

BEFORE THE POLLUTION CONTROL BOARD

PEOPLE OF THE STATE)
 OF ILLINOIS,)
)
 Petitioner,)
)
 v.) No. PCB 97-008
)
 CANTON INDUSTRIAL CORPORATION,)
)
 Respondent.)

Illinois Pollution Control Board hearing taken on 3-12-97.

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Reporter: Angela K. Sievers, CSR - #084-004102

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PEOPLE OF THE STATE
 OF ILLINOIS,

 Petitioner,
 v. No. PCB 97-008
 CANTON INDUSTRIAL CORPORATION,

 Respondent.

APPEARANCES:

Hearing Officer: Michael L. Wallace
 For the People: Thomas Davis, Esq.
 Michelle M. Ryan, Esq.
 For Respondent: Michael Golightly, Esq.

IT IS STIPULATED AND AGREED by and between counsel for Petitioner and counsel for Respondent that the hearing of witnesses may be taken

for purposes pursuant to and in accordance with the provisions of the Illinois Code of Civil Procedure and Supreme Court Rules pertaining to such hearings, by and on behalf of both sides, on March 12, 1997, at the Illinois Pollution Control Board, Suite 402, 600 S. Second St., Springfield, Illinois, before Angela K. Sievers, a Notary Public, that the issuance of notice is waived and that this hearing may be taken with the same force and effect as if all statutory requirements had been complied with.

Witnesses produced, sworn and examined on behalf of both sides testified and deposed as follows:

HEARING OFFICER: Pursuant to the direction of the Illinois Pollution Control Board, I now called docket PCB 97-8. This is the complaint of the People of the State of Illinois versus the Canton Industrial Corporation. This is an enforcement action under the Environmental Protection Act. May I have appearances for the record please. For the People?

MR. DAVIS: My name is Thomas Davis, I'm chief of the Environmental Bureau for the Attorney General's Office.

MS. RYAN: Michelle Ryan, I'm assistant counsel with the Illinois EPA.

MR. GOLIGHTLY: My name is Michael Golightly, I'm appearing for the respondent. And for purposes of the record, I'll point out that Canton Industrial Corporation is now known as Cyber America Corporation and they are the same corporation. So if I refer back and forth, I'm trying to get use to the name change myself. But I am here for the respondent.

HEARING OFFICER: It's now known as what?

MR. GOLIGHTLY: Cyber America Corporation spelled C-Y-B-E-R, capital A-M-E-R-I-C-A, Corporation.

HEARING OFFICER: All right. Let the record reflect there are no other appearances at today's hearing. I believe you're from the Journal Star, did you say? Let the record reflect we have a member of the public and the People have two witnesses and the Respondent has one witness present. All right. Any preliminary matters, Mr. Davis.

MR. DAVIS: Thank you, Mr. Hearing Officer. The Respondent has offered for the record a pleading entitled Respondent's Offer and Compromise. While I do not take issue with the factual statements in this pleading, I would note that it does attempt to summarize some last minute settlement negotiations and I believe that such information is not admissible into the record or an enforcement case so therefore I would object.

HEARING OFFICER: Mr. Golightly?

MR. GOLIGHTLY: The intent obviously of the offer and compromise which is placed before the Board is the offer of the respondent at the time of this hearing that it can do in an effort to respond to the State's request for enforcement and payment of some fees related to the removal of the waste tires from Canton, Illinois. That is the purpose of it. If there's any part of it that goes simply beyond stating that offer, we simply would not encourage that upon the Board and certainly not try to make a factual argument. Simply the intent is to make an offer and settlement and compromise.

HEARING OFFICER: All right, thank you. I am going to sustain Mr. Davis's objection to the settlement negotiation's issue. All right. Mr. Davis, do you wish to make an opening statement--I'm sorry, Mr. Golightly, did you have any preliminary matters?

MR. GOLIGHTLY: No, Mr. Hearing Office, I did not.

HEARING OFFICER: Opening statement, Mr. Davis?

MR. DAVIS: Thank you, Mr. Wallace. On behalf of the People we have brought this case, I would note as background for the Board and as I expect the testimony to show that there has been and is still pending

a prior Court action and it is necessary to touch upon this briefly in my opening to provide a context for the other evidence that does go more directly to the allegations in our cost recovery complaint that is the subject of today's hearing. The Canton Industrial Corporation facility in Canton, Illinois, Fulton County, received beginning in late 1992, hundreds of thousands of waste tires. This facility began as a permitted authorized facility by the Illinois EPA. There was in fact financial assurance established in February of 1993 through a trust agreement in the amount of \$10,000. The facility soon in our view outstripped the level of its authorization, that is, it began accumulating many more tires than the state regulatory authorities had anticipated or had permitted. And in October of 1993, the problems, if you will, had risen to such a level that the Illinois EPA had asked formally for the Attorney General's office to take a legal action to enjoin additional accumulation of waste tires. On October 22, 1993 with the assistance of Fulton County State's Attorney Ed Danner, a complaint was filed by our office and an immediate injunction was obtained under section 43A of the Environmental Protection Act. Now I know the Board does not deal with these types of cases since it does not have equitable powers but under 43A, the Board is well aware that the statute allows for an ex parte injunction order if there is proof of a substantial endangerment of the public, health, or environment. That initial complaint in the court alleged that hundreds of thousands of waste tires had been improperly accumulated and stored and that there was a danger of fire either accidental or through perhaps the arson of some unknown third party and the Circuit Court in Fulton County granted that injunction. Now I will note from the outset, Canton Industrial Corporation attempted to be cooperative in the court proceeding and for the record, this case was entitled People of the State of Illinois versus Canton Industrial Corporation and other parties, Fulton County Circuit Court, 93-MR-45 I believe. In fact, an agreed order was issued in February of 1994 extending the initial injunction order. This agreed order prevented further tires from being brought on-site and it also required the proper management of the tires on-site until removal could be effectuated. This was followed up by an interim consent order on March 24, 1994. At the direction of the Court, the parties had discussions regarding a plan for the removal and it was this interim consent order that memorialized that plan. In executing this consent order, Canton Industrial Corporation agreed to remove 20,000 tires per month beginning I believe in May of that year and also Canton Industrial Corporation agreed to the deposit of \$140,000 in an escrow account which was subject to forfeiture. The idea being that this escrow account would be a performance bond for the total removal plan. I would represent also that the evidence that we expect to present would show that in April of 1995, contempt proceedings were instituted in circuit court for the Canton Industrial Corporation's failure to comply with this interim consent order. And then at the end of May 1995, a contempt order was entered finding that CIC had failed to comply with the interim order and ordering the complete removal of all tires by the end of 1995. The contempt order required that the removal rate be at least 30,000 tires per month. It continued the requirement for the \$140,000 as performance bond and it set contempt sanctions of \$14,000 in the event that the tires were not completely removed by the end of December of 1995. Additionally, the Court allowed \$600 attorney's fees to the Attorney General's office. During the summer of 1995, a couple of things occurred that are directly relevant to today's proceeding. First, the Court made it clear to the parties that it was very concerned about the potential of the catastrophic fire. The Board will hear evidence that this facility is located in the former International Harvester Manufacturing Plant, a facility that was built around the turn

of the century, a huge plant right in the middle of Canton. The Board will also hear as to the manner in which the hundreds of thousands of waste tires were stored and so forth, pretty much the same evidence that the Court entertained in its proceedings. The Court made it very clear that it was concerned about the State's ability to proceed under the statutory authorization, that is, using State funds to do a cleanup action. I can represent to the Court that Mr. Purseglove will testify that the Illinois EPA took very seriously those statements of concern by the Court and on July 17, 1995, Director Gade signed what we called a section 55.3D notice directing Canton Industrial Corporation to remove the tires making findings of a threat to public health and so forth. That will be admitted into evidence we expect as People's Exhibit No. 5. That type of notice under the statute requires the respondent to respond, to come up with a plan, if any, to address the problem. And our evidence will show that on August 24, 1995, the Canton Industrial Corporation filed a response with the Illinois EPA and that this response obviously generated some discussion within the Illinois EPA as well as my office. Our evidence will show that the Illinois EPA rejected that plan, however, agreed in court during a hearing that was prompted by the respondent's motion for injunction to allow respondent to take whatever efforts it could during the pendency of the State-funded project. In fact, the Canton Industrial Corporation had attempted to obtain a Court order enjoining the Illinois EPA from proceeding with a State-funded cleanup. You will hear evidence that the Court denied that injunction request. September 29th of 1995 is when I believe a contract was executed with a contractor and on October 2, 1995, the State-funded project began. It took until early March of the following year, 1996, until this project was completed. The proof that we need to establish under this title of the act in order to obtain an order from the Pollution Control Board regarding cost recovery I believe consists of the following. That is, that the Agency issued 55.3D notice upon adequate justification, and you will hear evidence regarding the inspections conducted prior to the project being commenced. Secondly, that the State in fact incurred costs in removing the tires. Those two elements of proof are necessary for us to obtain a cost recovery award. Furthermore, as we pleaded in our complaint, there is allowable under the statute punitive damages for an unreasonable failure on the respondent's part to perform the preventative or corrective actions identified in the notice. You will hear evidence regarding the response by the company and the Agency's rejection of that response and so forth. Under the statute, punitive damages are, and this would be 55.3H, punitive damages would consist of an amount at least equal to the actual costs expended. It is also allowable that that's the bottom of the range, that the range could go up to twice the amount. Now in this instance, we have actual costs incurred by the Agency of \$326,124.09. So we are seeking in this action punitive damages in that amount. We are not seeking excessive punitive damages because of the already high amount of action expenditures but we are requesting the Board to consider punitive damages. In a nutshell that's our case. I can in my opening advise the Board that we do expect that there may be some dispute regarding the extent of actual costs but it is clear in the evidence that we uncontroverted that we have a situation where there were hundreds of thousands of waste tires improperly stored and accumulated that was posing a very serious threat to the City of Canton, its residents, their public health, and the environment. Thank you.

HEARING OFFICER: Mr. Golightly.

MR. GOLIGHTLY: Thank you. Pretty much like Mr. Davis has, I would like to go over some of the history of the situation so that the Board in reaching its decision can be fully informed on the basis upon which the respondent intended to take action and what it was it attempted to

do. As it is evident by the fact that waste tires were involved, the respondent's initial efforts were to establish a waste tire recycling center plant in the Canton-Fulton County area. Its intent was to recycle waste tires within the State of Illinois and to benefit both the State and obviously to appropriate a profit center for itself, to be able to take what most people don't want and turn it into something people do want. The intent of that effort was to produce tire chips of 1-inch size or smaller and contracts were found to obtain those before tires were ever brought onto the site. A great deal of effort was put in to try to arrange and be sure that this would be a project that could function as it was intended to by the corporate officers. As evidence by the fact we're here today, that effort failed. And while there may have been many issues that contributed to that failure, various degrees certainly are contingent today that the main reason for the result of that failure was the result of the equipment that was obtained by the company to produce those chips according to specifications, to take the tires and to reduce them down to the 1-inch size I was talking about. That dispute between the respondent and the supplier company has not been resolved. I will be asking the Board to take notice the fact that a suit has been filed, originally was filed in a different court, was dismissed there based upon jurisdiction that is now presently pending in Cook County in an effort to recover damages that have been caused to the respondent by that failure. I will also be presenting evidence that during that period of time that they attempted to begin this operation, the respondent invested and lost a substantial amount of money. I believe that the evidence we present will show that the operating statements for the respondent, the operation lost over a half a million dollars over the course of two years in attempting to establish and operate this and it's been a substantial amount of money after that in an effort to mitigate and to control the situation resulting from the accumulation of the waste tires. I will also point out at this time that prior to the entry of the injunction relief that the State was referring to, that prior to that time they received waste tires at the site. The site had seized and they had not been accepted since that time. There's been no additional accumulation once this matter was not able to operate on the basis upon which it was intended to do, that no additional tires have been moved onto the site. We would also argue that efforts to dispose of the waste tires cheaply were not successful. Trying to find other ways outside the original intent to recycle them 1-inch chips were not met and was unsuccessful and we offer that with open opposition. In our opinion from the Illinois Environmental Protection Agency Waste Tire Division, that in an effort to comply with the Court orders that Mr. Davis has informed the Board of, that there were problems getting truck permits to move tire around, there were various efforts to propose and get approvals for other methods or efforts to dispose of the tires in a more cost-effective method, none of which were approved. And that efforts were made even throughout the end to in fact based upon the communication received from contractors retained by the respondent to interfere with their ability to progress and to remove the waste tires as expeditiously as possible. It was also the respondent's position that the removal was excessively costly, it wasn't carefully controlled, and that the total amount that we have received is information from the State and I must submit there still exist in my mind some confusion to the exact amount that was removed by the State exceeds any estimate that I've heard of the amount of tires that exist on-site, both our estimates and those I have heard from the State prior to that time. We'll also present evidence that logs were kept at the site reflecting the entrance and the removal of waste tires by the State contractor that do not coincide with the reports that have been provided to us in the amount that has been billed to the State. And so we

believe that there's certainly some questions there that have been raised for the respondent. We'll also point out that limited resources has restricted the ability for the Respondent to now fund the reimbursement of the State of any level. And the payment plans and the discounts based upon our concerns have limited us. The respondent is certainly not in the position to write a check for anything close to \$326,124.09. We believe that there has not been any unreasonable action by the respondent in the case to justify the award of punitive damages, that the amount that is represented by the \$326,000 represents for sufficient penalty for any failure to timely comply with the Court's orders or entered in the State court case premised upon the efforts of the respondent and the cooperation or lack thereof by the State and its agencies. I think that's all I have at this time.

HEARING OFFICER: All right, thank you. Let's go off the record.

(An off-the-record discussion was held)

HEARING OFFICER: Back on the record. Let the record reflect we have two gentleman from I guess Canton has joined us. It's customary in a Board's procedure at the end of the hearing that if members of the public wish to make a statement for the record, the Board will accept that. So if you gentleman wish to say something at the conclusion of the hearing, let me know and we'll let you make a brief statement. All right. Mr. Davis, are you ready to proceed.

MR. DAVIS: Yes, I am. We would call Eugene Figge.

HEARING OFFICER: Mr. Figge, will you come up here and we'll use this as the witness chair.

(Witness sworn)

HEARING OFFICER: Speak clearly and loudly so the court reporter can hear you.

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

by Mr. Davis:

Q. Sir, tell us your name and spell your last name?

A. R. Eugene Figge, F-I-G-G-E.

Q. Gene, by whom are you employed?

A. The Illinois Environmental Protection Agency.

Q. And how long have you worked there?

A. Since January of 1990.

Q. Can you summarize what type of job duties you do?

A. I am a field inspector working in the used tire unit.

Q. And what part of the state do you handle?

A. The Peoria Region which consist of 14 counties including Fulton County.

Q. Did you have any sort of environmental experience or background prior to working for the Illinois EPA?

A. I went to work for the Agency right out of college and my degree's in biology with a special area of interest in environmental study.

Q. And from which school did you graduate?

A. Monmouth College.

Q. Did you receive any specialized training regarding waste tire regulations?

A. When I started with the Agency, I was in the used tire unit at that time. Then the new Part 848 regulations were being considered and I was involved in that.

Q. Would it be fair to say, Gene, that you've been working in this program since its inception?

A. Yes.

Q. And to whom do you report?

A. I report to John Tripses, the Peoria Regional manager, and Paul Purseglove, the used tire unit manager.

Q. Let me direct your attention to a facility in Canton, Illinois. First of all, what county is that?

A. Fulton.

Q. And this is within your service area I take it?

A. Correct.

Q. Canton Industrial Corporation facility is located where?

A. It is located basically right in the middle of downtown Canton in the old International Harvester building.

Q. Can you describe the size of the facility and the types of structures in order to sort of paint a picture for the Pollution Control Board?

A. Okay. The facility lays in basically a square. I would say it's approximately three blocks long on each side of the square. Inside the square consist of a number of brick buildings which have wooden supports as opposed to metal and also there is an aisleway between the buildings and then a large blacktopped area.

Q. Okay. Now you've heard me describe it as a turn-of-the-century-type structure, would you agree with that?

A. Yes.

Q. When did you first have occasion in your duties to visit or inspect the CIC facility in Canton?

A. My first inspection there was December 9, 1992.

Q. Now you've heard me describe in my opening statement that at this point in time, the facility was permitted and had financial assurance or at least would have by February '93, are those things correct?

A. Yes.

Q. Let me direct your attention to some of your inspections that we've marked as exhibits. But first of all, would it be fair to say that you've inspected the facility many, many times?

A. Yes.

Q. Okay. Let's pick out April 17, 1995 and I'll show you what I've marked as People's Exhibit No. 1. First of all, is this your report of that inspection?

