

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
ADMINISTRATIVE CITATION

2

3 COUNTY OF DUPAGE,)

)

4 Petitioner,)

)

5 vs.) AC 97-13

) (Administrative citation)

6 CHAUDHRY M. SALEEM,) File No. 96 CD 494

) 96 SA 494

7 Respondent.)

8

9

10 The following is the transcript of

11 an administrative citation hearing held in the

12 above-entitled matter, taken stenographically by

13 Kim M. Howells, CSR, a notary public within and for

14 the County of Cook and State of Illinois, before

15 JOHN BURDS, Hearing Officer, at 505 North County

16 Farm Road, Wheaton, Illinois, on the 1st day of

17 April, A.D., 1998, scheduled to commence at

18 9:30 a.m., commencing at 10:15 a.m.

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

2

3 HEARING TAKEN BEFORE:
4 MR. JOHN BURDS
5 ILLINOIS POLLUTION CONTROL BOARD
6 100 West Randolph Street
7 Suite 11-500
8 Chicago, Illinois 60601
9 (312) 814-6062

7 STATE'S ATTORNEY'S OFFICE,
8 505 North County Farm Road
9 Third Floor
10 Wheaton, Illinois 60187
11 (630) 682-7050
12 BY: MR. KEVIN D. MACK,

13 Appeared on behalf of the Petitioner,

14

15 LAW OFFICES OF HARRY A. SCHROEDER, P.C.,
16 1619 South Western Avenue
17 Chicago Heights, Illinois 60411
18 (708) 747-4700

19 BY: MR. HARRY A. SCHROEDER,

20 Appeared on behalf of the Respondent.

21

22 Also Present:

23

24 Christine Rehash

25

26 Ed Vana

27

28 James Walsh

29

30 Naseem M. Chaudhry, M.D.

31

32 Darlene Jensen

33

34

35

1 I N D E X

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1 THE HEARING OFFICER: Let the record reflect
2 that today's date is April 1, 1998. We are located
3 at the DuPage County Courthouse. This is the matter
4 of County of DuPage as complainant vs. Saleem M.
5 Chaudhry as respondent, AC 97-13.

6 This matter pursuant to court order has
7 been scheduled for hearing in this matter for
8 today's date. At this time, I would like all
9 parties present starting with the complainant to
10 identify themselves.

11 Mr. Mack?

12 MR. MACK: My name is Kevin Mack. I'm the
13 assistant states attorney, and I'm representing the
14 County of DuPage.

15 THE HEARING OFFICER: Mr. Mack, please spell
16 your last name.

17 MR. MACK: M-a-c-k.

18 THE HEARING OFFICER: Thank you. All right.

19 Now, as far as the respondent?

20 MR. SCHROEDER: My name is Harry Schroeder.
21 I'm here on behalf of the respondent, Saleem
22 Chaudhry. Mr. Chaudhry is -- Dr. Saleem Chaudhry,
23 has, since this petition has been filed, moved to
24 Ohio which I was not aware of. He is not -- I've

1 already indicated to Mr. Mack he is not available
2 for today. I was unable to get him here today.

3 His brother, Dr. Naseem Chaudhry, is
4 thoroughly familiar with the events and is prepared
5 to testify, and he is also present.

6 THE HEARING OFFICER: Mr. Mack?

7 MR. MACK: We did issue -- I don't know if you
8 received a copy, Mr. Burds.

9 THE HEARING OFFICER: I did.

10 MR. MACK: We issued a subpoena to Saleem
11 Chaudhry. At this time, I would object to any
12 testimony ordered by Saleem Chaudhry's brother
13 today. Notwithstanding that objection, I do know
14 that the Chaudhrys were -- several of the brothers
15 were present on the property at the time, and if
16 counsel for the respondent can establish sufficient
17 foundation of Mr. Chaudhry's knowledge of the facts,
18 I may wish to question him about the facts, but
19 that's under the reservation of my initial objection
20 to his testimony.

21 THE HEARING OFFICER: I want to understand.
22 Who is the named party in this proceeding?

23 MR. MACK: Saleem Chaudhry.

24 THE HEARING OFFICER: Is that who Mr. Schroeder

1 has identified as Dr. Chaudhry?

2 MR. MACK: No.

3 MR. SCHROEDER: They're both doctors.

4 THE HEARING OFFICER: I see.

5 MR. SCHROEDER: Saleem Chaudhry is the named

6 party, and he is now residing in Ohio, which I only

7 learned of last night actually.

8 I'm not sure I understand Mr. Mack's

9 objection to the testimony of Naseem Chaudhry who is

10 present in court. If I called Naseem Chaudhry as a

11 witness, I would have to establish a foundation as

12 to his personal knowledge as I would any witness. I

13 don't see any grounds for Mr. Mack to say that

14 there's no basis for me calling whoever I want as a

15 witness.

16 THE HEARING OFFICER: I'm just wondering, as a

17 party, your client not being present where he's not

18 in default, Mr. Schroeder?

19 MR. SCHROEDER: He's present through counsel I

20 would suggest.

21 THE HEARING OFFICER: He is a named party in

22 this proceeding, and as I indicated to you on the

23 phone when we spoke with Mr. Mack, I indicated he

24 would be required to attend this proceeding, and he

1 is not here.

2 MR. SCHROEDER: I made several pages and
3 efforts to contact him, and I only learned last
4 night that he had moved to Ohio. I was not aware of
5 that. That was inadvertent. That was not by
6 design. As an officer of the court, I can represent
7 to you that there is nothing predisposed for him not
8 to be here.

9 THE HEARING OFFICER: Let the record also
10 reflect that there are several members of the public
11 in the audience. I don't know if they're here in
12 relation to this proceeding or another proceeding.
13 However, let the record reflect that there are
14 members of the public present.

15 MR. MACK: Let me --

16 THE HEARING OFFICER: Mr. Mack?

17 MR. MACK: Let me interject, Mr. Burds. One or
18 possibly two of the folks here will be potential
19 witnesses. Do you wish for them to wait outside the
20 courtroom? They're representatives of the County of
21 DuPage. They're not members of the public per se.

22 THE HEARING OFFICER: Mr. Schroeder?

23 MR. SCHROEDER: When we are ready to begin
24 proceedings, I would ask that witnesses be excluded.

1 THE HEARING OFFICER: All right. Granted. All
2 witnesses unless -- just as in any proceeding, one
3 party for the complainant may sit at counsel's
4 table. However, I would ask when the proceedings
5 start, and I will make a note of that, that the
6 parties -- the witnesses or people who intend to
7 testify be sequestered.

8 My unduly concern is that the respondent
9 who filed a petition in this case is not present,
10 and whether we should proceed in absentia or
11 consider him in default. At this point, how I
12 proceeded in the past is to proceed in absentia.
13 However, I will make note for the record that I did
14 receive a subpoena from Mr. Mack requesting the
15 attendance of Mr. Chaudhry on today's date.

16 I, prior to this date, have spoken with
17 Mr. Mack and Mr. Schroeder and made it very clear, I
18 thought, that Mr. Chaudhry, the named party in this
19 proceeding, would be present at this action, and he
20 has failed to appear.

21 MR. SCHROEDER: For the record, at the time of
22 our conference, Mr. Mack and yourself and myself, I
23 was unaware that Saleem Chaudhry had moved to Ohio,
24 and I had been trying to contact him since that

1 conference and only learned last night through his
2 brother that he was, in fact, in Ohio.

3 MR. MACK: Mr. Burds, the County is prepared to
4 put on its case today. These proceedings, as you
5 know, have been delayed a substantial amount of
6 time. Our evidence gets older and older as time
7 passes. I don't wish to continue this. But I'd
8 like to have my objection noted. We served a timely
9 subpoena. Whether or not I intended to call Saleem
10 Chaudhry, I have no idea. And I will renew my
11 objections throughout the proceedings, if necessary,
12 but we're ready to go.

13 THE HEARING OFFICER: Mr. Schroeder, let me ask
14 you this.

15 MR. SCHROEDER: Yes.

16 THE HEARING OFFICER: Are you seeking a
17 continuance to have your client here, or are you
18 prepared to proceed today?

19 MR. SCHROEDER: I would first under the
20 circumstances ask the Court for a continuance.
21 Second, for the record, I would make note that there
22 was no personal service of the subpoena. I received
23 a subpoena by mail. I have been trying to obtain my
24 client to come here, but because of the move to

1 Ohio, I was not successful in doing that. Any
2 representation that there was personal service on
3 him is not accurate.

4 THE HEARING OFFICER: Okay. Well, as far as
5 the subpoena, he is a named party in this
6 proceeding --

7 MR. SCHROEDER: Yes, he is.

8 THE HEARING OFFICER: -- and was required to be
9 here.

10 MR. SCHROEDER: I understand.

11 THE HEARING OFFICER: His obligation to be here
12 should be clear.

13 MR. SCHROEDER: As far --

14 THE HEARING OFFICER: I understand. I
15 understand, Mr. Schroeder. But for the record, he
16 is a named party in this proceeding. We will
17 proceed in absentia. I am denying the request for a
18 continuance at this time. This matter -- as
19 Mr. Mack correctly points out, this matter has been
20 pending before the board for some time and was
21 ordered to hearing well over six months ago at the
22 conclusion of a motion to reconsider that you and
23 your client brought, Mr. Schroeder, and at your
24 request. Therefore, we will proceed to hearing in

1 this matter.

2 All right. Again, let me identify myself
3 as a hearing officer for the Illinois Pollution
4 Control Board. My name is John Burds, B-u-r-d-s.
5 This matter is before the board as County of DuPage
6 as complainant vs. Saleem M. Chaudhry.

7 At this, I would ask any witnesses in this
8 procedure other than those seated at counsel
9 table -- Mr. Mack, do you have any objection to
10 Mr. Chaudhry's brother at counsel's table with
11 defense counsel?

12 MR. MACK: No.

13 Do you want to just forego excluding
14 people at this point? I mean, there's such a common
15 knowledge of the facts.

16 Would you agree with that?

17 MR. SCHROEDER: I don't know who -- I recognize
18 one of your witnesses in the back. I don't know who
19 else is here.

20 MR. MACK: Mr. Vana works for the zoning
21 department. His supervisor and manager of the
22 zoning department is Jim Walsh. I don't at this
23 time have any intention of calling them unless we
24 get into some zoning issues. Darlene is the

1 delegated IEPA enforcement officer who is my primary
2 and sole witness at this time.

3 MR. SCHROEDER: Who is at counsel's table?

4 MR. MACK: This is Chris, my assistant. She's
5 a paralegal in our office.

6 MR. SCHROEDER: Okay. With that representation
7 by Mr. Mack, I'll withdraw my motion to exclude.

8 THE HEARING OFFICER: Okay. Then at this time,
9 the motion being excluded to sequester witnesses,
10 all parties who are present may stay in the
11 courtroom.

12 Now, any other prehearing motions that we
13 need to deal with, Mr. Mack?

14 MR. MACK: None.

15 THE HEARING OFFICER: Mr. Schroeder?

16 MR. SCHROEDER: No, sir.

17 THE HEARING OFFICER: Let's proceed.

18 Any opening statements, Mr. Mack?

19 MR. MACK: Just very briefly, Mr. Burds.

20 This matter comes before the board
21 pursuant to an administrative citation filed by our
22 office on August 29, 1996, which therein alleges
23 that on June 28th of 1996, an on-site inspection of
24 the respondent's property revealed the following

1 violations: The first of which is causing or
2 allowing litter in violation of Illinois Compiled
3 Statutes, Section 21(P)(1), the second conducting
4 any waste storage, waste treatment, waste disposal
5 operation without a permit granted by the agency in
6 violation of Section 521(D); third, causing or
7 allowing the deposition of waste in standing or
8 flowing waters in violation of Section 21(D)(4); the
9 fourth, causing or allowing the development of an
10 indoor operation of a solid waste management site
11 without a permit issued by the IEPA in violation of
12 administrative regulations; and then, finally,
13 causing or allowing open dumping of any waste in
14 violation of compiled statutes.

15 What we're seeking penalties on,
16 Mr. Burds, is the first violation that I stated,
17 which is causing or allowing litter in violation of
18 this statute and the third violation, which is
19 causing or allowing deposition of waste in standing
20 or flowing waters. That's what we're going to be
21 focusing on in our case in chief, and we feel that
22 we have evidence to support those allegations.

23 That's all I have.

24 THE HEARING OFFICER: Okay. I just want to

1 make sure I'm understanding you correct, Mr. Mack.

2 As far as the allegations within your complaint,

3 you're not limiting -- there are five as I

4 understand?

5 MR. MACK: Right.

6 THE HEARING OFFICER: You are going to be

7 presenting evidence on all?

8 MR. MACK: Well, we will be presenting evidence

9 on all, but as I understand the AC process, those

10 that are only actionable under the AC are the two

11 that I've cited. So my understanding is that the

12 other violations must be alleged for sufficient

13 foundation purposes.

14 So that is what we have cited in our AC,

15 but we are seeking penalties of \$500 each on two of

16 those specific areas.

17 THE HEARING OFFICER: All right.

18 Mr. Schroeder, any opening statement?

19 MR. SCHROEDER: Yeah.

20 I would like to point out that this matter

21 concerns a single project lot of land where there

22 was a single-family residence, that there was a

23 building permit issued, and demolition began

24 pursuant to that term -- to that permit.

1 Very shortly after the process began, the
2 county stopped the work and issued the citation,
3 that is the subject of this hearing, within a matter
4 of days. I believe that the county in trying to
5 focus on the litter, disposition of waste,
6 allegation is almost admitting that the other
7 statutes cited are not applicable to this case, and
8 I believe that's what the evidence will show.

9 THE HEARING OFFICER: All right. Evidence,
10 Mr. Mack?

11 MR. MACK: Okay. At this time, Mr. Burds, we'd
12 like to call our first witness, Miss Darlene Jensen.

13 THE HEARING OFFICER: Miss Jensen, please step
14 forward.

15 Would you swear in the witness, please?

16 (Witness sworn.)

17 THE HEARING OFFICER: Miss Jensen, I would just
18 ask you to please state your name and spell your
19 last name for the record.

20 THE WITNESS: Darlene Jensen, J-e-n-s-e-n.

21 THE HEARING OFFICER: Thank you.

22 Mr. Mack?

23

24

1 WHEREUPON:

2 DARLENE JENSEN,
3 called as a witness herein, having been first duly
4 sworn, testified, and saith as follows:

5 DIRECT EXAMINATION

6 by Mr. Mack

7 Q. Okay. Miss Jensen, could you state your
8 occupation?

9 A. Environmental enforcement officer.

10 Q. Okay. And were you employed in that
11 capacity during the events of this administrative
12 citation?

13 A. Yes.

14 Q. Okay. How long have you been employed as
15 an environmental inspector?

16 A. Four years.

17 Q. Four years.

18 What type of training have you had
19 pursuant to that employment?

20 A. The Illinois EPA has a certification
21 program that I've gone through and also attended
22 their continuous training programs, which are
23 annual.

24 Q. Okay. The Illinois EPA, are you a

1 delegated enforcement officer of the Illinois EPA?

2 A. Yes.

3 Q. Okay. And have you been so throughout
4 your tenure with the county?

5 A. Yes.

6 Q. Is that pursuant to a delegation agreement
7 that the County of DuPage has with the IEPA?

8 A. Yes.

9 Q. Okay. All right. Miss Jensen, calling
10 your attention to June 28, 1996, did you receive any
11 complaints concerning property regarding potential
12 violations?

13 A. Yes, I did. I received a complaint
14 from -- and at that time on June 28th, I believe it
15 was through my director who, I think, he in turn
16 received it from the building department.

17 MR. SCHROEDER: I'm going to object to the
18 extent it's beyond her knowledge as to who the
19 director received it from --

20 THE WITNESS: Okay.

21 MR. SCHROEDER: -- as to relevancy.

22 THE HEARING OFFICER: Well --

23 MR. MACK: I think it's relevant because it
24 indicates how the inspector became knowledgeable of a

1 potential violation, and if that violation is
2 pursuant to a complaint or a drive-by, I think
3 that's relevant for the board's consideration.

4 THE HEARING OFFICER: I think it's a foundation
5 at this point. I'm going to overrule the objection
6 at this point. However, you are free to offer that
7 objection, Mr. Schroeder. I don't disagree that it
8 may bring in some hearsay. However, at this point
9 it's foundation. I don't think it is necessary to
10 prevent that testimony. I will allow the question.

11 Do you recall the question, Miss Jensen?

12 THE WITNESS: Yes, I do.

13 BY THE WITNESS:

14 A. Again, through the director, and I believe
15 he may have received the information from the
16 building department. I performed an inspection of
17 the site on June 28th in the afternoon. I think it
18 was a Friday, if I recall, about 3:00 p.m. There
19 was no one on the site. The basis of the
20 complaint --

21 BY MR. MACK:

22 Q. Just a moment. Let me interrupt just for
23 a second.

24 A. Sure. Sure.

1 Q. Is the site that we're talking about

2 639 86th Place in Downers Grove?

3 A. Yes.

4 Q. All right. So you went to that site

5 pursuant to a complaint that was relayed to you?

6 A. Yes.

7 Q. All right. Could you tell me the nature

8 of that complaint?

9 A. Yes.

10 MR. SCHROEDER: Objection.

11 THE HEARING OFFICER: I think it is a little

12 vague, Mr. Mack, as to which complaint you're

13 referring to, whether it was at the site or from the

14 person who responded to the complaint.

15 MR. MACK: Okay.

16 THE HEARING OFFICER: I think you can tie that

17 better.

18 BY MR. MACK:

19 Q. Okay. You were responding to this address

20 pursuant to -- what was the nature of your

21 inspection of that address?

22 A. The nature of the inspection of that

23 address was based on the complaint that I received

24 through my director that there had been disposition

1 of waste on the site. Open dumping is what we call
2 it.

3 MR. SCHROEDER: I'm going to renew my objection
4 as to the hearsay nature.

5 THE HEARING OFFICER: Okay. I'm going to
6 overrule that objection at this time.

7 BY MR. MACK:

8 Q. Approximately what time did you arrive at
9 the address on June 28th?

10 A. 3:00 p.m.

11 Q. 3:00 p.m. Okay. Did you contact anybody
12 on the property?

13 A. No, I did not.

14 Q. Okay. Could you describe -- could you
15 describe the general nature of the property at
16 639 86th Place?

17 A. Sure. When I arrived at the property, I
18 recognized that it was a renovation of a home. I
19 did go to the front door. There was no one home.
20 There was no one on the property at the time. I
21 performed my inspection, which usually -- which in
22 this case involved walking the property, walking the
23 perimeter of the property and through the property,
24 and I went to the back of the property, which

1 contained a pond.

2 Q. Okay. Could you -- was there any work
3 construction activity occurring at the property at
4 that time?

5 A. Not ongoing.

6 Q. Okay. Could you briefly describe the
7 surrounding area around the property?

8 A. Yes. It looked like there was just
9 some -- there were exposed exterior walls on the
10 house.

11 Q. I'm sorry. Let me rephrase the question.

12 Is this in a residential area?

13 A. Yes, it is.

14 Q. Okay.

15 A. Yes, it is.

16 Q. So is it surrounded by other homes?

17 A. Yes, it is.

18 Q. Approximately how large is the parcel?

19 A. Two acres, I believe.

20 Q. Two acres. Okay. So you conducted a site
21 inspection by walking the property?

22 A. Yes.

23 Q. Okay. Did you have a camera with you at
24 the time?

1 A. Yes.

2 Q. Were you taking notes during that?

3 A. Yes, notes and photographs.

4 Q. Okay. And your observations, your direct

5 observations of the property, related to your

6 knowledge of the Environmental Protection Act?

7 A. Oh, yes, definitely.

8 Q. And what other regulations were you

9 observing on the property?

10 A. The solid waste regulations, which are

11 Illinois regulations on operations of waste -- of

12 treatment and waste disposal on properties.

13 Q. Okay. You stated earlier that you came

14 across a pond on the property. Approximately what

15 distance is the pond located from the house?

16 A. 100 yards.

17 Q. Okay. Is there a road to the pond?

18 A. No. No.

19 Q. Is there a walking trail or sidewalk to

20 the pond?

21 A. No.

22 Q. Is it a manicured yard that spans the

23 distance between the pond and the house?

24 A. No.

1 Q. So it's basically -- well, why don't you
2 describe the topography --

3 A. Sure.

4 Q. -- that spans the distance between the
5 house and the pond?

6 A. Okay. Between the house and the pond,
7 there are some grassy areas, and at the time of the
8 inspection, I also saw what appeared to be a dirt
9 road, a dirt part of some type. It looked like it
10 was for vehicle traffic. There were some mounds of
11 dirt to -- it would be the southeast side of the
12 lot. It was pretty much -- it looked like it was
13 under work, I mean like it was a construction site.
14 So there was some excavated soils and that type of
15 thing on site or what appeared to be.

16 Q. Okay. So would you characterize the
17 topography between the -- strike that.

18 When you came across the pond, what did
19 you observe?

20 A. I observed a pond full of water. I
21 observed that on the north perimeter and within the
22 pond there was C and D -- construction and
23 demolition material as well as what appeared to be
24 general household refuse bags, approximately three,

1 within and about the northern perimeter of the pond.

2 Q. Okay. Did you take any photographs of
3 those observations?

4 A. Yes.

5 Q. You took them while you were there at that
6 particular time?

7 A. Yes, I did.

8 Q. Okay. Now, during this inspection, had
9 anyone approached you?

10 A. No.

11 Q. All right. Did you closer investigate the
12 nature of the C and D?

13 A. Yes, as close as I could get to material
14 safely.

15 Q. Okay.

16 A. I didn't want to enter into the pond to
17 get to the refuse bags that were in there, but the C
18 and D material I did note, and it consisted of
19 bricks, conduit, some drywall, some wood material.

20 Q. Okay. Was there a road or some sort of a
21 defined path which led to the C and D or connected
22 to the C and D to the house or the construction
23 occurring there?

24 A. Actually, there was some type of what

1 appeared to be a dirt pathway that was to what would
2 be the south side of the house and then extended
3 along the southern -- more the southern portion of
4 the backyard to the pond, which is located on the
5 southeast side of the lot.

6 (Peoples' Group Exhibit
7 Nos. 1-A through 1-D marked
8 for identification,
9 04/08/98.)

10 MR. MACK: Okay. Mr. Burds, I have some
11 photographs I'd like to introduce into evidence.

12 MR. SCHROEDER: May I see them, Counsel?

13 (Counsel perusing photographs.)

14 MR. MACK: If counsel has no objection, I'd
15 like to show the photographs to Miss Jensen.

16 May I approach the witness?

17 THE HEARING OFFICER: Of course. Everyone has
18 copies of the pictures?

19 MR. MACK: Yeah. And I have copies for you,
20 sir, once she establishes them.

21 THE HEARING OFFICER: Fine. I just want to
22 make sure they are the same ones that she is looking
23 at.

24 Let the record reflect that the witness is

1 reviewing the exhibits handed to her by her
2 counsel.

3 BY MR. MACK:

4 Q. Miss Jensen, I have marked here as
5 Plaintiff's Exhibit 1-A through 1-D, four
6 photographs that have been enlarged.

7 Are these the photographs that you took
8 during your inspection --

9 A. Yes.

10 Q. -- on June 28th?

11 A. Yes.

12 Q. Okay.

13 THE HEARING OFFICER: Let record the reflect
14 that counsel for the County of DuPage has handed the
15 hearing officer documents entitled Plaintiff's
16 Exhibit 1-A, 1-B, 1-C, and 1-D. They all appear to
17 be photographs.

18 BY MR. MACK:

19 Q. Okay. Miss Jensen, do these picture
20 enlargements accurately reflect the state of the
21 property on the 28th?

22 A. Yes.

23 Q. Okay. We're looking at -- we're looking
24 at photo Exhibit 1-A and to the right of that

1 exhibit -- the lower portion of the photo depicts a
2 pond with some debris to the right and the house in
3 the back.

4 Is the house in the rear or the midportion
5 of the photo of the Chaudhry home?

6 A. Yeah, I believe -- yes, that is.

7 Q. Okay. Now, when you were walking the
8 perimeter of the Chaudhry home, Miss Jensen, did you
9 see other C and D dispersed around the Chaudhry home
10 or in close proximity to the home?

11 A. I did. You can note in 1-A that just to
12 the middle of what appears to be the back of the
13 house, there's a pile of bricks.

14 Q. Okay.

15 A. So there is some C and D in the perimeter
16 of the house as well.

17 Q. Okay. Moving on to photograph 1-B, this
18 is the same pond and the same debris that we've been
19 talking about the last few minutes?

20 A. Yes.

21 Q. Okay. Is this debris -- this seems to be
22 in fairly close proximity to the water.

23 Was some debris, based on your direct
24 observation, in the water?

1 A. Yes, in the water as well.

2 Q. All right. And this looks to be primarily
3 construction debris?

4 A. Yes.

5 Q. All righty. Photograph 1-C also depicts
6 the debris that we're speaking of now along the
7 banks of the pond; is that correct?

8 A. Yes.

9 Q. Okay. And I notice also in a part that's
10 difficult to define in 1-C but better in 1-D, there
11 seems to be some bags of household refuse or some
12 other type of Glad bag is depicted?

13 A. Right.

14 MR. SCHROEDER: I'm going to object. If he
15 wants to testify as to what's in the pictures, he
16 has a witness for that purpose. He's not asking her
17 to identify anything in particular in the
18 photograph.

19 MR. MACK: I'll withdraw my question.

20 BY MR. MACK:

21 Q. In photograph 1-D, could you generally
22 describe what's depicted in that photograph?

23 A. Yes. Again, construction and demolition
24 material that's on the bank as well as in the pond,

1 and the bags of refuse -- because of the safety
2 factor of not going into the pond, I did not open
3 those bags nor pick them up or touch them, but they
4 are what appear to be three bags of possibly
5 household refuse.

6 Q. Okay. Did you note or observe a garage
7 receptacle near the house?

8 A. I did, what appeared to be a ten-yard
9 roll-off to the front of the house.

10 Q. Okay.

11 A. It's not depicted in any of these
12 photographs.

13 Q. Okay. Following this inspection -- well,
14 what did you do pursuant to this inspection?

15 A. I sent an administrative warning notice,
16 which is procedure when we see a violation of the --
17 an apparent violation of the Environmental
18 Protection Act. That administrative warning notice
19 requests the respondent to submit to us -- first of
20 all, it asks that they cease from disposing or open
21 dumping of waste on the site --

22 MR. SCHROEDER: I'm going to object to the
23 testimony as to the effect of the notice. That's
24 nonresponsive to the question, and the notice will

1 speak for itself.

2 THE WITNESS: Okay.

3 MR. MACK: Okay.

4 THE HEARING OFFICER: Mr. Mack, are you

5 withdrawing the question?

6 MR. MACK: No.

7 MR. SCHROEDER: The question was, what did she

8 do? And she said she sent the notice. Anything

9 after that --

10 THE HEARING OFFICER: I agree. Anything other

11 than the response to that question at this point is

12 stricken.

