

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Complainant,

6 vs. No. PCB 96-111

7 JOHN CHALMERS, INDIVIDUALLY, and

8 d/b/a JOHN CHALMERS HOG FARM,

9 Respondent.

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13 Proceedings held on June 23, 1999 at 9:08 a.m., at

14 the Menard County Courthouse, Petersburg, Illinois, before

15 the Honorable John Knittle, Hearing Officer.

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A P P E A R A N C E S

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1 INDEX

2

3 WITNESSES PAGE NUMBER

4 DALE W. BROCKAMP

Redirect Examination by Ms. Peri 260

5 Recross-Examination by Mr. Tice 288

6 JOHN WELLS

Direct Examination by Ms. Peri 326

7 Cross-Examination by Mr. Tice 344

8 A.G. TAYLOR

Direct Examination by Ms. Peri 367

9 Cross-Examination by Mr. Tice 392

10 LINDA BROWN

Direct Examination by Ms. Peri 421

11 Cross-Examination by Mr. Tice 435

12 JOHN CHALMERS

Direct Examination by Mr. Tice 450

13

14

15

16

17

18

19

20

21

22

23

24

1
2
3
4
5
6
7
8
9
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12
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18
19
20
21
22
23
24

E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
Hrg. Officer Exhibit 1	260	260
People's Exhibit L	339	343
People's Exhibit M	366	391
Respondent's Exhibit 2	505	--
Respondent's Exhibit 3	506	--
Respondent's Exhibit 4	509	--
Respondent's Exhibit 5	510	--

1 P R O C E E D I N G S

2 (June 23, 1999; 9:08 a.m.)

3 HEARING OFFICER KNITTLE: Good morning. Today is
4 June 23rd, 1999. It is approximately 9:08 a.m. and we are
5 starting the second day of the hearing in PCB 96-111,
6 which is People of the State of Illinois versus John
7 Chalmers, individually and doing business as John Chalmers
8 Hog Farm.

9 Once again, I note for the record there are no
10 members of the public present. We are currently about to
11 begin the redirect examination of Mr. Brockamp, who I
12 would like to swear in again even though he was sworn
13 yesterday.

14 That won't be a problem, Mr. Brockamp, will it?

15 THE WITNESS: No.

16 HEARING OFFICER KNITTLE: Okay. We will do that in
17 one second.

18 I have one housekeeping item here. Yesterday I had
19 asked Ms. Peri to submit the original of what everyone has
20 been referring to as the topo map, which I have just
21 learned from Mr. Brockamp is topography. I was in the
22 right ballpark anyway.

23 I am submitting this as Hearing Officer Exhibit
24 Number 1, and I am admitting this as well.

1 (Whereupon said document was duly marked for purposes
2 of identification and admitted into evidence as
3 Hearing Officer Exhibit 1 as of this date.)

4 HEARING OFFICER KNITTLE: That being done, are there
5 any objections to me admitting this as Hearing Officer
6 Exhibit Number 1? I should ask.

7 MS. PERI: No.

8 MR. TICE: No.

9 HEARING OFFICER KNITTLE: All right. With that being
10 done, let's swear in the witness and commence with
11 redirect.

12 (Whereupon the witness was sworn by the Notary
13 Public.)

14 HEARING OFFICER KNITTLE: Ms. Peri?

15 MS. PERI: Thank you. For the record, before we
16 begin with redirect I would like to indicate that sitting
17 with me at counsel table is Bobella Glatz, of the Illinois
18 Environmental Protection Agency. She will be with me
19 throughout the proceeding.

20 HEARING OFFICER KNITTLE: Thank you.

21 REDIRECT EXAMINATION

22 BY MS. PERI:

23 Q. Good morning, Mr. Brockamp.

24 A. Good morning, Ms. Peri.

1 Q. Mr. Brockamp, what is a water of the State?

2 A. It is --

3 MR. TICE: Objection, again, for the record, Mr.

4 Knittle.

5 HEARING OFFICER KNITTLE: Your objection, again, Mr.

6 Tice, for the record?

7 MR. TICE: Is that such a conclusion from the witness

8 is a conclusion that is on the ultimate issue in this case

9 to be decided by the Pollution Control Board and not by a

10 witness.

11 HEARING OFFICER KNITTLE: Okay.

12 MR. TICE: The witness can speak as to facts but not

13 as to conclusions as to the ultimate issue.

14 HEARING OFFICER KNITTLE: Ms. Peri, do you have a

15 comment before I rule?

16 MS. PERI: No.

17 HEARING OFFICER KNITTLE: As before, I am overruling

18 that objection. I find that that is not the ultimate

19 decision in this case. Mr. Brockamp is qualified to

20 answer that question. Why don't you ask the question

21 again, Ms. Peri.

22 Q. (By Ms. Peri) What is a water of the State?

23 A. I don't know the exact definition, but it is

24 essentially an accumulation of water, both natural and

1 unnatural, artificial, nonartificial, that flows through or
2 lies within the State of Illinois.

3 Q. Is the flow necessarily continuous?

4 A. No.

5 Q. Is the flow ten percent of the time satisfactory
6 to be a water of the State?

7 A. Sure. Yes, it is.

8 Q. Going back to the May 11th, 1992 inspection that
9 you made, that was your first inspection, correct?

10 A. Yes.

11 Q. You have already testified that you observed in
12 the northwest corner of Mr. Chalmers' property two pools
13 of livestock waste manure; is that correct?

14 A. Yes, I did.

15 Q. You also testified that it is your opinion that
16 the livestock waste manure came from John Chalmers'
17 property; is that correct?

18 A. Yes, it is.

19 Q. Why did you conclude that the livestock waste came
20 from Mr. Chalmers' property?

21 A. Because there was no other livestock farms within
22 the watershed, which is draining toward my position,
23 within that --

24 Q. Your position being where?

1 A. At the bridge on the intermittent stream.

2 Q. Did you make a conclusion at that time as to
3 whether there was a threat of water pollution?

4 A. Yes, I did.

5 Q. And what was your conclusion?

6 A. My --

7 MR. TICE: Objection again as to the conclusion of
8 this witness with regard to whether or not a threat
9 existed without more foundation.

10 HEARING OFFICER KNITTLE: Ms. Peri?

11 MS. PERI: I will rely on the same response I had
12 yesterday.

13 HEARING OFFICER KNITTLE: Could you read back that
14 question, please.

15 (Whereupon the requested portion of the record was
16 read back by the Reporter.)

17 HEARING OFFICER KNITTLE: I am overruling the
18 objection. You can answer, Mr. Brockamp.

19 THE WITNESS: My conclusion was that there was
20 livestock waste within the intermittent stream, which is a
21 water of the State. Therefore, there was a threat to the
22 waters of the State.

23 Q. (By Ms. Peri) So the two livestock waste pools
24 that you observed in the northwest corner of the property

1 were in the intermittent stream?

2 A. Yes.

3 MR. TICE: Objection. There has been no testimony
4 about the pools of water being in the intermittent stream,
5 I don't believe. He just identified where they were.

6 HEARING OFFICER KNITTLE: Ms. Peri?

7 MS. PERI: He just provided that testimony. That is
8 the basis for his conclusion.

9 HEARING OFFICER KNITTLE: Yes. I would like to -- go
10 ahead, Mr. Tice.

11 MR. TICE: Are you talking about the ones right at
12 the bridge, when you are talking about pools of water,
13 because that was not --

14 MS. PERI: Just to the east.

15 MR. TICE: -- in your question.

16 MS. PERI: We are talking about, and I will show
17 you --

18 HEARING OFFICER KNITTLE: Yes, if you could clarify
19 that, that might help things.

20 Q. (By Ms. Peri) Mr. Brockamp, I am going to show you
21 what we have all seen and is now entered as People's
22 Exhibit C. Are these the two pools that you referred to
23 as being livestock waste on the northwest corner of the
24 respondent's property?

1 A. Well, actually I see three.

2 Q. You see three in these photographs?

3 A. Yes.

4 Q. Okay. Are these livestock waste pools that you

5 observed on May 11th, 1992?

6 A. Yes, they are.

7 Q. Are they in the intermittent stream?

8 A. Yes, they are.

9 Q. There was some discussion of when you spoke with

10 Mr. Tice yesterday about rainfall possibly occurring just

11 prior to your inspection. Do you recall that

12 conversation?

13 A. A little bit.

14 Q. In general, Mr. Brockamp, does the addition of

15 rainwater to livestock waste affect the presence of

16 livestock waste constituents?

17 MR. TICE: Objection. I don't believe there has been

18 a foundation laid by this witness to render a conclusion

19 in a general sort of way as to the affect of rainwater on

20 livestock waste, and that's what he is being asked to do,

21 not as to the specific circumstances in this case, but

22 just generally.

23 HEARING OFFICER KNITTLE: Ms. Peri?

24 MS. PERI: As an agricultural engineer he is highly

1 qualified to talk about various weather events and how
2 they contribute to possible water pollution threats.

3 MR. TICE: There has been no expertise laid for this
4 witness that he is a climatologist or has anything to do
5 with weather or had any training in weather, other than
6 what a normal person would have under the circumstances.
7 That does not make him an expert and does not allow him to
8 render conclusions or opinions with regard to the affects
9 of the climatology upon the livestock waste.

10 MS. PERI: You don't need to be a climatologist to
11 decide if livestock waste is present before or after rain
12 is added to it.

13 HEARING OFFICER KNITTLE: I am going to overrule the
14 objection. I think Mr. Brockamp is qualified to make a
15 determination of the impact of rainwater on livestock
16 waste. I think he has been duly qualified.

17 Mr. Brockamp, you may answer the question.

18 THE WITNESS: Could I have the question again?

19 MS. PERI: Sure. I will rephrase.

20 Q. (By Ms. Peri) What happens when rainwater is added
21 to livestock manure?

22 A. It does not reduce the amount of livestock manure,
23 but it will reduce the concentration within the impounded
24 area of the --

1 Q. Do the constituents of the livestock manure
2 remain?

3 A. Yes.

4 Q. Going on to the May 6th of 1993 inspection that
5 you conducted, and now we will be in the area of the Kay
6 Watkins School Road, and which on People's Exhibit A is
7 indicated by the three flattened red circles. Do you
8 recall discussing your inspection of that area yesterday?

9 A. Yes, I do.

10 Q. You testified yesterday, did you not, that there
11 may have been some heavy rain before that inspection?

12 A. I believe I testified that I was not aware of any
13 precipitation there before that.

14 Q. Mr. Tice suggested there may have been some heavy
15 rain prior to that inspection?

16 MR. TICE: I am going to object as to what I may
17 have suggested or didn't suggest. The record will reflect
18 what that is.

19 HEARING OFFICER KNITTLE: Ms. Peri, maybe you could
20 rephrase.

21 MS. PERI: Certainly.

22 Q. (By Ms. Peri) You testified, did you not, that you
23 saw livestock waste running from the respondent's property
24 to the Kay Watkins School Road at that point with the red

1 circles?

2 A. It had already run. I mean, it was present there
3 when I made my inspection.

4 Q. It was present on the road?

5 A. It was present within the ditches and within the
6 cornfield adjacent to the road.

7 Q. Are the road ditches waters of the State?

8 A. Yes, they are.

9 Q. Why?

10 A. Because they meet the definition of waters of the
11 State.

12 Q. In what way?

13 A. They can accumulate waters which lie within the
14 State or flow through the State in any amount of time.

15 Q. In your opinion, how did the livestock waste you
16 observed in the road ditches reach the road ditches?

17 A. They drain --

18 MR. TICE: Objection again. It calls for conjecture
19 on the part of this witness.

20 HEARING OFFICER KNITTLE: Overruled.

21 THE WITNESS: They drain there from the alfalfa field
22 immediately south of the road ditch.

23 Q. By Ms. Peri) Why did you conclude that?

24 A. Because the alfalfa field sloped towards the road

1 ditch, and there was a ponded area within the alfalfa
2 field. It entered a field tile and exited the field tile
3 into the road ditch.

4 Q. What was, in your opinion, the nature of the
5 material ponded in the alfalfa field?

6 A. It appeared to me to be livestock waste.

7 Q. And what did you base that conclusion on?

8 A. My visual observation and my nose.

9 Q. Yesterday you testified that farm fields may have
10 standing water in them after a rainfall event, correct?

11 A. Yes, I did.

12 Q. Okay. Will farm fields necessarily have livestock
13 manure in them after a rainfall event?

14 A. Not after strictly a rainfall event.

15 Q. Yesterday you testified on cross-examination that
16 there was more livestock manure present on the Kay Watkins
17 School Road before your inspection of May 6th, 1993,
18 correct?

19 A. Correct.

20 MR. TICE: I am going to object, Mr. Knittle. He did
21 not testify that there was, in fact, more, I don't
22 believe, livestock waste on the Kay Watkins Road before
23 his inspection on May 6th, 1993. It would have been
24 impossible for him to have said that, because he didn't

1 see it. When he was there on the 6th of May, 1993, he
2 testified that there was not any on the road itself.

3 HEARING OFFICER KNITTLE: Ms. Peri.

4 MS. PERI: I will rephrase and withdraw that
5 question.

6 Q. (By Ms. Peri) Is it correct, Mr. Brockamp, that
7 you testified yesterday that more livestock manure was
8 present along the road ditches prior to your inspection?

9 MR. TICE: Again, I am going to object for the same
10 reason, because he did not see it prior to his inspection,
11 and I do not believe, from the record, that he testified
12 that there was more in the ditches prior to his
13 inspection.

14 HEARING OFFICER KNITTLE: Ms. Peri.

15 MS. PERI: I believe Mr. Brockamp made a conclusion
16 yesterday that prior to his inspection there had been more
17 material at that location, and he went into the potential
18 for evaporation and so forth. If I am incorrect, I would
19 like to hear from Mr. Brockamp.

20 MR. TICE: If the question is did you make a
21 conclusion that there was more in the ditches prior to
22 your inspection rather than did you testify that there was
23 more in the ditches prior to your inspection, there is a
24 lot of difference between them. Because he could not have

1 testified that there was, because he didn't inspect it. I
2 think what he was allowed to do yesterday was to draw his
3 conclusion or render his conclusion about whether there
4 was or not. So the question should be framed in that
5 fashion so we don't get a change in the testimony.

6 MS. PERI: I am happy to rephrase in that way.

7 HEARING OFFICER KNITTLE: All right. I will not rule
8 on this objection.

9 You can go ahead, Ms. Peri.

10 Q. (By Ms. Peri) Mr. Brockamp, in your testimony
11 yesterday, did you offer testimony that it was your
12 conclusion or opinion that more manure had been present in
13 the road ditches prior to your inspection of May 6th,
14 1993?

15 A. Yes, that is my conclusion.

16 Q. Why did you conclude that?

17 A. Because I have received the complaint from the --
18 well, the complainant that said that this event happened
19 and at the time that I was there, I could observe that
20 waste had been on both sides of the road, but the road was
21 the highest point and it was dry at that moment. So in
22 order for it to cross the road, there would have had to
23 have been more waste on the south side of the road to flow
24 over the road to the north side.

1 Q. Could it possibly flow under the road at that

2 point?

3 A. Not at that point.

4 Q. Let's move on to the June 15th, 1993 inspection,

5 which, as you recall, has been marked on People's Exhibit

6 A as area C. Is that where you made your June 15th, 1993

7 inspection?

8 A. That was a critical area, yes.

9 Q. And that was pursuant to a complaint of overspray

10 in that area?

11 A. Well, I believe the complaint was general water

12 quality problems, fish kill, odors, and all of that stuff.

13 Q. You testified under direct examination, did you

14 not, that liquid livestock waste moved from respondent's

15 property in the manure application area across the Kay

16 Watkins School Road into a grassy waterway; is that

17 correct?

18 MR. TICE: I am going to object to Counsel

19 characterizing what the witness' testimony was or was not.

20 Counsel is not the witness here. I think Counsel's

21 question -- I would object to the form of the question as

22 being leading in nature, and it calls simply for a yes or

23 a no answer from this witness, and it is improper on

24 direct or redirect examination.

1 HEARING OFFICER KNITTLE: Ms. Peri?

2 MS. PERI: I am simply recapping yesterday's
3 testimony to move this direct along. If we need to walk
4 through all of the direct questions as we did yesterday I
5 will do that.

6 MR. TICE: Well, Counsel can simply ask the question
7 of the witness, what his testimony was in that regard
8 yesterday and see if he recalls it. That is all she needs
9 to ask. Counsel does not need to and cannot testify for
10 the witness. She is not under oath.

11 HEARING OFFICER KNITTLE: Ms. Peri, do you have a
12 final comment?

13 MS. PERI: No.

14 HEARING OFFICER KNITTLE: I am going to sustain the
15 objection and ask you to rephrase the question.

16 MS. PERI: Okay.

17 Q. (By Ms. Peri) During your June 15th, 1993
18 inspection, Mr. Brockamp, what did you observe at area C?

19 A. I observed livestock waste flowing underneath the
20 road through a corrugated metal culvert.

21 Q. What was the direction of flow?

22 A. In a northern direction, downhill.

23 Q. Where did the liquid livestock waste flow to?

24 A. It flowed into the neighbor's grass waterway on

1 the north side of the road.

2 Q. In your opinion, is the grass waterway a water of
3 the State?

4 A. Yes it is.

5 Q. Why?

6 A. Because it meets the definition of waters of the
7 State.

8 Q. How would you characterize the soil north of the
9 Kay Watkins School Road?

10 A. The further north you get the more sandy it would
11 be.

12 Q. Is the soil sandy in the area of the grass
13 waterway?

14 A. Somewhat.

15 Q. Do you have an opinion as to whether liquid
16 livestock waste in the grass waterway could leach into the
17 soil?

18 MR. TICE: Objection. I am not sure that this
19 witness, since he didn't make -- I know there is no proper
20 foundation laid for this witness to testify whether it
21 would at that location have leached into the soil. He has
22 not testified to any inspections he made of the soil at
23 that location at that time. He has not testified to
24 finding or taking samples of the soil to make an

1 investigation as to whether there has been any leaching or
2 not of the livestock waste. His testimony, in fact, has
3 been it went on down the waterway. That is what his
4 direct testimony was.

5 HEARING OFFICER KNITTLE: Ms. Peri?

6 MS. PERI: Mr. Brockamp is qualified to make a
7 decision or form an opinion as to based on his experience
8 whether liquid livestock manure is going to soak into
9 soil. This is integral to his making conclusions as an
10 Illinois EPA inspector as to whether there is a water
11 pollution threat, because part of water pollution is
12 groundwater.

13 HEARING OFFICER KNITTLE: Okay.

14 MS. PERI: If he had a concern about groundwater
15 contamination he is qualified to make an opinion as to
16 whether there was a threat.

17 HEARING OFFICER KNITTLE: The objection is overruled.
18 Please proceed.

19 Q. (By Ms. Peri) In your opinion, Mr. Brockamp, is it
20 possible that liquid livestock manure would soak into the
21 soil at the grassy waterway?

22 A. Yes, it is possible.

23 Q. Let's move on then to the February 9th, 1994
24 inspection. Do you recall your testimony regarding an

1 overflow of lagoon number one?

2 A. Yes, I do.

3 Q. What did you observe on that date with respect to
4 the overflow?

5 A. I observed a relatively small overflow of 10 or 15
6 gallons draining over the embankment, which is a gravel
7 walkway. It was flowing in a northern direction down the
8 sloping hill towards the north through a sow feedlot.

9 Q. Did you see the stream of liquid livestock waste
10 moving across the sow lot?

11 MR. TICE: I am going to object. That is a leading
12 question. He has testified already he saw it going north
13 across the sow lot. This again calls for a yes or a no
14 from the witness. It is leading.

15 HEARING OFFICER KNITTLE: Ms. Peri?

16 MS. PERI: Indeed, he has answered the question. I
17 will move to the next question.

18 Q. (By Ms. Peri) Did you observe a berm anywhere in
19 the sow lot?

20 A. I did not observe a berm, but I didn't look for
21 one either.

22 Q. In your opinion, was a berm present that would
23 prevent the flow of liquid livestock waste that you
24 observed from lagoon number one to the intermittent

1 stream?

2 MR. TICE: Objection. The witness has already said
3 that he did not observe one and he did not look for one.
4 So if he did not look for one and did not notice one, he
5 cannot render an opinion as to whether one existed or not.

6 HEARING OFFICER KNITTLE: Sustained.

7 Q. (By Ms. Peri) You have testified that you observed
8 a stream flowing from lagoon number one toward the
9 intermittent stream?

10 A. Yes.

11 Q. Was there a pooling of the liquid livestock
12 waste --

13 A. No.

14 Q. -- during your observation?

15 A. No, there was no pooling in the intermittent
16 stream.

17 Q. In your opinion, Mr. Brockamp, could Mr. Chalmers
18 have prevented the overflow from lagoon number one?

19 A. Yes.

20 Q. How?

21 A. By transferring it to a different location,
22 different lagoon.

23 Q. By transferring what?

24 A. The livestock waste from lagoon number one into

1 either lagoon number four or lagoon number two or

2 whatever.

3 Q. Yesterday you testified on water quality samples
4 that you have collected from the east side of the concrete
5 bridge at the northwest corner of the property?

6 A. I am sorry. Which date?

7 Q. On several dates; is that correct?

8 A. Yes.

9 Q. Would those dates include July 15th, 1993?

10 A. I did not collect any samples on July 15th, 1993
11 at the bridge.

12 Q. Would it include February 14th, 1994?

13 A. Yes, it would.

14 Q. And February 17th, 1994?

15 A. Yes, it would.

16 Q. Okay.

17 MR. TICE: I am sorry. Which side of the bridge are
18 you talking about now?

19 MS. PERI: I have indicated that this would be the --
20 to the -- I am sorry -- to the west of the concrete bridge
21 located at the northwest corner of the property.

22 Q. (By Ms. Peri) And you testified that analytical
23 results from those samples collected in February of 1994
24 show livestock waste constituents to be present in those

1 samples, correct?

2 A. Yes.

3 Q. What parameters do you look for in determining
4 whether livestock waste constituents are present?

5 A. Primarily ammonia, BOD, and dissolved oxygen.

6 Q. Why do you look for BOD?

7 A. Because it is a parameter which is -- it is
8 inherent with all livestock waste.

9 Q. Is it inherent to all livestock waste application
10 onto crop fields?

11 A. If there was runoff from those crop fields, yes.

12 Q. Under cross-examination yesterday you discussed
13 with Mr. Tice the possibility that some nitrates from land
14 application in the crop fields to the west of Mr.
15 Chalmers' property had potentially leached into the
16 stream -- I am sorry -- nitrogen had leached into the
17 stream from which you sampled?

18 A. Yes, I recall that discussion.

19 Q. You sampled in February of 1994; is that correct?

20 A. That was one of the times, yes.

21 Q. In your opinion, is livestock manure going to be
22 land applied in February of any year?

23 A. Not usually. I mean, it doesn't --

24 Q. Why not?

1 A. Because typically the ground is frozen and that's
2 not an appropriate time to land apply livestock waste
3 because the soils cannot utilize the nutrients that are
4 applied to it, and it causes runoff.

5 Q. When is fertilizer typically applied to crop
6 fields, based on your experience?

7 A. Usually in the fall, but it can be applied in the
8 spring.

9 Q. When does the spring application period begin?

10 A. It certainly depends on the soil moisture
11 conditions, but usually not before mid March.

12 Q. Mr. Brockamp, if there had been some leaching of
13 nitrogen from neighboring crop fields into the stream from
14 which you sampled, what percentage of nitrogen would that
15 contribution constitute in the overall water quality
16 sample result for nitrogen?

17 MR. TICE: I am going to object. There has been no
18 foundational basis for this witness to make such -- draw
19 such a conclusion. He did not test the samples. He did
20 no testing at the time of drawing the samples or even any
21 investigation at the time of drawing those samples to make
22 such a conclusion or test to determine how much may have
23 come from those fields and how much may have come from
24 some other location.

1 His methodology here simply does not account for that
2 possibility. And for him to attempt to draw or render a
3 conclusion or opinion at this point in time is simply
4 asking the witness to make a conjecture about that
5 possibility. I think that it is highly inappropriate.

6 MS. PERI: Yesterday Mr. Tice asked Mr. Brockamp to
7 make that very conjecture, whether leachate could enter
8 the stream. As an agricultural engineer Mr. Brockamp is
9 qualified to make an opinion, just as he did about
10 possible leachate, as to how that contribution may affect
11 water quality samples.

12 MR. TICE: Yes, and his opinion was that it could
13 affect the samples made. And now Counsel is asking this
14 same witness to come back and render an opinion as to what
15 extent the leaching from the fields or potential leaching
16 of ammonia or BOD, or whatever the case may be, from these
17 neighboring fields into this stream where he took the
18 samples affected the sample itself. And that is an
19 impossibility to do unless you have some methodology by
20 which to do that, some parameters that are established and
21 to establish such a test. If you don't do a test then it
22 is simply a guesstimate by this witness as to what that
23 percentage of contamination would be or would not be. And
24 that is the basis of my objection. He is not qualified to

1 do it.

2 HEARING OFFICER KNITTLE: Ms. Peri?

3 MS. PERI: As an agricultural engineer he is
4 qualified to make an opinion based on his experience as to
5 the impact of nitrogen flow through groundwater into a
6 stream.

7 MR. TICE: Mr. Knittle, there has been no foundation
8 laid that this man has conducted any studies whatsoever on
9 the degree of leaching of fertilizers from soils,
10 different types of soils, into stream water, whatever the
11 case may be. That foundation has not been laid.

12 HEARING OFFICER KNITTLE: I am going to rule on this.
13 I am going to overrule your objection. I don't think it
14 is impossible for Mr. Brockamp to make a determination to
15 the extent that the leachate from the fields may have
16 impacted the lab results. However, I think it is
17 permissible for Ms. Peri to ask if he knows. If Mr.
18 Brockamp does not know the extent or if he can't form an
19 opinion, I trust that Mr. Brockamp will not make an
20 opinion.

21 So, Ms. Peri, please proceed.

22 Q. (By Ms. Peri) Mr. Brockamp do you have an opinion
23 as to whether and to what extent leachate flow, a
24 particular nitrogen leachate flow from land application

1 might impact the water quality sample results that you

2 took in February of 1994?

3 A. Yes, I have an opinion.

4 Q. What is your opinion?

5 A. I have -- my opinion is I can't say what

6 percentage of ammonia or nitrogen is caused by leaching,

7 but the level which would be caused by leaching would be,

8 you know, one part per million or less. It would be very

9 small.

10 Q. In your opinion, what accounts for the nitrogen

11 levels that you saw in your water quality sample results?

12 A. The runoff from the livestock farm.

13 Q. Why did you conclude that?

14 A. Again, the visual part of it, the odor part of it,

15 and the other factors, the other constituents within the

16 livestock manure, mainly the BOD.

17 Q. When you collected your water quality samples in

18 February of 1994 did you smell the liquid that you

19 sampled?

20 A. Yes, I did.

21 Q. Did you observe its appearance as you collected

22 it?

23 A. Yes, I did.

24 Q. Please describe what you observed?

1 A. From the 1994 samples?

2 Q. Yes, both February 1994 sampling events?

3 A. They had a slight odor. They had a slight
4 discoloration. It was not as bad as some of the other
5 times I had been out there, but there was an apparent
6 livestock odor and they were discolored.

7 Q. Discolored how?

8 A. They were darker.

9 Q. Is that typical of any running stream in nature?

10 MR. TICE: I am going to object. That is a very,
11 very general statement. Any running stream could
12 encompass anything from Colorado to New York. It is not
13 even restricted to the general location which this man is
14 testifying.

15 MS. PERI: I will withdraw the question.

16 Q. (By Ms. Peri) Mr. Brockamp, is the dark color that
17 you observed during those sampling events consistent with
18 livestock waste?

19 A. Yes, it is.

20 Q. You have lived on a hog farm, correct?

21 A. Yes, ma'am.

22 Q. You have inspected about 700 swine facilities in
23 your time with the Illinois EPA; is that correct?

24 A. No, 700 livestock farms.

1 Q. It is 700 livestock farms?

2 A. Yes.

3 Q. A portion of those were swine facilities?

4 A. A majority of those were.

5 Q. Okay. In making a determination about the

6 presence of liquid livestock waste do you need to step in

7 it?

8 A. No, I do not.

9 Q. Do you need to put your finger in it?

10 A. No, I do not.

11 Q. Okay. What is the difference between a lagoon and

12 a holding pond?

13 A. It has to do with the definitions. A lagoon is a

14 waste treatment system where there is bacterial action

15 working. The bacteria will breakdown the solids into

16 liquids and gases and it actually is a treatment system.

17 A holding pond is essentially an earthen basin which

18 simply stores waste without any significant treatment.

19 Q. During your initial inspection of the Chalmers'

20 hog farm did you make a conclusion as to whether there

21 were holding ponds on this property?

22 A. Yes, I did.

23 Q. Did you --

24 MR. TICE: Again I am going to object to any opinion

1 of this witness as to whether the items marked on People's
2 Exhibit A, the lagoons one, two and three, are lagoons or
3 holding ponds because the witness did not testify -- or
4 did testify that he made no inspections of them or no
5 investigation as to whether or not any anaerobic activity
6 was occurring in those bodies of water at the time he
7 inspected them or at any time during the course of these
8 events.

9 HEARING OFFICER KNITTLE: Ms. Peri?

10 MS. PERI: I believe Mr. Brockamp did make an opinion
11 yesterday during his testimony as to whether there was
12 biological activity in those structures.

13 HEARING OFFICER KNITTLE: Okay. I will overrule the
14 objection.

15 You can proceed, Ms. Peri.

16 Q. (By Ms. Peri) Mr. Brockamp, did you form an
17 opinion during any of your inspections of Mr. Chalmers'
18 property as to whether there was biological activity in
19 the livestock containment structures located on the
20 property?

21 A. Yes.

22 Q. What was your opinion?

23 A. My opinion is that there was only a very, very
24 small amount of biological activity in holding ponds one,

1 two and three, and not enough to classify them as a
2 lagoon.

3 Q. Okay. In your opinion, was there more biological
4 activity in numbers one, two and three at any time prior
5 to that?

6 MR. TICE: Prior to -- I am going to object.

7 MS. PERI: Prior to your inspection.

8 MR. TICE: Again, I am going to object unless there
9 is some foundation laid for this witness to know what
10 occurred prior to his inspections.

11 HEARING OFFICER KNITTLE: Ms. Peri?

12 MS. PERI: I am going to ask that Mr. Brockamp call
13 on his experience in making that conclusion. If he is not
14 in a position to make a conclusion or form an opinion I
15 would suspect he would tell me so.

16 HEARING OFFICER KNITTLE: I am going to overrule the
17 objection. Any arguments you have, Mr. Tice, can be made
18 to the weight of Mr. Brockamp's testimony.

19 THE WITNESS: I have an opinion, but I don't know any
20 facts.

21 Q. (By Ms. Peri) What is your opinion?

22 A. My opinion is that when they were initially put
23 into use or into practice that they probably were lagoons,
24 but I don't know that.

1 Q. Mr. Brockamp, are there any hog farms to your
2 knowledge to the east or southeast of Mr. Chalmers'
3 property? And I am speaking specifically with reference
4 to any adjoining properties.

5 A. There is a fairly close hog farm to the northeast.

6 Q. To the northeast?

7 A. Across the Kay Watkins School Road.

8 MS. PERI: Okay. Thank you. No more questions.

9 HEARING OFFICER KNITTLE: Mr. Tice, do you have any
10 re-cross?

11 MR. TICE: Yes, I do.

12 RE-CROSS EXAMINATION

13 BY MR. TICE:

14 Q. Mr. Brockamp, you indicated in your redirect that
15 any body of water that flows through or exists within the
16 State of Illinois could be considered a water of the
17 State; is that correct?

