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BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Petitioner,)	
)	
-vs-)	NO. 96-107
)	(Enforcement)
ESG WATTS, Inc., an Iowa)	
Corporation,)	
)	
Respondent.)	
-----)	

PROCEEDINGS taken on October 29, 1996, at the Rock Island County Building, 1504 Third Avenue, Third Floor, Rock Island, Illinois, commencing at 10:12 a.m., before Deborah L. Frank, Attorney/Hearing Hearing Officer, and Victoria Fickel, Certified Shorthand and Notary Public of the County of Rock Island, State of Illinois.

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A-P-P-E-A-R-A-N-C-E-S

Hearing Officer: DEBORAH L. FRANK
Attorney/Hearing Officer
Illinois Pollution Control
Board
608 South Prospect Avenue
Champaign, IL 61820

Petitioner by: AMY SYMONS-JACKSON
Office of the Attorney General
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

THOMAS DAVIS
Office of the Attorney General
Chief Environmental Bureau
500 South Second Street
Springfield, IL 62706

Respondent by: CHARLES J. NORTHRUP
Sorling, Northrup, Hanna,
Cullen and Cochran, Ltd.
Suite 800 Illinois Building
P.O. Box 5131
Springfield, IL 62705

Also Present: Michelle M. Ryan, Assistant Counsel,
Waste Enforcement, Division of
Legal Counsel

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1 let the attorneys make their appearance on the
2 record. And if we have any preliminary matters, go
3 ahead and take care of those.

4 MS. SYMONS-JACKSON: I'm Amy
5 Symons-Jackson on behalf of the complainant.

6 MS. RYAN: Michelle Ryan with the
7 Illinois Environmental Protection Agency.

8 MR. DAVIS: Thomas Davis, Illinois
9 attorney general's office on behalf of the people.

10 MR. NORTHRUP: Charles Northrup,
11 Sorling, Northrup, Hanna, Cullen and Cochran, Ltd.,
12 for ESG Watts.

13 THE HEARING OFFICER: Okay. Are
14 there any preliminary matters? Okay. I also need
15 to encourage everyone to speak up. I have a fan
16 right behind me, and it's really hard to hear. So
17 you need to increase your volume.

18 If anybody from the public is having
19 trouble hearing, let us know, and we will ask
20 everyone to speak up, or we will go to microphones
21 if we need to.

22 Okay. Ms. Symons-Jackson, did you have
23 an opening statement?

24 MS. SYMONS-JACKSON: Yes, I do,
25 Ms. Hearing Officer.

1 The Board cited in its opinion the lack
2 of environmental impacts from the proven violations
3 as one of the reasons why they decided not to
4 revoke the operating permit at that time.

5 And now here we are back again. This
6 time we will prove significant and continuing
7 impacts not only to the environment but to the
8 health of neighboring citizens and to the enjoyment
9 of property of the neighboring citizens to the
10 landfill.

11 If this Board was concerned regarding the
12 lack of environmental impacts in the previous case,
13 it need not be so concerned now. Permit revocation
14 is the necessary and appropriate remedy in this
15 case.

16 We are, in fact, before the Board because
17 the Board alone has the authority to revoke Watts'
18 operating permits. And that is the remedy that we
19 desire in this enforcement case.

20 Mr. William Child of the Illinois
21 Environmental Protection Agency will testify
22 regarding the need and justification for permit
23 revocation. Mr. William Child will tell the Board
24 that since Watts opened its doors back in the early
25 '70s at no time in those years has Watts ever been

1 fully in compliance with the environmental laws of
2 this state.

3 Neighbors to the landfill will testify
4 regarding the negative impact the landfill has had
5 on their enjoyment of life and of their property.

6 Illinois Environmental Protection Agency
7 inspectors will testify regarding the violations at
8 the Watts landfill. Violations, including but not
9 necessarily limited to the failure to monitor and
10 control leachate, groundwater contamination, water
11 pollution resulting from erosion, and storm water
12 runoff problems, and air pollution. We will prove
13 that these violations have continued for a number
14 of years and that, in fact, these violations are
15 continuing to this day as we speak.

16 Since receiving this case for enforcement
17 in early 1995, the state has been diligently
18 working toward this point in time. Approximately
19 one year ago, a 31-D meeting was held with Watts
20 representatives. At that time, we discussed with
21 Watts the need to perform certain actions at the
22 facility. Those actions included the submittal of
23 a significant modification application in order to
24 obtain a significant modification to their permit.

25 It also included the need to perform a

1 groundwater assessment and monitoring. We also
2 discussed the need to monitor and control leachate
3 with an approved leachate management plan. We
4 discussed the need to develop and implement a storm
5 water management plan and a gas management plan.

6 Now since September 1st of 1993, ESG
7 Watts has been obligated to obtain a significant
8 modification to their operating permit. In fact,
9 two years ago in the Board case 94-127, they were
10 adjudicated to have violated the regulations
11 regarding the significant modification
12 requirements.

13 Since that adjudication two years ago,
14 Watts has not formally applied for a significant
15 modification to their permit. As of this date,
16 Watts has acted in two of the areas that we
17 discussed during our 31-D conference.

18 First of all, they did apply for and
19 obtain a permit governing groundwater assessment
20 and monitoring. That permit provided them with the
21 means to perform the groundwater assessment and to
22 monitor the groundwater. What did Watts do after
23 they got the permit they applied for? They
24 appealed.

25 Since that time, they have not performed

1 any of the groundwater assessment and monitoring
2 that was permitted in that submittal.

3 The second area that they have acted in
4 is in the gas management area. As we speak, a
5 system is currently being installed to collect gas
6 from the landfill. However, that system is not
7 being installed at the expense of ESG Watts or any
8 of the Watts companies. The 4.4 million dollars
9 gas collection system is being installed by a
10 totally separate company, RTC, and we will hear
11 testimony from the RTC representative today.

12 We will show that the motive situation
13 behind the installation of this gas management plan
14 is not a concern for the environment or a concern
15 for the problems being caused to the neighboring
16 citizens as a result of the odor from the landfill.

17 We will prove that the motivation behind
18 installation of this gas management plan is the
19 same thing that has motivated Watts from the very
20 beginning of their operations. That motivation is
21 money. It is profit. That is the only thing that
22 Watts is concerned with. Above and beyond a
23 concern for the environment.

24 Now, not only will we prove these
25 numerous operational violations at the Taylor Ridge

1 facility, we will also prove that Watts is again
2 delinquent in its financial assurance obligations
3 to the state.

4 The delinquency at this time is
5 significant. We will prove that Watts' financial
6 assurance fund falls short of the current approved
7 cost estimates by approximately \$800,000.

8 Now, not only are there significant and
9 continuing violations at the Watts landfill, but
10 there is an insufficient amount of money in the
11 financial assurance trust fund to properly close
12 the fund and close the facility.

13 After considering all the evidence that
14 the state will produce today, we are confident that
15 the Board will do the right thing. The right thing
16 for -- for the environment. The right thing for
17 the neighbors to the landfill. The right thing
18 being revocation of Watts' operating permits. That
19 is the remedy we are seeking, and that is the
20 remedy we are confident the Board will order.
21 Thank you.

22 THE HEARING OFFICER: Thank you.

23 Mr. Northrup, did you have an opening?

24 MR. NORTHRUP: I'm going to reserve
25 any argument for post hearing briefs. I will -- we

1 are going to reserve argument for our post hearing
2 briefs.

3 I would note we, of course, do not agree
4 with many of the statements made by the attorney
5 general in her opening statements, but we intend
6 that those facts will come out during the hearing.

7 THE HEARING OFFICER: Okay. Before
8 we call our first witness, Mr. Davis, did you have
9 a statement you wanted to make about some matters
10 in the complaint?

11 MR. DAVIS: Yes. Count II,
12 paragraph 20 and 21 and 22 and 23, 20 through 23,
13 the people have made an allegation regarding
14 lateral expansion. We are not going to be
15 presenting any evidence on those allegations.

16 I would note those allegations were made
17 in good faith based upon an understanding that we
18 had back in November of last year when we filed
19 this complaint. As it turns out, there is not a
20 compliance problem with lateral expansion. As you
21 may appreciate, it's a technical -- complicated
22 technical issue, and we have come to a
23 determination that we will focus on other -- other
24 matters, as well as there is an additional
25 allegation in the complaint.

1 This will be found at Count VII dealing
2 with the alternate daily cover. It looks like
3 paragraphs 15 through 17 of that count deal with
4 alternate daily cover. We will once again not be
5 presenting any evidence.

6 It appears from our present understanding
7 that there are no serious compliance problems with
8 those requirements.

9 THE HEARING OFFICER: Okay. Thank
10 you. Let's go off the record for just a minute.

11 (Off-the-record discussion held.)

12 THE HEARING OFFICER: Back on the
13 record.

14 The State please call its first witness.

15 MR. DAVIS: The People would call
16 William Child.

17 WILLIAM CHILD,
18 having been first duly sworn, was examined and
19 testified as follows:

20 DIRECT EXAMINATION

21 BY MR. DAVIS:

22 Q. Please state your name.

23 A. William Kirby Child.

24 Q. And are you employed by the Illinois
25 Environmental Protection Agency?

1 A. Yes.

2 Q. When did you first begin employment with
3 the Illinois EPA?

4 A. May of 1971.

5 Q. And what was your initial assignment?

6 A. I was hired as regional manager for the
7 Collinsville regional office.

8 Q. Have you been continuously employed by
9 the Illinois EPA since May 1971?

10 A. Yes.

11 Q. What is your present position?

12 A. I am the bureau chief for the Bureau of
13 Land Pollution Control.

14 Q. Can you summarize your advancement within
15 the Illinois EPA from regional manager to chief of
16 the Bureau of Land, please.

17 A. Yes. In May of '91 (sic), as I said, I
18 was hired as the regional manager for the
19 Collinsville regional office, consisting of seven
20 counties around the East St. Louis metropolitan
21 area.

22 In 1973, I was moved to the regional
23 manager's office in Springfield, which consisted of
24 43 counties across central Illinois to manage that
25 office after there were some managerial problems.

1 Department Store.

2 Q. Please describe your academic
3 qualifications.

4 A. I received a bachelor of science degree
5 from Western Illinois University in 1968. I
6 received a masters of science degree from the same
7 university in 1973. I have also completed all the
8 course work, but have not received the degree in
9 environmental engineering from Southern Illinois
10 University. I'm of the opinion one thesis is
11 enough for anyone to write.

12 Q. This continuing course work, has this
13 occurred recently?

14 A. This occurred from 1973 until about
15 1976. And in addition to that, I have course work
16 at Northern Illinois University, University of
17 Illinois and Missouri -- University of Missouri.

18 Q. Please describe your affiliations, Bill,
19 with any professional organizations.

20 A. I am the past president of the
21 Association of State and Territorial Solid Waste
22 Management Officials. It's the professional
23 association which represents all solid waste
24 managers and all hazardous waste managers
25 throughout the United States and the territories.

1 I was president of that organization in 1989. And
2 I am currently affiliated with them and served on
3 several of their committees. Some of my duties
4 included testimony before Congress on many
5 environmental matters, including solid and
6 hazardous waste matters.

7 Q. And have you also had occasion to
8 accompany the director of the Illinois EPA on
9 missions outside of the country?

10 A. Yes, I have. Most -- most notably was a
11 mission to China in which we were teaching
12 pollution prevention to the Chinese national
13 government. That mission has just been wrapped up
14 in September and October of this year.

15 Q. And focusing on your duties within the
16 Agency on behalf of the state of Illinois, have you
17 played any policy making roles?

18 A. Absolutely. I am responsible for policy
19 made within the Bureau of Land Pollution Control,
20 and I'm responsible to advise the director on
21 policy considerations for the entire Agency.

22 Q. Let's jump back now to the early days. I
23 believe you testified that you were a regional
24 manager with responsibility for the northern third
25 of the state. Would that have included Rock Island

1 at that time?

2 A. Yes, it did.

3 Q. And did you have -- ever have occasion to
4 inspect the Taylor Ridge landfill that is the
5 subject of these proceedings?

6 A. Yes, I did, although it was known as
7 Andalusia Watts then. And if I slip into my old
8 terminology, please forgive me.

9 Q. Certainly. At that time was that
10 landfill owned and operated by the Watts companies?

11 A. Yes, it was.

12 Q. Could you briefly describe any serious --
13 serious compliance problems that you observed
14 during these inspections?

15 A. During my tenure at the Aurora regional
16 office, after having looked at every landfill
17 within the northern third of the state, I had
18 reached the determination that of the operating
19 landfills that were left open, the Andalusia Watts
20 landfill was in the worst shape of all the
21 landfills in the northern third of Illinois.

22 We instituted a program at that point in
23 time to try to bring the Andalusia Watts facility
24 into full compliance, and I assigned an inspector,
25 a Mr. Michael McKaren (phonetic spelling), to

1 literally visit the landfill on a daily basis to
2 try to achieve compliance.

3 While we made tremendous strides in -- in
4 bringing the landfill into better operational
5 condition, we were never able to achieve compliance
6 during the summer of 1975 that we attempted this
7 feat.

8 Q. Now, you mentioned that you reviewed the
9 facilities existing at that time. Would it be fair
10 to say, Bill, that there were many more operating
11 landfills 20 years ago than there are today?

12 A. Yes. 20 years ago there were
13 approximately 200 operational landfills throughout
14 the state of Illinois. Today the number is 60 and
15 declining.

16 Q. And getting back to the specific time
17 frame of '75 and '76, did you go to the landfill
18 and observe any serious problems yourself?

19 A. Yes, I did. I personally made visits in
20 addition to the assigning of a full-time inspector
21 to that site. The inspector and I made joint
22 visits to the facility on at least two occasions
23 and perhaps three. There were significant
24 violations at the facility when I was there.

25 Daily cover on my first visit was

1 nonexistent. Trash was brought in the front gate
2 and open dumped. There was a serious erosion
3 problem on the back side of the landfill with cover
4 dirt having been eroded down to the garbage and
5 leachate flowing into a small stream that flows
6 down that small -- or down the back side of the
7 landfill. There were vectors everywhere of flies,
8 that sort of thing, and a considerable amount of
9 blowing litter.

10 On my second visit, the daily
11 housekeeping kind of violations had improved.
12 Daily cover had improved. And, therefore, the
13 vectors, the flies and other kinds of vermin that
14 can live on open garbage had decreased
15 significantly. However, the erosion problem and
16 the leachate problem into the creek still remained
17 and was of great concern at that point in time.

18 Q. In your estimation, Bill, would any of
19 the site characteristics at this landfill increase
20 these problems, the location of the site and so
21 forth?

22 A. Well, the proximity, of course, to the
23 creek is an -- is a significant factor and is
24 something that under current state rules and
25 regulations, we would try to discourage. And

1 A. Yes.

2 Q. Would it be fair to say that -- that ever
3 since the mid '70s when you focused on the landfill
4 that this landfill has remained under the Agency's
5 scrutiny?

6 A. Yes, it has.

7 Q. Now, in -- in your dealings with your
8 staff, have you also been briefed on the newly
9 alleged violations within this pending complaint?

10 A. Yes, I have.

11 Q. And in addition to those briefings, Bill,
12 have you also had occasion to review permit
13 documents and internal memoranda regarding this
14 facility?

15 A. Yes, I have.

16 Q. Are you also aware of the history of
17 enforcement actions taken against the Watts
18 companies for this facility?

19 A. Yes.

20 Q. Are you also aware of the enforcement
21 actions that have been taken regarding the other
22 two landfills in Illinois?

23 A. Yes.

24 THE HEARING OFFICER: Just a
25 moment. Mr. Davis, if you could speak up a little

1 bit. You are kind of trailing off.

2 MR. DAVIS: I hate it when that
3 happens.

4 THE HEARING OFFICER: Usually you
5 are good.

6 BY MR. DAVIS:

7 Q. What relief, Bill, is the Illinois EPA
8 and the attorney general's office seeking from the
9 Pollution Control Board in this proceeding?

10 A. We would -- would like for the Illinois
11 Pollution Control Board to revoke the Watts permit.

12 Q. Please articulate the rationale for
13 permit revocation.

14 A. Because of the history of the violations
15 at this facility and the inability of Mr. Watts'
16 company or the unwillingness of Mr. Watts' company
17 to come into compliance at any time during my
18 knowledge of its facility, we feel very strongly
19 that it -- the only option left to us is to revoke
20 the permit and to have the landfill permanently and
21 properly closed.

22 My history goes back on this site for
23 some two decades now plus, and I can't think of a
24 time when there wasn't some ongoing problem at the
25 landfill. The closest that we ever come -- came,

1 in my knowledge, to achieving a long-term
2 compliance was in the '75-'76 time frame when we
3 had almost a full-time inspector there five days a
4 week. And even at that, we were unable to take
5 care of the erosion rills on the back of the
6 landfill and the leachate going into the creek.

7 It's the Agency's position that when
8 landfills are unable to -- to stay in compliance,
9 to achieve compliance and maintain that, that
10 drastic measures are called for. And we believe
11 that -- that in this case, permit revocation is the
12 only solution that will solve permanently the
13 problems at this site.

14 Q. Are you aware that the Board had declined
15 to revoke the operating permit for this landfill in
16 the previous proceeding, 94-127, because those
17 violations which pertain to financial assurance,
18 the lack of a sig-mod as we call it, and the
19 nonpayment of solid waste fees didn't pose any
20 environmental threat?

21 A. Yes.

22 Q. And have you had occasion to discuss that
23 Board ruling with staff and other people for
24 instance?

25 A. Yes.

1 Q. Do you have an opinion as to the
2 environmental impacts of the newly alleged
3 violations within the present complaint?

4 A. Yes.

5 Q. What -- what would be your opinion as --
6 please give us the bases for that opinion.

7 A. I feel that there is a significant
8 environmental threat from these newly alleged
9 violations in the -- in the new complaint. We are
10 talking about issues that directly affect human
11 health and the environment. Issues such as gas
12 leaving the landfill, run-on and runoff of
13 contaminated water from the landfill, leachate
14 control systems from the landfill, which can impact
15 groundwater, and the groundwater assessment, which
16 is necessary to determine whether the landfill is
17 actually being operated as a sanitary landfill or
18 an open dump.

19 Q. If the Board does not revoke the
20 operating permit, are there any controls that the
21 Illinois EPA could suggest in order to force Watts
22 to operate in compliance?

23 A. As a -- as a second measure, I guess, if
24 the Board does not find that -- that the landfill's
25 permit should be revoked -- and I must tell you, we

1 feel very strongly that is the preferable option.
2 But as a second option, we would suggest a control
3 such as having Watts hire a full-time -- pay the
4 Agency for a full-time inspector to -- to be at the
5 facility at all times it is open to -- to help with
6 the compliance needs and necessities at the
7 landfill. We -- we feel, based on past experience,
8 that should help us achieve some measure of
9 compliance. But we are not confident that full
10 compliance will be accomplished by that measure
11 even.

12 Q. Just as it was not achieved with daily
13 on-site supervision by the Agency's inspectors?

14 A. That is correct. And -- and I might add
15 that the inspector should report to the Agency.
16 While it should be paid for the Watts company, it
17 should report directly -- the inspector should
18 report directly to the Agency.

19 Q. Would you agree, however, Bill, that this
20 would certainly be an unprecedented measure for a
21 solid waste facility?

22 A. For -- for an existing solid waste
23 facility, yes. Although this measure for new
24 developed facilities has been suggested in the
25 Chicago area.

1 Q. Okay.

2 A. But that has never been implemented.
3 That was only a suggestion for a facility that was
4 proposed and has yet to be built.

5 Q. Would you agree that the Agency's
6 position on these two matters, permit revocation
7 and the alternative remedy are based strictly on
8 the site specific problems, the history of our
9 compliance actions, all of the things that deal
10 with this landfill in particular?

11 A. Yes, I would agree with that.

12 Q. And as to one of those specific
13 particulars, if you will, are you aware that this
14 landfill is anticipated to close in the next few
15 years?

16 A. Yes.

17 Q. Please review what we have marked as
18 Exhibit No. 1.

19 A. (Complies.)

20 Q. And is this document a copy of the solid
21 waste landfill capacity certification filed by
22 Watts in January of 1996?

23 A. Yes, it is.

24 Q. And is this type of certification
25 required of all operating facilities in the state?

1 A. Yes, it is.

2 Q. What is the document intended to show?

3 A. The document is intended to show the
4 remaining capacity of the operational landfills
5 throughout the state.

6 Q. And as far as this particular landfill,
7 does it, in fact, show that?

8 A. Yes, it does, for the ESG Watts facility.

9 Q. And part of the report would be the
10 approximate disposal rates and so forth to
11 determine that capacity as far as remaining years
12 or months. Would you not agree?

13 A. That is correct.

14 Q. Does Exhibit No. 1 indicate when the
15 Taylor Ridge landfill is expected to close?

16 A. Yes, it does.

17 Q. And -- and once again, this is when the
18 operator expects it to close; is that correct?

19 A. That is correct.

20 Q. When would that be?

21 A. That would be the year 2000.

22 Q. On another issue dealing with sig-mod.
23 And first of all, when I say sig-mod, I intend to
24 refer to the significant modifications to permit
25 regulations.

1 As you have testified, Bill, you've been
2 involved with the regulation of solid waste as well
3 as hazardous waste for over 25 years. Would you
4 agree that landfill design is an evolutionary
5 process?

6 A. Absolutely. It's evolved greatly over
7 the 25-26 years I've been involved.

8 Q. And would you briefly explain your
9 involvement with the significant modification
10 regulations, how they came about and the reasons
11 and so forth.

12 A. As part of the Pollution Control Board
13 regulations regulating landfills, it was determined
14 that there were a number of landfills in the state
15 that were of marginal design at best. And when the
16 Pollution Control Board considered the landfills --
17 or the regulations on what to do with these
18 landfills, some of which were designed very well,
19 and some of which were designed very poorly, they
20 set up a system by which landfills were required to
21 register whether they were going to stay open or
22 not past -- past a -- a date certain.

23 Landfills which -- which closed by 1992
24 were allowed to operate as they were without
25 further upgrade. Landfills which were required

1 to -- that were going to stay open from 1992 into
2 1997 were required to supply -- to submit a sig-mod
3 and -- and have a -- an interim permit to make sure
4 that things like leachate collection and leachate
5 withdrawal were taken care of. But landfills which
6 chose to stay open past 1997 were required by the
7 Board to apply for a significant modification to
8 fully upgrade all of the facility to put in all new
9 control measures which were required, which
10 included groundwater monitoring and modeling.

11 Q. Would you agree that obtaining a
12 significant modification is sort of a trade off for
13 a landfill being allowed to operate past that date?

14 A. Yes.

15 Q. And that date would be October '92, would
16 it not?

17 A. That's correct.

18 Q. And would you agree that conceptually
19 much of this program was based upon some federal
20 regulations?

21 A. One of the -- one of the main drivers was
22 the Subtitle D regulations, which were passed in
23 '95, I believe, but had been talked about for
24 forever before they came out.

25 Q. And were you personally involved in those

1 discussions on a national level?

2 A. Yes. Actually testified before Congress
3 on Subtitle D regulations.

4 Q. You know, you mentioned design and the
5 marginality -- the marginal of some existing
6 facilities. Would you agree that it's awfully
7 difficult to retrofit an operating facility to meet
8 these new design standards?

9 A. I would say it's much more difficult to
10 retrofit an existing facility than it is to build a
11 new one.

12 Q. Okay. And would one of the big problems
13 be with leachate collection and management?

14 A. Yes. That is one of the most significant
15 areas.

16 Q. Okay. To digress just for a moment, how
17 would leachate collection be handled with a
18 landfill that's being constructed right now under
19 the presently and applicable regulations?

20 A. The landfill liner system itself would be
21 designed to collect and to channel the leachate to
22 certain collection points. The landfill design
23 would incorporate a design which maintained
24 leachate head, which is the amount of leachate that
25 is found in the landfill itself, at one foot or

1 less.

2 All of this design work and grading work
3 is done prior to refuse ever being placed in the
4 landfill. There are drainage blankets and
5 collection sumps and all manner of engineering
6 features and construction that's put into the
7 landfill prior to its development.

8 It's obvious that an existing landfill
9 cannot do that, and retrofitting those landfills
10 can be -- an old landfill, can be very expensive
11 and very time consuming.

12 Q. Would it involve the implementation of
13 monitoring and extraction wells, for instance?

14 A. It could very well involve that. And
15 certainly groundwater modeling to determine what
16 the impact of the leachate is on the groundwater.

17 Q. And would that be part and parcel of the
18 sig-mod, for instance?

19 A. Yes, it would. That is its purpose.

20 Q. Okay. Are you aware that an application
21 for sig-mod was, in fact, filed by Watts in
22 September 1994?

23 A. Yes.

24 Q. And that this application was found to be
25 over a year late?

1 A. Yes. It came in a year late.

2 Q. And the Agency had a call-in program
3 established, which -- whereby facilities were
4 notified this is your due date, this is your
5 deadline, and that the Agency made an overt attempt
6 to try to coordinate things?

7 A. That is correct.

8 Q. Okay. As to this application, are you
9 aware, Bill, that the Illinois EPA issued a denial
10 of the sig-mod in February 1995?

11 A. Yes.

12 Q. And is it your understanding that Watts
13 has yet to formally resubmit a sig-mod application
14 to the Agency?

15 A. Yes, that is correct.

16 Q. Do you, on behalf of the Illinois EPA,
17 have any compliance concerns regarding specific
18 lack of a sig-mod?

19 A. We certainly do. The Agency's concern
20 about the lack of a sig-mod is that -- that no one,
21 including ESG Watts or the Agency or the citizens
22 of the state of Illinois, have any idea whether or
23 not this facility comply with -- can comply with
24 the new regulations. We don't know what the effect
25 of the leachate is at this facility. We don't know

1 how much leachate head there is at that facility.
2 We don't know about leachate withdrawal systems.
3 We don't know about monitoring requirements. There
4 is questions about run-on and runoff, all of which
5 have grave environmental impacts, but which we
6 cannot assess without the engineering data that's
7 found within the sig-mod.

8 Q. How does the anticipated closure affect
9 these compliance concerns?

10 A. Well, the longer that we let this
11 facility operate, the more potential damage that is
12 done. The more leachate that can reach into the --
13 into the groundwater, the more gas that can be
14 emitted into the air. We need to bring this
15 facility under control.

16 Q. Now, I detect a sense of urgency. If I
17 can be allowed to interpret your remarks, isn't it
18 true the Agency has been working toward this
19 objective with this landfill for quite a while,
20 working toward it in a permitting sense?

21 A. Yes. As part of our permitting process,
22 we have called in the permit some three or four --
23 three -- well, three or four years ago in an effort
24 to -- to review the engineering data necessary to
25 make the determination that this landfill can be

1 successfully and safely operated. But we haven't
2 been able to achieve that because the significant
3 modification is not forthcoming.

4 Q. And are you -- do you have a familiarity
5 with the previous Board rulings in the previous
6 case?

7 A. Yes.

8 Q. Okay. Did the Board order this company
9 to submit a sig-mod application?

10 A. Yes, it did.

11 Q. Are you also familiar with the denial
12 points in the February 1995 permit action by your
13 Agency?

14 A. Generally.

15 Q. Okay. And did one -- is it your
16 understanding that one of those denial points
17 involved the lack of a groundwater assessment
18 monitoring program?

19 A. Yes.

20 Q. How significant is this deficiency to
21 your request for permit revocation?

22 A. Well, I think it's directly related.
23 The -- the groundwater assessment information is
24 the way that we make a determination of whether or
25 not groundwater is impacting the environment. And

1 to that -- to that extent, potentially human
2 health. Its impact on the groundwater. Its impact
3 on receiving streams where -- where groundwater may
4 be surfacing, and the impact on any local wells
5 that -- that are in continuity with the groundwater
6 under the facility.

7 Q. Okay. Another of the sig-mod denial
8 points involved the insufficiency of the financial
9 assurance cost estimates. Specifically in the
10 context of these groundwater problems.

11 First of all, on that point, would you
12 please review Peoples Exhibit No. 2, and would you
13 agree that this is a copy of supplemental permit
14 number 1996-087-SP that was issued by the Agency to
15 Watts on June 13, 1996?

16 A. Yes.

17 Q. Okay. Now, in addition to approving the
18 landfill gas management and monitoring plan, which
19 we will discuss in a moment, does the permit
20 upgrade the financial assurance requirements for
21 the Taylor Ridge landfill?

22 A. Yes, it does.

23 Q. Would it be pertinent to the position of
24 the Illinois EPA that permit revocation is
25 warranted if Watts has failed to increase its trust

1 fund to the required level?

2 A. Yes.

3 Q. Okay. And as an officer of these
4 proceedings, as assistant attorney general, I will
5 represent to you that we expect testimony that the
6 trust fund is not up to the required level of
7 \$1,299.464. My question now is --

8 MR. NORTHRUP: Let me make an
9 objection here, while we are on this issue of
10 whether or not, you know, you are going to prove up
11 the issue of whether or not the financial assurance
12 with this requirement has been complied with. That
13 is not something that's been alleged in the
14 complaint. There has been no 31-D meeting. I
15 think that is especially pertinent since the
16 governor and the legislature amended Section 31 to
17 set in place all kinds of bells and whistles for
18 compliance opportunities and things like that.

19 So to the extent that you are using this
20 proceeding to allege and prove any kind of
21 violation with respect to financial assurance, from
22 this point, I'm going to object to it.

23 MR. DAVIS: Ms. Hearing Officer, the
24 objection appears to be on notice and pleading
25 ground rather than whether the 1.3 million

1 approximately is, in fact, within the trust fund.

2 If -- if there is a denial as to the
3 factual accuracy, then that's one thing. So I
4 would -- I would ask whether there is a denial on
5 that point before addressing the other aspects.

6 THE HEARING OFFICER: My guess is
7 that you are going to attempt to prove it. And if
8 there is an --

9 MR. NORTHRUP: I'm not going to deny
10 it.

11 THE HEARING OFFICER: -- factual
12 aspect, we will get to it when you try and prove
13 it.

14 MR. DAVIS: It sounds like --

15 THE HEARING OFFICER: I'm going to
16 allow your question at this point.

17 And, Mr. Northrup, if you want to make,
18 you know, any type of motion to the Board on
19 whether or not you received proper notice, that is
20 not something I have the authority to make a
21 determination on.

22 MR. NORTHRUP: Right. I just wanted
23 to object for the record so it's there. So in post
24 hearing briefs.

25 THE HEARING OFFICER: Please

1 continue.

2 MR. DAVIS: Since the objection is
3 not regarding the factual accuracy, we will just
4 address that in our briefs.

5 BY MR. DAVIS:

6 Q. Getting back to my inquiry, Bill. Let me
7 restate the question.

8 Would it be pertinent if there is
9 evidence to show that the 1.3 approximately is not
10 within the trust fund? How does the financial
11 assurance underfunding in the context of the
12 anticipated closure affect your compliance concerns
13 and your request for permit revocation?

14 A. It's directly connected. We are gravely
15 concerned about the underfunding of this financial
16 assurance commitment. It is the pot of money that
17 is set aside to deal with closure and post closure
18 problems at the landfill during -- during the
19 application of final cover. All the monitoring
20 that is required for the 30 years post closure
21 monitoring. For fixing of erosion control and --
22 and -- and leachate seeps around the landfill
23 during its post closure care period.

24 And without that pot of money there, the
25 Agency cannot be assured that money has been set

1 costs more as the years go on to do a given -- a
2 given task.

3 The second issue is that as you increase
4 the volume of refuse, you also can increase the
5 amount of leachate that needs to be taken care of.
6 There could be more daily cover that is required.
7 And more final cover. And you have additional
8 height on side slopes which need to be maintained
9 so that costs as it goes -- goes on, can go up.

10 Q. Moving to one last -- well, a couple more
11 issues. And referring to Peoples Exhibit No. 2 in
12 particular.

13 Can you explain the Agency's position as
14 far as issuing permits to this permittee for this
15 facility where we have a lack of a sig-mod?

16 A. The Agency has taken the position that it
17 will issue permits that are required to be
18 protective of human health in the environment.
19 This permit was issued, because it was a permit to
20 control the gas problem that was found at the
21 landfill. This was not a permit to accept more
22 waste or different kinds of waste. This was a
23 permit to correct an environmental problem. And
24 since the permit is required, we felt that it would
25 be -- we would be derelict in our duty if we did

1 not issue this permit and allow this landfill to
2 correct any potential gas problems at the -- found
3 at the site.

4 Q. Would you agree, simplistically speaking,
5 that the Illinois EPA has asked the attorney
6 general's office to take this enforcement action to
7 seek certain objectives, including this -- this
8 item, the gas management?

9 A. Yes.

10 Q. Okay. And would you agree that it makes
11 more sense to try to take those -- come to achieve
12 compliance progress as opportunities arise?

13 A. Absolutely.

14 Q. And in issuing this permit, the Agency
15 has simply said that based upon what it's been told
16 the landfill would do, it sounds like a good idea?

17 A. That's right.

18 Q. Okay.

19 A. Putting in this landfill gas management
20 system is a good idea for the environment and for
21 the public health of the area.

22 Q. As to the other enforcement objectives
23 that we have touched on, are you aware that the
24 Illinois EPA is also seeking to have Watts submit
25 a leachate management plan and that this

1 requirement -- this enforcement demand was
2 articulated in one of the previous court cases?

3 A. Yes.

4 Q. And -- and has the Agency received a
5 leachate management proposal?

6 A. No.

7 Q. And are you also aware that the Illinois
8 EPA is seeking through the enforcement actions to
9 have Watts submit a groundwater assessment
10 monitoring proposal and that this also was
11 communicated during the 31-day meeting in August
12 '95?

13 A. Yes.

14 Q. Now, we have stated that such a permit
15 did issue. Is this your understanding?

16 A. Yes.

17 Q. And is it also your understanding that an
18 appeal was taken to the Board of that permit?

19 A. That is my understanding, yes.

20 Q. Are you also aware, Bill, that the
21 Illinois EPA is seeking through these enforcement
22 actions to have Watts submit a storm water
23 management plan, and that this enforcement demand
24 was also communicated to Watts during the 31-day
25 meeting in August '95?

