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ILLINOIS POLLUTION CONTROL BOARD

October 29, 2008

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
Vs.)	PCB 06 159
)	(Enforcement-Land, Air)
)	
GARY SIMMONS,)	
Individually, and)	
LAWRENCE COUNTY)	
DISPOSAL CENTRE, INC.))	
An Illinois Corp.)	
Respondent.)	

Proceedings held on October 29, 2008, at 11:00 a.m.,
at City Hall Civic Center, Lawrence County, 700 E State
Street, Lawrenceville, Illinois, before Carol Webb,
Hearing Officer.

Reporter: Angie R. Kelly, CSR#084-004498

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A P P E A R A N C E S

ILLINOIS POLLUTION CONTROL BOARD
HEARING OFFICER

BY: Carol Webb
1021 North Grand Ave.
Springfield, Illinois 62794

FOR ENVIRONMENTAL PROTECTION AGENCY
SPECIAL ASSISTANT ATTORNEY GENERAL

BY: Mr. Phillip McQuillan

E X H I B I T S				
	Exhibit	Page	Exhibit	Page
1				
2				
3	1.1	9	14	39
4	1.2	15	16	43
5	1.3	16	6.1	45
6	1.4	18	7.1	46
7	2.1	19	19	57
8	2.2	22	20	60
9	3.1	23	Direct Exam Mr. Gher	Pg. 6
10	3.2	24	Cross Exam Mr. Gher	Pg. 44
11	3.3	26	Redirect Exam Mr. Gher	Pg. 45
12	4.1	27	Direct Exam Mr. Liebman	Pg. 49
13	4.2	28	Direct Exam Mr. Simmons	Pg. 52
14	4.3	29		
15	4.4	31		
16	4.5	31		
17	5.1	32		
18	5.3	34		
19	8	10		
20	9	36		
21	10	37		
22	11	37		
23	12	38		
24	13	39		

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

2 (October 29, 2008)

3 HEARING OFFICER WEBB: Good morning. My name
4 is Carol Webb, this is the hearing for PCB 06 159,
5 People verses Gary Simmons, individually, and Lawrence
6 County Disposal Center Incorporated. It is October 29,
7 and we are beginning at 11:00 a.m.

8 I'm noting for the record that there are no
9 members of the public present. In this matter, the
10 People allege that Respondent violated various
11 provisions of the Environmental Protection Act, and
12 Administrative Code, in relation to post closure care
13 requirements, sight security, maintenance requirements,
14 closure from a conditions, ground water and gas
15 monitoring requirements, and causing, threatening, or
16 allowing air pollution.

17 The Pollution Control Board will make the
18 final decision in this case. My purpose is to conduct
19 the hearing in a neutral and orderly manner, so that we
20 have a clear record of the proceedings. I will also
21 assess the credibility of any witnesses on the record at
22 the end of the hearing.

23 This hearing was noticed pursuant to the
24 acts in the Board's rules, and will be conducted

1 pursuant to section 101.600 through 101.632 of the
2 board's procedural rules. At this time, I will ask the
3 parties to please make their appearances on the record.

4 MR. MCQUILLAN: Good morning, Madam Hearing
5 Officer, my name is Phillip McQuillan, Phillip has two
6 Ls in it, McQuillan is M-C-Q-U-I-L-L-A-N, I'm an
7 assistant attorney general for the State of Illinois
8 representing the people.

9 HEARING OFFICER WEBB: Thank you, and
10 Mr. Simmons?

11 MR. SIMMONS: My name is Gary Simmons,
12 G-A-R-Y S-I-M-M-O-N-S.

13 HEARING OFFICER WEBB: And Mr. Simmons,
14 you've been previously advised because you're not an
15 attorney, that you may represent yourself in this
16 matter, but not Lawrence County Disposal Center.

17 Are there any preliminary matters to discuss
18 on the record?

19 MR. MCQUILLAN: Madame Hearing Officer, the
20 status of Lawrence County Disposal Center Incorporated
21 it is a corporation, but it has been dissolved, or it's
22 not in good standing any more, according to the
23 Secretary of State web site, I'll basically be asking
24 for a default against Lawrence County Disposal Center

1 Incorporated, and I will prove that with the same
2 testimony that we offer against Mr. Simmons.

3 HEARING OFFICER WEBB: Thank you. Was that
4 your opening statement or?

5 MR. MCQUILLAN: No.

6 HEARING OFFICER WEBB: Do you have an opening
7 statement?

8 MR. MCQUILLAN: I'll waive my opening
9 statement.

10 HEARING OFFICER WEBB: Mr. Simmons, did you
11 want to make an opening statement?

12 MR. SIMMONS: No.

13 HEARING OFFICER WEBB: Then we will proceed
14 to the people's first witness then.

15 MR. MCQUILLAN: Call Bob Gher.

16 HEARING OFFICER WEBB: Mr. Gher, would you
17 have a seat up here, please. The court reporter will
18 swear you in.

19 (WITNESS, BOB GHER, SWORN)

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

21 By Mr. McQuillan:

22 Q. Would you state your full name please?

23 A. Bob Gher.

24 Q. And what is your business address?

1 A. P. O. Box 62 Bridgeport, Illinois. We are
2 located in the Rucker Building in Bridgeport.

3 Q. For whom do you work?

4 A. Ambraw Valley Solid Waste Management.

5 Q. And could you tell us what Ambraw Valley Solid
6 Waste Management is?

7 A. It's a three county government agency that has a
8 delegation agreement with the state to do EPA work.

9 Q. And this delegation agreement that you have with
10 the state, how does that relate to this case regarding
11 the Lawrence County Disposal Center Incorporated
12 landfill?

13 A. The landfill is in Lawrence County, that's one of
14 the three counties that we were involved with, Lawrence,
15 Crawford, Richland Counties.

16 Q. Pursuant to your delegation in agreement with the
17 state of Illinois, have you made inspections at that
18 landfill?

19 A. Yes, I have.

20 Q. Now, I'm directing your attention to what's
21 sometimes commonly called the Dowty Landfill D-O-W-T-Y,
22 and sometimes called the Lawrence County Disposal
23 Center, Incorporated Landfill. Are those two entities
24 one in the same?

1 A. To the best of my knowledge, they are.

2 Q. Where is the landfill located?

3 A. It's located I guess approximately five miles
4 west of Bridgeport on Route 250, that's adjacent to the
5 active landfill in Lawrence County.

6 Q. But this case does not involve the active
7 landfill; is that correct?

8 A. That is correct.

9 Q. And is the Lawrence County Disposal Center
10 Incorporated facility located in Lawrence County?

11 A. Yes, it is.

12 Q. And pursuant to your employment with Ambrow
13 Valley Solid Waste Management, have you inspected the
14 Lawrence County Disposal Center Incorporated?

15 A. Yes, I have.

16 MR. MCQUILLAN: And for brevity, would it be
17 okay if we refer to this as the facility from this point
18 forward?

19 HEARING OFFICER WEBB: Yes.

20 Q. Okay Mr. Gher, do you recall about when you
21 started inspecting this facility?

22 A. Probably in 1999, I was hired in June of 99 and I
23 become certified with the state to do those inspections
24 in September of 99.

1 Q. I'm going to direct your attention to the date of
2 February 19, 2001. And I'm going to hand you what's been
3 marked People's Exhibit No. 1.1, we have a copy for Mr.
4 Simmons, and a copy for the hearing officer. Mr. Gher.
5 Mr. Gher, do you recognize People's Exhibit 1.1?

6 A. Yes, I do.

7 Q. What is it?

8 A. It's a copy of my inspection report.

9 Q. And when you inspected the facility at issue in
10 this case, did you prepare this report on the basis of
11 this inspection?

12 A. Yes, it was based on that inspection.

13 Q. And was the report prepared contemporaneously
14 with the inspection, or a reasonable time thereafter?

15 A. It was done within two weeks, I would say.

16 Q. When you did the inspection, did you take notes
17 during your inspection?

18 A. No, I did not.

19 Q. Now, referring to People's Exhibit 1.1, could you
20 tell us were there any violations that you noted in your
21 inspection of this facility?

22 A. Yes, they were several violations.

23 Q. Could you tell us what the violations were?

24 A. Cause, threaten, or allow air pollution.

1 Q. What was the basis of that finding?

2 A. The methane gas being emitted from the wells.

3 Q. And were there any other violations?

4 A. Operating without a permit, or in violations of
5 the conditions of a permit, and violations of any
6 regulations or standards adopted by the board. Disposed
7 street, store, abandon any waste, or transport any waste
8 into the state or at sites not meeting the requirements
9 of the acts or regulations.

