

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 PEOPLE OF THE STATE OF ILLINOIS,

4 Petitioner,

5 vs. No. PCB 95-091

6 BELL SPORTS, INC. and WASTE HAULING

7 LANDFILL, INC., and WASTE HAULING, INC.,

8 Respondents.

9 vs.

10 WASTE HAULING LANDFILL, INC.,

11 and WASTE HAULING, INC.,

12 Cross-claimants,

13 vs.

14 BELL SPORTS, INC.,

15 Cross-Respondents.

16

17

18 Proceedings held on March 3, 1997 at
19 10:00 a.m., at the Illinois State Library, Illinois
20 Authors Meeting Room, 300 South Second Street,
21 Springfield, Illinois, before the Honorable Michael
22 L. Wallace, Hearing Officer.

21 Reported by: Darlene M. Niemeyer, CSR, RPR
22 CSR License No.: 084-003677

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Belleville, Illinois

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1 I N D E X

2 WITNESS PAGE NUMBER

3 Kenneth E. Smith 12, 42, 60, 64, 71

4

5 Steven C. Townsend 84, 170, 218

6

7 E X H I B I T S

8 NUMBER MARKED FOR I.D. ENTERED

9 People's Exhibit 1 22 26

10 People's Exhibit 2 26 30

10 People's Exhibit 3 31 35

11 People's Exhibit 4 36 40

11 People's Exhibit 5 91 94

12 People's Exhibit 6 116 122

12 People's Exhibit 7 140 145

13 Respondent's WHL Exhibit 1 70 71

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14 Respondent's WHL Exhibit 3 189 191

15 Respondent's WHL Exhibit 4 210 --

15 Respondent's Bell Exhibit 1 224 227

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P R O C E E D I N G S

(March 3, 1997; 10:00 a.m.)

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

This is the complaint of The People of the State of Illinois versus Bell Sports, Inc., Waste Hauling Landfill Inc., and Waste Hauling, Inc., and additionally the cross-claim of Waste Hauling Landfill, Inc., Waste Hauling, Inc. versus Bell Sports, Inc.

May I have appearances for the record, please, starting with the People.

MS. MENOTTI: Maria Menotti, Attorney General's office.

MR. DAVIS: Thomas Davis, Attorney General's office.

MR. RICHARDSON: Greg Richardson, the Illinois EPA.

HEARING OFFICER WALLACE: For the Respondents, Bell Sports.

MR. NAHMOD: Jack Nahmod from Sidley & Austin.

MR. TAYLOR: Byron Taylor.

1 MR. LATSHAW: Michael Latshaw for the
2 respondents, Waste Hauling Landfill, Inc. and Waste
3 Hauling, Inc.

4 MR. VAN NESS: Phil Van Ness, also for
5 the respondents, Waste Hauling, Inc. and Waste
6 Hauling Landfill, Inc.

7 HEARING OFFICER WALLACE: All right.
8 Thank you.

9 Let the record reflect there are no other
10 appearances at today's hearing.

11 Are there any preliminary matters anyone
12 wants to bring up at this time? Ms. Menotti?

13 MS. MENOTTI: I have none.

14 HEARING OFFICER WALLACE: All right. Mr.
15 Latshaw?

16 MR. LATSHAW: There are a couple of
17 motions, I guess, that have been flying around. I
18 don't know whether the Hearing Officer has all of
19 the copies of those. One has to do with the motion
20 by Bell to amend their answer, and there is one by
21 us to extend discovery as to Bell and supplement
22 responses, and the People, I think, filed an
23 objection and so on.

24 I don't know if that would be appropriate

1 to take that up now or some other time.

2 MS. MENOTTI: Can we hold them until the
3 conclusion of today's testimony and direct them at
4 the end?

5 HEARING OFFICER WALLACE: Well, really
6 quickly, everyone had filed a response that was
7 going to, right?

8 MS. MENOTTI: Yes.

9 HEARING OFFICER WALLACE: Were there any
10 outstanding responses or replies to any of the --

11 MR. LATSHAW: Not that I know of.

12 HEARING OFFICER WALLACE: Mr. Taylor?

13 MR. TAYLOR: None.

14 HEARING OFFICER WALLACE: Okay. The
15 motion for a leave to amend the answer in Stanter
16 is granted, and the motion to extend discovery is
17 granted. We can work out the time frames later, if
18 necessary.

19 Okay. Opening statements.

20 MS. MENOTTI: As I promised, I will have
21 very brief comments before we call our first
22 witness.

23 HEARING OFFICER WALLACE: All right.

24 MS. MENOTTI: Just to clarify, for the

1 record, this morning the State will bring testimony
2 in evidence regarding Counts 5 and 6 of the
3 complaint filed in this matter.

4 We intend to show that violations at the
5 landfill exist and include, but are not limited to,
6 vertical and lateral overfill, lack of an improved
7 closure and post-closure plan, lack of financial
8 assurance, and failure to initiate closure
9 activities within 30 days of the receipt of the
10 final volume of waste.

11 All the proof that the State intends to
12 bring regarding other allegations will be addressed
13 in this hearing continued in April of 1997.

14 Today the State will be calling two
15 witnesses from the Illinois EPA, Ken Smith and
16 Steve Townsend.

17 HEARING OFFICER WALLACE: Thank you. Mr.
18 Taylor?

19 MR. TAYLOR: We also have a brief
20 opening.

21 HEARING OFFICER WALLACE: All right.

22 MR. TAYLOR: The State of Illinois has
23 sought this claim as being heard, and this
24 proceeding is relevant to Bell Sports' defense

1 against the cross-claim filed by Waste Hauling,
2 Inc. and Waste Hauling Landfill, Inc. Although the
3 cross-claim addresses only penalties and not
4 closure requirements, the landfill has claimed, in
5 prior proceedings, that Bell is responsible for any
6 increased closure requirements applicable to the
7 landfill beyond that required under Part 807 of the
8 Board Regulations.

9 The evidence in this proceeding, however,
10 will show that the landfill is responsible for the
11 solid waste violations alleged in the complaint
12 and, therefore, for any enhanced closure
13 requirements. We expect the State to call several
14 people employed by the Agency that have knowledge
15 of the landfill's operations at the time.

16 The evidence will show that the landfill
17 was overheight, meaning that it accepted waste long
18 after it should have closed, and that Waste Hauling
19 was aware of the overheight issue long before the
20 landfill ceased receiving waste.

21 In addition, the landfill has never
22 submitted an approved closure plan under any
23 applicable regulatory standard. In fact, it
24 remains open. It is yet to close today,

1 approximately five years after it last received
2 waste.

3 Finally, the evidence will show that the
4 landfill has had a series of apparent solid waste
5 violations over time and it has detrimentally
6 affected the Agency's views of the landfill. The
7 evidence in this solid waste proceeding will show
8 that Waste Hauling's refusal to properly close its
9 facility and the overfilling of the landfill have
10 nothing, whatsoever, to do with any waste shipments
11 from Bell Sports.

12 The Landfill's refusal to properly and
13 timely close the facility, according to an IEPA
14 approved closure plan, subjects it to the enhanced
15 municipal solid waste landfill closure standards
16 that the Agency is now asking the landfill to
17 meet.

18 These standards would apply to the
19 landfill even if it had never received any
20 hazardous waste from any generator. Accordingly,
21 the landfill's independent, wholly unrelated solid
22 waste violations completely defeat any enhanced
23 closure claims by the landfill against Bell.

24 HEARING OFFICER WALLACE: Thank you. Mr.

1 Van Ness, Mr. Latshaw?

2 MR. VAN NESS: We will defer opening
3 remarks until the second phase, with the leave of
4 the Hearing Officer.

5 HEARING OFFICER WALLACE: All right.
6 Leave is granted.

7 Ms. Menotti, you may call your first
8 witness.

9 MS. MENOTTI: The People call Ken Smith.

10 HEARING OFFICER WALLACE: Mr. Smith,
11 would you please step up here.

12 MR. LATSHAW: Sir, I wonder, could we
13 exclude witnesses other than those being presented
14 for testimony?

15 HEARING OFFICER WALLACE: Any objection?

16 MR. DAVIS: Yes, we would object. Unless
17 there is a reason given that the testimony of Mr.
18 Townsend might somehow be influenced by the
19 testimony of Mr. Smith, I find it inconvenient.

20 Also, it may, indeed, impair our
21 presentation, because Mr. Townsend is a pending
22 conclusion witness as well as a fact witness, and
23 he may base some of his opinions and conclusions on
24 the testimony of other witnesses.

1 HEARING OFFICER WALLACE: Any further
2 response, Mr. Latshaw?

3 MR. LATSHAW: Well, it is just
4 traditional, I think, that the Pollution Control
5 Board should have the benefit of independent
6 testimony. In every proceeding I have ever been in
7 such a motion is routinely granted.

8 HEARING OFFICER WALLACE: Who is the
9 second witness?

10 MS. MENOTTI: Steve Townsend.

11 HEARING OFFICER WALLACE: Is Mr. Townsend
12 here in a capacity as other than a witness? I
13 mean, is he here to advise the People in any way?

14 MS. MENOTTI: If it is required. The
15 field inspector, one that will be on hand today and
16 will be on hand tomorrow, will --

17 HEARING OFFICER WALLACE: I am sorry. Is
18 Mr. Townsend an expert witness?

19 MS. MENOTTI: Yes, he is.

20 MR. DAVIS: That is correct.

21 HEARING OFFICER WALLACE: Mr. Townsend
22 may stay, since he is an expert witness.

23 (Whereupon the witness was
24 sworn by Hearing Officer

1 Wallace.)

2 HEARING OFFICER WALLACE: You may
3 proceed.

4 MS. MENOTTI: Thank you.

5 K E N N E T H E D W A R D S M I T H,
6 having been first duly sworn by the Hearing
7 Officer, saith as follows:

8 DIRECT EXAMINATION

9 BY MS. MENOTTI:

10 Q For the record, could you please state
11 your name.

12 A My name is Kenneth Edward Smith.

13 Q And, Mr. Smith, could you please tell us
14 about your educational background?

15 A I received a Bachelor's Degree in Civil
16 Engineering in March of 1984 from Cleveland State
17 University.

18 Q And who is your current employer?

19 A My current employer is the Illinois EPA.

20 Q And how long have you worked for the
21 Agency?

22 A Since January of 1989.

23 Q And what is your current position with
24 the Illinois EPA?

1 A My current position is I am an
2 Environmental Protection Engineer III in the Solid
3 Waste Unit of the Permit Section of the Bureau of
4 Land.

5 Q Could you briefly describe what that
6 position involves?

7 A I review primarily permit applications,
8 other correspondence relating to permits and permit
9 applications. Those are my --

10 Q Permit applications related to what?

11 A Permit applications for landfills, but
12 not hazardous waste landfills. Transfer stations,
13 landscape waste compost facilities.

14 Q During your tenure with the Agency, have
15 you held any other positions within the Bureau of
16 Land?

17 A No.

18 Q While you worked for the Agency, have
19 they provided you with any kind of training beyond
20 your Bachelor's Degree?

21 A Yes, I have received extensive training
22 in geology, hydrogeology, introductory type
23 courses, computer training, continuing education in
24 engineering, in my engineering field.

1 Q And did -- I am sorry.

2 A We routinely attend quite a few seminars
3 sponsored by the U.S. EPA, up in Chicago, on new
4 Regulations.

5 Q Okay. Did any of these courses pertain
6 to landfills specifically?

7 A Yes.

8 Q Do you have any other certifications
9 besides your Bachelor Degree?

10 A I am a Registered Professional Engineer
11 in the State of Illinois.

12 Q In what year were you certified?

13 A July of 1991.

14 Q Prior to your employment with the
15 Illinois EPA, did you hold any other job or
16 employment as an engineer for landfills?

17 A Yes, I worked for a consulting firm in
18 Hillsboro, Illinois, called Hurst-Rosche Engineers,
19 and I worked on some landfill projects while
20 working for them.

21 Q Did you work for them up until the time
22 you were employed with the Illinois EPA?

23 A Yes.

24 Q During the course of your career,

1 approximately how many landfills would you say that
2 you have worked on, either as an engineer or in a
3 permitting capacity?

4 A Oh, it would number in the hundreds.
5 More than 100. Probably less than 200. But it is
6 difficult for me to say.

7 Q Okay.

8 A Quite a few.

9 Q An estimate is fine. Thank you. Are you
10 familiar with the Waste Hauling Landfill?

11 A Yes, I am.

12 Q And in what capacity?

13 A I have been the designated permit
14 reviewer for them since -- roughly since 1989. Not
15 the sole permit reviewer, but I have reviewed
16 permit applications for them in the past.

17 Q Okay. Do you primarily handle the permit
18 applications that would come in for the landfill
19 then?

20 A Yes.

21 Q Okay. Are you familiar with the
22 permitting contours of the landfill?

23 A Of this landfill, Waste Hauling?

24 Q Yes, the Waste Hauling Landfill.

1 A Yes, I am.

2 Q Okay. Can you briefly, before we talk
3 about them, could you explain what a contour is,
4 for the record?

5 A A contour is -- shows on a two -- in a
6 two-dimensional setting the elevations of the
7 landfill and also the extent of -- the lateral
8 extent of the landfill. So they will depict the
9 lateral and vertical extent of a land form. And in
10 this case, in the case of landfills, it is -- the
11 land form is the landfill.

12 Q Okay. When are the contours approved?

13 A Normally the contours are approved in the
14 permit application.

15 Q The permit application to --

16 A The permit application to develop the
17 landfill.

18 Q All right. If there is any change in
19 those contours, is an applicant required to submit
20 any kind of information or modification?

21 A Yes, they would be required to get
22 another permit for those revised contours.

23 Q And is that the type of information that
24 you would also review?

1 A Yes.

2 Q When you were talking about contours of
3 the landfill, did this include just the level of
4 the waste fill, or does it include the waste and
5 other things?

6 A Well, it -- when we review the contours,
7 we review the vertical height of the landfill and
8 we also review the lateral extent of the landfill.
9 And we sometimes also look at -- well, we do look
10 at the vertical depth of the landfill. So we look
11 at the contours in those three contexts, the
12 vertical depth, the vertical height, and the
13 lateral extent.

14 Q Okay. Do the contours just describe the
15 area where waste can be filled or does it also
16 include the walls and the --

17 A The contours would also include any --
18 they will include any disturbance to the permit
19 area. The landfill consists of just a portion of
20 the facility. A landfill operator might change the
21 contours of a piece of property within the facility
22 that is totally unrelated. Where there is no
23 landfilling activity going on, we still require
24 those contours to be shown.

1 Q Okay. Through your involvement with the
2 Waste Hauling Landfill, specifically, do you know
3 what the maximum elevations are for the landfill?

4 A The maximum elevation for the Waste
5 Hauling Landfill would be in the neighborhood of
6 elevation of 632, 631, 630.

7 Q Okay. When you make a decision regarding
8 a permit or a modification of a permit from a
9 landfill, what kind of information do you consider?

10 A Well, there is a lot of information we
11 consider. We consider the geology and hydrogeology
12 of the site. As far as the final land form, we
13 consider the stability of slopes, we consider
14 whether you will be able to grow grass on those
15 final slopes. We consider the thickness of the
16 final cover, the type of waste that are going to go
17 into the landfill, the proximity of the waste to
18 groundwater. There is a lot of considerations
19 there.

20 Q Do you evaluate information that you
21 receive internally from the Agency or is this
22 information given to you by the applicant, or is it
23 a combination?

24 A It is a combination of both. It is -- we

1 rely to a great extent, of course, on information
2 received from the applicant. But the
3 information -- the application which we receive
4 from the applicant is also reviewed by other
5 individuals. Other individuals within the Agency
6 have an opportunity to look over the application
7 and provide the primary reviewer comments on that
8 application.

9 Q When the -- as a member of the permit
10 section and having had the Waste Hauling Landfill
11 facility assigned to you, is it fair to state that
12 you do most of the investigation and determinations
13 regarding that site?

14 A As lead reviewer, I am the individual who
15 is responsible in pooling all the comments
16 together. I do a great part of the review but,
17 again, as I said, I rely upon comments from our
18 field inspectors. Sometimes I rely upon reviews
19 done by geologists who look at the groundwater and
20 the hydrogeology of the setting of where the site
21 is going to be located at. But I guess it is fair
22 to say as primary reviewer I would do the majority
23 of the review.

24 Q Are you responsible for any

1 recommendations or determinations that are made
2 regarding a permit application?

3 A I am responsible for making the
4 recommendation to ultimately the permit section
5 manager, as far as issuance -- recommending
6 issuance of the permit or denial.

7 Q Okay. To your knowledge, has Waste
8 Hauling Landfill ever submitted a closure or
9 post-closure care application for the landfill?

10 A Yes.

11 Q Were you the reviewer assigned to that?

12 A I reviewed a closure, post-closure care
13 plan application for them.

14 Q When was the most recent application
15 submitted that you reviewed regarding the Waste
16 Hauling Landfill?

17 A I believe the date it was submitted was
18 April of 1991.

19 Q And this was a permit application for
20 closure and post-closure care?

21 A Yes, it was a permit application for
22 closure, post-closure care to revise the
23 groundwater monitoring system and implement a
24 leachate management plan.

1 Q When you evaluate a closure, post-closure
2 care permit application, do you consider if the
3 plan, based on your knowledge, can meet the
4 requirement of any Regulations?

5 A When I review a -- first of all, I review
6 permit applications for nonhazardous waste
7 landfills, so there is two sets of Regulations for
8 nonhazardous waste landfills in Illinois. I would
9 either review them against the Part 807 standards
10 or the new landfill Regulations, Parts 810 through
11 815.

12 Q Could you identify the title of --

13 A It is 35 Illinois Administrative Code,
14 Subtitle G.

15 Q Did you consider those Regulations when
16 you were evaluating the permit applications
17 submitted by Waste Hauling?

18 A Yes, I reviewed the application against
19 the standards in Part 807.

20 Q During the course of your review, did you
21 review any kind of aerial survey regarding the
22 landfill?

23 A There were plan sheets which accompanied
24 the permit application, which showed the existing

1 contours of the landfill.

2 Q If I showed you a copy of that, would you
3 be able to identify it?

4 A Yes.

5 MS. MENOTTI: Could you mark this,
6 please.

7 (Whereupon said document was
8 duly marked for purposes of
9 identification as People's
10 Exhibit 1 as of this date.)

11 MS. MENOTTI: Do you gentlemen want to
12 look at this before I show it to the witness?

13 MR. LATSHAW: I am sorry. I couldn't
14 hear you.

15 MS. MENOTTI: It is the 1988 aerial
16 survey. Did you want to look at it before I showed
17 it to the witness?

18 MR. TAYLOR: We have seen it.

19 MR. LATSHAW: We have seen it.

20 Q (By Ms. Menotti) Mr. Smith, I will show
21 you what has been marked as People's Exhibit Number
22 1. Could you identify this document?

23 A It is a document titled the Danner Aerial
24 Survey. It appears that the -- it is based on a

1 flight that was taken April 14th, 1988, prepared by
2 Shaffer, Krimmel & Silver & Associates for Waste
3 Hauling Landfill.

4 Q Have you seen this survey before?

5 A Yes, I have.

6 Q Would you say this is an accurate copy of
7 the survey, to your recollection?

8 A Yes.

9 Q Have you considered it in your review of
10 the Waste Hauling Landfill closure, post-closure
11 permit application?

12 A I have considered these contours as they
13 are depicted on this map. I don't know if I have
14 considered, in the context of a permit application,
15 this particular copy of the plan sheet but,
16 certainly, these contours have been depicted on
17 other plan sheets.

18 Q Let's focus on the contour design. In
19 general, can you describe what the contours show in
20 front of you?

21 A They essentially show three mounds, three
22 landfilled areas of the Waste Hauling Landfill.

23 Q Does the survey anywhere indicate what
24 the vertical elevations are in these areas?

1 A Yes, there is a mound in the northeast
2 corner that has a maximum elevation of 640.5.
3 There is a mound in the southeast corner, which has
4 an elevation of 648, maximum elevation and a mound
5 in the southwest corner that has an elevation of
6 678.5.

7 Q And how do the numbers that you have
8 observed on this aerial survey compare with the
9 numbers we discussed earlier regarding the
10 permitted final contours for the landfill?

11 A Well, the mound in the southwest corner
12 is commonly referred to as fill area number two of
13 Waste Hauling Landfill, and that these contours, as
14 I am looking at them now, appear to exceed the
15 permitted contours for the landfill.

16 Q When you were reviewing -- initially
17 reviewing the permit application for closure and
18 post-closure care, did you inform the Waste Hauling
19 Landfill of the exceedence of the vertical
20 elevation?

21 A Yes. Yes, I did.

22 Q Did you, in your review, find any other
23 problem with their initial -- with the 1991
24 application?

1 A Well, in addition to be overheight on
2 fill area number two, I informed them that it
3 appeared that fill area number two had exceeded its
4 lateral boundaries to the east -- excuse me -- to
5 the west. And that fill area number one had
6 exceeded its lateral boundaries to the north.

7 Q Did you inform Waste Hauling of these
8 problems in writing?

9 A Yes.

10 MS. MENOTTI: For the time being, I think
11 we are done with People's Exhibit 1.

12 Mr. Hearing Officer, I would move this be
13 admitted into evidence as People's Exhibit Number
14 1.

15 HEARING OFFICER WALLACE: Any objection?

16 MR. VAN NESS: No.

17 HEARING OFFICER WALLACE: I am sorry?

18 MR. VAN NESS: I am sorry. None.

19 MR. TAYLOR: None.

20 HEARING OFFICER WALLACE: All right.

21 People's Exhibit Number 1 is admitted into
22 evidence.

23 (Whereupon said document was
24 admitted into evidence as

1 People's Exhibit 1 as of this
2 date.)

3 HEARING OFFICER WALLACE: We have a nice
4 room, but the acoustics are a little funny.

5 MS. MENOTTI: Could you mark this exhibit
6 too, please.

7 (Whereupon said document was
8 duly marked for purposes of
9 identification as People's
10 Exhibit 2 as of this date.)

11 MS. MENOTTI: This is the November 4th,
12 1991 letter to Waste Hauling Landfill from the
13 Illinois EPA.

14 MR. VAN NESS: What is the date of that,
15 Counsel?

16 MS. MENOTTI: It is the November 4th,
17 1991 letter.

18 MR. VAN NESS: Thank you.

19 Q (By Ms. Menotti) Mr. Smith, I am going to
20 hand you what has been marked as People's Exhibit
21 Number 2. Do you recognize that document?

22 A Yes, I do.

23 Q Could you please identify it?

24 A Again, it is a document dated November

1 4th, 1991. It is for Waste Hauling Landfill in
2 Macon County. It is addressed to Waste Hauling
3 Landfill, Inc., attention, Mr. Jerry Camfield. Its
4 comments, which I had -- it is comments which I had
5 provided to Mr. Camfield concerning a pending
6 permit application for closure, post-closure.

7 Q You authored this letter?

8 A Yes, I did.

9 Q Did you sign the letter?

10 A I didn't sign the letter. I initialed
11 the letter.

12 Q Is it common practice, at all, within the
13 Bureau of Land in the Permit Section, for a
14 reviewer to draft certain letters that may be
15 signed by your superior?

16 A Yes.

17 Q And who signed this letter, for the
18 record?

19 A Mr. Lawrence W. Eastep.

20 Q What was Mr. Eastep's position at that
21 time?

22 A He was the Permit Section Manager.

23 Q Was he your ultimate supervisor?

24 A Yes.

1 Q So, for clarification, you were
2 responsible for writing the letter and you
3 initialed it and Mr. Eastep approved it and signed
4 off on it?

5 A Yes, that's correct.

6 Q And would you say that this is an
7 accurate copy of the letter that you drafted?

8 A Yes.

9 Q What was the general purpose of your
10 contacting Waste Hauling via this letter?

11 A Well, at the time I had finished my
12 review of this permit application, and at this
13 particular period of time Waste Hauling was going
14 through siting hearings for expansion of landfill.
15 They may have even completed them. I don't
16 recall. But my supervisor at that time, Larry
17 Eastep, felt it would be appropriate to write them
18 a letter and make them aware of deficiencies we had
19 noted in their permit application.

20 Q Okay. So this wasn't a rejection of the
21 permit application, then?

22 A No.

23 Q Could you summarize the deficiencies that
24 appear in the letter?

1 A Yes. There are sixteen items. Items one
2 and two concern deficiencies that I noted in the
3 leachate management plan. Items three and four
4 concern the closure, post-closure care plan. And
5 specifically they refer to exceedence of vertical
6 and lateral contours I had noted during my review
7 of the permit application.

8 Item five also notes a deficiency in the
9 contours. Items six through thirteen note
10 deficiencies in the closure, post-closure care
11 plan. They vary in nature. Items fourteen through
12 sixteen note three deficiencies, which we had noted
13 in the groundwater monitoring program proposal.

14 Q When you send letters of this nature out,
15 is the applicant given an opportunity to respond?

16 A Yes. I think the intention for us
17 sending out this letter was to get a response from
18 the applicant.

19 MS. MENOTTI: Okay. At this point, I
20 would move to admit the November 4th, 1991, letter
21 into evidence.

22 HEARING OFFICER WALLACE: Any objection?

23 MR. VAN NESS: No objection.

24 MR. TAYLOR: No.

1 HEARING OFFICER WALLACE: People's
2 Exhibit Number 2 is admitted.

3 (Whereupon said document was
4 admitted into evidence as
5 People's Exhibit 2 as of this
6 date.)

7 MS. MENOTTI: Thank you.

8 Q (By Ms. Menotti) After you had sent out
9 that letter, did Waste Hauling submit any further
10 information, as a result of this letter, in regard
11 to the deficiencies that you listed?

12 A Yes. They submitted some information in
13 1996. I don't recall the exact date now.

14 Q Did you consider that information in your
15 review -- in your continuing review of the permit
16 application for closure and post-closure care?

17 A Yes, I did.

18 Q Would you be able to identify that
19 document if you saw it?

20 A Yes I would.

21 MS. MENOTTI: Could you mark this,
22 please. Thank you.

23 (Whereupon said document was
24 duly marked for purposes of

1 identification as People's
2 Exhibit 3 as of this date.)

