

1 BEFORE THE ILLINOIS
2 POLLUTION CONTROL BOARD
3
4

5 ILLINOIS EPA,)
6 Petitioner,)
7 versus)
8 KISHWAUKEE AUTO PARTS,)PCB 01-037
9 Respondent.)

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11 The following is a transcript of proceedings from the
12 hearing held in the above-entitled matter, taken
13 stenographically by ROSEMARIE LAMANTIA, CSR, a notary
14 public within and for the County of DuPage and State of
15 Illinois, before BRADLEY P. HALLORAN, Hearing Officer,
16 at 4302 North Main, Conference Rooms A & B, Rockford,
17 Illinois, on the 18th day of October 2001, A.D.,
18 scheduled to commence at the hour of 10:00 a.m.

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

2 HEARING TAKEN BEFORE:
3 ILLINOIS POLLUTION CONTROL BOARD,
4 4302 North Main
5 Rockford, Illinois

6 BY: BRADLEY P. HALLORAN, HEARING OFFICER

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1 HEARING OFFICER HALLORAN: Good morning. My
2 name is Bradley Halloran, I am a hearing officer with
3 the Illinois Pollution Control Board, I am also assigned
4 to this matter. And this matter is the Illinois EPA
5 versus the Kishwaukee Auto Parts, PCB 01-037.

6 I'll also note for the record that today is
7 October 18th. It is approximately 10:00 o'clock. And I
8 appreciate counsel showing up on time.

9 This administrative citation was filed by the
10 agency, alleges that during an inspection of March 7,
11 2001, it was determined that Kishwaukee Auto Parts
12 caused or allowed open dumping to result in liter, both
13 in violation of EPA. As a result of the March 7, 2001,
14 inspection, administrative citation, and I'll refer to
15 it as an AC, Respondent filed a petition for a review
16 disputing the violation and we're here today as a result
17 of that petition.

18 This matter has been noticed pursuant to the
19 board's regulations and has been publically noticed in
20 the local newspaper here and will be conducted in
21 accordance with Subsection 108 Subpart B, and 101
22 Subpart F.

23 I also want to note for the record there are no
24 members of the public here today, but if there were,

1 they would be allowed to testify under oath, subject to
2 cross-examination.

3 Also, note for the record, that I will not make
4 the ultimate decision in this matter, of course, that
5 decision is left to the esteem members of the board,
6 comprised of seven members located throughout the state,
7 chosen for their environmental expertise.

8 My job is to insure an orderly hearing, clear
9 record, and rule on evidentiary matters here at the
10 hearing.

11 With that said, Ms. Ryan, would you like to
12 introduce yourself, please?

13 MS. RYAN: Michelle Ryan, I'm an attorney,
14 special assistant attorney general for the Illinois EPA.

15 HEARING OFFICER HALLORAN: Thank you.

16 MS. RYAN: Would you like me to introduce my
17 witness?

18 HEARING OFFICER HALLORAN: Sure.

19 MS. RYAN: Kaara Jacobsen, inspector, he is
20 also here to testify.

21 HEARING OFFICER HALLORAN: Good morning.

22 MR. ALEXANDER: Peter Alexander, attorney
23 licensed in the State of Illinois practice in Rockford,
24 Illinois, representing Kishwaukee Auto Parts and

1 Marshall Pekarsky.

2 HEARING OFFICER HALLORAN: Thank you.

3 Ms. Ryan, would you like to give an opening?

4 OPENING STATEMENT

5 MS. RYAN: Yes.

6 We believe that the evidence will show in this
7 hearing today both through testimony and through
8 documentary evidence that the Respondent, Kishwaukee
9 Auto Parts, had a violation of 21P1 of the act, which
10 involves causing or allowing open dumping in a matter
11 resulting in liter on March 7, 2001 of this year. And
12 we believe that the board will find the requested
13 statutory penalty is appropriate in this situation.

14 HEARING OFFICER HALLORAN: Thank you, Ms.
15 Ryan.

16 Mr. Alexander.

17 OPENING STATEMENT

18 MR. ALEXANDER: I believe that the testimony
19 will be that that refuse, or whatever is there, and
20 there is a lot of it, has been there for 10, 15, 20
21 years, that this area was operated by Mr. Pekarsky's
22 father, who died, and Mr. Pekarsky was made the executor
23 of the estate, had nothing to do with the refuse being
24 there. He is a trustee under the trust, the executor of

1 the estate. He had nothing to do with it. The refuse
2 has been there for many, many years, and there is no new
3 refuse there whatsoever. The cost of the estate is
4 basically insolvent. He has been doing what he can to
5 clean it up on a little bit at a time basis, but does
6 not have the funds to remedy it, you know, in one felt
7 swoop, so. I don't think they'll be able to show that
8 the entity known as Kishwaukee Auto Parts or Mr.
9 Pekarsky was responsible for dumping refuse on this
10 site.

11 HEARING OFFICER HALLORAN: Thank you, Mr.
12 Alexander.

13 Ms. Ryan, would you like to call your first
14 witness?

15 MS. RYAN: Yes.

16 We are call Kaara Jacobsen.

17 HEARING OFFICER HALLORAN: Mr. Jacobsen,
18 raise your right hand and the court reporter will swear
19 you in.

20 (The witness was first duly
21 sworn.)

22 KAARA JACOBSEN,
23 called as the witness herein, having been first duly
24 sworn, was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. RYAN:

3 Q. Kaara, could you spell your name for record, for
4 the court reporter?

5 A. My name?

6 Q. Yes, both parts of your name.

7 A. My name is spelled K-A-A-R-A, Kaara, Jacobsen,
8 J-A-C-O-B-S-E-N.

9 My job description?

10 Q. What is your job description?

11 A. My job description is inspector with the
12 Illinois EPA. I've been here for about a year and a
13 half, mostly deal with tire issues and solid waste
14 issues.

15 MR. ALEXANDER: I'm sorry.

16 What kind of issues?

17 THE WITNESS: Tire issues, used waste tire
18 issues and solid waste issues, for example, landfills.

19 BY MS. RYAN:

20 Q. Kaara, how many inspections do you think you've
21 done in your year and a half here at the Illinois EPA?

22 A. A little over 200.

23 Q. And what is your educational background?

24 A. I have a plant, soil science degree from

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1 Southern Illinois.

