

ILLINOIS POLLUTION CONTROL BOARD
MAY 5, 2010

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
))
Complainant,)
))
vs)
))
JASON D. & ANGELA R. MARRS)
d/b/a MARRS HAULING,)
LANDSCAPING & MORE,)
))
Respondents.)

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STATE OF ILLINOIS
Pollution Control Board

AC 09-55

(IEPA No.

130-09-AC)

(Administrative

Citation)

REPORT OF PROCEEDINGS at the hearing of the
above-entitled cause before Carol Webb, Hearing
Officer, taken before Rebecca A. Graziano, Certified
Shorthand Reporter within and for the County of Cook
and State of Illinois, at the Urbana City Building,
Urbana, Illinois, commencing at the hour of 10:00,
on the 5th day of May, A.D., 2010.

A P P E A R A N C E S

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ILLINOIS POLLUTION CONTROL BOARD:

MS. CAROL WEBB

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794
(217) 782-5544

BY: MS. MICHELLE M. RYAN
MR. MIKE MULLINS

Appeared on behalf of the Complainant,

NOVAK WEAVER SOLBERG,
130 West Main Street
Urbana, Illinois 61801
(219) 384-0000

BY: MR. BLAKE WEAVER

Appeared on behalf of the Respondents.

1 MS. WEBB: Good morning. My name is
2 Carol Webb. I'm a hearing officer with the
3 Pollution Control Board. This is AC 0955,
4 IEPA versus Marrs. It is May 5th. We are
5 beginning at 10:40 a.m. There is one
6 interested member of the public present, who
7 does not wish to make a public comment today.

8 At issue in this case is the EPA's
9 allegation that respondents violated
10 Sections 21 P1 and P7 of the Environmental
11 Protection Act at a site in Foosland,
12 Champaign County.

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

18 This hearing was noticed pursuant
19 to the acts in the board's rules, and will be
20 conducted pursuant to Sections 101.600
21 through 101.632 of the Board's procedural
22 rules.

23 At this time, I will ask the
24 parties to please make their appearances on

1 the record.

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

5 MR. WEAVER: Blake Weaver, attorney
6 for Jason and Angela Marrs.

7 MS. WEBB: Thank you. Are there any
8 preliminary matters to discuss today?

9 MS. RYAN: No.

10 MS. WEBB: Ms. Ryan, would you like to
11 make any opening statement?

12 MS. RYAN: Yes. I'm sorry. I did
13 have my formal appearance here. I'm holding
14 it and I'm talking and not thinking. That's
15 the original on the bottom, and nine plus one
16 for you.

17 MS. WEBB: Okay. Thank you. Would
18 you like to make an opening statement?

19 MS. RYAN: Yes. Thank you. We
20 believe that the evidence today will show
21 that on May 18th, 2009, open dumping
22 resulting in litter and the deposition of
23 construction or demolition debris occurred at
24 the Marrs property in Champaign County.

1 MS. WEBB: Mr. Weaver, would you like
2 to make any opening statement?

3 MR. WEAVER: No.

4 MS. WEBB: Okay. Ms. Ryan, you can
5 call your first witness.

6 MS. RYAN: I call Mike Mullins.

7 MS. WEBB: Okay. Would the court
8 reporter please swear in the witness?

9 (Witness sworn.)

10 WHEREUPON:

11 MIKE MULLINS

12 called as a witness herein, having been first duly
13 sworn, deposeth and saith as follows:

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

15 BY MS. RYAN:

16 Q. Can you state your name?

17 A. Yeah. My name is Mike Mullins,

18 M-u-l-l-i-n-s.

19 Q. And what is your job?

20 A. My job is I work for the Environmental
21 Protection Agency, and I do inspections,
22 investigations, and assist with remediation and
23 cleanups.

24 Q. And have you held that same job

1 throughout your tenure at the Agency?

2 A. No, I have not. My first two years I
3 worked in the Agency's laboratory analyzing soil and
4 water samples, and I've been in this position for
5 eight and a half years.

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

8 A. As a field inspector, I inspect solid
9 waste facilities that are permitted by the Illinois
10 EPA. I investigate complaints that involve solid
11 waste in a 19-county region in east central
12 Illinois, and then I also assist the public in
13 remediation and cleanup of sites.

14 Q. Approximately how many inspections
15 have you done during your years at EPA?

16 A. I would estimate somewhere between 900
17 and 1,000.

18 Q. What's your educational background?

19 A. I have a bachelor's of science degree
20 from the University of Missouri with a background in
21 biology and agriculture, and I have additional work
22 studies in chemistry and in management.

23 Q. Have you had any additional training,
24 besides that background you just referred to?

1 A. Yes, I have. Due to working here at
2 the Agency over the years, we're continuously going
3 to classes on new procedures, new rules, as well
4 as -- I've taken additional classes at the local
5 university to better my skills as an inspector.

6 Q. Are you familiar with the Marrs
7 property near Foosland in Champaign County?

8 A. Yes, I am.

9 Q. Where is that property located?

10 A. Well, it's actually located very near
11 the county line between Champaign County and Mclean
12 County in the northwest part of Champaign County,
13 and locally it would be considered in
14 unincorporated -- I think it's called the town of
15 Lotus, though they don't have -- they don't have a
16 post office, so they use the Foosland mailing
17 address.

