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ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
ex re. JAMES E. RYAN, Attorney General )  
of the State of Illinois, )  
Complainant, )  
vs. ) PCB No. 98-148  
DOREN POLAND, LLOYD YOHO, ) (Enforcement)  
and BRIGGS INDUSTRIES, INC., )  
a/k/a BRIGGS PLUMBING PRODUCTS, INC., )  
Respondents. )

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Gale G. Everhart, CSR-RPR, a notary public within and for the County of Peoria and State of Illinois, before Bradley P. Halloran, Hearing Officer, at 200 South Cherry Street, Galesburg, Illinois, on the 10th day of December, A.D. 2002, commencing at 10:03 a.m.



1 PRESENT:

2 HEARING TAKEN BEFORE:  
3 ILLINOIS POLLUTION CONTROL BOARD  
4 200 South Cherry Street  
5 Galesburg, Illinois 61401  
6 (309) 343-3121  
7 BY: MR. BRADLEY P. HALLORAN

8 APPEARANCES:

9 STATE OF ILLINOIS, OFFICE OF THE ATTORNEY GENERAL  
10 BY: THOMAS DAVIS, ESQUIRE  
11 Attorney at Law  
12 500 South Second Street  
13 Springfield, Illinois 62706  
14 (217) 782-7968  
15 On Behalf of the Complainant.

16 MOHAN, ALEWELT, PRILLAMAN & ADAMI  
17 BY: JOEL A. BENOIT, ESQUIRE  
18 Attorney at Law  
19 One North Old Capitol Plaza, Suite 325  
20 Springfield, Illinois 62701-1323  
21 (217) 528-2517  
22 On Behalf of the Respondent  
23 Briggs Industries, Inc.

24 DOREN E. POLAND  
506 East Latimer Street  
Abingdon, Illinois 61410  
(Appeared PRO SE)

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

21 ALSO PRESENT:

22 Joanne Yoho  
23 Loren West  
24 Tom Nelson



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1 HEARING OFFICER HALLORAN: Good morning, everyone.  
2 My name is Bradley Halloran. I'm a hearing officer with  
3 the Illinois Pollution Control Board. My predecessor,  
4 Steven Langhoff, who had the hearing last time has  
5 apparently left for greener pastures so it was  
6 reassigned to me.

7 This matter is PCB 98-148 entitled People  
8 versus Doren Poland, Lloyd Yoho and Briggs Industries,  
9 Inc., a/k/a Briggs Plumbing Products, Incorporated,  
10 Respondents, and Briggs Industries, Incorporated, Third  
11 Party Complainant versus Loren West. And is it Abingdon  
12 Salvage Company, Inc., Third Party Respondents? The  
13 allegations contained in the third party complaint will  
14 not be the subject matter of today's hearing. We will  
15 schedule that for a later date if need be.

16 I want to note for the record there are no  
17 members of the public here. There is a member of the  
18 press. It appears to be all interested parties here  
19 today. However, if there were members of the public,  
20 they would be allowed to testify subject to  
21 cross-examination.

22 We are going to run this hearing pursuant to  
23 section 103.212 and section 101 subpart F under the  
24 Board's general provisions. I note that this hearing is





1 intended to develop a record for review by the Illinois  
2 Pollution Control Board. I will not be making the  
3 ultimate decision in the case. That decision will be  
4 left to the members of the Board. They will review the  
5 transcript of this proceeding and the remainder of the  
6 record and render a decision in this matter. My job is  
7 to ensure an orderly hearing, clear record and rule  
8 on any evidentiary matters that may arise.

9           After the hearing, the party will be  
10 given -- the parties will be given an opportunity to  
11 submit posthearing briefs if they choose. These, too,  
12 will be considered by the board. I note that the board  
13 found in favor of the complainant in its order of  
14 September 6th, 2001, and ordered parties back to hearing  
15 on the issues of technical relief, penalties, cost and  
16 attorney fees. To that end, the parties are only to  
17 present testimony and evidence that are relevant to the  
18 factors and causes that are set forth in section 33(c)  
19 and 42(h) of the act. This includes proposing a remedy  
20 for violation, whether to impose a civil penalty in  
21 supporting its position with facts and arguments that  
22 address any and all of section 33(c) factors and  
23 proposing a civil penalty including a specific dollar  
24 amount and supporting its position with facts and



1 arguments that address any and all of section 42(h)  
2 factors.