13 Mr. Mack, you're free to ask further.

14 BY MR. MACK:

15 Q. Was the administrative warning notice that

16 you speak of attached as Exhibit A to the

17 administrative citation?

18 A. Yes, it is.

19 Q. Okay. And the notice details your direct

20 observations on June 28th?

21 A. Yes, it does.

22 Q. Okay. At any time following the June 28th

23 inspection, did you return to the Chaudhry property?

24 A. Yes.

1 Q. And when was that?

2 A. July 10th.

3 Q. Okay. And what caused you to return to
4 the property?

5 A. A complaint I directly received from a
6 neighbor to the Chaudhry property.

7 Q. Okay. And what was the nature of that
8 complaint?

9 A. That there was filling going on within the
10 pond on the Chaudhry property -- filling of the pond
11 actually.

12 Q. Okay. Approximately at what time did you
13 arrive at the property on July 10th?

14 A. Between 1:00 and 2:00 p.m.

15 Q. And what was going on on the property at
16 that time?

17 A. At that time, there was a -- there was
18 some heavy equipment on the property, the sheriff
19 was on the property, Ed Vana of the zoning
20 department was on the property, and the contractor
21 who was operating the heavy equipment was there.
22 There was no work going on at that time as far as
23 filling of the pond.

24 Q. Okay. I'm sorry. Was Mr. Saleem Chaudhry

1 there at that time?

2 A. No.

3 Q. Was any representative from the Chaudhry
4 family there?

5 A. Yes.

6 Q. Did you talk to that representative?

7 A. Briefly. And then what he had me do --
8 and I cannot recall his name. He had me speak on
9 the phone to Mr. Chaudhry -- Saleem Chaudhry.

10 MR. CHAUDHRY: Naseem Chaudhry was on the
11 phone.

12 THE HEARING OFFICER: Mr. Schroeder, I'll let
13 you take care of that.

14 BY MR. MACK:

15 Q. Okay. Miss Jensen, could you briefly
16 describe your observations regarding the pond on
17 July 10th?

18 A. I observed the pond had been approximately
19 three-quarters filled with material. I observed --
20 the bottom of this pond still contained a small
21 amount of water and fish that was bouncing about.
22 The material that had been used to fill the pond
23 appeared to be dirt commingled with what appeared to
24 be C and D, construction and demolition material. I

1 observed conduit mixed with material, plastic, brick

2 mixed with the fill material in the pond.

3 Q. Okay. So would you characterize the fill

4 dirt existing on the pond as clean fill dirt?

5 A. No.

6 Q. Did you observe any other piles of fill on

7 or about the property?

8 A. Prior to that I did, and when I arrived at

9 the site, those mounds of what appeared to be fill

10 dirt material had been eliminated.

11 Q. Okay. Did you record the results of your

12 inspection?

13 A. Yes.

14 MR. SCHROEDER: Are we still speaking about

15 July the 10th?

16 MR. MACK: On July 10th. I'm sorry.

17 THE HEARING OFFICER: Miss Jensen?

18 THE WITNESS: Yes, I did.

19 THE HEARING OFFICER: Thank you.

20 MR. MACK: All right. Let the record reflect

21 that I'm handing counsel for respondent a copy of

22 our administrative citation including its exhibits.

23 May I approach the witness?

24 THE HEARING OFFICER: Of course.

1 BY MR. MACK:

2 Q. Miss Jensen, I'm handing you Exhibit B of
3 the administrative citation.

4 Is that the inspection report that you
5 filled out on July 10th?

6 A. Yes.

7 THE HEARING OFFICER: Just for clarification
8 sake, I want to make sure it's the administrative
9 citation that was filed by the county in connection
10 with this case, and you're referring to Exhibit B
11 attached thereto and filed with the clerk's office;
12 is that correct, Mr. Mack?

13 MR. MACK: Yes, sir.

14 THE HEARING OFFICER: Thank you.

15 Let the record reflect that the witness is
16 now reviewing that document.

17 BY THE WITNESS:

18 A. Yes, this is.

19 BY MR. MACK:

20 Q. Okay. Miss Jensen, when you were on the
21 property on July 10th, did you take some
22 photographs?

23 A. Yes, I did.

24 Q. And what did you photograph?

1 A. The material that had been placed in the
2 pond.

3 Q. Okay. In Exhibit B, does this reflect
4 Xerox copies of the photographs that you attached to
5 the inspection report?

6 A. Yes.

7 Q. Do these Xerox copied photographs
8 accurately depict the property as you recall it on
9 July 10th?

10 MR. SCHROEDER: I object to that, your Honor.
11 The Xerox copies are of poor quality, and there's
12 been no explanation as to where the original
13 photographs are.

14 THE HEARING OFFICER: Mr. Mack?

15 MR. MACK: Mr. Burds, we have misplaced the
16 original -- unfortunately, the original photographs
17 of the July 10th inspection. All we have is the
18 copies of the inspection reports that admittedly
19 have been reproduced several times. They're not of
20 good quality, but we do not have the originals.

21 THE HEARING OFFICER: Okay. So they're no
22 longer available?

23 MR. MACK: That's correct.

24 THE HEARING OFFICER: Well, at this time, I'm

1 going to allow you to lay a foundation regarding
2 these photographs to determine whether they can be
3 admitted.

4 Mr. Schroeder, I agree with your
5 objection. However, I think that would be something
6 that would go to the weight to be given to them, not
7 necessarily to exclude them from the record.

8 So I'll let you proceed with the
9 foundation, Mr. Mack.

10 MR. MACK: Thank you, sir.

11 BY MR. MACK:

12 Q. Just to backtrack. In preparation for
13 this hearing, did you make a search for the original
14 photographs that were on this inspection report?

15 A. Actually, I did. My office has been
16 moved. So my original photographs of this
17 inspection on July 10th are not available at this
18 time, but we did send original photographs to the
19 Pollution Control Board as well as the Illinois EPA
20 attached to this administrative citation.

21 Q. Okay. So the original file before the
22 board reflects the original photographs or should
23 reflect the original photographs that are here
24 before us today?

1 A. Yes.

2 MR. MACK: Mr. Burds, would it be -- I'm going
3 to ask very few questions about these photographs,
4 but would it be best for your purposes and the board
5 to mark these as an exhibit, or what would you
6 prefer?

7 THE HEARING OFFICER: Well, as far as how you
8 mark them or how you identify them, certainly it's
9 important that they be identified so we know which
10 photographs you're referring to and which ones your
11 witness is referring to to describe those
12 photographs.

13 So I would ask that if you're going to
14 refer to individual photographs within Exhibit B as
15 attached to the administrative citation that we
16 identify them with as much specificity as possible.

17 MR. MACK: You bet.

18 THE HEARING OFFICER: For the record, I have
19 attached to Exhibit B what appears to be six
20 photostatic copies of photographs. Are we going to
21 be referring to all six, Mr. Mack?

22 MR. MACK: I'm just going to refer to the three
23 pages that the two photographs are on as 2-A, B,
24 and C.

1 THE HEARING OFFICER: I must have something --

2 MR. MACK: And identify them as such.

3 THE HEARING OFFICER: You're referring to just

4 three photographs. I have one page with two

5 photographs on each side.

6 MR. MACK: Yeah.

7 THE HEARING OFFICER: And I have one with just

8 two photographs.

9 MR. MACK: It's your -- I can either mark the

10 photographs individually or mark the page that the

11 two photographs are on as 2-A, B, and C.

12 THE HEARING OFFICER: I see. So you're

13 referring to two photographs on each page?

14 MR. MACK: Yeah.

15 THE HEARING OFFICER: I understand.

16 MR. MACK: If that would be preferable.

17 Do you have any objection to that,

18 Mr. Schroeder?

19 MR. SCHROEDER: Just so we can understand what

20 you're referring to.

21 THE HEARING OFFICER: There appears to be --

22 and I don't know. Exhibit B appears to be more than

23 just photographs. For the record, it starts with

24 what appears to be described as a narrative

1 inspection report by Miss Jensen, two pages long.
2 Then the third page appears to be an open dump
3 inspection checklist, which is a two-page document
4 both front and back. The second page of that
5 document appears to be a site sketch. Then after
6 that page, there are three pages with two
7 photographs -- what appear to be two photostatic
8 copies of photographs on each.

9 The only thing that I would ask is that if
10 we're going to refer to them, why don't we refer to
11 them individually by page?

12 MR. MACK: Okay.

13 MR. HEARING OFFICER: And what I want to be
14 clear about is -- my concern is your reference to
15 the photographs and with the clerk's office before
16 the board, and I mean that that administrative
17 citation is within the record as a pleading in this
18 case and is required under the act.

19 However, here we do not have those
20 photocopies. My concern is, are they in the same
21 order as they are here? And I can't speak to that,
22 Mr. Mack. So I guess what we might want to do at
23 this time -- I don't know if -- there appears to be
24 some type of description of the photographs to the

1 left of each of the photographs on these
2 photocopies. My preference would be to identify
3 them not only by complaints' or peoples' exhibit
4 pages one, two, and three but then also --

5 MR. MACK: A description?

6 THE HEARING OFFICER: -- a description, so we
7 can best clarify which photograph we're referring
8 to.

9 Any objection to that, Mr. Schroeder?

10 MR. SCHROEDER: No.

11 THE HEARING OFFICER: I just want to be clear
12 with all specificity for the board's sake as they
13 will be making a decision in this case.

14 MR. MACK: All right.

15 THE HEARING OFFICER: So Mr. Mack, group
16 exhibit of Peoples' 1-A through D that had been
17 previously marked as Plaintiff's Exhibit 1-A
18 through D, group exhibit, we'll call Peoples' Group
19 Exhibit 2-A through C, and then we'll identify the
20 photographs as I've indicated.

21 MR. MACK: Very good.

22

23

24

1 (Peoples' Group Exhibit
2 Nos. 2-A through C marked
3 for identification,
4 04/01/98.)

5 THE HEARING OFFICER: Okay. Thank you.

6 BY MR. MACK:

7 Q. Okay. Miss Jensen, I've just marked the
8 document that you're referring to, Exhibit B, and
9 within Exhibit B of the citation are Plaintiff's
10 Exhibit 2-A through C, three pages of photostatic
11 copies.

12 Do you have that in front of you?

13 A. Yes.

14 THE HEARING OFFICER: Before we proceed, were
15 original photocopies provided to defense counsel or
16 the petitioner in this case?

17 MR. MACK: Yes. When we served -- when we
18 served the respondent, those were originals that
19 went --

20 MR. SCHROEDER: Original photographs?

21 MR. MACK: Yeah.

22 Is that correct, Miss Jensen?

23 THE HEARING OFFICER: As attached to the
24 administrative citation?

1 THE WITNESS: I'm sorry. No, to the
2 respondent, just photocopies --

3 MR. MACK: Oh, I'm sorry.

4 THE WITNESS: -- of the photographs attached.

5 THE HEARING OFFICER: All right.

6 BY MR. MACK:

7 Q. Miss Jensen, referring to

8 photograph 2-C --

9 A. Yes.

10 Q. -- on the upper portion of the

11 photograph --

12 THE HEARING OFFICER: Okay. 2-C, we're

13 referring to the last page of the six photos?

14 MR. MACK: Yes, sir.

15 THE HEARING OFFICER: Okay. And which -- could

16 we just refer to on the left how that is described?

17 MR. MACK: Yes. That is described in the brief

18 description as surface of fill, miscellaneous debris

19 mixed with fill.

20 THE HEARING OFFICER: Okay

21 BY MR. MACK:

22 Q. Do you have that in front of you?

23 A. Yes.

24 Q. Okay. And could you briefly describe

1 what's depicted in the photograph?

2 MR. SCHROEDER: I'm going to object again that
3 she's trying to describe what's in a photocopy where
4 she apparently has had access to the originals. We
5 have not seen them. The originals will speak for
6 themselves. She can testify to what she remembers
7 she saw out there, but to try to go through these
8 Xerox copies of this quality is just leading, asking
9 the witness to almost give a narrative of what she
10 thinks she photographed.

11 THE HEARING OFFICER: Well, I think the
12 foundation has been laid. She took the photographs
13 on the date. As far as her description based on
14 these transcriptions, we'll deal with the
15 photographs before the board in turn, but here I
16 think that would be something that would be given to
17 the weight of her testimony as well as the quality
18 of these photos, Mr. Schroeder.

19 Therefore, I'm going to overrule the
20 objection at this time. However, it will go to the
21 weight, not necessarily as to its admissibility or
22 the description.

23 Miss Jensen, do you recall the question?

24 THE WITNESS: Yes.

1 THE HEARING OFFICER: Please answer.

2 BY THE WITNESS:

3 A. In this particular photocopy, there is
4 conduit. Approximately it looks to be two feet in
5 length with wire extending out of it on the surface
6 of the fill material that was in the pond.

7

8 BY MR. MACK:

9 Q. Okay. And this photograph forms the basis
10 of your concern that the fill was mixed with debris
11 that you had previously inspected?

12 MR. SCHROEDER: I'm going to object to the
13 continued leading questions.

14 THE HEARING OFFICER: Yes, Mr. Mack. I'd like
15 to hear more from the witness.

16 MR. MACK: Okay.

17 THE HEARING OFFICER: Sustained.

18 BY MR. MACK:

19 Q. Based on your expertise and experience,
20 does this photograph depict a violation?

21 A. Yes.

22 Q. Could you describe what violation this
23 depicts?

24 A. Yes; litter and being that this was a

1 pond, it would have violated Section 21 of the act,
2 which states that you cannot dispose -- no person
3 shall place refuse or material of this nature in
4 standing or flowing waters.

5 Q. And the photograph on 2-C, the lower
6 photograph which is described as the northeast
7 perimeter of pond, debris mixed with fill, depicts
8 what?

9 A. Construction and demolition debris.
10 Again, there was also -- and I believe in the center
11 of this photograph -- plastic material --

12 MR. SCHROEDER: I'm going to object to her
13 belief. The witness should testify to what she
14 knows and not what she believes. If she can't
15 remember, she should tell us she can't remember.

16 THE HEARING OFFICER: Sustained.

17 Mr. Mack?

18 BY MR. MACK:

19 Q. Okay. Miss Jensen, based on your
20 observations on June 28th, your direct observations,
21 you noted that violations existed?

22 A. Yes.

23 Q. Describe those violations.

24 A. Violations were litter and deposition of

1 waste in standing waters, violations of the
2 Environmental Protection Act.

3 Q. Okay. Were these violations continuing on
4 July 10th?

5 A. Yes.

6 Q. Describe the substance of that
7 observation.

8 A. Fill material in the pond contained
9 construction and demolition material as well as what
10 I consider refuse, which would be plastics and
11 paper.

12 Q. Okay. What action did you take following
13 your inspection on July 10th?

14 A. I met with the Enforcement Decision Group,
15 which is combined of three inspectors with the solid
16 waste department for the Illinois EPA Maywood
17 office, Cliff Gould, Kevin Dixon, the director of
18 solid waste department and then Kevin Mack of the
19 state's attorney's office. The Enforcement Decision
20 Group as a unit decided --

21 MR. SCHROEDER: Objection.

22 THE HEARING OFFICER: Mr. Schroeder, basis?

23 MR. SCHROEDER: She's relating what another
24 group decided, and what they decided is not relevant

1 to what she observed or what the state of the
2 property was. There's been no testimony that
3 anybody else in that group had been out to the
4 property. It's not relevant to these particular
5 charges which involve the condition of the
6 property. It's hearsay.

7 MR. MACK: I can rephrase.

8 THE HEARING OFFICER: I think she's
9 testifying -- as I understand the question was what
10 she did as a result of her observations and her
11 previous actions and the process she employed in
12 doing that.

13 At this time, I'm going to overrule the
14 objection.

15 MR. SCHROEDER: Her description was -- and the
16 point I objected to was when she said this
17 enforcement group that she met with decided, and I
18 assume she was then going to describe their actions
19 or deliberations and not her own.

20 THE HEARING OFFICER: Well, again, I'm not sure
21 that's being -- what is being propounded here or
22 whether that's being offered for the truth of the
23 matter.

24 As far as this is concerned, my

1 understanding is that it's being offered as part of
2 the process. Your objection is overruled at this
3 time.

4 BY MR. MACK:

5 Q. Did you take any action pursuant to your
6 meeting with the Enforcement Decision Group?

7 A. Yes. As a member of the Enforcement
8 Decision Group, I then in turn, upon the
9 recommendation of our Enforcement Decision Group,
10 issued an administrative citation to the respondent.

11 Q. And the citation that was issued is the
12 subject of this proceeding?

13 A. Yes.

14 Q. Okay. Did you issue an administrative
15 notice subsequent to the identification?

16 A. Yes, I did. The administrative notice --
17 I can't recall the date of that -- basically
18 informed the respondent that the Enforcement
19 Decision Group saw apparent violations of the
20 Environmental Protection Act and would then take a
21 step to issuing an administrative citation if we
22 could not -- if the matter was not remedied.

23 Q. Okay. Did you request the respondent to
24 take any action pursuant to these notices?

1 A. Yes.

2 Q. What was that request?

3 A. To submit to us receipts that the material

4 on the premises, construction --

5 MR. SCHROEDER: Objection, foundation.

6 THE HEARING OFFICER: When, where, how, who?

7

8 BY MR. MACK:

9 Q. Okay. In your administrative notice, did

10 you request -- in the administrative notice that was

11 sent to the Chaudhry home, did you request any

12 action be taken?

13 A. Yes.

14 MR. SCHROEDER: Objection. That's not been

15 identified. I'm not sure what document he's

16 referring to. If he's referring to the charge in

17 this case, that speaks for itself.

18 THE HEARING OFFICER: Mr. Mack?

19 MR. MACK: One second, Mr. Burds.

20 (Brief pause.)

21 BY MR. MACK:

22 Q. Did you make any subsequent inspections of

23 the Chaudhry property after July 10th?

24 A. No.

1 THE HEARING OFFICER: Okay. Related to the
2 objection, I'll sustain the objection for now. The
3 last question stands.

4 Is there an objection to that question,
5 Mr. Schroeder?

6 MR. SCHROEDER: No.

7 THE HEARING OFFICER: Miss Jensen, do you
8 recall the last question?

9 THE WITNESS: Yes. Regarding the warning
10 notice?

11 MR. SCHROEDER: No.

12 THE HEARING OFFICER: No.

13 THE WITNESS: Or this question?

14 THE HEARING OFFICER: I believe it was the last
15 question Mr. Mack asked.

16 THE WITNESS: This last question.

17 Could you repeat the question, please?

18 MR. SCHROEDER: I thought she answered it no.

19 MR. MACK: No, she didn't.

20 THE HEARING OFFICER: I do not recall.

21 Would you read Mr. Mack's last question?

22 (Record read.)

23 THE HEARING OFFICER: Okay. Thank you,
24 Mr. Schroeder.

1 Miss Jensen, that was your answer to that
2 question?

3 THE WITNESS: Yes, it was.

4 THE HEARING OFFICER: Thank you.

5 Mr. Mack?

6 BY MR. MACK:

7 Q. Did you receive any responses from the
8 Chaudhrys pursuant to notices that you sent to them?

9 A. Yes, I did.

10 Q. Okay. Is the response that you're
11 referring to Exhibit C of the administrative
12 citation?

13 A. Yes, it is.

14 Q. Could you read the second paragraph of
15 Exhibit C?

16 A. I am in receipt of your administrative
17 warning notice dated July 3, 1996, as well as the
18 notice dated July 17, 1996. Please consider the
19 following response.

20 Q. Okay. So on this basis, you were
21 sufficiently assured that the Chaudhrys had received
22 notice of the results of your inspection?

23 MR. SCHROEDER: Objection.

24 THE HEARING OFFICER: Basis?

1 MR. SCHROEDER: Leading, relevance. What
2 difference does it make if she was assured that they
3 had notice or not?

4 MR. MACK: Well, I think we just went through
5 this of whether or not -- at least it was implied
6 that the Chaudhrys may not have received any notice
7 about the results of Miss Darlene Jensen's
8 inspection.

9 MR. SCHROEDER: My objection was to the failure
10 to identify the document, and I didn't know which
11 document you were talking about.

12 THE HEARING OFFICER: I think he is correct as
13 far as foundation, Mr. Mack. I think it would be
14 good to clarify what document we're referring to
15 specifically, identify the document, ask the witness
16 if she can recognize the document, and lay the
17 foundation necessary for the document.

18 MR. MACK: Very good. Very good.

19 BY MR. MACK:

20 Q. In the --

21 THE HEARING OFFICER: The objection is
22 sustained.

23 Mr. Mack, proceed.

24

1 BY MR. MACK:

2 Q. In the copy of the administrative citation
3 before you, I direct your attention to Exhibit C.

4 Do you have that in front of you?

5 A. Yes.

6 Q. And could you describe Exhibit C?

7 A. Yes. This is a letter to me from

8 Mr. Schroeder, which states that --

9 MR. SCHROEDER: Objection. It speaks for
10 itself. I have no objection to it being admitted.

11 THE HEARING OFFICER: Mr. Mack?

12 MR. MACK: Okay.

13 THE HEARING OFFICER: Are you asking the
14 document to be admitted?

15 MR. MACK: Yes, I am.

16 THE HEARING OFFICER: All right. I'm going to
17 mark it as Peoples' Exhibit 3. It is a document
18 identified as Exhibit C entitled Law Offices of
19 Harry A. Schroeder. It appears to be a two-page
20 correspondence both front and back, and I'm not sure
21 if Exhibit D was an attachment thereto or not.

22 I want to make sure I have the complete
23 exhibit. What is the complete exhibit, counsel? Is
24 it just the two-page letter?

1 MR. SCHROEDER: Two-page letter.

2 MR. MACK: Two pages.

3 (Peoples' Exhibit No. 3

4 marked for identification,

5 04/08/98.)

6 THE HEARING OFFICER: For the record, it has

7 been requested to be admitted over no objection; is

8 that correct, Mr. Schroeder?

9 MR. SCHROEDER: Correct.

10 THE HEARING OFFICER: All right. And it will

11 be marked as Peoples' Exhibit 3.

12 Mr. Mack?

13 BY MR. MACK:

14 Q. Miss Jensen, you understood this letter to

15 be a response to what?

16 A. The administrative warning notice sent on

17 July 3rd.

18 Q. And this letter addresses what issues?

19 MR. SCHROEDER: Objection. What relevance is

20 that at this point?

21 MR. MACK: The letter is --

22 MR. SCHROEDER: The letter is in evidence.

23 MR. MACK: If it is sufficient -- if the

24 contents of the letter are sufficient, then we're

1 not here today, and I think that Miss Jensen's
2 testimony and review and assessment of the letter is
3 pertinent to this inquiry.

4 MR. SCHROEDER: Her assessment of the letter --
5 the assessment of the letter and the weight to be
6 given to it is part of the findings of fact and
7 conclusions of law that the administrative law judge
8 has to make. Miss Jensen doesn't judge the legal
9 sufficiency or insufficiency of any of these
10 documents.

11 THE HEARING OFFICER: I agree that the document
12 speaks for itself. However, I do believe
13 Miss Jensen can testify as to what effect, if any,
14 it had upon her and her understanding or her actions
15 related to this proceeding. However, I do not
16 believe Miss Jensen can testify as to the intent of
17 Mr. Schroeder or Mr. Schroeder's client, only what
18 effect, if any, it had on her.

19 If you want to ask her that question,
20 Mr. Mack, you may. However, if it goes to the
21 intent of Mr. Schroeder or what effect it had on
22 Mr. Schroeder or his client or what intended effect
23 they had to Miss Jensen, that question will not be
24 allowed.

1 MR. MACK: Okay.

2 THE HEARING OFFICER: All right.

3 BY MR. MACK:

4 Q. Based on your expertise, did you deem this

5 letter to be a sufficient response to the notices

6 that you sent to the Chaudhrys?

7 MR. SCHROEDER: The same objection.

8 THE HEARING OFFICER: The sufficiency of the

9 response -- as I indicated, the question related to

10 what Miss Jensen's -- what effect this had on

11 Miss Jensen; i.e., this letter or her actions to

12 that date and after can be asked.

13 As to whether it is a sufficient response

14 I think ultimately that may be a question for the

15 board to determine, Mr. Mack.

16 MR. MACK: Okay.

17 THE HEARING OFFICER: However, as I've

18 indicated, I do believe Miss Jensen can testify as

19 to what effect it had on her actions to date or

20 after or subsequent to that date of the letter.

21 MR. MACK: Okay.

22 THE HEARING OFFICER: That question may be

23 asked.

24 MR. MACK: I'll rephrase.

1 BY MR. MACK:

2 Q. What effect did this letter have on your
3 actions as an enforcement officer?

4 A. Since I consider this letter nonresponsive
5 to the administrative warning notice requirements
6 and if I'm not mistaken --

7 Q. Let me -- why did you consider it
8 nonresponsive?

9 A. First of all --

10 MR. SCHROEDER: Objection. It doesn't matter
11 why. Let's just find out what she did, if
12 anything.

13 THE HEARING OFFICER: Well, I think --

14 MR. MACK: She issued the citation.

15 THE HEARING OFFICER: As far as what effect it
16 had on her and why, if any, the objection is
17 overruled.

18 You may answer the question, Miss Jensen.

19 BY THE WITNESS:

20 A. What I did -- first of all, the response
21 was untimely and also not complete, nonresponsive,
22 in that it did not address the receipts or include
23 as attachments to the letter receipts for the proper
24 disposition of waste, or if they were handled in a

1 recyclable manner, showing me that the material was
2 properly disposed of as requested within the
3 administrative warning notice.

4 BY MR. MACK:

5 Q. You have requested receipts in the
6 administrative warning notice?

7 A. Yes.

8 Q. You mentioned that the letter was
9 untimely. What's the basis for that?

10 A. Within the administrative warning notice,
11 the respondent is given 15 days to submit a letter
12 in writing in response to the administrative warning
13 notice. The date of the administrative warning
14 notice is July 3rd. That would have put the
15 response deadline at July 18th. This letter is
16 dated July 24th.

17 MR. MACK: Nothing further.

18 THE HEARING OFFICER: Mr. Schroeder?

19 CROSS-EXAMINATION

20 by Mr. Schroeder

21 Q. Let's pick up with that letter that was
22 marked as Plaintiff's Exhibit C or 3.

23 THE HEARING OFFICER: It's Exhibit C of the
24 administrative citation, and it's been marked as

1 Peoples' Exhibit 3 for identification purposes,

2 Mr. Schroeder.

3 MR. SCHROEDER: Okay. Peoples' Exhibit --

4 THE HEARING OFFICER: 3.

5 MR. SCHROEDER: -- 3.

6 BY MR. SCHROEDER:

7 Q. What, if any, notices or documents or

8 response did you give to this letter?

9 A. An administrative citation was issued.

10 Q. And when was that sent?

11 A. August.

12 Q. And that was the one that we're at issue

13 here about today?

