

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 PEOPLE OF THE STATE OF ILLINOIS,

4 Petitioner,

5 vs. No. PCB 95-091

6 WASTE HAULING LANDFILL, INC.,

7 and WASTE HAULING, INC.,

8 Respondents.

9 and

10 WASTE HAULING LANDFILL, INC.,

11 and WASTE HAULING, INC.,

12 Cross-claimants,

13 vs.

14 BELL SPORTS, INC.,

15 Cross-Respondent.

16

17

18 Proceedings held on May 20, 1997, at
19 10:05 a.m., at the Office of the Attorney General,
20 Conference Room, 500 South Second Street,
Springfield, Illinois, before the Honorable Michael
L. Wallace, Hearing Officer.

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I N D E X

WITNESS	PAGE NUMBER
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Steven C. Townsend	38, 66, 74, 76,

E X H I B I T S

NUMBER	MARKED FOR I.D.	ENTERED
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P R O C E E D I N G S

(May 20, 1997; 10:05 a.m.)

HEARING OFFICER WALLACE: Pursuant to the direction of the Illinois Pollution Control Board, I now call Docket PCB 95-91.

This is the matter of the People of the State of Illinois versus Waste Hauling, Inc., Waste Hauling Landfill, Inc., and the counterclaim of Waste Hauling Landfill, Inc. and Waste Hauling, Inc. versus Bell Sports.

Let the record reflect the same appearances as May the 19th. There are no new appearances, and there are no members of the public present.

Any preliminary matters, Ms. Menotti?

MS. MENOTTI: Nothing.

HEARING OFFICER WALLACE: Mr. Van Ness?

MR. VAN NESS: Nothing.

HEARING OFFICER WALLACE: Mr. Taylor?

MR. TAYLOR: No.

HEARING OFFICER WALLACE: All right. We finished up yesterday evening with the Waste Hauling Landfill, Inc. and Waste Hauling, Inc. resting, and Bell Sports was going to present

1 additional witnesses today.

2 Are you ready to proceed?

3 MR. TAYLOR: Yes, we are.

4 HEARING OFFICER WALLACE: Call your first
5 witness, please.

6 MR. NAHMOD: We call Robert Miller.

7 HEARING OFFICER WALLACE: Mr. Miller,
8 would you please come up here.

9 (Whereupon the witness was
10 sworn by the Hearing Officer.)

11 HEARING OFFICER WALLACE: Mr. Miller,
12 please speak clearly and loudly so the court
13 reporter can hear your answers.

14 THE WITNESS: All right.

15 HEARING OFFICER WALLACE: You may begin.

16 MR. NAHMOD: Thank you.

17 R O B E R T M I L L E R,
18 having been first duly sworn by the Hearing
19 Officer, saith as follows:

20 DIRECT EXAMINATION

21 BY MR. NAHMOD:

22 Q Mr. Miller, please state your name and
23 spell it for the record.

24 A Robert Miller, R-O-B-E-R-T, M-I-L-L-E-R.

1 Q Mr. Miller, are you currently employed?

2 A Yes.

3 Q Who is your current employer?

4 A Bell Sports.

5 Q And what title do you hold now?

6 A Production supervisor.

7 Q What are your responsibilities as

8 production supervisor?

9 A I am in charge of production in the

10 bicycle cap cutting department.

11 Q Do you oversee employees?

12 A Yes.

13 Q How many employees do you oversee?

14 A Approximately 60.

15 Q How long have you held this position?

16 A Since October of 1996.

17 Q How long have you been a Bell employee?

18 A Since October of 1977.

19 Q What are some of the other titles you

20 have held as a Bell employee?

21 A Assembly worker, line lead and production

22 supervisor.

23 Q And what have been some of your

24 responsibilities in those positions?

1 A I was in charge of the vacuum foaming
2 operation. I have been in charge of the shell
3 manufacturing operation. I have also been in
4 charge of the auto racing department. And
5 currently the division of the bicycle assembly.

6 Q Were you an employee in 1992?

7 A Yes.

8 Q What was your title in 1992?

9 A Production supervisor for shell
10 manufacturing and later production supervisor for
11 auto racing.

12 Q When did you become production supervisor
13 for auto racing?

14 A Approximately February.

15 Q Of 1992?

16 A Of 1992.

17 Q And I am sorry if this is a little
18 repetitive, but what were your responsibilities in
19 that position?

20 A I had five areas of responsibility; shell
21 manufacturing, shell painting, sewing, painting and
22 final assembly.

23 Q You mentioned painting. Were you
24 familiar with the painting operations at Bell?

1 A Yes.

2 Q How was the painting done?

3 A The shells were put on a conveyer. They
4 were run through a series of paint booths and then
5 through a dryer and then unloaded.

6 HEARING OFFICER WALLACE: And then what?

7 THE WITNESS: Unloaded.

8 Q (By Mr. Nahmod) How many paint booths
9 were there?

10 A Three.

11 Q Were all of the paint booths similar?

12 A Yes, identical.

13 Q Would you be able to describe one of
14 those paint booths?

15 A Yes. It was a waterfall paint booth,
16 approximately eight foot by -- eight foot wide, by
17 five foot deep. It was submerged in the ground
18 approximately one foot. It had a front opening and
19 then two side walls and a back. The water flowed
20 through the bottom portion of the booth and
21 collected the paint as the painter was spraying
22 into the booth.

23 Q Why is it called a waterfall paint booth?

24 A Because instead of using dry filters to

1 collect the overspray paint, it has water that
2 continually cycles through the bottom of it, and as
3 the water cycles through the bottom it carries the
4 paint to the bottom of the booth.

5 Q How does the paint come into contact with
6 the water?

7 A Gravity. As it goes past the helmet, if
8 it doesn't stick to the helmet, it falls and then
9 the water captures it, and it is heavier than the
10 water so it goes to the bottom.

11 Q Does this process produce any waste?

12 A Yes.

13 Q How?

14 A I am sorry?

15 Q How does it produce waste?

16 A As you continue to paint, the overspray
17 paint builds up into the bottom of the booth.

18 Q Did the overspray paint that collected at
19 the bottom of the booth ever have to be removed
20 from the booth?

21 A Yes.

22 Q How was that done?

23 A We used two different tools. We had one
24 that was manufactured at Bell. It was a square of

1 expanded metal, approximately a foot and a half by
2 a foot and a half, and it was welded to a handle.
3 The expanded metal had holes in it, so as you
4 scooped the sludge out of the booth the water would
5 cycle through and you would end up with just the
6 paint sludge.

7 Q Who would be responsible for removing the
8 paint sludge?

9 A Our painter.

10 Q And did you supervise the painter as part
11 of your responsibilities?

12 A Yes.

13 Q Where did the painter put the paint
14 sludge when it was removed, after it was removed
15 from the paint booth?

16 A Into a barrel.

17 Q Where was that barrel located?

18 A In the paint room.

19 Q What color was the barrel?

20 A Black.

21 Q And was that always true that it was a
22 black barrel?

23 A Yes, we used brand-new black drums.

24 Q Was there a label on the barrel?

1 A Yes.

2 Q What did the label say?

3 A It was a green label that had the start
4 date of when the barrel was brought into the paint
5 room, and then a date was written on it when it was
6 capped off and taken out of the paint room.

7 Q If I showed you a label do you think you
8 would recognize it?

9 A Yes.

10 MR. NAHMOD: Could I please have this
11 marked as the next Bell Exhibit.

12 (Whereupon said document was
13 duly marked for purposes of
14 identification as Bell Exhibit
15 7 as of this date.)

16 Q (By Mr. Nahmod) Mr. Miller, I am handing
17 you what has been marked as Bell Exhibit Number 7.
18 Do you recognize that label?

19 A Yes.

20 Q Is that the label that you were just
21 referring to?

22 A Yes.

23 Q And what does the label say? If you can
24 describe the size of it, for example, first?

1 A It is about three by three, green
2 background, white lettering. It has the start date
3 and the completion date, who brought it in and who
4 took it out.

5 Q And was this sticker used on the drums in
6 which the paint sludge was placed?

7 A Yes.

8 Q So then was the paint sludge considered
9 hazardous or nonhazardous waste?

10 A It was considered nonhazardous.

11 Q And the people responsible for removing
12 it from the paint booth and putting it in the drum,
13 the barrel, how did they know to put it in the drum
14 labeled with a nonhazardous sticker?

15 A They received training.

16 Q When was the label placed on the drum?

17 A When the empty barrel was brought into
18 the paint room.

19 Q So it was placed on the barrel -- I am
20 sorry to use drum and barrel interchangeably, but I
21 mean the same thing. I will use the word you are
22 using. So it was placed on the barrel before any
23 waste was put in it, then?

24 A Yes.

1 Q Was there also hazardous waste generated
2 by the paint process at Bell?

3 A Yes.

4 Q And how was hazardous waste generated?

5 A If the painters had excess paint at the
6 end of their run, also the solvent that they used
7 to clean out their guns at the end of the work day.

8 Q So who was it that put the hazardous
9 waste in the hazardous waste drum?

10 A The painters.

11 Q Were they under your supervision?

12 A Yes.

13 Q How did they know to put it in the
14 hazardous waste drum?

15 A They received training.

16 Q Did you ever see a drum that had waste in
17 it that did not have a label on it?

18 A No.

19 Q What was the procedure or the practice
20 that was to be done if a drum was found with waste
21 in it and it was unlabeled?

22 A It would be automatically classified as
23 hazardous.

24 Q But to your knowledge did that ever

1 happen?

2 A No.

3 (Mr. Taylor and Mr. Nahmod
4 confer briefly.)

5 Q (By Mr. Nahmod) The label that you have
6 identified, was that the label that was used when
7 you became a supervisor in 1992?

8 A Yes.

9 Q And was that kept by Bell in the ordinary
10 course of its business?

11 A Yes.

12 Q Who kept the labels?

13 A Nick Riddle.

14 Q And who placed the labels on the drums?

15 A The painters.

16 Q Mr. Miller, were you able to check on a
17 daily basis that waste was placed in the proper
18 drums?

19 A No.

20 Q Why didn't you check?

21 A I couldn't be there -- because I had five
22 areas of responsibility, I couldn't be there every
23 single time the paint was deposited in a drum.

24 Q Were you confident that based on their

1 training those under your supervision would be able
2 to place the drum in the proper barrel?

3 A Yes.

4 Q I mean place the waste in the proper
5 barrel?

6 A (Nodded head up and down.)

7 HEARING OFFICER WALLACE: Your answer?

8 THE WITNESS: Yes.

9 MR. NAHMOD: I have no further questions
10 for Mr. Miller.

11 HEARING OFFICER WALLACE: Mr. Van Ness?

12 MR. VAN NESS: Yes.

13 CROSS EXAMINATION

14 BY MR. VAN NESS:

15 Q Mr. Miller, what did the painters do when
16 they weren't painting?

17 A They would tack rag helmets to be
18 prepared to be painted.

19 Q Was that in a different part of the
20 plant?

21 A No.

22 Q They were always in the painting room?

23 A Generally, yes.

24 Q How about when generally they weren't? I

1 mean, you said generally yes, but I understood that
2 suggested that that might not always be the case.
3 Did they have another work station is what I am
4 asking you?