3           With that said, Mr. Davis, would you like to  
4 introduce yourself, please.

5           MR. DAVIS: Thank you. My name is Thomas Davis.  
6 I'm an assistant attorney general. I'm also the chief  
7 of the Environmental Bureau. And I am appearing here on  
8 behalf of the People of the State of Illinois.

9           HEARING OFFICER HALLORAN: Thank you, Mr. Davis.

10           Mr. Benoit.

11           MR. BENOIT: Joel Benoit, and I represent  
12 Respondent Briggs Industries.

13           HEARING OFFICER HALLORAN: Thank you, sir.

14           Mr. Poland.

15           MR. POLAND: Yes, sir?

16           HEARING OFFICER HALLORAN: Would you like to  
17 introduce yourself, please?

18           MR. POLAND: Doren Poland of Abingdon, Illinois.  
19 Retired six years ago.

20           HEARING OFFICER HALLORAN: Thank you.

21           Mr. Yoho.

22           MR. YOHO: Lloyd Yoho. I live in Abingdon,  
23 Illinois, and I'm one of the owners and operators of  
24 Abingdon Salvage Company.



1 HEARING OFFICER HALLORAN: Mr. West.

2 MR. WEST: Loren West, co-owner of Abingdon  
3 Salvage, past co-owner.

4 HEARING OFFICER HALLORAN: A bit of housekeeping.  
5 On December 5th, Mr. Davis and Mr. Benoit -- actually I  
6 believe it was -- well, Mr. Davis and Mr. Benoit,  
7 somehow I got a fax of a stipulation. It's a section  
8 101.626(d) stipulation and a waiver of the right to  
9 cross-examine. And the reason this originated is  
10 because Mr. Davis and Mr. Benoit are going  
11 to -- actually, Mr. Davis has already filed written  
12 testimony, and Mr. Benoit, I understand, is going to do  
13 that this morning. And subject to section 101.626(d)  
14 in -- pertinent part, written testimony may be  
15 introduced by a party only if the persons whose written  
16 testimony is introduced are available for  
17 cross-examination at the hearing.

18 With that said, the parties signed a  
19 stipulation under waiver of right to cross-examination.  
20 It was signed by Mr. Yoho, Mr. Poland, Mr. Davis and  
21 Mr. Benoit. That was a fax copy. Today Mr. Benoit  
22 brought in another stipulation, the same stipulation and  
23 we had Mr. Poland and Mr. Yoho and Mr. Davis and  
24 Mr. Benoit sign it again as the original. With that



1 said, I will accept this stipulation and proceed from  
2 there.

3           Mr. Davis, would you like to give an opening  
4 statement, or do we need to talk about anything else  
5 before we proceed?

6           MR. DAVIS: No. I'm prepared to begin.  
7 Thank you, Mr. Halloran.

8           The Board's September 6th, 2001, interim  
9 opinion and order correctly found Briggs Industries,  
10 Inc., to be liable as an operator for certain waste  
11 disposal violations. The Board has directed the parties  
12 back to hearing on the issues of technical relief and  
13 civil penalty. The evidence presented during the  
14 hearing over two years ago, in the view of the Board,  
15 suggested that the materials disposed of at the  
16 unpermitted site was inert waste.

17           The People respectfully disagree with this  
18 view because the record contains no proof that the  
19 wastes were inert. The People also disagree with the  
20 Board's conclusion that there was insufficient evidence  
21 in the record to determine whether the wastes posed such  
22 a risk to the environment as to require removal.

23           The complainant has already shown that the  
24 industrial processed wastes generated by Briggs are not





1 inert. We have done this essentially by proving a  
2 negative. One question arises, does the Board expect  
3 Briggs to somehow attempt to prove that its wastes are  
4 inert in order to justify the so-called remedy Briggs  
5 has suggested in its briefs? This will likely not occur  
6 during this hearing. In fact, the parties have  
7 stipulated to the admission of written testimony. I  
8 have got a witness, Ken Smith, of the Illinois EPA  
9 permit section to give opinions and conclusions. And  
10 Mr. Benoit, on behalf of Briggs, has a witness, Michael  
11 Rapps, who will supplement the record with a great deal  
12 of information hopefully that will be useful to the  
13 Board. But this written testimony must be viewed in the  
14 context of the existing record.

