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ILLINOIS POLLUTION CONTROL BOARD

FOREST PRESERVE DISTRICT)
OF DUPAGE COUNTY, ILLINOIS,)
a body politic and corporate)
in the County of DuPage,)
State of Illinois,)
Complainant,)
vs)
MINERAL LAND AND RESOURCES)
CORPORATION, a Delaware)
corporation, SOUTHWIND)
FINANCIAL, LTD., an Illinois)
corporation, formerly known)
as ABBOTT CONTRACTORS, INC.,)
BLUFF CITY MATERIALS, INC.,)
an Illinois corporation as)
assignee of ABBOTT CONTRACTORS,)
INC.,)
Respondents.)

PCB No. 96-84

Volume II

The following is the transcript of a hearing held in the above-entitled matter, taken stenographically by Caryl L. Hardy, CSR, a notary public within and for the County of Cook and State of Illinois, before Michael Wallace, Hearing Officer, at 505 North County Farm Road, Wheaton, Illinois, on the 24th day of September 1997, A.D., scheduled to commence at 9:30 a.m., commencing at 9:50 a.m.

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

2 HEARING TAKEN BEFORE:
3 ILLINOIS POLLUTION CONTROL BOARD
4 100 West Randolph Street
5 Suite 11-500
6 Chicago, Illinois 60601
7 (312) 814-4925
8 BY: MR. MICHAEL WALLACE

9 CHAPMAN AND CUTLER,
10 111 West Monroe Street
11 Chicago, Illinois 60603
12 (312) 845-3000
13 BY: MR. RICHARD A. MAKARSKI and
14 MR. ROBERT G. TUCKER

15 Appeared on behalf of the Complainant,

16 WALSH, KNIPPEN, KNIGHT & DIAMOND, CHARTERED,
17 601 West Liberty Drive
18 Wheaton, Illinois 60189
19 (630) 462-1980
20 BY: MR. JAMES H. KNIPPEN, II

21 Appeared on behalf of the Respondents,
22 Bluff City Materials, Inc. and Southwind
23 Financial, Ltd.,

24 BUTLER, RUBIN, SALTARELLI & BOYD,
25 Three First National Plaza
26 Suite 1800
27 Chicago, Illinois 60602
28 (312) 444-9660
29 BY: MR. MICHAEL A. STICK

30 Appeared on behalf of the Respondents,
31 Bluff City Materials, Inc. and Southwind
32 Financial, Ltd.,

33

34

1 A P P E A R A N C E S: (cont'd)

2 GOULD & RATNER,
3 222 North LaSalle Street
4 Chicago, Illinois 60601
5 (312) 236-3003
6 BY: MS. KARIN O'CONNELL

7 Appeared on behalf of the Respondent,
8 Mineral and Land Resources.
9

10 ALSO PRESENT:

11 Mr. Michael Vondra

12 Mr. Joseph R. Benedict, Jr.

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12 E X H I B I T S

13 Marked for
Identification

14 Complainant's Exhibit No. 13. 250

15 Complainant's Exhibit
Nos. 14-A through 14-S. 256

16 Respondents' Exhibit
Nos. 7, 8, and 9. 368

17 Respondents' Exhibit No. 10 436

18 Respondents' Exhibit No. 11 446

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1 THE HEARING OFFICER: Pursuant to docket PCB
2 96-84, this is the complaint of the Forest Preserve
3 District of DuPage County vs. Mineral and Land
4 Resources Corporation, Southwind Financial, Limited,
5 and Bluff City Materials, Inc.

6 Can I have appearances for the record?

7 MR. MAKARSKI: Richard Makarski and Robert
8 Tucker of Chapman and Cutler for the Complainant,
9 Forest Preserve District of DuPage County.

10 MR. STICK: Michael Butler of Butler, Rubin,
11 Saltarelli, and Boyd for the Respondents, Bluff City
12 and Southwind, and with me is Mr. Michael Vondra,
13 the president of both those entities. My
14 co-counsel, Mr. Knippen, will be joining us later.

15 MS. O'CONNELL: Karin O'Connell on behalf of
16 the Respondent, Illinois Land Resources.

17 THE HEARING OFFICER: Thank you.

18 MR. MAKARSKI: We also have Mr. Joseph
19 Benedict, your Honor, who is our director of
20 environmental services representative of the
21 district here.

22 THE HEARING OFFICER: Thank you.

23 Let the record reflect there are no other
24 appearances and no members of the public.

1 Just a quick preliminary matter leftover
2 from yesterday. The Respondent identified Exhibits
3 5 and 6 -- labeled Respondents' Exhibit 5 and
4 Respondent Exhibit 6. I know that 5 was not
5 offered. Was 6 offered?

6 MR. STICK: My recollection is Mr. Knippen
7 thought he offered it. Could we defer that until
8 after the next break, and I will confer with him on
9 whether he wanted it offered?

10 THE HEARING OFFICER: Okay.

11 MR. STICK: That was during Mr. Knippen's
12 examination of Mr. Vick, correct?

13 MR. MAKARSKI: Vick, yes.

14 THE HEARING OFFICER: We will hold off on that.

15 Any other preliminary matters?

16 MR. MAKARSKI: We had not completed the cross
17 examination of Mr. Wells yesterday, and I discussed
18 with Mr. Stick and with the Court that we have a
19 witness we would like to interrupt Mr. Wells'
20 testimony to present because he came in from Florida
21 and is going to go back, Mr. Urbanski, and I
22 understand there is no problem with that. He will
23 be completed today. And then Mr. Wells will be
24 returned for cross examination when Mr. Urbanski is

1 done.

2 THE HEARING OFFICER: Anything further?

3 MR. MAKARSKI: We have nothing.

4 THE HEARING OFFICER: Mr. Stick?

5 MR. STICK: Nothing further.

6 THE HEARING OFFICER: Ms. O'Connell, are you
7 comfortable there?

8 MS. O'CONNELL: Yes, I'm fine.

9 THE HEARING OFFICER: All right.

10 (The witness was duly sworn.)

11 THE HEARING OFFICER: Please speak clearly and
12 loudly so we can all hear, and wait for the question
13 before you begin your answer. Thank you.

14 DENNIS URBANSKI,
15 called as a witness herein, having been first duly
16 sworn, was examined upon oral interrogatories, and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MAKARSKI:

20 Q Would you give us your name, please, sir?

21 A Dennis Urbanski.

22 Q Would you spell your last name?

23 A U-r-b-a-n-s-k-i.

24 Q And where do you reside, Mr. Urbanski?

1 A In Florida right now.

2 Q And were you at one time employed by the
3 Forest Preserve District of DuPage County?

4 A Yes.

5 Q Would you give us the date you started
6 your employment with the district?

7 A May 16th, 1965 -- '66. '66.

8 Q Did you subsequently leave the district?

9 A Yes. I retired.

10 Q When was that?

11 A June 19th, '96.

12 Q And what was your position with the
13 district when you retired?

14 A I was senior construction inspector.

15 Q How long did you hold that position?

16 A I think that position about ten years.

17 Prior to that, I was the construction supervisor for
18 20 years.

19 Q To which department of the district were
20 you assigned?

21 A Government services.

22 Q And has that named been changed?

23 A Yes. I think it's environmental services
24 right now.

1 Q What were your duties as a senior
2 construction supervisor?

3 A Really to check the construction practices
4 and make sure they were all to our specifications in
5 the Forest Preserve.

6 Q Now, did there come a time -- or strike
7 that.

8 Are you familiar with a parcel of land
9 that the district owns called the Stearns Road
10 property?

11 A Yes. I am now.

12 Q Did you have occasion to ever visit that
13 site?

14 A Yes, I did.

15 Q How many times?

16 A I think twice.

17 Q And would you tell us the date of the
18 first visit?

19 A I think it was in December of '94.

20 Q And what occasioned you to go to the site?

21 A I was told to go to the site because we
22 were going to do some work there.

23 Q And did you go out there?

24 A Yes, just to see it.

1 Q Did you go with anybody else?

2 A I went with Hartwig.

3 Q Would you spell that?

4 A H-a-r-t-w-i-g.

5 Q And who was Mr. Hartwig?

6 A He's my superior, my supervisor.

7 Q And what did you do at the Stearns Road
8 site that day in December?

9 A That time just looked at it. We tried to
10 establish where we were going to do our study at,
11 and we just walked around the site in general.

12 Q Now, did you subsequently return to the
13 site?

14 A Yes.

15 Q And when was that?

16 A In January 6th, 1995.

17 Q And with whom did you go?

18 A With a backhoe operator.

19 Q Who was that?

20 A I can't remember his name. It's on my
21 report.

22 Q Then what was the purpose of your going
23 there in January of 1995?

24 A To do an investigation.

1 Q And what type of investigation?

2 A Really basically to find out what was
3 there on the site. I had no idea before this what
4 we were doing. Just to find out what was there
5 basically.

6 Q And was there a specific area of the site
7 that you were investigating?

8 A We decided -- and it was an arbitrary
9 decision that -- where the flattest part of the site
10 because of the railroad tracks on the west side of
11 the site and that was pretty well level, so we
12 concluded that they were finished with that area.
13 It was just -- we weren't sure if they were finished
14 or not, but that basically was where we decided to
15 do the investigation.

16 Q And is that an area where off site fill
17 was placed, if you know?

18 A At that time, I didn't know.

19 MR. STICK: Objection. Foundation.

20 THE HEARING OFFICER: I didn't hear your
21 objection.

22 MR. STICK: Foundation.

23 THE HEARING OFFICER: All right.

24 MR. STICK: I think his answer established that

1 there is no foundation.

2 THE HEARING OFFICER: Okay.

3 BY MR. MAKARSKI:

4 Q What type of investigation were you going
5 to do there?

6 A We were going to dig a trench to find out
7 what type of -- what was actually there as far as
8 material anything, and we tried digging a trench,
9 but we couldn't because this area wasn't compacted.
10 And so we ended up digging holes. It kept on caving
11 in on us, so I decided that we should go out 50-foot
12 intervals.

13 Q And dig a hole every --

14 A Every 50 feet.

15 Q How deep would you go?

16 A The machine could go 15 feet deep, so that
17 was our maximum we could go.

18 Q Now, did you do this investigation that
19 day?

20 A Yes, I did.

21 Q What time of the day did you start?

22 A We started early. I was there on the site
23 maybe a couple hours before the machine came in.

24 And then he came in with the machine, the backhoe,

1 and we came in from the north end.

2 Q Did you do anything on the property prior
3 to the backhoe arrival?

4 A Did I personally?

5 Q Yes.

6 A No.

7 Q How did you determine which areas to dig
8 in?

9 A Like I said, because it was the flat area.

10 Q And was there a specific interval, you
11 said?

12 A Every 50 feet.

13 Q Now, did you prepare a report of your
14 activity --

15 A Yes, I did.

16 Q -- that day?

17 And did you take photographs when you were
18 there that day?

19 A Yes, I did.

20 (Complainant's Exhibit No. 13 marked
21 for identification, 9-24-97.)

22 BY MR. MAKARSKI:

23 Q And let me show you what we have marked as
24 Exhibit 13 for identification.

1 MR. STICK: Your Honor, I have the same
2 objection I had yesterday with respect to the report
3 being shown to the witness before his recollection
4 has been exhausted on the record.

5 MR. MAKARSKI: Well, it's a document he
6 prepared. I want to offer the document into
7 evidence. He could certainly read from it whatever
8 he wants.

9 MR. STICK: I think the document itself is
10 hearsay. It's an out-of-court statement offered for
11 the truth of the matter asserted. The declarant is
12 now in court on the stand subject to cross
13 examination. My objection is based on the fact that
14 it's hearsay, and unless Mr. Urbanski's recollection
15 has been exhausted, it's inappropriate to show that
16 exhibit to him for any purpose.

17 THE HEARING OFFICER: All right. Your
18 objection is overruled.

19 MR. MAKARSKI: Do you have one up there?

20 THE HEARING OFFICER: Yes.

21 BY MR. MAKARSKI:

22 Q Let me show you what we have had marked as
23 Complainant's Exhibit 13, Mr. Urbanski, a three-page
24 document. Would you look through that and tell us

1 whether or not you can identify that document?

2 A This is mine, yes.

3 Q Would you tell us in general what the
4 first page is?

5 A It basically tells that I went out there
6 with a surveyor and a machine. By the way, the
7 operator's name was Keith Colon, and I have
8 excavated 15 feet maximum depth -- up to a depth of
9 15 feet, and there was debris observed beyond the
10 maximum depth.

11 Q What is the second page of that report?
12 Just describe it in general.

13 A It's basically -- it's the stations that I
14 designated, the depth I found the material, and the
15 material that was found.

16 Q And then what is the third page?

17 A It's really basically a map of the area I
18 had dug showing the points that we had designated --
19 the survey had designated.

20 Q And did you prepare this exhibit?

21 A Not the end one I didn't.

22 Q Does that -- are you familiar with that
23 survey, the third page?

24 A Yes. I am familiar. It is exactly where

1 it was.

2 Q Does it truly and accurately depict the
3 areas in which you did your digging?

4 A Yes, it does.

5 Q And you said you prepared Pages 1 and 2?

6 A Yes.

7 MR. MAKARSKI: I would ask your Honor to offer
8 Complainant's Exhibit 13 into evidence.

9 MR. STICK: Could I have a moment, your Honor?

10 (Brief pause.)

11 MR. STICK: Your Honor, I object to the
12 introduction of the document into evidence on the
13 basis that it is hearsay, and it is being offered
14 for the truth of the matter asserted.

15 THE HEARING OFFICER: Mr. Urbanski, this map
16 prepared by Emocon, that was not attached to the
17 report when you submitted it, was it?

18 THE WITNESS: Not that I recall, sir.

19 THE HEARING OFFICER: And then the two of those
20 photographs, were they attached to your report?

21 THE WITNESS: Yes, they were.

22 THE HEARING OFFICER: Were there other
23 photographs?

24 THE WITNESS: I seem to be missing a couple,

1 but I'm not sure anymore. They have taken so many
2 copies of these things that I don't know anymore.

3 MR. STICK: Your Honor, I had not realized that
4 the map attached as the third page is not the map
5 that he had prepared, and so I would assert that as
6 an additional objection that the document is not as
7 he prepared it.

8 MR. MAKARSKI: Well, he testified that it
9 accurately depicts where he did his digging. It's
10 just demonstrative to show where he was working on
11 the site.

12 THE HEARING OFFICER: Then it may very well be
13 a proper exhibit in a different context, but it was
14 not -- the reason I point this out is that the date
15 on this Emocon map is February 22nd of '95, so
16 obviously it was prepared after Mr. Urbanski's
17 report of January 18th and then the two
18 photographs.

19 I think at this time I will not admit the
20 Exhibit 13 as I don't think a foundation has been
21 made for all five pages of this document.

22 MR. MAKARSKI: It should be just three pages.

23 MR. TUCKER: Three pages, your Honor.

24 THE HEARING OFFICER: I have five pages.

1 MR. TUCKER: It should just be the first three
2 pages. That's just photocopies.

3 THE HEARING OFFICER: They were clipped there,
4 Mr. Makarski.

5 MR. MAKARSKI: You are not admitting 13 at this
6 moment without the --

7 THE HEARING OFFICER: With that explanation
8 that those two pages were inadvertent, I still don't
9 think that the map has been properly identified.

10 MR. MAKARSKI: Why don't we just take the map
11 off?

12 THE HEARING OFFICER: All right. With the map
13 taken off, Exhibit 13 consists of a memorandum and a
14 chart, and I will admit that as Exhibit 13.

15 BY MR. MAKARSKI:

16 Q Mr. Urbanski, I think I asked you this.
17 Did you take photographs --

18 A Yes, I did.

19 Q -- at the time you were out there?
20 How long were you there that day?

21 A About ten hours.

22 Q And did you do -- explain to us again how
23 you did the actual study, I mean, physically, what
24 you did.

1 A Basically, once we knew where we were at
2 and I measured the spot, I put a designation on the
3 area that we dug like north zero plus 50, and then
4 we dug at that point. And then whatever I found, I
5 wrote down on a pad saying this is what I found.

6 Q And then what did you do with the
7 information on the pad?

8 A I transferred it when I got back into the
9 office. It was full of snow. It was snowing. It
10 was wet out there.

11 Q But then he prepared this exhibit?

12 A Yes. Exactly.

13 (Complainant's Exhibit No. 14-A
14 through 14-S marked for
15 identification, 9-24-97.)

16 BY MR. MAKARSKI:

17 Q Let me ask you to -- I want you just to
18 generally go through these. This is a series of
19 photographs which is marked Exhibits 14-A through
20 14-S and ask you without saying what each specific
21 one is if you can identify those particular
22 photographs.

23 A Yes. These are my photos.

24 Q Taken that day?

1 A Yes.

2 Q And does each one truly and accurately
3 depict what you were photographing?

4 A As accurately at the time as I think I --
5 yes.

6 Q Now, I just want to -- can I have those
7 back a second? I want to make sure that we are
8 all the same. We have Bates numbers on here,
9 Judge. I want to make sure that --

10 (Brief pause.)

11 BY MR. MAKARSKI:

12 Q Now, referring, Mr. Urbanski, to Exhibit
13 13, the second page, would you tell us -- did you --
14 the first test pit that you dug, is that accurate to
15 call it a test pit?

16 A I would.

17 Q Which is the first one you dug and where
18 was it located?

19 A It was Station one, 30 feet, west zero,
20 zero.

21 Q And how far down did you go?

22 A I went down nine and a half feet.

23 Q Would you tell us what material you
24 encountered in that?

1 A I found an old cable, a concrete slab,
2 asphalt plant leftovers, a mix of reddish, sandy
3 material, and photo was taken.

4 Q Now, what was the size of these holes, the
5 length and the width?

6 A They varied. Like that particular hole,
7 that's where we started, and I wanted to go a
8 trench, like I said, one continuous trench, but I
9 couldn't. It kept on caving into me. So that
10 area -- we ended up with a lot of material because
11 it just kept on caving in.

12 And after I went -- I had a hole I bet you
13 20 feet across after I started this thing, and I
14 realized then I couldn't go in a straight ditch. So
15 that was much larger than all the rest of the holes.

16 Q What was the approximate size?

17 A I don't know. 20-by-20. I don't know
18 because it just kept on caving in. I had a lot of
19 material.

20 Q How about the other -- you said the other
21 ones were smaller?

22 A Yes, much smaller.

23 Q What size were they?

24 A Again, it depended on how much caved in

1 and how far. If we stopped at, say, nine feet or
2 ten feet, they weren't as large on the top. If we
3 went down deeper, we had to make it wider on top to
4 get down deeper because you just can't dig straight
5 down. You have to dig on an angle.

6 Q And you say you took photographs of the
7 material you found in the Station one-thirty W zero
8 plus zero?

9 A Yes. Yes, sir.

10 Q Would you tell us on this Group Exhibit 14
11 which photograph or photographs were taken of that
12 pit?

13 A This here one here.

14 Q This is Exhibit 14-A, which is F 007711.
15 What does that photograph reflect?

16 A The reflects old cable, a concrete slab,
17 asphalt plant leftovers. When I say plant
18 leftovers, that's my best guess on what that was.

19 Q What do you mean by asphalt plant
20 leftovers?

21 A When you make asphalt, some of the
22 material doesn't stick to the different types of
23 material you are making, and this is a by-product of
24 the asphalt itself, and they get rid of this. This

1 is what I call a leftover, and they get rid of
2 that.

3 MR. STICK: Your Honor, I will move to strike
4 both of the last two answers to questions starting
5 with the statement this is my best guess, and I'm
6 moving to strike on the grounds that it's
7 speculation. There is no foundation for his ability
8 to make an educated and reliable statement regarding
9 what this material is. And he admitted at the
10 preliminary part of his answer that he was guessing,
11 so I move to strike from the point this is my best
12 guess on.

13 MR. MAKARSKI: I would like to ask a couple
14 more questions as to the experience with this
15 material.

16 THE HEARING OFFICER: All right. Go ahead.

17 BY MR. MAKARSKI:

18 Q Have you ever had experience at an asphalt
19 plant?

20 A Yes, I have, sir.

21 Q And which plant or plants?

22 A It was a plant at Blackwell. When I say
23 Blackwell, Forest Preserve. It was an area within
24 Blackwell. It was about five acres, and this

1 asphalt plant was there for about 20 years. I
2 visited this plant many, many, many times, and I saw
3 this residue all around the area stockpiled about
4 ten feet high. So I have dealt with it.

5 Q And is the material you observed at the
6 Stearns Road site in Exhibit 14-A, in your eyes, the
7 same as material you saw --

8 A Certainly. That's my best guess.

9 Q I mean, does it appear to be the same
10 material --

11 A Yes. It certainly did

12 MR. MAKARSKI: I think that clarifies it,
13 Judge. It's his best estimate as to what it is
14 looking at it compared to having been in an asphalt
15 plant.

16 MR. STICK: Your Honor, I still object on the
17 basis of foundation and speculation. I move to
18 strike everything from his first statement this is
19 my best guess up to here.

20 THE HEARING OFFICER: Okay. Objection
21 overruled.

22 BY MR. MAKARSKI:

23 Q Now, what was the next test hole that you
24 did, Mr. Urbanski, from your report?

1 A That I took a picture of?

2 Q No. Let's look at the report first.

3 A Okay. N zero plus 50, clean clay, stone,
4 top soil mix.

5 Q Did you find any debris in that?

6 A No. I went down ten feet on that.

7 Q And did you make a photograph of that?

8 A No. There was nothing to take a
9 photograph. It was clean clay.

10 Q Now, what is the next test hole that you
11 did?

12 A North 100, 11 feet, wood, concrete, soil
13 mix, photo taken.

14 Q You wrote down what you encountered?

15 A Yes.

16 Q Would you take a look at the Group Exhibit
17 14 and tell us which photo or photos depicts that
18 second group?

19 A Right here.

20 MR. STICK: What is the number?

21 MR. MAKARSKI: 7701.

22 MR. STICK: Give me just a moment.

23 MR. MAKARSKI: Sure.

24 (Brief pause.)

1 MR. MAKARSKI: We had Bates stamps on there,
2 and then we turned them over. That's what those
3 longer numbers are, Judge.

4 THE HEARING OFFICER: All right.

5 MR. STICK: Okay.

6 BY MR. MAKARSKI:

7 Q Now, does that truly and accurately depict
8 what you saw there?

9 A This is -- I think I have two photos of
10 this.

11 Q You have a second photo?

12 A I think so. Right. That depicts it
13 better. This one I was taking, I was looking down
14 in the hole and it doesn't show it as well, but it
15 does show some wire down there, but you have to look
16 at it.

17 Q And that's Exhibit 14-B?

18 A Oh, I'm sorry. I had it wrong there.

19 Q So people know.

20 A I have it wrong.

21 Q What?

22 A It's not in the same order.

23 Q No, that's right. That was the first one
24 you looked at it.

1 A No. This is the first one I looked at.

2 Q No. I mean, on this set.

3 A Oh.

4 Q So 14-B is from this N 100 plus 50 -- I

5 mean, N 100?

6 A Yeah. One N 100 here.

7 Q And you said there was a second photo?

8 A This is the one that shows it.

9 Q 14-C, which is 7713, is that also from the

10 same?

11 A That's not right. This one is right. 100

12 north. 100 north. There is two photos here.

13 Q Right.

14 A Right. Okay.

15 Q But I said the second photo -- what does

16 the second photo depict, which is 14-C?

17 A That one depicts concrete.

18 Q From the same test hole?

19 A Yes. Right.

20 Q So you have two photographs, 14-B and C,

21 from that same test hole; is that right?

22 A Yes.

23 THE HEARING OFFICER: Mr. Urbanski, you have a

24 habit of talking before Mr. Makarski is through with

1 his questions?

2 THE WITNESS: Sir, I am having a very hard time
3 with that, and I don't understand why I'm doing it,
4 but I am doing it. I have the same thing with
5 Mr. Stick there, and believe me, I have tried to
6 correct that.

7 THE HEARING OFFICER: It just makes it very
8 hard for the court reporter.

9 THE WITNESS: I know, sir. I'm really trying.
10 I'm sorry if I can't. I'm nervous. I think that's
11 what it is.

12 MR. STICK: Can I clarify one thing? We have
13 gone through 14-A, B, and, C?

14 MR. MAKARSKI: Yes.

15 MR. STICK: And if you could identify the
16 photographs by the Bates stamp number and the
17 exhibit number --

18 MR. MAKARSKI: Sure.

19 MR. STICK: -- as you go through it because
20 mine aren't marked and they are out of order.

21 THE HEARING OFFICER: Let's go off the record a
22 minute.

23 (Whereupon, a discussion was held off
24 the record.)

1 THE HEARING OFFICER: Back on the record.

2 You may continue, Mr. Makarski.

3 MR. MAKARSKI: Thank you, Mr. Hearing Officer.

4 Just for the record, I would like to move
5 the admission of this entire series of photographs.
6 He has already generally identified them, 14-A
7 through S, because he is looking at them and
8 describing them and I think they probably should be
9 in evidence when he does that.

10 MR. STICK: Your Honor, I have two problems
11 with that. First is an objection to the commentary
12 on the back of the photographs, which I would object
13 to. The second is I'm not sure he has laid a
14 foundation for each of these, and perhaps moving for
15 admission is more appropriate for the end.

16 MR. MAKARSKI: We can wait until the end.

17 THE HEARING OFFICER: Yes. Why don't you go
18 through them all?

19 MR. MAKARSKI: Okay.

20 MR. STICK: Your Honor, for the record, my
21 objection to the commentary on the back is that it
22 is hearsay.

23 BY MR. MAKARSKI:

24 Q Mr. Urbanski, showing you 14-D here, that

1 typed commentary on the back, do you see that?

2 A Yes.

3 Q Did you put that on there?

4 A Yes, I did.

5 Q And what is it?

6 A It tells me the station, the depth, and
7 the material found.

8 Q Is it the same that's on your report?

9 A Yes, it is.

10 Q Now, is that true with each of these
11 photographs, 14-A --

12 A To my knowledge, yes.

13 Q -- through S.

14 What is the next test hole that you looked
15 at?

16 A I think we have gone north to 200. I'm
17 not sure.

18 Q No. 100.

19 A We are still on 100?

20 Q 100 plus 50 I have.

21 A 100 plus 50.

22 Q Did you take a photograph or photographs
23 at that site?

24 A Yes, I did.

1 Q What did you encounter at 100 plus 50?

2 A Asphalt chunks, wood, wire, soil, concrete
3 curb about six feet by two feet.

4 Q Let me show you the exhibits again and ask
5 if you would tell us which photograph or photographs
6 are of the 100 plus 50. Give us the numbers --
7 exhibit numbers.

8 A D-14 and E-14.

9 Q What does D-14 depict? 14-D. I'm sorry.

10 A D-14 predicts -- predicts -- shows the
11 wire, chain-link fence, and the concrete.

12 Q At what depth did you find that chain-link
13 fence, if you recall?

14 A Approximately 13 feet. That's what it
15 says here. It could have been sooner, or it could
16 have been -- I only went 13 feet deep in that hole.

17 Q And does that truly and accurately depict
18 what you observed there that day?

19 A Yes, sir.

20 Q And then what about 14-E? Is that the
21 other one?

22 A Yes, sir. This is --

23 Q Tell us what that depicts.

24 A This is the two concrete curbs, six feet

1 by two feet. This picture isn't -- you are shooting
2 down from that distance, and it's starting to get --
3 I don't know if it's dark now or not, but it's hard
4 to show that. But it's much clearer when you are
5 there than when you are showing it on a picture.
6 That's the reason I knew they were curbs.