2 Q. Have you had any training since you graduated
3 from Southern?

4 A. The initial training I've acquired here, such as
5 tire training, solid waste inspection training, criminal
6 training with the Midwest Environmental Association and
7 that was probably the extent of it.

8 Q. Are you familiar with the facility known as
9 Kishwaukee Auto Parts?

10 A. Yes, I am.

11 Q. Where is that property located?

12 A. The place is located on Harrison Avenue, right
13 across the street from (inaudible) products. I would
14 say about a quarter mile east of Rockford.

15 Q. What city is that?

16 A. Rockford, Illinois.

17 Q. Who owns that property?

18 A. As the record states and our files indicate,
19 that Marshall Pekarsky owns the property.

20 Q. How many inspections have you done at Kishwaukee
21 Auto Parts?

22 A. Four, one including a complaint I did.

23 Q. I have -- unfortunately, our color printer is

24 not working that well, so I have black and white copies

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1 to share but I will use my color copies for the -- our
2 actual exhibit.

3 If you have any trouble following along, let me
4 know, I do have another set of my own copies here that I
5 can share with somebody.

6 HEARING OFFICER HALLORAN: This inspection,
7 Ms. Ryan, that is already in the record, this is the
8 one?

9 MS. RYAN: Actually, it is the one attached
10 to the administrative citation, I should mention that.
11 There may have been colored copies also attached to your
12 copies of that.

13 BY MS. RYAN:

14 Q. Kaara, I've given you what is marked as Exhibit
15 A, do you recognize that, what that document is?

16 A. Yes, ma'am.

17 It's an open dump inspection check list.
18 Generally, what we do is we have -- generally
19 inspection, what I did in October was a tire, a regular
20 tire inspection, but with all of the problems I saw
21 going on at the premises and the property, I saw a lot
22 of garbage, or say municipal waste, generally involved

23 with an open dump inspection checklist, things I saw on
24 there were --

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11

1 Q. Actually, can I stop you here for a second?

2 Can you look through that document and see how
3 many pages are there and what those pages are, please?

4 A. I'd say about --

5 Q. You don't need to count, just flip --

6 A. These pages indicate that we have a checklist,
7 follow-up narrative inspection report, a general site
8 sketch, from 3/7/01.

9 Another general site sketch from 2/21/01.

10 And then photographs from 2/21. There are about
11 6 of them.

12 And photographs from 3/7/01, 1 through 12.

13 Q. And is that document an accurate and complete
14 copy of your March 7, 2001, report?

15 A. Correct.

16 Q. Can you generally describe the property? I
17 believe you started to do that already but --

18 A. The property is a salvage yard, which they take
19 in automobiles to be scraped or parts to be sold to
20 various other auto stores.

21 I walked in the premises and as soon as I walked
22 in there, I seen garbage piled -- or not garbage piles,

23 but municipal waste, landscape waste, stuff that could
24 be recycled, which has been sitting there for a certain

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1 period of time.

2 And one area I saw I'd say a 13 by 10 area of
3 soil that was heavily saturated with an oil substance to
4 it.

5 Along the back fence there is different areas
6 located throughout.

7 There was garbage and some of the photos I took
8 from 10/19, from the initial inspection, indicate or
9 show that there was garbage along the back, along the
10 fence, and there was piles, also piles of landscape
11 waste located throughout the facility, mixed in with
12 used wooden pallets and that is what I generally saw.

13 Q. Who took the photos that you indicated were
14 attached to the report?

15 A. Myself.

16 Q. What do the photos show generally speaking?

17 MR. ALEXANDER: I'll object.

18 The photos speak for themselves. He can
19 identify the photos and talk about directions but --

20 HEARING OFFICER HALLORAN: I'm sorry.

21 Your objection is, I'm sorry?

22 MR. ALEXANDER: What they depict is shown by
23 the photos.

24 He can testify as to where he was standing

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13

1 and --

2 MS. RYAN: I'm sorry.

3 That was what I was trying to ask --

4 HEARING OFFICER HALLORAN: Okay.

5 MS. RYAN: -- was where was he looking when
6 he took these particular photos.

7 THE WITNESS: We look at 2/21 photo number
8 1, that day, that was the day I was supposed to make
9 sure everything was back to compliance, which,
10 apparently, it wasn't.

11 MR. ALEXANDER: When you say photo number
12 1 --

13 THE WITNESS: 2/21, photo number 1, we have a
14 date --

15 BY MS. RYAN:

16 Q. Explain where the number 1 comes from.

17 A. There is a date and we'll have a number.

18 MR. ALEXANDER: 001 down here.

19 THE WITNESS: Go with number 1.

20 I'm sorry about that.

21 2/21 was the initial date that we were supposed

22 to have everything cleaned up, which I went out there
23 and there was snow cover on the ground, which was hard
24 to realize what was done or not.

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1 So, 2/21 it was indicating remain solid waste
2 pile that has -- was not properly disposed of, I would
3 say about 90 percent of it was disposed of and there
4 were still remains on the ground.

5 3 --

6 HEARING OFFICER HALLORAN: I'm sorry.

7 90 percent?

8 THE WITNESS: 90 percent, there was a big
9 pile, 90 percent of that pile was disposed of.

10 Solid waste along the backside of the fence,
11 number --

12 MR. ALEXANDER: Okay. I mean, if you -- are
13 we still on photo number 1?

14 THE WITNESS: No, we're on 2. 3. Sorry. My
15 fault.

16 MR. ALEXANDER: Okay.

17 HEARING OFFICER HALLORAN: I think it might
18 help, Ms. Ryan, if you just -- we'll go to one photo at
19 a time.

20 MS. RYAN: Walk him through.

21 HEARING OFFICER HALLORAN: Walk him through.

22 BY MS. RYAN:

23 Q. Did you finish what you had to say about number

24 2, the back fence?

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1 A. Yes.

2 Q. Number 3, what are we looking at?

3 A. It was kind of hard, this picture was kind of
4 hard to -- and it looks like we got a refrigerator back
5 there, a tire, and probably some other recyclable metal.