A. Yes.

Q. Can you describe generally what this report as well as most of your inspection reports consist of?

A. Generally when I conduct an inspection, it consist of a checklist which summarizes any apparent violations and the address of the facility, site number, a narrative describing the conditions on-site, and a site sketch which shows the general layout of the facility, and photographs. The general location where photographs were taken are noted on the site sketch by arrows and then each arrow has a number by it which corresponds to the photograph.

Q. Would it be fair to say, Gene, that this is what we call a compliance inspection?

A. Yes.

Q. Why don't you take a look at this to determine whether it's complete. First of all, it contains the components that you've generally described. And while you're doing that, let me ask, was this prepared in the normal course of the Agency's business?

A. Actually this particular inspection was conducted to check compliance with the Court order in Fulton County Circuit Court which is number 93-MR-45. Also included in this report is a printout from Canton which outlines the status of the tire removal.

Q. Okay. Now you've heard my opening statement regarding the court proceedings and so forth, did what I relate in my argument so to speak conform to your memory as accurate?

A. Yes.

Q. So would it be fair to say that you were also attempting to determine compliance with not only the regulations and the permit as you would with any facility but also the Court order?

A. Correct.

Q. Okay. And is this exhibit complete?

A. Yes.

Q. And was it conducted and prepared in the course of your business?

A. Yes.

Q. Is it your practice as a general matter and, of course, in this specific instance to prepare the report contemporaneously with the inspection, that is, as soon after as you are able to?

A. Yes.

Q. And where you have photographs is basically when you get the photographs back?

A. Right.

MR. DAVIS: Okay. We would move this exhibit, Mr. Hearing Officer, as a business record into the record at this point.

HEARING OFFICER: Any objection?

MR. GOLIGHTLY: If I can direct just two questions to Mr. Figge on voir dire to verify.

HEARING OFFICER: All right.

Q. (by Mr. Golightly) Mr. Figge, was a copy of this ever provided to the respondent?

A. To the best of my knowledge, yes.

Q. Do you know who that would have been delivered to, if it was?

A. No, I do not.

Q. Okay. Then based upon what you're saying, it was delivered to them?

A. The standard practice of the Agency when I complete a report is that it's processed through headquarters and then headquarters conducts the appropriate mailings which always include a copy of the report.

Q. So if a copy of this was sent to anyone, you didn't do that and it would have been handled out of the home office which would be here in Springfield?

A. Correct.

Q. So you don't personally know whether or not this was ever sent, that was just standard practice?

A. No, I do not.

Q. But you have satisfied yourself that this is a copy of the original report you produced?

A. Yes.

Q. And in fact is this the original report that we're actually submitting to the Board, Mr. Figge?

A. It appears to be a copy of the original.

Q. With original photographs--or copies of the original photographs?

A. Yes.

MR. GOLIGHTLY: On that basis, I won't object to it as being an original record as Mr. Figge testified.

HEARING OFFICER: People's Exhibit No. 1 is admitted.

Q. (by Mr. Davis) Eugene, As a practical matter with regard to this case, do you have to ask permission from somebody to get site access?

A. If someone is present, I ask permission to get site access. And in the case of this particular inspection, I spoke with the security guard who went and got Mr. Hansen who granted permission to conduct an inspection.

Q. And as a practical matter with regard to this case, do you always try to talk to Mr. Hansen to make contact, discuss progress, or lack of progress etc. etc?

A. If he's present.

Q. Getting back to Exhibit 1, the report of your April 17, 1995 inspection, let me direct your attention to a series of photographs. Beginning with photograph number 5, and I'd ask that you quickly review photos 5 through 20. And first of all, do these photographs 5 through 20 truly and accurately depict what you saw that day?

A. Yes.

Q. What do they show?

A. Generally what photographs 5 through 20 show are the various locations around the facility where tires are stored. In many cases, the photographs are taken through an open door or a broken window and along the pathway which runs through the facility which I mentioned earlier. When you get to photograph number 11, those photos are taken actually inside of the building showing the accumulation of tires from an interior view. Basically so you can see more of them as opposed to looking simply through a door.

Q. Okay. Can you tell us where the tires were mostly stored, that is, the majority of the tires?

A. The majority of the tires in the facility if you refer to the site's sketch in my report, we're in the building to the northwest, when you come in the main entrance of the plant then you enter the plant from the north, so you'd be heading south.

Q. Would this building be the closest to the downtown area of Canton?

A. Yes.

Q. And how close is it to the downtown area?

A. I'd estimate six blocks.

Q. You've also heard me indicate that we believe that hundreds of thousands of tires were on-site, how many tires in your estimation were there?

A. I would say at least 500,000.

Q. And how can you come up with that estimate?

A. Where I developed my estimates from tires is from working on cleanup jobs. The measure I'd use is a 40 cubic yard roll-off box will hold roughly 400 car tires and I sort of tried to mentally take the dimensions of a 40-yard box and stack it into the facility like this and that's what I used to develop an estimate.

Q. Can you estimate how large an area, that is, how much floor space this northwest building may have had?

A. No, I cannot. It was very large.

Q. Would it be fair to say that as depicted in the photos in this exhibit that the tires were stacked in more than one level?

A. Yes, they were stacked to the rafters.

Q. And what sort of height would that be generally?

A. 25 feet.

Q. Did you also have access to some company records that may have indicated the amount of tires being received during a certain time?

A. It's not included in this report but while CIC was accepting tires, they are required by Part 848 to maintain daily tire records. Generally, CIC's records represent that there was an area of 300,000 tires at the facility.

Q. By the time of your April 17, 1995 inspection, to your knowledge was there a Court order in effect?

A. Yes.

Q. And as you've indicated, one of your purposes that day was to determine compliance with that Court order?

A. Yes.

Q. Can you tell us what sort of problems you observed on that issue?

A. Basically what the Court order required as I outlined in my narrative was that CIC remove 20,000 tires a month commencing in May of 1994 and deposit \$140,000 in an escrow account. During my inspection, I discovered as per their records that they had not begun removing tires until August 12th of 1994. Mr. Hansen gave me that information, I penciled it in on the top of this form titled CIC Tire Cleanup Status.

Q. Now within this Exhibit No. 1, that form appears directly after the site sketch?

A. Correct.

Q. Okay. On the basis of your inspection, did you later that spring in perhaps the month of May testify in Fulton County Circuit Court regarding your observation?

A. Yes.

Q. And to your knowledge, was a contempt order issued by the Judge?

A. Yes, it was.

Q. Did you have occasion, Gene, to inspect the facility later that summer?

A. Yes.

Q. Let me show you what we've marked as Exhibit No. 2, is this the report of your August 14th inspection in 1995?

A. Yes, it is.

Q. And does it appear to be complete?

A. Yes.

Q. With original photographs?

A. Yes.

Q. Was this inspection report generated in the normal course of your Agency's business regarding the compliance investigation?

A. Yes.

Q. And as in the case of all your inspection reports, was it prepared as soon as you could after that actual visit?

A. Yes.

Q. Let me direct your attention to photo number 8 and ask if this is also representative of the interior storage conditions?

A. Yes, it is.

Q. What does it show?

A. It shows car and truck tires stacked to the rafters.

Q. And does it show that truly and accurately, that is, is it a good photograph?

A. Yes.

MR. DAVIS: We would move into the record People's Number 2.

MR. GOLIGHTLY: No objection, Mr. Wallace.

HEARING OFFICER: People's Exhibit No. 2 is admitted into evidence.

Q. (by Mr. Davis) Now I've represented that the contempt order had required a removal rate of 30,000 tires per month. First of all, is this accurate with your knowledge of the court proceedings?

A. Yes.

Q. And did you observe any removal activities ongoing on August 14, 1995?

A. At this time, CIC had proposed bailing tires and shipping them to Missouri to be casting concrete and used as building blocks for lack of a better description.

Q. Let me interrupt you, Gene. Did this proposal arise during the court proceedings?

A. Yes.

Q. Okay. And did it later form the basis of the company's formal response to the Agency's removal notice?

A. Yes.

Q. Okay. Was one of your purposes then to re-evaluate the effectiveness of that plan?

A. Correct.

Q. To observe it in operation?

A. Yes.

Q. Can you in as comprehensive manner as you can tell us your understanding of what they exactly intended to do, how they intended to do it, and the end uses if you will of the bail tires?

A. Okay. I actually have photographs of the bailing operations in this report, it would be photographs 1 through 6. Basically what the plan was, they had a hydraulic bailing apparatus which they would put tires in, they were then compressed, and metal strapping was used to secure the tires. And at the time of my inspection, I believe, let me look through my report, but I believe they were producing two bails an hour. The ultimate destination of these bails as I understood it at that time was they were to go to Hannibal, Missouri where they would be casting concrete and used to construct flood walls and like storage bins for aggregate material. The bailer was exceedingly slow. They get as I understand it approximately 75 truck tires in a bail or approximately, now this is not from my report, but if I recall correctly, 135 car tires, producing two bails an hour. We're talking 150 truck tires an hour or whatever 135 times 2 is, I can't do it in my head, around 270 car tires in an hour. When you're talking about 500,000 tires, it'll take a long time to get them all out using that methodology.

Q. And what was the Court deadline for removal of all tires in the Canton facility?

A. By the end of the year.

Q. 1995?

A. Correct.

Q. Now let me represent that we intend to have Mr. Purselove address some of these issues but with that as background, are you aware that the State did fund a removal project and go ahead and perceive at that?

A. Yes.

Q. When did that begin?

A. On October 2nd.

Q. And did you have occasion over the course of the next several months to visit the facility to monitor the progress of the project?

A. Part of my responsibility was monitoring the ongoing cleanup at the facility.

Q. Okay. Let me back up and ask you, prior to the initiation of that project in October of 1995 and concurrently as well as prior to the Agency's issuance of the removal notice of July of 1995, did you have occasion to come to any conclusion or opinion based upon your observations and your expertise and so forth regarding any hazard posed by the tires of the Canton facility?

A. If a fire started at the Canton facility at the time it was full of tires, there is no way it would be put out. The tires being inside a building make access extremely difficult not to mention you're talking about a building with wooden as opposed to metal supports which would burn. The curious thing about car tires is you cannot pour enough water on them to put them out. The only way you're going to stop the fire is move the tires that are not burning and with them in a building like they were, it becomes exceedingly difficult.

Q. Can you assert--rather let me ask, do you have an opinion, yes or no, as to the degree of hazard?

A. From the smoke --

MR. GOLIGHTLY: I'm going to object, it's nonresponsive. You asked him to answer yes or no. Get that in the record and then he can fill it in.

MR. DAVIS: I would concur with that objection, let me rephrase the question.

Q. (by Mr. Davis) Gene, first of all, yes or no, do you have an opinion as to the level or degree of hazard?

A. Yes.

Q. Okay. What is that opinion and explain as fully as you can the basis you have for that opinion?

A. When tires combust, you have basically two problems. One is the smoke which is quite noxious. The effect of the smoke depends on wind direction but in the case of the facility in downtown Canton, if a large tire fire developed, you'd probably have to do considerable evacuations in town. The second problem with tire fires is that when tires burn, they melt as much as burn and they give off oily sludgy runoff residue which has hazardous constituents. And in the case of this facility and most of that runoff would probably have gone into the storm sewers and overload sewage treatment systems, contaminate soil, things of that nature.

Q. And as to the degree of hazard perhaps on a scale of 1 to 10, 10 being the highest, could you pick a number that would be explainable?

A. Yes.

Q. Okay. What number would you pick and explain more fully if you need to?

A. I would pick about an 8. The main reason behind that again being it's located right in the middle of a populated area. The other reason being sheer volume of tires. The third reason being the relatively small size of a village like Canton, they simply do not have the resources that a larger city would have to fight a fire at this magnitude.

Q. Let me direct your attention please to Exhibit 3 for the People, would you agree that this is another inspection report?

A. Yes.

Q. Okay. Tell us when you inspected and the purposes that you hope to achieve in that inspection?

A. This inspection report is done in memo form, was completed on March 7, 1996. Generally what I was doing at this day was verifying that in fact the cleanup was completed. What it includes, it's main part probably is a flow chart which I completed over the course of the cleanup generally documenting the status of the operation, number of laborers on-site, equipment, things of that nature.

Q. And this would be the second page of Exhibit 3?

A. Correct.

Q. When you refer to workers, whose workers are you talking about?

A. Our contractor was Tri-Rinse out of St. Louis, Missouri. They had individuals on-site who directly worked for Tri-Rinse and then they also retained laborers from the local community.

Q. Would you agree that this report that is People's Exhibit 3 differs from your previous reports in that it intends to summarize activity between October of '95 and March of '96?

A. Yes.

Q. And does it also contain photographs that truly and accurately depict what you observed on designated or specified dates in that time frame?

A. Yes.

Q. Let me direct your attention to photos 35, 39, and 40, and we'll take each of those in turn. First of all, does 35 accurately and truly depict those conditions?

A. Yes.

Q. What are those conditions?

A. Basically, the tires in the building to the northwest of the property, which we spoke of earlier. On the west side of the building, they were closer to Canton, the streets in Canton, than they were to the alleyway through the facility. So with cooperation from the city, we essentially closed that street and set up operations outside. The tires from the west side of the building were moved over next to the street where we had one of the two shredders we used during this project setup. The tires were shred on the street and then the shreds from the tires were stockpiled on an adjacent parking lot which was city owned and from there, the trucking firm which handled the transportation of the tires loaded the shreds and transported them.

Q. So what you've summarized is basically photos 36 and 7, would you agree?

A. Yes. Actually the ones following show that the tires are being moved from the west side of the building to the street.

Q. Okay. Let me ask you, however, regarding Exhibit 3, photo 35, what exactly does that show?

A. That shows tires which are stacked against the fence. Actually, I think we moved those tires there so they could be loaded into the shredder.

Q. So these conditions were not created in your view by the company?

A. No, they were not.

Q. All right. But 36 and 7 show the Third Avenue part of the project that you just testified about?

A. Yes.

Q. Okay. Let me ask whether 39 and 40 truly and accurately depict what you saw on the designated dates?

A. They do.

Q. And for the record, this would be October 23, 95?

A. Correct.

Q. Are these rather representative of the storage conditions created by the company?

A. Actually, it's a little better because it's after we started moving tires. So prior to the cleanup, there would be more tires in the area.

Q. Do these photographs depict so to speak the logistical challenges faced by the contractor?

A. Yes.

Q. We would move--well let me ask as foundation, was this report generated as well in the normal course of your Agency's business contemporaneously with your final visit?

A. Yes.

MR. DAVIS: We would move the admission of People's Number 3.

MR. GOLIGHTLY: No objection.

HEARING OFFICER: People's Exhibit No. 3 is admitted.

MR. DAVIS: We have no other questions at this time of this witness.

HEARING OFFICER: Cross-examination?

MR. GOLIGHTLY: Thank you.

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

by Mr. Golightly:

Q. Mr. Figge, first let's turn to People's Exhibit No. 1 and I'd like to refer to a couple of things you testified to with regard to those items. You on a couple of occasions referred to the number of tires that were present. Let's look specifically at photographs number 11 and 12, page 6 I believe in the exhibit.

A. Yes.

Q. Okay. And it's your testimony you took those pictures on April the 17th and they truly and accurately reflect the condition of the tires at the time?

A. Yes.

Q. Did I further hear you testify that the tires are stacked to the rafters in this building?

A. Yes.

Q. Do you know what the height of the ceiling and rafters are in those pictures, do you have an estimate of that?

A. I estimated earlier 25 feet but that's strictly an estimate.

Q. Okay. So is it also your testimony then that these tires reflect--or that these pictures reflect tire piles that are 25 feet high?

A. Not those pictures.

Q. So those pictures aren't in the exhibit?

A. Yes, they are.

Q. So anything that would reflect tires actually piled to the rafters anywhere in the building are not included in the exhibits that have been presented?

A. I believe there are photos in this exhibit which will show tires stacked to the rafters.

Q. Would it be fair then--and if you can identify that for me, that would be fine--but can we characterize it then that there are places that it's your testimony that there are tires stacked 25 feet high?

A. Yes.

Q. Can you identify where that might be in any of the pictures in either Exhibits 1, 2, or 3.

A. Okay. In Exhibit 1, picture number 14.

Q. Okay, 14. Let me turn to that so I'm with you.

A. If you will notice in roughly the center of the photograph, there is a column with appears to be a fuse box on it. If you look to the left of the column and to the rear of the picture, you can see where the pile of tires peaks and it appears from this photograph that it is at the rafters.

Q. May I see the original photograph, the copies regrettably don't. Okay. Based upon your personal observation and memory of taking the picture, what would be the distance between the top of that pile and the roof there? Evidently the tires aren't actually touching the roof in these pictures, are they, or the rafter more precisely?

A. I feel that they are.

Q. Do you have any recollection of what the approximate height is of the fuse box that you referred to in photograph 14?

A. Approximately my face.

Q. And you're how tall?

A. 5 foot 9.

Q. So we're talking about approximately 5 foot 7. That the tires start at that point then I'm going to estimate at a depth of 1 or 2 feet, and it is then that your testimony is to about 25 feet?

