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ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
vs.)	No. AC 00-84
)	(IEPA NO. 248-00-AC)
)	
JAMES DAY,)	
)	
Respondent.)	

TRANSCRIPT OF PROCEEDINGS taken

before HEARING OFFICER BRADLEY HALLORAN before
LORI ANN ASAUSKAS, CSR, RPR, a notary public within
and for the County of Cook and State of Illinois,
at 102 North Neil Street, Champaign, Illinois,
on the 9th day of April, A.D., 2001, scheduled to
commence at 9:00 o'clock a.m., commencing at 8:57
a.m.

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

2

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BY: MR. ROBERT J. SCHERSCHLIGT,

16

Assistant Counsel

17

Appeared on behalf of the Complainant;

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19

LAW OFFICES OF PHILIP A. SUMMERS

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(217) 352-7629

23

BY: MR. PHILIP A. SUMMERS,

24

Appeared on behalf of the Respondent.

25

ALSO PRESENT:

26

Mr. Kenneth W. Keigley, Illinois EPA

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Mr. James Day

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1 HEARING OFFICER HALLORAN: Good
2 morning. My name is Bradley Halloran. I'm from
3 the Illinois Pollution Control Board. I'm a
4 hearing officer with the Board and I'm also assigned
5 to this matter. I'll note for the record today
6 is Monday, April 9th, the year 2001. It's --
7 actually, it's a couple of minutes to 9:00 o'clock
8 a.m.

9 I'll also note for the record
10 there are no members of the public present. The
11 case before us today is Administrative Citation
12 No. 00-84, Illinois Environmental Protection Agency
13 versus James Day.

14 The administrative citation
15 was filed by the Agency -- that was filed by the
16 Agency alleges that during an inspection of May
17 17th, the year 2000, it was determined that James
18 Day caused or allowed open dumping to result in
19 litter and open burning, both in violation of the
20 Environmental Protection Act.

21 As a result of the May 17th,
22 2000, inspection, an administrative citation was
23 filed or AC. Mr. Day filed a petition for review
24 disputing the violations and we're here today as

1 a result of that petition.

2 This matter has been noticed
3 pursuant to the Board's regulations and has been
4 publically noticed in the local newspaper here in
5 the county that is affected and will be conducted
6 in accordance with Sections 108, Subpart B, and
7 101, Subpart F.

8 I also want to note for the
9 record again that there is no members of the
10 public present and if there were, they would be
11 allowed public comment subject to cross-examination.

12 I will also note for the record
13 I will not be making the ultimate decision in this
14 matter. That decision is left to the -- to the
15 Board comprised of seven members located throughout
16 the state of Illinois chosen for their environmental
17 expertise.

18 My job is to insure an orderly
19 transcript, a clear record and rule on evidentiary
20 matters here at the hearing.

21 I also will note for the record
22 that before we started, the complainant made a motion
23 to exclude the witnesses. Respondent had no
24 objection. The motion was granted.

1 With that said, Mr. Scherschligt,
2 would you like to introduce you and the members
3 present, your witnesses?

4 MR. SCHERSCHLIGT: Yes. My name is
5 Bob Scherschligt. I'm an assistant counsel with the
6 Illinois EPA's division of legal counsel. To my
7 right is Kenneth Keigley, Environmental Protection
8 Specialist III, with the Illinois EPA's Champaign
9 regional office, Bureau of Land.

10 HEARING OFFICER HALLORAN: Thank you,
11 Mr. Scherschligt.

12 Mr. Summers?

13 MR. SUMMERS: My name is Phil Summers.
14 I'm an attorney from Champaign. My office is located
15 at 502 West Clark in Champaign, Illinois. This is
16 Mr. Day, the respondent in this case.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. Summers.

19 All right. Without further ado,
20 Mr. Scherschligt, would you like to make an opening
21 statement?

22 MR. SCHERSCHLIGT: Just very briefly.

23 Mr. Hearing Officer, Mr. Summers,
24 members of the Illinois Pollution Control Board --

1 THE COURT REPORTER: Keep your
2 voice up just a little bit.

3 MR. SCHERSCHLIGT: Pardon me?

4 THE COURT REPORTER: Keep your voice up
5 just a little bit.

6 O P E N I N G S T A T E M E N T

7 by Mr. Scherschligt

8 Once again, my name is Bob
9 Scherschligt. I represent the Illinois Environmental
10 Protection Agency. We are here today regarding
11 Administrative Citation Illinois EPA
12 No. 248-00-AC.

13 The Agency plans to present at
14 least four, and perhaps a fifth witness, who will
15 testify today that on or about May 17th of the year
16 2000, Mr. Day and members of his family were observed
17 committing violations of the Illinois Environmental
18 Protection Act, notably Section 21(p)(1), which
19 is opened up and resulting in litter and Section
20 21(p)(3), which is opened up resulting in open
21 burning.

22 Mr. Keigley, who is an
23 Environmental Protection Specialist III with
24 the Illinois EPA, will testify that he conducted

1 an inspection on May 17th and that he did observe

2 evidence consistent with that of open dumping and
3 open burning.

4 Witnesses Don Webber, Lawrence
5 Sapp and Ron Tatman will testify that they also
6 observed Mr. Day and members of his family in the
7 day or two prior to May 17th actually engaging in
8 the act of open dumping and open burning.

9 At the close of the evidence and
10 at the close of this hearing, the Agency will ask
11 the Board to enter a fine that Mr. Day did, in fact,
12 violate the Illinois Environmental Protection Act
13 as is alleged in the administrative citation.

14 Thank you.

15 HEARING OFFICER HALLORAN: Thank you,
16 counsel.

17 Mr. Summers?

18 O P E N I N G S T A T E M E N T

19 by Mr. Summers

20 Your Honor, the -- as you have
21 already noted, the Respondent in this case denies
22 that he violated any of the sections enumerated in
23 the citation.

24 The evidence that will be

1 produced on behalf of the Respondent basically will

2 consist of documents showing that any interest of
3 the Respondent and the subject property was
4 terminated back in December of 1999 and ultimately
5 finalized in February of the year 2000.

6 The documents will consist of
7 the notice of intent to forfeit contract and then
8 an actual declaration of forfeiture. Those will
9 come to the Hearing Officer as exhibits --
10 Respondent's Exhibit No. 1, Respondent's Exhibit
11 No. 2, and Respondent's Exhibit No. 3.

12 Exhibit 1 that will be presented
13 will be a copy of a plat of the subdivision where
14 these particular lots were located. Attached to
15 that exhibit are the respective deeds showing
16 the correct ownership of the persons actually
17 owning the lots in question and then the exhibits --
18 the subsequent exhibits, Exhibit No. 2 and Exhibit
19 No. 3 -- are, in fact, copies of the documents
20 that were served on Mr. Day terminating all of
21 his right, title and interest in the property in
22 question.

23 Also to be presented to the
24 Hearing Officer and at the hearing on this date

11

1 will be some photographs of the subject property
2 showing the condition as it existed at the time

3 called as a witness herein, having been first
4 duly sworn, depose and saith as follows:

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

6 by Mr. Scherschligt

7 Q. Good morning, Mr. Keigley. Please state
8 your name for the record.

9 A. Kenneth Keigley.

10 Q. I'd like you to please spell your last
11 name for the benefit of the court reporter.

12 A. K-E-I-G-L-E-Y.

13 Q. Mr. Keigley, how are you employed?

14 A. I'm employed by the Illinois
15 Environmental Protection Agency as an Environmental
16 Protection Specialist III.

17 Q. Environmental Protection Specialist III?

18 A. Yes.

19 Q. And how long have you been employed as
20 such?

21 A. Five years.

22 Q. Please describe for us the general
23 nature of your duties and responsibilities as an
24 Environmental Protection Specialist III with the

13

1 Illinois EPA?

2 A. I inspect various sites in our area
3 for compliance with Illinois state regulations,

4 environmental regulations.

5 Q. That would be for compliance of the
6 Illinois Environmental Protection Act as well as
7 the associated regulations?

8 A. Yes, it is.

9 Q. In the course of your five years with
10 the Illinois EPA, can you give us an estimate as
11 to how many inspections you have done personally?

12 A. Between 700 and 800.

13 Q. In addition to those 700 or 800
14 inspections, did you -- did you also conduct
15 inspections while you were training initially
16 with the Illinois EPA?

17 A. Yes, I did.

18 Q. Can you describe for us what, if any,
19 educational background you might have?

20 A. I've got a Board of Governors Bachelor's
21 Degree with Significant Life Sciences training on
22 it, a Master's of Business Administration with
23 Eastern Illinois University and I'm working on a
24 Master's of Environmental Biology degree at

14

1 Governor's State University now.

2 Q. Okay. And what, if any, training
3 have you received in addition to your education

4 while you have been employed with the Illinois
5 EPA?

6 A. I've had the 40-hour hazardous
7 materials training backed up by eight hours of
8 additional training each year. I've had RCRA
9 inspector training in various one and two-day
10 seminars on site inspection techniques.

11 Q. Are you familiar with a facility
12 commonly known to the Illinois EPA as the Longview
13 Jim Day?

14 A. Yes, I am.

15 Q. How were you familiar with that
16 facility?

17 A. I have inspected that facility in the
18 past.

19 Q. How many times have you conducted
20 inspections of that particular facility?

21 A. Twice, that I recall.

22 Q. Just for clarification, we're
23 speaking of a facility located at the northwest
24 corner of Logan and Sherman streets in Longview,

15

1 Illinois, is that correct?

2 A. Yes, I believe it is.

3 Q. And what was the purpose of those two
4 inspections of that facility?

5 A. For both inspections, the Agency
6 had received a complaint alleging open dumping
7 at least and in the second case, open burning.

8 Q. Okay. And your inspections were
9 conducted as a followup to the receipt of those
10 complaints?

11 A. Yes, they were.

12 (Document marked as
13 People's Exhibit No. 1
14 for identification,
15 4/9/01.)

16 MR. SCHERSCHLIGT: Mr. Hearing Officer?

17 HEARING OFFICER HALLORAN: Thank you.

18 BY MR. SCHERSCHLIGT:

19 Q. Mr. Keigley, I hand you what I've just
20 marked as People's Exhibit No. 1 and I would ask do
21 you recognize that?

22 (Document tendered
23 to the witness.)

24

16

1 BY THE WITNESS:

2 A. Yes, I do.

3 BY MR. SCHERSCHLIGT:

4 Q. Please tell us what that is.

5 A. That's an inspection report prepared by
6 me that is documenting what I saw on the inspection
7 of January 12, 2000.

8 Q. Okay. And would you please take a
9 moment and just leaf through that report and let
10 us know whether or not that is a fair, accurate
11 and complete copy of the inspection report for your
12 January 12, 2000, inspection?

13 MR. SUMMERS: We would like to voice
14 an objection at this time. Apparently, this document
15 pertains to an inspection that was made on January
16 12, 2000.

17 It's my understanding that the
18 complaint that's filed -- the citation was filed --
19 it involves violations that occurred in May of 2000.
20 For that reason, we would find that one, we would
21 object to the use of this document in that it deals
22 with January 12, 2000, matters and it would be
23 prejudicial, irrelevant and would have no probative
24 value of this particular complaint.

17

1 HEARING OFFICER HALLORAN: Okay.
2 Mr. Scherschligt?

3 MR. SCHERSCHLIGT: Yes.

4 Mr. Hearing Officer, counsel is
5 correct. It does deal with an inspection that was

6 conducted prior to the inspection that we're dealing
7 with in the administrative citation. However, I
8 would note three things.

9 First of all, the Agency offers
10 this report to provide the Board with a little
11 historical background with respect to this site,
12 in other words, the compliance history that we've
13 had with Mr. Day.

14 Secondly, I would note that in
15 this January 12th inspection, this witness is going
16 to testify that that involved the open dumping of
17 some sandblasting material, which he will also
18 testify that it was present during his May 17th
19 inspection, which we are here on today.

20 Thirdly, it's a state record.
21 It's a part of his ordinary course of business.
22 We are offering that to show a common scheme or
23 practice, limited purpose, common scheme or practice,
24 and also for the limited purpose of showing that

18

1 the sandblasted material that Mr. Keigley observed
2 on January 12th continued to remain on May 17th
3 when he conducted his inspection of the very same
4 facility.

5 So for those reasons, I think

6 counsel's objections should be overruled.

7 HEARING OFFICER HALLORAN: And you will
8 connect this up?

9 MR. SCHERSCHLIGT: Absolutely.

10 HEARING OFFICER HALLORAN: Mr. Summers?

11 MR. SUMMERS: Again, we would like a
12 standing objection to the use of this document for
13 the reasons already stated.

14 HEARING OFFICER HALLORAN: The objection
15 is noted. However, it's overruled. You may
16 proceed.

17 BY MR. SCHERSCHLIGT:

18 Q. Mr. Keigley, have you looked through the
19 report?

20 A. Yes, I have.

21 Q. And is that a fair, accurate and
22 complete copy of the report that you have prepared
23 in connection with your January 12th, 2000,
24 inspection?

19

1 A. Yes, it is.

2 Q. Now, I noticed that this report contains
3 an opened up inspection checklist?

4 A. Yes, it does.

5 Q. It also contains a narrative?

6 A. Yes, it does.

7 Q. And it also contains -- this
8 particular photograph contains photographs, right?

9 A. Yes, it does.

10 Q. Is it customary for your inspection
11 reports to contain a narrative, an inspection
12 checklist and photographs?

13 A. Yes, it is.

14 Q. Is it also customary for your report
15 to contain sample data sheets if, in fact, you take
16 samples at the facility?

17 A. Yes, it is.

18 Q. This particular report does contain
19 sample data sheets, does it not?

20 A. Yes, it does.

21 Q. Describe for us what you observed at
22 the facility located at the northwest corner of Logan
23 and Sherman Streets in Longview, Illinois on January
24 12, 2000.

20

1 A. When I arrived on the site, there was
2 an area that was approximately 10 by 25 feet that
3 had amounts of white sand scattered around and then
4 there was a pile or two that were maybe a foot and
5 a half by a foot and a couple inches deep of sand.

6 Q. Okay. And did you take a sample of that

7 material?

8 A. I did take a sample.

9 Q. Okay. What did you do with the sample
10 of the material?

11 A. I took it to the lab, the Illinois EPA
12 lab, at 2125 South First in Champaign for analysis.

13 Q. And what did that sample reveal?

14 A. There were no constituents --

15 MR. SUMMERS: I would like to object
16 to the --

17 BY THE WITNESS:

18 A. -- present to --

19 HEARING OFFICER HALLORAN: Wait, sir.

20 Mr. Summers?

21 MR. SUMMERS: I would like to object
22 to the testing. Those matters would be hearsay.
23 There has been no proper foundation. We would object
24 at this time for his testifying as to some act or

21

1 some thing reported to him by some other person or
2 agency.

3 HEARING OFFICER HALLORAN: Okay.

4 Mr. Scherschligt?

5 MR. SCHERSCHLIGT: Well, again, this
6 is a business record prepared by an employee of
7 the Illinois Environmental Protection Agency. It's a

8 state record. It's really not so important to the
9 Agency as to what was in the sandblasting material.
10 I think the fact that there was sandblasting material
11 at the site is evidence sufficient in and of itself
12 to show that there was open dumping. I'm merely
13 offering this to give the Board an understanding of
14 what that material contained for whatever benefit
15 they may see.

16 HEARING OFFICER HALLORAN: Okay.

17 Mr. Summers, anything further?

18 MR. SUMMERS: No.

19 HEARING OFFICER HALLORAN: I will
20 overrule your objection and, of course, you may
21 appeal the hearing officer's evidentiary rulings
22 after the hearing is completed.

23 You may proceed.

24

22

1 BY MR. SCHERSCHLIGT:

2 Q. Mr. Keigley, what was your understanding
3 of the sample analysis?

4 A. There were amounts of metals in the
5 sand, none in amounts great enough to render it
6 hazardous.

7 Q. Would that be consistent with the

8 complaint you received?

9 A. Yes, it would.

10 Q. Would that be consistent with your
11 personal physical observations at the site?

12 A. Yes, it would.

13 Q. I would now like to direct your
14 attention to the photograph section of the report,
15 in particular, the very first photographs. It
16 appears to be identified by a number, dot, JPG.
17 The last three digits being '001.

18 Now, did you take that photograph?

19 A. Yes, I did.

20 Q. And tell us what is depicted in that
21 photograph?

22 A. It's an area that's about ten-foot wide
23 and maybe 25-foot long with sand. It contains sand
24 in various depths.

23

1 Q. Does that photograph fairly and
2 accurately depict what you personally observed on
3 January 12th of 2000 at the site?

4 A. Yes, it does.

5 Q. I direct your attention to the
6 photograph ending 002.JPG. What is depicted in that
7 photograph?

8 A. That's the -- one of the piles of sand

9 that was maybe a foot wide and a couple inches deep
10 that I saw while I was there that day.

11 Q. And did you also take that photograph?

12 A. Yes, I did.

13 Q. And does that photograph fairly and
14 accurately depict what you personally observed on
15 that day?

16 A. Yes, it does.

17 Q. I direct your attention to the third and
18 final photograph ending 003.JPG. What is depicted in
19 that photograph?

20 A. Again, it's from a different direction
21 showing the sand scattered across the lot.

22 Q. And did you take that photograph?

23 A. Yes, I did.

24 Q. Does that photograph fairly and

24

1 accurately depict what you personally observed on
2 that date at the facility?

3 A. Yes, it does.

4 MR. SCHERSCHLIGT: I'm going to
5 offer this at a later time, but I'll leave that with
6 you, if that's all right.

7 HEARING OFFICER HALLORAN: Okay.

8 BY MR. SCHERSCHLIGT:

9 Q. What did you do after your January 12,
10 2000, inspection?

11 A. I went back to the office, prepared
12 the report and prepared an administrative warning
13 notice.

14 Q. What is an administrative citation
15 warning notice?

16 A. It's a notification to the person that
17 we believe is responsible for violations, that we
18 believe there are violations, and it's to give them
19 an opportunity to clean it up or correct them.

20 Q. And is it customary for the Illinois EPA
21 to send a warning notice --

22 A. Yes.

23 Q. -- to an alleged violator of the
24 Environmental Protection Act or the associated

25

1 regulations?

2 A. Yes, it is.

3 Q. And you did that in this particular
4 case?

5 A. Yes, I did.

6 MR. SCHERSCHLIGT: Okay.

7 Mr. Hearing Officer?

8 HEARING OFFICER HALLORAN: Fine.

9 (Document marked as

10 People's Exhibit No. 2
11 for identification,
12 4/9/01.)

13 MR. SCHERSCHLIGT:

14 Q. I hand you what I just marked as
15 People's Exhibit No. 2 and I would ask do you
16 recognize that?

17 (Document tendered
18 to the witness.)

19 BY THE WITNESS:

20 A. Yes, I do.

21 BY MR. SCHERSCHLIGT:

22 Q. What is that?

23 A. That's the administrative -- it's an
24 opened up administrative citation warning notice

26

1 that was sent to Mr. Day.

2 Q. Did you author this letter?

3 A. Yes, I did.

4 Q. Although you did not sign it, did you?

5 A. No, I did not.

6 Q. Who signed that?

7 A. My supervisor, Richard Gerard.

8 Q. Okay. Does he normally sign these
9 letters?

10 A. Yes, he does.

11 Q. So you prepare them and then he signs
12 them?

13 A. Yes.

14 Q. Okay. And what was the purpose of this
15 letter to Mr. Day?

16 A. It was to notify Mr. Day that we
17 believe that there were violations of the Illinois
18 Environmental Protection Act and to give him a
19 chance to clean up and resolve these violations.

