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ILLINOIS POLLUTION CONTROL BOARD

November 4, 2009

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Complainant,)	
V.)	AC 09-56
)	(IEPA No. 136-09-AC)
)	(Administration Citation)
GARY J. And JAMES R.)	
SZCZEBLEWSKI,)	
Respondents.)	

Angela R. Kelly, CSR # 084-004498

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APPEARANCES

ILLINOIS POLLUTION CONTROL BOARD

By Ms. Carol Webb

1021 North Grand Avenue East

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Springfield, Illinois 62794-9274

FOR RESPONDENT:

Mr. Gary Szczeblewski, Esq.

FOR IEPA:

Ms. Michelle Ryan, Esq.

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PROCEEDINGS

(November 4, 2009)

HEARING OFFICER WEBB: Good morning, my name is Carole Webb, and this is a hearing for AC-09-56 IEPA verse Gary and James Szczeblewski. It is November 4, and we are beginning at 10:00 a.m.

I'll note for the record there are no members of the public present.

At issue in this case are allegations that respondents violated sections 21(p)(1) and (p)(7) of the Environmental Protection Act, at a site located at approximately 402 E. Young Road in Sesser, Franklin County.

The Pollution Control Board members will make the final decision in this case. My purpose is to conduct the hearing in a neutral and orderly manner, so that we have a clear record of the proceedings.

This hearing was noticed pursuant to the Act and the Board's rules and will be conducted pursuant to Sections 101.600 through 101.632 of the Board's procedural rules.

At this time, I'd like to ask the parties to please make their appearances on the record.

MS. RYAN: Michelle Ryan, special assistant attorney general for the Illinois EPA.

MR. SZCZEBLEWSKI: Gary Szczeblewski, attorney, representing

1 Gary Szczeblewski and James Szczeblewski.

2 HEARING OFFICER WEBB: Are there any preliminary matters to
3 discuss on the record?

4 MS. RYAN: No.

5 MR. SZCZEBLEWSKI: No.

6 HEARING OFFICER WEBB: Okay. Miss Ryan, would you care to
7 give any opening statement?

8 MS. RYAN: Yes. We believe that the evidence today will
9 show that on June 11 of 2009, open dumping and the deposition of
10 construction demolition debris occurred at the Szczeblewski
11 property in Sesser, on East Young Road, and that there are no
12 legal defenses to these activities.

13 HEARING OFFICER WEBB: Would the Respondents care to make
14 any opening statement?

15 MR. SZCZEBLEWSKI: Yes, the property in question, it's
16 unknown if it's Burlington Northern Railroad right of way, or
17 whether it's owned by Gary and James Szczeblewski. Apparently
18 the witness Maggie Stevenson had left that unknown, and most of
19 the infractions of the rules is located upon the railroad right
20 of way.

21 HEARING OFFICER WEBB: THE COURT: Miss Ryan, you may call
22 your witness.

23 MS. RYAN: I call Maggie Stevenson.

24 MAGGIE STEVENSON, having been duly sworn, testified as

1 follows:

2 DIRECT EXAMINATION.

3 By Ms. Ryan:

4 Q. Would you state your name and spell your last name for
5 the court reporter?

6 A. Yes, Maggie Stevenson, S-T-E-V-E-N-S-O-N.

7 Q. What is your job?

8 A. I'm a field inspector for bureau of Land, Illinois
9 EPA.

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

12 A. Approximately five.

13 Q. And did you work at Illinois EPA prior to being a
14 field inspector?

15 A. Yes.

16 Q. For how long was that?

17 A. For approximately twenty years.

18 Q. What are your duties as a field inspector?

19 A. I inspect facilities or land that we receive
20 complaints on, regarding open dumping, hazardous waste, tires.
21 I also do as hazardous waste inspection on businesses for RECRA
22 inspections.

23 Q. How many inspections do you think you've conducted
24 approximately over the five years that you've been doing field

1 inspections?

2 A. Approximately 400 to 500.

3 Q. What's your educational background?

4 A. I have a Bachelor's degree Environmental Chemistry.

5 Q. From?

6 A. University of Illinois.

7 Q. And have you had any additional training besides your
8 bachelor's work?

9 A. Yes, I have annual inspection training, we have
10 hazardous waste training, we have training that's offered to us
11 that I go to regarding newer technology in the field, US EPA
12 training.

13 Q. Are you familiar with the Szczeblewski property in
14 Sesser, located at 402 East Young Road?

15 A. Yes.

16 Q. And is that property located within the town of
17 Sesser?

18 A. I believe it is.

19 Q. Who owns that property?

20 A. That's registered to Szczeblewski, I'm sorry if I
21 slaughter the name.

22 Q. How many inspections have you conducted at that
23 property?

24 A. I've conducted three inspections.

1 Q. I'm going to show you what I've marked as Exhibit 1
2 for identification, can you tell me if you recognize that
3 document?

4 A. Yes.

5 Q. What is it?

6 A. It's the field inspection document package.

7 Q. Can you page through it for me? Is that a fair
8 accurate and complete copy of your June 11, 2009 report?

9 A. Yes.

10 Q. Can you generally describe the property that this
11 inspection relates to?

12 A. It's property that's bordered on the west by railroad
13 tracks, and a field road on the west, and it goes at an angle.
14 It starts at about 150 feet or so, widens toward the back of the
15 property that I inspected, to about 400 feet.

16 Q. Besides the road and railroad tracks, are there any
17 fixtures or other noticeable things on the property?

18 A. There's a field on the west side of the field road.

19 Q. But no buildings or anything?

20 A. No, there's some buildings that are located in the
21 very, very far back of the property, being the north end of the
22 property, I believe. And I think those are mine related
23 properties.

24 Q. Who took the photographs that are attached to this

1 report?

2 A. I did.

3 Q. Can you go through them, and tell us what they show?

4 A. Sure. Photograph number one shows an open gate, and
5 it shows the railroad tracks on the east side of the property,
6 shows the field road, and it shows the overgrowth of vegetation
7 in the center area.

8 Photograph number two shows a tire, it shows some
9 cement block or cinder block, shows roofing material, I think in
10 the far background is some dimensional lumber.

11 Q. Can you describe in relation to photograph number one
12 where photograph number two was taken?

13 A. Yeah, it was taken, I would say approximately, let me
14 look at my map here, real quick. Yeah, that photograph was
15 taken at the end of this lane area.

16 Q. So at the end of the field road that's shown in
17 picture one?

18 A. Correct, about where it's about 400 feet or so wide.

19 Q. Okay. Go ahead.

20 A. Okay, photograph number three, that was also taken at
21 the end of this field road area, and it shows like a partial
22 child's bed, that is what red and blue, a little bit of yellow
23 it looks like there.

24 Photograph number four is the same thing, there's also

1 some dimensional number, laying beside the child's bed area.
2 The tilled area in the front here where it's darker earth,
3 that's where that open burning from the previous inspection had
4 actually occurred. It looks like this stuff had been shoved
5 over to the side.

6 Photograph number five, it's kind of hard to see, the
7 vegetation was very, very thick when I went out to do the
8 reinspection. There are some roofing shingles, some cement
9 cinders. If you look through the trees, you can see a little
10 bit of the turquoise color right in there, towards the center
11 upper area, that's a plastic child's slide right there.

12 Number six is, looking for the northern type of end of
13 the field road, looking towards the gate area, which you can't
14 see because of the vegetation overgrowth, but I took that
15 picture so you can get a better picture of how overgrown that
16 area became after I did the first inspection.

17 Picture number seven shows at least two drums, steel
18 drums, they're pretty deteriorated and rusted. I could not get
19 back in with the vegetation the way it was, to see if they were
20 empty, or if they had been leaking. There's also some cement
21 cinder blocks in that.

22 Picture number eight shows some cinders block, some
23 dimensional lumber in there, there's also a cigarette sorter
24 container, like would be used in a retail store, and that

1 cigarette container was actually added, it wasn't there during
2 the first inspection.

3 Q. In photograph eight, in the middle toward the left
4 side of the page, there's a large black area, can you determine
5 what that was?

