

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.) PCB-98-148
) (Enforcement-Land)
 DOREN POLAND, LLOYD YOHO, and) Volume I
 BRIGGS INDUSTRIES, INC.,)
)
 Respondents.)

BRIGGS INDUSTRIES, INC.,)
)
 Third Party Complainant,)
)
 vs.) PCB-98-148
) (Enforcement-
 LOREN WEST and ABINGDON SALVAGE) Citizens, Land)
 COMPANY, INC.,) Volume I
)
 Third Party Respondents.)

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Gale G. Everhart, CSR-RPR, a notary public within and for the County of Peoria and State of Illinois, before Steven C. Langhoff, Hearing Officer, at 200 South Cherry Street, Galesburg, Illinois, on the 28th day of November, A.D. 2000, commencing at 9:01 a.m.

PRESENT:

HEARING TAKEN BEFORE:
ILLINOIS POLLUTION CONTROL BOARD
200 South Cherry Street
Galesburg, Illinois 61401
(309) 343-3121
BY: MR. STEVEN C. LANGHOFF

APPEARANCES:

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On Behalf of the Complainant.

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On Behalf of the Respondent
Briggs Industries, Inc.

DOREN E. POLAND
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Abingdon, Illinois 61410
(Appeared PRO SE)

LLOYD F. YOHO
710 North Main Street
Abingdon, Illinois 61410
(Appeared PRO SE)

ALSO PRESENT:

Joanne Yoho
Jessica Potts
John Tripses
Michelle Ryan

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1 HEARING OFFICER LANGHOFF: Good morning everyone.
2 My name is Steven Langhoff. I'm the Pollution Control
3 Board hearing officer who will be handling this matter.
4 This is PCB-98-148, People of the State of Illinois
5 versus Doren Poland, Lloyd Yoho and Briggs Industries,
6 Inc.; and Briggs Industries, Inc., versus Loren West and
7 Abingdon Salvage Company, Inc.

8 For the record, a hearing will be scheduled
9 in the near future concerning the third party complaint
10 of Briggs Industries, Inc., versus Loren West. The
11 allegations contained in that third party complaint will
12 not be the subject matter of today's hearing.

13 For the record, it is Tuesday, November 28th,
14 2000, and we are beginning at 9:01 a.m. I should note

15 for the record that I assumed responsibility for this
16 case after Amy Muran-Felton left our office. And she
17 was the hearing officer for a portion of time that this
18 case has been before the Board.

19 Are there any members of the public present
20 today?

21 (No audible response.)

22 HEARING OFFICER LANGHOFF: I want to note for the
23 record that there are no members of the public present.
24 Members of the public are encouraged and allowed to

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1 provide public comment if they so choose.

2 At issue in this case are allegations
3 contained in a complaint filed by the People of the
4 State of Illinois. The violations alleged in the
5 complaint are for Count 1, Open Dumping Violations in
6 violation of sections 21(a), (d), (e) and (p)(1) of the
7 act.

8 Count 2, Development and Operation of
9 Landfill Without Permits in violation of sections
10 807.201 and 807.202(a) of the Board's waste disposal
11 regulations.

12 And Count 3, Violations of Standards for New

13 Solid Waste Landfills in violation of various sections
14 of the Board's waste disposal regulations.

15 The location of the site is in Knox County,
16 Illinois, designated by the Illinois EPA as number
17 0950050003.

18 I want to take a brief moment to let you know
19 what is going to happen today and after the proceeding
20 today. You should know that it is the Pollution Control
21 Board and not me that will make the final decision in
22 this case. My job as a hearing officer requires that I
23 conduct the hearing in a neutral and orderly manner so
24 that we have a clear record of the proceedings here

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1 today.

2 During the course of this hearing it is
3 acceptable to address me either as Mr. Hearing Officer
4 or Mr. Langhoff. It is also my duty and responsibility
5 to assess the credibility of any witnesses giving
6 testimony today, and I will do so on the record at the
7 conclusion of the proceedings.

8 We will begin today with opening statements
9 from all parties who wish to do so. We will then
10 proceed with the State's case, followed by Mr. Poland,

11 Mr. Yoho and then Briggs Industries, Inc., having an
12 opportunity to put on a case in its behalf. We will
13 conclude any closing arguments that the parties wish to
14 make. And then we will discuss off the record a
15 briefing schedule which will then be set on the record
16 at the conclusion of the proceedings.

17 The Board's procedural rules and
18 Environmental Protection Act provide that members of the
19 public shall be allowed to speak or submit written
20 statements at the hearing. Any person offering such
21 testimony today or during the hearing shall be subject
22 to cross-examination by both of the parties. Any such
23 statements offered by the members of the public must be
24 relevant to the case at hand. I will call for any

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1 statements from members of the public at the conclusion
2 of the proceedings.

3 This hearing was noticed pursuant to the
4 Illinois Environmental Protection Act and the Board's
5 rules and regulations and will be conducted pursuant to
6 sections 103.202 and 103.203 of the Board's rules.

7 Before beginning, I would like to caution
8 everyone that a board hearing is much the same as being

9 in court and everyone should act appropriately with
10 proper decorum and with due respect for all sides.

11 At this time I will ask the parties to make
12 their appearances on the record beginning with the
13 State.

14 MR. DAVIS: Thank you, Mr. Hearing Officer. My
15 name is Thomas Davis. I'm an assistant attorney
16 general. I'm also chief of the Environmental Bureau for
17 the Springfield office of Attorney General Jim Ryan.

18 My colleague.

19 MS. RYAN: Michelle Ryan. I'm assistant counsel
20 with the Illinois Environmental Protection Agency.

21 HEARING OFFICER LANGHOFF: Thank you. Mr. Poland,
22 would you make an appearance on the record?

23 MR. POLAND: My name is Doren Poland from Abingdon,
24 Illinois, past owner of Abingdon Salvage, Incorporated.

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1 HEARING OFFICER LANGHOFF: Mr. Poland, you are not
2 an attorney, correct?

3 MR. POLAND: No.

4 HEARING OFFICER LANGHOFF: You have elected to
5 proceed today without the benefit of legal counsel,
6 correct?

7 MR. POLAND: Yes.

8 HEARING OFFICER LANGHOFF: Thank you very much.

9 Mr. Yoho, would you make an appearance for
10 the record, please?

11 MR. YOHO: My name is Lloyd Yoho. I live in
12 Abingdon, Illinois, and I'm half owner of Abingdon
13 Salvage Company, Incorporated.

14 HEARING OFFICER LANGHOFF: Thank you. Mr. Yoho,
15 you are not an attorney, correct?

16 MR. YOHO: Pardon?

17 HEARING OFFICER LANGHOFF: You are not an attorney;
18 is that correct?

19 MR. YOHO: No.

20 HEARING OFFICER LANGHOFF: You have elected to
21 proceed today without the benefit of legal counsel; is
22 that correct?

23 MR. YOHO: Yes, sir.

24 HEARING OFFICER LANGHOFF: Thank you very much.

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1 For Briggs Industries, Inc.?

2 MR. BENOIT: Joel Benoit. I'm the attorney for
3 Briggs Industries, Inc.

4 HEARING OFFICER LANGHOFF: Thank you. Do we have

5 any preliminary matters that need to be discussed on the
6 record?

7 MR. BENOIT: Mr. Hearing Officer, if I could just
8 clarify one thing. This hearing concerns the complaint
9 against Mr. Poland and Mr. Yoho and Briggs and Briggs'
10 counterclaim against Poland and Yoho; is that correct?

11 HEARING OFFICER LANGHOFF: That's correct.

12 And are there any outstanding or prehearing
13 motions that the parties would like to present before we
14 proceed?

15 MR. DAVIS: None by the people.

16 MR. BENOIT: I would just like to mention on the
17 record I talked to Mr. Davis and three of the agency
18 witnesses that I had previously noticed up, Mr. Missy,
19 Mr. Smith and Mr. Patel. I will not be requiring their
20 appearance.

21 HEARING OFFICER LANGHOFF: Thank you. Would the
22 parties like to give a brief opening statement on behalf
23 of their clients?

24 MR. DAVIS: Thank you, Mr. Hearing Officer.

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1 As I mentioned, my name is Tom Davis. I am
2 with the Attorney General's Office. My counsel -- my

3 co-counsel rather, Michelle Ryan, is seated next to me.
4 Behind me is John Tripses who is the regional manager
5 for the Illinois EPA for the Peoria Region for the
6 Bureau of Land. The reason I mentioned Mr. Tripses is,
7 even though he has been noticed to appear as a witness,
8 he will, as necessary, be serving an additional role.
9 He will be providing technical support and advisement,
10 if necessary, during the examination of the witnesses.

11 Now the State's case is what I'm concerned
12 with, the complaint that we filed against Mr. Poland,
13 Mr. Yoho and Briggs Industries back in April of 1998.
14 We understand that there are counterclaims and third
15 party complaints, but our focus will be on the three
16 counts within the State's complaint. To prove the
17 allegations which have already been summarized by the
18 hearing officer, we will be calling a couple of
19 witnesses from the Illinois EPA; James Jones, the
20 inspector, and Christian Liebman, the permit supervisor.

21 This is a case where disposal operations have
22 occurred at one site with a permit and then at an
23 adjacent site, subsequently, without a permit. So to
24 prove the fundamental allegations, that is, open dumping

1 and operation without a permit, we intend to basically
2 show that disposal activities were ongoing at a location
3 that was not permitted and that didn't meet the
4 standards, the regulatory standards that a permit would
5 have imposed.

6 In addition to the two Illinois EPA staff
7 that I just mentioned, we will be calling Mr. Yoho and
8 Mr. Poland as our witnesses to provide testimony to
9 support the allegations that we have made against them
10 as well as Briggs Industries, the company. We
11 understand that Mr. Yoho and Mr. Poland will have some
12 degree of latitude in providing additional testimony,
13 and we are sure that everything that they want to say,
14 seeing as how they are not represented by counsel, will
15 be allowed to come out at the appropriate time either
16 during the State's examination or, for instance,
17 opposing counsel's cross-examination.

18 The reason I mentioned this is because we
19 also are concerned about proving our case against the
20 company. To give you just -- in the context of a brief
21 opening -- just a little overview of what we think the
22 facts will show, Mr. Yoho and Mr. Poland became involved
23 with Briggs Industries back in the '70s. They acquired
24 a site which goes by various names, and perhaps I should

1 address that now. It's been permitted as the
2 Poland-Briggs site. It's been referred to in the
3 State's complaint as the Abingdon Landfill. It may well
4 go by different names, but the site that was initially
5 developed by Mr. Yoho and Mr. Poland and the company,
6 Briggs Industries, was basically an approximately 15
7 acre site on the edge of Abingdon. And that, over the
8 course of the late '70s and all throughout the '80s,
9 this site received waste from only one source and that
10 was the Briggs Industries Manufacturing facility there
11 in Abingdon.

12 The evidence will show that Briggs
13 manufactures toilets and other bathroom fixtures and
14 that they generate quite a bit of porcelain waste as
15 well as the plaster of Paris molds that are used in
16 forming these fixtures.

17 So this was a single source disposal site
18 with only one generator. The evidence that we intend to
19 show is that this site was developed cooperatively and
20 collectively and in a collaborative manner and that all
21 three parties, Mr. Yoho, Mr. Poland and the company,
22 Briggs Industries, shared in the decisions and the
23 development costs and so forth.

24 At a point in time in the early '90s, a

1 decision was made to modify the original permit so that
2 a portion of the site that had been filled could be
3 closed. And that was done. Operations -- disposal
4 operations and the provision of the wastes generated by
5 Briggs continued even after the portion of the old site
6 was closed and disposal occurred at the adjacent
7 portion. We will hear more about that from Mr. Poland
8 and Mr. Yoho so I needn't summarize the evidence I
9 anticipate. We have had depositions of both of those
10 gentlemen, and we have a pretty good idea of what they
11 are going to say. There is no need to summarize that
12 now.

13 We are concerned as much with the old site as
14 with the new site. Mr. Poland may refer to those
15 respectively as phase I and phase II. In our complaint,
16 as I mentioned, we called the old site the Abingdon
17 Landfill and the new site the dump site. We are all
18 talking about the same thing.

19 So, hopefully, with this as a little bit of
20 background as an opening statement, we can avoid some of
21 the confusion that may or may not arise.

22 I do want to note one thing for the Board.
23 That is, Briggs Industries and the complainant developed
24 a list of the major portion of our exhibits. We

1 exchanged those exhibits. We have had a prehearing
2 conference with you, Mr. Hearing Officer, and we have
3 come to an understanding that all of these exhibits are
4 admissible as business records. Each side -- well, let
5 me basically summarize what those exhibits are. They
6 are either documents generated by the Environmental
7 Protection Agency or by one of the parties in the course
8 of their business. So we expect that all of these
9 exhibits will be dealt with in the course of examining
10 witnesses. They will probably be dealt with in a rather
11 cursory fashion because our objective in pre-tendering
12 these exhibits was essentially to streamline the
13 admission process. So, certainly, while each of us may
14 have witnesses alluding to these exhibits and explaining
15 very generally what they might be, we are not going to
16 get into a great deal of substantive testimony because
17 the documents generally will speak for themselves.

18 There will certainly be exceptions where we
19 want to focus on what a document is at more length, but
20 I do want to state my appreciation to opposing counsel
21 for agreeing to this. It is totally appropriate under
22 the Board's current procedural rules. We think that it

23 will cut the hearing down from three days to two days,
24 and I just want to state that on the record. So without

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1 further ado, I will close out my opening and defer to
2 Counsel.

3 HEARING OFFICER LANGHOFF: Thank you.

4 Mr. Poland, would you like to make a brief
5 opening statement?

6 MR. POLAND: Well, I really don't know how to talk
7 about this except for the fact, just like he said, it's
8 adjoining sites right next to the other one. The first
9 site that we have covered was four and a half acres.
10 This new site that we started we covered it up with
11 grass. Mr. Jones was there, and he authorized the fact
12 that it was closed. And he stood right beside it where
13 we had already started dumping with the new site which
14 was two and a third acres. This new site -- we had to
15 do something with Briggs Manufacturing because they had
16 to get rid of their merchandise every day. We couldn't
17 stop them because that was 350 employees that
18 would -- they would just be laid off if they couldn't
19 get rid of the merchandise. There was no place else to
20 get rid of it.

21 So we dug out this ditch beside the other one
22 and used the materials to cover the other piece of the
23 landfill. And then after that was done and we got it
24 all covered, we started dumping on the other side right

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1 beside it. And at that time we originally had it set up
2 like he said, 15 and some acres. We dropped that back
3 to do it in phases because the EPA told us we was going
4 to have to have \$150,000 in escrow to cover our permit
5 in the end for closure fees. This we could not afford.
6 So we broke it down in phases. We was going to do a
7 little piece and then enclose it and open up another
8 piece and enclose it and keep on until about three
9 phases. Then we would be done with that piece of ground
10 because it was a worthless piece of ground to start
11 with. And then in the end we had anticipations we could
12 possibly give it to the city for a park or something.

13 We continued to try to get a permit on this
14 situation, but for some reason or other it couldn't go
15 through the EPA office the way we wanted it to go
16 through. The first part of the permit went right
17 through, no problem at all. Then this next piece and
18 this second -- phase II come along, and they said we

19 couldn't have a permit. I never did understand it.
20 That's all I got to say.

21 HEARING OFFICER LANGHOFF: Thank you.

22 MR. SCHOENHARD: Mr. Hearing Officer, I'm an
23 engineer for Abingdon Salvage and I work with Doren
24 Poland. And I would like to make a further statement.

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1 HEARING OFFICER LANGHOFF: Well, I'm sorry, sir. I
2 will allow Mr. Poland to put you on as a witness at the
3 appropriate time. We are just doing brief opening
4 statements here.

5 MR. POLAND: I should let him talk for me because
6 he can talk better than I can.

7 HEARING OFFICER LANGHOFF: During your case,
8 Mr. Poland, you will be able to put any witnesses you
9 wish on the stand.

10 MR. POLAND: Okay. Very good. Thank you.

11 HEARING OFFICER LANGHOFF: Mr. Yoho, do you have a
12 brief opening statement?

13 MR. YOHO: I really don't have anything to say that
14 Mr. Poland hasn't already said. He is probably much
15 more aware of what went on back then than I was. So I
16 really don't have anything to say at this time.

17 HEARING OFFICER LANGHOFF: Okay. Thank you.
18 MR. YOHO: Thank you, sir.
19 HEARING OFFICER LANGHOFF: Mr. Benoit.
20 MR. BENOIT: No opening statement.
21 HEARING OFFICER LANGHOFF: Mr. Davis, would you put
22 on your case in chief, please?
23 MR. DAVIS: Yes. I would ask James Jones to step
24 forward and be sworn.

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1 (Witness sworn.)
2 JAMES J. JONES,
3 called as a witness, after being first duly sworn, was
4 examined and testified upon his oath as follows:
5 DIRECT EXAMINATION
6 BY MR. DAVIS:
7 Q Mr. Jones, please tell us your full name.
8 A James J. Jones.
9 Q By whom are you employed?
10 A By the Illinois Environmental Protection
11 Agency, State of Illinois.
12 Q Since what year?
13 A Since 1984.
14 Q Prior to that, did you go to college?

15 A Yes, I did.

16 Q Where did you go, and what sort of degrees
17 did you get?

18 A I went to Grambling State University. I have
19 a B.A. degree in geography.

20 Q And when you joined the EPA in 1984, where
21 were you stationed and what were your general duties?

22 A I was stationed in the Peoria regional office
23 as an LSCT, commonly called life science career trainee.

24 Q And through the years have you upgraded your

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1 status and become, I think, an environmental protection
2 specialist?

3 A Yes. I have two promotions -- well, three
4 promotions since life science career trainee. The last
5 promotion being approximately eight years or so ago
6 where I became an EPS 3 which is an Environmental
7 Protection Specialist 3.

8 Q Would it be fair to say that your experience
9 has been in inspecting solid waste and other facilities?

10 A Yes.

11 Q And would this include landfills?

12 A Yes.

13 Q So over the course of the past 16 years, you
14 have conducted many inspections?

15 A Yes.

16 Q Let's focus on one facility in particular,
17 the Abingdon facility in Knox County. By what name do
18 you know this facility?

19 A Poland-Briggs Landfill is the name by which I
20 know of it.

21 Q When was your first occasion to inspect the
22 Poland-Briggs Landfill?

23 A November 29th, '93.

24 Q Would it be fair to say that this was for the

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1 purpose of checking out the closure activities?

2 A Yes, it would.

3 Q Can you tell us what you saw on that
4 occasion?

5 A Well, at the time, as I recall it, it was
6 during the winter and it had snowed. And I basically
7 did a usual closure inspection with photographs
8 included. At the time I saw a site that appeared to
9 have been closed, meaning that there was no activity or
10 any waste that you could see. And --

11 Q And that site was covered and so forth?
12 A Yes, it was.
13 Q Did you see any evidence of waste disposal on
14 an adjacent site?
15 A Yes, I did.
16 Q Tell us about that.
17 A On this particular inspection, 11/29/93, I
18 did see, just to the east of what is the closed site,
19 some toilet fixtures and what we call an open dump at
20 that particular time.
21 Q Would it be fair to say that these wastes
22 were ceramic and porcelain materials?
23 A Yes, it would.
24 Q Were there any other materials mixed in?

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1 A No, there were not.
2 Q How large an area was being utilized as a
3 dump site at this point?
4 A Well, at that particular time, probably less
5 than an acre.
6 Q This was your first occasion to visit the
7 facility?
8 A This was my first occasion to visit the

9 facility.

10 Q Did you learn what was the source of the
11 wastes that you observed?

12 A Yes, I did.

13 Q And how did you learn that?

14 A Well, when I got back to the office I -- what
15 we normally do -- well, before you can go onto the site
16 I already checked the file and was aware of where the
17 wastes came from. And I did get in contact with Briggs
18 Industries.

19 Q Who did you speak with at Briggs?

20 A I spoke to a gentleman by the name of Jim
21 Willis.

22 Q Was this over the telephone?

23 A Yes, it was.

24 Q Shortly after your November '99 inspection?

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1 A That's correct.

2 Q What did Mr. Willis have to say?

3 A He basically told me that the waste that I
4 inquired about did come from Briggs Industries.

5 Q Did he give you any other information about
6 the disposal activities?

7 A No, he didn't, other than saying that, you
8 know, the waste was taken to the site in question.

9 Q When you first went there, James, did you
10 expect to see this dump site?

11 A No, I didn't.

12 Q What was the purpose of your inspection?

13 A Well, it was a closure inspection.

14 Q Did you have occasions, James, to come back
15 to the Abingdon site and do further inspections?

16 A Yes, I did.

17 Q Would it be fair to say that those were three
18 or four additional inspections over the next three or
19 four years?

20 A That would be correct.

21 Q Can you tell us, generally, whether you
22 observed the disposal activities continuing at this
23 adjacent site?

24 A Yes, I did.

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1 Q Do you recall anything in particular about
2 what you observed on those subsequent occasions?

3 A Well, what I did observe is that each time
4 that I went to the site what we commonly call the open

5 dump had grown larger.

6 Q Did you have, on any of those occasions, a
7 chance to observe dumping activities actually happening?

8 A On one occasion I actually observed a tandem
9 dump truck. I think it was a double axle dumping at the
10 time.

11 Q Why do you call it a dump site?

12 A Well, the reason why we call it a dump site
13 is because by definition any waste that is dumped on the
14 property that does not have a permit would be considered
15 a dump.

16 Q How did you ascertain that there was no
17 permit for this adjacent dump site?

18 A Well, by checking the permits. That was one
19 way.

20 Q Did you also speak with Mr. Poland or
21 Mr. Yoho?

22 A Yes, I did.

23 Q To whom did you speak?

24 A Mr. Poland.

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1 Q And do you recall, generally, when the first
2 time it was that you had a chance to talk to Mr. Poland?

3 A Probably shortly after the closure
4 inspection.

5 Q As part of your follow-up?

6 A As part of my follow-up; that's correct.

7 Q And this, again, was on the telephone, James?

8 A This was by telephone.

9 Q What did Mr. Poland have to say about the
10 ongoing disposal activities?

11 A I don't really recall the conversation in
12 terms of exactly what he said about the dump site
13 adjacent to the closed landfill. I don't remember the
14 exact conversation.

15 Q Did he acknowledge that he didn't have a
16 permit for this adjacent site?

17 A I don't recall.

18 Q Did you have a chance to talk to him
19 subsequently about whether he needed a permit?

20 A Yes.

21 Q And would this have been in connection with
22 one of your later inspections?

23 A This would be correct.

24 Q Would that have been face-to-face at the site

1 or on the telephone?

2 A It would have been on the telephone. Both of
3 our conversations were by way of telephone.

4 Q At any time during the subsequent
5 conversations, James, did Mr. Poland acknowledge that he
6 didn't have a permit?

7 A Yes.

8 Q What did he say if you can recall?

9 A That they didn't have a permit.

10 Q Let me get back to your observations at the
11 site. And this would have been just generally over the
12 years, the four or five times you may have inspected it
13 '93 through, what, '97?

14 A Yeah. That would be correct.

15 Q Did you observe any problems, site problems
16 being caused by the disposal activities?

17 A Well, on most of the inspections upon closer
18 look at the actual materials that were on the site, I
19 observed that there were materials other than what we
20 call vitreous china, porcelain fixtures. And there were
21 materials such as -- I think it was vent pipes and there
22 were plastic -- and I'm not really sure what the proper
23 terminology is. I had it in my report. I don't recall
24 exactly what the proper terminology was, but there were

1 other materials other than what's commonly thought that
2 should have been there.

3 Q Well, let's talk about the nature of the
4 waste. Is this -- that is, the ceramic waste, the
5 porcelain and the broken molds, are these materials what
6 the agency would consider clean fill?

7 A No, it isn't.

8 Q Are they in fact wastes?

9 A Yes.

10 Q And the additional materials, the vent pipe
11 and the other wastes, were these inappropriate for this
12 site?

13 A Yes, they were.

14 Q Did you observe any litter in addition to
15 these other materials?

16 A Well, by definition an open dump is
17 considered litter.

18 Q Let me show you a series of exhibits that we
19 have already marked and had a little bit of discussion
20 about prior to the hearing. For the record, these are
21 Exhibits 6, 7 and 8. First of all as to these exhibits,
22 you have had a chance to view these previously?

23 A Yes.

24 Q Are these, in fact, letters, Number 6 is

1 dated November 9, 1979?

2 A That's correct.

3 Q Number 7, dated July 3, 1980?

4 A That's correct.

5 Q And August 27, 1980?

6 A That would be correct.

7 Q What agency issued these letters?

8 A The Illinois Environmental Protection Agency.

9 Q And to whom were they issued?

10 A The letter dated November 9th, 1979, Exhibit
11 6, was sent to Briggs Manufacturing. Exhibit 7, dated
12 July 3rd, 1980, was also sent to Briggs Manufacturing.
13 And Exhibit Number 8, dated August 27th, 1980, was sent
14 to Briggs Manufacturing.

15 MR. BENOIT: I'm going to object to the witness
16 discussing these three exhibits. They all are dated
17 prior to the time he came to work at the EPA according
18 to his own testimony.

19 There is no way he can have personal
20 knowledge of whether they were sent to anybody.

21 HEARING OFFICER LANGHOFF: Mr. Davis.

22 MR. DAVIS: They are admissible as business
23 records. We previously had a ruling on this point.

24 HEARING OFFICER LANGHOFF: It's overruled.

1 MR. BENOIT: I understand that. I understand they
2 are admissible. I'm objecting to him discussing them
3 and their contents and whether they were sent or
4 whatever.

5 MR. DAVIS: Well, one way to handle this would be
6 for me to tender these documents at this point in time
7 without any attempt by any witness to identify them.
8 The documents do speak for themselves. That would
9 further streamline the hearing. It would, of course, be
10 an appropriate topic for any cross-examination if there
11 were any reason to delve into the substance of these
12 documents. But they are admissible as business records.

13 HEARING OFFICER LANGHOFF: Anything else,
14 Mr. Benoit?

15 MR. BENOIT: No.

16 HEARING OFFICER LANGHOFF: I'm going to overrule
17 your objection.

18 MR. DAVIS: We would tender Exhibits 6, 7 and 8 for
19 admission.

20 MR. BENOIT: No objection.

21 HEARING OFFICER LANGHOFF: Thank you.

22 BY MR. DAVIS:

23 Q Now, James, I have handed you Exhibits 10 and

24 11. Would it be fair to say that Number 10 is a letter

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1 dated June 30, 1981, and Number 11 is a letter dated
2 August 26th, 1981, both letters from the Illinois EPA to
3 Briggs Manufacturing?

4 A Yes.

5 MR. DAVIS: I would move for admission of 10 and
6 11.

7 Just set those aside, please.

8 BY MR. DAVIS:

9 Q Look at Exhibit Number 12, James. Would you
10 agree that this is a Federal EPA document?

11 A Yes, I would.

12 Q And that the date is August 30, 1984?

13 And to that information --

14 A Yes.

15 Q -- I would direct your attention to the lower
16 right-hand corner. Does this document on its face
17 indicate what facility it pertains to?

18 A Yes, it does.

19 Q And what facility is that?

20 A Briggs, slash, Poland.

21 MR. DAVIS: We would move Number 12 for admission.

22 Q And, James, the next document that I would
23 direct your attention to would be Number 15, a letter
24 dated July 2, 1991. And would you agree that this is a

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1 letter from the Illinois EPA to all three of the
2 respondents, Mr. Poland, Mr. Yoho and the Briggs
3 Company?

