

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
2
3 ILLINOIS ENVIRONMENTAL)
4 PROTECTION AGENCY,)
5 Complainants,)
6 versus)IEPA No. 292-01-AC
7 NORDEAN and SUSAN SIMON,)AC02-2
8 d/b/a BERMAN'S AUTO PARTS.)
9 Respondents.)

10 The following is a transcript of the
11 above-entitled cause before HEARING OFFICER
12 BRADLEY P. HALLORAN and stenographically taken
13 before ROSEMARIE LAMANTIA, CSR, RPR, a notary
14 public within and for the County of DuPage and
15 State of Illinois, at 601 North Main Street,
16 Courtroom B, Belvidere, Illinois, on the 23rd
17 day of April A.D., 2002, commencing at 9:00
18 o'clock a.m.

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

2

3 ILLINOIS POLLUTION CONTROL BOARD,

4 100 West Randolph Street

5 Suite 11-500

6 Chicago, Illinois 60601

7 (312)814-3917

8 BY: MR. BRADLEY P. HALLORAN, Hearing Officer

9

10 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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15 BY: MS. MICHELLE M. RYAN

16

17 HINSHAW & CULBERTSON

18 100 Park Avenue

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21 (815)963-8488

22 BY: MR. RICHARD S. PORTER

23 Appeared on behalf of the Respondent.

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1 ARBITRATOR HALLORAN: Good morning.
2 My name is Bradley Halloran. I am a hearing
3 officer with the Illinois Pollution Control
4 Board. I'm also assigned to this matter. This
5 is regarding the Illinois EPA versus Nordean and
6 Susan Simon, doing business as Berman's Auto
7 Parts, Administrative Citation No. 2-2.

8 Also, note for the record today is
9 April 23rd, the year 2002, and it's
10 approximately 9:00 a.m.

11 This administrative citation was filed
12 by the agency and alleges that during an
13 inspection of May 17, 2001, it was determined
14 that the Respondents caused or allowed opening
15 dumping to result in liter in violation of
16 Section 21P1 of the act.

17 As a result of the May 17, 2001,
18 inspection, and I'll refer to it for the rest of
19 the hearing as AC, Respondents filed a petition
20 for review disputing the violation and that's
21 why we're here today.

22 This matter has been noticed pursuant
23 to the board's regulations and procedural rules

24 and has been publicly noticed in the local

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1 newspaper here and will be conducted in
2 accordance with Subsection 108, sub-part B, and
3 101, sub-part F of the board's procedural rules.

4 I also want to note for the record
5 that there are no members of the public here.
6 But if there were they would be allowed to
7 testify subject to cross-examination.

8 Also, note for the record that I will
9 not be making the ultimate decision in this
10 matter. That decision is left to the esteemed
11 members of the board. My job is to ensure an
12 orderly hearing, a clear record and rule on
13 evidentiary matters here at the hearing.

14 With that said, Ms. Ryan, would you
15 like to introduce yourself?

16 MS. RYAN: Michelle Ryan, I'm an
17 attorney, special assistant attorney general for
18 the Illinois EPA.

19 ARBITRATOR HALLORAN: Thank you.

20 Mr. Porter?

21 MR. PORTER: Rick Porter on behalf of
22 Nordean and Susan Simon.

23 ARBITRATOR HALLORAN: Thank you.
24 Would you like to do an opening

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1 statement?

2 MS. RYAN: Yes.

3 We believe the evidence today will
4 show that on May 17, 2001, Respondents caused or
5 allowed opening dumping resulting in liter at
6 the site known as Berman's Auto Parts and that
7 there are no defenses to this violation.

8 ARBITRATOR HALLORAN: Thank you.

9 Mr. Porter.

10 MR. PORTER: Thank you. Mind if I
11 stand?

12 ARBITRATOR HALLORAN: Yes, please.

13 MR. PORTER: Good morning, members of
14 the pollution control board, Hearing Officer
15 Halloran and counsel.

16 The evidence today will show that the
17 government cannot meet its burden of proving
18 that my client caused or allowed open dumping in
19 a waste and a manner to cause liter.

20 Specifically, there will be evidence
21 that the items at issue are not a waste,

22 furthermore, there will be evidence that my
23 clients cannot be liable for a violation of the
24 act because they were complying with the Used

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1 Tire Removal Plan under Section 55.4 of the act.

2 And, finally, if the court somehow
3 finds a violation of 21P, said violation was
4 beyond my client's control because they relied
5 on the government's agreement to allow them to
6 institute a response plan and the plan was being
7 instituted as to weather and the waste tire
8 hauler's schedule allowed.

9 First, as to the issue that my clients
10 were not operating a waste dump. The evidence
11 will be that my clients were a licensed used car
12 dealer and a licensed used auto parts dealer.
13 They operated the business without any
14 environmental citations for over 30 years.
15 There will be no evidence that they were
16 operating a dump. On the contrary, the
17 operation of this business involved acquiring
18 used and damaged automobiles and parts and
19 reselling them. The business necessarily
20 involved the collection and resale of tires and

21 rims. Accordingly, my client will file the
22 appropriate IEPA used and/or waste tire activity
23 and notification form and pay the annual fee for
24 the waste tire fund thereby authorizing them to

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1 store tires on their facility. These tires were
2 part of my client's inventory and were one of
3 the products that they sold. They were not
4 discarded refuse or liter.

5 Furthermore, in regard to the 55.4
6 removal agreement, the evidence will show that
7 this action arises out of a 55.3 notice, which
8 was sent by the IEPA to my clients on January 8,
9 2001. The notice allowed my clients the
10 opportunity to implement an action plan to
11 correct the perceived problem. My clients
12 submitted an action plan within the allotted
13 time, which was accepted by the IEPA. The IEPA
14 allowed my clients to remove the tires over time
15 and the evidence will be that the IEPA believed
16 that approximately 7500 tires were on the
17 premises. And the tires can be removed over a
18 seven to eight month period. The government's
19 action plan also provided that there will be

20 revisitation on May 1, and the plan would be
21 revised at that time. The evidence will be that
22 my client was complying with the plan by having
23 tires removed but just two months after the plan
24 was accepted and agreed to by the government the

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1 government reneged and sent a letter that they
2 were going to have the tires removed immediately
3 and issued the administrative citation. The
4 government failed to give my clients a chance to
5 comply with the plan nor did it give them a
6 chance to see if an extension was required by
7 54D. My client relied on the opportunity to
8 remove the tires over time and, therefore, the
9 evidence will be that if the IPCB finds a
10 violation, it was beyond my clients control.

11 At the conclusion of the evidence, my
12 clients will ask that the board issue a finding
13 of no violation and no penalty.

14 Thank you.

15 ARBITRATOR HALLORAN: Thank you, Mr.
16 Porter.

17 Let's go off the record for a minute.

18 (Off the record.)

19 ARBITRATOR HALLORAN: We're back on
20 the record.

21 Ms. Ryan, would you like to call your
22 first witness?

23 MS. RYAN: Actually, I apologize. I
24 do have my formal written appearance here, I

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1 have the board's copy and your copy, Mr. Hearing
2 Officer, and one for counsel. I meant to give
3 that to you earlier but I missed it there.

4 Illinois EPA calling Kaare Jacobsen.
5 (Witness first duly sworn.)

6 KAARE JACOBSEN,
7 called as the witness herein, having been first
8 duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MS. RYAN:

12 Q. Spell your name the record, Kaare?

13 A. K-A-A-R-E J-A-C-O-B-S-E-N.

14 Q. And where are you employed?

15 A. Illinois Environmental Protection
16 Agency.

17 Q. What is your job there?

18 A. I'm with the used tire unit and solid
19 waste division.

20 Q. What type of activity do you conduct?

21 A. I generally go out to salvage yards or
22 tire retail, wholesale places to make sure
23 they're in compliance with our rules and
24 regulations that we introduce at limited

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1 facilities.

2 Q. Would it be fair to call you a field
3 inspector?

4 A. Yes.

5 Q. How many years have you been a field
6 inspector for Illinois EPA?

7 A. Two years.

8 Q. What is your educational background?

9 A. Plant and soil science degree from
10 Southern Illinois.

11 Q. Is that a bachelor degree?

12 A. Yes.

13 Q. Have you had any other training
14 besides your educational background you just
15 mentioned?

16 A. Training within the agency, that is

17 all.

18 Q. What was the subject matter of that
19 training, just general?

20 A. Just trained by Sean Newell of tire
21 issues, solid waste, criminal enforcement.

22 Q. Are you familiar with the facility
23 known as Berman's Auto Parts?

24 A. Yes, I am.

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1 Q. Where is that property located?

2 A. It's on Town Hall Road right off East
3 State Street.

4 Q. Who owns that property?

5 A. Susan and Dean Simon.

6 Q. Do you know how many inspections you
7 conducted there?

8 A. Roughly estimate about 12 within about
9 2 years.

10 Q. I'm going to show you what I've marked
11 for identification as Exhibit 1. Can you tell
12 me, do you recognize that document?

13 A. Yes.

14 Q. What is it?

15 A. An open dump inspection list.

16 Q. Can you page through it for me?
17 Is that a fair, accurate and complete
18 copy of your report?

19 A. That's correct.

20 Q. Can you describe this property
21 generally?

22 A. Generally, the facility has a -- their
23 business, they have a garage or an area where
24 they keep auto parts in front of the property,

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1 then probably drive about 200 yards back, there
2 was cars there before I -- my inspection I did
3 there in August 2000, looks like there are about
4 cleaning the cars off the property. Then I saw
5 tires right along the back line of the property
6 on the -- that would be on the east side of the
7 property.

8 Q. Now, you mentioned August 2000, was
9 that the first time you were personally out at
10 the property?

11 A. Yes.

12 Q. What is the date on this inspection
13 report on Exhibit 1?

14 A. 5/17/01.

15 Q. I see that there are photos attached
16 to your report. Who took those?

17 A. Okay.

18 Q. No. Who took the photographs?

19 A. Oh, me. I'm sorry.

20 Q. I wasn't sure you were answering it
21 correctly.

22 Can you turn to the first photograph
23 there which I believe are under the photo file
24 name, has the last three digits of 001, if you

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1 can tell me what do you see in that picture?

