeah. It was right after they had a big</p> <p>4 fire in the cave and lost their company.</p> <p>5 Q. So that company went out of business, I</p> <p>6 guess, Kanalyse Mushroom Company?</p> <p>7 A. Yes.</p> <p>8 Q. And so then the racetrack obviously had to</p> <p>9 make some other arrangements then?</p> <p>10 A. Right.</p> <p>11 Q. Were you involved at all in the negotiation</p> <p>12 or any of the contracts that Fairmount Park had with</p> <p>13 James Seiber for the removal of trash and manure from the</p> <p>14 racetrack?</p> <p>15 A. No. Never had any contracts. Never took</p> <p>16 care of any contracts.</p> <p>17 Q. So did you ever participate in the</p> <p>18 negotiations in any way?</p> <p>19 A. No.</p> <p>20 Q. Did you ever actually see any of those</p> <p>21 written contracts between Fairmount Park and James</p> <p>22 Seiber?</p> <p>23 A. No.</p> <p>24 Q. Did anybody at Fairmount Park ever talk to</p> <p style="text-align: right;">16</p>

<p>1 you about any of those contracts with James Seiber?</p> <p>2 A. Probably Bruce did at one time. But, you</p> <p>3 know, it would have been just how many dumpsters do you</p> <p>4 think we need or, you know, where we need to place them</p> <p>5 and stuff like that.</p> <p>6 Q. Did you ever have any discussion with Brian</p> <p>7 Zander, the current general manager, over any of the</p> <p>8 contracts that Fairmount Park had with James Seiber?</p> <p>9 A. No.</p> <p>10 Q. Well, in any event, from about 1980 onward</p> <p>11 for -- well, for at least ten years let's say were you</p> <p>12 aware that James Seiber -- James Seiber and his company,</p> <p>13 in fact, had the contract for the removal of the horse</p> <p>14 manure and the trash from Fairmount Park?</p> <p>15 A. Yeah. I seen his trucks going in and out of</p> <p>16 the gate and in the barn area picking up manure and</p> <p>17 trash.</p> <p>18 Q. Would you describe what you observed with</p> <p>19 respect to the manner in which James Seiber's trucks</p> <p>20 picked up and removed the manure and the trash?</p> <p>21 A. Well, he had two different trucks. He</p> <p>22 picked up with one truck for the manure and the other</p> <p>23 truck for the trash.</p> <p>24 Q. All right. What did the trucks look like?</p> <p style="text-align: right;">17</p>	<p>1 Q. James Seiber, Junior?</p> <p>2 A. Yes.</p> <p>3 Q. And I will call him Jimmy. That is a good</p> <p>4 way of distinguishing him from his father, James.</p> <p>5 A. It worked for him.</p> <p>6 Q. Well, how many -- on how many occasions did</p> <p>7 you see James Seiber's trucks in there removing manure</p> <p>8 and trash from the racetrack?</p> <p>9 A. On a daily basis.</p> <p>10 Q. Now, would that have been every day of the</p> <p>11 year or -- you know, how many days out of the year would</p> <p>12 that have been in the early '80s?</p> <p>13 A. Probably around 250 days out of the year.</p> <p>14 Q. Did that change over the years? Did it</p> <p>15 increase or decrease?</p> <p>16 A. It decreased -- the only time it would</p> <p>17 decrease is when they was -- this is -- I don't want to</p> <p>18 go back to the split seasons because Cahokia was already</p> <p>19 closed. The only time it would decrease is when we shut</p> <p>20 down early and then trained our harnesses.</p> <p>21 Q. And when -- what decrease -- how many days</p> <p>22 per year would that be?</p> <p>23 A. Well, that was still in the 200 --</p> <p>24 Q. 250 range?</p> <p style="text-align: right;">19</p>
<p>1 Were they different in appearance or were they --</p> <p>2 A. They were basically the same type of truck.</p> <p>3 They were just different colors.</p> <p>4 Q. And what type of truck was that?</p> <p>5 A. It was a GMC. Like a 65 -- 8500 series. A</p> <p>6 large, two-ton truck.</p> <p>7 Q. Was it outfitted like a garbage truck so</p> <p>8 they could lift these dumpsters up?</p> <p>9 A. It was a rear-loader Leach-type garbage bed</p> <p>10 on the back.</p> <p>11 Q. So they would back up to it in order to load</p> <p>12 it?</p> <p>13 A. Right. They had to run into it to pick it</p> <p>14 up.</p> <p>15 Q. Okay. Did you ever observe whether Seiber's</p> <p>16 trucks would dump general -- general municipal-type trash</p> <p>17 in with the manure in the same truck?</p> <p>18 A. No. It was always two separate trucks. The</p> <p>19 maroon truck he had for the manure and the red and white</p> <p>20 truck did the trash.</p> <p>21 Q. Do you know who were -- who any of the</p> <p>22 drivers were that drove either the manure truck for the</p> <p>23 manure or the red and white truck for the trash?</p> <p>24 A. The only one I knew was Jimmy, his boy.</p> <p style="text-align: right;">18</p>	<p>1 A. Yes.</p> <p>2 Q. In the early '80s approximately how many</p> <p>3 horses were stabled there at Fairmount Park say on an</p> <p>4 average?</p> <p>5 A. About 800.</p> <p>6 Q. 800 every day?</p> <p>7 A. Yeah.</p> <p>8 Q. Wow. That is a lot of horses.</p> <p>9 A. Yes. We're up to a thousand now.</p> <p>10 Q. Actually, that's a great thing. I'm rooting</p> <p>11 for you guys. I just wish you well. I hope things work</p> <p>12 out there for you. Well, now through the '80s would it</p> <p>13 have stayed on the average 800 per day throughout the</p> <p>14 '80s do you suppose?</p> <p>15 A. The only time it would decrease is when</p> <p>16 harness horses came on board like in the wintertime. We</p> <p>17 would race some thoroughbreds in the summer and harness</p> <p>18 through the winter at that time.</p> <p>19 Q. So when the harness horses came around the</p> <p>20 thoroughbred horses were taken out? I guess there was no</p> <p>21 reason for them to be there because they didn't have any</p> <p>22 races?</p> <p>23 A. State law says you can't keep both breeds on</p> <p>24 the grounds.</p> <p style="text-align: right;">20</p>