3 MS. MENOTTI: This is a copy of the March
4 21st, 1996 submittal from Waste Hauling, submitted
5 by Mr. Krimmel, to the Illinois EPA, regarding the
6 deficiencies noted in the November 4th, 1991
7 letter.

8 HEARING OFFICER WALLACE: What was the
9 date on that again?

10 MS. MENOTTI: The date is March 21st,
11 1996.

12 Q (By Ms. Menotti) Mr. Smith, I hand you a
13 copy of what has been marked as People's Exhibit
14 Number 3. Do you recognize that document?

15 A Yes, I do.

16 Q Could you please identify it for the
17 record?

18 A It is a document dated March 21st, 1996,
19 prepared by Shaffer, Krimmel & Silver Engineers,
20 Incorporated. It is for Waste Hauling Landfill and
21 it references application log number 1991-136.

22 Q What does that number mean?

23 A That's the log number assigned to the
24 permit application for the closure, post-closure

1 care plan for Waste Hauling Landfill.

2 Q Is this the submission that you were just
3 referring to when we were talking about Waste
4 Hauling Landfill's response to the deficiency
5 letter?

6 A Yes.

7 Q Could you look at it and tell me if it
8 appears to be a true and accurate copy of what you
9 received?

10 A It appears to be, yes.

11 Q Can you tell me who submitted the letter?

12 A The letter is signed by Robert G.
13 Krimmel, PE.

14 Q Do you know who Mr. Krimmel is?

15 A Yes, I do.

16 Q Could you please identify him, for the
17 record?

18 A He is, at least since my involvement with
19 Waste Hauling Landfill, he has been their engineer
20 that has prepared permit applications for the
21 landfill.

22 Q Okay. When reviewing this information,
23 did you find any problems or deficiencies with
24 regard to the closure, post-closure care

1 requirements that the landfill were supposed to
2 meet under the Regulations?

3 A Yes, I did.

4 MR. LATSHAW: Could you clarify what
5 Regulations you are asking about?

6 MS. MENOTTI: I am sorry?

7 MR. LATSHAW: I was wondering if you
8 could clarify which Regulation section and subtitle
9 you were referring to.

10 Q (By Ms. Menotti) Could you please, for
11 the record, identify which Regulations you
12 considered?

13 A The Part 807 Regulations.

14 Q Okay. Based on your review of this
15 document, can you summarize what the landfill
16 addressed with regard to the deficiencies?

17 A Well, as best as I can tell, they
18 addressed each of the deficiencies I noted in the
19 November 4th, 1991 letter. In some cases they
20 merely provided responses and the responses were
21 not necessarily of a technical nature, but in some
22 instances just an explanation was provided for
23 certain deficiencies. They addressed the
24 overheight issue and they addressed the lateral

1 landfilling issues, too, in this permit application
2 or this addendum.

3 Q Was this the first set of materials that
4 you received after you sent the November 4th, 1991
5 letter regarding the deficiencies?

6 A Could you repeat the question, please.

7 Q Was this the first responsive
8 documentation that you received from the landfill
9 since you sent them the deficiency letter?

10 A Yes, yes.

11 Q Okay. Did this submission address any of
12 the problems that you noted regarding the vertical
13 overfill?

14 A To my knowledge, they acknowledged that
15 they were overheight in this document.

16 Q What was your final determination after
17 reviewing this document?

18 A After reviewing this document in
19 conjunction with the material I had received back
20 in April 1991, I recommended that the permit
21 application for closure, post-closure be denied.

22 MS. MENOTTI: Okay. Before we move on,
23 at this point I would move to admit People's
24 Exhibit 3 into evidence.

1 HEARING OFFICER WALLACE: Any objection?

2 MR. VAN NESS: No objection.

3 MR. TAYLOR: No.

4 HEARING OFFICER WALLACE: People's

5 Exhibit 3 is admitted.

6 (Whereupon said document was
7 admitted into evidence as
8 People's Exhibit 3 as of this
9 date.)

10 MS. MENOTTI: Thank you.

11 Q (By Ms. Menotti) Mr. Smith, did you --
12 upon the recommendation of the denial, did you
13 prepare any kind of documentation regarding this
14 denial to be forwarded to Waste Hauling?

15 A Yes. I prepared a letter or permit
16 denial letter for signature by the Permit Section
17 Manager.

18 Q If I showed you this letter, would you be
19 able to identify it?

20 A Yes.

21 MS. MENOTTI: Would you mark this,
22 please.

23 (Whereupon said document was
24 duly marked for purposes of

1 identification as People's
2 Exhibit 4 as of this date.)

3 MS. MENOTTI: This is the June 26, 1996
4 letter.

5 Q (By Ms. Menotti) Mr. Smith, I am handing
6 you a copy of what has been marked as People's
7 Exhibit 4.

8 A (Witness reviewed document.)

9 Q Can you please identify it?

10 A It is a letter on agency letterhead dated
11 June 26th, 1996. It is addressed to Mr. Jerry
12 Camfield of Waste Hauling Landfill. Again, it
13 references application log number 1991-136. It is
14 four pages long, and it is signed by Edwin C.
15 Bakowski.

16 Q Did you draft this letter?

17 A Yes, I did.

18 Q And who is it addressed to, again?

19 A It is addressed to Mr. Jerry Camfield.

20 Q And who signed the letter?

21 A Edwin C. Bakowski.

22 Q And who was Mr. Bakowski, at this point
23 in time, in reference to your position?

24 A Mr. Bakowski was the Permit Section

1 Manager.

2 Q And as we discussed before, is it a
3 common practice within the Bureau of Land Permit
4 Section for a reviewer to draft letters that
5 ultimately are signed by his superior?

6 A Yes.

7 Q And at that time Mr. Bakowski was your
8 superior?

9 A Yes.

10 Q Would you say it is a true and accurate
11 copy of the letter that you drafted and that was
12 subsequently sent to Waste Hauling Landfill?

13 A Yes.

14 Q Can you briefly summarize the point of
15 the letter?

16 A Point number one concerns a leachate
17 management plan. There is some discrepancies in
18 their -- I noted some discrepancies in their plan
19 they presented to manage leachate seeps, and I felt
20 that was worthy of a denial point.

21 Denial point number two mentions the
22 lateral fill outside the permitted waste boundaries
23 of fill area number two. I noted in this denial
24 point that they really didn't provide any

1 information which the Agency can check to make sure
2 that it is not waste but indeed is a soil
3 containment berm that is outside the permitted
4 boundaries.

5 Denial point number three concerns the
6 final cover system. Denial point number four has
7 to do with some permeability tests for the final
8 cover. Denial point number five has to do with
9 final cover, also, the thickness and percent
10 compaction. Denial points six through eight
11 concern landfill gas, their design for taking care
12 of landfill gas.

13 Denial point number nine has to do with
14 the vegetative layer of the final cover. Denial
15 point number ten has to do with the landfill
16 closure plan they proposed. Denial point eleven
17 also has to do with inspection of the final cover.
18 Denial point twelve has to do with a deficiency in
19 the closure cost estimate regarding groundwater
20 monitoring wells.

21 Denial point number thirteen has to do
22 with the overfill vertically of the fill area
23 number two. And denial points number fourteen
24 through sixteen have to do with information they

1 provided in regard to their proposed groundwater
2 monitoring program.

3 Q Okay. These reasons that are listed in
4 the letter are the reasons that the application was
5 denied?

6 A Yes.

7 Q Are these reasons for denial made
8 according to the 807 Regulations?

9 A Yes, they are.

10 Q To your knowledge, has any information
11 been submitted on behalf of the landfill either in
12 response to this denial letter or as a new permit
13 application?

14 A In response to the June 26th letter?

15 Q Right.

16 A No. To my knowledge, I have not seen
17 anything.

18 Q You have not been given any new
19 information --

20 A No.

21 Q -- to review?

22 A No.

23 MS. MENOTTI: At this point the People
24 would move to have Exhibit Number 4 admitted into

1 evidence.

2 HEARING OFFICER WALLACE: Any
3 objections?

4 MR. VAN NESS: No objection.

5 MR. TAYLOR: No.

6 HEARING OFFICER WALLACE: Exhibit Number
7 4 is admitted.

8 (Whereupon said document was
9 admitted into evidence as
10 People's Exhibit 4 as of this
11 date.)

12 Q (By Ms. Menotti) Mr. Smith, are you aware
13 of the point in time when the landfill owned by
14 Waste Hauling ceased accepting waste?

15 A I believe it was some time in the spring
16 of 1992.

17 Q Okay. At that time, to your knowledge,
18 was there an approved closure, post-closure care
19 plan for the landfill?

20 A No.

21 Q Is there an approved closure,
22 post-closure care plan for the landfill today?

23 A No.

24 Q In your opinion, based on the

1 documentation and information that has been
2 presented to you by Waste Hauling or that you have
3 gathered on your own, can the landfill meet the
4 closure, post-closure care requirements of the
5 Pollution Control Board Waste Disposal Regulations
6 Part 807?

7 A Based on the information I have seen to
8 date?

9 Q Right.

10 A No.

11 Q Based on -- in your opinion, on the
12 information that you have reviewed, is this
13 landfill exceeding its vertical boundaries?

14 A Yes, it is.

15 Q In your opinion is it exceeding its
16 permitted lateral boundaries?

17 A Yes.

18 Q Do any of the overfills that we are
19 talking about right now constitute a violation of
20 the Pollution Control Board Regulations for
21 sanitary landfills?

22 A Yes.

23 Q And in your letter of June 26th, 1996,
24 did you also reference the sections of the

1 Regulations that you based your denial on or that
2 you found the landfill to be in violation of?

3 A Yes, I did.

4 MS. MENOTTI: I have nothing else for the
5 witness at this time.

6 HEARING OFFICER WALLACE: All right.
7 Thank you.

8 Cross-examination, Mr. Van Ness, Mr.
9 Latshaw?

10 MR. VAN NESS: Yes. Thank you.

11 CROSS EXAMINATION

12 BY MR. VAN NESS:

13 Q Now, Mr. Smith, I understand that your
14 opinion is that the landfill contours exceed its
15 final permitted boundaries both vertically and
16 laterally; is that correct?

17 A That's correct.

18 Q Does that opinion extend to both fill
19 area number one and fill area number two?

20 A Yes. It -- well, it is my understanding,
21 based on information I have reviewed in the Agency
22 files and information presented by the applicant,
23 that fill area number two exceeds the contours
24 vertically and laterally. Fill area number one, it

1 is my understanding, exceeds the contours
2 laterally.

3 Q Do you have any information whether --
4 well, let me back up and rephrase that.

5 Do you know what the historic name for
6 fill area number one is?

7 A The historic name? I believe McKinney's
8 Landfill is probably the historic name, the initial
9 name given to the landfill.

10 Q Mr. McKinney would have been the original
11 owner/operator of the landfill, as you understand
12 it?

13 A That's correct.

14 Q Do you know whether the Waste Hauling
15 Landfill, Inc. ever contributed to fill area number
16 one in the so-called McKinney number one area?

17 A I am not certain, but I don't believe
18 that they did. I believe Mr. Camfield took
19 operation of the landfill over after that area had
20 been filled.

21 Q So if there were any overbreadth in fill
22 area number one, it might have existed before Waste
23 Hauling Landfill came in?

24 A It could have, yes.

1 Q Okay. Do you know, for a fact, that
2 there was any placement of waste beyond the lateral
3 boundary of area number one?

4 A I don't know for a fact, no. I am basing
5 my opinion on the information presented to me.

6 Q And what was the source of that
7 information?

8 A The source of the information are the
9 permit application I referred to earlier, log
10 number 1991-136. I compared the existing contours
11 of the landfill to those permitted contours I had
12 noted on plan sheets, which were approved by
13 previous permits issued to Mr. McKinney.

14 Q Do you know whether the Agency ever
15 discussed this apparent exceedence with Mr.
16 McKinney?

17 A You are talking about the lateral?

18 Q I am talking about the lateral in area
19 one.

20 A No, I am not, I am not aware.

21 Q Do you have any explanation for why they
22 waited twelve years to do anything about this?

23 A No, other than the fact that I am the
24 first person to note it.

1 Q Well, more precisely, you would be the
2 second person to note it; is that correct?

3 A Pardon me?

4 Q More precisely, you would be the second
5 person to note it, wouldn't that be more correct?

6 A The second person? Who would be the
7 first person?

8 Q The person who gave you the information
9 in the first place. I believe you said you got the
10 information from the applicant.

11 A Okay. Well, that might be the case. But
12 no one pointed it out to me.

13 Q But the information was presented to you?

14 A Yes, it was.

15 Q Thank you. I take it you are not aware
16 of any enforcement actions that were ever taken on
17 Mr. McKinney?

18 A In regard to the lateral overfill in area
19 number one, no, I am not.

20 Q Now, is it your understanding that there
21 was any placement of waste beyond the lateral
22 boundaries of area number two?

23 A I don't know whether there is or isn't.
24 I have explained in my June 26, 1996 letter that

1 there is a possibility it may have. But at this
2 point in time we haven't, meaning the Agency, has
3 not been presented any information that suggests
4 that there is or isn't. But we do believe it is
5 something that should be investigated.

6 Q So as I understand the statements you
7 made in response to Counsel for the People, when
8 you were talking about exceedence of lateral
9 boundaries, now, in area number two, that is an
10 inference with respect to the waste?

11 A It is an inference, yes.

12 Q A possible --

13 A Yes, a possible -- it is a possibility
14 they may have exceeded the lateral -- they have,
15 indeed, exceeded the lateral boundaries. The big
16 issue is does the lateral exceedence include waste.

17 Q So from what you know, from what you can
18 tell from the information available to you at the
19 time, what you know is that a lateral exceedence is
20 comprised of the cover cap and berm, the containing
21 berm?

22 A That is the allegation made by Mr.
23 Krimmel. I don't know if that is true or not. It
24 could also include waste. He could be right. He

1 may be mistaken. I don't know.

2 Q Okay. Now, you joined the Agency in
3 January of 1989; is that correct?

4 A Yes, that's correct.

5 Q And you mentioned that since then you
6 have received training and orientation; isn't that
7 right?

8 A Uh-huh.

9 HEARING OFFICER WALLACE: Yes?

10 THE WITNESS: Yes.

11 Q (By Mr. Van Ness) Do you recall being
12 instructed on the local siting requirements?

13 A We have to have a knowledge of the local
14 siting approval requirements in the capacity of the
15 job I am in right now, yes.

16 Q Do you understand that the Agency's
17 policy regarding height restriction on landfills
18 underwent a change prior to your coming to work for
19 the EPA?

20 A I understand that the local siting
21 approval process was instituted sometime in 1982,
22 if that's what you are referring to.

23 Q Do you recall being advised in the course
24 of that instruction what the net effect of the

1 local siting requirements was with respect to the
2 vertical perimeters of the landfill?

3 A It is my understanding that if the
4 vertical boundaries of a landfill increase beyond
5 the currently permitted boundaries of the landfill,
6 then that increase would require local siting
7 approval, and also a permit from the Agency.

8 Q Were you aware that there was some
9 questions among the authorities at that time
10 whether a vertical elevation required additional
11 permitting or not?

12 A Which authorities are you referring to?

13 Q Well, I am not trying to make you testify
14 as an attorney, sir. I am simply trying to
15 determine whether you were aware of any policy
16 changes or understanding as part of your
17 instruction relating to the period before you
18 started working for the EPA?

19 A No.

20 Q Do you understand that -- is it your
21 understanding that waste was placed beyond the
22 vertical boundary in fill area number two?

23 A It is my understanding that it appears
24 that waste has been placed there. That is -- the

1 contours suggests, the existing contours suggests
2 that that may be the case.

3 Q Again, when you are saying contours, you
4 are talking about the entire outer perimeter of the
5 landfill; is that correct?

6 A I am talking about the west side of fill
7 area number two.

8 Q All right. Thank you. Now, you have
9 never visited the site yourself; isn't that right?

10 A No, I have never visited the site.

11 Q You are depending upon the field
12 operation section's observations?

13 A Yes, and I am dependent upon the plan
14 sheets which the Waste Hauling Landfill's engineer
15 sends me.

16 Q The material Waste Hauling submitted?

17 A Uh-huh.

18 HEARING OFFICER WALLACE: Yes?

19 THE WITNESS: Yes. Sorry.

20 Q (By Mr. Van Ness) Would you agree that a
21 landfill operator should not allow a cavity to
22 develop in the outer containment wall of the
23 landfill and the waste pile within that landfill?

24 A To the -- I would agree that if they do

1 something like that, they should provide a means of
2 getting the storm water, the rain water, which
3 falls onto the landfill off of the landfill as
4 expeditiously as possible without causing other
5 problems.

6 Q Okay. Would you agree that the berm wall
7 should always be at least as high as the waste?

8 A There should be some means of -- rainfall
9 which falls on the water, has to be -- has to be
10 collected in some manner to keep it from traveling
11 off the site. Commonly that's done with berms.

12 Q And wouldn't you agree that a landfill
13 operator should generally obey the directions of
14 the Agency's Operation Section Personnel?

15 A Yes, generally speaking.

16 Q Are you familiar with the Agency Field
17 Operation Section Inspection Reports relating to
18 the Waste Hauling Landfill between 1981 and 1990?

19 A I have had occasion to read through them
20 over the past five, six years.

21 Q Would you agree that Waste Hauling was
22 repeatedly cited in order to raise the sides of the
23 berm wall without a single reference to an
24 overheight issue?

1 A I know that they have been cited. I
2 don't know how often that they have been cited.

3 Q I am going to show you a document that I
4 will represent to you is a Field Operation Section
5 Report from May 17th, 1984. Do you recall that
6 document, sir?

7 A I don't recall specifically seeing it in
8 the past.

9 Q You stated earlier that you had seen the
10 Field Operation Section Reports from that period?

11 A Uh-huh.

12 Q So I understand that you don't recall
13 that specific document?

14 A That's correct.

15 Q But it might be?

16 A It could very well be -- I have reviewed
17 this file extensively in the past. I am sure I
18 have read over this document in the past, but I
19 don't recall this specific one.

20 Q Thank you. That's efficient. Without
21 belaboring the point, do you see in the middle of
22 the page the handwriting on line 41?

23 A Yes.

24 Q Would you care to read into the record

1 what that handwriting states?

2 A It says "berm needs to be raised."

3 Q Now, I ask you to turn to the -- I guess
4 it is the next page. Do you see handwriting on
5 that page, sir?

6 A Yes.

7 Q For the record, would you tell us what
8 that handwriting appears to be?

9 A It is handwriting prepared by the Agency
10 inspector, Rick Hursman (spelled phonetically). It
11 consists of two paragraphs, taking up the entire
12 page.

13 Q Okay. Do you see on that first paragraph
14 reference to refuse being placed above the west
15 berm?

16 A Yes.

17 Q Why don't you read the last two sentences
18 in that paragraph?

19 A The last two sentences of the first
20 paragraph state, "this was marked as a permit
21 violation, as no refuse is to be deposited above
22 the berm. Site operator Chuck Cornwall said that
23 they had to excavate the good clays to build the
24 berm up. Mr. Cornwall said that they were also at

1 the final elevation on the active area."

2 Q All right. Thank you.

3 MR. VAN NESS: I don't believe we will
4 introduce this.

5 Q (By Mr. Van Ness) I just wanted to
6 confirm this was among the documents that you have
7 referred to previously as having been referred to
8 by you?

9 A In the course of reviewing the file, I
10 probably would have read that inspection report.

11 Q This is not a surprise to you? This is
12 consistent with what you understand to be the tenor
13 of the directions given to the operators?

14 A I have been told that the operator
15 received directions consistent with that in the
16 past.

17 Q Okay. Now, it is your testimony, isn't
18 it, that Waste Hauling Landfill has failed to
19 obtain approval from the Illinois EPA as to closure
20 or post-closure care plans?

21 A Yes.

22 Q All right. And I believe you also
23 testified that you are responsible for making the
24 recommendation both in 1991 and I believe also in

1 1996 --

2 A Yes.

3 Q -- with respect to that site? Did you
4 review any closure, post-closure plans prior to
5 1991?

6 A Yes, I did.

7 Q And --

8 A For this facility?

9 Q Yes.

10 A Yes, I did.

11 Q Do you recall what the fate of that
12 application was?

13 A That application was also denied.

14 Q Were you the primary reviewer for that,
15 as well?

16 A Yes, I was.

17 Q You indicated that after November 4th,
18 1991, the letter that was dated that, I should say,
19 that there was no documentary response received
20 until March of 1996; is that correct?

21 A That's correct.

22 Q Okay. Now, are you suggesting, sir, that
23 between 1991 and 1996, there was no contact between
24 the parties?

1 A No, I am suggesting that this was the
2 only formal submittal in response -- formal
3 submittal as an addendum to this permit application
4 which we received after November 4, 1991.

5 Q Okay. There was contact between the
6 parties in that period, but was not in the form of
7 a written submittal?

8 A I would imagine that there had to be. I
9 had spoken to Mr. Krimmel, I am sure, between 1991
10 and 1996 on number of occasions, as I am sure my
11 superiors had.

12 Q Did you attend any meetings between the
13 parties in this period?

14 A Yes.

15 Q Do you recall how many?

16 A I would say no more than half a dozen,
17 six.

18 Q Do you recall whether during the course
19 of these discussions any additional requirements
20 than those that were mentioned in your November 4,
21 1991 letter were raised by representatives of the
22 Illinois Environmental Protection Agency?

23 A Yes.

24 Q And what were those?

1 A They were -- they were requirements,
2 which we felt were necessary, due to the allegation
3 that this landfill had accepted hazardous waste.

4 MS. MENOTTI: At this point, Mr. Hearing
5 Officer, I would ask that further testimony
6 regarding this be suspended, since we are holding
7 off on the hazardous waste counts until the April
8 continuation.

9 MR. VAN NESS: Mr. Hearing Officer, I
10 intend to not proceed much further on this.
11 However, I have this witness before me now, and the
12 testimony relates to the lack of the closure,
13 post-closure care plan, and so all I want to do is
14 establish that there are reasons for that, and this
15 witness is available to me for that purpose now.

16 So I don't intend to go into the
17 substance, but I certainly want to go into the
18 procedure, just a little bit further.

19 HEARING OFFICER WALLACE: Do you still
20 object?

21 MS. MENOTTI: Well, this witness will be
22 available to attend the continuation of the
23 hearing. I don't think it is appropriate, until we
24 address the hazardous waste allegations in the

1 counts, to be talking about any of those issues.

2 MR. VAN NESS: Mr. Hearing Officer, if I
3 may, this witness has now testified, I believe
4 twice, in the course of direct examination, that
5 his denial was based solely on Part 807. I intend
6 to follow-up on that question, and then I will be
7 done with this witness with respect to that area.
8 So I respectfully request that I be allowed to do
9 so now.

10 HEARING OFFICER WALLACE: It was our
11 agreement that we would just go on Counts 5 and 6
12 and not get into the hazardous material aspect of
13 this case. And for the most part that was to take
14 into account Waste Hauling's and Bell Sports'
15 positions. So I think that we should move on to
16 another area.

17 Mr. Smith will be back, right?

18 MS. MENOTTI: (Nodded head up and down.)

19 MR. VAN NESS: If I have assurances that
20 Mr. Smith will be available for cross-examination
21 on this issue, on the continuation part of the
22 hearing, then I will accept that and we will move
23 on.

24 MS. MENOTTI: I can represent that at the

1 end of his testimony, as with our other witnesses,
2 that we will reserve the right to recall them
3 during the continuation of the hearing to testify
4 regarding the remaining outstanding counts in the
5 complaint.

6 MR. VAN NESS: Okay. With that
7 understanding, Mr. Hearing Officer, I have just a
8 couple of questions more, then, for Mr. Smith this
9 morning.

10 Q (By Mr. Van Ness) So far, as I understand
11 it, Mr. Smith, you are of the opinion that fill
12 area number two is overheight, based upon the 1988
13 Danner Aerial Survey Map, which I believe is
14 People's Exhibit Number 1; is that correct?

15 A Yes.

16 Q All right. Is that the only source of
17 information you have that relates to that
18 overheight situation?

19 A As far as the existing contours of the
20 landfill?

21 Q Yes.

22 A Unless I am mistaken, there are also
23 contour maps in the March 21st, 1996 application
24 addendum, which appear to me to be consistent with

1 the contours shown on Exhibit Number 1. I believe
2 there is also a contour map or maps in the original
3 April 1991 application which Waste Hauling
4 submitted. Those contours are also consistent with
5 these contours shown on Exhibit Number 1.

6 Q And that is April 1991 and not April
7 1981, correct?

8 A That's right. It is April 1991. I am
9 sorry.

10 Q Thank you. So as far as you understand
11 the attachment to the application that you just
12 referred, is essentially reflecting the 1988 Danner
13 Aerial Survey; is that correct?

14 A The contours, based on comparing the
15 contours in this March 1996 application addendum to
16 the contours on here, appear to be consistent with
17 one another.

18 Q We are talking about the same document
19 basically, as far as you understand?

20 A Basically, yes.

21 Q Were you aware of any enforcement action
22 taken against this landfill with respect to
23 overheight allegations?

24 A Not that I can recall.

1 MR. VAN NESS: Thank you. Nothing more
2 for now.

3 HEARING OFFICER WALLACE: All right.
4 Redirect?

5 MS. MENOTTI: Yes, I have a few follow-up
6 questions.

7 REDIRECT EXAMINATION

8 BY MS. MENOTTI:

9 Q Mr. Smith, regarding the landfill, when
10 considering the closure and post-closure care
11 application, is the landfill required to be able to
12 close fill area one and fill area two?

13 Let me rephrase that. I guess my
14 question is, is the landfill permitted for closure
15 and post-closure as a whole, would that include
16 area one and area two of the landfill?

17 A The closure, post-closure care plan,
18 which I reviewed and identified as log number
19 1991-136 was just for fill area number two. It is
20 my understanding that fill area number one was
21 already closed.

22 Q Okay. So when they submitted this
23 application, they were only addressing the area
24 marked on the map as fill area number two?

1 A Well, let me go back a moment. The fill
2 area number one was already closed, so closure only
3 addressed fill area number two. It was the
4 Agency's opinion, though, that fill area number one
5 was still in post-closure, because both fill areas
6 are considered one facility, and post closure is
7 for the entire facility.

8 Q All right. In regard to the permitted
9 lateral and vertical boundaries, the landfill is
10 required to meet the boundaries that are approved
11 by the Agency?

