

1 ILLINOIS POLLUTION CONTROL BOARD
2 CITY OF CHICAGO DEPARTMENT)
3 OF ENVIRONMENT,)
4 Complainant,)
5 vs.) AC 06-41
6 1601-1759 EAST 130th STREET,) (CDOE No. 06-01-AC)
7 L.L.C.,) (Administrative
8 Respondent.) Citation)
9

10 TRANSCRIPT OF PROCEEDINGS had in the
11 above-entitled cause before Hearing Officer
12 Bradley P. Halloran, called by the Illinois
13 Pollution Control Board, pursuant to notice, taken
14 before Sharon Berkery, CSR, a notary public within
15 and for the County of Cook and State of Illinois, at
16 the James R. Thompson Center, 100 West Randolph
17 Street, Room 11-512, Chicago, Illinois, on the
18 17th day of May, A.D., 2007, commencing at 1:10 p.m.

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1 APPEARANCES:

2

3 CITY OF CHICAGO,

4 Department of Law

5 Aviation, Environment & Regulatory Section

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8 Chicago, Illinois 60602

9 312-742-3990

10 MS. JENNIFER A. BURKE, Senior Counsel

11 and

12 CITY OF CHICAGO,

13 Department of Law

14 Revenue Litigation Division

15 Room 900

16 30 North LaSalle Street

17 Chicago, Illinois 60602

18 312-744-1438

19 MR. GRAHAM G. McCAHAN, Assistant Corporation

20 Counsel

21 appeared on behalf of the Complainant;

22

23

24

1 APPEARANCES (Cont'd.):

2

3 JEFFREY J. LEVINE, P.C.,

4 20 North Clark Street

5 Suite 800

6 Chicago, Illinois 60602

7 312-372-4600

8 MR. JEFFREY J. LEVINE,

9 appeared on behalf of the Respondent.

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23 REPORTED BY: SHARON BERKERY, C.S.R.

24 CERTIFICATE NO. 84-4327.

1 THE HEARING OFFICER: Good afternoon.

2 My name is Bradley Halloran.

3 I'm a hearing officer here with
4 the Illinois Pollution Control Board. I'm
5 also assigned to this matter entitled City of
6 Chicago, the complainant, versus 1601-1759
7 East 130th Street, LLC.

8 It is docketed at the Board as
9 Administrative Citation 6-41. I also note
10 for the record that today is May 17th, it is
11 approximately 1:10 in the afternoon.

12 This administrative citation
13 alleges that respondent violates
14 Sections 21P1, 2, 3, 4 and Section 21P7 of
15 the Act. As a result, the respondent filed a
16 petition and that's why we're here today.

17 This matter will be conducted in
18 accordance with Section 108 and Section 101
19 Subpart F of the Board's procedural rules. I
20 also want to note, for the record, that I do
21 not make the ultimate decision of the case,
22 that is left up to the five board members.

23 With that said, would the City
24 like to introduce themselves.

1 MS. BURKE: Jennifer Burke for the
2 City of Chicago.

3 MR. McCAHAN: Graham McCahan for the
4 City of Chicago.

5 MR. LEVINE: And for the respondent,
6 Jeff Levine representing 1601-1759 east
7 130th Street, LLC.

8 THE HEARING OFFICER: I also want to
9 note, for the record, that there are no
10 members of the public here, other than the
11 parties affiliated with the AC6-41.

12 We had been talking off record
13 prior, and what we have decided, the parties
14 have agreed and stipulated to, that for
15 purposes of Administrative Citation 6-41, the
16 testimony from Raphael Maciel, the testimony
17 from Chris Antonopoulos, will be used and
18 incorporated in this Administrative Citation
19 6-41.

20 MR. LEVINE: And that's prior
21 testimony. Is that from 639 and 640?

22 MS. BURKE: Only 640.

23 MR. LEVINE: Okay.

24 THE HEARING OFFICER: Only 640.

1 Correct.

2 Again, the testimony from Maciel
3 and the testimony from Antonopoulos from
4 6-40, by agreement, has been incorporated and
5 stipulated to this AC 6-41.

6 With that said, would the City
7 like to do an opening or proceed with her
8 case in chief?

9 MS. BURKE: Both. I would, yes.

10 I'd like to make a brief opening.

11 The evidence will show in this
12 hearing that on March 22nd, 2006, 1601 to
13 1759 East 130th Street LLC, respondent
14 violated section 21P of the Illinois
15 Environmental Protection Act by causing or
16 allowing open dumping at 1601 East 130th
17 Street, which resulted in litter, scavenging,
18 open burning, deposition of waste and
19 standing water and deposition of general
20 construction and demolition debris. We
21 believe that the Board will find that a
22 statutory penalty is appropriate.

23 We'd also move to admit the
24 exhibits from the testimony that you

1 referenced, Mr. Hearing Officer. And that
2 would be City Exhibits A, B and C.

3 THE HEARING OFFICER: Okay.

4 Mr. Levine?

5 MR. LEVINE: I would object to the
6 introduction of Exhibit B as relevant. Is B
7 the --

8 MS. BURKE: The deed?

9 MR. LEVINE: -- the deed?

10 THE HEARING OFFICER: Okay. You had
11 no objection, though, in 6-40; correct?

12 MR. LEVINE: I did not.

13 THE HEARING OFFICER: Okay.

14 And that's the only objection you
15 have for Complainant's exhibit --

16 MR. LEVINE: I'm going to -- Mike, the
17 same objections I previously made in 6-40, I
18 continue those objections, with regard to the
19 completeness and with regard to the hearsay
20 of the lab reports, I believe were on
21 Exhibit A.

22 THE HEARING OFFICER: In the
23 incompleteness. Okay.

24 The record will so note your

1 objections. However, I'm going to overrule
2 your objections and ask the Board to rule
3 accordingly.

4 I will admit Complainant's
5 Exhibits A, B and C.

6 And, Ms. Burke, do you have those?

7 MS. BURKE: An extra copy.

8 THE HEARING OFFICER: An extra copy,
9 and we will mark them 6-41.

10 MS. BURKE: Yes.

11 THE HEARING OFFICER: Will be admitted
12 into evidence.

13 (WHEREUPON, said documents, were
14 previously marked Complainant's
15 Exhibit Nos. A, B, C, for
16 identification, was offered and
17 received in evidence.)

18 THE HEARING OFFICER: You know, I'll
19 take those, Ms. Burke. Or do you need those?

20 MS. BURKE: I think I have enough.

21 THE HEARING OFFICER: Thank you.

22 All right. You may proceed,
23 Ms. Burke.

24 MS. BURKE: The City has no further

1 witnesses, other than the incorporated
2 testimony of Mr. Maciel and Mr. Antonopoulos.

3 THE HEARING OFFICER: Terrific.
4 Thanks.

5 The City rests in its case in
6 chief.

7 Mr. Levine, respondent?

8 MR. LEVINE: Yes. Thank you.

9 Mr. Halloran, I will call Jose Gonzalez.

10 THE HEARING OFFICER: Off the record.

11 (WHEREUPON, a recess was had.)

12 (WHEREUPON, the witness was duly
13 sworn.)

14 JOSE GONZALEZ,
15 called as a witness herein, having been first duly
16 sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. LEVINE:

19 Q. Mr. Gonzalez, directing your attention
20 to 1601 to 1759 East is 130th Street, LLC. Do you
21 own that company?

22 A. Yes.

23 Q. And it is owned in what is called an
24 LLC; correct?

1 A. Correct.

2 Q. And have there been problems with that
3 property?

4 A. Yes.

5 Q. Do those problems include people
6 dumping waste on the property?

7 A. Yes.

8 Q. And when you acquired the property,
9 was there waste on the property?

10 A. Yes, there was.

11 Q. Have you ever allowed anyone to dump
12 waste on your property outside of a dumpster?

13 A. No.

14 Q. Have individuals or entities fly
15 dumped on that property?

16 A. Yes.

17 Q. And has this been an ongoing problem
18 for you?

19 A. Yes.

20 Q. Was there also -- prior to March 22nd,
21 2006, was there an agreement with you regarding the
22 storage of CTA waste on the property?

23 A. Yes.

24 Q. What was the agreement and who did you

1 have the agreement with?

2 A. The agreement was with E. King -- with
3 Elaine King.

4 Q. And what was the agreement? What did
5 you agree to?

6 A. The agreement was that she was going
7 to -- they were going to leave the excavated
8 material either on boxes or they were going to leave
9 the semis there.

10 Q. Now, as we're starting over again in a
11 different case, if we could just -- when you say
12 they were going to leave, who was -- where was the
13 material coming from, who was moving it and where
14 was it going to?

15 A. The material was coming from the CTA
16 job on Lake Street, and it was coming to my yard,
17 which is 130th and Stony Island. And E. King was
18 the transporter, and she was hauling it for Paschen.

19 Q. And where was the waste going to go --
20 where was the final point?

21 A. The final destination point was CID.

22 Q. And CID is the landfill?

23 A. Yes.

24 Q. And is that landfill close to your

1 property?

2 A. Yes.

3 Q. Where is it?

4 A. It's right next door.

5 Q. Thank you.

6 Did E. King follow their
7 agreement?

8 A. No.

9 Q. What did they do outside of their
10 agreement?

11 A. They ended up dumping the dirt on the
12 property instead of storing it the way she
13 originally said they were going to store it.

14 Q. And how did she agree to store it on
15 your property?

16 A. They were supposed to store it either
17 in dumpsters or they were going to store it in the
18 parked semis overnight.

19 Q. Now, the dumpsters, are these also
20 called roll-offs?

21 A. Yes.

22 Q. Is that a roll-off dumpster like we
23 see next to buildings for material?

24 A. Yes.

1 Q. And have you viewed the City's
2 narrative evaluation in this case with regard to the
3 agreement?

4 A. Yes.

5 Q. I'm showing you what has been marked
6 as Exhibit A, Page 6.

7 A. Okay.

8 Q. The bottom paragraph, does that --
9 does the agreement that the CTA material was going
10 to be removed by E. King, stored at your lot in
11 roll-offs or trucks until the CID site was opened,
12 is that in that narrative evaluation, the bottom
13 paragraph?

14 A. Yes, it is.

15 Q. And have you seen, either that day or
16 subsequent thereto, a manifest signed by Chuck Weber
17 regarding the generator -- and I'm showing what's
18 been marked as Defendant's Exhibit A. Have you seen
19 manifests signed by Chuck Weber?

20 A. Yes.

21 Q. And did you talk with Chuck Weber
22 ever?

23 A. With Chuck Weber himself?

24 Q. Yes.

1 A. No, not personally.

2 Q. Now, this manifest is consistent with
3 the -- what we just looked at, correct, the
4 narrative evaluation at Page 6 of Exhibit A?

5 A. Yes.

6 Q. And the manifest demonstrates that the
7 generator is the CTA?

8 MS. BURKE: Objection. Leading the
9 witness.

10 MR. LEVINE: I'm sorry.

11 BY MR. LEVINE:

12 Q. Where does the manifest state -- does
13 the manifest state who is the generator? And that's
14 at three.

15 A. Yes, it does.

16 Q. And who was that?

17 A. It says right on Line Item No. 3 the
18 generator's name and mailing address -- oh, no,
19 that's where the stuff is going to -- and then it
20 states where the material is coming from and it
21 states that E. King is the hauler.

22 Q. Where does the material say it's
23 coming from?

24 A. CTA.

1 Q. And who --

2 A. 567 West Lake Street.

3 Q. Who is the transporter of that
4 manifest?

5 A. Line No. 5, E. King.

6 Q. And where is the designated facility?

7 A. CID.

8 Q. And is that consistent with the
9 narrative evaluation at Page 6, bottom paragraph?

10 A. Yes.

11 MR. LEVINE: I move for admission of
12 Defendant's A.

13 MS. BURKE: I'm going to object to
14 admitting the waste manifest into evidence
15 because it's hearsay.

16 THE HEARING OFFICER: Any further
17 comment, Mr. Levine?

18 MR. LEVINE: Now, this was, obviously,
19 a document taken in with the investigation
20 and the corresponding -- line by line with
21 the City of Chicago narrative evaluation
22 dated March 22nd, as well as Chris
23 Antonopoulos' and Mr. Maciel's testimony.

24 THE HEARING OFFICER: As before, I

1 will allow it into evidence, and I'm looking
2 at Section 101 626 of the Board's procedural
3 provisions, "Evidence that is material,
4 relevant and would be relied upon by prudent
5 persons in the conduct of serious affairs."

6 So objection overruled.

7 Respondent's Exhibit A, the manifest, is
8 admitted into evidence.

9 (WHEREUPON, said document,
10 previously marked Respondent's
11 Exhibit No. A, for identification,
12 was offered and received in
13 evidence.)

14 BY MR. LEVINE:

15 Q. Now, sir --

16 THE HEARING OFFICER: Do you have that
17 or do you need that, Mr. Levine?

18 MR. LEVINE: I can hand you a copy.

19 THE HEARING OFFICER: Okay. Thank
20 you.

21 BY MR. LEVINE:

22 Q. Now, sir, I'm going to have you look
23 at the photographs on Pages 9 to 22 of Exhibit A.
24 Does that generally describe -- generally indicate

1 what was going on at the property you owned on
2 March 22nd, 2006?

3 A. Yes.

4 Q. Did you cause or allow any of the
5 material to be placed in your yard in those
6 photographs?

7 A. No.

8 Q. Now, with regard to what is marked as
9 suspect CTA waste -- and those are Photographs 9,
10 10, 17, 21 and 22 -- is that the waste that was
11 dumped on you yard?

12 A. Yes.

13 Q. And was that in line with the
14 agreement you had with Elaine King?

15 A. No.

16 Q. And how was the material to be kept at
17 your yard from the CTA? How was the CTA material to
18 be kept in your yard?

19 A. It was supposed to be kept in roll-off
20 boxes or in semis.

21 Q. Okay.

22 A. They were either just going to stage
23 the trucks and leave the loads on the trucks.

24 Q. Did you cause or allow anyone from

1 E. King to dump that material on your yard?

2 A. No.

3 Q. Were you upset about it?

4 A. Yes.

5 Q. Were you very upset about it?

6 A. Yes, I was.

7 Q. Did you have words with Elaine King?

8 A. Yes, I did.

9 Q. And what did she say after you told

10 her what had occurred?

11 MS. BURKE: Objection. Hearsay.

12 THE HEARING OFFICER: Mr. Levine?

13 MR. LEVINE: It's not for the truth of
14 the matter, sir, but to show the reaction of
15 the witness.

16 THE HEARING OFFICER: I'll allow it.

17 Overruled.

18 BY THE WITNESS:

19 A. I basically called her that Monday
20 morning and I was real upset, I was just -- just
21 cussing at her. And then she let me talk for a
22 little while.

23 And then she goes, "Listen,
24 relax." She goes, "Paschen is going to bring a

1 wheel loader out there. I'm sending trucks there
2 now, and we're going to clean it all up."

3 And then I told her that she
4 better get out here right away. And she originally
5 stated that she didn't know what was going on, that
6 she was sleeping and that Paschen was handling the
7 yard, blah, blah, blah.

8 So then she had the superintendent
9 show up there and meet us there, and then he assured
10 me that everything was going to get cleaned up and
11 that everything was going to be fine.

12 BY MR. LEVINE:

13 Q. And who from Paschen assured you that
14 everything was going to be cleaned up?

15 A. You know, what, honestly, I don't
16 remember his name. I thought it was Chuck Weber,
17 but I just read on this one page that Chuck Weber
18 was the environmental consultant.

19 But I forgot his name -- I forgot
20 his name, but he did show up there.

21 Q. The guy from Paschen?

22 A. The guy running the job from Paschen.

23 Q. Did he tell you that was the stuff
24 from the CTA?

1 A. Yes.

2 Q. Did he take responsibility for the
3 fact that it was dumped there and not kept in
4 roll-offs?

5 A. He didn't state that. He just said
6 that -- the only thing he said was it was so much
7 material that they wanted to get the job done in
8 that time the CTA was allowing them and they didn't
9 have enough time.

10 So -- and they just started
11 calling off the trucks and just started rolling the
12 material in there.

13 Q. Did you cause or allow that manner to
14 be left on your property outside of a roll-off or a
15 truck?

16 A. No.

17 Q. Were Paschen and E. King cleaning up
18 the yard?

19 A. Yes.

20 Q. Did they subsequently bring a
21 front-end loader and trucks in to clean up the
22 property?

23 A. Yes.

24 Q. And directing your attention to

1 Exhibit C, the photographs -- Pages 67 and 68.

2 Do you have those, Pages 67 and
3 68?

4 A. Yes.

5 Q. Are those pictures of the front-end
6 loader cleaning the property?

7 A. Yes.

8 Q. And the yellow vehicle, is that a
9 Bobcat?

10 A. Yes.

11 Q. Now, where was the material taken,
12 that is suspect CTA material?

13 A. To CID.

14 Q. Do you have any question in your mind
15 that that was CTA material?

16 A. Do I have any question in my mind?

17 No.

18 Q. Did you later learn that there was a
19 problem with some of the material that was being
20 taken to CID?

21 A. Yes.

22 Q. And is CID a landfill?

23 A. Yes.

24 Q. And do they have specific rules as to

1 what they allow in their landfill?

2 A. Yes. When they're going to receive
3 waste, they go out to the jobs.

4 You call them out and you tell
5 them, "Listen, we have 800 yards of this." And they
6 go out there and they classify the material. They
7 take samples of it, and they classify to see exactly
8 what it's contaminated with.

9 And then they'll tell you how
10 much -- like if it has benzine, how much does it
11 have. And they call -- what they call a waste
12 profile.

13 Now, what happened was, when the
14 truck started rolling in there, as you could see on
15 Page -- on that Page 67.

16 What was the page where you said
17 the garbage was at?

18 Q. Let's go back up. Try 13 --

19 MS. BURKE: Objection. Are you
20 testifying or is the witness?

21 MR. LEVINE: I'm directing him.

22 BY THE WITNESS:

23 A. Go to Page 21 and Page 22.

24 THE HEARING OFFICER: That's

1 Complainant's Exhibit A?

2 MR. LEVINE: Yes.

3 BY THE WITNESS:

4 A. If you go to Pages 21 and 22, you can
5 see the material that's the CTA stuff, you could see
6 all the garbage and stuff in the material. There's
7 timbers in there.

8 It was just wires, everything
9 just -- so CID started complaining. They started
10 saying that this wasn't the material they had
11 classified.

12 And then, I guess, they called
13 Elaine or somebody from Paschen and they explained
14 what -- how the job went down. And so, then the guy
15 said -- he said, "You guys have to clean it up a
16 little bit, because I can't allow it in here like
17 this."

18 So then -- that's what -- then
19 they brought laborers out there to start cleaning it
20 up.

21 And if you see on Page 21, on the
22 bottom, even the City wrote on there, where it says
23 "comments," it says, "CTA waste, broken concrete,
24 multi-debris, brick, soil," it had everything in it.

1 BY MR. LEVINE:

2 Q. That's on Page 22?

3 A. Page 22.

4 Q. Now, on March 22nd, were any of your
5 employees on the lot?

6 A. No.

7 Q. Whose employees were on the lot?

8 A. Elaine brought her own guys.

9 Q. From E. King?

10 A. Yeah.

11 Q. And were there E. King trucks in the
12 lot, as well?

13 A. Yes.

14 Q. And what were the front-end loader --
15 what was the front-end loader doing with respect to
16 the trucks?

17 A. The front-end loader was loading the
18 trucks up and hauling the stuff out of there.

19 Q. Now, in addition to what's marked as
20 Suspect CTA Waste in Exhibit A, there's also
21 numerous photographs of other piles of garbage;
22 correct?

23 A. Correct.

24 Q. And did you cause or allow any of

1 those piles of garbage to be placed on your
2 property?

3 A. No.

4 Q. Have you had a problem with fly
5 dumping?

6 A. Yes.

7 Q. And has it been a consistent problem
8 since you acquired the property?

9 A. Yes.

10 Q. And what efforts did you make to
11 secure the property from people coming on the
12 property and dumping?

13 A. We've repaired the gates numerous
14 times. They've taken the gates off the hinges.

15 So what we did now -- I had my
16 mechanic weld the hinges right onto the gate and
17 eliminate the bolts. So there's no -- they can't
18 unscrew the bolts and take the hinges off.

19 So everything's welded and we've
20 put another lock on there, another bigger chain,
21 done numerous things to the property.

22 Q. Has the fence ever been knocked down?

23 A. Yes.

24 Q. Approximately how many times, since

1 you've acquired the property?

2 A. Probably like 15, 16, 17 times.

3 Q. That many times?

4 A. Yes.

5 Q. And has the lock on the gate been cut?

6 A. Yes.

7 Q. Approximately how many times?

8 A. The locks, a couple times.

9 Q. And each time you -- you don't stay at

10 the property; correct?

11 A. No.

12 Q. Each time you come back to the

13 property and the gate is down or the lock is cut,

14 what do you find on your property?

15 A. Material -- fly dump of material.

16 Q. And have you caused or allowed any of

17 that material to be placed on the property?

18 A. No.

19 Q. Let's go through photographs.

20 Photograph No. 1, Exhibit A, Page 9.

21 A. Yes.

22 Q. Is that fly dump material?

23 A. Yes.

24 Q. Photographs No. 3 and 4?

1 A. Yes.

2 Q. Is that fly dump material?

3 A. Yes.

4 Q. Photographs 5 and 6, is that fly dump
5 material?

6 A. Yes.

7 Q. Let's go to Photograph No. 7. What is
8 Photograph No. 7?

9 A. Photograph No. 7 is on the far --
10 which would be the south side, those first three
11 loads that are right there (indicating), that's
12 three inch, and the stuff on the far north side is
13 CA6.

14 Q. And what is that?

15 A. That's a stone that we were using to
16 construct the road with.

17 Q. Is that clean or waste?

18 A. It's clean material.

19 Q. Where did that material come from?

20 A. From Material Service.

21 Q. Did you purchase that?

22 A. Yes.

23 Q. When I say "you," you or your company
24 purchased that?

1 A. The company did.

2 Q. And what was being done on March 22nd
3 with that stone?

4 A. Well, for the record, I -- since I had
5 leased the yard, we started a week before
6 constructing the road so they could get in the
7 property.

8 Q. So who could get in?

9 A. F. H. Paschen and E. King.

10 Q. Okay.

11 A. So my agreement was to buy the stone
12 and make the road for them.

13 Q. Okay.

14 A. So we already had, like, maybe
15 200 feet of the road. Enough of the area that he
16 said he needed to put the boxes and put the trucks.

17 Enough of the area we had already
18 had stone -- and that stone there, they were just
19 adding. Because when you build a road, after semis
20 start going over there, you start having depressions
21 and stuff. And so that was just like for topping to
22 add on top of the road.

23 And then we took that stone and we
24 ended up finishing the rest of the stone -- the rest

1 of the road all the way to that one building.

2 Q. Okay. Now, that one building, could
3 you --

4 A. If you look at Page 47.

5 Q. Forty-seven?

6 A. Correct.

7 Q. I don't think we could look at 47.

8 A. No?

9 Q. No.

10 A. Well, I show the building.

11 Q. I know. We can't look at that.

12 Let's look at Page 8.

13 Do you have Page 8 in front of
14 you, of Exhibit A?

15 A. Yes.

16 Q. Okay. Can you describe, based on the
17 site sketch, where the road that -- the stone road
18 you guys were putting down?

19 A. If you look at Page 8, you see where
20 it says 130th and Stony Island. It says "entrance."

21 Q. Yes.

22 A. That's where the gate is at. Okay.

23 But the stone was only like
24 ten feet away from the gate, because the trucks

1 can't get in there. So what they were doing, they
2 were just backing right off Stony Island and dumping
3 right in there so they wouldn't get stuck.

4 Q. Okay.

5 A. The stone was placed right at the
6 front entrance of the gate.

7 Q. Okay.

8 A. Okay? And then the road went -- it
9 went from there straight down.

10 Q. Now, "straight," which way are you
11 going? Are you going --

12 A. We're going west.

13 Q. Okay.

14 A. It went down just about where the
15 port-a-potties, were at. Where it says,
16 Port-o-Johns, trailers, right there.

17 That thing that he has mapped out,
18 that's an old existing foundation. It's like a slab
19 on grade, and we're using it for port-a-potties on
20 top of it, because it's all concrete. So --

21 Q. Now -- okay. Go on.

22 A. We put the stone right to there, right
23 to where this port-a-potties begin, which is
24 probably like 200 feet.

1 Q. Now, did you subsequently put stone
2 farther west to clean up the property?

3 A. Yeah. They were taking -- after -- in
4 between loads, when the trucks were going to dump,
5 he was taking stone and he was just driving down,
6 right down the road. And he was dumping -- and
7 dumping it to get back to the back part of it.

8 Q. And for what reason were you dumping
9 stone on the property in March of 2006?

10 A. To clean up the property.

11 Q. Why did you need to dump stone down to
12 clean up the property?

13 A. Because of all the mud and all the
14 water from the snow and stuff.

15 Q. What would happen if you didn't put
16 stone down to the front-end loader and trucks?

17 A. The trucks would have just completely
18 got stuck, buried and they would have got a lot of
19 mud on 130th.

20 Q. Now, if I can direct your attention to
21 Exhibit C, we are going to look at some photographs
22 on Pages 64 through 70. Do you have those in front
23 of you?

24 A. What pages, 64 to 70?

1 Q. Yes.

2 A. Yes.

3 Q. These are photographs two days later
4 from March 22nd, are they not?

5 A. Yeah.

6 Q. And this indicates that certain areas
7 have been cleaned up; correct?

8 A. Right. If you look at Photograph 1,
9 you could see where that stone road was at right
10 here (indicating), but it just got all muddy from
11 the trucks going back and forth on it.

12 All this (indicating) is where he
13 was saying they were burned in the fire and they had
14 all that garbage there. Everything is completely
15 gone.

16 Q. And who was out there on the 24th
17 cleaning the property?

18 A. I was. I was with the -- I told
19 E. King to keep sending the trucks and let me use
20 the operator because the machine was already there.
21 And I stood there.

22 And then the environmental people
23 kept coming out there wanting to shut it down. And
24 I just kept telling the drivers to just keep going

1 because we're not doing anything illegal, we're just
2 cleaning up the property.

3 Q. And did you clean up the property on
4 March 24th?

5 A. Yeah. We cleaned up about -- I would
6 say about -- I probably cleaned up like 90 percent
7 of it. But they kept sending an inspector out
8 there, they kept sending -- Raphael just kept
9 sending everybody he could send out there. And it
10 was becoming more of a headache than it was worth.

11 And the property was like 90
12 percent clean. So I just said whatever, it doesn't
13 matter now, it already there.

14 Q. Now, on Photographs 8, 9, and 10, are
15 those photographs of the front-end loader and the
16 Bobcat cleaning the material?

17 A. On back --

18 Q. On 67 and 68?

19 A. Yes.

20 Q. Okay.

21 A. And on Photograph 7, that's right --
22 that's where they were -- if you look at that
23 detail -- if you go back to this detail...

24 Q. Okay. Let me direct your attention to

1 page --

2 A. If you go back to -- No. 8.

3 Q. Eight.

4 A. If you go back to his detail -- all
5 the way where it says west -- on the west. Where it
6 says -- I don't know, it says like waste piles in
7 the water and all that over stuff, all the garbage,
8 that's where -- where he claims that was at, it's
9 all gone.

10 Q. Is there still water there?

11 A. Yes.

12 Q. On the photograph?

13 A. Yes.

14 Q. Is this a low-lying area?

15 A. Yeah. This -- there's another
16 photograph showing where -- there's like cattails
17 there.

18 And since they cut the property,
19 there's no sewers or no drainage. So it rains or
20 whatever melts on it, the water just stands on
21 there, because there's no positive drainage
22 whatsoever.

23 The water is just entrapped there.

24 Q. Have you been using stones to -- I

1 want to direct your attention to Page 18 now.

2 A. Yes.

3 Q. Are those the cattails you were
4 talking about?

5 A. Yes. And that's that same area, as
6 Photograph 9.

7 Q. On page?

8 A. No, no, that's not 9, my mistake.
9 That's Photograph...

10 Q. On Page 67?

11 A. That's the area that he's talking
12 about, it's clean.

13 Q. Okay.

14 A. And you can see the cattails still in
15 the way -- in back right here (indicating).

16 Q. Are you using -- were you using stone
17 to put in the low-lying areas?

18 A. Yes.

19 Q. And this is an example of an area
20 where you put stone down --

21 A. Correct.

22 Q. -- once you cleared the garbage;
23 correct?

24 A. Yes.

1 And just -- cattails, I don't know
2 if you understand -- cattails only -- cattails grow
3 where there's --

4 MS. BURKE: Objection. There's not a
5 question pending.

6 THE HEARING OFFICER: Sustained.

7 MR. LEVINE: Okay.

8 BY MR. LEVINE:

9 Q. When you purchased this property,
10 was -- did you learn what the property used to be?

11 A. Yes.

12 Q. What did it used to be, from what you
13 learned?

14 A. From what I learned, the property used
15 to be -- it used to be a truck stop.

16 Q. Okay.

17 A. It had a little restaurant, and they
18 were washing trucks there. And, I guess, they were
19 selling fuel there.

20 Q. Were there also wetlands around it?

21 A. Yes.

22 Q. And the area where the cattails are,
23 is that where the wetlands were?

24 A. Yes.

1 Q. No, Page 69, there's a photograph of a
2 truck behind a berm?

3 A. Yes.

4 Q. Whose truck is that?

5 A. That's E. King's truck. That
6 (indicating) was -- this was the inspector outside
7 the property.

8 Because they were, supposedly,
9 watching us for a couple days to see what was going
10 on. And they were taking pictures of the trucks
11 getting loaded.

12 Those (indicating) are the trucks
13 getting loaded.

14 Q. And this (indicating) is E. King
15 cleaning up the property?

16 A. Yes.

17 THE HEARING OFFICER: Just for the
18 record, this is Complainant's Exhibit No. C.
19 I know we keep jumping back and forth.

20 MR. LEVINE: Yes. It is Plaintiff's
21 Exhibit No. C, and we're talking about
22 page --

23 THE HEARING OFFICER: Sixty-nine.

24 MR. LEVINE: Page 69, Photographs 11

1 and 12, for the record.

2 BY MR. LEVINE:

3 Q. Now, did you allow open burning on
4 your property?

5 A. No.

6 Q. Were those your employees doing it?

7 A. Yes. No -- I mean, they were not
8 mine, they were E. King's employees.

9 Q. Did you allow -- did you cause or
10 allow the open dumping of litter on your property?

11 A. No.

12 Q. Did you an allow the scavenging to go
13 on on your property?

14 A. No.

15 Q. Why were E. King's employees
16 separating certain things out of the materials they
17 were cleaning up?

18 A. Because they were having -- we were
19 having problems with CID. CID didn't want to take
20 the stuff because they were saying that wasn't the
21 stuff they classified, that they were bringing in
22 garbage. That's what CID was saying.

23 Q. Now, the open water that is shown in
24 the photographs -- I'm specifically directing your

1 attention to Pages 18 and 19 of Exhibit A.

2 A. Yes.

3 Q. Where did that water come from?

4 A. That was just natural water from the
5 snow when it melted.

6 Q. And had the snow just melted a few
7 days prior to March 22nd?

8 A. Yeah.

9 Q. Do you remember how cold it was on
10 March 22nd?

11 A. No, I don't remember. But it was
12 cold.

13 Q. How do you know it was cold?

14 A. Because I was out there, and when the
15 inspectors got there, I was sitting in my truck
16 because I was cold.

17 Q. Okay.

18 A. So I would just sit in my truck.

19 Q. On Page 2, if I could direct your
20 attention to Exhibit A, indicates that the weather
21 was cloudy and 35. Is that consistent with what you
22 remember?

23 A. Yes.

24 Q. Now, did you cause or allow the

1 disposition of construction or demolition debris on
2 your property?

3 A. No.

4 Q. In fact, have you spent quite a bit of
5 money cleaning up the property since you acquired
6 it?

7 A. Yes.

8 Q. And approximately how much have you
9 paid cleaning up the property?

10 A. Approximately \$30,000.

11 Q. Did you also have Elaine King and her
12 employees and Paschen employees to work cleaning up
13 the property?

14 A. Yes.

15 Q. Did you have words with both of them,
16 with both entities?

17 A. Yes. That one Monday we had -- I only
18 had words with the superintendent from Paschen and
19 E. King.

20 Q. Was any scavenging occurring at your
21 property?

22 A. No, there wasn't. But, I mean, if you
23 consider separating stuff -- I don't know if you
24 consider that scavenging. Because they were -- they

1 were taking like the wood and stuff out of those
2 loads.