<p>1 Q. That's interesting. I probably should have 2 known that, but I did not know that. So when the harness 3 horses were there, about how many horses would you have? 4 A. It would go down to about 600. Between 500 5 and 600. 6 Q. Is a fair and true statement that 800 horses 7 produced rather a large amount of horse manure every day? 8 A. Yes. About 250 cubic yards a day. 9 Q. 250 cubic yards a day? 10 A. Yeah. 11 Q. I'd have to say I'm impressed that you have 12 that figure. How did you happen to know -- I mean, that 13 makes sense that you would have that kind of knowledge. 14 But is there some sort of engineering or science or 15 whatever that figured that out? 16 A. Well, Ogden sent me to Saratoga one year to 17 look at a manure composting system, and that's what the 18 figure was on 800 horses. 19 Q. 250 cubic yards per day? 20 A. Yes. 21 Q. When did you get sent to Saratoga to study 22 that manure composting system? 23 A. That was in the late '80s. 24 Q. And what came of that? Did Fairmount Park</p> <p style="text-align: right;">21</p>	<p>1 about composting. What exactly does it mean to compost 2 manure? I mean, I have kind of a rough idea, I think, 3 but, I mean, what exactly happens when you compost 4 manure? 5 A. Okay. The reason why they had the water and 6 the air on that system is the air would generate -- they 7 would blow the air through it which would start its own 8 composting. I mean, it would start composting with the 9 air going through it, and it would generate heat and the 10 heat is what they need to sterilize the manure. Because 11 a horse doesn't digest wheat seeds. They go through the 12 body and they wind up in the manure. The compost unit 13 would actually generate enough heat to get over 14 180 degrees, and they would hold it at that for a certain 15 amount of time to burn up those wheat seeds and to 16 sterilize the compost. 17 MS. LIVINGSTON: You're essentially looking 18 at you feed the oxygen to the bugs, the more oxygen, the 19 more bugs, the more bugs, the more heat, and the higher 20 the heat, you have got to start sprinkling because you 21 don't want it to be too hot. And what he's talking about 22 is anaerobic composting which is a lot faster than 23 aerobic composting. 24 Q. Well --</p> <p style="text-align: right;">23</p>
<p>1 do the manure composting? 2 A. Well, they were going to, but the -- it was 3 too labor intensive for them -- 4 Q. What -- 5 A. -- with the unions. 6 Q. What would have been involved in the manure 7 composting? 8 A. There would have been like four full-time 9 people. 10 Q. Well, I mean, do you have some sort of plant 11 or machinery or did they just spread it around? 12 A. Well, no, up there in New York, what they 13 did is they had concrete bunkers that were 20-by-20 and 14 maybe 12, 14 feet high, with wooden doors on the front. 15 And inside the bunker they would have plastic pipe to 16 push air into the manure, and at the top on the ceiling 17 they had a water -- like a lawn sprinkler to put water on 18 it to cool it down. And they would -- they would 19 actually compost that vault of manure in 14 days. 20 MS. LIVINGSTON: Highly impressive. You 21 might ask him, too, because that's not the only compost 22 facility that he visited. 23 Q. (By Mr. Long) Let me ask you this because I 24 need to understand this before I ask any more questions</p> <p style="text-align: right;">22</p>	<p>1 MS. LIVINGSTON: That's a-e-r. I know a 2 little bit about composting. 3 Q. (By Mr. Long) I've never had a chance to 4 ask questions about horse manure. Actually, this is 5 interesting. 6 A. That also includes the bedding. 7 Q. Oh, okay. 8 A. That is just not all manure. 9 Q. The bedding would be the straw that was in 10 it? 11 A. The straw or the sawdust. 12 Q. At Saratoga did they make an effort to keep 13 the general racetrack trash out of the manure? 14 A. I never noticed anything when they was 15 unloading the trucks or pushing it into the bunkers. 16 Q. To your knowledge, what would it have done 17 to the composting effort if the -- if trash like that had 18 been mixed in with the manure? 19 A. It really wouldn't have mattered because 20 what didn't burn up or compost -- like paper would 21 compost. The only thing that wouldn't would be plastic 22 and metals. Any of that would come out when they 23 screened it to bag it. 24 Q. Let me ask you this. This is maybe -- the</p> <p style="text-align: right;">24</p>

<p>1 answer should be obvious to me here, but what's the 2 difference between manure and composted manure? What 3 actually is the result of the manure being composted 4 because that's not -- 5 A. It's about a third less of what you started 6 out with. 7 Q. And does it change chemically? I mean, does 8 it somehow become -- 9 A. It breaks down into a finer material almost 10 like a peat moss. 11 Q. And after it's composted, what can you do 12 with it then? I mean, does it have more uses after it's 13 composted? 14 A. It's still got the nutrients in it for 15 bedding plants and landscaping, top dressing the yard, 16 whatever. 17 Q. And if it's composted, then is it something 18 that can be readily sold on the -- 19 A. Yeah. It's a valuable commodity. You know, 20 they -- all landscapers use compost garden centers. What 21 they did in New York is they bagged it and sold it under 22 Saratoga's Finest or something like that. 23 Q. Well, the racetrack's attorney, Penni 24 Livingston, said that you saw some other composting</p> <p style="text-align: right;">25</p>	<p>1 of windrows. 2 THE WITNESS: Yeah. 3 A. When they brought the trucks in, they let it 4 down before they put it in the windrow. 5 Q. (By Mr. Long) Did you visit any other 6 composting facilities? 7 A. No, I did not. 8 Q. Now, that visit to Shreveport also happened 9 in the late '80s, I assume? 10 A. Yes. 11 Q. Which of these methods of composting did 12 Fairmount Park most seriously consider? 13 A. The one from Saratoga. 14 Q. The concrete bunkers? 15 A. Yeah. 16 Q. And you said that Fairmount Park did not do 17 that because it was too labor intensive? 18 A. Yes. 19 Q. Too costly, I guess? 20 A. Yes. The start up on it was the big cost. 21 Q. With respect to the removal of the trash -- 22 when I say trash, I'm talking about the papers, the 23 drinking cups, things like that, the racing forms. Did 24 you have any responsibility at all for seeing that that</p> <p style="text-align: right;">27</p>
<p>1 facilities. So can you tell me about the others? 2 A. Well, I also went during the journey when we 3 were looking at building a compost facility in fair 4 Fairmount to -- I also went to Louisiana down to 5 Shreveport, Louisiana Downs, and I looked at their 6 facility. It was basically like a 60-acre field, and 7 they just put it in windrows and they had a windrow 8 machine that turned it every 15 days. 9 Q. Now, a windrow is just like a -- kind of 10 stacked up in a long row? 11 A. Yes. 12 Q. All right. 13 A. And it would just -- they would start on one 14 side and move the windrow and move the next windrow and 15 move the next windrow and just turn it over. And it just 16 reactivates the bugs and it -- it starts composting and 17 breaking down the matter more smaller and smaller. 18 Q. And how big was the field that you saw at 19 Shreveport? 20 A. About 60 acres. 21 Q. Oh, you did say that. I'm sorry. Was 22 that -- did they have more than one field like that? 23 A. No. Just the one. 24 MS. LIVINGSTON: They would have had a lot</p> <p style="text-align: right;">26</p>	<p>1 was taken care of properly on a day-to-day basis? 2 A. No. The racing -- the racing secretary 3 would put in the overnight, you know, please put the 4 manure in the manure dumpsters and the trash in the trash 5 dumpsters, and they were two different colored dumpsters, 6 too, so they used the color to associate with which was 7 which. 8 Q. But, I mean, did you -- I think you've 9 already answered this, but did you have any 10 responsibility or duty at all with respect to seeing that 11 the trash was, in fact, removed on a daily basis from the 12 track? 13 A. Seeing if the trash was removed on a daily 14 basis? 15 Q. Yes. 16 A. No. He'd come in with the truck -- come in, 17 pick it up and take it. 18 Q. Was the manner of removing the trash, was 19 that also something that was handled strictly out of the 20 front office? 21 A. Yeah. As far as the contract goes. I would 22 oversee it if I had a problem with, you know, they missed 23 a dumpster or, hey, we need another dump up here at the 24 buildings because we got more trash today or something</p> <p style="text-align: right;">28</p>

