

1                   ILLINOIS POLLUTION CONTROL BOARD  
2                               April 20, 2006  
3           ILLINOIS ENVIRONMENTAL           )  
4           PROTECTION AGENCY,           )  
5                               Complainant,           )  
6   )    No. AC 05-40  
7           vs.                               )  
8   )  
9           NORTHERN ILLINOIS SERVICE           )  
10           COMPANY,                        )  
11   )  
12                               Respondent.           )  
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10                   TRANSCRIPT OF PROCEEDINGS at the hearing of  
11           the above-entitled cause before Hearing Officer  
12           Bradley P. Halloran, called by the Illinois  
13           Pollution control Board, pursuant to notice, taken  
14           before CHERYL L. SANDECKI, CSR, RPR, a notary public  
15           within and for the County of Lake and State of  
16           Illinois, at 4302 North Main Street, Rockford,  
17           Illinois, on the 20th day of April, A.D., 2006,  
18           commencing at 9:00 o'clock a.m.  
19  
20  
21  
22  
23  
24

1 APPEARANCES:

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

9 ILLINOIS ENVIRONMENTAL  
10 PROTECTION AGENCY  
11 BY: MS. MICHELLE M. RYAN  
12 1021 North Grand Avenue East  
13 P.O. Box 19276  
14 Springfield, Illinois 62794  
15 (217) 782-5544

16 On behalf of the  
17 Complainant;

18 MR. LEWIS B. KAPLAN  
19 401 West State Street  
20 Suite 201  
21 Rockford, Illinois 61101  
22 (815) 963-3090,

23 - and -

24 MR. PETER D. DeBRUYNE  
838 North Main Street  
Rockford, Illinois 61103  
(815) 964-3810,

On behalf of the  
Respondents.

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1           THE HEARING OFFICER: Good morning.  
2           My name is Bradley Halloran. I am a  
3           hearing officer with the Illinois  
4           Pollution Control Board. I am also  
5           assigned to this matter entitled  
6           Illinois Environmental Protection  
7           Agency, the complainant, versus Northern  
8           Illinois Service Company, the  
9           respondent. It is Administrative  
10          Citation 05-40.

11                 I also note for the record  
12          that today is April 20th, 2006. It is  
13          approximately 9:00 a.m. This  
14          Administrative Citation was filed by the  
15          IEPA. It alleges that during an  
16          inspection on October 4th, 2004, it was  
17          determined that respondent violated  
18          Section 21(p)(1) and Section 21(p)(7) of  
19          the Act.

20                 As a result of the  
21          October 4th, 2004 inspection and  
22          subsequent Administrative Citation,  
23          respondent filed a petition for review  
24          disputing the one violation of 21(p)(1),

1           and that is why we are here today.

2                       This matter will be conducted  
3           in accordance with Section 108 and  
4           Section 101 subpart F of the Board's  
5           procedural rules.

6                       I also note for the record  
7           that I don't make the ultimate decision  
8           in the case. That is left up to the  
9           five board members.

10                      With that said, Ms. Ryan,  
11           would you like to introduce yourself?

12                      MS. RYAN: Michelle Ryan, Special  
13           Assistant Attorney General for the  
14           Illinois EPA. And I apologize to the  
15           Board, I have forgotten my written  
16           appearance today, but I will be sending  
17           that along. In fact, I will file it  
18           electronically, if that's all right.

19                      THE HEARING OFFICER: Thanks.

20                      MR. KAPLAN: Lewis Kaplan on behalf  
21           of Northern Illinois Service, one of the  
22           lawyers representing them. And I will  
23           also, as suggested by yourself, your  
24           Honor, file my appearance with the

1 post-hearing brief.

2 THE HEARING OFFICER: Thank you,  
3 Mr. Kaplan. Mr. DeBruyne?

4 MR. DeBRUYNE: Peter DeBruyne. It  
5 is D-E capital B-R-U-Y-N-E, attorney for  
6 the respondent.

7 THE HEARING OFFICER: Thank you.  
8 Mr. DeBruyne, do you have a motion you  
9 would like to floor at this time?

10 MR. DeBRUYNE: Yeah. I would like  
11 to move to exclude witnesses. I believe  
12 the complainant only has one, but just  
13 for the purposes of opening statement,  
14 and then I understand the witness will  
15 come back in.

16 THE HEARING OFFICER: Okay.  
17 Terrific. Ms. Ryan, any problem with  
18 that?

19 MS. RYAN: No, that's fine.

20 THE HEARING OFFICER: Okay. Motion  
21 granted.

22 (Witnesses excused.)

23 THE HEARING OFFICER: My Ryan, any  
24 opening?

1 MS. RYAN: Just very briefly.

2 OPENING STATEMENT

3 BY MS. RYAN:

4 We believe that the evidence today will  
5 show that on October 4th, 2004, open dumping  
6 resulting in litter as construction demolition  
7 debris occurred at the Roscoe Quarry, which is  
8 located at 4960 Rockton Road in Roscoe.

9 THE HEARING OFFICER: Thank you.

10 Mr. Kaplan?

11 MR. KAPLAN: Very briefly, your

12 Honor.

13 OPENING STATEMENT

14 BY MR. KAPLAN:

15 The charges, as Ms. Ryan has said to be  
16 heard today, involve charges against the client,  
17 Northern Illinois Service Corporation, for violation  
18 of Section 21(p)(1) and that its claim that Northern  
19 Illinois Service Corporation caused or allowed the  
20 open dumping of waste in a manner resulting in  
21 litter. And litter is going to be the subject of  
22 the testimony offered here on behalf of Northern  
23 Illinois Service Company today.

24 Evidence will show that the trees, which

1 are the subject of this alleged violation, have  
2 never been litter as defined by Illinois case law.