6 A. I believe that that was just like a plastic tarp type
7 of material.

8 Q. Okay.

9 A. Picture number nine shows the plastic cigarette sorter
10 that had been added to the waste since my last inspection that
11 was noticeable.

12 Picture number ten is another of the steel drums, some
13 cement cinder blocks in there.

14 Picture number eleven shows a pile of, there's some
15 metal debris, siding, cinder blocks some dimensional lumber.

16 Picture number twelve, there's a toilet in this pile,
17 ceramic toilet, and there's also a couch, there's some drywall,
18 there's dimensional lumber in here, just a lot of miscellaneous
19 debris.

20 Q. The toilet would be the white item at the top of the
21 photo above the couch, which is the green item?

22 A. That's correct.

23 Q. Do those photographs actually depict what you saw on
24 the property on June 11, 2009?

1 A. Yes.

2 Q. When was this report generated?

3 A. I believe this report was generated on June 17, is
4 when this report went out.

5 Q. Does Illinois EPA keep those reports in the regular
6 course of it's business?

7 A. Yes, they do.

8 Q. Is it Illinois EPA' regular course of business, to
9 make such record at or reasonably after the event reflected
10 thereon?

11 A. Yes, it is.

12 MS. RYAN: I move for admission of Exhibit 1 into
13 evidence.

14 HEARING OFFICER WEBB: Exhibit 1 is admitted into
15 evidence.

16 MS. RYAN: And I have nothing further at this point.

17 HEARING OFFICER WEBB: Mr. Szczeblewski, do you have
18 any cross?

19 MR. SZCZEBLEWSKI: This has been admitted into
20 evidence?

21 HEARING OFFICER WEBB: Yeah.

22 C R O S S E X A M I N A T I O N

23 By Mr. Szczeblewski:

24 Q. And in regards to this report, in your remarks, of

1 June 11, 09, the final part of that, I don't know, it's not
2 numbered, it's page two of two, it says, that's your remarks,
3 you make the statement, it was still unknown at this time if
4 waste is also being dumped on railroad right of way property.

5 A. Yes.

6 Q. What did you mean by that statement?

7 A. It hadn't been measured to show the distance between
8 the center of the tracks out, 75 foot from the center of the
9 tracks, into that field area, is Burlington Northern Railroad
10 property. It's their right of way, but this waste is clearly not
11 on the 75 feet, as you can see from some of the photos.

12 Q. Your inspection, you said that you've inspected over
13 400, 500 areas?

14 A. Yes.

15 Q. How many mine sites have you examined?

16 A. I would say, estimated fifty.

17 Q. And regards to those mine sites you're familiar with
18 the operation of old coal mines in southern Illinois?

19 A. Yes.

20 Q. This area we're talking about, what would that have
21 been used for in the old coal mines that existed on this
22 property?

23 A. This area where the open dumping occurred?

24 Q. Yes.

1 A. This is just a field access road, it could have been a
2 mine access road also.

3 Q. Why is it the property elevated there? For what
4 purpose, it's apparently man-made, because it doesn't contour
5 with the land, but why is this area elevated, that you're saying
6 this dumping occurred on?

7 A. You mean the railroad track area is elevated?

8 Q. The area is elevated, if you notice that there was
9 road that was on top of this elevation at one time?

10 A. Okay, I'm not familiar with what you're talking about.

11 Q. You're not familiar with coal mines in southern
12 Illinois then?

13 A. I'm familiar with coal mines.

14 Q. You have to know they parked cars up there on this
15 raised area to bump them down to the coal mine to be filled?

16 A. I'm sorry, I didn't understand your question clearly,
17 if we're talking about the railroad tracks being elevated.

18 Q. We're talking about this area being elevated?

19 A. Okay.

20 Q. Where this dumping occurs?

21 A. I'm not clear on what you're asking, so I can't answer
22 that question.

23 Q. You inspected this property?

24 A. Yes, I did.

1 Q. You've told us?

2 A. Yes.

3 Q. Under affidavit, you said you inspected this property?

4 A. Correct.

5 Q. And there are buildings in the back part of this

6 field?

7 A. Which I did not inspect.

8 Q. Correct.

9 A. Okay.

10 Q. But what was apparent to you about this property,

11 where this alleged dumping occurred?

12 A. What was apparent to me about the property, I'm

13 looking for open dumping.

14 Q. You're not looking for the fact that this is a gob

15 pile, that you're looking at old coal residue and everything

16 else on that property?

17 A. To me, that has nothing to do with the open dumping

18 that is occurring on the property.

19 Q. You didn't look that you were driving on top of coal

20 dust when you went back on this field road?

21 A. No, I did not.

22 Q. You did not observe that?

23 A. I did not pay any attention to that, I went to look at

24 the open dumping.

1 Q. Okay. Now, you've got a bachelor's degree in what?

2 A. Environmental Chemistry.

3 Q. What kind of bachelor's degree does that concern?

4 A. That concerns that I have studies in Environmental
5 Science, and studies in chemistry.

6 Q. Which would include studies of coal, coal dust, stuff
7 like that?

8 A. No, not anything that's specific to this area.

9 Q. You've inspected fifty coal mines, you've got some
10 knowledge?

11 A. Southern Illinois is basically one huge coal mine.

12 Q. You've inspected coal mines, you're familiar with coal
13 mines?

14 A. I've inspected coal mine properties.

15 Q. This property, where the dumping occurred, what part
16 of the coal mine was this property?

17 A. I do not know, because I'm not sure what you're trying
18 to get to. This is a field road, as far as I'm concerned, this
19 is a field road entrance to, I'm sure a field mine at one time
20 went back to the old coal mine that's in the very back of the
21 property. I did not inspect that, that falls under the
22 Department of Natural Resources.

23 Q. With your experience going in coal mines, when you
24 were taking these pictures on June 11, you didn't know you were

1 standing on coal dust?

2 A. Actually, it was irrelevant to the photos I was taking
3 of the open dumping.

4 Q. The question is, were you aware of the fact you were
5 standing on coal dust?

6 A. No, I wasn't paying any attention to it.

7 Q. You made reference to it that this was blackened
8 earth, the debris had been removed?

9 A. No, I made reference to where the open dumping,
10 burning had taken place in a previous inspection that this was
11 darker Earth in the photograph, I did not make any mention as to
12 that it was coal dust or anything else.

13 Q. So, with fifty inspections of coal mines, you have no
14 idea what this area was where this dumping was occurred?

15 A. It's not relevant to what I'm doing at the time.

16 Q. Okay. Now, in regards to this same document, you have
17 a checklist, I call it a checklist, you call it inspection
18 checklist, and on that inspection checklist, what did you check?

19 A. I checked 21-A, cause or allow open dumping, I checked
20 21-B, conduct waste storage, waste treatment, or waste disposal
21 operation without a permit, and in violation of any regulations
22 or standards adopted by the Board. I checked 21-E, dispose,
23 treat, store, or abandon any waste, or transport any waste into
24 state. I checked 21-P, which is cause or allow the open dumping

1 with any waste in the manner which results in any of the
2 following occurrences at the dump site. I checked number one,
3 which would have been litter. I checked number seven, which
4 would have been deposition of general construction or demolition
5 debris, or clean construction or demolition debris.

6 I checked 55-A-1, which is caused or allow open
7 dumping in any use of waste tires.

8 I checked 812.101 A failure to submit an application
9 for a permit to develop and operate a landfill.

10 722.111 hazardous waste determination, and 808.121
11 special waste determination.

12 Q. This all relates to your inspection of the property in
13 June of 2009, correct?

14 A. Yes.

15 Q. When was the first time you inspected this property?

16 A. First time I inspected this property was March 31,
17 2009.

18 Q. Do you have your report with you?

19 A. I don't have my report with me.

20 Q. Does your attorney have your report?

21 MS. RYAN: I have one copy.

22 MR. SZCZEBLEWSKI: Please allow your client to review,
23 the March report.

24 A. Okay.

1 Q. In regards to this report, the initial report, what
2 did you check on your checklist in that report?

3 A. Additionally, to what I had checked in the June 11?

4 Q. No, no, this is not after June, this is March, okay?

5 A. Right.

6 Q. 2009?

7 A. You want me to go down each one for you?

8 Q. Yes, because you checked different things in March,
9 when you made your initial inspection, than what you did in
10 June.