20 Q. Does the letter identify specific
21 actions that we would like to see Mr. Day take in
22 order to become in compliance?

23 A. Yes, it does.

24 Q. And does it also give him a compliance

27

1 deadline for achieving compliance?

2 A. Yes, it does.

3 Q. Now, do you recall having any
4 conversations with Mr. Day subsequent to you
5 sending the administrative citation warning
6 notice?

7 A. I do recall that Mr. Day and I had
8 two or three meetings at the Champaign regional
9 office. It's been awhile now and I don't recall
10 if we specifically discussed this one.

11 Q. And they were meetings with respect
12 to this particular facility?

13 A. I believe one of them at least was.

14 Q. Okay. What do you recall happening
15 next with respect to this particular facility
16 that we're dealing with here today, the one at
17 Sherman and Logan streets?

18 A. We received a complaint that there
19 was open burning and open dumping going on there --
20 had gone on over a weekend at this site.

21 Q. What do you do when you receive a
22 complaint over the telephone?

23 A. Prepare a complaint form for the record
24 and then we follow up on that.

28

1 Q. Now, do you recall -- well, let me back
2 up. I'm going to mark this.

3 (Document marked as
4 People's Exhibit No. 3
5 for identification,
6 4/9/01.)

7 HEARING OFFICER HALLORAN: Thank you.

8 BY MR. SCHERSCHLIGT:

9 Q. I hand you what I've just marked as
10 People's Exhibit No. 3. Do you recognize that?

11 (Document tendered
12 to the witness.)

13 BY THE WITNESS:

14 A. Yes, I do.

15 BY MR. SCHERSCHLIGT:

16 Q. What is that?

17 A. That's a complaint form that was
18 prepared by me concerning alleged open burning
19 at this facility.

20 Q. You prepared that form, correct?

21 A. Yes.

22 Q. Did you actually receive the anonymous
23 telephone call yourself?

24 A. No, I did not.

29

1 Q. Who received that call?

2 A. Darwin Fields, Bureau of Air, Illinois
3 EPA.

4 Q. And then why did you prepare the report
5 despite the fact that you did not receive the actual
6 complaint?

7 A. This particular complaint more pertains
8 to Bureau of Land expertise than Bureau of Air.

9 Q. So that's why you were assigned to
10 prepare the complaint form even though you didn't
11 receive the call?

12 A. Yes.

13 Q. Okay. And what have you noted in
14 the complaint details section of the complaint?

15 A. Burned furniture, wood scraps, and
16 other refuse.

17 Q. And what have you noted in your
18 investigation results?

19 A. Observed evidence of open burning,
20 see inspection report dated 5/17/00, AC recommended.

21 Q. Is it your testimony that you prepared
22 an inspection as a follow-up to receiving the
23 anonymous complaint?

24 A. Yes.

30

1 Q. And that would have been on what day?

2 A. I did the inspection on the 17th, May
3 the 17th.

4 Q. This complaint was actually received
5 on what day?

6 A. The 16th.

7 Q. The 16th. Why did you wait a day to go
8 out there?

9 A. I believe the complaint came in later in
10 the day or Mr. Fields got back to me later in the day
11 on Monday and I didn't have time. So I did it on

12 Tuesday.

13 (Document marked as
14 People's Exhibit No. 4
15 for identification,
16 4/9/01.)

17 BY MR. SCHERSCHLIGT:

18 Q. Okay. I hand you what I have just
19 marked as People's Exhibit No. 4. Do you recognize
20 that?

21 (Document tendered
22 to the witness.)

23

24

31

1 BY THE WITNESS:

2 A. Yes, I do.

3 BY MR. SCHERSCHLIGT:

4 Q. Tell us what that is.

5 A. That's the inspection report that I
6 prepared for an inspection that I did on May 17,
7 '00.

8 Q. That was in response to the anonymous
9 telephone complaint that was received by the Illinois
10 EPA?

11 A. Yes, it was.

12 Q. Does that inspection report contain a

13 checklist?

14 A. Yes, it does.

15 Q. Does it contain a narrative?

16 A. Yes, it does.

17 Q. Does it contain photographs?

18 A. Yes, it does.

19 Q. Now, take a moment and just leaf through
20 that and let me know if that's a fair, accurate, and
21 complete copy of your client report?

22 A. Yes, it is.

23 Q. What did you observe when you arrived on
24 May 17th of 2000?

32

1 A. I saw what was obviously a burn pile
2 and when I walked over, it was probably 10-foot by
3 10-foot by maybe eight inches deep in refuse. When
4 I walked over to the burn pile, I saw that there was
5 furniture, you know, just scraps of what could have
6 been burned furniture. There was heat scorched
7 springs --

8 MR. SUMMERS: I'm going to object and
9 move to strike the report. Apparently, this is guess
10 or speculation on behalf of the witness. He said
11 could have and may have been furniture. Without some
12 foundation to show that he actually knows that is

13 what it was, I think that testimony should be
14 stricken.

15 MR. SCHERSCHLIGT: He is merely
16 testifying as to his personal firsthand observations
17 of the material. We will grant that it may not be
18 what he thinks it is, but I think as an opinion
19 witness, he can testify as to what he believes that
20 material is and that it's consistent with that of
21 carpet, metal, frame, whatever the case may be.

22 HEARING OFFICER HALLORAN: Mr. Summers?

23 MR. SUMMERS: At this point and based
24 on --

33

1 HEARING OFFICER HALLORAN: Could you
2 speak up a little, please?

3 MR. SUMMERS: At this point, based on
4 what I have heard him say, it's merely a guess or
5 speculation. Now, if he has some special knowledge
6 or some personal knowledge as to what was actually
7 burned there or what it was, then, I think he can
8 testify to that.

9 For him to sit up here and
10 say, well, I think it was this or I guess it was
11 that, that's not proper. It's irrelevant. It's
12 immaterial. It has no probative value whatsoever.

13 MR. SCHERSCHLIGT: I'll be happy to

14 rephrase.

15 HEARING OFFICER HALLORAN: Could you
16 rephrase, please?

17 MR. SCHERSCHLIGT: Sure.

18 HEARING OFFICER HALLORAN: Thank you.

19 BY MR. SCHERSCHLIGT:

20 Q. Mr. Keigley, can you say with any degree
21 of certainty or with some degree of certainty that
22 you observed material in that burn pile that was
23 metallic in nature?

24 A. Yes, I can.

34

1 Q. Can you say with certainty that you
2 observed material in that burn pile that contained
3 what was a metal spring-type apparatus?

4 A. Yes, I can.

5 Q. And can you say with certainty that you
6 observed material in that pile that was consisting of
7 empty metallic cans?

8 A. Yes, I did.

9 Q. Can you say with certainty that you
10 observed within that burn pile pieces of charred
11 dimensional lumber?

12 A. Yes, I can.

13 Q. Can you say with certainty that you

14 observed in that pile pieces of charred particle
15 board?

16 A. Yes, I can.

17 Q. And you observed other material in that
18 pile that perhaps you don't know specifically what it
19 was, but you know that it was material?

20 A. Yes.

21 Q. Did you speak to anybody while you were
22 at the site on this particular day?

23 A. I don't recall.

24 Q. Do you recall if you observed any drink

35

1 containers in the burn pile?

2 A. I did observe what appeared to be drink
3 containers in the pile.

4 Q. Did you observe -- do you remember what
5 they were made out of?

6 A. Glass, I believe.

7 Q. Were there any of them that were made
8 out of metal?

9 A. Yes.

10 Q. Now, I noticed that there are two
11 photographs to your report, is that correct?

12 A. Yes.

13 Q. Who took those photographs?

14 A. Mr. Darwin Fields, Bureau of Air.

15 Q. And Mr. Fields works in your office, is
16 that correct?

17 A. Yes, it does.

18 Q. And when did he take those photographs,
19 if you know?

20 A. May the 15th.

21 Q. So his photographs were taken two days
22 prior to your actual visit to the site? Perhaps I
23 have that. It looks like your report is dated
24 May 17th?

36

1 A. Yes. I believe that's the day that they
2 were taken.

3 Q. Okay. But they were taken prior to your
4 visit?

5 A. Yes, they were.

6 Q. Within two days?

7 A. Yes.

8 Q. Now, how did you get involved subsequent
9 to Mr. Fields' involvement with the site?

10 A. When Mr. Fields saw the burn pile on
11 the site, he realized that this more pertained
12 to Bureau of Land expertise so he brought the
13 photographs to me and referred --

14 Q. He brought the photos to you?

15 A. Yes.

16 Q. And then you went out on the 17th and
17 did your site investigation?

18 A. Right.

19 Q. I direct your attention to Photograph
20 No. 1 of your report.

21 A. Yes.

22 Q. Does that photograph taken by Darwin
23 Fields fairly and accurately depict what you
24 personally observed at the site on May the 17th?

37

1 A. Yes.

2 Q. Tell us what you observed in that
3 photograph on May the 17th?

4 A. Well, I can see heat scorched springs.
5 I can see a piece of what looks to be burned
6 dimensional lumber. I see heat scorched metal
7 food containers and what appears to be particle
8 board that's charred.

9 Q. How about dimensional lumber?

10 A. Yes. I did see pieces of and do see
11 pieces of heat scorched and charred dimensional
12 lumber.

13 Q. I can't remember. Did you see any heat
14 scorched and charred metal framing?

15 A. Yes, I did. It appeared consistent

16 with what would be these metal folding doors.

17 Q. Okay.

18 A. Or wooden folding doors or whatever.

19 Q. Tell us about the heat scorched springs
20 that you observed. Were you able to determine where
21 they came from?

22 A. No.

23 Q. Okay. What did they appear to be
24 consistent with?

38

1 A. Consistent with what would be in
2 furniture cushions or a mattress.

3 Q. Okay. And what is depicted in
4 photograph -- did you also -- in Photograph No. 2,
5 what is depicted in that?

6 A. That's the same burning pile from the
7 road.

8 Q. It's just from a distance?

9 A. Yes, from a distance.

10 Q. And these two photographs are consistent
11 with what you personally observed on May the 17th?

12 A. Yes, they are.

13 Q. Did you have any contact with Mr. Day
14 subsequent to your May 17th inspection?

15 A. Again, I did have two or three meetings

16 with Mr. Day. I don't recall if we had a meeting on
17 this specific day.

18 Q. You have met Mr. Day before?

19 A. Yes, I have.

20 Q. Is Mr. Day present here in the
21 courtroom?

22 A. Yes, he is.

23 Q. Can you point him out and identify an
24 article of clothing he is wearing?

39

1 A. Mr. Day (indicating).

2 Q. And what color is his shirt?

3 A. Green.

4 MR. SCHERSCHLIGT: I would ask that the
5 record reflect that he has identified the respondent.

6 HEARING OFFICER HALLORAN: The record
7 so reflects.

8 MR. SCHERSCHLIGTT: That's all I have.

9 Thank you.

10 HEARING OFFICER HALLORAN: Thank you,
11 Mr. Scherschligt.

12 Mr. Summers?

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

14 by Mr. Summers

15 Q. Mr. Keigley, your investigation of the
16 property that you have referred to as the Longview

17 Day property, were there any persons living on this
18 property at the time that you conducted your
19 investigations?

20 A. No, sir.

21 Q. The property that you referred to was
22 basically a vacant lot, is that correct?

23 A. Yes, sir.

24 Q. Or vacant lots because there was more

40

1 than one lot?

2 A. Yes, sir.

3 Q. Did you conduct an investigation to
4 determine who the owner of record was of those
5 particular lots?

6 A. Yes.

7 Q. And would it be correct to say that
8 you determined that the owner of record was Opal
9 Thomas?

10 A. Yes, that's true.

11 Q. Did you ever have a meeting with or talk
12 with Opal Thomas?

13 A. I believe I talked to her son.

14 Q. That would be a Robert Thomas?

15 A. Yes.

16 Q. Did you determine that he was, in fact,

17 a guardian or some court appointed officer for his
18 mother, Opal Thomas?

19 A. Yes.

20 Q. Did you make an investigation and
21 determine who was paying the taxes --

22 A. Yes, I did.

23 Q. -- on the vacant lot?

24 A. Yes, I did.

41

1 Q. And who was that?

2 A. That was Opal Thomas, again.

3 Q. When you made your investigation of
4 the property and discovered the burn pile on May 17,
5 2000, was the fire or the -- the pile wasn't in the
6 process of burning at that time, was it?

7 A. Not at that time.

8 Q. Okay. And I take it that from your
9 investigation, you would not know what exact day
10 the actual burn took place referring to that pile?

11 A. No, sir.

12 Q. You weren't present at any time when
13 any actual burning took place, is that correct?

14 A. No, sir.

15 MR. SUMMERS: That's all I have.

16 HEARING OFFICER HALLORAN: Thank you,

17 Mr. Summers.

18 Mr. Scherschligt?

19 MR. SCHERSCHLIGT: Brief redirect, if I
20 may.

21 HEARING OFFICER HALLORAN: That's fine.

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

23 by Mr. Scherschligt

24 Q. When you spoke to Ms. Opal's son -- I'm

42

1 sorry. What is her name again, Opal Thomas?

2 A. Yes.

3 Q. Mrs. Thomas' son, what, if anything, did
4 he tell you?

5 MR. SUMMERS: Objection, hearsay.

6 MR. SCHERSCHLIGT: He opened the door.

7 MR. SUMMERS: You don't open the door to
8 improper evidence. If it's proper, he can ask him,
9 but you don't open the door to improper evidence no
10 matter what you asked.

11 MR. SCHERSCHLIGT: Mr. Summers --

12 HEARING OFFICER HALLORAN: You can open
13 the door to improper evidence.

14 MR. SCHERSCHLIGT: Mr. Summers asked him
15 about a conversation that he had with Opal Thomas'
16 son. I think I'm entitled to inquire as to what the
17 extent of that conversation was.

18 MR. SUMMERS: I was very specific when
19 I asked him that. I asked him did he inquire of
20 Mr. Thomas about the ownership of record. If he
21 wants to ask about the ownership of record, of
22 course, I have no problem with that, but I didn't
23 ask him about any conversations with Opal Thomas,
24 with Robert Thomas or Mr. Keigley about any other

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1 item other than ownership of record.

2 MR. SCHERSCHLIGT: He asked him
3 about guardianship and that implies that he had a
4 conversation with her son. He asked if her
5 son indicated to him that he was guardian of her
6 estate.

7 MR. SUMMERS: Well, if he wants to ask
8 about the guardianship, I don't have any problem with
9 that.

10 MR. SCHERSCHLIGT: I'm merely suggesting
11 that you questioned him about the conversation that
12 he had with her son and that gives me the right to
13 explore what the extent of that conversation was.

14 HEARING OFFICER HALLORAN: I would agree
15 with Mr. Scherschligt.

16 BY MR. SCHERSCHLIGT:

17 Q. What, if anything, did her son say to
18 you?

19 A. He said that they were in a dispute
20 with Mr. Day at the time, that Mr. Day had bought
21 the property on contract and that they were in
22 the process of trying to get the property back.

23 MR. SUMMERS: We would object to
24 the response and move that it be stricken and

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1 that it's hearsay and beyond the scope of the
2 cross-examination.

3 HEARING OFFICER HALLORAN: Again, I
4 believe you did open the door, Mr. Summers. I will
5 overrule your objection.

6 BY MR. SCHERSCHLIGT:

7 Q. Now, Mr. Summers asked you about if
8 you inquired as to ownership of the property and
9 I believe you testified that you determined or you
10 believed the owner to be Opal Thomas?

11 A. Yes.

12 Q. What led you to that conclusion?

13 A. The county records, the supervisor
14 assessments office in Champaign County.

15 Q. Now, when you checked at that office,
16 you didn't see any evidence of a contract for deed,
17 did you?

18 A. No, I didn't.

19 Q. All you saw was the plat or perhaps a
20 deed of the property?

21 A. Right, yes.

22 Q. And she was the last owner in the chain
23 that you saw?

24 A. Yes.

45

1 Q. Okay. But you don't know for certain
2 what happened after she bought the property, do you?

3 A. No, I don't.

4 Q. Okay. And you said that you determined
5 that she was paying the taxes, Mrs. Thomas. How did
6 you determine that?

7 A. In the supervisor of assessments office,
8 they have the address of the person that's paying the
9 taxes.

10 Q. Now, is that the address of the person
11 that receives the tax bill or is that the address of
12 the person who pays the taxes?

13 A. That's the address of the person that
14 receives the tax bill.

15 Q. So you don't know who was paying these
16 taxes, do you?

17 A. No, I don't.

18 Q. And it's very possible that there was an
19 arrangement between Mrs. Thomas and Mr. Day that he

20 was to pay the taxes, correct?

21 MR. SUMMERS: I'll object. That's
22 guess or speculation. He has no personal knowledge
23 of that.

24 MR. SCHERSCHLIGT: One second. I'm

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1 going to mark this as the next exhibit.

2 (Document marked as
3 People's Exhibit No. 5
4 for identification,
5 4/9/01.)

6 BY MR. SCHERSCHLIGT:

7 Q. I hand to you what I have just marked as
8 People's Exhibit No. 5. Tell us what that is.

9 (Document tendered
10 to the witness.)

11 BY THE WITNESS:

12 A. That's an agreement that I received
13 from a Champaign attorney. It's a contractual
14 agreement by Mr. Day and Mrs. Thomas where he is
15 buying this property.

16 MR. SUMMERS: Again, we object, your
17 Honor. Apparently, this is a copy. There has been
18 no proper foundation for this admission. In fact,
19 we haven't heard anything that this witness has said

20 to be able to identify signatures.

21 THE COURT REPORTER: Keep your voice up,
22 sir.

23 MR. SUMMERS: There just isn't any
24 foundation for the use of this document or

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1 establishing its validity.

2 HEARING OFFICER HALLORAN: Okay.
3 Mr. Scherschligt?

4 MR. SCHERSCHLIGT: This is a document of
5 legal significance. It does appear to have Jim Day's
6 signature on the document. It may not be Mr. Day's
7 signature. Mr. Day is here and available to testify
8 that it is not his signature if he wants to refute
9 this document.

10 Mr. Keigley testified where he
11 received the document. What he believes it to be
12 based upon -- I'll have him read parts of it if that
13 would help, but I believe that there is sufficient
14 foundation and, you know, perhaps Mr. Summers'
15 argument goes to the weight of the evidence, but I
16 don't believe it goes to its admissibility. It's a
17 document of legal significance. It's accepted under
18 the hearsay rule.

19 MR. SUMMERS: It's beyond the scope of
20 the cross-examination. I didn't ask him about any

21 A. From a Champaign attorney.
22 Q. Do you recall her name?
23 A. Linda Laugges.
24 Q. Okay. Do you recall who she

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1 represented? Did she indicate to you who she
2 represented?

3 A. It was either the -- I believe it was
4 Mr. Thomas.

5 Q. Opal Thomas' son?

6 A. Right. And I believe the city of
7 Longview was involved in some way.

8 Q. And what did she say that this document
9 was going to be that she was going to send to you?

10 A. A contractual agreement that Mr. Day had
11 entered into to buy that property.

12 MR. SUMMERS: Objection. I didn't
13 ask him about anything -- any conversations with
14 Linda Laugges or anything of the like and I object.