A. Yes.

Q. How many places are there and if there are other pictures, does the tire pile actually start at a low level and go to a point that it actually touches the rafters?

A. In just this exhibit or all of them?

Q. This is the only evidence I've got based upon what you've been presenting.

A. I meant --

Q. Either one of them. If you've got pictures that show that, I'd like to know how extensive we are talking about, that they actually went to the rafters.

A. Okay. Again on Exhibit 1, photograph number 16, there is a small white structure to the left-hand side of the photograph. To the right, there is another column. To the right of the column if you look back further, there is a second column set further back in the picture. And if you can look at the peak of the tire pile, there is a metal, I refer to it as rafter for lack of a better description, and I would note that actually part of the tire accumulation obscures this metal object.

Q. Thank you for handing me the exhibit. Is it your testimony then that the depth of the tire pile exceeds the white structure that's in front of the picture? From the picture, it appears it does not, I'm just asking if that's a point of reference that the tire pile doesn't exceed the height of that building or structure, whatever it maybe.

A. From the picture, it appears not to.

Q. Okay. So that again would be a place where tires do not reach the rafters. Even if we say that structure is 12 feet high, obviously all the piles in that area are less than that?

A. Correct.

Q. Okay. Do we have any other evidence that would substantiate your representation that tire piles routinely reached the rafters in this case?

A. Photograph 17, immediately following the last one. If you refer back to the site sketch, it will show that photo 17 was taken just south of photograph number 16. So essentially I am standing next to the white structure at the time the photograph is taken. The white structure doesn't appear in the picture but I am right next to it taking the photograph, to the right of it.

Q. So these are pictures that would be partially visible in photograph number 16, we've just gone farther south and we continued to take pictures?

A. Yeah. Where the column is in photograph 16, I'm pretty much standing next to it.

Q. Okay. So again these would be the same tires we discussed in 16, all lower in height than the structure that's in picture 16?

A. If you look to the right in photograph 17, there is a blue metal object which appears to be another rafter and the tires are stacked up to it.

Q. In fact, the blue metal structure you're referring to appears to be behind them. Are you testifying that you know that those tires touched that structure?

A. From the photograph, I cannot tell.

Q. Okay. Is that it or do we need --

A. Would you like me to look at Exhibit 2?

Q. If you would like to review Exhibit 2 or 3 if you believe there are pictures that would reflect that.

A. Photograph number 8, Exhibit 2, if you'll look dead center in the photograph, tires are again up to the metal objects which I'm calling rafters, that might not be entirely accurate.

Q. Okay. Do you have any independent recollection of piles of tires other than what you've shown us in the photographs actually touching the roof structure in any of these buildings?

A. Yes.

Q. And other than what you've presented in the way of these photographs, if that exist, they are outside of these photographs and it is strictly from your memory?

A. Yes.

Q. What percentage of the tire piles then would have exhibited that characteristic of actually piled to the 20 or 25-foot ceiling?

A. 70 percent.

Q. 70 percent? Then these pictures don't fairly and accurately represent that because I'm going to disagree based upon these pictures

and looking and saying 70 percent of these piles. I mean, they obviously all apparently start at some level. Even in the areas they go up, they build up to that level. Would that be a fair characterization?

A. No.

Q. So every place we've got tires stacked 25 feet high and you have to start pulling them out from that level?

A. As you established earlier, there is a slope on a tire pile. When I am taking a photograph, I am obviously standing at the edge of the tire pile and unless I scaled the site of it, which wouldn't be very safe, and therefore it's going to appear due to the slope that a smaller percentage of the tire pile is in fact as high as it is. Because again you're talking about photographs taken strictly from the edge.

Q. As I understand your testimony, the greatest danger these tires presented was one of fire; is that correct?

A. Yes.

Q. Because they were inside, they didn't present the dangers that may have been typical of waste tires of collecting water and other items; is that also correct?

A. The disrepair of the roof of the facility was a concern for water accumulation but I feel it's a fire risk.

Q. As far as your evaluation of the danger, I believe at one point you characterized it as an 8, is that primarily based upon the fire dangers you perceived?

A. Yes.

Q. Okay. In your inspections that you've presented into evidence, is the danger of fire discussed in either one of those?

A. My inspections --

Q. I understand you may have other problems, I'm just asking if it's mentioned in these?

A. No.

Q. Okay. Did you note in your inspections any particular fire hazard that was present at the site that could have created a fire at the site? I'll put it that way.

A. Yes. If you'll refer specifically to the regulations Part 848.202C, let me find it. It's for facilities with 500 or more tires, they must maintain a contingency plan. Again, that is a fire consideration. Separation from ignition sources by 250 feet. Again, that's a fire consideration. 848.202B has separation distances from the sides of the building. Again, that is a fire consideration. And I also have a concern about security of the facility which is addressed in the regulations and also there was previously a fire in the power plant at CIC which obviously is a concern.

Q. Do you know when this fire took place?

A. It's not included in these inspection reports but if I could go to my file, I could tell you the date.

Q. Is it something you became aware of during the time the tires were present?

A. Yes. Actually, I read about it in the paper.

Q. Attached as part of Exhibit No. 2 is a copy of the July report for Canton Industrial Corporation which included the agreement for services with a corporation known as Echo Systems; is that correct?

A. Correct.

Q. Did you review that contract?

A. Yes.

Q. And did it provide for a procedure to remove the tires from the site in a timely fashion?

A. I did not deem that it would accomplish removal in a timely fashion.

Q. And that's based upon you actually going and observing the work progress as opposed to what's on the face of the contract?

A. Correct.

Q. And my question was, do you have an opinion as to whether or not the contract itself provided for the removal of the tires in a timely fashion?

A. The contract did.

Q. Okay. Do you have an opinion as to the feasibility of using those sort of bailed tires in concrete blocks for the purposes that were identified for you?

A. Yes, I have an opinion.

Q. And that opinion would be?

A. That it's not feasible.

Q. And that's based upon you've actually seen it tried and failed or you just have never seen it work to your knowledge?

A. There were bails taken to Hannibal, several of the bails broke when they were unloaded. To my knowledge, no E-ko (phonetically) blocks were ever made in Hannibal.

Q. Pardon me for interrupting if you're not finished yet but you appear to be addressing the specifics of this program, how it worked. I was asking the feasibility of doing these things, do you have any actual knowledge of whether or not this type of use of waste tires is feasible?

A. Based upon research of a similar project?

Q. If that's the basis of your opinion.

A. I've never seen a similar project.

Q. Okay. So you have no actual experience with any type of projects to this nature?

A. No, I do not.

Q. And you earlier testified your estimate of the number of tires located was 500,000; is that correct?

A. Correct.

Q. And that's consistent through your reports as reflected on Exhibits 1 and 2?

A. Yes.

Q. And so that I'm clear, does 500,000 refer to what I've heard referred to as PTE or passenger tire equivalent?

A. It was basically an estimate. It was a guess of a number, the number of whole tires in the facility. How many pennies are in a jar.

Q. Okay. So is there any distinction in that number between car tires, truck tires, or any other tires?

A. No.

Q. And do you have an opinion based upon your experience with the waste tire division of the number of pounds that 500,000 tires represents or tons, if that's easier for the way you do it.

A. Take 25 pounds times 500,000.

Q. Could we agree that that would work out to 12,500 pounds?

A. An estimate, yes.

HEARING OFFICER: I'm sorry?

Q. (by Mr. Golightly) 12,500,000 pounds. And that would roughly translate into 6,250 tons of tires. 12,500,000 pounds divided by 2,000 would result in 6,250.

A. Assuming you punched the number in correctly.

Q. If you'd like to do those number yourself, I invite you to do so.

A. You want tons?

Q. Appears to be the way ultimately.

HEARING OFFICER: Go ahead, those numbers are correct.

Q. (by Mr. Golightly) Were you the person responsible for the day-to-day--or was there anyone else responsible for the day-to-day supervision of the State contractor for the removal of these tires?

A. I was primarily responsible but Paul Purseglove was also involved.

Q. Then in Exhibit No. 3, there's a schedule that makes up the second page of that that has dates, personnel present, equipment present, actions taken, is that a result of your visits on those dates?

A. Yes.

Q. And are those all the visits that you made or are there ones when you did not write this information down?

A. I believe there are some days omitted because essentially the same thing was happening as the previous day.

Q. Okay. So your testimony, there are additional visits to those that are listed there?

A. Maybe one or two but most of them are there.

Q. This is by far the bulk of them?

A. Yes.

Q. So you don't have any knowledge of what went on necessarily then on a day-to-day basis, that was left in the hands of the State contractor?

A. To some extent.

Q. Okay. How long was the operation conducted on the outside of the plant, on the I believe it's Third Avenue?

A. Okay. The big shredder was moved to Third Avenue October 25, 1995. Prior to that time, they had in fact been moving tires over to accessible at that point. And I missed when the big shredder was moved back inside the facility. I missed when we reopened the street.

Q. You don't know how long then they actually operated outside of the plant boundaries?

A. I have an estimate.

Q. Okay. Do you have--is that estimate somewhat close to moved outside on October the 25th and then that they moved back in sometime just after the first of November?

A. Actually, I think it was more towards the latter part of November.

Q. Okay.

A. Are you talking about the shredder or hauling tires from outside?

Q. Well, that they moved the shredder back into the plant so that any tires that were handled perhaps were moved to the shredder but then it was located back inside the plant.

A. No. The tires that were brought to the shredder were shred. The shreds were accumulated on a parking lot owned by the City of Canton. Shreds were trucked from that parking lot after the shredder had in fact been moved because there was a stockpile.

Q. Okay. So one of the things this contractor did was created a stockpile of shredded tires out on the public street?

A. Correct.

Q. Okay.

A. Well, parking lot.

Q. Parking lot, excuse me. And then those were later trucked inside the site for some purpose?

A. No, they were never trucked inside of the site.

Q. Okay. But you don't know what period of time that covers necessarily?

A. Roughly from six weeks.

Q. That they were trucking the shreds from outside the site on that side of the building?

A. Yes.

Q. Was there ever a punitive time when Tri-Rinse was not operating at all on this site?

A. Yes.

Q. And do you know the purpose for that cessation of operations?

A. No, I do not.

Q. Okay. I note that your report has a visit on 11/29/95 says no equipment in operations, actions, no work and that the next time that there's an indication here of what you did is 12/26 and you show that three men are there, is there a reason that you went almost a month for making such notations?

A. It appears they did not work during that month.

MR. GOLIGHTLY: No further questions.

HEARING OFFICER: Re-direct?

MR. DAVIS: Yes, thank you.

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

by Mr. Davis:

Q. Mr. Figge, counsel has raised issues that I did not touch on. I focused on fire hazard. Let me try to address some of those other issues. I believe you mentioned that there are operational requirements imposed by the regulation and that this regulation is section 848.202?

A. Correct.

Q. Let me hand you a copy of the regulations with that section opened and ask as a general matter does 848.202 impose requirements according to how many tires are being handled?

A. Correct.

Q. And is it an accumulative section, that is, all the requirements are at issue if you have a certain amount of tires?

A. Correct. If you have over 10,000 tires they all apply.

Q. Can we agree that at least 10,000 tires were on this site?

A. Yes.

Q. Go point by point, review the regulation if you would. When you come to a regulatory provision that you feel has been violated, I would ask that you first read that provision and then explain why you think it was violated.

A. Okay.

MR. GOLIGHTLY: Your Honor, we object going over anything that's already included in People's Exhibit 1 and 2 which would be his previous statements of what he found to be violations and are already in the record. I don't see any point of going back through this unless there's something more specific that you're seeking.

MR. DAVIS: Well, my response would be I'm trying to address these matters generally without regard to specific inspections with the hope that it might be a more efficient inquiry. I'm open to any other suggestion but I believe the inquiry is pertinent. It's certainly something that was addressed on cross to a certain extent. Let me attempt to accommodate by withdrawing that inquiry and ask this. We focused on the inside, Gene, let's now focus on the outside. Did you observe any problems, that is, regulatory violations regarding tires on the outside of the buildings?

A. Yes, I did.

Q. Did any of these problems pose a threat to the public health or environment?

A. Yes.

Q. Tell us point by point what the problem is and how it posed a threat?

A. Obviously tires outside are going to be accumulating water and as addressed under 848.202B4 and 5 and that specifically 4 says tires should be drained of water on the day of generation or receipt and 5 says that within 14 days of the accumulation, they must be prevented from holding water. That's a concern for mosquito breeding, infector organisms. The tires outside were holding water.

Q. Okay. Now as to the manner of storage of whole tires, would you agree that in many instances, tires were placed directly against the buildings?

A. Yes, they were.

Q. Is this a violation of any regulatory provision?

A. Yes. 848.202E2 and that is essentially a regulation as far as the concern for fire goes. Burning tires up against the side of the building obviously is going to act as an accelerant for lack of a better term.

Q. Let me show you Exhibit No. 1 and direct your attention to photograph number 19, does this truly and accurately depict the place where the tires were against the building?

A. In that particular area, it does.

Q. And what is the extent of that area from the foreground of the photo to the background?

A. Approximately 100 feet long and if you look at the tire pile, I'd say 10 foot wide and the center of it is probably hit high to me.

Q. And as to photo 20, first of all, does it truly and accurately depict what you saw that day?

A. Yes, it does.

Q. And what does it show?

A. That is a large door on the building where semis at one time had been backed into a loading dock area which is now covered and the tires are spilling out of the door and stacked directly against the side of the building.

Q. Would these conditions pose the threat of a fire that might start outside going into the building?

A. Yes, they would.

Q. Did you observe on the outside of these buildings any other violations or public health or environmental threats?

A. Concerning the storage of the whole tires?

Q. Focusing for the moment on whole tires.

A. Since the regulation that you said earlier are accumulative, you go into section 848.202C and part of that is Part 3, 848--wrong one, sorry, let me find the right number here. There it is, 848.202C5. And that is separation distance from buildings, aisle space requirements, things of that nature essentially increase with the larger tire storage unit. Since we pretty much agree that there are more than 500 tires here, the tires would have to be separated more than 25 feet from the building according to the dimensions of the tire storage unit and there is a table included in the regulations there.

Q. Are there tire storage unit height requirements or prohibitions if you will?

A. Yes. Also in 848.202C along with the rough dimensions of the tire storage unit and the appropriate separation distance, there is a limit on how big a tire storage unit can be under 848.202C4, which basically says it can be no more than 20 feet high by 250 feet wide by 250 feet long.

Q. And did you observe a violation indoors or outdoors of this requirement?

A. I have to look at the reports, I don't believe I actually cited that one. Let me check. I did not cite that one.

Q. Okay. And finally with regard to whole tires, were there any other serious problems indoors or out?

A. Obviously, the condition of the roof.

Q. I think you've touched on that in cross. Now let's shift our focus to the shredded material. First of all, was there any?

A. Yes.

Q. Was it of the proper sizes?

A. No.

Q. And can you tell us where it was and how much of it there was?

A. It is actually noted on my site sketch in the exhibits.

Q. Let's look at Exhibit 1 from April of '95.

A. It is noted pile of tire chips to the southeast side of the plant directly at the end of the corridor, driveway, whatever you want to call it that runs through the facility?

Q. Outside?

A. Outside.

Q. Did this situation impose any public health or environmental threats?

A. The material's not going to hold water because it's shred but it will burn a lot better than a whole tire because it's more compacted and so forth.

Q. And finally, did you ever observe any mosquitoes or other infectors that are a source of concern under the regulations?

A. I did not ever sample for mosquitoes myself, however, I am aware that the Illinois Department of Public Health did some sampling.

Q. And would it be fair to say that the primary concern was basically just the fire hazard?

A. Yes.

Q. And that it was severe?

A. Yes.

MR. DAVIS: Okay. Thank you, sir, I have no other questions.

HEARING OFFICER: Re-cross?

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

by Mr. Golightly:

Q. Just one or two questions. If there are tires outside, can you use insecticides to treat them, is that an acceptable way to control the infector problem?

A. There are provisions.

Q. Are you aware that any effort was made by the respondent to treat the tires with insecticides?

A. They were treated one time I believe.

Q. So you're aware of at least one time?

A. Yes.

MR. GOLIGHTLY: I have no further questions.

HEARING OFFICER: Mr. Figge, you had a couple of spellings. There was a Tripses, John Tripses or something, could you spell that please?

THE WITNESS: T-R-I-P-S-E-S.

HEARING OFFICER: And then the construction company Tri-Rinse?

THE WITNESS: T-R-I, hyphen, R-I-N-S-E.

HEARING OFFICER: And from the Tri-Rinse contractor, where were the shredded tires transported?

THE WITNESS: They were transported to several places actually. Part of the tires went to Union Electric and also part of the tires went to Tri-Rinse's home base where they could process them further and I believe those wound up at Union Electric, too. And I also think some went to ADM.