3 THE HEARING OFFICER: Thank you,  
4 Mr. Kaplan.

5 Ms. Ryan, do you want to call  
6 your first witness?

7 MS. RYAN: Yes, we call Karre  
8 Jacobsen.

9 THE HEARING OFFICER: Raise your  
10 right hand and Cheryl will swear you in,  
11 please.

12 (Witness duly sworn.)

13 KARRE JACOBSEN,  
14 called as a witness herein on behalf of the  
15 Complainant, having been first duly sworn, was  
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. RYAN:

19 Q. State your name, please.

20 A. Karre Jacobsen.

21 Q. And where are you employed?

22 A. The Illinois EPA.

23 Q. What your job there?

24 A. I am a field inspector.



1 Q. Out of which region?

2 A. The Rockford region.

3 Q. How many years have you been a field  
4 inspector in the Rockford region?

5 A. Almost six years.

6 Q. What are your duties as a field  
7 inspector?

8 A. I go out to facilities such as  
9 landfills and tire facilities, check for  
10 West Nile Virus and also make sure -- also  
11 with the landfills to make sure they are  
12 going along with their permit as issued with  
13 the State of Illinois.

14 Q. Do you also inspect open dumps?

15 A. Yes.

16 Q. Now, approximately how many  
17 inspections have you conducted in your almost  
18 six years here?

19 A. 940 inspections.

20 Q. What is your educational background?

21 A. Plant soil and science degree.

22 Q. From?

23 A. Southern Illinois, Carbondale.

24 Q. Have you had any other training

1       besides your degree?

2           A.    Training within the agency such as  
3       federal law enforcement training, 40-hour  
4       hazardous waste training, miscellaneous other  
5       training such as writing courses. That is  
6       probably about it.

7           Q.    Are you familiar with the facility  
8       in Roscoe known as the Roscoe Quarry on  
9       Rockton Road?

10          A.    Yes, I am.

11          Q.    Where approximately is that property  
12       located?

13          A.    It is right on the outside of Roscoe  
14       about the west -- west of Roscoe, right off  
15       of 251 on Rockton Road.

16          Q.    How many inspections have you  
17       conducted at this piece of property?

18          A.    Two.

19          Q.    Okay. I am going to show you what I  
20       have marked as Exhibit 1. Can you tell me if  
21       you recognize this document?

22          A.    Yes, I do.

23          Q.    What is it?

24          A.    It is an inspection checklist that

1 was generated right after the October 10th,  
2 2004 inspection.

3 Q. Will you page through this document  
4 for me?

5 A. Uh-huh. Okay.

6 Q. Is this a fair, accurate and  
7 complete copy of your report?

8 A. Yes, it is.

9 Q. Can you describe this property in  
10 general?

11 A. It is right off of Rockton Road. As  
12 soon as you go northbound on the gravel road,  
13 there will be a trailer where an attendant is  
14 there to check on people coming in and out of  
15 the facility. Just north of the trailer is  
16 concrete debris -- at the time there was  
17 concrete debris with protruding rebar to fill  
18 in low lying areas of the quarry.

19 Just northwest of there, I would say  
20 there was approximately 9,700 cubic yards of  
21 landscape debris. Mostly it looks like an  
22 island with a moat, and it was probably --  
23 you look at it probably ten to 13 feet high  
24 of landscape debris.

1           Q.    Are there any other features on the  
2   property other than what you just described?

3           A.    Just sand and growth of trees.  
4   That's all.

5           Q.    Who took the photographs that are  
6   attached to this report?

7           A.    Myself.

8           Q.    And what is shown in each of the  
9   photographs?

10          A.    Photographs 1, 2, 3, 4 are the  
11   pictures of the landscape debris that is on  
12   the north side of the property.  Also 5 and 6  
13   are the pictures of landscape debris located  
14   on the north side of the property.

15          Q.    If I can stop you for one moment,  
16   what type of material is included in this  
17   landscape waste?

18          A.    It mostly looks like uprooted trees,  
19   also trees that have been cut.  It has just  
20   been placed there for a lengthy period of  
21   time.

22          Q.    And when you describe the -- well,  
23   you said a moat, but I don't recall what else  
24   exactly you said.  Can you explain that a

1     little better?

2           A.    You are surrounded with a bunch of  
3     trees like --- and then right in the middle  
4     there a big pile of trees in the middle.  I  
5     guess there is an access road that goes  
6     around the inner part of these trees here.  
7     It looks like it is accessible for dumping  
8     debris and easy for the vehicle to get in and  
9     out of there.

10          Q.    Okay.  You can continue with the  
11     other photos.

12          A.    Okay.  Photograph 7 is a picture of  
13     concrete with protruding rebar.  And also  
14     photograph 8 is conduit that has been placed  
15     on the nearby concrete pile, which is located  
16     on the west central section of the quarry.

17          Q.    Do you know what material that  
18     conduit is made from?

19          A.    Steel.

20          Q.    Did you observe anything else in  
21     this -- in photograph 7 and 8 in that area  
22     besides the concrete and the metal that you  
23     have described?

24          A.    What I saw in that -- in the

1 concrete pile is a lot of protruding rebar  
2 throughout the pile.

3 Q. Okay. Do these photographs  
4 accurately depict what you saw on  
5 October 4th, 2004, at the site?

6 A. Correct.

7 Q. When was this report generated?

8 A. Probably October 5th, 2004.

9 Q. Does Illinois EPA keep these reports  
10 in the regular course of its business?

11 A. Yes.

12 MS. RYAN: At this time I move  
13 Exhibit 1 into evidence.

14 THE HEARING OFFICER: Mr. Kaplan?

15 MR. KAPLAN: No objection.

16 THE HEARING OFFICER: Okay.

17 Exhibit 1 is admitted into evidence.

18 (Whereupon document  
19 so offered was  
20 received in evidence  
21 as Complainant  
22 Exhibit No. 1.)