1 A. Yes.

2 Q. And is it your understanding that that
3 plan has not been submitted?

4 A. Yes.

5 Q. Do you have an opinion as to whether the
6 leachate groundwater assessment, storm water
7 management, all of these plans are necessary as far
8 as being protective of the environment and human
9 health?

10 A. Yes, I do. I believe very strongly that
11 all of them are part of a well operated, well run,
12 safely designed, sanitary landfill, a landfill
13 that's protective of human health and the
14 environment. And without having these in place,
15 and appropriate designs in place, one cannot be
16 sure that the landfill will be safely operated.

17 Q. Let's focus on one last issue. Do you
18 have a concern regarding landfill gas emissions?

19 A. Yes.

20 Q. And would you agree, Bill, that landfill
21 gas emissions are more than simply malodors?

22 A. Yes.

23 Q. Okay. Request you please explain that
24 and -- and, as well, give us insight into your
25 personal expertise into this issue.

1 A. Let me reverse the order of the question,
2 if I may. My personal experience has been giving
3 congressional testimony on gas management issues
4 during the Subtitle D debate in Washington when
5 Congress was passing Subtitle D. And -- and I have
6 for a number of years witnessed gas migration at
7 many of the landfills throughout the state of
8 Illinois.

9 Gas management is a very serious problem
10 and not one that just manifests itself in odors.
11 Many of the constituents of gas are harmful and/or
12 toxic compounds. Things like sulfides, hydrogen
13 sulfide, which is -- which is a toxic gas, carbon
14 monoxide, other gases which are by-products of the
15 breakdown of the refuse underneath the cover
16 system. It's of particular significance in that
17 the gas can migrate off site, and it can cause two
18 very significant environmental effects.

19 One, it be can stress and/or kill
20 vegetation. There have been numerous sites where
21 vegetation dies off. Has been very significant.
22 Some of them have been environmentally sensitive
23 areas.

24 Second issue is -- of course, is gas
25 migration into neighbors' homes. The gas is

1 primarily made up of methane, which is explosive
2 when combined with oxygen at a 15-to-1 ratio. This
3 particular problem has -- has caused explosions in
4 peoples basements, has caused explosions in peoples
5 garages, has caused upheaval of foundation units,
6 and -- and is very, very dangerous. And if a
7 person is unaware of it, could -- could cause
8 asphyxiation if -- if it doesn't explode.

9 Q. Okay. Based upon your involvement in
10 this particular issue, have you developed a
11 specialized knowledge that's based part on personal
12 knowledge and part on review of scientific
13 treatises and so forth?

14 A. Yes. Part of my training, of course, to
15 receive my job was landfill management. And one of
16 the big issues has been gas management. It's --
17 it's a significant issue with sanitary landfills.

18 Q. And generally within all this
19 comprehension that you have gained, would you agree
20 that landfill gas emissions at least have the
21 potential for exacerbating an individual's health
22 condition, asthma, allergies, emphysema, et cetera?

23 A. Certainly there are direct human health
24 consequences for -- for breathing these -- these
25 gases, and there are some also dermal contact

1 issues for the gases also.

2 Q. Could you now explain the regulatory
3 position of your Agency, the Illinois EPA,
4 regarding landfill gas emissions?

5 A. The Agency has taken the position that
6 where financially practical, we encourage that the
7 gas from a landfill be collected and used for its
8 BTU value by cleaning up the gas and piping it
9 into -- to pipe lines, natural gas pipelines, since
10 it is basically made up of natural gas. It's sort
11 of the ultimate in recycling your garbage. Goes
12 into the ground through anaerobic decomposition.
13 Breaks down into carbon dioxide and water and --
14 and methane and carbon monoxide. I'm sorry. The
15 methane can then be captured, cleaned up and sent
16 in the pipelines for people to burn in their
17 house.

18 Short of that, the Agency has taken a
19 position that gas from landfills must be
20 controlled. And at landfills in which the volume
21 of waste and therefore the volume of gas that will
22 be produced from that waste is insufficient to
23 capture it, we require a gas management system,
24 which could include such things as flaring or
25 impermeable caps and scrubbing of the gases.

1 Q. Would you agree there is intrinsic
2 differences between what you've called financial
3 practicality or economic feasibility, if you will,
4 and profitability on the other hand?

5 A. Yes.

6 Q. Would you also agree that this facility
7 has had a need for something to be done for gas
8 management for quite a while?

9 A. Yes.

10 Q. Now, let's focus on the particulars at
11 this facility. You mentioned that gas emissions
12 have an effect on vegetation. And you said
13 distress. Can you explain what distress involves?

14 A. Distress could involve yellowing of the
15 vegetative leaf systems. It could disrupt growth
16 patterns, slow down growth. It can inhibit root
17 growth within -- within the surrounding soils.
18 And, of course, the ultimate in stress, that the
19 plant would die. It would yellow, wilt, and
20 eventually die because of the toxic nature of the
21 methane and the other contaminant gases that are
22 found within the gases from the landfill.

23 Q. Now, with this facility, the Taylor Ridge
24 landfill, as it nears and has been for several
25 years nearing the end of its disposal capacity, has

1 the potential -- potential or actual impact of
2 distressed vegetation become more severe?

3 A. There is a natural curve in terms of gas
4 generation. Gas starts out in the very earliest
5 stages when refuse is first laid down as being a
6 very, very small percentage of -- of the overall
7 decomposition products of -- of the waste. As --
8 as you increase the volume of waste in there, and
9 as the waste has more water in it, the gas
10 production increases, and you get the typical
11 bell-shaped curve.

12 Normally, you see very -- a high level of
13 gas production within five to seven, perhaps ten
14 years of the first placement of gas. And that
15 will -- or first placement of refuse. That will --
16 will start to tail off with time and -- and gas
17 production will slowly slow down probably 20 years
18 after closure of the landfill to where it's not
19 very noticeable. But at -- normally at the -- at
20 the time the landfill closes, because of the amount
21 of waste that's there and the fact that you have a
22 lot of old refuse and lot of new refuse, you have
23 gas production at its peak, and I would expect this
24 landfill has -- is very close to peak production
25 now.

1 Q. Would the lack of consistent daily cover
2 that you've testified 20 years ago be a factor in
3 gas production now, then or at any point?

4 A. Yes. Gas production is a factor of many
5 elements, but -- but one of the elements for gas
6 production, moisture content of the waste. The
7 more moisture you can let in, the more gas that --
8 that can be produced. And, of course, the other
9 factor in daily cover is the ability of the gas to
10 escape into the atmosphere.

11 An appropriate controlled facility with
12 appropriate cover and appropriate flaring of the
13 gas lets very little of its gas content vent into
14 the atmosphere. That's not the case in the Taylor
15 Ridge landfill. The cover is highly suspect, and
16 that's the reason for the permit that we issued.

17 Q. Okay. Now, as the cover -- would you
18 agree that as this landfill exhausts its disposal
19 capacity, that more and more of the total site has
20 been covered with final cover, intermedial cover
21 and so forth --

22 A. Yes.

23 Q. -- that you are not going to go back into
24 certain areas, they are eventually full?

25 A. Yes. That's correct.

1 Q. Focusing on gas emissions, would the
2 potential to distress the vegetation affect the --
3 this final cover?

4 A. It could very well. Inappropriately
5 vented gases or gases which are not appropriately
6 collected could very well stress the cover -- the
7 vegetative cover, which is required to be put on
8 the landfill both on the top of the landfill and
9 the side slopes to -- to control the freeze/thaw
10 cycle and the erosions in the landfill itself.

11 Q. Would you have an opinion as to this
12 landfill whether some of the erosion problems have
13 been so well documented could be attributable to
14 gas emissions?

15 A. It's possible.

16 Q. And would you agree that the erosion
17 problems if not corrected could lead to more and
18 more runoff?

19 A. Oh, that's absolutely correct.

20 Q. Okay. And that has been a persistent
21 problem for at least 20 years with this landfill?

22 A. Yes.

23 Q. Lastly, can you articulate any other
24 reason -- and I know we have covered a lot -- but
25 that you haven't mentioned that would support the

1 Illinois EPA's request for permit revocation?

2 A. I'd just like to stress again the
3 compliance history that this facility has had. And
4 as I said in my opening remarks, the inability or
5 unwillingness of the -- of the landfill to control
6 its pollution problems at the facility to operate
7 the landfill as an appropriate sanitary landfill.

8 And I feel if you look at the overall
9 history, the 20-year plus history of this facility,
10 you have to come to the conclusion that -- that
11 this landfill with its current operator and owner
12 is just incapable of being operated as the kind of
13 landfill that the Pollution Control Board
14 envisioned when it set up its new solid waste regs.

15 MR. DAVIS: Thank you, sir. I have
16 no other direct examination.

17 As to the two exhibits, Peoples Exhibit
18 No. 1, we didn't have a stipulation. Subject to
19 cross, I would move the admission. As to No. 2, I
20 believe we have a stipulation. The permit.

21 MR. NORTHRUP: Yeah. That's okay.
22 Exhibit No. 1, that's fine. 2, and no objection to
23 that.

24 THE HEARING OFFICER: Okay. And
25 Exhibit 1 and 2 are admitted into evidence.

1 Mr. Northrup, before you begin your
2 cross-examination, I'd like to take a five-minute
3 break and come back in five minutes.

4 (Recess taken.)

5 THE HEARING OFFICER: Okay. Let's
6 go back on the record.

7 Mr. Davis, did you have anything further
8 for Mr. Child?

9 MR. DAVIS: Not on direct
10 examination.

11 THE HEARING OFFICER: Mr. Northrup,
12 then you may begin. I'm going to remind you to
13 speak up. We are having trouble hearing you.

14 MR. NORTHRUP: Okay. Thanks.

15 CROSS-EXAMINATION

16 BY MR. NORTHRUP:

17 Q. Let's talk about gas for a while. Have
18 you ever designed a methane gas recovery system?

19 A. No.

20 Q. Have you ever operated one?

21 A. No.

22 Q. Can you calculate for me how much gas is
23 produced at the Taylor Ridge landfill?

24 A. No, I cannot.

25 Q. Now, you talked about some of the toxic

1 property of landfill gas. Can you tell me at what
2 point those -- those gases become toxic when they
3 are released in the ambient air?

4 A. The ambient -- no.

5 Q. Do you understand the question?

6 A. You asked me if -- if I could tell you at
7 what point landfill gases became toxic in the
8 ambient area. And the answer is, no, I can't tell
9 you that.

10 Q. Do you know of any stressed vegetation
11 off the landfill site that has been caused by
12 landfill gas?

13 A. I personally don't, no.

14 Q. Are you -- do you know of any explosions
15 in houses attributable to landfill gas from this
16 landfill?

17 A. I don't know of any, no.

18 Q. Can you tell me if anyone's health
19 condition has been affected by landfill gas at this
20 landfill?

21 A. I have no personal knowledge of that.

22 Q. Do you know how much landfill gas it
23 takes to stress vegetation?

24 A. No. I -- I don't know the -- the
25 quantification limits.

1 Q. There was quite a bit of discussion about
2 a particular 31-D meeting where certain
3 requirements were requested of Watts. Are you
4 aware of any penalty demand that was made at that
5 meeting?

6 A. I'm not personally aware, no.

7 Q. Are you aware of any penalty demand made
8 to Watts in this case?

9 A. I don't recall.

10 Q. You just don't recall, or you don't
11 recall what the amount was, or you don't recall
12 whether a penalty demand was made?

13 A. The latter.

14 Q. Are landfills designed to leak a certain
15 amount of leachate?

16 A. Not currently.

17 Q. Were they in -- prior to 1990?

18 A. Yes.

19 Q. Now, isn't it true that every landfill in
20 the state does not have a sig-mod?

21 A. That is correct.

22 Q. Are you seeking the revocation of any of
23 those landfill permits?

24 A. No.

25 Q. You discussed a variety of things related

1 back to your personal inspections or these visits
2 to the landfill back in the 1970s. Did you review
3 any -- well, is that true?

4 A. Yes.

5 Q. Is that just based on recollection or
6 have you reviewed any documentation?

7 A. It's based on recollection.

8 Q. How do your -- your personal experiences
9 at the landfill back in the mid '70s affect your
10 decision to revoke Watts' permits?

11 A. I would say that it is the beginning of
12 what I view as a continuing compliance problem.
13 Compliance problem that hasn't been fixed. And so
14 it's significant in that regard, that it's sort of
15 my first awareness of the situation at the
16 Andalusia facility, and that situation has kind of
17 gone on since then.

18 Q. I believe you testified earlier -- when
19 Mr. Davis asked you to articulate your decision for
20 permit revocation, you identified a couple of broad
21 categories. The history of the landfill as well as
22 inability or unwillingness of the Watts -- of ESG
23 Watts to come into compliance.

24 Now, what -- what is that based on, this
25 inability or unwillingness?

1 A. I would have to say as my personal
2 observations or personal experience with this
3 facility, I have seen and -- and I don't know for
4 what reason, the inability of this company to
5 achieve and continue to keep facilities in Illinois
6 in compliance. And -- and since I -- I don't know
7 what the full circumstances are for -- for the
8 company, I don't know whether it's an unwillingness
9 to do so or inability to do so or financial or
10 personal unwillingness to -- to bring the
11 facilities into compliance and -- and to keep them
12 there.

13 Q. How does the fact that Watts has applied
14 for and received a gas permit affect your thinking
15 with respect to the inability or unwillingness of
16 Watts to comply?

17 A. I don't think it has. I believe that the
18 permit, the gas permit, was a business --

19 Q. That's fine.

20 MR. DAVIS: I would object. The
21 witness has to be allowed to give -- complete his
22 answer. If the answer is responsive, it gets in.
23 If it's not responsive, there is a motion to
24 strike. I object to the witness being interrupted.

25 THE HEARING OFFICER: Okay.

1 MR. NORTHRUP: I believe he answered
2 my question. I didn't ask him to elaborate on his
3 answer.

4 THE HEARING OFFICER: Can you read
5 back the question, please.

6 (Requested portion read.)

7 THE HEARING OFFICER: Mr. Child,
8 will you complete your answer, please.

9 MR. NORTHRUP: I'm sorry. I
10 didn't --

11 THE HEARING OFFICER: I asked him to
12 complete his answer.

13 BY MR. NORTHRUP:

14 A. I was going to add the thought that in my
15 view this was a business decision based on Watts --
16 ESG Watts that -- that there was gas within the
17 landfill, which is a valuable commodity. There is
18 a collection system designed with the gas with the
19 idea that eventually that gas would be sold, and --
20 and I applaud him for that decision. I don't think
21 that was a bad decision. I just -- I just don't
22 think that that's the only compliance issue at this
23 site.

24 Q. Okay. What's the basis of your statement
25 that this was a business decision on Watts' part?

1 on October 18th of this year, how would that affect
2 your thinking with respect to Watts' inability or
3 unwillingness to comply with requirements?

4 MR. DAVIS: May I interrupt,
5 please. The objection would be a submittal. The
6 question is ambiguous and could be irrelevant. A
7 submittal of what? If the question can be, you
8 know, enhanced. What was submitted? Basically we
9 are asking the witness to speculate. That's
10 another objection. All of these things could be
11 addressed if the question were made more specific.
12 A submittal of. If you get my point.

13 THE HEARING OFFICER: Can you make
14 that clear?

15 BY MR. NORTHRUP:

16 Q. You were aware that there are various
17 denial points in the denial letter.

18 THE HEARING OFFICER: Talking about
19 the sig-mod?

20 MR. NORTHRUP: The sig-mod denial.

21 BY MR. NORTHRUP:

22 Q. If Watts had submitted a response to
23 those denial points, how would that affect your
24 thinking on Watts' inability or unwillingness to
25 comply with the requirements to obtain a sig-mod?

1 first to admit that there are elements that he has
2 complied with, and that could be one of them.

3 Q. Okay. What other elements has he
4 complied with?

5 A. He has on occasion applied daily cover.
6 He has on occasion not applied daily cover. He has
7 on occasion paid his solid fees. He has on
8 occasion not paid his solid waste fees. He has on
9 occasion paid his solid waste fees with checks that
10 cleared the bank, and he has paid his solid waste
11 fees with checks that haven't cleared the bank.

12 I mean, if you look -- my testimony would
13 be if you look at the overall history of compliance
14 of Mr. Watts, it has not been consistent. He has
15 not brought his site into full compliance, and he
16 has not tried to keep it there. He drifts in and
17 out on various elements.

18 Q. Well, with respect to solid waste fee
19 payments, are you aware of any late -- or payments
20 that have not been made since the Board's ruling in
21 PCB 94-127?

22 A. I don't know.

23 Q. You just don't know whether -- whether
24 there are any or are not?

25 A. I don't know whether there are any or

1 not.

2 Q. Why wouldn't these compliance efforts
3 impact your decision to seek revocation?

4 A. For the reasons I just stated is that --
5 is that if you take the compliance efforts over the
6 20 years that I've been aware of the facility,
7 there has been no effort during that time period
8 that's brought the facility into full compliance
9 and kept it there.

10 Q. Do you know of any health effect directly
11 related to any runoff from this site?

12 A. No.

13 Q. How about with respect to leachate
14 leaving this site?

15 A. No.

16 Q. I believe I -- I asked earlier. But how
17 about with respect to gas?

18 A. No.

19 Q. I believe you had indicated that it was
20 difficult to retrofit older landfills. That is the
21 purpose of the sig-mod, correct?

22 A. Yes.

23 Q. How many sig-mods -- do you know how many
24 sig-mods have been issued in this state?

25 A. No, I don't know.

1 Q. Is it more than five?

2 A. Yes.

3 Q. More than ten?

4 A. Yes. I believe so.

5 Q. More than 15?

6 A. Someplace between 10 and 30.

7 Q. So while it may be difficult, it's
8 certainly not impossible?

9 A. That is correct.

10 Q. With respect to the capacity issue, I
11 believe it was Peoples Exhibit 1, that is a
12 document that is prepared yearly by landfills?

13 A. Yes.

14 Q. Okay. The estimated capacity that is
15 listed on that document, it can change from year to
16 year.

17 A. Yes.

18 Q. Okay. There is also an allegation in the
19 complaint with respect to groundwater
20 contamination. Do you know of any health effect
21 related to this alleged groundwater contamination,
22 any adverse effect?

23 A. I don't know.

24 Q. Permit revocation is the most severe
25 sanction that can be imposed by the Board. Do you

1 agree?

2 A. I don't know if I could say it's the most
3 severe, but it's certainly a very severe sanction,
4 yes.

5 Q. What would be more severe?

6 A. I would think that a penalty well in
7 excess of the ability of an operator to ever
8 recover all, that would be probably more severe
9 than closing the facility and getting out and
10 cutting your losses. That would be one of the
11 things that I would think would be more severe.

12 Q. Would you agree that there would have to
13 be a significant vegetative kill to support seeking
14 of permit revocation?

15 A. No.

16 Q. Would you agree that in the absence of
17 any other -- scratch that.

18 Is a gas problem sufficient in and of
19 itself to warrant permit revocation?

20 A. It could be.

21 Q. Under what circumstances?

22 A. If the gas problem was threatening
23 sensitive or endangered environmental ecosystems or
24 threatening human health.

25 Q. Do you know of any sensitive ecosystem

1 around the Taylor Ridge landfill?

2 A. I don't personally.

3 Q. Now, would daily cover problems alone
4 warrant permit revocation?

5 A. It might.

6 Q. Under what circumstances?

7 A. If they went on for years.

8 Q. Would there have to be any associated --
9 harm associated with the cover problems?

10 A. There would be an associated harm with
11 the -- with that problem.

12 Q. And what would that harm be?

13 A. Be increased infiltration into the
14 landfill, generations of excess leachate, and then
15 your guess is as good as mine what happened --
16 happens to the leachate.

17 Q. Are you aware that a leachate control
18 plan was submitted to Judge Cadigan, the Sangamon
19 county circuit court, back in 1992?

20 A. I don't remember.

21 Q. Do you remember any leachate control plan
22 being submitted to the court at any time with
23 respect to the Taylor Ridge facility?

24 A. No. No. I don't remember.

25 Q. Can you quantify for me how much leachate

1 would be produced at the landfill if it were to
2 continue to operate for the next -- or say until
3 the year 2000?

4 A. No.

5 Q. Can you tell me how much gas would be
6 produced at the landfill if it were to continue
7 until the year 2000?

8 A. No.

9 Q. Any -- scratch that.

10 Given the fact that this landfill has
11 been in operation for 20, 30 years, would the
12 increased gas or leachate be significant?

13 A. It could be.

14 Q. Okay. How could it be?

15 A. The area of the landfill which is
16 currently being operated is immediately proximate
17 to the residents. Therefore, making the gas easier
18 to -- to reach those residents and their -- their
19 wells, if they are on wells. So it could be.

20 Q. But you can't give me some kind of
21 percentage of how great it would be?

22 A. No. But if it's important to you, I have
23 an engineering staff that can.

24 Q. Let's talk about some of the history of
25 Watts with respect to some adjudicated violations.

1 In the complaint it alleges Sangamon
2 County 92-CH-23 case. Have you reviewed any of the
3 pleadings in that case prior to your testimony
4 today?

5 A. Is this the Sand Hill Road?

6 Q. No. This is about Cadigan and Taylor
7 Ridge?

8 A. No, I didn't.

9 Q. No, you did not?

10 A. No, I did not.

11 Q. Did you have any discussions with anyone
12 about that case prior to today?

13 A. I don't remember.

14 Q. Have you reviewed any of the
15 administrative citations issued against ESG Watts?

16 A. Yes.

17 Q. Okay. Which ones of those have you
18 reviewed?

19 A. At least in a cursory sense, all of them.

20 Q. Okay. How in a cursory sense have you
21 reviewed them?

22 A. Administrative citations are required
23 to go through my desk for signature, all of them.
24 And with the exceptions of days when I was not
25 present and there is an alternative sign-off

1 procedure, I would have -- I would have signed the
2 administrative citation. I would have reviewed the
3 photographs that were taken. I would have reviewed
4 the inspector's notes. That's my job.

5 Q. I'm sorry. You have not reviewed any of
6 those since the filing of this complaint, is that
7 true? Since November of -- let me rephrase.

8 In connection with this complaint, have
9 you reviewed any of those administrative citations?

10 A. I don't believe so, because we filed the
11 complaint.

12 Q. So I -- if I were to ask you how
13 Administrative Citation 86-10 affected your
14 decision to seek revocation of permits, could you
15 tell me?

16 A. It's part of the compliance history of
17 this site.

18 Q. Can you tell me anything about any of
19 these administrative citations that have been
20 alleged in the complaint specifically?

21 A. No. I've to review each one of them to
22 see what they were about, and when they were sent,
23 and when they were signed, and whether they were
24 paid. All those issues.

25 Q. And you have not done so in anticipation

1 of at least your testimony here today?

2 A. No.

3 Q. How would you characterize administrative
4 citations? Are they for minor violations?

5 A. Administrative citation process was a
6 process that was put into place by the state
7 legislature when they were tired of dealing with
8 citizens' complaints concerning landfills. It gave
9 the Agency tools to deal with straightforward but
10 significant violations, things like daily cover,
11 blowing litter, easily observable events.
12 Nonetheless, very significant and especially in
13 terms of significant to the neighbors that have to
14 live around these facilities.

15 Q. Would you characterize them as
16 housekeeping problems?

17 A. Only to a certain extent. Obviously, the
18 lack of daily cover, as we have just testified,
19 contributes directly to leachate generation, which
20 contributes to gas generation. Housekeeping has an
21 effect on environmental issues at the landfill,
22 environmental compliance at the landfill. And so I
23 don't want to understate the importance of the
24 administrative citation program. It has been a
25 very effective tool in achieving landfill

1 compliance.

2 Q. Are they common at landfills?

3 A. AC's?

4 Q. Yes.

5 A. Administrative citations that are common
6 at landfills, yes.

7 MR. NORTHRUP: I don't have any
8 further questions.

9 THE HEARING OFFICER: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. DAVIS:

12 Q. Bill, have administrative citations been
13 an effective tool in achieving compliance at the
14 Taylor Ridge landfill?

15 A. No.

16 Q. Have they been an effective mechanism for
17 enforcement in achieving compliance at other
18 landfills?

19 A. Yes.

20 Q. As to landfill gas, would you agree that
21 the potential toxicity depends upon various
22 factors, such as the quantity of the constituents
23 within the gas, the concentration of those
24 constituents, the type of exposure, the duration of
25 exposure, the susceptibility of plants, animals or

1 people being exposed, and other variables?

2 A. Yes, I would agree with that. I can go
3 on with the variables. The distance --

4 Q. Okay.

5 A. -- of the receptor community, whether
6 it's plants, animals or human beings to the gas
7 source. Obviously, the concentration of the gas
8 itself, the concentration of the contaminants in
9 the gas, potential for venting within the soil,
10 it's the actual permeability of the soils
11 themselves, barriers to the gas flow. We can go on
12 and on.

13 Q. Is it similar to a tree falling in a
14 forest? If nobody is there to hear it, it's not as
15 noisy?

16 A. I'll leave that for great philosophers to
17 debate.

18 Q. But seriously, has it been your intent in
19 answering my questions and Mr. Northrup's questions
20 to give the record a comprehension of the potential
21 of impacts and not any speculation on actual
22 impacts?

23 A. Yes. Absolutely. I'm -- it is not my
24 intent to say that anyone has been directly
25 exposed. I have not reviewed the record or -- or

1 the site to -- to determine that. But I have
2 indeed through much of my training been involved
3 with the potential effects of landfill gas on -- on
4 the surrounding communities, whether they be the
5 environmental, community or citizens.

6 Q. And on direct, I did ask you if -- if the
7 effects of landfill gas emissions were much more
8 than odors.

9 But just focusing on odors. Is there a
10 real distinct problem as far as human health with
11 just the odors?

12 A. One of the odors that is often detected
13 is the odor of rotten eggs, which is hydrogen
14 sulfide, which is a toxic compound. Hydrogen
15 sulfide, as we all learned in our chemistry lab
16 experiments, is a very dangerous gas and can cause
17 death. Odors like that, odors like the methane
18 itself. And while the methane is an odorless gas,
19 meaning the contaminants that are in it, but the
20 methane itself can -- can settle in pockets, cause
21 explosion, cause respiratory problems, and even
22 suffocation, because it filters out the oxygen or
23 eliminates the oxygen.

24 I mean, landfill gases are -- are very
25 bad. And the odors that are affected with them can

1 have some toxic effects on citizens. And -- and I
2 don't believe that we should eliminate odors as --
3 as being insignificant on citizens' abilities to
4 enjoy their property and -- and their lives.

5 I mean, when you get complaints like I do
6 on a frequent basis that -- that you can't go
7 outside and enjoy your backyard, odors are -- are
8 very significant to those citizens. They have to
9 live inside their house with the windows shut, with
10 the air conditioners running to filter out the
11 odors.

12 These are significant issues for -- for
13 Illinois citizens.

14 MR. DAVIS: No other questions.

15 MR. NORTHRUP: Real quick follow-up.

16 RE-CROSS-EXAMINATION

17 BY MR. NORTHRUP:

18 Q. Since you are talking about potential
19 impacts --

20 THE HEARING OFFICER: Can you speak
21 up, Mr. Northrup?

22 BY MR. NORTHRUP:

23 Q. Since we are talking about potential
24 impacts, there is a potential for odor problems to
25 be remedied. Isn't that correct?

1 A. That is correct.

2 Q. And that is through the installation of a
3 gas system?

4 A. Yes.

5 Q. Okay. Is the installation of a gas
6 system inconsistent in any way with -- scratch
7 that.

8 Is the operation of a gas system
9 inconsistent with continued operation of the
10 landfill?

11 A. You'll need to clarify. I don't
12 understand your question.

13 Q. You can continue to take waste in a
14 landfill with an up and running gas system?

15 A. Oh, absolutely. Yes. That is correct.

16 MR. NORTHRUP: I don't have any
17 further questions.

18 THE HEARING OFFICER: Mr. Davis.

19 MR. DAVIS: No other questions.

20 THE HEARING OFFICER: Okay. Is
21 there any reason why we would need to recall this
22 witness, or can we go ahead and excuse him? Okay.
23 Thank you for coming.

24 THE WITNESS: Bless you. I have a
25 headache.

1 THE HEARING OFFICER: It's that fan.

2 Who is your next witness?

3 MS. SYMONS-JACKSON: Jim Kammuelier.

4 THE HEARING OFFICER: Do you have
5 any estimate as to time?

6 MS. SYMONS-JACKSON: Probably a good
7 couple of hours actually.

8 THE HEARING OFFICER: Okay. Let's
9 go off the record.

10 (Off-the-record discussion held.)

11 (Recess taken.)

12 THE HEARING OFFICER: Back on the
13 record then. And if you would call your next
14 witness.

15 MS. SYMONS-JACKSON: The People call
16 James Kammuelier.

17 THE HEARING OFFICER: And if you
18 could swear Mr. Kammuelier.

19 JAMES E. KAMMUELLER,
20 called as a witness, after having been first duly
21 sworn, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. SYMONS-JACKSON:

24 Q. Would you please state your name for the
25 record.

1 regarding my job duties, a single-page document
2 regarding papers I prepared and seminars I've
3 presented, a three-page document regarding training
4 courses and seminars I have attended, and a
5 single-page document regarding articles, technical
6 policies, procedure manuals and proposed
7 regulations I have prepared as part of my job
8 duties.

9 Q. And I didn't mean -- did you prepare this
10 document yourself?

11 A. Yes.

12 Q. When did you prepare it?

13 A. I most recently updated it last week. I
14 prepared it a number of years ago.

15 Q. Okay. Would you say that the entries in
16 Exhibit 60 are current to this date?

17 A. Yes, they are.

18 MS. SYMONS-JACKSON: We would move
19 that Exhibit 60 be entered into evidence in this
20 matter.

21 THE HEARING OFFICER: Any
22 objection?

23 MR. NORTHRUP: No objection.

24 THE HEARING OFFICER: Then it's
25 entered into evidence.

1 MS. SYMONS-JACKSON: Okay.

2 BY MS. SYMONS-JACKSON:

3 Q. Jim, let's talk a little bit just briefly
4 about your educational background, and I assume
5 some of that is contained in Exhibit 60.

6 THE HEARING OFFICER: Can I take
7 this?

8 MS. SYMONS-JACKSON: Sure.

9 BY MS. SYMONS-JACKSON:

10 A. Yes, it is.

11 Q. Can you tell me about your educational
12 background?

13 A. I have a bachelors degree in biology.

14 Q. And where did you obtain that bachelor's
15 degree?

16 A. From Blackburn College, Carlinville,
17 Illinois.

18 Q. And what year did you obtain that degree?

19 A. 1970.

20 Q. Have you had any postgraduate work after
21 obtaining that bachelor's degree?

22 A. No.

23 Q. What did you do after 1970? Did you go
24 to work?

25 A. I went to work for the Illinois

1 Department of Public Health, division of sanitary
2 engineering.

3 Q. And how long were you with the Department
4 of Public Health?

5 A. Approximately three weeks. I then joined
6 the EPA.

7 Q. Okay. So you've been with the
8 Environmental Protection Agency since 1970?

9 A. Yes. July 1, 1970.

10 Q. Is it fair to say, Jim, that the
11 educational and training opportunities you've had
12 with the Agency since 1970 have predominantly been
13 limited to water-based issues?

14 A. Yes.

15 Q. Have you worked in the Bureau of Water
16 since beginning with the Agency?

17 A. Almost entirely.

18 Q. Can you tell me what position you started
19 out in?

20 A. With public health, I was involved with
21 waste water inspections, as I do now, but also
22 some -- some public water supply work, some
23 swimming pool work, and a very small amount of
24 landfill work.

25 Q. And since starting with the Agency in

1 1970, has your work regarding landfills increased?

2 A. Only as it relates to waste water coming
3 from a landfill site.

4 Q. Now, as the regional manager in Peoria,
5 would you agree that your job duties include
6 conducting site inspections at regulated
7 facilities?

8 A. Yes.

9 Q. And would you also agree that these
10 inspections are performed to determine the given
11 facilities compliance with the Environmental
12 Protection Act and Board regulations?

13 A. Yes.

14 Q. And what type of experience have you had
15 in regard to inspecting landfills?

16 A. In 1970, I -- I was at one or two sites
17 regarding leachate discharges. In the past ten
18 years, I've been to one site regarding pretreatment
19 of leachate. I'm sorry. Two sites. And I've been
20 to the -- most recently, the Watts Rock Island
21 County landfill facility regarding storm water
22 discharges.

23 Q. As the regional manager, would you say
24 that your duties also include supervising the other
25 various inspectors that are within the Bureau of

1 Water regional office?

2 A. Yes.

3 Q. Would you say that's what a majority of
4 your work is made up of?

5 A. Yes. I spend about 20 percent of my time
6 in the field.

7 Q. Now, you just mentioned that you are
8 familiar with the Taylor Ridge facility. Correct?

9 A. Yes.

10 Q. And have you actually had -- you've
11 actually had an occasion to inspect that landfill?

12 A. Yes.

13 Q. And do you recall when the first time was
14 that you inspected the Taylor Ridge facility?

15 A. Yes. It was February 14, 1994.

16 Q. Okay. Now, are you aware -- Jim, did --
17 at any time prior to February 14, 1994, were there
18 any inspectors from the Bureau of Water Peoria
19 regional office that conducted inspections at the
20 Taylor Ridge facility?

21 A. Yes.

22 Q. And are there field inspectors assigned
23 to certain landfills?

24 A. We assign them on a county basis.

25 Q. So would there have been a field

1 inspector assigned to Rock Island County?

2 A. Yes. At that time that was me, but I
3 was -- in my absence, two other fellows under me
4 had been to the landfill on two different
5 occasions.