10 Q. In regard to the permit, I'm going to hand you
11 what's been marked People's Exhibit 8, I'm giving a copy
12 to Mr. Simmons, and a copy for the hearing officer.

13 HEARING OFFICER WEBB: Thank you.

14 Q. And here's People's Exhibit 8, Mr. Gher.
15 Mr. Gher, referring to People's Exhibit 8, is that the
16 permit that is referenced in People's Exhibit 1.1 where
17 you state that landfill was being operated in violations
18 of a condition of a permit?

19 A. Yes.

20 Q. And what did you note about the facility that was
21 a violation?

22 A. Permit violation?

23 Q. Yes.

24 A. Failure to submit records, access is not

1 controlled by a fence or gate. There's no sign posted,
2 and there's no records on file at Lemac Engineering as
3 far as any records.

4 Q. And what records?

5 A. Monitoring records of any sort, gas or air, or
6 water.

7 Q. Are those monitoring records required by both the
8 permits and regulations of the control board?

9 A. To the best of my knowledge, yes.

10 Q. And okay, with regard to boundary controls, what
11 deficiencies did you note?

12 A. The east and the west are not access controlled,
13 the east side and the west side of the landfill.

14 Q. By not controlled, was it simply open?

15 A. It's open.

16 Q. So anyone could have gone onto the property?

17 A. Yes.

18 Q. Is it required that access be restricted?

19 A. Yes.

20 Q. And were there signs posted?

21 A. There were no signs posted at the landfill.

22 Q. With regard to post closure maintenance required
23 by section 811 of the pollution control board
24 regulations, what was the situation with regard to the

1 final cover and vegetation?

2 A. There were several areas of failed vegetation on
3 the landfill.

4 Q. What is the purpose for requiring vegetation on a
5 landfill?

6 A. To stop erosion.

7 Q. And were these large areas where the vegetation
8 was had failed?

9 A. Yes.

10 Q. Do you have any estimate as to the area?

11 A. Well, approximately fifteen feet wide and
12 thirty-five feet long.

13 Q. Was there more than one area where that was the
14 case?

15 A. Yes, there was.

16 Q. Okay.

17 A. But that was the only one noted in this
18 inspection, if I'm reading this right. Is it okay if I
19 refer to my notes?

20 HEARING OFFICER WEBB: Of course.

21 Q. With regards to the wells, you've already
22 mentioned it had gas monitoring wells, what did you note
23 about them?

24 A. They were unmarked, and unlocked.

1 Q. And are they required to be?

2 A. Yes.

3 Q. Marked and locked?

4 A. Yes, they are.

5 Q. Were there any ground water monitoring stations?

6 A. They are on the perimeter of the landfill, yes.

7 Q. What did you note about those?

8 A. They were well, I didn't actually inspect the
9 groundwater monitoring wells.

10 Q. Were there records of the groundwater monitoring
11 on file?

12 A. No, there's not.

13 Q. And with regard to the gas monitoring, what did
14 you note about that situation?

15 A. There's no record of any monitoring being done by
16 Lawrence County Disposal Center.

17 Q. The condition of the gas monitoring wells, was
18 gas free to be emitted into the atmosphere?

19 A. Yes, I observed gas vapors.

20 Q. Mr. Gher, you had mentioned earlier that you
21 didn't recall some of the circumstances of that
22 inspection, I direct your attention to a narrative
23 inspection report in the general remarks. Would reading
24 that to yourself refresh your recollection?

1 A. Yes, it would.

2 Q. Would you please read that, silently, to
3 yourself.

4 A. Okay.

5 Q. And has reading that refreshed your recollection?

6 A. Yes.

7 Q. What can you tell us according to the erosion
8 that you observed of the landfill?

9 A. Well, the largest erosion was located on the
10 maintenance access road that leads from the active
11 landfill into this facility, and it was approximately
12 ten feet deep, and ten feet wide, forty feet long, and
13 then there was also erosion on the north slope, that I
14 estimate to be approximately a foot wide, a foot deep,
15 and four to five feet long.

16 Q. Mr. Gher, referring to People's Exhibit 1.1, does
17 that inspection report fairly and accurately describe
18 the conditions of this facility when you inspected it?

19 A. Yes, it does.

20 Q. Is it your job or business to make these
21 inspections?

22 A. Yes.

23 Q. And is it your job or business to prepare written
24 reports of your inspections?

1 A. Yes, it is.

2 Q. Now, after you performed this inspection that is
3 depicted in People's Exhibit 1.1, did you send a copy of
4 this to Mr. Simmons?

5 A. Yes, I did.

6 Q. And do you recall where you mailed the copy to?

7 A. 2411 Clydesdale Drive, Vincennes, Indiana.

8 Q. Did Mr. Simmons ever contact you in response to
9 this inspection?

10 A. No, he did not.

11 Q. I'm going to hand you what's been marked People's
12 Exhibit 1.2, I'll give a copy to Mr. Simmons, a copy to
13 the hearing officer, Mr. Gher would you examine People's
14 Exhibit 1.2.

15 A. Okay.

16 Q. Could you tell us what People's Exhibit 1.2 is
17 please?

18 A. It's a copy of my inspection dated May 9, 2001.

19 Q. Did you physically go to this facility for the
20 purpose of this inspection?

21 A. Yes, I did.

22 Q. And did you note violations during this
23 inspection?

24 A. Yes, I did.

1 Q. And were all of the violations that you noted in
2 your prior inspection present in this inspection on May
3 9, 2001?

4 A. Yes.

5 Q. Were there any additional violations in this May
6 9, 2001 inspection?

7 A. No, there were not.

8 Q. Does this People's Exhibit 1.2 fairly and
9 accurately report the inspection that you made on this
10 date?

11 A. Yes, it does.

12 Q. Was it pursuant to your business responsibilities
13 that you made this inspection?

14 A. Yes.

15 Q. Is it pursuant to your business responsibilities
16 that you prepared this inspection report?

17 A. Yes.

18 Q. And does People's Exhibit 1.2 fairly and
19 accurately portray and report the inspection of May 9,
20 2001?

21 A. Yes, it does.

22 Q. Mr. Gher, I'm going to present to you People's
23 Exhibit 1.3, and I'll give a copy to Mr. Simmons, copy
24 for the hearing officer. Mr. Gher, would you please

1 Exhibit 1.3.

2 A. Okay.

3 Q. Mr. Gher what is depicted in People's Exhibit
4 1.3?

5 A. A copy of my inspection report dated July 5,
6 2001.

7 Q. Did you physically go the site on July 5, 2001?

8 A. Yes, sir, I did.

9 Q. Did you make a report of your inspection of this
10 facility?

11 A. Yes, I did.

12 Q. Did you note violations during your inspection?

13 A. Yes, I noted the violations.

14 Q. And were the same violations from prior
15 inspections also existing as of July 5, 2001, with
16 regard to this facility?

17 A. Yes, I noted the same violations.

18 Q. And does People's Exhibit 1.3 fairly and
19 accurately report the results of your inspection?

20 A. Yes.

21 Q. And is it your business to perform these
22 inspections?

23 A. Yes, it is.

24 Q. Is it your business to put the results of your

1 inspection into written form, as soon as possible?

2 A. Yes.

3 Q. And is that what was done with regard to People's
4 Exhibit 1.3?

5 A. Yes, it is.

6 Q. Mr. Gher, I'm going to hand you People's Exhibit
7 1.4, I'll give a copy to Mr. Simmons, copy for the
8 hearing officer. Mr. Gher, before we deal with Exhibit
9 1.4, with regard to People's Exhibit 1.2, did you mail a
10 copy of that to Mr. Simmons?

11 A. Yes, I did.

12 Q. And did you get a response from Mr. Simmons?

13 A. No, I did not.

14 Q. With regard to People's Exhibit 1.3 did you mail
15 a copy to Mr. Simmons?

16 A. Yes, I did.

17 Q. Did you get a response from Mr. Simmons?

18 A. No, I did not.

19 Q. Drawing your attention to People's Exhibit 1.4,
20 could you examine that one for us, please.

21 A. Okay.

22 Q. Could you tell us what People's Exhibit 1.4 is?

23 A. It is a copy of my inspection dated 11-12-2001.

24 Q. Did you personally go to this facility on site on

1 that date?