18 A. There is an exception.

19 Q. What is the exception?

20 A. Any waste sewers or any type of intended waste
21 treatment system, like a lagoon or a holding pond.

22 Lagoons and holding ponds are not considered waters of the
23 State.

24 Q. It only has to have a flow? How often does this

1 area have to have water in it during the course of a
2 calendar year to be considered, in your opinion, a water
3 of the State?

4 A. If water accumulates within an impoundment or
5 within a waterway at any time it can become a water of the
6 State.

7 Q. If you have a low spot in your yard and water
8 accumulates at any time in that, that's a water of the
9 State?

10 A. I guess if I have a low spot and water accumulates
11 within my yard, I suppose it could be considered a water
12 of the State.

13 Q. Well, you are the expert here. Is it a water of
14 the State?

15 A. Yes.

16 Q. Even though it never leaves your property; is that
17 correct?

18 A. Well, it has to go somewhere so it either
19 evaporates or soaks into the soil. The definition of
20 water of the State includes groundwater.

21 Q. This is a definition that you have derived at
22 simply from the regulations propounded by the Illinois
23 Environmental Protection Agency; isn't that correct?

24 A. The definition of water of the State is within

1 Subtitle C which is a Pollution Control Board regulation.

2 Q. From those regulations, is that where you are

3 getting that definition?

4 A. Yes.

5 Q. You are not getting this definition from any

6 particular study that you have made of what constitutes a

7 water of the State?

8 A. No, sir, I am not.

9 Q. You are drawing it strictly from the regulations?

10 A. From the definition, yes.

11 Q. That appears in the regulations?

12 A. Yes.

13 Q. You were taken back to your inspection of May 2nd,

14 or May 11th -- excuse me -- of 1992, in your redirect.

15 And you were shown Exhibit C, People's Exhibit C, which

16 consists of two photographs?

17 A. Yes.

18 Q. If I understand your testimony correctly on

19 redirect, that all three bodies of water appear on Mr.

20 Chalmers' property?

21 A. The two in the top photo are on Mr. Chalmers'

22 property. The one on the bottom photo is the neighbor's

23 property to the west.

24 Q. Okay. So only two bodies of those waters that

1 appear in Exhibit C in those two photographs is on Mr.

2 Chalmers' property, then; is that correct?

3 A. That's correct.

4 Q. Now, this -- these bodies of water that you are

5 talking about that are shown in these pictures, People

6 Exhibit C, both pictures, are waters that come from this

7 watershed that you talked about yesterday?

8 A. Yes, the intermittent stream which flows through a

9 majority of his property.

10 Q. Okay. Some of that water comes from other

11 locations other than on Mr. Chalmers' farm, doesn't it?

12 A. Yes, it does.

13 Q. Okay. And it comes from neighbor's fields,

14 doesn't it?

15 A. Yes, I estimated about 45 acres.

16 Q. How much?

17 A. About 45 acres.

18 Q. And you told me yesterday that was cropped?

19 A. I --

20 Q. Crop land?

21 A. I think it is, yes.

22 Q. Okay. Based on your conclusions, it was cropped

23 in corn and soybeans; is that correct?

24 A. Yes.

1 Q. And was subject to fertilizer application by the
2 neighbors?

3 A. I don't know that, but I am sure it has been, yes.

4 Q. You didn't bother to check that, then?

5 A. No, I did not.

6 Q. Okay. Have you read any studies, Mr. Brockamp, in
7 the course of your experience with the EPA about leaching
8 of fertilizer from fields?

9 A. No, I have not.

10 Q. You indicated in your redirect that only one
11 percent of the ammonia or BOD that you found in the waters
12 that are west of the Kay Watkins bridge would have been
13 subject to or coming from the leaching of the neighbor's
14 field; is that correct?

15 MS. PERI: I will object. I believe Mr. Brockamp
16 said that he couldn't indicate a percentage.

17 MR. TICE: I think he testified one percent.

18 HEARING OFFICER KNITTLE: I will sustain the
19 objection. I don't think he testified to a percentage
20 either, but you could ask Mr. Brockamp if he quantified to
21 find out. But I will sustain her objection. I don't
22 think that is his testimony.

23 MR. TICE: All right.

24 Q. (By Mr. Tice) Mr. Brockamp, isn't it common for

1 manure to be applied during the early, very early spring

2 months --

3 A. Yes.

4 Q. -- in fields?

5 A. Yes.

6 Q. And isn't it also common if a farmer has livestock

7 and he spreads that fertilizer on his field that he will

8 do that during the winter months even, in January and

9 February, if the soil conditions are such that he can do

10 that, get on the field?

11 A. I don't think common is a proper term, but it is a

12 known practice and it has happened, yes.

13 Q. And it is done during that time of year because it

14 makes for better management or utilization of labor,

15 doesn't it, it spreads the labor out?

16 A. Yes. That is usually the slower time of the year

17 for farmers.

18 Q. All right. And most farmers if they have the

19 opportunity to do it will spread fertilizer, particularly

20 manure at that time on their fields, won't they?

21 A. It is not the best management practice, but you

22 are correct that a lot of farmers will do it that way.

23 Q. And if, in fact, manure is spread on the surface

24 of that soil and it does not work its way into the soil

1 until the field is worked later in the spring that manure
2 can wash off the surface with any kind of moisture or
3 rain, can't it?

4 A. That's why it is not the best management practice.

5 Q. But that can happen, doesn't it?

6 A. That can happen.

7 Q. If it is washed to a stream, it will be in that
8 stream, won't it?

9 A. Yes, probably.

10 Q. And that will be BOD and nitrogen and whatever
11 else, won't it, that is the content of the particular
12 manure that was spread?

13 A. I am sure there will be.

14 Q. All right. Now, did you make any investigation
15 prior to or after you took these tests of the waters west
16 of the Kay Watkins bridge on February 14th and February
17 17th of 1993, I think it was, or 1994 -- yes, 1994, about
18 whether -- or who was the owner of the land to the west of
19 the Kay Watkins bridge?

20 A. Could you ask the question again?

21 Q. Did you make any inspection as to who the owner of
22 the land was west of the Kay Watkins bridge?

23 A. No.

24 Q. But you knew how to do that, didn't you?

1 A. Yes, I did.

2 Q. Did you make any attempt to inspect those fields
3 west of the Kay Watkins bridge to determine if any
4 fertilizer had been applied?

5 A. I visually observed right along the intermittent
6 stream right through there.

7 Q. Within five feet of the stream, just where you
8 walked?

9 A. I would say at least 100 feet of the stream, both
10 sides.

11 Q. Did you go any further into the field?

12 A. No.

13 Q. Did you actually walk the 100 feet both sides of
14 that ditch?

15 A. No. My eyesight is good enough to see 100 feet
16 up.

17 Q. Was there residue on there, on the field?

18 A. None that I observed.

19 Q. All right. Did you make any inspection beyond
20 that distance of the ditch?

21 A. No.

22 Q. Okay. So you really don't know for certain the
23 time you took those samples whether or not the farmer who
24 was the owner of those fields and farms those fields that

1 lay adjacent to the ditch waterway west of the Kay Watkins
2 bridge on February 14th and February 17th of 1994 had, in
3 fact, applied manure of any type to those fields?

4 A. When I conducted my inspection on those dates I
5 did not observe any flow or any residual within the fields
6 or any flow into the stream.

7 Q. But you only inspected you said 100 feet either
8 side of the ditch?

9 A. I didn't inspect that much. I visually looked at
10 that much.

11 Q. How wide is that field in there? How big is the
12 field?

13 A. Oh, it goes a couple thousand feet.

14 Q. Either side of the waterway, doesn't it?

15 A. Well, to the north. There is a tree line or there
16 is some other vegetation to the south.

17 Q. How far does it go to the south?

18 A. I don't recall

19 Q. Okay. Does it go a quarter of a mile?

20 A. No.

21 Q. Does it go an eighth of a mile?

22 A. Approximately, maybe.

23 Q. Okay. And you couldn't see all of that, could
24 you?

1 A. I really don't recall how far I could see on the
2 south.

3 Q. All right. So it is a possibility that you did
4 not check out that there could have been manure spread or
5 located on the surface of that field that may have leached
6 into or washed into that stream and affected the samples
7 that you took on those days?

8 A. I can say that I -- there was nothing washing into
9 the stream at the sample locations. You know, we
10 discussed yesterday about the potential possibility of
11 leaching and, you know, I suppose that that is a
12 possibility, but there is nothing washing into the stream
13 where I collected my samples.

14 Q. It does not have to be washing right beside you to
15 collect your sample, does it?

16 A. Well, when we are talking -- well, there is no
17 distance there. I mean, if I collect my sample at this
18 time, you know, there is like a leeway of five minutes or
19 less that the water goes on.

20 Q. Well, Mr. Brockamp, did you notice any livestock
21 waste in the stream at that location in the waterway?

22 A. Yes.

23 Q. Okay. And so that was there, that was deposited
24 at some point in time, wasn't it?

1 A. No, it was flowing -- my opinion is that it was
2 flowing from the Chalmers' property.

3 Q. It was moving?

4 A. Yes.

5 Q. Was it sitting on the bottom of the waterway?

6 A. No, it was within the waterway.

7 Q. What about solid waste? Was there solid waste
8 there?

9 A. I did not detect any solid waste on the February
10 dates.

11 Q. You are talking about nothing but liquid waste?

12 A. On the February dates, that is correct.

13 Q. Did you ever observe any solid waste in that
14 waterway west of the Kay Watkins bridge at any time on any
15 of your inspections?

16 A. I would have to say on the July 24th or 26th, 1994
17 I saw some.

18 Q. Okay. Were there crops growing in the field at
19 that time?

20 A. Yes.

21 Q. You talked about the lagoons that were on Mr.
22 Chalmers' property and you rendered your opinion, Mr.
23 Brockamp, that they were holding ponds, that is one, two
24 and three are holding?

1 A. Yes, at the time of my inspection.

2 Q. Which inspections are you talking about?

3 A. Well, any that I was out at the farm.

4 Q. You mean as of May 11th, 1992 thereafter?

5 A. Yes.

6 Q. Now, to be a lagoon there has to be some anaerobic

7 activity, doesn't there?

8 A. They could be aerobic lagoons, but most likely --

9 Q. Aerobic, anaerobic, whatever the case may be?

10 A. Yes, sure.

11 Q. There is a way of checking for that, isn't there,

12 to see if that activity is going on?

13 A. You mean by tests or by visual --

14 Q. Tests of the water?

15 A. There are studies currently going on at various

16 universities that are trying to make that determination.

17 I don't think that there is a current test which has been

18 known or shown, you know, what is a lagoon or what is not

19 a lagoon.

20 Q. There are tests that you can perform upon the

21 waters from that particular lagoon or holding pond to

22 determine whether or not there is any bacterial activity

23 ongoing disposing of the waste?

24 A. There are tests to sample, I suppose, those

1 lagoons to determine if there is bacteria present and then
2 at what level that they would be breaking down the solids.

3 Q. And you know about those as an inspector at the
4 IEPA?

5 A. I am somewhat familiar with them.

6 Q. All right. Did you make any of those tests with
7 respect to either one, two or three of those bodies of
8 water?

9 A. No, sir, I did not.

10 Q. Okay. Those tests would be a more accurate way of
11 determining whether or not there was any bacterial
12 degrading activity going on in either of those bodies of
13 water one, two and three, wouldn't they?

14 A. It would help, yes.

15 Q. They would be more accurate than your visual
16 observations of the same?

17 A. I suppose so.

18 Q. In fact, they would be fairly conclusive, wouldn't
19 they?

20 A. It would be hard to argue.

21 Q. Now, you were asked on redirect about your
22 inspection on May 6th, 1993 on the Chalmers' farm?

23 A. I am sorry? Which date?

24 Q. Pardon?

1 A. Which date?

2 Q. May 6, 1993?

3 A. Okay.

4 Q. I want you to look at the photographs you took on

5 those dates, at People's Exhibit D. I want you to look at

6 photo three. If you look at the road ditches, Mr.

7 Brockamp, as you testified yesterday, that is heavy

8 vegetation, 12 to 15 inches high, on those road ditches,

9 the sides of that road; isn't that correct?

10 A. Yes.

11 Q. All right. Did you -- you said there was livestock

12 waste in those roadway ditches, or in the side of the road

13 there when you inspected on May 6th, 1993?

14 A. In the top photo there was some waste still in the

15 ditch, but you cannot see in this photo. I don't recall.

16 I think probably everything had left or evaporated or

17 something into the soil from the north side of the road.

18 Q. When you were there on the 6th?

19 A. That's correct.

20 Q. All right. Now, how did you determine that there

21 was waste on the south side of the road in that

22 vegetation?

23 A. Because it had moved on into the --

24 Q. On the south side of the road how did you

1 determine there was waste on the south side of the road in
2 that vegetation?

3 A. You can see it over here. This photo does not
4 show it.

5 Q. You mean the photograph shows it?

6 A. No, the photograph does not show it.

7 Q. All right. So we cannot see it looking at the
8 photograph; is that correct?

9 A. That's correct.

10 Q. You are saying you saw it?

11 A. I am saying I saw it.

12 Q. All right. How big an area did you see?

13 A. It was a small area, maybe ten feet long, a foot
14 wide.

15 Q. How close to the fence line was it?

16 A. Ten feet away approximately.

17 Q. So it would be maybe a half of the distance
18 between the fence line and the south side of the surface
19 of that roadway?

20 A. That would be a good estimate, yes.

21 Q. You said it was about ten foot long?

22 A. Yes.

23 Q. Was it solidly, did it cover the ground solidly?

24 A. It was only about an inch deep. It was very

1 shallow.

2 Q. Did you walk in it?

3 A. No.

4 Q. Did you measure it?

5 A. No.

6 Q. Now, you indicated that you don't have to stick

7 your finger in it, you don't have to walk in it to

8 determine whether or not it is livestock waste. Mr.

9 Brockamp, could it have been water?

10 A. There was some water in it, but there was also

11 livestock waste.

12 Q. Could it have been muddy water?

13 A. No.

14 Q. Could it have been washoff from the neighboring

15 field with sediment?

16 A. Yes, it was washed off from the neighboring field.

17 Q. Could it have been sediment washed off from the

18 neighboring field?

19 A. There could have been sediment within it.

20 Q. All right. That would affect the coloration of

21 it, wouldn't it?

22 A. It would make it darker.

23 Q. So, tell me, Mr. Brockamp, how do you really

24 determine how much of that water was sediment and how much

1 was hog manure or manure of some type?

2 A. I relied on my nose and then the waste, which were
3 still in the alfalfa field, and the waste which had
4 crossed over the road and to the north side.

5 Q. So you drew some conclusions that because you say
6 that there are wastes on the north side of the road that
7 there had to be waste on the south side of the road; is
8 that correct?

9 A. I suppose so.

10 Q. All right. And then you say you could smell an
11 odor from manure?

12 A. Yes.

13 Q. Okay. Could that have been coming from some other
14 location?

15 A. Not in my opinion.

16 Q. Could it have been?

17 A. (The witness shrugging shoulders.)

18 MS. PERI: He has answered the question. I object
19 here.

20 MR. TICE: I have every right to ask him if it could
21 have been.

22 HEARING OFFICER KNITTLE: Yes, I will overrule the
23 objection.

24 Mr. Brockamp, if you can answer the question, you

1 have to. I am directing you to do so.

2 THE WITNESS: Could you rephrase it?

3 Q. (By Mr. Tice) Could that odor have been coming
4 from some other location?

5 A. I suppose it is possible.

6 Q. Okay. So without really taking a sample of that
7 particular water at that location or that liquid at that
8 location, you really have no definitive way of saying that
9 the water that you saw approximately ten foot in length
10 and approximately ten foot away from the side of the road,
11 the south side of the road was, in fact, hog manure, do
12 you?

13 A. Based on my experiences both growing up on a hog
14 farm and my tenure with the Illinois Environmental
15 Protection Agency it is my opinion that that was hog
16 manure.

17 Q. But you would have been more exact with your
18 inspection if you had taken a sample of water and had that
19 checked?

20 A. That would certainly validate my opinion.

21 Q. But you really saw no need to do that, did you?

22 A. No, I did not.

23 Q. Again, at that time you considered this -- what
24 you considered to be a violation to be a minor infraction,

1 didn't you?

2 A. I believe that's what I wrote in the field report.

3 Q. If I recall correctly yesterday you told me that

4 you did not check to see if there had been any heavy

5 rainfall in this area prior to your -- just prior to your

6 inspection?

7 A. No, I did not.

8 Q. I want you to look at your photos in People's

9 Exhibit D, photo one, which is a picture of the alfalfa

10 field right to the south of the location that you have

11 been talking about in photographs three?

12 A. Yes.

13 Q. Okay. That is a heavy growth of alfalfa, isn't

14 it?

15 A. It appears to be, yes.

16 Q. All right. What is the affect, if you know, of

17 irrigation of hog waste upon a heavy growth of alfalfa of

18 that size and maturity?

19 A. It would probably damage it.

20 Q. You didn't see any damaged alfalfa there, did you?

21 A. Not on that date.

22 Q. You didn't see any evidence, based on your

23 opinions as an expert here or as a farm boy, that there

24 was any damage to that alfalfa in that field, was there?

1 A. I believe I just answered that, yes, there was no
2 damage.

3 Q. All right. So wouldn't that lead to the
4 conclusion, Mr. Brockamp, that, in fact, there had not
5 been any hog manure irrigated upon that field directly to
6 the south of this location on the Kay Watkins Road that
7 you testified about?

8 A. No.

9 Q. Well, it was not damaged.

10 A. That does not mean that there was not livestock
11 waste there.

12 Q. But you just told me that livestock waste could
13 damage that type of alfalfa.

14 A. It could.

15 Q. So wouldn't it lead to that type -- couldn't it
16 lead to that type of conclusion, also, that there was no
17 irrigation of hog waste upon that alfalfa field at or
18 about the time of your inspection on May 6th, 1993?

19 A. Well, I believe I have also testified that I spoke
20 with the farm manager on that date and he confirmed that
21 there had been livestock waste irrigated onto that alfalfa
22 field.

23 Q. Could it not have led to that conclusion that I
24 just asked you, is that a possible conclusion?

1 A. Based on other information, no.

2 Q. Based on the information that I proposed to you.

3 A. I don't know if that's a valid question. I can't
4 say that.

5 Q. You don't know, then, whether that would be the
6 appropriate conclusion?

7 MS. PERI: I object. This is bordering on
8 harassment. It has been asked and answered to the best of
9 his ability.

10 MR. TICE: I think I have the right to ask this man,
11 who has been portrayed by the State as an expert in this
12 area. He said that alfalfa could be damaged by the
13 irrigating of hog manure on it. He indicated there is no
14 damage to this alfalfa field on this particular date in
15 question. And I think I have the right to ask him if that
16 would not lead fairly to a conclusion that no irrigation
17 of hog waste had occurred at that time.

18 HEARING OFFICER KNITTLE: In a hypothetical
19 situation, Mr. Tice?

20 MR. TICE: Yes.

21 MS. PERI: How does that have any relevancy in this
22 case where Mr. Brockamp had spoken with the site manager
23 at the site and received other information and formed a
24 conclusion based on the realities of that visit and rather

1 than on a hypothetical.

2 MR. TICE: It goes to the credibility of this

3 witness' original conclusion.

4 HEARING OFFICER KNITTLE: How so, Mr. Tice?

5 MR. TICE: Because he has drawn one conclusion

6 without taking any specific inspections or tests of the

7 water which he claims came from this field that he found

8 along the side of the road, and based upon his smell and

9 his experience as an investigator and as a farm raised

10 person, that that is hog manure, and I think -- he didn't

11 make any inspections of it, so I think I have the right to

12 ask him then if, in fact, he could not come to the same

13 conclusion that the alfalfa, which was not damaged,

14 therefore, had not been irrigated with hog waste at that

15 time and date. It seems to be a fair question to ask him

16 if that could not be a conclusion that could be reached.

17 HEARING OFFICER KNITTLE: Ms. Peri?

18 MS. PERI: It is a hypothetical that does not have

19 any bearing and it is not reality based. I don't

20 understand the relevancy of that line of questioning.

21 MR. TICE: The relevancy is, Mr. Knittle, that this

22 man has drawn a conclusion based upon his observations at

23 the site, and only based upon his observations at the

24 site. In addition to those, he observed that the alfalfa

1 was full growth and mature and in a very healthy condition
2 and not damaged. He has also made the -- given the
3 statement that alfalfa which had been irrigated or would
4 be irrigated of that size and maturity by hog manure would
5 be damaged by the hog manure.

6 MS. PERI: I believe that Mr. Brockamp testified that
7 it could be damaged.

8 MR. TICE: If I may finish my statement. Would be
9 damaged by that hog manure. Therefore, I think I have the
10 right to ask him that if that were then taken into
11 consideration whether or not an opposite conclusion could
12 be reached as to the nature of the water that he observed
13 on the south side of this road and the north side of this
14 particular field was not, in fact, hog manure but water.

15 HEARING OFFICER KNITTLE: Ms. Peri?

16 MS. PERI: I have recorded my objection, I believe.
17 The hypothetical has no relevancy here, and I will end my
18 comments there.

19 HEARING OFFICER KNITTLE: I am going to overrule your
20 objection and allow him to answer the question.

21 If you can answer the question, Mr. Brockamp, please
22 do.

23 And, Ms. Peri, if there is relevancy objections to
24 this question I would address them in your post hearing

1 brief.

2 Q. (By Mr. Tice) Mr. Brockamp, now, you have told us
3 that alfalfa of this size and maturity that is reflected
4 by your picture in People's Exhibit D, the picture one,
5 could be damaged by irrigation of hog waste on it and that
6 you have also testified that, in fact, that alfalfa did
7 not appear damaged to you on May 6th, 1993, but appeared
8 to be perfectly healthy. Could that not lead to the
9 conclusion that there had not been alfalfa (sic) waste
10 irrigated on that particular field at or near the time of
11 your inspection on May 6th of 1993?

12 A. No, I cannot come to that conclusion because, as I
13 said yesterday, it was my opinion that the wastes were
14 applied approximately 24 hours before my visit. And if
15 that was the case there would be no damaged observed at
16 this time of my inspection. It would take approximately a
17 week before the alfalfa would show stress or any signs of
18 damage.

19 Q. And you are basing the fact that that field was
20 irrigated within 24 hours of your inspection upon what,
21 sir?

22 A. The complainant's phone call.

23 Q. The complainant, and who is that?

24 A. I believe it was Linda Brown.

1 Q. Do you know the location at which that occurred,
2 that supposedly irrigation that the complainant complained
3 about?

4 A. I believe I have testified that it was
5 approximately a quarter mile from the bridge on Kay
6 Watkins School Road.

7 Q. If the irrigation had not occurred at that
8 location, would you still have drawn that same conclusion?

9 A. Could you ask that again?

10 Q. If that irrigation had not occurred at that
11 location, would you still have drawn the same conclusion
12 that the water that you noticed south of the field or
13 north of the field and south of the road was livestock
14 waste?

15 A. If the irrigation had not occurred at that
16 location at that time, there would be no damage to the
17 alfalfa and I wouldn't expect there to be any problem. I
18 probably would not have visited the farm.

19 Q. Well, you did visit the farm.

20 A. Because the situation which you just laid out for
21 me was a hypothetical.

22 Q. I am asking you now, Mr. Brockamp, that if, in
23 fact, the information that you had received that you now
24 say that you received about irrigation at this particular

1 location, had not occurred at this location, and this is
2 where you found the water, would you have drawn the same
3 conclusion that the water that you saw between the north
4 fence line of this field and the south side of the road in
5 the ditch area was hog waste?

6 A. I have no idea what kind of conclusion I would
7 have drawn based on that information.

8 Q. Now, on June 15th, 1993 you were asked your
9 opinion about whether or not the water that flowed under
10 the road at the location of C on People's Exhibit A would
11 have leached into the ground in the waterway. Do you
12 remember that?

13 A. I believe I said it was a possibility, yes.

14 Q. Now, you told us yesterday that you looked and saw
15 this water at a point of approximately I think it was 20
16 feet north of the roadway?

17 A. Uh-huh.

18 Q. Was that 20 feet north of the north edge of the
19 road surface or of the ditch?

20 A. I said approximately, so I don't know if it really
21 matters; 20 feet, 22 feet, 18 feet.

22 Q. Seven feet?

23 A. No.

24 Q. No what?

1 A. I think it would be 20 feet, plus or minus two
2 feet.

3 Q. From where?

4 A. From the edge of the road.

5 Q. The edge of the surface of the road?

6 A. Sure.

7 Q. You didn't measure it; is that correct?

8 A. No, I did not measure it.

9 Q. You didn't step it off?

10 A. No.

11 Q. You didn't walk to the end of it?

12 A. No, I did not.

13 Q. Did you take any soil samples at that location?

14 A. No.

15 Q. How did you determine that, in fact, the waterway
16 at that location was sandy?

17 A. You can tell it by looking at it.

18 Q. Well, if you didn't walk out to it where the water
19 disappeared how do you know what it was, sir?

20 A. I have walked into that field, not on this
21 particular occasion.

22 Q. On that waterway?

23 A. In the field. The grass waterway is in the field.

24 Q. Where in the field did you walk to on prior

1 occasions? Let me show you the picture. Where in the
2 field, Mr. Brockamp, had you walked to on prior occasions?

3 A. Do you want me to show you?

4 Q. Yes.

5 (The witness approached the exhibit.)

6 A. I walked basically in the dry areas through here,
7 and in dry areas through here, and I walked in dry areas
8 through here (indicating). I never once stepped in the
9 hog manure and never once --

10 HEARING OFFICER KNITTLE: Mr. Brockamp, I want to
11 make sure this is clear for the record. You are pointing
12 to an area north of Kay Watkins School Road first just to
13 the left of C.

14 THE WITNESS: Yes.

15 HEARING OFFICER KNITTLE: And then where was the
16 second area?

17 THE WITNESS: And I walked in dry areas through here
18 (indicating).

19 HEARING OFFICER KNITTLE: Which is to the right of
20 those little red circles.

21 THE WITNESS: And also near the bridge.

22 HEARING OFFICER KNITTLE: Okay.

23 Q. (By Mr. Tice) Now, when you walked -- let's take
24 the last one. You walked near the bridge. That was to

1 the west of the Chalmers farm; is that correct?

2 A. To collect my samples, yes.

3 Q. And that was just along the ditch, is that

4 correct, or the waterway?

5 A. Yes.

6 Q. Okay. About 10 to 15 feet --

7 A. Yes.

8 Q. -- either side of it; is that correct?

9 A. Approximately, sure.

10 Q. All right. You didn't really get out in any of

11 the cropping land, did you?

12 A. No more than 10 or 15 feet.

13 Q. Were you into the crops or into the corn or

14 soybeans?

15 A. I probably was on the July inspection.

16 Q. Then the other place where you said you walked

17 into the field was the area of your May 6th, 1993

18 inspection, the red circles?

19 A. In that area. Not on that date.

20 Q. When did you do it?

21 A. I don't recall.

22 Q. What year?

23 A. Between 1992 and 1994.

24 Q. Okay. How far in the field did you walk?

1 A. Ten or fifteen feet.

2 Q. Those areas are, what, a quarter of a mile west of
3 the waterway in question on June 15th, 1993?

4 A. Well, this one would be.

5 Q. Which one?

6 A. This would be a little bit less and this would be
7 a little bit more (indicating).

8 Q. From where?

9 A. From where you just asked, from the bridge, from
10 the corner.

11 Q. From the bridge to the red circles on the Kay
12 Watkins Road is how far?

13 A. A little less than a quarter of a mile.

14 Q. Okay. How far are the red circles, then, from C
15 that is marked on Exhibit A, which is the waterway that
16 you inspected on June 15th, 1993?

17 A. Approximately another quarter of a mile.

18 Q. Now, where is the third place that you walked into
19 this field besides the one by the Kay Watkins bridge, the
20 one by the red circles that are listed on -- shown on
21 Exhibit A by the Kay Watkins Road, where is the third area
22 that you walked?

23 A. I walked about ten feet into the field right here
24 (indicating).

1 Q. About how far west of the waterway was that?

2 A. Ten feet.

3 Q. Was it outside of the waterway?

4 A. Outside of the waterway.

5 Q. Was it into the bare soil?

6 A. Yes.

7 Q. And that soil was sandy at that location, is that

8 what you are saying?

9 A. Sandy is a subjective term but, yes, it was more

10 sandy than most soils.

11 Q. You can sit down now if you want.

12 A. Okay. Thank you.

13 Q. Do you know the soil type?

14 A. No, I do not.

15 Q. Did you take a sample of the soil at that time?

16 A. No, I did not.

17 Q. Now, on June 15th, 1993, when you went -- when you

18 saw this water flowing into the neighbor's field in this

19 waterway north at the location of C on Exhibit A, did you

20 take a soil sample within the waterway where you saw the

21 water end?

22 A. No, I did not.

23 Q. Okay. I take it that you also did not dig down

24 into the soil at that location to see if there was any

1 leaching of water through the soil?

2 A. No, I did not.

3 Q. Okay. Have you ever done any tests in your
4 experience, Mr. Brockamp, concerning the leaching of water
5 through soils of various types?

6 A. What do you mean by tests?

7 Q. Tests to determine the extent to which it will
8 leach or will not leach?

9 A. To that extent just soil collection, soil sample
10 collection.

11 Q. Soil sample collection from where?

12 A. I would say exclusively from agchem facilities.

13 Q. From what?

14 A. Agrichemical facilities. That was the other part
15 of my job.

16 Q. Okay. And agrichemical facilities would be places
17 where they would manufacture ag chemicals and fertilizers?

18 A. Yes. I have also collected samples from like
19 spill sites and that type of thing, but predominantly from
20 commercial agrichemical facilities.

21 Q. So there would have been a method for you to have
22 determined on June 15th, 1993, at the location where you
23 saw this water disperse or end in the neighbor's waterway
24 north of point C on Exhibit A to determine if, in fact,

1 there had been leaching of this water into the soil at

2 that point, wouldn't there?

3 A. I am not aware of any method.

4 Q. You could take a soil sample, couldn't you?

5 A. And that would determine what the soil structure

6 is like, but that would not determine if there was

7 leaching.

8 Q. And you could then determine whether there was a

9 possibility of leaching, couldn't you?

10 A. That would certainly aid in that discussion.

11 Q. But you saw no need to do that, did you?

12 A. No, I did not.

13 Q. Again, you were not that concerned about leaching

14 of the water at that location?

15 A. I suppose not. I saw it drained along the

16 surface.

17 Q. And you just were not concerned about whether it

18 would leach into the soil and cause a problem, were you?

19 A. That is not a typical function that I do.

20 Q. If you were concerned about it you would have seen

21 to it that there was some sort of test made at that point

22 in time to determine if, in fact, leaching was occurring

23 and to minimize the harm or do something about any

24 potential harm, wouldn't you?

1 A. Well, in my ten years of working for the Illinois
2 EPA I never once did that at a livestock farm.

3 Q. Again, because you don't see any real harm from
4 it?

5 A. No. Because it doesn't show very much. It does
6 not have any weight.

7 Q. What do you mean, it does not have any weight?

8 A. It does not -- you can collect a soil sample and
9 have it analyzed to determine how much sand, silt and
10 other clay particles are within the soil, but that does
11 not tell you if you have groundwater contamination or not.

12 Q. How do you tell if you have ground contamination?

13 A. You would have to bore a well and collect a water
14 sample.

15 Q. You didn't really think that was occurring here or
16 was necessary here, did you?

17 A. No.

18 Q. All right. So you were not concerned about
19 groundwater contamination at the point where you saw that
20 water disappear in the grass waterway, were you?