7 Q Does that as accurately as you could
8 depict what you observed there that day?

9 A With my equipment that I had, yes, sir.

10 Q Mr. Urbanski, what is the next test hole
11 that you worked on?

12 A North 200.

13 Q And what did you encounter there?

14 A Three long star paper concrete slab
15 material had odor and septic tank smell.

16 Q Let's go back to that. What do you mean
17 by it had a septic tank smell?

18 A To me, it was septic; that either they
19 dumped something from an outhouse or it was
20 decaying. I don't know. It was very strong septic
21 odor.

22 MR. STICK: Objection, your Honor. I move to
23 strike that portion of the answer that opines on
24 what may have been done. I believe it was on the

1 first part of the answer he stated he did not know,
2 but in the first part he purported to say or opined
3 on how the material got there. His phrase was
4 either --

5 THE HEARING OFFICER: I will tell you what, the
6 answer is stricken. Try again.

7 BY MR. MAKARSKI:

8 Q Would you tell us without describing any
9 suspected sources what you encountered?

10 A A strong odor.

11 Q Of what?

12 A To me, it smelled like septic.

13 Q And have you smelled septic in the past?

14 A Yes, I have.

15 Q And this was the same odor?

16 A The operator and I both agreed it was.

17 Q Now, how deep was that --

18 MR. STICK: Your Honor, if I might interject
19 another objection and move to strike the portion of
20 that answer that offers the hearsay statement of the
21 operator.

22 THE HEARING OFFICER: So stricken.

23 BY MR. MAKARSKI:

24 Q Did you take photographs of the material?

1 A Yes, I did, sir.

2 Q Would you tell us which in group
3 exhibit -- is there one or more?

4 A I'm not sure yet.

5 Q 14-F?

6 A Wait. I'm not sure if that's the right
7 one. No, that's not the right one. That's not the
8 right one.

9 Here's the one, 200. 200 and 200, I have
10 two. 14-H. Is that H or I?

11 Q Yes. H and I.

12 A I.

13 Q 14-H and I were the photographs of N 200;
14 is that right?

15 A Yes, sir.

16 Q And what does --

17 A Yeah.

18 Q What does 14-H depict?

19 A 14-H depicts the logs with the concrete
20 around them.

21 Q And what does 14-I depict?

22 A The concrete and a log.

23 Q And do those photographs truly and
24 accurately depict what you observed there that day?

1 A The other thing that was there --

2 Q Excuse me. Answer that first. All right?

3 A There was a black substance or black

4 discoloration in this hole where I -- where the odor

5 was coming from.

6 Q You observed that?

7 A Yes, I did.

8 Q And can you see that in the photograph?

9 A No, you can't.

10 Q Does that photograph, though, depict what

11 you could see as best you could?

12 A What was visual, yes. You can't

13 photograph odor.

14 Q What is the next test?

15 A North 250.

16 Q What did you find in that test hole?

17 A Nothing. I dug 11 feet, and it was clean

18 mix, gravel, soil.

19 Q Did you take a photograph?

20 A No. There was nothing to take a

21 photograph of.

22 Q What about the next test hole?

23 A North 300. I went nine and a half feet,

24 and again, there was clean mix, gravel, and soil.

1 Q Did you take a photograph?

2 A No, sir.

3 Q What is the next hole you dug?

4 A N 350. I went down 13.7 feet, and there
5 was clean mix with gravel and soil.

6 Q Did you take a photograph of that?

7 A No, sir.

8 Q And what is the next test hole you did?

9 A N 400. I went down nine and a half feet.

10 There was a concrete slab there four by
11 approximately one foot size. The rest was clean
12 fill. There was a photo taken, but I'm not sure
13 where this photo is.

14 Q It's not in our group that we have here,
15 is it?

16 A No, sir.

17 Q And then what is the next test hole that
18 you dug?

19 A North 400 plus 50. I went ten foot
20 seven -- 7.0, and that was clean fill, mostly
21 gravel.

22 Q Did you take a photograph of that?

23 A No, sir.

24 Q And what is the next test hole that you

1 did?

2 A Station seven, two feet west, 15 plus,
3 clean clay and gravel mix.

4 Q Is that 15 plus the number of feet?

5 A Yes. I went down 15 feet.

6 Q And did you take a photograph of that
7 material?

8 A Yes, sir -- no, not that one, but I would
9 like -- the plus on this means that this is as far
10 as I could go. I went to the depth of the machine.

11 Q Thank you.

12 A And there was still -- if there is a plus
13 there, there was something down below, or that's as
14 far as I could go.

15 Q What is the next test hole that you did,
16 Mr. Urbanski?

17 A Station CP, four feet east. I went down
18 12 feet, a very fine silty gravel fill asphalt and
19 pipe, photo taken.

20 Q Would you tell us the -- see if you could
21 find that photo or photos from CP four E?

22 A CP, yes, there is two photos.

23 Q There are two photos.

24 What are the exhibit numbers on the back?

1 A 14-J, 14-K.

2 Q What does 14-J show?

3 A It shows the pipe and the material -- the
4 silty material.

5 Q And then what does 14-H show?

6 A The pipe and some asphalt. That was a
7 different shot, different angle, but already you see
8 the snow on the ground there starting to accumulate.

9 Q It was snowing that day?

10 A Yes.

11 Q And do those two exhibits truly and
12 accurately depict what you observed there in that
13 test hole?

14 A Yes, sir.

15 Q What is the next test hole you did,
16 Mr. Urbanski?

17 A Station six, two feet north 950, clean
18 clay, gravel mix.

19 Q Did you take a photograph?

20 A No, sir.

21 Q And then what is the next one?

22 A Station eight, four feet south, 15 feet
23 plus, concrete slab, gravel, black soil, clay, photo
24 was taken.

1 Q And would you tell us which exhibit or
2 exhibits reflect that hole?

3 A 14-L.

4 Q What does that show?

5 A It shows the concrete and the asphalt and
6 different material.

7 Q Does that truly and accurately depict what
8 you observed that day?

9 A Yes.

10 Q Which is the next test hole you did,
11 Mr. Urbanski? 84 was the last one.

12 A Station nine, two feet northwest, 15 feet,
13 clean clay and gravel soil mix.

14 Q Did you take a photograph of the material
15 in that?

16 A No, sir.

17 Q And what is the next test hole you did,
18 Mr. Urbanski?

19 A Station ten, one foot north, 15 feet plus,
20 small amount of asphalt, concrete. The rest was
21 clean fill.

22 Q Did you take a photograph of that?

23 A I don't know if I did. Yes, I did.

24 Q What is the exhibit number on the back?

1 A 14-M.

2 Q 14-M?

3 A Yes.

4 Q What does that reflect?

5 A This shows the concrete and the asphalt.

6 Q And does that truly and accurately depict
7 what you observed there that day?

8 A Yes, sir.

9 Q Would you tell us, Mr. Urbanski, which is
10 the next test hole that you did?

11 A That was ten?

12 Q That was ten, one.

13 A Station five-one foot north, 15 plus, very
14 fine, silty clay. Looks like washing of gravel
15 screens.

16 Q Did you do a photograph of that?

17 A I don't think so.

18 Q Let's see if there was one.

19 A I don't seem to find it.

20 MR. STICK: Your Honor, may I ask counsel a
21 question?

22 THE HEARING OFFICER: Yes.

23 MR. STICK: The last photograph, was that 14-M
24 or N?

1 MR. MAKARSKI: I'm just looking. I have M
2 here. And then don't we have one more for --

3 THE WITNESS: Station ten.

4 MR. MAKARSKI: Ten, yes. And M and N.

5 BY MR. MAKARSKI:

6 Q N is also from that Station ten?

7 A Yes. That's what it looks like.

8 Q What does that show?

9 A The concrete.

10 MR. MAKARSKI: So it's M and N.

11 MR. KNIPPEN: For Station ten?

12 MR. MAKARSKI: Correct.

13 BY MR. MAKARSKI:

14 Q Is that right?

15 A Station ten, one foot north, yes.

16 Q Does that truly and accurately depict what
17 you saw that day?

18 A Yes, sir.

19 Q Now, you said for Station five-one N,
20 there is no photograph. Is that right?

21 A I can't seem to find it.

22 Q What is the next test hole that you did?

23 A Station four, two feet north, 15 feet
24 deep, and it says PVC pipe, asphalt, more debris on

1 the bottom of the hole.

2 Q Did you take photographs of that hole?

3 A Yes, I did, sir.

4 Q How many?

5 A I think there is only one. I'm not sure.

6 There seems to be only one, and that's 14-0. That
7 just shows the pipe and the asphalt, and I don't see
8 a picture of the hole, but there was other debris
9 that I found there.

10 Q What do you mean by other debris?

11 A Already it was getting to the point where
12 it was getting dark. All I could see was things,
13 and when I say things, it was hard to distinguish.
14 There was either tarpaper. Whatever there was, I
15 don't know.

16 MR. STICK: Objection, your Honor, and move to
17 strike the reference to tarpaper. He indicated it
18 was dark. He didn't know what he saw at the bottom,
19 and then he opined and speculated regarding
20 tarpaper.

21 THE HEARING OFFICER: All right. Tarpaper is
22 stricken.

23 BY MR. MAKARSKI:

24 Q Now, what is that exhibit you are looking

1 at now?

2 A That's the pipe. That's Exhibit 14-0.

3 Q 14-0.

4 Does that truly and accurately depict what
5 you observed there that day?

6 A Yes. On the surface, yes, it is.

7 Q And what was the next test hole that you
8 did, Mr. Urbanski?

9 A Station three, 15 feet plus, slabs of
10 asphalt, concrete, more debris on the bottom of the
11 hole.

12 Q And did you take a photograph or
13 photographs?

14 A Yes, sir.

15 Q How many photographs did you take?

16 A I think there is only one here.

17 Q And what is the exhibit number there?

18 A It's 14-Q.

19 Q And what does that reflect?

20 A It's a hole with something in it, and
21 again, you can't see it because it's getting dark.

22 Q Does that depict the best you could see at
23 that time?

24 A Yes, I could. This is asphalt and

1 concrete on the bottom and more debris in the hole.

2 Q And what is the next test hole that you
3 did?

4 A Station two, two feet west, 15 feet deep,
5 middle culvert, very sandy, very wet.

6 Q Very sandy?

7 A Very wet -- very silty and very wet.

8 Q Did you do any photographs of that
9 material?

10 A Yes, sir. I have two photos of it.

11 Q Would you give us the exhibit numbers from
12 the back?

13 A 14-S and 14-R.

14 Q Why don't we do them numerically? Do 14-R
15 first. What does that show?

16 A That shows the part of the culvert and a
17 pile right next to the machine.

18 Q At what depth did you find that culvert?

19 A That wasn't too deep. I went 15 feet
20 deep, but this was under the surface maybe a few
21 feet. It was covered, though.

22 Q And that's 14-R, right?

23 A Yes, sir.

24 Q Does that truly and accurately depict what

1 you observed there?

2 A Yes. Part of the culvert is there, and
3 then I took another shot at a different angle.

4 Q Is that 14-S?

5 A Yes.

6 Q What does that show?

7 A The culvert and some of the backhoe and
8 the pile of the silty material and right behind the
9 stick in the backhoe.

10 Q Now, those photographs are of the material
11 after it came out of the hole?

12 A Yes, sir.

13 Q Do they truly and accurately depict what
14 you observed there that day?

15 A Yes, sir.

16 Q That's the extent of your test holes; is
17 that right?

18 A Yes, sir.

19 Q We have a couple of these left. I don't
20 know if we just missed them or what we did.

21 A Yeah. I don't either.

22 Q I just want to double-check. Where is
23 that from, 14-F?

24 A 14-F is 150 north, the asphalt chunk.

1 That's several different pictures of it, I guess.

2 Q Do you know what that is? Have you seen
3 that?

4 A Wire -- this is -- this is a piece of wood
5 like a root that's torn out. That looks like a root
6 to me.

7 MR. STICK: Your Honor, could I have the last
8 question and answer read back?

9 THE HEARING OFFICER: For what purpose?

10 MR. STICK: Well, I thought I heard the witness
11 mention something about wire, and then he said it's
12 a root after reviewing the picture, and if he said
13 wire, I would like to have the wire stricken from
14 his testimony.

15 THE HEARING OFFICER: No. He was trying to
16 identify that, so the answer stands.

17 MR. KNIPPEN: Judge, I think the problem is
18 from back at our standpoint, when Mr. Makarski says
19 what this here, we don't know what he's referring to
20 when he says this here because we are not pointing
21 to it. We can't see, so we are looking at photos
22 without any reference point, and that's the
23 difficulty.

24 THE HEARING OFFICER: All right.

1 MR. MAKARSKI: I'm sorry.

2 BY MR. MAKARSKI:

3 Q What do you observe in that photo?

4 A What I am looking at is discoloration of
5 the soil and the root.

6 Q So it is a root?

7 A It looks like a root to me.

8 Q And did that accurately and truly depict
9 what you saw there that day?

10 A Yes, sir.

11 Q Now, let's see. We have still got two.
12 14-B, where is that from?

13 THE HEARING OFFICER: What number?

14 MR. MAKARSKI: 14-B.

15 THE WITNESS: Station three. This is slabs of
16 asphalt, concrete, more debris. It must be another
17 picture of that same one.

18 BY MR. MAKARSKI:

19 Q Do you recognize this?

20 A Yes. It was one of the pictures I have
21 taken.

22 Q And is it from Station three?

23 A Yeah, northwest, 15 feet plus. This was
24 some of the asphalt that's on the side of the hole,

1 yes, on the side of the hole.

2 Q Was that taken after the material was
3 removed from the hole or before?

4 A Yes, sir.

5 Q Was it after?

6 A After.

7 Q Does that truly and accurately depict what
8 you observed there?

9 A Yes, sir.

10 Q What is the final photograph that you have
11 there?

12 A Station one, north 150.

13 Q That's 14-G. That's one near the top of
14 the hole; is that right?

15 A Yes. It shows part of a wire fence, a
16 chain-link fence, and there is a cable. A wire?
17 Yeah. I don't know. This looks like a cable to me
18 and concrete and a wire fence.

19 Q Where did that come from, which test hole?

20 A 150 -- north 150, 13 feet deep.

21 Q Did you take that photograph?

22 A Yes, I did, sir.

23 Q From that test hole?

24 A Yes, sir.

1 Q Was that before or after the material was
2 removed from the --

3 A That was after the material was removed.

4 Q And does it truly and accurately depict
5 what you observed there?

6 A Yes, sir.

7 Q What time did you finish there that day,
8 Mr. Urbanski?

9 A It was dark already because I had to use
10 my truck's lights to take some of the photos.

11 Q And what did you do when you completed
12 your work at the Stearns Road site that day?

13 A We just packed up and left. This was the
14 initial -- the first time we did -- anybody did any
15 studies there, so...

16 Q Now, did you have occasion subsequently to
17 go back to that site?

18 A Yes, I did. I met Mr. Stick there.

19 Q Well, I mean, prior to the litigation, you
20 went back -- did you ever go back to do any further
21 studies or anything?

22 A No, I didn't.

23 Q You said at one point it was too dark with
24 the photograph?

1 A Yes, sir.

2 Q Was it light enough for you to observe
3 things, though?

4 A Sometimes, yes, but, I mean, right at the
5 bitter end, no. It was to the point where you
6 couldn't see anymore.

7 Q Is that when you stopped?

8 A Yes.

9 Q But the last test that you did you were
10 able to observe what material was in there; is that
11 right?

12 A Yes, sir.

13 Q With many of these photographs, the
14 material is not in the pit; is that right?

15 A I don't understand the question.

16 Q The material is piled on the ground in the
17 photographs?

18 A Yes. After I dug them out, yes.

19 Q Where did it come from?

20 A It came from the holes I dug out.

21 Q And what did you do with the material
22 after you completed your investigation?

23 A Most of it I buried. The culvert I didn't
24 because it was just too big to put back in the

1 hole. And some of them I just left because, like I
2 said, it was getting late already. We were out
3 there a long time, so really -- I just got out of
4 there after a while.

5 Q Do you have a photograph there with a part
6 of a fence in it?

7 A Yeah. Fencing, chain-link fencing?

8 Q Yes. I'm trying to see which.

9 A Yes.

10 MR. TUCKER: Can you identify that for the
11 record?

12 THE WITNESS: One north, 150.

13 BY MR. MAKARSKI:

14 Q What is the exhibit number in the lower
15 right-hand corner?

16 A 14-G.

17 Q And where was that fencing encountered?

18 A At a depth of -- 14-G. Within a depth of
19 13 feet. I have no idea exactly how far I found it.

20 Q Was it on the surface, do you remember?

21 A No. It was definitely buried.

22 Q But you just don't recall the exact depth?

23 A No. You would have to be a genius.

24 MR. MAKARSKI: We have no further direct,

1 Mr. Hearing Officer. I would offer Exhibits 14-A
2 through 14-S, the photographs that were identified
3 by Mr. Urbanski.

4 MR. STICK: No objection, your Honor.

5 THE HEARING OFFICER: Complainant's Exhibits
6 14-A through 14-S, consisting of photographs, are
7 admitted.

8 THE HEARING OFFICER: Cross?

9 MR. STICK: Thank you, your Honor.

10 CROSS EXAMINATION

11 BY MR. STICK:

12 Q Mr. Urbanski, you were employed by Forest
13 Preserve District for some 30 years, correct?

14 A Yes, sir.

15 Q As your general practice, when you visited
16 a Forest Preserve District property and came upon
17 debris or waste, it was your practice to arrange for
18 that debris or waste to be properly disposed of,
19 correct?

20 A Not necessarily. That wasn't my job.

21 Q Well, are you saying to me that it was
22 your practice as a Forest Preserve District
23 inspector that when you came across debris or waste
24 material on a piece of property owned by the Forest

1 Preserve District, you just sometimes left it there?

2 A No, sir. That was not my job. They have
3 rangers to do that. My job was on the sites of the
4 construction sites. If it was on a construction
5 site and it was my responsibility, yes, I would
6 remove it. If it wasn't on a construction site and
7 it was on a different preserve, no, sir, I would not
8 remove it. I would call a ranger, and a ranger
9 would do it.

10 Q So if it was on a site for which you had
11 some responsibility, you would, as an ordinary
12 course in your practice as a Forest District
13 employee, remove the waste from the site, correct?

14 A Yes, sir.

15 Q And if it was on a site that was not your
16 responsibility, it was your practice to at least
17 instruct someone else to remove it?

18 A If I found any, yes, sir.

19 Q Is that correct?

20 A That's correct.

21 Q Is it fair to say that if you yourself
22 were ever unable to remove the waste, you would, at
23 a minimal, instruct someone else to get rid of it
24 and properly dispose of it?

1 A Yes.

2 Q And under no circumstances would you allow
3 that waste to remain on the Forest Preserve District
4 property, correct?

5 A Not after my responsibility -- once I
6 informed somebody, then I would either not come
7 back, or if I did come back, I would reinform them.
8 But other than that, no, that would be it as far as
9 I would be concerned.

10 Q Well, if it was a site that you were
11 responsible for --

12 A Yes.

13 Q -- you would under no circumstances leave
14 it on the property, correct?

15 A Yes, sir.

16 Q If it was a site that you were not
17 responsible for, you would instruct someone else to
18 remove it. And if you came back to the site, you
19 would check to make sure that it had, in fact, been
20 removed, correct?

21 A If I were there. There were many times I
22 didn't go back to the site for many, many, many
23 months.

24 Q Now, under no circumstances would you bury

1 waste at a Forest Preserve District piece of
2 property, correct?

3 A No, sir. It depend on what you mean by
4 burying. What type of waste?

5 Q If you came upon waste on Forest Preserve
6 District property, you testified you would arrange
7 for it to be removed and disposed of, correct?

8 A Right.

9 Q My question to you is under no
10 circumstances if you came upon waste on Forest
11 Preserve District property would you bury it on the
12 site?

13 A When you say waste, does that take in
14 demolition?

15 Q Do you have an understanding of what waste
16 is?

17 A Yes. Waste is something you don't want.

18 Q If you came upon something that you don't
19 want on Forest Preserve District property, under no
20 circumstances would you bury it there, correct?

21 A I would like to say one thing. I have
22 buried debris many, many years ago when we were
23 doing demolition of homes.

24 Q Many years ago you buried debris on Forest

1 Preserve District property?

2 A I would say at that particular time. That
3 was many, many, many years ago.

4 Q And that was demolition debris?

5 A Yes, it was.

6 Q And that was because that was the easiest
7 way to get rid of it?

8 A At that particular time, yes.

9 Q At that particular time, you did not
10 arrange for it to be disposed of off site, right?

11 A We didn't have the landfills at that time.

12 Q Now, since 1990, have you ever buried
13 demolition debris on Forest Preserve District
14 property?

15 A Just in the landfills.

16 Q But on Forest Preserve District property
17 that is not permitted as a landfill, it is not your
18 practice to bury demolition debris on those sites --

19 A No, it's not.

20 Q -- since 1990 at least?

21 A I would say so, yes, sir.

22 Q And if you came upon debris or other waste
23 on Forest Preserve District property, under no
24 circumstances would you bury it on the site if it

1 was not a permitted landfill, correct?

2 A I would say so, unless there was some
3 other circumstances, you know, beyond my knowledge.
4 If I was told to, maybe I would.

5 Q If you were told to bury it on the Forest
6 Preserve --

7 A Maybe I would. If I was told to, maybe I
8 would.

9 Q Since 1990, have you ever been told to
10 bury debris on Forest Preserve District property?

11 A No, sir, not to my knowledge.

12 Q Now, in your course of your employment as
13 a Forest Preserve District inspection person, if you
14 came upon what you thought might be contaminated
15 soil, is it your standard operating procedure to
16 arrange for that soil to be tested?

17 A I would notify my superiors. What they
18 would do after that, that's up to them.

19 Q Would that be true whether it was a site
20 you were in charge of or one that you were not in
21 charge of?

22 A Yes, sir.

23 Q So if you came upon soil that you
24 suspected might be contaminated, you would notify

1 your inspectors?

2 A My superiors.

3 Q Okay.

4 A Not my inspectors.

5 Q Your superiors. I'm sorry.

6 Would you in the ordinary course conduct
7 analytical sampling of that soil of your own
8 initiative?

9 A I would not personally, no.

10 Q Is it fair to say that if you came upon
11 something that you suspected was contaminated soil
12 on Forest Preserve District property, you would
13 under no circumstances bury that soil on the site?

14 A Absolutely not.

15 Q Unless it was a permitted landfill?

16 A Yes, sir.

17 Q And that's true whether the soil had been
18 analytically tested or not, correct?

19 A That's true.

20 Q If you had a suspicion, you wouldn't bury
21 it, correct?

22 A Absolutely.

23 Q Now, you had never been to the Stearns
24 Road site prior to December of 1994, correct?

1 A No. Just -- I passed it, but I never
2 physically walked it, no, sir.

3 Q You had never been on the site itself?

4 A No, sir.

5 Q And you knew nothing about the site before
6 you visited it, correct?

7 A No, sir.

8 Q You have no firsthand knowledge of the
9 operations that were taking place on the Stearns
10 Road site between 1990 and March 25th, 1993,
11 correct?

12 A I heard that we had purchased some
13 property here and I heard that there was some kind
14 of mining operations, but other than that, nothing.

15 Q Mr. Urbanski, you have no firsthand
16 knowledge of the operations that were taking place
17 on that site between 1990 and March 25th, 1993,
18 correct?

19 A No, sir.

20 Q And you never saw any of the operations at
21 the Stearns Road site during that period?

22 A No, sir.

23 Q Is it fair to say, Mr. Urbanski, that you
24 have no firsthand knowledge regarding the conditions

1 at the Stearns Road site as they existed on March
2 25th, 1993?

3 A No, sir.

4 Q That's not fair to say?

5 A No. I don't know.

6 Q You would agree with me that you have no
7 firsthand knowledge regarding the conditions at the
8 Stearns Road site as they existed on March 25th,
9 1993?

10 A Yes, sir.

11 Q And isn't it also true that you have no
12 firsthand knowledge regarding the conditions of the
13 Stearns Road site at any time between March 25th,
14 1993, and December of 1994?

15 A Yes. That's fair to say.

16 Q Is that correct?

17 A That's correct.

18 Q You have no firsthand knowledge regarding
19 how conditions at the Stearns Road site may have
20 changed between March 25th, 1993, and December of
21 1994, correct?

22 A Correct.

23 Q And when you first visited the site in
24 December of 1994, the portion of the site that you

1 visited had already become vegetated, correct?

2 A There was some vegetation on it, yes, sir.

3 Q There was a vegetative cover of some sort?

4 A Weeds.

5 Q On your second visit to the site on
6 January 6th, 1995, there was snow on the ground,
7 correct?

8 A No.

9 Q That's not correct?

10 A No, that's not correct. It started to
11 snow when I got there.

12 Q What was the very first test pit you dug
13 on December 26th?

14 A 0130, west zero, zero.

15 Q Let me refer you to photographs contained
16 in Group Exhibit Number 14 and specifically to the
17 Exhibit 14-A. It should be the very first exhibit
18 in 14.

19 A Oh.

20 Q Okay?

21 A Yes, sir.

22 Q Do you see that exhibit?

23 A Yes, sir.

24 Q Is that a photograph you took at Station

1 30 west-zero plus zero?

2 A Yes, sir.

3 Q And that was the first station at which
4 you did any investigation, correct?

5 A Yes, sir.

6 Q Is that the very first photograph you took
7 on January 6th, 1994 --

8 A Yes, sir.

9 Q -- or '95?

10 A Yes, sir.

11 Q Now, does this photograph depict snow on
12 the ground?

13 A Yes.

14 Q And it depicts a fairly good layer of snow
15 on the ground, correct?

16 A No. This was a very good storm coming
17 on. There was no snow on the ground when I got
18 there. This is after, and if you notice the size of
19 the amount of material there, we were there
20 already. I waited for the operator over two hours.

21 Q So let me see if I understand. It began
22 snowing as you were excavating the first test pit?

23 A Yes, sir.

24 Q And by the time you finished the first

1 test pit and took the photographs of the first test
2 pit, there was a layer of the snow on the ground?

3 A Yes, sir.

4 Q Mr. Urbanski, when was a determination
5 made by the Forest Preserve District as far as where
6 the particular test pits would be located?

7 A When was the determination made?

8 Q Yes.

9 A When Mr. Hartwig made that determination.
10 I don't know when that was.

11 Q On your first visit to the site in
12 December of 1994, did you or the surveyor drive
13 stakes in the ground where you anticipated digging
14 test pits?

15 A Mr. Hartwig did and with the surveyors.

16 Q So Mr. Hartwig and the surveyors
17 designated the places in December of 1994 where you
18 were to dig test pits on your January 6th, '95,
19 visit, correct?

20 A Yes, sir.

21 Q Did you have any input whatsoever in
22 locating where those test pits would be placed?

23 A No, sir. The only thing that I had was
24 where I started from, and I had the ability because,

1 like I said, when we started, we were going to make
2 a full trench and we couldn't, so then I started
3 going -- I decided 50-foot intervals because I
4 couldn't go any further with the trench.

5 Q Are you referring to Station 130, west
6 zero, zero through Station north 400 plus 50?

7 A Yes, sir.

8 Q Are you saying that that initially was
9 anticipated to be a trench across the property?

10 A Yes, sir.

11 Q And because you found it difficult to dig
12 a trench, you periodically placed a separate test
13 pit every 50 feet, correct?

14 A Yes, sir, I made that decision.

15 Q And is that the only input you had into
16 the location of test pits?

17 A Yes, sir.

18 Q Now, I think you said Mr. Hartwig
19 determined where to put the test pits, correct?

20 A Yes, sir.

21 Q And he had the surveyor survey those spots
22 in in December of 1994?

23 A Yes, sir.

24 Q Do you have any idea what criteria

1 Mr. Hartwig used in locating the test pit locations?

2 A No, sir.

3 Q As far as you know, Mr. Hartwig did not
4 choose the locations of the test pits based upon a
5 computer-generated random grid, correct?