3 Q. And the reason they were doing that
4 was to affect a cleanup of the property; correct?

5 A. Correct.

6 Q. Were they also doing that with -- I'm
7 not talking about -- in addition to the CTA
8 material, was the other material that was dumped on
9 your property being separated in the course of
10 cleaning the property?

11 A. No, that other stuff -- because that
12 other stuff was going to Tri-State Disposal. And
13 Tri-State Disposal, that's what they take, they just
14 take raw garbage, whatever.

15 Tri-State Disposal, they charge
16 more a ton, but they'll take whatever. The stuff
17 that you're taking to them, they'll either separate
18 it at transfer and they'll ship it to whoever
19 they've got to ship it to.

20 Q. Do you think Raphael Maciel targeted
21 you specifically?

22 A. Yes.

23 Q. Why do you think that?

24 A. Because I've been having problems with

1 Raphael since 130th, when I had the
2 port-a-potties -- when I let my sister put the
3 port-a-potties in my yard over there. And --

4 Q. What is that property location?

5 A. It's at 10624 South Torrence.

6 MS. BURKE: I object as to the
7 relevance.

8 THE HEARING OFFICER: Mr. Levine?

9 MR. LEVINE: It's the basis for why
10 the violations have occurred.

11 THE HEARING OFFICER: I'll overrule
12 it. But I think I have done it in the past
13 in a limited fashion, as far as the line of
14 questioning.

15 You may answer.

16 BY THE WITNESS:

17 A. And when that incident occurred, the
18 very first time, he went out there and he was being
19 real, like -- I mean, like I said, I understand he
20 was doing his job, but he was being like very -- he
21 said, "Well, I want to speak to Jose." And then I
22 came up and he was treating me like I was a criminal
23 or something, saying, "Oh, I know you do this, I
24 know you do that."

1 And then we went outside. I took
2 him out of the office because all my staff was
3 there, and I didn't want them to hear what he had to
4 say.

5 So I said, "Look, let's go outside
6 and we can talk outside."

7 And then when we went outside,
8 he's like, "Well, you know what, there's ways" -- he
9 made that comment saying there was a way of handling
10 these issues. There's ways of taking care of this
11 without writing tickets.

12 BY MR. LEVINE:

13 Q. Okay.

14 A. So I looked at him and I said, Look,
15 Dude, do your fucking job. If you've got to write
16 the tickets, do your job, do whatever you've got to
17 do and get out of here."

18 I told him, "I don't have time for
19 this." Because it got to the point where we were
20 just arguing.

21 THE HEARING OFFICER: All right.

22 BY THE WITNESS:

23 A. So I don't think he liked my comment
24 and then he looked at me and he said, "I'm going to

1 give you the tickets, and believe me, you're going
2 to pay for this."

3 And then we went to court on that
4 stuff --

5 THE HEARING OFFICER: Okay. I'm going
6 to stop this.

7 MR. LEVINE: That's a narrative.

8 THE HEARING OFFICER: Yes.

9 MR. LEVINE: Okay.

10 BY MR. LEVINE:

11 Q. Let's move on.

12 A. Can I say something about the waste?

13 Q. No.

14 Do you have any further comments
15 with regard to the waste? Go ahead.

16 A. Well, you could look -- I just want to
17 say if you looked on Page 70, you could see where he
18 even wrote -- where it says "CTA material," and you
19 can see all the waste on these two pages. It's a
20 lot closer than those other original pictures of the
21 stuff that was being brought into the yard.

22 Q. With regard to Page 70, there's two
23 colors of waste, a dark dirt and light dirt. Is
24 that the result of material that had just recently

1 been dumped on that date, or is that the result of
2 material that had been moved and up-ended?

3 A. No, it was material that was being --
4 like the material that was at the end -- at the
5 bottom of it, where he was scraping the yard to
6 clean it. That's what it was.

7 And that was, obviously, rolling
8 around in the water, and that was getting water from
9 the stuff that was on top.

10 Q. Does Jose Gonzalez Landscapers -- or
11 Speedy Gonzalez Landscaping Incorporated, other than
12 storing a truck on that site, have any connection
13 with that property?

14 A. No.

15 Q. Is any of the -- what the
16 investigators had alleged to be landscaping waste
17 on your property, was any of that from any job ever
18 done by your landscaping company, Speedy Gonzalez
19 Landscaping Incorporated?

20 A. Nope.

21 And on those pictures, these -- I
22 can't talk about 45, 46 -- because those pictures
23 are not allowed to be talked about -- and 48?

24 Q. Let me offer the exhibit -- we'll do

1 this as Exhibit D. I'm sorry, as Defendant's
2 Exhibit B into evidence. Okay?

3 Defendant's Exhibit B will entail
4 Pages 44 through 53.

5 A. If --

6 MS. BURKE: Wait a second.

7 Which pages, Jeff?

8 MR. LEVINE: Forty-four to 53.

9 MS. BURKE: Well, I think you need to
10 establish foundation for the photographs.

11 BY MR. LEVINE:

12 Q. Sir, what has been marked as Pages 44
13 through 53, are these photographs of your yard?

14 A. Yes.

15 Q. And are these photographs of the yard
16 as the yard appeared on or about March 23rd, 2006?

17 A. Yes, sir.

18 Q. The inspectors were out on the 22nd;
19 correct?

20 A. Yes.

21 Q. The day before?

22 Did they come out again the next
23 day?

24 A. Yes.

1 Q. And were they taking pictures of the
2 front-end loader cleaning up material on the yard?

3 A. Yes.

4 Q. And are these photographs pictures of
5 the material on the yard on that date?

6 A. Yes.

7 Q. Now, Page 44, Photographs 1 and 2,
8 with regard to the property -- when there's no waste
9 on the land, when you dig in the property, what is
10 the dirt like?

11 A. The dirt has rocks, it has everything
12 in it. It's mud, it has clay, little bit of stones,
13 it's a mixture of a backfill, where we backfilled.

14 Q. And does it have concrete and asphalt
15 and dirt?

16 A. Yes.

17 Q. And that's how you purchased the
18 property; correct?

19 A. Correct.

20 Q. And do you happen to know what the
21 prior owner did to bring the property up to grade?

22 A. Bring the property up to grade? No,
23 he didn't -- they didn't do anything to bring the
24 property up to grade.

1 Q. How do you know there's backfill?

2 A. Because I had -- I'm going to build --
3 I'm going to invest like \$15 million in this
4 property and I had soil borings. And they went back
5 and looked at all the records of what happened with
6 this property, and they've told me that this is all
7 backfill material.

8 And in order for me to put my
9 buildings up, I have to put caissons in the ground.
10 Because this is unsuitable ground to build on. It's
11 unstable, it's all garbage.

12 Q. So if this garbage land was being
13 added to the berms, is this waste that you caused or
14 allowed to be on your property?

15 A. No.

16 Q. Is this, in fact, the condition of
17 your property, as you purchased it?

18 A. Yes.

19 Q. Have you been engaged in the cleaning
20 and restoration of the property?

21 A. Yes, I have.

22 Q. Photograph 3 on Page 45, do you have
23 that in front of you?

24 A. Yes.

1 Q. Those are trees growing on the
2 property; correct?

3 A. Correct. That's what I want to
4 explain to you. He's charging me -- this is what I
5 said to you --

6 Q. Let me ask the questions, please.

7 Some of the trees in Photograph 3
8 are literally growing through the tires; correct?

9 A. Exactly.

10 Q. So how long do you believe that waste
11 has been on that property?

12 A. That waste has been on there for over
13 20 years.

14 Q. And do you know that, or are you just
15 assuming that by the size of the trees?

16 A. That's because of the size of the
17 trees. Those trees are like six inches.

18 And to grow a six-inch tree, it
19 normally takes between 12 and 15 years to get a
20 six-inch caliber on a tree.

21 Q. And how long have you owned the
22 property, if you remember?

23 A. Well, I'm not sure on this, but I
24 would say at least two years.

1 Q. Now, since -- in your experience, has
2 the Department of Environment allowed you, as a
3 landowner, to work to -- with them, to clean
4 property that had -- where fly dumping has occurred
5 on the property?

6 MS. BURKE: Objection. No foundation.

7 THE HEARING OFFICER: Mr. Levine?

8 MR. LEVINE: Let me rephrase it.

9 BY MR. LEVINE:

10 Q. Have you had prior experiences with
11 the Department of the Environment?

12 A. Yes.

13 Q. And have they given you opportunities
14 to correct alleged violations?

15 A. Yes.

16 Q. And do you believe that's their policy
17 with working with land owners to clean up waste?

18 A. Yes. That's the whole objective to
19 clean -- they want the city clean.

20 Q. And did you -- did they -- were you
21 given an opportunity, in this instance, to clean the
22 property?

23 A. No, I wasn't. No, I wasn't given the
24 opportunity.

1 And all I was doing was cleaning
2 the property. And they came out and they cited me
3 with ten million violations.

4 And that's why, in my heart, I
5 honestly believe -- I kept telling everybody just
6 keep working because we're not doing anything wrong,
7 we're just cleaning. I'm trying to clean the
8 property, it's not like I'm -- semis were going in
9 there dumping and dumping.

10 They were out there three days
11 watching us, they knew what was going on.
12 Everything going out was garbage. Every single
13 load, semi after semi, was garbage leaving the
14 property.

15 Q. Did you cause or allow any waste to be
16 placed on that property?

17 A. No.

18 Q. And your intention is to develop the
19 property; correct?

20 A. Correct.

21 Q. So before you develop it, it's in your
22 interest to remove all waste; isn't that correct?

23 A. Correct.

24 MR. LEVINE: Nothing further for this

1 witness.

2 THE HEARING OFFICER: Thank you.

3 Ms. Burke, cross?

4 MS. BURKE: Yes.

5 CROSS-EXAMINATION

6 BY MS. BURKE:

7 Q. Mr. Gonzalez, you mentioned that on
8 March 22, 2006, you were in the process of cleaning
9 the property at 1601 East 130th?

10 A. Yes.

11 Q. Is that correct?

12 And where was the waste taken to?
13 Where did you remove the materials that you were
14 cleaning up?

15 MR. LEVINE: Objection. Foundation as
16 to which waste. The suspect's EPA waste or
17 the --

18 THE HEARING OFFICER: Ms. Burke?

19 MS. BURKE: I'll rephrase the
20 question.

21 THE HEARING OFFICER: Thanks.

22 BY MS. BURKE:

23 Q. Which areas of the property were you
24 in the process of cleaning up on March 22, 2006?

1 A. If you go to Page 8, which was drawn
2 by the city inspector, they were working on -- where
3 he has Nos. 27, 17, 9, 10, they were working on this
4 area (indicating). And they were working on this
5 area -- on where he has 1, 2, 20, 3 and 4, they were
6 right there (indicating).

7 All these areas right here
8 (indicating), that's where they were working at.

9 Q. All right. And the first area that
10 you mentioned near No. 22 on Page 8, where was that
11 material taken to?

12 A. CID.

13 Q. And the second area that you referred
14 to toward 130th Street, where were those materials
15 taken to?

16 A. See, where he has right here --
17 (indicating) where he has piles of soil and concrete
18 and landscape waste, that was -- that's incorrect.
19 This whole area right here (indicating), that was
20 CTA material, too. That was taken to CTA.

21 Q. So the material toward 130th Street
22 that you're pointing to was also taken to CID
23 landfill?

24 A. Also taken to CID, yeah.

1 Q. Were any materials from the site --
2 that were on the site on March 22, 2006, taken to
3 any other disposal sites?

4 A. Yes, they were.

5 Q. Which materials were those?

6 A. The materials where he has it
7 classified under Landscape Waste, but it was all
8 railroad ties, those timbers, that was taken to
9 Tri-State Disposal. And then all this (indicating),
10 the dirt that was back here, where he has waste
11 piles -- it wasn't waste piles, he just put "waste
12 pile and water," that was all taken to Lincoln.

13 THE HEARING OFFICER: For the record,
14 we're looking at Complainant's Exhibit A.

15 MR. LEVINE: Page 8, correct.

16 BY THE WITNESS:

17 A. And all the stone was spread right
18 down the center, it was spread on the property. It
19 was a stone pile here (indicating), a stone pile
20 there. And all the tires, where he has tires and
21 the street signs, that was all taken to Tri-State
22 Disposal.

23 The railroad ties that are on the
24 property of the railroad tracks, he even has the

1 railroad tracks shown there, those are still there.

2 I cannot touch that, it's not part of my property.

3 And where he has stone, PVC, dirt
4 and tires, that was the stuff that we're sorting.

5 Where he has scrap metal, that was taken to
6 Tri-State Disposal, that came out of the CTA stuff.
7 It was taken to Tri-State Disposal.

8 And that was it. That, pretty
9 much, covers the whole area.

10 Over here (indicating) where he
11 has landscape bricks and berms and all that. And if
12 you look on -- if you go and you look on this page
13 right here (indicating) -- that page, where was it
14 at, I'll show you the exact area on that. I'll get
15 it right now.

16 If you look on Page 48, which he
17 says -- Photograph 9, that's this whole area of the
18 property (indicating). That's where the berm is at.

19 If you see, there's -- he's citing
20 me saying there's brick and concrete. But that's
21 the lay of the land, that's what the property is.

22 That -- this -- all this still
23 exists there (indicating). And over here he's
24 classifying it on Exhibit 8, he's classifying it

1 against the whole berm, where he's saying that it's
2 landscape waste and on and on and on.

3 But that's the way I bought the
4 property, that stuff has been there. He has it,
5 ties, bricks, possible arson in -- he put all
6 that -- berm. He says all that.

7 But that's the berm right there,
8 that's exactly what was there. And you can see
9 where all the cattails and all the vegetation, where
10 the machines haven't even touched that.

11 We were over here (indicating),
12 and all that, and he's cited me for all that. And
13 that's the way I bought the property.

14 And then you can see on the
15 property up close, where he has dirt, concrete,
16 metal, wood, waste used as berm, it has three foot,
17 four foot of vegetation. We didn't do that.

18 I mean, that's been like that.
19 That's the way the property was bought.

20 If you look at that right there
21 (indicating) --

22 BY MS. BURKE:

23 Q. You stated that materials needed to be
24 sorted in order to be taken to disposal sites; is

1 that correct?

2 A. Correct.

3 Q. And I'm referring to Page 8. Which
4 areas -- where on Exhibit 8 were materials that
5 needed to be sorted?

6 A. Where it says "Suspected CID
7 material," where we talked that --

8 MR. LEVINE: You mean the CTA
9 material.

10 BY THE WITNESS:

11 A. Yeah, the CTA. Where it says that 10,
12 9, 7, 21, 22 -- I can't really see that.

13 And then where you have over here
14 (indicating) 7, and then where he has that 2 and
15 that 5, right around where that 20's at. He says --
16 where it says, "Possible compost pile with fabric,"
17 that was all that stuff.

18 And then some -- by the building
19 here, by the building where you see all the ruts and
20 that, them knuckleheads, they dumped a few loads
21 back there. One of them got stuck.

22 They had like three or four loads
23 that we had to scoop out of there. And clean up out
24 of here, too (indicating).

1 BY MS. BURKE:

2 Q. Referring to the first area that you
3 pointed to, the suspected CTA material?

4 A. Yeah.

5 Q. What type of materials needed to be
6 sorted or segregated out of that pile in order to
7 take the material --

8 A. Well, it had all the electrical wire
9 from the tracks -- where the power, like a
10 three-inch wire like this (indicating) from the
11 power that, obviously, fed for the train, it had a
12 whole bunch of that wire. It had pieces of timbers,
13 like railroad ties.

14 It had wood in it, it had all kind
15 of garbage -- just garbage. Everything. It had
16 bottles.

17 You name it, it was in there. And
18 that's what the guy was saying we were switching the
19 material on him, that that's not what he classified.

20 And then there was an issue on
21 that on Monday before the Department went out there,
22 the Environmental. There was an issue and that's
23 when we all met out there.

24 I said, "Look, this is what your

1 guy has dumped." So then the guy from CID said,
2 "Okay, you guys have got to clean it up, because I
3 can't take it like that."

4 Q. Were any of the materials that were on
5 the site on March 22 and then removed from the site,
6 taken to a recycler or a scrap yard?

7 A. Well, the steel was.

8 Q. Do you recall where on the site the
9 steel was?

10 A. The steel was everywhere. The
11 majority of it was like right here (indicating) by
12 where the -- there was a lot of steel in the -- a
13 lot of steel was coming out of the stuff from -- a
14 lot of steel was coming from the stuff from the CTA.

15 There was a lot of copper in it.
16 Because that wire, that they ran the power to it,
17 was like a three-inch, four-inch wire and there was
18 just miles and miles of it. Just miles. It was a
19 lot.

20 And then over here (indicating) by
21 where they dumped by the building, they had a pile
22 on this side. Here they have -- there was
23 piling all this stuff -- the stuff that was coming
24 out of it.

1 Q. You testified that you had an
2 agreement with E. King to allow E. King to store
3 materials on the property in roll-off boxes;
4 correct?

5 A. Correct.

6 Q. And did you give a key to the gate to
7 E. King?

8 A. Yes.

9 Q. Did the agreement with E. King include
10 you receiving any payment for allowing them to store
11 materials?

12 A. Yes, it did.

13 Q. And how much was the agreement for?

14 A. The agreement was for \$500 a night
15 until they cleaned the material up.

16 Q. And have you received payment from
17 E. King?

18 A. No, because -- I didn't get paid
19 because, since we had the -- when the
20 Environmental -- when the City went out there, they
21 stopped -- they made us stop -- they made us stop.
22 They said "No more."

23 They told Paschen, "Tell them to
24 stop," because we wouldn't stop. Because I told

1 him, "Get the stuff out of here. I don't want it
2 here." And they forced us to stop.

3 So then I said -- I told Paschen
4 and E. King, "That's not my problem." I said, "You
5 guys got me in a world of trouble, that's not my
6 problem. You guys are going to pay me -- the
7 agreement was \$500 for -- until you were using the
8 site."

9 So they held us up like a month
10 before they figured out the waste. And then what
11 ended up happening they -- because CID was still
12 complaining of all the garbage.

13 And what CID did, they had -- they
14 made them go out there and reclassify the waste
15 again. That's what they made them basically do.

16 Because CID was saying that --
17 because now it was dumped on my property, the
18 manifest was incorrect. And by law, by EPA law,
19 whatever, they've got to have exactly a manifest of
20 where the property was coming -- where the waste was
21 coming.

22 So what they did, they made a
23 manifest with my name on it stating that the -- not
24 all the material was coming from my property going

1 "I can't take the material, I don't want it no more.
2 I can't take it."

3 He goes, "I don't want it, because
4 it's not coming from where they said it was going to
5 come -- and there's a lot of garbage in it." He
6 said, "I don't know if this is -- I don't even know
7 that this -- it could be special waste now." That's
8 what he said.

9 So then that's when they calmed
10 him down, and they -- he said they had this
11 environmental company. This Chuck Weber, he redid a
12 whole analysis of the material.

13 And then CID sent their guy out
14 there, and he did his own analysis. And they found
15 out that it did have a tracing of that benzine or
16 whatever they were looking for. It was the same
17 stuff.

18 But they just figured out that
19 Paschen was -- they just loaded everything straight
20 into the trucks, instead of stripping the tops and
21 giving them the soil. So they ended up
22 reclassifying it, and they made a manifest stating
23 my name that I was the generator of it now, because
24 it was on my property, and that it was going to CID.

1 And so then that whole process
2 took like a month and a half. So the guy that --
3 I'm telling the guy that they owe me the \$500 for
4 each day, that's what I'm saying.

5 And that's where we're at with it.

6 MR. LEVINE: Did that answer your
7 question?

8 BY MS. BURKE:

9 Q. You stated that E. King removed
10 material from the property in addition to the CTA
11 material; correct?

12 A. Correct. Because -- since I was --

13 MR. LEVINE: You just answered the
14 question.

15 BY MS. BURKE:

16 Q. Did you pay E. King to remove those
17 other materials?

18 A. No.

19 Q. Did you pay the disposal fees on those
20 other materials?

21 A. Yes.

22 Q. Meaning the fee that you paid to the
23 transfer facility or landfill?

24 A. Yeah. The only thing I paid

1 E. King was -- the only thing I had to pay -- I had
2 to pay for the trucking and disposal.

3 But they didn't charge me no
4 time -- no machine -- no man hours or no machine
5 hours. That was because -- she said she was going
6 to do that because she didn't do what she was
7 supposed to do.

8 Q. Has the Illinois Environmental
9 Protection Agency issued any permits for any
10 operations at this site?

11 A. No.

12 Q. When did 1601 to 1759 East
13 130th Street LLC acquire the property?

14 A. Well, to be honest with you, I'm not
15 really too sure on that, because I was going based
16 on what my office was telling me. And, I mean, you
17 can see I'm kind of nutty, I've got three phones
18 going on.

19 And I really don't know -- I
20 really don't keep sense of the things that I do,
21 honestly. I probably remember two days and then
22 that's it.

23 So I really -- from what I've seen
24 on the paper that you showed me, it would probably

1 be like two years, right, that I owned it.

2 Q. You can look at the exhibit if that
3 helps.

4 THE HEARING OFFICER: I think he's
5 referring to --

6 MR. LEVINE: Exhibit B.

7 THE HEARING OFFICER: Complainant's
8 Exhibit B.

9 BY THE WITNESS:

10 A. It's on January 2005.

11 BY MS. BURKE:

12 Q. And it's the LLC that acquired the
13 property?

14 A. Yes. Correct.

15 MS. BURKE: Mr. Hearing Officer, I
16 believe I need to reintroduce this exhibit,
17 because in the prior hearing we introduced it
18 and during Mr. Gonzalez's testimony.

19 THE HEARING OFFICER: Oh, okay.

20 MS. BURKE: So I would move -- the
21 City would move to -- entry of City Exhibit B
22 into evidence, a self-authenticating
23 document, we've produced a certified copy.

24 MR. LEVINE: I object as to relevance.

1 This is about whether or not he caused or
2 allowed this to be stored on his property.

3 MS. BURKE: This establishes that the
4 respondent LLC, in fact, owns the property.

5 THE HEARING OFFICER: I'll allow it
6 over objection. Or, excuse me, Complainant's
7 Exhibit B, the trustee's deed is admitted
8 into evidence. Objection so noted on the
9 record.

10 (WHEREUPON, said document,
11 previously marked Complainant's
12 Exhibit No. B, for identification,
13 was offered and received in
14 evidence.)

15 MS. BURKE: I have no further
16 questions.

17 THE HEARING OFFICER: Thank you.

18 Mr. Levine, redirect?

19 MR. LEVINE: Thank you, Judge.

20 REDIRECT EXAMINATION

21 BY MR. LEVINE:

22 Q. You just wanted that stuff off your
23 property; right?

24 A. Yes.

1 Q. And it was your position that if they
2 had to sort it to get it off quicker, then let them
3 sort it; correct?

4 A. Right.

5 Q. And it is also your understanding that
6 if they didn't sort it, it might be on the property
7 longer; correct?

8 A. Correct.

9 Q. So your basis for allowing E. King
10 employees to sort some of the materials so they
11 could be taken to the correct transfer point or
12 landfill was solely in an effort to clean the
13 property; correct?

14 A. Correct.

15 Q. And since you acquired the property,
16 have you wanted it cleaned?

17 A. Yes.

18 Q. And since you've acquired the
19 property, have you had numerous expenses with regard
20 to cleaning the property?

21 A. Yes.

22 Q. And do you continue to -- is fly
23 dumping still occurring on the property?

24 A. Yes.

1 Q. And do you continue, through this day,
2 to pay expenses to clean the property?

3 A. Well, I kind of stopped -- what's
4 being fly dumped, I just left it there because I'm
5 kind of afraid of going in there and then having
6 Mr. Raphael show up and say that I'm back at it
7 again and giving me more tickets. Because I'm
8 already in a world of trouble with this.

9 So there is material there that's
10 been fly dumped. But it -- I'm not doing nothing
11 with the property, so I just left it there.

12 Q. And was it ever your intention to
13 store waste outside a box or allow fly dumping on
14 that property?

15 A. No.

16 Q. Has it been nothing but a headache for
17 you since you've acquired the property?

18 A. Yes.

19 MR. LEVINE: Nothing further.

20 Oh, can I just clear one thing up
21 before I --

22 THE HEARING OFFICER: Oh, I'm sorry, I
23 didn't know you'd finished. Sure.

24 MR. LEVINE: I thought I was, but I

1 just remembered something.

2 BY MR. LEVINE:

3 Q. I just want to point out, I don't know
4 if I did on this. If you look at Page 12,
5 Photograph 7.

6 THE HEARING OFFICER: Complainant's
7 Exhibit A?

8 MR. LEVINE: It's A. Thank you.

9 BY THE WITNESS:

10 A. Yes. Page 12?

11 BY MR. LEVINE:

12 Q. Page 12, Photograph 7, the top
13 photograph?

14 A. Correct.

15 Q. That's clean stone; correct?

16 A. Correct.

17 Q. And that's stone being spread on the
18 property to fill in the low lying areas; correct?

19 A. Yes.

20 Q. And the stone is being used so you can
21 get the heavy equipment in to clean the property;
22 correct?

23 A. Correct.

24 Q. And that stone was acquired well

1 before March 22nd?

2 A. A week before.

3 Q. A week before.

4 And portions of it were being laid

5 prior to March 22nd?

6 A. (No audible response.)

7 Q. Is that yes?

8 A. Yes.

9 MS. BURKE: I'm going to object. This
10 goes outside the scope of --

11 MR. LEVINE: Nothing further.

12 THE HEARING OFFICER: Sustained.

13 Mr. Levine, do you have anything
14 further?

15 MR. LEVINE: No, Your Honor.

16 THE HEARING OFFICER: Re-cross,

17 Ms. Burke?

18 MS. BURKE: No.

19 THE HEARING OFFICER: Okay.

20 MR. LEVINE: We'll rest, Judge.

21 THE HEARING OFFICER: Thank you.

22 Any rebuttal, City? Ms. Burke?

23 MS. BURKE: No.

24 THE HEARING OFFICER: Thank you.

1 Any closing arguments, or do you
2 want to reserve it, like in the other cases,
3 for the post-hearing briefs?

4 MS. BURKE: City will reserve for the
5 brief.

6 THE HEARING OFFICER: Okay.

7 MR. LEVINE: As will respondent.

8 THE HEARING OFFICER: I'm sorry.

9 Thank you, Mr. Levine.

10 Let's go off the record for a
11 second.

12 (WHEREUPON, discussion was had
13 off the record.)

14 THE HEARING OFFICER: Back on the
15 record.

16 We are back on the record. We've
17 been talking about the briefing schedule.

18 And here's what we will do: AC
19 6-41, complainant's brief is due on or before
20 June 13th, 2007. Respondent's brief is due
21 on or before June 29th, 2007.

22 The City's reply, if any, is due
23 July 13th, 2007. Public comment is due on or
24 before June 8th, 2007.

1 into evidence.

2 (WHEREUPON, said document,
3 previously marked Respondent's
4 Exhibit No. B, for identification,
5 was offered and received in
6 evidence.)

7 THE HEARING OFFICER: Off the record.

8 (WHEREUPON, attached hereafter
9 the testimony of Raphael Maciel
10 and Chris Antonopoulos as
11 requested.)

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF COOK)

4 I, SHARON BERKERY, a Certified Shorthand
5 Reporter of the State of Illinois, do hereby certify
6 that I reported in shorthand the proceedings had at
7 the hearing aforesaid, and that the foregoing is a
8 true, complete and correct transcript of the
9 proceedings of said hearing as appears from my
10 stenographic notes so taken and transcribed under my
11 personal direction.

12 IN WITNESS WHEREOF, I do hereunto set my
13 hand at Chicago, Illinois, this 20th day of
14 May, 2007.

15

16

17 Certified Shorthand Reporter

18

19 C.S.R. Certificate No. 84-4327.

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**TESTIMONY
INCORPORATED
FROM AC 06-40**

1 (The following testimony was taken
2 on May 9, 2007, at 8:00 a.m., by
3 Martina Manzo, CSR.)
4 (Witness sworn.)

5 WHEREUPON:

6 RAFAEL MACIEL,
7 called as a witness herein, having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BURKE:

11 Q. Mr. Maciel, will you state your name and
12 spell your last name, please?

13 A. My name is Rafael Maciel, M-A-C-I-E-L.

14 Q. And what is your occupation?

15 A. I'm a senior environmental inspector with the
16 Department of Environment for the City of Chicago.

17 Q. And have you had any special training to be
18 an inspector?

19 A. Yes, I have. I've been --

20 Q. And what is that?

21 A. I've been State trained from IEPA to be
22 deputized as an agent for the EPA -- IEPA. I'm sorry.

23 Q. And what does IEPA stand for?

24 A. Illinois Environmental Protection Agency.

1 Q. And briefly explain what you do at your job
2 as an inspector for the City.

3 A. As an inspector for the City, we take on
4 complaints from the residents of the City of Chicago.
5 We also do inspections of landfills, transfer stations.
6 We do open-dump inspections, investigations,
7 fly-dumping-incident investigations. We also do hazmat
8 response too.

9 Q. And how many inspections do you perform in an
10 average week?

11 A. Close -- 20 to 25 in a week.

12 Q. And how long have you worked for the City as
13 an inspector?

14 A. 7 years.

15 Q. So in your 7 years as an inspector, you've
16 conducted thousands of investigations?

17 A. Yes.

18 Q. Are you familiar with the property at
19 1601 East 130th Street?

20 A. Yes, I am.

21 Q. Did you visit that property on March 22nd,
22 2006?

23 A. Yes, I did.

24 Q. And how did you come to be at the property on

1 March 22nd?

2 A. I was in the process of attending a different
3 site on 136th and Hoxie. We came off the 130th east
4 exit, and as I was looking on the south end -- I'm
5 sorry -- yes -- the south end of 130th Street,
6 particularly because of the CID landfill there, I
7 noticed that there was a bit of smoke coming up and,
8 also, it looked like some flame too.

9 Q. And what did you do then?

10 A. Particularly I waited till we started going a
11 little bit further on 130th Street, and as I looked, I
12 questioned if we still had some ample time to go and
13 stop by and take a look at this real quickly because of
14 the fact that it was drawing my attention that it was
15 close to the landfill.

16 Q. And then did you enter the property?

17 A. Upon entering the property, that's when we
18 realized that there was some open burning there --

19 Q. What did the entrance to the property look
20 like?

21 A. It was a gated facility, but it was open.

22 Q. And what did you -- What did the property
23 look like along 130th Street as you drove along there?

24 A. There was a berm across it with some

1 vegetation on top of it probably about 4 foot in height
2 or so.

3 Q. And then at the entrance, what was the ground
4 surface made of?

5 A. There was some stone out there, gravel.

6 Q. And was there a fence at that entrance?

7 A. Yes, there was.

8 Q. And was it closed or open?

9 A. It was open at the time.

10 Q. Did you see a lock on the fence?

11 A. It was hanging off of there with the chain.

12 Q. I'm going to show you what's marked as
13 Exhibit A.

14 Is this your report of your visit
15 to the site on March 22nd?

16 A. It's a partial, yes.

17 Q. If you could flip through this document at
18 Tab A and tell me whether this is your complete report.

19 A. I would say yes, minus the manifests.

20 Q. What are the -- Just briefly, what are the
21 components of the report?

22 A. Briefly what it is -- the first page would be
23 a sheet where we gather an LPC number. For every
24 action that's done in the State of Illinois, we get an

1 LPC number. Basically if it's a landfill, a transfer
2 station, or an open dump, you get an LPC number.

3 The following would be an open-dump
4 checklist which is required by the State for us to fill
5 out which lists the violation counts with general
6 information of who the respondent was and also owner of
7 the property -- and/or owners of the property and other
8 information with the time, date, weather, amount of
9 material.

10 And then you have a list of
11 apparent State violations, and you have a list of
12 municipal violations.

13 And then what we have is a
14 narrative of our findings for that day.

15 Following that, you have also site
16 conditions as far as what was on the site. We also
17 have a site sketch of the property. We also have
18 photos that we take of the materials that we found or
19 any evidence that would suggest -- that we need from
20 the site for the investigation.

21 And on this particular
22 investigation, I also did have an analysis report from
23 the material -- suspect material from the site, and
24 also we did have a title search that was done, too,

1 attached to the report.

