

ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

COUNTY OF VERMILION,

Complainant,

v.

VILLAGE OF TILTON,

Respondent.

)

)

)

)

) AC 04-22

) (County No. 03-03)

) (Administrative

) Citation)

)

THE following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Jennifer E. Johnson, CSR, RMR, CRR, License No. 084-003039, a Notary Public in and for the County of Tazewell and the State of Illinois, before Carol Sudman, Hearing Officer, at the Vermilion County Courthouse Annex, 6 North Vermilion Street, Room 319, Danville, Illinois, on the 27th day of August, A.D. 2004, commencing at 10:00 a.m.

1 PRESENT:

2

HEARING TAKEN BEFORE:

3

ILLINOIS POLLUTION CONTROL BOARD

1021 North Grand Avenue East

4

Springfield, Illinois 62794-9274

(217) 524-8509

5

BY: CAROL SUDMAN, ESQUIRE

6

APPEARANCES:

7

8

OFFICE OF THE STATE'S ATTORNEY

VERMILION COUNTY

9

BY: JENNIFER RIGGS, ESQUIRE

Assistant State's Attorney

10

7 North Vermilion Street

Danville, Illinois 61832

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(217) 554-7750

On Behalf of the Complainant.

12

13

MEACHUM & MARTIN LAW OFFICES

BY: JOHN F. MARTIN, ESQUIRE

14

Attorney at Law

110 North Vermilion Street

15

Danville, Illinois 61832

(217) 442-1390

16

On Behalf of the Respondent.

17

ALSO PRESENT:

18

19

Douglas Toole, B.S, R.S.

Vermilion County Health Department

20

Mayor David A. Phillips

21

Village of Tilton

22

Mark Goodwin, Esquire

23

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1 HEARING OFFICER SUDMAN: Good morning. My
2 name is Carol Sudman, and I'm a hearing officer with the
3 Pollution Control Board. This is the hearing for
4 AC 04-22, Vermilion County versus Village of Tilton. It
5 is August 27th, 2004. We are beginning at 10:00 a.m.

6 I'll note for the record that there are no
7 members of the public present. Members of the public are
8 allowed to provide public comment if they so choose.

9 At issue in this case is the County's
10 allegation that the Village violated Section 21(p)(3) of
11 the Environmental Protection Act at a site located at
12 1st Avenue and 15th Street in Tilton, Vermilion County.

13 You should know that it is the Pollution
14 Control Board and not me that will make the final decision
15 in this case. My purpose is to conduct a neutral --
16 conduct the hearing in a neutral and orderly manner so
17 that we have a clear record of the proceedings. I will
18 also assess the credibility of any witnesses on the record
19 at the end of the hearing.

20 This hearing was noticed pursuant to the Act
21 and the Board's rules and will be conducted pursuant to
22 Sections 101.600, Rule 101.632 of the Board's procedural
23 rules.

24 At this time I would like to ask the parties

1 to please make their appearances on the record.

2 MS. RIGGS: Jennifer Riggs for Vermilion
3 County.

4 MR. MARTIN: John Martin for Village of
5 Tilton.

6 HEARING OFFICER SUDMAN: Thank you.

7 Are there any preliminary matters that you
8 wish to discuss on the record?

9 MR. MARTIN: Not for us, Your Honor.

10 MS. RIGGS: No, Your Honor.

11 HEARING OFFICER SUDMAN: All right.

12 Ms. Riggs, would you like to give an opening
13 statement?

14 MS. RIGGS: No.

15 HEARING OFFICER SUDMAN: Mr. Martin?

16 MR. MARTIN: Only, Judge, that I don't believe
17 that we -- we're dumping or operating a dump and that this
18 is not the type of case that the statute was designed to
19 address.

20 HEARING OFFICER SUDMAN: Okay. Thank you.

21 The County may present its case.

22 MS. RIGGS: The County would call Doug Toole.

23 HEARING OFFICER SUDMAN: Thank you.

24 Would the court reporter please swear in the

1 witness?

2 (Witness sworn.)

3 DOUGLAS TOOLE, B.S., R.S.,
4 called as a witness, after being first duly sworn, was
5 examined and testified upon his oath as follows:

6 DIRECT EXAMINATION

7 BY MS. RIGGS:

8 Q. Can you state your name, please?

9 A. My name is Doug Toole.

10 Q. And can you spell your last name?

11 A. T-o-o-l-e.

12 Q. What is your occupation?

13 A. I'm a health inspector with the Vermilion
14 County Health Department.

15 Q. And how long have you been so employed?

16 A. Since January of 1992.

17 Q. And what do you do for the Vermilion County
18 Health Department?

19 A. I work in the Environmental Health division,
20 the division that handles restaurant inspections and well
21 inspections and some nuisance complaints. Since 1993,
22 I've worked primarily with solid waste nuisance
23 complaints.

