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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Complainant,)
vs.) Case No. AC 06-49
MICHAEL GRUEN and JON ERIC)
GRUEN, d/b/a JON'S TREE)
SERVICE,)
Respondents.)

Proceedings held on March 14, 2007, at 9:10 a.m., at the
Carlinville City Hall Council Chambers, 550 North Broad
Street, Carlinville, Illinois, before Carol Webb, Hearing
Officer.

Reported By: Karen Waugh, CSR, RPR
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PROCEEDINGS

(March 14, 2007; 9:10 a.m.)

HEARING OFFICER WEBB: Good morning. My name is Carol Webb. I'm a hearing officer with the Pollution Control Board. This is AC 06-49, IEPA versus Michael Gruen and Jon Gruen doing business as Jon's Tree Service. It is March 14, 2007. We are beginning at approximately 9 a.m.

I will note for the record that we have a couple people here from the EPA and a couple people here for the Respondent. We don't appear to have any members of the public present, although members of the public are allowed to provide public comment if they so choose.

At issue in this case is the EPA's allegation that Respondent violated Section 21(p)(1) of the Environmental Protection Act at a site in Mt. Olive, Macoupin County. You should know that it is the Pollution Control Board and not me that will make the final decision in this case. My purpose is to conduct the hearing in a neutral and orderly manner so that we have a clear record of the proceedings. I will also assess the credibility of any witnesses on the record at the end of the hearing.

This hearing was noticed pursuant to the Act and

1 the Board's rules and will be conducted pursuant to
2 Sections 101.600 through 101.632 of the Board's
3 procedural rules. At this time I'd like to ask the
4 parties to please make their appearances on the record.

5 MS. RYAN: Michelle Ryan, Special Assistant
6 Attorney General for the Illinois EPA. I have my formal
7 written appearance here. The original's on the top and
8 there are ten copies on the bottom.

9 HEARING OFFICER WEBB: Okay. Thank you.

10 MR. HAMILTON: I'm Phil Hamilton. I'm here
11 for the Respondents, Michael Gruen and Jon Gruen.

12 HEARING OFFICER WEBB: Thank you. Ms. Ryan,
13 would you like to make an opening statement?

14 MS. RYAN: Yes. We believe the evidence
15 today will show that on April 20, 2006, open dumping
16 resulting in litter occurred at the property known as
17 Mt. Olive Gruen in Macoupin County, Illinois.

18 HEARING OFFICER WEBB: Thank you.
19 Mr. Hamilton, would you like to make any opening
20 statement?

21 MR. HAMILTON: Yes. Miss Webb, the issues
22 in this case are -- they seem somewhat unusual to me,
23 because Mr. Gruen's business involves cutting down trees,
24 taking the wood to this property. In most cases he takes

1 the lumber and he dries it out; he lets it sit for a
2 while; he splits the lumber; he processes this lumber; he
3 processes the bark; he processes everything related to
4 these trees, and that's his business.

5 Now, he's being charged with litter, okay, as
6 it's defined under the relevant statute, but it's not
7 litter in any sense. It might be landscaping waste,
8 okay, but it's not litter as that term is defined in the
9 statute or in any of the regulations because he uses this
10 material. It doesn't sit there indefinitely. He hasn't
11 cut down trees with the intent to just leave that stuff
12 there forever, and that seems to be the main issue. And
13 this is basically a case that involves a fine of \$1500,
14 but the import of this is it's going to put the guy out
15 of business. There's no reason why he shouldn't be able
16 to cut down these trees, take them to his property, cut
17 the trees down, split the trees, let the wood dry. He
18 sells the wood as firewood. Anything that remains is
19 usually put into a chipper, and that has a use as well.
20 There might be a little bit of branches and stuff like
21 that that he eventually puts into these burn barrels and
22 he burns, but he's not being charged with air pollution
23 that I can tell and they're not saying there's anything
24 wrong with the drums, so that doesn't seem to be an

1 issue. I mean, there's going to be a little bit of stuff
2 that is eventually waste, but he gets rid of it. It's
3 not just going to be left there forever. So that seems
4 to be one category.

5 The second category seems to be this issue about
6 the vehicles that are on the property. Well, the
7 testimony that he's going to provide today is that every
8 single one of these vehicles is used in his business. In
9 some cases they need repairs, but in most cases they need
10 minor repairs, but they don't meet the definition of an
11 abandoned vehicle under the statute. An abandoned
12 vehicle under the statute is basically one that's
13 deserted and it's just going to stay there, it's never
14 going to be moved, but the evidence is going to show that
15 these vehicles are used in his business and that they're
16 not just junk that's going to sit there forever.

17 And then the last category, although I'm not 100
18 percent sure if this is an issue in the case, has to do
19 with some what I would call scrap metal. Well, he does
20 accumulate some scrap metal, and after a while, once he
21 accumulates enough of it, he takes it to someplace and he
22 gets money for the scrap metal. It doesn't sit there
23 indefinitely. So I think that the theory of the case
24 that's advanced by the EPA is a problem here. This is

1 not a dump. He doesn't need a permit to do what he's
2 doing, and the import of this is -- I know it's a \$1500
3 case, but we're going -- they're going to be coming
4 around and they're going to say, "Now you've got another
5 violation, now it's \$2500," or whatever the fine's going
6 to be. They're trying to put the guy out of business,
7 and that's why we're here.

8 HEARING OFFICER WEBB: Thank you. Are there
9 any preliminary matters to discuss on the record before
10 we --

11 MS. RYAN: No.

12 HEARING OFFICER WEBB: -- call our first
13 witness? Okay. Ms. Ryan, you may present your case.

14 MS. RYAN: We call Jan Mier.

15 HEARING OFFICER WEBB: Would the court
16 reporter please swear in the witness?

17 (Witness sworn.)

18 JAN MIER, produced, sworn and examined on behalf
19 of the Illinois EPA, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. RYAN:

22 Q. Please state your name and spell your last
23 name.

24 A. Jan Mier, M-I-E-R.

1 Q. What job do you hold?

2 A. I'm an environmental protection specialist
3 with the EPA of Illinois.

4 Q. And what type of work do you do as an
5 environmental protection specialist?

6 A. I'm an inspector and I conduct complaint
7 investigations and inspections with the regulated
8 community.

9 Q. How many years have you been a field
10 inspector for the Illinois EPA?

11 A. About eight to nine years.

12 Q. Can you estimate the number of inspections
13 you've conducted over those eight or nine years?

14 A. 1540.

15 Q. What's your educational background?

16 A. I have a bachelor's degree in biology.

17 Q. And have you had any additional training
18 beyond the bachelor's degree?

19 A. We have seminars and workshops in order to
20 keep us up to date on our work.

21 Q. When you say we, you're referring to the
22 Illinois EPA?

23 A. Yes.

24 Q. Are you familiar with the facility named in

1 this case as the Mt. Olive Gruen property?

2 A. Yes, I am.

3 Q. Where is that property located?

4 A. It's located at the conjunction of Route 66
5 and Old Route 66 south of Mt. Olive.

6 Q. What county is that?

7 A. In Macoupin.

8 Q. In April of 2006, who owned that piece of
9 property?

10 A. Michael Gruen.

11 Q. And at that time, who operated that piece of
12 property?

13 A. Jon Gruen.

14 Q. How many inspections have you conducted at
15 the Mt. Olive Gruen property?

16 A. Five.

17 Q. I'm showing you what I've identified as
18 Exhibit 1. Can you tell me if you recognize that
19 document?

20 A. Yes, I do.

21 Q. What is it?

22 A. It's an inspection that I conducted on April
23 20 of '06. It has a checklist, a narrative and the
24 photos from the inspection.

1 Q. Can you look through all the pages of that
2 for me really quickly, or slowly?

3 A. Uh-huh.

4 Q. Is this a fair, accurate and complete copy
5 of your checklist, narrative and the photographs that you
6 took during this inspection?

7 A. Yes, it is.

8 Q. Can you describe this property in general?

9 A. It has an abandoned hotel on it. I would
10 say it's a few acres, and basically, with the hotel,
11 there's another mobile home there on site and then the
12 wood that is on the property, as well as the other
13 vehicles and other waste.

14 Q. When you refer to wood, are you talking
15 about cut wood or growing wood?

16 A. Cut.

17 Q. Is there any growing vegetation on the
18 property?

19 A. Yes. There's saplings, tree saplings and
20 some larger trees.

21 Q. And is this -- would you consider this a
22 wooded area, then, or is it just --

23 A. Not really. I mean, it has some trees on
24 it.

1 Q. Who took the photographs that are attached
2 to this exhibit?

3 A. I did.

4 Q. And what did they show, if you want to start
5 with Exhibit -- or photo number 1?

6 A. Photo 1 is along the west side of the fence
7 that is approximately 250 feet long, and you can see the
8 wood that has been stacked along the bottom of the fence
9 inside the property there. Photo 2 is looking west, and
10 that's the entrance to the property, the drive with the
11 wood stacked along the driveway. The drive is
12 approximately, I don't know, 100 feet long.