<p>1 like that.</p> <p>2 Q. Did you know that Seiber was dumping the</p> <p>3 manure that he took from Fairmount Park on his land which</p> <p>4 I'll refer to as Seiber Farm?</p> <p>5 A. Yes.</p> <p>6 Q. Did you know that Seiber was dumping the</p> <p>7 trash that was removed from Fairmount Park on Seiber</p> <p>8 Farm?</p> <p>9 A. No.</p> <p>10 Q. When did you first become aware that Seiber</p> <p>11 was dumping the manure on Seiber farm?</p> <p>12 MS. LIVINGSTON: Can we use another word</p> <p>13 other than dumping?</p> <p>14 MR. LONG: I mean, suggest one for me. I'm</p> <p>15 not sure.</p> <p>16 A. Disposing.</p> <p>17 Q. (By Mr. Long) Well, disposing is fine. I'm</p> <p>18 just talking about the process of getting it there and</p> <p>19 keeping it there, so I'll use disposing. When did you</p> <p>20 first become aware that Seiber was disposing of the</p> <p>21 manure on Seiber Farm?</p> <p>22 A. After he found out I went and looked at</p> <p>23 these facilities, he asked me about that because he was</p> <p>24 thinking about composting. And he took me down there and</p> <p style="text-align: right;">29</p>	<p>1 asking you about building a bunker to speed up the</p> <p>2 composting process.</p> <p>3 A. Well, he didn't want to build a bunker. He</p> <p>4 wanted to windrow it.</p> <p>5 Q. But did he indicate to you that he had been</p> <p>6 composting the manure in any fashion before then?</p> <p>7 A. Yeah. He would -- he was doing it in a</p> <p>8 pile. He just moved the pile from here over to here.</p> <p>9 Just by moving it you're doing the same thing, but he</p> <p>10 would just move the whole pile. And then when he got</p> <p>11 into the middle of it where it was composted more than</p> <p>12 the outer edges, he would take that and put that in a</p> <p>13 separate pile.</p> <p>14 MS. LIVINGSTON: Do you see what he means?</p> <p>15 MR. LONG: Yeah, I do.</p> <p>16 MS. LIVINGSTON: When you windrow, what they</p> <p>17 do is you have got a row of compost. What you do is you</p> <p>18 turn it, you move it, so all of the rows move over. It</p> <p>19 is part of the process of getting it to compost faster.</p> <p>20 MR. LONG: Sure.</p> <p>21 MS. LIVINGSTON: But the Seibers were just</p> <p>22 doing it in a pile instead of a windrow.</p> <p>23 A. Right. And --</p> <p>24 Q. (By Mr. Long) Well, now, why would it</p> <p style="text-align: right;">31</p>
<p>1 showed me this big pile of manure.</p> <p>2 Q. On his land?</p> <p>3 A. Yes.</p> <p>4 Q. How big is big?</p> <p>5 A. It was a pretty good size. I would say 20</p> <p>6 foot tall and probably 60 foot in diameter.</p> <p>7 Q. So it was a round pile of manure?</p> <p>8 A. Yeah. It was just a big pile. And he asked</p> <p>9 me how he could get it to compost faster, and I told him</p> <p>10 to put it in windrows.</p> <p>11 Q. Was this particular pile of manure in a</p> <p>12 valley on his land or on a flat spot?</p> <p>13 A. Actually, it was an area up at the top of a</p> <p>14 hill, and it was where they cut a bunch of dirt out</p> <p>15 because he sold a bunch of dirt off his property for the</p> <p>16 255 expansion around St. Louis.</p> <p>17 Q. Did you see any other piles of manure?</p> <p>18 A. No. Just that big pile that was there.</p> <p>19 Q. Did Seiber indicate that he had other manure</p> <p>20 piles on his land?</p> <p>21 A. No.</p> <p>22 Q. What, if anything, did Seiber say to you</p> <p>23 about his having composted manure in the past? I'm</p> <p>24 talking about the time when he took you out there and was</p> <p style="text-align: right;">30</p>	<p>1 compost faster in the middle? Is that because of the</p> <p>2 higher temperature?</p> <p>3 A. A higher temperature in the middle, the core</p> <p>4 of it, and that was really a mistake by doing it the way</p> <p>5 he did it because he was taking all the heat away from</p> <p>6 it, and then it would have to regenerate from what was</p> <p>7 left.</p> <p>8 MS. LIVINGSTON: It wasn't consistent like</p> <p>9 it would be if you had it windrowed.</p> <p>10 Q. (By Mr. Long) How close did you stand to</p> <p>11 that big pile of manure when Seiber showed it to you?</p> <p>12 A. Just from here to the windows away from it.</p> <p>13 Q. Did you see any papers or other trash mixed</p> <p>14 in with the manure?</p> <p>15 A. No. They wasn't noticeable if they was.</p> <p>16 Q. And you're saying this occurred in the late</p> <p>17 '80s?</p> <p>18 A. Yeah.</p> <p>19 Q. Did you ever take any other trips out there</p> <p>20 to Seiber Farm?</p> <p>21 A. Not to see the manure. I went out to pick</p> <p>22 mushrooms.</p> <p>23 Q. All right. Well, how many times did you go</p> <p>24 out there to pick mushrooms?</p> <p style="text-align: right;">32</p>

