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ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs)	PCB 02-21
)	RCRA Enforcement
J & F HAULING, INC.,)	
)	
Respondent.)	

REPORT OF PROCEEDINGS held at the
hearing of the above-entitled case, before
BRADLEY P. HALLORAN, commencing in the County of
Cook and State of Illinois, 100 West Randolph,
Room 11-512, Chicago, Illinois, on the 2nd of
October, A.D., 2002, at 9:35 a.m.

1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD,
3 100 West Randolph Street
4 James R. Thompson Center
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-8917
8 BY: MR. BRADLEY P. HALLORAN, Hearing Officer

9
10 OFFICE OF THE ATTORNEY GENERAL,
11 188 West Randolph Street
12 Chicago, Illinois 60601
13 (312) 814-5388
14 BY: MR. CHRISTOPHER J. GRANT

15
16 Appeared on behalf of the Complainant;

17

18 ALSO PRESENT:

19 MS. ROSE MARIE CAZAUE
20 MR. MITCHELL COHEN

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I N D E X

THE WITNESS: ANNA VANORDEN

PAGES

Examination by Mr. Grant..... 9

1 MR. HEARING OFFICER: Good morning.
2 My name is Bradley Halloran. I'm a hearing officer
3 here with the Illinois Pollution Control Board. I'm
4 assigned to this matter, PCB 02-21 entitled People
5 versus J & F Hauling Incorporated. It's
6 approximately 9:35 on October 2nd in the year 2002.

7 I want to note for the record that
8 there are no members of the public here, but if
9 there were, there would be a lot of testifying, then
10 there's cross-examination.

11 We're going to run this hearing
12 pursuant to Section 103.212 and Section 101
13 Subpart F under the Board's general provisions.

14 I note that this hearing is
15 intended to develop a record for review for the
16 Illinois Pollution Control Board. I will not be
17 making the ultimate decision in the case. That
18 decision will be left to the seven esteemed members
19 of the Pollution Control Board. And they'll review
20 the transcript of this proceeding and the remainder
21 of the record and render a decision in this matter.

22 My job is to ensure an orderly
23 hearing, clear record, and rule on any evidentiary
24 matters that may arise.

1 After the hearing, the parties
2 will be given an opportunity to submit post-hearing
3 briefs, if they choose. These too will be
4 considered by the Board. I note that the Board
5 granted complainant's motion for summary judgment on
6 June 6, 2002 and directed that this hearing be held
7 on issues of penalties, cost, and attorney fees.

8 To that end, the parties are only
9 to present testimony and evidence that are relevant
10 to the factors and cause that are set forth in
11 Section 33(c) and 42(h) of the Act.

12 This includes proposing a remedy
13 for a violation, if any, whether to impose a civil
14 penalty and supporting it's position with facts and
15 arguments that address any and all of Section 33(c)
16 factors and proposing a civil penalty, if any,
17 including a specific dollar amount, and supporting
18 it's position with facts and arguments that address
19 any or all of Section 42(h) factors.

20 I note for the record that
21 respondent is not present and the respondent has
22 been repeatedly warned in the Hearing Officer Orders
23 that it must be represented by counsel.

24 With that said, this proceeding

1 will be run in accordance with Section 101.608, the
2 Board's procedural rules entitled default.

3 Mr. Complainant, would you like to
4 introduce yourself?

5 MR. GRANT: Yes, Mr. Halloran. My
6 name is Christopher Grant, and I am the attorney
7 handling this case for the complainant. I'm with
8 the Environmental Bureau of the Illinois Attorney
9 General's Office.

10 Mr. Hearing Officer, may I begin?

11 MR. HEARING OFFICER: Yes, you may.

12 You're giving an opening
13 statement?

14 MR. GRANT: Yes, I'd like just a brief
15 opening statement.

16 Mr. Halloran, on August 17, 2001,
17 the State filed a complaint against the respondent,
18 J & F Hauling Incorporated, an Illinois corporation.
19 The complainant's complaint was based on the
20 facility owned and operated by the respondent
21 located at 7753 West 47th Street, McCook,
22 Cook County, Illinois.