24 (Whereupon, Mr. Goodwin entered the room.)

1 Q. And what do you do to handle those complaints?

2 A. I investigate complaints, determine their
3 validity, and then contact the responsible people to get
4 them to address the matters, then confirm that the
5 matter's been brought into compliance even if that
6 requires enforcement.

7 Q. And drawing your attention to August 25th of
8 2003, did you inspect some property in Tilton?

9 A. Yes, I did.

10 Q. And what property was that?

11 A. Mildred Butler's property near the corner of
12 15th and 1st Street in Tilton.

13 Q. And why were you inspecting that property?

14 A. I was conducting a follow-up inspection. I
15 had contacted her in June of 2003 about some tires and
16 some truck trailers and a derelict building and some other
17 refuse on the property, and I had given her a compliance
18 date; so, I wanted to follow up and see if it had been
19 brought into compliance.

20 Q. And what did you find upon arrival at the
21 site?

22 A. When I got there, I found there had been some
23 work done. The items that had been scattered around
24 seemed to be centralized in one pile that was smoldering

1 when I got there.

2 Q. And what was in the pile?

3 A. When I walked up on the pile, I saw some
4 brush, branches and things. I saw some scrap metal, some
5 demolition debris, boards and things like that, some
6 fencing, and what appeared to be the rims and steel belts
7 from tires.

8 Q. And what did you notice about the tire --
9 about the pile? Excuse me.

10 A. It was smoldering and definitely had been
11 burning for a while. I could -- I could smell the smoke;
12 I could see the scorch marks on it.

13 Q. And what did you see scorch marks on?

14 A. On the boards, on the tire rims and some of
15 the metal that was there. Also some of the branches, I
16 think, were partially burned.

17 MS. RIGGS: May I approach?

18 HEARING OFFICER SUDMAN: Yes.

19 BY MS. RIGGS:

20 Q. I'd like to show you what has been marked as
21 People's Exhibit 1. And what is that?

22 A. That's one of the photos I took that day of
23 the smoldering pile of debris.

24 Q. And that would be August 25th?

1 A. Yes.

2 Q. And does this picture fairly and accurately
3 present what the pile looked like on the day of
4 August 25th?

5 A. Yes.

6 Q. Okay. And what -- can you see anything
7 specific in that picture?

8 A. I can see some of the brush. I can see some
9 boards there, some scrap metal. And I can see, from this
10 angle, looks like three of the tires, tire rims.

11 Q. Okay. Now I'd like to show you what has been
12 marked as People's Exhibit 2. Do you recognize that?

13 A. Yes.

14 Q. And what is that?

15 A. This is a closer shot of the same pile, the
16 same day.

17 Q. Okay. And what, if anything, can you see
18 specifically in that picture?

19 A. You can start to see some of the belts around
20 some of the tire rims. You can see the fencing more
21 clearly and some of the scorch marks on the ground. You
22 can also see the smoke coming up, as you could in the
23 first photo.

24 Q. And then I'd like to show you Exhibit 3. Do

1 you recognize that?

2 A. Yes.

3 Q. And what is that?

4 A. This is an even closer shot from a slightly
5 different angle of the same pile.

6 Q. And this was also taken August 25th?

7 A. Also the same day, right.

8 Q. What, if anything, did you do after you had
9 inspected the property?

10 A. When I got back to the office, I called the
11 Village of Tilton and asked if they knew which contractor
12 had been doing the work out on the site. I had a previous
13 conversation with the mayor and knew the Village of Tilton
14 was involved in the property.

15 Q. And how did you become aware that the Village
16 of Tilton was involved with this property?

17 A. Through a prior conversation with Millie
18 Butler and also with the mayor of Tilton.

19 Q. Okay. And the, the mayor of Tilton would be
20 Dave Phillips; is that correct?

21 A. Yes.

22 Q. And what did your conversation consist of in
23 speaking with this property before the date of the
24 inspection?

1 A. We talked on the phone on July 7th.

2 Ms. Butler had said that the Village of Tilton was
3 involved in the property, and I should talk to them about
4 any concerns I had with it.

5 When I spoke with Mayor Phillips on the 7th of
6 July, he said that the village had an option to purchase
7 the property, didn't legally own it, but had agreed on a
8 price, and said that the village was trying to make
9 arrangements for a local fire department to burn the house
10 as part of a training exercise, and had talked with Thomas
11 Excavating about maybe doing some of the work to remove
12 the debris out there.