18 Q. Who owns that property?

19 A. The last information that I have, it
20 was owned by Jason and Angela Marrs.

21 MR. WEAVER: We'll stipulate to that.

22 BY MS. RYAN:

23 Q. Approximately how many inspections
24 have you conducted at that property?

1 A. Approximately eight inspections
2 and -- yeah, eight inspection reports and
3 inspections have been done there.

4 Q. I'm going to show you what I marked as
5 Exhibit 1.

6 (Document marked as Petitioner's
7 Exhibit No. 1 for
8 identification.)

9 (Document tendered.)

10 BY MS. RYAN:

11 Q. Can you tell me if you recognize that
12 document? And I apologize, the last page is double
13 sided in case you're missing it.

14 A. I do recognize that document.

15 Q. And what is that?

16 A. That's an inspection report that I
17 prepared after my inspection on 5/18 of 2009, on
18 May 18th, 2009.

19 Q. And I saw you reviewing the document
20 there. Is that a fair, accurate, and complete copy
21 of your report from that inspection?

22 A. Yes, it is.

23 Q. Can you describe this property
24 generally?

1 A. Generally, it was a residential
2 property on the southeast corner of the small
3 village where previously there was a two-story
4 house, as well as at least one or two small
5 outbuildings, and the -- one of the features of it
6 that was quite interesting in my investigation was
7 the house. The whole property was completely
8 enclosed by a fence.

9 Q. Who took the photographs that are
10 attached to the double-sided page at the end of your
11 report?

12 A. I took those photos.

13 Q. And starting with photograph
14 number one there, tell us what is shown in those
15 photos.

16 A. Yeah. Photo number one was taken from
17 outside the south fence in a northwesterly
18 direction, and it was primarily the debris that
19 remained from the house that had been on that
20 property. And so that was what remained after a
21 fire had occurred there some months prior to that.

22 Q. Now, when you say "the debris from the
23 house," you're referring to the material in the
24 foreground there, or the entire picture?

1 A. Well, it's the entire picture pretty
2 much. It encapsulates -- except for the very center
3 of it, and it would be -- behind the debris of the
4 burnt house is a pile of debris, which actually
5 shows up better in photo two.

6 Q. Okay.

7 A. And photo two then is a pile
8 approximately maybe 20 cubic yards of mixed waste,
9 maybe as much as 30 cubic yards. It's in the
10 northwest corner of the fenced property.

11 Photo number three was taken from
12 the alley -- the alleyway on the north side of the
13 property in a southwesterly direction, and so it's
14 basically another angle of the same debris pile as
15 in photo number two, or the waste pile in photo
16 number two.

17 And then number four, again, is
18 taken from the alley in the northwest corner outside
19 the fence in a southeasterly direction, and so
20 that's where the picture was taken. And at issue is
21 this one pile of waste or debris.

22 Q. And it looks like photograph three may
23 be the closest view of this pile. Would you agree
24 with that?

1 A. Yes, it would have been the closest.

2 Q. Looking at that photograph
3 number three, can you identify what types of
4 materials you see in that pile?

5 A. Well, there's some lumber, dimensional
6 type lumber, that may have white paint on it.
7 There's was what appeared to be, at one time, a live
8 Christmas tree. There was paper, there was metal,
9 which possibly may have been bed parts. There was
10 also a number of black plastic bags that had some
11 unknown content in them, as well as there was some
12 mixed landscape waste, some branches, and dead
13 leaves.

14 Q. And during your inspection, were you
15 able to determine what was inside the black plastic
16 bags?

17 A. I was unable to determine what was
18 inside the black plastic bags, because I did not
19 pass through the gated -- any of the openings to the
20 gated property to go and investigate it. All my
21 inspection was done outside of the fence.

22 Q. Were you able to determine on that
23 day, May 18th, 2009, where this material had come
24 from?

1 A. No. I had no idea where this material
2 had come from. This inspection actually was a
3 follow-up inspection to an inspection that was done
4 back on March 11th of 2009 where I had observed the
5 same pile.

6 Q. Had the pile changed in size or shape
7 at all between those two inspections?

8 A. Not that I could tell, other than the
9 fact of weathering, from being out in the weather.
10 It may have been wet and shrunk a little bit, but I
11 could not tell that it had changed in content or in
12 volume.

13 Q. Do those photographs accurately depict
14 what you saw on May 18th, 2009, at the Marrs
15 property?

16 A. Yes, it does.

17 Q. When was this inspection report
18 generated?

19 A. I don't have the exact date. I
20 usually get my inspection reports done within one to
21 two days after an inspection, unless there's
22 additional information that I'm waiting to secure
23 from some other source. But it's usually within a
24 couple of days.

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

3 A. Yes, they do.

4 Q. Is it our regular course of business
5 to make such records at or reasonably after the
6 event reflected thereon?

7 A. Yes.

8 MS. RYAN: At this time, I would move
9 Exhibit 1 into evidence.

10 MR. WEAVER: No objection.

11 MS. WEBB: Exhibit 1 is admitted into
12 evidence.

13 MS. RYAN: And I have no more direct.

14 MS. WEBB: Mr. Weaver?

15 MR. WEAVER: Thank you.

16 C R O S S - E X A M I N A T I O N

17 BY MR. WEAVER:

18 Q. Mr. Mullins, you indicated that this
19 inspection report was something that you submitted
20 and kept in the regular course of business. Is that
21 accurate?