5 A They had a mixing room where they
6 prepared the paint.

7 Q Where was that relative to the paint
8 room?

9 A That would be on the east side of the
10 plant.

11 Q And where was that relative to the paint
12 room? I am not sure where that is relative to the
13 paint room.

14 A Let's see. They would have to go through
15 the warehouse to get to the mixing room. It was a
16 separate explosion proof area.

17 Q So I am taking, from what you are telling
18 me, that there was a considerable difference
19 between the mixing room and the painting room?

20 A Yes.

21 Q And I also understood that the painting
22 didn't go on on a continual basis; is that correct?

23 A The actual spraying of the helmets was
24 probably about four hours a day.

1 Q Four hours every day?

2 A Yes.

3 Q Would that be five days a week, six days

4 a week?

5 A Depending on the season. It was a

6 seasonal business. We would have heavier periods

7 that we may be painting six days a week sometimes,

8 and maybe only four days a week during slow times.

9 Q Would you be painting on more than one

10 shift during those periods?

11 A No.

12 Q Always during the first shift?

13 A Right.

14 Q You have indicated that you had five

15 areas of responsibility within the plant?

16 A Correct.

17 Q How often did you get around to see the

18 operations in the paint room?

19 A I usually came by in the morning to make

20 sure everybody was there and they were starting on

21 time, and then I would come by again in the

22 afternoon, again at clean up time to make sure --

23 Q Did you supervise the clean up?

24 A I inspected the clean up.

1 Q You are drawing a distinction between
2 supervising and inspection. Could you clarify
3 that?

4 A I didn't physically stand in the paint
5 room and watch them clean up, but I would come
6 through and inspect it to make sure that they
7 cleaned up properly.

8 Q Did you -- did part of that inspection
9 include looking at the barrel that was supposed to
10 receive the hazardous waste?

11 A Yes.

12 Q Did you look into that barrel every day
13 when you were there?

14 A No.

15 Q Okay.

16 A It was -- we kept a lid on the drums.

17 Q Okay. Was that lid nudded down?

18 A Not while it was in the paint room. Only
19 when it was removed from the paint room.

20 Q Would you agree that anyone that walked
21 by that could have lifted up the lid and put
22 whatever they wanted to in that drum?

23 MR. TAYLOR: Objection. It calls for
24 speculation.

1 MR. VAN NESS: I don't think so. I am
2 asking him whether anyone could have. I didn't ask
3 him whether they did.

4 HEARING OFFICER WALLACE: Overruled.

5 THE WITNESS: Answer the question?

6 HEARING OFFICER WALLACE: Yes, please.

7 THE WITNESS: Yes.

8 Q (By Mr. Van Ness) Where was the -- where
9 were the -- the two paint drums you described in
10 the paint room, where were they relative to the
11 nearest general traffic area?

12 A They were not in the traffic area at
13 all. It was a self-contained area.

14 Q Okay. Would that be within the painting
15 room?

16 A Yes.

17 Q Was there a gate or a barrier around
18 those barrels within the painting room?

19 A No.

20 Q Now, let's talk about the nonhazardous
21 waste drums for a moment. You indicated that
22 the -- you used that device using expanded metal
23 with the holes in it to remove the paint sludge; is
24 that correct?

1 A Uh-huh.

2 Q Were your painters responsible for doing
3 that, too?

4 A Yes.

5 Q So they were working both sides; they
6 were loading both barrels?

7 A Correct.

8 Q Okay. So the same individuals that
9 placed waste in the hazardous waste barrels were
10 also placing waste in the nonhazardous waste
11 barrels?

12 A Correct.

13 Q You testified previously that both
14 barrels, as they were sitting in the paint room,
15 before they were sealed, bore their respective
16 stickers; is that correct?

17 A Correct.

18 Q The labels that we were referring to?

19 A Yes.

20 Q Did you have occasion always to look for
21 those labels?

22 A Could you repeat that?

23 Q Yes. Did you have the opportunity every
24 time you visited the facility to look at -- to

1 check for the presence of those labels?

2 A Yes.

3 Q How often were the solid waste barrels --
4 I am referring now to the nonhazardous waste
5 barrels -- how often were they taken out of that
6 paint room?

7 A On average, once a week.

8 Q Okay. So if I understand your testimony
9 correctly, even when you were painting on a daily
10 basis, you were removing basically one barrel per
11 week of the nonhazardous waste out of the paint
12 room?

13 MR. TAYLOR: Objection. It
14 mischaracterizes his testimony.

15 MR. VAN NESS: I certainly didn't mean
16 to. If I did I am sure the witness will clarify.

17 Do I understand that correctly, sir?

18 HEARING OFFICER WALLACE: I am sorry.

19 Would you --

20 MR. VAN NESS: Let me restate the
21 question.

22 HEARING OFFICER WALLACE: Thank you.

23 MR. VAN NESS: I will see if I can state
24 it more artfully this time.

1 Q (By Mr. Van Ness) My understanding was
2 that painting operations were conducted on a daily
3 basis?

4 A Correct.

5 Q And that you testified that basically one
6 barrel of nonhazardous waste was removed from the
7 paint room each week?

8 A Approximately.

9 Q Approximately. Would it be sometimes
10 more than that?

11 A It would depend on when we cleaned out
12 the pit.

13 Q I see. Was there a schedule for cleaning
14 out the pit?

15 A Not a regular schedule. We would monitor
16 the volume.

17 Q Now, when you said "we," did that include
18 you?

19 A The painter and myself.

20 Q The painter?

21 A The painter would recommend to me that it
22 was time to clean out the pit and we would schedule
23 it at that time.

24 Q Did Mr. Riddle have any supervisory

1 responsibility in the paint room?

2 A No.

3 Q Did he have any responsibility for the
4 collection of the waste paint?

5 A Are you referring to in the paint room?

6 Q In the paint room.

7 A No.

8 Q So Mr. Riddle's responsibility began
9 after the paint was collected?

10 A Correct.

11 Q Would Mr. Riddle's employees, the people
12 under his responsibility, be responsible for
13 nutting down the barrel?

14 A No, we would do that.

15 Q So the painters remove the waste from
16 both sides of the painting room and seal the
17 barrels down and then they were made available to
18 Mr. Riddle's employees to remove from the facility?

19 A Correct.

20 Q Were Mr. Riddle's employees responsible
21 for affixing the labels on the new barrels that
22 would be brought in?

23 A No.

24 Q That would be the painters'

1 responsibility?

2 A Correct.

3 Q How did this get coordinated? Did they
4 physically go down and tell Mr. Riddle it was time
5 to remove those barrels, or was there some kind of
6 memo passed along or what?

7 A We would -- once we had the barrels full,
8 had the lid on them, had the ring attached and had
9 them tightened, the painters would use a barrel
10 cart and take them to the north end of the plant,
11 notify maintenance that they had a full barrel, and
12 that they needed a new barrel, an empty barrel, and
13 then maintenance would come take it from there.

14 Q Maintenance. So now I have got a full
15 barrel sitting at the north end of the plant?

16 A Uh-huh.

17 Q Where is the north end relative to the
18 paint room?

19 A Opposite. The paint room is on the far
20 south side.

21 Q Okay. They moved the barrel --

22 A Within the same building.

23 Q Within the same building. How big is
24 that building?

1 A I think about 120 feet long.

2 Q Okay.

3 A Guessing.

4 Q Okay. That's fine. So your people would

5 move the barrels on the dolly and over to the far

6 end of the building?

7 A (Nodded head up and down.)

8 Q Would they leave them in a staging area

9 there?

10 A Yes.

11 Q Did they take them out to the barrel

12 storage area?

13 A No.

14 Q Okay. That would be done by the

15 maintenance people?

16 A Correct.

17 Q Subsequently, the maintenance people

18 would bring a new barrel in?

19 A Yes.

20 Q Was there someone from your painting

21 operation there to meet the new barrel when it came

22 in?

23 A If they brought it right away, where they

24 could do an exchange right away, yes. Otherwise,

1 the maintenance would drop it off at the door of
2 the paint room and then the painter would put the
3 label on it and bring it into the room.

4 Q So there could be a considerable gap of
5 time, couldn't there?

6 A For the nonhazardous, yes.

7 Q Do you recall when Bell began using that
8 green label on the nonhazardous barrels?

9 A It was in use when I took over in
10 February.

11 Q That would have been February of 1992?

12 A Correct.

13 Q Okay. You have no knowledge as to
14 whether they were using it before then?

15 A No.

16 Q Were you ever present when the labels
17 were being placed on the barrels?

18 A Yes.

19 Q Do you recall who was putting on those
20 labels at that time?

21 A My painter.

22 Q Your painter. Would that have been
23 perhaps in 1992?

24 A Yes.

1 Q Did you have any responsibility for the
2 barrel storage area at the plant?

3 A No.

4 Q So once it left the hands of your
5 painters at the north end of the building, it was
6 outside of your control?

7 A Correct.

8 Q Okay. Approximately how much time would
9 you say you spent on a daily basis in the painting
10 area?

11 A On average, 30 minutes.

12 (Mr. Van Ness and Mr. Latshaw
13 confer briefly.)

14 MR. VAN NESS: One moment, please.

15 (Mr. Latshaw and Mr. Van Ness
16 confer briefly.)

17 Q (By Mr. Van Ness) Are you aware of any
18 changes in the waste handling procedures since
19 1992?

20 A Yes.

21 Q What would those be?

22 A Approximately --

23 MR. NAHMOD: Mr. Hearing Officer, we
24 object to this question. It is beyond the scope of

1 the direct examination. He specifically said after
2 1992, and I did not ask any questions about
3 practices after 1992.

4 MR. VAN NESS: Okay. Let me rephrase the
5 question.

6 Q (By Mr. Van Ness) Are you aware of any
7 changes in the waste handling operations that took
8 place during 1992?

9 A Yes.

10 Q What was that?

11 A We went from two waste streams to one.

12 Q Do you recall when that occurred?

13 A Approximately April of 1992.

14 MR. VAN NESS: Thank you. No further
15 questions.

16 HEARING OFFICER WALLACE: Ms. Menotti?

17 MS. MENOTTI: I don't have anything.

18 Thank you.

19 HEARING OFFICER WALLACE: Redirect?

20 MR. NAHMOD: Yes, please.

21 REDIRECT EXAMINATION

22 BY MR. NAHMOD:

23 Q Mr. Miller, Mr. Van Ness just asked you
24 about a change in the procedure for handling

1 waste. Why was the change made as to -- well, what
2 change was made in the handling of waste?

3 A We began to classify everything as
4 hazardous.

5 Q Why was that change made?

6 A Our volume, when we went from motorcycle
7 down to auto racing, it became just a fraction of
8 what it was before.

9 Q And can you explain that, why the
10 volume -- what had happened to the volume to make
11 it decrease?

12 A We sold the motorcycle division and went
13 down to auto racing only, so our number of paint
14 shots went from approximately 4,000 down to 200 to
15 300.

16 Q We have discussed a little bit the
17 placing of hazardous waste in a barrel specifically
18 designated for hazardous waste. Was there a label
19 on that barrel?

20 A Yes.

21 Q What was the appearance of that label?

22 A It was a yellow and red label.

23 Q To your knowledge, were labels both for
24 hazardous and nonhazardous waste, were labels used

1 before you became supervisor in February of 1992?