4 A Yes.

5 MR. DAVIS: Okay. Thank you. We move Number 15
6 for admission.

7 BY MR. DAVIS:

8 Q Now the next four Exhibits 24, 25, 26 and 27,
9 would you agree, first of all, that these are letters
10 from the Illinois EPA to the Briggs Company?

11 MR. BENOIT: Tom, could you restate those numbers?

12 Q I'm sorry. Let's focus on 24 and 25. Would
13 you agree that these are letters from the Illinois EPA
14 to the Briggs Company?

15 A Yes.

16 Q And as to Number 24, James, the date would be
17 March 4, 1994?

18 A That's correct.

19 Q Did this occur subsequent to your initial

20 inspection of the site?

21 A It occurred after.

22 Q Right. Okay. And would you agree that this
23 is a pre-enforcement conference letter?

24 A Yes, I do.

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1 Q What's the purpose of this type of
2 correspondence generally?

3 A Well, to give the respondents an opportunity
4 to respond to the apparent violation that the agency has
5 cited against them.

6 Q Was this letter directed to any individual at
7 Briggs?

8 A To the attention of Jim Willis.

9 Q Was this the same Jim Willis that you spoke
10 to?

11 A Yes, it was.

12 Q Does the letter indicate that operations,
13 disposal operations were being conducted without a
14 permit?

15 A Yes, it does.

16 Q Now turning our attention then to Exhibit 25,
17 you have already indicated this is a letter from the EPA

18 to Briggs. Is it dated January 17th, 1997?

19 A Yes, it is.

20 Q Now between the dates of March '94 and this
21 January '97, had you gone back to the sites and done
22 further inspections?

23 A Yes, I did.

24 Q What sort of letter is Exhibit Number 25?

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1 A Exhibit Number 25 is a violation notice
2 letter.

3 Q And does it generally refer to a lack of
4 permit authorization by the agency for the disposal
5 operations?

6 A Yes, it does.

7 Q To whom at Briggs was this letter addressed?

8 A It was addressed to the attention of Joyce
9 Blevins.

10 Q Now who is she if you know?

11 A I'm not familiar with Ms. Blevins.

12 Q Was this a person that you had ever talked
13 to?

14 A I am not sure.

15 MR. DAVIS: We would move for admission of 24 and

16 25.

17 Q Let me ask you to look at Exhibit 26. Now,
18 first of all, this is a letter dated February 19th,
19 1997; is it not?

20 A This is correct.

21 Q Who sent this letter?

22 A This letter is from Schoenhard and
23 Associates.

24 Q And to what facility does it pertain to?

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1 A Abingdon Poland-Briggs Landfill.

2 MR. DAVIS: We would move the admission of
3 Number 26.

4 BY MR. DAVIS:

5 Q Now lastly, Exhibit 28, is this a May 28,
6 1997, letter from the Illinois EPA to Briggs Industry?

7 A Yes, it is.

8 Q Is this a follow-up letter to Exhibit Number
9 25, the January '97 notice of violation?

10 A Yes, it is.

11 MR. DAVIS: We would again move the admission of
12 this final exhibit for this witness, Number 28.

13 BY MR. DAVIS:

14 Q There is one last area that I would like to
15 explore with you, James. You mentioned initially that
16 you inspect all sorts of landfills?

17 A Yes.

18 Q Are there other landfills in this -- in Knox
19 County?

20 A Yes, there are.

21 Q What are those?

22 A Knox County Landfill Number 3 which is
23 currently in operation now. Prior to that, it was Knox
24 County 1 and 2.

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1 Q And when you say "prior to that," would that
2 have included the last decade, the '90s?

3 A Yes.

4 Q Were there any other landfills in adjacent
5 counties, say McDonough County?

6 A I'm sure there is.

7 Q Okay. Very good.

8 Have you done any investigation regarding the
9 tipping fees or expenses of utilizing these other
10 landfills?

11 A Yes, I have.

12 Q Do you know what the -- generally speaking,
13 the prevailing rate has been in the last several years?

14 A Yes, I do.

15 Q What is that?

16 A That would be \$22.50 per ton.

17 Q Would it be fair to say that costs have
18 somewhat fluctuated, going up and down over time?

19 A Well, in checking, I checked back the last
20 five years and that particular 22.50 is pretty
21 much -- pretty much stayed the same.

22 Q It's been fairly stable?

23 A It's been fairly stable over the last five
24 years.

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1 Q Do you know what sort of rates or do you have
2 any knowledge regarding the rates that the facility in
3 Abingdon was charging Briggs?

4 A I'm not aware of a rate.

5 MR. DAVIS: Thank you, sir. I have no other
6 questions on direct.

7 HEARING OFFICER LANGHOFF: Mr. Poland, do you have
8 any questions of the witness?

9 CROSS-EXAMINATION

10

BY MR. POLAND:

11 Q I want to ask Mr. Jones, did you ever see any
12 of this same material in any other landfill in the state
13 of Illinois?

14 A Could you state your question again, please?

15 Q Did you ever see any ceramic waste or molds
16 waste like used in Abingdon Landfill, did you ever see
17 any of that in any other place in the state of Illinois,
18 like say, like down in Robinson, Illinois? Did you see
19 any down there?

20 A Well, first of all, Mr. Poland, the Peoria
21 office covers 14 regions. And any of my activities with
22 the State would be in those particular regions, Peoria
23 County, Henry County, McDonough County, et cetera, et
24 cetera. So I would have business in any of those

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1 counties.

2 Q You didn't cover --

3 A I can only speak to the counties that I
4 actually inspect. And the answer would be no.

5 Q Now you say there was other materials on this
6 landfill. What kind of percentage would you say that
7 you saw the cardboard and little pieces of plastic on

8 this landfill? What kind of a percentage would you say?

9 A Well, we didn't calculate any percentages.

10 The fact of the matter is that --

11 Q You could put them all in a small pickup
12 truck, right?

13 A Well, I wouldn't necessarily say that would
14 be the case. When you are referring to the materials
15 that were on site, there were no percentages calculated
16 as to how much.

17 Q But there wasn't a whole lot?

18 A Well, once again, there weren't any
19 percentages. The fact of the matter is that those
20 materials should not have been there.

21 Q Even though they got there by mistake, they
22 wasn't supposed to be there?

23 A Well, the fact of the matter, like I said --

24 Q But they were picked up later on and

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1 disposed?

2 A Well, I don't know that for a fact that they
3 were picked up.

4 Q You didn't look afterwards? After I sent you
5 a letter stating the fact that they were cleaned up, you

6 didn't go back and look?

7 A Well, any time we conduct inspections we are
8 required to do follow-up inspections, and I don't recall
9 in the follow-up inspections that all of the materials
10 had been picked up.

11 Q Then I could have just covered it up and you
12 would never have known it. I could have just covered it
13 all up and you could have never seen it?

14 A Well, that could have been possible.

15 MR. POLAND: Well, I didn't. That's all I
16 got.

17 HEARING OFFICER LANGHOFF: Thank you.

18 Mr. Yoho, do you have any questions for the
19 witness?

20 MR. YOHO: I don't have any questions, sir.

21 HEARING OFFICER LANGHOFF: Mr. Benoit.

22 MR. BENOIT: Mr. Jones, my name is Joel Benoit. We
23 met before at your deposition at the IEPA office in
24 Springfield. Do you recall that deposition?

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1 THE WITNESS: Yes, I do.

2 MR. BENOIT: Okay.

3 CROSS-EXAMINATION

4

BY MR. BENOIT:

5

Q I would like to start out my

6

cross-examination of you by showing you an exhibit which

7

was not previously marked and submitted to the parties,

8

but it was a portion of an exhibit that was,

9

basically -- well, I'll ask you what this is. It's

10

marked Exhibit B58.

11

HEARING OFFICER LANGHOFF: Do I have a copy of

12

that?

13

MR. BENOIT: No, you don't. I'll have to get it to

14

you after the witness looks at it.

15

MR. DAVIS: Here is an extra, Joel.

16

MR. BENOIT: Well, actually this one has a

17

different date on it. It's the same map but a different

18

date. I'm on 11/29/93.

19

HEARING OFFICER: That's okay, Mr. Benoit. I will

20

get it after the witness is through.

21

BY MR. BENOIT:

22

Q Can you tell me what Exhibit B58 is?

23

A This is a site sketch of the Poland-Briggs

24

Landfill.

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1

Q And who drew that site sketch?

2 A That would have been me, sir.

3 Q And does the site sketch accurately depict
4 the layout of the Abingdon, slash, Poland-Briggs
5 Landfill?

6 A Yes, it does.

7 MR. BENOIT: I would like to move for the admission
8 of B58.

9 MR. DAVIS: No objection.

10 MR. BENOIT:

11 Q Now you have reviewed the complaint in this
12 matter, Mr. Jones?

13 A Yes.

14 Q Are you aware that the complaint talks about
15 two different areas of the land depicted on Exhibit B58.
16 One it refers to as the Abingdon Landfill which was
17 formerly permitted and is now closed. And, secondly, it
18 refers to a new landfill. Are you aware of those
19 distinctions?

20 A Yes, I am.

21 Q When I'm asking you questions today and refer
22 to the Abingdon Landfill, I'm going to be referring to
23 that portion of Exhibit B58 that states, "closed and
24 covered 4.6 acres." Do you see where it says that on

1 Exhibit B58?

2 A Yes, I do.

3 Q And when I talk about the new landfill, I'm
4 going to be referring to that portion of B58 where it's
5 marked, new, parentheses, 811, parentheses, landfill,
6 parentheses, 11.24 acres, parentheses. Do you see where
7 that's at?

8 A Yes, I do.

9 Q And your earlier testimony was that you have
10 inspected both the Abingdon Landfill and the new
11 landfill; is that correct?

12 A That would be correct.

13 Q Now Mr. Poland and Mr. Yoho are the owners of
14 the land where the Abingdon Landfill and the new
15 landfill sit; is that correct?

16 A That would be correct.

17 Q And Mr. Poland was the operator of the
18 Abingdon Landfill; is that correct?

19 A That would be correct.

20 Q You don't know who hauled the material that's
21 placed on the Abingdon Landfill to the Abingdon
22 Landfill, do you?

23 A No, I don't.

24 Q You don't know how much of the 11.2 acres of

1 the new landfill has been used to date, do you?

2 A No, I don't.

3 Q Poland and Yoho operated the new landfill;

4 isn't that correct?

5 A Based on records that we have in the agency,

6 that would be correct.

7 Q You don't know how much material was placed

8 in the new landfill; is that correct?

9 A That would be correct.

10 Q IEPA's Peoria office has never received a

11 complaint concerning either the Abingdon Landfill or the

12 new landfill; is that correct?

13 A When you say "complaint" --

14 Q Citizen complaint.

15 A Citizen complaint.

16 Not that I am aware of.

17 Q You were not at the April 12, 1994,

18 preenforcement conference with Mr. Poland?

19 A What was the date again?

20 Q April 12th, 1994.

21 A Is there any documentation that will refresh

22 my memory?

23 (Pause in proceedings.)

24 Q I'm looking on -- just to assist you a little

1 bit -- B32, page 3.

2 A Well, I don't recall seeing that date.

3 Q There we go. Look at Exhibit B32, page 2,
4 about the middle of the page. It talks about three
5 conferences originally scheduled for March 21st, 1994,
6 rescheduled for April 12th, 1994.

7 And my question was: Were you present at
8 that preenforcement conference? Do you see where I am?

9 A Yes, I was.

10 Q Was Mr. Poland told at that time that the
11 porcelain was clean fill, no permit would be required?

12 A According to this letter, yes.

13 Q Was there an agreement reached at that time
14 that Poland could continue to accept waste at the new
15 landfill?

16 A No. No.

17 Q On B32, page 3 at the top of the page, it
18 talks about an April 3rd, 1995, meeting. Were you
19 present at that meeting?

20 A Yes.

21 Q Can you tell me who else was present at that
22 meeting?

23 A Without the benefit of having our sign-up

24 sheet, no, I couldn't tell you at this particular time.

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1 Q Can you tell me where that meeting was held?

2 A Which meeting are you referring to?

3 Q April 3rd, 1995.

4 A That meeting would have been held at the
5 Peoria regional office.

6 Q Can you tell from looking at the top of page
7 3 of Exhibit B32 -- or tell me what those initials were,
8 what offices of the EPA were present at the April 3rd,
9 1995, meeting. Do you see where it says DLPC/Solid
10 Waste Permits-Solid Waste? Is that some type of
11 division out of the Peoria office?

12 A No. That's not a division of the Peoria
13 office. This is just -- makes reference to the land
14 division, slash, permit section, solid waste.

15 Q Is that permit section in Springfield?

16 A Yes.

17 Q So you are saying that somebody from
18 Springfield came up to Peoria and participated in the
19 meeting that you were participating in with Mr. Poland?

20 A No. I'm not saying that.

21 Q What does it mean when it says that somebody

22 from that DLPC/Solid Waste Permits-Solid Waste was at
23 the meeting?

24 A Well, looking at the contents of the letter

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1 it just simply means that someone from the DLPC Permit
2 Solid Waste section gave Mr. Poland some information --

3 Q It doesn't --

4 A -- on how to apply for a permit.

5 Q And you were at that meeting?

6 A The April 3rd meeting that you are referring
7 to that you asked me about, yes.

8 Q I'm going to show you what's been marked as
9 B28. Can you tell me what that is?

10 A It's the preenforcement conference letter.

11 Q And which inspection does that preenforcement
12 conference letter relate to?

13 A It's referring to the March 31st, 1995,
14 inspection.

15 Q Now was that preenforcement conference letter
16 regarding the new landfill, the March 31st, 1995,
17 inspection?

18 A Yes, it was.

19 Q And was that preenforcement conference letter

20 sent to Mr. Yoho because he was the owner/operator of
21 the new landfill?

22 A As you can see, the letter is addressed to
23 Mr. Poland.

24 Q I must have grabbed the wrong letter. What's

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1 the letter, B32?

2 A Yeah. This is actually B28.

3 Q Okay. Was it sent to Mr. Poland as
4 owner/operator of the new landfill?

5 A It was sent to Mr. Poland. It didn't
6 designate whether or not he was the owner or operator.

7 Q In your -- earlier you said you recalled our
8 deposition; is that right?

9 A I beg your pardon?

10 Q You recall being deposed in this case; is
11 that right?

12 A Yes.

13 Q During that deposition I was questioning you
14 regarding Exhibit B32. That's the August 15th, 1995,
15 request for enforcement decision. Do you see on page 3
16 of B32, second paragraph, it says the May 22nd, 1995,
17 was sent to Doren Poland as operator and Lloyd Yoho as

18 owner?

19 A Yes. I do see that.

20 Q So was B28 -- do you agree that it was sent
21 to Poland as owner and operator?

22 A Well, as we can clearly see, it was sent to
23 Doren Poland. If you are referring to Exhibit 28 dated
24 May 22nd, 1995.

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1 Q Can you restate that?

2 A I stated that, as we can clearly see, Exhibit
3 28 shows that this preenforcement conference letter was
4 sent to Doren Poland.

5 Q And my question is, do you agree with your
6 statement in B32 at page 3, that it was sent to Poland
7 as operator?

8 A The answer would be yes.

9 Q Then following along on Exhibit B32 there was
10 a preenforcement conference held on June 13th, 1995. Do
11 you see that on page 3 of B32?

12 A Yes, I do.

13 Q And were you present at that conference?

14 A Yes.

15 Q Mr. Tripses conducted that conference; isn't

16 that correct?

17 A Yes.

18 Q And Mr. Tripses told Mr. Poland that he was
19 operating the new landfill without a permit?

20 A According to the letter here.

21 Q And did Mr. Tripses give Poland some
22 information regarding permitting, how to obtain a permit
23 for the new landfill?

24 A Well, the letter just states in the second

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1 sentence, "DLPC Permit Solid Waste provided information
2 on what was needed to include with the permit
3 application."

4 Q So is that Mr. Tripses or just generally your
5 office provided that?

6 A At the time of the preenforcement conference,
7 that would have been our office because we were there at
8 the conference and anything stated, then said at the
9 conference would have come from our office.

10 Q Now did you assist in drafting Exhibit B32?

11 A Yes.

12 MR. BENOIT: I would like to move for B32 and B28
13 to be admitted.

14 MR. DAVIS: We would not object.

15 BY MR. BENOIT:

16 Q What were you seeking in this request for an
17 enforcement decision?

18 A Which request are you referring to?

19 Q B32.

20 A B32.

21 What we were seeking was trying to get
22 Mr. Poland to get a permit which was required for the
23 site in question.

24 Q And why were you recommending that possibly

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1 Briggs Manufacturing Company be referred? I'm looking
2 at page 6 of B32.

3 A Because they were the generator of the waste.

4 Q Of the waste that was placed in the new
5 landfill?

6 A Of the waste that was placed in the new
7 landfill.

8 Q Does this request for enforcement decision
9 have anything to do with violations of what we had been
10 referring to as the Abingdon Landfill?

11 A No.

12 Q It concerns only the new landfill?

13 A That's correct.

14 Q Now your office was aware in 1995 that the
15 new landfill continued to accept waste and would do so
16 while seeking to obtain a permit; isn't that right?

17 A Say that again because I didn't catch
18 everything you said.

19 Q In August 1995 -- and again, this Exhibit
20 B32, Request for Enforcement Decision, is dated August
21 15th, 1995 -- your office was aware that the new
22 landfill continued to accept waste and would do so while
23 seeking permit; isn't that right?

24 A Yes.

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1 Q Did your office take any steps to stop the
2 new landfill from accepting waste?

3 A Not that I'm aware of.

4 Q Have I shown you B29 yet?

5 A No, you haven't. I have got B58, B28 and
6 B32.

7 Q Do you recognize B29?

8 A Yes, I do.

9 Q Is B29 based on the March 31st, 1995

10 inspection?

11 A Yes, it is.

12 Q And it was sent to Mr. Yoho?

13 A That's correct.

14 MR. BENOIT: I will move to admit B29.

15 MR. DAVIS: No objection.

16 BY MR. BENOIT:

17 Q I'll show you what's B30. It was sent to

18 Mr. Poland as a result of that June 13th, 1995

19 preenforcement conference we earlier discussed?

20 A Yes.

21 MR. BENOIT: I would move to admit B30.

22 MR. DAVIS: No objection.

23 BY MR. BENOIT:

24 Q I'm going to show you what has been marked as

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1 B36(A). Do you recognize B36(A)?

2 A Yes, I do.

3 Q Just a quick aside, on the first page of

4 B36(A) it notes that previous inspection date July 12th,

5 1995. Do you see that?

6 A Yes, I do.

7 Q In discovery, the inspection report for July

8 12th, 1995, was not produced and the reason was is that
9 it was lost; is that correct? We discussed this in your
10 deposition, too. My question is after the -- since your
11 deposition, has the July 12th, 1995, inspection report
12 ever turned up?

13 A Not that I am aware of.

14 Q Exhibit B36(A) the third page in, under
15 Narrative, it states, "As of the July 11th, 1996
16 inspection Poland-Briggs continues to operate the open
17 dump adjacent to the closed and covered 807 landfill."
18 Do you see that?

19 A You said third page in. Are you talking
20 about the third page of the narrative or are you talking
21 about the third page --

22 Q Right there (indicating).

23 A Okay. That's the first page of the
24 narrative. Okay. I do see the paragraph that you are

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1 referring to.

2 Q And you wrote this inspection report; isn't
3 that correct?

4 A That would be correct.

5 Q And when you state Poland-Briggs continues to

6 operate the open dump, you mean Poland and Yoho; isn't
7 that correct?

8 A I meant what I said right here in the
9 narrative.

10 Q Who are you referring to when you say
11 Poland-Briggs continues to operate the open dump?

12 A Poland-Briggs.

13 Q Poland-Briggs?

14 A Yeah. I'm referring to Poland-Briggs.

15 Q Poland-Briggs is what you referred to -- you
16 stated that you referred to the site in general; isn't
17 that correct?

18 A Poland-Briggs Landfill, as we have stated
19 before, is the site name by which we were referring to
20 as the closed and covered landfill. The adjacent site
21 which was 11.2 acres has been referred to as the 811
22 landfill. That's the open dump.

23 Q I'm going to ask you one more time, who are
24 you referring to? What person are you referring to when

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1 you say, "Poland-Briggs continues to operate the open
2 dump"?

3 A In this context in the paragraph to which you

4 are referring, to what I'm speaking of and what I'm
5 referring to is the owner and operator of the landfill
6 as well as the generator of the waste. In the context
7 of this paragraph -- 1, 2, 3 -- in the 4th paragraph is
8 what I am referring to.

9 Q That's not what you told me during your
10 deposition, is it?

11 A What did I tell you?

12 Q Start out on page 49 of your deposition,
13 first sentence, "As of July 11th, 1996, inspection,
14 Poland-Briggs continues to operate the open dump
15 adjacent to the closed and covered 807 landfill."

16 Who are you referring to when you say Poland
17 Briggs?

18 Answer: Owner and operator of the landfill.

19 Question: Which landfill are you talking
20 about?

21 Answer: This particular inspection
22 specifically states that we are talking about the open
23 dump which is what we are talking about for all
24 intensive purposes today, the new landfill.

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1 Question: And who do you mean when you say

2 Poland-Briggs continues to operate?

3 Answer: Owner and operator of the landfill.

4 Question: Who is the owner of the new
5 landfill?

6 Answer: Doren Poland and Lloyd Yoho.

7 MR. DAVIS: I would object. This is not the way to
8 do impeachment. Having objected, I would also suggest
9 that this is not a significant point warranting
10 impeachment because it is related not to direct evidence
11 but to indirect evidence.

12 HEARING OFFICER: Mr. Benoit?

13 MR. BENOIT: A significant -- and I don't know if
14 the hearing officer had a chance to view the motion for
15 summary judgment filed in this case, but it's Briggs'
16 position that a significant, factual determination or
17 issue in this case is who is the owner or operator of
18 the new landfill.

19 HEARING OFFICER LANGHOFF: I'm going to overrule
20 the objection and let the witness answer the question as
21 it was asked.

22 A The owner/operator of the landfill as I have
23 stated before is Poland-Briggs.

24 Q So you disagree with your earlier testimony

1 in your deposition where you said the owner and operator
2 of the new landfill is Poland and Yoho?

3 A No. I am not disagreeing. What I'm telling
4 you is the owner and operator of the landfill is
5 Poland-Briggs. What I told you previous was that when
6 you asked me about Poland-Briggs, this fourth paragraph,
7 and you asked me who I was referring to at the time I
8 said owner/operator and the generator of the waste.

9 Q We are talking about Exhibit B36(A) under the
10 narrative the fourth paragraph down. You are telling me
11 now when you say Poland-Briggs you meant the owner and
12 the operator which is Yoho and Poland and Briggs as the
13 generator?

14 A That's exactly correct. That's what I'm
15 saying.

16 Q So you are disagreeing with your earlier
17 deposition testimony?

18 A No, I don't.

19 Q All right. B36(A), on the top, about a
20 quarter of the way down on the fourth page, it says,
21 "Send inspection report to," and one of the people or
22 parties identified is Briggs Industries, Inc. Briggs
23 Industries, Inc., was sent this inspection report
24 because it was the generator of the waste at the new

1 landfill; is that right?

2 A That's what I said.

3 Q I'm going to show you what's been previously
4 marked B38 and B39. Can you tell me what those are?

5 A Exhibit B38 is a violation notice letter sent
6 by the agency dated January 17th, 1997. Exhibit B39 is
7 also a violation notice letter dated January 17th, 1997.
8 And I might add that it's common for the agency to send
9 a violation notice letter individually and in this
10 particular case being to Mr. Doren Poland and Mr. Yoho
11 since they are the owner/operator of the site.

12 Q And we are talking about this notice
13 violation letter -- letters, B38 and B39, they concern
14 the new landfill?

15 A That would be correct.

16 Q The new landfill only?

17 A I beg your pardon?

18 Q Only the new landfill. They only concern the
19 new landfill?

20 A That would be correct.

21 MR. BENOIT: I move that B38 and B39 be admitted.

22 MR. DAVIS: No objection.

23 BY MR. BENOIT:

24 Q I'm going to show you what's marked as B42.

1 Tell me what B42 is.

2 A This is a notice of intent to pursue legal
3 action. It's dated May 8, 1997, and it comes from the
4 agency.

5 Q Did you draft B42?

6 A Yes, I did.

7 Q Who are the parties that you identified as
8 responsible parties in B42, Exhibit B42?

9 A According to the letter, in the first
10 paragraph, Lloyd Yoho, Doren Poland and Briggs
11 Industries, Inc., of Abingdon.

12 Q And you listed Briggs as a responsible party
13 in B42 because it was the generator of the waste placed
14 in the new landfill?

15 A That's correct.

16 MR. BENOIT: I move for the admission of B42.

17 MR. DAVIS: No objection.

18 BY MR. BENOIT:

19 Q Is it your position that Briggs caused or
20 allowed open dumping as alleged in your inspection
21 reports solely because Briggs was the generator of the
22 waste? I'm talking about open dumping at the new
23 landfill.

24 A Is it my position that Briggs caused open

1 dumping? Is that what you are asking me?

2 Q (Mr. Benoit nodding head up and down.)

3 A It's my position that the owner and operator
4 of the landfill was responsible for the waste that came
5 to the site. He is responsible for open dumping.

6 Q What facts are you aware of that support the
7 allegation that Briggs caused or allowed open dumping?

8 A The facts are pretty simple. The waste is
9 there at the adjacent site for which there was no permit
10 for them to be operating such a site.

11 Q Are you saying the only fact that you are
12 aware of that supports the charge that Briggs engaged in
13 open dumping is the fact that there is no permit for the
14 new landfill?

15 A No. That's not the only fact.

16 Q What facts are you aware of?

17 A The fact that waste had been placed on the
18 site in question which we are calling the new landfill
19 which we characterized as an open dump. It does not
20 have a permit.

21 Q Are you finished?

22 A Yeah.

23 Q I think you testified earlier you don't know
24 who hauled the material to the new landfill; is that

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1 correct?

2 A That is correct.

3 Q The complaint also suggests that Briggs
4 conducted landfill activities. The only fact that you
5 are aware of that Briggs conducted landfill activity is
6 the fact that it was the generator of the waste that was
7 put on the new landfill; isn't that right?

8 A I don't know if I agree with your assertion
9 that I or the agency said that Briggs conducted the
10 waste operation. I don't know where you are getting
11 that from.

12 Q Are you saying that Briggs did not conduct
13 the landfill activity at the new landfill?

14 A I'm trying to answer your questions. I'm not
15 saying anything.

16 Q That's the problem. That's why we are kind
17 of going around in circles here. You are not saying
18 anything.

19 MR. DAVIS: Objection.

20 HEARING OFFICER LANGHOFF: Sustained.

21 MR. DAVIS: And a further objection, this line of
22 inquiry seems to have made it plain to everyone in the
23 room the focus is on what Mr. Jones thinks or doesn't
24 think. The complainant is not James Jones. The

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1 complainant is the People of the State of Illinois on
2 behalf of the Illinois EPA. Mr. Jones can tell us what
3 he knows. He can describe the limits of what he knows.
4 He can admit to what he doesn't know. But this is no
5 longer an appropriate area of inquiry because it's not
6 personal positions of this witness that count.

7 HEARING OFFICER LANGHOFF: Mr. Benoit?

8 MR. BENOIT: Mr. Jones is the inspector on this
9 case that's inspected the new landfill from 1993 to
10 1997. He has authored inspection reports and request
11 for enforcement decision. I think it's relevant to
12 determine, again, since one of the focuses of this case
13 is who is the operator of the new landfill to figure out
14 the basis for Mr. Jones' assertion, assertions of
15 violations which ultimately ended up in the complaint as
16 far as Briggs' open dumping, Briggs conducting landfill
17 operations, Briggs operating and developing a new
18 landfill and so forth. And that's what this line of

19 questioning -- you know, he is obviously a fact witness.
20 And I just want to know what is the basis for his
21 claims.