23 In its complaint, complainant
24 alleges multiple violations of the Illinois

1 Environmental Protection Act. As noted by the
2 hearing officer on June 6, 2002, the Board granted
3 the State's motion for summary judgment and found
4 that the respondent has violated Sections 21(a),
5 21(d1), 21(d2), 21(E), 21(p1), and 55(a) of the Act,
6 as well as 35 Illinois Administrative Code Sections
7 722.102, 808.121, and 812.101(a).

8 The Board also found the
9 respondent may be liable for attorney's fees
10 expended by the State pursuant to Section 42(f) of
11 the Environmental Protection Act.

12 The purpose of this hearing is to
13 establish pursuant to Sections 33(c) and 42(f) and
14 (h) the appropriate basis for a civil penalty.

15 The State will call one witness in
16 this matter. Anna VanOrden is an experienced
17 inspector for the Illinois Environmental Protection
18 Agency. Ms. VanOrden is familiar with the location
19 of the violations and with the respondent.

20 From July 7, 1999 until the
21 present, Ms. VanOrden has regularly visited
22 respondent's facility located at 7753 West 47th
23 Street, McCook, Illinois. Ms. VanOrden will testify
24 that from the first inspection until her last on

1 September 24, 2002, the respondent has caused and
2 allowed the open dumping of construction and
3 demolition debris at the site.

4 She will testify from that same
5 day in 1999 until at least August 27 of this year,
6 the respondent allowed the open dumping of used and
7 waste tires. She will also testify that throughout
8 the same period the respondent had failed to
9 remediate a portion of the site where an oil leak
10 contaminant has been dumped.

11 The State is seeking a penalty for
12 the respondent's violation pursuant to the Act, but
13 it is also seeking a remedial order of the Board.

14 A substantial amount of waste
15 remains at the site in the control of the
16 respondent. The State will ask the Board to order
17 removal of this waste within a reasonable period of
18 time.

19 The State will also ask the Board
20 to order the respondent to investigate,
21 characterize, and remove the spilt contaminant at
22 the site and to order the respondent to cease and
23 assist from prior violations of the Act.

24 Your Honor, before we get started,

1 I'd like to offer Complainant's Exhibit A, which is
2 the Board order issued granting the complainant's
3 motion for summary judgment.

4 (Document tendered.)

5 MR. GRANT: Your Honor, I'd like to
6 call Ms. Anna VanOrden as a witness.

7 THE COURT: Sure. The court reporter
8 will swear you in if you raise your right hand.

9 (Witness sworn.)

10 WHEREUPON:

11 ANNA VANORDEN

12 called as a witness herein, having been first duly
13 sworn, deposeth and saith as follows:

14 E X A M I N A T I O N

15 BY MR. GRANT:

16 Q. Ms. VanOrden, can you please give your
17 name and spell your last name for the record,
18 please?

19 A. Anna VanOrden.

20 Q. And where are you employed?

21 A. Illinois EPA at the Des Plaines
22 regional office.

23 Q. What is your position?

24 A. I'm a field operator for solid waste.

1 Q. And can you briefly describe your
2 position?

3 A. I do inspections, I write reports, I
4 do complaint investigations, I do operational
5 inspections, I do permitted and unpermitted facility
6 inspections.

7 Q. And how long have you been employed
8 with the Illinois EPA?

9 A. Since April 1992.

10 Q. And have you been doing inspections
11 for approximately that same period?

12 A. Yes, I have.

13 Q. As a regular part of your job,
14 following an inspection, do you write or generate
15 reports?

16 A. Yes, I do.

17 Q. And are these reports kept in the
18 regular course of business?

19 A. Yes.

20 Q. And -- strike that.

21 Are you familiar with the
22 respondent in this case, J & F Hauling, Inc.?

23 A. Yes, I am.

24 Q. Can you describe the respondent's

1 business?

2 A. He's an operator of construction,
3 demolition operation. Basically demolishes
4 buildings and then removes the debris and is
5 supposed to dispose of it properly.

6 Q. Are you familiar with the location of
7 the violations in this case, that is, 7753 West
8 47th Street in McCook?

9 A. Yes, I am.

10 Q. Please describe the area surrounding
11 that location, which I will hereinafter refer to as
12 the site.

13 A. North of 47th Street is some small
14 businesses but mostly residential, south of the
15 facility or the site are railroad tracks, and on the
16 other side of the railroad tracks are trailer
17 operators and transfer station. On the east and
18 west side there's also properties used for parking
19 semi-trailers.