21 A. Not on that one particular date.

22 Q. All right. Were you at any time on any of your
23 inspections concerned about groundwater contamination?

24 A. Yes.

1 Q. When?

2 A. Well, when we -- well, towards the latter part of
3 my inspections, particularly after -- well, Mr. Chalmers
4 had informed me that he had not ever irrigated or applied
5 any waste after I believe it was July of 1993, and he had
6 hogs on the farm until December of -- November of 1996, so
7 there was at least three years there of active livestock
8 production, yet he never once land applied any manure.

9 Q. But he had adequate storage capacity?

10 A. Not three years' worth.

11 Q. You had rendered the opinion yesterday that he had
12 adequate storage capacity, Mr. Brockamp.

13 A. Yes, we require 120 days worth. He had 120 days
14 worth.

15 Q. He had that adequacy, right? He met that adequacy
16 requirement?

17 A. He has at least 120 days worth of storage
18 capacity.

19 Q. Or more?

20 A. Or more.

21 Q. That depends on the population of hogs, doesn't
22 it?

23 A. That has a lot to do with it.

24 Q. And did you ever make a determination as to what

1 his population of hogs were during the latter part of your
2 investigations when you say you had this concern?

3 A. Only what he would offer. We had no real reason
4 to dispute. I never once asked to count the animals.

5 Q. Did you then recommend that there be some kind of
6 groundwater monitoring at his site if you were concerned?

7 A. Those issues certainly came up in our discussions
8 at the Agency.

9 Q. Did you ever make that recommendation to Mr.
10 Chalmers?

11 A. No, I don't think we ever did.

12 Q. He was not required to do that, was he?

13 A. No, he was not.

14 Q. If he was not required to do that then the Agency
15 was really not that concerned about it, were they?

16 A. No, I wouldn't say that.

17 Q. Well, if you were concerned about it you would
18 have asked him to do it, wouldn't you?

19 A. I think we would have been hard-pressed to require
20 him to do that.

21 Q. But you would have asked him to do it?

22 A. We didn't.

23 Q. You would have asked him to do it if you were
24 concerned about it, wouldn't you?

1 A. That decision was not to be made by me. I am a
2 simple field inspector. I did not --

3 Q. Who would make it?

4 A. Well, I assume it would be my supervisors, which
5 would be Bud Bridgewater, Tim Cloogey (spelled
6 phonetically), A.G. Taylor, Jim Park, the director of the
7 EPA.

8 Q. And they didn't make it, did they?

9 A. No.

10 Q. And wouldn't they -- if they didn't make it, that
11 would lead you to the conclusion that they were not that
12 concerned about it?

13 A. I can't come to any conclusion about what they
14 decide or not.

15 Q. Okay. Now, Mr. Brockamp, back on May 6th of 1993,
16 would -- you had indicated, I think, at one time you saw a
17 four-wheeler around in the alfalfa field?

18 A. No. I saw it in the manure application area.

19 Q. South of the road?

20 A. South of the road.

21 Q. Okay. Wouldn't that four-wheeler leave -- if
22 there was a lot of saturation in the soil leave tracks in
23 that field?

24 A. I don't believe that the guy on the four-wheeler

1 drove through the irrigation guns.

2 Q. Okay.

3 A. The irrigation guns shoot up in the air and they
4 go in a circular motion, and they cover and encompass
5 approximately one acre. When he was driving his
6 four-wheeler around he didn't drive on the areas where
7 those guns were spraying liquid manure.

8 Q. If he rode on those fields where the irrigation
9 guns had sprayed after they had been sprayed and the
10 ground was that saturated, wouldn't it leave tracks?

11 A. Well, if he was stupid enough to do that, yes.

12 Q. Did you see any tracks?

13 A. No.

14 MR. TICE: I have no other questions.

15 MS. PERI: No questions.

16 HEARING OFFICER KNITTLE: Mr. Brockamp, thank you for
17 your time and patience. You can step down, sir.

18 THE WITNESS: Thank you.

19 (The witness left the stand.)

20 HEARING OFFICER KNITTLE: We will take a recess
21 before the next witness. Ten minutes?

22 MR. TICE: That is fine.

23 MS. PERI: Yes, that is fine.

24 (Whereupon a short recess was taken.)

1 HEARING OFFICER KNITTLE: Back on the record after a
2 short break.

3 Ms. Peri, your next witness, please.

4 MS. PERI: Thank you. The State calls John Wells.

5 HEARING OFFICER KNITTLE: Mr. Wells, if you would
6 have a seat in that chair that Mr. Brockamp was -- well,
7 of course, you weren't here. In that chair right there.

8 THE WITNESS: Okay. Fine.

9 (Whereupon the witness was sworn by the Notary
10 Public.)

11 HEARING OFFICER KNITTLE: All right. Ms. Peri, it is
12 your witness.

13 JOHN WELLS,
14 having been first duly sworn by the Notary Public, saith
15 as follows:

16 DIRECT EXAMINATION

17 BY MS. PERI:

18 Q. Good morning, Mr. Wells.

19 A. Good morning.

20 Q. Let's talk briefly about your education and work
21 history. You received a Bachelor's of Science, did you
22 not, in agricultural engineering?

23 A. Yes, I did.

24 Q. Where was that from?

1 A. It was from the University of Illinois at

2 Urbana-Champaign.

3 Q. Did you move on into the Master's program?

4 A. Yes, I did. Several years later I went back and
5 got a Master's of Science in agricultural engineering from
6 the U of I.

7 Q. How many years were you in that program?

8 A. Let's see. I think I was -- four years, there
9 about, give or take.

10 Q. Okay. As part of your curriculum in the Master's
11 program for agricultural engineering, what was the nature
12 of your study?

13 A. For my -- well, I studied both undergraduate and
14 in graduate school the soil and water conservation. That
15 was my main area of expertise. For my Master's thesis I
16 did a study of models of runoff of pesticides from farm
17 fields.

18 Q. Tell me more about that study.

19 A. I had several models of which we obtained field
20 data on concentrations of several pesticides. And then I
21 took the data and compared it to what models I predicted,
22 and assessed the value of the models from those data.

23 Q. Then as part of your study, were you focusing on
24 drainage across agricultural lands?

1 MR. TICE: I am going to object to the leading form
2 of the question. I think the witness can explain what the
3 focus of the studies were that he engaged in.

4 HEARING OFFICER KNITTLE: I will sustain Counsel's
5 objection. Go ahead.

6 MS. PERI: This is just background here.

7 MR. TICE: Well, I think it is pretty important
8 background.

9 HEARING OFFICER KNITTLE: Yes, I will sustain the
10 objection.

11 Q. (By Ms. Peri) Now, in your studies in the Master's
12 program or during any other educational related activities
13 with the University did you study agricultural land
14 drainage?

15 A. Yes, I did.

16 Q. Tell me about your studies in that area.

17 A. We studied both surface and subsurface drainage
18 runoff, erosion from agricultural fields and areas both in
19 course work within the department of agricultural
20 engineering and in course work with the civil engineering
21 department at the U of I.

22 Q. Would your studies include field visits?

23 A. Oh, certainly, yes, and surveying field visits.

24 As part of my research I had to go out and help man the

1 machines where we took an artificial rain maker and
2 applied water to the fields and helped collect the samples
3 from the runoff.

4 Q. Are you a professional engineer?

5 A. Yes, I am.

6 Q. Are you licensed with the State of Illinois?

7 A. Yes, I am.

8 Q. How long have you been with the Illinois EPA?

9 A. Since December of 1988.

10 Q. And when you first came on board with the Illinois
11 EPA what was your position?

12 A. I was the agricultural engineer for the
13 Springfield Region of the Division of Water Pollution
14 Control, which meant that I would go out in west central
15 Illinois and look at livestock facilities or agrichemical
16 facilities.

17 Q. Including in livestock facilities are swine
18 confinement facilities?

19 A. Yes.

20 Q. How many years were you the agricultural engineer
21 with the Illinois EPA?

22 A. I was the agricultural engineer from December of
23 1988 until essentially spring of 1992, whenever Dale
24 Brockamp moved from Marion up to our office. I had been

1 doing another job for the year of 1991 and part of 1992 in
2 addition to my agricultural engineering duties, and then
3 in --

4 Q. So Mr. Brockamp took over your duties as the
5 agricultural engineer?

6 A. Yes, in the spring of 1992.

7 Q. Did you subsequently resume the duties as
8 agricultural engineer for the Springfield region?

9 A. Yes, whenever Dale left in December of 1997 I took
10 over the duties of agricultural engineer for our office
11 until January of this year.

12 Q. Okay. You have already stated that as part of
13 your duties as agricultural engineer you conduct
14 inspections of livestock facilities?

15 A. That is correct.

16 Q. Okay. When you make inspections, do you make
17 reports of those inspections?

18 A. Yes, I do.

19 Q. What is the general content of those reports?

20 A. Reports are generally an introductory paragraph, a
21 narrative description of what I saw when I was out there.
22 If I took photographs, they will be included as an
23 attachment and perhaps some description of what the
24 photographs show. If I collect analytical samples there

1 will usually be a description, and if I have the results
2 they will be included in the report or included later.
3 But a description of what the -- a brief description of
4 what the results mean.

5 Q. Okay. They included photographs?

6 A. Yes.

7 Q. In your duties as an agricultural engineer, you
8 stated that you make inspections of livestock facilities,
9 correct?

10 A. Yes.

11 Q. What is your purpose in conducting those
12 inspections?

13 A. At livestock facilities?

14 Q. Yes.

15 A. It would be to assess the facility in its waste
16 handling operation usually. That's the focus of why we
17 are there, to see how well they are handling their
18 livestock waste.

19 Q. In the course of your inspections do you make
20 determinations as to whether a water of the State is
21 present or may be impacted by contaminants?

22 A. Yes.

23 Q. What is a water of the State, in your opinion?

24 MR. TICE: I am going to object. That goes to the

1 ultimate issue.

2 HEARING OFFICER KNITTLE: As before, I am overruling
3 that objection.

4 THE WITNESS: Waters of the State, as I understand
5 the definition, is any accumulation of water in or
6 bordering of the State of Illinois that flow through or
7 are impounded in or near the State, so it --

8 Q. (By Ms. Peri) Are you familiar with -- I am sorry.
9 Go ahead.

10 A. It would include flowing streams. It could
11 include road ditches at times. Certainly lakes and ponds.

12 Q. Are you familiar with the John Chalmers Hog Farm
13 located in rural Oakford?

14 A. Yes, I am.

15 Q. How did you become familiar with this site?

16 A. Through review of the files, originally, and then
17 also I have made two inspections at the facility.

18 Q. Was that in --

19 A. Actual inspections of the farm.

20 Q. Was that in resuming your duties as an
21 agricultural engineer after Mr. Brockamp left the Agency?

22 A. Yes, they were.

23 Q. Okay. In conducting your inspections of the hog
24 farm, did you walk the property?

1 A. Yes, I did.

2 Q. Did you speak with Mr. Chalmers about the
3 operation?

4 A. Yes.

5 Q. Okay. Did you in the course of your walking the
6 property observe the presence of a water of the State?

7 MR. TICE: Again, objection, unless there is a
8 foundation as to some form of what he observed.

9 HEARING OFFICER KNITTLE: Sustained.

10 Q. (By Ms. Peri) Mr. Wells, you indicated that you
11 did walk around the John Chalmers' property?

12 A. Yes, I did.

13 Q. Okay. What did you see?

14 A. I observed confinement buildings that had
15 previously been used for raising swine that appeared to be
16 empty, and Mr. Chalmers reported that, in fact, they had
17 been empty for sometime. I saw the lagoons. There were
18 four of them on the property that --

19 Q. How many lagoons?

20 A. Well, four. Two and three -- let's see. Lagoon
21 number one, and lagoons two and three are essentially
22 connected, adjacent. And then a fourth lagoon is also
23 present.

24 Q. Are all of these lagoons used for treatment?

1 A. Yes. I would say that -- well, except for perhaps
2 number one which seemed so shallow as to be too small to
3 really provide much treatment in the sense of the word as
4 I am used to using it. Essentially it was a storage pit.
5 It looked like to me to be an earthen storage pit.

6 Q. All of these lagoons contained liquid livestock
7 waste?

8 A. They appeared to, or I am sure they had in the
9 past. I am sure they do to this day.

10 Q. Why are you sure of that?

11 A. Just from the -- what I have read in the reports.
12 I did not see livestock manure going into them while I was
13 there.

14 Q. Why are you sure that they are livestock waste
15 lagoons now?

16 A. Because they will contain the remains of the
17 livestock or at least portions of the remains of the
18 livestock waste that went in there in years past. There
19 will be sludge in the bottom of those lagoons that
20 contains the nutrients and constituents that are part of
21 the livestock waste that was deposited in there over the
22 years when it was used actively.

23 Q. In your opinion, how long will the livestock waste
24 constituents be present in those lagoons?

1 MR. TICE: I am going to object unless there is some
2 foundation laid as to the studies that this witness may
3 have done concerning how long hog waste will remain in
4 lagoons of this type.

5 Secondly, this is not relevant. There is no
6 complaint or no count in the complaint or no allegation
7 against Mr. Chalmers that these lagoons are now improperly
8 maintained or that there is anything that he is being
9 requested to do concerning the nature of the waste that
10 may be in there for the future. That is not even an issue
11 in this case.

12 HEARING OFFICER KNITTLE: Ms. Peri, I --

13 MS. PERI: Okay. I will withdraw and come back to
14 this point.

15 Q. (By Ms. Peri) Mr. Wells, as you walked the
16 property in the course of your inspections what else did
17 you observe?

18 A. I was, in the first inspection, looking at --

19 Q. Was that your inspection of May 18?

20 A. May 18, 1998. Looking to see if certain items
21 that Dale Brockamp had looked at in his previous
22 inspection and recommendations that he had made in his
23 last inspections had been followed through upon. One was
24 whether or not livestock were being allowed to graze on

1 the berms and whether there was any danger to the berms
2 from grazing livestock. And I didn't see any danger at
3 that time.

4 I also looked for an overflow pipe from what had been
5 identified as building number five. And Mr. Chalmers
6 indicated that it had been covered in recent earth work,
7 and that he had no intention of uncovering it or using
8 that pipe for any purpose unless he had animals in the
9 building number five once again.

10 Q. You said in the course of your inspections you
11 walked the facility and you noticed several confinement
12 buildings on the property?

13 A. (Nodded head up and down.)

14 Q. Tell me more about the layout of the property.

15 A. Let's see. There are numerous confinement
16 buildings on the property. I have been -- I know from the
17 file that there are said to be 17 buildings. I did not
18 count them. They have -- they are getting to be old
19 buildings. There are some that are starting to
20 deteriorate with time, which would make sense.

21 Q. Are there any other artificial structures on the
22 land beside those buildings?

23 A. There are all of the other buildings that go into
24 a livestock farm. There are implement sheds. There are

1 grain bins. There is a fresh water pond. There is

2 fences, lots, pastures, typical of a livestock farm.

3 Q. You stated that as part of your education you

4 studied agricultural land drainage, correct?

5 A. Yes, I did.

6 Q. In the course of your inspections in general, and

7 that is as agricultural engineer with the Illinois EPA, do

8 you make determinations or assessments about agricultural

9 land drainage or drainage of stormwater runoff across

10 property?

11 A. In general only where it affects the runoff of

12 livestock waste do we look -- at least from the

13 agricultural program standpoint do we concern ourselves

14 with proper drainage. If it -- I guess if there is a

15 flood plane involved we would be concerned about the

16 location of livestock waste handling or livestock

17 facilities in flood planes. And so we look at that aspect

18 sometimes.

19 But otherwise, we will look at drainage structures

20 and waterways and streams as how they might be impacted by

21 runoff of livestock waste from livestock housing units,

22 from waste handling units, from land application of

23 livestock waste. So we will look at the lay of the land,

24 the way we think drainage may go for tile drained inlets,

1 and such as that.

2 Q. In the course of your inspections of Mr. Chalmers'
3 property, did you make such an assessment?

4 A. Yes, I did.

5 Q. What was that assessment?

6 A. I noted that the soil was rather sandy, that the
7 general drainage of the site appeared to go to the -- an
8 unnamed tributary of the Sangamon River, it appeared.

9 Q. Where is the location of that unnamed tributary?

10 A. It runs to the north of his buildings. It appears
11 to originate somewhere to the south and east of those
12 buildings. A good portion of the flow of the small stream
13 that I saw seemed to originate in his on-site pond, which
14 is located just to the west of his lagoon number four.
15 And it flows off his property, apparently, at the
16 northwest corner through this what has been described as
17 the dilution pond and onto a neighbor's property and flows
18 toward the northwest through a straightened or channelized
19 portion, a drainage ditch.

20 Q. Okay. You said you inspected the property on May
21 18, 1998; is that correct?

22 A. That's correct.

23 Q. Did you again inspect Mr. Chalmers' farm on June
24 4th, 1999? I am sorry. It was --

1 A. I think it was June 3rd.

2 Q. June 3rd. Thank you for that correction. Did you
3 make a report of your inspection on that date?

4 A. Yes, I did.

5 MR. TICE: Which date, now? June 3rd of 1999?

6 MS. PERI: Yes. I would ask that this exhibit be
7 premarked.

8 HEARING OFFICER KNITTLE: Sure.

9 (Whereupon said document was duly marked for purposes
10 of identification as People's Exhibit L as of this
11 date.)

12 Q. (By Ms. Peri) Mr. Wells, you testified that you
13 made a report of your June 3rd, 1999 inspection?

14 A. Yes, I did.

15 Q. Is this a true and accurate copy of your June 3rd,
16 1999 inspection report?

17 A. Yes, it is.

18 Q. Thank you.

19 MS. PERI: Please let the record show I have just
20 handed Mr. Wells what has been premarked as People's
21 Exhibit L.

22 Q. (By Ms. Peri) Mr. Wells, please describe for us
23 your observations during your June 3rd inspection?

24 A. It did not appear to me that a great deal had

1 changed from my previous inspection, other than livestock
2 were grazing close to some of the lagoons, and that each
3 of the lagoons had more liquid in it than it had a year
4 previous.

5 Q. Each of the four lagoons?

6 A. Significantly more liquid present in each of the
7 four lagoons.

8 Q. Just prior to your visit, had there been a 25 year
9 24 hour storm?

10 A. No. To my knowledge there has not been one during
11 the past year.

12 Q. Did you make any other observations about the
13 livestock waste lagoons on the property?

14 A. Not really, other than that was my main
15 observation was the fact that they had -- you know, they
16 had filled up in the last year, and I guess that most
17 significantly lagoon numbers two and three had filled
18 beyond -- above the level where -- they had insufficient
19 capacity to contain the runoff from a 25 year 24 hour
20 storm.

21 Q. How did you make that decision?

22 A. I was able to find what appeared to be the lowest
23 point on the berm of lagoon number three, and I observed
24 that there was less -- or approximately one inch of

1 freeboard. In addition, Mr. Chalmers' freeboard marker
2 showed that there was little freeboard left, meaning that
3 if the level in the lagoons raised another inch or so
4 there would be a discharge from them.

5 Q. Was there a freeboard marker in lagoon number two?

6 A. Not that -- well, there may be. I did not observe
7 it on the 3rd. The lagoon number two and the lagoon
8 number three are connected by pipes, by a pipe, and the
9 berm between them was nearly submerged at the time of the
10 inspection on June 3rd. If lagoon -- even if there was no
11 pipe between lagoon number two and three, if the level
12 were to raise another inch or so they would be connected
13 and would discharge at the point of number three, which is
14 in the northwest corner where the berm appeared to be
15 lowest.

16 Q. In your opinion, what steps can the respondent
17 take to ensure there is adequate storage capacity for
18 lagoons two and three in the event of a 25 year 24 hour
19 storm event?

20 A. He could land apply a sufficient quantity of the
21 contents of the lagoons onto farm ground, pasture ground,
22 at less than an agronomic rate and less than the practical
23 limit of not causing a runoff, to lower the levels. He
24 has lagoon number four, which appears to have adequate

1 freeboard to take some or all of the contents necessary to
2 lower those lagoons number two and three to the point
3 where they will have sufficient storage capacity.

4 Q. In your opinion what is that point where they will
5 have sufficient storage capacity?

6 A. It would be -- they need at least six or seven
7 inches of freeboard. They need to contain the runoff --
8 the precipitation from a 25 year 24 hour storm which, I
9 believe, is in -- has been cited in the permit as being
10 5.3 inches in a day. Plus any runoff from buildings or
11 ground that is tributary to those, which in this case
12 appears to be a small area to the south of the lagoons.
13 So he would need in excess of that 5.3 inches, and it
14 would probably be six or seven inches of freeboard to meet
15 the minimum requirements of capacity.

16 MS. PERI: Thank you. I have no more questions. At
17 this time I would like to move to enter into evidence
18 People's Exhibit L.

19 HEARING OFFICER KNITTLE: Any objections, Mr. Tice?

20 MR. TICE: Yes. Exhibit 31, People's Exhibit 31, has
21 that been admitted?

22 MS. PERI: No.

23 MR. TICE: Are you going to offer that?

24 MS. PERI: No.

1 MR. TICE: All right.

2 HEARING OFFICER KNITTLE: Let's handle Exhibit L

3 first, Mr. Tice. Any objections to this exhibit?

4 MR. TICE: No, I have no objection to the exhibit,

5 subject to cross-examination.

6 HEARING OFFICER KNITTLE: Okay. Exhibit L is

7 admitted.

8 (Whereupon said document was duly admitted into

9 evidence as People's Exhibit L as of this date.)

10 HEARING OFFICER KNITTLE: Now, do you have any other

11 questions regarding other exhibits?

12 MR. TICE: Well, Exhibit 31 was not withdrawn

13 yesterday, as I recall from the --

14 MS. PERI: It was not withdrawn, but I think the

15 entire request was denied.

16 HEARING OFFICER KNITTLE: Yes. As I stated before, I

17 denied the entire request to admit public records, and

18 then there was an oral offer to admit those documents as

19 public records, and that was primarily denied, and one

20 document was accepted as a public record. So there is

21 really nothing outstanding from that request to admit.

22 MR. TICE: All right. Mr. Wells --

23 HEARING OFFICER KNITTLE: Hold on one second. You

24 have finished your direct examination?

1 MS. PERI: I have. Thank you.

2 HEARING OFFICER KNITTLE: I am sorry, Mr. Tice.

3 Please proceed with cross.

4 CROSS EXAMINATION

5 BY MR. TICE:

6 Q. Mr. Wells, you made two inspections, one on May
7 26th -- I am sorry -- May 18th, 1998, and then on June
8 3rd, 1999; is that correct?

9 A. That is correct. I made two inspections of Mr.
10 Chalmers' operation, yes.

11 Q. All right. You made reports with respect to both
12 of those inspections?

13 A. Yes, I did.

14 Q. Now, you were asked on direct examination what the
15 definition of a water of the State was and you gave your
16 definition. That definition is based strictly upon the
17 Pollution Control Board's regulations, is it not what it
18 says?

19 A. Yes. And, in fact, it is included in our
20 regulations. And I believe I repeated it and paraphrased
21 it pretty well.

22 Q. From the Pollution Control Board regulations; is
23 that correct?

24 A. Yes.

1 Q. You said in our regulations. Is there another set
2 of regulations?

3 A. That is the set of regulations which I referred.
4 When I refer to as our regulations, I am referring to the
5 Pollution Control Board regulations.

6 Q. So when you define what you considered to be
7 waters of the State, you are basing it solely upon the
8 regulations you have described to me?

9 A. Yes.

10 Q. You are not basing it upon any other concept or
11 study that you are aware of; is that correct?

12 A. That's correct.

13 Q. Based upon that definition that you gave of a
14 water of the State, that would include, would it not, any
15 body of water, no matter how small it is, that may stand
16 in any particular location for a certain period of time?

17 A. By that definition, yes. As a practical matter we
18 do not and I don't think the definition was intended to
19 include, say, a mud puddle a foot across.

20 Q. But it would, in fact -- that definition would, in
21 fact, include a mud puddle, wouldn't it?

22 A. I would have to look at the definition more
23 carefully to see. But I would imagine that, yes, it
24 could.

1 Q. Okay. You said you engaged in some studies
2 regarding drainage and erosion while you were a student --

3 A. Yes, I did.

4 Q. -- in engineering? Where did those studies take
5 place?

6 A. At the University of Illinois in Urbana-Champaign.

7 Q. Were those studies conducted in a preconceived
8 structure or a preconceived mock-up or model?

9 A. Most of my course work, of course, was in the
10 classroom. We also went out to the south farms there at
11 the University of Illinois out to fields near the
12 university. The runoff of pesticides study that I cited,
13 that I did for my thesis, it was on a farm located near
14 Oquawka, Illinois, which is in northwestern Illinois.

15 Q. When you did those studies, though, Mr. Wells,
16 with regard to the studies in erosion, the study regarding
17 erosion and runoff, whether it consisted of pesticides or
18 anything that is runoff of water, isn't that correct, it
19 is runoff of water basically that causes the runoff?

20 A. Yes, precipitation, snow melt.

21 Q. When you did those studies, you had a certain
22 methodology that you followed, didn't you?

23 A. Yes.

24 Q. And you had parameters to the study, didn't you?

1 A. Yes, we did.

2 Q. Okay. You had that methodology and you had those
3 parameters so that you could gauge and make a
4 determination as to the amount of erosion that occurred or
5 the amount of runoff of a particular chemical element that
6 occurred in any given period of time with respect to any
7 particular soil type, didn't you?

8 A. In fact, they were specific soil types that we
9 were looking at at the time.

10 Q. Okay.

11 A. We did not extrapolate from the study for my
12 Master's thesis, and in general most of the erosion --
13 mostly whenever I studied erosion and runoff we were
14 working from previous studies. We were looking at results
15 of previous studies where they had tried, of course, to
16 come up with equations, empirical equations or methods of
17 determining erosion, runoff.

18 Q. Okay. But the point is that in doing those
19 studies you had a high degree of specificity and a high
20 degree of protocol that you followed in making those
21 studies to arrive at whatever conclusions you arrived at?

22 A. Insofar as you can do that with the study of
23 runoff and erosion, yes.

24 Q. You try to control the studies as much as

1 possible?

2 A. Yes.

3 Q. Because by controlling it you have more accurate
4 information in the form of the results?

5 A. That is necessary in research.

6 Q. It is necessary in order to be able to more
7 appropriately draw appropriate and as accurate as possible
8 conclusions, isn't it, about the study and the work?

9 A. Certainly.

10 Q. Science, whether it be engineering or pure science
11 or chemistry is a very exact science, isn't it? It seeks
12 exact answers, as much as possible.

13 A. It seeks exact answers, but exact answers are not
14 always possible.

15 Q. I understand that. Now, since your employment
16 with the EPA since December of 1988, do I understand
17 correctly that you have primarily been engaged in making
18 inspections -- or making on site inspections?

19 A. Yes.

20 Q. And that has included, you say, agricultural
21 livestock farms?

22 A. Yes, it has.

23 Q. Do you know how many agricultural livestock farms
24 you may have inspected in the last -- since your

1 employment?

2 A. Since my employment, I would have to guess. I

3 could make an estimate of 200 maybe.

4 Q. Of those --

5 A. Give or take 100.

6 Q. So it could range anywhere from 100 to 300?

7 A. It could easily be more than 300, actually.

8 Q. Of those amounts, how many were livestock farms?

9 A. That is the estimate I made, was of livestock
10 farms.

11 Q. How many of those involved swine?

12 A. Probably 50 percent or more. Perhaps 60 or 70
13 percent.

14 Q. Okay. How many of those swine farms involved
15 livestock -- I mean, swine farms involved confinement
16 swine operations?

17 A. Probably most of them. Of those swine farms that
18 I looked at, in general that is the type of operation that
19 we visit.

20 Q. When you say most, two-thirds?

21 A. About 90 percent.

22 Q. About 90 percent. Of those 90 percent how many
23 involved lagoon operations for waste water treatment?

24 A. Probably a third.

1 Q. Based upon your inspections of the Chalmers farm
2 on May 18th of 1998, and June 3rd, 1999, I take it from
3 your testimony that you consider lagoons two, three and
4 four to be treatment facilities?

5 A. I would say that they appear to have the capacity
6 to function as livestock lagoons.

7 Q. With respect to lagoon number one, it is your
8 conclusion that it is more of a holding operation than a
9 holding facility?

10 A. Yes. Just based on the apparent available
11 capacity at this time. At one time it may have had more
12 depth and capacity. At this time it appears to be full of
13 solids.

14 Q. To be able to be an appropriately operating
15 lagoon, it has to have some depth to it, correct?

16 A. Yes.

17 Q. When you were out there on either of those two
18 dates did you make any inspections of any of these lagoons
19 as to the size?

20 A. No, I did not.

21 Q. Just your visual observation?

22 A. Just visual observation, yes.

23 Q. And your I would say guesstimate as to whether or
24 not they were the appropriate size?

1 A. Even actually at the time I was there I was not
2 assessing them for -- I was not looking at that aspect of
3 those lagoons. Mainly I was looking at whether or not
4 they had sufficient storage capacity to avoid discharge.

5 Q. Okay. Did you make any assessment about that on
6 your May 18th, 1998 report?

7 A. Yes, I did.

8 Q. And what was that?

9 A. In that report I believe I did state that lagoons
10 number one and number four had sufficient capacity and
11 that lagoons three and four were borderline.

12 Q. All right.

13 A. Not three and four. Two and three. Two and
14 three, the capacity was borderline. I discussed that with
15 Mr. Chalmers at the time.

16 Q. All right. And when you say borderline you are
17 going -- you mean that they were close to the -- what you
18 would consider to be adequate from what they call or has
19 been described as the freeboard or the amount of height
20 above the water?

21 A. Right. It was right at that point where it
22 appeared that it had capacity to contain the runoff from a
23 25 year 24 hour storm, but it -- but if it filled up any
24 further it would have insufficient capacity.

1 Q. So on May 18th, 1998, had lagoons -- I am not sure
2 I have these correct. Lagoon one and three were the ones
3 you were concerned about or two and three?

4 A. Two and three.

5 Q. Lagoons two and three did appear to have the
6 adequate freeboard required by the 25 year 24 hour storm
7 of 5.3 inches of rainfall in a 24 hour period, but you
8 were concerned about the future?

9 A. Yes.

10 Q. All right.

11 A. And, in fact, as I discussed with Mr. Chalmers at
12 the time they might -- we were going on the freeboard
13 available by his marker, and I didn't know whether it was
14 totally accurate. But even given that it was accurate
15 there was a possibility that he didn't have sufficient
16 capacity at that time considering how much runoff might
17 come from his buildings and the south -- the area just
18 south of the lagoons.

19 Q. At that point you, Mr. Wells, didn't really
20 consider that to be a violation, did you?

21 A. No, I did not think that -- I did not cite it as a
22 violation, I believe, in my report.

23 Q. In your report. You just discussed it with him?

24 A. I discussed it with him and the need to manage the

1 lagoon contents properly.

2 Q. Did you find Mr. Chalmers cooperative in that
3 respect?

4 A. Yes, I did.

5 Q. Did you observe the -- any water or flow of water
6 in the general area of Mr. Chalmers' farm and the color of
7 it, the odor of it, or anything of that nature?

8 A. Yes, I did.

9 Q. What did you find?

10 A. At that time I looked at the small stream in an
11 area that was directly north of lagoon number one, near
12 where Mr. King and Mr. Chalmers discussed solid waste
13 disposal. At that time I looked at the unnamed tributary
14 of the Sangamon River that flows through his property. I
15 observed water that was being discharged, I assumed from
16 his pond, and I think Mr. Chalmers confirmed that was from
17 the pond. Water in the stream and water coming from the
18 pond --

19 HEARING OFFICER KNITTLE: Excuse me, sir. Could you
20 hold on a second, please.

21 (Discussion off the record.)

22 HEARING OFFICER KNITTLE: Let's take a five minute
23 recess. I am sorry for interrupting you, sir.

24 THE WITNESS: That is no problem.

1 (Whereupon a short recess was taken.)