2 Q. And when did you prepare this report?

3 A. Myself and Chris Antonopolous prepared this
4 maybe, like, a day or two after the investigation
5 itself.

6 Q. And does the Department of Environment keep
7 these reports in the ordinary course of business?

8 A. Yes, they do.

9 Q. And does this report accurately describe the
10 condition of the property on March 22nd and your
11 inspection of it?

12 A. Yes.

13 MS. BURKE: I'd note for the record that
14 this report is attached to the administrative citation
15 in the case 2006 040 against Jose Gonzalez.

16 BY MS. BURKE:

17 Q. So when you entered the site on March 22nd,
18 what did you see when you first entered?

19 A. When we first entered, we noticed that there
20 was a front end loader. There was one dump truck at
21 the time. There was also a white pickup truck off to
22 the side. And, also, we did notice a few workers out
23 there. It looked like -- to be like they were
24 segregating material.

1 Q. And what type of material did you see at the
2 site?

3 A. I noticed that there was compose material. I
4 noticed that there was C and D debris, which is
5 construction and demolition debris, some landscape
6 materials, shrubbery, landscape waste. There was also
7 some railroad ties, concrete. There was some suspected
8 scrap metal. There could have been, possibly, some
9 scavenging going on there. There was a big pile of
10 material there that was questionable only because it
11 looked like it was a C and D combination type of
12 material, but also there was some discoloration of the
13 material too. So that would indicate that there was
14 some kind of contamination inside of it. There was
15 some City property on there, tires, brick, and stone.
16 And I think that would be basically it.

17 Q. Where on the property was the compose
18 material located that you referenced?

19 If it's helpful, you can use the
20 site sketch on page 8.

21 A. On the site sketch, the compose material
22 would be on the north end of the property, which is
23 closest to 130th Street. It should be, probably, Photo
24 No. 20, I believe. Yes, Photo 20.

1 Q. And where on this site did you see
2 construction and demolition debris?

3 A. There was construction and demolition debris
4 throughout the whole site, if you look on Photo No. 19,
5 Photo 18. Even the suspected CTA waste material, which
6 is 17, had some C and D debris in there. Photo 15,
7 Photo 13, Photo 12, like I said, the photos of the CTA
8 material too 9 and 10, Photo 6, Photo 5 -- Photo 4, I
9 think, is just a different-angle picture of Photo 6, I
10 believe -- Photo 1 and Photo 2.

11 Q. And where on the site did you observe
12 landscape waste or shrubbery?

13 A. Approximately, it was in the area on the
14 north side of the property, again, close to 130th
15 Street. Photos 1 and 2 indicate a little bit of the
16 shrubbery and landscape waste. Photo 3 also indicates
17 that. Photo 13 indicates a little bit of a pile there.

18 Q. And what materials are you -- What
19 specifically are you referring to as landscape waste?

20 A. As landscape waste, we consider it any kind
21 of shrubberies, trees, branches, grass, grass
22 clippings, vegetation that's already died out or even
23 that was just recently pulled out.

24 THE HEARING OFFICER: I think we're

1 going to take a break here. We'll go off the record.
2 We'll be back in an hour or so. Approximately about
3 1:50, we'll resume.

4 (The hearing in the above-entitled
5 cause recessed for lunch from
6 12:50 p.m. till 1:50 p.m.)

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1 (The following testimony was taken
2 on May 9, 2007, at 1:56 p.m., by
3 Kathy A. O'Donnell, RPR.)

4 HEARING OFFICER: We're back on the
5 record. It's approximately 1:56,
6 May 9th, 2007. We are continuing with the
7 direct testimony of Mr. -- Is it Maciel.

8 THE WITNESS: Maciel, yes.

9 THE HEARING OFFICER: Maciel, I'm
10 sorry. Anyway, Ms. Burke, you may continue.
11 This is the Case No. AC6-40.

12 (Witness previously sworn.)

13 WHEREUPON:

14 RAFAEL MACIEL,
15 called as a witness herein, having been previously
16 duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 (continued)

19 BY MS. BURKE:

20 Q. We were discussing, when we broke off,
21 Exhibit A, your report from March 22nd, and the
22 photographs attached to the report. You mentioned
23 this morning that you saw railroad ties at the site.
24 Where were the railroad ties located?

1 A. Railroad ties were located at --
2 Actually, there was two piles. There was one pile,
3 Photo No. 11, and that would be on the northeast
4 corner. And then there was another second pile --

5 MR. LEVINE: Northwest.

6 BY THE WITNESS:

7 A. -- Photo 12, on the northwest -- no,
8 I'm sorry -- south end of the property, which would
9 be Photo No. 12. Northwest and south.

10 BY MS. BURKE:

11 Q. And you mentioned there was scrap
12 metal on the property. Where did you see scrap
13 metal?

14 A. In Photo No. 1, there's some little
15 pieces of scrap metal there. The material for
16 No. 6, within that pile there, there was some scrap
17 metal. You can see the wood timber there. Within
18 that area, there was some scrap metal. Photo 8
19 would be considered scrap metal. Photo 14 would
20 have some scrap metal product in there.

21 Q. Is photo 14 also the reference you
22 made to there being City property on the site?

23 A. That's correct.

24 Q. Were there any buildings on the

1 property?

2 A. I believe there was only one building
3 there.

4 Q. And where was the building located?

5 A. The building was located on the
6 southwest corner, close to it.

7 Q. And did you enter the building?

8 A. No. It was secured. There were no
9 open doors; no open bay doors, either.

10 Q. Did you see any standing water on the
11 property?

12 A. Yes, I did.

13 Q. And where was that located?

14 A. The piles would be on the northwest
15 corner of the property too. Northwest, and then
16 there was some on the south, southwest part of it
17 too -- I'm sorry. Yeah, there was some on the
18 southwest part of it, too.

19 Q. And was there waste standing in that
20 water?

21 A. Yes, there was.

22 Q. What type of materials were in the
23 water?

24 A. I believe there was some construction

1 and demolition debris, indicated like in Photo 13,
2 Photo 15, Photo 18, Photo 19. I believe that was
3 it.

4 Q. And did you see any vehicles on the
5 property while you were there on March 22nd?

6 A. Yes, I did.

7 Q. What vehicles did you see?

8 A. Two dump trucks were on the property.
9 One was there, and then another one arrived shortly
10 after.

11 Q. And the one that was there on the
12 property when you arrived, what was that dump truck
13 doing?

14 A. It was just standing still. It was
15 idling.

16 Q. And were there materials in the dump
17 truck?

18 A. I did not take a look inside the dump
19 truck.

20 Q. And was the back of the dump truck up
21 or down?

22 A. It was down.

23 Q. And where was it located on the site?

24 A. It would be on the southeast -- I'm

1 sorry -- northeast corner of it, I believe, right
2 where the site sketch would indicate there was
3 suspect CTA material.

4 Q. And the dump truck that arrived later,
5 how long were you at the site when that dump truck
6 arrived?

7 A. Probably about 15, 20 minutes or so.

8 Q. I'm sorry. Let me go back to the
9 first dump truck. What did it look like?

10 A. It was gray. The container itself was
11 gray.

12 Q. Were there any markings on the dump
13 truck?

14 A. Yeah. It said E. King.

15 Q. And was there a driver in the dump
16 truck?

17 A. Yes, there was.

18 Q. Was he sitting in the cab of the
19 truck?

20 A. Yes.

21 Q. Back to the dump truck that arrived
22 15 or 20 minutes later, what did that dump truck
23 look like?

24 A. Basically the same thing.

1 Q. Did it have any markings on it?

2 A. E. King Trucking.

3 Q. And what -- Where did that -- What did
4 that dump truck do? Where did it go when it entered
5 the site?

6 A. When it entered the site, it just
7 parked right behind the other truck.

8 Q. In the area of the suspect --

9 A. CTA material.

10 Q. -- CTA material?

11 A. Yes.

12 Q. And what did the second dump truck do
13 at that point?

14 A. At that point it just stood there
15 until I started giving out directives as far as not
16 to move any of the vehicles for the time being,
17 we're doing an investigation. And after that, I
18 guess he felt that he had to leave, and he left, the
19 second dump truck.

20 Q. Did the second dump truck leave before
21 you left the site?

22 A. That's correct.

23 Q. And what other vehicles were there in
24 addition to the two dump trucks?

1 A. There was a front-end loader, which is
2 a piece of heavy equipment.

3 Q. What was the front-end loader doing --
4 Let me back up.

5 Where was the front-end loader
6 located?

7 A. The front-end loader was located right
8 by the suspect CTA material.

9 Q. And what was the front-end loader
10 doing?

11 A. It was pushing some of the material
12 closer to the big pile that was already there.

13 Q. And what did the pile look like that
14 the front-end loader was working with?

15 A. Photo 17 is pretty accurate as far as
16 how the material looked like.

17 Q. And what kind of things would you say
18 are in that pile?

19 A. There was some dirt, some clay
20 material. There was some broken concrete in there,
21 bit of masonry, brick. There was some clay and
22 discoloration in the color of the dirt and in the
23 clay itself, which would indicate some type of
24 contamination.

1 Q. Were there any other vehicles on the
2 site?

3 A. There was a white pickup truck.

4 MR. LEVINE: Objection, foundation --

5 THE HEARING OFFICER: Ms. Burke?

6 MR. LEVINE: -- as to when the pickup
7 truck was on the site.

8 BY MS. BURKE:

9 Q. Was the white pickup truck on the site
10 when you arrived at the site?

11 A. I don't recall if it was there exactly
12 at the time. I was preoccupied with looking at the
13 front-end loader and the dump trailer.

14 Q. When did you first notice the white
15 pickup truck?

16 A. I noticed it after I started
17 interviewing the pickup -- I'm sorry -- started
18 interviewing the front-end loader, and the driver
19 started pointing towards the vehicle saying that was
20 the boss over there.

21 Q. And how long after you arrived at the
22 site, then, did you notice the white pickup truck?

23 A. About a good 10, 15 minutes or so.

24 Q. And where was the white pickup truck

1 when you noticed it?

2 A. It was directly on the west -- I'm
3 sorry -- the east side of the property, right by the
4 stone area, I believe. If you look on the site
5 sketch, it would be by the stone pile, close to it.

6 Q. Can you describe the perimeter of the
7 site?

8 A. The perimeter of the site off
9 130th Street, it's a bermed area. It's a bermed
10 area about 4 foot high, has some vegetation growing
11 on top of it. At closer inspection, you would
12 realize that it has some construction debris mixed
13 in there with --

14 MR. LEVINE: Objection, foundation as
15 to where that is.

16 THE HEARING OFFICER: Ms. Burke?

17 BY MS. BURKE:

18 Q. Which berm are you referring to?

19 A. I'm referring to the berm off
20 130th Street.

21 Q. And what did that berm look like?

22 MR. LEVINE: My objection is to
23 specifically where he's talking about.

24 BY MS. BURKE:

1 Q. Referring to page 8 of Exhibit A, can
2 you point on the map as to where you're describing
3 the berm?

4 A. (Complying.)

5 Q. Is it in one particular -- Are you
6 referring to one particular location or along the
7 length of 130th Street?

8 A. It's along the length of 130th Street.

9 Q. And what does that berm look like
10 along 130th Street?

11 A. Basically it's a bunch of sandy
12 debris, some dirt, clay, mixed in with some growth
13 of vegetation on top of it.

14 Q. And what is the -- What does the west
15 edge of the property look like?

16 A. The west edge also has a berm that
17 goes along the edge of the property there too.

18 Q. And what does the berm along the west
19 edge of the site look like?

20 A. Sandy debris, some vegetation growth
21 on the top of it. There's also some dirt, clay with
22 it, mixed, intermingled with it.

23 Q. And what is -- What does the south
24 edge of the property look like?

1 A. South edge of the property is along a
2 railroad track area.

3 Q. And what is along the perimeter of the
4 site to the east?

5 A. To the east is a fenced area, and
6 there's a property next-door to it, a trucking firm,
7 I believe.

8 Q. Who was present on the site when you
9 arrived?

10 A. There were two unknown individuals.
11 One of the unknown individuals was the operator of
12 the heavy equipment, operator of the dump truck.
13 There were two other individuals that were sorting
14 some material in the rear; one which was all the way
15 near the area where the open burning was at, and the
16 other individual was by -- where was it by? -- I
17 believe he was here by the compost material. And
18 there was also another individual in the white
19 pickup truck.

20 MR. LEVINE: I'm going to object on
21 the foundation of the compost material, as to
22 where specifically that would be.

23 THE HEARING OFFICER: Ms. Burke?

24 BY MS. BURKE:

1 Q. Where is the individual that you
2 identified as being near the compost material?
3 Where was the individual?

4 A. The individual was exactly by our
5 Picture No. 20 on the site sketch.

6 Q. And what was that individual doing
7 when you saw him?

8 A. He was segregating some material
9 there.

10 Q. What was he segregating?

11 A. I believe he was taking wood debris
12 out from the pile of intermingled products. They
13 had some railroad ties, some concrete. I think he
14 was taking up some of the landscape, like shrubby
15 and things.

16 Q. And the person you mentioned that was
17 near the open burning, where are you referring to?

18 A. It would be by Photograph 18 on the
19 site sketch.

20 Q. And what did you see in that area?

21 A. Basically we saw a few piles -- I saw
22 a few piles of construction and demolition debris.
23 There was some standing water there, the material
24 that was in the opening burning, which was some

1 vegetation, landscape material, wood debris. There
2 was broken concrete, a little bit of litter.

3 Q. And in the area of the open burning,
4 did you see a fire?

5 A. Yes.

6 Q. And did you see smoke?

7 A. Yes, I did.

8 Q. And how many feet across would you say
9 the area of the open burning was?

10 A. It was probably a good 12 to 15 feet.

11 Q. And how high was that pile?

12 A. Probably about 2 to 3 feet.

13 Q. And the person that you saw in this
14 area of the open burning, what was that person
15 doing?

16 A. Basically, by the time we had got
17 there, he was putting out the fire and was throwing
18 some dirt on there with a shovel.

19 Q. Did you speak with that person who was
20 near the open burning?

21 A. I tried to. I tried to get his
22 information. He just started walking away from me.

23 Q. And did you speak with the person who
24 was near the compost?

1 A. Again, we tried on that occasion to
2 speak with the person, and he just started walking
3 away from me.

4 Q. And did you speak with the operator of
5 the front-end loader?

6 A. Yes, I did.

7 Q. Approximately how long after you
8 entered the site did you speak with the front-end
9 loader operator?

10 A. About 15 minutes.

11 Q. Did you identify yourself as a City
12 employee?

13 A. Yes, I did.

14 Q. And were you wearing clothing that
15 said -- Were you wearing City of Chicago clothing?

16 A. Yes.

17 Q. Did you show the --

18 MR. LEVINE: I'm going to object as to
19 leading. She's got to ask questions, not
20 direct the answers.

21 THE HEARING OFFICER: Overruled. You
22 may proceed, Ms. Burke.

23 BY MS. BURKE:

24 Q. Did you show your badge?

1 A. Yes, I did.

2 Q. And what did you say to the front-end
3 loader operator?

4 A. I asked him what was going on, what
5 are they doing here, and he flat out was, like,
6 Well, we're working for the City of Chicago.

7 And I say, Oh, really? Can I see
8 any load tickets, I asked him, any load tickets, any
9 paperwork? And that's when he handed over a
10 manifest to me. As I was reading the manifest, I
11 started asking him, So who sent you here to take
12 this material? Did you bring this material here?

13 And he was like basically, Well,
14 the CTA hired us for this job -- He said City of
15 Chicago, to be more approximate on it. He said City
16 of Chicago.

17 I reiterated to him that it's not
18 the City of Chicago, it's the CTA. And I told him,
19 I said I didn't want anybody moving any equipment, I
20 didn't want anybody driving off of the property
21 until I finished interviewing them and finish with
22 this investigation.

23 And he basically said, Well, I'm
24 going to do what my boss tells me, and he pointed

1 over to a white truck.

2 Q. Do you know this person's name?

3 A. Yes, I do.

4 Q. Let me clarify. Do you know the name
5 of the person who was driving the front-end loader?

6 A. No, I do not.

7 Q. Do you know the employer of the
8 front-end loader driver?

9 A. No, I do not.

10 Q. Were there any markings on the
11 front-end loader?

12 A. Not that I recall.

13 (Short interruption.)

14 BY MS. BURKE:

15 Q. And what did the front-end loader
16 operator tell you that he was doing?

17 A. That they were bringing material onto
18 the site.

19 Q. And did you talk with the dump truck
20 driver?

21 A. I talked with the dump truck driver.

22 Q. That was the dump truck that was on
23 the site when you arrived at the site?

24 A. That's correct.

1 Q. And did you identify --

2 MR. LEVINE: I'm going to object to
3 the statements of what the drivers are saying
4 as hearsay, and I move to strike them. We
5 don't know who these people are. They're not
6 identified. They're not witnesses.

7 THE HEARING OFFICER: Ms. Burke?

8 MS. BURKE: I think that they are
9 hearsay, but they are reliable. And I would
10 ask that the Board admit the statements. The
11 testimony has shown that they didn't have
12 time to fabricate a response, that they
13 didn't have any reason to think that they
14 were in trouble, that there was no reason for
15 them to not tell the truth, and argue that
16 they're reliable.

17 MR. LEVINE: I would counter that
18 there's no indicia of reliability. In fact,
19 when they're confronted by an individual with
20 a badge from the City of Chicago who is out
21 there, obviously, to charge people with
22 violations, that it's reasonable that they
23 would give false or incorrect testimony in
24 order to avoid prosecution.

1 THE HEARING OFFICER: You're saying,
2 Ms. Burke, it is hearsay but it's okay?

3 MS. BURKE: I'm saying it is hearsay,
4 but I'd ask for it be admitted because it is
5 reliable.

6 THE HEARING OFFICER: Mr. Levine?

7 MR. LEVINE: There's no indicia of
8 reliability. This is a criminal
9 investigation with liability seeking to
10 attach. He's wearing a badge; he's obviously
11 doing an investigation to seek culpability.
12 For the response, I would say it's obvious
13 that they would deny or make false statements
14 to avoid liability for themselves and their
15 employer.

16 THE HEARING OFFICER: Okay. I'm going
17 to sustain Mr. Levine's objection. But,
18 Ms. Burke, you may proceed like we did before
19 with an offer of proof, and the Board can
20 take a look at it and make its own decision,
21 or you can file a motion. I think you have
22 14 days after the Board gets the transcript.
23 But just let the record reflect when you're
24 entering this offer of proof and when you're

1 finishing the offer of proof.

2 MR. LEVINE: And, your Honor, I would
3 also like to exclude all of these statements
4 of what these people are telling Mr. Maciel
5 and would include in my oral motion to
6 exclude these, the prior testimony given
7 where different statements -- different
8 versions of the statements are given, and
9 that they're not included in the report.

10 THE HEARING OFFICER: And that
11 testimony happened 5, 10 minutes ago?

12 MR. LEVINE: 5, 10 minutes ago as well
13 as the -- Right, yes. And in comparison with
14 this testimony with Mr. Maciel's prior
15 testimony this morning, where different
16 conversations are now occurring than he's
17 previously testified to.

18 MS. BURKE: I object to the motion to
19 the extent that we're going back to the prior
20 hearing in the other matter.

21 MR. LEVINE: I'm saying --

22 THE HEARING OFFICER: You're going
23 back to AC6-39 now?

24 MR. LEVINE: I am arguing now, but

1 because these statements appear to be
2 different than his prior testimony. It's a
3 further indication that there's no indicia
4 for reliability with regard to the testimony
5 regarding any statements.

6 THE HEARING OFFICER: I can't recall
7 with any specificity what the prior testimony
8 was in AC6-39. You can address that in any
9 kind of motion after the Board gets the
10 transcript.

11 MR. LEVINE: That's fine. I just want
12 to make my record.

13 THE HEARING OFFICER: Okay. Fair
14 enough. Ms. Burke, this is under an offer of
15 proof, correct?

16 MS. BURKE: No, I'm not going to. I'm
17 finished with that line of questioning. I'm
18 not going to make an offer of proof.

19 THE HEARING OFFICER: Okay. Thank
20 you.

21 BY MS. BURKE:

22 Q. You mentioned that there was a white
23 truck on the property. Was there a person in the
24 white truck?

1 A. Yes, there was.

2 Q. And did you speak with the person in
3 the white truck?

4 A. Yes, I did.

5 Q. And did you identify yourself as a
6 City employee to the person in the white truck?

7 A. Yes, I did.

8 Q. Did you recognize the person in the
9 white truck?

10 A. Yes, I did.

11 Q. And who was the person in the white
12 truck?

13 A. It was Jose "Speedy" Gonzalez.

14 Q. And you knew -- How is it that you
15 recognized Mr. Gonzalez?

16 A. I recognized him. I knew him
17 personally from a few years back and also from
18 previous incidents with the City of Chicago,
19 specifically with the Department of Environment.

20 Q. And what was Mr. Gonzalez doing when
21 you saw him in the white truck?

22 A. He was on his phone.

23 Q. And did you initiate the conversation
24 with Mr. Gonzalez?

1 A. Actually, no. He drove up to us.

2 Q. And what did you say to Mr. Gonzalez?

3 A. I asked Mr. Gonzalez, What seems to be
4 going on here at the property?

5 And he just rebutted with, This is
6 private property. What are you guys doing out here?

7 And I started questioning him
8 about the material on the property here. I said,
9 What is it you're running here? Are you running a
10 transfer station?

11 He rebutted that with, I don't
12 know what you're talking about. This is not a
13 transfer station. He kept reiterating that it was
14 private property and we needed to leave.

15 Pretty much I told him, I said,
16 Well, do you know where this came from, this
17 manifest came from?

18 He said, I don't know what you're
19 talking about. I didn't give you those papers. And
20 he rolled up his window and drove off.

21 Q. Did you know who owned the property
22 when you arrived on March 22nd?

23 A. No, I did not.

24 Q. Did you know Mr. Gonzalez had any

1 connection to the property when you arrived on
2 March 22nd?

3 A. No.

4 Q. And did Mr. Gonzalez leave the site
5 before you left the site?

6 A. Yes, he did.

7 Q. Do the photographs -- Do the
8 photographs in Exhibit A on pages 9 through 22
9 accurately depict the appearance of the property
10 when you were there on March 22nd?

11 A. Yes, they do.

12 MS. BURKE: I would move to admit the
13 report that we've marked as Exhibit A into
14 evidence.

15 MR. LEVINE: I would object. One,
16 it's been offered as a complete report. We
17 know that the uniform hazardous waste
18 manifests are not included. It's an
19 important portion of the investigation.

20 Two, I would object to the
21 testimonial hearsay from the First
22 Environmental Laboratories, which is pages 24
23 through 31.

24 And three, that with the -- I

1 would also object based on the fact that
2 the -- If I can just have a second? The
3 prior notes of the witness, the street notes,
4 have not been included.

5 So it's not, as indicated, the
6 complete report of the Department of
7 Environment. And I apologize, I don't find
8 the reference to the notes that were not
9 included.

10 THE HEARING OFFICER: The field notes?

11 MR. LEVINE: Field notes, thank you,
12 are not included. And therefore, what was
13 offered as the complete report of the
14 investigation is missing actual portions of
15 the investigation, including the manifest,
16 the field notes, and the testimony hearsay
17 with regard to the lab reports.

18 THE HEARING OFFICER: Anything
19 further, Ms. Burke?

20 MS. BURKE: Mr. Maciel has testified
21 that this is the official report of the
22 Department of Environment, the report that's
23 kept in the ordinary course of business. And
24 as to the fact -- As to the document at pages

1 24 to 31, that's a document that's considered
2 to be part of the official report. And as to
3 the document -- the two items that Mr. Levine
4 claims are missing, the waste manifest and
5 the field notes, those are not considered to
6 be part of the report. And the fact that he
7 thinks that they should have been included is
8 not relevant.

9 THE HEARING OFFICER: I find it is
10 complete such as it is, such as it's offered.
11 And as in AC6-39, I am going to admit it but
12 note Mr. Levine's objections. Exhibit A is
13 admitted over Mr. Levine's objections.

14 MS. BURKE: I have no further
15 questions.

16 THE HEARING OFFICER: Thank you.
17 Mr. Levine?

18 CROSS-EXAMINATION

19 BY MR. LEVINE:

20 Q. Sir, didn't you testify previously
21 that the uniform hazardous waste manifests were part
22 of your reports?

23 A. Part of my investigation.

24 Q. And as part of the investigation, was

1 it not part of the reports?

2 A. I assume that they should have been,
3 but they weren't --

4 Q. Was that a yes or a no, sir?

5 A. No.

6 Q. That it is part of the report or it's
7 not part of the report?

8 A. It's not part of the report.

9 Q. Why was not -- Why was the manifest
10 not part of your report?

11 A. I don't know.

12 Q. Well, would the manifest indicate the
13 generator's -- the originator of the waste and the
14 transportor of the waste in a designated facility?

15 A. Yes, it would.

16 Q. Wouldn't that be of interest when you
17 were preparing a report if you were going to be fair
18 to all parties involved?

19 A. Actually, it was duly noted in our
20 open dump inspection checklist as the person
21 interviewed, Chuck Weber from CTA, and there was an
22 E. King representative too along with my narrative.

23 MR. LEVINE: I'll move to strike that
24 as unresponsive, an unresponsive response to

1 the question, and seek the Court to direct
2 the witness to answer the question put to
3 him.

4 THE HEARING OFFICER: Ms. Burke, any
5 response?

6 MS. BURKE: I would like to hear the
7 question again.

8 THE HEARING OFFICER: Can you read
9 back the question, please?

10 (Record read as requested.)

11 THE HEARING OFFICER: That's a yes or
12 a no. Objection is sustained. Witness?

13 BY THE WITNESS:

14 A. That would be partial to it, yes.

15 BY MR. LEVINE:

16 Q. And the reason it was not included in
17 your report would be?

18 A. Because it wasn't pertinent to the
19 fact that the material ended up on the property
20 itself. At that time being, we were still in
21 discussion as far as whether or not the material was
22 deriving from the CTA or from some other area.

23 Q. Isn't an issue of your entire
24 investigation who caused or allowed the waste to be

1 placed on the property on that day and time?

2 MS. BURKE: Objection to the extent
3 that it calls for a legal conclusion on the
4 meaning of cause or allow.

5 THE HEARING OFFICER: It's funny, this
6 was going on in AC6-39, but all of a
7 sudden -- I sustain Ms. Burke's objection.
8 It is a legal conclusion.

9 BY MR. LEVINE:

10 Q. Well, wouldn't your investigation be
11 interested in the entity that generated the waste?

12 A. Sure. Yes.

13 Q. And wouldn't your investigation be
14 interested in the entity that transported the waste?

15 A. Yes.

16 Q. And didn't you want to know the
17 designated facility of where the waste was going to?

18 A. Yes.

19 Q. And wouldn't the uniform hazardous
20 waste manifest indicate all of those things?

21 A. Yes, but it was also indicated in my
22 narrative too.

23 Q. And wouldn't the fact that Chuck Weber
24 had signed and dated the manifest have indicated

1 whether or not Mr. Weber was telling the truth or
2 not?

3 A. Basically when I had got to the site
4 and had the manifest --

5 Q. That's a yes or a no, sir.

6 A. Could you repeat the question?

7 Q. Wouldn't the fact that Chuck Weber had
8 signed the manifest on behalf of the CTA and
9 indicated where the waste was generated from,
10 transported by, and going to indicate whether or not
11 he was telling the truth when you spoke to him?

12 A. That would not indicate if he was
13 telling the truth or not to me.

14 Q. Do you know whether -- Do you think
15 that Chuck Weber was telling the truth, sir?

16 A. Do I know?

17 Q. When he told you that there was an
18 agreement with regard to the waste.

19 A. Per the partial interview that I had
20 with him, it was undetermined to know whether or not
21 he was lying to me.

22 Q. Would a document signed by him be
23 indicative and help you determine whether or not he
24 was telling the truth or lying to you?

1 A. Basically, from what he was telling
2 me, he was telling the truth to some degree, that
3 per this verbal agreement, that they were supposed
4 to --

5 Q. Sir, that's a yes or no as well.

6 A. Repeat it again.

7 Q. Would the document help you determine
8 whether or not Mr. Weber was telling the truth as to
9 the agreement of where the waste was coming from and
10 where it was going?

11 A. No, it wouldn't.

12 Q. I'm showing you what's been marked for
13 identification as Defendant's B. What is that, sir?

14 A. That is a manifest.

15 MR. LEVINE: I'm sorry.

16 Respondent's ...

17 MR. LEVINE: Respondent's B -- Or
18 should I do Respondent's A?

19 THE HEARING OFFICER: A.

20 BY MR. LEVINE:

21 Q. What is that, sir?

22 A. A manifest.

23 Q. And what is a manifest?

24 A. A manifest is a log, pretty much, that

1 tells you the whereabouts of the material, from
2 either hazardous or special waste material. That's
3 pretty much letting you know who -- It gives you all
4 the specific information as far as the generator and
5 who's transporting the material and where it's
6 designated arrival is supposed to be at.

7 Q. And in this case, on March 22nd, what
8 did the manifest show -- where did the manifest show
9 the material was coming from?

10 A. For this case, it showed the material
11 was coming from 567 West Lake Street in Chicago.

12 Q. Is that the CTA?

13 A. That is correct.

14 Q. And do you have any information that
15 the material is not coming from that location, from
16 the CTA?

17 A. The only information was through the
18 rebuttal --

19 Q. Yes or no, sir.

20 A. Yes, I do have information.

21 Q. What is that information?

22 A. That information is that Paschen,
23 which is a subcontractor for CTA, rebutted, saying
24 that the material -- it was suspected that it didn't

1 come from a CTA project, that it probably came from
2 another project.

3 Q. But you didn't take a picture of the
4 Paschen guy and you never got his information, so we
5 don't know who that Paschen guy is, do we?

6 A. I did not take that information down,
7 but I gather that the information was taken through
8 my supervisors.

9 Q. Well, if it was taken by your
10 supervisors, I'm assuming it would appear somewhere
11 in your investigation report.

12 A. Not necessarily so.

13 Q. Why would that information be left out
14 of your investigation report?

15 A. I would have no idea. I was just told
16 to -- I was just told to specifically cite
17 Mr. Gonzalez, being that he was the property owner.

18 Q. Would you agree with me that leaving
19 this information out of an investigation report with
20 regard to the generation, point generation of the
21 waste, the transportor, and the subsequent -- where
22 it was going, not taking down Paschen's information,
23 not taking photos of E. King's trucks, or
24 identifying individuals from Paschen or E. King,

1 would you agree with me that that would be a way to
2 target the investigation towards Mr. Gonzalez and
3 avoid culpability for the other parties in this
4 manner?

5 A. No.

6 Q. And why would you say -- Why would you
7 not -- For what reasons would your investigation
8 report not include that type of information?

9 A. Being that there was still a pending
10 conclusion to what the narrative was entitled. This
11 is pretty much the facts of the case that I saw that
12 day. There's still a conclusionary part, where the
13 aftereffects of what happens after -- I'm sorry --
14 as far as the cleanup process, where the material is
15 supposed to end up at.

16 Q. Well, aren't some of the facts what
17 you saw today, those CTA manifests?

18 A. This was one piece of documentation,
19 yes.

20 Q. And those were facts you observed on
21 the 22nd, correct?

22 A. That's correct.

23 Q. And those do not appear in the
24 investigation report, correct?

1 A. That's correct.

2 Q. And you were responsible for creating
3 that investigation report, correct?

4 A. No. I was not the only sole person.

5 Q. I'm just asking if you had
6 responsibility to create the investigation report.

7 A. I had some responsibility, yes.

8 Q. And you signed it, didn't you?

9 A. Yes, I did.

10 Q. And your signature is on there as
11 certifying the information you took?

12 A. Yes.

13 Q. Why did your investigation, as you --
14 as it appears in Exhibit A, preclude information
15 regarding the CTA, E. King, and Paschen?

16 A. It was duly noted in my narrative; but
17 as far as any other information, I don't understand
18 why it wasn't on there.