2 A. We see a tire pile right along the
3 south end of the property, maybe mostly a
4 combination of tires with and without rims along
5 the south end of the property.

6 You want to go onto 2?

7 Q. No. Actually, I -- there are other --
8 it looks like maybe vehicles on the side of the
9 photo, is that correct?

10 A. Yes. At the time it looks like they
11 were trying to get rid of the vehicles.

12 Q. Okay. And then --

13 MR. PORTER: Objection, conjecture.

14 ARBITRATOR HALLORAN: Ms. Ryan?
15 MS. RYAN: That's fine. I didn't need
16 that bit any way.
17 MR. PORTER: Move to strike.
18 ARBITRATOR HALLORAN: Sustained,
19 strike.
20 BY MS. RYAN:
21 Q. If you could move onto number 2.
22 A. Number 2, we're looking at south --
23 photo pointing south to tires with and without
24 rims.

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1 Go on to the next one?
2 Q. If you would just continue through the
3 photos whenever you're finished.
4 A. Photo 3 we're looking down southeast,
5 look at a pile with landscape waste mixed with
6 piles of furniture, building debris, and looked
7 off to the side on the right there it looks like
8 there was a burnt pile right there.
9 Photo number 4 --
10 Q. Actually, if I could stop you for one
11 second, on photo 3 on the far right side there
12 is some blue matter there.

13 A. That is a tarp right there.
14 Q. A tarp?
15 A. Yes.
16 Q. All right. Go ahead.
17 A. Photo number 4 points northeast. I
18 think you see on the left-hand side there was a
19 bus on the right and on the left-hand side.
20 That is in front of a pile that had a lot of
21 vegetative cover over it with tires on and off
22 rim.
23 Photo number 5, photo directs to the
24 east, as you see, the vegetative growth over the

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1 tire pile with and without rims.
2 Photo number 6, we have tires with and
3 without rims and that is a direction of east.
4 Photo number 7, tires, toys, they're
5 overrun by vegetative growth.
6 And then photo number 8, pointed
7 southeast, as you can tell with the -- another
8 bus in front of the tire pile, on and off rim.
9 Q. Is that a different bus from the one
10 in the previous --
11 A. There were two buses right in front of

12 the pile.

13 Q. And --

14 A. And then photo number 9 faces south to
15 a tire pile with and without rims.

16 Q. And how many piles of tires in total
17 were there on this property?

18 A. Two large ones.

19 Q. Two large piles?

20 A. Yes, one was located on the south
21 central side of the property. One was located
22 on the east side of the property.

23 Q. Some of these photographs are of the
24 same pile from different angles then?

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1 A. Yes, as you see in the map, I drew out
2 different angles.

3 Q. And that is there on page 4 of your
4 inspection report?

5 A. Yes.

6 Q. You mentioned that some of the tires
7 were on and off rim. Could you estimate how
8 many were -- of the tires were off -- excuse me.
9 I'm sorry -- how many of these tires that you
10 saw at the property were still on the vehicle

11 wheel rim?

12 MR. PORTER: Objection, foundation.

13 ARBITRATOR HALLORAN: Ms. Ryan?

14 MS. RYAN: He was out there and
15 observed it. He could see whether there was a
16 rim inside the tire or not, that is what he does
17 for a living.

18 MR. PORTER: My objection is there is
19 no evidence he counted.

20 MS. RYAN: I was asking for an
21 estimate. I was not asking for an exact count.

22 ARBITRATOR HALLORAN: He may answer if
23 he is able.

24 THE WITNESS: I would estimate about

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1 35,000.

2 BY MS. RYAN:

3 Q. And what percentage of the total
4 would --

5 A. Total amount with and without rims?

6 Q. No. What percentage of the total
7 would that 35,000 amount to?

8 A. No, 35 -- I thought you meant without
9 rims.

10 Q. No. Sorry. I'll start over again.
11 How many tires did you see at the property --
12 what percentage of the tires that you saw at the
13 property were still on the vehicle wheel rim?

14 A. About 50 percent.

15 Q. 50 percent.

16 Do these photographs attached to your
17 inspection report accurately depict what you saw
18 at the property that day?

19 A. Yes, they did.

20 Q. What violations did you cite in your
21 inspection report, if any?

22 A. Violations I cited from the open dump
23 checklist would be 21A, cause or allow opening
24 dumping; 21D1, conduct any waste storage, waste

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1 treatment or waste disposal operation without a
2 permit; 21D2, in violation of any regulation or
3 standards authored by the board; 21E, dispose,
4 treat, store or abandon any waste or any --
5 transport any waste into the state at 2 --
6 not --

7 ARBITRATOR HALLORAN: Excuse me.

8 MR. PORTER: I have to object.

9 We're -- or Mr. Halloran, we're here on a 21D
10 only violation. I don't understand the
11 relevancy of listing off the alleged findings of
12 the investigator. The only violation issue is a
13 21D1.

14 ARBITRATOR HALLORAN: Ms. Ryan?

15 MS. RYAN: Actually, that is all I was
16 really asking about was what violation he cited
17 that related to this administrative citation.

18 ARBITRATOR HALLORAN: Objection
19 sustained. You can strike -- strike the remarks
20 that the witness said. Ms. Ryan --

21 MS. RYAN: I'll ask again.

22 BY MS. RYAN:

23 Q. Which violation did you cite at the
24 site that related to this administrative

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1 citation?

2 A. 21D1, cause or allow opening dumping
3 of any waste in a manner which results in any of
4 the following occurrences at the dump site,
5 liter.

6 Q. And when was this report generated?

7 A. 5/17/01.

8 Q. On the date of the inspection.

9 Does the Environmental Protection
10 Agency keep these reports in regular course of
11 its business? Can you answer out loud?

12 A. Yes.

13 MS. RYAN: I would move Exhibit 1 into
14 evidence.

15 MR. PORTER: No objection.

16 ARBITRATOR HALLORAN: Exhibit 1 is
17 admitted.

18 (Exhibit No. 1 was admitted.)

19 BY MS. RYAN:

20 Q. Mr. Jacobsen, you heard Mr. Porter
21 during his opening argument talk about a 55.3D
22 notice. Are you familiar with that document?

23 A. Yes.

24 Q. And I believe that was sent to the

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1 property prior to this inspection date, is that
2 correct?

3 A. Yes.

4 Q. And Mr. Porter mentioned that the
5 Illinois Environmental Protection Agency
6 accepted the tire removal agreement from the

7 Simons relating to the tires on this property?
8 A. Correct.
9 Q. Did that relate to the tires that are
10 on rim and off rim or some subset thereof?
11 A. Dated for last year?
12 Q. I believe the tire removal agreement
13 was sometime in February of 2001. Does that
14 sound correct?
15 A. Correct.
16 Q. So, in February of 2001 that tire
17 removal agreement addressed what portion of the
18 material that you saw on the site on May 17,
19 2001?
20 A. Come again.
21 Q. I'm sorry.
22 The tire removal agreement that you
23 accepted in February of 2001 --
24 A. Uh-huh.

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1 Q. -- what types of material did that
2 removal agreement address?
3 A. Oh, all tires without rim.
4 Q. Without rims?
5 A. Yes.

6 Q. It did not address the tires that were
7 on rim?

8 A. No, ma'am.

9 Q. Did it address the landscape waste
10 that you mentioned in photograph
11 number something, 3?

12 A. 3, correct, the AC did.

13 Q. Did the tire removal agreement
14 address --

15 A. No, I'm sorry.

16 Q. You said there was some demolition or
17 construction debris also in that photograph.
18 Did the tire agreement address that material?

19 A. No.

20 Q. And I believe that there is a -- well,
21 there is something at the bottom of photograph
22 number 3, it looks like a silver circle. Can
23 you tell me what that is?

24 A. It looks like a hub cap to me.

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1 Q. Did the tire removal agreement address
2 that piece of material there?

3 A. No.

4 Q. What about the school buses that you

5 can see in photos 4 and 8?

6 A. No.

7 MS. RYAN: Thank you. That's all I
8 have.

9 ARBITRATOR HALLORAN: Thank you, Ms.
10 Ryan.

11 Mr. Porter, any cross?

12 MR. PORTER: Yes. Thank you.

13 CROSS-EXAMINATION

14 BY MR. PORTER:

15 Q. How long have you been familiar with
16 the Berman's property?

17 A. Since August 2000.

18 Q. And isn't it true that the Berman's
19 property -- or excuse me, isn't it true that my
20 clients are licensed auto parts recyclers?

21 A. Correct.

22 Q. And you were aware of that when you
23 were inspecting their property?

24 A. Not at the time.

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1 Q. You became aware of that after --

2 A. Afterwards.

3 Q. -- the 55.3 notice was issued?

4 A. Before that.

5 Q. Okay. Isn't it true also that
6 Berman's is a licensed auto dealer?

7 A. Correct.

8 Q. And isn't it true that Berman's is
9 authorized by the IEPA to store used tires on
10 their site?

11 A. They have to fill out a notification
12 registration form every year to notify as a
13 storage site.

14 Q. Have you seen their registration form?

15 A. I haven't seen it this year yet.

16 Q. I'd like to -- may I approach, your
17 Honor?

18 ARBITRATOR HALLORAN: Yes, Mr.
19 Porter, anytime.

20 BY MR. PORTER:

21 Q. Let me show you a document I'm going
22 to have marked as -- what is it 2? Exhibit 2.

23 Is that document the Illinois
24 Environmental Protection Agency used and/or

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1 waste tire agency notification registration form
2 for the Berman's property?