2 HEARING OFFICER KNITTLE: All right. We are back on
3 the record.

4 Mr. Tice, we can read back his last response if you
5 want.

6 MR. TICE: Why don't you read it back if you don't
7 mind.

8 (Whereupon the requested portion of the record was
9 read back by the Reporter.)

10 HEARING OFFICER KNITTLE: Are you familiar with your
11 answer now, sir?

12 THE WITNESS: Yes.

13 HEARING OFFICER KNITTLE: Do you want to just resume
14 then, Mr. Tice?

15 MR. TICE: Yes, go ahead.

16 THE WITNESS: Yes, certainly. Water in the stream
17 and water in the pond at that time, as I recall, were
18 essentially clear, colorless and odorless. I don't think
19 I got really close to the stream to smell, but I did not
20 notice any odor in the water. We also --

21 Q. Okay. Did -- I am sorry.

22 A. We also observed the stream down by the road near
23 the -- what has been called the dilution pond, and I
24 believe the water coming from there was similarly clear

1 and colorless, maybe a little bit turbid, but seemingly
2 normal runoff that I would expect to see in a stream like
3 that.

4 Q. Okay. Now I want to point you to what is People's
5 Exhibit A. And the intermittent stream that you have been
6 testifying about, is that indicated on this exhibit by
7 this dotted line, Mr. Wells?

8 A. Yes.

9 Q. And it is the water that you noted in that
10 particular stream; is that correct?

11 A. Yes. I noted the water at two points in that
12 stream that on May 18th, 1998 were essentially clear and
13 colorless, normal agricultural drainage in a small stream
14 like that.

15 Q. And you didn't notice any violations then --

16 A. No.

17 Q. -- of the Environmental Protection Act or the
18 Pollution Control Board regulations?

19 A. That is correct.

20 Q. Again, the other area that I think you were
21 testifying to is marked as B on People's Exhibit A, and
22 the water at that location, is that the other location?

23 A. That is the other location I was describing, yes.

24 Q. All right. You, again, didn't note any violations

1 of the Environmental Protection Act or the Pollution

2 Control Board regulations at that point in time?

3 A. That is correct.

4 Q. That dotted line which appears running from the
5 bottom right-hand corner of People's Exhibit A to the top
6 left-hand corner of People's Exhibit A, is that what you
7 are describing as this intermittent stream and what you
8 have described as a water of the State?

9 A. Yes, it is.

10 Q. Okay. And that, again, is solely based upon your
11 understanding of the regulations of the Pollution Control
12 Board?

13 A. Yes.

14 Q. Now, you also indicated that you thought the water
15 in this area was coming from the -- Mr. Chalmers' pond,
16 the fresh water pond?

17 A. There was flow from upstream and then also a
18 discharge from a pipe in that area that I described north
19 of the buildings and lagoon number one that was of such a
20 volume that I assumed it was a pond overflow, and at the
21 time I believe I asked Mr. Chalmers and he confirmed that,
22 yes, it was from the pond.

23 Q. Okay. Now, would you describe the pond that you
24 have been talking about that is -- that you saw out there

1 that day, the nature of it?

2 A. It appears to be a typical farm pond from what I
3 saw. I did not study it. I did not observe it very
4 closely. It was made by impounding a water course, which
5 having looked at the U.S.G.S. topo maps, appears to be the
6 main little valley that this stream originates and flows
7 from. Certainly, the day of, for instance, this last
8 inspection on the 3rd of June, most of the flow in the
9 stream -- there was flow from upstream of the confluence
10 with the pond, but most of the flow from the stream was
11 coming from the pond.

12 Q. So this intermittent stream that you are talking
13 about, it does sometimes contain water from another area
14 of the water shed?

15 A. Other than the pond?

16 Q. Yes.

17 A. Apparently so. On that map -- Dale has, I
18 believe, drew that map. The dotted line is shown coming
19 from an area to the east, and there was flow in that
20 portion of that little intermittent stream. I believe on
21 both days that I was on the farm there was flow being
22 contributed from that pond that is shown on that map from
23 that pipe also shown on the map, and on the 3rd of June
24 this year the flow from the pond was quite a bit more than

1 what was coming from that other little branch.

2 Q. The branch off to the east?

3 A. The branch off to the east, that is correct.

4 Q. Do you know how large the watershed is to the

5 south and east of Mr. Chalmers' farm?

6 A. No, I don't.

7 Q. You have not made any investigation or checked

8 with respect to that?

9 A. No, sir, other than to note that it can't be much

10 beyond several -- you know, much more than a section or

11 two of land. Just glancing at the topo map, I know it was

12 no more than 600 to maybe 1,800 acres.

13 Q. Okay. Beyond and to the southeast of Mr.

14 Chalmers' farm?

15 A. Right.

16 Q. And do you know what type of land area that is?

17 Is that agricultural land?

18 A. I believe it is.

19 Q. Okay. Is it subject to row cropping, corn and

20 soybeans?

21 A. It appeared to be. At least portions of it were

22 subject to row cropping, yes.

23 Q. All right.

24 MS. PERI: Mr. Knittle, I am going to object now. I

1 don't believe that this was covered within the scope of
2 our direct. It is interesting, but I think it is well
3 beyond the testimony given prior.

4 HEARING OFFICER KNITTLE: Mr. Tice, why is this not
5 beyond the scope of direct examination?

6 MR. TICE: Pardon? What did you say?

7 HEARING OFFICER KNITTLE: Can you tell me why this is
8 not beyond the scope of the direct examination?

9 MR. TICE: Because this witness was asked questions
10 about the intermittent stream and what comprises an
11 intermittent stream, and what comprises waters of the
12 State, and where the water comes from with respect to this
13 dotted line on Exhibit A that has been described as an
14 intermittent stream.

15 I believe I have a right to inquire as to whether or
16 not the water comes from other sources besides Mr.
17 Chalmers' pond, which the witness has described. And
18 that's why I have gone into the area of what else drains
19 into that. I think it is appropriate cross-examination
20 given the expertise that this man has been portrayed to
21 have.

22 HEARING OFFICER KNITTLE: Ms. Peri, anything else?

23 MS. PERI: No.

24 HEARING OFFICER KNITTLE: I am going to overrule the

1 objection and let him proceed at least on a limited basis
2 with this line of questioning.

3 Q. (By Mr. Tice) Now, Mr. Wells, in your report of
4 your inspection on May 18th, 1998, when you indicated that
5 lagoons two and three were fairly close to the freeboard
6 point, you also made a determination, did you not, that
7 the discharge from the operation could be likely avoided
8 indefinitely because there were no hogs in the operation
9 and because Mr. Chalmers was set up to transfer water from
10 lagoons two and three to lagoon four?

11 A. I think I did make that determination, yes.

12 Q. Okay. Now, when you inspected Mr. Chalmers'
13 facilities on June 3rd, 1999, you indicated that you found
14 that lagoon two and three were close to the berm at that
15 point in time or the top at that time?

16 A. Yes.

17 Q. Did you make an observation about the ability of
18 Mr. Chalmers to transfer that water up to lagoon number
19 four?

20 A. Yes. I believe I suggested that it appeared that
21 lagoon number four had sufficient capacity to take some of
22 the liquid from lagoon two and three without jeopardizing
23 the storage capacity of lagoon number four.

24 Q. In fact, didn't you make a determination that

1 there was approximately five feet of freeboard at lagoon

2 number four?

3 A. I believe that was my estimate, yes.

4 Q. With that amount of capacity you made the

5 determination, then, on June 3rd, 1999, that there was

6 adequate capacity in the lagoon systems of Mr. Chalmers

7 that he could make the transfer from lagoon two and three

8 to lagoon four and still have adequate capacity?

9 A. Yes, if he makes -- yes, he could -- if he could

10 transfer that with pumping pipe or whatever from lagoons

11 two and three to lagoon four, at that time he would have

12 sufficient -- he could have sufficient capacity to avoid a

13 discharge.

14 Q. Okay. And that would satisfy -- if that transfer

15 were made that would satisfy the only concern that you had

16 as a result of your inspection on June 3rd, 1999; is that

17 correct?

18 A. That's correct.

19 Q. Do you know whether or not that transfer was made?

20 A. I do not.

21 Q. Did you discuss that transfer with Mr. Chalmers?

22 A. Yes, I did.

23 Q. Did you find him cooperative in that respect?

24 A. He was cooperative in the discussion. I did not

1 leave with the feeling that he had made -- he made no
2 commitment to make a transfer or to land apply contents.
3 That would be another way to obtain the freeboard. He
4 mentioned building up the berm, and I pointed out that he
5 would have to build up the berm quite a bit all the way
6 around to get sufficient freeboard.

7 Q. So you discussed alternatives is really what you
8 are saying --

9 A. Yes, I did.

10 Q. -- with him, and he was cooperative in your
11 discussions with him about the alternatives, was he not?

12 A. Yes. And as I say, there was no commitment made
13 to take any action, just a discussion to the possible
14 alternatives.

15 Q. And those alternatives, then, if I understand you
16 correctly, included building up the berm on lagoons two
17 and three?

18 A. That would be a possibility.

19 Q. Pumping from two and three to four?

20 A. Yes.

21 Q. And/or transferring to field --

22 A. Proper land application.

23 Q. Field application of the liquid waste. That would
24 be -- with Mr. Chalmers' setup there, that would be

1 through an irrigation setup onto his pastures; is that

2 correct?

3 A. I would assume that would be the most logical way

4 for him to do that, yes.

5 Q. Now, did you make any investigation of the pasture

6 application of swine waste on Mr. Chalmers' farm on either

7 June 3rd, 1999 or May 18th, 1998?

8 A. No, I did not.

9 Q. Now, can Mr. Chalmers have a discharge even to the

10 waters of the State as long as the water and waste that is

11 discharged meets a certain level of -- only has a certain

12 level of ammonia in it or other contaminants in it?

13 A. No, not from his livestock waste handling

14 facilities or livestock housing facilities.

15 Q. Are there limits on the amount of ammonia that

16 water that has discharged can have in it without being a

17 violation?

18 A. From his facilities, because it is an agricultural

19 facility, it is regulated under Subtitle E, as I

20 understand it, and because his -- because his structures

21 hold livestock waste, and he is -- he cannot have a

22 discharge from those structures except in the case of a 24

23 hour 25 year storm where he had sufficient capacity to --

24 before the storm.

1 Q. Okay. And if he had sufficient capacity before
2 the storm and the storm came about and he had a discharge
3 that discharge could contain a certain amount of
4 contaminants; is that correct?

5 A. Even then only so long -- he could have such a
6 discharge, but even then it would be required that that
7 discharge did not cause a water quality violation in the
8 streams that receive that discharge.

9 Q. Is there a limit of 4.8 milligrams per liter of
10 nitrogen in the water that is discharged that you are
11 aware of?

12 A. Not that I am aware of, no, certainly not for his
13 facility.

14 Q. Did you make any -- take any water samples on
15 either of these two inspection dates, June 3rd, 1999, or
16 May 18th, 1998?

17 A. I filled a sample bottle from lagoon -- from the
18 surface waters of lagoon number three on May 18th, 1998,
19 but I did not submit it for analysis.

20 Q. Okay. Why did you not submit it for analysis?

21 A. I didn't think that any useful information would
22 be obtained, either for Mr. Chalmers or for us.

23 Q. You took no samples, then, of water from any
24 location on Mr. Chalmers farm on the June 3rd, 1999

1 inspection; is that correct?

2 A. That is correct.

3 Q. Now, Mr. Chalmers has right now an NPDES permit,
4 does he not?

5 A. Yes, as I understand, he does.

6 Q. Okay. What is the benefit of that permit, if any?

7 A. The permit --

8 MS. PERI: I object. I don't see how this has any
9 relevancy to complainant's case. We didn't raise it on
10 direct, and we have not alleged anything with regard to
11 the NPDES permit that was issued in 1995 as to our
12 allegations.

13 MR. TICE: Well, I didn't understand that then. If
14 the State is saying that they are not alleging any
15 violations of the NPDES permit in the complaint, then I
16 will withdraw the question if that is not an issue of the
17 case.

18 MS. PERI: You have the complaint. There is a 12(f)
19 violation, but that goes to no permit. We have raised no
20 issues as to the 1995 permit.

21 HEARING OFFICER KNITTLE: Mr. Tice, are you
22 withdrawing the question?

23 MR. TICE: I will withdraw the question for the
24 witness.

1 Let me check my notes. I don't think I have anything

2 else for Mr. Wells.

3 I have no further questions.

4 MS. PERI: No redirect.

5 HEARING OFFICER KNITTLE: Thank you, sir. You can

6 step down.

7 (The witness left the stand.)

8 HEARING OFFICER KNITTLE: Ms. Peri, do you have

9 another witness you would like to call?

10 MS. PERI: We do.

11 HEARING OFFICER KNITTLE: Would you like to call this

12 witness now? How long do you anticipate?

13 MS. PERI: Well, on the State side, 15 to 20 minutes,

14 but I imagine cross will consume some time.

15 HEARING OFFICER KNITTLE: Let's go off the record.

16 (Discussion off the record.)

17 (Whereupon a document was duly marked for purposes of

18 identification as People's Exhibit M as of this

19 date.)

20 HEARING OFFICER KNITTLE: We are back on the record

21 after a short break.

22 All right. Ms. Peri, can you identify this witness,

23 please.

24 MS. PERI: Yes. Would you please state your name for

1 the record.

2 THE WITNESS: My name is A. G. Taylor.

3 HEARING OFFICER KNITTLE: Could we please swear him
4 in.

5 (Whereupon the witness was sworn by the Notary
6 Public.)

7 HEARING OFFICER KNITTLE: Thank you. Ms. Peri, you
8 may proceed.

9 MS. PERI: Thank you.

10 A. G. T A Y L O R,
11 having been first duly sworn by the Notary Public, saith
12 as follows:

13 DIRECT EXAMINATION

14 BY MS. PERI:

15 Q. Mr. Taylor, you are employed with the Illinois
16 Environmental Protection Agency, correct?

17 A. That is correct.

18 Q. In what capacity?

19 A. I am the agricultural advisor.

20 Q. And as the agricultural advisor with the Illinois
21 EPA what are your duties?

22 A. I serve in a technical capacity for the various
23 divisions, bureaus within the Agency on agricultural
24 related matters, and I am also a liaison with agricultural

1 organizations with outside groups.

2 Q. You have a Master's of Science Degree from SIU at

3 Carbondale; is that correct?

4 A. That's correct.

5 Q. What is the subject matter of your Master's

6 Degree?

7 A. I got a degree in the plant soil science

8 department, specializing in fertilizers and soils.

9 Q. Okay. Did you put together a thesis as part of

10 your Master's studies?

11 A. Yes.

12 Q. What was the subject matter of that thesis?

13 A. The subject matter dealt with nitrification

14 inhibitors, studying a phenomenon of inhibiting conversion

15 of ammonia to nitrite, nitrate.

16 Q. How many years have you been with the Illinois

17 EPA?

18 A. I started with them in 1976.

19 Q. And how many years have you been the agricultural

20 advisor?

21 A. Since 1980.

22 Q. Have you published any materials relating to your

23 studies with SIU or your duties with the Illinois EPA?

24 A. The thesis was published, yes.

1 Q. Were there any other publications?

2 A. With the Illinois EPA?

3 Q. Yes.

4 A. There are numerous publications that I have
5 written with the Agency. I have a list of about 70 some
6 publications that I have written on different topics
7 including livestock waste management, pesticide issues.

8 Q. Okay. Would those articles include one entitled,
9 Understanding the Pollution Potential of Livestock Waste?

10 A. That is a fact sheet that both I and an assistant
11 of mine put together to help farmers and other individuals
12 understand the pollution potential of livestock waste in
13 the event that it got out of containment and into stream.

14 Q. I am going to show you what is premarked as
15 People's Exhibit M, and ask you to identify this as being
16 an article that you authored?

17 A. Yes, it is.

18 MS. PERI: Okay. I am also providing a copy to
19 Counsel and to Mr. Hearing Officer.

20 Q. (By Ms. Peri) Are you familiar with commercial
21 nitrogen containing fertilizers that are used for land
22 application on crop fields?

23 A. Yes.

24 Q. What might some of those fertilizers be?

1 A. Anhydrous ammonia is probably the most common.
2 Ammonia nitrate, 28 percent solution, ammonia nitrate and
3 uria solution. Those are some of the more common ones.

4 Q. It sounds like they standardly contain ammonia; is
5 that correct?

6 A. Those do, yes.

7 Q. Why? Why do they contain that compound?

8 A. It is a source of nitrogen that is utilized by the
9 growing crop.

10 Q. How is it utilized by the crop?

11 A. It is assimilated in the protein materials.

12 Q. To the benefit of the crops?

13 A. Yes.

14 Q. When would commercial fertilizers typically be
15 applied to crop fields, and I am specifically referring to
16 corn and bean fields?

17 A. There are two seasons for fertilizer application
18 primarily in corn production, which in Illinois is in the
19 springtime or in the fall after harvest.

20 Q. What do you mean by spring? Can you provide me
21 with months?

22 A. Well, it can occur anywhere from late in February,
23 more typically as you get into March and April, and there
24 are also some nitrogen applications that are side-dressed,

1 which occur after the corn crop has emerged and is about
2 one and a half, two feet high.

3 Q. In your studies at SIU and in the Master's program
4 or in the course of your duties with the Illinois EPA, did
5 you make assessments about groundwater flow, in particular
6 the carrying capacity for groundwater for ammonia?

7 A. Could you explain?

8 Q. In your studies at SIU and in your capacity as the
9 agricultural advisor with the Illinois EPA, did you study
10 groundwater flow as it pertains to fertilizers?

11 A. Groundwater flow was not a part of my research,
12 no, but I looked at numerous articles as we have been
13 involved with nonpoint source of pollution issues looking
14 at papers on tile drainage and other phenomenon that could
15 be potential source of stream pollution, yes.

16 Q. Have you been to the John Chalmers Hog Farm near
17 Oakford?

18 A. I was there on a cold day in February, 1994.

19 Q. I am going to ask you to look at this map that we
20 have marked as People's Exhibit A. Based on your visit to
21 the farm, does this fairly and accurately depict the
22 layout of the property including the buildings and any
23 waterways?

24 A. As I recall it, yes.

1 Q. Which areas of the property did you visit during
2 your inspection?

3 A. Can I point to those areas?

4 Q. Yes, please approach.

5 (The witness approached the exhibit.)

6 A. First of all we came up past the residence.

7 HEARING OFFICER KNITTLE: Sir, you will have to speak
8 up.

9 And, Ms. Peri, are you going to identify it on the
10 map?

11 MS. PERI: I will.

12 HEARING OFFICER KNITTLE: Okay.

13 THE WITNESS: Okay. We came up here to his
14 residence.

15 MS. PERI: Let the record show that Mr. Taylor is
16 pointing to the area marked J.C.'s residence on People's
17 Exhibit A.

18 THE WITNESS: As I recall, we were in the lot and
19 came back up I believe it was in this area. There is a
20 little road coming through here (indicating). We went
21 past some of these buildings and also drove back along
22 here (indicating).

23 MS. PERI: The record should show that Mr. Taylor is
24 pointing to an area south of the confinement buildings and

1 in the direction of the pond and lagoon number four.

2 THE WITNESS: And we also drove around on the county
3 road back along this area past where this little dilution
4 pond is and around here to where there was an application
5 site (indicating).

6 MS. PERI: Okay. Again, let the record show that Mr.
7 Taylor has indicated that he drove north on what is marked
8 as 400 East and took a right on the Kay Watkins School
9 Road toward the manure application area.

10 Q. (By Ms. Peri) Thank you, Mr. Taylor. So you were
11 at the property in February of 1994?

12 A. Uh-huh.

13 Q. Was it cold then?

14 A. It was bitterly cold.

15 Q. What would you guess the temperature to be?

16 A. It was a bright, sunny day and very windy. I
17 would say the temperature was probably around ten degrees,
18 it --

19 Q. You have -- I am sorry.

20 A. -- felt like. It was extremely cold.

21 Q. You have indicated that you were up in the area of
22 the northwest part of the property; is that correct?

23 A. Part of the time, yes.

24 Q. Did you drive across a concrete bridge located at

1 the corner of the north-south road and the Kay Watkins

2 School Road?

3 A. There was a bridge there and to the west of the

4 bridge there was a drainage ditch, yes.

5 Q. What did you see as you looked out to the west

6 from that point?

7 A. Well, the drainage ditch and field.

8 Q. More than one field?

9 A. Well, I didn't distinguish between the number of

10 fields. There appeared to be a field with a ditch running

11 down the middle of it.

12 Q. Okay. So there was agricultural land, then, on

13 both sides of the ditch?

14 A. That is what it appeared to be.

15 Q. Did you make any assessments about the watershed

16 that would drain into that ditch from those fields?

17 A. Yes. It didn't -- at that point it didn't appear

18 as much would have drained into it.

19 Q. At what point do you mean? Right at the bridge?

20 A. Yes.

21 Q. What about at about 100 feet to the west of the

22 bridge?

23 A. Not much, of the fields that I saw.

24 Q. What do you mean by not much?

1 A. Well, if any of it drained in there at all, it
2 would only be a small area that could have drained into it
3 from the fields to the west.

4 Q. You stood on the bridge on that date?

5 A. Uh-huh.

6 Q. As you stood on the bridge, did you observe any
7 land application going on during that time?

8 A. No.

9 Q. Did you observe any evidence of land application
10 of manure or fertilizer at that time?

11 A. Not that I saw.

12 Q. Okay. Is it likely that manure or other
13 fertilizers would be land applied to crop land in February
14 of 1994 on a cold day?

15 MR. TICE: I am going to object. It calls for
16 speculation on the part of this witness.

17 HEARING OFFICER KNITTLE: Ms. Peri?

18 MS. PERI: We have heard his experience. He has 20
19 years with the Agency as an agricultural advisor. He has
20 a Master's degree in the plant and soil sciences. I
21 believe he has demonstrated expertise in the area of
22 agronomy. I believe this falls right within his opinion
23 making ability.

24 HEARING OFFICER KNITTLE: Could you read back the

1 exact question, please.

2 (Whereupon the requested portion of the record was

3 read back by the Reporter.)

4 HEARING OFFICER KNITTLE: Mr. Tice, did you have

5 further objection?

6 MR. TICE: Yes, I do. This witness is being offered

7 for testimony on this subject to directly contradict the

8 testimony of Mr. Brockamp, which is also a witness of the

9 State. It is improper for the State to attempt to

10 controvert its own witnesses with another witness so that

11 they can basically impeach their own witness, Mr. --

12 MS. PERI: I have a response.

13 MR. TICE: -- (continuing) Brockamp, on this issue.

14 HEARING OFFICER KNITTLE: All right. Anything

15 further, Ms. Peri?

16 MS. PERI: Yes, I do. The State is offering this

17 witness to corroborate Mr. Brockamp's testimony on the

18 lack of a likelihood that nitrogen or ammonia would

19 leachate into the water that was sampled by Mr. Brockamp.

20 MR. TICE: That's not the question. The question was

21 is it likely that there would be application of fertilizer

22 or manure on the field in question on February 9th, 1994.

23 HEARING OFFICER KNITTLE: On a cold and windy day.

24 MR. TICE: On a cold and windy day.

1 HEARING OFFICER KNITTLE: I am going to overrule the
2 objection and let the witness answer the question.

3 Go ahead, sir.

4 THE WITNESS: Okay. Could you repeat the question
5 again, please.

6 Q. (By Ms. Peri) Certainly. In your opinion, is it
7 likely that manure or another fertilizer would be land
8 applied to those crop fields in February?

9 A. Commercial fertilizers, no. There are
10 applications of manure in February in the State of
11 Illinois when fields are frozen or snow covered.

12 Q. Okay. If manure had been applied to the crop
13 fields that you observed in the area 100 feet to the west
14 of the concrete bridge that you stood on, would you expect
15 to see biochemical oxygen demand levels of 560 parts per
16 million or milligrams per liter in a water quality sample
17 taken at that 100 foot point?

18 MR. TICE: I am going to object unless there is some
19 foundation laid that this witness has made studies as to
20 what the levels of nitrogen would be from runoff from
21 fertilizer and this sort of thing, particularly manure.

22 HEARING OFFICER KNITTLE: Any response, Ms. Peri?

23 MS. PERI: No.

24 HEARING OFFICER KNITTLE: I am going to overrule the

1 objection. I think this witness has been properly

2 qualified to answer that question.

3 THE WITNESS: Okay. Could you repeat the question

4 again, please.

5 MS. PERI: Sure. Actually, would you read back the

6 question.

7 (Whereupon the requested portion of the record was

8 read back by the Reporter.)

9 MR. TICE: 100 foot point from where now?

10 MS. PERI: To the west of the concrete bridge.

11 THE WITNESS: No. In order for manure that was

12 applied to that farm field to impact that stream, you

13 would have had to have a significant runoff event and

14 significant amounts of that that were applied to that

15 field to be discharged through runoff, either through

16 precipitation or heavy snow melt.

17 Q. (By Ms. Peri) This, again, would be through

18 surface drainage?

19 A. Yes.

20 Q. All right. Would you see results of 560

21 milligrams per liter on BOD through leachate of fertilizer

22 constituents?

23 A. Commercial fertilizer?

24 Q. Commercial or manure?

1 A. Through leaching?

2 Q. Yes.

3 A. Through the soil and discharge into the
4 groundwater and discharging?

5 Q. Yes.

6 A. I would not expect it, no.

7 Q. Why not?

8 A. Because BOD is related to the organic constituents
9 in the manure, and I would not expect the organic
10 materials to be filtering through the soil and migrating
11 through the soil like that to be discharged.

12 Q. On the date that you inspected or visited the John
13 Chalmers hog farm and stood on that bridge in the
14 northwest corner, did you see any indication that manure
15 was running off into the stream that you identified as
16 being just to the west of the bridge?

17 A. From those fields, no.

18 Q. Would you identify the constituents of livestock
19 waste generally?

20 A. The ones that concern us would be the ammonia, the
21 organic matter constituent, and both suspended and
22 dissolved solids that relate to BOD, that eventually cause
23 oxygen to be depleted in streams. There is phosphorus in
24 manure. Those would be the primary ones.

1 Q. Okay. When you say that they concern you, what do
2 you mean?

3 A. Well, they are a concern with -- each one can
4 cause a different type of environmental problem.

5 Q. Are they contaminants?

6 A. Yes, we consider them contaminants or measures of
7 contaminants if you are talking about BOD as a measure of
8 contaminant.

9 Q. You have testified now, Mr. Taylor, that you would
10 not expect to see a quantity of 560 milligrams per liter
11 BOD in the stream if manure or a commercial fertilizer had
12 been land applied to the crop fields just west of the
13 concrete bridge; is that correct?

14 A. Not through leaching, right.

15 Q. Okay. Would you expect to see -- you would,
16 however, expect to see those values potentially through
17 runoff of manure?

18 A. Well, if a large enough quantity of the manure
19 entered the stream through surface runoff it is possible,
20 yes.

21 Q. Okay. Would you expect to see ammonia nitrogen
22 levels of 186 milligrams per liter if manure or a
23 commercial fertilizer had been land applied to those crop
24 lands? And I am referencing water quality sampling

1 results from the steam or the ditch area that you observed
2 to the west of the concrete bridge.

3 A. For commercial fertilizers, no. For manure, only
4 if it were surface applied and there was a significant
5 runoff event immediately after the application.

6 Q. What about through leachate?

7 A. No.

8 MS. PERI: I have no more questions, but I would like
9 to go ahead and move to enter into evidence the article
10 authored by Mr. Taylor titled, Understanding the Pollution
11 Potential of Livestock Waste, and marked as People's
12 Exhibit M.

13 HEARING OFFICER KNITTLE: Mr. Tice?

14 MR. TICE: I am not sure I understand what the
15 relevancy of People's Exhibit M is.

16 HEARING OFFICER KNITTLE: Is that an objection, Mr.
17 Tice?

18 MR. TICE: The objection is as to its relevancy. It
19 is not on any issue that he has testified here to, that I
20 understand from his direct testimony. It is just a
21 general article. It doesn't bear on any issue in this
22 case that I can see.

23 HEARING OFFICER KNITTLE: Ms. Peri -- I am sorry, Mr.
24 Tice. Are you finished?

1 MR. TICE: I have not had a chance to read the whole
2 article, but from what it appears it does not bear on an
3 issue in this case.

4 MS. PERI: I believe it bears on the case in two
5 ways. First, it was drafted by Mr. Taylor, and goes to
6 his expertise and that certainly is a weight issue and not
7 a relevancy issue.

8 And, secondly, Mr. Tice has raised, through Mr.
9 Brockamp's testimony, the possibility that nitrates had
10 contributed to the water quality results taken or obtained
11 by Mr. Brockamp, and this article appears to identify how
12 nitrates operate in soil.

13 MR. TICE: Mr. Knittle, we had discovery in this
14 case, and under the rules of the Pollution Control Board,
15 the EPA was supposed to provide the respondent with all of
16 the documents that were relevant to this case. And we
17 requested those documents. We were provided, I assume,
18 all of the documents that were relevant, but we were not
19 provided any of the articles written by Mr. Taylor
20 relative to the issues of this case. I would object to it
21 on that basis, in addition.

22 There has been no testimony regarding what this
23 article is about and Mr. Taylor has written a general
24 article and it is not an article specific to the issues in

1 this case. The issue of whether or not there were proper
2 samples taken from this waterway to the west of the Kay
3 Watkins bridge is an issue that has always been in the
4 case that the EPA has been well aware of all along, and
5 they could have provided this sort of information to us in
6 discovery if they were intending to present it at hearing.

7 We are now presented with it at first blush basically
8 at the close of the State's case. I think that is
9 improper.

10 HEARING OFFICER KNITTLE: Let me -- if you want to
11 move that this be excluded because it was not provided
12 during discovery, I am going to have to see your discovery
13 request and the State's response or a copy thereof. I am
14 authorized to accept admissible and relevant scientific or
15 technical articles under 103.204(d) of our regulations.

16 I would accept this as a relevant scientific article
17 and I am prepared to do that, but if there is a discovery
18 issue involved I would be happy to take a look at that as
19 well. So this will be admitted pending any showing to me
20 that there has been a discovery breach of some sort.

21 MS. PERI: I would like to comment further on the
22 discovery question. I agree that all documents that we
23 anticipated would be used in trial should be provided and
24 were asked for by Mr. Tice, as my recollection. However,

1 the issue of groundwater flow and leaching of ammonia
2 nitrogen or nitrogen particles through soil was raised by
3 Mr. Tice and not by the State.

4 It was not something we anticipated having to provide
5 testimony on, but we are here and providing that testimony
6 in response to the raising of the issue.

7 MR. TICE: This is not rebuttal. This is their
8 direct testimony. This is their direct case-in-chief.
9 They anticipated presenting this or they wouldn't be
10 presenting Mr. Taylor as one of their direct witnesses in
11 this matter.

12 I did ask for all of the expert witnesses that they
13 expected to call and along with the issues that they would
14 testify to, and I am not even sure Mr. Taylor was listed.
15 I would have to look. I can do that through the noon hour
16 and advise you, Mr. Knittle, afterwards.

17 HEARING OFFICER KNITTLE: Okay. Well, let's take a
18 look at --

19 MR. TICE: They gave me very general, sketchy
20 information about what they would testify to and no
21 documents or anything else that they would rely upon in
22 the way of articles, but I will check and see if they even
23 gave me Mr. Taylor's name as a prospective witness.

24 HEARING OFFICER KNITTLE: All right. Let's take a

1 one hour lunch break.

2 Mr. Taylor, you are going to be asked to stay here
3 for cross-examination, not here in the building during
4 lunch, but please appear back at 1:15 this afternoon with
5 everybody else.

6 THE WITNESS: Okay.

7 HEARING OFFICER KNITTLE: All right. Thank you very
8 much.

9 (Whereupon a lunch recess was taken from 12:15 p.m.
10 to 1:20 p.m.)