2 A. Yes, I did.

3 Q. Did you note any violations?

4 A. Yes, I noted the same violations as in the
5 previous inspection.

6 Q. Were all the violations that you noted reflected
7 on people's Exhibit 1.4?

8 A. Yes.

9 Q. And is it your business to inspect this facility?

10 A. Yes, it is.

11 Q. And did you prepare a report of your inspection
12 at a point in time, or reasonably thereafter?

13 A. Yes, I did.

14 Q. Did you send a copy of your inspection report to
15 Mr. Simmons?

16 A. Yes, I did.

17 Q. Did you receive a response from Mr. Simmons?

18 A. No, I did not.

19 Q. People's Exhibit 1.4 fairly and accurately
20 reports on the conditions you observed during your
21 inspection on November 12, 2001?

22 A. Yes.

23 Q. Mr. Gher, I'm going to hand you what's been
24 marked People's Exhibit 2.1, I have a copy for Mr.

1 Simmons, and a copy for the hearing officer. Could you
2 examine People's Exhibit 2.1, please, and can you
3 identify what People's Exhibit 2.1 is?

4 A. It's a copy of my inspection report dated May 10,
5 2002.

6 Q. Did you physically go upon the site of this
7 facility on that date?

8 A. Yes, I did.

9 Q. Did you note violations during your inspection?

10 A. Yes, I noted violations.

11 Q. Were the violations noted, the same violations
12 that you noted on previous inspections?

13 A. They were the same violations, and in addition I
14 noted exposed refuge, and an area of failed vegetation.

15 Q. Could you describe that in more detail?

16 A. It was located on the northeast slope of the
17 landfill, it was approximately five feet wide and ten
18 feet long.

19 Q. Had the cap been eroded away?

20 A. Yes.

21 Q. Okay.

22 A. Well, what do you mean by cap?

23 Q. The earth or ground cover?

24 A. Well yeah, there was failed vegetation in that

1 area.

2 Q. I'm sorry, I didn't catch that?

3 A. There was areas -- there was failed vegetation in
4 that area.

5 Q. And was the soil eroded?

6 A. Yes, it was.

7 Q. Did you note the same violations during the
8 inspection on May 10, 2002 as noted before?

9 A. Yes, I did.

10 Q. Is it your business to perform an inspection of
11 this facility, pursuant to your employment?

12 A. Yes, it is.

13 Q. Is it your business to prepare a report of that
14 inspection?

15 A. Yes.

16 Q. Does People's Exhibit 2.1 fairly and accurately
17 report the results out of your inspection?

18 A. Yes, it is.

19 Q. Did you send a copy of People's Exhibit 2.1 to
20 Mr. Simmons?

21 A. Yes, I received a copy.

22 Q. Did you receive a response from Mr. Simmons?

23 A. No.

24 Q. Mr. Gher, I'm going to be handing you what's

1 marked as People's Exhibit 2.2, I'm handing a copy to
2 Mr. Simmons, copy to the hearing officer. Mr. Gher,
3 could you please review Exhibit 2.1, and could you tell
4 us what that exhibit is please?

5 A. It's a copy of my inspection report dated
6 November 8, 2002.

7 Q. Did I say 2.1, that's 2.2, isn't it?

8 A. Yes.

9 Q. Sorry. And did you physically visit the site on
10 November 8, 2002?

11 A. Yes, I did.

12 Q. Did you note any violations during that
13 inspection of this facility?

14 A. Yes, I noted violations.

15 Q. And are those the same violations that have
16 previously existed?

17 A. Yes, they are.

18 Q. And did you prepare a report on this inspection?

19 A. Yes, I did.

20 Q. And is that what Exhibit 2.2 is?

21 A. Yes.

22 Q. Is it your business as part of your employment to
23 inspect landfills?

24 A. Yes, it is.

1 Q. And is it also your business as part of your
2 employment to prepare a report, subsequent to the
3 inspection, within a reasonable time?

4 A. Yes.

5 Q. Is that what was done here?

6 A. Yes, it is.

7 Q. And does People's Exhibit 2.2 fairly and
8 accurately describe the violations that existed?

9 A. Yes.

10 Q. And did you send a copy of People's Exhibit 2.2
11 to Mr. Simmons?

12 A. Yes, I did.

13 Q. Did you receive a response from Mr. Simmons?

14 A. No, I did not.

15 Q. Mr. Gher, I'm going to hand you what's been
16 marked People's Exhibit 3.1, and a copy to Mr. Simmons,
17 copy to the hearing officer. Mr. Gher, please examine
18 People's Exhibit 3.1. Do you recognize People's Exhibit
19 3.1?

20 A. It's a copy of my inspection report dated
21 February 20, 2003.

22 Q. Did you personally visit the facility, during the
23 inspection?

24 A. Yes, I did.

1 Q. And were these the same violations that existed
2 before?

3 A. Yeah, the ones that were visible, there was snow
4 on the ground, so some areas of the failed vegetation
5 and exposed refuge was not visible.

6 Q. Is it part of your business through your
7 employment to inspect this facility?

8 A. Yes, it is.

9 Q. Is it also part of your business through your
10 employment to prepare a report of the results of your
11 inspection?

12 A. Yes.

13 Q. Does People's Exhibit 3.1 fairly and accurately
14 describe the inspection and the conditions of this
15 facility at that time?

16 A. Yes, it does.

17 Q. Did you mail a copy of People's Exhibit 3.1 to
18 Mr. Simmons?

19 A. Yes, I did.

20 Q. Did you receive a response from Mr. Simmons?

21 A. No, I did not.

22 Q. Mr. Gher, I'm going to hand you what's been
23 marked People's Exhibit 3.2, and present a copy to Mr.
24 Simmons, a copy for the hearing officer. Mr. Gher,

1 please examine People's Exhibit 3.2, and could you tell
2 us what People's Exhibit 3.2 is?

3 A. It's a copy of my inspection report dated April
4 3, 2003.

5 Q. Did you physically go to the site of this
6 facility on that date?

7 A. Yes, I did.

8 Q. And did you inspect the condition of this
9 facility on that date?

10 A. Yes.

11 Q. Did you note any violations?

12 A. Yes, violations were noted.

13 Q. Were these the same violations that existed in
14 prior inspections?

15 A. Yes, they are, same violations.

16 Q. And is it part of your business to perform the
17 inspection of this facility?

18 A. Yes, it is.

19 Q. Is it also part of your business to prepare a
20 written report of that inspection?

21 A. Yes.

22 Q. Does People's Exhibit 3.2 fairly and accurately
23 portray the results of your inspection, what you
24 observed on that date?

1 A. Yes, it does.

2 Q. Did you mail a copy of People's Exhibit 3.2 to
3 Mr. Simmons?

4 A. Yes, I did.

5 Q. Did you receive a response from Mr. Simmons?

6 A. No, I did not.

7 Q. Mr. Gher, I'm going to hand you what's been
8 marked People's Exhibit 3.3, present a copy to
9 Mr. Simmons, copy for the hearing officer. Please
10 examine People's Exhibit 3.3. Mr. Gher, could you tell
11 us what People's Exhibit 3.3 is?

12 A. It's a copy of my inspection report dated
13 September 9, 2003.

14 Q. And did you physically go to the site of this
15 facility on that date?

16 A. Yes, I did.

17 Q. During your inspection, did you note violations?

18 A. Yes, violations were noted.

19 Q. And are those -- were they the same violations as
20 in the previous inspections?

21 A. Yes, they are.

22 Q. Is it part of your business to inspect this
23 facility?

24 A. Yes, it is.

1 Q. Is it also part of your business to prepare a
2 written report of that inspection?

3 A. Yes, it is.

4 Q. And does People's Exhibit 3.3 fairly and
5 accurately portray the results of the inspection and
6 note the conditions that existed on that date?

7 A. Yes, it does.

8 Q. Did you mail a copy of this inspection to
9 Mr. Simmons?

10 A. Yes, I did.

11 Q. Did you receive any response from him?

12 A. No.

13 Q. Okay Mr. Gher, I'm going to hand you what's been
14 marked People's Exhibit 4.1, and present a copy to
15 Mr. Simmons, a copy to the hearing officer. Mr. Gher,
16 please examine People's Exhibit 4.1, can you tell us
17 what People's Exhibit 4.1 is?

