

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 PEOPLE OF THE STATE OF ILLINOIS,

4 Petitioner,

5 vs. No. PCB 95-091

6 WASTE HAULING LANDFILL, INC.,

7 and WASTE HAULING, INC.,

8 Respondents.

9 and

10 WASTE HAULING LANDFILL, INC.,

11 and WASTE HAULING, INC.,

12 Cross-claimants,

13 vs.

14 BELL SPORTS, INC.,

15 Cross-Respondent.

16

17

18 Proceedings held on April 15, 1997, at
19 10:00 a.m., at the Office of the Attorney General,
20 Conference Room, 500 South Second Street,
21 Springfield, Illinois, before the Honorable Michael
22 L. Wallace, Hearing Officer.

21 Reported by: Darlene M. Niemeyer, CSR, RPR

 CSR License No.: 084-003677

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23 KEEFE REPORTING COMPANY

 11 North 44th Street

24 Belleville, IL 62226

 (618) 277-0190

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A P P E A R A N C E S

STATE OF ILLINOIS, OFFICE OF THE ATTORNEY
GENERAL

BY: Thomas Davis, Esq.
Chief, Environmental Bureau
and
Maria M. Menotti, Esq.
Assistant Attorney General,
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
On behalf of the People of the State of
Illinois.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: Gregory Richardson, Esq.
Assistant Counsel
2200 Churchill Road
Springfield, Illinois 62794-9276
On behalf of the Illinois Environmental
Protection Agency.

SIDLEY & AUSTIN

BY: Byron F. Taylor, Esq.
Ira Jack Nahmod, Esq.
One First National Plaza
Chicago, Illinois 60603
On behalf of Cross-Respondent, Bell
Sports, Inc.

WILLOUGHBY, LATSHAW & HOPKINS, P.C.

BY: K. Michael Latshaw, Esq.
502 West Prairie
Decatur, Illinois 62525
On behalf of Respondents/Cross-Claimants,
Waste Hauling Landfill, Inc. and Waste
Hauling, Inc.

WEBBER & THIES, P.C.

BY: Phillip R. Van Ness, Esq.
202 Lincoln Square
Urbana, Illinois 61803-0189
On behalf of Respondents/Cross-Claimants,
Waste Hauling Landfill, Inc. and Waste
Hauling, Inc.

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I N D E X

WITNESS	PAGE NUMBER
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Dustin L. Burger	110, 136, 142, 148

E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
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P R O C E E D I N G S

(April 15, 1997; 10:00 a.m.)

HEARING OFFICER WALLACE: Pursuant to adjournment, I now call Docket PCB Number 95-91.

This is the matter of the People of the State of Illinois versus Waste Hauling Landfill, Inc. and Waste Hauling, Inc., and the counter-complaint of Waste Hauling Landfill, Inc. and Waste Hauling, Inc. versus Bell Sports, Inc.

May I have appearances for the record, please? For the People?

MS. MENOTTI: Maria Menotti, for the People.

MR. DAVIS: Thomas Davis.

MR. RICHARDSON: Greg Richardson, the Illinois EPA.

MR. VAN NESS: Phillip Van Ness, with Webber & Thies.

MR. LATSHAW: Michael Latshaw, for the respondents, Waste Hauling Landfill, Inc. and Waste Hauling, Inc.

MR. NAHMOD: Jack Nahmod, for Bell Sports.

MR. TAYLOR: Byron Taylor. I am with

1 Sidley & Austin, representing Bell Sports.

2 HEARING OFFICER WALLACE: All right.

3 Thank you.

4 Let the record reflect there are no other
5 appearances at today's hearing.

6 You are from the Agency?

7 MR. BURGER: Yes.

8 HEARING OFFICER WALLACE: All right. We
9 have two witnesses from the Agency present.

10 I don't believe there are any unresolved
11 motions except for the motion to reconsider. The
12 Board did issue an interim order on the stipulation
13 between the People and Bell Sports. I assume
14 everyone has gotten a copy.

15 I don't know when the Board will rule on
16 the motion for reconsideration. I see no reason
17 not to proceed today, though.

18 All right. Is there any preliminary
19 matters the parties wish to bring up?

20 MS. MENOTTI: I have two. In my
21 discussions with Counsel for Bell Sports yesterday,
22 they indicated that there were certain subpoenas
23 they were withdrawing, and I would like them on
24 record as being withdrawn.

1 MR. TAYLOR: I am sorry?

2 MS. MENOTTI: The subpoenas.

3 MR. TAYLOR: For --

4 MS. MENOTTI: The subpoenas for --

5 MR. NAHMOD: For Jeff Turner. That
6 subpoena is withdrawn.

7 MS. MENOTTI: Okay. Then, secondly,
8 certain witnesses that are in the employ of the
9 State have been subpoenaed for tomorrow, and I am
10 wondering if we can establish some sort of time
11 frame so I can tell Mr. Maw, who is traveling from
12 up at University Park, and he wants to know if he
13 needs to be here exactly at 10:00 or is he being
14 called later in the day, so he can arrange for
15 travel.

16 MR. VAN NESS: My understanding is that
17 we would have them available on maybe half an
18 hour's notice.

19 Are you looking for a specific time slot,
20 Maria?

21 MS. MENOTTI: Well, I just wanted to know
22 if you need him here first thing in the morning or
23 if --

24 MR. VAN NESS: No, I don't think so. We

1 haven't really nailed down the order, but I don't
2 think we need him in the morning.

3 MR. LATSHAW: Perhaps later in the
4 morning, but not necessarily first thing.

5 MS. MENOTTI: Okay.

6 MR. VAN NESS: We won't need him first
7 thing in the morning.

8 MS. MENOTTI: He was just wondering,
9 because it is like a three-hour trip or something
10 like that.

11 MR. VAN NESS: We will have a better idea
12 this afternoon. I will talk about it then.

13 MS. MENOTTI: Okay. Those are the only
14 questions that I had.

15 HEARING OFFICER WALLACE: Mr. Van Ness,
16 Mr. Latshaw, do you have any preliminary matters to
17 bring up?

18 MR. VAN NESS: We would at this time
19 renew our motion to exclude witnesses. The Hearing
20 Officer denied that motion at the last hearing, but
21 since we have a new set of witnesses and a similar
22 set of circumstances, we would renew it.

23 MS. MENOTTI: Both Mr. Burger and Mr.
24 Zierath are both opinion witnesses, who will be

1 testifying to fact conclusions and their opinions
2 regarding this case.

3 Mr. Burger's presence this morning during
4 Mr. Zierath's testimony is for the purposes of
5 providing technical advice to Counsel.

6 HEARING OFFICER WALLACE: All right. The
7 motion is denied.

8 Mr. Taylor, do you have any preliminary
9 matters?

10 MR. TAYLOR: Just one. We received the
11 motion to reconsider relating to the settlement on
12 effectively Monday morning, yesterday morning, and
13 given that the hearing is today we would just ask
14 that we have until next Monday morning -- or excuse
15 me -- next Monday to respond.

16 HEARING OFFICER WALLACE: Okay. I see no
17 problem with that.

18 MR. TAYLOR: Okay.

19 HEARING OFFICER WALLACE: All right. The
20 first witness.

21 MS. MENOTTI: The People call Bill
22 Zierath.

23 (Whereupon the witness was
24 sworn by the Hearing Officer.)

1 W I L L I A M E D W A R D Z I E R A T H ,
2 having been first duly sworn by the Hearing
3 Officer, saith as follows:

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

5 B Y M S . M E N O T T I :

6 Q Would you please state your name for the
7 record.

8 A William Edward Zierath.

9 Q Can you tell us a little bit about your
10 educational background, please?

11 A I have a Bachelor of Science Degree from
12 the University of Illinois at Urbana-Champaign. I
13 have a degree in zoology with a minor in chemistry,
14 and that's the furthest I have gone into formal
15 education.

16 Q Who is your current employer?

17 A The Illinois Environmental Protection
18 Agency.

19 Q How long have you worked for the Agency?

20 A Since March of 1980.

21 Q What is your current position there?

22 A I am an inspector at the Springfield
23 Regional Office for the Bureau of Land, the
24 Division of Land Pollution Control, the Field

1 Operations Section.

2 Q How long have you been in that position?

3 A I have worked at the Regional Office
4 since April of 1982.

5 Q What does this position involve?

6 A It involves conducting inspections and
7 investigations of solid waste facilities, such as
8 landfills, and also hazardous waste facilities of
9 various types. And then the preparation of reports
10 from the inspections and follow-up of those
11 reports.

12 Q Have you had any training beyond your
13 B.S.?

14 A Yes, I have had on-the-job training in
15 how to do inspections, I had a two-week course in
16 that, and then trained by other inspectors. Plus I
17 have had safety training, first aid training,
18 sampling training, and other similar training on
19 the job.

20 Q During your tenure with the Agency, how
21 many landfills or landfill facilities have you been
22 involved with?

23 A I have done over 500 inspections. The
24 actual number of landfills is less than that,

1 because some of those were multiple inspections of
2 the same landfill.

3 Q Have you ever been involved with the
4 removal of any type of waste from one of these
5 facilities?

6 A Before the investigation that we are
7 dealing with here, I had also supervised the
8 recovery of some drums from Multi-County Landfill
9 in Douglas County back in October of 1989.

10 Q Can you generally describe how you would
11 conduct an inspection of a facility?

12 A Well, it depends on the type of
13 facility. A permitted landfill inspection would
14 involve review of pertinent permitting information,
15 also review of any applicable previous inspections
16 and any complaints we might have received on the
17 facility. For a nonpermitted facility, the reason
18 we would be going out there is because we received
19 a complaint or other such information, that there
20 was a reason to do an inspection. So I would
21 review that information.

22 Q What happens when you go out to a site,
23 what procedures do you follow?

24 A Well, once again, it depends on the type

1 of facility. For a permitted facility, procedures
2 would be to notify the responsible parties at the
3 facility that I am there for an inspection, and
4 then to view what is necessary to determine if
5 there are apparent violations or not. For a
6 landfill, that would be inspecting the active area
7 plus any records, such as waste manifests, that
8 they might have at the office of the facility.

9 Q Do you record your observations in any
10 manner when you conduct an inspection?

11 A I always take notes when doing an
12 inspection. Said notes include names of anybody I
13 have talked to, information about the operation,
14 such as where they are operating, what they are
15 doing, how large an active area they would have in
16 the landfill, plus any notes about problems I have
17 seen, whether or not that problem is an apparent
18 violation. In addition, I would also take
19 photographs of any -- of the active area, any
20 apparent violations that can be photographed, and
21 areas of concern that I would see.

22 Q Is this a general practice within the
23 Agency?

24 A Yes.

1 Q Do you generate any kind of official
2 report from your observations?

3 A Yes. For every site visit, no matter
4 whether anything is -- even on complaints that
5 nothing be verified, I read the report, which
6 includes any photographs taken that are attached to
7 that report and any observations I made.

8 Q Where is this report kept, if anywhere?

9 A There would be -- the original copy of
10 that report goes to our division file. Presently
11 the division file is up at our Ninth Street
12 office. It used to be at the Churchill office. It
13 recently moved. Plus a copy of that goes in the
14 regional file of my office.

15 Q Are you familiar with the Waste Hauling
16 Landfill?

17 A Yes, I am.

18 Q Did you ever have the opportunity to
19 visit it?

20 A I have been there three times, once while
21 I was in training back in 1982, once when we served
22 a search warrant on April 22nd, 1992, and then
23 again the next morning April 23rd, 1992.

24 Q What were the circumstances surrounding

1 your visit on April 22nd of 1992?

2 A The State Police had been contacted by an
3 informant, a confidential informant. They don't
4 know his name. The informant had said that the
5 landfill had taken some drums of waste that the
6 informant felt were hazardous waste. He apparently
7 was -- he claimed to have been familiar with methyl
8 ethyl ketone, and said that the drums smelled of
9 methyl ethyl ketone.

10 The State Police, with the Attorney
11 General's office, got a search warrant. They had
12 asked for our assistance in excavating the drums
13 and sampling the contents of the drums. So I was
14 out there to lead the Illinois EPA's efforts to
15 assist the State Police.

16 Q Who was present with you on that date?

17 A Jack Johnson was the Special Agent for
18 the Illinois State Police who was in charge of the
19 investigation. He had another investigator with
20 him from the State Police, whose name I cannot
21 remember. We also had a contractor that the
22 Agency, the Illinois Environmental Protection
23 Agency, had hired to do the excavation, since we
24 didn't have the equipment to do so. And we had

1 four of their personnel.

2 Plus there were a number of people from
3 the Agency. Karen Nelson had been -- from my
4 office, had been recruited to do a record review at
5 the office of Waste Hauling. Dustin Burger and Amy
6 Brown from the Champaign Regional Office were there
7 assisting, also. Al Colentino (spelled
8 phonetically) and -- I would have to review my
9 records again. There was one other person from our
10 office who assisted, but I don't recall who it was.

11 Q Were you the only person from the
12 Springfield office?

13 A No, Al Colentino, Karen Nelson, and I,
14 plus this other person from our office were from
15 the Springfield Regional Office.

16 Q What happened when you arrived at the
17 landfill?

18 A The confidential informant, Special Agent
19 Johnson, and I and Mr. Burger went to determine, as
20 best we could, where they had been operating at the
21 time the informant said they had received this
22 waste. Landfills are, of course, changing
23 operations, because as they fill they move on to a
24 new area to fill.

1 Mr. Burger had been out to the landfill
2 just before the time in question, so he was
3 familiar with it, and so we -- what we did is we
4 determined where it was that they had been
5 operating earlier in April, and then we brought in
6 the backhoe that our contractor had and basically
7 started digging to see if we could recover the
8 crushed drums that were reportedly there.

9 Q Can you describe your observations, what
10 you recall about the inspection on that day?

11 A Well, the area that they had been
12 operating earlier in April was on the south side of
13 the landfill up towards the top. The landfill was
14 quite a bit above the surrounding ground. The
15 place that had been identified was just north of
16 where they were operating during the time that we
17 were there, and a little bit up the slope from it.

18 We then brought in the backhoe and
19 started digging and dug through quite a bit of
20 general refuse, municipal refuse, and that type of
21 material. And then also dug up a number of crushed
22 drums.

23 Q Did you generate a report regarding this
24 inspection?

1 A Yes, I did.

2 MS. MENOTTI: Could you mark this,
3 please.

4 (Whereupon said document was
5 duly marked for purposes of
6 identification as People's
7 Exhibit 14 as of this date.)

8 Q (By Ms. Menotti) I am going to hand you
9 what has just been marked as People's Exhibit
10 Number 14. Is this the report that you were
11 referring to?

12 A Yes, it is.

13 Q Prior to your testimony today, did you
14 have the opportunity to review this report?

15 A Yes, I did.

16 Q Is it complete, to the best of your
17 knowledge?

18 A Yes.

19 Q Is this the type of report that is
20 generated and maintained for Agency files?

21 A Yes.

22 Q Is it a memorandum of the inspection that
23 you conducted at the landfill on April 22nd, 1992?

24 A Yes, it is.

1 Q Is this the type of report that is
2 ordinarily prepared in the regular course of Agency
3 business?

4 A Yes.

5 Q Was this report prepared
6 contemporaneously with or shortly thereafter when
7 you conducted the inspection on that date?

8 A It was prepared within the two days after
9 the 22nd.

10 Q Is this a true and accurate copy of your
11 report of April 22nd, 1992 inspection of the
12 landfill?

13 A Yes, it is.

14 MS. MENOTTI: Mr. Hearing Officer, at
15 this point I would move to admit this inspection as
16 a business record of the Illinois EPA.

17 HEARING OFFICER WALLACE: Any
18 objections?

19 MR. LATSHAW: No objection.

20 MR. TAYLOR: No objection.

21 HEARING OFFICER WALLACE: People's
22 Exhibit Number 14 is admitted.

23 (Whereupon said document was
24 admitted into evidence as

1 returned for the search warrant. So this was not
2 completed in entirety.

3 Then there is a narrative that I
4 completed that includes the list of the drums as we
5 numbered them. After excavating the drums we had
6 taken -- it is actually a livestock marking crayon,
7 a large waxy crayon, and numbered the drums
8 sequentially, just so we would have a reference for
9 each drum, plus information about the seven samples
10 that we collected.

11 After that, the photographs, with a
12 hand-drawn site map that I drew for each roll of
13 photographs, to show not only what occurred at the
14 landfill -- or what I observed at the landfill, but
15 where each of the photographs were taken. Plus,
16 there are the chain of custody forms for the
17 samples we collected.

18 Q Can you -- let's talk about the drums
19 that you mentioned that were excavated. How many
20 drums were excavated from the landfill that date?

21 A We were able to find 53 drums in the area
22 we were digging up top.

23 Q Can you describe the procedure that you
24 used to get them out of the landfill?

1 A Well, we had a backhoe, a large piece
2 of -- a large, shovel-like piece of equipment that
3 was digging in the landfill. And when we came upon
4 a drum, which we both were watching for, and at
5 times you could smell when one of them had been
6 exposed because of the solvent-type odors, we would
7 then have the backhoe pick it up.