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1 AFTERNOON SESSION

2 (June 23, 1999; 1:20 p.m.)

3 HEARING OFFICER KNITTLE: We are back on the record
4 after a lunch break. It is 1:20 p.m. For the record,
5 there are no members of the public who are present.

6 I should also note for the record, though I failed to
7 do so yesterday, that yesterday when we moved up to this
8 room, which is courtroom two on the second floor, I posted
9 a notice alerting any interested members of the public who
10 wants to come and testify at this hearing that this
11 hearing has, in fact, moved to this room, and that notice
12 is posted outside the county commissioners room, which was
13 the room originally noticed for this hearing.

14 I will state that I just walked down there and the
15 notice is still affixed to outside the door, so hopefully
16 that will suffice.

17 I think we had Exhibit M that we were dealing with.
18 Yes, People's Exhibit M, which is an article by Mr.
19 Taylor.

20 All right. Mr. Tice, do you have further objection
21 to that?

22 MR. TICE: Not only as to the relevancy, because it
23 is just a general article and not specific to the issues
24 involved in this case and this particular respondent.

1 And, secondly, I had interposed an interrogatory discovery
2 to the State regarding all expert witnesses whom they
3 intended to call and asked them the subject matter upon
4 which the expert would be expected to testify as to each
5 and every opinion and conclusion about which that expert
6 is expected to testify and each and every basis of the
7 opinions and conclusions disclosed with respect to the
8 interrogatory qualifications.

9 They listed, that is the State listed Mr. A.G.
10 Taylor, and just said that the expert will testify as to
11 violations of the Illinois Environmental Protection Act
12 and Board regulations as alleged in the complainant's
13 complaint. And then the basis upon -- it would be based
14 upon observations made and information obtained during
15 inspections of the respondent's facility on review of IEPA
16 inspection reports and on an understanding of the
17 applicable environmental and agricultural laws.

18 This expert has concluded, that is Mr. Taylor, that
19 the respondent has violated the Illinois Environmental
20 Protection Act and Board regulations as alleged in the
21 complainant's complaint. There is no mention at all about
22 the opinion that this expert has been asked to render in
23 this proceeding this date, which is more in the nature of
24 rebuttal testimony rather than direct testimony,

1 concerning the leaching of nitrogen or ammonia through
2 subsurface waters from the surface of soils, agricultural
3 soils, either applied through commercial fertilizers or
4 from livestock manure, nor as to opinions about the
5 leaching or transferring of BOD from surface applied
6 manures, livestock manures to fields. Nor is there any
7 mention that if such an opinion was to be rendered by this
8 expert in this proceeding or alleged expert in this
9 proceeding, that it would be based upon any articles
10 written by this particular witness, including articles
11 while he was with the Illinois Environmental Protection
12 Agency specifically with regard to this article.

13 The sole purpose of discovery is to discern the
14 experts expected to be called, the issues upon which they
15 will render their opinions, and the basis of those
16 opinions, as well as the articles or other scientific
17 information that they rely upon to establish the basis of
18 those opinions. It is obvious that the State did not do
19 that in this situation. They just sort of gave a general
20 reference to it, and now are expecting -- are attempting
21 to bring in an issue or testimony on an issue by this
22 expert and bring it in under the protective umbrella of
23 their very general statement.

24 So on that basis I am going to object to both

1 People's Exhibit Number 9 as well as the direct testimony
2 offered by Mr. Taylor, and ask that it be stricken as to
3 the opinions that he rendered concerning runoff of
4 nitrogen or ammonia or the leaching of nitrogen and
5 ammonia from surface applied commercial fertilizers or
6 livestock manure, and also the runoff or leaching of BODs
7 generated from livestock manure surface applied to the
8 fields to the west of this site, which are not even on the
9 Chalmers' property.

10 HEARING OFFICER KNITTLE: Okay. Anything else, Mr.
11 Tice?

12 MR. TICE: That's it.

13 HEARING OFFICER KNITTLE: Ms. Peri? Oh, and before
14 you get started, did you say People's Exhibit 9?

15 MR. TICE: Exhibit M. I am sorry. I may have
16 misspoke.

17 HEARING OFFICER KNITTLE: I just wanted to make sure
18 that I was not missing an exhibit.

19 Okay. Then you may proceed, Ms. Peri.

20 MS. PERI: Thank you. I will limit my comments to
21 the following.

22 Mr. Taylor was disclosed as a potential witness. As
23 to the allegations in the complaint, the allegations
24 concern threats of water pollution specifically and

1 including the area to the west of the concrete bridge. He
2 was at the site on one date and observed the area. He is
3 qualified to speak on those issues and, again, was
4 disclosed as one who was qualified or had made
5 observations to speak on those issues.

6 On cross-examination of Mr. Brockamp, Mr. Tice delved
7 into the area of leachate flow, as what I gathered to be
8 his argument that there is some other contribution to the
9 high water quality sample results that were obtained by
10 Mr. Brockamp. And, therefore, it is appropriate as to
11 that allegation that Mr. Taylor be entitled to testify as
12 to the likelihood that those contaminants, if they
13 existed, could have contributed to the water quality
14 samples at all.

15 HEARING OFFICER KNITTLE: And to the report itself or
16 the article?

17 MS. PERI: I will just reiterate my earlier comments.
18 One, this goes to his expertise in the area of livestock
19 waste pollution problems. The article is right on the
20 point in that regard. And, secondly, it touches on
21 ammonia nitrogen and nitrates and in general how those
22 constituents can move through soil.

23 HEARING OFFICER KNITTLE: Okay. Mr. Tice, I am going
24 to overrule your objection. As to the testimony adduced

1 by Mr. Taylor, I think that is testimony that even if it
2 couldn't be properly presented on direct examination,
3 could be presented in complainant's case in rebuttal. I
4 think it is more harmless there than brought forward on
5 the case-in-chief. I am going to let that testimony
6 stand.

7 I am a little more troubled about the report, because
8 it does not appear as if it was provided during discovery,
9 but I am going to let the Board decide that, if they think
10 that it should be viewed as a discovery sanction. I am
11 not so sure that it shouldn't be viewed.

12 I think that's a closer issue, but I am going to
13 admit it. If you have any arguments to that effect, I
14 think you should make it to the Board.

15 (Whereupon said document was admitted into evidence
16 as People's Exhibit M as of this date.)

17 HEARING OFFICER KNITTLE: All right. Now somebody
18 has to remind me where we were.

19 MR. TICE: We are ready for cross-examination, I
20 believe.

21 HEARING OFFICER KNITTLE: Let's proceed with cross.

22 MR. TICE: They had just closed their direct of Mr.
23 Taylor.

24 HEARING OFFICER KNITTLE: All right.

1 CROSS EXAMINATION

2 BY MR. TICE:

3 Q. Mr. Taylor, you were at the Chalmers farm site on

4 one occasion; is that correct?

5 A. Yes.

6 Q. On February 9, 1994?

7 A. Yes.

8 Q. According to your testimony it was a bitterly cold

9 day; is that correct?

10 A. Yes, it was to me.

11 Q. Well, did you get out of the car out there?

12 A. Yes.

13 Q. Was there a north wind?

14 A. Straight direct from the north? I don't recall

15 specifically whether it was straight directly north or

16 not.

17 Q. Was it a northerly wind, if you know? If you

18 don't know that's fine.

19 A. I don't know whether it was north, northwest or

20 west. It was cold.

21 Q. You would not classify it as a southerly breeze,

22 would you?

23 A. No, it was not a warm, southerly breeze.

24 Q. It was very cold, wasn't it? And you said

1 probably ten degrees?

2 A. As I recall, that's what I would estimate it
3 being. It could have been colder or slightly warmer.

4 Q. You said it felt like, and then you never got to
5 finish that comment.

6 A. It felt like zero to me.

7 Q. Now, you indicated that it is common practice to
8 apply manure to the fields, that is livestock manure, now,
9 to the fields on the surface, not plowed into the field or
10 knifed into the field, but to the surface during the
11 colder months, January and February when the ground is
12 frozen?

13 A. Some farmers have to do that because they can't
14 apply it to the growing crop, and they have to apply it
15 after the crop is harvested and when the ground is not so
16 wet that they can't get on it. If it is frozen at that
17 time of year they can get on it and surface apply.

18 Q. So that's not really an uncommon agricultural
19 practice, is it, the surface application of livestock
20 manure when the ground is frozen during the winter months?

21 A. It does occur, yes.

22 Q. It occurs in this area of Illinois, doesn't it?

23 A. Uh-huh.

24 Q. You have to say yes or no.

1 A. Yes.

2 Q. Okay. Now, I assume that when you went to that
3 site on February 9th, 1994, you went first to where the
4 buildings are; is that correct?

5 A. That was the first area that we looked at. We
6 stopped at Mr. Chalmers -- the house that was on the
7 property first and then subsequently went around the
8 building area.

9 Q. Okay. Then after you made that tour, that is when
10 you left the site and went north on what is the Kay
11 Watkins Road?

12 A. Yes. And we stopped out on that road and talked
13 again with Mr. Chalmers.

14 Q. Was he with you at the time?

15 A. He drove in his own vehicle, but we were standing
16 outside talking to him.

17 Q. Were you still on the road surface, though?

18 A. We were standing on the side of the road.

19 Q. In the grassy area along side the road?

20 A. I am not sure how grassy the spot we were standing
21 on was, but it --

22 Q. You were off of the traveled portion next to your
23 vehicles?

24 A. Yes.

1 Q. How wide is the road there?

2 A. Not very wide.

3 Q. Ten feet? The traveled portion of the road, I
4 mean, the traveled surface?

5 A. Probably comfortably you can get one car down it.

6 To try to get two cars down it, one would have to go over
7 to the side and probably sit still.

8 Q. Is that typical of that whole Kay Watkins Road
9 from the time you leave John Chalmers' residence and
10 travel north to the Kay Watkins bridge and then turn back
11 east and travel approximately half a mile, is that
12 typically --

13 A. Show me what you are talking about, please.

14 Q. (Indicating on exhibit.) Start at John Chalmers'
15 house here and travel north to the Kay Watkins bridge and
16 the curve where the road turns back east.

17 A. I have a more distinct memory of the road along
18 the north edge being the narrow road and when you get
19 around the bridge it may have widened a little bit.

20 Q. From here on east for approximately half a mile on
21 the north side of Mr. Chalmers' property, you are familiar
22 with that road?

23 A. That's what I recall, yes.

24 Q. How wide would you say the traveled portion of

1 that road is?

2 A. That is what I thought that you were referring to
3 to begin with. It is not a very wide road.

4 Q. Ten foot, if that?

5 A. Probably a little wider than ten foot. You can
6 get one car down it, but not two.

7 Q. All right. There is not much in the way of a
8 ditch on either side of it, is there, a road ditch, or do
9 you know?

10 A. Continuous, it didn't appear to be much of a
11 ditch.

12 Q. Now, when you said you got out of the vehicle
13 after you left John Chalmers' premises and drove north on
14 the Kay Watkins Road and stopped and got out, where were
15 you on the Kay Watkins Road when you stopped and got out?

16 A. When we stopped and talked with Mr. Chalmers?

17 Q. Yes.

18 (The witness approached the exhibit.)

19 A. If I may?

20 Q. Sure. Here is his house.

21 A. This is not necessarily to scale, but we were over
22 in this area (indicating). What we were doing was
23 observing this area where he had applied manure.

24 Q. Where who had?

1 A. Mr. Chalmers.

2 Q. This is February 9th, 1994?

3 A. No, where he had historically used that field to
4 apply manure. That's what we were looking at.

5 Q. Okay. So the witness is pointing to the area
6 marked C on People's Exhibit A. And this is where you
7 stopped and got out of the car and talked to Mr. Chalmers;
8 is that right?

9 A. Yes, in this general area, yes.

10 Q. All right. Is that the only place that you
11 stopped along that road after you left his residence?

12 A. No.

13 Q. Where else did you stop?

14 A. On the bridge.

15 Q. Okay. When did you do that? Subsequent to the
16 stop at the location marked C on Exhibit A?

17 A. I believe so, yes.

18 Q. Where did you stop there? Can you show me on the
19 map, People's Exhibit A?

20 (The witness approached the exhibit.)

21 A. Right in this area (indicating).

22 Q. So right where the road turns from traveling west
23 to going back south; is that correct?

24 A. Yes, so we could observe the down side of this and

1 this drainage ditch (indicating).

2 Q. The down side of what is marked as the dilution
3 pond?

4 A. Yes.

5 Q. How many individuals were with you at that time?

6 A. As I recall, the region manager, Bud Bridgewater,
7 was with us. Dale Brockamp was with us. I was there, and
8 an assistant of mine, Steve Cook, was with us.

9 Q. Was Tim Cloogey there with you?

10 A. I believe he was.

11 Q. Did you all get out of the vehicle?

12 A. Yes.

13 Q. Did you stand by the vehicle?

14 A. Well, we moved around.

15 Q. How far did you move from the vehicle?

16 A. We went --

17 Q. You personally.

18 A. I personally went down on the side of the road to
19 look at that drainage ditch. Not too far probably.

20 Q. Did you get off the public way of the road?

21 A. Yes.

22 Q. How far did you get off the public way?

23 A. Probably 15, 20 feet.

24 Q. Into the field then?

1 A. Uh-huh.

2 Q. Did you walk into the field?

3 A. Well, I don't know what constitutes the field

4 versus the right-of-way. I assume it would have been the

5 field.

6 Q. Well, you were there, Mr. Taylor. I am asking you

7 how far into the field did you go, that you best

8 recollect?

9 A. Just right on the edge of the field, probably

10 within maybe ten feet.

11 Q. All right. How far away from your vehicle were

12 you when you stopped? Maybe that will help us. Ten foot?

13 A. I doubt that at any time walking up and down the

14 road or out in the field or along that ditch that I got

15 100 feet from the car.

16 Q. Were you 100 feet from the car on this particular

17 occasion when you told me you walked down toward the

18 field?

19 A. That is what I was referring to.

20 Q. All right. Now, did you notice another road going

21 off to the north right there at that curve?

22 A. No, I didn't.

23 Q. Are you aware of the fact that there is one?

24 A. There could have been. There was a snow cover as

1 well at the time.

2 Q. How much of a snow cover?

3 A. I don't know how many inches of snow there were
4 left on at that time.

5 Q. Apparently enough that you couldn't recognize the
6 road going to the north from that curve of the Kay Watkins
7 Road; is that correct?

8 A. That is quite possible.

9 Q. Either it is correct or not. If you noticed it,
10 you noticed it. If you didn't notice it, you didn't.

11 A. I did not notice the road going north there.

12 Q. Do you think it was because of the snow coverage?

13 A. If there was a road going north there and I could
14 have seen it, yes, I would have noticed it.

15 Q. All right. Now, how many acres are in the field
16 that you were looking at that lies to the west of that Kay
17 Watkins bridge and along this waterway that you were
18 looking at?

19 A. I don't know how many acres --

20 Q. Don't you have any estimate?

21 A. -- that that field --

22 Q. Pardon?

23 A. Do I have any estimate?

24 Q. Sure.

1 A. Well, I don't know what the boundaries of that
2 property were.

3 Q. You didn't attempt to make any estimate as to how
4 many acres might be in that field, I take it, right?

5 A. I had no reason to but, again, I did not know what
6 the boundaries of that particular field was. It could
7 have been two or three fields. Different people owned
8 them.

9 Q. Did you make any determination as to how many
10 acres of land lay in that field to the south of the
11 waterway and the west of the Kay Watkins Road?

12 A. No.

13 Q. Okay. Did you make any estimation as to the
14 distance from the waterway to the south edge of the field
15 and west of the Kay Watkins Road?

16 A. Pardon?

17 Q. Did you make any estimation as to the distance
18 from the waterway south to the south edge of the field
19 that lay immediately west of the Kay Watkins Road at the
20 juncture?

21 A. No.

22 Q. How far could you see to the west without having
23 your vision interrupted by any horizon or change of the
24 slope in the land from that point where you were standing?

1 A. Down the drainage ditch?

2 Q. Yes.

3 A. Looking down the drainage ditch?

4 Q. Looking down the drainage ditch.

5 A. You mean where the slope would impair my vision

6 and I couldn't see any further?

7 Q. Just wherever the point was that your vision would

8 be impaired, sir, by any geographical impediment?

9 A. Well, it was not a geographic impediment because

10 we were up gradient looking west.

11 Q. How far could you look?

12 A. About as far as I could see.

13 Q. How far is that, sir? Half a mile, a mile?

14 A. Oh, I can see at least a mile.

15 Q. So you could see an open field? Was the field all

16 open then that you were looking at?

17 A. Along the drainage ditch.

18 Q. Okay. And to the south of the drainage ditch, was

19 it also open for that full mile?

20 A. It was a fairly open field. I don't recall

21 exactly where there might have been trees or other

22 structures.

23 Q. To the west or to the south?

24 A. South.

1 Q. I think we have talked about it. I asked you how
2 far to the south those trees may have been from the
3 drainage ditch. You said you didn't know. Now we are
4 talking about to the west. Do you think you could see
5 from the point where you were standing on that curve in
6 the Kay Watkins Road approximately a mile to the west on
7 either side of the drainage ditch? Is that a fair
8 statement?

9 A. I think so.

10 Q. Okay. And as far as you could see that was an
11 open field; is that correct?

12 A. Uh-huh.

13 Q. You would assume, I take it --

14 HEARING OFFICER KNITTLE: You have to say yes or no
15 for the court reporter.

16 THE WITNESS: Okay. Yes.

17 Q. (By Mr. Tice) I assume that if that was an open
18 field that you would conclude that it was cropped on a
19 regular basis?

20 A. It would have been cropped unless it were left in
21 the Conservation Reserve Program.

22 Q. Did you see any evidence that it was in the
23 Conservation Reserve Program on February 9, 1994, looking
24 at the surface of that field where you were located?

1 A. No.

2 Q. So you would safely assume that it was cropped as
3 of the year 1993, for the crop year 1993, would you not?

4 A. I didn't assume one way or the other.

5 Q. Did you see crop residue on the surface of that
6 soil in that field?

7 A. It was snow covered.

8 Q. Snow covered so you couldn't see the residue; is
9 that right?

10 A. Uh-huh.

11 Q. Now, Mr. Taylor, if manure, livestock manure were
12 land applied to the surface of this field that you were
13 looking at during the winter months, it would generally
14 lay on the frozen ground, wouldn't it?

15 A. Yes.

16 Q. And before you came out on that date did you make
17 any determination whether there had been any rains or
18 anything of that nature in the general area, anything that
19 would cause runoff from open fields?

20 A. Well, again, it was snow covered.

21 Q. Okay. But prior to that day when you saw the snow
22 cover, had there been prior to the time, a week prior to
23 or anytime in the general time just before you came out
24 for that inspection, did you --

1 A. I did not review any weather records.

2 Q. So it would be possible, would it not, if, in
3 fact, manure had been applied to that field that there may
4 have been runoff into that drainage waterway if it were
5 located on the surface and applied to the surface?

6 MS. PERI: I will object here and just ask Mr. Tice
7 to clarify which field he is talking about.

8 MR. TICE: The field immediately to the west of the
9 Kay Watkins Road.

10 MS. PERI: On both sides of the ditch?

11 MR. TICE: Either side of the ditch.

12 HEARING OFFICER KNITTLE: Is that sufficient, Ms.
13 Peri?

14 MS. PERI: Thank you.

15 THE WITNESS: Can you clarify at what point you are
16 talking about running into the ditch?

17 Q. (By Mr. Tice) At any point along the ditch, sir,
18 where the ditch borders the cultivated portion of the
19 field?

20 A. I would assume that it was possible.

21 Q. Did you make any study, Mr. Taylor, before you
22 went out there on that date, either before or since you
23 have been out there, from topographical maps to show how
24 the lay of that field is, the slopes and so forth and how

1 that may affect any drainage or runoff from the field into
2 that waterway?

3 A. The topographical map that I have seen indicates
4 the elevation from the roadway going west goes down
5 gradient.

6 Q. What about from the south towards the waterway?

7 A. From the south?

8 Q. Uh-huh.

9 A. It does go down gradient --

10 Q. To the waterway?

11 A. -- as you go west.

12 Q. To the waterway; is that correct?

13 A. Uh-huh.

14 Q. Yes or no?

15 A. It appears as if it does.

16 Q. It appears or it does? You looked at the topo?

17 A. That's what the topograph shows.

18 Q. All right. Now, did you also, when you were out
19 there on that occasion, and inspecting the premises of Mr.
20 Chalmers', discern whether or not there was any waterway
21 or drainage way up near Mr. Chalmers' house that may drain
22 into that field immediately to the west of the Kay Watkins
23 Road? And I am not speaking of the one that has been
24 referred to as an intermittent stream and identified as a

1 dotted line on Exhibit A running from the bottom
2 right-hand corner to the top left-hand corner. I am
3 referring to anything that you may have noticed near to
4 Mr. Chalmers' house that would in any way represent a
5 drainage way that would flow to the west?

6 A. The only thing that I saw that I recall was the
7 outfall from that dilution pond that went under the bridge
8 and under that drainage ditch.

9 Q. Are you telling me that you saw no drainage way or
10 anything that would resemble a drainage way or a waterway
11 near Mr. Chalmers' house that would flow to the west and
12 into this field immediately west of the north-south Kay
13 Watkins Road?

14 A. I really did not make those observations at that
15 point.

16 Q. Okay. You have never made that type of an
17 observation, because you have only been out there the one
18 time; is that correct?

19 A. I didn't personally look for that at that point.

20 Q. Okay. You never have been out there to look for
21 that sort of thing, have you?

22 A. I was just at Mr. Chalmers' the one time.

23 Q. February 9th, 1994?

24 A. Right.

1 Q. Okay. When you were there you did not look for
2 that sort of a drainage way?

3 A. Not from Mr. Chalmers' house down along the west
4 edge of his property.

5 Q. All right. From your review of the topographic
6 map of that area, Mr. Taylor, if there were such a
7 drainage way that traversed to the west of the Kay Watkins
8 Road and south of the waterway in question that you were
9 inspecting on 02-09-94, wouldn't it be possible then for
10 that drainage way to also drain into that waterway that
11 you were inspecting --

12 A. Could you --

13 Q. -- based upon your review of the topographical
14 map?

15 A. Would you point out what you are talking about?

16 Q. Well, it is not shown on People's Exhibit A, Mr.
17 Taylor. There has been no depiction of it. But if there
18 were, as I asked you about, a drainage way around Mr.
19 Chalmers' residence that traversed to the northwest across
20 the Kay Watkins Road and then northerly or northwesterly
21 to the waterway that you were inspecting, would it not
22 also, based on your review of the topographical map now
23 that you looked at and you testified about, would it not
24 also, that is, that drainage way, drain into the waterway

1 in question?

2 A. Unless it were directed a different direction.

3 Q. And if it were not directed in a different
4 direction, if it went according to the topography of the
5 land at that location would it drain into the waterway in
6 question?

7 A. I would think it would.

8 Q. All right.

9 A. But I didn't make those observations.

10 Q. I understand that you didn't make those
11 observations, sir. Now, when livestock manure is applied
12 to the surface of farm ground, it contains both BOD and
13 ammonia, doesn't it?

14 A. It will contain ammonia. BOD is a measurement.
15 It is not a contaminant, in and of itself. It is a
16 measure of the affect of the breakdown of organic matter
17 that is in --

18 Q. The solids?

19 A. In part the solids, dissolved or suspended, the
20 affect of that consuming oxygen in an oxidation process.

21 Q. But it contains -- livestock manure applied to the
22 surface of a farm field contains both ammonia and these
23 solids that are measured by the BOD measurement?

24 A. Uh-huh.

1 Q. Is that correct?

2 A. Yes.

3 Q. And they will be there on the surface of that

4 field until they are either washed off through some

5 climatic condition or they are worked into the ground

6 through some tillage effort; isn't that correct?

7 A. Or they can infiltrate the --

8 Q. Leach down through the ground?

9 A. -- fact that it is soluble.

10 Q. Do they also -- does that same livestock manure

11 also contain phosphorus?

12 A. Well, I am not finished with the other question.

13 Q. I am sorry.

14 A. The ammonia can volatilize.

15 Q. Evaporate?

16 A. Uh-huh.

17 Q. All right.

18 A. So some of it can be lost in the air if it is left

19 on the surface. And then your next question?

20 Q. The phosphorus?

21 A. Yes, there would be some phosphorus in the manure.

22 Q. What would happen with that?

23 A. Which form of phosphorus are you talking about?

24 Q. Well, I don't know, sir. You are the expert on

1 this. I am asking you. If there is phosphorus there --
2 there would be phosphorus contained in this solid manure
3 that is applied to the field from the livestock feedlot or
4 wherever it came from?

5 A. Some of the phosphorus would be tied up in organic
6 matter. It would be organic phosphorus. Some of it may
7 be mineral phosphorus. Mineral phosphorus is not very
8 soluble. So the mineral phosphorus, which is a more
9 readily available form, not being very soluble, is not
10 going to move very far unless all the manure itself is
11 washed off through some precipitation or runoff event.

12 Q. All right. Now, you, in your capacity with the
13 Illinois Environmental Protection Agency, are concerned
14 about the application of livestock manure, raw livestock
15 manure to the surface of fields, aren't you?

16 A. Yes.

17 Q. You are concerned about it because it can run off
18 into grass waterways, or waterways, or what you call
19 waters of the State, aren't you?

20 A. Yes.

21 Q. And become a contaminant; is that correct?

22 A. That's correct.

23 Q. I take it that on February 9th, 1994, that you
24 didn't go ahead and that all you did was simply observe

1 the field, it was snow covered, and that is the field in
2 question here, at the Kay Watkins bridge, and on either
3 side of the waterway in question here, and that you did
4 not proceed to walk down the waterway any distance at all;
5 is that correct?

6 A. No.

7 Q. It was kind of cold and miserable weather, wasn't
8 it?

9 A. It was cold.

10 Q. And miserable. Okay. Did you observe whether or
11 not there were any feedlots to the west, that is livestock
12 feedlots to the west of your location where you were
13 looking at this field?

14 A. I did not see any that I would say were close to
15 Mr. Chalmers.

16 Q. Did you observe some?

17 A. As we were driving out, towards Mr. Chalmers, we
18 saw one or two locations that appeared to have livestock.

19 Q. Where were they in relationship to the waterway?

20 A. They would have been south and west.

21 Q. Okay. I am talking about as you are standing
22 there at the Kay Watkins bridge, Mr. Taylor, and looking
23 west along the waterway in question and the fields on
24 either side of that waterway, did you observe any

1 livestock feedlots in that area?

2 A. I didn't see any.

3 Q. Okay. Did you -- you never made any inspection to
4 find out if there were any along that grass waterway, did
5 you?

6 A. I didn't.

7 Q. Let me ask you one other question. When you were
8 at the point C on the People's Exhibit A, and this would
9 be on the Kay Watkins Road running east and west, what
10 were you observing there? Were you looking at Mr.
11 Chalmers' field to the south?

12 A. Well, Mr. Chalmers was showing us this one small
13 area where he had applied irrigated manure.

14 Q. Recently you mean at that time or --

15 A. No, we were just talking about his historical use
16 of that particular site.

17 Q. I see.

18 A. I believe Mr. Chalmers also talked about another
19 area that he may be able to get access to. It is -- it
20 would be straight north.

21 Q. It wasn't contiguous to this track, right?

22 A. No.

23 Q. Did you make any inspection of the field directly
24 across from where you were standing looking directly north

1 on that occasion?

2 A. We didn't walk out in the field, no.

3 Q. Okay. It was, though, an agricultural field to
4 the north?

5 A. That appeared to be.

6 Q. Okay. For crops, row crops?

7 A. It appeared that it had the potential to be used
8 for crops.

9 Q. This was wintertime. Did you see any crop residue
10 there?

11 A. It was snow covered.

12 MR. TICE: I have no other questions.

13 HEARING OFFICER KNITTLE: Ms. Peri, do you have any
14 redirect?

15 MS. PERI: No redirect.

16 HEARING OFFICER KNITTLE: All right. Sir, thank you
17 very much for your time. You can step down.

18 (The witness left the stand.)

19 HEARING OFFICER KNITTLE: Ms. Peri, do you have
20 another witness?

21 MS. PERI: We do. We have one additional witness. I
22 would like to revisit, however, the issue of Exhibit M
23 before we move on, if this is a satisfactory time to, Mr.
24 Knittle.

1 HEARING OFFICER KNITTLE: Let me grab my copy of

2 Exhibit M. Okay, Ms. Peri.

3 MS. PERI: Do you have a copy of that there?

4 HEARING OFFICER KNITTLE: I have the original.

5 MS. PERI: The State would like to voluntarily seek

6 to withdraw this exhibit, and I will explain why. The

7 People feel that this material having just been made

8 available to the attorneys in the State's case this

9 morning was not unfairly withheld. It was the first time

10 it had been presented to the State, and we feel it is

11 relevant.

12 However, if there is any remote chance of unfairness

13 to the other side, it is not our purpose in this hearing

14 to proceed along those lines. So I will voluntarily seek

15 to withdraw this Exhibit M from evidence on the basis that

16 the State always wants to conduct its discovery and trials

17 in the most fair manner as possible.

18 HEARING OFFICER KNITTLE: Mr. Tice, do you have any

19 objection to that?

20 MR. TICE: Well, to the extent that any of Mr.

21 Taylor's testimony was based on People's Exhibit M, then

22 we have a bit of a problem. I am not sure whether it was

23 or was not. I think his expertise was based upon his

24 articles, and I think in his direct examination he was

1 asked if he had written articles, and he indicated
2 numerous articles on behalf or while he has been working
3 at the IEPA. I think when he identified People's Exhibit
4 M he referred to that, and has given some testimony with
5 regard to the biochemical oxygen demand, this measuring
6 device of the raw material from the livestock manure, and
7 has talked about ammonia.

8 HEARING OFFICER KNITTLE: Mr. Tice, can I interject
9 for a second? Are you suggesting that Mr. Taylor would
10 have to submit all of the articles he has penned for the
11 EPA in order to testify?

12 MR. TICE: No, I am not suggesting that at all.

13 HEARING OFFICER KNITTLE: Because it is my
14 recollection that he did not testify based on this
15 exhibit, and if that's where we are headed with some sort
16 of motion to strike his testimony, because this exhibit
17 has been withdrawn, I would deny that motion.

18 MR. TICE: I don't know how much -- my point was, Mr.
19 Knittle, I don't know how much of his testimony was based
20 in fact and how much of his opinions and conclusions were
21 based, in fact, upon this article that he has written and
22 was submitted and admitted by you, sir, and now is being
23 sought to be withdrawn by the State on the basis that they
24 feel like they unfairly presented it.

1 Now, that puts me in a little bit of an awkward
2 position. I objected to having it introduced in the first
3 instance because I didn't think it had been fairly
4 presented to us. I was overruled in that regard. I know
5 you had some reservations about it, and I appreciate that.
6 But now this witness has testified and has been crossed
7 and now excused. I can't tell from his testimony or
8 without going through the record how much of his opinions
9 are based upon this particular article that he wrote.

10 HEARING OFFICER KNITTLE: Let me address --

11 MR. TICE: And if we find in the record then I will
12 make an objection in the record.

13 HEARING OFFICER KNITTLE: I think even though I am --
14 first of all -- and Ms. Peri, I will let you speak again.

15 I am going to allow you to withdraw this, but I still
16 keep a copy of it because it was submitted, and so it will
17 be before the Board if you want to make any arguments
18 based on that, Mr. Tice.