3 A. Correct.

4 Q. And how do you become familiar with
5 those documents?

6 A. I generally go up to the facilities
7 and make sure they have accounted tires, like do
8 they store 250 tires outside and 1300 tires
9 inside, they will be notified as a storage site,
10 but if -- anything below that number is called a
11 generator site. And I can show you right here
12 on the front, right there, or storage exempt.

13 Q. And this document is for the year
14 2001, is that right?

15 A. 2001, yes.

16 Q. And so my clients were indeed a
17 storage site for used and waste tires, is that
18 right?

19 A. Yes, sir.

20 MR. PORTER: Your Honor, I move for
21 the admission of Exhibit 2.

22 MS. RYAN: No objection.

23 ARBITRATOR HALLORAN: Respondent's
24 Exhibit 2 is admitted.

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2 admitted.)

3 BY MR. PORTER:

4 Q. Now, the Berman's facility is a
5 licensed fenced auto salvage yard, is that
6 right?

7 A. That would be correct.

8 Q. And by necessity auto salvage yards
9 contain auto parts, isn't that correct?

10 A. That would be correct.

11 Q. And are you aware that my clients
12 never received administrative citation before?

13 A. Correct.

14 Q. Are you aware of how long my clients
15 have been in business?

16 A. No.

17 Q. Are you familiar with Title 14 of the
18 Illinois Environmental Protection, which is
19 entitled, used tires?

20 A. Yes.

21 Q. And isn't it true that the Simons were
22 issued a notice under 55.3D of the act on
23 January 8, 2001?

24 A. Yes.

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(Off the record.)

ARBITRATOR HALLORAN: We're back on
the record.

We're going to amend Respondent's
Exhibit No. 2 and we're going to label it
Respondent's Exhibit No. 1 and that is the
notification and registration form of the IEPA
and that is admitted.

(Respondent's Exhibit No. 1 was
admitted.)

MR. PORTER: Thank you, Mr. Halloran.
May I approach the witness?

ARBITRATOR HALLORAN: Yes, you may.

BY MR. PORTER:

Q. Let me show you what I've had marked
as Respondent's Exhibit No. 2. Is that a true,
fair and accurate copy of the notice pursuant to
Section 55.3D of the Environmental Protection
Act, which was sent to my client?

A. Yes, sir, it is.

Q. And it was sent by the Illinois
Environmental Protection Agency, your office, is
that right?

A. Yes, sir.

1 Q. And it was sent according to the proof
2 of service on the last page on January 8, 2001,
3 is that correct?

4 A. Yes.

5 MR. PORTER: Thank you. I move for
6 admission of Exhibit 2.

7 ARBITRATOR HALLORAN: Ms. Ryan?

8 MS. RYAN: No objection.

9 ARBITRATOR HALLORAN: Respondent's
10 Exhibit No. 2 is admitted.

11 (Respondent's Exhibit No. 2
12 admitted.)

13 BY MR. PORTER:

14 Q. Isn't it true that Section 55.3D
15 explicitly requires a notice to provide an
16 opportunity for the owner/operator or both to
17 perform a preventive or corrective action?

18 A. Correct.

19 Q. Isn't it true that the 553.D notice
20 that was sent to my clients doesn't make any
21 distinction between tires on rims or tires off
22 of rims?

23 A. Correct.

24 Q. As a matter of fact, isn't it also

1 true that the notice provides that the alleged
2 dump area was estimated to be in excess of 7500
3 used or waste tires?

4 A. As is stated right here, yes.

5 Q. It doesn't mention anything about
6 35,000 waste tires, isn't that right?

7 A. That would be correct.

8 Q. Isn't it true that you never actually
9 performed a count of the tires?

10 A. No.

11 Q. You never performed a sampling of any
12 type of the tires and multiplied that out by the
13 number of piles you saw or something like that,
14 correct?

15 A. No.

16 Q. So your -- you would agree that that
17 35,000 number you gave before was a complete
18 guess, right?

19 A. That will be after we cleaned them out
20 the first time, as to when we did the first 553D
21 with the tires on -- off rim.

22 Our contractor gave us a rough
23 estimate how many tires were with and without
24 rim on site.

1 Q. So, you actually --

2 A. But at this time right now, yes.

3 Q. If I understand what you just said,
4 that estimate that you provided was based on
5 somebody else's statement to you, is that right?

6 A. Correct.

7 Q. It was a complete hearsay statement,
8 is that correct?

9 A. (Indicating.)

10 Q. So, you personally have no knowledge
11 as to how many tires on or off rims were at my
12 client's property, is that right?

13 A. Correct.

14 Q. And if someone else at the IEPA --
15 strike that.

16 Who was it that came up with the 7500
17 estimate for the 553D notice?

18 A. That would be my co-worker, Sean.

19 Q. And how long has Sean been working
20 with waste tires?

21 A. Eight years.

22 Q. So, you wouldn't have any reason to
23 doubt his abilities, would you?

24 A. No.

1 Q. Now, earlier you mentioned the 553
2 requires that the landowner have an opportunity
3 to provide a preventive or corrective action
4 plan and indeed isn't it true that my clients
5 provided a correction plan?

6 A. A TRA, yes, a truck tire removal
7 agreement.

8 Q. And indeed the notice that was sent to
9 my clients at page 2 provided that they had an
10 opportunity to submit a response action plan, is
11 that right?

12 A. That would be correct.

13 Q. Let me show you what I'm going to have
14 marked as Respondent's Exhibit No. 3.

15 Is that a true and accurate copy of
16 the tire removal plan that was submitted by my
17 clients, Dean and Susan Simon?

18 A. Yes, sir.

19 MR. PORTER: Move for admission of
20 Exhibit 3.

21 ARBITRATOR HALLORAN: Ms. Ryan?

22 MS. RYAN: No objection.

23 ARBITRATOR HALLORAN: Respondent's
24 Exhibit No. 3 is admitted.

1 (Respondent's Exhibit No. 3
2 admitted.)

3 BY MR. PORTER:

4 Q. Isn't it true that that plan
5 contemplates that my clients would have tires
6 removed by a Star Used Tire Disposal?

7 A. Yes, sir.

8 Q. And Star Used Tire Disposal was a
9 disposal entity approved by the IEPA for that
10 purpose, is that right?

11 A. Correct.

12 Q. And they were to remove 500 tires a
13 month weather permitting, is that right?

14 A. That's what it states right here, yes.

15 Q. And let me show you what I'm going to
16 have marked as Exhibit No. 4. Well, strike
17 that.

18 Isn't it true that my client's
19 proposed plan was accepted?

20 A. Not with weather permitting.

21 Q. Well, let me show you what I'm going
22 to have marked as Exhibit 4. What is that
23 document we've had marked as Respondent's
24 Exhibit 4?

1 A. A document written by Todd Marvel, my
2 manager out of Springfield.

3 Q. Well, that is the document wherein
4 Todd agrees with the response action plan, isn't
5 that right?

6 A. Yes.

7 Q. And no where within this document does
8 it say that he does not agree to the force
9 majeure language of the Berman's proposal, does
10 it?

11 A. No.

12 Q. And you understand the force majeure
13 language is language that relates to conditions
14 beyond my client's control such as weather?

15 A. Okay. No, it doesn't address anything
16 about the weather.

17 Q. So, the acceptance didn't say we
18 accept but we don't agree to your restriction
19 regarding weather, is that right?

20 A. Correct.

21 Q. And the acceptance doesn't mention
22 anything about rimed tires versus nonrimed
23 tires, is that correct?

24 A. Correct.

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1 Q. And isn't it true that the 553 notice
2 only references tires, it doesn't reference
3 anything to do with any other waste piles?

4 A. The 553D references tires, no waste
5 piles, no other -- any other thing.

6 ARBITRATOR HALLORAN: All right. Off
7 the record.

8 (Off the record.)

9 ARBITRATOR HALLORAN: Back on the
10 record.

11 BY MR. PORTER:

12 Q. I would -- is Exhibit No. 4 a true and
13 accurate copy of the correspondence from
14 Todd Marvel dated February 27, 2001, to my
15 clients?

16 A. Yes.

17 Q. You're familiar with his signature?

18 A. Yes, sir.

19 MR. PORTER: I would move for
20 admission of Exhibit 4.

21 MS. RYAN: No objection.

22 ARBITRATOR HALLORAN: Respondent's

23 Exhibit No. 4 is admitted.

24 (Respondent's Exhibit No. 4

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1 admitted.)

2 BY MR. PORTER:

3 Q. So, you and the IEPA understood that
4 my client's believed there might be a problem
5 with removing tires in the late March, early
6 April months due to weather, is that correct?

7 A. That would be correct.

8 Q. That is because, you know, the ground
9 gets wet and it's difficult to get trucks out on
10 the property to get the tires out of there?

11 A. That would be correct.

12 Q. After you received my client's
13 proposal, isn't it true that you and some other
14 IEPA personnel went out to my client's property
15 on February 22?

16 A. Yes.

17 Q. And after that meeting is when the
18 letter went out by Mr. Marvel accepting the
19 response action plan, is that right?

20 A. That would be correct.

21 Q. Now, so the plan is actually Exhibit 3

22 and Exhibit 4 put together, is that correct?

23 A. Yes. Correlation of each other, yes.

24 Q. And isn't it true that the plan

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1 contemplated that initially 500 tires per month

2 would be removed?

3 A. Correct.

4 Q. And then on May 1, according to Mr.

5 Marvel's letter, the plan would be revisited, is

6 that right?

7 A. Yes, sir.

8 Q. There was no revisitation on May 1,

9 2001, was there?

10 A. No, there wasn't.

11 Q. And as a matter of fact, Mr. Marvel

12 indicated that at May 1, at that time, a revised

13 clean up plan would be instituted, isn't that

14 right?

15 A. As stated right here, yes.

16 Q. And isn't it true that no revised plan

17 was ever instituted?

18 A. No.

19 Q. My clients were never communicated

20 with regarding an opportunity to revise the

21 plan, is that right?

22 A. Correct.

23 Q. Now, isn't it true that the overall
24 plan contemplated that at a minimum it would

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1 take 7 to 8 months to remove the tires?