6 Q. Now, in July of 1986, do you recall who
7 was assigned to the Rock Island County area?

8 A. That was me. But I had Tom Meyer do an
9 inspection at the facility in July of '86.

10 MR. NORTHRUP: If he could speak up
11 a little bit.

12 THE HEARING OFFICER: Okay. Please
13 speak up.

14 THE WITNESS: Okay.

15 BY MS. SYMONS-JACKSON:

16 Q. And were you manager of the regional
17 office in July of '86?

18 A. Yes.

19 Q. And as a manager at that time, it was
20 your responsibility to review and approve
21 inspection reports prepared by field inspectors
22 under your supervision?

23 A. Yes.

24 Q. And you just stated that Tom Meyer was
25 one of the inspectors that you supervised at that

1 time. Correct?

2 A. That's correct.

3 Q. And do you recall reviewing and approving
4 an inspection report prepared by Tom Meyer
5 following a July 1987 inspection at the Taylor
6 Ridge facility?

7 A. Yes, I do.

8 Q. Jim, I'm going to hand you what we have
9 already marked as Peoples Exhibit 5. And I'll ask
10 if you would please identify this for the record.

11 A. This is a copy of Tom Meyer's July 10th,
12 1986 inspection report at the Watts landfill in
13 Rock Island County.

14 Q. In looking at that inspection report, do
15 you know who actually prepared the report?

16 A. Yes. Mr. Meyer did.

17 Q. Do you have an estimate as to how soon
18 after the inspection this report was prepared? Let
19 me ask you a different question.

20 Jim, is there a standard amount of time
21 after an inspection is conducted that -- that your
22 office, Bureau of Land in Peoria, typically likes
23 to have an inspection report prepared by?

24 A. I'm Bureau of Water.

25 Q. Bureau of Water. I'm sorry.

1 A. Yes.

2 Q. And is this report something that in the
3 regular course of Agency business is kept in the
4 Agency file pertaining to the Taylor Ridge
5 landfill?

6 A. Yes.

7 MS. SYMONS-JACKSON: Ms. Hearing
8 Officer, I move that this exhibit be entered into
9 evidence as a business record of the Agency.

10 THE HEARING OFFICER: Okay. You've
11 already agreed to this by stipulation?

12 MR. NORTHRUP: I actually hadn't,
13 but I have no objection.

14 THE HEARING OFFICER: Okay. This is
15 Exhibit 5, right?

16 MS. SYMONS-JACKSON: Yes. That's
17 correct.

18 THE HEARING OFFICER: It's admitted
19 into evidence.

20 MS. SYMONS-JACKSON: Okay.

21 BY MS. SYMONS-JACKSON:

22 Q. Jim, let's talk a little bit about the
23 inspection.

24 MS. SYMONS-JACKSON: Would it help
25 if I gave you a copy of that inspection report to

1 refer to as we are talking about it?

2 THE HEARING OFFICER: Yes.

3 MS. SYMONS-JACKSON: I've got
4 another one if you'd like. We would like for the
5 witness to keep the original exhibits, because we
6 could have original photographs attached to those,
7 and he may need to take a look at some of those.

8 THE HEARING OFFICER: That's fine.

9 BY MS. SYMONS-JACKSON:

10 Q. Now, Jim, thinking back, do you recall
11 whether you actually discussed this impending site
12 inspection with Tom Meyer before it was performed?

13 A. Yes.

14 Q. Did you discuss it with him prior to that
15 time?

16 A. I discussed it with him, and I can't
17 recall whether it was prior or after, but we did
18 discuss his need to go there and his findings.

19 Q. Okay. Do you recall what it was that
20 prompted the particular inspection on this date?

21 A. It would have been a complaint received
22 by our office.

23 Q. Okay. A complaint from whom?

24 A. Mr. Joe Whitley. It's W-H-I-T-L-E-Y.

25 Q. And who is Joe Whitley?

1 A. He is a neighbor to the north of the
2 landfill site.

3 Q. And do you recall what his concern was
4 that prompted him to make the complaint?

5 A. That landfill -- I'm sorry. That runoff
6 from the landfill was possibly contaminating his
7 pond.

8 Q. And was this a pond -- was this one
9 pond -- or I mean, how many ponds are we talking
10 about?

11 A. In this report here, we are discussing
12 two ponds.

13 Q. And are these ponds -- do you recall,
14 were they located on Joe Whitley's property or on
15 the landfill property or both?

16 A. They -- I would say both.

17 Q. Okay.

18 A. There are two ponds, a small pond and a
19 large pond.

20 Q. Okay. Would it be fair to say that the
21 large pond is located entirely on Joe Whitley's
22 property?

23 A. Yes.

24 Q. And the smaller pond, would you agree
25 that we now know that this small pond might, in

1 fact, be located partially on the landfill property
2 and partially on Joe Whitley's property?

3 A. Yes.

4 Q. Now, the ponds that are discussed in the
5 inspection report, have you on subsequent occasions
6 or during subsequent inspections had an opportunity
7 to view these ponds yourself?

8 A. Yes, I have.

9 Q. And would you agree that these ponds are
10 classified as waters of the state?

11 A. Yes.

12 Q. And can you describe for us what it means
13 to be classified as a water of the state?

14 A. As defined by the Pollution Control Board
15 regulations, a water of the state includes both
16 public and private surface waters and underground
17 waters.

18 Q. And would you agree that these ponds were
19 private ponds, artificial impoundments on private
20 property?

21 A. Yes.

22 Q. And would you also agree that there are
23 certain environmental rules and regulations that
24 regulate and protect waters of the state?

25 A. Yes.

1 Q. Now, what is the purpose of these rules
2 and regulations?

3 A. Well, to protect the water quality of
4 these state waters.

5 Q. And to prevent water pollution?

6 A. Yes.

7 Q. Okay. Now, referring to Peoples Exhibit
8 5, do you recall what Tom Meyer noted about the
9 appearance of those ponds?

10 A. The water in the small pond was muddy,
11 brown and turbid, and the pond contained silt
12 deposits.

13 Q. Did he make any observations regarding
14 the appearance of the large pond?

15 A. The water was fairly clear.

16 Q. Now, can you tell us what further
17 investigation Tom Meyer conducted during that
18 inspection?

19 A. He did collect samples from both of the
20 ponds.

21 Q. And do you recall what -- at what
22 location in or around the pond those samples were
23 collected?

24 A. Yes. Based on the sketch that's attached
25 to his memo, he sampled the small pond near its

1 point of release to the large pond, and he sampled
2 the large pond from what would apparently be the
3 boat dock area -- or dock area.

4 Q. Okay. Let's talk about the small pond
5 for a second. You mentioned the sample was taken
6 near the point of release. What are you talking
7 about?

8 A. He sampled the contents of the small pond
9 on the north side near where the pond overflowed or
10 released water into a drainage course tributary to
11 the large pond.

12 Q. Okay. So the small pond on that date,
13 and according to Mr. Meyer's inspection report, was
14 discharging into the large pond?

15 A. Yes.

16 Q. And do you know what the inspector did
17 with the samples he took?

18 A. They were sent to our Champaign
19 laboratory.

20 Q. And are there sample results attached to
21 that inspection report?

22 A. Yes.

23 Q. And can you tell us what those sample
24 results revealed about the water in these ponds?

25 A. The quality of the water in the small

1 pond was turbid, based on the analyses, and had a
2 higher suspended solids level.

3 Q. What was the level of suspended solids in
4 the small pond?

5 A. 82 milligrams per liter.

6 Q. Jim, would you agree there is not
7 actually a water quality standard for suspended
8 solids?

9 A. There is not a numerical value, but there
10 are what we call the freedoms that streams and
11 waters have to be free of excessive turbidity,
12 color, bottom deposit.

13 Q. Would you agree, based upon your review
14 of this inspection report, that the small pond was
15 not free of solids and bottom deposits?

16 A. Yes.

17 Q. Now, although there are no numerical
18 standards for the water quality standards, are
19 there numerical standards for effluents?

20 A. Yes.

21 Q. And there was effluent being discharged
22 from the small pond on the date of this inspection?

23 A. Yes.

24 Q. Was there actually a sample taken of that
25 effluent?

1 A. No.

2 Q. Based on what you know to be the level of
3 suspended solids in that small pond, do you, Jim,
4 have an opinion as to what the level of suspended
5 solids would be in effluent discharging from that
6 pond?

7 A. I would say they would be at the same
8 level or concentration or essentially the same.

9 Q. And why would you say that?

10 A. Because the pond is small, and the water
11 in the pond should be well mixed.

12 Q. Are you more likely to see uniform mixing
13 in a smaller pond than a large pond?

14 A. Generally speaking, yes.

15 Q. And that's what you would expect to see
16 in this situation?

17 A. Yes.

18 Q. Now, if the effluent contained a level of
19 suspended solids at 82, would that be violative of
20 the effluent quality standards?

21 A. Yes.

22 Q. What is the numerical standard for
23 suspended solids in effluent?

24 A. In this -- it depends on the size of the
25 receiving stream. But in this case, it would be at

1 least 12 milligrams per liter.

2 Q. And the level of suspended solids in that
3 small pond was 82?

4 A. Yes.

5 Q. Now, were samples taken of the large pond
6 on that day?

7 A. Yes.

8 Q. And are sample results attached to that
9 inspection report?

10 A. Yes.

11 Q. What do those sample results reveal
12 regarding the large pond in July of 1986?

13 A. They did not indicate any water quality
14 problems.

15 Q. Okay. Now, how much -- can you tell us
16 how much larger that pond is than the small pond
17 that we are talking about?

18 A. I guess I would have to refer to some
19 other field notes I have. The large pond is
20 certainly several times larger than the smaller
21 pond. I don't have the exact surface area in front
22 of me, but I have some estimates that are in my
23 files.

24 Q. Jim, would you agree that solids are more
25 likely to settle out in a larger area of water than

1 in a small area of water?

2 A. Yes.

3 Q. Is it consistent with your understanding
4 of the settleability of solids that this large pond
5 would not show exceedences for suspended solids?

6 A. Yes.

7 Q. And, Jim, is it your opinion that there
8 was a violation of the effluent quality standards
9 in this discharge that was leaving the small pond
10 and entering the large pond on July 18 -- July 18,
11 '86?

12 A. Yes.

13 Q. And violation was for suspended solids?

14 A. Yes. And the color and turbidity.

15 Q. That is violation of the water quality
16 standards?

17 A. Well, effluent standard also require that
18 effluent be free in excess -- excessive or obvious
19 levels of color and turbidity.

20 Q. Now, Jim, do you have an opinion as to
21 what impacts to the environment there can be from
22 a -- an exceedence of the quality standards for
23 suspended solids?

24 A. Yes. This can affect several aspects of
25 water quality.

1 Q. Such as?

2 A. The solids can -- can blanket the stream
3 bottom and smother aquatic life and plants that
4 were -- serve as fish food, organisms. They can
5 interfere with fish spawning by smothering fish
6 eggs. They can coat the gills of fish and cause
7 suffocation. They can interfere with -- with
8 migratory habits of fish. If the water is too
9 cloudy, the fish can't really find their way. And
10 they can block out sunlight, which also interferes
11 with the growth of plants in the stream and serve
12 as fish food. And they also would, of course, be a
13 cause of natural color and turbidity in the stream
14 and cause an aesthetic problem.

15 MR. NORTHRUP: Sorry?

16 THE WITNESS: Aesthetic problem.

17 MR. NORTHRUP: Aesthetic?

18 THE WITNESS: Yes.

19 BY MS. SYMONS-JACKSON:

20 Q. Jim, do you have an opinion, based on
21 your review of this report and subsequent knowledge
22 of this, as to the source of these solids in this
23 suspended pond?

24 A. Yes. They are present in the runoff,
25 which they use the landfill. As this runoff, based

1 on my inspections, both contains high levels or
2 high concentrations of soil particles.

3 Q. So it's -- it's your opinion that the
4 suspended solids in the small pond came from the
5 landfill?

6 A. Yes.

7 Q. Now, in this inspection report, is there
8 any mention of an N.P.D.E.S. permit?

9 A. Yes.

10 Q. And what specifically is indicated
11 regarding that permit?

12 A. That one has been proposed to be issued
13 to the landfill site.

14 Q. Now, I called this an N.P.D.E.S. permit.
15 What does that mean?

16 A. That stands for National Pollutants
17 Discharge Elimination System.

18 Q. And what is the purpose of an N.P.D.E.S.
19 permit?

20 A. It's a permit required by the Federal
21 Clean Water Act of 1972, which regulates what can
22 be discharged into waters. It's a permit to
23 discharge and regulates the level of pollutants in
24 that discharge.

25 Q. Would you agree that an N.P.D.E.S.

1 permits point source discharges?

2 A. Yes.

3 Q. Can you explain to me, is there a
4 difference between point source and nonpoint source
5 discharges?

6 A. Point source normally refers to a
7 discharge leaving a facility at a single point,
8 whereas nonpoint would be something more general,
9 such as runoff from a -- a farm field, which may be
10 sheet -- that's S-H-E-E-T -- in nature and more
11 broad or general or a wider area.

12 Now, once that runoff is collected, if
13 you have a conveyance or a method to collect sheet
14 runoff, and put it into a single conveyance system,
15 ditch, pipe, that would become a point source.

16 Q. Now, in the context of an N.P.D.E.S.
17 permit, are point source discharges given a certain
18 name?

19 A. They are normally numbered specific to
20 the site which makes -- which has the permit.

21 Q. And do we call them outfalls?

22 A. Right.

23 Q. Now, do you recall whether an N.P.D.E.S.
24 permit was ever issued to the Taylor Ridge
25 facility?

1 A. Yes.

2 Q. When was that issued?

3 A. In 1986.

4 Q. Jim, I'm going to hand you Peoples
5 Exhibit 6. Would you please identify this for the
6 record.

7 A. What do I do?

8 Q. You can hand that on over to the hearing
9 officer.

10 A. (Complies.) This is a copy of -- of the
11 original N.P.D.E.S. permit issued to ESG Watts,
12 Inc., Taylor Ridge facility August 21st, 1986.

13 Q. And is there a permit number identified
14 on that exhibit?

15 A. Yes. IL-0065307.

16 Q. Now, Jim, did you have anything to do
17 with the issuance of this permit?

18 A. I don't believe I did at that time.
19 We -- I know we would have received a draft permit
20 for comment and a public notice permit for comment.
21 I don't know that I had a great deal of input to
22 that permit as far as needed changes.

23 Q. Based on what was occurring at the
24 landfill and observed by Thomas Meyer on July 10,
25 1986, was it the opinion of the Bureau of Water

1 that an N.P.D.E.S. permit was needed by this
2 facility?

3 A. Yes.

4 Q. Now, once an N.P.D.E.S. permit is issued,
5 does it continue indefinitely?

6 A. No. They have an expiration date.

7 Q. And on Exhibit 6, is there an expiration
8 date indicated?

9 A. Yes. August 1st, 1991.

10 Q. Now, what happens if the facility wants
11 to continue operating under the N.P.D.E.S. permit?
12 Is there a way for them to renew the permit?

13 A. Yes. They need to make an application
14 for renewal at least 180 days in advance of the
15 expiration date.

16 Q. And are you aware of whether that was
17 done by Taylor Ridge?

18 A. They did apply for renewal, but they
19 missed the 180-day deadline.

20 Q. And do you know, was a renewal permit
21 ever issued by the Agency to Taylor Ridge?

22 A. Yes. Earlier this year.

23 Q. Okay. Earlier in 1996?

24 A. Yes.

25 Q. Would you agree then, Jim, that from

1 September -- or to August of 1986, when the
2 original permit was issued, until the new permit
3 was issued earlier this year, that Watts Taylor
4 Ridge was required to comply with the terms and
5 conditions of that original N.P.D.E.S. permit, that
6 is Peoples Exhibit 6?

7 A. Yes.

8 Q. Jim, is the failure to timely file a
9 renewal application a violation of the applicable
10 environmental regulations?

11 A. Yes.

12 Q. And do you have an opinion as to whether
13 Watts violated those environmental regulations by
14 failing to timely file a renewal application?

15 A. I would say they did violate the
16 regulation by not applying within 180 days.

17 Q. Now, this -- referring again to this
18 first N.P.D.E.S. permit that is Exhibit 6, what did
19 it allow Watts to do?

20 A. It allowed them to discharge storm water
21 runoff from the south side of the landfill and
22 ponded storm water from the north side of the
23 landfill. Essentially, it allowed two storm water
24 discharges; one from the north side outfall 001,
25 one from the south side called outfall 002.

1 Q. Jim, I'm going to hand you what we have
2 marked as Peoples Exhibit 3. Can you take a look
3 at that and explain for us what that shows?

4 A. Yes. It's a site map of the Watts Taylor
5 Ridge landfill.

6 Q. Does it indicate on that map who -- or
7 who prepared the map?

8 A. An engineering firm, CH2MHill I believe
9 is what that is.

10 Q. And are you aware of whether that is the
11 environmental consulting firm for ESG Watts at the
12 Taylor Ridge facility?

13 A. It was at one time, because I had a phone
14 call from one of their engineers several months ago
15 about storm water.

16 Q. Okay. And whether it is or was the
17 environmental consulting firm at this time this map
18 was prepared, do you have an opinion as to that?

19 A. I would say they were, based on the map.

20 MS. SYMONS-JACKSON: Okay. I would
21 move that this map be admitted into evidence. I
22 believe it was submitted as part of the original
23 sig-mod application. And as such, I think we
24 probably stipulated to it already.

25 MR. NORTHRUP: That's fine.

1 THE HEARING OFFICER: No objection?

2 MR. NORTHRUP: (Shakes head.)

3 MS. SYMONS-JACKSON: What was the
4 exhibit number?

5 THE WITNESS: 3.

6 THE HEARING OFFICER: Exhibit 3 also
7 admitted.

8 BY MS. SYMONS-JACKSON:

9 Q. I left a ballpoint pen for you up on the
10 ledge. What I'd like for you to do, mark on that
11 exhibit the locations of outfall 001 and 002, if
12 you are able to on that map.

13 A. I can mark them as I've been told they
14 exist by Watts. I did not have a copy of their
15 original N.P.D.E.S. permit application.

16 Q. Okay. I would say, go ahead and mark on
17 the map the locations of those outfalls as they
18 have been identified to you by the Watts'
19 personnel.

20 A. 001 is in the northeast corner of the
21 site, and 002 is to the south end of the site.

22 Q. And, Jim, where do these discharge points
23 empty into?

24 A. They go into at least three unnamed
25 tributaries of the Mississippi River.

1 Q. And that's the same for both 001 and 002?

2 A. 001 drains to the northeast to an unnamed
3 tributary. 002 drains to the south to an unnamed
4 tributary. There is a third tributary involved.
5 But I should correct my earlier statement. That
6 third tributary is -- receives water from the --
7 the northwest corner, which was not part of this
8 initial permit.

9 MR. NORTHRUP: May I jump in for a
10 minute? Did you mark on this map where the first
11 outfall was?

12 THE WITNESS: Yes.

13 MR. NORTHRUP: Can I come over and
14 take a look?

15 THE WITNESS: Sure.

16 MR. NORTHRUP: If you just want to
17 mark it on this one for me.

18 THE WITNESS: Sure.

19 MR. NORTHRUP: Thanks. Do you want
20 to see that?

21 MS. SYMONS-JACKSON: (Complies.)

22 BY MS. SYMONS-JACKSON:

23 Q. Now, Jim, you just indicated that both
24 outfalls 001 and 002 discharge into two separate
25 tributaries to the Mississippi River. Are those

1 tributaries waters of the state?

2 A. Yes.

3 Q. And as such, are they also protected by
4 the environmental regulations pertaining to waters
5 of the state?

6 A. Yes.

7 Q. Does that original N.P.D.E.S. permit,
8 referring back again to Exhibit, I believe, 6, does
9 it restrict the discharge of storm water runoff
10 from the landfill?

11 A. Yes. It has to meet certain effluent
12 standards.

13 Q. What are those effluent standards?

14 A. The pH B.O.D. -- that's biochemical
15 oxygen demand -- total suspended solids,
16 total iron, total manganese -- that's
17 M-A-N-G-A-N-E-S-E -- and oil and grease. They are
18 also required to monitor flow, flow discharged.

19 Q. Is that the volume of the flow?

20 A. Yes.

21 Q. And are there any affirmative actions
22 that the landfill is required to take on that
23 N.P.D.E.S. permit?

24 A. Yes. They are required to monitor at
25 both these outfall points. 001 is required to be

1 monitored daily when discharging by a composite
2 sample for all parameters, except pH, which is a
3 grab sample, and flow is to be estimated. The same
4 is true for outfall 002, except that is only
5 required to be monitored once per month.

6 Q. And is it the landfill that's required to
7 perform that monitoring?

8 A. Yes.

9 Q. What do they do with the results of the
10 monitoring?

11 A. They record them on what we call a
12 discharge monitoring report, which we call a D.M.R.
13 for short. And those are to be submitted within 15
14 days after the end of each month.

15 Q. Okay. So a D.M.R., for example, for the
16 month of October would be submitted within 15 days
17 after the end of the month, or by November 15?

18 A. Yes.

19 Q. Now, does the permit restrict or prohibit
20 the discharge of any contaminant or just certain
21 amounts?

22 A. Well, it does both. It regulates the
23 parameters I mentioned earlier, and also requires
24 that the discharges be free from any process or
25 waste water discharges.

1 Q. And pursuant to the N.P.D.E.S. permit,
2 who is responsible to determine if any of those
3 parameters are exceeded in the discharge water?

4 A. It's the responsibility of the landfill,
5 based on their monitoring.

6 Q. Now, has the Taylor Ridge landfill
7 submitted D.M.R.'s to the Agency?

8 A. Yes.

9 Q. And have you reviewed any of those
10 D.M.R.'s?

11 A. Yes.

12 Q. When you review a D.M.R., what sorts of
13 things are you looking for?

14 A. Well, a number of different things. To
15 make sure the report was submitted in a timely
16 manner, that it was filled out properly, and to see
17 if there were any exceedences.

18 Q. Exceedences of the parameters we talked
19 about a minute ago?

20 A. Yes.

21 Q. And based on your review of Watts'
22 D.M.R.'s from the Taylor Ridge facility, have you
23 made any specific observations or conclusions?

24 A. Yes.

25 Q. What are some of those observations and

1 conclusions?

2 A. During my February 14, 1994 inspection, I
3 reviewed D.M.R.'s that were submitted since the
4 time of issuance, that of the 1986 permit, and I
5 found a number of problems with those D.M.R.'s.

6 Q. What sorts of problems?

7 A. One would be the apparent falsification
8 of D.M.R.'s.

9 Q. And what -- what do you mean by apparent
10 falsification?

11 A. They had reported no discharge for -- for
12 both outfalls on many occasions.

13 Q. Now, if a facility is monitoring their
14 outfalls and there is no discharge for a given
15 month, is there any requirement -- are they still
16 required to submit the D.M.R.?

17 A. Yes, they are.

18 Q. It must be submitted whether there is
19 discharge or not?

20 A. That's correct.

21 Q. Now, what was it about the -- their
22 reporting of no discharge on these D.M.R.'s that
23 concerned you?

24 A. Outfall 002, that's the south outfall,
25 always was reported as having no discharge.

1 Q. And why did that concern you?

2 A. There has to be a discharge from these
3 outfalls sometime, because we do have precipitation
4 in Illinois. Usually around 36 inches a year. And
5 at least some of that has to run off. It needs to
6 be monitored.

7 As far as outfall 001 is concerned, we
8 need -- D.M.R.'s for that outfall also indicated no
9 discharge. In fact, they had reported no discharge
10 for that outfall since around March of 1991.

11 Q. Now, would you say that the reporting --
12 the continual reporting of no discharge by Watts
13 for the Taylor Ridge facility is inconsistent with
14 your knowledge of the site and of the weather
15 patterns of this part of the state?

16 A. Yes.

17 Q. Okay. Now, you mentioned a little
18 earlier the February 14, 1994 inspection that you
19 conducted. I want to hand you what we have marked
20 as Peoples Exhibit 7. Can you identify that for
21 the record, please.

22 Now, Jim, I believe this exhibit has
23 already been admitted by stipulation. Does it
24 appear to be your February 1994 inspection report?

25 A. Yes.

1 Q. And was this the first inspection you
2 conducted at the Taylor Ridge facility?

3 A. Yes.

4 Q. Now, referring to Exhibit 7, what was it
5 that prompted your inspection on that particular
6 day?

7 A. Well, several things. For one, it was --
8 I was long overdue to inspect this facility. Since
9 they do have an N.P.D.E.S. permit, we are supposed
10 to inspect such sites as often as we can.

11 No. 2, I had been looking at their
12 D.M.R.'s as they came into the office, and I had
13 noticed that they had always reported no discharge
14 for outfall 002, and had been reporting no
15 discharge for outfall 001 since March of 1991.

16 Q. Now, can you tell us what you did during
17 your February 14, 1994 inspection?

18 A. Yes. I interviewed Tom Jones, J-O-N-E-S,
19 the landfill engineer, and I interviewed Elmer
20 Elliot, E-L-L-I-O-T, the landfill site manager.

21 Q. And what did you talk about in these
22 interviews with specifically Tom Jones?

23 A. We began by discussing the N.P.D.E.S.
24 permit and reporting requirements.

25 In response to some questions they had, I

1 explained how to calculate and report monthly
2 average concentrations and daily maximum
3 concentrations on the D.M.R. form. I also
4 explained to them that the current N.P.D.E.S.
5 permit required monthly monitoring at outfall 002
6 and daily monitoring at outfall 001 when
7 discharging.

8 Q. And what did you learn?

9 MR. NORTHRUP: I'm sorry. What was
10 the last? I didn't hear that.

11 THE WITNESS: When discharging.

12 BY MS. SYMONS-JACKSON:

13 Q. And what did you learn about Watts
14 monitoring -- monitoring of outfall 001?

15 A. They -- Mr. Jones indicated that he had
16 not monitored 001 for over a year and had just been
17 reporting no discharge on the D.M.R. form.

18 Q. Now, Jim, is it a violation of the
19 N.P.D.E.S. to simply report no discharge when the
20 outfall hasn't even been monitored?

21 MR. NORTHRUP: Objection. It calls
22 for a legal conclusion.

23 THE HEARING OFFICER: Sustained.

24 BY MS. SYMONS-JACKSON:

25 Q. Jim, the terms of the N.P.D.E.S. require

1 daily monitoring of outfall 001, correct?

2 A. Yes. When discharging.

3 Q. When discharging.

4 A. And they would have to check that outfall
5 to make sure it's not discharging.

6 Q. How frequently would they need to check
7 that outfall?

8 A. Well, certainly during wet weather
9 periods.

10 Q. Was it your understanding, based on your
11 conversation with Tom Jones, that there had been
12 periods of wet weather when the outfall 001 had not
13 been monitored?

14 A. Yes.

15 Q. And that instead of monitoring and
16 recording the monitoring results on the D.M.R.,
17 they simply reported no discharge?

18 A. That's correct.

19 Q. Did you learn anything about Watts
20 monitoring of outfall 002 during this inspection?

21 A. They had not been monitoring that outfall
22 and had just been reporting no discharge on the
23 D.M.R. form.

24 Q. Do you know for what period of time they
25 had not been monitoring outfall 002?

1 A. Since issuance of the 1986 N.P.D.E.S.
2 permit.

3 Q. So for seven-and-a-half years, Watts had
4 not been monitoring the discharge from outfall 002?

5 A. Yes.

6 Q. How did you learn that it had been for
7 that period of time that they had not been
8 monitoring the outfall?

9 A. Based on my discussion with Mr. Jones.

10 Q. Is Mr. Jones the individual that prepares
11 the D.M.R.'s and submits them to the Agency?

12 A. At that time, he was that person and had
13 been doing so for about two years.

14 Q. Did you also tour the facility on
15 February 14, 1994?

16 A. Yes.

17 Q. And what observations did you make during
18 that tour of the facility?

19 A. At the time of my visit, recent weather
20 conditions had been cold with below freezing
21 temperatures much of the time, and the receiving
22 streams and ponds in the area were ice and snow
23 covered. And it had snowed several inches a few
24 days prior to my inspection.

25 But on the day of my inspection, the

1 temperature was above freezing, and some runoff was
2 just beginning to develop. I sampled runoff at
3 outfall 001 and also sampled ponded runoff at
4 outfall 002, or at least in that area on the south
5 side of the landfill.

6 Q. So did you observe outfall 001
7 discharging during your inspection on February 14,
8 1994?

9 A. Yes. And I also observed outfall 002
10 discharging as well from several other points, from
11 three other points.

12 Q. Now, when you say you observed outfall
13 002, are you talking about the south side of the
14 landfill?

15 A. Yes.

16 Q. And you observed runoff from various
17 points on the south side of the landfill at that
18 time?

19 A. Yes.

20 Q. So there was runoff leaving the south
21 side of the landfill from points other than outfall
22 001?

23 A. Yes. Outfall one is the north side.

24 Q. 002. Excuse me.

25 A. Yes. 002 would, in my opinion, be

1 comprised of several discharge points or release
2 points.

3 Q. And they were running together in a
4 ponded area and then discharging at point 002?

5 A. No. There is no pond at 002. It's
6 runoff that's conveyed either in a rill, or gully
7 if you will, or down the haul, H-A-U-L, leading
8 from the borrow area to the landfill.

9 Q. Did you observe runoff from either of the
10 north or the south side leaving the landfill
11 property on February 14, 1994?

12 A. Yes.

13 Q. And where was that runoff going?

14 A. Outfall 001 was draining off the
15 northeast corner.

16 Q. Into the receiving stream?

17 A. Yes. There was no runoff going from the
18 Northwest corner to the Whitley pond or ponds.
19 Runoff from the south and southeast corners was --
20 was leaving the property and going to the receiving
21 stream of the south.

22 Q. What observations did you make regarding
23 the appearance of that runoff from either point?

24 A. There was also runoff from the east side
25 of the site also going south to the same receiving

1 stream on the south. And all of these runoff
2 waters had varying degrees of muddy, brown
3 turbidity. 001 was more turbid than 002, as I saw
4 002 at the southwest corner and on the -- and 002
5 from the south side and southeast corner was more
6 turbid.

7 Q. Do you have an opinion, based on your
8 experience and your observations, as to the source
9 of turbidity in this discharge?

10 A. Yes. It would have been soil particles.

11 Q. Soil particles from the landfill?

12 A. Yes.

13 Q. Now, you indicated that you took samples
14 of this runoff. You sampled the north side at
15 outfall 001?

16 A. Yes.

17 Q. And the south side at outfall 002?

18 A. Yes. I sampled one of the south side
19 streams.

20 Q. And what did you do with those samples
21 that you collected?

22 A. They were sent to our Champaign lab for
23 analysis.

24 Q. And are sample results attached to your
25 inspection report from that day?

1 A. Yes.

2 Q. And with regard to the sample that you
3 took at the northeast corner of the landfill at
4 outfall 001, do you have any photographs attached
5 to your inspection report that would accurately
6 depict the appearance of that area during your
7 inspection?

8 A. Yes, I do.

9 Q. And what photographs are those?

10 A. Photograph No. 3 shows the discharge in
11 my sampling points at 001.

12 Q. And can you describe for us the volume of
13 runoff that was leaving the site at the northeast
14 corner of the landfill?

15 A. It was not large. It was just beginning
16 to develop. It would have been less than, say, ten
17 gallons per minute.

18 Q. And you indicated earlier that the snow
19 was just beginning to melt --

20 A. Yes.

21 Q. -- during your inspection.

22 A. Yes.

23 Q. Would you anticipate that as the snow
24 continued to melt, that that runoff would increase
25 in volume?

1 milligrams per liter.

2 Q. And your sample results revealed 15
3 milligrams per liter of iron at that location,
4 correct?

5 A. Yes.

6 Q. Now, are there also regulatory standards
7 that provide limits for suspended solids and for
8 iron?

9 A. Yes.

10 Q. What are those regulatory standards?

11 A. It's the Illinois Subtitle C water
12 pollution control regulations.

13 Q. And are those standards the same as the
14 standards in the N.P.D.E.S. permit?

15 A. Yes.

16 Q. And so those standards were also
17 exceeding, based on your sampling?

18 A. Yes.

19 Q. Now, did you observe the Whitley small
20 pond on that date?

21 A. Yes, I did.

22 Q. And how did that appear to you?

23 A. It was ice and snow covered, and I did
24 not see any runoff yet entering that pond.

25 Q. Based on your experience and your

1 knowledge of their facility, do you have an opinion
2 as to the source of the suspended solids and the
3 iron found in the samples you collected at the
4 northeast corner of the landfill?

5 A. Yes.

6 Q. And what is that source?

7 A. That they were present in runoff leaving
8 the landfill due to soil particles at least.

9 Q. Okay. Now, we talked earlier about the
10 potential environmental impacts from high levels of
11 suspended solids being introduced into a water of
12 the state.

13 Can you tell me now what the potential
14 environmental impacts are from exceedences for iron
15 entering waters of the state?

16 A. It's similar to suspended solids. Iron
17 can cause aesthetic problems in the stream. Orange
18 color. It can also coat the gills of fish, which
19 can cause suffocation. It can blanket the bottom
20 of the stream, which will smother the fish food
21 organisms, the plant and macro invertebrates. It
22 will -- it can smother fish eggs and interfere with
23 spawning. Iron can also be toxic to fish. And
24 depending upon the species of fish, it can be toxic
25 at less than 1 milligram per liter. It can also be

1 toxic to the -- to certain macro invertebrates that
2 at around .3 milligrams per liter.

3 Q. And we had 15 milligrams per liter
4 leaving the site and entering the receiving stream
5 at the northeast corner of the property on the date
6 of your inspection?

7 A. Yes.

8 Q. I want to talk a little bit about the
9 sample you collected on the southside of the
10 landfill. Do you have any photographs attached to
11 your inspection report that would accurately depict
12 the area where your sample was taken?

13 A. Yes, I do.

14 Q. Which photographs are those?

15 A. That would be No. 6.

16 Q. And is that the only one?

17 A. Of my sample point, yes.

18 Q. Okay. And what does -- what's
19 specifically shown in that photograph?

20 A. It shows water that is collecting on the
21 landfill perimeter road in the southwest corner of
22 the site and beginning to drain to the southwest.

