

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 PEOPLE OF THE STATE OF ILLINOIS,

5 Complainant,

6 vs. No. PCB 96-111

7 JOHN CHALMERS, INDIVIDUALLY, and

8 d/b/a JOHN CHALMERS HOG FARM,

9 Respondent.

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13 Proceedings held on June 22, 1999 at 9:30 a.m., at

14 the Menard County Courthouse, Petersburg, Illinois, before

15 the Honorable John Knittle, Hearing Officer.

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A P P E A R A N C E S

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1                    P R O C E E D I N G S

2                    (June 22, 1999; 9:30 a.m.)

3                    (Whereupon documents were duly marked for purposes of  
4                    identification as People's Exhibits A through K as of  
5                    this date.)

6                    HEARING OFFICER KNITTLE: Okay. Let's go on the  
7                    record.

8                    Good morning. My name is John Knittle. I am a  
9                    Hearing Officer with the Illinois Pollution Control Board.  
10                   I am also the assigned Hearing Officer for this case,  
11                   which is entitled, People of the State of Illinois versus  
12                   John Chalmers, Individually and doing business as John  
13                   Chalmers Hog Farm. It is PCB 96-111.

14                   Today's date is June 22nd, 1999. It is about 9:30  
15                   a.m. We are starting a half hour late because we had some  
16                   settlement discussions before the hearing, which I have  
17                   been informed did not work out. Is that correct, Ms.  
18                   Peri?

19                   MS. PERI: Yes, Mr. Hearing Officer, settlement offer  
20                   was discussed at about 9:15 this morning. The State is  
21                   not authorized to accept that offer.

22                   It seems to the State that at this point we proceed  
23                   to a full hearing on the merits, or this Board accepts a  
24                   confession of judgment and we proceed on penalty factors.

1 HEARING OFFICER KNITTLE: Mr. Tice, is that correct?

2 MR. TICE: No. What is correct is that the offers  
3 that were discussed this morning have not been accepted,  
4 and we are ready to proceed to a full hearing this  
5 morning.

6 HEARING OFFICER KNITTLE: You are not at this point  
7 wanting to admit liability?

8 MR. TICE: No, we are not willing to admit liability.  
9 There was some discussions concerning admissions along  
10 with the proposed settlement offer, but it is my  
11 understanding that the State has refused the monetary  
12 settlement offer at this point. And with that in mind, we  
13 have no incentive to make admissions.

14 HEARING OFFICER KNITTLE: Then we are going to  
15 proceed along with the full hearing on this matter. I  
16 will note, for the record, that there are no members of  
17 the public present that are not affiliated in one way or  
18 the other with either the People of the State of Illinois  
19 or the respondent. I also note for the record that there  
20 are no members of the Illinois Pollution Control Board  
21 present nor employees other than myself.

22 This hearing has been scheduled in accordance with  
23 the Illinois Environmental Protection Act and the Board's  
24 rules and regulations. We will be conducted according to

1 procedural rules laid out at 103.202 and 203. As noted in  
2 those rules, I am going to allow members of the public, if  
3 present, to offer comment and this will happen after the  
4 cases in chief are completed. Any person speaking, I will  
5 ask that they will be sworn in and subject to  
6 cross-examination by both of the parties. The statement,  
7 of course, must be relevant to the matter at hand and the  
8 issues pending before the Board. If there were any  
9 members of the public here I would allow them to speak now  
10 if they had to leave, but since that does not appear to be  
11 the case, it is not an issue.

12 Before we begin, I would also like to note for the  
13 record that I will not be deciding this case. I think  
14 everybody here knows that. This case will be decided by  
15 the Illinois Pollution Control Board. The Pollution  
16 Control Board is a Board comprised of seven members  
17 throughout the State of Illinois. I am responsible for  
18 ensuring that an orderly hearing ensues and a clear record  
19 is developed so that the Board can make a good decision,  
20 and that is pretty much my job.

21 So the first thing I want to have done is have the  
22 parties introduce themselves, starting with the  
23 complainant.

24 MS. PERI: I am Desiree Peri, with the Attorney



1 General's Office.

2 HEARING OFFICER KNITTLE: Thank you, Ms. Peri.

3 MR. TICE: Jerry Tice, Attorney at Law, representing

4 Mr. Chalmers.

5 HEARING OFFICER KNITTLE: All right. Thank you, Mr.

6 Tice.

7 We have one preliminary matter, to the best of my

8 knowledge, and that is a request to admit public

9 documents.

10 Ms. Peri, you said you had some comments on that?

11 MS. PERI: Yes, Mr. Hearing Officer. Based on the

12 response of the respondent to this request, and in

13 addition the State's intent to present as concise and

14 streamlined a case as possible today, we will voluntarily

15 withdraw the bulk of these documents from the request.

16 If Mr. Knittle will so like, I will proceed with

17 indicating the numbers of those exhibits.

18 HEARING OFFICER KNITTLE: Okay. You are withdrawing

19 certain exhibits from the request to admit?

20 MS. PERI: Yes.

21 HEARING OFFICER KNITTLE: Okay. Yes, you can go

22 ahead and do that.

23 MS. PERI: The State would like to withdraw People's

24 Exhibit Number 1, 3, 5, 8, 9, 10, 11, Exhibit 12 -- pardon

1 me. Strike that.

2 MR. TICE: Exhibit 10 and not 11?

3 MS. PERI: Exhibit 10 and 11.

4 MR. TICE: Okay. Exhibit 10 and 11.

5 HEARING OFFICER KNITTLE: Not 12?

6 MS. PERI: Not 12. The next exhibit would be

7 People's Exhibit Number 16 and Exhibit 17.

8 MR. TICE: Now, wait. You are withdrawing -- okay.

9 Exhibit 16 you are withdrawing. I am sorry.

10 MR. CHALMERS: Exhibit 16 and 17.

11 MS. PERI: Backing up, that is Exhibit 11, 16 and 17,

12 19, 20, 22, 23, 24, 25, 26, 27, 29, 30, and 32.

13 HEARING OFFICER KNITTLE: Mr. Tice, I want you to

14 take a moment and let me know after you have looked at it

15 whether you still have any objection to the request as it

16 has been modified.

17 To the best of my records here it now only includes

18 Numbers 2, 4, 6, 7, 12, 13, 14, 15, 18, 21, 28 and 31.

19 MS. PERI: Would you like these copies?

20 HEARING OFFICER KNITTLE: Yes.

21 MS. PERI: These are the ones that are withdrawn and

22 these remain.

23 HEARING OFFICER KNITTLE: Okay. Thank you. Mr.

24 Tice, how much time do you think you are going to need?

1 MR. TICE: Just a few minutes here.

2 HEARING OFFICER KNITTLE: A few minutes more or a few  
3 minutes --

4 MR. TICE: Just two or three minutes. I want to get  
5 through the rest of the pile so that I get myself  
6 acclimated as to the exhibits that they have withdrawn.  
7 There is about 32 here.

8 With respect to the balance of the exhibits, Mr.  
9 Hearing Officer, our objections still stand. They have to  
10 do with the foundation, and they have to do with certain  
11 statements that are controverted and disputed in those  
12 documents.

13 Now, I understand, though, or I presume that the  
14 State has the makers of those documents here and that they  
15 will be testifying. So I would presume that the documents  
16 could be presented during the course of their testimony  
17 and the proper foundations laid, and then I will have the  
18 opportunity to cross-examine with respect to those  
19 individuals. But just to admit them flat out without any  
20 further testimony I think is contrary to the rules --

21 HEARING OFFICER KNITTLE: Okay.

22 MR. TICE: -- as I laid out in my objections.

23 HEARING OFFICER KNITTLE: Ms. Peri, I don't think you  
24 have ever responded to the response to the request to

1 admit. Would you like to do that now?

2 MS. PERI: I will respond verbally. Let me assure  
3 you, Mr. Hearing Officer, the State will lay the proper  
4 foundation for each inspection report through the  
5 inspector who made that report.

6 HEARING OFFICER KNITTLE: Okay. Then I am inclined  
7 to agree with Mr. Tice partially, and so this is what I am  
8 going to do. I do think that Supreme Court Rule 216(d) is  
9 a discovery tool and discovery in this matter is closed.  
10 So I will deny the request on that ground.

11 However, these all can still be offered as public  
12 record as an exception to the hearsay rule and subject to  
13 certain objections to relevancy and whatnot. I would be  
14 inclined to accept the majority of these if you want to do  
15 that.

16 However, the inspection reports, I do think it is  
17 important to lay appropriate foundation primarily for the  
18 photographs. I would accept probably the remainder of the  
19 inspection reports as a public record, but I would redact  
20 the photographs unless there is an appropriate foundation  
21 that they were taken and, you know, properly reflect the  
22 site at the time that it was taken and things like that.

23 MS. PERI: Certainly.

24 HEARING OFFICER KNITTLE: So if you still want to

1 offer the rest as public records, to the best of my  
2 knowledge I think there is two that are not inspection  
3 reports remaining. And I would accept those as public  
4 records that you don't have to lay any further foundation  
5 for.

6 MS. PERI: Thank you.

7 MR. TICE: Which are those two now that you are  
8 referring to?

9 HEARING OFFICER KNITTLE: I have Exhibit Number 1,  
10 which is the Illinois NPDES permit issued to John Chalmers  
11 on July 8th.

12 MR. TICE: I thought that was withdrawn.

13 HEARING OFFICER KNITTLE: Oh, I am sorry. I am  
14 thinking of 18 then, the Illinois NPDES permit. That one  
15 is still in, correct?

16 MS. PERI: Yes.

17 HEARING OFFICER KNITTLE: It was issued to John  
18 Chalmers on August 14th, and then that might be the only  
19 other that is not an inspection report. Yes, the rest of  
20 the remaining are then inspection reports. My error.  
21 There is just one exhibit that is not an inspection  
22 report.

23 Ms. Peri, are you offering that as a public document  
24 at this point in time?

1 MS. PERI: The NPDES permit?

2 HEARING OFFICER KNITTLE: Yes.

3 MS. PERI: Yes.

4 HEARING OFFICER KNITTLE: Okay. That I will accept

5 as Exhibit Number 18, over Mr. Tice's objections.

6 MS. PERI: As a matter of convenience, the People

7 would ask that the exhibit markings on the documents

8 submitted under that request be used for today's hearing.

9 HEARING OFFICER KNITTLE: Definitely. That is not a

10 problem.

11 MS. PERI: Thank you.

12 HEARING OFFICER KNITTLE: Okay. Which takes us to

13 opening statements unless, Mr. Tice, there is anything

14 else you want to add on this request to admit?

15 MR. TICE: There is nothing more.

16 HEARING OFFICER KNITTLE: Okay. Ms. Peri, do you

17 have an opening statement you wish to make?

18 MS. PERI: I do. I have one other request.

19 HEARING OFFICER KNITTLE: Sure.

20 MS. PERI: Is this an appropriate time for me to take

21 official notice of a document?

22 HEARING OFFICER KNITTLE: I don't see why not.

23 MS. PERI: Okay. I have a topography map of the area

24 in which the subject farm is located, and I have enlarged

1 the area based on the original. And I would ask you to

2 take official notice of this exhibit that is premarked

3 Exhibit B.

4 HEARING OFFICER KNITTLE: This is an enlargement of

5 this official topography map of the United States

6 Department of the Interior Geological Survey?

7 MS. PERI: Yes.

8 HEARING OFFICER KNITTLE: Okay. Mr. Tice, do you

9 have a problem with that? Why don't you take a look.

10 MR. TICE: I have no objection to the foundation of

11 it. I may have objections to the relevancy of it at a

12 point, but I think it is an accepted document.

13 HEARING OFFICER KNITTLE: Okay. I will grant your

14 request and take official notice of it.

15 MS. PERI: Thank you.

16 HEARING OFFICER KNITTLE: Is that going to be marked

17 at some point?

18 MS. PERI: It has been premarked as Exhibit B.

19 HEARING OFFICER KNITTLE: Exhibit B. Okay. So for

20 Exhibit B the Board will take official notice of that

21 document.

22 MS. PERI: Thank you.

23 HEARING OFFICER KNITTLE: I didn't mean to cut you

24 short last time. Are there any other preliminary matters

1 that you want to address at this point, Ms. Peri?

2 MS. PERI: No.

3 HEARING OFFICER KNITTLE: Mr. Tice?

4 MR. TICE: None, Mr. Hearing Officer.

5 HEARING OFFICER KNITTLE: Okay. Then let's proceed

6 with opening statements.

7 MS. PERI: Thank you. May I ask at this time that we

8 may be seated at counsel table?

9 HEARING OFFICER KNITTLE: You can be seated at any

10 point throughout the hearing or stand if you so desire.

11 MS. PERI: Thank you.

12 MR. TICE: I am sorry. I have one matter that I wish

13 to take up with the Hearing Officer.

14 HEARING OFFICER KNITTLE: Yes, sir.

15 MR. TICE: I would ask that all witnesses who intend

16 to testify be excluded.

17 HEARING OFFICER KNITTLE: Ms. Peri, do you have a

18 problem with that?

19 MS. PERI: No.

20 HEARING OFFICER KNITTLE: I would grant that.

21 Excluded for the opening statement, Mr. Tice, or excluded

22 just for the --

23 MR. TICE: Excluded for the opening statements, too.

24 HEARING OFFICER KNITTLE: Okay. Is there an



1 objection to that?

2 MS. PERI: Would that include potential rebuttal

3 witnesses?

4 MR. TICE: If they are going to testify --

5 HEARING OFFICER KNITTLE: To the potential rebuttal

6 witnesses down the road who you have not --

7 MS. PERI: Yes.

8 HEARING OFFICER KNITTLE: Are they listed as witness?

9 MS. PERI: They are listed as witnesses, however, the

10 State only intends to call three witnesses this morning.

11 HEARING OFFICER KNITTLE: I would have to agree with

12 Mr. Tice. If they are going to be intended to be called

13 even as a rebuttal witness -- I imagine, Mr. Tice, the

14 same objection would stand?

15 MR. TICE: That's correct.

16 HEARING OFFICER KNITTLE: Okay. Yes, I would be

17 sustaining that.

18 MS. PERI: Okay.

19 HEARING OFFICER KNITTLE: So if you are going to be a

20 witness, please make yourself comfortable out in the

21 hallway somewhere.

22 Let's go off the record for a second.

23 (Discussion off the record.)

24 HEARING OFFICER KNITTLE: Let's go back on the

1 record.

2 We are back on the record, and we are going to  
3 proceed with opening statements by Ms. Peri.

4 MS. PERI: We have a brief opening statement, Mr.  
5 Hearing Officer.

6 We are here today on the People's complaint against  
7 the respondent, John Chalmers, to address allegations  
8 concerning repeated threats of water pollution. The  
9 respondent owns a parcel of land in rural Oakford, north  
10 Menard County, which during times relevant to the  
11 complaint was used for confinement of up to 15,000 head of  
12 swine. The respondent provided for the storage of liquid  
13 livestock waste in storage pits beneath confinement  
14 buildings which empty into one of four settling ponds or  
15 lagoon structures located on his property.

16 The allegations in this Board case arose in 1992,  
17 from a series of citizen complaints of liquid livestock  
18 waste leaving the respondent's property, running onto a  
19 county road and onto a school bus. Inspections by the  
20 Illinois Environmental Protection Agency that followed  
21 confirmed that liquid livestock waste was, indeed, leaving  
22 respondent's property onto a county road, under the road,  
23 and into a waterway that leads to the Sangamon River.

24 That is not all. Liquid livestock waste was also

1 overflowing from the settling ponds or lagoon structures  
2 on the respondent's property and flowing through a  
3 waterway on respondent's property to a tributary of the  
4 Sangamon River. These incidents threatened to cause water  
5 pollution. Through proper management of the swine  
6 facility the People will show that the respondent could  
7 have avoided creating such threats of water pollution.

8 Mr. Hearing Officer, the People are confident that  
9 the People's evidence will show, by a preponderance of the  
10 evidence, that the respondent has violated Sections 12(a)  
11 and 12(d) and 12(f) of the Illinois Environmental  
12 Protection Act, and that the respondent has created an  
13 offensive discharge and an offensive condition on his  
14 property in violation of Board rules 304.106 and 302.203.  
15 And, finally, the respondent has failed to adequately  
16 provide for storage of liquid livestock waste on his  
17 property in violation of Section 501.404, Subsection C.

18 Thank you.

19 HEARING OFFICER KNITTLE: Thank you, Ms. Peri.

20 Mr. Tice?

21 MR. TICE: We waive our opening argument.

22 HEARING OFFICER KNITTLE: Okay. Ms. Peri, if you  
23 would like to proceed with your case-in-chief.

24 MS. PERI: Thank you. The State will call Dale

1 Brockamp, if I may retrieve him.

2 HEARING OFFICER KNITTLE: It is Mr. Brockamp,

3 correct?

4 THE WITNESS: Yes, sir.

5 HEARING OFFICER KNITTLE: All right. Are you ready?

6 I will have the witness sworn in.

7 MS. PERI: For purposes of a large exhibit, may I

8 tape it on to that calendar?

9 HEARING OFFICER KNITTLE: Sure. Go right ahead, if

10 it will stay up. I could try to find something if you

11 want.

12 MS. PERI: Whatever you suggest.

13 HEARING OFFICER KNITTLE: All right. Let's go off

14 the record.

15 (Discussion off the record.)

16 HEARING OFFICER KNITTLE: All right. Ms. Peri, if

17 you are ready, I will have the witness sworn in.

18 MS. PERI: Yes.

19 HEARING OFFICER KNITTLE: Will you swear in the

20 witness, please.

21 (Whereupon the witness was sworn by the Notary

22 Public.)

23 HEARING OFFICER KNITTLE: All right, Ms. Peri.

24 MS. PERI: Thank you.

1           D A L E W. B R O C K A M P,  
2 having been first duly sworn by the Notary Public, saith  
3 as follows:

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

5           B Y M S. P E R I:

6    Q. Good morning, Mr. Brockamp.

7    A. Good morning.

8    Q. Let's begin by discussing your education and work  
9 background. Did you attend an undergraduate university?

10   A. Yes, I did.

11   Q. Did you receive a Bachelor's of Science in  
12 Agricultural Engineering?

13   A. That is correct.

14   Q. Did you do any Master's work?

15   A. I took a few classes, but I did not achieve a  
16 degree.

17   Q. Where did you go to work once you had your  
18 agricultural engineering degree?

19   A. I began my employment with the Illinois  
20 Environmental Protection Agency in May of 1988.

21   Q. And how long were you with the Marion Regional  
22 Office?

23   A. I was in the Marion Regional Office from May of  
24 1988 until March of 1992.

1 Q. What were your duties with the Agency during that  
2 time?

3 A. I was the agricultural specialist in the region  
4 six and seven field office, which is located in Marion.

5 Q. What does that mean in terms of your day-to-day  
6 duties?

7 A. I responded to agricultural complaints regarding  
8 livestock waste and agrichemical wastes.

9 Q. And in an agrichemical facility, what might be the  
10 purpose of your inspection?

11 A. When we would receive a complaint I would  
12 investigate it and determine if there was any runoff which  
13 was causing damage to the environment or to people's  
14 lives.

15 Q. So you would investigate potential water pollution  
16 problems?

17 A. That is correct.

18 Q. In the course of your duties with the Marion  
19 office, did you inspect swine confinement facilities, in  
20 particular?

21 A. Yes, I inspected all types of livestock.

22 Q. After your tenure with the Marion Regional Office,  
23 where did you go?

24 A. I took a geographic transfer to the Springfield

1 Regional Office in Springfield.

2 Q. And did you maintain the same title with the  
3 Agency at that time?

4 A. Yes, it was a lateral movement, so to speak.

5 Q. What was your title at that time?

6 A. I believe I was Engineer II at that time.

7 Q. And as an Engineer II with the Agency in  
8 Springfield Regional Office, your duties remained the  
9 same?

10 A. Yes, they were exactly the same. Previously I had  
11 31 counties in Southern Illinois, and then I moved up to  
12 17 counties in West Central Illinois.

13 Q. And with the Springfield Regional Office, when you  
14 conducted inspections of livestock facilities what would  
15 you look for?

16 A. I would look for any -- well, just runoff waste,  
17 is that what you --

18 Q. In general?

19 A. In general, if the complaint was in regard to odor  
20 complaints, I would drive around the facility and see how  
21 it was being managed and maintained. If the complaint was  
22 in regard to waste runoff, I would look, obviously,  
23 downstream of the facility to determine if there was any  
24 evidence of a discharge.

1 Q. Can you estimate approximately how many livestock  
2 facilities you inspected during your time with the  
3 Illinois Environmental Protection Agency?

4 A. Yes, I did annual summaries. I was with the  
5 Agency for ten years total. I averaged at least 150  
6 livestock inspections a year, and 75 of those would have  
7 been new facilities. So 700 or so over my tenure with the  
8 Agency.

9 Q. In the course of those inspections would you  
10 examine or inspect livestock waste storage structures?

11 A. Yes.

12 Q. Would you also examine, then, livestock waste  
13 lagoons or settling ponds?

14 A. Yes, both.

15 Q. Have you now left the Illinois EPA?

16 A. That is correct.

17 Q. Did you make a job transfer to another State  
18 agency?

19 A. That's correct.

20 Q. Which one?

21 A. The Illinois Department of Natural Resources.

22 Q. Okay. Why did you make that move?

23 A. It was time for a change, a professional change.

24 Q. In the course of your inspections of livestock



1 facilities or any other facility as an agricultural  
2 engineer for the Illinois EPA, did you make reports?

3 A. Yes, I did.

4 Q. What was the general content of those reports?

5 A. I typically had three sections to each report. I  
6 had a background section which indicated why I was out  
7 there, if I received a complaint and then what the  
8 complaint was about. The middle section was an  
9 observation section, which basically described what I  
10 observed as I was at the site. And then I typically wrote  
11 a summary or a conclusion section which outlined any  
12 violations or lack thereof.

13 Q. Would your reports typically include a site map of  
14 that particular facility?

15 A. Yes, it would include a site map, photographs, lab  
16 results, whatever.

17 Q. Okay. Are you familiar with the John Chalmers Hog  
18 Farm located in rural Oakford?

19 A. Yes.

20 Q. How did you become familiar with that farm?

21 A. I received the first complaint against the  
22 facility I believe in early May of 1992.

23 Q. And you inspected the facility as an agricultural  
24 engineer for the Illinois EPA?

1 A. That is correct.

2 Q. Did you in your inspections observe the layout of  
3 this hog farm?

4 A. Yes.

5 Q. Okay. Can you describe for the Board the layout  
6 in terms of the location and number of artificial  
7 structures, including buildings, and in addition the  
8 topography and any other man-made or natural structures or  
9 components of the property?

10 A. Sure. The Chalmers farm consists of 136 acres of  
11 contiguous land. Most of this property is pretty good  
12 rolling hill. The soil maps from, I believe, 1953  
13 indicated that at least 90, 95 percent of the ground was  
14 Class C or Class D topography, which is -- well, Class C  
15 is between a four and seven percent slope, and Class D is  
16 between eight and fifteen percent slope. So it generally  
17 rolls. There is quite a few trees on the property. Mr.  
18 Chalmers has a fairly large hog farm. There were 17  
19 confinement buildings. He has four waste lagoons and/or  
20 holding ponds.

21 Q. Do you mean that they are one or the other or some  
22 are holding ponds and some are lagoons?

23 A. I am sure when they were first utilized they were  
24 classified as a lagoon, but there is a certain definition

1 of what is a lagoon and what is a holding pond and that is  
2 somewhat subjective.

3 Q. In your opinion, what were these structures?

4 MR. TICE: I am going to object to what his opinion  
5 is with respect to the structures out there. He can  
6 describe them, but I think that calls for an opinion for  
7 which this man does not have the background with which to  
8 give such an opinion. He has already testified that it  
9 was somewhat subjective as to what is a lagoon and what is  
10 not a lagoon.

11 HEARING OFFICER KNITTLE: Ms. Peri?

12 MS. PERI: Mr. Hearing Officer, Mr. Brockamp is an  
13 expert for the State on agricultural issues. In  
14 particular, he has an engineering background. I believe  
15 we have established that he has ten years of experience in  
16 inspecting facilities, and that he is in the best position  
17 possible to make an opinion as to what is or is not a  
18 lagoon or a holding pond.

19 MR. TICE: Mr. Hearing Officer, there has been  
20 absolutely no foundation laid with respect to this  
21 witness' expertise concerning lagoons, particularly hog  
22 confinement lagoons. He has only testified to a B.S.  
23 Degree in Agricultural Engineering with no specialties  
24 whatsoever. He has only testified to inspections with the

1 IEPA. None of those -- there has been no testimony  
2 whatsoever given as to whether he has inspected facilities  
3 with lagoons in the past and no definition even as to what  
4 a lagoon is or is not. Strictly the testimony of this  
5 witness is that it is very subjective. For that reason I  
6 believe there is no proper foundation.

7 HEARING OFFICER KNITTLE: Ms. Peri?

8 MS. PERI: We can go back on the transcript. Mr.  
9 Brockamp has testified that he spent ten years with the  
10 Agency inspecting up to 700 facilities. We maintain that  
11 is more than adequate to make, again, an opinion based on  
12 his experience inspecting these same types of facilities  
13 as to what is or is not a lagoon or a holding pond.

14 HEARING OFFICER KNITTLE: Okay. The objection is  
15 overruled.

16 Mr. Brockamp, you can proceed with your testimony.

17 Q. (By Ms. Peri) Please continue, Mr. Brockamp, in  
18 describing the layout of the farm?

19 A. Okay. There are three small, I would consider  
20 them holding ponds near the buildings. All three of those  
21 are approximately one acre in size. There is a larger  
22 lagoon, and it is approximately six acres, and it is  
23 located east of the main complex of buildings. The large  
24 lagoon I would consider a lagoon because it does provide

1 biological treatments for the livestock waste. The other  
2 three holding structures I would consider as a holding  
3 pond because they basically store waste. There was very,  
4 very little biological treatment in those holding ponds.  
5 However, I am sure that when they were first utilized for  
6 the livestock farm, they probably would have been  
7 considered lagoons at that time.

8 Q. What do you mean when you say that there is little  
9 biological treatment in the holding ponds?

10 A. I mean that the bacteria which are used to  
11 decompose the solid wastes into liquids and gases are not  
12 present, because they are -- the strength of the material  
13 is too strong and, therefore, it kills the bugs and they  
14 are not able to function properly.

15 Q. Thank you. In the course of your inspections as  
16 an agricultural engineer did you also observe a watershed  
17 on a property?

18 A. Yes.

19 Q. In other words, where stormwater flows on that  
20 property?

21 MR. TICE: I am going to object. That calls for a  
22 conclusion from this witness as to a watershed. There has  
23 been absolutely no indication at all from this witness'  
24 testimony as to what -- whether he knows what a watershed

1 is or whether he did any investigation as to what would  
2 consist of a watershed in this area.

3 MS. PERI: I just provided the description by  
4 indicating this is where storm water would flow on the  
5 property based on the topography.

6 MR. TICE: Well, Ms. Peri is not the witness in this  
7 case, and she cannot provide a definition of a watershed  
8 through her question. The definition has to come through  
9 the witness, and there has to be some foundation laid that  
10 the witness knows what a watershed is or is not.

11 HEARING OFFICER KNITTLE: I will sustain the  
12 objection. You can lay the appropriate foundation for  
13 this witness.

14 MS. PERI: Thank you.

15 Q. (By Ms. Peri) Mr. Brockamp, in the course of  
16 making your inspections of livestock facilities, will you  
17 observe the topography of that site?

18 A. Yes, I do.

19 Q. In observing the topography of the site, do you  
20 make conclusions about where stormwater flows in the event  
21 of a rainfall event?

22 A. Yes, I do.

23 Q. In this particular case did you make conclusions  
24 about where stormwater runoff flows on the John Chalmers

1 property?

2 A. Yes.

3 MR. TICE: Your Honor, I am going to object again to  
4 this question, because there is no foundation laid as to  
5 what the topography of this area was, only a question  
6 asking for a conclusion of this witness as to where  
7 stormwater runs. The witness has to be asked to lay some  
8 kind of foundation as to the topography for the land for  
9 which he is observing. That is what determines a  
10 watershed, not the conclusions of the witness.

11 HEARING OFFICER KNITTLE: One note, please refer to  
12 me as Mr. Knittle or Mr. Hearing Officer.

13 MR. TICE: I am sorry.

14 HEARING OFFICER KNITTLE: As much as I would like to  
15 be Your Honor, it is just not the case.

16 MR. TICE: You are sitting up there in that high  
17 chair, and it is my habit --

18 HEARING OFFICER KNITTLE: I understand that.

19 Ms. Peri, do you have a response?

20 MS. PERI: I will proceed with moving more  
21 specifically into the area of topography and move on to  
22 the watershed issue.

23 HEARING OFFICER KNITTLE: All right. I am not going  
24 to rule on that objection, then.

1 Q. (By Ms. Peri) Mr. Brockamp, have you examined a  
2 topography map for the area in which the John Chalmers  
3 farm is located?

4 A. Yes, I have.

5 Q. Okay. I am going to show you what has been  
6 premarked as People's Exhibit B. Do you recognize this  
7 enlargement of the Department of Interior Geological  
8 Survey Topo Map as the area including the John Chalmers  
9 Hog Farm?

10 A. Yes, I do.

11 Q. Okay. I am going to go ahead and mount this  
12 Exhibit B.

13 Mr. Brockamp, if Mr. Hearing Officer will allow it,  
14 would you please approach this board and describe the  
15 topography in the area of the John Chalmers Hog Farm.

16 (The witness approached the exhibit.)

17 A. Yes. The hog farm is located roughly in this  
18 general --

19 MR. TICE: Mr. Knittle, I would ask that there be  
20 some indication by the witness on the exhibit as to where  
21 he is pointing his finger to by some mark or some  
22 identification so we can have that for the record.

23 THE WITNESS: Do you mean outline the farm?

24 HEARING OFFICER KNITTLE: Ms. Peri, do you have any



1 objection to that?

2 MS. PERI: I have no objection, and I will reiterate

3 that.

4 Q. (By Ms. Peri) I will ask you, Mr. Brockamp, to  
5 highlight with an orange highlighter pen the general area  
6 of the John Chalmers Hog Farm.

7 A. (Witness complied.)

8 Q. Based on your personal inspection of the Hog Farm,  
9 does this area that you have encapsulated in orange fairly  
10 and accurately represent the topography of the John  
11 Chalmers Hog Farm?

12 MR. TICE: Mr. Knittle, I again would object to this,  
13 because I am not sure that there has been a foundation  
14 laid for this witness to testify as to this map portraying  
15 the topography for that farm. The map itself or the  
16 exhibit itself will speak for itself, not this witness.

17 HEARING OFFICER KNITTLE: Ms. Peri?

18 MS. PERI: I agree. The exhibit does speak for  
19 itself, and now I am going to ask Mr. Brockamp, based upon  
20 his experience, to describe the topography based on his  
21 own personal inspection of the site.

22 Mr. Brockamp, you can be seated for this part of the  
23 testimony. Thank you.

24 HEARING OFFICER KNITTLE: Let me interject. Are you

1 going to be marking more on this map, Ms. Peri?

2 MS. PERI: At a later time.

3 HEARING OFFICER KNITTLE: Okay. Maybe we could have  
4 either you or the witness mark hog farm or something so  
5 the Board knows. Or are you planning on using a different  
6 colored marker for each?

7 MS. GLATZ: Yes.

8 HEARING OFFICER KNITTLE: Okay. Let the record  
9 reflect, and I think it is already on there, that the  
10 orange highlighter is intending to represent the  
11 boundaries of the John Chalmers Hog Farm.

12 You can proceed, Ms. Peri. Sorry for the  
13 interruption.

14 Q. (By Ms. Peri) Mr. Brockamp, please describe, based  
15 on your personal inspection of the property, the  
16 topography of that parcel?