2 A. Correct.

3 Q. And as a matter of fact, you've now
4 indicated that possibly there were far in excess
5 of 7500 tires, is it correct?

6 A. That would be correct.

7 Q. And so the plan actually contemplated
8 that it could take years to remove all of the
9 tires, is that right?

10 A. That would be correct.

11 Q. Rather than revisiting the plan, isn't
12 it true that you went out on May 17, 2001, and
13 conducted another inspection?

14 A. Yes.

15 Q. And it's that May 17, 2001, inspection
16 that brings us here today, is that right?

17 A. Correct.

18 Q. And you went out there to see how the
19 tire removal was going, is that right?

20 A. That would be correct.

21 Q. Now, you earlier referenced some
22 photos that were attached to Petitioner's
23 Exhibit 1. Isn't it true that those photos --
24 strike that.

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1 How many total photos are there?

2 A. There will be nine photos total.

3 Go ahead.

4 Q. I'm sorry. I didn't mean to cut you
5 off.

6 A. Minus one with the solid waste pile.
7 So, eight total with the tires.

8 Q. Eight of the nine photos depict the
9 two tire piles, is that right?

10 A. Yes, sir.

11 Q. So, you would agree that the purpose
12 that you were out there was to inspect those
13 tire piles, is that right?

14 A. Yes, sir.

15 Q. And you authored a report, isn't that
16 correct?

17 A. Correct.

18 Q. And that narrative report is contained

19 within Exhibit 1 at page 3, is that right?

20 A. Yes, sir.

21 Q. And the narrative report indicates
22 that indeed 356 used waste tires in the month of
23 March had been removed, isn't that correct?

24 A. Is that stated in the narrative did

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1 you say?

2 Q. If you need to take a look at the
3 report to refresh your recollection, I would
4 suggest you look at paragraph 2.

5 A. Okay. Correct. Thank you.

6 Q. Isn't it true that you were aware at
7 the time of your inspection indeed some tires
8 had been removed?

9 A. Yes.

10 Q. You were also made aware that my
11 clients had to get a different contractor to
12 remove those tires, isn't that right?

13 A. Correct.

14 Q. Isn't it true that my clients told you
15 that Star failed to come out though they had
16 been requested to do so?

17 A. That would be correct.

18 Q. And the photos that you took were
19 those taken on May 17?

20 A. Yes, sir.

21 Q. So, as of May 17, 2001, were you aware
22 that my clients were in the process of
23 implementing the action plan, isn't that right?

24 You're nodding?

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1 A. Yes, I am sorry.

2 Q. Nonetheless, you cited my clients for
3 potential violations of Section 21 due to the
4 tire piles, is that correct?

5 A. Tires with rims.

6 Q. Why are you drawing a distinction
7 between tires with rims and tires without rims?

8 A. Before July 1st we had rules stated
9 tires without rims. We considered the tires
10 with rims as an open dump site, due to the
11 duration of how long they're -- they were in
12 there, for that certain period of time.

13 Q. What rule draws a distinction between
14 tires with rims and tires without rims that
15 you're referencing?

16 A. Tires with rims with -- still with

17 rims on them, we regularly -- before July 1st we
18 used to regulate facilities with tires on rim
19 with the -- with the possible case of
20 encephalitis. It's a disease carried by
21 mosquitoes. Mosquitoes like to harbor in tires,
22 which they contain shallow water, resting areas
23 for the mosquitoes. We changed the rules, tires
24 on rim due to the fact of -- most the fact of

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1 tire fires and we wanted to put these two items
2 together. I -- Todd Marvel is not here, he
3 would address that more than I would.

4 Q. Can you cite to me chapter and verse a
5 specific rule that references a distinction
6 between tires with rims and tires without rims?

7 A. Tire with rims is a tire with a rim
8 intact. Tires without rims, tires with nothing
9 intact.

10 Q. Are you familiar with Part 848 of the
11 Illinois Administrative Code?

12 A. Sort of.

13 Q. Isn't it true that those are the
14 regulations that regulate management of used and
15 waste tires?

16 A. Yes.

17 Q. And you indicated sort of, so you
18 haven't committed that document to memory, is
19 that right?

20 A. No. I haven't committed that document
21 to memory, no.

22 Q. Are you aware of anywhere within that
23 Part 848 of the Illinois Administrative Code
24 that references a distinction between tires with

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1 rims and tires without rims?

2 A. Not really.

3 Q. Are you aware of any section of
4 Illinois Environmental Protection Act that
5 references a distinction between tires with rims
6 and tires without rims?

7 A. No.

8 Q. You were aware that my client was a
9 used auto parts dealer, is that correct?

10 A. Correct.

11 Q. And you were aware that tires with
12 rims were part of the products that they sold?

13 A. Correct.

14 Q. And so you knew that the tires there

15 were not discarded, they were part of their
16 inventory, isn't that right?

17 A. Correct.

18 Q. Now, after your inspection on May 17,
19 isn't it true that the IEPA authored a letter to
20 my clients on May 21, 2001?

21 A. Yes.

22 Q. Exhibit 5, is that where we're at?
23 Let me show you what I've had marked as
24 Respondent's Exhibit No. 5. Is that a true,

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1 accurate and complete copy of the letter sent to
2 my clients from May 21, 2001?

3 A. That will be correct.

4 Q. Now, it has some handwritten text on
5 the bottom of it that says, I called and talked
6 to Todd. He said the contract had already put
7 into motion. That wasn't on the letter when it
8 was sent, correct?

9 A. No.

10 Q. And I take it you don't know who wrote
11 that, is that right?

12 A. No.

13 Q. My statement was correct?

14 A. Your statement is correct, yes.

15 MR. PORTER: Now, well, I move for
16 admission of Exhibit 5.

17 ARBITRATOR HALLORAN: Ms. Ryan?

18 MS. RYAN: No objection.

19 ARBITRATOR HALLORAN: Respondent's
20 Exhibit No. 5 is admitted.

21 (Respondent's Exhibit No. 5
22 admitted.)

23 BY MR. PORTER:

24 Q. Isn't it true that the letter states

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1 that or provides, excuse me, that the results of
2 the recent inspection conducted by Kaare
3 Jacobsen of Rockford Regional Office revealed
4 that you have not removed any used or waste
5 tires in the above-referenced site.

6 A. That's what it says, yes.

7 Q. And the letter also provided that as
8 of that date the tires would be removed without
9 further notice to my clients, isn't that
10 correct?

11 A. Correct.

12 Q. Isn't it true that Ms. Simon informed

13 the IEPA that the content of the letter was
14 incorrect?

15 A. I never got any words of that.

16 Q. Okay. Isn't it true that indeed the
17 letter is wrong?

18 A. Yes.

19 Q. Tires had been removed from the
20 premises, isn't that right?

21 A. Correct.

22 Q. Were you aware that my clients
23 telephoned Mr. Marvel regarding this letter?

24 A. A couple of times, yes.

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1 Q. And are you aware that my clients
2 informed the Illinois Environmental Protection
3 Agency that the content of the letter was
4 incorrect?

5 A. I wasn't aware of that, no.

6 Q. Let me show you what I'm going to have
7 marked as Respondent's Exhibit No. 6. Isn't it
8 true that this correspondence dated May 25,
9 2001, sent to the IEPA, 1021 North Grand Avenue,
10 East, P.O. Box 19276, Springfield, Illinois,
11 from Susan Simon?

12 A. Yes.

13 Q. Have you seen that correspondence
14 before?

15 A. Looks familiar, yes.

16 Q. And isn't it true that that
17 correspondence indicates that the information --
18 well, strike that.

19 The correspondence was to Mr. Marvel,
20 is that correct?

21 A. Yes.

22 Q. And it tells him that, quote, the
23 information in your letter is not accurate,
24 closed quote, isn't that right?

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1 A. That's what it says, yes.

2 Q. And it also mentioned that you had
3 been told that indeed tires had been removed?

4 A. Right.

5 Q. And that that is correct, you had been
6 told tires had been removed?

7 A. Yes, tires has been removed, yes.

8 MR. PORTER: I move for the admission
9 of Exhibit 6.

10 MS. RYAN: No objection.

11 ARBITRATOR HALLORAN: Respondent's
12 Exhibit 6 is admitted.

13 (Respondent's Exhibit No. 6
14 admitted.)

15 BY MR. PORTER:

16 Q. Isn't it true that you were provided a
17 copy of a receipt from Watertown Tire Recyclers
18 by my clients?

19 A. Yes.

20 Q. Let me show you what I'm going to have
21 marked as Exhibit 7.

22 Is that a true and accurate copy of
23 the receipt, Watertown Tire Recyclers indicating
24 a removal of tires in March?

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1 A. That would be correct.

2 MR. PORTER: Move for the admission of
3 Exhibit 7.

4 MS. RYAN: No objection.

5 ARBITRATOR HALLORAN: Respondent's
6 Exhibit No. 7 is admitted.

7 (Respondent's Exhibit No. 7
8 admitted.)

9 BY MR. PORTER:

10 Q. Isn't it true that my client was
11 informed immediately -- well, strike that.

12 After my client sent her notice to the
13 IEPA that their information was incorrect in the
14 letter that was sent to them, isn't it true that
15 my client was informed that there was nothing
16 she could do about it, the tire contractor was
17 going to come out and remove the tires?

18 A. Come again. I just --

19 Q. Terrible question. Let me rephrase.

20 A. Please.

21 Q. After my client sent notice to the
22 IEPA that the IEPA was wrong when it indicated
23 she had not removed any tires, isn't it true
24 that she was informed it was too late, there was

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1 nothing she could do about it, the contractor
2 had already been contracted?

3 A. Correct.

4 Q. Now, you were aware that in March and
5 April of 2001, the ground at my client's
6 premises was very wet, is that right?

7 A. Yes, it was a sloppy spring.

8 Q. And you were aware that Mr. Simon was

9 hospitalized around this time, isn't that right?