19 MR. TICE: I appreciate that.

20 HEARING OFFICER KNITTLE: My reservations to the
21 admission of this initially were primarily based upon
22 discovery and my reservations were the fact that I had not
23 had sufficient time to review the discovery requests and
24 the discovery response to ascertain whether or not it was

1 a discovery issue that needed to be addressed. That was
2 primarily -- I was not making a decision one way or the
3 other. If, in fact, it had been withheld during
4 discovery, then I would have some reservations, but I am
5 not prepared to say that it was or it wasn't.

6 I am taking Ms. Peri at face value that she is
7 attempting to do the honorable thing here by withdrawing
8 this exhibit, and I am going to take it in that light. If
9 there are any arguments that need to be made upon the
10 exhibit and the testimony that may or may not have been
11 adduced from the exhibit or based on the exhibit I think
12 those could properly be made before the Board.

13 MR. TICE: I appreciate that and just want you, sir,
14 to understand that it puts me in a little awkward position
15 because of the fact that it was tendered to the witness
16 and the witness testified, I assume with regard to it as
17 to some of his conclusions or opinions, and that it is now
18 being withdrawn. And to the extent that that impacts on
19 the basis of some of his opinions or any of his opinions
20 and conclusions, then I would expect and would make those
21 objections to the Board.

22 HEARING OFFICER KNITTLE: Understood. I just wanted
23 it noted for the record that I was listening to this
24 witness' testimony in light of the fact of the controversy

1 surrounding Exhibit M. I don't think he testified to
2 anything that he could not have testified to based on his
3 education and experience with the Illinois Environmental
4 Protection Agency. However, if that proves not to be the
5 case, that would be something that you could make the
6 appropriate motion to strike before the Board.

7 Ms. Peri, I have been leaving you out of the loop. I
8 want you to have any comments if you want to make them.

9 MS. PERI: Thank you. I think you summed up our
10 position appropriately, Mr. Knittle. We want to be more
11 than fair in every case, and I am certainly not
12 acknowledging that this was unfair. As I said, this
13 article was presented to me for the first time today. And
14 I think it was limited in its use today simply to provide
15 recognition to Mr. Taylor, as to his having written that
16 article. He was obviously not examined on that article
17 nor crossed as to that article, and we would simply again
18 urge this -- encourage you, Mr. Hearing Officer, to
19 withdraw the document, as you have indicated that you
20 will. And in response to Mr. Tice's argument that it
21 somehow has some bearing on Mr. Taylor's testimony, I
22 agree with your comments, Mr. Knittle, and would reiterate
23 that Mr. Taylor testified independently of any documents
24 throughout both direct and cross.

1 HEARING OFFICER KNITTLE: Mr. Tice, just for the
2 record, I have to note this on my hearing report. Are you
3 objecting to the withdraw? I know you have -- what did
4 you say -- qualms about it, but I just need --

5 MR. TICE: Well, it puts me in an awkward position.

6 HEARING OFFICER KNITTLE: Right. But you understand
7 that I just need to know if there is an objection to the
8 withdraw or not.

9 MR. TICE: Sure. I objected to it in the first
10 instance.

11 HEARING OFFICER KNITTLE: Well, I know you objected
12 to --

13 MR. TICE: I am hard pressed to have to switch and
14 now say I object to its withdraw. I don't object to its
15 withdraw. I do object to its withdraw if it impacts -- if
16 it impacted on the witness' conclusions and opinions if he
17 relied on them, after we go back through the record.

18 I understand that we have all listened to his
19 testimony, but I would like to see the record at some
20 point. By my not objecting to the withdraw I don't want
21 to be precluded from arguing that his testimony, to the
22 extent it is based on this document or this article,
23 should be excluded then also.

24 HEARING OFFICER KNITTLE: Okay. I think that is

1 clearly made for the record regardless of --

2 MR. TICE: That's my point.

3 HEARING OFFICER KNITTLE: I know. I just want to let

4 you know if I sum it up incorrectly in my hearing report,

5 please note that it is in the record, your argument that

6 you just made.

7 All right. Let's move on to the next witness, Ms.

8 Peri.

9 MS. PERI: Okay. The State has called Linda Brown.

10 HEARING OFFICER KNITTLE: Okay. Ms. Brown, we are

11 going to ask that you be sworn in by the court reporter.

12 Would you please swear her in.

13 (Whereupon the witness was sworn by the Notary

14 Public.)

15 HEARING OFFICER KNITTLE: Okay. Ms. Peri, it is your

16 witness.

17 L I N D A B R O W N,

18 having been first duly sworn by the Notary Public, saith

19 as follows:

20 DIRECT EXAMINATION

21 BY MS. PERI:

22 Q. Good afternoon, Ms. Brown.

23 A. Hi.

24 Q. Where do you work?

1 A. I am a PORTA school bus driver, and I also own my
2 own business.

3 Q. Is your business here in town?

4 A. Yes.

5 Q. What sort of business is that?

6 A. A laundry mat and rec center.

7 Q. You said you are a bus driver for PORTA?

8 A. Yes.

9 Q. What does PORTA mean?

10 A. Petersburg, Oakford, Rock Creek, Tallula and
11 Atterbury. It is a Community School District.

12 Q. So you pick up and drop off children that go to
13 school in all of those areas?

14 A. Yes.

15 Q. When have you begun your duties as a bus driver
16 for PORTA?

17 A. I started in 1990.

18 Q. 1990?

19 A. Uh-huh. It would have been August of 1990.

20 Q. Have you driven several bus routes --

21 A. Yes.

22 Q. -- in your position with PORTA?

23 A. Yes, I have.

24 Q. Okay. Did any of your routes include passing by

1 John Chalmers' property?

2 A. Yes.

3 Q. When was that?

4 A. I believe I drove the -- from 1990, it would have
5 been about September of 1991, and I drove it four years so
6 it would be 1994, 1995.

7 Q. Okay. How did you know that you were passing by
8 Mr. Chalmers' property?

9 A. Everybody in the area would say that is John
10 Chalmers --

11 MR. TICE: I would object to what everybody may say.

12 THE WITNESS: Okay. My first pick up --

13 HEARING OFFICER KNITTLE: Hold on. Ma'am, I don't
14 mean to interrupt you.

15 THE WITNESS: Okay.

16 HEARING OFFICER KNITTLE: But when he objects or she
17 objects I have to either say yes, that is a good objection
18 or no, Mr. Tice, that is not a good objection.

19 THE WITNESS: Okay.

20 HEARING OFFICER KNITTLE: Ms. Peri, did you have a
21 comment?

22 MS. PERI: No.

23 HEARING OFFICER KNITTLE: I will sustain that
24 objection. When I sustain an objection, if you would, try

1 not to answer the question until one of the attorneys says

2 something else.

3 THE WITNESS: Okay.

4 Q. (By Ms. Peri) Other than talking to other persons

5 in town, did you have some personal basis for knowing that

6 that was John Chalmers' property?

7 A. My first pick up was at the Chalmers farm.

8 Q. Where along the farm was the pick up point?

9 A. It would have been the helper's house. It was

10 Jackson's house, and I think that's the tenant house.

11 Q. Which direction would the bus be traveling at that

12 point?

13 A. I was going eastbound when I stopped the bus to

14 pick up the kids.

15 Q. Do you remember the name of the road that you were

16 on?

17 A. No.

18 Q. Okay. Was it a public road?

19 A. Yes.

20 Q. Which side of Mr. Chalmers' property was that road

21 located?

22 A. It would have been on the west side of his

23 property.

24 Q. Okay. And the pick up point would have been on

1 the right side of that road?

2 A. Right. I would stop on the road, and the kids

3 would get on the bus on the right.

4 Q. What were about the age range of the children that

5 you drove on the bus?

6 A. I believe the boy was junior high and the girl was

7 grade school the first year I picked them up.

8 Q. So they might be 11 or 12 years in age?

9 A. Yes.

10 Q. Okay. About how many children would you have on

11 that particular bus route on any given day?

12 A. Just those two. I would pick up those two.

13 Q. At that point?

14 A. Yes.

15 Q. How many children might be on the bus already when

16 you stopped at that point?

17 A. That was the first pick up in the morning and the

18 last drop off at night.

19 Q. So at any time you would have on the bus yourself

20 and two children?

21 A. Correct.

22 Q. Okay. About what time of day would you pick up

23 the children?

24 A. I think I picked them up in the morning at 7:10,

1 7:15, and then in the afternoon, whatever time school got
2 out that day would be probably a half hour after school
3 got out to 45 minutes after school got out.

4 Q. When did school get out?

5 A. 3:20.

6 Q. Okay.

7 A. So it would be 4:00, a quarter after, somewhere
8 around there when I get there to let them off, depending
9 on how the weather was and everything.

10 Q. Did you like driving by this location?

11 A. No.

12 Q. Why not?

13 A. It stunk. But, I mean, it is just a pig farm, and
14 I am a town girl.

15 Q. What is the smell that you are referring to?

16 A. Well, I presume -- I mean, I guess it was the
17 manure from the animals.

18 MR. TICE: I am going to object to the witness
19 guessing, and I move to strike the answer.

20 HEARING OFFICER KNITTLE: Ms. Peri?

21 MS. PERI: I am just asking for a lay opinion as to
22 what she smelled or did not smell, based on her life
23 experience.

24 MR. TICE: But that is not what the answer was. She

1 is guessing. She testified she is a town girl. I am not

2 sure she can render an opinion about that.

3 HEARING OFFICER KNITTLE: Ms. Peri, I would allow her

4 to state what she thinks the smell comes from. Maybe you

5 could ask the question again and see what happens.

6 MS. PERI: Certainly.

7 HEARING OFFICER KNITTLE: I will sustain the initial

8 objection.

9 MS. PERI: Okay.

10 Q. (By Ms. Peri) As you passed by the Chalmers farm

11 on the right hand side of the road, you would stop?

12 A. Yes.

13 Q. Okay. When did you smell the odor that you

14 referred to?

15 A. Every day you drive out there.

16 Q. Would you have to stop the bus in order to smell

17 it?

18 A. No.

19 Q. Could you smell it with the windows closed on the

20 bus?

21 A. Yes.

22 Q. What did it smell like?

23 A. Pigs.

24 Q. Was that each day that you drove by the farm?

1 A. Yes.

2 Q. Was it more pungent some days than others?

3 MR. TICE: I am going to object to the form of the
4 question.

5 HEARING OFFICER KNITTLE: How so?

6 MR. TICE: It is leading. It is asking for a yes or
7 no; is it more pungent on some days than others.

8 HEARING OFFICER KNITTLE: Sustained.

9 MS. PERI: Okay.

10 Q. (By Ms. Peri) You said it smelled on most days, if
11 not every day that you passed by there?

12 A. Yes.

13 Q. Did you ever observe pigs on the field to the
14 right of your stop, that is on the north side of Mr.
15 Chalmers' property?

16 MR. TICE: I am going to object to the question of
17 Counsel, because I believe the testimony of this witness
18 has indicated that the road that she picked up on ran on
19 the west side of the farm.

20 HEARING OFFICER KNITTLE: I am going to overrule if
21 she saw pigs regardless of where it was on the farm if she
22 saw pigs. So it is overruled.

23 You can answer the question.

24 MR. TICE: I would object then and have it identified

1 as to where specifically she is referring to with the
2 question as observation.

3 HEARING OFFICER KNITTLE: I would like to know where
4 the bus route ran, too. I don't have a great idea. I am
5 hoping that the transcript will be clear on that.

6 THE WITNESS: Is that a map of it?

7 MS. PERI: It is.

8 Q. (By Ms. Peri) Ms. Brown, would you approach
9 People's Exhibit A.

10 A. Yes.

11 (The witness approached the exhibit.)

12 Q. Do you recognize this map to be a fair and
13 accurate representation of the area that you drove by?

14 MR. TICE: I am going to object to --

15 THE WITNESS: Can I ask a question?

16 MR. TICE: I am going to object to the witness asking
17 a question, Mr. Knittle, and --

18 HEARING OFFICER KNITTLE: Ms. Brown, I will sustain
19 that. You are a witness here. You are not really able to
20 ask questions or direct comments to Mr. Tice unless he
21 asks you a question and then you can answer it.

22 THE WITNESS: Okay.

23 HEARING OFFICER KNITTLE: Did you have an objection,
24 Mr. Tice?

1 MR. TICE: I have an objection to the question. The
2 question was phrased is this an -- is People's Exhibit A
3 an accurate representation of the farm location. I don't
4 think there has been any foundation laid for this witness
5 to say that at all. If I understand what this witness is
6 about, she drove a school bus along the road on the
7 exterior portion of the farm.

8 HEARING OFFICER KNITTLE: I am going to overrule
9 that. She can answer to the extent that she knows whether
10 the roads surrounding the farm are accurate.

11 Q. (By Ms. Peri) Ms. Brown, would you indicate on
12 People's Exhibit A, the map before you, where you drove
13 your bus?

14 A. Okay. I would come along the road here and stop
15 and pick up kids and then follow the road around this way
16 to pick up more kids (indicating).

17 MS. PERI: Okay. Let the record show that Ms. Brown
18 has pointed to an area at the southwest corner of Mr.
19 Chalmers' property and traveling north along 400 East,
20 taking a right at the northwest corner of the property
21 along Kay Watkins School Road.

22 Q. (By Ms. Peri) Thank you.

23 A. Uh-huh.

24 Q. And the pick up point for the children then was on

1 the north side of the property?

2 MR. TICE: I am going to object. I think that is not
3 what the witness said. It is also a leading form of the
4 question. The witness said she picked up at the southwest
5 corner where the residence was on the right-hand side of
6 the westbound road -- or the northbound road on the west
7 side.

8 HEARING OFFICER KNITTLE: That was my impression as
9 well.

10 MS. PERI: Okay. My error. I thought it was Mr.
11 Jackson's home, and I was not sure that that was the same
12 location.

13 HEARING OFFICER KNITTLE: Yes, she did say it was Mr.
14 Jackson's home. That does say J.C.'s residence. I am not
15 sure whether that is a mistake by the witness or not.

16 Q. (By Ms. Peri) Is that the same location, Ms.
17 Brown? Is Mr. Jackson's home located in the same area as
18 Mr. Chalmers' house?

19 A. The rental house or Mr. Jackson's house that he
20 lived in was on this side of Mr. Chalmers' house. It is a
21 brick house that sat over on this side of the road
22 (indicating).

23 Q. What do you mean by this side of the road?

24 (The witness approached the exhibit.)

1 A. It sits like over here (indicating). It is a
2 brick house that the Jacksons lived in. I didn't pull
3 down this road. I stopped here to pick up the kids
4 (indicating).

5 MS. PERI: Ms. Brown has indicated on the map that
6 she stopped to pick up two children at the intersection of
7 400 East and I believe 1450 North.

8 HEARING OFFICER KNITTLE: The record will so reflect.

9 MS. PERI: Thank you.

10 Q. (By Ms. Peri) But after you picked up the children
11 where did you go?

12 A. On around to the north and around the corner and
13 there was a yellow house that I also would pick up kids
14 when they lived there. There was not always people living
15 in another house, but I would go that way and pick up more
16 kids.

17 Q. Okay. When did you smell pigs during your travel
18 around the Chalmers' property?

19 A. As soon as you come up to the road to stop to pick
20 up the first kid and all the way around until I got out of
21 the area.

22 Q. Was the strength of the smell the same all along
23 that route?

24 A. Some days it was worse than others. If it was hot

1 outside it would be worse. If he was spraying there would
2 be a stronger smell.

3 Q. What do you mean by if he was spraying?

4 A. Out in the pasture where the cattle were, he would
5 have a sprayer of some sort. It was like a metal wire
6 sticking up, and he would spray this pasture with this
7 black stuff.

8 Q. Did you ever see the black stuff?

9 A. Yes.

10 Q. Where did you see it?

11 A. Well, on the ground, and in the air, and then
12 running across the road.

13 Q. Where on the ground?

14 A. In the area around where the sprayer was.

15 Q. Is that -- on which side of the road?

16 A. It would have been on the south side of the road.

17 Q. Okay. So as you are traveling east on Kay Watkins
18 School Road, it would have been on the right-hand side?

19 A. Correct.

20 Q. You said you saw dark --

21 A. Yes.

22 Q. -- liquid on the ground?

23 A. Yes.

24 Q. Okay. You also testified that you saw it on the

1 road?

2 A. Yes.

3 Q. What did it look like?

4 A. It was black.

5 MR. TICE: I am going to object unless she indicates
6 when it was she saw it on the road, what time frame we are
7 talking about.

8 HEARING OFFICER KNITTLE: I will sustain. If you
9 could get any more of a specific time from this witness as
10 to when she saw the black stuff on the road that would be
11 helpful.

12 Q. (By Ms. Peri) Do you recall, Ms. Brown, a specific
13 time during which you saw the black material on the ground
14 or on the road?

15 A. If you are asking about dates, no, I can't tell
16 you.

17 Q. Okay.

18 A. But when you drive out there, it would be once a
19 month.

20 Q. Would it be in the morning?

21 A. Most of the time in the afternoon.

22 MS. PERI: Okay. Thank you. No more questions.

23 HEARING OFFICER KNITTLE: Mr. Tice, do you have
24 cross?

1 MR. TICE: Yes.

2 CROSS EXAMINATION

3 BY MR. TICE:

4 Q. Ms. Brown, did you know the names of the children
5 that you picked up there at the intersection of road 1450
6 North and 400 East?

7 A. Brandon Jackson was the boy. The girl's name I
8 can't tell you right offhand what it is.

9 Q. Would it be Brittany?

10 A. Yes.

11 Q. What year did you start picking them up there?

12 A. 1991, probably September of 1991.

13 Q. And how long did you have the route that you
14 followed around the west and north side of the Chalmers'
15 farm?

16 A. Four years. I drove that route for four years.

17 Q. So the four years you are talking about is 1991 to
18 1992, and 1992 to 1993, and 1994 to 1995?

19 A. Correct.

20 Q. Did you stop at the end of the 1995 school year?

21 A. I got transferred to go on another route.

22 Q. What route did you go on then?

23 A. It was the Tallula route.

24 Q. Were you transferred by the school district to the

1 Tallula route?

2 A. Yes.

3 Q. By your supervisor?

4 A. Yes.

5 Q. Did he tell you why he was transferring you?

6 A. Wanted to get somebody else out there.

7 Q. Out where?

8 A. Out there on that route.

9 Q. Okay. You had some difficulty on that route?

10 A. Oh, sure.

11 Q. You had some difficulty with Mr. Ron Jackson,

12 didn't you?

13 A. Sure.

14 Q. You had a run-in with him, didn't you?

15 A. Sure.

16 Q. A run-in with him over his children, Brittany and

17 Brandon Jackson; is that right?

18 A. Sure.

19 Q. He thought maybe you might have been mistreating

20 them as a bus driver, is that what the confrontation was

21 about?

22 A. Sure.

23 Q. Did you ever tell his children that you were going

24 to see that their daddy was put in jail because of the

1 Chalmers Hog Farm?

2 A. Never.

3 Q. Did you ever talk to them about the Chalmers Hog

4 Farm?

5 A. Just that it smelled.

6 Q. You told them that it smelled, didn't you?

7 A. Yes.

8 Q. In a derogatory way, didn't you?

9 A. Yeah, I said it stunk.

10 Q. You told them that you didn't like it, didn't you?

11 A. Yes.

12 Q. All right. Now, how old was Brittany?

13 A. Grade school maybe.

14 Q. Was she about eight or nine?

15 A. She could have been.

16 Q. Would this be in 1991 or 1992, or would this be

17 towards the end of 1994 and 1995?

18 A. I don't know.

19 Q. Well, when did you have the run-in with Mr.

20 Jackson?

21 A. Probably the fall of the last year I drove out

22 there.

23 Q. In 1994?

24 A. Yes, I think so.

1 Q. Okay. Did you have a run in with him prior to

2 that time --

3 A. No.

4 Q. -- over his children?

5 A. Just the school was talking to him about it. I

6 never said anything to him.

7 Q. The school was talking to him about what? About

8 your --

9 A. About writing --

10 Q. About your relationship?

11 A. About if --

12 Q. About your --

13 A. -- I would write --

14 THE REPORTER: I am sorry?

15 Q. (By Mr. Tice) I am sorry, ma'am. About your

16 relationship with his children on the school bus?

17 A. Yes.

18 HEARING OFFICER KNITTLE: You were about to say

19 something previously, ma'am. What was that? We didn't

20 get that.

21 THE WITNESS: Just if I would write them up, if I

22 would write them up, it would be --

23 HEARING OFFICER KNITTLE: That is fine. I didn't

24 mean to interrupt you, but I know the court reporter

1 didn't get that.

2 You can go ahead, Mr. Tice.

3 Q. (By Mr. Tice) Did you write his children up?

4 A. Yes, but along with other children.

5 Q. When did you start writing his children up?

6 A. When they were misbehaving.

7 Q. How soon was that, ma'am, after you started this
8 route out there?

9 A. I don't have any idea.

10 Q. Would it have been in 1991?

11 A. It could have been.

12 Q. Was it in 1992?

13 A. It could have been then, too.

14 Q. Did you write them up frequently?

15 A. I don't -- I don't know.

16 Q. Okay. What did you write them up for?

17 A. Being in the aisles, moving things around,
18 throwing things.

19 Q. Okay.

20 A. Changing seats when the bus is moving and they are
21 not supposed to be, state laws.

22 Q. Which child did that?

23 A. Both of them.

24 Q. Would they do this right after they got on the

1 bus, or would it be after you got your bus pretty full

2 before you got to school?

3 A. Before I got to school.

4 Q. After the bus was full?

5 A. Uh-huh.

6 Q. You had a full bus, didn't you?

7 A. Yes, I did.

8 Q. In fact, it was overcrowded, wasn't it?

9 A. Yes, it was.

10 Q. And the children had to sit probably four to a

11 seat, didn't they, in some instances?

12 A. No, never four to a seat. Three to a seat

13 sometimes when it got crowded.

14 Q. All right. Would they have to put their feet in

15 the aisles under those circumstances?

16 A. If there were three in a seat they were allowed in

17 the aisle.

18 Q. Did you write Brittany up for putting her feet in

19 the aisles when the bus was crowded?

20 A. Probably.

21 Q. Even though she had no other place to put them,

22 right?

23 A. I guess.

24 Q. You started doing this then sometime in the fall

1 of 1991 or the spring of 1992; is that right?

2 A. Probably.

3 Q. When you write them up, what happens?

4 A. I write them up. They get sat in the front seat.

5 It goes to the high school office or the school, wherever

6 they were at, and they would get corrected at school.

7 Q. They would notify -- their parents would be

8 notified; is that right?

9 A. Yes.

10 Q. Okay. And then there would be some discussion

11 between the parent and the school, I take it, about

12 this --

13 A. Yes.

14 Q. -- disciplinary action that you would initiate; is

15 that correct?

16 A. Yes.

17 Q. All right. Did the school have any discussions

18 with you, Mrs. Brown, about the write up of Mr. Jackson's

19 children?

20 A. Just that if they are doing it, fine, and if they

21 are not, you know --

22 Q. Lay off, huh?

23 A. Right.

24 Q. Now, when did you first start having those

1 discussions with the school? Let me ask you this. Would

2 this have been with your supervisor, the bus supervisor?

3 A. Uh-huh.

4 Q. Who was that?

5 A. At that time it was probably George Moore.

6 Q. Now, by at that time do you mean 1991, 1992?

7 A. Yes.

8 Q. Did George Moore continue to be your supervisor

9 for a period of time after that or did that change?

10 A. No, it changed.

11 Q. When did it change?

12 A. I am not sure of the year.

13 Q. Did it change to Mr. Jim Conklin?

14 A. Yes, it did.

15 Q. So George Moore then discussed with you these

16 disciplinary problems with the Jackson children, and did

17 he tell you that Mr. Jackson --

18 MS. PERI: I object. That is hearsay.

19 MR. TICE: I still have to ask it.

20 Q. (By Mr. Tice) Did he say anything to you about Mr.

21 Jackson talking to him about them, his children?

22 HEARING OFFICER KNITTLE: Hold on a second. What did

23 you say, Mr. Tice? She objected.

24 MR. TICE: I said I didn't get the question out.

1 HEARING OFFICER KNITTLE: Okay. Is there still a
2 hearsay objection?

3 MS. PERI: If the question is was something said and
4 the answer is yes or no then I have no objection.

5 MR. TICE: I asked --

6 MS. PERI: But any reiteration of comments that were
7 made I believe is hearsay.

8 MR. TICE: I asked if Mr. Moore talked to Mrs. Brown
9 about these matters.

10 HEARING OFFICER KNITTLE: That I will allow.

11 Q. (By Mr. Tice) Did Mr. Moore talk to you about
12 these matters?

13 A. Yes.

14 Q. Okay. So sometime in 1990 -- in late 1991 or the
15 spring of 1992 you were aware of the fact that Mr. Jackson
16 was unhappy with what was going on on the bus between you
17 and his children, weren't you?

18 MS. PERI: I would object. How would Ms. Brown have
19 any way of knowing if he was unhappy or happy.

20 Q. (By Mr. Tice) Let me ask you, were you aware --

21 HEARING OFFICER KNITTLE: Sustained.

22 Q. (By Mr. Tice) Were you aware in the fall of 1991
23 and the spring of 1992 that Mr. Jackson was unhappy with
24 how the situation was occurring on the bus with -- on your

1 bus with respect to his children?

2 MS. PERI: I object on the same basis.

3 HEARING OFFICER KNITTLE: Mr. Tice?

4 MR. TICE: I simply asked if she was aware. I am not
5 asking for the truth of some testimony or some statements
6 from any individual.

7 MS. PERI: Again, how would she have any basis of
8 being aware whether or not he was happy or unhappy.

9 MR. TICE: Well, I think this goes to the witness'
10 state of mind here as to her testimony, if she was aware
11 that there was a problem here.

12 HEARING OFFICER KNITTLE: I will allow the question.

13 THE WITNESS: Not until we had the confrontation in
14 1994.

15 Q. (By Mr. Tice) What is the confrontation that you
16 are talking about?

17 A. Where he got on the bus and argued with me about
18 his children.

19 Q. When in 1994 was that?

20 A. The fall of 1994.

21 Q. Are you certain it was in 1994 and not before
22 then?

23 A. I don't believe it was before then.

24 Q. Are you certain?

1 A. Well, I can't be 100 percent sure.

2 Q. All right. Now, did you ever make any comment to

3 Mr. John Chalmers about the fact that his hog farm stunk?

4 A. No. I never had any reason to see him.

5 Q. Where did you live during this time period?

6 A. In Petersburg.

7 Q. So you didn't live by the farm, did you?

8 A. No.

9 Q. Okay. Did you ever make on this occasion or any

10 of these occasions when you said there was manure on the

11 road any comment to Mr. Chalmers about that fact?

12 A. No.

13 Q. You didn't see any need to, did you?

14 A. It wouldn't have done any good.

15 Q. How do you know if you didn't talk to him?

16 A. I don't know that.

17 Q. Okay. Did you say anything to Mr. Jackson about

18 this?

19 A. No.

20 Q. Any of these incidents?

21 A. No.

22 Q. Did you say anything to anybody else about these

23 incidents?

24 A. The supervisor at the bus barn and two gentlemen

1 at one time along the road.

2 Q. Do you know who they were?

3 A. I have no idea.

4 Q. Do you know the date that you saw those two

5 gentlemen on the road?

6 A. No.

7 Q. Do you know where they were from?

8 A. Just workers of Chalmers, that is what I was told.

9 Q. What did you say to them?

10 A. There is stuff running on the road. It smells.

11 Q. Okay. You say you saw this once a month; is that

12 right?

13 A. I would say so.

14 Q. Where would you see it?

15 A. On the -- that one field that he would spray on,

16 that they were spraying it on.

17 Q. On the north road?

18 A. No, it would be the east road, the road that runs

19 east and west.

20 Q. The north road running on the north side of his

21 farm; is that right?

22 A. No, running on the south side of the farm.

23 Q. Okay. If you saw it one day, it would be gone the

24 next day?

1 A. No, the black would still be there.

2 Q. Would it be removed at all?

3 A. No, not that I --

4 Q. It would never get removed?

5 A. Well, it would go away after a while. I guess the

6 animals or whatever would trample it down or the rain

7 would wash it away.

8 Q. Did you ever stop the bus as a result of that?

9 A. No.

10 Q. Okay. Have you ever lived on a farm?

11 A. No.

12 Q. If you didn't say anything to Mr. Chalmers about

13 this, or if you didn't say anything to Mr. Jackson about

14 this, how would you expect them to correct it?

15 A. Why would they change anything just because I was

16 a bus driver?

17 Q. If you didn't say anything to them, how would you

18 expect them to correct it?

19 A. They wouldn't have corrected it probably.

20 Q. You don't know that, do you?

21 A. Well, no.

22 Q. You didn't give them an opportunity, did you?

23 A. No.

24 Q. Okay. And really you were upset with this whole

1 problem between Mr. Jackson and his children and the
2 situation that developed on the bus, weren't you?

3 A. No, sir.

4 Q. Isn't that the sole reason for your objections?

5 A. No, sir.

6 Q. Did you talk to your supervisors at the school
7 about this?

8 A. Yes.

9 Q. Did you ask them to make any -- to contact Mr.
10 Chalmers about it?

11 A. They said it wouldn't do any good.

12 Q. Who is they?

13 A. The same they who --

14 Q. George Moore?

15 A. George Moore, yes.

16 Q. Jim Conklin?

17 A. Yes.

18 Q. Okay. Do you know whether they ever made any
19 comments to John Chalmers about this?

20 A. I wouldn't have any idea.

21 Q. You never bothered to check with them after you
22 said something to them; isn't that right?

23 A. Right.

24 MR. TICE: I have no other questions.

1 HEARING OFFICER KNITTLE: Ms. Peri, do you have any

2 redirect?

3 MS. PERI: No.

4 HEARING OFFICER KNITTLE: Ma'am, thank you very much

5 for your time. You can step down.

6 THE WITNESS: Thanks.

7 (The witness left the stand.)

8 HEARING OFFICER KNITTLE: Ms. Peri, do you have any

9 other witnesses?

10 MS. PERI: No. The State has concluded.

11 HEARING OFFICER KNITTLE: You are closing your

12 case-in-chief, are you?

13 MS. PERI: Yes.

14 HEARING OFFICER KNITTLE: All right. Let's take a --

15 Mr. Tice, how much time do you think you are going to

16 need?

17 MR. TICE: I would like to have 15 minutes.

18 HEARING OFFICER KNITTLE: Is 15 minutes okay, Ms.

19 Peri?

20 MS. PERI: That is fine.

21 HEARING OFFICER KNITTLE: All right. Let's meet back

22 at a quarter to 3:00.

23 (Whereupon a short recess was taken.)

24 HEARING OFFICER KNITTLE: We are back on the record

1 after a short recess, and it is the respondent's

2 case-in-chief.

3 All right, Mr. Tice.

4 MR. TICE: I would like to have the witness sworn,

5 please.

6 John, will you please raise your right hand to be

7 sworn.

8 (Whereupon the witness was sworn by the Notary

9 Public.)

10 JOHN CHALMERS,

11 having been first duly sworn by the Notary Public, saith

12 as follows:

13 DIRECT EXAMINATION

14 BY MR. TICE:

15 Q. State your name, please.

16 A. John Chalmers.

17 Q. Where do you reside, Mr. Chalmers?

18 A. Box 77, Oakford, Illinois.

19 Q. How long have you resided at that location?

20 A. Since 1976. Prior to 1976 we lived a quarter mile

21 straight east of that location.

22 Q. All right. Where were you born, Mr. Chalmers?

23 A. In Minnesota.

24 Q. Where were you raised as a young man?

1 A. Northern Illinois mostly.

2 Q. Okay. Where did you obtain your education?

3 A. The University of Illinois.

4 Q. After you graduated -- where did you obtain your

5 high school education?

6 A. Marengo, Illinois.

7 Q. Where?

8 A. Marengo, northern Illinois.

9 Q. Is that a small community in a rural area?

10 A. It is kind of a transition area. The high school

11 has about 800 kids, so it is a fairly large high school.