11 A. I checked 9C, cause or allow open dumping, I checked
12 21A, cause or allow open dumping, I checked 21B1, conduct any
13 waste storage waste treatment or waste disposal operation
14 without a permit. I also checked 2, which is in violation of
15 any regulations or standards adopted by the board. I checked 21
16 P open burning, and I checked 21 P7, deposition of general
17 construction or demolition debris or clean construction or
18 demolition debris. I checked 55A, cause or allow open dumping
19 of used tires.

20 And I checked 812.101 failure to submit an application
21 for a permit to develop and operate a landfill.

22 Q. Now, in March you checked 9A?

23 A. Yes.

24 Q. In June you didn't check 9 A, why not?

1 A. Because no open burning was occurring at the site,
2 when I went out there in June.

3 Q. So there was open burning occurring when you went out
4 there in March?

5 A. There was evidence that open burning had occurred.

6 Q. What happened with the evidence in June?

7 A. That's where I explained that there was an area where
8 the open burning had occurred. If you look at exposure, photos
9 number 003, 004 open burning had occurred where the area was
10 darker right here, that was the actual area. This had been
11 pushed up to the side, you could see that the bed and stuff was
12 over in a different area, at the time I went out, that field was
13 adjacent to that.

14 Q. Show me the picture, the same picture that you took in
15 March, of 2009, reflecting this burning area?

16 A. It would be picture 003, 004, right here, in the
17 March inspection, in that same picture area, approximately in
18 picture 003, 004 in the June.

19 Q. Now, the pictures in the June report, are the same
20 pictures that are of the same area that's in the March report?

21 A. We try to get as close to the approximated area as
22 possible, I can't say that they are exact.

23 Q. Okay.

24 A. And as noted on the site map, it always says

1 approximate locations.

2 Q. On my photographs, on the March report, there's
3 picture twelve, that appears to me to be open burning residue?

4 A. No, that's up by the tracks, 007 there was piece of
5 carpet there, padding, drywall there was landscape debris,
6 stacked up there, branches, and such.

7 HEARING OFFICER WEBB: May I interrupt for a moment.
8 Mr. Szczeblewski, I'm confused. You've not been charged with
9 open burning, and you've actually not been charged with anything
10 that was inspected in the March inspection report, you've only
11 been charged with what the inspector found in the Exhibit 1. So
12 I'm a little confused as to why we're going through this.

13 MR. SZCZEBLEWSKI: Well, because we've got three
14 different inspections, and each inspection has different
15 charges, and I don't know which charges the Pollution Control
16 Board are inspecting.

17 HEARING OFFICER WEBB: Now, it's only this latest one.

18 MS. RYAN: No, it's not the latest one, because there's
19 one following that, it's the June 11, 2009.

20 HEARING OFFICER WEBB: Oh, I'm sorry. It's only the one
21 in Exhibit 1, you're not being charged with anything from the
22 March exhibit, and you're not being charged with open burning,
23 as far as I'm aware.

24 MS. RYAN: That's correct.

1 MR. SZCZEBLEWSKI: Okay, then I should refer to the
2 August report?

3 MS. RYAN: I would object to that, because it's
4 irrelevant to violations that cited in those citations.

5 MR. SZCZEBLEWSKI: It's very relevant, because the
6 check list is different.

7 HEARING OFFICER WEBB: I've not seen the
8 August inspection, they haven't filed any complaint against you
9 with regard to just an inspection. It's just an inspection
10 right now, there haven't been any charges brought against you as
11 a result of that inspection. The only charges that have been
12 brought against you are the ones that are in Exhibit 1, so those
13 are the only ones that the Board's looking at. The Board's not
14 going to look at the subsequent inspection, or the previous
15 inspection. They're just going to look at the ones, upon which
16 the charges were brought.

17 MR. SZCZEBLEWSKI: Okay. The charges were brought on
18 the first, as I understand it, the March report.

19 MS. RYAN: That's incorrect.

20 MR. SZCZEBLEWSKI: That's when the complaint was filed,
21 it was followed up in March.

22 HEARING OFFICER WEBB: No, do you have your complaint
23 with you?

24 MR. SZCZEBLEWSKI: Yes, I do.

1 HEARING OFFICER WEBB: If you would you like to take a
2 moment to look at that?

3 MR. SZCZEBLEWSKI: I've looked at it.

4 HEARING OFFICER WEBB: The subject matter of this
5 hearing is only the inspection from June 11.

6 MR. SZCZEBLEWSKI: The problem with this is, that we
7 were given until May 31 to comply with the first inspection in
8 March. There was a subsequent inspection, unknown to us, we
9 were given no notice of it, we were not asked to solve this
10 problem, and they immediately did the inspection, and they took
11 it to the Pollution Control Board. They didn't say, okay, we
12 reinspected it, this is what we're going to charge you with,
13 you've got so much time to correct it. They didn't do that,
14 they reinspected it, they followed with the Pollution Control
15 Board. They didn't give us an opportunity to do anything. In
16 fact, on their first citation we got, they gave us three days to
17 correct the situation, I called down, talked to --

18 HEARING OFFICER WEBB: Okay, Mr. Szczeblewski, you're
19 testifying right now, and that's fine you are allowed to
20 testify. However, I want to make sure you're finished with cross
21 crass examination.

22 MR. SZCZEBLEWSKI: You're the one you brought this up.

23 HEARING OFFICER WEBB: Yeah.

24 MR. SZCZEBLEWSKI: About this report, she did in June.

1 HEARING OFFICER WEBB: Right, that's the report.

2 MR. SZCZEBLEWSKI: That we didn't have any notice of,
3 that it was sent directly to the Pollution Control Board, we
4 were not asked to fix the problems, there was an inspection
5 done, it was sent to the Pollution Control Board.

6 HEARING OFFICER WEBB: Okay. Mr. Szczeblewski, just
7 understand what I'm telling you, that only this inspection is
8 the one that was filed with the Pollution Control Board, that's
9 the one that the Pollution Control Board members are going to
10 rule on. They're not going to rule on any of the charges from
11 the March inspection, they're not going to rule on any of the
12 charges from the August inspection. This is the only inspection
13 we're worried about today.

14 MR. SZCZEBLEWSKI: So, it's the position of the
15 Pollution Control Board then to allow Environmental Protection
16 Agency to do an inspection, give no notice to the violator, then
17 immediately proceed after that inspection to file it with the
18 Pollution Control Board before the violators can have any chance
19 to correct the situation, since?

20 MS. RYAN: I do information to address that issue, if
21 you'd like to let me do that, before you answer.

22 HEARING OFFICER WEBB: Okay.

23 MS. RYAN: I'd like to let Mr. Szczeblewski finish
24 though.

1 MR. SZCZEBLEWSKI: The problem I'm having is, you know,
2 Miss Stevens testified, she did the inspection in March, they
3 sent us notice of that inspection. They did not send us notice
4 of the June inspection, they immediately sent that new
5 inspection to the Pollution Control Board.

6 Q. My question to Miss Stevens is, why didn't you send us
7 notice of that June inspection, so we could respond to that, to
8 correct the wrongs, since it was a different list of violations?

9 A. Are you saying that we didn't send you a letter
10 stating that we had done the June inspection? Are you saying
11 that we didn't send you a notice that we were going to do the
12 June inspection?

13 Q. You did not send us a letter for the June inspection
14 for us to have an attempt to clean up the problem. If you
15 remember, you were called and asked in May of 2009, asked what
16 procedure could be followed?

17 A. Right.

18 Q. In regards to this?

19 A. Right.

20 Q. And at the time?

21 A. And I spoke with Robin.

22 Q. You spoke with Robin, who's here today?

23 A. Right.

24 Q. And at that time, did you inform her or anyone else

1 that there was going to be a re-inspection, and that this
2 re-inspection was going to be sent immediately to the Pollution
3 Control Board, in the form of a complaint?

4 A. No, I did not.

5 Q. And is this your normal procedure?

6 A. Yes, it is.

7 Q. So you do not give the violators a chance on a new
8 re-inspection, where there's a different checklist completed, to
9 respond to that, prior to sending that to Pollution Control
10 Board?