23 MS. RYAN: That is all I have at  
24 this time.

1 THE HEARING OFFICER: Thank you.

2 Mr. Kaplan?

3 MR. KAPLAN: I got to take a look at  
4 this for just a second, your Honor.

5 CROSS-EXAMINATION

6 BY MR. KAPLAN:

7 Q. Mr. Jacobsen, I am going to direct  
8 your attention to page one of Exhibit 1 and  
9 ask you to acknowledge what -- I am sure you  
10 will, in that you have in generating this  
11 report checked the box right below item 8,  
12 21(p) with regard to one of things you found  
13 being litter; is that correct?

14 A. Yes, sir.

15 Q. And am I correct in saying that that  
16 litter is the trees as opposed to -- or the  
17 landscape waste, as you called it, as opposed  
18 to the rebar and the conduit; is that  
19 correct?

20 A. Yes.

21 Q. Okay. Now, that is -- that litter  
22 was wood?

23 A. Correct.

24 Q. Is that correct?

1           A.    Correct.

2           Q.    Okay.  Now, are you familiar with  
3   mulch sold in garden centers?

4           A.    Yes.

5           Q.    And that oftentimes is wood mulch?

6           A.    Yes.

7           Q.    So that wood mulch, they sell that  
8   for whatever dollars a bag that they sell it;  
9   is that correct?

10          A.    I would assume so, yes.

11          Q.    So that type of thing, obviously,  
12   has an economic value because people buy it  
13   and they use it in their gardens?

14          A.    Correct.

15          Q.    What is the -- you are a landscape  
16   degreed guy from Southern.  And what is the  
17   purpose of using mulch?

18          A.    For aesthetic purposes, for dressing  
19   plants, for holding in moisture and building  
20   around a house.

21          Q.    Okay.  And as far as -- this is  
22   9,700 cubic yards of wood material that you  
23   estimated was there or thereabouts?

24          A.    Yes.



1           Q.   And in deeming this litter, did it  
2   enter -- it didn't enter into your mind that  
3   this wood had the potential use of being used  
4   for mulch?

5           A.   No.  At the time during my  
6   inspection, I assumed that the -- not  
7   assumed, but it came to my mind during the  
8   inspection that the wood on that property is  
9   considered as open dumped material.  And the  
10   way it was on the property, it looked like it  
11   was open dump and it is going to be left  
12   there for a lengthy period of time.

13                   There could have been a market value  
14   for it.  But at the time of the inspection,  
15   it was considered open dump material.

16           Q.   At the time of the inspection?

17           A.   At the time of the inspection,  
18   initial inspection.

19           Q.   Now, as far as open dump material,  
20   is there a difference between -- or as I  
21   understand it, I guess there is a  
22   difference -- you tell me if there isn't --  
23   between trees which come -- which are from  
24   the property itself and trees which come in

1 from the outside?

2 A. Yeah, there is. Because most of  
3 that debris was generated by a contractor  
4 brought in from off-site.

5 Q. Okay. How did you learn that?

6 A. We have receipts indicating that  
7 they were brought in from off-site. Yeah.

8 Q. And how did you obtain those  
9 receipts, sir?

10 A. From the safety director from  
11 Northern Illinois Service Company.

12 Q. What was that gentleman's name?

13 A. Ken Matteson.

14 MR. DeBRUYNE: Your Honor, do you  
15 mind if I ask a few questions on this  
16 same line?

17 THE HEARING OFFICER: Do you have  
18 any objection?

19 MS. RYAN: No.

20 THE HEARING OFFICER: Go ahead,  
21 Mr. DeBruyne.

22 CROSS-EXAMINATION

23 BY MR. DEBRUYNE:

24 Q. Mr. Jacobsen, when you visited the

1 site, was this the time you obtained these  
2 records from Mr. Matteson?

3 A. That would be after the initial  
4 inspection from -- in July we obtained  
5 receipts from them.

6 Q. Your inspection occurred in October  
7 of 2004?

8 A. 2004 we have an initial inspection.

9 Q. And then in July of 2005 --

10 A. 2004 -- 2004 -- July 2004 we did an  
11 initial inspection.

12 Q. You did an initial inspection?

13 A. Yes.

14 Q. All right. And at that time you  
15 obtained these invoices?

16 A. Yes, sir.

17 Q. And did you obtain them at the  
18 location?

19 A. No. They were mailed to me.

20 Q. All right. And what did those -- do  
21 you have those invoices with you?

22 A. Yes.

23 Q. All right. And have you had a  
24 chance to look at those invoices before

1       today?

2           A.    Yes.

3           Q.    All right.  And do the invoices  
4       indicate the cubic yards of trees that were  
5       brought on the premises?

6           A.    There was just a dollar amount.

7           Q.    Just a dollar amount?

8           A.    Yes.

9           Q.    All right.  So when you looked at  
10       the trees -- did you look at the trees in  
11       July?

12          A.    Yes.

13          Q.    Okay.  And did you ever do any  
14       mathematical computation of any kind, that is  
15       translating the dollars into the volume of  
16       trees you looked at?

17          A.    No.

18          Q.    Okay.  So do you know today how  
19       those dollars that were -- you say were paid  
20       to I guess people who brought trees out to  
21       the premises, do you know how those dollars  
22       relate or related then to the volume of trees  
23       that were on the premises?

24          A.    I just clearly went by an estimate

1 of how much volume was there. Because there  
2 was a large amount.

3 Q. Okay. But my question was have you  
4 ever done any mathematical calculation --

5 A. No, I didn't.

6 Q. -- let me give you an example, such  
7 as the invoices show \$1,000, this equates to  
8 so many trees?

9 A. No, I did not.

10 Q. So there is no way that you can say  
11 by looking at these invoices how many of the  
12 trees or what percentage of the trees came  
13 from off-site versus the trees that came from  
14 on the site?