17 A. The topography is sloping, a majority of the --  
18 there is 136 acres encapsulated there in the orange. I  
19 estimated that 100 acres flowed to the very, very  
20 northwest corner of that property. The other 36 acres is  
21 divided. A little bit goes to the north and a little bit  
22 goes to the west, but the bulk of that area goes to the  
23 northwest corner.

24 Q. So it is approximately 100 acres flowing to the

1 northwest corner?

2 A. That is correct.

3 Q. In your opinion, Mr. Brockamp, what does the  
4 topography of this property or how does the topography of  
5 this property bear on the direction of stormwater runoff?

6 A. Stormwater runoff typically flows in a downhill  
7 direction. So if the ground is sloping towards -- if the  
8 bulk of the ground is sloping towards one particular area  
9 of the property the stormwater will flow to the same  
10 particular area of the property.

11 Q. If 100 acres of this property flows to the  
12 northwest corner, how does that specifically bear on where  
13 stormwater will flow on the John Chalmers Hog Farm?

14 A. All stormwater will flow to that same point.

15 Q. Is that true of other liquids?

16 A. Yes.

17 Q. Mr. Brockamp, are there any waterways located on  
18 the John Chalmers Hog Farm?

19 A. Yes.

20 Q. Would you describe that for me?

21 A. There is an intermittent stream that collects the  
22 stormwater runoff and any other liquids and transports  
23 those liquids to the northwest corner of that property.

24 Q. Is that intermittent stream, in your opinion, a

1 water of the State?

2 MR. TICE: I am going to object. That calls for a  
3 conclusion on the ultimate question. This witness is not  
4 competent to testify.

5 HEARING OFFICER KNITTLE: Ms. Peri?

6 MS. PERI: My response is simply that this witness  
7 has been qualified as an expert in the area of  
8 agricultural engineering. Part of his -- integral to his  
9 duties is making inspections and making conclusions about  
10 whether pollutants or contaminants have entered waters of  
11 the State of Illinois. This is a conclusion that he makes  
12 or made during his ten year tenure with the Agency every  
13 day.

14 HEARING OFFICER KNITTLE: Yes, Mr. Tice?

15 MR. TICE: Mr. Knittle, the waters of the State and  
16 whether or not there have been encroachments upon the  
17 waters of the State and pollution of the waters of the  
18 State is still the ultimate issue in this case. It is an  
19 issue of law. It is an issue that the witness cannot  
20 competently testify to, because it is for the trier of  
21 fact, not for the witnesses.

22 HEARING OFFICER KNITTLE: I agree with Mr. Tice --  
23 with you, Mr. Tice, that the ultimate question is whether  
24 there was a pollution to the waters of the State, but I

1 don't think whether this is a water of the State is the  
2 ultimate question in the case. So I am going to overrule  
3 your objection, however, I will note it for the record.

4 You can answer the question, sir.

5 Q. (By Ms. Peri) What is the basis, Mr. Brockamp, for  
6 your opinion that the intermittent stream that you  
7 described is a water of the State?

8 A. The definition of waters of the State, which is  
9 located in Subtitle C.

10 Q. That is of the Pollution Control Board  
11 regulations?

12 A. That is correct.

13 Q. Is there aquatic life, in your opinion, that can  
14 thrive in this intermittent stream?

15 MR. TICE: Objection. That calls for a conclusion.  
16 There has been absolutely no foundation laid by this  
17 witness to determine -- for him to be able to determine if  
18 there is aquatic life that may live in this intermittent  
19 stream. There has been no proof really of an intermittent  
20 stream at this point.

21 HEARING OFFICER KNITTLE: Ms. Peri?

22 MS. PERI: Well --

23 HEARING OFFICER KNITTLE: No response?

24 MS. PERI: Well, let me limit it to the following,

1 Mr. Hearing Officer. Mr. Brockamp, again, has been  
2 qualified as an inspector with ten years of experience of  
3 inspecting lagoons and waterways for pollution problems.  
4 The end to that inspection is to determine whether there  
5 are threats of water pollution, and a part of water  
6 pollution is a threat to either human health, aquatic  
7 life, or fish populations. So it is core to his decision  
8 making as to whether or not there is aquatic life at issue  
9 in any particular waterway that he comes across. I would  
10 suggest that is routine.

11 HEARING OFFICER KNITTLE: Mr. Tice?

12 MR. TICE: Mr. Knittle, there has been no testimony,  
13 whatsoever, or no questions asked of this witness as to  
14 whether he observed any aquatic life in any stream on the  
15 Chalmers farm, and we are only talking about what has been  
16 outlined so far on Exhibit B in this orange area, because  
17 this line of questioning started out with topography for  
18 this farm, and so there is no foundation laid.

19 HEARING OFFICER KNITTLE: I am going to sustain the  
20 objection, but you can lay the appropriate foundation, Ms.  
21 Peri.

22 Q. (By Ms. Peri) Mr. Brockamp, in the course of your  
23 inspections for the Illinois EPA, would you make  
24 conclusions about whether aquatic life may prosper or

1 survive in a water of the State?

2 A. Yes.

3 Q. In the course of your inspections of the John  
4 Chalmers Hog Farm, did you observe in what you have  
5 described as the intermittent stream or make a conclusion  
6 about whether aquatic life would survive or thrive in that  
7 stream?

8 A. Yes.

9 Q. What is your conclusion?

10 MR. TICE: Again, I am going to object. Mr. Knittle,  
11 there has been no foundation laid that there has even been  
12 any observation by this witness as to aquatic life.  
13 Secondly, there has been no explanation and no testimony  
14 here about what intermittent stream we are talking about.

15 HEARING OFFICER KNITTLE: Ms. Peri?

16 MS. PERI: Mr. Brockamp has testified as to what is  
17 the intermittent stream that he has come across on this  
18 property. We will follow his testimony up momentarily  
19 with a site map. However, as to whether or not there was  
20 actually aquatic life is not the question. The question  
21 is whether, in his opinion, aquatic life would thrive or  
22 survive in this intermittent stream.

23 MR. TICE: There has been no testimony about an  
24 intermittent stream. We started out this line of

1 testimony about the topography, Mr. Hearing Officer.

2 HEARING OFFICER KNITTLE: I am going to overrule. I

3 think there has been sufficient testimony about the

4 stream. I am not sure it is the only stream on site, but

5 if the witness understands the question I am going to let

6 him answer.

7 THE WITNESS: Certain species of aquatic life can

8 live in that intermittent stream. Most fish species I

9 would not expect in there, because there is just not

10 enough water, but other forms of aquatic life certainly

11 could live in there.

12 Q. (By Ms. Peri) Mr. Brockamp, are there other waters

13 of the State on John Chalmers property, based on your

14 inspections?

15 A. Yes.

16 Q. Where are they?

17 A. The only other really waters of the State would be

18 his fresh water pond.

19 Q. Okay. Where is that located?

20 A. It is in the southern part. It is south of the

21 main complex of the hog buildings.

22 Q. At this time, Mr. Brockamp, I am going to show you

23 and Counsel what has been premarked as People's Exhibit A.

24 Mr. Brockamp, do you recognize this map to be a fair



1 and accurate representation of the layout of John Chalmers

2 Hog Farm based on your inspections?

3 A. Yes, I do.

4 MR. TICE: Is that Exhibit A?

5 MS. PERI: Yes.

6 Q. (By Ms. Peri) Mr. Brockamp, would you please

7 approach People's Exhibit A, which has been mounted in the

8 room here, and I am providing you with a blue pen. Would

9 you indicate with a blue arrow the intermittent stream

10 that you have described in your recent testimony?

11 (The witness approached the exhibit.)

12 A. (Witness complied.)

13 Q. All right. With those blue arrows are you also

14 indicating the direction of water or liquid flow through

15 that intermittent stream?

16 A. That is correct.

17 Q. Okay. On this Exhibit A, Mr. Brockamp, we see

18 what has been labeled as lagoon number four on the

19 southeast corner of the property. Is that what you

20 testified to be a lagoon that undergoes treatment?

21 A. Yes.

22 Q. We also see what has been marked as number one,

23 number two, and number three in circled areas. What are

24 those?

1 A. Those are holding ponds.

2 Q. You indicated that there are other waters of the

3 State on this property?

4 A. Yes.

5 Q. Where is that located?

6 A. This fresh water pond here (indicating). I believe

7 it is spring feed, somewhere down here in this area. And

8 he utilizes it for a water supply as well as for fire

9 protection.

10 HEARING OFFICER KNITTLE: I want it noted that the

11 witness is referring to a circled area marked pond on

12 Exhibit A.

13 Go ahead, Ms. Peri.

14 MS. PERI: Thank you. Could you go ahead and be

15 seated, Mr. Brockamp.

16 (The witness returned to the stand.)

17 Q. (By Ms. Peri) Based on your inspections of the

18 property, would you describe how livestock waste is stored

19 on this property?

20 A. Most of the buildings -- I can't say all of them,

21 but most of the buildings have an underground pit. The

22 waste from the pits, once the pits are full, from 14 of

23 the buildings go directly into holding pond number one.

24 The other three or four buildings, I believe, discharge

1 directly into number three. A majority of the livestock  
2 waste are fed directly into holding pond number one. Once  
3 it is full, the waste flow by gravity into holding pond  
4 number two, and from holding pond number two they will  
5 flow into holding pond number three, also by gravity flow.

6 Q. Does any of the liquid livestock waste find its  
7 way to lagoon number four?

8 A. On occasion, yes.

9 Q. How would it get there?

10 A. It has to be pumped from lagoon number one up hill  
11 into lagoon number four.

12 Q. Mr. Brockamp, you made an inspection on May 11,  
13 1992; is that correct?

14 A. Yes.

15 Q. Was that your first inspection of the John  
16 Chalmers Hog Farm?

17 A. Yes.

18 Q. What did you observe during your inspection on  
19 that date?

20 A. I observed -- well, I observed livestock waste  
21 down at the corner near the bridge in the northwest corner  
22 of the property.

23 Q. I am sorry? In the northwest corner of the  
24 property?

1 A. That is correct.

2 Q. Would you mind approaching People's Exhibit A, and  
3 indicating with this red marker in an X the area that you  
4 are referring to?

5 (The witness approached the exhibit.)

6 A. (Witness complied.)

7 MS. PERI: Let the record show that Mr. Brockamp has  
8 marked with two red Xs the area at the top left corner of  
9 People's Exhibit A.

10 Q. (By Ms. Peri) Mr. Brockamp, you indicated that you  
11 observed livestock waste in that area?

12 A. Yes.

13 Q. How did you conclude that it was livestock waste?

14 A. The liquids which were observed had a very foul,  
15 putrid odor to it. It was very thick. It had the  
16 consistency of a thick soup, like a gumbo type. I could  
17 observe -- this stuff on this particular date was  
18 untreated waste. It was basically raw livestock manure.  
19 You could see some fecal matter, like digested grain and  
20 that type of stuff within the material. The odor was the  
21 big noticeable thing.

22 Q. By the way, did you grow up on a hog farm?

23 A. Yes, I did.

24 Q. How many years did you live on a hog farm?

1 A. I lived on my family's hog farm for approximately  
2 21 years.

3 Q. Can you estimate the approximate amount in gallons  
4 of liquid livestock waste that was present in that area  
5 that you have doubled marked X?

6 A. I estimated at the time between 6,000 and 7,000  
7 gallons.

8 Q. Mr. Brockamp, in observing liquid livestock waste  
9 at the northwest corner of the property, did you make any  
10 conclusions as to where that liquid came from?

11 A. I concluded that it came from the adjacent hog  
12 farm. I could not pinpoint exactly from which building or  
13 which holding pond or lagoon it came from, but it  
14 certainly came directly from the hog farm right there.

15 Q. Which hog farm is that?

16 A. The John Chalmers Hog Farm.

17 Q. What was the basis for your concluding that it  
18 definitely came from the respondent's hog farm?

19 A. There were no other livestock farms, hog farm or  
20 otherwise, within the watershed.

21 Q. If the liquid livestock waste did, as you suggest,  
22 come from his property, did you make any conclusions about  
23 the direction that the liquid would flow to make it to  
24 that point?

1 A. Yes.

2 Q. What is your conclusion?

3 MR. TICE: I am going to object to the witness'  
4 conclusion as to the direction of the flow. I think he  
5 can describe -- make a description of the area, but to  
6 conclude the way in which it would flow I think is  
7 improper.

8 HEARING OFFICER KNITTLE: Ms. Peri?

9 MS. PERI: I am looking for an opinion. I can  
10 rephrase.

11 HEARING OFFICER KNITTLE: Please, if you would like.

12 Q. (By Ms. Peri) Mr. Brockamp, you have already  
13 testified that you inspected the property and made  
14 conclusions or developed an opinion about the topography;  
15 is that correct?

16 A. Yes.

17 Q. In doing so, you developed an opinion about the  
18 direction of liquid or stormwater flow on the property; is  
19 that correct?

20 A. Yes.

21 Q. In the course of your inspection on May 11, 1992,  
22 did you make an opinion as to how liquid flowed on his  
23 property, that is the respondent's property, to the  
24 northwest corner?

1 A. Yes.

2 Q. What is your opinion?

3 A. My opinion is that the water flowed downhill, and  
4 in this particular case at that location it is to the  
5 west.

6 Q. And when you say downhill, it would be downhill  
7 from where?

8 A. Downhill from higher ground.

9 Q. Can you point out the general area of the higher  
10 ground on this property on People's Exhibit A?

11 A. Would you like me to approach?

12 Q. Please.

13 (The witness approached the exhibit.)

14 A. The Sangamon River is a half mile up here  
15 (indicating).

16 MR. TICE: I am going to object to the witness  
17 testifying about the Sangamon River. That was not the  
18 question. The question was can he detect and can he show  
19 the direction of flow.

20 HEARING OFFICER KNITTLE: Ms. Peri, do you have  
21 something?

22 MS. PERI: I believe Mr. Brockamp should be allowed  
23 an opportunity to develop his answer.

24 HEARING OFFICER KNITTLE: I will overrule the

1 objection. But as a caution for the witness, we have to  
2 get it on the record. When you are waving your hand like  
3 this it makes it difficult. If you could, just describe  
4 it or I can describe it after you are done, if you would  
5 like. I can let the record reflect that the witness was  
6 waving his hand over the map in a direction pointed north  
7 on the map.

8 MS. PERI: And in an east-west direction. Is that  
9 correct, Mr. Brockamp?

10 THE WITNESS: Yes. Mr. Chalmers located his hog  
11 farm very smartly on the higher ground.

12 MR. TICE: I am going to object to the witness'  
13 conclusion about why Mr. Chalmers located his farm at this  
14 particular location or that he very smartly located it on  
15 the high ground. That is not even response to the  
16 question that was asked.

17 HEARING OFFICER KNITTLE: I will sustain that  
18 objection. If you could proceed with your answer to the  
19 question.

20 THE WITNESS: This ground where the hog buildings are  
21 located is a higher elevation than this ground here where  
22 the intermittent stream is located. Therefore, stormwater  
23 runoff and any other liquids which might happen to fall on  
24 to the surface of the earth at this particular location



1 will drain in a northern direction towards the  
2 intermittent stream. Once it enters the intermittent  
3 stream it will drain in a northwestern direction to the  
4 corner of his property. And at this location the liquids  
5 which fall in this typical watershed of Mr. Chalmers'  
6 property drain in a western direction and eventually go in  
7 a northwestern direction directly towards the Sangamon  
8 River.

9 HEARING OFFICER KNITTLE: Thank you, sir.

10 Q. (By Ms. Peri) Thank you. Mr. Brockamp, did you  
11 make any other observations during your May 11, 1992  
12 inspection?

13 A. Well, I responded -- the reason I was visiting the  
14 site that date was to respond to a citizen's complaint  
15 regarding aerial application in a different area of the  
16 farm, and I found no problems up there.

17 Q. Did you make a report based on your May 11  
18 inspection?

19 A. Yes, I did.

20 Q. I am going to show you what is marked as People's  
21 Exhibit Number 2. I believe that Counsel already has a  
22 copy of that exhibit as does Mr. Hearing Officer .

23 HEARING OFFICER KNITTLE: Yes.

24 Q. (By Ms. Peri) Is this a true and accurate

1 photocopy of your May 11, 1992 inspection of the John

2 Chalmers Hog Farm?

3 A. Yes, this appears to be a clear photocopy.

4 Q. Thank you. I am now going to show you what has

5 been premarked as People's Exhibit C. Mr. Brockamp, did

6 you take these photographs?

7 A. Yes, I did.

8 Q. Okay. Are these true and accurate color copies of

9 photographs taken by you on May 11th, 1992 during your

10 inspection of the property?

11 A. Yes, it is.

12 Q. Okay. Would you describe for us what is being

13 shown in both the top and bottom photographs?

14 A. The top photograph is looking in a southwestern

15 direction towards Mr. Chalmers' property. I was probably

16 standing on the bridge at that time.

17 Q. Where is the bridge?

18 A. The bridge is along the road at the northwest

19 corner of the property.

20 Q. Would you take a moment, Mr. Brockamp, and

21 indicate on People's Exhibit A the location of the bridge

22 that you are referring to? And I am going to hand you

23 this blue marker, and could you indicate with a B the

24 location of the bridge

1 (The witness approached the exhibit.)  
2 A. (Witness complied.)  
3 Q. Thank you. I am sorry. You indicated that in the  
4 top photograph you were standing on the bridge?  
5 A. I believe so, yes.  
6 Q. Looking in which direction?  
7 A. In an eastern or southeastern direction.  
8 Q. And in the bottom photograph?  
9 A. The bottom photograph is looking in a western  
10 direction, the other way, away from Mr. Chalmers'  
11 property.  
12 Q. Also standing on the bridge?  
13 A. That is correct.  
14 Q. What are we seeing in those photographs?  
15 A. We are seeing what appears to be livestock waste,  
16 specifically hog manure.  
17 Q. Is this the hog manure that you have previously  
18 described as having been seen by you in the northwest  
19 corner of the property in the double X location?  
20 A. That is correct.  
21 Q. Thank you. Mr. Brockamp, did you also make an  
22 inspection of the John Chalmers Hog Farm on May the 6th,  
23 1993?  
24 A. Yes, I did.

1 Q. Would you please describe your observations in the  
2 course of that inspection?

3 A. I first approached the facility and returned to  
4 the bridge. At the bridge, the water looked relatively  
5 clear. It certainly was not nearly as contaminated as it  
6 had been the prior year. However, at that location I  
7 observed approximately a dozen or so medical waste bottles  
8 floating within the intermittent stream attempting to get  
9 underneath the bridge. They were kind of hung up there on  
10 the bridge.

11 Q. On which side of the bridge were those bottles  
12 located?

13 A. They were located on the east side of the bridge,  
14 which would have been on Mr. Chalmers' side of the road.

15 Q. Did you make any conclusions or develop an opinion  
16 as to how the medical waste bottles reached that point of  
17 the property?

18 MR. TICE: I am going to object. There has been no  
19 foundation laid that this man did any inspection  
20 whatsoever to find the source of those medicine bottles,  
21 just that he saw them and that's it. For him to draw some  
22 conclusion as to how they may have been there or located  
23 there I think is improper of this witness without any  
24 further foundation.

1 MS. PERI: I will move on.

2 HEARING OFFICER KNITTLE: Are you withdrawing the  
3 question, Ms. Peri?

4 MS. PERI: Yes.

5 Q. (By Ms. Peri) Mr. Brockamp, what was the purpose  
6 of your May 6, 1993 inspection?

7 A. I was responding to a citizen's complaint that  
8 livestock manure had been overapplied to an alfalfa field  
9 and the wastes were running directly on top of the road  
10 and into the neighbor's corn field.

11 Q. Did you follow-up on that complaint?

12 A. Yes, I did.

13 Q. What did you find?

14 A. I found that livestock waste had been overapplied  
15 into an alfalfa field and had drained across the roadway.

16 Q. And which roadway are you referring to?

17 A. The Kay Watkins School Road.

18 Q. And looking now, Mr. Brockamp, at People's Exhibit  
19 A, is that the Kay Watkins School Road that appears on the  
20 north side of the property and the top of that map?

21 A. That is correct.

22 Q. Would you describe the appearance of the manure  
23 that you saw traversing the road?

24 A. It was gray. It had a foul odor. It had been out

1 there for probably a day or two.

2 MR. TICE: I am going to object to the conclusion by  
3 this witness as to how long it may have been there.

4 HEARING OFFICER KNITTLE: Ms. Peri?

5 MS. PERI: I believe Mr. Brockamp, based on his  
6 personal experience being raised on a farm and ten years  
7 of experience of inspecting livestock facilities certainly  
8 has the expertise to testify on his opinion as to how long  
9 manure has been exposed.

10 MR. TICE: I think he has to lay some kind of -- or  
11 Counsel has to lay some kind of foundation as to what his  
12 observations were before he can make a conclusion as to  
13 how long it was there or not there. He only saw this on  
14 one particular day. There has not even been any  
15 foundation laid, Mr. Knittle, as to how long he was there  
16 on this occasion or how long he observed. It is  
17 unfathomable for somebody to be able to give a conclusion  
18 about as to how long manure may have been there or not  
19 been there.

20 HEARING OFFICER KNITTLE: Ms. Peri, do you have  
21 something before I rule?

22 MS. PERI: No.

23 HEARING OFFICER KNITTLE: Okay. I am going to  
24 overrule the objection. I think Mr. Brockamp has

1 sufficient expertise to make that judgment.

2 Q. (By Ms. Peri) Mr. Brockamp, had how did you make  
3 the conclusion that the manure had been on the road for  
4 some time?

5 A. The manure had evaporated from the road. In fact,  
6 there was not very much on the road itself. However,  
7 there was -- it was fairly concentrated on both sides of  
8 the road, meaning that more solids were remaining than  
9 probably what were there to begin with. I only estimated  
10 that it had been there 24 hours, maybe 48 is all.

11 Q. So you observed liquid livestock waste on both  
12 sides of the county road?

13 A. That is correct.

14 Q. Would you approach People's Exhibit A and indicate  
15 with this red marker the general area that you observed  
16 liquid livestock waste at the road

17 (The witness approached the exhibit.)

18 A. I first observed -- it was pooled up in a little  
19 area about, oh, 30 feet south of the road. It was also  
20 immediately in the road ditch on the south side of the  
21 road, and then there was a little more bigger area on the  
22 north side of the road, that it had crossed over the road.  
23 There was no culvert at this location.

24 MS. PERI: Let the record show that Mr. Brockamp has

1 indicated with three red circular areas the areas he has  
2 just described.

3 Q. (By Ms. Peri) Thank you, Mr. Brockamp. Were the  
4 livestock waste pools that you observed on that date near  
5 a water of the State, in your opinion?

6 MR. TICE: Objection. That calls for a conclusion of  
7 the witness with regard to, again, waters of the State and  
8 there has been no foundation laid as to the distance of  
9 this road from any intermittent stream that may have been  
10 testified to by this witness before or the topography that  
11 surrounds this particular road and the land lying between  
12 this road and any intermittent stream that this witness  
13 may have testified to.

14 HEARING OFFICER KNITTLE: Ms. Peri?

15 MS. PERI: I believe that the question is moving in  
16 that direction, Mr. Hearing Officer. The point of the  
17 question is to determine whether there is a waterway or  
18 water of the State in the area that Mr. Brockamp has just  
19 described.

20 HEARING OFFICER KNITTLE: Mr. Tice, I have already  
21 ruled that I think Mr. Brockamp is capable of determining  
22 what a water of the State is. If that is your objection,  
23 I will overrule it.

24 MR. TICE: My objection, Mr. Knittle, is that there



1 has been no foundation laid as to the topography of what  
2 this road is or the distance of this road from the  
3 intermittent stream that Mr. Brockamp has already  
4 testified about. And the question called for is this in  
5 the area, is this location in the area of an intermittent  
6 stream in your opinion Mr. Witness, and I don't believe he  
7 is qualified to give that kind of an opinion without other  
8 foundation being laid.

9 HEARING OFFICER KNITTLE: Ms. Peri, would you like to  
10 rephrase?

11 MS. PERI: Sure.

12 Q. (By Ms. Peri) Mr. Brockamp, in the course of your  
13 May 6th, 1993 inspection, did you form an opinion as to  
14 whether the pools you have described as being along side  
15 the Kay Watkins School Road threatened to reach or  
16 actually reached a water of the State?

17 MR. TICE: Again, I am going to object. There is no  
18 basis for it, factual basis in this record or from this  
19 witness yet for him to be able to form an opinion.

20 HEARING OFFICER KNITTLE: I am overruling that  
21 objection.

22 THE WITNESS: Yes, it does threaten to enter waters  
23 of the State.

24 Q. (By Ms. Peri) Would you please describe where that

1 water of the State is located with reference to the pools  
2 you have described along the school road?

3 A. At this particular location there is no threat of  
4 these wastes entering the intermittent stream, as I have  
5 previously marked. The threat in this particular location  
6 is that the waters enter the road ditch, and a road ditch,  
7 I believe, is also a water of the State.

8 Q. Why?

9 A. Because it can accumulate water which flows  
10 through or lies upon within the State of Illinois.

11 Q. And the road ditch you are describing is located  
12 where on People's Exhibit A?

13 A. It is located on both sides of Kay Watkins School  
14 Road.

15 Q. Please describe, then, if liquid enters the road  
16 ditch along the Kay Watkins School Road where it will  
17 travel?

18 MR. TICE: Again, that calls for speculation on the  
19 part of this witness without something in the form of  
20 foundation to show the topography along this road. We  
21 don't even have any testimony in this record, Mr. Knittle,  
22 as to the size of this ditch, the vegetation, or anything  
23 else.

24 HEARING OFFICER KNITTLE: Ms. Peri?

1 MS. PERI: I will develop this further.

2 HEARING OFFICER KNITTLE: Okay.

3 Q. (By Ms. Peri) Mr. Brockamp, would you please  
4 approach People's Exhibit A.

5 (The witness approached the exhibit.)

6 Q. Looking at Kay Watkins School Road, you have  
7 indicated that there is a road ditch on both sides of the  
8 road, correct?

9 A. Yes.

10 Q. Would you indicate the general topography of that  
11 area?

12 A. There is somewhat of a dip here in the road, right  
13 at this location (indicating). When the waste enter at  
14 this location --

15 Q. By enter you mean enter the road ditch?

16 A. Yes, enter the road ditch. What I observed on  
17 this date was that actually the waste left the road ditch  
18 on the north side of the road and actually drained into  
19 the neighbor's field. The ditches are not very large.  
20 They are very small, and they don't function as they  
21 should, so it drains into the field if there is too much  
22 liquids.

23 Q. And from the field where would the liquid  
24 potentially flow to?

1 MR. TICE: Objection. There has been absolutely no  
2 foundation laid. I hate having to raise these objections  
3 to foundation, Mr. Knittle, but Counsel is asking the  
4 witness to speculate about where these liquids flow to  
5 without properly having laid any foundation as to what  
6 investigation this witness made as to where the water is  
7 going, whether he walked the field, whether he went out  
8 and did any investigation so many feet off the road, or  
9 anything else. For him to just be allowed to speculate  
10 about this and make a conclusion about where they go, I  
11 think it is highly improper and prejudicial to the  
12 respondent's case.

13 HEARING OFFICER KNITTLE: Ms. Peri, do you have a  
14 response?

15 MS. PERI: Mr. Brockamp has been developed here today  
16 as an expert in the area of discovering potential water  
17 pollution threats. And as part of his inspection on this  
18 date I believe his purpose was to determine whether there  
19 was a threat, from the pooling of livestock waste manure,  
20 on the Kay Watkins School Road.

21 MR. TICE: To determine threats requires  
22 investigation. It requires legwork. There has been no  
23 foundation laid that this witness did that on this  
24 occasion.

1 HEARING OFFICER KNITTLE: Ms. Peri? You looked like  
2 you wanted to say something further.

3 MS. PERI: No.

4 HEARING OFFICER KNITTLE: Mr. Tice, I think it is an  
5 appropriate question.

6 However, Ms. Peri, I do think you could lay more  
7 foundation on this.

8 MS. PERI: Certainly.

9 HEARING OFFICER KNITTLE: I will sustain the  
10 objection for now but, you know, Mr. Tice, it is a  
11 borderline thing.

12 MR. TICE: I understand.

13 HEARING OFFICER KNITTLE: Let me just state for the  
14 record that this is an administrative proceeding, and our  
15 evidentiary rules are not the same as before a Circuit  
16 Court. So I am going to allow questions that I wouldn't  
17 be allowing or expect to be allowed if, in fact, we were  
18 in a court of law. So based on that I will allow it, but  
19 I think it would be helpful for the Board if there were  
20 further foundation laid.

21 MS. PERI: Certainly.

22 Q. (By Ms. Peri) Mr. Brockamp, please back up and  
23 describe for us how you came to that Kay Watkins School  
24 location where the pool of manure was located?

1 A. I was responding to a citizen's complaint that  
2 livestock waste had been applied to an alfalfa field along  
3 Kay Watkins School Road, and that it had been  
4 oversaturated and that it had drained into the road ditch  
5 and across the road and on to the neighbor's property.

6 Q. Okay. When you arrived at the property, where did  
7 you go?

8 A. I went to the point where the complainant told me  
9 the pond was located.

10 Q. Is that the point where you have indicated in red  
11 that the pools of manure were?

12 A. Yes. I believe the complainant told me it was  
13 roughly 1,000 feet or so from the bridge.

14 Q. Please describe how you conducted your inspection  
15 in that area?

16 A. I drove in my vehicle to the particular location.  
17 I stopped my vehicle. I got out of my vehicle. I looked  
18 on both sides of the road. I went down in the ditch.

19 Q. Which ditch is that?

20 A. Both.

21 Q. Okay. Both road ditches on the side of the county  
22 road?

23 A. Yes. I took two photographs or several  
24 photographs on this particular date. I did not walk out

1 into the field. I don't think it is necessary.

2 Q. Why not?

3 A. I have been around livestock waste my entire life,  
4 and I think I am qualified to indicate that that was  
5 livestock waste.

6 Q. You had already concluded it was liquid livestock  
7 waste?

8 A. Yes.

9 Q. In the course, then, of making that inspection on  
10 Kay Watkins School Road, did you form an opinion as to  
11 whether the liquid livestock waste posed a threat to a  
12 water of the State?

13 A. Yes.

14 MR. TICE: I want the record to reflect my objection,  
15 Mr. Knittle, to the question of asking him an opinion as  
16 to whether it posed a threat, livestock waste, as he just  
17 described that he saw, to the waters of the State without  
18 further foundation being laid as to where this livestock  
19 waste was going.

20 HEARING OFFICER KNITTLE: Okay. I will note the  
21 objection for the record. However, we will let him answer  
22 the question.

23 THE WITNESS: At this particular location the  
24 topography on the north side of the road slopes away from

1 the road toward -- in a northern direction. So any runoff  
2 of any liquid, including livestock waste, would drain in a  
3 northern direction at this particular location and  
4 threaten the waters of the State. The waters of the State  
5 also includes any groundwater, so that is located within  
6 the definition. And at this particular location the soils  
7 are fairly sandy.

8 Q. Why is that?

9 A. Why are they sandy?

10 Q. Yes. In your opinion, why are the soils sandy in  
11 that area?

12 A. Because we are in the bottom ground of the  
13 Sangamon River.

14 Q. All right. Thank you.

15 HEARING OFFICER KNITTLE: Ms. Peri, can I interject?

16 Let's go off the record for a second.

17 (Discussion off the record.)

18 HEARING OFFICER KNITTLE: Back on the record.

19 Q. (By Ms. Peri) Mr. Brockamp, did you make a report  
20 of your May 6, 1993 inspection?

21 A. Yes, I did.

22 Q. I am going to show what is marked as People's  
23 Exhibit Number 4. Counsel and Mr. Hearing Officer already  
24 have copies of that exhibit.



1     Would you please tell us if that is a fair and  
2 accurate photocopy of your inspection report from that  
3 date?