6 Q. Which part of the property is that?

7 A. This is on the backside, pointing south, so it
8 would be on the north side of the property.

9 Q. Photo number 4, where is that?

10 A. Number 4 would be -- basically, where the old
11 pile of debris used to be from 10/19, and there was a
12 huge pile there and it still indicates there are remains
13 left from the huge pile.

14 Q. In the foreground there?

15 A. Yes, in the foreground. Well, you can hardly
16 tell because with all of the snow there.

17 Q. Photo 5 is that --

18 A. Landscape waste.

19 Q. Is that next to a building there?

20 A. It's -- yes, next to a storage shed.

21 And then number --
22 Q. 6?
23 A. -- 6 is the same photo but taken from a
24 different perspective.

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1 Q. Okay. And the next photo starts with 3/7 --
2 A. When snow is completed -- was mostly all melted,
3 I took -- went back there, took a few more photographs.
4 This is where the oil was located on the soil.
5 Q. Photos 1 and 2?
6 A. Yes. Correct. You can tell by the sheen on the
7 soil.
8 Q. And number 3, where is that?
9 A. That is located where the pile was located at,
10 that would be on the -- if you look at site sketch 3 on
11 3/07, that would be number 3 pointing south.
12 Q. And number 4?
13 A. And number 4 would be (inaudible) material mixed
14 in with some auto parts.
15 Q. Is that a different pile than number 3?
16 A. Yes, it's a different pile, and that would be
17 pointing north, northwest.
18 Q. And it looks from the site sketch, that 5 and 6
19 are the same pile again, different angles?

20 A. Correct.
21 Q. As number 3, sorry.
22 A. Check this. Yes. 5 and 6 are different angles.
23 Q. And 7 and 8?
24 A. 7 and 8 would be like the same pile but

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1 different areas of -- areas of the pile.
2 Q. Do you know what the -- these things are in
3 these pictures, like --
4 A. Looks like some kind of water heater or looks
5 like some kind of stove. I couldn't tell, decipher what
6 it was. A lot of sheet metal there and some kind of
7 wooden 2 by 4s, and just what I saw was that huge --
8 looks like a cooler or a heater, I don't know what it
9 was. Well, I can see a lot.
10 And photo number 8 there is a lot of building
11 material mixed in with landscape waste.
12 Q. And then 9?
13 A. Number 9 would indicate that there is a lot of
14 landscape waste piled on this location right here. Let
15 me check the site sketch here. Mixed in with some metal
16 parts in there.
17 Q. And it looks like 10 and 11 were taken about the
18 same angle?
19 A. Yes. And as you can see, there is some kind --

20 there is landscape waste mixed in with used pallets and
21 some municipal waste.

22 Q. Now, do these pictures compare to other pictures
23 from the group of February 21?

24 A. Some do, because I only took 6 on February 21.

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1 Q. I was thinking specifically of 10 and 11, do
2 they -- are they the same photos as -- let me see if I
3 can help you out, 5 and 6 from February 21?

4 A. 5 and 6. Correct, it's --

5 Q. And then number 12 there is our last photo,
6 where is that?

7 A. That is located on the -- that was located on
8 the northwest side of the property, that photograph is
9 pointing northwest.

10 Q. And can you tell what those --

11 A. Those are -- looks like inserts for grease guns.

12 Q. Oh.

13 A. So whereas -- well, you start putting grease in
14 axle joints or anything like that on a vehicle, it looks
15 like there was a box there, that looks like it has been
16 weathered, looks like water got to it, and looks like it
17 got ran over a few times.

18 Q. I was going to ask are those flattened things

19 the same as the cylinder things?

20 A. Yes, and grease was on the ground. And I didn't
21 note that in my other from February 21 but I figured
22 that would be a good photo to take.

23 Q. Did those photos from both February 21 and March
24 7 accurately depict what you saw on the site on those

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19

1 two days?

2 A. Yes.

3 Q. And what violations did you site, if any, in
4 your inspection report from March 7?

5 A. I -- the violations I cited were 21A, cause or
6 allow open dumping.

7 Second one I cited was 21D, conduct any waste
8 storage, waste treatment or waste disposal operation
9 without a permit.

10 21P, cause or allow the open dumping of any
11 waste in a manner which results in any of the following
12 occurrences at the dump site.

13 21P would be liter.

14 And the fourth one I cited, 812.101A, failure to
15 submit application for a permit to develop, operate a
16 landfill.

17 Q. And the report I see is dated March 7, 2001,
18 which is the time of your second inspection there.

19 Do you know approximately when this report was
20 generated?

21 A. Generally, we are asked to bring a report
22 initial -- when we do the inspection, we generally have
23 to bring it within 10 working days.

24 Q. So you believe this was prepared within 10

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1 working days --

2 A. Yes, it was.

3 Q. -- March 7th.

4 You had indicated that you inspected the
5 property four times. Do you know when the previous --

6 A. Previous time I inspected it was one time it was
7 10/19 of 2000. And then we received a complaint and I
8 went out there in November, I think it was November
9 11th, I couldn't tell you right off the bat, November
10 11, there was a complaint that somebody alleged that
11 they were burying tires, so I went out there with a
12 shovel and nothing was found on site.

13 Q. Did Illinois EPA take any action in response to
14 your October 19th inspection of 2000?

15 A. Not at the time.

16 Q. Did they send any type of warning notice out at
17 that time?

18 A. We sent out an ACWN at that point.

19 Q. ACWN, what does that stand for?

20 A. Administrative citation warning notice.

21 Q. And what does that notice --

22 MR. ALEXANDER: I'll object, unless they can
23 produce that.

24 HEARING OFFICER HALLORAN: Ms. Ryan.

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1 MR. ALEXANDER: Best evidence rule.

2 MS. RYAN: Yes, I can. I don't have a copy
3 for everybody, but I do have one that I can introduce.
4 Unfortunately, I do not have color copies on this one
5 either because we had not yet moved to digital at that
6 time.