20 Q. Approximately how large is the site?

21 A. I'm not sure. I believe it's about
22 three acres, but I might be wrong.

23 Q. And is there a driveway leading from
24 47th Street into the main location of the site?

1 A. Yes, there is.

2 Q. Can you estimate approximately how far
3 that is?

4 A. I would say about 150 feet.

5 Q. And inside of that driveway, is there
6 a fence?

7 A. Yes, there is. There's a locked gate.
8 In order to access the facility, you would have to
9 unlock it.

10 Q. And inside of the locked gate, I'm
11 speaking headed in the southward direction from
12 47th Street, is that where the waste is stored at
13 the site?

14 A. Yes, it is.

15 Q. Can you give me an estimate
16 approximately how far it is from the location of the
17 waste to 47th Street?

18 A. About 150 feet or so.

19 Q. And on the other side of 47th Street,
20 is that where the residential area begins?

21 A. Yes, it is.

22 Q. So would it be accurate to say, as an
23 estimate, that perhaps 200 feet between the location
24 of the waste pile and the beginning of the

1 residential area?

2 A. Yes, it is.

3 Q. Okay, thank you.

4 How did you first come to visit
5 the site?

6 A. We received a complaint and I went out
7 there to do the complaint investigation. At the
8 time I went out there -- I'm sorry. Can I review --
9 I can't remember if anybody was there the first time
10 or the second time.

11 MR. GRANT: Your Honor, at this point,
12 I'd like to offer Complainant's Exhibit
13 Number B.

14 MR. HEARING OFFICER: Okay.

15 (Document tendered
16 to the witness.)

17 BY MR. GRANT:

18 Q. Ms. VanOrden, I've given you what's
19 been marked as Complainant's Exhibit Number B, have
20 you seen this document before?

21 A. Yes, I have.

22 Q. And did you prepare it?

23 A. Yes, I did.

24 Q. Is this the inspection report that was

1 prepared following your inspection of the site on
2 July 7, 1999?

3 A. Yes, it is.

4 Yes, I did go out there. I had to
5 honk the horn in order to get the gate open since
6 there's nobody available at the gate. The office
7 manager allowed me entrance into the facility. She
8 could not tell me much about what's going on there.
9 She did contact the owner, Jim Fergelic.

10 Q. Could you spell that, please, for the
11 record?

12 A. Yes, F-E-R-G-E-L-I-C. And I spoke to
13 the gentleman on the phone. I explained to him why
14 I was there, that it was a complaint investigation.
15 I need to do a site investigation, take some
16 photographs.

17 I also explained to him that it
18 was obvious there's an open dump waste pile
19 alongside of the property that would need to be
20 removed, and once it's removed, the documentation
21 with the receipts would have to be submitted to the
22 Agency as a proper disposal.

23 Also, I explained to him that
24 there was some staining on the ground. He would

1 need to analyze that and also remove it, properly
2 dispose of it, submit the analysis and the
3 paperwork.

4 I also explained to him if he
5 wants to continue working as he has been, he would
6 either need to get a permit from the agency or under
7 the new Section 22.38 do a notification form for his
8 activities. And I did leave the forms with the
9 facility and I explained to them they need to
10 complete all this, they would get a letter, and let
11 me know what's going on.

12 Q. Let me ask you a little bit more
13 specifically, did you go to the site as a result of
14 a citizen complaint?

15 A. Yes, I did.

16 Q. And you were asked to investigate a
17 complaint for open dumping of waste?

18 A. Yes.

19 Q. I'd like to ask you some specific
20 questions about the site, and I'm referring to when
21 you first visited on July 7, 1999.

22 You mentioned staining near the
23 front, are you referring -- can you explain
24 specifically where that location was?

1 A. Facing south at the gate on the west
2 side of the property, there was a pile of dirt. It
3 was summer, so it was pretty warm and you could
4 smell the odors coming off from the ground, so I
5 assume something had been dumped over there. And
6 that's why I wanted the soil to be sampled and then
7 disposed of properly.