12 A That's correct.

13 Q And those boundaries are set, if I am
14 understanding your recommendation of the contours,
15 to include the contours of the landfill whether or
16 not actual waste is deposited in that area?

17 A That's correct.

18 Q I would like to direct your attention to
19 what has been marked and admitted into evidence as
20 People's Exhibit Number 3. It is the March 21st,
21 1996 submission on behalf of Waste Hauling Landfill
22 by SKS Engineers.

23 A Uh-huh.

24 Q Specifically, I would like to direct your

1 attention to Attachment C to the letter entitled
2 closure.

3 HEARING OFFICER WALLACE: Excuse me, Ms.
4 Menotti. I am very sorry. Mr. Taylor, did you
5 have any cross-examination of Mr. Smith?

6 MR. TAYLOR: Yes, I did, but my
7 questions, I think, are somewhat limited, so I
8 think it is fine for the State to --

9 HEARING OFFICER WALLACE: I apologize for
10 that. I got out of hand here.

11 Q (By Ms. Menotti) Could you tell me what
12 this attachment is entitled?

13 A Attachment C is entitled revised closure,
14 post-closure care plan.

15 Q Could you please turn to the fourth page
16 of that attachment?

17 A Okay.

18 Q You previously testified that you
19 considered this information in regard to the
20 closure, post-closure care permit application and
21 your subsequent denial?

22 A Uh-huh.

23 HEARING OFFICER WALLACE: Yes?

24 THE WITNESS: Yes.

1 Q (By Ms. Menotti) Could you please, under
2 item number six, for the record, tell me what item
3 C under fill area number one reads as?

4 A Item C requests the average depth of
5 refuse in each area, provide bottom elevation, mean
6 sea level, and final elevation mean sea level and
7 the response is top elevation 648 plus or minus,
8 bottom elevation, unknown.

9 Q Could you move down the page a little bit
10 to where the fill area number two is addressed?
11 Could you please read item C under that section?

12 A Okay. Item C, again, is requesting the
13 average depth of refuse in each area, provide
14 bottom elevation, mean sea level, and final
15 elevation, mean sea level, and the response is top
16 elevation 700 plus and the bottom elevation
17 unknown.

18 Q And based on your knowledge and your
19 review of this information, how does that
20 information compare to the permitted contours of
21 the landfill?

22 A In regards to fill area number two,
23 the -- it is my belief the maximum permitted
24 elevation of fill area number two is in the

1 neighborhood of elevation 632. They are indicating
2 here that the top elevation is 700 plus, the
3 existing elevation is 700 plus. So it appears they
4 are overheight.

5 MS. MENOTTI: At this point I have
6 nothing further, but the State does intend to
7 recall Mr. Smith during the continuation of this
8 hearing in April.

9 HEARING OFFICER WALLACE: All right.
10 Thank you.

11 Mr. Van Ness, recross?

12 MR. VAN NESS: Yes.

13 RECROSS EXAMINATION

14 BY MR. VAN NESS:

15 Q We just saw the references in People's
16 Exhibit Number 3 being, again, the submittal from
17 Waste Hauling regarding the possible overheight
18 issue. I want to go back and revisit with you the
19 field operation section notes that you said you
20 reviewed as part of your understanding of the
21 file.

22 Would you agree that the Waste Hauling
23 Landfill was repeatedly requested to raise the
24 height of the landfill?

1 A I have read this particular inspection
2 report you gave me some moments ago, and agree that
3 an inspector on that occasion told them that. I
4 don't know -- I can't characterize how often that
5 that occurred, if it, indeed, occurred more than
6 once. I have been advised by --

7 Q Do you --

8 HEARING OFFICER WALLACE: Let him finish
9 his answer.

10 MR. VAN NESS: I am sorry.

11 THE WITNESS: I have been advised by
12 Waste Hauling's legal counsel in the past that that
13 occurred.

14 Q (By Mr. Van Ness) I am trying to
15 understand why it is that you have a
16 characterization of documents that you stated that
17 you have looked at. Would you care to look at some
18 more, or would you agree that this 1984 inspection
19 report that I showed you a few minutes ago is not
20 the only one in which they were cited for having
21 the berm too low?

22 A That's the only one I can recall at the
23 moment.

24 Q Okay. We will try this again.

1 MS. MENOTTI: Before you proceed, for the
2 record, I would like to make an objection regarding
3 the further introduction of these documents and the
4 continuation of this line of examination, as this
5 should have been properly done initially on
6 cross-examination if they wanted to be addressed,
7 and it is not responsive to the redirect regarding
8 the March 21st, 1996 testimony.

9 HEARING OFFICER WALLACE: Reply?

10 MR. VAN NESS: My response, Mr. Hearing
11 Officer, is that Counsel saw fit to continue
12 pursuing this witness with respect to the
13 overheight issue, and in consequence of which I am
14 trying to respond to that. Counsel opened the
15 door. This witness opened the door talking about
16 what he had reviewed as part of the background for
17 his testimony today. All of this is within that
18 area, by his own testimony.

19 Obviously, I have attempted to keep the
20 paperwork down to a dull roar, but since this
21 witness has an imperfect memory, I would seek the
22 opportunity to jog his memory a little bit more.

23 HEARING OFFICER WALLACE: Objection
24 overruled. Proceed.

1 MR. VAN NESS: Thank you.

2 Q (By Mr. Van Ness) I show you another
3 document which I represent to you is a
4 Environmental Protection Agency Inspection Report.
5 Is this a document you recall having seen before?

6 A Not specifically, no.

7 Q You don't deny that you have seen it
8 before?

9 A If it is in the Agency file, I would have
10 read it.

11 Q It is an Agency document, would you not
12 agree?

13 A Yes.

14 Q I am going to ask you to look again at
15 the line marked number one, and do you see
16 handwriting, sir on the --

17 MS. MENOTTI: Excuse me. For the record,
18 could I -- I have no idea what the witness is
19 testifying to. Could you have the document
20 identified, please?

21 MR. VAN NESS: I am sorry.

22 Q (By Mr. Van Ness) Would you identify the
23 document in terms of the date that is shown in the
24 upper right-hand corner of that document, please?

1 A It is an Agency Inspection Report for
2 Waste Hauling Landfill dated -- I believe it says
3 February 9th, 1987.

4 Q Okay. Again, at line one would you
5 describe or read the handwriting that you see there
6 on that line?

7 A "Berm on east side below fill."

8 Q Why don't you go ahead and turn to the
9 back page of that report. Why don't you read the
10 note at the bottom of that page.

11 A "807.302 was charged because the berm
12 along the east side was below the fill level. This
13 berm is supposed to be brought up as the fill, so
14 that it is above the fill."

15 Q All right. Thank you. Would you agree
16 that that is a direction to the landfill operator
17 to raise the landfill?

18 A Yes.

19 Q Do you see anything in there about
20 overheight?

21 A No, I don't.

22 Q Do you see any mention at all about
23 height restriction?

24 A No.

1 MS. MENOTTI: Mr. Hearing Officer, the
2 State, at this point, would move to have either the
3 whole document read into evidence or admitted into
4 evidence, as the parts that Mr. Smith has read is
5 not only a not produced document, but he is being
6 asked to read only parts of the document that is to
7 be taken out of context.

8 The State believes that this would
9 inaccurately reflect the substance of the report
10 that Counsel is referring to. In support of that,
11 we offer a 1976 court case, Lawson v. Judy Steril
12 (spelled phonetically) which indicates that if one
13 party introduces part of another into writing the
14 opposing party may introduce the remainder or is
15 required to place that part originally offered in
16 proper context.

17 MR. VAN NESS: I have no objection to
18 introducing either of these documents that are
19 obviously Agency documents. My intention was,
20 frankly, to introduce them with respect to another
21 witness. However, if it please the Hearing
22 Officer, I will produce those documents now and ask
23 that they be identified. I am not sure this
24 witness is an appropriate witness for that purpose,

1 Mr. Hearing Officer.

2 HEARING OFFICER WALLACE: Why don't we
3 mark them as WHL Respondent's Exhibits 1 and 2 for
4 identification, if you have another witness that is
5 going to be testifying to them.

6 MR. VAN NESS: Exhibit Number 1 will be
7 the May 17, 1984 document. Exhibit Number 2 will
8 be the February 9th, 1987 document.

9 (Whereupon said documents were
10 duly marked for purposes of
11 identification as Respondent's
12 WHL Exhibits 1 and 2 as of this
13 date.)

14 HEARING OFFICER WALLACE: To the extent,
15 is there an agreement on these two, Ms. Menotti?

16 MS. MENOTTI: I am sorry?

17 MR. DAVIS: We could stipulate Mr.
18 Hearing Officer, since these are -- at least these
19 two are Agency Inspection Reports and if there are
20 other Agency Inspection Reports we would stipulate
21 to those, as well.

22 HEARING OFFICER WALLACE: All right. Any
23 objection, Mr. Taylor?

24 MR. TAYLOR: As long as we could see

1 them.

2 HEARING OFFICER WALLACE: Do you have
3 other copies?

4 MR. VAN NESS: Yes, I am getting them.
5 Maria, do you have these?

6 MS. MENOTTI: I don't think we have a
7 copy of them with us.

8 MR. TAYLOR: We have no objection.

9 HEARING OFFICER WALLACE: All right.
10 Respondent's WHL Exhibits 1 and 2 are admitted into
11 evidence.

12 (Whereupon said documents were
13 admitted into evidence as
14 Respondent's WHL Exhibits 1 and
15 2 as of this date.)

16 MR. VAN NESS: Thank you. I have nothing
17 further.

18 HEARING OFFICER WALLACE: Mr. Taylor, did
19 you have any questions?

20 CROSS EXAMINATION

21 BY MR. TAYLOR:

22 Q Mr. Smith, I believe you -- can you
23 restate your duties? At this point it has been
24 some time since the beginning of your testimony.

1 A I am an Environmental Protection Engineer
2 III with the Solid Waste Unit of the Permit Section
3 in the Bureau of Land. My primary duty is to
4 review permit applications for nonhazardous waste
5 landfills, nonhazardous waste transfer stations and
6 landscape waste compost facilities.

7 Q Can you explain your function as it
8 relates to the Waste Hauling Landfill?

9 A Between the period of April 1991 --
10 excuse me. Actually in 1989 up until now I have
11 been the primary reviewer for this landfill.

12 Q Does that mean that you have some
13 obligation to coordinate the review and responses
14 given to permit applications?

15 A Yes.

16 Q Who else would review permit applications
17 submitted for Waste Hauling Landfill during the
18 time that you were the primary permit application
19 reviewer?

20 A Aside from myself, I would receive
21 comments from our field staff. They would look
22 over the application.

23 Q Excuse me. Is the field staff, are those
24 the people who conduct the inspections or --

1 A Yes, people that conduct the
2 inspections.

3 Q Okay.

4 A This particular application, log number
5 1991-136, it was reviewed by two geologists in our
6 Groundwater Assistance Unit, the first individual
7 being Kevin Rogers. He provided comments which I
8 incorporated into the November 4th, 1991 letter.

9 He subsequently left the agency and an
10 individual by the name of Scott Magill reviewed the
11 March 21st, 1996 application addendum. He provided
12 me some comments which I subsequently identified as
13 deficiencies in the June 26, 1996 denial letter.

14 Q These two gentlemen from the Geologist
15 Section of the Agency, would they have access to
16 the files relating to the landfill?

17 A Yes.

18 Q So their comments given to you would be
19 based on their review of technical information
20 concerning the landfill?

21 A Yes.

22 Q All right. And for purposes of
23 clarification, did you or did you not receive
24 comments from actual inspectors of the Waste

1 Hauling Landfill?

2 A I don't recall. I could -- if I had an
3 opportunity to look at the application record I
4 would be able to make that determination. I don't
5 specifically recall.

6 Q You are familiar with Part 807 of the
7 Board Regulations concerning landfills; is that
8 correct?

9 A Yes, I am.

10 Q Do you know the date when closure,
11 post-closure care submittals were first required
12 for landfills subject to Part 807?

13 A Sometime in 1985.

14 Q And at that point they were required to
15 do what, submit a plan or --

16 A It is my understanding that in 1985 the
17 financial assurance requirements also became
18 affective at that time also. And landfills were
19 required to fill out a form called the Interim
20 Formula, where they would calculate initially the
21 amount of financial assurance they should set aside
22 for the purpose of closure, post-closure.

23 Then, at a latter date, they would submit
24 a closure, post-closure care plan, and get a better

1 estimate of the amount of money that was needed to
2 close the landfill. I don't specifically recall if
3 the Regulations set -- identified a date by which a
4 landfill operator had to submit a closure,
5 post-closure care plan application.

6 Q Do you know when the first closure,
7 post-closure care plan application was submitted by
8 Waste Hauling Landfill?

9 A I believe that it was sometime in early
10 1988.

11 Q Do you know the results of that
12 submittal?

13 A I believe an application was denied on
14 May 10th of 1988.

15 Q Was there a follow-up submittal from the
16 landfill after that first application?

17 A There was a second submittal, which I
18 denied in 1989.

19 Q Then following that was the 1991
20 submittal?

21 A Following that there was a third
22 submittal, which was denied in December of 1989.

23 Q And following that?

24 A Following that was the April 1991 permit

1 application.

2 Q Would it be accurate to say that there
3 have been five closure, post-closure care
4 submittals from the landfill?

5 A I believe actually there were four permit
6 applications submitted.

7 Q Was the 1996 application a separate
8 application or a restatement?

9 A It was an addendum to the April 1991
10 application.

11 Q So then there were four applications plus
12 an addendum?

13 A That's correct.

14 Q I would like you to refer to what I
15 believe is People's Exhibit Number 4. It is the
16 June 1996 letter that I understand you wrote and
17 sent to Mr. Camfield?

18 A Yes.

19 Q Do you have that?

20 A Yes, I do.

21 Q Would you please refer to paragraphs
22 three, four and five of this letter. I will give
23 you a chance to read those.

24 A (Witness reviewed document.) Okay.

1 Q Can you explain the importance of those
2 or the import of those paragraphs?

3 A Paragraph number three, without having
4 the benefit of looking at the application, I am
5 going to presume that fill area number two needed
6 some additional final cover soil placed on the
7 landfill. However, the applicant didn't identify
8 the specific areas which were in need of the
9 additional final cover. That information was
10 required to be submitted pursuant to the Agency's
11 application form for closure, post-closure care
12 plans. They didn't submit it, so I identified that
13 as a deficiency.

14 Q So was it your -- you had reviewed the
15 application prior to writing this letter, correct?

16 A Yes, I did.

17 Q Was it your understanding, then, at the
18 time that fill area number two had not received
19 final cover soil?

20 A It was my understanding that the
21 applicant had stated that certain areas were
22 deficient of final cover.

23 Q Okay. Can you explain the importance of
24 paragraph number four?

1 A Again, the applicant had identified that
2 a piece of property adjacent to the landfill would
3 serve as a borrow area for getting soil used in
4 constructing the final cover. They had made a
5 claim that the soil exhibited a certain
6 permeability when it was compacted to 95 percent of
7 standard proctor density.

8 HEARING OFFICER WALLACE: To 95 percent
9 what?

10 THE WITNESS: To 95 percent of standard
11 proctor density.

12 In this denial point I noted that the --
13 that they hadn't demonstrated that enough soil
14 existed in this borrow area which would meet these
15 specifications. As far as --

16 Q (By Mr. Taylor) And the applicant had to
17 make that demonstration in order to have their
18 closure plan approved?

19 A Yes.

20 Q Paragraph five, can you explain the
21 importance of that?

22 A Paragraph five states that the applicant
23 has failed to identify how the existing final cover
24 will be checked for thickness and percent

1 compaction.

2 Again, I don't have the benefit of the
3 application in front of me, but I presume the
4 applicant stated that they would check the existing
5 final cover to make sure it was thick enough to
6 meet the 807 standards, and that it was compacted
7 sufficiently to meet the standards. Yet, they
8 didn't state specifically how they were going to go
9 about checking this.

10 Q Was it your understanding then at the
11 time that the final cover was complete on the
12 landfill?

13 A No, it was not my understanding.

14 Q I would ask you to refer to paragraph
15 nine on page three of this letter.

16 A Okay.

17 Q Can you explain the content of paragraph
18 nine?

19 A On the application form -- on the Agency
20 application form we request information as to the
21 source and type of material that they are going to
22 use to construct the vegetative layer of the final
23 cover system. In the application they stated that
24 they would use compost from a site next to the

1 landfill, they would use compost from that facility
2 to construct a vegetative layer.

3 I pointed out that this compost site
4 doesn't exist, so they couldn't very well use
5 compost from that site to construct a vegetative
6 layer.

7 Q Okay. So are there two layers of a final
8 cover?

9 A Yes.

10 Q Can you explain what those two layers
11 are?

12 A Under Part 807 there is a two foot thick
13 clay compacted layer. That's the layer that
14 prohibits water from infiltrating into the
15 landfill. Above the two foot layer is a six inch
16 layer, commonly referred to as the vegetative
17 layer, and that's the layer which is usually seeded
18 and protects the two foot thick compacted layer
19 from animals and weather and traffic.

20 Q Can you explain what happens without the
21 six inch vegetative layer to the underlying cover?

22 A Without the vegetative layer, the clay
23 layer will crack through the normal freeze-thaw
24 cycle. It will warm up, get cold, warm up, get

1 cold, and crack. And animals have access to it,
2 burrowing.

3 It is -- you will get volunteer
4 vegetation growing into the clay and roots
5 penetrated through the cover and it provides an
6 avenue for water to infiltrate into the landfill.

7 Q Does it also protect the clay there from
8 erosion?

9 A Yes, it does.

10 Q Was it your understanding that a
11 vegetative layer had been applied to the landfill
12 at the time that you were reviewing the
13 application?

14 A It wasn't my understanding that it was or
15 wasn't. I don't know to what extent a vegetative
16 layer had been applied to the landfill.

17 Q I would like to redirect your attention
18 now to paragraph thirteen of this letter. I will
19 provide you an opportunity to read that.

20 A (Witness reviewed document.) Okay.

21 Q Can you explain the import of paragraph
22 thirteen?

23 A In paragraph thirteen I noted that fill
24 area number two, it appears to have been landfilled

1 above its existing contours. I asked the applicant
2 to provide either a cost estimate, meaning
3 financial assurance for removal of the overfill, or
4 they would have to -- or ask that they provide a
5 demonstration that they had local site approval in
6 accordance with Section 39.2 of the Illinois
7 Environmental Protection Act.

8 Q Okay. Does this paragraph state the
9 Agency's position, at the time of the letter, of
10 the requirements applicable because of the
11 overfill?

12 A Yes.

13 Q I would like you to refer to People's
14 Exhibit Number 1 for a moment. I believe it is the
15 November 4, 1991 letter. Excuse me. I believe it
16 is Exhibit Number 2.

17 Does this letter also make reference to
18 the overheight issue?

19 A Yes.

20 Q All right. Did the addendum submitted in
21 1996 provide an approvable response to the
22 overheight issue first identified in Exhibit Number
23 2?

24 A No.

1 MR. TAYLOR: All right. Thank you. No
2 further questions.

3 HEARING OFFICER WALLACE: All right.
4 Thank you, Mr. Smith.

5 (The witness left the stand.)

6 HEARING OFFICER WALLACE: This seems an
7 appropriate time to break for lunch. Let's come
8 back at 1:00.

9 (Whereupon a lunch recess was
10 taken from 12:00 p.m. to 1:00
11 p.m.)

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AFTERNOON SESSION

(March 3, 1997; 1:00 p.m.)

HEARING OFFICER WALLACE: Back on the record.

Ms. Menotti, are you ready to proceed?

MS. MENOTTI: Yes. The State would like to call Steven Townsend.

(Whereupon the witness was sworn by Hearing Officer Wallace.)

HEARING OFFICER WALLACE: You may proceed.

MS. MENOTTI: Thank you.

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

DIRECT EXAMINATION

BY MS. MENOTTI:

Q For the record, could you please state your name.

A Steven Cameron, C-A-M-E-R-O-N, Townsend.

Q Could you please give us a description of your educational background, Mr. Townsend?

A I have a Bachelor of Science Degree from

1 the University of Wisconsin at Stevens Point, which
2 I received in December of 1984, and that's in
3 Natural Resource Management with a minor in Soil
4 Science, and that included a course work in solid
5 and hazardous waste management and waste water
6 treatment.

7 Q Who is your current employer?

8 A The State of Illinois EPA.

9 Q How long have you worked for the Illinois
10 EPA?

11 A Ten and a half years.

12 Q What is your current position?

13 A Environmental Protection Specialist III.

14 Q Could you please tell us what your job
15 duties are in that position?

16 A I am a field inspector. I inspect solid
17 and hazardous waste sites and industries that
18 generate hazardous waste.

19 Q How long have you held this position?

20 A I have been an inspector from the time I
21 was hired. My first year was as a trainee, but the
22 job description was basically the same.

23 Q Do you have any kind of training beyond
24 your Bachelor's that were either provided within or

1 outside of the Illinois EPA?

2 A Yes, I have. The State of Illinois sends
3 its employees at the EPA to a lot of training. I
4 have been to the RCRA Inspector Institute. I have
5 had -- the State picked up two geology courses and
6 a geophysics course for me. I have safety training
7 yearly. I have had various other trainings
8 regarding either case management or hazardous or
9 nonhazardous investigations. I have had emergency
10 response training. I have had training on specific
11 Regulations as they come up.

12 THE COURT REPORTER: Could you tell me
13 the name of the institute again?

14 THE WITNESS: The RCRA Inspector
15 Institute. RCRA, it is Resource Conservation and
16 Recovery Act.

17 THE COURT REPORTER: Thank you.

18 Q (By Ms. Menotti) In your tenure with the
19 Agency as a field inspector, how many different
20 landfills would you say you have inspected or
21 worked on?

22 A Different sites?

23 Q Yes.

24 A Oh, it would be an estimate, because I

1 don't have my records in front of me. But it would
2 be somewhere between a dozen and two dozen
3 different sites.

4 Q Have you ever testified before a Circuit
5 Court or a Pollution Control Board before?

6 A I have testified before both.

7 Q On behalf of the Illinois EPA?

8 A Yes.

9 Q Can you generally describe your duties as
10 a field inspector with regard to what happens when
11 you are assigned a specific site to inspect?

12 A It would depend upon the nature of the
13 site and, for instance, if it were a landfill, my
14 duties would be, first off, to review the file and
15 find out what information I have available as far
16 as the site history, so that I will be aware of the
17 areas I should look at, either location or specific
18 problems that have occurred in the past.

19 Then to actually go out and do a field
20 inspection, to document what I see by photographing
21 and drawing a site sketch and writing notes, which
22 I incorporate into a report. And then to help
23 draft a memo that would go to our enforcement
24 people that would summarize what I have done. That

1 would be the major duties I would have as an
2 inspector. I might, on occasion, be called to
3 testify about what I have done.

4 Q Can you -- when you were talking about
5 conducting actual inspections of facilities, do you
6 make records of your observations when you conduct
7 that type of investigation?

8 A While I am conducting the investigation,
9 I write down notes on papers and they usually end
10 up getting quite muddy. Then I take those notes
11 and I write a narrative report. And that goes into
12 our file. That is the record that I turn in.

13 Q So you make your notes as you are
14 actually at the site?

15 A Yes.

16 Q Do you generate any kind of official
17 report for the facility's file or for submission to
18 your supervisor when you do an inspection of a
19 facility?

20 A Yes. There is an inspection report which
21 generally includes both the narrative and a
22 checklist, although on occasion it will just be a
23 narrative. There is usually photographs. Very
24 rarely are they not taken. And any other data,

1 such as records from a facility that we would get,
2 that might be included, would be attached to the
3 report.

4 Q Is this a generally established practice
5 for field inspectors when they conduct a site
6 inspection, to produce a report and attach the
7 photographs?

8 A Yes, that's the way I have done it the
9 entire time I have been with the Agency, and that's
10 the way everybody in my office does it, to my
11 knowledge.

12 Q Are these inspection reports a type of
13 report that are ordinarily prepared in the regular
14 course of Agency business?

15 A Yes.

16 Q And is this at the direction of your
17 supervisor or is it just general Agency practice?

18 A Well, from my perspective it comes from
19 my supervisor, but as far as I know it is the
20 general Agency practice, also.

21 Q Are these inspection reports something
22 that are kept in the regular course of Illinois EPA
23 business, and that are retained within the Agency
24 file for a particular site?

1 A Yes, they would be retained in both the
2 division file and the individual region file and
3 maybe some others.

4 Q Are you familiar with the Waste Hauling
5 Landfill?

6 A Yes.

7 Q Were you ever assigned to inspect this
8 landfill?

9 A Yes, I was.

10 Q During what period of time? Can you give
11 me a span of time when you conducted such
12 inspections?

13 A I conducted inspections from early 1987
14 until late in the spring of 1992. During that last
15 inspection, in the spring of 1992, I accompanied
16 another inspector, who actually wrote the report.
17 Then I was asked to do another inspection again,
18 which I did Friday.

19 Q During the course of these inspections,
20 did you make notes of conditions that existed at
21 the landfill?

22 A Yes.

23 Q Did you ever note any violations at the
24 landfill?

1 A Yes.

2 Q Were those violations the type of things
3 that you would include in your inspection reports?

4 A Yes, they would have been in the report.

5 Q Did you have the opportunity to visit and
6 inspect the landfill on April 26th, 1990?

7 A I think that was the date. I know it was
8 April of 1990. I don't remember the exact date.

9 Q If I showed you a report regarding that
10 inspection, would you be able to identify it?

11 A Yes, I would.

12 MR. LATSHAW: What date was that? I
13 couldn't hear you.

14 MS. MENOTTI: I am sorry?

15 MR. VAN NESS: The date.

16 MS. MENOTTI: April 26, 1990.

17 MR. LATSHAW: Thank you.

18 MS. MENOTTI: Could you mark that,
19 please. Thank you.

20 (Whereupon said document was
21 duly marked for purposes of
22 identification as People's
23 Exhibit 5 as of this date.)

24 Q (By Ms. Menotti) Mr. Townsend, I will

1 hand you what has been marked as People's Exhibit
2 Number 5. Do you recognize this document?