19 Q. Did you put it in there?

20 A. Did I put it in there? No.

21 Q. Why didn't you put it in there?

22 A. Basically, like I said, this was just
23 what are the facts of the day that I received from
24 the material.

1 Q. And aren't the facts of the day the
2 manifest? Don't they include the manifest, the
3 facts of the day?

4 A. That would be part of it, yes.

5 Q. That was a document you received on
6 that day, was it not?

7 A. That is correct.

8 Q. And another fact of the day would be
9 the license number of the truck on E. King, correct?

10 A. That is correct.

11 Q. And you took that down, didn't you?

12 A. I don't believe I did. It might have
13 been a different inspector.

14 Q. Did someone do it at your direction,
15 sir?

16 A. I think I did tell one of our
17 inspectors to take that information down.

18 Q. And yet that information occurs
19 nowhere in your investigation report, correct?

20 A. Correct.

21 Q. Can I have that back?

22 A. Sure.

23 Q. Were you out to get Speedy Gonzalez?

24 A. No.

1 Q. Personally?

2 A. No.

3 Q. Would you have reason to do that, sir?

4 A. I have none.

5 Q. If you were out to get him, would it
6 be helpful to avoid the mentioning of all other
7 individuals and witnesses at the site on March 22nd,
8 2006?

9 A. Would you repeat that again?

10 Q. If you sought to concentrate your
11 investigation only towards Jose Gonzalez, would it
12 be helpful to avoid listing all other witnesses that
13 you contacted and information you saw on that date?

14 MS. BURKE: Objection, calls for
15 speculation.

16 THE HEARING OFFICER: Overruled. He
17 may answer if he's able.

18 BY THE WITNESS:

19 A. No. Basically, I mean, he has
20 responsibility because he's the owner of the
21 property.

22 BY MR. LEVINE:

23 Q. But other people would have
24 responsibility as well, correct?

1 A. Some responsibility, yes.

2 Q. In fact, there's a defense to this if
3 he did not cause or allow it, correct?

4 MS. BURKE: Objection again to the
5 phrase cause or allow. It's calling for a
6 legal conclusion.

7 THE HEARING OFFICER: Sustained.

8 BY MR. LEVINE:

9 Q. Do you know whether or not the
10 violation alleges that Mr. Gonzalez caused or
11 allowed these violations?

12 MS. BURKE: Same objection.

13 MR. LEVINE: I'm asking whether he
14 knows it.

15 THE HEARING OFFICER: Excuse me.

16 Mr. Levine, I think I already sustained
17 Ms. Burke's objection regarding legal
18 conclusion.

19 MR. LEVINE: All right. I'll move on.

20 THE HEARING OFFICER: Thank you.

21 BY MR. LEVINE:

22 Q. Did you have a conversation with
23 individuals at the site?

24 A. Yes.

1 Q. Did you have conversations regarding
2 what the agreement was with regard to the suspect
3 CTA waste?

4 A. I gathered some information to begin
5 with, and then I was pulled away from there to
6 follow up on the other areas of the property.

7 Q. Who pulled you away from there?

8 A. Actually, my supervisor, Stanley
9 Kaehler.

10 Q. Why do you think Stanley Kaehler only
11 wanted to target Jose Gonzalez and not concentrate
12 on other potential violators such as the CTA,
13 E. King, or Paschen Construction?

14 A. I can't answer that question.

15 Q. Have you ever seen him to be biased
16 before?

17 A. No.

18 Q. Was it unusual that he would do
19 something like that?

20 A. It was just unusual for me as far as
21 not pursuing everybody, to hold everybody
22 accountable for it.

23 Q. And as your job in enforcement, isn't
24 it your job as a senior environmental inspector to

1 find out all the culpable individuals at the scene?

2 A. Correct.

3 Q. But all the culpable individuals at
4 the scene were not investigated at this site,
5 correct?

6 A. They were pretty much all there, and
7 they've agreed to what extent they were involved in
8 it, which is noted in my narrative.

9 Q. Well, Mr. Weber told you that it was
10 CTA material, correct?

11 A. That is correct.

12 Q. And the manifest, Respondent's
13 Exhibit A, demonstrates that, in fact, there is a
14 waste manifest for the CTA, correct?

15 A. Correct.

16 Q. And would that -- Would the manifest
17 support Mr. Weber's statement or go contrary to it?

18 A. To some degree, it would support it.

19 Q. But you still thought Mr. Weber was
20 lying, correct?

21 A. I wouldn't say that he was lying.

22 Q. Do you think he was being untruthful
23 with you?

24 A. I wouldn't say he was untruthful.

1 Q. What was the agreement that you
2 determined as an investigator on March 22nd with
3 regard to the suspect CTA material?

4 A. Can you repeat that again?

5 Q. What was the agreement that you
6 discussed with the parties with regard to the
7 suspect CTA material on March 22nd, 2006?

8 A. I specifically did not discuss any
9 agreement. The only agreement that was under
10 discussion was the agreement -- this hearsay
11 agreement with CTA, Paschen Construction, E. King,
12 and with Mr. Gonzalez.

13 Q. Sir, you don't know what hearsay is,
14 do you?

15 A. Hearsay is basically what people --
16 It's like you telling me something; and you could
17 tell me specifically something about Ms. Burke that
18 might not be truthful or so, but based on -- the
19 only way you're going to be able to know is with
20 some legal documentation or what have you.

21 Q. Are you a lawyer?

22 A. No.

23 Q. Do you know what the definition of
24 hearsay is in legal terms?

1 A. No, I do not.

2 Q. Okay. So you don't really -- When you
3 say it was hearsay information, you're just saying
4 it wasn't in writing, correct?

5 A. In legal terms.

6 Q. Now, do agreements have to be in
7 writing?

8 A. Per se with the environment, yes.

9 Q. What was the agreement that was, as
10 you say, hearsay that you heard on that day, as you
11 testified to in your December 6th deposition?

12 A. That there was an agreed commitment
13 with Paschen, CTA, E. King, and the property owner,
14 Mr. Gonzalez, that the material was to be stored on
15 the property.

16 Q. And how was it to be stored on the
17 property?

18 A. According to them, it was supposed to
19 be stored in roll-off boxes.

20 Q. Was there any -- If I can just go a
21 little further, the agreement, as you learned it to
22 be through talking with the un-named Paschen
23 representative, Chuck Weber of the CTA, and, I'm
24 assuming, the driver from the E. King truck?

1 A. Not the driver, no. It was one of the
2 owners of E. King.

3 Q. Was that Mrs. King?

4 A. I'm not sure.

5 Q. Elaine King?

6 A. Maybe, yes.

7 Q. Was she there that day?

8 A. I believe she was; late, I think she
9 was.

10 Q. That's funny. You didn't mention her
11 in your report, did you, sir?

12 A. No.

13 Q. Was there a reason you would not
14 mention Elaine King showing up and discussing the
15 agreement in the investigation report?

16 A. Is there a reason why? No.

17 Q. Were there other things that occurred
18 that you did not put in your investigation report?

19 A. No. This is basically it.

20 Q. Did you think it was not important to
21 put the fact that Elaine King was there with regard
22 to what the agreement was between the CTA, Paschen,
23 E. King, and Mr. Gonzalez, that you did not put in
24 the report?

1 A. Can you repeat that again?

2 Q. Was there other material other than
3 the fact that Elaine King was discussing the
4 agreement between Paschen, E. King, and Mr. Gonzalez
5 regarding the suspect CTA waste material that you
6 learned throughout the investigation but also chose
7 not to put in your report?

8 A. No. It was not a choosing. It was
9 just I didn't put it in there. It wasn't beneficial
10 to the investigation at the time.

11 Q. Well, who decides whether something is
12 beneficial to the investigation?

13 A. Basically, my supervisors.

14 Q. You weren't really doing an
15 investigation there, were you?

16 A. That's what an investigation was.
17 Yes, I was there for an investigation.

18 Q. Well, you were selectively leaving
19 information out of the investigation, correct?

20 A. No.

21 Q. Well, you selectively left out the
22 fact that Elaine King was a part of the
23 conversation?

24 A. She was not part of the conversation.

1 Q. You said she was there and discussed
2 the --

3 A. She was there on the property, but she
4 did not discuss anything with the individuals there.
5 She was off to the side. She was preoccupied with
6 getting her vehicles out of the property and not
7 getting them impounded.

8 Q. And did you discuss that with her?

9 A. I just told her to hold on because we
10 were basically running around still trying to get
11 the information, gathering information from all
12 these other individuals.

13 Q. Well, if the E. King trucks were
14 dumping on the property, wouldn't they have been
15 impounded?

16 A. Most definitely, yes.

17 Q. And they were not impounded, so can we
18 conclude that the E. King trucks were not dumping at
19 the location on March 22nd, 2006?

20 A. I can't draw that conclusion from
21 that, no. I was just told to let them go, and
22 that's it.

23 Q. So, in fact, sir, by not including
24 that, you were not conducting an investigation for

1 the Illinois Department of -- Chicago Department of
2 Environment, you were just doing what your superiors
3 told you to do that day; is that correct, sir?

4 A. I was doing my investigation; and then
5 once they arrived, they told me that they were going
6 to take over from there as the lead investigators.

7 Q. Before they got there, did you notice
8 that Ms. King was there?

9 A. No, she was not there.

10 Q. And after your supervisor -- And who
11 was this that told you they were taking over?

12 A. Stanley Kaehler and John Kryl.

13 Q. Did you finish drafting your
14 investigation report?

15 A. No.

16 Q. Did you finish it at a later point?

17 A. Yes, I did.

18 Q. And yet you left out the fact that
19 Elaine King was there and discussing that she did
20 not want her trucks impounded, correct?

21 A. Correct.

22 Q. So what you did, you selectively
23 included and excluded material in your investigation
24 report based on what you felt was important,

1 correct?

2 A. Not what I felt important, no.

3 Q. Were you told what to put in the
4 investigation report?

5 A. No. Basically they told me just to
6 fill in what the facts were of what I saw, and I put
7 in as much as I could that I could remember and
8 recall.

9 Q. And the facts of what you saw included
10 the fact that Elaine King was at the site discussing
11 not having her trucks impounded, correct?

12 A. Correct.

13 Q. That did not make it to the
14 investigation report, correct?

15 A. I didn't feel it was pertinent to the
16 investigation.

17 Q. Why not?

18 A. Because basically it was decided that
19 they weren't going to be impounded, so there was no
20 need for me to put that in there.

21 Q. So you're saying you decided, rather
22 than doing an investigation, factual investigation,
23 you -- the Chicago Department of Environment picked
24 a target and you only included information that

1 would target that one specific respondent, correct?

2 A. Basically I was just told to write it
3 up as such from what I saw, take my photos, gather
4 the information.

5 Q. Well, you didn't actually take the
6 photos, did you, sir?

7 A. I took some photos.

8 Q. And you didn't get any information
9 down of the individuals from Paschen, correct?

10 A. No.

11 Q. And that was another reason -- Did you
12 think that was pertinent as well?

13 A. I would assume so. John Kryl and
14 Stanley Kaehler were there, and they did receive
15 business cards from those gentlemen.

16 Q. And those are not in the investigation
17 report, correct?

18 A. No. It's not practice to do so.

19 Q. And how did you learn to do your
20 investigations and leave out certain things that you
21 think are not pertinent?

22 A. How did I do my investigation?

23 Q. How did you learn to do investigations
24 and leave out specific items that you believe were

1 not pertinent?

2 A. Basically that's how I've been taught.

3 Q. And you've been doing these type of
4 investigations for how long?

5 A. Seven years.

6 Q. Thousands of them?

7 A. Correct.

8 Q. And you leave out specific information
9 that doesn't target a specific respondent because
10 that, to you, is not pertinent, correct?

11 A. Not to say that it's not pertinent to
12 me, but that's under specific supervision.

13 Q. Are there guidelines that list that
14 you should decide what you think is pertinent, what
15 to include in the investigation report?

16 A. No.

17 Q. So this is something you're doing
18 based on someone telling you, correct?

19 A. Basically.

20 Q. And who told you to leave out
21 nonpertinent information in this investigation?

22 A. Nobody told me to leave out not
23 pertinent information.

24 Q. So you forgot to put in the part about

1 Elaine King being on-site and arguing not to impound
2 her trucks?

3 A. Actually, it was based -- If you look
4 on the open dump inspection checklist, it was noted
5 on there as an E. King representative that was on
6 the property, right next to Mr. Chuck Weber, CTA.
7 Her name specifically wasn't put on there, basically
8 because we didn't have that information probably at
9 the time of writing the state report.

10 Q. You didn't know that was Elaine King
11 who was there?

12 A. I didn't know. I didn't know exactly
13 her exact name at the time probably.

14 Q. Did she introduce herself when you met
15 her?

16 A. I've met her before from a previous
17 site.

18 Q. So you knew Elaine King, correct?

19 A. Just from a previous incident.

20 Q. So when you said you didn't know her
21 name to include it on the report, you actually did
22 know her name, correct?

23 A. No, I did not. I knew her by facial
24 recognition, not by her name.

1 Q. Did you know she worked for E. King?

2 A. Yes, I did.

3 Q. Did you know she ran things at
4 E. King?

5 A. She was one of the people, I believe,
6 that ran it.

7 Q. Now, the agreement was for CTA waste
8 to be stored at Mr. Gonzalez's facility by E. King
9 in roll-off trucks, correct?

10 A. According to their agreement, yes.

11 Q. Did Ms. King tell you this?

12 A. No.

13 Q. Did Mr. Weber tell you this?

14 A. Mr. Weber was speaking of this.

15 Q. And did you have cause and reason not
16 to believe him?

17 A. Did I have cause and reason not to
18 believe him?

19 Q. Yes.

20 A. There was some doubt. But like I
21 said, I didn't get to conclude anything because of
22 the fact that our interview was short, my interview
23 was short with him.

24 Q. And was there some doubt because that

1 statement didn't match up with the manifests?

2 A. There was some doubt altogether, all
3 around it.

4 Q. Was one of the basis for the doubt the
5 fact that Mr. Weber's story did not match up with
6 the manifest?

7 A. No. Basically he was -- Like I said,
8 there was some doubt altogether in it, flat out.

9 Q. Did his information that he gave you
10 regarding the agreement match the manifest?

11 A. No.

12 Q. Did they tell you the material was
13 generated from the CTA Brown Line?

14 A. Mr. Weber indicated that the material
15 was supposed to be coming from the Brown Line.

16 Q. And did that manifest match up to
17 that, the generator's name and address?

18 A. Correct, it did.

19 Q. And you saw the transporter of the
20 material. The trucks were E. King trucks, right?
21 You testified to that?

22 A. That's correct.

23 Q. Did the E. King transporter, No. 1,
24 match up to the manifest?

1 A. Can I see your manifest, please?

2 Actually, there was no indicators other than what it
3 says, E. King is a transporter, marking on the
4 truck; but there is no clear written indicator
5 for -- as far as the number or license plate number
6 of the vehicle itself.

7 Q. Did Mr. Weber's story telling you that
8 E. King was the transporter working as a
9 subcontractor for Paschen match up to the manifest,
10 yes or no?

11 A. E. King was the transporter for the
12 manifest, yes.

13 Q. And the designated facility for the
14 waste, that was CID, as listed on the manifest,
15 correct?

16 A. That's correct.

17 Q. And that's what Chuck Weber told you,
18 isn't it?

19 A. That's correct.

20 Q. What about Chuck Weber's story did you
21 find false or untruthful?

22 A. Like I said, I couldn't make that
23 conclusion whether or not it was false or untruthful
24 because we didn't get to finish our interview.

1 Q. But you did make that conclusion when
2 you said you didn't believe what Mr. Weber told you,
3 correct?

4 A. There was some doubt, yes.

5 Q. And you're a professional in
6 determining whether people are telling the truth or
7 not, are you not?

8 A. I would not say that I'm a
9 professional.

10 Q. Well, you've had past training in that
11 area, have you not?

12 A. Yes.

13 Q. Okay. Could you tell us about your
14 past training having to do with how people --
15 whether or not people are telling the truth? And
16 give us as many specifics as you can, please.

17 A. Basically the training was a course
18 that I took on my own to try to benefit me with my
19 job as far as how to indicate when people are not
20 telling the truth. It's not 100 percent effective.
21 But to some degree, you have some indicators on how
22 a person can distinguish whether or not a person is
23 truthfully being honest on questions.

24 Q. What date did you take that course?

1 A. This was about four years ago. I
2 really don't recall the date.

3 Q. And what are the indicators of whether
4 or not someone is telling the truth or not as you
5 learned them?

6 A. One of the indicators was twitching of
7 the eyes, shakiness, unrestfulness while they're
8 sitting in their chair.

9 Q. Would that also indicate nervousness
10 as well?

11 A. Yes, it would.

12 Q. Is lack of specificity an indicator as
13 to whether or not someone is telling the truth or
14 not?

15 A. That could be one, yes.

16 Q. And with regard to this story about
17 you taking this class, you can give us no
18 specificity as to the date, the person that taught
19 it, the other individuals in the class, the location
20 of where that class was taught, and how you paid for
21 it, correct?

22 A. I couldn't recall that right now. It
23 was four years ago.

24 Q. You don't even know the building you

1 took it in, do you?

2 A. It was in a federal building, but I
3 don't recall exactly --

4 Q. You don't know which federal --

5 A. I don't recall the exact address.

6 Q. And you don't know who taught it?

7 A. I don't recall the name of the person.

8 Q. And you don't know -- You said you
9 paid for it with a money order?

10 A. Correct.

11 Q. And did you write it off on your
12 taxes?

13 A. No.

14 Q. Wouldn't that be work-related?

15 A. But it wasn't something that I would
16 write off on my taxes. I don't specifically write
17 off things from work on my taxes.

18 Q. Do you have a certificate of
19 completion from the class?

20 A. I believe I do have it still.

21 Q. You have that?

22 A. Yes.

23 Q. You told us at the previous hearing
24 that you no longer had that.

1 A. No. I didn't say that specifically.

2 I said I don't have it with me, on me now.

3 Q. But you do have that?

4 A. I probably do have that.

5 Q. You probably have that, okay. Do you
6 know where it is?

7 A. Probably somewhere in my house.

8 Q. Where would you keep something like
9 that?

10 A. I have many different certificates for
11 different other pieces of training I've had across
12 my years of work.

13 Q. Any other indicators as personal
14 training in truthfulness that Mr. Weber was not
15 telling the truth regarding the agreement?

16 A. Basically that's all that you can do.
17 I mean, I didn't have enough of an interview to
18 conclude anything with him.

19 Q. Would you agree with me that his story
20 matched up perfectly with the hazardous waste
21 manifest?

22 A. It matched up to, like I said, what he
23 told me, yes.

24 Q. And wasn't the agreement, as you

1 learned from these people, for E. King to store the
2 waste in roll-off containers or trucks on
3 Mr. Gonzalez's property?

4 A. Per Mr. Weber's agreement and Paschen
5 Construction, the so-called agreement, they said
6 that, yes, it was supposed to be in a roll-off box
7 on the property.

8 Q. So Paschen agreed as well that that's
9 how the material is supposed to be stored, correct?

10 A. Correct.

11 Q. And then Paschen denied that it was
12 even its material, correct?

13 A. They said that there was a probability
14 that the material didn't even derive from the CTA
15 project.

16 Q. And they would have said that because
17 they're seeking to avoid liability, correct?

18 A. It could be the case. I couldn't tell
19 you that.

20 Q. Have people ever told you something
21 false to avoid liability?

22 A. Of course.

23 Q. In the course of your investigation --
24 Let me say this. You testified previously that the

1 photographs that were in your report, Exhibit A,
2 accurately described the conditions of the field,
3 correct?

4 A. The site there, yes.

5 Q. There are no photographs of any
6 E. King trucks or individuals. Why are there no
7 photographs?

8 A. I believe when we started taking the
9 photographs, the trucks had already left, and the
10 front-end loader was already leaving too.

11 Q. While you -- Before -- When you pulled
12 up, the white pickup was not at the scene, correct?

13 A. Correct. I really don't even recall
14 if he was there or not. Like I said, my attention
15 was drawn to the dump truck and the front-end
16 loader.

17 Q. When you first saw him, he was at the
18 entrance of the property, correct?

19 A. Close to the entrance.

20 Q. And you would have seen him as you
21 pulled into the entrance had he been there, correct?

22 A. That's incorrect.

23 Q. That's incorrect?

24 A. Yeah. Actually, he was more so by the

1 pile of stone, which was --

2 Q. By the entrance, correct?

3 A. Yeah.

4 Q. When you first saw him, he was by the
5 pile of stone by the entrance, correct?

6 A. When I first saw him?

7 Q. Yes.

8 A. Yes. It was more so probably, if you
9 look down on -- if you look on the site sketch, he
10 was closer --

11 Q. Page 8?

12 A. Yes. He was closer to the CTA
13 material but further east.

14 Q. Needless to say, you didn't notice him
15 when you pulled into the entrance?

16 A. No.

17 Q. Did you notice how many buildings were
18 on the property?

19 A. I noticed that one building was on the
20 property.

21 Q. And how long were you there, sir?

22 A. I was there for approximately -- Let
23 me see. From 10:00 a.m. to 1:30.

24 Q. So you were there half a day, correct?

1 A. If you split it in half, yeah.
2 Basically we were there for some part of the
3 morning, maybe for like an hour or so, and then we
4 had to run off and go to another site.

5 Q. Sir, as a senior environmental
6 inspector, is one of your jobs noticing how many
7 buildings are on certain property?

8 A. No.

9 Q. Is it something you could miss?

10 A. Could be.

11 Q. Because buildings are small and you
12 wouldn't notice them?

13 A. Some buildings could be small. There
14 could be -- Like I said, your focus point is usually
15 on other things.

16 Q. You want to look at the site map on
17 page 8 and see how many buildings you see now?

18 A. Sure. Specifically the building
19 you're talking about on the right-hand side is on a
20 different property. It's not on the property line.

21 Q. How do you know where the property
22 line is, sir?

23 A. Because I know that building is not
24 there. That building there belongs to the other

1 property next-door to it.

2 Q. How about the railroad ties, sir? Are
3 those on the property within the property line,
4 Photograph No. 12?

5 A. Which ones are you talking about?
6 There's two piles there.

7 Q. Photograph 12.

8 A. I'm assuming that the railroad ties
9 closest to the slag material, that would be railroad
10 property. And I'm assuming that the railroad ties
11 directly underneath it would be on the property that
12 Mr. Gonzalez owns.

13 Q. You said Mr. Gonzalez owns. Why did
14 Speedy Gonzalez Landscaping get tickets in this
15 matter?

16 A. Speedy Gonzalez?

17 Q. Landscaping.

18 A. Landscaping?

19 Q. Yes.

20 MS. BURKE: Objection as to relevant.

21 MR. LEVINE: It goes to motive and
22 bias of the witness, your Honor.

23 THE HEARING OFFICER: Let's go off the
24 record.

1 (Discussion off the record.)

2 THE HEARING OFFICER: We're back on
3 the record. There was an objection out, and
4 I'm not sure what the objection was or what
5 it was to.

6 MR. LEVINE: I think I can clarify. I
7 asked why the landscaping company received
8 tickets in this case. Counsel objected.

9 I'm thinking, relevance?

10 MS. BURKE: On relevance, yes.

11 MR. LEVINE: And I responded that it
12 goes to motive and bias of the witness in
13 this case. My position is that these tickets
14 were given as a form of harassment by
15 Mr. Maciel when there was absolutely no
16 ownership interest of the landscaping
17 company.

18 THE HEARING OFFICER: Overruled. I'll
19 allow it.

20 BY MR. LEVINE:

21 Q. Why was the landscaping company
22 ticketed, sir? Were they the owners of the
23 property?

24 A. Basically you would have to ask that

1 to Mr. Stanley Kaehler and John Kryl.

2 Q. Did you tell Jose Gonzalez that you
3 were giving him tickets for his landscaping to stop
4 him from -- to preclude him from -- to preclude that
5 company from doing business with the City of
6 Chicago?

7 A. No, I did not.

8 Q. Did you have a conversation with
9 Mr. Gonzalez outside on the property?

10 A. No.

11 Q. Did you testify you spoke with him?

12 A. Did I testify that I spoke with him?

13 Q. Sure. Didn't you just testify you
14 spoke with him?

15 A. Outside of when, that day?

16 Q. On that day.

17 A. I spoke with him that day, yes.

18 Q. And you said he was on the phone when
19 you spoke to him?

20 A. He was on a phone prior to me talking
21 to him.

22 Q. He pulled up to you when he pulled in
23 the property, correct?

24 A. No. He pulled up to us -- well,

1 okay -- after we finished talking with the operator
2 and the truckdriver.

3 Q. Did he indicate to you that these
4 trucks were cleaning the site?

5 A. No.

6 Q. Did trucks continue to fill material
7 with the front-end loader while you were on the
8 site?

9 A. No. Not that I recall, no.

10 Q. Is it possible that that happened and
11 you didn't see it?

12 A. Possible.

13 Q. And, in fact, doesn't it say that in
14 your report, sir? The first paragraph, I
15 observed -- it was observed the trucks from E. King
16 Hauling were in the process of receiving loads.
17 That's the first paragraph, sir.

18 A. Proceed to investigate the smoke; and
19 upon driving up, it was observed the trucks from
20 E. King Hauling in the process of receiving loads of
21 what looked -- Yeah.

22 Q. Okay. Receiving loads means trucks
23 were loading up, correct?

24 A. I made the assumption that that's what

1 they were probably doing, was receiving loads.

2 Q. You made more than an assumption, sir.
3 You made a narrative evaluation that you signed,
4 correct?

5 A. Correct.

6 Q. Was that correct when you made the
7 narrative evaluation?

8 A. That is correct to some point. But
9 like I said --

10 Q. Would that be pertinent, sir?

11 A. It was an assumption that I made that
12 the gentleman was receiving loads, looking like they
13 were going to pull out with them.

14 Q. Did you qualify this by saying I
15 assumed that E. King Hauling was in the process of
16 receiving loads?

17 A. I did not specifically put that word
18 in there, no.

19 Q. But you wish to amend the report, the
20 evaluation, now to say you assume that's what
21 happened, correct?

22 A. No.

23 Q. And you told them not to remove the
24 material from the site until further notice?

1 A. Correct.

2 Q. What material were they told not to
3 remove from the site?

4 A. Anything from the site.

5 Q. How would they have removed material
6 from the site if not in an E. King dump truck?

7 A. They could have -- He could have
8 gotten his own vehicles and removed it. He could
9 have hired some other contractor to remove the
10 material. Like I said, we were trying to find
11 out --

12 Q. Isn't that speculation, sir?

13 A. Basically we were still in the
14 investigation as far as trying to find out what was
15 exactly going on with what little information we
16 were gathering.

17 Q. Well, you conducted -- you drafted a
18 narrative evaluation which you signed?

19 A. That's correct.

20 Q. And then that's truthful, sir?

21 A. That is truthful.

22 Q. And you left out what you thought was
23 nonpertinent, correct?

24 A. I wouldn't say that it wasn't

1 pertinent.

2 Q. Well, I'm saying you left out what you
3 thought was nonpertinent.

4 A. But I wouldn't say that it wasn't
5 pertinent.

6 Q. Elaine King, would you say that was
7 nonpertinent?

8 A. I would say it wasn't pertinent; but
9 like I said, it was noted that E. King was on the
10 property.

11 Q. But you did put in the pertinent
12 information, correct?

13 A. That is pertinent, E. King is part of
14 the narrative evaluation.

15 Q. And it was also pertinent that you
16 told them not remove material from the site,
17 correct?

18 A. I told them for the time being, not to
19 remove any of the material.

20 Q. And what happened was the employees
21 continued the loading of the trucks, correct?

22 A. It looked like they were about to
23 start loading the vehicles, yes.

24 Q. It doesn't say that, sir, does it?

1 A. Where are you looking at specifically?

2 Q. That's the last sentence in the third

3 paragraph.

4 A. Correct.

5 Q. Now, you say that he let his employees

6 continue the loading of the trucks, correct?

7 A. Correct.

8 Q. So the trucks were loading and not

9 dumping, correct?

10 A. No. At the time, it looked like they

11 were -- I mean, the case could have been that he was

12 trying to get rid of the evidence there, that could

13 be one suggestion that he was trying to do,

14 probably, on the property.

15 Q. Oh, come on. Doesn't your report say

16 he continued the loading of the trucks?

17 A. Yes.

18 Q. And are you going to stick with that,

19 or do you want to change that now?

20 A. I'm sticking with what it says there.

21 Q. And loading of the trucks indicates

22 cleaning of the property, correct?

23 A. That would not indicate it there,

24 so --

1 Q. Well, it's not dumping, is it?

2 A. Well, you need -- In order for you to
3 remove material from one site to another, you need a
4 permit from the Department of Environment. You
5 can't move one piece of material -- Once it leaves a
6 specific area or leaves a specific piece of real
7 estate, it's considered waste. It has to go to
8 either a landfill or a transfer station or some kind
9 of recycler. He didn't have any of that paperwork
10 other than what was manifested there for that
11 material there at the site.

12 MR. LEVINE: Move to strike the
13 narrative, request the Court to direct the
14 witness to answer the question put to him.

15 THE HEARING OFFICER: I'll allow the
16 narrative, but answer the question Mr. Levine
17 puts to you, please.

18 BY THE WITNESS:

19 A. Could you repeat that?

20 MR. LEVINE: Could you read it back,
21 please?

22 (Record read as requested.)

23 BY MR. LEVINE:

24 Q. If they're loading the trucks, it's

1 not dumping, correct?

2 A. If they're loading the trucks, it's
3 not dumping --

4 Q. Correct?

5 A. -- for that time being, no.

6 Q. So at that point the trucks were being
7 loaded, correct?

8 A. Correct.

9 Q. That means that waste was coming off
10 that property onto somewhere else, correct?

11 A. That means that they were about to
12 leave the site there with material.

13 Q. And you knew where the material was
14 going because you had a manifest, correct?

15 A. The material originally was supposed
16 to go to CID landfill.

17 Q. And do you know where it went?

18 A. Pardon me?

19 Q. Do you know where the material went
20 when the loaded truck left the yard?

21 A. No.

22 Q. Did you have any of your six or eight
23 employees or helpers follow any of the trucks?

24 A. That is not my job to do that.

1 Q. I'm just asking if you did it or not.

2 A. No.

3 Q. Do you have any information that --

4 You indicate here that it was his employees who

5 continued the loading of the trucks, correct?

6 A. Correct.

7 Q. But we don't know who those people

8 are, do we?

9 A. No, I don't.

10 Q. We don't have any photographs of those

11 people to identify them, correct?

12 A. I don't, no.

13 Q. How many people had cameras those

14 days -- that day?

15 A. That day, I believe myself and then

16 just another inspector.

17 Q. And any of the -- The other inspector

18 and you could have both taken pictures of the

19 individuals in the E. King trucks, correct?

20 A. I can't answer for -- For myself, I

21 could have taken a picture.

22 Q. But you didn't, and we don't know who

23 that person is today, correct?

24 A. No, I did not.

1 Q. Do you continue to maintain the trucks
2 were dumping on March 22nd?

3 A. I would assume that they were because
4 of the manifests that were given to me, that they
5 were dumping.

6 Q. What is your basis for continuing to
7 maintain that the E. King trucks were dumping on
8 March 22nd?

9 A. Because of the conversation I had with
10 the driver and the heavy equipment operator, they
11 pretty much told me that the material was -- they
12 were working for the City of Chicago and they were
13 bringing the material there.

14 Q. In fact, they were, in a sense,
15 working for the City of Chicago, for the CTA, were
16 they not?

17 A. City of Chicago and CTA are two
18 different entities.

19 Q. Well, they were confused, weren't
20 they?

21 A. They probably were.

22 Q. What does C stand for in CTA?

23 A. Chicago.

24 Q. That would provide for the

1 inconsistency, correct?

2 A. It's two different entities, though.

3 Q. But they don't know that, do they?

4 A. I would assume that they don't, but I
5 can't make that assumption for them.

6 Q. And they knew they were moving CTA
7 waste off -- E. King was moving CTA waste off
8 Mr. Gonzalez's property, taking it to a landfill,
9 correct?

10 A. They were supposed to in the long run,
11 I would assume, because of their agreement.

12 Q. And that's what you did your
13 investigation around. Your investigation was to
14 determine where the waste came from, how it happens
15 to be on the property, where it was going, and
16 whether or not a potential violator caused or
17 allowed it, correct?

18 A. Basically all of the people who were
19 on --

20 Q. Is that correct or not, sir?

21 A. Can you repeat the question?

22 MR. LEVINE: Could you read it back?

23 THE HEARING OFFICER: You can ask me
24 the next time, and I'll ask the court

1 reporter.

2 MR. LEVINE: Okay. Thank you.

3 THE HEARING OFFICER: It's a
4 formality.

5 (Record read as requested.)