22 A. Yes, sir.

23 Q. And attached to it is a letter -- a
24 three-page letter. Were you the author of that

1 letter?

2 A. I do not see what you're pointing out
3 here. This is -- what I'm looking at here is the
4 narrative of the written description of the history
5 of the site, if it has a history, and then the
6 observations for that inspection, and then any
7 violations which resulted from that inspection.

8 Q. And it's got a file stamp on it,
9 "Reusable, June 10th, 2009. Reviewer, MD." You
10 didn't have anything to do with that?

11 A. The stamp?

12 Q. The stamp.

13 A. No. We generate a report here locally
14 at the Champaign regional office. The official
15 files for the Agency are in Springfield. Once the
16 documents have been reviewed by management, and in
17 some cases also by legal, the official report is
18 finalized and then is sent out to the respondent, as
19 well as a copy is sent to the official file in the
20 record in Springfield.

21 And so someone within the
22 Agency -- and I don't know who this is or how this
23 system exactly works -- goes through and looks at
24 the document for the FOIA, Freedom of Information

1 Act or whatever, and applies a stamp on there.

2 Q. Okay. But you prepared the narrative
3 that's here?

4 A. Yes, sir.

5 Q. Okay. One of the first headings is,
6 "History," and it talks in Paragraphs one, two,
7 three, and four about inspections and complaints in
8 the months, all of which were in 2008?

9 A. Yes, sir.

10 Q. That's accurate. And the fourth
11 paragraph says, "On October 20th, 2008, reinspection
12 found the alleged dumping and burning had ceased,
13 and the property was found to be in compliance with
14 regulations of the Illinois Environmental Protection
15 Act."

16 A. Yes, sir.

17 Q. And that was your conclusion based
18 upon --

19 A. That was correct and accurate.

20 Q. As of October 20th, 2008?

21 A. Yes, sir.

22 Q. Okay. And then it appears that on or
23 about January 20th, 2009, you had additional
24 response to complaints regarding this property?

1 A. Well, on January 20th was information
2 that I had received that the property had burned.

3 Q. Okay. And who did you receive that
4 from?

5 A. From the Champaign County Zoning
6 Department.

7 Q. Okay. And then that caused your
8 complaint, or investigation of a complaint, on March
9 11th?

10 A. No.

11 Q. Okay.

12 A. No. I know where you're going here.

13 Q. Explain to me what you did.

14 A. We receive a complaint, we go out and
15 investigate the complaint, and we have the objective
16 primarily of two things as a field investigator:
17 One is to stop what's being done that effects the
18 environment, and to fix what has already occurred.
19 So a cleanup or whatever is required.

20 And so we document that as part of
21 the complaint, and we notify the individual of what
22 we found, and oftentimes what needs to be done, like
23 cease open dumping or whatever it is. We go back
24 and we do a reinspection, and we find then that

1 there's no longer any violations, the cleanup or
2 remediation is complete, and we issue a letter that
3 says that they're in compliance, or they have
4 returned to compliance, in reference to that matter.

5 When we receive another complaint,
6 we start the whole process over again, and we
7 document any history that the site may have had in
8 the past. Now, in this region, based upon the
9 guidance of our regional manager, act of God fires,
10 whether it be from lightening or whatever, of
11 structures, we do not immediately say that this is
12 open dump debris.

13 And the reason for that is because
14 we anticipate that the respondent is going to answer
15 back, you know, if we allege that, that there's
16 issues going on with insurance or finding a company
17 to probably clean the site up or whatever, and so we
18 allow an equitable amount of time for those issues
19 to be resolved. Then we come back and say, "Okay.
20 You need to clean up your site."

21 So that's -- but it was not the
22 house debris that was a result of a March 11th,
23 2009, complaint, which started this process again.

24 Q. Okay. Let me stop you there. You

1 said "complaint." Was it a third-party complaint,
2 or was it a complaint that you based upon your
3 inspection?

4 A. No, it was a third-party complaint.

5 Q. Okay. You received a third-party
6 complaint?

7 A. Correct.

8 Q. Okay. And was that in March of 2009?

9 A. And that was in March of 2009.

10 Q. Okay. Were you familiar with the
11 condition of the property between March of 2009 and
12 October 20th, 2008?

13 A. Yes.

14 Q. Okay.

15 A. Because I had gone back and taken a
16 look at it on or around January 20th when I was
17 notified that the structure had burned.

18 Q. Did you take pictures of the
19 conditions of the premises on January 20th?

20 A. That's -- I cannot answer that.

21 Q. Okay.

22 A. Because I do not have all of my
23 inspection reports or my files with me. Each time
24 we go out and do an inspection, we generate a

1 report.

2 Q. You indicated that this is your final
3 report with respect -- this is the report of May of
4 2009?

5 A. Correct.

6 Q. You generally include the history?

7 A. Yes.

8 Q. You've gone back with respect to prior
9 clients?

10 A. Correct.

11 Q. But I don't see any photos or
12 indication as to documenting the condition of the
13 property as of January 2009.

14 A. Okay.

15 Q. From that, do I conclude that since
16 you formally would include that, that you probably
17 didn't then take photos?