22 HEARING OFFICER: I'm going to overrule the
23 objection. I would like the record and everyone in the
24 room to understand that it's not Mr. Jones and his

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1 personal position or as his own person; it's Mr. Jones
2 as an employee of the Environmental Protection Agency.
3 And I'm going to allow the questioning.

4 MR. BENOIT: I kind of got thrown off stride as to
5 what the last question was.

6 HEARING OFFICER LANGHOFF: Would you like the court
7 reporter to repeat it?

8 MR. BENOIT: Yes.

9 HEARING OFFICER LANGHOFF: Okay. Would you read
10 the question back, please?

11 (A recess was taken.)

12 HEARING OFFICER LANGHOFF: Okay. We are back on
13 the record. It's 10:33. Would you please repeat the
14 question?

15 COURT REPORTER: "Are you saying that Briggs did
16 not conduct the landfill activity at the new landfill?"

17 And then you said, "I'm trying to answer your
18 questions. I'm not saying anything."

19 BY MR. BENOIT:

20 Q Other than the fact that Briggs was the
21 generator of the material placed on the new landfill,
22 you are aware of no other facts supporting the
23 allegation that Briggs caused or allowed open dumping,
24 correct?

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1 A Repeat that question again. Can you repeat
2 the question?

3 Q Other than the fact that Briggs was the
4 generator of the material that was placed on the new
5 landfill, you are aware of no other facts supporting the
6 allegation that Briggs caused or allowed open dumping,
7 correct?

8 A I'm going to say that that would be correct.

9 Q Other than the fact that Briggs generated the
10 waste that was placed on the new landfill, you are aware
11 of no other facts that Briggs conducted landfill
12 activities at the new landfill; is that correct?

13 A That would be correct.

14 Q Other than the fact that Briggs generated the

15 waste that was placed on the new landfill, you are aware
16 of no other facts supporting the allegation that Briggs
17 disposed of waste at the new landfill; is that correct?

18 A That would be correct.

19 Q Other than the fact that Briggs generated the
20 waste that was placed on the new landfill, you are aware
21 of no other facts supporting the allegation that Briggs
22 caused litter at the new landfill; is that correct?

23 A That would be correct.

24 Q Other than the fact that Briggs generated the

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1 waste that was placed at the new landfill, you are aware
2 of no other facts supporting the allegation that Briggs
3 developed the new landfill, correct?

4 A That would be correct as well.

5 Q Other than the fact that Briggs generated the
6 material that was placed on the new landfill, you are
7 aware of no other facts supporting the allegation that
8 Briggs operated the new landfill, correct?

9 MR. DAVIS: I'll interject at this point,
10 Mr. Hearing Officer. This is getting quite repetitive.
11 It's the same question with slight variations. So I
12 would object on the basis that it's been asked and

13 answered.

14 HEARING OFFICER LANGHOFF: I will overrule that
15 objection.

16 BY MR. BENOIT:

17 Q Do you want me to restate the question?

18 A Yeah. You need to restate the last question.

19 Q Other than the fact that Briggs generated the
20 waste that was placed on the new landfill, you are aware
21 of no other facts supporting the fact that Briggs
22 operated the new landfill, correct?

23 A I'm going to say correct.

24 Q Other than the fact that Briggs was the

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1 generator of the waste that was placed on the new
2 landfill, you don't have any other information regarding
3 other activities Briggs may have taken in regard to the
4 new landfill; is that correct?

5 A I don't understand your question.

6 Q Other than the fact that Briggs was the
7 generator of the waste that was placed on the new
8 landfill, you don't have any information regarding any
9 other activities Briggs took in regard to the new
10 landfill, correct?

11 A What activities are you referring to?

12 Q Any activities Briggs took in relationship or
13 in regard to the new landfill.

14 A In this particular case, I'm going to say
15 yes.

16 Q Yes, you have no other information?

17 A Of any activities as you stated.

18 HEARING OFFICER LANGHOFF: So your answer is that
19 is a correct statement?

20 THE WITNESS: Yeah.

21 HEARING OFFICER LANGHOFF: Okay. Thank you.

22 BY MR. BENOIT:

23 Q While conducting your inspection activities,
24 your duties as inspector, are there different forms that

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1 you use as inspection reports?

2 A Yes.

3 Q And is one form -- is there one particular
4 form that you use for landfills?

5 A Yes, there is.

6 Q And is there another form that you use when
7 you are inspecting an open dump?

8 A Yes.

9 Q Do you carry these various forms with you in
10 your vehicle when you are out doing inspections?

11 A Yes.

12 Q Exhibit B20, do you recognize Exhibit B20?

13 A Yes, I do.

14 Q And Exhibit B20, I think, does that contain
15 your findings based on your November 29th, 1993,
16 inspection?

17 A That would be correct.

18 Q And did that inspection -- what was the
19 primary purpose of that inspection?

20 A November 29th, 1993, was what we call a
21 closure inspection.

22 Q And because you were inspecting a landfill,
23 is that why you used this particular form or this
24 particular inspection report?

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1 A That would be correct.

2 Q And if you could turn to the narrative
3 section of B20 on page 2, did you determine that you
4 could not, at that time, cite any violations relating to
5 the old -- the Abingdon Landfill, the 807 landfill, you
6 couldn't site any 807 violations based on the new unit

7 because the new unit was not part of the Abingdon
8 Landfill?

9 A I decided that, as the narrative states, that
10 there weren't any apparent violations of site regarding
11 the 807 site which is what we commonly refer to as the
12 closed landfill. On the other hand, the adjacent site
13 which was the 811 landfill and the open dump, we did
14 cite landfill violations.

15 Q So you made the determination that there are
16 two distinct facilities?

17 A That would be correct.

18 Q And I've kind of lost track of which exhibits
19 that have been moved into evidence here. I would move
20 that B20 be admitted into evidence.

21 MR. DAVIS: No objection.

22 (Discussion off the record.)

23 HEARING OFFICER LANGHOFF: We are back on the
24 record. I think the last thing we were talking about

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1 was Exhibit B20. It was admitted.

2 MR. BENOIT: It was offered.

3 MR. DAVIS: And I didn't object.

4 HEARING OFFICER LANGHOFF: With no objection.

5 BY MR. BENOIT:

6 Q Can you look at B20 in the photograph
7 section. It would be photograph number 2. Do you see
8 what I'm referring to? It shows --

9 A Yeah.

10 Q -- a car parked?

11 A Uh-huh.

12 Q Where is that car parked?

13 HEARING OFFICER LANGHOFF: For the record, we are
14 looking at photocopies of the colored photographs
15 attached to B20. And the Respondent Briggs will be
16 giving the color photographs to the Board for
17 acceptance.

18 You can answer the question, Mr. Jones.

19 A This is a state vehicle which I use to get to
20 the site. And at this particular -- looking at this
21 photograph, the vehicle is pointed toward the south and
22 the -- what we refer to as the Abingdon Landfill or the
23 closed and covered landfill.

24 Q Is that the entry way to the Abingdon

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1 Landfill?

2 A Yes.

3 Q And is the gate that's depicted in that
4 photograph -- or was the gate that is depicted in that
5 photograph used to control entrance to the Abingdon
6 Landfill?

7 A I assume that it is.

8 Q I'm going to show you what has been marked as
9 B23. Can you tell me what that is?

10 A Yes. This is a letter from the agency that
11 was sent to division files involving the closure
12 certification inspection that was conducted at
13 Poland-Briggs Landfill in Abingdon.

14 Q And you drafted B23?

15 A Yes, I did.

16 Q I'm a little confused. Earlier did you say
17 that the November 1993 inspection was the closure
18 inspection? I'll just make this a little clearer. Is
19 there a difference between a closure inspection and a
20 closure certification inspection?

21 A A closure certification inspection is a
22 closure certification inspection.

23 MR. BENOIT: Okay. This isn't that important. I
24 will move for B23 to be admitted.

1 MR. DAVIS: No objection.

2 Q I will show you what's been marked as B27.

3 Can you tell me what that is?

4 A Yes. This is an open dump inspection
5 checklist. The date of the inspection is March 31st,
6 1995.

7 Q And you drafted B27?

8 A Yes, I did.

9 Q Can you tell me why B27 states, "Send
10 inspection report to Doren Poland and Lloyd Yoho"?

11 A Probably because it's common practice for the
12 agency to send the letter to the owner/operator of a
13 site. In this particular case that would be Mr. Poland
14 and Mr. Yoho.

15 Q Is Exhibit B27 a standard open dump form that
16 you use?

17 A It's an open dump checklist, inspector
18 checklist as it's entitled on the top of the page here.

19 MR. BENOIT: I move for the admission of B27.

20 MR. DAVIS: No objection.

21 BY MR. BENOIT:

22 Q Have I already showed you -- can you look and
23 find B36(A) again?

24 HEARING OFFICER LANGHOFF: That document hasn't

1 been offered yet, Counsel.

2 Q Did you draft B36(A)?

3 A What was your question?

4 Q Did you draft B36(A)?

5 A Yes, I did.

6 MR. BENOIT: I move for the admission of B36(A).

7 MR. DAVIS: No objection.

8 BY MR. BENOIT:

9 Q If you could turn to B36(A) and compare the
10 violations listed in B36(A) to the violations listed in
11 B27. And, specifically, this is kind of in Count 3 of
12 the complaint. I just wondered why the list of it, the
13 violations increased?

14 (Brief pause in proceedings.)

15 Q And to kind of assist you, the reason I am
16 asking for the increase is because we are missing the
17 July 12th, 1995, inspection. I'm wondering if something
18 happened at the July 12th, 1995, inspection that caused
19 the violations listed to significantly increase?

20 A The reason for the increase is because we
21 added the 811 violations which were cited because of the
22 fact that the 811 site that we refer to that we made
23 that distinction from the beginning.

24 Q The new landfill?

1 A Yeah. The new landfill. We added all of
2 those apparent violations that the facility would have
3 been in apparent violation of by virtue of the fact that
4 they did not have the required permit.

5 Q Can you look at Exhibit B32 --

6 A Uh-huh.

7 Q -- page 4.

8 A 32. Just a moment.

9 (Brief pause in proceedings.)

10 A B32, page 4?

11 Q Right. And towards the bottom of the page it
12 says -- well, in the middle of the page it talks about a
13 reinspection on July 12th, 1995. That's the inspection
14 report we are missing; is that right?

15 A Yes. That's correct.

16 Q And then it lists some continuing apparent
17 violations. I'm talking about Exhibit B32, page 4 and
18 there is -- 1, 2, 3, 4 -- 5 violations and right after
19 that it says, "Because Mr. Poland is going to obtain a
20 permit under the new landfill regulations and not close,
21 the following new apparent violations were observed."
22 And then it goes on for several pages listing 811
23 violations; do you see that?

24 So is the reason that all the 811 violations

1 were cited -- and apparently this was based on the July
2 12th, 1995, missing inspection report -- is because
3 Mr. Poland was going to obtain a permit?

4 A No. That's not the reason.

5 Q What does it mean when it says there,
6 "Because Mr. Poland is going to obtain a permit under
7 the new landfill regulations and not close, the
8 following new apparent violations were observed." And
9 I'm talking about Exhibit B32, page 4.

10 A It's pretty self-explanatory down at the
11 bottom. After we found out that he was going to pursue
12 and get a permit, that let us know that these new and
13 apparent violations could be added to the list. And
14 that's what we did, section 811.102 and 103 and all the
15 rest of them because all of these are requirements.

16 Q So if he was not going to obtain a permit, or
17 not going to attempt to obtain a permit, you wouldn't
18 have charged him with these things?

19 A No. That's not what we are saying.

20 Q Okay. What are you saying?

21 A We cited the apparent violations that the
22 facility would be in apparent violation of. And these

23 are all the apparent violations that the facility were
24 in apparent violation of by virtue of the fact they did

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1 not have a permit issued by the Illinois Environmental
2 Protection Agency.

3 Q Do you understand my question? Why was
4 Mr. -- or I don't know who this was sent to, B32. This
5 is a request for enforcement decision based in part, at
6 least, based on this July 12th, 1995, inspection and
7 also listing the violations?

8 A Well, this is not an inspection.

9 Q We are missing the July 12th, 1995,
10 inspection report, right?

11 A That's correct.

12 Q So all I have to look at is B32 where it kind
13 of mentions that there was a reinspection on July 12th,
14 1995. And then my question is is why all these
15 violations were added after the July 12th, 1995,
16 inspection?

17 And your answer was they weren't added
18 because Mr. Poland was going to obtain a permit, right?

19 A That is correct.

20 Q But you drafted B32, right?

21 A That would be correct.

22 Q And you say because Mr. Poland is going to
23 obtain a permit, then you list all these other
24 violations. But there is some other reason, right?

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1 A The general statement that you are referring
2 to is something that was just stated in this particular
3 document. It doesn't mean that Mr. Poland wasn't going
4 to be cited if he actually, you know, got the permit.
5 The fact of the matter was -- and like I said, this is
6 not -- this is not an inspection report. All this is a
7 request for enforcement decision. This is an
8 interagency document that comes from the field
9 operations section that we send to the enforcement
10 decision group. And all this is information based on
11 the inspections that had been conducted and any other
12 activities involving this particular site as a
13 summarization of what has occurred at this site. This
14 is all this is.

15 Q Are you saying that the information that you
16 submitted to the enforcement group is incorrect?

17 A Why would I say it's incorrect?

18 Q Do you generally tell the enforcement group

19 why you want to refer a particular person or business
20 for alleged violations?

21 A Yes, we do.

22 Q In this instance, did you tell the
23 enforcement group that you wanted to refer Poland, Yoho
24 and possibly Briggs in part because Mr. Poland was going

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1 to obtain a permit under the new landfill regulations
2 and not close? I'm just confused. Why would you tell
3 them that?

4 A State specifically for me what you are
5 referring to. Are you referring to something that is in
6 this particular letter?

7 Q Okay. I'm looking at B32, page 4: In the
8 middle it talks about the July 12th, 1995, inspection;
9 then it talks about continuing apparent violations and
10 lists 1, 2, 3, 4, 5 violations. And then it says,
11 "Because Mr. Poland" -- and I read the sentence. You
12 can read it yourself -- "the new apparent violations
13 were observed."

14 Apparently these new apparent violations were
15 observed on July 12th, 1995. Can you recall what
16 happened at the July 12th, 1995, inspection?

17 A At this particular time, no, I can't. Not
18 without having anything to refresh my memory.

19 Q Did you receive some information at the July
20 12th, 1995, inspection or around that date that let you
21 know that Mr. Poland was going obtain a permit?

22 A Did I receive any information?

23 Q (Mr. Benoit nodding head up and down.)

24 A Well, the only way I would know something

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1 like that was if Mr. Poland told the office or told
2 someone in our division that he was going to obtain a
3 permit. That would be the only way.

4 Q And so then when you learned that he was
5 going to obtain the permit, you cited him for more
6 violations based on the fact that he was trying to get a
7 permit?

8 A Well, if we are going to go by what this
9 document is stating, the answer to your question would
10 be yes.

11 Q You testified that there was -- that you had
12 observed some material other than porcelain waste at the
13 new landfill; is that correct?

14 A Yes.

15 Q And can you tell me when that was?

16 A Well, if you could give me something to
17 refresh my memory, I would be more than happy to tell
18 you.

19 Q Can you recall if you ever -- scratch that.
20 When observing this type of material -- and,
21 again, we are talking about the new landfill -- have any
22 bearing on the type of violations you would have set
23 forth in your inspection reports?

24 A When you refer to materials that I observed

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1 seeing in the waste, it had to do with the facility at
2 some point in time trying to make a determination, waste
3 determination, solid waste determination on the waste in
4 question. And when I refer to the materials that I saw,
5 this was done for the purpose, you know, to state that
6 this waste contained materials other than what was
7 supposed to have been there at the site.

8 Q We are talking about the new landfill, right?

9 A Yes, we are.

10 Q Nothing was supposed to be there, right?

11 A Well, we know that nothing was supposed to be
12 there.

13 Q You mentioned waste that was supposed to be
14 there?

15 A No. No.

16 Q Does the fact that you observed these -- I
17 think your testimony was some kind of metal rod, maybe a
18 little plastic at the new landfill, would that change in
19 any way the violations that are alleged?

20 A No. Not at all.

21 Q I'm going to show you what's been marked as
22 B48. Can you tell me what that is?

23 A This is a request for enforcement decision
24 dated July the 18th, 1997.

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1 Q Now what did you -- did you draft or codraft
2 B48?

3 A I drafted this.

4 MR. BENOIT: I move that B48 be admitted.

5 MR. DAVIS: No objection.

6 BY MR. BENOIT:

7 Q What was your recommendation in B48 to the
8 department of legal counsel?

9 A Section 4 states a recommendation. Do I need
10 to read it?

11 Q You can summarize it if you like or read it,
12 whichever you want to do.

13 A Well, I will go ahead and read it. "DLPCFOS
14 Peoria recommends that Doren Poland, Lloyd Yoho and
15 Briggs Industries be referred to the IAGO for developing
16 and operating a solid waste disposal site without a
17 permit. The parties failed to comply with their CCA.
18 The permit application was submitted late and was not
19 approvable. Monetary penalties should be sought from
20 all three parties. And they should be required to
21 obtain a section 811 permit or conduct an 811 closure,
22 post closure that requires them to submit all documents
23 to DLPC permit section for review and approval."

24 Q Could you grab B32 again?

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1 A Okay. Turn in B32 again to the
2 recommendation which is the last page.

3 Q Looking at B32, would you agree that August
4 15th, 1995, your recommendation was that possibly Briggs
5 be referred to the AG as a generator?

6 A Yes.

7 Q And July 18th, 1997, I'm talking about
8 Exhibit B48, you definitely recommended that Briggs be

9 referred. Would you agree with that statement?

10 A Yes.

11 Q And what was the change that had occurred
12 between August 15th, 1995, and July 18th, 1997, that
13 strengthened your recommendation that Briggs be
14 referred?

15 A Oh, I'm pretty sure there were some
16 circumstances involved. The agency doesn't -- there
17 have been occasions where we have, you know, taken a
18 stance and because of extenuating circumstances or
19 circumstances we might, you know, change the position.
20 And I imagine that the reason why we said might to they
21 were a generator.

22 Q And July 18th, 1997, when you were requesting
23 that Briggs be referred, you were still asking that they
24 be referred because they were a generator?

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1 A Yes.

2 MR. BENOIT: I think that's all I have for this
3 witness right now.

4 HEARING OFFICER LANGHOFF: Thank you. Mr. Davis.

5 MR. DAVIS: No redirect. I would ask counsel for a
6 clarification. He said "right now." We had a previous

7 discussion off the record --

8 MR. BENOIT: No. I'm not going to recall him. I
9 thought if you --

10 MR. DAVIS: No. I have no other questions.

11 HEARING OFFICER LANGHOFF: No redirect. Thank you,
12 Mr. Jones.

13 For the record, the People's Exhibits 6, 7,
14 and 8, 10, 11 --

15 Do you need a moment?

16 MR. DAVIS: Just a moment. Okay. Go ahead,
17 please.

18 HEARING OFFICER LANGHOFF: I'll start over.

19 People's Exhibits 6, 7, 8, 10, 11, 12, 15, 24, 25, 26
20 and 28 have been moved to be entered into evidence.

21 Briggs raised an objection based on the fact
22 that Mr. Jones didn't have any knowledge of the Exhibits
23 6, 7 and 8 because they were before he came to the
24 agency.

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1 Mr. Davis replied that business records
2 exception applied and that they should be admitted into
3 evidence. And I overruled Briggs motion. At this time
4 I will --

5 MR. BENOIT: Did you list the Briggs motion?

6 HEARING OFFICER LANGHOFF: No, not yet.

7 At this time I will admit into evidence all
8 those People's exhibits that I have previously read
9 unless there is some other objection to any of those
10 documents?

11 MR. BENOIT: No. My objection wasn't to the -- we
12 had already agreed that they were admissible as business
13 records. I was objecting to Mr. Jones discussing the
14 contents of them.

15 HEARING OFFICER LANGHOFF: Those records and
16 exhibits are admitted into evidence.

17 With regard to Briggs Exhibits, Exhibits B58,
18 B32, B28, B29, B30, B36(A), B38, B39, B42, B20, B23, B27
19 and B48 have been offered into evidence without
20 objection. The Board will accept those documents into
21 evidence at this time.

22 Mr. Davis, your next witness.

23 MR. DAVIS: We would call Mr. Poland.

24 (Witness sworn.)

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1 HEARING OFFICER LANGHOFF: Mr. Davis.

2 MR. DAVIS: Mr. Poland, I have called you, sir, as

3 my witness. You will have a chance later in the
4 proceedings to offer additional testimony, but right now
5 I'm going to ask you questions about what I want to talk
6 about.

7 THE WITNESS: Okay.

8 DOREN E. POLAND,
9 called as a witness, after being first duly sworn, was
10 examined and testified upon his oath as follows:

11 DIRECT EXAMINATION

12 BY MR. DAVIS:

13 Q For the record, what is your full name?

14 A Doren Edwin Poland.

15 Q And where do you live?

16 A 506 East Latimer, Abingdon, Illinois.

17 Q Now I would like to focus on a period of time
18 during the late 1970s through the middle part of the
19 '90s. Were you engaged in any particular business or
20 businesses during that time?

21 A With Abingdon Salvage.

22 Q And can you tell us what Abingdon Salvage was?

23 A It's a trash removal for Abingdon and several
24 communities around Abingdon. Plus the fact that they

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1 had one contract with Briggs Manufacturing to get rid of
2 their waste in our landfill.

3 Q Did the company start out as sort of a
4 partnership between you and somebody?

5 A It did.

6 Q Who was the other party?

7 A Lloyd Yoho.

8 Q And at one point in time, did it become a
9 corporation?

10 A It did.

11 Q Do you recall when?

12 A I cannot tell you for sure, but I think it
13 was around '91 or '92.

14 Q And why did you and Mr. Yoho turn the
15 partnership into a corporation?

16 A I cannot remember at this time.

17 Q Can you tell us what the company had as far
18 as equipment and real estate?

19 A Real estate, a piece of ground which is 15.8
20 acres on the east side of Abingdon and garbage trucks,
21 three garbage disposal trucks and several miscellaneous
22 trucks to pick up refuse.

23 Q Did you have an office?

24 A Yes. Mr. Yoho took care of part of the

1 books, and I took care of part of the books.

2 Q Did you divide the business up into separate
3 areas?

4 A He took half of the business and I took half.

5 Q And how was that half divided?

6 A Equally.

7 Q Now you mentioned the piece of property.

8 Would this be the same property, the same 15-plus acres
9 that we have been talking about as far as the landfill
10 and --

11 A It is.

12 Q -- the dump.

13 And can you tell us whether the company owned
14 it or whether you and Mr. Yoho owned it as tenants in
15 common?

16 A It was that way.

17 Q Which way?

18 A Tenants in common. We both owned it equally.

19 Q So the company utilized the property but
20 didn't own the property?

21 A Right.

22 Q Now the half of the business that you
23 concerned yourself with, would that have been the
24 dealings with Briggs Industries?

1 A That's the reason we purchased the property.

2 Is that what you want to know?

3 Q Let's start there. Why did you purchase the
4 property?

5 A To have a place to get rid of the refuse from
6 Briggs Manufacturing when the time come when we needed
7 it.

8 Q And when did you and Mr. Yoho purchase the
9 property?

10 A That I cannot tell you for sure, but it was
11 the late '80s -- no, '70s, 1978 I believe. It was a
12 piece of ground that wasn't worth anything because it
13 was a neck of a funnel. It was waste area.

14 Q It wasn't good for farming at that point?

15 A No. Part of it was. Maybe five acres which
16 we were never going to use was farmable.

17 Q Did Briggs participate in the acquisition of
18 this property?

19 A No.

20 Q Did they participate in looking for a
21 suitable site?

22 A No.

23 Q Did Briggs participate in developing this
24 site once the purchase was made?

1 A They did.

2 Q Tell us about that.

3 A All expenses were divided by Briggs
4 Manufacturing and Abingdon Salvage Incorporated.

5 Q So half and half?

6 A Everything. Like you saw a picture a while
7 ago of a car on a road going through a gate. The gate
8 was furnished by Briggs.

9 Q Let's back up. You said it was divided, and
10 I'm asking whether it was divided equally, half and
11 half?

12 A Right.

13 Q After the purchase of the site was completed,
14 what did Briggs do if anything?

15 A Paid half the bills as I give them to him.

16 Q Isn't it true that Briggs applied for a
17 permit from the Illinois EPA?

18 A Oh, yes. Briggs was the ones that applied
19 for the permit because they had typewriters and
20 secretaries. You might say it was down the road from
21 me. And Jim Willis had the -- seemed to have the
22 knowledge of how to take care of things like this.

23 Q And that application was submitted to the EPA

24 by some consulting firm?

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1 A No.

2 Q Did Briggs pay for the costs of preparing the
3 applications?

4 A They did.

5 Q All of the costs or half of the costs?

6 A That I don't know.

7 Q And was a permit subsequently issued to your
8 knowledge to Briggs for the original site?

9 A Yes.

10 Q Now to pick up where you left off, once the
11 landfill began operating, did Briggs pay for half of the
12 expenditures?

13 A They did.

14 Q Tell us about what sort of expenditures?

15 A Expenditures that they were responsible for
16 paying half of. As we would fill it up and it needed to
17 be bulldozed down and leveled off again, they would pay
18 half the bulldozing. They would pay half of any fees
19 that we had other than bulldozing. Like when it come
20 time for us to hire an engineer to get a new permit,
21 they paid half of it. I paid -- we paid the first of it

22 and then give them a bill monthly and they would pay us
23 their half.

24 Q Now the new permit would have been in the

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1 early '90s?

2 A Yes.

3 Q So when the original permit was issued, let's
4 say, I would represent to you in March of '79 --

5 A Right.

6 Q -- up through all of the '80s and into the
7 '90s --

8 A Yes.

9 Q Let me finish my question, sir. I know you
10 are trying to help; but let me finish my question, then
11 you can give your answer.

12 Did operations continue as you have described
13 all through the '80s up through the early parts of the
14 '90s?

15 A Yes.

16 Q With Briggs paying half of the operational
17 expenditures?

18 A Yes.

19 Q Tell us about the decision to seek a new

20 permit as you have called it? First of all, what was
21 the purpose of seeking a new permit?

22 A We had a permit for 15.8 acres. That was the
23 whole piece of ground. We was not going to use all of
24 it. We started down in the real bad part of it and then

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1 had a bulldozer go in there and bulldoze it out and put
2 the dirt aside so you use that for cover for later on.
3 We went ahead and used that. It was 4.6 acres, I think.
4 Then the EPA come along and told us at the time that we
5 was going to have to have \$150,000 put away in escrow in
6 order to continue to leave it as 15.8 acres.

7 Q Let me interrupt you. This would have been
8 for financial assurance?

9 A Yes.

10 Q Were you aware that the financial assurance
11 requirements had become applicable a few years earlier?

12 A No. No.

13 Q In the 1980s?

14 A We didn't know that it didn't have them. It
15 wasn't that way to start with.

16 Q At the point in time then when financial
17 assurance was required, regardless of whether it was

18 150,000 or some other amount, who posted the money for
19 that?

20 A Briggs Manufacturing did.

21 Q Now, I'm sorry I interrupted you. You were
22 telling us that the amount of financial assurance was
23 going to be 150,000. Did this play a role in your
24 decision to seek a new permit?