8 It was generally sitting at the north
9 edge of the pit, it was digging, so it would pick
10 up the drum in the bucket, set it down at the site
11 of the pit, and there was a small piece of
12 equipment called a Bob Cat, a little wheeled piece
13 of equipment, with a small bucket on the front.
14 The driver of the Bob Cat would then get the drum
15 in the bucket and would take it over to a staging
16 area that we had set up. We had laid out plastic
17 to put the drums on.

18 We continued to do that until -- well, we
19 got 53 drums. We continued to do it for a while
20 after we had gotten the last of those drums, and we
21 were not finding any additional drums, and haven't
22 for quite some time.

23 Q What were the conditions of the drums
24 that you -- what was the condition of the drums

1 that were excavated?

2 A They had all been crushed. There weren't
3 any of them that were anywhere near normal
4 condition on crushed condition. Some of them had
5 paint on the outside. A lot of them were fairly
6 shiny underneath the mud and grime from the garbage
7 that had been put on them, as though the paint had
8 been -- it appeared to have been scraped off,
9 probably in the crushing operation.

10 Q Did you observe any materials in any of
11 the drums?

12 A Many of the drums had some remaining
13 material in it. None of them were in any condition
14 that -- there was any liquid, at least available,
15 if there was liquid in it, it was because the drum
16 was crushed and the liquid was trapped. But there
17 was -- well, one of the drums had what looked like
18 trash and may or may not have been even brought in
19 with the rest of them. The others had various
20 types of paint-like materials. It was kind of
21 rubbery. Some of it was pink. Some of it was
22 pink -- or blue. Some of it was gray,
23 muddy-colored material.

24 Q Were there any odors?

1 A We detected odors prior -- when we were
2 digging for the drums, because we were not wearing
3 respirators generally at that time. We actually
4 had to -- because of our safety plan we had to have
5 the Bob Cat operator and the backhoe operator wear
6 respirators when dealing with the drums. When we
7 were inventorying the drums and sampling them, we
8 all had to wear respirators, so we couldn't detect
9 odors through the respirators.

10 Q Which drums -- where did you take the
11 samples?

12 A We took them out of the drums when they
13 were in the staging area.

14 Q How did you determine which drum to take
15 the samples from?

16 A We used a photoionizing detector made by
17 the H. New Company. It is a device that can detect
18 certain organic compounds, and give a -- it
19 actually isn't a concentration, an air
20 concentration reading. It is a -- we would have to
21 refer to it as meter units reading. And we used
22 that device when we were able to get access to any
23 of the material in the drums to determine which
24 ones had the highest readings and sampled those

1 drums.

2 Q How many samples did you take that day?

3 A We collected seven.

4 Q What happened to the samples after they
5 were collected?

6 A We transported samples both to our
7 Springfield laboratory, which does the organic
8 analysis, and to a contract lab, which did analysis
9 for the leaching of metals from the materials. We
10 used chain of custody, chain of custody forms for
11 the transportation.

12 Q Did the Illinois EPA lab analyze the
13 samples?

14 A Yes, they did.

15 Q Were the analysis done by employees of
16 the Illinois EPA?

17 A The samples that we -- the parts of the
18 samples we took to the Illinois EPA lab, yes, they
19 were analyzed by Illinois EPA employees.

20 Q Was any type of report generated
21 regarding the results of the analysis?

22 A Yes.

23 Q Did you request a copy of this report?

24 A As per procedures, I received a copy of

1 the report when the lab was done with it.

2 Q Is a copy of the report the type of thing
3 that is kept in Agency files?

4 A Yes, it is.

5 Q Is the analytical report a report that is
6 generated in the regular course of normal Agency
7 business when samples are collected from a facility
8 or from a site?

9 A Yes.

10 Q Is this a report prepared when the
11 samples are analyzed, in your knowledge?

12 A Yes.

13 MS. MENOTTI: Could you mark this,
14 please.

15 (Whereupon said document was
16 duly marked for purposes of
17 identification as People's
18 Exhibit 15 as of this date.)

19 Q (By Ms. Menotti) Mr. Zierath, I am going
20 to hand you what has just been marked as People's
21 Exhibit Number 15. Is this a copy of the analysis
22 that you have been talking about?

23 A It is a copy of the analysis reports from
24 the lab. In addition, there is a copy of the chain

1 of custody form for the shipping parts of the
2 samples taken to the Springfield lab.

3 Q Prior to your testimony this morning, did
4 you have the opportunity to review this document?

5 A Yes, I did.

6 Q In your opinion, is it a true and
7 accurate copy of the document?

8 A It is a true and accurate copy of what I
9 received from the lab, yes.

10 Q Did you review these results when you
11 received them?

12 A Yes, I did.

13 Q And have you kept these results in your
14 file since you received them?

15 A They have been kept in the division file,
16 which was transferred to the Champaign Regional
17 Office several years ago.

18 MS. MENOTTI: At this point, the State
19 moves to admit the document as a business record of
20 the Illinois EPA.

21 MR. VAN NESS: I would object to that,
22 Mr. Hearing Officer. I don't believe this witness
23 is the appropriate witness to put together a proper
24 foundation for this document as a business record

1 or otherwise, insofar as we have no information as
2 to how the report was generated.

3 If Counsel wants to utilize this document
4 for purposes of the witness' testimony, I have no
5 objection, provided that this document is
6 subsequently proved up. Otherwise, I believe it is
7 not admissable. This witness, at least, is not the
8 witness to qualify the results of the lab analyses,
9 which he, himself, indicated that he had no part
10 in.

11 All he is testifying to, as I recall, is
12 that this is a true and accurate copy of the
13 document that was given to him, which begs the
14 question, of course, as to how it was created.

15 MS. MENOTTI: The document in question
16 has been not only utilized by the witness in his
17 assessments, it is the type of document that he
18 testified is generated in the normal course of
19 Agency business, and it has been kept as a part of
20 the file in this case since its generation. The
21 proper foundation regarding the document has been
22 laid for the purposes for which it is going to be
23 used.

24 MR. TAYLOR: Mr. Hearing Officer, we

1 would second the objection of Waste Hauling's
2 attorneys. We also do not believe it is a business
3 record. In large part, despite the testimony, this
4 is the document that was generated to support
5 originally a criminal enforcement action, and as
6 such is more of an enforcement document, not a
7 business record. We also believe that this witness
8 is not qualified to establish a foundation for this
9 document.

10 HEARING OFFICER WALLACE: All right. The
11 objections are overruled, and the exhibit is
12 admitted.

13 (Whereupon said document was
14 admitted into evidence as
15 People's Exhibit 15 as of this
16 date.)

17 Q (By Ms. Menotti) When you reviewed the
18 results, what did you find, if anything?

19 A Well, I reviewed the results to determine
20 if they indicated any of the samples were from a
21 hazardous waste, as identified in 35 Illinois
22 Administrative Code 721, and found that four of the
23 samples were from hazardous waste, because of the
24 toxic characteristic leaching procedure results for

1 benzene, and it is listed in here as 2-Butanone.
2 That is a name that is a -- that is actually the
3 current name for material that is also called
4 methyl ethyl ketone or MEK.

5 Q Can you tell me which samples you were
6 referring to when you said that they were -- they
7 tested high?

8 A The samples that exceeded the standards
9 were sample X201, X203, X205 and X206.

10 Q Do you know what the regulatory level for
11 methyl ethyl ketone or 2-Butanone is?

12 A Yes. That is Hazardous Waste D035, and
13 the regulatory standard, using the leaching
14 procedure, is 200 milligrams per liter.

15 Q Are those units that are used in the
16 report?

17 A Our laboratory reports out -- since the
18 material used for leaching is water, they report
19 out water analyses in the micrograms per liter
20 units, and to -- you have to do a conversion then
21 from those to the milligrams per liter. Micrograms
22 per liter will be 1,000 times a milligram per liter
23 results.

24 Q Did you do that conversion when you were

1 analyzing these results?

2 A Yes, I did.

3 Q What does it mean if the sample is above
4 the regulatory level you just mentioned for methyl
5 ethyl ketone?

6 A That would mean it would be Hazardous
7 Waste D035.

8 Q Do you know what the regulatory standard
9 for benzene is?

10 A Yes, it is 0.5 milligrams per liter from
11 the extraction procedure.

12 Q And what does it mean if the sample
13 exceeds this level?

14 A That would mean it would be Hazardous
15 Waste D018.

16 Q Okay. Directing your attention to sample
17 X201, and feel free to refer to the document if you
18 need to, what level of methyl ethyl ketone was
19 detected in the sample?

20 A Okay. Using the extraction procedure, it
21 was 230,000 micrograms per liter.

22 Q Okay. How did that compare to the
23 standard?

24 A The standard is 200,000 micrograms per

1 liter. I am sorry. I have got -- I read the wrong
2 line. That was incorrect. Wait a minute. I
3 correct myself. It was 280,000 micrograms per
4 liter, not 230,000. I read the wrong line.

5 HEARING OFFICER WALLACE: All right. Mr.
6 Zierath, would you clarify your answer?

7 THE WITNESS: Okay. My answer -- I read
8 the wrong line. For methyl ethyl ketone or
9 2-Butanone the result here is 280,000 micrograms
10 per liter.

11 Q (By Ms. Menotti) What level of benzene
12 was detected in this sample?

13 A Okay. It is 1,400 micrograms per liter.

14 Q How does that compare with the regulatory
15 standard?

16 A The regulatory standard in micrograms per
17 liter would be 500. So it is above the standard.

18 MR. TAYLOR: Can you specify where we are
19 at on the document? There appears to be no page
20 numbers.

21 THE WITNESS: Okay. For the first
22 sample, which goes from the first chain of custody
23 form to the page before the next chain of custody
24 form, it is the next to the last page in that, at

1 the --

2 MR. LATSHAW: Would that be -- which of
3 the --

4 THE WITNESS: Okay. The analyses or the
5 test number for 2-Butanone -- excuse me. Let me
6 count the pages from the beginning here. Okay. It
7 would be on the seventh page. Okay.

8 HEARING OFFICER WALLACE: Do we have
9 Bates numbers on any of these?

10 MS. MENOTTI: No. The Agency doesn't
11 number them.

12 (Mr. Davis and Ms. Menotti
13 confer briefly.)

14 MS. MENOTTI: For convenience sake, Mr.
15 Hearing Officer, would you like us to have the
16 pages of the report numbered so that we can refer
17 to them by page?

18 HEARING OFFICER WALLACE: That would help
19 a lot.

20 MS. MENOTTI: Do you want me to actually
21 mark directly on the exhibit that has been
22 entered?

23 HEARING OFFICER WALLACE: Yes, let's do
24 that.

1 MS. MENOTTI: Do you want me to do it
2 while we are off the record?

3 HEARING OFFICER WALLACE: We are on the
4 record.

5 MS. MENOTTI: No, I mean do you want me
6 to go off the record and take care of it, or do you
7 want me to do it --

8 HEARING OFFICER WALLACE: No. Let's just
9 go ahead and do it as we go along.

10 MS. MENOTTI: Okay.

11 MR. VAN NESS: We are numbering the pages
12 now?

13 MS. MENOTTI: Yes.

14 Q (By Ms. Menotti) Mr. Zierath, take the
15 first group of pages that we were referring to,
16 from the chain of custody report to the last page,
17 and in the bottom right-hand corner can you number
18 them from 1 to 8?

19 A (Witness complied.)

20 Q Then the chain of custody document or the
21 first page of the sample, is there a sample I.D.
22 number here?

23 A There is a sample I.D. number that we
24 assigned to it. That is X201.

1 Q What is the laboratory number?

2 A The laboratory number, which the lab
3 stamps on the form, is D216226.

4 Q Is that number referenced on the
5 following pages?

6 A Yes, it is. It is not -- it is at the
7 top and not necessarily independently legible, but
8 there is a sample number at the top of each of the
9 subsequent pages.

10 Q Okay. Let's go back and see if we can
11 clarify the results that we were talking about for
12 methyl ethyl ketone. What page were you looking
13 on?

14 A It is page seven.

15 Q And the result of that sample was what?

16 A Well, the result for that sample -- the
17 compounds are grouped into four, just so that it is
18 legible and you can read across easier. It is in
19 the bottom of the fifth group there. Actually, the
20 first one only has two. So the result there is in
21 milligrams per liter 280,000 -- excuse me. It is
22 micrograms per liter. The "U" is used to stand for
23 micrograms.

24 Q Okay. And what level of benzene was

1 detected?

2 A That's down in the eighth group, the
3 second one down there, and it is 1,400 micrograms
4 per liter.

5 Q Okay. And what do these two numbers
6 indicate to you, if anything?

7 A They indicate that this sample is from a
8 hazardous waste that has hazardous waste numbers
9 D035 and D018.

10 Q Okay. Let me direct your attention to
11 the sample which you have referred to as X203,
12 which would be the third set of pages. Go ahead
13 and continue.

14 HEARING OFFICER WALLACE: Just a second.
15 Is it -- which number is better to refer to these,
16 the sample I.D. or the laboratory number?

17 MS. MENOTTI: I am sorry? Which what?
18 On the front?

19 HEARING OFFICER WALLACE: Use the same
20 number when you are referring to them. It seemed
21 like you switched from the lab number to the sample
22 number.

23 MS. MENOTTI: The --

24 HEARING OFFICER WALLACE: Just so we can

1 all follow along.

2 MS. MENOTTI: The inspectors have
3 assigned a certain number to the sample, and the
4 lab assigned a different number that appears on the
5 pages, and we just want to make that clear.

6 MR. VAN NESS: Mr. Hearing Officer, if I
7 may interject, I believe, from my perspective, for
8 what it is worth, it would be easier for all of us
9 to use the sample I.D. number, which is found both
10 on the printouts and on the chain of custody form.

11 At least on the copies I have, which are
12 scarcely legible at all, it is easier for me to
13 make out, and I believe it will be easier for most
14 people to make out the sample I.D. number at the
15 top of the page than it is to make out the
16 laboratory number. In almost every instance it is
17 virtually obliterated in every copy that I have.

18 For instance, if you look at the page
19 number two under sample I.D. X201, you can see that
20 the second line, which is actually legible, X201 is
21 quite clearly legible. I think it is easier to
22 work that way.

23 HEARING OFFICER WALLACE: All right. I
24 just want to make sure we are clear. So we will

1 continue using the sample I.D. number, and you have
2 referred the witness to X203, I believe.

3 MS. MENOTTI: Right.

4 Q (By Ms. Menotti) Before going into that,
5 so that the Board has a continuous numbering, can
6 you number the interim pages to follow the first
7 sample?

8 A Yes.

9 HEARING OFFICER WALLACE: Okay. So
10 beginning with X202, that will be page nine.

11 (The witness numbered the
12 pages.)

13 MS. MENOTTI: Go ahead and number the
14 next sample.

15 HEARING OFFICER WALLACE: Which would be
16 X203. That's page 17.

17 (The witness numbered the
18 pages.)

19 HEARING OFFICER WALLACE: We will go off
20 the record while Mr. Zierath numbers the pages.

21 (Discussion off the record.)

22 HEARING OFFICER WALLACE: Okay. Let's go
23 back on the record.

24 You may continue your questioning.

1 MS. MENOTTI: All right.

2 HEARING OFFICER WALLACE: For the record,
3 Mr. Zierath came up with 56 pages in this document.

4 Q (By Ms. Menotti) Okay. Directing your
5 attention to the third sample of the group, how is
6 it identified? I am sorry. What is the sample
7 number?

8 A The sample number is X203.

9 Q What level of MEK -- I am sorry -- methyl
10 ethyl ketone, was detected in this sample?

11 A The sample results I am referring to are
12 on page 23, the fifth group down. The results were
13 reported in scientific notation in micrograms per
14 liter as 1.7 E to the 6th. I recognize the
15 handwriting there. That is of the laboratory
16 manager at the time, John Hurley. He wrote in
17 there as a clarification an equivalent to value.
18 That is basically 1,700,000 micrograms per liter.

19 Q How does this compare to the regulatory
20 standard?

21 A The regulatory standard is 200,000
22 micrograms per liter. So this is above the
23 standard.

24 Q And what level of benzene was detected?

1 A Okay. It is on the same page, in the
2 eighth group down, the second one. It is 1,100
3 micrograms per liter.

4 Q How does this compare to the regulatory
5 standard for benzene?

6 A It is above the standard.

7 Q What do these exceedences mean to you?

8 A That would mean that the waste this
9 sample is from is hazardous for the extraction --
10 the toxic characteristic extraction -- the leaching
11 procedure -- excuse me -- for MEK, which would make
12 it Hazardous Waste D035 and for benzene, which
13 would make it Hazardous Waste D018.

14 Q Let's turn to the fifth sample of the
15 group. I believe it starts on page 33.

16 A Okay.

17 Q What is the sample number here?

18 A The sample number is X205.

19 Q Can you turn to the page where the
20 results for methyl ethyl ketone and benzene are.
21 What page is that?

22 A That is page 39.

23 Q What level of methyl ethyl ketone was
24 detected in the sample?

1 A This is in the bottom of the fifth group,
2 and it is 6.6 E to the 6th micrograms per liter or
3 6,600,000 micrograms per liter.