7 MR. ALEXANDER: I just haven't seen it, if
8 I --

9 HEARING OFFICER HALLORAN: Right.

10 MS. RYAN: Happy to show it to you first.

11 HEARING OFFICER HALLORAN: We can make
12 copies, if you want, when we take a break.

13 MS. RYAN: I can make more photo copies.
14 It's just the copies I don't think they're going to be
15 that helpful.

16 I do have another copy just with the notice,
17 without the photos.

18 MR. ALEXANDER: That's fine.

19 BY MS. RYAN:

20 Q. Okay. Kaara, showing you what has been marked
21 for identification as Exhibit B, can you tell me is that
22 the administrative citation warning notice you were
23 talking about?

24 A. Yes. That's correct.

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1 Q. Can you page through that there and tell me if
2 that is a complete copy of that notice that you sent,
3 and I realize the photographs are copies, but --

4 A. Yes, they are, exact same report I sent out
5 except for this.

6 Q. Sorry.

7 Can you tell me what the purpose behind sending
8 this ACWN was?

9 A. It's kind of giving the person a warning notice,
10 indicates that we will give them 90 days to complete the
11 task that we asked them to do, if not, they would be
12 subjected to go to an AC, an AC we will go for a \$1500
13 fine.

14 Q. What was task did you ask for in that notice?

15 A. I asked the facility to complete all the stuff
16 that I had indicated in this report be done by February

17 20th.

18 As February 20th came around, I went out the
19 21st and nothing was -- the ground -- the snow was still
20 covering.

21 MR. ALEXANDER: What did you say there, sir?

22 THE WITNESS: There was still snow on the
23 ground at the time.

24 BY MS. RYAN:

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23

1 Q. Why did you choose February 20 as the compliance
2 date?

3 A. That was 90 days from the initial inspection.

4 Q. And how long did you think it would take to
5 cleanup the problems that you saw at the site?

6 A. I would say about a month and a half.

7 Q. So about 90 days -- a month and a half would be
8 more than like 45 days?

9 A. Yes, less than, less than a 90 day period that
10 we decided to give them.

11 Q. Did you talk with Mr. Pekarsky about how long
12 you thought it would take him to clean it up when you
13 were out there in October?

14 A. I -- no, I wasn't in contact with Mr. Pekarsky
15 at the time.

16 Q. Did you talk to anyone else?

17 A. I talked to Mildred Henson and I talked to Merv
18 Worley at the time.

19 Q. Did you describe to them how long you thought it
20 might take --

21 A. Yes, I did.

22 At the time, I did, this can only take -- you
23 got a month and a half left before winter hits and
24 should get it done.

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1 MS. RYAN: I would move Exhibit A and B into
2 evidence at this time.

3 HEARING OFFICER HALLORAN: Any objection?

4 MR. ALEXANDER: No objection.

5 HEARING OFFICER HALLORAN: Thank you.

6 Exhibits A and B are admitted into evidence.

7 (Exhibit Nos. A & B were admitted

8 into evidence.)

9 MS. RYAN: I have nothing further.

10 HEARING OFFICER HALLORAN: Thank you.

11 Mr. Alexander.

12 CROSS-EXAMINATION

13 BY MR. ALEXANDER:

14 Q. How big is this? How big is this site?

15 A. I would say about 3 acres.

16 Q. Fair to say there were various piles of debris
17 and waste scattered around?

18 A. Scattered around, yes.

19 Q. You took pictures on two occasions?

20 A. Three occasions.

21 Q. Three occasions.

22 A. October, February and March.

23 Q. And it's true that you weren't able to look at
24 those photographs and determine whether or not during

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25

1 that period of time there was any refuse thrown in these
2 piles?

3 A. There were no new refuse. Everything was the
4 same from October until March.

5 Q. In fact, the berm across the back with all of
6 the garbage and things had been removed, is that
7 correct, in your last --

8 A. In one location, one location, like there was a
9 huge pile, it was about 15 by 20 feet, and about 8 feet
10 in height, of just various debris, it got removed, about
11 90 percent of it, but still there was still debris left.

12 Q. You said you went out there in November on a
13 November 11th --

14 A. Complaint.

15 Q. -- complaint, you found nothing as far as tires

16 buried?

17 A. Right. I went out there on a complaint,
18 responded, went out there with a shovel and Merv came
19 out with an end loader forks and we found nothing.

20 Q. Who made that complaint?

21 A. It was unanimous.

22 Q. Okay. And you thought he could clean it up in
23 45 days starting on November 11th?

24 A. He could have.

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1 Q. When did the ground freeze that year?

2 A. Ground froze I would say -- it didn't snow until
3 about the first week of December.

4 Q. Three weeks later?

5 A. Yes.

6 Q. And there was still so much snow on the ground
7 in February, when you went back, that you couldn't
8 really --

9 A. Decipher.

10 Q. -- what was --

11 A. Correct.

12 Q. And, in fact -- well, first, as far as the
13 automobiles in the photographs, this is -- an auto
14 salvage yard operation is authorized here, is that

15 correct?

16 A. Yes.

17 Q. And with the exception of the cars, the truth is
18 that you don't know if any additional liter or refuse or
19 waste had been deposited in that site for the last 10 or
20 15 years, do you?

21 A. No.

22 Q. Now, you say 45 days to clean it up, what would
23 it cost?

24 A. I couldn't tell you on that figure.

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1 Q. I mean, there is hundreds of dump trucks full of
2 waste on that site?

3 A. Probably.

4 Q. And do you have any idea about what it cost to
5 go to a landfill site, which specializes in dump
6 truck --

7 A. For tipping fees, probably about 25 to about \$30
8 a ton, or more, between 25 and 50.

9 Q. Now, you said you -- you checked the title to
10 the property and found Marshall Pekarsky to be the
11 owner?

12 A. I would guess it would be Marshall Pekarsky
13 because we try to look for that.

14 Q. I don't want you to guess.

15 Okay. Did you check the title yourself?

16 A. No.

17 Q. The truth of it is you don't have any idea who
18 owns that, is that correct?

19 A. Correct.

20 Q. You don't have any idea what kind of entity
21 Kishwaukee Auto Parts is, whether it's a corporation,
22 sole proprietorship or what, do you?

23 A. No.

24 HEARING OFFICER HALLORAN: Sorry, could you

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28

1 speak up?