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1 A Right. So if I'm right, the EPA informed us
2 that we could break it down in phases. Use this 4.6
3 acres which we was using at the time and get it leveled
4 off, close it, cover it, and get a closure on it. And
5 that is what Briggs paid for.

6 Q The financial assurance?

7 A I think it was \$16,000. And then we was
8 going to go on to what we call phase 2.

9 Q Now before we move on to phase 2, as far as
10 the closure activities for phase 1, did Briggs pay half
11 of those costs?

12 A Yes.

13 Q Do you recall --

14 A They paid half the bulldozing, covering it up
15 and half the engineers that had to come out of Indiana

16 somewhere to prove the solubility, how solid it was.

17 Anything that come up, Briggs paid half of it.

18 Q Now have you heard Mr. Jones testify that
19 this old portion was properly closed?

20 A Right.

21 Q And you're telling us that the costs of
22 finishing that old portion -- well, you have also
23 described it as 4.6 acres?

24 A Yes.

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1 Q The phase 1, as you say, those costs were
2 shared with Briggs, were they not?

3 A Right.

4 Q Now the permit, the new permit, did Briggs
5 pay half of those costs?

6 A Yes, they did.

7 Q Who was your engineer on the new permit?

8 A James Schoenhard out of Athens, Illinois.

9 Q And I understand you are going to be calling
10 him as your witness to talk about this?

11 A We are.

12 Q Did Mr. Schoenhard bill you for those costs
13 of the new permit?

14 A He did.

15 Q And how did you secure payment from Briggs?

16 A He started billing Briggs, but they wouldn't
17 pay for it. They was too slow on money. So then we
18 started paying for them. As they come due, we paid for
19 them. And then I put them on the bill with Briggs'
20 weekly billing, and they paid it.

21 Q It seemed like an easier way to do it?

22 A Yeah.

23 Q But when all was said and done, Briggs ended
24 up paying for half of those costs?

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1 A Right.

2 Q And I'm talking specifically now about the
3 permit modification or what you call the new permit?

4 A Yes.

5 Q Do you recall whether you billed the company,
6 Briggs, on a weekly, monthly or some other basis?

7 A Weekly.

8 Q And how were those arrangements made?

9 A I would take a bill into Briggs Manufacturing
10 to the plant manager, Bob Batson at the time, to start
11 with. I give him the bill, and if any discussions with

12 any of the operations was dissatisfactory or anything,
13 why I was told at the time, and I give him the bill and
14 a couple weeks later I got paid for it.

15 Q Now, sir, our job today and tomorrow is to
16 generate a record so that somebody else can read it and
17 understand. So I'm going to ask you to clarify. And
18 I'm going to represent to you what I believe the
19 evidence will be, and in fact, has been. That Mr. Jones
20 and the documents that were admitted through his
21 testimony indicate that, at least, as far as the EPA was
22 concerned that they felt that the operations beginning
23 in August of '93 needed a permit on this new site?

24 A Yes.

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1 Q So that's the point in time we are now going
2 to focus on.

3 A Okay.

4 Q August '93 and the years following that.

5 At the time, August '93, was Mr. Batson the
6 plant manager?

7 A I can't tell you right now for sure. I don't
8 think he was. I think -- I don't think he was.

9 Q But you dealt with whoever succeeded him as

10 plant manager?

11 A Yes.

12 Q Mr. Batson was who you apparently dealt with
13 for the older site, phase 1?

14 A Right.

15 Q As a general matter, talking both about the
16 old site and new site, did you have a written contract
17 with Briggs?

18 A No.

19 Q You indicated that you would simply, on a
20 weekly basis, present a bill to Briggs?

21 A Yes.

22 Q I've got several documents that I'm going to
23 ask you to look at, some of which you may have seen
24 before and some of which you may have generated. Now in

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1 order to do this so that it's easiest for all of us, I'm
2 going to ask you simply to take a couple of
3 minutes -- with the hearing officer's permission -- sit
4 here and look through these. Don't read them every
5 page, but glance through them to familiarize yourself
6 with those documents.

7 HEARING OFFICER LANGHOFF: And, Counsel, those

8 documents are People's 32 through --

9 MR. DAVIS: Yes. Thank you. 32 through 59 plus
10 66. The remaining documents I'll explore with Mr. Yoho.

11 (Brief pause in proceedings.)

12 Q Okay, sir, it looks like you are ready to
13 start. We are going to refer -- just keep them on your
14 lap if you would, and when you are done with them you
15 can hand them to the hearing officer. But we are going
16 to go through them collectively first of all. I have
17 represented that it's Exhibits 32 through 59 plus number
18 66. Do these appear to be copies of checks -- and I'm
19 speaking generally -- checks made by Briggs and
20 delivered to your company?

21 A Yes.

22 Q Plus, on occasion at least, statements that
23 you apparently provided to Briggs from your consultant
24 Mr. Schoenhard --

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1 A Yes.

2 Q -- plus bills on -- or invoices, if you will,
3 on Abingdon Salvage Company stationery that you
4 apparently delivered on a weekly basis to Briggs?

5 A Yes.

6 Q Now did Briggs pay you for each week
7 separately, or did they combine weeks together?

8 A Most generally weekly.

9 Q And there were some occasions, I take it,
10 specifically Exhibit 32 it looks like they paid you for
11 two weeks?

12 A They got behind sometimes. Lots of times.

13 Q And focusing specifically on Number 32, in
14 addition to the amount that you billed Briggs for the
15 services that you provided, did you also pass onto
16 Briggs half of the costs for your engineer?

17 A I did.

18 Q And would this be the same situation with
19 many of the other exhibits --

20 A Yes.

21 Q -- that you are looking at?

22 Let's talk about how much you billed Briggs
23 and on what basis and so forth. Can you tell us how
24 much you charged for what sorts of services? And there

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1 again we are focusing on August '93 and the following
2 years.

3 A It was based on \$500 a day I believe. Is

4 that what you want to know?

5 Q Well, first of all, it was based on a
6 daily --

7 A Daily.

8 Q Daily service.

9 And if you are looking at Exhibit 32 which I
10 would ask you to do right now, sir, top of the pile.

11 A That was back -- to start with, they had a
12 raise in there. We started out 328 a day.

13 Q And take a look at Number 32. It looks like
14 it started at least -- well, not started but back in
15 February of '94 it was at 290 a day?

16 A Yes.

17 Q So the exhibits that I have handed you, it's
18 gone from 290 a day to 325 a day. I think you mentioned
19 500 a day?

20 A It ended up being 5.

21 Q So that's the range of the services?

22 A Right. But they got bigger, too.

23 Q Let's talk about that. Back in '94, for
24 instance, did the company generate generally the same

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1 amount of ceramic wastes on a daily basis?

2 A Yes.

3 Q Relatively stable production?

4 A Yes.

5 Q Did production increase at the Abingdon
6 Manufacturing facility?

7 A Yes.

8 Q Did that result in an increase of waste?

9 A It did.

10 Q And did that result in an increase of the
11 costs or the fees that you charge?

12 A Yes.

13 Q Makes sense.

14 Were there some days during the weeks that
15 you didn't have to provide any services, holidays, for
16 instance?

17 A Yes.

18 Q And on the other hand, were there occasions
19 where you provided extra services?

20 A Yes.

21 Q And did you attempt to bill Briggs for those
22 additional or subtracted days?

23 A Yes.

24 Q Now focusing on the point in time where we

1 are talking about phase 2, or the new landfill or the
2 dump site, whatever you choose to refer to it as, and
3 this point in time would be August '93 and following.

4 A Yes.

5 Q Did you, in addition to passing on half of
6 the costs of your engineer, pass along half of the costs
7 of any other contractors that conducted activities at
8 the new landfill? And I'm referring specifically to
9 anybody you may have hired for compacting or crushing of
10 the wastes.

11 A Yes. We hired -- we hired a man that was
12 going to be the operator. He is already a legal
13 operator.

14 Q What I'm referring to is somebody that you
15 may have hired with a bulldozer or other heavy equipment
16 that would come into the site on an occasional basis?

17 A Just the one time to clean up the little mess
18 that James Jones said we had.

19 Q Tell us about that. Who did you hire?

20 A My daughter.

21 Q And was her job basically to extract the
22 wastes that were not porcelain or ceramic wastes?

23 A Right.

24 Q The so-called litter?

1 A Right.

2 Q Now I'm thinking that there was somebody by
3 the name of Robinson Bulldozing that was hired?

4 A That's the bulldozer.

5 Q And would this have been after or before
6 August of '93?

7 A After.

8 Q And did you pass along to Briggs half of
9 those expenses?

10 A Yes.

11 Q And did Briggs pay those?

12 A Yes.

13 Q Was the bulldozing done to compact the waste?

14 A Yes.

15 Q As part of operations?

16 A Yes.

17 Q And how often was it done after August of
18 '93?

19 A Probably four times.

20 Q Maybe once a year?

21 A Yes. About every eight months.

22 Q Every eight months.

23 When did the new site quit accepting wastes
24 from Briggs?

1 A That I cannot tell you because I had sold
2 out.

3 Q That's what I want to get to. You indicate
4 that you sold your interest in the property?

5 A Yes.

6 Q And this would have been in the middle of
7 1996?

8 A July 1st, 1996.

9 Q And to whom did you sell? Who did you sell
10 it to?

11 A To Loren West.

12 Q Is it your understanding, from your own
13 personal knowledge, Mr. Poland, that your former
14 partner, Mr. Yoho, and Mr. West continued operating the
15 site?

16 A Yes.

17 Q And at some point after you got out of that
18 business, they quit accepting waste at the site?

19 A Yes.

20 Q Do you have any idea what point in time this
21 may have been?

22 A No, I don't.

23 Q Can you tell us whether Mr. Yoho, between the

24 time of August 1993 and July '96, had any dealings with

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1 Briggs?

2 A Not as much as I, but occasionally he did.

3 Q Occasionally he filled in for you?

4 A Yeah.

5 Q Do you have any idea who picked up where you
6 left off after July '96?

7 A No, I don't. I don't know. I think they
8 both did.

9 Q Let's focus now on that time period, August
10 '93 up until July '96. You have already told us that
11 you increased the rate or the fees you were charging on
12 a daily basis. I believe you said 290 up to 500?

13 A Uh-huh.

14 Q Did you make any effort to calculate the
15 weight or the volume of the wastes that you were
16 disposing of?

17 A No.

18 Q Do you have any idea from any source the
19 weight of the wastes that Briggs was producing,
20 generating?

21 A No.

22 Q Would it be fair to say, Mr. Poland, that the
23 arrangement that you had on behalf of your company with
24 Briggs for the waste disposal was made without regard to

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1 the weight of the wastes?

2 A Right.

3 Q You have already told us that the quantity of
4 the wastes being produced did increase over time?

5 A Right.

6 Q Can you tell us, then, how many truckloads on
7 the average over the long term that you would have to
8 have hauled from Briggs? Let's say on a daily basis,
9 but I'm looking for an average.

10 MR. BENOIT: I'm going to object. That is kind of
11 ambiguous. Can we get a time frame?

12 MR. DAVIS: I mentioned the time frame as August
13 '93 up until July '96.

14 HEARING OFFICER LANGHOFF: You can answer the
15 question, Mr. Poland.

16 A That's hard to say because some days they do
17 more than others.

18 Q Sure. That's why --

19 A I'm saying approximately eight loads a day.

20 Q Eight loads?
21 A About.
22 Q I cut into your answer.
23 A Approximately eight loads a day.
24 Q How big were these trucks?

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1 A Two-ton trucks.
2 Q Now I'm sure we will get into this a little
3 bit more with Mr. Yoho, but would it be fair to say that
4 Abingdon Salvage also had other customers?
5 A Yes.
6 Q And these were commercial and residential
7 customers?
8 A Yes.
9 Q Where were the wastes generated by these
10 customers taken for disposal?
11 A Along with what we picked up at Briggs, we
12 did theirs also which was quite a bit. It was taken to
13 Knox County Landfill.
14 Q The other material you took from Briggs and
15 took to the other landfill would have been refuse?
16 A Yes.
17 Q Can you describe what sorts of other wastes?

18 A Just regular trash.
19 Q Garbage?
20 A Rubbish and papers and stuff. Cardboard was
21 sorted and taken to a recycle.
22 Q Would it be fair to say that only ceramic
23 porcelain, plaster type waste from Briggs were put in
24 your landfill?

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1 A That's all.
2 Q Was there any other --
3 A We tried to keep it that way.
4 Q Would that breakdown presumably be at the
5 plant where the sorting, as you just mentioned, didn't
6 work out perfectly?
7 A Yes.
8 Q But as far as your landfill, that is, well,
9 the dump site, the new landfill, phase 2, whatever you
10 want to call it, only Briggs' wastes went into that?
11 A Yes.
12 MR. DAVIS: I have no other questions at this time.
13 I would move for admission of Exhibits 32 through 59
14 plus 66.
15 I would also reiterate what I stated at the

16 beginning of this examination that I'm sure this witness
17 will testify during the days that follow, but I tried to
18 be very limited with my examination and I would suggest
19 that in contrast to the agency witnesses where a more
20 wide open and free range in cross would be acceptable,
21 that the scope of this cross-examination should be
22 limited.

23 HEARING OFFICER LANGHOFF: Noted. Any objection?

24 MR. BENOIT: I don't know. I know Tom wants to

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1 call Mr. Liebman today.

2 MR. DAVIS: Mr. Liebman will be here at 1:00 and
3 also the other three agency witnesses that Mr. Poland
4 wanted to examine. They will all be here at 1:00. So I
5 do definitely want to.

6 MR. BENOIT: That's what I'm trying to get at. I
7 don't have to cross Mr. Poland now. Do you agree with
8 that, Tom?

9 MR. DAVIS: I agree. You have indicated,
10 Mr. Benoit, that you intend to prove up your
11 counterclaim, and I would assume you would call up these
12 gentleman as your witnesses.

13 MR. BENOIT: Right. And I'm just trying to make

14 it -- if the people are coming from out of town and if
15 we can get them in and done and I can get my cross-exam
16 done, I think Mr. Poland and Mr. Yoho will be here until
17 we are done. So I would be willing to wait for my
18 cross. And I don't know if Mr. Poland wants to wait to
19 testify on his own behalf. I mean, that's up to him,
20 but I don't have to do cross right now.

21 HEARING OFFICER LANGHOFF: You will have an
22 opportunity to cross-examine him or direct, whichever
23 you prefer.

24 MR. POLAND: Might I ask, would it be okay for you

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1 to go ahead and interview Mr. Rob Anderson so he might
2 go to work this afternoon?

3 MR. DAVIS: I wouldn't object to you calling him as
4 your witness if it's going to be --

5 MR. POLAND: He was the employee. I could not get
6 ahold of Mr. Willis. He is in Florida. Mr. Anderson
7 was his associate at Briggs.

8 HEARING OFFICER LANGHOFF: Let's go off the record.

9 (Discussion off the record.)

10 HEARING OFFICER LANGHOFF: Back on the record.

11 Mr. Yoho, do you have any kind of questions you want to

12 ask Mr. Poland at this point concerning the direct
13 testimony of what we call cross-examination. You will
14 have ample time. He will be up on the stand tomorrow.

15 MR. YOHO: I don't believe so.

16 HEARING OFFICER LANGHOFF: You can step down,
17 Mr. Poland.

18 MR. DAVIS: Mr. Hearing Officer, I would ask leave
19 to suspend my presentation and allow Mr. Poland to call
20 a brief witness.

21 HEARING OFFICER LANGHOFF: There are no objections?

22 MR. BENOIT: No objections.

23 MR. BENOIT: Mr. Poland, you may call your witness,
24 Mr. Anderson?

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1 MR. POLAND: Mr. Rob Anderson.

2 (Witness sworn.)

3 HEARING OFFICER LANGHOFF: Would you spell your
4 name for the record, please.

5 THE WITNESS: My name is Robert E. Anderson,
6 A-n-d-e-r-s-o-n out of Abingdon.

7 ROBERT E. ANDERSON,
8 called as a witness, after being first duly sworn, was
9 examined and testified upon his oath as follows:

10

DIRECT EXAMINATION

11

BY MR. POLAND:

12

Q Mr. Anderson, when did you start working at

13

Briggs Manufacturing in Abingdon?

14

A In June of 1984.

15

Q And when did you cease operations there,

16

working there?

17

A In May of '94.

18

Q And what was your associations with Abingdon

19

Salvage? What did you have to do with them?

20

A I was the project engineer at the pottery.

21

So my job was when it came time to get the landfill

22

crushed, I would go out sometimes and hire a contractor

23

with, you know, your approval and the plant manager's

24

approval. And so it was my job to get that lined up at

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1 times. And take care of anything that needed to be done

2 on the back dock area where the waste was being hauled

3 to the landfill, anything that would break down, not

4 your equipment but on our end. And make sure we had

5 somebody back there to assist your man with the back

6 dock.

7

Q You did know we had a permit prior to 1993,

8 right?

9 A Yes.

10 Q And you did know that we were -- we closed
11 that permit and was working on a new permit, right?

12 A Yes.

13 Q After hiring Jim Schoenhard, right?

14 A Correct.

15 Q And you did know that Briggs Manufacturing
16 paid half of all the bills, right?

17 A Correct.

18 MR. POLAND: I guess that's all I have to ask.

19 HEARING OFFICER LANGHOFF: Okay. Thank you,

20 Mr. Poland.

21 Mr. Davis.

22 CROSS-EXAMINATION

23 BY MR. DAVIS:

24 Q Mr. Anderson, you worked at Briggs during

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1 1994?

2 A For five months, yes.

3 Q Five months.

4 And you say you were the project manager.

5 What was the project?

6 A Project engineer.

7 Q Project engineer, I'm sorry.

8 That was regarding the waste disposal?

9 A That was part of it.

10 Q What were the other parts?

11 A The equipment installation, supervise
12 maintenance, security. I mean, I had a lot of jobs.

13 Q Okay, I see. Now focusing on the wastes. We
14 have heard a little testimony regarding the amount of
15 wastes generated on the average on a daily basis. Do
16 you have any idea, on your own, how much waste was
17 generated daily?

18 A Seven to eight truckloads a day. And the
19 trucks were no way at capacity because of the -- we
20 would try and break the china as we threw it into the
21 vehicles. But being it's bulk, it doesn't break into
22 that fine of pieces. Maybe it might break in half. So
23 the trucks would only be loaded probably to 25, 30
24 percent capacity.

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1 Q Any idea as to weight?

2 A No. I would just be guessing. I mean, I
3 would just be guessing. A stool weighs 14 pounds. I

4 will tell you that before -- after it's fired. And a
5 plaster mold would probably weigh in the neighborhood of
6 50 to 60 pounds. So depending on how many you could get
7 on the truck, which would be a guess on my part. I
8 mean, I do know the weights of the molds.

9 Q But there would be no reason to overload a
10 two-ton truck?

11 A No.

12 Q So when you say they were only a quarter
13 full, it may have been --

14 A Not a quarter full. A quarter to weight
15 because you can't pack -- if you could grind this stuff
16 up and fill the truck, you could get the truck to
17 capacity. But when you throw a bulky item in a
18 truck -- it's like hauling, you know, mattresses; you
19 won't get much weight, but you will get a lot of bulk.
20 And that's what I'm trying to get at.

21 Q Sure. And I appreciate that because I want
22 to be clear, too. If the two-ton truck were filled to
23 the top, it still wouldn't be two tons in other words?

24 A Correct.

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1 Q So something less than two tons?

2 A Yes.

3 Q Now during 1994, or at least the five months
4 that we are looking at, you indicated you hired a
5 contractor for work. Would this have been Robinson
6 Bulldozing?

7 A He did the bulldozing for the new landfill.

8 Q Did you hire anybody else for the new
9 landfill?

10 A Not to my knowledge. I wasn't there, like I
11 said, after '94, so --

12 Q During the time that you were there in 1994,
13 did you realize that the new landfill did not have a
14 permit?

15 A The permit, we were told, was obtained by
16 Mr. Schoenhard. We would never have done the digging
17 had we known there was no permit in place.

18 Q I see.

19 A We were told we could go ahead and we could
20 proceed with the closing which was all approved. And
21 that the permit was coming for the new landfill and the
22 reason it was being delayed was because we were going
23 for it becoming an inert waste which was just simply
24 plaster and china.

1 We went to great lengths on the back dock to
2 make sure that all the irons and bands and things of
3 that -- we had to literally break all these molds and
4 take the irons and bands out of them because when the
5 molds are made, they are made with iron supports in them
6 which are laid in place before the plaster is poured.

7 So all these had to be broken on the back
8 dock, the irons pulled out and separated which we
9 reused. Then the only things that were supposed to go
10 to that landfill was plaster and china.

11 Q So on behalf of Briggs you yourself knew that
12 a permit was being sought?

13 A Yes.

14 MR. DAVIS: Thank you, sir.

15 HEARING OFFICER LANGHOFF: Is that all, Mr. Davis?

16 MR. DAVIS: Yes. No other questions.

17 HEARING OFFICER LANGHOFF: Mr. Yoho, do you have
18 questions?

19 MR. YOHO: I have no questions.

20 HEARING OFFICER LANGHOFF: Mr. Benoit?

21 CROSS-EXAMINATION

22 BY MR. BENOIT:

23 Q I just have a question about the -- when
24 Mr. Poland questioned you, you said you worked at Briggs

1 from June of 84 to May of '94, right?

2 A Uh-huh.

3 Q And you were project engineer?

4 A Correct.

5 Q And you stated that -- and correct me if I'm
6 wrong -- you hired a contractor to perform some
7 crushing?

8 A We would go out and either get Ratliffes or
9 Robinson to do the crushing. It was either one of those
10 two contractors. Normally it was Ratliffes because they
11 had larger machines.

12 Q Do you recall the times that you were
13 involved with hiring Ratliffe or Robinson, if it was
14 before August of 1993 or if it was after that time?

15 A Well, I hired Ratliffes before that time and
16 Robinson during that time because Robinson did the
17 digging for the new landfill. And Ratliffes did a lot
18 of the closure work and the crushing of the old
19 landfill.

20 Q And when you hired these contractors -- and,
21 again, I think this is what your testimony was in
22 response to Mr. Poland's questions -- you said you hired
23 him with the approval of Poland?

24 A The amount. I would get a quote from them as

1 to what they were going to need to crush the landfill.
2 And then my boss, Ed Doren, would have to approve the
3 quote. In other words, say, yeah, that amount of money
4 is okay.

5 And several times I would quote more than
6 one. I mean, that was the reason for a quote was to
7 see -- sometimes guys were a little out of line as far
8 as how much money they wanted to do.

9 Q Mr. Poland earlier testified that he was the
10 person that hired these contractors to crush the waste.
11 Is there a reason that you were doing that work?

12 A It was a joint effort. You have to
13 understand, when he says he hired them it was a joint
14 effort. I mean, we did things in halves on that
15 landfill.

16 (Brief pause in proceedings.)

17 A I think, quite honestly, the reason we did
18 the pottery or bids at times was to keep Doren honest.

19 Q What do you mean by that?

20 A Well, if Doren went out and hired a
21 contractor, the contractor could say, I want \$4,000 to
22 crush the landfill, and we would pay half. Well, our
23 thinking was that we better get a quote just to keep
24 everybody honest. I mean, I'm just being honest here.

1 We got several quotes, and that was the reason for it.
2 And that's why sometimes it was a joint effort between
3 Doren and ourselves.

4 Q And the reason you got involved in the
5 bidding process was to keep Mr. Poland honest, and by
6 that you mean he might get an inflated bid and then get
7 half of Briggs and somebody get a kickback?

8 A Well, we didn't want that to happen. And
9 that was my job. You have to understand. I got bids
10 for every project at the pottery whether it be fixing
11 the roof or fixing the parking lot or putting in new
12 pieces of equipment. So I was in contact with these
13 contractors all the time. So it was always my job to do
14 that stuff.

15 Q You mentioned that Briggs went to great
16 lengths to keep the waste clean by taking out the metal,
17 and that was after August of '93?

18 A We always did it.

19 Q You always did that?

20 A We always did it.

21 MR. BENOIT: I think that's all I have.

22 HEARING OFFICER LANGHOFF: Do you have anything

23 further?

24 MR. POLAND: No.

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1 HEARING OFFICER LANGHOFF: Thank you, Mr. Anderson.

2 Thank you, Mr. Benoit.

3 At this time, instead of calling another
4 witness, we are going to take a break for lunch and then
5 call the next witness for the People.

6 (A luncheon recess was taken.)

7 HEARING OFFICER LANGHOFF: We are back on the
8 record. Mr. Davis, please call your next witness.

9 MR. DAVIS: Thank you. Christian Liebman.

10 (Witness sworn.)

11 CHRISTIAN J. LIEBMAN,
12 called as a witness, after being first duly sworn, was
13 examined and testified upon his oath as follows:

14 DIRECT EXAMINATION

15 BY MR. DAVIS:

16 Q Okay, Chris, full name and spell your last
17 name, please?

18 A Christian J. Liebman, L-i-e-b-m-a-n.

19 Q And by whom are you employed?

20 A The Illinois Environmental Protection Agency.

21 Q How long have you worked for the EPA?
22 A Fifteen years.
23 Q And what is your current position?
24 A I'm the manager of the solid waste unit in

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1 the permit section of the Bureau of Land.

2 Q Are you responsible for the unit that would
3 review permit applications from landfills?

4 A Solid waste landfills, yes.

5 Q Let's talk -- before we move into that, let's
6 talk a little bit about who you are and your
7 qualifications and so forth. I think yesterday you
8 mentioned to me you might bring a resume with you.

9 A Yes.

10 Q Do you have that with you?

11 A Yes, I do.

12 Q I would like to have this marked as
13 Complainant's Number 71.

14 HEARING OFFICER LANGHOFF: It's been marked as
15 People's -- Complainant's 71.

16 Q Okay. Now where did you go to college?

17 A The University of Missouri, Rolla.

18 Q What sort of degrees did you get?

19 A I got one degree. It's a bachelor's of
20 science in geological engineering.

21 Q I understand, Chris, that you are an
22 engineer?

23 A Yes.

24 Q Can you tell us about that?

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1 A Well, I'm a professional engineer licensed by
2 the State of Illinois by virtue of the bachelor's degree
3 that I mentioned, passing the engineering and training
4 test, my experience working at the Illinois EPA, and
5 then finally by passing the professional engineering
6 exam as a civil engineer.

7 Q And does your resume that we have marked
8 Exhibit Number 71, is it up-to-date and true and
9 accurate and so forth?

10 A Yes.

11 Q And does it also explain other qualifications
12 as well as your full range of employment history?

13 A Yes.

14 MR. DAVIS: Very good. We would move the admission
15 of Exhibit 71 for the Complainant.

16 MR. BENOIT: That's fine.

17 BY MR. DAVIS:

18 Q Now let's focus on the matter at hand. You
19 have explained that the solid waste, a permit unit would
20 be responsible for the issuance of permits for
21 landfills?

22 A I'm sorry?

23 Q I think you have explained already that your
24 unit, the solid waste unit of the permit section for the

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1 EPA would be responsible for the issuance of permits for
2 landfills, solid waste landfills?

3 A My unit would be responsible for reviewing
4 those applications. The person who issues them is Joyce
5 Munie, the permit section manager.

6 Q I see. Now I have handed you a series of
7 documents that we have marked as People's Exhibits 1, 2,
8 3, 4, 5. Let's take those so far. Now these are
9 documents I would represent that have been ruled
10 admissible as business records. And in looking through
11 just the first five marked exhibits, would you agree
12 that these are all documents that were either received
13 by the Illinois EPA or were generated by the Illinois
14 EPA?

15 A They appear to be, yes.

16 Q And as to Exhibits 1 through 5, first of all,
17 these range in dates December 5th, 1978, and through
18 April 19th, 1979. You weren't employed by the Illinois
19 EPA at that time now, were you?