13 Q. So if I could stop you really quickly --

14 A. Sure.

15 Q. -- the wood observed in photograph number 1
16 is not the same wood as observed in photograph 2; is that
17 correct?

18 A. That's correct. And photo 3 is the
19 right-hand side of the entrance to the driveway, and it
20 shows some cut logs, some lumber that has, it looks like,
21 deteriorated, and also some wood chips. Photo 4 is again
22 the right side of the driveway with the wood, and it has
23 some tree saplings growing through the wood.

24 Q. Do you have any estimate of how long those

1 saplings have been growing there?

2 A. I would say a couple of years. Photo 5 is
3 just past the entrance gate, and it shows some new
4 branches that were on site from my previous visits. It
5 has pine branches and it has a blue garbage can. There's
6 some, it looks like, equipment from the tree trimming
7 business. There's a white truck that's used in the tree
8 trimming business, and then on the left -- right-hand
9 side there's the mobile home and the hotel. Photo 6
10 shows the drums along the east side of the property, and
11 then there's the vehicles, it looks like tarps, garbage
12 cans and the mobile home, and then the end part of the
13 pine branch pile.

14 Q. On photograph number 6 there appears to be
15 some material on the ground, some white and maybe blue
16 and red material. Can you determine what that --

17 A. It looks like containers. I don't know
18 the -- what -- Red container could be gasoline container.
19 I don't know what was in the others.

20 Q. Do you know what those containers might have
21 been made out of?

22 A. Plastic. Photo 7 shows the drums and the --
23 when I was at -- during the inspection, that drum in
24 photo 7 was smoldering, and it looked -- had ash in it.

1 Then there's a large log. There's a grill behind it with
2 some vegetation growing out of the grill and the pine
3 branch pile in the back.

4 Q. And that's the same pine branch pile there
5 as we saw in the previous photograph?

6 A. Yes. And then moving along the east side of
7 the fence, you can see a rusted metal tank there.
8 There's some garbage cans. You can see four vehicles at
9 that point, and there's a -- in the center of the photo
10 is a pile of logs that are weathered.

11 Q. Directly in front of that -- what you've
12 described as the tank, in the foreground there there's a
13 little red thing right in front of that. Can you --

14 A. Right.

15 Q. -- determine what that is?

16 A. No, I can't.

17 Q. Okay.

18 A. Heading north along the east side of the
19 property, there's another stack of cut tree branches or
20 trunks with the motel in the background, and then along
21 the north side, photo 10, there's a pile of deteriorating
22 wood, tree stumps, branches, etc., among the saplings
23 there. And then along the east side through the fence
24 there's another picture of a boat, a red vehicle and then

1 a flatbed truck. The boat has waste in it, plastic,
2 metal scraps, perhaps some wood. I can't remember. The
3 truck has some wood on it, lumber, and a tire, used tire.
4 Photo number 12 is through the fence, and it shows a
5 boat, a motorboat with material in it; it looks like a
6 tarp. There's some branches, maybe some wire. There's
7 also a yellow truck. You can see one, two, three, four
8 other vehicles on the property that are sitting amongst
9 the vegetation. Photo 12 is just going around the fence,
10 and you can see a truck bed there that's filled with
11 wood, metal and other waste, then there's also another
12 photo of the vehicles that are on site.

13 Q. Now, the truck bed you've identified in the
14 center of photograph 13, does that appear in any other
15 photographs or are those different vehicles in the other
16 photographs?

17 A. I think you can get a glimpse of it in one
18 of them. In photo 12 you can see that -- just above the
19 green boat, between the boat and the yellow truck, you
20 can see that truck bed.

21 Q. And do you have the front of the flatbed
22 truck in any of these other photos? I'm trying to get an
23 understanding of which direction we're looking.

24 A. No, I don't.

1 Q. Okay. Approximately how much waste material
2 was on site during your April 20, 2006, inspection?

3 A. Well, I put down on my inspection report
4 that there was 200 cubic yards, and I vastly
5 underestimated that. There's much more than that.

6 Q. And what do you base your opinion that you
7 underestimated that on?

8 A. Well, when I walked the fence on the west
9 side, that fence is about 250 feet long, approximately --
10 I paced it off -- and the logs go up about three feet, so
11 that's 750.

12 Q. The pacing you did, was that during your
13 April 20 inspection?

14 A. Yes.

15 Q. How much of the material that you found on
16 site there was landscape waste as opposed to other types
17 of waste?

18 A. Probably three-fourths.

19 Q. Do the photographs attached to your
20 checklist and narrative accurately depict what you saw at
21 the property on April 20, 2006?

22 A. Yes.

23 Q. When was this report generated?

24 A. About a week after I was at the site.

1 Q. Does Illinois EPA keep these documents in
2 the regular course of its business?

3 A. Yes.

4 MS. RYAN: At this time I move Exhibit 1
5 into evidence.

6 MR. HAMILTON: No objection.

7 HEARING OFFICER WEBB: Exhibit 1 is
8 admitted.

9 MS. RYAN: That's all I have at this point.

10 HEARING OFFICER WEBB: Okay. Thank you.
11 You may step down.

12 MR. HAMILTON: Am I going to cross now or --

13 MS. RYAN: He gets to cross.

14 HEARING OFFICER WEBB: Oh, I'm sorry. I'm
15 sorry. Yes, you are. Yes, you are.

16 CROSS EXAMINATION

17 BY MR. HAMILTON:

18 Q. Miss Mier, in reference to this inspection
19 report that was admitted as Exhibit 1, my understanding
20 is you were out at the property and you did your last
21 inspection on April 4, 2006; is that right?

22 A. April 20.

23 Q. Oh, is that the date?

24 A. Yes.

1 Q. The first date I saw here was April 4, but
2 it's April 20. Okay. Was that the last time you were at
3 the property?

4 A. Yes.

5 Q. And so you do not have any information as to
6 the current condition of the property; would that be
7 accurate?

8 A. Correct.

9 Q. Now, those first five photos that you
10 identified show various timber. Would you agree with
11 that characterization?

12 A. Yes, uh-huh.

13 Q. Now, if this wood is used in Mr. Gruen's
14 business, if he holds it for resale, it's not litter, is
15 it?

16 A. No. It would be a product.

17 Q. So he -- And my understanding is he's being
18 charged with the accumulation of litter, but your
19 testimony is if he uses this timber in his business, then
20 it's not litter; is that right?

21 A. Yes. It's reached a point, though, that
22 there's so much wood on site that it's starting to
23 disintegrate at the bottom of the piles and it would take
24 a long time to get rid of the amount of wood that's

1 there.

2 Q. But if he holds that wood, if he's got it
3 stored on premises to sell as firewood, if he uses it in
4 his business, it's not litter, is it? It's not discarded
5 at that point.

6 A. If it's still good for firewood, yes.

7 Q. Now, Mr. Gruen is going to testify that he
8 sells this timber as firewood. Are you disputing that
9 that's what he does with that?

10 A. No.

11 Q. Okay. Mr. Gruen is in the business of
12 cutting down trees, and what is left is cut up as timber
13 or for firewood. What are you saying that he is supposed
14 to do with this material?

15 A. Well, he can keep a handle on things without
16 letting it grow to the amount that it has grown to, and
17 he can chip it up and use it for mulch. You know, he can
18 sell it for firewood. He can take it to an Illinois EPA
19 permitted landscape waste facility and dispose of it that
20 way.

21 Q. Well, what is it about the quantity of
22 material that he has now that would require him to do
23 that?

24 A. That he has gotten so much and the wood has

1 weathered so badly that it's no longer usable for
2 firewood, some of it.

3 Q. Well, if he testifies that that -- all of
4 the timber can be used for firewood, are you disputing
5 that characterization?

6 A. Yes, I would.

7 Q. I mean, you can burn just about anything as
8 firewood, can't you?

9 A. Not when it's disintegrated and, you know,
10 it's damp, it's ridden with bugs, that type of thing.

11 Q. Do you have any personal knowledge as to how
12 long the items that you've identified as weathered
13 logs -- do you know personally how long that stuff has
14 been there?