2 A Yes.

3 Q And to your knowledge, did anybody ever
4 voluntarily clean up the paint room?

5 A I don't understand the question. I am
6 sorry.

7 Q Mr. Van Ness was asking you questions
8 about people wandering into the paint room, and so
9 I guess my first question would be did you ever
10 have any problems, to your knowledge, with people
11 wandering into the paint room?

12 A No, it was a clean room. It was off
13 limits.

14 Q Did anybody ever voluntarily clean it up
15 for you?

16 A No.

17 MR. NAHMOD: We have no further
18 questions.

19 HEARING OFFICER WALLACE: Recross?

20 MR. VAN NESS: No, no further questions.

21 EXAMINATION

22 BY HEARING OFFICER WALLACE:

23 Q Mr. Miller, in January of 1992, what was
24 your job title and responsibility?

1 A I was a production supervisor for the
2 shell manufacturing area.

3 Q And what was involved with the shell
4 manufacturing area?

5 A We would manufacture fiberglass helmets.

6 (Mr. Davis left the hearing
7 room.)

8 Q (By Hearing Officer Wallace) All right.
9 And then in February of 1992, what was your job
10 title and responsibilities?

11 A I became auto racing production
12 supervisor.

13 Q Was it the auto racing area that had the
14 sub five areas in it?

15 A Correct.

16 Q Just for way of background, I guess using
17 1992, what products did Bell manufacture?

18 A Early 1992, the motorcycle division was
19 phased out approximately May, and we went to auto
20 racing only. The primary product is bicycle
21 helmets.

22 Q All right. For example, in January of
23 1992, Bell was making bicycle helmets, motorcycle
24 helmets and auto racing helmets; is that correct?

1 A Yes.

2 Q Were there any other products being made
3 at that time?

4 A Yes. We made road gear shuttles. That's
5 a bicycle carrier.

6 Q And then in May of 1992, the motorcycle
7 division was phased out?

8 A Correct.

9 Q Or sold?

10 A Correct.

11 Q Okay. And Bell -- by way of background,
12 Bell continues to manufacture bicycle helmets and
13 auto racing helmets?

14 A Correct.

15 Q At this point in time?

16 A Correct.

17 Q When did the painter clean up the excess
18 paint?

19 A Hazardous or nonhazardous?

20 Q Well, what you categorized as hazardous.

21 A That was done on a daily basis.

22 Q At the end of his shift, or the end of
23 the --

24 A Generally at the end of the shift, but if

1 he changed colors it could happen during the course
2 of the work day.

3 (Mr. Davis entered the hearing
4 room.)

5 Q (By Hearing Officer Wallace) All right.
6 If you could explain for me one point. Why is the
7 excess paint different than the sludge that dropped
8 down the waterfall?

9 A I don't know specifically.

10 Q If you would walk me through, after the
11 painter sprays the row of helmets and then is
12 either done for the day or is going to change
13 colors, what does the painter do at that point?

14 A He will open his paint pot, he will empty
15 any excess paint into the hazardous waste drum,
16 then he will put a small amount of a solvent in his
17 paint gun, he will run that through his gun into a
18 five gallon bucket to clean his line and then that
19 will be deposited into a hazardous waste drum.

20 Q Now, both the hazardous waste drum and
21 the nonhazardous waste drum are located behind the
22 paint booth; is that correct?

23 A No, they were on the left-hand side.

24 Q Now, the three paint booths are in a row?

1 A Yes.

2 Q In the paint room?

3 A Yes.

4 Q You only had one barrel for hazardous
5 waste and one barrel for nonhazardous waste?

6 A Correct.

7 Q Not two barrels for each booth?

8 A No, one of each for the entire paint
9 room.

10 Q What was the ratio of nonhazardous waste
11 generated to the hazardous waste generated, if you
12 know?

13 A I don't know specifically.

14 Q In response to Mr. Van Ness' question,
15 you indicated that approximately once a week you
16 removed the nonhazardous waste drum. How often did
17 you remove the hazardous waste drum?

18 A During what time period?

19 Q Well, let's go for your busy period,
20 then.

21 A After motorcycle was done, when we were
22 doing auto racing only?

23 Q Well, what date did you use for the once
24 a week for the nonhazardous waste?

1 A During auto racing only.

2 Q All right. Auto racing only?

3 A I would say -- I would guess once every
4 three weeks.

5 Q At the point in time you were doing all
6 three types of helmets, did they all come through
7 this single paint room or not necessarily at the
8 same time but on different runs or were they all
9 segregated?

10 A I am sorry?

11 Q All right. That was a very unclear
12 question.

13 The paint room that you have testified
14 about and the paint booths, did you just paint like
15 motorcycle helmets in there or auto racing helmets
16 in there or bicycle helmets?

17 A Only motorcycle or auto racing. Bicycle
18 helmets don't get painted.

19 Q When you were doing both motorcycle and
20 auto racing, how were those fed through on the
21 conveyor?

22 A They were loaded on the west side of the
23 paint room and then the conveyor would carry them
24 through into the paint booths. They would go

1 through each booth and then into a dryer, a drying
2 oven, and then back out into the loading area.

3 Q Each helmet was sprayed three times?

4 A No, twice.

5 Q Okay. And the storage lot for the filled
6 drums, in what -- that was on the north side of the
7 building; is that correct?

8 A Yes.

9 Q Your people left the drum at the north
10 side of the building and Mr. Riddle's people would
11 take the drum into the storage lot?

12 A Correct.

13 HEARING OFFICER WALLACE: All right.
14 Thank you, Mr. Miller.

15 MR. NAHMOD: We move to have Bell Exhibit
16 Number 7 entered into evidence.

17 HEARING OFFICER WALLACE: Any
18 objections?

19 MR. VAN NESS: No objection.

20 MS. MENOTTI: (Shook head from side to
21 side.)

22 HEARING OFFICER WALLACE: No? All right.
23 Bell Exhibit Number 7 is admitted.

24 (Whereupon said document was

1 admitted into evidence as Bell
2 Exhibit 7 as of this date.)

3 HEARING OFFICER WALLACE: Thank you, Mr.
4 Miller. You may step down.

5 (The witness left the stand.)

6 MR. LATSHAW: What was Bell Exhibit 6?

7 HEARING OFFICER WALLACE: Bell Exhibit 6
8 were the daily sheets.

9 MR. LATSHAW: I didn't write that down.
10 Thank you.

11 MR. TAYLOR: We would call Steve
12 Townsend.

13 HEARING OFFICER WALLACE: All right. Mr.
14 Townsend.

15 Mr. Taylor, while I am thinking about it,
16 could you hand me Bell Exhibit Number 5, so I can
17 put it in the file? That was an annual report of
18 hazardous waste.

19 MR. TAYLOR: All right. It will take me
20 a few minutes to find it. I am sure it is in the
21 piles of material.

22 HEARING OFFICER WALLACE: That is fine.

23 All right. Mr. Townsend, you have
24 previously testified.

1 THE WITNESS: Yes, I have.

2 HEARING OFFICER WALLACE: Please consider
3 yourself still under oath and you still have to
4 tell the truth.

5 THE WITNESS: Okay.

6 HEARING OFFICER WALLACE: You may
7 proceed.

8 S T E V E N C A M E R O N T O W N S E N D,
9 having been previously duly sworn by the Hearing
10 Officer, saith as follows:

11 DIRECT EXAMINATION

12 BY MR. TAYLOR:

13 Q Mr. Townsend, please state your full name
14 for the record.

15 A Steven Cameron, C-A-M-E-R-O-N, Townsend,
16 T-O-W-N-S-E-N-D.

17 Q And you have previously testified in this
18 same proceeding?

19 A Yes, I have.

20 Q Who is your current employer?

21 A The State of Illinois Environmental
22 Protection Agency.

23 Q What position do you hold?

24 A Environmental Protection Specialist with

1 the Division of Land Pollution in the Springfield
2 region, the Field Operations Section.

3 Q Okay. And how long have you held that
4 position?

5 A It has been in various degrees. I
6 started out as a trainee for a year. I have almost
7 held the Specialist title for ten years. I have
8 almost been with the Agency for eleven.

9 Q So you started with the Agency in
10 approximately 1986?

11 A August of 1986.

12 Q Okay. In the course of your duties, have
13 you come to know the Waste Hauling Landfill in
14 Decatur, Illinois?

15 A I have inspected the facility before,
16 yes.

17 Q Also, in the course of your duties have
18 you come to know a facility in Decatur called DK
19 Manufacturing or Diesel KeeKee (spelled
20 phonetically)?

21 A Yes. I have also inspected DK
22 Manufacturing.

23 Q How many times have you inspected DK
24 Manufacturing?

1 A I can't recall if I have been there two
2 or three times. I have been there -- a similar
3 situation, as we handed over the Decatur area to
4 the Champaign region, I was there in conjunction
5 with other inspectors. The initial inspection I
6 did on my own, though. I don't recall how many
7 reports I have written. I know at least the one.

8 Q Okay. So there is at least one report on
9 an inspection for DK?

10 A That I have written. There may actually
11 be two. I would have to look back at our file.

12 Q What type of inspection did you conduct
13 at the DK facility?

14 A It was a generator inspection. They were
15 listed as a generator of hazardous waste. It was
16 basically a compliance inspection to see if they
17 were in compliance with the generator regulations.
18 It is a typical type of inspection we would do at a
19 generator. There was also a complaint that had
20 been called in about the facility, so we looked
21 into that also.

22 Q Is that -- did you conduct the inspection
23 because of the complaint?

24 A I don't recall if that's what caused the

1 timing of the inspection. The facility was listed
2 as a generator of hazardous waste. They would be
3 subject to the inspection anyway. To be honest
4 with you, I don't recall if that is what motivated
5 my going out there, or if they were just on our
6 list anyway.

7 Q Are you familiar with the types of
8 products that are manufactured by DK?

9 A Yes, to a degree.

10 Q To your knowledge, what do they make?

11 A They make air conditioning equipment for
12 automotive use.

13 Q Have you seen these manufacturing
14 operations?

15 A Yes.

16 Q Is there one or more vapor degreasers
17 associated with their production activities?

18 A To my memory, when I was there, there
19 were four vapor degreasers.

20 Q Do you know what the purpose of a vapor
21 degreaser is?

22 A Basically it is a cleaning tool, as the
23 name degreaser implies. They put something in to
24 clean it off and it uses -- instead of dipping it

1 into a liquid bath, they use a vapor.

2 Q Is there a cleaning solution that is
3 used?

4 A Yes, there is a solvent that is used in
5 the vapor degreaser.

6 Q Do you recall the type of solvent being
7 used by DK -- let me back up for a second.

8 Do you recall that -- you have mentioned
9 one full inspection. Do you recall when that
10 occurred?

11 A My initial inspection there would have
12 been January of 1990.

13 Q Do you recall the type of solvent being
14 used by DK at that time?

15 A I remember it being -- the hazardous
16 waste number being F002. I think it was -- I can't
17 remember for sure, but I think it was 1, 1,
18 2-trichloro-trifluoroethane. It is listed in the
19 report. I don't remember for sure if that is what
20 the solvent was.

21 Q If I showed you a copy of the report
22 would that refresh your recollection?

23 A Yes, it would. (Witness reviewed
24 document.) Okay. In the subheading two entry,

1 waste accumulations, storage and waste deposition,
2 paragraph A, I list waste, Freon solvent, as being
3 1, 1, 2-trichloro-1,1,2-trifluoroethane solvent.