13 Q. Did you then talk to Mayor Phillips after your
14 inspection on August 25th?

15 A. On the 25th, I gave a call to village hall and
16 spoke with a village -- whoever it was who answered the
17 phone at the village hall who said it was village workers
18 who had piled the stuff up and burned it.

19 MR. MARTIN: Objection. Hearsay, Judge. He
20 doesn't know who it is.

21 MS. RIGGS: I'll withdraw.

22 HEARING OFFICER SUDMAN: Okay. Thank you.

23 BY MS. RIGGS:

24 Q. Did you speak with Mayor Phillips concerning

1 the inspection on August 25th?

2 A. Not on the 25th. The following day, the 26th,
3 I was able to reach him by phone.

4 Q. Okay. And do you know approximately when on
5 that day that you spoke with Mayor Phillips?

6 A. I remember it was the afternoon. If I could
7 refer to my notes, I can give you a time. But off the top
8 of my head, I just remember it being in the afternoon.

9 Q. And how did you know it was Mayor Phillips
10 that you were speaking with?

11 A. He identified himself as Mayor Phillips.

12 Q. Had you ever spoken with him on the phone
13 before?

14 A. I've spoken with him in person. I am fairly
15 certain I've spoken to him on the phone.

16 Q. And on the 26th when you spoke to him on the
17 phone, did you recognize his voice at all?

18 A. Yes.

19 Q. And what, if anything, did he indicate to you
20 about the property in Tilton that you had done an
21 inspection on?

22 A. He said that village workers had piled the
23 stuff up there and burned some brush and some other items.
24 We started talking about some of the other items that were

1 in the pile. And I told him that the burning of brush
2 would be okay, but there was too much debris and refuse in
3 the pile to be legal.

4 Q. So he said that village workers had burned the
5 pile; is that correct?

6 A. Yes.

7 MS. RIGGS: I have nothing further.

8 HEARING OFFICER SUDMAN: Thank you.

9 CROSS-EXAMINATION

10 BY MR. MARTIN:

11 Q. Mr. Toole, the site here is -- has been owned
12 by the Butlers for many, many years. You're aware of
13 that?

14 A. I'm aware they own it, yes.

15 Q. There used to be a drive-in theater that Jack
16 and Mildred Butler owned, right?

17 A. That's been my understanding.

18 Q. It's been more or less -- I think it closed
19 probably 20, 30 years ago, didn't it?

20 A. I don't recall.

21 Q. Okay. The place has been in disrepair for
22 some time. Would you agree with that?

23 A. I'm not certain if I drove down that street
24 before June of 2003.

1 Q. Well, do you have your photographs that you
2 produced in discovery?

3 A. Yes. Which ones?

4 Q. Well, the pictures of the house, of the
5 trailer.

6 A. Yes, I have photos of those.

7 Q. Okay. Could I have them, please?

8 MS. RIGGS: I would object as to the relevance
9 of the other items on the property.

10 MR. MARTIN: This is the site of the alleged
11 offense.

12 HEARING OFFICER SUDMAN: I'll allow it.

13 A. I have photos showing the house and the
14 property on June 9th, June 25th, August 25th, and
15 October 17th. Which ones --

16 Q. The only ones that were produced were
17 August 25th. So, you have other ones besides the 25th?

18 A. Yes.

19 Q. Well, let me see the photographs, if I may.

20 MR. MARTIN: Could I have these marked, Your
21 Honor, or should I just mark them?

22 HEARING OFFICER SUDMAN: Yes, I -- do you --
23 you've not marked these? Are you introducing these as
24 evidence?

1 MS. RIGGS: No, no. I only looked at the
2 photographs from August 25th.

3 HEARING OFFICER SUDMAN: Okay. Are you going
4 to --

5 MR. MARTIN: I'd like to offer them, Your
6 Honor.

7 HEARING OFFICER SUDMAN: Okay. Then yes,
8 please.

9 MR. MARTIN: Do you want them to be
10 Defendant's or Respondent's exhibit?

11 HEARING OFFICER SUDMAN: Well, what -- I guess
12 I don't know what numbers we have so far.

13 MS. RIGGS: 1, 2 and 3.

14 HEARING OFFICER SUDMAN: 1, 2 and 3? Do you
15 want to just make it 4 and 5?

16 MR. MARTIN: Okay.

17 (Whereupon, Respondent's Exhibit Numbers 4
18 and 5 were marked for identification.)