20 A No, I was not.

21 Q What do these first five exhibits pertain to,
22 what facility?

23 A Well, the site being given on Exhibit 2 is
24 Abingdon, slash, Poland, dash, Briggs site.

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1 Q Chris, I would represent to you that we have
2 been talking about this landfill and it does, in fact,
3 go by a variety of names. So any of those names I
4 believe would be consistent with what previous testimony
5 has been. Let me ask that you turn your attention to
6 Exhibits 13 and 14. And as to 13, does this appear to
7 be a July 3, 1984 -- at least an excerpt of the
8 application for a permit pertaining to the Poland-Briggs
9 site?

10 A Yes.

11 Q And as to Exhibit 14, does this appear to be
12 an Illinois EPA letter to the Briggs Company dated

13 September 18, 1984, which grants the supplemental permit
14 applied for in Exhibit 13?

15 A Well, from just looking at the beginning of
16 Exhibit 14, it looks as if Exhibit 13 is part of that
17 application. But there was an earlier submittal from
18 December 5th of '78.

19 Q Let me try not to be as confusing as I have
20 been in my questions. Does Exhibit 13 pertain to permit
21 number 1979-7?

22 A Yes.

23 Q Okay. And does Exhibit 14 also pertain to
24 permit 1979-7?

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1 A Yes.

2 Q When did you first begin working for the
3 permit section?

4 A In June 1985.

5 Q So what the next couple of exhibits,
6 specifically Exhibit 16 and Exhibit 18, these appear to
7 be letters generated by the Illinois EPA dated September
8 1992, both of them, do they not?

9 A Yes.

10 Q And what is Exhibit 16?

11 A It's a letter to the owner and operator of
12 the Poland Landfill informing him that the facility must
13 cease accepting waste by September 18 of 1992.

14 Q Now back in September of 1992, the Illinois
15 EPA sent a variety of these notifications to landfills,
16 did they not?

17 A I believe that is the case, yes.

18 Q And what was the general purpose in doing
19 that?

20 A A new set of regulations regarding solid
21 waste landfills had been adopted in 1990, and landfills
22 that were in existence in 1990 were given two years to
23 either demonstrate that they met some of the
24 requirements in the new regulations or cease accepting

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1 waste.

2 Q Now one of those requirements would have been
3 increased amounts of financial assurance, would it not?

4 A Probably, yes.

5 Q And turning your attention now specifically
6 to financial assurance, take a look at Exhibit 18. And
7 does this appear to be a letter providing financial
8 assurance forms to some party?

9 A Yes.

10 Q Okay. And to which party was this letter
11 sent?

12 A Briggs Industries.

13 Q And to which facility did this letter
14 pertain?

15 A Poland-Briggs.

16 Q Please pick up Exhibit 19 and tell us whether
17 or not this appears to be a copy of a trust agreement
18 for financial assurance purposes?

19 A From just looking at the cover letter and the
20 first page of the form, yes, it does appear to be.

21 Q And does the cover letter as well as the
22 trust agreement form indicate what facility this
23 pertains to?

24 A The cover letter indicates Knox County

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1 Poland-Briggs.

2 Q And does the trust agreement document
3 indicate that that grantor of the trust agreement is
4 Briggs Industries?

5 A Yes.

6 Q Okay. Very good. Let me ask that you turn

7 your attention now to Exhibit 21. And does this appear
8 to be a supplemental permit granted by your agency?

9 A Yes, it does.

10 Q And to what facility does this pertain?

11 A Poland-Briggs Landfill.

12 Q Do you know -- and I realize you haven't
13 necessarily looked at this in any detail, but do you
14 know why this permit was requested?

15 A Well, according to the itemized list at the
16 beginning of the letter, it's approving the modification
17 to the closure and post closure care plan and the
18 closure and post closure care cost estimates. And it
19 approves the decrease in the landfill's permitted area
20 from 15 acres to 4 acres.

21 Q So the original permit which is Exhibit 2
22 would have been for a site 15.8 acres in size. And this
23 Exhibit 21 reduces the size of the site?

24 A Evidently, yes.

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1 Q Thank you. Look at Exhibit 22, Chris. And
2 can you tell us what sort of notification or report this
3 document conveys?

4 MR. DAVIS: I would note for the record that we

5 have only chosen to make the cover letter an exhibit.

6 So there is no attachment.

7 BY MR. DAVIS:

8 Q But what does the cover letter refer to?

9 A It says it's in regard to the initial
10 facility report.

11 Q And what would that be?

12 A Well, we don't deal with these reports
13 directly in the permit section, but I believe it's a
14 report that's required for on-site landfills.

15 Q And does it indicate to what facility it
16 pertains?

17 A Yes. Up in the heading it says Poland-Briggs
18 Landfill.

19 Q Very good. Okay. Moving on then to Exhibit
20 23, does this appear to be a financial assurance related
21 report?

22 A Yes.

23 Q Okay. And I realize the permit section works
24 with a separate financial assurance unit, but does this

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1 appear to be a routine report regarding what's in a
2 financial assurance trust fund?

3 A As far as I could tell, yes.

4 Q And, once again, does it indicate what
5 parties were involved in the trust agreement?

6 Well, let me ask, does it indicate whether
7 Briggs was involved in this agreement?

8 A Yes.

9 Q Now I see in the upper right hand portion of
10 the first of the 4 pages a handwriting notation. Does
11 this identify to what facility the report pertains?

12 A Yes.

13 Q Which facility?

14 A Poland-Briggs.

15 Q Exhibit 27 I would represent to you is also
16 simply a cover sheet document, and I would ask you
17 whether or not it identifies the parties involved in the
18 preparation of this document?

19 A Yes.

20 Q And which are the parties?

21 A Jim Schoenhard and Associates and Briggs
22 Manufacturing and Loren West.

23 Q And does it identify the Poland-Briggs
24 Landfill as the subject matter?

1 A Yes, it does.

2 Q Exhibit 29 appears to be a letter to your
3 agency, does it not?

4 (Brief pause in proceedings.)

5 A Yes, it does. The reason I hesitated is it
6 looks very similar to the letters we prepared. But it
7 does appear to be to our agency.

8 Q And it's directed to one of your personnel in
9 your permit section, is it not?

10 A Yes.

11 Q And, once again, this pertains to the
12 Poland-Briggs Landfill?

13 A Yes.

14 Q Exhibits 30 and 31 appear to be letters to
15 the permit section of your agency, do they not?

16 A Yes. Well, let me look at 31.

17 (Brief pause in proceedings.)

18 A Yes.

19 Q And does each of these two exhibits pertain
20 to the Poland-Briggs Landfill?

21 A Yes, they do.

22 Q Okay. Very good. Now I can represent to
23 you, Chris, that we have already had testimony that
24 indicated that a portion of this site continued to

1 operate without a permit. My question to you is if the
2 facility did continue to operate or commence operations
3 subsequent to September 1992, would that facility have
4 been subject to Part 811 regulations?

5 A Could you repeat the question?

6 Q Sure. If a landfill started disposing of
7 solid waste after September '92, would it be subject to
8 the Part 811 regulations?

9 A Yes, it would.

10 Q Can you tell us, generally, what the Part 811
11 regulations would require in addition to what we call
12 the Part 807 regulations?

13 A Sure. 811 regulations are much more detailed
14 with regard to the environmental safeguards required for
15 solid waste landfills. For example, the 807 regulations
16 really didn't specify what type of engineered liner
17 would be necessary for a solid waste landfill. In fact,
18 they really didn't specify that an engineered liner was
19 required. Whereas, the 811 regulations require a
20 compacted clay liner at least five feet thick with a
21 hydraulic conductivity of 1 times 10 to the minus 7
22 centimeters per second or less. Would you like me to
23 give more examples?

24 Q No. I just wanted a general sense. Would

1 you agree, then, that these are enhanced technical
2 standards?

3 A Yes, I would.

4 Q Let me show you what has previously been
5 admitted as Exhibit B32. I would direct your attention
6 to what's indicated as pages 4 and 5 of that exhibit.
7 And I would direct your attention to the bottom of page
8 4. Now this was admitted as an RED memo which lists
9 alleged violations. Does this document, Chris, cite the
10 various provisions of Part 811 that would have to be met
11 by an operating landfill after September '92?

12 A Yes, it appears to.

13 Q So in addition to the general technical
14 standards that you have just mentioned, there are many
15 more specific items that would have to be covered?

16 A Yes.

17 Q Has what we have been calling, variously, the
18 dump site or the new landfill or phase 2, has this
19 portion of the Poland-Briggs site received a permit from
20 your agency?

21 A Not that I know of.

22 Q Are you aware that there have been at least
23 two attempts, two applications to obtain a permit?

24 A I have been told that.

1 Q Now you are the supervisor of the permit
2 section?

3 A Yes. I'm the unit manager.

4 Q Unit manager, okay.

5 You haven't worked yourself on these permits?

6 A No, I have not.

7 Q But you have assured yourself in speaking
8 with staff and reviewing agency records that no permit
9 has been issued for the new site?

10 A No, I have not.

11 Q Yes, you have assured yourself?

12 A No.

13 Q No, okay.

14 Now you had a deposition taken earlier this
15 year, and at that time, I believe you testified that no
16 permit had been issued?

17 A Okay.

18 Q Okay. All these cases run together
19 sometimes, don't they?

20 A Yes.

21 MR. DAVIS: I don't mean to put you on the spot
22 because I did want to call you as a witness primarily to

23 gain the admission of these documents. So I think we
24 have accomplished that.

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1 Mr. Hearing Officer, I would formally move
2 the admission of Exhibits 1, 2, 3, 4, 5, 13, 14, 16, 18,
3 19, 21, 22, 27, 29, 30, 31. And I have no other
4 questions on direct.

5 HEARING OFFICER LANGHOFF: Any objections?

6 MR. DAVIS: Oh, and 23. I must have missed that.

7 HEARING OFFICER LANGHOFF: Any objections?

8 MR. BENOIT: No.

9 HEARING OFFICER LANGHOFF: Those exhibits are
10 admitted. Do you have any further questions?

11 MR. DAVIS: No, I don't.

12 HEARING OFFICER LANGHOFF: Mr. Poland.

13 CROSS-EXAMINATION

14 BY MR. POLAND:

15 Q My name is Doren Poland. I'm of the
16 Poland-Briggs. I have here in my hand a West Coast
17 Employees Association which is a laboratory, and they
18 give me the firm belief that this material that we are
19 placing on this fill area is inert.

20 Why -- could you give me a reason why the EPA

21 would not let us have a permit for an inert waste fill
22 area?

23 A I'm not sure I quite understand the question.

24 Q Would you like to look at this? They say

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1 it's inert waste. Why would not the Illinois EPA, which
2 is supposed to be helping people, aren't they, small
3 businesses? That's what we are. But how come they
4 would not allow us to use this fill area as inert waste?
5 This has been used around Abingdon since 1908. This
6 stuff is all around Abingdon. And now the EPA says we
7 are not allowed to use it anymore. We did have a permit
8 for the previous 4.8 acres. But then when we come along
9 and tried to get a permit to go adjacent to it, they
10 said this area, this material is not qualified to get a
11 permit. Could you give me a reason why?

12 A Well, if you had applied for a permit and
13 your application satisfied the regulations, including a
14 demonstration that the waste was truly inert, we would
15 issue a permit.

16 Q What would it take to prove it inert if I got
17 it in writing?

18 A Well, as I understand it, basically, what you

19 need to do is take drinking water and place it in
20 contact with the material and then simulate it. If it
21 meets drinking water standards, then you would have an
22 inert waste.

23 Q We have already done that four or five times,
24 proven the water from this fill area is strictly sound.

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1 It goes into a creek. Guys feed cattle from it, have
2 for 30 or 40 years. But we have also proven through
3 laboratories that it's clean water, good clean water,
4 drinkable. What more would we want?

5 A Well, you would need to have a complete
6 permit application. I have not seen any of the denials,
7 or --

8 Q Well, I'm not qualified to talk because I'm
9 not of that category, but I hired an engineer to try to
10 get this permit, Jim Schoenhard, which is behind me. Is
11 it possible that he could ask him questions?

12 HEARING OFFICER LANGHOFF: No, Mr. Poland.

13 MR. POLAND: Oh.

14 BY MR. POLAND:

15 Q Should I just give up the ghost and forget
16 about permitting?

17 A I don't know how to answer the question.

18 Q We have tried three or four times.

19 A If you submit to us a complete application,
20 an application that satisfies the regulations, we are
21 bound to issue a permit to you.

22 MR. POLAND: Has this been done?

23 MR. SCHOENHARD: We tried. We tried.

24 MR. POLAND: That's all.

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1 HEARING OFFICER LANGHOFF: Thank you. Mr. Yoho, do
2 you have any questions?

3 MR. YOHO: I have no questions.

4 HEARING OFFICER LANGHOFF: Mr. Benoit?

5 MR. BENOIT: Mr. Liebman, we met before at your
6 deposition. My name is Joel Benoit, and I represent
7 Briggs Industries.

8 CROSS-EXAMINATION

9 BY MR. BENOIT:

10 Q Is your first involvement with the site that
11 we are talking to you about today in the spring of 1999?

12 A That's correct, yes.

13 Q Have you reviewed the complaint that was
14 filed in this matter?

13 Q Do you still have People's Number 5?

14 A Yes, I do.

15 Q Do you understand that People's Number 5 was
16 a permit granted for the operation of the Abingdon
17 Landfill. And, again, this is why I make the
18 distinction between the Abingdon Landfill -- that's the
19 only one in this case that has ever had a permit -- and
20 the new landfill. So my question is, do you understand
21 that permit -- or Exhibit Number 5 is a permit issued
22 for the Abingdon Landfill?

23 A As you define it?

24 Q Excuse me?

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1 A As you define it? As you define the Abingdon
2 Landfill?

3 Q Correct.

4 A Yes. I understand it.

5 Q Do you know some other definition for the
6 Abingdon Landfill? What do you mean by "define"?

7 A Well, I guess I'm kind of confused about this
8 15.8 acre landfill referred to here and then the 4 acre
9 landfill that it was reduced to and whether part of that
10 11 acre area, whether that is part of the new landfill,

11 or --

12 MR. BENOIT: Hearing Officer, could you give the
13 witness Exhibit B58?

14 (Brief pause in proceedings.)

15 BY MR. BENOIT:

16 Q Now I would represent to you that earlier a
17 witness testified -- his name is James Jones; he is an
18 inspector -- that Exhibit B58 accurately depicts the
19 land upon which the Abingdon Landfill and the new
20 landfill sits or is situated. And that portion of
21 Exhibit B58 that says closed and covered 4.6 acres is
22 what we are referring to today as the Abingdon Landfill.
23 And the portion of Exhibit B58 that says new 811
24 landfill is what we are referring to today as the new

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1 landfill. Does that help clarify it in your mind?

2 A Well, no, it doesn't because between this
3 drawing, Exhibit B58, and the permit letter, Exhibit 5,
4 it appears to me that in all probability the letter is
5 referring to the Poland-Briggs site as being both these
6 areas, both the 4.6-acre area and the 11.2-acre area.

7 Q I understand how you could be confused by
8 that. And I think you are correct. At the time that

9 Exhibit 5 was issued the site was 15.8 acres. I see
10 what you are saying.

11 Looking at Exhibit 5, People's 5 again, who
12 was that operating permit granted to?

13 A Briggs Manufacturing, Lloyd Yoho and Doren
14 Poland.

15 Q I'm going to show you what has been marked as
16 B6. Can you tell me what that is?

17 A It's a prior conduct certification issued by
18 the Illinois EPA to Doren Poland.

19 Q And what site does that refer to?

20 A Abingdon/Poland-Briggs.

21 Q And what does the prior conduct certification
22 allow Mr. Poland to do?

23 A To be the certified operator of a solid waste
24 disposal site.

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1 Q What are the responsibilities of the
2 certified operator?

3 A To be responsible for the facility.

4 Q Twenty-four hours a day?

5 A I believe that's the case, yes.

6 MR. BENOIT: I move for the introduction

7 of -- admission of B6.

8 MR. DAVIS: No objection.

9 HEARING OFFICER LANGHOFF: It's admitted.

10 BY MR. BENOIT:

11 Q I show what's previously been marked as
12 Exhibit B8. As with B6, is B8 or does B8 grant
13 Mr. Poland prior conduct certification?

14 A Yes, it does.

15 Q Is it related to the Poland-Briggs site?

16 A Yes.

17 MR. BENOIT: I move for admission of B8.

18 MR. DAVIS: No objection.

19 HEARING OFFICER LANGHOFF: It's admitted.

20 BY MR. BENOIT:

21 Q I'm going to show you what's been marked as
22 B14. Tell me what B14 is.

23 A It's a form developed by the Illinois EPA,
24 and I believe the purpose of it was to have the

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1 operators of landfills that were in existence in 1990 to
2 declare how they planned to deal with the regulations
3 that were adopted in 1990.

4 Q Are these the new regulations that Mr. Davis

5 was just inquiring about?

6 A Yes.

7 Q The heightened standards for the new
8 landfills?

9 A Uh-huh.

10 Q And this B14, does it indicate that the
11 landfill will initiate closure by September 18th, 1992?
12 I'm looking at the second page, section 3.

13 A Yes. And section 3, it's indicated that the
14 site will be closed before or by September 18th and in
15 1992. And that is an inert waste landfill.

16 Q Did you just testify that it's the operator
17 that would submit this type of form, this revised
18 LPC-PA15-final?

19 A Yes, I believe I did.

20 Q And who signed B14 as the operator?

21 A Doren Poland.

22 Q I'm going to show you what's been marked as
23 B15.

24 MR. BENOIT: I would like to move for the admission

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1 of B14.

2 MR. DAVIS: No objections.

3 HEARING OFFICER LANGHOFF: It's admitted.

4 BY MR. BENOIT:

5 Q Can you tell me what B15 is?

6 A It's the form for a supplemental permit for a
7 solid waste management facility.

8 Q Can you tell which site this form is related
9 to?

10 A The name given on the form is the Doren E.
11 Poland Landfill.

12 Q Does the site number listed on page 2 of B15
13 give you an idea as to whether or not the Doren E.
14 Poland Landfill is the same landfill, the same 15.8-acre
15 landfill that was previously permitted back in 1979?

16 A Well, not by itself because we didn't back
17 then in 1979 include with the permit letters for
18 development permits include the site number. But, yes,
19 that site number, if we looked at our records, should
20 indicate what site it was associated with. And so if we
21 went to one of the later letters regarding
22 Poland-Briggs, we should be able to check to see that
23 it's the same.

24 Q Okay. I'm not going to belabor this point.

1 I think earlier witnesses have testified that, in fact,
2 it is the site, the originally permitted 15.8-acre
3 landfill was reduced down in size to 4.6 acres. I guess
4 I'm not going to belabor that point. Who signed this as
5 operator?

6 A Mr. Poland.

7 Q And when -- and that's dated August 31st,
8 1992?

9 A Yes.

10 Q And I'm going to show you what's been marked
11 B17. Can you tell me what that is?

12 A It's a copy of supplemental permit number
13 1992-298-SP.

14 Q And does B17 grant a supplemental permit to
15 Doren E. Poland as owner and operator?

16 A Yes, it does.

17 Q And this is the -- this exhibit is similar to
18 State's Exhibit 21 which you already discussed with
19 Mr. Davis. But one of the things that Exhibit B17 does
20 is decrease the permitted landfill area from 15.8 acres
21 to 4.6 acres; is that correct?

22 A Yes.

23 Q Now going back to Exhibit B58, do you still
24 have that in your hand?

1 A Yes.

2 Q Do you see where it says, "Close and cover
3 4.6 acres"?

4 A Yes.

5 Q That's what I'm referring to as the Abingdon
6 Landfill today.

7 A Okay.

8 Q And is that what this permit, B17, relates
9 to, the same 4.6 acres?

10 A Yes.

11 MR. BENOIT: I would like to move for the admission
12 of B17.

13 MR. DAVIS: It's the same exhibit as People's
14 Exhibit 21. I don't see the point in submitting another
15 copy.

16 HEARING OFFICER LANGHOFF: Is it the same document,
17 Mr. Benoit?

18 MR. BENOIT: I think the only difference was B17
19 has attached to it some type of evidence that via
20 certified mail was sent to Mr. Poland. I think that's
21 the difference.

22 MR. DAVIS: If there is a difference, then I don't
23 object.

24 HEARING OFFICER LANGHOFF: That is accepted, B17.

1 Q I'm going to show you what's been marked as
2 B22 handed to witness. Is B22 -- or does B22 contain an
3 affidavit for certification of closure of nonhazardous
4 waste facilities related to what we have been referring
5 to as the Abingdon Landfill?

6 A Yes.

7 Q And are these types of certifications
8 required to be signed by the operator?

9 A Yes.

10 Q And who signed B22 as the operator?

11 A Mr. Poland.

12 MR. BENOIT: I would like to move for admission of
13 B22.

14 MR. DAVIS: No objection.

15 HEARING OFFICER LANGHOFF: It's admitted.

16 BY MR. BENOIT:

17 Q I'm going to show you what's been marked as
18 B24. Can you tell me what that is?

19 A Yes. It's a certification of closure for the
20 Poland-Briggs Landfill.

21 Q Okay. And this was issued after the agency
22 determined that site was, in fact, closed in accordance
23 with the closure plan?

24 A Yes.

1 Q And this certification was issued to
2 Mr. Poland as operator?

3 A Well, it doesn't specify that it's being
4 issued to him as operator, but I would say, yes, that is
5 the case.

6 MR. BENOIT: Move for the admission of B24.

7 MR. DAVIS: No objection.

8 HEARING OFFICER LANGHOFF: It's admitted.

9 BY MR. BENOIT:

10 Q I'm going to show you what's been marked B25.
11 Tell me what that is.

12 A It's an application for a prior conduct
13 certification.

14 Q Who submitted that application?

15 A Mr. Poland.

16 Q Generally, do only operators submit these
17 type of applications?

18 A That is the purpose of these forms is for the
19 person with prior conduct certification to be the chief
20 operator of the facility.

21 MR. BENOIT: I move for the admission of B25 if I
22 haven't already.

23 MR. DAVIS: This documentation is getting

24 repetitive. This is an earlier version of two other

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1 certifications that have already been admitted. I would
2 object on the basis that it's duplicative.

3 HEARING OFFICER LANGHOFF: Is it the same?

4 MR. BENOIT: I think they all have different dates
5 on them, and I'm showing -- it's repetitive just because
6 of the nature of the system. You have to keep
7 submitting these things every year.

8 HEARING OFFICER LANGHOFF: Is it a different
9 document, Mr. Benoit?

10 MR. BENOIT: I don't know which one he's referring
11 to as the same. I'm talking about B25 and it's the same
12 as --

13 MR. DAVIS: As the two others that you have
14 admitted. Why don't you look up the numbers?

15 (Brief pause in proceedings.)

16 MR. DAVIS: B14.

17 HEARING OFFICER LANGHOFF: I'm going to admit the
18 document B25 into evidence.

19 MR. BENOIT: B14 isn't even the same type of
20 document.

21 HEARING OFFICER LANGHOFF: I have just admitted

22 Exhibit B25.

23 BY MR. BENOIT:

24 Q I'm going to show you what's been marked as

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1 B36. Tell me what that is.

2 A Yes. It's a copy of a permit letter for
3 supplemental permit number 1996-085-SP.

4 Q And does this supplemental permit relate to
5 the Abingdon Landfill?

6 A Well, it's called the Poland-Briggs Landfill
7 at the heading of the letter. But, yes, I believe
8 that's what you referred to as the Abingdon Landfill.

9 Q Today. That 4.6-acre closed landfill; is
10 that right?

11 A Yes.

12 Q And that was issued to Mr. Poland as the
13 owner and operator?

14 A Yes, it was.

15 MR. BENOIT: Move for admission of B36.

16 MR. DAVIS: No objection.

17 HEARING OFFICER LANGHOFF: It's admitted.

18 BY MR. BENOIT:

19 Q Looking at these, the various permits that we

20 have been discussing today, would you agree that when
21 this landfill was initially permitted -- and, again, it
22 was a 15.8-acre landfill at that time -- that the owners
23 and operators were Briggs, Poland and Yoho?

24 A Yes. That's what I recall from earlier

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1 today.

2 Q And then in about 1992, a supplemental permit
3 was issued, what we have been referring to as the
4 Abingdon Landfill, that reduced the size of it and
5 financial assurance had to be provided. And that permit
6 was issued in the name of Doren Poland alone as the
7 owner and operator. Would you agree with that?

8 A I would have to check to be sure, but, yes,
9 that is what I recall.

10 Q Do you want to take a minute and look at it?
11 It's the 1992 one.

12 (Brief pause in proceedings.)

13 MR. DAVIS: What's the exhibit number?

14 THE WITNESS: B17. Is that right?

15 (Brief pause in proceedings.)

16 A Yes. Supplemental permit 1992-289-SP names
17 Mr. Poland as owner and operator and no one else.

18 Q And the agency's view from 1992 forward,
19 Doren Poland would, in fact, be the owner/operator;
20 isn't that correct? And I'm talking about the Abingdon
21 Landfill.

22 A Yes.

23 Q The agency considers the last operator listed
24 or named and the last issued supplemental permit or

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1 significant modification permit to, in fact, be the
2 operator of a landfill; isn't that correct?

3 A I don't know whether that's correct or not.

4 Q What do you mean?

5 A Well, I am not an attorney, and I don't know.

6 In a case -- let's say we issued a permit to develop a
7 site to two people and then later just the -- say the
8 operator signed as owner and operator and we issued the
9 permit just to him as the -- as both the owner and
10 operator, whether -- and we didn't specifically transfer
11 the operating rights or the ownership rights to the new
12 person or the one person, I don't know if that first
13 owner is still one of the permittees or not.

14 Q Now you remember the deposition we had this
15 summer, right?

16 A Yes.

17 Q And I asked you that question this summer; do
18 you remember that?

19 A Not exactly, no.

20 Q Question -- this is on page 32 of your
21 deposition -- "And if supplemental --

22 MR. DAVIS: Excuse me, Counsel. Objection. Once
23 again, counsel is not attempting impeachment in the
24 proper fashion. I object to the form. It's not even a

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1 question.

2 MR. BENOIT: I don't understand the objection.

3 HEARING OFFICER LANGHOFF: He objected to the form
4 of the question and the impeachment based on the prior
5 testimony.

6 MR. BENOIT: I don't understand why it's improper.

7 HEARING OFFICER LANGHOFF: Would you like to show
8 the witness the copy of the deposition?

9 MR. BENOIT: Sure.

10 (Pause in proceedings.)

11 THE WITNESS: Okay.

12 BY MR. BENOIT:

13 Q So after looking at that, would you agree

14 that the agency considers the operator of a site to be
15 the last person listed as an operator on an issued
16 supplemental permit or significant modification permit
17 for the particular site?

18 A I agree that that's what I said. I don't
19 feel that I probably should have said that because it
20 looks like a legal opinion, and I'm not an attorney.

21 Q Just as an in-house -- when I say in-house,
22 within the EPA, not as a matter of law but in-house in
23 the EPA. Is that how the EPA determines who the
24 operator is by looking at the last issued permit whether

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1 it be a supplemental permit, significant modification
2 permit, what have you?

3 MR. DAVIS: Objection. This has been asked and
4 answered three times. He says he doesn't know. He is
5 not qualified to give an answer. He disagrees with the
6 previous answer.

7 HEARING OFFICER LANGHOFF: Mr. Benoit?

8 MR. BENOIT: It's a different question. The reason
9 he was objecting to it because he said as matter of law.
10 Now I switched the question and I said in-house as a
11 practical matter. I'm not asking the witness to give a

12 legal opinion. I want to clarify what's the in-house
13 practice.