23 Q. Now, you indicated that that's the only
24 photograph that shows the sample point.

25 Are there other photographs that show the

1 runoff you observed on the south side of the
2 landfill as a whole?

3 A. Yes. Photos No. 7 and No. 8 show runoff
4 leaving the south side of the landfill in a couple
5 of small gullies or rills, if you will, and photo 9
6 shows runoff from the southeast corner running down
7 the haul road and leaving the site by that pathway,
8 and No. 10 shows runoff leaving the landfill on the
9 south side of the gate house, which is the entrance
10 to the landfill on the east side of the site.

11 Q. Can you describe for us the appearance of
12 the runoff on the south side of the site?

13 A. It had a muddy, brown, turbid color.

14 Q. And what was the volume of the runoff on
15 the outside of the site?

16 A. These streams were just beginning to
17 develop, but they -- it was heaviest on the -- from
18 the southeast corner.

19 Q. And was that actually leaving the site on
20 the southeast corner?

21 A. Yes. You can see it in photo No. 9
22 running down the haul road, which is going toward
23 the top of the photograph. And the receiving
24 stream is in that tree line in the photograph
25 center.

1 Q. Now, there is no permitted outfall from
2 the southeast corner of the site, is there?

3 A. Outfall two is supposed to address runoff
4 from the south side of the landfill. There are
5 several release points on the south side. In my
6 opinion, outfall two addressed runoff from the
7 south side. And an effort should have been made to
8 sample that runoff of those various streams and
9 composite those for analysis. And at the same
10 time, I would have, had I been the Watts people,
11 applied for a modification of that N.P.D.E.S.
12 permit to more accurately reflect the varying
13 number of discharge points on the south side of the
14 site.

15 Q. Now, do you have results from the
16 sampling that you took on the south side of the
17 site attached to your inspection report?

18 A. Yes, I do.

19 Q. What do those sample results reveal?

20 A. The suspended solids was 107 milligrams
21 per liter.

22 Q. And can you remind us what the N.P.D.E.S.
23 standard is for suspended solids?

24 A. Yes. 12 monthly average, 24 daily
25 maximum.

1 Q. And that's the same as the regulatory
2 standards for suspended solids, correct?

3 A. Yes.

4 Q. Now, you've mentioned that the runoff you
5 observed throughout the site appeared to be turbid
6 to you. Would you agree with that?

7 A. Yes.

8 Q. Does the N.P.D.E.S. permit say anything
9 about turbidity?

10 A. It does not contain a turbidity standard,
11 but it does have the suspended solids and iron and
12 manganese limitations, which are designed to
13 prevent turbidity.

14 Q. Would you agree that exceedences of the
15 suspended solids, iron and manganese parameters can
16 cause turbidity in water?

17 A. Yes.

18 Q. And is it your opinion that the excessive
19 levels of -- of suspended solids in the runoff at
20 this facility was causing the turbidity on this
21 date?

22 A. Yes.

23 Q. Now, there are regulatory standards
24 regarding turbidity, are there not?

25 A. Yes.

1 Q. And is it fair to say those regulatory
2 standards prohibit waters of the state containing
3 unnatural turbidity or settleable solids?

4 A. Yes.

5 Q. Based on your experience, do you have an
6 opinion as to the source of the solids and
7 turbidity in the runoff on the south side of the
8 landfill?

9 A. It would have been due to erosion of
10 soil.

11 Q. From the landfill itself?

12 A. Yes.

13 Q. Now, were any representatives from the
14 landfill present when you observed the runoff at
15 either outfall 001 or 002?

16 A. Yes. Mr. Jones was.

17 Q. Did you and Mr. Jones discuss the
18 discharge from outfall 001 or 002 during your
19 inspection?

20 A. Yes, we did.

21 Q. And did you make any recommendations to
22 Mr. Jones as to what should be done by the landfill
23 to address these runoff problems?

24 A. Yes. I discussed with him the need to
25 control erosion.

1 Q. Now, you mentioned a sedimentation pond.
2 What exactly is that?

3 A. It would be a pond -- a settling pond
4 permitted by the Agency and designed using best
5 engineering judgment to retain storm water and
6 provide some settling of the soil particles before
7 release to a receiving stream.

8 Q. Now, how did the landfill personnel --
9 specifically Tom Jones, how did he respond to these
10 recommendations that you made?

11 MR. NORTHRUP: Objection. It's
12 hearsay.

13 THE HEARING OFFICER: Ms. Jackson.

14 MS. SYMONS-JACKSON: Mr. Jones is
15 here to -- it's not hearsay if Mr. Jones is a
16 representative of Watts. He's here to be
17 questioned and crossed by Mr. Northrup.

18 THE HEARING OFFICER: Mr. Northrup.

19 MR. NORTHRUP: That's for my
20 examination, if he does that. Examine Mr. Jones,
21 that's my prerogative. And I may or may not do
22 that, but he's my witness.

23 THE HEARING OFFICER: I'm going to
24 allow the question. Please continue.

25 BY MS. SYMONS-JACKSON:

1 Q. Do you want me to repeat the question?

2 A. I believe you asked if Mr. Jones agreed
3 with me regarding our discussion of how -- of the
4 need to control erosion.

5 Q. Well, I was wanting to know what his
6 response was to the recommendations that you made.

7 A. Well, he was receptive to the ideas that
8 we discussed. In fact, he had some similar
9 thoughts himself about the need to control erosion
10 and how to do it.

11 Q. Did he indicate to you whether he had
12 mentioned these -- these thoughts or the need for
13 other erosion control to any of the other Watts
14 personnel, the owner or operator of the landfill?

15 A. I -- I don't recall for sure, but it
16 seems to me that he had done so as their engineer.

17 Q. That would be something that you would
18 expect him to do as an engineer of the landfill?

19 A. Yes, I would.

20 Q. Now, Jim, you've been out to the landfill
21 at least a couple of times since February of 1994,
22 correct?

23 A. Yes.

24 Q. And when you have been there, have you
25 observed that the landfill has taken any of these

1 steps that you recommended to control the erosion
2 and runoff from the landfill?

3 A. They have done a little bit of work.

4 Q. Can you tell me what they have done?

5 A. They -- on the north side, they built,
6 oh, I'll call it a terrace or maybe a diversion
7 structure to divert runoff away from the Whitley
8 ponds to the northeast to outfall 001.

9 And I also noticed some bales of straw in
10 a ditch upstream of 001 during my February 9th of
11 '96 inspection, but those weren't successful in
12 holding back water.

13 Q. Okay. The diversion channel that you
14 mentioned to divert water or runoff away from the
15 Whitley ponds, do you know if that has been
16 successful, or has runoff continued to enter the
17 Whitley ponds?

18 A. Runoff still goes to the ponds.

19 Q. So would you say that that diversion
20 channel has not been completely successful?

21 A. Not completely. It's taken some water to
22 the northeast, but not everything.

23 Q. And the bales of straw upstream of
24 outfall 001, you testified that has not, in your
25 opinion, been an adequate response?

1 landfill, would you say that that has been
2 successful in controlling the runoff and erosion at
3 the landfill?

4 A. Based on what I've seen, I'd say not
5 really.

6 Q. Okay. Now, back to the D.M.R. for
7 February of 1994. You indicated that the landfill
8 did submit such a D.M.R.

9 A. Yes.

10 Q. Jim, we have marked as Peoples Exhibit 8,
11 it's a Group Exhibit, and it contains the set of
12 D.M.R.'s that have been submitted by Watts from
13 January 1, 1992 to the present.

14 MS. SYMONS-JACKSON: And I believe
15 we have had stipulated to the introduction of these
16 records.

17 THE HEARING OFFICER: Is there any
18 objection?

19 MR. NORTHRUP: No objection.

20 THE HEARING OFFICER: Okay. Exhibit
21 8 is in then. The other ones have -- we have not
22 gone through the steps, so you'll want to move
23 those.

24 MS. SYMONS-JACKSON: Okay. I'll do
25 that before I finish.

1 THE HEARING OFFICER: Okay.

2 BY MS. SYMONS-JACKSON:

3 Q. I want you to look at Peoples Exhibit 8
4 and see if you can find for us the D.M.R. for
5 February of '94. I believe we have got it tagged
6 up there for you.

7 A. (Complies.)

8 Q. Have you got that in front of you now?

9 A. Yes, I do.

10 Q. Okay. And with regard to outfall 001,
11 what has Watts indicated to be the discharge for
12 the month of February 1994?

13 A. They indicate no discharge during the
14 month of February.

15 Q. Now, look to outfall 002. Can you tell
16 me what they have indicated regarding the discharge
17 from 002 for the month of February 1994?

18 A. Yes. No discharge.

19 Q. And are those D.M.R.'s signed by any
20 employee of the Watts landfill?

21 A. Yes.

22 Q. Who has signed that D.M.R.?

23 A. Thomas Jones.

24 Q. And you testified earlier that Mr. Jones
25 had been with you during your inspection of the

1 site when you observed outfall 001 and outfall 002
2 discharging, correct?

3 A. Yes.

4 Q. Based on your observations of February
5 14, 1994, what is your opinion regarding the
6 accuracy of that D.M.R.?

7 A. They are not accurate, in my opinion.

8 Q. And why is that?

9 A. Because when I was there, I sampled
10 discharges. And as the weather warmed that month,
11 there, in my opinion, were bound to be additional
12 discharges.

13 Q. As the snow continued to melt?

14 A. Yes.

15 Q. And based on your knowledge of the
16 facility and your review of the D.M.R.'s submitted
17 by Watts and on your conversations with Watts
18 employees, do you have an opinion as to whether
19 there have been other inaccurate or incorrect
20 D.M.R.'s submitted by Watts?

21 A. Yes.

22 Q. What is that opinion?

23 A. Certainly prior to that time, I feel that
24 the D.M.R.'s submitted have to be questioned as far
25 as their accuracy.

1 Q. Jim, do you have any opinion as to
2 whether Watts avoided any costs by not sampling and
3 analyzing the runoff as required in their
4 N.P.D.E.S. permit?

5 A. They would have avoided considerable
6 cost.

7 Q. How much would one set of composite
8 samples per outfall per day of discharge cost the
9 landfill?

10 A. I can't give you an exact figure on what
11 it costs, but I know that the commercial
12 laboratories in the Peoria area, I believe, charge
13 around 30 or \$40 to do a B.O.D. and suspended
14 solids test.

15 Q. Only for B.O.D. and suspended solids?

16 A. And perhaps pH.

17 Q. And a number of other parameters they
18 have to sample for?

19 A. Yes. Iron and manganese and oil and
20 grease.

21 Q. Now, for iron, manganese, oil and grease,
22 are you aware of whether the cost charged by the
23 area laboratories are greater or less than those
24 charged for the B.O.D. and suspended solid samples?

25 A. They would be greater. I would expect

1 that it run, all six of those tests, most
2 commercial labs would charge somewhere in the
3 neighborhood of 75 to \$100.

4 MR. NORTHRUP: I'm sorry. What was
5 that?

6 THE HEARING OFFICER: 75 to 100.

7 BY MS. SYMONS-JACKSON:

8 Q. And that would be per sample, correct?

9 A. Yes. It would obviously be best to --
10 to, I guess, quiz various commercial labs to see.
11 But based on my knowledge of what I've been told by
12 some of the labs, that would be, I think, a fair
13 estimate of the cost.

14 Q. Okay. And so would you agree, then, that
15 by Watts failing to monitor outfall 002 since the
16 time the permit was issued in 1986 until at least
17 the time of your inspection in 1994, significant
18 costs were saved by Watts?

19 A. I would think so, yes.

20 Q. And the same would be true for any
21 failure to monitor outfall 001, correct?

22 A. Yes.

23 THE HEARING OFFICER: Off the record
24 for a second.

25 (Off-the-record discussion held.)

1 THE HEARING OFFICER: Back on the
2 record.

3 BY MS. SYMONS-JACKSON:

4 Q. One other thing you mentioned earlier
5 was -- was regarding the vegetative cover that you
6 believe Watts had tried to establish on their final
7 cover.

8 A. Yes.

9 Q. During your inspection of February 14,
10 1994, had a vegetative cover been established on
11 the final cover of this landfill?

12 A. I don't even know that they had final
13 cover established. And I -- on my '94 inspection,
14 there was quite a bit of snow present. But I did
15 not see a great deal of any kind of vegetative
16 cover.

17 MS. SYMONS-JACKSON: Okay. I'd say
18 this would be a good point if we want to break for
19 lunch.

20 THE HEARING OFFICER: Off the record
21 then.

22 (Lunch recess taken at 1:37 p.m.)

23

24

25

1 (Proceedings resumed at 2:49 p.m.)

2 THE HEARING OFFICER: Okay. Let's
3 go back on the record.

4 MS. SYMONS-JACKSON: As a
5 preliminary matter, I would move for the admission
6 of certain exhibits that we have talked about
7 earlier. Specifically the Exhibit 3, which was the
8 site map prepared by CH2MHill, the N.P.D.E.S.
9 permit of 1986, which I believe we have stipulated
10 to.

11 THE HEARING OFFICER: Okay. 6. I'm
12 sorry. Go ahead.

13 MS. SYMONS-JACKSON: And the
14 inspection report of February 14, 1994.

15 THE HEARING OFFICER: Any objection?

16 MR. NORTHRUP: No objection.

17 THE HEARING OFFICER: Okay. Those
18 exhibits are entered into evidence.

19 BY MS. SYMONS-JACKSON:

20 Q. Before lunch, we were talking about the
21 February 14, 1994 inspection.

22 Hand you what's been marked as Peoples
23 Exhibit 9. Could you take a look at it and tell me
24 if you agree that that is your inspection report
25 from August 7, 1995.

1 on that day?

2 A. Yes.

3 Q. And is the sample report attached to your
4 exhibit?

5 A. Yes, it is.

6 Q. What did the sample reveal with regard to
7 the small pond?

8 A. It didn't really indicate any -- any
9 water quality violations, and I therefore felt that
10 the current N.P.D.E.S. permit was properly written
11 in that it addressed the pollutants of concern; the
12 solids, iron, manganese, the LD and so forth.

13 Q. Did you take a sediment sample from that
14 small pond also?

15 A. Yes, I did.

16 Q. And is the sediment sample attached to
17 your inspection report?

18 A. Yes.

19 Q. What did the sediment samples reveal?

20 A. Nothing really unusual for sediments.
21 The iron was one of the higher parameters, and that
22 was considered to be what we normally find in
23 situations where there has been sedimentation. The
24 iron background or level was -- was comparable to
25 other receiving waters which have received a silt

1 load or sedimentation problems.

2 Q. And the sedimentation that you observed
3 in the Whitley small pond, is it your opinion that
4 the source of that sedimentation was soil contained
5 in runoff from the landfill?

6 A. Yes.

7 Q. And did you actually test for suspended
8 solids in the small pond?

9 A. No. On this date, I just wanted to test
10 for some water quality parameters, including
11 metals, certain inorganic, organic and pesticide
12 compounds.

13 Q. Based on your observations during your
14 inspection of the small pond, do you have an
15 opinion as to the solids -- the suspended solids
16 content of the small pond?

17 A. Yes. Water was turbid, and the solids
18 would have been above allowable effluent limits.
19 I'm confident of that.

20 Q. And the small pond was discharging into
21 the large Whitley pond?

22 A. Yes.

23 Q. Is the landfill permitted for such a
24 discharge?

25 A. Well, not at that point.

1 Q. Okay.

2 MS. SYMONS-JACKSON: I would move
3 for admission into evidence the inspection report
4 which is -- is that Exhibit 9, Jim?

5 THE WITNESS: Yes.

6 THE HEARING OFFICER: Any objection?

7 MR. NORTHRUP: No objection.

8 THE HEARING OFFICER: It's admitted.

9 BY MS. SYMONS-JACKSON:

10 Q. Jim, I'm going to hand you the next two
11 exhibits, Peoples Exhibit 10 and 11. Take a look
12 at those. And would you tell me that you agree
13 that these are inspection reports from August 30,
14 1995 and September 5, 1995?

15 A. Yes, they are.

16 Q. And do you recall why you visited the
17 facility on August 30, 1995, the date of the first
18 inspection report?

19 A. Yes. I had -- I had some recent
20 telephone conversations with the landfill personnel
21 regarding the discharge of water from a large
22 impoundment in the northeast corner of the
23 landfill.

24 Q. And do you recall what this large
25 impoundment was?

1 A. It was a depression that had been formed
2 by landfilling operations all around it. They had
3 raised the elevation all around this central area
4 in a manner which created this large reservoir, and
5 this thing had a surface area about the size of a
6 football field roughly.

7 Q. And the impoundment had accumulated
8 water?

9 A. Yes.

10 Q. From a water pollution standpoint, what
11 kinds of problems could that cause?

12 A. Well, they wanted to discharge that
13 water. And I asked them to sample it first and
14 make sure it met the applicable permit limits,
15 because they wanted to discharge it or pump it to
16 what would have been outfall 001.

17 Q. And did they take a sample of that water?

18 A. Yes.

19 Q. Was that sample -- did you receive a
20 sample result?

21 A. Yes, I did.

22 Q. And what did the sample result reveal to
23 you?

24 A. I'll need to check here. They -- what
25 they sent me indicated it would meet applicable

1 discharge limits of their N.P.D.E.S. permit.

2 Q. When you were there August 30th, did you
3 actually see water pumped from this depression?

4 A. No. They had stopped. They had started
5 the pumping operation just before I arrived, and
6 they had stopped it. They had -- had experienced a
7 pump failure.

8 Q. Did you observe anything at the landfill
9 that day that concerned you regarding this pumping
10 process?

11 A. Well, yes. They were pumping from the
12 reservoir to the west to a ditch that carries water
13 from the landfill to the north to outflow 001.
14 That's a -- that ditch that runs the base of the
15 inactive area cap on the east -- on the west and
16 this reservoir on the east. And that ditch is
17 barren. It just has bare, exposed soil in it, and
18 had a lot of refuse in it. I guess blown litter.
19 And I asked them to extend that hose all the way to
20 the north to their property line to avoid flushing
21 anymore soil out of this ditch and the litter that
22 I saw.

23 There was also a lot of dust in the
24 general area that day. A lot of dust was present
25 on the access road to the landfill. Trees were

1 covered with dust. And there was a lot of dust in
2 the area. And the landfill people were applying
3 water to try to control the dust.

4 I didn't -- I didn't on that date observe
5 or detect any -- any gas odors, but I wasn't on the
6 north or west sides of the area of that.

7 During my February '94 inspection, I did
8 detect obvious landfill gases. Same during August
9 7th, '95 inspection.

10 Q. And we'll come back and talk about some
11 odors that you've noticed in just a minute.

12 But continuing on with this. You
13 followed up with another inspection of the facility
14 shortly after the August 30th inspection, correct?

15 A. Yes. On September 5th, 1995.

16 Q. And that is -- your inspection report is
17 what we have marked as Exhibit 11.

18 A. Yes.

19 Q. And what was the purpose of this
20 follow-up inspection?

21 A. Just to observe what they had done since
22 my August 30th, 1995 visit. I wanted to make sure
23 they had extended the discharge hose all the way to
24 the north and were taking action to minimize
25 erosion of soil from the site.

1 Q. And what observations did you make on
2 that day?

3 A. Well, they had extended the hose, and it
4 was discharging at what I would call the top of
5 the -- of the embankment on the northeast corner of
6 the landfill. And while they had employed a tarp
7 for the water to run down this embankment and had
8 employed some silt fences, the water was running
9 down this embankment and getting off that tarp and
10 was going onto the bare soil. It was washing the
11 soil off this embankment. The water was passing
12 beneath the silt fences. And as it got down to the
13 toe of that embankment, what I would call the
14 approximate property line area, it was very muddy,
15 brown and turbid. And I took a sample at that
16 time.

17 Q. And what did the sample reveal?

18 A. High concentration of suspended solids
19 and iron.

20 Q. And were the concentrations of solids and
21 iron in excess of the N.P.D.E.S. permit
22 requirements, standards?

23 A. Yes. I also sampled the receiving stream
24 about 1100 feet downstream of that point. It was
25 very muddy, brown, turbid at that point.

1 Q. And turbidity of the receiving stream, is
2 that inconsistent with the regulatory requirements
3 on turbidity?

4 A. Yes. Yes.

5 Q. And how would you describe the volume of
6 water that was being discharged from this hole or
7 the depression at the landfill on this date?

8 A. I -- I would estimate it was somewhere in
9 the range of 300 to 400 gallons per minute.

10 Q. And do you have any photographs attached
11 to your inspection report that depict the runoff as
12 you observed it on that day?

13 A. Yes, I do. Photographs of 1, 2, 3, and 5
14 all show the runoff. 5 actually shows the
15 receiving stream at about the 1200 feet downstream
16 of the discharge. And photo 4 is a picture of the
17 pond. And the pump is the orange machine, if you
18 will, in the lower right-hand corner of photo 4.
19 And you can see the hose, the blue hose, leading
20 away to the left, to the photo left, up the slope.

21 Q. You know, based on the problems you
22 observed during this inspection, did you make any
23 recommendations to the landfill employees as to
24 what they should do to remedy the situation?

25 A. Yes. I -- I felt they needed to do more

1 to control erosion, and I suggested rip-rap as
2 one -- as one means or perhaps running the hose
3 down to the toe of the embankment.

4 Q. Jim, are you aware of how many days this
5 discharge was continued by the landfill?

6 A. Well, it was around the week, as I
7 recall. I don't have the dates right here. I was
8 there on September the 5th, and I had called him on
9 September the 11th, and they had stopped pumping on
10 September the 8th, according to my notes in my
11 memo. And they had started pumping sometime prior
12 to September the 5th and after August 30th. So I
13 would say, probably a week. Approximately a week
14 of discharges.

15 Q. And were they monitoring or sampling
16 those discharges at the points of outfall 001 where
17 you took your sample?

18 A. Yes, they were. They were taking daily
19 samples, according to what I was told, and based on
20 how their D.M.R.'s appear.

21 Q. And what did those D.M.R.'s indicate for
22 that month?

23 A. They had a high concentration of
24 suspended solids present in the discharge.

25 Q. And that is consistent with what you

1 observed in the sample you took on September 5th of
2 1995?

3 A. Yes.

4 Q. Okay. Jim, I want to move on to your
5 next inspection report. I'm going to hand you
6 Peoples Exhibit 12. Can you tell me if this is a
7 copy of your February 7, 1996 inspection report?

8 MS. SYMONS-JACKSON: Jim, while you
9 are doing that, I would go ahead and move to admit
10 Exhibits 10 and 11. I think we have stipulated to
11 those inspection reports already.

12 MR. NORTHRUP: No objection.

13 THE HEARING OFFICER: Okay. 10 and
14 11 are admitted then.

15 BY MS. SYMONS-JACKSON:

16 A. Yes. This is a copy of that inspection
17 report.

18 Q. And do you recall what prompted your
19 inspection on that date?

20 A. It was a follow-up to my previous
21 inspections. I was trying to get there at a point
22 in time when they -- to observe and sample runoff.

23 Q. And what in particular about the February
24 7 date made you decide that that was the date to go
25 out to the site?

1 Q. And which ones were those?

2 A. The 001 sample and the southeast corner
3 sample.

4 Q. Do you have any photographs in your
5 inspection report that accurately depict the sample
6 points?

7 A. Yes, I do.

8 Q. Which photographs are those?

9 A. Photo No. 1 shows the outfall 001
10 sampling area and runoff ditch at the right corner
11 of the photo. Photo No. 7 shows the ponded water
12 on the northwest corner of the landfill. Photo
13 No. 11 shows sampling of the -- the ponded runoff
14 on the southwest corner of the landfill. And photo
15 12 shows the runoff from the southeast corner as it
16 traveled south on the haul road to the receiving
17 ditch in the background tree line. Photos 13 and
18 14 show the receiving ditch which was receiving the
19 runoff from the southeast corner of the landfill.
20 They show the -- the muddy, brown water collecting
21 on top of the frozen stream surface. And photos 15
22 and 16 show the runoff ponding at the gate area and
23 flowing toward the top of each photo, the top right
24 of each photo as it left the property.

25 Q. Okay. Now, Jim, can you describe the

1 appearance of the runoff on this day?

2 A. Yes. It was muddy, brown and turbid.

3 Q. And what was the volume of the runoff
4 like?

5 A. It was just beginning to develop in most
6 areas, except for the southeast corner, which is
7 sample No. 4. It was getting fairly heavy at that
8 point.

9 Q. Okay. Now, you've got sample results
10 attached to your inspection report, correct?

11 A. Yes.

12 Q. With regard to the northeast sample
13 point, can you tell us what those results were?

14 A. Yes. The suspended solids was 116
15 milligrams per liter. Iron -- total iron was 7.7
16 milligrams per liter.

17 Q. And what about with regard to the sample
18 taken from the northwest corner of the facility?

19 A. The iron -- the total iron in that sample
20 was .55 milligrams per liter. I did not collect
21 the suspended solids sample at that point, as the
22 flow was relatively low. I was more concerned
23 about metals at that point in time.

24 Q. Okay. And did you collect a sample from
25 the south side of the landfill?

1 A. Yes. Both southwest and southeast. The
2 southwest runoff showed a suspended solids of 202
3 milligrams per liter and total iron of 4.7
4 milligrams per liter.

5 Q. And from the southeast side?

6 A. That sample showed suspended solids of
7 420 milligrams per liter and total iron of 11
8 milligrams per liter.

9 Q. When you were at the landfill on February
10 7, was the landfill taking any action to -- to
11 alleviate the runoff problem that was occurring?

12 A. I really didn't observe any efforts made
13 to control the runoff or the sedimentation or
14 erosion.

15 Q. Now, Jim, didn't you return to the
16 facility within a rather short amount of time after
17 this inspection?

18 A. Yes. On February 9th, 1996.

19 Q. I'm going to bring you a copy of Peoples
20 Exhibit 13. Would you tell us -- us if this is
21 your inspection report from February 9, 1995 --
22 1996 rather?

23 THE HEARING OFFICER: Would you like
24 to move Exhibit 12 while he's looking?

25 MS. SYMONS-JACKSON: Yes.

1 THE HEARING OFFICER: Is there any
2 objection?

3 MR. NORTHRUP: No.

4 THE HEARING OFFICER: Exhibit 12 is
5 entered into evidence.

6 THE HEARING OFFICER: Mr. Northrup,
7 have we looked through the list of the exhibits,
8 and are the ones that are marked as stipulated
9 accurate?

10 MR. NORTHRUP: Okay. Of those, with
11 the exception of No. 52, and I don't have any
12 problem.

13 THE HEARING OFFICER: You need to
14 speak up.

15 MR. NORTHRUP: It is, with the
16 exception of No. 52. And my only comment with that
17 is it's not a question of authenticity. I don't
18 have a problem with that. It's just whether or not
19 I'm actually going to get these things into
20 evidence.

21 THE HEARING OFFICER: Okay. Then on
22 the other ones that are marked as yes, when they're
23 moved in, they will just be accepted into evidence,
24 with the exception of No. 52, and you can object to
25 it.

1 MS. SYMONS-JACKSON: What was it you
2 said with regard to 52?

3 MR. NORTHRUP: Just I don't have any
4 problem with their authenticity or anything, but
5 I'm not sure at least for my case how many of those
6 I'm actually going to use. So I don't want the
7 whole group just coming in.

8 In your case if you want to get them in
9 somewhere, some way, put Joe Chenoweth on the
10 stand. But I just haven't made any determination
11 how many or which specific ones I would use.

12 MR. DAVIS: Okay.

13 THE HEARING OFFICER: Okay. I just
14 thought that might speed things up. Please
15 continue.

16 THE WITNESS: You're missing page
17 two.

18 MS. SYMONS-JACKSON: Oh. We will
19 supplement the report with page two.

20 Is it page two of the narrative, Jim?

21 THE WITNESS: Yes.

22 BY MS. SYMONS-JACKSON:

23 Q. Now, what --

24 THE HEARING OFFICER: This is for
25 Exhibit 13, correct?

1 MS. SYMONS-JACKSON: Yes.

2 THE HEARING OFFICER: Okay. Thank
3 you. Please continue.

4 BY MS. SYMONS-JACKSON:

5 Q. Jim, what caused you -- you to reinspect
6 so soon after the last inspection?

7 A. I was trying to, I guess, get a better
8 feeling for how much water leaves the site and what
9 the quality of that water would be. So I returned
10 two days later on February 9th, 1996, as the
11 weather had been warmer those two days to see, to
12 observe any runoff.

13 Q. And what did you see that day?

14 A. Large volumes of water leaving the site.
15 The water was, generally speaking, very muddy,
16 brown and turbid, as were the receiving streams
17 downstream of that runoff.

18 Q. Describe for us the volume of runoff that
19 was leaving the facility on that day.

20 A. It's hard to estimate, but we would be
21 talking in the millions of gallons a day easily.

22 Q. Now, how many areas of runoff did you
23 actually observe?

24 A. Really eight different areas, significant
25 areas, and five of those were sampled.

1 MR. NORTHRUP: I'm sorry. Five of
2 those were?

3 THE WITNESS: Sampled. Sampled.

4 MR. NORTHRUP: Okay.

5 BY MS. SYMONS-JACKSON:

6 Q. How many -- how many different samples
7 did you take?

8 A. Let me -- I sampled -- in addition to the
9 runoff, I also sampled the receiving waters. Ten
10 samples.

11 Q. And are you referring, for clarification
12 purposes, to the sampling observations table that's
13 part of your inspection report?

14 A. Yes, I am.

15 Q. And does that identify the various
16 locations from which you took samples?

17 A. Yes. It identifies the locations and
18 also the observations made at each location.

19 Q. Okay. And do you also have attached to
20 your inspection report a samples reports table that
21 contains all the various results from the various
22 samples you took on that day?

23 A. Yes.

24 Q. Now, we will do this as swiftly as we
25 can, but let's go through each sampling point and

1 discuss what you observed at that point and what
2 the sample results were.

3 Can you tell us which was the first place
4 you sampled?

5 A. Yes. I was on the south side of the
6 landfill upstream of any drainage from the
7 landfill. And that's sample point A.

8 Q. And what observations did you make at
9 that location?

10 A. The water in the receiving stream was
11 relatively clear with some suspended material, some
12 heavier, grittier material, possibly sand present,
13 due to an apparent scouring of the stream bottom by
14 the stream velocity.

15 Q. And would you agree that the stream
16 velocity was increased due to the thawing that had
17 been occurring at that time of the year?

18 A. Yes. Yes.

19 Q. And then the second point you sampled,
20 can you tell us about that?

21 A. Yes. That's point B-1. And that's at
22 the gate house on the east side of the landfill. I
23 sampled muddy, brown, turbid water leaving that
24 area and going into the road ditch. There was some
25 oil sheen also present on that runoff.

1 Q. Now, the gate house at the landfill, is
2 that located next to the entrance to the landfill?

3 A. Yes. That is the entrance.

4 Q. And what were the sample results from
5 that second sample point?

6 A. Okay. That sample point, B-1 in my
7 table. Suspended solids were 1412 milligrams per
8 liter. Total iron was 79 milligrams per liter.
9 Total manganese was 4.3 milligrams per liter.

10 Q. Okay. Now, we have talked about the iron
11 and suspended solids standards in the N.P.D.E.S.
12 permit.

13 What is the standard for manganese in the
14 permit?

15 A. 1 milligram per liter.

16 Q. So the sample you took from point B-1
17 exceeded the N.P.D.E.S. permit requirement for
18 manganese?

19 A. Yes.

20 Q. Moving on to the third sample you took.
21 Can describe for us where that sample point was, or
22 where is the sample was taken?

23 A. This is sample B-2. And that's runoff
24 leaving the haul road at the southeast corner of
25 the site and entering the receiving stream. That

1 discharge was muddy, brown and turbid with some oil
2 sheen present, and the receiving stream was also
3 muddy, brown and turbid at this point due to the
4 entry of the sample B-1, the gate house water
5 upstream at that point, and also this water from
6 point B-2.

7 Q. And what were your sample results for
8 point B-2?

9 A. Those suspended solids was 2148
10 milligrams per liter. Total iron was 156
11 milligrams per liter. Total manganese was 11
12 milligrams per liter.

13 Q. All of those in exceedence of the
14 N.P.D.E.S. requirements, correct?

15 A. Yes.

16 Q. Okay. The next sample point, can you
17 tell us where that was taken?

18 A. This is point B-3, and that is runoff
19 from the southwest corner of the site that was also
20 heavy in volume and muddy, brown and turbid.

21 Q. And what were -- I'm sorry?

22 A. Suspended solids was 2344 milligrams per
23 liter. Total iron was 120 milligrams per liter.
24 Total manganese was 6.6 milligrams per liter.

25 Q. Once again, all in exceedence of the

1 N.P.D.E.S. permit requirements?

2 A. Yes.

3 Q. Okay. Next sample point, tell us about
4 that.

5 A. This was point C-1. And that was in the
6 receiving stream on the south side of the landfill
7 downstream of all the landfill discharges.

8 Q. And how did the receiving stream appear
9 at that sample point?

10 A. It was -- this was a point about 100 feet
11 downstream of the southwest corner of the landfill
12 to clarify. And it was -- the flow was muddy,
13 brown and turbid. There was an oil sheen present.
14 And there was silt deposits on the streambed.

15 Q. And what were the sample results at that
16 point?

17 A. Suspended solids was 1420 milligrams per
18 liter. Total iron was 147 milligrams per liter.
19 Total manganese was 7.7 milligrams per liter.

20 Q. And this was a sample point approximately
21 100 feet off site?

22 A. Yes. Downstream of the last discharge
23 from the landfill.

24 Q. Okay. And how about the next sample
25 point?

1 Q. And what did the sample results reveal?

2 A. Suspended solids was 744 milligrams per
3 liter. Iron was 54 milligrams per liter. And
4 manganese was 1.8 milligrams per liter.

5 Q. And this was discharge that was entering
6 the Whitley small pond?

7 A. Yes.

8 Q. Okay. And what about the next sample
9 point?

10 A. That is sample No. 2, which was taken of
11 the -- of the effluent leaving the Whitley small
12 pond and going to the Whitley big pond.