15 HEARING OFFICER HALLORAN: Sustained.

16 MR. SCHERSCHLIGT: I'll be happy to get
17 this on my examination of Mr. Day. I was trying to
18 save time.

19 HEARING OFFICER HALLORAN: Thank you,
20 Mr. Scherschligt.

21 MR. SCHERSCHLIGT: That's all that I

22 have for this witness.

23 HEARING OFFICER HALLORAN: Thank you.

24 Mr. Summers, is there any recross?

50

1 MR. SUMMERS: No.

2 HEARING OFFICER HALLORAN: You may step
3 down. Thank you.

4 (Witness excused.)

5 MR. SCHERSCHLIGT: We would at this time
6 call Ron Tatman.

7 HEARING OFFICER HALLORAN: Is it Tapman?

8 MR. SCHERSCHLIGT: Tatman, T-A-T-M-A-N.

9 HEARING OFFICER HALLORAN: Thank you.

10 MR. SCHERSCHLIGT: You're welcome.

11 HEARING OFFICER HALLORAN: The court
12 reporter will swear you in.

13 (Witness sworn.)

14 WHEREUPON:

15 R O N A L D R. T A T M A N, S R. ,
16 called as a witness herein, having been first duly
17 sworn, deposeth and saith as follows:

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

19 by Mr. Scherschligt

20 Q. Please state your name for the record.

21 A. Ronald R. Tatman, Sr.

22 Q. Please spell your last name.
23 A. T-A-T-M-A-N.
24 Q. Where do you reside, Mr. Tatman?

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1 A. 102 John Street in Longview.
2 Q. Are you employed?
3 A. Not right at the moment, no.
4 Q. Do you have any affiliation with the
5 city of Longview?
6 A. I'm the village president, yes.
7 Q. How long have you been the village
8 president?
9 A. I was elected in April of '99.
10 Q. How long have you resided in Longview?
11 A. Since November of 1971.
12 Q. One moment, please.
13 Are you familiar with an
14 individual with the name James Day or Jim Day?
15 A. Yes. I've known Jim for quite awhile.
16 Q. How are you familiar with Mr. Day?
17 A. I just know him from living in Longview.
18 Q. Are you familiar with a piece of
19 property located in Longview at the northwest corner
20 of Logan and Sherman streets?
21 A. Yes, sir.
22 Q. I would direct your attention to the

23 date of -- actually, the time period of May 14th
24 of 2000, which was a Sunday.

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1 MR. SCHERSCHLIGT: First of all, I would
2 ask the hearing officer to take administrative notice
3 that May 14th of 2000 fell on a Sunday, May 15th fell
4 on a Monday, May 16th fell on a Tuesday and May 17th
5 fell on a Wednesday.

6 HEARING OFFICER HALLORAN: Mr. Summers?

7 MR. SUMMERS: I don't know whether you
8 can take judicial notice of that or not.

9 MR. SCHERSCHLIGT: Would you stipulate
10 that those dates are correct?

11 MR. SUMMERS: I have no idea.

12 MR. SCHERSCHLIGT: Would you like to
13 consult with a calendar?

14 HEARING OFFICER HALLORAN: I'm going to
15 take notice.

16 MR. SCHERSCHLIGT: I don't know if he
17 responded. I asked him to stipulate. I don't know
18 what his response is.

19 HEARING OFFICER HALLORAN: The hearing
20 officer will take notice.

21 MR. SUMMERS: That those days are
22 whatever they are?

23
24

HEARING OFFICER HALLORAN: Correct.

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1 BY MR. SCHERSCHLIGT:

2 Q. I would like to direct your attention
3 to the time period beginning the Sunday of May 14th
4 following through Wednesday, May 17th of 2000. Do
5 you recall anything unusual happening at the property
6 located at the northwest corner of Logan and Sherman
7 streets in Longview, Illinois?

8 A. Just Jim carrying on some burning
9 there. That's all I know.

10 Q. Okay. Tell us -- do you recall what day
11 that was that you saw that burning?

12 A. I seen it on a Saturday morning. I was
13 going --

14 Q. On a Saturday?

15 A. Yes. They had been --

16 Q. Which would have been May 13th?

17 A. Yeah.

18 HEARING OFFICER HALLORAN: If I may
19 interject, I do have a year 2000 calander and May
20 14th was a Sunday, May 13th was a Saturday and May
21 12th was a Friday.

22 MR. SCHERSCHLIGT: I would also ask you
23 to take administrative notice that the 13th fell on

24 a Saturday. I didn't include that in my time frame.

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1 HEARING OFFICER HALLORAN: So noticed.

2 BY MR. SCHERSCHLIGT:

3 Q. So where were you on the 13th when you
4 saw Mr. Day burning at the property?

5 A. I was going to the post office.

6 Q. You were going to the post office?

7 A. Yes.

8 Q. You were in your vehicle?

9 A. Yes.

10 Q. And what was your direction of travel?

11 A. I was headed east on Logan Street, which
12 is a main street in Longview.

13 Q. How close did you get to the property in
14 question when drove by there?

15 A. I drove right by the front of it.

16 Q. You drove right by the front of it?

17 A. Right by it, yes.

18 Q. Can you tell us what you saw exactly.

19 A. I seen Jim and Tisha and --

20 Q. When you say Jim, you are speaking of
21 the Respondent, Mr. Day?

22 A. Mr. Day, yes.

23 Q. And Tisha is?

24 A. His wife or girlfriend.

55

1 Q. Significant other?

2 A. Yes.

3 Q. Okay. And who else -- did you see
4 anybody else besides them two?

5 A. One of the kids was there.

6 Q. Mr. Day's kids?

7 A. Yes.

8 Q. Okay.

9 A. I don't know which one it was because I
10 can't tell them apart. One of them is older than the
11 other, I know that, but...

12 Q. So at that particular time, you saw
13 three individuals?

14 A. Yes.

15 Q. And what were those three individuals
16 doing?

17 A. Standing at the back of Mr. Day's pickup
18 truck. He had pulled his pickup truck up on the
19 property and they were standing at the back of the
20 pickup truck observing the fire.

21 Q. Tending to the fire?

22 A. Well, they were standing next to the
23 truck and the fire was burning.

24 Q. Was it in the immediate vicinity --

1 A. Yes.

2 Q. -- of the truck?

3 A. It was a little ways away from the
4 truck, yeah.

5 Q. Did you see any -- was the fire burning
6 at the time?

7 A. Yes.

8 Q. Was it a full-blown fire or was it
9 merely smoldering?

10 A. Oh, no. It was burning. It had flames
11 in it.

12 Q. You saw flames?

13 A. Yeah.

14 Q. Did you see anything else in the back of
15 the pickup truck?

16 A. No, I didn't.

17 Q. Did you see material in the fire?

18 A. I never paid any attention what material
19 it was. All I know is it was flamed up and burning.
20 I mean, it was --

21 Q. So you were just driving by?

22 A. Yes.

23 Q. So it would be your testimony that
24 you saw the three individuals in the back of the

1 pickup truck?

2 A. Well, they were standing at the back
3 of it.

4 Q. At the back of it?

5 A. They weren't in it. They were standing
6 at the back of the truck.

7 Q. In the immediate vicinity of a fire?

8 A. Yes, sir.

9 Q. And that those -- and you were not able
10 to determine what exactly was being burned?

11 A. No. It had been on there for a while.

12 Q. Can you say with certainty that
13 Mr. James Day was present during that burn?

14 A. Yes, sir.

15 MR. SCHERSCHLIGT: May I retrieve one
16 of these exhibits?

17 HEARING OFFICER HALLORAN: Yes.

18 BY MR. SCHERSCHLEGT:

19 Q. I hand to you what I previously marked
20 as People's Exhibit No. 4 and I'm turning to the
21 photograph section of that exhibit and I would ask
22 you to take a look at the very first photograph
23 identified by the last three digits. I'm sorry.
24 It's Photograph No. 1 of that report and I would

1 ask you is that the burn pile that you observed
2 when you drove by on that Saturday?

3 (Photograph tendered
4 to the witness.)

5 BY THE WITNESS:

6 A. Yes, sir.

7 BY MR. SCHERSCHLIGT:

8 Q. It's in the same location on the
9 property?

10 A. Yes, sir. The pickup truck was sitting
11 over here to the right in Picture No. 2. The pickup
12 truck was sitting just east of it.

13 Q. East of the pile?

14 A. Yeah.

15 Q. And it was backed up to the pile or was
16 it head in?

17 A. Well, it was heading east. The back of
18 it was toward the pile, but like I say, it was away
19 from it a little bit.

20 Q. Okay. Have you had any conversations
21 with Mr. Day subsequent to you driving by on that
22 Saturday when you saw him burning?

23 A. No, sir.

24 Q. Okay. Do you have any animosity towards

1 Mr. Day?

2 A. No, sir.

3 Q. Do you have any business dealings with

4 Mr. Day?

5 A. Through the village --

6 Q. You've had a few contacts?

7 A. -- had a few contacts with him and

8 that's it.

9 Q. Okay.

10 A. I've always got along with Jim pretty

11 good.

12 MR. SCHERSCHLIGT: That's all I have.

13 Thank you.

14 THE WITNESS: Thank you.

15 MR. SCHERSCHLIGT: He will have an

16 opportunity to cross-examine you, sir.

17 HEARING OFFICER HALLORAN: Mr. Summers?

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

19 by Mr. Summers

20 Q. On the day that you saw the -- you saw

21 Mr. Day and the burning on a Saturday, is that

22 correct?

23 A. Yes, sir.

24 Q. Did you see any other burning after that

1 day?

2 MR. SCHERSCHLIGT: Objection, vague.

3 If he could just narrow it down to the location he is
4 referring to.

5 BY THE WITNESS:

6 A. No.

7 HEARING OFFICER HALLORAN: Mr. Summers?

8 BY MR. SUMMERS:

9 Q. Any burning from Saturday through the
10 following Tuesday?

11 A. I can't say that there was. I never had
12 a reason to go downtown on Sunday.

13 Q. So you weren't -- you didn't go past
14 there on Sunday, Monday or Tuesday?

15 A. I went by on Monday and Tuesday at which
16 time the fire was out then.

17 Q. Do you recall what time of the day it
18 was that you were there on Monday?

19 A. Oh, I would say approximately between
20 9:00 and 10:00. I go up and get my mail every day.

21 Q. So you just drove past it in one
22 direction and drove past it coming back, is that
23 right?

24 A. Yes, sir.

1 Q. And that was the only time you had gone
2 by there on Monday?

3 MR. SCHERSCHLIGT: I believe he said
4 Monday and Tuesday.

5 BY THE WITNESS:

6 A. Well, I can't really say that would be
7 the only time. Every once in a while, I get out and
8 ride my bicycle around. You know, I may have done
9 that later on.

10 BY MR. SUMMERS:

11 Q. But you don't have any specific
12 recollection of having done that on that following
13 Monday?

14 A. Not really, no.

15 Q. And would that be true, then, of Tuesday
16 also?

17 A. Probably, yeah.

18 HEARING OFFICER HALLORAN: I want to
19 note for the record that Monday was May 15th,
20 correct?

21 MR. SUMMERS: Yes. I was going to ask
22 him that.

23 HEARING OFFICER HALLORAN: I'm sorry.

24

1 BY MR. SUMMERS:

2 Q. The Saturday was the 13th and then
3 the Monday and Tuesday I'm talking about -- Sunday,
4 Monday and Tuesday would have been the subsequent
5 days after the fire that you saw?

6 A. Yeah.

7 Q. So you would have been -- you would
8 have gone by there -- you don't think you went by
9 the way there on Sunday, but you think you went by
10 there maybe once or twice on Monday. What about
11 Tuesday?

12 A. I went by there Tuesday at the same
13 time. Like I said, I go up and get my mail at about
14 the same time every day.

15 Q. And as you sit there today, that would
16 have been the only times that you would have gone
17 by there during that time period, is that correct?

18 A. That I could swear that I went by there,
19 yes.

20 Q. And there was nothing that you can think
21 of today that would cause you to remember other times
22 of going by there?

23 A. No.

24 Q. I mean, nothing unusual?

1 A. No.

2 Q. Now, you said that you don't have any
3 problems with Mr. Day, is that correct?

4 A. No, I don't.

5 Q. No difficulties with Mr. Day?

6 A. No.

7 MR. SUMMERS: That's all I have.

8 HEARING OFFICER HALLORAN: Thank you,
9 Mr. Summers.

10 Mr. Scherschligt, any redirect?

11 MR. SCHERSCHLIGT: No, thank you. I
12 would just like to thank Mr. Tatman for being here
13 today.

14 THE WITNESS: Thank you.

15 HEARING OFFICER HALLORAN: Thank you,
16 sir. You may step down.

17 THE WITNESS: Okay.

18 MR. SCHERSCHLIGT: As far as I'm
19 concerned, he is free to go. However, I would refer
20 to you and Mr. Summers as to whether he is free to
21 leave.

22 MR. SUMMERS: I don't intend to call
23 him.

24 HEARING OFFICER HALLORAN: Okay. You

1 may leave, sir.

2 THE WITNESS: Thank you.

3 MR. SCHERSCHLIGT: Thank you very much.

4 I appreciate your presence here today.

5 (Witness excused.)

6 MR. SCHERSCHLIGT: The Illinois EPA

7 would next call John Webber, please.

8 HEARING OFFICER HALLORAN: Is everybody

9 okay with breaks.

10 We have the Agency's witness
11 stepping up. If you could raise your right hand,
12 the court reporter will swear you in.

13 (Witness sworn.)

14 WHEREUPON:

15 D O N W E B B E R ,

16 called as a witness herein, having been first duly
17 sworn, deposeth and saith as follows:

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

19 by Mr. Scherschligt

20 Q. Please state your name for the record.

21 A. Don Webber.

22 Q. Please spell your last name.

23 A. W-E-B-B-E-R.

24 Q. Mr. Webber, where do you reside?

1 A. At 209 North Grant in Longview.

2 Q. How long have you resided at that

3 address?

4 A. I have lived in Longview about 20

5 years. I have lived at that address 16 years.

6 Q. Are you employed?

7 A. I'm self-employed.

8 Q. What do you do?

9 A. I run a garage in Longview, auto repair.

10 Q. Auto repair?

11 A. Uh-huh.

12 Q. Where is that garage located?

13 A. 107 East Logan Street.

14 Q. Where is that in relation to the

15 property located at the northwest corner of Logan

16 and Sherman streets?

17 A. I'm right across the street from it.

18 Q. Are you familiar with the individual by

19 the name of James Day?

20 A. Yes.

21 Q. How are you familiar with Mr. Day?

22 A. I've known him since I moved to

23 Longview. I met him shortly after I moved to town.

24 Q. Have you ever observed Mr. Day at the

1 property located at the -- and I apologize for

2 repeating myself -- northwest corner of Logan and
3 Sherman streets in Longview?

4 A. Yes.

5 Q. I would direct your attention to the
6 date of Saturday May 13th of 2000. Do you recall
7 observing anything unusual happening at the property
8 directly across the street from your auto body garage
9 that would be at Logan and Sherman streets on the
10 northwest corner?

11 A. Well, if that was the date of the fire
12 itself, yeah. They had a -- there was a large, large
13 fire.

14 Q. You don't recall the exact date?

15 A. Not the exact date.

16 Q. Do you recall the day of the week?

17 A. I was -- it was on a weekend, I know
18 that. It was on a weekend. It was either Saturday
19 or Sunday. I was thinking it was on a Sunday, but
20 I'm sure it was on a weekend.

21 Q. On a weekend?

22 A. Yeah.

23 Q. All right. What, if anything, did you
24 observe with respect to the burn at that property?

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1 A. They had a large trailer of household

2 stuff that formerly stayed over at his son's house --
3 at Jason's house and the trailer had been pulled over
4 across the property and there was a huge fire. They
5 were just piling stuff on this fire. They had a huge
6 fire going.

7 Q. Now, you've seen the trailer at
8 Mr. Day's son's house?

9 A. Yes.

10 Q. And then you saw it at this particular
11 piece of property across the street from your
12 business?

13 A. Yes.

14 Q. And it was either on a Saturday or a
15 Sunday?

16 A. Yes.

17 Q. That would have been -- you can say with
18 certainty that that was either May 13th, which was a
19 Saturday, or May 14th, which was a Sunday?

20 A. Right.

21 Q. Who was present during that burn?

22 A. Well, besides Jim, pert near the whole
23 family was across the street. You know, at one time
24 or another, people were coming and going.

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1 Jim was there. Tisha was there. His daughters
2 were there. Jason was there. That's about it.

3 Q. What type of material did you personally
4 observe in the back of this trailer?

5 A. There was rugs. There was rugs and,
6 like, construction debris, household debris from,
7 like, remodeling a house. You know, it was stuff
8 that was taken out of a house being remodeled.

9 Q. Did you personally observe Mr. Day
10 throwing any articles onto the fire?

11 A. Yes.

12 Q. What did you see Mr. Day throw onto the
13 fire?

14 A. Well, aside from construction debris,
15 there was, like, rugs. There was, like, a rug. I
16 can't remember whether it was a blue or green-type
17 rug, but there were rugs. There was just basically,
18 like, construction debris is what it was. There was
19 a mattress. There was a mattress that was piled on
20 top.

21 Q. You saw a burning mattress?

22 A. Yes.

23 Q. Anything else that you recall?

24 A. No. It was just -- basically, that

1 was it. It was just a bunch of, like, debris. It
2 was construction-type debris that, you know, come

3 from his house -- from Jason's house.

4 Q. Now, what brought you outside to see
5 this?

6 A. The smoke. There was just a huge, huge
7 cloud of black smoke that was drifting.

8 Q. The smoke was dark in color?

9 A. Yes. It was black.

10 Q. Were you able to smell the smoke?

11 A. No.

12 Q. Do you recall if it was windy that day?

13 A. Yes. It was kind of windy. If I
14 recall, the wind was -- it was blowing towards the --
15 I guess it was coming out of, like, the north or the
16 northwest because I think it was drifting across the
17 street to the south and down the street.

18 Q. So it wasn't blowing in your direction?

19 A. Not directly in my direction, no.

20 Q. Now, the trailer you saw at Mr. Day's
21 son's house, was the trailer filled with material at
22 the time you saw it at his son's house?

23 A. Yes.

24 Q. Did it appear to be the same material

70

1 that they were throwing onto the fire out of that
2 trailer?

3 A. Yes.

4 Q. I would like to hand to you what I have
5 previously marked as People's Exhibit No. 4. I'm
6 turning to the photograph section of that exhibit.
7 I would direct your attention to Photograph No. 1 of
8 that report.

9 (Document tendered
10 to the witness.)

11 BY THE WITNESS:

12 A. Okay.

13 BY MR. SCHERSCHLIGT:

14 Q. Does the burn pile -- first of all, what
15 is depicted in that photograph?

16 A. This is the pile that was taken across
17 the street. The picture is taken across the street
18 of the remnants of the fire.

19 Q. Is that the burn pile that you saw
20 Mr. Day throwing articles onto?

21 A. Yes.

22 Q. On either Saturday or Sunday?

23 A. Yes.

24 Q. Can you identify anything in that first

71

1 photograph that is consistent with what you saw him
2 throw onto that fire?