8 Q. Is that approximately at the location,
9 at the entrance of the facility?

10 A. Yes, it is.

11 Q. Did you take pictures when you were
12 out there on July 7?

13 A. Yes, I did.

14 Q. And are those pictures attached to
15 your report?

16 A. Yes, they are.

17 Q. Going to the waste that was there at
18 the site, I'm going to refer you to complainant's
19 Exhibit Number B, on, I think, the fourth page
20 there's a diagram on the inside that shows the
21 location of the various things, if you could refer
22 to it in Exhibit B.

23 Did you prepare this, this
24 diagram?

1 A. Yes, I did.

2 Q. And is it an accurate representation
3 of the site on July 7, 1999?

4 A. Yes, it is.

5 Q. On the left of the site I notice that
6 there is a -- that there is a -- marked on the
7 diagram waste pile, is that the waste that you
8 referred to earlier?

9 A. Yes, it is.

10 Q. And how would you characterize that
11 waste?

12 A. It's construction demolition debris
13 consisting of wood, metal, pieces of furniture,
14 concrete, brick, some tires sticking out, a lot of
15 siding.

16 Q. Can you tell us how large the pile was
17 approximately?

18 A. I estimate approximately about
19 120 feet long, 20 feet wide, and 20 feet high.

20 Q. Did you make an estimate of the volume
21 of waste at that time or immediately thereafter?

22 A. I estimated about 1700 cubic yards.

23 Q. Since that time, have you learned
24 anything that suggests that might have been an

1 underestimate?

2 A. Yes, I have. They have been removing
3 the piles, and about 50 percent has been removed and
4 we've already approximately approached that 1700
5 cubic yards, so --

6 Q. But it's fair to state that you
7 observed at least 1700 yards of construction
8 demolition debris at the site on July 7, 1999?

9 A. Yes, I did.

10 Q. Did you notice any worn or damaged
11 tires not mounted on rims or otherwise described as
12 used tires at the site?

13 A. Yes, I did.

14 Q. And I notice on the diagram that's
15 attached with Complainant's Exhibit B there is
16 marked used tires at the top of the diagram, was
17 that the location that you saw the used tires?

18 A. Most of them, yes.

19 Q. Can you describe how large the pile
20 was?

21 A. Visibly, I could see approximately
22 20 to 30 tires. It was hard to get an exact number
23 because a lot of it was buried under the concrete
24 and under the C and D, so from what I could see,

1 that's what I would estimate.

2 Q. Do you know how this waste came to the
3 site?

4 A. Just from daily operation of the
5 facility. They brought it on-site after their work
6 off-site.

7 Q. When you say they, you mean J & F
8 Hauling?

9 A. J & F.

10 Q. Now, you mentioned a permit
11 application, let me ask you a couple questions about
12 that.

13 At the time that you first visited
14 the site on July 7, 1999, was the site covered by
15 any Illinois EPA waste handling permits of any kind?

16 A. No, it was not.

17 Q. Did the respondent subsequently make
18 any sort of application for waste permit?

19 A. Not for a waste permit. They did
20 complete it under Section 22.38 notification form.
21 They submitted it to me for review and I called them
22 back to let them know that it was not complete.
23 There's a lot of information missing. I sent them a
24 copy of what it should look like, but I've never

1 heard anything more from them.

2 Q. So they never resubmitted another
3 permit application?

4 A. As far as I know, no.

5 Q. Can you tell me if at any time from
6 July 7, 1999 until today, the date of this hearing,
7 the site was ever covered by any Illinois EPA
8 permits of any kind?

9 A. Not as far as I know.

10 Q. Thank you.

11 At the time that you spoke with
12 Mr. Fergelic and with his employees at the site, did
13 you advise them that they were operating in
14 violations?

15 A. Yes, I did.

16 Q. And was a violation notice
17 subsequently issued to them?

18 A. Yes, it was.

19 Q. Did you visit the site again on
20 May 23, 2000?

21 A. Yes, I did.

22 MR. GRANT: Mr. Hearing Officer,
23 offering what I've marked as Complainant's
24 Exhibit C, and I'd like to show that to the

1 witness.

2 (Document tendered
3 to the witness.)