13 Q. And how did that effluent appear?

14 A. It also was turbid.

15 Q. And did you take a sample of that
16 effluent?

17 A. Yes.

18 Q. What were those results?

19 A. Suspended solids was 456 milligrams per
20 liter. Iron was 2.8 milligrams per liter.
21 Manganese was .14 milligrams per liter.

22 Q. Okay. If I'm looking at your chart
23 correctly, we have got one more sample point. Is
24 that correct?

25 A. Yes.

1 Q. Why don't you tell us about that?

2 A. That was sample No. 3, which was taken
3 about 1200 feet downstream of outfall 001 near the
4 Highway 92.

5 Q. And how did the stream appear at that
6 location?

7 A. It was very muddy, brown and turbid.

8 Q. And what were the sample results --

9 A. Suspended solids --

10 Q. -- for that receiving stream?

11 A. Suspended solids were 5480. Iron was
12 121. Manganese was 7.1.

13 Q. Okay. Now, Jim, looking at this -- the
14 sampling results table in your exhibit, you have
15 results for C.O.D. Can you tell me --

16 A. Yes.

17 Q. -- what that -- what is the significance
18 of the C.O.D. results?

19 A. That C.O.D. stands for chemical oxygen
20 demand. I ran that test in lieu of B.O.D., because
21 I was unable to get the samples to the laboratory
22 within the 48-hour holding time, which applies just
23 to B.O.D. and also it's an indicator of all the
24 organic matter that's present in a sample, whereas
25 B.O.D. only indicates the biodegradable

1 carbonaceous matter in a sample.

2 Normally, C.O.D. would run about 30 to 50
3 percent higher than B.O.D., so it's a fair
4 comparison to get an idea of the organic nature of
5 the sample.

6 Q. Now, the specific results that you got
7 from your February 9, 1996 sampling with regard to
8 the C.O.D., what conclusions can you draw from
9 those results?

10 A. I think what I see here appears to be
11 normal. They are all about the same value. And I
12 guess I would expect that based on the large volume
13 of runoff, the large amount of dilution present and
14 probably a reduced organic matter concentration due
15 to the dilution present.

16 Q. Okay. Was the landfill doing anything on
17 this date to address the runoff problems?

18 A. I did observe the terrace or channel they
19 had built on the north side of the site to divert
20 more flow to the northeast corner, and I did
21 observe some straw bales that had been placed in
22 the drainage ditch that I described as part of my
23 August 30th inspection, which is located east of
24 the toe of the inactive site slope and west of the
25 depression.

1 problems?

2 A. Yes. Those would have been actions that
3 I mentioned when I described my February 14, '94
4 inspection report.

5 Q. So these are things that you had talked
6 about with Tom Jones, an employee of the landfill,
7 as early as February 14, 1994?

8 A. Yes.

9 Q. And those, I guess, corrective actions,
10 if you will, had not been implemented by the
11 facility as of February 1996?

12 A. That's correct.

13 Q. Now, is it your opinion, Jim, that these
14 continuous problems with runoff and lack of erosion
15 controls are the source of the continuing effluent
16 exceedences at the landfill?

17 A. Yes.

18 Q. Based on your knowledge of the landfill,
19 do you have an opinion as to how long the runoff
20 problems have been in existence at the facility?

21 A. Well, I would expect that they have had
22 storm water runoff leaving that site since its
23 initial commencement of operation.

24 Q. And they have no adequate means installed
25 to address or correct those runoff problems at this

1 time?

2 A. That's correct.

3 Q. Jim, I'm going to hand you what we have
4 already marked as Peoples Exhibit 61.

5 A. Got page two?

6 Q. I'm sorry?

7 A. What about page two on this?

8 Q. We will supplement the record with that
9 later.

10 A. Okay.

11 Q. And can you tell me the title of this
12 document that I've just handed you?

13 A. Yes. It's called, Estimating Your Soil
14 Erosion Losses with the Universal Soil Loss
15 Equation.

16 Q. Jim, have you performed any calculations
17 to determine the amount of soil that has been
18 leaving this landfill as a result of the runoff
19 problems?

20 A. Yes.

21 Q. And how has this document, which is
22 Exhibit 61, assisted you -- you in making those
23 calculations or those determinations?

24 A. It provides a formula and information
25 required to make those calculations.

1 Q. Who publishes that document?

2 A. This is by the Cooperative Extension
3 Service College of Agriculture, University of
4 Illinois, Urbana/Champaign. It's circular 1220.

5 MS. SYMONS-JACKSON: I'm going to
6 move to admit Exhibit 61 into evidence.

7 THE HEARING OFFICER: Is there any
8 objection?

9 MR. NORTHRUP: No.

10 THE HEARING OFFICER: Exhibit 61 is
11 admitted, and so is Exhibit 13. And we can discuss
12 when you guys will provide page two.

13 MS. SYMONS-JACKSON: Okay.

14 BY MS. SYMONS-JACKSON:

15 Q. Now, Jim, based on your review of this
16 document and your knowledge of the landfill, can
17 you explain for us what conclusions you've been
18 able to reach regarding the quantity of soil
19 eroding from the landfill?

20 A. Well, using the equation on page two and
21 the various components of the equation as listed in
22 the document. And being very conservative
23 regarding the landfill topography or slope, I would
24 estimate that 31 tons per acre per year of soil
25 would leave this site. And if you multiply that

1 times what -- we will say 50 acres of inactive
2 area. We will ignore the ten acres of active
3 area. That would give you roughly 1500 tons of
4 soil per year leaving the site.

5 Q. And you indicated that that would be a
6 conservative calculation.

7 A. Yes. I assumed a much lower slope or
8 steepness factor on the landfill banks just to be
9 conservative with these calculations.

10 Q. And would -- the steepness of the slope,
11 how would that affect the amount of siltation or
12 soil leaving the site?

13 A. It would increase it greatly because of
14 the increased velocity of water running down the
15 slopes.

16 Q. So would you agree then that if the
17 actual slope of or the actual steepness of the
18 slopes at this facility is greater than what you
19 used in your calculation that the amount of soil
20 actually eroding and leaving the facility would be
21 greater than the number you've just given us?

22 A. Yes.

23 Q. Now, Jim, when was the last time you were
24 out at the landfill?

25 A. Today.

1 Q. And what did you do at the landfill
2 today?

3 A. I briefly stopped by the office and met
4 with Elmer Elliot to see if -- if they had prepared
5 a pollution prevention plan, as required by their
6 current -- their new N.P.D.E.S. permit issued
7 earlier this year.

8 Q. Okay. I'm going to hand you a copy of
9 Peoples Exhibit 14. Can you tell me if that is the
10 new N.P.D.E.S. permit that was issued earlier this
11 year to the Watts landfill?

12 A. Yes, it is.

13 Q. And you just testified that this new
14 permit requires a storm water pollution prevention
15 plan?

16 A. Yes.

17 Q. And is that a plan that the facility
18 submits to the Agency, or is it something they just
19 keep at the landfill?

20 A. It's something they can keep at the
21 landfill and have available for our review.

22 Q. Okay. And when was this facility
23 supposed to have the storm water pollution
24 prevention plan?

25 A. Within 180 days after the effective date

1 of the permit, which was April 16, 1996. So they
2 would have had to have their plan prepared, let's
3 see, I believe last month.

4 Q. September 16?

5 A. Yes.

6 Q. Or it would be October 16, wouldn't it?

7 A. October 16.

8 Q. Six months?

9 A. Right.

10 Q. And when you were at the facility today,
11 did they, in fact, have a storm water pollution
12 prevention plan that they could provide you to
13 review?

14 A. They weren't sure. They could not find
15 one.

16 Q. And who did you speak to today?

17 A. Elmer Elliot.

18 Q. And who is Elmer Elliot?

19 A. He's the site manager.

20 Q. And Elmer checked through the records at
21 the facility and could not find a storm water
22 pollution prevention plan?

23 A. Well, he asked the receptionist if she
24 could find one, and she checked their file and
25 couldn't find one. And he also asked Joe

1 Chenoweth, and he didn't know if they had one.

2 Q. Did they have a copy of the permit on
3 file, this new permit?

4 A. I didn't ask to see that today.

5 Q. Were they aware of the requirements that
6 they have a storm water pollution prevention plan
7 at that facility?

8 A. They seemed to be. They didn't ask me
9 what it was or anything like that.

10 Q. Now, did you observe any -- I guess, what
11 other observations did you make when you were at
12 the facility today?

13 A. Well, I did observe the gate area, and I
14 saw --

15 MR. NORTHRUP: I'm sorry. The what
16 area?

17 THE HEARING OFFICER: Gate area.

18 MR. NORTHRUP: Gate.

19 BY MS. SYMONS-JACKSON:

20 A. Leaving that area and going to the county
21 road ditch.

22 Q. You observed runoff from that area?

23 A. Yes. Muddy, brown water leaving that
24 area.

25 Q. And you didn't take any samples, did you?

1 A. No. And I also observed the receiving
2 stream near Highway 92 about 1200 feet downstream
3 of outfall 001, and the flow in the stream was also
4 muddy, brown and turbid.

5 Q. And that's the same point as your
6 inspection or your sampling .3 from your February
7 1996 inspection?

8 A. Yes. That's correct.

9 Q. Would you say the receiving stream was
10 similar in appearance today as it was back then in
11 February of '96?

12 A. Yes. The flow was heavier in February,
13 but it was the same general appearance, except for
14 the ice and snow.

15 Q. Okay. Now, Jim, just briefly I want
16 to -- you mentioned earlier some occasions when you
17 had been at the landfill when you noticed a
18 malodorous odor at the landfill. I want to expand
19 on that just a little bit and ask that you tell me
20 what you have observed during your inspections if
21 the facility with regard to odor.

22 A. During my first inspection, February 14,
23 1996, I noticed this. In fact, I asked Mr. Jones
24 what it was. And he told me it was landfill gas.

25 THE HEARING OFFICER: Excuse me.

1 '96 or '94?

2 THE WITNESS: '94.

3 THE HEARING OFFICER: '94. Okay.

4 BY MS. SYMONS-JACKSON:

5 Q. What did the odor smell like to you in
6 '94?

7 A. It reminded me of a sour milk odor.

8 Q. And is that the same -- have you smelled
9 that same smell on other occasions at the landfill?

10 A. Yes, I have.

11 Q. During how many of your inspections of
12 the landfill have you noticed this odor?

13 A. During the August 1995 inspection and
14 during the February 1996 inspections. On both of
15 those occasions.

16 Q. Now, are you familiar with what a
17 livestock or a hog manure smell smells like?

18 A. Yes. Very much so.

19 Q. And how would you compare this smell or
20 the odor that you've noted at the landfill with a
21 hog manure odor?

22 A. It's not the same.

23 Q. Jim, I've just got another final question
24 for you. Over the course of your -- the years
25 inspecting the facility, has it appeared to you

1 that the small pond, the small Whitley pond, is --
2 has acted or functioned as a retention or a
3 sedimentation pond?

4 A. Yes.

5 Q. And why do you say that?

6 A. Because I've seen silt or soil
7 accumulations in that.

8 MS. SYMONS-JACKSON: Okay. That's
9 all I have.

10 THE HEARING OFFICER: Okay. Would
11 you like to move Exhibit 14 into evidence?

12 MS. SYMONS-JACKSON: Yes.

13 THE HEARING OFFICER: Permit.

14 MS. SYMONS-JACKSON: Yes.

15 THE HEARING OFFICER: Let's take a
16 five-minute break and come back for
17 cross-examination.

18 (Recess taken.)

19 THE HEARING OFFICER: Let's go back
20 on the record and begin with Mr. Northrup's
21 cross-examination.

22 The exhibits are in this box in case he
23 asks you about any of them and you need to look at
24 them.

25 THE WITNESS: Okay. Thank you.

1 CROSS-EXAMINATION

2 BY MR. NORTHRUP:

3 Q. Just a couple of quick things to tie
4 things up. Did you say 1 milligram per liter is
5 toxic of iron?

6 A. To fish.

7 Q. Is that what you said?

8 A. Right. It's been -- studies have shown
9 that certain species of fish can be affected by
10 iron as low as a milligram per liter or even less.

11 Q. Do you know what species of fish we are
12 talking about?

13 A. Well, one I recall was trout. And I
14 realize there aren't any trout in that stream, but
15 that was one name that I could recall from the
16 studies I've seen.

17 Q. Okay. Given that, do you have any idea
18 why an N.P.D.E.S. permit would allow the release of
19 4 milligrams per liter of iron?

20 A. There is some factor of, I guess you'd
21 say, safety built into the permit limits. It's
22 recognized that that is a daily maximum at 4
23 milligrams per liter, and it's recognized that
24 there can be some assimilation of contaminants for
25 a short period of time by a receiving water without

1 adverse effect.

2 Q. Do you have any idea what the uppermost
3 level of that would be that a stream could receive
4 without any adverse effect?

5 A. No, I really don't. The water quality
6 standards we have were based on hearings that were
7 held a number of years ago before the Pollution
8 Control Board. And a lot of scientific data went
9 into those decisions, as far as how to set the
10 water quality standards. I don't have that
11 information. I wish I did have. I don't have all
12 that in my files. But I know there were -- was a
13 good scientific reason behind how they set those
14 standards. And they are continually being reviewed
15 as more data becomes available.

16 Q. Okay. We -- a lot of the exhibits that
17 were admitted were inspection reports that you had
18 did -- you had done. Have you ever sent any of
19 those to landfill personnel?

20 A. No. We would not send inspection
21 memorandums or reports to a permittee. We at times
22 send inspection letters.

23 Q. Do you know if any inspection letters
24 were sent as a result of your inspections to the
25 landfill?

1 mentioned. I have that with me, if you'd like to
2 see that.

3 Q. Okay.

4 A. But I -- this is the first I've seen
5 this.

6 Q. Okay. What's the date on this letter?

7 A. This is February 18th, 1991.

8 Q. I guess actually why don't you just
9 identify that for me or just tell me who it's too.

10 A. It's a letter from ESG Watts, Inc.,
11 Taylor Ridge to the Illinois Environmental
12 Protection Agency. It has division of water
13 compliance, N.P.D.E.S. section, and it's regarding
14 the renewal of their N.P.D.E.S. permit number, IL
15 0065307.

16 Q. Okay. Can you hand that back to me,
17 please.

18 A. Sure.

19 Q. Now, you mentioned you had knowledge of a
20 letter going back from the Agency that you thought
21 was denying this 1991 permit application.

22 A. Yes.

23 Q. Let me hand you this document. It's not
24 marked. Can you identify that for me?

25 A. It's a letter on Illinois Environmental

1 Protection Agency letterhead dated June 2nd, 1994
2 addressed to ESG Watts, Inc., at Taylor Ridge,
3 Illinois, signed by Steve Nightingale (phonetic
4 spelling) of our permits section, indicating that
5 they had denied the Watts application for
6 N.P.D.E.S. permit, which they received -- or we
7 received on February 22nd, 1991.

8 Q. Okay.

9 A. And attached to that is a listing of
10 reasons for that denial. This I have seen.

11 Q. Okay.

12 A. Yeah.

13 Q. Thanks.

14 A. Sure.

15 Q. Can you give me any reason why it took
16 approximately three years for the Agency to deny
17 the renewal application?

18 A. Well, I could only speculate. I don't
19 work in the permits section. And I really don't
20 know why it would have taken that long.

21 Q. In your experience, would such a delay be
22 normal?

23 A. Possibly.

24 Q. You in -- you also indicated that prior
25 to your February '94 inspection of the landfill you

1 had reviewed Watts' D.M.R.'s --

2 A. Yes.

3 Q. -- is that correct? You had been
4 receiving these D.M.R.'s since 1986 approximately?

5 A. Yes.

6 Q. Okay. Would you review those as they
7 came in to your office?

8 A. Normally.

9 Q. Okay. Here again, why did it take
10 approximately six years for you to go to the
11 landfill?

12 A. In my particular case, it was backlog.
13 There were priorities that I needed to take care of
14 before I could get to that facility.

15 Q. Had you had any conversations with Watts
16 employees regarding the permitting requirements or
17 their D.M.R.'s prior to February of '94?

18 A. I don't recall for sure, but I --
19 offhand, I don't think I did.

20 Q. Okay. There was some discussion about
21 the costs of or supposed economic benefits that
22 Watts received by failure to perform some
23 sampling. I believe you indicated it would be
24 approximately 75 to \$100 per sample.

25 A. Yes.

1 Q. Do you remember that?

2 A. Yes.

3 Q. Okay. Here again, what is that -- what
4 are those figures based on?

5 A. Well, they are -- they are based on
6 prices that I know other commercial labs charge or
7 I have some operators who also run their own
8 laboratories and do tests for other sewage
9 treatment plants, and that's about what they charge
10 to do those. The basic parameter, pH, B.O.D. and
11 suspended solids. And normally, the commercial
12 labs charge a little more for doing the metals,
13 iron and manganese because of the equipment that's
14 required, and also for doing the oil and grease,
15 because of the chemicals involved in the -- and the
16 procedure involved, more time consuming and more
17 chemical costs.

18 Q. I believe you said there were -- and
19 correct me if I'm wrong -- two receiving streams
20 that -- that runoff will flow into at the Watts
21 site.

22 A. Actually, there can be three, if you look
23 at the one that the Whitley ponds would drain into.

24 Q. Okay. The one on the 001 outfall
25 receiving stream, that's on the north side of the

1 landfill.

2 A. Yes. More -- more on the northeast
3 corner.

4 Q. Okay. Is there always water in that
5 stream, or is it intermittent?

6 A. It's intermittent the times I've seen it.

7 Q. Okay. Is it fair -- well, do you know --
8 is the only time there is ever water in that stream
9 when it's raining when there is runoff?

10 A. That may not be the only time, but
11 certainly that would probably be the case a lot of
12 the time, that runoff from the landfill -- when
13 that is being discharged, the stream would have
14 flow in there, of course.

15 Q. Have you ever observed any fish in that
16 stream?

17 A. No.

18 Q. What's the deepest you've ever seen that
19 stream?

20 A. At this point, I've seen it probably
21 around 12 inches.

22 Q. Where would that be?

23 A. Downstream of the landfill within the
24 first hundred feet approximately or downstream 1200
25 feet near the highway where I commonly see it at

1 under the highway bridge. I think it's a little
2 bit deeper as it tends to pond or pool in that area
3 a little.

4 Q. Does -- that stream, where does it flow
5 to eventually?

6 A. Mississippi River.

7 Q. And the stream -- or the creek on the
8 south side of the landfill, have you ever observed
9 any fish in that stream?

10 A. Well, I've never -- I've only seen it
11 during the -- up close during the wintertime when
12 it was ice and snow covered, except on February 9th
13 when the -- it contained the discharge from the
14 landfill. And a lot of that water was on top of
15 the ice. So I haven't seen the stream at, I guess,
16 the times of the year when there could be a --
17 minnows or smaller fish present.

18 I wouldn't be surprised to see at least
19 smaller fish in that stream, based on its size
20 especially.

21 Q. You say you would or would not?

22 A. I would not be surprised to see smaller
23 fish, especially minnows or smaller fish.

24 Q. How deep is that stream?

25 A. The areas where I've seen it, it was --

1 it probably varied from one to two feet, depending
2 upon how wide it was at that point.

3 Q. Okay. Do you know what the source of
4 that stream is?

5 A. It starts to the east -- southeast of the
6 landfill. As I recall, there are a couple of small
7 streams that kind of come together above the
8 landfill and form that stream.

9 Q. Okay. And where does it eventually flow
10 to?

11 A. The Mississippi River.

12 Q. What is on the -- I guess, what is south
13 of the stream -- I mean, adjacent to the stream on
14 the south on the landfill property, correct?

15 A. The landfill borrow area is south of the
16 stream.

17 Q. Is that all?

18 A. Well, as far as the landfill property,
19 that's all. But there -- upstream of the landfill,
20 there is some farm ground on both sides of the
21 stream. And downstream there is some pasture
22 ground and timber ground --

23 Q. Okay.

24 A. -- and then farm ground.

25 Q. Have you performed any calculations for

1 soil loss that would come off those areas into the
2 stream?

3 A. No.

4 Q. Do you have any idea, would it be more or
5 less than I think -- what did you testify to 31
6 tons or 1500?

7 A. 31 tons per acre.

8 Q. 31 tons per acre?

9 A. Right.

10 Q. Would it be more or less than that?

11 A. It would be less, because the ground in
12 those areas that I've seen is not as sloping or as
13 steep as the landfill site, and there is more cover
14 on that. There is vegetative cover. There is
15 trees and some -- there is pasture in some areas,
16 and there is some farm fields but on farm fields
17 normally you look at 4 to 5 tons per acre per year
18 of soil loss. And while some can be higher than
19 that, depending on the conservation measures
20 employed, that's a figure that is desired to be
21 achieved by the year 2000, in fact, by the
22 conservation folks.

23 Q. And have you ever observed vegetation on
24 the landfill?

25 A. I've never really looked that close.

1 I've been there mostly during the wintertime when
2 the crops are out, so I -- there is some wooded
3 areas that upstream of the landfill along the
4 stream and some pasture and farm areas, but I can't
5 tell you the percent coverage as far as vegetation
6 goes.

7 Q. On the February 9th inspection report,
8 you indicate you took samples at sampling points
9 001 and 3. Do you recall where those were at?

10 A. Yes.

11 Q. Okay. Now, looking at your chart on page
12 three, your sampling result table. If you want to
13 take a look at that.

14 THE WITNESS: Thanks.

15 THE HEARING OFFICER: No problem.

16 BY MR. NORTHRUP:

17 Q. Your sampling points 001 and 3. Look
18 under the TSS, which again, that's total suspended
19 solids?

20 A. Yes.

21 Q. Okay. You'll see under 001 it's 1024.
22 Under 3 it's 5480. Now, what do you attribute that
23 difference to?

24 A. Well, there could be several things. One
25 could be erosion of the streambed and banks as the

1 water traveled on downstream to my sample .3.
2 Another could be the fact that these were grab
3 samples, and there was some time difference between
4 sample 001 and 3. Perhaps the flow volume from the
5 landfill changed and contained more silt by the
6 time I got downstream. The time of travel is not
7 very great in that small segment there.

8 Q. How much time elapsed between the time
9 you took your sample at 001 and sample No. 3?

10 A. Let's check the lab sheets here, and I'll
11 tell you. About an hour and 40 minutes.

12 Q. What was the time frame between? Still
13 on that same sampling results table between sample
14 point A and sample point C-2.

15 A. An hour and ten minutes.

16 Q. An hour and ten minutes?

17 A. Yes.

18 Q. And what's the approximate distance
19 between A and C-2?

20 A. Well, there is a map I'd like to refer
21 to, if I could, in the exhibits that might give me
22 a little better idea. I could estimate, but --

23 Q. Do you need --

24 A. Let's see here.

25 THE HEARING OFFICER: The one that

1 you marked?

2 THE WITNESS: Right. It's probably
3 down there.

4 MS. SYMONS-JACKSON: Exhibit 13.

5 THE WITNESS: There it is.

6 BY MR. NORTHRUP:

7 A. Around 1500 feet it appears to be
8 roughly.

9 Q. Turning back to Peoples Exhibit No. 5,
10 which is this July 10, '96, memo from Thomas
11 Meyer. DWPC/FOS. Okay. Do you want to take a
12 look at the map on page three.

13 Now, there is no scale on that map,
14 correct?

15 A. That's correct.

16 Q. Okay. And you were not present during
17 this inspection?

18 A. That's correct.

19 Q. Okay. Do you have any idea what the
20 distance is between where this map depicts the
21 sampling point on the landfill pond was taken and
22 where the Whitley pond and the landfill pond meet?

23 MS. SYMONS-JACKSON: Sorry. Could
24 you repeat that, Charlie? I couldn't hear you.

25 BY MR. NORTHRUP:

1 Q. No. From there to there basically.

2 A. Okay.

3 MR. NORTHRUP: I'm asking him if he
4 knows what the distance would be from that sample,
5 from this depiction right here.

6 THE HEARING OFFICER: Charlie, can
7 you repeat it for the record, 'cause from there to
8 there, it doesn't work in the record.

9 MR. NORTHRUP: Sure.

10 BY MR. NORTHRUP:

11 Q. I'm wondering if you can tell me the
12 distance between the sampling point that is marked
13 in the landfill pond and the point on the landfill
14 pond at which it meets the Whitley pond?

15 A. The -- Tom Meyer does not have the exact
16 distance in here. But based on his sketch and
17 based on my knowledge of the site at that time, I
18 would think he was within certainly less than 50
19 feet from that -- from the sample point taken in
20 the small pond to the overflow from the small pond
21 to the Whitley pond.

22 Q. Okay. Had you -- had you been to this
23 site prior to 1994?

24 A. No, I had not.

25 Q. Okay. I think you indicated that solids

1 will settle more in a large pond than in a small
2 pond.

3 Can you explain your basis for that?

4 A. Solids would tend to settle more in a
5 large pond, because the large pond provides greater
6 detention time. The water that contains the solids
7 sits in this pond more time for gravity to pull
8 that solid down.

9 Q. Now, you indicated that solids can
10 blanket a stream bottom. You also indicated that
11 they can interfere with spawning.

12 Have you seen any evidence of that at any
13 of the receiving streams around the Watts landfill?

14 A. I've just seen the silt on the streambed.

15 Q. So you've seen no interference with
16 spawning?

17 A. That's correct. I -- I've only been
18 there during the off season for spawning. I guess
19 in the wintertime.

20 Q. You also indicated that the solids could
21 result in suffocation of fish, I believe. Have you
22 seen any evidence of that?

23 A. No. I've seen no fish, so I don't know
24 if they just weren't there when I was there or if
25 the stream conditions weren't right when I was

1 there, 'cause of the size and snow cover, or if
2 they were driven out years ago, for example, by the
3 conditions.

4 Q. Okay. You have observed fish in
5 Mr. Whitley's big pond?

6 A. Yes, I have.

7 Q. Have you observed any suffocation of fish
8 in Mr. Whitley's big pond?

9 A. No.

10 Q. Have you observed any interference with
11 spawning in Mr. Whitley's big pond?

12 A. No, not that I could recognize.

13 Q. Can you -- you have been to Whitley's big
14 pond?

15 A. Yes. One time.

16 Q. Okay. Can you describe that area for me?

17 A. Well, it's -- I guess from the standpoint
18 of private property, it has a desirable appearance.
19 The pond has -- contains fish. There is -- I think
20 he had some kind of small trailer there. And there
21 is a fishing dock. So from a recreational
22 standpoint on private property, it's probably a
23 pretty desirable facility.

24 Q. Does the land slope down to the pond?

25 MS. SYMONS-JACKSON: I'm going to

1 object to that question. I think it's vague. If
2 you could be more specific as far as direction or
3 something like that.

4 BY MR. NORTHRUP:

5 Q. Well, I guess let me step back. Do you
6 have any idea how that pond formed?

7 A. How it does what?

8 Q. Formed.

9 A. Formed. Well, only what I've been told.

10 Q. What is the topography on the west side
11 of the pond? Is there a slope?

12 A. Yes. The pond has embankments, if I
13 could call them embankments, on all sides, because
14 they were, as I understand it, raised some years
15 ago by Watts as they restored the pond to a more
16 normal depth. But on the west side of the pond,
17 the ground tends to slope off to the west and drain
18 away. The pond reminds me almost of a perched
19 lake. It's been raised to the point where what
20 goes into it is basically drainage coming from the
21 northwest corner of the landfill or perhaps the
22 very north corner of the Whitley property.

23 I'm not sure where the property line is.
24 But there is a pretty small watershed feeding that
25 pond on the Whitley property. The bigger watershed

1 is coming from the landfill.

2 Q. Since after February of '94, have you
3 ever had a concern that Watts was not accurately
4 reporting any discharges on their D.M.R.'s?

5 A. Yes, I have.

6 Q. Okay. What occasions were those?

7 A. Well, when -- when their February '94
8 D.M.R. was submitted, it indicated no discharge
9 from either outfall. And I knew when I was there
10 that I had seen a discharge. And as I have
11 reviewed D.M.R.'s since that time -- in fact, I
12 have summarized some findings in my February 7th,
13 1996 report -- I still have some concerns regarding
14 the way D.M.R.'s are -- are prepared and -- and
15 submitted.

16 There are -- I guess, basically there are
17 still some times when I see no discharge being
18 reported, and I have to wonder if they actually had
19 a discharge or if they monitored outfall one as
20 often as required. These questions that you have
21 once you have reason to become concerned about
22 D.M.R. validity.

23 Q. Okay. But you cannot point to any
24 specific instance where you can tell me that they
25 miss -- did not appropriately reflect no discharge

1 when, in fact, there was a discharge?

2 A. I would have to go through some reports
3 that I have and some D.M.R.'s. I can't say for
4 sure. I couldn't do that without a file review.
5 I'd like to refer to my February 7th of '96 report,
6 if I could.

7 Q. That's fine.

8 A. Okay.

9 THE HEARING OFFICER: That's No. 12.
10 BY MR. NORTHRUP:

11 Q. Are you looking at the February 7th?

12 A. Yes.

13 Q. Would there be anything in addition to
14 what's already written down there? I guess,
15 that -- anything in addition to what is listed out
16 on page two and three?

17 A. Two and three would detail my findings
18 and concerns during that two-year period between
19 this report and my '94 -- February '94 inspection.

20 During my February 9th, '96, inspection,
21 I went back, as you know, and took a number of
22 samples. And the fellow who was with me left me
23 that day in the afternoon to go do his own
24 sampling.

25 Now, they had not started their sampling

1 for that day until I arrived and went around the
2 site with him. And then -- he then left me
3 mid-afternoon to go do his own sampling.

4 And they should have been starting to
5 collect their composite samples that day, in the
6 morning of that day, and had been on their last
7 sample, their last aliquot, not their first sample
8 for that day when I arrived, when I was almost done
9 in the afternoon.

10 Q. Where is this at? Permit requirement?

11 A. Yes. They are required to take composite
12 samples. And I had told them before at least get 3
13 aliquots during the eight-hour period when you are
14 discharging as a minimum. That's in the permit.
15 And they had not started to do that or do any
16 sampling at all until I had arrived that day and
17 had almost completed my inspections.

18 It was around 2 o'clock or 2:30 when the
19 fellow that was with me left to go get his own
20 samples. And I have to suspect that had I not
21 arrived that day, there would have been no samples
22 taken.

23 Q. Is your understanding of the older
24 N.P.D.E.S. permit not the now one that was just
25 issued, they only have to sample when discharging;

1 is that correct?

2 A. In the older permit, it requires one
3 sample per month at outfall 002 and daily when
4 discharging on 001.

5 Q. All right. But obviously, if it's not
6 raining, there is nothing to sample.

7 A. Right. Assuming there is no runoff or no
8 recent precipitation that would have caused a
9 discharge. So you may be thinking that they could
10 have or may not have had to sample outfall two the
11 day I was there and could have gotten it later on
12 that month. However, they were required to monitor
13 001, so they should have been sampling that
14 discharge on a daily basis during that month.

15 Q. If there was, in fact, discharge?

16 A. Right.

17 Q. Is iron naturally occurring in the soil?

18 A. Yes, it is.

19 To further answer your last question,
20 could I check the D.M.R.'s for a minute?

21 Q. No.

22 A. Okay. All right.

23 MR. NORTHRUP: Let the AG ask.

24 Those are all the questions I have.

25 THE HEARING OFFICER: Redirect.

1 MS. SYMONS-JACKSON: Yes.

2 REDIRECT EXAMINATION

3 BY MS. SYMONS-JACKSON:

4 Q. Jim, I've got a couple of follow-up
5 questions for you. First of all, we were talking
6 earlier. Charlie had asked you a couple of
7 questions about the fish in the receiving streams.

8 Has the stream conditions, as you have
9 observed them, precluded the availability or use of
10 the receiving streams around this landfill as a
11 fish habitat?

12 A. It's possible.

13 Q. You mentioned earlier that it was
14 possible that the fish had been driven out
15 earlier. Do you recall saying that?

16 A. Yes.

17 Q. I want to expand on that. Is it possible
18 that the continuing runoff problems from this
19 facility causing a buildup of siltation at the
20 bottom of the streams could have driven those fish
21 out years ago?

22 A. Yes.

23 Q. And that could be why you are not seeing
24 fish in the streams at this time?

25 A. Possibly.

1 Q. Going back to the July 10, 1986
2 inspection report that was prepared by Thomas
3 Meyer.

4 A. Yes.

5 Q. Charlie asked you a question regarding
6 your estimation of the distance between the
7 sampling points in the small pond and the point
8 where the effluent was discharging from the small
9 pond into the large pond.

10 Do you recall that question?

11 A. Yes.

12 Q. You indicated that in your estimation it
13 would have been within 50 feet.

14 A. Yes.

15 Q. Okay. Even if that sample had been taken
16 50 feet from the point of discharge, is it still
17 your opinion that due to the uniform mixing of
18 materials in that pond, that the level of suspended
19 solids at the point of discharge would be the same
20 as at the point of sample?

21 A. Yes. I would expect that.

22 Q. Just a couple of questions regarding the
23 discharge monitoring reports.

24 Would you agree that in the discharge
25 monitoring reports that you have reviewed for the

1 Watts facility that when discharges are, in fact,
2 reported, there are regular exceedences of the
3 permit standards?

4 A. Yes.

5 Q. Now, does the N.P.D.E.S. permit indicate
6 when discharges from either outfall 001 or outfall
7 002 are to be monitored?

8 A. Which permit is that?

9 Q. Okay. Let me ask you another question.
10 The original N.P.D.E.S. permit --

11 A. Yes.

12 Q. -- monitoring the outfalls. Does the
13 permit limit the time of monitoring only to
14 operating hours of the facility?

15 A. Not really.

16 Q. Are they -- does the permit require that
17 a sample be taken whenever a discharge occurs?

18 A. Yes. It's written for outfall 001 to be
19 sampled daily when discharging; and for outfall
20 002, to be sampled at least once a month.

21 Q. Now, for outfall 001, if a D.M.R. was
22 submitted by Watts that indicated there was no
23 discharge during operating hours, would you say
24 that is a correct interpretation of the N.P.D.E.S.
25 permit requirements?