18 A. It's a copy of the ground water review that was
19 performed on February 6, 2004.

20 Q. And who performed that review?

21 A. Illinois EPA.

22 Q. And who in the Illinois EPA?

23 A. Doug Haywood, Kent Johnson, Sheila Williams, and
24 myself.

1 Q. So you were present for this?

2 A. I was present, yes.

3 Q. And do the results that are depicted in People's
4 Exhibit 4.1 fairly and accurately describe the
5 conditions that were in existence on that date?

6 A. Yes, they do.

7 Q. And does People's Exhibit 4.1 indicate that a
8 copy was mailed to Mr. Simmons?

9 A. Yes, it does.

10 Q. Do you know if Mr. Simmons responded?

11 A. No, I do not know that.

12 Q. Mr. Gher, I'm going to hand you what's been
13 marked People's Exhibit 4.2, and present a copy to
14 Mr. Simmons, a copy to the hearing officer. Mr. Gher,
15 please examine People's Exhibit 4.2, can you describe
16 what's depicted in People's Exhibit 4.2?

17 A. It's a copy of my inspection report dated May 11,
18 2004.

19 Q. Did you physically go on the site of this
20 facility on that date?

21 A. Yes, I did.

22 Q. During your inspection, did you note any
23 violations?

24 A. Yes, violations were noted.

1 Q. Are the violations listed on People's Exhibit
2 4.2?

3 A. Yes.

4 Q. And is it part of your employment duties to
5 inspect this facility?

6 A. Yes, it is.

7 Q. Is it also part of your employment duties to
8 prepare a written report describing the results of that
9 inspection?

10 A. Yes.

11 Q. Does people's Exhibit 4.2 fairly and accurately
12 describe the conditions that existed on that date?

13 A. Yes, it does.

14 Q. Did you send a copy of this to Mr. Simmons?

15 A. Yes, I did.

16 Q. Did you receive a response?

17 A. No, I did not.

18 Q. Mr. Gher, I'm going to hand you what's been
19 marked as People's Exhibit 4.3, present a copy to
20 Mr. Simmons, copy to the hearing officer, and Mr. Gher,
21 can you describe or tell us what People's Exhibit 4.3
22 is?

23 A. It's a copy of my inspection report dated
24 November 9.

1 Q. Is there a typographical error on this with
2 regard to the year?

3 A. Yes, there is, it's dated on the inspection
4 report 2002, but it's actually 2004.

5 Q. Does People's Exhibit 4.3 -- did you physically
6 go on the site on November 9, 2004?

7 A. Yes.

8 Q. To inspect the site?

9 A. Yes, I did.

10 Q. Is it part of your employment duties to make the
11 inspection of this facility?

12 A. Yes, it is.

13 Q. Is it also part of your employment duties to
14 prepare a report of that inspection, reasonably
15 thereafter?

16 A. Yes.

17 Q. And is People's Exhibit 4.3 -- or did you note
18 any violations on People's Exhibit 4.3, down in your
19 inspection?

20 A. Yes, I did.

21 Q. Were these violations the same that existed
22 previously?

23 A. Yes, they are.

24 Q. And does People's Exhibit 4.3 fairly and

1 accurately report the results of your inspection?

2 A. Yes, it does.

3 Q. Did you mail a copy of People's Exhibit 4.3 to
4 Mr. Simmons?

5 A. Yes, I did.

6 Q. Did you receive a response?

7 A. No, I did not.

8 Q. Mr. Gher, I'm going to hand you what's been
9 marked People's Exhibit 4.4, and present a copy to
10 Mr. Simmons, copy for the hearing officer, Mr. Gher,
11 could you tell us what People's Exhibit 4.4 is?

12 A. It is a copy of the letter I sent to Mr. Simmons,
13 along with the inspection report dated -- the inspection
14 report was dated November 9, 2004.

15 Q. Specifically with regard to the date of the
16 inspection and correlating this to People's Exhibit 4.3,
17 in People's Exhibit 4.4, what did you say was the date
18 of the inspection?

19 A. The date of the inspection was November 9, 2004.

20 Q. And does this fairly and accurately portray the
21 letter that you sent to Mr. Simmons?

22 A. Yes, it does.

23 Q. Mr. Gher, I'm going to hand you what's been
24 marked People's Exhibit 4.5, and present a copy to

1 Mr. Simmons, copy to the hearing officer. Mr. Gher
2 could you tell us what People's Exhibit 4.5 is?

3 A. It's a of the narrative for the inspection report
4 of my inspection for November 9, 2004.

5 Q. Does People's Exhibit 4.5 fairly and accurately
6 report the results of your inspection for November 9,
7 2004?

8 A. Yes, it does.

9 Q. Is it part of your business to report the results
10 of the inspection in this form?

11 A. Yes, it is.

12 Q. Does People's Exhibit 4.5 fairly and accurately
13 describe the inspection?

14 A. Yes, it does.

15 Q. Mr. Gher, I'm going to hand you what's been
16 marked People's Exhibit 5.1, present a copy to
17 Mr. Simmons, copy for the hearing officer, could you
18 identify People's Exhibit 5.1, please?

19 A. It's a copy of my inspection report dated January
20 6, 2005.

21 Q. Did you physically visit the site of this
22 facility on that date?

23 A. Yes, I did.

24 Q. Did you note any violations?

1 A. Yes, I did.

2 Q. And were all the violations you noted listed on
3 People's Exhibit 5.1?

4 A. Yes.

5 Q. And is it part of your business through your
6 employment to perform these inspections?

7 A. Yes, it is.

8 Q. Is it also part of your business to prepare a
9 report detailing your findings of your inspection?

10 A. Yes, it is.

11 Q. Does People's Exhibit 5.1 fairly and accurately
12 describe the results of your inspection on that date?

13 A. Yes, it does.

14 Q. Did you mail a copy of People's Exhibit 5.1 to
15 Mr. Simmons?

16 A. Yes, I did.

17 Q. Did you receive a response?

18 A. No, I did not.

19 Q. Mr. Gher, I'm going to hand you what's been
20 marked People's Exhibit 5.2, and give a copy to
21 Mr. Simmons, copy to the hearing officer, could you tell
22 us what People's Exhibit 5.2 is?

23 A. It's a copy of my inspection report dated May 11,
24 2005.

1 Q. Did you physically go to the site of this
2 facility on that date?

3 A. Yes, I did.

4 Q. Did you note any violations?

5 A. Yes, violations were noted.

6 Q. Is it part of your job duties to inspect this
7 facility?

8 A. Yes, it is.

9 Q. And is it also part of your job duties to prepare
10 a report of this inspection in a reasonable time
11 thereafter?

12 A. Yes.

13 Q. Was that done here?

14 A. Yes, sir it was.

15 Q. Does People's Exhibit 5.2 fairly and accurately
16 report the results of your inspection?

17 A. Yes, it does.

18 Q. Did you send a copy of People's Exhibit 5.2 to
19 Mr. Simmons?

20 A. Yes.

21 Q. Did you receive a response?

22 A. No, I did not.

23 Q. Mr. Gher, I'm going to hand you what's been
24 marked People's Exhibit 5.3, present a copy to

1 Mr. Simmons, copy to the hearing officer, could you tell
2 us what People's Exhibit 5.3 is?

3 A. It's a copy of my inspection report dated
4 September 8, 2005.

5 Q. Did you physically go upon the site of this
6 facility on that date?

7 A. Yes, I did.

8 Q. Did you note violations during your inspection?

9 A. Yes, violations were noted.

10 Q. Are the violations noted on People's Exhibit 5.3?

11 A. Yes.

12 Q. Is it part of your job duties to inspect this
13 facility?

14 A. Yes, it is.

15 Q. Is it also part of your job duties to prepare a
16 report of that inspection in a reasonable time after the
17 inspection has occurred?

18 A. Yes, it is.

19 Q. Is that what was done here?

20 A. Yes, it is.

21 Q. Does People's Exhibit 5.3 fairly and accurately
22 portray the results of your inspection?

23 A. Yes, it does.

24 Q. Did you send a copy of this Exhibit 5.3 to

1 Mr. Simmons?

2 A. Yes.

3 Q. Did you receive a response?

4 A. No, I did not.

5 Q. Mr. Gher, with regard to these exhibits that have
6 been presented, that you have examined, exhibits 1.3
7 through 5.3, have you had training to perform these
8 inspections?