14 A. Correct.

15 Q. And there was no other response, was

16 there?

17 A. No.

18 Q. What was your notice dated July 17th? Do

19 you have a copy of that?

20 A. No, I don't. An administrative notice,

21 excuse me, yes, I recall, but I don't have a copy.

22 MR. SCHROEDER: This is the only copy that I

23 have received. If I can use a stapler, if there is

24 one, so I can staple it.

1 THE HEARING OFFICER: I do not have one,
2 Mr. Schroeder. Perhaps there's one by the court
3 reporter. There's one over there (indicating).

4 MR. SCHROEDER: If we can have the court
5 reporter mark this as Defendant's Exhibit.

6 THE HEARING OFFICER: Why don't you mark it as
7 Respondent's --

8 MR. SCHROEDER: I'll mark it as Respondent's
9 Exhibit 1 --

10 THE HEARING OFFICER: Thank you.

11 MR. SCHROEDER: -- for identification.

12 (Respondent's Exhibit No. 1
13 marked for identification,
14 04/01/98.)

15 BY MR. SCHROEDER:

16 Q. Is this the July 17th notice that you
17 spoke of?

18 THE HEARING OFFICER: Let the record reflect
19 that counsel has handed the witness what has been
20 identified as Respondent's Exhibit 1.

21 BY THE WITNESS:

22 A. Yes.

23 BY MR. SCHROEDER:

24 Q. And that essentially is a repeat of the

1 earlier notice that was given on July 3rd; isn't

2 that true?

3 A. Could I look at it again, please? Thank

4 you. Yes, with the addition of paragraph one, two,

5 three, four -- Paragraph 4.

6 Q. And Paragraph 4 sites the potential fine

7 of \$1,000?

8 A. Correct.

9 Q. That's the only difference?

10 A. From the administrative warning notice?

11 Q. Yes.

12 A. Yeah.

13 THE HEARING OFFICER: Just for clarification

14 sake, we are referring to Respondent's Exhibit 1 and

15 your analogy to, I guess, the administrative notice

16 of July 3rd?

17 MR. SCHROEDER: Her notice of July 3rd.

18 THE HEARING OFFICER: Only one paragraph out of

19 four, just the fourth paragraph was added?

20 MR. SCHROEDER: She was referring to the

21 fourth -- counting down from the first paragraph on

22 the face of Page 1 of Respondent's Exhibit 1, which

23 consists of actually two pages. The witness was

24 referring to the fourth paragraph from the top.

1 BY MR. SCHROEDER:

2 Q. Is that correct?

3 A. That's correct.

4 THE HEARING OFFICER: Thank you.

5 MR. SCHROEDER: Your Honor, could we take a

6 five-minute break?

7 THE HEARING OFFICER: Sure. I think that would

8 be appropriate at this time. We've been at it for

9 about an hour. Well, is five minutes realistic?

10 Will a ten or 15-minute recess at this time point --

11 let me ask this again. Let's go off the record.

12 (Discussion had off

13 the record.)

14 (Break taken.)

15 THE HEARING OFFICER: Okay. Are we ready to

16 proceed, Mr. Schroeder?

17 MR. SCHROEDER: Yes.

18 THE HEARING OFFICER: Okay. Miss Jensen,

19 you're still under oath. Do you understand?

20 THE WITNESS: Yes.

21 MR. SCHROEDER: I'd like to mark -- I'd like to

22 mark Respondent's Exhibit 2.

23

24

1 (Respondent's Exhibit No. 2
2 marked for identification,
3 04/01/98.)

4 CROSS-EXAMINATION

5 by Mr. Schroeder

6 (cont'd)

7 BY MR. SCHROEDER:

8 Q. Miss Jensen, I'm going to show you what's
9 been marked as Respondent's Exhibit 2 for
10 identification and ask you if you would look at that
11 and identify that for me.

12 A. This is the administrative warning notice
13 sent to the respondent on July 3rd, which I
14 drafted.

15 Q. You're the author of that?

16 A. Yes.

17 Q. Okay. And this was following your initial
18 inspection on June 28th; is that correct?

19 A. Yes.

20 Q. And attached to it is a checklist of what
21 you perceive to be violations?

22 A. Yes.

23 Q. And you hand-filled that out?

24 A. Yes.

1 Q. Did you do that on site or afterwards?

2 A. After.

3 Q. And you have on that checklist after

4 several of the listed possible violations what

5 appears to be the letters NE?

6 A. Yes.

7 Q. What does that refer to?

8 A. That at that point I did not evaluate for

9 those particular items on the checklist.

10 Q. And the items marked with X were the ones

11 that you were concerned about; is that correct?

12 A. The items marked with an X are the items

13 that I observed violations of, yes.

14 Q. And then following your narrative report,

15 you drew a little sketch, and that's also attached;

16 is that correct?

17 A. Yes, it is.

18 Q. Okay. And did you do the sketch on site

19 or afterwards?

20 A. After, rough draft after. This particular

21 site sketch -- rough draft on site. This particular

22 sketch after.

23 Q. Did you have notes and other materials

24 besides what's in this report?

1 A. Just that particular --

2 Q. Personal notes? What happened to those?

3 A. Those are within the file that I have in

4 my office that I --

5 Q. Did you bring it here today?

6 A. No. That file cannot be found at this

7 time. It's not available.

8 Q. What do you mean it can't be found?

9 A. Again, my office has been moved, and that

10 material was within a file that's boxed.

11 Q. So the original recording of your

12 observations on June 28th is not available? Is that

13 what you're saying?

14 A. No. I'm saying a site sketch that I

15 drafted from a site map that I hand drafted during

16 the inspection --

17 Q. On site?

18 A. Right.

19 Q. What you did on site, the sketch, is not

20 available?

21 A. Exactly.

22 Q. You made notes on site also, didn't you?

23 A. No, I don't believe I made note.

24 Q. You didn't make any notes?

1 A. If I made notes, they would have appeared
2 on the site sketch. On the side map, there may be
3 notes.

4 Q. Did you measure distances?

5 A. Only approximates.

6 Q. And when did you write down those
7 distances, or did you do it from memory?

8 A. I didn't write down distances.

9 Q. So the narrative report that is in that
10 exhibit just before your sketch is from your memory
11 of what you saw?

12 A. Yes, and from the photographs I took.

13 Q. On that site sketch where you have photos
14 listed, is that where you remember taking the photos
15 that were referred to earlier as Plaintiff's 1-A
16 through D?

17 A. I'm sorry. Could you repeat that,
18 please?

19 Q. Look at the site sketch and that
20 exhibit -- Respondent's Exhibit 2.

21 A. Yes.

22 MR. SCHROEDER: Do you want a copy to follow
23 along?

24 THE HEARING OFFICER: No, that's fine.

1 BY MR. SCHROEDER:

2 Q. Do you see where it says photo one, photo
3 two, et cetera?

4 A. Yes.

5 Q. Does that correspond to the photos that
6 you identified earlier that were marked Peoples'
7 Exhibits 1-A through D?

8 A. Yes, they are.

9 Q. And is the location of your writing and
10 the little arrows meant to indicate where you took
11 these photos?

12 A. Yes.

13 Q. Okay. And where you have the words
14 written "debris and pond," that's where you centered
15 all your photographs?

16 A. Yes.

17 Q. And that's where you testified that you
18 observed certain debris in the pond?

19 A. Correct.

20 Q. But you didn't go into the pond to
21 investigate further?

22 A. That's correct.

23 Q. Among what you testified to was you saw
24 three plastic bags?

1 A. Correct.

2 Q. And you assume they had some sort of
3 garbage in them?

4 A. Household refuse I assumed, yes.

5 Q. You didn't open it up?

6 A. No, I did not.

7 Q. You didn't see what was in the bags?

8 A. No. The bags were in the pond. I was not
9 going to go into the pond.

10 Q. And you weren't concerned enough to mark
11 where the bags were on your sketch?

12 A. The bags are not marked on my sketch.

13 Q. And you didn't see those bags there when
14 you returned on July the 10th?

15 A. Correct.

16 Q. I'm going to show you, again, what was
17 marked Peoples' Exhibit 1-A, which is -- you have
18 them in front of you, if you would refer to that.

19 A. Sure.

20 Q. Do any of the plastic bags appear in that
21 photograph?

22 A. No.

23 Q. 1-B?

24 A. No.

1 Q. 1-C?

2 A. No.

3 Q. 1-D?

4 A. Yes.

5 Q. Okay. And would you identify where in 1-D

6 the plastic bags appear?

7 A. In the middle of the picture at the bottom

8 or what appears to be the bottom of the construction

9 and demolition debris, one, two, and three

10 (indicating).

11 MR. SCHROEDER: Okay. May the record reflect

12 that she's referring to the center of the picture

13 there's a white mass, and she's pointing to what

14 appear to be three objects on top of that mass.

15 Can I have her circle those?

16 THE HEARING OFFICER: I'm wondering if we have

17 some manner of -- I know that there's a cover

18 there. I guess what I'd prefer if we had some

19 method of circling.

20 MR. SCHROEDER: I could take them out -- on my

21 copy, I'll take it out and let her mark my copy.

22 THE HEARING OFFICER: Any objection to that,

23 Mr. Mack, circling roughly the point where she's

24 referring to the white object?

1 MR. MACK: No.

2 THE HEARING OFFICER: As I understand your
3 question correctly, Mr. Schroeder, you're asking her
4 to identify the white plastic bags she referred to
5 earlier?

6 MR. SCHROEDER: Yes.

7 THE HEARING OFFICER: All right.

8 BY MR. SCHROEDER:

9 Q. Would you mark those on --

10 A. On this?

11 Q. Not on the cover, but on the original
12 photograph because the cover can be moved.

13 THE HEARING OFFICER: Do you have a -- what
14 type of pen do you have, Miss Jensen? I just want
15 to make sure.

16 MR. SCHROEDER: It's a felt tip marker.

17 THE WITNESS: It looks like -- it will probably
18 do the trick.

19 THE HEARING OFFICER: Okay.

20 BY THE WITNESS:

21 A. (Witness complied.)

22 BY MR. SCHROEDER:

23 Q. And those are the bags that you wouldn't
24 go over and examine to determine what was inside of

1 them; is that correct?

2 A. I could not --

3 THE HEARING OFFICER: Excuse me.

4 THE WITNESS: Yes.

5 THE HEARING OFFICER: For the record, you have

6 made how many circles, Miss Jensen?

7 THE WITNESS: Three.

8 THE HEARING OFFICER: Okay. On the photograph

9 identified as Plaintiff's Exhibit 1-D, you made

10 three separate circles; is that correct?

11 THE WITNESS: Correct.

12 THE HEARING OFFICER: All right. Thank you.

13

14 BY MR. SCHROEDER:

15 Q. And those three circles depict the bags

16 that you did not go to open and investigate; is that

17 correct?

18 A. That's correct.

19 Q. You testified about your interpretation or

20 how you had some training in interpreting the

21 environmental statutes. One of the things that you

22 cited in your violations was open dumping; is that

23 correct?

24 A. Yes.

1 Q. What do you consider open dumping to be?

2 A. Open dumping is the disposition of waste

3 on site.

4 Q. So any time somebody gets rid of waste on

5 their own site you consider that to be open dumping?

6 A. No, not any time. If the waste is

7 generated off site, brought onto the site, and

8 thereafter disposed on site it's defined as open

9 dumping.

10 Q. What if it's generated on site?

11 A. Then they're exempt from the siting and

12 permitting requirements under the act.

13 Q. Attached to Respondent's Exhibit 2 is also

14 a plat, is that correct, on one of the pages?

15 A. Yes.

16 THE HEARING OFFICER: Okay. We're referring to

17 what is identified as Exhibit 2 --

18 MR. SCHROEDER: Respondent's Exhibit 2.

19 THE HEARING OFFICER: -- the administrative

20 citation, and this is identified as Respondent's

21 Exhibit 2.

22 How many pages is that document for the

23 record?

24 THE WITNESS: Seven pages.

1 THE HEARING OFFICER: Okay. Both front and
2 back; is that accurate?

3 THE WITNESS: Twelve pages front and back. So
4 this would be page number, the plat, 10.

5 THE HEARING OFFICER: Thank you.

6 THE WITNESS: You're welcome.

7 BY MR. SCHROEDER:

8 Q. Is that plat meant to depict where the
9 property in question is?

10 A. Yes.

11 Q. Can you mark on the exhibit where the
12 property is that we're -- do you have it marked
13 already? You have it marked?

14 A. Yeah.

15 Q. That's this one tax parcel?

16 A. Yes.

17 Q. Now, Respondent's Exhibit 2 is captioned
18 administrative warning notice, and you signed the
19 second -- the third page, excuse me, on 7/3/96; is
20 that correct?

21 A. Yes.

22 Q. And how did you serve that on the
23 respondent?

24 A. By mail, certified receipt requested.

1 Q. Okay. And after that, you again visited
2 the property on July 10th?

3 A. Yes.

4 Q. So approximately a week after you signed
5 this?

6 A. Yes.

7 Q. And did you issue another administrative
8 warning notice after that visit?

9 A. No, not an AWN, an administrative notice
10 after that visit.

11 Q. So you issued a warning notice. Then you
12 issued the notice that's Respondent's Exhibit
13 No. 1 --

14 A. Correct.

15 Q. -- is that correct?

16 A. Um-hum.

17 Q. And then what happened after that?

18 A. After the administrative notice?

19 Q. Yes.

20 A. I received a letter from you -- from
21 Mr. Schroeder dated July 24th.

22 Q. Okay. And you didn't consider that timely
23 was your prior testimony?

24 A. Correct and nonresponsive.

1 Q. But that was within the 15 days of your
2 last notice, wasn't it?

3 A. It was not within 15 days of the
4 administrative warning notice.

5 Q. That wasn't my question.

6 It was within 15 days of your last notice,
7 was it not?

8 A. Correct.

9 Q. And in your last notice -- can I see that
10 exhibit?

11 A. Sure.

12 Q. You signed the administrative notice on
13 July 17th; is that correct?

14 A. Yes.

15 Q. And the administrative notice signed on
16 July 17th gave the respondent until July 19th to
17 comply with what you were asking him to do in here;
18 is that correct?

19 A. That's correct.

20 Q. And after July 19th, you didn't consider
21 it serious enough to follow up with either myself or
22 the respondent, did you?

23 A. I don't understand.

24 MR. MACK: Objection. Objection what is --

1 THE HEARING OFFICER: Basis?

2 MR. MACK: As to relevancy and seriousness, I

3 don't know what is the meaning of the question.

4 THE HEARING OFFICER: Well, if I understand

5 correctly, my understanding of the question is that

6 he's simply asking what effect, if any, the letter

7 he sent to her had on her and what the relative

8 severity, if any. I think it's the same question

9 that was asked by the complainant.

10 I'll allow the question at this time.

11 Do you understand the question,

12 Miss Jensen?

13 THE WITNESS: Yes, I believe so.

14 THE HEARING OFFICER: Okay.

15 BY THE WITNESS:

16 A. I believed the letter dated July 24th to

17 be nonresponsive.

18 BY MR. SCHROEDER:

19 Q. That wasn't my question, ma'am.

20 A. Okay.

21 Q. Answer my question.

22 A. Okay.

23 Q. You didn't consider it serious enough to

24 respond to myself or the respondent?

1 A. Yes, I did consider it serious enough. I
2 responded with an administrative citation.

3 Q. And when was that?

4 A. August.

5 Q. When in August?

6 A. August -- I can't recall the exact date.

7 MS. REKASH: 28th.

8 THE WITNESS: 28th? Thank you.

9 MR. SCHROEDER: Just so we have a clear record,
10 I'll mark this three.

11 (Respondent's Exhibit No. 3

12 marked for identification,

13 04/01/98.)

14 BY MR. SCHROEDER:

15 Q. I'm going to show you what's been marked

16 Respondent's Exhibit 3 for ID.

17 Is that the administrative citation you're

18 referring to?

19 A. Yes, it is.

20 Q. And is that signed on August 28th?

21 A. Yes.

22 Q. That's more than a month after my

23 letter --

24 A. One month.

1 Q. -- isn't it?

2 A. Yes, it is.

3 Q. Did you sign that?

4 A. No.

5 Q. Who signed it?

6 A. Kevin Mack of the states' attorney's
7 office.

8 Q. So that wasn't your response. It was
9 Kevin Mack's response?

10 A. If I may elaborate on that?

11 Q. Was that your response or not?

12 A. Yes, it is.

13 Q. Okay. And how is it your response?

14 A. I have input on this response being that
15 I'm a member of the Enforcement Decision Group.

16 Q. You went and talked to Kevin Mack is what
17 you're trying to say?

18 A. I went to speak to the Enforcement
19 Decision Group. Kevin Mack is a member of that
20 group.

21 Q. And in relation to the respondent or
22 myself, you took no action to get back to either me
23 or any of the Chaudhrys to see if this condition --

24 MR. MACK: Objection, your Honor, this is --

1 Mr. Burds, this is an administrative procedure, and
2 we're discussing administrative procedures, and my
3 concern is we're going through a set of timing
4 requirements that are objective and asking
5 suggestive questions about timely requirements that
6 we have no control over.

7 MR. SCHROEDER: I am asking --

8 THE HEARING OFFICER: I'm trying to understand
9 the basis of the objection. I'm not sure I heard
10 the whole question.

11 MR. MACK: Relevancy.

12 THE HEARING OFFICER: Relevancy.

13 Mr. Schroeder, how is this relevant?

14 MR. SCHROEDER: Her testimony was that she
15 found these -- that she found these certain
16 violations first on June 28th. She considered them
17 serious. I'm showing that she didn't consider them
18 serious enough to contact anybody other than file a
19 month later and have somebody else file the
20 administrative citation.

21 THE HEARING OFFICER: I believe the testimony
22 that you elicited, Mr. Mack, did include testimony
23 related to the response time or whether there was a
24 response from Mr. Schroeder and his client.

1 Therefore, I'm going to allow the question.

2 MR. MACK: Thank you.

3 BY MR. SCHROEDER:

4 Q. So it wasn't serious enough for you to try
5 to get to the property owner or myself rather than
6 go through the administrative procedure, is that
7 correct, or in addition to the administrative
8 procedure?

9 A. In no cases do I contact the parties
10 directly. I follow procedure.

11 Q. You didn't contact Mr. Chaudhry directly?

12 A. I did not contact Mr. Chaudhry directly.
13 I did have a phone conversation with Mr. Chaudhry.

14 Q. That's contact.

15 A. While I was on the premises.

16 Q. You sent him the administrative notice?

17 A. By procedure, yes, that's correct.

18 Q. And you sent him the administrative
19 warnings?

20 A. That's correct.

21 Q. And you talked to him?

22 A. Yes.

23 Q. Is it against the administrative procedure
24 for you to respond to a party's attorney?

1 A. No.

2 Q. Your initial warning which was dated --

3 which you have in front of you as Respondent's

4 Exhibit 2, I believe, do you still have that in

5 front of you?

6 A. Yes.

7 Q. That gave until July the 19th -- gave the

8 respondent until July the 19th to comply; is that

9 correct?

10 A. Yes.

11 Q. When you were out on the premises on

12 July 10th, you observed some construction debris on

13 top of what you perceived to be fill. Is that a

14 fair statement?

15 A. May I elaborate?

16 Q. Is that what you observed?

17 A. I observed construction debris on litter,

18 plastics, paper, on top and commingled with fill.

19 Q. Okay. Plastics are not construction

20 debris in your mind?

21 A. The plastics that I observed were not

22 construction debris.

23 Q. What plastics did you observe?

24 A. Plastics that would have come from jugs,

1 bottles such as -- say a bottle Tide, that type of
2 plastic jug.

3 Q. All right. Is any of that in any of the
4 photographs anywhere?

5 A. Not that you can see.

6 Q. The plastic that you observed was plastic
7 sheeting, wasn't it?

8 A. No.

9 Q. There was no garbage out there on
10 July the 10th; isn't that true?

11 A. No, that's not true.

12 MR. MACK: Objection. He's badgering the
13 witness.

14 THE HEARING OFFICER: Well, I'm not sure I'd
15 characterize it as badgering. However, I would like
16 to have the witness have an opportunity to respond
17 before you ask the next question.

18 MR. SCHROEDER: I think she did respond.

19 THE HEARING OFFICER: She did.

20 BY MR. SCHROEDER:

21 Q. Did you dig into any of what you
22 considered to be the fill on July the 10th?

23 A. No.

24 Q. Did you wade into the pond or see what was

1 under the water in the pond on July the 10th?

2 A. No.

3 Q. So in essence, all you can see is what was

4 on top of the ground; is that true?

5 A. Yes.

6 Q. And with respect to garbage, on both

7 occasions there was a Dumpster in front of the

8 building, wasn't there?

9 A. Yes.

10 Q. And there was garbage in the Dumpster?

11 A. Yes.

12 MR. SCHROEDER: Can I have just a moment?

13 THE HEARING OFFICER: Of course.

14 (Brief pause.)

15 BY MR. SCHROEDER:

16 Q. When was your phone conversation with one

17 of the Chaudhrys?

18 A. July 10th.

19 Q. That was referred to in your report as a

20 Mr. Chaudhry?

21 A. Yes.

22 Q. Do you know which Chaudhry you spoke to?

23 A. I believe Saleem.

24 Q. Why do you believe it to be Saleem?

1 A. If I recall, he identified himself as

2 Saleem Chaudhry.

3 Q. So that's your memory?

4 A. Yes.

5 Q. Had you ever spoken to Saleem Chaudhry

6 before or since?

7 A. I believe -- it's been a while, but I

8 believe he may have contacted me subsequent to

9 that. Someone did, and I don't recall if it was

10 Mr. Saleem Chaudhry or another Chaudhry, and it was

11 I think in December if I'm not mistaken, to tell me

12 that they were faxing me a document.

13 Q. In December of what year?

14 A. 1996.

15 Q. Did you tell in your phone conversation to

16 whichever Chaudhry you spoke to on July the 10th

17 that you were going to teach them a lesson?

18 A. No.

19 Q. Did you tell that Chaudhry that you would

20 teach them how to live in this country?

21 A. No.

22 Q. Did you claim at any time during this

23 process that this property consisted of wetland?

24 A. No.

1 Q. So you never made the complaint that there
2 were wetlands on the property?

3 MR. MACK: Objection, your Honor, relevancy.
4 What difference does it make if it's a wetland or
5 not?

6 MR. SCHROEDER: It shows bias --

7 MR. MACK: It's not the subject matter of this
8 AC.

9 THE HEARING OFFICER: One at a time.

10 Mr. Schroeder?

11 MR. SCHROEDER: I would hook it up on bias.

12 MR. MACK: Bias?

13 THE HEARING OFFICER: Well --

14 MR. SCHROEDER: Along the same lines as --

15 THE HEARING OFFICER: -- at this time, I'm
16 going to overrule the objection. However, I'm not
17 sure where this is going, but I do know that water
18 is alleged to have been impacted for at least a
19 portion of the complaint, so I'm going to allow the
20 question.

21 Do you understand the question,

22 Miss Jensen?

23 THE WITNESS: Yes.

24

1 BY THE WITNESS:

2 A. No.

3 MR. SCHROEDER: I have nothing further.

4 MR. MACK: Just a few questions, Mr. Burds.

5 REDIRECT EXAMINATION

6 by Mr. Mack

7 Q. Referring back to the photographs of

8 Plaintiff's Exhibit 1-A through 1-D, do you have

9 those in front of you?

10 A. Yes.

11 MR. SCHROEDER: Do you want her to have the

12 marked one?

13 MR. MACK: Oh, you've got those? Yeah.

14 THE HEARING OFFICER: For the record, what was

15 that, Mr. Mack?

16 MR. MACK: That photo was 1-D.

17 THE HEARING OFFICER: Let the record reflect

18 that the witness has been handed Plaintiff's Exhibit

19 1-D by Mr. Mack.

20 BY MR. MACK:

21 Q. Concerning the debris depicted in each of

22 the photos, do you consider that, in your opinion as

23 an enforcement officer, a violation of the

24 Environmental Protection Act?

1 A. Yes.

2 Q. And what violation is that?

3 A. There's litter, Section 21 of the act,
4 litter and deposition of waste in water.

5 Q. Okay. Each of the photos that were taken
6 on June 28th depict deposition of waste in water; is
7 that correct?

8 A. Correct.

9 Q. One of the photos depicts what is
10 allegedly litter and has been circled previously; is
11 that correct?

12 A. Yes.

13 THE HEARING OFFICER: For the purposes of the
14 record, could you clarify which photo?

15 BY MR. MACK:

16 Q. Photo 1-D, Miss Jensen, is that the one
17 that you circled earlier?

18 A. Yes. Yes.

19 Q. On the basis of what's depicted in these
20 photos, you cited the Chaudhrys for those two
21 violations?

22 A. Yes.

23 Q. As a hypothetical, if the construction
24 debris were near to the house, would that be a

1 violation --

2 MR. SCHROEDER: Objection.

3 BY MR. MACK:

4 Q. -- based on your opinions as an

5 enforcement officer?

6 MR. SCHROEDER: Objection. That's an improper

7 hypothetical. She's testified that construction

8 debris was by the house, by the pond, all over the

9 place. His hypothetical doesn't take into account

10 the witness' prior testimony and tends to contradict

11 her own testimony.

12 THE HEARING OFFICER: Mr. Mack?

13 MR. MACK: (No response).

14 THE HEARING OFFICER: I guess I'm trying to

15 understand where you're going with it.

16 MR. MACK: I'm trying to define the basis for

17 the violation of deposition of waste in water and

18 that this forms the basis of that violation.

19 MR. SCHROEDER: That's an argument, not a

20 question for this witness.

21 MR. MACK: The witness has to make factual

22 on-site determinations as to what is violation and

23 what is not. I'm trying to define what is her

24 discretion and what's the basis for her evaluation.

1 THE HEARING OFFICER: Okay. As to the question
2 as it stands as a hypothetical in this case, I'm not
3 sure what purpose or what it goes to related to
4 what's been charged in the complaint. However, I do
5 believe, Mr. Schroeder, you did ask what constituted
6 a violation in her mind. I'm going to allow the
7 question at this time. However, I don't want it too
8 far off the complaint, Mr. Mack.

9 MR. MACK: Okay.

10 THE HEARING OFFICER: I'm sorry, Miss Jensen.
11 Did you understand the question? Do you recall the
12 question.

13 THE WITNESS: Deposition of waste in water?

14 THE HEARING OFFICER: No.

15 BY MR. MACK:

16 Q. Let me rephrase the question.

17 A. Okay. Please do.

18 Q. Let me rephrase the question.

19 THE HEARING OFFICER: Right. Why don't we just
20 have the question reread, if that's possible. I
21 apologize, Madam Court Reporter.

22 (Record read.)