4 Q Could you spell that for us?

5 A Okay. I was going to show it to her, but
6 I will spell it out loud. It is 1, comma, 1,
7 comma, 2, dash, T-R-I-C-H-L-O-R-O, dash, 1, comma,
8 1, comma, 2, dash, T-R-I-F-L-U-O-R-O-E-T-H-A-N-E.

9 Q Is there a common name for this material?

10 A Freon.

11 Q You mentioned some sort of waste code.
12 Could you explain what that is?

13 A Yes. In the Administrative Code under
14 determining what your waste is, Section 721, they
15 have under D, they have a list of what is called
16 listed hazardous waste. These are wastes that are
17 considered hazardous because of what the
18 constituent is. And under the -- there is a
19 heading of F, listed waste, and this one would have
20 fallen in the F002 category, which would be listed
21 per toxicity.

22 Q Do you have to test this waste, like run
23 a TCLP test on it to determine whether it is a
24 hazardous waste?

1 A No, this is not a characteristic
2 toxicity. This is a toxicity because it contains
3 that solvent that is known to be toxic. So you
4 basically have to determine if it has got it then
5 how much it has got. You don't have to do a
6 characteristic test on it.

7 Q So someone could determine that it is
8 hazardous just based on the knowledge of the type
9 of solvent used?

10 A Yes.

11 Q You also mentioned it as a waste code.
12 Is this solvent used and recycled in the degreaser?

13 A To my knowledge, they are recycling it in
14 all of their degreasers now. When I was there the
15 initial time, only half of the degreasers were
16 recycling. Two of them were on a test basis and
17 two of them were not.

18 Q If you are not recycling the solvent,
19 does that mean that at some point you would -- that
20 it would become a waste?

21 A Yes. It would become dirty and become a
22 waste when it became no longer usable.

23 Q Were there any filters associated with
24 these degreasers?

1 A Yes, there were.

2 Q Can you generally explain what the
3 purpose of the filter would be?

4 A In general, the purpose of a filter for a
5 degreaser is to filter the solvent, to remove
6 impurities. The most -- the easiest one that I
7 could describe to you would be similar to like a
8 fuel filter and an oil filter that would be in a
9 car. It takes out some of the crud before it is
10 used or it is cleaned.

11 Q Can these filters be used perpetually or
12 do they have to be changed?

13 A It would depend on the type of filter.
14 There would be a filter that would be a permanent
15 filter that could be cleaned out, which would be
16 able to be used perpetually or it would be a
17 disposable filter, which when it became clogged you
18 have to change it.

19 Q Do you know what type of filter DK was
20 using in its degreasers?

21 A During the 1990 inspection they were
22 using the disposable filters that they changed one
23 time a week in four machines.

24 Q Do you know how long these degreasers had

1 been at the DK facility?

2 A I don't know how long they had actually
3 been at the facility. I don't have an exact date
4 for how long they have been used. I have a general
5 date that they began use. I think it was the fall
6 of 1988. I don't remember the month. I believe
7 that is also listed in the report, though.

8 Q Okay. Now, did DK identify its waste
9 solvent as a hazardous waste?

10 A Yes, they did.

11 Q Would waste filters from these degreasers
12 also constitute a hazardous waste?

13 A Yes, they would. If they had the solvent
14 in them they would.

15 Q What waste code would apply to the
16 filters?

17 A It would be the same as the solvent. It
18 would be listed for being contaminated with the
19 solvent.

20 Q Okay. Did DK ever -- well, at the time
21 of your inspection in January of 1990, had DK
22 determined whether the filters were hazardous
23 waste?

24 A At the time of the inspection in 1990,

1 no, I actually marked that on the report as one of
2 the things being wrong; that they had failed to
3 determine whether their filters were hazardous.

4 Q Did DK -- had DK been sending those
5 filters off site as a hazardous waste?

6 MR. VAN NESS: Objection. There is no
7 foundation for this. How would this witness know
8 where they were sent?

9 MR. TAYLOR: I didn't ask where they were
10 sent.

11 HEARING OFFICER WALLACE: What was your
12 question again?

13 MR. TAYLOR: I said had DK been sending
14 these filters off site as a hazardous waste.

15 HEARING OFFICER WALLACE: The objection
16 is overruled.

17 Mr. Townsend.

18 THE WITNESS: Okay. During the course of
19 my interview with Mr. Wilson, I believe his name
20 was from DK, the person that I dealt with during
21 the inspection, I asked him where waste streams
22 went. And he indicated to me that the filters were
23 being placed in the general refuse dumpster.

24 Q (By Mr. Taylor) So the filters, to your

1 knowledge, were not being sent off site as a
2 hazardous waste?

3 A No.

4 MR. LATSHAW: I will object and move to
5 strike. Mr. Wilson's testimony is hearsay, what
6 Mr. Wilson said.

7 HEARING OFFICER WALLACE: Response?

8 MR. TAYLOR: I think it goes to the -- I
9 think, number one, it is an admission on the part
10 of DK, and I think it also goes to Mr. Townsend's
11 understanding of their operations and why he cited
12 them for improperly handling that waste.

13 MR. LATSHAW: Well --

14 MR. VAN NESS: Nevertheless, it is
15 classic hearsay. It is being introduced for the
16 truth of the statement inserted therein. In
17 regards to being an admission, I don't see DK as
18 being an interested party here, so that particular
19 exception to the hearsay rule wouldn't apply here,
20 it seems to me.

21 This is classic hearsay. It is being
22 asserted for the truth of the statement attributed
23 to a person who is not before us.

24 HEARING OFFICER WALLACE: All right. The

1 objection is sustained. The last answer will be
2 stricken.

3 Q (By Mr. Taylor) To your knowledge, Mr.
4 Townsend, had DK been sending filters off site as a
5 hazardous waste?

6 A Not to my knowledge.

7 Q They didn't show you any manifest of
8 those filters being sent off as a hazardous waste?

9 A I did not see any manifest, when I
10 reviewed the manifests, to indicate that they had
11 been sent off as a hazardous waste.

12 Q Did DK have a special waste authorization
13 to dispose of those filters as a special waste?

14 A Not to my knowledge, they did not.

15 Q Did DK show you any manifests that they
16 had sent these filters off site as a special waste?

17 A No, they did not.

18 Q Did DK store these filters on site? Did
19 you see a storage pile of these filters?

20 A I saw no storage pile or container for
21 these filters.

22 Q So there were no drums of left over
23 filters?

24 A No, there were not.

1 Q No roll-off box for these filters?

2 A I was told that they were placed in a
3 roll-off box, but I did not see one specifically
4 for filters.

5 Q Why did you cite DK for improperly
6 handling these filters?

7 A I cited DK based on my interview with
8 personnel regarding how they handled the filters,
9 and when they answered the questions as to how they
10 handled the filters I indicated that that was not
11 the right way to handle them.

12 Q Did they tell you how they were handling
13 them?

14 A Yes, they did.

15 Q What did they tell you?

16 MR. VAN NESS: Objection. It is calling
17 for hearsay.

18 MR. TAYLOR: It goes to Mr. Townsend's
19 knowledge and understanding in why he cited them.
20 I am not asking him whether it is true or not. I
21 am asking him why he has cited them.

22 MR. VAN NESS: Mr. Townsend has already
23 been asked and answered the question as to why he
24 cited them.

1 MR. TAYLOR: His answer --

2 MR. VAN NESS: It is an attempt to get in
3 the back door what he couldn't get in the front
4 door.

5 MR. TAYLOR: His answer was that they
6 told me how they were handling them, and I cited
7 them. They were handling them improperly. He
8 needs to flush it out.

9 HEARING OFFICER WALLACE: Sustained.

10 Q (By Mr. Taylor) If I showed you a copy of
11 your report from January of 1990, would you
12 recognize it?

13 A Yes, I would.

14 MR. TAYLOR: Could you mark this, please.

15 (Whereupon said document was
16 duly marked for purposes of
17 identification as Bell Exhibit
18 8 as of this date.)

19 Q (By Mr. Taylor) I am handing you what has
20 been marked Bell Number 8. Can you please look at
21 that document?

22 A (The witness reviewed document.) Okay.

23 Q Did you review that document?

24 A Yes.

1 Q Did you prepare this document?

2 A I prepared the original. This is a
3 copy.

4 Q Is that a true and accurate copy of your
5 report?

6 A Yes, it is.

7 Q Is it a complete copy of your report?

8 A Other than that the photographs are
9 replaced by photocopies of photographs, it appears
10 to be.

11 Q When did you write this report?

12 A It would have been after the inspection
13 in 1990. I probably would have started either that
14 day or the following day, as I normally would. I
15 don't recall the exact day that I finished the
16 report.

17 Q Did you take any notes during your
18 inspection?

19 A Yes.

20 Q Were those notes used in preparing the
21 report?

22 A Yes, they were.

23 Q Is this in the ordinary course of your
24 business as an inspector to prepare such a report?

1 A Yes, it would be.

2 Q Is it in the ordinary course of business
3 for the Illinois Environmental Protection Agency to
4 retain such reports?

5 A Yes, and we do have a copy of this.

6 MR. TAYLOR: I would offer Bell Number
7 8.

8 MR. VAN NESS: We would have to object,
9 Your Honor, based on a lack of showing of
10 relevance.

11 HEARING OFFICER WALLACE: All right. Ms.
12 Menotti, any objection?

13 MS. MENOTTI: No.

14 HEARING OFFICER WALLACE: Do you wish to
15 respond?

16 MR. TAYLOR: Yes. We have heard
17 testimony from representatives of the Illinois
18 Environmental Protection Agency concerning the
19 requirements that may be applicable to the Waste
20 Hauling Landfill. Some of that testimony related
21 to what requirements might apply because of the
22 receipt of hazardous waste.

23 It is our proposition that Waste Hauling
24 Landfill received hazardous waste from DK, and at a

1 minimum, it is the Agency's belief and to the
2 Agency's knowledge that Waste Hauling received
3 hazardous waste from DK. And, accordingly, that
4 would affect the requirements applicable to the
5 landfill, which they are attempting to recover from
6 Bell Sports for.

7 HEARING OFFICER WALLACE: All right. I
8 will admit Bell Exhibit Number 8.

9 (Whereupon said document was
10 admitted into evidence as Bell
11 Exhibit 8 as of this date.)

12 Q (By Mr. Taylor) Mr. Townsend, did you
13 inspect the Waste Hauling Landfill?

14 A I have inspected it more than once, yes.

15 Q Did you inspect the landfill after the
16 time that you inspected the DK facility?

17 A I inspected it more than once after I
18 inspected the DK facility.

19 Q At any point in time did you inform the
20 landfill that it was your belief that they had
21 received hazardous waste from DK Manufacturing?

22 A My recollection would be that I would
23 have informed them on the inspection at the
24 landfill that was just after my DK inspection. It

1 would have been the next -- I believe it was in the
2 spring of 1990.

3 Q Do you recall the exact date of that
4 inspection?

5 A No, not without looking back at the file
6 I wouldn't, no.

7 Q If I showed you a copy of the report from
8 that inspection would that refresh your
9 recollection?

10 A Yes, it would.

11 Q I would like to show you what has been
12 marked as People's Number 5.

13 A (The witness reviewed document.)

14 Q Does that refresh your recollection?

15 A Yes.

16 Q Is that the inspection that followed your
17 inspection of DK?

18 A Yes, I believe that was the one next
19 after the DK inspection.

20 Q And did you inform anyone at Waste
21 Hauling Landfill of your belief that they had
22 received hazardous waste from DK manufacturing?