11 A. Actually, we did give you the chance to respond, that
12 was the March 31 inspection, we talked to you, we talked to
13 Robin.

14 Q. As the hearing officer said, that's not relevant?

15 A. You brought up the conversation, so I wanted to
16 explain what happened.

17 Q. The hearing officer already dealt with that, that's
18 not relevant.

19 HEARING OFFICER WEBB: We need to speak one at a time,
20 so that the stenographer can get everything down.

21 Q. But in regards to the inspection at hand, the one that
22 is before the Illinois Pollution Control Board?

23 A. Yes.

24 Q. What notice did you give Jim Szczeblewski or Gary

1 Szczeblewski, as to what the checklists were, and how to,
2 whether or not they had time to remedy the situation?

3 A. I did not give it at that time, I gave it in March,
4 and I have a documentation, I believe that shows that we granted
5 you an extension verbally, over the phone, that was granted by
6 Tom Edmondson of our office, who was acting regional manager at
7 the time. He spoke to Robin, and I spoke to Robin, no one's
8 spoken to you directly. At that time, you were granted a verbal
9 extension, based on the fact that you send it in by writing by
10 June 3. It was documented in the file that had never arrived to
11 our office, and subsequently, I went out and did another
12 inspection, and that's what was filed with the Pollution Control
13 Board.

14 Q. And what notice did you give to the violators?

15 A. I didn't give any notice prior to the inspection of
16 June 11, to you that I was going to go out and do another
17 inspection, that information was given out on the 31st.

18 Q. That's procedure and policy that you follow?

19 A. That information was given out March 31.

20 Q. So you do a new inspection, and mark new things on the
21 checklist?

22 A. I do a follow up inspection.

23 Q. And give no notice of this change in the checklist.

24 You then immediately send it to Pollution Control Board, rather

1 than allowing the violator to try to correct the situation,
2 especially since you marked a new checklist? Is that correct?

3 A. That's correct, I went out and did another inspection
4 on the site.

5 Q. And you immediately sent that to Illinois Pollution
6 Control Board?

7 A. Yes, I did.

8 Q. And you did not send a copy to the violators?

9 A. I believe a copy of that gets sent to you, by our
10 legal department.

11 Q. After it's filed with Illinois Pollution Control
12 Board?

13 A. I'm not sure of all the details, whether it's after or
14 before.

15 Q. You personally did not send any notice?

16 A. No, I follow agency policy, it went right through the
17 upper channels.

18 Q. And it's your office policy not to give notice?

19 MS. RYAN: Objection asked an answered.

20 HEARING OFFICER WEBB: I believe it has been asked and
21 answered, a few times, Mr. Szczeblewski, could you maybe
22 summarize this in your post hearing brief, if we could just move
23 on.

24 MR. SZCZEBLEWSKI: Well, it's a serious offense here,

1 and no notice being given, other than through the complaint
2 being filed with Pollution Control Board.

3 HEARING OFFICER WEBB: Yes, sir, but I believe the
4 witness has already responded to that.

5 Do you have any further questions for her?

6 Q. In the August report that you did, you again
7 changed --

8 MS. RYAN: I'm going to object to the August report, it
9 has nothing to do with the violations sited on the June 11
10 inspection, which is the subject of this administrative
11 citation.

12 HEARING OFFICER WEBB: Sustained.

13 MR. SZCZEBLEWSKI: We're talking about the same piece
14 of property, the same picture, the same everything, everything's
15 the same.

16 HEARING OFFICER WEBB: It's not relevant, I'm just
17 going to say it's not relevant, I'm sorry sir.

18 MR. SZCZEBLEWSKI: I object to that, I think it's very
19 relevant.

20 HEARING OFFICER WEBB: That is fine.

21 Q. Now, tell me how the complaint worked? Who filed this
22 initial complaint in March of 2009?

23 MS. RYAN: The citizen's complaint, you mean?

24 Q. Yes.

1 MS. RYAN: Okay, go ahead.

2 A. Okay.

3 Q. I have never received it. Just describe what a
4 complaint is, who is it filed with, since you don't have a copy
5 of the complaint filed herein?

6 A. Okay, we get a complaint and a complaint can be
7 submitted by telephone, by E-mail, by written communication, or
8 a complaint can be filed by an anonymous complainant. What
9 happens is we log it in, the day it was made, who took the
10 complaint, we try to get the information on the person filing
11 the complaint. Sometimes they don't want to give it, sometimes
12 they do. We try to get a property, possible owner of the
13 property, if they know it. Any phone numbers relevant, we get
14 directions to the property, a description of what the problem is
15 at the property, and then we log it in to our complaint log, and
16 it's sorted by county, and then our inspectors, everything is
17 tried to address, according to order of priority, sometimes
18 depending on the county, it's organized by date received.

19 Q. Okay. Who filed the complaint in regards to this
20 site?

21 A. I believe the name was Fred Mitchell, maybe.

22 Q. Who is Fred Mitchell?

23 A. I believe he is the mayor of Sesser.

24 Q. When was the complaint filed?

1 A. I don't know, it would have been pretty close to the
2 date of the first inspection.

3 Q. That would have been in March of 2009?

4 A. Possibly, yeah, it could have been in February, could
5 have been in March, somewhere in there.

6 Q. Had you had dealings with Mr. Mitchell prior to this
7 complaint being filed?

8 A. Yes, actually, I had had previous contact with him.

9 Q. What was that in regards to?

10 A. That was in regards to a complaint that had been
11 submitted, I guess, to the news media, not to Illinois EPA, to
12 the news media regarding Sesser Lake, and some rip rap. They
13 had been working on the bank area, and stuff, a complaint of
14 open dumping.

15 Q. At that time you had contact with him, is that when he
16 filed a complaint on this property?

17 A. No, it was after that.

18 Q. Was it before or after?

19 A. It was after.

20 Q. At the time were you aware that Fred Mitchell was
21 running for mayor, against Gary Szczeblewski?

22 A. No, I was not, not at that time.

23 Q. Were you ever made aware of that?

24 A. Yes, I was made aware of that, after the complaint had

1 been filed, against the property, on Young Road.

2 Q. Okay. So after the complaint had been filed, you were
3 made aware that he was in a highly contested mayor race, Fred
4 Mitchell was against myself?

5 A. I was made aware that you two were both running for
6 mayor.

7 Q. Yes. You were aware that he filed the complaint
8 against me?

9 A. Yes, by the mayor of Sesser.

10 Q. In March of 2009?

11 A. It was either February or March, sometime in that time
12 frame.

13 Q. During the mayoral election?

14 A. I don't know, I'm not into politics, so I have no
15 idea.

16 Q. The mayoral election was April 7 of 2009?

17 A. Yes.

18 Q. I think exact date had to sign in January of 2009?

19 A. Yes.

20 Q. It would be safe to say that it was during the mayoral
21 election, that he filed this complaint against myself?

22 A. Based on the information you've given me, yes, I would
23 say that.

24 Q. You did not take that into consideration at all?

1 A. No, we go out and do an inspection of the property,
2 and the inspection showed open dumping on the property, that's
3 all I'm concerned about, I'm not concerned about anything else.

4 Q. When you got the complaint on Sesser Lake, of course
5 you went out there and inspected that?

6 A. No, I told you earlier, I did not receive a complaint,
7 neither did Illinois EPA. We were contacted through the news
8 media, Channel 3. They were going up to the property, we were
9 not able to go. They took pictures of the Sesser Lake property
10 and brought them back to our office. I reviewed those tapes
11 with my acting regional manager, it was determined at that time
12 that was rip rap for the Sesser Lake, that was not open dumping.

13 Q. Did you observed any other pictures of the Sesser
14 Lake?

15 A. No, I observed the newsreel media, is what I observed.

16 Q. And so, was there a new report that came out?

17 A. I believe they were going to do some kind of a news
18 report, but I didn't follow through on it, because the pictures
19 that I saw did not concern me.

20 Q. What statement did you give to the news media in
21 regards to Sesser City Lake?

22 A. I don't know, because I didn't see the thing, I would
23 assume that when I was talking to them, that it was just a rip
24 rap project, that was actually under the control of Illinois

1 Department of Natural Resources, but I didn't see any problems
2 or issues.

3 Q. So, in the TV news story of March 17, 09, who made the
4 statement according to EPA officials, video of the area, killing
5 two birds with one stone, using clean construction debris to
6 prevent further erosion of the lake, and saving money and space
7 by not taking material off to the landfill?