1 A. Possibly.

2 Q. Okay. If a discharge occurred from
3 outfall 001 after operating the regular operating
4 hours, does the permit require that that discharge
5 be monitored?

6 A. You could interpret the former permit
7 that way, that they have to monitor during
8 operating hours.

9 Q. Okay. Going on to the issue of iron as a
10 naturally occurring substance in the environment.
11 How is it, in your opinion, that the iron has
12 gotten into the runoff and then as a result into
13 the receiving stream?

14 A. Through erosion on the landfill site.

15 Q. The iron is actually in the soil that's
16 being washed off the landfill?

17 A. Yes. That would be the majority of the
18 iron certainly --

19 Q. Okay.

20 A. -- in my opinion.

21 MS. SYMONS-JACKSON: That's all I
22 have, Jim.

23 THE HEARING OFFICER: Any recross?

24 MR. NORTHRUP: Yeah.

25

1 record?

2 A. Yes. It's a copy of a letter from ESG
3 Watts, Taylor Ridge facility, to a Mr. Richard
4 Pinneo, P-I-N-N-E-O, in our permits section. It's
5 written by a Nicole, N-I-C-O-L-E, Hute, H-U-T-E, of
6 Watts, confirming discussions held during a June
7 30, 1994 meeting between ESG Watts and the EPA,
8 which would have been in Springfield.

9 Q. Okay. Do you recall this meeting?

10 A. Yes. I was there.

11 Q. Okay. Do you recall stating at that
12 meeting that ESG Watts could collect samples of
13 storm water discharge during operating hours?

14 A. Yes. That was my gift to them during the
15 meeting.

16 Q. Explain that. Why is that a gift?

17 A. There was confusion about when they
18 should sample and how they should sample. I said,
19 at least sample during operating hours.

20 Q. All right. Did you tell them at that
21 point to sample during nonoperating hours?

22 A. Well, the discussion was along those
23 lines, and they said they weren't open 24 hours a
24 day and could not get a 24-hour composite sample.
25 I said, at least get an eight-hour composite sample

1 for the time being until we get a new permit
2 issued.

3 MR. NORTHRUP: Okay. I don't have
4 any further questions.

5 THE HEARING OFFICER:
6 Ms. Symons-Jackson, do you have anything else?

7 MS. SYMONS-JACKSON: Give me one
8 second, please. Deb, I don't have any further
9 questions.

10 THE HEARING OFFICER: Okay.
11 Anything else for this witness? Is there any
12 reason to recall him, or can he be excused?

13 MS. SYMONS-JACKSON: I guess Charlie
14 did issue a subpoena to Jim last week. If he's not
15 going to be recalled, can he be excused?

16 MR. NORTHRUP: Yeah. I'm not going
17 to recall him.

18 THE HEARING OFFICER: Thank you very
19 much for your testimony, and you are free to leave.

20 THE WITNESS: Thank you.

21 THE HEARING OFFICER: Thank you.

22 Let's go off the record for one second.

23 (Off-the-record discussion held.)

24 (Recess taken.)

25 THE HEARING OFFICER: Will the State

1 please call their next witness.

2 MR. DAVIS: The people would call
3 Joe Whitley.

4 THE HEARING OFFICER: Please swear
5 the witness.

6 JOE L. WHITLEY,
7 called as a witness, after having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION
10 BY MR. DAVIS:

11 Q. Please state your name, sir.

12 A. Joe, with a middle initial L., Whitley,
13 spelled W-H-I-T-L-E-Y.

14 Q. And, Joe, I understand that you're
15 retired from the Postal Service.

16 A. That is true.

17 Q. How long did you work there?

18 A. 30 years.

19 Q. And I also understand you are a Veteran.

20 A. Yes, sir.

21 Q. From which branch of the service?

22 A. Korea.

23 Q. Where do you live?

24 A. 8004 - 78th Avenue West, Milan, Illinois.
25 Zip code is 61264-4117.

1 Q. And is this road Route 92?

2 A. It is.

3 Q. Can you describe for us your property as
4 far as its size, its features, your uses of it and
5 so on?

6 A. I own 43 acres in two separate parcels.
7 One parcel borders the Andalusia Road, which is
8 Route 92 or 78th Avenue West. The south side of
9 that property and one-half of it joins the Watts
10 landfill to the south. Is his north border. And
11 the 20 acres with is a separate parcel borders the
12 Watts landfill to his west. My east side. The
13 entire length of a 20-acre square.

14 Q. Are these parcels adjacent to each other?

15 A. Yes, they are.

16 Q. Okay.

17 A. They form an L shape. 32 acres across
18 the front. 20 acres in the back originally.

19 Q. And this is your residence?

20 A. Yes, it is.

21 Q. Can you describe your house?

22 A. My house is a two-story house
23 approximately 130 years old. It's been remodeled a
24 couple of times in the years. And otherwise, it's
25 just a livable, two-bedroom home.

1 Q. And do you have any outbuildings or other
2 improvements?

3 A. I do I have an unattached, oversized,
4 two-car garage. I do have a 20-stall horse barn,
5 which measures 102 by 52.

6 Q. And we have heard a lot about the pond.
7 Can you tell us about that?

8 A. I'm sure I can.

9 Q. Okay. Please describe it as far as the
10 size at the present time.

11 A. The size of the pond at the present time,
12 I think, would include approximately an
13 acre-and-a-half of surface water. It's
14 approximately 400 feet long, 100 feet wide and runs
15 from north -- from south to north due to an
16 overflow tube. It was man-made, and it was there
17 when I moved in.

18 Q. And when that was, Joe?

19 A. In 1964, 30th day of May.

20 Q. Okay. And was there a landfill in
21 operation or under development at the time that you
22 moved in?

23 A. No, sir.

24 THE HEARING OFFICER: Just a moment.
25 Can I just ask a question? By overflow tube, do

1 you mean drainage tile?

2 THE WITNESS: When the pond is
3 constructed, I have approximately three foot of
4 surface around the top of the pond. That overflow
5 tube goes out of the pond. Instead of going over
6 the top of the dike, it flows through a tube.

7 THE HEARING OFFICER: Thank you.

8 BY MR. DAVIS:

9 Q. It's a corrugated metal pipe?

10 A. Right.

11 Q. Perhaps 8 inches, 12 inches in diameter?

12 A. It's 12 inches.

13 Q. Okay. What do you know about the pond?

14 You say it was there when you moved in. Have you
15 learned about who put it in and so forth?

16 A. No. The pond was there when I moved.
17 When I bought the property, the pond was there.

18 Q. Okay. It's an acre-and-a-half in surface
19 area now. What about some 30 years ago when you
20 moved in?

21 A. It was approximately the same.

22 Q. Okay.

23 A. It didn't have as high a dike as it has
24 now, but it -- as far as surface water, there is
25 more surface covered, but it doesn't have the

1 depth, anymore depth now than it had when I moved
2 in.

3 Q. Let me show you what we have marked as
4 Peoples Exhibit No. 17.

5 MR. DAVIS: And Ms. Hearing Officer,
6 permit me some remarks to explain this, as well as
7 the other exhibits, we intend to address with
8 Mr. Whitley.

9 Mr. Whitley, as he will testify, has
10 taken photographs over the years. We have selected
11 approximately 100 photographs. We have divided
12 them up into, I think, 7 or 8 exhibits, and we
13 intend to try to be coherent in eliciting testimony
14 about the photographs. But I do have some basic
15 questions that I'll ask of each exhibit. Do they
16 accurately depict and so forth. Have you reviewed
17 them recently. And I'll try to stick to that
18 routine as far as admissability.

19 BY MR. DAVIS:

20 Q. So first of all, Joe, have you reviewed
21 all of these exhibits, which would be exhibits 15,
22 16, 17, 18, 19, 20, 21, 22 and 23, during the
23 course of this afternoon?

24 A. Yes, sir.

25 Q. And as to all of these exhibits, does

1 each photograph truly and accurately depict what
2 you saw at that time when you took the photograph?

3 A. Yes, sir.

4 Q. And are you prepared to explain what
5 certain photographs portray?

6 A. Yes, sir.

7 Q. Now, as to the exhibit that I've handed
8 you, 17, and I'll try keep to this routine as we
9 address each of these. Exhibits 15 through 23, I'm
10 going to ask you on occasion to -- to once again
11 briefly review those and select photographs that
12 may be responsive in your view to whatever my
13 question might be.

14 A. All right, sir.

15 Q. And my question right now is: Do any of
16 these photographs show where the landfill is in
17 proximity to the pond?

18 A. Yes, they do.

19 Q. Okay. And as I've explained to you, and
20 I'll state for the record, there are notations on
21 the back of the photos that identify each photo
22 within the exhibit with a number. So when you --
23 when you -- such as, you know, when I ask you is
24 there a photograph, would you say -- would you give
25 us the number and then describe it.

1 A. All right, sir.

2 Q. Okay. Have you selected a photograph?

3 A. Start with No. 1.

4 Q. Okay.

5 A. The picture was taken on August 2nd of

6 1996 between the hours of 4:30 and 5:00 p.m.

7 Photograph was facing south from the corner of the

8 dike. That would be the corner of my dike where I

9 am standing. That's the landfill. That's

10 proximity to the pond. There is the trailer.

11 There is the dock. There is a fenced-off area

12 here.

13 THE HEARING OFFICER: Okay. For the

14 record, because this is a written transcript, it's

15 going to be harder, but you need to be more

16 specific. Like at the middle of the picture, you

17 know, on the north is the landfill, on the

18 left-hand side is the trailer. So that we are

19 doing a verbal description of the picture for the

20 Board.

21 MR. DAVIS: Okay. Another remark,

22 and this is directed toward counsel. If during

23 your review, you notice that there were notations

24 on the back of the photos, I would represent that

25 almost every photo has some recollection recorded

1 at the time that the photograph was -- was returned
2 from processing. So I don't intend to have the
3 witness read that, as he's done with this
4 photograph. But I'm making this statement to alert
5 the Board that there is more to the photograph than
6 simply what's on the picture that's presented.

7 THE HEARING OFFICER: Okay.

8 MR. DAVIS: Obviously it's subject
9 to cross-examination and so forth.

10 BY MR. DAVIS:

11 Q. My next question, Joe, is: Is your pond
12 down -- downhill, down slope from the landfill?

13 A. The pond is directly north of the
14 landfill.

15 Q. And is the landfill higher or lower than
16 your property, and especially the pond?

17 A. The landfill is higher than my pond.

18 Q. Does your pond receive drainage from the
19 landfill?

20 A. Yes, it does.

21 Q. And has this caused problems over the
22 years for you and your family?

23 A. Yes, it has.

24 Q. In addressing this particular issue, let
25 me first ask you in relation to the property line

1 between your place and the landfill site, how close
2 did the pond reach when you first moved in?

3 A. When I first moved in in 1964, is that
4 what you are referring to?

5 Q. Yes, sir.

6 A. Okay. When I moved in in 1964, the pond
7 was different in shape and size than it is today.
8 When I moved in in 1964, there was two streams that
9 came into my pond with a probably 20-to-30-foot
10 elevated hill between the two streams that ran into
11 the pond. And the water was up to the landfill,
12 coming out of the landfill, because there was
13 springs in the landfill site that was feeding this
14 pond along with my pond being spring fed with at
15 least three springs inside the confines of that
16 pond.

17 Q. Okay. And, in particular, how close was
18 the edge of the water to the property line?

19 A. In '64, there was water all the way
20 through my property line and into the landfill.

21 Q. Okay.

22 A. Because it was being fed by two springs
23 or more than two springs in two separate streams
24 leading in to the -- would be the east finger of
25 the pond.

1 Q. In relation to that property line, how
2 close does the pond reach at the present time?

3 A. It's approximately 100 to 120 feet from
4 the property line.

5 Q. Over the course of the past 30 years, the
6 pond has -- the reach of the pond has changed to
7 120 feet?

8 A. Well, it was changed in 1982 when we
9 extended the elevation of the dike.

10 Q. Okay. Let's focus on that first of all.
11 We understand that you've -- you've raised the
12 elevation of the dike. Why?

13 A. To make the water approximately ten feet
14 deeper.

15 Q. Why did you have to do that?

16 A. Because of siltation from the Watts
17 landfill had completely up to about four feet, four
18 to six foot, filled the original pond.

19 Q. How deep was the pond at that time in
20 1982 after you raised the dike?

21 A. It was running 14 to 16 feet.

22 Q. And how did you measure that?

23 A. With an anchor and a rope.

24 Q. How many measurements did you take?

25 A. Not only that, but friends of mine would

1 come ice fishing. And in winter, it's real icy,
2 because they know how far they got to go to the
3 bottom. And it was running between an average 14
4 and 16 foot in 1982.

5 Q. Did you go out and take more recent
6 measurements of the depth of the pond?

7 A. I measured it yesterday.

8 Q. And what is the -- the depth at this
9 present time?

10 A. It runs from 7 to 9 feet, maximum 9 feet
11 most in anyplace you want to measure. I probably
12 measured in 20 different locations yesterday.

13 Q. Yesterday. Do you have any opinion as to
14 the cause or causes of these changes that -- first
15 of all, the change in the reach of the pond, the
16 problem that you alluded to that prompted you to
17 raise the dike and the change in depth between 1982
18 and the present time?

19 MR. NORTHRUP: Objection. I don't
20 think he's qualified as an expert to give an
21 opinion.

22 MR. DAVIS: Well, Ms. Hearing
23 Officer, the -- I wouldn't say the rules have
24 changed. But the focus now is not necessarily on
25 whether an expert -- whether a person -- a person

1 is an -- an expert, but whether a person can
2 provide opinion testimony. And that is, of course,
3 dependent upon what foundation is laid, the
4 experience of the person and the type of inquiry.

5 And I submit to you that we have somebody
6 who is living there for 30 years, keeping track of
7 what's going on. He is more than qualified to give
8 an opinion on this.

9 THE HEARING OFFICER: Okay. I'm
10 going to allow the question.

11 BY MR. DAVIS:

12 A. Would you repeat the question, please.

13 Q. Certainly. Do you have any opinion as to
14 the cause or causes as to these changes, first of
15 all, the change in the reach of the pond between
16 the time that you moved in, the change that
17 prompted you to raise the dike in 1982, to
18 increase -- increase the depth, and the change in
19 depth between '82 and 1996?

20 A. It's been mostly erosion and siltation,
21 because all the vegetation was excavated, of
22 course, off the landfill prior to filling. And
23 there has been an enormous amount of the erosion
24 since the late '70s all the way through today.

25 Q. Runoff from the landfill?

1 A. And the cause of a lot of that erosion is
2 due to, I think, lack of cover, lack of daily
3 cover, lack of seeding, lack of terracing, and any
4 numerous things that could be done to avoid a lot
5 of this erosion runoff that I am receiving at the
6 present time.

7 Q. Now, you've testified that the landfill
8 is essentially next-door up higher than your
9 property. Is there anything in-between the
10 landfill and your property?

11 A. There is now.

12 Q. Any physical barrier?

13 A. There is a retention pond, a retaining
14 pond, sediment pond. I don't know. We have called
15 it numerous names. It is a pond that I had built
16 to -- mainly for the purpose of collecting the
17 debris and the solids of erosion, silt, whatever
18 might come in there.

19 Q. Okay.

20 A. To let it drain into that pond before
21 going into the large pond.

22 THE HEARING OFFICER: You said you
23 had it built?

24 THE WITNESS: ESG Watts built --
25 raised the elevation of the dike. Leonard Falk

1 (phonetic spelling) was the manager at that time of
2 the landfill. And if I might speak. Why it was
3 done is because EPA gave him a choice of either
4 dredging my pond or raising the dike, because it
5 was a known fact that the siltation had completely
6 filled my pond.

7 In fact, in the late 80's -- they asked
8 the question a while ago. Did the fish die. Every
9 fish in my pond died in the late '70s from lack of
10 oxygen.

11 They tell me, pond turns over sometimes.
12 Maybe they don't. Maybe they do. But I know that
13 every fish died in the late '70s.

14 BY MR. DAVIS:

15 Q. You indicate the landfill did something.
16 At what point in time did the landfill construct
17 the retention pond?

18 A. The landfill didn't construct the
19 retention pond.

20 Q. Let's make that clear, because that's
21 what you had said.

22 THE HEARING OFFICER: Right.

23 BY MR. DAVIS:

24 Q. What did the landfill do and when did
25 they do it?

1 A. In relation to the retention pond.

2 Q. In relation to the property line between
3 their site and your home.

4 A. What did they do and when did they do it?

5 Q. Sure.

6 A. Last year they --

7 Q. Okay. I'm confusing you, Mr. Whitley.

8 Let me show you what we have marked as
9 Exhibit 15, and have this as a starting point for
10 these questions. And once again, you've reviewed
11 these recently this afternoon.

12 Do you think they truly and accurately
13 depict what you observed back in September and
14 October of 1987?

15 MR. NORTHRUP: Let me raise an
16 objection. For the record, this complaint is based
17 on violations occurring subsequent to an order
18 issued by Judge Cadigan in 1992. Therefore, there
19 is really no relevance to any photographs prior to
20 that date.

21 To the extent that any of those -- you
22 might say these are relevant, I would, of course,
23 reserve for the briefs the issues of claim
24 preclusion and that type of thing. But I don't
25 think these are relevant. Anything before the

1 Cadigan order.

2 MR. DAVIS: Ms. Hearing Officer, the
3 previous proceeding that Mr. Northrup is referring
4 to is 92-CH-23, and that case raised a series of
5 solid waste violations. I would think, from my
6 perspective as the prosecutor, focusing on more
7 leachate than contaminated runoff and so forth.
8 But I would think that since we have not had a
9 final adjudication in 92-CH-23, we have had a
10 preliminary injunction, and what I would submit is
11 at least some adjudication of violation, that it's
12 really not a matter of claims preclusions.

13 I would also submit to you that our
14 complaint specifically goes back to '86. That's
15 where I'm trying to get to. 1986. And we will go
16 from there.

17 MR. NORTHRUP: Let me make this
18 statement to clarify something.

19 Unfortunately, the Cadigan order is a
20 final adjudication, and that was made clear in the
21 fourth district appellate opinion on our -- on the
22 appeal of 127. PCB-127.

23 So I think there is a valid issue of
24 claim preclusion.

25 THE HEARING OFFICER: Okay. I'm

1 going to allow this evidence in. That certainly
2 does not bar you from making any legal arguments in
3 your brief that you wish to make. But at this
4 time, I'm going to allow the questioning on these
5 photographs.

6 MR. DAVIS: Okay. Thank you.

7 BY MR. DAVIS:

8 Q. Mr. Whitley, in Exhibit 15, I would
9 represent we have got 5 photographs that you've
10 told us depict whatever they depict accurately. My
11 question is: What do they show as a group?

12 A. Photograph No. 5, No. 1, it shows where
13 my pond came to originally, which is within six
14 feet, this being the boundary line right here.

15 THE HEARING OFFICER: Okay. For the
16 record, Mr. Whitley is pointing to the right-hand
17 side of the photograph on the edge of what almost
18 looks like a road.

19 THE WITNESS: That's supposedly the
20 liner for the landfill.

21 THE HEARING OFFICER: Okay.

22 THE WITNESS: And I hope you notice
23 it's supposedly partially built on my property.

24 THE HEARING OFFICER: Okay.

25 BY MR. DAVIS:

1 Q. So as a group, these photographs show
2 liner placement?

3 A. They do.

4 Q. And portions of a pond are visible in
5 No. 5?

6 A. The large pond, yes, that we have been
7 discussing.

8 Q. Okay.

9 A. Before this retention pond was put in or
10 anything else in relation to how far did the water
11 come in the early --

12 Q. Right.

13 A. -- years. And after 1982, it came to
14 within six foot of the landfill property itself.

15 Q. Okay. You've mentioned the property
16 line. Does any of these 5 photographs show
17 construction -- encroaching construction by the
18 landfill encroaching upon your property?

19 A. Photograph No. 5 does so.

20 Q. Any of the others?

21 A. Photograph No. 2 also shows the
22 encroachment of property. A picture of me standing
23 on my side of the property with one strand of
24 barbed wire tied between the two poles in a
25 straight line showing the line itself and showing

1 at least one tract in the center of the photo.
2 Construction of the liner itself of the Watts
3 landfill.

4 THE HEARING OFFICER: Thank you for
5 that description. That was good.

6 BY MR. DAVIS:

7 Q. Now, let me have those a moment?

8 A. (Complies.)

9 Q. I don't see, in addition to liner
10 placement and that would have been in the fall of
11 '87, in this time span. That is, that year, the
12 year before, the year after in this time span, if
13 you will, did the landfill make any other
14 construction in this exact area?

15 A. They were filling the fill area just
16 immediately south of this area where it shows where
17 those photos show.

18 Q. Okay.

19 A. And, yes, there was a large excavation
20 between my property and their property, which one
21 of the pictures also show, and it shows where they
22 were putting the garage -- garage into water.

23 Q. Okay. Let me hand you Exhibit No. -- I'm
24 sorry. Photograph No. 1 and photograph No. 4 of
25 Exhibit 15. And do these photos -- and I'm sorry.

1 Photograph No. 3 of Exhibit 15. Well, do these
2 three photos show refuse in water?

3 A. Yes, they do.

4 Q. Okay. You mentioned disposal activities
5 in this exact area. Were these -- was filling done
6 below or above grade at this particular area?

7 A. In this particular area, the filling --
8 they had excavated up to and including part of my
9 property, and the filling was going on in that
10 ponding area right adjacent to and up to the
11 property line. Property, I might say, that this
12 photo here is the --

13 Q. No. 1?

14 A. Photo No. 1 shows the old G-113 monitor
15 well, and it was excavated below the department of
16 this monitor. Well, the excavation of the -- the
17 landfill was below the depth of that, but in
18 relation to that the water is within a good two to
19 three feet of this old well.

20 Q. Okay. After filling continued, did it
21 reach grade that is of levelness? Do you follow
22 me?

23 A. (Nods head.)

24 Q. Levelness with the property line?

25 A. Right. Yes, sir.

1 THE HEARING OFFICER: Which property
2 line?

3 BY MR. DAVIS:

4 Q. Between your property and the landfill
5 site?

6 A. Yes, sir.

7 Q. What approximate time span would that
8 have been after the liner was put in in '87? How
9 long did it take for filling to reach grade level?

10 A. The liner was the grade level.

11 Q. Sure. But you've said that there was
12 some excavation with liner placement and that
13 filling took place at that area.

14 A. That area was filled up at the same time
15 the liner was put in. There was no big difference
16 between it.

17 Q. Okay.

18 A. In other words, there was no liner there
19 when they were putting this garbage. As the
20 picture depicts, when they were putting the garbage
21 in there, no liner there. The liner was put in
22 later. The fact is part of the liner, as my
23 estimation, is put in on top of the garbage.

24 Q. As a practical matter, and this question
25 there again is a general one, over the years have

1 you kept a pretty close eye on the landfill
2 activities?

3 A. Yes, sir.

4 Q. Daily basis?

5 A. Not a daily basis, no. No, sir. I'm not
6 home every day. But generally, I might take a
7 walk, I'd say, at least twice a week.

8 Q. Now, getting back to this line of
9 inquiry. Once filling had come up to grade, did
10 filling then continue above grade?

11 A. Yes.

12 Q. Okay. Was there any physical barrier
13 constructed by the landfill, such as a berm between
14 the site and your property at this precise
15 location?

16 A. No, sir.

17 Q. We have also heard about the small pond,
18 or what I've called in the pleadings the retention
19 pond. Was this constructed in this exact area?

20 A. Yes, sir.

21 Q. How was it constructed and when?

22 A. It was constructed to start with in
23 1986. I had a guy come out with a bulldozer.
24 Ellis Kell Excavation (phonetic spelling). He
25 pushed some dirt around to try and level up and get

1 it to where I could put in a fence on the property
2 line itself. And then pushing the dirt and
3 leveling it out, all there was some small
4 indentations there that did stop a little of the
5 erosion in 1987. I --

6 Q. Wait a minute, Joe. In 1986, was your
7 intent in hiring somebody to create a small pond, a
8 retention pond, or simply to create some sort of
9 physical barrier?

10 A. Physical barrier.

11 Q. Okay. And as it happened, after you put
12 that in, did water start to impound?

13 A. Not a whole lot, because the first rain,
14 it came, it was full of erosion, and the fence was
15 gone.

16 Q. This was May of '86?

17 A. Yes.

18 Q. How much did that cost you?

19 A. I believe \$220. I had him do some other
20 work, but I think \$220 was for the excavation work
21 that he had done.

22 Q. All right. Did you also pay for a
23 bulldozer and rock work in October 1987?

24 A. Yes, I did.

25 Q. And how much did that cost you?

1 A. Referring to a note; six, forty-four,
2 fifty.

3 Q. And what was the intent for that work?

4 A. Because in 1985-'86, in those years, I
5 was getting so much silt in the pond, that actually
6 there was nothing but mud in the bottom of the pond
7 for a period of two or three years. And from
8 between raising of the dike in '82 and the years to
9 1986, the pond had silted in every year, especially
10 in the spring, of course, when there was a
11 tremendous amount a runoff and erosion. The pond
12 was silting in. You could put an anchor into the
13 pond, and you would get nothing but mud on it.

14 Now, if anybody is familiar with the
15 pond, you know that a pond is decomposed leaves,
16 vegetation, et cetera. You should get black muck
17 out of it.

18 Three or four years, all you could get
19 was mud.

20 Q. Okay. But the construction activities
21 that you hired out in October of '87, what was the
22 intent? To increase the dike as a barrier between
23 the two properties?

24 A. Yes. To make a higher barrier, to stop
25 more of the debris, everything that was running

1 into my main pond. I wanted to try to stop it
2 before it entered the main pond. I constructed
3 three chain link fences to try to, lack of a better
4 word, sift the debris from and keep it from going
5 into the large pond.

6 Q. Okay. Let me show you Peoples Exhibit
7 16. And once again, we have a series of
8 photographs. And you've recently reviewed these,
9 have you not, Joe?

10 A. Yes, I have.

11 Q. And does each truly and accurately depict
12 what you saw at that time?

13 A. Yes, it does, Dave.

14 MR. NORTHRUP: Make a continuing
15 objection, as we talked before, on the age.

16 THE HEARING OFFICER: That's fine.

17 MR. DAVIS: On what basis?

18 MR. NORTHRUP: The same as before.

19 I wanted to make sure that I'm making the objection
20 for all the pre-'92 photographs.

21 MR. DAVIS: Oh, okay.

22 BY MR. DAVIS:

23 Q. As a general matter, do photos 1 through
24 17, over the course of several years, show the
25 so-called retention pond?

1 A. Yes, it does.

2 Q. Okay. Now, focus, if you will, on 1
3 through 6 for the next couple of minutes. And let
4 me ask you a couple more questions about the
5 construction activities.

6 Did you also pay to have a dike built or
7 rebuilt in October 1989?

8 A. Yes, I did.

9 Q. And did this cost you \$495?

10 A. Yes, it did.

11 Q. Does any of the photos that have been
12 marked as 1 through 6 within Exhibit 16 show the
13 before and after aspects of this construction?

14 A. Yes, they do.

15 Q. Okay. Can you identify them? Just pick
16 out one that shows the problems that prompted you
17 to -- to have the dike built in October '89, and
18 describe that, please.

19 A. The photograph No. 1 shows a fence that
20 was constructed by me on the property line and
21 after a survey was made on the property line
22 itself. And as the picture will show, in the
23 bottom right-hand corner, it shows all the debris
24 already running through the fence. And this is a
25 fence that was new at this time.

1 Tires coming off the landfill, going
2 right through the fence. And nobody bothers to
3 pick them up or anything. This tire laid there for
4 probably two months, three months before anybody
5 ever got around to picking it up. Another photo
6 shows a lot of debris in and around the property.
7 Shows erosion going from the landfill site into the
8 large pond.

9 THE HEARING OFFICER: That's --
10 BY MR. DAVIS:

11 Q. Last one is No. 2?

12 A. That was No. 2. Photo No. 2.

13 No. 3 shows where the fence line property
14 line is and where the water was running in relation
15 to the pond in 1988.

16 Q. Okay. Now, these three photos; one, two,
17 and three, were taken in March of '88?

18 A. Yes, they were.

19 Q. Okay. Is there any other photo that
20 shows the problems that you were trying to correct
21 or mitigate?

22 A. Yes. This photo here. No. 4 shows all
23 kind of floating debris inside the boundaries and
24 outside the boundaries of the landfill.

25 Photo No. 5 shows the same thing, with a

1 lot of erosion. Little streams running. This is
2 the area -- the area that I'm pointing to now is
3 the area where the retention pond that I had
4 constructed was built after 1989.

5 Q. And that was the middle?

6 A. This was the small dike that was built in
7 '87 shown in this picture here, and that's -- be
8 photo No. 5.

9 Q. Right in the center of photo No. 5?

10 A. Right.

11 Q. Okay.

12 A. And photo No. 6 shows Ellis Kell with a
13 bulldozer building the dike. That was in -- this
14 was the first one. This was in '87. This was --
15 was one that was built by just pushing dirt from
16 along the fence line and building it up into an
17 area that the bulldozer shows how it was
18 constructed.

19 Q. No. 6 is -- was taken in October '89, we
20 believe.

21 A. Yes, sir.

22 Q. And it shows Mr. Kell working on the dike
23 that he had worked on two years prior?

24 A. Right.

25 Q. Okay.

1 A. Building it larger.

2 Q. Okay. What was the intent for the
3 October '89 earth work?

4 A. Because the dike I had built in '87 all
5 washed out big time.

6 Q. Did you subsequently pay to have yet a
7 larger dike built in August 1990?

8 A. Yes.

9 Q. At a cost of \$930?

10 A. Yes, sir.

11 Q. Okay. Do any of the following
12 photographs show what prompted you to have that
13 work done?

14 A. Yes, they do.

15 Q. Okay. Identify it by number then.

16 A. No. 7 shows how the pond was originally
17 built in the area of -- in the top center of the
18 photo. It shows the property line where the fence
19 in 1990 -- this was the second fence that I had
20 built in this area. And this dike, it's in the
21 center of the top photo, was completely washed out,
22 evidently prior to October of -- this was February
23 of '90. So October.

24 Q. That was February of 1990, No. 7?

25 A. Yes.

1 Q. Okay. Now, without getting into the
2 substance at this time of any particular
3 conversations in this time span, that is the time
4 that you were spending money out-of-pocket to have
5 dikes built, rebuilt, enlarged and so forth, did
6 you ever ask the landfill personnel to take action
7 regarding the siltation and so forth?

8 A. Many times.

9 Q. And what response or what actions were
10 taken, if any?

11 A. I have talked on numerous occasions to
12 numerous people at the landfill, with supposedly
13 much more intelligence than I. And the answer I
14 get is that he doesn't really know how to correct
15 the problems that they have in the northwest corner
16 of the landfill.

17 And that was my reason for the letter
18 that Mr. Kammuller was talking about earlier that
19 I sent in, is because I would like to see it
20 addressed and what do they intend to do in this
21 corner.

22 In short, I don't feel responsible for
23 furnishing a retaining pond or a holding pit for
24 the landfill.

25 Q. And, in fact, the property line seems

1 to -- at least some of the photos we have seen --
2 go through the retention pond. And is -- part of
3 it is on your property. Part of it on their
4 property. Would you agree with that?

5 A. After they put in the new fence in 1995,
6 yes. Prior to that, no.

7 Q. Okay. Let's -- let's now focus on the
8 more recent past. The last dike that you paid to
9 have built was August 1990, right?

10 A. Yes, sir.

11 Q. Have you paid for any further
12 construction since then?

13 A. No, sir.

14 Q. Okay. What has the landfill done as far
15 as the retention pond since that time, if anything?

16 A. I have repeatedly asked them to clean it
17 out, which they have done. I'm sure about four
18 times. But they have cleaned out the pond to a
19 certain extent, not to the depth the last time that
20 it was originally, or not to the outside boundaries
21 that it was originally. But they have cleaned it
22 out. And, of course, in that time frame, all the
23 fence has to come out again, because they can't get
24 to it without tearing out -- all the fence out.
25 And again and again, we go back to the temporary

1 fence.

2 Q. Okay. Let me interrupt you, Joe, and ask
3 when was the last time these actions were
4 performed, the dredging out?

5 A. 1995.

6 Q. Okay. Did you observe any of that
7 activity?

8 A. Yes.

9 Q. Okay. And was it similar to the previous
10 three efforts?

11 A. Yes.

12 Q. Let's focus then on the -- the '95
13 dredging. Tell us what they did, what you saw them
14 do?

15 A. I was not there all the time, but I did
16 see a couple of times that they were there, they
17 dredged the pond as far as they could reach, of
18 course, with the retaining pond there. And, of
19 course, their property is to the south, and they
20 brought down -- it's a good-sized backhoe, or I
21 don't know what you actually call them, but
22 loaders.

23 Q. Uh-huh.

24 A. And dredged the pond over as far as they
25 could reach. But they couldn't reach to the

1 outside edges of the boundary, because of the water
2 and debris that was in that area.

3 Q. And what was done with the material that
4 they extracted?

5 A. Lot of it they pushed back on the bank
6 and spread it out and built-up, I'm going to say,
7 three or four feet on their property or between the
8 property lines, so they could construct a fence.

9 Q. And when the material was piled upon the
10 dry ground, did it stay in place?

11 A. No, sir.

12 Q. What happened to it?

13 A. It comes right back in the pond.

14 Q. So they essentially extracted the muck,
15 piled it up on the bank, and it flowed back in?

16 A. A lot of it. And a lot of it was spread
17 out. Lot of it was drug up on the bank. Lots of
18 it spread out. As pictures will show.

19 Q. Okay. Let me -- let me now focus on the
20 conversation aspect. What was -- when was the most
21 recent conversation on this issue? With whom did
22 you talk to at the landfill?

23 A. About cleaning out the pond or finishing?

24 Q. Exactly. About cleaning out the pond,
25 preventing siltation, doing something in the

1 northwest corner where the site abuts your home.