15 A. I inspected it beginning in December of '04,
16 and that -- I don't have any knowledge before that date.

17 Q. Are you saying it's the exact same materials
18 since December 2004?

19 A. Yes.

20 Q. Without any exceptions.

21 A. Some of it. Some of it.

22 Q. Okay. Do you have any personal knowledge as
23 to what Mr. Gruen actually does with that material?

24 A. No.

1 Q. Has he ever made any statements to you as to
2 what he does with the material?

3 A. He's sent in receipts for firewood, sales of
4 firewood.

5 Q. Has he ever told you that what he does with
6 that timber is to chop it up and cut it up and sell it as
7 firewood?

8 A. Yes.

9 Q. Okay. Now, picture number 6 in your
10 report --

11 A. Okay.

12 Q. -- and I think also number 7 are these drums
13 that are used for burning. My understanding is that he
14 is not being charged with some kind of a violation
15 relating to those drums. Is that correct?

16 A. Correct.

17 Q. And is there anything that prohibits him
18 from burning the scrap in the drums or not?

19 A. Yes, there is.

20 Q. But he's not being charged with some kind of
21 an air pollution violation, is he?

22 A. Correct.

23 Q. Okay. Now, my understanding, Mr. Gruen's
24 going to testify that he uses these drums in his

1 business, the drums themselves. They are not discarded
2 and they are not abandoned. Are you going to dispute
3 that characterization?

4 A. No.

5 Q. Okay. Picture number 8 is a metal tank.

6 A. Okay.

7 Q. Do you have any personal knowledge as to
8 what his use is for that or his intended use?

9 A. No, I do not.

10 Q. Mr. Gruen is going to testify that he had --
11 he can take that tank and convert it into a wood-burning
12 stove. Are you going to dispute that characterization of
13 what he's going to do with it?

14 A. No.

15 Q. Now, there's a lot of vehicles in these
16 pictures.

17 A. Uh-huh.

18 Q. Do you have any knowledge as to what he does
19 with the vehicles?

20 A. I think some are used in the business that
21 he has for the tree trimming.

22 Q. Are there any vehicles that you believe are
23 not being used in the business?

24 A. Yes. Let's see. The small red car, I

1 wouldn't believe. The boat.

2 Q. What picture are you looking at?

3 A. In photo 11.

4 Q. The small red car and the boat? Is that it?

5 A. Well, the others are trucks, so they could
6 be used in the business. There's a van on site that I
7 don't believe would be used in the business.

8 Q. Is that it?

9 A. Uh-huh.

10 Q. Do you have any personal knowledge as to the
11 last time he used those vehicles in his business?

12 A. No. I just noted vegetation growing around
13 the vehicles.

14 Q. Do you have any knowledge as to whether or
15 not he uses the vehicles in his business or what the
16 state of repair of those vehicles is?

17 A. He's told me that he's needed to repair the
18 vehicles.

19 Q. And are you disputing that he does intend to
20 have them repaired?

21 A. No.

22 Q. Are you saying that those vehicles
23 constitute litter?

24 A. If they're inoperable and they haven't been

1 moved for some time, yes, I would.

2 Q. Okay. Well, we're going to talk about what
3 the statute defines as a vehicle that is deserted in a
4 minute, but you talked about these saplings. I would
5 characterize this area -- you said a few acres. It's
6 mostly just vacant ground except for it's got the hotel
7 and the storage building. You accept that
8 characterization?

9 A. Well, no. It has these vehicles and also
10 the timber on it.

11 Q. I'm just talking about the ground
12 generally --

13 A. Okay.

14 Q. -- okay? Now, what's the big deal with
15 these saplings growing up? I mean, this is an
16 agricultural area. There's people that have saplings
17 growing up all over the place out there.

18 A. Well, saplings can show that there has been
19 no movement of the material on site if saplings are
20 allowed to grow up in between them.

21 Q. So you think that the saplings, depending
22 how long it took for those to grow up -- remember, these
23 pictures are taken, like, in the middle of summer, aren't
24 they?

1 A. Uh-huh.

2 Q. Or maybe early spring, I guess?

3 A. In April.

4 Q. And so your observation of that is based on
5 how long you think it would take for these saplings to
6 grow.

7 A. Correct.

8 Q. Okay. Now, in looking at photos number 11,
9 12 and 13, we've got truck beds filled with wire, metal,
10 plastic, mowers and vehicle parts. Do you have any
11 knowledge as to what Mr. Gruen's use of that material is?

12 A. No.

13 Q. He's going to testify that he accumulates
14 scrap material and then he eventually takes it to
15 someplace and gets money for it. Do you disagree with
16 what his characterization --

17 A. Well, I would tend to, because it's mixed in
18 with other material that's not going to be recycled.

19 Q. Like what?

20 A. Usually if you're recycling metal, you have
21 to keep it organized.

22 Q. But you wouldn't -- wouldn't take very long
23 for somebody to sort that material. I mean, it wouldn't
24 take more than a half an hour to do that, would it?

1 A. Yeah, I think so, it would.

2 Q. Well, how long do you think it would take?

3 A. Oh, a few hours.

4 Q. But even if it was a few hours, that's not a
5 very long time to sort that metal and take it someplace
6 to have it scrapped, is it?

7 A. Well, the fact that it's been on site for
8 two years kind of makes me tend to think that it's waste.

9 Q. You're sure that all of that material that's
10 reflected in those pictures has been sitting there for
11 two years?

12 A. Not all the material, no.

13 Q. Well, what material are we talking about?

14 A. Well, the material that's in the boat and in
15 the truck beds. It seemed like most of the activity took
16 place at the entrance gates where the pine branches are
17 and where the drums are.

18 Q. Activity meaning what?

19 A. Materials going in and out.

20 Q. Okay. Now, the mobile home that's on
21 premises is used for storage. Is there something wrong
22 with the mobile home?

23 A. No.

24 Q. And then you talked about what you

1 characterized as the abandoned hotel. My understanding
2 is he uses that for storage. Is there something wrong
3 with that hotel?

4 A. No.

5 Q. So what we're down to, I think, is the
6 timber and the vehicles and some of the scrap metal; is
7 that right?

8 A. Yes.

9 Q. Okay. Now, my understanding of the statute,
10 open dump means consolidation of refuse, okay? And it
11 means items discarded or abandoned. Now, if these items
12 are used in his business, then they are not discarded or
13 abandoned, are they?

14 A. If they haven't been used in a number of
15 years, they're considered discarded.

16 Q. If he uses the items in his business -- and
17 that's what his testimony's going to be, okay, so accept
18 for purposes of this question that that's what his
19 testimony's going to be. If the items are used in his
20 business, then they are not discarded or abandoned.
21 There's no time limit on how long it's going to take him
22 to use the stuff, is it?

23 A. At some point a product can become a waste.
24 I see this in salvage yards that I inspect. If it's not

1 being turned over in a timely manner and just left to
2 sit, I consider it a waste.

3 Q. If he's going to cut up his timber and sell
4 it for firewood, then it's not waste, is it?

5 A. Some of the timber has disintegrated, so
6 that cannot be used as firewood.

7 Q. Okay. Well, define for me, then, what is
8 waste?

9 A. Waste is a material that's not being used
10 that has been abandoned.

11 Q. Okay. Now, let's look at what the statute
12 says about litter. Litter means any discarded, used or
13 unconsumed substance or waste. Again, same question. If
14 he uses this stuff in his business, then by definition
15 it's not discarded, used or unconsumed substance or
16 waste.

17 A. But he's not using it. He's let the wood
18 sit for a number of years.

19 Q. But I thought I heard you early in your
20 testimony say that you have no personal knowledge as to
21 what he really does with his timber. Did I not
22 understand you to say that?

23 A. He sent me receipts in for selling firewood.

24 Q. But other than what you've observed on the

1 property, you have no idea what he does with this timber.

2 A. No.

3 Q. I mean, your entire opinion here is based on
4 what you deem to be just -- I guess just material that is
5 starting to degrade.

6 A. Yeah. I have no problem with the new wood
7 that's on site, but it seems to have gotten out of hand
8 with the amount of wood that's on site.

9 Q. Well, in the statute there's a pretty
10 extensive definition of litter. It says that it may
11 include but is not limited to any garbage, trash, refuse,
12 debris, rubbish. I mean, if this timber's used in his
13 business, it doesn't meet that definition, does it? It's
14 not garbage, trash, refuse, debris or rubbish.

15 A. It's not being -- Some of the wood is not
16 being used in this business. Some of the wood has been
17 left to sit for years until it's starting to crumble and
18 disintegrate.

19 Q. Okay. So that would be the entire basis of
20 your opinion, is your own perception of how long the
21 stuff has been sitting there and whether or not it's
22 degrading.