12 Q. At the time you were there?

13 A. Yes.

14 Q. After you graduated from high school, did you have

15 any period of military service?

16 A. Yes, when I graduated from high school, about 39

17 years ago in this month, I took the oath of office.

18 Q. How long were you in the military?

19 A. Eight years.

20 Q. How much of that was active duty?

21 A. A couple of years or less.

22 Q. After you were released from active duty, did you

23 go to college?

24 A. Yes.

- 1 Q. Where?
- 2 A. The University of Illinois, Champaign-Urbana.
- 3 Q. And what curriculum did you enroll in?
- 4 A. Engineering.
- 5 Q. What type of engineering?
- 6 A. CE, civil engineering.
- 7 Q. How long were you enrolled in civil engineering?
- 8 A. A year and a half.
- 9 Q. Did you change your major at that point in time?
- 10 A. I transferred into the college of agriculture at
- 11 that point.
- 12 Q. What was your major?
- 13 A. I had a dual major, economics in the economics
- 14 department and animal science.
- 15 Q. Did you ultimately graduate then from the
- 16 University of Illinois?
- 17 A. Yes, I graduated with honors in 1964.
- 18 Q. With what type of a degree?
- 19 A. It would have been a BS degree.
- 20 Q. In animal science and economics?
- 21 A. Yes.
- 22 Q. Okay. After you obtained -- did you obtain any
- 23 other formal education beyond that point?
- 24 A. I don't have a Master's degree, but I did take

1 some courses towards --

2 Q. Towards a Master's degree?

3 A. Yes.

4 Q. What curriculum or discipline?

5 A. Genetics, marketing, and one engineering course.

6 Q. How much course work did you take in those

7 particular disciplines towards a Master's degree?

8 A. Maybe 15 hours.

9 Q. All right. Did you do that after you left the on

10 site campus at the University of Illinois, or did you do

11 that --

12 A. I did that on site.

13 Q. At Champaign-Urbana?

14 A. Yes.

15 Q. After you completed those 15 hours, did you then

16 enter into the normal work force?

17 A. Yes.

18 Q. Okay. Whereabouts?

19 A. I went for a short time to Storm Lake, Iowa. I

20 was not there very long. That project didn't take very

21 long.

22 Q. What were you doing in Storm Lake, Iowa?

23 A. A project engineer.

24 Q. For what?

1 A. For a large construction company.

2 Q. And what were your duties and functions as a
3 project engineer?

4 A. Design, supervision of different construction
5 projects, roads, bridges.

6 Q. Okay.

7 A. And livestock confinement buildings.

8 Q. Okay. And you say you left there after a short
9 time?

10 A. Yes.

11 Q. Where did you go?

12 A. I went to Bush Farms, Inc. They farmed, had a
13 fertilizer business, but also did a lot of construction.

14 Q. Where were they located?

15 A. In Milan, Illinois was their headquarters. That
16 is near the Quad Cities.

17 Q. What were your duties or responsibilities at that
18 employment?

19 A. I was in charge of the heavy equipment. I was in
20 charge of some of the livestock. I was in charge of most
21 of the personnel on the farm other than the crop aspect of
22 the business. I had very little to do with the fertilizer
23 aspect of the business. My expertise was in livestock and
24 construction.

1 Q. Any particular area of livestock?

2 A. At that particular farm there was both swine and
3 cattle.

4 Q. And were you involved with both of those --

5 A. Yes.

6 Q. -- breeds or type of livestock?

7 A. (Nodded head up and down.)

8 Q. How long did you stay, then, at Bush Farms, Inc.?

9 A. Three years.

10 Q. And upon leaving that employer, where did you go?

11 A. I was recruited very heavily by a construction
12 company called Honagers (spelled phonetically) which at
13 that particular time was the largest agriculture
14 construction firm in this country. The reason I declined
15 that job, they had job sites going in 42 states and 9
16 foreign countries. I didn't want to travel that much.

17 Q. What type of activity or work would you have been
18 doing for them?

19 A. Designing -- I would have been a project engineer,
20 which entails designing projects, implementing the
21 construction project after design, and making sure it
22 flowed through the normal construction process.

23 Q. You apparently did not desire to do that type of
24 work; is that correct?

1 A. I didn't want to travel all over the world at that
2 point. I wanted to --

3 Q. What was your course of your work experience then
4 after leaving Bush and not going with Honagers?

5 A. The reason I came to this part of the world was a
6 man by the name of George Brauer, one of the pioneers in
7 the confinement rearing of swine.

8 Q. Did you want to get involved in swine confinement
9 operations and raising swine in that manner?

10 A. I was mainly attracted to the man and his
11 expertise.

12 Q. Were you offered an opportunity to work with him?

13 A. Yes.

14 Q. How long did you work with Mr. Brauer?

15 A. Roughly three years.

16 Q. Okay. And at that point in time did you have
17 another opportunity that came available to you?

18 A. During the time I worked for Mr. Brauer, I had
19 started purchasing land and adding livestock to that land.

20 Q. Did you own some property in this area at that
21 time?

22 A. Yes, we purchased the original 36 acres.

23 Q. When you say the original 36 acres, are you
24 referring to the location where your residence is and

1 where the hog operation -- the confinement operation is?

2 A. That is correct.

3 Q. Okay. When did you purchase the original 36

4 acres?

5 A. The late 1960s, 1967, 1968.

6 Q. Okay .

7 A. I can't be any more specific than that.

8 Q. Did you leave the employment of Mr. Brauer then

9 after three years for the purpose of starting your own hog

10 confinement operation?

11 A. That's correct.

12 Q. Okay. And how much acreage did you have at the

13 time you made that switch?

14 A. I started with 36.

15 Q. Okay. Did you have any buildings?

16 A. None when I started except the personal residence.

17 Q. What did you do then to start your enterprise that

18 later became known as the Chalmers Hog Farm?

19 A. We developed the site enough to build the first

20 few buildings.

21 Q. How many buildings did you build?

22 A. The shop, you know, the construction shop, the

23 farrowing one.

24 Q. The farrowing building?

1 A. Yes.

2 Q. All right. Any other buildings?

3 A. I believe one of the other implement sheds was
4 built.

5 Q. That's how you got started in the business; is
6 that right?

7 A. Yes.

8 Q. How many sows were you farrowing at that point in
9 time?

10 A. We would have started with approximately 400 sows.

11 Q. And how many pigs would you raise then from those
12 400 sows?

13 A. 7,000 to 8,000.

14 Q. Would that be a farrow to finish operation?

15 A. The initial start-up was farrow to feeder, but
16 within six months after starting we started constructing
17 finishing buildings.

18 Q. So you then became a farrow to finish; is that
19 right?

20 A. That's correct, within the first year.

21 Q. During the course of this time did you develop a
22 form of waste handling facilities for this operation?

23 A. Yes.

24 Q. What did that consist of?

1 A. We built lagoon system one through three.

2 Q. Did you obtain any knowledge or did you already
3 possess any knowledge with respect to the construction of
4 hog buildings and the construction of waste facilities for
5 the hog confinement buildings?

6 A. Up until that time I probably designed and
7 constructed probably well over 100 buildings by that time.

8 Q. What about waste handling facilities?

9 A. Numerous.

10 Q. Now, the hog buildings that you constructed, would
11 those be the type that had underground pits, that is pits
12 underneath the building?

13 A. That was the standard construction method of the
14 era, pits under the building.

15 Q. In the 1960s?

16 A. Yes.

17 Q. Did you also at this stage of your business
18 construct the waste handling facilities for these
19 buildings?

20 A. Yes.

21 Q. What did that consist of?

22 A. Four foot underground pits and the lagoon system.

23 Q. How -- what did the lagoon system consist of?

24 A. Lagoon one was 1.5 acres. Lagoons two and three

1 were about eight-tenths of an acre apiece.

2 Q. Okay.

3 A. There was a gravity drain from one to two. There
4 was a gravity drain from two to three. And then there was
5 a pump that could go from either two to three back to one.

6 Q. So you could pump interchangeably between the
7 lagoons; is that correct?

8 A. Yes.

9 Q. You could transfer the liquid waste between the
10 lagoons?

11 A. Yes.

12 Q. Is that the waste treatment facility that you
13 used, then, in the late 1960s?

14 A. Yes.

15 Q. How long did you utilize that treatment facility
16 in and by itself?

17 A. As long as we raised hogs.

18 Q. Did you ever expand upon or enlarge this swine
19 confinement operation?

20 A. We grew continuously.

21 Q. And by growing continuously what do you mean? Did
22 you expand each year or was it over a period of years that
23 you expanded the operation?

24 A. During the late 1960s and early 1970s we

1 essentially built a building or two a year.

2 Q. Okay. Did you acquire any additional land?

3 A. Yes.

4 Q. How much additional land did you acquire?

5 A. Another 400 acres, roughly.

6 Q. This is acquired with borrowed funds, I presume;

7 is that correct?

8 A. That's correct.

9 Q. The whole operation at this point was being

10 financed?

11 A. That's correct.

12 Q. All right. Did you -- when did you arrive at the

13 maximum -- what year did you arrive at the maximum number

14 of buildings that you had in this particular operation,

15 Mr. Chalmers?

16 A. 1978.

17 Q. How many buildings was that?

18 A. It was 22.

19 Q. Now, you have heard --

20 A. It was 21. Excuse me. It was 21, I believe.

21 Q. All right. Now, you have heard Mr. Brockamp, and

22 I am not sure, but Mr. Wells very generally, but I think

23 primarily Mr. Brockamp, describe your hog confinement

24 operation as it existed at the time that he made his first

1 inspection on May 11th of 1992.

2 Can you tell us, as accurate as possible, or give us
3 an accurate as possible description of the number of
4 buildings that you possessed when you reached your maximum
5 size as well as -- well, let's take the buildings first.

6 How many buildings did you have when you reached the
7 maximum size?

8 A. It was 22. We had one building in the interim.

9 Q. One building since then?

10 A. Yes. In 1991 we added a building.

11 Q. Did you change your waste treatment facilities as
12 the farm operation grew?

13 A. Yes.

14 Q. How did you change it?

15 A. Back when we investigated irrigation, there was
16 almost zero knowledge to be derived from the land grant
17 system on the irrigation of swine waste. I contacted a
18 firm by the name of Williamston Irrigation in Jamestown,
19 New York. Their engineer met with me and helped me design
20 the waste treatment and irrigation system for our farm,
21 and we installed that in the early 1970s.

22 Q. Now, did you add any additional lagoons, such as
23 lagoon number four, at any time?

24 A. Yes. In --

1 Q. When was that?

2 A. In --

3 Q. When was --

4 A. In 1975 we added -- excuse me.

5 Q. You have to wait until I get my question out, and

6 then you can answer. Okay.

7 A. I am sorry.

8 Q. I will try to make it as short and snappy as

9 possible. When did you add the lagoon number four?

10 A. In 1975.

11 Q. Okay. Now, can you describe that lagoon, the

12 size, etcetera?

13 A. Lagoon four sat in the southeast quadrant of the

14 farm. It was the highest point on the farm. As we

15 developed further sites we had to move a lot of dirt. We

16 rented two seven yard scrapers and a Cat dozer and

17 virtually for a whole year we moved dirt. To the east

18 quadrant of buildings we had 75 feet of fill where the

19 bins are and the east set of buildings.

20 At that point in time we built lagoon four, which has

21 essentially six surface acres of water. It is not

22 quite -- it does not have the bump in it like they show it

23 there. At the same time we developed the pond, which is a

24 little over six acres and, you know, we essentially

1 changed the whole drainage pattern of that side of the

2 farm by the addition of 75 foot of fill in certain areas.

3 Q. The pond, is that a fresh water upon?

4 A. Yes.

5 Q. Where does the water come from that goes into that

6 pond?

7 A. It comes from three springs, two of which are

8 located on my farm, the biggest spring of which is located

9 southeast of my farm, plus the watershed to the southeast

10 of my location.

11 Q. Is that the watershed that you heard Mr. Wells

12 speak about this morning?

13 A. Yes. He alluded to some six to 1,800 acres.

14 Q. That is what drains into your fresh water pond; is

15 that correct?

16 A. That's correct.

17 Q. Okay. Now, back to the irrigation. When you say

18 you designed the irrigation system in the late 1970s, what

19 was the purpose of the installation of the irrigation

20 system with respect to the wastewater treatment facility?

21 A. To more effectively utilize the nutrients derived

22 from the excrement from manure production, if you will.

23 Q. In other words, you wanted to irrigate wastewater

24 from the lagoons onto your field; is that correct?

1 A. That's correct.

2 Q. How did you go about doing that? What was the
3 system like that this engineer helped you design?

4 A. In design phase I initially went to Art Huling
5 (spelled phonetically) at the ag engineering department at
6 the U of I and John Jadley (spelled phonetically), who was
7 his supervisor. From there I went to Iowa State, and I
8 forget the engineer I met with out there. From there I
9 went to Cozad, Nebraska, and talked to another irrigation
10 company, and they in turn said the man you need to talk to
11 is the man I alluded to previously from Williamston
12 Irrigation.

13 Q. All right. Now, you got this man from Jamestown,
14 New York, and can you describe now the irrigation system
15 that he helped you design and that you installed on your
16 farm?

17 A. The initial solid pump was a Bauer centrifugal
18 pump. No, it was Bauer piston pump. The fresh water pump
19 was a centrifugal pump. The lower pump was a centrifugal
20 pump, all of which were tied together with six inch mains
21 and four inch laterals with a series of valves for
22 blending purposes.

23 Q. Is that underground pipe?

24 A. Yes, it is all underground except for the risers.

1 Q. And the risers are located where?

2 A. Part of the risers are located in the manure
3 application area, as depicted on that map that shows less
4 than half -- the biggest manure application area is on the
5 flat land south and east of what is noted on the map as
6 pond. There is approximately 40 acres in that, and 31
7 acres in the top.

8 Q. Mr. Chalmers, why don't you go over to People's
9 Exhibit A, and if you would make a mark on there as to
10 where the area is.

11 MS. PERI: I will object to their marking on the
12 People's exhibit. If they want to indicate just verbally
13 the location --

14 MR. TICE: That's fine.

15 THE WITNESS: I will point if that is all right.

16 Q. (By Mr. Tice) Tell me where the irrigation is
17 located on your farm. You have to stand back so Mr.
18 Knittle can observe while you are doing this.

19 A. The largest manure application area is in this
20 location right here. And of the approximately 50 acres in
21 that area there is approximately 40 acres developed to the
22 manure application area one. And manure application area
23 two is approximately 31 acres, as depicted here.

24 HEARING OFFICER KNITTLE: Okay. Mr. Chalmers, you

1 were pointing to the part of People's Exhibit A which says

2 John Chalmers Hog Farm, Oakford, Illinois?

3 THE WITNESS: That is correct.

4 HEARING OFFICER KNITTLE: For the first manure

5 application area?

6 THE WITNESS: Yes.

7 Q. (By Mr. Tice) That is south of the buildings and

8 to the west of the fresh water pond, and to the south of

9 your residence; is that correct?

10 A. That is correct.

11 Q. All right. The other manure application area that

12 the irrigation is applicable then is in the area on

13 People's Exhibit A that is marked manure application area

14 by dotted lines?

15 A. That is correct.

16 Q. All right. Why don't you have a seat here,

17 please.

18 Now, what does the irrigation actually consist of in

19 the form of the manner in which you apply it to the field

20 area itself? Tell us how that is done, briefly.

21 A. There is approximately 64 risers. Each one of

22 those risers will irrigate something less than one acre.

23 When we designed the system we designed it utilizing the

24 trajectory of one gun. The trajectory of one gun is 125

1 feet at maximum pressure.

2 However, protocol on the farm states that we are
3 going to irrigate with two guns at a time, two Reinberg
4 (spelled phonetically) guns, and that will reduce the
5 trajectory about 17.5 percent, which means the normal
6 trajectory of the irrigation water, be it fresh water,
7 lagoon water, or blended water, will be something over 105
8 feet under normal conditions.

9 Q. All right.

10 A. With 105 foot radius, that would put us at the
11 minimum of 45 feet from our -- from any potential road
12 discharge of the trajectory of the irrigation water.

13 Q. Now, Mr. Chalmers, I am drawing your attention now
14 to People's Exhibit A, which depicts the manure
15 application area, in which there has been some testimony
16 given about the use of your irrigation risers by the State
17 in their direct testimony, and I would ask you to tell us
18 how far from the Kay Watkins Road, running east and west
19 on the north side of that manure application area, are
20 these irrigation risers located?

21 A. The closest one of which is designed to be no
22 closer than --

23 Q. Go ahead and approach it, People's Exhibit A, if
24 you wish.

1 (The witness approached the exhibit.)

2 A. It is no closer than the fence, the parameter of
3 the fence of the property. In other words, from the
4 parameter of the fence of the property to the first riser
5 would be 125 feet. Beyond that is 25 feet of road ditch,
6 plus 15 feet that I own to the middle of the road. So
7 there is 40 plus the 15 feet that I have got excess that
8 comes up to really 55 feet.

9 Q. Mr. Chalmers, are you telling us, then, that the
10 irrigation risers on the south side of the Kay Watkins
11 Road running east and west in that manure application
12 area, as designated on People's A, are located at least
13 125 feet south of the field fence boundary?

14 A. That is correct.

15 Q. All right. How many irrigation risers are located
16 in the area that is in that field that is depicted by the
17 manure application area on People's Exhibit A?

18 A. Probably in the neighborhood of 20. Without going
19 to my riser map I can't tell you specifically, but
20 approximately 20.

21 Q. All of the rest of them would be located south --
22 how many are in the first row south of the -- north of the
23 fence boundary from that manure application area?

24 A. Four.

1 Q. All right. All the rest of the 20 would be
2 located -- or the 16 would be located south of those four;
3 is that right?

4 A. No. There would be four more to the west of that
5 area.

6 Q. To the west of that area?

7 A. Yes.

8 Q. The same line, the same distance from the road,
9 the Kay Watkins Road?

10 A. No, it would be about 350 feet south of that road,
11 considerably further south.

12 Q. Okay. Is the trajectory on each of these risers
13 no greater than the 105 feet that you have testified to
14 when they are being used in tandem for the irrigation of
15 water or manure or a mixture of the two?

16 A. When you are designing this type of a facility,
17 you have to look at both the flow rate, the GPM, the
18 gallons per minute, and the size of the riser and the type
19 of gun to arrive at -- you know, mathematically you can
20 figure out the trajectory of the effluent or the fresh
21 water being sprayed, and that was used in the design
22 criteria.

23 Q. Mr. Chalmers, is the maximum trajectory from any
24 of these risers that you have indicated that are 125 feet

1 south of the Mary Kay Watkins Road and the manure
2 application area, depicted on People's Exhibit A, is that
3 maximum trajectory 105 feet when they are operated in
4 tandem, as you have testified?

5 A. Plus or minus a factor of about 1.5 percent.

6 Q. All right. Now, in your operation, you reached
7 your peak operation, for size purposes, about late --
8 about the mid to late 1980s; is that correct?

9 A. No, 1978.

10 Q. In 1978. All right. Did your operation continue
11 to stay at that size until sometime in the 1990s?

12 A. Between 1978 and 1988 it essentially stayed about
13 the same. There would be some annual fluctuations due to
14 production. My consulting engineer and I decided that --
15 my consulting veterinarian and I decided that we needed to
16 reduce the number of litters and finish more pigs in 1988,
17 so we reduced the number of litters from the mid 3,000
18 down to 2,700.

19 Q. Why did you decide to do that?

20 A. Because we wanted to finish more animals at that
21 point.

22 Q. Was it more economical to do that?

23 A. From a health standpoint we felt it was beneficial
24 to go that route instead of crowding our farrowing

1 facilities.

2 Q. I understand that. Did the enterprise change in
3 any respect after that?

4 A. After 1988?

5 Q. Yes.

6 A. The most significant factor that happened after
7 1988, during the construction in 1991 of our single-stage
8 nursery, we had a contractor negligence fire of 1.4
9 million dollars, and obviously --

10 Q. This was a fire in a building that was being
11 constructed?

12 A. Yes.

13 Q. And how did that impact you from the standpoint of
14 the size of your operation?

15 A. From a very profitable operation prior to the
16 fire, the impact of the fire negated most of that
17 profitability in subsequent years.

18 Q. When was the fire?

19 A. In 1991.

20 Q. Did your operation ever gain any profitability
21 again subsequent to 1991?

22 A. Not the swine operation. Well, there was some
23 breakeven years in 1991 and 1992, but there --

24 Q. After that what happened to your operation

1 financially?

2 A. It went downhill.

3 Q. Okay. Are you currently operating the swine
4 operation at all?

5 A. No. There has been no hogs on the farm. We made
6 an agreement with our operating lender to sell the hogs
7 back to them the 15th of January of 1996.

8 Q. Was that done?

9 A. Yes.

10 Q. And did those hogs then leave the farm, or were
11 they kept on the farm for a period of time after January
12 of 1996?

13 A. No. Parks, Inc., out of North Carolina bought the
14 entire inventory of swine. We continued to farrow until
15 the number of animals that were pregnant at the January
16 15th date had farrowed, and we finished all the subsequent
17 pigs out, and we terminated the swine operation portion
18 the 15th of November of 1996.

19 Q. Since that date there have been no swine on the
20 farm; is that correct?

21 A. No.

22 Q. Nor in your hog confinement buildings?

23 A. No.

24 Q. Between 1991, when you had the fire, and 1995,

1 when you made this agreement with your lender to terminate
2 the business, the swine business, did the swine operation
3 decrease in size at all? Were the numbers reduced?

4 A. From 1995 until the subsequent end it was
5 decreasing in intensity, yes.

6 Q. You were not replacing sows or you were not
7 maintaining the same number of breeding stock; is that
8 correct?

9 A. That's correct.

10 Q. Okay. Now, have you, since the termination of
11 your swine operation in 1996, been forced into financial
12 foreclosure with respect to this operation?

13 A. The swine farm itself has been under foreclosure
14 for two and a half years.

15 Q. Is it currently under foreclosure?

16 A. Yes.

17 Q. Have you also, as a result of your primary lender,
18 been required to sell all of your land that you described
19 that you had, some 400 acres?

20 A. Most of that has been sold, yes.

21 Q. What has not been sold yet?

22 A. Anything that was in my name other than the 100 --
23 other than the hog farm has been sold.

24 Q. Okay. And the hog farm is -- how many acres in

1 the hog farm?

2 A. It is 136 acres.

3 Q. Is that what is currently under foreclosure?

4 A. Yes.

5 Q. Now, Mr. Chalmers, in the 19 -- in the early part
6 of the operations up until 1992, when Mr. Brockamp first
7 came to your operation, had you ever had any difficulties
8 with the Illinois Environmental Protection Agency
9 concerning any inspections or violations or potential
10 violations as a result of your swine operation?

11 A. In 1996, Ross Manning --

12 Q. In 1986?

13 A. In 1986 Ross Manning from the IEPA inspected the
14 premise and saw no problems.

15 Q. Is that what has been marked as Respondent's
16 Exhibit Number 1 earlier?

17 A. It was admitted into evidence. I am not sure what
18 the number is.

19 Q. That's all right. I am just asking you. I will
20 show you what has been marked as Respondent's Exhibit
21 Number 1. Would you take a look at that, please?

22 A. Yes.

23 Q. Is that the document that you are referring to?

24 A. Yes, that's the Ross Manning report.

1 Q. I corrected you. I think you said 1996.

2 A. No, it is 1986.

3 Q. All right.

4 A. Previous to that I recall no other IEPA
5 inspections. I have no reports in the file from any other
6 inspection prior to that.

7 Q. That is in your files?

8 A. In my file.

9 Q. All right.

10 A. That is not saying there was not another
11 inspection. To be proactive, I did file and receive in
12 the mid 1970s an NPDES permit. The ag engineering
13 department at the U of I said I should have never done
14 that, and advised me when it ran out not to renew it, and
15 we did that.

16 Q. John, drawing your attention now to May 11th,
17 1992, which is a date that Mr. Brockamp came to your farm,
18 and made an inspection of your farm. Do you recall that
19 date?

20 A. Yes.

21 Q. Okay. Do you recall where that alleged complaint
22 was supposed to have occurred?

23 A. Yes.

24 Q. Where was it supposed to have occurred, if you

1 recall?

2 A. As near as I can ascertain, it would be east of

3 what is marked C on exhibition A.

4 Q. Exhibit A?

5 A. Yes.

6 Q. Now, you have testified about the -- is that near

7 the manure application area that is marked on People's

8 Exhibit A?

9 A. Yes. It is in the northeast corner of the manure

10 application area.

11 Q. Okay. And did you talk to Mr. Brockamp on that

12 occasion?

13 A. I talked to him, I believe, when he came out on

14 his inspection trip.

15 Q. Did he advise you as to what the nature of his

16 inspection trip was and why he was there?

17 A. Reluctantly.

18 Q. What did he say?

19 A. The protocol that is supposed to be followed is as

20 follows, and it states that very explicitly in the NPDES

21 report. One, is --

22 Q. Mr. Chalmers, listen to the question. What did

23 Mr. Brockamp say to you about the nature of why he was

24 there?

1 MS. PERI: Objection. That is hearsay.

2 MR. TICE: This is a staff inspector from the EPA.

3 MS. PERI: It is still hearsay.

4 MR. TICE: I think that it is -- I will withdraw the

5 question.

6 Q. (By Mr. Tice) Were you given any notice as to why

7 Mr. Brockamp was present on May 11th, 1992?

8 A. Prior to his showing up, no.

9 Q. All right. At any time did you become aware of

10 the fact that there was a complaint that there was hog

11 manure on the roadway north of the manure application area

12 near the area marked C on People's Exhibit A, as a result

13 of this inspection on May 11th, 1992?

14 A. Because the design criteria and the --

15 Q. Did you ever become aware that there was?

16 A. Oh. No, no.

17 Q. Okay. Based upon your knowledge of your

18 irrigation system and the design of it, Mr. Chalmers, do

19 you have an opinion as to whether or not it would even be

20 possible for the irrigation risers to spray irrigation

21 water or a mixture of water and manure on the road at that

22 location?

23 A. It is a design impossibility.

24 Q. Why is that, sir?

1 A. Because the initial design criteria was gauged to
2 discount that possibility, plus a margin of almost 50
3 percent.

4 Q. Okay. I am going to show you what was marked as
5 People's Exhibit C, which are purported to be photographs
6 taken by Mr. Brockamp on May 11th, 1992, when he was out
7 at your site on that date. I would like you to take a
8 look at that, if you would, please?

9 A. The top picture as shown in the --

10 MS. PERI: I am sorry. Is there a question?

11 MR. TICE: Just wait and let me --

12 THE WITNESS: Oh, okay. I thought you said describe
13 that.

14 Q. (By Mr. Tice) With respect to picture number one
15 on that exhibit, can you tell us what that depicts?

16 A. Yes. That depicts my dilution pond.

17 Q. Where is that located, Mr. Chalmers?

18 A. It is indicated on A close to or where it says
19 dilution pond.

20 Q. On People's Exhibit A; is that correct?

21 A. That's correct.

22 Q. Okay. Now, when did you construct that dilution
23 pond?

24 A. The dilution pond was constructed in November of

1 1993.

2 Q. What is the date of the photograph on People's
3 Exhibit C?

4 A. May 11th, 1992.

5 Q. Was that dilution pond, as depicted by that
6 photograph dated May 11th, 1992, in existence on that
7 date?

8 A. No.

9 Q. Did you on or about May 11th, 1992 ever go to the
10 area which is marked as C or to the east of the area
11 marked C on People's Exhibit A to determine whether or
12 not, in fact, there had been manure placed upon, that is
13 hog manure, placed upon the roadway in that vicinity?

14 A. On the day of the inspection I am sure that Mr.
15 Brockamp and I traveled to that area of the farm.

16 Q. Did you see any manure on the roadway at that
17 time?

18 A. No, I did not.

19 Q. Now, do you recall another inspection made by Mr.
20 Brockamp at your facility on May 6th, 1993?

21 A. Yes.

22 Q. Do you recall the purpose for that inspection?

23 A. Apparently there was another complaint from an
24 unknown person, which we later discovered through

1 discovery was Linda Brown.

2 Q. Do you know the nature of that complaint?

3 A. There was supposed to be manure on the road again.

4 Q. Do you know where it was, where it was supposed to
5 have been?

6 A. It is not quite where the red circles are but
7 close.

8 Q. On People's Exhibit A; is that correct?

9 A. That's correct.

10 Q. Did you view the site, that particular site, on
11 May 6, 1993?

12 A. Dale Brockamp and I went down there. On the date
13 that Linda Brown made the complaint, you know, I was not
14 aware that there was a problem, so I didn't go down there
15 that day. But when Mr. Brockamp came out to inspect we
16 went there together.

17 Q. Tell me what you found when you went there
18 together that date?

19 A. Nothing.

20 Q. Okay. I am going to show you -- when you say
21 nothing, what do you mean?

22 A. The summer -- the spring and summer of 1993 was
23 one of -- was the wettest in record in central Illinois.
24 Yes, the fields were muddy. My fields were muddy. The

1 Barker ground was muddy.

2 Q. Was --

3 A. There were implement tracks in the field where
4 they tried to move and couldn't.

5 Q. Where is --

6 A. And those had collected water.

7 Q. Where is the Barker ground that you are referring
8 to?

9 A. Directly north of my farm. Directly north of the
10 Kay Watkins School Road, as depicted on A.

11 Q. In other words, where the red circles are, and
12 north of that would be the Barker ground?

13 A. That's correct.

14 Q. North of where the letter C is depicted on Exhibit
15 A, that would be the Barker ground?

16 A. Yes, that is correct. They border me on the
17 north.

18 Q. Well, was it muddy in the fields on that occasion?

19 A. Yes, very muddy.

20 Q. Did you go out into the field?

21 A. Yes.

22 Q. What did you find?

23 A. Now, be specific on which field.

24 Q. The Barker field.

1 A. No, I didn't go out in the Barker field that day.

2 Q. Were you standing next to the Barker field?

3 A. We were on the road, so we could observe the

4 Barker field.

5 Q. Did you go into any field on that occasion?

6 A. Not with Mr. Brockamp. I would have been on the

7 fields that day.

8 Q. Whose fields would you have been on during the

9 course of that day?

10 A. On my own.

11 Q. All right. Where were those fields located?

12 A. Being that time of the year, I was probably on the

13 property that we call the Ogden farm seeing if there was

14 any place that we had the potential to plant corn.

15 Q. All right. What was the condition of those

16 fields?

17 A. Even on the very sandy upland fields, there was

18 not anyplace we could move.

19 Q. What do you mean, there was not anyplace you could

20 move?

21 A. The soil conditions were not such even on the very

22 sandy upland hills that gave us an opportunity to move any

23 equipment.

24 Q. Were they wet and muddy, John?

1 A. Yes.

2 Q. All right. Was water standing in them?

3 A. Yes.

4 Q. All right. Now, I am going to show you People's
5 Exhibit D, which are photographs taken by Mr. Brockamp on
6 that May 6th, 1993 inspection, and ask you to take a look
7 at them, if you would, please. Look at all of them, and
8 then I will ask you a question about it, John.

9 A. Okay. (The witness reviewing photographs.)

10 Q. Have you had a chance to look at all of them?

11 A. (Nodded head up and down.)

12 Q. All right. With respect to photograph number
13 three and number four, do those depict the area that you
14 and Mr. Brockamp went to where the alleged complaint was
15 made about manure on the road?

16 A. Yes. It does not show the grain bins, but by the
17 location of the house that's close.

18 Q. All right. Was there, in fact, any manure on the
19 road at that time when the two of you went there?

20 A. Not to my recollection.

21 Q. Now, you were standing there with Mr. Brockamp.
22 Can you describe what the conditions were of the
23 roadsides, the vegetation area there on either side of the
24 traveled portion of that road?