23 BY THE WITNESS:

24 A. Yes, it would.

1 BY MR. MACK:

2 Q. Miss Jensen, does the proximity of the
3 debris to the water as depicted in these photographs
4 constitute the basis for the violation causing or
5 allowing deposition of waste in standing and flowing
6 waters based on your --

7 MR. SCHROEDER: Objection.

8 THE HEARING OFFICER: Let him finish the
9 question, Mr. Schroeder.

10 Mr. Mack, finish the question.

11 BY MR. MACK:

12 Q. -- based on your knowledge of the
13 Environmental Protection Act?

14 MR. SCHROEDER: He just didn't like the answer
15 to the prior question, so now he's directing her to
16 answer by leading her into notwithstanding the
17 hypothetical, isn't it really up by the water that
18 matters is what he's asking. She just finished
19 saying it would still be a violation up closer to
20 the house.

21 THE HEARING OFFICER: Well, that question and
22 answer stands. As far as the question whether the
23 proximity to the water is --

24 MR. SCHROEDER: Now, he's leading her to

1 contradict that.

2 THE HEARING OFFICER: Well, as far as
3 contradiction, we haven't heard the answer yet. But
4 as far as the prior question and answer, that
5 stands.

6 As far as this question, I believe it is a
7 different question whether the proximity to the
8 water is relevant in her determinations. I'll let
9 the question stand.

10 Do you understand the question,
11 Miss Jensen?

12 THE WITNESS: Yes.

13 THE HEARING OFFICER: Please answer.
14

15 BY THE WITNESS:

16 A. The proximity of the waste about the pond
17 and in the pond is a violation of the act for
18 deposition of waste in the pond as well as litter.
19 If it's situated other than in or about the pond --
20 in the pond, it would constitute litter
21 exclusively.

22 BY MR. MACK:

23 Q. Okay. Do the garbage bags or do the bags
24 that are depicted in 1-D in your mind constitute a

1 violation of litter?

2 A. Yes.

3 MR. SCHROEDER: Objection as to relevancy?

4 THE HEARING OFFICER: Well, I think ultimately

5 it's a question for the board to determine whether

6 this witness has certainly testified as to whether

7 she believes it to be a violation. Ultimately, it's

8 for the board to make that determination. So at

9 this time, the objection is overruled.

10 BY MR. MACK:

11 Q. So on the basis of these photographs, your

12 inspection reports, and subsequent AC, you

13 determined that those two violations --

14 MR. SCHROEDER: Leading.

15 THE HEARING OFFICER: Well, again, I would like

16 each party to finish the question.

17 The question, Mr. Mack, is, and the

18 witness will refrain from answering at this point.

19 BY MR. MACK:

20 Q. What two violations did you determine

21 occurred on June 28th?

22 A. Two violations of the Environmental

23 Protection Act --

24 THE HEARING OFFICER: Hold on. Hold on.

1 An objection to that question,

2 Mr. Schroeder?

3 MR. SCHROEDER: No. He rephrased it.

4 THE HEARING OFFICER: Miss Jensen?

5 BY THE WITNESS:

6 A. Two violations of the Environmental
7 Protection Act, litter and deposition of waste in
8 water.

9 BY MR. MACK:

10 Q. And in your subsequent inspection on
11 July 10th, did you determine those violations to
12 have been remedied or resolved?

13 A. They were not.

14 Q. And what formed the basis of that
15 determination?

16 A. The material I observed, the waste I
17 observed, commingled with the material in the pond.

18 Q. Did you ever receive any documentation --
19 strike that.

20 MR. MACK: No further questions.

21 THE HEARING OFFICER: Recross, Mr. Schroeder?

22 RECROSS-EXAMINATION

23 by Mr. Schroeder

24 Q. Let me make sure I understand the

1 testimony you just gave. The violations you
2 observed on June 28th were litter and waste in
3 water?

4 A. Correct.

5 Q. That's it?

6 A. There's two others that are not seeable
7 items that were not discussed by me, but those are
8 for operating a waste treatment and waste disposal
9 facility on site without a permit.

10 Q. Those weren't discussed?

11 A. No, because those aren't seeable items.

12 Q. What do you mean they're not seeable
13 items?

14 A. Administrative citation action cannot be
15 brought for those violations.

16 Q. Can't be brought for any of those
17 violations?

18 A. For those two.

19 Q. Had you had input into the citation which
20 was marked Respondent's Exhibit 3 you testified
21 earlier to?

22 A. Yes.

23 Q. That cites open dumping, doesn't it?

24 A. Yes.

1 Q. But that you couldn't see. So that
2 shouldn't have been in here, is that your testimony?

3 A. I'm not following your question.

4 Q. In the citation it cites open dumping.
5 That's one of the violations you just alluded to

6 that you could not see; is that correct?

7 A. No. I saw open dumping on site.

8 Q. So now you're saying litter, waste in
9 water, and open dumping?

10 A. Open dumping, again, is not seeable.

11 Q. I'm not asking you to refer to any
12 documents. I'm asking you what violations you saw
13 on site?

14 A. All of them, including litter.

15 Q. What are all of them?

16 A. I'm citing them litter, deposition of
17 waste in standing waters, operating a waste
18 treatment facility without a permit, and open
19 dumping.

20 Q. So when you testified in response to
21 Mr. Mack's questions a few moments ago that the two
22 violations were litter and waste in water, that
23 wasn't an accurate answer?

24 A. I thought as part of this proceeding we

1 were discussing litter and violations of the act

2 that are seeable items, which are litter and

3 deposition of waste in water.

4 THE HEARING OFFICER: Okay. I'm going to ask

5 that the parties identify acronyms at this hearing.

6 BY MR. SCHROEDER:

7 Q. You're just testifying to whatever you

8 think Mr. Mack wants you to testify to; isn't that a

9 fact?

10 A. No.

11 Q. When he asked you the question, you saw

12 open dumping; when I asked you the question, you

13 didn't think you saw open dumping?

14 A. I don't recall him asking me open dumping

15 per se.

16 Q. Okay. He asked you what violations you

17 saw and you said waste and litter?

18 A. That's correct.

19 Q. But now when I asked you, you could see

20 open dumping?

21 A. Yes.

22 Q. And by your testimony and in your

23 consideration, open dumping is not a violation if

24 it's at the same site; isn't that correct?

1 A. If the waste is generated on site --

2 Q. It's not open dumping.

3 A. -- then it's not open dumping. If it's

4 generated off site, if it's brought onto the site,

5 and then disposed of on site, it is open dumping.

6 Q. Did you see anybody bring any waste on

7 site?

8 A. The waste -- no, I did not.

9 Q. Did you see anybody bring any waste on

10 site?

11 A. No, I did not.

12 Q. Since you listed also operating a waste

13 management facility or something like that, what was

14 that violation?

15 A. As part of a procedure, we are to note and

16 mark that there's a violation of the act when any

17 site that contains what we observe as open dumped

18 material to be a facility operating without a waste

19 disposal permit.

20 Q. So if there's open dumping that follows

21 there has to be a permit or there's another

22 violation for no permit?

23 A. Correct.

24 Q. That's your understanding?

1 A. Yeah.

2 Q. And that's the other violation alleged in
3 the citation?

4 A. Yes.

5 Q. But when Mr. Mack was asking you
6 questions, you thought that he was only referring to
7 violations you could see?

8 A. Yes.

9 Q. With respect to the construction debris or
10 the other debris, I want to make sure I understand
11 the material. You said earlier there were bricks.
12 Would you consider bricks inert?

13 A. Yes, if they don't contain rebar.

14 Q. Did you see rebar in the bricks?

15 A. No.

16 Q. You saw conduit?

17 A. Yes.

18 Q. Is conduit inert?

19 A. No.

20 Q. How would you characterize conduit?

21 A. Metallic.

22 Q. How do you use the word inert?

23 A. A material that can be broken down.

24 Q. Can be?

1 A. Um-hum, by process.

2 Q. So you saw bricks, you saw conduit, you
3 saw plastic, you saw other metals; is that correct?

4 A. Yes, I believe so.

5 Q. What other material did you see on
6 June 28th?

7 A. Cardboard, paper, and I have noted in the
8 inspection report --

9 Q. I'm not asking you what you noted. I'm
10 asking you what you saw --

11 A. What I recall?

12 Q. -- on June 28th.

13 Pardon?

14 A. What I recall? I recall seeing wood,
15 drywall, what appeared to be tar paper, again,
16 conduit, plastics, cardboard, brick.

17 Q. And all the material was on the edge of
18 the pond on June 28th?

19 A. No, also within the pond.

20 Q. That's according to your sketch?

21 A. My observation.

22 MR. SCHROEDER: Nothing further.

23 THE HEARING OFFICER: Any re-rebuttal,

24 Mr. Mack?

1 MR. MACK: No, sir.

2 THE HEARING OFFICER: Okay. Anything else for

3 Miss Jensen, Miss Jensen being in your case,

4 Mr. Schroeder?

5 MR. SCHROEDER: No.

6 THE HEARING OFFICER: You are released,

7 Miss Jensen.

8 (Witness excused.)

9 THE HEARING OFFICER: Mr. Mack, any further

10 evidence?

11 MR. MACK: No further witnesses.

12 THE HEARING OFFICER: Now, as far as the

13 exhibits that you've marked, what I have is that

14 only the letter from Mr. Schroeder had been admitted

15 without objection, referring to the Group Exhibit

16 1-A through D and what has been marked as Peoples'

17 Exhibit -- second Group Exhibit 2-A, B, and C.

18 Are you moving that they be admitted at

19 this time?

20 MR. MACK: Yes, Mr. Burds.

21 THE HEARING OFFICER: Now, Mr. Schroeder, do

22 you have any objection to those being in evidence or

23 admitted?

24 MR. SCHROEDER: Can we go through them again?

1 What were the exhibits?

2 THE HEARING OFFICER: We're referring to
3 Plaintiff's Exhibits 1-A, B, C and D. Let's deal
4 with that group exhibit first.

5 MR. SCHROEDER: No objection.

6 THE HEARING OFFICER: Okay. What I would like
7 based on that no objection and admission -- what I
8 don't have is the document 1-D that was circled.
9 What I would like for purposes of the board to
10 review would be that document and what Mr. Schroeder
11 had the witness circle.

12 Now, if the parties want to make their own
13 copies and best depict what they have or what was
14 circled, we can do that, if necessary. Okay. Let's
15 deal with the second group exhibit.

16 For the record, Peoples' Exhibit 3 is
17 admitted without objection. Plaintiff's Group
18 Exhibit 1-A through D are admitted without
19 objection. Now, let's go through the second group
20 exhibit marked as Peoples' Exhibit 2-A through C.

21 Mr. Schroeder, any objection?

22 MR. SCHROEDER: I believe those are the Xerox
23 copies of the photographs.

24 THE HEARING OFFICER: That is correct.

1 MR. SCHROEDER: And I object to those, and I
2 don't believe she verified those in her testimony.

3 THE HEARING OFFICER: Your basis is
4 foundation?

5 MR. SCHROEDER: Both foundation and the fact
6 that the original photographs are not available.

7 THE HEARING OFFICER: Well, my concern is
8 this: There are two depictions, one would be with
9 the original photographs which the board has in its
10 possession in the clerk's office that is a pleading
11 in this matter and attached as an exhibit thereto.

12 My concern is the testimony here referred
13 to those photostatic copies. I understood Mr. Mack
14 to say that they aren't available. My
15 understanding -- if I understand Miss Jensen
16 correctly, it isn't that they are unavailable. It's
17 just that they are unavailable at this time based
18 upon a move.

19 Regarding that, I think the testimony will
20 speak for itself, and as far as the photographs, the
21 only thing that I'm going to admit in this
22 proceeding would be those photostatic copies. Those
23 documents -- those photos that exist as an
24 exhibit -- as an attachment to the pleadings exist

1 as any such an attachment would exist to a
2 pleading.

3 How the board uses those and what weight
4 they give them -- what weight they give the
5 photostatic copies depicted in Peoples' Exhibit 2-A,
6 B, and C is really up to the board --

7 MR. SCHROEDER: Just --

8 THE HEARING OFFICER: Yes, Mr. Schroeder?

9 MR. SCHROEDER: I'm sorry.

10 THE HEARING OFFICER: No.

11 MR. SCHROEDER: I didn't mean to interrupt
12 you.

13 THE HEARING OFFICER: No. Go ahead.

14 MR. SCHROEDER: For the record, I would like to
15 note that the basis my objection is not only the
16 fact that the originals were not available for the
17 purpose of the witness' testimony, they were also
18 not available for purposes of cross-examination.
19 This was the peoples' witness. The people are
20 seeking to introduce this group of photographs, and
21 from the Xerox copies and the lack of the quality
22 and the detail they're in, I'm precluded from
23 offering what otherwise I might do on
24 cross-examination because they did not have their

1 photographs here. That is their burden, not the
2 respondent's burden, and in addition to the other
3 foundational objections, I think that's perhaps the
4 most important one.

5 THE HEARING OFFICER: I do not disagree that it
6 is the peoples' burden or the complainant's burden
7 to provide originals or to establish that they are
8 unavailable under the best evidence rule in order to
9 provide photostatic copies. However, I would also
10 point out that the discovery is available to counsel
11 as well and was not employed in this case, to my
12 knowledge.

13 Now, that doesn't mean the discovery
14 wasn't employed after this process, but I've not
15 been made aware that you requested the original of
16 these photographs and were not provided them.

17 Now, as far as these photos, I want to
18 make my ruling clear. What I am admitting in this
19 proceeding are the photostatic copies that were
20 identified and the foundation was laid as photos
21 taken by Miss Jensen on the date and time as
22 accurately depicting, as best they do as photostatic
23 copies, the location she described.

24 Now, I am not admitting those photos that

1 are attached to the exhibit as an exhibit to the
2 pleading; i.e., known as the administrative citation
3 filed with the board. What the board does with that
4 evidence, that is a pleading in this matter and will
5 be treated as such.

6 As far as the photographs, what I am
7 admitting -- and, again, the testimony given to that
8 and what weight they're given is really up to the
9 board, but all I'm admitting in this proceeding are
10 the photostatic copies because that is what was
11 provided. That is what was testified to. And I'm
12 holding the state to the standard that is required;
13 that is, they are limited to what they produce, and
14 that's what they produced at this proceeding.

15 Any objection, Mr. Mack?

16 MR. MACK: No, Mr. Burds.

17 THE HEARING OFFICER: Mr. Schroeder?

18 MR. SCHROEDER: None other than what I've
19 already stated.

20 THE HEARING OFFICER: Other than your
21 objection, that's how I heard it.

22 All right. Therefore, based upon that
23 long, drawn out explanation, I will admit Peoples'
24 Exhibit 2-A, B, and C.

1 Now, I want to make sure I have copies of
2 that document. What I have, I have marked on the
3 administrative citation. I thought I had two copies
4 of that document. I want to make sure that I have
5 all of the exhibits. I do have 1 through D (sic).
6 And I have --

7 MR. MACK: I have a separate -- a separate
8 photocopy of this exhibit that is not -- that is
9 separate and apart from the AC that you have.

10 Do you want a separate copy of that
11 marked?

12 THE HEARING OFFICER: What I would like is a
13 copy of the exhibit with the -- I thought -- perhaps
14 I'm just misplacing it. I have two copies
15 possibly. Let me see what I have.

16 MR. MACK: It's within the AC I submitted.

17 THE HEARING OFFICER: I know that I placed a
18 peoples' exhibit sticker on one of the ones that I
19 had, and I don't know if that's perhaps the ones you
20 provided.

21 Well, here's what I would like. I would
22 like a copy of those photographs attached to
23 Exhibit B identified, and I will give you the
24 exhibit stickers, and I would like them identified,

1 and I would like to give them to Mr. Schroeder for
2 his review to make sure that we have what's
3 accurate.

4 Then I would also like a copy identified
5 as Peoples' Exhibit 3 of the letter Mr. Schroeder
6 wrote. I believe it was July 24th; is that correct,
7 Mr. Schroeder?

8 MR. SCHROEDER: Yes.

9 THE HEARING OFFICER: That was admitted the
10 without objection.

11 Why don't we go off the record for a
12 moment?

13 (Discussion had off
14 the record.)

15 THE HEARING OFFICER: Okay. Let the record
16 reflect that both counsels have graciously gone
17 through and we identified what's been marked as
18 Peoples' Group Exhibit 2-A, B, and C. It's
19 depictions of six photostatic copies -- well, that
20 depict the property as alleged in the testimony of
21 Miss Jensen.

22 Also I have marked as Peoples' Exhibit 3
23 the letter from the law offices of Harry Schroeder,
24 July 24, 1996. Okay. Based on my previous ruling,

1 those documents are admitted.

2 All right. You rest, Mr. Mack?

3 MR. MACK: Yes, sir.

4 THE HEARING OFFICER: All right. Motions?

5 MR. SCHROEDER: Yeah. First of all, I believe
6 for a directed finding on the basis that by Darlene
7 Jensen's own testimony, the respondents were given
8 to July 19th to comply with her request, and she did
9 not visit the property or have any knowledge of its
10 condition after July 10th.

11 With respect to the other various charges,
12 with respect to allowing litter in violation of the
13 Compiled Statutes 415, 521(P)(1), there was
14 testimony -- a great deal of testimony about
15 construction debris. This was a site were there was
16 demolition going on. There was testimony about
17 three plastic bags that she refused to open, and she
18 had no personal knowledge of what was inside of
19 those plastic bags, and there was some testimony on
20 the part of Miss Jensen that when she returned again
21 on the 10th, there was some plastic jugs somewhere,
22 but they weren't identified as to where or the
23 extent of them and what they were.

24 For that reason, I would suggest that the

1 people have not sustained their burden on proving a
2 violation of the ordinance based upon litter.

3 With regard to waste in standing or
4 flowing waters, I would cite to the Court Central
5 Illinois Public Service Company vs. Pollution
6 Control Board, which is a 1987 case, 107 Ill.
7 Decisions 666, 116, Ill. 2d, 397 and 507, N.E. 2d,
8 819. And that's a case where it talks about what
9 constitutes water pollution, and that's what the
10 statutes speak to in causing or allowing disposition
11 of waste and in standing or flowing waters.

12 There was testimony that she saw dirt in
13 the pond, and she saw construction debris on top of
14 the dirt. She didn't turn over the dirt or take any
15 actions to investigate what might be beneath the
16 dirt. And, again, they have not sustained their
17 burden with regard to waste. Waste should be
18 defined as garbage. There's no testimony of garbage
19 out there. There's a great deal of testimony of
20 construction debris.

21 With respect to the violation about
22 allowing open dumping, I would cite to the Court
23 Environmental Protection Agency vs. Pollution
24 Control Board, which is a Fifth District 1991 case,

1 and that's found at 162 Ill. Decisions 401, 579,
2 N.E. 2nd, 1215, and I do have a copy of that case
3 that I can provide --

4 MR. MACK: I have a copy.

5 MR. SCHROEDER: -- to you, if you wish.

6 Mr. Mack has indicated he has a copy of
7 it.

8 THE HEARING OFFICER: That's fine.

9 MR. SCHROEDER: With that -- Miss Jensen was
10 correct when she said as long as the debris
11 originates on site, it's not open dumping. Open
12 dumping is when you carry it off site somewhere and
13 dispose of it at a different location. And all the
14 testimony showed that there was, and the
15 photographs, construction and demolition going on on
16 site.

17 The last part of that case points out that
18 if we were to accept any other interpretation, then
19 every construction site would be open dumping, and
20 nobody could do renovation. And that's the finding
21 of the Court in that particular case. And if
22 there's no open dumping, the last violation of
23 operating a site without a permit must also fall
24 because there was no permit needed when there's no

1 open dumping.

2 THE HEARING OFFICER: Here is what I will tell
3 you as to my authority and what my role is in this
4 process before allowing the state to respond.

5 As far as the directed finding, if you
6 were choosing now not to present evidence and just
7 go on that argument, Mr. Schroeder, that is up to
8 you. I do not have the authority to make a
9 corrected finding at this time based on the
10 nonshowing of a prima facie case, nonshowing
11 thereof.

12 Therefore, as far as the record is
13 concerned, if you want to stand on that argument and
14 the state's case without presenting testimony, you
15 are certainly willing to do that at this time.
16 Then, I would allow Mr. Mack to respond to those
17 arguments.

18 However, if you are going to present
19 evidence or testimony at this time, I would deny
20 that motion just based on my own inability to either
21 grant or deny.

22 MR. SCHROEDER: I think you have the ability to
23 certainly find that they have failed to sustain
24 their burden of proof which is, in essence, what the

1 motion is.

2 THE HEARING OFFICER: Well, I disagree that the
3 hearing officer has that within its authority under
4 the board's rule.

5 MR. SCHROEDER: At the very least, you have the
6 ability to take it under advisement.

7 And what I want to be clear on the record
8 is that by proceeding with my witness, I'm not
9 waiving the right or the requirement that they had
10 to present prior to my going forward a prima facie
11 case and sustain their burden of proof.

12 THE HEARING OFFICER: Of course, and that is
13 accurate. As far as the burden, I believe the
14 burden is on, in an administrative proceeding, upon
15 the filing petitioner. It is then thrust upon the
16 state as they do have the burden of proof in this
17 matter as you've indicated.

18 MR. SCHROEDER: And any testimony that I put on
19 cannot be used to bootstrap them into sustaining
20 that burden.

21 THE HEARING OFFICER: That is exactly right.

22 Mr. Mack, response?

23 MR. MACK: Response to the motion?

24 THE HEARING OFFICER: Right. I've indicated

1 what my authority is. I do have the authority to
2 grant or deny that motion. However, I do believe
3 Mr. Schroeder accurately depicts what place his
4 client is in regarding your burden of proof.

5 If you have any response thereto.

6 MR. MACK: Okay. I do. With response -- in
7 response to the motion for a directed verdict as to
8 the aspect of deposition of waste in standing or
9 flowing waters, the act states that it's a violation
10 of Subdivision A to cause or allow the open dumping
11 of any waste in a manner which results in the
12 following occurrences, deposition of waste in
13 standing or flowing waters. So whether or not it's
14 C and D debris or some other type of matter,
15 hazardous specialist waste, the fact that it is in
16 standing or flowing waters in itself is a
17 violation.

18 The evidence that we have put forth, four
19 photographs, depict that violation as we interpret
20 it, waste in standing water, and the testimony by
21 Miss Jensen supports the photographs and her
22 observations as that being the actionable violation
23 here.

24 With respect to the open dumping of waste,

1 there is a case that was cited earlier by counsel
2 for respondent, the Environmental Protection
3 Agency. In that case, the Court -- let me first
4 point out that the Court found that the
5 subcontractor who was the respondent in the case did
6 engage in open dumping. That case is in favor of
7 the people. And also in the case, it defined -- it
8 defined disposal, disposal of wastes as being the
9 discharge, deposit, injection, dumping, spilling,
10 leaking, or placing of any waste into or on any land
11 or water so that such waste may enter the
12 environment or be emitted into the air or discharged
13 into any waters, including ground waters. It's a
14 pretty broad definition.

15 I think that the photographs, once again,
16 supported by the testimony of Miss Jensen support
17 that there was open dumping occurring and that was
18 not incidental to any construction that was
19 occurring at the house.

20 So I think we would survive a motion based
21 on the case that we've put forth, the evidence that
22 we presented in the testimony thus far.

23 One last note with regard to the timing
24 requirements, it was pointed out by counsel that

1 it's dispositive that there were no subsequent
2 inspections by Darlene Jensen after July 10th.
3 That's not dispositive. What is, is that prior to
4 those dates, Darlene Jensen directed notices to the
5 Chaudhrys of which they do not object that they
6 received requesting certain documentation which
7 evidenced that the debris that she noted had been
8 removed.

9 At no time after July 10th did she receive
10 any indication prior to July 19th, which was the
11 deadline of such response, that there were receipts
12 of the removal of the debris around the pond or that
13 the debris had, in fact, been removed by the
14 contractor or by someone. There was no response to
15 that question prior to July 19th. Hence, the
16 administrative citation was issued.

17 The fact that she did not go out there
18 after July 10th is not dispositive because the
19 burden was then on the respondent to respond whether
20 they had remedied the problem or otherwise state
21 that their problem did not exist. That didn't
22 happen in a timely fashion.

23 So as to that aspect of the motion, we
24 feel we presented evidence that our violations

1 were -- the violations alleged were well-founded and
2 not responded to.

3 That's it.

4 THE HEARING OFFICER: Mr. Schroeder?

5 MR. SCHROEDER: Very briefly in response, the
6 case that I cited does find for the state, but not
7 on the basis that open dumping can be on site.
8 That's not what the case says. And they're very,
9 very clear at the end, if you just read the end of
10 it. The Court is very, very clear to distinguish
11 that case and open dumping on site. You can't have
12 open dumping when you're doing construction on site
13 unless you have another site involved. That's the
14 statutory definition. There has to be
15 transportation from one site to another.

16 With regard to the waste statute, when
17 Mr. Mack read his reference to dumping of waste in
18 standing waters, it didn't say dumping. It said
19 open dumping. This is not a case of open dumping.
20 The definition of waste is up for grabs too.
21 They're statutory definitions. They're not laymen's
22 definitions.

23 Waste under the statute, I think, has a
24 narrower connotation than what they have shown.

1 With respect to response, my letter was a
2 response within 15 days of the last notice, and I'll
3 let it go at that.

4 THE HEARING OFFICER: Okay. Having heard the
5 arguments, as I have indicated earlier, I do not
6 have the authority to grant or deny that motion.
7 It's ultimately up to the board to determine whether
8 or not the state has met its burden in establishing
9 a prima facie case of these violations. It is,
10 therefore, according to the statute, and that would
11 be in relationship to any notice requirements, any
12 subsequent activities relating to notices as well as
13 to the violations or evidence -- sufficiency of the
14 evidence related to the violations.

15 Now, based on your previous comments, not
16 wanting to waive any objections regarding that, do
17 you want to proceed with evidence at this time,
18 Mr. Schroeder?

19 MR. SCHROEDER: Yes. I'll call Dr. Naseem
20 Chaudhry.

21 THE HEARING OFFICER: Fine. Mr. Chaudhry?

22 MR. MACK: At this time, Mr. Burds, we'd like
23 to renew our motion to any testimony presented by
24 Mr. Naseem Chaudhry which goes to the truth of the

1 matter being asserted; that is, what is the subject
2 of this administrative citation.

3 Mr. Chaudhry is not a party to this
4 action. We have properly subpoenaed a party. I
5 have evidence of the subpoena being served. You
6 received a copy of that. That defendant is not
7 here, and any testimony that Mr. Chaudhry elicits
8 today is not relevant to the charges brought against
9 Mr. Saleem Chaudhry.

10 THE HEARING OFFICER: Well, let's see what the
11 testimony is and what his basis of knowledge is
12 before we predispose ourselves regarding
13 Mr. Chaudhry's testimony.

14 I've made my ruling regarding the absence
15 of a party to this proceeding, Mr. Chaudhry, and
16 where that stands and may constitute in itself
17 default pursuant to the board's own procedure
18 rules. We are proceeding in absentia. Why don't we
19 determine -- let Mr. Schroeder begin his questioning
20 before we predispose ourselves one way or another.