15 A. No.

16 Q. Okay. Now, how do you know these  
17 invoices are evidence of payments to people  
18 to bring trees onto the site?

19 A. These were -- my assumption was that  
20 they were jobs that -- they were contracted  
21 out by Northern Illinois Service Company to  
22 have these contractors remove the trees  
23 before they do probably any site renovations  
24 and brought these trees from the site -- the

2 Q. Okay. But you didn't get that from  
3 Mr. Matteson? He didn't say that to you?

4           A.    No.  But he provided me receipts.

5 Q. But your testimony then, as I  
6 understand it, is you have assumed without  
7 any base knowledge from looking at the  
8 invoice, so the source of your knowledge is  
9 just looking at the invoice and then you  
10 reach a conclusion?

11           A.     Correct, correct.

12 Q. Okay. And do you have the invoice  
13 available to you?

14           A.    Yes.

15 Q. Okay.

16 MR. DeBRUYNE: May I see that,  
17 Counsel?

18 (Document tendered.)

19 MR. DeBRUYNE: May I have a couple  
20 minutes?

21 THE HEARING OFFICER: Sure. We can  
22 go off the record.

23 (Short pause in  
24 proceedings.)

1           THE HEARING OFFICER: We are back on  
2           the record.

3           MR. DeBRUYNE: I don't have any more  
4           questions.

5           MR. KAPLAN: Nor do I.

6           MS. RYAN: I have a few questions.

7                         REDIRECT EXAMINATION

8         BY MS. RYAN:

9           Q.     Karre, how did you determine that  
10           the landscape material on the site was waste  
11           and not garden mulch?

12          A.     The way the trees were just laying  
13           there. They are just -- the way they were  
14           positioned. They were not processed. They  
15           were just laid there just to rot.

16          Q.     Were the trees usable in their  
17           current form as garden mulch?

18          A.     No.

19          Q.     Was there any evidence of any  
20           processing either prior to your inspection or  
21           during your inspection?

22          A.     None whatsoever.

23          Q.     Do you know how long those trees had  
24           been there in that position?

1           A.    By the way it looks, probably two to  
2   three years.

3           Q.    And what do you base that on?

4           A.    Just knowledge of my degree of how  
5   plants have a tendency to decay.

6           Q.    So did you observe evidence of decay  
7   in the trees?

8           A.    Somewhat on the base of the mounds  
9   of landscape debris.

10          Q.    And you had mentioned your previous  
11   inspection from July.  Were those same trees  
12   there at that time?

13          A.    Yes.

14          Q.    And had the position or condition of  
15   the trees changed between the July and  
16   October inspections?

17          A.    No.

18          Q.    When you were provided the receipts  
19   that you mentioned earlier from Mr. Matteson,  
20   what did you ask him for?

21          A.    I needed to see proof of some kind  
22   of disposal.  And apparently he sent me  
23   receipts that allegedly look like these trees  
24   were being brought off-site onto the



1 premises.

2 Q. So you were asking for receipts  
3 indicating that the trees had been removed  
4 from the quarry?

5 A. No. I was seeing what kind of --  
6 kind of volume he was bringing in on the  
7 premises.

8 Q. So you asked him for information as  
9 to what material was coming onto the  
10 property?

11 A. Yes.

12 Q. And this is what he sent you in  
13 response?

14 A. Yes.

15 MS. RYAN: Thank you. That is all I  
16 have.

17 THE HEARING OFFICER: Respondent's  
18 recross?

19 MR. DeBRUYNE: No recross.

20 MR. KAPLAN: No.

21 THE HEARING OFFICER: All right.

22 You may step down, Karre, thank you, or  
23 step aside.

24 Anything further, Ms. Ryan?

1 MS. RYAN: Not at this time. Thank  
2 you.

3 THE HEARING OFFICER: Okay. The  
4 complainant rests the case-in-chief.

5 Respondents?

6 MR. DeBRUYNE: Yes. We call Ron  
7 Foss, F-O-S-S.

8 THE HEARING OFFICER: Mr. Foss,  
9 please raise your right hand.

10 (Witness duly sworn.)

11 MR. DeBRUYNE: If Mr. Jacobsen has  
12 completed his testimony for the day, he  
13 can remain in the room, otherwise I ask  
14 that he leave.

15 MS. RYAN: Actually, Karre, please  
16 go back outside or back to your office.

17 RONALD FOSS,  
18 called as a witness herein on behalf of the  
19 Respondent, having been first duly sworn, was  
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DeBRUYNE:

23 Q. Would you state your name, please?

24 A. Ron Foss.

1           Q.    Okay.  And do you have a business in  
2   this area?

3           A.    Two businesses, Foss Landscapes and  
4   Outdoor Living and Garden Center.

5           Q.    All right.  And what is -- how long  
6   has Foss Landscapes been in business?

7           A.    Ten, 12 years.

8           Q.    Okay.  And what does it do?

9           A.    We do state and federal work,  
10   residential, commercial landscaping and  
11   construction.

12          Q.    And when you say landscape  
13   construction, can you be a little bit more  
14   specific as to what type of materials you are  
15   working with?

16          A.    We work with brick pavers, retaining  
17   walls, trees, shrubs, mulch, seed, sod to if  
18   you were to buy a new home and there is no  
19   yard, we can install that.  Or we also do  
20   work for the DOT where we seed ditches and  
21   erosion control and stuff like that.

22          Q.    All right.  How many employees do  
23   you have?

24          A.    I have got about three full-time and

1       probably 15 seasonal.

2           Q.    Are you licensed by the State of  
3       Illinois?

4           A.    Yes, we are certified by the State.

5           Q.    And certified is what?  What is it?

6           A.    You have to be certified to do state  
7       and federal work and some municipal projects  
8       and stuff like that.