8 A. I believe that was made by Tom Edmondson, who was
9 acting regional manager at the time, who also viewed the tape
10 with me.

11 Q. And was it him or you that made the statement that
12 there was rebar in the debris, which is a hazard, they say it's
13 a simple fix?

14 A. I don't know, I do not recall making that statement.

15 HEARING OFFICER WEBB: You want to lay a foundation for
16 it?

17 Q. Yes, this is the picture that appeared on the
18 WSILTV.com website, a picture that would accompany a news story,
19 a picture that was taken apparently at Sesser City Lake.

20 MS. RYAN: I'm going to have to object, I'm not sure my
21 witness has indicated she seen the website, I'm not sure what
22 that has to do with the citation that we're talking about today.

23 MR. SZCZEBLEWSKI: She viewed the film.

24 MS. RYAN: This is a still photograph though.

1 MR. SZCZEBLEWSKI: The question gets down to, she says
2 that this is not, she says this is construction debris, if it's
3 thrown on public property on a spillway, it's okay, but if you
4 throw it's a gob pile, it's not okay.

5 HEARING OFFICER WEBB: So are you just using that photo
6 as an example as to what construction debris looks like?

7 MR. SZCZEBLEWSKI: Yes, and ask her if this is what she
8 considered to be construction debris.

9 MS. RYAN: I have no objection to asking if my witness
10 has ever seen that picture, but if she hasn't, then I object to
11 any questions about it.

12 MR. SZCZEBLEWSKI: She saw the film, she had to see the
13 picture.

14 MS. RYAN: You can ask her if she's seen that picture,
15 but if she hasn't I'm objecting to it.

16 Q. Have you ever seen the picture, the film that this
17 picture was taken from?

18 A. I can't say for sure that I have, I don't recall.

19 Q. And have you ever seen this statement on WSIL TV?

20 A. That the news. No, I've never seen that.

21 Q. Are you familiar with the tape that showed the
22 construction debris at the lake? You testified already that you
23 are familiar?

24 A. Okay.

1 Q. What's the difference?

2 A. I viewed the tape one time.

3 Q. What's the difference between that construction
4 debris, and the construction debris located on the property at
5 issued today?

6 A. Because this is clean construction demolition debris,
7 I assume that's what you're asking me?

8 Q. Right.

9 A. Any clean construction demolition debris would be
10 considered okay, in Illinois Department of Natural Resources
11 allows you to use that as rip rap to stabilize bank areas around
12 lakes, ponds, that kind of thing, that's governed by Illinois
13 Department of Natural Resources, not by Illinois EPA.

14 HEARING OFFICER WEBB: I'm going to interrupt, in the
15 interest of moving this along, I'm going to accept that photo as
16 an offer of proof, it's just a picture of construction debris,
17 the board knows what construction debris looks like, I'll allow
18 you to present it to the board, and make any kind of argument
19 you'd like in the post hearing brief, but I'd like to move this
20 along.

21 Do you have any more questions for this witness about
22 the June 11 inspection, sir?

23 MR. SZCZEBLEWSKI: No more questions.

24 HEARING OFFICER WEBB: Okay, thank you.

1 MR. SZCZEBLEWSKI: Wait yes, one.

2 HEARING OFFICER WEBB: Okay.

3 Q. How do you know who dumped that debris on that
4 property?

5 A. Who dumped what debris on what property?

6 Q. This open dumping that you allege that the
7 Szczablewski brothers caused or allowed this open dumping?

8 A. Right, the property owners, if it was unknown who is
9 doing the open dumping, you allow the open dumping by not
10 sealing off the entrance to which they were driving down the
11 road in order to do the open dumping. I didn't allege who did
12 the open dumping, I just alleged they allowed for it to be
13 happening.

14 Q. So every property owner in Illinois down a rural road,
15 or a field road, not even a rural road, a field road is
16 responsible if someone comes out there and dumps different
17 materials?

18 A. Yes, they are.

19 Q. And with your department, is there any way for
20 compensating for the clean up of debris, that was not caused or
21 allowed by the landowner?

22 A. No, there's not, not for private landowners.

23 Q. For who does this special fund allow to, only?

24 A. Used to be, the money is gone for that fund in the

1 program right now, it use to be called IRID program, it was for
2 public properties, which would have been county, city, municipal
3 properties, had the been open dumped on. That program no longer
4 exists.

5 Q. So every farmer in the State of Illinois, according to
6 Illinois EPA, is responsible for any dumping down any field
7 road, in the State of Illinois?

8 A. Any land owner is responsible, no matter if it's a
9 farmer or not, is responsible for taking measures to make sure
10 that their property is not accessible for open dumping, and if
11 open dumping occurs on that property, then they're liable.

12 Q. Where does the penalty come in?

13 A. Pardon me?

14 Q. Why is there a penalty for someone coming out there,
15 and dumping on their property?

16 MS. RYAN: I object to the question, the legislators
17 created the penalty, I'm not sure my witness is qualified to
18 answer that.

19 HEARING OFFICER WEBB: Sustained.

20 Q. You've shown various pictures, over what time period
21 has this dumping occurred?

22 A. The first inspection was done in March.

23 Q. When was the dump site itself?

24 A. I have no idea.

1 Q. Was it ten years, twenty years, forty years, fifty
2 years, sixty years?

3 A. I can't tell you that, I don't know.

4 Q. When was your department created?

5 A. 1974.

6 Q. Could it have been before then?

7 A. Might have been, we were part of Department of Public
8 Health. What does that have to do with what we're talking
9 about?

10 Q. You're the expert, you're the inspector, when was this
11 dumped out there?

12 A. I have no idea, all I know is it was dumped, when I
13 went out to do three inspections.

14 Q. You observed it?

15 A. Yes, I did.

16 Q. Had you observed this property, three years ago?

17 A. No, we hadn't received a complaint on it three years
18 ago.

19 Q. But you did observe Sesser Lake property, even though
20 you didn't have a complaint?

21 A. No, I reviewed that film, because we were not able to
22 get out there, and they were going to do the filming. We did not
23 receive a complaint, no complaint was filed with our office,
24 Channel 3 asked us to review the film, and we did.

1 Q. Who gave you permission to go out on this field road,
2 and rut it up?

3 A. Pardon me?

4 Q. Who gave you permission to go out on this field road
5 and rut it up? I think your reports refer to it?

6 A. Refer to rutting the road up?

7 Q. Field road?

8 A. Right, we're allowed to enter onto any property, in
9 order to do an inspection or reinspection.

10 Q. And cause damage to it?

11 A. We didn't do any damage to the property.

12 MR. SZCZEBLEWSKI: Okay. That's all the questions I
13 have.

14 C R O S S E X A M I N A T I O N.

15 By Ms. Ryan:

16 Q. I have a bunch of different questions, I'll try to
17 group them into things that make sense to you here.

18 When you accessed the property June 11, 2009, was your
19 access restricted in any way?

20 A. No.

21 Q. Was the gate open or closed?

22 A. Open.

23 Q. Were there any signs indicating that your access was
24 to be restricted, or was anyone present at the property

1 restricting your access?

2 A. No.

3 Q. I don't know if you've testified to this before, I'm
4 going to go over it again, just in case it wasn't in your
5 previous testimony.

6 You had indicated, I believe, that it was 150 feet
7 from the railroad, to the field road, toward the gated end?

8 A. Correct.

9 Q. How wide was it toward the opposite edge?

10 A. My best estimate might be 400 feet.

11 Q. And how long was that field road to the gate end, to
12 what you're calling the opposite end, approximately?

13 A. Approximately, maybe a quarter of a mile, maybe, maybe
14 an eighth of a mile, somewhere in there. It was not a terribly
15 long distance.

16 Q. You've indicated that you didn't inspect the mine
17 shaft portion of the property; is that correct?

18 A. No, actually, that field road, it ends back, there's a
19 little bit of a field, there's like a creek bed, we walked back
20 there, there's like a creek bed, and we weren't able to drive
21 back through there, and then the mine area that's sitting way
22 back into that area, so we didn't access it.