4     A. Yes, the photographs are in black and white, but  
5 the originals were in color.

6     Q. Thank you. I am now showing you what is premarked  
7 as People's Exhibit D. Mr. Brockamp, do these photographs  
8 fairly and accurately depict areas observed by you during  
9 your May 6th, 1993 inspection?

10    A. Yes, they do.

11    Q. On page one of this People's Exhibit D would you  
12 please describe what we see on the top photograph?

13    A. This photograph was looking in a southern  
14 direction. I am standing on the road, on Kay Watkins  
15 School Road. I am looking at the alfalfa field. In the  
16 center of the photograph is a pool of liquid livestock  
17 manure.

18    Q. And in the bottom photograph?

19    A. In the bottom photograph is just a trickle of  
20 manure discharging from tile pipe. This is into the -- it  
21 is discharging into the road ditch on the south side of  
22 the Kay Watkins School Road.

23    Q. Are you standing on the road while taking these  
24 photographs?

1 A. That is correct.

2 Q. Okay. How did you conclude in the bottom  
3 photograph that it was livestock waste manure that you  
4 were looking at?

5 A. The color of the liquids and the odor of the  
6 liquids.

7 Q. On page two of People's Exhibit D, would you  
8 indicate what is shown in the top photograph?

9 A. The top photograph is looking in a western  
10 direction. This photograph shows that there is not much  
11 of a road ditch at either side. The waste discharged into  
12 the ditch on the left-hand side of the photograph, and  
13 they eventually crossed over the road onto the right side  
14 of the photograph.

15 Q. Again, you are standing on the Kay Watkins School  
16 Road?

17 A. That is correct. At this time there was no waste  
18 directly on the center of the road.

19 Q. You had indicated that most of it had evaporated  
20 off?

21 A. Yes, and it had been a day or two since any waste  
22 had been discharged.

23 Q. All right. In the bottom photograph what are we  
24 looking at?

1 A. We are looking at the neighbor's field which is on  
2 the north side of the Kay Watkins School Road. And there  
3 are obviously some ruts or some tire marks from tillage  
4 equipment which have accumulated some livestock waste.

5 Q. And on page three of this exhibit?

6 A. Page three of the exhibit is a photo -- the top  
7 photo is a photo of the waterway at the bridge, previously  
8 marked with red Xs and B for blue -- for bridge, I guess.  
9 There are roughly a dozen medical waste bottles. There is  
10 a beer can and some other junk, a lot of trash.

11 Q. Is that on John Chalmers' property that we are  
12 looking at?

13 A. It is in the road ditch. I assume that would be  
14 public right-of-way, but it was very adjacent to John  
15 Chalmers' property. It was on the east side of the road,  
16 yes.

17 Q. And the bottom photograph?

18 A. The bottom photograph is a photo of what I later  
19 learned to be lagoon number three. This photo was  
20 taken -- I am not sure if it is still Kay Watkins School  
21 Road, but it is the north-south road that is indicated as  
22 400 East on that diagram there.

23 Q. All right. Thank you. You conducted a third  
24 inspection of the hog farm on June 15th, 1993?

1 A. Yes, I did.

2 Q. Okay. What did you observe during that

3 inspection?

4 A. I responded to a complaint that odors were very

5 powerful from the John Chalmers Hog Farm. The complainant

6 also said that there was manure being irrigated too much

7 on to the ground and being discharged away from the

8 property. When I investigated the complaint, I drove

9 along the roadway first.

10 Q. Which roadway is that?

11 A. I think on this particular date I -- may I

12 approach?

13 Q. Yes.

14 (The witness approached the exhibit.)

15 A. I came this direction here, past Mr. Chalmers'

16 residence and went around this loop here (indicating).

17 MS. PERI: Let the record show that Mr. Brockamp has

18 approached People's Exhibit A, and indicate that he drove

19 north on 400 East and turned right on to Kay Watkins

20 School Road.

21 Q. (By Ms. Peri) And what did you find when you

22 traveled along Kay Watkins School Road?

23 A. At this location I observed three or four

24 irrigation risers (indicating).

1 Q. Mr. Brockamp is pointing to what is marked as the  
2 manure application area on the site map of People's  
3 Exhibit A.

4 A. The irrigation risers were operating at the time  
5 of my inspection. They were shooting a black liquid into  
6 the air. The liquids were spraying onto the ground. And  
7 at this particular location there was a culvert which goes  
8 underneath the roadway.

9 Q. What do you mean by a culvert?

10 A. A culvert is -- in this particular case it was a  
11 corrugated metal pipe, approximately eight inches in  
12 diameter. It carries liquids from one side of the road to  
13 the other side without going on top of it.

14 Q. Okay.

15 A. The wastes were -- liquid livestock manure was  
16 flowing through little gullies on this property and  
17 entering the culvert on the south side of the road and  
18 discharging the culvert on the north side of the road. At  
19 this point they entered the neighbor's grass waterway and  
20 headed in a northern direction.

21 Q. All right. Did you walk along both sides of the  
22 road at the point where you observed flow beneath the  
23 road?

24 A. Yes, I did.

1 Q. Okay. And in looking south from the road -- and  
2 before we move on, I am going to ask you to indicate with  
3 this blue marker where you were observing the irrigation  
4 risers and flow on that date. If you would indicate with  
5 the letter C the general area that you made your  
6 observations?

7 A. (Witness complied.) I guess that was my prime  
8 spot, but I certainly drove up and down all along here to  
9 find out if there was anymore discharge points.

10 Q. Mr. Brockamp has so marked People's Exhibit A with  
11 the letter C and arrows pointing in opposing directions as  
12 the area that he investigated.

13 All right. Please walk us through your inspection.

14 A. At this point, but not at the farm?

15 Q. Correct.

16 A. At this location I -- well, when we pulled up, and  
17 I had a Governor's environmental course student with me at  
18 the time. When we pulled up, we observed a -- I assume he  
19 was an employee. We observed a gentleman on a  
20 four-wheeler down here near the road watching the liquid  
21 waste go underneath the road through the culvert. As we  
22 approached the road and got closer the gentleman road his  
23 four-wheeler to the top of the hill.

24 Q. In a southerly direction?

1 A. In a southerly direction at the top of the hill  
2 and parked his vehicle and watched us as we were  
3 conducting our inspection.

4 Q. Who were you with?

5 A. It was a student intern named Matt Conner.

6 Q. Okay.

7 A. At this location I took several photographs and I  
8 also collected a water sample from the north side of Kay  
9 Watkins School Road as the waste was exiting the  
10 corrugated pipe culvert.

11 Q. In looking from the Kay Watkins School Road from  
12 the area you marked C, south towards what is marked as the  
13 manure application area, will you describe, based on your  
14 inspections of the property and your conversations, if  
15 any, with Mr. Chalmers about the site what the purpose of  
16 that manure application is?

17 A. It is a manure application area. This is -- all  
18 livestock farmers have to apply manure which accumulates  
19 within their waste storage structures. He was utilizing  
20 an underground irrigation system to apply the manure to  
21 this pasture type area. It was vegetated at the time.  
22 There was not a great deal of vegetation, but it was  
23 vegetated. It was not a barren feedlot or anything like  
24 that. It was very rolling ground and it had a five to ten

1 percent slope.

2 Q. In which direction did the slope move?

3 A. The general direction was in a northern direction.

4 I mean, there is hills and bumps everywhere. They are

5 small. They are not large. But it is not one big gradual

6 slope towards the north. There is lots of little hills.

7 But eventually everything does drain in a northern

8 direction. Each of his risers could irrigate in a

9 circular pattern, and we later learned that roughly an

10 acre in size is how much each irrigation nozzle covered at

11 one time. So if there were three or four nozzles going at

12 this point he was probably irrigating on to three or four

13 acres at that point.

14 Q. You indicated that you saw certain irrigation

15 risers pumping out liquid during your inspection?

16 A. Yes.

17 Q. Where were those located?

18 A. Just in this general area. (The witness marking on

19 the map with blue dots.) They were at least 100, 150 feet

20 off the road. I can't remember exactly where they were.

21 Q. How much further north toward the road are

22 irrigation risers located, based on your inspection?

23 MR. TICE: I am going to object, Mr. Knittle. The

24 witness has been asked where the risers were. He has



1 already testified that they are 100 to 150 feet off the  
2 road. Now he is being asked how much closer are they. He  
3 has already testified that he doesn't know for certain.

4 MS. PERI: Actually, my last question was limited to  
5 on the date of this inspection where he observed  
6 irrigation risers actually pumping out liquid. I am now  
7 asking the question of how close to the road irrigation  
8 risers were actually located, not necessarily functioning  
9 on the day of the inspection.

10 HEARING OFFICER KNITTLE: I think that's a different  
11 question. Do you have an objection to that, Mr. Tice?

12 MR. TICE: No, if she is referring to other risers  
13 that may have not been operating.

14 HEARING OFFICER KNITTLE: Do you understand the  
15 question, sir?

16 THE WITNESS: I --

17 MS. PERI: I will rephrase.

18 HEARING OFFICER KNITTLE: Yes, Ms. Peri, why don't  
19 you rephrase.

20 Q. (By Ms. Peri) Are there additional irrigation  
21 risers that are located closer to the Kay Watkins School  
22 Road than you have already indicated with the blue dots?

23 A. I did not observe any on this date. I have  
24 observed some closer over in this area, which caused this

1 problem a month earlier. But he has got 60 some risers  
2 throughout all his property. I did not know that at this  
3 time, but he has got quite a few risers, and you can't see  
4 them from the road.

5 Q. How did you later learn that there were 60  
6 some-odd risers on the property?

7 A. Mr. Chalmers showed me the majority of them.

8 Q. Looking then from point C, where you were standing  
9 on the road and in a northerly direction, please describe  
10 what you saw?

11 A. The waste entered a grass waterway. The grass  
12 waterway was on the neighbor's property. The waterway was  
13 20, 25 feet wide. And it flowed -- it kind of curved, but  
14 it flowed in a general northern direction.

15 Q. When you say liquid what do you mean?

16 A. I mean thick black liquid that had a livestock  
17 odor to it.

18 Q. Did you make an opinion at the time as to whether  
19 that was liquid livestock waste?

20 A. Yes.

21 Q. What did you base your opinion on?

22 A. My previous experience both with the Agency and my  
23 home life growing up.

24 Q. In this particular case, what did you base your

1 opinion on?

2 A. My opinion was -- that this waste was from -- this  
3 was a black liquid waste which indicated that it had been  
4 treated somewhat. It was not raw like on my previous  
5 inspections. This had some treatment involved.

6 Q. Okay. You indicated that the liquid livestock  
7 waste was -- had pooled in an area north of the road in a  
8 grassy waterway. Please describe further what you mean by  
9 grassy waterway?

10 A. This inspection occurred in June and the grass had  
11 already grown, you know, two feet tall at that point. The  
12 grass on the waterway had not been mowed. I could only  
13 observe the waste, you know, 20 feet off the road. At  
14 that point it became diffused within the grass and I could  
15 no longer see it.

16 Q. Based on your experience, Mr. Brockamp, did you  
17 make any conclusions or opinions as to how liquid,  
18 including liquid livestock waste, would move through that  
19 grassy waterway?

20 MR. TICE: I am going to object. He has already  
21 described how the liquid moves through the waterway. He  
22 testified that he went approximately 20 feet and it  
23 diffused in the grass and he couldn't tell where it went  
24 after that. Now, he cannot form any opinion beyond that.

1 HEARING OFFICER KNITTLE: Ms. Peri?

2 MS. PERI: My response is simply that Mr. Brockamp,  
3 again, has many years of experience in making conclusions  
4 and opinions about where liquid may potentially flow and  
5 potentially impact waters of the State. I believe he  
6 should have an opportunity to provide an opinion, if he  
7 has one, which he has not actually said if he has one, as  
8 to where liquid might flow in this grassy waterway.

9 MR. TICE: Well, if the facts stated by this witness  
10 are correct, Mr. Knittle, that he observed the liquid flow  
11 approximately 20 feet in the waterway, because of  
12 vegetation and the thickness of it diffused, where he  
13 could not observe it anymore, then it would be impossible  
14 for him to form any other conclusion about where it would  
15 have flowed from that point. I understand that to be her  
16 question.

17 HEARING OFFICER KNITTLE: I am going to overrule the  
18 objection. If you know or have some other way of telling  
19 us what you think the flow is aside from direct visual  
20 observation, I will let you answer that question.

21 THE WITNESS: I am confident that water flows  
22 downhill, and the topography in this area slopes toward  
23 the north, therefore --

24 Q. (By Ms. Peri) From the road?

1 A. From Kay Watkins School Road it flows in a  
2 northern direction, and that's -- I mean, you build  
3 waterways that go downhill. It was entering the waterway  
4 and flowing downhill.

5 Q. Manure was already in the waterway on the north  
6 side of the road?

7 A. That's correct.

8 Q. And it was in the grassy waterway, as you have  
9 described it?

10 A. That's correct.

11 Q. Is the grassy waterway, in your opinion, a water  
12 of the State?

13 A. Yes.

14 Q. Why?

15 A. Because there are certain times in the year when  
16 it collects runoff, and any accumulation of water which  
17 flows through or lies within the State of Illinois is  
18 defined as waters of the State.

19 HEARING OFFICER KNITTLE: Okay. Let's take a fifteen  
20 minute recess. Well, actually, a twelve minute recess,  
21 and we will report back at 11:15.

22 (Whereupon a short recess was taken.)

23 HEARING OFFICER KNITTLE: Back on the record after a  
24 short recess.

1 Ms. Peri, you may proceed.

2 Q. (By Ms. Peri) Mr. Brockamp, we were discussing  
3 your observations on June 15th of 1993 in the area marked  
4 C on People's Exhibit A where you were standing on Kay  
5 Watkins School Road.

6 You indicated previously that you observed liquid  
7 livestock waste on the north side of the road in a grassy  
8 waterway; is that correct?

9 A. That is correct.

10 Q. Did you form an opinion at that time as to the  
11 rate of flow beneath the road through the culvert to the  
12 north side of that road?

13 MR. TICE: I am going to object to an opinion by this  
14 witness as to rate of flows without a proper foundation,  
15 either from an engineering standpoint or by some means of  
16 measurement or investigation.

17 HEARING OFFICER KNITTLE: Ms. Peri?

18 MS. PERI: I will ask some additional questions.

19 Q. (By Ms. Peri) Mr. Brockamp, as part of your duties  
20 with the Illinois EPA and course of conducting inspections  
21 pursuant to water pollution complaints, did you typically  
22 observe liquid flow?

23 A. Yes.

24 Q. Would you typically make estimates as to rate of

1 liquid flow?

2 A. I would make estimates in every instance where a  
3 flow was observed.

4 Q. What did you base those estimates upon?

5 A. My experience and my education.

6 Q. And in this particular case and on June 15th of  
7 1993, did you observe a flow on the north side of the  
8 property, area C?

9 MR. TICE: Objection. He said that he based it upon  
10 his education and as well as his experience. There has  
11 been no testimony with regard to his education having to  
12 do with hydraulics or rate of flows.

13 HEARING OFFICER KNITTLE: Ms. Peri?

14 MS. PERI: I believe that Mr. Brockamp's agricultural  
15 engineering degree speaks for itself. I believe it is  
16 logical that as part of the program, although we can ask  
17 additional questions, that he would be trained in  
18 observing rate of flow and making those types of  
19 conclusions.

20 HEARING OFFICER KNITTLE: I am going to overrule the  
21 objection. However, it might be a good idea for the  
22 Board's sake to have some additional background on his  
23 experience and education.

24 MS. PERI: Sure.

1 Q. (By Ms. Peri) Would you please elaborate, Mr.  
2 Brockamp, on your experience and your education in the  
3 area of making determinations about rate of flow?

4 A. Yes. I am a Registered Professional Engineer in  
5 the State of Illinois. I attended the University of  
6 Illinois in Champaign. While in school I took numerous  
7 fluid dynamics and hydraulics courses. Part of that  
8 curriculum was to determine flow rates in order to design  
9 piping systems or irrigation systems or drainage systems.  
10 The obvious first question that you have to answer is what  
11 is your flow rate. And so it is a very common or very  
12 basic fundamental in the agricultural engineering  
13 curriculum.

14 Q. And did you apply the skills and education that  
15 you obtained through that curriculum during your  
16 inspection on June 15th, 1993?

17 A. Yes, I did.

18 Q. And when you made an assessment of rate of flow in  
19 area C of manure beneath Kay Watkins School Road, what was  
20 your opinion as to rate of flow?

21 A. I don't recall exactly without looking at the  
22 memo, but I know it is in the report.

23 Q. By looking at your -- did you indicate that you  
24 made a report of your inspection of June 15th of 1993?



1 A. Yes, I did.

2 Q. By looking at your report of that date your memory

3 would be refreshed as to the rate of flow?

4 A. Yes, it would.

5 Q. Let the record show I am producing for Mr.

6 Brockamp People's Exhibit Number 6, already made available

7 to Counsel and Mr. Hearing Officer.

8 A. (The witness reviewing document.) On page two of

9 the top paragraph, I estimated the flow to be

10 approximately 40 to 50 gallons per minute.

11 Q. Thank you. In observing liquid livestock waste in

12 the grassy waterway north of the county road, did you form

13 an opinion as to where that grassy waterway led, if

14 anywhere, beyond your field of vision?

15 MR. TICE: I am going to object.

16 HEARING OFFICER KNITTLE: Yes, sir.

17 MR. TICE: If he did not make an inspection -- well,

18 first, there has not been a proper foundation laid for

19 this witness to testify as to where this grassy waterway

20 went. And the phrasing of the question was beyond your

21 vision. Now, if you couldn't see it, you couldn't tell

22 where it went. So to ask him to render an opinion on

23 where it went I think without any further foundation as to

24 how he investigated or what the basis is for forming such

1 an opinion or what facts he relies upon to form such an  
2 opinion is improper.

3 MS. PERI: I believe we have already been down this  
4 road a bit before. Mr. Brockamp previously testified that  
5 material moves downhill, and in this case he observed  
6 manure in the grassy waterway moving away from the road.  
7 He made a visual inspection, and I believe if he made any  
8 conclusions about where it flowed beyond that he would  
9 have the expertise based upon his personal observation and  
10 experience to do that.

11 MR. TICE: But the witness also has testified, Mr.  
12 Knittle, that the liquid diffused in the grass  
13 approximately 20 feet north of the road and he could not  
14 tell where it went. That was his testimony. If he cannot  
15 tell where it goes, he cannot form an opinion as to where  
16 it goes beyond his vision, and that was the question.

17 HEARING OFFICER KNITTLE: All right. Ms. Peri,  
18 anything further?

19 MS. PERI: Nothing further.

20 HEARING OFFICER KNITTLE: I am going to overrule the  
21 objection. I think Mr. Brockamp is qualified. I think we  
22 ruled on this before, but other than direct visual  
23 observation if he has an opinion based on his background  
24 and education as to where that might go, I will let him

1 state that.

2 THE WITNESS: I previously stated that I received a  
3 complaint for this -- that this is the reason why I was  
4 there. And on my complaint form I always attach a copy of  
5 a topography map. So in my possession on this date I had  
6 a topography map with me at the time that I made the  
7 inspection. And the topography map indicated that there  
8 was a waterway that went north of there and it drained to  
9 the -- you know, after it hit another ditch then it  
10 drained to the west.

11 Q. (By Ms. Peri) Mr. Brockamp, I am going to refer  
12 you back to what has been premarked as People's Exhibit B,  
13 and ask you is this, again, a fair and accurate  
14 representation of the topography map that you examined on  
15 that date?

16 A. Yes, it is.

17 Q. Okay.

18 A. I didn't have that large of a map, but it was a  
19 segment of that.

20 Q. Certainly. Would you please approach this  
21 exhibit.

22 (The witness approached the exhibit.)

23 Q. (By Ms. Peri) I am going to ask that you indicate  
24 with this green highlighter pen the area C and the

1 direction of flow that you concluded the liquid livestock  
2 waste manure would move?

3 MR. TICE: I want the record to reflect my objection  
4 to the witness marking on Exhibit B the direction of flow  
5 of the liquid when there is no foundation made as to his  
6 personal investigation as to the direction of the waterway  
7 in question. It does not have anything to do with  
8 topography. It has to do with the direction in which the  
9 waterway itself went and whether it even terminated and  
10 where it terminated. There is absolutely no testimony in  
11 the record as to that.

12 HEARING OFFICER KNITTLE: Ms. Peri?

13 MS. PERI: Mr. Brockamp has already testified that he  
14 observed flow, and he can, at a minimum, indicate that for  
15 us through my question.

16 HEARING OFFICER KNITTLE: I will note your objection  
17 for the record, Mr. Tice, but I am going to allow Mr.  
18 Brockamp to proceed.

19 MR. TICE: Is the question then limited to the  
20 direction of flow and that is it?

21 HEARING OFFICER KNITTLE: I have not limited the  
22 question at all, but at this point I would like her to  
23 restate it.

24 Ms. Peri, would you --

1 MS. PERI: Certainly.

2 Q. (By Ms. Peri) Mr. Brockamp, would you please  
3 indicate with the green highlighter pen the direction of  
4 flow that you observed at what is already marked as area C  
5 on the previous exhibit?

6 A. (Witness complied.) I observed it right there.

7 Q. And with that green spot you have indicated, is  
8 that the area of the grassy waterway?

9 A. Yes. The grassy waterway runs this way. (The  
10 witness marking on the map.)

11 Q. Mr. Brockamp, how do you conclude that the grassy  
12 waterway, without having walked the waterway, winds in the  
13 direction that you have indicated in green?

14 A. I visually saw it from the road.

15 Q. You visually saw that the grassy waterway runs  
16 north from the county road, bends to the left, and then  
17 moves south to the northwest corner of John Chalmers'  
18 property?

19 A. I cannot say past this point here (indicating). I  
20 could see it down to this point (indicating). And then I  
21 have to go to the topography maps from there on.

22 HEARING OFFICER KNITTLE: Would you note where you  
23 can see it too, and also note with arrows the direction  
24 that you are saying that the flow goes, please.

1 THE WITNESS: With this pen?

2 HEARING OFFICER KNITTLE: Yes, that's fine. I just

3 want the Board to be able to look at this when you are

4 done and have some sort of idea of what we are talking

5 about

6 (Witness complied.)

7 MS. GLATZ: It says limited vision?

8 THE WITNESS: No, visual observation.

9 MS. PERI: Let the record show that Mr. Brockamp has

10 indicated in green two arrows moving in a northerly

11 direction from the county road indicating that the liquid

12 livestock waste moves in a northerly direction from the

13 county road along the grassy waterway.

14 Q. (By Ms. Peri) Mr. Brockamp, what is the basis for

15 your conclusion that the grassy waterway continues beyond

16 that area that you have indicated, and you have indicated

17 visual --

18 A. Observation.

19 Q. Observation?

20 A. The topography map.

21 Q. Please expand on that?

22 A. The topography maps show -- well, these are

23 contour lines, and these are at five foot intervals. And

24 they indicate the high ground versus low ground. In this

1 particular case these dotted lines, that this is a

2 waterway and --

3 Q. Do dotted lines on a map such as this typically

4 indicate a waterway?

5 A. Well, there are different dotted lines. These are

6 the -- like, these type of dotted lines may not --

7 MR. TICE: Mr. Knittle, I am going to object. There

8 is no legend on this map. I am not sure. There was the

9 original map that was here at one point in time, which

10 this is a -- Exhibit B is a photocopy of. There is no

11 legend on here that indicates that dotted lines are, in

12 fact, waterways, as this witness is testifying to or

13 attempting to testify to. And, again, there is no

14 foundation that this witness knows of his own personal

15 knowledge that -- what these particular marks are, other

16 than elevation levels where they are marked already,

17 indicate waterways.

18 HEARING OFFICER KNITTLE: Again, I will note this for

19 the record. I have taken official notice of the

20 enlargement of this topographical map, which was shown to

21 me before the hearing started. I think we have the

22 original of the topographical map that this is an

23 enlargement of, if you want to take a look at this, Mr.

24 Tice.

1 Ms. Peri, are you intending on submitting that  
2 original topographical map as well?

3 MS. PERI: I had not.

4 HEARING OFFICER KNITTLE: Would that be an option, do  
5 you think?

6 MS. PERI: I could certainly do that.

7 MR. TICE: I think the record should reflect, though,  
8 that the legend of this original map does not indicate  
9 waterways. And that's what I understand the witness'  
10 testimony to be and the basis for his testimony that the  
11 dotted line is a waterway on Exhibit B.

12 HEARING OFFICER KNITTLE: Okay.

13 MR. TICE: And that's the point of my objection.

14 HEARING OFFICER KNITTLE: Okay. Ms. Peri?

15 MS. PERI: I believe that Mr. Brockamp has shown that  
16 his experience backs up his conclusions as to how to read  
17 a topo map. This is something he did for ten years as  
18 part of his inspections of properties all across the  
19 State.

20 HEARING OFFICER KNITTLE: Okay. I will overrule that  
21 objection, and I will allow Mr. Brockamp to testify.

22 However, I would like the original topographical map  
23 submitted especially in light of the fact that we have  
24 taken official notice of the enlargement.



1 MS. PERI: Certainly.

2 HEARING OFFICER KNITTLE: We can do that later when  
3 you offer the rest of your exhibits.

4 MS. PERI: All right. Thank you.

5 Q. (By Ms. Peri) Would you please, then, expand  
6 further, Mr. Brockamp, on how you read the topo map to  
7 draw the conclusions about the grassy waterway flow?

8 A. I observed the waterway leading towards -- well,  
9 leading downhill. On the topography map there is a line  
10 that shows the waterways continue in this particular  
11 direction (indicating).

12 Q. And that is from the point of your limited visual  
13 slightly northwest and then in a southwesterly direction  
14 to the northwest corner of Mr. Chalmers' property?

15 A. No. I need to make a correction. I just looked  
16 at this a little closer. What happens here is it hits  
17 that stream there. It does not go back to this bridge  
18 here. But it does continue in this dotted line, and it  
19 meets up with the same stream, but at a much later time.  
20 I need to make that correction.

21 Q. Okay. Please explain why it moves more  
22 northwesterly?

23 A. This is not correct. It goes to a point here and  
24 then it continues on to this drainage ditch right here

1 (indicating).

2 Q. And you have indicated the drainage ditch to be an  
3 area in section five that moves southwesterly; is that  
4 correct?

5 A. Yes, it drains this way (indicating).

6 Q. Would you, Mr. Brockamp, indicate in orange the  
7 drainage ditch that you are referring to?

8 MS. GLATZ: How about red.

9 (The witness marked the map with a red marker.)

10 Q. (By Ms. Peri) Based on your visual of this,  
11 People's Exhibit B and the topo of that area, where does  
12 the drainage ditch lead?

13 A. This drainage ditch?

14 Q. Yes.

15 A. It goes this way (indicating).

16 Q. You are indicating that it moves in a westerly  
17 direction?

18 A. Yes.

19 Q. Does it continue uninterrupted?

20 A. Yes. I mean -- yes. I mean, there is other  
21 ditches which join or merge with the same waterway, but it  
22 continues uninterrupted. And here at the highway, at  
23 Highway 97, the topography map shows it going this way,  
24 although I can't swear that IDOT had not changed the

1 direction of the flow.

2 HEARING OFFICER KNITTLE: I want the record to  
3 reflect that you marked the drainage ditch in a red marker  
4 and not an orange marker. I think you originally said  
5 orange. Just so that everyone is clear.

6 All right. You can proceed, Ms. Peri.

7 Q. (By Ms. Peri) Okay. So the drainage ditch -- I am  
8 sorry -- to recap, moves in a westerly direction and then  
9 goes to Highway 97. Then where does it go?

10 MR. TICE: I am going to object. The witness has  
11 already testified he cannot swear as to where it goes when  
12 it reaches Route 97.

13 HEARING OFFICER KNITTLE: Sustained.

14 Q. (By Ms. Peri) Do you have an opinion, Mr.  
15 Brockamp, as to whether that drainage ditch eventually  
16 reaches the Sangamon River?

17 MR. TICE: Objection on the same basis. He cannot  
18 swear as to where that drainage ditch goes because he has  
19 not been out there and observed. He does not know what  
20 IDOT did with respect to Route 97 and the altering of the  
21 flow. The topographical map will not show it and you  
22 cannot tell it from the map.

23 HEARING OFFICER KNITTLE: Ms. Peri?

24 MS. PERI: I am asking for his opinion based on his

1 experience.

2 MR. TICE: But opinions are based upon facts and  
3 investigation, Mr. Knittle. This witness has testified  
4 under oath that he cannot swear as to the facts upon which  
5 to base such an opinion.

6 HEARING OFFICER KNITTLE: Well, I agree with you, Mr.  
7 Tice. However, if he knows whether or not it reaches the  
8 Sangamon River that's a different question as to whether  
9 he knows the direction and what happens when it hits Route  
10 97.

11 So if you know the answer to that, I am going to  
12 allow you to testify. I will overrule the objection.

13 THE WITNESS: The water enters the Sangamon River. I  
14 just don't know in which direction it gets there. The  
15 entire northern part of Menard County, which includes this  
16 whole general area, discharges into the Sangamon River.

17 Q. (By Ms. Peri) And why is that?

18 MR. TICE: Objection. I want my objection in the  
19 record as to this witness' testimony as to the opinion as  
20 to the entire part of the north part of Menard County  
21 drains into the Sangamon River. This witness is not  
22 qualified to give such an opinion. There is not  
23 sufficient foundation as to his expertise to do that.

24 We don't have somebody here testifying about the

1 topography of the entire area of Menard County or who has  
2 made an investigation with respect to the topography of  
3 the entire northern part of Menard County. He is just  
4 guessing.

5 MS. PERI: Mr. Hearing --

6 MR. TICE: He is speculating and guessing at this  
7 point in time that the water he is talking about from this  
8 drainage ditch as a result of this investigation, in fact,  
9 flowed into the Sangamon River. It is pure speculation  
10 how he has gotten to Route 97.

11 HEARING OFFICER KNITTLE: Ms. Peri?

12 MS. PERI: That argument can be made as to weight,  
13 but Mr. Brockamp has already been qualified to read a topo  
14 map and make opinions as to where liquids or water may  
15 flow on a property based on his examination of the topo  
16 map and with regard to this topo map he is qualified to do  
17 the same.

18 MR. TICE: But he is testifying -- and I don't want  
19 to belabor the point. This is my final objection to it,  
20 but it is patently bad evidence because he has testified  
21 that he does not know how the topo map that he is looking  
22 at and that he is reading from and that he is forming his  
23 opinions from and only from that, because he made no  
24 personal investigation at all, was changed by the

1 construction of or use of Route 97, which is a man-made  
2 structure that has changed, and he knows it, and he has  
3 testified so, changed the drainage patterns.

4 HEARING OFFICER KNITTLE: I will note your objection  
5 for the record.

6 Mr. Tice and Ms. Peri, I want you both to know, and I  
7 usually go over this at the beginning of any hearing, that  
8 any evidentiary decision that I reach at this hearing is  
9 appealable to the Pollution Control Board in your post  
10 hearing briefs or via a motion after the hearing.

11 But I will overrule the objection and let Mr.  
12 Brockamp answer to the best of his ability.

13 THE WITNESS: Okay. What was the question?

14 HEARING OFFICER KNITTLE: Do you need it read back,  
15 or Ms. Peri, do you remember it?

16 MS. PERI: No.

17 Q. (By Ms. Peri) The question pertains to your  
18 comment, Mr. Brockamp, that all of northern Menard County  
19 drains into the Sangamon River and I asked you to explain  
20 why?

21 A. I may be in error in saying all of northern Menard  
22 County drains into the Sangamon River, but this particular  
23 watershed drains into the Sangamon River.

24 Q. I am sorry. Which watershed?

1 A. Actually, it is indicated here (indicating). I  
2 think here it is called Tarr (spelled phonetically) Creek,  
3 but this discharges into Tarr Creek.

4 Q. That is the extension of the drainage ditch marked  
5 in red?

6 A. This is a different branch, right here  
7 (indicating). The one that we are talking about right  
8 here, discharges at this location (indicating).