4 Q How does this level compare to the
5 regulatory standard?

6 A This is above the standard.

7 Q And what is the level detected for
8 benzene in the sample?

9 A It is 3,000 micrograms per liter.

10 Q How does that number compare to the
11 regulatory standard for benzene?

12 A This would be above the standard.

13 Q What do these levels indicate about this
14 sample?

15 A The sample is from a waste that is
16 Hazardous Waste D035 and D018.

17 Q Okay. Let's direct your attention to
18 page 41 of the document. Which sample is this?

19 A This would be X206.

20 Q Can you turn to the page where the
21 results from methyl ethyl ketone and benzene appear
22 and tell us what page that is?

23 A It is page 47.

24 Q Okay. What level of methyl ethyl ketone

1 was detected in this sample?

2 A 730,000 micrograms per liter.

3 Q How does this compare to the regulatory
4 standard for methyl ethyl ketone?

5 A It is above the standard.

6 Q Could you tell me what the detected level
7 of benzene was in this sample?

8 A It is 1,900 micrograms per liter.

9 Q How does this compare to the regulatory
10 standard for benzene?

11 A It is above the standard.

12 Q What do these exceedences indicate to
13 you, if anything?

14 A This waste -- or the waste the sample
15 came from would be Hazardous Waste D035 and D018.

16 Q Okay. This group of documents, these
17 results -- I am sorry. You can set them aside.

18 When these samples were pulled, did you
19 have any expectations as to what the samples might
20 show?

21 A We had the information from the
22 confidential informant that he had smelled methyl
23 ethyl ketone. I am not familiar enough with the
24 compound's odor to have been able to make that

1 determination. As I said, we used the
2 photoionizing detector to choose the samples that
3 had the most indication of being contaminated with
4 organic solvents. But other than that, I did not
5 know what the analysis results would show.

6 Q Based on what the informant told you and
7 the results, are they consistent with each other?

8 A We did find methyl ethyl ketone actually
9 in all of the samples at a level that would make
10 them regulated as hazardous waste in four of the
11 samples.

12 Q Let's go back to your inspection on April
13 22nd of 1992. Were any documents obtained during
14 the execution of the search warrant?

15 A Yes, they were.

16 Q Do you recall what they were?

17 A Karen Nelson collected a number of
18 documents that were waste logs that had been
19 actually kept by Waste Hauling, Inc. or Waste
20 Hauling -- I don't know which entity was keeping
21 them -- but indicating what waste had been received
22 at the landfill and who the generator was. In
23 addition, she got a copy of a manifest for shipment
24 of waste that had been received on the 9th of

1 April.

2 Q What happened to these documents after
3 they were seized?

4 MR. LATSHAW: I think I am going to
5 object to any further line of questioning in this
6 regard without more foundation to establish the
7 direct or personal knowledge of this witness with
8 regard to what apparently some other person did
9 during the course of this proceeding involving the
10 execution of the search warrant.

11 MS. MENOTTI: I am trying to establish
12 that through this line of questioning. Mr. Zierath
13 was in charge of the inspection on that date and
14 couldn't be in all places at once. The documents
15 did become a part of the Agency file and were kept
16 there. And he did have the opportunity to review
17 the file prior to his testimony.

18 HEARING OFFICER WALLACE: All right. The
19 objection is noted. Continue.

20 Q (By Ms. Menotti) What happened to the
21 documents that were seized as part of the search
22 warrant?

23 A Well, the State Police got a copy of
24 them, and we got a copy of them and put them in the

1 file.

2 Q Did you inspect these documents?

3 A Yes, I did.

4 Q Have these documents been kept as part of
5 the Agency file regarding the landfill?

6 A Yes.

7 MS. MENOTTI: Could you mark this,
8 please.

9 (Whereupon said document was
10 duly marked for purposes of
11 identification as People's
12 Exhibit 16 as of this date.)

13 Q (By Ms. Menotti) The document you have in
14 front of you here has been marked as People's
15 Exhibit 16. Is this one of the documents that you
16 were referring to?

17 A Yes, it is.

18 Q Could you please identify the document
19 for the record?

20 A It is entitled Daily Solid Waste Record.
21 The date that this one is associated with is April
22 9th, 1992. It identified -- there is a heading on
23 it that identifies it as Decatur Waste Hauling
24 Landfill and the address and the site number.

1 Q Is any of this -- just one second. Is
2 any of this information, in your opinion,
3 significant to this case?

4 A Well, what we were looking for was a
5 generator that may -- that generated the drums that
6 had come in, and knowing that the informant had
7 said that there were 80 drums in the shipment,
8 which is for a semi-trailer the standard shipment,
9 since that is one layer of drums in the bed of the
10 trailer. And on April 9th this indicates that they
11 received -- the amount here would be 22 cubic yards
12 from Bell Sports, and it has the permit number next
13 to it.

14 MS. MENOTTI: Could you please mark this.
15 (Whereupon said document was
16 duly marked for purposes of
17 identification as People's
18 Exhibit 17 as of this date.)

19 Q (By Ms. Menotti) The document that is in
20 front of you now, Mr. Zierath, has been marked as
21 People's Exhibit Number 17.

22 Is this one of the documents that you
23 were referring to that was seized during the
24 execution of the search warrant?

1 A Yes, this is a copy of the manifest that
2 was seized. It is called a TSD copy. It stands
3 for Treatment Storage Disposal facility copy, which
4 means it was the landfill's copy.

5 Q Okay. What is the title of the document
6 in front of you?

7 A This is a Uniform Hazardous Waste
8 Manifest, though it is also at times used for
9 nonhazardous waste. It has control number, in this
10 case, IL4253506.

11 Q Can you generally explain what a manifest
12 is?

13 A For hazardous waste shipments and for
14 many types of nonhazardous waste shipments
15 manifests were and still are required. It is a
16 document that is to accompany the waste from the
17 generator to the facility that it is supposed to go
18 to.

19 The generator fills out the top part,
20 describes -- well, with their name and address,
21 with the name of the transporter, with the name and
22 the address of the facility that the material is
23 supposed to go to, the description of the waste,
24 including the volume.

1 Then it is signed and certified by the
2 generator at the bottom of the generator portion,
3 and the transporter then would sign the manifest,
4 which is a multi document. The back two pages are
5 torn off and kept by the generator, and depending
6 on the type of waste, they may be required to send
7 a copy to our Agency.

8 Then the manifest accompanies the waste.
9 A responsible person at the facility then signs for
10 the waste at the bottom of the form, and gives a
11 copy to the transporter as his record that he
12 delivered the waste, and then keeps a copy. One
13 copy goes to our Agency, the number two copy. And
14 then the original goes back to the generator as
15 their record that the waste was delivered to the
16 facility specified.

17 Q Okay. Who is the generator listed on
18 this particular manifest?

19 A It is listed as Bell Sports, Post Office
20 Box 927, Rantoul, Illinois, 61866.

21 Q And who was the transporter listed on
22 this?

23 A Waste Hauling, Inc.

24 Q And what was the designated facility to

1 receive this shipment?

2 A The designated facility is Decatur Waste
3 Hauling, Rural Route 1, Decatur, Illinois, 67572.

4 Q And how was the shipment described on
5 this?

6 A It says waste paint sludge, nonhazardous
7 material. It was indicated that there were 80
8 drums and a total of 4,400 gallons.

9 Q Did you utilize the documents that have
10 been marked as People's Exhibits 16 and 17 in
11 developing any opinion regarding the landfill?

12 A The manifest and the records both
13 indicated the shipment had been made on the 9th of
14 April. They were consistent with the number of
15 drums that the informant had said had been disposed
16 of at the landfill in that shipment. So it is my
17 opinion, based on what we observed at the landfill
18 and the records, that the drums we excavated were
19 the drums from Bell Sports.

20 Q Based on the information that you
21 gathered and the inspection on the day of April
22 22nd, 1992, have you formed an opinion regarding
23 the general characteristics of the waste samples at
24 Waste Hauling -- sampled from Waste Hauling

1 Landfill? I am sorry. Let me go back and get the
2 question out right.

3 Based on your -- the information you
4 gathered and your inspection at the landfill on
5 April 22nd, 1992, have you formed an opinion
6 regarding the characteristics of the waste sampled
7 from those drums?

8 A Based on our sample results, this is a
9 characteristic -- some of the drums contained
10 characteristic Hazardous Waste D018 and D035.

11 Q Did you utilize any of the documents in
12 front of you in making -- in formulating this
13 opinion?

14 A Yes, Exhibit 15, or papers that were
15 marked as Exhibit 15.

16 Q Okay. Do you have -- when you were at
17 the landfill on April 22nd, 1992, what was the
18 constituents, again, of the contents of the drums?

19 A All we were able to find in the drums
20 were solid materials. Generally a paint-like,
21 slightly elastic material, frequently in small --
22 very small chunks. It was somewhat similar to
23 rubber, some of it.

24 Q Was there any liquid in the drums?

1 A Not that we were able to recover any
2 appreciable amounts of, no.

3 Q Did you review the Agency file regarding
4 the landfill before going out there on April 22nd,
5 1992?

6 A I reviewed parts of the file,
7 particularly pertaining to where they had been
8 operating just prior to the time that our informant
9 was alleging some drums of what he thought were
10 hazardous waste had been disposed of there. Plus,
11 I reviewed the special waste permits that they had
12 to accept nonhazardous special waste.

13 Q When you reviewed that file, did you find
14 any permits for hazardous waste disposal?

15 A No, I did not. I also reviewed the
16 printout from the U.S. EPA pertaining to permitted
17 hazardous waste facilities, and this landfill did
18 not have a hazardous waste landfill permit.

19 Q Based on that information, do you have an
20 opinion as to whether or not the drums were
21 properly disposed of at the landfill?

22 A Based on my review of the file, the
23 permitting information there, and the results of
24 the analyses, this was not a material that was

1 legally disposed of in that landfill.

2 Q Do you know if when you excavated those
3 drums if you got all of the drums?

4 A Our informant had specified there were 80
5 drums, and we only got 53 drums. So based on that
6 information alone, it appears we did not get all of
7 the drums, no.

8 Q Is it possible that some of those drums
9 are still in the landfill?

10 A Since we did not remove them, I have not
11 heard from anybody else. I would assume that they
12 are still there.

13 Q Based on the information that you have,
14 is it possible that some of those drums may contain
15 waste similar to the waste that was tested by -- or
16 the waste that was tested by the Illinois EPA
17 labs?

18 MR. VAN NESS: Objection. It calls for
19 speculation.

20 MR. TAYLOR: I would object. It calls
21 for speculation.

22 HEARING OFFICER WALLACE: Sustained.

23 Q (By Ms. Menotti) Are there any special
24 requirements in the regulations, and generally I am

1 referring to 35 Illinois Administrative Code, that
2 governs hazardous waste?

3 A Yes, there are. 35 Illinois
4 Administrative Code, 503 -- anyway, they are
5 required to get a permit and a -- in this case
6 because they did not notify prior to November 19th,
7 1980 as an active hazardous waste landfill, they
8 would have needed a permit to accept this material,
9 so they would have been subject to the requirements
10 of 35 Illinois Administrative Code, 724, which
11 would be the standards for permitted hazardous
12 waste facilities.

13 Q Based on the information available to
14 you, was the landfill in compliance with those
15 regulations on April 22nd, 1992?

16 A Because they did not have a hazardous
17 waste permit, they were not in compliance with
18 those regulations, no.

19 Q Did you form an opinion as to who the
20 transporter of the drummed waste was?

21 A Inasmuch as it appeared these drums were
22 the -- the drums in question were the drums from
23 Bell Sports, after review of the records, the
24 manifest indicates that Waste Hauling, Inc. was the

1 transporter.

2 Q Are there any regulations which address
3 the transport of hazardous waste that the hauling
4 company would have been subject to on the date of
5 transportation?

6 A The hauling company would have been
7 required to have notified -- sent in a notification
8 form to the U.S. EPA indicating that they were
9 going to transport hazardous waste, which this
10 company had done. Before accepting any hazardous
11 waste, they would have to get a manifest from the
12 facility that indicated what permitted facility the
13 waste was going to be hauled to, and then deliver
14 it to a permitted facility. Or if they couldn't do
15 that, then return it to the generator.

16 Q In your opinion, were these requirements
17 met?

18 A They were not met because the facility
19 indicated on the manifest for the shipment, Decatur
20 Waste Hauling, is not a permitted hazardous waste
21 facility. So there was no designated permitted
22 hazardous waste facility.

23 Q Could the disposal of the drums in
24 question, based on your experience and knowledge of

1 landfills, have any kind of impact on the
2 environment?

3 A Well, the samples we collected that the
4 analysis indicated were hazardous were from drums
5 that had been crushed. The crushing process tore
6 them open. There was generally very little
7 material left in any of the drums, less than a
8 quarter of what an intact drum would have held,
9 which, in my opinion, indicates that the majority
10 of the waste in those drums at least leaked out
11 into the landfill.

12 Q Does anybody have the responsibility for
13 determining if the landfill is impacting the
14 environment in any way?

15 A Well, there are several ways that the
16 landfill is required to make those determinations,
17 such as groundwater monitoring and other such ways,
18 other such monitoring. In addition, if there is an
19 indication then they are required to -- an
20 indication of contamination, they are required to
21 take steps to remedy the contamination.

22 Q Let me move back to the manifest for just
23 one second. Is there any indication on that
24 manifest that the waste shipped was hazardous?

1 A No, there is not. There is a space on
2 the manifest for the -- what is referred to here as
3 the EPA hazardous waste number, and that area is
4 left blank.

5 MS. MENOTTI: I have nothing further at
6 this time.

7 The People would move to admit documents
8 that have been marked People's Exhibit 16 and 17
9 into evidence.

10 MR. VAN NESS: No objection.

11 MR. TAYLOR: No objection.

12 HEARING OFFICER WALLACE: People's
13 Exhibit Numbers 16 and 17 are admitted into
14 evidence.

15 (Whereupon said documents were
16 admitted into evidence as
17 People's Exhibits 16 and 17 as
18 of this date.)

19 HEARING OFFICER WALLACE: Mr. Van Ness?

20 MR. VAN NESS: Yes. Thank you, Mr.
21 Hearing Officer.

22 CROSS EXAMINATION

23 BY MR. VAN NESS:

24 Q I would like to go back through your

1 testimony in a couple of places, Mr. Zierath, and
2 just clarify what you stated.

3 First of all, I didn't hear the precise
4 standard for benzene mentioned in milligrams per
5 liter.

6 A It is 0.5.

7 Q Okay. 0.5. You examined seven barrels,
8 did you not?

9 A We collected samples from seven barrels.

10 Q Right. And four of those, according to
11 your testimony, essentially were shown to be or
12 represented to be hazardous?

13 A That's correct.

14 Q That suggests to me that the other three
15 were not?

16 A They did not show any characteristics of
17 hazardous waste. There are other hazardous wastes
18 that depended on how they were generated, so I
19 can't -- the analysis won't tell you how it was
20 generated.

21 Q Is that a yes or a no, then?

22 A Well, our analyses didn't show they were
23 hazardous.

24 Q Thank you. As I understand it, the

1 methodology for selecting the barrels in the first
2 place was to use what is sometimes referred to as a
3 PID meter or a photoionization detector and
4 selected, if you will, the hot barrels; is that a
5 fair statement?

6 A Yes.

7 Q Okay. So this was not, per se, a
8 representative sample?

9 A It was not representative of what we
10 could get to, no.

11 HEARING OFFICER WALLACE: I am sorry. Of
12 what?

13 THE WITNESS: Of what we could actually
14 get access to.

15 Q (By Mr. Van Ness) Well, of the 53 barrels
16 that you had access to, I take it that these seven
17 barrels gave off the highest readings on the PID
18 meter; is that a fair statement?

19 A We took PID readings on those drums that
20 we could access the waste in. There were a number
21 of drums that were crushed to the point where we
22 had no access to the waste, and we were not going
23 to open them up any further to --

24 Q Did some of those drums that were

1 crushed, that you had no means of access, did some
2 of those drums, in effect, give off a higher PID
3 reading?

4 A We couldn't get anything off of --

5 Q You couldn't get any PID reading, right?

6 A Right.

7 Q So you don't know what was in those?

8 A That's correct.

9 Q Okay. Thank you. Now, you indicated, I
10 believe your testimony was, was that your
11 confidential informant smelled MEK or methyl ethyl
12 ketone. Was that your testimony; is that correct?

13 A That's correct.

14 Q Did he say, in fact, that I smelled
15 methyl ethyl ketone?

16 A In my presence he indicated that he had
17 worked at a company in Decatur named Rigolet
18 (spelled phonetically), and that he had worked with
19 methyl ethyl ketone, so he knew that compound and
20 he knew what it smelled like, and that's what he
21 smelled.

22 Q Okay. Now, I am going to ask you to
23 refer very briefly again to People's Exhibit 17,
24 which is the Uniform Waste Manifest Form. Do you

1 have that in front of you?

2 A Yes, I do.

3 Q Now, I see that there are a number of
4 boxes on it. Do you see the box numbered 16, about
5 two-thirds of the way down the page?

6 A Yes, I do.

7 Q And for the record could you just state
8 what that is?

9 A Would you like me to read it?

10 Q Well, I think maybe it would be
11 sufficient if you maybe just read the first
12 paragraph.

13 A Okay. It says generator's
14 certification. I hereby declare that the contents
15 of this consignment are fully and accurately
16 described above by proper shipping name and are
17 classified, packed, marked, labeled, and are in all
18 respects in proper condition for transport by
19 highway according to applicable international and
20 national government regulations.