<p>1 A. Just once a year every year.</p> <p>2 Q. When you say every year, over what span of</p> <p>3 time?</p> <p>4 A. Oh, I'd say from 1990 on up until they sold</p> <p>5 the property.</p> <p>6 Q. They sold it in 2004, I think, so --</p> <p>7 A. Yeah.</p> <p>8 Q. So over a period of about 14 years</p> <p>9 approximately?</p> <p>10 A. Yeah.</p> <p>11 Q. Well, when you went out there to go</p> <p>12 mushrooming, how much of the farm would you cover in the</p> <p>13 process of looking for mushrooms?</p> <p>14 A. Well, it was kind of unique because I didn't</p> <p>15 have to go very far at all. Just past Jimmy's house --</p> <p>16 Jimmy Seiber's house up there. There was a little</p> <p>17 cluster of Oak trees that was probably three acres, and I</p> <p>18 got most of them right there. That was the fastest</p> <p>19 mushroom picking I have ever had.</p> <p>20 Q. So you're saying -- did you ever go beyond</p> <p>21 the three acres behind Jimmy's house?</p> <p>22 A. Yeah. We went back -- there was an old barn</p> <p>23 up there up top, and we went back there looking. We</p> <p>24 found a few back there, too.</p> <p style="text-align: right;">33</p>	<p>1 you knew were from Fairmount Park Racetrack?</p> <p>2 A. No. I think that was like a valley and a</p> <p>3 hill over away from where I was, and there's woods in</p> <p>4 between there.</p> <p>5 Q. Did Jimmy ever say anything to you about</p> <p>6 what he and his dad were doing with respect to disposing</p> <p>7 of either the manure or the trash from Fairmount Park on</p> <p>8 their land?</p> <p>9 A. No.</p> <p>10 Q. Did you ever have any significant</p> <p>11 conversations with them at all? By that, I mean</p> <p>12 something more than, well, how are you today or</p> <p>13 something -- you know, just a passing comment. Did you</p> <p>14 ever have any conversations with Jimmy about his work and</p> <p>15 what he was doing and how he was doing?</p> <p>16 A. Oh, yeah.</p> <p>17 Q. Okay. Well, what kind of conversations did</p> <p>18 you have with him?</p> <p>19 A. Just -- you know, he'd have a piece of</p> <p>20 equipment broke down or something, and I was wondering</p> <p>21 why they weren't picking up the manure. He said, well,</p> <p>22 I'm trying to get the transmission back in that truck</p> <p>23 and, you know, it's been broke for a couple of days.</p> <p>24 Q. So if he didn't show up for a day or so</p> <p style="text-align: right;">35</p>
<p>1 Q. How many times did you go back to that old</p> <p>2 barn?</p> <p>3 A. Once we found one, we'd go back there every</p> <p>4 year.</p> <p>5 Q. Did you ever see any other -- any other</p> <p>6 hills of manure when you -- on Seiber Farm when you</p> <p>7 walked back to that old barn?</p> <p>8 A. Just the stuff that was generated from the</p> <p>9 horses they had up there.</p> <p>10 Q. From his own horses?</p> <p>11 A. Yes.</p> <p>12 Q. Did you ever see any piles of manure that</p> <p>13 you knew were from Fairmount Park Racetrack --</p> <p>14 A. No.</p> <p>15 Q. -- on Seiber Farm? I'm referring to the</p> <p>16 times when you're going mushroom hunting, not the times</p> <p>17 you went out there to talk to him about the bunkers and</p> <p>18 composting.</p> <p>19 A. No. Just when I went to see him that one</p> <p>20 time.</p> <p>21 Q. Well, this is a little bit redundant, but</p> <p>22 let me ask you the same question with respect to the</p> <p>23 trips you took to the three acres behind Jimmy's house.</p> <p>24 On those trips did you ever see any piles of manure that</p> <p style="text-align: right;">34</p>	<p>1 would you be the person that would contact them to ask</p> <p>2 why they hadn't be there?</p> <p>3 A. Yeah. They would have me contact them to</p> <p>4 find out why they hadn't been dumping.</p> <p>5 Q. Is it fair to say if Seiber didn't come for</p> <p>6 a day or so, the result was very noticeable because the</p> <p>7 manure piled up?</p> <p>8 A. Well, he usually didn't let it get that bad</p> <p>9 because he would send the other truck. He would clean</p> <p>10 the other truck out and send it down to pick up manure.</p> <p>11 Q. Did you ever have any other conversations</p> <p>12 with Jimmy about the work that he and his dad were doing</p> <p>13 with respect to removing the manure trash and disposing</p> <p>14 of it?</p> <p>15 A. No.</p> <p>16 Q. Did you ever have any conversation with</p> <p>17 James, the father, with respect to his removing the</p> <p>18 manure or the trash or both from Fairmount Park?</p> <p>19 A. No.</p> <p>20 Q. Did you ever hear anyone at Fairmount Park</p> <p>21 discuss where James was disposing of the trash that he</p> <p>22 removed from Fairmount Park?</p> <p>23 A. As far as I knew, he was taking it to the</p> <p>24 landfill.</p> <p style="text-align: right;">36</p>