23 A I do not recall conversationally what all
24 I had talked about. I believe I told Mr. Brown. I

1 do recall putting it in the report and a copy of
2 the report was given to the landfill.

3 Q Okay. Is that -- is a statement to that
4 effect contained in People's Number 5?

5 A I really would have to look back and see.

6 Q Please look through it.

7 A I have -- I have listed -- I do have
8 marked item number 36, which corresponds with the
9 number on the checklist in my narrative.

10 Q Is there a page number?

11 A No, it doesn't have a page number written
12 on it, but it would be in the narrative portion.
13 It would be the fourth page in the narrative.

14 Q Can you tell us what that says?

15 A I marked acceptance of waste without
16 required manifest.

17 Q Is that what -- did that relate to your
18 belief that they had received waste from DK?

19 A That's what I wrote down in the comment
20 there, that hazardous waste solvent, contaminated
21 degreaser filters were accepted from DK.

22 Q You mentioned that you may have stated
23 this to Mr. Brown?

24 A Yes, I may have. I don't see a note that

1 I did, but it would have been a normal type of
2 thing that I would have brought up during an
3 inspection.

4 Q Now, did you expect, for any reason, that
5 DK would have been sending hazardous waste filters
6 to Waste Hauling Landfill at the time of this
7 inspection of the landfill?

8 A No, I did not suspect that they were
9 still sending them.

10 Q Why is that?

11 A During my initial DK Manufacturing
12 inspection, I was told that they would cease that
13 and handle them properly.

14 Q So after January of 1990, did you expect
15 that DK would be properly handling those degreaser
16 filters?

17 A Yes, I did.

18 Q During your visit to the landfill on
19 April 26 of 1990, were you aware of an incoming
20 shipment from DK Manufacturing?

21 A I don't recall being aware of an incoming
22 shipment from DK. It is possible one would have
23 been coming and it might have even been possible
24 that one came while I was there, but I don't recall

1 it.

2 Q Is that the type of question that you
3 would ask during your inspection, if you saw a
4 waste shipment arriving, who was the generator?

5 A Often I would ask a question like that.
6 My understanding is that the waste shipments from
7 DK were dumped from a dumpster into a packer truck,
8 so they would have been combined with other
9 shipments.

10 Q Do you recall asking anyone at the
11 landfill on April 26th to check a shipment of
12 material for degreaser filters?

13 A No, I do not recall that. It may -- I
14 may have done it, but I don't recall.

15 Q Would that be a normal thing for you to
16 do?

17 A No, it wouldn't normally be something
18 that I would ask, for two reasons. Normally they
19 are not in general garbage and I would not have
20 suspected that they would be in anymore because I
21 had already been told that they would cease that.

22 Q Would this be the type of abnormal event
23 that you would note in a report?

24 A Yes, I would have most likely noted in a

1 report if we had discussed actually checking the
2 dumpster. I did not note it here. I don't recall
3 whether or not we actually did.

4 Q Okay. While you were at the landfill,
5 did you see anyone go through recently dumped waste
6 to remove degreaser filters?

7 A While I was at the landfill in April of
8 1990?

9 Q Yes.

10 A I don't recall anybody removing degreaser
11 filters during any inspection that I have been at
12 at the landfill.

13 Q If a person were to remove degreaser
14 filters that had already been disposed of in a
15 landfill and sent them off site, would such a
16 shipment require a manifest?

17 A The filters that were removed?

18 Q Yes?

19 A When you excavate a waste from a landfill
20 it would be considered a special waste, so it would
21 definitely require a manifest for that reason
22 alone.

23 Q Do you have any knowledge of waste being
24 removed from the Waste Hauling Landfill and sent

1 off site?

2 A The only recollection that I have of
3 waste being removed was the drums being excavated
4 that we -- that we have been talking about
5 previously in the hearing. I wasn't there. I do
6 know that I was told that it occurred.

7 Q Does that relate to DK at all?

8 A No.

9 Q All right. Did you site Waste Hauling
10 Landfill for any apparent violations related to
11 these degreaser filters?

12 A Yes.

13 Q What were those apparent violations?

14 A I cited them for acceptance of waste
15 without a required manifest, and -- let me
16 double-check real quick and see if that's the only
17 thing. No, it would have been acceptance of
18 special waste for disposal from a waste hauler that
19 did not present a manifest, which would have been
20 item 39 on the checklist also.

21 Q Are you aware of any enforcement action
22 taken by the Agency or the State of Illinois
23 against Waste Hauling Landfill based on the
24 apparent violations that we just discussed?

1 A Based on those two apparent violations, I
2 honestly don't recall if -- we have had -- we have
3 had dealings with the landfill before, but I
4 honestly don't recall if it was specifically under
5 those violations.

6 Q Do you recall any enforcement action
7 against DK relating to these shipments?

8 A I don't recall an enforcement action. I
9 do recall correspondence being sent back and forth
10 and their having to answer certain things via
11 correspondence to satisfy the Agency for the
12 violations that were cited.

13 Q And did that correspondence relate, at
14 least in part, to the handling of the degreaser
15 filters?

16 A Yes, at least in part.

17 MR. TAYLOR: No further questions at this
18 time.

19 HEARING OFFICER WALLACE: All right.
20 Thank you. Before you begin cross, let's take a
21 five minute break.

22 (Whereupon a short recess was
23 taken.)

24 HEARING OFFICER WALLACE: Back on the

1 record.

2 Cross-examination?

3 MR. LATSHAW: Thank you.

4 Prior to beginning that, I wanted to
5 renew our objection and move to strike Mr.
6 Townsend's testimony for these reasons: One, is
7 there has been, with regard to our allegations in
8 the cross-claim against Bell, there has been no
9 connection between the particular solvent the
10 witness testified about, the trichloro,
11 trifluoroethane, whatever, compound and the MEK and
12 benzene that the People have alleged that was
13 placed in the landfill by Bell. There is no
14 suggestion that those are chemically the same or
15 would test to be chemically the same. That's the
16 first basis.

17 The second basis is that, if I understood
18 Mr. Taylor correctly, it is offered for the purpose
19 of showing that whatever Bell may have done to
20 contaminate this landfill with hazardous waste, it
21 was apparently already contaminated with hazardous
22 waste, so we have no obligation whatever to be
23 responsible for any additional cleanup or other
24 requirements that have been in evidence here with

1 regard to closure.

2 It is my understanding that that might be
3 a valid case against DK, if they wanted to
4 interplead DK, which they haven't done, but it
5 doesn't get Bell off the hook insofar as any
6 obligations they have for what they have done. It
7 simply provides a basis for bringing in another
8 party. So I don't know what relevance it has to
9 our case against Bell. So those are the two basis
10 that we move to strike the testimony.

11 HEARING OFFICER WALLACE: Mr. Taylor?

12 MR. TAYLOR: The chemicals are absolutely
13 100 percent totally irrelevant. The issue is
14 whether there is hazardous waste in the landfill.
15 The letters that we have on file from -- excuse
16 me -- that have been admitted into evidence that
17 were written on or behalf of Mr. Bakowski do not
18 reference any type of particular hazardous waste.

19 In fact, I believe that they state that
20 these are requirements that apply to any facility
21 that has received hazardous waste in a generic
22 fashion. So the chemicals and their types are
23 totally irrelevant.

24 The second argument really goes to the

1 merits of the case. I mean, you know, it is a
2 defense. You know, I can explain it in more
3 detail, but it is not a basis for keeping the
4 testimony out.

5 What we are talking about here are
6 regulatory obligations that are triggered by the
7 receipt of certain materials. Those regulatory
8 obligations are generic in nature and they are not
9 tied to any specific chemical and the receipt of
10 those materials and disposal of them will trigger a
11 whole series of requirements regardless of the
12 source of them.

13 It is quite relevant to their claim in
14 their attempt to pass off their obligations on to
15 Bell. It is relevant as to whether they have had
16 these problems with other similar generators. We
17 do not see any reason to further complicate the
18 case by adding another party and believe there is
19 no obligation to do so. What we are talking about
20 is what right and what amount, if any, Waste
21 Hauling can recover from Bell Sports.

22 MR. DAVIS: Mr. Wallace, may we be
23 heard?

24 HEARING OFFICER WALLACE: Yes, I was

1 turning to you.

2 MR. DAVIS: Okay. Thank you. We have a
3 stake in this, as you know. The disposal
4 violations that we have pleaded, we have to prove
5 to show that they are more likely than not.
6 Evidence of other improper disposal events could
7 tend to buttress our proof.

8 In fact, during a brief break I was
9 conferring with lead Counsel regarding our ability
10 to make a motion to the Board to amend the
11 pleadings to conform to the proof, now that we have
12 had proof of other hazardous waste disposal
13 events. I would state to you, Mr. Hearing Officer,
14 that is our present intention. So, therefore, that
15 intention relates to the issue of relevancy.

16 But on the broader issue of how the Board
17 fashions its relief, our interest is not totally
18 aligned with Bell, and it is certainly not with the
19 Waste Hauling defendants. Our interest is to see
20 that the landfill is closed properly and so,
21 therefore, in the broader sense of what technical
22 remedy the Board is being requested to impose,
23 these other hazardous waste disposal violations are
24 certainly relevant as well.

1 HEARING OFFICER WALLACE: All right. At
2 this time I am going to overrule the objection and
3 the testimony of Mr. Townsend will stand.

4 Certainly, your objection is noted for
5 the record and is preserved, as it were.

6 MR. LATSHAW: Without waiving the
7 objection, then I can proceed to cross-examine the
8 witness?

9 HEARING OFFICER WALLACE: Yes.

10 MR. LATSHAW: Thank you.

11 CROSS EXAMINATION

12 BY MR. LATSHAW:

13 Q Now, Mr. Townsend, I will have you, once
14 again, look at the People's Exhibit Number 5, which
15 I believe is before you.

16 A Okay.

17 Q Do you have it, sir?

18 A Yes, I do.

19 Q I would like you to turn to what I
20 believe is page 13, at least in my copy. At the
21 top it appears to be Attachment C-1, handwritten.

22 A Okay.

23 Q Do you have that page, sir?

24 A I have Attachment C-1, handwritten at the

1 top.

2 Q Next to that in the right-hand corner it
3 says page, I believe, four; is that correct?

4 A The right-hand corner on mine --

5 Q The right-hand, not left-hand corner.

6 A Yes. Okay. I am sorry.

7 Q Now, --

8 A It does say page four.

9 Q All right. Paragraph G, indicates waste
10 degreaser filters and next to that you have in
11 parenthesis undetermined. Did you make that
12 statement?

13 A Yes, I did.

14 Q Okay. In paragraph F you have got waste
15 metal slag and in parenthesis nonhazardous. Is it
16 fair to say that your determination or your
17 statement of undetermined is that you made no
18 determination about hazardous or nonhazardous?

19 A No. My statement about undetermined was
20 that DK had made no determination.

21 Q Okay. They had made no determination?

22 A That's correct.

23 Q Were they obligated in some way to make
24 such a determination?

1 A Yes, they were.

2 Q Were they obligated in some manner to
3 inform whoever would have transported and/or
4 disposed of those filters to inform that person or
5 entity of what their determination was?