2 THE WITNESS: No. Sorry.

3 BY MR. ALEXANDER:

4 Q. And at no time did you see any refuse being
5 deposited, coming in from outside this parcel and being
6 deposited on the property?

7 A. On the property, no.

8 Q. You don't know if any of that refuse was even
9 deposited there from like the mid '80s, when apparently
10 these EPA statutes were adopted, do you?

11 A. No.

12 Q. When you did talk to Mr. Pekarsky, did he tell
13 you about the problems that he was having with finding

14 the funding to cleanup this site?

15 A. Yes, we -- we discussed and I indicated -- I'm
16 sorry. I indicated to him that I know it is hard to
17 find good help to cleanup some of the stuff and I
18 pretty much -- he had about two or three gentlemen
19 working for him at the time.

20 Q. Now, the citation that we're here on today is
21 not for not having a permit or littering, is it, or do
22 you know?

23 A. For having a permit, your -- as it is stated in
24 the checklist.

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1 Q. Well, is this what we're charged with or was
2 there an actual citation?

3 A. There was a -- there should be an actual
4 citation filed.

5 Q. Would you read page 2 under the violation,
6 please?

7 And I understand that you may not be the one
8 that issues those citations, but would you indicate
9 which of these matters in the actual complaint are
10 included in your report?

11 A. Based upon direct authorization made by Kaara
12 Jacobsen during his March 7th inspection, Respondent's
13 facility, IEPA has determined that Respondent has

14 violated the Illinois EPA, hereinafter the act as
15 follows: Number 1, the Respondents caused or allowed
16 open dumping of waste in a manner resulting in liter in
17 violation of Section 21P1 of the act.

18 Q. That's it. I mean, you don't have to read it
19 all.

20 That is all he is charged with, right?

21 A. Yes.

22 Q. He is not charged without having a permit or he
23 is not charged with littering? He is charged with
24 violation of Section 21A, is that correct?

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1 A. 21, 21P1, liter, says it right here.

2 Q. And what that statute says, cause or allow open
3 dumping of any waste in a manner which results in any of
4 the following occurrences of the dump site, and number 1
5 is liter, is that correct, and that is the only thing he
6 is charged with, is that correct?

7 HEARING OFFICER HALLORAN: Could you
8 verbally --

9 THE WITNESS: Yes.

10 BY MR. ALEXANDER:

11 Q. And you do not know whether or not Kishwaukee
12 Auto Parts at any time allowed anyone on this site to

13 dump liter, do you?

14 A. During the course of the business, for periods
15 long ago, no, I don't.

16 Q. And you don't know if Mr. Pekarsky did?

17 A. No, I don't.

18 Q. In fact, it was extremely obvious from looking
19 at this site that this wasn't a new problem, it was a
20 very, very long standing problem?

21 A. Yes.

22 Q. Other than the automobiles, can you identify one
23 piece of liter or trash or refuse that was younger than
24 say 15 years old, and I know it is difficult to tell how

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1 old trash is, but --

2 A. Well, there is a lot of landscape waste down
3 there, and it -- you know, I -- you can't decipher if
4 wood has been there for long periods of time. Dry out
5 in two years.

6 Q. But the landscape waste itself may have -- I
7 mean, the site itself, other than the piles was fairly
8 void of trees and brush and shrubs, is that correct?

9 A. Yes.

10 Q. And the landscape waste that was there might
11 have been in an effort to open up the rest of the refuse
12 there and put in piles, is that correct?

13 A. Correct.

14 I was -- question to ask is did the facility run

15 a pallet business at one time?

16 MR. PEKARSKY: No.

17 THE WITNESS: Just because there were

18 pallets --

19 MS. RYAN: Not supposed to ask a question.

20 THE WITNESS: Off the record.

21 HEARING OFFICER HALLORAN: It was on the

22 record.

23 MR. ALEXANDER: That's all I have.

24 HEARING OFFICER HALLORAN: Thank you, Mr.

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1 Alexander.

2 Any redirect?

3 MS. RYAN: I do have one issue to clarify.

4 REDIRECT EXAMINATION

5 BY MS. RYAN:

6 Q. Kaara, you testified you went out there in

7 October, I think it was the 19th of 2000, and that you

8 had talked to Mildred at a certain time and told her

9 that it would take about a month and a half to clean up

10 the problem, was that during the October inspection or

11 during your November 11 complaint inspection?

12 A. During the November time.
13 Q. It was during the November time?
14 A. Yes.
15 HEARING OFFICER HALLORAN: Thank you, Ms.
16 Ryan.
17 Any recross, Mr. Alexander?
18 MR. ALEXANDER: No.
19 HEARING OFFICER HALLORAN: Thank you.
20 Mr. Jacobsen, you can step down. Thank you,
21 very much.
22 Mr. Alexander, you may call your witness, if
23 you'd like.
24 MR. ALEXANDER: They have rested?

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1 HEARING OFFICER HALLORAN: Yes.
2 MS. RYAN: I've rested my case in chief.
3 HEARING OFFICER HALLORAN: Thank you.
4 (The witness was first duly sworn.)
5 MARSHALL PEKARSKY,
6 called as the witness herein, having been first duly
7 sworn, was examined and testified as follows:
8 DIRECT EXAMINATION
9 BY MR. ALEXANDER:
10 Q. Would you state your name, please?
11 A. Marshall Pekarsky. M-A-R-S-H-A-L-L

12 P-E-K-A-R-S-K-Y.

13 Q. Mr. Pekarsky, I'm going to ask you some
14 questions, and you let me finish asking them and then
15 you answer them. Okay.

16 A. Yes.

17 Q. So the court reporter can do it, take it down in
18 an orderly fashion.

19 Who owns the site on which Kishwaukee Auto Parts
20 is now located?

21 A. The estate of Abe Pekarsky.

22 Q. Was Abe your father?

23 A. Yes.

24 Q. And when did he die?

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1 A. November 19, '95.

2 Q. Prior to November of 1995, did you have any
3 control or did you ever take any refuse or allow anyone
4 to put refuse in the back of that site?

5 A. No.

6 Q. And to your knowledge, for many, many years
7 prior to that time, had anyone taken refuse into that
8 site?

9 A. No.

10 Q. When your father died, were you made the

11 executor, administrator of his estate?