3 A. Well, the trailer -- the part of the

4 trailer is still sitting there.

5 Q. Is that the blue -- the trailer with the
6 tarp over it in the background?

7 A. Yes.

8 Q. Okay. How about any of the burned
9 remnants? Can you identify any of the burned
10 remnants as being consistent with what you personally
11 observed being thrown onto the fire?

12 A. No. I mean, I can't -- as far as the
13 ashes, no.

14 Q. Do you see any metallic objects in that
15 pictures?

16 A. Which one, the top one are we talking
17 about now?

18 Q. The first one, yes, Photograph No. 1.
19 Let me be specific. Do you see anything that appears
20 to be a mattress spring in that photograph.

21 A. I didn't bring my glasses.

22 Q. It's kind of dark up there. I realize
23 that.

24 MR. SCHERSCHLIGT: Could he perhaps move

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1 under the light? Would that be all right?

2 HEARING OFFICER HALLORAN: Sure.

3 BY MR. SCHERSCHLIGT:

4 Q. In particular, the middle top part of

5 the photograph, what, if anything, do you see?

6 A. Yeah. It looks like the remnants of the
7 springs of the mattress itself.

8 Q. The remnants of the mattress --

9 A. Yeah.

10 Q. -- springs that you observed Mr. Day
11 throw onto the fire?

12 A. Yeah.

13 Q. Okay. What about Photograph No. 2, is
14 that taken from the immediate vicinity of your
15 property?

16 A. Yeah. That's taken from my side of
17 the street almost directly in front of my property
18 looking towards the north because the Skinners'
19 property, the white house, is in the background.

20 Q. And that would have been from, you know,
21 approximately your vantage point from --

22 A. Yeah.

23 Q. -- where you observed the burning and
24 the materials being thrown onto the fire by Mr. Day

73

1 and members of his family, correct?

2 A. Right.

3 Q. Do you have any animosity towards

4 Mr. Day?

5 A. None in particular.

6 Q. Have you had any dealings with Mr. Day
7 in the past?

8 A. Off and on.

9 Q. Okay. Tell us about those dealings with
10 Mr. Day.

11 A. Well, he has reported me for violations
12 and all this here stuff. He brought the EPA to my
13 property before his ownself. So, you know, other
14 than that...

15 Q. Okay. Have you ever seen Mr. Day at
16 this particular piece of property prior to this
17 particular incident of burning?

18 A. Oh, yeah. He's had --

19 Q. Approximately how many times?

20 A. He's had -- basically, he's had
21 control of that property for as long as I've been in
22 Longview.

23 Q. Okay. Have you ever seen him operate
24 or possess any of the other items located on that

74

1 property that is depicted in Photographs 1 or 2?

2 A. Yeah. All they -- just about all of
3 the stuff that's laying on there, the building --
4 the remnants of the -- there is some rails that are
5 laying on the ground there that came from a Quonset

6 hut that he disassembled behind the school property
7 down there that's laying there on the ground, engines
8 and stuff that he's just -- you know, just all sorts
9 of junk and debris that he has stacked on that
10 property. He's always had some kind of junk or
11 debris on the property whether it's been vehicles or
12 engines or something.

13 Q. What's the time period that you're
14 referring to when you say he's always had?

15 A. Over the -- almost the entire period
16 that I've been in Longview. It's been almost the
17 20 years that I've been in Longview. I'm sure I've
18 got pictures that go back at least ten or 15 years
19 taken from my property of cars on my property and
20 in the background, you could see, you know, different
21 vehicles and different things on that property.

22 Q. Is it your testimony that Mr. Day has
23 had some sort of relationship with this property for
24 almost 20 years?

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1 A. Yes.

2 Q. Are you familiar with an Opal Thomas?

3 A. Yes.

4 Q. How do you know Mrs. Thomas?

5 A. Well, I've met her. I've talked to her

6 before.

7 Q. What is her relationship with this
8 particular piece of property, if any, if you know?

9 A. If anything, she probably -- she picked
10 up the tax deed on it. She has several properties
11 down there she acquires through delinquent taxes.

12 Q. What is her relationship with Mr. Day?

13 A. My only understanding is that she was
14 selling the property to him.

15 MR. SCHERSCHLIGT: That's all I have.

16 Thank you.

17 HEARING OFFICER HALLORAN: Thank you,
18 Counsel.

19 Mr. Summers?

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

21 by Mr. Summers

22 Q. Mr. Webber, you and Mr. Day aren't
23 friends, are you?

24 A. We were in the past. I wouldn't suggest

76

1 that we are now, no.

2 Q. In fact, you've had an ongoing dispute
3 about an access to another property, isn't that
4 correct?

5 A. Yes, I suppose. It's not really a
6 dispute. He claims he has access across my property

7 and he has yet to prove it.

8 Q. And that's with his son, Jason, is that
9 right?

10 A. Right. That refers to Jason. It has
11 nothing to do with Jim. The property is in Jason's
12 name, as Jason has said.

13 Q. Okay. And there is a dispute over your
14 parking junk and boats and everything else on his
15 property and --

16 A. My dispute is not with Jim. It's with
17 Jason.

18 Q. That's what I mean.

19 A. Yeah.

20 Q. That's part of his family.

21 A. Well, it's with Jason. It has to do
22 with Jason, not Jim.

23 Q. Okay. And this is an ongoing thing,
24 isn't it?

77

1 A. No, because he just acquired the
2 property just recently. Jason just acquired it
3 just very recently. So it isn't --

4 Q. You had to have the -- the police have
5 gotten involved or the sheriff's office has gotten
6 involved with the dispute between you and the Days,

7 isn't that correct?

8 A. Yes.

9 Q. It's your understanding and you believe
10 that he has made complaints to the EPA about you?

11 A. It's no belief. It's a fact. I was
12 present when he brought Mr. Keigley over to my
13 property one day.

14 Q. Are you the one that made anonymous
15 complaints to the EPA on Mr. Day?

16 A. Yes. I called Monday morning after
17 the fire because of the fact -- for what I had
18 seen. The following Monday morning, I called
19 the EPA.

20 Q. So you're the one that made this
21 anonymous -- we have this anonymous complaint form
22 here. You're the one that made that?

23 A. You betcha. That's if it's the only
24 complaint that was made and if it's my particular

78

1 complaint.

2 Q. Now, the trailer that you were asked
3 about that is shown in this Photograph No. 1 that
4 was handed to you, that trailer was there before
5 you observed the fire, is that correct?

6 A. Yes.

7 Q. And it was there after?

8 A. Uh-huh. They have more than one trailer
9 also.

10 Q. This trailer that's in the photograph,
11 the tarp was on that trailer before the fire and it
12 was on it after, is that correct?

13 A. It was -- yeah. It was covered with a
14 tarp and it was down -- the tarp -- it had been
15 covered with a tarp while it was down at Jason's
16 property and then they pulled the tarp back and
17 dumped, you know, started that big fire and then they
18 covered up I guess that was good still left over.

19 Q. So that there's no misunderstanding, you
20 say there's another trailer?

21 A. They have more than one trailer is what
22 I'm saying, yes.

23 Q. But this particular trailer that's in
24 this photograph was there before the fire and

79

1 after --

2 A. Yes.

3 Q. -- as shown by way of the photograph?

4 A. Yes.

5 MR. SUMMERS: That's all.

6 HEARING OFFICER HALLORAN: Okay.

7 Mr. Scherschligt?

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

9 by Mr. Scherschigt

10 Q. You testified that you were the one
11 who made an anonymous complaint. Did you see any
12 of the employees of the Illinois Environmental
13 Protection Agency at the property subsequent to you
14 telephoning in the complaint?

15 A. After I phoned in the complaint, yes.
16 I believe it was on a Monday. I believe one
17 gentleman had came up that Monday and took some
18 pictures.

19 Q. He took some pictures?

20 A. Yeah. He took some --

21 Q. Was that Mr. Keigley?

22 A. I believe -- the first gentleman that
23 I saw, I don't believe it was Mr. Keigley. I think
24 I spoke to Mr. Keigley the following day.

80

1 Q. Would you recognize the name Darwin
2 Fields, by any chance?

3 A. No.

4 Q. At any rate, you saw an individual
5 taking pictures on a Monday when you telephoned in
6 the complaint?

7 A. Right. The fire was still smoldering.

8 Q. It was still smoldering on Monday?

9 A. Yeah.

10 Q. May 15th?

11 A. Yeah.

12 Q. Now, you testified that Jason, Mr. Day's

13 son, is now who you believe to be the owner of the

14 property?

15 A. No. Jason has claimed to be the owner

16 of the property behind my shop.

17 Q. I'm sorry?

18 A. Yeah, behind my shop.

19 Q. I'm sorry. I misunderstood you.

20 Now, despite your dealings or your relationship or

21 your problems with Mr. Day or however you want to

22 characterize them, has your testimony here today

23 been truthful and accurate?

24 A. To the best of my recollection, yes.

81

1 MR. SCHERSCHLIGT: Thank you very much.

2 That's all I have.

3 HEARING OFFICER HALLORAN: Mr. Summers,

4 any recross?

5 MR. SUMMERS: No.

6 HEARING OFFICER HALLORAN: You may step

7 down. Thank you.

8 THE WITNESS: Okay.

9 (Witness excused.)

10 HEARING OFFICER HALLORAN: We're going
11 to take about a five-minute break.

12 (Whereupon, after a short
13 break was had, the
14 following proceedings
15 were held accordingly.)

16 HEARING OFFICER HALLORAN: We're back
17 on the record after approximately a 10-minute break.
18 It's about 10:20.

19 Mr. Scherschligt, you're fourth
20 witness?

21 MR. SCHERSCHLIGT: And I believe he
22 will be the last. It's Lawrence Sapp. I will go get
23 him.

24 HEARING OFFICER HALLORAN: We can go off

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1 of the record for a minute.

2 (Whereupon, a discussion
3 was had off the record.)

4 HEARING OFFICER HALLORAN: We'll go back
5 on the record. The witness can take the stand and
6 the court reporter will swear him in.

7 (Witness sworn.)

8 WHEREUPON:

9 L A W R E N C E S A P P ,

10 called as a witness herein, having been first duly
11 sworn, deposeth and saith as follows:

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

13 by Mr. Scherschligt

14 Q. Good morning, Mr. Sapp.

15 A. Good morning.

16 Q. Please state your name for the record.

17 A. Lawrence Sapp.

18 Q. And your last name is spelled S-A-P-P?

19 A. Yes, sir.

20 Q. Okay. Where do you reside, Mr. Sapp?

21 A. 201 North Grant, Longview.

22 Q. How long have you resided at that
23 address?

24 A. Since 1955.

83

1 Q. So you have been a resident of Longview
2 for quite a while?

3 A. Since 1950.

4 Q. Are you retired, sir?

5 A. Yes, sir.

6 Q. Okay. Are you familiar with an
7 individual by the name of Jim Day?

8 A. Yes, sir.

9 Q. How are you familiar with Mr. Day?

10 A. Oh, I've known Jim for years.

11 Q. Okay. Are you familiar with a piece
12 of property located at the northwest corner of Logan
13 and Sherman streets in Longview, Illinois?

14 A. Yes, sir.

15 Q. How are you familiar with that property?

16 A. Oh, I used to live right there by it.

17 Q. Right next to it?

18 A. One time before the house burnt down
19 there, I lived in the house and my folks ran a
20 restaurant there?

21 Q. I see. Have you ever seen Mr. Day at
22 that property?

23 A. Yes, sir.

24 Q. What is your understanding of Mr. Day's

84

1 relationship of that property?

2 A. All I know is he claimed he owned it.

3 Q. Okay. I would like to direct your
4 attention to the dates of Saturday, May 13th and
5 Sunday, May 14th. Do you recall anything unusual
6 happening on that weekend with respect to this
7 particular piece of property?

8 A. The only thing I can tell you is I came
9 by there being out of town and there was a big
10 bonfire there.

11 Q. Do you remember if that was on a
12 Saturday or Sunday?

13 A. All I know it was on the weekend.

14 Q. It was on the weekend?

15 A. Yes, sir.

16 Q. Where were you when you saw this?

17 A. I was there on Main Street. I was
18 coming into town.

19 Q. You were in your vehicle?

20 A. Yeah.

21 Q. You were right out in front of that
22 piece of property?

23 A. Yeah. I drove right by it.

24 Q. Okay. And tell us what you observed

85

1 when you drove by.

2 A. Oh, I heard Jim and another bunch of
3 people out there burning -- had a big bonfire there.
4 What they was burning, I have no idea.

5 Q. Did you see a trailer or a pickup truck
6 next to the bonfire, by any chance?

7 A. I don't -- I can't recall, sir.

8 Q. Did you see Mr. Day throwing anything
9 onto the bonfire?

10 A. No. I didn't see them throwing anything

11 on it, but they was just all standing around it.

12 Q. He was standing immediately adjacent to
13 the fire?

14 A. Yes, sir.

15 Q. What did you do after you saw that? Did
16 you continue driving?

17 A. Yes. I went on home.

18 Q. You were on your way home?

19 A. Yes.

20 Q. Have you had any prior dealings with
21 Mr. Day?

22 A. No.

23 Q. Is there any animosity between you and
24 Mr. Day?

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1 A. No. There never has been.

2 Q. I'm sorry?

3 A. There never has been.

4 Q. Okay. That's all I have. Thank you.

5 I'm sorry. Excuse me. I have one other thing.

6 I would hand to you what I

7 previously marked as People's Exhibit No. 4. I'm

8 turning to the photograph section of that exhibit.

9 Mr. Sapp, please take a look at

10 Photograph No. 1. Does that appear to be the same

11 bonfire that you observed when you drove by on that

12 weekend?

13 A. Yes.

14 MR. SCHERSCHLIGT: That's all I have.

15 Thank you.

16 HEARING OFFICER HALLORAN: Thank you,

17 Mr. Scherschligt.

18 Mr. Summers, any cross?

19 MR. SUMMERS: No questions.

20 HEARING OFFICER HALLORAN: Sir, you may

21 step down. Thank you for coming.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 MR. SCHERSCHLIGT: As far as I'm

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1 concerned, Mr. Sapp and Mr. Webber and Mr. Tatman are

2 free to leave.

3 HEARING OFFICER HALLORAN: Mr. Summers?

4 MR. SUMMERS: No problem.

5 MR. SCHERSCHLIGT: Thank you very much,

6 sir. Thank you very much.

7 THE WITNESS: See you, Jim.

8 MR. DAY: Okay. See you.

9 HEARING OFFICER HALLORAN: Okay.

10 Mr. Scherschligt, does that complete your case in

11 chief?

12 MR. SCHERSCHLIGT: Yes. The state
13 rests.

14 HEARING OFFICER HALLORAN: Okay. At
15 this time, I would ask Mr. Summers to proceed with
16 his case in chief.

17 MR. SCHERSCHLIGT: May I make one
18 inquiry?

19 HEARING OFFICER HALLORAN: Yes.

20 MR. SCHERSCHLIGT: Would you like for me
21 to move to enter those exhibits now or would you
22 prefer that I wait until after all of the exhibits
23 have been marked? I guess I would prefer to just
24 move to admit. I realize Mr. Summers objected to

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1 Exhibit No. 5 and I'm willing to withdraw that, but
2 I would move to have Exhibits 1, 2, 3 and 4 admitted
3 into evidence.

4 HEARING OFFICER HALLORAN: Mr. Summers,
5 when you get a chance, do you have any objection?

6 MR. SUMMERS: I would just stand on the
7 objections that I previously made to the exhibits.

8 HEARING OFFICER HALLORAN: So noted.
9 People's Exhibit Nos. 1, 2, 3 and 4 are admitted into
10 evidence.

11 MR. SCHERSCHLIGT: We would rest. Thank
12 you.

13 MR. SUMMERS: Five has been with
14 withdrawn?

15 MR. SCHERSCHLIGT: Yes, sir.

16 HEARING OFFICER HALLORAN: Five was
17 withdrawn. Mr. Summers, for the record, just to
18 clarify, which ones did you have objections to,
19 which exhibits? Was that Nos. 1 and 2?

20 MR. SUMMERS: Exhibits 1 and 2. I don't
21 think I made any objections to Exhibit 3. I didn't
22 make any on Exhibit 4.

23 MR. SCHERSCHLIGT: Exhibit 4 was the
24 May 17th report, I believe. One would have been

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1 the January 12th report. Two would have been the
2 administrative citation warning notice.

3 HEARING OFFICER HALLORAN: That was
4 dated May 26th?

5 MR. SCHERSCHLIGT: Right.

6 HEARING OFFICER HALLORAN: 2000?

7 MR. SCHERSCHLIGT: Right. Exhibit 3
8 would have been the complaint form and Exhibit 4
9 would have been the May 17th report.

10 HEARING OFFICER HALLORAN: Respondent's
11 objections are so noted for the record.

12 Mr. Summers, you may proceed with

13 your case in chief. The complainant has rested.

14 MR. SUMMERS: We will call Jim Day.

15 HEARING OFFICER HALLORAN: Mr. Day, take
16 the stand, please, and the court reporter will swear
17 you in.

18 (Witness sworn.)

19 WHEREUPON:

20 J A M E S D A Y ,
21 called as a witness herein, having been first duly
22 sworn, deposeth and saith as follows:

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

24 by Mr. Summers

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1 Q. State your name, please.

2 A. James Day.

3 Q. Where do you live?

4 A. 106 North Johnson, Longview, Illinois.

5 Q. Now, you are the Respondent in this
6 case, is that correct?

7 A. Yes.

8 (Document marked as
9 Respondent's Exhibit No. 1
10 for identification,
11 4/9/01.)

12 BY MR. SUMMERS:

13 Q. I'm going to hand you what's been marked

14 as Exhibit No. 1, which purports to be a drawing of
15 several blocks in Longview, Illinois, and ask you if
16 you have seen that before?

17 (Document tendered
18 to the witness.)

19 BY THE WITNESS:

20 A. Yes, I have.

21 BY MR. SUMMERS:

22 Q. Does that show the property on the
23 subject matter of this complaint?

24 A. Yes, it does.

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1 Q. And where is that located?

2 A. On the corner of the south -- the corner
3 of Sherman and the east corner of Logan.

4 Q. And how many -- how many lots are
5 involved there?

6 A. Oh, maybe six.

7 Q. Now, attached to that Exhibit No. 1,
8 are there certain deeds that reflect the ownership
9 of that property that's all part of that exhibit?

10 A. It's all the same owner, if that's what
11 you mean.

12 Q. Okay. Well, let me -- let's go back
13 a little bit in time. At one time, you owned all

14 of those lots, is that correct?

15 A. Yes.

16 Q. And do you know approximately when you
17 owned those or when you acquired them?

18 A. The first one was probably in 1960 or
19 1961.

20 Q. Okay. And --

21 A. And then several years went by and I
22 picked up another one.

23 Q. How many lots were there all together?

24 A. There wasn't none (sic.) full lots.

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1 There was just partials and I was trying to put it
2 together as a whole. I think there's three total
3 lots involved, what we're talking about, but the way
4 it's broke up, there might be six or seven.

5 Q. Okay. Now, some time after you acquired
6 all of these lots, did you -- did you ultimately fail
7 to pay the taxes on those lots?

8 A. Yes, I did.

9 Q. What happened after you failed to pay
10 the taxes?

11 A. Mrs. Opal Thomas from Urbana here picked
12 up the taxes and got a -- she bought the taxes, I
13 reckon, and got a tax deed for the properties.