21 Q And on the same form, in I guess it would
22 be box 11A, do you see a description of the waste
23 material?

24 A Yes, I do.

1 Q Do you have any idea who might have
2 entered that description?

3 A I mean, I am not a handwriting expert, so
4 I can't -- it appears to be the same handwriting as
5 the printed name below. It would have been
6 somebody at Bell Sports that would have written
7 that.

8 Q Okay. There it says what? How does it
9 describe the waste?

10 A It says waste, paint sludge, nonhazardous
11 material.

12 Q So it expressly says nonhazardous
13 material; isn't that correct?

14 A Yes.

15 Q So we have the description on box 11A and
16 we have the generator certification on box 16. Do
17 you see any corresponding certification paragraph
18 on that form for the waste hauler?

19 A No, there is none.

20 Q Do you see corresponding certification on
21 that form for the recipient of the waste, in this
22 case the landfill?

23 A No.

24 Q Do you have any information, whatsoever,

1 sir, that either Waste Hauling, Inc. or Waste
2 Hauling Landfill, Inc. had any idea that that waste
3 was, in fact, hazardous?

4 A I don't have anything in writing, no.

5 Q What do you have that is not in writing,
6 sir?

7 A Well, we have the statements by a
8 confidential informant that indicated that he
9 recognized the fact that as they were crushing the
10 drums this material was potentially hazardous.

11 Q In other words, after the drums were
12 crushed he could smell what he took to be methyl
13 ethyl ketone?

14 A That's correct.

15 Q By that time the damage was already done,
16 wasn't it?

17 A The drums were at the landfill, yes.

18 Q You indicated that while you were out
19 there at the landfill some of the crushed drums had
20 what appeared to be paint splashed on the exterior;
21 isn't that correct?

22 A I believe my testimony was that on some
23 of the drums the paint had been -- they no longer
24 had paint. They were shiny, so it looked like the

1 paint had been removed either by scraping or
2 potentially by the action of the solvents on the
3 paint that had caused it to slough off.

4 Q Oh, I am sorry. I misunderstood your
5 testimony. You indicated that it was your opinion
6 that the contents of the drums had been I guess you
7 would say squished out or crushed out of the
8 barrels into the landfill; is that correct?

9 A The drums contained generally less than a
10 quarter, sometimes quite a bit less than if they
11 had been full or intact and not crushed.

12 Q Do you know for a fact whether or not
13 they were full?

14 A No, I do not.

15 Q Now, you stated earlier that -- I think
16 you described earlier the Hazardous Waste
17 Regulations, and I am going to ask you whether you
18 are also familiar with the Solid Waste Regulations
19 of 35 Illinois Administrative Code, Part 807?

20 A Yes, I am.

21 Q Could you characterize those very
22 briefly?

23 A Those are -- I guess they would be
24 characterized as the old Solid Waste Landfill

1 Regulations. They are being superceded by
2 subsequent regulations at this point, depending on
3 when a landfill closed and what they do.

4 Q Do those regulations apply at all to
5 hazardous waste landfills?

6 A They would if a hazardous waste landfill
7 also had a portion that took solid waste.

8 Q Are you also familiar with the
9 regulations governing the transportation of special
10 waste under Part 809?

11 A Yes, I am.

12 Q And, again, the regulations relating to
13 the disposal of municipal solid waste of Parts 811
14 through 814?

15 A Yes.

16 Q And, finally, the disposal of hazardous
17 waste, I think you already testified to those,
18 relating to Part 724?

19 A Yes.

20 Q Do you have any information that for all
21 you know about the landfill and everything you have
22 testified here to today that the Waste Hauling
23 Landfill held itself out to the public or to any
24 third party as to anything other than a Part 807

1 landfill?

2 A I have no knowledge.

3 Q Do you have any information to the effect
4 that the Waste Hauling Landfill ever solicited or
5 knowingly accepted hazardous waste for disposal?

6 A I have no knowledge.

7 Q Are you aware of any provisions of 35
8 Illinois Administrative Code, Part 807, that
9 requires a sanitary landfill operator to inspect,
10 chemically sample, or otherwise independently
11 confirm that an incoming special waste load
12 comports with the information on the manifest?

13 A No.

14 Q How about document facility inspections?

15 A No.

16 Q Submit hazardous waste reports?

17 A No.

18 Q Maintain hazardous waste records?

19 A No.

20 Q Are you familiar with the solid waste
21 disposal permit? I believe you stated you were
22 familiar with the solid waste disposal permit
23 issued to Waste Hauling Landfill; is that correct?

24 A Not in entirety, no. I didn't review the

1 entire permit file on that, no.

2 Q Did you not have an opportunity to read
3 that before you went out to the site?

4 A I reviewed only the parts of the permit
5 that pertained to the possibility that they were
6 permitted to accept hazardous waste, and also I
7 reviewed the permit applications and subsequent
8 permits that were issued for special waste.

9 Q Did you see anything in those parts of
10 the permit then that you had an opportunity to
11 review that requires Waste Hauling Landfill, Inc.
12 to inspect, chemically sample, or otherwise
13 independently confirm that an incoming special
14 waste load comports with the information on the
15 manifest?

16 A No.

17 Q I believe you stated that you looked at
18 the supplemental waste stream permits issued by the
19 Agency; is that correct?

20 A That's correct.

21 Q Are you aware of any provision or
22 condition of those permits that required the
23 landfill operator to inspect, chemically sample, or
24 otherwise independently confirm the contents of the

1 waste received?

2 A No.

3 Q Now, you indicated that the barrels had
4 been crushed. Had the barrels' contents comported
5 with the manifest, would the crushing of the
6 barrels, per se, have been a violation of any
7 regulation that you are aware of?

8 A Well, to the extent that it causes
9 disposal of hazardous waste, it would.

10 Q But if it were not hazardous waste, would
11 the act of crushing itself have been a violation of
12 the applicable supplemental waste stream permit?

13 A No.

14 Q Are you aware of any attribute of the
15 exterior of these drums, such as a label or a tag
16 or a warning of any kind, in which the Bell Sports
17 waste was allegedly transported to the landfill
18 that would have tipped off a reasonably diligent
19 hauler or landfill operator that the waste didn't
20 comport with the manifest?

21 A No.

22 Q Are you aware of any provision of the
23 Special Waste Hauling Regulations of 35 Illinois
24 Administrative Code, Part 809, that required either

1 the hauler or a sanitary landfill operator to
2 physically inspect, chemically sample, or otherwise
3 independently confirm the characteristics of the
4 load of special waste prior to accepting it?

5 A No.

6 Q Do you have any information, sir, that
7 either Waste Hauling, Inc. or Waste Hauling
8 Landfill, Inc. accepted any special waste from Bell
9 Sports during the time period of 1991 through 1992
10 without a signed and completed manifest?

11 A No.

12 Q Do I gather it correctly that the
13 hazardous waste violations that you stated to Ms.
14 Menotti's questioning basically are attributable
15 then to these two companies simply by virtue of
16 their having received the hazardous waste from Bell
17 Sports?

18 A Yes.

19 MR. VAN NESS: No further questions.

20 HEARING OFFICER WALLACE: Mr. Taylor?

21 MR. TAYLOR: Mr. Nahmod will be
22 addressing the questions.

23 HEARING OFFICER WALLACE: All right. Mr.
24 Nahmod?

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CROSS EXAMINATION

BY MR. NAHMOD:

Q Mr. Zierath, did anybody employed by Waste Hauling identify the drums at the landfill that you excavated as belonging to or originating from Bell Sports?

A Not in my presence.

Q Are you aware that outside your presence that any employee or representative of Waste Hauling indicated that the drums had belonged to or originated from Bell?

A Not that I am aware of.

Q Did Dustin Burger ever indicate that the drums -- ever indicate to you that the drums originated from Bell?

A Not that I recall.

Q Mr. Townsend had provided you with a plan sheet of the landfill; is that right?

A That's correct.

Q Did that plan sheet indicate to you that the drums that you excavated that day originated from Bell Sports?

A No.

Q Were there any labels on the drums that

1 indicated that they originated from Bell Sports?

2 A The only label I saw on any of the drums
3 was a green label, with the words hazardous waste
4 written diagonally across them. Excuse me.
5 Nonhazardous waste. I recognized this as being the
6 same type of label that I had seen several years
7 before at the Bell facility when I had done an
8 inspection there. But there was no -- other than
9 that, there is no ties.

10 Q What was the date of your inspection of
11 the Bell facility?

12 A I don't recall. I had been there -- I
13 had been to that facility when it was still Vetter
14 Products and then just after Bell for that
15 facility.

16 Q What was the name of the facility at that
17 time?

18 A It was Vetter Products prior to Bell
19 taking over that facility. V-E-T-T-E-R.

20 Q Do you know whether Bell Sports continued
21 to use the identical labels?

22 A When we did an inspection there in
23 January of 1993, they had that type of label on
24 drums at that time.

1 Q Okay. Returning to the date of your
2 inspection, did the drum -- did you sample the drum
3 that had a label on it indicating that its contents
4 were not hazardous?

5 A I would have to review my records to
6 determine that. (The witness reviewed records.)

7 Q It might help if you checked a memo that
8 you wrote on April 22nd, 1992, attachment one.

9 A Right.

10 Q Okay.

11 A Correct.

12 Q Okay. Now, how many drums total are
13 there that are listed on these two pages?

14 A 53.

15 Q Those are the drums that you found that
16 day that you excavated?

17 A Yes.

18 HEARING OFFICER WALLACE: Just for the
19 record, you are looking at Exhibit 14, are you
20 not?

21 THE WITNESS: That is correct.

22 Q (By Mr. Nahmod) And looking at the drum
23 that is numbered as 33, is that the one you were
24 referring to that had a nonhazardous waste sticker?

1 A Yes.

2 Q And that was the only one of all those
3 drums?

4 A That's the only drum I saw any labels on,
5 yes.

6 Q Turning to attachment two, which is the
7 very last page, I believe, of the exhibit, a
8 description of the samples. Do you see that page?

9 A Yes.

10 Q Do you see that drum number 33 was not
11 sampled?

12 A That is correct.

13 Q So the drum with the sticker on it was
14 not sampled?

15 A That's correct.

16 Q Was there any company inscription on the
17 drums that you excavated that day?

18 A Not that I saw.

19 Q Was an employee of Waste Hauling by the
20 name of Bradley Brown ever in your presence on the
21 day you excavated the drums?

22 A Yes, occasionally.

23 Q Did he ever indicate to you that day or
24 any day that the drums had originated from Bell

1 Sports?

2 A Not that I recall.

3 Q Do you know Mr. Jerry Camfield?

4 A Yes, I do.

5 Q Do you know who he is?

6 A Yes.

7 Q Who is he?

8 A He is the owner of the landfill, I
9 believe the president of the company, but I am not
10 positive of that.

11 Q Okay. Did he ever indicate to you that
12 the waste had originated from Bell Sports?

13 A Not directly, no, I don't recall that.

14 Q Did he ever indicate to you that he saw
15 any labels on the drums as they were being
16 excavated or after they were excavated?

17 A He did not, no.

18 Q To your knowledge, is there any reason
19 that an 80 drum shipment would be typical?

20 A As I stated before, that's what fits in a
21 semi-trailer as a single layer of drums.

22 Q Referring to what has been labeled as
23 People's Exhibit Number 14, on the third page, in
24 the complaint details it says there that Waste

1 Hauling had received 80 drums; is that right?

2 A That's correct.

3 Q So as far as the informant was concerned,
4 then, the search was for -- the drums that had been
5 received totaled 80?

6 A That's correct.

7 Q Of the 53 drums that were excavated,
8 seven samples were taken, four of which appeared to
9 be hazardous from test results; is that right?

10 A That's correct.

11 Q So as far as you know, that's the sum
12 total of hazardous waste that was found in the
13 landfill?

14 A As far as I know from the documentation,
15 yes.

16 Q Well, in turning to that documentation
17 you were asked some questions by Ms. Menotti about
18 lab results; is that right? I think it is marked
19 as Exhibit 15.

20 A Correct.

21 Q I want to draw your attention to the top
22 of that document, the upper right-hand corner.
23 There is a place there for the seal number, where
24 that is filled in. Do you see that?

1 A Yes.

2 Q Then right below that there is a date
3 sealed line?

4 A Yes.

5 Q What does that date sealed indicate?
6 What is it meant for generally?

7 A It is supposed to be the day that the
8 sealer -- oh, I am sorry. I am -- we don't use
9 these all too often in our office. That actually
10 is when the coolers that contained the empty
11 bottles were sealed by our bottle shop, so these
12 were picked up on the 20th, and that's whose
13 initials also -- this is not the sample sealed
14 date, but the bottle sealed date. We maintain a
15 chain of custody on empty bottles, also.

16 Q Whose initials are those?

17 A I don't recall the gentleman's name. He
18 doesn't even work for the Agency anymore. But it
19 would have been the person who was in charge of the
20 bottle shop.

21 Q Do you know where those bottles were
22 between the time they were sealed and the time they
23 were brought to the landfill for samples?

24 A They were in our storeroom at our

1 office.

2 Q Do you personally supervise that office?

3 A I am not the supervisor of the office,
4 but the room is locked. The people who work in my
5 bureau have keys that will get into that
6 storeroom.

7 Q Do you know whether anybody had entered
8 that storeroom between the 20th and the 22nd?

9 A Well, since we also use that storeroom
10 for supplies for our sampling trips, yes, I know
11 that people did go in there.

12 Q Do you know how many?

13 A I don't know.

14 Q You mentioned just now a chain of
15 custody, but I am not sure I see where the chain of
16 custody is in People's Exhibit Number 15. Would
17 you be able to point that out to me?

18 A Well, it was -- the procedure for these
19 bottles is to -- well, they are picked up with a
20 plastic seal on them, the seal number shown. At
21 the landfill, then, when the person opens them, and
22 in this case it was Amy Brown, she signs them and
23 indicates when she -- that she opened them.

24 Then she also indicates when she sealed

1 the cooler, which contained the paperwork involved,
2 and so she signed the certification that these
3 samples have been collected and placed in bottles
4 in her presence, and that she had sealed it and
5 then it is signed by the person who breaks the seal
6 at the laboratory. So there is no intermediate
7 signature.

8 Q But she didn't hand them to the person
9 who opens them at the laboratory; is that right?

10 A No, she sealed the container with the
11 numbered seal, and in this case it was Charles King
12 who transported them, according to the information.

13 Q Does Charles King hand them to the person
14 who opens them up at the laboratory?

15 A Yes, I am sure.

16 Q Who handles it at the laboratory?

17 A All I can tell you about this sample is
18 the name of the person who was the one who broke
19 the seal on the cooler. I really can't even tell
20 you whether this person is male or female or not.
21 I am not familiar with them. Anju Patel.

22 Q Do you know whether this was the only
23 person that handled the samples at the laboratory?

24 A I do not know who handled them.

1 Q Would your responses be the same for all
2 of the samples represented in this exhibit?

3 A The chain of custody procedure was the
4 same, yes. It would be the same.

5 Q Did you do any of the testing yourself?

6 A No.

7 Q Did you see any of the testing done?

8 A No.

9 Q Did you review the testing for its
10 quality or whether it was done pursuant to
11 procedures?

12 A I did not, no.

13 Q Ms. Menotti was asking you whether these
14 were records kept in the ordinary course of
15 business, I think. But you just said this is not a
16 form usually used by the Agency; is that right?

17 A This is not one used by our office
18 frequently. This was developed by our so-called
19 Superfund Unit for collection of samples. We have
20 a different form that we normally use, and we use
21 this one because we also sent samples to a private
22 lab and that was developed as part of the private
23 lab program.

24 Q So that form was not used here because

1 these samples were submitted to an Agency
2 laboratory?

3 A This is the form -- when we send samples
4 to a private lab we use this form because we didn't
5 want to use two different types of forms in this
6 investigation. We use this for sending to our lab
7 also.

8 Q Mr. Zierath, when you were talking about
9 the information that allegedly was received from an
10 informant, you mentioned that you used that
11 information to choose the location of the
12 excavation; is that right?

13 A That is correct.

14 Q Now, when did the informant allegedly say
15 that these drums were delivered and crushed at the
16 landfill? By that I mean the date, if you know?

17 A I don't recall his having said in my
18 presence.

19 Q Do you recall being told what day or date
20 he had said the drums were delivered?

21 A I recall having been told -- my
22 recollection is it was -- he said it was right
23 before his employment date was terminated by
24 whatever means and that that would have been

1 somewhere around the 7th to 9th. But, as I said,
2 he didn't tell me directly, so I don't recall
3 specifically.

4 Q Who did he tell?

5 A He talked to Jack Johnson from the State
6 Police, and I believe Allen Chancilhaskins (spelled
7 phonetically) from the Attorney General's office,
8 also.

9 Q Then you would have received the
10 information from either one of those individuals?

11 A It would have been from Jack Johnson.

12 Q I want to show you a copy of the Illinois
13 State Police Investigative Summary, which appears
14 to be based on the investigation done and the
15 excavation that day.