3 A Yes, I do.

4 Q Could you please identify it?

5 A This is the inspection report that I
6 wrote as a result of the April 26, 1990 inspection
7 that I had done.

8 Q Is this a report that you generated?

9 A Yes, it is.

10 Q Does your signature appear anywhere in
11 this document?

12 A On page four of the checklist, which is
13 on the front of this package, my signature is
14 there.

15 Q Is this the type of report that is
16 generated and maintained for the Illinois EPA
17 files?

18 A This is one of the type of reports, yes.

19 Q And is this report a memorandum of the
20 inspection that you conducted at the landfill on
21 April 26, 1990?

22 A This report documents my findings of the
23 inspection of 1990. I am not sure quite what you
24 mean by is it a memorandum.

1 Q Is there a narrative attached besides the
2 checklist?

3 A Yes, there is.

4 Q Okay.

5 A Just below the checklist there is a
6 narrative.

7 Q Is this a type of report that you would
8 generally prepare in the regular course of Agency
9 business regarding your inspection?

10 A Yes, it is.

11 Q Was this report prepared
12 contemporaneously with or shortly after you
13 conducted the inspection on this date?

14 A Yes, it would have been. The initial
15 information would have been collected during the
16 inspection and then I would have taken that
17 information back to my office and wrote the
18 report --

19 Q Okay.

20 A -- usually either starting that afternoon
21 or, you know, sometime that next week depending on
22 how late I would get back.

23 Q Is this -- did you say this is a true and
24 accurate copy of the report that you generated

1 regarding this inspection?

2 A Let me look at it first (Witness reviewed
3 document.) It appears to be.

4 Q Are the photographs attached also
5 accurate copies of the documentation --

6 A Yes.

7 Q -- for the inspection of that date?

8 A Yes, they appear to be, too.

9 MS. MENOTTI: At this time I would move
10 to admit the document into evidence, for the
11 record. I still have more questions regarding it.

12 MR. LATSHAW: Could I see that just to
13 make sure that it is complete?

14 Thank you. I believe it is. No
15 objection. Oh, Byron wants to see it. Okay.

16 MR. TAYLOR: No objection.

17 HEARING OFFICER WALLACE: People's
18 Exhibit Number 5 is admitted into evidence.

19 MS. MENOTTI: Thank you.

20 (Whereupon said document was
21 admitted into evidence as
22 People's Exhibit 5 as of this
23 date.)

24 Q (By Ms. Menotti) I will hand you back

1 People's Exhibit Number 5. On the date of this
2 inspection, can you generally describe what you
3 observed at the landfill?

4 A Yes. In the 1990 inspection I observed,
5 if my recollection is correct, I observed uncovered
6 refuse. I observed that as you walk in you would
7 be looking upward towards refuse that was buried.
8 And on previous inspections I had observed leachate
9 problems. I am sure there may have been other
10 things I listed, which I could recall if I looked
11 at it, but in general, that is what I observed on
12 that inspection.

13 Q In regard to -- you just mentioned that
14 when you walked in you saw material that was
15 sloping upward?

16 A Yes.

17 Q Is that how it was supposed to appear
18 according to your knowledge of the fill and its
19 permits?

20 MR. LATSHAW: I think I will object. We
21 have allowed Counsel to lead for quite awhile. I
22 think this is fairly leading and suggesting on
23 fairly important points. I would object to the
24 form of the question.

1 MS. MENOTTI: I can rephrase.

2 HEARING OFFICER WALLACE: Would you
3 rephrase, please.

4 Q (By Ms. Menotti) Actually, let's go back
5 to the document you have in front of you that has
6 been admitted as People's Exhibit Number 5. Could
7 you go through the first four pages where you have
8 the checklist of violations and summarize them for
9 the record?

10 A Sure. On the first page the first item I
11 marked was failure to comply with terms and
12 conditions of permit. And I marked, as a
13 subheading under that, outside the permitted area.
14 Slope of fill was wrong. Inadequate cover, daily
15 cover. Unpermitted leachate pond. And then below,
16 also on that page, I marked an item for not
17 having -- for having uncovered refuse remaining
18 from the previous day and adequate depth of daily
19 cover, which relates to the uncovered refuse from
20 the previous day.

21 On the second page I marked failure to
22 collect and contain litter, acceptance of waste
23 without necessary permits, causing or allowing --
24 basically there were three leachate related

1 violations, one for causing or threatening and
2 allowing water pollution, one for leachate flow
3 entering the water of the State and one for
4 leachate flow exiting the landfill confines.

5 On the third page there is an additional
6 mark for inadequate measures to monitor and control
7 leachate. There is a mark for refuse in standing
8 water or flowing water. There is a mark for refuse
9 in an unpermitted portion of the landfill. There
10 is a mark for failure to submit some reports.
11 There is a mark for acceptance of special waste
12 without the appropriate manifest. There is a mark
13 for failing to file a closure plan and there is a
14 mark for the operator, Mr. Brown, not having his
15 prior certification.

16 Q Did the checklist -- the violations that
17 you just quoted, do those represent either
18 violations of the Environmental Protection Act or
19 the Pollution Control Board Waste Disposal
20 Regulations?

21 A Either or both, yes.

22 Q Regarding on page three, item 35, you
23 said that you observed unpermitted deposition of
24 refuse?

1 A Deposition of refuse in an unpermitted
2 portion of the landfill.

3 Q Can you explain what is meant by that
4 violation?

5 A This violation I would mark anywhere, and
6 I marked it specifically on that date because
7 refuse had apparently been placed beyond the area
8 that the permit would have allowed it, both
9 laterally and vertically.

10 Q How did you determine that there was
11 lateral overfill?

12 A I determined the lateral overfill --
13 initially in my review before I went to the site I
14 looked at an aerial survey from 1988, the Danner
15 Aerial Survey and I double-checked that by pacing,
16 taking a walked measurement along the back side of
17 the landfill, the north end.

18 Q And with regard to the vertical
19 overheight, how did you document that?

20 A The vertical overheight, I looked at the
21 initial permit, what it stated that it should --
22 what the maximum elevation should be. I looked at
23 the Danner Survey, which stated what the elevation
24 was measured as in 1988, and I also noted that the

1 original permit should indicate that as you walk
2 in, you should look downward, and I noted that as
3 you walked in you looked upward.

4 Q Would you be able to identify the 1988
5 aerial survey that you are referring to?

6 A Yes.

7 Q I am handing you what has been marked and
8 admitted as People's Exhibit Number 1. Mr.
9 Townsend, I would ask you to look at this exhibit,
10 and can you tell me if this is a copy of the survey
11 that you are referring to?

12 A It appears the same. I believe my copy
13 was not quite this blue, though.

14 Q Would you say that this is an accurate
15 representation or a copy of the document that you
16 relied upon in basing your observations regarding
17 the overfill?

18 A Yes, I would.

19 Q For the record, could you please tell me
20 where this survey came from, who generated it?

21 A Okay. It was -- it came in as part of a
22 permit application, if my remembrance is correct,
23 and it was turned in by the site engineer, Shaffer
24 Krimmel & Silver. It indicates that it was Danner

1 Aerial Survey that did the flyover work.

2 Q And this was forwarded to you by the
3 landfill or the Agency people? How did you come
4 into --

5 A This was forwarded to the Agency by the
6 landfill. For some reason I did not receive a copy
7 when the initial permit was turned in and I had to
8 request one. I believe that was done in December
9 of 1989, that I requested that. This I received
10 from -- internally from our division file.

11 Q Okay. At the time that you conducted
12 this inspection, based on your knowledge of the
13 Regulations and the Environmental Protection Act,
14 was this landfill required to have any kind of
15 closure plan?

16 A Yes.

17 Q Did you document -- to your knowledge,
18 did the landfill have a closure plan at this point
19 in time?

20 A They did not have an approved closure
21 plan at this time.

22 Q Did you note this fact, that there was no
23 approved closure plan in your inspection on this
24 date?

1 A I believe I did. Let me double-check,
2 though. Yes, I did, item number 41 in the
3 checklist.

4 Q Okay. At the time of your inspection,
5 based on your knowledge of the landfill and your
6 knowledge of the Environmental Protection Act and
7 the Board Regulations, was the landfill required to
8 have any kind of closure, post-closure care plan?

9 A Yes.

10 Q To your knowledge, was there any such
11 plan that was approved by the Illinois EPA permit
12 section?

13 A No, not to my knowledge, there was no
14 such plan approved.

15 Q Did you document this in your report?

16 A Actually, I don't believe I documented
17 that they didn't have a post-closure plan. I think
18 I just marked closure on this report.

19 Q During your inspection did you take any
20 photographs at the site?

21 A Yes, I did.

22 Q Were they attached as part of this
23 report?

24 A Yes, they are.

1 Q Do any of the photographs that you
2 attached illustrate the violations that we have
3 been talking about?

4 A In general, when you had me list the
5 violations, summarize the entire violations, yes,
6 these photographs would depict the violations we
7 spoke of.

8 Q Could you identify which photographs in
9 particular?

10 A Okay. Based on which violation would you
11 want first?

12 Q Pardon me?

13 A Which violation would you want me to
14 cover first?

15 Q Based on -- we have been talking about
16 the overfill vertically and laterally?

17 A Okay. Photograph number 10, roll 148.

18 MR. LATSHAW: What is that again?

19 THE WITNESS: Photograph number 10, roll
20 148.

21 Q (By Ms. Menotti) What did that photograph
22 indicate specifically?

23 A It basically is a distance shot showing
24 the fill, how it rises up. This is taken towards

1 the north, northwest, based on my -- also
2 photograph number 11, roll 148. Photograph number
3 13 of 148.

4 HEARING OFFICER WALLACE: Mr. Townsend
5 you kind of trailed off.

6 THE WITNESS: Photograph 13 of 148. I am
7 sorry. Photograph one of 149. I will say the
8 photograph first and the roll second just to
9 clarify it.

10 HEARING OFFICER WALLACE: I think the
11 court reporter can probably hear you, but I am not
12 sure this side of the table can. So if you can,
13 keep your voice up. It would help.

14 THE WITNESS: Again, photograph 2, 3 and
15 7 of 149 regarding the dimensions of the landfill
16 photographs, that would be it.

17 Q (By Ms. Menotti) Okay. Let's talk about
18 those pictures that you have mentioned one at a
19 time. Regarding photograph number 11 of roll
20 number 148, could you please describe the picture,
21 for the record?

22 A Okay. Photograph number 11 of 148 is
23 taken from the east edge of the fill towards the
24 west at the back end or north end. It shows how

1 the fill rises up. There is some other items in
2 the picture, also. There appears to be some litter
3 and some refuse.

4 Q Okay. Photograph number 13 of roll 148,
5 could you please describe that?

6 A Photograph number 13 of 138 shows
7 uncovered refuse taken from up top in the landfill
8 itself of fill area number two and it is taken
9 toward the northwest and shows uncovered refuse in
10 that area.

11 Q When you say up top, what do you mean by
12 that?

13 A I climbed up on top of the landfill and I
14 took a picture.

15 Q Okay. Was this the part of the landfill
16 that was active that was still accepting waste at
17 the time?

18 A This would have been in fill area number
19 two, which was accepting waste. I don't recall for
20 sure if this particular picture was where they were
21 accepting waste at that time.

22 Q But --

23 A It had been recent.

24 Q Well, I guess a better question is was

1 this portion of the landfill open for receipt of
2 waste?

3 A Again, fill area number two would have
4 been open for receipt of waste. I don't recall
5 whether they were actually dumping in this area or
6 if they had just not put cover down.

7 Q I believe the next picture you mentioned
8 was picture number 1 of roll 149. Could you please
9 describe the view in that picture?

10 A Yes. This picture is -- shows the slope
11 rising upward. It is taken towards the north,
12 northeast as you come into the site.

13 Q Is that what you would have expected to
14 see?

15 A No.

16 Q What would you expect to see from that
17 vantage point?

18 MR. LATSHAW: I will object as to
19 foundation as to what basis he can state as to what
20 he would expect to see.

21 MS. MENOTTI: I think that Mr. Townsend
22 has already testified that the view should be a
23 downgrade slope. I am asking him to elaborate on
24 the picture in relation to his prior testimony.

1 HEARING OFFICER WALLACE: All right.

2 Objection overruled.

3 You may answer the question.

4 THE WITNESS: Could you please restate
5 it.

6 Q (By Ms. Menotti) I believe that I asked
7 what you would expect to see from that vantage
8 point?

9 A Okay. From the vantage point where I
10 took photograph number 1 of roll 149, I would
11 expect to be standing roughly at the highest
12 elevation, and anything that would have been buried
13 as far as refuse would be below plus the cover that
14 was put over that refuse would be below me. In
15 this photograph it depicts that it goes above me.

16 Q Can you turn now to picture number 2 of
17 roll 149? Could you please describe the view in
18 that photograph, for the record?

19 A Yes, this is to the north, northwest.
20 Let me see exactly where that was taken from. It
21 also depicts the landfill rising upward.

22 Q The next picture, number 3 of roll 149,
23 could you describe that picture for the record?

24 A Again, this shows the landfill rising

1 upward. It is taken toward the northwest. I
2 believe there is a part missing to this report.
3 There was a site sketch which would have depicted
4 where these all were taken, which I don't see
5 here.

6 Q Can you identify what site sketch you are
7 talking about in that report?

8 MR. LATSHAW: I am sorry. I couldn't
9 hear the question.

10 HEARING OFFICER WALLACE: What was the
11 question, Ms. Menotti?

12 MS. MENOTTI: I just asked -- he said
13 there may be a site sketch in the report. I asked
14 him if he could look through and identify what page
15 that was.

16 THE WITNESS: Normally when I do an
17 inspection report I would create a site sketch
18 where I mark where I took the photographs, and
19 that's the part that I don't see here in this
20 report. Apparently, it is not here. Everything
21 else appears to be there.

22 MS. MENOTTI: Excuse me a minute. I am
23 going to mark this as -- apparently, this has been
24 omitted from the document that I have tendered as

1 an exhibit. I will show it to opposing counsel,
2 for the record

3 (Mr. Van Ness, Mr. Latshaw and
4 Mr. Taylor reviewed document.)

5 MS. MENOTTI: Is that included in your
6 report?

7 MR. LATSHAW: I didn't see it.

8 HEARING OFFICER WALLACE: Off the
9 record.

10 (Discussion off the record.)

11 HEARING OFFICER WALLACE: All right.
12 Back on the record.

13 MS. MENOTTI: Apparently, due to an
14 omission in our record, the Attorney General's
15 office, we didn't have this properly included.

16 Q (By Ms. Menotti) Would you be able to
17 identify the sketch of the site that you indicated
18 you thought was part of your report if I showed it
19 to you?

20 A Yes, I would.

21 Q Can you please look at the document that
22 I am going to hand you and tell me if that is the
23 report, the site sketch that you were referring to?

24 A Yes, this is the site sketch that was

1 missing.

2 Q And is there any identifying marking on
3 it that indicates what it shows?

4 A As in -- I don't understand your
5 question.

6 Q I am sorry. Is there any label on it to
7 indicate which facility it is for?

8 A Yes, there is an LPC site number and then
9 there is the city with the site name next to it --

10 Q Is it --

11 A -- indicated at the top of the page.

12 Q Is that consistent with the numbers on
13 the rest of the inspection report?

14 A Yes, it is.

15 MS. MENOTTI: Mr. Hearing Officer, I
16 would ask that this page be included as part of the
17 exhibit. It was mistakenly not within our file,
18 but I believe opposing counsel has it as part of
19 their document that was tendered during discovery.

20 HEARING OFFICER WALLACE: Any objection?

21 MR. LATSHAW: No, it is part of mine,
22 too.

23 MR. TAYLOR: No.

24 HEARING OFFICER WALLACE: All right.

1 Please insert it in the correct spot, Mr. Townsend,
2 if you know where that is.

3 THE WITNESS: Right at the front of the
4 photographs.

5 HEARING OFFICER WALLACE: Now, before you
6 go on, you do have independent knowledge that that
7 is your sketch?

8 THE WITNESS: Yes.

9 HEARING OFFICER WALLACE: And that was
10 included in your report?

11 THE WITNESS: Yes. I do have knowledge
12 that this is my writing, too.

13 HEARING OFFICER WALLACE: All right. Let
14 the record reflect that the site sketch is being
15 made as part of People's Exhibit Number 5.

16 You may continue.

17 Q (By Ms. Menotti) My next question is did
18 you personally generate the sketch of the site that
19 we have just incorporated into the exhibit?

20 A Yes, I did.

21 Q Could you -- you previously mentioned
22 that you prepared the sketch. Could you please
23 explain what it depicts?

24 A Okay. The main body of the sketch shows

1 what we refer to as the fill area number two or the
2 most recently filled or currently active site at
3 that time. And on the far right of the page and up
4 more towards the top is the old fill area, which
5 had at times been referred to as the McKinney
6 site. And what the sketch shows, is it shows some
7 notations of things that I have drawn, made marks
8 of what I have seen as far as where I took
9 photographs and some areas where I indicated that
10 there was uncovered refuse. I indicated the
11 current active area.

12 Q You mentioned the notations that you
13 made. Just for clarification, the notations are
14 cross-references to photographs or to violations?
15 I am a little bit unclear.

16 A The notations would be cross-references
17 to things I observed. I may or may not have taken
18 a photograph of what I drew on the site sketch.

19 Q I will turn your attention to the last
20 photograph that you mentioned regarding the
21 overfill violation and refuse violation and that
22 was number 7 of roll 149.

23 A Okay. Let me see where I took that.
24 Okay.

1 Q Could you please describe the view in
2 that photograph, for the record?

3 A This photograph is taken from on top of
4 the old McKinney site looking at the fill area
5 number two and it basically shows a mound with a
6 high point in the center.

7 Q Okay. And did you, based on these
8 observations and photographs, draw any conclusions
9 regarding the status of the height of the landfill?

10 A Based on the observations, I drew an
11 opinion that the landfill was higher than it was
12 permitted to be.

13 MR. LATSHAW: I will object and move to
14 strike. I don't think there is sufficient
15 foundation for that opinion. It is largely
16 conjecture, based upon looking at it, and as far as
17 a factual basis --

18 MS. MENOTTI: I am sorry. I couldn't
19 hear.

20 MR. LATSHAW: There is no factual basis
21 or data to support that conclusion, no foundation
22 for the opinion.

23 MS. MENOTTI: I believe that we have --
24 the witness has already testified that he had

1 reviewed the permits, the aerial survey, and has
2 the technical expertise to make such judgments,
3 based on his experience and technical training.

4 MR. LATSHAW: If I may, I think the
5 question was and the answer specifically was based
6 on his observations, and based upon his
7 observations of the landfill, I presume, while he
8 took the photographs. I don't think that is an
9 adequate basis for such opinion. That was my
10 objection.

11 MS. MENOTTI: I am not certain that I
12 caught the last part of that. Can you repeat
13 that?

14 MR. LATSHAW: The objection is that his
15 opinion was that based upon his observations. I
16 take that to mean it was his observations when he
17 was taking these photographs. If that's the case,
18 then I don't think that is sufficient foundation
19 for the opinion. If it is based upon something
20 else, we can ask that question, but if it is based
21 on simply his observations, which is what he said,
22 I don't think that is sufficient.

23 HEARING OFFICER WALLACE: All right.
24 Anything further?

1 MR. LATSHAW: No, sir.

2 MS. MENOTTI: Perhaps the question wasn't
3 clear, but it was based on not just his view of
4 the -- of what he saw when he developed the
5 picture, when he took the picture, but based on his
6 observations during that inspection and the
7 information he had in front of him, which includes
8 the aerial survey and the permit file, which he
9 already testified that he had reviewed.

10 HEARING OFFICER WALLACE: The objection
11 is noted and overruled.

12 Go ahead and answer the question.

13 THE WITNESS: Please restate it again.

14 MS. MENOTTI: Can you read back the
15 question, please.

16 (Whereupon the requested
17 portion of the record was read
18 back by the Reporter.)

19 MR. LATSHAW: I will renew my objection.

20 HEARING OFFICER WALLACE: Overruled.

21 THE WITNESS: Based on what I observed
22 and then specifically what I have taken in these
23 photographs --

24 MR. VAN NESS: Mr. Hearing Officer, could

1 we ask that the witness speak up a little bit
2 louder.

3 THE WITNESS: I am sorry. Based on what
4 I observed and in particular the areas I
5 photographed, I have -- I would conclude that the
6 landfill was filled higher than it was permitted to
7 be.

8 Q (By Ms. Menotti) Just to satisfy Mr.
9 Latshaw regarding his objection, is your opinion
10 only based on your -- is your opinion that the
11 landfill is overheight based on any other
12 information besides the photographs in question?

13 A Yes, in conjunction with other
14 information my observations would be consistent
15 with, for instance, the aerial survey and compared
16 to the original operating permit.

17 Q I want to turn your attention to a
18 different date. Do you recall conducting an
19 inspection of the landfill during 1992?

20 A Yes, in early April, I believe, the first
21 week.

22 Q Excuse me just one second. Did you
23 generate a report regarding that inspection?

24 A I believe the report was generated by one

1 of the other inspection participants and that all
2 of the participants had reviewed it prior to
3 sending it to the file.

4 Q Would that have been a report that you
5 would have been a signatory to?

6 A I would have signed the checklist, yes.

7 Q Would you be able to identify a copy of
8 this report?

9 A Yes, I would.

10 MS. MENOTTI: Would you mark this,
11 please.

12 (Whereupon said document was
13 duly marked for purposes of
14 identification as People's
15 Exhibit 6 as of this date.)

16 MS. MENOTTI: This is dated April 6,
17 1992.

18 MR. LATSHAW: What was the date again?

19 MS. MENOTTI: April 6, 1992.

20 MR. LATSHAW: All right. Thank you.

21 Q (By Ms. Menotti) Mr. Townsend, I am going
22 to hand you what has been marked as People's
23 Exhibit Number 6. Do you recognize this document?

24 A Yes, I do.

1 HEARING OFFICER WALLACE: Excuse me. Do
2 both of you have this?

3 MS. MENOTTI: I am sorry. We tendered
4 this during discovery.

5 HEARING OFFICER WALLACE: Off the
6 record.

7 (Discussion off the record.)

8 HEARING OFFICER WALLACE: All right.
9 Back on the record.

10 MS. MENOTTI: The narrative portion, Mr.
11 Taylor has given me a copy of it, which matches the
12 copy that the Waste Hauling Respondents have, and I
13 believe the copy that Bell Sports have.

14 I would ask if there are no objections,
15 and I think the gentlemen have indicated that they
16 wanted a full record, that this be attached to the
17 exhibit or incorporated as part of the narrative
18 portion.

19 HEARING OFFICER WALLACE: Well, it is
20 whatever you want to put in, and if that's whatever
21 is the correct --

22 MS. MENOTTI: For some reason our file
23 doesn't have a copy of this, of the narrative.

24 HEARING OFFICER WALLACE: Right. So just

1 put it with that, with the exhibit. I don't think
2 you need those first two pages, though, do you?

3 MS. MENOTTI: Right. It is six pages of
4 an inspection narrative.

5 HEARING OFFICER WALLACE: Then, Mr.
6 Townsend, would you put it together as you normally
7 do.

8 THE WITNESS: Yes.

9 MS. MENOTTI: I apologize. I have no
10 reason why our file is not complete with regard to
11 this portion of the report.

12 HEARING OFFICER WALLACE: All right.
13 Now, with the addition of that six-page narrative,
14 People's Exhibit Number 5, we are all agreed is
15 reasonably complete?

16 MR. LATSHAW: I guess so. Yes, I think
17 it is now, as far as I can tell.

18 THE WITNESS: I will look it over real
19 thoroughly, if you would like.

20 MR. TAYLOR: Is that 5 or 6?

21 HEARING OFFICER WALLACE: It is 6. I am
22 sorry.

23 THE WITNESS: (The witness reviewed
24 document.) Yes, it looks to be all there to me.

1 HEARING OFFICER WALLACE: You may
2 proceed.

3 Q (By Ms. Menotti) Okay. I am not certain
4 where I left off. Could you please identify this
5 document?

6 A Yes, this is a copy of the inspection
7 report generated from the April 6, 1992 inspection,
8 which I was present, and I also reviewed this
9 document before it was turned into the file.

10 MR. VAN NESS: Could you please speak up,
11 sir.

12 THE WITNESS: This is a copy of the April
13 6, 1992 inspection report, at which I was present
14 during that inspection, and I had reviewed this
15 document before it was turned into the file.

16 MR. VAN NESS: Okay. Thank you.

17 Q (By Ms. Menotti) Did you sign this report
18 anywhere?

19 A On the fourth page of the checklist
20 portion my name is the last one on the page. There
21 is three names.

22 Q Prior to signing, did you take the
23 opportunity to review what was included in the
24 report?

1 A Yes. And if my recollection serves me
2 correct, I believe we also discussed this as Mr.
3 Turner was drafting it.

4 Q Is this an example of the type of report
5 that is generated and maintained for agency files
6 regarding facilities?

7 A Yes, it is.

8 Q Is this the type of report that is
9 ordinarily prepared in the regular course of agency
10 business regarding a facility?

11 A Yes, this report compares to the one I
12 talked about earlier in that respect. It is the
13 same type of document that we would turn in after
14 an inspection.

15 Q To the best of your recollection and
16 knowledge, was this report prepared either
17 contemporaneously with or shortly after this
18 inspection was conducted at the site?

19 A Yes. I believe it was a combination
20 thereof. Notes and information were taken down
21 during the inspection, and then it was finalized
22 afterwards.

23 Q After looking at this document -- if you
24 need to look at it again, please do so -- would you

1 say it is a true and accurate copy of the report
2 that was generated regarding this inspection?

3 A Let me take my time and look through it
4 this time. (Witness reviewed document.) Yes, it
5 appears to be.

6 MS. MENOTTI: Prior to any further
7 testimony regarding this document, I would move to
8 admit this exhibit as a business record of the
9 Agency.

10 HEARING OFFICER WALLACE: Any
11 objections?

12 MR. LATSHAW: We have no objections to
13 foundation, but we do object to any testimony or
14 the document being used to show any alleged
15 violations other than those that are alleged in
16 Counts 5 and 6.

17 HEARING OFFICER WALLACE: Okay. Any
18 objections?

19 MR. TAYLOR: No. I believe what -- it
20 would be consistent for this proceeding to address
21 the issues from Counts 5 and 6 in the complaint.