10 A. Yes.

11 Q. You were also aware that the tire
12 hauler that had been approved by the IEPA failed
13 to come out, isn't that right?

14 A. Correct.

15 Q. And you were aware that my client took
16 the initiative of having a different hauler come
17 out and remove tires, isn't that correct?

18 A. Right.

19 Q. Isn't it true that my clients were
20 never given an opportunity to complete the tire
21 removal program, which was supposed to take a
22 minimum of 7 to 8 months?

23 A. That would be correct.

24 Q. Isn't it true that my clients were

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1 never given a chance to seek an extension of the
2 time frame for removal of the tires?

3 A. Correct.

4 Q. Isn't it true that Section 55.4D of
5 the Illinois Environmental Protection Act
6 explicitly requires or allows a party to seek an
7 extension of a tire removal program?

8 A. Correct.

9 Q. All right. You would agree that all
10 of the photos or purported violations related to
11 tires except for one photo which showed another
12 waste pile, isn't that right?

13 A. That would be correct.

14 Q. Your inspection report and the
15 administrative citation pleadings never
16 referenced any problem with the automobiles you
17 saw on the premises, right?

18 A. No.

19 Q. And you mentioned the overturned buses
20 and I think there is a picture of a truck in
21 here. You were aware that they were in the
22 business of selling used auto parts and --

23 A. Yes.

24 Q. -- it was appropriate for them to

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1 have those vehicles on their property?

2 A. Totally aware of that, yes.

3 Q. So, my statement is correct, it was
4 appropriate for them to have those on their
5 property?

6 A. Yes.

7 Q. And you didn't believe that they were
8 refuse, right?

9 A. No, not at all.

10 Q. So, the only pile then that doesn't
11 relate to tires is the one depicted on the
12 second page of photos, the top photo, is that
13 right?

14 A. Number 3? Correct.

15 Q. Where are you getting the numbers of
16 the photos, if you could just point that out to
17 me?

18 A. Right here.

19 Q. Okay. So, photo file name has a long
20 file, the last three digits of that are the
21 number of the photo?

22 A. That would be correct, yes.

23 Q. And photo no. 3 actually depicts yard
24 waste, isn't that right?

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1 A. Yard waste and building debris.

2 Q. Were you aware that the roof of a
3 building had fallen down on the property?

4 A. No, I wasn't aware of that.

5 Q. And isn't it true that all of the

6 material depicted in photo 3 was material
7 generated on site?

8 A. On site, yes.

9 Q. So, it wasn't material that had been
10 brought off of site and then dumped on site,
11 correct?

12 A. Correct.

13 Q. And isn't it true that Boone County
14 allows for burning of yard waste?

15 A. Yards waste but not building material.

16 Q. And -- well, there is no evidence that
17 my clients burned any building material, right?

18 A. No.

19 Q. Now, it actually appears to be two
20 piles, there is one to the right and one to the
21 left --

22 A. Yes.

23 Q. -- do you see that?

24 A. Yes.

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1 Q. The bigger pile to the left is yard
2 waste?

3 A. Yard waste and some building material.

4 Q. The building material, as far as you

5 know, was generated on site, is that correct?

6 A. That would be correct.

7 Q. And the building material, what was
8 it?

9 A. It was roofing shingles and probably
10 like I-beam but -- not I-beams, 2 by 4s,
11 plywood, stuff like that.

12 Q. Do you know whether or not my clients
13 intended to use any of those building materials?

14 A. No, they're totally torn up,
15 discarded, damaged, not capable for using -- for
16 using for building material.

17 Q. Okay. Do you know if my clients were
18 going to try to use any of that building
19 material?

20 A. No, none whatsoever.

21 Q. You never asked them about that?

22 A. No.

23 Q. And you said you'd been to my client's
24 property on how many occasions?

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1 A. Probably 12 different occasions.

2 Q. And prior to May 17, 2001, how many
3 times had you been there?

4 A. I would say about four, five times.

5 Q. That pile wasn't there when you went
6 the night before, right?

7 A. No.

8 Q. So, as far as you knew, it was spring
9 cleaning going on, is that correct?

10 A. Probably.

11 Q. And did you go back at some point?

12 A. After 5/17?

13 Q. Yes.

14 A. Yes, I went back there.

15 Q. The pile was gone, wasn't it?

16 A. A majority of it.

17 Q. You would agree that it's not the
18 creation of liter to create a pile of material
19 that you intend to discard appropriately, right?

20 A. Yes.

21 MS. RYAN: Objection, calls for a
22 legal conclusion.

23 ARBITRATOR HALLORAN: Mr. Porter?

24 MR. PORTER: My response, I don't

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1 think it calls for a legal conclusion. The term
2 liter in this context is a factual issue, at

3 least as far as this investigator is concerned.

4 MS. RYAN: I disagree. The term liter
5 is defined in the liter control act, which is
6 the definition that is used by the pollution
7 control board. I think it is a legal
8 conclusion.

9 MR. PORTER: If I may make one more
10 response, even if it is determined to be a legal
11 conclusion, this witness has been put on as an
12 expert from the state on environmental
13 compliance, he is the one that actually leveled
14 the citation. So, I think he is qualified to
15 offer an opinion.

16 MS. RYAN: To the extent that he has
17 any factual basis for the facts relating to
18 the -- his opinion of whether there is liter on
19 the site, I have no problem with that but to the
20 extent that his -- any answer includes a legal
21 conclusion, I would object to that as being
22 considered for that purpose.

23 ARBITRATOR HALLORAN: I would sustain
24 Ms. Ryan's objection, possibly reword, rephrase

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1 that.

2 BY MR. PORTER:

3 Q. In your opinion is material -- strike
4 that.

5 I'm going to actually withdraw that.
6 I don't really need it.

7 When you issued the report, you didn't
8 know how long that pile had been present, is
9 that right?

10 A. That would be correct.

11 Q. The pile was primarily landscape
12 material, is that right?

13 A. A majority of it was landscape waste,
14 yes.

15 Q. The administrative citation that was
16 issued was issued because of the tires, isn't
17 that right?

18 A. Solid waste and the tires on rim.

19 Q. Well, isn't it true that the
20 administrative citation references your May 17,
21 2001, inspection?

22 A. Correct.

23 Q. And your May 17, 2001, inspection
24 report references the February 22, 2001, meeting

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1 or inspection of the premises, is that right?

2 A. Correct.

3 Q. And at any time have you ever
4 mentioned to my clients a problem with anything
5 other than tires on their property?

6 A. No.

7 Q. Are you aware of anyone from the IEPA
8 ever mentioning anything to my clients about a
9 problem with anything other than tires on their
10 property?

11 A. No.

12 Q. So, would it be safe to say the first
13 we heard about that would be today?

14 A. The tire issues, yes.

15 Q. Well, the first that we heard that the
16 government is taking a position that the real
17 problem out there was something other than
18 tires, would be today, is that correct?

19 A. Generally, no, it's May 15, 17, when
20 we cited a violation for the tires, not -- with
21 the tires and for the solid waste piles standing
22 out there.

23 Q. And you're calling the solid waste
24 pile the pile that had landscape waste it in?

1 A. Landscape waste and building material.

2 Q. You didn't believe that that pile
3 posed any threat to the human health, welfare or
4 environment, did you?

5 A. At the present time, I believe the
6 pile, in my judgment, my opinion, I thought at
7 the time the pile looked like as being staged to
8 be burned.

9 Q. That's complete conjecture though, is
10 that correct?

11 A. Yes.

12 Q. You don't know whether or not that
13 pile was burned, is that right?

14 A. No.

15 Q. There is absolutely no problem with
16 burning landscape waste, is that right?

17 A. Yes, there is.

18 Q. Not in Boone County, correct?

19 A. That's correct.

20 Q. It's not a violation in Boone County
21 to burn landscape waste --

22 A. No, no violation whatsoever.

23 Q. You would agree that the primary
24 concern as evidenced by the 8 out of 9 photos,

1 the 55.3 notice, the correspondences back and
2 forth, the primary concern was the tires?

3 A. That would be correct.

4 Q. And you would agree that my clients
5 were in the process of implementing the
6 corrective action plan, right?

7 A. Correct.

8 MR. PORTER: Nothing further.

9 ARBITRATOR HALLORAN: Thank you, Mr.
10 Porter.

11 Any redirect?

12 MS. RYAN: Yes, please.

13 REDIRECT EXAMINATION

14 BY MS. RYAN:

15 Q. You testified earlier that you gave --
16 50 percent of the tires you saw on the site were
17 on rim, is that correct?

18 A. That would be correct.

19 Q. You also testified that this
20 administrative citation did not apply to the
21 tires off rim but that it did apply to the tires
22 that were on rim, right?

23 A. Say that again.

24 Q. You testified that this administrative

1 citation that we're having a hearing for today
2 that applied to the tires that were on rim?

3 A. That would be correct.

4 Q. But not the tires that were off rim?

5 A. Correct.

6 Q. So, 50 percent of the tires at the
7 site are the subject of this administrative
8 citation?

9 A. Yes, ma'am.

10 Q. I'm sorry. At the cite on May 17?

11 A. Yes.

12 Q. I don't know what is there now.

13 Respondent's Exhibit No. 2, that is
14 our 553B notice, I think you still have your
15 copy there, if you look down at Roman Numeral
16 III, subparagraph C and D, it references the
17 term used and waste tires in C, and in D, used
18 and/or waste tires; do you see that?

19 A. Yes.

20 Q. And I believe you testified earlier
21 that in July of 2001, our understanding of these
22 terms changed?

23 A. Yes, they have.

24 Q. I believe you also testified you

1 weren't sure exactly where that change was,
2 whether it was in Part 848 or in the act, but
3 can you describe what that change was?

4 MR. PORTER: Object to the --
5 obviously calls for conjecture because if he
6 doesn't even know where it comes from, how can
7 he testify as to what the nature of the change
8 was.