23 Q. Could you estimate how far back that would have been,
24 from the gate there?

1 A. Maybe another eighth to a quarter of a mile.

2 Q. Mr. Szczeblewski testified that there was no notice
3 given, to give him or his brother, to have an opportunity to
4 clean up the property, I'm going to show you what I've marked as
5 Exhibit 2, can you tell me if you recognize that?

6 A. Yes, this is the administrative citation board notice
7 that was issued in March.

8 Q. Can you check the date on it, tell me exactly when it
9 was issued?

10 A. Sorry, let me see here, it was issued April 16, 2009.

11 Q. What was the compliance date on that notice?

12 A. May 31, 2009.

13 Q. So it was six weeks after the issuance then?

14 A. Right.

15 Q. Did you determine that six weeks is a reasonable
16 amount of time to clean up the amount of waste you saw at the
17 property?

18 A. Yes.

19 Q. Can you look at page two of that document?

20 A. Yes.

21 Q. At the bottom where it says potential sanctions, could
22 you read that section right there?

23 A. Any violation of section 21-C of the Illinois
24 Environmental Protection Act 415.ILCS-521 1994 sited in the

1 attached inspection report, the agency may, without further
2 notice and regardless of any future activity, file an
3 administrative citation.

4 Q. And why did you send this document?

5 A. I sent it to give them notice that we had inspected
6 the property, we found open dumping, and giving them a chance to
7 go ahead and comply with the law and clean up their open
8 dumping, without any further action.

9 Q. Did you receive a response to this notice?

10 A. We received a phone call.

11 Q. Did you receive a written response to this notice?

12 A. No, I'm sorry, we did we did receive a written
13 response to this notice.

14 Q. I'm going to show you what I've marked as Exhibit 3,
15 can you tell me what that is?

16 A. Yes, this is the written response to the notice that
17 was sent on April 16, it's dated April 30, 2009.

18 Q. Is there any indication in that response that the
19 Respondents intend to clean up the property?

20 A. No.

21 Q. Did you respond to that response?

22 A. Yes, I did.

23 Q. I'll show you what I've marked as Exhibit 4, can you
24 tell me what that is?

1 A. This is a response telling the property owners that
2 the mine reclamation program is not relevant to this particular
3 area of the property, for open dumping, and they still need to
4 go ahead and make sure that their corrective actions are done by
5 May 31.

6 Q. When was that letter sent?

7 A. This letter was sent May 27.

8 Q. You said you received an oral request on the telephone
9 extension of the May 31 deadline, did you ever receive a written
10 request for extension of that deadline?

11 A. No.

12 Q. Did you make a final decision whether to send an
13 administrative citation?

14 A. No.

15 Q. And is the administrative citation based on a citizen
16 complaint that you received, or upon an inspection report that
17 you've done?

18 A. Upon an inspection report that I've done.

19 MS. RYAN: I move for the admission of Exhibits 2
20 through 4.

21 HEARING OFFICER WEBB: 2, 3, and 4 are admitted.

22 MR. SZCZEBLEWSKI: I'm going to object, because these
23 exhibits are signed by Gerald E. Steele, this witness said she
24 did this, I don't know who Gerald E. Steele is.

1 MS. RYAN: I can clarify that. Who is Gerald E. Steele?

2 A. He's my supervisor, and regional manager for Bureau of
3 Land.

4 MS. RYAN: And who prepared documents 2 and 4?

5 A. I prepared these documents for his signature.

6 HEARING OFFICER WEBB: Okay. I'm going to admit them,
7 you are arguing the issue of notice, and those documents are
8 relevant to that issue, so I'm going to admit them. Are you
9 finished?

10 MS. RYAN: I am finished.

11 HEARING OFFICER WEBB: Thank you.

12 MR. SZCZEBLEWSKI: In regards to these admissions of
13 those documents, this all pertains to the March inspection, and
14 that's what was at issue, and you said it was irrelevant, March.
15 Now all of a sudden, you've admitted all of those documents and
16 say oh, that March inspection was relevant, because that's the
17 notice of it.

18 But when I brought it up, oh, it couldn't pertain, but
19 now it pertains, and my question is, why are the checklists in
20 the March investigation, which all these documents refer to,
21 which gives notice, different in the June document, and why
22 weren't these notices given in regards to this new checklist of
23 violations, like it was in the March report? Prior to being
24 sent to Illinois Pollution Control Board.

1 MS. RYAN: I don't have any problem with my witness
2 answering that question, why she didn't give additional notice
3 following the June 11 report.

4 HEARING OFFICER WEBB: I believe the document addresses
5 that issue, and if you weren't arguing that you didn't have
6 notice, I would not admit these documents, they don't relate to
7 the March inspection, they relate to the issue of notice, which
8 is an issue that you're going to be arguing. So that is why I
9 admitted the document, that is my ruling.

10 MR. SZCZEBLEWSKI: But this is in regards to the
11 March inspection, this is not in regards to the notice given for
12 the June inspection. You can tell that from the dates.

13 HEARING OFFICER WEBB: That is my ruling.

14 MR. SZCZEBLEWSKI: All these dates are before June 17.

15 HEARING OFFICER WEBB: Mr. Szczeblewski, that is my
16 ruling, you may object to the Board, you may argue the issue to
17 the Board.

18 Q. Thank you. But, why am I going to ask it again, since
19 this is all irrelevant now in regards to this March inspection,
20 why weren't those same notices given in regards to the new
21 inspection that occurred in June of 2009? It's a new
22 inspection, new different whole area of checklists, why weren't
23 the same notices given?

24 A. Am I suppose the answer?

1 MS. RYAN: Yeah, you can answer that.

2 A. Because we had already given you previous notice about
3 the clean up issues, so the second inspection, it's agency
4 policy, it automatically goes up for administrative citation.

5 Q. But my question to you is, you did this inspection in
6 March, you gave all the notices, okay, the violation notice, so
7 why didn't you file that March inspection with Illinois
8 Pollution Control Board?

9 A. Because we give you a chance to clean it up.

10 Q. Why did you do a new inspection?

11 A. We give you a chance to clean it up, within the
12 timeframe given.

13 Q. Notices of continuation, you alleged there's no clean
14 up, so the next step is to go to the Illinois Pollution Control
15 Board. Instead of doing that, you did a new inspection, and you
16 made a new checklist?

17 A. It was actually a reinspection, we had already given
18 you notice, you had promised to supply documents to us, which
19 you did not supply within the timeframe, so we went ahead and
20 did the reinspection and issued the citation warning, because it
21 was perfectly clear that you weren't going to clean it up within
22 the timeframe, which was already passed.

23 Q. And in regards to those documents that have been
24 admitted, this warning notice says by May 31, 2009, remove all

1 waste to permitted landfill or transfer station?

2 A. Correct.

3 Q. Correct?

4 A. Yes.

5 Q. That whole area is a gob pile, coal, it's all waste,
6 we're talking about a quarter of a mile by 400 feet of material
7 that's going to have to be taken to the landfill, permitted
8 landfill, or transfer station, it didn't say --

9 HEARING OFFICER WEBB: Mr. Szczeblewski, you are
10 testifying, do you have any question for this witness or not?

11 MR. SZCZEBLEWSKI: Yes.

12 HEARING OFFICER WEBB: Well, what is it?

13 MR. SZCZEBLEWSKI: The question is, it's bad to be a
14 witness and an attorney both, isn't it?

15 Q. On Exhibit 2, I assume it's Illinois EPA exhibit, says
16 Exhibit 2, it's states in paragraph two, do you have a copy?

17 A. Yeah.

18 Q. States under open dumping, administration citation
19 warning notice?

20 A. Yes.

21 Q. Paragraph two, what does that day?

22 A. By May 31, 2009 remove all waste to a permanent
23 landfill or transfer station. Scrap metal, not to be disposed to
24 a landfill, can be taken to a scrap metal facility, or recycling

1 center, is that what you're referring to?