6 MS. BURKE: Objection to the extent
7 that it uses the phrase caused or allowed.

8 BY THE WITNESS:

9 A. That was partial to my --

10 THE HEARING OFFICER: Sustained.

11 BY MR. LEVINE:

12 Q. What did your investigation seek to
13 determine on March 22nd, 2006?

14 A. My investigation seeked to determine
15 who was the culprit that was burning the material on
16 the property, which is how we first started off,
17 which was the open burning. And as soon as I
18 started walking --

19 Q. And who was the person burning?

20 A. We couldn't tell because the person
21 did not give me an identification. He walked away
22 from us.

23 Q. Did you take his picture?

24 A. I'm not sure if I did or not. I don't

1 think so, no.

2 Q. Did you ask Elaine King who the person
3 was?

4 A. No.

5 Q. Did you ask Mr. Gonzalez who the
6 person was?

7 A. No.

8 Q. What sort of investigation did you
9 conduct to determine who the person was who was
10 doing the burning?

11 A. It wasn't a completely thorough
12 investigation, mostly because of the fact that a lot
13 of the individuals were not willingly giving
14 information to us, nor were they showing us any
15 identification.

16 Q. So you had to just charge Mr. Gonzalez
17 with everything because you couldn't do a completely
18 thorough investigation?

19 A. That's not -- Like I said, the
20 liability as far as giving him a citation, I was
21 told specifically to give him a ticket.

22 Q. By who?

23 A. By Stanley Kaehler, John Kryl.

24 Q. And what is he charged with, sir?

1 A. I believe what the municipal codes are
2 on page ...

3 Q. 2, No. 8?

4 A. Page 4 and page 5, the list of
5 apparent state violations, and then you have the
6 municipal violations.

7 Q. Okay. On page 4, do most of them
8 start with caused or allowed?

9 A. Some of them do.

10 Q. Most of them?

11 A. Some of them.

12 Q. 9 out of 14, correct?

13 A. I believe so.

14 Q. Now, you didn't even know if
15 Mr. Gonzalez was on the property when you pulled up,
16 correct?

17 A. I didn't look in that direction.

18 Q. But you did see someone, and you said
19 he was -- I think you testified this time that he
20 was putting the fire out with a shovel --

21 A. Not Mr. --

22 Q. -- when you pulled up?

23 A. Not Mr. Gonzalez.

24 Q. The person by the fire.

1 A. Yes.

2 Q. Didn't you previously testify that he
3 was taking branches and throwing them on the fire
4 when you pulled up?

5 A. Well, when I pulled up, that's what he
6 was doing. But by the time I made my trip down to
7 the area, walking to that area, he was dying it out
8 already with a shovel.

9 Q. And you could see all the way down to
10 where the fire was when you pulled in?

11 A. Yeah, it was a pretty decent fire when
12 we were pulling in.

13 Q. How many cubic yards was the fire --
14 of material was the fire?

15 A. Close to 15.

16 Q. 15 cubic --

17 A. Maybe cubic feet, if anything, instead
18 of yards.

19 Q. That's 15 feet high?

20 A. No.

21 Q. So not cubic feet. It would be square
22 feet, correct?

23 A. Square feet.

24 Q. When you previously testified cubic,

1 did you mean square?

2 A. Maybe I might have meant square.

3 Q. When was the first time you noticed
4 waste on the property in March of 2006?

5 A. Maybe two weeks prior to, I believe.

6 Q. Did you watch the property for two
7 days before, seeing if loads would come on the
8 property?

9 A. No.

10 Q. Where were you the 21st and the 20th?

11 A. I don't recall right now.

12 Q. Were you at the site?

13 A. No.

14 Q. Would your log from work detail where
15 you were on those days?

16 A. It would show definitely where I was
17 at the time.

18 Q. Where is that log, sir?

19 A. I don't have it on me.

20 Q. Where is it?

21 A. It would be with the City of Chicago
22 Department of Environment. It should be called a
23 vehicle sheet.

24 Q. Was the vehicle sheet part of your

1 investigation that week?

2 A. It's part of -- yes, my daily process,
3 yes.

4 Q. Did you tell Mr. Gonzalez that he was
5 running a transfer site on that date?

6 A. Yes, I did.

7 Q. An illegal transfer site?

8 A. That's correct.

9 Q. Did you make any attempts to help him
10 avoid the citations?

11 A. He started stating right away, cutting
12 off my conversation, telling me he's not running an
13 illegal transfer station, not running anything
14 illegal there, and pretty much that's all he was
15 rebutting to.

16 Q. And what was his position as to --
17 What was your understanding of his position of why
18 he believed he was not doing anything illegal?

19 A. I don't know. I can't make that
20 assumption for him.

21 Q. Don't you usually try to find out
22 what's going on at a property and work it out before
23 ticketing?

24 A. Basically, if they're doing

1 something, like I said, of this magnitude of
2 material there, no.

3 Q. What if he had purchased a lot with
4 that type of material on it, would you be able to
5 work something out with him?

6 A. Probably, if he would have called us
7 in. We've had scenarios on other sites where people
8 have called us in to go inspect their site and ask
9 us what they need to do exactly to be in compliance
10 with the City of Chicago as far as environmentally.

11 Q. Wouldn't that be just inviting you to
12 come out to give them a ticket?

13 A. No, not necessarily so.

14 Q. Couldn't he proceed to clean the site
15 himself without your gracious assistance?

16 A. He didn't -- When I asked him for any
17 other paperwork, he didn't provide it at the time.
18 I took the assumption that he was just doing
19 something illegal.

20 Q. What did you base that assumption on?

21 A. Based on that he didn't provide me
22 with the information that I needed, which was load
23 tickets or any manifests. He acknowledged that the
24 manifest was not his and he doesn't know who gave me

1 those manifests, and that's when he rolled up the
2 window.

3 Q. Well, weren't there manifests from CTA
4 having E. King haul it?

5 A. E. King, yes.

6 Q. And you thought there were better
7 manifests that you should receive other than the one
8 that the driver gave you?

9 A. Well, if he was doing a cleanup, he
10 would have basically gave me, like I said, any -- he
11 would have gave me a manifest if it was going to a
12 landfill. He would have gave me --

13 Q. Didn't this manifest say it was going
14 to a landfill?

15 A. But it's coming from the CTA, not
16 coming from that site.

17 Q. And you understood there was an
18 agreement to store it in roll-offs on Mr. Gonzalez's
19 property, right?

20 A. For that specific material.

21 Q. I'm just talking about the suspect CTA
22 material. And you understand that there was a break
23 in the agreement with someone and E. King's
24 individuals dumped it on that site previously;

1 didn't you learn that?

2 A. Per their conversation, yes.

3 Q. So you did learn that, and you
4 discounted that, correct? You didn't believe that?

5 A. I couldn't say that I discounted it,
6 no.

7 Q. Well, if that were the case, wouldn't
8 E. King be responsible and not Mr. Gonzalez?

9 A. I would say that CTA, Paschen,
10 E. King, Mr. Gonzalez were all responsible.

11 Q. If Mr. Gonzalez knew about it,
12 correct?

13 A. No. Even so, if the City of Chicago
14 ordinance states that you're technically responsible
15 for that lot, that lotted area, you're supposed to
16 secure it, supposed to have a fence around. If
17 someone comes and fly-dumps on there, you are held
18 responsible for the cleanup.

19 Q. Which ordinance, and what does it
20 specifically state?

21 A. I believe it would be dumping on real
22 estate, would be one part to it.

23 Q. Look on page 5 at the top, dumping on
24 real estate without a permit.

1 A. Dumping on real estate without a
2 permit.

3 Q. Does that state caused and allowed the
4 open dumping?

5 A. Caused and allowed the open dumping.

6 Q. So wouldn't a violator have to cause
7 or allow the open dumping in order to be held
8 responsible for that violation?

9 MS. BURKE: Objection, calls for a
10 legal conclusion.

11 THE HEARING OFFICER: Overruled. I
12 agree. He can answer it.

13 BY THE WITNESS:

14 A. Basically you're causing and allowing
15 if you're not securing the area.

16 BY MR. LEVINE:

17 Q. So it's your position -- Haven't you
18 previously testified that this lot was secured?

19 A. It was secured usually all the time,
20 yes, by lock and a chain, chain-link fence and a
21 chain around the fence.

22 Q. So if someone violates an agreement
23 and dumps without being allowed to on Mr. Gonzalez's
24 property, is he held responsible for allowing the

1 open dumping of debris?

2 A. If he's there and he's allowing it
3 willingly, I would assume so. They pointed out that
4 he was the boss, he was the supervisor.

5 Q. I'm saying if they went outside the
6 agreement and he didn't allow it, is he responsible
7 for allowing open dumping?

8 A. Partially, yes.

9 Q. How?

10 A. It says owner responsible for removal,
11 7-28-450.

12 Q. Owner is responsible for removal of
13 debris?

14 A. 11-4-1500, treatment and disposal of
15 solid waste.

16 Q. Well, wait. Let's go there. Weren't
17 there trucks picking up material with a loader and
18 dumping them in dump trucks, and they were removing
19 it from the property? Isn't that what the owner was
20 there -- Isn't that what was happening on this
21 property, they were removing it on the 22nd?

22 A. Like I said, I can't assume that.
23 There was nothing to conclude to that, that that's
24 exactly what he was doing, other than what Mr. --

1 what you're telling me now, that Mr. Speedy Gonzalez
2 was there for.

3 Q. And yet you can't assume that he was
4 in violation of these acts, correct?

5 A. It was his property.

6 Q. Did you testify they were bringing
7 material onto the site -- I'm sorry. Let me
8 withdraw that.

9 When you say the fire -- You
10 testified the fire was 5 feet across, correct?

11 A. 5 feet? The fire was not 5 feet
12 across.

13 Q. I'm sorry. 12 to 15 feet across?

14 A. The fire itself was probably 3 to 4
15 feet, but the material that it was burning or the
16 material that was to be burned was about 15 feet
17 across, probably, about.

18 Q. Did you see Mr. Gonzalez there when
19 the individual who you saw in front of the fire --

20 A. No, I didn't witness him at the time.

21 Q. You saw Mr. Gonzalez later, correct?

22 A. After the interview with the front-end
23 loader operator and the truckdriver.

24 Q. You testified there was gravel at the

1 entrance?

2 A. Correct.

3 Q. Was gravel -- Was there clean gravel
4 on the site?

5 A. Was there clean gravel on the site?
6 Yes, Photo No. 7 would indicate that.

7 Q. And you testified there was gravel at
8 the entrance, correct?

9 A. Right at the entrance, yes.

10 Q. I'm directing your attention to
11 Photograph 11. There's gravel in front of those
12 ties, correct?

13 A. On the ground?

14 Q. Yes.

15 A. Yes.

16 Q. And on Photograph 5, there's a picture
17 of the guy burning -- or by the burning, correct?

18 A. By the burning, no.

19 Q. There's a picture of a guy, correct?

20 A. Correct.

21 Q. Did you take that photograph?

22 A. No, I did not.

23 Q. There's gravel to the left of where
24 the individual is standing, correct?

1 A. Correct.

2 Q. And could you tell the gravel was
3 being spread on the property, clean gravel?

4 A. I can't determine that right now with
5 that photo. But during that day, I mean, it looked
6 like it was already worn down, so ...

7 Q. Were there treads going up to the
8 piles of gravel on No. 7, and were there depressions
9 in the piles?

10 A. There was depressions all over the
11 property.

12 Q. I'm talking about Photograph 7,
13 depressions in the piles of clean gravel.

14 A. There is indicating in the photo
15 there.

16 Q. And that would indicate to you that
17 gravel is being spread at the site, correct?

18 A. That would indicate that gravel was
19 dumped on the site, yes.

20 Q. Photograph 7 shows piles of gravel
21 dumped at the site, correct?

22 A. Correct.

23 Q. There are tracks coming up to the
24 gravel in the photograph, correct?

1 A. Correct.

2 Q. In the middle of the pile of gravel,
3 there's a depression where there was a previous hump
4 of gravel, correct?

5 A. I can't determine that from this
6 photo.

7 Q. Did you see it when you were there?

8 A. I don't recall that.

9 Q. Do you know whether or not the gravel
10 depicted in Photograph 11 and 5 was being spread to
11 clean the site?

12 A. I would assume that it wasn't, only
13 because of the wood debris that you see commingled
14 with the gravel on the ground there. This is a
15 dirtier gravel on the ground with the wood debris.

16 Q. Is it the same color as the gravel in
17 Photograph 11 -- or Photograph 7?

18 A. I would say it's closely similar but
19 not exactly the same.

20 Q. And you can tell?

21 A. You can tell that the gravel on Photo
22 No. 7 is a finer material, smaller material, and you
23 can tell in Photo 11 that the gravel on the ground
24 there is a bigger and coarser material.

1 Q. What was this property prior to the
2 purchase?

3 A. I have no idea.

4 Q. Do you know whether it was wetlands?

5 A. I have no idea.

6 Q. Do you know where the material from
7 the berm came from?

8 A. I have no idea.

9 Q. Do you know whether or not the
10 previous owner of the property scraped the top of
11 the property and used that material to make the
12 berms?

13 A. I have no idea.

14 Q. If he had done that, would the berms
15 be considered waste?

16 A. Depending on what type of material he
17 was scraping off the ground, depending on what type
18 of property that was on there.

19 Q. Well, the property was obviously
20 something before it was an empty lot, correct?

21 A. Quite possibly.

22 Q. In fact, much of Chicago was something
23 else before what it is now, correct?

24 A. Quite possibly.

1 Q. And commingled in the dirt as a result
2 of the fire and previous construction, there's other
3 material in the dirt, correct?

4 A. There probably is, yes.

5 Q. And that includes rocks, cement,
6 correct?

7 A. You're talking about, what, 60 years
8 ago?

9 Q. Could be a hundred.

10 A. The Chicago fire?

11 Q. It could be a hundred years, right?

12 A. Could be.

13 Q. And could you describe that material
14 as C&D?

15 A. Actually, no.

16 Q. What's the difference if broken pieces
17 of concrete and asphalt are in the soil as opposed
18 to whether or not -- from previous buildings from
19 100 years ago as opposed to --

20 A. Actually, a lot of the product from
21 back then has carcinogens in it, so it would be
22 considered hazardous waste material. Like most of
23 the material that was from the Chicago fire was
24 considered -- well, by today's standards, would be

1 considered hazardous materials.

2 Q. How about concrete? Would that be
3 considered hazardous waste?

4 A. If it's commingled with the other
5 material, yes, it is.

6 Q. And is an owner responsible for
7 lifting up 4 feet of his soil on property and
8 sifting it to get out the concrete, asphalt, and
9 other construction and demolition material in the
10 property?

11 A. Well, he would have to have an
12 analysis report first as far as what kind of
13 contamination he has on his property.

14 Q. You're assuming there's contamination,
15 correct?

16 A. No, I'm not assuming. We're going
17 for -- We're speculating, I guess, right? Is that
18 what we're doing here?

19 Q. Well, my question is whether or not
20 soil in Chicago has what you describe as C&D
21 material in it.

22 A. Could be.

23 Q. So when the berm was built, if it was
24 built from soil in the area, that soil would contain

1 what you call C&D material, correct?

2 A. Could you repeat that?

3 Q. If the soil was pushed up to make the
4 berm around the property, that would include in that
5 soil what you conclude to be C&D material, correct?

6 A. Depending, but you did have some big
7 bulky pieces of concrete in there, in the berms.
8 You're talking 6 to 12 inches of concrete.

9 Q. And that could have been from
10 buildings from 100 years ago, for all you know,
11 correct?

12 A. I couldn't tell you that.

13 Q. Now, you talk about discoloration of
14 soil?

15 A. Correct.

16 Q. Does that automatically mean that it's
17 contamination, or could it mean that it's wet?

18 A. No, it could be that there is some
19 contamination to it. That's a flag indicator for
20 us.

21 Q. Could it also mean that it's just
22 damp?

23 A. Dampness does change some color to it,
24 but you can tell specifically in Photos No. 9 and 10

1 that there is some type of contamination in there.

2 Q. How can you tell?

3 A. You have three different shades of
4 material there.

5 Q. How do you know it's not just
6 different topsoils as opposed to clay?

7 A. Well, there is different topsoils in
8 there, of course.

9 Q. How could you tell from the photograph
10 that that's topsoil -- that that's not topsoil
11 instead of clay?

12 A. How can I tell?

13 Q. Yeah.

14 A. You can't tell from the photograph,
15 but you can tell when you were right next to it.

16 Q. And you could tell that was
17 contaminated material?

18 A. Yes.

19 Q. Didn't you indicate possible
20 contaminated material?

21 A. Possibly contaminated, but you can't
22 ultimately determine that until you get an analysis
23 report. To get a better picture, a closeup view of
24 the picture, look at Photo 22. That would give you

1 pretty much an indicator as far as what type of
2 material was in that CTA waste -- suspected CTA
3 waste.

4 Q. As you sit here today, do you think
5 that waste was CTA waste?

6 A. It's still in question for me, not
7 with all the remaining factors.

8 Q. Now, you've mentioned there's some C&D
9 debris throughout the site, correct?

10 A. Right.

11 Q. Do you know who put that material on
12 the site?

13 A. No, I do not.

14 Q. Do you know whether the site was
15 purchased with fly-dumped material?

16 A. No, I do not.

17 Q. Do you know whether there were
18 previous instances of fly-dumping on the property?

19 A. No, I do not.

20 Q. Do the piles, the small piles, appear
21 to be fly-dumped, for instance, 3, 4, 5, and 6?

22 A. It could be a possibility, but it
23 looks more like a landscape waste material.

24 Q. What if it was landscape waste

1 material fly-dumped?

2 A. Could be.

3 Q. You don't know how that material got
4 on that property?

5 A. No, I do not.

6 Q. You don't know whether or not
7 Mr. Gonzalez put that waste on that property,
8 correct?

9 A. No, I do not.

10 Q. And you don't know whether
11 Mr. Gonzalez allowed that waste to be put on the
12 property, correct?

13 A. No, I do not.

14 Q. You don't know whether he caused that
15 waste to be put on the property?

16 A. No, I do not.

17 Q. With regard to the temperature that
18 day, how cold was it, if you remember?

19 A. About 35 degrees, around there.

20 Q. And that's listed in one of the
21 reports, correct?

22 A. Correct.

23 Q. Do you know whether or not the
24 individual -- that the water occurred from snow

1 melting in the last day or so?

2 A. It could have been a possibility.

3 Q. Do you know whether or not that was a
4 low area, previously a wetland, in Photograph 18 or
5 19?

6 A. No, I do not know if it was a wetland.

7 Q. What would indicate that that area was
8 wetland?

9 A. Vegetation growth.

10 Q. Like pussy willows?

11 A. Commonly, right in the area here, you
12 would notice it.

13 Q. In Photograph 18, right in the center
14 between all the arrows, do you see pussy willows
15 growing?

16 A. Near the railroad tracks, yes.

17 THE HEARING OFFICER: Excuse me. Are
18 those cattails?

19 MR. LEVINE: I'm sorry. We call
20 them -- Cattails, thank you.

21 BY MR. LEVINE:

22 Q. The scrap metal, do you know whether
23 Mr. Gonzalez caused the scrap metal to be placed on
24 the property?

1 A. No, I do not.

2 Q. Do you know whether Mr. Gonzalez
3 allowed the scrap metal to be placed on the
4 property, specifically in Photographs 1, 6, 8, and
5 14?

6 A. I'm assuming that since it was his
7 property, that he would have knowledge. Since it
8 was his property, he would know exactly what's on
9 his property.

10 Q. Unless someone fly-dumped it, right?

11 A. If they had the key to get inside,
12 yes.

13 Q. Or if they cut the lock or knocked
14 down the fence?

15 A. Correct. But he didn't produce a
16 police report to me to suggest otherwise.

17 Q. Would that prove that someone
18 fly-dumped, a police report?

19 A. If someone goes on the property, I
20 would assume that he would have written out a police
21 report which then would have pretty much took the
22 investigation into another direction. Then it would
23 have been just a general fly-dump. He still would
24 have been responsible for the cleanup.

1 Q. Did you ask him for a police report?

2 A. He didn't give me a chance to.

3 Q. Did you go to the police and pull all
4 the police reports on the property?

5 A. No.

6 Q. What would be the point of filing a
7 police report if you didn't write it off your
8 insurance?

9 A. What would be the point?

10 Q. Yeah. Why would someone do a --
11 conduct a police report for throwing garbage on
12 their property?

13 MS. BURKE: Objection, speculation.

14 THE HEARING OFFICER: Could you read
15 the question back, please?

16 MR. LEVINE: I'm just saying why would
17 someone fill out a police report if someone
18 were to throw garbage on the property.

19 THE HEARING OFFICER: Objection
20 sustained.

21 BY MR. LEVINE:

22 Q. Now, the waste is not actually in the
23 standing water. The standing water is between the
24 waste, correct? Photograph 19 -- Photograph 18.

1 A. Right about -- right around the other
2 side of that photo --

3 Q. Which photo are we talking about?

4 A. Photograph 18.

5 Q. Okay.

6 A. Around the other side, there was --

7 Q. The part that doesn't appear in the
8 photograph?

9 A. Correct. There was some water there.
10 And if you look there, directly in front of the
11 photo there, it's all damp.

12 Q. I see that. You can see the bottom,
13 correct?

14 A. Correct.

15 Q. About half an inch of water, quarter
16 inch?

17 A. Probably about half an inch.

18 Q. How deep was the water?

19 A. In some spots it was standing, like,
20 2 to 3 inches.

21 Q. How do you know? Did you walk in it?

22 A. No. We stuck a stick in the water.

23 Q. Who stuck a stick in the water?

24 A. I did.

1 Q. Really?

2 MR. LEVINE: If I could have a moment?

3 MS. BURKE: Can we go off the record
4 for a moment?

5 THE HEARING OFFICER: Yes.

6 (Discussion off the record.)

7 THE HEARING OFFICER: Back on the
8 record.

9 BY MR. LEVINE:

10 Q. One way to stop standing water on
11 property is to put clean stone down, correct?

12 A. I wouldn't say it would stop it.

13 Q. Well, would that fill in the low areas
14 where the water was collecting?

15 A. It can, but it's still going to
16 overlap. I mean, water still tends to find its way
17 through areas that are not specifically solid.

18 Q. The City objects to water standing by
19 itself, correct?

20 A. Yes, it does.

21 Q. So if clean stone were filled in the
22 low areas, that would stop the water from standing
23 by itself and we'd just have wet clean stone,
24 correct?

1 A. Correct.

2 Q. You took the time to stick a stick in
3 the water, right?

4 A. I was just walking through there, just
5 checking to see if there was any sheen in the water
6 that would indicate some type of fuel product on top
7 of there.

8 Q. Did you see any sheen on the water?

9 A. I did not see any sheen on the water.

10 Q. You said another dump truck arrived
11 while you were there, correct?

12 A. Correct.

13 Q. And you did not look in the truck?

14 A. No.

15 Q. Can you tell by looking at a truck as
16 an experienced investigator whether the truck is
17 full or empty by looking at the load on its tires?

18 A. No.

19 Q. You can't tell?

20 A. I don't make a determination like
21 that. I usually look in the bed of the truck.

22 Q. I'm asking can you tell by looking and
23 seeing whether the tires are down, see how low the
24 thing is riding, whether there's material in the

1 truck.

2 A. No. That's an overweight. If you get
3 an overweight vehicle, yeah, you can determine that.

4 Q. Did you have an opportunity to look in
5 the back of the truck that arrived?

6 A. No, I did not.

7 Q. Would that have indicated whether the
8 truck was dumping or cleaning the property?

9 A. As far as what, me looking inside of
10 it?

11 Q. Yeah, whether the truck was empty or
12 full.

13 A. It could have if he had just arrived,
14 yes.

15 Q. Why didn't you do that?

16 A. I was busy with the investigation
17 still.

18 Q. And one of the things you were busy
19 with was with sticking a stick in the water,
20 correct?

21 A. One of the things among others, yes.

22 Q. Okay. And the second dump truck was
23 filled before leaving, correct?

24 A. I wouldn't say that it was filled.

1 Q. Didn't you testify the second dump
2 truck was filled before leaving?

3 A. I wouldn't say it was filled. I would
4 say that it was probably being loaded.

5 Q. And after it was loaded, it left,
6 correct?

7 A. It left after the fact that I told
8 them that they needed to stay pending our
9 investigation, and the driver decided not to stay
10 around.

11 Q. And we don't know what the license
12 plate number of that truck is?

13 A. I don't have that information with me.

14 Q. But someone from the City did take
15 that information down, correct?

16 A. I would assume yes, they did.

17 Q. Now, the vegetation you talked about
18 along the berm along 130th Street, that vegetation
19 was vegetation that grows there, correct?

20 A. Yes.

21 Q. So no one caused to put it there,
22 correct?

23 A. Along the berm?

24 Q. Yeah.

1 A. No, I can't make that assumption.

2 Q. Well, if vegetation grows, does
3 someone allow it to grow?

4 A. It's just part of human nature, I
5 would believe, isn't it?

6 Q. Well, it's really part of nature.

7 A. Nature itself, yes.

8 Q. So you're not contending that the
9 vegetation growing on the berm was waste, are you?

10 A. No, but there is a clause in there
11 that says that it's supposed to be at a certain
12 height if they're going to have vegetation on the
13 property.

14 Q. How long have you been looking at this
15 property? Didn't you work at CID previous to this?

16 A. Yes, I have.

17 Q. CID is the big hill in the back of
18 Picture No. 21?

19 A. Mm-hmm.

20 Q. Is that a yes?

21 A. That's correct. That's CID landfill.

22 Q. And your job at CID for six years in a
23 row would be to get on top of those landfills and
24 check the methane levels, correct?

1 A. Methane level, yes.

2 Q. So you could look down on this site
3 when you were up there, correct?

4 A. You can.

5 Q. You could look all around the
6 surrounding area, correct?

7 A. You can.

8 Q. And there's really nothing up on that
9 berm, is there -- on top of the landfill, except for
10 some explosive gas, right?

11 A. Explosive gas and leaching wells.

12 Q. Do you know whether or not the CID
13 landfill was leaching out to the property that
14 Mr. Gonzalez purchased?

15 A. No, I do not.

16 Q. Could you see from on top of the
17 landfill, when you worked at CID, the property that
18 Mr. Gonzalez purchased?

19 A. Can you see it?

20 Q. Yeah.

21 A. If you're on the north -- I believe
22 the northwest corner of the landfill, you probably
23 can.

24 Q. Weren't you up there about six days

1 prior to March 22nd, 2006?

2 A. I can't recall exactly what date it
3 was.

4 Q. About a week before?

5 A. I can't recall if it was a week or so.

6 Q. Was it a week, a month, a couple
7 weeks?

8 A. I don't recall. I do a monthly
9 inspection at the site.

10 Q. So you're there every month?

11 A. Yeah.

12 Q. And every month you're there, you
13 could see the property, correct?

14 A. Not all the time. Like I said, it
15 depends on that specific area you're talking about
16 where you can see the property. If you look at it
17 closely, they were doing work on the right-hand side
18 there, which is the area you could only come in
19 through. You can't come in through the left side;
20 you would have to come in through the right side
21 only.

22 Q. What picture are you talking about?

23 A. 21. This would be what they call a
24 lift on the landfill.

1 Q. That's a road going up?

2 A. That's a road -- No. A lift is what
3 they call -- It's kind of, like, what they make on
4 the landfill. They make, like, certain steps on the
5 landfill in order to prevent erosion from coming
6 down.

7 Q. You could see down to the property the
8 month before when you were there, correct?

9 A. I don't recall if I did or not.

10 Q. Did you see a truck down there?

11 A. I don't recall if I did or not.

12 Q. Did you see a truck that said
13 Mr. Gonzalez's name on the property?

14 A. I don't recall if I did or not during
15 that time frame.

16 Q. You don't remember seeing a truck?

17 A. I could have possibly have seen it,
18 but I don't recall if I did or not.

19 Q. Because you testified that you didn't
20 know that the site was Mr. Gonzalez's prior to
21 pulling on the property, correct?

22 A. Correct.

23 Q. When you pulled on the property and
24 you saw the Gonzalez name on the truck, did you have

1 an indication at that point?

2 A. It was an assumption that it could
3 have been, that he could have maybe been storing or
4 leasing something on the property.

5 Q. What is your -- What evidence did you
6 see of standing water violations at the site?

7 A. Evidence would be Photograph No. 19,
8 Photograph No. 18.

9 Q. How about a barrel? Did you see a
10 barrel?

11 A. Did I see a barrel?

12 Q. A drum or a container. I'm going to
13 give you a hint. It's not in the photographs.

14 A. I don't see it.

15 Q. Do you remember flowing water at the
16 site?

17 A. I don't recall seeing any flowing
18 water.

19 Q. Do you remember flowing water
20 December 6 of '06?

21 A. I don't recall if I did or not.

22 Q. Is there something that would have
23 caused you to forget flowing water from December to
24 this date?

1 A. I -- Like I said, I don't recall
2 seeing any flowing water on the property itself.

3 Q. Well, you testified you saw flowing
4 water that came from a container. Do you remember
5 that?

6 A. No, I don't remember that.

7 Q. Was that false?

8 A. I wouldn't say it was false if it was
9 a statement that I made.

10 Q. Was it your contention that --

11 THE HEARING OFFICER: Could you read
12 the question and the answer to the dep?

13 MR. LEVINE: I'm sorry. Do you want
14 me to repeat it?

15 THE HEARING OFFICER: Yes.

16 MR. LEVINE: Could you read it back?

17 THE HEARING OFFICER: Were you going
18 to impeach the witness?

19 MR. LEVINE: No, I wasn't.

20 THE HEARING OFFICER: Disregard. You
21 may continue.

22 BY MR. LEVINE:

23 Q. Were there any violations coming from
24 the Porta-Potties on the site?

1 A. No.

2 Q. Did you believe -- Did you previously
3 state in testimony that water came from the
4 Porta-Potties?

5 A. There looked to be some water. There
6 was some dampness around there.

7 Q. But as you sit here today, you don't
8 believe any of the water came from the
9 Porta-Potties, correct?

10 A. Not to my knowledge, no.

11 Q. The decision to cite the defendant
12 with not having special weight stickers on the
13 trucks, whose decision was that?

14 A. That was based on Stanley Kaehler and
15 John Kryl's decision.

16 Q. Would that have been Mr. Gonzalez's
17 violation?

18 A. If he owned the vehicles, yes.

19 Q. Did he own the vehicles that said
20 E. King on them?

21 A. No, I believe not.

22 Q. Did you ever check that?

23 A. Did I ever check that? No.

24 Q. Did anyone ever check that?

1 A. I can't answer. To the best of my
2 knowledge, no.

3 Q. In the six years you worked at CID,
4 you never saw debris on this property?

5 A. I never paid attention to the property
6 in the six years that I worked there.

7 Q. You never saw the condition it was in
8 prior to March 22nd, 2006?

9 A. Possibly maybe I have as an inspector.

10 Q. Well, when?

11 A. I can't recall right now.

12 Q. My question is: You only became
13 interested in the property after Jose Gonzalez
14 acquired the property, correct?

15 A. I had no idea that he had owned the
16 property or he owns the property or even leased it
17 or what have you other than from that day that I
18 seen him. He stated himself that it was his
19 property and that we were on there illegally.

20 Q. And you never saw his truck with his
21 name on it when you were on top of the CID landfill,
22 correct?

23 A. Probably I might have seen it, if
24 anything maybe once, but it was more so -- I don't

1 even recall if I did see it or not. It might have
2 been -- If I did see it, it might have said Speedy
3 or something on there.

4 Q. So you might have seen where it says
5 Speedy and then just happened to be driving down
6 with a couple City of Chicago lawyers in the car,
7 correct, on March 22nd?

8 A. We were going to 136th and Hoxie.

9 Q. You just happened to drive by there
10 with ten minutes to spare, correct?

11 A. That's the only area that's -- That's
12 the only way to get to that area.

13 Q. Okay. Did you see evidence of
14 scrapping at this site?

15 A. Other than Photograph No. 8, No. 14,
16 No. 16, that's the only scrapping that I saw.

17 Q. Did you see any burn marks on any of
18 the wires?

19 A. In photograph No. 8, there was some
20 burn mark, actually, right above -- right in between
21 where that white part is on Photograph 8 and the
22 ending colors, where you see the red and the yellow
23 on there.

24 Q. How many acres is this site?

1 A. I don't recall.

2 Q. Is it more than one acre?

3 A. I don't recall.

4 Q. Is it more than one block?

5 A. I think it is probably close to a

6 block, if anything.

7 Q. You walked the whole site?

8 A. I didn't get to walk the entire site,

9 no.