22 HEARING OFFICER WALLACE: Are you
23 offering it for anything other than Counts 5 and 6
24 at this time?

1 MS. MENOTTI: I will limit my questions
2 to the violation of Counts 5 and 6. That's fine.

3 HEARING OFFICER WALLACE: All right.
4 What foundation objections do you have?

5 MR. LATSHAW: I didn't have. I had no
6 objections to foundation.

7 HEARING OFFICER WALLACE: All right.

8 MR. LATSHAW: The acoustics in this room
9 are bad.

10 HEARING OFFICER WALLACE: Yes, I know it.
11 All right. With that in mind, that it will be used
12 for Counts 5 and 6, it is admitted into evidence.

13 (Whereupon said document was
14 admitted into evidence as
15 People's Exhibit 6 as of this
16 date.)

17 HEARING OFFICER WALLACE: You may
18 proceed.

19 MS. MENOTTI: Thank you.

20 Q (By Ms. Menotti) During this inspection,
21 and please refer to the document if you need to,
22 did you document any violation with regard to
23 lateral overfill?

24 A Yes, there is documentation.

1 Q Could you please tell --

2 A The first location would be in the
3 checklist. He marked failure to comply with the
4 permits. In his narrative he expounds on that, to
5 indicate the lateral and vertical boundaries of the
6 fill were exceeded. The second location would be
7 also in the checklist where he marks -- I passed it
8 up. Item number 35, deposition of refuse in
9 unpermitted portion.

10 HEARING OFFICER WALLACE: Keep your voice
11 up, Mr. Townsend.

12 THE WITNESS: Item number 35, deposition
13 of refuse in unpermitted portion of the landfill
14 and he also expounds on that in the narrative, I
15 believe, if I can find that.

16 MR. LATSHAW: I think at this point -- I
17 was under the impression, if I may go on the record
18 a moment, that Mr. Townsend prepared this report.
19 I guess I am incorrect, that it was not prepared by
20 him.

21 MS. MENOTTI: I believe the actual
22 written report was prepared by Mr. Turner, but all
23 three investigators were present during the report
24 and reviewed it and signed it. I believe that it

1 is customary that when more than one person attends
2 a site inspection that more than one person writes
3 the report for the inspection.

4 MR. LATSHAW: I understand that. I guess
5 Mr. Townsend can testify to what he recalls he
6 observed and have his memory refreshed with the
7 document, but to go through and testify in detail
8 as to what the document says when he didn't prepare
9 it, I think would be inappropriate.

10 MS. MENOTTI: I would note that this
11 morning testimony was allowed by Mr. Smith
12 regarding a document that he did not prepare
13 regarding the inspection of the landfill.

14 MR. LATSHAW: He said he had reviewed
15 them and was aware of them.

16 MS. MENOTTI: I think Mr. Townsend has
17 said that he has reviewed this document prior to
18 his testimony and before he signed off on it.

19 HEARING OFFICER WALLACE: Your objection
20 is overruled. Mr. Townsend signed it. He can
21 testify to this report.

22 Go ahead, please.

23 MS. MENOTTI: Could you read back to tell
24 us where we left off, please.

1 (Whereupon the requested
2 portion of the record was read
3 back by the Reporter.)

4 MS. MENOTTI: I just wanted to make sure
5 he answered the question.

6 Q (By Ms. Menotti) Did you note any
7 vertical -- let me rephrase that. Did you, in this
8 report, based on your observations note any
9 vertical overfill at the facility?

10 A Those are described in the same
11 locations. They were both taken as a violation of
12 the permitted boundaries and described that way. I
13 don't know if it got into the record or not, but
14 2109 would have been the second location in the
15 narrative of the Act.

16 HEARING OFFICER WALLACE: I am sorry, Mr.
17 Townsend. You said 2109 is in the narrative and
18 the Act? What is --

19 THE WITNESS: 2109 of the Act. I am
20 sorry. He refers to the violations in his report
21 by what appeared to have been violated.

22 HEARING OFFICER WALLACE: Okay. Try it
23 again. What is your answer to the question?

24 THE WITNESS: Yes, the vertical overfill

1 would have been referred to in the same locations
2 as the lateral overfill. They were both taken as a
3 violation of the boundary and described that way.
4 They are both listed in the same location. And in
5 the narrative it describes both vertical and
6 lateral dimensions.

7 HEARING OFFICER WALLACE: The location of
8 what?

9 THE WITNESS: The location both in the
10 checklist and the narrative.

11 HEARING OFFICER WALLACE: In the report?

12 THE WITNESS: In the report.

13 HEARING OFFICER WALLACE: Be specific,
14 please.

15 THE WITNESS: Okay. I am sorry. The
16 report being divided into two parts, the checklist
17 and the narrative as far as their descriptive
18 nature, the first locations are identical in that
19 they are marked in the checklist both indicating
20 lateral and vertical expansion beyond the permitted
21 boundary was marked, and in the same way in the
22 narrative they are both marked in the same -- they
23 are both written about in the same location.

24 When he described the expansion beyond

1 the boundaries, he discussed both vertical and
2 lateral in the same location in the report.

3 HEARING OFFICER WALLACE: All right.
4 Please proceed.

5 Q (By Ms. Menotti) These observations were
6 based on what you saw during a visit to the site?

7 A Let me review briefly what he wrote to
8 see --

9 HEARING OFFICER WALLACE: No, her
10 question was were these observations based on what
11 you saw at the site. That was the question.

12 THE WITNESS: Okay. Regarding the
13 observations that he wrote about or my
14 observations?

15 Q (By Ms. Menotti) The observations that we
16 have been talking about that are documented in this
17 report, the -- we were just talking about the
18 documentation of vertical and lateral overfill.

19 My question is are those based on what
20 you observed during your visit to the site that
21 day?

22 A It would have been based both on what we
23 observed on the site that day, indicating that
24 there had been nothing excavated and removed, and

1 what had been written about previously in other
2 reports as it hadn't changed, so he described what
3 was written about previously.

4 Q Okay. Moving away from the fill
5 question, did you -- in this report would you have
6 documented whether or not closure or a closure plan
7 was required for the landfill at this point in
8 time?

9 A In this report it indicated that closure
10 and post-closure plans were required and had not
11 been approved.

12 Q Could you please indicate where in the
13 checklist this is documented?

14 A Yes. The last page of the checklist,
15 item number 41, he has a mark for both closure and
16 post-closure plan as not being there.

17 MS. MENOTTI: Excuse me just a moment.

18 Q (By Ms. Menotti) With regard to the
19 closure plan, to your knowledge, did the landfill
20 have an approved closure plan at this point in
21 time?

22 A No, it did not.

23 Q To your knowledge, at this point in time,
24 did the landfill have an approved post-closure care

1 plan?

2 A Again, to my knowledge, it did not.

3 Q To the best of your knowledge, based
4 on -- well, first let me ask, in general, what
5 Regulations apply to this landfill? We have been
6 referring to Regulations.

7 A Sure. What we looked at, when we looked
8 at this landfill as an inspection, we both looked
9 at compliance with the Section 21, Section 9 and
10 Section 12 of the Act and Section 807 of the
11 Regulations and some portions -- other portions of
12 the Regulations. And, for instance, 744 and 809
13 would probably have been looked at for a landfill,
14 and this landfill in particular.

15 Q Okay. And in these Regulations the
16 landfill was required to have both a closure and
17 post-closure care plan approved as of this date?

18 A Yes.

19 Q To your knowledge, is there any
20 Regulations that address financial assurance for a
21 landfill?

22 A Yes, there is. To be honest with you,
23 without looking it up, I couldn't quote you the
24 exact number, but I could find it in a minute if

1 you gave me the regs.

2 Q Regardless of the specific citation in
3 the Regulations, would this facility be required to
4 have financial assurance?

5 A Yes.

6 Q And to the best of your knowledge, at
7 this point in time, did this facility have
8 financial assurance?

9 A To the best of my knowledge, it did not.

10 Q Okay. I want to move on. When we were
11 talking about the time period that you had
12 conducted inspections of the landfill, you said
13 that you had an opportunity to conduct an
14 inspection last week?

15 A Yes.

16 Q What day did you conduct this inspection?

17 A We conducted the inspection on Friday,
18 February 28th, 1997.

19 Q Can you tell me who was present during
20 this inspection?

21 A Yes. From the Agency I was present. I
22 am sorry. I should actually put myself last.
23 Dustin Burger was present from the Agency, as was
24 I. From Waste Hauling itself, Randy Camfield, Mr.

1 Jerry Camfield's son, was present, and Bob Krimmel
2 from SKS was present and Mr. Latshaw was present.
3 Mr. Krimmel and Mr. Latshaw did not remain the
4 entire time. They were there at the beginning.

5 Q Was Mr. Jerry Camfield present during
6 this inspection at all?

7 A No, he was not.

8 Q Can you generally describe what you
9 observed during your visit on Friday?

10 A The last visit, last week?

11 Q Right, the February 28th, 1997 visit.

12 A Yes, I can. What we observed is we --
13 what I observed, personally, I walked in -- I drove
14 into the landfill and I looked to see if it
15 appeared to have been changed as far as the
16 height. It appeared that it had not. I observed
17 that there was erosion problems on all four sides,
18 as well as leachate problems on all four sides of
19 fill area number two.

20 There was some vegetative cover
21 established on fill area number two and on fill
22 area number one. There was a small amount of
23 leachate coming off of fill area number one. And
24 what I mean by leachate, it was a colored liquid, a

1 purplish-orange with an oily film on top of what
2 was flowing out of the landfill. As you follow it
3 back, its origin would be bubbling out of the
4 ground at the fill itself or at the base of the
5 fill.

6 MR. LATSHAW: I think I have to object to
7 any testimony about leachate, because I don't think
8 in Counts 5 and 6 there is any allegations with
9 regard to leachate.

10 MS. MENOTTI: The problems that were
11 observed on Friday not only go to environmental
12 impact, but if you would like, the State would be
13 more than happy to amend the complaint to reflect
14 the most recent violations that we are talking
15 about here.

16 I think that they are certainly relevant
17 to the complaint, and as Mr. Townsend's testimony
18 continues, I think we will demonstrate that some of
19 these things that we are talking about right now
20 are impacts due to violations regarding the
21 overfill in the landfill. I would further submit
22 that we would have addressed this matter earlier
23 had your client agreed to let the Agency on site
24 prior to Friday to conduct this inspection.

1 MR. TAYLOR: I think it is arguable that
2 leachate issues go to elements of the closure plan
3 also, to the extent that there may be an issue that
4 is identified at the site that they may have
5 actually been addressed that would most likely be
6 through the closure, post-closure care plans.

7 MR. LATSHAW: If I may --

8 HEARING OFFICER WALLACE: If you wish, go
9 ahead.

10 MR. LATSHAW: Thank you. I am not --
11 well, at any rate, that was my objection to the
12 report earlier, not to foundation but to its use.
13 Counts 5 and 6, the evidence that is going to be
14 material to those counts are the evidence that go
15 to what those allegations of violations were. If
16 there is no allegation of violation then I am
17 objecting to any evidence that goes toward those
18 allegations, because they are not there.

19 There is allegations -- so leachate is
20 not alleged as a violation, or as far as I can
21 tell. I don't think it would be appropriate for
22 the record to contain evidence with regard to
23 something that is not alleged.

24 With regard to this matter of whether Mr.

1 Camfield was going to be available for the
2 inspection, I am not sure what relevance that has,
3 but on the record I don't want to let that pass.
4 They have had -- the State has had many
5 opportunities in the last five years to seek to
6 have permission to inspect these premises and, in
7 fact, they have admitted to us that they inspected
8 the property as recently as August of 1996. We
9 have never seen a report from that.

10 We have never denied them access. They
11 didn't ask for it until approximately 30 days
12 before they did it. So whether -- it is not our
13 fault that they had to wait until the 28th to
14 inspect the premises. I just want the record clear
15 on that.

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

18 In terms of the inspection, I don't think
19 that -- I think your point is well taken. But in
20 terms of having Mr. Townsend describe what he saw
21 on the February 28th, 1997 inspection I am going to
22 allow that. He is describing what he has visually
23 saw and whether it goes to any of the counts right
24 now or not, he can still testify as to what he

1 saw.

2 MS. MENOTTI: Just for the record, Mr.
3 Hearing Officer, Mr. Latshaw has indicated that he
4 has not seen the report from August of 1996. I
5 would represent that we have tendered that by
6 Federal Express, which should have been received by
7 Mr. Van Ness on Friday.

8 MR. VAN NESS: We have it. We did
9 receive it on Friday. Mr. Latshaw has not had a
10 chance to go through the whole file yet.

11 MR. LATSHAW: It was not addressed to me.

12 HEARING OFFICER WALLACE: As far as it
13 goes, Mr. Latshaw's statement was correct. It was
14 not tendered to him. It was tendered to Mr. Van
15 Ness. But thank you for pointing that out.

16 You may proceed.

17 MS. MENOTTI: Thank you. Could you tell
18 us at what point in the testimony we left off?

19 HEARING OFFICER WALLACE: No. Just start
20 with --

21 MS. MENOTTI: I have no idea what the
22 last question I asked was. I just don't want to be
23 repetitive. I think I asked him to describe what
24 he observed at the landfill.

1 HEARING OFFICER WALLACE: Yes. Let's
2 just go from there. It takes too long to go back
3 through.

4 THE WITNESS: Okay. I am assuming that I
5 am to continue with what I saw at the landfill.

6 Okay. I left off, I believe, at
7 describing the leachate, and I don't know if I
8 stated it or not, but it was visible from all four
9 sides of fill number two area including the west
10 side, which we have alleged was overfilled. And in
11 addition to doing an actual walk around, we
12 followed and tried to see where the flows were
13 going. They went to a drainage ditch which led to
14 the river, and into the river.

15 Then after doing those physical
16 observations and taking photographs, we did some
17 quick height measurements with a clinometer to see
18 if there was actually a measured positive height
19 above where we would come in at the entrance, and
20 there was. And we did some quick width
21 measurements using a compass and a 200 foot tape
22 measure to see if there was some indication that
23 the width had changed at all from 1992, and the
24 height and width still appeared to be generally

1 where they were at that time and consistent with
2 the Danner survey of 1988.

3 Q (By Ms. Menotti) With regard to your
4 observations from February 28th, 1997 and with your
5 knowledge regarding the landfill and the
6 environment in general, is this landfill having any
7 impact, in your opinion, on the environment?

8 A Yes.

9 Q How would you characterize that impact?

10 A Most noticeably would have been the
11 leachate coming out and flowing into the drainage
12 ditch which flowed into the Sangamon River.

13 MR. LATSHAW: Show my objection. Move to
14 strike. That goes to allegations -- it is evidence
15 that goes to allegations not contained in Counts 5
16 and 6.

17 HEARING OFFICER WALLACE: Objection
18 overruled.

19 Did you complete your answer?

20 THE WITNESS: I basically mentioned just
21 the leachate, as far as impact to the environment.

22 HEARING OFFICER WALLACE: Was that the
23 conclusion of your answer?

24 THE WITNESS: As far as the observable

1 impact on that date that was pretty much it, yes.

2 HEARING OFFICER WALLACE: Okay.

3 Q (By Ms. Menotti) Based on your knowledge
4 of landfills, is there a technical explanation for
5 why leachate might leak from a landfill?

6 A Yes. It would be actually a few
7 explanations. One would be -- the simplest one to
8 understand would be that the cover didn't prevent
9 it from getting out. The cover that was there acts
10 as a barrier to some degree to prevent leachate
11 from either flowing or being pushed out of the
12 landfill.

13 Reasons why it could bubble out, even
14 through adequate cover, would be that there would
15 be a buildup of gas, or of some other factor, that
16 would cause additional pressure to cause the liquid
17 to go to the point of least resistance and pop out
18 there.

19 MR. LATSHAW: Could you show my
20 continuing objection to this line of questioning
21 with regard to leachate.

22 HEARING OFFICER WALLACE: So noted for
23 the record and it is overruled.

24 Please continue.

1 MS. MENOTTI: Thank you.

2 Q (By Ms. Menotti) You just mentioned if
3 there was additional pressure it may force leachate
4 out of the landfill. Based on your experience and
5 your training regarding landfills, in addition to
6 your knowledge of this particular landfill, is it
7 possible that extra overfill in the landfill itself
8 could exert extra pressure?

9 A In two ways it would be possible, in my
10 opinion, in that additional landfill, if it
11 included additional refuse would cause additional
12 activity or breakdown to create additional Methane
13 gas, which would be one way. The other would be
14 just the sheer weight, the additional weight would
15 be pressure downward, the additional pressure
16 downward.

17 Q Based on your observations from your
18 February 28th inspection, and your knowledge of the
19 history of the landfill, in your opinion, does this
20 landfill exceed its permitted lateral boundaries as
21 of February 28, 1997?

22 A Yes, in my opinion it does.

23 Q And in your opinion and knowledge
24 regarding the history of this site, based on your

1 February 28th, 1997 inspection, does the landfill
2 exceed its permitted vertical boundaries?

3 A In my opinion, again, it does.

4 Q When you conducted your inspection on
5 February 28th, did you generate an inspection
6 report?

7 A Yes, I did.

8 Q Would you be able to identify this
9 report?

10 A Yes, I would.

11 MS. MENOTTI: Would you please mark that.
12 Thank you.

13 (Whereupon said document was
14 duly marked for purposes of
15 identification as People's
16 Exhibit 7 as of this date.)

17 MS. MENOTTI: This is the documentation
18 that we all received this morning.

19 Q (By Ms. Menotti) Mr. Townsend, I show you
20 what has been marked as People's Exhibit Number 7.
21 Could you please identify it.

22 A Yes. This is a copy of the report.
23 There is an extra copy of that in there (witness
24 removed a page from People's Exhibit Number 7)

1 which I wrote this weekend.

2 HEARING OFFICER WALLACE: What was that
3 that you pulled out?

4 THE WITNESS: There was a duplicate of
5 the site sketch.

6 MS. MENOTTI: There were two pages of the
7 same thing in his report.

8 HEARING OFFICER WALLACE: All right.

9 Q (By Ms. Menotti) Did you personally
10 generate this report?

11 HEARING OFFICER WALLACE: Excuse me. Mr.
12 Latshaw, do you have a question?

13 MR. LATSHAW: I was just trying to see if
14 that was what I already had here.

15 MS. MENOTTI: I am sorry. The sketch --

16 MR. LATSHAW: It looks similar, I guess.

17 MS. MENOTTI: The report he had had two
18 pages of the same thing in it.

19 THE WITNESS: Might I add, I pulled it
20 out because I made a limited number of copies and
21 somebody is short one if this is in here.

22 MR. TAYLOR: We have it.

23 MS. MENOTTI: Does everybody have a copy
24 of this sketch in their report.

1 MR. LATSHAW: Yes.

2 MR. VAN NESS: Yes.

3 MR. TAYLOR: Yes.

4 MR. TAYLOR: So there is one sketch?

5 THE WITNESS: Yes, there is only one
6 sketch.

7 MS. MENOTTI: There should be two pages
8 of narrative and one page of a sketch in addition
9 to the photographs.

10 MR. TAYLOR: All right. Thank you.

11 HEARING OFFICER WALLACE: Thank you.
12 Please continue.

13 Q (By Ms. Menotti) Is this the type of
14 report that generally is generated and maintained
15 for Agency files?

16 A This is a type of report that is
17 generated. Generally when I do a landfill
18 inspection I would also do a checklist. When
19 discussing with my boss what I should do, given
20 that this is a site that is now in the Champaign
21 region, he suggested that I just do a narrative,
22 and so I did.

23 Q Okay. But the -- I am sorry. The
24 difference in -- the reason the checklist was

1 excluded, I want to make sure I understand
2 correctly, was at the direction of your supervisor?

3 A Yes, and that of -- that there would be
4 limited time to finish this report.

5 Q Is this a type of report that the Agency
6 would prepare in the regular course of business
7 regarding an inspection of a facility?

8 A Yes, this would be a type of a report, a
9 narrative report.

10 Q Was this report prepared
11 contemporaneously or shortly after you conducted
12 your inspection on February 28th, 1997?

13 A I collected the data for the report that
14 day and began writing it that night.

15 Q To the best of your knowledge, is this a
16 true and accurate copy of the inspection that was
17 conducted of the -- of the report that was
18 generated regarding the inspection of the facility
19 on February 28th, 1997?

20 A Yes, it is. This is an accurate copy of
21 my report that I wrote, based on my February 28th,
22 1997 inspection.

23 MS. MENOTTI: At this point I would ask
24 that this be admitted into evidence as a business

1 record of the Illinois EPA.

2 HEARING OFFICER WALLACE: Any
3 objections?

4 MR. LATSHAW: I think -- I don't have any
5 substantial foundation objection. However, I would
6 like to note for the record that this is not a
7 business record in the sense that it is prepared in
8 the regular course of business. This record was
9 prepared for the purposes of this litigation, and
10 done pursuant to the order of the Hearing Officer,
11 upon motion of the complainant.

12 So technically it is not a business
13 record, but this man prepared it and has identified
14 it, so I am not going to object on that basis, but
15 it is not a business record.

16 HEARING OFFICER WALLACE: Any other --

17 MR. LATSHAW: No.

18 MR. TAYLOR: None.

19 MS. MENOTTI: I would just respond that
20 the only purpose of this inspection was not just
21 for the purposes of this litigation, and absent
22 that I would appreciate it if opposing Counsel
23 would not insinuate such things. The Agency acted
24 based on a request that the inspection be done, but

1 it was not done solely for purposes of this
2 litigation. I would like that noted for the
3 record.

4 HEARING OFFICER WALLACE: All right.
5 People's Exhibit Number 7 is admitted into
6 evidence.

7 (Whereupon said document was
8 admitted into evidence as
9 People's Exhibit 7 as of this
10 date.)

11 Q (By Ms. Menotti) I just have a couple
12 questions regarding the report, Mr. Townsend. If
13 you would turn to page three. Could you please
14 describe what this is, for the record?

15 A This is the site sketch that I made for
16 the report.

17 Q And can you please explain what the
18 markings are with regard to fill area two?

19 A I just noticed I forgot to write fill
20 area two on number two. The markings on fill area
21 two, the arrows indicate directions of
22 photographs. The lines without the dotted lines
23 next to them indicate where I saw erosion, the
24 general location of that.

1 The lines with the dotted lines next to
2 them indicate where I saw a liquid flowing out of
3 the landfill, and/or liquid flowing across the
4 surface of the ground adjacent to the landfill.
5 The line north, as is indicated north of fill area
6 two, has a 784 feet marked.

7 It indicates where I measured the east,
8 west length using the tape measure and compass.
9 And the HR1 and HR2 indicates the height readings
10 that were taken with the clinometer, the
11 approximate locations.

12 Q Okay. And you have indicated earlier in
13 your testimony that it was your opinion that the
14 lateral and vertical boundaries were in exceedence
15 of the permit. Do any of the photographs
16 incorporated as part of this report depict that?

17 A Yes, they would.

18 Q Could you please identify them for the
19 record?

20 A I will take them one at a time here.
21 Photograph number 1, although not -- of roll 344
22 shows a slight gradient upward where my
23 understanding is that permit would not have that.
24 Let me go back to the next one. Photograph number

1 2 indicates the same type of thing as does
2 photograph number 5.

3 Photograph number 9 of roll 344, although
4 I must admit not shown really clearly, does show
5 the general shape of the landfill as being high in
6 the center, as does photograph number 11 of 344,
7 which I think is a better depiction of that.
8 Photograph 6 of roll 345 shows the west boundary
9 and there is a leachate seep flowing from that west
10 boundary and the west boundary is one of the areas
11 we have alleged was overfilled. Photographs 8 and
12 9 of roll 345 again show that you can look upward
13 into the fill where you should not be able to,
14 based on my understanding of the permit.

15 Q I just have a few final questions that I
16 would like to touch upon before opposing Counsel
17 does their cross-examination. During the course of
18 your inspection over the years, did you ever tell
19 the owner or the operator of the landfill that the
20 berms around the edge of the landfill needed to be
21 raised?

22 A Yes, I did.

23 Q Could you please briefly describe what a
24 berm is?

1 A Okay. A berm is basically a pile of dirt
2 outside of the area where the waste is being
3 filled, and it serves a couple useful purposes.
4 One would be screening so that people visually
5 couldn't see, although that is not really a problem
6 at this location. And another would be in helping
7 or in aiding to prevent litter from escaping the
8 fill area. And the third would be helping to hold
9 liquid into the fill area.

10 Q Did you have a reason for telling them to
11 raise the berms?

12 A Yes, I did.

13 Q What would that reason be?

14 A The site permit requires, and I don't
15 remember the exact height, that the berm be above
16 where they are filling refuse.

17 Q Did you ever indicate that by raising the
18 berm the landfill could continue to deposit refuse
19 merely by keeping the berm above -- the appropriate
20 height above the top level of refuse or cover?

21 A No. My recollection is that when I
22 discussed the berm it was because the level of the
23 berm was lower in relation to the garbage than it
24 should be, not the other way around, that the

1 garbage should come up, but rather that the berm
2 should come up.

3 MS. MENOTTI: Okay. I think that is all
4 I have for Mr. Townsend at this point in time.

5 HEARING OFFICER WALLACE: All right.
6 Let's take a five-minute break.

7 (Whereupon a short recess was
8 taken.)

9 HEARING OFFICER WALLACE: Back on the
10 record.

11 MS. MENOTTI: I think there were a few
12 things that I still needed to address regarding the
13 most recent inspection, so I guess I would like to
14 say I am not done with Mr. Townsend's testimony
15 regarding that just yet.

16 DIRECT EXAMINATION (continued)

17 BY MS. MENOTTI:

18 Q Do you have what has been marked as
19 People's Exhibit 7 still in front of you?

20 A Yes, it is still in front of me.

21 Q Okay. We were talking about your
22 observations at the landfill last Friday and what
23 kind of impact, environmental impact you observed.

24 I would like to direct your attention to

1 your comments regarding the flow of leachate from
2 the landfill. Can you briefly tell me how many
3 different seeps you observed? Did you make a
4 count?

5 A I didn't make an exact count. There were
6 a number of them. It was easier just to note the
7 general location where seeps were occurring than to
8 try to count all of them.