9 Q. And that is the red dash line that becomes just a  
10 black line moving west across the topo map?

11 A. That's correct.

12 Q. And that is in the watershed that you referred to  
13 that would drain into the Sangamon River?

14 A. Yes.

15 Q. Okay. Thank you. I am going to show you what is  
16 marked as People Exhibit 6, Mr. Brockamp. Did you, in  
17 fact, recognize this to be a true and accurate copy of  
18 your inspection report as of that date?

19 A. Yes, it is.

20 Q. Thank you. Did you make any other observations at  
21 the property on that date?

22 A. Before visiting the farmstead I also drove to the  
23 bridge, and I observed a few medical waste bottles in the  
24 waterway there.

1 Q. Did you have any conversations with the  
2 respondent, John Chalmers, during that inspection?

3 A. Yes, I did.

4 Q. And what was the nature of your conversation?

5 MR. TICE: I am going to object to conversations as  
6 being hearsay.

7 MS. PERI: Party opponent.

8 MR. TICE: Yes, but only in the event that what they  
9 are proposing are admissions and not just general  
10 conversation. Not every conversation with party opponent  
11 is admissable under the hearsay rule.

12 HEARING OFFICER KNITTLE: Ms. Peri, do you have  
13 something?

14 MS. PERI: I do.

15 HEARING OFFICER KNITTLE: Okay.

16 Q. (By Ms. Peri) Mr. Brockamp, you have acknowledged  
17 that this People's Exhibit Number 6 is your inspection  
18 report?

19 A. Yes.

20 Q. From June 15th, 1993, and you have already  
21 indicated that you spoke with Mr. Chalmers on that date?

22 A. Yes.

23 Q. Okay. And in your report you indicate the  
24 following --



1 MR. TICE: I am going to object to reading from his  
2 report. That is not proper questioning. Mr. Knittle, if  
3 she has some attempted exception to the hearsay rule it  
4 should be brought out in the form of question and answer  
5 of the witness.

6 HEARING OFFICER KNITTLE: Ms. Peri, do you have a  
7 response?

8 MS. PERI: I will rephrase my question.

9 Q. (By Ms. Peri) Mr. Brockamp, did Mr. Chalmers make  
10 specific comments to you on that date about his management  
11 of liquid livestock waste?

12 A. Yes.

13 Q. Did he make comments to you regarding --

14 MR. TICE: I am going to object to the leading form  
15 of the question. She can ask the witness what the  
16 comments were, but not suggest the answer to him.

17 HEARING OFFICER KNITTLE: I will sustain it.  
18 However, Ms. Peri is going to have to be able to ask a  
19 question of Mr. Brockamp that allows me to know whether or  
20 not these were party admissions or not at some point.

21 So please proceed, Ms. Peri.

22 MS. PERI: Thank you.

23 Q. (By Ms. Peri) Do you recall the comment made by  
24 Mr. Chalmers to you regarding how liquid livestock waste

1 on his property was handled?

2 A. Certain portions of it, yes.

3 Q. Okay. Please describe those comments?

4 A. He indicated that it was difficult managing the  
5 waste from 13,000 hogs and so what if a couple thousand  
6 gallons got away from him. He also indicated that this is  
7 the way things have been done around there for 30 years  
8 and there is no point in changing now.

9 Q. I am now showing you what has been premarked as  
10 People's Exhibit E. Do you recognize this exhibit to be a  
11 fair and accurate representation of photographs taken by  
12 you on June 15th, 1993, during your inspection?

13 A. Yes, it does.

14 Q. Okay. On page one of this exhibit, would you  
15 please describe what we are looking at in the top  
16 photograph?

17 A. In the top photograph at the very, very bottom of  
18 the photograph you can just barely see the corrugated  
19 metal pipe. Leading into that pipe is a stream of black  
20 liquid hog manure, previously estimated at 40 to 50  
21 gallons per minute.

22 Q. So the material is moving in a --

23 A. Toward you.

24 Q. -- northerly direction but toward the bottom of

1 the page, correct?

2 A. Yes, moving toward my position when I took this  
3 photograph.

4 Q. Okay.

5 A. And in the top portion of the photo, you can see  
6 one of the risers irrigating and, apparently, it is more  
7 than 150 feet away from the road. You can see an  
8 irrigation riser spraying black liquid hog manure on to  
9 one of the hill sides.

10 Q. On page two of this exhibit, Mr. Brockamp, what  
11 are we looking at in the top photograph?

12 A. On page two I am standing near the fence, and I  
13 see black liquid hog manure draining into the culvert.

14 Q. And on the bottom photograph?

15 A. On the bottom photograph, this is still looking  
16 towards Mr. Chalmers' property. You can see at least two  
17 grain legs in the background where his bins and hog  
18 buildings are located. At the very upper left corner of  
19 the photo is another irrigation riser spraying liquid  
20 manure on to the ground. And as you can see, the stream  
21 of black liquid waste kind of meanders through the  
22 vegetative pasture.

23 Q. Okay. Thank you. In your opinion, Mr. Brockamp,  
24 is spray irrigation the only method of manure land

1 application?

2 A. No.

3 Q. What are some other methods?

4 A. There is direct injection with a Honey wagon.

5 There is -- you can pipeline it to a Honey wagon and

6 inject it directly, you know, from a waste storage pond or

7 a lagoon. Those are basically the only approved methods.

8 Q. Okay. You indicated that on this particular

9 inspection date, June 15, 1993, you took at least one

10 sample --

11 A. That's correct.

12 Q. -- of manure? Where did you take that sample

13 from?

14 A. I took the sample from the north side of the Kay

15 Watkins School Road ditch.

16 Q. In the area C?

17 A. Right at C, yes.

18 Q. On which side of the road?

19 A. On the north side of the road, on the upper side.

20 Q. You have already testified that you routinely take

21 samples when you conduct inspections?

22 A. Yes.

23 Q. Okay. And would you take us through the manner of

24 your sample collection?

1 A. At the time?  
2 Q. In a typical case?  
3 A. Okay. What I do is I collect my two sample  
4 bottles. One is a half gallon container with no  
5 preservatives. The other is a little six ounce container  
6 with a preservative. I position my sample bottle in the  
7 stream, the wastestream, and I collect -- I try to get it  
8 at least half full. I take that bottle and fill up the  
9 smaller container with the preservative carefully, to note  
10 not to overflow it to, you know, overflow any of the  
11 preservative within the bottle. And then I cap that, the  
12 small bottle, immediately. I then return to the  
13 wastestream and fill up the bottle as much as I possibly  
14 can.

15 Q. And then what do you do with the sample bottles?

16 A. I mark them accordingly, indicating the date and  
17 the location and the facility, that type of thing. After  
18 that -- I mean, do you want me to go on as far as going  
19 back to the office and that?

20 Q. Please.

21 A. If I don't have ice coolers with me or ice packs  
22 with me I stop at a local convenient store and purchase a  
23 bag of ice, if need be. That is in order to keep the  
24 samples cool. Once I get back to the office, I transfer

1 personally the sample bottles from my sample cooler that I  
2 had with me in the field into another ice cooler that has  
3 padlocks on it.

4 At that time I will pack that ice cooler with ice  
5 packs that we have in the freezers at the office to ensure  
6 that it is adequately cooled. The containers or the  
7 coolers, really the padlocked coolers are then shipped via  
8 UPS to the Champaign laboratory of the Illinois EPA, where  
9 they are opened up the next day and analyzed.

10 Q. Who receives the analytical results from those  
11 samples when you have collected the samples?

12 A. Once they come back from the laboratory?

13 Q. Yes.

14 A. They go directly to my attention. I put my name  
15 at the bottom of the sample sheet, so they come to my  
16 attention.

17 Q. And do you typically review those samples on their  
18 arrival?

19 A. Yes.

20 Q. I am referring to the results of those samples?

21 A. Sure.

22 Q. When you collected, was it one water quality  
23 sample at John Chalmers farm?

24 A. On this particular date, yes, one sample.

1 Q. When you collected that sample, did you follow the  
2 procedures that you just indicated to us?

3 A. Yes, I did.

4 Q. Are those standard Illinois EPA sample collection  
5 procedures?

6 A. Yes, they are, as far as water is concerned. I  
7 mean, our Division of Land might have some different  
8 procedures.

9 Q. And you were trained to collect samples through  
10 the Illinois EPA?

11 A. Through Water, yes.

12 Q. I am going to show you what is marked as People's  
13 Exhibit F. Pardon the grain on the first page. Do you  
14 recognize this to be a true and accurate photocopy of the  
15 lab results that you received from your samples collected  
16 on that date?

17 A. It appears to be, yes.

18 Q. Okay. Did you review these sample results when  
19 they came back from the lab?

20 A. Yes, I did.

21 Q. And did you form any opinions as to whether these  
22 sample results either confirmed or denied the presence of  
23 livestock waste manure in the samples you collected?

24 MR. TICE: I am going to object. The foundation has

1 not been laid for the introduction of these tests of these  
2 samples. This witness did not do the testing. It was not  
3 done under his supervision or direction, and so to allow  
4 him to form an opinion -- he has already testified as to  
5 his own opinion made at the scene, but to allow him to  
6 testify as to an opinion as to the facts of these results  
7 of these water tests, it is improper because they are not  
8 of evidence.

9 MS. PERI: I disagree. Obviously, these are business  
10 records. We have developed a routine established by the  
11 submission of sample results to the Illinois EPA  
12 laboratory in Champaign. They routinely provide lab  
13 results to the person who collected the samples, and Mr.  
14 Brockamp has indicated that he routinely reviews these  
15 samples and the results when they come back to him.

16 HEARING OFFICER KNITTLE: Okay. Anything else, Mr.  
17 Tice?

18 MR. TICE: Well, there is absolutely no chain of  
19 evidence once these documents leave his control, that is,  
20 the samples that he made. He does not see them again. He  
21 does not perform the tests on them. So we have absolutely  
22 no way of cross-examining the tester of these samples. We  
23 have no way of determining if they were mixed up with  
24 anybody else's or anything else. We do not have someone



1 from the lab to testify to them.

2 Business records are not admissible unless there is  
3 testimony given with respect to the principal keeper of  
4 those records, the one who produced the records and then  
5 kept them, as an exception to the hearsay rule. We do not  
6 have that here. The chain is broken once it leaves Mr.  
7 Brockamp's possession.

8 HEARING OFFICER KNITTLE: Anything further, Ms. Peri?

9 MS. PERI: The rules of evidence on this hearsay  
10 exception are construed more liberally before Board  
11 hearings, and not only the past but in this instance  
12 sufficient foundation has been laid to qualify this  
13 business record as an exception to the hearsay rule. Mr.  
14 Brockamp is qualified to give his opinion as to what these  
15 results mean without the presence of the actual tester.

16 HEARING OFFICER KNITTLE: Are you planning on calling  
17 the lab person?

18 MS. PERI: No, we are not.

19 MR. TICE: Mr. Knittle, hearsay is not automatically  
20 admissible in an administrative hearing. I would cite to  
21 you, Mr. Knittle, the Supreme Court case of Novicki  
22 (spelled phonetically) versus the Department of Finance,  
23 373 Illinois 342. It has not been changed. It has been  
24 followed continually, and particularly in Department of

1 Revenue cases.

2 The most recent case that I found was Saal, S-A-A-L,  
3 versus the County of Carroll, and it is found at 130  
4 Illinois Decisions 88, and they make it very clear that  
5 hearsay evidence is not admissable just because it is an  
6 administrative hearing.

7 HEARING OFFICER KNITTLE: I would agree with that,  
8 Mr. Tice. However, the Board's regulations are pretty  
9 clear that we will accept any evidence which is material,  
10 relevant, and would be relied upon by reasonably prudent  
11 persons in the conduct of serious affairs. So I would  
12 accept this. However, I do think there is substantial  
13 arguments and comments that can be made as to the weight  
14 of this evidence without the proper chain of custody being  
15 laid. I would encourage you to make those to the Board,  
16 but I will allow Mr. Brockamp to testify as to what he  
17 thinks these results indicate.

18 Q. (By Ms. Peri) Mr. Brockamp, then backing up, did  
19 you review the results from your samples of June 15th,  
20 1993, that came back from the Illinois EPA Champaign  
21 laboratory?

22 A. Yes, I did.

23 Q. Okay. Did you make any conclusions or develop any  
24 opinions about whether the sample collected contained

1 constituents of liquid livestock waste?

2 A. Yes.

3 Q. What did you base that opinion upon?

4 A. All of the other samples that I have collected and  
5 effluent limits, which are Board regulations, I guess.

6 Q. What do you mean by effluent limits?

7 A. Most facilities which are allowed a discharge, can  
8 only discharge -- they can only discharge contaminants at  
9 certain levels. And those levels have been adopted by, I  
10 presume, the Illinois Pollution Control Board or some  
11 other entity. And in this particular case, you know, the  
12 BOD and ammonia standards are very, very high, much higher  
13 than the --

14 Q. What is BOD?

15 A. BOD is the biochemical oxygen demand.

16 Q. What does that mean, for us lay people?

17 A. That means the amount of oxygen required to  
18 stabilize a sample, you know, that has bacteria within it.

19 Q. And what -- based on your experience, what, in  
20 your opinion, are constituents of livestock manure that  
21 you would look for in analyzing lab results?

22 A. When we collect water quality samples we look for  
23 ammonia and BOD, sometimes phosphorus, dissolved oxygen,  
24 those types of things.

1 Q. Did you look for those constituents in this case?

2 A. Yes.

3 Q. What did you find?

4 A. I don't have the numbers in front of me, but the  
5 ammonia and the BOD were extremely high.

6 Q. Would it refresh your memory as to how high they  
7 were by looking at that document?

8 A. Yes.

9 Q. Okay. Let the record show I am showing the  
10 witness the document premarked as Exhibit F.

11 A. (The witness reviewing document.)

12 Q. In looking, then, Mr. Brockamp, at the quantity or  
13 concentration of BOD in this sample, what did you find?

14 A. The BOD in the sample was 200 or so times higher  
15 than other effluent limits.

16 Q. Is that a Board set effluent limit?

17 A. That is correct.

18 Q. And what did you find as to ammonia nitrogen  
19 levels?

20 A. There again, over 100 times higher than what the  
21 effluent limit is that currently exists.

22 Q. Is that finding consistent with livestock waste  
23 manure being present in the sample?

24 A. Yes, but not -- it is not -- it is not common to

1 find it this high.

2 Q. What do you mean?

3 A. Most of the samples that I collect do not have  
4 strengths or contaminants showing this high, the BOD and  
5 ammonia.

6 Q. Did you make an opinion as to why the BOD and  
7 ammonia nitrogen were excessive, as you called them, in  
8 this case?

9 A. They were undiluted wastes.

10 Q. I am showing you what is marked as People's  
11 Exhibit 7, already made available to Counsel and Mr.  
12 Hearing Officer. Is this a report you made of your  
13 samplings conducted on June 15th, 1993?

14 A. Yes. This is the little one page report that  
15 indicates the laboratory results.

16 Q. Okay. Thank you. Mr. Brockamp, did you again  
17 inspect the property on February 9th, 1994?

18 A. Yes, I did.

19 Q. Okay. What did you observe during that  
20 inspection?

21 A. There was several of us in attendance. We  
22 observed overflow directly from the holding pond number  
23 one.

24 Q. That is the area indicated as number one on

1 People's Exhibit A?

2 A. Yes.

3 Q. Okay. And you have indicated that you observed an  
4 overflow?

5 A. That is correct.

6 Q. What do you mean by that?

7 A. Liquid wastes were draining out of the lagoon over  
8 the embankment, over the gravel walkway, which is the  
9 embankment, and down the hill into a sow lot.

10 Q. When you say down the hill, what direction do you  
11 mean?

12 A. In a northern direction.

13 Q. Where is the sow lot? Would you please approach  
14 Exhibit A.

15 (The witness approached the exhibit.)

16 A. Mr. Chalmers had previously -- I didn't see any  
17 sows on this particular date, but there were in this  
18 particular area right on the south side of the  
19 intermittent stream.

20 Q. Would you indicate with the letter D the area that  
21 you are referring to as the sow lot?

22 A. (Witness complied.)

23 Q. Would you also indicate with that same red marker  
24 the direction of flow from lagoon number one?

1 A. (Witness complied.)

2 Q. Would you describe the material that you saw

3 overflowing from that lagoon?

4 A. The material was a thick, black liquid. It had a

5 very strong livestock odor. It was very dark.

6 Q. Please describe the path of this overflow?

7 A. The overflow flowed in a northern direction

8 towards the intermittent stream.

9 Q. Did the flow end at the intermittent stream, based

10 on your visual observation?

11 A. Based on visual observation alone, I guess, yes.

12 Q. Okay. Did you conduct samples on that date?

13 A. I don't think so.

14 Q. Okay. Did you collect samples at the property on

15 February 14th, 1994?

16 A. I collected samples from the neighbor's property

17 on February 14th, 1994.

18 Q. And by the neighbor's property, do you mean the

19 property just west of the northwest corner of Mr.

20 Chalmers' property?

21 A. Yes.

22 Q. Okay. Would you indicate for us verbally from

23 your seat where you extracted those samples?

24 A. This is on February 14th?

1 Q. Yes.

2 A. I believe I collected one sample on that date.

3 Well, one sample location, but I collected both a fecal  
4 sample as well as a water quality sample from the same  
5 location. It was, I think, like ten yards west of the  
6 concrete bridge.

7 Q. And why did you collect the sample at that point?

8 A. Because that is away from his property and there  
9 really is no argument about -- I mean, we had gone back  
10 and forth about what I couldn't do and what I could do.  
11 So I didn't want to rock the boat, so to speak.

12 Q. How does the water or liquid that you sampled on  
13 the neighbor's property have any bearing on Mr. Chalmer's  
14 activities?

15 A. The water that I sampled on the neighbor's  
16 property flowed directly from Mr. Chalmers' property.

17 Q. How?

18 A. Through the intermittent stream, in a westerly  
19 direction.

20 Q. How did it pass on to the neighbor's properties,  
21 if at all?

22 A. It flowed in a man-made ditch underneath the road  
23 through the -- underneath the concrete bridge.

24 Q. Did you make a report of your February 14th, 1994



1 sampling event?

2 A. Yes.

3 Q. Was your sampling on that date conducted in the  
4 same manner that you routinely conducted sampling?

5 A. Yes, it was.

6 Q. I am showing you what is marked as People's  
7 Exhibit 13. Is this a fair and accurate copy of your  
8 inspection and collection report from that date?

9 A. Yes, it is.

10 Q. Okay. Thank you. I am now showing you what is  
11 premarked as People's Exhibit G. Do you recognize this  
12 exhibit as a fair and accurate copy of the lab results  
13 received on the samples collected on February the 14th,  
14 1994?

15 A. Yes, I do.

16 Q. Thank you. What did you find based on your review  
17 of these lab samples?

18 MR. TICE: Again, the same objection, Mr. Knittle,  
19 with respect to Exhibit F. The same thing would apply to  
20 Exhibit 13, which was his report based off of the samples.  
21 And the same would be applicable to this report that he  
22 gave -- I think it was Exhibit 7 also, which is not  
23 offered. Ms. Peri has not moved for those admissions, but  
24 we have the same problem with the foundation on these

1 reports of the samplings.

2 HEARING OFFICER KNITTLE: I will note your objection,

3 Mr. Tice. I am assuming that you will want to make them

4 again when they are moved into evidence, if you want.

5 Even if you don't, we can have the same objection when

6 they are moved into evidence.

7 MR. TICE: Thank you.

8 HEARING OFFICER KNITTLE: Once again, I am going to

9 overrule that objection. But note you should make any

10 arguments to the Board regarding the weight and relevance

11 of the testimony.

12 Q. (By Ms. Peri) Did you review the analytical

13 results that came back from the Illinois Environmental

14 Protection Agency, the Champaign laboratory?

15 A. Yes, I did.

16 Q. Did you, as with your previous sampling review,

17 look at ammonia nitrogen and BOD constituent levels?

18 A. Yes.

19 Q. What did you conclude based on your review of

20 those perimeters from your February 14th sampling?

21 A. The numbers that I collected on that date were

22 certainly higher than clean water, but they were not as

23 high as what it had been the year earlier.

24 Q. Did you form an opinion as to whether the levels

1 for ammonia nitrogen and BOD were consistent with the  
2 presence of liquid livestock waste in the sampling?

3 A. Yes, very consistent.

4 Q. What was your opinion?

5 A. I believe -- if I could look at the numbers.

6 Q. I am showing Mr. Brockamp the sample results  
7 previously presented to him.

8 A. The total ammonia and nitrogen on this particular  
9 date was at 186 parts per million. This level is  
10 significantly higher than any effluent limit which the  
11 Board will allow. The highest ammonia limit which they  
12 allow is 4.0. The BOD on this particular date was at 560  
13 milligrams per liter or parts per million. This, again,  
14 is much higher than any effluent limit which the Board  
15 will allow. The highest currently, and I believe at that  
16 time also, was at 37, or 30, something like that.

17 Q. Okay. Thank you. I am going to show you what is  
18 premarked as Exhibit H. Do you recognize these color  
19 copies of photographs to be true and accurate copies of  
20 the photographs taken by you or observations made by you  
21 during your February 14th, 1994 sampling event?

22 A. Well, the first two photographs were taken by John  
23 Wells.

24 Q. Okay.

1 A. I am in the top photo.

2 Q. You were there on that date?

3 A. Yes, I was the one that collected the water  
4 samples.

5 Q. Do these photographs fairly and accurately depict  
6 your sampling of the water flowing from the northwest  
7 corner of the property on that date?

8 A. Yes. In the top photo Mr. Chalmers' property is  
9 in the background across the road on the other side of the  
10 bridge and the wire fence. I am collecting the sample  
11 from the north side of the drainage ditch approximately 30  
12 feet from the bridge.

13 Q. All right. And then in the bottom photograph of  
14 page one?

15 A. In the bottom photograph I am standing somewhere  
16 along the ditch looking in a westerly direction away from  
17 the farm.

18 Q. And then finally on the second page, the top  
19 photograph?

20 A. The top photograph on the second page, I am  
21 probably standing on the bridge or at least along the  
22 roadway. I am looking at the discharge pipe from a little  
23 holding pond there on the farm.

24 Q. What holding pond are you referring to?

1 A. It is -- Mr. Chalmers called it a dilution pond  
2 and we have typically called it that, also. It is located  
3 near that bridge there in the corner of his property.

4 Q. Okay. Is that area represented on People's  
5 Exhibit A?

6 A. Yes.

7 Q. Where?

8 A. Well, I think that's A. I don't know.

9 Q. On this site map?

10 A. Yes.

11 (The witness approached the exhibit.)

12 A. This is the dilution pond, and for lack of a  
13 better name we just called it the dilution pond, too.

14 MS. PERI: And Mr. Brockamp is pointing to a  
15 blackened area on the top left corner of People's Exhibit  
16 A.

17 Q. (By Ms. Peri) Did you again collect samples from  
18 that same area off the northwest corner of respondent's  
19 property on February 17th of 1994?

20 A. Yes, I did.

21 Q. Did you make a report of that sampling event?

22 A. Yes, I did.

23 Q. I am going to show you what is marked as People's  
24 Exhibit 14. Does this represent the inspection report

1 made by you based on that sampling?

2 A. Yes, it does.

3 Q. Okay. Thank you. I am now showing you what is

4 premarked as People's Exhibit I. Is this a true and

5 accurate copy of the lab results received by you from the

6 Illinois EPA Champaign laboratory on your samples

7 collected February 17th, 1994?

8 A. Yes, but this also contains the laboratory results

9 from the Illinois Department of Public Health Lab.

10 Q. Which samples were sent to the Illinois Department

11 of Public Health Laboratory?

12 A. Well, two samples were sent to the EPA Champaign

13 laboratory and two samples were sent to the Public Health

14 Laboratory.

15 Q. Were they all water quality samples?

16 A. No. The ones that were sent to the health

17 department were bacteria samples.

18 Q. Okay. With respect to the water quality samples,

19 did you examine the analytical results when they came back

20 from the Illinois EPA Champaign Laboratory?

21 A. Yes.

22 Q. Okay. Did you again in this instance examine the

23 parameters for ammonia nitrogen and BOD?

24 A. Yes.

1 MR. TICE: I would like the record to reflect the  
2 same objection.

3 HEARING OFFICER KNITTLE: The record will so reflect.

4 THE WITNESS: Yes, I did.

5 Q. (By Ms. Peri) Did you make any conclusions about  
6 the presence of livestock waste constituents in these  
7 samples?

8 A. Yes. I concluded that there was some livestock  
9 waste within this water.

10 Q. What was the basis for your conclusion?

11 A. My visual observation and the laboratory results.

12 Q. In particular, what about the laboratory results  
13 led you to that conclusion?

14 A. The numbers reflected in the results.

15 Q. All right. I am going to show you what is  
16 premarked as People's Exhibit J. Do these color  
17 photocopies truly and accurately depict your observations  
18 or activities on February 17, 1994, during your lab sample  
19 collection?

20 A. Yes, they do.

21 Q. Can you explain for us what we are looking at on  
22 page one of this Exhibit J?

23 A. The top photo of page one shows the outlet  
24 structure for Mr. Chalmers' dilution pond. Water is

1 flowing out of the corrugated metal pipe and it is causing  
2 the foam there within the intermittent stream. You can  
3 see the fence right in front of where I was taking the  
4 photograph. There is some corn stubble or bean stubble or  
5 some kind of weeds dangling from the fence there.

6 In the bottom photo, it is a photo taken by Steve  
7 Cook, who was with me at the time. I am shown in the  
8 photograph bending over collecting a sample from the  
9 intermittent stream.

10 Q. Okay. And the top of page two of this exhibit?

11 A. The top of page two, I am shown in the center of  
12 the photograph using my large container to fill my ammonia  
13 container. The bridge, the road, and part of Mr. Chalmers  
14 farm is located in the background.

15 The bottom photograph is just another angle of me  
16 collecting probably the second sample that is further  
17 downstream.

18 Q. Thank you. Did you again inspect the property on  
19 July 26th of 1994?

20 A. Yes, I did.

21 Q. Okay.

22 A. Well, I might have to retract on that. I really  
23 did not inspect the property. I collected a water sample  
24 on that date.



1 Q. Okay. Where did you collect a water sample from  
2 on that date?

3 A. In the same location that I did on February 14th  
4 and February 17th.

5 Q. That is to the west --

6 A. To the west of the bridge on the neighbor's  
7 property.

8 Q. Okay. And how many samples did you collect on  
9 that date?

10 A. I believe I collected two.

11 Q. Were these water quality samples?

12 A. I think I only collected water quality samples on  
13 this date, but I am not sure.

14 Q. Did you make a report of your sample collection  
15 from July 26th of 1994?

16 A. Yes, I did.

17 Q. Okay. Would it refresh your memory if I presented  
18 that report to you?

19 A. Yes, it would. (The witness reviewing document.)  
20 Yes. As I look at this field report, I collected two  
21 water quality samples and two bacteria samples.

22 Q. Thank you. Did you collect these samples in the  
23 same manner that you routinely collect samples?

24 A. Yes. I try to be --

1 Q. And that was in accordance with the Illinois EPA  
2 standard collection practices?

3 A. That's correct.

4 Q. And did you send those water quality samples to  
5 the Illinois EPA Champaign laboratory?

6 A. That is correct.

7 Q. When you received the results from the Champaign  
8 laboratory did you review them?

9 A. Yes, I did.

10 Q. On your review of those water quality sample  
11 results did you make any conclusions or develop any  
12 opinions as to the presence of liquid livestock waste  
13 constituents in those samples?

14 A. Yes, I did.

15 Q. What did you conclude?

16 A. I concluded that the intermittent stream contained  
17 livestock waste.

18 Q. Why?

19 A. Based on my visual observation and the results  
20 from the laboratory samples.

21 Q. Again, please explain to us your visual  
22 observations that led to that conclusion?

23 A. The water on this particular date was very black.  
24 It had attracted a lot of vectors. It also had a very

1 strong livestock waste odor.

2 Q. You indicated that on February 17th of 1994 you  
3 also collected bacterial samples?

4 A. Yes.

5 Q. Would you please describe what you mean by that?

6 A. You collect bacteria samples in little eight ounce  
7 jars. And I transported them personally to the Illinois  
8 Department of Public Health laboratory. These -- we have  
9 them analyzed typically for tero coliform, fecal coliform  
10 and fecal streptococci.

11 Q. Why did you decide to collect bacteria samples on  
12 this date?

13 A. I knew I was going out there and I was prepared in  
14 advance to collect these samples. I did not typically  
15 collect bacteria samples.

16 Q. But you decided to in this instance?

17 A. Yes. It is a further indicator of waste in a  
18 stream.

19 Q. You visited Mr. Chalmers' farm on several other  
20 occasions; is that correct?

21 A. Yes.

22 Q. Including in January of 1996?

23 A. Yes.

24 Q. And again in December of 1996; is that correct?

1 A. I believe so.

2 Q. And then finally on October 27th of 1997?

3 A. I believe so.

4 Q. Mr. Brockamp, do you have an opinion as to whether

5 there was adequate storage capacity of liquid livestock

6 waste on John Chalmers' farm?

7 MR. TICE: Objection. There has not been a proper

8 foundation laid with respect to this man giving an opinion

9 as to the proper storage capacity.

10 HEARING OFFICER KNITTLE: Ms. Peri?

11 MS. PERI: Mr. Brockamp has just testified over a two

12 hour period on his observation of overflows and

13 oversprays. I believe that is more than adequate

14 foundation for his making conclusions about whether there

15 was adequate storage space.

16 HEARING OFFICER KNITTLE: I will overrule the

17 objection.

18 Mr. Brockamp, you can proceed.

19 THE WITNESS: Yes, I have an opinion.

20 Q. (By Mr. Brockamp) What is your opinion?

21 A. My opinion is that he does have enough storage

22 space on the farm.

23 Q. Okay. And what is the basis for your opinion?

24 A. Well, lagoon number four alone is quite large. It

1 is both deep and has a lot of area to it. This doesn't  
2 mean that there is not problems out there. It just means  
3 he has adequate storage.

4 Q. During the period of 1992 to 1994, in your  
5 opinion, did Mr. Chalmers have adequate storage capacity  
6 to prevent an overflow except in a 25 year, 24 hour storm  
7 event?

8 A. I observed overflows, so the answer to that  
9 question is he did not have enough capacity given his  
10 management techniques.

11 Q. In your opinion, did Mr. Chalmers maintain  
12 adequate storage of liquid livestock waste so as not to  
13 cause water pollution?

14 A. No, he did not.

15 Q. Why not?

16 MR. TICE: Now, Mr. Knittle, I am going to object to  
17 this. This is again the ultimate issue here. Allowing  
18 this witness to testify as to whether or not he had  
19 adequate management in order to prevent proper -- or  
20 prevent overflows, there has been no testimony at all from  
21 this witness as to the management practices of Mr.  
22 Chalmers. There has been no investigation with respect to  
23 the management practices of Mr. Chalmers. All he did was  
24 come out there and visually observe on four or five

1 occasions, however many it was here, and take samples of  
2 the water. That has been the extent of his investigation.

3 HEARING OFFICER KNITTLE: Ms. Peri, do you have a  
4 response?

5 MS. PERI: No.

6 HEARING OFFICER KNITTLE: Can you rephrase the  
7 question for me?

8 MS. PERI: Certainly.

9 Q. (By Ms. Peri) You have testified, Mr. Brockamp,  
10 that you -- in your opinion there was not adequate storage  
11 to prevent an overflow because you observed overflows; is  
12 that correct?

13 A. Yes.

14 Q. In your opinion, was there a threat of water  
15 pollution on or off of Mr. Chalmers' property during --

16 MR. TICE: Objection again as to foundation. This  
17 calls for speculation on the part of this witness as to  
18 whether there is any threat or not of water pollution.