6 A Yes. If you were handling a waste that
7 was regulated in a specific manner, you would have
8 to insure that the hauler knew that the waste was
9 regulated in that manner. In fact, you would have
10 to provide the proper paperwork and generally in
11 the form of a manifest, and in the case of a
12 hazardous waste there would be some additional
13 paper work, too.

14 Q DK didn't do any of that, did they, with
15 regard to these matters?

16 A No, I actually marked those as apparent
17 violations in my report for DK.

18 Q Okay. I want you to turn to what I see
19 before additional pages, page 15, 16. It says page
20 8 in the right-hand corner, handwritten.

21 A Okay.

22 Q Again, it says attachment, and I cannot
23 read the --

24 A It is C-3.

1 Q It is C-3. All right, sir. Under
2 apparent violations then you have got 722.111, and
3 then you have A and B below that; is that correct?

4 A That's correct.

5 Q And you -- is it fair to say you are
6 describing there your understanding of the process
7 involved from which these filters would have come?

8 A I described the two types of filters and
9 where they come, and the reason they are listed
10 here is that DK had failed to make a determination
11 as to what these were, as to whether or not they
12 were hazardous waste at the time of my inspection
13 at their facility.

14 Q Did you make any independent
15 determination that these filters contained any of
16 the spent solvent that you claim they did contain?

17 A Based on my interview with the personnel
18 at DK, the processes were described to me as to how
19 they were used, and I listed them in both -- and
20 later on in that paragraph that they would be
21 considered hazardous.

22 Q Yes, but did you, in fact, determine that
23 they contained; if these spent filters actually
24 contained any quantity of the solvent that you

1 described here, the trichloro, trifluoroethane?

2 A I did not actually test or even examine
3 the filters. They were not present at the time I
4 was there.

5 Q So it is fair to say that you are
6 assuming that that chemical was present but you
7 don't, in fact, know that?

8 A Other than the fact that the filter was
9 used to filter the solvent, no, I don't have any
10 test or knowledge that I physically saw myself.

11 Q Are you aware of any tests that were done
12 subsequent to your preparing this report with
13 regard to the presence of that chemical on those
14 filters?

15 A I am not sure if they ran tests. My
16 guess would be that they would have in order to
17 have properly disposed of them. They would have
18 been required by a reputable waste disposal
19 facility that handles hazardous waste to know what
20 their solvent was.

21 Q That's the procedure?

22 A That's the procedure.

23 Q They didn't follow the procedure before,
24 though, did they?

1 A No, they had been marked for not
2 following it. I do not know. It would be my guess
3 since we discussed it and they said they would do
4 it that it would have been done.

5 Q Sure.

6 A I never continued on with that.

7 Q Now, when you made the visit to Waste
8 Hauling Landfill, I guess on April 26th, 1990, as
9 it is indicated on Exhibit 5; is that correct?

10 A That's correct.

11 Q How long were you present that day at the
12 landfill?

13 A It looks to be about five and a half
14 hours.

15 Q Now, what time of day -- does this report
16 indicate what time of day you departed?

17 A Yes, it indicates that I left at 12:35
18 p.m.

19 Q You don't know what happened after 12:35
20 p.m. at the landfill, do you?

21 A No, I do not.

22 Q If any filters or anything was taken and
23 removed or taken back to DK you don't know if that
24 happened after 12:35 p.m., do you?

1 A No, I would not.

2 Q Okay.

3 A I wasn't there.

4 Q All right. I have read what is paragraph
5 16 in People's Exhibit 5, the typed portion of it
6 which I think is page seven.

7 A Okay.

8 Q Or page eight. Do you have that?

9 A I have that.

10 Q I have read that paragraph 16 as being
11 what is based on your personal knowledge of what
12 you observed at the landfill or is this based upon
13 what someone told you at the landfill?

14 A This is based upon, as I stated, as noted
15 during my DK inspection, it was based upon the
16 inspection of the facility that claimed to have
17 sent waste to the landfill based on that knowledge
18 I alleged in 16.

19 Q So you did, in fact, know that filters
20 had gone to Waste Hauling Landfill before you
21 visited there in April of 1990?

22 A Yes.

23 Q All right. Now --

24 A I take that back. I had been told that

1 they had by the people at DK. I had not ever seen
2 them.

3 Q All right. Did you see it happen when
4 you were there on April 26, 1990?

5 A I don't recall seeing any filters there
6 at that time.

7 Q Okay. Well, did you ask anybody at the
8 Waste Hauling Landfill if they had received any of
9 these?

10 A To be honest with you, I don't recall if
11 I asked people at the landfill or if I discussed my
12 DK inspection. I do remember writing it in the
13 report. I would have assumed that I would have
14 discussed it with Mr. Brown, but I can't say for
15 sure that I did.

16 Q So you don't know if you asked Mr. Brown
17 or Mr. Camfield or some representative of Waste
18 Hauling Landfill if they had received any of the DK
19 degreaser filters?

20 A No, I don't know for sure if I discussed
21 that with them.

22 Q No, that's not my question.

23 A Okay.

24 Q My question is did you ask them if they

1 had received any of these?

2 A I do not recall if I asked them, no.

3 Q So you don't know if they ever received
4 any of these, do you?

5 A No. I alleged it based on my DK
6 manufacturing inspection. I do not know for sure,
7 no.

8 MR. LATSHAW: Excuse me a second.

9 (Mr. Latshaw and Mr. Van Ness
10 confer briefly.)

11 MR. LATSHAW: I have nothing further of
12 this witness.

13 HEARING OFFICER WALLACE: Ms. Menotti?

14 MS. MENOTTI: I just have a couple of
15 questions.

16 CROSS EXAMINATION

17 BY MS. MENOTTI:

18 Q Mr. Townsend, you indicated during direct
19 examination that if waste was removed from a
20 landfill it would require a manifest; is that
21 right?

22 A Yes.

23 Q And that's because it becomes a special
24 waste stream once refuse is taken out? Does it

1 matter what kind of refuse?

2 A The Agency considers, when you excavate
3 waste from a landfill, they consider that to be a
4 special waste, no matter whether it has hazardous
5 waste in it or it is just garbage. Now, if it has
6 hazardous waste in it, it could also be considered
7 a hazardous waste, which is a subcategory of
8 special waste.

9 Q Okay. Would such removal require a
10 permit from the Agency?

11 A To do the removal itself?

12 Q To actually remove it and ship it off
13 site?

14 A To do the removal, no. The shipping off
15 site -- the special waste rules are changing
16 considerably. It may or may not, depending on
17 where it is going and how it is being sent, require
18 a permit if, for instance, there was a landfill
19 that had, you know, Subtitle D landfill written
20 into its permit that it could accept these as part
21 of its operating permit.

22 It might not require a special permit
23 from that facility for the waste from that
24 facility. In the past they used to do waste

1 streams specific from where they are generated.

2 That is changing.

3 Q Okay. Back in 1990, if these filters
4 that are noted in your report were disposed of into
5 the fill with the general refuse, and then taken
6 out of the landfill after disposal, put back in the
7 container and sent back to DK, would that require a
8 permit, back under -- if you can remember the rules
9 that were in place in 1990?

10 A Okay. Let me see if I have got your
11 question. You are asking me if removal of filters
12 as we have discussed back in 1990 and sending them
13 back to DK Manufacturing would require a permit?

14 Technically speaking, yes, because after
15 they had been buried they would be considered a
16 special waste, and DK, not having a permit to
17 accept waste, would require one.

18 MS. MENOTTI: I have nothing further.

19 HEARING OFFICER WALLACE: Redirect?

20 MR. TAYLOR: Yes.

21 REDIRECT EXAMINATION

22 BY MR. TAYLOR:

23 Q I have a few questions for you, Mr.

24 Townsend.

1 In the course of your inspection of DK in
2 1990, did you review their material safety data
3 sheets?

4 A Yes. I believe I have even attached the
5 bulk of them, if not all of them, to the report.

6 Q Did any of those sheets confirm the use
7 of this solvent that we are discussing?

8 A I believe three of the attachments
9 related to Freon from two suppliers. I think two
10 of them are data sheets and one of the attachments
11 is related to some testing, I believe.

12 Q Okay. Now, the purpose of a filter in a
13 vapor degreaser, where would the filter be located?

14 A It would depend on how the degreaser is
15 set up.

16 Q Are there various alternatives?

17 A Sure.

18 Q What are the alternatives?

19 A The most common would be that you would
20 filter the solvent in some manner to remove
21 impurities so it would be better -- it would do its
22 job better. There may also be --

23 Q Can I stop you there?

24 A Yes.

1 Q When you say filter the solvent, would
2 the filter be in like a bath of solvent or would it
3 be located above where the vapors would hit it?

4 A It would depend on the design of the
5 machine. The ones I have seen generally --

6 MR. LATSHAW: I think I am going to
7 object to this line of questioning unless Mr.
8 Taylor wants to qualify this man as an expert in
9 the process that is involved in the design and
10 production process involved with this. Otherwise,
11 I think it is based entirely upon hearsay and
12 speculation and no basis or no foundation
13 whatsoever.

14 MR. TAYLOR: May I respond?

15 HEARING OFFICER WALLACE: Yes.

16 MR. TAYLOR: On cross-examination Mr.
17 Latshaw attempted to draw some distinction and
18 suggested that these filters did not contact the
19 solvent. I am attempting to establish if the
20 filters, obviously, would contact the solvent,
21 because that is what they were filtering.

22 HEARING OFFICER WALLACE: All right. My
23 ruling is to the extent that Mr. Townsend may or
24 may not have seen these machines, he can testify

1 from that knowledge.

2 Q (By Mr. Taylor) Mr. Townsend, did you see
3 these machines?

4 A Yes, I did.

5 Q Do you know where the filters were
6 located?

7 A I don't recall where the filters were
8 located.

9 Q Once a filter comes into contact with an
10 F002 waste, does the filter also become a list of
11 hazardous waste?

12 A If it would have the solvent in it, yes,
13 it would.

14 Q Is this the mixture rule, what is
15 commonly known as the mixture rule from the
16 regulations?

17 A Well, the solvent itself, assuming that
18 as you stated, that it was an F002 waste, would be
19 hazardous and basically the filter would just have
20 that material inside it. So it would be containing
21 a hazardous waste. You don't look at the filter
22 itself for a percentage, because it is not a before
23 use.

24 HEARING OFFICER WALLACE: It is not a

1 what?

2 THE WITNESS: It is not -- they are not
3 looking at the --

4 HEARING OFFICER WALLACE: No, just repeat
5 what you said before.

6 THE WITNESS: It is not a before use,
7 percentages. The filter is different from the
8 solvent.

9 HEARING OFFICER WALLACE: All right.
10 Just stop right there.

11 THE WITNESS: Okay.

12 HEARING OFFICER WALLACE: I just couldn't
13 hear what you said.

14 Q (By Mr. Taylor) Can you explain what is
15 "before use?"

16 A When you are looking at percentages in
17 the solvent, you are looking at the percentage of
18 the material prior to its use. The filter -- the
19 filter itself is not the solvent. It is actually
20 screening the solvent, is what it is doing. It
21 is -- you wouldn't look at the filter as being part
22 of the solvent to determine the percentage. You
23 would look at the raw material before it was used.