16 Do you see there where it indicates a
17 date that the informant said the materials had been
18 delivered?

19 A Yes, I do.

20 Q What are the dates there?

21 A It says here on the -- on April 7th, 1992
22 or April 8, 1992.

23 MR. LATSHAW: I think I will object.
24 Hearsay.

1 MR. VAN NESS: Are we going to put this
2 into evidence or are you using it to refresh the
3 witness' memory or what?

4 MR. NAHMOD: Yes. I am not using this as
5 evidence of the actual dates that the materials
6 were delivered. I am using it to show what Mr.
7 Zierath was told as to the dates that the materials
8 were delivered.

9 MR. VAN NESS: We will be watching that
10 very closely.

11 Q (By Mr. Nahmod) Mr. Zierath, I would --

12 HEARING OFFICER WALLACE: Wait just a
13 second.

14 MR. NAHMOD: Okay.

15 HEARING OFFICER WALLACE: Are you
16 withdrawing your objection?

17 MR. LATSHAW: Well, yes.

18 MR. VAN NESS: No. I think we are not
19 withdrawing it, but I think we are willing to --

20 MR. LATSHAW: I made a hearsay objection.

21 HEARING OFFICER WALLACE: Yes, you did.
22 I am asking if that is being withdrawn.

23 MR. LATSHAW: Well, I think it is being
24 offered for the truth of the assertion. I guess in

1 further -- that one, yes. But I am asserting also
2 that I think the witness indicated that he
3 didn't -- I don't think the witness stated that he
4 was ever told what the date was, so I am not sure
5 that that is clear on the record. If he is saying
6 that I was told but I can't recall, then that's
7 another story. But I don't think he said that I
8 was ever told and I can't remember.

9 MR. VAN NESS: My only point, Mr. Hearing
10 Officer, and I don't mean to step on co-counsel
11 here, but my point was that if this is being used
12 to refresh this witness' memory, then there is a
13 way of doing that and we expect it to be used for
14 that purpose and that purpose only and not as
15 direct testimony in its own right. So with that
16 reservation.

17 MR. NAHMOD: It is not being offered as
18 evidence. It is being offered to refresh Mr.
19 Zierath's recollection.

20 HEARING OFFICER WALLACE: All right. I
21 am going to sustain the objection, because I don't
22 recall that Mr. Zierath had a problem remembering
23 whether he had been told or not. I think his
24 testimony was that he had not been told.

1 Q (By Mr. Nahmod) Mr. Zierath, I would like
2 to turn your attention to People's Exhibit 14.
3 Included in that exhibit is a memorandum dated
4 April 22nd, 1992. I have already referred to it in
5 questioning you.

6 A Okay.

7 Q At the bottom of the first page there is
8 a paragraph there that begins, group one, colon.
9 Do you see that?

10 A Yes.

11 Q Reading the first sentence, do you see
12 the end of that sentence?

13 A Yes.

14 Q What does that sentence indicate?

15 A It indicates that we are looking for 80
16 to 100 drums, 55 gallon drums reportedly disposed
17 of in the time period of April 7th to 9th, 1992.

18 Q And do you remember what the source for
19 that information was?

20 A That would have been what I got from Jack
21 Johnson.

22 Q Would that have been the Illinois State
23 Police Investigative Summary?

24 A Right, special Agent Johnson from the

1 State Police.

2 Q So you were told what dates the drums
3 were delivered then; is that right?

4 A Apparently, yes.

5 Q When you began your excavation at the
6 landfill on April 22nd, did you begin exactly where
7 the informant had indicated that operations had
8 taken place?

9 A We began where he indicated they had
10 taken place, yes.

11 Q Do you recall whether Mr. Burger informed
12 you to dig in a slightly different place?

13 A Yes, he did.

14 Q Where was that place in relation to where
15 the informant had said the materials were disposed?

16 A I recall that Mr. Burger said that based
17 on his recollection at the time in question it
18 would have been slightly west of the location
19 indicated by the informant.

20 Q So did you begin excavating where the
21 informant indicated that the drums had been
22 disposed of or where Mr. Burger indicated you
23 should excavate?

24 A My recollection is that we began where

1 the informant said and then moved towards the area
2 where Mr. Burger said.

3 Q Was Mr. Burger present at the landfill,
4 if you know, on the 9th of April, when the drums
5 were allegedly disposed of?

6 A Not that I know of.

7 Q Were you told the basis of his opinion
8 that you should excavate in a location different
9 than where the informant had said?

10 A He had been there -- I don't recall the
11 date, but it would be in my report -- but a very
12 short period of time, several days before the time
13 when the drums would have been disposed of, and
14 knew how much they had filled after that, and so
15 was able to remember where they -- based on his
16 recollection where they had been, where they would
17 have been working then at that time.

18 Q Did he inform you of the basis for his
19 knowledge as to the landfill's operations and what
20 they had filled and when?

21 A My recollection is it was based on where
22 they had been operating, the direction they had
23 been filling in, and what had been filled
24 subsequent to his inspection.

1 Q Did he tell you how he knew that
2 information?

3 A Well, he had been to the landfill doing
4 an inspection just prior to the time of the
5 reported disposal.

6 Q But then you also indicated that he made
7 statements regarding operations subsequent to the
8 time of his visit. So I am asking about that
9 period of time, if he indicated to you how he knew
10 what the landfill had done subsequent to his visit?

11 A My recollection is he advised us as to
12 where to dig based on where he recalled they had
13 been operating when he had been there, and
14 extrapolated it based on the direction they were
15 filling and how much they had filled.

16 Q How much of the area known as area one,
17 where you excavated first, what was the area that
18 you excavated?

19 A I don't recall. I may have written it in
20 my report, but I would have to refresh my memory.

21 Q Would an area of 25 by 40 feet, would
22 that sound about right?

23 A That may be, yes.

24 Q Do you recall how much refuse was

1 excavated before you found the crushed drums?

2 A I don't recall, no. It may be in my
3 report, but I would have to refresh my memory.

4 Q You also excavated a second area at the
5 landfill; is that right?

6 A Yes.

7 Q How many holes did you dig at the second
8 area?

9 A I would have to refresh my memory. We
10 dug several of them.

11 Q You searched an area about 50 feet long?

12 A That could have been, yes. I can refresh
13 my memory, if you wish.

14 Q Yes, if you could do that, that would be
15 helpful.

16 A (The witness reviewed a document.)

17 MR. LATSHAW: I wonder if the record
18 could reflect what the witness is using to refresh
19 his recollection.

20 THE WITNESS: I am looking at Exhibit 14.

21 MR. LATSHAW: Okay.

22 THE WITNESS: I don't find in here that I
23 indicated that in this report, so I don't recall.

24 Q (By Mr. Nahmod) But in that second area,

1 you did not find any of the materials that the
2 informant indicated might be located there?

3 A That is correct.

4 Q When the last crushed drum was removed
5 from the first area in which you searched, you did
6 not detect any solvent odor; is that right,
7 originating from the area that had just been
8 excavated?

9 A That's correct.

10 Q You didn't observe any solvent after that
11 last crushed drum was removed; is that correct?

12 A That's correct.

13 Q You mentioned a search of Waste Hauling
14 records. During that search, you reviewed waste
15 manifests; is that right?

16 A The person assigned to do that did,
17 yes --

18 Q Okay.

19 A -- according to what she told me.

20 Q You expressed an opinion as to the
21 origins of the waste that was excavated that day;
22 is that right?

23 A Yes.

24 Q That opinion was not based on your own

1 personal review of the manifest?

2 A I did not review the manifest at the
3 landfill or at the office but I did review the
4 manifest that -- the copies of the manifests that
5 were provided to me.

6 Q Did that include all manifests for April
7 9th, 1992?

8 A It included all manifests from that week.

9 Q Okay. If waste had been disposed of at
10 the landfill and no manifests were completed by the
11 landfill or kept on file by the landfill, would you
12 have reviewed any records at all concerning that
13 waste?

14 A They were keeping a log of waste that
15 they had received, so there was a potential there
16 would have been other records if not manifests.

17 Q Did you review the logs?

18 A Yes. Well, I did not. A person under my
19 direction did, yes.

20 Q Were you provided copies of the logs
21 subsequent to that person's review of them?

22 A Yes.

23 Q All of the logs?

24 A For that week.

1 Q For that week. Do those logs indicate
2 the nature of the waste?

3 A In some cases, yes.

4 Q We have looked at a manifest from -- I am
5 sorry -- a list of waste received on April the 9th,
6 and I believe it is marked as People's Exhibit 16.
7 I wanted to ask you a few questions about that.

8 Q Could you describe any of the waste that
9 is listed here on this daily solid waste record
10 besides the Bell Sports' waste?

11 A Based only on this, no, I cannot.

12 Q What else would you need?

13 A In some cases, there were -- or at least
14 in one case a Special Waste Permit for what is
15 listed as Staleys 29, that waste would be described
16 in the permit application.

17 Q Other than what appears to be an
18 indication that a Special Waste Permit was issued
19 in connection with Staleys 29, would there be any
20 other records for this waste that you could look at
21 to determine the nature of the waste?

22 A No.

23 Q So you do not know -- you could not know,
24 other than that waste and Bell's waste what the

1 nature of the waste was?

2 A Not from records I have access to.

3 Q Do you know whether any of this waste
4 listed here contained MEK or benzene?

5 A I have no way of knowing.

6 Q Do you know where at the landfill this
7 waste was disposed of?

8 A Based on the date, it was in the area
9 they were disposing waste on on April 9th. We were
10 able to determine roughly where that was.

11 Q Who informed you that the waste was
12 disposed of at the landfill on April 9th, that this
13 waste was disposed of on April 9th?

14 A This is a daily solid waste record that
15 the landfill was required to keep, and this is for
16 waste received on the 9th of April.

17 Q Has anyone informed you as to the
18 location at the landfill that this waste was
19 disposed of?

20 A Not me, no.

21 Q To your knowledge, has anyone at the
22 Agency been informed as to where the waste listed
23 here was disposed of at the landfill?

24 A Specifically, no.

1 Q So then when you said that the -- that
2 you are assuming that the waste here was disposed
3 of in a certain place that you were directed
4 towards, what was the basis for that?

5 A These are shipments of waste that they
6 had received on the 9th of April in 1992, and that
7 was where the active area of the landfill was at at
8 that time.

9 Q Okay. But you were not told that this
10 waste was disposed of at that active area on April
11 9th?

12 A No, nobody told me.

13 Q Okay. Do you know whether any of the
14 waste on this list was disposed of in drums?

15 A I do not know.

16 (Ms. Menotti left the hearing
17 room.)

18 Q (By Mr. Nahmod) I want to show you what
19 appears to be Uniform Waste Manifests, after I show
20 them to Counsel for Waste Hauling and the State.

21 A Okay.

22 MR. NAHMOD: I am not going to have these
23 entered into evidence at this time. The dates are
24 indicated here as April 7.

1 (Ms. Menotti entered the
2 hearing room.)

3 MR. TAYLOR: We will represent that these
4 were all manifests that were received in discovery
5 from Waste Hauling and also from the State.

6 HEARING OFFICER WALLACE: Let's go off
7 the record.

8 (Discussion off the record.)

9 HEARING OFFICER WALLACE: Back on the
10 record.

11 Q (By Mr. Nahmod) I apologize for standing
12 next to you while you look at these. There are
13 three Uniform Waste Manifests that I am showing you
14 that all of Counsel has seen. One is dated April
15 7, 1992, which is the one all the way to your
16 right. This one is dated April 13, 1992, and then
17 this one is dated April 21, 1992.

18 A Okay.

19 Q Can you please read the description of
20 the waste for the April 7th manifest?

21 A It says --

22 MR. VAN NESS: Are we -- what are we
23 doing here? I think I will have to object. I am
24 not sure that this witness is competent to give

1 testimony regarding this document when he hasn't
2 even indicated that he has ever seen it before. He
3 certainly has not prepared it. I am not sure what
4 the point is here, so I will object.

5 MR. NAHMOD: Well, my response to that is
6 that we are not introducing this as evidence at
7 this point.

8 I would like to remind Counsel that he
9 asked a fair share of questions of Mr. Zierath as
10 to a waste manifest that he also did not have any
11 personal knowledge of, and the testimony was
12 allowed.

13 MR. VAN NESS: Well, that particular
14 manifest was entered into evidence as People's
15 Exhibit 17. I guess I am unaware that this witness
16 has seen these documents before or has any
17 knowledge about them whatsoever.

18 MR. DAVIS: Mr. Hearing Officer, our
19 witness is more than competent to explain what is
20 on a waste manifest. These were the waste
21 manifests that the State presumably inspected
22 during its search warrant.

23 HEARING OFFICER WALLACE: All right. The
24 objection is noted. Let's continue, Mr. Zierath.

1 Q (By Mr. Nahmod) Can you please read the
2 description of the waste on the April 7th manifest?

3 A Okay. The waste description is paint
4 sludge and filters, nonhazardous material. And in
5 parenthesis it has not hazardous by DOT.

6 Q Do you know whether that waste contained
7 MEK or benzene?

8 A There is no indication of that.

9 Q Do you know where at the landfill that
10 waste was disposed of?

11 A Only that it -- I know approximately
12 where the active area was on that date.

13 Q But you do not know that that specific
14 waste was disposed of at a particular location?

15 A No.

16 Q Turning your attention to the manifest,
17 who is indicated as the generator of that waste?

18 A In the generator's name and mailing
19 address, it says Caterpillar, Incorporated, 27th &
20 Pershing Road, Decatur, Illinois, 62525.

21 Q Turning your attention to the manifest
22 dated April 13th, who is indicated as the generator
23 on that manifest?

24 A Climate Control, Incorporated, 2120 North

1 22nd Street, Decatur, Illinois, 6252 -- I think
2 that is 6.

3 Q Have you -- do you know whether that
4 waste contains any MEK or benzene?

5 A No, I do not.

6 Q Do you know where at the landfill that
7 waste was disposed of?

8 A No.

9 Q Now, turning your attention to the third
10 of the three manifests, dated April 21st, who was
11 the generator indicated on that manifest?

12 A It is Climate Control, Incorporated
13 again.

14 Q What is the description of the waste on
15 that manifest?

16 A There are two different descriptions.
17 The first one is paint and grinding sludge, and in
18 parenthesis it has not hazardous by DOT. The
19 second waste description is waste water
20 pretreatment sludge, and also in parenthesis not
21 hazardous by DOT.

22 Q Do you know whether that waste contained
23 MEK or benzene?

24 A No, I do not.

1 Q Do you know where at the landfill that
2 waste was disposed of?

3 A No, I do not.

4 Q Have you visited any of the facilities
5 indicated on those manifests?

6 A No.

7 Q Have you sampled any of the wastes
8 originating from those facilities?

9 A No, I have not.

10 Q Mr. Zierath, you testified as to
11 statutory and regulatory requirements triggered by
12 the presence of hazardous waste, didn't you?

13 A Yes.

14 Q Would any hazardous waste, regardless of
15 its origin, that is located at the landfill,
16 trigger those requirements?

17 A As long as it came from a facility that
18 generated over 100 kilograms per month of hazardous
19 waste, yes.

20 Q One final question. Are you aware that
21 the landfill is no longer accepting waste?

22 A I have seen that on the television and
23 read it in the newspaper.

24 Q To your knowledge, was closure of the

1 landfill related to the waste discovered at the
2 landfill on April 22nd, 1992?

3 A From my knowledge gained from both media
4 it was closed by court order from a hearing that
5 occurred before our inspection.

6 Q You mentioned that 53 drums of the 80
7 that you were looking for were uncovered during
8 excavation; is that right?

9 A Correct.

10 Q And the 27 drums that you were looking
11 for were not found and have not been found?

12 A We did not find them on the date of my
13 inspection, and I have not heard that they have
14 been found since.

15 Q And you did make an effort to find the
16 remaining drums that were allegedly exposed that
17 day?

18 A Yes.

19 Q You mentioned that you had to dig through
20 refuse to reach the crushed drums; is that right?

21 A Correct.

22 Q Was any sample taken of the refuse
23 removed that you had to dig through to get to the
24 drums?

1 A No.

2 Q Was any sampling done of the waste
3 disposed of on the sides of -- on any side of the
4 waste that was excavated? I am going to rephrase
5 that question.

6 Was any sampling done of the waste found
7 on the sides of the drums that were excavated?

8 A No.

9 Q Was any sampling done of the waste that
10 was beneath the drums that were excavated that day?

11 A No.

12 MR. NAHMOD: I have no further questions
13 at this time.

14 HEARING OFFICER WALLACE: All right. Why
15 don't we break for lunch. I have 12:30. Let's be
16 back at 1:35.

17 (Whereupon a lunch recess was
18 taken from 12:30 p.m. to 1:35
19 p.m.)

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AFTERNOON SESSION

(April 15, 1997; 1:35 p.m.)

HEARING OFFICER WALLACE: Back on the record.

Let's resume for the afternoon. Mr. Zierath is still on the stand. You are still under oath, sir.

You may begin redirect.

MS. MENOTTI: Before I begin my redirect, can we have the manifest that Counsel for Bell asked the witness about and have them marked, even though they are not being offered into evidence?

MR. VAN NESS: Mr. Hearing Officer, we will renew our objection. We think that these three manifests are without foundation, are irrelevant, are immaterial, and simply want the record to show that we have serious objection.