12 A. Co-executor.

13 Q. With your brothers and sisters?

14 A. One brother and sister.

15 Q. And they both live out on the east coast, is
16 that correct?

17 A. New Jersey.

18 Q. And since that time, have you been operating the
19 business and attempting to remedy years and years of
20 neglect of the business?

21 A. Yes.

22 Q. Now, during -- when the gentleman who just
23 testified came out, talked -- I guess he talked to you
24 in November, I think, how many times did you talk to

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1 him, to Kaara Jacobsen?

2 A. Three.

3 MR. JACOBSEN: Phone and one person. Sorry.

4 BY MR. ALEXANDER:

5 Q. On several occasions.

6 Now, between --

7 A. Yes, I'd say about --

8 Q. -- between November and -- November 11 and
9 February 21, what were the weather conditions?

10 A. Everything was frozen from a week after he first

11 came and just started to thaw the beginning months of --
12 I think the beginning days of March, that yard was
13 frozen.

14 Q. Do you have a -- I believe there is testimony
15 that you have a forklift. Do you have bulldozers or
16 scrapers or do you own those out there?

17 A. I have a big end loader that carries cars to the
18 crusher.

19 Q. During that period of time, what, if anything,
20 did you do with the rubbish or the piles or --

21 A. That one pile Kaara was talking about extended
22 from behind the crusher about 300 yards, must have been
23 about 15 feet high, and 15 feet deep of rubbish, and
24 from the time he first came and then the second time he

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1 came, he saw that I had gotten rid of most of that, even
2 during the time it was frozen. I didn't have time to do
3 more. I couldn't send guys out to freeze themselves
4 with any of the other piles, which I now have gotten
5 removed, but it has taken time and it's done whenever I
6 could do it. I'm working the place with no monies. So,
7 I do the best I can.

8 Q. Is the estate basically insolvent?

9 A. Yes.

10 Q. And what are the real estate taxes on that
11 property?

12 A. \$36,000, which it can't pay.

13 Q. What kind of utilities do you have in the
14 building now? Do you have an office?

15 A. Gas and electric, don't have gas anymore, that
16 was turned off because we couldn't pay the bill, that
17 was a \$14,000 bill for last year.

18 Q. Now, why don't you hire somebody and go out
19 there and just clean this place up and get these guys
20 off of you?

21 A. I have to use the help I have because I don't
22 have any extra money to pay to dump or anything, so I
23 get rid of it --

24 Q. Do you have a dump truck?

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1 A. We have a dumpster, a garbage dumpster.

2 Q. No. I mean, a dump truck, I mean, if you wanted
3 to take the refuse, put it in a vehicle and take it to a
4 dump --

5 A. No, we don't.

6 Q. Okay. What are the dumping fees, do you have an
7 estimate as far as -- let's say --

8 A. If you take a big load out there, I hear it runs
9 up to \$500 for a dump.

10 Q. For this type of waste?

11 A. Yes, so -- couldn't quite manage that.

12 Q. Are you aware of any of this refuse or -- that
13 has been placed in that site in the last -- I know
14 you've moved some of it around in an effort to isolate
15 it so you can remove it, but are you aware of any refuse
16 other than the cars that have been taken into that site
17 in the last 15 years?

18 A. No.

19 Q. Now, you now do recycle cars, is that correct,
20 your business?

21 A. Yes.

22 Q. A small part of your business is recycling of
23 cars?

24 A. Right.

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1 Q. And when you recycle those cars, if there is --
2 if there is benches or there is debris or things in it,
3 do you put those things in your dumpster and you remove
4 that from the site as it comes?

5 A. Right.

6 Q. Are you continuing to do what you can to clean
7 the site up?

8 A. Yes.

9 Q. What are you doing?

10 A. The place is loaded with -- like Kaara said,
11 pallets and wood and a lot of wood, so, we take it out
12 as we can and put it in the dumpster and get rid of it
13 that way. We just got a bigger dumpster. We got one,
14 what they call a 5 yard dumpster or something like that,
15 so can put more in it. And then I hired another guy to
16 come in and pick up all of the straggling stuff that is
17 lying around the yard, loose tires when they take the
18 tires off the car to take it to the crusher and crush it
19 and I had him put those in the tire pile. We got rid of
20 the big tire pile. We had a big tire pile, had to pay
21 to get rid of those, had to leave them on the wheels,
22 otherwise they cost more to dispose of and just raised
23 the fee for getting rid of the tires on the wheels also.

24 Q. What is the fee?

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1 A. Oh, the guy who comes in comes in about every
2 three, four weeks and takes out about -- I think it just
3 went up to 50 cents a tire, a wheel.

4 Q. It went up 50 cents?

5 A. No, it went to 50 cents per tire and wheel to
6 dump. So he takes about 3, 400 at a time. I get rid of
7 them that way.

8 Q. And there are literally thousands of them?

9 A. Not now. We got rid of the big pile, but then I
10 sent the guy around to pick up all of the loose tires
11 that were taken off when cars were taken to the crusher
12 and he got another pile started now. So we'll have to
13 get rid of that by selling those.

14 Q. But at least from the time you took over until
15 now, you have disposed of those tires?

16 A. The ones that were there then, yes.

17 Q. Okay.

18 A. Oh, and the time Kaara first came, I started
19 preparing to get rid of a lot of that stuff, but then
20 the freeze of 2000 sort of stopped that for awhile,
21 couldn't do anything.

22 Q. So did you have any control what -- did you or
23 Kishwaukee have any control whatsoever over what
24 happened in the -- say early '80s, as far as --

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1 A. My father controlled all of that, I mean --

2 Q. Then he appointed you executor or head of the
3 estate?

4 A. Co-executor.

5 Q. And left you with it, right?

6 A. Yes. Right.

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

8 HEARING OFFICER HALLORAN: Thank you, Mr.
9 Alexander.
10 Ms. Ryan, any cross?
11 MS. RYAN: Yes.
12 CROSS-EXAMINATION
13 BY MS. RYAN:
14 Q. Mr. Pekarsky, who is Kishwaukee Auto Parts &
15 Wrecking Company?
16 A. It was a sole proprietorship owned by my father.
17 Q. And are you still using that name today?
18 A. Yes, we are.
19 Q. And are you the owner of that property or is it
20 still a property of the estate?
21 A. Property of the estate.
22 Q. Not the land?
23 A. It's owned by the estate because there are too
24 many debts to settle it. I can't settle it.