21 One thing that I would want to make clear
22 for the record, after the break, all public
23 members -- all people in the galley, members of the
24 public, did leave. One thing I did not do was allow

1 anyone present to question Miss Jensen. However, I
2 will note for the record and what I would like is
3 concurrence from both counsel is that all members --
4 the only members in the gallery have been potential
5 witnesses of Mr. Mack and at no time do I know of
6 any other members in the gallery.

7 Therefore, no one could have questioned
8 Miss Jensen regarding this proceeding as a member of
9 the public.

10 Mr. Mack, do you concur?

11 MR. MACK: Yes, sir.

12 THE HEARING OFFICER: Mr. Schroeder?

13 MR. SCHROEDER: Yes.

14 THE HEARING OFFICER: Okay. I need to make
15 that finding for my own record -- the record before
16 the board.

17 Okay. Mr. Chaudhry, if you would raise
18 your right hand, please.

19 (Witness sworn.)

20 THE HEARING OFFICER: Okay. Mr. Chaudhry, what
21 I would like is for you to speak -- well, just speak
22 as clearly as you can. I think everybody can hear.
23 And please spell your name for the record, your
24 complete name.

1 THE WITNESS: Naseem, N-a-s-e-e-m, C-h-a-u-d,
2 like in David, r-h-y.

3 THE HEARING OFFICER: Mr. Schroeder?

4 WHEREUPON:

5 NASEEM M. CHAUDHRY, M.D.,
6 called as a witness herein, having been first duly
7 sworn, testified, and saith as follows:

8 DIRECT EXAMINATION

9 by Mr. Schroeder

10 Q. Would you state your occupation, please?

11 A. I'm a medical doctor, specialist in
12 geriatrics psychiatry.

13 Q. And you're also related to the named
14 respondent in this proceeding, Saleem Chaudhry; is
15 that correct?

16 A. That's correct.

17 Q. How are you so related?

18 A. He is my younger brother.

19 Q. Okay. And where is Mr. Saleem Chaudhry
20 residing now?

21 A. He's at Columbus, Ohio.

22 Q. Is he one of the owners of this property
23 that's been the subject today?

24 A. Yes.

1 Q. Is he the only owner?

2 A. No, there is one other.

3 Q. Who is that?

4 A. That's another younger brother. His name
5 is Abdus Salam Chaudhry.

6 THE REPORTER: Could you spell that, please?

7 THE WITNESS: A-b-d-u-s S-a-l-a-m.

8 BY MR. SCHROEDER:

9 Q. And what -- I'm sorry.

10 THE HEARING OFFICER: No. Proceed.

11 BY MR. SCHROEDER:

12 Q. And what is your relationship -- what is
13 your relationship to the property, or what was it in
14 June of 1996?

15 A. I was living at this house at the time.

16 Q. And besides you who else, if anyone, was
17 living there?

18 A. My wife Solbia, my older son, Abdullah,
19 A-b-d-u-l-l-a-h, and another brother, Mahmood --

20 THE REPORTER: Can you spell that?

21 THE WITNESS: M-a-h-m-o-o-d.

22 BY THE WITNESS:

23 A. (Continuing.) -- his wife and his
24 daughter.

1 BY MR. SCHROEDER:

2 Q. And was that all on June 28th? Those were
3 all the residents of the household?

4 A. Yes.

5 Q. On June 28, 1996, what was the status of
6 the physical residence? What condition was the
7 property in?

8 A. Well, most of the exterior was
9 demolished. Some of the brick was taken off the
10 walls. The two-car garage was demolished in
11 preparation for the future excavation and expansion
12 of the house. And there was, obviously, quite a bit
13 of construction materials around, laying all over
14 the grounds.

15 Q. Okay. I'm going to show you what was
16 previously admitted into evidence as Plaintiff's
17 Exhibit 1-A.

18 THE HEARING OFFICER: Why don't we do this,
19 Mr. Schroeder? Why don't I put the exhibits here,
20 and we'll just refer to these as the ones? I want
21 to make sure -- unless you have a reason for using a
22 different exhibit?

23 MR. SCHROEDER: No. It's just my copy.

24 THE HEARING OFFICER: I assume those have been

1 admitted. I'm going to leave them up on the
2 counter. In fact, why don't we just set them right
3 down here? That way we have everything that's been
4 admitted at this time.

5 BY MR. SCHROEDER:

6 Q. I'm going to show you what's been admitted
7 as Exhibit 1-A and ask you to take a look at that.
8 Do you see that's a photograph with a house in the
9 foreground or background; is that correct?

10 A. Well, the photograph is taken from the
11 background. The house is in the foreground.

12 Q. Is that the house that was on the property
13 on June of '96?

14 A. Yes.

15 Q. Is that the house that you just testified
16 to that you and the others resided in?

17 A. Yes.

18 Q. And does that depict its condition on June
19 of '96?

20 A. Yes, it does.

21 Q. And it appears to have been partially
22 demolished at that point; is that correct?

23 A. Yes.

24 Q. Was there a permit issued for the

1 demolition?

2 A. Yes.

3 Q. And when was the building permit issued?

4 A. I believe July 5th, '96.

5 Q. And demolition proceeded pursuant to --

6 A. Pursuant to negotiations with the zoning

7 people downtown here, and we had the verbal

8 permission to go ahead and start the demolition.

9 Q. So this was the very early stages of the

10 demolition?

11 A. Yes.

12 Q. Okay. And was there -- describe what, if

13 any, debris there was on June 28, 1996.

14 A. There were -- typically, there were piles

15 of bricks and some -- like your gutter material that

16 collects the rain water off of the roof. There was

17 some side -- the paper that you use to enclose the

18 house, the felt paper. There were, obviously, piles

19 of dirt also and. . .

20 Q. Was the source of that debris?

21 A. It was all from the house, from the house

22 that we were in.

23 Q. Was there -- and where on the property was

24 that debris located?

1 A. Most of it around the house and some of it
2 was scattered all over.

3 Q. Is there a pond on that property?

4 A. Yes.

5 Q. Where is the pond located?

6 A. That is to the back of the house.

7 Q. Is that what's also depicted in the
8 photograph before you previously admitted?

9 A. Yes.

10 Q. And was there debris around the pond?

11 A. There was some debris on the edge of the
12 pond, yes.

13 Q. And could you describe that debris?

14 A. Majority of that was bricks, some gutter
15 materials, and, I believe, there was some pieces of
16 flashing that was taken down from the garage, and
17 that's basically what I recall.

18 Q. Was there any garbage there?

19 A. No.

20 Q. Was any of it dumped in the pond?

21 A. Absolutely not.

22 Q. You heard Miss Jensen's testimony earlier
23 today?

24 A. Yes.

1 Q. Do you disagree with her that there was
2 garbage in the pond?

3 A. Yes.

4 Q. Were you there when Miss Jensen came out
5 on June 28, 1996? Were you physically present at
6 that time?

7 A. No. I don't recall her visit on June 28,
8 1996.

9 Q. Okay. What happened -- when were you
10 first aware of her visit?

11 A. July 10, 1996.

12 Q. Had you received anything from her prior
13 to July 10th?

14 A. I believe so, yes.

15 Q. Okay. What was that?

16 A. It was a notice stating that -- obviously,
17 I don't have it in front of me, so I don't recall
18 the exact wording of it, but something to the effect
19 that she perceived open dumping and pollution of
20 stagnant or flowing waters, which was in violation
21 of the -- some statute, and. . .

22 Q. I'm going to show you what's been marked
23 for identification Respondent's Exhibit 2 and ask
24 you if that's the notice you received?

1 A. Yes.

2 Q. Do you recall when you received that?

3 A. Actually, I don't. I don't have the exact
4 date.

5 Q. Do you see the date on the third page,
6 when it was --

7 A. It says July 3, 1996.

8 Q. Did you receive it sometime after that
9 date?

10 A. Yes.

11 Q. Okay. When you received that, what did
12 you do?

13 A. Actually, this notice came after we had
14 received the permit for construction of the house,
15 which was July 5th.

16 Q. So you received that sometime after
17 July 5th?

18 A. Sometime after July 5, 1996.

19 Q. And what did you do?

20 A. Actually, we understood that this -- that
21 somehow somebody was taking things out of context,
22 and that the materials which were on the edge of the
23 pond were in the process of -- actually, we were
24 going to haul the stuff away.

1 Q. Okay. Let's break it down one step at a
2 time.

3 During this time period from June 28th to
4 July 10, 1996, what was being done with the
5 construction debris?

6 A. Most of it was being hauled away as they
7 were starting to demolish the garage, which they
8 did, and they started to dig the existing blacktop.
9 There were trucks which were constantly taking the
10 stuff away from the house, but there was also
11 excavation of the dirt which was going on for the
12 future basement which was right adjacent to the
13 garage of the house, and that dirt was being hauled
14 back into the backyard. And some of it was being
15 placed into the pond which was a part of the total
16 regrading of the backyard. And most of it was also
17 piled in different piles around the pond --
18 different parts of the backyard. And that was for
19 future spread and future renovating.

20 Q. Okay. And when was that dirt taken to the
21 backyard, if you know?

22 A. That would have to be July 10th because
23 that was the first day when we got the big machines
24 on the site, the backhoes and the bulldozers and the

1 excavation machines.

2 Q. Okay. Were you present for Darlene

3 Jensen's visit on July 10th?

4 A. No.

5 Q. Did you have any conversation with Darlene

6 Jensen at that time?

7 A. Yes, I did.

8 Q. And how was that?

9 A. Around 3 o'clock in the afternoon on

10 July 10th I was in the office, and I received a page

11 from my home. So I called back, and one of my

12 brothers told me that there were several people on

13 the property including sheriffs and Mr. Ed Vana from

14 the zoning and a certain Miss Jensen from the

15 Environmental Protection Agency. And he said that

16 she would like to talk to you. So the next thing he

17 did was he handed the phone over to Miss Jensen, and

18 then I had a conversation with her.

19 Q. And what did you say to Miss Jensen, and

20 what did she say to you?

21 A. Well, first of all, I really was totally

22 surprised to find out that there was somebody --

23 Q. Okay. Just describe the conversation,

24 Doctor.

1 A. Okay. I asked her what she was doing over
2 there and what was the problem, and she tried to
3 tell me that there had been several violations on
4 this property previously and that notices had been
5 sent out and that we were still in violation of
6 several zoning regulations or stuff like that.

7 In fact, during that conversation, she
8 became quite irate over the phone with me, and she
9 said that she had sent us notices previously and
10 that she's back again now after about two weeks, and
11 nothing had been done to rectify the situation. And
12 that's when she proceeded to tell me that -- I mean,
13 this was the essence of her conversation; that we
14 did not know how to live in U.S.A. and that she was
15 going to tell us how to live by the rules.

16 Q. Was anything else said in that
17 conversation between you and Miss Jensen?

18 A. Well, I, in fact, kept trying to intervene
19 and try to explain what was happening and try to
20 explain that we had a valid permit to do the
21 demolition and construction and also we had a valid
22 permit to fill the pond, which was a part of the
23 total process of construction and regrading of the
24 backyard. And she was not, basically, listening to

1 me. She almost told me that we have to stop working
2 that afternoon or there will be further legal
3 action.

4 Q. Did she say anything else at that time?

5 A. Not that I recall.

6 Q. Okay. And what happened after you had the
7 conversation with Miss Jensen?

8 A. I was very upset, obviously, and I tried
9 to find out if there was -- honestly, if there was
10 anything illegal or something that we were doing
11 that we were not supposed to be doing because it
12 seems to me everything was being done by the
13 licensed contractors, the excavation people and
14 everything.

15 Q. And what did you do after your phone
16 conversation?

17 A. I called the contractor, Mr. Miller, and
18 then I put a call out for our architect who had been
19 working on these plans, and Mr. Miller and Mr. John
20 Hay, they had been out to the zoning people several
21 times before the permit was issued. So they had
22 gone over these plans and everything many, many
23 times. And then I also called Mr. Walsh, James
24 Walsh.

1 Q. And who is Mr. Walsh?

2 A. Yeah. Actually, during the conversation,
3 I believe my brother told me that Mr. Vana, Ed Vana,
4 was also on the site and that he was also asking us
5 to stop working on the house --

6 MR. MACK: Objection, hearsay.

7 BY MR. SCHROEDER:

8 Q. Do you know who Mr. Walsh was?

9 A. No, I do not.

10 MR. MACK: This was --

11 THE HEARING OFFICER: Hold on. Hold on. Hold
12 on.

13 Response to the objection?

14 MR. SCHROEDER: I'll let you rule.

15 THE HEARING OFFICER: Well, I think it does
16 constitute as hearsay. As to who he contacted and
17 how he contacted them, I don't think that
18 constitutes hearsay. However, that testimony did
19 provide --

20 MR. MACK: This was a conversation between, as
21 I understand, his brother and Ed Vana that was
22 relayed to him.

23 THE HEARING OFFICER: That is exactly right.

24 He relayed the conversation between he and his

1 brother, which I believe does constitute hearsay at
2 this point. Therefore, I'm going to sustain the
3 objection.

4 BY MR. SCHROEDER:

5 Q. Okay. Doctor, I'm trying to -- I want you
6 to explain after talking to Miss Jensen what actions
7 you took, and I understand you said you contacted
8 your contractor?

9 A. Correct.

10 Q. You contacted your architect?

11 A. Correct.

12 Q. You contacted Mr. Walsh?

13 A. Correct.

14 Q. What else did you do, if anything?

15 A. I also contacted the engineers who had
16 originally surveyed the land, and this is -- I'm
17 trying to think of his name.

18 Q. You can't remember your engineer's name?

19 A. Yeah, if you can help me with that.

20 Q. Is there something that would refresh your
21 recollection?

22 A. Yes, those notes.

23 Q. You made notes of what was happening at
24 this time?

1 A. Yes. I remember his name actually.

2 Q. I'll let you take a look at this.

3 THE HEARING OFFICER: Let's mark it --

4 MR. SCHROEDER: Okay.

5 THE HEARING OFFICER: -- just for

6 identification purposes.

7 MR. SCHROEDER: There are Xerox copies of

8 handwritten notes marked as Respondent's Exhibit --

9 THE HEARING OFFICER: Four, I believe.

10 MR. SCHROEDER: -- 4.

11 (Respondent's Exhibit No. 4

12 marked for identification,

13 04/01/98.)

14 BY MR. SCHROEDER:

15 Q. I'll ask you if that refreshes your

16 recollection?

17 A. Sure. Actually, I recall his name. His

18 name is Don Eddy. Mr. Eddy of Eddy Engineering.

19 Q. I'll take the exhibit back then.

20 A. Okay. And I spoke to him personally.

21 This is Mr. Eddy. I asked him -- I actually

22 explained to him what had happened that afternoon

23 explaining Miss Jensen's appearance and her

24 allegation of dumping and that Mr. Vana also asked

1 us to stop working on the property and asked if
2 there was anything we were doing which might
3 constitute as illegal, and I did tell them that we
4 were taking the dirt out of the excavation and
5 putting it right into the pond. It was not mixed
6 with anything else, and over the phone, he told me
7 that to his understanding it would not be --

8 MR. MACK: Objection, hearsay.

9 THE HEARING OFFICER: Okay. I want some
10 foundation laid.

11 Who is Don Eddy?

12 THE WITNESS: He's the owner --

13 THE HEARING OFFICER: And I'm reserving ruling
14 at this time. Mr. Schroeder, I would like some
15 foundation as to who this individual is and when
16 these conversations took place.

17 BY MR. SCHROEDER:

18 Q. Who is Don Eddy?

19 A. Don Eddy is the owner of Eddy Engineering
20 Company who contracted for doing topographic survey
21 of the land, and he also designed the future
22 regrading and water retention for the property.

23 Q. Okay. And when did you contact him?

24 A. On the afternoon of July 10th.

1 Q. And how did you contact him?

2 A. By phone.

3 Q. And was that at his office?

4 A. That was at his office in Lemont.

5 Q. Okay.

6 THE HEARING OFFICER: All right. Go ahead.

7 BY MR. SCHROEDER:

8 Q. Is that where the conversation that you

9 were relating took place?

10 A. Yes.

11 THE HEARING OFFICER: Based on that foundation,

12 the objection is sustained.

13 MR. SCHROEDER: I'm not offering it for the

14 truth of Mr. Eddy's advice, but to show the actions

15 taken by my client and what he did subsequent to

16 that.

17 THE HEARING OFFICER: Mr. Mack?

18 MR. MACK: Well, Mr. Burds, I didn't know what

19 he was offering it for and hence my objection.

20 THE HEARING OFFICER: Are you withdrawing your

21 objection at this time?

22 MR. MACK: Well, I don't --

23 THE HEARING OFFICER: He's indicated -- if I

24 understand Mr. Schroeder correctly, he's not

1 offering the conversation for the truth of the
2 matter, but only as the conversation with that
3 individual.

4 MR. MACK: It's not offered for the truth of
5 the matter asserted?

6 THE HEARING OFFICER: As to whether or not they
7 were in violation or as to subject matter.

8 MR. MACK: Right.

9 THE HEARING OFFICER: Is the objection
10 withdrawn?

11 MR. MACK: Yes.

12 THE HEARING OFFICER: The ruling is withdrawn.
13 The testimony will stand.

14 Mr. Schroeder?

15 BY MR. SCHROEDER:

16 Q. After you had the conversation about
17 whether or not there was a violation with your
18 engineer Mr. Eddy --

19 A. Right.

20 Q. -- what did you do next?

21 A. Like I said earlier, I called Mr. James
22 Walsh and. . .

23 Q. Now, is Mr. Walsh a county official?

24 A. Yes.

1 Q. Okay. And did you call him before or
2 after you called the engineer?

3 A. I don't exactly remember the sequence of
4 who I called first.

5 Q. All this was that afternoon?

6 A. Correct.

7 Q. On July the 10th?

8 A. Right.

9 Q. Okay. Whether it was that afternoon,
10 later that night, or the next day, what was the next
11 thing that happened with respect to this problem?

12 A. Okay. Since Miss Jensen did not give us
13 anything in writing that afternoon, there was no
14 violation issued, and since she cited the pond --
15 essentially that she was still seeing dirt in the
16 pond, we gathered four of the construction workers.

17 We, in fact, stopped all work. We would not be
18 doing anymore excavation or regrading --

19 Q. Now, wait a minute. When you say you
20 stopped all work, was there a stop work order on
21 July the 10th?

22 A. No. So we basically voluntarily did not
23 continue the process of excavation and moving of the
24 dirt.

1 Q. Okay. What did you do with the workers
2 that were there?

3 A. Four workers we put to work. We basically
4 told them to pick out -- they actually were hand
5 digging with shovels and with the backhoe. They
6 went back to the pond area, and they shoveled most
7 of the dirt that they could shovel upside down. And
8 they handpicked for about five or six hours anything
9 and everything that seemed inappropriate, like
10 pieces of bricks, plastic. There was quite a few
11 pieces of the underground -- the plastic that was
12 used previously during the previous construction,
13 the green felt and plastic.

14 Essentially, they picked out anything out
15 of dirt which was not dirt, and we made a whole pile
16 on the side to be removed later on.

17 Q. Okay.

18 A. And, in fact, not only that, they were
19 instructed like when they come back tomorrow, which
20 would have been July 11th, '96, that they were
21 supposed to do the same. There were two guys which
22 were designated to clean and handpick anything which
23 was objectionable that was being put into the pond,
24 any dirt that had to go into the pond had to be

1 clean, nothing else but dirt.

2 So by the end of the evening on July 10th,
3 we had basically handpicked and removed anything
4 objectionable around the construction site,
5 especially the pond.

6 Q. Was there a lot of debris around the pond,
7 or was it -- how would you describe the extent of
8 the debris and the dirt?

9 A. Actually, I filled two -- they were
10 30-gallon garbage bags, plastic bags. That was the
11 extent of it. This was the stuff that came out of
12 the pond.

13 Q. You mean out of the dirt?

14 A. Out of the dirt. I'm sorry. Out of the
15 dirt from the pond, but two bags full.

16 Q. Did you ever dump any debris directly into
17 the pond?

18 A. No.

19 Q. And after the fill or the dirt was picked,
20 what, again, what did you do next?

21 A. I'm assuming we're still talking for
22 July 10th?

23 Q. July 10th or the 11th.

24 A. Okay. The morning of July 11, '96, the

1 guys showed up for work around 7:00 a.m., and they
2 spent another hour basically to finish the cleanup
3 around the pond and the dirt and everything. At
4 8:05 a.m. on July 11th, I put a call out to
5 Miss Jensen at the EPA offices, and I spoke to a
6 gentleman who answered the phone. He identified
7 himself as an inspector, and he said that
8 Miss Jensen would come to the office around 8:30.
9 He identified himself as some Mr. Rod, R-o-d. He
10 didn't give me his last name.

11 So I left a detailed message with him. I
12 identified myself as Dr. Chaudhry calling from this
13 address, which is 639 86th Place, and I told him
14 what the issue was. I said she was out here
15 yesterday, and she had objection about this issue,
16 and I requested that if she cannot come at least
17 send somebody down here that morning to inspect the
18 house and the property. So I offered them to come
19 out and see what we had already done, which was a
20 complete cleanup.

21 Q. What did the inspector tell you?

22 A. He said he would relay the message over to
23 Miss Jensen around 8:30 when she arrived.

24 Q. Okay. And then what happened after that?

1 A. Around 8:00 -- between 8:00 and 8:30, the
2 guys were just sitting around, and I told them -- I
3 said, you know, I left a message. Why don't you
4 guys go ahead and proceed? So the contractor was
5 there. So they started the excavation again, but
6 this time they were not putting the dirt right into
7 the pond from the excavation site. They were
8 basically dumping it on the side outside of the
9 pond, and two guys were cleaning it up. They were
10 handpicking. They were turning the dirt over with
11 shovels. And then a backhoe was pushing the dirt
12 into the pond.

13 So that whole process was going on for
14 about, I think, an hour and a half, two hours. And
15 around 10 o'clock, we received the stop work order
16 on the 11th.

17 Q. And then did work stop?

18 A. Yes.

19 Q. Did any work continue after the stop work
20 order?

21 A. No.

22 Q. Did you try to contact Miss Jensen any
23 other time that morning?

24 A. Can I refer to my notes, please?

1 Q. You mean you have no memory?

2 A. Well, I know there was so much going on
3 that morning.

4 Q. I'm showing the witness what's been marked
5 as Respondent's Exhibit No. 4 to refresh his
6 recollection.

7 A. Thank you.

8 THE HEARING OFFICER: For the record,
9 Mr. Schroeder, can we just identify what exactly
10 what Respondent's Exhibit 4 is?

11 MR. SCHROEDER: Handwritten notes of the
12 witness. He has looked at a page captioned
13 7/11/96. The first entry is 8:05 a.m.

14 BY MR. SCHROEDER:

15 Q. This is your handwriting?

16 A. This is Asif's handwriting.

17 Q. That's your brother?

18 A. Yes.

19 Q. Did he make these notes at or about the
20 time that the dates bear?

21 A. Yes.

22 Q. Okay.

23 A. On July 11, '96 around 8:30 a.m. --

24 MR. MACK: Objection, your Honor. Once again,

1 I think by his own admission, we're talking about
2 out-of-court statements made by a party who is not
3 here to be subject to cross-examination, and I would
4 object to his use of those notes.

5 MR. SCHROEDER: Naseem is not a party.

6 THE HEARING OFFICER: Well, as a --

7 MR. MACK: Those are out-of-court observations.

8 THE HEARING OFFICER: Hold on. Hold on.

9 MR. MACK: Excuse me.

10 THE HEARING OFFICER: As I understand, these
11 are handwritten notes by another party,

12 Mr. Schroeder?

13 MR. SCHROEDER: No, sir. They're not a party
14 to this action. Maybe that's --

15 THE HEARING OFFICER: I'm asking if these are
16 handwritten notes of this witness --

17 MR. SCHROEDER: They're handwritten notes by
18 another person --

19 THE HEARING OFFICER: -- or another -- let me
20 make myself clear.

21 THE REPORTER: Hold on. One at a time.

22 THE HEARING OFFICER: I'm sorry. One person at
23 a time. I apologize.

24 Let me make myself clear. I'm asking as I

1 understand Mr. Chaudhry's testimony, he has
2 indicated these are handwritten notes of another
3 individual other than himself?

4 MR. SCHROEDER: Correct.

5 THE HEARING OFFICER: The objection is
6 sustained.

7 MR. SCHROEDER: I'm sorry. What was the
8 objection to? What are you sustaining?

9 THE HEARING OFFICER: That they're based on
10 hearsay and out-of-court statements.

11 MR. SCHROEDER: He's not --

12 THE HEARING OFFICER: Where is his basis of
13 knowledge coming from, Mr. Schroeder?

14 MR. SCHROEDER: He is testifying to events that
15 he did at that time that his brother recorded at
16 that time. He's not testifying or authenticating
17 these notes, and these notes are not being put into
18 evidence. He used it for the sole purpose of
19 refreshing his recollection.

20 He's testified, and I've laid the
21 foundation. He was present. He did this. He did
22 that. This witness personally has done these
23 things. He couldn't remember the name of the
24 engineer. He used that to refresh his recollection

1 as to the name of the engineer.

2 He couldn't remember the time that the
3 stop work permit was there. He used that to refresh
4 his recollection as to that. But he's only
5 testifying as to his personal knowledge and not from
6 these notes.

7 THE HEARING OFFICER: Well, as far as
8 refreshing recollection, I do not believe that is an
9 appropriate way to refresh recollection through the
10 recorded events or transcribed events of another
11 party and allow someone other than the party who
12 recorded these events to refresh their recollection
13 based on someone else's recorded notes. Therefore,
14 I'm sustaining the objection.

15 As far as the prior testimony referring to
16 his recollection of the engineer, I believe -- if my
17 understanding is correct, he was able to -- he came
18 to that recollection without the notes before they
19 were handed to him. As to other times, I don't
20 recall other testimony related to that, but let me
21 make it clear that these notes --

22 MR. SCHROEDER: It was only the last question
23 he needed the notes for.

24 THE HEARING OFFICER: Let me make it clear.

1 As far as refreshing his recollection from
2 someone else's regarded notes I believe is not an
3 appropriate way to refresh recollection and will not
4 be allowed.

5 MR. SCHROEDER: Okay. Where did we leave off?

6 THE HEARING OFFICER: Is there a -- and I
7 apologize.

8 Will the court reporter please look?

9 (Record read.)

10 THE HEARING OFFICER: That question and answer
11 will stand.

12 Any other questions, Mr. Schroeder, at
13 this time?

14 BY MR. SCHROEDER:

15 Q. Let me try to pick up what -- and, again,
16 I'm only asking you about what you did, Doctor.

17 A. Right.

18 Q. The morning of July 11th, you testified
19 that you called Darlene Jensen's office and spoke to
20 a Rod there; is that correct?