14 HEARING OFFICER LANGHOFF: Objection overruled.

15 You may answer if you know.

16 A I think typically permit reviewers determine
17 who the operator is the way you indicated.

18 Q By looking at the last issued supplemental
19 permit or --

20 A Yes.

21 Q -- significant modification permit?

22 Some of the permit applications submitted for
23 the new landfill -- now do you understand what I'm
24 talking about by the new landfill?

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1 A The 11.2-acre area?

2 Q Right.

3 A Yes.

4 Q -- indicate that they were supplemental
5 permits. Is it possible to get the new landfill
6 permitted via a supplemental permit after the Abingdon
7 Landfill had been certified closed?

8 A I don't know.

9 MR. BENOIT: That's all I have.

10 MR. DAVIS: No further questions.

11 HEARING OFFICER LANGHOFF: Thank you. Mr. Benoit,
12 you made a reference to Exhibit B15 with this witness,
13 and it hasn't been offered. I just want to know if you
14 want to offer that?

15 MR. BENOIT: I would like to offer that.

16 HEARING OFFICER LANGHOFF: Any objection?

17 MR. DAVIS: No. We have no objection.

18 HEARING OFFICER LANGHOFF: B15 is admitted.

19 MR. DAVIS: Mr. Hearing Officer, I have agreed to
20 suspend my presentation once again to accommodate other
21 witnesses. Mr. Poland indicated that he would call
22 three of the agency people.

23 (A recess was taken.)

24 HEARING OFFICER LANGHOFF: Mr. Poland, in order to

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1 facilitate the hearing and not inconvenience these
2 agency personnel, Mr. Davis is going to let you call
3 three of the agency personnel as witnesses now. Would
4 you call your first witness, please? Do you want to
5 call three agency witnesses at this time?

6 MR. POLAND: Yes.

7 HEARING OFFICER LANGHOFF: Go ahead and call your

8 first one.

9 MR. POLAND: I don't care.

10 HEARING OFFICER LANGHOFF: Go ahead. Who
11 is -- Mr. Dragovich?

12 MR. POLAND: Okay.

13 MR. BENOIT: I would ask that -- there are three
14 gentlemen that are going to be called, Mr. Dragovich,
15 Schollenberger and Steward. And I would ask that the
16 two that are not going to be on the stand not be
17 present.

18 HEARING OFFICER LANGHOFF: Any objection,
19 Mr. Davis?

20 MR. DAVIS: No. That's fine.

21 HEARING OFFICER LANGHOFF: Mr. Schollenberger and
22 Mr. Steward, would you step outside, please?

23 (Whereupon, Mr. Schollenberger and
24 Mr. Steward left the room.)

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1 (Witness sworn.)

2 HEARING OFFICER LANGHOFF: Would you give your name
3 and spell it for the record, please?

4 THE WITNESS: My name is Theodore Dragovich. First
5 name is spelled T-h-e-o-d-o-r-e. Last name is

6 D-r-a-g-o-v-i-c-h.

7 HEARING OFFICER LANGHOFF: Thank you. Mr. Poland.

8 THEODORE DRAGOVICH,

9 called as a witness, after being first duly sworn, was
10 examined and testified upon his oath as follows:

11 DIRECT EXAMINATION

12 BY MR. POLAND:

13 Q Mr. Dragovich, do you remember me?

14 A Not really.

15 Q Okay. I was with another gentleman,

16 Mr. Skinner, about 1995 in Springfield with four
17 engineers, and you was one of them. And we had this
18 discussion meeting, and I was trying to get a permit for
19 a solid waste landfill. And I had samples of the
20 material with me, the clay and the porcelain material
21 which we were going to use in this landfill which is
22 strictly inert.

23 And you told me at that meeting that as long
24 as I was working on a permit that I could go ahead and

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1 use the facility that I was dumping on which was 2.3
2 acres in order to be able to keep the pottery for Briggs
3 Manufacturing in operation because if we closed it, they

4 would have to close the door. Do you remember telling
5 me that?

6 A No, sir, I don't.

7 Q You don't remember telling me that as long as
8 I was trying for a permit I could use that facility?

9 A No, sir. I don't remember that at all.

10 MR. POLAND: Okay. That's all I got. Thank you.

11 HEARING OFFICER LANGHOFF: Mr. Benoit, do you have
12 anything?

13 MR. BENOIT: Yeah.

14 CROSS-EXAMINATION

15 BY MR. BENOIT:

16 Q Mr. Dragovich, you are an employee of the
17 IEPA?

18 A Yes.

19 Q How long have you been employed by the IEPA?

20 A 12 years, 12-1/2 years.

21 Q In what capacity?

22 A First as a permit reviewer in the disposal
23 alternatives unit and later as the manager of the
24 disposal alternatives unit and currently the manager of

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1 the disposal alternatives unit and RCRA permit unit.

2 COURT REPORTER: And the what?

3 THE WITNESS: R-C-R-A, RCRA.

4 BY MR. BENOIT:

5 Q What does the disposal alternatives unit do?

6 A We permit treatment and recycling type
7 facilities and commercial transfer facilities.

8 Q And you testified that you have never seen
9 Mr. Poland before?

10 A No. I testified that I don't remember him.
11 I don't remember seeing him.

12 Q Okay.

13 MR. POLAND: I mean, he saw people and --

14 HEARING OFFICER LANGHOFF: Mr. Poland, let
15 Mr. Benoit ask the questions, please.

16 BY MR. BENOIT:

17 Q And after Mr. Davis notified you that you
18 were going to be called as a witness at this hearing,
19 did you review any of your files?

20 A I looked up for letters to do with Briggs
21 Manufacturing. I found a letter.

22 Q What was that letter about?

23 A It was a request from James Schoenhard to
24 reuse -- or for us to determine that some industrial

1 process wastes, some broken toilets and whatever were
2 not considered a solid waste.

3 Q Do you know the date of that letter?

4 A I think there were several letters. One of
5 them -- I don't remember the dates. One was in '95 and
6 there might have been a follow-up one in '97.

7 Q What file did you find these letters in?

8 A Actually, I asked Mark Schollenberger to look
9 them up for me, and he brought me copies of them.

10 Q Is Mark Schollenberger in your disposal
11 alternatives unit?

12 A Yes. He works for me.

13 Q Are the records of the disposal alternatives
14 unit kept separate and apart from other agency records
15 having to do with what we have been referring to here
16 today as the Poland-Briggs Landfill or the Abingdon
17 Landfill?

18 A All the agency's Bureau of Land records are
19 kept together. They are filed by site number. And if
20 we refer to a different site number, then the landfills
21 that you referred to earlier, they could be in a
22 separate file.

23 Q Just to back up a little bit, do you know
24 where Mark Schollenberger found these letters you are

1 referring to?

2 A No, I do not.

3 Q Do you recall having a meeting with
4 Mr. Poland, Mr. Schollenberger, Mr. Steward and Harry
5 Chappel regarding this issue of getting some type of
6 permit having to do with porcelain waste?

7 A I remember a meeting when Mr. Schoenhard came
8 in with some people and made a presentation on some
9 crushed clay and a proposal to either landfill it or
10 reuse it. And I don't remember the details of it or who
11 all was there.

12 Q Do you know when that meeting was held?

13 A I believe it was in the spring of '95, but
14 I'm not sure. I had a calendar I pulled my meetings up
15 on.

16 Q And you don't recall Mr. Poland being present
17 at that meeting?

18 A Don't remember him, no.

19 Q I'm going to show you what's been marked as
20 Exhibit B32.

21 MR. BENOIT: And it might take me a second to find
22 it. I've been handing these out and now they are out of
23 order. Here it is. In fact, Tom, I might have your
24 copy now. Is that your writing, Tom?

1 MS. RYAN: Yes.

2 MR. DAVIS: Yeah.

3 MR. BENOIT: Things are moving around here. Do you
4 guys have a different B32 or can I go ahead and use this
5 one?

6 MR. DAVIS: Go ahead.

7 BY MR. BENOIT:

8 Q I'm referring to Exhibit B32, on the bottom
9 of page 2, top of page 3. If you could just review that
10 paragraph, bottom of page 2, top of page 3.

11 (Brief pause in proceedings.)

12 A Okay.

13 Q Is the meeting that's referred to as the
14 April 3rd, 1995, meeting at the top of page 3 of Exhibit
15 B32 the meeting that you participated in in regard to
16 this porcelain waste?

17 A That's about the right time period. So I
18 believe it is.

19 Q And at the top of page 3 in that first
20 sentence it says all these different divisions of the
21 EPA met with Mr. Poland, but you don't recall meeting
22 with Mr. Poland, correct?

23 A That is correct. I don't remember his face,

24 sorry.

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1 Q Yeah. That's fine. And was that
2 meeting -- do you recall if Jim Jones, the inspector
3 from Peoria, was at that meeting?

4 A I don't remember.

5 Q Do you know who Jim Jones is?

6 A Yeah.

7 Q Do you recall where the meeting was held?

8 A It was at our Springfield office.

9 Q You testified Schoenhard made a presentation
10 at the meeting?

11 A I remember him being there, yes.

12 Q What was the presentation about?

13 A Well, he showed us various crushed ground
14 materials, and I think there was some plastic rings and
15 things, inserts that fit into the toilets.

16 Q For lack of better words, he was trying to
17 put on some kind of sales pitch like this is what we are
18 going to do to get this permitted, or this is why this
19 should be considered clean fill, or what was his
20 presentation about?

21 A Well, I mean his presentation may have been

22 aimed with different purposes at different parts of the
23 agency, but my involvement was to determine whether that
24 material was a solid waste or not if it was reused. And

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1 I believe he was trying to convince me that this
2 material could be reused for some type of fill.

3 Q And what did the agency tell Mr. Schoenhard
4 about his presentation? Did they give him any
5 assurances that --

6 A Well, the conclusion as far as my standpoint
7 was that it was a solid waste and it had to go to a
8 properly permitted facility.

9 Q Did any of the other IEPA people at the
10 meeting come to a different conclusion?

11 A I really don't remember the details, but I
12 don't believe that they did.

13 Q Did anyone at the meeting tell Mr. Schoenhard
14 that it was okay for Mr. Poland to continue to use the
15 new landfill as long as he was seeking to obtain a
16 permit?

17 A As far as I know, they did not.

18 Q Just to back up slightly, can you tell me of
19 these records that Mr. Schollenberger found, can you

20 describe those letters again? How many were there?

21 A There was two or three letters that had a
22 paragraph that said something -- it said something like
23 this is in response to your request for solid waste
24 determination for some material from Briggs

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1 Manufacturing.

2 MR. BENOIT: I don't have any further questions.

3 HEARING OFFICER LANGHOFF: I'm sorry, Mr. Yoho, do
4 you have any questions?

5 MR. YOHO: No, sir.

6 HEARING OFFICER LANGHOFF: Mr. Davis?

7 MR. DAVIS: Yes, I do.

8 CROSS-EXAMINATION

9 BY MR. DAVIS:

10 Q Ted, are you authorized to allow somebody to
11 conduct disposal operations without a permit?

12 A No, I'm not.

13 MR. DAVIS: Okay. Thank you, sir.

14 HEARING OFFICER LANGHOFF: And, Mr. Poland, would
15 you like to call Mr. Schollenberger?

16 MR. POLAND: That would be fine.

17 (Witness sworn.)

18 HEARING OFFICER LANGHOFF: Would you go ahead and
19 spell your name for the record, Mr. Schollenberger.

20 THE WITNESS: It's spelled
21 S-c-h-o-l-l-e-n-b-e-r-g-e-r.

22 HEARING OFFICER LANGHOFF: Thank you. Mr. Poland.

23 MARK A. SCHOLLENBERGER,
24 called as a witness, after being first duly sworn, was

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1 examined and testified upon his oath as follows:

2 DIRECT EXAMINATION

3 BY MR. POLAND:

4 Q Mr. Schollenberger, outside of meeting you in
5 the hallway a while ago, do you remember seeing me on
6 Second Street in Springfield about 1995 in your office
7 with three other engineers? And at that time I had with
8 me pieces of pottery or ceramic waste and some clay in a
9 ball and some little pieces of plastic?

10 A I remember.

11 Q Do you remember that?

12 A I remember seeing the pieces of plastic and
13 ceramic, yes.

14 Q But you don't remember me?

15 A No. I can't say that I really do.

16 Q You don't remember -- do you remember you
17 making as we talked -- this meeting only lasted an hour
18 or so -- but in that discussion I was trying real hard
19 to get a permit from the EPA which I had had a previous
20 permit for the piece of ground right beside it. And I
21 was trying to get a permit for this, same kind of
22 permit. Do you recall telling me that you thought it
23 was all right as long as I was trying to get a permit to
24 go ahead and use that facility to put this material on

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1 this piece of ground?

2 A No. I don't remember that.

3 Q You don't remember that?

4 A Huh-uh.

5 MR. POLAND: That's all.

6 HEARING OFFICER LANGHOFF: Mr. Yoho?

7 MR. YOHO: I don't have any questions.

8 HEARING OFFICER LANGHOFF: Mr. Benoit?

9 I think Mr. Benoit has some questions for you.

10 Sorry, Mr. Schollenberger.

11 CROSS-EXAMINATION

12 BY MR. BENOIT:

13 Q You are an employee of the IEPA?

14 A Yes, I am.

15 Q What is your position?

16 A I'm a permit reviewer for the disposal
17 alternatives unit.

18 Q Is it your recollection that this meeting
19 where pieces of clay and things were presented occurred
20 sometime in April of 1995?

21 A I couldn't tell you about what time or the
22 time frame of the meeting.

23 Q Can you recall who was present at the
24 meeting?

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1 A Besides Ted Dragovich, no, not really.

2 Q Do you recall somebody coming to the meeting
3 with clay or pottery samples?

4 A Yes, I do.

5 Q And that person wasn't Ted Dragovich, was it?

6 A No.

7 Q Who was it?

8 A I don't recall.

9 Q But somebody else was there?

10 A Oh, yeah, definitely, some other people were
11 there.

12 Q How many people total were there?
13 A I would say at least five to six people.
14 Q It was you, Ted Dragovich, and somebody who
15 brought in the samples?
16 A Correct.
17 Q And then some other people that you can't
18 recall?
19 A That's correct.
20 Q Do you recall why this meeting was held?
21 A No, I don't.
22 Q Who was -- back in 1995, who was your
23 supervisor?
24 A It probably would have been Ted.

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1 Q Ted Dragovich?
2 A Ted Dragovich, yes.
3 Q Is Ted Dragovich the one that told you, Hey
4 Mark, you are going to go with me to this meeting?
5 A I don't know if they contacted Ted first or
6 they could have contacted me or they could have
7 contacted one of the other engineers there.
8 Q Who is this "they"?
9 A Whoever was heading up the meeting.

10 Q Do you know who set up the meeting?

11 A No, I do not.

12 Q What was the topic or topics discussed at the
13 meeting?

14 A I believe we were discussing whether or not
15 the material was inert or not.

16 Q Why would somebody in your position be at a
17 meeting when the topic of discussion was whether or not
18 a particular waste was inert?

19 A Because -- well, my involvement with
20 Poland-Briggs is we were issuing -- or we wrote letters
21 in the past about whether or not the material was solid
22 waste.

23 Q When you say "in the past," you mean prior to
24 this meeting you were involved with the Poland-Briggs

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1 Landfill?

2 A Not the landfill but we had correspondence.

3 Q With who?

4 A Briggs Manufacturing.

5 Q Briggs Manufacturing?

6 A I believe that's the way the letter was
7 addressed, yes.

8 Q What letter are you referring to?
9 A There is a '94 letter.
10 Q Is this letter in the agency files?
11 A One of the agency files, yes.
12 Q Can you recall any presentation that was put
13 on at this 1995 meeting by whoever brought the clay
14 samples?
15 A What kind of presentation? I don't
16 really -- I don't recall, no.
17 Q Do you have a very clear recollection of this
18 meeting at all?
19 A No, I don't.
20 Q Do you recall anybody present who was an
21 employee of the IEPA telling the person who brought the
22 clay samples to the meeting that it was okay to keep
23 using the new landfill as long as a permit was being
24 sought?

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1 A No. I don't recall that.
2 Q Do you know Jim Schoenhard?
3 A Yes, I do.
4 Q Was he at that meeting?
5 A He might have been.

6 Q You can't recall?

7 A I can't recall. I had -- I met with Jim
8 Schoenhard and Briggs Manufacturing at various times,
9 but I don't recall if he was at that particular meeting.

10 Q I'm going to show you what's been marked as
11 B40 if I can find it. Do you recognize that?

12 A Yes.

13 Q What is that?

14 A It's a letter from our regional office
15 concerning correspondence that we were responding to.

16 Q That letter or memo, B40, was sent to you?

17 A Correct.

18 MR. BENOIT: I would like to move for B40 to be
19 admitted.

20 MR. DAVIS: No objection.

21 HEARING OFFICER LANGHOFF: It's admitted.

22 Q Why were you sent B40?

23 A As I indicated, we were responding to a
24 correspondence letter.

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1 Q Can you restate that? I don't understand
2 what you are saying. B40 is a memo from John Tripses,
3 who works in the Peoria office, to you. Why would John

4 Tripses send you this memo?

5 A Because there was a letter that came in to us
6 that asked us to -- a question. And the field was
7 providing this information so that we could properly
8 answer the question.

9 Q And the question was whether or not the waste
10 in the new landfill was inert? Was that the question?

11 A No. I believe the question was whether or
12 not the material was considered a solid waste.

13 Q Is this process -- your involvement in this
14 process in determining whether or not the material was a
15 solid waste, did it cover a period of time even greater
16 than the 1995 meeting to this February 4, 1997, memo?
17 Can you recall how long you were involved in this
18 discussion?

19 A As I indicated earlier, there was a
20 correspondence back in '94 which also dealt with the
21 same issue.

22 Q So sometime in '94 all the way through '97?

23 A Right.

24 MR. BENOIT: I don't have any further questions.

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1 HEARING OFFICER LANGHOFF: Mr. Davis.

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CROSS-EXAMINATION

BY MR. DAVIS:

Q Mark, are you authorized to allow somebody to
conduct disposal actions without a permit?

A No, I'm not.

MR. DAVIS: Okay. Thank you, sir.

HEARING OFFICER LANGHOFF: Thank you.

(Witness sworn.)

HEARING OFFICER LANGHOFF: Thank you. Mr. Poland,
do you have a question?

COURT REPORTER: What is your name?

THE WITNESS: Ron Steward.

HEARING OFFICER LANGHOFF: Would you spell it?

THE WITNESS: Ron Steward, S-t-e-w-a-r-d.

HEARING OFFICER LANGHOFF: Thank you. Mr. Poland,
do you have any questions for Mr. Steward?

RON STEWARD,

called as a witness, after being first duly sworn, was
examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. POLAND:

Q Mr. Steward, I was in Springfield, I think,
March or April of 1995 on Second Street with the two

1 gentlemen who just left and there was another one who
2 has moved on from the IEPA. I don't remember what his
3 name was. I got his card, though, because you give me
4 one of yours, too. I have got theirs. At that meeting
5 I gave you samples of material on a landfill that was
6 used in Abingdon, Illinois, for Briggs Manufacturing
7 Company. This operation had to keep going every day;
8 otherwise, they would have to close the plant.

9 And I give you -- I showed you this vitreous
10 china that was waste and pieces of clay and some little
11 bitty pieces of plastic I had in my suitcase. And I
12 showed you these items to show you what I had to call
13 inert. And at this meeting I believe it was you who
14 told me that you didn't see anything wrong with going
15 ahead and using that landfill as long as I was trying
16 for a permit?

17 A Well, I believe you're mistaken on that. I
18 don't recall being at the meeting in Springfield.

19 Q You don't recall being at that meeting?

20 A No.

21 Q I got your card at home.

22 A Well, I believe I do recall having a meeting
23 with you at our field office.

24 Q In Springfield?

1 A No. That would be in Peoria.

2 Q It wasn't with those two fellows who just
3 left?

4 A No. I don't recall having a meeting with
5 them and you.

6 Q Well, I was at a couple of meetings in
7 Peoria, but I thought, you know, when I say there is one
8 of the engineers that has left the organization, that
9 doesn't ring a bell either, huh?

10 A We have had engineers that left the permit
11 section. Over a long period of time, several have left.

12 Q Well, does the name Childs ring a bell to
13 you? I wish I would have brought those cards. But you
14 don't remember telling me such a thing as that
15 because -- the Peoria office, maybe it was there. I
16 don't know. But do you recall telling me this?

17 A What was it?

18 Q As long as I was operating under -- trying to
19 get a permit, that you didn't see anything wrong with
20 going ahead and using this operation just for this
21 material from Briggs?

22 A No, I'm sure I didn't tell you that. I was
23 at the field office. I attended the meeting as a
24 technical advisor to describe the regulations and how to

1 apply for a permit.

2 Q But you don't remember a meeting on Second
3 Street?

4 A No.

5 MR. POLAND: That's all I have.

6 HEARING OFFICER LANGHOFF: Mr. Yoho, do you have
7 any questions?

8 MR. YOHO: I have no questions.

9 HEARING OFFICER LANGHOFF: Mr. Benoit?

10 CROSS-EXAMINATION

11 BY MR. BENOIT:

12 Q What's your position with the IEPA?

13 A I am an environmental protection engineer. I
14 work for the federal facility unit in the Bureau of
15 Land. I was formerly in the permit section.

16 Q Were you in the permit section in the time
17 period 1995 through 1996?

18 A Yes.

19 Q And you testified, I think, that you recall a
20 meeting with Mr. Poland and other EPA officials in
21 Peoria, Illinois?

22 A Yes.

23 Q I'm going to show you what has been marked as
24 B32. I want you to look at -- well, you can look at the

1 whole thing, but page 3 is what I am focusing on. And
2 the reason I want you to focus on that is just for the
3 dates. Try to firm up what date this meeting may have
4 been held. You will see about three quarters of the way
5 down, page 3, Exhibit B32, it says, PC was held on
6 June 13th, 1995, and that somebody from the Peoria
7 office was there and somebody from DLPC, slash, permit,
8 slash, solid waste?

9 A Uh-huh.

10 Q Would you have been the person at the meeting
11 from the Department of Land Pollution Control, slash,
12 permit, slash, solid waste?

13 A Yes. I believe I was.

14 Q Do you recall who else was at that meeting?

15 A I think I was the only person that came from
16 the permit section. I think that Mr. Poland was there
17 and one or two people from the field office section. I
18 don't recall specifically who was there from the field
19 office.

20 Q Was this the only meeting that you
21 participated in regarding Mr. Poland?

22 A That's the only meeting that I can recall.

23 Q Can you recall what the topic of that meeting
24 was -- or well, can you recall what the topic of the

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1 meeting was?

2 A Well, I believe it was a question regarding
3 the enforcement proceedings. And as I said, I was to
4 advise on the regulations and how to apply for a permit.

5 Q Did you give Mr. Poland any information on
6 how to apply for a permit?

7 A Yes, I did. I believe I gave him copies of
8 the regulations and some forms.

9 Q Did you tell Mr. Poland what would need to be
10 done to show that the waste was inert?

11 A I believe that was part of the discussion.

12 Q Did you tell Mr. Poland what we have been
13 referring to as this new landfill would need siting and
14 a separate permit, separate and apart from the previous
15 closed landfill that's situated on the same land?

16 A I don't specifically recall discussing that.
17 I may have.

18 Q And is it your testimony that at no time did
19 you ever tell Mr. Poland that it was okay for him to
20 keep using the new landfill? When I say "using the new

21 landfill," placing porcelain type waste there without a
22 permit as long as he was attempting to obtain a permit?

23 A I am pretty sure I never made any statement
24 of that nature.

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1 Q I'm going to show you what's been marked as
2 B30. Do you recognize B30?

3 A I don't recognize having specifically seen
4 the document before. I may have.

5 Q Do you see on the very bottom of page 2 on
6 page -- or of B30, it indicates that you received a
7 blind courtesy copy of B30?

8 A Yes.

9 Q If you could take a minute and review B30.
10 My question is, do you agree, generally, B30 is kind of
11 a summary of the meeting. That's the way it's written
12 at least. Do you agree to the best of your recollection
13 that this is a correct summary of what occurred at the
14 June 30th, 1995, meeting?

15 A As best I recall, that was accurate.

16 MR. BENOIT: Okay. I think that's all the
17 questions I have for this witness.

18 HEARING OFFICER LANGHOFF: Thank you. Mr. Davis.

19 MR. DAVIS: Thank you, Mr. Hearing Officer.

20 CROSS-EXAMINATION

21 BY MR. DAVIS:

22 Q Ron, are you authorized to allow anyone to
23 conduct disposal operations without a permit?

24 A No.

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1 MR. DAVIS: Thank you, sir.

2 HEARING OFFICER LANGHOFF: Thank you, Mr. Steward.

3 Okay. Mr. Davis.

4 MR. DAVIS: I would call Mr. Yoho.

5 (Witness sworn.)

6 LLOYD F. YOHO,

7 called as a witness, after being first duly sworn, was

8 examined and testified upon his oath as follows:

9 DIRECT EXAMINATION

10 BY MR. DAVIS:

11 Q What is your full name and your residence?

12 A Lloyd F. Yoho, 710 North Main Street,
13 Abingdon, Illinois.

14 Q Mr. Yoho, we understand that you were in
15 business with Mr. Poland for several years; is that
16 true?

17 A That's correct.

18 Q Can you describe the nature of that business?

19 A Refuse removal, residential and commercial.

20 Q And we understand that the name of the
21 company was Abingdon Salvage Company and it started out
22 as a partnership and then became incorporated?

23 A That's correct.

24 Q Who are the officers at the present time of

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1 the corporation?

2 A I'm the president. I think my present
3 partner is the vice president and my wife is the
4 secretary and -- secretary/treasurer.

5 Q And who would be your present partner?

6 A Donald K. Brown.

7 Q When did --

8 A I'm sorry, Elaine Brown.

9 MR. DAVIS: Okay. Very good. Anytime you need to
10 clarify something, don't hesitate. It's not that formal
11 a proceeding here.

12 BY MR. DAVIS:

13 Q My question to you, sir, is when did you and
14 Mr. Poland first start together in the refuse hauling

15 business?

16 A When?

17 Q Yes.

18 A I think approximately 1972. I'm not -- don't
19 quote me on that exact, but I believe that's in the
20 neighborhood.

21 Q And did you have at that time as a customer
22 the Briggs Manufacturing Company there in Abingdon?

23 A I don't think so at that time.

24 Q It was a few years later then?

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1 A Yes. We may have hauled what I call trash.
2 What the employees throw in barrels and paper and pop
3 cans and that sort of thing, but I can't remember for
4 sure. But they hauled their own brokenware at the time.

5 Q Along about 1978 or thereabouts, did you and
6 Mr. Poland acquire a piece of property north or
7 northeast of town?

8 A Yes.

9 Q And would this be the 15.8-acre site that we
10 have been talking about all day?

11 A Yes, sir. I believe it was in 1975.

12 Q '75, okay. And what was the purpose of

13 acquiring that site?

14 A Well, I think that we had it in mind to put
15 both brokenware on it when the present site expired
16 because it was a pretty well worthless piece of ground.
17 And we thought by leveling this up and putting dirt on
18 it we could make it a nice productive piece of ground.

19 Q So you had been involved with Briggs and when
20 this opportunity came about to handle other waste
21 materials for Briggs you acquired the site?

22 A Yes, I think we -- yes, I believe so.

23 Q Now you just mentioned, Mr. Yoho, that Briggs
24 had been disposing of its brokenware at another site.

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1 Do you know where that other site was?