23 A. And the amount of wood that's on site.

24 Q. The statute refers to some other things, and

1 I actually thought that this was kind of interesting. He
2 hasn't been charged with the improper accumulation of
3 landscaping waste. I don't find that in your report any
4 place. I don't find that in the administrative citation
5 any place.

6 A. I didn't think there was a violation of
7 landscaping waste.

8 Q. Landscape waste means all accumulations of
9 grass or shrubbery cuttings, leaves, tree limbs and other
10 materials accumulated as a result of the care of lawns,
11 shrubbery, vines and trees. Is that --

12 A. Yeah, I know what it is. I just -- There's
13 no definite violation in the Act concerning landscape
14 waste. Landscape waste is considered waste.

15 Q. But your report makes no reference to the
16 accumulation of landscape waste. Would you agree with
17 me?

18 A. No.

19 Q. I don't find one word in your report
20 characterizing this material as landscape waste.

21 A. Okay. I'll agree with that.

22 Q. Okay. Now, the statute also defines litter
23 as a number of other things which I'm kind of assuming do
24 not apply here. We've got newspaper, magazines. You

1 haven't noticed any accumulation along those lines; is
2 that right?

3 A. Right.

4 Q. The statute talks about glass, which
5 we've -- is there an issue about glass out on this
6 property?

7 A. No.

8 Q. Now, the statute talks about metal and
9 plastic, so I understand your characterization of what
10 those items are, and then it goes on to talk about paper,
11 containers or other packaging, construction material, and
12 that's not evident on the property, is it?

13 A. No.

14 Q. And then it talks about abandoned vehicle.
15 Okay. Now, I think that's important. Let's talk about
16 what an abandoned vehicle is under the statute.
17 Abandoned vehicle -- and I'm looking at the vehicle
18 code --

19 A. Is that for the regulations or from the
20 Secretary of State or --

21 Q. I'm looking at the Illinois Compiled
22 Statutes in the vehicle code. I'm looking at 625 ILCS
23 5/1-101.05.

24 A. Okay.

1 Q. Abandoned vehicle means any vehicle in a
2 state of disrepair rendering the vehicle incapable of
3 being driven in its condition or any vehicle that has not
4 been moved or used for seven consecutive days or more and
5 is apparently deserted. Do you understand that
6 definition?

7 A. Yes.

8 Q. Now, Mr. Gruen's going to testify that he
9 uses all of these vehicles in his business. Are you --
10 Do you accept that characterization or do you dispute
11 that?

12 A. I dispute the cars and vans on site. He
13 could be using the trucks if they were repaired.

14 Q. Well, in order for it to constitute an
15 abandoned vehicle, it has to say that it's apparently
16 deserted. Well, these aren't apparently deserted
17 vehicles, are they?

18 A. I don't know.

19 Q. Okay. That was what I thought the answer to
20 that question was. Now, if we read on through the
21 statute here, litter also includes anything else of an
22 unsightly or unsanitary nature which has been discarded,
23 abandoned or otherwise disposed of improperly. Are you
24 familiar with that definition?

1 A. Uh-huh.

2 Q. Now, are you saying that this timber somehow
3 fits into that category?

4 A. Yes.

5 Q. Why?

6 A. Because it is degrading down into mulch,
7 into -- it's not usable any longer.

8 Q. I mean, timber, once you take it and you cut
9 it and you split it, I mean, it doesn't look good, does
10 it? I mean, where are we going with unsightly and
11 unsanitary nature?

12 A. It can't be used if it's crumbling. If it's
13 been on site so long that it's crumbling, it cannot be
14 used.

15 Q. Can't be used by whom?

16 A. I don't know. What do you mean by whom?

17 Q. You're saying it can't be used by -- who
18 can't use it?

19 A. Anyone.

20 Q. I mean, you're expressing an opinion here.
21 What if a farmer could take some of this stuff, this wood
22 that you say is degraded, and put it into a wood-burning
23 stove? Are you saying he can't do that? Are you saying
24 that that's not possible to do that with that material?

1 A. I don't believe so. Not the degraded wood.

2 Q. And if you have timber and stuff like that
3 that's in a degraded condition, why -- it could be
4 chipped up and used for mulch or, like, wood chips or
5 something, couldn't it?

6 A. Possibly.

7 Q. Same thing with bark. That could be chipped
8 up. It could be used in the business.

9 A. We've given Mr. Gruen two years to do so and
10 he hasn't.

11 Q. What expresses the time limit? Why is it
12 he's -- there's a certain amount of time in which he has
13 to take this timber that he has and convert it into
14 something that's usable by the business?

15 A. It's my understanding that a product can
16 become a waste if it's not being used.

17 Q. Based on what? What statute? What
18 regulation? What policy of the EPA says that this
19 timber's got to be out of this property in a certain
20 amount of time? There is none.

21 MS. RYAN: Is that a question?

22 Q. That's a question.

23 A. No, there is no time limit.

24 Q. Now, he's been accused under -- I'm just

1 going to call it Section 21(a) of causing or allowing
2 open dumping. My understanding is you must have waste,
3 okay, as that term is defined, to have open dumping.

4 A. Uh-huh.

5 Q. So everything -- the whole issue here
6 depends on whether or not this material is waste or not.

7 A. Uh-huh.

8 Q. Now, he's also been charged under 21(d) of
9 operating a waste storage --

10 MS. RYAN: I'd have to object. He hasn't
11 been charged under 21(a) or (d). This is a 21(p)(1)
12 case. That's the only violation stated in the
13 administrative citation. That's the only violation
14 that's at issue in this hearing.

15 MR. HAMILTON: If they want to --

16 MS. RYAN: That's the only violation
17 charged.

18 MR. HAMILTON: -- confine that to the
19 charge, but I'm looking here at what's been marked as
20 Exhibit 1, and it says 21(a), cause or allow open
21 dumping. There's a check where it says violation.

22 MS. RYAN: I don't dispute there's a check.
23 I dispute that that's in the citation.

24 MR. HAMILTON: Okay.

1 MS. RYAN: The citation is 21(p)(1).

2 MR. HAMILTON: So are we prepared to
3 stipulate, then, that he is not being accused of a
4 violation of Section 21(a)? Are we?

5 MS. RYAN: In this matter he's only being
6 charged with 21(p)(1).

7 MR. HAMILTON: He's not being charged with a
8 violation of not having his permit for a waste disposal
9 area.

10 MS. RYAN: That's correct.

11 MR. HAMILTON: He's not being charged with
12 21(e), which is disposing, treating, storing or
13 abandoning any waste, etc.

14 MS. RYAN: Right.

15 MR. HAMILTON: He's being charged solely
16 with the accumulation of the waste under 21(p).

17 MS. RYAN: 21(p)(1), that's correct.

18 Q. (By Mr. Hamilton) And 21(p) basically says
19 that it's a violation to cause or allow the open dumping
20 of any waste in a manner which results in litter; is that
21 right?

22 A. Yes.

23 Q. And we're not talking about scavenging --
24 that's in the statute as well -- and we're not talking

1 about open burning for purposes of this proceeding.

2 A. That's correct.

3 MR. HAMILTON: Okay. I have no further
4 questions.

5 HEARING OFFICER WEBB: Thank you. Miss
6 Ryan?

7 REDIRECT EXAMINATION

8 BY MS. RYAN:

9 Q. Miss Mier, can you go back to your
10 photographs again?

11 A. Yes.

12 Q. You testified on cross examination that
13 there's material on site that is deteriorated to such an
14 extent that it wouldn't be good for firewood anymore.
15 Can you identify which photographs demonstrate those
16 types of materials?

17 A. Photo 3 and photo 10.

18 Q. If I can direct your attention to photograph
19 number 5, are those pine branches in that photograph?
20 That's the new material you saw during this inspection
21 for the first time; is that correct?

22 A. Yes.

23 Q. Is that material good for firewood?

24 A. No.

1 Q. How about mulch?

2 A. Possibly.

3 Q. If we can go back to photograph number 4,
4 right in the middle of the photograph behind that sapling
5 that you identified, there's a long black cylindrical
6 object. Can you identify what that is?

7 A. No, I cannot. It looks like a pipe or -- I
8 don't know if it's a branch or a pipe or what. I cannot
9 identify it.

10 Q. Okay. Now, Mr. Hamilton had you limit your
11 definition of the problem materials on the site to
12 timber, vehicles and scrap. I want to direct you back
13 again to photograph 6.

14 A. Okay.

15 Q. Are there any other materials in that
16 photograph that you consider unsightly or unsanitary
17 other than timber, vehicles and scrap metal?

18 A. Well, the litter of plastic containers on
19 the ground, the truck that has the items in the back of
20 the truck, the tarp. I don't know. The drums could be
21 considered that if they're not being used.