9 Q Did you trace the area to where the flow
10 seemed to be coming from at all?

11 A Not on every seep. On some of the bigger
12 ones we did, yes.

13 Q And could you tell us what your findings
14 are regarding that?

15 A The seeps where we traced back to the
16 origin of the seep, we found them originating --
17 the majority of the ones we followed back were
18 originating from fill area number two in the
19 constructed fill area itself. And then we did also
20 find one that originated a little ways up the fill,
21 the northern portion of fill area number one.

22 Q Could you describe how the leachate
23 appeared visually?

24 A There were -- it appeared differently in

1 different locations. On the southern and eastern
2 and for most of the eastern half of the northern
3 portion of fill area number two, it was a
4 purplish-orange liquid that had an oily film or
5 sheen on it and left a stain on the ground that was
6 kind of an orangish where it appeared to have
7 flowed, but was flowing less vigorously now. That
8 was identical to that in fill area number one.

9 On the western half of the northern
10 portion of fill area number two, on part of the
11 western portion of fill area number two, it was a
12 tannish foam floating on top of more of an
13 orangish-colored oily sheen.

14 Q Was the leachate flowing along the
15 property at the landfill at all?

16 A What do you mean by the property?

17 Q You were inspecting the site, and I am
18 trying to get a clear picture. It was seeping out
19 of the fill area. I guess a better question to ask
20 would be where was it flowing to?

21 A Okay. There was a drainage ditch, both
22 on the west edge of fill area number two and on the
23 east edge of fill area number two. The majority of
24 the leachate seeps flowed off of the fill area

1 number two in those areas and flowed into channels
2 that went into this drainage ditch usually joining
3 with surface water runoff, which appeared to be
4 cleaner prior to their mixing.

5 That was the same with fill area number
6 one. It flowed into the drainage ditch along the
7 east edge of fill area number two, and that
8 drainage ditch had liquid flowing in it to the
9 Sangamon River, which I did take photographs of.
10 On the west edge of fill area number two, there was
11 another drainage ditch which flowed in general
12 direction toward the river also.

13 Q You mentioned a drainage area that runoff
14 water went into. Where is that drain located?

15 A Okay. The drainage area where runoff
16 water went to, there is a drainage ditch between
17 the old McKinney fill, or the fill area number one,
18 and the fill area number two, which was the most
19 recent active fill. There is a road that crosses
20 over that. There is a tile that goes under that
21 road. There is a drainage ditch that has a tile
22 associated with it there.

23 Q To your knowledge, is the purpose of that
24 drainage ditch to collect the drain leachate from

1 the landfill?

2 MR. LATSHAW: Objection. There is no
3 foundation.

4 MS. MENOTTI: I am sorry? Excuse me?

5 MR. LATSHAW: Objection. There is no
6 foundation for that opinion. I don't know that
7 this witness could have any basis for knowing what
8 any ditch is or is not used for.

9 HEARING OFFICER WALLACE: Sustained.

10 Q (By Ms. Menotti) Do you know what the
11 purpose of the drainage ditch you were referring to
12 is?

13 MR. LATSHAW: I will object to that
14 question, too. The same basis.

15 MS. MENOTTI: I would submit that Mr.
16 Townsend has testified that there is a ditch, and I
17 am just trying to get him to elaborate on what he
18 knows about the drainage system that he has been
19 referring to.

20 HEARING OFFICER WALLACE: He can testify
21 to actual facts that he observed. I don't know
22 that he can designate the purpose of that.

23 MS. MENOTTI: That was my inquiry, if he
24 knew what the purpose of the drainage ditch was.

1 HEARING OFFICER WALLACE: All right. As
2 rephrased. I don't think that was the original
3 question.

4 THE WITNESS: The question is do I know
5 what the purpose of --

6 Q (By Ms. Menotti) Do you know what the
7 purpose of the drainage ditch that you were
8 referring to is?

9 A Whether I actually know, I cannot say
10 that I do. My assumption was that it was for water
11 drainage.

12 MR. LATSHAW: Objection. Move to
13 strike. Assumption.

14 MS. MENOTTI: I would submit that the
15 witness is just testifying based on his
16 observation.

17 HEARING OFFICER WALLACE: The objection
18 is overruled. The answer stands.

19 Go ahead, please.

20 Q (By Ms. Menotti) You also mentioned that
21 you saw leachate flowing down into this drainage
22 ditch. Did I hear your testimony correctly?

23 A Correct.

24 Q Do you have any pictures in the report

1 that you generated which would illustrate the flow
2 of leachate into this drainage area?

3 MR. LATSHAW: Excuse me. I don't know if
4 it is clear with regard to this particular
5 inspection, but I want to show my continuing
6 objection to the leachate issues and so on in that
7 they are not responsive to Counts 5 and 6.

8 HEARING OFFICER WALLACE: All right.
9 Your objections are noted and overruled.

10 Please proceed.

11 Q (By Ms. Menotti) I believe my last
12 question was if there were any photographs which
13 showed the leachate in the drainage area you were
14 referring to?

15 A I have photographs that depict the
16 leachate seeps as they come off the landfill.
17 Photograph number four shows it flowing to some
18 ponded water. I do not recall if that ponded water
19 flowed directly to the ditch or not. I have
20 photographs of the ditch itself which I had taken
21 after following leachate seeps to the ditch, but I
22 do not believe I have any actual photographs
23 showing the leachate flowing directly into the
24 ditch.

1 Q All right. I would direct your attention
2 to the photographs you mentioned regarding the
3 leachate --

4 A I don't --

5 Q -- seeping from the fill area. Could you
6 identify those photographs?

7 A Okay. Leachate seeping from the fill
8 area would be depicted on roll 344, photographs 0,
9 1, and you can't see it real well but in 2, 3, 5
10 and 6. In roll 345, photograph number 1 and 2.
11 And 3 is hard to tell. I am standing on the fill
12 actually taking this photograph downward. There
13 was some in the location for 4. It is hard to
14 see. There is in 5 and 6. Let me see where 6 was
15 taken. I don't remember that. And 8 of 345.

16 Q Okay. I will direct your attention to
17 picture 0, roll 344.

18 A Uh-huh.

19 Q Could you, for the record, please
20 describe the view and the condition of the
21 leachate.

22 A Okay. The leachate flow that I
23 photographed in 0 of 344 was taken in the southeast
24 corner of fill area number two, right at the base

1 basically, and it had an orangish tint with a
2 purple, slight purple tint to it. Basically the
3 next photograph is a continuation of that same
4 stream.

5 Q Could you do the same for 344, picture 1?

6 A I just did. That's the --

7 Q The last part was a picture --

8 A Both are showing different angles of the
9 leachate stream.

10 Q Oh, okay. Excuse my mistake. Could you
11 please describe the view in picture number 2 and
12 the observation regarding the leachate in that
13 photograph?

14 A Okay. Number 2 of 344 was just west of
15 number 0 and 1, and that was a smaller seep with
16 less flow that actually joined into the other ones.

17 Q How about roll 344, picture number 3,
18 could you characterize this picture in the same
19 way, regarding view and describe the leachate,
20 please?

21 A The leachate, the picture 3 of roll 344
22 was taken along the east edge of fill number two
23 toward the south part of the fill. And that was
24 appearing just slightly upward from the base of the

1 fill.

2 Q What was the appearance of --

3 A Oh, I am sorry. It had a bright orange
4 tint with a purplish hue to it also. It left
5 stains on the adjacent vegetation and soil where it
6 flowed.

7 Q Okay. Moving on to photograph number 5
8 of the same roll, could you describe the view and
9 the appearance of the leachate in that picture?

10 A Photograph number 5, and as is also
11 photograph number 6 of that same roll, I will cover
12 two of them at the same time, depicts the leachate
13 flows that came off of the east edge of fill area
14 number two and they joined into a stream on what
15 was an access road toward the back end. They
16 flowed right down that road. That's what those
17 pictures are.

18 Q Okay. Moving on to picture number 6.

19 A Picture number 6 I described. It was the
20 same general area as 5, only taken further down
21 toward the river.

22 Q Okay. And the river bounds the landfill
23 on which side?

24 A The Sangamon River bounds the landfill on

1 the north side. There is a small strip of property
2 between the landfill and the river. It is not
3 right up against the river.

4 Q And moving to roll 345, on picture number
5 1, could you please describe that?

6 A Yes. Let me get to it. Okay. Picture
7 number 1 of roll 345 was along the north slope of
8 fill area number two, and that was a seep that was
9 originated up the slope of that fill somewhere. I
10 just took a picture of it. It was -- it wasn't as
11 brightly colored, although it did have an oily
12 sheen.

13 Q Okay. What about picture number 3 of
14 that same roll?

15 A Picture number 3?

16 Q Yes, picture number 3.

17 A Okay. Picture number 3 is where the
18 change occurred in how the appearance of the
19 leachate that I described as having a tan colored
20 foam, that was being generated. It was at the very
21 bottom of picture number 3. That's what you see
22 there. There is a foam being generated by that
23 flow.

24 Q Can you describe the appearance of the

1 foam?

2 A Actually, a really good appearance of it,
3 if anybody has ever made instant iced tea and you
4 mix it up really fast, that's exactly what it
5 looked like. It was a tannish colored foam.

6 Q Okay. Turning to picture number 4 of
7 this roll, could you describe the view in the
8 leachate in that picture, please?

9 A Yes. Once again, this was a -- it
10 doesn't show up very well. This was that same
11 foamy leachate. It was not foaming as much. There
12 is some staining toward the bottom of that picture,
13 too, which is more characteristic of what I saw at
14 the other locations.

15 Q Then picture number 5 of roll 345, could
16 you describe the view and the leachate there?

17 A Picture number 5 is, again, the foamy
18 type of leachate. This was taken along the western
19 slope toward the northern part of the western slope
20 of fill area number two.

21 Q And what was the appearance of the
22 leachate at that point?

23 A It was a liquid with an oily sheen and
24 floating on the liquid was this tan foam.

1 Q Okay. Picture number 6 on the next page,
2 could you please describe the view and the
3 appearance of the leachate there?

4 A Picture 6 is basically taken down slope
5 of picture number five. It is the same slope.

6 Q Is the leachate still visible at that
7 point?

8 A Yes, if you look at the base of the
9 picture on the left-hand side you can see a tannish
10 foam that splits out into, it looks like, three
11 channels.

12 Q Okay. And the last picture you mentioned
13 was picture number 8?

14 A Yes.

15 Q Could you please describe the view and
16 the appearance of the leachate in that picture?

17 A This was taken at the front of the fill,
18 which would be the south slope of the fill on the
19 western part of that, and it was a flow that was
20 generated part way up the slope and it was similar
21 to the flows I had seen on the east side. It was a
22 purplish-orange liquid that had an oily sheen to
23 it.

24 Q In the course of taking these pictures

1 and making your observations, did you also observe
2 the leachate movement? It was actually flowing at
3 the time?

4 A Yes, especially where the foam was being
5 generated. You could see the foam flow. At one
6 point actually the foam -- a gust of wind came and
7 blew the foam off and then it came back and filled
8 up again.

9 Q Based on your knowledge regarding
10 leachate in landfills, do you know what any of the
11 constituents that might be present in the leachate
12 are?

13 A Without looking at a record I could only
14 name a few. I would state there would be some iron
15 in it, which is where you get the orange color.
16 There may be various other organic constituents.
17 It varies from leachate to leachate. I would
18 really have to probably get an exact sample of that
19 to tell you what is in it.

20 Q Okay. Did you observe, at any point
21 during this inspection, the leachate coming in
22 contact with any water or with the river?

23 A In two locations I viewed leachate come
24 in contact with water. One was up toward the

1 eastern part of fill area number two, toward the
2 southern area there. There was a small area of
3 ponded water where leachate flowed into that. The
4 second was various streams flowed into the drainage
5 ditch I had described along the east edge of fill
6 area number two and they joined with what visibly
7 appeared to be a surface water, as it was clear,
8 and that mixture flowed to the river.

9 Q During the course of your inspection on
10 February 28th, did you observe the leachate flows
11 that we have been talking about exiting the
12 perimeters, the boundaries of the landfill?

13 A Yes, I did.

14 Q And can you tell me where, upon exit,
15 what they were coming in contact with or where the
16 leachate was flowing to?

17 A I saw fluid flowing from the landfill as
18 I described these various colored fluids on all
19 sides north, south, east and west and flowing off
20 the area of the constructed fill and in some cases
21 it flowed on to a road or just flowed on to the
22 ground. In other cases it flowed into a drainage
23 ditch of sorts and mixed with surface water that
24 was running off.

1 Q Okay. In your opinion does leachate have
2 any kind of impact upon the environment?

3 MR. LATSHAW: I will object to the
4 question. I am not sure it is relevant to any
5 allegations in the complaint.

6 HEARING OFFICER WALLACE: Sustained.

7 Q (By Ms. Menotti) Do you have any opinion
8 with regard to these leachate flows -- I am going
9 to rephrase that whole thing.

10 Based on your observations on February
11 28th, 1997, regarding these leachate flows, in your
12 opinion and based on your knowledge of this
13 landfill, are these flows attributable to the lack
14 of closure at this landfill, as the State has
15 alleged in Count 5 of the complaint?

16 A Yes, at least in part.

17 Q You also mentioned earlier in your
18 testimony that you observed some erosion at the
19 fill?

20 A Yes, I did.

21 Q In the course of your observation of that
22 erosion, did you observe any exposed refuse?

23 A My recollection of the inspection on the
24 28th, the only significant area where refuse was

1 visibly unearthed, other than appears here and
2 there that could have been litter, was in the south
3 portion of fill area number two where, my best
4 recollection is their last active area or the
5 general location of their last active area. There
6 was a significant -- you could look down there and
7 see a lot of uncovered refuse as opposed to an
8 isolated piece here and there.

9 MR. LATSHAW: I will object to the
10 response. I think it is pretty non technical and
11 vague. I am not sure what he means by "a lot."

12 MS. MENOTTI: I am sorry. I missed the
13 objection.

14 HEARING OFFICER WALLACE: There is an
15 objection pending, based upon Mr. Townsend's last
16 answer as being rather technically unsound. There
17 was "a lot of refuse."

18 MR. LATSHAW: Vague and conjecture,
19 subject to conjecture.

20 MS. MENOTTI: I would submit that this
21 testimony is based on his observation of the
22 landfill on February 28th, 1997, and if the witness
23 is allowed to expand on the testimony we will show
24 that such refuse should not be exposed if proper

1 closure had taken place.

2 HEARING OFFICER WALLACE: Pardon?

3 MS. MENOTTI: That said refuse would not
4 be exposed if proper closure care had taken place
5 as alleged in Count 5.

6 HEARING OFFICER WALLACE: The objection
7 is sustained in that his answer was rather vague.
8 If you wish to try again, Mr. Townsend.

9 THE WITNESS: Would you please restate
10 the question.

11 HEARING OFFICER WALLACE: No, just answer
12 the question again.

13 THE WITNESS: Okay. My best recollection
14 of the question regarded where I saw -- I am
15 stating this to make sure I have it right -- refuse
16 exposed, and my answer was that the only area I
17 deemed having a large or significant amount that
18 could not have been accounted for by potentially
19 litter, as opposed to it, would be refuse that had
20 not received adequate cover was --

21 HEARING OFFICER WALLACE: Did you measure
22 the area that was uncovered?

23 THE WITNESS: No, I did not.

24 HEARING OFFICER WALLACE: What is your

1 definition of a large significant area of uncovered
2 refuse?

3 THE WITNESS: It was an area that had I
4 been doing a checklist I would have measured.

5 HEARING OFFICER WALLACE: That is as
6 precise as you can get?

7 THE WITNESS: In that I did not measure
8 it, yes.

9 HEARING OFFICER WALLACE: All right.
10 Please proceed.

11 Q (By Ms. Menotti) Mr. Townsend, I would
12 like to draw your attention to what has been marked
13 and admitted as People's Exhibit Number 7. Based
14 on your observations, you generated this report,
15 and I would like to draw your attention to the
16 second full paragraph, approximately seven lines
17 down. Could you please read that sentence?

18 HEARING OFFICER WALLACE: No, we don't
19 need to read the -- the report has already been
20 admitted into evidence. We don't need to read a
21 report into the record.

22 MS. MENOTTI: I wanted him -- he doesn't
23 have to read it for the record.

24 Q (By Ms. Menotti) But I would like to draw

1 your attention to it. Regarding exposed refuse,
2 could you please tell us what area of the fill the
3 refuse you are referring to in that paragraph was
4 located at?

5 MR. LATSHAW: I will object. It has been
6 asked and answered. I think he said it was on the
7 south part of the field.

8 HEARING OFFICER WALLACE: Sustained.

9 Q (By Ms. Menotti) Is there any photographs
10 attached to this report that would show the
11 uncovered refuse?

12 A No, there is not. We took a video which
13 did not turn out for problems with the camera. I
14 did not want to duplicate it too much, because it
15 would mean extra work in putting the report
16 together.

17 Q I will direct your attention to photo 2
18 of 345, if I may.

19 MR. LATSHAW: Which one? Which roll?

20 MS. MENOTTI: Pardon me?

21 MR. LATSHAW: Which roll?

22 MS. MENOTTI: Roll 345.

23 Q (By Ms. Menotti) Could you please look at
24 picture number 2 and tell me what that picture

1 depicts, the view and what --

2 A Yes.

3 MR. LATSHAW: I don't have a number 10 on
4 345.

5 THE WITNESS: It is --

6 HEARING OFFICER WALLACE: Which photo?

7 MS. MENOTTI: Roll 345, picture number
8 2. I want him to characterize the picture from
9 where it was taken and what it shows.

10 MR. LATSHAW: I think we have already had
11 testimony about this photograph. I think the
12 photograph otherwise speaks for itself. I think it
13 has been asked and answered.

14 MS. MENOTTI: I don't think we discussed
15 this picture yet. We discussed 1, 3, 4, 5, 6 and 8
16 on roll 345.

17 HEARING OFFICER WALLACE: Sustained. Go
18 ahead to your next question.

19 MS. MENOTTI: The --

20 HEARING OFFICER WALLACE: The objection
21 is sustained. Please ask your next question.

22 MS. MENOTTI: Okay. That's all I have
23 regarding -- that's all we have for this witness at
24 this time.

1 HEARING OFFICER WALLACE: All right.

2 Cross-examination?

3 MR. LATSHAW: Thank you.

4 CROSS EXAMINATION

5 BY MR. LATSHAW:

6 Q Mr. Townsend, you started inspecting this
7 landfill in 1987; is that correct?

8 A That's correct.

9 Q You inspected it the first time on
10 February 9, 1987?

11 A That appears to be about the right date.
12 I couldn't tell you without looking back at the
13 report.

14 Q Let me hand you a copy of that report
15 that has been previously marked as Respondent's
16 Exhibit Number 2. Does that represent a true and
17 accurate copy of your report of that date?

18 A Missing are the site sketch and
19 photographs. Otherwise, yes.

20 Q Does it truly and accurately depict that
21 portion of your report that you have previously
22 testified as the checklist?

23 A Yes.

24 Q All right. That would be the first four

1 pages; is that correct?

2 A That's correct.

3 Q Does it truly and accurately depict the
4 portion of the report that we may identify as
5 remarks or narrative?

6 A Yes, it does.

7 Q That consists of about how many pages?

8 A I think it was not quite four.

9 Q We will call it three and a third; is
10 that fair?

11 A That's fair.

12 Q Okay. You inspected it at that time and
13 you made a comment with regard to this matter of
14 the berm; is that correct?

15 A I would have to look back at the report
16 to see. I believe it is.

17 Q Let me point to something designated as a
18 note.

19 A Yes.

20 Q Is that a note that you made?

21 A Yes, that is note I made.

22 Q That's your handwriting, isn't it?

23 A That is my handwriting.

24 Q In that note you indicate that 807.302 --

1 and that's a portion of the Regulations that was in
2 effect at that time; is that correct?

3 A That's correct. It relates to a
4 violation -- or compliance with the permit.

5 Q And you are indicating that that was
6 charged because the berm along the east side was
7 lower than the fill level; is that correct?

8 A Yes, the permit required the berm to be
9 above the fill level.

10 Q All right. At that time you were not
11 concerned with height, were you?

12 A Actually, I did not cite it, but I made
13 mention of it in that report.

14 Q Were you concerned with height at that
15 time?

16 A Was I concerned with it? Yes. Did I
17 cite it as a violation? No. I did not concern
18 myself with it in that I did not have any real
19 indication, any data.

20 Q It wasn't a concern of yours that the
21 landfill might or may not have been overheight at
22 that time; is that correct?

23 A Well, it is always a concern that a
24 landfill would be overheight when I inspect it. I

1 don't always check it.

2 Q It was not something you looked at at
3 that time?

4 A No, not clearly. I had nothing to look
5 at it with. There was no data.

6 Q Now, did you inspect this site in 1989?

7 A Yes, I believe I did twice in 1989.

8 Q It would have been on May 30th of 1989?
9 That's when you overflowed it in a helicopter or
10 airplane?

11 A No, I was not there that day. I would
12 have inspected it in June and July of 1989.

13 Q June 29, 1989, does that sound about
14 right?

15 A That sounds about right.

16 Q Now, at that time -- have you had an
17 opportunity or did you review a copy of that
18 inspection report before you came to testify today?

19 A I reviewed a copy of that sometime last
20 week, yes.

21 Q I am going to show you a copy of what has
22 been represented to me as being your inspection of
23 June 29, 1989.

24 A Okay.

1 Q Do you recognize that document as being
2 one that you prepared?

3 A Yes, I do.

4 Q Your signature appears on page four, I
5 believe; is that correct?

6 A Yes, it does.

7 Q Okay.

8 A And on the last page of the narrative.

9 Q Okay. Again, you did a diagram, took
10 some photographs and so on; is that correct?

11 A Correct.

12 Q Okay. Now, during the course of this
13 inspection, did you make any reference to any berm
14 or overheight?

15 A During the first inspection of 1989?

16 Q This inspection right here, June 29,
17 1989?

18 A Okay. My first inspection of 1989.

19 Q All right.

20 MS. MENOTTI: Mr. Hearing Officer, at
21 this point I will go back to my objection that we
22 stated earlier during Mr. Smith's testimony. If
23 opposing Counsel intends to have this witness
24 testify or read into evidence any portion of this

1 report, I ask that it be marked and that the whole
2 document be admitted as evidence, so that it can be
3 taken into proper context when reviewed by the
4 Board.

5 MR. LATSHAW: How about the whole thing,
6 Counsel? There are inspection reports from June
7 1980 --

8 MS. MENOTTI: I would represent that the
9 inspection reports --

10 MR. LATSHAW: -- through and including
11 April 26, 1990.

12 HEARING OFFICER WALLACE: Don't talk over
13 each other, please.

14 MS. MENOTTI: I am sorry.

15 HEARING OFFICER WALLACE: All right. Mr.
16 Latshaw, repeat the dates.

17 MR. LATSHAW: June 19, 1980, and I
18 believe we have April 26, 1990 in, but with the
19 exclusion of that one, I would be willing to
20 stipulate that they all go in.

21 HEARING OFFICER WALLACE: Ms. Menotti?

22 MS. MENOTTI: I would represent that the
23 inspection reports prior to 1983, Mr. Hearing
24 Officer, have absolutely no relevance to the Counts

1 5 and 6 of the complaint, and should not be in any
2 way admitted as part of the record based on
3 relevance.

4 I would also submit that any of the
5 inspection reports that have not been either
6 generated or otherwise used by Mr. Townsend would
7 also not be relevant to his testimony, and would
8 lack the appropriate foundation for admission into
9 evidence.

10 HEARING OFFICER WALLACE: We are asking
11 whether you would stipulate to those reports or
12 not.

13 MS. MENOTTI: I am willing to stipulate
14 to reports that he has prepared so long as they are
15 appropriately marked and entered.

16 HEARING OFFICER WALLACE: Why are the
17 earlier reports not relevant?

18 MS. MENOTTI: Pardon me?

19 HEARING OFFICER WALLACE: Why are the
20 earlier reports not relevant?

21 MS. MENOTTI: The reports prior to
22 1983 -- there is no allegation in the complaint
23 prior to 1983, and that information has no bearing
24 on what the State is trying to prove with regard to

1 lack of closure, lack of post-closure, lack of
2 financial assurance or the overfill counts, which
3 is the substance of Counts 5 and 6, which opposing
4 Counsel has repeatedly objected to and asked that
5 we make focus on.

6 HEARING OFFICER WALLACE: Why are the
7 earlier counts relevant?

8 MR. LATSHAW: Well, I guess the Complaint
9 5 and 6 does begin in 1983. As a matter of
10 convenience, I guess, I put together all of them
11 since June of 1980, which is at or about the time
12 Mr. Camfield took this over. And all of these are
13 relevant to the question as to essentially a
14 mitigation of penalty, if nothing else, insofar as
15 an overheight question is concerned in that all of
16 these indicate that there was substantial -- or
17 there was continuous statements to him that he
18 should raise this berm and raise the fill, and
19 there was no reference or objection or citation
20 with regard to it being overheight until 1990,
21 essentially.

22 I think to the extent that they mitigate
23 the question of how it got overheight and so far as
24 penalty is concerned, it is certainly relevant for

1 that purpose.

2 HEARING OFFICER WALLACE: All right. So
3 the People do not stipulate to all the inspection
4 reports beginning with 1980?

5 MS. MENOTTI: No.

6 HEARING OFFICER WALLACE: All right.

7 MS. MENOTTI: I am willing to stipulate
8 to the reports that Mr. Townsend has generated
9 since he started inspecting the site in 1987. If
10 Counsel would like to discuss reports that occurred
11 as the complaint is drafted from 1983, I would
12 certainly ask that if Mr. Townsend is asked to
13 review or consider them that they be marked
14 fully -- the document be marked and admitted into
15 evidence so it is considered in the appropriate
16 context.

17 For reports that he did not generate, I
18 am not willing to stipulate, and I am not willing
19 to stipulate to any of the reports from prior to
20 1983. They are not relevant to Counts 5 and 6 of
21 the complaint.

22 HEARING OFFICER WALLACE: All right.
23 Well, absent a stipulation, we will go with the
24 reports that Mr. Townsend's generated and the

1 earlier reports prior to 1983, without the
2 stipulation, you will have to bring them in through
3 another witness, I guess. I am not ruling those
4 out at this time.