19 BY MR. MARTIN:

20 Q. Mr. Toole, let me show you what I've marked
21 are, I believe, two of your photographs, and I believe
22 they were taken probably in June, is that correct, of
23 2003?

24 A. Yes.

1 Q. And that is a picture of the area -- what
2 we're talking about here where the Butler property is
3 located?

4 A. Yes.

5 Q. Okay. It shows, I guess, a bunch of tires and
6 a trailer in Exhibit Number 4, right?

7 A. Yes.

8 Q. And then Number 5 shows a house on the
9 premises and, it looks like, another trailer, right?

10 A. Yes.

11 Q. And the area had been used, I guess, as a
12 haunted house I assume around Halloween on a couple of
13 occasions. Is that your understanding?

14 A. That's my understanding.

15 Q. Do you know how long it had been used as a
16 haunted house occasionally?

17 A. No. No.

18 Q. Now, what got -- what brought your attention
19 to the property initially was a complaint by some neighbor
20 about the condition of the property, right?

21 A. I got an anonymous complaint on June 4th about
22 the property -- of 2000-- June 4th, 2003, about the
23 property.

24 Q. Okay. And that's -- so you went out then on

1 -- looks like, per your notes, on June 9th, 2003, and saw
2 the tires, a deteriorating house, a semi truck trailer, a
3 camper, scrap metal, and other refuse, correct?

4 A. Yes.

5 Q. Then you went out a couple of more times. And
6 then you contacted Mildred Butler about the property,
7 right, in June?

8 A. I think I returned to the property one time
9 before I contacted Mrs. Butler.

10 Q. And you understood her to be the owner?

11 A. Yes.

12 Q. And she's still the owner, correct?

13 A. Last time I checked, which was a few weeks
14 ago, she's listed as the owner.

15 Q. Okay. And you -- I assume you asked her to
16 clean up the property?

17 A. I sent her a letter saying the property was in
18 violation of county ordinances and that she had till
19 August 26th to bring it into compliance.

20 Q. Okay. And did she bring it into compliance by
21 August 26th?

22 A. No.

23 Q. Then when you spoke to the mayor -- that's
24 Dave Phillips who's with me today, correct?

1 A. Correct.

2 Q. And he had told you that Thomas Excavating was
3 going to try to help get the place cleaned up, right?

4 A. That's what he told me on July 7th when we
5 talked by phone.

6 Q. Okay. Now, the Village did not take anything
7 to that property to dump there, correct?

8 A. I don't know.

9 Q. You have no -- you have no evidence, no
10 information that the Village put anything on that
11 property, correct?

12 A. I don't have any evidence to that, no.

13 Q. And as far as who may have piled up items
14 besides brush, you don't know who piled that up, do you?

15 A. No.

16 Q. Then your next visit was August 25th, and
17 that's when you saw a pile smoldering, right?

18 A. Yes.

19 Q. All right. Then you eventually talked -- or
20 wrote Mildred Butler again on October 1st?

21 A. Yes.

22 Q. And did she contact you back?

23 A. Yes.

24 Q. And had she done anything to clean up the

1 property, to your knowledge?

2 A. She said she -- when I talked to her after
3 October 1st, she mentioned that the Village was taking
4 care of the cleanup for her. She mentioned that she
5 thought she gave them a copy of the letter I sent to her
6 back in June of 2003.

7 Q. October 17th, 2003, you went back out to the
8 site, and the waste pile that had been there was gone
9 then, right?

10 A. Yes.

11 Q. The tires were gone, too?

12 A. Yes.

13 Q. Trailers were gone?

14 A. There's -- at that time, there were two
15 trailers still on the site.

16 Q. Okay. Some trailers had been gone (sic),
17 right?

18 A. Yes.

19 Q. Okay. Other material that had been on the
20 site also had been removed; is that correct?

21 A. Yes.

22 Q. And I guess this spring, in March of 2004, you
23 checked again, and Mildred Butler still owned the
24 property, right?