15           Now I decided to give an opening statement  
16 today in order to assist the Board because it's been two  
17 years since the liability phase. There are new members  
18 on the Pollution Control Board. The record will have to  
19 be reviewed. And that record is substantial, two days'  
20 testimony, well over 100 documentary exhibits. The  
21 primary violations were proven upon this record as well  
22 as -- and this is key, I believe, to the Board's  
23 consideration -- the so-called Andrews' Engineering  
24 exhibits which were admitted subsequently.



1           The primary violations consisted of open  
2 dumping in count 1 and the development and operation of  
3 a landfill without permits, count 2. In violation  
4 respectfully of sections 21(a) and 21(d) of the  
5 Environmental Protection Act.

6           Now the nature of the Briggs' waste was not  
7 an issue in either count 1 or count 2. And in  
8 consideration of the allegations within count 3 the  
9 Board, however, also found that although the part 811  
10 standards do apply to this unpermitted site, the  
11 complainant had failed, in the Board's view, to prove  
12 that the wastes were chemical or putrescible wastes.

13           The burden of proof is obviously on the  
14 complainant initially. And the standard is just as  
15 obviously a preponderance of the evidence, what is more  
16 likely than not. There is no dispute that Briggs,  
17 Mr. Poland and Mr. Yoho had failed to demonstrate in a  
18 series of permit applications that the Briggs wastes  
19 ought to be considered inert. That was their  
20 contention. They failed to prove it. We proved that  
21 they failed to prove it.

22           The consultant for the respondents, James  
23 Schoenhard, testified at the previous hearing that the  
24 concentrations of both barium and selenium were too



1 high, the transcript, page 202. The leachate testing by  
2 Andrews Engineering in November 2000 also indicated that  
3 the levels would not meet the inert standards,  
4 specifically chromium, iron, oil and grease, total  
5 dissolved solids and sulfate were in excess of the inert  
6 wastes classification standards. I refer the Board to  
7 People's Exhibits 73 and 74.

8           By the way, I should mention I'm giving this  
9 opening statement in lieu of a written brief at the end  
10 because we have already filed our briefs. We have  
11 already made our recommendations. This is an  
12 opportunity, as you have noted, Mr. Hearing Officer, for  
13 additional arguments to be presented, and that's all I'm  
14 trying to accomplish. So I want to tell the Board that  
15 it was correct in looking to People's Exhibit 73, but it  
16 should also look at People's Exhibit 74. The Board had  
17 quoted Exhibit 73 in interim opinion and order of  
18 September '01. And this quote is on page 14. That  
19 document, Exhibit 73, was an October, 26th, 2000, letter  
20 from Andrews Engineering to Counsel for Briggs,  
21 Mr. Benoit.

22           That letter, Exhibit 73, discussed the  
23 failure of previous sampling of events to demonstrate  
24 that the Briggs wastes could be classified as inert.



1 And that letter, Exhibit 73, proposed that leachate  
2 wells be drilled into the existing exposed fill area in  
3 order to obtain uncontaminated, undiluted and  
4 unattenuated leachate samples. That was done. Exhibit  
5 74 contains those analytical results. However, the  
6 Board did not mention or discuss in an interim order  
7 those analytical results, the levels of chromium, iron,  
8 oil and grease, total dissolved solids and sulfates were  
9 in excess of the inert waste classification standards.

10           The written testimony of Ken Smith previously  
11 filed and offered into the record at this hearing does  
12 not have to go beyond that evidence. The Illinois EPA  
13 does not have to do its own testing. We did not.

14           In fact, no further testing has been done.  
15 The written testimony of Mr. Rapps indicates that he had  
16 reviewed all previous testing that was available. And  
17 his opinion -- and I refer the Board to page 12 of his  
18 written testimony -- is, quote, "It is my opinion the  
19 new landfill will likely never meet the inert waste  
20 standards," unquote.