We would move that it be not admitted and that responses relevant thereto be struck.

HEARING OFFICER WALLACE: All right. Your objection is noted and overruled at this time.

I am sorry. You wish to --

1 MS. MENOTTI: Either have them marked for
2 reference or I can refer to them by date.

3 HEARING OFFICER WALLACE: All right.
4 Just go ahead and refer to them by date at this
5 point, since the -- you are not going to offer them
6 into evidence?

7 MS. MENOTTI: No. I just wanted a chance
8 to follow-up the questions that the attorneys for
9 Bell asked regarding these documents.

10 HEARING OFFICER WALLACE: All right.

11 REDIRECT EXAMINATION

12 BY MS. MENOTTI:

13 Q Mr. Zierath, let me direct your attention
14 to your inspection of April 22nd, 1992. Of the 53
15 drums that were excavated from the landfill, how
16 many had contents that were accessible for
17 sampling?

18 A I don't recall at this point. I don't
19 remember if I even wrote that down in my report.

20 Q Can you give us any kind of about number
21 or an estimation?

22 A My recollection is maybe half of them had
23 waste materials in them that was accessible, but
24 that's a rough estimate.

1 Q And when you chose which drums to take
2 samples from, did you use the PID meter?

3 A Yes.

4 Q And what made you choose the drums that
5 you did for the samples?

6 A We collected seven samples and we chose
7 the seven that we could get waste out of that had
8 the highest reading on the PID meter.

9 Q If you had wanted to, could you have
10 taken samples from all the drums that had materials
11 available or that had materials inside of them?

12 A I don't understand.

13 Q Let me rephrase it. If you had -- of all
14 the drums that had materials inside them that you
15 observed, could you have pulled samples from each
16 of these drums?

17 A For those that had enough material that
18 could be reached we could have collected samples.
19 However, we had a budget, and we didn't want to
20 collect a sample from everything we could reach.

21 Q I am going to switch subjects to the
22 questions that were asked regarding the bottles
23 that were used for sampling. Do you remember Mr.
24 Nahmod asking you questions about the seals and the

1 bottles that were used for the samples?

2 A Yes.

3 Q When the Agency had possession of the
4 bottles you said that they were kept in a storage
5 area at the Agency?

6 A Actually, it was a contractor the Agency
7 had contracted with, and they were kept in a secure
8 area. They were clean bottles that were unsealed
9 by him, put into the coolers and then sealed in the
10 coolers with records kept as to, you know, what
11 bottles were used and in case there was a question
12 about whether the bottle was contaminated.

13 Q Were these bottles kept sealed until the
14 date of the inspection?

15 A They were kept sealed -- the ones we
16 received were packed according to the chain of
17 custody form into the coolers on the 20th, and we
18 kept them sealed until we were ready to use the
19 bottles.

20 Q I am going to hand you the three
21 manifests that Mr. Nahmod asked you about
22 previously. On those manifests, is the type of
23 waste identified?

24 A Yes, it is.

1 Q And on any of those manifests, is the --
2 under box number 12, is the type of container that
3 the waste was disposed of in indicated on any of
4 those?

5 A The type of container that the waste was
6 transported in is indicated on all three of the
7 manifests.

8 Q Could you identify the first manifest to
9 your right in front of you. Which manifest is
10 that?

11 A This is the one from April 7th, 1992.

12 Q And who is the generator on that one?

13 A Caterpillar, Incorporated.

14 Q What kind of containers was the waste
15 transported in?

16 A I don't recall what CM stands for, but it
17 is a -- what it is an abbreviation for, but it is
18 a -- it is what is referred to as a roll-off box, a
19 large metal container that is rolled on to a truck
20 for transportation. On this manifest there was one
21 of those containers.

22 Q Does it have the quantity of waste
23 indicated anywhere?

24 A Yes, it does.

1 Q Can you tell me what it is?

2 A In the total quantity it has eight and in
3 the unit column it has two, which stands for cubic
4 yards.

5 Q Okay. The middle document, what is the
6 date on that document?

7 A This is a shipment that originated on
8 April 13th, 1992.

9 Q Who was the generator?

10 A Climate Control, Incorporated.

11 Q Directing your attention again to box 12,
12 is the type of container indicated?

13 A Yes, it indicates that there were two
14 such containers like I described previously. One
15 of them contained eight cubic yards and the other
16 one contained seven cubic yards.

17 Q And the last manifest, what is the date
18 on that one?

19 A It is April 21st, 1992.

20 Q And who is the generator listed on that
21 one?

22 A Climate Control, Incorporated.

23 Q Then directing your attention back down
24 to boxes 12 and 13, does it say what type of

1 container this waste was disposed of in -- or
2 transported in? I am sorry.

3 A There were two shipments of the same type
4 of containers as the previous two manifests. One
5 was eight cubic yards and the other was seven cubic
6 yards.

7 Q Do you have any knowledge, generally, as
8 to what color paint Caterpillar uses?

9 A I am familiar with the yellow paint that
10 they use on quite a bit of their equipment that
11 they manufacture.

12 Q Just one more thing. I direct you to
13 People's Exhibit Number 17. Can you please tell me
14 what kind of containers are listed on this
15 manifest?

16 A Yes. It indicates that there are 80.
17 And the type is DR, which means drums. And the
18 quantity of the waste was 4,400 gallons, which
19 would be the same as you would have in 80, 55
20 gallon drums.

21 MS. MENOTTI: All right. We have nothing
22 further.

23 HEARING OFFICER WALLACE: All right. Mr.
24 Van Ness?

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RECROSS EXAMINATION

BY MR. VAN NESS:

Q Mr. Zierath, do you recall whether your confidential informant accompanied you to the landfill on that date?

A At the beginning of the investigation he did accompany us there, yes.

Q Did he remain around to see the barrels being removed?

A No, he did not.

MR. VAN NESS: I guess I have nothing more, Mr. Hearing Officer, except to once again renew my motion to exclude and to strike testimony relating to the three Uniform Waste Manifests that were basically read into the record without foundation and no showing of relevance or materiality.

So I will renew that so it is clear that the entire line of testimony is objected to by us.

HEARING OFFICER WALLACE: All right. Your objection is noted and overruled.

Mr. Nahmod?

MR. NAHMOD: We have no further questions.

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EXAMINATION

BY HEARING OFFICER WALLACE:

Q All right. Mr. Zierath, has the confidential informant ever been identified publicly?

A My understanding was he was identified in a newspaper report, but I didn't see that.

Q No, I meant has the Agency ever identified him?

A Not that I know of.

Q Okay. Now, on your bottles you said that you got -- I am still unclear now. You received the bottles sealed in a cooler that was also sealed, and these coolers were put in a room at the Agency?

A We received them -- we have a contractor who is contracted to provide the bottles. They are put in a cooler that can only be opened -- you can't open the hinges from the back or anything without destroying the cooler, so that -- and there is a -- I guess I would describe it as a clasp type thing on the front, so that they can put a plastic seal that can't be opened without destroying it on that, so that the seal can then be -- the number on

1 it can be recorded and, you know, verified that
2 that same seal was the one that was put on by the
3 last person that handled the bottles.

4 Q All right. Wait just a second.

5 A Okay.

6 Q Your contractor puts bottles in a cooler
7 and seals it, and then he does what with the
8 cooler?

9 A Okay. At that point we pick the cooler
10 up from him. Then in this case, because we got the
11 bottles -- well, it was the late afternoon, maybe
12 two days before the investigation, I went over and
13 picked the coolers up and took them back and put
14 them in our storeroom.

15 Q Okay. Who did you pick them up from?

16 A From the contractor that --

17 Q Who is?

18 A I don't recall the gentleman's name, at
19 this point. I would have to have other people in
20 the Agency provide that information.

21 Q Okay. And you put them in -- you took
22 them back to the Agency. Where exactly?

23 A We have a locked storeroom within our
24 office that only the people that work in my -- in

1 the Bureau of Land, the Division of Land Pollution
2 Control, have keys to.

3 Q What is the address of this office?

4 A It is 4500 South Sixth Street Road in
5 Springfield.

6 Q Then the coolers -- was there just one
7 cooler of bottles?

8 A There were a number of coolers. I don't
9 recall. But there were more than two, I know.

10 Q They remained in this locked room until
11 April the 22nd?

12 A Right, until we loaded the equipment in
13 the vehicles.

14 Q And then the lab report would indicate
15 who opened the coolers?

16 A That's correct.

17 Q The coolers were labeled, right, or
18 numbered?

19 A The coolers were not -- I don't think
20 they were numbered, but the seal on each of the
21 coolers was numbered. They had sequential numbers
22 on the seals.

23 Q Is that reflected in the lab report?

24 A Yes, it is.

1 Q Okay. Now, you mentioned standards for
2 MEK and benzene in your testimony. Where are those
3 standards found?

4 A In 35 Illinois Administrative Code, 721.

5 HEARING OFFICER WALLACE: All right.
6 Thank you, Mr. Zierath. You may step down.

7 (The witness left the stand.)

8 HEARING OFFICER WALLACE: The next
9 witness.

10 MS. MENOTTI: The People call Dustin
11 Burger.

12 (Whereupon the witness was
13 sworn by the Hearing Officer.)

14 D U S T I N L E E B U R G E R,
15 having been first duly sworn by the Hearing
16 Officer, saith as follows:

17 DIRECT EXAMINATION

18 BY MS. MENOTTI:

19 Q Could you please state your name for the
20 record.

21 A Dustin Lee Burger.

22 Q And could you tell us about your
23 educational background, Mr. Burger?

24 A Yes. I received a Bachelor's of Science

1 Degree from the University of Illinois at
2 Champaign-Urbana, in the teaching of life
3 sciences.

4 Q Who is your employer?

5 A The Illinois Environmental Protection
6 Agency.

7 Q How long have you been employed by the
8 Agency?

9 A It will be six years on June 2nd.

10 Q What is your current position with the
11 Agency?

12 A I am an Environmental Protection
13 Specialist with the EPA's Bureau of Land, in the
14 Field Operations Section, in the Champaign Regional
15 Office.

16 Q How long have you been in this position?

17 A The almost six years that I have been
18 with the Agency.

19 Q What does this position involve?

20 A I am a solid waste and hazardous waste
21 inspector. I inspect solid waste landfills and
22 open dumps and hazardous waste generators,
23 transporters, and disposal facilities.

24 Q Have you had any additional training

1 beyond your Bachelor's Degree?

2 A Yes, I have. I have had training in how
3 to conduct solid waste and hazardous waste
4 inspections. I have been to the Hazardous Waste
5 Inspectors Institute in Denver, Colorado. I have
6 received training from the United States EPA in the
7 construction of municipal solid waste facilities.
8 I have received training in geology and
9 hydrogeology and groundwater chemistry.

10 Q Approximately how many landfills have you
11 inspected or been involved with in the course of
12 your employment with the Agency?

13 A I believe at last count it was 14.

14 Q Can you generally describe how you
15 conduct an inspection of a facility?

16 A Hazardous waste or solid waste or both?

17 Q For both.

18 A Generally when we inspect a facility we
19 review the facility's file, check and see -- read
20 the facility's permit, the past inspection reports
21 and any other correspondence in the file. And then
22 we gather our materials together and visit the site
23 and physically observe the physical situation at
24 the site and review documents and records, and

1 speak with the facility personnel.

2 Q Do you record the observations that you
3 make once you are on site?

4 A Yes, I do. I take photographs of the
5 physical conditions at the site and also take field
6 notes that are then later transcribed into an
7 inspection report.

8 Q Is that your general practice when you
9 conduct an inspection of a facility?

10 A Yes, it is.

11 Q In the report that you mentioned that
12 gets generated, is it retained anywhere?

13 A Yes, a copy is retained in our Champaign
14 Regional Office files and another copy is sent to
15 the Agency's division files in Springfield.

16 Q Are you familiar with the Waste Hauling
17 Landfill?

18 A Yes, I am.

19 Q In what capacity?

20 A I have been the inspector assigned to the
21 landfill for part of -- or since 1992, in addition
22 to the County authorities, also.

23 Q Are you familiar with the Agency file
24 regarding the landfill?

1 A Yes, I have read it.

2 Q Have you reviewed the file prior to
3 testifying today?

4 A Yes, I have.

5 Q What kind of documents does the file
6 contain?

7 A The file contains permit records. It
8 contains drawings. It contains correspondence
9 between the facility, its engineer, and the
10 Agency. It contains inspection reports, special
11 waste permits, groundwater monitoring reports, in
12 most cases, and any other general correspondence or
13 other information collected from the landfill.

14 Q Does the landfill have any permits issued
15 to it by the Agency?

16 A Yes, it does.

17 Q Can you describe them?

18 A Yes. In general, they have a permit to
19 develop and operate a solid waste and special waste
20 landfill on the property.

21 Q Okay. Which regulations from 35 Illinois
22 Administrative Code apply to this facility?

23 A It would be Section 807, Standards for
24 Municipal Solid Waste Facilities. That's what it

1 is titled.

2 Q Under those regulations, what kind of
3 waste was the landfill permitted to receive?

4 A It is permitted to receive general
5 municipal solid waste and certain special wastes
6 that they had special waste permits for.

7 Q Can you give me a definition of what
8 general waste is?

9 A Sure. General municipal waste is waste
10 generated from a typical citizen in the county or
11 the local area that -- their normal trash that they
12 would throw in the trash can and the garbage hauler
13 would come and pick up.

14 Q And can you describe generally what
15 special waste is?

16 A Sure. Special waste is any industrial
17 processed waste that is generated from any sort of
18 business activity or pollution control wastes, and
19 another whole classification of waste above and
20 beyond what a normal person would throw in their
21 garbage.

22 Q And what, exactly, is a special waste
23 stream permit?

24 A Each landfill at that time needed to

1 obtain a special waste stream permit before they
2 could accept a waste from an industry. They would
3 send in an application to the Agency. The landfill
4 would send in the application. It would be granted
5 to the landfill to accept a particular waste
6 stream.

7 Q Did the Waste Hauling Landfill have a
8 special waste stream permit to accept waste from a
9 company by the name of Bell Sports?

10 A I believe they did, yes.

11 Q Do you recall the nature of the wastes
12 that they were permitted to accept?

13 A It was paint sludge, I do believe.

14 Q Do you recall who the permit was issued
15 to?

16 A It was Waste Hauling, Inc.

17 Q Were you at the landfill on April 22nd,
18 1992?

19 A Yes, I was.

20 Q What was your role during that visit?

21 A I was, I guess you would call it, the
22 assistant project manager for the search warrant.
23 Since I had been to the landfill just a short time
24 before, I had a general knowledge of what the

1 landfill looked like in areas they had been filling
2 prior to the execution of the search warrant. I
3 was, I believe, the only person, besides Mr.
4 Zierath, a long time previously that had been to
5 the landfill in recent history.

6 Q Can you describe what occurred during
7 your visit there that day?

8 A Yes. We arrived with the Illinois State
9 Police and a confidential informant. We also had a
10 crew from Heritage Environmental that supplied a
11 backhoe or a highhoe that we used to excavate, and
12 we also included Agency personnel that would sample
13 any of the material that we recovered from the
14 landfill.

15 We arrived on site, set up our safety
16 plan, and it took a little while to set up before
17 we began excavating at an area where the
18 confidential informant had said that the drums had
19 been disposed of. Then we gradually worked back
20 towards an area that I had observed Waste Hauling
21 dumping right around the time that this alleged
22 disposal had happened.

23 Q Were you there while the drums were being
24 excavated?

1 A Yes. I was actually the spotter for the
2 backhoe, and if we -- as we were digging if we
3 found a drum I would direct them to where it was.
4 They would remove it with the backhoe, and it would
5 be staged on a piece of plastic nearby for later
6 sampling.

7 Q Were you there when the samples were
8 taken?

9 A Yes, I was. I was the runner who held
10 the sample from the time when it was collected, and
11 took it to the table to Amy Brown, who then checked
12 the sample in and placed it in the containers or
13 the coolers.

14 Q Do you know if any analyses were
15 performed on the samples that were taken?

16 A Yes.

17 Q And are the results a part of the Agency
18 file?

19 A Yes, they are.

20 Q Did you review those results at any
21 point?

22 A Yes, when the sample results were
23 received from the lab.

24 Q Do those results indicate anything to

1 you?

2 A Yes, the results -- we took seven samples
3 from the landfill, and of the seven samples that we
4 pulled from the drums four of them came back with
5 hazardous constituents above regulatory limits.

6 Q Do you recall which constituents those
7 were?

8 A Yes, they were benzene and methyl ethyl
9 ketone, which is also known as 2-Butanone.

10 Q Do these results have any statutory or
11 regulatory significance?

12 A Yes, under the hazardous waste
13 regulations there are several ways a waste can
14 become hazardous. One of them is if an analysis
15 indicates that certain constituents are over a
16 certain regulatory level. For benzene the level
17 is, I believe, half part per million.

18 And for methyl ethyl ketone I believe it
19 is 200 parts per million. If the concentrations of
20 Benzene or methyl ethyl ketone are over this
21 regulatory limit, the waste is a hazardous waste
22 with the characteristic of toxicity.

23 Q Under the permits issued to the Waste
24 Hauling Landfill, are they subject to the hazardous

1 waste regulations?