14 Q. Okay. And those tax deeds, those are

15 the deeds that are attached to that plat, is that
16 correct, that's shown in Exhibit No. 1?

17 A. Yeah. I believe they are from what I'm
18 seeing here.

19 Q. Now, after -- after Opal Thomas acquired
20 those properties through the tax deed process, did
21 you attempt to repurchase those properties from her?

22 A. Yes.

23 Q. And how did you do that?

24 A. I have knowed (sic.) Opal for a lot of

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1 years. As a matter of fact, I worked for her several
2 times. I went to her and told her I'd like to redeem
3 my property back from her and she wrote us out a
4 contract where I could buy the property back from
5 her.

6 Q. So you entered into an agreement with
7 her to buy those lots back, is that correct?

8 A. Yes.

9 Q. Do you know approximately when that
10 would have been?

11 A. I think it was in '97, '96 or '97. I
12 don't remember.

13 Q. Did you end up -- did you ultimately
14 have a dispute with her or with her son as to the

15 payment agreement that you had entered into with
16 Opal Thomas?

17 A. Yes.

18 Q. And did that result in you receiving
19 a notice of termination of that contract?

20 A. Yes.

21 (Document marked as
22 Respondent's Exhibit Nos.
23 2, 3 and for identification,
24 4/9/01.)

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1 BY MR. SUMMERS:

2 Q. I'm going to hand you what's been marked
3 here as Exhibit No. 2 and Exhibit No. 3 and ask you
4 if these are the documents that you received or
5 copies of the documents you received terminating the
6 agreement with Opal Thomas.

7 (Document tendered
8 to the witness.)

9 BY THE WITNESS:

10 A. Yes, it is.

11 BY MR. SUMMERS:

12 Q. Now, you --

13 MR. SCHERSCHLIGT: Excuse me. Could we
14 just identify those so I know which one is two and
15 three.

16 HEARING OFFICER HALLORAN: I'm having a
17 hard -- you don't have any copies for the hearing
18 officer, do you, Mr. Summers?

19 MR. SUMMERS: Yes, I do.

20 MR. SCHERSCHLIGT: Could I see -- could
21 I inspect those?

22 HEARING OFFICER HALLORAN: Yes.

23 THE WITNESS: All three of them?

24 MR. SCHERSCHLIGT: Just two and three,

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1 please. Thank you.

2 So two would be the notice
3 of intention to declare and three would be the
4 declaration of forfeiture.

5 MR. SUMMERS: This is the plat and here
6 was the notice of intent and then here was the actual
7 declaration of termination.

8 HEARING OFFICER HALLORAN: Okay. The
9 notice of intent was Respondent's Exhibit No. 2.
10 The diagram of the plat and the attachments were
11 Respondent's Exhibit No. 1. The declaration of
12 forfeiture is Respondent's Exhibit No. 3.

13 You may proceed, Mr. Summers.

14 BY MR. SUMMERS:

15 Q. Now, after you received those

16 declarations of forfeiture, was there a lawsuit
17 involving the termination of that contract?

18 A. Yes.

19 Q. Now, after receiving these documents,
20 were there any other agreements ever made with Opal
21 Thomas or her son involving these lots?

22 A. No.

23 Q. So your interest and your ownership
24 rights were terminated by these documents as you

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1 understand it, is that correct?

2 A. Yes.

3 MR. SCHERSCHLIGT: Objection, calls
4 for a conclusion of law. I think that issue is in
5 dispute.

6 HEARING OFFICER HALLORAN: Mr. Summers?

7 MR. SCHERSCHLIGT: I believe he can
8 testify that it's his desire that the contract was
9 terminated, but I believe that's a pending issue and
10 the question calls for a conclusion of law and not a
11 conclusion of fact.

12 HEARING OFFICER HALLORAN: Do you care
13 to rephrase, Mr. Summers?

14 MR. SUMMERS: Yes. I'll rephrase the
15 question.

16 HEARING OFFICER HALLORAN: Thank you.

17 BY MR. SUMMERS:

18 Q. Mr. Day, after reaching those documents,
19 did you have any further ownership rights to this
20 property?

21 A. None whatsoever.

22 MR. SCHERSCHLIGT: Objection. Again,
23 that calls for a conclusion of law as to whether he
24 has any ownership interest in the property.

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1 HEARING OFFICER HALLORAN: Sustained.

2 BY MR. SUMMERS:

3 Q. Mr. Day, have you entered into any
4 further agreements with Opal Thomas or her son
5 after receiving those documents shown by Exhibits 2
6 and 3?

7 A. No.

8 Q. Now, subsequent to the documents shown
9 by Exhibits 2 and 3, did you receive notice from the
10 village of Longview and to violations concerning
11 noxious weeds --

12 A. Yes.

13 Q. -- concerning these lots?

14 A. Yes.

15 Q. And would you tell us about that?

16 MR. SCHERSCHLIGT: I would object as to

17 relevance as to noxious weeds. Nothing in these
18 proceedings relates to noxious weeds. No allegations
19 have been made with respect to noxious weeds.

20 MR. SUMMERS: I'll tie it up. It goes
21 to the fire.

22 HEARING OFFICER HALLORAN: Okay. If you
23 can, tie it up, Mr. Summers.

24

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1 BY MR. SUMMERS:

2 Q. Did you receive notice concerning
3 noxious weeds, Mr. Day?

4 A. Yes.

5 Q. And tell us in summary basically what
6 that notice says.

7 A. The village board sent me a letter
8 stating they gave me seven days to mow the grass
9 and clean it up or after the seventh day, they would
10 do it and charge me.

11 Q. Now, who would have been in charge of
12 doing that? Would that have been Mr. Tatman --

13 A. Yes.

14 Q. -- who would have been involved with
15 that?

16 A. Yes.

17 Q. So what did you do after you received

18 that notice?

19 A. We immediately went down there and
20 started cutting the grass and weeds and bushes.

21 Q. And what did you -- who helped you do
22 that?

23 A. Ed Massie and Lloyd Langleyer, Jason
24 Day, my son, my wife, my daughter, Jason's wife,

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1 and my younger brother, Don. We all floated in and
2 out just taking turns helping.

3 Q. Could you tell the hearing officer what
4 you actually did on the day that you went to take
5 care of this property?

6 MR. SCHERSCHLIGT: I would object. It's
7 overly vague. Can we narrow down what time period we
8 are referring to?

9 HEARING OFFICER HALLORAN: I would
10 agree, Mr. Summers.

11 BY MR. SUMMERS:

12 Q. Well, let's back up. When did you
13 undertake, then, to do this particular cleanup that
14 you had received a notice for?

15 A. Me and Lloyd got there early Saturday
16 morning the 13th around 8:00 o'clock. Ed came --
17 Ed Massie came in with his big tractor. It's got

18 a six-foot deck on it, a Woods deck. He came in a
19 few hours later. I don't remember what time Ed got
20 there, but me and Lloyd was already cutting the
21 grass with a weed sickle. Ed agreed to bring his
22 mower in there on Saturday. We worked all day
23 Saturday cutting grass. There was no fires. We
24 was just cutting the grass.

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1 Q. At that time, did you have anything
2 stored on that property at that time?

3 A. Yes, I did.

4 Q. What did you have stored on that
5 property?

6 A. There is a complete quantum building.
7 It consists of 42 by 42-foot all metal building.
8 It's got a wood roof that's stored there too. It's
9 all under cover there on the same property. It's
10 knotty pine wood. It is still on the property.
11 It is still there. There was a trailer there at
12 that time with garage equipment and stock car
13 equipment on the trailer.

14 Q. Let me hand you what has been marked
15 as the photographs of the -- as part of the
16 Petitioner's Exhibit No. 4 and it's the photograph
17 that's listed as Photo No. 1 that's been previously
18 testified to and ask you if that shows some of the

19 items that you had stored on that property at that
20 time.

21 A. Well, the Photo No. 2 from a far view,
22 it shows it all. Now, number one, upclose one, you
23 can just barely see some of the -- bows for the
24 quantum building. That's red steel there.

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1 Q. Now, is there a trailer shown in that
2 photograph?

3 A. Yes, there is.

4 Q. What is on that trailer?

5 A. There is garage equipment and stock car
6 equipment.

7 Q. Was that trailer there prior to the
8 time that you undertook to take care of the noxious
9 weeds?

10 A. Before and after, yes.

11 Q. Did you have to move the trailer or was
12 anything done with that trailer while you were doing
13 the cutting of these weeds?

14 A. No.

15 (Document marked as
16 Respondent's Exhibit
17 Nos. 5 and 6 for
18 identification, 4/9/01.)

19 BY MR. SUMMERS:

20 Q. Let me show you two other photographs
21 that would be Exhibit Nos. 5 and 6 and ask you if
22 these are closeup photographs of the metal building
23 components that you had on that property?
24

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1 (Photographs tendered
2 to the witness.)

3 BY THE WITNESS:

4 A. Yes. That's part of the building
5 there. That's part of the quantum building.

6 BY MR. SUMMERS:

7 Q. Now, was there any -- I'm looking
8 at that trailer that's shown by Photograph No. 1.
9 Was there any household items such as mattresses,
10 furniture or anything like that on that particular
11 trailer?

12 A. None whatsoever. Underneath that
13 tarp on that trailer was garage equipment. There
14 was no burnable stuff at all. That was garage
15 equipment and stock car parts and motors underneath
16 that tarp.

17 Q. Now, when you say garage equipment,
18 give us an example of what you mean by garage
19 equipment.

20 A. There was some drill presses. There
21 was two drill presses. There was two steel benches.
22 Preparation benches is what we call them. There was
23 motor stands. There was just some hoists that hang
24 from the ceiling. It was just strictly garage

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1 equipment is all it was. There was no household
2 furniture on that trailer at all.

3 HEARING OFFICER HALLORAN: Mr. Summers,
4 so the Board is clear, what Mr. Day is presently
5 looking at is Photo No. 1 from People's Exhibit
6 No. 4?

7 MR. SUMMERS: Correct.

8 HEARING OFFICER HALLORAN: And you
9 mentioned something about Exhibit Nos. 5 and 6?

10 MR. SUMMERS: Yes. Those are our
11 exhibits.

12 HEARING OFFICER HALLORAN: Okay. We
13 were only up to four, I believe, or did you want to
14 offer this as well?

15 MR. SUMMERS: I will be offering these
16 other photographs. I thought we could use them since
17 they were already in evidence, the one.

18 HEARING OFFICER HALLORAN: Oh, yes, yes.
19 Okay. Very well. So the exhibit that Mr. Day is

20 looking at, Photo No. 1, explaining what's underneath
21 the tarp, you want to offer that as Respondent's
22 Exhibit No. 4?

23 MR. SUMMERS: I don't know. I don't
24 want to offer this. It's already in evidence as part

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1 of No. 4 of the People's case.

2 HEARING OFFICER HALLORAN: Right. But
3 up until then, we were at Exhibit No. 3 for
4 Respondent.

5 MR. SCHERSCHLIGT: The pictures may
6 depict the same thing, but they are not the same
7 pictures. Now, I think what you're talking about
8 is you're referring to Complainant's Exhibit No. 1,
9 which includes -- I'm sorry -- Complainant's Exhibit
10 No. 4, which includes two photographs.

11 Those are not the same photographs
12 as the Respondent's exhibits. They may depict some
13 of the same materials, but they are not the same
14 photographs. So I think we should be clear as to
15 just what exactly we're referring to here.

16 MR. SUMMERS: I'll clear it up.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. Summers.

19 BY MR. SUMMERS:

20 Q. Okay. You've been asked about a photo

21 shown as Photo No. 1, which is part of People's Group
22 Exhibit No. 4, and it shows some metal objects and
23 it shows a trailer in there, is that correct?

24 A. Yes.

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1 Q. Okay. Now, what I've handed you two
2 photographs here marked Respondent's Exhibits 5 and
3 6, the metal components shown in Exhibits 5 and 6,
4 are these the same items that are depicted in the
5 Photograph No. 1 of People's Exhibit No. 4?

6 A. Yes.

7 Q. Okay. So when we are talking about
8 this metal quantum building, is that what those
9 metal objects are that are shown next to the
10 trailer?

11 A. Yes, it is.

12 Q. Okay. Now, at the time that you were
13 doing the mowing that you're talking about, did you
14 leave the trailer and the metal components in the
15 same location where they were?

16 A. Yes.

17 Q. And they haven't been moved, is that
18 correct?

19 A. No, they haven't.

20 Q. Now, I'm going to hand you what's been

21 marked as Respondent's Exhibit No. 5 and ask you if
22 this shows the lot in question after the cleanup.

23 (Photograph tendered
24 to the witness.)

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1 BY THE WITNESS:

2 A. That's the same lot. That's the same
3 property we're talking about.

4 MR. SCHERSCHLIGT: I'm sorry. Is that
5 Exhibit 4?

6 MR. SUMMERS: Four.

7 BY MR. SUMMERS:

8 Q. That's of the same lot -- that
9 photograph is showing it after the mowing is totally
10 done and the lot has been totally cleaned, is that
11 correct?

12 A. Yes.

13 Q. Now, after you did the mowing with the
14 mowers that you've talked about, what did you do with
15 the weeds and so forth that were compiled from the
16 mowing?

17 A. We started a pile approximately 20-foot
18 north of Logan Street just about 75-foot off of
19 Sherman where we started our pile that we was cutting
20 and accumulating.

21 Q. Now, were there any old tires or things

22 of that nature on this lot that was owned by you or
23 that you had been buying on contract?

24 A. Well, the tires was on the trailer.

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1 There is no used tires or something like that or junk
2 tires. There's no junk tires on there.

3 Q. Were there junk tires or old tires and
4 debris on the adjoining property?

5 A. Yes.

6 (Photograph marked as
7 Respondent's Exhibit No. 7
8 for identification,
9 4/9/01.)

10 BY MR. SUMMERS:

11 Q. I hand you what's been marked as
12 Respondent's Exhibit No. 7 and ask you if that is a
13 photograph of the adjoining property.

14 (Photograph tendered
15 to the witness.)

16 BY THE WITNESS:

17 A. Yes, it is.

18 BY MR. SUMMERS:

19 Q. Now, just so that we're clear, I'll hand
20 you a photograph marked as Respondent's Exhibit No. 4
21 and ask you if the tires that are shown in Exhibit 4

22 are one in the same as the trees and tires shown in
23 Exhibit 7.
24

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1 (Photograph tendered
2 to the witness.)

3 BY THE WITNESS:

4 A. Yes, it is.

5 BY MR. SUMMERS:

6 Q. And maybe you could show the hearing
7 officer and explain to him or point out to him
8 where the trees are in relation -- that are shown
9 in Exhibit 7, where they are in Exhibit 4?

10 A. Both of these pictures was taken --

11 Q. Put them over here where he can see
12 them.

13 A. Oh, I'm sorry.

14 HEARING OFFICER HALLORAN: That's okay.

15 BY THE WITNESS:

16 A. Both of these pictures are taken facing
17 west. This light area right here is an alleyway
18 (indicating). These tires and that big stump is
19 right there at the corner of those trees and bushes
20 and weeds and stuff there. That's where the location
21 of these was, right there (indicating).

22 BY MR. SUMMERS:

23 Q. Okay. Now --

24 A. On the adjoining property.

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1 Q. Now, where is the lot line where your
2 lot ends so that --

3 A. Okay. This property line -- this big
4 tree right here (indicating) is about ten-foot back
5 to the east of that tree there and maybe 20-foot
6 east of this tree line there (indicating).

7 HEARING OFFICER HALLORAN: Now,
8 Mr. Scherschligt, do you need to see this?

9 MR. SCHERSCHLIGT: I have seen them.

10 HEARING OFFICER HALLORAN: Continue.
11 I'm sorry, Mr. Day.

12 BY MR. SUMMERS:

13 Q. Did you have -- did you have any
14 conversations with Mr. Keigley about those tires
15 or about those trees --

16 A. Yes.

17 Q. -- and the location?

18 A. Yes.

19 Q. Were you present with him on the lot?

20 A. Yes.

21 MR. SCHERSCHLIGT: I would object as
22 to the relevance of tires that may have been located

23 at an adjoining piece of property. I don't -- there
24 are no allegations that any tires were burned. There

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1 are no allegations that Mr. Day has committed any
2 tire violations. This is an adjoining or separate
3 piece of property. It's entirely unrelated to the
4 observations and the allegations of May 17th of 2000.

5 BY THE WITNESS:

6 A. The Illinois EPA sent me a letter --

7 HEARING OFFICER HALLORAN: Mr. Summers?

8 Excuse me. Mr. Summers, you may respond.

9 MR. SUMMERS: Well, he is charged with
10 maintaining an open dump and it's my understanding,
11 and I think Mr. Day can clear this up, it's my
12 understanding that Mr. Keigley was under the
13 impression that that property was part of this lot
14 and that those tires and all of that debris that's
15 in that tree line was being maintained by Mr. Day
16 when it wasn't even part of his property and it was
17 beyond the lot line and it was being maintained by
18 the adjoining property owners and I want to clear
19 that up.

20 MR. SCHERSCHLIGT: I would object as to
21 counsel or his client stating what their impression
22 or their understanding is of Mr. Keigley's
23 impression.

24

MR. SUMMERS: He told them that -- that

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1 was a part of their conversation.

2 MR. SCHERSCHLIGT: Well, that's assuming
3 facts not in evidence. There are no allegations
4 whatsoever in Mr. Keigley's May 17th inspection
5 report or the administrative citation which relate
6 to any tires that may be located on an adjacent piece
7 of property and for all practical matters, the state
8 is willing to stipulate that this matter does not
9 involve tires at all on an adjoining piece of
10 property or even tires at the particular piece of
11 property that's cited in the administrative citation.

12 HEARING OFFICER HALLORAN: Mr. Summers?

13 MR. SUMMERS: Well, we heard testimony
14 of black smoke and I don't know where black smoke
15 would come from except tires and I want to --

16 MR. SCHERSCHLIGT: It comes from burning
17 mattresses and rugs.

18 MR. SUMMERS: I want to be absolutely
19 certain that there was no claim that he is burning
20 these tires that Mr. Keigley saw on this property,
21 that it was adjoining property and not this
22 property. They had a conversation about it and
23 that was cleared up, I hope, to Mr. Keigley's

24 satisfaction. These tires and this debris and all

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1 of this stuff that was being accumulated as a dump
2 was not on the property maintained by Mr. Day.

3 HEARING OFFICER HALLORAN: Okay.

4 Mr. Scherschligt, I do remember or recall testimony
5 regarding other material that was not identified.
6 With that in mind, I think I will allow this limited
7 direct.

8 MR. SCHERSCHLIGT: If we would be
9 willing to stipulate that we did not observe any tire
10 bead in the burn pile, would that be satisfactory?

11 MR. SUMMERS: That's satisfactory and I
12 will not continue along those lines.

13 HEARING OFFICER HALLORAN: Okay. Thank
14 you. Sustained.

15 MR. SCHERSCHLIGT: Did you observe any
16 tire bead?

17 MR. KEIGLEY: No. I did see the tires.
18 We did discuss them and the EPA removed the tires.

19 MR. SCHERSCHLIGT: All right. We will
20 stipulate that there is no evidence of any tires
21 being burned in that burn pile.

22 HEARING OFFICER HALLORAN: The record
23 will show it was stipulated that there were no tires
24 in the burn pile. Your objection is sustained.