1 A. Yes.

2 MR. MARTIN: Okay. That's all I have, Your
3 Honor. Thank you.

4 HEARING OFFICER SUDMAN: Thank you.

5 Any redirect?

6 MS. RIGGS: Yes.

7 REDIRECT EXAMINATION

8 BY MS. RIGGS:

9 Q. The pile that -- of debris that you saw on
10 August 25th, was that pile there upon your first
11 inspection?

12 A. No.

13 Q. And your first inspection was June 26th of
14 '03; is that correct?

15 A. First inspection was June 9th of 2003, and
16 then I did a reinspection on the 25th of June, 2003.

17 Q. So, on June 25th, was the pile there on the
18 property?

19 A. No.

20 Q. And when did you have the conversation with
21 Mayor Phillips that they had received an option on the
22 property?

23 A. July 7th.

24 Q. And that was --

1 A. 2003.

2 MS. RIGGS: Okay. Nothing further.

3 HEARING OFFICER SUDMAN: Okay.

4 MR. MARTIN: Brief, short recross, Your Honor.

5 HEARING OFFICER SUDMAN: Okay.

6 RECROSS-EXAMINATION

7 BY MR. MARTIN:

8 Q. Let me show you Exhibit 6 which I think is
9 another one of your photos. Is that one of the photos
10 taken in June 2003?

11 A. Yes.

12 Q. Okay. That shows at least a pile of debris in
13 the background, correct?

14 A. Yes.

15 MR. MARTIN: All right. Thank you.

16 That's all I have, Judge. Thank you.

17 HEARING OFFICER SUDMAN: Would you like to
18 offer your exhibits at this time?

19 MS. RIGGS: Yes, Your Honor. We would offer
20 Exhibits 1 through 3.

21 HEARING OFFICER SUDMAN: And I know Mr. Toole
22 already testified. Can you just summarize again what
23 Exhibits 1 through 3 which are --

24 MS. RIGGS: Piles of the smoldering debris

1 that was found on the property on August 25th of 2003.

2 This would be the property southeast of the intersection
3 of 1st Avenue and 15th Street in Tilton, Illinois.

4 HEARING OFFICER SUDMAN: Is there any
5 objection?

6 MR. MARTIN: No, Your Honor.

7 HEARING OFFICER SUDMAN: Okay. Exhibits 1, 2
8 and 3 are accepted into evidence.

9 Mr. Martin, you may present your case.

10 MR. MARTIN: Okay. I would call Mayor
11 Phillips.

12 HEARING OFFICER SUDMAN: Would the court
13 reporter please swear in the witness?

14 (Witness sworn.)

15 DAVID A. PHILLIPS,
16 called as a witness, after being first duly sworn, was
17 examined and testified upon his oath as follows:

18 DIRECT EXAMINATION

19 BY MR. MARTIN:

20 Q. Would you state your name, please?

21 A. David Phillips.

22 Q. And what's your business address?

23 A. The new one's 1001 Tilton Road.

24 Q. And what's your business or occupation?

1 A. I'm the mayor in the Village of Tilton.

2 Q. How long have you been the mayor?

3 A. Three and a half years.

4 Q. And how long have you lived in the Village of
5 Tilton?

6 A. All my life.

7 Q. Now, you're familiar with the property that's
8 involved in this case which is the Butler property on the
9 east side of Route 1?

10 A. Yes.

11 Q. Okay. What was that -- what was the use of
12 that property in past years?

13 A. Basically where that was at, for a haunted
14 house, and an entrance to the drive-in theater.

15 Q. All right. And you've seen photographs that
16 have been produced in this case of -- and including the
17 exhibits that have been admitted. How long has the
18 property been in that type of condition with the haunted
19 house, the trailers and the stuff that was on the site?

20 A. Since she's owned it.

21 Q. All right. Now, as I understand it, the
22 Village has an option to -- is that to purchase the
23 property? Is that correct?

24 A. That's correct.

1 Q. Why is the Village interested in the property
2 at all?

3 A. We've got a development going and ongoing with
4 a developer on that site.

5 Q. So, the hope of the Village is that the
6 property can be used and developed into some development
7 for the Village of Tilton?

8 A. That is correct.

9 Q. The property is inside the corporate limits of
10 the Village of Tilton?

11 A. It is today, yes.

12 Q. The Village does not own the property; is that
13 right?

14 A. That's correct.

15 Q. In terms of the materials or whatever was --
16 is or was on the site, did the Village put any of those
17 items there?

18 A. No.

19 Q. Has the Village ever dumped anything on the
20 site?

21 A. No.

22 Q. Now, directing your attention to the summer of
23 2003, you were contacted by Mr. Toole regarding the
24 condition of the property?

1 A. That's correct.

2 Q. And you told him that the Village was going to
3 try to help clean it up; is that correct?

4 A. That's correct.

5 Q. Would you -- could you tell us what actions
6 the Village took to try to get the property cleaned up?

7 A. Plowed -- I don't know if we have existing
8 pictures today, but it don't look near like it does today
9 on them pictures. Plowed fence rows out that was in there
10 so we could mow it and cut several semi trailers up, took
11 it to Cultas (phonetic) for scrap.