18 A. Okay. Within our system, when we
19 submit a request for an administrative citation,
20 it's usually based on an inspection and the photos
21 for that inspection and the prior history. We don't
22 include all of the inspection reports that we've
23 ever done at a facility or at a property as being
24 the reason for the complaint that leads to the

1 administrative citation.

2 Q. Well, I thought you indicated in
3 responses to questions on direct that piles two,
4 three, and four were the ones at issue -- or the
5 photos of the pile depicted there in in photos two,
6 three, and four, were at issue?

7 A. Yes, sir.

8 Q. And I thought you described that to
9 be, in addition to yard waste, debris, dimensional
10 lumber, primarily the debris from a fire?

11 A. I did not.

12 Q. Okay.

13 A. I did not, no.

14 Q. All right. Let me ask you to
15 characterize then what you believe the contents of
16 the pile depicted in photos two, three, and four in
17 Exhibit 1 to be.

18 A. Characterize what it is?

19 Q. Yeah.

20 A. Photo one, in the foreground, is
21 burned house debris.

22 Q. Right.

23 A. In the background is the pile of
24 debris that showed up at some point after the house

1 fire.

2 Q. Okay. All right. But you don't know
3 its source?

4 A. That is correct.

5 Q. Okay.

6 A. I do not know its source.

7 Q. All right.

8 A. And that's because I do not know the
9 source of whether it was on-site generated or
10 off-site generated. When the warning notice went
11 out on or after the March 11th report, I provided an
12 adequate amount of time to take care of it, whether
13 that included properly disposing of it or securing
14 it outside of the elements.

15 Q. Okay. I'm a laymen at this game, so I
16 don't know all the rules and regulations and nuances
17 of your job. When a house burns, is that dumping?

18 A. Initially, no.

19 Q. When does it become dumping?

20 A. After a period of time when it is not
21 cleaned up.

22 Q. Okay. All right. So it's not lawful
23 to maintain the residue of a house fire on a site,
24 at least based upon your inspection experience?

1 A. Correct.

2 Q. You indicated that you found it
3 interesting that the whole area was fenced?

4 A. Right.

5 Q. What was interesting to you about
6 that?

7 A. Well, I'll point this out: From doing
8 this job for eight and a half years, normally when I
9 go to a residential property in a residential
10 property inside of a village or a city --

11 Q. Well, let me stop you there --

12 A. Because I also go into rural areas.

13 Q. Well, this isn't inside a village or a
14 city. It's in an unincorporated area, right?

15 A. Correct.

16 Q. Okay.

17 A. I normally do not encounter a
18 situation where there is no way to get to any of the
19 ingress or egress points of a house without passing
20 through a fence.

21 Now, in my previous life, I lived
22 in foreign countries where it was very common, but I
23 don't find that real common in America, that you
24 have to pass through a gate to get to someone's door

1 to knock on their door, you know, to explain why
2 you're in the neighborhood and that you would like
3 to interview them.

4 Q. Well, at this point, there was no
5 house on the lot in March of 2009?

6 A. Correct. But if you look at the
7 history, this was not the first, second, or third
8 time that I had been to this property.

9 Q. Okay. And your report indicates that
10 you were there in June of 2008 in regards to some
11 complaints about landscape waste being on the
12 property, et cetera, et cetera, and that as of
13 October 20th, a reinspection found compliance?

14 A. Correct, from the initial complaint of
15 2008.

16 Q. Okay.

17 A. And then we started the process again
18 in March of 2009.

19 Q. And that was all after a fire totally
20 destroyed the residence?

21 A. And after no one was living there.

22 Q. All right. And did you find this
23 fence to have existed in 2008?

24 A. Yes, sir.

1 Q. So it wasn't something that was put up
2 after the fire?

3 A. No.

4 Q. Okay.

5 A. But a situation like this makes it
6 difficult for me as an inspector or an investigator
7 to go in and determine whether this was a case of
8 dumping of debris that was good or bad to the
9 environment. Though no dumping to the environment
10 is usually thought to be good, but some things are
11 allowed in an unincorporated area to be piled up and
12 to be burned in the state of Illinois, one of which
13 is landscape waste.

14 When you put me as an investigator
15 in a position where I cannot go through a fence or a
16 gate, I cannot get to a pile of debris and take a
17 look at it and see if there is something in there
18 that could be really bad for the environment that's
19 hid underneath of something else. And so when it
20 comes down to telling you what is in the black
21 plastic bags, I could say that it's garbage.

22 Q. But you don't know?

23 A. But I do not know.

24 Q. Okay. Did you ask anyone?

1 A. Did I ask?

2 Q. Did you ask Jason or Angela Marrs?

3 A. My attempts to call them were
4 unsuccessful.

5 Q. In what fashion?

6 A. They never got answered. And my
7 single contact with them -- I was able to contact
8 them using a different phone, and they answered, and
9 the question that I had at that time -- and I do not
10 remember what day it was -- was, "What's your
11 mailing address," because I needed to continue to
12 send reports.