21           I, of course, suggest that with any statement  
22 the Board should read the entire document. I'm not  
23 suggesting that -- I'm not trying to quote anything out  
24 of context. What I will try to do, however, for the





1 Board is to respectfully contend that we have already  
2 proven one issue that the Board is somehow concerned  
3 with, and that is more likely than not these wastes are  
4 industrial processed wastes, special wastes. They are  
5 not, definitely not, because there is no evidence  
6 whatsoever that they are inert.

7           In the years prior to the first hearing, the  
8 respondents have collectively failed to demonstrate that  
9 the wastes were inert. Immediately prior to the hearing  
10 Briggs, through Andrews Engineering, had conclusively  
11 demonstrated through proper testing the wastes were not  
12 inert.

13           I won't go through all of the contentions and  
14 allegations regarding the Andrews documents. They were  
15 provided to the People after the hearings. We got them  
16 into the record. We simply had a -- you know, we didn't  
17 have the opportunity to explore those documents at  
18 hearing with other witnesses.

19           Now the People also will obey the Board and  
20 not try to relitigate certain issues here. However, we  
21 still, as a matter of argument, can state that we  
22 respectfully disagree with the Board's finding that the  
23 part 811 violations were not supported by a proper  
24 showing.



1           Schoenhard, the consultant for all three of  
2 the respondents had admitted on cross-examination that  
3 the permit application submitted collectively on behalf  
4 of Briggs, Mr. Poland and Mr. Yoho had failed to satisfy  
5 the part 811 requirements. And that was basically what  
6 we had alleged in count 3.

7           Now the unresolved issues of technical remedy  
8 and penalty could have and perhaps should have been  
9 determined by the Board without further hearing although  
10 it's the Board's prerogative under section 103.212(d) to  
11 conduct a separate hearing as to remedy. The parties  
12 didn't know that the first hearing was only for  
13 liability. The parties didn't know that there would be,  
14 two years later as it turns out, a separate hearing on  
15 technical remedy and civil penalty. None of the parties  
16 had requested bifurcated proceedings on liability and  
17 relief. So the People have already made our case. We  
18 have already introduced testimony and documentary  
19 evidence regarding lack of due diligence, the accrual of  
20 economic benefit and so forth. The so-called section  
21 33(c) and 42(h) factors.

22           What we will do, and have through the filing  
23 of written testimony of Mr. Smith, is to attempt to  
24 address the Board's various inquiries. And specifically



1 I'm referring to an order issued on January 24, 2002.  
2 Page 4 sets forth several matters as issues for this  
3 so-called second hearing. Our written testimony,  
4 Mr. Hearing Officer, has addressed the regulatory  
5 obligations applicable to the new landfill -- so-called  
6 new landfill or the unpermitted landfill. Secondly,  
7 that the industrial processed wastes generated by Briggs  
8 are special wastes due to the failure to demonstrate  
9 that such wastes might be inert. And, lastly, we have  
10 addressed the possible costs of compliance. But we are  
11 not producing any further evidence. And we are not  
12 filing written briefs.

13           Exhibit 74 provides the only objective,  
14 definitive and reliable factual evidence in the record  
15 as to the potential environmental risks, the levels of  
16 chromium and so forth. As to economic benefit, it's  
17 obvious, I would argue, that Briggs did accrue some  
18 economic benefit through its arrangements with  
19 Mr. Poland and Mr. Yoho. Exhibits 32 through 70, if  
20 memory serves me right, document the expenditures of  
21 Briggs during the lengthy period of violation for  
22 several years of disposal at the unpermitted landfill.

23           Now according to the testimony of Mr. Orton,  
24 the plant manager, of the unpermitted landfill half a



1 mile from the plant was, quote, "A good deal," unquote,  
2 transcript 375. The very next page, and this is on  
3 direct examination still, Mr. Orton testified that  
4 Briggs only began to send its wastes to a permitted  
5 landfill when Mr. Poland and Mr. Yoho raised the daily  
6 fee from \$500 to \$700. This daily fee for disposal was  
7 in addition to Briggs paying half of certain operating  
8 and consulting expenses.

9           Now I suggest to the Board that it would be  
10 unreasonable to expect a precise quantification of the  
11 economic benefit in a case such as this. I can't come  
12 up with a number. But the record should be reviewed.  
13 The Board should do its work and determine, as best it  
14 can, on the evidence that was put into the record  
15 whether and to what extent there was an economic  
16 benefit.