6 A I don't know what Mr. Hartwig did.

7 Q As far as you know, Mr. Hartwig did not
8 utilize any scientific documentation in an attempt
9 to develop a random --

10 MR. TUCKER: Objection. I think has answered
11 the question.

12 THE HEARING OFFICER: Sustained.

13 BY MR. STICK:

14 Q Mr. Urbanski, what was the single largest
15 item you found during your investigation that you
16 felt was inappropriate?

17 A The culvert.

18 Q Is that the culvert that you identified as
19 being found at location Station two-two west?

20 A Yes, sir.

21 Q Now, these test pit holes, generally, they
22 were as wide as they were long at the surface,
23 correct?

24 A They varied.

1 Q Were they generally circular --

2 A No, sir.

3 Q -- in shape?

4 A No. They varied. Some of them were
5 almost like a slit where the soil stayed together.
6 It came more like a slit, and it was narrow on top
7 almost as -- but it was just a slit. Others where
8 it caved in, they were wider.

9 THE HEARING OFFICER: Just a second. When you
10 say slit, do you mean a rectangle?

11 THE WITNESS: No. A strange -- like a slit
12 trench; in other words, the backhoe goes straight
13 down and comes up, and it's just a plain, narrow
14 slit, sir.

15 THE HEARING OFFICER: Thank you.

16 BY MR. STICK:

17 Q All of the test pits, to one extent or
18 another, were tapered from the top to the bottom,
19 correct?

20 A Yes, sir.

21 Q Now, the bucket on your backhoe had a
22 cubic yard capacity of approximately a cubic yard?

23 A Yeah, a yard, a yard and a quarter,
24 something like that.

1 Q Generally, how large was the top surface
2 area of these test pits?

3 A The hole itself?

4 Q Yes.

5 A Like I said, it varied. Some of them --
6 the first must have been maybe 20 feet across by the
7 time it stopped caving in, and others were four or
8 five feet, maybe ten feet. They all varied.

9 Q So they varied from something in the
10 neighborhood of four to five feet to ten feet, and
11 the one pit you dug, the first one, was 20 feet?

12 A Yes, sir.

13 Q Now, test pit at Station one-thirty west
14 zero plus zero was nine and a half feet deep,
15 correct?

16 A One dash --

17 Q That's the first one?

18 A Oh, yeah. Right.

19 Q And I think you -- well, do you recall
20 that you removed approximately 30 to 40 cubic yards
21 of material from that test pit?

22 A That's right. That particular pit, that's
23 as far as I could get down because it was just
24 caving in so badly. I just gave up at nine and a

1 half feet.

2 Q What was the range of the size of the
3 bottom of these test pits?

4 A Again, sir, they varied.

5 Q What was the range?

6 A The range, from maybe ten feet to four
7 feet, five feet maybe.

8 Q Across?

9 A Across.

10 Q So four to ten feet across at the bottom
11 of the test pits was the range?

12 A Yes, sir.

13 Q What was the range as far as the amount of
14 cubic yards of material that you excavated from
15 these test pits?

16 A I don't know, sir.

17 Q Would it be fair to say that each of these
18 test pits, you excavated something in excess of 20
19 or 30 cubic yards?

20 A I couldn't answer that.

21 Q All you know is at the first test pits,
22 you excavated something up towards --

23 A Yes. That was a large hole.

24 Q -- 40 yards?

1 Now, you had eight of your test pits that
2 you found nothing in but clean fill, correct?

3 A Yes, sir.

4 Q And by clean fill, I assume you mean --
5 strike that.

6 By clean fill, do you mean material
7 suitable for reclamation purposes?

8 A I'm not saying it was good for reclamation
9 materials or not. I'm just saying it was clean.

10 Q By clean fill, do you mean it was material
11 that was suitable for filling purposes?

12 A I would say so, yes, sir.

13 Q Now, the clean fill test pits, for the
14 record, were north-zero plus 50, correct? That was
15 one of them?

16 A Yes. Yes, sir.

17 Q And north-200 plus 50 was also a clean
18 fill?

19 A Yes, sir.

20 Q And north-300 was a clean fill test pit,
21 correct?

22 A Yes, sir.

23 Q And north-300 plus 50 was a clean fill
24 test pit, correct?

1 A Yes, sir.

2 Q North-400 plus 50 was also a clean fill
3 test pit?

4 A Yes, sir.

5 Q Test pit seven-two west was a clean fill
6 test pit, correct?

7 A Yes, sir.

8 Q Test pit six-two north was a clean fill
9 test pit, correct?

10 A Yes, sir.

11 Q And test pit nine-two northwest was a
12 clean fill test pit, correct?

13 A Yes, sir.

14 Q Now, in addition, you found nothing but
15 silty clay in test pit five-one north, correct?

16 A Yes, sir.

17 Q Is it fair to say that that test pit was
18 also a clean fill test pit?

19 A I found it was very silty, and the clay
20 looked like the washings of gravel screens, and it's
21 very, very gritty. I wouldn't say it was clean. I
22 would say it was silty.

23 Q You didn't take a photograph of that test
24 pit, correct?

1 A No, sir.

2 Q Now, it doesn't surprise you, does it,
3 that you found silty material that looked like the
4 washings from gravel screens at a sandy gravel
5 mining operation?

6 A No, sir.

7 Q Is there anything about your investigation
8 of test pit five-one N that would suggest to you or
9 lead you to conclude that anything from off site,
10 other than clean fill, had been used at that
11 location?

12 A No, sir.

13 Q So would it be fair to say that as far as
14 the fill material was concerned at five-one north
15 that was a clean fill test pit?

16 A Yes, sir.

17 Q Now, a number of the other test pits that
18 you investigated contained at those locations only
19 soil, concrete, asphalt, and asphalt, correct? Let
20 me strike that. Let me rephrase that.

21 A number of the other test pit locations
22 that you investigated contained only soil, concrete,
23 and asphalt, correct?

24 A A number did, yes, sir.

1 Q And that includes test pit location N-400,
2 correct?

3 A Yes, sir.

4 Q At that test pit location, you found one
5 piece of concrete, correct?

6 A Yes, sir.

7 Q And the rest of that test pit was clean
8 fill?

9 A Yes, sir.

10 Q Correct?

11 A Yes, sir.

12 Q Test pit location eight-four south was a
13 test pit where all you found was clean fill, gravel,
14 and concrete, correct?

15 A Concrete slab, gravel, black soil, clay
16 taken, yes.

17 Q Is that correct that all you found at that
18 test pit location was gravel, concrete, and clean
19 fill?

20 A Slabs, yes. Concrete slabs, yes.

21 Q No asphalt was found at that test pit,
22 correct?

23 A I don't think so.

24 Q Now, the three photographs that were taken

1 at that test pit -- strike that.

2 At test pit location eight-four south, you
3 cannot estimate how much of the material at that
4 location was clean fill versus concrete, correct?

5 A That's correct.

6 Q Would that be true also of test pit
7 location N-400?

8 A That's true.

9 Q At N-400, you can't estimate how much of
10 that -- the material at that location was clean fill
11 versus the one piece of concrete you found?

12 A That's true.

13 Q Now, at Station ten-one west, you found a
14 small amount of concrete and asphalt, and the rest
15 was clean fill, correct?

16 A Ten dash -- would you repeat that again?

17 Q Ten-one west. I'm sorry. One north.
18 Ten-one north.

19 A Oh. Okay. Small amount of asphalt,
20 concrete. The rest is clean fill, yes, sir.

21 Q Now, Mr. Urbanski, I believe you
22 identified two photographs taken from that test pit,
23 correct, 14-N and 14-M?

24 A 14-N and M?

1 Q Yes.

2 A Yes, sir.

3 Q Would it be fair to say that those two
4 photographs were taken generally of the same subject
5 matter but from different angles?

6 A Looking at these, I think there is a
7 mix-up in the photos because it looks like a hell of
8 a lot more than a small amount there to me.

9 Q You think that perhaps that photograph is
10 of different test material?

11 A I'm saying it got mixed up along the way
12 with something else really, to be honest with you,
13 because to me that does not look like a small
14 amount.

15 Q Is it your testimony that Photographs 14-M
16 and N may not truly depict what you observed on the
17 site at location ten-one north?

18 A It possibly got mixed up a little bit.

19 Q Well, my question to you is, is it your
20 testimony that Photographs 14-M and N do not truly
21 depict what you observed at the site at location
22 ten-one north?

23 A 14-M would.

24 Q 14-N you don't know about?

1 A I think that's right. 14-M I think is
2 correct. 14-N I'm not sure.

3 Q Is it your testimony that 14-N is a
4 photograph that does not truly depict what you saw
5 at test pit location ten-one north?

6 A I think there is a mix-up. These stamps
7 have been put on so many different photos that I
8 have no idea anymore.

9 Q Now, test pit location three-one northwest
10 was another test pit location where all you found
11 was clean fill, concrete, and asphalt, correct?

12 A Station three-one?

13 Q Northwest, yes.

14 A Yes. Slabs of asphalt, concrete, more
15 debris on the bottom of the hole.

16 Q Is it correct that at location three-one
17 northwest all you observed was clean fill, concrete,
18 and asphalt?

19 A No. It was more debris on the bottom of
20 the hole.

21 Q I think you said in your direct testimony
22 that you couldn't see what was on the bottom of the
23 hole because it was too dark. Is that correct?

24 A Not on that one. Was that the last one?

1 Q Three-one northwest was the second to last
2 one. Isn't it correct, Mr. Urbanski, that you
3 couldn't see --

4 A I said in general I could not see at the
5 end.

6 Q I'm going to ask you to try not to -- you
7 are doing it again as far as interjecting and
8 answering too quickly.

9 A Sorry. Okay.

10 Q Thank you, Mr. Urbanski.

11 Isn't it true that at Station three-one
12 northwest you couldn't identify what was on the
13 bottom of the pit?

14 A No, sir.

15 Q You couldn't identify what was on the
16 bottom of the pit, or you disagree with my question?

17 A I disagree with your question.

18 Q What was on the bottom of the pit?

19 A I don't know.

20 Q At Station three-one northwest, you can
21 not make an estimate regarding the amount of clean
22 fill at that location, correct?

23 A Correct.

24 Q Is that correct?

1 A Correct.

2 Q Now, at location north 100, isn't it
3 correct that all you found was wood, concrete, and a
4 single piece of wire?

5 A If that's what it says, that's what I
6 found.

7 Q The rest of that pit was clean fill,
8 correct?

9 A Soil mix, yes, sir.

10 Q And you did not photograph the wood or the
11 concrete, correct?

12 A I don't know.

13 Q Did you photograph the wood or the
14 concrete?

15 A It says photograph taken. Must have.

16 Q I'm going to refer you to Photographs 14-B
17 and C.

18 A 15-B and C?

19 Q 14-B and C. First let me refer you to
20 14-B.

21 A 14-D.

22 Q 14-B, as in Bob.

23 A Oh. B. Yes, sir. I have it.

24 Q Now, that photograph purports, according

1 to your testimony on direct, to show a piece of wire
2 sticking out of the side of the wall --

3 A Yes, sir.

4 Q -- is that correct?

5 The rest of that photograph is clean fill,
6 correct?

7 A It also says that I found concrete and
8 clay mix.

9 Q But the Photograph 14-B does not depict
10 concrete in that photograph, correct?

11 A No, sir.

12 Q So the rest of that photograph is clean
13 fill?

14 A Yeah. If that's -- yeah. Yes, sir.

15 Q You didn't make a note in your report
16 regarding the wire that you testified you found at
17 location N-100, correct?

18 A No, sir, but I -- on the final report, I
19 said cables meaning with the S was that it was a
20 wire cable and cables. So I used the S as reporting
21 what I found.

22 Q So in your mind, that would include what
23 is depicted in Photograph 14-B?

24 A Yes, sir.

1 Q Now, that's not a huge cable, is it, in
2 14-B?

3 A I don't know how huge it was.

4 Q Do you know what kind of wire that is?

5 A I have no idea. I don't know how much was
6 there or anything. All I know is that it was there
7 and I reported it.

8 Q I'm going to refer you to test pit
9 location CP-4-E.

10 A Yes, sir. Fourteen?

11 Q CP-4 east.

12 A Yes, sir.

13 Q Now, you only found one pipe at that
14 location, correct?

15 A What is the number?

16 Q CP-4 east.

17 A No. I'm talking about on the photo.

18 Q Well, 14-J and K.

19 A 14-J and K. J and K.

20 Q My question to you is 14-J and K purport
21 to depict the same piece of pipe, correct?

22 A Yes, and it also says same pipe, but also
23 fill -- gravel fill and asphalt.

24 Q But there was only one pipe found at that

1 location, correct?

2 A That's correct, yes, sir.

3 Q And the pipes that are depicted in 14-J
4 and K are, in fact, the same pipe?

5 A Yes, sir.

6 Q When did you first see that pipe?

7 A When did I first see it, I don't know.

8 Q Did you see it while it was on the pile of
9 excavated material?

10 A No, when it came out with the backhoe.

11 Q So you saw it in the bucket?

12 A Yes, coming out.

13 Q You did not see it in the pit; is that
14 correct?

15 A No, sir, until it was dug out coming up.
16 It was sticking out of the bucket.

17 Q Let me refer you to test pit location
18 north 100 plus 50.

19 A What photo?

20 Q I will refer you to photographs -- I
21 believe you designated 14-D, E, and F. Do you have
22 those photographs?

23 A Not yet.

24 Q 14-D, E, and F.

1 A 14-D I got, and F -- I can't find F.

2 Q Do you have F?

3 A No, I don't. I have 14-B and 14-D.

4 MR. STICK: Your Honor, may I approach the
5 witness with my copy of F? I have one or two quick
6 questions.

7 THE HEARING OFFICER: Yes.

8 THE WITNESS: I would appreciate that. Thank
9 you.

10 BY MR. STICK:

11 Q Mr. Urbanski, let me show you what is
12 marked as Exhibit 14-F. During your detective
13 examination, I thought I heard you say something
14 about wire in that photograph.

15 A No, sir.

16 Q Is it correct that that photograph does
17 not depict wire?

18 A Yes, sir.

19 Q What you see at the bottom of that pit you
20 think is a root, correct?

21 A That's not in the bottom. That's on the
22 side.

23 Q On the side of the pit you think is a
24 root?

1 A Yes, I do.

2 Q Thank you very much.

3 A 14-B is the wire.

4 Q Now, I think you also stated in your
5 testimony on direct that you found a chain-link
6 fence at 13 feet?

7 A I didn't say I found it at 13 feet. I
8 said up to 13 feet. I don't know where I found it.

9 Q The test pit was 13 feet deep, right?

10 A Yes, sir.

11 Q You don't know where that fence was
12 located, correct?

13 A It was in the ground. That's all I know.

14 Q When did you first see that fence?

15 A I have no idea.

16 Q Did you see it on the pile material?

17 A Most of the stuff I saw it coming up.

18 Q In the bucket?

19 A Yes.

20 Q So at some point when the bucket is above
21 ground, that's when you saw most of this material?

22 A Or down below the ground coming up.

23 Q How close to the test pit were you
24 standing?

1 A Oh, right on top of it.

2 Q Now, with respect to this wire in location
3 north 100 plus 50, you don't know where that wire
4 came from in relation to its elevation, correct?

5 A Correct.

6 MR. STICK: Your Honor, could I have a moment
7 to confer?

8 (Brief pause.)

9 BY MR. STICK:

10 Q Mr. Urbanski, do you know whether Bluff
11 City Materials was utilizing wire at the site during
12 their operations?

13 A I have no idea. I imagine they did if
14 there was fencing around it.

15 Q Is it fair to say that you don't know the
16 depths at which any of these particular items were
17 found precisely?

18 A Some I can remember. Some I can't.

19 Q I think you indicated that the culvert was
20 a couple feet --

21 A Yes, sir.

22 Q -- right below the surface?

23 A Yes, sir.

24 Q Is it fair to say with respect to the

1 other items you have identified you really can't
2 identify how deep those items were located?

3 A For exact recollection, no, I cannot.

4 Q They could have been anywhere from the top
5 to the bottom of the pit, correct?

6 A Yes, sir.

7 Q Let me refer you to test pit location
8 four-two north.

9 A Yes, sir.

10 Q With the exception of asphalt and clean
11 fill, the only thing you found in that test pit was
12 one segment of what you refer to as PVC pipe,
13 correct?

14 A No, sir. It says debris is on the bottom
15 of hole. I don't know what was there.

16 Q You don't know what was on the bottom of
17 the hole?

18 A No, sir.

19 Q So you can't describe for the Board what
20 was on the bottom of the hole --

21 A There was something down there --

22 Q -- precisely, correct?

23 A Yes. That's correct.

24 Q So the only thing you observed in test pit

1 four-two north other than asphalt and clean fill was
2 the one piece of PVC pipe, correct?

3 A And what I saw at the bottom. That's the
4 only thing.

5 Q The one piece of PVC pipe is the only
6 other item you can describe for certain, correct?

7 A Yes. For certain, yes.

8 Q Now, this PVC pipe was approximately six
9 inches in diameter; is that correct?

10 A Yes, sir.

11 Q And I believe you testified that you found
12 one piece of asphalt in that test pit?

13 A Where are we at again? What number are we
14 on again?

15 Q Four-two north.

16 A Okay. Four-two north. I don't know if I
17 described one piece of asphalt or not. I can't tell
18 you that.

19 Q Is it fair to say you only photographed
20 one piece of asphalt?

21 A I don't know. I have to look at the
22 picture again. I don't know.

23 Q Let me refer you to Photograph 14-0.

24 A Fourteen what?

1 Q Zero.

2 A Zero.

3 There appears to be only one there.

4 Q When did you first see the piece of PVC
5 piping?

6 A I don't recall.

7 Q Now, that's plastic, correct?

8 A Yes, sir, PVC is plastic.

9 Q You don't recall whether you saw it on the
10 pile in the bucket or where, correct?

11 A No. It just came out of the bucket.

12 Q So the first time you saw it was some time
13 after it was above surface?

14 A Yes, sir.

15 Q I'm going to refer you to photographs --
16 14 H -- and I.

17 A I have them.

18 Q My question, Mr. Urbanski, to you is those
19 two photographs, Photographs 14-H and I, depict the
20 same subject matter from different angles, correct?

21 A Correct, sir.

22 Q When did you first see the pieces of wood
23 that you identified as having been located at
24 location north 200?

1 A They were quite deep. We had to take
2 these out separately.

3 Q You did not photograph any tarpaper at
4 that location, correct?

5 A No, sir. I was interested in this and the
6 odor.

7 Q And you don't recall how large the pieces
8 of tarpaper were that you noted in your report?

9 A No, I don't, sir.

10 Q When did you first see the pieces of
11 tarpaper?

12 A I can't answer that.

13 Q You don't recall?

14 A I don't recall.

15 Q By the way, Mr. Urbanski, do you have any
16 recollection of your investigation independent of
17 your investigative report?

18 A I don't understand that.

19 Q Well, during your direct examination, you
20 were allowed to utilize your report of your
21 investigation, correct?

22 A Yes, I was.

23 Q My question to you is do you have any
24 independent recollection other than what is in this

1 report?

2 A Yes. I have some.

3 Q Would it be fair to say that it is fairly
4 vague at this point?

5 A No. I wouldn't say it's vague. I can't
6 remember everything. I mean, you dig 20 holes,
7 you're doing the best to remember, but I wouldn't
8 say it's vague. Certain things I remember very
9 distinctively but no, I wouldn't say it was vague.

10 THE HEARING OFFICER: Off the record.

11 (Whereupon, a discussion was held off
12 the record.)

13 THE HEARING OFFICER: Back on the record.

14 BY MR. STICK:

15 Q Mr. Urbanski, at test pit location one
16 north-200, you took no soil samples at that
17 location, correct?

18 A One?

19 Q One north 200.

20 A One north -- Station five, you mean, one
21 north? Oh. North 100, is that what you are saying?

22 Q North -- I'm sorry. North 200.

23 A North 200. Okay.

24 Q Did you take any soil samples at that

1 location?

2 A No, sir.

3 Q You didn't take any soil samples at any of
4 the locations, correct?

5 A No, sir.

6 Q Did you preserve any of the soil that you
7 testified had an odor to it?

8 A No, sir.

9 Q You didn't preserve any of that soil so
10 that someone else could --

11 A It's there if you want it.

12 Q I'm sorry, Mr. Urbanski.

13 You did not preserve any of that soil so
14 that someone else could sample it, correct?

15 A That's not true. It's there.

16 Q Did you retrieve any of that soil and take
17 it back to your supervisor at the Forest Preserve
18 District for soil sampling?

19 A No, sir.

20 Q Did you request your supervisor to have
21 someone come to the site and sample that soil while
22 it was still above surface?

23 A No, sir.

24 Q Now, you have installed septic tanks and

1 drain fills on Forest Preserve District property,
2 correct?

3 A Yes, sir.

4 Q And during your work with the Forest
5 Preserve, you have discovered septic and drain fills
6 in farm fields, correct?

7 A Yes, sir.

8 Q And at other locations when you were
9 reconstructing sites, you have found septic fills
10 and drain fills, correct?

11 A Yes, sir.

12 Q Now, the material at this location, north
13 200, that you claim had an odor to it, you did not
14 preserve that material above the surface so that it
15 could be sampled or investigated in any way,
16 correct?

17 A Yes, sir.

18 Q And you did not take that material and
19 transport it off site, correct?

20 A That's right.

21 Q And you did not arrange for someone else
22 to get that material and transport it off site,
23 correct?

24 A No, sir.

1 Q You buried it at the site, correct?

2 A Yes, sir.

3 Q Let me refer you to the test at location
4 two-two west, the last test pit location. My
5 question to you is other than the culvert that's
6 logged in your report, all the other material at
7 that location was soil or wet, silty material,
8 correct?

9 A Yes, sir.

10 Q And the two photographs you took from that
11 location, 14-R and S, depict the same metal culvert,
12 correct?

13 A Parts of it, yes, sir. There are two
14 parts to it, I think.

15 Q Is it your testimony that those two
16 photographs depict separate parts of the same metal
17 culvert?

18 A I have to look at it, yeah. I have got to
19 find it.

20 (Brief pause.)

21 THE WITNESS: I think it's the same one.

22 BY MR. STICK:

23 Q By the way, for reference purposes, that's
24 the backhoe in the background of both of those

1 photographs, correct?

2 A Yes, sir.

3 Q Would it be correct to say that 90 percent
4 of what you dug out of that test pit was silty
5 material and water?

6 A I wouldn't put a figure on it.

7 Q You can't estimate, correct?

8 A No. That's correct.

9 MR. STICK: Could I have a moment here?

10 THE HEARING OFFICER: Are you about ready to
11 wrap up?

12 MR. STICK: I have got a good bit more, but I
13 want to check on the test pits.

14 THE HEARING OFFICER: Well, we can keep going.

15 MR. STICK: Can I have a moment to check and
16 make sure I have covered each of the test pits?

17 THE HEARING OFFICER: All right. Let's take a
18 five-minute break.

19 (Whereupon, a recess was taken.)

20 THE HEARING OFFICER: Back on the record.

21 MR. STICK: Thank you, your Honor. I
22 appreciate you allowing me a moment.

23 BY MR. STICK:

24 Q Mr. Urbanski, let me refer you to test pit

1 location one-30 west, which was the first test pit
2 location.

3 A Yes, sir.

4 Q Now, the cable that you have noted in your
5 log, you didn't photograph that cable, correct?

6 A I don't see it on the picture, no, sir.

7 Q Your recollection is that the cable was
8 about a half inch in diameter?

9 A I think so.

10 Q When did you first see that cable?

11 A I don't recall.

12 Q You don't recall whether it was on the
13 pile or coming up from the bucket?

14 A No. It was just there.

15 Q Now, the backhoe bucket had grease
16 fittings, correct?

17 A Yes, sir.

18 Q And you don't know whether any of that
19 grease came off in the dirt at the site while you
20 were excavating your test?

21 A No, sir. I have no way to determine that.

22 Q Now, is it correct that you took no soil
23 samples at any time during any investigation of the
24 Stearns Road site, correct?

1 A Yes, sir.

2 Q And is it also correct that you took no
3 water samples at any time during any investigation
4 of the Stearns Road site?

5 A Yes, sir.

6 Q Is it also correct that you took no
7 material off site that you identified as being
8 located at the Stearns Road site?

9 A That's correct, sir.

10 Q You did not dispose of any of the material
11 excavated from any of these test pits, correct?

12 A Yes, sir.

13 Q And did you not arrange for any of the
14 material to be removed off site to a landfill by
15 someone else, correct?

16 A That's correct, sir.

17 Q You did not arrange for any analytical
18 testing of the soil or water to be performed by
19 someone else, correct?

20 A No, sir. It was none of my -- none of my
21 functions.

22 Q In fact, with the exception of the one
23 culvert, you backfilled all the rest of the
24 material, correct?

1 A I'm not sure if I backfilled them all. I
2 think I did, but I'm not sure.

3 Q And to your knowledge, all of the
4 material, including the culvert, is today still
5 located at the Stearns Road site?

6 A Yes, sir.

7 Q Now, Mr. Urbanski, you were involved in
8 converting the Blackwell landfill into a public
9 park, correct?

10 A Correct.

11 Q At that location, the waste was left in
12 place, correct?

13 A Yes, sir.

14 Q And the Forest Preserve District put a
15 clay cover on top of the landfill?

16 A Yes, sir.

17 Q Where did that clay come from?

18 A From the lake.

19 Q I'm sorry?

20 A From the lake.

21 Q Which lake?

22 A The lake at Blackwell.

23 Q It was excavated from the lake?

24 A Yes, sir.

1 Q All of the clay?

2 A Yes, sir.

3 Q After the clay was applied to the cover of
4 the landfill, the Blackwell site had no restrictions
5 on the type of recreational activities that could be
6 conducted there, correct?

7 A No restrictions?

8 Q No restrictions on the type of
9 recreational activity that could be conducted
10 there.

11 A As far as I know, sir.

12 Q In other words, you could walk on top of
13 the landfill?

14 A Yes, sir.

15 Q And they had hiking trails there?

16 A Yes, sir.

17 Q And children could go sledding on the
18 landfill in the wintertime?

19 A That was stopped.

20 THE HEARING OFFICER: Let me interrupt you.

21 Let's go off the record.

22 (Whereupon, a discussion was held off
23 the record.)

24 THE HEARING OFFICER: Back on the record.

1 We have had an off-the-record discussion.
2 The hearing officer feels that this line of
3 questioning is way beyond the scope of the direct,
4 even absent an objection by the Complainant. You
5 were going to --

6 MR. STICK: I had one more area I was going to
7 get into, and it was a follow-up on what I was
8 examining him on.

9 THE HEARING OFFICER: I don't follow the
10 purpose of this because he's not your witness. This
11 is beyond the scope.

12 MR. STICK: That's correct.

13 MR. MAKARSKI: On the record, I would object to
14 anything beyond what we have already talked about
15 here, and purely it's not Blackwell.

16 MR. STICK: He's not our witness, but I believe
17 it is within the scope to the extent he's talking
18 about material at the Stearns Road site that he
19 found to be inappropriate.

20 The last area I was going to get into was
21 the Forest Preserve District's utilization of
22 concrete on their projects, and he did identify
23 concrete throughout his report as something he found
24 to be inappropriate, and I think this area --

1 notwithstanding what I just finished, I think the
2 last area I was going to get into is clearly within
3 the scope, and I only had a handful of questions I
4 was going to ask him about the use of concrete.

5 THE HEARING OFFICER: Let's go directly to the
6 use of concrete then.

7 MR. STICK: Concrete and asphalt are the two
8 areas.

9 THE HEARING OFFICER: All right.

10 BY MR. STICK:

11 Q Mr. Urbanski, you have used concrete from
12 demolished buildings as ripraps in waterways on
13 Forest Preserve District property, correct?