10 Q. Is that the only evidence you saw of

11 scrapping, is Photograph 8?

12 A. That's the only evidence that I saw.

13 There were other issues that I was more involved

14 with than that.

15 Q. Any other evidence of scavenging?

16 A. Not that I saw.

17 Q. Do you remember previously testifying

18 that you didn't see any burn marks on the wire

19 itself?

20 A. I don't recall if I did or not.

21 Q. Did you see any other evidence of

22 scrapping?

23 A. Other than what I just said, no.

24 Q. Were there residential homes next to

1 the property?

2 A. I didn't see any residential homes
3 other than the Altgeld Gardens, which is across
4 130th Street there.

5 Q. Was there grease and oil being
6 released in the sewers?

7 A. I didn't notice there was that either.

8 Q. How about salt or asbestos?

9 A. I did not observe that.

10 Q. Do you believe that violations --
11 there's significant evidence to charge violations of
12 salt or asbestos on the site?

13 MS. BURKE: Objection to the extent
14 that question calls for a legal conclusion.

15 THE HEARING OFFICER: I'll allow it.

16 BY MR. LEVINE:

17 Q. Did you see any evidence of salt or
18 asbestos on the site?

19 A. I'm not an asbestos expert; but I did
20 not see it, no.

21 Q. How about salt?

22 A. Salt, I didn't observe any salt.

23 Q. How about grease and oil into the
24 sewers?

1 A. I didn't observe that myself during my
2 inspection.

3 Q. And yet there's -- CID landfill,
4 you're familiar with them?

5 A. Yes, I am.

6 Q. Is it possible for them to reject a
7 load if there's copper in the waste?

8 A. They would reject it outright.

9 Q. The entire load?

10 A. The entire load.

11 Q. So if someone was taking a load to CID
12 landfill and there was copper, if the copper wasn't
13 taken out, the whole load would be rejected,
14 correct?

15 A. Correct.

16 Q. How about PVC tubing? Is the same
17 true with PVC tubing?

18 A. They would reject the load.

19 Q. An entire load of waste would be
20 rejected if PVC tubing was in it, correct?

21 A. It would be rejected if there's
22 anything other than what's described in the
23 analytical result and the description of the waste
24 material.

1 Q. Okay. Railroad ties, does CID
2 landfill require separation of railroad ties?

3 A. Railroad ties are not allowed in the
4 CID landfill.

5 Q. So you couldn't bring a load in with
6 railroad ties, correct?

7 A. No.

8 Q. Do you have any evidence that --

9 THE HEARING OFFICER: Let's go off the
10 record for a minute.

11 (Discussion off the record.)

12 BY MR. LEVINE:

13 Q. Mr. Maciel?

14 A. Yes.

15 Q. I asked you numerous questions in this
16 deposition with regard to Jose R. Gonzalez, correct?

17 A. Correct.

18 Q. Would your answers be the same to all
19 those questions if I asked those with regard to
20 1601-1759 East 130th Street, LLC?

21 MS. BURKE: I'm going to object to
22 that question. It's too broad and vague. I
23 object.

24 THE HEARING OFFICER: Objection

1 sustained.

2 BY MR. LEVINE:

3 Q. Okay. Let me ask you this: Did you
4 later learn that the 1601-1759 East 130th Street,
5 LLC, was the company that Mr. Gonzalez owned the
6 property under?

7 A. No. I didn't do the title search.

8 Q. Is that in your violation report in
9 Exhibit A?

10 A. Where exactly?

11 Q. Look at page 33. Did anyone at the
12 Department of Environment ever learn that the title
13 of the property was held in 1601-1759 East 130th
14 Street, LLC?

15 A. I couldn't answer that. Like I said,
16 I didn't draw this information.

17 Q. Okay. Did the property commit any
18 acts on its own?

19 A. Did the property itself commit any
20 acts? Could you be more specific?

21 Q. I don't think I could. The property
22 is inert, correct? It just sits there?

23 A. Correct.

24 Q. So it really couldn't commit any acts,

1 correct?

2 A. No.

3 Q. Would you agree that the reason the
4 LLC is charged with violations in this case is
5 because the property was owned by the LLC on the
6 date in question?

7 A. I would believe that being one of the
8 owners of the property is LLC, yes.

9 Q. Okay. That's good. Now, do you know
10 whether or not Mr. Gonzalez caused or allowed open
11 burning on his property?

12 MS. BURKE: Objection to the phrase
13 cause or allow. It calls for a legal
14 conclusion.

15 THE HEARING OFFICER: Sustained.

16 BY MR. LEVINE:

17 Q. Could you previously answer that
18 question, sir?

19 MS. BURKE: Same objection.

20 BY MR. LEVINE:

21 Q. On December 6th, 2006, did I ask you
22 the following questions and did you give the
23 following answers --

24 MS. BURKE: I'm going to object if

1 he's going to read deposition testimony of
2 something that we've just excluded.

3 THE HEARING OFFICER: Mr. Levine?

4 MR. LEVINE: Well, he answered it
5 previously, and he answered it at the prior
6 hearing. I asked him whether he knew of
7 whether or not Mr. Gonzalez caused or allowed
8 the burning and I went through all these
9 different acts, and he responded. And as my
10 offer of proof, he responded no to all of
11 them. And as I did in the previous hearing,
12 subsequent to closing the hearing, I asked
13 the chief -- the senior environmental
14 inspector whether he had information that the
15 particular individual or entity caused or
16 allowed the act. This was not objected to in
17 the deposition. It was not objected to at
18 the prior hearing. It is not a legal
19 determination; it is a factual determination
20 based on his investigation and what he knows.

21 MS. BURKE: May I respond?

22 THE HEARING OFFICER: Oh, yes.

23 MS. BURKE: The standard at the
24 deposition is different from the standard

1 here today in terms of what is admissible
2 evidence. And what happened at the prior
3 hearing is similarly irrelevant.

4 MR. LEVINE: I would agree. But as
5 the investigator -- If I could respond?

6 As the senior environmental
7 inspector, he can testify whether or not he
8 has information that he viewed particular
9 actions and whether these particular actions
10 were caused or allowed -- if he has
11 information or evidence whether these matters
12 were caused or allowed by Mr. Gonzalez.

13 THE HEARING OFFICER: Well, I'm kind
14 of in a quandary based on my prior rulings.
15 I'm looking at Section 101.626: The hearing
16 officer may admit evidence that is material,
17 relevant, and would be relied upon by prudent
18 persons in the conduct of serious affairs.
19 Mr. --

20 I'm sorry. Maciel?

21 THE WITNESS: Maciel.

22 THE HEARING OFFICER: (Continuing) --
23 is a senior environmental investigator, and I
24 think he's been around the block. So I am

1 going to allow him to answer, and I overrule
2 the City's objection.

3

4 BY MR. LEVINE:

5 Q. Sir, with regard to the open burning,
6 do you have any information that Jose Gonzalez
7 caused or allowed the open burning?

8 A. Other than he's the property owner,
9 no.

10 Q. Now, you qualified that he was the
11 property owner. How would being the property owner
12 indicate whether he caused or allowed it?

13 A. He was there. It's a secured site.
14 The chain on the fence and the lock itself didn't
15 show that there was any breakage or anything on it.
16 It just looked like it was unlocked. As a matter of
17 fact, when we were leaving the property, everybody
18 was leaving the property, they did lock the gate
19 back up.

20 Q. Sir, on December 6th were you asked
21 the following questions and did you give the
22 following responses?

23 QUESTION: Do you know whether
24 he was aware that there was open

1 burning?

2 ANSWER: No.

3 QUESTION: Okay. Do you know
4 whether he caused it?

5 ANSWER: No.

6 QUESTION: Do you know whether he
7 allowed it?

8 ANSWER: No.

9 Were you asked those questions,
10 and did you give those answers?

11 A. If it says that in the deposition, I
12 did.

13 Q. And was that truthful when you gave
14 it?

15 A. On the deposition, yes.

16 Q. And, sir, do you have any information
17 that Mr. Gonzalez allowed L. King [sic] not to keep
18 the suspect CTA material in roll-off boxes and dump
19 it on the site?

20 A. No, I don't have any information on
21 that.

22 Q. Sir, do you have information that Jose
23 Gonzalez caused or allowed open dumping in his yard?

24 A. In his yard? What yard are you

1 speaking of?

2 Q. The property located at 1601 East
3 130th Street.

4 A. No, I don't have information on that.

5 Q. Do you know whether or not
6 Mr. Gonzalez caused or allowed the material to be
7 dumped there on his lot?

8 A. No, I don't.

9 Q. Sir, do you have any information that
10 Jose Gonzalez caused or allowed the railroad ties to
11 be on the property at 130th Street?

12 A. No. Other than him being the owner of
13 the property, no.

14 THE HEARING OFFICER: Can you speak
15 up, please? I'm 51 years old.

16 THE WITNESS: I said, no, other than
17 him being the owner of the property, that's
18 all.

19 MR. LEVINE: He's been old for
20 20 years.

21 BY MR. LEVINE:

22 Q. Do you have any information, sir, that
23 Jose Gonzalez caused or allowed the fly-dumping of
24 the small piles on the property?

1 A. No, I do not have any information.

2 Q. Do you have any information that
3 Mr. Gonzalez caused or allowed any of the illegal
4 dumping to take place on his property?

5 A. Other than him being the owner of the
6 property, no.

7 Q. How about the 50 waste tires? Do you
8 have any information that Mr. Gonzalez caused or
9 allowed the material to be placed in the yard?

10 A. I have no idea, no.

11 Q. With regard to the timber with
12 creosol, do you have any information that
13 Mr. Gonzalez caused or allowed the material to be
14 placed in his property?

15 A. Not that I know of, no.

16 Q. Do you have any information, sir, that
17 Jose Gonzalez caused or allowed concrete blocks to
18 be placed on his property?

19 A. No.

20 Q. And do you have any information that
21 Mr. Gonzalez caused or allowed Porta-Johns to be
22 cleaned out on his property?

23 A. No.

24 Q. And finally, sir, do you have any

1 information that the LLC, 1601-1759 East 130th
2 Street, LLC, caused or allowed any of those matters
3 to be placed on that property? What I'm asking you,
4 sir, is the same questions to all those I just asked
5 you; but instead of Jose R. Gonzalez, I'm asking
6 with regard to the LLC, 1601-1759 East 130th Street,
7 LLC.

8 A. No.

9 MR. LEVINE: Now, I have no further
10 questions with regard to this witness, but I
11 just want to make clear on the record that to
12 allow Mr. Maciel's testimony to be used in
13 the LLC action, does not include the action
14 titled AC 07-25. I have nothing further for
15 this witness.

16 THE HEARING OFFICER: Okay. I'm
17 sorry. Mr. Levine, you move that
18 Mr. Maciel's testimony today in 6-40, you're
19 moving for it to be transplanted, if you
20 will, into 6-41, the other case?

21 MR. LEVINE: AC 06-41, yes, your
22 Honor, that is my motion, so we can preclude
23 Mr. Maciel from testifying again with regard
24 to the same.

1 THE HEARING OFFICER: Ms. Burke, you
2 can either state your position now or if you
3 want to wait.

4 MS. BURKE: I'd like to redirect.

5 THE HEARING OFFICER: Okay.

6 REDIRECT EXAMINATION

7 BY MS. BURKE:

8 Q. When you first arrived at the site,
9 how long were you there before you needed to leave
10 for your next meeting?

11 A. Actually, we got there at -- We were
12 supposed to be there at 10:00 o'clock, at the other
13 property, but it was maybe about -- I'm sorry. I
14 think we were supposed to be there at 11:00 o'clock.
15 Let me double-check.

16 I think we were there maybe
17 half-hour, 20, 30 minutes or so, before we left to
18 go to the other property.

19 Q. And then when you returned after your
20 other meeting, how long were you at the site on
21 130th Street?

22 A. We were there for a few hours.

23 Q. And the exhibit -- the document that
24 Mr. Levine marked as Respondent's Exhibit A, on this

1 document, is Jose Gonzalez's name on this document?

2 A. No, it's not.

3 Q. Is the address 1601 or 1759 East 130th
4 Street on this document?

5 A. No, it is not.

6 MS. BURKE: No further questions.

7 THE HEARING OFFICER: Thank you.

8 Mr. Levine, any recross?

9 MR. LEVINE: I don't know if it's
10 proper if I have to call him as a witness to
11 put the document into evidence, but I would
12 suggest I can do that now. We could open up
13 my case to put that in, or we could call
14 Mr. Maciel back and I could call him as a
15 witness and seek to admit the Respondent's
16 Exhibit A as a work record.

17 THE HEARING OFFICER: Unless Ms. Burke
18 has an objection on the timing of you
19 offering it into evidence, I'm fine with
20 that.

21 MS. BURKE: I don't have an issue as
22 to the timing, but I do have a substantive
23 objection.

24 MR. LEVINE: Let's hear it.

1 THE HEARING OFFICER: You want to
2 address that now?

3 MS. BURKE: I'm happy to deal with
4 that now. I object on two grounds. One is
5 on the grounds of relevance. It does not go
6 to Jose Gonzalez or 1601 East 130th Street,
7 LLC, the charges that have been brought
8 against those two entities in these two
9 cases. And then my second objection would be
10 that it's hearsay.

11 THE HEARING OFFICER: Mr. Levine, any
12 response?

13 MR. LEVINE: Yes. It's relevant as
14 indicated by Mr. Maciel's testimony in that
15 it goes to them -- it goes to -- first, it is
16 part of the investigation process, number
17 one, and Ms. Burke testified that the
18 complete report -- she sought to offer the
19 complete report, Exhibit A. I would say,
20 one, this document is part of the complete
21 report; two, it compliments -- There was a
22 question of whether or not Mr. Maciel
23 accepted the veracity of Mr. Weber and the
24 agreement of the matters as to the storage of

1 the waste in question. It's my contention
2 that this document does support Mr. Weber's
3 story and it is contrary to Mr. Maciel's
4 testimony that Mr. Weber was not forthright
5 or truthful in his testimony, that the record
6 was kept in the ordinary course of business
7 by the City of Chicago Department of
8 Environment in its investigation and relates
9 to who was responsible for the waste being at
10 the property on the date in question, as it
11 indicated it was owned by the CTA and
12 transported by E. King, whose trucks
13 Mr. Maciel testified were on the scene
14 loading material.

15 So it is both relevant and
16 nonhearsay as a business record.

17 THE HEARING OFFICER: Any follow-up,
18 Ms. Burke?

19 MS. BURKE: On the hearsay point, it
20 does not meet the requirements for a business
21 record. It's a document that's generated by
22 another entity, and we do not have that
23 entity here to testify.

24 MR. LEVINE: Similar to the --

1 THE HEARING OFFICER: If I may address
2 Ms. Burke's objection, Section 101.626 -- we
3 all know the administrative rules are a
4 little more lax -- all other circumstances of
5 the making of the writing or record,
6 including lack of personal knowledge by the
7 entrant or maker, may be admitted to affect
8 the weight of the evidence, but will not
9 affect admissibility.

10 I will allow it in. Respondent's
11 Exhibit A is admitted over objection.

12 MR. LEVINE: Can we make a copy here
13 before we leave?

14 THE HEARING OFFICER: Yes. Let's make
15 a copy here.

16 Off the record.

17 (Discussion off the record.)

18 THE HEARING OFFICER: Back on the
19 record.

20 We're not finished with AC6-40.
21 We're going to continue it, hopefully, on the
22 record until May 17th. It is definitely
23 May 17th unless I hear otherwise.

24 MR. LEVINE: At what time, Judge

1 Halloran? We could do 9:00.

2 THE HEARING OFFICER: 9:00 a.m.

3 MR. LEVINE: That's beautiful.

4 THE HEARING OFFICER: On May 17th.

5 Also, I am going to note that
6 Ms. Burke from the City is going to -- we
7 only have one exhibit, A, and I've already
8 admitted it in AC6-39 and 6-40. She's going
9 to bring some copies on May 17th.

10 With that said, anything else we
11 need to discuss?

12 MR. LEVINE: Nothing from the
13 Respondents.

14 MS. BURKE: No.

15 THE HEARING OFFICER: Thank you.
16 Thank you for your professionalism and
17 civility. I'll see you in a couple of weeks.

18 (Which were all the proceedings
19 had in the above-entitled cause.)

20

21

22

23

24

1 (WHEREUPON, the following testimony was
2 taken on May 17, 2007, at 9:00 a.m., by
3 Margaret Beddard, CSR, and the witness
4 was duly sworn.)

5 CHRIS ANTONOPOULOS,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. McCAHAN:

10 Q. Could you please state your name for the
11 record.

12 A. Chris Antonopoulos.

13 Q. And what position do you have at the City
14 of Chicago?

15 A. I'm an environmental investigator.

16 Q. And when did you start working for the City
17 of Chicago?

18 A. November '05.

19 Q. And what department are you in?

20 A. Department of Environment.

21 Q. What work experience did you have prior to
22 joining the Department of Environment?

23 A. I worked for an environmental company
24 called Heritage Environmental for seven years during

1 which time I -- some of my duties were I was a field
2 chemist, along with a lab chemist. And I also
3 received a certificate of achievement for record
4 training, and also I was put through a training
5 course for HAZWAP and OSHA.

6 Q. And have you received any other training or
7 certifications since that time while you've been
8 employed for the City?

9 A. Yes. With the City I went through a
10 training class also, a state certification class.
11 The terminology I think on the certificate is solid
12 waste inspector. And I achieved that in August of
13 '06. I also, again, went through a refresher course
14 for HAZWAP awareness and OSHA awareness. Also, I'm
15 certified in smoke training -- smoke school training,
16 opacity reads.

17 Q. And what's your educational background?

18 A. I have a bachelors in biology.

19 Q. And where is that from?

20 A. The University of Wyoming.

21 Q. What are your duties at the Department of
22 Environment?

23 A. I respond to complaints. I also do
24 investigations for permitted facilities, recyclers,

1 junkyards, things of that nature.

2 Q. On March 22, 2006, did you visit the site
3 at 1601 East 130th Street in connection with your
4 duties as an inspector?

5 A. Yes, I did.

6 Q. Why did you visit 1601 East 130th Street on
7 March 22, 2006?

8 A. I was instructed to do so by my supervisor.

9 Q. And who was the supervisor?

10 A. My supervisor was Stan Kaehler.

11 Q. And about what time of day was that when
12 you were instructed to go to the site?

13 A. I would say late morning.

14 Q. And did you go to the site with anyone
15 else?

16 A. Yes, I did. I went with John Kryl, our
17 director of inspectors.

18 Q. What did you do when you arrived at
19 1601 East 130th Street?

20 A. We -- Well, John and I went inside the
21 property and started documenting all of the waste
22 piles that we saw on site.

23 Q. And just to step back a second, do you know
24 why Stan Kaehler requested that you go out to the

1 site that day?

2 A. He said Raphael was needing assistance out
3 there at the site, so he asked me to go and also John
4 Kryl.

5 Q. And when you got to the site, how did you
6 get on the site on March 22, 2006?

7 A. We had to walk around the gate over a berm.

8 Q. Okay. And how else -- Did you see any
9 other way to get on the property if you were in a
10 motor vehicle that day?

11 A. Not at that time. There was a gate.
12 However, it was closed at the time.

13 Q. And was the gate locked?

14 A. I believe it was locked, yes.

15 Q. Was there anybody else on the site when you
16 got there on March 22?

17 A. It was just John and I at that time.

18 Q. What did you do once you gained access to
19 the site?

20 A. We started off just going up and down
21 taking pictures and documenting the different waste
22 piles that we saw. And then a little later I did a
23 site sketch of everything that was there.

24 Q. I'm going to direct your attention to what

1 has been admitted as Exhibit A.

2 MR. LEVINE: I don't think it's been admitted in
3 this case. I may be wrong.

4 MS. BURKE: I think it was.

5 HEARING OFFICER HALLORAN: Yes, it was.

6 MR. LEVINE: Okay.

7 HEARING OFFICER HALLORAN: Over objections.

8 MR. LEVINE: Okay.

9 BY MR. McCAHAN:

10 Q. If I could direct your attention to the
11 site sketch that you just referenced.

12 MR. LEVINE: What page is that?

13 MR. McCAHAN: On page 8.

14 BY MR. McCAHAN:

15 Q. Is that site sketch a true and accurate
16 depiction of what you observed at 1601 East
17 130th Street on March 22, 2006?

18 A. Yes, it is.

19 Q. And if I could direct your attention to the
20 photos on pages 9 through 22. If you can take a
21 moment to look at those.

22 A. Okay.

23 Q. Are those photos true and accurate
24 depictions of what you observed at 1601 East

1 130th Street on March 22, 2006?

2 A. Yes, they are.

3 Q. Once you got on the site, please describe
4 what you and Mr. Kryl did.

5 A. Well, we decided to document all the waste
6 piles. Like I said, there was multiple waste piles.
7 Exactly how many piles there were I'm not exactly
8 sure. Some of the piles contained construction and
9 demolition debris, like wood and stone and bricks.
10 There was also scrap metal commingled with some of
11 the piles, PVC piping. Used tires were also observed
12 out there. I don't know if I said big chunks of
13 concrete, but those were out there also. Some street
14 signs were out there also. That's about it.

15 Q. And so you -- You drew the site sketch and
16 then you documented -- you took photos?

17 A. Yes. I took photos of all the piles and
18 did --

19 MR. LEVINE: Objection. Asked and answered.
20 Objection. Narrative. It's not really a question.

21 HEARING OFFICER HALLORAN: Do you want to
22 rephrase, please?

23 MR. McCAHAN: Sure.

24 BY MR. McCAHAN:

1 Q. What did you do after taking the pictures?

2 A. I did a site sketch of the site itself and
3 describing where the piles were in relation to the
4 lot.

5 Q. And did you do anything else on the site
6 that day?

7 A. That was it. That was my main objective --
8 or my main focus out there was to go down there and
9 take pictures and perform a site sketch. And then
10 later I also did some of the narrative.

11 Q. And which portions of the narrative did you
12 write? And this is in Exhibit A.

13 HEARING OFFICER HALLORAN: This is Complainant's
14 Exhibit A, for the record.

15 THE WITNESS: "After gathering all information
16 and meeting," et cetera -- These last two paragraphs.

17 BY MR. McCAHAN:

18 Q. Thank you.

19 And were there any other things on the site
20 that you observed that day that you thought might be
21 a violation?

22 A. The berm itself that surrounded the
23 property I thought could have been a violation. The
24 berm was -- consisted of waste. There was also

1 evidence of scavenging that I saw. There was some
2 remnants of what appeared to be open burning. There
3 was some ashes.

4 Q. And when you say there's evidence of
5 scavenging, what do you mean?

6 A. It looked like there was wire -- insulation
7 wire trying to be stripped off to get access to the
8 copper wiring underneath.

9 Q. On March 24, 2006, two days later, did you
10 perform a follow-up visit to 1601 East 130th Street
11 in connection with your duties as an inspector?

12 A. Yes, I did.

13 Q. Why did you visit 1601 East 130th Street on
14 March 24, 2006?

15 A. Again, my supervisor Stan Kaehler was
16 driving by. He saw some activity inside the lot. He
17 thought maybe there was some more dumping going on
18 inside the --

19 MR. LEVINE: Objection to "more dumping."
20 There's never been any testimony of prior dumping.

21 HEARING OFFICER HALLORAN: Overruled.

22 You may answer.

23 THE WITNESS: So he asked myself, along with Ed
24 Collins, to go down back to the site and investigate

1 further.

2 BY MR. McCAHAN:

3 Q. I have here what has been marked as
4 Complainant's Exhibit C for identification purposes.

5 Can you take a look at the pages contained
6 after this C tab and tell me what this is.

7 A. We're looking at another site sketch of the
8 site at 1601 East 130th Street, and then we have some
9 pictures here. Some of the areas have been cleaned
10 of the waste from the prior inspection. I don't know
11 if they were moved somewhere else or if they were
12 loaded and taken off site.

13 Q. Let me interrupt you for one second.

14 A. Sure.

15 Q. Generally, how would you describe the
16 totality of the documents contained in Exhibit C?
17 What is this?

18 A. This is a report. This is the Department
19 of Environment official report that we do for each
20 inspection.

21 Q. I'll just have you leaf through that.

22 A. Okay.

23 Q. And did you prepare this report that has
24 been marked as Complainant's Exhibit C as part of

1 your job duties as an inspector for the Department of
2 Environment?

3 A. Yes, I did.

4 Q. Did you prepare this report at or about the
5 time of the inspection?

6 A. Yes, I did.

7 Q. As part of its regular course of business,
8 does DOE require its inspectors to prepare such
9 inspection reports after a site inspection?

10 A. Yes.

11 Q. Is this a true and accurate copy of the
12 inspection report that you prepared for your
13 March 24, 2006, inspection of 1601 East 130th Street?

14 A. Yes, it is.

15 Q. Did you draw the sketch on page 63 of
16 Complainant's Exhibit C?

17 A. Yes, I did.

18 Q. Is this a true and accurate sketch of what
19 you saw on March 24, 2006?

20 A. Yes, it is.

21 Q. Did you take the photos on pages 64 through
22 70 of Exhibit C during your site visit at 1601 East
23 130th Street on March 24, 2006?

24 A. Yes, I did.

1 Q. Are these true and accurate representations
2 of what you saw on March 24, 2006?

3 A. Yes, they are.

4 MR. McCAHAN: I'd like to admit Exhibit C into
5 evidence.

6 MR. LEVINE: I have to state objections toward
7 the ordinary course of business. That's my
8 objection.

9 BY MR. McCAHAN:

10 Q. Is it -- Are these documents that are part
11 of Exhibit C stored -- kept and stored at DOE as part
12 of the regular course of business?

13 A. Yes, they are.

14 MR. McCAHAN: Like to admit Exhibit C into
15 evidence.

16 MR. LEVINE: My only objection would be as to
17 completeness, that the field notes that we've heard
18 about are not included. These are just portions of
19 the investigation record.

20 HEARING OFFICER HALLORAN: We're going to go off
21 the record for a minute.

22 (WHEREUPON, discussion was had
23 off the record.)

24 HEARING OFFICER HALLORAN: Okay. The

1 Complainant's have moved for admission of
2 Complainant's Exhibit No. C.

3 Mr. Levine, your objection was again?

4 MR. LEVINE: It was to completeness. There were
5 no field notes included. And I'm not sure these are
6 the complete records of the investigation.

7 HEARING OFFICER HALLORAN: Okay. I'm willing to
8 allow Exhibit C into admission -- to be admitted into
9 evidence over Mr. Levine's objection, and the Board
10 can weigh it accordingly. Exhibit C is admitted.

11 (WHEREUPON, Complainant's Exhibit
12 No. C was offered and received in
13 evidence.)

14 HEARING OFFICER HALLORAN: Also, for the record,
15 we are skipping over Exhibit B, which there is
16 nonexistent at this time. So this is Exhibit C we're
17 talking about from pages 62 to 70.

18 You may proceed, Mr. McCahan.

19 BY MR. McCAHAN:

20 Q. When you arrived at 1601 East 130th Street
21 on March 24, 2006, what did you do?

22 A. We -- Ed and I first gained access to the
23 site, again, by going around the berm -- going over
24 the berm. We attempted to talk to some of the

1 workers that were there on site. I think there was
2 about six of them at the time. We were trying to get
3 some more information to exactly where the material
4 came from, where the intentions were to send it, if
5 they were intending to do so. We also took pictures
6 of new material that appeared from the last
7 inspection. We also did another site sketch.

8 Q. When you say you went over the berm, did
9 you -- how did you get over the berm?

10 A. We had to walk, traverse, over the berm.

11 Q. And why is that?

12 A. The gate was locked again.

13 Q. And how was it locked?

14 A. With a padlock or a combination lock.

15 Q. And there was no other way you could drive
16 on to the site?

17 A. That's correct.

18 Q. When you say -- You said you observed new
19 material on the site. What do you mean by that?

20 A. There appeared to be new material next to
21 the suspect's CTA material. If I could refer to this
22 site sketch right here, I'm referring to this area
23 right over here. I'm saying it looked new because it
24 was dryer. It had a different color to it. And that

1 material was not there from the inspection on the
2 22nd.

3 Q. And on your site sketch what number is --
4 are you referring to?

5 A. Number 13 and number 14.

6 Q. And is that depicted in the photos numbered
7 as such?

8 A. Yes, sir, it is.

9 Q. On the photos on 13 and 14, what appears to
10 be new material in those photos?

11 A. This appears to be waste material
12 consisting of concrete and -- chunks of concrete,
13 asphalt, bricks, dirt, and wood. Also, there was
14 some piping in there. Again, like I said, this
15 material was not here from the previous inspection on
16 March 22.

17 Q. What were the people doing on the site?

18 A. They were operating machinery -- heavy
19 machinery, moving piles around. Some laborers were
20 manually sifting and sorting through some of the
21 piles. It looked like they were segregating some of
22 the material out. Later in this investigation Ed and
23 I witnessed --

24 MR. LEVINE: Objection to the narrative as to,

1 "Later in the investigation."

2 HEARING OFFICER HALLORAN: Mr. McCahan.

3 BY MR. McCAHAN:

4 Q. What did you -- After you took the photos,
5 what did you do next?

6 A. After we took the photos, we did the site
7 sketch. We tried to, like I said, make contact --
8 tried to talk with the people on the site. And then
9 we pretty much left after that. We drove down the
10 road a little bit and staked out the facility for
11 about 15 to 20 minutes. The goal of that was to see
12 if anybody was going to leave the site or perhaps
13 maybe try to enter the site.

14 Q. And what did you observe at that time?

15 A. 15 minutes later we observed an E. King
16 dump truck drive up to the gate. Then we observed a
17 representative from E. King that was on the site
18 drive in his truck up to the gate, open the gate,
19 unlock the gate, and let the truck in.

20 Q. And what -- Did you observe what the dump
21 truck did once it was on the site?

22 A. Yes. The dump truck pulled into the back
23 of the facility and then was loaded up with
24 construction -- demolition debris and waste. Exactly

1 what piles were being loaded up I couldn't say.

2 Q. And how do you know that the person who
3 unlocked the gate was from E. King? Why do you say
4 that?

5 A. There was a white truck, and there was red
6 lettering on the side that "E. King" on it.

7 MR. McCAHAN: Thank you.

8 Nothing further.

9 HEARING OFFICER HALLORAN: Mr. Levine?

10 MR. LEVINE: Thank you.

11 CROSS-EXAMINATION

12 BY MR. LEVINE:

13 Q. Chris, do you remember me?

14 A. Yes, sir, I do.

15 Q. How are you today?

16 A. Good. How are you doing?

17 Q. Good to see you.

18 A. Good to see you.

19 Q. Chris, you know I represent Jose Gonzalez,
20 correct?

21 A. Correct.

22 Q. And your job is to determine where the
23 waste came from, correct, as an investigator?

24 A. Yes.

1 Q. Okay. And why were you called to the site?

2 Do you know?

3 A. Why was I called to the site? I was
4 instructed to show up on the site from my supervisor
5 Stan Kaehler.

6 Q. Well, wasn't Raphael there?

7 A. He was also there, yes.

8 Q. Why did he need help from you?

9 A. I don't know.

10 Q. Okay. Who was running the investigation on
11 that day -- the first initial day you got there?

12 A. Raphael.

13 Q. Was Mr. Kaehler or Mr. Kryl directing the
14 investigation?

15 A. No.

16 Q. Do you know why Raphael was taken off the
17 investigation the next day?

18 A. I don't know.

19 Q. Do you have any idea why?

20 A. No.

21 Q. Do you think he did a competent job of the
22 investigation?

23 A. Yes.

24 Q. Did you do a competent job of the

1 investigation?

2 A. Yes.

3 Q. Was any effort made to contact E. King
4 after the initial day on the site?

5 A. Not by me.

6 Q. Was it made by anyone from the Department
7 of Environment?

8 A. Not that I know of.

9 Q. And why was that, sir?

10 A. I just don't know. Maybe there was.

11 Q. Okay. Well, was there any that you were
12 aware of, sir?

13 A. No.

14 Q. Okay. Was there any effort to contact
15 anyone at Paschen after the first day on the site?

16 A. Not by me.

17 Q. Was there any effort made by anyone that
18 you're aware of?

19 A. Not that I'm aware of.

20 Q. And do you think, as we sit here today,
21 that a more thorough investigation should have been
22 done?

23 A. I don't know.

24 Q. Well, sir, do you remember when I asked you

1 that question on -- when did I ask you that
2 question -- February 15, 2007, at your deposition?