17           Now, lastly, I'm, on behalf of the State of  
18 Illinois, contending that Briggs ought to be liable not  
19 only for civil penalties but also for whatever technical  
20 relief may be necessary. This is critical to, quote,  
21 "Assure that the adverse effects upon the environment  
22 are fully considered and borne by those who caused  
23 them," unquote. This obviously is section 2(b) of the  
24 act.





1           We made our recommendations for civil  
2 penalty. For the benefit of the press and you,  
3 Mr. Hearing Officer, who didn't attend the previous  
4 hearing or may have read the briefs, we are asking for a  
5 \$25,000 civil penalty against the company and \$5,000 or  
6 less against the individuals. But most importantly this  
7 mess cannot be left. The exposed fill area must be  
8 dealt with. If the Board wants to look at its  
9 regulations and look at the record of this case and  
10 allow 2.3 acres of unpermitted waste disposal to simply  
11 be covered up and monitored, I am suggesting that would  
12 be a lousy precedent. In this case by finding that  
13 Briggs was liable and the generator, the Board has set  
14 forth a good precedent on that issue of liability. On  
15 technical relief this is an opportunity, I guess, for  
16 the Board to snatch defeat from the jaws of victory, as  
17 I would look at it, because the unpermitted wastes  
18 improperly disposed of cannot simply be left there.

19           So I thank you, Mr. Hearing Officer, for your  
20 patience, and I will submit our written testimony  
21 formally to the Board.

22           HEARING OFFICER HALLORAN: Thank you, Mr. Davis.

23           Before we proceed, I want to revisit this  
24 stipulation and waiver of right to cross-examination. I



1 want to get it on the record. Mr. Poland, you, in fact,  
2 voluntarily signed -- which I'm going to mark Hearing  
3 Officer Exhibit A -- this waiver of right to  
4 cross-examination of written testimony of Ken Smith,  
5 Mr. Smith and Mr. Rapps; is that correct?

6 MR. POLAND: Uh-huh.

7 HEARING OFFICER HALLORAN: Thank you.

8 Mr. Poland -- I'm sorry, Mr. Yoho, you have  
9 also signed this voluntarily? You are waiving your  
10 right to cross-examination of the written testimony?

11 MR. YOHO: Yes.

12 HEARING OFFICER HALLORAN: Thank you very much.

13 With that said, I will accept again the  
14 written testimony of Ken Smith. I will label it  
15 Complainant's Exhibit A.

16 MR. DAVIS: And I have a supplement to that,  
17 Mr. Hearing Officer. I had inadvertently, in filing the  
18 written testimony, left off Ken's curriculum vitae,  
19 which is his resume which Mr. Benoit had. And all this  
20 is, Mr. Poland and Mr. Yoho, is sort of a resume  
21 indicating some personal information about his education  
22 and work experience. So I would ask for leave to attach  
23 this to what was filed earlier.

24 HEARING OFFICER HALLORAN: Any objections or



1 questions, Mr. Poland or Mr. Yoho?

2 MR. YOHO: No, sir.

3 MR. POLAND: No.

4 HEARING OFFICER HALLORAN: Thank you. It will be  
5 taken as a supplement to Complainant's Exhibit A, the  
6 resume of Mr. Ken Smith. So admitted.

7 Mr. Benoit, would you like to give a  
8 statement?

9 MR. BENOIT: Just one thing, if I could.

10 HEARING OFFICER HALLORAN: I'm sorry.

11 MR. BENOIT: Tom, that's not attached to this. You  
12 can just send me a copy of it.

13 MR. DAVIS: Oh, sure.

14 HEARING OFFICER HALLORAN: Mr. Davis, with that  
15 have you rested?

16 MR. DAVIS: Yes, sir.

17 HEARING OFFICER HALLORAN: Thank you very much.

18 Mr. Benoit.

19 MR. BENOIT: Again, I represent Briggs in this  
20 matter. And in an attempt to follow the Board's January  
21 24th, 2002, order setting out what this hearing was  
22 about, I don't think it's proper to argue about the  
23 violations found or not found based on the initial  
24 hearing, and I won't do so. In addition, what I tried



1 to do in compliance with the Board's order, what my  
2 client has is put together evidence for the Board to  
3 consider as the Board requested in that January 24th  
4 order.