2 A. I imagine in August of this year was
3 probably the last conversation. I warned them --

4 (Proceedings interruption.)

5 BY MR. DAVIS:

6 Q. Joe, I may -- in the interest of a
7 coherent presentation, I may have -- have to
8 interrupt you. What I'll do is I'll raise my hand,
9 and I don't mean to be rude.

10 A. Okay.

11 Q. Okay. With whom did you talk to at the
12 landfill?

13 A. I've talked to Steve Grothus, and I've
14 talked to Elmer Elliot on the latest occasions.

15 Q. And what did they say, if anything, to
16 you on this issue?

17 MR. NORTHRUP: Objection. Hearsay.

18 MR. DAVIS: It's not hearsay,
19 Ms. Hearing Officer. These are agents of the
20 respondent. Whatever they say could be an
21 admission, assuming it's relevant. I submit to you
22 this is relevant.

23 THE HEARING OFFICER: I'm going to
24 let in the testimony.

25 BY MR. DAVIS:

1 about three feet from the top of the dike. That's
2 what I mean by freeboard. How far is the impounded
3 runoff in the retention pond from the top of
4 whatever separates it from your pond?

5 A. The way I constructed it to the west,
6 it's high; and to the east, it's lower. In other
7 words, it's a contour. So that water would come
8 into the dike, would flow out on the east end
9 instead of flowing over the dike itself. Back to
10 virgin soil where the hill starts upgrade.

11 Q. Okay. Is the level of the retention pond
12 typically right at the top?

13 A. Most of the time, yes, sir.

14 Q. Okay. That's what I mean by freeboard.

15 What site conditions on the landfill, in
16 your opinion, have contributed to these runoff and
17 siltation problems?

18 A. Well, the erosion, the deep gullies, the
19 way they -- that the gullies have been maintained,
20 the lack of seeding, the lack of any type of
21 terracing or -- and lack of cover.

22 Q. To your observation, has the landfill
23 done filling in the area in the northwest corner?

24 A. Yes, sir.

25 Q. Have you observed the application of what

1 might appear to be final cover and so forth?

2 A. I don't believe so.

3 Q. Okay. Have you -- when was the last time
4 you saw any disposal or filling activity adjacent
5 to the retention pond?

6 A. It would have been probably in the '80s,
7 late '80s.

8 Q. Okay. Would it be true to say that --
9 that after the liner placement was done in the fall
10 of '87, as reflected by the photos in Exhibit 15,
11 that that area was filled, and they moved on?

12 A. Yes, sir.

13 Q. Has there been anything constructed on
14 this now inactive area of the fill in addition --
15 I'm losing you. Let me --

16 Have you observed any construction on the
17 slopes of this inactive area, which is adjacent to
18 the retention pond next to your property?

19 A. Yes, sir.

20 Q. Tell us what you've seen.

21 A. Well, they -- they have cut a -- I don't
22 know what you call it. I guess they hauled in some
23 dirt, and they did some trenching, and they tried
24 to defer the water from the west to the east. From
25 the west side of the landfill to the east. They

1 have done some work in putting up siltation fences,
2 which washed out the first time it rained. And did
3 a lot of work just above there, two grades above my
4 pond looking straight south.

5 Q. Uh-huh.

6 A. The one grade has been there for some
7 period of time. That's the road that they maintain
8 to get around the perimeter of the landfill, and
9 the second one was going -- constructed. I'm going
10 to say, within the last two years, which is up
11 higher and trying to run the water through the
12 northeast.

13 Q. Why don't you look at the remaining
14 photos in Exhibit 16 and see if any of those might
15 show what you've just told us about.

16 A. (Complies.) Photo No. 12, 1991, shows --
17 in the right center of the photo, it shows that the
18 fence is completely gone. And the left side of the
19 photo, it shows a temporary fence. It shows
20 floating debris all around the -- in the center of
21 the photo. Left side. And it shows construction
22 work being done in the area. It would be to the
23 southwest of the immediate landfill. It also shows
24 a large amount of erosion going in to the retention
25 pond that's in the center right-hand side of the

1 photo.

2 Q. Let me ask you to set aside those photos,
3 and I will hand you Exhibit 19, with a similar
4 inquiry. Have you recently reviewed these
5 photographs, and does each truly and accurately
6 depict what you saw at the time the photos were
7 taken?

8 A. Yes, they do.

9 Q. Does any of these photographs -- and I
10 would direct your attention to 23 and then 29
11 through 36, show what you've been testifying about,
12 about these other site development activities?

13 A. No. 23 shows what little vegetation is in
14 the picture directly to the south. It also shows
15 at the bottom center of the photo where the debris,
16 mud, whatever has been from the retaining pond.
17 And just pulled back on the outside edge of the
18 photo. And you wanted from 23 on?

19 Q. Well, it looks like 29 through 35,
20 according to my notes, could be pertinent to this
21 issue.

22 A. No. 29 is a photo. And in the center of
23 the photo, there is a large depression in the
24 ground that washed out -- I had a chain link fence,
25 and I had a woven wire fence both put around the

1 portion of the retention pond where the water
2 drained out before going into the big pond. An
3 photo No. 29 shows the large depression underneath
4 the fence where the fence is being washed out.

5 No. 30 gives a much better view of the
6 same thing as No. 29. In the center of the photo,
7 it shows the two fences. It shows the fence post.
8 It shows the dike and how it receded. And it also
9 shows a tremendous amount of debris pushing into
10 a -- well, it was a five-foot chain link fence. Is
11 now about one foot showing in the center of the
12 photo, that much debris laying against the fence.

13 Photo No. 31 shows a method in which when
14 they constructed this first, I don't know what you
15 would call it. But roadway coming around the end
16 of the landfill and along that roadway. They
17 evidently proposed to run the water over -- they
18 built a little berm out of rocks and put a canvas
19 over the top of it and run it through my fence into
20 my property and destroyed that portion of the
21 fence. And plus the fact, they ran the water over
22 on that side.

23 Photo No. 32 shows the deep depressions
24 that was in the ground. And that photo in the
25 center of it would be in relation to the photo of

1 No. 31, just to the west of that, showing how much
2 erosion had come out on my side of the fence after
3 they deferred the water over on that.

4 And photo No. 33 in the center of the
5 photo, it shows the fence. What is left of the
6 fence. No fence down at the end of the retaining
7 pond, which is in the center of the photo. It
8 shows about 60 feet from the point of taking the
9 photo on the left side of the fence on the Watts
10 property itself. It shows what kind of a rock
11 canvas that they put in there, and run the water
12 over here and on the right side. It shows all of
13 it going into the pond.

14 And No.34 is the ruts where the oily
15 substance that goes all the way through there when
16 they were running everything from down this grade
17 into the property.

18 And No. 35 shows the same thing as oily
19 substance running downhill and directly into the
20 pond. And numerous indentations of the ground.

21 And No. 36 is not pertaining to that so
22 much as it just showed some garbage hanging in the
23 trees.

24 Q. Now, for the record, I don't see -- 23
25 was taken in May of 1993, was it not?

1 A. No. 23 was taken May 18th of 1993.

2 Q. Okay. And the remaining photos that
3 you've described were from June 9, 1993?

4 A. June 9, 1993.

5 Q. And would you agree that with -- with
6 almost all of these photos, that you have recorded
7 at least the months and year, if not the exact
8 date, on the photographs?

9 A. Yes, sir.

10 Q. Okay.

11 A. I would like to -- I would like to put
12 this photo in with it.

13 Q. Okay.

14 A. Because this photo shows more of anything
15 than any of the other photos shows in regard --

16 Q. I better ask you a question.

17 A. Fact is, both of those do. In fact, all
18 of these show more than the photos that you just
19 asked for.

20 Q. Okay. We are going to touch on that
21 issue in a moment.

22 A. Okay.

23 Q. So let me ask for purposes of not
24 creating too much confusion, that we gather up the
25 remaining photos from No. 19, and put them in the

1 envelope, if you don't mind.

2 A. (Complies.)

3 Q. They don't have to be in order, Joe.

4 MR. NORTHRUP: Off the record for a
5 minute while you do that?

6 THE WITNESS: I didn't hear what he
7 said.

8 MR. NORTHRUP: Off the record for a
9 minute?

10 THE HEARING OFFICER: Yes.

11 (Off-the-record discussion held.)

12 THE HEARING OFFICER: Let's go back
13 on the record.

14 BY MR. DAVIS:

15 Q. Mr. Whitley, let me now show you what we
16 have marked as No. 20. And as a general matter,
17 have you reviewed these photographs this afternoon,
18 and does each of them truly and accurately show
19 what you observed on the dates indicated on the
20 back?

21 A. Yes, sir.

22 Q. Okay. Now, in regard to the -- what we
23 could call the upstream conditions on the landfill;
24 that is, where the erosion has occurred, where the
25 runoff is coming from, does any of this group

1 exhibit show that?

2 A. Yes, they do.

3 Q. Okay. Let's pick out a few of those
4 photographs and tell us the number and the date.

5 A. Maybe I better go through the whole
6 thing. Want the best ones?

7 No. 1 shows the runoff and shows no berm
8 or anything on the property side, but it doesn't
9 show a fence line as such. Shows a small retaining
10 to the left side of the photo and down the center.
11 Shows a little retaining. Shows the siltation
12 fence. But as the picture will show, it doesn't
13 not work. On the left side of the photo, it shows
14 the end of the landfill where there is nothing
15 except straight slope into the ponding area.

16 Picture No. 2 is made on May 22nd, 1995.
17 And this is a photo showing the deep ruts in the
18 center of the photo. Deep ruts with large rock
19 sitting right in the middle. And this is one place
20 where I have observed lots of things coming out of
21 that portion of the landfill.

22 Q. Things such as what, Joe?

23 A. Oily substances, leachate type coming out
24 of this one particular area.

25 Q. And what about -- let me -- if you don't

1 mind, let me direct your attention to 14 through 22
2 taken in July of 1995. That is a series of several
3 photos on this issue, I believe.

4 A. That's No. 13.

5 THE HEARING OFFICER: That's 14.

6 BY MR. DAVIS:

7 A. Here is No. 14. Okay. No. 14, I have
8 in my hand. Picture was made July 6, 1995 at
9 1:44 p.m. And this picture shows that some of the
10 debris that's been cleaned out of the retention
11 pond and piled back to the left on the left side of
12 the photo showed large accumulations of silt that
13 was taken out of the pond many years before. But
14 it shows the retaining pond completely full up to
15 the top of the dike with sediment, erosion,
16 siltation.

17 And No. 15 shows the same thing in detail
18 only a little more detail. It shows a little more
19 of the north slope of the landfill as it comes in
20 to play with the retention pond or the property
21 line.

22 Q. Okay. Does it show any erosion gullies?

23 A. It shows deep erosion gullies. But most
24 of photo No. 15 is strictly siltation into the
25 pond.

1 Q. Okay.

2 A. Photo No. 16 shows many ravines or deep
3 gullies of erosion, and it shows a general
4 constructing -- in the process of constructing the
5 siltation -- a fence along the edge of this road
6 that I referred to before as being the perimeter
7 road.

8 Q. And what about the next photo?

9 A. No. 17 shows how well the silt fences
10 work. This was laying completely on the ground.
11 Bottom of the photo. You can see the stakes where
12 the fence was put up. And by the way, the fence
13 put up by Watts people on my property and outside
14 of where my small retaining pond, emptying into the
15 large pond in-between the two ponds. It shows the
16 fence completely down.

17 And No. 18 shows a retaining pond full of
18 water and sediment to the east and left top of the
19 picture, and it shows the roadways and all the deep
20 gullies and ditches to the right with a small
21 siltation fence across the front. And then the top
22 center of the picture, another small siltation
23 fence which was installed.

24 And No. 18 was made on Thursday, July the
25 6th, 1995, at 2 p.m.

1 THE HEARING OFFICER: That was
2 No. 19, I believe.

3 BY MR. DAVIS:

4 A. No. 19. Photo No. 19. I'm sorry.
5 No. 19 shows the deep gullies and the runoff.

6 And No. 20 is made Friday, July 7th,
7 1995. And these other photos showed putting up a
8 silt fence. And one day later, the mud pushed
9 completely out over the top. They must have
10 changed their mind and tried to do something
11 different. All of this is mud. And all of this is
12 just about 100 feet above my retention pond. And,
13 of course, with all this loose, majority of it ran
14 strictly into the pond, which you can see in the
15 next photo, which is No. 21.

16 That shows all the debris, siltation
17 running into the pond.

18 And No. 22 shows a better photo of
19 exactly what it looks like in the retention pond
20 area. In the center of it, probably the dirt is
21 two foot higher than the water level, because it's
22 completely full and overrunning.

23 Q. Let me interrupt you. Were these photos
24 from July 6 and July 7, 1995 taken before or after
25 the most recent dredging of the retention pond?

1 A. I'm going to say before.

2 Q. Okay.

3 A. Because the most recent -- and the reason
4 I say that is that the most recent dredging of the
5 pond, when that was completed, they did --
6 installed a fence on the property line.

7 Q. Okay. I think you --

8 A. This had to be prior.

9 Q. You testified that the most recent
10 dredging was August of '95?

11 A. I'm not sure. I'm not sure of the month
12 or the year.

13 Q. But subsequent to these photos?

14 A. It was prior to October the 13th of 1995,
15 'cause the photo of October 13th of 1995 shows the
16 new fence and shows the portion of the landfill
17 that they had cleaned out. The center of the
18 photo, the left side shows the property line
19 between me and the Watts property. Shows the old
20 fence, which was a temporary fence. That's still
21 there. And it shows the portion that they did
22 clean out, and it also shows that it lacked a lot
23 of being cleaned out to where it originally was.

24 Q. And what about 24 and 25?

25 A. No. 24 is facing east, and it shows the

1 same thing. It shows the roadway. It shows how
2 they smoothed out what they dredged out of this
3 retaining pond and put back. They dredged a lot of
4 it out. And also shows a picture of what they did
5 with the excessive amount. It's just pushed with
6 the loader. Just put back on the bank on the other
7 side of the pond. No doubt first two or three
8 rains, it will go back into the pond.

9 And it shows the amount that they lacked
10 cleaning out the pond to the original depth either.

11 Q. And lastly on this issue, 25, please.

12 A. 25 shows the third fence that I installed
13 probably in the early '90s, '91-'92. But the photo
14 was made on October 13th, 1995. And it shows a
15 chain link fence, which I constructed all the way
16 across between the two areas of the retention
17 pond. And the large pond for the purpose of trying
18 to, as I said before, strain or sift or try to keep
19 the debris from going into the pond. And it has
20 worked, except it's about pushed out now too.

21 Q. Lastly on this issue, let me ask that you
22 to describe photos 27, 28 and 29 in Exhibit 20.
23 Were these taken, first of all, on November 14,
24 1995?

25 A. Yes, they were.

1 Q. And what do they depict?

2 A. No. 27 shows the property line. It shows
3 the new fence that was installed, and it shows the
4 water on both sides as one of the other photos.
5 There is not much water, I'd say, about two foot of
6 water on the Watts property itself, and it's about
7 halfway up on the new fence that was constructed
8 down through the center. It's a fence running
9 through the center of the pond to describe the
10 picture.

11 Q. And for purposes of expediency, No. 29
12 shows about the same thing, does it not?

13 A. 29. Yes. No. 29.

14 Q. Okay.

15 A. It shows -- it shows snow cover and shows
16 what they did when they cleaned out the retaining
17 pond itself.

18 This picture to the left shows an
19 excessive amount of the debris that was pulled out
20 and pushed just back, because in the picture you
21 can't see the portion that they leveled off to
22 build the roadway to get in to build the fence
23 itself.

24 Q. Joe, I'm going to have to move quickly
25 through some other issues. Let's set these aside.

1 A. Watts landfill.

2 Q. Have the discharges of runoff and silt
3 from the landfill, in your opinion, created a
4 nuisance?

5 A. Yes, sir.

6 Q. Have the discharges from the landfill, in
7 your opinion, physically altered the properties of
8 your pond?

9 A. Yes, sir.

10 Q. The big pond?

11 A. Yes, sir.

12 Q. Have the discharges from the landfill, in
13 your opinion, affected the use of your big pond by
14 you or your family?

15 A. Yes, sir.

16 Q. Can you explain this last point?

17 A. Well, in relation to being able to go
18 there and enjoy the pond as recreational, which I
19 used it for, and using the trailer, due to the
20 debris going into the pond. It's not much fun
21 anymore to throw the fishing pole out and drag in
22 plastic bags. It's not fun to go up there when
23 it's raining real hard to see if your tube is
24 plugged up with Styrofoam or anything that floats,
25 wood.

1 Q. Is the fishing as good as it used to be?

2 A. That's a hard question to answer. I
3 don't know. I'm not much of a fisherman.

4 Q. Okay. Do you eat the fish that you
5 catch?

6 A. No, sir.

7 Q. Why not?

8 THE HEARING OFFICER: Sir.

9 BY MR. DAVIS:

10 Q. I'm sorry. Did you hear me? Why don't
11 you eat the fish?

12 A. Why don't I eat the fish? I'm just not
13 that brave. I don't. I don't really -- I don't
14 know that there is anything wrong with the fish
15 itself, but I just don't like the place they are
16 coming from.

17 Q. You mentioned, in regard to some previous
18 photos, leachate. Let's address this issue. First
19 of all, do you know what leachate is?

20 A. In a layman's terms, probably, yes.

21 Q. Okay. Give us your comprehension of what
22 leachate is.

23 A. Well, the word leach, as explained in the
24 dictionary, says something that's perked. And
25 leachate is a liquid that is created by decomposed

1 garbage or perked garbage, propelled out of the
2 ground by methane gas.

3 Q. Have you observed leachate flows leaving
4 the landfill site?

5 A. Yes, sir.

6 Q. In relation to the time span subsequent
7 to 1986, how common an occurrence might this be?

8 A. Oh, at least on three different
9 occasions.

10 Q. And have you had occasion to photograph
11 these leachate flows?

12 A. Yes, sir.

13 Q. Let me, first of all -- and perhaps this
14 is in reverse chronological order. But in Exhibit
15 19, we had set aside some photos. Let me have you
16 look at those and identify them by number, you
17 know, 1 through whatever. I believe --

18 A. We have 4, 5, 6 -- 3, 4, 5, 6 and 7.

19 Q. And do these photos show leachate
20 flowing?

21 A. Yes, they do.

22 Q. And can you tell us where the flow is at
23 in relation to your property?

24 A. The flow comes through the fence
25 approximately 50 to 75 feet east of the retaining

1 pond. Flows through the fence and flows in the
2 center of the photo. Shows that it flows directly
3 into the pond. And the fence that's in this photo
4 is a temporary fence. I mean, this is around the
5 dike that I built. And it shows it is leachate
6 going directly into the pond. This leachate flow
7 would be going from east to west.

8 Q. And in your estimation, does that fence
9 serve any purpose in controlling the leachate?

10 A. No, sir.

11 Q. There is one more photograph, and it's
12 the next one in the series. No. 8. Does this also
13 show the leachate flow you've been talking about?

14 A. Yes, it does.

15 Q. Okay. Let me, as I mentioned, move back
16 in time now, and ask about Exhibit 22. And once
17 again, have you recently reviewed these photos?

18 THE HEARING OFFICER: Can we -- I
19 don't want to get them confused.

20 MR. DAVIS: Sure.

21 BY MR. DAVIS:

22 Q. And have you -- have you reminded
23 yourself, if you will, that they truly and
24 accurately depict whatever they show?

25 A. Yes, they do.

1 Q. And in particular, I believe that they're
2 marked as 8, 10, 14 and 15. And do they show
3 anything regarding leachate flows?

4 A. No. 8 does show a reddish brown flow.
5 Made in 1991. Notation on the -- did you want the
6 notation that I made on the back of this photo?

7 Q. Not at this time, Mr. Whitley.

8 A. Okay. It shows a reddish brown liquid
9 going directly into the pond from the south or the
10 north boundaries of the landfill just above the
11 retention pond.

12 Q. And would that be the same flow or
13 different flow as depicted in the other photos?

14 A. It's a different flow.

15 Q. Okay. Explain the other photos then.

16 A. No. 10. 1991. It shows leachate flows
17 in the right top corner of the photo.

18 Q. Okay. What about 14 and 15?

19 A. They show the same thing. It shows
20 leachate flow through the fence on my property.

21 Q. Now, let me show you Exhibit 23. And
22 once again, this is an exhibit that I've asked you
23 to review. Does it truly and accurately depict
24 leachate flows?

25 A. Yes, it does.

1 Q. This is a May 19 -- 26. I'm sorry. May
2 26, 1993 photograph. Did you take it?

3 A. Yes, I did.

4 Q. Are you aware, Joe, that an injunction
5 order had been issued in September 1992 regarding
6 the leachate problems and other violations?

7 A. Yes, sir.

8 Q. And, in fact, did you testify for the
9 People in those proceedings?

10 A. Yes, sir.

11 Q. Is it your understanding that the
12 injunction order prohibited further violations?

13 A. Yes, sir.

14 Q. Is it your understanding that the
15 landfill was required to implement a leachate
16 monitoring and control plan?

17 A. Yes, sir.

18 Q. Do you know from listening to testimony
19 or reviewing pleadings or talking to the landfill
20 personnel as to what this plan consisted of?

21 A. One of the main things -- and it was
22 according to testimony -- was that they would go
23 out to this site, walk the site, and I believe they
24 said a daily basis or at least three times a week
25 search for leachate flows or gas leaks in the

1 landfill and try to plug them as they found them to
2 prevent any further discharge of leachate.

3 Q. And did they -- have you personally
4 observed any landfill personnel conducting these
5 site visits --

6 A. Yes, I have.

7 Q. -- since that time?

8 A. Yes, I have.

9 Q. Who?

10 A. Joe Chenoweth.

11 Q. Have you observed any corrective actions
12 taken by the landfill to control the leachate?

13 A. I -- supposedly corrective actions, yes,
14 sir.

15 Q. Okay. Tell us what you have seen in
16 relation to, let's say, the past year.

17 A. Well, the last year. And more familiar
18 with the portion just to the south of this
19 retaining pond that we keep talking about all the
20 time. There has been numerous leaks and flows that
21 has presented a real problem. I guess not only for
22 me, but for them too. But they come down with a
23 bulldozer. And, of course, when they try to repair
24 these leaks, they just take the dirt from one side
25 and push it over into the -- the crevices of the

1 other side to try to stop the leaks. And I call it
2 shuffling the dirt.

3 Q. Have you observed any major construction
4 activity apparently intended to correct the
5 leachate seeps?

6 A. They are drilling wells. I don't know if
7 that's a leachate collection system or not.

8 Q. Okay. Anything other than the well
9 implementation?

10 A. Other than just pushing dirt over the --
11 where they can see them, yes. And where they can
12 smell them, they try to put dirt over them.

13 Q. Have these actions, in your opinion, been
14 effective in preventing the leachate seeps from
15 reoccurring?

16 A. No, sir.

17 Q. Have you, in fact, observed leachate
18 flows exiting the confines of the landfill since
19 the injunction was issued?

20 A. Yes, sir.

21 Q. Have you had problems with odors from the
22 landfill?

23 A. Definitely.

24 Q. Can you explain as far as describing the
25 odors the time frame and so forth?

1 A. There is different and various degrees of
2 the odor. My explanation would be if you took a
3 dozen rotten eggs and mixed them with propane gas
4 or the smell that they put into natural or propane
5 gas, you would come up with about the same scent.

6 Q. And how long have you detected these
7 odors?

8 A. Two decades.

9 Q. Let's focus on the past few years. What
10 impacts have been caused on your life, your family,
11 the activities that you do around the home?

12 A. Lots of times we can't even be out.
13 There is times that the smell has been so bad that
14 we have to go in the house, shut the doors, turn on
15 the air-conditioner. There has been times when
16 I've actually left home on account of the smells.
17 I've had people pull up to visit me in the
18 driveway, get out of their car. Joe, I like you,
19 I -- I like your company, I can't stay due to the
20 smell. It has took all the enjoyment in life. I
21 can't go to the pond. I can't go to the trailer.
22 I don't enjoy going fishing anymore, because any
23 time -- the odors at my house are not a 24-hour
24 situation. But the odors -- any time on the west
25 side and the north side of the landfill that you go

1 there, they are there.

2 Q. Have you -- have you -- I'm sorry. Have
3 these odors, in your opinion, unreasonably
4 interfered with your enjoyment of your life and
5 your property?

6 A. Yes, sir.

7 Q. Have you observed any health effects
8 personally or upon your family?

9 A. That would be a very hard question to
10 answer at this time. I would not know. I do have
11 a wife that is not in the best of health, yes. But
12 I don't -- that's not --

13 Q. I don't mean to pry, but what type of
14 ailment does she have?

15 A. She has emphysema, breathing problems,
16 lung problems.

17 Q. Have you observed any environmental
18 impacts attributable, in your opinion, to the
19 landfill gas emissions?

20 A. Repeat that.

21 Q. Have you observed any environmental
22 impacts attributable, in your opinion, to the
23 landfill gas emissions?

24 A. I do have some dead oak trees. Whether
25 they are attributable to that or not, I'm not

1 sure. And I do have one area of grass in the
2 southeast corner of my property that doesn't
3 produce anything but old rough type of grass.
4 Doesn't grow anything else.

5 Q. Let me show you photo No. 26 from Exhibit
6 20, and ask if this depicts anything regarding the
7 trees dying that you mentioned?

8 A. It does. It shows at least one black oak
9 tree in the center of the photo. Some of these
10 other trees are very close to the landfill site
11 and -- but the one oak tree that's on a slight
12 angle and the one right behind it, I believe, are
13 both hardwood trees, and I believe they are both
14 dead.

15 Q. Were there any other oak or walnut trees
16 maybe not depicted in the photo but elsewhere on
17 your property?

18 A. I have cut up three fallen oak trees that
19 have died in the last six years in this area
20 itself. There is a photo somewhere showing one of
21 them laying on the ground. I also have a dead
22 walnut tree to the south of the area where this
23 picture was made.

24 Q. Are you aware that the Illinois EPA has
25 issued a permit to Watts for the landfill gas

1 project?

2 A. Yes, sir.

3 Q. And have you reviewed that permit?

4 A. Yes, sir.

5 Q. Does it impose any restrictions on how
6 excavated waste is to be handled?

7 A. The way I read it, yes, sir.

8 Q. And what is your interpretation of those
9 restrictions?

10 A. According to the permit, all of the
11 excavations or the diggings or the borings would be
12 immediately handled, would be placed in a truck and
13 immediately covered, and sometime during the day, I
14 guess, taken to the landfill operating site and
15 disposed of.

16 Q. Let me show you Exhibit 21, series of
17 photographs, 2 through 12, taken July 11th, 1996.
18 Have you reviewed these to assure yourself that
19 they are true and accurate?

20 A. Yes, sir.

21 Q. And does any photograph show waste
22 extracted during the gas well implementation?

23 A. Yes, sir.

24 Q. Which number?

25 A. Got the wrong pictures.

1 Q. Does Exhibit 21 as a group merely show
2 some of the activities that you've described?

3 A. This here series of photos shows the well
4 drilling operation in effect and the truck sitting
5 there where they were putting the drillings into
6 the truck.

7 Q. Okay. Which of the photos shows the
8 truck, Joe?

9 A. Photo No. 2 shows the truck.

10 Q. Okay. What prompted you on July 11th to
11 take these photographs?

12 A. I believe that this is the start of the
13 operation. It was in the early stages -- in early
14 July that they started drilling on the landfill
15 site itself.

16 Q. Okay. Let me have those back, and I'll
17 show you Exhibit 18, and ask if you ever reviewed
18 these three photographs to determine whether they
19 are true and accurate?

20 A. I have.

21 Q. And are these the photographs that show
22 the truck?

23 A. Yes, sir.

24 Q. And when were these photographs taken?

25 A. September the 10th, 1996.

1 Q. And -- and what prompted you to take
2 these photos?

3 A. Because I was up in the pasture, and it
4 was getting late. The time on this photo is 6:55
5 p.m., which is late in the evening. The landfill
6 is already closed for the day. I believe their
7 operating hours are 5 o'clock or something,
8 6 o'clock. And there is a truck sitting in this
9 area (indicating), which I did make a photograph
10 of. It's completely full of borings, drillings,
11 whatever you want to call them. It had been
12 sitting there most of the day. I'd been to the
13 pasture twice that day. And at 6:55 p.m., the
14 truck was still sitting there. It was full of the
15 borings.

16 So I went back and got the camera and
17 started making pictures of this. And when I got
18 back, I found out that the truck was full. And
19 they were going about 50 or 75 feet to the east of
20 the truck and dumping the borings into a large
21 pile.

22 And these pictures show that. In the
23 center of this picture it shows.

24 THE HEARING OFFICER: Which picture?

25 THE WITNESS: This would be

1 photograph No. 12. It shows the truck sitting full
2 of debris to the right side center picture. And
3 the very center of the picture, it shows the
4 excavator or the end loader dumping the debris into
5 a pile east of the truck.

6 BY MR. DAVIS:

7 Q. On this occasion, September 10, '96, was
8 excavated waste left uncovered or exposed
9 overnight?

10 A. When I made these photos, this was late
11 in the evening. I went back at dark when it was
12 completely dark, there was no operating. The truck
13 was still there, and the pile of garbage was still
14 there, yes, sir.

15 Q. Did you detect any malodors on this
16 occasion?

17 A. Yes, sir. That's why I was there
18 originally that day.

19 Q. Okay. Were there any other occasions
20 during the project commencement up through the
21 present that you detected odors from the landfill?

22 A. Absolutely.

23 Q. Please explain, Joe, in your opinion,
24 whether these landfill gas management activities
25 have abated or worsened. The odor problems?

1 A. They have worsened the odor problem. In
2 this time frame from July until the present time,
3 the odors have been much worse.

4 MR. DAVIS: Thank you, sir. I have
5 no other direct exam.

6 THE HEARING OFFICER: Let's go off
7 the record for a moment.

8 (Off-the-record discussion held.)

9 (Recess taken.)

10 THE HEARING OFFICER: Back on the
11 record. Well, then, let's continue with
12 Mr. Northrup's cross-examination.

13 CROSS-EXAMINATION

14 BY MR. NORTHRUP:

15 Q. A couple of real quick questions on the
16 last photographs that we looked at, which are Nos.
17 9, 11 and 12 from exhibit?

18 THE HEARING OFFICER: 18, I believe.

19 MR. NORTHRUP: 18.

20 THE HEARING OFFICER: Is that?

21 MR. NORTHRUP: 18.

22 BY MR. NORTHRUP:

23 Q. Okay. Now, you've got the first
24 photograph. Shows the drill rig all in operation.
25 I don't know what you call that. A mast for lack

1 of a better term all the way up. And that is at
2 6:55 p.m.

3 The next two photographs are 7:00 p.m.
4 and 7:05 p.m. Would you agree that it's quite a
5 bit darker on these two latter pictures?

6 A. Sure. They are made from a different
7 position.

8 Q. Okay. Can you tell me where the drill
9 rig is in these latter two pictures?

10 A. Yeah. The drill rig is explained on the
11 back of the picture. They had the boom, for lack
12 of a better term --

13 Q. Okay.

14 A. -- laid down and backed over the point of
15 the hill at the time these photos were taken.

16 Q. Okay. Any idea how long it takes to
17 lower the boom and move the drill rig?

18 A. Not very long.

19 Q. Okay. Now, this last photograph you've
20 got at 7:05. And what is it again that it's doing
21 there?

22 A. The well itself that they were drilling
23 and taking the borings from was -- would not be
24 present in this picture. It would be to the right
25 and down in this area here (indicating). This end

1 loader, whatever you want to call it, was taking
2 the borings or the drillings from there and taking
3 it over and dumping it into a pile back here.

4 Now, I watched him do this for at least
5 three loads. At least three loads that went back
6 in this area. Then in this photo, you don't see
7 the boom, 'cause he's back over here again, and
8 there is the pile of --

9 THE HEARING OFFICER: Which photo is
10 in your hand?

11 THE WITNESS: Photo No. 11.

12 MR. NORTHRUP: This photo was taken
13 before this photo.

14 THE HEARING OFFICER: You need to
15 use numbers.

16 MR. NORTHRUP: Oh.

17 BY MR. NORTHRUP:

18 A. That is the pile of debris. Then I got
19 the picture of him actually dumping it. As you can
20 see, the two photos are compatible. There is the
21 truck. It has not been moved. There is the pile
22 of debris prior to this photo. Then I went over in
23 this area and took this photo from a different view
24 when the dozer came up and dumped it.

25 THE HEARING OFFICER: For the

1 record, the witness is talking about photos No. 11
2 and 12, stating that photo 11 is prior to photo
3 No. 12.

4 BY MR. NORTHRUP:

5 Q. Okay. Now, what happened after this
6 photo? What did you do after you took this
7 photograph?

8 A. Went home.

9 THE HEARING OFFICER: You need --

10 BY MR. NORTHRUP:

11 Q. After photograph No. 12?

12 THE HEARING OFFICER: Thank you.

13 BY MR. NORTHRUP:

14 A. After 7:05?

15 Q. Yes.

16 A. I went back to the house. I watched them
17 for a while. They worked for a while longer after
18 I made the picture, but it was getting -- as you
19 can see in the picture, it was getting too dark to
20 make another photo.

21 Q. That's all I've got on those.

22 THE HEARING OFFICER: Is this --
23 yeah.

24 BY MR. NORTHRUP:

25 Q. Are you color-blind?

1 A. Yes, I am, to a certain extent.

2 Q. What does to a certain extent mean?

3 A. Probably in terms if you went to lay out
4 my clothes, I can't tell real dark colors or real
5 light pastel colors, but I can still see red from
6 green and those kind of things.

7 Q. Okay.

8 A. In other words, my eyesight is still good
9 enough without my glasses that I can pass a
10 chauffeur's license examination.

11 Q. Okay. Did you testify before Judge
12 Cadigan in 1992?

13 A. Yes, sir.

14 Q. What was the subject of your testimony,
15 if you recall?

16 A. About the same as it has been here today,
17 I believe, sir.

18 Q. Okay. Had you had any discussions prior
19 to that testimony with the IEPA or attorney
20 general's office with respect to those matters?