3 A. That was over a month ago. I really don't
4 know exactly.

5 Q. Well, did you tell the truth at your
6 deposition?

7 A. Yes, I did.

8 Q. Okay. Were you asked the following
9 question, and did you give the following answer on
10 page 51:

11 "Question: What would your opinion be of the
12 investigator who performed the lead
13 investigation job being aware that CTA
14 material was required to be stored in boxes
15 from the CTA brought here by E. King under
16 Paschen's general contracting work and
17 was not" --

18 HEARING OFFICER HALLORAN: Mr. Levine, could you
19 slow down.

20 MR. LEVINE: I'm sorry.

21 BY MR. LEVINE:

22 Q. -- "stored in boxes from the CTA, brought
23 here by E. King under Paschen's general
24 contracting work, and was not done?"

1 "Answer: It would. My opinion would be that I
2 don't think that's how, you know -- I think
3 maybe a more thorough investigation should
4 be done. I think more questions should have
5 been answered. I'm not saying this hasn't
6 happened. Maybe it has. But my knowledge
7 personally I don't know that."

8 Were you asked that question and gave that
9 answer, sir?

10 A. Yes, sir.

11 Q. Okay. So you believe that a more thorough
12 investigation should have been done?

13 A. Correct.

14 Q. Why?

15 A. Well, we just didn't have all the facts at
16 the time.

17 Q. What facts, sir?

18 A. Well, what the case was about. We didn't
19 know where the material came from, where it was
20 going. We just needed to get some more
21 information -- gather as much information as
22 possible.

23 Q. Do you feel comfortable charging
24 individuals and entities with violations when an

1 adequate investigation in your opinion has not been
2 performed?

3 A. No.

4 Q. Okay. If you were to do this type of
5 investigation, is it your opinion that you'd be
6 remiss in your duties?

7 A. Yes.

8 Q. Now, I think we also talked about you had
9 previously spoken -- or at some point spoken with
10 Raphael regarding Mr. Gonzalez, correct?

11 A. Correct.

12 Q. And did Mr. -- Did Raphael have -- When I
13 say Raphael, I'm talking about Raphael Maciel,
14 correct?

15 A. Correct.

16 Q. And did Raphael -- Did you later learn that
17 Raphael Maciel had prior dealings with Mr. Gonzalez?

18 A. Yes.

19 Q. And did he talk about his opinion of
20 Mr. Gonzalez to you?

21 A. Yes.

22 Q. And what was his opinion of Mr. Gonzalez?

23 A. He said that he didn't think Mr. Gonzalez
24 operated his business in a professional manner or a

1 professional way.

2 Q. And did he also believe that Mr. Gonzalez
3 could not be trusted?

4 A. That's correct.

5 Q. Now, do you think that Mr. Maciel's
6 preconceived notions about Mr. Gonzalez had any
7 effect on the amount of the investigation performed?

8 A. I don't think so, no.

9 Q. If you were aware that Mr. Maciel -- Let me
10 ask you this.

11 If you were aware that an investigator had
12 previously walked up to people and offered to work
13 things out, what would that mean to you in your
14 business?

15 A. What do you mean by "work things out"?

16 Q. If he said to someone who he was
17 investigating, "Maybe we can talk and work this out,"
18 what does that mean to you as an investigator when
19 you hear words like that?

20 A. Working things out means you're trying to
21 work with an individual, giving him the benefit of
22 the doubt perhaps.

23 Q. Okay. Does it also indicate a request for
24 a bribe?

1 A. No.

2 Q. Have you ever come across in your entire
3 history as an investigator investigators who sought
4 money from people they were investigating?

5 A. No.

6 Q. Have you ever heard about it?

7 A. No.

8 Q. Is it your opinion that this property was
9 secured or not secured?

10 A. It was secured in my opinion.

11 Q. I'm sorry?

12 A. It was secured in my opinion.

13 Q. Okay. And would the berms stop a truck
14 from rolling into the property and dumping?

15 A. Yes.

16 Q. Okay. Now, I'm sure you looked at
17 Exhibit A, photographs 1 to 4. I'm directing your
18 attention --

19 A. What were the photos again, Jeff?

20 Q. Try page 9 and 10. Photos 1 to 4.

21 Would you agree that these photos look like
22 they're fly dumped?

23 A. They were definitely dumped. I can't say
24 if they were fly dumped or not.

1 Q. Sir, when you looked at the piles on the
2 property initially, did they look like they were
3 organized piles, or, in your experience, they looked
4 like they were fly dumped?

5 A. The piles were not organized.

6 Q. Did they look like they were fly dumped?

7 A. They looked like they were dumped. I
8 wouldn't particularly say fly dumped.

9 Q. Would you have said that on February 15,
10 2007, in your deposition?

11 A. If I did say that, I'm sorry. I misspoke.
12 They were dumped.

13 MR. LEVINE: Page 37, line 16, Counsel.

14 BY MR. LEVINE:

15 Q. Did you -- Were you asked the following
16 question, and did you give the following answer:

17 "Question: The types of piles on the
18 property, were they organized piles, or, in
19 your experience, it would look like these
20 piles had been fly dumped?

21 "Answer: Yes. They looked like piles that were
22 fly dumped."

23 Were you asked that question, and did you
24 give that answer, sir?

1 A. Yes, I did.

2 Q. Was that true then?

3 A. Yes.

4 Q. You don't know how those piles got there,
5 do you, sir?

6 A. No, I don't.

7 Q. In fact, don't photographs 1 through 4 look
8 like classic fly dumping?

9 A. Yes, they do look like classic fly dumping.

10 Q. Now, you testified absolutely. Do you have
11 any question in your mind that these piles look like
12 classic fly dumping?

13 A. Yes, they do. They look like classic fly
14 dumping.

15 Q. Okay. Now, would you agree with me, if
16 someone had made it on to the property and fly dumped
17 on that property, then the owner of the property
18 would not have caused or allowed that to have
19 occurred, correct?

20 A. Correct.

21 Q. And I'm going to skip around here.

22 You saw some port-a-potties on the
23 property?

24 A. Yes, I did.

1 Q. And you saw no evidence of cleaning?

2 A. Yes, sir, that's correct.

3 Q. And you saw no evidence of waste from the

4 port-a-potties?

5 A. That's correct.

6 Q. And in your investigation -- Now, you -- If

7 I can, again, skip around. I apologize.

8 Now, you had just started the job, correct?

9 A. Correct.

10 Q. And you were in training --

11 A. Correct.

12 Q. -- at the time?

13 A. Yes.

14 Q. Okay. So this was new to you?

15 A. Correct.

16 Q. And you were being told what to do?

17 A. Correct.

18 Q. By Raphael Maciel?

19 A. No.

20 Q. By John Kryl?

21 A. Yes.

22 Q. And by Stan Kaehler?

23 A. Yes.

24 Q. Okay. Since that time you have more

1 experience, correct?

2 A. Correct.

3 Q. Okay. Did you learn that the suspect CTA
4 waste was to be stored in roll-off boxes on the site?

5 A. Correct.

6 Q. And that was the agreement between who,
7 based on your investigation?

8 A. Between Speedy Gonzalez, Paschen
9 Construction, E. King, and Chuck Webber, who's one of
10 the representatives for CTA.

11 Q. Okay. Do you know what the circumstances
12 were that required the CTA waste material to be
13 stored in roll-off boxes?

14 A. I believe the agreement was it was supposed
15 to be stored in the boxes until the CID landfill
16 opened up the next day.

17 Q. Where was the CID landfill compared to the
18 site you were at?

19 A. It was pretty close.

20 Q. Like right next door?

21 A. Like right next door.

22 Q. Okay. I'm sorry. Go ahead.

23 A. That was it.

24 Q. Okay. And where did you learn about this

1 agreement from?

2 A. We had a meeting on site, and that's when I
3 found out about it.

4 Q. Were you at the meeting?

5 A. Yes, I was.

6 Q. Did you have a camera?

7 A. Yes, I did. I took all the pictures.

8 Q. Did you take any pictures of the E. King
9 trucks at the site?

10 A. No, I didn't.

11 Q. Did you take any pictures of any of the
12 representatives from E. King?

13 A. No, I did not.

14 Q. Did you meet Elaine King who was at the
15 site that day?

16 A. No, I did not.

17 Q. Okay. Was someone from Paschen at the
18 site?

19 A. Yes, there was.

20 Q. Okay. Was there someone from CTA at the
21 site?

22 A. Yes.

23 Q. Who was that?

24 A. That was Chuck Webber.

1 Q. Who was the individual from Paschen?

2 A. I don't remember his name.

3 Q. As an investigator, would you have -- would
4 his name have been important?

5 A. Yes.

6 Q. Okay. And why would that have been
7 important to you?

8 A. Well, if we needed to get in contact with
9 him.

10 Q. Did you feel -- Do you feel now as an
11 experienced investigator that E. King would have
12 liability in this matter?

13 A. Perhaps.

14 Q. And what would be the basis of that
15 liability?

16 A. There was an agreement, and the agreement
17 wasn't followed.

18 Q. By who?

19 A. By the parties involved.

20 Q. Do you know who specifically dumped --
21 didn't follow the agreement and dumped the waste?

22 A. I don't know specifically.

23 Q. Would an investigation have revealed that?

24 A. Sure. Yes.

1 Q. And would that have been the person who
2 would have caused or allowed the waste on the
3 property in that specific instance?

4 A. Caused.

5 Q. Caused or allowed?

6 A. Just caused.

7 Q. Okay. How about the person from Paschen?
8 Do you know who that person was?

9 A. No, I don't.

10 Q. Okay. As the general contractor, would
11 they have some liability -- or possible liability
12 with regard to the suspect CTA waste on the property?

13 A. Possibly.

14 Q. And what would that liability be?

15 A. Again, they didn't follow the agreement.

16 Q. And if they had followed the agreement,
17 wouldn't -- the waste would have been stored in a
18 roll-off --

19 What's a roll-off box?

20 A. It's a dumpster.

21 Q. It's the kind that fits on the back of a
22 dump truck?

23 A. Yeah. You can take it off of a dump truck.
24 It's, like, a 30 yard, 40 yard dumpster.

1 Q. Okay. A construction dumpster we see
2 outside buildings, correct?

3 A. Yeah. Correct.

4 Q. And these are pulled back on trucks?

5 A. Yes.

6 Q. Okay. And did you take -- Did you
7 investigate who the individual was from Paschen?

8 A. No, I did not.

9 Q. Okay. Did you take photographs of these
10 individuals from Paschen or E. King?

11 A. No, I did not.

12 Q. Were you instructed to do so by either
13 Raphael Maciel, John Kryl, or Stan Kaehler?

14 A. I was not.

15 Q. Okay. Would that have been an
16 investigative tool you would have used -- you would
17 use now to learn the identities of individuals?

18 A. I wouldn't say taking pictures of them.
19 But for sure, you know, getting names and phone
20 numbers, points of contact, yes.

21 Q. How about the people on the site --
22 initially on the site? Would you take photographs of
23 people initially on the site when you arrive if they
24 don't want to give you their names?

1 A. Typically I don't.

2 Q. Okay. Now, photograph 4, if I could direct
3 your attention.

4 Would you agree with me that that is not
5 landscaping waste? That's construction waste?

6 A. In my opinion, that could be classified as
7 landscaping waste in photo number 4.

8 Q. Well, they're broken pieces of -- I'm
9 sorry -- broken pieces of bricks you would use to
10 build a wall, correct?

11 A. Correct.

12 Q. And if you were constructing landscaping,
13 wouldn't you use nice bricks to fix up a berm?

14 A. They were pretty nice bricks actually.
15 They had a nice finish on the front of them.

16 Q. Aren't these bricks in photograph 4 --
17 Aren't landscaping bricks typically solid and angled
18 on the sides as opposed to the bricks in photograph 4
19 which have holes to allow the concrete to be poured
20 through them to ascend on a wall?

21 A. Yes.

22 Q. Okay. And these have holes in them, do
23 they not?

24 A. Yes, they do.

1 Q. And these are contrary to the kind of
2 bricks used for landscaping, correct?

3 A. Yes, they are.

4 Q. And I think we see those also in photo 6,
5 do we not?

6 A. Yes, we do.

7 Q. Those are construction bricks, correct?

8 A. I don't know for sure.

9 Q. Okay. Well, what's your opinion? What's
10 your best guess?

11 A. I think they would have multiple uses.

12 Q. Okay. These are used bricks, are they not?

13 A. I couldn't tell.

14 Q. Well, do you see where the bricks are
15 mortared together in places in the photograph?

16 A. No, I don't.

17 Q. Okay. Did you see it on the day?

18 A. No, I did not.

19 Q. Okay. You don't know what those bricks
20 were used for before they were placed on the
21 property, correct?

22 A. Correct.

23 Q. In photograph 7, you'd agree with me that
24 those are clean stones placed on the property,

1 correct?

2 A. Yes, I do agree with you.

3 Q. And the difference of those and the
4 photographs in 1 through 4 is this is consistent
5 material dumped in the same location load after load,
6 correct, as opposed to an individual load scattered?

7 A. I would say it's consistent. Meaning, it
8 was consistently -- The substance was consistent. It
9 wasn't mixed with any other type of material.

10 Q. Okay. This looks more like the delivery
11 dumping than fly dumping, correct?

12 A. Yes.

13 Q. And would a user -- Would an owner of
14 property use gravel to get rid of water on land?

15 A. Yes.

16 Q. Okay. And this is the type of stone he
17 would use, the stone depicted in photograph 7?

18 A. Yes.

19 Q. Okay. Photograph 12, if we can move ahead
20 there.

21 Those are railroad ties, correct?

22 A. Correct.

23 Q. And I think you testified to this.

24 This is by the railroad property, correct?

1 A. Correct.

2 Q. Now, the ties towards the railroad tracks,
3 I believe you testified that that was not the
4 defendant's property? Do you remember?

5 A. I think I said that I wasn't sure if it was
6 the defendant's property. But it is pretty close to
7 the railroad.

8 Q. Okay. Does that look like the way the
9 railroad would store materials?

10 A. I couldn't tell you that. I don't know for
11 sure.

12 Q. Have you ever seen railroad ties next to
13 railroad tracks?

14 A. No.

15 Q. You've never seen railroad ties next to
16 railroad tracks?

17 A. I've seen railroad ties on the tracks --
18 part of the track itself, but not like this.

19 Q. Okay. Not like photograph 12?

20 A. Unless they were doing some type of
21 maintenance work.

22 Q. Now, if they were doing maintenance work,
23 they would be taking the old ties out and putting the
24 new ties in?

1 A. Correct.

2 Q. And the way to get the new ties there would
3 be to bring them to the site, correct?

4 A. Right.

5 Q. So you don't know if that's the
6 Respondent's property in photograph 12; is that
7 correct?

8 A. That's right.

9 Q. Okay. Now, if an owner such as the
10 respondent Jose Gonzalez had material fly dumped on
11 his property, he would have been given time to clean
12 the fly-dump material off the property? If there was
13 water on his property, he would have time to put
14 gravel down to soak up the water, correct?

15 A. It all depends on the --

16 Q. Let's start with, would he be given time to
17 do that?

18 A. By who?

19 Q. By the Department of Environment.

20 A. Well, Raphael was the lead investigator, so
21 it's ultimately up to him how much time, if any, he
22 wants to give.

23 Q. Okay. Would you agree with me that an
24 owner -- whether an owner would be -- the amount of

1 time an owner would be given to clean fly-dump
2 material off his property is up to the investigator?

3 A. That's correct.

4 Q. Okay. And how much time would, in your
5 experience, be given to clean up a large amount of
6 fly-dump waste on property?

7 A. I would say --

8 Q. It depends, doesn't it?

9 A. Absolutely. It depends on the quantity.

10 Q. If it's a big site, he would be given more
11 time?

12 A. Perhaps.

13 Q. I'm sorry?

14 A. Perhaps.

15 Q. Well, when you said, "It depends," wouldn't
16 it depend on how big the site was?

17 A. Yes.

18 Q. So I'm assuming that a person with a large
19 amount of waste would be given more time and a person
20 with a small amount of waste would be given shorter
21 time?

22 A. Yes.

23 Q. Okay. Is that policy at the Department of
24 Environment?

1 A. No, it's not.

2 Q. Okay. Is it the common, usual way of doing
3 business at the Department of Environment?

4 A. No. I wouldn't say so necessarily.

5 Q. Is this consistently what investigators do
6 when they come upon a waste site?

7 A. Is it consistent? I wouldn't say it's not
8 consistent.

9 Q. Okay. But it is something that
10 investigators do do at times?

11 A. Yes.

12 Q. They give respondents the opportunity to
13 clean up sites that they did not cause or allow,
14 correct?

15 A. Correct.

16 Q. Okay. Again, you don't know where any of
17 the waste on this property came from, do you, sir?

18 A. No, I don't.

19 Q. You couldn't even conclude whether the
20 suspect CTA's was, in fact, CTA waste, correct?

21 A. Right.

22 Q. In fact, there was no further -- You did no
23 further investigation, correct?

24 A. I did not, correct.

1 Q. And you know of no other further
2 investigation that was performed, correct?

3 A. I believe in my narrative that Chuck Webber
4 from CTA was going to investigate the matter himself.

5 Q. Let me rephrase.

6 You don't know of any further investigation
7 performed by the Department of Environment, correct?

8 A. Right.

9 Q. Now, is the Department of Environment
10 adverse to giving the CTA violations for any reason?

11 A. No.

12 Q. Okay. Now, would you agree with me that
13 you can't write up a ticket without proof of a
14 violation?

15 A. Correct.

16 Q. Now, I'm going to direct your attention to
17 the narrative.

18 A. The one on the 22nd?

19 Q. This is the first one, correct.

20 Were you there at the meeting with Chuck
21 Webber?

22 A. Yes.

23 Q. Did -- Were you there to examine manifests
24 that he provided -- that were provided to -- I'm

1 sorry.

2 Were you there to examine manifests that
3 were provided to the Department of Environment from
4 the person driving the trucks?

5 A. No, I was not.

6 Q. Did you ever see him at a later point?

7 A. See?

8 Q. Any documents signed by Chuck Webber.

9 A. Yes.

10 Q. Okay. I'm showing you what has been marked
11 as Defendant's Exhibit A.

12 Do you recognize that?

13 A. Yes, I do.

14 Q. Okay. What is that, sir?

15 A. It's a hazardous waste manifest.

16 Q. Okay. Does that indicate where the waste
17 was coming from, who was moving it, and where it was
18 going to?

19 A. Yes, it does.

20 Q. And was that document received by the
21 Department of Environment in the course of their
22 investigation in this matter?

23 A. I don't know.

24 Q. Okay. Have you ever seen it before?

1 A. I saw it the day of the investigation. I
2 believe Raphael showed it to me.

3 Q. Okay. So Raphael had it on the day of the
4 investigation, correct?

5 A. I think he did, yeah.

6 Q. Do you know whether or not it made it into
7 the investigation report at any time?

8 A. I don't know.

9 Q. Do you know why it would have been kept out
10 of the investigation report?

11 A. No.

12 Q. Okay. Would you have put a document like
13 that into the investigation report?

14 A. Yes.

15 Q. Why?

16 A. Well, it basically gives us another piece
17 of information trying to narrow down exactly where
18 the material came from.

19 Q. And that would be helpful in determining
20 who would be responsible for the alleged violations,
21 correct?

22 A. Yes.

23 Q. Okay. Looking at that document, does that
24 look the same as the one you saw when Raphael Maciel

1 had it?

2 A. I don't remember.

3 Q. Okay. Well, the document that you
4 previously viewed indicated that the material was
5 coming from the CTA and being transported by E. King?

6 A. Yes, it was being transported by E. King.

7 Q. Okay. And do you know -- I can't think of
8 the word here -- the final location of where the
9 material was supposed to be?

10 A. Yes. It says it right here.

11 Q. And where is that?

12 A. The CID landfill.

13 Q. And where is that in connection with the
14 respondent's property?

15 A. Right next door.

16 Q. Okay. Do you have any doubt in your mind
17 that the people moving the suspect CTA waste were
18 taking it -- the waste was being taken by E. King to
19 the CID landfill?

20 A. That was the agreement.

21 Q. Okay. What I'm asking you is, do you have
22 any doubt that that was what was occurring?

23 A. No, I don't.

24 Q. Okay. Now, on March 24, did you see -- I'm

1 sorry. Let's go to March 22, which is page 6.

2 A. Where is it at?

3 Oh, okay. Thanks.

4 Q. Okay. You said the investigation that you
5 were responsible for was the last two paragraphs on
6 page 6?

7 A. That's correct.

8 Q. Did you see any trucks bringing any waste
9 to the respondent's property?

10 A. I did not.

11 Q. Okay. Did you ever see any trucks bringing
12 waste to the respondent's property?

13 A. No, I did not.

14 Q. On March 22 did you see trucks departing
15 with waste?

16 A. No, I did not.

17 Q. Okay. Were you aware that there were
18 E. King employees on the property?

19 A. No, I was not aware.

20 Q. Okay. Were you aware that -- Was there a
21 front-end loader on the property?

22 A. I didn't see one.

23 Q. Okay. In your investigation -- And I'm
24 discussing these bottom two paragraphs on page 6.

1 HEARING OFFICER HALLORAN: This, for the record,
2 is Complainant's Exhibit A.

3 MR. LEVINE: Thank you.

4 BY MR. LEVINE:

5 Q. This is your March 22, 2006, narrative
6 evaluation, correct?

7 A. Correct.

8 Q. And you previously testified you had
9 gathered the information on the bottom two paragraphs
10 of that narrative investigation?

11 A. Correct.

12 Q. And you signed off on this, correct?

13 A. Correct.

14 Q. Before you signed off, it indicates,
15 "Investigation completed." Do you see where it says
16 that on the next page?

17 A. Yes.

18 Q. Now, was the investigation completed on
19 March 22?

20 A. That particular investigation was
21 completed.

22 Q. Okay. Do you see where it says,
23 "Investigation completed," and there's two boxes?

24 A. Uh-huh.

1 Q. Is that a yes or a no, sir?

2 A. It says, "No."

3 Q. Let me ask you this.

4 Do you see where it says --

5 A. Yes, I do.

6 Q. Okay.

7 A. And I do see that it's checked, "No."

8 Q. Okay. Was that your check mark?

9 A. I don't remember if that's my check mark or
10 if that's Raphael's.

11 Q. Okay. Do you know what further information
12 was required for the investigation when you completed
13 that narrative evaluation on March 22?

14 A. I don't know.

15 Q. So your investigation revealed that someone
16 didn't -- either Paschen Construction or E. King
17 didn't follow the agreement to store the material in
18 roll-off trucks, correct?

19 A. Correct.

20 Q. And you don't know who would have violated
21 that agreement, correct?

22 A. Correct.

23 Q. But the person who violated that agreement,
24 would you agree with me, would cause the waste to be

1 on the property?

2 A. Correct.

3 Q. Okay. Now, with regard to the other waste
4 on the property on March 22, were you aware whether
5 that property was being cleaned?

6 A. I was not aware.

7 Q. When a fly dumper generally gets rid of a
8 load, do they segregate the material before they dump
9 it?

10 A. No.

11 Q. Okay. Why is that?

12 A. They just want to get out of there as fast
13 as they can.

14 Q. That's not one of their concerns, is
15 segregating material, correct?

16 A. Right.

17 Q. Okay. Now, if an entity -- an individual
18 or an entity were to be cleaning property and he was
19 taking it -- and they were taking the property -- the
20 material to an authorized fill or an authorized yard,
21 would the material require some segregation from what
22 had been fly dumped?

23 A. Perhaps, yeah.

24 Q. And what would be the reason for that?

1 A. What would be the reason for what?

2 Q. For some segregation prior to taking it to
3 an authorized place.

4 A. Some landfills have special requirements
5 for the waste that's brought in. Some landfills
6 don't want contamination or things of that nature.

7 Q. In fact, if some material is in a dump --
8 For instance, PVC piping. If a load of material --
9 or construction debris is taken to a legitimate
10 landfill and it contains PVC piping, some landfills
11 will reject the entire load, correct?

12 A. Correct.

13 Q. Okay. And that is the same with wood,
14 correct?

15 A. Correct.

16 Q. And that is also the same with wire,
17 correct?

18 A. Correct.

19 Q. And, in fact, some places you have to take
20 rocks and stone, and other places -- and there are
21 other places, like transfer stations, where you're
22 required to take metal, correct?

23 A. Correct.

24 Q. Okay. And I'm assuming this metal is

1 recycled or sold?

2 A. Yes, it is.

3 Q. And that is by statute that these landfills
4 and dumping stations can only take specific things?

5 A. I'm not sure.

6 Q. Okay. But that -- In your experience,
7 that's a requirement, correct?

8 A. Correct.

9 Q. Now, if an entity discovered fly-dump
10 material on his property which was not segregated and
11 intended to clean the material off his property and
12 take it to a -- either a landfill or a transfer
13 station, would the entity be required to segregate
14 the material prior to taking it there?

15 A. Yes.

16 Q. Do you have any knowledge or information in
17 the course of your entire investigation that that's
18 what was not occurring at this property?

19 A. No, I don't.

20 Q. Now, I'm going to move to Exhibit C, which
21 is your March 24 report.

22 On that date you saw that workers were
23 sorting and segregating multiple waste piles
24 scattered throughout the lot, correct?

1 A. Correct.

2 Q. And they were using heavy machinery. I'm
3 assuming this is a front-end loader, correct?

4 A. Correct.

5 Q. And you said this was -- E. King Trucking
6 was doing this?

7 A. There was an E. King Trucking supervisor
8 there.

9 Q. Okay. But you don't know who the people
10 working there were?

11 A. Correct.

12 Q. Okay. They were cleaning up the site, were
13 they not?

14 A. They were moving -- Well, yeah. I guess
15 they were, yes. Yes.

16 Q. And the way they were cleaning up the site,
17 they were moving piles of some stuff some places and
18 moving other piles other places, correct?

19 A. Correct.

20 Q. And they were also taking some of the piles
21 and dumping them in the E. King truck which you saw
22 leaving the site, correct?

23 A. Correct.

24 Q. And all this activity is consistent with an

1 entity or individual or individuals cleaning up the
2 site, correct?

3 A. Correct.

4 Q. Now, if numerous Department of Environment
5 investigators had swarmed an owner's site two days
6 before, would it be logical for that owner to accept
7 additional waste on the site?

8 A. No.

9 Q. In fact, wouldn't, in your experience, the
10 owner of the site be making best efforts at that
11 point to clean up the site?

12 A. Absolutely.

13 Q. And to avoid further investigation?

14 A. Right.

15 Q. And to avoid further trouble from the
16 Department of Environment?

17 A. Right.

18 Q. And isn't that what you saw on March 24,
19 2006?

20 A. Yes.

21 Q. Did you follow where the C&D material was
22 shipped to?

23 A. No, I did not.

24 Q. Okay. You didn't see it go to the landfill

1 around the corner, did you?

2 A. No, I did not.

3 Q. Now, there's a statement in the narrative
4 that you asked about the illegal dump. Do you see
5 that halfway through? It's the first paragraph,
6 three lines from the bottom.

7 A. Yes.

8 Q. What were you just talking about when you
9 were talking about an illegal dump?

10 A. I was referring to Investigator Kaehler's
11 statement when he said there was a possible illegal
12 dump.

13 Q. Okay. You had no information that any
14 dump -- that any dumping was illegal, correct?

15 A. Correct.

16 Q. And you have no knowledge or information
17 that any of the material on the site was -- dumped on
18 the site was caused or allowed by Jose R. Gonzalez,
19 correct?

20 A. Correct.

21 Q. You mentioned the berm. You said the berm
22 was possible waste, correct?

23 A. Correct.

24 Q. You don't know how long that berm had been

1 there, correct?

2 A. Correct.

3 Q. And you don't know where the dirt had come
4 from to make the berm, correct?

5 A. Correct.

6 Q. And in the City of Chicago over the -- it's
7 couple-hundred year history buildings go up and
8 buildings come down, correct?

9 A. Correct.

10 Q. And you don't know the background of this
11 particular site, correct?

12 A. Correct.

13 Q. If dirt was taken off the site and used to
14 make the berm, it's possible it could have contained
15 rocks and concrete from the site itself, correct?

16 A. Correct.

17 Q. What are field notes, sir?

18 A. Field notes are exactly what it is. You're
19 in the field, and you take notes on a piece of paper.

20 Q. Are those commonly kept in the
21 investigation file?

22 A. No, not the notes.

23 Q. What happened with the field notes?

24 A. My field notes?

1 Q. What are done with field notes in your
2 experience?

3 A. I keep my field notes.

4 Q. Okay. Where do you keep them?

5 A. In my drawer.

6 Q. When a case comes up for hearing, do you
7 provide those to anyone -- those field notes?

8 A. If they're needed.

9 Q. Have you ever been asked for field notes?

10 A. Yes.

11 Q. Sir, do you have any knowledge or
12 information that the berm -- the dirt, and you said
13 there was material in the berm, had come from any
14 other site other than the instant site?

15 A. I have no knowledge of that.

16 Q. Now, you also -- Let's look at page 64, if
17 we could.

18 Did you do the writing underneath the
19 photographs?

20 A. Yes, I did.

21 Q. It looks like your handwriting?

22 A. Yes.

23 Q. Okay. This shows number 1 -- Photo
24 number 1 shows a back portion of piles removed,

1 correct?

2 A. Correct.

3 Q. So what you observed was cleaning going on
4 at the site, correct?

5 A. I observed the piles removed from the
6 inspection on 3-22-06.

7 Q. Okay. Do you know where they were removed
8 to?

9 A. No, I don't.

10 Q. Okay. How about the photographs 3 and 4?

11 HEARING OFFICER HALLORAN: For the record, we're
12 still on Complainant's Exhibit C.

13 MR. LEVINE: Thanks, Mr. Halloran.

14 BY MR. LEVINE:

15 Q. Exhibit 4, you don't know whether there was
16 arsenic contamination on those boards, do you?

17 A. No, I don't.

18 Q. Were those there prior?

19 A. Prior to 3-24?

20 Q. Yeah.

21 A. I believe they were.

22 Q. Okay. On photograph 5, that is a pile of
23 metal?

24 A. Yes, it is.

1 Q. And photograph 6 is a pile of metal,
2 correct?

3 A. Correct.

4 Q. And this is what we discussed before, that
5 the metal would have to be sorted out to be taken to
6 a transfer station as opposed to a landfill, correct?

7 A. Correct.

8 Q. If an entity was cleaning up the lot, this
9 would -- photograph 5 and 6 would be -- would be
10 indications of what it would look like before it was
11 taken to a transfer station, correct?

12 A. Correct.

13 Q. Now, also on photographs 1 through -- 1, 2,
14 and 6 we see tracks on the mud?

15 A. Yes.

16 Q. Are those recent tracks?

17 A. They look pretty recent.

18 Q. Would that indicate cleaning?

19 A. I don't know if they would indicate
20 cleaning.

21 Q. Okay. Let's move to photo 8.

22 Is that a front-end loader?

23 A. Yes, it is.

24 Q. A big red one, isn't it?

1 A. Yes.

2 Q. And what are the workers doing?

3 A. It looks like they're loading up a bunch of

4 waste into the bucket of the front-end loader.

5 Q. And they're using a --

6 A. A bobcat.

7 Q. A bobcat. Thank you.

8 A. You're welcome.

9 Q. -- to do that, correct?

10 A. Correct.

11 Q. And you have that listed as workers sorting

12 and segregating waste piles in standing water,

13 correct?

14 A. Correct.

15 Q. Would another interpretation of that

16 photograph be workers cleaning up waste on property?

17 A. Sure.

18 Q. Okay. Now, on photograph 7 we have a lot

19 of waste piles removed, correct?

20 A. Correct.

21 Q. So those waste piles were moved somewhere

22 else?

23 A. Correct.

24 Q. You don't know where they were moved to?

1 A. Correct.

2 Q. Okay. And it says, "Berm could be from
3 illegal dump," correct?

4 A. Correct.

5 Q. You don't know where that berm came from?

6 A. Right.

7 Q. And that berm had been there for a couple
8 of years, had it not?

9 A. It could have been.

10 Q. Well, isn't there vegetation all over it?

11 A. Yes.

12 Q. And the vegetation indicates it had been
13 there for quite some time?

14 A. Yes.

15 Q. It looks like heavy cover, does it not, a
16 hunting term we use?

17 A. Yes.

18 Q. Okay. Now, moving on to photograph 9 --

19 Nice pictures, by the way.

20 A. Thank you.

21 Q. -- these are workers segregating waste
22 piles, correct?

23 A. Correct.

24 Q. Again, you indicate, "Berm could be from

1 illegal dump," correct?