<p>1 Q. Well, now when you say so far as I know, 2 what's the basis for you're saying so far as I know? I 3 mean, did somebody say something to you? 4 A. Well, Jimmy told me he used to -- you know, 5 Jimmy told me that he would have to take the red truck to 6 the landfill on a regular basis. 7 Q. All right. 8 A. But I don't know what he was doing with the 9 manure until I found out he was trying to compost it. 10 Q. And how many times did Jimmy say that to 11 you, that he had to take the red truck to a landfill? 12 A. Well, I don't --- it was just in a 13 conversation that I had with him. 14 Q. Did Jimmy ever mention the name and location 15 of the landfill to which he was driving the red truck? 16 A. No. 17 Q. Did you ever ask him where he was disposing 18 of the trash that he removed from Fairmount Park? 19 A. No. 20 Q. To your knowledge, did anybody else at 21 Fairmount Park, anybody else in authority, ever ask James 22 or Jimmy where they were disposing of the trash that they 23 had taken from Fairmount Park? 24 A. I wouldn't know anybody. Nobody asked me.</p> <p style="text-align: right;">37</p>	<p>1 Q. Now, did Fairmount Park have enough acreage 2 there so that the manure could have been composted? 3 A. Yeah. But it wasn't really big enough for 4 the volume that we had. 5 Q. Okay. Well, how many acres would you have 6 had available for the composting? 7 A. There was like 15 acres back there back 8 behind the racetrack between the racetrack and the city 9 sewer plant. 10 Q. And by your calculations, how many acres 11 would the racetrack have really needed to do that sort of 12 composting operation? 13 A. Probably about 30. 14 Q. Did James ever indicate to you that he ever 15 actually began the windrow method of composting the 16 manure? 17 A. He did it on his farm. 18 Q. Well, he actually -- you're saying that he 19 did start using windrows on the farm? 20 A. Yeah. And he sold all that -- he sold a 21 bunch of that to a landscaper up at Pere Marquette State 22 Park. 23 Q. Do you happen to know the name of the 24 landscaper that he --</p> <p style="text-align: right;">39</p>
<p>1 Q. Did anybody at Fairmount Park ever ask James 2 or Jimmy to produce a ticket or a receipt from -- of some 3 kind from a landfill that would indicate that they were, 4 in fact, disposing of the trash at a landfill? 5 A. I wouldn't know that. 6 Q. Did anybody at Fairmount Park ever discuss 7 the question whether the Seibers had a license from the 8 EPA or a permit from the EPA in order to dispose of trash 9 on the Seiber Farm? 10 A. I don't know anything about that. 11 Q. About how long did the investigation of 12 methods of composting manure last? In other words, you 13 said it occurred in the late '80s. Was that an 14 investigation that took a year, two years, three years? 15 A. About six months. 16 Q. And was the investigation also concluded in 17 the late '80s? 18 A. Yes. 19 Q. And Fairmount Park decided not to do -- 20 well, let me back up and ask you another question. Did 21 Fairmount Park seriously consider the windrow method of 22 composting the manure? 23 A. They didn't, but Jim Seiber did on our 24 property.</p> <p style="text-align: right;">38</p>	<p>1 A. I sure don't. He just told me some 2 landscaper wanted all that that he had and wanted to know 3 if he could get more. 4 Q. Now, did you know that James used the -- the 5 windrow method of composting manure from hearing him talk 6 about it or from actually seeing it on his land? 7 A. Well, I -- I told him how to do it with the 8 windrows, and that's when he started doing it. And it 9 worked a lot better for him. 10 Q. I'm just asking with respect to how you knew 11 that he was actually doing it, did he tell you that he 12 was doing it or did you have some other knowledge of the 13 fact? 14 A. Jimmy told me that he had put in windrows 15 and they did it for like 30 days and it was breaking down 16 real good, and that's when he had some guy that wanted to 17 buy it all. 18 Q. All right. So was it Jimmy that told you 19 that or did James also tell you that? 20 A. Well, I didn't get to see Jimmy that much. 21 Q. So it would have been Jimmy that mentioned 22 they were using this windrow method of composting? 23 A. Yeah. Because he's the one that had to do 24 it.</p> <p style="text-align: right;">40</p>