9 A. Yes, I have.

10 Q. Has that training included the different
11 statutory, and regulatory sections that apply to the
12 landfill?

13 A. Yes.

14 Q. And did you note on each of these exhibits,
15 People's Exhibit 1.1, through 5.3, the various statutory
16 and regulatory violations that you observed?

17 A. Yes, I did.

18 Q. Mr. Gher, I'm going to hand you what's been
19 marked People's Exhibit No. 9, present a copy to
20 Mr. Simmons, copy to the hearing officer, Mr. Gher,
21 could you identify People's Exhibit 9 please?

22 A. It's a copy of the certified letter that I sent
23 Mr. Simmons on February 27, 2001.

24 Q. And what was the purpose of this letter?

1 A. It was in regards to my inspection on February
2 19, 2001.

3 Q. Does this letter fairly and accurately list the
4 violations that you notified Mr. Simmons of?

5 A. Yes, it does.

6 Q. Is People's Exhibit 9 a fair and accurate copy of
7 the original letter that was sent to Mr. Simmons?

8 A. Yes, it is.

9 Q. Mr. Gher, I'm going to hand you what's been
10 marked People's Exhibit 10, present a copy to
11 Mr. Simmons, copy to the hearing officer, could you tell
12 us what People's Exhibit 10 is?

13 A. It is a copy of the letter that I sent
14 Mr. Simmons on May 14, 2001, in regards to my inspection
15 of May 9, 2001.

16 Q. And does People's Exhibit 10 fairly and
17 accurately list the violations that were noted?

18 A. Yes, it does.

19 Q. Is People's Exhibit No. 10 an accurate copy of
20 the original sent to Mr. Simmons?

21 A. Yes, it is.

22 Q. Mr. Gher, I'm going to hand you what's marked as
23 People's Exhibit 11, present a copy to Mr. Simmons, copy
24 for the hearing officer, and can you identify for us

1 what People's Exhibit 11 is?

2 A. It's a copy of the violation notice that I sent
3 Mr. Simmons on July 13, 2001, in regards to the July 5,
4 2001 inspection.

5 Q. And does this letter fairly and accurate list the
6 violations noted?

7 A. Yes, it does.

8 Q. And is People's Exhibit 11 a true copy of the
9 original sent to Mr. Simmons?

10 A. Yes, it is.

11 Q. Mr. Gher, I'm going to hand you what's been
12 marked People's Exhibit 12, and present a copy to
13 Mr. Simmons, copy for the hearing officer, and ask you
14 to identify People's Exhibit 12?

15 A. It's a copy of the violation notice letter that I
16 sent Mr. Simmons on November 23, 2002 in regards to my
17 November 8, 2002 inspection.

18 Q. Does People's Exhibit 12 fairly and accurately
19 describe the violations that were noted?

20 A. Yes, it does.

21 Q. With regard to People's Exhibit 12, is it a true
22 and accurate copy of the original sent to Mr. Simmons?

23 A. Yes, it is.

24 Q. Mr. Gher, I'm going to hand you what's been

1 marked People's Exhibit 13, give a copy to Mr. Simmons,
2 copy for the hearing officer, and please examine
3 People's Exhibit 13, Mr. Gher?

4 A. Okay.

5 Q. Do you recognize people's Exhibit 13?

6 A. Yes, I do.

7 Q. What is it please?

8 A. It's a copy of the letter I received from
9 Mr. Simmons' attorney.

10 Q. And would that be Stephen, P-H for Stephen
11 Hedinger, H-E-D-I-N-G-E-R?

12 A. Yes.

13 Q. And after this letter was received, and up
14 through the various years, did Mr. Simmons perform any
15 remedial work at the facility that we're dealing with?

16 A. No, he has not.

17 Q. Mr. Gher, I'm going to hand you what's been
18 marked People's Exhibit 14, and present a copy to
19 Mr. Simmons, copy to the hearing officer, Mr. Gher, what
20 is People's Exhibit 14?

21 A. It's a copy of the compliance commitment
22 rejection letter that was sent to Mr. Simmons on
23 September 18, 2001.

24 Q. And is People's Exhibit 14 a true and accurate

1 copy of the letter sent to Mr. Simmons on that date?

2 A. Yes, it is.

3 Q. Mr. Gher, from the time that you were inspecting
4 this landfill, from the time of People's Exhibit 1.1,
5 through Exhibit 5.3, were the conditions deteriorating
6 over those years?

7 A. Yes, they were.

8 Q. With regard to the various things that would need
9 to be done, let's start first with the ground water,
10 what is the purpose and importance of inspecting the
11 ground water?

12 A. To ensure that the water surrounding had not
13 been -- there's no leach aid getting into the drinking
14 water, the ground water around it.

15 Q. And what is leach aid?

16 A. Leach aid is contaminated water contaminated by
17 refuse.

18 Q. Is it a mixture of liquids from the refuse, in
19 addition to the ground water?

20 A. It's water that's been in contact with refuse.

21 Q. Does the refuse -- leach aid contaminate ground
22 water?

23 A. Yes, it does.

24 Q. What impact does that have on the ground water?

1 A. It would make it unfit for wells, you know,
2 wildlife getting in it, whatever.

3 Q. Could it also affect any wells?

4 A. It could affect drinking water, wells.

5 Q. With regard to the gas monitoring stations,
6 what's the impact upon the environment with gas being
7 emitted into the atmosphere?

8 A. I can't answer that.

9 Q. Would that commonly add to air pollution?

10 A. It could contribute to it, yes.

11 Q. With regard to when there are breeches in the cap
12 due to erosions, failing of the vegetation, does that
13 expose refuse in the landfill?

14 A. Yes, it does.

15 Q. And does that present a problem for wildlife?

16 A. It attracts it.

17 Q. And if --

18 A. Which would --

19 Q. If the refuse is toxic, can that have an adverse
20 impact upon the wildlife?

21 A. Yes, it could.

22 Q. And with regard to when the contents of a
23 landfill are exposed due to erosion, does that refuse
24 get blown around sometimes?

1 A. Sometimes it does, yes.

2 Q. With regards to the failure to secure the
3 landfill, what adverse ramifications can arise from
4 that?

5 A. Anybody can have access to it, and there's one
6 instance, looks like four wheelers had been running
7 across the landfill.

8 Q. What does that do to maintaining vegetation on
9 the cap?

10 A. It would affect it, you know, it would destroy
11 it.

12 Q. And what is the purpose of maintaining the
13 vegetation over the cap?

14 A. To keep the erosion from happening.

15 Q. Now, subsequent to your last inspection that's
16 listed in Plaintiff's Exhibit 5.3, are you familiar with
17 the Illinois EPA having performed some remediation work
18 at this landfill?

19 A. Yes, I am.

20 Q. What are you aware of with regard to the
21 remediation work that the Illinois EPA performed?

22 A. I know that a fence was erected around the
23 landfill, wells were completed, and some vegetation,
24 grass was planted, and erosion was corrected.

1 MR. MCQUILLAN: Just a moment, for one
2 additional exhibit marking, Madame Hearing Officer.

3 HEARING OFFICER WEBB: Okay.

4 Q. Mr. Gher, I'm going to be handing you People's
5 Exhibit 16, I'm relaying a copy to Mr. Simmons, copy for
6 the hearing officer, and People's Exhibit 16, for the
7 record, is a two page exhibit. It will need to be
8 stapled together, so it doesn't get lost.

9 Mr. Gher, was Environmental Restoration LLC the
10 company that the Illinois EPA hired to make corrections
11 to this landfill?

12 A. Yes, it was.

13 Q. Are you -- in looking at the bill, People's
14 Exhibit 16, and your familiarity with the site, having
15 inspected it, is this the bill that matches the work
16 that you testified to earlier?

17 A. I believe it does.

18 Q. And with regard to the first page of People's
19 Exhibit 16, what's the invoice total of the work?

20 A. \$91,927.26.

21 Q. With regard to the second page of People's
22 Exhibit 16, what the invoice total for the work
23 performed at that facility?

24 A. \$14,348.70.

1 MR. MCQUILLAN: That's all the questions I
2 have.

3 HEARING OFFICER WEBB: Thank you.
4 Mr. Simmons, would you like an opportunity to ask this
5 witness any questions about anything he's said up here?

6 C R O S S E X A M I N A T I O N

7 By Mr. Simmons:

8 Q. I guess the current condition, since they've been
9 done, is pretty much in compliance.

10 MR. GHER: No, there's still violations at
11 the landfill.

12 MR. SIMMONS: Nothing.

13 HEARING OFFICER WEBB: No more questions?

14 MR. SIMMONS: No.

15 HEARING OFFICER WEBB: Thank you very much.

16 MR. MCQUILLAN: Madame Hearing Officer, I ask
17 that the witness be released, he has another commitment.

18 (Whereupon, a break was taken.)