24 Q I understand. So if I mixed a listed

1 hazardous waste with a nonhazardous waste, can I
2 then dispose of that material as a nonhazardous
3 waste?

4 A No. Generally not, no. You would not be
5 allowed to do that. You said a listed hazardous
6 waste?

7 Q Yes.

8 A No.

9 MR. TAYLOR: We have nothing further.

10 HEARING OFFICER WALLACE: Recross?

11 MR. LATSHAW: Very briefly, if you
12 please, Your Honor.

13 RE CROSS EXAMINATION

14 BY MR. LATSHAW:

15 Q Mr. Townsend, if a landfill were to
16 receive something that is alleged to be hazardous,
17 and it comes in contact with the surface or some
18 part of the landfill real estate, and the landfill
19 operator realizes what it is and rejects it, and
20 sends it back to the generator, would that
21 situation require a permit?

22 A It had just came in contact with the real
23 estate or was it, indeed, buried?

24 Q Well, let's say it had not been buried,

1 but had just technically been dumped in the sense
2 that it was off of the truck and on the property.
3 At that point in time it is discovered and sent
4 back to the generator. Would that situation
5 require a permit, a special waste permit?

6 A Not necessarily, if the waste was not --
7 was being checked as it was being dumped, and they
8 were rejecting it in that process, we would make
9 allowance for them to, of course, reload that,
10 sure.

11 MR. LATSHAW: All right. Thank you.
12 That's all I have.

13 HEARING OFFICER WALLACE: Ms. Menotti?

14 MS. MENOTTI: Nothing.

15 HEARING OFFICER WALLACE: All right.
16 Thank you, Mr. Townsend. You may step down.

17 (The witness left the stand.)

18 HEARING OFFICER WALLACE: All right. Mr.
19 Taylor, anything further?

20 MR. TAYLOR: I guess we have two issues
21 to address. We have no further witnesses to
22 present at this time.

23 HEARING OFFICER WALLACE: All right.
24 What are the two issues?

1 MR. TAYLOR: The first relates to the
2 Waste Hauling Exhibit Number 5. I believe it is
3 Mr. Maw's -- it was the report brought to this
4 hearing by Mr. Maw.

5 HEARING OFFICER WALLACE: All right.

6 MR. TAYLOR: We would like to clarify
7 that that has not been admitted as an exhibit, as
8 Waste Hauling did not move to enter that as an
9 exhibit in this matter during its case.

10 MR. VAN NESS: That would be a miss
11 statement. Waste Hauling did move it, and my
12 understanding was that the Hearing Officer reserved
13 judgement on it, pending subsequent testimony. It
14 was my understanding that it remains in that
15 posture at this time.

16 For the record, it was moved and
17 subsequently the Hearing Officer took it under
18 advisement. So that is my understanding of the
19 posture of it.

20 HEARING OFFICER WALLACE: All right.
21 Without going back through the transcripts, it is
22 my recollection that it was moved, and that it was
23 taken under advisement by myself and is currently
24 still under advisement by myself, and will be ruled

1 upon.

2 MR. TAYLOR: We would like to state an
3 additional reason for our objection to entering
4 that exhibit, then.

5 HEARING OFFICER WALLACE: All right.

6 MR. TAYLOR: That exhibit was not
7 contained on Waste Hauling's exhibit list, as it
8 was presented at this hearing. We believe this
9 situation is substantially similar to the situation
10 yesterday when we were not allowed, Bell Sports was
11 not allowed to enter an annual waste report that
12 was not specifically identified on the exhibit
13 list.

14 If it is going to be the ruling that no
15 one in this hearing is allowed to enter exhibits
16 unless they are specifically identified on the
17 exhibit list, Maw Number 5 appears -- excuse me --
18 Waste Hauling Number 5 appears no where on that
19 list.

20 MR. VAN NESS: May I respond?

21 HEARING OFFICER WALLACE: Yes.

22 MR. VAN NESS: Well, I guess our response
23 would be twofold.

24 First, the document is, in fact, on the

1 exhibit list. It was identified, I believe, by the
2 People. To the extent that there was a little bit
3 of surprise, it was mainly one of bulk rather than
4 one of import. This is all material that we had
5 described previously.

6 As regards to the document, the annual
7 report that was not allowed into the record
8 yesterday, I would simply point out that they are a
9 completely different kettle of fish, one from the
10 other. The two documents stand on their own in
11 terms of their basis for being approved or not
12 approved into the record, and they shouldn't be
13 confused. They are not the same thing at all. The
14 grounds are completely dissimilar.

15 HEARING OFFICER WALLACE: All right.
16 Thank you.

17 Your second issue?

18 MR. TAYLOR: We would also move at this
19 time to strike Mr. Maw's testimony, based on Waste
20 Hauling Exhibit Number 5, for the same reason; he
21 was allowed to continue to testify under -- with
22 the reservation that Waste Hauling would establish
23 a foundation and have the document be admitted.

24 HEARING OFFICER WALLACE: All right.

1 MR. TAYLOR: The second issue that we
2 have --

3 HEARING OFFICER WALLACE: Oh, I thought
4 that was the second issue.

5 MR. TAYLOR: No. I am sorry.

6 MR. NAHMOD: That was a subissue.

7 MR. TAYLOR: That is 1 (a) and (b).

8 HEARING OFFICER WALLACE: All right.

9 MR. TAYLOR: The second issue relates to
10 Mr. Brad Brown, who is a former employee of Waste
11 Hauling Landfill.

12 On multiple occasions -- excuse me. Mr.
13 Brown was deposed in this case by Bell and by the
14 State. On multiple occasions Bell Sports has
15 attempted to serve Mr. Brown with another subpoena
16 to appear at this hearing. Mr. Brown has
17 effectively avoided service of the subpoena.

18 We sent to him a subpoena by certified
19 mail, which was rejected and not accepted. We then
20 hired a process server, who for three days
21 attempted to serve Mr. Brown, and at various points
22 in time spoke with his wife, who gave him, gave the
23 process server, a time that Mr. Brown would be
24 available.

1 The process server returned to the house
2 at that time and no one was home. The process
3 server returned to the house another time, and
4 suspected that people were inside and would not
5 answer the door.

6 We have an affidavit from the process
7 server. We have the returned certified mail
8 receipt, and we would move, pursuant to Board Rule
9 103.161 of Subsection C, to use Mr. Brown's
10 deposition testimony as evidence in this
11 proceeding, because he is not available to
12 participate in the hearing, due to other
13 exceptional circumstances.

14 We would note, for the record, that each
15 person that has appeared here pursuant to a
16 subpoena -- we have had Mr. Nick Riddle, who is not
17 an employee of any party to this case, who seemed
18 to be able to accept service. We have had multiple
19 personnel from the Agency, who seem to have not had
20 a problem with service by certified mail. We have
21 had other personnel from the landfill that have not
22 had problems with service by certified mail.

23 We believe there are other exceptional
24 circumstances, because we not only tried to serve

1 him with a subpoena in the same way that we have
2 served the other parties, but that we actually went
3 to the extraordinary measure in this Board case of
4 hiring a process server and attempting on multiple
5 times to serve him.

6 HEARING OFFICER WALLACE: All right.

7 MR. TAYLOR: We have and can show you a
8 copy of the affidavit from the process server, as
9 well as other documents relating to this matter.

10 MR. LATSHAW: Mr. Hearing Officer, we --

11 MR. NAHMOD: Attached to the affidavit --

12 HEARING OFFICER WALLACE: Wait a minute.
13 Don't speak at the same time, please.

14 MR. LATSHAW: Go ahead.

15 MR. NAHMOD: Attached to the affidavit is
16 a subpoena that the process server attempted to
17 serve, and attached to that is the return -- a copy
18 of the return receipt from the certified mail.
19 Attached to that is the subpoena originally drafted
20 for the April hearing that was contained in the
21 certified mail that returned without signature.
22 Then a copy of Mr. Brown's deposition is attached,
23 as well, Mr. Hearing Officer, to the packet of
24 materials that you have.

1 HEARING OFFICER WALLACE: All right.

2 Response?

3 MR. VAN NESS: Well, this is a bit of a
4 surprise to us. Mr. Hearing Officer, I hope it is
5 clear, from everything that Mr. Taylor stated, that
6 there should be no inference of any complicity in
7 any possible attempt to evade service on the part
8 of Waste Hauling or Waste Hauling Landfill. We
9 personally don't have any knowledge as to Mr.
10 Brown's whereabouts either.

11 As regards the admission of the discovery
12 deposition into the record in this proceeding, as I
13 said, this is a bit of a surprise to us. I haven't
14 had a chance to review the transcript of that
15 deposition for some time. I will represent to the
16 Board on this record that we were present and did
17 participate in the deposition of Mr. Brad Brown
18 back in January, I believe, of this year.

19 MR. LATSHAW: Well, I certainly want to
20 join with Mr. Van Ness, and indicate that neither
21 Mr. Camfield, nor Mr. Van Ness, or myself, nor
22 anyone else of Waste Hauling made any effort to
23 prevent Mr. Brown from testifying. Any actions he
24 may or may not have taken are certainly on his

1 own.

2 I think all parties were aware that he
3 was terminated from his employment, I believe,
4 effective October 1st of 1996. His deposition was
5 taken in January of 1997 in this matter, and
6 everyone was aware at that time that he no longer
7 was employed. He apparently responded to that
8 subpoena. I don't know what the problem is with
9 this one.

10 My inclination is that I would like to
11 take a look at the deposition again before the
12 ruling is made on that question, is all I would ask
13 at this point. We haven't examined it in
14 preparation for this hearing today, but perhaps it
15 would be reasonable to have, say, a written
16 response -- Phil will have to do it, though --
17 within ten days or so, after examining it, to
18 determine whether we have any objection.

19 My inclination is that we probably
20 wouldn't. I don't recall his deposition being a
21 great deal of value to anybody. I guess that is
22 the only comment I have in that regard.

23 HEARING OFFICER WALLACE: All right. Ms.
24 Menotti, any response or comment?

1 MS. MENOTTI: We did depose Mr. Brown
2 back in January. I have been looking through the
3 transcript, and I think that everybody should
4 review it before any final decision is made on its
5 admissibility.

6 When the deposition did occur, we were
7 able to serve Mr. Brown with a subpoena. I don't
8 recall if at that time he indicated whether or not
9 he would be willing to testify during a hearing.
10 But I can represent that the only testimony and
11 contact that the State has had with Mr. Brown has
12 been the discovery deposition that was taken back
13 in January.

14 HEARING OFFICER WALLACE: All right. I
15 think I will allow Waste Hauling and the People to
16 take a look at the deposition and file a written
17 response. I will treat your document as a motion
18 to treat the deposition as an evidentiary
19 deposition, and to be admitted into the record. I
20 will --

21 MR. VAN NESS: Mr. Hearing Officer, do
22 you want to set a time limit on it to get some
23 comment in to you?

24 HEARING OFFICER WALLACE: Well, how much

1 time do you want?

2 MR. VAN NESS: We each have a copy of the
3 transcript, and it is not that long.

4 HEARING OFFICER WALLACE: Seven days?

5 MR. VAN NESS: Seven days I think would
6 be adequate.

7 HEARING OFFICER WALLACE: Well, let's
8 see. Monday is a holiday, so May 28th. Respond to
9 me with either your objection or non objection. If
10 there is no objection from any of the parties, we
11 will put it into the record. If there is an
12 objection, I will issue a ruling on it.