<p>1 Q. Oh, Jimmy was the one that did the --</p> <p>2 A. The turning.</p> <p>3 Q. The turning?</p> <p>4 A. Yeah.</p> <p>5 Q. What kinds of equipment would you use to do</p> <p>6 that?</p> <p>7 A. Just a high lift or a front-end loader.</p> <p>8 MS. LIVINGSTON: A Scarra (phonetic).</p> <p>9 THE WITNESS: They didn't have that.</p> <p>10 Q. (By Mr. Long) What kind of equipment is</p> <p>11 that?</p> <p>12 A. It's just like a big rake.</p> <p>13 Q. A big rake?</p> <p>14 A. It just picks it up and turns it over.</p> <p>15 Q. What's the name of it?</p> <p>16 A. A Scarra.</p> <p>17 Q. A Scarra?</p> <p>18 MS. LIVINGSTON: Like it would keep it</p> <p>19 straight.</p> <p>20 A. Well, you know how they windrow alfalfa</p> <p>21 before they bale it. It is basically the same thing.</p> <p>22 Q. (By Mr. Long) Mr. Killian, is there</p> <p>23 anything else that you know about the disposal of the --</p> <p>24 the Seibers removal of the manure and trash from</p> <p style="text-align: right;">41</p>	<p>1 A. To get any trash, any debris, out of it, any</p> <p>2 metal.</p> <p>3 Q. Who was involved in talking with James and</p> <p>4 letting him know that that would be permissible; and by</p> <p>5 that, I mean putting the manure out there in the field</p> <p>6 and building a pole barn and bagging it in the pole barn.</p> <p>7 A. I believe it was Brian Zander at the time.</p> <p>8 Q. And do you remember about what year that</p> <p>9 discussion would have occurred?</p> <p>10 A. No. I can't remember what year it was.</p> <p>11 Q. Do you remember would it -- whether it would</p> <p>12 have been in the '80s or the '90s?</p> <p>13 A. It had to be in the -- had to be -- it was</p> <p>14 right before -- right before he quit hauling. I don't</p> <p>15 know when that was.</p> <p>16 Q. What, if anything, do you know about the</p> <p>17 events that lead to the breakup so-to-speak of the</p> <p>18 relationship between Fairmount Park and James and Jimmy</p> <p>19 Seiber?</p> <p>20 A. I don't know anything about that other than</p> <p>21 the fact that a farmer came by and wanted to look at the</p> <p>22 barns and look at the manure and wanted to know how much</p> <p>23 cubic yards there was in there on a daily basis.</p> <p>24 Q. Would that have been Keller from Keller</p> <p style="text-align: right;">43</p>
<p>1 Fairmount Park that you think would be relevant at all?</p> <p>2 I'm not saying you should know, but if there is anything</p> <p>3 else that I haven't asked you about that you think is --</p> <p>4 has any bearing at all upon Seibers removal of the manure</p> <p>5 and trash from Fairmount Park, I would like to hear about</p> <p>6 it just to make sure I don't overlook anything.</p> <p>7 A. No. He was going to build -- he was going</p> <p>8 to build a building down there behind the racetrack and</p> <p>9 bag it down there.</p> <p>10 Q. On the racetrack's property?</p> <p>11 A. Yeah. We let him build -- he was going to</p> <p>12 build a pole barn and he just never did, never did. And</p> <p>13 he had the poles in the ground and they just stood there</p> <p>14 for a while, and he moved a trailer in there and a bunch</p> <p>15 of other junk.</p> <p>16 Q. Now, what was the pole barn supposed to be</p> <p>17 for?</p> <p>18 A. For bagging.</p> <p>19 Q. Was he going to allow the manure to compost</p> <p>20 next to the building? Was that part of --</p> <p>21 A. In the field, yeah, and then he would bring</p> <p>22 it in and dump it in a hopper and bag it after he</p> <p>23 screened it.</p> <p>24 Q. Why would he have been screening it?</p> <p style="text-align: right;">42</p>	<p>1 Farms?</p> <p>2 A. Yes.</p> <p>3 Q. So he wanted that for himself?</p> <p>4 A. Yes. He wanted that land applied.</p> <p>5 Q. When the relationship between Fairmount Park</p> <p>6 and Seiber broke up, what did Fairmount Park begin to do</p> <p>7 with respect to the removal of the trash from the</p> <p>8 racetrack?</p> <p>9 A. They signed a contract with Waste Management</p> <p>10 at the time.</p> <p>11 Q. All right. So after the relationship with</p> <p>12 Seiber broke up, Fairmount Park entered into a</p> <p>13 relationship with Keller Farms to remove the manure and</p> <p>14 with Waste Management to remove the trash?</p> <p>15 A. Yes.</p> <p>16 Q. To your knowledge, is Waste Management still</p> <p>17 removing the trash?</p> <p>18 A. No.</p> <p>19 Q. Who is removing the trash now?</p> <p>20 A. Allied Waste.</p> <p>21 MR. LONG: Okay. I don't have any other</p> <p>22 questions.</p> <p>23 CROSS EXAMINATION</p> <p>24 BY MR. URBAN:</p> <p style="text-align: right;">44</p>

<p>1</p> <p>2 Q. Okay. Just a few. And I'm just trying to</p> <p>3 sort this out because I'm a little confused on time</p> <p>4 frames. Frank, you testified you went out to the Seiber</p> <p>5 property once and you saw the -- for lack of a better</p> <p>6 word I will call it pile of manure?</p> <p>7 A. Yes.</p> <p>8 Q. The 20-foot-by-60-foot diameter pile?</p> <p>9 A. Right.</p> <p>10 Q. What time frame are we talking about? Was</p> <p>11 that the early '80s, mid '80s, late '80?</p> <p>12 A. It was late '80s.</p> <p>13 Q. Late '80s, okay.</p> <p>14 MS. LIVINGSTON: Would you know maybe when</p> <p>15 it was in relation to when Seiber stopped hauling?</p> <p>16 THE WITNESS: It was -- no. I wouldn't. It</p> <p>17 was prior -- before they let him windrow it down at the</p> <p>18 racetrack.</p> <p>19 Q. (By Mr. Urban) Then I will jump to that</p> <p>20 next question. Like I said, I'm trying to get some time</p> <p>21 frames. Do you have a time frame as to when the</p> <p>22 windrowing was commenced?</p> <p>23 A. It was the last year, year-and-a-half,</p> <p>24 before this contract -- before they got rid of him.</p> <p style="text-align: right;">45</p>	<p>1 A. Right.</p> <p>2 Q. Okay. I think you also testified that</p> <p>3 they're two different colored dumpsters down there, one</p> <p>4 for manure and one for trash?</p> <p>5 A. Right.</p> <p>6 Q. Okay. In your presence were they always</p> <p>7 meticulous about making sure manure went into the manure</p> <p>8 truck and trash went into the trash truck?</p> <p>9 A. As far as -- yes.</p> <p>10 Q. Okay. And I think you testified that if</p> <p>11 there was a problem with a truck and they had to double</p> <p>12 it up, they always cleaned it out to the best of your</p> <p>13 knowledge?</p> <p>14 A. Right. They cleaned it and brought it down</p> <p>15 for the manure or vice versa.</p> <p>16 Q. Sure. Sure. Frank, I teased when I came in</p> <p>17 the door that you're known as the mushroom hunter because</p> <p>18 that is how Jimmy referred to you as. You go out there</p> <p>19 about once a year?</p> <p>20 A. Yeah. These mushrooms that I was hunting,</p> <p>21 they only come in in late September, early October.</p> <p>22 Q. Okay.</p> <p>23 A. And they will stay good and fresh until the</p> <p>24 first freeze.</p> <p style="text-align: right;">47</p>
<p>1 Q. So sometime in the early '90s, mid --</p> <p>2 A. Right.</p> <p>3 Q. Somewhere in that area?</p> <p>4 A. Whenever they signed a contract with Keller.</p> <p>5 MS. LIVINGSTON: Do you remember? Is it</p> <p>6 '93?</p> <p>7 MR. URBAN: '93 is one. And I don't think</p> <p>8 '95 came into existence, did it? I think they worked up</p> <p>9 from '95, but I don't think they ever got the '95</p> <p>10 contract signed. Does that sound about right?</p> <p>11 MR. LONG: That sounds about right. I don't</p> <p>12 want to commit myself, but that does sound about right.</p> <p>13 MS. LIVINGSTON: I don't know if that helps</p> <p>14 you in time frames, but --</p> <p>15 THE WITNESS: No.</p> <p>16 MS. LIVINGSTON: Okay.</p> <p>17 MR. URBAN: That's fine.</p> <p>18 Q. (By Mr. Urban) And, Frank, you testified</p> <p>19 that the Seibers ran two different types of trucks; is</p> <p>20 that correct?</p> <p>21 A. They were the same type of truck, but two</p> <p>22 different colors.</p> <p>23 Q. Two different colors. And one was for</p> <p>24 manure and one for trash?</p> <p style="text-align: right;">46</p>	<p>1 Q. You've taught us a lot today about</p> <p>2 composting. I will give you a chance to teach us</p> <p>3 something about mushrooms. Are the mushrooms on the</p> <p>4 Seiber property in any way related to the material that's</p> <p>5 being put on the property?</p> <p>6 A. No.</p> <p>7 Q. None at all? And the only reason I ask that</p> <p>8 is because you testified about the manure going to the</p> <p>9 caves down in Valmeyer and being used down there?</p> <p>10 A. Different type of mushroom.</p> <p>11 Q. Different type, okay.</p> <p>12 MS. LIVINGSTON: What's the name of the</p> <p>13 mushroom you were hunting?</p> <p>14 THE WITNESS: The mushroom that I hunt down</p> <p>15 there is called a Kareem (phonetic) mushroom.</p> <p>16 Q. (By Mr. Urban) Okay. Kareem?</p> <p>17 A. Yes.</p> <p>18 Q. You probably better spell that.</p> <p>19 A. Like it sounds.</p> <p>20 Q. Like it sounds. There you go. And you go</p> <p>21 about once a year?</p> <p>22 A. Yeah.</p> <p>23 Q. Would anybody go with you?</p> <p>24 A. My cousin.</p> <p style="text-align: right;">48</p>