13 And when you don't have a
14 residence there and no one is living there, one of
15 my duties is to ensure that you get the mail that we
16 send you. And if I can't get it to you by mail,
17 then my other choice is to physically serve it or to
18 get some agency to assist me in serving it.

19 Q. Do you have any reason that they
20 didn't get mail at 30 East County Road?

21 A. Sir, we never received any mail back
22 from them, so someone was picking it up.

23 Q. So they got what you sent?

24 A. Yes, sir. Someone was picking it up.

1 Q. Did you notice any litter in the area
2 surrounding the property?

3 A. No. I don't remember when it started,
4 but outside of the east fence was pallets of
5 supplies that had been -- and I call it supplies,
6 because it looks like bags of rock or top soil or
7 something on pallets -- and that would not be
8 considered litter. But other litter, no.

9 Q. And your testimony was that the pile
10 depicted in the picture taken in March was the same
11 as that that existed in your last inspection in May?

12 A. In May, yes, sir.

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

14 MS. WEBB: Ms. Ryan?

15 MS. RYAN: I don't have anything
16 further. Thank you.

17 MS. WEBB: Thank you, Mr. Mullins.

18 Ms. Ryan, do you have anything further?

19 MS. RYAN: I do not. Thank you.

20 MS. WEBB: Very good. Mr. Weaver, you
21 may call your first witness.

22 MR. WEAVER: I would call Jason Marrs.

23 MS. WEBB: Would the court reporter
24 please swear in the witness?

1 (Witness sworn.)

2 WHEREUPON:

3 JASON MARRS

4 called as a witness herein, having been first duly
5 sworn, deposeth and saith as follows:

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

7 BY MR. WEAVER:

8 Q. Jason, you were the owner and occupant
9 until December of 2009 of property with a mailing
10 address of 30 East County Road, 3050 North,
11 Foosland, Illinois?

12 A. Yes.

13 Q. And how long had you lived there?

14 A. We lived there almost a year.

15 Q. Okay. And on or about December 23rd,
16 2008, was the house destroyed by fire?

17 A. Yes.

18 Q. You're familiar with an investigation,
19 and did you have some contact with Mr. Mullins
20 concerning complaints of unlawful dumping in the
21 year 2008?

22 A. It was originally, yeah, back in
23 October.

24 Q. Right. And as a consequence of that,

1 did you clean up your property?

2 A. Yes, I did.

3 Q. Are you employed, or are you
4 self-employed?

5 A. Yes.

6 Q. And what is the nature of your
7 business?

8 A. Landscaping, hauling, and moving.

9 Q. Tell us what that actually means you
10 do on a regular basis.

11 A. We do -- on the landscaping side, we
12 actually do landscape design, putting in new
13 gardens, also cleanup and trees.

14 Q. Planting trees?

15 A. Yeah. Yeah, everything.

16 Q. And in terms of hauling, what does
17 that mean?

18 A. Hauling means that we actually will
19 haul -- well, whether it be yard waste or, like, old
20 furniture, stuff like that.

21 Q. And what else do you do?

22 A. And then the moving. Moving is like
23 moving an actual household.

24 Q. And you do that on occasion as well?

1 A. Yes.

2 Q. Okay. And where did you work from?

3 A. Home.

4 Q. So your home --

5 A. 1030 County Road.

6 Q. Could you describe for the record what
7 the improvements were to the real estate that you
8 owned in Foosland prior to the fire?

9 A. Describe what the improvements are?

10 Q. Yeah. What existed on the real estate
11 prior to the fire?

12 A. Prior to the fire?

13 Q. Right.

14 A. Prior to the fire, I had planted a lot
15 of trees.

16 Q. Okay.

17 A. I was redoing all the landscape. Is
18 that what you're asking?

19 Q. Well, that's part of it. Was there a
20 house?

21 A. Oh, yes. There was a house.

22 Q. How many square feet?

23 A. It was 3,200 I believe. 3,200 square
24 feet.

1 Q. Two-story?

2 A. Two-story.

3 Q. Was it an older farm house?

4 A. A 1905 house.

5 Q. Were there other buildings on the
6 premises?

7 A. Yes.

8 Q. What other buildings existed on the
9 premises?

10 A. It was a three-car pole barn, and
11 another brick building that's a one-car garage, and
12 then a little building off of the brick building.

13 Q. Now, you indicated that the house was
14 totally destroyed by fire December 23rd, 2008?

15 A. Yes.

16 Q. You no longer resided at the premises
17 after that date?

18 A. No.

19 Q. Do you reside there now?

20 A. No.

21 Q. Did you operate your business from
22 there after that date?

23 A. No.

24 Q. With respect to the outbuildings, that

1 garage and pole barn area, did you use those in
2 connection with your business after December 23rd,
3 2008?

4 A. The only thing I used those for is
5 storage for the haunted house and the Christmas
6 village. All my props and stuff were inside there.

7 Q. You also do a haunted house and a
8 Christmas village?

9 A. Sorry. I forgot to mention that.

10 Q. Okay. All right. If I could direct
11 your attention to Exhibit 1 and ask you to look at
12 the four photos that are attached at the end, which
13 are dated in March of 2009.