2 Q. Yes. It states all waste, correct.

3 A. It is implied waste, as referred to in the inspection
4 report.

5 Q. Does it say that?

6 A. No, the inspection report specifies what waste is
7 being talked about in this inspection, which does not include
8 any kind of coal mine waste, that you were talking about.

9 And that question was not asked when you called in to
10 the office, or when Robin called into the office.

11 Q. You got a recording of that?

12 A. I pretty much recall what Robin and I talked about.

13 Q. You recall?

14 A. No, I do not have a recording of it.

15 Q. You do recall talking to her?

16 A. Yes, do recall talking to her. Would you like for me
17 to recant what I remember of that conversation?

18 Q. Yes.

19 A. I recalled that she called in regarding that property,
20 I did not speak to you, you were unavailable at the time,
21 because I did ask to speak with you. That you wanted to speak
22 to someone who did not have political ties in this area. I
23 explained to her I had no political ties in this area
24 whatsoever, I was only doing an open dump inspection. She

1 wanted a name of a person in Springfield she could contact. I
2 said I can't give out that information, but I can give you to my
3 supervisor, who at the time was Tom Edmondson. I referred her
4 to Tom Edmondson. Tom called her, and spoke to her, and that's
5 when the request for extension was granted, based on the fact
6 that we get it in writing by June 3, which was not followed
7 through on. That was the jest of the conversation. He also gave
8 a name in Springfield to Robin for contact, if needed.

9 Q. How much of an extension did you give then?

10 A. The extension was going to be, I believe thirty days,
11 that's the normal course to give a thirty day extension.

12 Q. Thirty days from May 28?

13 A. Thirty days from the date of our conversation.

14 Q. Which would have been, when?

15 A. I don't remember, because I don't remember what the
16 date was on the phone records.

17 Q. There was a thirty day extension given?

18 A. No, the thirty day extension was granted verbally on
19 the basis that it be submitted in writing between June 3, and
20 that's in the phone record documentation, and we never received
21 it in writing.

22 MR. SZCZEBLEWSKI: I believe that's all the questions I
23 have of this witness.

24 HEARING OFFICER WEBB: Any redirect?

1 MS. RYAN: I am done, thank you.

2 HEARING OFFICER WEBB: Thank you, Ms. Stevenson.

3 (Whereupon a break was taken.)

4 HEARING OFFICER WEBB: We'll go back on the record,
5 Miss Ryan, you completed your presentation?

6 MS. RYAN: Yes, thank you.

7 HEARING OFFICER WEBB: Respondent may call their first
8 witness.

9 MR. SZCZEBLEWSKI: We'd like to call Robin Hammonds.

10 HEARING OFFICER WEBB: Okay, will the court reporter
11 please swear in the witness.

12 ROBIN HAMMONDS, first being duly sworn, examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Szczebleski:

16 Q. Please state your full name?

17 A. Robin Hammonds, H-A-M-M-O-N-D-S.

18 Q. And where is your place of employment?

19 A. Gary Szczebleski Law Office.

20 Q. And what's the address of that?

21 A. 111 East Franklin, Sesser, Illinois.

22 Q. And what's your position in the office?

23 A. I am secretary, and the office manager.

24 Q. In regards to the incident at hand, who opens the mail

1 up in the office of Gary Szczeblewski?

2 A. I do.

3 Q. And I believe all these documents are addressed to the
4 office at 111 East Franklin?

5 A. Correct.

6 Q. That's been sent out by Illinois EPA?

7 A. Yes.

8 Q. Illinois Pollution Control Board?

9 A. Correct.

10 Q. You observe all these documents as they came in?

11 A. Yes.

12 Q. Now, in regards to the letter received from a
13 Mr. Steel, which it's a letter which has been marked as Exhibit
14 4, are you familiar with that letter?

15 A. Yes.

16 Q. How are you familiar with that letter?

17 A. We received it on May 28, I read it.

18 Q. What's the date of the letter?

19 A. May 27, 09.

20 Q. And in regards to this letter, what does it say that
21 the, the brothers had to do on a certain date?

22 A. Had to be cleaned up by May 31, 2009.

23 Q. Okay. Now, this was received into the office at what
24 time?

1 A. May 28.

2 Q. How do you know that?

3 A. Because I stamped it, the day I opened it.

4 Q. At that date, did you have reason to call Illinois EPA
5 regional office in Marion, Illinois?

6 A. Yes.

7 Q. When you called there, who did you speak to?

8 A. I spoke with Maggie Stevenson.

9 Q. What was the conversation in regards?

10 A. Well, I asked Miss Stevenson how we were supposed to
11 get that cleaned up by May 31st, three days, and she didn't have
12 no response. And I asked her if we needed to speak with someone
13 that wasn't in a political, in the middle of the political,
14 small time politics. She said that in a laughing matter, she
15 laughed, and said that there was no small town politics involved
16 in this.

17 Q. At that time, in that conversation, did Miss Stevenson
18 direct you to someone else in the regional office at Marion,
19 Illinois?

20 A. Yes.

21 Q. Who were you directed to?

22 A. Tom Edmondson.

23 Q. Did you speak with Mr. Tom Edmondson?

24 A. Yes.

1 Q. What date did you speak with him?

2 A. On May 28.

3 Q. What was the conversation in regards?

4 A. Well, he was, he said he would give us a thirty day
5 extension to get it cleaned up, and he also told me that there
6 was some cameras in Collinsville, and that when they got back,
7 they would need to be back on the following Monday, she would
8 bring the camera, and set them up on the property, where the
9 open dumping had been taking place, to see who has been coming
10 in and doing the open dumping.

11 Q. Do you know whether or not this Mr. Edmondson was in
12 the same office with Miss Stevenson?

13 A. I assume that he was, because the phone was
14 transferred.

15 Q. Do you know whether or not they were sitting in the
16 same room?

17 A. No.

18 Q. Miss Stevenson 's testified that there was a notice,
19 that there was only a five day extension issued to June 3?

20 MS. RYAN: I object, I think that mischaracterizes his
21 testimony. I think she testified that she needed a written
22 extension request by June 3, and a thirty day extension was
23 discussed.

24 Q. Did Miss Stevenson tell you that you had to file an

1 extension by June 3?

2 A. No.

3 Q. Did Mr. Edmondson tell you you had to file an
4 extension, that the Szczeblewski brothers had to file and
5 extension by June 30?

6 A. No, he said a thirty day extension, and he would take
7 care of it.

8 MS. RYAN: I object, that's hearsay, he's not here to
9 testify.

10 HEARING OFFICER WEBB: Sustained, please make your
11 point.

12 MR. SZCZEBLEWSKI: The point is, there was an extension
13 given, Miss Stevenson used hearsay to say that Mr. Edmondson
14 gave a five day extension, that's okay, she can say that, but
15 when a witness has an actual conversation with an individual,
16 who should have been here, if this was going to be an issue?

17 MS. RYAN: It's not an issue, you're making it an
18 issue.

19 MR. SZCZEBLEWSKI: It a very important issue.

20 MS. RYAN: Then you should have called him to testify.

21 HEARING OFFICER WEBB: I don't remember her having said
22 it any way, but you know, I think you can, I think you can get
23 your testimony, without relaying hearsay conversation. I don't
24 think this is relevant any way, please get through it quickly,

1 I'd appreciate it.

2 Q. From the conversation, what was your knowledge as to
3 when this matter was extended to.

4 A. To July 31, is what I wrote down in my notes.

5 Q. When did you write those notes down?

6 A. On May 28.

7 Q. 2009?

8 A. 2009, yes.

9 Q. After this conversation, did you receive or are you
10 aware of any notice being received by the law office of Gary
11 Szczeblewski in regards to the Szczeblewski brothers, as to
12 whether there had been a new inspection of the property?

13 A. No.

14 Q. What first documents were you made aware of that there
15 had been an inspection, and it had been filed with the Illinois
16 Pollution Control Board?

17 A. When we got the second packet, which was June 29.

18 Q. Did it come from the attorney for the Illinois EPA, or
19 where did it come from?

20 A. It come from the EPA.

21 Q. And what did it relate to?

22 A. The same, the pictures.

23 Q. Was the Illinois Pollution Control Board involved?

24 A. No, not at that time, I'd have to look, yes we got it

1 on June 29.