HEARING OFFICER: All right. And photos in Exhibit 2 where you were talking about the bails.

THE WITNESS: Yeah.

HEARING OFFICER: Looking at photograph number 1, are those the bails you were talking about?

THE WITNESS: Part of them.

HEARING OFFICER: All right. In the foreground or the middle ground of the photo, that's a complete bail?

THE WITNESS: Yes.

HEARING OFFICER: Now how many tires did you say were in that bail?

THE WITNESS: In the case of truck tires, I believe they had 75. It's tough to tell from the photos because some of them get smashed really small so I might be overestimating.

HEARING OFFICER: You turned to photo number 4, each banded set of tires is what you've described as a bail?

THE WITNESS: Yes.

HEARING OFFICER: All right. And those bails were approximately 8, 10 feet long or longer?

THE WITNESS: I'd say 8 feet long.

HEARING OFFICER: All right. Thank you, Mr. Figge, you may step down.

MR. DAVIS: We would call Paul Purseglove.

(Witness sworn)

HEARING OFFICER: Thank you, you may proceed.

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

by Mr. Davis:

Q. Thank you. Sir, your name and the spelling of your last name.

A. Paul Purseglove, P-U-R-S-E-G-L-O-V-E.

Q. And by whom are you employed?

A. Illinois Environmental Protection Agency Bureau of Land.

Q. Since when?

A. I've worked at the EPA for 16 years.

Q. And focusing on your current assignment, first of all, what is it and how long have you been in that position?

A. I am currently the manager of the used tire unit, I have been so for seven years.

Q. Now we understand that under the Environmental Protection Act, there is a State fund that receives revenues from the sale of new tires; is this correct?

A. That's correct.

Q. Can you explain a little bit about the funding and the type of program that you've managed and its objectives?

A. Our program can be described perhaps as really two ways or in two main efforts. First, in the traditional sense of the EPA, we regulate the generators, the transporters, processors, and end users of scrap tires. The other half of our program is that of a cleanup program where we clean up tire dumps around the state.

Q. Focusing on that cleanup component of your program, Paul, let me ask if first of all you're familiar with the Canton Industrial Corporation facility in Canton, Illinois?

A. Yes, I am.

Q. When did you first become directly involved in that situation?

A. I met with Mr. Alan Hansen probably in 1992 when he first came to the state and expressed interest in starting a tire recycling business.

Q. Now I've stated in my opening statement that at the initial part of the time period we're concerned with, the Canton Industrial Corporation was permitted and authorized to operate; is this accurate?

A. That's correct.

Q. To what extent were they permitted to operate?

A. They had registered as a storage and processing facility. Their plans included several things that perhaps the most important to us was a facility where tires could be brought in, usable tires could be recycled as recapped truck tires, perhaps strap tires would be shredded, processed into a tire drive fuel which would then be marketed to at that time an unknown third party who would use it as a supplemental fuel for their power plant. The use of tires as supplemental fuel is widely spread across the country and the world.

Q. And in fact under the statutes at issue, is it part of the Agency's mission to encourage these private efforts?

A. Absolutely.

Q. And did you attempt to do that in the case of Canton Industrial Corporation?

A. Absolutely. My responsibility is to manage the 12 million tires that are generated in the state and find markets for those tires as well as clean up the millions of tires that have been dumped across the state.

Q. Now I mentioned the State fund, can you touch on that very briefly about how that works, how the expenditures are made, who gets hired, on what basis, and how money is obtained for reimbursement.

A. Yes. The legislature established a program to fund the tire program specifically. And in Illinois when a tire is sold at retail, a \$1 user fee is charged. That user fee is deposited into the used tire management fund. The first 2 million dollars of proceeds into that fund are distributed among four or five agencies. After 2 million dollars, it is split primarily between EPA for our regulatory and cleanup program and the other split goes to the Department of Commerce and Community Affairs which does grants and loan programs for stimulating markets for used tires.

Q. Does this fund provide a source of funding for State cleanups?

A. Yes. The total fund receipts are 6 to 7 million dollars a year.

Q. And do you manage these State cleanups?

A. Yes, I do.

Q. In the case of Canton Industrial, we're going to be focusing on that later in your testimony but as a general matter, how do you choose contractors and on what basis do you allow those contracts?

A. The State procures contractors. We request proposals. We solicit bids for cleanup contractors. We have done that several times in the course of my employment there. We currently have a handful of contractors on retainer. We task cleanup jobs based on a number of factors, cost and ability to perform and ultimate use of the material.

Q. And where do the tires go once the State contractor, as a general matter once again, becomes involved?

A. It depends on the location of the site and transportation is certainly a big portion of any of these cleanup costs. We look to minimize the cost as best we can. It is fair to say that most of the material that comes from our cleanups has historically gone to Archer Daniels Midland in Decatur which uses it as a supplemental fuel.

Q. Let's drop that inquiry for a moment and return more specifically regarding Canton Industrial. Getting back to your direct involvement with this facility, were you also involved in the various court proceedings that we've had?

A. Yes, I was.

Q. And for the record, is it true to your knowledge that an immediate injunction was entered in October of 1993?

A. Yes.

Q. Was this at the request of the Illinois EPA?

A. Yes.

Q. And on what basis was this request made?

A. It became apparent by October or actually even a little sooner than that that CIC did not have a market for their materials. They had no equipment on-site to process the tires. They had a shredder which was subsequently removed and however up until then, even tires continued to come onto the property and it got to the point where so many tires had been received that they were even spilling out of the buildings and being stacked outside. These buildings are virtually

acres under roof and the buildings had been filled almost to the maximum capacity and the tires were spilling out into the open.

Q. We should make it clear that you've been to the Canton facility several times?

A. Yes.

Q. Getting back to the receipt of tires by CIC, do you have any knowledge under what terms this occurred?

A. CIC had contracted with a number of people who were either commercially hauling tires or who themselves were generating tires and I should say that in my opinion, they were offering tire disposal at a low market cost and that's not at all uncommon for new companies to try to undercut cost to acquire market share.

Q. Well basically CIC was being paid to receive tires?

A. CIC was paid to receive tires.

Q. When a new tire is sold to a consumer, who imposes the \$1 fee that you mentioned?

A. The retailer must collect it from the purchaser.

Q. Is the retailer required to take the used tire that the new tire replaces?

A. Right. The law requires you as a retailer accept used tires in exchange for the purchase of a new one.

Q. And in Canton Industrial's situation as I understand your testimony thus far, there was some relationship with numerous retailers as well as other people?

A. Virtually hundreds of retailers and dozen transporters had business arrangements, perhaps contracts, where they could use the services of CIC to dispose of their tires.

Q. Now within the Agency files that I've reviewed and been provided copies of, I've seen customer lists, have you seen those lists?

A. Yes, I have.

Q. And is that part of the basis for your testimony in this issue?

A. Yes, it is.

Q. Okay. We've also heard the estimation of approximately 500,000 tires being on-site during 1993, 1994, 1995. Do you agree with this estimation?

A. Yes, I do.

Q. Getting back to the court proceedings, would you also agree that you were involved with the company and its representatives in attempting to come up with a Court sanction plan for removal?

A. Yes.

Q. And that this as a general matter would have required a certain amount of tires to be removed on a per month basis?

A. Yes.

Q. Would it be fair to say, Paul, that the company didn't remove some tires during the Court's sanction plan?

A. I don't think that any tires were ever removed by CIC prior to the Agency starting the cleanup.

Q. Okay. And would you agree that the Circuit Court of Fulton County did enter a contempt order at one point in time?

A. Yes.

Q. Let's now focus on that point in time, being May and the summer of 1995. Did you attend the court hearing in which Judge Wilhelm stated his concerns regarding the fire hazard?

A. Yes, I was.

Q. Were you in attendance during that proceeding when the chief of the Canton Fire Department testified?

A. Yes, I was.

Q. Without getting into any specifics because that would be hearsay, would it be fair to say that the chief of the fire department expressed concerns regarding the fire hazard?

A. Yes.

Q. And that the Court apparently took this into consideration?

A. Yes.

Q. Did you yourself provide testimony regarding the fire hazard?

A. I don't recall.

Q. Okay. Did the Court express an interest in the State of Illinois coming to the rescue so to speak?

A. Yes. Through the proceedings, the Court became aware of the Agency's authority and programs to clean up these tires and to order the cleanup. And if that order is not followed and the State can effect the removal itself, the Court stressed very strongly that the Agency use its authority and order this cleanup.

Q. The Court did not order the EPA to do a cleanup?

A. In so many words he did not order us to do it. He stressed very strongly that if the State had all this authority then it ought to use it to get this cleanup done.

Q. And did the State perceive with that?

A. Yes, we did.

Q. What involvement if any did you have in the issuance of what we called the section 55.3D notice?

A. I'm responsible for that.

Q. And let me hand you Exhibit No. 4 for the People, is this a copy of the notice that was issued by the Agency?

A. Yes, it is.

Q. And is it an accurate and complete copy?

A. Yes.

Q. Signed by whom?

A. Our director, Mary Gade.

Q. And did you have occasion to brief her directly or indirectly on this case?

A. My briefs go to the Bureau chief and the Bureau people in the divisional land.

Q. Is it your understanding, Paul, that on the basis of the input and recommendations, that you and your program provided that the director of the EPA issue this notice?

A. Yes.

Q. The notice refers, and I'll be specific here, page 2 section 3 statement E under the findings of fact and I'll read it. The Agency finds that this storage of used and/or waste tires poses a threat to the environment, quote, unquote. Do you know what the basis for this finding of fact by the director would be?

A. Yes.

Q. And can you briefly explain in your own view having heard the testimony of Gene Figge and previous testimony in other forms?

A. The primary concern here is that of fire. If the fire would commence in a pile or in a location such as CIC where there inside buildings have inadequate fire lanes, we would have a catastrophic situation. Parts of the city would probably need to be evacuated there. The runoff from the fire would contaminate the storm sewers. I'm not certain whether they have public treatment plants for their storm water. Material could get into the environment ditches, creeks. We would have a major environmental cleanup on our hands if there was a fire there.

Q. Now having been involved with the used and waste tire program for such a length of time, have you had occasion to see similar problems elsewhere?

A. Absolutely. Unfortunately, a scenario just like this has occurred in other places where people rent buildings, fill them full of

tires, and then disappear and the landowners, property owners, are left to clean up the tires. In East Chicago, Indiana, an old World War II factory, perhaps even a little larger than this one but very much the same circumstances, stacked from wall to wall as high as 10 to 12 feet tall with tires that caught on fire. That fire burned uncontrollably for days and days and days. The structure collapsed on top of the burning rubber making putting the fire out nearly impossible. People were evacuated. Millions of dollars spent in fighting the fire and cleaning up the residue thereof.

Q. And with regard to State-funded cleanups, have there been problems of a similar magnitude to the CIC situation?

A. Nothing where we had that many tires inside of a building.

Q. Do I understand you to say that this has been the biggest State-funded cleanup?

A. We have cleaned up as many tires in a pile before but it was outside. Over the course of my cleanup activities, I have cleaned up 7 to 10 million tires in various sizes.

Q. Taking this other situation, can you first of all identify it for us, the similar magnitude situation?

A. It was an open dump east of Kankakee.

Q. Comparing these two, which cleanup was more difficult?

A. It's hard to say exactly which is more difficult, each one has particular parts of it that made it difficult. Retrieving the tires out of a building was problematic. You couldn't really operate big machinery inside of it but rather Bobcat size machines that would have to go in and grab 10 to 20 tires at a time, bring them to the outside. It's virtually acres under roof. One of the benefits of this was that we could work through the winter because we did have some protection there and we also had a hard surface to work on, concrete and/or blacktop, which made working through the winter months possible.

Q. Okay. Let's get back to Canton Industrial. Now having issued the 55.3D notice in July of '95, did the Agency receive any response?

A. Yes, we did.

Q. Let me show you Exhibit No. 5 and ask if that is a copy of what was sent to the director of the Illinois EPA?

A. Yes, it is.

Q. And as far as the date of the cover letter, what would that be?

A. August 25th, 1995.

Q. And does the exhibit indicate when it was received by the director?

A. Yes, August 31, 1995.

Q. Would it be fair to say, Paul, that the substance of this response was a proposal to remove tires?

A. Yes.

Q. And that this proposal had been under discussion during the court proceedings and the summer of '95?

A. My recollection is that this was the first time that we had officially heard from them a plan to bail tires to effectuate the removal.

Q. Had there been some informal suggestion that some sort of plan along these lines might be undertaken?

A. Yes.

Q. Okay. As to the actual plan, bailing tires, can you tell us whether or not it had been ongoing at the time that this response was provided to the director?

A. I think that as this response was provided, the project of bailing tires was just in its infancy.

Q. Okay. Paul, let me show you Exhibit 2, an inspection report that we've had admitted regarding Gene Figge's inspection on August 14th, and does it contain photographs showing the bailing process?

A. Yes.

Q. Okay. Did the Agency's review of the plan result in any determination whether it was adequate?

A. In general, our conclusions were that while the project may have had some merit, it was willfully inadequate in terms of addressing the total removal of the tires from the site. The plan called for bailing tires, transporting those bails to Hannibal, Missouri, and then at Hannibal casting them into concrete, lego block sort of things to perhaps oversimplify it, but interlocking blocks that can then be used for storage of aggregate piles of big heavy concrete blocks that you might see at a DOT yard. Whenever a project such as that is proposed, we talk to our sister states to find out if such a project would be appropriate or approved. We certainly don't want somebody transporting bails of tires into Illinois unless we know what they're going to be used for. So we made inquiries to the State of Missouri and I made a trip to Hannibal and I talked with the city engineer there. And the conclusions after numerous phone calls and letters was that this was a pilot project, could consume as much as 450 bails, and frankly we were happy that something like this would happen because by then, our plans for the cleanup were already in motion and if any tires could be beneficially used, that would just lessen the amount that we had to do. I would add that in my trips to Hannibal, I observed the spot where the bails had been shipped to and frankly the tires had been dumped off of trucks, bails had been split open, and tires were laying loosely around. It was in the middle of a grass lot. There was no concrete forms. There were no bailing--there was no forming operation. When I was there, there were just over 100 bails had been transported and I don't believe that they ever did ship the 450 bails that the city had requested and I don't have any knowledge of them being casting concrete and actually used. During the course of the cleanup, the people from Missouri said, hey come get these bails back, we don't want them, they're just laying around here.

Q. Okay. Let me interrupt you and show you Exhibit 6 and ask if this is the letter you wrote rejecting CIC's plan?

A. Yes.

Q. And the plan that we're talking about is Exhibit 5 which was submitted in response to Exhibit 4?

A. Correct.

Q. The scenario being the Agency sent a notice which identified the necessary corrective actions, that is, tire removal and that the company submitted the response, and then as you've testified, the response was evaluated and then finally rejected?

A. Correct.

Q. When was it formally rejected?

A. September 28th.

Q. 1995?

A. 1995.

MR. DAVIS: And that's shown on the face of Exhibit 6. Mr. Hearing Officer, let me as a group move the admission of 4, 5, and 6 being the notice, the company response, and the rejection.

HEARING OFFICER: Mr. Golightly?

MR. GOLIGHTLY: I have no objection, Your Honor.

HEARING OFFICER: People's Exhibits 4, 5, and 6 are admitted into evidence.

Q. (by Mr. Davis) Now by the end of September of '95, Paul, when the plan was rejected, had the Agency already been in contact with Tri-Rinse?

A. Yes.

Q. And on what basis was Tri-Rinse selected?

A. They had the equipment, personnel to get the job done, and they were the lowest cost contractor that we have on retainer.

Q. Okay. The contract with Tri-Rinse would have been on a unit basis then?

A. Per ton basis.

Q. Okay. And how many tons approximately were actually removed over the course of the project?

A. In excess of 6000.

Q. And as far as the exact amount of costs incurred by the Agency, what was that?

A. The exact costs were \$326,124.09.

Q. And for the record, was this money paid by the State out of the fund that you've been mentioning to the contract?

A. Yes, yes, it was.

Q. Okay. Do you have any opinion as to whether the company failed without sufficient cause to do what they were told to do through the notice?

A. Yes, they failed.

Q. Okay. Did they fail without sufficient cause?

A. Yes.

Q. Okay. Now focusing on those two parts. First of all, the Agency did its own cleanup, we've established that.

A. Yes.

Q. During the course of that cleanup, the company did remove through the bails some tires?

A. Yes.

Q. Did the company remove any other tire material during the course of your cleanup?

A. Yes, they did. After we started our cleanup, they then loaded trailer loads of tires and transported them to Decatur for disposal.

Q. Okay. In effect, did the company reduce the amount of tires ultimately removed by the Agency?

A. Yes.

Q. On what basis do you state that this is a failure to comply?

A. They never took any actions until after we began our work and they removed but a fraction of the tires that were there.

Q. Okay. Focusing now on the other part of the sufficient cause, does this relate to the nature of their plan in response to the notice?