12 Q. Okay. What's Cultas?

13 A. It's a scrap yard down in Hegeler. Took 53
14 tires down there that was on that site.

15 Q. Okay. And where did the tires go?

16 A. Cultas Recycling.

17 Q. Were you able to get him to take the tires
18 from you?

19 A. Yes. We had to have a guy cut the tires off
20 the rims because he was doing it for a favor for us; he
21 owed us a favor. So, I told him we -- I didn't want him
22 to have any expense, and we would have our guys remove the
23 tires from the rims so he would take them.

24 Q. Okay. You're referring to Mr. Cultas?

1 A. Yes.

2 Q. All right. What else has been done by the
3 Village to try to clean up the property?

4 A. We plowed the trees out, fence row, and piled
5 it into a pile and then burnt it.

6 Q. The -- in terms of the property at that
7 location -- well, let's talk about the Butler property.
8 Approximately how much money has the Village spent trying
9 to clean up the property?

10 A. We got about \$7,000 on that site.

11 Q. And this is directly adjacent to a piece of
12 property where -- which is the former Douglas School; is
13 that correct?

14 A. Daniels School, yes.

15 Q. Daniels, rather?

16 A. Yes.

17 Q. Excuse me. And approximately how much has the
18 Village spent in cleaning up the entire area?

19 A. About \$225,000, including asbestos removal.

20 Q. Now, directing your attention to August of
21 2003, what activity did the Village do relative to the
22 brush that was on the premises?

23 A. We -- it was all growed-in fence rows. There
24 was existing trees growing on the property. And for

1 anybody to maintain it to mow it, it was going to have to
2 be taken out.

3 Q. And so did you have village employees do that?

4 A. With the help of Thomas and the village
5 employees, yes, we did do that.

6 Q. You said "Thomas." Who's Thomas?

7 A. He's a private contractor that was working on
8 the site already.

9 Q. He owns an excavating company?

10 A. Yes.

11 Q. And so the brush that was taken -- the brush
12 that was there, the brush that was taken down by the
13 Village, the trees, the fence, that was burned by the
14 Village?

15 A. Yes.

16 Q. That was the village fire department who set
17 that on fire?

18 A. Yeah.

19 Q. In terms of the non-- the stuff that's not
20 brush, not trees and so forth, did the Village stack up a
21 pile of debris of that stuff?

22 A. We didn't stack any pile of debris.

23 Q. Then the -- after the 25th of August 2003, did
24 the Village continue to take action to try to clean up the

1 site?

2 A. We took three semi loads to the landfill.

3 Q. And who did that for the village or what --

4 was it village trucks, or was it --

5 A. Well, we used a semi tractor to do that, so it
6 was Thomas's semi. Our guys loaded it.

7 Q. Thomas Excavating again helped you?

8 A. Yes, yes.

9 Q. I note in Mr. Toole's notes that on
10 October 17th, 2003, he went back to the site again, and
11 the waste pile he had seen before had been removed. Is
12 that the -- did the Village remove that?

13 A. Yes.

14 Q. You mentioned the trailers. Those had to be
15 cut up to be removed?

16 A. Yes.

17 Q. And the tires, I guess they had to be cut off
18 rims?

19 A. Yes.

20 Q. And the rest of the tires that are shown in
21 photographs 4 and 5, for example, they were taken to
22 either -- the recycler; is that right?

23 A. Yes.

24 Q. And besides that, there were barrels on the

1 property?

2 A. They was inside the trailer, yes.

3 Q. Okay. And they were removed also?

4 A. Yes.

5 Q. Anything -- can you describe what else was out
6 there that the Village hauled off?

7 A. Oh, there was load after load. I mean, it was
8 -- everything that, that we thought we should have been
9 hauling off to the proper place was hauled off.

10 Q. Under the village ordinances, is it acceptable
11 to burn brush within the village limits?

12 A. Yes.

13 Q. And at this point, is the Village trying to
14 make arrangements to remove the house and trailer that's
15 shown in the Exhibits 1 and 2?

16 A. Yes, we are.

17 Q. And can you tell us what the Village's
18 attempts are in that regard?

19 A. We're -- one of the fire department officers
20 is applying for permits for a training site to burn that
21 house and trailer there that's on the site.

22 Q. Who do you have to get a permit from to do
23 that?

24 A. From the State of Illinois. It comes through

1 the Historical Society to make sure we're not burning down
2 a historical site.

3 Q. Okay. During the -- when the Village had the
4 -- burned the brush, were there any complaints made to the
5 Village, to your knowledge, from neighbors?