2 A Yes. If you accept a hazardous waste at
3 a facility for disposal, you have to meet what we
4 call a big laundry list of regulations. In order
5 to accept a hazardous waste, first of all, you have
6 to have a permit to do it. If you don't have a
7 permit, then there is a long list of regulatory
8 violations that we usually site.

9 One is if you do not have a -- you must
10 also have a -- if you are going to accept hazardous
11 waste, you have to have a permit. Your landfill
12 has to be designed to accept hazardous wastes, not
13 just a regular 807 solid waste landfill. There is
14 many more engineering requirements that go into the
15 siting and design of a landfill that accepts
16 hazardous waste.

17 You have to have personnel training. You
18 have to have a contingency plan. You have to have
19 a waste analysis plan that determines what each
20 waste is when it comes into the landfill. You have
21 to have inspections of the waste that is accepted
22 and where it -- make notes on where it is placed in
23 the landfill. All these records have to be
24 maintained in another requirement, which is to have

1 an operating plan, which all these records are
2 maintained in. It is usually a big book or a file
3 in one of the other facilities.

4 If you accept hazardous waste you also
5 must have -- let me go through my list here that we
6 cite many times. You also, if you accept hazardous
7 waste, the hazardous waste must meet certain land
8 ban restrictions. That means it has to be either
9 treated or somehow rendered nonhazardous -- or
10 somehow the toxicity levels have to be reduced
11 before it can be placed in a landfill.

12 You have to send notifications in to the
13 U.S. EPA and the Illinois EPA stating that you plan
14 on receiving hazardous wastes. You also -- because
15 flammable liquids were received, that is also
16 another violation of the land ban restrictions.
17 And there are some other ones under each one of
18 these general categories.

19 There are many individual regulations
20 pertaining to each one, but I just went through the
21 general ones for each one.

22 Q Based on the information that you have
23 available to you and your inspections at the
24 facility, was the landfill following the general

1 categories of regulations that you have just
2 referred to?

3 A No. If you accept a hazardous waste
4 without a permit, and you are not prepared to do
5 so, generally -- that's why we call it a laundry
6 list. Once you do that, there is usually a large
7 list of violations that go along with accepting
8 hazardous wastes without a permit.

9 Q Do you know what a Part A Application is?

10 A Yes, that would be the permit that is
11 granted to a hazardous waste treatment storage or
12 disposal facility to actually begin accepting waste
13 under interim status.

14 Q Did the Waste Hauling Landfill have one
15 of these?

16 A No. That was the permit that would have
17 been lacking for them to ever accept this waste.

18 Q At any time did the landfill submit any
19 documentation regarding hazardous waste?

20 A No, they have not submitted annual
21 reports or the operating plan or permit or any
22 other sort of documentation for it.

23 Q Does the landfill have any type of water
24 monitoring program?

1 A No. That would be under the design
2 requirements for both solid waste and hazardous
3 waste landfills, and I believe their groundwater
4 monitoring system consists of one well, which is
5 inadequate.

6 Q Does the landfill have any type of liner
7 in it?

8 A I checked back through the file and I did
9 not see any notation of a liner. I spoke with Brad
10 Brown on that topic at one time and he mentioned
11 that the landfill had an in situ liner. In other
12 words, it wasn't one that actually has been
13 engineered, but they basically built the landfill
14 on top of clay.

15 Q Is a liner required by the 807
16 Regulations?

17 A Yes, it is.

18 Q After your visit in April of 1992, have
19 you had other occasions where you visited the site?

20 A Yes, I was there again in 1996. I
21 believe it was August 28th, 1996.

22 Q What was the purpose of your visit that
23 day?

24 A It was more or less a routine

1 inspection. We planned on possibly taking some
2 leachate samples from the landfill during that
3 visit. I actually accompanied one of the solid
4 waste inspectors from the County on that
5 inspection, because he would be supposedly taking
6 over the inspections on the landfill at some later
7 date, and wanted him to become familiar with the
8 site.

9 Q Did you generate a report regarding this
10 inspection?

11 A Yes, I did.

12 MS. MENOTTI: Could you mark this,
13 please.

14 (Whereupon said document was
15 duly marked for purposes of
16 identification as People's
17 Exhibit 18 as of this date.)

18 Q (By Ms. Menotti) I have just handed you
19 what has been marked as People's Exhibit Number
20 18. Can you identify the document, please?

21 A Yes. It is a copy of the inspection
22 report dated August 28th, and it consists of my
23 solid waste landfill checklist and a narrative
24 summary of apparent violations, site sketch, and

1 photos.

2 Q Is this a report that you generated?

3 A Yes, it is.

4 Q And is this report based on your
5 observations made during the August 20th, 1996
6 inspection?

7 A Yes, it is, although I didn't actually
8 put the date on the cover sheet. It is actually on
9 the narrative.

10 Q Is this the type of report that is
11 generated and maintained for Agency files?

12 A Yes, it is.

13 Q Is it the type of report that is
14 ordinarily prepared in the course of Agency
15 business?

16 A Yes, it is.

17 Q Was the documentation in front of you
18 prepared contemporaneously with or shortly after
19 you conducted your inspection at the site?

20 A Yes, I believe it was.

21 Q Is this a true and accurate copy of the
22 inspection report for August 28, 1996?

23 A Yes, it is. There was one attachment,
24 which was a videotape, but that did not turn out.

1 But, otherwise, this is the paper part of it.

2 MS. MENOTTI: At this point, Mr. Hearing
3 Officer, the People would move to admit this as a
4 business record of the Agency.

5 MR. VAN NESS: We will object to that,
6 Mr. Hearing Officer. First, on the grounds of
7 relevancy. On its face this document relates to a
8 Part 807 inspection. It is, in fact, a Part 807
9 inspection report. We have seen already what a
10 RCRA inspection report looks like. It was my
11 understanding, pursuant to the understanding among
12 Counsel and the Hearing Officer, that today's
13 proceeding would be limited to the non 807 related
14 counts in the complaint.

15 To the extent that I can see in this
16 inspection report, it relates exclusively to the
17 counts that the People have already rested on,
18 namely Counts 5 and 6, so I would move that this
19 exhibit not be entered into evidence.

20 HEARING OFFICER WALLACE: All right. Mr.
21 Taylor, any objection?

22 MR. TAYLOR: I would tend to agree with
23 Mr. Van Ness. It was my understanding that the
24 two-day hearing we had last month was to address

1 solid waste issues, and this was to address the
2 hazardous waste issues.

3 MS. MENOTTI: May I respond?

4 HEARING OFFICER WALLACE: Ms. Menotti?

5 MS. MENOTTI: First, to respond to Mr.
6 Van Ness, the People have not rested regarding any
7 of the counts of the complaint. Certainly, while
8 the first two days of hearing were devoted to
9 specific counts of the complaint, it was by no
10 means exhaustive. It was bifurcated that way due
11 to a request by the Waste Hauling Respondents that
12 we not go forward on the hazardous waste
13 violation.

14 Mr. Burger has observed both the
15 hazardous waste violations and the solid waste
16 violations as an inspector at the landfill, and
17 should not be precluded from testifying to his
18 knowledge regarding -- he is testifying today to
19 both things, as a matter of convenience so he did
20 not have to travel from Champaign on multiple
21 occasions to testify in this hearing.

22 HEARING OFFICER WALLACE: All right. I
23 am going to reserve ruling. I need to go back and
24 look through the transcript to see where we were

1 before I respond. I will rule on it at a later
2 date.

3 Please continue.

4 Q (By Ms. Menotti) Can you please summarize
5 your observations on that date?

6 A Yes. I arrived at the site with Jeff
7 London, who is the solid waste inspector for Macon
8 County. Again, one of their main concerns was to
9 show him the site since he would possibly be taking
10 over inspections at a later date, and to take
11 leachate samples leaking out of the -- if there
12 were any there. And we also wanted to find out
13 just the general condition of the landfill, and if
14 the roll-off boxes still contained the drums that
15 were excavated previously were still present.

16 We arrived at the site, and we met Brad
17 Brown, who was representing Waste Hauling at that
18 time, and we walked around the facility. Jeff
19 London took three photographs while I operated the
20 video camera, which I think was probably the same
21 one that we used for the other one. For some
22 reason or another, I don't know whether it was the
23 tapes or the video camera, but it did not turn out
24 very well. It was very hard to read.

1 We walked around the perimeter of the
2 landfill and found several leachate seeps. Since
3 the weather had been extremely dry during the
4 previous months -- Brad Brown said it had only
5 rained there two inches -- there were not as many
6 leachate seeps in comparison as to the past
7 inspections or even present inspections.

8 The general consensus was that nothing
9 new had been done at the landfill, no new cover had
10 been applied. Erosion gullies had not been
11 repaired. There really had not been any action
12 since the last time we had been to the landfill.

13 Q Did you anywhere in this report note any
14 violations or noncompliance with the hazardous
15 waste regulations?

16 A Yes, I did. I included two sections.
17 One was for the solid waste violations, which had
18 all been discussed in previous reports. I didn't
19 site any particular new violations on that time.
20 Most of them had been ongoing.

21 Then I also included a section at the end
22 of the report on hazardous waste violations, which
23 just gave a general overview that the facility had
24 accepted hazardous waste and did not have a permit,

1 and did not comply with all of the other
2 requirements for a hazardous waste landfill.

3 Q In your opinion, do these violations that
4 we have been talking about have any impact on the
5 environment?

6 A Yes, I do.

7 MR. LATSHAW: I wonder if we could ask
8 which violations Counsel is referring to?

9 Q (By Ms. Menotti) The violations -- I am
10 sorry. The violations -- you mentioned leachate
11 seeps. Do they have any impact on the --

12 MR. LATSHAW: Once again, we will renew
13 our objection to this line of questioning.

14 HEARING OFFICER WALLACE: The objection
15 is noted. I will have to rule on that later.

16 Please continue.

17 Q (By Ms. Menotti) In your opinion, do the
18 leachate seeps have any impact on the environment?

19 A Yes. This landfill has had repeated
20 problems with leachate in the past. It has been
21 observed running from the landfill into a nearby
22 creek on the east side of the landfill, and into a
23 ditch on the west side. By acceptance of hazardous
24 waste that also means that hazardous constituents

1 can be leaching from the landfill into these nearby
2 streams and ditch, which then flows into the
3 Sangamon River.

4 Q Does the disposal of hazardous waste have
5 any impact on the environment, in your opinion?

6 A The disposal of hazardous waste would add
7 several other hazardous constituents possibly to
8 the leachate generated by the landfill already. It
9 could have an impact on people, on the water
10 quality down stream.

11 Q Did you have an opportunity to visit the
12 landfill again after the August 1996 visit?

13 A Yes, I did.

14 Q When was that?

15 A That was, I believe, February 28th, 1997.

16 Q Can you describe your visit on that date?

17 A Yes. We met with opposing Counsel, and
18 we met with Jerry Camfield, and Steve Townsend was
19 the lead inspector on that particular inspection.
20 The purpose was to determine the current state of
21 the landfill and to measure the dimensions of the
22 landfill, and I assisted Steve Townsend in that
23 regard.

24 Q What did you find that day?

1 A During that day -- it had not been nearly
2 as dry, and we observed numerous leachate seeps
3 seeping from the eastern, the northern and western
4 sides of the landfill that were flowing into a
5 creek that flows along the east side of the
6 landfill and into a ditch on the west side.

7 We also observed leachate seeps on top of
8 the fill area where they had -- where the last
9 active areas had been right before the landfill had
10 been closed down by the court order. And there was
11 also deep erosion gullies in the landfill that have
12 not been corrected since the previous inspection.
13 And the roll-off box that had contained the drums
14 that were excavated in 1992 had been removed.

15 Q What exactly is a leachate seep?

16 A Leachate is a substance that is a -- a
17 substance that is generated when water or other
18 liquid percolates through garbage or other wastes
19 and picks up constituents from it, and then leaks
20 from the confines of the landfill. In this case
21 the landfill had numerous seeps all over the place,
22 fairly black, fiscus-type liquid that sometimes had
23 an oily sheen. And it was actually coming out of
24 this landfill so much that it actually caused foam

1 to be generated in certain locations.

2 Q Do you know under what circumstances the
3 landfill ceased accepting waste?

4 A Yes, under a court order.

5 Q Do you know when that happened?

6 A I don't recall the exact date, but it was
7 right around -- I believe in April of 1992.

8 Q Going back to the hazardous waste
9 regulations, is the facility that accepts hazardous
10 waste required to have permits for closure or
11 post-closure care?

12 A Yes, it is.

13 Q Did this facility have one?

14 A No, it does not have a permit for
15 post-closure hazardous waste landfill -- or
16 hazardous waste landfill closure, post-closure
17 care.

18 Q Does it have any kind of approved closure
19 plan?

20 A No, not for solid waste or hazardous
21 waste.

22 MR. LATSHAW: I think we need to
23 interpose another objection with regard to this
24 line of questioning.

1 In addition to the fact that this was an
2 issue covered last month, this testimony is pretty
3 cumulative, in that People's Exhibit 7 is a copy of
4 the inspection report of February 28, 1997, and we
5 had extensive testimony with regard to this by Mr.
6 Townsend, and it seems highly cumulative in
7 addition to the fact that it is our understanding
8 that this issue was -- that there was closure on
9 this question last month.

10 MS. MENOTTI: It is my understanding, Mr.
11 Hearing Officer, that the State is allowed to
12 present its case in chief, and if some of the
13 information provided by witnesses is duplicative,
14 it goes to show, you know, the severity of the
15 violation and it goes to the weight that the Board
16 should consider the evidence. I have never heard
17 of evidence being excluded based on the fact that
18 some other witness has already observed the same
19 thing.

20 HEARING OFFICER WALLACE: Well, are you
21 through with this line of questioning?

22 MS. MENOTTI: Pardon me?

23 HEARING OFFICER WALLACE: Are you through
24 with the February 28th --

1 MS. MENOTTI: Yes.

2 HEARING OFFICER WALLACE: I think we have
3 heard enough on the February 28th.

4 MS. MENOTTI: That was the last question
5 I had.

6 HEARING OFFICER WALLACE: I don't think
7 it is overly cumulative, so that objection is
8 overruled. The other objection I will note for the
9 record.

10 MR. VAN NESS: Mr. --

11 HEARING OFFICER WALLACE: Mr. Van Ness?

12 MR. VAN NESS: Is it my turn?

13 MS. MENOTTI: I am sorry. I am just
14 looking through my notes. I wanted to make sure I
15 had covered everything.

16 MR. VAN NESS: I am sorry. I thought you
17 said you were done.

18 MS. MENOTTI: I am sorry. I didn't
19 realize everyone was waiting on me.

20 Q (By Ms. Menotti) One last question, Mr.
21 Burger. In your opinion, is the landfill in
22 violation of the hazardous waste regulations that
23 you have mentioned during your testimony?

24 A Yes, many of them.

1 MS. MENOTTI: That's all I have, Mr.
2 Hearing Officer.

3 HEARING OFFICER WALLACE: Mr. Van Ness?

4 MR. VAN NESS: Thank you, Mr. Hearing
5 Officer.

6 CROSS EXAMINATION

7 BY MR. VAN NESS:

8 Q Mr. Burger, let's see if I can reduce
9 this.

10 Are you aware of any permit possessed by
11 Waste Hauling Landfill that requires it to inspect,
12 chemically sample, or otherwise independently
13 verify the nature of the waste that is coming in?

14 A Yes, actually.

15 Q And what would that be?

16 A The special waste stream permit that is
17 issued to the landfill to accept the waste stream
18 requires that a chemical analysis be done.

19 Q Was that done in this case?

20 A Yes, it was.

21 Q So I would now repeat my question to
22 whether you are aware of any requirement beyond
23 that one for the landfill to conduct some sort of
24 independent test of incoming waste immediately

1 prior to accepting receipt of that load?

2 A No.

3 Q And for the waste hauler, the same
4 question?

5 A No.

6 Q Do you have any information, whatsoever,
7 that either Waste Hauling or Waste Hauling
8 Landfill, Inc. was aware that the waste they
9 allegedly received from Bell Sports on April 9th,
10 1992 was, in fact, hazardous?

11 A Before disposal or after disposal?

12 Q Well, before disposal. I guess it is too
13 late after disposal, isn't it?

14 A I would have to say yes.

15 Q So before disposal?

16 A No.

17 Q You mentioned the roll-off in your report
18 of August 28, 1996. Can you explain what that
19 roll-off was?

20 A Yes. That was waste that was -- that was
21 the actual drums that were excavated from the
22 landfill at -- during the 1992 search warrant.

23 Q Do you know whose roll-off container that
24 was?

1 A Yes, the State was renting that roll-off
2 container at the time.

3 Q What was the condition of that roll-off
4 when you saw it last?

5 A It held water but, otherwise, it -- and
6 the top had -- the tarp had ripped on top of it,
7 but otherwise it was in good shape.