19 HEARING OFFICER KNITTLE: Go ahead, Mr. Peri.

20 MS. PERI: Thank you. The point of Mr. Brockamp's  
21 inspections in all the ten years he was with the Agency  
22 was primarily to determine if there were water pollution  
23 threats.

24 HEARING OFFICER KNITTLE: I will overrule the

1 objection and let this witness answer that question.

2 THE WITNESS: Yes, there is a threat of an overflow,  
3 because on numerous occasions they were full of livestock  
4 waste. There was no freeboard.

5 Q. What you say "they" what do you mean?

6 A. The lagoons, the holding ponds and lagoons, they.  
7 The Board's regulations require that all livestock waste  
8 holding structures, which includes holding ponds and  
9 lagoons, have adequate storage capacity to assimilate a  
10 six inch rainfall. Well, that means that if we get a six  
11 inch rain, it has to have enough storage capacity to hold  
12 that rain. Well, these holding ponds and lagoons do not  
13 even have the six inches, let alone any additional storage  
14 capacity for the livestock manure from the hogs.

15 Q. Now, you have testified today that you observed an  
16 overflow from the lagoon number one to the intermittent  
17 stream; is that correct?

18 A. Yes.

19 Q. You also observed -- you also testified that you  
20 observed liquid livestock waste on Kay Watkins School Road  
21 from the irrigated crop land; is that correct?

22 A. That's correct.

23 Q. Do you have an opinion as to how the respondent  
24 could have avoided those occurrences?

1 A. Yes.

2 Q. What is your opinion?

3 A. My opinion is that he should not have waited as  
4 long as he did to try to correct the problem.

5 Q. What do you mean?

6 A. All livestock farmers have to handle their waste  
7 in an appropriate manner. And that means by doing some  
8 planning in advance, and that means by removing the wastes  
9 in an appropriate manner before they become full. The  
10 traditional method is to irrigate or to land apply the  
11 waste at an agronomic rate to adjacent agricultural land.  
12 And in this particular case, Mr. Chalmers failed to do  
13 that before an overflow occurred.

14 Q. In your opinion, are there additional costs  
15 involved in managing this farm to avoid occurrences, such  
16 as the overspray on the county road and the overflow from  
17 lagoon number one?

18 MR. TICE: I am going to object to the witness  
19 testifying as to additional costs. There has been --  
20 again, it is a lack of foundation, Mr. Knittle. He has  
21 testified to no experience in managing a hog farm,  
22 particularly a confinement hog farm. He has an ag  
23 engineering degree, but all his work has been with the  
24 EPA. He has no management courses that he has indicated



1 in his C.V. Unless there is some foundation laid for him  
2 to be able to render his opinion as to the proper way to  
3 manage the farm from a management standpoint, I don't  
4 believe he is qualified to do that.

5 HEARING OFFICER KNITTLE: Ms. Peri?

6 MS. PERI: Mr. Brockamp has years of determining  
7 whether a hog farm is in compliance with State laws and  
8 regulations, and he also was raised on a hog farm. I  
9 believe he is in a very good position to determine what is  
10 proper management, not only from a legal standpoint and an  
11 experience based standpoint, but from a personal  
12 standpoint.

13 HEARING OFFICER KNITTLE: Mr. Tice, do you have any  
14 additional arguments that you want to make on the record?

15 MR. TICE: No.

16 HEARING OFFICER KNITTLE: Okay. I am going to  
17 overrule. I think Mr. Brockamp can certainly answer the  
18 question that Ms. Peri put to him. Whether there is any  
19 other management questions that he could or could not  
20 answer, we will get into when they come up.

21 So you can answer that question, sir.

22 THE WITNESS: Could you rephrase it or reask it?

23 Q. (By Ms. Peri) Certainly. In your opinion, are  
24 there additional costs that are involved in avoiding any

1 overspray and overflow incidents that you observed?

2 A. Of course, yes. There are always costs in proper  
3 waste management. It is the cost of doing business. And  
4 all farmers must take that cost into consideration as part  
5 of their business.

6 Q. So the costs in avoiding overspray and overflow in  
7 this case were avoided?

8 MR. TICE: I am going to object. I am not sure what  
9 the question was.

10 HEARING OFFICER KNITTLE: Hold on, Mr. Brockamp,  
11 before you answer that. I will sustain. Perhaps you  
12 could rephrase that.

13 Q. (By Ms. Peri) In your opinion, were there costs  
14 saved by not taking steps to prevent overflow from lagoon  
15 number one and overspray to area C and the other area you  
16 have marked on Exhibit A with red circles?

17 MR. TICE: I am going to object. There has been no  
18 testimony at all by this witness that he has looked at Mr.  
19 Chalmers' records, financial records, to determine what he  
20 has either saved or not saved in way of expenses or what  
21 expenses he even made.

22 There has been no testimony from this witness as to  
23 the type of expenses or the costs that would have to be  
24 put out by the farmer in order to solve the problems that

1 Mr. Brockamp has testified to here that he believes could  
2 have been solved.

3 Then by the same token, no measurement of those costs  
4 against the costs and the expenses incurred by Mr.  
5 Chalmers during this period of time through an examination  
6 of his financial records by this witness. So it would be  
7 impossible for him to render such an opinion.

8 HEARING OFFICER KNITTLE: Ms. Peri?

9 MS. PERI: I will withdraw that question.

10 Q. (By Ms. Peri) Mr. Brockamp, you have already  
11 testified that there are additional costs, in your  
12 opinion, involved in the proper management of swine  
13 confinement facilities; is that correct?

14 A. Yes.

15 Q. And that includes costs in avoiding overflow and  
16 overspray incidents such as those you observed on John  
17 Chalmers farm; is that correct?

18 A. Yes.

19 MS. PERI: No more questions. I would move at this  
20 time to enter into evidence the exhibits that we have  
21 covered.

22 HEARING OFFICER KNITTLE: We are going to have to go  
23 over those. I have a pretty long list here and I want to  
24 make sure that I have not missed anything. I think Mr.

1 Tice would appreciate that, as well.

2 Do you want to do that -- we are going to

3 cross-examine him after lunch. But we can go over the

4 exhibits now or we can --

5 MR. TICE: Let's do it after lunch.

6 HEARING OFFICER KNITTLE: Okay. Let's take a one

7 hour recess for lunch. We will come back at 1:30.

8 (Whereupon a lunch recess was taken from 12:30 p.m.

9 to 1:30 p.m.)

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1                   AFTERNOON SESSION

2                   (June 22, 1999; 1:30 p.m.)

3       HEARING OFFICER KNITTLE: We are back on the record.

4       It is about 1:30, after a lunch break.

5       I want to go through the exhibits that Ms. Peri has  
6       offered into evidence immediately before our last break.

7       Ms. Peri, what I want to do is I am going to go over  
8       what I have as the exhibits.

9       And I think, Mr. Tice, some of these you have  
10      objections to?

11      MR. TICE: That's correct.

12      HEARING OFFICER KNITTLE: Okay. I will name off the  
13      exhibit, and then I will let Mr. Tice make his objection  
14      and you can respond to it as we go.

15      MS. PERI: Okay.

16      HEARING OFFICER KNITTLE: The first one I have is  
17      People's Exhibit Number 18, which was admitted at the  
18      beginning of the hearing. That is the Illinois NPDES  
19      permit issued on 08-14-95. That one was admitted.

20      Mr. Tice, your objections?

21      MR. TICE: My objection is only -- I have no  
22      objection to it.

23      HEARING OFFICER KNITTLE: Actually, I think you may  
24      have an objection in your response to --

1 MR. TICE: An objection simply as to relevancy. That  
2 can stay in the record.

3 HEARING OFFICER KNITTLE: Okay.

4 MR. TICE: I think the foundation was laid.

5 HEARING OFFICER KNITTLE: The next exhibit is  
6 People's B. It is an enlargement of a topographical map  
7 that I took official notice of. I think you also wanted  
8 to admit that into evidence, isn't that correct, Ms.  
9 Peri?

10 MS. PERI: I am sorry? Which one?

11 HEARING OFFICER KNITTLE: Exhibit B.

12 MS. PERI: Yes, both People's Exhibits A and B.

13 HEARING OFFICER KNITTLE: Okay. Mr. Tice, do you  
14 have an objection to, first of all, Exhibit B, which is  
15 the enlargement of the topographical map underneath that  
16 one?

17 MR. TICE: I have an objection as to the foundation.  
18 I have no objection to that. There have been some  
19 markings on there by the witness, Mr. Brockamp. So until  
20 we have some cross-examination on it I reserve the right  
21 to object to that.

22 HEARING OFFICER KNITTLE: I will allow you to make  
23 further objections.

24 MR. TICE: Otherwise no.

1 HEARING OFFICER KNITTLE: Then I am going to admit

2 People's B.

3 (Whereupon said document was admitted into evidence

4 as People's Exhibit B as of this date.)

5 HEARING OFFICER KNITTLE: People's A is the map of

6 the hog farm, which there is also markings on. That's the

7 one hanging there now.

8 MR. TICE: I would have the same objection to that.

9 I don't know that the witness even testified as to whether

10 he made that. I am not sure. I don't think there was

11 foundation on that one.

12 HEARING OFFICER KNITTLE: Ms. Peri, if you want to

13 respond, I will let you.

14 MS. PERI: Absolutely. I believe that before we even

15 raised the map we spent about ten or fifteen minutes

16 talking about the layout of the property, at which time

17 Mr. Dale Brockamp indicated that he does recognize this to

18 be a fair and accurate representation of the layout of the

19 property.

20 HEARING OFFICER KNITTLE: Okay. Mr. Tice, I am

21 admitting that as well. But I will note that it is over

22 objection.

23 (Whereupon said document was admitted into evidence

24 as People's Exhibit A as of this date.)

1 HEARING OFFICER KNITTLE: People's Exhibit Number 2  
2 is an inspection report dated June 22nd, 1993. Actually,  
3 that was of an inspection that took place on May 11th of  
4 1992.

5 Mr. Tice?

6 MR. TICE: I have several objections to this. There  
7 are comments in there made to Mr. Brockamp by third  
8 parties other than Mr. Chalmers and that is hearsay.  
9 There has been no foundation laid during the direct  
10 examination of Mr. Brockamp as to the admissibility of  
11 those hearsay statements. So they should be stricken if  
12 the document is, in fact, admitted.

13 Otherwise, my objection would simply be whatever  
14 comes out in cross-examination of Mr. Brockamp. He did  
15 write the report.

16 HEARING OFFICER KNITTLE: Ms. Peri?

17 MS. PERI: As to this and all of the other  
18 inspections made by Mr. Brockamp, I would like to make it  
19 clear that it has been established that he routinely  
20 prepares these reports following his inspections. They  
21 qualify without controversy, I believe, under the business  
22 records exception to the hearsay.

23 MR. TICE: But not -- my objection, Mr. Knittle, is  
24 as to the recitation of comments by third parties who are



1 not witnesses in the proceeding.

2 HEARING OFFICER KNITTLE: Okay. I will note your  
3 objections and --

4 MR. TICE: And it is hearsay.

5 HEARING OFFICER KNITTLE: Correct. I am going to  
6 admit -- well, we can handle all the inspection reports en  
7 masse, if that's your objection to each one, Mr. Tice.

8 Actually, as I am going through things here, Ms.  
9 Peri, even though I have them written down in my exhibit  
10 list I do not have People's -- no. Here it is. I am  
11 sorry. I missed one. I have it now. My error. Please  
12 disregard anything I just stated.

13 Mr. Tice, are we going to --

14 MR. TICE: Well, I think we better take them each  
15 individually because there are some --

16 HEARING OFFICER KNITTLE: There are some with  
17 laboratory results.

18 MR. TICE: There are some with references to other  
19 investigations, which I understand from the State have  
20 been withdrawn now, some of these reports.

21 HEARING OFFICER KNITTLE: Okay.

22 MR. TICE: I am not sure how the State intends to  
23 handle these exhibit under those circumstances, these  
24 reports.

1 HEARING OFFICER KNITTLE: Okay. Well, we are dealing  
2 first with the inspection report which is People's Exhibit  
3 Number 2.

4 MR. TICE: That's right.

5 HEARING OFFICER KNITTLE: And I have admitted that  
6 over your objection.

7 (Whereupon said document was admitted into evidence  
8 as People's Exhibit 2 as of this date.)

9 HEARING OFFICER KNITTLE: That takes us to Exhibit C,  
10 which is photos taken on May 11th, 1992. Mr. Tice?

11 MR. TICE: My only objection is that they should be  
12 subject to my cross-examination in case something shows up  
13 during that.

14 HEARING OFFICER KNITTLE: Okay. They will be so  
15 admitted.

16 (Whereupon said document was admitted into evidence  
17 as People's Exhibit C as of this date.)

18 HEARING OFFICER KNITTLE: People's Exhibit 4 is an  
19 inspection report about an inspection that took place on  
20 May 6, 1993.

21 MR. TICE: With respect to that there is reference in  
22 that document to investigations by Charlie King. I think  
23 it was having to do with land pollution matters. And the  
24 Illinois Department of Agriculture, Division of Animal

1 Industries, and those are not a matter of this proceeding.  
2 Any documentation that was presented in the request to  
3 admit regarding those has been withdrawn from the State.  
4 And so to the extent that the document contains those --  
5 that information, it should be -- I would object to it.

6 It also contains statements of a Mr. Ron Jackson,  
7 again, third party statements, and there is no proper  
8 foundation laid. And that's the -- there is no -- it is  
9 hearsay, and the Court -- the Courts have made it very  
10 clear that in order to get that kind of hearsay testimony  
11 in the record, if that's what the intent of the State is  
12 with this report, they have to lay a proper foundation  
13 first, and they --

14 HEARING OFFICER KNITTLE: Ms. Peri -- oh, I am sorry.  
15 I didn't mean to interrupt you.

16 MR. TICE: And they have not.

17 HEARING OFFICER KNITTLE: Ms. Peri, did you want to  
18 respond to each one of these inspection reports, or can I  
19 rule on this?

20 MS. PERI: I will make a quick comment on this one.

21 HEARING OFFICER KNITTLE: Sure. Just so you know,  
22 you have the opportunity even though you have already  
23 spoke to --

24 MS. PERI: Thank you. I will limit my comments to

1 this one. Ron Jackson is an agent employee of Mr.  
2 Chalmers and, therefore, I would certainly bring to Mr.  
3 Hearing Officer's attention the fact that that is a  
4 hearsay exception. The comments made by him to Dale  
5 Brockamp are outside of the hearsay rule. Secondly, as  
6 Mr. Brockamp indicated, each of his reports would have a  
7 background section. This would be very typical, and that  
8 aspect is made as part of his routine in developing  
9 inspection reports, as well. So, again, that would fall  
10 under the business records exception.

11 HEARING OFFICER KNITTLE: I am going to admit this,  
12 although I am going to ask the Board to disregard the  
13 portion relating to comments made by Charles King which  
14 are not relevant to this proceeding.

15 MR. TICE: I would note for the record, Mr. Knittle,  
16 that the State did not produce any testimony to show what  
17 the functions or duties of Mr. Jackson were or that the  
18 comments that were associated to him by Mr. Brockamp in  
19 his report were within his authority as an employee or  
20 agent of Mr. Chalmers. That's the other part of the basis  
21 for the foundation that has to be laid if you are going to  
22 admit agent or employee statements as an admission against  
23 interest.

24 HEARING OFFICER KNITTLE: Okay. I will note that for

1 the record, but I will also note that part of my reason  
2 for admitting this document is that I think it falls  
3 within the evidentiary requirements required by the  
4 Illinois Pollution Control Board which, as I previously  
5 stated are somewhat less than involved in a Circuit Court.  
6 I think the hearsay exception outlined at 103.204(a)  
7 qualifies these documents for admission. But I will  
8 strike, as I have stated, the portions regarding Charles  
9 King, statements as to an unrelated matter.

10 MR. TICE: And the Illinois Department of  
11 Agriculture?

12 HEARING OFFICER KNITTLE: Pardon?

13 MR. TICE: And the Illinois Department of Agriculture  
14 in the third and fourth paragraph.

15 HEARING OFFICER KNITTLE: Sure. I will strike that  
16 as well.

17 (Whereupon said document was admitted into evidence  
18 as People's Exhibit 4 as of this date.)

19 HEARING OFFICER KNITTLE: All right. That takes us  
20 to People's D, which is the photos that accompany this  
21 inspection report, specifically photographs taken on May  
22 6, 1993.

23 MR. TICE: We have no objection.

24 HEARING OFFICER KNITTLE: All right. I will admit

1 those.

2 (Whereupon said document was admitted into evidence

3 as People's Exhibit D as of this date.)

4 HEARING OFFICER KNITTLE: That takes us to People's

5 6, which is an inspection, a report of an inspection that

6 occurred on June 15th, 1993. Mr. Tice?

7 MR. TICE: The same objection with respect to the

8 comments of Mr. Jackson, otherwise based on your earlier

9 rulings.

10 HEARING OFFICER KNITTLE: Ms. Peri, do you wish to

11 respond?

12 MS. PERI: No.

13 HEARING OFFICER KNITTLE: All right. That will be

14 admitted over objection.

15 (Whereupon said document was admitted into evidence

16 as People's Exhibit 6 as of this date.)

17 HEARING OFFICER KNITTLE: People's E are the

18 photographs that accompany that inspection report,

19 specifically photographs that were taken on June 15th,

20 1993.

21 Any objection, Mr. Tice?

22 MR. TICE: We have no objection.

23 HEARING OFFICER KNITTLE: Okay. Those are then

24 admitted.

1 (Whereupon said document was admitted into evidence  
2 as People's Exhibit E as of this date.)

3 HEARING OFFICER KNITTLE: Next I have People's F,  
4 which are lab results that I am noting on my exhibit list  
5 were received -- the only date I have here is June 16th,  
6 1993, but I think they were taken on a different date.  
7 But these were lab results received by the laboratory that  
8 the EPA was using on June 16th, 1993. Oh, here it is.  
9 Let's use the laboratory I.D. Number. It is B308846. Mr.  
10 Tice?

11 MR. TICE: I have already noted my objection of  
12 record when we were testifying to them. It would be the  
13 same objection.

14 HEARING OFFICER KNITTLE: Ms. Peri, did you want to  
15 further comment on these?

16 MS. PERI: No.

17 HEARING OFFICER KNITTLE: Okay. Those are going to  
18 be admitted as noted earlier over Mr. Tice's objection.

19 (Whereupon said document was admitted into evidence  
20 as People's Exhibit F as of this date.)

21 HEARING OFFICER KNITTLE: That brings us to People's  
22 Exhibit Number 7.

23 MR. TICE: I have the same objection as to Exhibit F.

24 HEARING OFFICER KNITTLE: Okay. This is a report

1 dated August 10th of 1993, which contains lab results.

2 Ms. Peri, anything on this?

3 MS. PERI: No.

4 HEARING OFFICER KNITTLE: This will be admitted as

5 well. This appears to be the same -- yes, it is a report

6 of the same sample number, B308846.

7 (Whereupon said document was admitted into evidence

8 as People's Exhibit 7 as of this date.)

9 HEARING OFFICER KNITTLE: Which takes us to People's

10 Exhibit -- what was the last exhibit that we admitted?

11 MR. TICE: Exhibit Number 7.

12 HEARING OFFICER KNITTLE: Which takes us to Exhibit

13 Number 13.

14 MS. PERI: I show 12.

15 HEARING OFFICER KNITTLE: I don't have 12 on my list.

16 I was wondering if we skipped that for a reason. I do

17 have a copy of 12.

18 MS. PERI: I believe I showed this to Mr. Brockamp,

19 and he identified it as his inspection report.

20 HEARING OFFICER KNITTLE: I will go to -- this is an

21 inspection that took place on February 9th, 1994. Mr.

22 Tice?

23 MR. TICE: Again, the same objection that has been

24 noted before with respect to the inspection reports.



1 HEARING OFFICER KNITTLE: Okay.

2 MR. TICE: Hearsay comments from third parties.

3 HEARING OFFICER KNITTLE: Okay. I will admit this  
4 over that objection, People's Exhibit Number 12.  
5 (Whereupon said document was admitted into evidence  
6 as People's Exhibit 12 as of this date.)

7 HEARING OFFICER KNITTLE: Now are we on Number 13?

8 MR. TICE: I thought there was G.

9 HEARING OFFICER KNITTLE: I have G after Number 13  
10 here on my list, so let's hit 13 first before I get  
11 further confused.

12 People's 13 is a report regarding an inspection dated  
13 February 14th, 1994. The date of the report is April  
14 11th, 1994. Mr. Tice?

15 MR. TICE: The same objection as to F.

16 HEARING OFFICER KNITTLE: Okay. This exhibit is  
17 admitted.  
18 (Whereupon said document was admitted into evidence  
19 as People's Exhibit 13 as of this date.)

20 MR. TICE: F and 7, I think it was.

21 HEARING OFFICER KNITTLE: Right. Okay. That brings  
22 us to Exhibit G, Mr. Tice, which is a lab result, a lab  
23 sheet for -- let's see. I think I am using the sample  
24 number.

1 Am I correct, Mr. Brockamp, that this item here that  
2 is stamped with a B and then a number following is the  
3 sample number?

4 THE WITNESS: Yes, that's done by the laboratory.

5 HEARING OFFICER KNITTLE: Okay.

6 THE WITNESS: They are all Bs.

7 HEARING OFFICER KNITTLE: Okay. Let' use this. This  
8 is marked B401963. It is followed by two pages.

9 Actually, the third page looks to be another report by the  
10 laboratory.

11 THE WITNESS: That's the fecal results probably.

12 HEARING OFFICER KNITTLE: Okay. The fecal results.  
13 And that is marked 09639.

14 Any objection, Mr. Tice?

15 MR. TICE: Which one are you on now?

16 HEARING OFFICER KNITTLE: It is one exhibit, People's  
17 Exhibit G, but it looks to be two different lab reports.

18 MR. TICE: The same objection as to F.

19 HEARING OFFICER KNITTLE: Okay. Ms. Peri, I didn't  
20 mean to exclude you the last time. Do you have any  
21 further comments?

22 MS. PERI: I have no further comments.

23 HEARING OFFICER KNITTLE: All right. I am going to  
24 admit it over Mr. Tice's objections.

1 (Whereupon said document was admitted into evidence

2 as People's Exhibit G as of this date.)

3 HEARING OFFICER KNITTLE: People's Exhibit H

4 consists of photographs taken on February 14th of 1994.

5 Mr. Tice?

6 MR. TICE: No objection.

7 HEARING OFFICER KNITTLE: All right. It will be

8 admitted.

9 (Whereupon said document was admitted into evidence

10 as People's Exhibit H as of this date.)

11 HEARING OFFICER KNITTLE: People's Exhibit 14.

12 MR. TICE: The same objection as to Number 7.

13 HEARING OFFICER KNITTLE: Okay. This is an

14 inspection report with lab results. The date of the

15 inspection is February 17th of 1994.

16 Anything further, Mr. Tice?

17 MR. TICE: No.

18 HEARING OFFICER KNITTLE: Ms. Peri?

19 MS. PERI: No.

20 HEARING OFFICER KNITTLE: As before, I am going to

21 admit this over Mr. Tice's objection.

22 (Whereupon said document was admitted into evidence

23 as People's Exhibit 14 as of this date.)

24 HEARING OFFICER KNITTLE: Okay. People's Exhibit I,

1 laboratory results for sample B402185.

2 MR. TICE: The same objection.

3 HEARING OFFICER KNITTLE: There is more here, Mr.

4 Tice. There is also a B402186 and then another -- there

5 is two more, 09822 and 09823.

6 MR. TICE: These are all with respect to the samples

7 taken on February 17th, 1994, I believe.

8 HEARING OFFICER KNITTLE: I think you are correct.

9 MR. TICE: All right. The same objection with

10 respect to F and G.

11 HEARING OFFICER KNITTLE: Okay. These two will be

12 admitted over Mr. Tice's objection.

13 (Whereupon said document was admitted into evidence

14 as People's Exhibit I as of this date.)

15 HEARING OFFICER KNITTLE: Now we are on People's

16 Exhibit J.

17 MR. TICE: No objection.

18 HEARING OFFICER KNITTLE: Those are photos taken on

19 February 17th, 1994. Those will be admitted.

20 (Whereupon said document was admitted into evidence

21 as People's Exhibit J as of this date.)

22 HEARING OFFICER KNITTLE: Then my next one is

23 People's Exhibit 15.

24 MS. PERI: I have Number 14.

1 MR. CHALMERS: He already did 14.

2 HEARING OFFICER KNITTLE: Yes, I have done 14. That  
3 was admitted over objection.

4 MS. PERI: Okay. Thank you.

5 HEARING OFFICER KNITTLE: People's 15, which is an  
6 inspection report of an inspection that took place on July  
7 26, 1994. Mr. Tice? It does look to contain laboratory  
8 results.

9 MR. TICE: The same objection.

10 HEARING OFFICER KNITTLE: All right. That is  
11 admitted as well.

12 (Whereupon said document was admitted into evidence  
13 as People's Exhibit 15 as of this date.)

14 HEARING OFFICER KNITTLE: That's all I have on my  
15 exhibit list.

16 I know you mentioned really quickly a few more. Do  
17 you want to --

18 MS. PERI: I mentioned -- I showed Mr. Brockamp an  
19 Exhibit K. I think I was remiss, however, in distributing  
20 it.

21 Do you recall that, Mr. Tice?

22 MR. TICE: No, I don't.

23 MS. PERI: This was the last inspection, and I asked  
24 Mr. Brockamp regarding his review of the lab analysis from

1 the collection on the July 26th, 1994 inspection.

2 HEARING OFFICER KNITTLE: This is letter K?

3 MS. PERI: Right, which I have all the copies of,

4 which leads me to believe that I did not distribute it.

5 HEARING OFFICER KNITTLE: Yes, I don't have that one.

6 MS. PERI: Would it be appropriate to do that now, or

7 do we need to go back on direct?

8 HEARING OFFICER KNITTLE: As far as I am concerned we

9 are still on direct of Mr. Brockamp. So if you want to

10 approach Mr. Brockamp and lay whatever foundation is

11 necessary.

12 MS. PERI: Thank you. I will.

13 Q. (By Ms. Peri) In order to get this on the record,

14 Mr. Brockamp, I am going to show you what has been

15 premarked as People's Exhibit K. I have provided copies

16 to Counsel and Mr. Hearing Officer.

17 Have you identified that or can you identify that now

18 as a true and accurate copy of the lab results from the

19 July 26, 1994 inspection?

20 A. (The witness reviewing document.) Yes. The first

21 results are the fecal samples. The water quality are

22 further on down.

23 MS. PERI: Thank you. That will be all.

24 HEARING OFFICER KNITTLE: Mr. Tice?

1 MR. TICE: The same objection.

2 HEARING OFFICER KNITTLE: Okay. And this looks to be

3 two fecal results, sample numbers 01187 and 01188. I am

4 assuming that they are -- what was that again, Mr.

5 Brockamp?

6 THE WITNESS: Water quality samples.

7 HEARING OFFICER KNITTLE: Water quality samples. The

8 I.D. from the lab is B410921 and B410922. Those will be

9 admitted over objection.

10 (Whereupon said document was admitted into evidence

11 as People's Exhibit K as of this date.)

12 HEARING OFFICER KNITTLE: That is still all I have.

13 Ms. Peri, there is more on this request to admit.

14 MS. PERI: Right. The State has no further exhibits

15 at this time.

16 HEARING OFFICER KNITTLE: Okay. Anything further on

17 direct exam for Mr. Brockamp?

18 MS. PERI: No.

19 HEARING OFFICER KNITTLE: Mr. Tice, do you have some

20 cross-examination for Mr. Brockamp?

21 MR. TICE: Yes, I do, but first I would like to have

22 a clarification. Have the People's Exhibits 18, 21, 28

23 and 31, have they been -- did the request to admit, was it

24 granted with respect to those?

1 HEARING OFFICER KNITTLE: The request to admit was  
2 denied as to everything.

3 MS. PERI: Except for the NPDES permit.

4 HEARING OFFICER KNITTLE: The request to admit was  
5 denied, and then you orally moved to submit that NPDES  
6 permit. Actually, I think you orally moved to submit them  
7 all as public records, and I allowed the Illinois NPDES  
8 permit issued on 08-14-95 to be admitted as a public  
9 record.

10 MS. PERI: All the other documents not withdrawn were  
11 inspection reports and foundation was laid and they were  
12 so admitted you said.

13 HEARING OFFICER KNITTLE: Right. Aside from the  
14 fact, I think what Mr. Tice was talking about, I have 18,  
15 21, 28 and 31 on my request or your request to admit that  
16 you have not offered into evidence.

17 MS. PERI: Not at this time.

18 HEARING OFFICER KNITTLE: All right. Is that  
19 sufficiently clear, Mr. Tice?

20 MR. TICE: I think so.

21 HEARING OFFICER KNITTLE: All right. You can then,  
22 unless you have another housekeeping matter, proceed with  
23 your cross-examination.

24 MR. TICE: All right. Thank you.



1 CROSS EXAMINATION

2 BY MR. TICE:

3 Q. Mr. Brockamp, where were you raised, what part of  
4 the State?

5 A. Southern Christian County, in Morrisonville,  
6 Illinois.

7 Q. How large of a farm were you raised on?

8 A. We had 120 sows, farrow to finish.

9 Q. What size of farm was it?

10 A. Do you want acres or what?

11 Q. Acres.

12 A. About 520 acres.

13 Q. Was that your father's farm or your farm?

14 A. My father's farm.

15 Q. You, I assume, graduated from high school at the  
16 age of 18?

17 A. Yes.

18 Q. And you went then to Lincoln Land Community  
19 College, is that correct, for two years?

20 A. Yes.

21 Q. Then you transferred over to University of  
22 Illinois for your last two years?

23 A. That's correct.

24 Q. What year did you graduate from the University of

1 Illinois?

2 A. May of 1988.

3 Q. So you would have graduated from high school in

4 May of 1984?

5 A. Actually, I graduated in 1983. I did two and a

6 half years at Lincoln Land and two and a half years at the

7 U of I.

8 Q. Okay. Did you hold any work down during your

9 summertime that you were not in school?

10 A. Sure.

11 Q. Where was that?

12 A. My brother had an accounting firm at the time.

13 This is during Lincoln Land. I worked out at the mall for

14 a time. I continued to work for my father part-time. I

15 had mowing jobs around Morrisonville.

16 Q. How many hours did you work for your father while

17 you were in college?

18 A. It was on an as needed basis. Some weeks would be

19 10 hours and some weeks would be 60 hours.

20 Q. Did you help put the crop in and take it out?

21 A. Yes, sir.

22 Q. Were you the only help that your father had?

23 A. No.

24 Q. Did he have a hired man?

1 A. At that time or -- I have an older brother.

2 Q. You had other family members?

3 A. Yes, yes.

4 Q. Did he rely principally upon you for help on the

5 farm in the care of the hog operation during the time that

6 you were in Lincoln Land and the University of Illinois?

7 A. Not when I was at the University of Illinois.

8 Q. What about when you were at Lincoln Land?

9 A. At certain times of the year he did, harvest and

10 planting.

11 Q. About how much time a year would you spend

12 assisting him with the hog operation while you were

13 enrolled in Lincoln Land?

14 A. While I was enrolled in Lincoln Land I assisted

15 him most of the time, but I was not in charge of the

16 animals except during planting and harvesting. He was in

17 charge then, otherwise.

18 Q. You said it was a farrow to finish. There is a

19 number of different types of farrow to finish operations,

20 aren't there?

21 A. I am only aware of one farrow to finish type.

22 Q. Can you describe what your father had in the way

23 of his setup?

24 A. At that particular time we had sows out on lots.

1 We farrowed indoors. We finished all our newborns out.

2 Q. On pasture?

3 A. No, in confinement. The sows were the only thing  
4 that were out in the lots.

5 Q. Okay.

6 A. Now -- I mean, as of about five years ago  
7 everything is indoors now.

8 Q. But at that time that you were there --

9 A. At that time when I was there.

10 Q. Okay.

11 A. The sows were outdoors, farrowed indoors, and the  
12 pigs from then on remained in confinement until they were  
13 sold at approximately the age of six months.