19 HEARING OFFICER WEBB: Okay. We're back on
20 the record. At Mr. McQuillan's request, Mr. Gher is
21 going to take the witness stand again to review some
22 additional exhibits. Mr. Gher, I'll remind you you are
23 still under oath.

24 MR. GHER: Okay.

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

2 By Mr. McQuillan:

3 Q. Mr. Gher, I'm going to be handing you People's
4 Exhibit 6.1, I have a copy for Mr. Simmons, copy for the
5 hearing officer. And Mr. Gher, could you identify
6 People's Exhibit 6.1 please?

7 A. It's a copy of my inspection report dated May 17,
8 2006.

9 Q. And did you physically go onto the site of this
10 facility on that date?

11 A. Yes, I did.

12 Q. And did you notice any violations during your
13 inspection?

14 A. Yes, violations were noted.

15 Q. Were the violations that were noted listed on
16 People's Exhibit 6.1?

17 A. Yes, they are.

18 Q. Is it part of your job duties to inspect this
19 facility?

20 A. Yes, it is.

21 Q. Is it part of your job duties to prepare a
22 written report of the results of your inspection, within
23 a reasonable time thereafter?

24 A. Yes.

1 Q. Is that what was done in People's Exhibit 6.1?

2 A. Yes, it is.

3 Q. Does People's Exhibit 6.1 fairly and accurately
4 describe the conditions on the date of the inspection?

5 A. Yes, it does.

6 Q. Did you send a copy of People's Exhibit 6.1 to
7 Mr. Simmons?

8 A. Yes, I did.

9 Q. Did you receive a response from Mr. Simmons?

10 A. No, I did not.

11 Q. Mr. Gher, I'm going to hand you what's been
12 marked People's Exhibit 7.1, presenting a copy to
13 Mr. Simmons, copy to the hearing officer, and Mr. Gher,
14 could you tell us what People's Exhibit 7.1?

15 A. It is a copy of my inspection report dated
16 February 16, 2007.

17 Q. Did you physically go upon the site on that date?

18 A. Yes, I did.

19 Q. Did you note violations during that inspection?

20 A. Yes, I did.

21 Q. And were the violations listed on People's
22 Exhibit 7.1?

23 A. Yes, they are.

24 Q. Is it part of your job duties to inspect this

1 facility?

2 A. Yes, it is.

3 Q. Is it part of your job duties to make a written
4 report of your inspection within a reasonable time
5 thereafter?

6 A. Yes.

7 Q. Does People's Exhibit 7.1 fairly and accurately
8 describe the results of that inspection?

9 A. Yes.

10 Q. Mr. Gher, earlier Mr. Simmons asked you whether
11 there were any violations at the site on this date, what
12 is your answer to that?

13 A. There are still violations at the site.

14 Q. And do you recall what those violations are?

15 A. On the date of this inspection?

16 Q. On the date of the last inspection that you
17 performed on, on the date of People's Exhibit 7.1?

18 A. On my last inspection, I noted violations at the
19 site.

20 Q. I'm sorry, I didn't hear that?

21 A. I said on my last inspection, violations were
22 noted.

23 Q. Do you recall what they were?

24 A. There's erosion, new erosion, there's still

1 permit violations, and there has been no mowing
2 performed at the landfill, no maintenance.

3 MR. MCQUILLAN: That's all the questions I
4 have, thank you.

5 HEARING OFFICER WEBB: Mr. Simmons, do you
6 have any?

7 MR. SIMMONS: No.

8 HEARING OFFICER WEBB: Okay, no questions.
9 Mr. McQuillan, you may call your next witness?

10 MR. MCQUILLAN: I call Christian Liebman.

11 HEARING OFFICER WEBB: Could you spell that
12 please?

13 MR. MCQUILLAN: L-I-E-B-M-A-N.

14 (Witness, Christian Liebman, sworn.)

15 MR. MCQUILLAN: Madame Hearing Officer, I'm
16 going to be using People's Exhibit 18, we only have one
17 copy, I could ask the kind folks here to make some
18 photocopies, if that would help.

19 HEARING OFFICER WEBB: Can we work off that
20 copy?

21 MR. MCQUILLAN: I can do it with just this
22 copy.

23 HEARING OFFICER WEBB: Why don't we do it
24 with just this copy, or maybe at the next break or at

1 the end of the hearing, make a copy.

2 MR. MCQUILLAN: I will first let Mr. Simmons
3 take a look at it.

4 HEARING OFFICER WEBB: Is it possible it's
5 already labeled as People's Exhibit 8, the witness
6 thought that it might be.

7 MR. MCQUILLAN: It is, that's why I don't
8 have it.

9 HEARING OFFICER WEBB: Well, it's right here.

10 MR. MCQUILLAN: I apologize.

11 HEARING OFFICER WEBB: Thank you, sure.

12 MR. MCQUILLAN: To end all the confusion,
13 there will be no People's Exhibit 18, we will be using
14 People's Exhibit 8.

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

16 By Mr. McQuillan:

17 Q. Will you state your name sir?

18 A. My name is Christian Liebman L-I-E-B-M-A-N.

19 Q. And what is your occupation, Mr. Liebman?

20 A. I manage the solid waste unit in the Illinois
21 EPA's land permit section.

22 Q. What's your business address?

23 A. 1021 North Grand Avenue East, Springfield,
24 Illinois.

1 Q. What is your educational background?

2 A. I have a bachelor's degree in geological
3 engineering from University of Missouri Rolla, and
4 Master's Degree in civil engineering from Southern
5 Illinois University.

6 Q. How long have you worked for Illinois EPA?

7 A. Approximately 23 years.

8 Q. And how long have you worked in the permit
9 section?

10 A. 23 years.

11 Q. And have you been the manager of the permit
12 section?

13 A. Yes, I've been the manager of the permit section
14 since 1999.

15 Q. And drawing your attention to People's Exhibit 8,
16 can you examine that please?

17 A. Yes. I've examined it.

18 Q. What is People's Exhibit 8?

19 A. It's a copy of the permit letter approving
20 closure certification for the Dowty Landfill.

21 Q. Is this the landfill that is also known as
22 Lawrence County Disposal Center Incorporated?

23 A. Yes, it is.

24 Q. And is Mr. Simmons the operator associated with

1 that facility?

2 A. Yes, I believe that's the case.

3 Q. What is the purpose of this permit, People's
4 Exhibit No. 8?

5 A. It approved closure certification for the
6 landfill.

7 Q. Did this permit, People's Exhibit No. 8 require
8 anything be done during the post closure period?

9 A. Yes.

10 Q. And could you, in summery or bullet point form,
11 tell us what was required by the permit in People's
12 Exhibit No. 8?

13 A. During the post closure care period for solid
14 waste landfills, the operator is required to maintain
15 the final cover system, monitor ground water, and
16 monitor for gas migration.

17 Q. And is the failure to comply with the provisions
18 of this permit a violation of the permit?

19 A. Yes.

20 Q. Is it also a violation of the rules and regs and
21 statutory provisions?

22 A. Yes.

23 Q. Does People's Exhibit No. 8, fairly and
24 accurately describe the permit conditions that apply at

1 this facility?

2 A. Yes.

3 Q. And have there been any modifications of People's
4 Exhibit 8, that you're aware of?

5 A. Not that I'm aware of.

6 MR. MCQUILLAN: That's all the questions I
7 have.

8 HEARING OFFICER WEBB: Thank you.
9 Mr. Simmons, would you like to ask this witness any
10 questions?

11 MR. SIMMONS: No.

12 HEARING OFFICER WEBB: No, okay. Thank you.

13 MR. MCQUILLAN: I will call Mr. Simmons as an
14 adverse witness under the Civil Practice Act.

15 HEARING OFFICER WEBB: Mr. Simmons.

16 (Witness, Gary Simmons, sworn.)