A. I don't quite understand that.

Q. The sufficiency of their plan, is this the issue that you're focusing on?

A. Yes.

Q. Okay. And you've already talked a little bit about it and you've mentioned your visit to Hannibal so let me ask that this exhibit be marked as People's No. 7.

(People's Exhibit No. 7 marked for identification.)

Q. (by Mr. Davis) Paul, let me show you what we've marked as Exhibit 7 and ask first of all for you to look at that and identify that for us?

A. Yes, this is a memo and attached photographs that depict what I observed in Hannibal, Missouri regarding the location of bailed tires that had been shipped there.

Q. And this would have been a visit on November 7, 1995?

A. On November 7, 1995 I traveled there.

Q. Okay. For what purpose?

A. To verify or to know for sure that the bailed tires that were being shipped off the property were in fact being used as represented.

Q. And did you verify that?

A. Yes, I did. I verified that the tires were just unloaded into a vacant lot but that there was nothing, no casting of concrete ongoing, no production-type facility that would lead us to believe that this was any legitimate operation.

Q. In essence, did this confirm your suspicions from several weeks earlier?

A. Yes.

MR. GOLIGHTLY: I'll object to the question.

HEARING OFFICER: Overruled. Answer stands. Your answer was?

THE WITNESS: Yes, it did.

Q. (by Mr. Davis) By this time, November 1995, had the shipment of bails to Hannibal ceased?

A. I'm not sure if after my visit anymore loads were transported off-site or not. At this time, there were some 175 bails shipped there, the project called for 450.

Q. Okay. To your knowledge, was any individual bail ever converted to its intended use as a concrete retaining block?

A. No, and I don't think that--one of the reasons I say that is that we had received phone calls from the people in Hannibal asking the city engineer there asking if we would come and get these bails back.

Q. During the limited time that this bailing project was in effect, did the Agency issue permits for transportation to facilitate or authorize the bails leaving the state?

A. Yes, but only after we had inquired with the State of Missouri, our counterparts there and the city, as to their intentions and the legality of such an operation.

Q. Were these actions in your view a legitimate exercise of the Agency's authority?

A. Yes, very much so.

Q. Was it to the Agency's benefit to allow any legitimate removal no matter how small an amount?

A. Yes.

Q. And was this ultimately done to the tune of 175 bails?

A. It was.

Q. Okay. Let's touch finally on the project itself. Would it be fair to say that this was conducted over the course of five months?

A. Yes.

Q. And would it also be fair to say that during portions of that time period, that the contractor was not working on the Canton project?

A. Yes.

Q. Can you explain that for us?

A. The contractors that we have do a number of jobs for us. Many months prior to commencing the Canton cleanup, we had scheduled Tri-Rinse to do a cleanup of a County Amnesty Day. The Agency sponsors dozens of these every year. We set up on a parking lot, the public brings in tires. Tri-Rinse had been scheduled to do this work so we moved them off of the Canton site for probably about a week or ten days to do a cleanup in Springfield at the fairgrounds and then they went back to Canton to continue on with the work.

Q. Did the contractor bill the State for any costs associated from, for the lack of a better word, going to Springfield and coming back?

A. No.

Q. Okay. Can you as a general matter in regard, of course, to this project tell us what types of expenditures remained?

A. We reimbursed the contractor for a cost to mobilize to a site and then a cost per ton to remove and load the tires and then a cost per ton to transport them.

Q. Is the State charged for the purchase of equipment, shredding equipment for instance?

A. No.

Q. Is the State charged for--well, strike that.

A. I might add that during the course of this cleanup, as we completed the removal of the whole tires, we moved on to the removal of the bailed tires and then to the removal of the shredded material that had been accumulated on-site. I did negotiate a reduced cost for the removal and disposition of the shredded material, something less than the contracted price that Tri-Rinse provides us because I know that it would have been less of an effort to remove the material that was already shredded on-site.

Q. Now the sequence of events that you mentioned, the whole tires and then the bails and then the shreds, was that done as an accommodation to the company?

A. Absolutely.

Q. How so?

A. So that if any legitimate use of these bails would come about, we would not have spoiled their efforts to use bails.

Q. Okay. And was the focus of the project from its outset on reducing the threat of fire hazard?

A. Yes.

Q. How was this addressed?

A. Well, by doing the cleanup.

Q. I mean as far as sequence of actions.

A. We started at one end of the facility and pretty much worked from one end to the other, crossed over the aisle and worked from the other end back. We did remove the tires that had been stacked outside for several reasons. One, to effectuate our large trucks moving up and down the alleyway, and two, so as to remove the fire hazard.

Q. Okay. Along those lines, would you agree with the previous testimony that the shredded material may have posed a fire hazard but it was less than the other circumstances?

A. Yes.

Q. Okay.

A. There were perhaps outside chances that those chips that were stored outside could have been marketed and when it got to the end of the cleanup and they had not been completely removed by CIC, we removed them.

Q. Okay. I have no other questions but I would move the admission of Exhibit 7. I believe a foundation has been laid as a business record and so forth. Although I acknowledge for the record it's an inspection of a Missouri facility, it was done in conjunction with the Agency in Illinois.

HEARING OFFICER: Any objections, Mr. Golightly?

MR. GOLIGHTLY: Other than I've never seen it before, Mr. Wallace, I'm not sure yet.

Q. (by Mr. Golightly) Just a couple questions. First of all, this is your original report then?

A. It is a copy that I provided to Mr. Davis.

Q. Okay. And is there any indication here of who took these pictures and what date they were taken that is sufficient to identify the site that's purported to be represented?

A. I took those pictures.

Q. Is that on the exhibit?

A. I believe on the front page it indicates I traveled there on the 7th and photographed the representation of what I observed.

MR. GOLIGHTLY: Beyond that it's a business record, Judge, we have no objection to its admission as to what it is.

HEARING OFFICER: All right. People's Exhibit No. 7 is admitted into evidence.

MR. DAVIS: And I've concluded my direct examination.

HEARING OFFICER: Cross examination?

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

by Mr. Golightly:

Q. Mr. Purseglove, did you have an opportunity to speak to the principal of the contractor with CIC?

A. You mean my contractor?

Q. No, the contractor of CIC. The person who was to create these bails and make some ultimate use of them.

A. Yes.

Q. Okay. And do you recall about when that took place?

A. It would have been right as either September or October of '95.

Q. Okay. Since that contract was made known to the Agency and included in Mr. Figge's report of August the 14th, is there a reason you wouldn't have checked on it before that?

A. I'm not exactly sure of the date that I spoke to him. In fact, you're talking about Randy Nowack?

Q. Novack I believe is his name.

A. Yes.

Q. Do you recall speaking with him then?

A. Yes.

Q. Do you recall what the result of that conversation was?

A. I was less than impressed that he had the market to handle the half a million tires that were on the CIC property.

Q. And did you express to him an opinion at that time?

A. Just that it was clear he had an end use for a small portion, small number of bails, at the Hannibal project. But beyond Hannibal, he had nothing in contract form that would allow for the use of these bails.

Q. Did he indicate that he was pursuing other contracts for uses beyond simply the Hannibal use?

A. I don't recall.

Q. In regard to People's Exhibit No. 6, you indicated that you had reached the decision, it's your letter to reject the plan that was proposed as contained in People's Exhibit No. 5; is that correct?

A. Correct.

Q. And that was premised also upon this telephone conversation?

A. That conversation and discussions that I had with the city engineer in Hannibal.

Q. Okay. Were there any other basis for the decision that's set forth in the September 28th letter?

A. The fact that we had been involved with CIC in legal matters going back to October of '93, virtually no tires had been removed from the site. Those combination of things led me to believe that CIC would not remove the tires in a timely fashion.

Q. When you say virtually no tires, are we speaking strictly on a relative basis?

A. Yes.

Q. Because Mr. Figge's report in People's Exhibit 1 indicates that at least through October or November of '94 that 50,000 tires had been removed during that month, is that approximately correct?

A. I would defer to that, yes.

Q. So there were some activities taking place prior to that. Was there any other basis for your letter of September 28th?

A. Nothing beyond what is already set out in the original notice.

Q. So then is it your testimony as I understand it, the primary factor was the lack of activity you had seen by the respondent prior to that date to remove tires on its own?

A. Yes, sir.

Q. Was it strictly a matter of rejecting the plan that's contained in People's Exhibit No. 5 were the efforts of Mr. Novack to remove tires?

A. No. In fact, we encouraged that, we went along with that and I think we had discussions that encouraged them to use the bails anywhere and everywhere that they possibly could.

Q. Did in fact the respondent propose several different options in an effort to dispose of tires?

A. At one point, yes, we did receive some correspondence from Mr. Hansen.

Q. Then were any of those other uses approved by the Agency?

A. No.

Q. Okay. Do you know how many by volume or whatever tires that were removed by the respondent prior to the time that all the tires were removed from the project? Beginning at any point in time that you'd like to pick as a specific starting date that you're aware of.

A. I don't have that information.

Q. Is that something that would be available to the Agency?

A. CIC is required to maintain daily and annual records that show what comes in and what goes out. So CIC should have that record as to how much was removed from the property.

Q. Do you have any idea of the volume of tires that were then removed by CIC after the last court date through the period of time that exist now that all the tires are removed?

A. Specifically, no.

Q. Do you have any general estimate?

A. I have a general idea of what was removed after October 1st when we began our cleanup.

HEARING OFFICER: I'm sorry, removed by who?

THE WITNESS: CIC.

Q. (by Mr. Golightly) Generally what would be your opinion then of the number of tires that has been removed?

A. Probably less than 30 truckloads.

Q. And what would that convert into as far as tons?

A. 30,000 tires.

Q. And does that include both whole tires and the shredded material that we were discussing?

A. They did remove some shredded tires. I recall now that they also did remove some shredded material.

Q. And do you have any idea of the amount of those that were removed?

A. Not without looking at their daily tire records I wouldn't know.

Q. Okay. Do you know what Tri-Rinse did with majority of the tires it removed?

A. Yes.

Q. Where were they taken?

A. Archer Daniels Midland in Decatur.

Q. Commonly known as ADM?

A. ADM.

Q. And did ADM charge a fee for receipt of that material from Tri-Rinse?

A. Yes.

Q. Do you know what that is?

A. It's a fluctuating fee depending upon the market. During the time of this cleanup, I believe it was \$15 a ton, it could have been 10.

Q. Do you have--are there records that exist within the Agency that would reflect what was paid since I assume the State reimbursed Tri-Rinse for those.

A. We paid the contractors a flat rate. They absorb whatever disposal costs there are.

Q. Okay. Why was a lower rate negotiated for the shredded material?

A. The contractor, part of his business is re-mediation work. Going to sites, shredding whole tires. There is certainly a cost associated with shredding tires. Another part of their business is to take tires at their home plant, process them down, and market them as fuel. Since the shredded material was partially processed, the cost associated to them to take it down to the final marketable stages would be less.

Q. Okay. Does ADM accept whole tires?

A. They except whole automobile tires.

Q. Okay. And what's the distinction that they accept whole automobile tires as opposed to any other tire?

A. They do accept some whole truck tires but at a significantly increased cost. In effect, nobody takes whole truck tires to ADM. Truck tires are by nature much more difficult to shred. They are very heavy. The equipment necessary to shred truck tires is significantly more expensive than equipment necessary to shred a car tire.

Q. Okay. Do you know if there was any difference in the rate that ADM charged to receive whole passenger car tires and the rate that they were charging Tri-Rinse to receive the material they were delivering?

A. No, there shouldn't have been no difference.

Q. Do you know in fact that the respondent, Cyber America Corporation, was shipping whole passenger car tires to ADM and getting that same rate as Tri-Rinse was getting for the shredded material that they were shipping?

A. I don't have any knowledge of that. I assume that would be correct.

Q. Do you know if that was the same rate that they were also paying for the shredded material that was being shipped over there?

A. Yes.

Q. So if anyone could have shipped whole passenger car tires, the cost at ADM would have been the same?

A. Correct, at ADM the cost would have been the same.

Q. And the other costs involved would have been simply transporting those tires, the hauling cost to get them to the ADM site?

A. Yes. Well, it would have been the cost of taking them out of the building, putting them on a truck, and then transporting them to ADM.

Q. Are you aware of any inquiry being made into the number of truckloads of tires that were leaving the Canton plant site during the State cleanup procedure?

A. I don't quite understand that question.

Q. Are you aware of any concern that the company has expressed regarding the number of loads that were shown as having left the Canton plant site as opposed to those that were reflected in internal company records of Canton?

A. Not until after the cleanup was completed.

Q. Okay. At that time then did you assist in formulating any sort of response to that?

A. Yes.

Q. And what if anything did you do in responding to that inquiry?

A. We provided a copy of all of the invoices that would document each truckload of shredded material that left the site.

Q. Okay. And those are the same invoices that lead to the figure that you have given Mr. Davis of \$326,000, whatever it is, those are simply the invoices and by addition you've totaled them up to testify to that figure?

A. Yes.

Q. And what efforts have you made to satisfy yourself that all of those invoices of the material represented by the invoices originated from the Canton site?

A. That is our standard operating procedure.

Q. I'm sorry?

A. I said it's very much our standard procedure to task a contractor to do a cleanup and during the course of that cleanup as loads are sent to Decatur, each truck is weighed in and out at Decatur, date stamped, and then that ticket is submitted to the EPA for reimbursement.

Q. So you've satisfied yourself that the material was actually received in Decatur and you have receipts from ADM, if I understand what you've just testified to?

A. Correct.

Q. My question was, what efforts did you do to verify that this material originated from the Canton plant site?

A. Although we did not maintain a constant vigil at the site during the course of the cleanup, we inspected--Mr. Figge was on-site numerous days. I was there numerous days, observed trucks coming in, going out. And then as bills would come in, we would look at reports that might have been submitted from the field or E-mail letters that Gene and I would have shared saying five trucks went out today, ten trucks went out today, and comparing them against the bills that came in. We did not follow every truck that left the Canton site and track it to Decatur to be sure that we were not being cheated. I have no reason to think that we were being cheated. We have done work with this contractor for several years and found him to be nothing but forthright and honest in his dealings with us.

Q. You mentioned several things. First of all, you said there were reports that five truckloads went today?

A. As an example maybe five loads went out today or ten loads went out today.

Q. And who would have generated that sort of report to report to either you or Mr. Figge that five loads went out today?

A. Either Gene would have gotten the weight tickets from the on-site manager, the Tri-Rinse foreman, or he would have actually observed them going in or out if he was there that day.

Q. So those would primarily have been limited to the visits that are reflected in People's Exhibit No. 3 on the second page there when he was on the site. In other words, for him to personally observe, it would have been when he was actually there?

A. Yes.

Q. Is there a record kept of when you were on the site?

A. No.

Q. Okay. And the last comment you made was you had no reason to believe that we were cheated. In other words, we just simply trust Tri-Rinse, we relied upon them and went from there?

A. It's not quite that simple. Tri-Rinse has two shredding machines, both of them were on-site at the Canton operation doing this cleanup work at varying times. I don't have any reason to think that they would have been doing any cleanup work anywhere else at the time.

So that what you're getting at is that Tri-Rinse hauled more loads to Decatur than what came out of Canton, I don't have any reason to believe that. They were working on this job for us, they weren't working anywhere else.

Q. And other than your confidence in them, do you have any other evidence that would substantiate that position that there's no reason to even ask that question?

A. No, I don't have any evidence to think that they would have been billing the State for work that they didn't do.

Q. Do you know whether or not Tri-Rinse stopped moving whole tires to move the shredded material that was piled out on the site?

A. I don't recall.

Q. Did you have to specifically authorize Tri-Rinse to begin moving the shredded tires?

A. Yes.

Q. And was part of that a stipulation that they finished removing the whole tires, as you mentioned that was the most important thing?

A. It was just as the cleanup was nearing its completion, that we then addressed the removal of the shredded material. There could have been a few whole tires left.

Q. Could have been but you don't really know?

A. I could look at my letters that I authorized the contractor to remove the shred and could tell you, yes, there were still some whole tires on-site. Part of the reduction in cost to remove the shredded material was a factor that they would already have their equipment down there doing the whole tires and if they had done the whole tires and then left and had to leave a man on-site just to remove the shred, it would have cost more than if while they were working on the final part of the removal of the whole tires, they could then also load out the shreds.

Q. Was there any cost related in removing the shreds other than simply using a front end motor, putting it on a truck, hauling it to ADM, and paying their charges?

A. I would have to look at my records but I believe that the materials, the shredded material was hauled to St. Louis where it was re-processed and then marketed as fuel.

Q. Okay. But you're not sure about that?

A. I'm almost certain.

Q. Okay. Did you testify that prior to the entry of the Court order that Canton didn't remove any tires or tire product?

A. Virtually none I think is what I said.

Q. Okay. When did they remove the shred that was taken to the Pekin landfill, when did that happen?

A. They did remove some material to the Pekin landfill.

Q. That would have been prior to the Court order?

MR. DAVIS: This is not necessarily an objection but I would think the record would be more clear if we referenced which Court order since we have several.