9 MS. RYAN: I think he has an
10 understanding of what is regulated and what's
11 not regulated based on what he does in his job,
12 whether or not he can cite to an actual legal
13 citation is apparently beyond his ability,
14 but --

15 ARBITRATOR HALLORAN: If the witness
16 can answer, he may do so.

17 BY MS. RYAN:

18 Q. Do you know what changed in July of
19 2001?

20 A. Yes. From July of 2001, we as
21 inspectors were asked to start to regulate tires
22 with rims, they are to be regulated just the
23 same as the tires without rims as done before
24 July 1st of 2001.

1 Q. So, prior to July 1st, 2001, tires on
2 rims were not regulated -- sorry. You did not
3 consider tires on rim regulated material when
4 you went out to inspect a tire site?

5 A. That would be correct.

6 Q. And this Respondent's Exhibit No. 2
7 was issued in January of 2001, which would be
8 prior to July, is that correct?

9 A. That would be correct.

10 Q. Can you turn to Respondent's Exhibit
11 No. 1, which is the used tire notification form?
12 Can you look through this document and tell me
13 when this was submitted to Illinois
14 Environmental Protection Agency?

15 A. I don't believe I have it. I think --

16 Q. Oh, don't you?

17 A. No, I don't.

18 Q. You can have mine, if you'd like.

19 A. Yes, I don't have it.

20 Q. Can you look through that document and
21 see if you can tell when it was submitted to
22 Illinois Environmental Protection Agency?

23 A. There is no date on this.

24 Q. Do you know when this document is due

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1 each year?

2 A. This document is due by the second
3 week of each -- of the first of the year, second
4 week of January.

5 Q. So mid-January?

6 A. Mid-January, yes.

7 Q. The 2001 form would be due mid-January
8 2001?

9 A. Yes. Correct.

10 Q. That would be prior to July of 2001,
11 is that correct?

12 A. Yes. Correct.

13 Q. So, from the way you described it,
14 this notification form and the 553D notice, both
15 being prior to July of 2001, did not relate to
16 the tires that were on rim at the site on May
17 17, 2001, is that correct?

18 A. Correct.

19 MR. PORTER: I object. The document
20 speaks for themselves.

21 ARBITRATOR HALLORAN: Ms. Ryan?

22 MS. RYAN: I'm just trying to get

23 Kaare's understanding of what happened. He was
24 the inspector out there on May 17. He is the

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1 one who decided what to cite for and I'm trying
2 to get the background for why his observations
3 lead him to the conclusion that a violation was
4 present on that day.

5 ARBITRATOR HALLORAN: Mr. Porter, I'm
6 going to overrule your objection. You may
7 proceed.

8 BY MS. RYAN:

9 Q. If you look back at Complainant's
10 Exhibit 1, which is your inspection report, you
11 still have that?

12 A. Yes.

13 Q. I'm going to take this one back,
14 otherwise I'll forget it is mine.

15 If you look at in photographs number
16 4, 5, look at photographs number 4 and 5 for a
17 minute. I believe you testified that these
18 piles contain tires that were both on and off
19 rim?

20 A. 4 and 5, yes.

21 Q. And I believe you also testified that

22 part of the reason that you were concerned about
23 the tires on rim at the site was the length of
24 time that you believed they had been there?

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1 A. Yes.

2 Q. And what -- based on these photographs
3 and your observation of the site, what led you
4 to believe that these tires were there for some
5 period of time?

6 A. The vast amount of vegetative growth
7 on and around the tires.

8 Q. Did you have any way to estimate about
9 how long you thought that they might have been
10 there?

11 A. Not really, being that I was a plant
12 and soil science major in college, those plants
13 -- those plants do not grow in a short period of
14 time.

15 MR. PORTER: I'm going to object. He
16 hasn't been offered as an expert in soils as far
17 as I know, but --

18 ARBITRATOR HALLORAN: Ms. Ryan?

19 MS. RYAN: That's fine.

20 THE WITNESS: All right.

21 ARBITRATOR HALLORAN: I will sustain
22 Mr. Porter's objection.

23 BY MS. RYAN:

24 Q. If you can turn to photograph number

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1 7, you testified that there were tires in this
2 pile. Can you describe where they are?

3 A. You could tell clear on the back where
4 the tires are.

5 Q. Would that be just above the
6 vegetation there, just a little below the trees?

7 A. Yes, you can tell by the white walls.

8 Q. Is that pile also covered with
9 vegetation?

10 A. Yes.

11 Q. And that led you to the conclusion
12 that those materials had been there for some
13 period of time?

14 A. Yes.

15 MS. RYAN: Thank you. That's all I
16 have.

17 ARBITRATOR HALLORAN: Thank you.

18 Mr. Porter, any re-cross?

19 MR. PORTER: Yes.

20

REXCROSS-EXAMINATION

21

BY MR. PORTER:

22

Q. On the latter part, we're from

23

Northern Illinois, you would agree that

24

vegetation wasn't there in the winter, right?

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1

A. Yes, that vegetation wasn't there in

2

the wintertime but --

3

Q. It's not evergreen, right?

4

A. No.

5

Q. And so the vegetation obviously grew

6

in the two months before May, isn't that right?

7

A. No, because that is more of a woody

8

plant and they grew all over the tires.

9

Q. Counsel made a big deal out of the

10

July 1 date, and isn't it true that your

11

inspection took place on May 17, 2001?

12

The inspection that was the basis of

13

the administrative citation took place on May

14

17, 2001, correct?

15

A. Yes.

16

Q. And so when you cited various sections

17

that you thought there might have been

18

violations on May 17, 2001, those were for tires

19 in general, you weren't drawing any distinction
20 between rimed tires or nonrimed tires?

21 A. Right.

22 MS. RYAN: Objection, misstates prior
23 testimony.

24 ARBITRATOR HALLORAN: Overruled, you

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1 may answer.

2 THE WITNESS: Correct.

3 MR. PORTER: Nothing further.

4 ARBITRATOR HALLORAN: Ms. Ryan?

5 MS. RYAN: That's all.

6 ARBITRATOR HALLORAN: Any reredirect?

7 You may step down. Thank you very

8 much.

9 (Off the record.)

10 ARBITRATOR HALLORAN: We're back on
11 the record after about a 10 minute break. It's
12 about 10:18, and Ms. Ryan, have you finished
13 with your case in chief?

14 MS. RYAN: We have. Thank you.

15 ARBITRATOR HALLORAN: Thank you, Ms.

16 Ryan.

17 Mr. Porter?

18 MR. PORTER: Procedurally this is a
19 different situation, I know you don't make the
20 final decision, but I'm going to make a motion
21 to dismiss at this time for the record.

22 ARBITRATOR HALLORAN: That is, as you
23 know, the hearing officer does not make
24 dispositive motions but your objection and your

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1 motion is so noted for the record.

2 You may proceed.

3 MR. PORTER: Thank you.

4 We would call Susan Simon.

5 (Witness first duly sworn.)

6 SUSAN SIMON,

7 called as the witness herein, having been first

8 duly sworn, was examined and testified as

9 follows:

10 DIRECT EXAMINATION

11 BY MR. PORTER:

12 Q. Good morning.

13 A. Good morning.

14 Q. State your name for the record.

15 A. Susan Simon.

16 Q. And where do you live?

17 A. We now live on Town Hall Road. We
18 lived at 827 Grover Street previously for 30
19 years.

20 Q. That is in Belvidere?

21 A. In Belvidere, yes.

22 Q. How are you employed?

23 A. We're self-employed. We have Berman's
24 Auto Parts.

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1 Q. You're saying we, who is the we?

2 A. My husband and I, Dean.

3 Q. Okay. And what does Berman's Auto
4 Parts do?

5 A. Berman's Auto Parts is a retail. We
6 sell used parts, rebuilt parts and new parts for
7 automotives.

8 Q. On May 17, 2001, did you and your
9 husband possess any licenses?

10 A. Yes.

11 Q. And what licenses did you possess?

12 A. We possessed a recyclers, automotive
13 recyclers license and a used motor vehicle
14 license.

15 Q. Let me show you what I'm going to have

16 marked as Respondent's Exhibit No. 8. Is that a
17 true and accurate copy of your 2001 automotive
18 parts recyclers license?

19 A. Yes, it is.

20 MR. PORTER: More for the admission of
21 Exhibit No. 8.

22 MS. RYAN: Objection, relevance.

23 ARBITRATOR HALLORAN: I'm sorry.

24 MS. RYAN: Object as to relevance.

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1 MR. PORTER: Clearly goes to the issue
2 of whether or not there was liter on the
3 premises and it wasn't liter because they deal
4 in the auto parts industry.

5 ARBITRATOR HALLORAN: May I take a
6 look at the exhibit?

7 I'm going to allow it over the
8 Complainant's objection, Respondent's Exhibit
9 No. 8.

10 (Respondent's Exhibit No. 8
11 admitted.)

12 BY MR. PORTER:

13 Q. Let me also show you Respondent's
14 Exhibit No. 8. Is that your motor vehicle

15 license for 2001?

16 A. Yes, it is.

17 MS. RYAN: Same objection.

18 ARBITRATOR HALLORAN: Same ruling.

19 Respondent's Exhibit No. 9 is admitted over
20 Complainant's objection.

21 (Respondent's Exhibit No. 9
22 admitted.)

23 BY MR. PORTER:

24 Q. Berman's Auto Parts was an authorized

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1 store of used and waste tires, is that right?

2 A. Yes.

3 Q. And you had filed the appropriate
4 document with the IEPA, which we previously had
5 marked, is that correct?

6 A. Yes.

7 Q. And as a matter of fact, you paid \$100
8 per year to the Used Tire Management Fund, is
9 that right?

10 A. Yes.

11 Q. How long have you and your husband
12 owned Berman's?

13 A. For 30 years at least, plus.

14 Q. During that time has Berman's been
15 inspected by the IEPA?

16 A. Yes.

17 Q. And in all of that time, other than
18 the administrative citation issued in this case,
19 has Berman's ever received an administrative
20 citation?