9           Q.    All right.  Okay.  Now, you also  
10       mentioned you have a retail shop?

11          A.    Yes.  It is a retail garden center  
12       on North Second Street.

13          Q.    Okay.  And what are some of the  
14       products that that outlet sells?

15          A.    Evergreens, trees, shrubs,  
16       perennials, mulch, top soils, paver brick.

17          Q.    And are you involved in both  
18       businesses?

19          A.    Yes, uh-huh.

20          Q.    And what is your relationship, if  
21       any, to Northern Illinois Service Company,  
22       the respondent here?

23          A.    I worked for them back in the late  
24       '80s, early '90s for two or three years.

1           Q.   And do either of your businesses now  
2   have any current relationship with Northern  
3   Illinois Service?

4           A.   Yeah.  The retail center doesn't,  
5   but the landscaping end of it, we will buy --  
6   Northern Illinois Service has quarries.  We  
7   buy aggregates from them, road stone, hag  
8   lime, stuff like that.  And we also do  
9   landscaping projects for them.

10          Q.   Okay.  Have you had an occasion to  
11   visit the Northern Illinois Service Company  
12   site right off of 251 near Rockton Road or  
13   perhaps on Rockton Road known as the Roscoe  
14   Quarry?

15          A.   Yes.

16          Q.   When was the last time you were  
17   there?

18          A.   I was there Monday.

19          Q.   And have you been there -- do you  
20   get up there frequently?

21          A.   Well, he just had us do a project in  
22   front of his pit there.  The entrance into  
23   the pit we did a bunch of work there last  
24   week.

1           Q.   Did you go up to that site in the  
2   year 2004 at all?

3           A.   Yeah.

4           Q.   Okay.  And last year were you up  
5   there?

6           A.   Uh-huh.

7           Q.   With respect to uprooted trees or  
8   dead trees or trees that aren't still  
9   growing, what did you observe on any of these  
10   occasions?

11          A.   He had some trees piled up.  It  
12   looked like they had been knocked over, piled  
13   up.

14          Q.   Okay.  Do you have any knowledge  
15   from your experience as to what use can be  
16   made of these trees, if any?

17          A.   Yeah.  They can be ground up into  
18   mulch.

19          Q.   Okay.  And what is the purpose of  
20   mulch?

21          A.   Well, everybody sees it.  It is  
22   mulch you put around your trees and shrubs.  
23   You know, it keeps the weeds down.  It holds  
24   moisture in when you water, it rains.  It

1 puts nitrogen back into the soil. It's used  
2 more as decorative around the mulch and  
3 trees, shrubs, things like that, flower beds.

4 Q. And have you ever purchased mulch in  
5 your business?

6 A. Oh, yeah. Both businesses.

7 Q. In both businesses?

8 A. Uh-huh.

9 Q. Have you ever manufactured mulch?

10 A. Yeah, uh-huh.

11 Q. And when you have manufactured it,  
12 then have you gone on to sell it?

13 A. Yeah. I just hire -- Rockford  
14 Blacktop does it for me. We have like ten  
15 acres of trees. And as we cleared them, pile  
16 them up and they come in with their tub  
17 grinder, charge about 3, 400 bucks an hour  
18 and they grind it all up. And we leave it  
19 sit for 30 days and use it either on our jobs  
20 or at the garden center, either one, resell  
21 it.

22 Q. Obviously, you observed the  
23 condition of the trees which you had Rockford  
24 Blacktop grind up into mulch?

1           A.    Uh-huh.

2           Q.    And you observed the trees up at  
3   Northern Illinois Service Company?

4           A.    Same thing.

5           Q.    Same thing?

6           A.    Yeah, same thing.  You have to knock  
7   a little more of the dirt off the roots.  You  
8   don't want to run a lot of dirt through that  
9   grinder.  But that is about it.

10          Q.    I want to show you some exhibits.  I  
11   want to show you what I marked as  
12   Respondent's Exhibits 1 through 3 and ask you  
13   -- let's go one by one.

14                Could you identify, first, what  
15   Respondent's Exhibit 1 is?

16          A.    It is a receipt to my Outdoor Living  
17   landscaping business from Forest Pallet for  
18   24 yards of brown mulch.

19          Q.    Okay.  And this is a purchase by  
20   your retail outlet?

21          A.    Yes.

22          Q.    And it says double ground mulch, and  
23   it says \$12.50.  It says quantity 80.  What  
24   is that, 80 what?



1           A.    That is 80 cubic yards of double  
2   ground mulch.

3           Q.    So it is \$12.50 per cubic yard?

4           A.    Yes, it is.

5           Q.    Okay.  And is this -- to the best of  
6   your knowledge, is this the market price for  
7   this type of mulch?

8           A.    Yes.

9           Q.    And is this typical of the prices  
10   that you would pay at your retail outlet for  
11   it?

12          A.    Yes.

13          Q.    Okay.  Please look at Respondent's  
14   Exhibit 2 and identify what that is?

15          A.    Which -- you have got these --

16          Q.    Respondent's Exhibit 2?

17          A.    The red mulch?

18          Q.    That's correct.

19          A.    Yeah.  That is the paid invoice from  
20   Outdoor Living.  That is for some red mulch  
21   that we purchased.

22          Q.    And this is -- this is dated  
23   April 14th.  This is earlier this week,  
24   right?

1           A.    Must be, yeah, Monday, the 14th.

2           Q.    Okay.  Now, this is \$14 a cubic  
3   yard; is that correct?

4           A.    Yes.

5           Q.    And why is it 14 and not 12?

6           A.    They consider this a designer mulch.  
7   This actually is ground up pallets.  It has a  
8   die injected into it.  And then we -- it is  
9   sold as a designer mulch.  Red mulch, brown  
10   mulch, gold mulch, they make several  
11   different colors.

12          Q.    And then take a look at Respondent's  
13   Exhibit 3.  And please identify what that is.

14          A.    It is 24 yards of brown mulch,  
15   correct?  You have got mine marked a little  
16   different from yours.