1 BY MR. SUMMERS:

2 Q. Okay. Mr. Day, the last -- going on
3 with what you did, then, you took the weeds and so
4 forth that you had cut on the lot and what did you
5 do next?

6 A. We started a pile up towards Logan
7 Street. It was getting late in the afternoon by the
8 time we had done that. We had cut that entire lot
9 down, you know, say, within three to four inches of
10 the ground, that entire lot. We started to rake it
11 and carry it over and put it on the pile.

12 Q. Then what happened after that?

13 A. What happened?

14 Q. What day was that?

15 A. That was Saturday the 13th.

16 Q. So was there any burning or anything of
17 that nature on Saturday the 13th?

18 A. No.

19 Q. Was the pile -- was the pile that you
20 compiled ultimately burned?

21 A. Yes.

22 Q. When was that?

23 A. I wasn't there, but I believe it was
24 started on a Sunday, the 14th.

1 Q. You weren't there at the time that it
2 was burned?

3 A. No.

4 Q. There has been testimony that you had a
5 trailer full of furniture and household debris and
6 construction debris, is that correct?

7 A. No. That's not correct.

8 Q. Was the trailer that was out there
9 the trailer that's depicted by the photograph that
10 you previously testified to?

11 A. Yes.

12 Q. Was that the only trailer that was out
13 there?

14 A. That's the only trailer that was there.

15 Q. That trailer is still there?

16 A. Yes.

17 Q. It has the same items on it that it had
18 at the time in question?

19 A. Mostly, yeah. It has been moved around
20 a little bit, but it's there.

21 Q. Tell us what was on the burn pile that
22 was burning?

23 MR. SCHERSCHLIGT: Objection. I think
24 he has testified that he wasn't present when the

1 burning took place.

2 HEARING OFFICER HALLORAN: Mr. Summers?

3 MR. SUMMERS: Let me back up.

4 BY MR. SUMMERS:

5 Q. The pile that you compiled on the lot
6 on Saturday, would you tell us what was on that
7 pile?

8 A. Anything that grew on that property,
9 which consisted of weeds and grasses and I don't know
10 the names of bushes and things. Those stems gets
11 about six or eight-foot tall. They're hollow in the
12 fall time. They break real easy. That's what was
13 piled up on the burn pile.

14 Q. Now, you had been charged in this case
15 with maintaining an open dump. Did you ever permit
16 anyone to come and dump items on that property?

17 A. Never.

18 Q. From the time that you owned it and from
19 the time your interest was terminated?

20 A. Never, never did.

21 Q. Subsequent to the time that your
22 interest was terminated, did you permit or did
23 you have any control over anybody dumping on
24 that lot?

1 A. I didn't have no control of anybody
2 dumping anything on that lot. If I was there, I
3 never permitted it. I never permitted no dumping
4 of anything by anybody on that property.

5 Q. Now, it was mentioned or there has
6 been a mention of springs -- metal springs from a
7 bed?

8 A. Yes.

9 Q. Do you know anything about that?

10 A. After I got back Monday, they was
11 some springs there that we had originally pulled
12 back from the alley. That would be the north
13 side of the property. They wasn't -- I don't
14 know what kind of springs it was. They was springs,
15 but they had no padding or nothing like that on it.
16 It could have been a bed or a couch or something
17 small. I don't know what it was, but it was springs.

18 Q. Metal?

19 A. All metal springs, yeah.

20 Q. Did they get used in the -- in that
21 fire?

22 A. They tell me they threw them --

23 MR. SCHERSCHLIGT: Objection, no
24 foundation. He has testified that he was not present

1 during the burn.

2 HEARING OFFICER HALLORAN: Mr. Summers?

3 BY MR. SUMMERS:

4 Q. The fire that was ultimately on that
5 property, which I understand to be on Sunday the
6 14th, is that correct?

7 A. Yes.

8 Q. Did you authorize anybody --

9 MR. SCHERSCHLIGT: I'm going to -- I'm
10 sorry. I object. First of all, he can't say when
11 the burn took place because he wasn't there and he
12 can't say what was burned because he wasn't there.
13 He can testify as to what he put in the accumulation
14 of material to be burned on Saturday, but he wasn't
15 there on Sunday. He didn't get back there, so he
16 says, until Monday.

17 MR. SUMMERS: We'll stipulate to that.

18 HEARING OFFICER HALLORAN: Mr. Summers?

19 MR. SUMMERS: We agree.

20 MR. SCHERSCHLIGT: Well, I'm not
21 suggesting that that's true. I'm suggesting that
22 that is what he has testified to. So I would object
23 to him asking him any questions as far as what was
24 burned.

1 MR. SUMMERS: If you know.

2 MR. SCHERSCHLIGT: Well, then, no
3 foundation. How can he know if he wasn't there?

4 MR. SUMMERS: He was there on Monday.

5 MR. SCHERSCHLIGT: Well, he wasn't there
6 when it got burned.

7 HEARING OFFICER HALLORAN: I'll allow
8 him to answer if he can. Overruled.

9 BY MR. SUMMERS:

10 Q. Tell us what you know about the fire.

11 A. What I know about the fire --

12 Q. And the springs.

13 A. That pile that we put there disappeared.
14 It apparently got burned. Those springs was put on
15 the fire to hold the limbs and stuff from blowing.

16 MR. SCHERSCHLIGT: I'm going to object.
17 There's absolutely no foundation for him to testify
18 who put the springs there or why they were put there.
19 He wasn't there. How could he possibly know? How
20 can he testify as to somebody else's state of mind
21 as to why they put it there?

22 HEARING OFFICER HALLORAN: I would agree
23 with Mr. Scherschligt. This is a little beyond the
24 scope of why they were put there -- why it was put

1 there.

2 BY MR. SUMMERS:

3 Q. Mr. Day, did you put any -- on the pile,
4 did you put any household items, construction items,
5 carpet, mattresses or anything of the like to be
6 burned?

7 A. Nothing, nothing. It was only what
8 grewed on that property. It was weeds and grasses
9 and bushes only.

10 Q. Did you have a conversation with
11 Mr. Keigley as to what you could burn?

12 A. Yes.

13 Q. When was that?

14 A. It was several different times. I have
15 knowed (sic.) him probably, what, two years now.
16 Probably in the two-year period, we've talked maybe a
17 half a dozen times at the most. He gave me a book
18 one time there from the EPA that was telling us what
19 we could burn, what we can't burn, the do's and
20 don'ts.

21 Q. And what did he tell you?

22 A. He told me that we could burn what
23 grewed on the property, we could have us a small
24 bonfire like a cookout or something as long as we

1 kept it under control and didn't burn -- we could
2 burn logs or something like having a weenie roast
3 or whatever, throw logs on it.

4 MR. SCHERSCHLIGT: The state is willing
5 to stipulate that the Environmental Protection Act
6 and the associated regulations would permit a
7 property owner to burn landscape waste that is
8 generated on-site.

9 MR. SUMMERS: Can we stipulate that
10 Mr. Keigley did tell him he could do that?

11 MR. SCHERSCHLIGT: No, I won't stipulate
12 to that, but I will stipulate the law that provides
13 for that.

14 MR. SUMMERS: The question was whether
15 Mr. Keigley --

16 HEARING OFFICER HALLORAN: Could you
17 raise your voice, please, Mr. Summers?

18 MR. SCHERSCHLIGT: We will stipulate
19 that Mr. Keigley advised Mr. Day that it was
20 permissible under the act and the associated
21 regulations to burn landscape waste generated
22 on-site.

23 BY MR. SUMMERS:

24 Q. Mr. Day, did you authorize or did

1 you ever burn on that lot anything other than what
2 Mr. Keigley had authorized or told you that you
3 were authorized to burn?

4 A. No.

5 MR. SUMMERS: That's all I have.

6 HEARING OFFICER HALLORAN: Okay.

7 Mr. Scherschligt, cross?

8 MR. SCHERSCHLIGT: Yes, sir.

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

10 by Mr. Scherschligt

11 Q. Mr. Day, I hand you what I have
12 previously marked as People's Exhibit No. 5. That's
13 the contract for deed that you entered into with
14 Mrs. Thomas, isn't it?

15 (Document tendered
16 to the witness.)

17 BY THE WITNESS:

18 A. It looks like it my signature.

19 BY MR. SCHERSCHLIGT:

20 Q. Well, I would like for you to take a
21 look at the signatures at the bottom of the page.

22 A. I'm looking at it.

23 Q. Does that signature appear to be
24 consistent with your signature?

1 A. It looks like it.

2 Q. All right. And just so we're clear,
3 the property that we're talking about where you
4 accumulated these weeds is the same property
5 identified in the May 17th inspection report as
6 being that located at the northwest corner of
7 Logan and Sherman streets, correct?

8 A. Yes.

9 Q. These documents, Respondent's Exhibits 2
10 and 3, I would like for you to take a look at those.

11 (Document tendered
12 to the witness.)

13 BY THE WITNESS:

14 A. Yeah. That's the northeast corner.

15 BY MR. SCHERSCHLIGT:

16 Q. Those documents pertain to the same
17 property that is cited in the inspection report,
18 don't they?

19 A. Which ones are you talking about now?

20 Q. Exhibits 2 and 3, your Exhibits 2 and 3.

21 A. Yeah, right.

22 Q. Who gave you these documents, Exhibits 2
23 and 3?

24 A. Linda Laugges.

1 Q. And who is she?

2 A. She is an attorney for Robert Thomas.

3 Q. Robert Thomas?

4 A. Yeah.

5 Q. Do you have any pending litigation going
6 on right now with respect to this particular piece of
7 property?

8 A. I don't know. I thought it was over
9 with.

10 Q. Well, do you have any knowledge of there
11 being any pending litigation going on with respect to
12 this particular piece of property?

13 A. No.

14 Q. Do you have any final judgments or court
15 orders today with respect to this piece of property?

16 A. No.

17 Q. Now, in Exhibit No. 3, Respondent's
18 Exhibit No. 3, I would like for you to take a look
19 at Page 2. Beginning with the language commonly
20 known as -- excuse me -- beginning with track five,
21 I would like for you to take a look at the paragraph
22 directly below that where it begins commonly known
23 as. I would like for you to read that sentence for
24 us.

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1 A. Commonly known as the northnest corner

2 of Sherman and Logan streets in Longview, Illinois.

3 Q. All right. So just to be sure, we're
4 talking about the same piece of property Mr. Keigley
5 inspected and that Mr. Fields took photographs of,
6 the same property that's identified in the Illinois
7 EPA's inspection report, correct?

8 A. Yes.

9 Q. Now, I would like for you to take a
10 look at Respondent's Exhibit No. 2, which is this
11 one, sir, and I would like for you to take a look
12 at Page 2 and I would like for you to begin the
13 paragraph just before that reads now therefore. I
14 would like for you to begin where it reads whereas.
15 Read that paragraph, please.

16 A. Whereas pursuant to the provision of
17 Illinois law and the contract demand for possession
18 is hereby made on you for possession of the property.
19 If you fail to cure the defaults herein set forth by
20 the time herein set forth.

21 Q. If you fail to cure the defaults herein
22 set forth by the time herein set forth, correct?

23 A. Uh-huh.

24 Q. You don't deny that you've had some

1 nexus or relationship with this property for almost
2 20 years, isn't that correct?

3 A. That's right.

4 Q. You've kept your possessions on the
5 property, correct?

6 A. Yes.

7 Q. You've been present at the property,
8 correct?

9 A. Yes.

10 Q. Your family has kept some of their
11 possessions at the property, correct?

12 A. Yes.

13 Q. In fact, the reason why you were
14 clearing weeds on Saturday, May 13th, was because
15 you got a notice from the city that there were
16 noxious weeds on this property , isn't that right?

17 A. Yes.

18 Q. So you were possessing the property and
19 physical control of the property on Saturday the 13th
20 and you testified that you went back on Monday the
21 15th, correct?

22 A. Yes.

23 Q. So your affiliation or relationship with
24 this property had not terminated, had it?

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1 A. It had terminated in February.

2 Q. Well, what do you mean it had terminated?

3 You just testified that you don't know if there is
4 any pending litigation with respect to this piece of
5 property.

6 A. You're trying to tell me there is then.

7 Q. Well, it's your belief that you don't
8 have an ownership interest in this property, isn't
9 that correct?

10 A. That's a fact, yeah.

11 Q. But that is disputed, is it not, with
12 Mrs. Thomas and her son, correct?

13 A. I'm not sure. I don't know.

14 Q. At any rate, you were physically present
15 on Saturday the 13th and Monday the 15th?

16 A. Yes.

17 Q. And you were taking measures to cut down
18 the weeds and you still had your positions on the
19 property, correct?

20 A. Yes.

21 Q. And your son still had some of his
22 possessions still on the property, correct?

23 A. Yes. Well --

24 Q. That's quite all right. You've

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1 answered.

2 A. It's not all right. I'd like to say
3 something, if I can.

4 Q. If your attorney wants to clarify --

5 MR. SUMMERS: He should be permitted to
6 finish his answer.

7 MR. SCHERSCHLIGT: He did finish his
8 answer.

9 MR. SUMMERS: He didn't. He was still
10 talking.

11 MR. SCHERSCHLIGT: No. He had ceased
12 talking.

13 BY MR. SCHERSCHLIGT:

14 Q. Now, you testified that all you did was
15 cut down the weeds on Saturday, correct, and put them
16 in a pile?

17 A. Yes.

18 Q. You weren't there on Sunday, correct?

19 A. Right.

20 Q. Which is your understanding of when the
21 burning took place, correct?

22 A. I don't know. I wasn't there.

23 Q. Well, you have testified as to what
24 you believed was burned or at least you attempted to

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1 before I objected?

2 A. That's right.

3 Q. So you believe the burning took place on

4 Sunday, don't you?

5 A. I believe it did, yeah. I wasn't there
6 so don't ask me when it was started. I don't know.

7 Q. So you don't know what was put on that
8 pile, do you?

9 A. No.

10 Q. You don't know if carpet was burned on
11 that pile, do you?

12 A. No.

13 Q. You don't know if a mattress was burned
14 on that pile, do you?

15 A. No.

16 Q. You don't know if a metal frame was
17 burned on that pile?

18 A. Yes.

19 Q. You do know that it was?

20 A. Yes.

21 Q. You were told that it was?

22 A. No.

23 Q. Well, then, how do you know?

24 A. I cleaned the pile up Monday.

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1 Q. Well, it might have been there on
2 Monday, sir, but you don't know when it was burned,
3 do you?

4 A. Look at Ken's picture and it will tell

5 you. It's buried in the burn pile, isn't it, Ken?

6 Q. Where were you on Sunday the 14th?

7 A. I was in Tuscola.

8 Q. You were in Tuscola?

9 A. Preparing a semi-tractor to go to
10 Pennsylvania.

11 Q. The village gave you seven days to clean
12 up that property, didn't they?

13 A. Yes.

14 Q. Landscape waste, in your experience,
15 doesn't generate dark black, thick smoke, does it?

16 A. No.

17 Q. You took photographs of the site after
18 the cleanup was complete, didn't you?

19 A. Yes.

20 Q. Why did you do that?

21 A. Because I knew that Webber called the
22 EPA. I knowed (sic.) they was coming.

23 Q. Because you wanted to demonstrate that
24 you had cleaned up the property that you were in

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1 physical possession of, isn't that correct?

2 A. I didn't want to pay a fine from the EPA
3 or the village of Longview.

4 Q. So you would agree that you had

5 responsibility for that property, correct?

6 A. I'm not sure.

7 Q. Well, you undertook measures to clean it
8 up, didn't you?

9 A. Yes, I did.

10 Q. All right.

11 A. Just because I cleaned something up
12 don't make me responsible for that.

13 Q. Did you notice any charred burn piles
14 located on the property prior to Saturday the 13th?

15 A. No, there wasn't any.

16 Q. All right. So you don't deny that the
17 burn pile depicted in People's Exhibit No. 4 with
18 Photographs 1 and 2, that's the very same burn pile
19 that you stacked the weeds on on Saturday, correct?

20 A. Yes.

21 Q. That's the very same burn pile we're
22 talking about, correct?

23 A. Yes.

24 Q. What is your understanding of who

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1 actually did the burning on Sunday?

2 A. My brother, Don; my son, Jason; and his
3 family.

4 Q. What about them?

5 A. What about them?

6 Q. Well, what is your understanding? Did
7 they tell you they did it or --

8 A. Yes.

9 Q. -- did they tell you who did it?

10 A. Yes.

11 Q. What did they tell you?

12 A. They burnt the weeds and stuff that was
13 down there.

14 Q. They didn't burn anything else?

15 A. No. They didn't burn anything else.

16 Q. All right. So let's piece this all
17 together. You cut down the weeds on Saturday the
18 13th, right?

19 A. Yes.

20 Q. You put them in a pile. On Sunday the
21 14th, your friends and family supposedly burned just
22 the weeds. On Monday the 15th, the EPA is out there
23 in response to Mr. Webber's complaint. Then, on
24 Wednesday the 17th, Mr. Keigley goes out there and

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1 notices the exact same burn pile and no other burn
2 piles.

3 A. Right.

4 Q. Are you telling us somebody else came
5 onto that property between Sunday after your friends

6 and family burned the weeds and Monday, before Darwin
7 Fields of the EPA got out there to take pictures,
8 are you suggesting that somebody came on there
9 between those time frames and burned all of this
10 other material?

11 A. I'm not suggesting nothing, but you
12 asked me an opinion. That fellow that testified
13 against me a while ago, that Donny Webber, I wouldn't
14 put nothing past him and Ken Keigley knows that.

15 Q. So he waited until after your friends
16 and family got done burning the weeds on Sunday --

17 A. I'm not speculating.

18 Q. -- and traipsed on over to your
19 property, put a bunch of other stuff on the burn pile
20 and burned it?

21 A. I don't even know where he is coming
22 from. He is the one that asked me for an opinion
23 and suggested that. I didn't accuse nobody of doing
24 nothing.

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1 Q. Are you suggesting that Don Webber is
2 being untruthful?

3 A. Very much so.

4 Q. When Mr. Webber testified that he
5 personally saw you present and throwing items like
6 carpet and a mattress onto the fire --

7 A. That's right.

8 Q. -- are you suggesting that he is lying?

9 A. He is down right lying. He also said he
10 seen me there Saturday and Sunday.

11 Q. What about Mr. Tatman, is he a liar,
12 too, when Mr. Tatman testified that he saw you
13 present during the burning?

14 A. No.

15 Q. Granted, he couldn't tell for sure what
16 you were burning, but he testifeid that you were
17 present.

18 A. He didn't see me there at the burning
19 because I wasn't there.

20 Q. Mr. Tatman testified that he saw you
21 present at the burning? Are you telling me that he
22 is a liar, that you were not there when --

23 A. That's right.

24 Q. -- it was burning?

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1 A. That's right. I wasn't there.

2 Q. Are you telling me that Lawrence Sapp is
3 a liar and that he --

4 A. Larry Sapp didn't say that either.

5 Q. -- is lying when he saw you burning? He
6 is lying about it too?

7 A. Larry Sapp didn't tell you he seen me
8 throwing anything on the fire either. I didn't throw
9 anything on the fire. There wasn't no fire going.

10 Q. Mr. Sapp testified that he saw you
11 present while there was burning going on along with a
12 member of that family. Are you calling him a liar?