14 MR. MAKARSKI: I object to that, Mr. Hearing
15 officer. It's beyond the scope of the direct. It
16 bears no relationship to this case either.

17 MR. STICK: Well, I think it is directly within
18 the scope of the direct because Mr. Urbanski
19 identified concrete as something he felt was
20 inappropriate at the Stearns Road site, and I have a
21 right, I believe, to ask him about his use of
22 concrete on other Forest Preserve District pieces of
23 property.

24 THE HEARING OFFICER: I will overrule the

1 objection at this time. Let's see where this goes.

2 MR. STICK: Could you read the question back?

3 THE HEARING OFFICER: Go ahead.

4 BY MR. STICK:

5 Q Do you need the question read back,
6 Mr. Urbanski?

7 A No. I would just like to say one thing.
8 I don't find that this was inappropriate or not
9 inappropriate. I had nothing -- I'm not making a
10 decision here. I'm just reporting on what I found.

11 Q So you are not saying the concrete is
12 inappropriate?

13 A No. I'm not saying nothing at all, no
14 such thing. I'm just saying exactly what I found.

15 Q Is it your testimony that concrete at the
16 Stearns Road site is not inappropriate?

17 A I have no opinion on it.

18 Q Have you used concrete from demolished
19 buildings as riprap in waterways on Forest Preserve
20 District property?

21 A Yes, I have.

22 Q And have you used asphalt removed from
23 roadways as foundation material for new roads on
24 Forest Preserve District property?

1 A Yes, I have.

2 MR. STICK: I have no further questions at this
3 time.

4 MR. MAKARSKI: I just have a couple. Excuse
5 me.

6 THE HEARING OFFICER: I'm sorry.

7 Ms. O'Connell?

8 MS. O'CONNELL: I have no questions.

9 THE HEARING OFFICER: Thank you.

10 Mr. Makarski?

11 REDIRECT EXAMINATION

12 BY MR. MAKARSKI:

13 Q Did you testify you had no prior knowledge
14 or involvement with the site before this series of
15 tests?

16 A Yes.

17 Q And you said there was vegetation growing
18 on the places where you worked?

19 A Yes, sir.

20 Q Was that planted vegetation or something
21 that appeared to be natural?

22 A Mostly weeds.

23 Q Grew there on their own?

24 A Yes, sir.

1 Q And you said it snowed there that day?

2 A Yes, sir.

3 Q Did that interfere with your ability to do
4 your job and to do your testing?

5 A No, sir.

6 Q You accomplished what you wanted to do?

7 A Yes, sir.

8 Q And there was some discussion about that
9 Photograph 14-N possibly being not of the particular
10 test pit that you said it was on the photograph.

11 A 14-N? Which one was that?

12 Q A small amount of -- I forget which. It
13 probably would be one --

14 A Right. I think this one is mixed up.

15 Q It's supposed to be -- what does that say?
16 Which test pit is it from?

17 A I don't know, sir. All I know is it's --
18 there is a lot more concrete there. I would not --
19 I don't think -- I don't think I would have said a
20 small amount showing that much concrete.

21 Q Is that a photograph taken, though, of the
22 date that you were out there?

23 A Yes, sir.

24 Q And it is one of the test pits that you

1 dug?

2 A Yes, sir. The labels have been switched
3 so many times, I can't be responsible for that.

4 Q But that does truly depict what you were
5 doing out there that day?

6 A Yes, sir.

7 Q And what you observed?

8 A Yes, sir.

9 Q Even though the number may be different?

10 A Yes, sir.

11 MR. MAKARSKI: I have nothing further.

12 THE HEARING OFFICER: Recross?

13 RE CROSS EXAMINATION

14 BY MR. STICK:

15 Q Mr. Urbanski, is Photograph 14-N a
16 potential duplicate photograph of something else
17 that's in the exhibit?

18 A It's possible.

19 Q With the snow on the ground on the date
20 you visited the site to do your test pit
21 excavations, isn't it correct that you couldn't
22 clearly see what was on the surface of the site?

23 A No, sir. I told you there was no snow on
24 the ground when I came there.

1 Q For the first test pit, correct?

2 A Right, for a couple hours.

3 Q After the snow had fallen, isn't it
4 correct that you could not clearly see what was on
5 the surface of the site?

6 A I could pretty well see.

7 Q The snow covered the entire surface,
8 correct?

9 A It wasn't that deep.

10 Q Isn't it correct that it covered the
11 entire surface?

12 A By the end of the day it did.

13 MR. STICK: I have no other questions.

14 THE HEARING OFFICER: All right. Mr. Urbanski,
15 you did not enter any of the test pits, did you?
16 Did you go down into any of the test pits?

17 THE WITNESS: No, sir.

18 THE HEARING OFFICER: And were you working,
19 just you and the backhoe operator?

20 THE WITNESS: Yes, sir.

21 THE HEARING OFFICER: And on your report, you
22 have that a land surveyor designated the grids. Is
23 that why -- is that where the designations for the
24 stations comes up?

1 THE WITNESS: I made up the designations from
2 the points that he surveyed, yes, sir.

3 THE HEARING OFFICER: Okay. Thank you,
4 Mr. Urbanski. You may step down.

5 MR. MAKARSKI: Mr. Wells is here to continue
6 his cross. I don't know if you want to do that now
7 or after lunch.

8 THE HEARING OFFICER: We might as well do it
9 after lunch. We will break for lunch.

10 (Whereupon, a recess was taken.)

11 AFTERNOON SESSION

12 THE HEARING OFFICER: Back on the record.

13 Preliminarily yesterday, I may have missed
14 it. The Respondents moved for the admission of
15 Respondents' Exhibit Number 6, which would be Page
16 seven of 12 of some of these specifications here.
17 Did you object?

18 MR. MAKARSKI: No.

19 THE HEARING OFFICER: Respondents' Exhibit 6 is
20 admitted.

21 THE HEARING OFFICER: Mr. Wells is recalled to
22 the stand. You are still under oath from
23 yesterday.

24 THE WITNESS: All right.

1 THE HEARING OFFICER: You may begin.

2 MR. STICK: Thank you, your Honor.

3 (The witness was previously sworn.)

4 HAROLD M. WELLS,
5 called as a witness herein, having been first duly
6 sworn, was examined upon oral interrogatories, and
7 testified as follows:

8 CONTINUED CROSS EXAMINATION

9 BY MR. STICK:

10 Q Good afternoon, Mr. Wells.

11 A Good afternoon.

12 Q I just want to clear up a couple things
13 that we went into briefly yesterday.

14 When you visited the site on January 22nd,
15 1993, it was your understanding that the piles of
16 broken concrete that you saw at the facility had
17 been brought on site from off site locations,
18 correct?

19 A I don't know where the concrete came
20 from. It was stockpiled there, yes.

21 Q It was your understanding, though, that it
22 had come on to the Stearns Road site from some off
23 site location?

24 A I would have to assume so, yes.

1 Q And you didn't determine that it was
2 necessary on or after January 22nd, 1993, to report
3 to anyone at the Forest Preserve that Bluff City was
4 crushing and processing broken concrete at the
5 Stearns Road site, correct?

6 A Correct.

7 Q And you didn't feel it was necessary on or
8 after January 22nd, 1993, to report to anyone at the
9 Forest Preserve that Bluff City was bringing
10 concrete on site from off site locations?

11 A That's correct.

12 Q In fact, nothing about the operations you
13 observed on January 22nd, 1993, struck you as
14 significant or unusual at the Bluff City location,
15 correct?

16 A Correct.

17 Q Mr. Wells, there is no mention in your
18 daily log entries for March 1st, 1993, regarding
19 petroleum odors, diesel fuel odors, or any other
20 kind of odors at the site, correct?

21 A That's correct.

22 Q That's not something you logged into your
23 daily log on March 1st, 1993?

24 A That's correct.

1 Q Now, on direct, you indicated that you had
2 smelled some sort of petroleum product at the site,
3 correct?

4 A That's correct.

5 Q Is it possible, is it not, that some or
6 all of the odor that you smelled may have emanated
7 from the heavy equipment that was being operated on
8 the site?

9 A In my experience, I would say no, that's
10 not probable.

11 Q But it is possible, correct?

12 A I would say it might be possible if the
13 machine was leaking fuel or something was
14 malfunctioning.

15 Q Or if the gas cap was off?

16 A Or if the gas cap was off, yes.

17 Q So it's something you can't rule out,
18 correct?

19 A Correct.

20 Q During your visit on March 1st, 1993, you
21 took no photos of the site, correct?

22 A That's correct.

23 Q And you did no testing of the soil on that
24 date, correct?

1 A Correct.

2 Q And you did no testing of the water at the
3 site on that date, correct?

4 A That's correct.

5 Q And you dug no test pits on March 1st,
6 1993, to determine what was below the surface of the
7 site, correct?

8 A Correct.

9 Q Now, on March 18th, 1993, you visited the
10 site for approximately a half hour, correct?

11 A I believe so, yes.

12 Q When you entered the site, you did not
13 stop at the gate, correct?

14 A Correct.

15 Q And you did not check in with anyone from
16 Bluff City, correct?

17 A That's correct.

18 Q On March 18th, 1993, you did not take any
19 photographs of the site, correct?

20 A Correct.

21 Q You performed no soil sample at the site,
22 correct?

23 A That's correct.

24 Q You took no water samples at the site?

1 A That's correct.

2 Q And on March 18th, 1993, you dug no test
3 pits at the site to determine what may be below the
4 surface of the site?

5 A Correct.

6 Q On March 19th, 1993, when you visited the
7 site, you did not stop at the gate, correct?

8 A That's correct.

9 Q You did not check in with anyone from
10 Bluff City, correct?

11 A Correct.

12 Q And you did not take any photos of the
13 site on March 19th, 1993, correct?

14 A That's correct.

15 Q You did not perform any soil samples at
16 the site on March 19th, 1993?

17 A That's correct.

18 Q And you did not take any sample of any
19 water at the site on March 19th, 1993, correct?

20 A That's correct.

21 Q And on March 19th, 1993, you dug no test
22 pits to determine what might be below the surface of
23 the site, correct?

24 A Correct.

1 Q Mr. Wells, isn't it correct that there is
2 no mention in your daily log entry for March 23rd,
3 1993, regarding petroleum odors, diesel fuel odors,
4 or any other odors at the Stearns Road site?

5 A I believe that's correct.

6 Q And on March 23rd, 1993, you took no
7 photographs of the site, correct?

8 A That's correct.

9 Q You did not perform any sample either of
10 the soil or water at the site on March 23rd,
11 correct?

12 A Correct.

13 Q And you dug no test pits on that day to
14 determine what may be below the surface of the site?

15 A That's correct.

16 Q In fact, other than the video, you took no
17 photographs of the site at any time during any of
18 your visits to the site in March of 1993, correct?

19 A That's correct.

20 Q And you didn't take any photographs after
21 March of 1993, correct?

22 A Correct.

23 Q Isn't it also correct that you never dug
24 any test pits at the site in order to determine what

1 might lay below the surface of the site at any time?

2 A That's correct.

3 Q And you did not personally perform any
4 soil sample at the Stearns Road site at any time
5 during any of your inspections of the site?

6 A That's correct.

7 Q And isn't it also correct that you never
8 at any time made any mention in your daily log for
9 any date regarding petroleum odors, diesel fuel
10 odors, or any other odors at the Stearns Road site?

11 A That's correct.

12 Q Now, Mr. Wells, did you ever pick up and
13 remove from the Stearns Road site any of the
14 material that you have identified during your
15 testimony as potentially objectionable?

16 A No.

17 Q You never sent any of that material off
18 site to a landfill, correct?

19 A That's correct.

20 Q And you never arranged for anyone else
21 from the Forest Preserve District to send any of
22 that material to a landfill?

23 A That's correct.

24 Q Now, I want to draw your attention to the

1 date March 4th, 1993. That was the date that you
2 went to the site and shot the video, correct?

3 A That's correct.

4 Q Would it be fair to say that all your
5 observations of the site prior to March 24th of
6 material at the site were observations of what was
7 lying on the surface or only partially buried at the
8 site?

9 A I would say so, yes.

10 Q And is it also fair to say that prior to
11 March 24th what you had seen at the site were piles
12 of material that had been apparently unloaded from
13 trucks, correct?

14 A Not entirely. What I observed out there
15 was piles that had been leveled by machinery.

16 Q You couldn't tell, though, whether what
17 you were observing was the final state for any
18 particular area on the site, correct?

19 A That's correct.

20 Q You could observe what you observed, but
21 you could not from what you observed draw any
22 conclusions as to whether that was the intended
23 final configuration of a portion of the site that
24 you were observing?

1 A That's correct.

2 Q And you could not determine during any of
3 your visits to the site whether or not what you saw
4 was intended to remain there indefinitely?

5 A That's correct.

6 Q What portion of the site was your video
7 shot in?

8 A The southwest corner.

9 Q Would it be fair to say that that video
10 was shot in an area of the site that had the
11 approximate dimensions of about 100 feet by 100
12 feet, 100 feet square?

13 A I would say it's more like three to 400
14 feet square.

15 Q What -- let me back up.

16 What area of the site did you walk around?
17 Would that be an area that was approximately 100
18 feet by 100 feet?

19 A I believe the film shows the southwest
20 fence line, and that area, in my approximation,
21 would be three to 400 feet square down to the
22 water's -- the existing ponds water's edge.

23 Q Now, are you familiar with the proposed
24 reclamation plan for the site?

1 A No.

2 Q And you don't know where the lake that was
3 intended for the site ultimately was to be
4 constructed, correct?

5 A That's correct.

6 Q So you don't know where in relation to
7 where the lake would ultimately go you were shooting
8 your video?

9 A That's correct.

10 Q In other words, when you shot videotape of
11 water, you don't know whether that's water that was
12 ultimately going to be part of the lake or water
13 that was being filled and would ultimately be dry
14 land, correct?

15 A That's correct.

16 Q Now, when you were shooting your video on
17 March 24th, you shut the video camera off for
18 certain periods of time?

19 A Yes.

20 Q Is it fair to say that you were walking
21 around the site photographing or videotaping what
22 you found to be significant?

23 A Yes.

24 Q And is it fair to conclude that during

1 those periods when you did not have the video camera
2 running, there was nothing that you were observing
3 that you found significant enough to videotape?

4 A I have never operated that particular
5 camera before, and I think I inadvertently took my
6 finger off the button where it automatically shuts
7 off.

8 Q So you are saying it automatically shut
9 off during a portion?

10 A As we were walking around the site, yes.

11 Q Do you also recall intentionally shutting
12 it off?

13 A No.

14 Q Do you remember intentionally shutting it
15 off to reshoot certain items?

16 A I might have, yes.

17 Q Were there times during your investigation
18 that you shut the camera off and refocused it on
19 some other aspect of the site?

20 A Probably, yes.

21 Q There were also portions of your video
22 that it appears that you were panning the camera
23 back and forth. Was that something that you recall
24 doing, panning the camera from right to left and

1 then back to right? Do you recall doing that on
2 March 24th?

3 A Yes.

4 Q And there were several times on the
5 videotape where it appeared you attempted to
6 videotape certain items such as the tire from
7 several different angles. Do you recall that?

8 A Yes.

9 Q Now, there was, in fact, only one tire at
10 the site that you saw, correct, on March 24th?

11 A Yes.

12 Q And, in fact, that's the only tire you've
13 ever seen at the site, correct?

14 A Yes.

15 Q The effect, however, of panning back and
16 forth and shooting an item from different directions
17 is that it appears on the videotape that some of
18 these items are appearing on more than one
19 occasion. Would you agree with that?

20 A I believe I filmed the tire twice. One
21 was a general pan. The other one was a close-up.
22 If I recall.

23 Q Would you agree with me that there are
24 items in your videotape that appear more than twice

1 or more than once?

2 A Yes.

3 Q And when I say items that appear more than
4 one, I mean the same precise item that appears more
5 than once such as the same pipe may appear more than
6 once.

7 A Yes.

8 Q Now, on March 24th, you did not prepare a
9 log of any sort regarding the items that you
10 observed on the site, correct?

11 A Correct.

12 Q And, in fact, after March 24th, you never
13 prepared a log, correct?

14 A I believe I did when I was out there
15 making sure that no fill was coming on site. I have
16 logs after March 24th, yes.

17 Q I mean, at no time on March 24th or any
18 time thereafter did you prepare a log of what you
19 observed on March 24th?

20 A Oh. No.

21 Q So yesterday when you identified certain
22 items on the video, you did not have the luxury of
23 confirming those items with a log that you had
24 prepared, correct?

1 A That's correct.

2 Q And some of those items -- I think you
3 stated in your testimony you weren't sure what, but
4 it looked like something. Do you recall that type
5 of testimony?

6 A Yes.

7 Q Would it be fair to say that some of the
8 items on that videotape, particularly those in the
9 background, you may not be 100 percent sure it is
10 what you have identified it to be, correct?

11 A It was very difficult to identify what I
12 was looking at on this particular video when it's on
13 a pause cycle. I could look at the tape again. I'm
14 99 percent sure I could identify everything that's
15 in that video.

16 Q Yesterday when you identified certain
17 items, it had been paused, correct?

18 A Yes.

19 Q Now, the items that you identified on the
20 video, you don't know whether the operator of the
21 site intended to segregate some of those items out
22 of the fill material, do you?

23 A No, I don't.

24 Q Yesterday on the video you identified a

1 pile of corrugated metal pipe. Do you recall that?

2 A Yes.

3 Q And they were all piled up off by
4 themselves on one particular portion of the site,
5 correct?

6 A That's correct.

7 Q You didn't see any of those corrugated
8 metal pipes being dumped from a truck, did you?

9 A No, I didn't.

10 Q And you did not see any of those
11 corrugated metal pipes being moved at any time while
12 you were on the site?

13 A No.

14 Q So you don't have or you don't know how
15 that pile of corrugated metal pipes got to be piled
16 in that particular location, correct?

17 A That's correct.

18 Q It is conceivable to you that these
19 corrugated metal pipes may have been segregated and
20 placed there by the operator pending removal to an
21 off site location, correct?

22 A That would be a possibility.

23 Q Now, yesterday in the video, you or
24 Mr. Utt referred to boiler or slag material. Do you

1 recall that portion of the video where there is an
2 audio portion that refers to boiler or slag
3 material?

4 A Yes.

5 Q You are not sure that that material came
6 from a boiler, are you?

7 A I couldn't be sure, no.

8 Q And you are not sure it's slag material,
9 are you?

10 A Can you repeat that?

11 Q You are not sure it's slag material,
12 correct?

13 A No. That's correct.

14 Q And you can't rule out the possibility
15 that that material that is referred to as boiler
16 slag material may, in fact, be naturally-occurring
17 red soil or aggregate, correct?

18 A Correct.

19 Q Yesterday during the video, you mentioned
20 some film that you say you saw on the water. You
21 didn't sample that film, did you?

22 A No.

23 Q And at no time did you smell that film,
24 did you?

1 A No.

2 Q Now, I want to clear up -- on the video,
3 Mr. Utt refers to sewer pipe, and I think during
4 your direct you referred to that same type of
5 material as clay tile. In your mind, when Mr. Utt
6 refers to sewer pipe, he's talking about clay
7 tile -- he's talking about what you would call clay
8 tile, correct?

9 A I wouldn't know what Mr. Utt's thoughts of
10 clay tile are.

11 Q When you use the term sewer tile, you are
12 referring to clay tile, right?

13 A No. I'm referring to clay tile. Sewer
14 tile can be clay tile. Sewer tile can be PVC.
15 Sewer tile can be cast iron.

16 Q What you saw on the site was clay tile?

17 A Yes.

18 Q And you don't know if that clay tile came
19 from a sewer or some other source?

20 A No, I don't.

21 Q It may have been farm tile for all you
22 knew?

23 A That's correct.

24 Q And there is nothing about clay tile that

1 you saw on the site that would lead you to believe
2 it may have come from a sewer as opposed to some
3 other source?

4 A That's correct.

5 Q On March 24th while you were taking the
6 videotape or at any time on March 24th, what was the
7 closest you got to the dozers?

8 A Oh, it probably would be a couple hundred
9 feet.

10 Q And the dozers were -- or the front-end
11 loaders I guess were what's on the video, but those
12 pieces of machinery were pushing fill material,
13 correct?

14 A That's correct.

15 Q And you got no closer than a couple
16 hundred feet, correct?

17 A Might have been a little closer. I'm not
18 sure now.

19 Q But in that general area?

20 A Yes.

21 Q And so from that distance, you are really
22 not able to see whether or not there was anything
23 that you would refer to as inappropriate in the fill
24 material that's being pushed by that front-end

1 loader, correct?

2 A I believe the film shows some asphalt
3 coming off one truck being pushed into the water, if
4 I recall.

5 Q Was it being pushed by the front-end
6 loader or coming off the truck?

7 A I believe the section of the film showed
8 it coming off the truck.

9 Q So you didn't see the asphalt being pushed
10 by the front-end loader and worked either into the
11 fill material or into the water, correct?

12 A I can't recall if that was on the film or
13 not.

14 Q Other than asphalt, you didn't see any
15 kind of item that you identified as potentially
16 inappropriate being worked into the fill or pushed
17 into the water on March 24th, correct?

18 A I thought I had logged in something about
19 GC Trucking on that date on March 24th.

20 Q On March 24th, there is no entry in your
21 log --

22 A Okay. I'm sorry.

23 Q -- is there?

24 A No. That's correct.

1 Q Did you take any soil samples on March
2 24th?

3 A No.

4 Q Did you dig any test pits on March 24th?

5 A No.

6 Q And did you take any samples of any water
7 on March 24th?

8 A No.

9 Q Would you agree with me, Mr. Wells, that
10 it is a common-related activity in this area in
11 mining operations to import outside fill material
12 when it becomes necessary to construct an
13 improvement after the mining is complete?

14 MR. MAKARSKI: Objection. It's way beyond his
15 direct. He just testified as to what he did -- went
16 out there and did and observed.

17 MR. STICK: Well, this witness on direct, your
18 Honor, has identified what he calls inappropriate
19 material, and I just want to make sure that his
20 understanding is that material from off site can be
21 appropriate.

22 THE HEARING OFFICER: All right. Objection
23 overruled. Mr. Wells?

24 THE WITNESS: I imagine under certain

1 circumstances it would be appropriate.

2 BY MR. STICK:

3 Q Do you know that after the Stearns Road
4 site was shut down that the Forest Preserve District
5 constructed a haul road on that site?

6 A Yes.

7 Q And it was built by the Forest Preserve
8 District, correct?

9 A Yes.

10 Q And do you know that the Forest Preserve
11 District used its own dozer in constructing that
12 haul road?

13 A I believe they did.

14 Q And do you know that aggregate from off
15 site was used to haul onto the site and used to
16 build that haul road on the Stearns Road site?

17 A Yes.

18 Q Now, recently the Forest Preserve District
19 used concrete riprap to stabilize the banks of the
20 DuPage River in the Churchill Downs or Churchill
21 Woods Forest Preserve?

22 A Correct.

23 MR. MAKARSKI: Objection.

24 MR. TUCKER: Objection.

1 MR. MAKARSKI: It's way beyond the scope and
2 not relevant to this proceeding.

3 MR. STICK: Your Honor, on direct examination
4 he talked about concrete and identified concrete in
5 the video as something he felt was inappropriate. I
6 believe this is clearly within the scope of cross
7 examination. He sat there yesterday and said there
8 is a piece of concrete, there is a piece concrete,
9 and I think I have the right to examine him
10 regarding his use of concrete on Forest Preserve
11 District property.

12 THE HEARING OFFICER: His own personal?

13 MR. STICK: Yes.

14 THE HEARING OFFICER: All right. Well,
15 continue for the time being. I don't know how far I
16 will let you go.

17 MR. STICK: Let me see if I can lay a
18 foundation on it being his personal responsibility.

19 BY MR. STICK:

20 Q You were the construction inspector for
21 the Churchill Woods Forest Preserve when they were
22 doing the shoreline stabilization, correct?

23 A That's correct.

24 Q So you inspected that site and saw the

1 progress that the contractor was making with the
2 shoreline preservation, correct?

3 A That's correct.

4 Q So you have personal knowledge regarding
5 the use of concrete at the Churchill Woods Forest
6 Preserve?

7 A That's correct.

8 Q And, in fact, it was your responsibility
9 as a Forest Preserve District inspector to confirm
10 that the contractor's use of concrete at that
11 Churchill Woods Forest Preserve met with the
12 contract specifications and requirements, correct?

13 A That's correct.

14 Q So it was your responsibility to determine
15 from the Forest Preserve's point of view whether the
16 use of concrete was appropriate?

17 A Yes.

18 Q Now, this concrete we are referring to is
19 broken concrete, correct?

20 A That's correct.

21 Q And it has come from off site excavation
22 activities, correct?

23 A Yes, it has.

24 Q And, in fact, it is broken curbing and

1 sidewalk, correct?

2 A Yes.

3 Q Now, the concrete is being brought from
4 off site to the Churchill Woods Forest Preserve by
5 the contractor pursuant to its contract with the
6 Forest Preserve, correct?

7 A That's correct.

8 Q Churchill Woods, by the way, is not a
9 landfill site, correct?

10 A That's correct.

11 Q It's not a permitted landfill?

12 A Correct.

13 Q Some of this concrete, when it comes to
14 the Churchill Woods Forest Preserve, has rebar
15 sticking out of it, correct?

16 A That's correct.

17 Q Concrete is being hauled to the Forest
18 Preserve property in semitrucks, correct?

19 A Correct.

20 Q And the concrete -- the broken concrete,
21 sidewalk, and curbing is going to be laid about two
22 feet wide for about 1,000 feet along the banks of
23 the DuPage River, correct?

24 A That's correct.

1 Q And the contract specifications called for
2 this broken concrete, sidewalk, and curbing to be
3 placed in the water itself, correct?

4 A Not exactly in the water. It was used to
5 stabilize the shoreline.

6 Q It will be in contact with the water,
7 correct?

8 A No.

9 Q Well, the broken concrete will be in
10 contact with the water, will it not?

11 A I imagine if the soil surrounding the
12 concrete would be. The procedure was to stabilize
13 the shoreline, so basically a trench was dug between
14 the water and the shoreline. The broken concrete
15 was placed in that void.

16 Q And the top of the broken concrete is
17 exposed to the water, correct?

18 A No.

19 Q Well, is it not correct that parts of that
20 concrete are exposed to the water?

21 MR. TUCKER: Objection. He has answered that
22 question three times now.

23 THE HEARING OFFICER: Sustained.

24

1 BY MR. STICK:

2 Q Let me ask you this.

3 So it's your testimony that the concrete
4 is being buried at the Churchill Woods Forest
5 Preserve?

6 MR. MAKARSKI: Objection. That's not what he
7 said, and we have been through this already.

8 MR. STICK: Well, I think that is what he said,
9 and I just want to clarify it.

10 THE HEARING OFFICER: It's overruled. Let's
11 see if we can clarify this.

12 THE WITNESS: This project -- again, I will
13 state the project. I will try to clarify everything
14 here.

15 Yes, it was buried. It was a controlled
16 project. The broken concrete was within IDOT
17 specifications. It was placed in a trench to
18 stabilize the shoreline. On top of the concrete
19 were placed three enstoned gabion baskets. On top
20 of the gabion baskets were placed layers of
21 flagstone. So I guess to answer your question, yes,
22 the concrete is buried.

23 BY MR. STICK:

24 Q It is buried in either the bed of the

1 river or the bank of the river, correct?

2 A On the bank of the river, yes.

3 Q And this contract is being performed
4 pursuant to IDOT specifications?

5 A Yes.

6 Q Would you characterize the activity at the
7 Churchill Woods Forest Preserve as using concrete to
8 construct an embankment?