6 A. I don't think there was a complaint made to
7 nobody.

8 Q. Have you ever had complaints by neighbors
9 about the property in the past?

10 A. Yes.

11 Q. Regarding -- I'm referring to its condition
12 and so forth.

13 A. Yes. Well, when West Nile started hitting,
14 they all started complaining about tires laying around.

15 MR. MARTIN: That's all I have, Your Honor.
16 Thank you very much.

17 HEARING OFFICER SUDMAN: Thank you.

18 CROSS-EXAMINATION

19 BY MS. RIGGS:

20 Q. At least since July 7th of '03, the Village of
21 Tilton has had an option to purchase the Butler property;
22 is that correct?

23 A. That's correct. We still have that in place.

24 Q. Okay. And so the Village of Tilton has been

1 the operator of that property since that time; is that
2 right?

3 A. No.

4 Q. Why is that?

5 A. They still -- we just have an option to
6 purchase the property.

7 Q. And the Village of Tilton has been -- well,
8 village workers from Tilton have been working on the
9 property since that time; is that right?

10 A. No.

11 Q. And how is that not right?

12 A. The only thing we done was the major site
13 cleanup and that's it -- since the time we've had the
14 option.

15 Q. So, there has been work done by village --

16 A. Yes.

17 Q. -- workers on the property?

18 A. You're saying today. No, it's not -- we're
19 not doing anything, no.

20 Q. Okay. And the, the pile of brush, scrap
21 metal, boards, fencing and rim that was all seen by Doug
22 Toole on August 25th, village workers actually burned that
23 pile; is that correct?

24 A. No.

1 Q. Do you recall having a conversation with Doug
2 Toole on August 26th of 2003?

3 A. Yes, and I told him the fire department burned
4 it. I didn't say anything about village workers burning
5 it.

6 Q. So, you're denying that village workers burned
7 anything on the property?

8 A. We didn't -- the village workers didn't burn
9 anything. The fire department done it.

10 Q. And who are the fire department -- who are
11 they employed by?

12 A. By the Village of Tilton.

13 Q. Okay. And did you know that they were burning
14 the debris?

15 A. Yes. No, not the debris, but brush pile, yes.

16 Q. And so you deny that you told Doug Toole that
17 village workers had actually burned that pile?

18 A. Tilton Fire Department burned the brush pile.

19 Q. My question is, Are you denying that you told
20 Doug Toole that village workers burned the pile on
21 August -- or the pile that he found on August 25th?

22 A. We burned a pile out there on August 25th, but
23 it was not the village workers. The fire department
24 burned it, so --

1 MS. RIGGS: I have nothing further.

2 BY THE WITNESS:

3 A. I don't know what you're referring to village
4 workers. We have several divisions. It wasn't the people
5 that helped clean it up burned it, no.

6 MS. RIGGS: I have nothing further.

7 HEARING OFFICER SUDMAN: Okay. Mr. Martin?

8 MR. MARTIN: I have no redirect, Your Honor.

9 Thank you.

10 HEARING OFFICER SUDMAN: Okay. Thank you,
11 Mayor Phillips.

12 THE WITNESS: Thank you.

13 HEARING OFFICER SUDMAN: Would you like to --

14 MR. MARTIN: We move to introduce the exhibits
15 we've marked, 4, 5 and 6, the three photographs which I
16 believe were taken in June of 2003 and, I believe,
17 June 25th, 2003, as I understand.

18 HEARING OFFICER SUDMAN: Okay. Is there any
19 objection to --

20 MS. RIGGS: No, Your Honor.

21 HEARING OFFICER SUDMAN: Okay. Thank you.
22 Okay. Exhibits 4, 5 and 6 are admitted into evidence as
23 well.

24 Before we continue, I'll note that we did have

1 a gentleman join us during the testimony.

2 Sir, are you affiliated with either party, or
3 are you here -- would you like to make a comment?

4 MR. GOODWIN: No, I'll show my appearance.
5 I'm Mark Goodwin, attorney for Mildred Butler.

6 HEARING OFFICER SUDMAN: Oh, okay. But you
7 don't wish to say anything at this hearing?

8 MR. GOODWIN: No.

9 HEARING OFFICER SUDMAN: Okay. Thank you.
10 We'll continue then. Before we hear closing arguments,
11 I'd like to go off the record to discuss the transcript
12 availability and the briefing schedule which I'll then
13 read into the record. So, we're off the record now.

14 (A discussion was held off the record.)