2 A. Correct.

3 Q. But it is covered with vegetation, is it
4 not?

5 A. Correct.

6 Q. And it's possible it could be from the
7 site, correct?

8 A. Correct.

9 Q. In fact, the site is kind of low in spaces,
10 is it not?

11 A. It is.

12 Q. And isn't there cattails on the site,
13 indicating low land?

14 A. I don't remember seeing cattails.

15 Q. Okay. We'll go back to that.

16 A. Okay.

17 Q. Was gravel being spread at the site from
18 the clean gravel being put down on the road to move
19 the bobcat in?

20 A. Not on the 24th.

21 Q. Okay. How about on the 22nd? Did you see
22 it there?

23 A. Yes, I did. I saw the piles -- From the
24 22nd inspection, he had the piles of gravel. On the

1 24th, those piles were gone, and they were spread out
2 throughout the property.

3 Q. Okay. So, in fact, whoever was working on
4 the property was spreading gravel throughout the
5 property, correct?

6 A. Correct.

7 Q. And you previously stated that one reason
8 you would do this was to get rid of standing water,
9 correct --

10 A. Correct.

11 Q. -- if I could be so technical?

12 Here's another photograph. We have
13 photographs 11 or 12. These are the spy photos,
14 right?

15 A. That's right.

16 Q. And these are workers loading up E. King
17 trucks --

18 A. That's correct.

19 Q. -- with waste?

20 Now, this is an example of the berm, is it
21 not?

22 A. Yes, it is.

23 Q. In fact, there's a tree on the berm?

24 A. Yes.

1 Q. Now, a tree on a berm would indicate that
2 the berm had been there for quite some time?

3 A. Are you referring to this tree right here?
4 I'm not exactly sure if that's on the berm or not.
5 That could be on the other side of the berm.

6 Q. Well, how about in front of the berm behind
7 the telephone pole? That's a small tree, is it not?

8 A. Yes.

9 Q. Would you agree with me that the berm is
10 covered with heavy cover?

11 A. Yes, it is.

12 Q. Did you have a tough time getting through
13 that?

14 A. Yeah.

15 Q. Because it had been growing for years,
16 correct?

17 A. Correct.

18 Q. Now, on -- Oh, was E. King ticketed on
19 March 24?

20 A. I don't think so.

21 Q. You knew there were E. King individuals
22 working on the site, correct?

23 A. Correct.

24 Q. And you suspected that they were sorting

1 scrap material, correct?

2 A. Correct.

3 Q. Did you have charging decisions on that
4 day?

5 A. No, I did not.

6 Q. Can you tell me, in your opinion, why you
7 believe that E. King was not cited if they were -- if
8 you took pictures of them sorting scrap material?

9 A. Maybe they were, but I didn't personally
10 cite them.

11 Q. Do you have any knowledge, based on your
12 history of working at the Department of Environment,
13 that E. King was ever cited with regard to actions
14 taken or failure -- actions that were failed to be
15 taken at this property, 1601 East 130th Street?

16 A. I have no knowledge of that.

17 Q. Okay. Moving on to photographs 13 and 14,
18 13 and 14 are what you indicate as suspect CTA
19 material?

20 A. Correct.

21 Q. And your notes say that this material may
22 have been recently dumped, correct?

23 A. Correct.

24 Q. You have no knowledge that this was

1 recently dumped, do you?

2 A. Yes, I do.

3 Q. Okay. How do you know this material was
4 recently dumped?

5 A. Because on March 22 it was not there.
6 March 24 it was there.

7 Q. Okay. But you will agree with me that
8 other piles, for instance at photograph 7, were
9 removed?

10 A. Yes.

11 Q. Okay. And is it possible that these were
12 removed to photographs 13 and 14 in order to
13 consolidate them?

14 A. No.

15 Q. And how do you know that, sir?

16 A. These piles were dry.

17 Q. Okay.

18 A. The site was completely wet and saturated
19 with water. These piles were completely dried.

20 Q. Okay.

21 A. So that leads me to believe --

22 Q. That leads you to believe --

23 A. -- that it didn't come from the site.

24 Q. Okay.

1 A. It came from another site somewhere else.

2 Q. Now, if there was a big pile somewhere else
3 on the site and a big dump truck came and scooped up
4 the pile and the water had not soaked down all the
5 way through the pile and there was dry material at
6 the bottom and the dry material was put on top of the
7 material as it was moved, would that be an
8 explanation of how dry material was next to this on
9 photographs 13 and 14?

10 A. It's a possibility.

11 Q. Now, how tall are these piles?

12 A. I don't remember. Judging by the
13 photographs, I'd say at least 6 feet.

14 Q. Were they taller than you?

15 A. Yes.

16 Q. So these are big piles?

17 A. Yes, they are.

18 Q. And we have a big front-end loader moving
19 them around, correct?

20 A. Yes.

21 Q. In your experience, does water when it
22 rains go all the way through 6, 9 feet of dirt?

23 A. Correct.

24 Q. Does it do that?

1 A. Yes. Percolates.

2 Q. Does the top get wet and then it runs off,
3 or does it go all the way through the pile, in your
4 experience?

5 A. It does both.

6 Q. You don't know if it went all the way
7 through the pile in this case, correct?

8 A. Correct.

9 Q. You don't know if material is moved from
10 another area on the site, overturned, and then put
11 over here with a front-end loader, correct?

12 A. That's a possibility.

13 Q. You just assume that it was new material,
14 correct?

15 A. Correct.

16 Q. You didn't see any trucks bringing
17 material, correct?

18 A. Correct.

19 Q. And the owner was just cited two days
20 before with numerous violations, correct?

21 A. Correct.

22 Q. Okay. When you were there on the 24th, you
23 saw a bobcat and a front-end loader cleaning the
24 site, correct?

1 A. Correct.

2 Q. I'm going to skip through -- I'm going back
3 to pages 10, 11, and 12. Let's try 12 first.

4 You testified that there was evidence of
5 scavenging, correct?

6 A. Correct.

7 Q. Now, at page 12 there's a wire -- a
8 photograph of a wire?

9 A. Correct.

10 Q. Did you see any other evidence of
11 scavenging?

12 A. Yes.

13 Q. Okay. Were those the waste piles of metal
14 that we looked at previously?

15 A. Yes.

16 Q. Okay. And it's your opinion that the
17 material was not being segregated to take it to a
18 legitimate transfer station, but instead being
19 scavenged at the site?

20 A. Correct.

21 Q. What do you base that opinion on, sir?

22 A. Just common practice. Legitimate business
23 issues. I don't think that would be considered
24 legitimate.

1 Q. I'm sorry. What would not be considered
2 legitimate?

3 A. Pulling out scrap material from a fly-dump
4 pile or any type of a dump pile and try to resell
5 that metal for money.

6 Q. Do you know whether or not this material
7 was trying to be resold?

8 A. I would assume it was. I believe that was
9 the intentions.

10 Q. Okay. And what do you base that belief
11 upon, sir?

12 A. Because it really has no other use, but for
13 the metal.

14 Q. Didn't you previously testify that certain
15 landfills will not take entire loads if they have
16 wire or metal in them?

17 A. Yes, I did.

18 Q. Okay. So if the entity or individuals were
19 in the process of cleaning property and taking the
20 loads to a landfill, wouldn't this metal material
21 have to be segregated from that load prior to taking
22 it to the landfill?

23 A. Yes.

24 Q. And wouldn't that be legitimate activity?

1 A. Yes.

2 Q. How does that look different from what you
3 see in photograph 12?

4 A. Photograph 12?

5 Q. I'm sorry. Photograph 8. I apologize.
6 Page 12.

7 A. Around this box here there's a bunch of
8 brick, and there was also ash present. Somebody was
9 trying to burn the insulation off.

10 Q. Did you see a fire that day?

11 A. I did not see a fire that day.

12 Q. Did you see burn marks on the wire?

13 A. I don't believe I did.

14 Q. I can't see in them photograph 8.

15 A. Yeah.

16 Q. Okay. So you don't know -- You don't know
17 where the fire was or whether the fire was occurring
18 on site or somewhere else, correct?

19 A. I never a saw a fire.

20 Q. Okay. And you also saw those two days you
21 were there instances of metal being gathered in
22 certain piles, correct?

23 A. Correct.

24 Q. And being segregated out from other piles?

1 A. Correct.

2 Q. And you would agree with me that the
3 segregation of these type of materials would have
4 legitimate bases if the material -- if the waste was
5 being cleaned from the lot and taken to landfills and
6 transfer stations?

7 A. Correct.

8 HEARING OFFICER HALLORAN: If it hasn't been
9 stated already, we're talking about Complainant's
10 Exhibit A, for the record.

11 MR. LEVINE: Thank you, Mr. Halloran.

12 HEARING OFFICER HALLORAN: I'm not sure if it
13 was or not. We are skipping around.

14 MR. LEVINE: I am skipping around. I apologize.

15 BY MR. LEVINE:

16 Q. I'm going to direct your attention, if I
17 could, to Exhibit A, photographs 14 and 16.

18 That's just junk, is it not?

19 A. Yes.

20 Q. Do you know how long that junk had been
21 there?

22 A. No.

23 Q. Well, by looking at the rust on the wheel
24 on photograph 16 and the rust underneath the sign on

1 photograph 14, would it look like it had been there
2 for quite some time?

3 A. Not necessarily in that particular spot or
4 on that particular property.

5 Q. You couldn't tell how long it had been
6 there, correct?

7 A. Correct.

8 Q. Now, what was the weather like prior to
9 March 22, 2006?

10 A. It was cold.

11 Q. Was it snowy and wet?

12 A. I don't remember. Judging by the pictures,
13 it doesn't look like it was snowy. But, yes,
14 definitely wet.

15 Q. Now, if the land was wet prior to
16 March 22 --

17 And you don't know that, correct?

18 A. Correct.

19 Q. But you know it was wet on March 22, do you
20 not?

21 A. I do know that, yes.

22 Q. Because there's piles of water, correct?

23 A. Correct.

24 Q. If you drive a big, heavy front-end loader

1 into a pile of water, what happens to the front-end
2 loader?

3 A. It might sink.

4 Q. Okay. So prior to doing that, you have to
5 put something down on the mud, correct?

6 A. Correct.

7 Q. To stop the front-end loader -- a heavy
8 front-end loader from sinking?

9 A. Yes.

10 Q. And you would put stones down to do that?

11 A. Yes.

12 Q. Okay. Now, a dump truck is also heavy and
13 that would also sink, correct?

14 A. Yes.

15 Q. Okay. So prior to sticking in a big
16 front-end loader, would you agree with me that in an
17 attempt to clean up property that stones would have
18 to be put down first?

19 A. Yes.

20 Q. And did you see evidence of stones being
21 put down --

22 A. Yes.

23 Q. -- at that yard?

24 Now, did you see a huge pile of stones?

1 A. Yes.

2 Q. Now, that pile came to this site prior to
3 you coming to the site on March 22, correct?

4 A. Correct.

5 Q. And you don't -- What was the weather like
6 on March 22?

7 A. It was sunny. I have cloudy down here.
8 About 35 degrees.

9 Q. It was just over freezing, was it not?

10 A. That's correct.

11 Q. So would you say this was, like, one of the
12 first warm days after the Chicago winter?

13 A. Yes.

14 Q. Okay. It was still cold, was it not?

15 A. Yes, it was.

16 Q. Do you know whether the workers on March 22
17 lit a fire to keep their hands warm when they were
18 working?

19 A. I don't know that.

20 Q. Do you know whether the workers on the site
21 were E. King workers?

22 A. I don't know. I wasn't on site at that
23 time. When I showed up, there was no one there.

24 Q. When you did show up, did you see Jose R.

1 Gonzalez there?

2 A. No, I did not.

3 Q. Did you see ever see him on the site?

4 A. Never.

5 Q. Okay. Do you know whether he was aware of
6 what was occurring at the site?

7 A. In terms of?

8 Q. E. King's actions on the site.

9 A. Yes.

10 Q. Okay. How do you know he was aware of
11 that?

12 A. Because there was an agreement he was part
13 of. There was a meeting that he took part in. And
14 about storing material in roll-up boxes. So he was
15 aware of that situation.

16 Q. Okay. So he was aware that material would
17 be stored on his site in roll-up boxes, correct?

18 A. Correct.

19 Q. Was he aware that material would be dumped
20 out of the roll-up boxes?

21 A. I don't know.

22 Q. Okay. Do you have any information or
23 knowledge, based on your investigation, that
24 Mr. Gonzalez had any knowledge that the agreement was

1 violated and the materials dumped out of the roll-up
2 boxes?

3 A. No, I don't.

4 MR. LEVINE: I have no further questions.

5 HEARING OFFICER HALLORAN: Thank you.

6 Mr. McCahan, redirect?

7 MR. McCAHAN: Yes, please.

8 HEARING OFFICER HALLORAN: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. McCAHAN:

11 Q. You testified to Mr. Levine that your job
12 is to determine where the waste comes from; is that
13 correct?

14 A. Correct.

15 Q. Do you also observe violations that occur
16 at a particular site?

17 A. Correct.

18 Q. And does the source or destination have any
19 bearing on the waste you observed on the site at
20 1601 East 130th Street in March of 2006?

21 A. Yes. The source has a lot to do with it.
22 The source -- It's the big one. You know, we need to
23 know where it comes from -- where it came from and
24 why it came to a facility or yard that wasn't

1 permitted.

2 Q. And do you -- Do you know where the waste
3 that you observed at 1601 -- 1601 East 130th Street,
4 do you know where that waste came from that you
5 observed?

6 A. I don't know where it came from, but I do
7 have guesses, I suppose, of where it came from. I
8 know most likely it did not come from the site. It
9 came from an off-site location.

10 Q. Let me direct your attention to what has
11 been marked as Defendant's Exhibit A.

12 Can you please identify this again?

13 A. Sure. This is a uniform hazardous waste
14 manifest from the State of Illinois.

15 Q. Can you review that document.

16 Do you anywhere see the address 1601 East
17 130th Street listed on that document?

18 A. I do not.

19 Q. Is there anything on that document that
20 describes the waste that the document is supposed to
21 pertain to?

22 A. All I see is nonhazardous by DOT
23 contaminated soil, which isn't even a DOT
24 description.

1 Q. Is there anything about the waste you
2 observed at 1601 East 130th Street that leads you to
3 believe that this document has anything to do with
4 the waste you observed at 1601 East 130th Street?

5 A. I don't.

6 Q. How often would you say that you catch fly
7 dumpers in the act?

8 A. Well, I've been working for the Department
9 since November '05. I think I've caught maybe one.

10 Q. So who do you -- How many tickets have you
11 issued for dumping violations?

12 A. Dumping violations? I would say more than
13 five.

14 Q. And who were those issued to?

15 A. Well, most of them were issued to the
16 owners of the property.

17 Q. The owners of the property --

18 A. Where the material was dumped.

19 Q. You mentioned an agreement between Paschen,
20 CTA, and E. King concerning transportation of waste,
21 correct?

22 A. Correct.

23 Q. How do you know about this agreement?

24 A. I heard about it through, I believe, John

1 Kryl and Raphael and a couple other people from DOE
2 that mentioned it to me. It could have been even
3 talked about during that meeting at the time that
4 there was an agreement.

5 Q. Have you ever seen a copy of this
6 agreement?

7 A. No, I have not.

8 MR. LEVINE: Objection. You're assuming that
9 the agreement's written.

10 HEARING OFFICER HALLORAN: I'm sorry. Could you
11 read the question back, Peggy.

12 (WHEREUPON, the record was read
13 by the reporter as requested.)

14 HEARING OFFICER HALLORAN: Mr. Levine?

15 MR. LEVINE: I'm saying it presupposes that an
16 agreement is written. It discounts the possibility
17 of an oral agreement.

18 HEARING OFFICER HALLORAN: Mr. McCahan, do you
19 want to rephrase, if you're able? Sustained.

20 MR. LEVINE: Move to strike his response.

21 HEARING OFFICER HALLORAN: Overruled. The Board
22 will disregard it.

23 BY MR. McCAHAN:

24 Q. What form did this agreement take as far as

1 you know?

2 A. I don't know. All I know there was an
3 agreement. I don't know if was a verbal or if it was
4 a documented agreement. I couldn't say.

5 Q. Have you seen a document embodying this
6 agreement?

7 A. I have not.

8 Q. Is there anyone else besides other DOE
9 inspectors that has told you about this agreement?

10 A. No.

11 Q. I'd like to refer your attention to
12 Exhibit A.

13 Starting on page 9, can you please
14 identify --

15 HEARING OFFICER HALLORAN: That would be
16 Complainant's Exhibit A?

17 MR. McCAHAN: Complainant's Exhibit A. Sorry.

18 BY MR. McCAHAN:

19 Q. I'm going to ask -- Is the -- Is -- The
20 material in photo number 1, is that the subject of --
21 is that what we've been referring to as suspect CTA
22 material?

23 A. It is not.

24 Q. And photo number 2?

- 1 A. That is not.
- 2 Q. Photo number 3?
- 3 A. No.
- 4 Q. Photo number 4?
- 5 A. No.
- 6 Q. Photo number 5?
- 7 A. No.
- 8 Q. Photo number 6?
- 9 A. No.
- 10 Q. Photo number 8?
- 11 A. No.
- 12 Q. Photo number 11?
- 13 A. No.
- 14 Q. Photo number 12?
- 15 A. No.
- 16 Q. Photo number 13?
- 17 A. No.
- 18 Q. Photo number 14?
- 19 A. No.
- 20 Q. Photo number 15?
- 21 A. No.
- 22 Q. Photo number 16?
- 23 A. No.
- 24 Q. So for all the photographs that you just

1 mentioned, they were not the basis of any agreement,
2 as far as you know, between CTA or E. King or the
3 owner of this site at 1601 East 130th Street?

4 A. That's correct.

5 MR. McCAHAN: Nothing further.

6 HEARING OFFICER HALLORAN: Okay. Let's go off
7 the record.

8 (WHEREUPON, discussion was had
9 off the record.)

10 HEARING OFFICER HALLORAN: We are back on the
11 record.

12 Chris, you're still under oath.

13 Mr. Levine is going for recross.

14 MR. LEVINE: Thank you.

15 RECCROSS EXAMINATION

16 BY MR. LEVINE:

17 Q. Counsel on redirect asked you a couple
18 things, and one of the things he discussed with you
19 was whether or not there was any evidence of an
20 agreement.

21 Do you remember that?

22 A. Yes.

23 Q. And isn't one of the reasons there's no
24 evidence of an agreement is because we don't -- in

1 the course of the investigation, the individuals from
2 E. King and Paschen's names were never taken down,
3 correct?

4 A. That's correct.

5 Q. And if those people's names -- If those
6 people were identified and could be brought as
7 witnesses, then we would have been able to ask them
8 questions with regard to the agreement, correct?

9 A. Correct.

10 Q. Okay. And you indicated on redirect that
11 the source is the big one. What is the big one?

12 A. The big one meaning the big factor.

13 Q. Is that the big target of an investigation
14 also?

15 A. No.

16 Q. Okay. Wouldn't you want to know during the
17 course of an investigation where the source was so
18 violations could be given to the appropriate
19 individuals?

20 A. Yes.

21 Q. And you testified you didn't know where the
22 waste came from, correct?

23 A. Correct.

24 Q. And one of the reasons you don't know where

1 the waste came from was because the investigation in
2 this case was not thorough, correct?

3 A. I wouldn't say that. I thought it was
4 pretty thorough.

5 Q. Well, wouldn't you have done a more
6 thorough investigation in this case?

7 A. Yes.

8 Q. And the reason -- What are the reasons you
9 think that a more thorough investigation should have
10 been done?

11 A. What are the reasons?

12 Q. Yes.

13 A. We needed to think about where the material
14 came from. We needed to ask more questions perhaps.
15 Again, CTA was going to do their own investigation.

16 Q. Well, you're not relying on the CTA to
17 prove violations, are you, sir?

18 A. No.

19 Q. And you testified that on Defendant's
20 Exhibit A Mr. Gonzalez or the address of his yard was
21 not on that, correct?

22 A. Correct.

23 Q. And what -- The fact that it was not on
24 there would lead you to believe that the waste was

1 moved contrary to the manifest, correct?

2 A. Correct.

3 Q. Okay. Would that be a violation?

4 A. I don't know.

5 Q. Okay. Do you have any question in your
6 mind that the CTA had waste coming from 567 West Lake
7 Street?

8 A. I don't know for sure.

9 Q. Okay. Well, does the manifest state that?

10 A. Yes, it does.

11 Q. Did Mr. King -- Mr. Webber state that?

12 A. He did not.

13 Q. Okay. Did the individual from Paschen and
14 E. King state that?

15 A. He did not either.

16 Q. Did they indicate that it was from the
17 Brown Line?

18 A. They did not.

19 Q. Did they say that they had an agreement to
20 move waste from CTA?

21 A. Yes.

22 Q. And that was E. King that stated that,
23 correct?

24 A. Yes.

1 Q. And E. King further stated that their
2 agreement to transport the waste -- that the final
3 destination was the CID landfill, correct?

4 A. Correct.

5 Q. And that was right next to the property in
6 question, correct?

7 A. Correct.

8 Q. And are you aware whether or not the CID
9 landfill is closed on the weekends?

10 A. Yes, it is.

11 Q. Okay. And are you aware whether or not CTA
12 was moving material on the weekends?

13 A. Yes.

14 Q. Okay. And how do you know that?

15 A. From prior conversations I had with John
16 Kryl and Stan Kaehler. They informed me that that
17 was the situation, that was the agreement.

18 Q. Does -- Whose fault is it if a manifest is
19 not followed?

20 A. I'm not sure.

21 Q. Okay. Well, is it Mr. Gonzalez' fault if
22 the manifest is not followed?

23 A. I'm not sure.

24 Q. Okay. You testified that you had no belief

1 that the waste in this case was connected to the CTA
2 manifest, correct?

3 A. Correct.

4 Q. Okay. E. King trucks were on site,
5 correct?

6 A. I didn't see any E. King trucks on site.

7 Q. You had an investigation report, did you
8 not?

9 A. Pardon me?

10 Q. You had an investigation report?

11 A. Right.

12 Are you referring to the 22nd or the 24th?

13 Q. I'm talking about the 22nd and the 24th.

14 A. On the 24th I did witness an E. King
15 truck -- pickup truck, but on the 22nd I did not
16 visually see an E. King truck on site.

17 Q. But you signed a narrative evaluation
18 summary, did you not?

19 A. Yes, I did.

20 Q. And that indicates that E. King trucks were
21 on site?

22 A. Yes.

23 Q. And they were on site in the process of
24 receiving loads of what looked to be C&D debris,

1 correct?

2 A. Correct.

3 Q. Do you have any knowledge that that summary
4 is incorrect?

5 A. No.

6 Q. Okay. So you know E. King trucks were on
7 site?

8 A. Yes.

9 Q. And you know that a manifest was given by
10 an E. King driver to one of your investigators,
11 correct?

12 A. Correct.

13 Q. Okay. You said that was Raphael Maciel?

14 A. Correct.

15 Q. Okay. And you know that there was an
16 agreement -- and this is from your two final
17 paragraphs -- there was an agreement between the CTA,
18 Paschen, E. King, and Gonzalez to store soil from the
19 CTA Brown Line until CID resumed business, correct?

20 A. Correct.

21 Q. Okay. And the trucks in question -- Now,
22 on your site plan you took pictures of what has been
23 marked -- and this is page 8 of Exhibit A -- what has
24 been marked as, "Suspect CTA material," correct?

1 A. Correct.

2 Q. That's on the site plan.

3 There's also numerous photographs, correct?

4 A. Correct.

5 Q. And you know that there was a manifest from
6 the CTA to a transporter, E. King, with a final
7 designation of CID, correct?

8 A. Correct.

9 Q. And you know the agreement that you wrote
10 up in your March 22 narrative evaluation, page 6 and
11 7 of Exhibit A, correct?

12 A. Correct.

13 Q. Now, taking all that in account, why do you
14 not believe that there was no connection between the
15 CTA and the waste found on site?

16 A. There possibly could have been a
17 connection. I don't know for sure. I didn't do a
18 follow-up investigation to where the material came
19 from, who it belonged to. We did ask a
20 representative from Paschen and E. King, you know, if
21 this material came from their site, and neither one
22 could give us an answer. Both of them said they
23 didn't know where it came from.

24 Q. If they didn't give you an answer, you

1 could have given them tickets that day, correct?

2 A. No.

3 Q. Could you have investigated further and
4 given them tickets at a later date?

5 A. Yes.

6 Q. Okay. So it's not unusual for someone to
7 deny knowledge of something where they could have
8 been libel, correct?

9 A. Right.

10 Q. Now, you did testify that you do not
11 believe they were connected, the waste on the site
12 with the CTA material?

13 A. Correct.

14 Q. And you said the reason you don't believe
15 they were connected is because no further
16 investigation was done, correct?

17 A. Correct.

18 Q. What I'm asking you is, based on the
19 investigation that you conducted with regard -- as
20 explained in your March 22 narrative evaluation,
21 page 6 of Exhibit A, based on your conversations with
22 Mr. Webber, the unknown representative from Paschen,
23 the E. King individual, and the --

24 MR. McCAHAN: Objection. Where does it say that

1 in the narrative? I don't believe it says anything
2 about an E. King representative being present.

3 MR. LEVINE: Okay. I'll remove that.

4 HEARING OFFICER HALLORAN: Thank you.

5 MR. LEVINE: I'll withdraw that.

6 BY MR. LEVINE:

7 Q. Based on your narrative evaluation, pages 6
8 and 7, dated March 22, which is Exhibit A, regarding
9 the agreement to move the CTA material; based on the
10 fact that E. King trucks were on site loading
11 material; based on the fact that you viewed a
12 manifest from the CTA signed by Chuck Webber with a
13 generator's point being the CTA, the transporter
14 being E. King, and the designated facility being CID,
15 the landfill next door to the property in question,
16 why do you still believe -- why did you testify that
17 they were not connected?

18 A. I didn't have any proof.

19 Q. What more would you have needed?

20 A. I would need somebody to tell me exactly
21 what was going on out there.

22 Q. Well, didn't Chuck Webber, the Paschen
23 representative that you spoke to, tell you what was
24 going on?

1 A. Yes.

2 Q. Okay.

3 A. In terms of the agreement, yes.

4 Q. Now, how much proof do you need to bring a
5 violation?

6 A. I don't know.

7 Q. Okay. What proof do you have -- If this
8 wasn't adequate proof to demonstrate that this was
9 CTA material and no further investigation was done by
10 the Department of Environment, what proof do you have
11 that Jose Gonzalez caused or allowed the waste on the
12 site?

13 A. I don't know.

14 Q. Would you agree with me that in order to
15 bring a violation of this sort further investigation
16 would be required?

17 A. Yes.

18 Q. Would you agree with me that the
19 photographs contained in Exhibit A throughout --
20 pages 9 to 17, indicate evidence of fly dumping on
21 the property?

22 A. Yes.

23 Q. And I'm talking about -- We're not talking
24 about the suspect CTA waste, correct, but everything

1 that is not the suspect CTA material?

2 A. Are you saying that was the fly-dump
3 material?

4 Q. No. I'm saying everything other than the
5 suspect CTA material.

6 A. Correct.

7 Q. The suspect CTA material was all in one big
8 pile, was it not?

9 A. It was.

10 Q. And it was in a big pile much like the
11 phones were, photo 7, correct?

12 A. Correct.

13 Q. Which indicates nonillegal dumping,
14 correct?

15 A. Correct.

16 Q. Okay. And would you agree with me that
17 there was sufficient -- there was some evidence that
18 the material that was suspect CTA material actually
19 came by the CTA and was dumped by E. King contrary to
20 an agreement?

21 A. It's a possibility.

22 Q. Well, it's more than a possibility. You
23 have testimony of specific witnesses and a manifest
24 to those facts, correct?

1 A. Correct.

2 Q. What more evidence would you require to
3 determine that the material was CTA material?

4 A. That's enough evidence.

5 Q. And what more evidence would you require to
6 determine that the material was dumped contrary to
7 the agreement?

8 A. You wouldn't have to have any more
9 evidence.

10 Q. Now, one of the reasons you issue tickets
11 to owners of property is it's easier than chasing
12 down a fly dumper, correct?

13 A. Correct.

14 Q. And in this case it was easier to ticket
15 Mr. Gonzalez than conduct an adequate investigation,
16 correct?

17 A. Correct.

18 Q. And an adequate investigation would have
19 identified witnesses as to where the material came
20 from and why it was on the property, correct?

21 A. Correct.

22 Q. Now, you testified -- One of the reasons
23 that there's no evidence of the agreement is because
24 we don't know who the witnesses are, correct?

1 A. Correct.

2 Q. So when you testify that there was no
3 evidence of an agreement previously, first of all,
4 you mean there was no written agreement that you ever
5 found, correct?

6 A. Correct.

7 Q. But it was never looked for, was it?

8 A. I don't know.

9 Q. You didn't look for it?

10 A. I didn't.

11 Q. And you don't know of anyone else at the
12 Department of Environment who looked for it?

13 A. That's correct.

14 Q. And with regard to evidence of an oral
15 agreement, no further investigation, as far as you
16 know, was conducted by the Department of Environment
17 to determine whether or not the agreement was
18 actually in place?

19 A. Correct.

20 MR. LEVINE: Nothing further.

21 Thanks, Chris.

22 HEARING OFFICER HALLORAN: Mr. McCahan,
23 re-redirect?

24 MR. McCAHAN: I just have two questions.

1 HEARING OFFICER HALLORAN: Go ahead.

2 MR. LEVINE: Sure you do.

3 RE-REDIRECT EXAMINATION

4 BY MR. McCAHAN:

5 Q. You testified on recross that the agreement
6 as you know was that the material was to be stored on
7 site over the weekend because the CID landfill was
8 closed; is that correct?

9 A. That is correct.

10 Q. What day of the week was March 22, 2006, if
11 you remember?

12 A. I don't remember.

13 Q. You also testified that the source is
14 important; is that correct?

15 A. That's correct.

16 Q. Whether the waste is -- the source of the
17 waste is on site or off site is an important aspect
18 of whether something is a dump; is that correct?

19 A. Correct.

20 MR. McCAHAN: Nothing further.

21 HEARING OFFICER HALLORAN: Thank you.

22 Mr. Levine?

23 MR. LEVINE: Sorry.

24 RE-RE-CROSS EXAMINATION

1 BY MR. LEVINE:

2 Q. Two things.

3 Whether something is on site or off site --

4 I don't understand what you just testified to. Could

5 you explain it?

6 THE WITNESS: Can you explain the question?

7 BY MR. LEVINE:

8 Q. No. You have to explain the question.

9 What is the difference between an on-site

10 and an off-site waste?

11 A. Off-site waste would be something that was

12 brought in to a site from an off-site location.

13 On-site waste is something that was generated on

14 site.

15 Q. For instance, the berm compared to the

16 suspect CTA material, correct?

17 A. Correct.

18 Q. The CTA material would be -- came from off

19 site?

20 A. Off site, right.

21 Q. Correct?

22 A. Correct.

23 Q. And if it was stored in boxes, as pursuant

24 to the agreement, that would not be a dump, correct?

1 A. Correct.

2 Q. That would just be storage?

3 A. Correct.

4 Q. Also, as you know, the agreement -- Your
5 understanding of the agreement was that material was
6 supposed to be stored in boxes, correct?

7 A. Correct.

8 Q. What is the time difference between moving
9 a box as opposed to moving dumped material? Does it
10 take longer to move dumped material than a box?

11 A. Yes.

12 Q. Why?

13 A. Because it's not containerized.

14 Q. So it takes additional time to load it back
15 in the container?

16 A. Yes.

17 Q. And put it on the truck and take it away?

18 A. Yes.

19 Q. And you know the agreement was to store it
20 in a box, correct?

21 A. Correct.

22 Q. So if the agreement was to store it in a
23 box over the weekend and the agreement was violated
24 by people unbeknownst to us, then would that explain

1 why the individuals were on site still cleaning it a
2 couple days after the weekend?

3 A. Perhaps.

4 Q. Is that a good explanation of that?

5 A. Yes.

6 MR. LEVINE: Nothing further.

7 HEARING OFFICER HALLORAN: Mr. McCahan?

8 MR. McCAHAN: Nothing further.

9 HEARING OFFICER HALLORAN: Thanks. Chris, you
10 may step down. Thanks. I don't know if you're
11 needed any further.

12 We can go off the record.

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