9 A I guess you could say yes, yes.

10 MR. STICK: Your Honor, I want to mark three
11 exhibits.

12 THE HEARING OFFICER: All right.

13 MR. STICK: Seven, eight, and nine.

14 (Respondents' Exhibit Nos. 7, 8, and
15 9 marked for identification,
16 9-24-97.)

17 MR. STICK: Your Honor, may I approach?

18 THE HEARING OFFICER: Yes.

19 MR. STICK: This one I have, I want to tender
20 the photograph to the witness and tender photograph
21 duplicates to parties and your Honor. This would be
22 Exhibit Number 7.

23 MR. STICK: Your Honor, this will be Exhibit 8,
24 Respondents' Exhibit 9.

1 MR. STICK: May I approach the witness?

2 THE HEARING OFFICER: Yes.

3 MR. MAKARSKI: Your Honor, as a preliminary
4 matter, I know these have nothing to do with our
5 side, and I'm going to object. Again, with this
6 other situation, first, it is not within the direct,
7 and secondly, it certainly is far afield from
8 anything that's relevant to what we are trying here
9 today. If we are going to bring in all of the
10 Forest Preserve sites and all 23,000 acres, it will
11 be unending.

12 THE HEARING OFFICER: I understand your
13 objection, and I'm going to allow Mr. Stick to
14 finish up with this one site, and we will let it
15 rest at that.

16 MR. STICK: May I approach the witness?

17 THE HEARING OFFICER: Yes.

18 BY MR. STICK:

19 Q Mr. Wells, let me show you what is marked
20 as Exhibits 7, 8, and 9.

21 Starting with Exhibit 7, do you recognize
22 Exhibit 7 as a photograph of Churchill Woods Forest
23 Preserve?

24 A Yes, I do.

1 Q And does that accurately portray
2 construction activities taking place at the
3 Churchill Woods Forest Preserve?

4 A Yes, it does.

5 Q Does Exhibit 7 depict broken concrete at
6 the Churchill Woods Forest Preserve?

7 A Yes.

8 Q And this is the broken concrete that you
9 were talking about, correct?

10 A Are you talking about these large pilings
11 here?

12 Q Large pilings and the concrete in the
13 background.

14 A Yes.

15 Q And the large piles have rebar sticking
16 out of the top, correct?

17 A Yes, they do.

18 Q And these large pilings have been brought
19 to the site by the contractor, correct?

20 A Correct.

21 Q For later use in this shoreline
22 stabilization project, correct?

23 A Correct.

24 Q Let me refer you to Exhibit 8. Is that a

1 photograph of Churchill Woods Forest Preserve?

2 A Yes.

3 MR. MAKARSKI: I have the same objection to
4 this as I previously did.

5 THE HEARING OFFICER: I will note your
6 continuing objection to this line of questioning on
7 the Churchill Woods.

8 MR. MAKARSKI: Okay.

9 BY MR. STICK:

10 Q Does Exhibit 8 depict the Churchill Woods
11 Forest Preserve?

12 A Yes.

13 Q And it depicts the project shoreline
14 stabilization project that was being conducted by
15 the Forest Preserve, correct?

16 A Yes.

17 Q And does Exhibit 8 truly and accurately
18 depict that shoreline stabilization project or a
19 portion of the project?

20 A A portion of the project, yes.

21 Q And Exhibit 8 depicts concrete pilings
22 that have been brought to the site by the
23 contractor, correct?

24 A That's correct.

1 Q And it also depicts rebar protruding from
2 the top of this concrete pile, correct?

3 A Yes, it does.

4 Q Let me refer you to Exhibit Number 9. Is
5 Exhibit Number 9 a photograph of the Churchill Woods
6 Forest Preserve?

7 A Yes, it is.

8 Q And does Exhibit 9 accurately and truly
9 portray a portion of the shoreline preservation
10 project or stabilization project being implemented
11 at the Churchill Woods Forest Preserve?

12 A Yes, it does.

13 Q This is where the concrete is being moved
14 down closer to the water, correct?

15 A It looks like it's been stockpiled along
16 the project limits, yes.

17 MR. STICK: Your Honor, I would move for the
18 admission of Respondents' Exhibits 7, 8, and 9.

19 MR. MAKARSKI: Well, I object on the relevant
20 issue and the scope issue, which I already said.

21 MR. STICK: Your Honor, this witness sat on the
22 stand and shot a photograph and talked about a
23 photograph on direct examination where he went to
24 the Stearns Road site and photographed concrete, and

1 he testified that he photographed the concrete and
2 highlighted the concrete in his testimony because he
3 thought it was inappropriate. I think this is
4 appropriate within the scope of cross examination
5 and is appropriate impeachment of this witness'
6 testimony about the appropriateness of concrete.

7 THE HEARING OFFICER: All right. Well, not
8 ruling on whether this witness is being impeached by
9 these exhibits, I will admit them.

10 MR. STICK: Thank you.

11 Your Honor, I had a couple more areas I
12 wanted to cover with Mr. Wells, and I will be very
13 brief, but I did have one more area that I was going
14 to go into very briefly about activities on other
15 Forest Preserve District pieces of property. You
16 had indicated you would let me complete this one,
17 and I am asking now for permission to explore one
18 more very briefly.

19 MR. MAKARSKI: I object.

20 THE HEARING OFFICER: All right. I think that
21 we have gone far afield on this, so your request is
22 denied.

23 MR. STICK: On grounds of relevancy?

24 THE HEARING OFFICER: On the grounds that it is

1 way beyond the scope of the direct, and I'm not sure
2 of the relevancy of the information. To the extent
3 that -- I know this doesn't shorten things up, so if
4 you wish to make an offer of proof, you may do so.

5 MR. STICK: I was going to ask for that and
6 then see how you wanted to handle that.

7 May I make the offer of proof with the
8 witness on the stand?

9 THE HEARING OFFICER: Yes, you may.

10 MR. STICK: Thank you, your Honor.

11 THE HEARING OFFICER: It would be helpful if
12 you would designate when you begin and when you
13 end.

14 MR. STICK: I'm beginning my offer of proof at
15 this point.

16 MR. MAKARSKI: And I object to the offer of
17 proof.

18 THE HEARING OFFICER: Yes, sir.

19 BY MR. STICK:

20 Q Mr. Wells, periodically the Forest
21 Preserve District accepts topsoil excavated from off
22 site construction activities for use on Forest
23 Preserve District property, correct?

24 A Correct.

1 Q And during 1993, an excavator named Mario
2 Conte excavated topsoil at a construction site at
3 Irving Park and O'Leary Drive and transported that
4 topsoil to Forest Preserve District property,
5 correct?

6 A That's correct.

7 Q And this began approximately July 23rd,
8 1993, correct?

9 A Correct.

10 Q Mario Conte was an excavator for
11 industrial parks and construction sites, correct?

12 A Correct.

13 Q Mario Conte hauled that topsoil to the
14 Draper property, which is now part of the Maple
15 Meadows Golf Course, correct?

16 A Correct.

17 Q Topsoil was being used in construction of
18 the new golf course on Forest Preserve District
19 property, correct?

20 A Correct.

21 Q Now, the Forest Preserve District did not
22 pay Mario Conte for this topsoil, correct?

23 A That's correct.

24 Q And, in fact, Mario Conte paid for his own

1 trucking of the topsoil to Forest Preserve District
2 property, correct?

3 A Correct.

4 Q No tests were conducted to determine
5 whether the topsoil was clean, correct?

6 A Visual tests to make sure there is no
7 debris in the topsoil. Chemical tests, no.

8 Q No chemical analysis was conducted to
9 determine whether, for instance, there was
10 contaminants in the topsoil, correct?

11 A Correct.

12 Q Now, Mario Conte transported a couple
13 thousand cubic yards of topsoil to the Forest
14 Preserve District property of the Draper property,
15 correct?

16 A Correct.

17 Q Pursuant -- let me back up.

18 This was something you were in charge of
19 inspecting, correct?

20 A Correct.

21 Q And so this was one of the activities
22 during your time in 1993 that you periodically
23 inspected, correct?

24 A That's correct.

1 Q Now, the Forest Preserve District did not
2 get a landfilling permit for the Draper property,
3 correct?

4 A I couldn't tell you. I don't know.

5 Q Well, is the Draper property a landfill?

6 A No.

7 Q So it's not a permitted landfill, correct?

8 A I would assume --

9 MR. MAKARSKI: Objection. He said he didn't
10 know if they had a permit.

11 BY MR. STICK:

12 Q Do you know whether the Draper property is
13 a permitted landfill?

14 A No, I don't.

15 Q Do you know whether it's an operating
16 landfill?

17 A No, I don't.

18 Q Well, you know it's not an operating
19 landfill?

20 A Yeah. It's not an operating landfill,
21 yes, correct.

22 Q And in 1995 and '96, topsoil from a
23 construction site at Chicago and Quarry Road was
24 taken to the Mallard Lake Recreation Area, right?

1 A Yes.

2 Q And it was not taken to the Mallard Lake
3 Landfill. It was taken to the Mallard Lake
4 Recreation Area, correct?

5 A That's correct.

6 Q And the construction site from which this
7 topsoil was excavated was not on Forest Preserve
8 District property, correct?

9 A That's correct.

10 Q The topsoil was stockpiled at the Forest
11 Preserve District property for future use at Mallard
12 Lake, correct?

13 A Yes.

14 Q And the topsoil spread approximately with
15 a six-inch layer across the recreational area?

16 A Yes.

17 Q And it served as surficial soil for
18 sustaining vegetation, correct?

19 A That's correct.

20 Q There is a lake, picnic shelter, and a
21 park at Mallard Lake Recreation Area, correct?

22 A That's correct.

23 Q Now, approximately 15,000 cubic yards of
24 topsoil were taken during 1995 and '96 to the

1 Mallard Lake recreational facility, correct?

2 A Correct.

3 Q And no chemical testing or analysis of the
4 topsoil was done to determine whether it was
5 contaminated with petroleum products or other
6 contaminants, correct?

7 A That's correct.

8 MR. STICK: That's the end of my offer of
9 proof. I do have two quick areas to wrap up on
10 cross, and I will be done.

11 THE HEARING OFFICER: All right.

12 MR. MAKARSKI: Let me, just for the record,
13 object to this offer of proof. It also gets into an
14 area that has nothing to do with this case, use of
15 topsoil.

16 THE HEARING OFFICER: I understand,
17 Mr. Makarski. I have ruled that it's -- I have
18 upheld your objection and allowed this in as an
19 offer of proof, and then if either side wishes to
20 appeal that and have the Pollution Control Board
21 overrule it, and then it would be allowed to stand
22 as evidence.

23 MR. STICK: May I continue?

24 THE HEARING OFFICER: You may continue.

1 BY MR. STICK:

2 Q Mr. Wells, you are not a hydrogeologist
3 are you?

4 A No.

5 Q And you have no particular training in
6 hydrogeology, do you?

7 A No.

8 Q You have never conducted any
9 hydrogeological investigation of the Stearns Road
10 site, correct?

11 A Correct.

12 Q And you have never conducted any ground
13 water investigation of the Stearns Road site,
14 correct?

15 A That's correct.

16 Q And you don't know whether the body of
17 water that was at the Stearns Road site on March
18 24th, 1993, was being recharged with ground water or
19 surface water runoff, correct?

20 A Correct.

21 Q Your statement yesterday during direct
22 that the water at the site was ground water was
23 simply your speculation as a layman, correct?

24 A Correct.

1 Q Mr. Wells, let me refer you to
2 Complainant's Exhibit Number 11. Let me refer you
3 to the first paragraph, the last sentence of that
4 observation report, the one that states, "It was our
5 determination that the fill was suitable as per the
6 license agreement." Do you see that?

7 A Yes.

8 Q Now, this is your observation report,
9 correct?

10 A That's correct.

11 Q And -- I'm sorry. I'm told by my
12 co-counsel that I misread that last sentence.

13 MR. MAKARSKI: Yes. It's unsuitable.

14 MR. STICK: May I back up, your Honor?

15 THE HEARING OFFICER: Yes, you may.

16 BY MR. STICK:

17 Q Mr. Wells, that last sentence reads, "It
18 was our determination that the fill is unsuitable as
19 per the license agreement," correct?

20 A Yes. That's correct.

21 Q Now, this is your observation report,
22 correct?

23 A That's right.

24 Q And you wrote these words, correct?

1 A Yes, I did.

2 Q And when you say our determination, you
3 meant your determination and Mark Vierck's
4 determination, correct?

5 A Correct.

6 Q But, in fact, you never made the
7 determination that the fill material at the site was
8 unsuitable per the license agreement, did you?

9 A After discussing what knowledge Mark
10 Vierck had, the license agreement had in it, it
11 was -- I guess you could say it was our
12 determination.

13 Q You never made that determination?

14 A I never made the determination.

15 Q And that's because you had never read the
16 license agreement, correct?

17 A Correct.

18 Q And you had not read the license agreement
19 and did not read the license agreement on March
20 24th -- I'm sorry -- on March 1st, 1993, correct?

21 A Correct.

22 MR. STICK: Your Honor, I renew my motion to
23 strike that last sentence of that observation report
24 as hearsay and inappropriate and incompetent from

1 this witness. I really think as a practical matter
2 it can be accomplished by redaction, and I would ask
3 that that be done.

4 THE HEARING OFFICER: Counsel?

5 MR. MAKARSKI: I think it should stay. It's
6 part of his report. He said here he clarified it.
7 He discussed it with Mr. Vierck and it's down.

8 MR. STICK: Then it's hearsay, your Honor.

9 MR. MAKARSKI: It's not hearsay he wrote it.

10 MR. KNIPPEN: But it's Mr. Vierck's
11 conclusion.

12 MR. STICK: But the letter is hearsay. In
13 fact, it's double hearsay because the letter itself
14 is hearsay, and what the letter contains is hearsay
15 because it's not something Mr. Wells is saying.

16 THE HEARING OFFICER: Okay. Thank you. The
17 motion to strike that sentence is denied.

18 MR. STICK: I'm sorry, your Honor. I think I'm
19 about done.

20 (Brief pause.)

21 MR. STICK: Your Honor, I have nothing
22 further.

23 THE HEARING OFFICER: Thank you.

24 Ms. O'Connell?

1 MS. O'CONNELL: I do have a question or two.

2 CROSS EXAMINATION

3 BY MS. O'CONNELL:

4 Q I wanted to clear up something from
5 yesterday, Mr. Wells. You testified that you served
6 that stop work notice on -- you believe it was MLR
7 on March 25th, 1993?

8 A Yes.

9 Q Do you recall that?

10 That's not really the case. You didn't
11 serve it on MLR, did you?

12 A No.

13 Q In fact, you served it on another entity,
14 correct?

15 A Yes.

16 Q Who was that?

17 A I'm not sure what the person's name was.
18 I believe it was Bluff City. I'm not sure who they
19 served it to. I just accompanied the officers.

20 Q And the officers served it upon an
21 employee of Bluff City?

22 A Yes.

23 Q In fact, you never had any contact with
24 anyone from MLR any of the times you went out to

1 that site, did you?

2 A No.

3 MS. O'CONNELL: That's it.

4 THE HEARING OFFICER: Thank you.

5 Redirect?

6 MR. MAKARSKI: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. MAKARSKI:

9 Q Mr. Wells, were you required to check in
10 with anyone at the site before you went in there and
11 did an inspection?

12 A No.

13 Q And you said you have a Blazer?

14 A Yes.

15 Q Does the district own Blazers other than
16 the one that you drive?

17 A Yes, they do.

18 Q How many, do you know?

19 A It's probably ten or 12 of them.

20 Q That other employees have?

21 A Yes.

22 Q Now, when you drive down Stearns Road
23 without going into the site, what can you see of the
24 Stearns Road site from the road?

1 A It's pretty well hidden. Can't see a
2 whole lot. They have a woven wire fence, so
3 everything is pretty much hidden in there.

4 Q Could you see the off site material?

5 A You could see some of the piles, yes.

6 Q Now, is it your job to inspect all of the
7 projects that the district is doing with respect to
8 construction?

9 A It's my duty to inspect the projects that
10 are funded in the construction and development fund.

11 Q Was the Stearns Road project funded in the
12 construction and development fund?

13 A No.

14 Q So you had no responsibility with respect
15 to the site?

16 A No.

17 Q No, you didn't or --

18 A No. I didn't have any responsibility to
19 inspect that site.

20 Q Why did you not record the petroleum odors
21 that you noticed in your diary?

22 A If I recorded everything that I see on
23 every inspection project, I would have volumes of
24 diaries. As I tried to explain before, these are

1 short notes to jog my memory for my observation
2 reports and jog my memory for time counting.

3 Q And that's the same reason other things
4 weren't recorded in detail?

5 A Yes.

6 Q Now, at Churchill, this concrete,
7 Respondents' Exhibit 7, for instance, the chunks --

8 A Yes.

9 Q -- what became -- well, the first place is
10 did the district hire a contractor to do this work?

11 A Yes.

12 Q And did the district, in fact, purchase
13 this material to be used at Churchill?

14 A The contractor was paid for it, yes.

15 Q And what is done with the rebars? Is
16 there anything done with the rebars before the
17 material is used for its final destination?

18 A Yes. As a matter of fact, the rebar is
19 cut off, and what is rather deceiving, and I wasn't
20 asked the question, if these pilings were used, no,
21 they were rejected and moved off site. They
22 attempted to break them into two-foot pieces, as you
23 see the other concrete, and breaking a
24 cylindrical-type of piling like this into two-foot

1 squares was rather difficult for the contractor.
2 They were loaded and hauled off site.

3 Q So this material that we see in Exhibits 7
4 and 8 of the Respondents' was rejected and never
5 used in the project; is that right?

6 A That's correct.

7 Q What does the district -- that's on a
8 navigable waterway, isn't that?

9 A No.

10 Q Is it the east branch?

11 A Yes.

12 Q Do you know if a permit is required from
13 the Corps of Engineers to do any bankment control
14 work?

15 A Yes?

16 MR. STICK: Objection. Foundation.

17 MR. MAKARSKI: I asked him if he knew.

18 MR. STICK: I object because he hasn't laid the
19 foundation on how or why he should know.

20 THE HEARING OFFICER: All right. Sustained.

21 BY MR. MAKARSKI:

22 Q You have worked on construction projects
23 for the district for a number of years?

24 A Yes.

1 Q Have you done work along waterways for the
2 district?

3 A Yes.

4 Q Are you familiar with the necessity, if
5 one exists, of acquiring permits from the Corps of
6 Engineers to do work on waterways?

7 A Not really. I just assumed all the
8 permits were in hand. The engineer that designed
9 this particular job, the project was delayed some
10 time, I remember, to get the Corps of Engineers
11 permits I believe it was.

12 Q That was your understanding?

13 A Yes.

14 Q On the video that you took, which we
15 looked at yesterday, I believe you testified that
16 you went back and showed the tire twice, I think?

17 A Yes.

18 Q What was the purpose of you doing that?

19 A I was just panning the area. Mr. Utt was
20 standing there, so the first time I wasn't real sure
21 what it was. And he started -- he was mentioning
22 what it was, and so I kind of zoomed in on it a
23 little bit. There is no particular reason. I
24 didn't pick out just certain items on that site to

1 zoom in on.

2 Q That's what I wanted find out.

3 MR. MAKARSKI: We have no further redirect.

4 THE HEARING OFFICER: Recross?

5 MR. STICK: A couple questions.

6 RE CROSS EXAMINATION

7 BY MR. STICK:

8 Q Mr. Wells, referring you to Exhibits 7, 8,
9 and 9, the photographs, you indicated a moment ago
10 that certain of the concrete here was rejected?

11 A Yes.

12 Q Would that be the larger items?

13 A Yes.

14 Q The smaller items were not rejected,
15 correct?

16 A That's correct.

17 Q And that concrete was used in the
18 shoreline stabilization project, correct?

19 A If all of the reinforcing bar-- protruding
20 reinforcing bar was cut off of it and they were
21 sized according to specifications, they were allowed
22 to use that, yes.

23 Q And, in fact, if the big pieces of
24 concrete shown on Exhibit 7 were broken up and the

1 rebar removed, then that concrete was also used in
2 the project, correct?

3 A If they could break these pilings into
4 suitable sizes within the specifications, they could
5 have used them. They attempted that -- I believe --
6 I'm not sure. Exhibit 8 they attempted that. You
7 could see how the concrete fell apart. So it was
8 rejected and hauled off site.

9 Q You indicated that you can't make every
10 entry into your daily log in response to
11 Mr. Makarski's questioning.

12 A That's correct.

13 Q My question to you is when was your first
14 visit to the site where you observed items in the
15 fill? That was March 1st, 1993, correct?

16 A Yes.

17 Q Isn't it correct that on March 1st, 1993,
18 you noted asphalt, concrete, and sewer pipe and
19 nothing else?

20 A That's correct.

21 Q In your daily log, correct?

22 A Yes.

23 Q And sewer pipe is clay tile, correct?

24 A It could be, yes.

1 Q When was your second visit to the site?

2 Was it March 18th --

3 A March 18th, I believe, yes.

4 Q -- 1993?

5 Isn't it correct in your daily log entry
6 for March 18th, 1993, you noted asphalt and sewer
7 pipe and nothing else?

8 A I believe so, yes.

9 Q And again, sewer pipe is clay tile,
10 correct?

11 A Yes.

12 MR. MAKARSKI: I object. Let me do --

13 THE HEARING OFFICER: I'm sorry. Are you
14 objecting?

15 MR. MAKARSKI: Well, I think --

16 MR. TUCKER: It's a point of clarification.

17 MR. MAKARSKI: Clarification because the word
18 et cetera comes in and was ignored.

19 MR. TUCKER: He's not reading directly from
20 the --

21 MR. MAKARSKI: And so it leaves the impression
22 that what he put down in the diary is something
23 other than what he did put down in the diary.

24 MR. TUCKER: He told the witness that he wrote

1 down asphalt, concrete, sewer pipe, but, in fact, he
2 also then wrote et cetera.

3 THE HEARING OFFICER: All right. I don't see a
4 real objection there. He's questioning the witness,
5 so the observation is overruled.

6 MR. MAKARSKI: I could ask him?

7 THE HEARING OFFICER: No. He's doing recross
8 right now.

9 MR. MAKARSKI: Oh. I thought he stopped. I'm
10 sorry.

11 MR. STICK: I was done, your Honor.

12 THE HEARING OFFICER: Oh, okay.

13 MR. MAKARSKI: I'm sorry. I thought he was
14 finished. I'm sorry.

15 THE HEARING OFFICER: No, we are done. We've
16 done cross and recross. I think we are done.

17 Ms. O'Connell?

18 MS. O'CONNELL: Nothing further.

19 THE HEARING OFFICER: Thank you, Mr. Wells.

20 MR. MAKARSKI: We have Mr. Utt as our next
21 witness. Should we take a break?

22 THE HEARING OFFICER: Yes. Let's take a
23 five-minute break to get Mr. Utt in here.

24 (Whereupon, a recess was taken.)

1 THE HEARING OFFICER: Back on the record.

2 Mr. Makarski?

3 MR. MAKARSKI: Yes. We would like to call

4 Mr. Richard Utt, U-t-t.

5 THE HEARING OFFICER: Mr. Utt, would you please

6 stand.

7 (The witness was duly sworn.)

8 RICHARD UTT,

9 called as a witness herein, having been first duly

10 sworn, was examined upon oral interrogatories, and

11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MAKARSKI:

14 Q Would you give us your name, sir?

15 A Richard L. Utt, U-t-t.

16 Q And where do you reside, Mr. Utt?

17 A I reside at 1201 Pearsons Parkway,

18 Belvidere, Illinois.

19 Q And are you presently employed?

20 A No, I am not.

21 Q Were you employed by the Forest Preserve

22 District of DuPage County?

23 A Yes, I was.

24 Q And give us the dates of that.

1 A I was employed from September 1975 to
2 December 31st, 1996.

3 Q And what happened on that date?

4 A I retired. I took early -- I took the
5 incentive -- early retirement incentive and retired
6 on that day.

7 Q Now, what is your educational background?

8 A I attend the University of Illinois and
9 subsequently graduated from the Illinois Institute
10 of Technology in 1956.

11 Q In what field of endeavor?

12 A Civil engineering.

13 Q Did you get a degree in engineering?

14 A Yes, I did.

15 Q What did you do after you graduated from
16 school?

17 A I worked -- during graduate -- during
18 University of Chicago Illinois, I worked for the
19 Illinois Central on the Earn and Learn Program. And
20 then subsequently I worked for a private engineering
21 company, Henry L. Uteg and Associates. It goes back
22 a long time.

23 Q Would you spell that for the lady?

24 A Uteg is U-t-e-g.

1 Q Thank you. And would you continue?

2 A I was an associate with Mr. Uteg.

3 I then worked for an excavating company,
4 which was CP Lorocco out of Northlake, and my job
5 was project engineer and superintendent. I worked
6 with them through 1967, '68, and then at that time I
7 became construction coordinator of the National
8 Accelerator Lab, which is called the Fermi Lab now,
9 and I held that position until 1972.

10 Q And is that when you started with the
11 district?

12 A No. No. Then I worked for Ted Surick
13 Excavating Company roughly in that timeframe until
14 August of '75, and then I started with the district.

15 Q Did you serve in the military?

16 A Yes, I did.

17 Q In what years?

18 A I served 1950 through 1953.

19 Q In what branch?

20 A U.S. Army Corps of Engineers.

21 Q Where did you serve?

22 A I served in Europe and Korea and, of
23 course, in the United States.

24 Q Did you fight in the Korean War?

1 A I didn't fight it. I was there. I was
2 there for a few months.

3 Q Now, when you started with the district,
4 what was your position?

5 A I started as a project engineer.

6 Q What does that involve?

7 A Well, I was to -- we were completing
8 parking lots and some construction sites throughout
9 the preserves throughout the district, and my job
10 was to supervise the construction of those sites.

11 Q And then did you assume another position
12 subsequent to that?

13 A Well, then in 1978 -- June '78, I took
14 over as superintendent of construction and
15 development.

16 Q And what responsibility does that entail?

17 A That entailed the oversight of all the
18 district landfills, as well as other construction --
19 complete construction of various projects throughout
20 the district.

21 Q When you say the district's landfills,
22 does the district own any landfills?

23 A Yes, sir. They own two active landfills
24 at the site, and there would be five or six inactive

1 landfills.

2 Q Which were the two active ones?

3 A Mallard Lake and Green Valley.

4 Q Are they still active?

5 A Green Valley, I think, closed August of
6 last year of '96, and Mallard Lake is still
7 operating.

8 Q Now, what did your duties entail with
9 respect to those two landfills?

10 A Well, we had entered into contracts with
11 the operators, and my job was basically oversight to
12 make sure that the operators were complying with
13 their contract, and part of their compliance, of
14 course, had to be that they were complying with
15 existing regulations from the IEPA and the U.S. EPA
16 environmental laws.

17 Q And what was your responsibility with
18 respect to the closed sites that the district had?

19 A Well, my job was to make sure; number one,
20 that we were monitoring some of those sites, and
21 some of those sites required remedial action. So in
22 other words, some of the action that was required
23 was either maintenance and reconstruction,
24 installation of monitoring wells, testing

1 procedures, this type of effort.

2 Q And in your oversight of Mallard Lake and
3 Green Valley, did you have a responsibility to
4 determine which wastes or which material went into
5 those sites?

6 A Yeah. We had a procedure because a part
7 of the contract was that the operator had to make
8 sure that if there were special waste coming in --
9 there was a different fee schedule for special
10 waste, there were different fee schedules for hard
11 to handle waste, and there was compacted and
12 uncompact waste.

13 Q Did you deal with the operators and the
14 IEPA with respect to --

15 A Yes, I did.

16 Q What issues did you deal with them on?

17 A Well, in some cases -- for instance, when
18 we first started -- of course, the regulations
19 change as you go along. We were to make sure that
20 nothing came into the site that would be deemed
21 against the regulations and that it would be --
22 whatever came into the site would be properly
23 disposed of and handled and incorporated into the
24 fill.