MR. GOLIGHTLY: But that was the question, prior to the entry of the time of the Court order. If you want to clarify which one it was then.

MR. DAVIS: Well then I would object, I think the record may be confused. The witness if he can should identify what Court order.

HEARING OFFICER: Sustained. Let's put a date around it.

Q. (by Mr. Golightly) The last Court order as I recall--do you have Mr. Davis's chronology, was it in July of 1995, is that the last Court order you testified to? The last contempt order or the last order of the Court was May 31, 1995. Let's use that as a point of reference.

Did CIC remove tire product prior to the last Court order which was on May 31, 1995?

A. I don't recall. I think that they did remove some material to the Pekin landfill.

Q. And any of the other prior things would have been included in Mr. Figge's reports that already in evidence if he so testified that the exhibits contained them?

A. Yes.

Q. And as I understood Mr. Davis's question at one point, the last Court order would have been at or about the May 31, 1995 date; is that correct?

A. Yes.

Q. Do you recall any discussion of the plan using the concrete blocks at that court hearing?

A. I don't recall.

Q. Okay. And do you have an exact figure on the number of tons that were actually removed by the State contractor?

A. Yes, I do.

Q. And that would be?

A. 6042.2 tons.

Q. Okay. I received subsequent correspondence that indicated or that provided records for the removal of 5631.2 tons from the Department, do you know what that figure represents?

A. During the course of this cleanup which began on the 2nd of September --

Q. About the 2nd of October, just to be clear.

HEARING OFFICER: Wait, don't talk over each other please.

MR. GOLIGHTLY: I'm sorry, sir.

THE WITNESS: Over the course of the cleanup --

HEARING OFFICER: Wait, let's back up. What date were you using, I didn't hear. You started to say a date.

THE WITNESS: The cleanup commenced around the first of October '95 and completed around March of '96. We received 9 or 11 invoices billing us from the contractor during the course of those months. Adding up those 9 invoices, there may have been some discrepancy over 5632 tons or 6024 tons.

Q. (by Mr. Golightly) And has that discrepancy been resolved?

A. I thought that it had.

Q. Has it or hasn't it? I mean, you admitted there is some discrepancy, how has that been resolved?

A. I think that we gave Mr. Davis the correct figure which he incorporated into the records.

Q. You think you gave him the correct figure?

A. We gave him the figure that we thought was correct.

Q. What was the billing rate per ton for the project done by Tri-Rinse?

A. They charged us \$49.50 a ton to retrieve and shred and load the tires. 5 cents a ton mile to transport them and a mobilization charge to bring their equipment onto the property.

Q. Are you aware of the mileage from the Canton plant to ADM? For a suggested figure of 210 miles, is that a close enough estimate?

A. I don't know, I didn't look at a map.

Q. Did the billings that Tri-Rinse sent to us include a charge for those miles?

A. Yes, 210 miles, you're correct.

Q. Okay. And would that work out to approximately \$10.50 a ton for 210 miles?

A. Yes.

Q. Okay. So Tri-Rinse is billing \$60 a ton, that is, approximately 49.50 and 10.50 for hauling?

A. Yes.

Q. And the discrepancy of 500 tons is something that you think we've worked out?

A. Yes.

Q. How does 6042.1 tons convert into whole tires?

A. Because there were numerous truck tires, numerous ag. tires, and off-road tires, Volkswagon tires versus tires that might come off of Cadillacs, it sometimes becomes difficult. In the business, we normally say 100 tires makes a ton. There were a lot of truck tires on this property.

Q. Then do you have any opinion as to the reason that over 6000 tons were reported removed only by Tri-Rinse for approximately 600,000 tires based on what you just told us and Mr. Figge's estimate of \$500,000 tires in the report that he filed previously?

A. A couple of things can account for that. Truck tires weigh about 100 pounds, so for every truck tire that was on the property, you would reduce the total number of tires. Secondly, one of the things that strikes me the most about this site is virtually acres of property under roof and tires piled everywhere and little aiseways cut through it and you could virtually walk around it in circles and it's not like you can walk up and see one pile. These piles are in building after building after building. And when you start approaching a half a million tires, it is very difficult to give you an exact number. I would not be surprised if it would have been 7000 tons. Suffice it to say, it was a lot of tire.

Q. Would you be surprised if it was 7500 tons?

A. No.

Q. Would you be surprised if it was 8000?

A. No.

Q. 9000?

A. Somewhere along the line we would have a concern about it but there were many, many thousands of tires there.

Q. At what point would be your threshold for being surprised?

A. I don't know.

Q. Okay. Mr. Purseglove, just so I'm clear on the basis of the contract, you used a couple of terms. Tri-Rinse is a firm that's on retainer, is that a proper term that you use in the Agency?

A. Yes.

Q. Does that mean there's already a contract and there's already a price established at which they'll come in and do work?

A. Yes.

Q. And such a contract was signed substantially prior to them coming onto this site of October 1, 1995 when they started working on the site?

A. Yes.

Q. Okay. So that price was determined without regard to the existence of the buildings, the other factors that are present and existed on the Canton plant site?

A. I don't know what the contractor considered when he made his proposal to do work for the State.

Q. Was he aware of this site when the contract was originally signed months prior to October of 1995?

A. No.

Q. Okay. So then that contract was not negotiated on the basis of this site?

A. That's correct.

Q. And who initiated the discussion to have a different contractual rate for the already shredded material that was on the site, was that at your request?

A. I did.

Q. Your request and not Tri-Rinse's?

A. Yes.

Q. If that had not happened, would they have been authorized or could they have simply treated that as waste tires and done them at the original contract rate?

A. Yes.

Q. So you took action at that point to try and conserve the State's funds; is that correct?

A. Correct.

Q. And is that one of your responsibilities?

A. Yes.

Q. And anytime an opportunity's presented to save the State's funds, it's one of your responsibilities to pursue that?

A. I can within some limits pursue those things. I can --

Q. It's okay, I can ask you another question. I don't believe I have anymore questions at this time, Mr. Wallace.

HEARING OFFICER: Re-direct?

MR. DAVIS: Thank you, Mr. Hearing Officer. Paul, is it your understanding that you've provided to Ms. Ryan, the Agency counsel, and myself all of the supporting documentation for the removal project?

THE WITNESS: Yes.

MR. DAVIS: With leave of the Hearing Officer, let me address my remarks to counsel. If you see a need to put this in the record, I'll put it in?

MR. GOLIGHTLY: You're aware of what my concerns are.

MR. DAVIS: If I might have a moment then.

HEARING OFFICER: Before you begin your re-direct, why don't we take a five, six, ten minute break.

(A short break was taken)

HEARING OFFICER: All right. Back on the record. We're essentially beginning re-direct of Mr. Purseglove.

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

by Mr. Davis:

Q. Paul, the first issue I want to touch upon is a logistical issue. Is it easier to haul whole tires or shredded material?

A. Shredded material.

Q. And why so?

A. You can use a dumping truck that dumps at ADM. ADM doesn't have any facilities to unload trailers. So if you send a trailer load of whole tires to ADM, you have to send the laborers along with it to unload them.

Q. And can you haul more PTE in a truck of the same size carrying shredded material as opposed to whole tires?

A. Yes.

HEARING OFFICER: I'm sorry, did you say PTE?

MR. DAVIS: Yes, passenger tire equivalent is what I'm referring to.

Q. (by Mr. Davis) And another issue I'd like to touch upon involves the Agency's oversight. We've had testimony from yourself and Mr. Figge that you were both on-site numerous occasions. Is your time, your mileage, any other costs that you and your colleague incurred included within the \$326,000 figure?

A. It is not.

Q. Now lastly as to the issue of an apparent discrepancy, would it be fair to say that there was a preliminary total number and then a final total number?

A. Regarding the towing tons and cost figures?

Q. Yes.

A. Yes.

Q. And focusing on the money, what is the final figure?

A. The final figure is as represented in our complaint.

Q. The 326,000?

A. 326,000.

Q. Okay. And as to the issue of tonnage, what is the final figure?

A. 6042 tons.

Q. Okay. Do you believe that the Agency --

HEARING OFFICER: Sorry, that's 6042, right?

THE WITNESS: Yes.

Q. (by Mr. Davis) Do you believe that the Agency has documentation to support these final numbers?

A. Yes.

Q. Let me show you what we've marked as a group Exhibit No. 8 for the People and ask if these are copies of the invoices that pertain to the CIC/Tri-Rinse project?

A. Yes, they are.

Q. And I believe you had testified earlier that there were several different--or rather several separate invoices. Could you, if you would, go through these one by one and determine whether or not these are the actual invoices?

A. Yes, they are.

Q. Okay, very good. Let me focus on just the first invoice in the series. Let me have you describe what types of information and the sources of information would be on the first invoice in Exhibit 8.

A. It would include a summary of the tons that were removed and the distance that they were transported, broken down by individual loads over the time period specified. For example, this invoice is for loads that were transported October 6th through October 12th. And during that time period, there was a total of 734.95 tons of material removed.

Q. Now these forms are Agency-generated forms for the most part?

A. The form is generated, the contractor completes them.

Q. And is this an obligation under the contractor?

A. Right. The contractor must use these forms so that our fiscal people can quickly analyze their forms.

Q. And is there also on Tri-Rinse letterhead a separate invoice?

A. Yes. An invoice is submitted from Tri-Rinse, our forms is backup documentation. And then after the Agency's process the invoice and send it to the comptroller, this form is attached to it.

Q. Now I see on the face of some of the invoices including the initial one in Exhibit 8 that there has been some cross-outs regarding the RCIF, would this be the response action contractor indemnification fund that is provided in certain cases under state statute?

A. Correct.

Q. But not regarding waste tires I take it?

A. Yes. When we began our contract tire cleanup work, 5 percent of all contract costs were deposited into the indemnification fund. That doesn't affect the cleanup costs, it's just in addition to what we pay another 5 percent goes into the indemnification. Just at about the time that this work began, the indemnification fund reached its statutory maximum so the State no longer had to pay into it.

Q. Okay. And so have the figures represented on these forms been adjusted to reflect reality?

A. Yes.

Q. Okay. Are these forms and the information contained therein generated in the normal course of the Agency's business?

A. Yes.

Q. Contemporaneously with the separate billings reflected by the separate invoices?

A. Yes, they are.

MR. DAVIS: Mr. Hearing Officer, we would move into the record People's 8 as a business record of the Agency.

MR. GOLIGHTLY: I have no objection.

HEARING OFFICER: How many total invoices are included?

MR. DAVIS: I would represent to the Board that People's Exhibit 8 as admitted contains an invoice dated 10/17/95, an invoice dated 10/31/95, an invoice dated 12/5/95, an invoice dated 1/9/96, an invoice dated 1/31/96, an invoice dated 2/15/96, invoice dated 2/29/96, and then the one that should have preceded that dated February 15, '96.

MR. GOLIGHTLY: We've had one dated 2/15/96.

MR. DAVIS: May we go off the record please.

HEARING OFFICER: Off the record.

(An off-the-record discussion was held)

HEARING OFFICER: Back on the record.

Q. (by Mr. Davis) Paul, would you go through the exhibit and utilize the invoice numbers to indicate separate exhibits and give me the subtotals for each that you do. I believe that there are nine, we've established that during the off the record investigation. So the first invoice number would be?

A. I think the easiest way to do it would be for the work performed for such and such a date.

Q. All right.

A. This was for work conducted October 6, '95 through October 12, '95 for \$44,832.45.

Q. Okay.

A. Work conducted October 13th through the 31st, \$94,842.74. Work conducted December 7th through December 27, '95, \$15,447.21. Work conducted January 11, '96 through January 29, '96, \$51,095.29. Work conducted February 1st through February 13th of '96, \$24,647.59. Work conducted October 13, '95 through 10/31/95, 94,842.74.

MR. DAVIS: That's apparently a duplicate copy.

MR. GOLIGHTLY: The amounts and the dates, is it in fact a duplicate or are we testifying to what it appears to be?

Q. (by Mr. Davis) What does it appear to be, Paul?

A. That appears to be a duplicate copy of what we've already talked about.

MR. DAVIS: With leave of the Hearing Officer, we will withdraw this duplicate copy from Exhibit 8.

HEARING OFFICER: All right. The leave is granted.

THE WITNESS: This one is for work conducted 11/1/95 through 11/29/95, \$24,874.61. This is for work conducted February 14th through February 29th for a total of \$45,547.70. And an invoice for work conducted February 21st through March 1st.

HEARING OFFICER: Of '96?

THE WITNESS: Yes, for \$24,866.50.

Q. (by Mr. Davis) Now for purposes of clarifying the record, I would request once more to go off the record so that we can use a calculator to come up with the total, if that's all right, Mr. Wallace?

HEARING OFFICER: All right. Off the record.

(An off-the-record discussion was held)

HEARING OFFICER: Back on the record.

Q. (by Mr. Davis) Mr. Purseglove, according to calculations that we've conducted off the record, what is the total?

A. \$326,154.09.

Q. Now regarding the issue of any discrepancy in the State's billing records, does it appear that we've resolved this by tallying up each of the separate invoices?

A. Yes.

Q. As far as another issue that being whether our records submitted by the contractor may or may not comport with the company's records, do you have any information that could enlighten this?

A. Our contracts are designed so that we receive a weight ticket on every load that is removed from a cleanup site. CIC, to my knowledge, did not weigh any trailer load that came into their property. Trailer loads were brought in and an estimate was made of the number of tires, depending upon whether that was a trailer that was 40 feet in length or 53 feet in length, whether the person that was loading the trailer had experience or not. You could have anywhere from 700 to 1300 tires in a trailer. I don't know specifically if CIC counted the tires as they were removed or made some estimate on every load that came in, oh this trailer's got 300, oh this one's got 500. But if they think that there was something less than the 6000 tons of material on the site, they didn't weigh it coming in so I don't know.

MR. DAVIS: Okay. Thank you, sir. At this time, we would conclude our re-direct and move the admission of No. 8 I believe.

HEARING OFFICER: Any objections?

MR. GOLIGHTLY: I have no objection to 8 and we would reiterate my request off the record for a copy of 8.

HEARING OFFICER: People's Exhibit No. 8 is admitted into evidence and leave is granted for Mr. Davis to withdraw People's Exhibit No. 8 to make copies for the People and for the Respondent and return the marked to the Board. I would note for the record that Exhibit 8 is a group exhibit and it consists of eight separately stapled invoice vouchers with each invoice voucher having various attachments to it for lack of a better description. Re-cross?

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

by Mr. Golightly:

Q. With regard to People's Exhibit No. 8, Mr. Purseglove, does your signature appear on the front page here as the receiving officer?

A. Yes.

Q. It's one of your duties and responsibilities to review these invoices that are received from the contractors?

A. Correct.

Q. Now is what's consisting of People's Exhibit No. 8, are those documents of which there are eight separately stapled items, is that the substance of what you review in indicating or signing them for approval?

A. Attached to those would be a weight ticket for each load. So there would be considerably more than that.

Q. So this is simply a summary of what you've referred to?

A. Correct.

Q. And those documents are not attached to this exhibit?

A. The individual weight tickets for the thousand or so loads are not attached to that exhibit.

Q. So you've reduced these from what was already there to something less than what was there for purposes of admission to the Court today?

A. Correct.

Q. Okay. And those weight tickets, I think we referred to those briefly earlier, those are the ones where ADM weighs the truck on the way in and weighs the truck on the way out, says this is the tonnage of tires for which we're going to bill you for having received them?

A. Correct.

Q. Are there any other documents that exist or that are being submitted to the Hearing Officer that exist to indicate the source of the materials that were received by ADM with those weight tickets?

A. No.

Q. What information is on the weight ticket?

A. The tickets are numbered sequentially. The dates are on there. The truck driver signs them, the weight in, the time in, the weight out, time out.

Q. So essentially identifies the truck, the date, and then the weight when it comes in and the weight when it goes out and then I suppose there's a difference between those numbers to indicate the number of tires received by ADM?

A. Correct.

Q. And it was on the basis of these documents that you earlier testified of the amount that the State expended?

A. Correct.

Q. And can that money be expended until you complete this review and approve these for payments on the dates as indicated by your signatures on each of the eight separate stapled documents that make up People's Exhibit 8?

A. You lost me there.

Q. Well, can these be paid prior to your approval for payment?

A. No.

Q. Is there anyone else that has to approve these for payment?

A. We have a series of checks and balances within our Agency. Our fiscal group reviews them, they return them to me after they have done the actual math, and approve that the contractor's math has been correct, and then when I get it back from fiscal saying the math is good, I sign them.