2 Q. Was this before July 31?

3 A. Yes.

4 Q. From the conversation date of May 28, through this
5 date of June 29, was there any conversation or any
6 correspondence in regard to this matter from the Illinois EPA?

7 A. No.

8 MR. SZCZEBLEWSKI: That's all the questions I have.

9 C R O S S E X A M I N A T I O N

10 By Ms. Ryan:

11 Q. Miss Hammonds, I'll direct your attention to Exhibit
12 4, the third paragraph, will you read the second sentence for
13 me, please?

14 A. You may request in writing an extension for the
15 deadline.

16 Q. Was that done?

17 A. No, because.

18 Q. Can you read the next sentence for me, please?

19 A. If you request an extension, provide a clean up plan.

20 Q. That wasn't done either, was it?

21 A. No.

22 Q. In fact, was the property cleaned up by July 31? It
23 wasn't, was it?

24 A. No.

1 Q. In fact, no attempts have been made since July 31, to
2 date probably?

3 A. Well, I'm not, I don't know that.

4 MS. RYAN: Okay. Thank you.

5 C R O S S E X A M I N A T I O N

6 By Mr. Szczebleski:

7 Q. In regards to Exhibit 4, is it not correct that the
8 letter was dated?

9 A. May 27, 09.

10 Q. And we were -- the letter said that the clean up had
11 to be completed by May 31?

12 A. Correct.

13 Q. Is that what caused the phone call to the Illinois
14 regional office?

15 A. Yes.

16 Q. You talked with Mr. Edmondson?

17 A. Yes.

18 Q. And in regards to this, did Mr. Edmondson ever advise
19 you to send a written notice to him, for this extension?

20 A. No.

21 MR. SZCZEBLEWSKI: You're done, okay, thank you Miss
22 Hammonds.

23 HEARING OFFICER WEBB: Mr. Szczebleski, you may call
24 your next witness.

1 MR. SZCZEBLEWSKI: I would like to call Jim
2 Szczeblewski.

3 JIM SZCZEBLEWSKI, having first been duly sworn,
4 examined and testified as follows:

5 D I R E C T E X A M I N A T I O N

6 By Mr. Szczeblewski:

7 Q. Please state your full name?

8 A. Jim Szczeblewski.

9 Q. And what's your present address?

10 A. 2187 Park Street Road, Mulkeytown.

11 Q. In regards to these documents, have you ever received
12 any documentation from Illinois EPA?

13 A. No.

14 Q. In regards to Gary Szczeblewski and Jim Szczeblewski,
15 what kind of legal arrangement is there?

16 A. My brother.

17 Q. Legal, partnership, corporation, individual?

18 A. You represent me.

19 Q. Am I correct we have a partnership together?

20 A. Yes.

21 Q. What's the purpose of the partnership?

22 A. Farm.

23 Q. Okay. The property in question, is that incorporated
24 in the city limits of City of Sesser?

1 A. I don't think.

2 Q. And is any of that property ever been platted or
3 plotted?

4 A. Not that I know of.

5 Q. Did you ever give permission for Fred Mitchell to go
6 up on this property?

7 A. No.

8 Q. To look at this property?

9 A. No.

10 Q. This property is not part of the City of Sesser?

11 A. Nope.

12 Q. And you heard the testimony of Miss Stevens where she
13 said that you had to secure this property to prevent any kind of
14 dumping on this property, over the time since the partnership,
15 has had ownership of this property, has there been any attempt
16 to secure this property?

17 A. Just by the Young Street Road.

18 Q. What attempts have been made?

19 A. I put up gates.

20 Q. How many times did you put up gates?

21 A. About half dozen times.

22 Q. Have you put up lock on those gates?

23 A. Yeah, they just cut them off.

24 Q. In regards to those gates, why were you putting these

1 gates up?

2 A. Well, I had a grain bin back there, they was stealing
3 everything, grain, electric motors, everything. I had to end up
4 moving the grain bin, because they stole so much.

5 Q. You were trying to secure farm property?

6 A. Yes.

7 Q. At any time, did you authorize or allow people to go
8 back there and dump their debris?

9 A. Nope.

10 Q. How come you did not stand as security guard on this
11 property, since the time that the property was purchased by the
12 farm partnership?

13 A. Didn't think I had to.

14 Q. Did you make every effort to secure this property?

15 A. Yeah.

16 MR. SZCZEBLEWSKI: That's all the questions I have.

17 C R O S S E X A M I N A T I O N

18 By Ms. Ryan:

19 Q. Miss Ryan, I'm sorry if you answered this already, how
20 long is the partnership on the property?

21 A. Like twenty years.

22 Q. How long has the dumping been happening?

23 A. Some of that stuff was already there when we purchased
24 the place, that you was talking about.

1 Q. It's been happening continuously since then?

2 A. Yeah, I guess.

3 Q. How many times have you cleaned up the open waste dump
4 on the property?

5 A. None.

6 MS. RYAN: Thank you.

7 R E D I R E C T E X A M I N A T I O N

8 By Mr. Szczeblewski:

9 Q. In regards to the dumping, was there dumping whenever
10 you secured it with gates?

11 A. They drove clean over the gates, smashed them down,
12 flat.

13 Q. No matter how secure you would try to make this
14 property, they would still go up on the property?

15 A. I think so.

16 Q. Did you receive any compensation for the dumping on
17 this property?

18 A. Nope.

19 Q. Did you ever allow anyone to dump on the property?

20 A. No.

21 Q. Over what time period would you say this dumping
22 occurred, that's at issued today?

23 A. I would say a long time.

24 Q. More than fifty years?

1 A. Probably, because some of that stuff was already
2 there.

3 MR. SZCZEBLEWSKI: That's all the questions I have.

4 MS. RYAN: Nothing else, thank you.

5 HEARING OFFICER WEBB: Thank you Mr. Szczeblewski.

6 Mr. Gary Szczeblewski, would you like to make any,
7 give any sworn testimony in this case, or do you have anything
8 further you'd like to present.

9 MR. SZCZEBLEWSKI: I believe we presented the facts we
10 have.

11 HEARING OFFICER WEBB: Before we hear any closing
12 arguments, let's go off the record to discuss a briefing
13 schedule.

14 (Whereupon, a discussion was held off the record).

15 HEARING OFFICER WEBB: Back on the record. While we
16 were off the record, I did accept the Respondent's Exhibit 1 and
17 Respondent's Exhibit 2 as offers of proof. I believe
18 Respondent's are going to make offers of proof that this is an
19 example of clean construction debris?

20 MR. SZCZEBLEWSKI: Correct.

21 HEARING OFFICER WEBB: The transcript of these
22 proceedings will be available from the court reporter by
23 November 17, and will be posted on the Board's website. The
24 public comment deadline is November 18. Any public comment must

1 be filed in accordance with Section 101.628 of the Board's
2 procedural rules. Compliant's brief is due by December 8, and
3 Respondent's brief is due by January 11, of 2010, and
4 Complainant's reply, if any, will be due by January 19.

5 Miss Ryan would you like to make any closing argument?

6 MS. RYAN: No, I'd like to reserve that for my brief,
7 thank you.

8 HEARING OFFICER WEBB: Mr. Szczeblewski, would you like
9 to make any closing argument?

10 MR. SZCZEBLEWSKI: We so reserve it for the brief.

11 HEARING OFFICER WEBB: Okay. All right, I will note
12 again that there are no members of the public present to make
13 statement on the records, and we will now adjourn the
14 proceedings, I thank you all for your participation.

15 (Hearing adjourned 12:35).

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1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF MARION)
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6 I, ANGIE R. KELLY, a Notary Public and Certified
7 Shorthand Reporter in and for the County of Bond, State
8 Of Illinois, DO HEREBY CERTIFY that I was present at
9 Illinois Pollution Control Board, Springfield, Illinois,
10 On November 4, 2009, and did record the aforesaid Hearing;
11 That same was taken down in shorthand by me and
12 Afterwards transcribed, and that the above and foregoing
13 Is a true and correct transcript of said Hearing.

14 IN WITNESS WHEREOF I have hereunto set my hand
15 And affixed my Notarial Seal this 15th day of November, 2009.

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Notary Public--CSR

#084-004498