14 Q. Were they raised on slats?

15 A. At an early age they were on stainless steel slats  
16 and at an older age they were on concrete slats.

17 Q. Okay. How did your father dispose of waste?

18 A. We had concrete pits underneath the buildings.

19 Q. Then what did you do?

20 A. Then we used a Honey wagon to apply the manure to  
21 row crops.

22 Q. Have you had any personal experience in the  
23 management or operation of lagoons as they are used in a  
24 hog operation, confinement operation?

1 A. Only professionally.

2 Q. What do you mean professionally?

3 A. Working for the Illinois Environmental Protection  
4 Agency.

5 Q. Only through your inspections, is that what you  
6 are saying?

7 A. I have given papers on management of livestock  
8 waste lagoons and holding ponds.

9 Q. Have you, Mr. Brockamp, yourself been in charge of  
10 the operation of and management of --

11 A. No, I have not.

12 Q. -- hog operations which have utilized a lagoon  
13 system for disposing of hog waste?

14 A. No, I have not.

15 Q. Okay. Now, you indicated that you had made  
16 inspections of livestock facilities in your ten years with  
17 the Illinois Environmental Protection Agency and that you  
18 had inspected probably 150 livestock operations. Are  
19 those all hog operations or mixed type of livestock  
20 operations that you have inspected? What kind of  
21 operations were they?

22 A. They are mixed. I would say roughly two-thirds  
23 were swine.

24 Q. What were the other one-third?

1 A. Mostly cows. When I was in southern Illinois, we  
2 had quite a bit of poultry and dairy down there. Once I  
3 transferred up to Springfield it was mostly beef.

4 Q. So you are saying a third of your inspections  
5 while you were in Southern Illinois were with respect to  
6 brood cow operations and poultry operations?

7 A. Well, dairy, beef and poultry.

8 Q. Dairy, beef and poultry?

9 A. Yes.

10 Q. All right. And those are different operations  
11 than a hog confinement operation, aren't they?

12 A. Sure.

13 Q. The other two-thirds you are saying were with  
14 respect to swine operations?

15 A. That's correct.

16 Q. Okay. Of those swine operations how many were  
17 confinement operations?

18 A. I would estimate maybe two-thirds were  
19 confinement.

20 Q. Two-thirds of the two-thirds?

21 A. Yes.

22 Q. And the other third of the two-thirds would be  
23 what, just on an open pasture?

24 A. Yes. That's really the only other option.

1 Q. In other words, the sows and the pigs, until they  
2 reached market weight, are all raised in pasture and  
3 moveable houses?

4 A. No. Well, I would say almost every farm has some  
5 form of confinement. It is -- there is a varying degree.  
6 Some would have maybe just a small portion of the  
7 operation that would be in confinement, and the remainder  
8 portion would be dirt lots or wherever they would want to  
9 raise them, whether it is a wooded area or whatever.

10 Q. Let me ask you this. Of the two-thirds  
11 investigations that you made that were of hog operations,  
12 how many of those involved farrow to finish swine  
13 operations that involved the lagoon method of waste  
14 disposal?

15 A. Fifty percent of the two-thirds of the two-thirds.

16 Q. Now, you had also indicated, and I am not sure if  
17 this is correct, that half the operations were of new  
18 operations. Of all your operations that you inspected  
19 half of them were new?

20 A. What I mean by that is, as in this case, I went  
21 back to a farm on several occasions. Sometimes I never  
22 went back. But I did 150 livestock inspections a year.  
23 Roughly half of those are farms that I -- individual  
24 farms. You know, sometimes I would go two or maybe three

1 times to the same farm within any given year.

2 Q. What does the 750 represent?

3 A. The total number of individual farms that I have  
4 inspected, and that includes --

5 Q. On a first time basis?

6 A. Yes. That would be the same thing.

7 Q. Okay. So of that, two-thirds would be hog  
8 operations, and of that two-thirds, another two-thirds  
9 would be full --

10 A. Total confinement.

11 Q. Total confinement with lagoon, and half of those  
12 would have lagoon operations?

13 A. That would be a very good estimate.

14 Q. Now, when you went to the Chalmers farm, you gave  
15 us a description of the farm. You said that -- let me ask  
16 you this. Did you prepare what is Exhibit A?

17 A. Yes, I did. If you look down in the lower  
18 left-hand corner it says drawn by DWP. Those are my  
19 initials.

20 Q. Is that based on your inspections of the Chalmers  
21 farm?

22 A. Yes. There are several things that went into  
23 this. If you also look in that corner, it says drawn from  
24 an IDOT aerial photograph. Basically what we had is I



1 went over to IDOT and got an aerial photograph and traced  
2 the locations of the buildings from that aerial  
3 photograph.

4 Q. But you prepared it based upon what you saw out  
5 there?

6 A. That is correct.

7 Q. All right. I refer to the areas marked number  
8 two, number one, number two, and number three. You have  
9 written there lagoons. When did you prepare Exhibit A?

10 A. It is not on there. I don't know when I prepared  
11 it.

12 Q. Was it after your first inspection out there on  
13 May 11th of 1992?

14 A. It was probably after the third inspection.

15 Q. So that is into 1993?

16 A. Yes.

17 Q. You had two inspections in 1993?

18 A. Yes, and one in 1992.

19 Q. The 6th and June 15th. So some time after the  
20 June 15th of 1993 inspection you sat down and prepared  
21 what has been marked as People's Exhibit A?

22 A. That is correct.

23 Q. All right. Now, when you did that, you marked or  
24 you identified these areas of one, two, and three on there

1 as lagoons there, didn't you?

2 A. Apparently I did, yes.

3 Q. All right. Today you referred to them as holding  
4 ponds?

5 A. Yes, I did.

6 Q. All right. When did you change your mind about  
7 what they were?

8 A. I don't know.

9 Q. Let me ask you this. Did you ever make an  
10 inspection of the lagoon numbers one, two, and three, I  
11 mean a physical inspection of them?

12 A. Yes, I have.

13 Q. What did that consist of?

14 A. Walking around the lagoons, identifying how much  
15 freeboard was available, identifying if there was any  
16 evidence of a discharge, identifying where the pipes led  
17 from one lagoon to the next, and if there is any pumps or  
18 any type of features which would show that there was any  
19 type of contamination.

20 Q. Did you ever test any of the liquid in those  
21 lagoons?

22 A. No.

23 Q. Did you ever measure the depths of those lagoons?

24 A. No.

1 Q. Did you ever determine the size of those lagoons?

2 A. We had the size determined. I did not do it

3 personally.

4 Q. Did you determine the size of those lagoons?

5 A. No.

6 Q. Who determined the size of those lagoons?

7 A. I believe the Menard County SCS people did.

8 Q. How did they determine it, or do you know?

9 A. They -- I believe they used a digitizer and the

10 aerial photograph to determine how large the --

11 Q. Did you ask them to do that?

12 A. No.

13 Q. Okay. Who asked them to do it if you know?

14 A. I believe Mr. Chalmers did.

15 Q. Okay. Did you ever do any -- make any

16 calculations as to the quantity of water in those lagoons?

17 A. I am sorry?

18 Q. The quantity of water in those lagoons, that is

19 one, two and three?

20 A. No, I did not.

21 Q. Did you ever perform any kind of tests or ask

22 anyone to perform any kind of tests to determine what

23 extent, if any, biodegradation of waste in those lagoons

24 was occurring, that is one, two and three?

1 A. At the latter part of our investigation we asked  
2 Mr. Chalmers to do it, but we didn't do that, nor do we on  
3 any other site.

4 Q. As to the latter part of your investigation, now  
5 what do you mean by the latter part of your investigation,  
6 Mr. Brockamp?

7 A. Well, we didn't get into this morning, but in  
8 approximately 1996 we got involved in a lot of back and  
9 forth regarding a waste management plan associated with  
10 the NPDES permit. And there was a lot of discussion on  
11 exactly what is the constituency of the contents of each  
12 of those holding ponds and lagoons. We went back and  
13 forth. He used a table. We used a table. They didn't  
14 match. So we asked him to go ahead and collect the  
15 sample, because that is the only true way of determining  
16 what is in there.

17 Q. But you yourself had never done that; is that  
18 correct?

19 A. No, we did not do that.

20 Q. And no one at the IEPA has, as far as you know?

21 A. Yes, that's correct.

22 Q. So when you say that lagoons one, two and three  
23 are merely holding ponds because no biodegradation has  
24 taken place, that is not -- that statement of yours is not

1 based upon any measurable quantification or determination

2 by any test, is it?

3 A. That's correct.

4 Q. Okay. Now, you indicate on Exhibit A, People's

5 Exhibit A lagoon number four, and you show it as area on

6 there of six acres?

7 A. Yes.

8 Q. Is that right?

9 A. Yes.

10 Q. Do you know what the depth is for that lagoon?

11 A. I was told by Mr. Chalmers it was 30 feet.

12 Q. Did you yourself do any checking of that or

13 measurement of that?

14 A. No, I did not.

15 Q. When you did your inspection on February 9th of

16 1994, and I am referring you to what is People's Exhibit

17 Number 12, which is your inspection report of that day,

18 you made some references to lagoon number four. Do you

19 remember that in your report?

20 A. No.

21 Q. You refer to that, and I will read it to you.

22 This is a large lagoon measuring 12 acres in surface area

23 and a depth of 35 feet. Was that a correct statement,

24 then, Mr. Brockamp?

1 A. No, it was not.

2 Q. Why did you make it in your report then of

3 February 9th, 1994?

4 A. I either miscalculated it or misjudged it or --

5 well, I don't know. I think Mr. Chalmers had told me how

6 big it was and the SCS had not done their little estimate

7 yet at that time. I think it was --

8 Q. The size of 12 acres would be approximately double

9 of what you have shown as the size of that lagoon on

10 Exhibit A, wouldn't it?

11 A. The surface area, yes.

12 Q. Were you calculating the size of it simply by your

13 visual inspection of it when you made it and placed the 12

14 acres in your report of February 9, 1994?

15 A. I don't recall how I came to that 12 acre figure.

16 Q. Well, did you look at it?

17 A. Sure.

18 Q. All right. You can't tell me today, then, how you

19 came to that size?

20 A. I can tell you how I came to the six acre size,

21 but I can't --

22 Q. I am talking about the 12 acre size --

23 A. No, I cannot.

24 Q. -- that you mentioned in your February 9, 1994

1 report. The reason I ask you that, Mr. Brockamp, is that  
2 is almost double what the size is of that same lagoon as  
3 shown on Exhibit A.

4 MS. PERI: I will object. This is a narrative now.  
5 It has been asked and answered. We should move on.

6 MR. TICE: This is cross-examination. I think I have  
7 a right to explore inaccuracies that have been shown in  
8 his report.

9 HEARING OFFICER KNITTLE: I agree with you, Mr. Tice.  
10 But I will sustain the objection. He has answered that he  
11 does not recall how he came to that 12 acre measurement.

12 If you have further questions about the inaccuracy,  
13 you are free to ask them.

14 Q. (By Mr. Tice) Now, when you were out there did you  
15 observe the topography of the site, that is Mr. Chalmers'  
16 farm?

17 A. Yes.

18 Q. Did you make any calculations as to the size of  
19 the watershed?

20 A. Yes.

21 Q. How did you do that?

22 A. I used the topo map.

23 Q. Okay. And did you make any determination as to  
24 whether there was just one watershed that his farm is

1 located in or whether there is more than one?

2 A. He owns 136 acres. All of it does not drain to

3 that one specific corner. I think I previously stated

4 that only 100 acres drain to that one corner.

5 Q. How many acres drains to the one corner that you

6 are talking about, and that is the northwest corner?

7 A. About 100 of Mr. Chalmers' and approximately 45

8 acres of someone else's.

9 Q. I am sorry. How many acres, now, drain to the

10 northwest corner?

11 A. Approximately 100 of Mr. Chalmers'.

12 Q. How did you calculate that?

13 A. Well, I used a ruler, and 160 acres would be -- if

14 you were to complete the square there, you know, I have

15 that little indentation in there, that would be 160 acres.

16 Taking the 40 acres out, and we know by records that he

17 owns 136 acres. Using the contour lines on the topo map,

18 I estimated that another 45 acres also drained into that

19 same area, which is outlined in orange on that map.

20 Q. Where is the other 45 acres?

21 A. To the south and to the east.

22 Q. Is that owned by someone else?

23 A. I believe so, yes.

24 Q. Do you know what that land is used for?



- 1 A. Row crops, I believe.
- 2 Q. Okay. By row crops what do you mean?
- 3 A. Corn and beans.
- 4 Q. Corn and soybeans?
- 5 A. Yes.
- 6 Q. Is fertilizer applied to that land?
- 7 A. I don't know if they do or not, but I would
- 8 assume.
- 9 Q. Okay. Does fertilizer commonly include the
- 10 fertilizer nitrogen for row crops?
- 11 A. Generally.
- 12 Q. Would you assume that nitrogen would be applied by
- 13 the owner of that land to those 40 acres that also drains
- 14 through this watershed?
- 15 A. I would assume, but I don't know.
- 16 Q. You would assume but you don't know?
- 17 A. That's correct.
- 18 Q. You don't know because you didn't investigate that
- 19 aspect; is that correct?
- 20 A. That's correct.
- 21 Q. Were you able to determine who the owner was of
- 22 that 40 acres?
- 23 A. I never looked it up.
- 24 Q. You could have determined it, could you not?

1 A. Sure.

2 Q. All right. You know how to determine ownership of  
3 land by looking at the county courthouse records?

4 A. That's correct.

5 Q. Now, there is another watershed you say that runs  
6 through Mr. Chalmers' land?

7 A. No, there is part of Mr. Chalmers' land that  
8 drains into a different watershed.

9 Q. Where is that?

10 A. There is a little bit near his house. Do you want  
11 me to approach the map?

12 Q. Go right ahead if you wish.

13 (The witness approached the exhibit.)

14 A. There is a small corner here by his house which  
15 drains off this way and does not drain through here. It  
16 drains through this little gully right here. And in  
17 addition some of this pasture ground up here drains  
18 directly to the north and does not go underneath the  
19 bridge here.

20 Q. Are there any other additional adjoining lands  
21 that drain off to the north and northeast there, that is  
22 adjoining lands to Mr. Chalmers' farm?

23 A. These lands over here (indicating).

24 Q. Would they drain through the same outlet?

1 A. That tile there?

2 Q. Yes.

3 A. No.

4 Q. How do they get to the north?

5 A. I believe they go through the ditch, which is near  
6 the property line right here (indicating).

7 Q. Okay. Well, how do they get north, then, across  
8 the road?

9 A. I believe that there is a separate culvert down  
10 off east of his property.

11 Q. Is it your testimony, then, Mr. Brockamp, that  
12 none of the lands that lie immediately east of Mr.  
13 Chalmers' land and that is the land that lies immediately  
14 to the right of your yellow marker, your Section 8 here,  
15 that none of the lands lie immediately east of this drain  
16 across Mr. Chalmers' land and north across the Kay Watkins  
17 Road?

18 A. I previously stated that there is approximately 45  
19 acres in this general area that enters this watershed and  
20 goes through there (indicating).

21 Q. I am directing your attention, though, to the land  
22 lying immediately east of this area marked Section 8 and  
23 Mr. Chalmers' farm and marked with a yellow or orange  
24 marker here, and it is the east boundary, the land lying

1 immediately east of that, the ones you said that drain to  
2 the north and across the Kay Watkins Road.

3 A. Well, the --

4 Q. Are you telling me -- let me finish. Are you  
5 telling me that none of those lands drain across Mr.  
6 Chalmers' farm, that is the northeast corner of his farm,  
7 and then across the Kay Watkins Road to the north?

8 A. I am telling you that anything from north of this  
9 8 and that center of the section does not drain through  
10 Mr. Chalmers' property. There is some ground south of  
11 this center of the section which does drain across his  
12 property.

13 HEARING OFFICER KNITTLE: You are pointing to the  
14 east of the orange line there?

15 THE WITNESS: Yes.

16 HEARING OFFICER KNITTLE: Below the 8.

17 THE WITNESS: If it is below the 8 it does have a  
18 chance to go across his property. If it is north of the 8  
19 it does not go across the property.

20 HEARING OFFICER KNITTLE: Thank you.

21 Q. (By Mr. Tice) And why is that, that if it is north  
22 of the 8 that it does not go across the eastern part of  
23 Mr. Chalmers' land?

24 A. Because that's the way God created the topography.

1 I can't explain it.

2 Q. Now, Mr. Brockamp, can you tell me the  
3 topographical reason as to why that is, from looking at  
4 the map now?

5 A. The slope of the topography channels the surface  
6 waters into an intermittent stream or a ditch or some type  
7 of gully, which does not drain across Mr. Chalmers'  
8 property.

9 Q. And that assessment by you is based upon your  
10 review solely of the topographical map, or is it also  
11 based upon your physical view of the land at that  
12 location?

13 A. Well, obviously, I have driven by there and I have  
14 looked at it. I can't say that I have studied it that  
15 much because it was his neighbor's property and I really  
16 didn't care about it.

17 Q. So is your answer then that that opinion of yours  
18 is based solely upon this topographical map, which has  
19 been marked as People's Exhibit B?

20 A. No, I cannot say solely, but a majority of it  
21 would be the topography map, yes.

22 Q. How much is based upon some other observation  
23 then?

24 A. A small amount.

1 Q. And that's when you were out there inspecting Mr.

2 Chalmers' property?

3 A. Yes.

4 Q. Okay. But you said you didn't really inspect the

5 neighbor's ground?

6 A. No. There is a fence there that separates the

7 property, and I did not pay much attention to the property

8 on the other side of the fence.

9 Q. You are saying that there is no waterway that

10 connects from the neighbor's ground directly to the east

11 there to Mr. Chalmers' property, his pasture?

12 A. I believe I have stated that.

13 Q. Pardon?

14 A. I believe I have stated that.

15 Q. That there is no waterway there that connects the

16 two?

17 A. I have stated that if it is north of the 8 on that

18 map it does not drain across his property. If it is south

19 of the 8 it can drain across his property.

20 Q. Now, in your May 11th, 1992 report, you made a

21 quote that there had been -- in your background

22 information you said there had been some runoff problems

23 documented in the mid 1970s and again in 1986 for this

24 farm?

1 A. Yes.

2 Q. Did you make any investigation as to the previous  
3 reports for those time frames to determine whether or not  
4 that was an accurate statement?

5 A. I looked at the file, but I did not do anything  
6 more than read the file.

7 Q. Did you read any reports from 1986 before you made  
8 that statement?

9 A. Yes.

10 Q. Okay. Did those reports from 1986 state that  
11 there were runoff problems from Mr. Chalmers' farm?

12 A. I believe so.

13 Q. Are you certain?

14 A. No.

15 MR. TICE: Will you mark this as Respondent's Exhibit  
16 Number 1.

17 (Whereupon said document was duly marked for purposes  
18 of identification as Respondent's Exhibit 1 as of  
19 this date.)

20 Q. (By Mr. Tice) I want you to look at what has been  
21 marked as Respondent's Exhibit Number 1.

22 A. (Witness reviewing document.)

23 Q. I would ask you to turn to the second -- well,  
24 take a minute and look at it, Mr. Brockamp.

1 A. (Witness reviewing document.)

2 MS. PERI: I feel it is best to object at this point  
3 before we proceed. Mr. Tice has not shown -- first of  
4 all, I don't know where he is going, but he has not shown  
5 adequate foundation for this particular report. This is  
6 not a report of Dale Brockamp. I believe we need some  
7 foundation before we proceed any further on testimony.

8 MR. TICE: This was a report that was disclosed to me  
9 by the People of the State of Illinois with respect to the  
10 respondent's farm as having been performed by the IEPA on  
11 August 26th, 1986.

12 MS. PERI: However, there is no foundation laid for  
13 Mr. Dale Brockamp as having prepared this report or that  
14 he has reviewed this report in the past.

15 MR. TICE: He just told me on my cross-examination  
16 that he reviewed the reports of this respondent's farm,  
17 Mr. Knittle. He made his --

18 MS. PERI: I think that you need to establish that  
19 this is a report --

20 HEARING OFFICER KNITTLE: Let him finish, Ms. Peri.

21 MR. TICE: He made his background check in  
22 preparation of making the May 11th, 1992 report. And in  
23 his May 11th, 1992 report he refers to the runoff problems  
24 documented in mid 1970s and again in 1986. I am showing



1 him the report that was provided to me by the IEPA. Of  
2 course I cannot lay a foundation as to the person who made  
3 it. This is in their files. They disclosed it to me. I  
4 presume that what they disclose to me are accurate reports  
5 coming from their files, and I also have to assume that  
6 Mr. Brockamp read this report if he said he did. I just  
7 simply want to ask him a question about the report that he  
8 claims to have read.

9 MS. PERI: I think the first question then should be  
10 is this the report that he has read. That's what I am  
11 asking.

12 MR. TICE: All right. I will ask him that.

13 HEARING OFFICER KNITTLE: Let's proceed along that  
14 line.

15 Q. (By Mr. Tice) Have you had a chance to review this  
16 report?

17 A. I have seen this report, yes.

18 Q. Okay. You have read it?

19 A. Several years ago.

20 Q. All right. Is that one of the reports that you  
21 read in preparation for your background information in  
22 making your May 11th, 1992 report about the respondent's  
23 farm?

24 A. I don't know about the May 11th, 1992 report, but

1 certainly by the time of the July 15th report, yes, later

2 only I did.

3 Q. Then turning, Mr. Brockamp to page two, the  
4 observations indicate and the conclusions indicate no  
5 runoff problems, don't they? In fact, they say no  
6 apparent violations?

7 A. That's what it says.

8 Q. All right. Why, then, sir, did you report in your  
9 May 11th, 1992 report in your background area that there  
10 had been runoff problems in 1986 on the respondent's farm?

11 A. I must have been in error in the 1986 aspect.  
12 This had an NPDES permit from the 1970s, and they don't  
13 give out NPDES permits for no violation facilities.

14 MR. CHALMERS: Incorrect.

15 HEARING OFFICER KNITTLE: Mr. Chalmers, was that you  
16 who spoke?

17 MR. CHALMERS: Yes, sir. I spoke in error. I  
18 shouldn't have --

19 HEARING OFFICER KNITTLE: Yes, let your attorney do  
20 the speaking for you here if you don't mind, sir.

21 MR. CHALMERS: Yes, sir.

22 Q. (By Mr. Tice) How many other errors did you make  
23 with respect to your May 11, 1992 report, Mr. Brockamp,  
24 besides that one?

1 A. None that I am aware of.

2 Q. Now, you made some references to some statements  
3 made by Mr. Jackson in your report of May 11th of 1992.  
4 Are you certain that you made no errors with respect to  
5 your recitation of those statements by Mr. Jackson?

6 A. I believe so.

7 Q. You also make a statement that the waterway was  
8 full of an estimated several thousand gallons of hog  
9 manure. Again, Mr. Brockamp, how did you make that  
10 estimation, just by observation?

11 A. Yes, I did not take any measurements.

12 Q. Okay. Where was that location that you made that  
13 visual observation?

14 A. I made the visual observation from the deck of the  
15 bridge.

16 Q. The Kay Watkins bridge?

17 A. On the corner, yes.

18 Q. The northwest corner of the farm?

19 A. Uh-huh.

20 Q. Okay. Now, you indicated also you couldn't tell  
21 where the wastes were coming from; is that right?

22 A. That's correct.

23 Q. Okay. Did you make any visual or attempt to make  
24 any visual inspection of where the wastes might be coming

1 from?

2 A. No, because I went and spoke with Mr. Jackson and  
3 he admitted that they had a lagoon overflow.

4 Q. Well, are you certain that is what he said to you?

5 A. Yes, I am certain that's what he said to me.

6 Q. You also make a reference in this report that they  
7 have adequate storage capacity; is that correct?

8 A. Yes.

9 Q. Is that your view, then, that this farm has always  
10 had adequate storage capacity?

11 A. It has adequate storage capacity. It is not  
12 always managed properly, but it has adequate storage  
13 capacity.

14 Q. By not always managed properly, what you are  
15 referring to is the overflows or the over irrigations?

16 A. That's correct, both of those two, yes.

17 Q. Those are the two things you are referring to as  
18 being not proper management?

19 A. Sure. There have been odor complaints lodged  
20 against the facility, but there has been hundreds of odor  
21 complaints lodged against any facility.

22 Q. And that would happen with your own father's  
23 facility; isn't that correct?

24 A. Sure.

1 Q. That is not really the subject --

2 A. No.

3 Q. -- of the dispute here today?

4 A. No.

5 Q. So what really is the subject of the dispute here

6 today is not a lack of capacity of these lagoons, not a

7 lack of the operation of the lagoons or biodegradation but

8 rather simply letting them overflow at certain times or

9 over irrigation on to the pasture fields of the liquid

10 manure; is that correct, Mr. Brockamp?

11 A. Yes, that is correct.

12 Q. That is what this all boils down to?

13 A. In my opinion.

14 Q. You took some pictures, Mr. Brockamp, at the time

15 you made this May 11th, 1992 inspection?

16 A. Yes, I did.

17 MR. TICE: People's Exhibit C, do you have the

18 original of those?

19 HEARING OFFICER KNITTLE: Yes, I do.

20 Q. (By Mr. Tice) Did you take this picture that I am

21 having you look at now, People's Exhibit 6?

22 A. Yes, I took both of these.

23 Q. Was this taken at the area that you have marked as

24 C on what is People's Exhibit A, the bridge, this area

1 here?

2 A. Well, it is marked B.

3 Q. It is marked B. I am sorry. Is that --

4 A. Yes.

5 Q. -- where you took that picture?

6 A. Yes.

7 Q. You were facing back up towards the southeast; is

8 that correct?

9 A. In the top photo I was.

10 Q. Now, in 1992 there was not any dilution pond

11 located right next to that bridge on the Chalmers farm,

12 was there?

13 A. Well, it was expanded later on.

14 Q. There was not any dilution pond, was there --

15 A. There was --

16 Q. -- at that time in 1992?

17 A. There was an embankment with this little pipe here

18 (indicating).

19 Q. Are you certain that that is correct?

20 A. Yes, I am certain that is correct.

21 Q. And then the bottom picture that you have on

22 Exhibit C, which direction are you looking at when you

23 took that picture?

24 A. Primarily west.

1 Q. Okay.

2 A. Away from the farm.

3 Q. Now, when you look at that picture there does not  
4 seem to be any foam appearing around that culvert, is  
5 there?

6 A. No.

7 Q. Had you made an investigation as to whether or not  
8 there had been any heavy rains just immediately prior to  
9 the time that you made that inspection on May 11th, 1992?

10 A. No, I did not.

11 Q. That could affect the amount of water that you  
12 would see there, wouldn't it?

13 A. Certainly it would.

14 Q. It would also affect the amount of water that you  
15 would see to the west of the bridge, wouldn't it?

16 A. Yes.

17 Q. Okay. You also indicate in this report that you  
18 saw no evidence of any manure in the area where there was  
19 this complaint about a school bus being sprayed?

20 A. That's correct.

21 Q. Is that correct?

22 A. Yes.

23 Q. The only place that you really saw any evidence of  
24 any alleged violation would have been at the bridge; is

1 that correct?

2 A. That is correct.

3 Q. Isn't there a way, Mr. Brockamp, that you can  
4 actually measure the flow of water?

5 A. Yes.

6 Q. And isn't there a way that you could have measured  
7 the size of the water that is depicted in your People's  
8 Exhibit C at that culvert to determine how many gallons of  
9 water there were there?

10 A. Well, I certainly would have had to have gone on  
11 his property to do that.

12 Q. Well, you could ask permission to go on his  
13 property, couldn't you.

14 A. Sure. I could have.

15 Q. In fact, this is the first time you had gone to  
16 the farm, isn't it?

17 A. That's right.

18 Q. Okay. Why didn't you?

19 A. Because the farm manager admitted that there was a  
20 problem and he said he would get it taken care of. I took  
21 him at his word for it.

22 Q. Where did you see the farm manager?

23 A. I went up to the shop.

24 Q. So you did go on the farm?



1 A. Yes, after I viewed the bridge.

2 Q. Okay. So you could have come back and taken some  
3 measurements of the water?

4 A. I could have.

5 Q. You didn't really think it was all that bad of a  
6 situation at that time, did you?

7 A. I thought it was a one time deal.

8 Q. Well, you didn't take measurements of the size of  
9 the water. You didn't walk the waterway to see where the  
10 water was actually coming from even though you couldn't  
11 see from the trees, and the reason you did that is because  
12 you didn't consider it a major problem at that time, did  
13 you?

14 A. I considered it I guess not a major problem. I  
15 considered it a problem and the manager said he would take  
16 care of it. In addition, there are no homes further on  
17 downstream where someone would be immediately affected.  
18 That would have a bearing on that.

19 Q. There were just agricultural fields on to the  
20 west, weren't there?

21 A. Predominantly, yes.

22 Q. In fact, do you know how far that it is before you  
23 get to a home to the west if you go west from this bridge  
24 area?

- 1 A. No, I don't. I am not sure there is a home.
- 2 Q. All the way to Route 97?
- 3 A. (Nodded head up and down.)
- 4 Q. Yes or no. You have to say for her.
- 5 A. I am not aware of any home all the way to 97.
- 6 Q. How far is it from this bridge to Route 97?
- 7 A. Three miles maybe.
- 8 Q. Okay. So it is just open agricultural ground,  
9 correct?
- 10 A. For the most part, yes.
- 11 Q. It is farm, is it, or do you know?
- 12 A. It appeared to me to be row crop.
- 13 Q. Have you walked any of that area west of the  
14 bridge other than the approximately 115 meters you went in  
15 to take tests on later on?
- 16 A. No, I did not.
- 17 Q. But you visually looked at it?
- 18 A. I went down some private lanes, some old abandon  
19 roadways.
- 20 Q. Is there an old abandon road that goes north off  
21 of that corner of the Kay Watkins Road where the road  
22 turns back east?
- 23 A. Yes.
- 24 Q. That's an old field road, isn't it?

1 A. Yes.

2 Q. How far did you drive back on it?

3 A. I never did back there.

4 Q. Okay. And what old abandon road did you go down,  
5 then?

6 A. Further west toward Route 97.

7 Q. Okay. So then you would have gone back to the  
8 Oakford blacktop and gone on into Oakford; is that  
9 correct?

10 A. That's correct.

11 Q. So you went through the town of Oakford before you  
12 got on to these old country roads?

13 A. Sometimes. Sometimes I cut straight north on  
14 Atterbury.

15 Q. Okay. The town of Atterbury is south of this  
16 area, isn't it, Mr. Brockamp?

17 A. Uh-huh.

18 Q. So you are talking about going down some old  
19 country roads further south of Mr. Chalmers' place and not  
20 directly close to it at all?

21 A. Sure.

22 Q. How far south?

23 A. Where are you asking?

24 Q. When you go through country roads to Atterbury?

1 A. I would say Atterbury is five to six miles south  
2 of his farm.

3 Q. All right.

4 A. I would exit Highway 97 there in Atterbury and go  
5 directly north.

6 Q. All right. You said now you made a brief drive-by  
7 inspection in mid July of 1992?

8 A. That's correct.

9 Q. And you observed no problems at that time; is that  
10 correct?

11 A. That's what I wrote, yes.

12 Q. You say the small stream appeared to have returned  
13 back to normal, and so that small stream you are talking  
14 about is which stream, Mr. Brockamp, the one here at B?

15 A. The one that crosses through to B, yes.

16 Q. When you say it appeared to have returned back to  
17 normal, what do you mean?

18 A. I mean that the rainfall and precipitation and  
19 other runoff apparently pushed all the wastes downstream  
20 and it returned to normal, what I would expect there.

21 Q. So there were no more apparent violations or  
22 problems with the Chalmers Hog Farm at that time; is that  
23 correct?