5           As the hearing officer has mentioned, that  
6 consists primarily of the written testimony of Michael  
7 W. Rapps, and I would like to submit that to the hearing  
8 officer for filing in the record. I would also like to  
9 ask the hearing officer -- I'm just submitting one copy,  
10 but I have a couple of extra copies and there are a lot  
11 of diagrams, color copies attached to that. Would it be  
12 helpful to have a couple more of those for the Board?

13           HEARING OFFICER HALLORAN: One should be  
14 sufficient. Thank you.

15           MR. BENOIT: I would also like to submit into the  
16 record Complainant's answer to request to admit by  
17 Briggs Industries, Inc.

18           MR. DAVIS: Which one?

19           MR. BENOIT: (Handed document to Mr. Davis.)

20           I would also like to submit portions of  
21 Complainant's responses to Briggs Industries' second set  
22 of interrogatories. My focus here is on the responses  
23 to interrogatories 9, 16, 17, 23, and 25. And in order  
24 to keep the record smaller, those are the portions that





1 I have copied for introduction into the record.

2           Now unlike Mr. Davis, I am not going to waive  
3 the right to file a written brief in this matter. I  
4 believe that when the Board considers the testimony of  
5 Mr. Rapps that will be of great assistance to the Board  
6 in determining the technical remedy to impose in this  
7 case. But I would comment -- just one comment Mr. Davis  
8 mentioned that these Andrews documents are something  
9 that he is relying upon and the State is relying upon,  
10 and they didn't have a chance to challenge these Andrews  
11 documents. And I would suggest to the hearing officer  
12 and the Board that today was the day to do that. And so  
13 without waiving the right to file a written brief, that  
14 concludes my comments.

15           HEARING OFFICER HALLORAN: Thank you, Mr. Benoit.  
16 With exception of Respondent's -- which I marked  
17 Respondent's Exhibit A, the written testimony of Michael  
18 Rapps, that exhibit is admitted into evidence.

19           With respect to Respondent's Exhibit B, which  
20 I entitled B, Complainant's answer to request to admit  
21 by Briggs Industries, Inc., any objections to this being  
22 admitted into evidence by anyone?

23           MR. WEST: No, sir.

24           HEARING OFFICER HALLORAN: Mr. Poland? Mr. Yoho?



1 MR. POLAND: No.

2 MR. YOHO: No.

3 HEARING OFFICER HALLORAN: Respondent's Exhibit B  
4 is admitted.

5 Complainant's responses to Briggs Industries  
6 Inc., second set of interrogatories which I labeled  
7 Respondent's Exhibit C. Any objections to those being  
8 admitted into evidence?

9 MR. DAVIS: No, sir.

10 HEARING OFFICER HALLORAN: I hear no objection.  
11 Respondent's Exhibit B, Respondent's Exhibit C is  
12 admitted into evidence

13 Mr. Poland, do you have any evidence today?  
14 I assume Mr. Benoit has rested.

15 MR. POLAND: I believe that's all I have today.  
16 Everything else has been well covered. I believe that's  
17 all I have.

18 HEARING OFFICER HALLORAN: I will cover this.  
19 Mr. Poland has tendered to the hearing officer October  
20 9th, 2001, letter from Mr. Donald Moffitt, state  
21 representative, 94th District. And, actually, there are  
22 two letters. I'm sorry. Another letter dated October  
23 16th, 2001, from Mr. Moffitt as well. I have entitled  
24 the October 9th, 2001, letter Hearing Officer Exhibit B.



1 And I also entitled the October 16th, 2001, Hearing  
2 Officer Exhibit C. What will happen is, if I accept  
3 them, they will be accepted only as a public comment  
4 under section 101.628.

5 Mr. Davis, any objections to these letters?

6 MR. DAVIS: No, sir. Mr. Poland was kind enough to  
7 mention them several months ago. I advised him I could  
8 not give him any legal advice, but it was my  
9 understanding that they would be admissible under the  
10 Board's rules for whatever weight the Board wanted to  
11 give it. So I have no objection.