5 MR. LATSHAW: With regard to 1983?
6 Forward or prior to 1983?

7 HEARING OFFICER WALLACE: Prior to
8 1983 -- what did you say, 1980?

9 MR. LATSHAW: Yes, these are from 1980.

10 HEARING OFFICER WALLACE: From 1980 to
11 1983 I am not ruling them out.

12 MR. LATSHAW: Sure.

13 HEARING OFFICER WALLACE: But if the
14 State is not going to stipulate to them, you will
15 have to bring in someone.

16 MR. LATSHAW: What about 1983 to 1987?

17 HEARING OFFICER WALLACE: 1983 to 1987,
18 you are not stipulating --

19 MS. MENOTTI: Mr. Townsend was not
20 employed by the Agency.

21 HEARING OFFICER WALLACE: And you are not
22 stipulating to these either?

23 MR. LATSHAW: It should be noted, I
24 think, that this witness was disclosed as an

1 opinion witness, and he stated that he relied upon
2 and reviewed these files at the time, in
3 preparation for his testimony and in regard to each
4 of his inspections. So even though he didn't start
5 inspecting until 1987, he reviewed these reports
6 that were generated by other inspectors prior to
7 1987 in preparation for his inspections.

8 He must have had to look at the permit
9 files because he is talking about the question of
10 height and permit and whether it should be up or
11 down or whatever you look at when you come on here,
12 and that was not issued until -- that was issued in
13 1973.

14 So to that extent I think I should be
15 granted considerable latitude with regard to
16 cross-examination of this opinion witness in that
17 he has rendered a lot of opinions based upon all
18 sorts of records. He has been very vague about
19 what they are except to the extent that he has
20 relied upon these records for purposes of those
21 opinions or the extent he has relied upon them for
22 purposes of his inspection opinions.

23 HEARING OFFICER WALLACE: All right.
24 Well, we are getting far afield. You are correct,

1 you have some leeway. This is cross-examination.
2 He has been offered for his opinions. All we
3 were -- all I was trying to do is see if there was
4 any agreement on introducing any of these
5 inspection reports from 1980 to the current with
6 stipulations. Obviously, there is no stipulations,
7 so you can go through whatever you want.

8 MR. LATSHAW: All right, sir. Thank
9 you.

10 HEARING OFFICER WALLACE: To the extent
11 that Ms. Menotti has raised that we will introduce
12 each one piecemeal then, or we will --

13 MS. MENOTTI: For the record, Mr. Hearing
14 Officer, my intent was not to limit opposing
15 Counsel from bringing in proof that is regarding
16 the allegations in Counts 5 and 6 from 1983
17 forward. My request was that if he -- if opposing
18 Counsel is going to ask this inspector to read in
19 certain portions of reports that he did not
20 generate or to base an opinion on those reports,
21 that those reports be marked and entered into
22 evidence as a complete record and not just in bits
23 and pieces, which could be taken out of context.

24 MR. LATSHAW: Well, if he has relied on

1 the document for his opinion, I can ask him about
2 what part of it he did, and I can cross-examine him
3 about that document without introducing it into
4 evidence.

5 HEARING OFFICER WALLACE: Yes, that's
6 correct. Okay. Let's go.

7 MR. LATSHAW: Okay. Thank you.

8 Q (By Mr. Latshaw) Again, with regard to
9 the report of June 29, 1989, at the time of your
10 inspection during that visit, you did not make any
11 specific finding or make any, I guess we call it,
12 apparent notation of violation with regard to
13 overheight or with regard to the berm; is that
14 correct?

15 A This was the 06-29-89 report?

16 Q That's correct.

17 A I don't remember anything according to
18 overheight. I would have to double-check real
19 quick with regards to the berm. I will check the
20 checklist, which will be the easiest way to do
21 that.

22 Q Okay. You made no measurements of height
23 and you made no measurements of lateral dimension;
24 is that correct?

1 A No, I did not.

2 Q At that point in time those issues were
3 not significant to you; is that correct?

4 A At that point in time I had nothing to
5 compare those with, other than what was existing.
6 I had no measurement taken, for instance, available
7 to me, like a surveyed --

8 Q Okay. I am sorry. I didn't mean to
9 interrupt.

10 A Go ahead.

11 Q Okay. It is my understanding, from
12 People's -- from your exhibit, which is now
13 People's Exhibit 6, I think. It has to do with the
14 April 26, 1990 inspection.

15 MR. VAN NESS: April 26, 1992.

16 MR. LATSHAW: April 26, 1992.

17 MR. VAN NESS: It is Exhibit Number 5.
18 It is 1990.

19 Q (By Mr. Latshaw) People's Exhibit Number
20 5. Do you recall your testimony with regard to
21 that?

22 A Yes.

23 Q Let me refer you to paragraph one of the
24 narrative.

1 A Okay.

2 Q In that report you indicate that you made
3 reference to the Danner Aerial Survey of April 14,
4 1988; is that correct?

5 A Yes, I did.

6 Q That Danner Aerial Survey made a specific
7 notation as to height; is that also correct?

8 A That is correct.

9 Q That height is noted in your report in
10 paragraph one; is that correct?

11 A In my 1990 report it is, yes.

12 Q All right. Aside from that particular
13 note, as to specific height, are you aware of any
14 other document in existence from April of 1990 to
15 today, to today's date, that indicates what
16 specific height that landfill is as of today? Do
17 you know?

18 A In my inspection report I did a height
19 measurement with a clinometer, from Friday, and
20 that is in there.

21 Q Did you take a survey as to what the
22 height of the elevation is, the highest elevation
23 is?

24 A No, I did not. I took a survey of the

1 elevation where the reading was taken.

2 Q All right. So you do not know what the
3 elevation of that landfill is today; is that
4 correct?

5 A I know what the elevation at that reading
6 is. I do not know the highest elevation.

7 Q You don't know the elevation of it at the
8 highest point; is that correct?

9 A That's correct.

10 Q All right. So the only specific data you
11 have is data that was attained in April of 1988; is
12 that a fair statement?

13 A Specific measured data other than last
14 Friday, the Danner Survey is it.

15 Q Okay. Now, I think you were asked
16 whether People's Exhibit 1 was, in fact, a copy at
17 least of something referred to as a Danner Aerial
18 Survey. Were you asked that question?

19 A Something similar to that and my response
20 was that it was similar to a copy I had, only
21 bluer.

22 Q Okay. You had seen this back --

23 A Yes.

24 Q -- in 1990 when you were doing that

1 inspection or immediately prior to it?

2 A Prior to the 1990 inspection I had, yes.

3 Q Okay. When you went out there for that
4 inspection, did someone provide this to you or did
5 you ask for it?

6 A I requested it from our file as we should
7 have received a copy, but hadn't.

8 Q All right. Was there a reason you
9 requested it?

10 A Yes, there was a reinforcement conference
11 we had held at the site where their attorney
12 discussed the overheight issue and discussed the
13 survey.

14 Q Right.

15 A And I didn't have a copy of it.

16 Q That was the first time you became aware
17 of this; isn't that correct?

18 A That's correct.

19 Q That meeting was some time in 1989,
20 wasn't it?

21 A I believe December.

22 Q Okay.

23 A I am not 100 percent sure.

24 Q That was Mr. Immel, by the way, wasn't

1 it?

2 A Immel.

3 Q Immel. Did you make that inspection in
4 1990 for the sole purpose of pursuing a violation
5 of some kind or was that another routine
6 inspection?

7 A I would have to actually look back at my
8 1990 report to see if I noted any complaints or
9 whether or not I noted it as routine. I don't
10 recall.

11 Q Well, let me ask you this. Did you go
12 out there because there was --

13 HEARING OFFICER WALLACE: Excuse me just
14 a minute. Why don't you head back to your seat,
15 please, if you are just going to question him now.

16 MR. LATSHAW: I am sorry.

17 Q (By Mr. Latshaw) Did you go out there as
18 a -- at the request of the Attorney General, for
19 example, at that time in April of 1990, on April
20 26th, 1990?

21 A I don't recall doing that, but it would
22 be better if I could check the report to see. I
23 would have noted it if I had.

24 Q Okay. It is in front of you, I believe.

1 A Okay. I will check if that is what you
2 would wish.

3 Q Sure.

4 A Here it is. I have looked at my comment
5 section, and I make no statement of request by
6 anybody, either in that or the general remarks that
7 I saw in the first paragraph.

8 Q All right. Now, as the result, or one of
9 the results, of that inspection there was an
10 administrative citation that was issued; is that
11 correct, sir? Do you recall that?

12 A There had been administrative citations
13 issued against this site. To be honest, I don't
14 remember which inspection reports they went with or
15 how many there were. I do remember that there had
16 at least been one.

17 Q Well --

18 A It could have been this report. I am not
19 sure.

20 Q Isn't it true that you hand delivered the
21 citation that was issued in 1990 to Mr. Camfield?

22 A Again, I hand delivered a citation. I
23 honestly don't recall the date of that. I do
24 remember hand delivering one to Mr. Camfield.

1 Q That citation was the result of this
2 inspection of April 26, 1990?

3 A Once again, if I had the citation in
4 front of me I could tell you. I do recall hand
5 delivering a citation and that was a result of a
6 report I did. I don't remember which date it went
7 with.

8 MR. LATSHAW: Could you mark this,
9 please. Thank you.

10 (Whereupon said document was
11 duly marked for purposes of
12 identification as Respondent's
13 WHL Exhibit 3 as of this date.)

14 Q (By Mr. Latshaw) Mr. Townsend, I am going
15 to hand you now --

16 MS. MENOTTI: Excuse me. Could I see the
17 document, please?

18 MR. LATSHAW: Do you want to see it?
19 This is a document that you provided to us in
20 response to our request to produce regarding the
21 administrative citation of 1990.

22 Q (By Mr. Latshaw) Now, Mr. Townsend, I am
23 going to hand you what has been marked now as
24 Respondent's Exhibit 3, and I will ask you if you

1 can examine that.

2 A I have already seen what I need. There
3 is the cover letter on the first page, which
4 indicates which inspection it was with, provided
5 that the rest of this is a true and accurate
6 attachment to what that was on, that letter, as it
7 was from the 1990 report.

8 Q Okay. So that refreshes your
9 recollection?

10 A Yes.

11 Q Okay. So the citation then that was
12 issued as -- I guess it is IEPA Case Number
13 258-90-AC would have been the one that resulted
14 from your report of 1990?

15 A Yes.

16 Q April 26th, 1990?

17 A Yes.

18 MR. LATSHAW: I don't know that it is
19 appropriate to move to admit this based on
20 cross-examination, but I can call him as a witness
21 later for that purpose if the State wishes to
22 object or Mr. Taylor wishes to object. Otherwise,
23 I would like to admit it.

24 HEARING OFFICER WALLACE: Objection, Ms.

1 Menotti?

2 MS. MENOTTI: No.

3 HEARING OFFICER WALLACE: Mr. Taylor?

4 MR. TAYLOR: No.

5 HEARING OFFICER WALLACE: All right.

6 Respondent Exhibit Number 3 is admitted.

7 MR. LATSHAW: Thank you.

8 (Whereupon said document was
9 duly marked for purposes of
10 identification as Respondent's
11 WHL Exhibit 3 as of this date.)

12 Q (By Mr. Latshaw) Mr. Townsend, do you
13 know that one of the issues that was involved in
14 that administrative citation was the question of
15 overweight; is that correct, or do you know?

16 A My recollection, and it is without
17 reading it, was that it would have been marked on
18 the checklist and, yes, there would have been an
19 administrative citation subject to that particular
20 mark.

21 Q Okay. Do you know what happened with
22 that citation, what the result was?

23 A I do not recall the figure, but there was
24 some discussion and there was some money paid, if I

1 am remembering correctly.

2 Q So a penalty was assessed and paid by
3 Waste Hauling Landfill, Inc.

4 A Yes. I don't recall if anything had been
5 dropped or not, but there was some money paid as a
6 result of the citation.

7 Q Presumably, that would be reflected in
8 the Exhibit if it is there, I guess, right?

9 A It would be, yes. If there was something
10 signed by the parties.

11 Q Sure. All right. Now, since 1990 you
12 have done no measurements specifically to reach the
13 highest level of that landfill; is that correct?

14 A That is correct.

15 Q The measurements you did last Friday
16 involved a clinometer?

17 A That's correct.

18 Q It measures incline, the percent of
19 slope?

20 A It measures both height and slope.

21 Q Okay. And you described in your report
22 how you did that, I guess; is that correct?

23 A That's correct.

24 Q Okay. You reached some findings as to

1 percent of positive slope?

2 A Yes, as read by the clinometer.

3 Q I am sorry? I couldn't hear you.

4 A Yes, as read by the clinometer.

5 Q Okay. What is a positive slope?

6 A A positive slope is pointing upward
7 versus a negative slope, which would be pointing
8 downward.

9 Q I see.

10 A From where you stand to measure it.

11 Q When you started that, you made some
12 measurements from a base. What was that base? How
13 did you determine a base?

14 A The base was determined visually from
15 walking up to the landfill and coming to the point
16 where it raises up from the ground or where the
17 construction begins, is the way I describe it.

18 Q Now, as you come into this landfill there
19 is a lane that comes in from the road, first of
20 all; is that correct?

21 A That's correct.

22 Q When you get to the boundary, and that
23 would be the south boundary of the landfill; is
24 that correct?

1 A That's correct.

2 Q Okay. And it sort of comes in more or
3 less in the center of the 40 acre tract; is that
4 correct?

5 A I am not sure where it is on the 40 acre
6 tract, but it is towards the right side of fill
7 area two but not quite on the edge.

8 Q So maybe a little more to the right?

9 A Yes. That is the location as best I can
10 describe it to you right now.

11 Q Okay. Do you know the elevation of that
12 point on the property?

13 A I do not know the exact. I know
14 approximate.

15 Q Okay. What is it, approximately?

16 A It is approximately 640, 638, somewhere
17 in that area.

18 Q What data do you have --

19 A Okay. That --

20 Q -- to render that opinion?

21 A That was based on the original permit
22 application showing the permitted contours drawn
23 over the existing contours.

24 Q Now, you keep referring to this original

1 permit application. What are you referring to when
2 you refer to that? What documents or what things
3 are you talking about?

4 A The portion of the -- what I am talking
5 about is the application that was turned in for
6 development and operation of the landfill
7 originally, which shows a drawing indicating where
8 the fill boundary is to be, which is similar to
9 this. It is a blueprint with some lines drawn on
10 it.

11 Q Do you know where that is?

12 A I have a copy of it in my file in the car
13 parked two blocks from here.

14 Q Do you keep that with you at all times?

15 A No. I brought it today in case it was
16 needed, but I did not wish to carry the box. It is
17 about two and a half feet long by a foot wide.

18 Q So you keep that in a permanent file
19 somewhere and you refer to it each and every time
20 you go out to the landfill for an inspection?

21 A It is kept in the division file, which
22 currently is housed in Champaign. I requested they
23 send it to me so I could look at it.

24 Q I am not referring to today. I am

1 talking about during all of the inspections that
2 you did.

3 A Yes, it is kept in the division file and
4 currently that is in Champaign. It used to be
5 located in my office in Springfield.

6 Q You were always in Springfield but this
7 somehow is in Champaign; is that right?

8 A I was always in Springfield. We used to
9 cover the Decatur area. A new office opened and
10 they now cover it.

11 Q Okay. So the permit file and the
12 documents you are referring to in this permit file
13 were always in Champaign?

14 A A copy of them were, and there is another
15 copy in the division file at the main EPA office.

16 Q So when you needed to have this permit
17 file or something in it, when you would do an
18 inspection, you would have to request it each time
19 from Champaign?

20 A No. When I was doing the inspections we
21 still had the file in Springfield.

22 Q That's what I am trying to find out.

23 A That's what I did. They were in
24 Springfield.

1 Q Now, you would go to this file, and it
2 was in your offices or did you have to --

3 A It was in my office. It was -- we have a
4 central area where we keep files in the office
5 building.

6 Q So from 1987 until 1992, when you
7 inspected this, each time you would go out there,
8 you would go to the file that had the permit and
9 you would look at the document you just testified
10 with?

11 A I am not exactly sure of the date. It
12 may have been prior to 1992 when we transferred it
13 to Champaign, but prior to that I would have gone
14 and looked at that document in my office in
15 Springfield.

16 Q Now, in that process, then, you would
17 look at some drawings?

18 A Yes.

19 Q Okay. Do you look at the permit itself?

20 A I would generally read the conditions of
21 the permit to see if there was anything. For
22 instance, that's where I would have gotten the berm
23 notation.

24 Q Okay. Now, did you also refer to any

1 previous inspection reports?

2 A Prior to inspecting the site?

3 Q Yes.

4 A I would, at minimum, read probably the
5 inspection report preceding that, the one probably
6 preceding that, if I had time, and then if I had
7 even more time I would go back even further, and on
8 occasion at this site I had.

9 Q I am sorry?

10 A On occasion at this site I have gone back
11 through the bulk of this file, if not all of it.

12 Q So is it fair to say that you have
13 reviewed all of the inspection reports for this
14 property back as far as 1983?

15 A Most likely, yes.

16 Q Then you would have reviewed them on more
17 than one occasion, depending upon what you were
18 looking for before you would make an inspection?

19 A Not all of them prior to 1983. I
20 probably reviewed all of them at least once, and
21 then I would have reviewed maybe the last few prior
22 to making the inspection.

23 Q I take it your opinions that you have
24 expressed in your direct testimony, in part, at

1 least, were rendered in reliance upon the
2 information you obtained from reading those
3 reports?

4 A My opinions would have been mostly, if
5 not completely, based on the inspection I did. I
6 would have relied on those reports to give me
7 suggestions of where I should look for potential
8 problems.

9 Q Okay.

10 A If I were writing a report, I would have
11 double-checked to see if the permit actually said
12 what the previous author had said it said.

13 Q Now, you mentioned this conversation in
14 1989 with representatives of this landfill. Who
15 was present?

16 A I was present, of course, Mr. Immel, the
17 Counsel for the landfill, was present. I know that
18 Mr. Jansen was present. I don't remember who our
19 Counsel was. We had Counsel, too, but I don't
20 remember who the EPA Counsel was. They were
21 present. I don't remember if Mr. Camfield was
22 there. I don't recall that.

23 Q There was discussion about the fact, at
24 least it was represented to you, apparently, from

1 Immel --

2 A Immel.

3 Q -- that the landfill had been told to
4 raise the berm; is that right, in the past?

5 A There was a discussion about that during
6 that meeting, yes.

7 Q Did you review any reports to find out if
8 that was correct or whether that was reflected in
9 any of those reports?

10 A Yes, we did ask them to raise the berm.

11 Q Okay. In your review of those reports,
12 is it fair to say that at no time -- when they were
13 instructing him to raise the berm, did anyone
14 indicate that you had raised it too high, that the
15 elevation was too high?

16 A We didn't check the elevation of the berm
17 except in relation to the fill, because that is how
18 it is written in the permit. There is no maximum
19 elevation for the berm, because the berm comes down
20 when closure occurs anyway. So the berm is to be
21 there during the operation, and is to be so high
22 above the fill. So we were concerned with how high
23 it was above the fill, and that is what we said.

24 Q So to get you back to my other question

1 earlier, when you were telling him about raising
2 the berm, you were not concerned about the height
3 on the fill, then, were you, the ultimate height of
4 the fill?

5 A No. We were concerned about the height
6 of the berm in relation to the fill.

7 Q Okay. When you were out there last
8 Friday, you say you did a measurement of the
9 lateral measurement of the landfill. In 1990 you
10 did the same thing, but in 1990 you paced it off?

11 A That's correct.

12 Q What did you do Friday?

13 A I took a 200 foot tape measure and a
14 compass and measured it with the tape measure.

15 Q How did you determine where to begin and
16 where to end?

17 A Visually. We lined up visually with the
18 edge of the fill on the east side and shot the
19 compass reading straight north, and then measured
20 across and lined it visually along the west side
21 and shot straight south to make sure we were
22 accurate.

23 Q So you eye-balled it sort of, kind of?

24 A Yes.

1 Q Okay.

2 A But double-checked it with the compass
3 reading and then ran the tape measure to see.

4 Q And what kind of compass was that, a
5 magnetic compass?

6 A A magnetic compass, a field compass, yes.

7 Q No gyro compass or anything like that?

8 A No. It is a compass, as I said.

9 Q Okay. Did you use any surveying
10 instruments, anything like that --

11 A No.

12 Q -- aside from the --

13 A No, I really don't have any available to
14 me.

15 Q Okay. You are not an engineer, though,
16 are you?

17 A No.

18 Q So you wouldn't have been familiar with
19 surveying?

20 A I have done some surveying.

21 Q Okay. Oddly enough, so have I.

22 A Yes, you mentioned that on Friday.

23 Q During the inspection back on last
24 Friday, you rendered some opinions about how this

1 leachate would be there and gas and water and so
2 on. Did you measure any gas --

3 A No.

4 Q -- leaks or anything?

5 A No.

6 Q Were you able to determine, in each
7 instance where you talked about this leachate, the
8 precise location from which it originated?

9 A I did not follow each instance up. I
10 only followed some of them.

11 Q Most of them you followed down; isn't
12 that correct?

13 A Correct, and some of them I followed them
14 back up to their origin.

15 Q You didn't take any samples of any of
16 these, did you?

17 A No, I did not.

18 Q You don't know what the composition of
19 any of these was?

20 A No, I do not.

21 Q Is it your testimony, however, that you
22 are absolutely certain that each instance about
23 which you testified in your photographs, with
24 regard to this leachate that you are talking about,

1 that in each and every instance it is, in fact,
2 leachate and not some kind of surface water?

3 A Yes.

4 Q Or muddy rain water?

5 A Yes.

6 Q Is that correct?

7 A That is correct, based on the appearance
8 and as I have seen it at other spills, yes.

9 Q But you didn't actually see in every case
10 where it originated from; is that right?

11 A I did not follow it to its point of
12 origin, no.

13 Q Okay. Do you know how much rain has been
14 in this area in the last two weeks?

15 A Quite a bit.

16 Q More than three inches?

17 A I am not sure of the exact amount.

18 Q There has been a lot of rain, hasn't
19 there?

20 A Yes.

21 Q Okay. You have no direct knowledge
22 either do you, sir, that on the west boundary,
23 where you say there is -- I don't know if you said
24 this or not, but I think your opinion was that it

1 is laterally too wide on that east-west plain
2 there; isn't that correct?

3 A Yes, that's what I said.

4 Q Okay. And you don't know by what
5 magnitude it is, do you?

6 A Approximately 97 feet.

7 Q Okay. Did you measure that?

8 A Yes, I did.

9 Q How were you able to determine the
10 boundary?

11 A The boundary of what I measured or the
12 boundary of what is permitted?

13 Q The boundary of the west boundary that
14 you say is exceeded?

15 A Okay. I determined -- I measured as I
16 described when I did the slope. I went to the base
17 of where the construction is. That is usually
18 indicated in the permit, because that's where they
19 draw the lines that they are altering to show the
20 existing grade and where they change it. So in the
21 field, I looked for the area where the slope of the
22 landfill rises from the existing grade. That's
23 where I began my measurement.

24 Q Does that tell you where the boundary is,

1 though?

2 A That tells me where the boundary of
3 filling as occurred is. It doesn't tell me where
4 the waste boundary is. It does tell me where the
5 boundary of the landfill construction is, though.

6 Q Isn't it correct that this landfill was
7 originally permitted in 1972, 1972 or 1973, is that
8 about right?

9 A The early 1970's, yes. I don't remember
10 the exact date.

11 Q At that point in time it was simply a 40
12 acre, quarter-quarter sections, described as
13 quarter-quarter sections are. Is that clear?

14 A In the original permit for this site
15 there was drawings indicating the lateral extent
16 and the vertical boundary of where the filling
17 would occur.

18 Q Okay.

19 A And what would be altered from the
20 existing grade.

21 Q Well, I guess what I am trying to figure
22 out is are you saying it exceeds the lateral
23 boundary because it goes outside the property or
24 does it exceed it by virtue of some drawing in 1973

1 and is entirely within the property of the original
2 40 acres?

3 A I would say it is probably both. It
4 exceeds the property, as indicated from Sidwell
5 (spelled phonetically) photographs that are kept in
6 Macon County, which I looked at back when I
7 inspected the site, and the drawing indicates that
8 it should be a certain width, from memory 680
9 something, and my measured width was roughly 97
10 feet beyond that.

11 Q But you can't say for certain that you
12 measured that 97 feet from the west property line,
13 can you?

14 A I didn't measure from the west property
15 line. I measured the entire width of the landfill
16 and compared it to the entire permitted width of
17 the landfill.

18 Q And the extent to which the property --
19 or maybe exceedence of the lateral boundary, you
20 don't know by what extent that might include
21 outside the boundary of the property itself?

22 A No, I have no measurement of that.

23 Q That's what I was getting at. I am
24 sorry. Now, you don't have any information, or do

1 you, that for that portion that you claim is
2 outside the boundary, as to whether that has, in
3 fact, or does contain any refuse or garbage,
4 dumping of some kind?

5 A I have -- the only indication I have, and
6 I don't really have the exact location, I just have
7 a site sketch to rely on, was in 1987 I did cite
8 uncovered refuse on the north edge of the fill. I
9 don't know how far to the north that actually was.

10 Q That was in 1987?

11 A Yes, my very first inspection, when I
12 reviewed it preparing for this, I found that I had
13 marked that.

14 Q Did you mark any later inspection?

15 A In that location, no. I had not marked,
16 that I remember, any uncovered refuse on the west
17 edge.

18 Q All right. I guess the answer to my
19 question is today you don't know what is under that
20 part of the landfill you say exceeds the lateral
21 boundary, right?

22 A I don't know exactly, no.

23 Q It could be just dirt, couldn't it?

24 A I would suspect not, but I suppose

1 technically speaking, yes.

2 Q It could be dirt; isn't that correct?

3 A That is correct.

4 Q If, in fact -- isn't that also part of
5 the area of the berm that he was told to be
6 raising?

7 A It would have depended upon where his
8 active area was at the time. He would have had a
9 berm adjacent his active area no matter where it
10 was. If he had filled there, there would probably
11 have been a berm there.