15 HEARING OFFICER SUDMAN: We've just had an
16 off-the-record discussion regarding post-hearing briefs.
17 The parties have agreed to a briefing schedule as follows:
18 The transcript of these proceedings will be available from
19 the court reporter by September 8th, 2004, and will be
20 posted on the Board's web site. The public comment
21 deadline is September 24th. Public comment must be filed
22 in accordance with Section 101.628 of the Board's
23 procedural rules. Complainant's brief is due
24 September 29th, 2004. Respondent's brief is due

1 October 20th, 2004. And Complainant's reply is due
2 October 27th, 2004. And the mailbox rule will apply.

3 Ms. Riggs, would you like to make a closing
4 argument?

5 MS. RIGGS: Yes. There's clearly been a
6 violation of the Environmental Protection Act, in this
7 instance, on August 25th of 2003. Doug Toole, who is
8 employed with the Vermilion County Health Department,
9 viewed the property which is southeast of the intersection
10 of 1st Avenue and 15th Street in Tilton, Illinois,
11 Vermilion County. At -- upon arrival at the site, he
12 viewed a large debris pile consisting of brush, branches,
13 scrap metal, boards, fencing, tire rims and belts around
14 the rims, all of which have been shown through People's --
15 or, well, the Exhibits 1, 2 and 3.

16 Doug Toole testified that he saw that many of
17 the items in the pile had been charred; they appeared to
18 have been burnt; there was still smoke smoldering from the
19 pile. It is clear that there was a violation of the Act,
20 in that open dumping resulted in open burning on this --
21 on this property.

22 The Village of Tilton has had an option to
23 purchase this property at least since July 7th of 2003.
24 They were in charge of the, quote-unquote, cleanup of the

1 property. According to the testimony of Doug Toole, he
2 spoke with Mayor Phillips of the Village of Tilton on
3 August 26th of 2003, and he had admitted to him that the
4 village workers had done the, the -- again, quote-unquote,
5 cleanup and had burned the brush and fencing.

6 There's clearly been a violation, and we would
7 ask that the Village of Tilton be held responsible for
8 that violation.

9 HEARING OFFICER SUDMAN: Mr. Martin.

10 MR. MARTIN: Yes, please the Court. Your
11 Honor, I think there's no evidence that the Village dumped
12 anything there. The Village doesn't even own the
13 property. The testimony is that the -- these items that
14 were there had been there for years. It's a junky site.
15 I think that, that the -- without the proof of dumping by
16 the Village. And they did not burn waste; the testimony
17 was they were burning brush, which is allowed certainly by
18 the village ordinances. I think that what the statute is
19 aimed at is not this kind of situation. What the Village
20 has been trying to do is clean up the site, and they have,
21 and they've spent a lot of village money to do it. It's
22 better off now than it was. I guess they didn't have to
23 do it, but they did remove the 50 tires and had them
24 disposed of. They did remove the trailers. They removed

1 other debris. There's no evidence that they piled up
2 debris to burn other than brush, and that's what they --
3 that's what they did there.

4 I think that at the least it's a situation of
5 what has been referred to in the statute as uncontrollable
6 circumstances. I don't think the Village is guilty of the
7 violation of the Act. Thank you.

8 HEARING OFFICER SUDMAN: Thank you. At this
9 time, I will again mention that there are no members of
10 the public here who wish to make statements on the record,
11 so I will proceed to make a statement as to the
12 credibility of witnesses testifying during this hearing.
13 Based on my legal judgment and experience, I find both of
14 the witnesses testifying to be credible.

15 At this time, I will conclude the proceedings,
16 and I thank all of you for your participation. We stand
17 adjourned. Thank you.

18 (Whereupon, the deposition was concluded at
19 10:32 a.m.)

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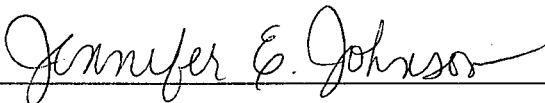
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1 STATE OF ILLINOIS :
: SS
2 COUNTY OF PEORIA :
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I, JENNIFER E. JOHNSON, CSR, RMR, CRR, and
5 Notary Public in and for the County of Tazewell, State of
Illinois, do hereby certify that the foregoing transcript
6 of proceedings is true and correct to the best of my
knowledge and belief;
7

That I am not related to any of the parties
8 hereto by blood or marriage, nor shall I benefit by the
outcome of this matter financially or otherwise.
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11
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JENNIFER E. JOHNSON

License #084-003039

CSR, RMR, CRR

Notary Public, State of
Illinois at Large

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17 My Commission expires May 8, 2005.
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