22 Q. Does -- The fact that you didn't identify
23 the timber in this -- at this site in your inspection
24 report as landscape waste, does that define whether or

1 not it is in fact landscape waste?

2 A. I don't believe so.

3 Q. And have you ever received any information
4 or any receipts from Mr. Gruen indicating that he has
5 tried to sell this degraded lumber to farmers for some
6 wood burning use?

7 A. He said in one of his responses that he was
8 giving away the unusable wood.

9 Q. He's never given you any receipts for the
10 sale of that material?

11 A. Not the unusable, no. He's given me
12 receipts for firewood.

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

14 HEARING OFFICER WEBB: Thank you.
15 Mr. Hamilton, anything further?

16 MR. HAMILTON: I have no recross.

17 HEARING OFFICER WEBB: Okay. Thank you,
18 Miss Mier.

19 Do you have any other witnesses?

20 MS. RYAN: We do not.

21 HEARING OFFICER WEBB: All right.

22 Mr. Hamilton, you may present your case.

23 MR. HAMILTON: Okay.

24 HEARING OFFICER WEBB: Would the court

1 reporter please swear in the witness?

2 (Witness sworn.)

3 JON GRUEN, produced, sworn and examined on behalf
4 of the Respondents, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HAMILTON:

7 Q. Jon, state your full name, if you would,
8 please.

9 A. My name is Jon Eric Gruen.

10 Q. Where do you live?

11 A. 21064 Old Route 66, Mt. Olive.

12 Q. Do you operate a business called Jon's Tree
13 Service?

14 A. Yes, I do.

15 Q. How long have you been in that business?

16 A. Since 1996.

17 Q. Approximately 11 years?

18 A. Yes.

19 Q. Describe for me what the nature of that
20 business is.

21 A. We top trees and remove trees. We grind
22 stumps and we sell firewood. We also deliver chips,
23 mulch, and we also scrap some metal on the side.

24 Q. Can you estimate for me your average yearly

1 gross income associated with this business?

2 A. Yes. About 75,000.

3 Q. Do you have any other employment or
4 business?

5 A. No.

6 Q. Now, as I understand it, the main function
7 of the business is cut down trees; is that right?

8 A. Yes.

9 Q. Now, tell me, what do you do after you cut
10 down a tree? Tell me what you do with what's left.

11 A. We chip up all the brush on site normally
12 when we're taking the tree down, as we take it down.
13 Depending on the wood, whether it's hardwood or
14 nonuseable wood, we keep all the hardwoods to reprocess
15 as firewood to sell later and we take all the nonuseable
16 wood, soft woods, and give it away to farmers in the area
17 who burn anything in their outside wood-burning stoves.

18 Q. So would it be accurate to say that after a
19 tree is cut down that you in many cases would split
20 what's left? Is that right?

21 A. Yes.

22 Q. You stack the split wood.

23 A. Yes, we do. We usually cut them in three-
24 to four-foot lengths and then stack them so that they'll

1 season properly.

2 Q. What do you mean by season?

3 A. Seasoning, they need to dry out for about
4 nine months to a year before it becomes usable and
5 burnable as seasoned firewood, and we leave them in
6 lengths so that it takes longer to season.

7 Q. Has anybody ever stated to you that there's
8 some kind of a time limit that you would have to store
9 the timber out there on this property?

10 A. No, sir.

11 Q. And I think a little bit ago you heard Miss
12 Mier testify that she thinks some of that timber's been
13 out there for, like, two years. Do you agree with that
14 characterization?

15 A. Some of the wood may have been there for two
16 years, but anything that has sat there long enough that's
17 not usable anymore I'd give away to the same people who
18 take the wood as I take the trees down.

19 Q. Is there any of this timber and whatever's
20 left from cutting down these trees that is not usable by
21 somebody?

22 A. No, sir.

23 Q. I mean, we've got firewood, okay? If it's
24 good firewood, anybody could use that in their fireplace.

1 Do you agree with that?

2 A. Correct.

3 Q. If you have wood that has been, let's call
4 it, somewhat degraded, is there any reason why somebody
5 like a farmer couldn't use that in some purpose for his
6 business?

7 A. A lot of them are very happy to come and get
8 that for free to throw into their outside wood-burning
9 furnaces.

10 Q. Some of this degraded wood can be chipped
11 and used for mulch or wood chips.

12 A. Yes, sir.

13 Q. Would you agree with that? Is there any of
14 the timber in -- that cannot be used in some fashion for
15 a business purpose?

16 A. No.

17 Q. Now, I want you to identify some exhibits
18 for me, if you'll go to your book there. Let's start
19 with what's been marked as No. 1.

20 And I've got these exhibits marked as Plaintiffs'
21 Exhibit 1. I'd just like to -- We'll just -- Those are
22 intended to be Respondents' Exhibits.

23 HEARING OFFICER WEBB: Okay.

24 Q. Jon, identify for me Plaintiffs' Exhibit 1.

1 A. This would be a receipt for the sale of
2 firewood. We delivered two cords of wood.

3 Q. And why don't you just go ahead and identify
4 2 through 13.

5 A. Okay. No. 2 would be the same thing. We
6 delivered two cords of firewood and we stacked that in
7 the rack on the front porch and one more we stacked
8 around back, charged him 350. All of these are receipts
9 for firewood.

10 Q. Go ahead and just briefly identify each one.

11 A. Okay. Another one would be -- No. 3 would
12 be the delivery of one and a half cords of firewood and
13 stacked for \$150. Exhibit 4 would be delivered three
14 cords of oak and cherry wood. We stacked it around back,
15 charged him \$350. No. 5 would be another receipt where
16 we delivered two cords of firewood and stacked them
17 around back, charged \$250. Exhibit No. 6 would be
18 another delivery of two cords of mixed firewood, and we
19 didn't have to stack that. We just tossed it on the back
20 of the truck. No. 7 would be the delivery of two cords
21 of firewood and stacked it as well. No. 8 would be
22 delivery of ten cords -- he picked up ten cords of
23 firewood right there at the office. We had actually cut
24 it up and he just came out and picked it up himself, and

1 we charged him 300 for that. And then Exhibit No. 9
2 would be the delivery of two more cords of firewood.
3 No. 10 would be delivered and stacked one cord of
4 firewood. No. 11 would be delivered two cords of split
5 hardwoods and stacked it around back. And No. 12 would
6 be the delivery of one and a half cords of oak wood and
7 stacked it.

8 Q. Go ahead. Did you do 13?

9 A. No. 13 would be delivery of two more cords
10 of split wood and stacked it into racks.

11 Q. Now, would this be all of the receipts that
12 you issued for the sale of firewood?

13 A. No. This would only be a portion of the
14 receipts. This is only probably two or three months'
15 worth of receipts right here.

16 Q. Now, you testified that in a year your
17 annual gross is about 75,000 a year; is that right?

18 A. Yes, sir.

19 Q. How much would you estimate to be from the
20 sale of cut firewood?

21 A. Probably 20 to 25 percent.

22 Q. Okay. Now, did you provide some receipts
23 like this to Miss Mier when she did her inspection?

24 A. Yes, I did. I didn't -- Not at the time of

1 her inspection, but I mailed them in over a period of
2 time, receipts for the sale of firewood.

3 MR. HAMILTON: Okay. I move to admit
4 Respondents' Exhibits 1 through 13.

5 MS. RYAN: I object to 10 through 13, as by
6 their own terms they postdate the inspection date and
7 they're irrelevant to this violation listed in the
8 matter.

9 HEARING OFFICER WEBB: Yes, they do postdate
10 the inspection date, so I would -- yes, I will admit all
11 these logs with the exception of 10 through 13. Yeah,
12 just 10 through 13. Yeah.

13 MR. HAMILTON: Miss Webb, I'd submit that 10
14 through 13 are relevant because they show that he's
15 continuing to sell the firewood. I mean, they show that
16 he's been selling the timber and the firewood and that he
17 has continued to do so. I don't know why that they would
18 be irrelevant simply because they postdate --

19 HEARING OFFICER WEBB: I'll -- I mean, I'll
20 take them as an offer of proof, but I -- but because they
21 occurred after the date of the inspection that we're
22 looking at here, I'm not going to admit them.

23 MR. HAMILTON: Okay. Then you'll show the
24 other ones that were admitted, then? The other exhibits

1 were admitted?