4 BY MR. GRANT:

5 Q. Ms. VanOrden, is this the -- I've
6 handed you what's been marked as complainant's
7 Exhibit C, is this the inspection report that you
8 wrote subsequent to the May 23, 2000 inspection?

9 A. Yes, it is.

10 Q. Based on your previous inspection of
11 the facility and comparison of the photographs that
12 you took on the July 7, 1999 inspection and the
13 notes that you made, was there any evidence on
14 May 23, 2000 that any waste from the principal waste
15 pile, and I'm referring to the construction
16 demolition debris at the site, was there any
17 evidence that any of that had been removed?

18 A. No, there was not.

19 Q. Did it appear to you to be
20 approximately the same amount of waste?

21 A. Yes, it did.

22 Q. Was there any evidence that any
23 additional waste had been brought to the site at
24 your visit on May 23, 2000?

1 A. The road leading to the site, to the
2 locked gates, there was dumping observed on the
3 east side of the road. It looked like more C and D
4 material.

5 Q. Is it accurate to say that there was
6 additional construction demolition debris brought
7 and placed in a separate pile?

8 A. Yes, there was.

9 Q. And that the original pile appeared to
10 be pretty much the same as you'd seen it in July of
11 1999?

12 A. Yes, it was.

13 Q. When you were -- and during your
14 inspection in May of 2000, were the used and waste
15 tires still present at the site?

16 A. That I could not confirm because the
17 gates were locked and I could not get to the back of
18 the property where the tires were located.

19 Q. Did you again visit the site on
20 June 19, 2001?

21 A. Yes, I did.

22 Q. Based on your previous inspections
23 including your reports and the photographs that you
24 took, did it appear that any of the waste had been

1 removed from the site?

2 A. No, it did not.

3 Q. Did the respondents eventually begin
4 to remove waste from the site?

5 A. Yes, they did.

6 Q. Can you tell us about what time that
7 was?

8 A. I believe it was January. I've been
9 going there every month, so it's hard for me to --
10 is it January?

11 Q. You know, I don't have it. January
12 of --

13 A. 2002.

14 Q. So to the best of your knowledge, from
15 July 7, 1999 until January of 2002, none of the
16 construction demolition debris had been removed from
17 the site?

18 A. No, it was not.

19 Q. Once the respondent began removing the
20 debris, do you know where the debris was taken?

21 A. Yes, it was taken to Congress Landfill
22 in Hillside, Illinois.

23 Q. And how did you come to find that out?

24 A. I've been working with the manager of

1 Congress Landfill. He's been working with
2 Jim Fergelic for the removal of the wood waste and
3 also the remaining C and D waste.

4 Q. And who's the manager of --

5 A. Jim Butler for Congress Development.

6 Q. Now, have either Mr. Butler or
7 Mr. Fergelic explained to you or described to you or
8 indicated to you in any way why the waste has not
9 been removed more quickly from the site?

10 A. There was more waste being removed
11 during the winter months when their workload was
12 less, J & F Hauling's. As the spring and summer
13 started, they were doing more of their regular
14 operations, so it sort of slowed down. They're
15 hoping now that the winter months are coming up they
16 can once again pick up and do more removal.

17 Q. And how did you learn that?

18 A. Just from speaking to Jim Butler and
19 information communicated to him from Jim Fergelic.

20 Q. But your testimony is essentially that
21 the waste is being removed as it's convenient for
22 J & F Hauling Company to -- for the use of their
23 vehicles and that they're doing it when it's
24 convenient for them to remove the waste?

1 A. Yes, they are.

2 Q. Okay, thank you.

3 And you began monthly inspections
4 I think you stated in January of this year?

5 A. January, December.

6 Q. Did you inspect the site on
7 August 27, 2002?

8 A. Yes, I did.

9 Q. When you inspected the site in
10 August of this year, were the used and waste tires
11 still present at the site?

12 A. No, they were removed.

13 Q. They were moved on August 27?

14 A. Yes.

15 Q. Do you know approximately when they
16 were removed?

17 A. No, I'm not sure.

18 Q. At any inspections during the year
19 this year, did you notice the used and waste tires?

20 A. Yes, they were continually there, and
21 I had reminded them that because of the concern with
22 the virus, the West Nile Virus and the regulations,
23 they need to remove those tires as soon as possible.
24 And this was reminded to them several times on the

1 monthly visits. And, finally, they did remove it.