21 A. Yes. Yes.

22 Q. And to make sure that everybody is clear,
23 you made that phone call?

24 A. Yes.

1 Q. The stop work order came later that
2 morning. What else did you do that morning?

3 A. Around 8:30 a.m. that morning, I called
4 Don Eddy, the engineer, his office again because he
5 had told me the day before on the 10th that he was
6 going to go to the zoning office in the morning,
7 which would have been the 11th of July, and that he
8 would provide me with some information. He was
9 going to look into the issue -- into the matter.

10 So I called his office at 8:30 a.m. on the
11 11th of July in Lemont, and his secretary told me
12 that he was at the zoning office as we spoke. She
13 told me personally.

14 Q. Okay. I'm not asking you what was in the
15 conversation --

16 A. Okay.

17 Q. -- what a secretary told you.

18 A. Then a few minutes later, Mr. Eddy called
19 back at my home phone, and he said that he was
20 calling from the zoning office, and he said that he
21 was going to share some information with me for
22 which he was not sure where that was coming from.
23 This is about 8:35 a.m. now. And he said that there
24 had been talk amongst the zoning people that the

1 pond had been constituted as a wetland.

2 MR. MACK: Objection, hearsay.

3 THE HEARING OFFICER: Mr. Schroeder?

4 MR. SCHROEDER: I'll defer to your ruling.

5 THE HEARING OFFICER: As I understand the

6 testimony, it is a restatement of someone else other

7 than the declarant.

8 Why is this being offered, Mr. Schroeder?

9 MR. SCHROEDER: I was asking him what he --

10 what this witness did, and he said he had called the

11 engineer, talked to the secretary, and the engineer

12 called him back.

13 THE HEARING OFFICER: Well, I believe the

14 testimony gets into out-of-court statement of that

15 individual regarding how this property is

16 perceived. I'm going to sustain the objection.

17 BY MR. SCHROEDER:

18 Q. After you spoke to Mr. Eddy on the morning

19 of the 11th, what else did you do that day?

20 A. I believe I left to go to the hospital

21 about 9:00 a.m.

22 Q. Did you make any other attempt to speak to

23 Darlene Jensen?

24 A. No.

1 Q. Why not?

2 A. Because I was reassured by Mr. Rod that
3 this message would have been relayed to Miss Jensen
4 around 8:30, and I felt pretty sure with that that
5 she was going to show up sometime that morning to do
6 her inspection. So I felt very actually reassured
7 that we had done what we were supposed to do and do
8 all the cleanup work, and we were actually waiting
9 for her to show up or send somebody down to inspect
10 it.

11 Q. And this was on the 11th?

12 A. This was on the 11th.

13 Q. Do you know if she ever inspected it
14 again?

15 A. Not to my knowledge.

16 Q. Then after you went to work, did anything
17 happen at work, or did you complete your day at
18 work?

19 A. Oh, no. I got a page again about 15 after
20 10:00 in the morning from my younger brother,
21 Mahmood, that the zoning people had shown up with
22 the violation notice again.

23 Q. Did you go out to the property at that
24 time?

1 A. I came out about 12:30 in the afternoon
2 during my lunch break.

3 Q. And what happened when you arrived at
4 12:30?

5 A. Right. I saw that the workers were
6 basically sitting. The machines were stopped. And
7 my brother showed me the violation notice, which
8 stated to stop all work, and it listed two reasons
9 for that.

10 The first reason listed was that we were
11 dumping in wetlands. The second reason listed on
12 that notice was that we had not paid the sewer fees
13 when we obtained the original permit.

14 Q. Okay. After you saw the notice, what
15 happened next?

16 A. The contractor, Mr. Miller, was at the
17 house. The excavation contractor was at the house.
18 And there were both very surprised and baffled. And
19 about 1 o'clock in the afternoon I called an
20 attorney who I thought -- who I thought knew
21 something about real estate law. His office is in
22 Downers Grove which is right across from my medical
23 offices. So I --

24 Q. Okay. I'm not asking what you talked

1 about with your attorney, Doctor.

2 Q. Did you retain that attorney?

3 A. Yes.

4 Q. And did you that day or the next day have
5 any other meetings with Mr. Jensen or anyone from
6 her office?

7 A. Yes.

8 Q. When was the next time?

9 A. I explained to the attorney the urgency of
10 the issue --

11 THE HEARING OFFICER: Okay. Okay. Okay.

12 BY MR. SCHROEDER:

13 Q. I'm not talking about the attorney.

14 When did you meet with Miss Jensen or
15 someone from her office?

16 THE HEARING OFFICER: Thank you.

17 BY THE WITNESS:

18 A. I called her office, and I was referred to
19 Mr. James Walsh's office.

20 BY MR. SCHROEDER:

21 Q. Okay. When did you call her office?

22 A. It would have to be between 1:00 and 2:00
23 in the afternoon.

24 Q. On the 11th?

1 A. On the 11th. Because I was very surprised
2 to find out why they had done this. So I wanted to
3 know the basic reasons, you know, why they were
4 pulling the permit.

5 Mr. Walsh told me that he had no knowledge
6 of whatever was going on, and he said this matter
7 was not in his jurisdiction.

8 Q. And Mr. Walsh was also a county official?

9 A. Yes.

10 Q. Do you recall what district he was with?

11 A. I believe he's with the building and
12 zoning enforcement.

13 Q. And when he told you he didn't know what
14 was going on, what was your reaction?

15 A. Totally surprised.

16 Q. And what happened then?

17 A. Well, I set up an urgent meeting with this
18 attorney who asked me to just bring all the
19 paperwork to his office that afternoon.

20 Q. Was that the end of your contact with the
21 county for that day?

22 A. Yes.

23 Q. Did you ever -- were you ever able to
24 reach Miss Jensen after the 11th?

1 A. No.

2 Q. Did Miss Jensen ever return your phone
3 call of the 10th or 11th?

4 A. No.

5 Q. How long did you continue to live at the
6 property?

7 A. From April of '95 through August of '96.

8 Q. So you lived there at least a month after
9 this incident?

10 A. Yes.

11 Q. Now, you said that a lot of the demolition
12 work was with respect to the garage. I'm going to
13 show you again Plaintiff's Exhibit 1-A and ask if
14 you'll note on the building in this picture there
15 appears to be exposed roof beams on the left-hand
16 side of the building; is that correct?

17 A. Yes.

18 Q. Where would the garage be in relation to
19 that portion of the structure?

20 A. Actually, that is the garage which was
21 being demolished.

22 Q. So that's why the demolition was taking
23 place?

24 A. Correct.

1 Q. Okay. Now, during the time that you
2 occupied the property from, let's say, June of '96
3 through the end of July of '96, that two-month time
4 span --

5 A. Yes.

6 Q. -- did you ever see any garbage in the
7 pond?

8 A. No.

9 Q. Did you ever see any refuse or plastic
10 jugs or anything of that nature in the pond?

11 A. No.

12 Q. Old pop bottles, old cans?

13 A. No.

14 Q. I'm going to show you what's been marked
15 as Plaintiff's Exhibit 1-D, which is the photograph
16 that Miss Jensen made three circles on and ask you
17 to take a look at that for a moment and look at with
18 where she circled those three items?

19 A. Yes.

20 Q. Have you had a chance to study that?

21 A. Yes, I did.

22 Q. Can you tell me what those items are from
23 that photograph?

24 A. I absolutely have no clue.

1 Q. All right. But you were out there the day
2 this was purported to have been taken on June 28th?

3 A. Yes.

4 Q. Was there any particular container bags
5 out there at that time?

6 A. No.

7 Q. How did you and your family dispose of
8 garbage at that time?

9 A. The usual way. We had two containers
10 which were provided by the city and --

11 Q. Two garbage cans, you used those?

12 A. Yes.

13 MR. SCHROEDER: I have nothing further.

14 THE HEARING OFFICER: Mr. Mack?

15 MR. MACK: Mr. Burds, can I request a very
16 short recess for a restroom break --

17 THE HEARING OFFICER: Sure.

18 MR. MACK: Before -- we begin?

19 THE HEARING OFFICER: Of course.

20 (Break taken.)

21 THE HEARING OFFICER: Okay. Let's go back on
22 the record.

23 Mr. Chaudhry, you are still under oath --

24 THE WITNESS: Yes.

1 THE HEARING OFFICER: -- do you understand?

2 All right. We are proceeding with the
3 cross-examination of Mr. Chaudhry. Is that correct,
4 Mr. Schroeder? You are complete?

5 MR. SCHROEDER: Yes.

6 THE HEARING OFFICER: All right. Mr. Mack?

7 CROSS-EXAMINATION

8 by Mr. Mack

9 Q. Mr. Chaudhry, you testified on the outset
10 that another one of your brothers was also residing
11 at the house at the time --

12 A. Yes.

13 Q. -- of these events?

14 Was it one or two other brothers?

15 A. Actually, by June 28th there was only one
16 brother -- one other brother living at the house.

17 Q. Okay.

18 A. But there was another third brother who
19 was also in and out of the house, but he did have a
20 room in the house, but he would come and stay.

21 Q. Okay. Are you familiar that subsequent to
22 these events an ordinance violation was brought
23 against --

24 MR. SCHROEDER: Objection, relevance.

1 THE HEARING OFFICER: Let's hear the question.

2 BY MR. MACK:

3 Q. -- your brothers and Abdus Salam, Saleem,

4 who is not with us today, Mahmood? I don't think

5 that you were a defendant in that proceeding. But

6 it was regarding a violation for a full permit.

7 THE HEARING OFFICER: Okay. Objection still --

8 MR. SCHROEDER: Yeah.

9 THE HEARING OFFICER: -- based on relevance?

10 How is this relevant, Mr. Mack?

11 MR. MACK: He testified that they had a valid

12 fill permit at the outset of his testimony which

13 allowed some of the movement of earth -- at least

14 their belief that they could move earth, and I'd

15 like to get into that testimony.

16 MR. SCHROEDER: I don't think he used the word

17 fill. If he wants to get into that testimony, why

18 doesn't he ask him about what he observed or saw at

19 the time? What relationship does that have to some

20 subsequent court action?

21 THE HEARING OFFICER: Well, I assume that that

22 could come to foundation you would lay related to

23 that action; is that correct, Mr. Mack?

24 MR. MACK: Yes, sir.

1 THE HEARING OFFICER: I'll allow it for now.

2 For the record, the objection is noted. I'm

3 reserving ruling.

4 MR. MACK: Very good.

5 BY MR. MACK:

6 Q. Are you familiar with the ordinance

7 violations that were brought against your brothers

8 regarding the fill permit?

9 A. Yes.

10 Q. Are you familiar that guilty verdicts were

11 found against each of your brothers regarding that?

12 MR. SCHROEDER: Objection.

13 THE HEARING OFFICER: Basis?

14 MR. SCHROEDER: A point of fact --

15 MR. MACK: I'm going to get to that if you're

16 talking about the appeal.

17 MR. SCHROEDER: He's talking to this witness

18 about another action that he's not even a party to.

19 He started off the questioning with an ordinance

20 violation case involving his brothers, but he was

21 not named in it. He said he was familiar with it.

22 It has no relevance to what went on in June of 1996.

23 THE HEARING OFFICER: Object noted. I think

24 foundation is lacking. I would like you to tie up

1 how it is related to this proceeding as even related
2 to this property and this site, Mr. Mack. I will
3 allow you to do so, but do so quickly.

4 MR. MACK: I will.

5 BY MR. MACK:

6 Q. Is it your belief today that a fill permit
7 was ever issued on that property?

8 MR. SCHROEDER: I'm going to the object to the
9 word "fill permit."

10 BY MR. MACK:

11 Q. A permit --

12 THE HEARING OFFICER: Okay. Hold on. Hold
13 on. Hold on. I think the standard is whether the
14 witness understands.

15 Do you understand what he means by fill
16 permit, Mr. Chaudhry?

17 THE WITNESS: No, I don't.

18 THE HEARING OFFICER: All right. Then let's
19 restate the question or go back, Mr. Mack.

20 BY MR. MACK:

21 Q. Is it your understanding or knowledge that
22 an excavation fill permit was ever pulled by you,
23 any of your brothers, or any of your contractors for
24 that property that you resided on during the

1 relevant events?

2 A. I really still don't understand your
3 question exactly.

4 Q. Is it your understanding today that you
5 ever had a valid fill permit for that property?

6 MR. SCHROEDER: I object as to relevance.

7 THE HEARING OFFICER: Overruled.

8 The witness can answer.

9 BY THE WITNESS:

10 A. If I'm allowed to elaborate, I can
11 elaborate on what my understanding of this process
12 was of obtaining the permit.

13 THE HEARING OFFICER: Well, Mr. Chaudhry --

14 BY MR. MACK:

15 Q. That's not my --

16 THE HEARING OFFICER: Hold on.

17 Mr. Chaudhry, do you understand the
18 question?

19 THE WITNESS: No, I don't.

20 THE HEARING OFFICER: What don't you
21 understand?

22 THE WITNESS: I don't understand the term fill
23 permit.

24 MR. SCHROEDER: I think --

1 THE HEARING OFFICER: Hold on. Hold on.

2 Mr. --

3 MR. SCHROEDER: Can we have a side bar?

4 THE HEARING OFFICER: Yes.

5 (The following proceedings were

6 held outside the presence of

7 the witnesses.)

8 THE HEARING OFFICER: Mr. Schroeder has asked

9 for a side bar.

10 MR. SCHROEDER: I think where some of the

11 witness' confusion is coming is the question has

12 switched terms on the witness from what he used in

13 his direct testimony. He testified to a building

14 permit --

15 MR. MACK: Harry, he testified --

16 THE HEARING OFFICER: Hold on. Hold on. Hold

17 on. We're going to recognize common courtesy. Let

18 Mr. Schroeder finish.

19 MR. SCHROEDER: It's my understanding of his

20 direct testimony, maybe she could look it up in the

21 record, when I asked him the questions about what

22 went on that day, he said that they had received a

23 permit or a building permit and that included what

24 he thought he had the authority after that to do,

1 that the excavation was approved.

2 He's asking him about a different kind of
3 permit that there's a separate case on which is an
4 excavation of a fill permit, in point of fact,
5 they're two different things, two different
6 animals. And I think that's what's confusing this
7 witness, and I think it's an unfair confusion if he
8 testified about what kind of permit to give him a
9 question that assumes his prior answer was talking
10 about another permit.

11 That's why I asked him to leave the room
12 so that we could have this without prejudice.

13 THE HEARING OFFICER: Mr. Mack?

14 MR. MACK: Mr. Burds, my understanding is that
15 there was some testimony regarding a building
16 permit, but I also thought -- and I think I have it
17 in my notes -- that there was also testimony
18 elicited from Naseem that excavation fill permit had
19 been obtained to put fill into the pond, and that
20 was the basis of the movement of dirt around that
21 property.

22 And if I'm wrong, I'm wrong, but I'm
23 asking him to his knowledge does he have a valid
24 fill permit, excavation fill permit. If he says he

1 doesn't know, then he doesn't know. But it seems to
2 me very relevant, either he has one or he doesn't or
3 he doesn't know.

4 MR. SCHROEDER: And he's indicated twice he's
5 had trouble with the term fill permit because that's
6 not what he testified to. He testified about a
7 building permit, and he said that had been approved
8 for excavation work. And now you're switching terms
9 on him.

10 MR. MACK: It's --

11 THE HEARING OFFICER: Okay. Here's -- I've
12 heard it.

13 As far as the understanding of the
14 witness, the witness has very clearly stated he
15 doesn't understand what you mean by fill permit, at
16 least on two occasions. As far as the fill permit,
17 I agree. He can certainly say he does not know
18 whether one was granted or whether he knows or not
19 what a fill permit is.

20 He's certainly able to discern whether or
21 not or how that term is being used. I do recall
22 testimony regarding permits being issued from this
23 witness. Now, what basis of knowledge and what
24 level of knowledge as to the type and adequacy or

1 sufficiency of those permits, I think is something
2 left better to the witness to determine and for him
3 to decide as to that concern.

4 And that's something you can certainly
5 bring up in redirect.

6 Now, as far as this question regarding the
7 fill permit, I think this witness has indicated at
8 least twice that he doesn't understand what you mean
9 by a fill permit.

10 MR. MACK: Yes.

11 THE HEARING OFFICER: And I think if that is
12 concerned, then I think the appropriate question may
13 be whether he knows whether any permit --

14 MR. MACK: You see, part of the problem,
15 Mr. Burds, is that the witness that I subpoenaed
16 does have a guilty conviction for fill without a
17 permit who is a party of this suit, and I can't get
18 out of that, and that is very relevant information
19 as far as the movement of dirt on there, and here --

20 MR. SCHROEDER: Well --

21 THE HEARING OFFICER: Okay. Hold on.

22 MR. MACK: And once again I'm hamstrung by the
23 fact that I've got someone here that I haven't even
24 prepared for that is working off notes another

1 brother prepared and I would ask some leniency by
2 virtue of the fact that --
3 THE HEARING OFFICER: I think you're asking me
4 a different question. I think you're asking me to
5 determine whether or not you're allowed to engage in
6 this line of questioning and no ruling at this time
7 has prevented you from doing so.

8 In fact, all I've asked you to do is tie
9 it to this site and the allegations alleged at this
10 site; i.e., who is involved, is it a permit related
11 to that site, whether this witness knows.

12 However, using this witness to bring in
13 something that, you know, certainly can be given,
14 you know, administrative or judicial of whether it's
15 a guilty plea, you know, I don't know what the
16 current state of affair is in that case. I do not
17 know. But whether or not judicial notice will be
18 taken of that, whether this witness has any
19 knowledge of that, let's find out.

20 MR. MACK: Okay.

21 MR. SCHROEDER: I'd like to respond.

22 THE HEARING OFFICER: Mr. Schroeder, yes?

23 MR. SCHROEDER: I'd like to respond Mr. Mack's
24 comments.

1 First of all, he says he's surprised by
2 this witness. He did not ask me for a list of
3 witnesses. Whether Saleem Chaudhry was here or not,
4 I would be entitled to call this witness just as he
5 had three other people sitting in the back row ready
6 to testify if he needed them that he did not give me
7 any forewarning of.

8 And for him to ask for leniency, in his
9 words, because I chose to call a witness that he
10 didn't ask me to identify ahead of time is totally
11 improper and assumes that somehow I manipulated my
12 client not being able to be here by calling a
13 factual witness. That's not the case.

14 With respect to the fill permit issue,
15 there was a two count complaint for an ordinance
16 violation. One was littering on this property which
17 is one of these counts where there was a directed
18 finding and an acquittal, and the other one was a
19 finding of guilty and that's on appeal as to the
20 permit, excavating without a permit.

21 MR. MACK: Right.

22 MR. SCHROEDER: That part is on appeal. There
23 hasn't been a final decision in that yet. That was
24 not appealed. The littering was an acquittal. That

1 is a final decision. If you want to take judicial
2 notice, let's put the whole thing on.

3 THE HEARING OFFICER: Okay. Is that
4 satisfactory, Mr. Mack?

5 MR. MACK: Yes.

6 THE HEARING OFFICER: If we put it on the
7 record. Then let's do this now. As far as -- I
8 want this --

9 MR. MACK: I'm going to --

10 THE HEARING OFFICER: If it's going to be in
11 the form of a --

12 MR. MACK: Let me just ask. I have a very
13 limited scope of questions. I'm going to ask him
14 what permits does he have knowledge of are being
15 pulled and what does he not have knowledge of, and
16 that's it.

17 MR. SCHROEDER: How can he ask him what he
18 doesn't have knowledge of?

19 THE HEARING OFFICER: Well, what if he doesn't
20 have knowledge is the question.

21 MR. MACK: Okay.

22 THE HEARING OFFICER: I think Mr. Schroeder has
23 indicated that he's willing to put the whole thing
24 on the record related to the adjudication you're

1 referring to; i.e., the ordinance violation, as long
2 as it includes the acquittal or the directed finding
3 related to litter.

4 MR. MACK: Sure.

5 MR. SCHROEDER: And that there's no final
6 finding in that case as to the --

7 MR. MACK: Well, I was going to point that
8 out.

9 THE HEARING OFFICER: For the record, so it's
10 clear, that's being appealed. The relevance of that
11 you can argue in posthearing brief, in closing
12 argument, and the weight to be given to it, you can
13 argue. Certainly, that's a legal determination, not
14 a factual one.

15 Now, who wants to make this stipulation?

16 MR. SCHROEDER: Do you have the documents from
17 that case?

18 MR. MACK: (Indicating.)

19 (Counsel perusing documents.)

20 MR. SCHROEDER: I do too.

21 THE HEARING OFFICER: Since we are in the
22 respondent's case, what I guess -- my preference
23 would be to have Mr. Schroeder make the stipulation,
24 and then you can add any comments, Mr. Mack. Do you

1 have any objection to that? You can add any
2 comments.

3 I know that we're doing this sua sponte so
4 I don't want to hold anybody to -- so that's why
5 we're doing this now.

6 As far as Mr. Schroeder's comments
7 regarding leniency, for the record, there's been no
8 leniency given.

9 MR. SCHROEDER: That was his request.

10 THE HEARING OFFICER: Well -- and I'm
11 indicating that --

12 MR. MACK: Some discretion.

13 THE HEARING OFFICER: As far as the discretion,
14 I'm limited by what the rules of law allow me to do,
15 and I believe that this is the type of matter that
16 can be, as in this case, stipulated to or be taken
17 judicial notice of. How it's taken is what is
18 presented to me.

19 So why don't we do this? Let's bring the
20 parties in. Mr. Schroeder, you can relate -- well,
21 let's do this. Let's do this in the absence of --

22 MR. SCHROEDER: We'll have the stipulation
23 first and then have --

24 THE HEARING OFFICER: That's probably the best

1 idea. Let's do this stipulation, and then we'll
2 bring the witness back. That way we can preserve
3 any of his recollection because I don't want to
4 preclude you from -- because I think if you wish to
5 engage in that line of inquiry to find out what his
6 basis of knowledge is or what his level of knowledge
7 is, that's fine.

8 MR. MACK: Okay.

9 THE HEARING OFFICER: I don't think that's
10 unreasonable.

11 MR. SCHROEDER: I don't think he can ask him
12 what he doesn't know though. You can't ask what is
13 it you don't know.

14 THE HEARING OFFICER: I don't disagree. I
15 don't think that's what Mr. Mack is asking for.

16 Let's go ahead. Mr. Schroeder, related to
17 the stipulation, related to the ordinance violation,
18 do we he have the case number?

19 MR. SCHROEDER: There are three cases that were
20 consolidated, 96 OV 6301, County of DuPage vs. Abdus
21 Salam, A-b-d-u-s S-a-l-a-m, Chaudhry; 96 OV 6302,
22 which is County of DuPage vs. Mahmood,
23 M-a-h-m-o-o-d, Chaudhry; and 96 OV 6303, which is
24 County of DuPage vs. Asif, A-s-i-f, Chaudhry.

1 None of those cases were brought against
2 Saleem Chaudhry, but rather the named individuals
3 I've just named.

4 THE HEARING OFFICER: Okay. Can I ask for
5 clarification? The parties in this case are those
6 three named defendants?

7 MR. SCHROEDER: Yes.

8 THE HEARING OFFICER: By the County of DuPage's
9 complaint?

10 MR. MACK: Yes, sir.

11 MR. SCHROEDER: Yes.

12 THE HEARING OFFICER: Okay.

13 MR. SCHROEDER: The ordinance violation was two
14 counts, and it was brought in the form of an amended
15 complaint. Count I of the amended complaint, which
16 is what went to trial, alleged among other things --
17 I'm trying to get the exact language here.

18 MR. MACK: This is the amended complaint
19 (indicating).

20 MR. SCHROEDER: Okay. (Continuing.) -- a
21 violation of the zoning ordinance requiring
22 excavation filling permit which is Section 37-14.8
23 of the DuPage County zoning ordinances and
24 specifically alleged that on or about August 24th --

1 on or about July 24, 1996, and August 7, 1996, the
2 above named defendant dumped several piles of fill
3 adjacent to the pond on the subject property in
4 violation of the above section of DuPage County
5 zoning ordinance.

6 Count II alleged a violation of DuPage
7 County ordinance 37-7.08 which prohibited the
8 storage of junk or debris on all residential lots
9 and 37-3.2 an accumulation of waste, scrap,
10 discarded, or salvaged materials and other garbage
11 and refusing but not limited to unusable disregarded
12 appliances, home furnishing, auto parts, rubber
13 tires, and landscape debris.

14 And the complaint in Count II alleged on
15 or about July 24, 1996, and August 7, 1996, the
16 defendants maintained junk and debris consisting of
17 bricks, paper, piping, conduit strewn near the pond
18 on the subject property in violation of the above
19 section of the DuPage County zoning ordinance.

20 The present status of the case is that
21 there was a trial on the both counts. As to the
22 count of storing junk and debris, there was a
23 directed verdict in favor of all three defendants.
24 I'm sorry. I don't have the trial date handy.

1 MR. MACK: Let's see.

2 THE HEARING OFFICER: I don't know if that's

3 necessary. I guess for the purposes of the

4 stipulation, what I would like to know is the

5 subject site property the property we have been --

6 received testimony that's the subject of

7 administrative citation.

8 MR. MACK: Yes, sir.

9 MR. SCHROEDER: Yeah. We'll stipulate it is

10 the same subject property.

11 THE HEARING OFFICER: All right.

12 MR. SCHROEDER: The status of the other

13 remaining count concerning excavating and filling

14 without a permit was a finding of guilty in a bench

15 trial, and that finding or ruling is currently on

16 appeal before the Second District Court of Appeals

17 and has not yet been a final ruling on it.

18 THE HEARING OFFICER: Okay. Which count was

19 that related to? Is that --

20 MR. MACK: That's the excavation and/or fill

21 without a permit.

22 MR. SCHROEDER: And the junk and debris count

23 was a directed finding in favor of the defendants.

24 THE HEARING OFFICER: Okay. This is, in fact,

1 a stipulation to allow the board to take judicial

2 notice of the events that you just --

3 MR. SCHROEDER: To the extent it is relevant.

4 THE HEARING OFFICER: Relevant or what --

5 MR. SCHROEDER: I'm not waiving my objection as

6 to relevancy.

7 THE HEARING OFFICER: I understand.

8 MS. REKASH: Are you ready?

9 THE HEARING OFFICER: Yes. Thank you.

10 (The following proceedings were

11 had in open court.)

12 THE HEARING OFFICER: Okay. Let the record

13 reflect that the witness, Mr. Chaudhry, has returned

14 to the witness stand.