17 D I R E C T E X A M I N A T I O N.

18 By Mr. McQuillan:

19 Q. Will you state your name, sir?

20 A. Gary Simmons.

21 Q. And where do you live, Mr. Simmons?

22 A. 2101 South Severs Road, Vincennes, Indiana.

23 Q. During this time period, have you from 1999 to
24 the present, have you lived at other addresses?

1 A. Yes.

2 Q. And what other addresses have you lived at?

3 A. 2411 Clydesdale, Vincennes, Indiana.

4 Q. Were there any others?

5 A. I don't believe so, no.

6 Q. Mr. Simmons, what is your relationship with
7 Lawrence County Disposal Center Incorporated?

8 A. That was the landfill that I owned and operated.

9 Q. And where is that located?

10 A. It's between Bridgeport and Sumner, Illinois.

11 Q. Is that located in Lawrence County?

12 A. Yes, sir.

13 Q. When did you become the owner of this landfill?

14 A. I believe it was in 98, 1998.

15 Q. And who was the prior owner?

16 A. I'm sorry, not '88, it was, I'm sorry, I think it
17 was back to 1986, I think.

18 Q. You purchased the landfill in 1986?

19 A. I think, or 88, I'm sorry, 1988, yes.

20 Q. And who did you purchase this landfill from?

21 A. It was Mr. Lauren Dowty.

22 Q. Is this landfill sometimes still referred to as
23 the Dowty Landfill?

24 A. Yes, sir.

1 Q. And are you the person who incorporated Lawrence
2 County Disposal Center Incorporated?

3 A. Yes, sir.

4 Q. And were you the sole stockholder of Lawrence
5 County Disposal Center Incorporated?

6 A. Yes, I am.

7 Q. And did the Lawrence County Disposal Center
8 Incorporated have quarterly corporate meetings with
9 minutes prepared?

10 A. Yes, sir.

11 Q. Did Lawrence County Disposal Center Incorporated
12 hold the title to the landfill, or did you hold it in
13 your name?

14 A. It was the corporation.

15 Q. Were you the operator of the Lawrence County
16 Disposal Center Incorporated Landfill?

17 A. Yes, sir.

18 Q. From when to when did you operate this facility?

19 A. I guess it would be from 1988, until it was
20 closed, 98, 99.

21 Q. I'm sorry, I didn't hear what you said?

22 A. It would have been from 1988 until it was closed,
23 it's closure.

24 Q. Referring to People's Exhibit No. 8 in front of

1 you, Mr. Simmons, do you recognize People's Exhibit No.
2 8 as the closure permit for this landfill?

3 A. Yes, sir.

4 Q. Mr. Simmons, you heard the testimony of Mr. Gher
5 concerning each of the inspections that was performed at
6 this landfill, beginning with People's Exhibit 1.1,
7 through People's Exhibit 6.1, do you disagree with
8 anything that Mr. Gher said in his testimony, or in the
9 various inspection reports?

10 A. I regret those reports, but no, I do not disagree
11 with them.

12 Q. And isn't it true that during this time period,
13 from the date of the first inspection, as depicted in
14 Exhibit 1.1, through all the inspections thereafter,
15 that you were mailed a copy of the inspection report,
16 and received it?

17 A. Yes, sir.

18 Q. And is it also true that you did not perform any
19 work at this site in response to the inspection reports
20 that were sent to you?

21 A. That is correct.

22 Q. Do you recognize that the violations that
23 Mr. Gher noted in each inspection constituted a
24 violation of the permit, People's Exhibit No. 8?

1 A. Yes, sir.

2 Q. You acknowledge that these violations that
3 Mr. Gher's testified to, as depicted in each of the
4 inspection reports, also violated statutory provisions
5 of the Illinois Environmental Protection Act?

6 A. Yes, sir.

7 Q. You also acknowledge that those violations also
8 constituted violations of the rules and regulations of
9 the Illinois Pollution Control Board?

10 A. Yes, sir.

11 Q. Mr. Simmons, are you aware of the work that the
12 Illinois EPA performed at the site by virtue of using
13 the post closure bond money?

14 A. I was just made aware of that, yes, sir.

15 Q. Do you have any reason to doubt that the amounts
16 that are listed in, I believe it was People's Exhibit
17 16, I'll make sure.

18 HEARING OFFICER WEBB: I've got it.

19 Q. The Environmental Restoration LLC, do you have
20 any reason to doubt the correctness of the work that's
21 stated on there, or the amounts billed for that work?

22 A. I have no reason to doubt that at all.

23 Q. Mr. Simmons, are you familiar with the complaint
24 that was filed in this matter?

1 A. Which particular one?

2 Q. I'll just mark this as an exhibit, and I'll hand
3 you what's been marked People's Exhibit 19.

4 A. Okay.

5 MR. MCQUILLAN: Madame Hearing Officer, this
6 is the complaint that was filed in this case, for the
7 record.

8 HEARING OFFICER WEBB: Okay.

9 A. Yes, sir.

10 Q. Mr. Simmons, referring to People's Exhibit 19,
11 are any of the allegations in that complaint false?

12 A. No, sir, as far as I can tell.

13 Q. I'm sorry?

14 A. I believe it's correct.

15 MR. MCQUILLAN: That's all the questions I
16 have.

17 A. Thank you.

18 HEARING OFFICER WEBB: Do you have anything
19 further, or can he stay here while you handle your
20 exhibits?

21 MR. MCQUILLAN: Yes. Madame Hearing Officer,
22 if we could kind of deal with the exhibit ins groups,
23 that might be faster.

24 I simply move to enter the exhibits, the

1 inspection reports that Mr. Gher testified to, that
2 began with People's Exhibit 1.1, and I believe they go
3 through People's Exhibit 7.1, I believe.

4 HEARING OFFICER WEBB: Can I just read you
5 back what I have?

6 MR. MCQUILLAN: Yes.

7 HEARING OFFICER WEBB: To make sure I have
8 everything, I have 1.1, 1.2, 1.3, 1.4, 2.1., 2.2, 3.1,
9 3.2, 3.3, 4.1, 4.2, 4.3, 4.4, 4.5, 5.1, 5.2, 6.2 and
10 7.1.

11 MR. MCQUILLAN: Those are correct.

12 HEARING OFFICER WEBB: Okay.

13 MR. MCQUILLAN: I would move to introduce
14 those, both as business records, and as evidence for the
15 -- also as the evidence that Mr. Gher testified to with
16 regard to the violations in each successive report,
17 being those that were visually noted.

18 HEARING OFFICER WEBB: Hearing no objections,
19 all of those exhibits are admitted.

20 MR. MCQUILLAN: Then I believe the next
21 exhibit is People's Exhibit 8, which is the permit, move
22 for introduction of the permit.

23 HEARING OFFICER WEBB: Are we taking these
24 as a group, or you want to go one by one?

1 MR. MCQUILLAN: We'll go one by one, from
2 here.

3 HEARING OFFICER WEBB: If there's no
4 objection, then exhibit 8 is admitted.

5 MR. MCQUILLAN: Did I use a number 9.

6 HEARING OFFICER WEBB: Yes, violation notice
7 from February 27 of 01.

8 MR. MCQUILLAN: I move to introduce People's
9 Exhibit 9.

10 HEARING OFFICER WEBB: Exhibit 9 is admitted.

11 MR. MCQUILLAN: I move to introduce People's
12 Exhibit 10.

13 HEARING OFFICER WEBB: Admitted.

14 MR. MCQUILLAN: I move to introduce People's
15 Exhibit 11?

16 HEARING OFFICER WEBB: Admitted.

17 MR. MCQUILLAN: I move to introduce People's
18 Exhibit 12?

19 HEARING OFFICER WEBB: Admitted.

20 MR. MCQUILLAN: I move to introduce People's
21 Exhibit 13.

22 HEARING OFFICER WEBB: Admitted.

23 MR. MCQUILLAN: I move to introduce People's
24 Exhibit 14.

1 HEARING OFFICER WEBB: Admitted, I do not
2 have a 15.

3 MR. MCQUILLAN: Okay.

4 HEARING OFFICER WEBB: I have 16, and 19.

5 MR. MCQUILLAN: I move to introduce People's
6 Exhibit 16.

7 HEARING OFFICER WEBB: Admitted.

8 MR. MCQUILLAN: I move to introduce People's
9 Exhibit -- I didn't have a 17?

10 HEARING OFFICER WEBB: No.

11 MR. MCQUILLAN: I move to introduce People's
12 Exhibit 19.

13 HEARING OFFICER WEBB: Admitted.

14 MR. MCQUILLAN: And then I'm going to, I have
15 one more exhibit that I need to mark. I move to
16 introduce People's Exhibit 20, I have a copy for the
17 hearing officer, a copy for Mr. Simmons. People's
18 Exhibit No. 20 is simply the verification regarding the
19 money spent to do the remediation work in 2007. This
20 includes an affidavit from Sherry Oxencis, O-X-E-N-C-I-S
21 from the Illinois EPA, and invoice voucher for the
22 fiscal year 2007 for \$91,927.26, and an invoice voucher
23 from the fiscal year 2007 for \$14,348.70, and the next
24 page is internal costs that the EPA charged for the work

1 that it did, in the amount of \$5,277.56, then again,
2 \$6,868.38, these are the costs that are associated that
3 came from the bond that the Illinois EPA used to perform
4 remediation work at the facility.