2 HEARING OFFICER WEBB: Yes, yes.

3 Q. (By Mr. Hamilton) Okay. Jon, go to
4 Plaintiffs' Exhibit -- or Respondents' Exhibit 14, if you
5 would.

6 A. Okay.

7 Q. Identify that picture.

8 A. This would be a picture of the inside gate
9 with the stacked firewood on the left side and on the
10 right.

11 MR. HAMILTON: And since we may have an
12 issue here as to the date of these pictures, I'm going to
13 indicate that they were taken on July 31, 2006, so maybe
14 we ought to have an issue -- I mean, are these going to
15 be -- is there going to be a problem with admission of
16 these pictures just because they were taken a few months
17 after the --

18 MS. RYAN: Yes, I'd have the same objection.

19 HEARING OFFICER WEBB: Yes, I'll take them
20 as an offer of proof. You can still argue them in your
21 post-hearing brief, but I can't admit them.

22 MR. HAMILTON: It seems to me that that puts
23 us into a practical difficulty unless he hired a lawyer
24 on April 20, 2006, to go out to his property to take the

1 pictures. I mean, it was within more or less the same
2 time period.

3 HEARING OFFICER WEBB: That is -- That's
4 true. That's -- I mean, I will take it as an offer of
5 proof.

6 Q. (By Mr. Hamilton) Okay. Jon, go ahead and
7 tell me what's Respondents' Exhibit 14.

8 A. Okay. Exhibit 14 would be showing the back
9 entrance gate to the office where the wood is stacked to
10 the left side and the right side of the driveway. There
11 is one log here in the picture in the front that is for
12 sale as a log for someone who cuts -- turns it into, you
13 know, lumber.

14 Q. Is there any of this material that cannot be
15 used for some business purpose?

16 A. No, there isn't.

17 Q. Go to Respondents' Exhibit 15.

18 A. Okay. That would be showing on the left
19 side of the driveway the stacked firewood. There's a
20 wheelbarrow there used in the business and a couple of
21 the trucks used in the business.

22 Q. Go to Plaintiffs' Exhibit 16.

23 A. This would again be just the firewood
24 stacked along the driveway.

1 Q. Now, some of that wood maybe looks a little
2 bit degraded. I mean, is there any problem with the use
3 of that by somebody for purposes of burning it?

4 A. No, there's not. We give away, like I said,
5 any wood that's not usable. To me, for the sale of
6 firewood can be used for anyone to go camping or other
7 farmers to keep their houses warm, their outside
8 wood-burning furnaces.

9 Q. Miss Mier testified that there are saplings
10 and so forth that have been allowed to grow up for, like,
11 a couple years. Do you accept that characterization?

12 A. I agree that maybe one or two of the trees
13 may have been there longer than a year, but in most cases
14 we're talking about mulberry trees, which grow very fast
15 on anyone's property and can grow ten to fifteen feet in
16 one year, no problem. You can cut down a lot of trees,
17 like mulberry trees, and they'll come right back up no
18 matter what you do. Chinese elms are the same way. You
19 know, I don't have time to go clean out the piles of the
20 wood from the saplings, so that's going to happen from
21 time to time.

22 Q. Go to 17. Show me what that is.

23 A. Exhibit 17 would also be the wood stacked
24 along the driveway.

1 Q. Go to 18.

2 A. Exhibit 18 would also be logs stacked along
3 the driveway.

4 Q. And let's look at 19.

5 A. No. 19 would be some of the longer logs that
6 we have. We stood them up and then stacked some across
7 the top so that they can season.

8 Q. No. 20?

9 A. That's also logs waiting to be processed
10 into firewood, to be split.

11 Q. How long -- Just to take this as an example,
12 how long has that stuff been sitting there?

13 A. This pile here had been sitting there
14 probably for about a year and is ready to go. As of now,
15 we've sold most of this pile.

16 Q. How about Plaintiffs' Exhibit 21?

17 A. No. 21 is also a stack of logs ready to be
18 split.

19 Q. Plaintiffs' Exhibit 22?

20 A. No. 22 would also be a stack of logs ready
21 to be split.

22 Q. How about 23?

23 A. 23 is a couple of big chunks of logs that we
24 had that we had come in and dropped them off the trailer

1 till we have time to come back and cut them down to
2 smaller size and split them, but they're seasoning while
3 they're sitting there.

4 Q. Plaintiffs' Exhibit 24?

5 A. No. 24 is some good oak wood that I had. It
6 was a large oak tree, and we stacked them on a pallet
7 there so that they can season and we can process them.

8 Q. How about No. 25?

9 A. No. 25 is the same thing, another large oak
10 tree we brought in and stacked so they can season.

11 Q. How about 26?

12 A. 26 is again more logs we brought in, and
13 they're sitting there seasoning. I believe they're on a
14 pallet as well.

15 Q. Plaintiffs' Exhibit 27?

16 A. No. 27 is some more logs that are by the
17 back fence, and they were also sitting on a pallet.

18 Q. And then how about 28?

19 A. And 28 is the wood along the driveway again,
20 and it's stacked.

21 Q. Okay. Now, in reference to all of the
22 pictures that we've seen here, is there any of this
23 material that you cannot put to some business purpose?

24 A. No, sir.

1 Q. And in fact, is it your intent to put that
2 timber and so forth to a business purpose?

3 A. Yes.

4 Q. You've testified that this material can be
5 burned as firewood after it has seasoned long enough; is
6 that right?

7 A. Yes, sir.

8 Q. You testified that anything that is more of
9 a degraded nature could be used by a farmer in some
10 wood-burning process; is that right?

11 A. Yes, sir.

12 Q. Other materials could be chipped into mulch
13 or wood chips or whatever; is that right?

14 A. That is correct.

15 Q. Okay. Well, let's look at No. 29. Why
16 don't you identify that machine for me.

17 A. That's my log splitter.

18 Q. What do you do with it?

19 A. We split all the big chunks of the logs that
20 need to be split down.

21 Q. Do you use it on a regular and a continuous
22 basis?

23 A. Yes. We use it all the time.

24 MR. HAMILTON: Okay. Subject to the

1 objection about the date, I move for the admission of
2 Respondents' Exhibits 14 through 28, which was the
3 timber.

4 HEARING OFFICER WEBB: And you -- same
5 objection?

6 MS. RYAN: I have the same objection.

7 HEARING OFFICER WEBB: I'm not going to
8 admit them for the same reason, but I will take them and
9 file them as an offer of proof.

10 Q. (By Mr. Hamilton) Okay. Jon, go to
11 Plaintiffs' Exhibit 30. Are you there?

12 A. Yes, sir.

13 Q. I want you to identify for me what you see
14 in that picture.

15 A. These would be tools that we use in the tree
16 cutting business. We have some scoop shovels there. The
17 barrels we use to scoop the mulch up into. There's a
18 couple of gas cans there and rakes and dollies. We use
19 them a lot.

20 Q. Is there anything in that picture that you
21 do not use in the business?

22 A. No.

23 Q. Do you use all of that stuff on a regular
24 basis?

1 A. Yes, we do.

2 Q. Now, in reference to all of the things that
3 you've identified, is there any of this material that you
4 consider to be discarded?

5 A. No.

6 Q. Is there any of this material that you
7 consider to be abandoned?

8 A. No.

9 Q. Is there any of this material you consider
10 to be waste?

11 A. No.

12 Q. Is there any of this material you consider
13 to be garbage?

14 A. No.

15 Q. Is there any of this material that you
16 consider to be trash, debris or rubbish?

17 A. No.

18 Q. In your opinion, are any of these items
19 nauseous or offensive?

20 A. No.

21 Q. Are they unsightly?

22 A. No.

23 Q. I mean, certainly no more so than something
24 that some farmer would have on his property if he had

1 some firewood, right?

2 A. Right. That's correct.

3 Q. Is there anything about this material that's
4 unsanitary?

5 A. No.

6 Q. Okay. Let's look at Exhibit 31.

7 A. Okay.

8 Q. I want you to identify for me what we see in
9 that picture.

10 A. These would be burning barrels. Basically,
11 when we split the firewood down, sometimes there's
12 leftover scraps, pieces of firewood that you can't use
13 for, you know, anything, they're just little scraps, and
14 we throw it in there and burn it off.

15 Q. Do you use these drums on a regular basis?

16 A. Yeah, we use them fairly -- you know, fairly
17 often.

18 Q. Has anyone ever told you in the county of --
19 in Macoupin County that you can't burn some of this
20 residue that you have?

21 A. No.

22 Q. Has anyone from the EPA told you that you
23 can't use these drums to burn stuff?

24 A. No.

1 Q. Do you use these drums in your business?

2 A. Yes, we do.

3 MR. HAMILTON: I move for the admission of

4 Exhibits 29 through 31.

5 MS. RYAN: Same objection.

6 HEARING OFFICER WEBB: Same ruling.

7 Q. (By Mr. Hamilton) Okay. Jon, I want you to

8 go to Plaintiffs' Exhibit 32.