17          Q.    You say mine is marked different  
18   from yours?

19          A.    You have R-1 at the bottom of this  
20   one (indicating).

21          Q.    I am sorry.  Maybe I got my exhibits  
22   mixed up.  The first one you were testifying  
23   to was R?

24          A.    R-3.

1 Q. R-3. Sorry.

2 So this again is what your retail  
3 outlet paid for this?

4 A. Yes. Yeah. We paid 14 a yard for  
5 that.

6 Q. 14 a yard. Now, with respect to the  
7 sale price from your retail outlet to the  
8 general public, what would they pay for brown  
9 mulch or regular mulch, let's say?

10 A. Regular mulch, the standard double  
11 processed hardwood mulch is 21.95 a yard I  
12 think.

13 Q. Okay. And is there a different  
14 price for the colored mulch?

15 A. Yes. That is more expensive. That  
16 is like 28.95 a yard.

17 Q. And is that the price you commonly  
18 receive for that mulch?

19 A. Yes.

20 Q. Now, when you manufactured your  
21 mulch, what process did you have to go  
22 through, mechanical process, to turn the  
23 trees into the mulch?

24 A. There is a piece of heavy equipment.

1     It is -- there is several different kinds.  
2     This particular one is a tub grinder, and it  
3     acts like a big pencil sharper basically.  
4     This big tub spins around and they have a big  
5     claw that comes down and reach into a pile of  
6     trees, pick it up, put it in this tub and  
7     kind of shove it right down through there.

8           Q.    Okay.  What was the cost for you to  
9     use that?

10          A.    I hired -- I didn't use it.  I hired  
11     them to do it.  And it was between 3 and 400  
12     bucks an hour.  I know that.  I don't  
13     remember the exact cost.

14          Q.    All right.  And did you find that  
15     even paying that, you could make money by  
16     paying that cost and manufacturing your own  
17     mulch?

18          A.    Yes.  It was like half the cost of  
19     what I would normally pay the 12.50.

20                MR. DeBRUYNE:  Okay.  At this time I  
21     would offer into evidence Respondent's  
22     Exhibits 1 through 3.

23                MS. RYAN:  No objection.

24                THE HEARING OFFICER:  So admitted.

1                   (Whereupon documents  
2                   so offered were  
3                   received in evidence  
4                   as Respondent's  
5                   Exhibit Nos. 1  
6                   through 3.)

7                   MR. DeBRUYNE: Nothing further.

8                   THE HEARING OFFICER: Thank you.

9                   Ms. Ryan?

10                  MS. RYAN: I don't have anything.

11                  Thanks.

12                  THE WITNESS: Can I go?

13                  THE HEARING OFFICER: Sure you may.

14                  You are finished. Thank you, Mr. Foss.

15                  I appreciate it.

16                  MR. DeBRUYNE: Next witness will be

17                  Wayne Klinger.

18                  THE HEARING OFFICER: Please raise

19                  your right hand and Cheryl will swear

20                  you in.

21                               (Witness duly sworn.)

22

23

24

1                   WAYNE KLINGER,  
2     called as a witness herein on behalf of the  
3     Respondent, having been first duly sworn, was  
4     examined and testified as follows:

5                   DIRECT EXAMINATION

6     BY MR. DEBRUYNE:

7           Q.     Would you state your name, please?

8           A.     My name is Wayne Klinger.

9           Q.     Okay. And are you the president of  
10    Northern Illinois Service Company?

11          A.     Yes.

12                THE HEARING OFFICER: I am sorry,  
13    can you spell your last name, please?

14                THE WITNESS: K-L-I-N-G-E-R.

15                THE HEARING OFFICER: Thank you.

16    BY MR. DeBRUYNE:

17          Q.     Okay. Wayne, we have had testimony  
18    that there is -- the location involved in  
19    this case is off of 251 near Rockton Road  
20    called the Roscoe Quarry. Is that the site  
21    that you own?

22          A.     Yes.

23          Q.     And when I say you, that is Northern  
24    Illinois Service Company, right?

1           A.    I think Demrix owns it.

2           Q.    Okay.  Is that a company that you  
3 own?

4           A.    Yeah, same thing.

5           Q.    Okay.  And when did you buy that  
6 property?

7           A.    Ten years ago.  Ten years and maybe  
8 two months ago.

9           Q.    All right.  And what is the nature  
10 of the business of Northern Illinois Service  
11 Company?

12          A.    Basically, an excavating contractor  
13 and a demolition contractor.

14          Q.    Okay.  And in the course of your  
15 work, have you used fill from that Roscoe  
16 Quarry on your jobs?

17          A.    Some, yeah, some.

18          Q.    And when I say fill, is that sand,  
19 basically?

20          A.    Bank run sand.

21          Q.    Okay.  And --

22          A.    That means we dig in the bank and  
23 haul it out.  We don't screen or crush it.  
24 We dig in the bank, put it in the truck and

1       haul it. That is called bank run.

2           Q. All right. When you do your jobs,  
3       you -- I take it you dig up dirt and other  
4       material?

5           A. Yes.

6           Q. And have you had occasion then to  
7       take that dirt and other material back to  
8       this Roscoe Quarry site?

9           A. Yes.

10          Q. Okay.

11          A. Yes, we do.

12          Q. Now, it is correct that right now  
13       and when you bought the property, there have  
14       been live growing trees on this property?

15          A. Yeah. There is live growing trees.  
16       And there also was a pile of old trees back  
17       there, pile of old trees I inherited.

18          Q. Okay. So when you first bought the  
19       property, there were trees on the property?

20          A. Yeah, live trees and stacked up  
21       trees.

22          Q. Okay. And in the course of  
23       excavating for the fill, have you been taking  
24       trees down?