13 A. No. He seen my brother.

14 Q. Now, Mr. Day, he testified that he saw
15 you. Are you calling him a liar?

16 A. I'm telling you he didn't see me.

17 Q. Do you have a twin?

18 A. Damn near.

19 Q. Do you have a twin?

20 A. Yeah.

21 Q. Do you have a sibling that was born on
22 the exact same date and --

23 A. No.

24 Q. -- time that you were?

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1 A. No. But I'll grant you that you
2 couldn't tell me and my brother apart if we was
3 standing back there against the wall.

4 Q. Your son, Jason, stores some of his
5 material on this site, doesn't he?

6 A. Once in a while, yeah.

7 Q. In fact, that trailer covered with the

8 tarp belongs to your son, doesn't it?

9 A. No.

10 Q. Who does it belong to?

11 A. It belongs to Leticia Eddy.

12 Q. What about the other material at the
13 site, that belongs to you or your family, doesn't it?

14 A. Yes.

15 Q. You were there on Sunday or Saturday and
16 you were burning carpet, were you not?

17 A. No.

18 Q. And you were also burning mattress
19 springs and pads, correct?

20 A. Now, we've got to go back one more
21 time. There was no fire on that property on a
22 Saturday.

23 Q. Mr. Day, I'm just asking questions.

24 A. Well, I'm just telling you an answer.

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1 There was no fire on Saturday.

2 Q. Isn't it true that you were burning
3 material on either Saturday or Sunday of that
4 weekend?

5 A. No.

6 Q. Isn't that true that you burned carpet
7 in that burn pile on Saturday or Sunday?

8 A. No.

9 Q. Isn't it true that you burned a mattress
10 on that pile on Saturday or Sunday?

11 A. I couldn't say it any plainer than I
12 said it a while ago.

13 Q. Isn't is it true --

14 A. I didn't burn anything on that property.
15 I didn't put anything on that pile other than the
16 stuff that grewed on that property.

17 Q. So your answer is it's not true?

18 A. It's not true.

19 Q. Isn't that true that you also burned
20 dimensional lumber in that pile on the 13th or the
21 14th?

22 A. No. I didn't burn anything.

23 Q. Isn't it true that you also burned
24 metal cans and glass containers in that burn pile

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1 on Saturday the 13th or Sunday the 14th?

2 A. No. I didn't burn no containers.

3 Q. Isn't it true that you directed your
4 family to burn those materials at that property
5 because you wanted to rid yourself of all the pending
6 compliance problems on the property?

7 A. No. I didn't say nothing like that.

8 MR. SCHERSCHLIGT: That's all I have.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Scherschligt.

11 Mr. Summers?

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

13 by Mr. Summers

14 Q. You have been asked several things and
15 one of the things you were asked, Mr. Day, is why
16 would Mr. Tatman or Mr. Webber not tell the truth
17 in this proceeding. Do you have reasons why they
18 would not?

19 A. Because they don't like me. I'm not
20 one of their type of people. Now, if you want to
21 know why I'm not one of their people, I don't
22 smoke drugs, I don't use alcohol and I don't go to
23 their parties. They've all been busted for drugs
24 down there at one time or another.

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1 MR. SCHERSCHLIGT: I'm going to object
2 to that.

3 THE WITNESS: He asked me.

4 MR. SCHERSCHLIGT: There is no
5 foundation.

6 MR. SUMMERS: You asked him.

7 MR. SCHERSCHLIGT: I asked him what his
8 relationship was. I didn't ask him about drugs. I

9 didn't make the assertion that they were arrested for
10 drugs. There is no foundation for that.

11 THE WITNESS: He asked why he don't
12 like me. I'll tell you why he don't like me.

13 MR. SCHERSCHLIGT: That's defaming their
14 character and there is no foundation for that. It's
15 improper.

16 THE WITNESS: What did they say they
17 are going to do to me?

18 HEARING OFFICER HALLORAN: Mr. Summers?

19 MR. SUMMERS: He opened the door to
20 this. We might as well find out why these fellas
21 would come in here and lie as to Mr. Day.

22 MR. SCHERSCHLIGT: Well, if he wants to
23 testify that they do drugs and alcohol, I want to
24 hear some foundation as to how he knows.

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1 Secondly, if he wants to testify
2 that they have been arrested for it, I want
3 foundation for that as well.

4 HEARING OFFICER HALLORAN: The objection
5 is sustained.

6 BY MR. SUMMERS:

7 Q. You were asked whether you had any
8 conversations about the fire or after the fire with
9 your brother, Donald Day. Did you inquire about

10 the bed springs or any of the fire with your brother
11 or the other persons present?

12 A. Did I ask about it, did you say?

13 Q. Did you ask them about the fire?

14 A. Yes.

15 Q. What did you find out?

16 A. My younger brother, Don, Jason, and
17 Jason's family was down there on a Sunday. I don't
18 know what time. It was during the day. They burnt
19 that burn pile that was down there on a Sunday
20 because I came back on a Monday. We raked it up
21 in a small pile. I think maybe two days later or
22 something like that, we took garbage bags and put
23 it into the garbage bags and took it to a dumpster.

24 Q. Did you learn from them whether or

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1 not those bed springs had been used in that fire?

2 A. They told me they put some metal --

3 MR. SCHERSCHLIGT: Objection, hearsay.

4 MR. SUMMERS: He asked that question.

5 MR. SCHERSCHLIGT: I didn't ask what the
6 statement was.

7 MR. SUMMERS: You asked about
8 conversations.

9 HEARING OFFICER HALLORAN: Lori Ann,

10 could you please read back the question that
11 Mr. Summers asked Mr. Day?

12 (Whereupon, the requested
13 portion of the record was
14 read accordingly.)

15 MR. SCHERSCHLIGT: I think it was the
16 second to the last question after that, I believe,
17 when he asked them what did they say.

18 MR. SUMMERS: During his examination of
19 Mr. Day, he asked him did he have a conversation with
20 his brother.

21 MR. SCHERSCHLIGT: No, I did not.

22 MR. SUMMERS: You certainly did.

23 MR. SCHERSCHLIGT: If I did, it
24 certainly wasn't phrased like that and you didn't

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1 object.

2 MR. SUMMERS: That's why I didn't.

3 MR. SCHERSCHLIGT: Well, I'm not
4 suggesting that I asked that. I may have and I may
5 have forgotten, but I certainly didn't ask it like
6 that.

7 HEARING OFFICER HALLORAN: Objection
8 overruled. I will allow the witness to answer if he
9 can.

10 BY THE WITNESS:

11 A. Yes. Don and Jason both told me that
12 they threwed (sic.) those springs on the fire to keep
13 it from blowing in the wind. They threwed a set of
14 springs on there. It was not a mattress. It's a set
15 of springs that they threwed (sic.) on there and a
16 few other pieces of metal to hold the branches and
17 things down, the lose stuff, to keep it from blowing.

18 MR. SUMMERS: That's all I have.

19 HEARING OFFICER HALLORAN: Okay.

20 Mr. Scherschligt?

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

22 Mr. Scherschligt

23 Q. Mr. Day, if you cut down brush on
24 Saturday, put it in a pile and tried to burn it on

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1 Sunday, it's likely going to be very green and wet,
2 is it not?

3 A. Well, them was weeds. I just told
4 you a while ago they was six and eight-foot tall.
5 That mainly was there from last fall. That burn
6 pile --

7 Q. This is May?

8 A. That burn pile was in May.

9 Q. This is in May?

10 A. That's right.

11 Q. Things get green in May, don't they?

12 A. That's right.

13 Q. And you're saying that those weeds
14 burned the day after they were cut down?

15 A. Once I weed it, it turns brown in the
16 fall and it will stay brown there until you burn
17 it.

18 MR. SCHERSCHLIGT: That's all I have.

19 HEARING OFFICER HALLORAN: Mr. Summers,
20 any re-redirect?

21 MR. SUMMERS: No.

22 HEARING OFFICER HALLORAN: Thank you.

23 Mr. Day, you may step down.

24 (Witness excused.)

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1 THE WITNESS: I'm sorry. Okay.

2 HEARING OFFICER HALLORAN: Mr. Summers?

3 MR. SUMMERS: I have one more short
4 witness.

5 HEARING OFFICER HALLORAN: Come on up,
6 sir, and the court reporter will swear you in. Raise
7 your right hand when you are seated, please.

8 (Witness sworn.)

9 WHEREUPON:

10 E D M A S S I E ,

11 called as a witness herein, having been first duly

12 sworn, deposeth and saith as follows:

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

14 by Mr. Summers

15 Q. Would you state your name please?

16 A. Ed Massie.

17 Q. Where do you live?

18 A. I live in Atwood now.

19 Q. Do you know Jim Day?

20 A. Yes.

21 Q. And have you been to some property that

22 he was acquiring in Longview?

23 A. Yes.

24 Q. Do you know about when that was?

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1 A. Well, it was last spring sometime.

2 Q. If I show you a photograph, would

3 you be able to identify the property or tell us

4 whether this is the property that you were at?

5 It's a photograph that is part of the complaining

6 witness's Group Exhibit 4 and it's Photographs 1

7 and 2.

8 (Photographs tendered

9 to the witness.)

10 BY THE WITNESS:

11 A. Yes.

12 BY MR. SUMMERS:

13 Q. Does that appear to be the property that
14 you were dealing with?

15 A. Yes.

16 Q. What was your involvement?

17 A. I was mowing it.

18 Q. Would this have been in the spring of
19 the year 2000?

20 A. Yes.

21 Q. Do you know exactly what dates were
22 involved?

23 A. No, I don't. I don't know exactly what
24 dates.

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1 THE COURT REPORTER: Keep your voice
2 up, sir.

3 THE WITNESS: Pardon?

4 THE COURT REPORTER: Keep your voice up,
5 please.

6 BY MR. SUMMERS:

7 Q. When you observed the property, when you
8 went there to mow it, what did it look like prior to
9 your mowing it?

10 A. Oh, it just had weeds and things on it.

11 Q. Now, the things --

12 MR. SCHERSCHLIGT: Objection. We

13 haven't even been able to nail down what time period
14 we're talking about here.

15 HEARING OFFICER HALLORAN: Mr. Summers,
16 can we get any closer than the spring of 2000?

17 BY MR. SUMMERS:

18 Q. Can you give us as close of a
19 recollection of a date as you can?

20 A. I would imagine it was late April, the
21 first of May. It was somewhere in there.

22 Q. During May of the year 2000, do you
23 think?

24 A. Yes.

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1 Q. Can you get any closer in time as to the
2 specific date?

3 A. Well, it would be on the weekend.

4 Q. Is there anything else that would affix
5 the time for you, as best as you can recall?

6 A. I don't know how to come any closer. I
7 mean --

8 Q. Could it have been during the first or
9 second week of May?

10 A. I'm sure it was.

11 Q. In the photograph that's sitting there
12 in front of you, there is a trailer with a tarp

13 depicted in the photograph, right?

14 A. Uh-huh.

15 Q. Did you see that there when you were
16 there?

17 MR. SCHERSCHLIGT: Are we speaking
18 about Photograph No. 1 in Complainant's Exhibit
19 No. 4?

20 MR. SUMMERS: Yes.

21 BY THE WITNESS:

22 A. I don't recall if it was there or not.
23 It might have been. I know there was some stuff
24 there, but I don't know exactly what all was there.

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1 BY MR. SUMMERS:

2 Q. Do you see any other items in that
3 photograph that you recall being there at the time
4 you were there?

5 A. This old quantum building that was
6 there, I think.

7 MR. SCHERSCHLIGT: We will stipulate
8 there was a quantum building on the site.

9 HEARING OFFICER HALLORAN: So
10 stipulated.

11 BY MR. SUMMERS:

12 Q. Would you tell us what you did on the
13 property on the day -- do you remember what day of

14 the week it was that you were there?

15 A. It was a Saturday.

16 Q. Okay. Would you tell us what you did?

17 A. I mowed.

18 Q. What kind of a mower do you have?

19 A. I have an International tractor with a

20 belly mower on it. It's an older tractor.

21 Q. After you mowed, did you help do any of
22 the other work on that property?

23 A. I don't recall at this time. I did --

24 I don't think I helped them do anything else then.

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1 Q. Did you help pile up any of the mowing
2 debris?

3 A. No. I was mowing.

4 Q. Did you do any burning on that property
5 that day?

6 A. No.

7 Q. Was there any burning going on while you
8 were there?

9 A. Not that I -- not to my knowledge. It
10 had to be after I left, if it did.

11 Q. Until what time of day or night were you
12 there?

13 A. I left probably around 5:00 or 6:00.

14 Q. What time had you arrived?

15 A. It was before noon.

16 Q. And were you mowing the whole time you
17 were there?

18 A. No. I wasn't mowing. I mean, not the
19 whole time. The mower takes a five-foot swath and
20 even though you've got to go over it a couple of
21 times, it still isn't a big enough lot to mow in that
22 amount of time.

23 Q. Okay. What did you observe about the
24 condition of the grass or the weeds or whatever was

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1 there? What did you observe about that when you
2 first got there?

3 A. Well, it was -- the grass was beginning
4 to grow and there were other weeds there that they
5 was growing up too. We needed to knock those weeds
6 down. My mower is a finish mower so it would leave
7 it in pretty good shape.

8 Q. How tall were the weeds you were mowing?

9 A. Oh, some was as high as your head or
10 higher.

11 Q. Could you tell if those weeds would have
12 been left over from the year before?

13 A. They were last year's weeds, yes.

14 Q. Those weren't new weeds that were

15 growing?

16 A. Not the tall ones. There were some
17 there that were maybe a foot high, but they weren't
18 real high.

19 Q. Now, the quantum building parts that
20 were there, the trailer and the other things that
21 you saw on the property, did you move any of that
22 stuff before you mowed or did you mow around it?

23 A. I didn't move any of it. There was
24 stuff being moved as I mowed, though.

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1 Q. Did you see anywhere on the lot whether
2 there was any open dumping?

3 A. Not open dumping, no. There was some
4 old springs -- bed springs over in kind of the north
5 corner there.

6 Q. Did they have any fabric or padding or
7 anything on them at that time?

8 A. No. They were just springs.

9 Q. Metal?

10 A. Metal, yeah.

11 Q. Could you describe whether they were
12 rusted or give us your description as best you can?

13 A. Well, they was just old springs that --
14 I don't know who put them there, but they had been

15 there for quite a while. It was probably since fall
16 or something.

17 Q. Other than the things that you see in
18 the photograph, were there any other items on the
19 property that you can recall?

20 A. I don't recall anything else on there at
21 this time.

22 Q. Was there any old furniture or carpet or
23 mattresses or anything of that nature lying around on
24 the property?

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1 A. No, no, there wasn't.

2 MR. SUMMERS: That's all I have.

3 HEARING OFFICER HALLORAN: Okay.

4 Mr. Scherschligt?

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

6 by Mr. Scherschligt

7 Q. Can I have your name again, please?

8 A. Ed Massie.

9 Q. Mr. Massie, you were there on a
10 Saturday in May, but you're not certain which
11 Saturday in May it was, correct?

12 A. Well, not absolutely.

13 Q. It was the first or second week in May?

14 A. Yes.

15 Q. Now, you have testified that you were

16 mowing weeds and grass?

17 A. Uh-huh.

18 Q. And that they were growing -- the grass
19 had begun to grow?

20 A. Uh-huh.

21 Q. Now, is it fair to say that some of the
22 grass was greening up?

23 A. Oh, I would say so, yeah.

24 Q. If they are growing, it stands to reason

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1 they would be green, correct?

2 A. Yeah.

3 Q. And some of the weeds were younger weeds
4 and they were green as well?

5 A. Yeah.

6 Q. Some of the weeds were older weeds and
7 they were dry?

8 A. Yeah.

9 Q. Now, you weren't there on the Sunday
10 subsequent to your mowing, were you?

11 A. No.

12 Q. Okay. And you weren't with Mr. Day on
13 Sunday, May 14th, were you?

14 A. Well, if it's the day after this, I
15 believe I was.

16 Q. If it's the day after you were mowing,
17 you were with Mr. Day?

18 A. Uh-huh.

19 Q. Where were you when you were with
20 Mr. Day?

21 A. In Tuscola.

22 Q. All day, you were in Tuscola?

23 A. Yes.

24 Q. Where were you on Monday the 15th?

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1 A. Oh, I don't know. Probably driving a
2 truck. I don't know.

3 Q. What were you doing in Tuscola with
4 Mr. Day?

5 A. We were servicing my truck.

6 Q. But you didn't know for sure whether
7 that was the first or the second week in May?

8 A. No.

9 Q. The second weekend in May?

10 A. I'm not -- I don't have a perfect
11 knowledge of it, no.

12 Q. It could have been Saturday May 6th
13 that you were at the site mowing the weeds, correct,
14 with Mr. Day? That would be the first week in May.
15 You've testified it was either the first or second
16 week in May.

17 A. Oh, I suppose, to my knowledge, it could
18 have been.

19 Q. All right. So you don't know for
20 certain what happened on the other weekends in May
21 at that property, do you?

22 Other than that one Saturday that
23 you were there mowing, you don't know what happened
24 on the other Saturdays and Sundays in May at that

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1 site, do you?

2 A. No, I don't.

3 MR. SCHERSCHLIGT: That's all. Thank
4 you.

5 HEARING OFFICER HALLORAN: Mr. Summers?

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

7 by Mr. Summers

8 Q. I hand you what's been marked as
9 Respondent's Exhibit No. 4 and ask you if that's
10 how the property looked as you were finished mowing.

11 (Photograph tendered
12 to the witness.)

13 BY THE WITNESS:

14 A. Basically, yes.

15 MR. SCHERSCHLIGT: Excuse me. Could
16 you -- what was that question again?

17 (Whereupon, the requested
18 portion of the record was
19 read accordingly.)

20 MR. SCHERSCHLIGT: Can I see that?

21 Okay.

22 MR. SUMMERS: That's all I have.

23 HEARING OFFICER HALLORAN: Anything
24 further, Mr. Scherschligt?

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1 MR. SCHERSCHLIGT: Briefly.

2 HEARING OFFICER HALLORAN: Go ahead.

3 R E C R O S S - E X A M I N A T I O N,
4 by Mr. Scherschligt

5 Q. Do you see any pile of brush on that
6 property?

7 A. Do I?

8 Q. Yes. Is there a pile of brush depicted
9 in that photograph?

10 A. I don't see any, no.

11 Q. Do you know when that photograph was
12 taken?

13 A. No.

14 Q. Is it possible that that photograph was
15 taken on Monday the 15th after the material was
16 burned? Is it possible?

17 A. Well...

18 Q. Mr. Massie, you don't know when the
19 photograph was taken, do you?

20 A. Well, no. In looking at the grass, it
21 could can have been taken at any time as far as I
22 know.

23 Q. Exactly. Thank you.

24 HEARING OFFICER HALLORAN: Mr. Summers?

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1 MR. SUMMERS: I don't have any other
2 questions.

3 HEARING OFFICER HALLORAN: Thank you.

4 You may step down, sir. Thank you
5 very much.

6 (Witness excused.)

7 HEARING OFFICER HALLORAN: Okay.

8 Mr. Scherschligt, as a point of order, if you need
9 the court reporter to read a question back, you
10 can ask me and then I'll ask the court reporter.