9 A. Okay.

10 Q. I want you to identify what that is for me.

11 A. This would be the title for the '87 Chevy

12 Caprice which is located on the property.

13 Q. What is the condition of that vehicle?

14 A. The car still runs. All it needs is brakes

15 put on it.

16 Q. Is that a deserted vehicle?

17 A. No.

18 Q. Okay. Go to Group -- or -- yeah,

19 Plaintiffs' Exhibit Group 33.

20 A. Okay.

21 Q. Tell me what we see in that picture.

22 A. This would be the 1985 Chevy one-ton dump

23 truck that we use in the business.

24 Q. What do you do with it in the business?

1 A. We pull trailers with it and haul logs with
2 it.

3 Q. What's the state of repair of that vehicle?

4 A. This truck at this time needs a master
5 cylinder.

6 Q. Is that a complicated repair?

7 A. No.

8 Q. Go to Plaintiffs' Group Exhibit 34.

9 A. Okay.

10 Q. And identify what that is.

11 A. This would be the '87 GMC Jimmy
12 four-wheel-drive truck.

13 Q. Is that actually owned by you?

14 A. No. This is owned by one of my workers.

15 Q. Was that vehicle used in the business?

16 A. Yes.

17 Q. Is it still on the premises?

18 A. No, it's not there any longer. He took it
19 home.

20 Q. What was its use in the business?

21 A. We used it to pull trailers with logs in it.

22 Q. Okay. Let's look at Plaintiffs' Group
23 Exhibit 35.

24 A. Okay.

1 Q. What is it?

2 A. This is an '85 Dodge van.

3 Q. And does that have any use in the business?

4 A. We've used it to pull trailers, trailers

5 full of logs.

6 Q. What is the current state of repair of that

7 vehicle?

8 A. Right now it needs freeze plugs put in it.

9 Q. Is that a deserted vehicle?

10 A. No.

11 Q. Do you have the intent to make the repairs?

12 A. Yes, I do.

13 Q. Okay. Let's look at Plaintiffs' Exhibit 36.

14 Tell me what that is.

15 A. This is a '94 Chevy one-ton dump truck.

16 Q. And what do you do with that?

17 A. We use that in the tree business as well.

18 Q. Can you be more specific as to how you use

19 it?

20 A. Yeah. We chip into the bed of it and we

21 also pull trailers of logs.

22 Q. Go to Plaintiffs' Exhibit 37.

23 A. Okay.

24 Q. What is it?

1 A. This is my '74 Chevy dump truck.

2 Q. Is that used in the business?

3 A. Yes, it is.

4 Q. Let's look at Plaintiffs' Exhibit 38.

5 A. This would be an '86 Dodge pickup truck.

6 Q. Is that used in the business?

7 A. Yes, it is.

8 Q. And how is it used in the business?

9 A. We use it to pull trailers around and we

10 also put tools in the camper shell bed to keep them out

11 of the weather.

12 Q. And then go to Plaintiffs' Exhibit 39.

13 A. That's a '91 Chevy pickup, also used to pull

14 trailers.

15 Q. Okay. Let's look at Plaintiffs' Exhibit 40.

16 A. This would be a 1984 Ford one-ton dump

17 truck, also used in the tree business for chipping into.

18 Q. Identify Plaintiffs' Exhibit 41.

19 A. A '75 Chevy flatbed pickup also used in the

20 business.

21 Q. Okay. Now, let's look at No. 42. Tell me

22 about this car.

23 A. It's a 1981 Chevy Camaro. It's basically an

24 old car that I've had for years. It's a collector's

1 item, and we've just got it sitting there right now till
2 we can fix it the rest of the way. All it has is a
3 valve -- needs a valve tightened on it.

4 Q. Is this a deserted or abandoned vehicle?

5 A. No. This car if it was fixed up would be
6 worth probably about \$10,000.

7 Q. And then lastly, No. 43.

8 A. No. 43 is a 1986 Ford pickup I have, and the
9 rear end's currently out on it.

10 Q. What does it need to fix it?

11 A. Just need to put a new rear end into it.

12 Q. Is that a major repair?

13 A. Probably take about four or five hours.

14 Q. Do you have the intent to make that repair?

15 A. Yes, I do.

16 Q. So other than the Camaro, is it accurate to
17 say that every one of these vehicles is used in your
18 business?

19 A. Yes, it is.

20 Q. Are these vehicles deserted?

21 A. No.

22 Q. Are they abandoned?

23 A. No.

24 Q. Are they discarded?

1 A. No.

2 Q. Are they nauseous?

3 A. No.

4 Q. Are they offensive?

5 A. No.

6 Q. Are they likely to injure anyone?

7 A. No.

8 Q. Do they create any traffic hazard?

9 A. Nope.

10 Q. Are they unsightly?

11 A. No.

12 Q. I mean, certainly no more so than a farmer

13 that might have an old pickup truck around the farm,

14 right?

15 A. That's correct.

16 Q. Is there anything unsanitary about the

17 vehicles?

18 A. No.

19 Q. Okay. Now, I think one of the pictures --

20 Well, actually, I'm going to go ahead and move

21 for the admission of these pictures that show the

22 vehicles, which would be No. 32 through 43, subject to

23 the objection that they were taken after the date of the

24 administrative citation. I would submit that that date

1 is irrelevant. I mean, we're looking at the same
2 vehicles as are shown in the EPA's pictures. I don't see
3 what the --

4 HEARING OFFICER WEBB: Well, I would submit
5 that the difference between the pictures of the cars and
6 the pictures of the logs is that the pictures of the logs
7 could be used purportedly in an argument as to what the
8 condition of the site was on the day of the inspection.
9 Do you object to the admission of the autos as
10 illustrations of the testimony that he just gave?

11 MS. RYAN: I don't. I don't think they're
12 relevant to the violation, but I don't have a problem
13 admitting them for that purpose.

14 HEARING OFFICER WEBB: All right. Then I'm
15 going to go ahead and -- because we had quite a bit of
16 testimony regarding the position of the autos, I just
17 think it's helpful for the Board to see them. So what
18 were the numbers?

19 MR. HAMILTON: These are Plaintiffs'
20 Exhibits 32 through 43.

21 HEARING OFFICER WEBB: Okay. Then 32
22 through 43 are admitted.

23 Q. (By Mr. Hamilton) Now, Jon, in that
24 administrative citation there was a picture of a large

1 metal tank. What's the purpose of that tank?

2 A. The large metal tank was saved because we at
3 one time in the near future hope to build a pole barn out
4 there, and I can convert that large metal tank into a
5 wood-burning stove. My son's a welder, and I intend to
6 cut the end off and make a door on one end that already
7 has a natural smokestack coming out of it. So that's the
8 only reason the tank was there. We intended to use it as
9 a wood-burning stove.

10 Q. Was that an abandoned tank that you had no
11 intent to ever do anything with in your business?

12 A. No.

13 Q. Is it still there?

14 A. No, the tank's not there right now.

15 Q. Now, the administrative citation also has
16 some pictures of some truck beds that are -- to
17 generalize, it looks like it has wire, metal, plastic,
18 mowers and vehicle parts. Why has that stuff been
19 accumulated?

20 A. A lot of times, whenever we run across
21 something that's scrapable, we'll just throw it into the
22 bed of the truck, and a lot of times that's later sorted
23 out by my son on a -- like, a Saturday or Sunday when he
24 doesn't have much going on. I'll send him out there to

1 sort all that stuff out, the scrap metal from the stuff
2 that's not useable.

3 Q. So what do you end up doing with that scrap
4 metal?

5 A. We end up taking it up the road to Mullins
6 Salvage, which is a couple miles up the road, and cashing
7 it in.

8 Q. Does that scrap metal have some value?

9 A. Sure.

10 Q. Well, what's it worth?

11 A. Approximately about \$100 a truckload.

12 Q. Okay. Would you agree with the
13 characterization that that material's abandoned and has
14 no business use?

15 A. No.

16 Q. Okay. There's also some pictures of a
17 mobile home. What's the function of the mobile home?

18 A. The mobile home is where we keep the files
19 for the business. We also use it as an office and
20 there's a lot of storage in there, materials used for the
21 business, for ropes, locks, things like that.

22 Q. What's the purpose of this old hotel
23 building or motel building?

24 A. The old hotel building has always been there

1 since we first bought the property, and we just store
2 things in there, materials we use every day, saws, things
3 like that.