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1 Q. Understood.
2 Are you in charge of operations, cars or
3 salvaging operation?
4 A. Well, not really, but I do oversee the cleanup,
5 you know, now.
6 Q. Before the cleaning up part, what was your duty
7 out on the site?

8 A. I worked the counter. I'm in the store and the
9 yard is -- is -- you might say a separate entity. My
10 father buried the yard by building storage units around
11 the total perimeter of the yard, with the doors on the
12 outside, which we have to guard every night. So, the
13 yard pretty much operates -- if they have any questions,
14 they come in and ask what they should do or what car
15 they should buy, if they can get this much for a car,
16 pay that much for a car. Scrap is very low now so you
17 don't get anything for it, just trading dollars. If you
18 buy a car, you might get back some of the money when you
19 crush it and scrap it, but, it's a losing proposition.

20 Q. So is the yard more of an open house sort of
21 thing where people --

22 A. They have to go through the office to get in.
23 Then they have to tell the person what they want. She
24 checks it on the computer, if we have a car like that

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1 out there or a part that will interchange with that
2 part, and then they can go in the yard or else somebody
3 accompanies them in the yard, takes the part off for
4 them or they can take the part off themselves,
5 whichever.

6 Q. Do you know where you got the figure of \$500 a

7 load for dumping that type of waste?

8 A. That was what I was told by someone who has
9 dumped there before. So, heavy load, that would be a
10 heavy load.

11 Q. When you say that type of waste, are you talking
12 about like the landscape waste or the metal?

13 A. Landscape, wood and the garbage.

14 Q. The wood that you were talking about?

15 A. Sofas, furniture, yard scrap.

16 Q. And you're hanging on to the metal in order to
17 scrap --

18 A. Well, we have separate piles of aluminum, that
19 type of thing, and the cars pretty much we keep whole
20 and crush them whole and get rid of them, that's how we
21 do it, take off the gas tanks, so we have gas tanks.

22 Q. But you weren't planning to take any of the
23 metals to the landfills?

24 A. No, I don't go to the landfill myself. I

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1 dump -- probably dump the wood -- most of the wood goes
2 into the dumpsters that come, the garbage.

3 Q. But you wouldn't put the metal in the dumpsters?

4 A. No, wouldn't put metal, try to sell the metal,
5 but --

6 Q. Right.

7 A. -- country isn't too cooperative at this time.

8 Q. Comes and goes, I guess.

9 Are you saying you're still working on cleaning
10 up the property right now?

11 A. Yes, we do. I even have another guy coming in
12 and doing things, take stuff out of there, get rid of
13 it.

14 Q. Did you see the pictures that were attached --

15 A. I saw them originally. You know, I agree. I'm
16 not refuting the pictures.

17 Q. I didn't have a question yet.

18 A. Right.

19 Q. Would you say compared to those pictures about
20 how much of the work have you finished up?

21 A. I would say probably 95 percent of it.

22 MS. RYAN: Okay. I don't have anything else.

23 HEARING OFFICER HALLORAN: Thank you, Ms.

24 Ryan.

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1 Any redirect, Mr. Alexander?

2 MR. ALEXANDER: No, that is fine. We would
3 rest.

4 HEARING OFFICER HALLORAN: Thank you very
5 much, sir.

6 Ms. Ryan, any case in rebuttal?

7 MS. RYAN: No, I don't think so.

8 HEARING OFFICER HALLORAN: Thank you.

9 Okay. I'm not planning -- I don't know if
10 you're planning to do a closing argument, and if you
11 are, would you like to take 10 minutes before you go
12 ahead and do it or you just want to plow ahead -- okay.

13 MR. ALEXANDER: I'm ready to plow ahead.

14 HEARING OFFICER HALLORAN: Fine.

15 MR. ALEXANDER: Figure of speech, yes, let's
16 plow ahead.

17 HEARING OFFICER HALLORAN: Ms. Ryan, would
18 you like to do your closing, please?

19 CLOSING ARGUMENT

20 MS. RYAN: Yes.

21 First, actually, if you don't mind, I would like
22 to note that we have issued the administration citation
23 to the name Kishwaukee Auto Parts. We have realized it
24 is not a corporate name. It was issued to the attention

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1 of Mr. Pekarsky and we do believe that he did receive
2 that.

3 And based on the testimony that we've heard
4 today about the ownership of the property and the way
5 that it is operated, we would move to conform our

6 pleadings to the evidence that Mr. Pekarsky is the
7 appropriate Respondent, rather than the nonentity of
8 Kishwaukee Auto Parts.

9 HEARING OFFICER HALLORAN: Thank you, Ms.
10 Ryan.

11 Mr. Alexander.

12 CLOSING ARGUMENT

13 MR. ALEXANDER: I believe that clearly under
14 the Environmental Safety Act, the burden of proof lies
15 with the Petitioner in this matter, with the agency.
16 They certainly have not sustained any burden of proof.
17 They have not established that one piece of refuse was,
18 or waste, nor liter was added to this site since the
19 beginning of the Environmental Safety Act or the
20 Environmental Protection Agency itself.

21 Mr. Pekarsky is charged with causing or allowing
22 open dumping of waste and the testimony of Mr. Jacobsen
23 was -- resulting in liter, okay, and the testimony of
24 Mr. Jacobsen was that he has no testimony or no -- I

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1 mean, he has no idea whether Mr. Pekarsky at any time
2 allowed any waste or liter to be accumulated on that
3 property.

4 Clearly, we admit in the process of trying to

5 clean it up that he is sorting out piles of things,
6 trying to get rid of this and working on it. And as you
7 can see from the photographs, I mean, it is an
8 overwhelming task.