15 Mr. Chaudhry, you are still under oath.

16 THE WITNESS: Yes.

17 THE HEARING OFFICER: I will indicate for the

18 record, and the record should already indicate that

19 a stipulation was entered into by the parties

20 without -- by both paragraphs; is that correct,

21 Mr. Schroeder?

22 MR. SCHROEDER: Correct.

23 THE HEARING OFFICER: Mr. Mack?

24 MR. MACK: Yes.

1 THE HEARING OFFICER: (Continuing.) -- without
2 any waiver of any relevance objection on behalf of
3 Mr. Schroeder.

4 That stipulation is so entered into the
5 record. What weight will be determined by the board
6 that it is given.

7 All right. Now, Mr. Mack?

8 CROSS-EXAMINATION

9 by Mr. Mack

10 (cont'd)

11 Q. Mr. Chaudhry, do you have knowledge of any
12 or all permits that were pulled that were related to
13 the construction at your property?

14 A. I would say yes.

15 Q. Could you describe for the board what
16 permits were pulled based on your knowledge?

17 A. I believe there was one permit which
18 was -- which was granted to us on July 5, 1996,
19 which was supposed to have covered the entire
20 construction project which included the addition to
21 the house and the regrading of the land that
22 surrounds the house.

23 Q. Okay. Did you personally pull the permit,
24 or did one of your contractors?

1 A. I know that I went with the contractor for
2 several of the meetings with the zoning people up
3 here, but he's the one who put in the application
4 for the permit.

5 Q. And to whom was the permit issued to? Who
6 paid for the permit upon its approval?

7 A. You mean who paid the --

8 MR. SCHROEDER: I'll object to relevancy.

9 THE HEARING OFFICER: Noted. Overruled at this
10 time.

11 If you know.

12 BY THE WITNESS:

13 A. Yes. That's what I'm trying to think of.

14 You're asking me who paid for the permit fees.

15 BY MR. MACK:

16 Q. (Nodding head.)

17 A. I wrote the check.

18 Q. Okay. Did you pick up the permit?

19 A. The contractor did.

20 Q. Okay. Did you look at the permit that the
21 contractor picked up?

22 A. Yes.

23 Q. Okay. You spoke of talking to Mr. Eddy
24 earlier in your testimony regarding debris placed

1 around the pond; is that correct?

2 A. Yes.

3 Q. You were confirming the legitimacy of that

4 activity; is that correct?

5 A. In essence, yes.

6 Q. Okay. Did Mr. Eddy relate to you that he

7 was an enforcement officer or had any official

8 duties with the county?

9 A. Could you repeat your question again,

10 please?

11 Q. Did Mr. Eddy indicate to you that he was

12 an enforcement officer for the county?

13 A. No.

14 Q. You were living at the premises on or

15 around June or July of '96?

16 A. Yes.

17 Q. Okay. And it was -- it was -- I'm sorry.

18 Yourself and which brother were --

19 A. Mahmood.

20 Q. Mahmood?

21 A. Right.

22 Q. Okay. Did you have garbage receptacles in

23 the house?

24 A. Yes.

1 Q. Okay. How would you dispose of your
2 household garbage?

3 A. Well, typically, you put them in the bags,
4 and you place them in the Dumpsters on the outside,
5 which was right outside of the garage door.

6 Q. Okay. Fair enough.
7 So you lined the garbage receptacles in
8 the house with bags of some sort?

9 A. Typically.

10 Q. Plastic bags?

11 A. Yes.

12 Q. Let me direct your attention to
13 Plaintiff's Exhibit 1-D. The circled items in the
14 picture, do those appear to be plastic bags or not?

15 A. No.

16 Q. They don't?

17 A. No, not to me.

18 Q. All right. Let me direct your attention
19 to photograph 1-B.

20 Does the construction debris in that
21 photograph appear to be in the water or touching the
22 water?

23 THE HEARING OFFICER: For the record, we're
24 referring to 1-B --

1 MR. MACK: Yes, sir.

2 THE HEARING OFFICER: -- as in boy?

3 Thank you.

4 BY THE WITNESS:

5 A. I see it on the edge of the pond. I do

6 not see it inside the water.

7 BY MR. MACK:

8 Q. Okay. In your estimation, how far would

9 it be from the pond based on that photograph?

10 A. It's close.

11 Q. A foot?

12 A. Perhaps.

13 Q. More than six feet?

14 A. No.

15 Q. Okay. You also testified earlier that --

16 let me ask you this first.

17 Did you have any direct control over the

18 contractors that were working on the property

19 pursuant to the permits that you felt were valid?

20 A. I don't know what you mean by that. Did I

21 control --

22 Q. Did you give them instructions or give

23 them authority to do their various jobs?

24 A. Well, of course, you give them authority

1 to do the jobs that they're supposed to do.

2 Q. Okay.

3 A. Right.

4 Q. Okay. So you did from time to time speak

5 with one of your contractors or subcontractors on

6 specific items?

7 A. Sure.

8 MR. SCHROEDER: Objection, relevancy.

9 THE HEARING OFFICER: Can I hear the question?

10 (Record read.)

11 THE HEARING OFFICER: What's the basis of the

12 objection, relevance?

13 MR. SCHROEDER: Yes.

14 THE HEARING OFFICER: Overruled.

15 BY MR. MACK:

16 Q. You testified earlier -- and I'm handing

17 the witness photograph 1-A -- that the portion of

18 construction that was being demolished was the

19 garage; is that correct?

20 A. That's not all true. The whole -- the

21 surrounding of the house was being demolished.

22 Q. Okay.

23 A. All the brick was being taken off. All

24 the flashings were being taken off. The roof

1 structure was going to be redesigned. So it was not
2 simply an addition to the house. It was the
3 complete overhaul of the existing house with new
4 brick, new exterior, new roofs --

5 Q. Okay.

6 A. -- and the addition to the house.

7 Q. Okay.

8 A. Yes.

9 Q. Okay. From what distance approximately --
10 you can say either yards or feet --

11 A. Sure.

12 Q. -- would it be from the edge of the pond
13 here to the house (indicating)?

14 THE HEARING OFFICER: Why are you referring to
15 in the photograph for purposes of the record? When
16 you say edge of the pond, are you pointing to a
17 specific location?

18 MR. MACK: I'm referring to the edge of the
19 pond that is directly -- the straightest line to the
20 house itself.

21 THE HEARING OFFICER: From the pond?

22 MR. MACK: Right.

23 THE HEARING OFFICER: Thank you.

24

1 BY THE WITNESS:

2 A. I would have to guesstimate, 30 to 40
3 yards.

4 BY MR. MACK:

5 Q. Thirty to 40 yards?

6 A. Yes.

7 Q. How much -- in terms of yardage, how much
8 yardage do you think this -- you did observe this
9 debris here?

10 A. Yes.

11 Q. How much yardage would you say this would
12 be comprised of, ten yards of debris?

13 A. No.

14 Q. More than that?

15 A. No, less than that.

16 Q. Less -- five yards?

17 A. Five yards maybe.

18 Q. Across from one width to the other?

19 A. Yes.

20 Q. Okay. Pointing your attention to what
21 appears to be an open land space here adjacent to
22 the garage on the photograph, was there any reason
23 why demolition debris wasn't staged there?

24 A. Several reasons actually. One of them was

1 because most of this part of the land was going to
2 be excavated and regraded all over across the whole
3 backyard.

4 Q. Okay.

5 A. So the effort was to keep the stuff that
6 was supposed to be hauled away at a later date away
7 from the excavation site.

8 Q. Okay.

9 A. So the bulldozers could come in in a week
10 or so, and they could start the digging. So they
11 didn't have to waste time to remove the debris first
12 from the site which was supposed to be excavated.

13 Q. Okay.

14 A. So that's why you see bricks on the back
15 of the house here, which they don't belong there.
16 But they were just piled to be hauled away at a
17 later date.

18 Q. Okay. So then your testimony is that it
19 was a conscious decision on the part of someone to
20 put the debris in or around the pond?

21 MR. SCHROEDER: Objection. I understood his
22 testimony was the debris was to be where it would be
23 easily hauled away up at top and only the dirt down
24 on the bottom --

1 THE WITNESS: Yes.

2 MR. SCHROEDER: -- not the other way around.

3 THE HEARING OFFICER: Basis of the objection?

4 MR. SCHROEDER: He's misstating the witness'
5 testimony, misleading.

6 THE HEARING OFFICER: Well, I understand the
7 question he's asking if he knows whether or not --
8 he's asking this witness if he knows whether or not,
9 in fact, it was a conscious decision to -- and I
10 don't recall what --

11 MR. SCHROEDER: That's the problem.

12 THE HEARING OFFICER: Okay. Let's go here.

13 Reread the question, please. I'm sorry.

14 (Record read.)

15 MR. SCHROEDER: The last part is my objection.

16 It misstates his testimony.

17 THE HEARING OFFICER: Well, let the witness --

18 do you understand the question, Mr. Chaudhry?

19 THE WITNESS: Yes, I do.

20 THE HEARING OFFICER: The objection is

21 overruled.

22 You may answer.

23 BY THE WITNESS:

24 A. No.

1 BY MR. MACK:

2 Q. Why wasn't it?

3 A. I don't understand the question, the
4 second part of it.

5 Q. Okay. Let me just -- let me recap what is
6 becoming kind of a compound inquiry.

7 First I asked why couldn't the debris be
8 placed closer to the house, and you responded -- is
9 that your understanding of my first question?

10 A. Yes.

11 Q. And then I asked -- and you responded that
12 because we contemplated some excavation and
13 topographical work?

14 A. Yes.

15 Q. Okay. Then I asked, so then was it a
16 conscious decision or a decision by design based on
17 that work contemplated to put the fill -- put the
18 construction debris in or around the pond?

19 A. I would still say no because -- this is
20 looking at the hindsight now. Okay. At the time
21 when you are in the process of this whole thing
22 going on, four or five guys working, as I mentioned
23 earlier, there are several piles around the house at
24 different distances. So this was just another pile

1 at a certain distance away enough where the trucks
2 could come in around the excavation site to pick up
3 different, you know, piles to haul it away.

4 Q. Yeah.

5 A. That was the whole idea.

6 Q. Okay.

7 A. So we did not sketch it and make a
8 schematic for the contractor and tell them exactly
9 where they could put those piles.

10 Q. But it was determined by your testimony it
11 was about 40 yards between the house and the edge of
12 the pond?

13 A. Sure.

14 Q. And there was about five square yards of
15 debris?

16 A. Right.

17 Q. The best place to put the debris was some
18 50 yards from the house?

19 A. Yeah, because most of that area that
20 you're referring to -- in fact, you can go back now
21 and look at it. There are piles of dirt in that
22 area which was supposed to be spread around.

23 Q. Okay.

24 A. So this stuff was not supposed to be a

1 part of the fill.

2 Q. I got you.

3 Okay. I want to go back to this area of
4 household waste. You or your brothers or members of
5 your family who were living at the property, did you
6 at that time grow your own food on the premises?

7 MR. SCHROEDER: Objection. That's beyond the
8 scope of my direct examination. That's not
9 relevant. It has absolutely nothing to do with the
10 charges or the prior testimony.

11 MR. MACK: Mr. Burds, I believe in direct
12 examination it was elicited, did you disperse any
13 garbage around the perimeter of the house? Did you
14 throw any garbage in the pond? It has also been
15 argued by counsel that some of the allegations of
16 our administrative citation deal with open dumping
17 and what constitutes open dumping.

18 Now, my reading of the law is if you're
19 dumping off-site garbage on your property, you need
20 a permit for a sanitary landfill. To the extent
21 that those bags or whatever they are on top of that
22 construction debris are garbage or otherwise, I want
23 to know if it's produced on site.

24 MR. SCHROEDER: That's totally improper after

1 the witness has testified he doesn't know what those
2 bags are.

3 THE HEARING OFFICER: I'm not sure how that --
4 either those things are going to be elicited by
5 finding or determining whether or not they grew
6 their own food on the property, but I assume you'll
7 tie it up quickly, Mr. Mack.

8 MR. MACK: Okay.

9 THE HEARING OFFICER: We won't go far here.

10 MR. MACK: Okay.

11 THE HEARING OFFICER: I'm going to note the
12 objection. At this time, I'm going to reserve
13 ruling.

14 BY MR. MACK:

15 Q. Did you purchase items at the grocery
16 store, retail store, what have you, that were
17 disposed of in the garbage cans in the receptacles
18 of your house?

19 A. No.

20 THE HEARING OFFICER: That wasn't the
21 question. The question was -- as I recall the
22 question that was prior to this was whether
23 Mr. Chaudhry or anyone in his family grew produce or
24 any type of food on site.

1 MR. MACK: Okay.

2 THE HEARING OFFICER: Mr. Chaudhry, do you
3 recall the question?

4 THE WITNESS: Yes, I do.

5 THE HEARING OFFICER: Do you know what the
6 answer is?

7 THE WITNESS: Yes. The answer is yes.

8 THE HEARING OFFICER: All right. Now,
9 Mr. Mack, if you want to proceed.

10 BY MR. MACK:

11 Q. Okay. Did you purchase any items to be
12 consumed or used off site that were later disposed
13 of in the receptacles in your home?

14 A. Yes.

15 MR. SCHROEDER: Whoa. Whoa. Whoa.

16 Can you repeat your last question?

17 MR. MACK: Purchase anything that was off site,
18 off premises, of your home that was later disposed
19 of in your home.

20 THE HEARING OFFICER: No. That wasn't the
21 question.

22 Read back the question, please.

23 (Record read.)

24 MR. SCHROEDER: Compound question, and I

1 object.

2 THE HEARING OFFICER: The answer stands.

3 Objection overruled.

4 Next question.

5 BY MR. MACK:

6 Q. Mr. Chaudhry, at any time during these
7 relevant events, have either you or anyone else to
8 your knowledge obtained a sanitary landfill permit
9 from the IEPA?

10 A. No.

11 Q. Okay. Mr. Chaudhry, you testified that
12 you had instructed some members of the construction
13 team to pick up some debris that was around the
14 pond?

15 A. Yes.

16 Q. Can you refresh my recollection as to when
17 that instruction was given and when that work
18 occurred?

19 A. Actually, more specifically they were
20 asked to remove anything that appeared in any way
21 suspicious --

22 Q. Okay.

23 A. -- on the 10th of July.

24 Q. Okay.

1 A. But prior to that as soon as we had the
2 trucks hauling the stuff away, this pile was
3 actually completely dug up by a backhoe, dumped into
4 the truck and hauled away.

5 Q. That was prior to the 10th?

6 A. That was prior to the 10th, absolutely.

7 Q. Okay. So on the 10th -- is it fair to say
8 that on the 10th --

9 A. Yes.

10 Q. -- and days prior to the 10th,
11 instructions were given to workers to square away --
12 clean the pond up?

13 A. Yes.

14 Q. Let me point your attention to Peoples'
15 Exhibit 2-C, and I'm referring to both photographs
16 on Page 2-C.

17 THE HEARING OFFICER: Thank you.

18 MR. SCHROEDER: Which page is that? Mine
19 aren't marked.

20 MR. MACK: Oh, you don't have it on yours?
21 This one right here (indicating).

22 THE HEARING OFFICER: Do you have the photos,
23 Mr. Schroeder?

24 MR. SCHROEDER: I have the photos. I just

1 doesn't have the designated A, B, or C.

2 THE HEARING OFFICER: If the parties so wish,
3 we can certainly clarify what is what. If we're
4 going to brief this in the posthearing, that may be
5 necessary.

6 BY MR. MACK:

7 Q. Okay. Mr. Chaudhry, on the right-hand
8 side of the photos, there's some times that indicate
9 when the photos were taken.

10 On the first photo, the top photo, what
11 was the time range indicated?

12 A. It says July 10, '96.

13 Q. And what time of day?

14 A. Between 2:30 and 3:30 in the afternoon.

15 Q. Okay. Does that photo depict clean fill
16 dirt?

17 A. Yes, it does.

18 Q. You don't notice any debris in that photo?

19 A. It's very hard to really tell what this
20 photo shows --

21 Q. Sure. Sure.

22 A. -- at this moment.

23 Q. Okay. As long as it's clear to you,
24 that's all I'm asking.

1 A. Right.

2 THE HEARING OFFICER: Now, we're referring to
3 the top photo now, is that correct --

4 MR. MACK: Yes, sir.

5 THE HEARING OFFICER: -- of 2-C?

6 BY THE WITNESS:

7 A. I have no idea what this structure is that
8 is visible in the middle of the photo here.

9 BY MR. MACK:

10 Q. But you've identified it as a structure?

11 A. Yes.

12 Q. It's not dirt?

13 A. It's not dirt.

14 Q. On the lower photo -- and admittedly this
15 is even more difficult to discern, but would you
16 characterize that as clean fill dirt?

17 A. I do see elements other than dirt --

18 Q. Okay. Based on --

19 A. -- or at least what it appears to be.

20 Q. I'm sorry.

21 Okay. Based on the two photos that were
22 taken in the afternoon of the 10th, is it your
23 opinion that the construction workers who were
24 ordered to clean up the pond did a sufficient job?

1 A. Those instructions came after this second
2 visit from Miss Jensen.

3 Q. Okay.

4 A. And if she had shown up the following day,
5 which would have been the 11th of July, none of this
6 would have been there.

7 Q. Okay.

8 A. In fact, I brought with me some samples of
9 the materials which were picked out of this fill.
10 It was the remnants which were a part of the dirt
11 which was being excavated from underneath the
12 garbage. So all they were doing was taking that
13 dirt and putting it away for regrading.

14 Okay. At that time, I don't think
15 anybody -- I mean, anybody assumed that there would
16 be anything objectionable coming out of that
17 excavation.

18 Q. Okay.

19 A. So what was in the excavation is what you
20 see here, which was pieces of the plastic tar paper
21 that the previous construction people used, which
22 were pieces of the corrugated plastic pipes which
23 they used for underground drainage of the water, and
24 I have a specimen of that in that bag over there.

1 There were some cardboard pieces -- not
2 cardboard, but the felt paper which was torn pieces,
3 small pieces only. There was no garbage in this
4 dirt.

5 Q. Okay. Let me ask you this. Did you ever
6 provide Miss Jensen or anyone else from the county
7 with receipts of work -- of the clean up efforts
8 around the pond?

9 A. She did not bother to show up the next
10 day.

11 Q. Did you ever mail them to her?

12 A. This -- this --

13 Q. Let me ask you this. Did you ever provide
14 any documentation to Miss Jensen which would
15 substantiate that the pond was cleaned up?

16 THE HEARING OFFICER: Are you withdrawing the
17 last question, Mr. Mack?

18 MR. MACK: Yes, sir.

19 THE HEARING OFFICER: All right.
20 Mr. Chaudhry?

21 THE WITNESS: Can he elaborate on it?

22 THE HEARING OFFICER: Do you understand the
23 question, Mr. Chaudhry?

24 THE WITNESS: Yes, I do.

1 THE HEARING OFFICER: Please answer.

2 BY THE WITNESS:

3 A. Yeah. I think this whole thing is taken
4 out of context. Looking at a cross-section of an
5 event, which was an ongoing process, okay, and you
6 come and take some pictures and you try to prove a
7 case, I think that is highly unreasonable.

8 MR. MACK: Your Honor, I would object to this.

9 It's nonresponsive.

10 THE HEARING OFFICER: Mr. Chaudhry --

11 THE WITNESS: Yes.

12 THE HEARING OFFICER: -- you said you

13 understand the question. Please answer.

14 THE WITNESS: No, we did not --

15 THE HEARING OFFICER: Please answer the

16 question.

17 BY THE WITNESS:

18 A. No. My effort was to contact her that
19 morning on the 11th of July, offered her to come in
20 or send a representative to look at the efforts that
21 we had done with the cleanup.

22 BY MR. MACK:

23 Q. Did you ever obtain any affidavits from
24 any of the workers that the clean up had occurred?

1 A. I had listed the names of those workers in
2 my personal notes, yes. In fact, if you like, I can
3 get an affidavit from the excavation contractor who
4 actually employed those workers to do the job.

5 Q. Actually though, Mr. --

6 THE HEARING OFFICER: All right. The question
7 was, did you ever obtain affidavits from any of the
8 construction workers.

9 Is that accurate, Mr. Mack?

10 MR. MACK: Yes, sir.

11 BY THE WITNESS:

12 A. No, we did not, not at that time.

13 THE HEARING OFFICER: All right. Mr. Mack?

14 BY MR. MACK: Okay.

15 Q. Did you provide any written documentation
16 to Darlene Jensen prior to July 19, 1996?

17 A. I don't believe so.

18 MR. MACK: That's all.

19 THE HEARING OFFICER: Mr. Schroeder?

20 MR. SCHROEDER: Yeah. May I have just a
21 moment?

22 THE HEARING OFFICER: Of course.

23 (Brief pause.)

24 THE WITNESS: Can I confer with Mr. Schroeder

1 for a moment?

2 THE HEARING OFFICER: Not while you're
3 testifying.

4 THE WITNESS: Okay.

5 THE HEARING OFFICER: Although, Mr. Schroeder,
6 I don't -- what I want to respect is the witness is
7 in the middle of his testimony, Mr. Schroeder.
8 However, he's indicated a desire to speak with you.
9 I can certainly instruct him as to what he can speak
10 about, if he needs to speak to you about something
11 outside of this proceeding.

12 MR. SCHROEDER: I don't know what it is he
13 wishes to speak about.

14 THE HEARING OFFICER: As I don't, but if it's
15 related to this proceeding, Mr. Chaudhry --

16 THE WITNESS: Yes, it is.

17 THE HEARING OFFICER: -- well then no.

18 THE WITNESS: Well, actually I just recalled --

19 THE HEARING OFFICER: Okay. No.

20 For the -- the record will state the
21 witness has asked an opportunity to speak with
22 counsel related to his testimony in this
23 proceeding. I've indicated while under oath and
24 during his testimony that will not be permitted.

1 THE WITNESS: Okay.

2 THE HEARING OFFICER: Any objection to that
3 ruling, Mr. Schroeder?

4 MR. SCHROEDER: No, your Honor.

5 THE HEARING OFFICER: Thank you.

6 MR. SCHROEDER: May I begin my --

7 THE HEARING OFFICER: Of course. I'm sorry.

8 REDIRECT EXAMINATION

9 by Mr. Schroeder

10 Q. You were just asked a series of questions,
11 Doctor, about fill and excavation work that you had
12 ordered done --

13 A. Yes.

14 Q. -- and documents?

15 MR. SCHROEDER: I want to mark these two
16 documents.

17 THE HEARING OFFICER: As Respondent's 6.

18 MR. MACK: I'm going to object to those
19 documents being admitted into evidence. They're
20 out-of-court statements that indicate nothing.

21 THE HEARING OFFICER: Well, nothing has been
22 asked to be introduced into evidence at this time.
23 All we're doing at this time is marking the
24 documents. Let's see what counsel intends to do

1 with them.

2 So your objection is noted. I will

3 reserve ruling at this time.

4 MR. SCHROEDER: I believe it's five and six I'm

5 on?

6 THE HEARING OFFICER: Yes.

7 (Respondent's Exhibit Nos. 5

8 and 6 marked for identification,

9 04/01/98.)

10 BY MR. SCHROEDER:

11 Q. I'm going to show you what's been marked

12 Respondent's Exhibits 5 and 6 and ask you to take a

13 look at them?

14 MR. MACK: I'm objecting.

15 THE HEARING OFFICER: Have you seen these

16 documents, Mr. Mack?

17 MR. MACK: Yes. I didn't --

18 MR. SCHROEDER: Yes, he has.

19 MR. MACK: I have seen them.

20 THE HEARING OFFICER: Okay. Fine. Your

21 objection, now, Mr. Mack?

22 MR. MACK: I'll reserve my objection.

23 THE HEARING OFFICER: Fine. Mr. Schroeder?

24

1 BY MR. SCHROEDER:

2 Q. Have you seen those?

3 A. Yes, absolutely.

4 Q. What are those documents?

5 A. Actually, this is what I was going to ask

6 Mr. Schroeder if he had copies of because I

7 recalled --

8 Q. Doctor, answer my question.

9 A. Okay.

10 Q. Please listen to the question and answer

11 the question you're asked.

12 A. Yes.

13 Q. What are these documents?

14 A. Okay. These are receipts of the --

15 THE HEARING OFFICER: For purposes of the

16 record, Mr. Schroeder, can I ask that you have him

17 identify each document individually.

18 MR. SCHROEDER: Yeah, let's take them one at a

19 time.

20 THE HEARING OFFICER: They've been marked

21 individually. Let's take them one at a time.

22 BY MR. SCHROEDER:

23 Q. Okay. I'm handing you what's been marked

24 Respondent's Exhibit 5 for identification. Can you

1 describe that document?

2 A. Yeah. This is --

3 Q. Have you ever seen this before?

4 A. Yes, I have.

5 Q. What is it?

6 A. This is an extra work order receipt from

7 Fox Valley Excavating.

8 Q. What is Fox Valley Excavating?

9 A. They were the subcontractors for the

10 excavation and regrading.

11 Q. Were there people involved in the cleaning

12 up that you described on cross-examination?

13 A. Yes.

14 Q. Were there people involved in picking out

15 the debris from the dirt?

16 A. Yes.

17 Q. And what does that document reflect? Is

18 it a bill?

19 A. It is a bill.

20 Q. For what?

21 A. For hauling away broken asphalt.

22 MR. MACK: Objection. It is an invoice, and I

23 object to the characterization of it as a past tense

24 bill for work performed or services rendered or if

1 it is a projection for work to be performed or if it

2 is anything.

3 MR. SCHROEDER: It goes to the weight. He's

4 describing what it is, what his --

5 MR. MACK: I'm objecting to the face of the

6 document.

7 MR. SCHROEDER: What is the basis of the

8 objection, Mr. Mack?

9 MR. MACK: Relevancy.

10 THE HEARING OFFICER: Well, I don't think

11 foundation has been -- I think before we determine

12 whether it is relevant, we have to have a foundation

13 as to when, what, and what it's related to or if

14 it's related to the site. That has not been made

15 clear to me at this time. So I'm going to allow --

16 I'll note your objection. I'll reserve ruling at

17 this time. More foundation, please, Mr. Schroeder.

18 MR. SCHROEDER: Can I hear my last question

19 read back?

20 THE HEARING OFFICER: Of course. Madam Court

21 Reporter, if you don't mind.

22 (Record read.)

23 THE HEARING OFFICER: The question and answer

24 will stand. However, as I've indicated, I want more

1 foundation laid.

2 BY MR. SCHROEDER:

3 Q. What property does that bill relate to?

4 A. 639 86th Place.

5 Q. The subject property of this action?

6 A. Yes.

7 Q. When was the work done that's reflected in
8 that bill?

9 A. July 10, 1996.

10 Q. And what -- did you pay the contractor for
11 that bill?

12 A. Yes.

13 Q. I'll show you what's been marked
14 Respondent's Exhibit 6 for identification.

15 Could you tell me what that is?

16 A. This is another Fox Valley Excavating
17 statement.

18 Q. What work is reflected on that statement?

19 A. This was also work that was done on
20 July 10th for removal of detention pond debris,
21 removal of concrete and driveway material, asphalt,
22 and disposal of all debris from the pond.