1 A. Picture three shows the road ditches that had
2 probably been mowed once previous to that time, and the
3 growth is maybe 12 inches.

4 Q. All right. Now, you were actually out there. Can
5 you tell us whether or not you could detect any hog manure
6 in the road ditches or the roadside on either side of that
7 traveled portion of that road on that occasion?

8 A. No, I couldn't recall any. Because of that
9 location, the location as shown in picture three of six on
10 Exhibit D, there is only one potential drain point that
11 would put effluent into that area if there was any
12 effluent, and that would come from the riser that would
13 have been in the south -- no, in the northwest quadrant of
14 cell six, and that was in an alfalfa field that was in,
15 you know, very lush growth. Irrigation protocol is such
16 that that type of field is only irrigated after harvest or
17 previous to the installation or the instigation of growth.

18 Q. Is that irrigation field shown in any of these
19 pictures, that alfalfa field?

20 A. Cell six is depicted on picture one.

21 Q. When you say cell six, you mean a particular
22 field; is that correct?

23 A. Yes. As we developed our waste management plan,
24 we have stipulated different areas of the farm by going

1 from cell one through 20 -- no, one through 31, I believe.

2 Q. That is just like going field one, field two,
3 field three, field four; is that correct?

4 A. That's correct.

5 Q. All right. Now, what is the affect of having
6 alfalfa of that size and that maturity, shown by picture
7 one of People's Exhibit D, on that occasion on May 11th,
8 1993 -- or May 6th, 1993 on your irrigation? Would you
9 have irrigated that field?

10 A. The photo in itself depicts an area where the dry
11 dam has slowed down the water and, in fact, all the water
12 has not left that area yet. The dry dam is doing its job.
13 Instead of cutting out and going over into the road ditch
14 it stopped and slowed down the water, and it is holding it
15 in this area (indicating).

16 Q. Would you have irrigated that field on that day or
17 about that day, Mr. Chalmers?

18 A. No.

19 Q. And the reason why is what? Why would you not
20 have irrigated it?

21 A. Because swine waste on mature alfalfa creates
22 damage rather quickly.

23 Q. All right. Now, turning now to picture four of
24 People's Exhibit D, that shows the -- purports to show a

1 field directly across the road from this general location

2 of what I believe you have described as the Barker field.

3 You were there on that occasion, were you not?

4 A. I was there with Mr. Brockamp.

5 Q. All right. Based on your observations of that

6 field on that occasion do you have an opinion as to what

7 the water consists of that you see in that picture in that

8 field, displayed by picture four of Exhibit D?

9 A. That field is exhibiting field cultivator marks,

10 which cause indentations in the soil of collected water.

11 Q. Did you at that time have any -- or notice any hog

12 manure odor from that water or that liquid that is

13 depicted by that picture four?

14 A. When Mr. Brockamp and I looked at that area there

15 was no indication to either of us that there was any swine

16 waste in that area.

17 MS. PERI: I object. Mr. Chalmers is not qualified

18 to speak for Mr. Brockamp, and I believe Mr. Brockamp has

19 already testified on that issue and differently.

20 MR. TICE: This is when the two of them were there.

21 HEARING OFFICER KNITTLE: I am going to sustain any

22 objection to Mr. Chalmers' conjecture as to what Mr.

23 Brockamp thought.

24 Q. (By Mr. Tice) Mr. Chalmers, what is your opinion

1 as to what that liquid consisted of, shown by or depicted
2 by picture four of Exhibit D, People's Exhibit D, on that
3 occasion while you were there, your opinion, sir?

4 A. Quite frankly, we didn't examine that during the
5 inspection.

6 Q. Do you have an opinion of what it consisted of
7 while you were there?

8 A. The only thing I could base my opinion on at this
9 point in time is the field was in alfalfa. The protocol
10 of our situation, as far as irrigation, no farmer would
11 knowingly apply a material to a crop that he knows would
12 damage that crop. Also, if we had irrigated a field that
13 was 15 to 24 inches high, the marks of the irrigation
14 cart, which is a four-wheeler with a cart on it, would be
15 very noticeable in the field. And it has never been
16 ascertained from any of the testimony yesterday or today
17 that there was any irrigation marks in that field.

18 Q. Did you notice any irrigation marks in that field
19 when you were out there on that occasion, Mr. Chalmers?

20 A. None.

21 Q. Okay. Now, Mr. Chalmers, do you -- can you also
22 provide fresh water irrigation to these fields?

23 A. Yes.

24 Q. And how do you do that?

1 A. Through the same system.

2 Q. Where does it come from?

3 A. It comes from the pond.

4 Q. Would you have provided fresh water irrigation to

5 this particular alfalfa field, as shown by picture one on

6 People's Exhibit D, on or about this occasion?

7 A. No.

8 Q. Okay. Do you have an opinion as to what the

9 source of the water that is impounded behind the dry dam,

10 as is shown on picture number one on People's Exhibit D

11 is, what the source of the water is?

12 A. It is excessive runoff from that particular cell.

13 Q. That particular field; is that correct?

14 A. Yes.

15 Q. All right. Do you have an opinion as to whether

16 or not any of that could have been caused by the excessive

17 rain that was experienced during that time of year in that

18 location?

19 A. I would have to assume that from one of the

20 wettest periods in history that that was a logical

21 assumption.

22 Q. Okay. How heavily is the Kay Watkins Road

23 traveled in this particular area, the portion of the road

24 that runs on the north side of your farm, as depicted on

1 People's Exhibit A, and also the portion of it that runs

2 on the west side of your farm?

3 A. On the whole length of the Kay Watkins Road from
4 my residence to the end of Kay Watkins Road there is only
5 two homes.

6 Q. How heavily is it traveled, sir?

7 A. Virtually none. It is not a county road. That is
8 a road district road, and I own the middle of the road.
9 Barkers would own the middle on the opposite way. It is a
10 road that is owned by the farmers in the area which have
11 granted easement to the county to run school buses and
12 mail on. That was an easement granted years and years
13 ago.

14 Q. Now, directing your attention to another
15 inspection made on June 15th, 1993 by Mr. Brockamp. Do
16 you recall that inspection on that date, Mr. Chalmers?

17 A. Only from the reports.

18 Q. Were you present at the time that Mr. Brockamp
19 made his inspection?

20 A. No, I don't believe so.

21 Q. Okay. Is it your information that the inspection
22 took place at a location approximately marked as C on
23 People's Exhibit A?

24 A. That's correct.

1 Q. Okay. And do you remember what the nature of the
2 inspection was about?

3 A. Discovery ascertained that Mr. Brockamp had
4 developed some pictures and made an inspection showing
5 that a stream of liquid waste had egressed from my farm
6 and ingressed onto the north side of the road, which is
7 Barker ground.

8 Q. Is that in a waterway, if you know?

9 A. That's correct.

10 Q. Did you ever go to that site, either during the
11 time of the inspection or shortly thereafter?

12 A. When I found out that that incident had occurred,
13 I went down there and specifically measured the distance
14 from the ingressed point to the dissipation of the liquid.

15 Q. And how soon after that did you find out?

16 A. As soon as my employee said that there is someone
17 nosing around on the north side of our farm.

18 Q. Was Mr. Brockamp still there when you went down
19 there?

20 A. I don't recall that.

21 Q. What did you find when you got there?

22 A. When I measured I found out it went 18 feet from
23 the ingress point.

24 Q. That is 18 feet from where to where, Mr. Chalmers?

1 A. From the end of the culvert to the end where the
2 liquid dissipated into the sand.

3 Q. In the waterway?

4 A. Yes.

5 Q. That is a waterway located in the Barker farm
6 ground?

7 A. Yes, sir, that's correct.

8 Q. Did you walk all the way to the end of where the
9 liquid was located?

10 A. Yes.

11 Q. Okay.

12 A. I physically measured it with a tape measure.

13 Q. What happened to the liquid at that point in time?

14 A. That particular location is sandy, which is a
15 minimum of 85 feet to groundwater, and is probably further
16 than that, and it is all sand.

17 Q. Okay.

18 A. A perfect filter.

19 Q. Does it act as a filter?

20 A. Absolutely.

21 MS. PERI: Objection. I don't believe any foundation
22 has been laid as to Mr. Chalmers' ability to, first of
23 all, determine the depth of groundwater and, secondly, to
24 make decisions about what constitutes a filter.

1 THE WITNESS: I --

2 MR. TICE: Just a minute, John.

3 THE WITNESS: I am sorry.

4 Q. (By Mr. Tice) Have you had any agronomy courses in

5 the course of your formal education, Mr. Chalmers?

6 A. Yes.

7 Q. Have you done any work with soil samples and the

8 types of soil?

9 A. Yes.

10 Q. Do you know the type of soil that existed at that

11 particular spot in that waterway?

12 A. Yes.

13 Q. How do you know that?

14 A. From soil maps.

15 Q. All right. What type of soil exists there?

16 A. Alvin sandy clay loam.

17 Q. What is the characteristics of the Alvin sandy

18 clay loam?

19 A. It is fine, granulated sand with less than three

20 percent organic material in it.

21 Q. Okay. With characteristics such as that, does it

22 act as a filter, or do you have an opinion as to whether

23 it acts as a filter with respect to water and substances

24 in water?

1 A. During CE 100 at the U of I, seven foot of sand
2 was normally used as filter for most municipal waste
3 treatment facilities.

4 Q. And does this soil type, found at that location,
5 have the same characteristics as the sand that you
6 described?

7 A. It would be ten times greater than that, due to
8 the distance to groundwater, minimum distance to
9 groundwater.

10 Q. When you measured this length of this water from
11 the exit point of the culvert running under the road at
12 that point into the Barker waterway into the field, did
13 you inspect then the soil around the area where the liquid
14 diffused?

15 A. Sure. I made a thorough inspection of the area.

16 Q. What was the nature of the vegetation in that area
17 at that time?

18 A. It is bromegrass. It was probably two to three
19 feet high.

20 Q. Was it thick?

21 A. Yes, very thick.

22 Q. What is -- what did the effect of that thick
23 bromegrass have on the flow of that liquid, as you
24 observed?

1 A. The vegetation reduces the velocity of any stream
2 of liquid.

3 Q. Where was the stream going at that point in time
4 in that thick vegetation?

5 A. It disbursed over maybe six or eight inches wide
6 and tapered down to the diffusion point.

7 Q. Okay. Did you find it after that?

8 A. No.

9 Q. Okay. Could you find any indication of liquid
10 beyond the diffusion point that you described at that
11 location?

12 A. No, I could not. Obviously, when there is a
13 problem and there is a problem that creates an
14 investigation by the IEPA, I wanted to ascertain exactly
15 what I was facing and make sure my protocol was changed to
16 try to eliminate future employee errors.

17 Q. Did you make a determination on that occasion that
18 there had been any problems?

19 A. Yes.

20 Q. What was the --

21 A. Within the next -- during the next staff meeting
22 and prior to that staff meeting, Jerry Gatons (spelled
23 phonetically) was the man in charge of irrigating that
24 summer. I informed his immediate supervisor that he was

1 prone not to move the guns quickly enough, and thus we had
2 a problem. Protocol needs to be changed and he needs to
3 be supervised to eliminate that type of thing in the
4 future. From 1993 forward it has never been shown that it
5 has ever repeated again.

6 Q. Okay.

7 A. So the protocol stopped that.

8 Q. So to your knowledge you have had no other problem
9 of that nature subsequent to that June 15th, 1993
10 occasion; is that correct?

11 A. On location C, that is true.

12 Q. All right. You took -- you, yourself took
13 immediate steps to change it; is that correct?

14 A. That's correct.

15 Q. Now, directing your attention to February 9th,
16 1994, there was an inspection of your property by Mr.
17 Brockamp, A.G. Taylor, and some others. Do you recall
18 that inspection date?

19 A. Yes. They were polite enough to call ahead and
20 make an appointment and set up a time that was mutually
21 agreeable to all parties.

22 Q. What was the weather like on that occasion?

23 A. It was cold.

24 Q. What was the temperature, John?

1 A. I don't know. It was, I think, eight to ten below

2 zero that night.

3 Q. Okay. Now, were you with the people from the IEPA

4 when they made the inspection of your property on that

5 occasion?

6 A. We did not travel together, but I led them to

7 every point.

8 Q. Okay.

9 A. When we had a discussion all parties were

10 involved.

11 Q. Now, you have heard testimony from Mr. Brockamp

12 that he noticed an overflow of lagoon number one over its

13 berm on that occasion. Did he draw your attention to

14 that?

15 A. Yes.

16 Q. And what did you observe?

17 A. His findings were true that we did have -- as he

18 testified, he said there was 10 to 15 gallons of swine

19 waste that went over the road and down into location D.

20 Q. What is location D, as shown on People's Exhibit

21 A?

22 A. That is a series of four sow lots, five through

23 eight.

24 Q. Okay. What do you use them for?

1 A. Breeding and gestation of mature sows at that
2 time.

3 Q. That is open ground, isn't it?

4 A. Yes.

5 Q. Does it have any vegetation on it or is it bare
6 ground?

7 A. Very little vegetation.

8 Q. Do you have any safety devices located on that
9 ground that would intercept any overflow from lagoon one
10 before it reached any lower area, in particular, the
11 dotted line as shown on Exhibit A, running from the lower
12 right-hand corner to the upper left-hand corner?

13 A. May I approach?

14 Q. Sure. Go ahead.

15 (The witness approached the exhibit.)

16 Q. Back up, John, so Mr. Knittle can watch you,
17 please.

18 A. To preclude any problems from just such an
19 occurrence when we couldn't pump, along the north edge of
20 the sow lots, we developed a berm that was approximately
21 20 foot long and four foot high, which went along this
22 area, along here, across here. This does not exist right
23 here. There is a small indentation right here, maybe 30
24 or 40 feet, and along here, and along here. Then the flow

1 rate was actually more over here, and the course that the
2 water would take would be in that direction (indicating).

3 Q. All right. Now, Mr. Chalmers, we have to back up
4 so we can get some indication into the printed record of
5 the things that you have noted on People's Exhibit A.

6 Now, if I may state for the record here, you have
7 pointed to the red outlined area marked D on People's
8 Exhibit A. And you have indicated that there was a berm
9 about four foot high and approximately twenty foot in
10 length; is that correct?

11 A. No, 25 feet in width.

12 Q. Okay. It is 25 feet in width?

13 A. That transverses the entire length of those lots.

14 Q. The outline marked Exhibit D, or marked D; is that
15 correct?

16 A. In fact, this lagoon corner is down here, and this
17 berm ties into the berm on lagoon two (indicating).

18 Q. So this berm you are talking about ties into the
19 east end of lagoon two and traverses in a northeasterly
20 direction towards this dotted line depicting the alleged
21 intermittent stream, crosses D, the area marked D in red
22 on Exhibit A, heading easterly to southeasterly, all the
23 way across that area marked D; is that correct?

24 A. That's correct.

1 Q. All right. Now, let me ask you this question.

2 How high is that berm?

3 A. The north berm or this berm? The north berm or
4 the east berm?

5 Q. The north berm.

6 A. Four foot high.

7 Q. About four foot high. And the east berm, how high
8 is it?

9 A. About 25 feet high.

10 Q. The east berm is the one that ties into the north
11 berm; is that correct?

12 A. Yes, the east side of the lagoon two, the berm for
13 that ties into the north berm that protects the sow lots
14 from any potential overflow from lagoon one.

15 Q. All right. How wide is that east berm?

16 A. Probably 40 feet at its base and 15 feet at its
17 top.

18 Q. All right. Now, is that all you need to depict on
19 Exhibit A?

20 A. Yes.

21 Q. Okay. Thank you.

22 MR. TICE: Now, Mr. Knittle, does that make it clear
23 enough on the record, do you think?

24 HEARING OFFICER KNITTLE: I think so. I hesitate to

1 talk about this, because I don't want to step into your
2 shoes, Mr. Tice.

3 MR. TICE: You are not going to --

4 HEARING OFFICER KNITTLE: But I think Mr. Chalmers
5 also referenced the fact that the one dotted line didn't
6 continue as far as it did on that Exhibit. If that is the
7 case, I think the Board should know about that. At least
8 Mr. Chalmers believed that it didn't --

9 MR. TICE: All right.

10 Q. (By Mr. Tice) Go back up there, Mr. Chalmers, if
11 you would, please.

12 A. Okay.

13 (The witness approached the exhibit.)

14 Q. In sort of the center part of the red outlined
15 area marked D on People's Exhibit A you see a dotted line
16 that goes basically up and down, top to bottom, bottom to
17 top. Do you see that?

18 A. Yes. The location of this is really over here,
19 and it is only about 40 feet.

20 Q. Okay. It is 40 feet from what is supposed to be
21 the intermittent stream?

22 A. Yes.

23 Q. Okay.

24 A. This dotted line should be over here in this area,

1 and it is about 40 feet from that (indicating).

2 Q. So it should be outside of and to the east of the
3 red area, the dotted area marked D; is that correct?

4 A. That is correct.

5 Q. All right. And can you describe what that dotted
6 line that goes from top to bottom that you moved out of
7 the red D area to an area east of that really is? Can you
8 physically describe it?

9 A. Okay. Before we changed the lay of the land, that
10 was a natural water course, a natural waterway to get into
11 this location, this intermittent stream, as has been
12 defined.

13 Q. What is it like now? What was it like on the date
14 of February 9, 1994?

15 A. Frozen ground with this little indent that is
16 fenced in berm.

17 Q. All right. Now, you observed this overflow from
18 lagoon number one; is that correct?

19 A. That's correct.

20 Q. And you didn't anticipate that that was going to
21 happen, did you?

22 A. No. You can't always anticipate when employees
23 are going to make a mistake.

24 Q. You knew the EPA people were coming out that day,

1 didn't you?

2 A. Oh, absolutely.

3 Q. Okay. Did any of the water that came out of
4 lagoon one ever get close to the area in the sow lot that
5 has been marked as the alleged intermittent stream?

6 A. No, and testimony of the people that were there
7 that day said there was nothing at location B that day.

8 Q. How close did it get from your observation, John?

9 A. It never got out of location D.

10 Q. It never got past the berm?

11 A. No.

12 Q. Okay.

13 A. I mean, 10 or 15 gallons in a 100 yard lot, with
14 the effluent not only curving north but to the west, 15
15 gallons is a physical impossibility for that to traverse a
16 four foot berm.

17 Q. Now, Mr. Chalmers, you also had another
18 investigation, did you not, by Mr. Wells? You had two
19 investigations by Mr. Wells? Well, you had some more
20 investigations by Mr. Brockamp subsequent to this time,
21 too, didn't you, this February of 1994 investigation,
22 didn't you?

23 A. Yes.

24 Q. Did you ever receive any notifications of any

1 violations of the Environmental Protection Act as a result
2 of any of those subsequent investigations by Mr. Brockamp?

3 A. The nature of the problems would have been -- I
4 can't tell you the exact dates, but there was one water
5 quality test that indicated an ammonia nitrogen level of
6 186 milligrams per liter.

7 Q. Okay. Did you --

8 A. To quantify that, it would take approximately
9 100,000 gallons of that concentration of ammonia N to
10 fertilize one acre of corn. So that's a very minute
11 concentration of effluent that shows the magnitude -- or
12 the minimumness of the problem.

13 Q. Mr. Chalmers, did you make an effort to minimize
14 that or to alleviate any problem that that may have
15 depicted with respect to your farm?

16 A. Okay. After the summer of 1993, which was also a
17 very financially stressing time, we spent a great deal of
18 money improving not only protocol but we spent close to
19 \$30,000.00 improving the physical aspects of our waste
20 management plan.

21 Q. Okay.

22 A. Case in point, we built the dry dam close to B.
23 We built the dilution pond. We increased the berms on all
24 lagoons. We went to a centrifugal pump, which made it

1 easier to get parts. The parts came from Havana rather
2 than Cozad, Nebraska. So we reacted to a problem like any
3 businessman would do.

4 The first thing we did was, one, increase our
5 training efforts with staff, two, spend the money
6 necessary to improve the physical plant and try as hard as
7 we could to instill in our employees the seriousness of
8 the situation that we faced. But in my 40 years of
9 supervising employees, you can't always control the
10 mistakes that the employees make.

11 (Whereupon a document was duly marked for purposes of
12 identification as Respondent's Exhibit 2 as of this
13 date.)

14 Q. (By Mr. Tice) All right. Mr. Chalmers, I am going
15 to show you what has been marked as Respondent's Exhibit
16 Number 2. What does that represent?

17 A. That is a review of the expenditures made at that
18 time frame.

19 Q. It totals how much?

20 A. \$29,971.00.

21 Q. What were the -- what was the purpose of those
22 expenditures at that time?

23 A. To try to ensure that we would maintain compliance
24 under the IEPA rules.

1 (Whereupon a document was duly marked for purposes of
2 identification as Respondent's Exhibit 3 as of this
3 date.)

4 Q. (By Mr. Tice) Okay. I am going to show you what
5 has been marked as People's Exhibit 3. I would like you
6 to take a look at that, if you would, please, and tell me
7 what it is. It is not People's. I am sorry. It is
8 Respondent's Exhibit 3.

9 A. Okay. (The witness reviewing document.)

10 Q. What is it, John?

11 A. That's my letter to Mr. Bridgewater indicating
12 what we had done subsequent to the 1993 inspections, both
13 on the solid problem and on the effluent problem.

14 Q. To try to correct any problems that may have
15 existed; is that correct?

16 A. That's correct.

17 Q. All right. Now, you also had some inspections
18 made of your property by Mr. Wells. Do you remember that?

19 A. Yes. He made two inspections.

20 Q. Okay. And you heard his testimony this morning
21 with regard to those inspections, did you not?

22 A. That's correct.

23 Q. All right. He indicated that in his last
24 inspection, and I think it was -- let me see if I can give

1 you the date of that.

2 A. His last inspection would have been 06-03-99.

3 Q. Okay. On 06-03-99 he indicated that there was a
4 risk of overflow from lagoons two and three, that they had
5 reached the level of their berm, and he recommended that
6 you pump into lagoon number four; is that correct?

7 A. That is correct.

8 Q. Have you taken those measures?

9 A. There was adequate freeboard in those lagoons
10 until we had six and a quarter inches of rain the five
11 days prior to that.

12 Q. Five days prior to June 3rd?

13 A. Yes.

14 Q. Okay.

15 A. During the time of inspection we -- as Mr. Wells
16 testified, we didn't have any over -- we didn't have a
17 discharge so, obviously, the freeboard was adequate.
18 There is no question on the day he was there the freeboard
19 was inadequate. No question. It was minimal. Subsequent
20 to that date I have increased the height of the berm on
21 the low point on -- it would have been the northwest
22 corner of lagoon three by about two feet, and we dewatered
23 that lagoon. When you dewater three, that also dewater
24 two.

1 Q. Okay.

2 A. We are close to the point now where our freeboard
3 is -- you know, exceeds the minimal level of 6.5 inches,
4 as he requested. That has been done.

5 Q. Okay.

6 A. Or, you know, we are pumping very slowly, because
7 it has been wet until the last ten days.

8 Q. But you are pumping, is that correct, now even?

9 A. Yes.

10 Q. Okay.

11 A. Obviously, I am not there, so we are not pumping
12 today.

13 Q. Are you the only person available now to take care
14 of this farm at the present time?

15 A. Other than my wife at certain times, and also if I
16 have a problem my son. And I also have a couple of
17 tenants that will help and some neighbors that will help
18 if I ask.

19 Q. You have no employees?

20 A. I have no employees.

21 Q. Is that because you have no financial means to pay
22 employees?

23 A. Yes, and it -- you know, the size of my operation
24 at this point in time does not require any.

1 Q. What is the size of your operation?

2 A. You know, historically our operation grossed in
3 excess of \$2,000,000.00 for over 20 years, and today it
4 grosses in the neighborhood of \$50,000.00.

5 Q. You have your expenses after that?

6 A. Yes. That's gross.

7 Q. Okay.

8 A. Obviously, a marked change.

9 HEARING OFFICER KNITTLE: Mr. Tice --

10 MR. TICE: We are about done.

11 HEARING OFFICER KNITTLE: I was going to suggest that
12 we go off the record and talk about it, but if you are
13 almost done --

14 MR. TICE: Well, that is all right. We can go off
15 here if you want and talk.

16 HEARING OFFICER KNITTLE: Off the record.

17 (Discussion off the record.)

18 HEARING OFFICER KNITTLE: Let's go back on the record
19 now. So, Mr. Chalmers, if you make any other statements
20 they will be recorded on the transcript.

21 THE WITNESS: Yes, sir.

22 (Whereupon a document was duly marked for purposes of
23 identification as Respondent's Exhibit 4 as of this
24 date.)

1 Q. (By Mr. Tice) I want to show you what has been
2 marked as Respondent's Exhibit Number 4. Can you tell me
3 what that is?

4 A. That is a balance sheet.

5 Q. And a balance sheet of your current financial
6 condition?

7 A. That's correct.

8 Q. And was it prepared under your direction and
9 supervision?

10 A. That's correct.

11 Q. Okay. Is it based upon your financial records of
12 the Chalmers farm operation, Mr. Chalmers?

13 A. That's correct.

14 Q. And what does it show with regard to your
15 financial condition at the current time, Mr. Chalmers?

16 A. We have a negative net worth.

17 Q. How much?

18 A. \$311,000.00

19 (Whereupon a document was duly marked for purposes of
20 identification as Respondent's Exhibit 5 as of this
21 date.)

22 Q. I am going to show you what has been marked as
23 Respondent's Exhibit Number 5. Would you explain to me
24 what that is?

1 A. That's a summary of my last six years tax returns.

2 Q. Is that prepared under your direction and

3 supervision, sir?

4 A. It is prepared by my accounting firm.

5 Q. All right. The tax returns?

6 A. Yes.

7 Q. Are they prepared from your records?

8 A. Yes.

9 Q. All right. And are those records maintained by

10 you?

11 A. Yes.

12 Q. Do you sign those tax returns?

13 A. Yes.

14 Q. Is the Respondent's Exhibit Number 6 a summary of

15 what those tax returns show?

16 MS. PERI: Do you mean Number 5?

17 MR. TICE: Yes. Number 5. I am sorry.

18 THE WITNESS: Yes, Number 5 depicts a summary from

19 those.

20 Q. (By Mr. Tice) Was that summary prepared from those

21 income tax returns under your direction and supervision,

22 sir?

23 A. Yes.

24 Q. All right. Now with respect to Respondent's

1 Exhibit Number 2, was that document prepared under your
2 direction and supervision, Mr. Chalmers?

3 A. It was totally prepared by me.

4 Q. From your records?

5 A. That's correct.

6 Q. All right. Are those financial records your
7 business records which you keep and maintain; is that
8 correct?

9 A. That's correct.

10 Q. All right. Now, with respect to Respondent's
11 Exhibit Number 3, is that a copy of the letter that you
12 prepared and sent to Mr. Bridgewater at the IEPA?

13 A. Yes.

14 Q. Regarding the amount of expenditures that you have
15 made during the time period reflected in that letter
16 concerning your financial commitment to improvements to
17 your wastewater treatment facility?

18 A. That's correct.

19 Q. Okay.

20 A. Jerry, I forgot to add one bit of information.

21 Q. Just a moment, John.

22 A. Okay.

23 MR. TICE: May we take just a minute here maybe and
24 take a break for five minutes here, and I will see if I am

1 about done.

2 HEARING OFFICER KNITTLE: Any objection, Ms. Peri?

3 MS. PERI: No.

4 HEARING OFFICER KNITTLE: All right. Let's go off

5 the record.

6 (Whereupon a short recess was taken.)

7 HEARING OFFICER KNITTLE: All right. We are back on

8 the record.

9 Q. (By Mr. Tice) Mr. Chalmers, do you know how far
10 your farm is located from the Sangamon River?

11 A. The best way to show that is on the topographical
12 map.

13 Q. All right. Are you referring to People's Exhibit
14 B?

15 A. Yes.

16 (The witness approached the exhibit.)

17 Q. Can you tell from that how far it is from your
18 farm by the lay of the land, not as the crow flies, but
19 the lay of the land to the Sangamon River?

20 A. From point C --

21 Q. Okay. Back up so people can see. I don't know
22 whether there is a point C on there.

23 A. That is this point here (indicating). That's what
24 Mr. Brockamp put on.

1 Q. That is where the green line intersects the orange
2 line?

3 A. Yes.

4 Q. All right.

5 A. He was true until he got to this point, and then
6 it goes straight north. From this point to this point is
7 just a shade under a mile (indicating). From that point
8 down to the Oakford drainage, which is right here, is
9 another 3.5 miles (indicating).

10 Q. Now, the Oakford drainage, is that on what is
11 marked as the C&IM Railroad just north and west of the
12 Village of Oakford?

13 A. No, no. It is on this other side of the road
14 (indicating).

15 Q. All right. Back up so that the Hearing Officer
16 can see.

17 A. Okay. I am sorry. Water coming through the
18 Oakford drainage ditch is impounded at this point and has
19 to be pumped over to make its -- from this point, you
20 know, it is roughly another mile and a half to the
21 Sangamon River. But the flow is interrupted here with a
22 pumping station. So it has to be pumped over.

23 Q. So how many miles, John?

24 A. About four and a half miles, at least. And it is

1 a little less from the northwest point, because it

2 traverses another direction.

3 HEARING OFFICER KNITTLE: Let me ask a Hearing

4 Officer question here once again. I added up as you were

5 giving us the mileage, and I come up with six. Maybe I

6 added wrong.

7 THE WITNESS: I said five and a half.

8 HEARING OFFICER KNITTLE: I thought just now you said

9 four a half.

10 THE WITNESS: Well, four a half from this point, and

11 then it is another --

12 HEARING OFFICER KNITTLE: Okay. So the total miles

13 to the Sangamon River, you would estimate as what, Mr.

14 Chalmers?

15 THE WITNESS: From five and a half to six. From C, a

16 little less from B, because the water goes a different

17 course.

18 HEARING OFFICER KNITTLE: Okay. I try to make things

19 as easy for the Illinois Pollution Control Board as I can.

20 If we can get your estimate, that's what I want.

21 THE WITNESS: Is that acceptable?

22 HEARING OFFICER KNITTLE: Yes.

23 THE WITNESS: All right.

24 MR. TICE: That's all I have right now.

1 HEARING OFFICER KNITTLE: Let me just state for the
2 record what is going to happen. Pursuant to an
3 off-the-record discussion, Mr. Tice is going to continue
4 with the direct examination of Chalmers tomorrow, and also
5 at that time he is going to move his exhibits.

6 Ms. Peri indicated that the State has no objection to
7 that course of action. Is that correct, Ms. Peri?

8 MS. PERI: That's true. The State would like an
9 opportunity to raise any objections on those exhibits at
10 the appropriate time.

11 HEARING OFFICER KNITTLE: All right. We will meet
12 back here at 9:00. We are off the record.

13 (Hearing Exhibits were retained by Hearing Officer
14 John Knittle.)

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

3 C E R T I F I C A T E

4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for
6 the County of Montgomery, State of Illinois, DO HEREBY
7 CERTIFY that the foregoing 516 pages comprise a true,
8 complete and correct transcript of the proceedings held on
9 the 23rd of June A.D., 1999, at Menard County Courthouse,
10 Petersburg, Illinois, in the case of the People of the
11 State of Illinois v. John Chalmers, Individually and doing
12 business as John Chalmers Hog Farm, in proceedings held
13 before the Honorable John Knittle, Hearing Officer, and
14 recorded in machine shorthand by me.

15 IN WITNESS WHEREOF I have hereunto set my hand and
16 affixed my Notarial Seal this 7th day of July A.D., 1999.

17

18

19

20 Notary Public and
21 Certified Shorthand Reporter and
22 Registered Professional Reporter

23 CSR License No. 084-003677
24 My Commission Expires: 03-02-99

25

26