21 A. No, they have not.

22 Q. Were the tires -- well, strike that.
23 Your business obviously acquires
24 vehicles that have tires on them, right?

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1 A. Yes.

2 Q. And the tires are removed and then
3 they're put in piles, is that correct?

4 A. Correct.

5 Q. Over the 30 years were the tires sold
6 on occasion?

7 A. Yes.

8 Q. And over that 30 years, were the tires
9 removed at any time?

10 A. Yes.

11 Q. And they were removed by waste haulers
12 on occasion, is that right, or tire haulers?

13 A. Tire haulers, yes.

14 Q. Okay. Is your property fenced?

15 A. Yes.

16 Q. So, the area where the tires are
17 located is fenced in, is that right?

18 A. Yes, it is.

19 Q. Do you allow people to dump refuse on
20 your property?

21 A. No, we do not.

22 Q. Now, one of the inspections that you
23 underwent occurred shortly before January 8 of
24 2001, is that right?

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1 A. Yes.

2 Q. And as a result of that inspection you
3 were sent a notice pursuant to Section 55.3D of
4 the Environmental Protection Act, right?

5 A. Yes.

6 Q. And the reason for the notice was the
7 used and/or waste tires, is that right?

8 A. Yes.

9 Q. Now, were the tire piles in the same
10 condition they had been in the 30 years
11 preceding?

12 A. Yes, they were.

13 Q. Now, the tire piles obviously grow and
14 shrink and grow and shrink depending on sales
15 and shipping?

16 A. That is correct.

17 Q. So nothing had changed in that 30 year
18 period, is that right?

19 A. Correct.

20 Q. And at any time prior to January
21 2001 -- well, strike that.

22 At any time before, in the 1980s or
23 '90, did the IEPA tell you that it was improper
24 to have tires on your premises?

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1 A. No, they didn't tell us that.

2 Q. The January 2001, 553 notice allowed
3 you to submit a response action plan, is that
4 right?

5 A. That's correct.

6 Q. And you submitted that plan, is that
7 correct?

8 A. Yes, I did.

9 Q. And as the government admitted that
10 plan was accepted, is that right?

11 A. That's correct.

12 Q. And what was your proposed plan?

13 A. The proposed plan was 500 tires for
14 March and April, weather permitting, tire
15 hauler's schedules permitting, and a revisit of
16 the plan in May.

17 Q. And did you understand that the
18 removal of the tires would take at least 7 to 8
19 months?

20 A. Yes, I did.

21 Q. Your proposal considered our northern
22 Illinois weather, is that right?

23 A. Yes.

24 Q. On February 22, 2001, did someone from

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1 the Environmental Protection Agency come out and
2 take a look at your property again?

3 A. Yes, they did.

4 Q. Who came out?

5 A. Kaare Jacobsen, Sean Newell and Todd
6 Marvel.

7 Q. And it was after that meeting that
8 your plan was accepted, is that right?

9 A. That's correct.

10 Q. You were aware that the original
11 notice of the IEPA estimated 7500 tires on your
12 property?

13 A. That's correct.

14 Q. Who was going to bear the expense of
15 removing those tires?

16 A. Todd was to get the figures on that
17 before they came into remove the tires to let me
18 know what that would -- what the cost would be,
19 which he did not.

20 Q. Okay. So, you ended up having to find
21 out yourself, is that right?

22 A. Correct.

23 Q. But you understood that you were going
24 to have to pay for it?

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1 A. Correct.

2 Q. Now, you mentioned that the tire
3 removal plan called for a revisitation on May 1,
4 2001, of the plan. Did that revisitation occur?

5 A. No, it did not.

6 Q. Instead was there an inspection on May
7 17, 2001?

8 A. Yes, there was.

9 Q. And at that inspection, were you
10 informed that the inspector believed the tire
11 piles constituted some type of open dump?

12 A. I don't recall them calling it an open
13 dump.

14 Q. Isn't it true that he was informed
15 that some tires had been removed?

16 A. Yes.

17 Q. After that inspection, did you receive
18 a letter from Mr. Marvel?

19 A. Yes.

20 Q. And were you surprised by that letter?

21 A. Yes, I was.

22 Q. Why?

23 A. Because we had already sent, shipped
24 tires. I had expected him to come and revisit

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1 by phone or in person on May 1st.

2 Q. In that letter was there ever any
3 mention of any problem other than tires?

4 A. No, there was no mention of anything
5 about tires.

6 Q. At the May 17 inspection, did the
7 inspector mention any distinction between tires

8 on rims or off rims?

9 A. His concern was tires off of rims.

10 Q. So, he was not concerned with tires on
11 rims, is that right?

12 A. No, that was -- no.

13 Q. Now, eventually the government comes
14 out and just removes a substantial amount of
15 tires, is that right?

16 A. They removed tires off of rims.

17 Q. You're jumping ahead. They came out
18 and removed tires, right?

19 A. Yes.

20 Q. What tires did they remove?

21 A. Just the ones off of rims.

22 Q. They didn't remove any on rims, right?

23 A. No, sir.

24 Q. And did they inform you they weren't

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1 concerned about the tires on rim?

2 A. That's correct.

3 Q. And when did that removal occur?

4 A. That removal occurred the latter part
5 of June and the first part of July.

6 Q. So, after July 1 they were removing

7 tires on your property?

8 A. Yes, the contract with the tire people
9 had expired on June, the end of June, and had to
10 be redone the first part of July.

11 Q. Okay. And the contractors came out in
12 July?

13 A. Yes.

14 Q. And at this time, they didn't remove
15 tires on rims, they removed them off of rims?

16 A. That's correct.

17 Q. Which were the very tires that you had
18 been having removed from your premises, right?

19 A. That's correct.

20 Q. Did the government give you a chance
21 to complete the action plan?

22 A. No, they did not.

23 Q. Did the government ever give you a
24 chance to extend the action plan?

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1 A. No, they did not.

2 Q. Did the IEPA ever tell you that you
3 could seek an extension of the action plan
4 within 90 days of the conclusion of the plan?

5 A. No, they didn't.

6 Q. Did you inform the government that
7 they were wrong when they indicated that no
8 tires had been removed?

9 A. Yes, I did.

10 Q. How did you do that?

11 A. I did that with a phone call and a
12 letter to Todd Marvel, a certified letter.

13 MR. PORTER: Off the record.

14 (Off the record.)

15 BY MR. PORTER:

16 Q. Let me show you what has been marked
17 as Respondent's Exhibit No. 6. Is that the
18 correspondence that you sent to Mr. Marvel?

19 A. Yes, it is.

20 Q. And did you also speak with Mr. Marvel
21 and tell him that his information was incorrect?

22 A. Yes, I did.

23 Q. What was his response?

24 A. His response was that the contract had

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1 already been signed and there wasn't anything he
2 could do about it.

3 Q. Now, today we've now heard that there
4 is some concern over a pile of stuff that

5 appears on photograph 3 of the inspection
6 report, and actually it appears that there might
7 be two piles there, what are those piles?

8 A. The pile on the left is shrubbery,
9 trees. There was some -- there was a couple of
10 drums that were in there.

11 The pile on the right is roofing
12 material from one of the buildings on site that
13 the storm had destroyed part of the roof, and we
14 had to repair it and that is where it was put --

15 Q. What happens --

16 A. -- before disposal.

17 Q. First, how long were those piles
18 there?

19 A. Part of the roofing pile was still
20 there, that is being -- the other piles is
21 completely gone.

22 Q. At the time the photo was taken, how
23 long were they there, if you know?

24 A. Probably about 5, 6 months, because

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1 the storm happened in the fall of the previous
2 year.

3 Q. What did you do with the piles?

4 A. The pile on the left with the trees,
5 the trees and the shrubbery was burnt, the rest
6 of it was -- the tin was put in the tin pile
7 that was laying around the site. Drums, metal,
8 iron were put in the iron piles. The roofing
9 goes to the garbage.

10 Q. And the tin and iron are those
11 products that your company deals in?

12 A. Yes.

13 Q. And you recycle those products, is
14 that right?

15 A. Yes.

16 Q. And the roofing materials were
17 disposed of properly, is that correct?

18 A. Yes.

19 Q. The shrubberies that mainly appear in
20 the left pile on the left, where did that
21 shrubbery originate from?

22 A. On site.

23 Q. Meaning on your property?

24 A. On our property.

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1 Q. This wasn't items that were brought
2 from somebody off-site and dumped on your

3 property, is that right?

4 A. That's correct.

5 Q. Were tires one of the products that
6 you dealt in?

7 A. Pardon me?

8 Q. Did you sell tires?

9 A. We sell tires, yes.

10 Q. Do you sell rims?

11 A. Yes.

12 MR. PORTER: Nothing further.

13 ARBITRATOR HALLORAN: Thank you, Mr.
14 Porter.

15 Ms. Ryan?

16 CROSS-EXAMINATION

17 BY MS. RYAN:

18 Q. Do you have copies of the exhibits
19 there with you or not?

20 He has got them? Okay.

21 Exhibit 1 and 4.

22 Thank you very much.

23 I'm going to show you Respondent's
24 Exhibit No. 1, which is the used tire

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1 notification form, did you fill that out?

2 A. Yes, I did.

3 Q. On the top of the form on the right
4 side there is a little box that says what is the
5 largest number of used and waste tires present
6 on this location at one time and in that box it
7 looks like a little fish with a dot under it.

8 A. That is a question mark.

9 Q. And underneath that it says, do you
10 sell new or used and/or used tires at retail at
11 this location, you've checked no, and you've
12 just testified today that that is not true,
13 isn't that correct?

14 MR. PORTER: Well, it's a compound
15 question, I object.

16 THE WITNESS: There was probably --
17 BY MS. RYAN:

18 Q. Does the form say, do you sell new or
19 used tires at this location and is the box
20 marked now --

21 A. We do not sell new tires.

22 Q. I'm asking you again, does the box --
23 does the line say do you sell new and/or used
24 tires at retail at this location, and there is a

1 box marked no?