13 MR. TAYLOR: Can we ask just for a bit of
14 a clarification? The form of the response, if -- I
15 take it that it is not going to be a brief or an
16 argument? It would be a fact based document in the
17 form of an affidavit that was sworn to by a
18 particular person?

19 HEARING OFFICER WALLACE: No, it would be
20 a response to --

21 MR. TAYLOR: To the motion or a response
22 to the substance of Mr. Brown's deposition? I
23 guess what I am suggesting is that Mr. Brown was
24 under oath during the deposition. Each party was

1 allowed to ask him questions, and I believe,
2 without looking at the deposition transcript, that
3 Waste Hauling conducted redirect of Mr. Brown
4 during the deposition.

5 So my question is, are the responses to
6 this motion related to the facts of the case or
7 related to the motion itself?

8 HEARING OFFICER WALLACE: I am not quite
9 sure I even understand your request, because you
10 have asked the Board to take this deposition in as
11 an evidentiary deposition and --

12 MR. TAYLOR: Yes.

13 HEARING OFFICER WALLACE: -- I am
14 allowing the other parties an opportunity to at
15 least go back and read the deposition and see if
16 they object to that. If there is no objection,
17 then I would essentially treat it as a stipulation
18 and the parties stipulate that this is now part of
19 the record.

20 If there is an objection, the objection
21 would be based upon the Board's rules or based upon
22 some point as to why it should not be admitted into
23 the record.

24 MR. TAYLOR: I understand. I was a bit

1 confused, and I appreciate your clarification.

2 HEARING OFFICER WALLACE: I am prepared
3 to rule on Exhibit Number 5, and I have looked at
4 the Board's rules, and I believe that Waste Hauling
5 Exhibit Number 5 is the type of evidence the Board
6 would wish to consider and, therefore, it is being
7 admitted.

8 I also would deny the motion to strike
9 Mr. Maw's testimony. Again, I believe it may be
10 the testimony -- the type of testimony that the
11 Board may wish to consider in deciding this
12 matter.

13 So, for the record, WHL Exhibit Number 5,
14 the analytical report, is admitted into evidence.

15 (Whereupon said document was
16 admitted into evidence as WHL
17 Exhibit 5 as of this date.)

18 HEARING OFFICER WALLACE: All right.
19 Now, do the People have any rebuttal?

20 MS. MENOTTI: We don't have any witnesses
21 to call, but as co-counsel stated before, we do
22 intend to utilize Section 103.210 (a) of the
23 Board's Procedural Rules to amend the pleadings to
24 conform with the proof that was presented, and we

1 request leave to do so if it is required.

2 HEARING OFFICER WALLACE: All right.

3 Leave is granted to file such a motion.

4 Do you want to do that in the near future
5 or do you want to wait and do that with your
6 brief?

7 MS. MENOTTI: I prefer to do it
8 separately.

9 HEARING OFFICER WALLACE: All right.

10 MS. MENOTTI: So that would come before
11 the brief.

12 HEARING OFFICER WALLACE: All right.
13 Let's go off the record.

14 (Discussion off the record.)

15 HEARING OFFICER WALLACE: Back on the
16 record.

17 Before I forget, we had several
18 witnesses. The Pollution Control Board rules
19 require that the Hearing Officer make a finding of
20 credibility.

21 The Hearing Officer finds that at least
22 based on the witnesses that appeared here in this
23 matter, I find no issues of credibility that strike
24 me as worthy of being noticed on the record.

1 I think it may be on the record, but Bell
2 Sports has presented a motion to adopt Bradley
3 Brown's deposition as evidence in this matter.
4 Waste Hauling and the People have seven days to
5 indicate whether they have an objection to this
6 deposition, and I will issue a ruling after those
7 responses come in. That would be May 27th.

8 The People have also indicated a request
9 to file a motion for leave to conform the pleadings
10 to the proof. I can't recall if we determined that
11 you would take seven days or fourteen days.

12 Ms. Menotti?

13 MS. MENOTTI: Fourteen.

14 HEARING OFFICER WALLACE: Fourteen days.
15 That motion would come in the 3rd of June.

16 The other parties, Bell Sports, Waste
17 Hauling, would have seven days after that to file a
18 response to that motion.

19 The briefing schedule, before we go into
20 it, everyone has rested; is that correct?

21 Ms. Menotti?

22 MS. MENOTTI: Correct. Can I, for the
23 record; just in the off time, I reviewed Mr.
24 Brown's deposition, and we have no objection to it

1 being entered. I will not be filing any pleading.

2 HEARING OFFICER WALLACE: You have no
3 objection. Okay.

4 You have rested, Mr. Taylor, for Bell
5 Sports?

6 MR. TAYLOR: We would like to reserve the
7 right to attempt to locate Mr. Brown once again and
8 file the same motion, once again, if we are unable
9 to locate him in the event that the Hearing Officer
10 elects to rule that his deposition may not be
11 entered as an evidence deposition.

12 HEARING OFFICER WALLACE: No, I am not --
13 actually, I am not going to do that. I am troubled
14 by the fact that Mr. Brown, as you state, avoided
15 your service. To the extent that all the parties
16 and the Hearing Officer were notified of this prior
17 to commencing yesterday, I might have felt
18 differently about it.

19 But these were the days scheduled to
20 complete this hearing, and I am not inclined to
21 really resume the hearing, even if Mr. Brown is
22 found. I assume that -- I mean, that was my
23 understanding, that we would go ahead and try to
24 wrap this up these three days. That is what I

1 intend to do.

2 MR. TAYLOR: We did not intend to cause
3 any prejudice by bringing this up today as opposed
4 to yesterday.

5 MR. VAN NESS: We would be willing to
6 take some time today and look through the
7 deposition transcript, if that's amenable to the
8 other parties and the Hearing Officer, and we could
9 state our objections on the record, if any, or
10 state that there is not an objection on the
11 record. If that would be agreeable to the parties,
12 we could take a break and come back and then --

13 HEARING OFFICER WALLACE: That would
14 certainly be helpful.

15 MR. TAYLOR: That would be very helpful.
16 I appreciate that.

17 MR. LATSHAW: It is probably going to
18 take no more than 15 or 20 minutes to read the darn
19 thing. Then that should tell us.

20 HEARING OFFICER WALLACE: All right. We
21 will do that.

22 While I am thinking of it, I will put the
23 briefing schedule on the record.

24 In the matter of the People's complaint,

1 the People's initial brief will be due June 30th.

2 Waste Hauling Landfill and Waste Hauling,
3 Inc.'s response brief will be due 07-21.

4 The People's reply brief will be due
5 08-04.

6 On the cross-claim of Waste Hauling
7 Landfill and Waste Hauling, Inc. against Bell
8 Sports, Waste Hauling Landfill's initial brief will
9 be due 07-21.

10 Bell Sports' response will be due 08-11.
11 That's August 11.

12 The reply of Waste Hauling Landfill will
13 be due August the 18th.

14 The People have requested leave to file a
15 response. During an off-the-record discussion, Mr.
16 Van Ness voiced a -- would you describe that as a
17 mild objection or a versifierous objection?

18 MR. VAN NESS: I would call that a mild
19 objection.

20 HEARING OFFICER WALLACE: Okay. He
21 voiced an objection. I am going to overrule the
22 objection and grant the People a leave to file a
23 response in the cross-claim, if the People are so
24 inclined.

1 Okay. I think that brings in all of the
2 dates.

3 Based upon Mr. Latshaw's representation,
4 we will break for lunch and come back at 1:30 to
5 see if we can wrap up the Bradley Brown
6 deposition.

7 MR. LATSHAW: Okay. Thank you.

8 MR. VAN NESS: Thank you.

9 MR. TAYLOR: Thank you.

10 HEARING OFFICER WALLACE: Thank you.

11 (Whereupon a lunch recess was
12 taken from 12:25 p.m. to 1:30
13 p.m.)

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AFTERNOON SESSION

(May 20, 1997; 1:30 p.m.)

HEARING OFFICER WALLACE: Back on the record.

Mr. Van Ness?

MR. VAN NESS: Yes, Mr. Hearing Officer.

My co-counsel and I have had an opportunity to review the discovery deposition of Mr. Bradley Brown, as per representations made prior to the lunch break, and we will represent to you that we have no objection to the entry of that document, as indicated by the Hearing Officer prior to the break.

HEARING OFFICER WALLACE: All right. The exhibits that were attached to the deposition were used in the deposition, right? There were some exhibits?

MR. TAYLOR: Yes.

MR. VAN NESS: There was only -- there were only one or two exhibits that were used. One of them I know, for a fact, was used in this pleading. That was the daily waste log. I don't recall whether there was anything else. Is there a directory at the front of that?

1 MR. TAYLOR: There was a manifest.

2 MR. VAN NESS: Okay.

3 MR. NAHMOD: You should find the exhibits
4 to the deposition attached to the transcript.

5 HEARING OFFICER WALLACE: Exactly. I am
6 just making sure that --

7 MR. NAHMOD: Okay.

8 MR. TAYLOR: Those were used during the
9 deposition.

10 HEARING OFFICER WALLACE: And there was
11 no objection?

12 MR. VAN NESS: There was no objection,
13 that is right.

14 HEARING OFFICER WALLACE: On the record I
15 am going to mark the discovery deposition of
16 Bradley L. Brown as Bell Exhibit Number 9.

17 (Whereupon said document was
18 duly marked for purposes of
19 identification as Bell Exhibit
20 9 as of this date.)

21 HEARING OFFICER WALLACE: There being no
22 objection, it will be admitted.

23 I will return the affidavits and the
24 subpoenas to you.

1 (Whereupon said document was
2 admitted into evidence as Bell
3 Exhibit 9 as of this date.)

4 MR. TAYLOR: Thank you. So that the
5 record is clear, we rest.

6 HEARING OFFICER WALLACE: All right.

7 MR. TAYLOR: Not that we had a choice.

8 HEARING OFFICER WALLACE: All right. Is
9 there anything else? This is it.

10 MR. LATSHAW: Going once --

11 HEARING OFFICER WALLACE: The briefing
12 schedule I put on the record, I will put that in
13 the Hearing Officer's report. I don't think there
14 is anything else outstanding at this time.

15 All right. Thank you very much. The
16 hearing is adjourned.

17 (Bell Exhibits 7, 8 and 9
18 were retained by Hearing
19 Officer Wallace.)

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

3 C E R T I F I C A T E

4 I, DARLENE M. NIEMEYER, a Notary Public
5 in and for the County of Montgomery, State of
6 Illinois, DO HEREBY CERTIFY that the foregoing 103
7 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 20th of
9 May A.D., 1997, at the Office of the Attorney
10 General, Conference Room, 500 South Second Street,
11 Springfield, Illinois, in the case of The People of
12 the State of Illinois v. Waste Hauling Landfill,
13 Inc. and Waste Hauling, Inc., in proceedings held
14 before the Honorable Michael L. Wallace, Hearing
15 Officer, and recorded in machine shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my
17 hand and affixed my Notarial Seal this 30th day of
18 May A.D., 1997.

19

20

21 Notary Public and
22 Certified Shorthand Reporter and
Registered Professional Reporter

23 CSR License No. 084-003677
My Commission Expires: 03-02-99

24