12 HEARING OFFICER HALLORAN: Mr. Benoit?

13 MR. BENOIT: I do object to their entry without  
14 Mr. Moffitt being present.

15 HEARING OFFICER HALLORAN: Does anybody else have  
16 any objections?

17 (No audible response.)

18 HEARING OFFICER HALLORAN: Over the objection of  
19 Mr. Benoit, I will accept these two letters as public  
20 comments and entitle them Hearing Officer Exhibit B and  
21 Hearing Officer Exhibit C.

22 With that said, Mr. Yoho, do you have any  
23 evidence today?

24 MR. YOHO: No. I have a question if it's not out



1 of context.

2 HEARING OFFICER HALLORAN: Feel free to ask it.

3 MR. YOHO: This seems like one of the major  
4 questions is that the site be evacuated. I mean, the  
5 possibility of that.

6 MRS. YOHO: Excavated.

7 MR. YOHO: Excavated, I'm sorry. I don't  
8 understand by the hundreds of sites around the  
9 surrounding counties including Knox and including some  
10 state property is not also an issue if we are singled  
11 out for this one portion. I mean, that's just a  
12 question not a -- you know, I don't know if I'm out of  
13 context by asking that or not.

14 HEARING OFFICER HALLORAN: Well, I mean, the Board  
15 will decide whether you are out of context, but feel  
16 free to continue.

17 MR. YOHO: That's all I have, sir.

18 HEARING OFFICER HALLORAN: Mr. Poland has rested  
19 and Mr. Yoho has rested. And Mr. West, since you are a  
20 third party respondent, we will take your  
21 issues -- comments up at a later date at another  
22 hearing. Is that --

23 MR. WEST: That's fine.

24 HEARING OFFICER HALLORAN: Let's --





1           MR. DAVIS: I'm sorry. Mr. Hearing Officer, may I  
2 respond to just a couple of things that Mr. Benoit  
3 raised?

4           HEARING OFFICER HALLORAN: Yes, you may.

5           MR. DAVIS: On the issue of the Andrews documents,  
6 I wasn't trying to convey that we had missed our  
7 opportunity to challenge the documents. In fact, we are  
8 relying upon those documents, as the Board will see in  
9 the written testimony of Mr. Smith, cites those  
10 documents as a basis for his opinion.

11                   And then, secondly, real quick, we are  
12 waiving our right to file an initial brief. Depending  
13 upon what Mr. Benoit has to say in his brief, I may  
14 exercise an opportunity, if allowed to, to reply.

15           HEARING OFFICER HALLORAN: Thank you. We will go  
16 off the record shortly, and we will get a hearing  
17 scheduled.

18                   (Discussion off the record.)

19           HEARING OFFICER HALLORAN: We are back on the  
20 record. We are talking about scheduling the posthearing  
21 briefs. We have concluded that the transcript will be  
22 due on December 20th. However, in all likelihood it  
23 probably won't be posted on our web site until December  
24 23rd. That is a Monday.



1           With that said, the complainant, Mr. Davis,  
2 has waived his right to his opening brief. However,  
3 Respondents have not waived their right. So we set  
4 Respondent's posthearing brief due February 5th, 2003.  
5 And the complainant's reply, if any, is due February  
6 20th, 2003. And for the record, I would like to make a  
7 public comment due date which would be January 16th  
8 public comment is due to be filed. And that will be  
9 weighted accordingly by the Board. I don't think there  
10 is anything else. And, if not, have a safe trip home  
11 and a Happy New Year and happy holidays. Thank you very  
12 much.

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15                           (Whereupon, the proceedings concluded  
16                           at 10:40 a.m.)

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF PEORIA )

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CERTIFICATE OF REPORTER

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7

I, GALE G. EVERHART, CSR-RPR, Notary Public

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in and for the County of Peoria, State of Illinois, do

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hereby certify that the foregoing transcript, consisting

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of pages 1 through 26, both inclusive, constitutes a

11

true and accurate transcript of the original

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stenographic notes recorded by me of the foregoing

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proceedings had before Hearing Officer Bradley P.

14

Halloran, in Galesburg, Illinois, on the 10th of

15

December, A.D. 2002.

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Dated this 16th day of December, A.D. 2002.

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\_\_\_\_\_  
GALE G. EVERHART, CSR-RPR  
Illinois License No. 084-004217

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