2 A It's to the northwest quadrant of Abingdon.
3 There is a sizable area there called the Fall Festival
4 ground.

5 Q So the porcelain and ceramic wastes were used
6 as fill material and that site later developed as the
7 festival ground?

8 A Yes. It was sort of a deal like this also.
9 It was hills and gullies.

10 COURT REPORTER: It was what?

11 THE WITNESS: It was hills and gullies originally.

12 That made a nice piece of ground out of it.

13 BY MR. DAVIS:

14 Q In conducting your business, especially in

15 relationship to the Briggs Company, was it you or

16 Mr. Poland that dealt mostly with Briggs?

17 A Mr. Poland.

18 Q Was it fair to say that the Briggs

19 arrangement was just a portion of the Abingdon Salvage

20 business?

21 A Yes.

22 Q And does that business, the Abingdon Salvage

23 hauling of commercial and residential refuse, continue

24 today?

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1 A Yes, it does.

2 Q We understand that Mr. Poland attempted to

3 sell his interest in the property on which the landfills

4 are situated. And this would have occurred about the

5 1st of July of 1996. Is this your recollection?

6 A I think that's really close, yes.

7 Q And would it be fair to say that Mr. Poland

8 was out of your business at that time -- after that

9 time?

10 A Yes.

11 Q Did you pick up his dealings with Briggs
12 after Mr. Poland left?

13 A No, my partner did at that time.

14 Q Do you recall whether the same billing
15 arrangement that you heard testimony about this
16 morning -- that is, weekly bills submitted to Briggs and
17 weekly payments were made -- do you recall whether that
18 continued?

19 A Yes, I believe so.

20 Q Do you recall whether there was any formal
21 contract coming into existence?

22 A I don't believe there was. It's always been
23 just a gentlemen's agreement.

24 Q I have a series of exhibits that I would like

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1 for you to look through. Specifically, these are
2 Exhibits 60, 61, 62, 63, 64, 65 and 67, 68, 69 and 70.
3 I will bring them to you, just a moment, please.

4 And I can represent to you that these are all
5 dated after July 1996 so Mr. Poland was not presented
6 with these this morning. But I will give you a couple

7 minutes, Mr. Yoho, so that you can look through those to
8 see if you recognize them.

9 (Brief pause in proceedings.)

10 Q Okay, sir, starting with Exhibit 60 as an
11 example, does it consist of a check on the Briggs
12 account payable to Abingdon Salvage Company?

13 A Yes, sir.

14 Q And this would be for the time period of the
15 first half of July 1996?

16 A Yes. And apparently it includes some
17 bulldozing.

18 Q Yes. I was going to ask you about that. You
19 have heard testimony this morning from Mr. Poland that
20 in addition to the daily fees for disposal and hauling
21 services, that half of the other expenditures would be
22 sent to Briggs for payment, did you not?

23 A Yes.

24 Q And did this arrangement specifically

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1 continue after Mr. Poland left?

2 A As best I know, yes.

3 Q And, in fact, in this Exhibit Number 60 on
4 the second and third pages, are there other expenditures

5 in addition to disposal and hauling fees noted?

6 A I haven't got that far. This is still
7 Mr. Poland's what I'm going through here.

8 Q This is still his handwriting in Exhibit 60?

9 A Yes. And so is 61 and 62. I think that it
10 was transferred sometime; and then Exhibit 63, I
11 believe, is from Loren West. Yes, it is. It's his
12 letterhead. And that was dated October 17th of '96.

13 Q Getting back to Number 60, so that we are all
14 clear, there are three pages in this exhibit, second and
15 third pages are invoices from Abingdon Salvage?

16 A Yes.

17 Q Okay. And those invoices do contain Loren
18 West's name as well as yours on the letterhead, if you
19 will?

20 A Yes. I'm not sure; this could be Loren
21 West's writing. I don't know. I see these others are
22 typewritten, but I'm not familiar with this writing. I
23 believe this is Doren's, though.

24 MRS. YOHO: I don't --

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1 HEARING OFFICER LANGHOFF: I'm sorry. We will just
2 have Mr. Yoho answer the questions.

3 BY MR. DAVIS:

4 Q They are business records?

5 A I see this is Loren's writing, yes. So
6 apparently some of this was for engineering fees on the
7 third page.

8 Q Yes. And that's really the point I was
9 hoping to give to -- this would be -- well, it mentions
10 James Schoenhard as the engineer, does it not?

11 A Yes, sir.

12 Q Getting back to the second page, however,
13 does it also allude to Robinson Bulldozing and Prairie
14 Analytical?

15 A Yes, it does. And I don't know what
16 this -- and I really wasn't involved in very much of
17 this. So I am just doing a little bit of guessing. I
18 think this analyzing was probably some samples that were
19 taken.

20 Q Sure. That makes sense. And as far as
21 Exhibit 61, the same relationship -- I'm sorry, the same
22 arrangement as indicated in the documents?

23 A On the payment to Mr. Schoenhard from Briggs?

24 HEARING OFFICER LANGHOFF: Counsel is discussing

1 Exhibit 61.

2 MR. DAVIS: As you finish, go ahead and hand the
3 exhibits to the hearing officer.

4 A And you asked me if 61 was --

5 Q Yes. Let me ask you this: On 61, does it
6 appear that the expenditures of Mr. Schoenhard are split
7 evenly between Abingdon Salvage and Briggs Industries?

8 A Well, it doesn't say here. Yes, it says
9 Briggs half \$1,800.

10 Q Okay. And turn your attention now, please,
11 sir, to Exhibit 62. Does this reflect an additional
12 payment to your company from Briggs?

13 A Yes.

14 Q Okay. Put that aside if you would and look
15 at page -- I'm sorry, Exhibit 63. And does this reflect
16 once again a payment for disposal and hauling services?

17 A Well, I am not smart enough to know. It says
18 subtotal and it's circled \$2,500. And there is a
19 payment to Prairie Analytical and two payments there and
20 Mr. Schoenhard, and then it says a total of 5,291.90 and
21 I don't know what's what.

22 Q But those notations are crossed out, are they
23 not?

24 A Yes.

1 Q And the check is only for 2,500 which
2 reflects the disposal and hauling?

3 A Yes, it is.

4 Q And look back at 62, which you have handed to
5 the hearing officer, I think, and see if the same
6 amount --

7 A Yes. It's scratched out.

8 Q Put those both aside now and look to 64.
9 Does it appear that expenditures are also crossed out on
10 the invoice provided to Briggs?

11 A Yes.

12 Q And the check, which is the first page of
13 Exhibit 64, is only for disposal and hauling services?

14 A Yes.

15 Q And look at Exhibit 65. The second page
16 being the invoice or the other expenditures from
17 Mr. Schoenhard are also crossed out. And the check
18 attached to page 1 is only for hauling and disposal?

19 A Yes, I would say so.

20 Q Does it appear to you, sir, that Briggs at
21 some point, as documented in these exhibits, quit paying
22 half of the expenditures?

23 A I really can't answer that. I really don't
24 know.

1 Q You weren't involved in that part?

2 A No.

3 Q Well, very quickly look at 67, 68 -- 67
4 first. And the same indication of a strike through on
5 the Schoenhard portion of the bill?

6 A Yes.

7 Q Set that aside and look at 68 now. Does it
8 appear that Briggs paid not only for disposal and
9 hauling but also for half of the Schoenhard
10 expenditures?

11 A Yes.

12 Q Now 68 is also noteworthy for another reason.
13 Did it appear from this document that the fees being
14 charged Briggs went up from \$500 a day to \$700 a day?

15 A That's correct.

16 Q Whose decision was that?

17 A That was between the plant manager, Loren
18 West and myself.

19 Q And who was the plant manager at that time?

20 A I believe it was a man named Robert Orton.
21 The reason for that, there was a -- I don't know whether
22 it was more breakage or what, but there was a tremendous
23 increase in what we were hauling.

24 Q As far as weight?

1 A Yes. In fact, we put two men down there a
2 lot of the time. We always furnish one man, and part of
3 the time we had two men down there.

4 Q We heard from Mr. Anderson, if you recall his
5 testimony, that he was the project manager during a
6 portion of 1994. Do you recall dealing with
7 Mr. Anderson?

8 A No. I remember when I would go down there I
9 remember seeing him around the back dock. And I did see
10 him on the landfill site once or twice when I believe
11 they were taking tests or something.

12 Q Well, I have a few more questions, but let's
13 deal with the last two exhibits first. Exhibit 69 there
14 again reflects the prevailing rate of \$700 per day plus
15 expenditures for the Prairie Analytical Systems,
16 Robinson Construction and Jim Schoenhard, does it not?

17 A Yes, sir.

18 Q And does the total bill presented to Briggs
19 for the hauling and disposal plus these additional
20 expenditures, was that paid or only the hauling and
21 disposal?

22 A Well, it appears to me that only the hauling

23 was paid. Only the services that we provided that I can
24 see was paid on this exhibit.

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1 Q And the last exhibit, Number 70, is for the
2 time period of March 10 through 14, 1997. Is this the
3 last payment Briggs made to your company?

4 A I believe so.

5 Q So after the middle of March 1997, you no
6 longer hauled the broken ceramic and porcelain wastes?

7 A I can't tell you exactly that that's the
8 date; but if this is the last payment, this has got to
9 be, I'd say, correct.

10 Q Does it jibe with your memory, generally,
11 that the arrangement that Abingdon Salvage had for many
12 years with Briggs terminated at some point in the mid to
13 late '90s?

14 A Yes, I believe so.

15 Q And what is also your memory, sir, on ceasing
16 operations at the landfills; when did that happen?

17 A Oh, that had to have been -- there has been
18 nothing placed there since we lost the Briggs contract.

19 Q Do you know why your company lost the Briggs
20 contract?

21 A Apparently money. And I think they also
22 maybe couldn't afford the amount of money. I don't
23 know.

24 Q Did you talk to anybody about it?

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1 A Not after we lost it, no.

2 Q It appears from Exhibit 68 that the rates
3 were raised in the middle of February, and it appears
4 from Exhibit 70 that you lost the contract in the middle
5 of March?

6 A I don't know the exact date, but that sounds
7 right.

8 Q Let's explore another issue regarding the
9 site itself. And I understand, sir, that you did not
10 have much involvement directly with the site, the
11 disposal site?

12 A That's correct.

13 Q What involvement did you have? How often did
14 you --

15 A Well, I was aware of everything pretty well.
16 And I don't know how else to answer you, but I wasn't
17 very active in the company at the time. And my wife
18 did -- of course, was the secretary, did all the billing

19 with the exception of Briggs. And I just wasn't 100
20 percent aware of everything that was going on. I get it
21 more or less secondhand.

22 Q But you obviously held a half interest in the
23 property?

24 A That's correct.

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1 Q And you continue to do so today, don't you?

2 A That's correct.

3 Q Did you ever have discussions with
4 Mr. Poland, for instance, about whether a permit could
5 be obtained for the new portion?

6 A Yes.

7 Q So you had some knowledge that efforts were
8 underway to seek the permit?

9 A Well, I was aware of -- to me it was a very
10 large amount of money that was going out about every
11 month trying to get a permit. And I asked him, I says,
12 Why are we getting rejected? Does somebody not know
13 what they are doing, or what's going on?

14 And, you know, I'm pretty dumb, but I said, I
15 would like to go down to Springfield and ask them what
16 we have to do.

17 Well, I understand now, I wouldn't have been
18 able to do anything. That's all I know.

19 Q You said there was an awful lot of money
20 going out every month. Do you mean expenditures to
21 Mr. Schoenhard?

22 A Basically, yes.

23 Q Do you recall how much your company spent?
24 Just your share in seeking the various permits?

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1 A I don't exactly. I think 60-some thousand.

2 Q Would it be fair to say that Briggs spent
3 approximately an equal amount?

4 A Yes, it would.

5 Q One more issue I would like to explore: Do
6 you have any knowledge as to what Briggs may have
7 contributed to the operations or maintenance of the
8 site, the landfill site?

9 A They -- someone tore our gate down. So they
10 built a real nice iron gate and put up out there. The
11 rest of the place is pretty well inaccessible from large
12 road ditches. And other than sending an engineer out
13 occasionally and -- I don't know what else to tell you.
14 And then paying half of the bills, of course.

15 We also had to have -- I don't know if it was
16 maybe Ratliffe Brothers install a sealed tile about, I
17 think, one four-inch diameter all the way through the
18 property to carry water coming to the property and
19 leaving the property without picking anything up on the
20 property. That was a joint effort between Briggs and
21 us. And, also, I think the engineering fees. We had to
22 have engineers on the ground -- surveyors, I guess I'm
23 trying to say, not engineers.

24 Q When was the gate replaced?

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1 A For that?

2 Q For the site.

3 A For this thing I'm talking about now?

4 Q Yes. You mentioned that Briggs --

5 A I can't tell you exactly. I don't know. I
6 couldn't even guess within two years.

7 Q We don't want you to guess.

8 A I don't know.

9 MR. DAVIS: I have no other questions, Mr. Hearing
10 Officer.

11 I would move the admission of Exhibits 60 through
12 65 and 67 through 70.

13 MR. BENOIT: No objection.
14 HEARING OFFICER LANGHOFF: They are admitted.
15 Mr. Poland, do you have any questions for
16 Mr. Yoho?
17 MR. POLAND: No.
18 HEARING OFFICER LANGHOFF: Mr. Benoit?
19 MR. BENOIT: I think that I am going to hold off on
20 my examination again. I think Mr. Schoenhard is here
21 today, and I would like the other witnesses -- well, one
22 I don't know. Tom, is this your last witness?
23 MR. DAVIS: We would rest after this witness.
24 MR. BENOIT: And so, you know, in the interest of

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1 time and Mr. Schoenhard, I don't know how long his
2 testimony will take, but I would be more than willing to
3 call Mr. Yoho later. Yeah. I will call him later.
4 HEARING OFFICER LANGHOFF: Thank you.
5 MR. BENOIT: Would it be possible to take another
6 short break?
7 HEARING OFFICER LANGHOFF: We will adjourn for five
8 minutes.
9 (A recess was taken.)
10 HEARING OFFICER LANGHOFF: Okay, Mr. Davis.

11 MR. DAVIS: Thank you, Mr. Hearing Officer. The
12 People have three other exhibits that we would seek the
13 admission without foundation testimony. These are
14 documents generated by or on behalf of Briggs. Exhibits
15 9, 17 and 20. So we would move the admission of those
16 exhibits at this time.

17 HEARING OFFICER LANGHOFF: Any objections?

18 MR. BENOIT: These are ones I have looked at
19 before?

20 MR. DAVIS: Right.

21 MR. BENOIT: No objection then.

22 HEARING OFFICER LANGHOFF: They are admitted.

23 MR. DAVIS: And I believe that Exhibits 1 through
24 71, inclusive, have been tendered and admitted.

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1 HEARING OFFICER LANGHOFF: Okay. Exhibits 1
2 through 71 are admitted into the record.

3 Anything else?

4 MR. DAVIS: We would call no further witnesses and
5 rest our presentation.

6 HEARING OFFICER LANGHOFF: Thank you. Okay,
7 Mr. Poland, do you have any witnesses or perhaps
8 yourself who would like to go first?

9 MR. POLAND: I have two. I have Mr. Paul Skinner,
10 and he lives here in town; he'll only take about five
11 minutes. And then I have Mr. Schoenhard, our engineer.

12 HEARING OFFICER LANGHOFF: Who would you like to
13 call first?

14 MR. POLAND: Mr. Skinner.

15 (Witness sworn.)

16 HEARING OFFICER LANGHOFF: Would you spell your
17 name for the record please?

18 THE WITNESS: S-k-i-n-n-e-r, Skinner. I live at
19 158 Hawkinson, Galesburg, Illinois.

20 HEARING OFFICER LANGHOFF: Okay. Mr. Poland, do
21 you have a question?

22 PAUL SKINNER,
23 called as a witness, after being first duly sworn, was
24 examined and testified upon his oath as follows:

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1 DIRECT EXAMINATION

2 BY MR. POLAND:

3 Q Do you remember, Paul, back in March of 1995
4 when you went to Springfield with me on Second Street
5 and we had a meeting with the four engineers from the
6 EPA -- and I found their cards that they give me

7 personally -- a meeting with these four EPA engineers?

8 Do you remember that meeting?

9 A Yes, I do.

10 Q To cut it short, you seen me give them
11 descriptions of the material and I explained to them how
12 important it was for the operation of the pottery to
13 keep going?

14 A Yes.

15 Q Do you remember, also, them telling me that
16 they didn't see anything wrong with me going ahead and
17 using it for the pottery only as long as I was applying
18 for a permit?

19 A Yes. That's what they said. They said as
20 long as you were trying for a permit -- and I think you
21 had an engineer working for you, or you was doing it
22 yourself, I think, and afterwards you got the engineer;
23 but they did say as long as you was working on it they
24 saw no problem.

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1 MR. POLAND: That's all I got.

2 THE WITNESS: I would like to admit one other
3 thing. I don't know why the gentlemen didn't remember
4 because I gave them a rough time when I was down there

5 because when we went into the EPA office, as we walked
6 in the front, it was a mess.

7 MR. POLAND: Oh, yeah.

8 THE WITNESS: There was pop cans, pop cartons,
9 cigarette butts all over the front. And I jumped them
10 about it. And I said, Here you guys are trying to clean
11 up things, and you can't even take care of your own.

12 MR. POLAND: I remember that.

13 THE WITNESS: That's why I can't understand why
14 they didn't remember me.

15 HEARING OFFICER: Thank you. Just a second,
16 Mr. Skinner. Mr. Davis.

17 MR. DAVIS: Thank you.

18 CROSS-EXAMINATION

19 BY MR. DAVIS:

20 Q Mr. Skinner, do you recall which person said
21 what you remember them saying?

22 A No, I don't. There was four or five people
23 in the room besides us. And I was more or less just
24 sitting as an observer to --

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1 Q And what can you recall somebody saying?

2 A They discussed everything about what he had

3 in his suitcase thing, the material he had brought down.
4 It lasted probably an hour or so. But, I mean, like I
5 said, I was more or less just coming with Doren, but
6 that was said. I mean --

7 Q Repeat it for me. What was said?

8 A As long as you are trying to get a permit, we
9 see no reason why you can't keep dumping. I mean, he
10 explained to them, like he said, if they closed him down
11 there would be quite a few people out of work because
12 they have got to have it every day to, you know, keep up
13 with it.

14 Q Right. "They" being Briggs?

15 A Right. They also stated that he had to have
16 a permit. And he had to get an engineer because he had
17 to check on for like everything, the Indians out there
18 and all this stuff, you know. And that's the reason he
19 had to have an engineer.

20 Q They had to get a sign-off from the Historic
21 Preservation Agency?

22 A Right. And, see, everything was just too
23 much for him to do by himself. He couldn't do it.

24 MR. DAVIS: Thank you, sir. I have no other

1 questions.

2 HEARING OFFICER LANGHOFF: Mr. Yoho?

3 MR. YOHO: I have no questions.

4 HEARING OFFICER LANGHOFF: Mr. Benoit?

5 MR. BENOIT: No questions.

6 HEARING OFFICER LANGHOFF: Thank you, Mr. Skinner.

7 MR. POLAND: Might I mention that it was Engineer

8 Chappel --

9 HEARING OFFICER LANGHOFF: Do you want to call your
10 next witness?

11 MR. POLAND: No. That was Harry Chappel.

12 COURT REPORTER: How do you spell that?

13 HEARING OFFICER LANGHOFF: Mr. Poland, I will let

14 you come up on the stand and testify after you call

15 Mr. Schoenhard if you like.

16 MR. POLAND: Oh, okay.

17 (Witness sworn.)

18 HEARING OFFICER LANGHOFF: Again, would you spell

19 your name for the record?

20 MR. SCHOENHARD: James Schoenhard,

21 S-c-h-o-e-n-h-a-r-d.

22 JAMES D. SCHOENHARD,

23 called as a witness, after being first duly sworn, was

24 examined and testified upon his oath as follows:

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DIRECT EXAMINATION

BY MR. POLAND:

Q Mr. Schoenhard, I don't recall exactly when -- who hired you to work on this, but I think it was before I went to the meeting in Springfield because I think I told them then also that I had him in here working on this. And I don't really know how to explain all this so -- to ask the questions. So if it's all right with you, just let him tell the story of it?

A In 19-- I believe it was '92, I had a firm called Environmental Management Incorporated down in Springfield, Illinois. And you came in and asked us for help in getting a permit or getting permitted for something at your landfill.

I think at that time you were talking about a problem that you had with an existing facility in the closure plan. And I think that's the first thing we did as Environmental Management is this closure plan. And we did author the initial facility report also. This was an attempt to get Briggs a piece of land to dump their waste on as I understood it. That they were going to purchase that piece of land. And now this is all -- it was one of those things that hadn't completely jelled. We were told to go ahead and produce the

1 report. We did that, and we sent that to the EPA.

2 Shortly after that we did a material
3 analysis, and we had materials from the landfill taken
4 to an expert. And they defined its permeability by ESTM
5 method. I can't remember what it is now. And I think
6 this was Shaffer and somebody over in Decatur, but
7 anyway, it was an expert in the field. And this stuff
8 came out at 2.25 times 10 to the minus 7. It's a very
9 impermeable material when it gets compacted as you lay
10 it down, as you leave your landfill. In fact, it was
11 good enough that EPA didn't require that any daily cover
12 was put on the landfill. They recognized it wasn't a
13 harbor for vectors, and it's not a place for bugs or
14 anything else to hide. It is just an inert material.

15 And I guess all the time that we were working
16 on this, we were, according to the landfill permit,
17 existing. We were taking water samples and what we call
18 them is leachate samples because there was no water in
19 the compacted material. It can't get in there. And so
20 we were taking what we call leachate. There is a pipe
21 that runs -- a drain pipe that carries the field tile
22 water down through the center of this landfill. And we
23 theorized if we shaped the bottom correctly, whatever
24 water or leachate did come out of the landfill would

1 join with that liquid and we would test that liquid at
2 the end of the pipe downstream. And we did that.

3 We had some problems with a couple of labs.
4 The only thing that ever turned up was barium. And
5 barium, a couple of times it seems like the lab
6 was -- laid it off to contamination of their samples
7 because we would -- one particular case where we had 2.5
8 milligrams per liter, we came back two days after we got
9 the report and took a sample. They ran it through right
10 away, and it was less than 1 milligram. So there were
11 some errors there with the lab on the barium. But the
12 rest of the stuff, we never did have any hits on
13 anything.

14 The one that looked kind of bad was selenium.
15 But at the time that this sample was analyzed, they were
16 bumping the limits of their testing equipment and the
17 limits had already been moved lower by EPA regulation.
18 And their test equipment wasn't good enough, I guess.
19 But, anyway, that's how I got started in this business.

20 In 1993 I left Environmental Management and
21 started doing this work, engineering work on my own.
22 And I have to tell you after, I think it's 1997
23 sometime, TLM Environmental Service handled this work

24 and I was their engineer. So I'm sure that Mr. Yoho

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1 knows that because he was paying those people.

2 Anyway, I guess that my real
3 involvement -- since I worked at EPA, I have to give you
4 some background and my education. I am a graduate
5 engineer from Wisconsin Mining School. And I am a PE
6 in -- well, only one state now, but I have resigned
7 myself to perhaps retire sometime. But I have worked
8 for a county for 18 years as a chief executive in road
9 building and maintenance department. I have worked for
10 IDOT for 10 years as a field engineer in maintenance.
11 And I worked for the EPA for about 10 years as a permit
12 reviewer. As a matter of fact, these people that are
13 down here today testifying were working with me or I was
14 working with them when I was with the EPA some years
15 ago. So I understand a lot of what's going on and from
16 both sides.

17 I would say that in this particular case we
18 are in Abingdon, Illinois. We have piles of this white
19 debris all over. My point in all this was to find out
20 whether there is a pollution potential for the ground
21 water. And if there is, that would be serious. If

22 there isn't, this stuff -- and I was really trying to
23 get Briggs and the owners of Abingdon Salvage to go to
24 the Pollution Control Board with a petition to try to

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1 get this type of waste declassified and get it into
2 either a clean fill where it didn't need a permit or a
3 reusable -- what do they call it, potential reusable
4 waste because these piles that were building out there
5 were 100 percent either clay or porcelain. And they are
6 about 10 feet thick, and it would be great if we would
7 pick those up and use them for some industrial purpose.

8 But I think that this problem is not unique.
9 Every city that has a pottery foundry -- and they are
10 kind of a foundry. They are in the kiln business
11 really. They take clay and some porcelain and spray on
12 it and make these fixtures. And it's not too much
13 unlike the foundry business because they have the same
14 type waste. They don't have the core waste that you
15 have to get rid of. But this is the same in a lot of
16 communities. I know it's the same in Robinson,
17 Illinois, because I was working on a project down there.
18 It's another Briggs pottery place.

19 And I say this in all sincerity: That a

20 solution should be found for the general problem and not
21 just the spot problem. That would be my objective.

22 HEARING OFFICER LANGHOFF: Mr. Poland, do you have
23 another question?

24 MR. POLAND: That would be all.

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1 HEARING OFFICER LANGHOFF: Is that everything you
2 want to ask of your witness?

3 MR. POLAND: I can't think -- we have proved it
4 inert, right?

5 MR. SCHOENHARD: Yes. Could I give you a statement
6 from Mr. Poland?

7 HEARING OFFICER LANGHOFF: Mr. Poland, I believe,
8 is going to take the stand.

9 MR. SCHOENHARD: Oh, okay. Thank you.

10 HEARING OFFICER LANGHOFF: Just a moment.
11 Mr. Davis.

12 MR. DAVIS: Thank you.

13 CROSS-EXAMINATION

14 BY MR. DAVIS:

15 Q Mr. Schoenhard, was a permit ever issued for
16 the new site?

17 A No. I got to tell you that it was -- it was

18 very close. And if you want to know the --

19 Q Well, I think my next question is: After it
20 was denied the last time, did essentially Briggs find
21 someplace else to take their waste? This would have
22 been in the spring of '97?

23 A I think they were taking it somewhere else
24 before we got to the end of the permit. We were trying

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1 to obtain a permit. And I think at that time -- this
2 was my own opinion -- Briggs Company changed, and they
3 sent a man up here by the name of Jose Morales. He
4 appeared at a meeting at the Attorney General's Office
5 with Desiree Perry or something like that and about 10
6 of us were around here including IEPA people. And we
7 were supposed to do certain things by certain time
8 limits, I think.

9 There were some other things stated there.
10 But those -- apparently, everybody lost interest. And
11 we, like Doren Poland, were tired of waiting for Briggs
12 to send a check up here from down in Florida where their
13 main office was. And we were tired of not getting paid.
14 So we said we would like a retainer if we are going to
15 finish this work. This Jose Morales then said he would

16 handle it. And I don't know where it went from there.

17 Q Now getting back to the billing, was it the
18 arrangement at one point that Briggs was paying you
19 their share directly?

20 A Yes.

21 Q And why did that cease?

22 A Because they were late in their payments,
23 sometimes like two months, three months. I think at one
24 time it was like four months.

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1 Q Can you estimate how much Briggs may have
2 paid you to seek a permit for the new site during all
3 the years that you worked on this problem?

4 A I would say maybe \$40,000. That's probably
5 on the high side. Now I'm including TLM in this also.

6 Q And that would include necessarily part of
7 the analytical?

8 A And, yeah, the MI and Schoenhard and
9 Associates and TLM.

10 Q Now I just have a few more questions. But
11 let me ask you, generally, isn't it true that the new
12 site does not comply with the Part 811 technical
13 requirements such as a liner leachate collection?

14 A Neither did -- the old one didn't comply with
15 807 regulations either. And that's because the material
16 as it's compacted -- it used to be liner standard
17 material. There was a time when landfill liners didn't
18 have to be -- have a permeability any less than we were
19 demonstrating with the compaction.