2 Q. But that was done sometime this year?

3 A. Yes.

4 Q. Do you have any recollection what
5 month that might have been?

6 A. I know when I was out there in
7 September they were removed.

8 Q. Based on a comparison of your July 7,
9 1999 inspection, the subsequent inspections
10 including your reports and the photographs that you
11 took at the site, during that time, do you have
12 any -- well, let me back up a little bit.

13 I believe your last inspection at
14 the site was September 24, 2002?

15 A. Yes.

16 Q. Based on what you saw on
17 September 24, 2002, comparing it to your inspection
18 report from July 7, 1999, are you able to estimate
19 the percentage of construction demolition waste
20 that's still present at the site?

21 A. About half of it is still there.

22 Q. Then it's your estimate that at a
23 minimum, at least 800 cubic yards of construction
24 demolition debris is present at the site?

1 A. Yes, at least.

2 Q. Is the stained soil still present at
3 the site?

4 A. It's still present there.

5 Q. Is there any evidence that anyone has
6 ever tried to remove it, remove the soil or
7 characterize the soil?

8 A. No, there isn't.

9 Q. Have any sample results from testing
10 of that soil ever been submitted to Illinois EPA?

11 A. No, it has not.

12 MR. GRANT: Mr. Halloran, I have
13 what's marked as Complainant's Exhibit D.

14 (Document tendered
15 to the witness.)

16 BY MR. GRANT:

17 Q. Ms. VanOrden, is this a copy of the
18 inspection report that you generated after your
19 inspection on September 24?

20 A. Yes, it is.

21 Q. And if you'd look -- I believe
22 there's photographs attached to the back of it?

23 A. Yes.

24 Q. Did you take those photographs at your

1 inspection on September 24, 2002?

2 A. Yes, I did.

3 Q. Okay, thank you.

4 MR. GRANT: That's all the questions I
5 have of this witness. Mr. Halloran, I have two
6 subsequent exhibits.

7 MR. HEARING OFFICER: You may step
8 down, so to speak. Thank you, Ms. VanOrden.

9 MR. GRANT: Mr. Halloran, I have what
10 are marked Exhibits E and F.

11 Mr. Halloran, these are consent
12 orders from two previous enforcement actions made by
13 our office for violations of the Environmental
14 Protection Act.

15 Specifically, they're People
16 versus J & F Hauling Company, Inc. It's
17 95 CH 5775 in the Circuit Court of Cook County.
18 It's a consent order that was entered on
19 July 17, 1997.

20 The second is a consent order
21 issued in People versus J & F Hauling Company, Inc.
22 and James Fergelic. It's numbered 99 CH 5244. This
23 is a consent order that was entered on
24 October 7, 1999.

1 Your Honor, I'm offering these as
2 evidence of previous adjudicated violations of the
3 Act by the respondent. And I note that on the first
4 page of both documents, the documents stipulate that
5 they may be used as evidence of a previous
6 adjudication of the Environmental Protection Act.

7 MR. HEARING OFFICER: Has the
8 respondent paid any of the -- I guess the total
9 \$27,000 in penalty?

10 MR. GRANT: The '95 case penalty has
11 been paid. The '99 case penalty was not paid, and
12 an enforcement action for rule to show cause was
13 filed against Mr. Fergelic individually in that
14 case, and I can't remember the date. It was within
15 the previous 12 months.

16 And a second order was entered,
17 and it's my understanding that payments have been
18 made. I can't guaranty -- the order that was
19 entered required payments over a period of time to
20 pay off a total of about 17,500 including interest.
21 And I know the initial payments were made. I can't
22 speak to whether Mr. Fergelic is current on the
23 payments on that.

24 Mr. Halloran, at this point, I move to

1 offer Complainant's Exhibits A through F into
2 evidence.