Q. So you don't perform that math verification?

A. No.

Q. You rely upon someone else to do that?

A. One of the accountants, yes.

Q. And is there a place on these documents that indicate that that review has taken place?

A. It would not be on that document.

Q. I'll hand you back People's Exhibit 8.

A. No.

Q. So there's another document that would have been attached to this upon which you based your approval that's not included in People's Exhibit No. 8, being this math verification process?

A. Yes.

Q. And would they have received weight tickets as well, the other documents that are not attached to these?

A. The complete package would be that of the weight tickets, one weight ticket for every load, and some accountant's adding machine ribbon that showed he checked the math on it.

Q. What other efforts with regard to any of these invoices did you take to verify their accuracy and their completeness?

A. None others.

Q. Subsequent to the approval for payment and based upon the proceedings that are being taken by this Board, have you completed any other activity to verify the accuracy and completeness of these invoices?

A. I've reviewed each one of them before I signed them, found them to be accurate, and approved payment.

Q. Okay. Subsequent to that time, has there been anything else you've done to verify the accuracy and completeness of these invoices?

A. No.

Q. In the dates that are included--oh, I know what that is, strike that. And, Mr. Purseglove, the total you gave us of 6042.1 tons, that was arrived by the same process of adding the tonnage up from each of these invoices and you're confident that that number turns out to be 6042.1 tons and that number would only be derived from the contents of People's Exhibit 8?

A. Yes, correct.

Q. As supported from the other documents that were attached to these at the time of your review?

A. That's correct.

MR. GOLIGHTLY: I have nothing else.

HEARING OFFICER: Will you hand me Exhibit 8 please. Actually, I just had a couple questions. For the record, Mr. Purseglove, when you say CIC, what are you referring to?

THE WITNESS: Canton Industrial Corporation.

HEARING OFFICER: And did you authorize Tri-Rinse to go to Hannibal, Missouri to bring the bails back?

THE WITNESS: No.

HEARING OFFICER: Did the State of Illinois retrieve the bails?

THE WITNESS: No, we did not.

HEARING OFFICER: Another question I had, the 210 mile transportation figure, is that a round trip figure?

THE WITNESS: That's a round trip figure from Canton to ADM in Decatur.

HEARING OFFICER: Okay. The EPA form entitled Summary of Used Tire Cleanup Charges, contained on that form for Exhibit 8 is all the tonnage that you've said comes up to 6042.1?

THE WITNESS: Yes.

HEARING OFFICER: Okay. And that's derived from the weight tickets?

THE WITNESS: Correct.

HEARING OFFICER: Okay, thank you, you may step down.

MR. DAVIS: The People would rest.

HEARING OFFICER: Okay. Mr. Golightly?

MR. GOLIGHTLY: We'll call Alan Hansen.

(Witness sworn)

HEARING OFFICER: All right. You may proceed.

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

by Mr. Golightly:

Q. State your name for the record please?

A. Alan Dale Hansen.

Q. And could you spell Alan for the record?

A. Alan, A-L-A-N, Dale, D-A-L-E, Hansen, H-A-N-S-E-N.

Q. And have you been employed by the respondent what was known as Canton Industrial Corporation and is now known as Cyber America Corporation?

A. Yes.

Q. What has been your position with the company here in Illinois?

A. Various. Anything from vice president of operations to currently I'm a part-time employee doing property management for the company.

Q. So your present only title is that of property manager?

A. Yes.

Q. For the site located in Canton, Illinois?

A. Correct.

Q. Okay. Could you briefly describe how you came to be in Illinois and your involvement with the tire recycling project generally that's been discussed here today?

A. I had gone to work for the company in Salt Lake City, I'm trying to remember if it was Canton Industrial Corporation at the time or not, I'm not certain. They asked me to come out and start up a tire recycling operation. My background was the chief operation's officer of a tire retailing operation. Came out here I believe it was the 3rd of July 1992, started doing some evaluation trying to understand what the market was, what would work, what wouldn't work, talked to a lot of

people in the industry including Mr. Purselove, etc. Once that was done, developed a business plan. The company said they wanted to proceed. We determined we weren't going to do anything until we had a commitment on equipment which we got I believe in early November of 1992 at which time once we had the commitment on equipment and delivery, we went ahead and started receiving tires within the law based on the fact that we needed revenue generation. This proceeded, equipment started to arrive on a timely basis. The main equipment was on-site. Unfortunately, we ran into the problem with the manufacturer who had committed to bring conveyers which delayed us ultimately several months. The equipment didn't work according to specifications.

Q. Let's stop there for a moment. This is in late 1992?

A. That would have been in early 1993.

Q. And can we short circuit the whole explanation by saying there were severe problems with the operation and the end product that this equipment was able to produce?

A. Yes.

Q. Did that ultimately lead to some complaints between the two companies?

A. Yes.

Q. Are you aware of the lawsuit that's been filed with the supplier of that equipment?

A. Yes, I am.

Q. Let me hand you what's been marked as Plaintiff's Exhibit 6 and just ask you if you can identify what that document is and if you're generally aware that a suit has been filed?

HEARING OFFICER: Respondent's Exhibit?

MR. GOLIGHTLY: Respondent's Exhibit 6, I'm sorry.

THE WITNESS: I'm not sure if I'm familiar with this specific document. I am aware that the company has filed a suit against My-jak (phonetically).

Q. (by Mr. Golightly) And you assisted in providing information related to the events that took place in late '92 and early '93 that formed the basis of that complaint?

A. Yes, I have.

MR. GOLIGHTLY: Your Honor, at this point having provided Mr. Davis with a copy, we'd ask the Court to take judicial notice of this public filing. It's a copy of the complaint that's filed in Cook County.

MR. DAVIS: No objection.

HEARING OFFICER: I will admit Respondent's Exhibit No. 6 into evidence and take administrative notice of said suit.

Q. (by Mr. Golightly) How long a period of time did the problems related to the equipment last before the intention to use the equipment was abandoned?

A. I'm sorry what?

Q. How long was it until the attempt to rectify the equipment was abandoned?

A. The efforts to--there were two pieces of equipment brought in. They were by contract to produce a 1-inch minus chip at a rate of six tons per hour. The initial piece of equipment we worked with and tested for a period of 30 plus days, that was producing very large useless chip about 4-inch nominal. The vice president of My-jak (phonetically) came down and offered to provide us with another piece of equipment, take the whole first system out, bring in a second system by which time we had already agreed with the EPA to reduce our operation to three truckloads a day which meant we were operating in a deficit. The second piece of equipment was delivered. It did function to the point where it was accomplishing something. It was supposed to be making a 2-inch minus chip, it was making what the EPA has determined to be a 2-inch nominal chip, difference being 5 percent or less of material has

any diameter more than 2-inches. We estimated it at 10 to 15 percent, was larger than that so it would have been a 2-inch nominal. 2-inch nominal means by the definition of the State that it is still a whole tire. We continued operation, I would call limping along until September at which time the corporation re-nigged on an agreement to keep the equipment in place. We shut down the operation as far as bringing tires in about, I don't know, one or two weeks before an injunction was placed on the company. So it already ceased as far as bringing tires in.

Q. If I tell you that the complaint to seek that injunction was filed on October 22, 1993, can you testify whether tires were still coming in at the time the complaint was filed?

A. If I remember, and that's just a little rough, but I can become pretty close. It seems like it was early September when the decision was made to stop operations at least until new equipment was provided. And I had been in communication with the EPA telling them we were going to wind down what we brought in, basically cleaning up operations where equipment was already in place. And I think we finished the last load by September 30th I believe.

Q. And so that was the last time the tires were received on the site?

A. Uh-huh, yes.

Q. From that date until the completion of the tire cleanup in March of 1996 when any further or additional waste tire was brought onto the site?

A. None were brought in officially. I think there may have been a half a dozen tires thrown over the fence. No, there were no other tires brought into the facility.

Q. What in your opinion being the representative of the respondent here in Canton, Illinois prevented the respondent from complying with the Court's orders to remove 20,000 tires per month in 1994?

A. There were two factors. The first factor was related to cash flow of the operation. Salt Lake authorized me to keep all rents and supplemented that to some extent between I think it was October of '94 and January of '95. I believe we took out approximately 700 tons of material, this was all the 2-inch nominal chips. The reason we chose that was neither fire safety although I've heard both sides of that today saying that it was more volatile and somebody saying less. The bottom line was I had a certain number of dollars to work with and we could come fairly close to the compliance figure by removing the 2-inch chips which I had been specifically told as far as the EPA was concerned were whole tires. So we were meeting the letter of the law.

Q. Okay. And what was the second factor?

A. The second factor was in January of 1997, the Pekin landfill informed us they could no longer accept our tires or our chips even though they continued and do to this date continue to receive chips from the Pekin Recycling Facility. We had been informed, and I suppose this would be hearsay but this is the opinion that I had, that they had been told that they were not to receive anymore chips from us, us being Canton Industrial Corporation. There was some sort of regulation that was referred to but the bottom line was they were afraid that the EPA would chase them if they didn't comply. So the feedback I got, and I cannot remember specifically who I got it from, whether it was the EPA or a third party, was that they had decided that we should be cleaning up the whole tires rather than the chips and therefore they didn't want us to clean up the chips.

MR. GOLIGHTLY: Mr. Hearing Officer, at this point I would object and move to strike this relation of what unknown parties or somebody may have said seemingly as being presented for the truth and the content of

what may or may not have been said. So it is definitely hearsay. If the witness can be more specific, we can address that but that's my objection thus far.

MR. GOLIGHTLY: As far as addressing what was said by third parties, I cannot respond to Mr. Davis's argument. Obviously, there were a mixture of numerous statements to attempt to strike the entire thing based upon an objection of hearsay. After that, we can't now go back and reconstruct what we said. I responded on obviously it's all hearsay and therefore we should be able to strike the entire answer at this time.

HEARING OFFICER: All right. The objection is overruled to the extent that I'm not going to strike the entire testimony. Maybe in future questioning when there is a purported hearsay objection, bring it up at that time. Please continue.

Q. (by Mr. Golightly) Then the primary reason that chips were no longer--the nominal 2-inch chips were no longer taken to the Pekin landfill is that the company was informed they would no longer accept them?

A. Correct.

Q. So that avenue of disposing materials on the site was no longer available to the company?

A. That's correct.

Q. And the cash flow that was being provided to you was the on-site person, that was the most expeditious manner to remove the material that the EPA designated needed to be removed?

A. That's correct.

Q. What other efforts were made to remove tires from the site prior to the contempt or to the hearing that took place in May of 1995?

A. I don't know that we had any--we did not remove any tires between, wait I take that back. I believe we did remove something like two truckloads of whole passenger tires to ADM. I'm not certain of that. I believe we took out a couple but it was not of any great significance. Part of the problem we had at that point in time was trying to figure out how to effectively use what limited funds we had. We hadn't achieved any particular conclusion when we got back into a contempt hearing in May.

Q. Okay. Were you in attendance at that court hearing?

A. I don't know if I was at that one or not, I missed several court hearings.

Q. Okay. As a result of the activities at that time, wasn't a method for disposing as many of the tires as possible on a cost effective basis attempted by the company?

A. Yes. The company informed me that they had finally gotten some funds, I believe it was \$140,000. We were looking at leasing shredding equipment. During I believe it was early July when we were just getting bids on leases of shredding equipment, we discovered E-ko (phonetically) block. I had talked with Randy Novack before on another matter and so I called him and asked him what that was all about. He informed me that he had equipment that could bail tires that could construct concrete blocks out of them, that he had contracts for it. We didn't take that at face value. We pursued that to verify that there were contracts. We verified that there was a contract available in Hannibal, Missouri. We contacted the city engineer and spoke with him. He agreed that they were planning on doing something right away and primarily from that one contract, we entered into an agreement because it appeared that we could process at a rate of about \$10 per ton net.

Q. Let's go back. When you used the term \$10 a ton net, you're referring to that as the net costs of the company to actually remove the tires from the site and dispose of them? So that's a reflection or a

statement, that's the net cost to dispose of a ton of tires from the site?

A. I believe their projection is \$7 a ton, we used the figure of \$10 a ton assuming the equipment would work according to specifications exactly.

Q. Let me hand you what's been marked as Respondent's Exhibit No. 1. Mr. Davis, I believe you already have a copy. For purposes of identification, Mr. Hansen, is Respondent's Exhibit No. 1 a copy of the contract that was ultimately entered into?

A. Yes.

Q. And was that contract sufficient had E-ko (phonetically) Systems performed to remove all of the waste tires that were present at the Canton plant site?

A. Yes.

Q. And when you earlier testified that we verified it, are you in fact the person who did most of that verification work?

A. I contacted not only that company but also some companies back east where they had sold and placed equipment that was functioning.

Q. And so the answer is?

A. Yes. Most of it, yeah.

Q. Did you then begin efforts in an attempt to carry out the provisions of the contract as of July 28, 1995, the date that's on the contract?

A. Yes.

MR. GOLIGHTLY: At this point, I should move to admit Respondent's Exhibit No. 1.

HEARING OFFICER: Any objection, Mr. Davis?

MR. DAVIS: No, there's no objection to this. I believe it's also part of one of our exhibits so we would not object to this one.

MR. GOLIGHTLY: It's part of People's Exhibit No. 2 I believe.

HEARING OFFICER: Respondent's Exhibit No. 1 is admitted into evidence.

Q. (by Mr. Golightly) And the question just before that was did you then begin efforts in an attempt to carry out the provisions of that contract?

A. Yes.

Q. Okay. Who is the principal officer of E-ko (phonetically) Systems?

A. Randy Novack.

Q. Was he the primary person you had contact with and further tried to coordinate the performance of these blocks?

A. Yes.

Q. All right. Let me hand you what's been marked as Respondent's Exhibit No. 2 and ask if you can identify that exhibit?

A. This is a letter that I received from Randy Novack.

Q. And is that a true and correct copy of the letters you received?

A. Yes.

Q. And does it appear--or can you testify whether or not that letter was received by a fax at your office or by a facsimile transmission?

A. I can't remember if it was facsimile or direct mail. I think it was facsimile.

Q. Okay. Is the original of that something that would have been kept in the normal course of business of the respondent?

A. Yes.

Q. And so this is a part of business records that are retained by the respondent?

A. Yes.

MR. GOLIGHTLY: I move for admission of Exhibit No. 2.

MR. DAVIS: The People would object. Mr. Hearing Officer, this is hearsay. The fact that a copy or even the original may be retained within business files does not make it a business record. I would submit from my review of this that it appears to be intended at least partially to attempt to impeach one of the witnesses for the State. But primarily the objection is that it's hearsay. Secondarily, it's for perhaps a legitimate purpose, that being impeachment but an illegitimate mess-up.

MR. GOLIGHTLY: Mr. Wallace, the letter was received in the normal course of business and we offer it only for the fact that it had been received and that it influenced Mr. Hansen's activities and responsibilities with regard to the attempt to comply with the directions and instructions they were receiving from the State with regard to the removal of tires. To that extent, we would urge that its admission be completed before the Board.

MR. DAVIS: Well, having heard that Mr. Wallace, if I could, I think that purpose might be achieved through oral testimony without this document.

HEARING OFFICER: All right, thank you. I'm going to admit Respondent's Exhibit No. 2.

Q. (by Mr. Golightly) Mr. Hansen, as a result of the letter that's dated August 22nd, were there discussions between yourself and Mr. Novack in an attempt to deal with the objections of the Illinois EPA?

A. Yes.

Q. Okay. Did you as the local representative of the respondent take all action you felt was inquired, proper, and needed in order to make the contract that the company had with E-ko (phonetically) Systems and the objections as you understood them to make the removal of the tires as expeditious and proper as possible?

A. I don't understand the question.

Q. Okay. Were you doing everything you could to get the tires removed as quickly as possible within the confines of the contract that's been marked as Respondent's Exhibit No. 1?

A. Yes.

Q. And was that also carried out in light of the matters that were raised in Respondent's Exhibit No. 2, the letter from Mr. Novack?

A. Yes.

Q. What ultimately caused the company not to be able to comply with the terms and conditions of the contract such that tires were not completely removed on or before September the 29th?

A. There was a rather vocal dispute going on, whether or not this was a real entity, a real source. The State of Illinois decided that they were not going to allow us to have a hauling permit which we did not receive until after they contracted with Tri-Rinse to come in. Finally, I got into the middle of it because the Missouri end of the contract was E-ko (phonetically) Systems and Mr. Novack was concerned because of the test nature of it, that it was going to get disrupted. Finally, I overrode his concerns and made some contacts myself with the Missouri EPA who informed me they had no opposition to our bringing these bails into the state. In fact, there was no legal restrictions on the bails. Again I confirmed with the city engineer in Hannibal that they were green light and finally I believe all that information was passed along to the Illinois EPA and once we had the verification from the State of Missouri that they had no objection and never had had, that we finally were allowed to have a trucking permit. Meanwhile, as far as Mr. Novack was concerned, the damage was done. There were some backup contracts that he felt were in jeopardy and might fail because of this particular problem. I can't testify that they would have, I can only

testify that he told me that they were in jeopardy and ultimately did fail.