1 Q Now, did the name of your department
2 change as time went by?

3 A Yes, it did. It changed in -- 1986 or
4 '87, I believe it was called government services,
5 and we -- at that time, I discontinued the
6 construction end and focused mainly on the landfill
7 program.

8 Q That was the responsibility at that time?

9 A That's correct.

10 Q How many employees were in government
11 services?

12 A They varied anywhere from ten to 12.

13 Q And what generally were their
14 responsibilities?

15 A Well, we had two landfill inspectors, and
16 we had a landfill foreman, and then we had a
17 testing -- environmental testing coordinator or
18 supervisor.

19 Later on, we had an officer -- what we
20 called a compliance officer, and we had kind of a
21 construction inspector that made sure that we were
22 following -- the operator was following the letter
23 of the contract and the letter of our drawings and
24 so forth. And then we had secretary and a couple of

1 technicians.

2 Q Did you have any superfund sites that the
3 district owned?

4 A Yes. We had a superfund site, which was
5 Blackwell. The Blackwell Preserve was the superfund
6 site.

7 Q And what is the district doing about that?

8 A We are currently -- I guess currently now
9 they are undergoing the final program of the
10 construction to bring it back into compliance. We
11 finished our RI investigation and feasibility
12 study. I believe they are working -- now they are
13 implementing the work plan.

14 Q Now, did the name of the government
15 services section become something else over time?

16 A No, not while I was there. It was still
17 government services, but we had made some
18 recommendations that it would be changed to
19 environmental services.

20 Q Do you know if those recommendations were
21 followed?

22 A I think they were, but I'm not sure
23 because I -- that happened after I left.

24 Q You left at the end of last year?

1 A That's correct.

2 Q And who succeeded you as director?

3 A Joe Benedict, director of government
4 services or environmental services.

5 Q Now, are you familiar with a parcel of
6 land that the district owns called Stearns -- for
7 lack of a better word, we will call it the Stearns
8 Road site?

9 A Somewhat, yes.

10 Q Where is that located?

11 A That's west of 59 on Stearns Road just
12 south of -- it's south of the road and right next
13 to -- just east of the railroad track. I can't
14 remember the track name now.

15 Q When is the first time that you visited
16 that site?

17 A I believe it was March. I don't remember
18 the exact date. It was March of '93.

19 Q Now, prior to March of '93, did your
20 government services have any responsibility with
21 respect to that site?

22 A Yes. I believe that we -- two of my
23 employees walked the site. It was called
24 preacquisition investigation where they walk the

1 site to see if there are any visible liabilities, et
2 cetera on the site.

3 Q When did they do that?

4 A I don't know offhand. It would have been
5 probably two or three years before that, but I
6 can't -- unless I saw the documents, I wouldn't
7 know.

8 Q Is that before the area is condemned?

9 A That's usually right at the time. Just
10 before it's condemned is usually when that is done.

11 Q And you hadn't been out there, though?

12 A No. I had not personally been out there
13 before.

14 Q Other than that preacquisition inspection
15 that you referred to, did government services have
16 any responsibility for that site up until March of
17 1993?

18 A None whatsoever.

19 Q Do you know what they were doing out there
20 before March of 1993?

21 A No. I have no knowledge of what was going
22 on before that time.

23 Q And what occasioned -- you said you went
24 out there in March of '93?

1 A That's correct.

2 Q Do you remember the date?

3 A I couldn't remember the date without
4 looking at documentation.

5 Q And did you go out there with anybody?

6 A I went out with Mike Wells.

7 Q And did he have anything with him?

8 A Yeah. Prior to going out, we were called
9 into the director's office, and he requested us to
10 go out and make a preliminary assessment of what was
11 going on out there due to some complaints.

12 Q And that's what occasioned you to go out
13 there?

14 A That's correct.

15 Q Did Mike Wells take any equipment with
16 him?

17 A He took a video camera.

18 Q Was a video made?

19 A A video was made.

20 Q And you have seen it before?

21 A I have seen it before.

22 Q In fact, you star in it, don't you?

23 A Well, I don't know if you call it starred.

24 Q What time of the day did you and Mr. Wells

1 go to the Stearns Road site?

2 A I think it was in the morning, and again
3 I'm not sure because I'm not -- I know that we would
4 talk to the director, and he said that we should go
5 out there. And I said well, maybe we should take a
6 video camera and take Mr. Wells, who was really
7 working for P and D at the time.

8 Q What is P and D?

9 A Planning and development.

10 Q And where did you do that? Did you go to
11 the site?

12 A We went to the site.

13 Q And how did you enter the site?

14 A We went through the gate. They have a
15 gate there with a gatehouse.

16 Q Did you talk to anybody about --

17 A No.

18 Q -- coming on the property?

19 A No. I just came in. There was a couple
20 fellows there, and some did ask what we were going
21 to do, and I said we are going to take a look
22 around.

23 Q People were working there?

24 A That's correct.

1 Q And who ran the site?

2 A I believe it was -- I don't know if it was
3 called Southwind at that time. Bluff City. I
4 really relied on Mike in that. I think he said
5 Bluff City.

6 Q And what kind of an operation or what was
7 going on at the site at the time?

8 A Well, I focused in on some trucks were
9 unloading some material on one side, which would be
10 near the northeast or north central part of the --
11 or more to the east part of the site from what I saw
12 there. And then I walked over towards an area which
13 would be to the southwest part of the site that
14 evidently had been filled.

15 Q You said there was fill-in there?

16 A Yes, there was.

17 Q What was going on at the north and
18 northeast?

19 A They were unloading trucks, semis, and
20 then some of the material was being dozed into the
21 lake or into the lagoon or the pond.

22 Q There was a lake out there?

23 A There was standing water. I think their
24 job was to excavate a wetland in that area, and that

1 area was underwater at the time, which was near --
2 more or less on the east side of the whole site.

3 Q Did they have an active mining operation
4 going on at the time?

5 A I didn't see any excavation of gravel at
6 that time, but they did have stockpiles of various
7 stone that they had evidently processed at that
8 time.

9 Q Now, you already told us you observed some
10 trucks at what you thought was the north section?

11 A Northeast section, yeah. At the
12 northeast, north central section, they were dumping
13 material.

14 Q And did you go over and look at what was
15 happening there?

16 A Yes, I did.

17 Q What did you observe?

18 A We did observe -- there was a strong odor
19 of fuel. I walked over with Mr. Wells, and I
20 said -- he said boy, this is really getting a load
21 of it.

22 MR. KNIPPEN: I'm going to object and motion to
23 strike what Mr. Wells said.

24

1 BY MR. MAKARSKI:

2 Q Just tell us what you observed.

3 A Oh, I observed it was --

4 THE HEARING OFFICER: Just a minute. Motion to
5 strike is granted.

6 THE WITNESS: I went over and looked at the
7 material and smelled what I saw. And then I picked
8 some of the material up in my hand and compressed
9 it, and then, you know, an oily substance came out
10 of it. I did this on several spots.

11 BY MR. MAKARSKI:

12 Q What kind of material was it?

13 A It was clay spoil.

14 Q What do you mean by clay spoil?

15 A Well, it was evidently hauled in from a
16 jobsite and it was wet, but I couldn't tell how much
17 moisture was water, but there was a lot -- I could
18 tell by the feel of it there was quite a bit of --
19 some type of fuel in there involved.

20 Q Did you observe anything else in the
21 material other than this fuel?

22 A The material there I didn't see too much.
23 There were some pieces of broken concrete and
24 possibly -- in that particular area, we saw a few

1 pieces of broken asphalt. That was at that
2 particular area there.

3 Q And you said you saw dozers, I believe?

4 A There was a small dozer there, and they
5 were pushing off that material towards into the
6 water so they would have a place to dump the trucks,
7 you know.

8 Q Did you actually see material being pushed
9 in the water?

10 A Yes, I did. I saw some.

11 Q And what did you do after you observed it?

12 A That wasn't the first thing I did. The
13 first thing is I came up and I walked to the
14 southwest part of the area where the prior filling
15 had taken place.

16 Q Now, this is before what you just
17 testified about?

18 A That's correct.

19 Q Well, tell us what you did there.

20 A Well, I walked up the hill -- well, it was
21 kind of like not a hill, but an incline, and
22 Mr. Wells was with me. I told him to take his video
23 and take a picture to get a general idea of the
24 condition of the site.

1 Q And what did he film?

2 A Well, he filmed the area that was in the
3 video, and he filmed a lot of pieces of broken
4 concrete, pieces of wood, tires, plastic -- busted
5 and broken up plastic pipe, tile. We had some lids
6 from plastic buckets. There was a variety of
7 debris, a culvert sticking out of the ground. Some
8 were stockpiled in a corner. Some were pushed in
9 and incorporated into the fill.

10 Q Now, was there any video taken of the
11 operation? You said you saw it to the northeast.

12 A Well, I think there was video taken. I
13 mean, it was kind of a sweeping thing that Mike
14 did. I just told him to take a picture of what is
15 going on at the northeast or north section there.

16 Q The material that you spoke of at the
17 southwest corner, did that appear to be material
18 that was generated in the mining operation, or did
19 that come from somewhere else?

20 A Based on what I saw, it had to come from
21 some other area, but I couldn't state exactly where
22 it came from. There was a variety of different kind
23 of materials, different soil texture, different
24 types of clay. There was even a little area where

1 we thought -- I thought it looked like boiler ash,
2 an area that was maybe two to three square yards
3 wide.

4 Q What is boiler ash?

5 A Well, it can come from a boiler used in
6 the processing of, say, asphalt or something like
7 that.

8 Q What made you say that it was boiler ash
9 or thought it was?

10 A Well, we had seen this material before
11 over at Blackwell. Right next to our Blackwell
12 site, there was a ready-mix -- not a ready-mix -- an
13 asphalt plant that subsequently vacated the place
14 and they had to clean it up, and it was the same
15 type of material we saw in that particular area, but
16 I have seen it before.

17 Q Did you see any concrete?

18 A Oh, yeah. I have seen quite a bit of
19 broken concrete.

20 Q Was there any in separate piles?

21 A No. They were incorporated within the
22 site, most of it. I didn't see any -- the area that
23 I'm talking about, the southwest corner, it was
24 basically broken up. There were some pieces

1 sticking out of the ground at odd angles. You know,
2 it was just like it had been disposed of in there.

3 Q Was there concrete in any other areas of
4 the site?

5 A They had stockpiled some concrete where
6 they were -- in the area where their stone was.
7 There was a large area where they had stockpiled
8 large pieces of concrete, tabletop-size pieces.

9 Q Now, you said Mr. Wells did take a video?

10 A Yes, he did.

11 Q And after he finished with the video, what
12 did you and he do?

13 A Well, we went back -- after we finished
14 the video, we went back to the district
15 headquarters, and I had informed Director Johnson
16 approximately of my preliminary assessment.

17 Q You have seen the video?

18 A Yes, I have.

19 Q What I want to do is we will go through
20 the point where you are, and then we will stop and
21 you can tell us what you were doing and what you
22 observed.

23 THE HEARING OFFICER: Off the record.

24

1 (Whereupon, a discussion was held off
2 the record.)

3 THE HEARING OFFICER: Back on the record.

4 MR. KNIPPEN: Your Honor, may the record
5 reflect our continuing objection to the audio
6 portion of the video?

7 THE HEARING OFFICER: All right. So noted.

8 Ms. Court Reporter, you do not have to
9 record the voices that you may hear off of the
10 video, just what is spoken by the attorney and the
11 witness.

12 MR. MAKARSKI: Would you start and play the
13 audio also?

14 Can you stop that a second and run that
15 back? Right there.

16 BY MR. MAKARSKI:

17 Q Did you observe that material, Mr. Utt?

18 A Yes. That's a piece of corrugated iron
19 pipe.

20 Q That's at 12:38. Did you observe that?

21 A It looks like broken asphalt and some
22 broken concrete there and large chunks of asphalt.

23 Q That's at 12:30?

24 MR. TUCKER: Thirty-eight.

1 BY MR. MAKARSKI:

2 Q Did you observe that material, Mr. Utt?

3 A It looks like a piece of wood on the
4 corner down there. I can't see exactly what that
5 is. It looks like a piece of concrete up above.

6 Q Is that you in the picture?

7 A That's me in the picture.

8 Q What are you doing there?

9 A I was trying to get up that slope. It was
10 a little muddy at the time, and I was kind of
11 chugging away getting up the top there. There was
12 some other wood and debris in front of me.

13 Q Do you see that material there in the
14 picture now at 12:39? Did you observe that?

15 A Yeah. It looks like a piece of pipe or
16 metal pipe, possibly lead pipe. And then there was
17 some siding and some more plastic pipe up above, a
18 tree stump right there.

19 Q Who was that speaking right now?

20 A That was Mr. Wells. There is some wood
21 and debris there.

22 MR. MAKARSKI: What is the time on that?

23 MR. TUCKER: 12:39.

24 MR. MAKARSKI: Stop there.

1 BY MR. MAKARSKI:

2 Q 12:40, what is that, Mr. Utt?

3 A That's a piece of pipe of some kind.

4 Q Did you see that when you were out there?

5 A Yes, I did.

6 Q And that?

7 A A piece of lumber and a can, I believe. I
8 can't see that too clear there.

9 Q Did you see that out there?

10 A Yeah. It was either pipe or a piece of
11 cable.

12 MR. MAKARSKI: Stop there.

13 BY MR. MAKARSKI:

14 Q What is that, Mr. Utt?

15 A I think that's a pile of corrugated pipe
16 that they had segregated and put over to one side.

17 Q Did you see that the day you were there?

18 A Yes, I did.

19 MR. MAKARSKI: Can you stop that a second?

20 BY MR. MAKARSKI:

21 Q Did you observe that water when you were
22 there?

23 A That's correct.

24 Q What did you see out of there?

1 A Well, it looked like it had a slight oily
2 scum to it.

3 Q On the water?

4 A Yes.

5 MR. TUCKER: That's 12:42.

6 BY MR. MAKARSKI:

7 Q What was that we just went by?

8 A I think it was the culvert we saw
9 originally and then a piece of concrete laying up
10 over the top.

11 Q You saw that out there?

12 A Yes. There is the culvert we saw.

13 Q Could you describe where it's located?

14 A It's located on the east side of the fill
15 about halfway through the fill area, and it's right
16 on the edge of the water.

17 MR. TUCKER: It's at 12:43.

18 MR. MAKARSKI: Stop there.

19 MR. MAKARSKI:

20 Q What is that that you were pointing at
21 there, Mr. Utt?

22 A That's the area, I believe, that we felt
23 we were looking at some boiler ash.

24 Q And that's what you already testified to

1 earlier?

2 A Yeah, and I think we were smelling it and
3 thought it was that.

4 MR. MAKARSKI: Stop there.

5 BY MR. MAKARSKI:

6 Q What is that you are holding?

7 A That looks like a piece of sewer pipe.

8 MR. TUCKER: 12:44.

9 BY MR. MAKARSKI:

10 Q When you say sewer pipe --

11 A It could be a corrugated -- it could be
12 vitreous tile or a piece of concrete sewer pipe.

13 MR. MAKARSKI: Stop there.

14 BY MR. MAKARSKI:

15 Q What is that, Mr. Utt, if you know?

16 A It looks to me like that's a lid off of a
17 bucket plastic bucket.

18 Q Did you see that?

19 A Yeah.

20 MR. TUCKER: It's at 12:45.

21 MR. MAKARSKI: Right there, 12:45.

22 BY MR. MAKARSKI:

23 Q Do you recognize what that is?

24 A It looks like a reinforcing rod. Can you

1 clear that up a little bit?

2 It looks like another culvert -- some type
3 of culvert pipe and a piece of reinforcement rod
4 next to it.

5 Q Did you see that when you were there?

6 A Yes, I did.

7 Q What is that, Mr. Utt?

8 A Well, that's the south ditch line, and
9 that's pieces of culvert that were pushed into that
10 area there. It was a corrugated metal pipe from
11 what I can see, some other miscellaneous fragments
12 of pipe and so forth.

13 MR. TUCKER: That's at 12:46.

14 BY MR. MAKARSKI:

15 Q What is that?

16 A A tire.

17 Q Did you see that out there?

18 A Yeah. I saw several tires out there.

19 Q Is that on the surface or where?

20 A Partially buried.

21 Q You said you saw several tires?

22 A Yes. Yes, I did.

23 Q Where?

24 A In this particular area.

1 Q Were they on the surface or --

2 A Some were half buried, and most -- I
3 didn't see any on the surface. I saw one was
4 sticking up, and most of them were half buried or
5 semi-half-buried.

6 Q What is that, Mr. Utt?

7 A Remnants of a plastic bucket.

8 Q Did you see that when you were out there?

9 A Yes, I did

10 MR. TUCKER: 12:50.

11 MR. MAKARSKI: Stop a second.

12 BY MR. MAKARSKI:

13 Q What is happening there now?

14 A This is -- after I got through there, I
15 walked over here, and this is where they were
16 unloading. They were bringing --

17 Q Let me just clarify for the record there
18 and here.

19 A Well, we were over at the southwest part
20 of the site, and now this is over near the north --
21 or this is over to the east central or maybe a
22 little bit to the northeast maybe characterized
23 better by the east central area maybe.

24 Q And what was occurring there?

1 A These trucks were bringing in spoil and
2 dumping it.

3 Q Did you notice any odors in that material?

4 A Yes. This was the odors that I mentioned
5 beforehand that we -- that I smelled and felt --
6 indicated I thought was petroleum -- at least some
7 petroleum base upon the fill itself.

8 MR. MAKARSKI: Stop it there.

9 BY MR. MAKARSKI:

10 Q Is that a bulldozer back there?

11 A Back there I believe there is. Right
12 there. It's over on the upper left. There is a
13 dozer there.

14 MR. TUCKER: 12:54

15 BY MR. MAKARSKI:

16 Q Did you observe what the dozer was doing
17 out there that day?

18 A He was pushing off spoil towards the
19 southeast into the watered area there.

20 Q What is that material there, Mr. Utt?

21 A Based on what I see, a lot of it's asphalt
22 and broken concrete.

23 Q Now, where is that on the site?

24 A This, again, is near the east central part

1 of the site where -- this is just before they topped
2 it off to push -- they're pushing it off so they
3 have an area to dump.

4 Q Is this material that's being brought in
5 recently?

6 A Well, it was evidently material brought in
7 that day.

8 MR. MAKARSKI: Stop there.

9 BY MR. MAKARSKI:

10 Q What is that, Mr. Utt?

11 A That is either one or two loads that has
12 been previously dumped, and I'm walking on top of it
13 right there, a part of it right next to it.

14 Q What was in that material there?

15 A Well, we had broken concrete, some other
16 odds and ends material, but mostly it was broken
17 concrete and some pieces of -- not mostly, but there
18 was a substantial amount of broken concrete and
19 broken asphalt in there.

20 MR. MAKARSKI: Stop there.

21 BY MR. MAKARSKI:

22 Q Did you observe that truck bringing that
23 material in?

24 A Yes, I did.

1 Q What did you see in what he's unloading
2 there?

3 A Well, it was the same material as I said
4 before. It was a mixture of clay, asphalt, and some
5 concrete debris.

6 MR. MAKARSKI: That's the end of it?

7 MR. TUCKER: I thought so.

8 THE WITNESS: I guess it was.

9 MR. TUCKER: I think that's the end.

10 THE WITNESS: I hope I don't see that again.

11 BY MR. MAKARSKI:

12 Q Now, I believe you testified after you
13 finished taping, you left the site?

14 A Yes, I did.

15 Q Now, one of your responsibilities was the
16 operation of the two landfills; is that correct?

17 A That's correct.

18 Q Are you familiar with the various forms of
19 waste?

20 A Yes, I am.

21 Q Are you familiar with the Environmental
22 Protection Act in the EPA regulations?

23 A Somewhat, yes.

24 Q What can or cannot be brought into a

1 landfill?

2 A That's correct.

3 Q Let me ask you this. In light of your
4 experience, would you give us your opinion within a
5 reasonable degree of technical certainty as to what
6 you would classify the material that you observed
7 out there, the off site material that was brought
8 into Stearns Road which you observed out there that
9 day?

10 MR. KNIPPEN: Objection, your Honor. That
11 calls for a legal conclusion, and I would cite to
12 the Court with regard to legal conclusions the case
13 of Pasulka, P-a-s-u-l-k-a, vs. Koob, K-o-o-b at 121
14 Il. Decisions 179. I think this witness can testify
15 to what he observed, but he cannot testify as to an
16 ultimate legal conclusion, and that is what does
17 this material constitute under the Environmental
18 Protection Act and its regulations? That is clearly
19 the decision of the trier of fact, and I don't
20 believe that even the appropriate foundation has
21 been laid for this particular witness. But this is
22 a legal conclusion, and nothing more than a legal
23 conclusion.

24 MR. MAKARSKI: I think it's a technical

1 conclusion as well, but it's based on his experience
2 operating landfills and controlling waste, two of
3 the biggest landfills in the state, remediation
4 efforts, and everything. I think he's in a perfect
5 position to be able to assist the Board with what he
6 thinks it is.

7 MR. KNIPPEN: If it's a technical conclusion,
8 then there needs to be no reference to the Act. The
9 specific question is propounded in the context of
10 the Act itself, and that is an ultimate legal
11 conclusion.

12 MR. MAKARSKI: Let me drop the reference to the
13 Act in the question.

14 THE HEARING OFFICER: All right.

15 BY MR. MAKARSKI:

16 Q Can you answer that?

17 A I think I would like you to rephrase the
18 question because --

19 Q From your technical experience, can you
20 give us an opinion within a reasonable degree of
21 technical certainty of what you would classify the
22 off site material that you observed out there on
23 March 24th?

24 MR. KNIPPEN: I just want to object to

1 foundation as to what the term technical means
2 because if technical means the Act, then we still
3 have the same problem. It's a legal conclusion. At
4 this point, we don't know what technical means.
5 Everybody knows what a scientific conclusion is.
6 Everybody knows what a medical conclusion is. But a
7 technical conclusion in absence of some regulation
8 or some act, I don't know what it means, and I don't
9 think the Board would know what it meant. What does
10 technical mean in this context?

11 MR. MAKARSKI: From his experience operating
12 landfills.

13 THE HEARING OFFICER: I think the objection is
14 overruled.

15 THE WITNESS: In my opinion, it would be
16 classified as unsuitable waste in some categories
17 and hard-to-handle waste in others.

18 BY MR. MAKARSKI:

19 Q And why do you say that?

20 A Well, this is, again, subject to -- number
21 one is it's not clean material, and you have large
22 pieces of concrete and so forth to make it hard to
23 incorporate into a fill. We have a long record of
24 insisting that haulers that came into our site would

1 follow what we consider guidelines which we use. So
2 that's my opinion on this material.

3 MR. KNIPPEN: Just to keep our record clean,
4 based on now his additional description, I have a
5 motion to strike that answer.

6 THE HEARING OFFICER: Objection is noted and
7 overruled.

8 MR. KNIPPEN: Thank you.

9 BY MR. MAKARSKI:

10 Q Did you have occasion to visit the Stearns
11 Road site subsequent to your visit in March of 1993?

12 A You mean afterwards?

13 Q Afterwards, yes.

14 A Yes, we did. I think I came out with Jim
15 Ryan and possibly Attorney Helm. I'm not sure. I
16 remember coming out to the site, though.

17 Q When was that, do you recall?

18 A It seemed like it was within a few days.
19 I wouldn't know unless I saw the record of it.

20 Q And where did you go at the site?

21 A Well, we just came back into the site and
22 went to basically the same areas that we had gone
23 before.

24 Q The southwest side?

1 A The southwest side and the other area
2 where they were dumping before, unloading.

3 Q What did you observe at the southwest
4 portion of the site?

5 A Well, I think that it had been slightly
6 regraded when I came back. I mean, it was leveled
7 off a little better. And that's at the southwest
8 side. I still saw some of the material, but it had
9 been regraded.

10 Q What did you see at the other -- well,
11 where did you go from there?

12 A Well, then we went to the east section
13 where they were unloading before.

14 Q And what did you observe?

15 A They had leveled that area off pretty well
16 and regraded it down to maybe about two feet above
17 the water level.

18 Q Now, was the mining operation going on at
19 the time, the second visit?

20 A I would say the stone processing was going
21 on, but I didn't see any excavation for gravel or
22 any stone at the time. But they could have -- they
23 had some rock crushers and so forth out there, so
24 they could have been processing and hauling out

1 stone.

2 Q Are you aware of whether or not the site
3 was closed down by the district?

4 A I think it was, and then it was reopened
5 again, but the dates escape me.

6 Q Now, did you have occasion to visit the --
7 let me go back now.

8 You said you went to the north site where
9 you saw the grading going on?

10 A Uh-huh.

11 THE HEARING OFFICER: What was your answer,
12 sir?

13 BY MR. MAKARSKI:

14 Q What was your answer?

15 A Well, I said I went to the north site or
16 the southwest corner.

17 Q Yes.

18 A And I saw it had been regraded.

19 Q And then you went north?

20 A Then we went to the east part where they
21 unloaded and saw that it had been regraded.

22 Q And then what did you do?

23 A Well, I think I was -- we just went back
24 and reported what we had found to the attorney and I

1 think to Mr. Johnson, who was the director at the
2 time.

3 Q And did you have any subsequent visits to
4 the Stearns Road site after this?

5 A I believe I went once or twice when there
6 was an outfit called P & P that went out and took
7 some tests, and I think I went out there once or
8 twice then. And then I think I went out one time
9 afterwards with two members of the Bureau of
10 State -- Department of Bureau of Mines.

11 Q Did there come a time when the
12 responsibilities for this site fell upon government
13 services?

14 A Well, what happened, there was a time when
15 we said that we didn't have definite authority to
16 continue an investigation until the commission
17 authorized such, and basically the authority rested
18 within P and D until there was a change in
19 authorization. And subsequently, quite a bit later,
20 I think in the interim time, there was some
21 negotiations trying to work out an agreement. And
22 subsequently later, then it was assigned back to my
23 department.

24 Q Is that where it was when you left?

1 A Yes. It was under the jurisdiction or
2 under our control or responsibility at that time,
3 yes.

4 MR. MAKARSKI: We have no further direct,
5 Mr. Hearing Officer.

6 THE HEARING OFFICER: Thank you.

7 Mr. Knippen?

8 MR. TUCKER: Can we go off the record for one
9 second? Were you going to use --

10 THE HEARING OFFICER: You should ask me to go
11 off the record.

12 MR. TUCKER: I'm sorry. I meant to interrupt
13 Jim and ask you at the same time. I apologize. May
14 we go off the record for a moment, Mr. Hearing
15 Officer?

16 THE HEARING OFFICER: Yes.

17 (Whereupon, a discussion was held off
18 the record.)

19 THE HEARING OFFICER: Back on the record.

20 Mr. Knippen?

21 CROSS EXAMINATION

22 BY MR. KNIPPEN.

23 Q Good afternoon, Mr. Utt. Mr. Utt, you are
24 not a PE under Illinois law, are you, sir?

- 1 A No, I am not.
- 2 Q What is a PE?
- 3 A It's a professional engineer.
- 4 Q And you are not a lawyer; is that correct?
- 5 A That's correct.
- 6 Q When Mr. Makarski asked you whether or not
- 7 you had an opinion within a reasonable degree of
- 8 technical certainty what these materials you
- 9 observed at the Stearns Road sites constituted, what
- 10 did you understand him to mean by the term
- 11 technical?
- 12 A Well, basically as administrator, he asked
- 13 my opinion of what I thought the materials were.
- 14 Q That was in the context, though, of your
- 15 experience with the landfills; isn't that correct?
- 16 A That's correct.
- 17 Q And that only makes sense in the context
- 18 of landfill regulations and landfill law; isn't that
- 19 correct?
- 20 A I wouldn't say that's necessarily true.
- 21 Q That's part of it, isn't it?
- 22 A That would be only part of it.
- 23 Q And the other part of it is what?
- 24 A It would be if I was a representative and

1 owner for a fill site.