9 The -- a couple of other things. I think that
10 there are provisions of the act that provide, and I
11 think it is under 5/31/1, C2, I think a good argument
12 can be made that that -- and it's very simply the part
13 that says, resulting from uncontrollable circumstances,
14 as to the Respondent here, Mr. Pekarsky, who claims to
15 be the responsible party, he had absolutely no control
16 whatsoever over the circumstances that resulted in the
17 liter and refuse and dumping that were there. And I
18 think, you know, perhaps that was meant for calamities
19 or accidents or whatever, but it certainly should be
20 construed in a manner as to benefit a person that is
21 being held to be a responsible party in this case.

22 I think they have the wrong entity. They have
23 the wrong person. They have not established that in any
24 way has this gentleman or any of the business entities

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1 that he may be operating there now, not by his choice,
2 was responsible for the liter and the dumping and, in
3 fact, there is no testimony that any of this was added
4 to the property since perhaps the -- prior to the time

5 that this act was even adopted to begin with.

6 And I think it also should be mentioned that the
7 only testimony is they give him 90 days during the
8 middle of the winter, and I think the time frames are
9 fairly, you know, the first part of December start
10 freezing because I know I stopped going outside
11 exercising in the morning then and I know it was a very
12 severe winter and, in fact, when the second inspection
13 was made, which was at the end of the 90 day period,
14 they couldn't do anything because there was still so
15 much snow and ice around. So a fair argument could be
16 made that that was a totally unreasonable period of
17 time, even though the 90 days is a statutory mandate,
18 that the statute also requires that you have a
19 reasonable period of time and I do not think that under
20 the circumstances considering the basic decades of
21 accumulation that to give somebody 90 days during the
22 middle of the winter when the ground is frozen and
23 covered by snow is in any way appropriate in this case.

24 If I could just in summary, the mess that is out

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1 there was out of the control of Marshall Pekarsky, there
2 has been no testimony that Mr. Pekarsky of Kishwaukee
3 Auto Parts during anytime when the EPA and the

4 Environmental Safety Act were in effect allowed what
5 they're charged with and that is the dumping of liter.

6 I think it is interesting that they originally
7 cited him for doing it without a permit and allowing
8 people to come in and dump it and that was eliminated
9 because there is absolutely no testimony or any evidence
10 whatsoever.

11 So we would ask that you find that the agency
12 failed to sustain its burden of proof and it was out of
13 the control of Mr. Pekarsky and that the period of -- if
14 you find otherwise on the first two, that the period of
15 time was totally unreasonable under the act to correct
16 the problem.

17 Thank you.

18 HEARING OFFICER HALLORAN: Thank you, Mr.
19 Alexander.

20 Any rebuttal?

21 MS. RYAN: No. Actually, I would prefer to
22 save my argument for briefing, but I would ask whether
23 the Hearing Officer was planning to rule on my motion to
24 conform the pleadings or whether that was to be up to

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1 the board?

2 HEARING OFFICER HALLORAN: The motion to
3 conform --

4 MR. ALEXANDER: I didn't hear.

5 HEARING OFFICER HALLORAN: Hold on, Ms. Ryan.

6 Mr. Pekarsky, I'm sorry for leaving you in the
7 hot set during the closing. You may step over by your
8 attorney.

9 Thank you.

10 You're making an oral motion --

11 MS. RYAN: I had -- prior to Mr. Alexander's
12 argument I was making an oral motion based on the
13 evidence that we heard today to conform the pleadings to
14 the proof to indicate that Kishwaukee Auto Parts being a
15 nonentity was not the appropriate Respondent in this
16 case and that Marshall Pekarsky having actually been
17 served and notified of this matter does appear to be the
18 correct Respondent in this situation being the operator
19 of the property.

20 MR. ALEXANDER: That is certainly -- I have
21 no objection to that. Certainly helps.

22 HEARING OFFICER HALLORAN: Okay.

23 MR. ALEXANDER: Because he had nothing to do
24 with --

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1 HEARING OFFICER HALLORAN: All right. Your
2 motion is granted and I would appreciate it if you

3 would, again, state in your hearing brief your motion,
4 but it has been granted.

5 MS. RYAN: Okay.

6 HEARING OFFICER HALLORAN: With that said,
7 I'm supposed to make a credibility determination, and
8 based on my legal judgment and experience I find no
9 issues of credibility with these two witnesses today.

10 I also want to state that there have been no
11 members of the public here.

12 With that said, I think we're going to go off
13 the record for a minute.

14 (Off the record.)

15 HEARING OFFICER HALLORAN: We're back on the
16 record after a short break.

17 We discussed post-hearing briefs. We've come up
18 with this agreed schedule. We're anticipating the
19 record to be completed by October 30th, excuse me, the
20 transcript. Complainant's post-hearing brief is due
21 November 13. Respondent's post-hearing brief is due
22 December 4, and a reply by the Complainant, if any, is
23 due December 11th.

24 With that said, unless there is no further

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1 questions, comments, motions, we're going to close this
2 hearing and I wish you all a good trip home.

3 Thank you very much.

4 We're going to continue on the record at 1:00
5 o'clock.

6 (Off the record.)

7 HEARING OFFICER HALLORAN: Back on record.

8 We're back on the record.

9 This matter is administrative citation 01-037,
10 IEPA versus Kishwaukee Auto Parts. I believe I misspoke
11 earlier. This -- it was around 11:00 o'clock when we
12 broke for lunch, we decided to continue this on the
13 record at 1:00 o'clock in case any members of the public
14 showed up. Counsel were in agreement with this and they
15 elected not to stay.

16 So in any event, right now it is about 1:00,
17 there are no members of the public here. The hearing is
18 concluded. Thank you very much.

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2 COUNTY OF DU PAGE)

3 I, ROSEMARIE LAMANTIA, being first duly sworn,
4 on oath says that she is a court reporter doing business
5 in the City of Chicago; that she reported in shorthand
6 the proceedings given at the taking of said hearing, and
7 that the foregoing is a true and correct transcript of
8 her shorthand notes so taken as aforesaid, and contains
9 all the proceedings given at said hearing.

10

11 -----

12 ROSEMARIE LA MANTIA, CSR
13 License No. 84 - 2661

14 Subscribed and sworn to before me
15 this day of , 2001.

16 -----
17 Notary Public

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