24 A. There were none visual at that bridge.

1 Q. As far as you are concerned when you made that  
2 inspection in mid July of 1992, there were no more  
3 apparent violations of the Chalmers Hog Farm at that time;  
4 is that correct?

5 A. There were no visual problems at the bridge.  
6 That's the only thing that I can testify to.

7 Q. And why is that the only thing that you can  
8 testify to?

9 A. Because I did not inspect the farm on that date.  
10 All I did was drive by the road.

11 Q. Okay. That was a follow-up check to your May  
12 11th, 1992 inspection, wasn't it?

13 A. Yes, it was.

14 Q. You were satisfied then that things were okay; is  
15 that correct?

16 A. Yes.

17 Q. If you had found some violations you would have  
18 done further inspection at that time, wouldn't you?

19 A. That's correct.

20 Q. So since you did not, would it be fair to assume  
21 then -- that is that you did not follow-up with any  
22 further inspection, would it be fair to assume, Mr.  
23 Brockamp, that you found no further violations of the  
24 Chalmers Hog Farm in mid July of 1992?

1 A. I believe I have already stated that I cannot make  
2 that statement. All I can say is that there were no  
3 visual problems at the bridge.

4 Q. I mean, you can't draw that conclusion?

5 A. I am not sure what I have to say here.

6 Q. Mr. Brockamp, do you have an opinion, based upon  
7 your inspection of mid July of 1992, whether there were  
8 any further violations at that time --

9 MS. PERI: I object.

10 Q. -- (continuing) of Mr. Chalmers' hog farm?

11 HEARING OFFICER KNITTLE: What is your objection, Ms.  
12 Peri?

13 MS. PERI: This question has been asked four or five  
14 times now. It has been answered. He didn't inspect  
15 beyond the bridge. He, therefore, does not have a basis  
16 for giving an opinion on whether there were additional  
17 violations beyond the visual at the bridge.

18 HEARING OFFICER KNITTLE: Mr. Tice?

19 MR. TICE: This witness has been presented to us as  
20 an expert. He has been asked opinions on numerous items,  
21 numerous questions all morning long. I am simply asking  
22 based upon his inspections made at the farm, and I think  
23 that I have a right to ask him if he has an opinion now  
24 based upon his mid July 1992 inspection of the farm, as to

1 whether or not there were any further violations of the

2 Chalmers Hog Farm at that time.

3 HEARING OFFICER KNITTLE: I will overrule the

4 objection.

5 Mr. Brockamp, if you can answer that question you

6 have to.

7 THE WITNESS: Could you ask it again, please.

8 Q. (By Mr. Tice) Do you have an opinion, Mr.

9 Brockamp, as to whether or not there were any violations

10 of the water pollution rules and regulations after you

11 made your -- at the Chalmers Hog Farm after you made your

12 inspection in mid July of 1992?

13 A. I have an opinion.

14 Q. What is that opinion?

15 A. I guess my opinion is there was no problems.

16 Q. All right. Now, Mr. Brockamp, the next time you

17 made an inspection out there was on May the 6th, 1993; is

18 that correct?

19 A. Yes, it was.

20 Q. Now, you had made --

21 HEARING OFFICER KNITTLE: Excuse me. Mr. Tice, can

22 we take a second here?

23 MR. TICE: Sure.

24 HEARING OFFICER KNITTLE: I would like a five minute

1 recess.

2 HEARING OFFICER KNITTLE: All right. We are back on

3 the record.

4 Mr. Tice, I appreciate your courtesy in letting me

5 get a drink of water. You can now resume your

6 cross-examination.

7 Q. (By Mr. Tice) Would you, Mr. Brockamp, take a look

8 at Exhibit D, People's Exhibit D, please. First, the

9 photograph number one. Which direction are you looking

10 when you took that photo?

11 A. The southwest.

12 Q. Where were you standing?

13 A. Just on this side of the -- it looks like the

14 barbed wire fence.

15 Q. Can you tell us where you were in reference to

16 People's Exhibit A?

17 (The witness approached the exhibit.)

18 A. Somewhere in this general location, looking that

19 way (indicating).

20 Q. Is that an alfalfa field that you were taking a

21 picture of there in Exhibit D, photo one?

22 A. I believe it is.

23 Q. That's a pretty good growth of alfalfa, isn't it?

24 A. Yes.



1 Q. In your opinion, as a farm boy, would that be a  
2 good crop of alfalfa coming off of that field?

3 A. Pretty lush and green, yes.

4 Q. Okay. Do you think that the hog manure helps that  
5 any?

6 A. It provides a lot of nutrients, yes.

7 Q. Photo number two, the bottom, where were you  
8 standing in relationship to People's Exhibit A when you  
9 took that photo?

10 A. I was still on the north side of the fence line.

11 Q. Were you at the same location as where you took  
12 photo number one?

13 A. I was probably about 30 feet west of photo number  
14 one.

15 Q. Okay.

16 A. Because if you see, the discharge pipe in the  
17 bottom photo is the end result of the orange tile riser in  
18 the top photo.

19 Q. Now, when you went -- these photos are as a result  
20 of your May 6th, 1993 inspection of the Chalmers farm; is  
21 that correct?

22 A. Yes, it is.

23 Q. You came out there -- or before you came out  
24 there, did you make any check as to the amount of

1 precipitation that had occurred as a result of rains  
2 during that May of 1993 or April?  
3 A. No, I did not.  
4 Q. You are aware of the fact, are you not, that April  
5 and May of 1993 were one of the wettest months that we had  
6 in this area for a long time?  
7 A. I recall the flood of 1993.  
8 Q. Okay. That would be true of the area where the  
9 John Chalmers farm is located, isn't it?  
10 A. Yes, it was -- everyone got covered.  
11 Q. In fact, you could find a lot of places in a lot  
12 of farmers' fields that would look similar to the photo  
13 number one on Exhibit D with respect to water standing in  
14 fields, couldn't you?  
15 A. You would see a lot of water standing in fields,  
16 yes.  
17 Q. You would also find, because of that excess amount  
18 of rain that occurred in April and May of 1993, that there  
19 would be a lot of drainage off of those farmers' fields  
20 through tiles and under roads and this sort of thing and  
21 into waterways; isn't that correct?  
22 A. Yes.  
23 Q. Now, the amount of water that you show coming out  
24 of the culvert in photo number two, that is not a very big

1 stream, is it?

2 A. No, I believe I testified that there was just a

3 trickle.

4 Q. Okay. Now, turning to photo three of People's

5 Exhibit D.

6 A. (Witness complied.)

7 Q. And this is a picture, I take it, of you facing

8 west on the north side of the Chalmers farm. That would

9 be up about where you have marked the red circles on the

10 People's Exhibit A along the Kay Watkins Road; is that

11 correct?

12 A. That is correct.

13 Q. This photo number three does not show anything

14 other than the normal surface of that public roadway, does

15 it?

16 A. It shows the vegetation in the side ditches.

17 Q. It shows the vegetation on the side of it and it

18 shows some mud along where the vegetation approaches the

19 sides of the public road and on the public road itself the

20 surface as shown by this photograph appears to be normal

21 all the way up and down that road, doesn't it?

22 A. The photo shows that, yes.

23 Q. Okay. Now, the ditches -- you mentioned in your

24 direct testimony about the roadside ditches at this

1 location where you have this view that is shown in photo  
2 three in People's Exhibit D. Did you walk these ditches  
3 at this location?  
4 A. What do you mean by walk?  
5 Q. Get out of your vehicle and walk down the ditch?  
6 A. I was in the ditch, yes.  
7 Q. Okay.  
8 A. Out of the vehicle and in the ditch.  
9 Q. All right. How deep was the ditch?  
10 A. Just a few inches.  
11 Q. Hardly any roadside ditch at all, is it?  
12 A. That's right.  
13 Q. How deep was the vegetation there, how tall?  
14 A. Well, at least 12 inches for the most part.  
15 Q. 12 inches or 15 inches, wasn't it?  
16 A. Yes.  
17 Q. It is a pretty good growth of vegetation along  
18 both sides of that roadway, isn't it?  
19 A. Yes.  
20 Q. Can you give me, based upon your inspection at  
21 that location, the amount of distance from the fence row  
22 to the south side of that road ditch, how wide that strip  
23 of vegetation would be?  
24 A. This distance here (indicating)?

1 Q. Yes, on the south side of the road?

2 A. A good 20 feet.

3 Q. With respect to the north side of the road, to the

4 right-hand side of the picture, how wide would that strip

5 of vegetation be between the roadway and the cultivated

6 field?

7 A. Five or six feet.

8 Q. Okay. That's quite -- that makes a good barrier

9 for any kind of liquid waste that might flow out there,

10 doesn't it?

11 A. Well, it provides a barrier.

12 Q. It diffuses the water, doesn't it?

13 A. Not really.

14 Q. Particularly if it is only coming as a trickle,

15 doesn't it, Mr. Brockamp?

16 A. It appeared as though it was coming out more than

17 a trickle prior to my inspection.

18 Q. Well, your photo on page one of People's Exhibit

19 D, the bottom photo, photo two, you said it was only

20 coming out as a trickle?

21 A. Yes.

22 Q. Okay.

23 A. At the time of my inspection.

24 Q. Okay. Well, you are not aware of any other -- you

1 were not there any other time before this particular

2 investigation, were you?

3 A. Well, I was at the farm in 1992.

4 Q. No. I mean in May of 1993.

5 A. No.

6 Q. Okay. So all that you are -- all that you are

7 aware of is what you saw at the time you shot these

8 photographs and made this inspection on May 6, 1993; isn't

9 that correct?

10 A. Plus the information I obtained from the

11 complainant.

12 Q. Outside of the information that you obtained from

13 the complainant, the only information that you directly

14 saw or observed is what you have told us about in these

15 photographs and what these photographs show?

16 A. Yes.

17 Q. Is that correct?

18 A. Yes.

19 Q. All right. Now, looking at photo number four, on

20 page two of People's Exhibit D, which direction are you

21 looking from the roadway as you took this picture?

22 A. Mostly west, a little bit to the northwest.

23 Q. All right. Are you at the same location

24 approximately as where you took the photo in photograph

1 number three?

2 A. I believe I am, yes.

3 Q. Okay. Did you walk out into that field either  
4 before or after the time you took photo number four?

5 A. Just to the edge of the vegetation right there.

6 Q. Did you walk -- you didn't walk out on to the  
7 field?

8 A. No, I did not.

9 Q. Had that field been planted?

10 A. I didn't think it had been, no.

11 Q. Now, again, this photo shows standing water in  
12 that field, doesn't it?

13 A. It was my opinion that this was livestock manure.

14 Q. That photo shows standing water in the field,  
15 doesn't it?

16 A. It was my opinion that this was livestock manure.

17 Q. All livestock manure, no liquid?

18 A. Yes.

19 Q. You are saying there is no water shown in  
20 photograph number four of People's Exhibit D?

21 A. I am saying that this was liquid livestock waste  
22 shown in photo number four in Exhibit D.

23 Q. Did you make any kind of a test of that liquid  
24 that you described as liquid manure shown in photograph

1 four?

2 A. No, I did not.

3 Q. Did you stick your finger in it?

4 A. No, I did not.

5 Q. Did you smell it?

6 A. Yes, I smelled it.

7 Q. Okay. Did you walk in it?

8 A. No, I did not.

9 Q. Okay. How close did you get to it?

10 A. To the edge of the grass.

11 Q. And now this shows water in these tracks in this

12 field for several feet. How far would you estimate that

13 it shows this water at this location?

14 A. Approximately 50 feet, from my point of view, to

15 the far west side of it.

16 Q. Could that water have been or that accumulation of

17 liquid there have come as a result of the heavy rains that

18 had occurred in this area at that time just prior to your

19 investigation?

20 A. As I have stated before, it was my opinion that

21 this was livestock waste, and livestock waste on the other

22 side of the road.

23 Q. Okay. The other side of the road that you are

24 talking about is shown in photo number three?



1 A. And in photo number one.

2 Q. Now, let's look at photo number two, Mr. Brockamp.

3 There is a culvert there in -- is that culvert on Mr.

4 Chalmers' land?

5 A. Yes, it goes underneath the metal fence right

6 there.

7 Q. Okay. Now, there was only a trickle of water

8 coming out of that culvert at that point in time; is that

9 right?

10 A. At that point in time, yes.

11 Q. And then looking at photo number three, was all of

12 the roadside along this public road muddy during this

13 time, during the time that you were out there?

14 A. I don't recall it being muddy, no.

15 Q. You don't know for sure?

16 A. No, I don't know for sure.

17 Q. Going to photo number five, I think you testified

18 on direct that photograph number five is an area on the

19 public highway?

20 A. Yes, the corner marked B.

21 Q. Okay. Did you go down off the highway down to

22 where this -- these bottles and trash were located?

23 A. I stood immediately above them and took the

24 photograph.

1 Q. Did you walk down to them?

2 A. No.

3 Q. Okay. Now, there is a beer can there, isn't

4 there?

5 A. Yes.

6 Q. In fact, there is more than one beer can there,

7 isn't there?

8 A. Yes, there are.

9 Q. And there are some other jars and other things

10 there, aren't there?

11 A. I am sure there are.

12 Q. Did you actually go down and count the number of

13 what you called medicine bottles?

14 A. No.

15 Q. Did you pick any of the medicine bottles up and

16 bring them back?

17 A. Certainly not.

18 Q. Did you observe any manufacturer's label or name

19 on those medicine bottles?

20 A. No, I did not.

21 Q. All you know is there are bottles down there; is

22 that correct?

23 A. Well, I know that they were medicine bottles that

24 would be used in a livestock operation.

1 Q. How do you know that they are medicine bottles?

2 A. Because we used them on our farm.

3 Q. Well, if you don't know -- if there is no

4 manufacturer's label on there, how do you know if they are

5 the same as what you would have used on your farm, sir?

6 A. I know that they are medicine bottles that are

7 typically used for the production of livestock.

8 Q. Is Mr. Chalmers being cited also for the beer cans

9 there?

10 A. I don't believe so.

11 Q. Just for the medicine bottles?

12 A. I am not sure he -- I don't know what he has been

13 cited for.

14 Q. So is this picture, then, of photograph number

15 five simply a photograph of land pollution, is that what

16 it is supposed to portray?

17 A. It portrays that aspect of it, and also portrays

18 that the water is clearer than what it was on my previous

19 inspection.

20 Q. And this was taken on May 6, 1993?

21 A. That is correct.

22 Q. So are you saying, then, that there was no

23 apparent violations at this location?

24 A. No.

1 Q. Now, when you look at photo number five, it  
2 appears that you are seeing the bottom of the stream there  
3 from this picture; is that right?

4 A. Yes, I think so.

5 Q. So the water is clear enough that you can see  
6 clear to the bottom of the stream?

7 A. This is a lot of sediment that had filled in. It  
8 was only about two or three inches deep.

9 Q. You could see all the sediment down there; is that  
10 right?

11 A. Right at this point where I took the photo, yes.

12 Q. You didn't see any fecal matter in that stream at  
13 that time, did you?

14 A. No, I can't say -- no, I did not.

15 Q. Okay. Now, what was your purpose in taking the  
16 photo then? Simply to show the bottles and to show  
17 the clearness of the stream, is that what you were taking  
18 them for, Mr. Brockamp?

19 A. Yes.

20 Q. Turning to photograph number six, you are looking  
21 which direction when you took this photo?

22 A. In a southeast direction.

23 Q. And you were located where?

24 A. Along the north-south road. It is labeled over

1 there as 400 East.

2 Q. Were you at the bridge or were you at a different  
3 location?

4 A. I was at a different location.

5 Q. Further south?

6 A. Yes.

7 Q. Approximately how far south?

8 A. Half way down, which would be roughly a quarter of  
9 a mile, I guess.

10 Q. Were you south of what is marked as lagoon number  
11 three?

12 A. I was right at lagoon number three.

13 Q. What is this picture supposed to depict?

14 A. Well, the photo does not do it justice, but I  
15 could tell that there had been a slight overflow from the  
16 very top of photo number three -- I am sorry -- from the  
17 lagoon number three.

18 Q. Did you get off the road and walk through this  
19 area to make --

20 A. No.

21 Q. -- that inspection?

22 A. No. There was black liquids that had left  
23 residue.

24 Q. How far away were you from where you say you saw

1 this black liquid when you took this picture?

2 A. 200 feet, maybe.

3 Q. Okay.

4 A. It was quite a bit.

5 Q. Did you again make any check of that black liquid,  
6 make a test of it?

7 A. No.

8 Q. Get a sample of it?

9 A. No.

10 Q. Did you walk to it at all?

11 A. No, I did not.

12 Q. How long was this area of black liquid?

13 A. A very short distance. It just came down a little  
14 bit. It didn't go all the way down to the road or  
15 anything like that.

16 Q. So if there was, in fact, hog manure at that  
17 location it was all retained on Mr. Chalmers' land at that  
18 time; is that correct?

19 A. At this particular instance and this location,  
20 yes.

21 Q. Okay. Now, your report of this inspection, of May  
22 6, 1993, you indicated that you observed an alfalfa field  
23 which appeared to be saturated with liquid hog manure.  
24 When you were making that observation, were you standing

1 on the Kay Watkins Road where the red circles are?

2 A. Yes.

3 Q. Okay. Did you walk into the field at all?

4 A. No, I did not.

5 Q. So this observation that you made was strictly

6 from your visual observation of the land itself?

7 A. From the road.

8 Q. And a field could look saturated simply from heavy

9 rainfall, couldn't it?

10 A. It could.

11 Q. How far away were you from the field where you

12 observed this saturation at the time that you made that

13 observation?

14 A. About 30 feet.

15 Q. You don't know how deep, as you sit here today,

16 and as a result of that investigation the mud was in that

17 alfalfa field?

18 A. No, I do not.

19 Q. Was the alfalfa coverage of the field as thick and

20 green and tall a growth as what you depict in your picture

21 number one on People's Exhibit D?

22 A. Yes, for the most part. I don't remember any

23 bareness or anything like that.

24 Q. So you really couldn't even see the base of the

1 roots of the alfalfa plants when you made that

2 observation, could you?

3 A. I guess not.

4 Q. It would be a little difficult to tell that the

5 soil underneath that heavy growth of alfalfa, Mr.

6 Brockamp, that you depict in People's Exhibit D,

7 photograph number one, as being saturated?

8 A. I made my opinion based upon the fact that there

9 was ponded liquids there that looked and smelled like

10 livestock manure and had discharged through the tile riser

11 under the fence line and into the road ditch.

12 Q. So, Mr. Brockamp, your opinion is based solely

13 upon the observation of a ponded area of liquid in a

14 corner of Mr. Chalmers' alfalfa field that you observed

15 and from that you concluded that the alfalfa field had to

16 be saturated with liquid hog manure; is that correct?

17 A. Not completely, no.

18 Q. Well, what is incorrect about it?

19 A. I did not make that basis solely on my

20 observation.

21 Q. What other basis did you rely upon other than your

22 observation?

23 A. The complaint.

24 Q. And that's the complaint by Mrs. Brown?



1 A. I think it was. I am not sure.

2 Q. That's the complaint about a separate time and a  
3 separate occasion; is that correct?

4 A. It was like a day or two prior. It was like May  
5 4th or 5th. I don't remember.

6 Q. But you yourself on May 6th, 1993, never attempted  
7 to utilize any other independent verification other than  
8 your own observation of a heavily cropped alfalfa field as  
9 to whether or not that field and the soil in that field  
10 was heavily saturated with alfalfa (sic) manure, other  
11 than what the complainant apparently said to someone, not  
12 to you even, and your visual observation on that date?

13 A. I also talked with Ron Jackson.

14 Q. Okay. Other than those statements, that's all you  
15 relied upon; is that correct?

16 A. Well, his testimony and admittance that the  
17 employees didn't know what they were doing, that was  
18 pretty good for me. I did not collect any samples. I did  
19 not have anything analyzed, no, if that's where we are  
20 going.

21 Q. You stood solely on the road?

22 A. That's correct.

23 Q. Okay. Now, your conclusion of your report on May  
24 6, 1993, you said that the Chalmers farm continues to have

1 small discharges of liquid manure, sometimes because of an  
2 overflow and sometimes because of improper application  
3 into nearby pastures. And then you referred to these as  
4 minor infractions; is that correct?

5 A. I believe I did.

6 Q. So as of May 6, 1993, in your opinion, as an  
7 agricultural engineer, a ten year employee of the IEPA,  
8 investigator of 1,500 farms at that location, or at that  
9 time, that these overflows or these infractions were  
10 minor; is that correct?

11 A. At the time that I wrote that statement, I was not  
12 overly concerned about it.

13 Q. Okay. Now, the next inspection that you did was  
14 June 15th, 1993; is that correct?

15 A. Yes, it was.

16 Q. That was, again, because of some verbal complaint?

17 A. Yes.

18 Q. And your report of June 15th, 1993 indicates that  
19 there had been a fish kill in the area waterways; is that  
20 correct?

21 A. I don't recall, but if it is, it is.

22 Q. Do you want to look at your report?

23 A. Yes.

24 Q. If you would look at paragraph two.

1 A. (Witness reviewing document.) Yes, that's what it  
2 says.

3 Q. Were you ever able to substantiate any kind of a  
4 fish kill in the area waterways?

5 A. No, I was not.

6 Q. What are they talking about when -- what were you  
7 talking about when you said area waterways?

8 A. I don't really know. The complainant said that --  
9 I mean, that's what the complainant said.

10 Q. You have no independent knowledge as you sit here  
11 today or even as you were there on June 15th, that is the  
12 Chalmers farm on June 15, 1993, that there was ever any  
13 fish in any waterways on the Chalmers farm; is that  
14 correct?

15 A. That is correct.

16 Q. So you have no knowledge whatsoever, and it is not  
17 your intent to advise the Pollution Control Board that  
18 there was any fish kills as a result of any violations or  
19 alleged violations at the Chalmers farm?

20 A. There was never any fish there to kill.

21 Q. Now, you also mentioned that this drainage way,  
22 and I am not sure how or what is the proper way to  
23 characterize it, Mr. Brockamp, but it is indicated by a  
24 dotted line that you have shown on this People's Exhibit

1 A, as an intermittent -- I think you have described it as  
2 an intermittent waterway?

3 A. An intermittent stream.

4 Q. An intermittent stream. And you indicated that it  
5 was an intermittent stream because it would support  
6 aquatic life, in your direct testimony. Do you remember  
7 that?

8 A. Yes, I do.

9 Q. What aquatic life will that intermittent stream,  
10 that you have evidenced on People's Exhibit A, support?

11 A. Bugs, worms, microbial particles.

12 Q. What kind of microbial particles?

13 A. I am not a biologist. I don't know that.

14 Q. Well, you are the one that is testifying here  
15 today as an expert that it will support aquatic life. Are  
16 you saying that the only aquatic life that you are aware  
17 of that would be supported at that area on People's  
18 Exhibit A, that you have indicated as an intermittent  
19 stream, is bugs and fishing worms?

20 A. There are other numerous -- there is probably  
21 hundreds of millions of small type of microbial animals  
22 and insects that would live in there. I don't know their  
23 biological names or anything like that, if that is what  
24 you are meaning.

1 Q. Well, bugs and fishing worms will live on high  
2 ground at other places other than in an intermittent  
3 stream, won't they?

4 A. Certain kinds of bugs and worms, yes.

5 Q. Fishing worms will, won't they?

6 A. Yes.

7 Q. In fact, you will find fishing worms in your yard,  
8 won't you?

9 A. Yes, probably.

10 Q. And you will find bugs in your yard, won't you?

11 A. Yes, unfortunately, we do.

12 Q. Does that, Mr. Brockamp, in your opinion, make  
13 your yard an intermittent stream?

14 A. No, it does not.

15 Q. So aquatic life, identified by you as bugs and  
16 fishing worms, does not necessarily make that area of Mr.  
17 Chalmers' farm an intermittent stream, does it?

18 A. No. Well --

19 Q. Now, Mr. Brockamp, when you went to this farm on  
20 June 15th, 1993, you went first to the location that you  
21 have marked as B on People's Exhibit A, didn't you?

22 A. I believe so, yes.

23 Q. Okay. You indicated that the water there appeared  
24 normal in clarity and color?

1 A. Yes.

2 Q. Don't you?

3 A. Yes.

4 Q. But you also indicate in your report that there

5 were traces of livestock manure; is that correct?

6 A. If that is what it says, yes.

7 Q. Okay. Did you go down to the stream and check to

8 see if it was livestock manure?

9 A. No.

10 Q. Which side of the bridge did you notice these

11 traces of fecal matter on, the east or the west?

12 A. I believe on the east.

13 Q. Did you count the items of fecal matter?

14 A. No.

15 Q. Could the fecal matter have been deposited there

16 by other animals other than hogs?

17 A. I suppose its possible.

18 Q. Okay. Then you also say that you noticed three

19 empty vaccination bottles that had floated there, but that

20 really was not much concern to you, was it?

21 A. No.

22 Q. All right. Now, you also indicate in your report

23 that you went further down the road. I think it is the

24 Kay Watkins Road. Do you mean you went further to the

1 east?

2 A. Yes, to the east.

3 Q. And is that the location that you have marked C on  
4 People's Exhibit A?

5 A. Well, I think so, but I am not sure where you are  
6 going.

7 Q. Well, do you have a copy of your report, People's  
8 Exhibit 6, I think it is?

9 HEARING OFFICER KNITTLE: That is the June 15th  
10 inspection report.

11 MR. TICE: People's Exhibit 6, I believe.

12 HEARING OFFICER KNITTLE: Are you looking for the  
13 original copy?

14 MR. TICE: Only for him to look at, yes.

15 HEARING OFFICER KNITTLE: Okay.

16 MR. TICE: Thank you.

17 HEARING OFFICER KNITTLE: Okay. I am just trying to  
18 keep this in order.

19 MR. TICE: I understand.

20 Q. (By Mr. Tice) On page two of that report at the  
21 very top, the third line, you indicate you traveled  
22 approximately three-eighths mile down the road?

23 A. Yes.

24 Q. Now, is that location the exhibit C -- or the

1 point C marked on People's Exhibit A?

2 A. Yes, it is.

3 Q. Okay. Is this the location, Mr. Brockamp, where  
4 you indicated that there was some what you claim to be  
5 liquid manure that was on the north side of the road going  
6 into this farmer's waterway in this farmer's field?

7 A. That is correct.

8 MR. TICE: I should probably have Exhibit E also.

9 That is the pictures that go with this report, Mr.

10 Knittle. I am sorry.

11 HEARING OFFICER KNITTLE: Sure.

12 MR. TICE: Thank you.

13 Q. (By Mr. Tice) Now, Exhibit E is the photographs  
14 that you took of this particular location on June 15th,  
15 1993, I presume; is that correct?

16 A. That is correct.

17 Q. And photo number one is a picture looking to the  
18 south from the road?

19 A. Yes.

20 Q. Is that correct?

21 A. Yes, it is.

22 Q. And photo number two is a picture also looking to  
23 the south --

24 A. Yes.



1 Q. -- from the road?

2 A. Uh-huh.

3 Q. And picture number three is standing on the road

4 looking which direction?

5 A. South, down.

6 Q. You are looking at Mr. Chalmers' ground there?

7 A. That's correct.

8 Q. And picture number four is also looking to the

9 south from the road?

10 A. Yes, it is.

11 Q. Okay. Now, looking at those pictures, just in

12 general, are those C and D slopes?

13 A. Yes.

14 Q. Those are --

15 A. They would be C. They would be the --

16 Q. They would be C. They wouldn't be D, would they?

17 A. I doubt it.

18 Q. Okay. Is that generally the terrain for that

19 particular field and location?

20 A. Yes.

21 Q. This is almost to the easterly boundary of Mr.

22 Chalmers' farm as you traverse the Kay Watkins Road

23 heading east, isn't it?

24 A. Yes. There are several hundred more feet, but --

1 Q. About 500, 600 feet?

2 A. Sure.

3 Q. And then you get to the fence line that we talked  
4 about before lunch?

5 A. Yes.

6 Q. Between his easterly boundary line and the  
7 neighbor's field to the east?

8 A. That's correct.

9 Q. And we talked about where does the neighbor's  
10 field drain at this point in time; is that correct?

11 A. Yes.

12 Q. Now, I think you testified this morning that you  
13 observed what you claim to be liquid hog manure traversing  
14 under the road at this location into the farmer's field to  
15 the north, and that is into the waterway into the farmer's  
16 field to the north; am I correct?

17 A. Uh-huh, yes.

18 Q. You, I think, testified it went into that field 20  
19 feet.

20 A. I testified that I could see it up to 20 feet.

21 Q. Up to 20 feet?

22 A. Approximately.

23 Q. Are you certain that that is how far you could see  
24 it at that point in time, Mr. Brockamp?

1 A. Yes.

2 Q. I want you to take a look at your report that you  
3 made on April 5th, 1994. It is your same report, People's  
4 Exhibit Number 12. I want you to take a look at page  
5 three of that report, the second paragraph. I would ask  
6 you to look at the last sentence, the last three lines of  
7 that second paragraph, if you would.

8 A. (Witness reviewing document.) Uh-huh.

9 Q. All right. May I have it?

10 A. Just a second.

11 Q. Be sure and read it.

12 A. Okay.

13 Q. There you said that liquid manure that you saw  
14 went seven feet into the neighbor's field, didn't you?

15 A. No, I did not. It says Mr. Chalmers said that.

16 Q. So that was Mr. Chalmers' statement to you?

17 A. That is correct.

18 Q. Did you measure the distance from the road surface  
19 to where you saw that liquid manure end?

20 A. No, I did not.

21 Q. Did you walk into the waterway into the farmer's  
22 field to where it ended?

23 A. No.

24 Q. Did you make any investigation as to whether the

1 liquid manure simply dissipated at that point in time and  
2 disappeared?

3 A. No, I did not.

4 Q. How deep was the vegetation in that waterway at  
5 that point in that location all the way from the north  
6 edge of the roadway until you saw the liquid manure  
7 disappear?

8 A. It looked to be fairly consistent, and I believe I  
9 said 15 inches or so earlier this morning.

10 Q. Was it fairly heavy vegetation?

11 A. Yes.

12 Q. Similar to your photographs that you made I think  
13 in People's Exhibit D of the roadway ditches back further  
14 west along the Kay Watkins Road?

15 A. It was better quality vegetation than the roadway  
16 ditches.

17 Q. The waterway was better quality vegetation?

18 A. Yes.

19 Q. Okay. And in your experience, that liquid manure,  
20 if that is what that was, in fact, at that point in time,  
21 Mr. Brockamp, would simply dissipate into the ground at  
22 that point, wouldn't it?

23 A. No.

24 Q. Where would it go?

1 A. It would go downhill.

2 Q. But you didn't see it go downhill, did you?

3 A. It was hidden from my view.

4 Q. And you didn't see fit to walk further out into

5 that waterway to investigate if, in fact, it stopped or

6 how far it did go, did you?

7 A. No, I did not.

8 Q. In fact, you were not that concerned about it at

9 all, were you?

10 A. No. I was concerned about whose property I was

11 walking across.

12 Q. If you were really concerned about it you could

13 have gone and asked for permission to walk into that

14 waterway, couldn't you?

15 A. Sure.

16 Q. But you were not concerned enough to do that, were

17 you?

18 A. I don't know if concern is the proper term, but I

19 did not do that.

20 Q. Can we assume then, Mr. Brockamp, that because you

21 did not do that, that you were not concerned about that

22 liquid manure making its way to the Sangamon River?

23 A. Yes, I was concerned that it was going to make its

24 way to the Sangamon River.