3 MR. HEARING OFFICER: Exhibits A
4 through F are admitted into evidence.

5 MR. GRANT: Your Honor, that's the
6 balance of my case, but I'd like to make a closing
7 statement.

8 MR. HEARING OFFICER: Sure.

9 MR. GRANT: I'd also like to submit a
10 post-hearing brief in this matter too.

11 MR. HEARING OFFICER: You can do your
12 closing and we'll go off the record and get some
13 dates.

14 MR. GRANT: Your Honor, the State is
15 requesting that the Board pursuant to Sections 42 of
16 the Act assess the civil penalty against the
17 respondent.

18 The Board, in assessing penalties
19 under the Act is guided by the provisions of
20 Sections 33(c) and 42(h). And the State believes
21 that we've submitted sufficient evidence at our
22 hearing today to request the penalty.

23 But the State would like to point
24 to the factors it considers relevant in these

1 sections.

2 Sections 33(c) direct the Board to
3 consider the reasonableness of the pollution source
4 under the circumstances. The respondent operates a
5 demolition business which includes the removal of
6 demolition debris from the location of demolition.
7 Without question, this material was waste material.

8 The respondent chose to deposit
9 this waste not in a permitted landfill, but rather
10 at property it owns and controls in McCook, Illinois
11 within 200 feet of a residential area.

12 The site is boarded on one side by
13 railroad tracks and the other two parcels are used
14 for the storage of truck trailers. However,
15 immediately across 47th Street from a largely
16 residential area, we don't know for how long the
17 respondent chose to use the site for waste storage
18 and disposal, but we do know that on the first day
19 the Illinois EPA inspected the site, the respondent
20 had accumulated sufficient waste material to
21 construct a pile at least 1700 cubic yards large.

22 This does not include material
23 removed from the waste for sale of scrap. How many
24 trucks filled with demolished buildings were brought

1 through and to this area to construct this pile?

2 How long would this have continued had Illinois EPA

3 not been alerted to this unpermitted dump site?

4 The State notes the respondent has
5 removed the tires and approximately half of the
6 large waste at the site. However, full compliance
7 will not be achieved until all of the construction
8 and demolition debris is removed from the site and
9 the contaminated areas are declared cleaned.

10 The State maintains that
11 respondent's activities at this location were
12 patently unreasonable. The amount of penalty to be
13 assessed for violations of the Act is guided by the
14 factors listed in 42(h) of the Act. The State will
15 address these factors in turn.

16 As mentioned, the State does not
17 know the date upon which respondent's unpermitted
18 activities began. However, the evidence shows that
19 all of the alleged violations were present on
20 July 7, 1999.

21 The State has shown that all but
22 one have continued at least until September 24,
23 2002, the date of Illinois EPA's last inspection.
24 This represents 1,175 days. The resolved violation

1 representing the open dumping of used and waste
2 tires continued for in determinant period but at
3 least into 2002.

4 The State believes the gravity of
5 respondent's violations to be serious. The handling
6 of waste material once the source of blight-related
7 problems throughout the State of Illinois is highly
8 regulated and managed through Illinois EPA's permit
9 process.

10 Had the respondent obtained proper
11 permits and thereby made its activities known to
12 Illinois EPA, the State, through routine inspection
13 process, would have recognized the growing problems
14 at the site early on and would have prevented the
15 massive accumulation still present at the site.

16 In addition, the State notes the
17 failure of respondent to properly dispose of waste
18 tires until more than three years have passed. The
19 disease vector problems related to the tires have
20 been known for years and have only been reinforced
21 by the introduction of a serious mosquito
22 transmitted disease in Illinois over the past
23 summer.

24 The State notes the recent

1 diligence of the respondent in shipping the
2 accumulated waste material off the site for proper
3 disposal.

4 The State also notes that
5 apparently, in 2001, the respondent stopped bringing
6 new waste to the site. However, the respondent was
7 aware of Illinois EPA's concerns about the site and
8 its own violations at the site for over a year
9 before the State's enforcement action resulted in
10 the respondent's compliance.

11 In addition, the State notes that
12 respondent, to the date of this hearing, has not
13 properly applied for Illinois EPA waste management
14 permits at the site.

15 The State suggested the issues of
16 deterrence in prior adjudicated violations be
17 considered together for simple reason. The prior
18 adjudications did not deter the violations in this
19 case.