2 Q With regard to the part of it that was
3 true, what part of your answer related to what you
4 perceived or concluded were violations of the
5 Environmental Protection Act or the regulations
6 associated with landfills?

7 A I would just say that it was material
8 that -- my feeling based on what I saw and the
9 nature of the material I saw would be the kind that
10 we would require a special waste permit on some of
11 the material that we saw based on what we have
12 required the operators to conform with before.

13 Q You would not require a hazardous waste
14 permit, would you?

15 A Not unless there was indicators that would
16 indicate it would be hazardous waste.

17 MR. KNIPPEN: Your Honor, I'm going to at least
18 motion to strike that portion of conclusion which is
19 a legal conclusion which is embedded in his prior
20 answer based on that cross examination.

21 THE HEARING OFFICER: All right. Your
22 objection is noted and overruled.

23 MR. KNIPPEN: Thank you.

24

1 BY MR. KNIPPEN:

2 Q Mr. Utt, you indicated in your testimony
3 that you are familiar with the fact that these
4 environmental regulations change on a rather
5 frequent basis; is that correct?

6 A That's correct.

7 Q Are you familiar with the current Illinois
8 and Environmental Protection Act and whether or not
9 broken concrete and reclaimed asphalt pavement are
10 included within the definition of non-waste items
11 under certain circumstances?

12 A I would have to look at it. I believe
13 there were certain conditions that they could be
14 incorporated into a fill.

15 Q Are you familiar with 415 Il. Compiled
16 Statutes, Section 5/3.78(a), which
17 reads, "Clean construction or demolition debris
18 means uncontaminated broken concrete without
19 protruding metal bars, bricks, rock, stone,
20 reclaimed asphalt pavement, or dirt or sand
21 generated from construction or demolition
22 activities. To the extent allowed by federal law,
23 clean construction or demolition debris shall not be
24 considered waste when used as fill below grade

1 outside of a setback zone if covered with sufficient
2 uncontaminated soil to support vegetation within 30
3 days of completion of filling or if covered by a
4 road or structure, separated or processed and
5 returned to the economic mainstream in the form of
6 raw materials or product, provided it is not
7 speculatively accumulated, or solely broken concrete
8 without protruding metal bars if used for erosion
9 control." Are you familiar with that definition?

10 A As you stated it, I understand what you
11 said. I can't 100 percent say the regulations. I
12 don't have them in front of me, but I'm going to
13 take your word for it that's correct.

14 Q If that is the state of the law with
15 regard to it, you would agree that under those
16 circumstances, broken concrete and reclaimed asphalt
17 pavement is appropriate fill so long as those
18 criteria are satisfied, wouldn't you?

19 A I think there is a certain size
20 recommendation on the size of the broken concrete,
21 isn't there?

22 MR. MAKARSKI: Objection to this, Mr. Hearing
23 Officer. The statute that he's reading was only
24 recently passed. It was not the statute in effect

1 at all when this was going on.

2 MR. KNIPPEN: May I respond, your Honor?

3 THE HEARING OFFICER: Yes.

4 MR. KNIPPEN: My response is twofold. My first
5 response is the law is very clear that if
6 administrative regulations or if environmental acts
7 are amended during the pendency of a proceeding, it
8 is the new standard that applies. It is not the old
9 standard. The Illinois Supreme Court has so ruled.
10 That is to A.

11 B; this witness' testimony based on the
12 generality of the question that was asked of him was
13 did those materials I observed constitute what I
14 believe to be improper waste, so this is appropriate
15 cross examination because I am impeaching him based
16 upon the current state of the law.

17 THE HEARING OFFICER: Okay. It's interesting
18 you cite argument A. What case are you citing for
19 that or do you have one because I don't believe it's
20 as clear-cut as you just mentioned, Mr. Knippen?

21 MR. KNIPPEN: Judge, I believe that it is. I
22 don't have that case with me, but Mr. Stick may be
23 able to access it while I continue cross
24 examination.

1 THE HEARING OFFICER: Are you talking about
2 First of America vs. Armstead?

3 MR. KNIPPEN: Mike, is it the Armstead case?

4 MR. STICK: That's not the one.

5 MR. KNIPPEN: I don't think that's it, Judge.
6 It's a case that follows the Chemrex case -- not
7 follows from a legal standpoint, but it's subsequent
8 to the Chemrex case. And I'm sorry. I just can't
9 remember the name of it off the top of my head, but
10 we will be able to provide you with a citation. I
11 believe this is appropriate cross examination.

12 THE HEARING OFFICER: Objection is overruled.
13 (Respondents' Exhibit No. 10 marked
14 for identification, 9-24-97.)

15 BY MR. KNIPPEN:

16 Q I have marked Exhibit 10. Mr. Utt, I'm
17 going to show you what I have had marked as
18 Respondents' Exhibit 10 for purposes of
19 identification and specifically ask you to draw your
20 attention to 415 Il. CS 5/3.78(a) new, which is
21 underlined on this particular copy in Lines 10
22 through 24. Do you see that, sir?

23 A Yes, I do.

24 Q I would like you to read that section and

1 tell me whether there is any size limitations placed
2 in that section.

3 A "Clean construction" --

4 Q I'm sorry. You don't have to read it out
5 loud, sir.

6 A Okay.

7 (Brief pause.)

8 MR. MAKARSKI: I object also, Mr. Hearing
9 Officer, in that this material up there is not clean
10 construction and demolition debris. It's waste
11 because it contains a lot of other things, pails and
12 oil and everything else.

13 THE HEARING OFFICER: Well, I think that's what
14 you are asking the Board to determine, sir. So we
15 will note it for the record that you have objected,
16 but there is really nothing to rule on at this
17 time.

18 THE WITNESS: I read the regulation.

19 BY MR. KNIPPEN:

20 Q Do you see any --

21 THE HEARING OFFICER: You are reading the
22 statute, aren't you?

23 THE WITNESS: I'm reading the statute, Section
24 3.78(a) I believe it is.

1 BY MR. KNIPPEN:

2 Q In the statute itself, you don't see any
3 size limitations in the statute, do you?

4 A That's correct.

5 Q As you sit there today, can you
6 specifically cite to a regulation or a statute which
7 you know from the stand establishes a size
8 regulation for broken concrete or reclaimed asphalt
9 pavement?

10 A No, I cannot.

11 Q Thank you, Mr. Utt.

12 MR. KNIPPEN: I would move introduction of
13 Respondents' Exhibit 10.

14 MR. MAKARSKI: I have a question, Mr. Hearing
15 Officer. Putting statutes into evidence?

16 THE HEARING OFFICER: No. It's not necessary
17 to put the statute into the evidence.

18 MR. KNIPPEN: I wasn't putting it in for
19 statutory purposes. I was putting it in because it
20 was used as an exhibit to cross examine the witness,
21 and that's the sole purpose of it, Judge, not as
22 legal authority per se.

23 THE HEARING OFFICER: All right.

24 MR. KNIPPEN: Just so they know what he was

1 looking at when I asked him those questions, and the
2 limited purpose of that is what I seek introduction
3 for.

4 THE HEARING OFFICER: All right Respondents' 10
5 will be admitted into evidence for demonstrative
6 purposes.

7 BY MR. KNIPPEN:

8 Q Now, Mr. Utt, I think you said that you
9 had not been to the site prior to your first visit
10 in March of 1993, correct?

11 A That is correct.

12 Q So up until March of 1993, you had no
13 experience with the manner in which the operator had
14 been conducting day-to-day operations on the site;
15 is that correct?

16 A That's correct.

17 Q You had not observed yourself the mining
18 operations on the site; that's correct?

19 A That's correct.

20 Q You had not physically observed prior to
21 that date the manner in which the contractor was
22 grading outside fill that was being brought to the
23 site; is that correct?

24 A That is correct.

1 Q You indicated that the second time you
2 went back to the site that you observed that the
3 areas that you had been in previously had been
4 graded to some degree, correct?

5 A Regraded, that's correct.

6 Q And when you said regraded, what do you
7 mean by that?

8 A Well, not that he had come over. Anytime
9 you are depositing or unloading loads of material,
10 you have to continually grade it, or you won't be
11 able to unload it.

12 Q So that's really a standard procedure
13 that's used when you are dumping fill at a site to
14 basically regrade so you can bring in other material
15 and be able to dump it on the site, correct?

16 A That is correct.

17 Q So there was nothing unusual about that
18 observation when you went back to the site, was
19 there?

20 A Not that I could tell.

21 Q It didn't appear to you that the
22 contractor was attempting to hide anything, did it?

23 A He was regrading.

24 Q You did observe a pile of broken concrete

1 on the site that you concluded was being recycled,
2 correct?

3 A That is correct.

4 Q There was a crushing plant on the site; is
5 that right?

6 A That is correct.

7 Q And that concrete pile was up near the
8 crushing plant; is that correct?

9 A It was in close proximity.

10 Q Prior to your visit to the site, you don't
11 have any idea whether the contractor had during the
12 placement of the fill in other areas of the site
13 removed concrete from those areas of the site and
14 brought them up to that concrete pile, have you?

15 A I have no knowledge of what went on
16 before.

17 Q The concrete pile, however, was segregated
18 in that area, wasn't it?

19 A It was separate in the area where the
20 stone was piled.

21 Q It appeared to be, based upon the manner
22 in which it was separated, that it had been
23 intentionally placed there instead of simply being
24 spread out through the site, correct?

1 A It was stockpiled.

2 Q Stockpiled is an interesting term because
3 you used that term with regard to the galvanized
4 pipe, correct?

5 A That's correct.

6 Q What do you mean by the term stockpiled?

7 A It's put into a pile.

8 Q That shows some intent as opposed to
9 merely random dumping, doesn't it?

10 A That would be an assumption on my part,
11 wouldn't it?

12 Q Well, you have worked on a lot of
13 constructions sites, haven't you, Mr. Utt, as an
14 engineer?

15 A Yeah. It's normal practice to stockpile
16 materials that you are going to segregate.

17 Q And do you have any reason to believe that
18 that particular stockpile of galvanized pipe which
19 you observed was going to be pushed down and
20 embedded in this fill?

21 A I only have my own knowledge of what I
22 saw, quite a bit of galvanized pipe that was pushed
23 down into the fill.

24 Q There was nothing about the way that that

1 galvanized pipe you observed in the fill, though --
2 was in the fill that would have precluded it from
3 being physically removed from the fill; isn't that
4 correct?

5 A It would be quite unusual to put it in and
6 then remove it, that's correct.

7 Q It could be physically removed from the
8 fill, correct?

9 A Yes, it could be. If you had something
10 that was 16 feet down, you could dig it back up and
11 take it out.

12 Q Nothing that you saw was 16 feet down, was
13 it?

14 A I'm not talking about that. I'm just
15 using that analogy.

16 Q I just want you to answer my question.
17 You didn't observe any corrugated --

18 A I didn't see anything at that time that
19 was -- other than was just pushed in at two or three
20 feet into the ground.

21 THE HEARING OFFICER: Let me interrupt you.
22 Mr. Knippen, you do go rather fast, and, Mr. Utt, if
23 you could wait for Mr. Knippen to finish his
24 questions before you answer.

1 MR. KNIPPEN: I will try to slow down, Judge.
2 I have been criticized for that for the last 15
3 years. My apologies.

4 BY MR. KNIPPEN:

5 Q I just want to make sure that the record
6 is clear on this point, Mr. Utt. There was nothing
7 about that corrugated pipe you observed in the fill
8 that would have precluded the contractor from
9 removing it from the fill and putting it on that
10 stockpile, was there?

11 A There is none.

12 Q There was nothing about those concrete
13 slabs that would have precluded the contractor from
14 removing those concrete slabs from the fill and
15 putting them in the stockpile, was there?

16 A None.

17 Q There was nothing about those pieces of
18 asphalt that you observed on the site that would
19 have precluded the contractor from removing that
20 asphalt and stockpiling it someplace; is that
21 correct?

22 A None.

23 Q Are you familiar with IDOT aggregate
24 standards with regard to being able to put either

1 recycled asphalt or recycled concrete into certain
2 types of fill materials?

3 A I was familiar with something on
4 embankments, yes.

5 Q And are you familiar with the fact that
6 the Illinois Department of Transportation permits
7 the recycling in certain circumstances of asphalt
8 and concrete into other aggregate materials to
9 produce an aggregate product to be marketed?

10 A Somewhat, yes.

11 Q And do you know whether or not the
12 contractor on the Stearns Road site was doing that?

13 A I have no knowledge whether he was doing
14 that or not.

15 Q You would have no basis to say that he
16 wasn't, would you?

17 A None whatsoever.

18 Q When you went to the Stearns Road site
19 with Mr. Wells to conduct that videotape, nobody
20 from the operator on the site interfered with you or
21 tried to stop you from your investigation, did they?

22 A Not to my knowledge, no.

23 Q Now, do you know specifically what the
24 relationship is between the body of water that you

1 observed on the site during your inspections and the
2 final wetland lake that was in the plans and
3 specifications?

4 A No, I do not. At that time, there were no
5 elevations taken.

6 Q So when you say that the fill material was
7 being placed into the water, you are not saying that
8 the fill material was being placed into the location
9 that would have been ultimately the wet lake, are
10 you?

11 A I can't state that, no.

12 Q You just don't know; is that correct?

13 A I don't know.

14 (Respondents' Exhibit No. 11 marked
15 for identification, 9-24-97.)

16 BY MR. KNIPPEN:

17 Q As a matter of fact, I'm going to show you
18 what I have had marked as Respondents' Exhibit 11.

19 MR. MAKARSKI: This is the one you objected to
20 us using.

21 MR. KNIPPEN: I haven't moved for its
22 introduction yet. There is always a method to the
23 madness. Whether it's rational or not is a
24 different question.

1 BY MR. KNIPPEN:

2 Q Mr. Utt, I'm going to show you what I have
3 had marked Respondents' Exhibit 11 and ask you to
4 take a look at that document. Do you generally
5 recognize that as being a topographic view, aerial
6 view of the Stearns Road site?

7 A That's correct.

8 Q And would I be correct if I assumed that
9 the location of the lake that you observed when you
10 were out there is depicted in the area which is
11 located in the southeast approximate quarter a
12 little bit larger of that map?

13 A I would say it would be the central east.

14 Q Central east?

15 A Now, this shows the -- all this shows is
16 the outline of the existing water table.

17 Q Correct. So that's an -- well, was that
18 an open water area entirely depicted by WE 757 1 on
19 both sides of the exhibit, or was the water simply
20 in this area which would be to the north of the
21 lower WE 757 1?

22 A The WE is the water elevation. I would
23 say if you are looking at this area as being
24 water -- being the open water, this was in the area

1 that we were talking about.

2 Q And as you look at this map, you don't
3 know where the wetland lake was going to be placed
4 with regard to where the water existed on the site
5 at the time of your observations?

6 A Not as I looked at the time, no.

7 Q Thank you.

8 MR. KNIPPEN: Could we back up the tape to the
9 beginning, Mr. Tucker, for a minute?

10 MR. TUCKER: Sure. Would you like me to start
11 it?

12 MR. MAKARSKI: Do you want to offer that?

13 Mr. Hearing Officer, is that map going to
14 be offered and used?

15 MR. KNIPPEN: I haven't decided yet,
16 Mr. Hearing Officer.

17 BY MR. KNIPPEN:

18 Q How long after the first visit did your
19 second visit occur, Mr. Utt?

20 A I can't recall the time. It seemed like
21 to me it was maybe three or four days, but I'm not
22 sure. It could have been a week, you know.

23 Q Would the fact that when you returned to
24 the areas that you described had been regraded

1 indicate to you that at the time that when you first
2 observed them they had not been worked by the
3 contractor?

4 A You are saying -- rephrase that. I'm a
5 little vague on that.

6 Q At the time that you observed the site in
7 its regraded, as you have described it --

8 A Second time now?

9 Q The second time.

10 Would that have indicated to you that the
11 site had not been graded by the contractor in the
12 areas you were looking prior to that point with
13 regard to the fill you were observing?

14 A I can only state what I saw. When I came
15 back the second time, I could say from the previous
16 time to the second time it had been regraded.

17 MR. KNIPPEN: Bob, if we could start the tape,
18 please.

19 MR. TUCKER: Sure.

20 MR. KNIPPEN: Pause.

21 BY MR. KNIPPEN:

22 Q Mr. Utt, when you went to the site, you
23 would agree with me that the site was a site under
24 construction, wouldn't you?

1 A You could certainly call it that.

2 Q And you have had a number of years of
3 experience with construction sites, haven't you?

4 A That's correct.

5 Q Wouldn't you agree with me that
6 construction sites, at least superficially, are not
7 always the cleanest places in the world when things
8 are under construction?

9 A Sometimes they are not, that's correct.

10 Q And depending upon the nature of the
11 construction, sometimes there is materials on the
12 surface of a construction site that get there as a
13 result of the construction activity and nobody
14 really thinks to pick them up or handle them at that
15 time, correct?

16 A That can be the case.

17 Q So let's say, for example, if I had a
18 cardboard box up by the weighing station of this
19 particular site and it was empty and the wind blew
20 it onto the site, it could have been out there
21 because the wind blew it as much as anybody
22 intentionally depositing it; isn't that true?

23 A That is correct.

24 Q Now, as we look at the first frame of this

1 picture, which the time on it is 38 --

2 THE HEARING OFFICER: 12:38

3 BY MR. KNIPPEN:

4 Q 12:38. We see a whole variety of
5 different things in this frame; is that correct?

6 A Uh-huh.

7 Q You have to answer with a word.

8 A Yes, sir.

9 Q You would agree with me, wouldn't you,
10 that the majority of the material that appears in
11 this frame is dirt, clay, and rock, correct?

12 A I would say 75 or 80 percent of the
13 surface.

14 Q And when you and Mr. Wells went out there,
15 you didn't make any effort to determine what the
16 percentage of those things you have characterized as
17 inappropriate materials were as opposed to the clay,
18 the dirt, and the stone, did you?

19 A No, we did not.

20 MR. KNIPPEN: Continue on.

21 Stop.

22 BY MR. KNIPPEN:

23 Q Now, as we look at this particular area,
24 do you see this?

1 A Yes, sir.

2 Q What is that?

3 A It looks like a big piece of asphalt.

4 Q Do you know what that is?

5 A Do I know what it is?

6 Q Yes.

7 A Looks like a piece of asphalt.

8 Q Do you have a specific independent
9 recollection as you sit there today --

10 A No.

11 Q -- that that is a piece of asphalt?

12 A Based on what I saw, it looks like a piece
13 of asphalt or a piece of concrete. We were not
14 sitting around itemizing. We made a general
15 assessment.

16 Q And I understand that. It's not a
17 criticism of what you did. I'm just trying to
18 understand what you did.

19 Do you know what the dimensions of that
20 object in the upper left-hand portion of this screen
21 at 12:40 is?

22 A I can't really say because -- unless there
23 was a reference point where somebody was walking
24 next to it. It's hard to see, but I would say it

1 looks like it's about two and a half feet wide and
2 maybe four or five feet into the ground.

3 Q Do you know what ultimately happened with
4 that particular item between the first date you were
5 out there and the date you came back?

6 A No, I do not.

7 MR. KNIPPEN: Please continue the tape.

8 Stop. Could you back it up just a little
9 bit?

10 Stop.

11 MR. TUCKER: Is that okay?

12 MR. KNIPPEN: No. That's not what I wanted.

13 Stop.

14 BY MR. KNIPPEN:

15 Q We are now looking at --

16 THE HEARING OFFICER: It's still 12:38.

17 MR. KNIPPEN: 12:38, and I'm sorry when I said
18 12:40 before. I must have been incorrect in the
19 last frame.

20 BY MR. KNIPPEN:

21 Q Looking at 12:38, what we see here again
22 is a very large pile of fill; is that correct?

23 A That's correct.

24 Q As you observe this portion of the frame,

1 there doesn't appear to be anything like concrete or
2 asphalt that you can observe in that frame, is
3 there?

4 A Not visually, no.

5 MR. KNIPPEN: Stop. Go on just a little bit
6 more.

7 Stop.

8 BY MR. KNIPPEN:

9 Q Once again now, we see two objects at
10 12:38, and these objects now are in the lower
11 right-hand portion of the screen; is that correct?

12 A That's correct.

13 Q I think you previously identified those as
14 either being concrete or asphalt; is that correct?

15 A That's correct.

16 Q Do you have an approximation of the
17 dimensions of those particular pieces of items?

18 A They look like about a foot square, maybe
19 a little larger.

20 Q Do you know what happened to those two
21 particular pieces of either asphalt or concrete from
22 the day you made your first observation of them
23 until you went back and observed that the site had
24 been regraded?

1 A I have no knowledge of that.

2 MR. KNIPPEN: Stop. Would you back up just for
3 a minute? Pan through there.

4 Stop. Keep going on. I'm sorry.

5 Stop.

6 BY MR. KNIPPEN:

7 Q With regard to continuing across 12:38,
8 the frames immediately after we observed those two
9 chunks, which you characterize as either concrete or
10 asphalt, we once again see material that appears to
11 be dirt, rock, and clay, correct?

12 A I would like to see it a little clearer,
13 but I'm --

14 MR. TUCKER: Hold on for a second.

15 MR. KNIPPEN: I didn't want you to go quite
16 that far because here's the culvert which I want to
17 talk about in a minute.

18 BY MR. KNIPPEN:

19 Q From the point that we see those two items
20 which you have characterized as concrete or asphalt
21 up until the point where the culvert finally comes
22 into view, you would agree with me that what is
23 depicted on the frames of those films is primarily
24 dirt, rock, and clay, wouldn't you?

1 A From what I can see here.

2 Q Do you specifically remember with regard
3 to that area whether there was anything other than
4 dirt, rock, and clay?

5 A I can't remember other than what I have
6 seen.

7 Q Thank you.

8 MR. KNIPPEN: You can go on, Bob, to the
9 culvert now.

10 Stop.

11 BY MR. KNIPPEN:

12 Q Now, this is a piece of corrugated culvert
13 pipe, correct?

14 A That's correct.

15 Q And this pipe would have been the same
16 type of pipe that you observed stockpiled on other
17 areas of the site; is that correct?

18 A That is correct.

19 Q In front of the corrugated pipe, there is
20 a white object that's sticking up at an angle. Do
21 you see that?

22 A Uh-huh.

23 Q You have to answer with a word.

24 A Yes, sir. I think that's a stick. I'm

1 not sure.

2 Q You didn't have any problems with sticks
3 being in the fill, did you?

4 A I just know that it was there.

5 MR. KNIPPEN: You could continue on.

6 Stop.

7 BY MR. KNIPPEN:

8 Q Now, Mr. Utt, you would agree with me
9 that -- we are still on 12:38. From the point in
10 time that we identified those two pieces of asphalt
11 and then panned across to the corrugated metal pipe,
12 what occurred after that on this tape is Mr. Wells
13 panned back across the same area, correct?

14 A It would appear that way.

15 Q So we are not seeing anything new in that
16 section of the film, are we?

17 A I don't see anything.

18 Q Thank you.

19 MR. KNIPPEN: Please continue.

20 Stop.

21 BY MR. KNIPPEN:

22 Q Do you know whether or not Mr. Wells knew
23 what the relationship was between the lake -- strike
24 that.

1 Did Mr. Wells ever tell you that he knew
2 what the relationship was between the proposed
3 wetland lake and the location of where you were
4 looking now?

5 A He did not.

6 MR. KNIPPEN: Continue on.

7 Stop that please.

8 BY MR. KNIPPEN:

9 Q What is CMP piping?

10 A Corrugated metal pipe.

11 Q Is that the same type of corrugated metal
12 pipe that you observed stockpiled in other areas of
13 the site?

14 A That is correct.

15 MR. KNIPPEN: Please continue.

16 Stop.

17 BY MR. KNIPPEN:

18 Q Two items protruding from the fill here --

19 A That's lumber.

20 Q So that's made out of wood?

21 A That's correct.

22 Q Did you ascertain whether that wood was a
23 finished or an unfinished wood?

24 A You could hardly tell.

1 MR. KNIPPEN: Could you please continue?

2 Stop.

3 BY MR. KNIPPEN:

4 Q This particular piece of pipe that's
5 depicted at 12:40 that is a close-up and is a
6 blue-gray shade, do you know what type of pipe that
7 was?

8 A I think it was plastic pipe, to the best
9 of my knowledge.

10 Q Do you know whether or not the aggregate
11 miner was using PVC pipe as part of his dewatering
12 operations on the site?

13 A I have no knowledge of what he was using.

14 Q Do you know what ultimately occurred with
15 this piece of pipe between your first inspection of
16 the site and when you returned and observed it
17 regraded?

18 A I couldn't state.

19 Q Did you know whether or not the contractor
20 had a general custom and practice with regard to
21 dealing with these types of material in the fill?

22 A I have no knowledge of that.

23 MR. KNIPPEN: Please continue.

24 Stop the tape for a minute.

1 BY MR. KNIPPEN:

2 Q Mr. Wells -- strike that.

3 Had it rained immediately before you went
4 out to the site?

5 A I can't tell when it rained. Whether it
6 was immediately before or it rained a couple days
7 before, I really don't know.

8 Q Would you agree me with that in a video
9 like this it's difficult to distinguish sometimes
10 between, say, concrete and a grade clay when it has
11 rained and you are looking at it trying to
12 distinguish between the two of them?

13 A I don't think it's very difficult at all
14 if you have any experience.

15 Q Well, I guess maybe I haven't.

16 What is this pile here?

17 A That just looks like some grain and some
18 gravel. I can't tell from that video.

19 Q That doesn't appear to be concrete to you,
20 does it, at 12:41?

21 A No.

22 Q And just for the purposes of the record,
23 with regard to this pile of material that I'm
24 currently referring to, in this frame appears the

1 blue corner of your jacket, and up above that there
2 is kind of a yellow -- I mean an orange-red blob or
3 something, correct?

4 A I see the blob. It's up near the pile of
5 culverts.

6 Q And this is your coat down in the corner
7 that's blue, correct?

8 A That's correct.

9 MR. KNIPPEN: Please continue.

10 Stop.

11 BY MR. KNIPPEN:

12 Q With regard to that film that you observed
13 on the water, you didn't take any samples of that to
14 determine how much was in the water, did you?

15 A No, I did not.

16 Q And if you are using heavy equipment like
17 bulldozers in the area of water and the tracks of
18 the dozers are getting down in the water, there is a
19 reasonable possibility under that circumstance that
20 the lubricants that are used on the dozer's
21 underside may invade the water surface; is that
22 correct?

23 A That's correct.

24 Q And that film that you observed on that

1 site is not inconsistent with that explanation, is
2 it?

3 A If a dozer, in fact, had been pushing down
4 into that area.

5 Q You did observe dozers pushing down into
6 the water areas, didn't you?

7 A Not in that area, but in other areas.

8 Q Did it appear at some point prior to this
9 that dozers may have been working this area based on
10 your observations, or don't you know?

11 A Based on what I saw of the material, if a
12 dozer had got into that material and worked down
13 there, he would have been stuck.

14 Q Could a dozer have been working in this
15 area beforehand?

16 A Before?

17 Q Before this material that's on the surface
18 was placed.

19 A It's quite possible.

20 Q And water will move, won't it?

21 A Very mobile.

22 Q So you can have a situation in which these
23 films may move on the water; is that correct?

24 A That is correct.

1 MR. KNIPPEN: Please continue.

2 Stop.

3 BY MR. KNIPPEN:

4 Q At 12:42, we are not looking at any
5 concrete, asphalt, or other unusual material there,
6 are we?

7 A Not that I can see.

8 MR. KNIPPEN: Please continue.

9 Stop.

10 BY MR. KNIPPEN:

11 Q I think you on the tape, Mr. Utt, just
12 said there is something that came out of a boiler,
13 and that was at 12:43. When you said that, there
14 was actually a piece of corrugated metal pipe at the
15 point you made that statement; isn't that correct?