- 1 Q. Where is the Sangamon River from that location?
- 2 A. It lies to the north.
- 3 Q. How many miles?
- 4 A. A half.
- 5 Q. How do you know?
- 6 A. I had a topography map with me.
- 7 Q. How far is the flow of water? That's a straight
- 8 line shot if you say a half mile, isn't it?
- 9 A. Approximately.
- 10 Q. That's not the way the water flows, is it?
- 11 A. No, it is not.
- 12 Q. How far a distance does it take the water to flow
- 13 to get from that point to get to the Sangamon River?
- 14 A. Three miles, four miles.
- 15 Q. Okay. And that's through vegetation, waterways
- 16 and --
- 17 A. A little bit of everything, I am sure.
- 18 Q. And through farmer's fields, isn't it?
- 19 A. Yes.
- 20 Q. Now, the affect of vegetation, Mr. Brockamp, and
- 21 the type of vegetation that you have testified was in this
- 22 farmer's waterway, a rather lush growth, 15 inches in
- 23 height, and how wide was the waterway?
- 24 A. About 20 to 25 feet.

1 Q. Okay. A 25 feet width of it. The affect of that  
2 kind of vegetation on the flow of liquid manure that you  
3 observed here at this point would be such that if -- that  
4 it would take an awful lot of manure to push that flow  
5 three or three and a half miles to the Sangamon River,  
6 wouldn't it?

7 A. It would take a lot of manure depending on the  
8 amount of antecedent soil moisture conditions or the  
9 amount of precipitation which had occurred prior to this  
10 event.

11 Q. And the 40 to 50 gallons per minute that you  
12 estimated the flow of the water at would not be sufficient  
13 to force that three and a half miles through this kind of  
14 vegetation to the Sangamon River, would it?

15 A. I don't know that.

16 Q. Pardon?

17 A. I don't know that.

18 Q. So you are not able to give any opinion about  
19 that; is that correct?

20 A. I can give an opinion, but not a specific answer  
21 to that.

22 Q. It would not be a very good opinion, then, would  
23 it?

24 A. Not to your specific question.

1 Q. Okay. Now, the flow of liquid manure ceased,  
2 didn't it, at this location?  
3 A. Not that I could see.  
4 Q. Did it virtually stop?  
5 A. Not that I could tell.  
6 Q. When is the next time that you inspected the  
7 Chalmers farm after this incident?  
8 A. I think it was February 9th of 1994, but I am not  
9 sure.  
10 Q. You talked to the Chalmers people at that point in  
11 time, did you?  
12 A. At which point in time?  
13 Q. June 15th, 1993.  
14 A. Yes, I did, after I took these photographs.  
15 Q. And you were satisfied that whatever preventative  
16 action that needed to be taken was going to be taken then?  
17 A. No.  
18 Q. You didn't come back again, did you, to check them  
19 out?  
20 A. We called them in for a meeting.  
21 Q. Okay. After the June of 1993?  
22 A. Yes.  
23 Q. You had that meeting, right?  
24 A. I think it was in September.



1 Q. Okay. Now, normally when you estimate the flow of  
2 water -- and you have indicated 40 to 50 gallons a minute  
3 was the flow of the water in this particular instance.

4 Was that on Mr. Chalmers' side of the land in his field on  
5 his side or was that on the north side of the road?

6 A. Both.

7 Q. Well, now, on the north side of the road there is  
8 a lot of vegetation, isn't it?

9 A. Not when it comes out of the pipe.

10 Q. How far does it run before -- when it comes out of  
11 the pipe before it gets in vegetation?

12 A. A foot, a very short distance.

13 Q. So after it runs a foot it gets into this heavy  
14 vegetation that you described; is that correct?

15 A. Yes.

16 Q. That slows the volume of flow down considerably  
17 doesn't it, and the rate of flow?

18 A. It slows it down, but it does not minimize the  
19 rate.

20 Q. But it slows the flow down, doesn't it?

21 A. It slows the velocity down.

22 Q. And causes it to diffuse and spread out, doesn't  
23 it?

24 A. Yes, it does.

1 Q. How far did it spread out at that point, width?  
2 A. Within the first 20 feet it did not spread out  
3 much at all.  
4 Q. How much?  
5 A. Two feet.  
6 Q. Two feet?  
7 A. Wide.  
8 Q. And then you saw it just end; is that right?  
9 A. No. Then I could no longer see it going to the  
10 vegetation.  
11 Q. The next inspection then was -- let me ask you  
12 another question here. When you marked on People's  
13 Exhibit B the flow of the waterway?  
14 A. Yes.  
15 Q. What you have marked in green on Exhibit B, is  
16 that waterway you have been talking about here?  
17 A. The 25 feet wide, the grass vegetative waterway.  
18 Q. All right. You said you could see it all the way  
19 down to the point where you marked it with a green arrow;  
20 is that correct?  
21 A. Yes.  
22 Q. It was the same type of vegetation all the way to  
23 the point where you could see it as far as your eyes could  
24 see it; is that correct?

1 A. Yes.

2 Q. Was it as wide?

3 A. It was consistent.

4 Q. Was the vegetation as high and thick?

5 A. It was consistent.

6 Q. With what you said it was up where --

7 A. Up near the roadway, yes.

8 Q. Where it ended; is that correct?

9 A. Yes.

10 Q. From that point on you don't know what the

11 characteristics of the waterway are; is that correct?

12 A. I didn't observe it.

13 Q. You don't know? Either you know or you don't

14 know. Do you know?

15 A. No.

16 Q. All right. Then you marked on this People's

17 Exhibit B, you said the waterway came back to the

18 southwest. Why did you mark it that way originally on

19 Exhibit B?

20 A. Why did I mark it that way originally?

21 Q. Yes.

22 A. Because I was nervous.

23 Q. Were you following this dotted line that appears

24 on Exhibit B?

1 A. I don't know what I was following. I remembered  
2 that the waterway curved down like that, but it did not do  
3 it at that point.

4 Q. Well, if you had not observed the waterway in its  
5 location, Mr. Brockamp, beyond where you marked it with an  
6 arrow there, how are we to be certain that you are correct  
7 with your drawing of that line as to the location of the  
8 rest of the waterway further on north, if you have not  
9 observed it or seen it?

10 A. I have looked at the topo map.

11 Q. The topo map is what you were following when you  
12 put that other green line on there, too, wasn't it?

13 MS. PERI: Excuse me, Mr. Brockamp. I object here.  
14 He has already indicated that he was nervous when he made  
15 the first line, and in making the second line, which he  
16 feels is an adequate basis for his opinion that it flows  
17 north, he corrected himself.

18 Q. (By Mr. Tice) Mr. Brockamp, you could be incorrect  
19 with --

20 HEARING OFFICER KNITTLE: Let's hold on. I was  
21 waiting to see if --

22 MR. TICE: I will withdraw the question.

23 HEARING OFFICER KNITTLE: Okay. I was trying to see  
24 if you were going to respond. The question is withdrawn.

1 I am not going to rule on the objection.

2 Q. (By Mr. Tice) Mr. Brockamp, you could be mistaken  
3 with where you have actually located the balance of that  
4 waterway, couldn't you?

5 A. I could be. I am not.

6 MS. PERI: I am sorry. Was there a follow-up to your  
7 answer?

8 THE WITNESS: I said that I could be, but I am not.

9 Q. (By Mr. Tice) What independent verification beyond  
10 the topo map do you have to verify that that is the proper  
11 location of the waterway?

12 A. All I have is the topo map.

13 Q. In your examination or your inspection on February  
14 9th, 1994, you made an inspection of the farm itself, and  
15 that was a cold day, wasn't it?

16 A. Yes, it was.

17 Q. Do you remember how cold it was?

18 A. I was thinking about that last night. I think it  
19 was somewhere around 20 degrees.

20 Q. Could it have been below zero or zero?

21 A. Not at the time we were out there. I am sure it  
22 was maybe overnight.

23 Q. Was there a cold north wind also?

24 A. It was windy. I don't know which direction.

1 Q. All right. Now, you indicated in your report that  
2 you observed an overflow at lagoon number one?  
3 A. Yes.  
4 Q. Drawing your attention back to People's Exhibit A,  
5 you marked some red arrows to show how you recall that  
6 overflow to have traveled?  
7 A. Uh-huh.  
8 Q. Is that correct?  
9 A. (Nodded head up and down.)  
10 Q. How much distance is there between the berm that  
11 is the north edge of lagoon number one, as shown on  
12 People's Exhibit A, and this dotted line that you put on  
13 here to reflect what you believe to be an intermittent  
14 stream?  
15 A. Maybe 300, 400 feet.  
16 Q. Did you ever measure that?  
17 A. No.  
18 Q. This, again, is an eyeball situation?  
19 A. Yes, sir, it is.  
20 Q. You have also shown on here another dotted line  
21 that intersects this longer running from the bottom right  
22 to the top left of Exhibit A that you show as an  
23 intermittent stream, but you show this other shorter  
24 dotted line almost straight up and down coming from lagoon

1 one. What does that represent?

2 A. A gully or a small little tributary to the

3 intermittent stream.

4 Q. Was there water in that?

5 A. When?

6 Q. When you were out there February 9th?

7 A. There was livestock waste in it.

8 Q. Was there water in it?

9 A. Not that I could tell.

10 Q. That's a sow lot, isn't it?

11 A. Yes, it is.

12 Q. That's a pasture sow lot, isn't it?

13 A. No, it was a barren feedlot.

14 Q. A barren feedlot with sows in it; is that correct?

15 A. I didn't see any sows there that day, but they

16 obviously had been in the recent past.

17 Q. That is sort of like the operation that you had at

18 home for your sows that your dad had?

19 A. Partially, yes.

20 Q. You kept them out in the open for breeding

21 purposes or gestation purposes; is that correct?

22 A. Yes.

23 Q. You are normally going to find sow or swine fecal

24 matter on the surface of the ground if they are pasturing

1 there, aren't you?

2 A. It is fairly common, yes.

3 Q. So that is not an uncommon experience to find  
4 fecal matter in this shorter dotted area, in this gully,  
5 so to speak, in what you have marked with a red D on  
6 People's Exhibit A, is it?

7 A. I am not sure how to answer the question.

8 Q. Well, either it is common or not.

9 A. Could you reask the question.

10 Q. It is not uncommon to find swine fecal matter in a  
11 pasture area, such as what D represents on People's  
12 Exhibit A, if you are maintaining swine, female swine,  
13 adult female swine in that area?

14 A. I would agree with that, yes.

15 Q. Okay. Now, you said you saw an overflow over the  
16 berm of lagoon number one; is that correct?

17 A. Yes.

18 Q. On this date. How far did that overflow go?

19 A. It went as far as the intermittent stream, that I  
20 could tell.

21 Q. That you could tell?

22 A. Yes.

23 Q. Did you walk down there and measure it?

24 A. No, we did not.



1 Q. So you just simply eye-balled it again; is that

2 correct?

3 A. Yes, it was 20 degrees, if you recall.

4 Q. It was pretty cold and you didn't want to go down

5 there, did you?

6 A. No.

7 Q. You wanted to make this inspection just as short

8 as you could, didn't you, Mr. Brockamp?

9 A. Well, there were five of us in attendance on that

10 date and, frankly, we were not prepared to see an

11 overflow.

12 Q. You are still classifying it as an inspection

13 report?

14 A. Uh-huh.

15 Q. It was cold. You were going to cut this thing as

16 short as you could, weren't you?

17 A. I would not phrase it like that.

18 Q. Well, you didn't go down and inspect that if you

19 saw this go all the way to the intermittent stream, did

20 you?

21 A. But I didn't go down and inspect any of those

22 other times either when it was nice weather.

23 Q. All right. All right. Now, isn't there a berm

24 buildup in this south pasture lot in there to guard just

1 against what you have just described?

2 A. I am not aware of one, but I am not denying that

3 one exists. I never went down there.

4 Q. If you had gone -- yes, you weren't down there, so

5 you couldn't tell for sure, could you?

6 A. No.

7 Q. That could have kept that overflow from that

8 intermittent stream, or what you are showing is the

9 intermittent stream, through Mr. Chalmers' farm on

10 February 9th, 1994, couldn't it?

11 A. Well, I didn't see a lake down there, particularly

12 when it was that cold out there.

13 Q. It would freeze, wouldn't it?

14 A. Well, it would pond up for a while, yes.

15 Q. But that berm could have kept that from

16 intercepting into what you have described as an

17 intermittent stream, correct?

18 A. But on that cold February day we did not see an

19 impounded area of livestock waste on this side of the

20 intermittent stream.

21 Q. But you were not down there to inspect either,

22 were you?

23 A. No.

24 Q. Then you drove to what is lagoon number four,

1 which is shown in the bottom right-hand of People's  
2 Exhibit A; is that correct?  
3 A. If that's what it says, yes. I don't remember  
4 which it is.  
5 Q. Yes, your report does say that.  
6 A. That's fine.  
7 Q. It is in this report that you described lagoon  
8 number four as being 12 acres -- the surface area being 12  
9 acres in size. Do you recall that?  
10 A. Our past discussion about an hour ago.  
11 Q. Yes.  
12 A. Yes, I do.  
13 Q. Yes, 35 feet deep.  
14 A. Okay.  
15 Q. You also made an inspection of the northwest  
16 corner of the farm at what is marked B on People's Exhibit  
17 A on this occasion. Do you remember that?  
18 A. Yes. We got in our vehicles and drove over.  
19 Q. And drove around there. It was a little bit  
20 warmer in the car, wasn't it?  
21 A. Yes, it was.  
22 Q. You said there was no flow occurring at that area  
23 at that time, no flow of water?  
24 A. (The witness shrugging shoulders.)

1 MR. TICE: I am showing the witness the report right

2 here.

3 HEARING OFFICER KNITTLE: What are you showing the

4 witness, Mr. Tice?

5 MR. TICE: I am showing him People's Exhibit Number

6 12, Mr. Knittle, my copy of it.

7 (Witness reviewing document.)

8 THE WITNESS: Yes, I wrote that no flow was occurring

9 at the time of our inspection.

10 Q. (By Mr. Tice) Now, there had been quite a little

11 bit of work done on the dilution pond at that point in

12 time, hadn't there?

13 A. Yes, there had.

14 Q. Can you tell from your inspection at that time

15 what kind of work had been done?

16 A. It was greatly expanded.

17 Q. By greatly expanded, what do you mean?

18 A. Beforehand it was just a small little earthen

19 berm. Now it was an organized pond. I think I estimated

20 it at 80 feet long, 30 feet wide, and about eight feet

21 deep.

22 Q. Okay. And it had a culvert sticking out of it, an

23 overflow culvert sticking out of the bottom of it, didn't

24 it?

1 A. Yes.

2 Q. Before this inspection in 1994 you had never  
3 noticed that much earthen construction work in that area,  
4 had you?

5 A. It just was a small little mound --

6 Q. Okay.

7 A. -- that I could see over.

8 Q. And there wasn't any corrugated pipe in that small  
9 little mound to take care of overflow, was there?

10 A. By 1992 the photos show that there was.

11 Q. Do you recall independently of those photographs,  
12 Mr. Brockamp, whether or not there was an overflow pipe  
13 prior to 1994 at that location?

14 A. Yes, there was an overflow pipe prior to 1994.

15 Q. That is your recollection independent of those  
16 photographs --

17 A. Yes.

18 Q. -- that you took? Okay. Did you check the amount  
19 of freeboard on Mr. Chalmers' four lagoons on this date?

20 A. I don't recall if we did or not.

21 Q. Was it of a concern to you on this particular  
22 inspection date?

23 A. Yes, it was a concern because, number one, it was  
24 overflowing at the time.

1 Q. Why didn't you check the amount of freeboard?  
2 A. Because I was not the one running the show.  
3 Q. Who was?  
4 A. The other people involved on that date.  
5 Q. Well, are you not the chief inspector for Mr.  
6 Chalmers' farm?  
7 A. There were three of my supervisors with me that  
8 day.  
9 Q. Could you have requested of them that you wanted  
10 to make that inspection?  
11 A. I suppose I could have.  
12 Q. Would they have allowed you --  
13 A. I suppose they would have.  
14 Q. -- if you had requested that? Why didn't you make  
15 the request if you felt that there was some concern on the  
16 amount of freeboard on that date?  
17 A. I did not question their judgment.  
18 Q. Did you discuss with them about inspecting the  
19 amount of freeboard on the lagoons on that particular  
20 inspection date?  
21 A. I don't recall.  
22 Q. Is it possible that you didn't even bring the  
23 subject up with your supervisors?  
24 A. I am sure we did, but I don't recall any specific

1 points that were discussed.

2 Q. Okay.

3 A. They were probably discussed on the way home.

4 Q. At this time now you have had three inspections  
5 out there. Did you say anything to Mr. Chalmers about  
6 this overflow in lagoon number one during this inspection?

7 A. Yes, we pointed it out.

8 Q. What did you say to him?

9 A. Well, number one, we were quite surprised, because  
10 he had had four weeks notice that we were coming on that  
11 particular date. We set up an appointment. And once we  
12 got out there we were like -- we were quite surprised to  
13 see a discharge. And we asked him, you know, what is  
14 this. His response was that it got cold last night and  
15 his pump froze up and it was not taking waste to one of  
16 the other lagoons, so it was overflowing.

17 Q. It was a result of some weather problems, then, is  
18 that correct, the cold weather?

19 A. That was his response, yes.

20 Q. Something that has to do with Mother Nature?

21 A. Uh-huh.

22 Q. That is the first time you had ever seen an  
23 overflow from that lagoon, isn't it?

24 A. Yes.

1 Q. And you have not seen any overflows from that  
2 lagoon since that inspection date, have you?

3 A. No, I have not.

4 Q. Now, Mr. Brockamp, based on your testimony this  
5 morning and what you have told us so far, I would assume  
6 that because you call this an intermittent stream, and I  
7 am pointing now to the dotted line starting at the bottom  
8 of the right-hand side of People's Exhibit A, and  
9 extending to the top left-hand corner of that same  
10 exhibit, that if that's an intermittent stream and if we  
11 have an overflow at lagoon number one, that that overflow  
12 is going to appear down here at this concrete bridge on  
13 the northwest corner of Mr. Chalmers' farm, isn't it?

14 A. It would eventually.

15 Q. But you didn't observe it there on February 9th,  
16 did you?

17 A. No.

18 Q. And you went to the northwest corner of the farm  
19 after you had the inspection of Mr. Chalmers' farm  
20 property, where you saw the overflow of the lagoon number  
21 one, isn't it?

22 A. That's correct.

23 Q. Wouldn't it be safe to assume that, then, that  
24 that overflow never, ever reached that intermittent



1 stream?

2 A. No.

3 Q. You didn't stay long enough to check it out to see

4 if it would?

5 A. I guess that's true.

6 Q. You were not that concerned about it, were you?

7 A. There again, I was not the one leading the

8 inspection.

9 Q. Then your supervisor was not concerned enough

10 about it to stay and see if it --

11 MS. PERI: I object. Mr. Brockamp cannot read the

12 minds of his supervisors.

13 HEARING OFFICER KNITTLE: Sustained.

14 Q. (By Mr. Tice) I want to show you what has been

15 marked as People's Exhibit H. These are the photos that

16 you took February 14th, 1994. You went back five days

17 after the February 9th inspection; is that correct, Mr.

18 Brockamp?

19 A. That is correct.

20 Q. And these are pictures that you have taken west of

21 the bridge at the northwest corner of Mr. Chalmers' farm?

22 A. Yes.

23 Q. Now, there is no vegetation on the sides of this

24 waterway at this time of year, are there?

1 A. No, there is not.

2 Q. In fact, there had been evidence to you, anyway,  
3 of fresh earth work done at that location?

4 A. Yes, it was done in the fall.

5 Q. So there had not been time for vegetation to grow  
6 back?

7 A. Correct.

8 Q. Now, fresh earth work like that is going to make  
9 the water very murky, sedimentary and very brown and  
10 dirty, isn't it?

11 A. It certainly allows for more erosion, sure.

12 Q. And this is in another farmer's field, isn't it?

13 A. Yes.

14 Q. And do you know what is growing in that field?

15 A. No.

16 Q. In fact, there is another farmer's field on both  
17 sides of that ditch, isn't there?

18 A. Yes.

19 Q. Okay. Would they be growing row crops in that  
20 field normally during the year?

21 A. Not on February 14th.

22 Q. No, but you were there during 1993 and 1992 and  
23 during May and June of each of those years. Did you  
24 observe the cropping on that particular field on the west

1 side of the Kay Watkins Road?

2 A. Yes.

3 Q. And it would be corn and soybeans, wouldn't it?

4 A. Yes, it would.

5 Q. That means there would be fertilizer wouldn't

6 there, Mr. Brockamp?

7 A. Yes, it would.

8 Q. And that would mean there would be anhydrous

9 ammonia, nitrogen fertilizer, wouldn't there?

10 A. Most likely, sure.

11 Q. It is possible that some of that nitrogen

12 fertilizer would work its way into that stream; isn't that

13 correct?

14 A. Under the right conditions that has been known to

15 happen.

16 Q. In fact, nitrogen leaches its way out of the soil

17 and into subsurface waters and drains to the lower area

18 and into a drainage ditch such as that, doesn't it?

19 A. I guess so.

20 Q. In fact, if there is too much moisture or the

21 temperature is just right that nitrogen will leach out,

22 won't it, through the subsurface waters?

23 A. I am not an agronomist, but, yes, sure.

24 Q. And that will work its way right into that stream,

1 won't it?

2 A. It can.

3 Q. Okay. Now, that can affect the samples, at least  
4 as to nitrogen that you take out of that stream when you  
5 take it downstream from the Kay Watkins bridge, can't it?

6 A. Yes.

7 Q. In fact, if I recall correctly from your report of  
8 February 17th, 1994, which is People's Exhibit Number 14,  
9 you went some 345 feet west of that road along that stream  
10 to take some of your samples, didn't you?

11 A. I took one set of samples about that distance.

12 Q. 115 meters is what your report says, which works  
13 out to something like 340 some feet, doesn't it?

14 A. Yes.

15 Q. Okay. So as you sit here today you have no  
16 accurate way of determining how much of the nitrogen that  
17 showed up in the tests that you made from those samples  
18 that might be attributed to the cropping rotation on  
19 either side of that waterway and what might be attributed  
20 to Mr. Chalmers' hog operation, do you?

21 A. I have no accurate method to determine that.

22 MR. TICE: I will be done in about five or ten  
23 minutes here.

24 HEARING OFFICER KNITTLE: Do you need a second, Mr.

1 Tice?

2 MR. TICE: No, I say I will be done. Well, if you

3 don't mind, I would like to take a drink of water.

4 HEARING OFFICER KNITTLE: Okay. Let's take five

5 minutes for Mr. Tice.

6 (Whereupon a short recess was taken.)

7 HEARING OFFICER KNITTLE: We are back on the record.

8 You may proceed.

9 Q. (By Mr. Tice) Now, Mr. Brockamp if you will look

10 at People's Exhibit J, which is photographs?

11 A. Uh-huh.

12 Q. These photographs were taken February 17th, 1994,

13 and they relate to the inspection that you made of the

14 Chalmers farm on February 17th, 1994; is that correct?

15 A. Yes, it is. Well, I did not inspect the farm on

16 this date. I just collected the water samples.

17 Q. Again, you took the water samples off the

18 northwest corner of Mr. Chalmers' farm, is that also

19 correct?

20 A. Yes.

21 Q. And is this the date when you took those samples

22 some 45 feet and some 340 plus feet into the neighbor's

23 field from this particular drainage ditch?

24 A. Yes, I took two sets of samples.

1 Q. The same thing would be true then when you took  
2 these samples as when you took them on February 14th, that  
3 the nitrogen, to the extent it leached out of the  
4 neighbor's soil, could impact on those samples as they  
5 reflect nitrogen in the water?

6 A. The leaching could contribute to the nitrogen in  
7 the stream.

8 Q. The next inspection that you made the next time, I  
9 assume, that you were at the Chalmers farm was July 26th  
10 of 1994; is that correct?

11 A. Yes.

12 Q. And you, again, took samples on that occasion?

13 A. Yes.

14 MR. TICE: Excuse me. Desiree, were there  
15 photographs?

16 MS. PERI: I don't have photographs from July 24th.

17 MR. TICE: There are photographs attached to the  
18 report, though.

19 MS. PERI: I don't have color photographs.

20 MR. TICE: Are you intending to admit into evidence,  
21 then, these black and white?

22 MS. PERI: They are entered in with the report. We  
23 didn't make any testimony on what appeared in those  
24 photographs.

1 MR. TICE: It is hard to read these photos.

2 Q. (By Mr. Tice) Was the inspection that you made on

3 July 26th, 1994, made at the northwest corner of Mr.

4 Chalmers' farm?

5 A. Yes. Well, across the road.

6 Q. To the west again?

7 A. Yes.

8 Q. So with respect to the samples of the water that

9 you took on that occasion, on that date, the same could be

10 true about those as about the previous samples you took in

11 respect to the nitrogen content of the water?

12 A. Yes.

13 Q. Now, you were out to the Chalmers farm subsequent

14 to July 26th, 1994, weren't you?

15 A. Yes.

16 Q. Do you know how many times you were out there

17 inspecting his farm subsequent to July 26, 1994?

18 A. I would have to count them.

19 Q. When did you become aware that Mr. Chalmers no

20 longer had livestock, that is hogs, in his confinement

21 operation?

22 A. Officially or unofficially or how do you --

23 Q. Unofficially, anyway?

24 A. Officially, when I made a 1997 inspection. And at

1 that point he told us that -- well, actually, he wrote us  
2 a letter, too, stating that all livestock were removed in  
3 November of 1996. He certainly reduced the number of  
4 head. I mean, there was a time in there when he was from  
5 full capacity down to about a third capacity, and then  
6 eventually there was no livestock.

7 Q. To this day, as far as you know, there is no hogs  
8 in the operation there on his farm; is that correct?

9 A. That's correct.

10 Q. All right. Now, each of your inspections  
11 subsequent to July 26, 1994, have shown that the  
12 violations, if there were any violations, as you would  
13 determine them in your inspection, have decreased or  
14 minimized, and to the extent where there is no violations  
15 at all now, are there, at his farm?

16 A. There are no longer any discharges.

17 Q. And that's basically --

18 MS. PERI: I will object. Mr. Brockamp has not  
19 visited -- at least we have not established that he has  
20 visited the property since October of 1997. So I don't  
21 see how he is in a position to make that determination.

22 HEARING OFFICER KNITTLE: Mr. Tice?

23 MR. TICE: The reports from Mr. Brockamp that they  
24 have given us are up through October 27, 1997.



1 Q. (By Mr. Tice) Let me ask you this. Have you been  
2 on his farm since October 27, 1997?

3 A. No, I haven't.

4 Q. As of October 27, 1997, you did not observe any  
5 violations at his operation, did you?

6 A. There were some NPDES violations, but there were  
7 no water quality violations.

8 Q. By NPDES violations, are you talking about the  
9 livestock waste management plan?

10 A. Yes. Paper problems.

11 Q. Paper problems?

12 A. Yes.

13 Q. Okay. The livestock waste management plan, to  
14 your knowledge, has been approved by the IEPA, hasn't it?

15 A. I think it has. I am not for sure.

16 Q. So that has been resolved, hasn't it?

17 A. I am not the one to ask.

18 Q. Who is the one to ask?

19 A. Our permit staff.

20 Q. Was that Mr. Wells?

21 A. No.

22 Q. Is that Mr. Heacock?

23 A. Mr. Heacock or Mr. Yurdin.

24 Q. Okay. So as of October of 1997, your last

1 inspection at this farm, other than the livestock waste  
2 management plan approval, there were no violations at Mr.

3 Chalmers' farm?

4 A. Yes.

5 Q. I mean, that statement is correct?

6 A. There were no water quality violations observed on  
7 that date.

8 Q. And you have not been back since to inspect it to  
9 determine?

10 A. That is correct.

11 Q. Okay.

12 A. I was only with the Agency for another two months  
13 after that, too.

14 MR. TICE: That's all of my cross-examination, Mr.  
15 Knittle.

16 HEARING OFFICER KNITTLE: Ms. Peri, do you have  
17 redirect?

18 MS. PERI: I do. I recommend that we start first  
19 thing in the morning, so that we can then proceed  
20 uninterrupted.

21 HEARING OFFICER KNITTLE: Mr. Tice, do you have any  
22 objection to that?

23 MR. TICE: How much redirect are you going to have,  
24 how long?

1 MS. PERI: Well, I can't give you an exact time, but  
2 I would guess maybe 30 to 40 minutes, with the expectation  
3 that there would be re-cross.

4 MR. TICE: Okay. I can't -- that's fine.

5 HEARING OFFICER KNITTLE: Okay.

6 MR. TICE: That would go past 4:30.

7 MS. PERI: Yes, I envision them coming in in about  
8 ten minutes, and then --

9 HEARING OFFICER KNITTLE: And we are only noticed up  
10 to 4:00. We have two additional days set up for this and  
11 I think we should take advantage of them.

12 So let's start up again tomorrow. Mr. Brockamp, you  
13 will, of course, be here tomorrow, I hope, and submit  
14 yourself for further examination.

15 THE WITNESS: Yes.

16 HEARING OFFICER KNITTLE: Thanks. We are now off the  
17 record.

18 (Discussion off the record.)

19 HEARING OFFICER KNITTLE: Let's go back on the  
20 record. Mr. Tice?

21 MR. TICE: I will ask that Respondent's Exhibit  
22 Number 1, which was the report of 1982, and that I  
23 questioned Mr. Brockamp about, be admitted into evidence.

24 HEARING OFFICER KNITTLE: Ms. Peri?

1 MS. PERI: My objection is limited to the fact that  
2 the State has not had the opportunity to cross-examine  
3 Mr. Manning, I believe, who is the author of that report,  
4 on the subject of his observations. He has not been  
5 called or listed as a potential witness. I believe that  
6 his evaluations are limited to an inspection that may be  
7 different from or less than what Mr. Brockamp perceives as  
8 a complete inspection. We have no way of addressing those  
9 issues with him.

10 MR. TICE: This is the Department's report. Mr.  
11 Manning, I presume, is still with the Department. He is  
12 under their control. If they want to call him and  
13 question him, that is their prerogative.

14 MS. PERI: If I recall correctly, Mr. Tice, you made  
15 that same objection with regard to our request to admit  
16 public records, specifically inspection reports. We  
17 presented Mr. Brockamp and laid foundation and talked  
18 about the reports and answered your questions, and we  
19 would like the opportunity to do the same with Mr.  
20 Manning.

21 HEARING OFFICER KNITTLE: I am going to admit it, Ms.  
22 Peri, and I will note your objections for the record.

23 MS. PERI: Thank you.

24 HEARING OFFICER KNITTLE: I will also note that my

1 problem with the earlier inspection reports were, as you  
2 recall, I was going to admit them aside from the  
3 photographs. I don't see any photographs here, so I will  
4 admit this over your objection. But if you prefer, you  
5 can make any arguments before the Board.

6 MS. PERI: Thank you.

7 (Whereupon said document was admitted into evidence  
8 as Respondent's Exhibit 1 as of this date.)

9 HEARING OFFICER KNITTLE: Are we finished? I  
10 hesitate to go off the record again until I ask you both.

11 MR. TICE: I am finished.

12 HEARING OFFICER KNITTLE: Ms. Peri?

13 MS. PERI: Nothing further.

14 HEARING OFFICER KNITTLE: All right. We will see you  
15 back here tomorrow at 9:00.

16 (The Hearing Exhibits were retained by Hearing  
17 Officer John Knittle.)

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

3 CERTIFICATE

4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for  
6 the County of Montgomery, State of Illinois, DO HEREBY  
7 CERTIFY that the foregoing 253 pages comprise a true,  
8 complete and correct transcript of the proceedings held on  
9 the 22nd of June A.D., 1999, at the Menard County  
10 Courthouse, Petersburg, Illinois, in the case of the  
11 People of the State of Illinois v. John Chalmers,  
12 Individually, and d/b/a John Chalmers Hog Farm, in  
13 proceedings held before the Honorable John Knittle,  
14 Hearing Officer, and recorded in machine shorthand by me.

15 IN WITNESS WHEREOF I have hereunto set my hand and  
16 affixed my Notarial Seal this 5th day of July A.D., 1999.

17

18

19 Notary Public and  
20 Certified Shorthand Reporter and  
Registered Professional Reporter

21 CSR License No. 084-003677  
My Commission Expires: 03-02-2003

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