21 A. I've talked to the IEPA on many different
22 occasions.

23 Q. Prior?

24 A. And I have talked to the attorney
25 general's office on many occasions.

1 Q. And some of those occasions occurred
2 prior to '92?

3 A. Absolutely or I wouldn't have been
4 subpoenaed.

5 Q. Has -- have you ever requested Watts to
6 dredge out your big pond?

7 A. No, sir.

8 Q. Okay.

9 A. EPA gave them a choice of either raising
10 the dike or dredging it out.

11 Q. Okay. But they have never actually
12 dredged it?

13 A. No, sir.

14 Q. Now, all the photographs that we have
15 seen, those are photographs that were taken by you;
16 is that correct?

17 A. Majority of them. There may be three or
18 four taken by my neighbor with me in the photo.

19 Q. Okay. Let's identify those photographs
20 of all the photographs that you did not take
21 yourself.

22 A. When -- I was present when they were
23 taken.

24 MR. DAVIS: I would object. I think
25 this is a pointless exercise. The admissability

1 standard is really more does it accurately depict.
2 It's not a prerequisite that the witness be the
3 actual photographer.

4 THE HEARING OFFICER: Mr. Northrup,
5 what are you trying to get at?

6 MR. NORTHRUP: Basically that. Just
7 a foundation. If he didn't take the photographs, I
8 don't see why we should have them admitted.

9 THE HEARING OFFICER: Okay. I don't
10 mind. I'm not ruling on whether they are
11 admissible or not admissible at this point. If you
12 want to go through and pick out the ones that he is
13 in or if it's just good enough to -- to agree that
14 any picture that Mr. Whitley is in is a photograph
15 that he did not take, can we do that to speed this
16 up.

17 MR. NORTHRUP: Yeah. That's fine.

18 THE HEARING OFFICER: Is that all
19 right, Mr. Davis? If Mr. Whitley is in a
20 photograph, he did not take the photograph? Do I
21 have --

22 MR. DAVIS: But that doesn't get us
23 to the point of admissibility.

24 THE HEARING OFFICER: I understand
25 that. And you have not moved them yet. And

1 Mr. Northrup hasn't objected. I think that he just
2 wants into the record the fact that there are some
3 photographs that Mr. Whitley didn't take.

4 MR. NORTHRUP: That would be true.
5 But I would object to their admissability as well.

6 THE HEARING OFFICER: Right. When
7 he moves them, if I decide to sustain your
8 objection, we will go through and pick them all
9 out. But to save us some time, let's not do that
10 right now.

11 MR. NORTHRUP: That's fine.

12 BY MR. NORTHRUP:

13 Q. Were you ever sued by Mr. Watts?

14 A. Yes, sir.

15 Q. Do you think Mr. Watts has a vendetta
16 against you?

17 A. Not personally probably, no.

18 Q. What do you mean not personally probably?

19 A. Well, I never faced Jim Watts, except in
20 a friendly conversation in my entire life. I don't
21 know if Jim Watts or on his behalf filed the
22 lawsuit. I don't know which.

23 Q. You gave some testimony regarding refuse
24 in your big pond. How often does that occur, do
25 you have refuse in your pond?

1 Q. What kinds?

2 A. Oh, turkey, deer, rabbits, opossum,
3 skunks, coons, frogs, turtles.

4 Q. Okay.

5 A. Snakes.

6 Q. Have you ever had, for the lack of a
7 better term, a tree doctor come out and looked at
8 the dying trees on your property?

9 A. No, sir.

10 Q. So you can't tell me for certain why
11 those trees are dying?

12 A. No, sir.

13 Q. Now, when you purchased your property,
14 you knew that a landfill had been zoned for the
15 area where the Watts landfill is now --

16 A. No, sir.

17 Q. -- correct? You did not?

18 A. No, sir.

19 Q. When did you first find out that that
20 property had been zoned for a landfill?

21 A. Probably within the year that I moved in
22 there or the year after. I knew that it was in the
23 process of some time that year of '64.

24 And I would like to state as to I know
25 how it was zoned.

1 Q. That's --

2 THE HEARING OFFICER: Mr. Whitley,
3 you can only answer the questions that are asked.

4 THE WITNESS: Okay.

5 BY MR. NORTHRUP:

6 Q. I believe you said the last time the
7 retention pond was dredged was sometime in '95.

8 A. I believe that's true, yes.

9 Q. Do you recall what month?

10 A. According to the photos, it had to be
11 prior to October.

12 Q. Okay. And did you request Watts to
13 dredge that?

14 A. I requested through Elmer Elliot and
15 Steve Grothus.

16 Q. Have you ever been a member of an
17 organization whose purpose it was to fight the
18 landfill?

19 A. I belonged to many organizations. I
20 don't recall any of them being for purposes of
21 fighting the landfill.

22 Q. If the landfill were properly operated,
23 do you have any problem with its continued
24 operations?

25 A. I answered that question in the

1 deposition and probably not to the best of my
2 interests. But if I may quote, if a landfill is
3 not properly designed when built, it becomes very
4 difficult to retrofit and improve design after the
5 landfill is full of waste. And that came from a
6 comment that was taken from the development
7 operating for hazardous or nonhazardous waste
8 landfills, and that is my contention today, is that
9 it is very hard to build on an unstable base. And
10 my feeling is the landfill is built on an unstable
11 base.

12 Q. What's the basis for that opinion?

13 A. Because of the early years that -- the
14 way that it was constructed, the way it was formed,
15 the way that, as the record will show, the
16 citations that was issued in the years of the '70s
17 and before the Pollution Control Board in those
18 years, and there was a lot of garbage and very
19 little dirt.

20 Q. Let me -- you were deposed in this matter
21 on July 16th. Is that correct?

22 A. Of this year?

23 Q. Yeah.

24 A. I believe that's the date. I'm not sure
25 of the exact date. I believe it is.

1 Q. Let me show you page 33, and I'll
2 represent that this is, in fact, a transcript from
3 your deposition. Why don't you read just to
4 yourself starting at line 10 and then down to 17,
5 and this is in relation to my question to you if
6 you have any problem with the operations of the
7 landfill if it's operating correctly.

8 A. (Complies.)

9 Q. Starting with 10.

10 A. Right. I understand that, but do you
11 have any problem with the landfill remaining open
12 if they address this problem. And I would again
13 say what problem are you looking for.

14 Q. Well, I'm just saying, you read your
15 answer there, please.

16 A. When I know what the problem is, I'll
17 read the answer to the problem.

18 THE HEARING OFFICER: Mr. Whitley,
19 you need to answer the question.

20 BY MR. NORTHRUP:

21 A. I have never -- okay. I have never had
22 any problems with the landfill remaining open, as
23 long as it's running correctly and according to the
24 rules and regulations. I will never frown on the
25 landfill, as long as it's operated properly.

1 Q. Okay. Do you still hold that opinion?

2 THE HEARING OFFICER: Thank you.

3 BY MR. NORTHRUP:

4 A. Yes, sir.

5 MR. NORTHRUP: Okay. Thank you. I
6 don't have any further questions.

7 THE HEARING OFFICER: Redirect.

8 REDIRECT EXAMINATION

9 BY MR. DAVIS:

10 Q. Joe, what was the nature of the
11 lawsuit -- of the nature of the lawsuit against
12 you?

13 A. Slander and libel.

14 Q. Defamation?

15 A. Defamation.

16 Q. What was the outcome?

17 A. It was dismissed in '91.

18 Q. How much were your legal fees?

19 A. Somewhere between 20 and \$25,000.

20 Q. Were you intimidated from testifying on
21 behalf of the people in the court case or in this
22 case?

23 A. Repeat the question.

24 Q. Were you intimidated by that lawsuit from
25 testifying in the court case or in this case?

1 were completely false for dates and et cetera. But
2 once the lawsuit was filed, and it continued to
3 change and continued to change, until it was like
4 eight counts in 19- -- in the late '80s. Lawsuit
5 went on for seven years. Dismissed in '91. Filed
6 April 26th of 1984.

7 MR. DAVIS: No other questions.

8 MR. NORTHRUP: I missed that last --
9 it was -- it was --

10 THE WITNESS: It was dismissed in
11 1991.

12 MR. NORTHRUP: Okay.

13 THE WITNESS: The lawsuit was filed
14 April, I believe, the 26th of 1984.

15 MR. NORTHRUP: 1984?

16 THE WITNESS: (Nods head.)

17 THE HEARING OFFICER: Do you have
18 any?

19 MR. NORTHRUP: Yeah.

20 THE HEARING OFFICER: Okay.

21 FURTHER RECROSS-EXAMINATION

22 BY MR. NORTHRUP:

23 Q. If the lawsuit was dismissed in April of
24 '91, how were you intimidated?

25 A. I don't know that it was April of '91.

1 In the year of '91. It was filed in April of '84.
2 Dismissed in 1991. I'm not sure of the month.

3 Q. Show you this document. Can you tell me
4 what this is?

5 A. It's a mutual release.

6 Q. Okay. And when was it signed by you? I
7 guess I say, is that your signature?

8 A. Yes. It's my signature.

9 Q. When was that signed?

10 A. 10th day of April, 1991.

11 Q. Okay. Now, this is a release at issue in
12 this defamation suit?

13 A. It's a mutual release between the
14 defamation suit and the encroachment trespass suit
15 that I filed.

16 Q. Oh, you filed a suit against Watts?

17 A. Later in the late '80s, yes.

18 Q. So you filed suit against Watts before
19 the defamation suit was filed?

20 A. No, sir. This suit was filed in 1984.
21 The latter part of the '80s -- in the late '80s, I
22 filed a suit.

23 Q. Okay. And that was a property suit?

24 A. Yes. And this is a mutual release from
25 both sides.

1 Q. Okay.

2 A. Watts versus Whitley and Whitley versus
3 Watts.

4 Q. So if this suit was dismissed, how were
5 you intimidated from testifying in the matter
6 before Judge Cadigan?

7 A. Because the suit could have been refiled
8 if I would have said anything that could have been
9 taken out of context or detrimental to anything, as
10 it was previously filed.

11 Q. So are you saying you did not testify
12 truthfully before Judge Cadigan?

13 A. I testified truthfully, yes, sir. There
14 is no doubt in my mind. But being intimidated
15 before the press and all, as you asked before, I
16 was intimidated because of the lawsuit and because
17 of the expense it cost me to fight that lawsuit. I
18 didn't want to fight another one. That is the
19 intimidation factor.

20 MR. NORTHRUP: No further questions.

21 MR. DAVIS: Nothing.

22 THE HEARING OFFICER: Okay. The
23 exhibits.

24 MR. DAVIS: Yes. I would move 15
25 through 23. We believe that these photos, some 102

1 according to my count --

2 THE HEARING OFFICER: You need to
3 speak up. I'm sorry. The fan is beginning to get
4 to me.

5 MR. DAVIS: Each of these photos,
6 and there is approximately 100 of these, truly and
7 accurately depict the landfill or Mr. Whitley's
8 property. Therefore, they are relevant and
9 material. Mr. Whitley has testified except for a
10 handful, maybe three or four, and one I can
11 remember in which he's pictured, that he was the
12 photographer. Now, that's not a prerequisite, but
13 it does go to whether he has personal knowledge.
14 And that's as complete a foundation as you need for
15 photos. We -- we have a reason for these. They
16 show violations.

17 The Board will see for itself, each of
18 the members, that this is not a disgruntled
19 citizen. This is a photographic documentary of a
20 portrayal of years of severe violations. You can't
21 get much more relevant than that.

22 I'm not sure what the objection is as far
23 as pleading and notice or claims preclusion, but I
24 submit to you we have got a well pleaded
25 complaint. The photos we chose are within the time

1 span. Our complaint is 1986 through the present.
2 And that's all I have to say in support of that.

3 THE HEARING OFFICER: Okay.
4 Mr. Northrup.

5 MR. NORTHRUP: Just for the record,
6 I will renew my objection to anything -- any of the
7 photos prior to Judge Cadigan's order. I don't
8 think those are relevant.

9 But then secondly, I would also object to
10 the photographs that Mr. Whitley did not take as
11 there being no foundation.

12 THE HEARING OFFICER: Okay. I'm
13 going to admit all of the photographs. As to your
14 legal arguments, you can include those in your
15 brief. Okay.

16 So Exhibits 15 through 23 are admitted
17 into evidence.

18 Let's go off the record.

19 (Off-the-record discussion held.)

20 (Recess taken.)

21 THE HEARING OFFICER: Going back on
22 the record. The people call their next witness,
23 please.

24 MS. SYMONS-JACKSON: People call Ron
25 Mehalic.

1 compliance with the rules and regulations.

2 THE HEARING OFFICER: Off the record
3 for a second.

4 (Off-the-record discussion held.)

5 THE HEARING OFFICER: Let's go back
6 on the record.

7 BY MS. SYMONS-JACKSON:

8 A. Field lots of complaints from individuals
9 that have complaints pertaining to environmental
10 impact against open dump violations.

11 THE HEARING OFFICER: Back off the
12 record.

13 (Off-the-record discussion held.)

14 THE HEARING OFFICER: Go back on the
15 record.

16 BY MS. SYMONS-JACKSON:

17 Q. All right. Now, Ron, did you work for
18 the Agency prior to being an environmental
19 protection specialist?

20 A. No, I did not.

21 Q. Okay. And you've been that for a --
22 you've had that position for approximately six
23 years?

24 A. Yes.

25 Q. And are you employed in the Bureau of

1 Land?

2 A. Yes, I am.

3 Q. Can you give us a brief description of
4 your educational background, please.

5 A. I have a bachelor of science degree in
6 geology from Illinois State University.

7 Q. When did you obtain that degree?

8 A. 1990.

9 Q. And so after graduating from Illinois
10 State University, you immediately went to your
11 employment at the Illinois Environmental Protection
12 Agency?

13 A. Yes.

14 Q. Since obtaining your bachelor's degree,
15 have you participated in any continuing education
16 or training related to your job as an environmental
17 production specialist?

18 A. Yes, I have.

19 Q. Can you give us a general list of various
20 topics that you've had the training in?

21 A. Groundwater monitoring and installation
22 techniques, site assessment characterization,
23 groundwater sampling techniques, remediation, site
24 characterization, leaks of underground storage tank
25 facilities.

1 Q. Ron, is there a particular portion of the
2 state that you -- that you focus your work on?

3 A. The Peoria region.

4 Q. And the Peoria region includes the Rock
5 Island area, correct?

6 A. Yes.

7 Q. And as part of your job duties as a
8 environmental protection specialist, you do conduct
9 inspections of sanitary landfills, correct?

10 A. Correct.

11 Q. And how many different landfills are you
12 currently inspecting?

13 A. Operating landfills?

14 Q. Yes.

15 A. Approximately four.

16 Q. And is the Taylor Ridge landfill one of
17 those operating landfills that you're currently
18 inspecting?

19 A. Yes.

20 Q. When did you first begin conducting
21 inspections of the Taylor Ridge landfill?

22 A. I inherited the site in June of 1992.

23 Q. And since that time, on average, can you
24 give us an idea of how many times per year you
25 inspect the facility?

1 A. At a minimum, six.

2 Q. Ron, based on your experience as an
3 environmental production specialist, and based on
4 the knowledge you've achieved through inspecting
5 the landfill, do you have an opinion as to whether
6 the landfill has a continuing problem with exposed
7 refuse?

8 A. Yes.

9 Q. What is your opinion?

10 A. Is they do have a problem with exposed
11 refuse.

12 Q. And have you personally observed areas of
13 exposed refuse at the facility on more than one
14 occasion?

15 A. Yes, I have.

16 Q. And, Ron, do you have an opinion, based
17 on your experience and knowledge of the site as to
18 whether the Taylor Ridge landfill has a continuing
19 problem with leachate?

20 A. Yes, they do.

21 Q. And have you, in fact, observed leachate
22 seeps at the landfill on more than one occasion?

23 A. Yes, I have.

24 Q. Ron, based again on your experience and
25 your knowledge of the facility, do you have an

1 opinion as to whether the landfill has a continuing
2 problem with erosion at the landfill?

3 A. Yes, they do.

4 Q. Ron, do you have an opinion as to whether
5 the Taylor Ridge landfill has a continuing problem
6 with odor?

7 A. Yes, they do.

8 Q. Now, when you conduct an inspection of
9 the Taylor Ridge landfill, do you prepare a written
10 report of that inspection?

11 A. Yes, I do.

12 Q. And have you done that in this case?
13 Have you prepared written inspection reports
14 documenting your inspections of the Taylor Ridge
15 facility?

16 A. Yes, I have.

17 MS. SYMONS-JACKSON: And for the
18 record, Ms. Hearing Officer, we are going to be
19 talking about Exhibits 25 through 51 here. All of
20 those, save one, I believe, are Bureau of Land's
21 inspection reports prepared by Mr. Mehalic. The
22 one Exhibit No. 29 is a preliminary injunction
23 order issued by the court in the 22-CH -- or
24 92-CH-23.

25 THE HEARING OFFICER: Okay.

1 MS. SYMONS-JACKSON: I believe we
2 stimulated to the introduction of all of these
3 exhibits. And move for introduction at this point
4 to save time later on.

5 THE HEARING OFFICER: They are all
6 admitted. I do caution you, though, to be very
7 clear as we go through them so that the record is
8 clear.

9 MS. SYMONS-JACKSON: As to which
10 report we are talking about, certainly.

11 THE HEARING OFFICER: Right. And
12 identify the number, because we have gone out of
13 order in the numbering.

14 MS. SYMONS-JACKSON: Okay.

15 BY MS. SYMONS-JACKSON:

16 Q. Ron, I'm going to hand you what we have
17 already marked as Peoples Exhibit 25. And would
18 you agree that this is your inspection report from
19 October 21, 1992?

20 A. Yes. This is my report.

21 Q. Now, what types of things -- as general
22 background information, can you tell us what types
23 of things you do when you conduct an inspection of
24 a sanitary landfill such as the Taylor Ridge
25 facility?

1 A. The initial portion of my inspection, I
2 seek out the previous day's working area to see if
3 it's been adequately covered with soil and/or --

4 THE HEARING OFFICER: Okay. Let's
5 stop here. I'm going to try and get you a
6 microphone.

7 (Off-the-record discussion held.)

8 THE HEARING OFFICER: Back on the
9 record.

10 BY MS. SYMONS-JACKSON:

11 Q. Okay. Now, Ron, you were telling us what
12 you typically do, what your standard practices are
13 in inspecting the land. If you would please
14 continue with your answer.

15 MR. NORTHRUP: If I can object just
16 real quick for the record to the extent that this
17 relates to any violations occurring prior to the
18 Cadigan order, which was issued in September of
19 '92, I would -- I would object. I don't think
20 it's relevant.

21 MS. SYMONS-JACKSON: Well, just for
22 the record, we are starting off with the October
23 21, '92 inspection report, and that's subsequent to
24 the Cadigan order.

25 MR. NORTHRUP: Sorry.

1 THE HEARING OFFICER: Let's
2 continue.

3 MR. NORTHRUP: I'll withdraw my
4 objection.

5 THE HEARING OFFICER: Can you
6 restate your question?

7 MS. SYMONS-JACKSON: Sure.

8 BY MS. SYMONS-JACKSON:

9 Q. Ron, I had asked you to give us some
10 background information regarding what you do to
11 conduct an inspection at a facility like this. I
12 think you told us you would first typically go to
13 the area of the previous day.

14 A. Previous day's working area. And then to
15 see if it's been adequately covered with a soil or
16 synthetic fabric. And then after that, I would go
17 for a walk around the site. And a lot of this
18 depends on sunlight. For instance, the Taylor
19 Ridge site opens at 5:00 a.m., so I have to be
20 there before 5:00 a.m. And these days, the sun
21 seems to rise a little bit later. So I usually
22 wait until the sun comes out a little bit, and I
23 usually go walk around the Taylor Ridge site,
24 specifically with Joe Chenoweth.

25 Q. And you mentioned you get to the Taylor

1 Ridge landfill prior to 5:00 a.m.

2 A. Yes.

3 Q. Why is it you get there that early?

4 A. To see if the previous day's working area
5 has been adequately covered.

6 Q. And do you carry a checklist with you
7 during your inspection?

8 A. Yes, I do.

9 Q. And as you observe violations, are they
10 noted on that checklist?

11 A. During the course and then after the
12 inspection, yes.

13 Q. And would you agree that this is the
14 standard mode of inspecting all the landfills you
15 inspect, including the Taylor Ridge landfill?

16 A. Yes.

17 Q. Okay. Now, Ron, I want to move on to
18 Peoples Exhibit 26. Would you take a look at that
19 and tell me if you agree that is your inspection
20 report from December 3, 1992?

21 A. Yes, it is.

22 Q. And can you tell us what time you arrived
23 at the site on that day?

24 A. Approximately 5:00 a.m.

25 Q. And what did you observe in relation to

1 uncovered refuse?

2 A. I observed uncovered refuse remaining
3 from the previous operating day.

4 Q. And can you estimate the surface area in
5 terms of feet that comprise the area of uncovered
6 refuse?

7 A. Approximately 150 by 25 feet.

8 Q. Now, Ron, are there photographs attached
9 to your inspection report that would show this area
10 of uncovered refuse?

11 A. Yes, there are.

12 Q. Can you identify those photographs for
13 us, please.

14 A. Photos 1 through 7.

15 Q. And do those photographs truly and
16 accurately depict the area of uncovered refuse that
17 you observed during that inspection?

18 A. Yes.

19 Q. Based on your personal observations on
20 December 3, do you have an opinion as to when that
21 refuse was placed on the landfill?

22 A. The refuse was placed the previous
23 operating day.

24 Q. And why do you say that?

25 A. During the course, the inspection

1 operator directed me to the area.

2 Q. You asked to see the area of the previous
3 day's operation?

4 A. Yes.

5 Q. And that's where he pointed?

6 A. Right.

7 Q. And it was not covered?

8 A. Right.

9 Q. Now, according to regulations, when
10 should the area of refuse have been covered?

11 A. At the end of the operating day.

12 Q. So that would be December 2nd?

13 A. Yes.

14 Q. If that was, in fact, the previous
15 operating day, not a weekend?

16 A. Yes.

17 Q. Okay. What other observations did you
18 make during your inspection of December 3, 1992?

19 A. Could you repeat that?

20 Q. Sure. Let me ask you a different
21 question. Did you observe areas of repaired
22 leachate seeps during that inspection?

23 A. Yes, I did.

24 Q. Can you tell us what is leachate?

25 A. Leachate is a -- defined as a liquid that

1 has -- has -- is or has been in direct contact with
2 a solid waste.

3 Q. Now, did you observe any leachate seeps
4 yourself that day?

5 A. During this inspection, no.

6 Q. But because you saw the repaired leachate
7 seeps, is it your opinion that there had been
8 leachate on previous occasions at the landfill?

9 A. Yes.

10 Q. And can you tell us where at the landfill
11 those repaired leachate seeps were located?

12 A. On the southern portion of the landfill.

13 Q. Ron, are there any photographs attached
14 to that inspection report that truly and accurately
15 depict the repaired leachate seeps you observed on
16 that day?

17 A. Photograph 11.

18 Q. Is that the only one?

19 A. And photograph 8.

20 Q. Okay. Okay. Now, Ron, I'm going to hand
21 you what we have already marked as Peoples Exhibit
22 27. And do you agree this is a copy of your
23 inspection report from February 10 of 1993?

24 A. Yes, it is.

25 Q. Okay. Now, moving on to Peoples Exhibit

1 28. Would you take a look at that and tell me if
2 you agree that's the copy of your inspection report
3 from April 14, 1993?

4 A. Yes, it is.

5 Q. And can you tell me what time you arrived
6 at the site on that day?

7 A. Approximately 5:00 a.m.

8 Q. Had operations begun?

9 A. No.

10 Q. And what did you observe in relation to
11 uncovered refuse on that date?

12 A. Could you repeat that?

13 Q. Sure. What did you observe with regard
14 to uncovered refuse on that date?

15 A. I observed an exposed refuse that was
16 inadvertently exposed during landfill operations.

17 Q. And are there photographs attached to
18 your inspection report that depict that area of
19 exposed refuse?

20 A. Yes, there is.

21 Q. Which photograph?

22 A. Photographs 23 and 24.

23 Q. And do those pictures accurately and
24 truly represent the exposed refuse that you
25 observed on that day?

1 A. Yes.

2 Q. Now, tell us where the exposed refuse was
3 located.

4 A. In the southern portion of the current
5 waste placement area.

6 Q. And are there regulations regarding or
7 disallowing exposed refuse?

8 A. Yes, there is.

9 Q. Did you observe any other violations
10 during this inspection?

11 A. Yes, I did.

12 Q. And what were they?

13 A. I observed leachate seeps.

14 Q. Was this the first inspection that you
15 had personally observed leachate seeps at the
16 landfill?

17 A. Yes.

18 Q. Can you tell us at what portion of the
19 landfill those leachate seeps were located?

20 A. These particular seeps were observed on
21 the western slope of the landfill.

22 Q. And do you have photographs attached to
23 your inspection report that accurately depict those
24 leachate seeps?

25 A. Yes, I do.

1 Q. Which photographs?

2 A. Photos 20, 17, 18 and 16.

3 Q. How many different leachate seeps did you
4 observe?

5 A. Four.

6 Q. Ron, can you tell us how leachate is
7 formed in a landfill?

8 A. The definition I just gave you defines
9 what leachate is. But leachate is formed as a
10 result of having exposed refuse, like previously
11 noted during previous operating days, and if it's
12 not covered up and precipitation or rain falls,
13 then it has a chance to mix in with the waste. And
14 over time, it accumulates within the landfill. And
15 then over specific areas, the leachate seeks out
16 areas of least resistance and more or less pops
17 out.

18 Q. Okay. So would you agree that if there
19 are problems with adequate cover at a landfill,
20 more precipitation or liquid can seep down into the
21 landfill and come into contact with the refuse in
22 the landfill?

23 A. If the refuse isn't adequately covered,
24 yes.

25 Q. Okay. So the leachate is actually

1 generated in the landfill as opposed to on the
2 surface of the landfill. Would that be an accurate
3 statement?

4 A. Yes.

5 Q. And in your opinion, Ron, can
6 uncontrolled leachate pose a threat to the
7 environment?

8 A. If it's not adequately controlled, yes.

9 Q. What threats to the environment can
10 result from uncontrolled leachate?

11 A. Water pollution, degradation of the
12 surrounding area, such as vegetation would not have
13 a chance to take hold, groundwater pollution at
14 some venture.

15 Q. And in your opinion, what can a facility
16 do to adequately control leachate?

17 A. First of all, keep adequate cover. To
18 adequately control leachate, immediate steps can be
19 taken as far as short-term. That is to excavate
20 the area and plug it with a clay cap, and then more
21 or less compact the area.

22 Long-term remediation would most likely
23 be beneficial for a site such as this would be to
24 extract the leachate.

25 Q. Is it your opinion that the only way this

1 facility can adequately control leachate would be
2 through a leachate extraction system?

3 A. In my opinion, yes.

4 Q. Ron, I want to hand you a copy of Peoples
5 Exhibit 29. And this is, for the record, a
6 preliminary injunction order in case 92-CH-23.

7 And are you familiar generally with this
8 preliminary injunction order, Ron?

9 A. Vaguely, but yes.

10 Q. Can you tell us what this preliminary
11 injunction order requires of the landfill regarding
12 leachate?

13 A. Condition E states, section 21-P2 and 3
14 of the Act for causing -- could you repeat that?
15 That question.

16 Q. Sure. Can you give me the exhibit for a
17 second?

18 A. Sure.

19 Q. Now, Ron, you've just had a chance to
20 look through this preliminary injunction order,
21 correct?

22 A. Yes.

23 Q. Would you agree that the injunction order
24 requires Watts to implement adequate measures to
25 monitor and control leachate?

1 A. Yes.

2 Q. Now, in your opinion, has the Watts
3 landfill implemented adequate measures to control
4 leachate in the long-term?

5 A. No, not in the long-term.

6 Q. Okay. Moving on to Peoples Exhibit 30.
7 Would you take a look at this exhibit. Tell me if
8 you agree this is a copy of your inspection report
9 from June 8, 1993?

10 A. Yes, it is.

11 Q. And what time did you arrive at the site
12 on that day?

13 A. Approximately 4:45 a.m.

14 Q. And did you make any observations in
15 regards to exposed refuse during that inspection?

16 A. Yes, I did.

17 Q. And, Ron, would you agree at that time
18 exposed refuse you noted in this inspection report
19 was in the same area you had noted in your previous
20 inspection report, which is Peoples Exhibit No. 28?

21 A. One area of it, yes.

22 Q. Did you observe more than one area of
23 exposed refuse on June 8, 1993?

24 A. Yes, I did.

25 Q. Now, can you tell me where the second

1 area of exposed refuse was located?

2 A. Let's see. The second area was
3 approximately a 40 by 50 feet area on the eastern
4 slope of the landfill area that already had waste
5 in place.

6 Q. Was this the previous day's operating
7 area?

8 A. No.

9 Q. Now, with regard to the area of exposed
10 refuse that had continued from your previous
11 inspection, which is Exhibit 28, had the landfill
12 done anything to address the exposed refuse in that
13 area, which I believe was the southern slope?

14 A. Not at this time, no.

15 Q. And did you observe any other violations
16 during this inspection?

17 A. Yes, I did.

18 Q. What other violations did you note?

19 A. Leachate seeps.

20 Q. Where did you observe leachate at the
21 facility?

22 A. At the western slope of the landfill.

23 Q. And is this the same area where you had
24 previously noted leachate seeps?

25 A. Yes.

1 Q. Any other violations you observed that
2 day?

3 A. No.

4 Q. Taking a look at the inspection report,
5 which is Peoples Exhibit 30, can you tell me what
6 observations you made in regard to erosion on that
7 day?

8 A. I noticed areas along the southwestern
9 portion of the landfill that were-- were in need
10 of soil. Yes. I saw erosion rills formed.

11 Q. Can you describe for us what erosion
12 rills -- what do you mean when you referred to a
13 rill?

14 A. Well, it's a crevice formed by escaping
15 water transecting down through the landfill slope.

16 Q. And are there certain actions at a
17 landfill such as the Taylor Ridge landfill should
18 take to avoid or address these erosional channels
19 or rills?

20 A. Well, to a -- No. 1, to fill them up.
21 And No. 2, to direct the flow of water away from
22 these areas and to areas that can contain the water
23 or stop its advancement or further erosion.

24 Q. Ron, do you have any opinion as to what
25 potential environmental impacts can result from

1 allowing erosional rills to go uncorrected?

2 A. In a landfill?

3 Q. Uh-huh, yes.

4 A. Well, if they go unchecked, they have a
5 tendency to continue their downward movement and
6 expose refuse. And if that were to happen, then
7 the rain or runoff water would intermix with the
8 exposed refuse and potentially cause an
9 environmental impact.

10 Q. Cause what?

11 A. Environmental impact.

12 Q. Do you recall whether you communicated
13 these options to any landfill personnel during this
14 inspection?

15 A. Yes.

16 Q. I'm sorry. The options being the
17 measures to control erosion.

18 A. That I can't recall.

19 Q. Okay. Based on your knowledge of the
20 landfill and on your inspections up through the
21 present time, have the erosion problems at the
22 landfill been corrected?

23 A. No, they haven't.

24 Q. Okay. Ron, I'm going to hand you what we
25 have marked as Peoples Exhibit 31. Would you agree

1 this is copy of your inspection report from June
2 30, 1993?

3 A. Yes, it is.

4 Q. Can you tell me what you observed at the
5 landfill on this date with regard to exposed
6 refuse?

7 A. I observed exposed refuse at the areas --
8 let's see. Near the area -- well, near the area I
9 noticed before. In the southern portion of the
10 waste area of the current waste placement area.
11 The waste seen -- that was observed during landfill
12 operations.

13 Q. And this is the area of exposed refuse
14 that you first noticed in your inspection report,
15 which is Peoples Exhibit 28?

16 A. Yes.

17 Q. Okay. And did it appear to you at this
18 time of your inspection as if respondent, or if the
19 Watts landfill, had done anything to address the
20 exposed refuse on that southern slope?

21 A. Not at this time.

22 Q. Was this the only area of exposed refuse
23 that you observed on June 30th, 1993?

24 A. Yes.

25 Q. Did you observe any erosion problems

1 during this inspection?

2 A. No.

3 Q. Do you have any photographs attached to
4 your inspection report which would accurately and
5 truly depict the areas of exposed refuse on the
6 southern slope?

7 A. Yes, I do.

8 Q. What photographs are those?

9 A. Photos 2 through 4.

10 Q. May I see that exhibit, please.

11 A. (Complies.)

12 Q. I want to direct your attention to the
13 narrative portion of this inspection report. Can
14 you look again and tell me if you observed any
15 erosional rills during this inspection?

16 A. Yes. Yes, I did. I see it.

17 Q. And did you observe, Ron, any exposed
18 refuse in those erosion rills?

19 A. Yes, there was.

20 Q. And do you have any photographs attached
21 to your inspection report that accurately and truly
22 depict the exposed refuse in the erosional rills?

23 A. Yes, I do.

24 Q. What photographs are those?

25 A. Photograph 11.

1 Q. Did you observe any water flowing through
2 the erosional rills?

3 A. No, I did not.

4 Q. May I see the inspection report, please.

5 A. (Complies.)

6 Q. Taking a look at the narrative portion of
7 this exhibit, and referring to the exposed refuse I
8 believe on the southern slope of the landfill. Was
9 there anything that was happening to that exposed
10 refuse?

11 A. The exposed refuse was continuing to wash
12 down the slope.

13 Q. So was there erosion taking place on that
14 southern slope?

15 A. Yes.

16 MS. SYMONS-JACKSON: If this is a
17 logical stopping point, we can.

18 THE HEARING OFFICER: Okay. Let's
19 go off the record.

20 (Off-the-record discussion held.)

21 (Recessed on October 29, 1996 at
22 8:00 p.m.)

23

24

25