<p>1 Q. And when you would go out there -- and I</p> <p>2 know you testified you had the little spot in the oak</p> <p>3 trees that you would generally find most of them at. How</p> <p>4 many acres are we talking about for the Seiber property,</p> <p>5 if you know?</p> <p>6 A. I wouldn't know how big that is. It is big.</p> <p>7 Q. How far into the Seiber property would you</p> <p>8 have to go to get to your mushroom hunting spot?</p> <p>9 A. Well, about from here to Old Collinsville</p> <p>10 Road.</p> <p>11 Q. Okay.</p> <p>12 MS. LIVINGSTON: A block?</p> <p>13 MR. URBAN: We'll all agree that is about a</p> <p>14 block, okay?</p> <p>15 THE WITNESS: Yeah.</p> <p>16 Q. (By Mr. Urban) Along that path would you</p> <p>17 ever see any evidence of any of the other windrows or</p> <p>18 manure piles or anything of that nature?</p> <p>19 A. No.</p> <p>20 Q. Okay. When you visited the site that one</p> <p>21 time and you saw the 20-by-60-foot diameter pile, I think</p> <p>22 you said you didn't see any trash there.</p> <p>23 A. No. It looked like they just dug dirt off</p> <p>24 of there. I mean, it was a big bluff with a straight up</p> <p style="text-align: right;">49</p>	<p>1 timeframe?</p> <p>2 A. Something like that, yes.</p> <p>3 Q. In your travels on the Seiber property at</p> <p>4 that time frame -- let's talk about in 2000 from the last</p> <p>5 time you with there -- did you see any evidence of manure</p> <p>6 piles, windrows or anything of that nature?</p> <p>7 A. No.</p> <p>8 Q. Once again, though, I think you didn't go</p> <p>9 very far on the property?</p> <p>10 A. No.</p> <p>11 Q. So when you told us about the block, that's</p> <p>12 about as far as you went?</p> <p>13 A. You could see my truck from the road. I</p> <p>14 mean, it was right there in the pasture. In fact, it was</p> <p>15 before Jimmy built his house up there when we was down</p> <p>16 there, too.</p> <p>17 Q. Right.</p> <p>18 MR. URBAN: I don't think I have got</p> <p>19 anything else.</p> <p>20 MR. LONG: Do you mind if I ask one more</p> <p>21 question?</p> <p>22 REDIRECT EXAMINATION</p> <p>23 BY MR. LONG:</p> <p>24</p> <p style="text-align: right;">51</p>
<p>1 and down dirt bank.</p> <p>2 Q. And I think you testified that if there was</p> <p>3 trash that accidentally got mixed in other than plastics</p> <p>4 or metal, that would be burned up in the composting</p> <p>5 process?</p> <p>6 A. Pretty much so.</p> <p>7 Q. Okay. And then whatever isn't destroyed in</p> <p>8 the composting process as it is bagged or whatever, it is</p> <p>9 screened?</p> <p>10 A. Yeah. You run it through a screener first.</p> <p>11 Q. Okay. How soon after you had your</p> <p>12 conversation with James Seiber did he start the windrow</p> <p>13 process?</p> <p>14 A. Well, I don't know when he started it on his</p> <p>15 property. But, like I said, it was like the last year or</p> <p>16 year-and-a-half before he ended it at Fairmount Park.</p> <p>17 Q. Okay. And when you saw that 20-foot-by</p> <p>18 -60-foot diameter, was it covered in any way, shape or</p> <p>19 form or was it just exposed?</p> <p>20 A. No. It was just sitting out in the open.</p> <p>21 Q. Okay. And I think you said that the last</p> <p>22 time you were out there it would have been before the</p> <p>23 property was sold by the Seibers, so are we talking about</p> <p>24 sometime in early 2003, 2004, somewhere in that</p> <p style="text-align: right;">50</p>	<p>1 Q. Mr. Killian, my notes are --</p> <p>2 MS. LIVINGSTON: That means three.</p> <p>3 MR. LONG: Yeah. Probably four.</p> <p>4 Q. (By Mr. Long) I have got 250 written down</p> <p>5 here twice and I think what -- I just want to make sure</p> <p>6 that -- well, I am not sure I'm right about that. How</p> <p>7 many days per year did you have 800 horses there at</p> <p>8 Fairmount? You told me and I don't remember the answer,</p> <p>9 and I need to make sure I have the answer to that.</p> <p>10 A. It would depend on the length of the meet of</p> <p>11 the thoroughbred races.</p> <p>12 Q. All right. Well, on an average do you have</p> <p>13 any idea how many days' period --</p> <p>14 A. Well, they would get about 120 days of a</p> <p>15 meet, but that stretches out longer because there is</p> <p>16 weekends involved in there and days off when they don't</p> <p>17 race. So, like I said, 250 days a year counting the</p> <p>18 thoroughbred and the harness.</p> <p>19 Q. All right. So 250 days per year and you're</p> <p>20 saying with 800 horses that's about 250 cubic yards of</p> <p>21 horse manure per day?</p> <p>22 A. Right.</p> <p>23 Q. I just -- I thought that's what my notes</p> <p>24 indicated, but I wasn't sure.</p> <p style="text-align: right;">52</p>