20 Q Right. The bad old days.

21 A And the material was inert. And regular
22 landfills were built with clay liners. There are some
23 materials like benzene that will go right through the
24 liner in one tenth of the time calculated by the method

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1 they use to tell how fast liquids go through liners.

2 Q And that example is just one of numerous
3 reasons why the Part 811 technical standards are much
4 more rigorous; wouldn't you agree?

5 A Yes.

6 Q Let me ask you, then, regardless of your
7 feelings on whether the new site should be viewed as an
8 811 landfill, isn't it true that the new site doesn't
9 comply with any of those technical standards?

10 A Well, when you talk about 811, you have
11 to -- see this is a special waste by definition because

12 it's a production controlled -- production waste.

13 Q Industrial process waste?

14 A Yeah. And unless you get it out of that
15 classification and into one it really deserves -- you
16 see, this is not like most wastes. It is almost -- it's
17 inert. And it doesn't disintegrate, it doesn't burn, it
18 doesn't evaporate. It's not a harbor for vectors. It's
19 not the kind of a thing that you are talking about
20 generally when you are talking about some kind of
21 industrial waste.

22 Q But none of the agency's permit actions was
23 appealed to the Pollution Control Board?

24 A That's correct. That is -- and not just

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1 their actions. I think maybe the permittee should have
2 gone and petitioned the Pollution Control Board to try
3 and get this into a different classification.

4 Q Yes, you mentioned that.

5 Lastly, just to be clear, this, again, is on
6 the Part 811 requirements, no hydrogeological site
7 investigation was done; isn't that true?

8 A That's true.

9 Q No ground water impact assessment was

10 performed?

11 A That's not exactly true because from studies
12 that we had from the testing facility we could
13 demonstrate that there was none expected. You weren't
14 going to have any leachate because, first, it wasn't
15 getting through. Second, the material was demonstrated.
16 It doesn't leachate.

17 Q But no assessment was done to the
18 satisfaction of the EPA?

19 A That wasn't a problem with the permit
20 application.

21 Q Was an assessment done?

22 A Yes. Well, in a way that you could say how
23 can you get water out of a place where there is no
24 water?

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1 Q Would it be fair, Mr. Schoenhard, to say that
2 your view was an assessment was not necessary because of
3 the nature of the wastes?

4 A Yes. And I think the same view was shared by
5 some people in the EPA, both permit and FOS areas. But,
6 again, we recognized we didn't have the authority to
7 make a change.

8 Q Now the old site, the Abingdon Landfill,
9 whatever you want to call it, the closed facility does
10 have ground water monitoring?

11 A It does in that they recognize, too, that
12 this stuff is impervious that no water goes through. So
13 you take the leachate which the bottom of this landfill
14 is shaped so that everything runs down to the run-off
15 point. There is some running water through there. And
16 if anything is going to be liquefied, it's going to be
17 there. And we did take leachate samples alongside this
18 running water as well as the water itself.

19 Q Now the ground water monitoring system for
20 phase 1, or the old site, does not encompass phase 2,
21 the new site, does it?

22 A The same material would show up at the same
23 monitoring place, yes.

24 Q If there were additional monitoring points?

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1 A No. Existing ones because it's all built
2 upstream from this. And if there is any leachate it's
3 going to go down in the same place as the existing
4 leachate.

5 Q I suppose what I should be asking, were there

6 any additional monitoring points installed for the phase
7 2 new site?

8 A There were a couple proposed simply because
9 that's the nature of the beast, the 811 regulations.
10 But it was my understanding that they are just going to
11 show nothing.

12 Q Sure. And getting back to your remark from a
13 moment ago as to the construction of the facility, this
14 is a trench and fill operation?

15 A It's mostly an area fill. An area is
16 selected, about two years worth of pottery waste, and
17 then they go and fill that area. And then after that's
18 filled, they go somewhere else. As for a practical
19 thing, it makes it about a 10-foot-by-2-acre area that,
20 if you ever did mine it, you have got this dust -- well,
21 it's not really dust -- chips and the plaster of Paris
22 about 10 feet thick or 10 to 12.

23 Q But as a practical matter, other than the way
24 the facilities were constructed, there is no leachate

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1 collection system? It's just the way things happen
2 facilitates leachate collection? It's kind of a de
3 facto?

4 A There is no leachate.

5 Q But leachate, of course, would be any water
6 that would come in contact with any waste; wouldn't you
7 agree with that?

8 A Yes. But it has to get it to its
9 potential -- it has to get into the ground water
10 somewhere. And where we have been testing it, we think
11 it's leachate. The best shot we have got. We can't get
12 the water to change any from the existing water,
13 upstream water. Downstream seems to be the same with
14 this one exception. And that's that lousy barium they
15 seem to get screwed up in the laboratories.

16 Q Now from what we know from the testimony that
17 we have heard, it seems like the new site operated from
18 August '93 until some point in March of '97. Would you
19 agree with that?

20 A I think that's close, yeah.

21 Q What would that be, 3-1/2 years?

22 A Yeah.

23 Q Do you have any estimate about how much
24 volume of waste was put there on the new site?

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1 A I got to tell you that all of Briggs' waste

2 wasn't taken to this facility during that time. And so
3 that's the X factor here, the unknown. There was
4 another area in town that was -- needed fill, and I
5 think maybe Mr. Poland or maybe Mr. Yoho alluded to
6 that.

7 Q The fair grounds?

8 A Well, this was a fair association. Actually,
9 it's the intersection of this road that you go down, you
10 know, that you go to the Poland-Briggs Landfill. You
11 turn off of U.S. 41 at the north end of Abingdon. Right
12 there used to be old Route 41 come down. And it's
13 significantly lower than the new 41, like maybe 15 feet.

14 And the fair association, whoever owns that
15 or controls it, got a hold of that and they wanted to
16 level up that land. And it's difficult for me to see
17 how anyone can come down Route 41 and turn on this road
18 and not see that pottery over there. It's still
19 sticking out. And there was a fill that was 20 feet
20 high. And these big old water closets and stuff
21 sticking out, it's difficult for me to think no one
22 would see that. It happened in 1994 to '95.

23 Q That's when they straightened the curve?

24 A That's where they straightened the curve

1 right down in there.

2 Q And you are saying some of Briggs' waste went
3 to that location?

4 A Very definitely went to that location.

5 Q During that time?

6 A Yes. So I don't know how much went to the
7 real land.

8 Q Be that as it may, can you give us a ballpark
9 estimate about how much wastes were generated over the
10 course of a year and disposed of at the new facility?

11 A You would have to -- and you heard testimony
12 this morning that less than two tons a truck and seven
13 trucks a day. I would say 5 to 10 tons a day. And
14 that's just a guess.

15 Q And we have heard some information through
16 the deposition that I would like for you to verify so
17 that it's in this record. I forget who it may have
18 been. It may have been Mr. Poland that estimated that
19 the new site was some two and a third acres of some
20 filled area?

21 A I think it's in that area, yes.

22 Q So you would agree with that estimation?

23 A Close. I guess we did have that -- I didn't
24 review that file, and I really don't know. I don't

1 remember. But I know it wasn't five acres; it was more
2 like two to three.

3 Q And you yourself, I believe, have alluded to
4 a 10-foot fill area, 10 foot in depth?

5 A The old one was, as I recall, was 12 to 15.
6 And this was a little less because it's moving upgrade
7 to a point where the water comes into this area. And I
8 would say it was just a couple feet less because of
9 that.

10 Q So instead of 12 it would be 10?

11 A 10, in that area. Again, I don't remember
12 exactly. It's been about three years since I looked at
13 that permit application.

14 MR. DAVIS: Thank you, sir. I have no other
15 questions.

16 HEARING OFFICER: Mr. Yoho?

17 CROSS-EXAMINATION

18 BY MR. YOHO:

19 Q I don't know whether I am asking this right
20 or not, but why, when I know you completed at least a
21 couple of permit applications and four of them to the
22 EPA, why weren't they approved?

23 A Personally, I think that we had a
24 communication problem with the permit reviewer. Now it

1 wasn't me personally. My associate Tracy Musgrove dealt
2 with Kalpesh Patel I think is his name. And she
3 apparently didn't get the information he was trying to
4 convey to her. As I looked over the file when I
5 searched the file for this meeting, I could see where
6 this reviewer had made very detailed notes. And given
7 the information that he had written out in the file, I
8 think that the permit would have been a lot easier to
9 handle.

10 But the information I got secondhand from
11 Tracy Musgrove is that she was half shooting in the
12 dark. She thought she understood what he was saying.
13 She did get some written information. Again, it's how
14 the permit reviewer interprets the regulations. I was a
15 permit reviewer also, and I know that. There is a
16 certain amount of latitude that is there. And, well, I
17 don't know what to tell you.

18 But I do think it's possible to get a permit.
19 I think it would be possible to complete that. I would
20 rather work from the files, that work information I saw
21 written in the file.

22 Q Well, this area we were just talking about,
23 this is still visible as you come into Abingdon?

24 A Oh, you mean that other fill? Yeah.

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1 Q Would it be safe to say there is probably 25
2 or 30 times as much litter as what we had on our piece?

3 A I would say the fill is a lot higher. Well,
4 you can almost see it on one of those quadrangle maps
5 that FOS gives us. You can see that low area. And if
6 you look at the contour intervals, you can tell that it
7 is a significant hole there they filled up. And the
8 other thing, it's right on state property.

9 Q Yes.

10 A That's not good. So, again, I would like to
11 reiterate, my basic problem is to find out whether this
12 material has any potential for pollution. And if it
13 doesn't, everyone concedes it doesn't, we should get
14 this into another category. We would eliminate a lot of
15 problems for the EPA and for the Pollution Control Board
16 down the line by getting this taken care of.

17 MR. YOHO: I have nothing further. Thank you.

18 HEARING OFFICER LANGHOFF: Mr. Benoit.

19 MR. BENOIT: I am going to need a second to look at
20 my notes here.

21 (Brief pause in proceedings.)

22 MR. BENOIT: I don't believe I have any questions.

23 (Discussion off the record.)

24 HEARING OFFICER LANGHOFF: I have just asked

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1 Mr. Poland if he is going to testify. And your answer

2 is? Are you going to testify?

3 MR. POLAND: What would I say that I haven't said?

4 HEARING OFFICER LANGHOFF: Well, it would get it

5 all on the record.

6 MR. POLAND: Well, I might.

7 (Witness sworn.)

8 DOREN E. POLAND,

9 called as a witness, after being first duly sworn, was

10 examined and testified upon his oath as follows:

11 HEARING OFFICER LANGHOFF: Okay. Go ahead,

12 Mr. Poland.

13 MR. POLAND: I can't think of anything that I

14 should say now that I have not previously said.

15 HEARING OFFICER LANGHOFF: Well, let me explain

16 that you are now under oath and everything you say is

17 going into the record.

18 MR. POLAND: Except to add on to what I have

19 previously said. I sold out my share of Abingdon

20 Salvage Company to Loren West on July the 1st, 1996.
21 And at that time, we was working on a permit for the
22 adjacent fill area next to the fill that we have been
23 using for the past five, six years. It just so happens
24 about three weeks ago somebody was drilling on that

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1 landfill. And I run out -- I was told about it. And I
2 went out to investigate what was going on. And there
3 was three holes drilled in it with a backhoe. They
4 couldn't drill it because it was too hard. And it was
5 Anderson Associates (sic) out of Springfield. And they
6 were hired by your lawyers out of Springfield to go
7 drill the holes and put some tile in it to get some
8 water out of the bottom of this landfill which is only
9 three foot deep at the time. It's three foot deep.
10 They couldn't find any water. It wouldn't go through.
11 That was Anderson Associates in Springfield.

12 I guess there is nothing else I have to say.
13 I can't see where, in my mind, where there can be
14 anything wrong with the material going into this
15 landfill because like I previously said, it's scattered
16 all around Abingdon within a 12-mile radius, used for
17 fill to keep ditches from washing. It's buried under

18 some houses. It could be used now in time -- let's put
19 it this way, it's covered up for now. Maybe 50 years
20 from now somebody will need it for fill. It could be
21 dug up and used for fill. But it does not hurt mankind
22 whatsoever. That's all I got to say.

23 HEARING OFFICER LANGHOFF: Mr. Davis.

24 MR. DAVIS: Thank you.

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1 CROSS-EXAMINATION

2 BY MR. DAVIS:

3 Q Mr. Poland, I would represent to you that
4 Briggs has filed a second supplemental response to the
5 State's interrogatories. They identify two individuals
6 of Andrews Environmental Engineering of Springfield.
7 Instead of Anderson, would this have been Andrews?

8 A I think it was Anderson.

9 Aren't you the ones that hired them?

10 MR. BENOIT: It's Andrews Environmental Engineering
11 out of Springfield, Illinois.

12 Q And who were they hired by? Were they hired
13 by Briggs?

14 A Hired by his law office, I think.

15 Q And how do you know this? Who told you that?

16 A I went and talked to them. I went down there
17 and talked to them on the ground on the landfill. I
18 went down there myself and talked to them.

19 What's going on here? Do you have permission
20 to do this?

21 No.

22 Q That's what they said?

23 A Yeah. That's what they told me. And I said,
24 I don't own the ground anymore.

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1 Q So you couldn't have them arrested for
2 trespassing?

3 A I couldn't get them for trespassing. I could
4 have got Lloyd and we could have got them, but I didn't
5 figure they was hurting anything because if they can
6 prove there is no water in it, you know, it don't hurt
7 nobody.

8 Q But they told you they had been hired on
9 behalf of Briggs?

10 A Yeah.

11 Q And Briggs, through their actions, was
12 apparently doing something on the landfill?

13 A Yeah.

14 Q Which landfill?

15 A The old one, the 2.3 acres.

16 Q Well, now wait a minute. The old one or the
17 new one?

18 A The new one.

19 Q Okay. The new one is approximately two and a
20 third acres?

21 A Yeah. Two thirds.

22 Q So Andrews Environmental Engineering on
23 behalf of Briggs Industries --

24 A Drilled these holes.

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1 Q -- drilled these holes on the new landfill?

2 A Right. A PCB pipe was sticking up about two
3 foot.

4 Q Did it appear that they were conducting any
5 other landfill operations at this time?

6 A No. That's all. I warned them how they
7 could tear their tires up by driving on it because it is
8 ceramic tile. You really tear them tires.

9 MR. DAVIS: I don't know that I have concluded my
10 cross-examination, Mr. Hearing Officer, but I would note
11 for the record that the State has been provided with no

12 supplemental discovery regarding these activities. It
13 would appear to me that there is some documentary
14 materials vis-a-vis perhaps a contract between Briggs or
15 Briggs' legal counsel and Andrews Environmental
16 Engineering. It would also appear to me that any time
17 an environmental consultant does anything they generate
18 a report. The State has received nothing.

19 So I am making an oral motion for this
20 hearing officer to exercise your authority to compel
21 supplemental discovery. This is unfortunate three weeks
22 before the trial to have this activity ongoing. If I
23 had been advised of it and if I had been provided with
24 discovery, I would present that information as evidence

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1 that Briggs not only in the past conducted landfill
2 operations, but this year, November 2000.

3 HEARING OFFICER LANGHOFF: Mr. Benoit.

4 MR. BENOIT: Mr. Davis is making a speech to the
5 hearing officer. I think before the hearing officer can
6 compel any discovery you have to look at the State's
7 discovery request. It doesn't have anything to do with
8 any report Andrews may or may not have generated.

9 Further, Mr. Davis was aware that in an

10 effort to settle this matter that Andrews Engineering
11 had been retained to determine whether or not it was
12 possible to, you know, try to get this thing permitted.
13 And thereby put together a permit application before
14 this hearing. So his claimed surprise is not true and
15 the discovery request did not include anything remotely
16 related to anything Andrews may have done.

17 MR. DAVIS: Mr. Hearing Officer, on the 6th of
18 September of this year, Counsel filed with the Board
19 Briggs Industries second supplemental response to
20 Complainant's first set of interrogatories.

21 Interrogatory Number 19 requested the
22 identification of any opinion or conclusion witness. It
23 listed two individuals from Andrews Environmental
24 Engineering. It also indicated in response to the

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1 portion of the interrogatory that asked
2 for -- essentially said, quote, "If any of the said
3 witnesses have prepared any written reports, please
4 provide copies as well," unquote. It answered, None.

5 Now at that point in time, that may have been
6 true, but Counsel is under continuing obligation and
7 has, in fact, up through September fulfilled that

8 obligation. No, I am not surprised that Andrews
9 Engineering is involved in this case. Yes, I am
10 surprised that three weeks before the hearing they are
11 conducting landfill operations on the new dump site.

12 HEARING OFFICER LANGHOFF: I am going to take all
13 the arguments under advisement. I am going to make a
14 ruling tomorrow. I am going to need to take a look at
15 the supplemental discovery.

16 MR. DAVIS: The one point I want to make,
17 Mr. Hearing Officer, is regardless of the scope of our
18 interrogatories and regardless of the scope of our
19 document production request and regardless of the fact
20 that Counsel may or may not call either of these two
21 named individuals, Counsel has raised the issue and has
22 indicated that no reports existed.

23 Now let's say reports do exist and let's say
24 Counsel doesn't intend to call those people. Depending

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1 upon those reports, which I would only know if they were
2 produced, I might call them. That's the way it works.
3 So the only thing I'm asking for -- and I'm not -- I'm
4 trying not to make a speech -- but I'm asking for copies
5 of whatever written reports were generated by the two

6 named and properly disclosed opinion and conclusion
7 witnesses.

8 I acknowledged Counsel's satisfaction up
9 through September of his obligation to supplement
10 discovery. He has done that. But I have not received
11 anything since.

12 HEARING OFFICER LANGHOFF: Okay. Thank you. Go
13 ahead, Mr. Benoit.

14 MR. BENOIT: The purpose of the interrogatory
15 questions that I submitted to Mr. Davis and that he
16 submitted to me regarding opinion witnesses is so that
17 someone isn't surprised by testimony that an opinion
18 witness might give.

19 The general course is if you want to find out
20 what an opinion witness is going to say after they have
21 been disclosed, you would depose those witnesses. In
22 this case Mr. -- let me back up just a little bit. At
23 the point in time when the interrogatory has been
24 answered and any report has been given to the other side

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1 and the witness has been deposed, that witness's
2 testimony -- and, again, I'm talking about opinion
3 witnesses' testimony -- is limited to what's been

4 disclosed earlier. In other words, you can't sandbag
5 your opponent and just come up with something new at the
6 last minute.

7 I can tell you right now that I do not intend
8 to call these Andrews witnesses, either one of them.
9 And so there is absolutely no prejudice to the State.
10 And that's about all I have to say.

11 HEARING OFFICER LANGHOFF: Has there been any
12 reports promulgated by Andrews Engineering?

13 MR. BENOIT: The only thing that I have seen
14 is -- I'm not positive. But I have seen some kind of
15 test result. But I can't tell you if it's a report
16 itself. I think it's something that went to a lab, you
17 know, sample to a lab and back.

18 HEARING OFFICER LANGHOFF: And that testing report
19 would have been from when they drilled two or three
20 wells that Mr. Poland just testified about?

21 MR. BENOIT: I think that's correct.

22 HEARING OFFICER LANGHOFF: I will make a ruling
23 tomorrow morning, a ruling concerning the motion to
24 compel after hearing both of your arguments.

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1 MR. DAVIS: To add to my request, I would note for

2 the record that Interrogatory Number 16 by the
3 complainant asks that Respondent Briggs identify any
4 documents, any tangible things, et cetera, that it
5 intends to rely on in support of its defense to the
6 allegations of the complaint.

7 Now this is a very standard interrogatory,
8 and it has been interpreted numerous times not to mean
9 something that might be admitted into evidence, but
10 rather to mean that something in the custody and control
11 of the other party upon which they may rely. They don't
12 have to admit it. So we have yet another interrogatory
13 that is a broadly phrased interrogatory that seeks
14 essentially for us to be advised whether any of these
15 things exist. The answer that we got was, yes.

16 The follow-up Interrogatory Number 17 was, If
17 your answer to Interrogatory Number 16 was yes, please
18 describe the materials, the dates on which it was made,
19 who has got it, et cetera, et cetera.

20 The answer was, quote, "Briggs is unable to
21 respond to this interrogatory at this time, and will
22 file a supplemental answer as pertinent information is
23 obtained."

24 Now that's Interrogatory Number 17. And the

1 supplemental answer, second supplemental answer that I
2 have referred to as being dated 6 September 2000, Briggs
3 says in answer to Number 17, "In its defense, Briggs
4 will use the documents exchanged between the parties in
5 response to discovery request."

6 It doesn't allude to any further reports. In
7 fact, these reports that Mr. Benoit has just referred to
8 as test results were obviously not generated until
9 November. So I'm not saying that something was
10 concealed back in September. What I'm saying is if
11 something has been generated since the last
12 supplementation, it needs to be produced regardless of
13 whether it would be used by the opposing party. It's
14 something that they would rely on. It's something that
15 I could use to my advantage.

16 Our contention here, Mr. Hearing Officer, is
17 that Briggs was also an operator of the new landfill.
18 And this clearly -- and I'm going to explore it with
19 more questions of Mr. Poland -- if they are out there
20 conducting operations, then to me, that is hard direct
21 evidence of their complicity.

22 MR. BENOIT: Mr. Hearing Officer --

23 MR. DAVIS: So there is prejudice. That was my
24 point.

1 HEARING OFFICER LANGHOFF: Thank you.

2 MR. BENOIT: One, the interrogatory he read, I am
3 not hiding these test results. He is not being
4 sandbagged. Two, when the State of Illinois named you
5 as Respondent, I don't care if you are Briggs, Yoho or
6 whatever, you try to figure out -- especially if it
7 looks like there is going to be some type of substantial
8 cost involved -- some way to settle the matter.

9 This characterization of trying to go out and
10 get a sample and see what, you know, the status of the
11 new landfill is as operations, I don't agree with that.
12 There is more of an attempt of fact gathering for
13 settlement reasons.

14 So I would just ask the hearing officer to
15 look carefully at what, in fact, the State requested in
16 their interrogatories when making the determination.

17 HEARING OFFICER LANGHOFF: Okay. Thank you. Do
18 you have a copy of the test results in your possession?

19 MR. BENOIT: No.

20 HEARING OFFICER LANGHOFF: Okay. Thank you.

21 MR. DAVIS: Do you mean now or in his possession
22 back home? Possession. Custody and control.

23 MR. BENOIT: I have another box of stuff. I mean,
24 I may have it in the motel. I don't have it on me right

1 now.

2 MR. DAVIS: One way to handle it is to have those
3 individuals show up tomorrow.

4 HEARING OFFICER LANGHOFF: Mr. Davis, do you have
5 any other questions for Mr. Poland?

6 MR. DAVIS: Yes, I do.

7 BY MR. DAVIS:

8 Q I have forgotten where we left off, but I do
9 remember you saying that you observed these two
10 individuals with a backhoe?

11 A Uh-huh.

12 Q How large an excavation was conducted at that
13 time you were there?

14 A Well, they had been there for about six hours
15 total. That's all I know because they were digging the
16 last hole, just covering it in when I was there. I also
17 asked them, Is this material inert? Can you take
18 samples and prove it's inert?

19 Well, we weren't hired to do that. All we
20 was after was water samples from the bottom.

21 But I don't know whether he did or not. I
22 don't know.

23 Q Did they indicate that these water samples
24 would be utilized to determine whether there was any

1 environmental impact?

2 A Yeah, but there wasn't none there.

3 Q Okay. From their waste?

4 A He says, there will never be none there
5 because, he says, this is strictly inert if anybody ever
6 asked me. This is inert, just clay, clay and ceramic.
7 And anybody in their right mind could tell you that.
8 There is nothing there.

9 Q Let me think of another question. Did they
10 have a trailer on which to carry the backhoe with them?

11 A Yeah. Pulled behind a white pickup.

12 Q And who advised you, sir, that somebody was
13 on this site?

14 A Donald Brown. The one that owns half of
15 Abingdon Salvage.

16 Q He has acquired your half interest?

17 A Yeah. I -- Loren West reneged on me and I
18 ended up selling it to Don Brown.

19 Q Did he, essentially, Mr. Brown ask you if you
20 had given anyone permission to come on the site?

21 A Yeah. He asked me. He just told me if I
22 knew about it.

23 MR. DAVIS: Thank you, Mr. Poland. I have no other
24 questions.

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1 HEARING OFFICER LANGHOFF: Mr. Yoho.

2 CROSS-EXAMINATION

3 BY MR. YOHO:

4 Q You mentioned that they had pushed these
5 pipes down to find the water. Would it be safe in
6 saying that this stuff is still loose in there and has
7 not been compacted in?

8 A No. It's solid.

9 Q You don't follow me. It's been crushed since
10 the last layer was put on there?

11 A Right. Right.

12 Q It has not been brought up to standard like
13 the other was. So, in other words, it's much looser
14 than what it will be -- or would have been when it was
15 crushed down like the other and covered with dirt?

16 A Yeah. Especially at that point, yeah.

17 Q And would it be safe to say there is no water
18 there now? There is no way any water could get there
19 when it's finished?

20 A No water. No way. That's what he said, too.

21 MR. YOHO: That's all I have.
22 HEARING OFFICER LANGHOFF: Mr. Benoit.
23 MR. BENOIT: I will reserve until I put on my case.
24 MR. DAVIS: I have thought of one further question

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1 in light of Mr. Yoho's redirect.

2 RECROSS-EXAMINATION

3 BY MR. DAVIS:

4 Q This site, this new site is not covered, is
5 it?

6 A No.

7 Q The new site is not covered?

8 A No. It's a shame to leave it like this
9 because if you cover it you still have about five foot
10 of dirt you will have to put on top of it to make it
11 level with the other.

12 Q When you say, sir, there is no way water can
13 get into the wastes, there is nothing there as a barrier
14 to keep water out?

15 A It just sits on top and vibrates.

16 MR. DAVIS: Okay. I just want the record to be
17 clear. Thank you, sir. No other questions.

18 HEARING OFFICER LANGHOFF: Okay. Thank you,

19 Mr. Poland. Is that all of your witnesses, Mr. Poland?

20 MR. POLAND: Beg pardon?

21 HEARING OFFICER LANGHOFF: Do you have any

22 additional witnesses?

23 MR. POLAND: No.

24 HEARING OFFICER LANGHOFF: Mr. Yoho, do you have

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1 any witnesses today? Do you wish to testify?

2 MR. YOHO: I wouldn't know what I said other than

3 what I already answered up here.

4 HEARING OFFICER LANGHOFF: So that's a no?

5 MR. YOHO: That's a no.

6 HEARING OFFICER LANGHOFF: Thank you.

7 (Discussion off the record.)

8 HEARING OFFICER LANGHOFF: Back on the record. We

9 are going to adjourn for today and tomorrow Briggs will

10 put on his case in chief at 9:00. Hearing is adjourned

11 for today.

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14 (Whereupon, the hearing adjourned at

15 4:35 p.m.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF PEORIA)

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4

5 CERTIFICATE OF REPORTER

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8 I, GALE G. EVERHART, CSR-RPR, Notary Public
9 in and for the County of Peoria, State of Illinois, do
10 hereby certify that the foregoing transcript, consisting
11 of pages 1 through 234, both inclusive, constitutes a
12 true and accurate transcript of the original
13 stenographic notes recorded by me of the foregoing
14 proceedings had before Hearing Officer Steven C.

15 Langhoff, in Galesburg, Illinois, on the 28th of
16 November, A.D. 2000.

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19 Dated this 6th day of December, A.D. 2000.

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GALE G. EVERHART, CSR-RPR
Illinois License No. 084-004217

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