2 A. I've got no written there, that's half
3 right and half wrong, we do not sell new tires.

4 Q. But is that what the form says?
5 That's all I'm asking.

6 A. In 2001 --

7 Q. Actually --

8 A. -- 2001 we did not sell used tires.
9 2000 I quit selling used tires because we had
10 leased the property. 2001 we did not sell used
11 tires.

12 ARBITRATOR HALLORAN: Ms. Simon --

13 THE WITNESS: -- prior time we did,
14 yes.

15 ARBITRATOR HALLORAN: -- could you
16 please just answer Ms. Ryan's question?

17 Would you, please, ask it again?

18 BY MS. RYAN:

19 Q. I'm just asking you to tell me is that
20 -- is that accurately what the form says?

21 A. That's accurate.

22 Q. But you testified today that you do
23 sell used tires at your property?

24 A. Prior to 2001, yes.

1 Q. So, all the time that you just
2 mentioned about four or five times when Mr.
3 Porter asked you if you sell tires and you said
4 yes, you were referring to prior to 2001?

5 A. Correct.

6 Q. And you didn't sign this form, did
7 you?

8 A. I did not sign this form, when I sent
9 it in. I did when Mr. Marvel was there on
10 February 22.

11 MS. RYAN: Thanks. I'm done with that
12 form.

13 ARBITRATOR HALLORAN: I'm going to
14 need that form.

15 BY MS. RYAN:

16 Q. I'm going to give you Respondent's
17 Exhibit No. 4. That's the letter from Mr.
18 Marvel approving any -- modifying your tire
19 removal plan. That letter doesn't say anything
20 about weather permitting there, does it?

21 MR. PORTER: Which document?

22 MS. RYAN: The letter from Todd Marvel
23 approving the plan.

24 THE WITNESS: It says accepts your

1 cleanup plan.

2 BY MS. RYAN:

3 Q. But it doesn't say anything about
4 weather permitting on that document, does it?

5 MR. PORTER: I'll stipulate that the
6 document says what it says.

7 BY MS. RYAN:

8 Q. And it doesn't say anything about the
9 hauler's schedule being a consideration, does
10 it?

11 MR. PORTER: Same objection. Document
12 speaks for itself.

13 ARBITRATOR HALLORAN: Ms. Ryan, you
14 may ask and the witness may answer, if she is
15 able.

16 THE WITNESS: It was understood.

17 BY MS. RYAN:

18 Q. But the document there doesn't say --

19 A. That doesn't state it, no.

20 Q. In fact, it says shall remove 500
21 tires in the month of March and 500 tires in the
22 month of April, doesn't it?

23 A. Yes, it does.

24 Q. I'm going to show you Exhibit 7, that

1 shows that you removed 356 tires in the month of
2 March, is that correct?

3 A. That's correct.

4 Q. And you didn't remove any tires in the
5 month of April, is that correct?

6 A. That's correct.

7 Q. Okay. You said that, I believe you
8 testified that someone told you that the tires
9 on rim were not a concern, who told you that?

10 A. Kaare did.

11 Q. Kaare told you that those were not a
12 concern?

13 A. His concerns were tires off of rims.

14 Q. And he specifically told you that
15 tires on rims were of no concern of his?

16 A. Yes.

17 MS. RYAN: Okay. Thank you.

18 ARBITRATOR HALLORAN: Thank you, Ms.

19 Ryan.

20 Mr. Porter, any redirect?

21 REDIRECT EXAMINATION

22 BY MR. PORTER:

23 Q. Isn't it true that your correspondence
24 to Mr. Marvel, which preceded his acceptance

1 letter, mentioned that the weather might play a
2 factor in March and April for removal of tires?

3 A. Correct.

4 MR. PORTER: Nothing further.

5 ARBITRATOR HALLORAN: Thank you, Mr.
6 Porter.

7 Any rerecross, Ms. Ryan?

8 MS. RYAN: No.

9 ARBITRATOR HALLORAN: Thank you. You
10 may step down.

11 MR. PORTER: We have nothing further.

12 ARBITRATOR HALLORAN: Do you have any
13 case in rebuttal?

14 MS. RYAN: I do. I'll call Kaare
15 Jacobsen again.

16 ARBITRATOR HALLORAN: I want to remind
17 you you're still under oath.

18 THE WITNESS: Okay.

19 (Witness previously sworn.)

20 KAARE JACOBSEN,
21 called as the witness herein, having been
22 previously sworn, was examined and testified as
23 follows:

24

1 REDIRECT EXAMINATION

2 BY MS. RYAN:

3 Q. Kaare, did you tell Ms. Simon that you
4 had no concern about the tires on rim at her
5 site?

6 A. No concern whatsoever at the time
7 before July, before July 2001.

8 Q. I'm having trouble following your
9 answer there.

10 Did you specifically tell Ms. Simon
11 not to worry about the tires that were on rim at
12 her site?

13 A. No.

14 Q. You did not tell her that?

15 A. No.

16 Q. I am having trouble with the question.
17 I'm not getting an answer I can follow.

18 You told her that your intent of
19 inspecting the site was related to the tires
20 that were off rim, is that correct?

21 A. That would be correct.

22 Q. But you never told her that she didn't
23 have to worry about the tires that were on rim?

24 A. I never said you shouldn't worry about

1 the tires on rim.

2 MS. RYAN: Thank you.

3 ARBITRATOR HALLORAN: Mr. Porter?

4 MR. PORTER: Please.

5 RECROSS-EXAMINATION

6 BY MR. PORTER:

7 Q. You certainly never told my clients
8 that you had any concerns regarding the tires
9 that were on rim, correct?

10 A. Not at that present time.

11 Q. And on May 17, 2001, you were not
12 concerned about the tires that were on rim,
13 right?

14 A. At the time at the inspection as I
15 stated before, that concern was about how -- the
16 duration of the time of the tires had been
17 there.

18 Q. Okay. But your administrative
19 citation that was the result of your May 17
20 inspection was concerning the tires that were
21 off of rim, right?

22 A. Correct.

23 Q. And those were the very tires that my

24 clients were in the process of cleaning up, is

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1 that correct?

2 A. Correct.

3 MR. PORTER: Nothing further.

4 ARBITRATOR HALLORAN: Thank you.

5 Ms. Ryan?

6 MS. RYAN: That's all. Thank you.

7 ARBITRATOR HALLORAN: Thank you. You
8 may step down.

9 Off the record.

10 (Off the record.)

11 ARBITRATOR HALLORAN: Back on record.

12 Mr. Porter. Ms. Ryan has waived her
13 closing argument. She'll be addressing that in
14 her post-hearing brief. Mr. Porter, you're on.

15 MR. PORTER: Thank you for the
16 opportunity.

17 My understanding is I'm also reserving
18 my right to do a post-hearing brief and my close
19 will be involved in that as well.

20 ARBITRATOR HALLORAN: Correct.

21 MR. PORTER: Very briefly.

22 I believe that the evidence supported

23 exactly what I said it would in opening
24 statement.

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1 The administrative citation clearly
2 was the result of the tires on the premises and
3 their own witness acknowledged that my client
4 was in the process of cleaning up those tires
5 and that the government had entered into a tire
6 removal agreement and that that agreement was
7 violated by the government when they decided to
8 go ahead and remove the tires without giving my
9 client the opportunity to complete the tire
10 removal.

11 Section 55.4 explicitly allows my
12 client to seek an extension of the program 90
13 days before it is set to conclude. The
14 conclusion date was at a minimum 7 to 8 months.
15 And if we believe that there were even more
16 tires on the premises than 7500 referenced in
17 the 553 notice, that would have been even longer
18 and, therefore, my clients should have had an
19 opportunity to complete the program, and at a
20 minimum an opportunity to seek an extension of
21 the program, which they didn't even get to the

22 end of the program before the government decided
23 they were going to come in and remove them
24 themselves.

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1 Seeing the error of their ways, it
2 appears that the IEPA is now suggesting that
3 these two other piles on the premises depicted
4 in one photograph of the nine is now the basis
5 for the allegation of liter on the premises. I
6 believe that is not borne out at all by the
7 record in this case. It's clear that their
8 concern was the tires. No one was ever
9 concerned about this predominantly landscape
10 waste pile, which in Boone County it is
11 absolutely appropriate to even burn landscape
12 waste.

13 Furthermore, the pile was there for a
14 relatively short period of time, sounds like
15 less than 6 months, and it was picked up. It
16 was not liter. Part of the pile contained
17 materials that my client deals in which were
18 tins and metals, and, therefore, clearly was not
19 a refuse.

20 For those reasons and the reasons

21 stated in my post-trial brief, we believe the
22 board should issue a finding of no violation and
23 no penalty.

24 ARBITRATOR HALLORAN: Thank you, Mr.

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1 Porter.

2 Before I forget, I'm supposed to make
3 a credibility determination and based on my
4 judgment and legal experience, I find that there
5 are no issues of credibility between the two
6 witnesses that testified today.

7 While we were off record, we talked
8 about a post-hearing brief schedule, and we've
9 agreed on the following:

10 May 17, Complainant's brief is due.

11 June 7th, Respondent's brief is due.

12 June 14, Complainant's reply, if any,
13 is due.

14 And I'm setting May 14th for a public
15 comment deadline.

16 With that said, any other issues,
17 comments?

18 MS. RYAN: No. Thank you.

19 ARBITRATOR HALLORAN: Mr. Porter?

20 MR. PORTER: Doesn't need to be on the
21 record.

22 ARBITRATOR HALLORAN: Okay. Anyway,
23 thank you very much and have a safe trip home.

24 This concludes this hearing today.

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1 STATE OF ILLINOIS)
)SS:
2 COUNTY OF DU PAGE)

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

12

13

14

ROSEMARIE LA MANTIA, CSR
License No. 84 - 2661

15

16

Subscribed and sworn to before me
this day of , 2002.

17

18

Notary Public

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22

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