11 MR. SCHERSCHLIGT: Thank you. I
12 apologize.

13 HEARING OFFICER HALLORAN: No apology
14 is needed.

15 MR. SUMMERS: We would like to offer
16 these exhibits. Do you have any objections to any
17 of them?

18 MR. SCHERSCHLIGT: The only one I would
19 object to again would be Exhibit No. 7. I believe
20 that's the adjoining property and we have stipulated
21 that this matter doesn't involve any tires or any
22 tire violations. So I would withdraw it.

23 MR. SUMMERS: I'll withdraw it.

24 HEARING OFFICER HALLORAN: Okay. Thank

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1 you.

2 MR. SCHERSCHLIGT: Mr. Hearing Officer,
3 I can wait until rebuttal. I don't intend to call
4 any witnesses, but I did offer Exhibit No. 5 there,
5 which is the contract for deed. I can either offer
6 that it be entered into the record now or I can wait
7 until my rebuttal case.

8 HEARING OFFICER HALLORAN: All right.

9 Let me --

10 MR. SUMMERS: I don't have any objection
11 to that.

12 THE COURT: Okay. Well, let me go
13 through your exhibits, Mr. Summers. I want to get
14 them on the record and then I'll address your
15 concerns, Mr. Scherschligt.

16 Respondent's Exhibit No. 1
17 regarding the diagram of the plat and tax deeds
18 is admitted into evidence.

19 Respondent's Exhibit No. 2
20 regarding notice of intention to declare of
21 forfeiture is admitted into evidence.

22 Respondent's Exhibit 3,
23 declaration of forfeiture, is admitted into
24 evidence.

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1 The photo, which is Respondent's
2 Exhibit No. 5, it's a photo depicting a pile of metal
3 with a latter across it, is admitted into evidence.

4 Respondent's Exhibit No. 6,
5 another diagram of -- what are those? Are those
6 beams or some kind of metal beams? It has two blue
7 barrels. That also is admitted into evidence.

8 Respondent's Exhibit No. 4,
9 depicting the site, is also admitted into evidence
10 without objection.

11 Mr. Scherschligt, you wanted to
12 address People's Exhibit Exhibit No. 5?

13 MR. SCHERSCHLIGT: Yes, sir. I would
14 move to admit that as evidence.

15 HEARING OFFICER HALLORAN: Any
16 objection?

17 MR. SUMMERS: No.

18 HEARING OFFICER HALLORAN: So admitted.

19 We can go off of the record.
20 (Whereupon, a discussion
21 was had off the record.)
22 HEARING OFFICER HALLORAN: We're back
23 on the record.
24 We have been discussing what we

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1 are going to be doing in the post hearing briefs.
2 The complainant has rested. The respondent has
3 rested.

4 As far as the post hearing brief,
5 we suspect the record will be done around May 18th
6 and that can be lifted from our web site, the IPCB
7 web site for download, much to the chagrin of the
8 court reporter.

9 In any event, the complainant has
10 waived his opening brief. If the respondent chooses
11 to submit his opening brief, he has until April 2nd.
12 The complainant will file his reply.

13 MR. SUMMERS: Wouldn't that be May 2nd?

14 HEARING OFFICER HALLORAN: I'm sorry.
15 May 2nd.

16 The complainant will file his
17 reply, if any, by May 15. That was the day of
18 the fire, wasn't it, a year ago?

19 MR. SCHERSCHLIGT: Oh, yes.

20 HEARING OFFICER HALLORAN: With that
21 said, Mr. Scherschligt, would you care to give a
22 closing argument?

23 MR. SCHERSCHLIGT: Yes, please.

24 HEARING OFFICER HALLORAN: All right.

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1 You may proceed, Mr. Scherschligt.

2 C L O S I N G A R G U M E N T

3 by Mr. Scherschligt

4 Mr. Hearing Officer, Mr. Summers,
5 members of the Illinois Pollution Control Board,
6 just very briefly, the violation cited in
7 administrative citation or Section 21(d)(1) of
8 the Illinois Environmental Protection Act, prohibits
9 open dumping resulting in litter. The second
10 violation cited in Section 21(b)(3) prohibits open
11 dumping resulting in open burning.

12 Now, I would submit that the
13 state has established a case beyond a preponderance
14 of the evidence really. We have heard testimony
15 from four witnesses on behalf of the state.

16 We first heard testimony from
17 Mr. Keigley, the Environmental Protection Specialist
18 III, with the Illinois EPA Champaign regional office.
19 He testified that he went to the site on the 17th

20 and observed this large burn pile containing items
21 such as metal, springs, dimensional lumber, and I
22 believe pressed wood as well as various other items
23 in this burn pile.

24 Mr. Keigley testified that two

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1 days prior to his arrival at the site, Darwin Fields,
2 also of the Champaign regional office, went to the
3 site and took photographs of the burn pile.

4 Mr. Webber, who has an auto body
5 shop right across the street from the site, testified
6 that he did see an individual other than Mr. Keigley
7 taking photographs at the site on May 15th and that
8 the fire was still smoldering on May 15th.

9 I would like to draw your
10 attention, for the benefit of the members of the
11 Pollution Control Board, I would like them to
12 please pay particular attention to Photograph No. 1
13 of Complainant's Exhibit No. 4, which -- and this
14 is for the Board to decide obviously, but there
15 does appear to be some smoldering depicted in that
16 photograph. That would be consistent with what
17 Mr. Webber testified to.

18 Now, we next heard from Ron Tatman
19 from the village of Longview. He testified that he
20 believed that it was on Sunday, May 14th, that he

21 drove by Mr. Day's property. While he couldn't
22 testify as to what was being burned, he did testify
23 that he saw Mr. Day, Mr. Jim Day, and members of
24 his family present standing immediately near the

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1 burn pile and that there were flames.

2 I asked him if there were flames.
3 He said, yes, there were flames. So he can't say
4 for certain what was being burned, but he can say for
5 certain that James Day was present while the burning
6 was taking place.

7 We next heard from -- prior to
8 hearing from Mr. Tatman, we heard from Mr. Webber
9 who testified that he was standing outside of his
10 auto body shop right across the street and in
11 addition to seeing the fire, he saw Mr. Day actually
12 throwing items onto the burn pile and those items
13 being -- he thought it was either a carpet or a rug.
14 He also testified as to a mattress. He believed a
15 mattress had been burned.

16 So Mr. Webber -- although the
17 other two, Lawrence Sapp and Ron Tatman, the other
18 two cannot identify what was being burned, Mr. Webber
19 not only says that Mr. Day was present, but he can
20 also identify what was being burnt.

21 At any rate, we have three
22 witnesses; Don Webber, Lawrence Sapp and Ron Tatman.
23 All three of these witnesses testified that they
24 saw James Day standing near the burn pile while it

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1 was burning. It appears that that day was Sunday,
2 May 14th. That appears to be uncontroverted.

3 Now, Mr. Day submits that he
4 was not present while any of the burning took place.
5 He said that he was only there on the day before,
6 on the Saturday, and that he was cutting down weeds
7 and that he stacked it into a nice, neat little
8 pile. That's not what the three witnesses say.
9 Don Webber, Lawrence Sapp and Ron Tatman all
10 testified that they saw Mr. Day doing the burning.

11 Mr. Massie, the last witness
12 called by the respondent, testified it was a weekend
13 in May. It was either the first or second weekend
14 in May. He was there on a Saturday and he did some
15 mowing. The state has no reason to disbelieve
16 Mr. Massie. I'm fairly certain that he probably
17 was at the property on either the first or the
18 second weekend in May. I'm certain that he probably
19 was mowing. We have no reason to dispute that.

20 What we do dispute, however, is
21 that Mr. Day was, in fact, present when the burning

22 took place and the items burned included more than
23 just landscape waste generated on-site. Landscape
24 waste, especially if it's dry, is not going to

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1 produce dark, thick smoke. The testimony is that
2 the smoke was dark and thick.

3 Lastly, I would like to point
4 out that it may be a bit unclear as to who actually
5 owns this piece of property at the present time,
6 but we have heard evidence that Mr. Day entered
7 into a contract for deed with Mrs. Opal Thomas
8 and we do have evidence before us that there have
9 been subsequent documents tendered back and forth
10 since the time of that contract for deed, one of
11 them being Respondent's Exhibit No. 2 and
12 Respondent's Exhibit No. 3.

13 Even if we assume that Mr. Day
14 did not own the property on May 17th, even if it
15 were May 14th or 15th or even the week prior to
16 that or the month prior to that, even if we assume
17 that he did not own the property in question, I
18 would like to point out for the Board that in
19 Respondent's Exhibit No. 2, the paragraph on the
20 second page that I had, Mr. Day read into the
21 record, it says, whereas pursuant to the provisions

22 of Illinois law and the contracts, demand for
23 possession is hereby made on you for possession
24 of the property if you fail to cure the defaults

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1 herein set forth on the time herein set forth.

2 It would seem that Mr. Day was
3 out there trying to cure the defects so that he
4 could continue to retain possession of this
5 property. It stands to reason. Otherwise, why
6 would he be taking these measures at the site.
7 So even if he didn't own the property, at a very
8 minimum, he had physical control and possession
9 of the property and I would submit that he would
10 be responsible for what goes on on that property.

11 He is, in essence, an operator
12 of that property and as such, he has allowed,
13 even if he wasn't present when that open burning
14 took place, which I believe he was and I believe
15 the evidence supports that contention, even if
16 he wasn't present, he has allowed the open burning
17 of improper material at that property. It's
18 clear that improper material has been burned at
19 that property.

20 Even if the Board is willing to
21 find that Mr. Day was not present, Mr. Day was still
22 responsible for allowing that burning to take place

23 on his property.

24 So for those reasons, I believe

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1 the state has met its burden of proof and has gone
2 beyond the preponderance of the evidence. There is
3 more than sufficient evidence here for the Board to
4 enter a finding that Mr. Day violated the act as
5 alleged in the citation.

6 Thank you very much.

7 HEARING OFFICER HALLORAN: Thank you,
8 Mr. Scherschligt.

9 Mr. Summers, you may make your
10 closing argument.

11 C L O S I N G A R G U M E N T

12 by Mr. Summers

13 The citation charges Mr. Day
14 with having two violations; one maintaining or
15 controlling or operating an open dump and the other
16 is burning.

17 Going to the open dump, there
18 is no testimony in this record anywhere that there
19 was any open dumping on this property. There just
20 isn't any. The closest thing they have to it is
21 the photograph that shows a -- not much more than
22 a handful of sand that was tested to be nonhazardous.

23 I think we can take in our own
24 experiences of life. Every golf course in the United

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1 States still has divot holes in the sand. Sand
2 is a form of topsoil or dirt. To say that there
3 was some spilled sand on the lot is almost ludicrous.
4 To say that that's a violation of this act is almost
5 silly.

6 So from -- first, the one charge,
7 that he is maintaining an open dump because we have
8 some spilled sand on the lot. I think the finding
9 should be that there is no violation there.

10 We have an ongoing feud between
11 Mr. Tatman and the Webbers and the Days. This has
12 been going on for a long time and I think you can
13 tell that from the testimony, not only from Mr. Day,
14 but from Mr. Webber. They don't like each other.
15 They have reported each other. They have made
16 complaints against each other. This is an
17 ongoing thing. So we have to take the testimony
18 of Mr. Webber with a grain of salt.

19 Dark smoke? We didn't hear
20 that from the other witnesses. There wasn't
21 any dark smoke.

22 A trailer full of furniture
23 and household goods? It's funny that we have

24 photographs taken before and after and you don't

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1 see any trailers out there stacked up with any
2 kind of furniture. He's got a trailer out there
3 that's got a blue tarp over it. Mr. Day has
4 testified that there is race car equipment in
5 there and tools on it. That's all metal. None
6 of that was being burned. It was there before
7 the fire and it's still there after the fire.

8 For Mr. Webber to say to this
9 Commission that there was household furniture and
10 a whole trailer full of furniture is -- I think
11 you have to take it with a grain of salt. I don't
12 believe it. I don't think it's true. There is no
13 supporting evidence.

14 Now, we will go to the debris
15 of the fire. You will find bed springs and you
16 will find some pieces of metal. It fits in with
17 what Mr. Day said. His brother and his son, who
18 was burning this pile out there, put these metal
19 bed springs on top of the debris to keep it from
20 blowing as it was burning. I think you would
21 expect that. It's weeds. If you've got a big
22 pile and if there is any wind blowing at all, which
23 some of the witnesses said it was, you have to try

24 and prevent it. The easiest way to do that is to

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1 throw some metal on top of it.

2 We all know that you're not going
3 to burn metal. Metal is not going to burn. Without
4 any scientific evidence or any expert testimony as
5 to what is in this debris, we don't have anybody
6 saying that there was carpet debris or carpet samples
7 or anything like that that was burned in this fire.

8 We have some wood debris. I don't
9 know that that's a violation. If you have a stick
10 or if you have a piece of a two by four and it was
11 gathered up with the leaves, is that going to be --
12 is that going to be a violation? You're going to
13 be putting a lot of people in jeopardy if burning
14 a two by four as a piece of scrap lumber is a
15 violation. You could go by every single new house
16 that is being built and there will be a pile out
17 there were they are burning pieces of two by four.
18 I'm not saying that that's maybe the right thing to
19 do, but it's not a violation. It's not a violation
20 here.

21 We don't know how -- are we
22 talking about one stick or are we talking about
23 looking at a picture? There is a can of pop that's
24 laying in the photograph. I think I see two cans

1 in there. You know, that's not what the act is
2 designed to do. The act is designed to keep people
3 from creating a big dump out there.

4 When you look at these pictures,
5 look at them as a whole. The ones that we offered
6 and the ones they offered, when you look at it, this
7 is not a dump. This was not a situation where they
8 were out there just creating a big mound of stuff
9 and burning all of the debris or stuff that
10 accumulated in the garage and stuff like that.
11 That's not what happened there.

12 So I think in the spirit of
13 this act and based on the evidence that is before
14 this commission, what you can see basically in
15 the photographs is that there are no violations
16 here and the finding should be in favor of the
17 Respondent.

18 HEARING OFFICER HALLORAN: Thank you,
19 Mr. Summers.

20 MR. SCHERSCHLIGT: Just very briefly, a
21 rebuttal?

22 HEARING OFFICER HALLORAN: Sure. Go
23 ahead.

24 MR. SCHERSCHLIGT: Thank you.

1 R E B U T T A L C L O S I N G A R G U M E N T

2 by Mr. Scherschligt

3 First of all, Mr. Summers
4 has addressed the trailer that is depicted in
5 the photographs in People's Exhibit No. 1 as
6 not containing any household items or carpet or
7 mattresses. I would submit that that photograph
8 was taken on the Monday following the burn and
9 it stands to reason that those items were not
10 depicted in those photographs because they were
11 burned on the Saturday or Sunday prior to those
12 photographs being taken.

13 We've heard testimony from
14 Mr. Webber that he has personally observed that
15 trailer at James Day's son's property, Jason Day.
16 I would submit that what happened here is they
17 brought that trailer from Jason Day's property
18 to James Day's property and burned the materials
19 on Saturday or Sunday. That's why you don't see
20 them in People's Exhibit No. 4.

21 Secondly, even if we assume
22 that Don Webber has a vendetta and that he is
23 not being truthful, Lawrence Sapp, we have no
24 reason to disbelieve his testimony. He is a retired

1 gentleman that has lived in this town for years.
2 He has testified that he saw James Day at the burn
3 pile.

4 Thirdly, the sand that Mr. Summers
5 points out was first noted on January 12th of 2000.
6 That sand was a result of sandblasting. That sand
7 was open dumped at the property. Now, while that
8 same sand was observed by Mr. Keigley on May 17th
9 and it is mentioned in his May 17th report, really,
10 the violations that are in this administrative
11 citation go above and beyond just that sand.
12 They address all of the other articles that were
13 open dumped and open burned at the property.

14 Fourthly, with respect to the
15 issue of his discarded lumber, is it a violation
16 to burn discarded lumber or pressed wood or soda
17 cans or whatever the case may be, I would submit
18 that it most certainly is a violation of the Illinois
19 Environmental Protection Act. It is a violation to
20 open burn and open dump waste.

21 If that dimensional lumber has
22 been discarded or even if it has been brought from
23 off-site or whatever the case may be, if it's
24 open dumped or open burned, it can just as easily

1 meet the definition of waste as anything else.

2 Fifthly, is this an open dump?

3 Well, the act is very broad in defining open
4 dumping. I would cite Section 3.24 of the Illinois
5 Environmental Protection Act, which defines open
6 dumping as the consolidation of refuse from one or
7 more sources at a disposal site that does not fulfill
8 the requirements of a sanitary landfill.

9 So then the question becomes
10 is this a disposal site? Well, the definition
11 of disposal in Section 3.08 of the act says the
12 discharge, deposit, injection, dumping, spilling,
13 leaking or placing of any waste or hazardous waste
14 into or on any land or water or into any well so
15 that such waste or hazardous waste or any constituent
16 thereof may enter the environment or be admitted
17 into the air or discharged into any waters including
18 ground waters.

19 Well, what do we have here?
20 We've got a bunch of waste being lit on fire and
21 emitted into the air. Not only do we have litter,
22 but litter that has been set on fire and emitted
23 into the air. So this most certainly is an open
24 dump. It certainly is not a permitted landfill.

1 It's an open dump.

2 So for those reasons, we have
3 met our burden and I would ask the Board to enter a
4 finding that Mr. Day has violated Section 21(p)(1)
5 and (p)(3). Thank you.

6 HEARING OFFICER HALLORAN: Thank you,
7 sir.

8 I do want to note for the record
9 that I'm required under board of regulations to make
10 a credibility determination. Based on my legal
11 judgment and experience, I find that there are no
12 credibility issues in this matter.

13 I also want to wish
14 Mr. Scherschligt good luck in his new career as an
15 assistant to the public defender of Sangamon County,
16 I believe, correct?

17 MR. SCHERSCHLIGT: Thank you, sir.

18 HEARING OFFICER HALLORAN: Thank you.

19 And I want to thank both of
20 you, Mr. Summers and Mr. Scherschligt, for your
21 professionalism and your civility.

22 With that said, we're going to
23 take about a 60-minute lunch break. I'm not sure
24 if either counsel will still be here, but we're

1 going to come back at 1:00 o'clock in case any
2 members of the public want to make comment.

3 Thank you very much.

4 MR. SUMMERS: Thank you.

5 MR. SCHERSCHLIGT: Thank you.

6 (Whereupon, after a short
7 lunch break was had, the
8 following proceedings
9 were held accordingly.)

10 HEARING OFFICER HALLORAN: Good
11 afternoon. We are back on the record at the hearing
12 regarding PCB 00-84, our administrative citation.
13 There being no members of the public present, we
14 now conclude this hearing. Thank you very much.

15 (Whereupon, no further
16 proceedings were had in the
17 above-entitled cause.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

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5 I, LORI ANN ASAUSKAS, CSR, RPR, do
6 hereby state that I am a court reporter doing business
7 in the City of Chicago, County of Cook, and State of
8 Illinois; that I reported by means of machine shorthand
9 the proceedings held in the foregoing cause, and that
10 the foregoing is a true and correct transcript of my
11 shorthand notes so taken as aforesaid.

12

13

14

Lori Ann Asauskas, CSR, RPR.
Notary Public, Cook County, IL

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20 SUBSCRIBED AND SWORN TO
before me this _____ day
21 of _____, A.D., 2001.

22

23

Notary Public

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