1           A.    Yes.

2           Q.    Okay.  Now, in your business when  
3   you are excavating, do you have occasion in  
4   doing your digging work to uproot live trees?

5           A.    Yes.

6           Q.    And on occasions do you have the  
7   opportunity or does it -- does it happen that  
8   there are a number of trees that are  
9   uprooted?

10          A.    Sometimes a whole pile of them, a  
11   large, large amount of them.

12          Q.    All right.  In this case an issue is  
13   the -- where -- the source of the trees, not  
14   the growing trees, but the trees that are  
15   lying down, the dead trees on the lot.  And  
16   in this case the complaint was filed, the  
17   record will show the complaint was filed in  
18   December of 2004 and the inspector was there  
19   in July and he was there again in October of  
20   '04.

21                Now, at that time do you have in  
22   your mind the source of the trees that were  
23   on the lot, that is were they from -- were  
24   they from the property itself or were they

1 from off-site?

2 A. Okay. Some was there from day one.  
3 I inherited them.

4 Q. Right.

5 A. Some came from my own property,  
6 okay, from right -- when I clean up the dump  
7 and I haul the trees back there. And, third,  
8 the stragglers -- what I call stragglers.  
9 Let's say I am excavating a job and there is  
10 one tree, I don't have time to call anybody.  
11 Usually, if they try to save a tree, they  
12 can't, I take it up and dump it up there.  
13 That has been going on from day one, the  
14 straggler has been going up there.

15 Q. Okay. So the straggler is  
16 S-T-R-A-G-G-L-E-R, a straggler tree. So I am  
17 viewing a guy marching along in a column of  
18 Army men and he falls behind, he can't keep  
19 up.

20 A. That's a straggler.

21 Q. Yeah. That is the straggler. So if  
22 I have got this little picture in my mind,  
23 the whole column of Army men of trees, what  
24 happens to that whole column that you uproot,

1     what do you do with those?

2           A.    I don't do it.  I hire them people  
3     there.  I hire a guy out of Chicago and  
4     Flying W -- what is the name of the guy out  
5     of Chicago?  I can't think of his name right  
6     now.  Look in the invoice, tell me what his  
7     name is.

8           Q.    Well, I want to --

9           A.    He is good.  He is good.

10          Q.    Okay.

11          A.    He is good at it.

12          Q.    But you -- I have -- and I want to  
13     -- I am going to show you these.  I am not  
14     going to introduce them into evidence.  But  
15     just -- I am showing you some documents you  
16     showed me this morning.  And just describe  
17     what that pile of documents is.

18          A.    Okay.  Trees to me, I am not  
19     efficient doing that.  I don't want to do it.  
20     It is a pain in the -- I can't say the word.  
21     It is a pain, so I don't do it.  I hire  
22     Flying W to do it.  And there was another  
23     company.  Try-State, Tri-City -- yeah, A-1  
24     Tree Service, Midwest.  Midwest is the big

1       one. We hire A-1 Tree Service, they come and  
2       take my trees out.

3           Q.    When you say they take your trees  
4       out, you mean on the jobs that Northern  
5       Illinois Service is hired to do as an  
6       excavator, when you uproot the Army of  
7       trees --

8           A.    I don't even uproot them, they come  
9       and take them.

10          Q.    When they take them, where do they  
11       put them?

12          A.    They grind them up and put them in  
13       the truck and away they go.

14          Q.    Do they put them in the Roscoe  
15       Quarry?

16          A.    No, no, no, can't do that.

17          Q.    So if I understand you, the trees  
18       that -- the only trees that you put in in the  
19       quarry premises are the stragglers?

20          A.    Stragglers, yes.

21          Q.    And what is the reason why you would  
22       take a straggler up there and not use one of  
23       these services?

24          A.    I got to get it done right now and

1       they can't come out for one tree.

2           Q.    Okay.

3           A.    But here, I want to add one thing.

4       Down there, they just opened a place up on

5       Route 72.  Now, the stragglers don't go up

6       there anymore.  I take them down to 72 and

7       64.  A guy down there takes the trees now.

8       The stragglers don't go there anymore.  He

9       opened about two, three years ago.

10          Q.    Okay.  We had some documents here

11       before.  Are those still available?

12               MS. RYAN:  I have to go back and get

13       them.  Karre took them with him.

14               THE HEARING OFFICER:  We can go off

15       the record.

16                               (Short pause in

17                               proceedings.)

18               THE HEARING OFFICER:  Back on

19       record.

20       BY MR. DeBRUYNE:

21          Q.    Mr. Klinger, I want to show you some

22       documents that were testified to earlier by a

23       witness in this case.  And can you tell me

24       what type of transaction these -- first of

1 all, what these documents are and what kind  
2 of a transaction do they relate to?

3 A. Real simple, like this Midwest. He  
4 is a good guy. He comes, cut a whole bunch  
5 of trees out. Let me see where he took them  
6 out at. Some place, yes, he come and took  
7 the trees for ten grand. I paid him \$10,000  
8 to take the trees out, grind the stumps up so  
9 we can go to work.

10 Q. What I want you to do is look at all  
11 these documents and tell me whether any of  
12 these trees that are -- that these documents  
13 relate to, whether any of those trees ended  
14 up in the Roscoe Quarry?

15 A. No.

16 Q. Take a look through each one.

17 A. I will look through each one to make  
18 everybody happy. I will look through each  
19 one. No. No. This Flying W, he is real  
20 good at it. He got trees up in the wire. He  
21 is good at that, is he good at that. Whoo.  
22 Some of these a little bit, they come up like  
23 on a bad tree, he is 325 here, 825 there, 950  
24 there, 425, 450, 2,200. Amcor Bank, North

1 Main.

2 No, I paid out. I wrote checks. I  
3 got cashier's checks to show everybody.

4 Q. Those would relate to -- as we  
5 talked about the straggler, that is the Army  
6 of trees --

7 A. Yeah.

8 Q. -- they didn't end up in the quarry?

9 A. Right. Here is a signed check if  
10 they want to see where I signed it  
11 (indicating).

12 Q. Now, did there come a time in the  
13 year 2004 where you applied to the EPA for an  
14 open burning permit?

15 A. Yeah, a burner.

16 Q. A burner?

17 A. A burner, a pressure burner.

18 Q. Okay. And do you remember when you  
19 did that?

20 A. Yeah, September of '04.

21 Q. Okay. And I want to show you what  
22 has been marked as Respondent's Exhibit No. 4  
23 and ask if you can identify this document?