14 Photo number one, you heard
15 Mr. Mullins description. He described this as
16 looking essentially, I believe, across your property
17 from the northwest or to the northwest -- to the
18 northwest, viewing what he described as the remnants
19 of the house in the foreground, and then behind it a
20 pile of various items. Would you say that's
21 accurate?

22 A. Part of this though is also from the
23 fire.

24 Q. But what I'm asking you is: Does that

1 photo, in your mind, accurately describe or depict
2 the condition of your property on May 18th, 2009?

3 A. Yes.

4 Q. Okay. And photo number two focuses in
5 on a smaller pile, which is in the background of
6 photo number one?

7 A. Yes.

8 Q. Is that accurate?

9 A. Uh-huh.

10 Q. Okay. Can you describe what's in this
11 pile?

12 A. Yes, I can. A lot of the brush that
13 you see, my neighbor's tree fell on the fence over
14 here, and actually I think I told you about that
15 earlier. His tree -- a lot of his tree fell, and I
16 had to get it off our fence. And actually, a lot of
17 that is from that, all the landscape. But also a
18 lot of it --

19 Q. Let me stop you. All the landscape?

20 A. Mm-hmm.

21 Q. In this pile, is there landscape
22 debris?

23 A. Yes.

24 Q. Do you recall when that tree fell?

1 Was it after the fire?

2 A. Oh, yes.

3 Q. Was it before March?

4 A. Yes.

5 Q. Okay. So it was sometime in the
6 winter?

7 A. Yes. There was still snow on the
8 ground.

9 Q. Okay. And so what you're saying is
10 that some of that that appears to be sticks and
11 branches in this pile was from that tree?

12 A. Yes. Most of it is from that tree.
13 And then also since the fire, some of those other
14 trees that I planted got ruined, and they were in
15 the yard. I planted about 150 trees.

16 Q. There appears to be a Christmas tree
17 here?

18 A. Mm-hmm.

19 Q. Is that your Christmas tree from your
20 house?

21 A. No. It was in the -- in this barn.
22 That's where we had the Christmas village go in.

23 Q. So this was something that was on your
24 property at the time of the fire?

1 A. Yes.

2 Q. But it's an old tree?

3 A. Yes.

4 Q. Okay.

5 A. Because by -- how I've been explained
6 is anything that you -- any landscape waste you
7 incur on your own property you can burn. But I
8 wasn't burning anything. I just put it over here in
9 this pile because we had nowhere to put it.

10 But that was the Christmas tree
11 for the Christmas village inside the pole barn,
12 because we were still running the Christmas village
13 from that building.

14 Q. But you weren't still running it in
15 March or May of 2009?

16 A. No.

17 Q. Let me direct your attention to photo
18 number three, which is a close up. I see this tree,
19 I see sticks and branches, I see white things, or
20 what appear to be flat, white items. Do you know
21 what those are?

22 A. A lot of this stuff -- we cleaned out
23 the garage. Whenever all that water came in, there
24 was a lot of boxes from all my inflatables and

1 different things for the Christmas village and
2 haunted house. A lot of stuff got damaged, and we
3 just, kind of, put it over in a pile from the
4 garage. We had to actually go out and get crates to
5 put all of the stuff in because a lot of the stuff
6 was damaged.

7 Q. Well, let me stop you. The house was
8 destroyed. You said this came from an adjoining
9 building that water was in. How did the water get
10 in there?

11 A. From them putting out the fire.

12 Q. So in the efforts to save the
13 outbuildings, there was water applied to it. Were
14 there windows broken in that building?

15 A. Yeah. All the windows were broken.

16 Q. So when the firemen shot water onto
17 the building, they --

18 A. It shattered from the heat. I'm
19 sorry.

20 Q. But when they shot water on to the
21 building, it damaged the contents of your property?

22 A. Yes.

23 Q. And all this was on site?

24 A. Yes.

1 Q. Prior to --

2 A. Prior to the fire, yes. There was
3 nothing brought on.

4 Q. Well, let me ask you that question
5 specifically. With respect to the piles or the
6 items depicted in photographs one, two, three, and
7 four, is there anything there that wasn't on your
8 property prior to the fire?

9 A. No. After they told us originally to
10 clean up the property, we stopped taking stuff out
11 there. You know, we didn't take anything out there.
12 Nothing.

13 Q. These black bags that are depicted in
14 photograph number four, do you know the contents of
15 those?

16 A. Mm-hmm.

17 Q. Okay. What is that?

18 A. Some of it -- again, some of it we
19 bagged. We ran out of bags, and that's why you see
20 some of this stuff not bagged.

21 Q. Let me stop you. You're pointing at
22 the items that are --

23 A. The white.

24 Q. The white on the pile?

1 A. What you referred to as "the white
2 stuff," most of that is cardboard boxes.

3 Q. Okay.

4 A. But what's in the bags is -- there's
5 different things. We had our upright freezer out in
6 the garage, so all that food went bad. I mean, it
7 was weeks after we went back out there to the
8 property. All that was really bad, so we, kind of,
9 just bagged it all up and put it out there in that
10 pile.

11 And then also there's cardboard in
12 some of the bags. It's just basically stuff from
13 the brick building mostly and the pole barn. And
14 also -- because when the Christmas village was going
15 on, there was a gate inside the gate, where we had a
16 walkway that came to the Christmas village. So
17 there were decorations -- there were also
18 decorations in here that got burnt.