4 Q. Okay. Now, Jan Mier came to your property
5 on a couple of occasions; is that right?

6 A. That's -- Yes, sir.

7 Q. Do you recall about how many times she was
8 there?

9 A. I talked to her there I believe two times.

10 Q. What was she saying were problems with
11 respect to the property?

12 A. Basically everything we've talked about
13 today. Just the wood.

14 Q. Did you tell her that you used that timber
15 in your business?

16 A. Yes, I did.

17 Q. Did you tell her that you used the vehicles
18 in your business?

19 A. Yes, I did.

20 Q. Did she ever advise you as to any permits or
21 anything like that that you had to have to store that
22 material?

23 A. No. We talked about -- She had said I had
24 an open dump without a permit, and I said something about

1 how would you go about getting a permit, and it never did
2 go any further than that.

3 Q. Did she cite any statutes or regulations to
4 you as to what was the problem with the material that you
5 had at the property?

6 A. No.

7 Q. But you say that she indicated you needed a
8 landfill permit?

9 A. Something of that nature, yeah.

10 Q. But she didn't give you any forms or
11 anything to fill out.

12 A. No.

13 MR. HAMILTON: I have no further questions.

14 HEARING OFFICER WEBB: Thank you. Ms. Ryan?

15 CROSS EXAMINATION

16 BY MS. RYAN:

17 Q. Mr. Gruen, let's talk about the tank that
18 was out there on the property. You said it's not there
19 anymore. How long was it there on the property?

20 A. Probably about a year or two.

21 Q. I don't know if you recall Exhibit 1, the
22 pine branches. I can get it for you if you --

23 A. I know what you're talking about.

24 Q. Okay. Are you seasoning those pine

1 branches?

2 A. No, ma'am. Those pine branches were hauled
3 in because the chipper had broke down during one day of
4 work, and so we threw the branches on the trailer, we
5 brought it in and just stacked it in the yard until we
6 got the chipper running, at which time they were ran
7 through.

8 Q. Okay. You brought in some receipts here,
9 and I don't remember exactly which numbers they are, but
10 I'll pull them out here.

11 A. Okay.

12 Q. No. 1 through -- well, you brought in more
13 than we admitted, but --

14 A. Sure.

15 Q. You said that these were about two to three
16 months' worth of receipts?

17 A. Yes.

18 Q. Can I ask you to look at the date on No. 1
19 and No. 13?

20 A. This is just a random grabbing of the
21 receipts, sure.

22 Q. So you're saying this is about how many
23 receipts you'd have in two to three months, not that this
24 represents two to three months' worth of work.

1 A. Right. At the time that I grabbed these
2 receipts, I never specifically grabbed October, November
3 and December's receipts. I just grabbed a random copy of
4 some receipts and brought them in.

5 Q. Okay. And all those receipts are in your
6 handwriting; is that right?

7 A. Yes, ma'am.

8 Q. In photograph -- your photograph No. -- I
9 think it's 42, that's the Camaro mostly?

10 A. Yeah.

11 Q. Does that Camaro run?

12 A. Yes, it does.

13 Q. It does? Right in front of the Camaro,
14 looks like there's a boat?

15 A. Yes.

16 Q. Does the boat run?

17 A. Yes, it does.

18 Q. Do you use it in your business?

19 A. The boat is a recreational vehicle.

20 Q. But you don't use it in your business?

21 A. No.

22 Q. And the -- on the left bottom corner, that's
23 the truck bed that you were talking about where you
24 collect scrap and other material?

1 A. Yes.

2 Q. Is that the same scrap -- or sorry -- the
3 same truck bed that was in Ms. Mier's photographs from
4 April 20?

5 A. Yes, it would be.

6 Q. Can you tell that or -- Okay. And there's
7 material in that photograph there that show -- that's not
8 scrap metal; is that correct?

9 A. Like I said, all the material that's thrown
10 into the truck bed is not necessarily scrap metal. It's
11 just put there until my son can later go through it and
12 decide what's valuable and what's not.

13 Q. Okay. And didn't you previously receive
14 administrative -- sorry -- administrative citation
15 warning notices from Illinois EPA indicating that you
16 shouldn't continue open dumping or open burning at your
17 property?

18 A. Yes. There is no open dumping.

19 Q. But Mr. Hamilton asked you if you'd ever
20 been told that you couldn't burn on the property, and
21 what I'm asking you is haven't you received documentation
22 to that effect, that you shouldn't do any burning on your
23 property?

24 A. The only thing I've received concerning

1 burning says no open burning.

2 Q. No open burning. But you have received
3 documents to that effect.

4 A. Yes --

5 Q. No open burning.

6 A. -- which was described to me by Mrs. Mier as
7 a ground fire, as in if I put all my logs in a big fire
8 on the ground.

9 MS. RYAN: Okay. That's all I have.

10 A. That's how it was described to me.

11 HEARING OFFICER WEBB: Anything further?

12 MR. HAMILTON: No redirect.

13 HEARING OFFICER WEBB: Okay. Thank you,
14 Mr. Gruen.

15 Mr. Hamilton, do you have anything further?

16 MR. HAMILTON: We have no other witnesses.

17 HEARING OFFICER WEBB: Okay. Before we hear
18 any closing arguments, let's go off the record to discuss
19 a briefing schedule.

20 (Discussion held off the record.)

21 HEARING OFFICER WEBB: We just had an
22 off-the-record discussion regarding post-hearing briefs,
23 and the parties have agreed to a briefing schedule as
24 follows. The transcript of these proceedings will be

1 available from the court reporter by March 26 and will be
2 posted on the Board's Web site. The public comment
3 deadline is April 9. Any public comment must be filed in
4 accordance with Section 101.628 of the Board's procedural
5 rules. The Complainant's brief is due by April 30,
6 Respondents' brief is due by May 31, and the
7 Complainant's reply, if needed, is due by June 7. The
8 mailbox rule will apply.

9 Miss Ryan, would you like to make a closing
10 argument?

11 MS. RYAN: I would like to reserve my
12 arguments for my brief. Thank you.

13 HEARING OFFICER WEBB: Mr. Hamilton, would
14 you like to make a closing argument?

15 MR. HAMILTON: Sure. Again, just to
16 emphasize, this is -- this case involves a \$1500 fine,
17 but the import of this, what they're telling him he can't
18 do could put this guy out of business. This is a guy
19 with -- this wasn't put into evidence. He's got six
20 kids. This is a \$75,000-a-year business of which about
21 25 percent of it is the use of this timber and this bark
22 and stuff like that. I submit this stuff has a business
23 use. It's not litter. It hasn't been deserted. It's
24 not trash, and we've been through every conceivable

1 definition of what litter is. It's not litter. It has
2 some use in his business. No one's ever told him that he
3 has some certain amount of time limit that he can keep
4 this stuff out there. As long as he has some intent to
5 use that in his business, it's not litter under the
6 definition of the statute and under any definition of the
7 regulations.

8 And the same goes for the -- for these vehicles.
9 These vehicles have a business use. He needs these
10 vehicles in his business. He uses them for his business.
11 It's not just some junk salvage yard. That's not what it
12 is. He doesn't need a permit to keep this stuff, and I
13 think that issue's been abandoned by the State. What
14 they're saying he's done is allowed an unreasonable
15 accumulation of litter, and we have yet to identify
16 anything that meets that definition under the statute of
17 regulations. And so, you know, we could -- we've
18 introduced a lot of exhibits here and we've taken up some
19 time with some testimony, and there's a good reason for
20 that. If the State continues on and continues with these
21 administrative citations and next time they come around
22 and they want \$2500 or whatever, they're going to put the
23 guy out of business, and that's not what the intent of
24 the statute is. He's not in violation of any statute or

1 regulations of the EPA. Thanks.

2 HEARING OFFICER WEBB: Thank you. I will
3 note again for the record that we have no members of the
4 public present to make any statements on the record, so I
5 will proceed to make a statement as to the credibility of
6 the witnesses testifying during this hearing. Based on
7 my legal judgment and experience, I find both of the
8 witnesses testifying to be credible. At this time I will
9 conclude the proceedings. We stand adjourned, and I
10 thank you all for your participation.

11 MR. HAMILTON: Thanks.

12 MS. RYAN: Thank you.

13 (Hearing adjourned.)

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

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4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of Bond, State
6 of Illinois, DO HEREBY CERTIFY that I was present at the
7 Carlinville City Hall Council Chambers, Carlinville,
8 Illinois, on March 14, 2007, and did record the aforesaid
9 Hearing; that same was taken down in shorthand by me and
10 afterwards transcribed, and that the above and foregoing
11 is a true and correct transcript of said Hearing.

12 IN WITNESS WHEREOF I have hereunto set my hand
13 and affixed my Notarial Seal this 21st day of March,
14 2007.

15

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Notary Public--CSR

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#084-003688

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