24 A. That is a permit.

1 Q. All right.

2 A. I placed a permit.

3 Q. From the IEPA?

4 A. Yeah.

5 Q. Now, you have -- and you have had  
6 occasion then to burn some of these trees  
7 with that?

8 A. Yes, yes, I have.

9 Q. Okay. Do you have any knowledge of,  
10 if you had to, a percentage of the trees that  
11 we are looking at up there let's say in  
12 October of '04, the dead trees, how many are  
13 from your site and how many stragglers?

14 A. There was probably at least 20 to  
15 25 percent I inherited, okay. Probably  
16 another 50 percent when I came to the site,  
17 40, 50 percent. And the rest were  
18 stragglers. There was a big pile when I  
19 inherited the place, when I bought it.

20 MR. DeBRUYNE: I would move for the  
21 introduction of Respondent's Exhibit 4.

22 MS. RYAN: I have to object to  
23 Exhibit 4 in that it postdates the  
24 inspection that is the subject of the



1       Administrative Citation. So it is not  
2       really relevant to the violations that  
3       occurred on that day.

4               THE HEARING OFFICER: I don't have a  
5       copy.

6               MS. RYAN: I am sorry.

7                               (Document tendered.)

8               MR. DeBRUYNE: If I may respond,  
9       your Honor?

10              THE HEARING OFFICER: Sure, you may.

11              MR. DeBRUYNE: I believe it is  
12       relevant in that the complainant in this  
13       case is simultaneously saying that the  
14       trees are in some way waste and litter  
15       and permitting the respondent to burn  
16       the trees. The application process  
17       commences in September of '04, and it  
18       reaches completion in December of '04.  
19       And the -- while this is going on, the  
20       investigation commences and the  
21       complaint is filed in November '04. So  
22       I think it is very relevant certainly as  
23       to time and certainly as to culpability  
24       in this case as to whether we are really

1       creating any type of environmental  
2       hazard.

3               MS. RYAN: May I respond further?

4               THE HEARING OFFICER: Yes, you may.

5               MS. RYAN: I think further that the  
6       fact that a permit may have been granted  
7       following the inspection that is the  
8       subject of this Administrative Citation  
9       is relative only to the violation of  
10      operating without a permit, which is not  
11      being alleged in this case.

12              And given that it is an open  
13      burning permit and open burning is not  
14      being alleged in this case, it is again  
15      three times irrelevant.

16              THE HEARING OFFICER: You know, I am  
17      going to allow it and I am sure the  
18      Board will weigh it accordingly. Thank  
19      you.

20              Exhibit 4 is admitted over  
21      objection.

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1 (Whereupon document  
2 so offered was  
3 received in evidence  
4 as Respondent  
5 Exhibit No. 4.)

6 MR. DeBRUYNE: I have no further  
7 questions.

8 THE HEARING OFFICER: Thank you.

9 Ms. Ryan, cross?

10 MS. RYAN: I don't have any  
11 questions. Thank you.

12 THE HEARING OFFICER: You may step  
13 down, sir.

14 THE WITNESS: Thank you.

15 THE HEARING OFFICER: Thank you very  
16 much.

17 MR. DeBRUYNE: I have nothing  
18 further. No further witnesses.

19 THE HEARING OFFICER: So you rest.

20 MR. DeBRUYNE: We rest.

21 THE HEARING OFFICER: Ms. Ryan, any  
22 rebuttal?

23 MS. RYAN: No rebuttal. Thank you.

24 THE HEARING OFFICER: Let's go off

1 the record.

2 (Discussion had off  
3 the record.)

4 THE HEARING OFFICER: We are back on  
5 the record. And before I forget, I want  
6 to make a credibility determination.  
7 And based on my experience, knowledge  
8 and observations, I find that there are  
9 no credibility issues with any of the  
10 witnesses that testified here today.

11 The parties have represented  
12 that they wish to reserve their closing  
13 argument for the post-hearing brief.

14 And we also discussed off  
15 record a post-hearing briefing schedule.  
16 We surmise that the transcript will be  
17 available on or before May 2nd. The  
18 IEPA -- the complainant's opening brief  
19 is due May 23rd. Respondent's brief is  
20 due June 12th. And the complainant's  
21 reply, if any, is due June 27th. I set  
22 May 10th, 2006, for public comment.

23 With that said, any other  
24 issues, questions?

1 MS. RYAN: No thank you.

2 MR. DeBRUYNE: No thank you.

3 THE HEARING OFFICER: Thank you very  
4 much, Counselors. Have a nice day.

5 (Proceedings concluded.)

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1     STATE OF ILLINOIS     )  
                                      )   SS:  
2     COUNTY OF LAKE        )

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4                   I, Cheryl L. Sandeck, a Notary Public  
5     within and for the County of Lake and State of  
6     Illinois, and a Certified Shorthand Reporter of the  
7     State of Illinois, do hereby certify that I reported  
8     in shorthand the proceedings had at the taking of  
9     said hearing and that the foregoing is a true,  
10    complete, and correct transcript of my shorthand  
11    notes so taken as aforesaid, and contains all the  
12    proceedings given at said hearing.

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                  Notary Public, Cook County, Illinois  
                  C.S.R. License No. 084-03710

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