8 Q Had the Agency maintained that tarp?

9 A No.

10 Q Had they inspected the roll-off to see
11 whether it was leaking with all that water in it?

12 A It held water, so I assumed it was not
13 leaking.

14 Q Do you know if they took any tests of the
15 water that was in that roll-off?

16 A I believe it was tested before disposal.

17 Q I see. But the Agency did not?

18 A We had requested that it be done before
19 the water was disposed of.

20 Q So, if I understand correctly, that
21 roll-off was sitting there for approximately four
22 years?

23 A That is correct.

24 MS. MENOTTI: Objection, Mr. Hearing

1 Officer. I don't understand how this line of
2 questioning is relevant at all.

3 MR. VAN NESS: It is at least as relevant
4 as a document that no one has seen before, Mr.
5 Hearing Officer.

6 This witness mentioned a roll-off twice
7 with respect to both the 1996 inspection and the
8 1997 inspection. So I believe I am entitled to a
9 little leeway in asking him questions about the
10 roll-off.

11 HEARING OFFICER WALLACE: It is
12 overruled.

13 Do you remember the last question?

14 THE WITNESS: No, I do not. I am sorry.

15 HEARING OFFICER WALLACE: Could you read
16 it back?

17 (Whereupon the requested
18 portion of the record was read
19 back by the Reporter.)

20 THE WITNESS: The answer stands.

21 Q (By Mr. Van Ness) Now, you mentioned
22 earlier, did you not, sir, that it was your opinion
23 that the leachate and other alleged violations that
24 you mentioned had an environmental impact; is that

1 correct?

2 A Yes.

3 Q Did you or anyone else on behalf of the
4 Agency, to the best of your knowledge, ever go out
5 and attempt to gauge those impacts?

6 A We had sampled the leachate that was
7 leaking out of the landfill, and we sampled the
8 stream immediately east of the landfill all the way
9 down to the river, and I physically observed a
10 rusty-colored bottom to the stream on past
11 occasions.

12 Q When was the last time that was done?

13 A Let me see. We sampled immediately prior
14 to -- I was present with Steve Townsend and Jeff
15 Turner in the sampling immediately prior to the
16 hearing that closed the landfill down.

17 Q Turning to your --

18 HEARING OFFICER WALLACE: What date was
19 that?

20 THE WITNESS: I don't recall.

21 Q (By Mr. Van Ness) Now, you testified, I
22 believe, that you saw some leachate seeps on your
23 visit of August 28, 1996; is that correct?

24 A I am sorry. Can you repeat that?

1 Q You testified earlier that you observed
2 some leachate seeps on August --

3 A Yes.

4 Q -- 28, 1996?

5 A Yes.

6 Q And that is reflected in People's Exhibit
7 18?

8 A Yes.

9 Q Do you recall how many seeps you saw?

10 A Yes, there were, I believe, two. Let me
11 check here.

12 Q I thought earlier you said something
13 else.

14 A Yes, two leachate seeps.

15 (Mr. Van Ness and Mr.

16 Latshaw confer briefly.)

17 Q (By Mr. Van Ness) You indicated earlier,
18 I believe, that Mr. Jerry Camfield was present at
19 the visit to the site on February 28, 1997?

20 A Yes.

21 Q Do you know Mr. Camfield when you see him
22 or would you recognize him as opposed to his son?

23 A That is correct, his son was there
24 instead. It wasn't Jerry Camfield. Mr. Camfield

1 is his son. I am sorry.

2 Q You testified also, did you not, that
3 just prior to February 28th there had been quite a
4 bit of rainfall, I believe you stated?

5 A Yes, it had rained.

6 Q Was there also not quite a bit of snow
7 melt at that time?

8 A I don't recall.

9 MR. VAN NESS: No further questions.

10 HEARING OFFICER WALLACE: Mr. Taylor?

11 MR. TAYLOR: Yes, we do have some
12 questions.

13 CROSS EXAMINATION

14 BY MR. TAYLOR:

15 Q I believe on direct you stated that there
16 was possible or potential environmental impact from
17 the hazardous waste disposal; is that correct?

18 A Yes.

19 Q Now, you have not -- you did not collect
20 samples of the leachate during your inspection on
21 August 28th, 1996, did you?

22 A No, it was too dry.

23 Q And you also did not collect samples of
24 that leachate during your inspection on March -- I

1 am sorry -- on February 28, 1997?

2 A No, the samples would not -- would likely
3 not have been returned, even before the hearing
4 now.

5 Q You were present on the day that the
6 search warrant was executed? I believe it was
7 April 22nd, 1992?

8 A That's correct.

9 Q And you did not collect any samples from
10 the walls of that excavation, did you?

11 A No, we did not.

12 Q You did not collect any samples from the
13 floor of that excavation, did you?

14 A No.

15 Q You did not collect any samples from the
16 overburden that was removed prior to the time you
17 located the drums, did you?

18 A No, we did not.

19 Q You actually didn't conduct any analysis
20 on the samples collected on April 22nd, 1992?

21 A No, not personally.

22 Q And you have -- you have reviewed the
23 summary sheets from that sample; is that correct?

24 A That is correct.

1 Q You have no actual knowledge of whether
2 the proper analysis was performed by the lab; is
3 that correct?

4 A I cannot testify as to what they did, so,
5 no.

6 Q Just for clarification, your answer is
7 no?

8 A The question is did I have any direct
9 knowledge of what they had done in the lab, I
10 believe?

11 Q Well, let me just --

12 A Could you reask your question? Thank
13 you.

14 Q You didn't conduct the analysis, correct?

15 A That is correct.

16 Q You were not present when the analysis
17 was conducted, correct?

18 A That's correct.

19 Q All you have done was review the summary
20 sheets that you received?

21 A That is correct, sir.

22 Q You have no basis for testifying whether
23 the results shown on the summary sheets are
24 accurate or inaccurate?

1 A That's correct.

2 Q One thing I am unclear on is when were
3 you at the landfill independently doing an
4 inspection around the date that the search warrant
5 was executed?

6 A I was not present independently. I was
7 actually there -- I don't recall the exact date --
8 with Steve Townsend and Jeff Turner.

9 Q But you conducted an inspection, correct?

10 A I was present during their inspection.

11 Q And that inspection was a separate event
12 from the execution of the search warrant?

13 A That is correct.

14 Q What date did that inspection occur?

15 A I do not recall, without reviewing the
16 inspection report that Mr. Townsend prepared on
17 that date.

18 (Mr. Davis handed Mr. Taylor a
19 document.)

20 Q (By Mr. Taylor) Is there any document
21 that might refresh your recollection as to the date
22 that you were present at the landfill?

23 A Yes, it would be the inspection report
24 from Mr. Townsend that was prepared on that date.

1 Q Let me show you a copy of an inspection
2 report. I would like you to look at it for a
3 second.

4 A (Witness reviewed document.) This is a
5 copy of the inspection report that was generated
6 during that visit.

7 Q I would like you to read the date on that
8 report.

9 A It is April 6, 1992.

10 Q Do you recall now what date you were
11 present at the landfill when an inspection was
12 being conducted by other personnel of the Agency?

13 A Yes, it would be April the 6th, 1992.

14 Q That would be three days prior to the day
15 of the disputed shipment from Bell Sports; is that
16 correct?

17 A That is correct.

18 Q Do you know the volume of waste received
19 at the landfill on the 6th of April of 1992?

20 A No, I do not know the exact on that date.

21 Q Do you know the volume of waste received
22 at the landfill on April the 7th, 1992?

23 A Not the exact volume for that date.

24 Q Do you know the volume of waste received

1 on the 8th of April of 1992?

2 A Again, I do not know the exact amount on
3 that date.

4 Q You do not know how deep the waste was
5 deposited that date either, do you?

6 A No.

7 Q There were no stakes at the landfill
8 delineating the area where waste was disposed of on
9 the 6th, was there?

10 A No.

11 Q Or any other day prior to that shipment?

12 A I don't understand your question.

13 Q Were there any stakes or other devices
14 that were placed with the express purpose of
15 identifying the volume of waste disposed of on any
16 particular day?

17 A No.

18 Q That would be the case for the 6th, 7th,
19 and 8th of April?

20 A That is correct.

21 Q When you were at the landfill on the 22nd
22 of April, 1992, you indicated that the excavation
23 area should be moved slightly from where the
24 informant had said?

1 A That is correct.

2 Q That advice was then based on some guess
3 as to where waste was being disposed of at or about
4 that time period; is that correct?

5 A A very educated guess, yes.

6 Q But you don't know how much waste was
7 received at that time period, right?

8 A No, I do not.

9 Q So you don't know the exact volume of
10 waste that was received on the days around the
11 disputed shipment, right?

12 A No.

13 MR. TAYLOR: No further questions.

14 HEARING OFFICER WALLACE: Redirect?

15 MS. MENOTTI: We don't have anything
16 further.

17 EXAMINATION

18 BY HEARING OFFICER WALLACE:

19 Q All right. Mr. Burger, Mr. Zierath
20 mentioned it and you mentioned it, also. What is
21 the safety plan?

22 A Before we -- before we conduct any
23 hazardous waste operations, OSHA requires anybody,
24 any contractor, and that also includes the Agency,

1 to write a written closure -- a written safety plan
2 which tells each specific task that is going to be
3 conducted during the investigation, all the
4 physical tasks and the hazards involved. It also
5 includes the location of the nearest hospital, in
6 case an accident would happen, and emergency phone
7 numbers from local fire departments and the
8 ambulance in case someone was injured during the
9 investigation.

10 Q And why did you say it took a long time
11 to set up at the landfill?

12 A Well, we originally arrived and then we
13 had to get the -- set up our sampling table, set up
14 our safety gear, set up the backhoe, get it off
15 the -- they came on a big tractor-trailer, so get
16 it into place, and we had to don safety equipment.
17 There is a lot that goes into doing a project like
18 this.

19 HEARING OFFICER WALLACE: All right.
20 Thank you, Mr. Burger. You may step down.

21 (The witness left the stand.)

22 HEARING OFFICER WALLACE: Any more
23 witnesses?

24 MS. MENOTTI: The State has one more

1 witness that is not available until tomorrow
2 morning.

3 But at this time I would like to address
4 the Official Notice provision under the Board
5 Procedural Rules, specifically found at 35 Illinois
6 Administrative Code, 103.206, for our previous
7 discussions.

8 I believe you indicated, Mr. Hearing
9 Officer, that the Court Orders regarding the
10 landfill were admissable as evidence for the Board
11 to consider regarding duration of violations and
12 penalty, and at this point the State would ask that
13 the Board take official notice of the revised order
14 of the Macon County Circuit Court in the case
15 numbered 92 CH 5, entitled People of the State of
16 Illinois versus Waste Hauling Landfill, Inc.

17 The order is being offered for the
18 limited purpose of penalty analysis to show that
19 these violations have been previously adjudicated
20 regarding the landfill and that certain findings of
21 fact have been entered by the Circuit Court of
22 Macon County.

23 HEARING OFFICER WALLACE: All right.
24 Have you prepared copies of that?

1 MS. MENOTTI: We haven't previously, but
2 I have copies that Counsel can review.

3 MR. LATSHAW: Are they certified?

4 MS. MENOTTI: I am sorry? What?

5 MR. VAN NESS: Are they certified?

6 MS. MENOTTI: It is --

7 MR. DAVIS: Are you contesting the
8 authenticity?

9 MS. MENOTTI: They are copies of the
10 Clerk.

11 MR. VAN NESS: I asked a question.

12 MR. DAVIS: And I asked a question in
13 turn.

14 MR. VAN NESS: I am entitled to an answer
15 to the --

16 HEARING OFFICER WALLACE: Are they --

17 MR. LATSHAW: We are addressing the
18 Court.

19 HEARING OFFICER WALLACE: Are they
20 certified?

21 MS. MENOTTI: It is a copy.

22 HEARING OFFICER WALLACE: No, no. Is it
23 certified from the Circuit Court?

24 MR. DAVIS: It is not, Mr. Hearing

1 Officer.

2 HEARING OFFICER WALLACE: All right.

3 MR. DAVIS: Nor are these types of
4 documents typically certified before --

5 MS. MENOTTI: It is just signed by the
6 Judge.

7 MR. DAVIS: -- the Board.

8 HEARING OFFICER WALLACE: Well, I wanted
9 to ask -- an answer to Mr. Van Ness' question.

10 MR. VAN NESS: Thank you.

11 HEARING OFFICER WALLACE: All right. We
12 will mark the order as People's Exhibit 19.

13 (Whereupon said document was
14 duly marked for purposes of
15 identification as People's
16 Exhibit 19 as of this date.)

17 HEARING OFFICER WALLACE: All right. Mr.
18 Van Ness, do you object to People's Exhibit Number
19 19?

20 MR. VAN NESS: Yes.

21 MR. LATSHAW: Yes, we renew our objection
22 based upon the motion in limine that was filed.

23 MR. VAN NESS: We filed a motion in
24 limine, Mr. Hearing Officer, as you well recall.

1 And in a nutshell it is our belief that this
2 revised order, which is not and does not purport to
3 be a final order, ought not to be accepted and
4 ought not to be judicially noted by the Board under
5 the circumstance of this case.

6 HEARING OFFICER WALLACE: Okay. Mr.
7 Taylor, any objection to People's Exhibit 19 as the
8 revised order?

9 MR. TAYLOR: No, we have no objection
10 because we do not believe that this is an issue
11 relating to Bell Sports.

12 HEARING OFFICER WALLACE: All right. I
13 am going to take this one under advisement, also.
14 I will make a ruling on it hopefully tomorrow.

15 Okay. Anything else today?

16 MS. MENOTTI: No. We have one more
17 witness who was not available to testify today. He
18 was available yesterday or Wednesday.

19 MR. LATSHAW: I am sorry. We didn't hear
20 who it was.

21 HEARING OFFICER WALLACE: No more
22 witnesses today. Her next witness is unavailable
23 until tomorrow morning.

24 MR. LATSHAW: Is that Mr. Taylor?

1 MS. MENOTTI: Yes, Mr. Taylor.

2 HEARING OFFICER WALLACE: Okay. Is there
3 anything we need to bring up? Otherwise, we will
4 stand adjourned until tomorrow.

5 MR. TAYLOR: There is one issue. I would
6 like to clarify that we are withdrawing our
7 subpoena to Mr. Ken Smith. I am not sure that was
8 clear from this morning.

9 HEARING OFFICER WALLACE: All right.

10 MR. VAN NESS: As well as Turner?

11 MR. TAYLOR: Yes, Turner and Smith.

12 HEARING OFFICER WALLACE: All right.

13 Let's go off the record for a minute before we
14 adjourn.

15 (Discussion off the record.)

16 HEARING OFFICER WALLACE: Back on the
17 record.

18 We are going to adjourn for this
19 afternoon, and reconvene tomorrow at 10:00. We
20 anticipate putting -- the State anticipates putting
21 on Mr. Taylor and then we will start with Mr.
22 Krimmel and Mr. Maw, which will begin Waste
23 Hauling, Inc. and Waste Hauling Landfill, Inc.'s
24 case.

1 We also explored some tentative dates.
2 It looks like we have May 19, 20 and 21 open, and
3 once we get those confirmed from everyone we will
4 set that up. Okay.

5 MR. TAYLOR: The other witness is Mr.
6 Riddly (spelled phonetically).

7 HEARING OFFICER WALLACE: The other
8 witnesses do not have to show up tomorrow, but they
9 are still under subpoena at a future date, Mr.
10 Riddly being one. Were there any others?

11 MS. MENOTTI: I believe --

12 MR. NAHMOD: Mr. Camfield, Mr. Brown, Mr.
13 Bakowski.

14 HEARING OFFICER WALLACE: All right. Mr.
15 Camfield, Mr. Brown, we will not get to. Mr.
16 Bakowski will be sort of on call, I guess.

17 MR. LATSHAW: And Mr. Zierath is on
18 subpoena from us, as well.

19 MS. MENOTTI: Do you want him to appear
20 tomorrow?

21 HEARING OFFICER WALLACE: Do you want Mr.
22 Zierath back tomorrow?

23 MR. LATSHAW: No, but he was under
24 subpoena.

1 HEARING OFFICER WALLACE: Oh, okay.

2 MR. LATSHAW: I wanted to make sure it
3 was clear on the record.

4 MS. MENOTTI: I can call and tell him he
5 doesn't have to come.

6 MR. LATSHAW: Okay.

7 HEARING OFFICER WALLACE: And, Mr.
8 Taylor, was there another name?

9 MR. TAYLOR: I believe Mr. Townsend. He
10 testified in the solid waste hearing.

11 HEARING OFFICER WALLACE: All right. So
12 those people are -- do not have to attend
13 tomorrow. All right. Thank you.

14 (People's Exhibits 14 through
15 19 were retained by Hearing
16 Officer Wallace.)

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

3 C E R T I F I C A T E

4 I, DARLENE M. NIEMEYER, a Notary Public
5 in and for the County of Montgomery, State of
6 Illinois, DO HEREBY CERTIFY that the foregoing 156
7 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 15th of
9 April A.D., 1997, at the Office of the Attorney
10 General, Conference Room, 500 South Second Street,
11 Springfield, Illinois, in the case of The People of
12 the State of Illinois v. Waste Hauling Landfill,
13 Inc. and Waste Hauling, Inc. in proceedings held
14 before the Honorable Michael L. Wallace, Hearing
15 Officer, and recorded in machine shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my
17 hand and affixed my Notarial Seal this 24th day of
18 April A.D., 1997.

19

20

21 Notary Public and
22 Certified Shorthand Reporter and
Registered Professional Reporter

23 CSR License No. 084-003677
My Commission Expires: 03-02-99

24