1 MR. LONG: That's all the questions I have
2 for you. I do need to tell you that you have got the
3 right to receive a copy of the transcript.
4 Do you want to ask him questions, Penni?
5 MS. LIVINGSTON: No. I have no questions.
6 MR. LONG: I do need to tell you that you
7 have the right to receive a copy of the transcript so you
8 can review it for accuracy and then sign it if it is
9 accurate, or you can waive that requirement if you want.
10 MS. LIVINGSTON: You don't really want to
11 read this, do you?
12 THE WITNESS: No.
13 MS. LIVINGSTON: I think we'll waive.
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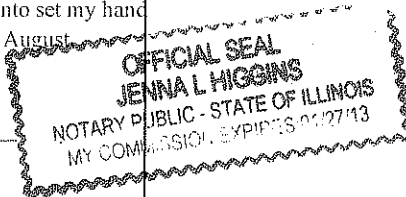
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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF ST. CLAIR)
3 I, Jenna L. Higgins, a Notary Public in and for
4 the County of St. Clair, State of Illinois, DO HEREBY
5 CERTIFY that pursuant to agreement between counsel there
6 appeared before me on August 7, 2009, at the offices of
7 Penni S. Livingston, 5701 Perrin Road, Fairview Heights,
8 Illinois, FRANK KILLIAN, who was first duly sworn by me
9 to tell the whole truth of all knowledge touching upon
10 the matter in controversy aforesaid so far as the witness
11 should be interrogated concerning the same; that the
12 witness was examined and said examination was taken down
13 in shorthand by me and afterwards transcribed upon the
14 typewriter, not being signed by the deponent, signature
15 having been waived by agreement of counsel, and said
16 deposition is herewith returned.
17

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 and affixed my Notarial Seal this 13th day of August
20 2009.

21 *Jenna L. Higgins*

22 Jenna L. Higgins
23 Notary Public, CSR
24 IL CSR 084-004398



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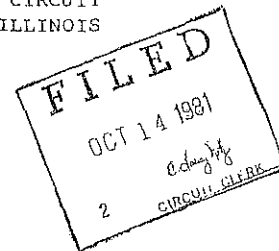
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IN THE CIRCUIT COURT
TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

Exhibit 7

VILLAGE OF CASEYVILLE,)
)
Plaintiff,)
)
vs.)
)
JAMES SEIBER,)
)
Defendant.)
)
STATE OF ILLINOIS,)
)
Intervenor.)



No. 81-CH-223

O R D E R

The Court finds that this cause was called to trial on Monday, September 21, 1981, at 1:30 p.m. in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois, Courtroom #7, before the Honorable Joseph Cunningham, Chief Circuit Judge. The Village of Caseyville appeared by its counsel, Thomas Q. Keefe, Jr.; Defendant, James Seiber, appeared in proper person and by his counsel, Russell K. Scott and John L. Bitzer; the State of Illinois appeared by Michael O'Malley, Assistant State's Attorney.

The Motion to Intervene filed by the People of the State of Illinois is hereby allowed. Parties having advised the Court that a settlement has been reached, IT IS HEREBY ORDERED AS FOLLOWS:

1. That the temporary restraining order entered herein on September 15, 1981, is hereby made permanent and that Defendant is hereby permanently enjoined from further dumping and/or storing of horse manure, refuse, trash, and/or garbage upon the property of the Defendant in the 600 block of Hollywood Heights Road, Village of Caseyville, Illinois, and that said injunction shall remain in full force and effect until and unless Defendant is granted a variance or until such time as said property is rezoned under the applicable ordinances of the Village of Caseyville and of the laws of the State of Illinois

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to allow the complained of activity.

2. On motion of the Village of Caseyville, all citations issued to Defendant for operating a landfill without a permit or other similar ordinance violations issued at any time prior to and including the date of this Order shall be dismissed with prejudice to refiling.

3. That as a condition of the agreement reached herein, the Village of Caseyville agrees to issue no more citations to Defendant for operating a landfill without a permit or other similar ordinance violations relating to the Defendant's property in the 600 block of Hollywood Heights Road, Caseyville, Illinois, for any conduct of Defendant or condition of the aforesaid property which occurred or existed as of the date of this Order or any previous date.

4. That as a condition of the agreement reached between the parties, the State of Illinois agrees not to prosecute Defendant for any conduct related to the aforesaid property for any condition of the aforesaid property which occurred or existed on the date of or prior to the date of this Order.

5. It is further agreed between the parties that nothing contained in this Order shall prevent Defendant from seeking any relief available to him under the ordinances of the Village of Caseyville or the zoning ordinances of St. Clair County or the statutes of the State of Illinois with respect to the aforesaid property.

6. The Court notes that a Stipulation has been entered into among the parties and said Stipulation appears to be reasonable to the Court and the Court adopts the agreements

of the parties.

7. That no evidence having been presented thereon, this Court specifically makes no findings on, nor enters this Order, premised upon allegations concerning public and private nuisance. Nothing in this Order shall be construed as affecting the rights of any parties to institute any actions, either legal or equitable, now or in the future, premised upon such allegations.

Dated this 14 day of Sept, 1981.

ENTER: [Signature]
JUDGE

JAN 19 '99 11:22AM BURNS & MCDONNELL
 Jan-18-99 11:15AM Joseph I. Kelleher, Jr.

P.2

P.02

Jan. 7, 1999

To Whom it May Concern :

The property in question is owned by James A. Seiber, SR. as far as fuel tanks buried on this property since I have owned it there is no underground tanks, but there are a couple overhead tanks fuel tanks 500 gallon each. As far as we are concerned there are no hazardous materials buried on the property. Straw & Bedding material burying on one part of the farm from Lacimont Race Tract. We will be glad to show you at any time you desire. It was ok by a man named ^{Don} Blockhouse E.P.A. An Agricultural Engineer with Agency. altho there was a few head of cattle buried on it some years ago a train killed. James A. Seiber SR.

P.S. We have some junk metal

Don on top of ground 502-269-7372

which can be moved with 2070 Rattle snake Rd

when property is sold. Elkton, Ky. 42220