23 Q. And when -- does that relate to the
24 property that's in question?

1 A. Yes.

2 Q. And I think you said July 10th. Is that
3 when the work was done?

4 A. July 10, '96.

5 Q. Okay. Did you observe that work being
6 done?

7 A. Yes.

8 Q. Can you tell us very briefly, because it's
9 getting late, what work it was that's described in
10 that bill?

11 A. This basically constituted several
12 construction workers turning over dirt from the pond
13 area and around, handpicking and actually taking
14 away anything which looked of nondirt material,
15 plastic pipes.

16 Q. So it's the cleaning that you described
17 before?

18 A. Cleaning, right. And the trucks were
19 hauling that stuff away.

20 Q. Did you pay for contractor for this bill?

21 A. Yes, sir.

22 MR. SCHROEDER: I ask that these two be
23 admitted into the evidence.

24 THE HEARING OFFICER: Okay. You're referring

1 to Respondent's Exhibit 5 and Respondent's

2 Exhibit 6; is that accurate?

3 MR. SCHROEDER: Yes.

4 THE HEARING OFFICER: May I see the exhibits,
5 please, Mr. Mack?

6 MR. MACK: Yes, Mr. Burds.

7 THE HEARING OFFICER: Let the record reflect
8 that these documents appear to be -- well, let's
9 refer to them one at a time.

10 Respondent's Exhibit 5 is entitled Fox
11 Valley Excavating. It does look to be either a bill
12 or invoice of some kind. It does appear to be on
13 some type of facsimile letter. In fact, there's a
14 facsimile heading at the top of the document.

15 There is project 639 86th Place, company
16 of Rich Miller -- to Rich Miller. The handwritten
17 signatures look legible to me, but it could be dated
18 July 10th.

19 As to that document, Mr. Mack, what's your
20 position? Any objection to its admission into the
21 record?

22 MR. MACK: And the other one?

23 THE HEARING OFFICER: Of course.

24 Let the record reflect that Mr. Mack is

1 looking at both Respondent's Exhibits 5 and 6.

2 MR. MACK: No, Mr. Burds, but I'd like an
3 opportunity to recross.

4 THE HEARING OFFICER: Of course. But there is
5 no objection to their admission?

6 MR. MACK: No.

7 THE HEARING OFFICER: Okay. Then both those
8 documents are admitted. Respondent's Exhibit 5 and
9 6 have been admitted without objection.

10 BY MR. SCHROEDER:

11 Q. Just to clear up, what's the handwritten
12 number on the bottom? It looks like a phone number?

13 A. I cannot identify it, but it looks like a
14 phone number. I don't know whose phone number that
15 is.

16 Q. Now, you also testified about garbage and
17 something about taking garbage or buying things off
18 site, bringing them onto your property and then
19 disposing them off site or something like that.

20 Do you remember that series of questions?

21 A. Yes.

22 Q. When you -- this property we're talking
23 about today was your residence at the time period --

24 A. Yes.

1 Q. -- in question?

2 When you go to the grocery store, you
3 consume some of the food, and some of it ends up as
4 garbage; is that correct?

5 A. Yes.

6 Q. What do you do with your garbage -- what
7 did you do with your garbage at that point in time?

8 A. Basically, we just keep it in the
9 Dumpsters on the outside, and every Thursday or
10 Friday, you take it to the edge of the curb to be
11 picked up.

12 Q. The city picked it up?

13 A. Yes.

14 Q. Did you make any -- bring anything in from
15 off site to be disposed of at your property?

16 A. No.

17 Q. You didn't go pick garbage up somewhere
18 and bring it to you?

19 A. No.

20 Q. You didn't have any garbage hauled to your
21 house?

22 A. No.

23 Q. Did you have any construction debris
24 hauled to your house?

1 A. No.

2 Q. Do you distinguish between dirt and fill?

3 A. No.

4 Q. When you say fill, you mean dirt and when
5 you say dirt, you mean fill?

6 A. Yes.

7 Q. Do you mean -- and when you talk about
8 debris, because we've had a lot of testimony today
9 about debris, do you include dirt in the debris, or
10 is it just the construction items themselves?

11 A. Construction items I would say like brick
12 and plastic and pipes.

13 Q. Okay. And when you were testifying as to
14 the storage of debris for later removal, what kind
15 of debris were you referring to?

16 A. Exactly what I just said, bricks, flashing
17 materials, the side fascia of the walls, some wood
18 material.

19 Q. And where would that be stored in relation
20 to the photograph that you were showed in
21 Plaintiff's Exhibit 1-A?

22 A. Several different small piles actually
23 that were all over the property.

24 THE HEARING OFFICER: For the record, what

1 photograph are we looking at?

2 MR. SCHROEDER: 1-A.

3 THE HEARING OFFICER: 1-A. I apologize.

4 BY MR. SCHROEDER:

5 Q. When you say small piles, are you talking

6 about small piles of dirt or small piles of

7 construction materials?

8 A. I'm talking about small piles of

9 construction debris.

10 Q. Okay. Like bricks?

11 A. Right.

12 Q. There was a pile of bricks?

13 A. Yes.

14 Q. Where were the bricks stored?

15 A. Most of it was stored in the back of the

16 house.

17 Q. Were they stored at the edge of the pond?

18 A. Some of them, yes.

19 Q. How far away?

20 A. I'd say anywhere between three to six

21 feet.

22 Q. Okay. And what about plastics? Were they

23 stored on the property?

24 A. Yes.

1 Q. And where were they stored?

2 A. Again, about three to six feet away from
3 the edge of the pond.

4 Q. Okay. And when did you have this material
5 stored on the property?

6 A. When as a time frame?

7 Q. Time frame.

8 A. Most of it started around the end of June,
9 which was maybe the last week of June. That's when
10 they started to tear the outside down. So between
11 the last week of June until July 10th.

12 Q. Okay. And was it during that entire time
13 frame that stuff was being hauled away?

14 Do you understand my question?

15 A. Yes. Yes. Actually, we had -- okay.

16 We had a Dumpster on the side, a big
17 construction Dumpster in the front of the house, and
18 then by the end of the month of June, we had a
19 couple of trucks which hauled some stuff away.

20 Q. Okay. You didn't wait until July 10th to
21 start cleaning things up?

22 A. No. No. No. No.

23 Q. You started the process with the
24 demolition?

1 A. Yes.

2 Q. And part of that process was the constant
3 tear down and removal?

4 A. Yes.

5 Q. And then after it was torn down, you had
6 it carted off site?

7 A. Yes.

8 Q. And that was ongoing until the stop work
9 order?

10 A. Yes.

11 Q. Let me ask you one more time,
12 Dr. Chaudhry. Did you ever put garbage in the pond?

13 A. Never.

14 MR. SCHROEDER: Nothing further.

15 THE HEARING OFFICER: Re-recross, Mr. Mack?

16 RE-CROSS-EXAMINATION

17 by Mr. Mack

18 Q. Dr. Chaudhry, where either these exhibits,
19 Exhibits 5 and D (sic) for the defense, transmitted
20 to Darlene Jensen prior to the 19th?

21 THE HEARING OFFICER: You're referring to five
22 and six; is that right?

23 MR. MACK: Yes, sir.

24

1 BY THE WITNESS:

2 A. I personally did not fax them over to her
3 or send them over to her.

4 BY MR. MACK:

5 Q. Did you instruct anyone to do so?

6 A. Not that I can remember.

7 Q. Okay. There are some -- there are some
8 faxes on both exhibits, referring again to
9 Exhibits 5 and D -- five and six for the
10 defendants. There are some faxes stamped in fax
11 numbers at the top of both pages.

12 Can you see that?

13 A. Yes.

14 Q. Do those have any -- they indicate what
15 dates?

16 THE HEARING OFFICER: Let's refer to each one
17 individually by exhibit, please.

18 BY THE WITNESS:

19 A. Okay. No. 5 refers to December 9, '96.

20 BY MR. MACK:

21 Q. Okay.

22 A. And No. 6 refers to December 3, '96.

23 Q. Okay. Do those dates have any meaning to
24 you?

1 A. Not necessarily.

2 Q. Were those the dates that these documents
3 were, in fact, transmitted to Darlene Jensen?

4 A. I can't answer that.

5 MR. SCHROEDER: Objection.

6 THE HEARING OFFICER: Basis?

7 MR. SCHROEDER: It presumes something not in
8 evidence. He testified he didn't send them to
9 Darlene Jensen. Now, he's saying were these the
10 dates they were sent to Darlene Jensen.

11 THE HEARING OFFICER: I think the witness can
12 answer if he knows. Overruled.

13 BY THE WITNESS:

14 A. Would you repeat your question again,
15 please?

16 BY MR. MACK:

17 Q. Would those be the dates that the
18 documents were, in fact, transmitted to Darlene
19 Jensen?

20 A. I don't know.

21 Q. You don't know.

22 So based upon your knowledge today, are
23 you -- do you have any certainty that Darlene Jensen
24 got these documents?

1 A. I don't know.

2 THE HEARING OFFICER: For the record, you're
3 referring to five and six -- Respondent's 5 and 6;
4 is that correct, Mr. Mack?

5 MR. MACK: Yes, sir.

6 THE HEARING OFFICER: Thank you.

7 BY MR. MACK:

8 Q. One point of clarification, you testified
9 that you personally did not dump any bags of garbage
10 or household waste on or around the pond?

11 A. Never.

12 Q. But there were, in fact, other members,
13 adults, living at the house at the time that you
14 were residing there?

15 A. Yes.

16 MR. MACK: That's it.

17 FURTHER REDIRECT EXAMINATION

18 by Mr. Schroeder

19 Q. Real briefly, did you ever see any other
20 adults dump garbage or litter into the pond during
21 the time in question?

22 A. No.

23 MR. SCHROEDER: Nothing further.

24 THE HEARING OFFICER: Any other questions for

1 Mr. Chaudhry from members of the gallery otherwise?

2 Let the record reflect that there are

3 none. The time is 3:00 p.m.

4 Mr. Schroeder, do you have any other

5 evidence or testimony you want to present?

6 MR. SCHROEDER: I would ask that -- I have no

7 further witnesses.

8 THE HEARING OFFICER: Mr. Chaudhry -- I

9 apologize. Mr. Chaudhry, you are free to go.

10 THE WITNESS: Thanks.

11 (Witness excused.)

12 MR. SCHROEDER: I would ask that Exhibits 1 --

13 THE HEARING OFFICER: Unless -- Mr. Mack, is

14 Mr. Chaudhry going to be called back on rebuttal?

15 MR. MACK: No, sir.

16 THE HEARING OFFICER: Okay. Fine.

17 MR. SCHROEDER: -- 2, 3 -- where is my

18 Exhibit 3?

19 THE HEARING OFFICER: My understanding is that

20 now five and six are the only respondent's exhibits

21 that have been admitted, and both of those were

22 admitted without objection.

23 Is that your understanding, Mr. Mack?

24 MR. MACK: Yes, sir.

1 MR. SCHROEDER: My Respondent's Exhibit 1 is
2 the July 17th administrative notice. I ask that
3 that be admitted.

4 THE HEARING OFFICER: Any objection, Mr. Mack?

5 MR. MACK: No, sir.

6 THE HEARING OFFICER: Okay. Is that so
7 marked? Can I have a copy of that, please?

8 MR. SCHROEDER: This was --

9 THE HEARING OFFICER: That was for the
10 record --

11 MR. SCHROEDER: -- my only copy.

12 THE HEARING OFFICER: Okay. What I have is
13 what appears to be an incomplete copy on fax filing,
14 a two-page document, the bottom right-hand corner --
15 lower right-hand corner is gone, and under the
16 heading corrective action required it's not
17 completely there.

18 But based on no objection, Respondent's
19 Exhibit 1, the two-page document, will be admitted.
20 I'm correct am I not, Mr. Mack, no objection to
21 that?

22 MR. MACK: No objection.

23 THE HEARING OFFICER: It is entitled, for the
24 record, Respondent's Exhibit 1, administrative

1 notice brought by the Illinois Environmental
2 Protection Agency brought the County of DuPage.

3 MR. SCHROEDER: If Mr. Mack wants to substitute
4 the state's complete copy, that's fine with me.
5 That was the only copy I was provided.

6 MR. MACK: If I can take a look at that, I'll
7 see if I got a better copy.

8 THE HEARING OFFICER: That would be great.

9 MR. SCHROEDER: Respondent's Exhibit 2 is the
10 administrative warning notice, which is dated July
11 the 3rd. I would ask that that be admitted, and
12 that consists of one -- we had the witness count the
13 pages on the stand.

14 THE HEARING OFFICER: There are some stickers
15 up here, Mr. Mack, if that's what you are looking
16 for.

17 MR. MACK: No. We're looking for our copy.

18 THE HEARING OFFICER: All right. Let the
19 record reflect what has been handed to me is the
20 title Exhibit A with the caption administrative
21 warning notice brought by the Environmental
22 Protection Agency with the sticker Respondent's
23 Exhibit two.

24 It is a one -- these are pages that have

1 appear to have -- well, not all of the pages appear
2 to have front and back, but it consists of one, two,
3 three, four, five -- six individual pages, some
4 front and back. In fact, I believe there is just
5 one that does not have a back portion.

6 Any objection to that document being
7 admitted, Mr. Mack? If you are -- do you have a
8 copy of that?

9 MR. MACK: Yes. No objection.

10 THE HEARING OFFICER: Okay. This document is
11 admitted without objection. Okay.

12 MR. SCHROEDER: I believe my Exhibit 4 -- I'm
13 sorry. Exhibit 3 was the administrative citations.

14 MR. MACK: That's already been admitted, hasn't
15 it, or is that the --

16 MR. SCHROEDER: No. This was my exhibit.

17 Since I questioned the witness,
18 Miss Jensen, on it, I would seek to admit Exhibit 3
19 which is the charge in this case with the attachment
20 consisting of one, two, three, four -- five pages.

21 THE HEARING OFFICER: All right. But am I
22 correct that this is not the complete administrative
23 citation? This is just the front without the
24 exhibits; is that accurate?

1 MR. SCHROEDER: Correct, without the exhibits.

2 THE HEARING OFFICER: Any objection, Mr. Mack?

3 MR. MACK: Well, other than it might be

4 duplicative of what has already been --

5 THE HEARING OFFICER: For the record, I have no

6 knowledge of the AC itself being admitted.

7 MR. MACK: Okay.

8 THE HEARING OFFICER: What I have from the

9 peoples' perspective exhibit is Group Exhibit 1-A

10 through D, which represents four photographs

11 enlarged that were received without objection; 2-A

12 through C group exhibit of the people that were

13 objected to but were admitted over objection limited

14 to the photocopies that have been identified.

15 MR. MACK: And you've got a copy of those?

16 Okay.

17 THE HEARING OFFICER: I do not. I left those

18 copies here. So whatever was there was presented to

19 me.

20 MR. SCHROEDER: You haven't been taking away

21 what's on the bench, have you?

22 THE HEARING OFFICER: That's fine. We'll

23 locate everything. But I will have to do an

24 accounting at some point.

- 1 MR. MACK: Yeah. That's it (indicating).
- 2 THE HEARING OFFICER: All right. That it is.
- 3 I do have for the record -- but I do not have all
- 4 four copies of the enlargements. I have 1-A. I'm
- 5 missing B, C and D of the peoples' exhibits.
- 6 MR. MACK: Well, this is a clean copy of this.
- 7 MR. SCHROEDER: Okay.
- 8 MR. MACK: I can just pull this out of here.
- 9 MR. SCHROEDER: That's fine.
- 10 MR. MACK: And we'll use that. It's two pages,
- 11 the saw deal.
- 12 MR. SCHROEDER: Fine.
- 13 THE HEARING OFFICER: Okay. Let's go through
- 14 them one at a time. I wanted to finish up with the
- 15 respondent's exhibits, but let's --
- 16 MR. MACK: Okay. I'm sorry.
- 17 THE HEARING OFFICER: Let's finish the
- 18 respondent's exhibits first.
- 19 MR. SCHROEDER: Okay. I was just asking --
- 20 THE HEARING OFFICER: Do I have one? You took
- 21 that back from me, Mr. Mack.
- 22 MR. SCHROEDER: That's what he was discussing.
- 23 He does have a copy.
- 24 THE HEARING OFFICER: Can we just have that

1 marked as Respondent's Exhibit 1? That is the --

2 MR. MACK: Harry, I'm scratching this out

3 because these were my notes.

4 MR. SCHROEDER: A notation at the bottom

5 referring to the plaintiff's exhibit is scratched

6 out, but it's a better copy of Respondent's 1.

7 THE HEARING OFFICER: Okay. May I have that,

8 please? Okay. Let the record reflect that I'm

9 being handed what's been marked as Respondent's

10 Exhibit 1 or that I'm now marking what appears to

11 be -- although I'll note for the record that it

12 doesn't appear to have the same language that was

13 torn from the bottom right-hand corner. It seems to

14 be missing.

15 MR. SCHROEDER: It should be the same. May I

16 compare? He copied my torn page.

17 MR. MACK: Oh.

18 MR. SCHROEDER: It's the same language with a

19 tear mark.

20 THE HEARING OFFICER: Exactly. So it does not

21 have the tear, but it does appear to have been

22 photocopied.

23 Well, for the record, the document is

24 admitted without objection. It's entitled

1 administrative notice brought by the Illinois
2 Environmental Protection Agency through the County
3 of DuPage. It's a two-page document dated 7/17/96
4 with the signature of one Miss Darlene Jensen as an
5 environmental enforcement officer.

6 That document is being admitted as
7 Respondent's Exhibit 1 in this proceeding without
8 objection. Is that correct, Mr. Mack?

9 MR. MACK: Yes, sir.

10 THE HEARING OFFICER: Respondent's Exhibit 3,
11 where -- this is in itself the administrative
12 citation. It is not the complete copy with all
13 exhibits. It constitutes one, two, three, four --
14 five pages, only front. Again, it is not a complete
15 version of the AC. It constitutes five pages.

16 Any objection to that document being
17 admitted, Mr. Mack?

18 MR. MACK: No.

19 THE HEARING OFFICER: All right. Then the
20 record will note it was admitted without objection.

21 All right. Let's go Respondent's
22 Exhibit 4.

23 MR. SCHROEDER: Four I'm withdrawing.

24 THE HEARING OFFICER: Four is withdrawn.

- 1 MR. SCHROEDER: Five and six have been
2 admitted, and I'm handing it back up to you.
- 3 THE HEARING OFFICER: Do I have five and six?
- 4 MR. SCHROEDER: Right here.
- 5 THE HEARING OFFICER: Let the record reflect I
6 have received Respondent's Exhibit 5 which I have
7 previously identified as a bill or invoice order
8 from one Fox Valley Excavating. It appears to be a
9 copy of that order on fax-type paper. It is being
10 admitted without objection as I recall.
- 11 Is that correct, Mr. Mack?
- 12 MR. MACK: That's correct.
- 13 THE HEARING OFFICER: The same goes for
14 Respondent's Exhibit 6 which appears to be a fax
15 copy of -- which is not complete. It seems to be --
16 some of the copy is off. It's legible, Fox Valley
17 Excavating. It appears to be the same type of
18 invoice by Respondent's Exhibit 5, but it has been
19 admitted without objection.
- 20 Is that correct, Mr. Mack?
- 21 MR. SCHROEDER: But it reflects different
22 work.
- 23 THE HEARING OFFICER: I'm sorry?
- 24 MR. SCHROEDER: It's the same type, but not the

1 same work.

2 THE HEARING OFFICER: For the record, it does

3 not appear, from its face, to be the same document.

4 It is, in fact -- the document speak for itself.

5 All right. Now, let's get the -- any

6 other evidence or testimony received from the

7 respondents?

8 MR. SCHROEDER: We rest.

9 THE HEARING OFFICER: Okay. Mr. Mack, do you

10 have any other evidence or testimony you want to

11 present in this matter?

12 MR. MACK: We rest.

13 THE HEARING OFFICER: Okay. All right. Let's

14 make sure that we have all the plaintiff's or

15 complainant's exhibits.

16 What I've been handed and what I already

17 had was 1-A of Group Exhibit 1-A through D which are

18 four enlarged copies of photographs.

19 MR. MACK: One should be circled.

20 THE HEARING OFFICER: 1-D as was previously

21 testified or requested is, in fact, circled at a

22 location as indicated in the testimony. I have

23 those in my possession.

24 Now, let's go to -- I believe I do have

1 2-A through C group exhibit. For the record, 1-A
2 through D, the group exhibit of the complainant was
3 admitted without objection.

4 That's correct, is it not, Mr. Schroeder?

5 MR. SCHROEDER: Yes.

6 THE HEARING OFFICER: Going ahead to 2-A
7 through C which consists of six photographs --
8 photostatic copies only of photographs taken at the
9 site is admitted over objection.

10 And, finally, Peoples' Exhibit 3 which was
11 Exhibit C as attached to the administrative
12 citation, a correspondence from one Harry A.
13 Schroeder dated July 24, 1996, admitted without
14 objection.

15 Is that correct, Mr. Schroeder?

16 MR. SCHROEDER: Yes.

17 THE HEARING OFFICER: That is a two-page
18 document?

19 MR. SCHROEDER: Correct.

20 THE HEARING OFFICER: Well, it consists of two
21 pages, front and back. It is a -- the copy I have
22 marked as Peoples' Exhibit 3 is a one-page document,
23 front and back.

24 All right. Any other evidence or

1 testimony that's going to be admitted, Mr. Mack?

2 MR. MACK: (Shaking head.)

3 THE HEARING OFFICER: All right. Closing
4 statements?

5 MR. MACK: Okay.

6 THE HEARING OFFICER: Do you want to do closing
7 statements?

8 Let me ask this. As far as the parties
9 are concerned, do you intend to brief this matter
10 before the board? Have you given any thought to
11 that?

12 MR. SCHROEDER: Well, if you're going to vacate
13 the recommendations -- you've heard the evidence.
14 If you're comfortable with the evidence and the
15 arguments we presented today --

16 THE HEARING OFFICER: So it's clear, I do not
17 make recommendations in administrative citations.

18 MR. SCHROEDER: Oh, okay.

19 THE HEARING OFFICER: My only responsibility
20 here is to develop a record and make sure that the
21 record is complete and indicate that it's closed.

22 As to briefing, however, I would be
23 responsible to schedule the briefing, if that is
24 requested.

1 MR. SCHROEDER: Let me have one minute with my
2 client.

3 THE HEARING OFFICER: Of course. Let's go off
4 the record for five minutes.

5 (Discussion had off
6 the record.)

7 THE HEARING OFFICER: Let's go back on the
8 record.

9 Let the record reflect this is AC 97-13,
10 in the matter of Saleem Chaudhry as petitioner of
11 the compliant filed by the County of DuPage.

12 Counsel, you were going to determine
13 whether or not you wanted a briefing schedule in
14 this case.

15 MR. SCHROEDER: After discussion with
16 Dr. Chaudhry, it was determined that we would not
17 request an opportunity to do a posthearing brief.

18 THE HEARING OFFICER: Mr. Mack, do you want a
19 posthearing brief?

20 MR. MACK: Likewise.

21 THE HEARING OFFICER: Okay.

22 MR. MACK: We would rest on the evidence
23 presented today.

24 THE HEARING OFFICER: Okay. Then any closing

1 arguments, Mr. Mack?

2 MR. MACK: Very briefly, Mr. Burds.

3 The case that we have attempted to put
4 before the board today entails a number of
5 violations, only two of which we're here, and we
6 were here to prove with a preponderance of the
7 evidence we presented.

8 The first of which was causing or allowing
9 litter in violation of Section 21(P)(1). If we have
10 established that, we would pray for a \$500 fine
11 based on that violation, and the basis for that
12 violation is the photographs which indicate bags of
13 garbage or some other type of waste on or near or
14 around the pond as evidenced by one of the photos
15 that we entered into evidence.

16 The second violation that we were focusing
17 our case in chief on today was causing or allowing
18 the deposition of waste, and we would assert that
19 that's any form of waste whether it's construction
20 debris or otherwise in standing or flowing waters in
21 violation of Sections 21(P)(4) of the act.

22 We believe that the testimony supported by
23 the photographic evidence and supported by the
24 testimony of Dr. Chaudhry in cross-examination would

1 support our contention that that violation existed
2 on June 28th as we alleged in our administrative
3 citation.

4 If we have sufficiently proved that
5 violation, then we would also pray for a \$500 fine
6 pursuant to the regulations for causing waste to be
7 deposited in flowing waters.

8 That's all.

9 THE HEARING OFFICER: Mr. Schroeder?

10 MR. SCHROEDER: This is a case where I believe
11 that the state has not proved by a preponderance of
12 the evidence any violation. It has been a case of
13 conflicting testimony also. But the conflict aside,
14 what is clear here is that there was debris that was
15 construction debris that was removed in the
16 construction process to the extent that that was
17 about to go on.

18 There was no off-site debris brought in,
19 and there was no garbage strewn about. There were
20 people living on the premises, and they were not --
21 it was not an abandoned garbage dump is what I'm
22 trying to say, and I think that's what the evidence
23 showed. We would ask for a finding in favor of the
24 respondent.

1 THE HEARING OFFICER: Mr. Mack, any rebuttal?

2 MR. MACK: No rebuttal.

3 THE HEARING OFFICER: Okay. I'm required under

4 the act and the regulations to make a credibility

5 determination. I do not believe based on my legal

6 judgment and experience that credibility is an issue

7 to the relevant matters and the issues in this

8 complaint. Therefore, I find that there is no issue

9 of credibility in this case.

10 As far as the posthearing brief, both

11 parties have already indicated that they do not wish

12 to brief this matter. The documents and exhibits

13 that have been admitted with objection and without

14 will speak for themselves with the testimony related

15 thereto.

16 Anything further that we need to discuss

17 before we close this record, Mr. Mack?

18 MR. MACK: Nothing further.

19 THE HEARING OFFICER: Mr. Schroeder?

20 MR. SCHROEDER: Nothing further.

21 THE HEARING OFFICER: All right. Let the

22 record reflect now that there are no members in the

23 gallery.

24 The time is approximately 3:20. This

1 proceeding is hereby closed.

2 Thank you for participating.

3 (Whereupon, these were all the
4 above-entitled proceedings had
5 at this time.)

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1 STATE OF ILLINOIS)

) SS.

2 COUNTY OF C O O K)

3

4 I, KIM M. HOWELLS, CSR, do hereby

5 state that I am a court reporter doing business in

6 the City of Chicago, County of Cook, and State of

7 Illinois; that I reported by means of machine

8 shorthand the proceedings held in the foregoing

9 cause, and that the foregoing is a true and correct

10 transcript of my shorthand notes so taken as

11 aforesaid.

12

13

14 _____
Kim M. Howells, CSR.
Notary Public, Cook County, IL
15 Illinois License No. 084-004037

16

17 SUBSCRIBED AND SWORN TO

before me this ____ day

18 of _____, A.D., 1998.

19 _____
Notary Public

20

21

22

23

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