12 Q Well, if he had ever filled there, there
13 had to be a berm there?

14 A Yes, provided he complied with that part
15 of the permit, yes.

16 Q Well, assuming that he raised the berm,
17 as he was told to do, would it not be true that as
18 he did this that there would be, I guess, an
19 increase in the width of the bottom of that berm?

20 A There would be some, yes.

21 Q As you would add more dirt to it or
22 whatever?

23 A Sure. In order to incorporate the higher
24 height, it would have to be wider.

1 Q Okay. And in that process it would be
2 possible for that berm to exceed the lateral
3 boundary by way of if you just looked at the
4 contours, as you did when you were out there last
5 Friday?

6 A I wouldn't suspect it would by 97 feet,
7 but technically it would be possible, yes.

8 MR. LATSHAW: Could you mark this,
9 please.

10 (Whereupon said document was
11 duly marked for purposes of
12 identification as Respondent's
13 WHL Exhibit 4 as of this date.)

14 MR. LATSHAW: This is just a narrative.
15 It is dated July of 1989.

16 (Mr. Latshaw showed
17 Respondent's Exhibit 4 to
18 Ms. Menotti and Mr. Taylor.)

19 Q (By Mr. Latshaw) Now, Mr. Townsend, I
20 guess we have now marked this Respondent's Exhibit
21 4. I ask you if you recognize that as a copy of
22 the narrative portion of your inspection of this
23 landfill on July 25, 1989?

24 A Yes, I do.

1 Q Does that consist of three pages that I
2 believe your signature is on?

3 A That's correct.

4 Q You prepared this narrative, I trust?

5 A Yes, I did.

6 Q Okay. The inspection, I guess, took
7 place in July and the document was signed in
8 August?

9 A Correct.

10 Q August 21?

11 A Yes. There were revisions, whether typos
12 or my boss didn't like the way I worded things.
13 That was the final version I signed on that day.

14 Q Did he ever tell you to take anything out
15 in terms of what you had cited?

16 A On occasion he does tell me to take it
17 out and put it in as a comment, because he doesn't
18 think I have evidence for it.

19 Q Okay. You have this portion of it
20 entitled apparent violations. You go through a
21 number of things. Is it fair to say that you do
22 not comment with regard to the berm or the height
23 at that time; is that correct?

24 A Let me check real quickly.

1 Q Certainly.

2 A That is correct.

3 Q Okay. Again, that was not a significant
4 issue to you at the time?

5 A On this particular inspection, I do
6 recall being limited in my scope. Also, I make no
7 notation of that being a problem, so it was either
8 not a problem or it was not checked at that time.

9 Q Okay.

10 A I would --

11 Q It was not -- I am sorry. Excuse me.

12 A I would say the height was not checked.
13 The berm, I don't recall whether it was not checked
14 or it was not a problem.

15 Q Okay. It was not then until December of
16 1989 that you had this meeting that you testified
17 about with Immel and the other folks; is that
18 correct?

19 A After the December 1989 meeting, I became
20 aware that there was an actual measurement of the
21 boundary, of the as filled area.

22 Q Up until that time there is no mention of
23 any overheight in your report; is that correct?

24 A No. In my 1987 report, I made a comment

1 that it didn't appear to be built right, but I only
2 made it as a comment. I had nothing, other than it
3 just didn't appear right. So it was not raised as
4 an issue because I had nothing to compare.

5 Q Did you discuss that with any
6 representative of the landfill at the time?

7 A Yes, I did. I discussed it with the man
8 who is operating the equipment, who indicated that
9 he was in charge of the site at the time. And his
10 response to me was that they did not have a copy of
11 the plans on site and that he just does what his
12 boss tells him.

13 Q I see no other mention of it after that
14 until after this meeting in 1989; is that correct?

15 A No, I had nothing to compare it to other
16 than my vision and I did not look at it.

17 Q Okay. So then it was after 1989, in this
18 meeting, that you became aware of the Danner Aerial
19 Survey; is that correct?

20 A That's correct.

21 Q Were you aware that at that time there
22 was pending and on file an application for permit
23 to expand the boundary?

24 A Not until that meeting. I had not

1 received a copy. Normally I would have, but for
2 some reason it had not gotten to us.

3 Q Well, I guess I misunderstood something
4 earlier. It was my understanding that until 1988
5 overweight was not a substantial consideration or
6 concern with regard to your inspection?

7 A No, it was not. That's correct.

8 Q Okay. I guess it is fair to say also
9 that the law changed about that time; isn't that
10 correct, as far as you know? I am not asking you
11 for a legal opinion, but were you aware?

12 A Well, there have been several changes in
13 the law. It would have been considered, had I had
14 data, if they complied with their permit. There
15 was nothing to compare it to.

16 Q You are also aware that about that time
17 this landfill filed an application for local siting
18 approval. Are you aware of that?

19 A I was aware after it had been done.

20 Q After this meeting here you are talking
21 about?

22 A Yes.

23 Q All right. I want to make sure I have
24 asked you about all of your inspection reports. I

1 have left my file over here. After July --

2 A If it helps, I have been out there six
3 times. One of those times I did not write the
4 report, that I recall.

5 Q All right. So we just talked about July
6 of 1989, and you have talked about April of 1990,
7 and there was an April of 1992; is that correct?

8 A That's the one where Mr. Turner wrote it
9 and I was out Friday, and I was out in June of
10 1989, also.

11 Q Okay. That's fine. At this meeting in
12 1989 Mr. Jansen was there; is that correct?

13 A Yes.

14 Q D.C. Jansen?

15 A David Jansen, yes.

16 Q J-A-N-S-E-N?

17 A Yes.

18 Q He is now a supervisor of some sort; is
19 that correct?

20 A He was back then.

21 Q All right. Prior to 1989, at some point
22 in time before you got there, he was also an
23 inspector; is that correct?

24 A That's correct.

1 Q Did you review any of his reports, that
2 you recall?

3 A Yes, I remember reading some of his. I
4 don't recall dates or anything, but I do remember
5 reading some of his reports.

6 Q Do you remember any of his reports where
7 he made reference to -- also made reference to this
8 berm and raising the berm?

9 A I remember him making reference to that.
10 Again, I couldn't recall dates, but I do remember
11 that, yes.

12 Q Okay. That would have been prior to your
13 coming on board in 1987; is that right?

14 A Yes.

15 Q Okay.

16 A I came on board with the Agency in 1986.
17 I began inspecting this site in 1987.

18 MR. LATSHAW: All right. I have no
19 further questions.

20 HEARING OFFICER WALLACE: Mr. Taylor?

21 MR. TAYLOR: Can we take a short break?

22 HEARING OFFICER WALLACE: Well, I would
23 normally allow that, but I have a letter here that
24 says they may kick us out at 4:30.

1 MR. TAYLOR: I think we forgot to go off
2 the record.

3 Okay. I will start asking a few
4 questions now.

5 CROSS EXAMINATION

6 BY MR. TAYLOR:

7 Q Is it correct that you were the primary
8 inspector for the landfill, I take it, between
9 sometime in 1987 and sometime in 1992?

10 A That is correct.

11 Q It has been awhile since you started
12 testifying. Can you describe for me what the scope
13 of your inspections generally consist of?

14 A Okay. Let's see. I will probably be
15 briefer this time. The scope of the inspection
16 would be I would review what their permit says, and
17 what they are allowed to do per their permit. Then
18 I would go out to the site, and I would actually
19 check to see if they are obeying both their permit
20 and the Act, the Environmental Protection Act, and
21 the Regulations as they relate to that site.

22 I would have -- the scope will vary from
23 site to site, for instance, but for this site,
24 their permit is unique for them, so there would be

1 things that they do differently that I would review
2 and that I might not even look at at another site
3 because it is not a permit requirement.

4 Q Would you say that these are the
5 compliance inspections?

6 A Yes, I would.

7 Q Okay. How many different landfills have
8 you inspected?

9 A I was asked this once before today, and I
10 didn't have an exact figure then and I don't have
11 one now. It is somewhere between a dozen and two
12 dozen different landfills, most of which I have
13 been to many times.

14 Q Those are solid waste facilities or
15 hazardous waste facilities, or a mix between the
16 two?

17 A I have been the lead inspector only on
18 solid waste landfills. I have actually been to a
19 hazardous waste disposal facility, but I was not
20 the lead inspector.

21 Q The majority of the facilities that you
22 have inspected have been solid waste facilities?

23 A That's varied over my years here. At
24 times I do more hazardous waste sites. It is

1 usually generators of hazardous waste. At times I
2 have done more solid waste facilities. It varies.
3 Currently I am doing more hazardous waste.

4 Q Between 1987 and 1992, which is the time
5 that you were the lead inspector for the Waste
6 Hauling Landfill, were you primarily doing solid
7 waste inspections?

8 A It was a pretty good mix of both,
9 actually.

10 Q So you are then familiar with the solid
11 waste regs and the hazardous waste requirements?

12 A Yes, I would say.

13 Q When you say you have done about
14 somewhere between 12 to 24 different facilities,
15 how many inspections have you done?

16 A Again, this is only going to be
17 estimate. Oh, probably, guessing, somewhere around
18 150 or better.

19 Q So would it be accurate to say you have a
20 good deal of experience?

21 A Right. I know that there are certain
22 landfills that I have inspected 30, 35 times.

23 Q Are you aware of the methods used to
24 identify the height of landfills, the various

1 methods?

2 A Yes. To a degree, yes.

3 Q Can you describe what some of those
4 methods might be?

5 A Yes. One of them would be to do an
6 actual ground survey based off of a known elevation
7 point using surveying instruments and setting some
8 grade stakes out and determining what the height is
9 at various locations in relation to that known
10 elevation. I have done an awful lot of field
11 work. If you have the money, it is a lot easier to
12 do an aerial flight.

13 Q Would that be similar to the Danner
14 Survey that we have referred to several times?

15 A Yes.

16 Q Okay.

17 A As far as kind of a quick and dirty
18 method, if you have available a global positioning
19 unit, you could walk up there and press the button
20 and it will give you a three-dimensional location.

21 Q Are those relatively recent things?

22 A I have requested one, and I haven't got
23 it yet.

24 Q Are you aware of the permitted height for

1 the Waste Hauling Landfill, based on the documents
2 that I assume were submitted with the original
3 application?

4 A I have reviewed the permitted height. My
5 recollection is that it is somewhere on the high
6 end as you come in for fill number two at 638, 640,
7 and I don't remember exactly where that is in
8 relation to the waste boundary, but that's the
9 dimension of the ground form of that, based on the
10 permit.

11 Q Okay. So would that be -- at the highest
12 elevation of the landfill, that would be the
13 highest allowed level?

14 A For fill area number two, yes.

15 Q Based on your knowledge today, what is
16 the current height at the landfill today?

17 A The most accurate portrayal I have would
18 be the Danner Survey, which says it is in the 670s
19 or 680s. I don't remember, to be honest with you,
20 the exact figure. My measurement I did on Friday
21 indicates that it is roughly 48 feet above the base
22 where the slope begins. And at that base I should
23 be standing looking downward. So on 48 feet, I
24 don't have an exact elevation of that base of that

1 slope. I didn't take a lateral measurement to
2 determine where that location was.

3 Q Okay. I understand. I believe you
4 testified that you have inspected the Waste Hauling
5 Landfill six times?

6 A Yes.

7 Q Okay.

8 A I don't remember if I testified to that
9 or if I just stated it or what but, yes, that's
10 correct.

11 Q Okay. I assume you stated it.

12 A Okay.

13 Q Just for your benefit, I believe most of
14 them have been entered into evidence so far, but do
15 you recall inspecting the landfill on or about June
16 the 29th of 1989?

17 A Yes, I did.

18 Q Okay. Did you make a report of that
19 inspection?

20 A Yes, I did. I don't recall but I thought
21 that was entered, but I am not sure.

22 Q I don't think that has been. If I show
23 you a copy of that would you be able to identify
24 that for me?

1 A Yes, I would. It may not have been
2 entered, but I do think I looked at it.

3 Q I will represent to you that this may or
4 may not be a complete copy. It is a complete copy
5 of what we have.

6 A Okay.

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

8 (Whereupon said document was
9 duly marked for purposes of
10 identification as Respondent's
11 Bell Exhibit 1 as of this
12 date.)

13 MR. TAYLOR: Just to make it clear, this
14 is complete as it has been received by the State in
15 response to the discovery request.

16 Q (By Mr. Taylor) Have you had an
17 opportunity to look at that document?

18 A Yes. I have checked through as far as
19 its completeness.

20 Q Does it appear to be complete based on
21 that review?

22 A Other than that we have photocopies
23 instead of photographs, yes.

24 Q All right. So does that appear to be an

1 accurate copy of your report from the June 29th,
2 1989 inspection?

3 A Yes, it does.

4 Q Okay. Is there a checklist attached to
5 the front of this document?

6 A The first four pages are a checklist.

7 Q Can you summarize for me the results --
8 let me back up a second. I assume that this
9 checklist to some degree represents your
10 interpretation of the inspection, of the compliance
11 inspection?

12 A I would have filled out this checklist
13 based on both my observations on site and my review
14 of what the site is supposed to be doing in their
15 permanent file and then fill out this checklist
16 when I compared the two.

17 Q Can you summarize for me what your site
18 observations were at that time?

19 A Give me a minute to go back through it
20 briefly, if I could.

21 Q Sure. Take your time.

22 A (The witness reviewed the document.)
23 Okay. In brief, the issues that I remember from
24 this day were uncovered refuse, leachate and/or

1 refuse in the water. There was some air pollution
2 violations due to some burning. My recollection
3 was that it was underground burning. There was
4 access control, a notation mark for not controlling
5 access properly. There were some permit -- there
6 was a permit violation mark also.

7 Q And the permit violations consisted of
8 what?

9 A Based on my report, it had to do with the
10 use of some waste for road base material, and
11 having the waste stockpiled as a result of using
12 the material without having permission to do that,
13 and the fact that their compaction was inadequate,
14 their compaction cover.

15 MR. TAYLOR: At this point I would move
16 to have Exhibit Bell 1 entered into evidence.

17 HEARING OFFICER WALLACE: Any objection,
18 Ms. Menotti?

19 MS. MENOTTI: Can I see the report?
20 Okay. No objection.

21 HEARING OFFICER WALLACE: Mr. Latshaw?

22 MR. LATSHAW: No, I have no objection.

23 HEARING OFFICER WALLACE: All right.

24 Respondent Bell Exhibit Number 1 is admitted.

1 (Whereupon said document was
2 admitted into evidence as
3 Respondent's Bell Exhibit 1 as
4 of this date.)

5 Q (By Mr. Taylor) Do you recall inspecting
6 the landfill on or about July 25th, 1989? I will
7 represent to you that I believe the three pages of
8 this report have been entered.

9 A I recall inspecting on or about that --
10 HEARING OFFICER WALLACE: Just a minute.
11 Just to clarify, I don't recall it being moved or
12 admitted. If I may correct that. The record will
13 reflect that. I don't recall it being moved and
14 admitted.

15 Q (By Mr. Taylor) I will represent to you
16 that this is a complete copy of the report that was
17 provided to us by the State, and I would like you
18 to take a look at it.

19 A Okay. (The witness reviewed the
20 document.)

21 MR. VAN NESS: Excuse me. Is it dated
22 June 29, 1989?

23 MR. TAYLOR: I believe it was July 25th,
24 1989.

1 MR. VAN NESS: Okay. Thank you.

2 Q (By Mr. Taylor) Have you had an
3 opportunity to look through it?

4 A Yes, I have.

5 Q Does that appear to be a true and
6 accurate copy of a report that you prepared after
7 that inspection?

8 A It is missing the photographs. Other
9 than that, yes.

10 Q Okay. And was this report written soon
11 after that inspection?

12 A Yes. Again, I would not be able to tell
13 you the exact day I wrote this. It could have been
14 that day. It could have been, you know, during
15 that following week or that week but, yes.

16 Q So it would be while your memory of that
17 inspection was still fresh in your mind?

18 A That's correct.

19 Q Okay.

20 A The initial draft of it would have been,
21 anyway.

22 Q Okay. Can you, again, summarize for me
23 the site observations at the time in terms of
24 compliance issues?

1 A Again, I would be able to do it if I
2 looked at the report briefly.

3 Q Please go ahead.

4 A (Witness reviewed document.) Again, there
5 were some permit concerns cited. There was
6 uncovered or inadequate cover of refuse. There was
7 litter problems cited. The burning issue was
8 revisited again. My recollection was that was one
9 of the reasons I went back to the site that day.

10 Q When you say it was revisited, was there
11 still a current issue at that time or did you
12 confirm, at that time, that there was no longer any
13 burning continuing?

14 A No, at that time I actually went with a
15 Drager tube, and took a carbon dioxide reading to
16 see if there was any indication that there may have
17 been burning underneath the surface where the
18 apparent smoke was venting a month earlier, and we
19 found the vents again and took some readings.

20 Q Continue, please.

21 A There was some leachate concerns and some
22 refuse and water concerns, and that appears to be
23 it. My scope of this inspection was a little bit
24 more limited. It was more of a check from the

1 month previously.

2 Q As a follow-up to the June --

3 A Yes, as a follow-up.

4 MR. TAYLOR: I would like to mark this as
5 Bell Exhibit Number 2, and move it entered into
6 evidence.

7 HEARING OFFICER WALLACE: Any objection?

8 MS. MENOTTI: No objection.

9 HEARING OFFICER WALLACE: Any objection,
10 Mr. Latshaw?

11 MR. LATSHAW: No.

12 HEARING OFFICER WALLACE: All right.
13 Respondent Bell Exhibit Number 2 is admitted into
14 evidence.

15 (Whereupon said document was
16 duly marked for purposes of
17 identification and entered into
18 evidence as Respondent's Bell
19 Exhibit 2 as of this date.)

20 Q (By Mr. Taylor) At this point I believe
21 that each of your inspection reports have been
22 admitted. I am not asking you to confirm that.

23 Based on those inspection reports, I
24 believe it would be accurate to say that you have a

1 picture in your mind of the operations at the
2 landfill during that period of time, primarily
3 between 1987 and 1982; is that correct?

4 A That's correct.

5 Q Can you describe for me, then, your
6 general impressions of the operations of this
7 landfill?

8 MR. LATSHAW: I think I will object to
9 that. I am not sure that his general impressions
10 are relevant, to begin with, or even competent
11 opinions. The reports speak for themselves. His
12 opinions --

13 MR. TAYLOR: I think he -- what I am
14 trying to elicit from him is a summary of his
15 inspection reports over a period of time. I think
16 he has testified that he has inspected hundreds of
17 landfills and, accordingly, I think he would be
18 qualified to give some opinions about the standards
19 of the operation or the quality of the operation
20 during the period of time that he was conducting
21 the inspections.

22 HEARING OFFICER WALLACE: I will allow
23 him to give a quick summary of his reports, but I
24 sustain the objection to his observations. He can

1 summarize his reports that he has made.

2 Q (By Mr. Taylor) Will you please do that?

3 A Okay. My inspection reports, in summary,
4 I guess the best way of doing that would be
5 consistently I would look at whether or not there
6 were leachate problems, and consistently I found
7 them. Consistently I would look for cover problems
8 and consistently I found them. There was
9 consistently a litter problem in the general
10 operation. And toward the end of my inspecting,
11 after being made aware of an aerial survey, I
12 looked at overfill as compared to data I had, and I
13 cited that as a problem, also.

14 Q Would you say that your -- what you have
15 cited then, tended to be consistent over time?

16 A Yes, I would.

17 Q Can you describe the process, to your
18 knowledge, that occurs once an inspector drafts a
19 report on the landfill, what happens at the Agency
20 at that time?

21 A Sure. First off, the inspector should
22 reread it to see if he notices anything he has
23 written wrong or spelling errors. It is a lot
24 easier now with the word processor, you can use

1 spell check. Then you turn it in as a complete
2 report, meaning the checklist, the narrative,
3 photographs, site sketch, whatever you have
4 included in your report for that particular visit,
5 and that would be reviewed by my supervisor.

6 He would go ahead and he would make marks
7 on it if he felt that there was a better way of
8 saying something or if I should cite something that
9 I put as a comment, or I should put as a comment
10 something that I cited, because he doesn't think I
11 have enough data for it. He would make those types
12 of requests. Then I would revise the report, after
13 discussing those requests with him, and agreeing to
14 what should be done for the report.

15 Q So you would write the report, and that
16 report would be reviewed by your immediate
17 supervisor?

18 A That's correct.

19 Q Would the report then be distributed
20 further in the Agency?

21 A Yes, it would go to the section manager
22 as a copy to the division file. They would receive
23 it and the enforcement decision group would receive
24 this report and review it from the legal end as to

1 whether or not it is something they wanted to
2 pursue with a case or, you know, recommend a
3 warning letter or recommend -- or whichever action
4 we are going to take.

5 Q Now, is that a separate group, this
6 enforcement group?

7 A Yes and no. Traditionally, the section
8 manager for the field operation section who would
9 review it for that purpose would be in that group,
10 and he would probably be the first to receive it in
11 that group, and then he would distribute it. Other
12 persons --

13 Q Who all is involved in that group?

14 A I don't know all of the names of the
15 persons involved in that group.

16 Q Do you know their positions? For
17 example, if it is a manager from some other
18 section?

19 A It would be managers. I do not know
20 specifically which ones. I would guess the Bureau
21 Manager for Bureau of Land would be in there, too.

22 Q Okay. Would it be accurate to say that
23 the results of your inspection reports between the
24 period of 1987 and 1992 have been distributed

1 within the Agency to the people that need to know
2 the results of those inspections?

3 A Yes. They would be given to -- they
4 would be available not only specifically to people,
5 but they would be put in the division file in case
6 anybody needed to get a copy, and they could go to
7 the division file and get it.

8 Q Are you familiar with -- I believe you
9 stated that you are familiar with the solid waste
10 Regulations of the Illinois Pollution Control
11 Board; is that correct?

12 A That's correct.

13 Q Are you familiar with the final cover
14 obligations under Part 207 of those Regulations? I
15 am sorry. Excuse me. It is Part 807.

16 A Yes, 807. Yes.

17 Q Okay. Would a landfill that has received
18 a proper final cover, under the Part 807 standards,
19 have significant erosion gullies on its sides or
20 top?

21 MR. LATSHAW: I will object to the
22 question. I don't know what is meant by
23 "significant."

24 MR. TAYLOR: Can you restate that?

1 MR. LATSHAW: I am sorry?

2 MR. TAYLOR: Can you restate that? I
3 didn't hear what you said.

4 MR. LATSHAW: Oh, I am sorry. My
5 objection was to the form of the question. I don't
6 know what the meaning of "significant" is in terms
7 of --

8 MR. TAYLOR: I will withdraw the question
9 then.

10 Q (By Mr. Taylor) Did you identify erosion
11 gullies at the landfill during your recent
12 inspection on February 28, 1997?

13 A Did I? Is that what your question was?

14 Q Yes.

15 A Yes, I did identify some.

16 Q Did it appear to you that there was a
17 proper cover that met the standards of Part 807 in
18 the areas where those erosion gullies existed?

19 A No, not completely.

20 Q Okay. Did you identify exposed refuse
21 during your recent inspection?

22 A Yes.

23 Q Okay. Did that particular area have a
24 cover over it that met the standards of Part 807 of

1 the Regulations?

2 A No. There would not have been exposed
3 refuse if it had, so, no.

4 Q We heard an extensive amount of testimony
5 concerning leachate seeps. I suppose that you
6 identified those during your recent inspection,
7 also?

8 A Yes, I did.

9 Q Did you have an opportunity to view at
10 least some of the areas where the leachate was
11 originating from?

12 A Where the leachate originated from as it
13 came out of the surface of the ground, yes.

14 Q I assume that some of this leachate was
15 originating from on the landfill site as opposed
16 to, say, 20 feet away?

17 A Yes.

18 Q Did the areas that appeared to be seeping
19 leachate have cover on it that would meet the
20 standards under Part 807 of the Regulations?

21 A They may have -- some of them may have
22 had soil cover, but vegetative cover had been
23 washed away and it needed to be reestablished, if
24 it had been there at all. I could not tell for

1 sure. It was likely that it had, because there was
2 vegetation around it.

3 Q Okay.

4 A But it didn't meet it on that particular
5 day, though.

6 Q The cover, as a whole, if you take the
7 landfill site as a whole, with the fill area two,
8 did it appear that the landfill currently has a
9 cover on it, the final cover and meets the
10 standards of the Part 807 Regulations?

11 A Not that meets the standards on the
12 entire fill, no.

13 MR. TAYLOR: I think we saved you some
14 time of coming back in tomorrow. We have no
15 further questions. Thank you.

16 HEARING OFFICER WALLACE: Do you have
17 redirect?

18 MS. MENOTTI: We may have some redirect,
19 but in the interest of time -- it is five till
20 5:00. Do you have to be out of here?

21 MR. LATSHAW: I had subpoenaed this
22 witness for tomorrow, anyway.

23 HEARING OFFICER WALLACE: Pardon me?

24 MR. LATSHAW: I had subpoenaed this

1 witness for tomorrow, anyway.

2 HEARING OFFICER WALLACE: Well, Mr.
3 Townsend, be here bright and early, then.

4 THE WITNESS: Okay. I will.

5 HEARING OFFICER WALLACE: Okay. Let's go
6 off the record a minute.

7 (Discussion off the record.)

8 HEARING OFFICER WALLACE: All right.
9 Back on the record.

10 We will adjourn until tomorrow morning at
11 9:30. Thank you.

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

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

4 I, DARLENE M. NIEMEYER, a Notary Public
5 in and for the County of Montgomery, State of
6 Illinois, DO HEREBY CERTIFY that the foregoing 239
7 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 3rd of
9 March A.D., 1997, at the Illinois State Library,
10 300 South Second Street, in the Illinois Authors
11 Meeting Room, Springfield, Illinois, in the case of
12 The People of the State of Illinois v. Bell Sports,
13 Inc. and Waste Hauling Landfill, Inc. and Waste
14 Hauling, Inc. in proceedings held before the
15 Honorable Michael L. Wallace, Hearing Officer, and
16 recorded in machine shorthand by me.

17 IN WITNESS WHEREOF I have hereunto set my
18 hand and affixed my Notarial Seal this 12th day of
19 March A.D., 1997.

20
21

22 Notary Public and
23 Certified Shorthand Reporter and
24 Registered Professional Reporter

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