19 Q. What kind of decorations?

20 A. Lights, garland, lighting decorations
21 that got melted by the heat of the fire.

22 Q. And in photograph number four, in the
23 background appears to be a pole-like building. Is
24 that one of the buildings?

1 A. That's the pole barn.

2 Q. And that's the pole barn that a
3 portion of the windows had been broken out on?

4 A. This only has one window and it was
5 totally broken. It was totally shattered.

6 Q. But the window is not depicted on the
7 side that this photo shows?

8 A. No. It's actually on the south side.

9 Q. After the fire, did you remove items
10 or debris from your property?

11 A. Yes, some.

12 Q. Okay. What did you do with those?

13 A. We took it to the proper places.

14 Well, I'll tell you. We took some of it to the
15 landscape recycling center.

16 Q. And where is that located?

17 A. It's on University. On east
18 University. And then some of it to the dump. Well,
19 the transfer station. We don't have a dump here.

20 MR. WEAVER: Let me show you what I'm
21 going to mark as Respondent's Number 1, which
22 is -- I'll just ask you to take a look at
23 that.

24

1 (Document marked as Respondent's
2 Exhibit No. 1 for
3 identification.)

4 BY MR. WEAVER:

5 Q. Can you go through and -- just
6 familiarize yourself with what's there, and can you
7 describe what it is?

8 A. What this is is different receipts
9 from renting a Bobcat, and also taking and dumping
10 the waste.

11 Q. Okay. Renting a Bobcat from where?

12 A. Rental City.

13 Q. And why did you rent a Bobcat?

14 A. To lift some of the waste and take it
15 out of there.

16 Q. And those are receipts for that?

17 A. Yes.

18 Q. Okay.

19 A. And also taking some of the waste to
20 transfer station on North Lincoln.

21 Q. And you have to pay to rent a Bobcat?

22 A. Yes.

23 Q. Do you have to pay to dump at the
24 transfer station?

1 A. Oh, yeah.

2 Q. And did you do that?

3 A. Yes.

4 Q. And does that represent some of the
5 efforts you made to clean up this site?

6 A. Yes.

7 Q. The site is not fully cleaned up, is
8 it?

9 A. No.

10 Q. Why?

11 A. I don't have the money.

12 Q. Your property was totally destroyed?

13 A. Yes.

14 Q. It was subject to a mortgage?

15 A. Yes.

16 Q. It was insured?

17 A. Yes.

18 Q. Who was it insured by?

19 A. Triple A.

20 Q. Are you in dispute with Triple A?

21 A. Yes.

22 Q. Have they denied coverage at this
23 point?

24 A. Yes.

1 Q. Did you get an estimate to clean up
2 the property?

3 A. Yes.

4 Q. How much was that?

5 A. \$11,000.

6 Q. From whom?

7 A. Gentry, and I forget the other
8 company, but he matched the bid.

9 Q. And how much money have you gotten
10 from the insurance company for clean up?

11 A. I don't remember.

12 Q. Did they give you anything?

13 A. Nuh-uh.

14 Q. You're sure?

15 A. Well, they gave -- they said that they
16 gave us money for clean up, but it was -- they
17 gave -- I don't remember the exact amount. It
18 wasn't enough to do the cleanup, but it wasn't just
19 for clean up, is what we were explained to on the
20 phone.

21 Q. Right now you're not getting anything,
22 are you?

23 A. No.

24 Q. And right now you don't have a house?

1 A. Right.

2 Q. And until July of 2009, you continue
3 to have a mortgage payment?

4 A. Yes.

5 Q. And did you have any extra money
6 available?

7 A. No, not -- well, at first we had some
8 money, but we, kind of, just went through it trying
9 to -- you know, we had no clothes, no nothing. We
10 had to buy stuff and we have two kids.

11 Q. What's the condition of the property
12 now today? Is it approximately the same as depicted
13 in these pictures?

14 A. Approximately. Some is gone.

15 Q. Some is gone?

16 A. Uh-huh, yes.

17 MR. WEAVER: Can I stop?

18 MS. WEBB: You want to go off the
19 record a minute?

20 (Whereupon, a discussion was had
21 off the record.)

22 MR. WEAVER: Back on the record.

23 BY MR. WEAVER:

24 Q. Jason, have you hauled anything into

1 your property with respect to dimensional lumber,
2 building materials, debris, yard waste, or anything?

3 A. Unless top soil is considered yard
4 waste, no. I mean, that's the only thing I've
5 hauled into the property.

6 Q. And how much top soil did you haul
7 into the property?

8 A. I hauled, like, three big trailers
9 full of top soil into the property.

10 Q. And why did you do that?

11 A. Because eventually whenever I do get
12 somebody to do the cleanup of the property, I'll
13 have to fill in that hole, and the dirt was free.

14 Q. And there's a basement --

15 A. Yes.

16 Q. -- in your old residence?

17 A. Yes.

18 MR. WEAVER: That's all I have.

19 MS. WEBB: Ms. Ryan?

20 MS. RYAN: Were you going to try to
21 admit those? Because I didn't get a chance
22 to look at them, but you didn't ask.