5 HEARING OFFICER WEBB: Exhibit 20 is at
6 admitted.

7 MR. MCQUILLAN: The people will rest.

8 HEARING OFFICER WEBB: Thank you.

9 Mr. Simmons, this is your opportunity to make a
10 statement on your own behalf, if you would like to do
11 so.

12 MR. SIMMONS: I don't know if it would help
13 or not. I was thinking about maybe just re-reading that
14 letter written to Mr. McQuillan, where I explain a
15 little bit of my situation. Would it be alright if I
16 read that?

17 HEARING OFFICER WEBB: Is it one of the
18 exhibits?

19 MR. MCQUILLAN: No, it's a letter that
20 Mr. Simmons mailed to me.

21 HEARING OFFICER WEBB: Do you have with it
22 you?

23 MR. MCQUILLAN: I do, it's down there.

24 HEARING OFFICER WEBB: Okay. You've seen

1 this?

2 MR. MCQUILLAN: Yes, he mailed it to me some
3 time ago, if the heading of the letter looks like the
4 letter would have come from me, I believe my name and
5 address are at the top heading.

6 HEARING OFFICER WEBB: Yes, I see.

7 MR. MCQUILLAN: It's listed as the heading of
8 the letter, but that's just, I am the addressee.

9 MR. SIMMONS: That's correct, that's my
10 doing.

11 HEARING OFFICER WEBB: I just want to make
12 sure, so this is a letter you sent to Mr. McQuillan, and
13 Mr. McQuillan you received this letter.

14 MR. MCQUILLAN: Yes.

15 HEARING OFFICER WEBB: So do you want to say
16 anything about it?

17 MR. SIMMONS: I guess this is basically my
18 situation, can I read it?

19 HEARING OFFICER WEBB: If you want, or we can
20 just admit it as though you just read it, is there
21 anything else you would like to say on your own behalf.

22 MR. SIMMONS: No, I regret the situation, it
23 was never intended to be this way, but I basically went
24 broke, and wasn't able to finish what we had begun. We

1 had left the place much better than we found it, but
2 wasn't able to make a home run, and I regret that. I
3 got in over my head, into something I should have
4 probably never have been involved with. I wish it would
5 have turned out differently. However, the legacy that I
6 left behind is much better than what it was. There's
7 the new subtitle D landfill that's I was critical in
8 getting started, that serves the community well now,
9 it's a start of the art facility, it sends revenue to
10 the state and county. The landfill that we're
11 discussing here was closed in compliance, even though
12 the guarantors went bankrupt for that post closure care,
13 the insurance company. I but at least, the people here,
14 one of the reasons why I was able to get the local
15 siding on the other sight, is because the people here
16 appreciate what I was able to go in there and do,
17 because it was a tremendous mess than was there, that
18 everybody was running away from at the time.

19 That was an opportunity, and I was a little
20 naive, with the rules changing as rapidly as they did,
21 especially during that time that I was quickly on a
22 treadmill I could not get off of, I regret the way it
23 turned out, however, it's not as bad as Mr. Dowty's
24 other landfills turned out to be. That's all I would

1 have to say.

2 HEARING OFFICER WEBB: Mr. McQuillan, do you
3 have any objection to admitting this as Respondent's
4 Exhibit 1?

5 MR. MCQUILLAN: I just need to read it again,
6 I don't think I will, it's just been a long time since I
7 read it. Thank you. No objections.

8 HEARING OFFICER WEBB: Okay. Then your letter
9 will be admitted as an exhibit. The board will review
10 that.

11 Do you have anything further that you want
12 to present, or are you done?

13 MR. MCQUILLAN: No.

14 HEARING OFFICER WEBB: Thank you very much.

15 MR. MCQUILLAN: I just have one thing, I'm
16 sorry.

17 HEARING OFFICER WEBB: Yes, Mr. McQuillan has
18 a chance to ask you some questions.

19 Q. (By Mr. McQuillan) I just want to draw attention
20 to the letter that Mr. Simmons wrote to me, that's been
21 admitted into evidence, just to get some clarification.

22 In that letter, Mr. Simmons, you talk about
23 another landfill that you helped to get started. For
24 clarification, you had bought adjoining ground?

1 A. Yes, sir.

2 Q. When you were operating the Dowty landfill, which
3 is this facility, the Lawrence County Disposal Center
4 Incorporated, and you worked to get the permit for that
5 landfill is what you're referring to in this letter?

6 A. Yes, we bought the land, and got the local siting
7 accomplished on it.

8 Q. Then you sold this landfill to what, Evergreen?

9 A. No, it was Eastern Environmental.

10 Q. It was Eastern Environmental, and then Eastern
11 Environmental sold it to Waste Management?

12 A. Yes, sir.

13 Q. So it's Waste Management?

14 A. Currently.

15 Q. Operating this landfill?

16 A. Correct, currently, yes.

17 Q. But you did not operate this landfill?

18 A. No, never operated or got that far, no.

19 Q. Just wanted that for clarification, and just one
20 other subject matter with regard to Lawrence County
21 Disposal Center Incorporated. Is it correct that
22 approximately two years ago, that corporation lost it's
23 status as being in good standing?

24 A. I believe that's correct.

1 Q. Did you simply discontinue paying the yearly
2 franchise fee?

3 A. That's correct.

4 MR. MCQUILLAN: Okay. That's all the
5 questions I have.

6 HEARING OFFICER WEBB: Thank you. Let's go
7 off the record.

8 (Whereupon, an off the record discussion was
9 held.)

10 HEARING OFFICER WEBB: We've just had an off
11 the record discussion, regarding post hearing briefs.
12 The parties have agreed to a briefing schedule as
13 follows. The transcript of these proceedings will be
14 available from the court reporter by November 10, and
15 will be posted on the Board's website. The public
16 comment deadline is November 24. Public comment must be
17 filed in accordance with Section 101.628 of the Board's
18 procedural recalls. The Complainant's brief is due by
19 December 10, and the Respondent's brief, if any, will be
20 will due by December 29.

21 I will note for the record that the
22 Respondent, Mr. Simmons, indicated that he did not plan
23 to file a post hearing brief, but I have set a date of
24 December 29 in case he changes his mind.

1 The parties are advised that their briefs
2 should consider (1) proposing a remedy for a violation,
3 if any, including whether to impose a civil penalty, and
4 supporting it's position with facts and arguments that
5 address any or all of the Section 33(c) factors: And
6 (2), proposing a civil penalty, in any, including a
7 specific total dollar amount and the portion of that
8 amount attributable to the respondents' economic
9 benefit, if any, from delay compliance, and supporting
10 it's position with facts and arguments that address any
11 or all of the Section 42(h) factors.

12 Would you like to make a closing argument?

13 MR. MCQUILLAN: I waive my closing argument.

14 HEARING OFFICER WEBB: Mr. Simmons, would
15 you?

16 MR. MCQUILLAN: No, thank yo.

17 HEARING OFFICER WEBB: I will note again for
18 the record there are no members of the public present,
19 so I will proceed to the credibility of the witnesses
20 testifying.

21 I find all the witness testifying to be
22 credible. At this time, I will conclude the proceedings,
23 and thank you all for your participation.

24

1 STATE OF ILLINOIS)

2 MARION COUNTY)

3

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5 I, ANGIE R. KELLY, a Notary Public in and for the
6 County of Marion, State of Illinois, and St. Louis City,
7 State of Missouri, DO HEREBY CERTIFY that appeared
8 before me on October 29, 2008 at the offices of
9 Lawrenceville City Hall, 700 East State Street,
10 Lawrenceville, Illinois, that a hearing by the Illinois
11 Pollution Control Board was held.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 affixed my Notarial Seal this 9th day of November, 2008.

14

15

16 _____
Angie R. Kelly

17 My Commission Expires September 27, 2009

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