20 Prior to the filing of this
21 action, the State had settled two previous cases
22 alleging violations of the Illinois Environmental
23 Protection Act. Both cases, 95 CH 5775 consent
24 order entered on July 17, 1997, and 99 CH 5244

1 consent order entered on October 7, 1999, involved
2 violations of demolition notification provisions
3 incorporated into Section 9.1 of the Act.

4 These standards are borrowed from
5 the asbestos NESHAPs in the Federal Clean Air Act.
6 The prior violations do not involve the disposal of
7 waste. They are, however, closely tied to the
8 demolition business.

9 Respondent's mishandling of
10 construction and demolition debris which resulted in
11 this action is also closely tied to the demolition
12 business. Respondent's prior violations indicate a
13 lack of attention to the requirements of the Act as
14 it relates to its primary business and should be an
15 aggravating factor in the calculation of any
16 penalty.

17 The State notes that the
18 respondent has removed no more than 50 percent of
19 the waste from the site and therefore requests that
20 in addition to a penalty the Board order the
21 respondent to complete removal of all waste from the
22 site within a reasonable period.

23 The State suggests that nine
24 months from the date of its order would constitute a

1 reasonable period in this case. Recognizing the
2 nature of respondent's business, respondent's
3 history of prior violations, and the potential for
4 future violations, the State also requests that the
5 Board order the respondent to cease and assist from
6 future violations of the Act.

7 The Board in its ruling on summary
8 judgment in this case found that the respondent had
9 violated six sections of the Act as well as three
10 sections of the Board waste regulations.

11 Each one of the nine violations
12 subjects the respondent pursuant to Section 42 to
13 penalties of up to \$50,000 and additional penalties
14 of \$10,000 per day a violation. As previously
15 noted, most violations have continued for 1,175
16 days.

17 However, penalties are imposed to
18 assist in the enforcement of the Act. In this case,
19 the State speaks to compel complete clean up of the
20 site. Although respondent has not participated in
21 this case and has not been amenable to discovery,
22 the State does not believe that respondent has the
23 financial resources to satisfy a large penalty,
24 although otherwise appropriate, and also continue

1 with the clean up of the site.

2 For this reason, the State
3 suggests the penalty of no less than \$60,000
4 combined with an enforceable Board order for
5 complete remediation removal at the site would both
6 aid in enforcement and satisfy the requirements of
7 the Act.

8 That's all I've got.

9 MR. HEARING OFFICER: Thank you,
10 Mr. Grant.

11 Before I forget, I'm supposed to
12 make a credibility determination on the witness, and
13 based on my legal experience and judgment, I find
14 there's no credibility issues with the witness in
15 testifying here today.

16 And I also want to note there's no
17 members of the public here. The respondent did not
18 show up. But it's my pleasure -- I note for the
19 record that Rose Marie Cazeau -- it's been awhile --
20 Chief of the Environmental Bureau. I always called
21 you boss, but -- and Mr. Cohen, also with the
22 Attorney General's Office, is here today.

23 We'll go off the record
24 momentarily for a minute to talk about the briefing

1 schedule. Thank you.

2 (Whereupon, a discussion
3 was had off the record.)

4 THE COURT: All right, we're back on
5 the record. We were discussing a post-hearing brief
6 schedule. We've decided that the record will
7 hopefully be ready by October 15.

8 With that, complainant's
9 post-hearing brief is due November 18. The
10 respondent's post-hearing brief is due on
11 December 20, 2002, and complainant's reply, if any,
12 is due January 3. I'm going to set public comment
13 cutoff date to November 1.

14 With that said, thank you.
15 Everybody have a safe trip across the street. Thank
16 you very much.

17 (Which were all the proceedings
18 had in the above-entitled cause
19 on this date.)

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24

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF DUPAGE)

3

4 I, STACY L. LULIAS, CSR, do hereby
5 state that I am a court reporter doing business in
6 the City of Chicago, County of DuPage, and State of
7 Illinois; that I reported by means of machine
8 shorthand the proceedings held in the foregoing
9 cause, and that the foregoing is a true and correct
10 transcript of my shorthand notes so taken as
11 aforesaid.

12

13

14

Stacy L. Lulias, CSR
Notary Public,
DuPage County, Illinois

15

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SUBSCRIBED AND SWORN TO
before me this ___ day
of _____, A.D., 2002.

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Notary Public

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