23 MR. WEAVER: I'll go ahead -- go ahead
24 and look at them. I'll move to admit those,

1 although I didn't bring a copy.

2 (Counsel peruses document.)

3 MS. RYAN: Is there a date on these?

4 It might be under the sticker. Hold on.

5 There it is.

6 MR. WEAVER: Look down at the bottom.

7 MS. RYAN: It's actually right under
8 your sticker. I can see the dates there.

9 MR. WEAVER: And there's some at the
10 bottom on some of them too.

11 MS. RYAN: I have no problem with the
12 invoices that are dated prior to the
13 inspection date, but there are three, I
14 think, in here that are dated post inspection
15 date, and I would object to those as
16 irrelevant.

17 MS. WEBB: Are you moving to admit all
18 of them, or do you want to --

19 MR. WEAVER: I am.

20 MS. RYAN: And they're not in order.
21 I don't know if you want me to put them in
22 order, if it makes it easier.

23 MS. WEBB: Do you have copies of
24 those?

1 MR. WEAVER: I don't.

2 MS. WEBB: If you give those to me,
3 they become part of the Pollution Control
4 Board file, which, if it gets appealed, will
5 then become part of the Appellate Court file.
6 Do you want to give me those?

7 MR. WEAVER: I do.

8 MS. RYAN: I correct myself. Just
9 the -- I would object to the July 6th, 2009,
10 and the May 29th, 2009, which are at the end
11 there. The other ones I have no problem
12 with.

13 MS. WEBB: Well, I will -- okay. We
14 can call this Respondent's Exhibit 1. I will
15 admit Respondent's Exhibit 1, except for the
16 two post inspection receipts, which I will
17 allow you to make an offer of proof, you
18 know, on those if you so desire. But I will
19 take these -- the rest of these.

20 MR. WEAVER: Okay. I'll pluck those
21 two out.

22 MS. RYAN: Well, you can leave them
23 in, and argue you can argue in your brief
24 about them, and then the Board will decide

1 what they want to do.

2 MR. WEAVER: Great.

3 MS. WEBB: I'm sorry. You're
4 finished. And did you have any questions?

5 MS. RYAN: I do.

6 C R O S S - E X A M I N A T I O N

7 BY MS. RYAN:

8 Q. The pink receipts that we were just
9 looking at, what materials were those that relate to
10 those receipts? Was that the burned debris material
11 from the actual house?

12 A. Yes.

13 Q. Any of the material from the pole barn
14 or other building?

15 A. Some.

16 Q. Some of that as well?

17 A. Yeah. I mean, some of it is, but it's
18 a mixture of both. I was just trying to get what I
19 could out. And I just ran out of money where I
20 couldn't do it, because on top of losing the house,
21 the business has also been really slow too.

22 Q. But you're still trying to operate
23 your business from where you are now?

24 A. Barely.

1 Q. But, I mean, you're trying? I
2 understand it's not going well.

3 A. Yes.

4 Q. But you are trying.

5 MS. RYAN: Thanks. That's all I have.

6 MS. WEBB: Anything further?

7 MR. WEAVER: Nope.

8 THE COURT: Okay. Let's go off the
9 record a minute to talk about a briefing
10 schedule.

11 (Whereupon, a discussion was had
12 off the record.)

13 MS. WEBB: We've just had an
14 off-the-record discussion regarding post
15 hearing briefs, and the parties have agreed
16 to follow briefing schedule: First, the
17 transcript will be available from the court
18 reporter by May 17th and will be posted on
19 the board's website. The public comment
20 deadline is May 19th. Any public comment
21 must be filed in accordance with
22 Section 101.628 of the Board's procedural
23 rules. Complainant's brief is due by
24 June 28th, and respondent's brief is due by

1 July 30th.

2 Ms. Ryan, would you like an
3 opportunity to do a reply?

4 MS. RYAN: No, that's all right.

5 MS. WEBB: Ms. Ryan, would you like to
6 make any closing statement?

7 MS. RYAN: No, thank you. I'll
8 reserve that for my brief.

9 MR. WEAVER: I'll reserve.

10 MS. WEBB: Okay. At this time, I will
11 conclude the proceedings. We stand
12 adjourned, and I thank you all for your
13 participation.

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1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF COOK)

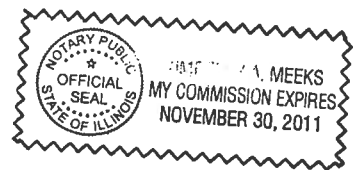
4
5 REBECCA A. GRAZIANO, being first
6 duly sworn on oath, says that she is a court
7 reporter doing business in the City of Chicago, that
8 she reported in shorthand the proceedings given at
9 the taking of said hearing, and that the foregoing
10 is a true and correct transcript of her shorthand
11 notes so taken as aforesaid, and contains all the
12 proceedings given at said hearing.

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15
16
17
18

Rebecca Graziano
REBECCA A. GRAZIANO, CSR
Eight West Monroe Street, Suite 2007
Chicago, Illinois 60603
License No.: 084-004659

19 SUBSCRIBED AND SWORN TO
20 before me this 12th day
of May, A.D., 2010.

Kimberly A. Meeks
Notary Public



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22
23
24

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