Q. How long did the process take from when trucking permits were initially sought until some were finally issued?

A. I think two months.

Q. And when were the first trucking permits actually issued?

A. I don't know.

Q. Was it before or after the State began its removal process on or about October the 1st?

A. The permits were issued I think I received notification simultaneously.

Q. Hand you what's been marked as Respondent's Exhibit No. 5 and ask if you can identify that for the record?

A. This is a log that security of the plant was asked to keep relative to trucks leaving the plant. Actually, this particular one was specifically of truck shipments leaving the plant from the Tri-Rinse Company and it goes from October 6th to March 1st--October 6, 1995 to March 1, 1996.

Q. Okay. Who actually created these records?

A. The security guards that were sitting at the front gate.

Q. Was that the primary point of entry and departure from the plant site?

A. Yes.

Q. Was there any other point of entry or departure from the plant site during the period of October 6th through March 1st?

A. Not normally.

Q. Would that have required someone to unlock the gate and allow exit through some other place or gate?

A. Yes.

Q. Okay. What was the duties and responsibilities with regard to these security guards in the creation of Exhibit 5?

A. The security guards had nominal responsibility. Their job was to admit and checkout anyone entering or leaving the plant, primarily doing that work for handling manufacturing. Relative to the amount of traffic going in and out, this would have been, they might have had 20 entries and exits a day on a typical day.

Q. Was it within the normal course of their responsibilities to record and log-in the exit and entry of vehicles from the plant site?

A. Yes.

Q. And did they keep what's been marked as Respondent's Exhibit No. 5 in the normal course of those responsibilities?

A. Yes.

Q. And was that ultimately delivered to you for keeping within the records of the company?

A. Yes.

MR. GOLIGHTLY: At this time, I move for admission of Respondent's Exhibit No. 5.

MR. DAVIS: We would object. This tracking system we believe was not in the normal course of business. This is not a business record in the sense that it deals with anything over which CIC had control, that is, whatever its business was certainly in contrast to let's say a receipt record, a daily log of receipts. That would be within the business record realm. Here they're simply maintaining surveillance over the Agency's State-funded cleanup. Now I realize that much of what I'm saying could be interpreted as going toward weight instead of admissibility but we're talking about a document that is being entered as if it were complete. The issue being it's contested that there were any other shipments beyond which might be reflected within Respondent's No. 5. So that's the context that you should view my objection. Additionally, there's been no indication that the generator of this

record is unavailable for testimony. We believe that it is hearsay, hearsay, hearsay, and I cannot emphasize that enough except by repeating it and that it is inadmissible. Thank you.

HEARING OFFICER: Do you wish to respond?

MR. GOLIGHTLY: Just that as a business record, all of Mr. Davis's arguments goes to the weight of what's there. He argues it's hearsay. Any business record by definition is hearsay. Business record is an exemption to hearsay because it is kept by someone at or near the time. Mr. Hansen testified that these records were made at or near the time of the activities that's reported. It would be under the control of the respondent to maintain its gate, to know who's coming in, who's going out, it's not some unknown stranger. That they were authorized in this particular case by the State contractor to come in and out and that they were directed to keep this record in a normal course of their affairs as to record who was coming in and who was going out. When we get to the weight of it, Mr. Davis can certainly make his arguments. But as far as a business record of what the security guards at the gate kept track, we would urge its admission before the Board.

HEARING OFFICER: I'm going to deny the admission of Respondent's Exhibit No. 5, I don't think the proper foundation has been made.

Q. (by Mr. Golightly) All right. Mr. Hansen, were the security guards directed to record the entry and exit of trucks through the main gate of the Canton plant?

A. Yes.

Q. And what's been marked as Respondent's Exhibit No. 5 the records that they kept to comply with that request?

A. This is part of the record, so it would have been kept for that request.

Q. And this is only a portion of those records that is distinct as to Tri-Rinse, there were other records of other trucks coming and going and whoever came and left out the front gate?

A. Yes.

Q. And that you asked them to keep track of whoever came into the gate before the State-funded removal started; and after it ended, that continues to be the practice to this day when there's a security guard there?

A. That was their primary responsibility.

Q. And did they make this record at or about the time of the events that are recorded thereon?

A. Yes.

Q. Did they keep it on a daily basis to your knowledge?

A. Yes.

Q. And is the only evidence that this reflects is simply the entry or exit of a truck, on a date, on a time, and with a truck and trailer number?

A. Yes.

Q. And again is it your testimony that that was done in the regular course of the business of the respondent?

A. Yes.

Q. And that it was the regular course of business of the respondent to make such records and to keep them within the corporate records?

A. Yes.

Q. And that Respondent's Exhibit No. 5 is a true and correct copy of that record?

A. Yes.

MR. GOLIGHTLY: Again, Mr. Wallace, under section 103.208 we move for the admission of Respondent's Exhibit No. 5 as a business record.

MR. DAVIS: Well, to elaborate upon the objection, obviously it is hearsay whether it falls within the business records exception as

provided by the procedural rule or based upon common practice in this code of civil procedure. The focus is what is being recorded in the context of what may be the business of the party doing the recording. And once again, this type of surveillance was done apparently to track the State-funded cleanup. I'm not suggesting it was illegitimate at all but it is not the normal course of business for CIC. In accepting tires, you make a record. In CIC transporting out tires, you make a record. Those things would be certainly admissible as a business record's exception. But to keep track of a third party's activity, that's not within CIC's business. Still we have not, and I'm not suggesting it's necessarily a matter of foundation for business records, but where you're trying to get this type of information for this apparent purpose, the unavailability of the maker of the record is sometimes viewed. I'm not suggesting it's crucial to your decision, Mr. Wallace, but I am suggesting that there's not been a foundation, there's not been anything that shouldn't adequately support this exhibit.

MR. GOLIGHTLY: Only to the purposes of business, the plant is not only a place where waste tires were at, it is a piece of real estate upon which the respondent exercises control. As Mr. Hansen has already testified, anything that came in or out through the gate--the day Mr. Figge would have visited, those would have been recorded. If anyone else would have showed up, those would have been recorded. Rather than burden anyone with all additional information, I think we complied easily with the requirements of 103.208.

HEARING OFFICER: These aren't the actual logs, these are pre-printed?

MR. GOLIGHTLY: These are copies of that actual log as it exist in its original form. There is an additional log that would have everybody that came in and out. This one has been specifically identified as to the entire shipments for ease of use in keeping the business records.

HEARING OFFICER: All right. I'm still going to deny admission, I will take it as an offer of proof. You may appeal the denial if you like.

MR. GOLIGHTLY: Thank you, Mr. Hearing Officer.

Q. (by Mr. Golightly) Mr. Hansen, during the period of time during which the State conducted through its contract to remove tires, did the respondent continue to make bails and then begin a process in removing other whole tires from the plant?

A. We continued to make bails I believe until the end of November at which time there was a serious question of what was going on in Hannibal. So we had bails in stockpile. We chose to stop that part of the operation. Once the Tri-Rinse operation came in, it wasn't within our budget to do a complete cleanup with the funds available. But we deemed it responsible to start loading whole passenger tires, shipping them to ADM which was costing us a net of \$25 a ton. It was costing us \$10 for shipping, \$10 for ADM, and approximately \$5 a ton to load them.

Q. And do you have any estimate of the number of whole tires removed in that fashion?

A. I do not have that at the tip of my tongue. I sent all the ADM invoices to your office. It was a lot more than 30 loads.

HEARING OFFICER: I would ask that when you give a date, if you would please give the year, sir.

THE WITNESS: Okay.

Q. (by Mr. Golightly) All the dates you just referred to have been in 1996?

A. Yes, sir.

Q. Okay. When did the company start --

HEARING OFFICER: I'm sorry, that wouldn't be quite correct. The cleanup was completed March of '96, wasn't it?

MR. GOLIGHTLY: March of '97 actually.

HEARING OFFICER: No, no, '96.

MR. GOLIGHTLY: I'm sorry. Yes, it would have begun in 1995.

HEARING OFFICER: That's why I asked that we put some dates on everything.

MR. GOLIGHTLY: And I've made the point too obvious.

Q. (by Mr. Golightly) This would have been through the fall, late fall of 1995, then and near the spring of 1996?

A. Yes.

Q. To what point did the company cease removing whole tires from the plant site?

A. Late March of--or excuse me, late February of 1996.

Q. And did the company at some point determine that it could remove the remaining nominal 2-inch chips at a lower cost per ton than it was removing the whole tires?

A. Yes, sir. Out of the process, we were looking at methods of removing the 2-inch chips. I believe until December of 1995, early January of 1996, we thought we were going to be able to remove them at no charge to LoanStar. They came down and inspected, we sent them a load which they tested and decided it had too much wire in it. We then determined that the best thing we could do is to remove that to minimize the total cost of the cleanup between the two parties and had our trucking company start emphasis on removing the tire chips, which again they did the loading and hauling for \$15 a ton and then the disposal cost at ADM was \$10 a ton. So we were still at \$25 a ton net.

Q. Were you basically on the plant site on a daily basis?

A. Yes.

Q. At what point did the State start removing the same nominal 2-inch chips?

A. Shortly after we started a true emphasis on that, where I believe we were removing about three loads a day, we started running into a blockage problem. Tri-Rinse stopped most of their other operations and just outgunned us. It became a horse race to see who could remove them the fastest.

Q. Did the efforts to remove the whole tires cease at that point in an effort to emphasize removal of the nominal 2-inch chips by Tri-Rinse?

A. As best I recall, they did not remove any of the materials they had been working on and diverted all their trucking to removing chips while we were removing chips.

Q. Would it be fair to characterize that you're loading chips on one side of the pile and they're on the other side of the pile?

A. At a certain point of time, we actually had to give up because we couldn't get in, yes.

Q. Mr. Hansen, you've been present for all the testimony today?

A. Yes.

Q. And you've heard the testimony as to the number of tons of tires that were removed by the State of 6042.1 tons?

A. Yes.

Q. Did you have an opinion as to the total number of waste tires that would have been on the site at the beginning of the process in the summer of 1995 before the State began any action?

A. If I remember correctly, and again I didn't review notes before I came, I think we had a total of 537,000 PTE's that we had received. We based the receipt of that on an estimate per ton--or per truck. I remember passenger tire loads we estimated at 1000 PTE's per truckload which would have been equivalent of about I believe 1200 tires. I do not remember the number we used for truck tires but we found out later that we were way overstated on truck tires.

Q. Is it your testimony and opinion then that the number of tires that had been reported removed between your efforts and the company's efforts and those of the State-funded removal exceed your estimate of the tires that were on the plant site?

A. Yes.

Q. Whatever happened to E-ko (phonetically) Systems, did they ever perform the requirements that were set forth in the contract margins in Respondent's Exhibit No. 1?

A. No.

Q. And despite demands having been made on Mr. Novack, has he failed to comply with the terms and conditions of that contract?

A. Yes.

Q. Has it been more than six months since you've had any contact with him with regard to that issue?

A. Yes.

Q. Despite efforts to contact him to find out what he was going to do?

A. I have made no effort to contact Mr. Novack in the last six months.

MR. GOLIGHTLY: I'll pass the witness on for cross.

HEARING OFFICER: Off the record.

(An off-the-record discussion was held)

HEARING OFFICER: Back on the record. You're finished with direct, Mr. Golightly?

MR. GOLIGHTLY: Yes, thank you.

HEARING OFFICER: Cross-examination, Mr. Davis?

MR. DAVIS: Thank you.

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

by Mr. Davis:

Q. Mr. Hansen, on a PTE unit basis, how much was Canton Industrial charging to accept waste tires?

A. I believe we started on a PTE basis in the 25 to 35 cent range and by midsummer of '93, we were raising that somewhere around 40, 45 cents per PTE.

Q. And would you agree that based upon what you've told us as far as record-keeping, the estimation of truckloads and so forth, that your 537,000 PTE number is just an estimate?

A. I would feel comfortable saying plus or minus 10 percent.

Q. Okay. Now my next few questions are rather obvious and I apologize if they sound stupid. But did CIC fail to remove all of the tires by the end of 1995?

A. Yes.

Q. Okay. And did the plan regarding the bailing of the tires, the so-called E-ko (phonetically) blocks, did this plan fail as well?

A. The plan relative to what we were doing was working. However, the overall plan which included the E-ko (phonetically) block portion of their contract failed.

Q. Would you agree that no bail to your knowledge was ever transformed into an E-ko (phonetically) block?

A. No. I will say that no bail that was produced in Canton and shipped to Hannibal was shaped into an E-ko (phonetically) block.

Q. All right. And as to Respondent's Exhibit No. 1, would you agree, Mr. Hansen, that Canton Industrial Corporation was not a party to that contract?

A. Yes.

MR. DAVIS: I have no other questions.

HEARING OFFICER: Re-direct?

MR. GOLIGHTLY: No, Your Honor.

HEARING OFFICER: Thank you, Mr. Hansen, you may step down.

MR. GOLIGHTLY: Mr. Hearing Officer, at this time what I'm going to do is I'm going to tender what's been marked as Respondent's Exhibit No. 3 and based upon the affidavits that's attached to the front page move for its admission. For purposes of the record, let me identify that it is a financial statement, been identified by the controller of what is now Cyber America related to the costs and losses in operations that were conducted at the Canton plant site, and his statement under oath that these were normal business records that were kept and included in the audit and financial statements of Canton Industrial Corporation and based upon his testimony under oath that these are business records, we'd ask for their admission and to be included in the record.

MR. DAVIS: We would not object.

HEARING OFFICER: All right. Respondent's Exhibit No. 3 is admitted into evidence.

MR. GOLIGHTLY: With that, we'd rest the Respondent's case.

HEARING OFFICER: There was no 4, right?

MR. GOLIGHTLY: No, that was a matter that was strictly contingent upon the admission of No. 5.

HEARING OFFICER: Let's go off the record.

(An off-the-record discussion was held)

HEARING OFFICER: Back on the record.

MR. GOLIGHTLY: The last thing would be, I would submit Respondent's Exhibit No. 4 which is a summary that has been prepared in my office for ease of use in this proceeding and subsequent proceedings, if any, that compare in the first call of the items that would have been contained in the State's Exhibit No. 8 as to the number of loads were billed each day comparing that to the number of loads that were shown leaving the plant as reflected in Respondent's Exhibit No. 5, that exhibit is not admitted, and showing the difference between those two over the course of time from October the 6th, 1995 through March the 6th, 1996. We offered that only as a summary of other items that are already in evidence with the now exclusion of Respondent's Exhibit No. 5.

HEARING OFFICER: All right. Mr. Davis?

MR. DAVIS: Well, this being an offer of proof, we would have similar objections and we would address those in our brief.

HEARING OFFICER: All right. Again, I will deny admission of Respondent's Exhibit No. 4, I will take it as an offer of proof and if you wish to argue its inclusion to the Board, you may do so.

MR. GOLIGHTLY: With that then we'll rest our case in chief.

HEARING OFFICER: Thank you. Any rebuttal?

MR. DAVIS: No, we have no rebuttal evidence.

HEARING OFFICER: Do you wish to file briefs?

MR. DAVIS: Did the citizens leave?

HEARING OFFICER: They apparently have left.

MR. DAVIS: Yes, we would follow the normal course and file a brief. It wouldn't take that much time.

HEARING OFFICER: All right. Let's go back off the record.

(An off-the-record discussion was held)

HEARING OFFICER: Back on the record. We'll establish the briefing schedule. The People's initial brief is due April the 21st, 1997. The Respondent's response brief is due May the 2nd, 1997 and People's reply brief, if any, May 16, 1997. The Respondent had asked to file a response pleading in response to this hearing today. If such a motion is to be filed, it should be filed by May 2nd of 1997. It should be in a form of motion for leave to file with the attached motion. The People will be given an opportunity within the confines of the procedural rules to reply to that pleading. Is there anything else, Mr. Davis?

MR. DAVIS: No, sir.

HEARING OFFICER: Mr. Golightly?

MR. GOLIGHTLY: No, sir.

HEARING OFFICER: All right. Thank you, this hearing is adjourned.

STATE OF ILLINOIS)
COUNTY OF MACOUPIN) SS.

I, ANGELA K. SIEVERS, a Notary Public in and for the County of Macoupin, State of Illinois, DO HEREBY CERTIFY that pursuant to agreement between counsel there appeared before me on March 12, 1997 at the offices of the Illinois Pollution Control Board, Suite 402, 600 S. Second St., Springfield, Illinois, witnesses, who was first duly sworn by me to testify the whole truth of their knowledge touching upon the matter in controversy aforesaid so far as they should be examined and their examination was taken by me in shorthand and afterwards transcribed upon the typewriter and said hearing is herewith returned.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my Notarial Seal this 19th day of March, 1997.

Notary Public--CSR
#084-004102.

My Commission expires September 6, 1999.

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