16 A Yeah, but that wasn't what I was talking
17 about.

18 Q And I know that, and that's why I want to
19 clarify it for the record. That corrugated metal
20 pipe is the same type of corrugated metal pipe that
21 you observed stockpiled on other areas at the site,
22 correct?

23 A That's correct.

24 MR. KNIPPEN: Please continue.

1 Stop.

2 BY MR. KNIPPEN:

3 Q Now, the item that you are pointing to is
4 the item that you characterized as what again?

5 A Boiler ash.

6 Q Boiler ash.

7 Now, what were the approximate dimensions
8 of this item?

9 A Well, it wasn't just one item. It was --
10 there was some of it spread over. It was like a
11 powder -- it's powdery material, and that just
12 happened to be a chunk, which is probably six
13 inches.

14 Q If we look in this area, we can see
15 material that's the same color as that chunk; is
16 that correct?

17 A That's correct.

18 Q And is that the powder you are talking
19 about?

20 A That is correct.

21 MR. KNIPPEN: Can anybody tell what the time
22 is? Is this still 12:40?

23 MR. TUCKER: 12:43.

24 MR. KNIPPEN: Excuse me. It's at 12:43.

1 BY MR. KNIPPEN:

2 Q Now, this particular chunk that you see
3 here, you did not remove from the site?

4 A No, I did not.

5 Q It wouldn't have been difficult to pick
6 that up, would it?

7 A No, it would not.

8 Q You did not know what happened to this
9 particular material from the date that you observed
10 it on the site until when you came back and observed
11 the site regraded, did you?

12 A No, I did not.

13 Q Any particular reason you didn't pick that
14 up?

15 A We were making just a preliminary
16 assessment. I was not making an investigation at
17 the time.

18 Q You don't know what the chemical
19 constituents of boiler ash would be, do you?

20 A Yes, a little bit.

21 MR. KNIPPEN: Please continue.

22 Stop.

23 BY MR. KNIPPEN:

24 Q When you said there was kind of a

1 petroleum odor, were you referring to that ash and
2 item that you just described?

3 A I think in the general area.

4 MR. KNIPPEN: Continue, please.

5 Stop.

6 BY MR. KNIPPEN:

7 Q That sewer pipe that you picked up there,
8 was that a clay type of tile?

9 A To the best of my knowledge, it was
10 vitrified tile.

11 Q And what is vitrified tile?

12 A It's a baked clay tile.

13 Q Vitrified tiles are used for a variety of
14 different purposes in construction in Illinois, are
15 they not?

16 A Usually sanitary sewers.

17 Q Do they have other uses as well?

18 A In some cases they can be used for drain
19 tile. Depends on the diameter.

20 Q You didn't check to determine whether or
21 not this particular piece of tile was a sewer tile
22 or a drain tile, did you?

23 A No, I did not.

24 MR. KNIPPEN: Please continue -- strike that.

1 BY MR. KNIPPEN:

2 Q You just took that piece of tile and threw
3 it, didn't you?

4 A Yeah.

5 Q You didn't take it off the site, did you?

6 A No, I didn't.

7 Q Okay. Thanks, Mr. Utt.

8 MR. KNIPPEN: Would you please continue?

9 Stop, please.

10 BY MR. KNIPPEN:

11 Q There was a question just asked on the
12 tape, "Was this dozed since you came back here?".
13 Who asked that question?

14 A I think I asked that to Mike Wells. I'm
15 not sure.

16 Q Did he respond to you?

17 A I have to listen to the tape.

18 MR. KNIPPEN: Would you back it up?

19 BY MR. KNIPPEN:

20 Q In fact, there was a break in the tape at
21 that point, wasn't there?

22 A He didn't respond. He just mentioned -- I
23 asked him -- I was the one that asked the question.

24 Q And his answer wasn't on that tape,

1 correct?

2 A I didn't recall him answering.

3 MR. KNIPPEN: Please continue.

4 Stop. Could we back up for just a minute?

5 MR. TUCKER: Sure.

6 MR. KNIPPEN: Stop. Could you please back it
7 up just a little bit?

8 MR. TUCKER: Sure.

9 MR. KNIPPEN: Stop.

10 MR. HEARING OFFICER: Which part are you trying
11 to get?

12 MR. KNIPPEN: Where he says more debris being
13 put in the fill.

14 THE HEARING OFFICER: Okay. You just passed
15 it.

16 BY MR. KNIPPEN:

17 Q You just heard on this tape Mr. Wells make
18 the statement, "more debris being put in the fill;"
19 is that correct?

20 A That's correct.

21 Q Do you know whether or not when he made
22 that statement he was looking at what we see on the
23 tape?

24 A Yes. That's what he was looking at.

1 Q And this was a piece of culvert back here;
2 is that correct?

3 A Several pieces of culvert, yes. Not
4 pieces, one piece.

5 Q While you were looking in this direction,
6 did you physically observe any contractors'
7 equipment working that culvert into the fill?

8 A I did not.

9 Q Do you recall whether or not there was a
10 dozer back in this area working material in the fill
11 where Mr. Wells was making this picture?

12 A There was -- no. If I recall right, there
13 was no heavy equipment in that southwest area.

14 Q How many dozers were there on the site
15 when you were there working?

16 A I just remember seeing one.

17 Q And that was working in an area that would
18 be northeast of this location, correct?

19 A Northeast.

20 Q And approximately how far northeast?

21 A Maybe three, 400 feet.

22 MR. KNIPPEN: Please continue.

23 MR. MAKARSKI: Excuse me, Mr. Hearing Officer.

24 It's been about an hour and 40 minutes.

1 MR. TUCKER: Mr. Utt said something about being
2 a little tired.

3 THE WITNESS: I would like a glass of water.

4 THE HEARING OFFICER: We are about through with
5 the tape, aren't we?

6 MR. KNIPPEN: We are getting close to the end
7 of the tape. I do have more cross examination.

8 THE HEARING OFFICER: Let's finish this tape,
9 and then we will take a break.

10 BY MR. KNIPPEN:

11 Q It looks like it's pretty muddy out there,
12 wasn't it?

13 A Extremely muddy.

14 MR. KNIPPEN: Stop.

15 BY MR. KNIPPEN:

16 Q How many tires did you see out there?

17 A At least three.

18 Q Do you know why Mr. Wells only filmed one?

19 A You would have to ask Mr. Wells. We might
20 have missed them. I just spotted some.

21 Q Were those tires in relatively close
22 proximity to this tire?

23 A No. There were a couple up on the other
24 side.

1 Q When you say the other side, what are you
2 referring to?

3 A It would be north of there.

4 Q Through your experience as a construction
5 engineer, are you familiar with a procedure where
6 contractors will use tires to park equipment on at
7 night to keep their equipment from freezing to the
8 ground?

9 A There is a procedure that you put two
10 planks down and you put the tires on the planks and
11 you keep them above ground. Tires below ground
12 won't do you any good.

13 Q Do you know what ultimately happened to
14 this tire that's depicted at 12:50 on this
15 photograph or on this portion of the video between
16 the date that you were out there and the time that
17 you went out and the site was regraded?

18 A I certainly don't.

19 Q You didn't provide any instruction to the
20 contractor with regard to how to regrade between
21 those dates, did you?

22 A No, we did not.

23 MR. KNIPPEN: Please continue.

24 Stop.

1 BY MR. KNIPPEN:

2 Q In this particular frame, which is at --
3 it looks like 54. Maybe it's 50. I'm not sure.

4 MR. KNIPPEN: Bob, just so we can be sure --

5 MR. TUCKER: Fifty-four.

6 BY MR. KNIPPEN:

7 Q The dozer that you have described appears,
8 doesn't it?

9 A That's correct.

10 Q What was the closest you came to that
11 dozer during your site visit?

12 A Well, I got within -- I would say within
13 50, 60 feet of it.

14 MR. KNIPPEN: Continue, please.

15 Stop.

16 BY MR. KNIPPEN:

17 Q We are at 12:55 on the film, and this was
18 an area that you previously, I think, identified as
19 having concrete and asphalt in it?

20 A That's correct.

21 Q Everything in this frame is not concrete
22 and asphalt, is it?

23 A Not everything, no.

24 Q Can you point to the items in this frame

1 that are concrete and asphalt?

2 A Well, you are looking at one frame. You
3 can see a piece of asphalt right here that goes
4 through here. I can't see anything else important
5 in this frame, but there is a piece that dovetails
6 back into there.

7 Q Most of this material, again, appears to
8 be --

9 A Substantially -- most it of -- I would say
10 substantially it's clay, but there is a lot of
11 broken -- see, loads come out. You only see a
12 portion of them. You may have a greater amount of
13 debris in one area, and you may have all clay in one
14 area. So it doesn't come out homogenously.

15 Q That brings up another point. When a load
16 comes into the site on one -- strike that.

17 You have seen two trucks on this
18 videotape; is that correct?

19 A I saw more than two, but I think we showed
20 two.

21 Q There is two on the videotape, correct?

22 A Correct.

23 Q Were all the trucks coming to site that
24 you observed on that date in March, the first day

1 you were out there, a similar size?

2 A I only saw semitrailers, yes.

3 Q What is the cubic yardage of the beds in
4 those semitrailers?

5 A Well, they range approximately 18 to 20
6 cubic yards -- feet.

7 Q Would you agree with me that when they
8 were loaded and they're brought to a site like this,
9 sometimes there are materials buried in them that
10 you can't see when they are coming through the door?

11 A That would be correct.

12 Q And that's just because the mass of
13 material is so great that it's impossible to know
14 everything that's underneath what is simply on the
15 surface, correct?

16 A That would be correct.

17 Q And there would be nothing unusual about
18 that at a construction site, correct?

19 A Depending on what you were doing at the
20 construction site.

21 MR. KNIPPEN: Please continue.

22 Stop.

23 BY MR. KNIPPEN:

24 Q Mr. Utt, as I look at this tape, it

1 appears to me that at least as far as the soils on
2 the site go, there is a lot of different colors out
3 there. Was that your impression when you were out
4 there as well?

5 A Well, it can sometimes be from the angle
6 of your video, but there were different types of
7 clay materials.

8 Q What was the general color of the stone
9 that was being removed from the mine?

10 A Generally, it's a tan -- more of a tan
11 color.

12 Q Did it have some red in it, too?

13 A It could have. It's mostly tan, though.

14 MR. KNIPPEN: Please continue.

15 Stop.

16 BY MR. KNIPPEN:

17 Q Mr. Vick, you indicated that --

18 MR. TUCKER: Mr. Utt.

19 BY MR. KNIPPEN:

20 Q Mr. Utt. I'm sorry.

21 Mr. Utt, you indicated that when you were
22 out on the site, you picked up some of the soil and
23 squeezed it, correct?

24 A That's correct.

1 Q Mr. Wells didn't videotape that, did he?

2 A I don't know if he did or not. I remember
3 just stooping over and doing that.

4 Q Did you do that before or after he made
5 this videotape?

6 A It might have been afterwards. I can't
7 recall when. I just remembering scooping it up.

8 Q Were you wearing your gloves at the time?

9 A No. I took the gloves off.

10 MR. KNIPPEN: Continue, please.

11 BY MR. KNIPPEN:

12 Q And one final question, Mr. Utt. With
13 regard to the equipment that we see operating on --

14 MR. KNIPPEN: This is one final question before
15 a break, your Honor. I'm sorry.

16 BY MR. KNIPPEN:

17 Q When we see the equipment that is
18 operating on this tape, the trucks and the dozer,
19 those would operate with diesel fuel, correct?

20 A That is correct.

21 MR. KNIPPEN: I'm not complete yet.

22 THE HEARING OFFICER: All right. Let's go off
23 the record. Let's take a break.

24 (Whereupon, a recess was taken.)

1 THE HEARING OFFICER: Back on the record.

2 You may continue, Mr. Knippen.

3 MR. KNIPPEN: Thank you very much, your Honor.

4 BY MR. KNIPPEN:

5 Q Mr. Utt, you would agree with me that the
6 videotape depicts when you were out on the site the
7 area where the trucks were dumping there were a
8 number of high, steep mounds, correct?

9 A In the background.

10 Q Correct.

11 And one of them may not have been high,
12 but it was fairly steep, and you were attempting to
13 walk up it in the video, correct?

14 A Are you talking about when I was out in
15 the southwest corner?

16 Q Yes, sir.

17 A That's correct.

18 Q And with regard to those particular areas
19 that you observed at the time, it didn't appear to
20 you that those areas had been graded where those
21 mounds were, did it?

22 A Not lately.

23 Q And with regard to -- certainly, the loads
24 that were immediately coming off those trucks, those

1 haven't been graded yet that we actually observed
2 being dumped, have they?

3 A That is correct.

4 Q Do you have any personal knowledge,
5 Mr. Utt, of the source of the water that existed in
6 the lakes that you observed at the Stearns Road
7 site, personal knowledge?

8 A Not personal knowledge, no.

9 Q While you were at the Stearns Road site on
10 either of those occasions that you were there in
11 March of 1993, you never personally observed a dozer
12 pushing corrugated metal pipe into the water, did
13 you?

14 A No, sir.

15 Q You are not a hydrologist, are you?

16 A I am not.

17 Q You are not a hydrogeologist, are you?

18 A I am not.

19 Q In Illinois, concrete is something
20 typically within the right-of-way, isn't it?

21 A Broken concrete?

22 Q Just concrete.

23 A Concrete is in normal highway
24 construction.

1 Q Asphalt is something that you can
2 typically find in Illinois in right-of-ways,
3 correct?

4 A That is correct.

5 Q Corrugated metal pipe is something that
6 you can typically find in Illinois in right-of-ways,
7 correct?

8 A That's correct.

9 Q PVC pipe is a type of pipe you can
10 typically find in Illinois in right-of-ways; is that
11 correct?

12 A That is correct.

13 Q You don't know the specific source of the
14 ash material that you identified in the video, do
15 you?

16 A I do not.

17 Q Did you ever ask anyone what the specific
18 source of that was?

19 A I did not.

20 Q In fact, when you went to the site on the
21 first visit in March, that was a preliminary site
22 examination, correct?

23 A That is correct.

24 Q You are aware that at some point in time

1 the district built a road after your inspections
2 into the site; isn't that correct?

3 A That is correct.

4 Q And the district brought shock rock (sic)
5 into the site for that purpose, didn't it?

6 A That is correct.

7 Q Would you please explain for the record
8 what shock rock (sic) is?

9 A Shot rock.

10 Q How do you spell it? I got it wrong.

11 A S-h-o-t, r-o-c-k. Just call it shot
12 rock.

13 It's large cobbles that I think they
14 wanted to make a road -- temporary road with.

15 Q When you say large cobbles, what does that
16 mean?

17 A Two to four-inch stone.

18 Q Do you know where that shot rock came
19 from?

20 A No, I do not.

21 Q Would it have been brought to the site in
22 trucks?

23 A That's correct.

24 Q Do you know what those trucks had been

1 hauling prior to the time the shot rock was put in
2 them and brought to the Stearns Road site?

3 A I do not.

4 Q Does the shot rock come from a quarry, or
5 is it something that's manufactured like an
6 aggregate?

7 A Most shot rock comes from quarries.

8 Q Some shot rock can come from aggregate
9 manufacturing?

10 A It wouldn't be shot rock.

11 MR. MAKARSKI: I object. This is not only
12 beyond the scope of the direct, but I don't see any
13 relevance to the proceeding here on using rock to
14 build a road.

15 MR. KNIPPEN: Judge, I think we have, if I am
16 not mistaken, listed Mr. Utt in our documents as a
17 witness. If we haven't, we would be seeking to
18 supplement that since we won't be presenting our
19 case for at least a month, and this relates to the
20 issues of site contamination and possible sources of
21 site contamination from the chemicals. He lives in
22 Belvedere. I have some very brief questions on
23 this, and I will get in and get out. Otherwise, I'm
24 going to have to subpoena him and bring him back.

1 So as a convenience to him, I have got three or four
2 more questions to finish up here.

3 THE HEARING OFFICER: Mr. Makarski?

4 MR. MAKARSKI: If it's not long, I would just
5 as soon get it over with, if that's all right with
6 the Court.

7 THE HEARING OFFICER: Yes. That's all right
8 with me.

9 MR. KNIPPEN: Thank you, Mr. Makarski. Thank
10 you, your Honor.

11 BY MR. KNIPPEN:

12 Q Mr. Utt, do you know whether any steps
13 were taken before the shot rock was brought in to
14 make certain that nothing in the beds of those
15 trucks that brought the shot rock in would
16 contaminate the site?

17 A I have no knowledge of that.

18 Q Who was responsible for that process?

19 A Who would have ever brought -- that came
20 under P and D, and I believe it was -- I'm trying to
21 think of -- the maintenance -- the construction
22 department brought those trucks in.

23 Q With regard to the cable and the wire that
24 is observed in the videotape, you don't know what

1 happened to that cable and wire between the date
2 that you were on the site originally and the date
3 you returned after it was regraded, do you?

4 A I do not.

5 MR. KNIPPEN: I think I'm done. If I could
6 have one moment.

7 (Brief pause.)

8 MR. KNIPPEN: Your Honor, I have nothing
9 further of this witness at this time.

10 THE HEARING OFFICER: Thank you.

11 Redirect?

12 MR. KNIPPEN: Judge, I don't know if
13 Ms. O'Connell has any questions.

14 MS. O'CONNELL: I do have questions. Thank
15 you, Mr. Knippen.

16 CROSS EXAMINATION

17 BY MS. O'CONNELL:

18 Q Mr. Utt, in response to one of
19 Mr. Knippen's questions, and I believe you were
20 referring to the videotape, you said that the
21 material on there is material you would require a
22 special waste permit for. Is that right?

23 A Yeah. Demolition waste is sometimes
24 considered general waste, and we would require -- if

1 it was brought into our landfills, we would require
2 a permit.

3 Q Well, what specifically -- from the video,
4 what material would you require a special -- are you
5 talking about a special waste manifest?

6 A I'm talking about if you brought in broken
7 culverts, material that could be considered from a
8 demolition site. If you broke up a site of broken
9 concrete or broken materials, that would be
10 considered, to a large extent, general waste, and it
11 would be required -- in some cases, it might require
12 a permit. In other cases, it might just require you
13 to identify it as special waste and identify the
14 source where it came from.

15 Q When you say it might require a permit,
16 what kind of permit are you talking about?

17 A It would be a special waste permit because
18 you don't know when you tear down a building if it
19 has asphalt in it or it has a certain type of
20 plastic wiring or so forth that might contain PCBs
21 or might contain other materials. General
22 demolition debris does require a permit called a
23 general. It's called general waste.

24 Q On the video, what material specifically

1 would require a special waste permit?

2 A Well, if you had, let's say, a lot of
3 containers which you did not know or you didn't know
4 what was in the containers.

5 Q Excuse me. I'm sorry. What material in
6 the video?

7 A I said plastic containers we saw there.

8 Q The plastic containers.
9 What other material?

10 A And it could be asphalt. It just depends
11 on our -- I'm talking about what we require at the
12 landfills.

13 Q Asphalt may or may not require a special
14 waste permit?

15 A It could require a special waste permit.
16 If it is a demolition site, we require -- like it's
17 a general -- it's considered general waste.

18 Q By whose definition?

19 A Well, it's required at the landfills. I
20 think there is a definition for general waste under
21 the IEPA regulations. I don't know.

22 Q How do you define it in your mind?

23 A How do I define general waste?

24 Q Yes.

1 A Demolition waste.

2 Q How do you define special waste?

3 A Special waste may require special
4 handling.

5 Q How do you define special waste?

6 A I said it would require special handling.
7 Special waste might require, if it's very dusty, to
8 bring it in and wetting it down before you could
9 incorporate it into the landfill.

10 Q So any waste that requires special
11 handling outside of just hauling it in a truck is
12 special waste?

13 A It can be, that is correct.

14 Q Depending upon what?

15 A Depending on how the regulations tie into
16 it. If you have got something that's extremely
17 wet -- you can only have a certain amount of
18 liquid -- percentage of liquid. Anything over 80
19 percent liquid would be considered special waste.

20 And then in some cases if you brought in,
21 say -- for instance, if you had a plant that wanted
22 to get rid of some old -- not old asphalt. Let's
23 just take, for instance, old lime, which could
24 create a dust when you were dumping it. It imposes

1 a danger not only to the people that are working
2 around it or it requires special handling like
3 tabletop pieces of concrete and so forth. If you
4 dump that in the site, you have got to remember you
5 are compacting this with specialized equipment which
6 you could injure the equipment, so you put that in a
7 special part of the landfill. That requires special
8 handling.

9 Q What material in the video that we just
10 saw would require special handling?

11 A Some of the concrete that I saw would
12 require special handling. I wouldn't want that
13 dropped in the normal face of our landfill where the
14 compactors would be. That would be put in a special
15 area into the landfill so it wouldn't injure the
16 equipment.

17 Q So when you are talking about a special
18 waste permit, are you talking about a permit for
19 where the waste ends up, or are you talking about --

20 A It's how it's handled.

21 Q How it's handle during shipment, during
22 transport?

23 A How it's handled either during shipment --
24 it can be handling during shipment or handling how

1 you deposit it within the landfill itself.

2 Q So you don't have an opinion one way or
3 another whether any of the material in the video did
4 require a special waste --

5 A If you have plastic pails or you had a lot
6 of plastic pipe, I would say that you would look at
7 it as possibly being special waste or general waste
8 under the category the EPA looks at it.

9 Q As possibly being that depending upon
10 what?

11 A It would be my interpretation that I
12 would -- based on what I have done before, I would
13 say it would be special waste or general waste.
14 Every time we have gone in to handle a demolition
15 site, that's what we required. We would find out
16 what it is. If it comes from demolition waste, we
17 would require either general or hard-to-handle, or
18 it could be special waste.

19 Q I'm not sure whether I got an answer to
20 this question. So the material on the video, in
21 your opinion, did or did not require a special waste
22 permit?

23 A You have to specifically say what
24 material. I say some of the material would have

1 required a special waste permit if it had been in --
2 we don't know exactly the quantity.

3 Q And that's the PVC piping?

4 A And possibly the containers and so forth.
5 You can't even bring certain containers in. They
6 are considered even hazardous waste.

7 Q So those would have required a special
8 waste permit?

9 A They could have, yes.

10 Q And that special waste permit would be for
11 deposit of it or for transport of it?

12 A It could be for both. It could be for
13 deposit. The operator is responsible -- he could
14 require you to -- if you were going to bring this
15 material in, the operator could say to you I need a
16 special waste permit. I will write it up for you.
17 I will write it up.

18 Q Any other material on that video that
19 would have required a special waste permit?

20 A Well, if you had boiler ash, that would
21 have.

22 Q I'm not asking if you have. I'm asking is
23 there any --

24 A If that was boiler ash, that would have

1 required at least a special waste permit.

2 Q Because?

3 A It's high in chlorides and lead.

4 Q And therefore?

5 A Therefore, it has some -- lead is
6 considered a hazardous material at certain
7 quantities or certain percentages. There are
8 certain chemicals' constituents that require a
9 special permit, and they require it because they
10 want to know where it came from and how it got
11 there.

12 Q Do you know how special waste is defined
13 under the pollution control regulations promulgated
14 under the IEPA?

15 A I don't know. They sent out bulletins and
16 they tell -- they give us certain particular
17 requirements for testing.

18 Q But you don't know offhand --

19 A I don't know offhand.

20 Q -- as you sit here?

21 A No.

22 MS. O'CONNELL: I don't have any more
23 questions.

24 THE HEARING OFFICER: Thank you.

1 Redirect?

2 MR. MAKARSKI: Just a couple. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. MAKARSKI:

5 Q You were asked about things found in the
6 roadway by Mr. Knippen.

7 A Yes.

8 Q Is the Stearns site a roadway?

9 A No, sir.

10 Q Is it an IDOT-sponsored project in any
11 way?

12 A It is not.

13 Q Was any IDOT money used at the Stearns
14 Road site?

15 A Not to my knowledge.

16 Q And it's located in DuPage County?

17 A That is correct.

18 Q Did IDOT have any regulatory or oversight
19 control of the Stearns Road site?

20 A Not to my knowledge.

21 Q You talked about that shot rock. How did
22 the district acquire that?

23 A As far as I know -- I mean, I can't say
24 firsthand. I know that normally they buy it from a

1 quarry.

2 Q And, Mr. Utt, you are familiar with normal
3 construction procedures at a construction site, are
4 you not?

5 A Yes, I am.

6 Q Would it be a normal procedure to bury
7 corrugated pipe and then dig it up again?

8 A That's not a normal procedure

9 MR. MAKARSKI: Nothing further, Mr. Hearing
10 Officer.

11 THE HEARING OFFICER: Mr. Knippen?

12 MR. KNIPPEN: Thank you very much.

13 RE CROSS EXAMINATION

14 BY MR. KNIPPEN:

15 Q The corrugated pipe you were able to
16 observe, Mr. Utt, was not completely buried, was it?

17 A That's correct.

18 Q And you weren't familiar with what the
19 contractor was doing on that site prior to the time
20 you arrived there, were you?

21 A I previously stated that.

22 Q And you couldn't tell whether the
23 corrugated pipe that you observed had been
24 intentionally buried there by a piece of equipment

1 or something dumped out of a truck, could you?

2 A I could not state that.

3 Q What is a lot of plastic pipe?

4 A Well, when you see pieces laying all
5 over. A lot is what you can visually see. It could
6 be ten pieces. It could be 15 or 20.

7 Q There wasn't a lot of plastic pipe that
8 you observed at the Stearns Road site in those areas
9 that you videotaped, was there?

10 A Not in the particular areas I videotaped.
11 There was a few, but not -- I mean, when you are
12 talking about a lot, it's kind of in the eyes of
13 beholder.

14 Q I mean, obviously if you have got two
15 six-inch pieces of PVC pipe and 77 acres, it's not a
16 lot of pipe by anybody's estimation, it is?

17 A Not in 77 acres.

18 Q And there was no effort in this case made
19 to inventory plastic pipe on the site to determine
20 how much plastic pipe there was over that 77-acre
21 zone, was there?

22 A Not by me.

23 MR. KNIPPEN: Thanks very much, Mr. Utt. I
24 have nothing further.

1 THE HEARING OFFICER: Ms. O'Connell?

2 MS. O'CONNELL: Nothing.

3 THE HEARING OFFICER: Thank you. Mr. Utt, you
4 may step down.

5 THE WITNESS: Thank you.

6 MR. MAKARSKI: Our next witness couldn't make
7 it until tomorrow morning.

8 THE HEARING OFFICER: Then we will recess for
9 the day and start-up again tomorrow.

10 MR. MAKARSKI: I have three witnesses for the
11 morning.

12 THE HEARING OFFICER: Before we go off the
13 record, is there anything?

14 MR. STICK: Dick, I would like to confirm your
15 schedule. You are going to call Lara --

16 MR. MAKARSKI: Lara, John Giazzon. This is on
17 those summaries. And then Steve Heuer who did the
18 work out for the Emocon people out at the site, who
19 I would imagine we will take some time with him.

20 THE HEARING OFFICER: Okay. We will reconvene
21 tomorrow at 9:30. Thank you.

22 (WHEREUPON, FURTHER

23 PROCEEDINGS WERE CONTINUED

24 SINE DIE.)

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

3

4 I, CARYL L. HARDY, do hereby state that I
5 am a court reporter doing business in the City of
6 Chicago, County of Cook, and State of Illinois; that
7 I reported by means of machine shorthand the
8 proceedings held in the foregoing cause, and that
9 the foregoing is a true and correct transcript of
10 my shorthand notes so taken as aforesaid.

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