

ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD

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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Complainant,)

VS.) No. AC 13-60

JAMES HARRIS,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

TRANSCRIPT OF PROCEEDINGS had at the hearing of the above-entitled cause, taken before Paula A. Morsch, C.S.R. License No. 84-002965, a Certified Shorthand Reporter in the State of Illinois, on the 27th day of August, 2014, at the hour of 10:00 a.m., at 55 W. Tompkins Street, in the City of Galesburg, County of Knox, State of Illinois.

BEFORE HEARING OFFICER CAROL WEBB.

1 PRESENT:

2 MS. CAROL WEBB
3 Illinois Pollution Control Board
4 1021 N. Grand Ave E.
5 Springfield, IL 62794-9274
6 217.524.8509
7 carol.webb@illinois.gov

8 MS. MICHELLE RYAN, ESQ.
9 Illinois EPA
10 2021 N. Grand Avenue East
11 Springfield, Illinois 62794
12 217.782.5544

13 for Complainant IEPA;

14 MARK V. KELLY, ESQ.
15 Attorney at Law
16 P.O. Box 5
17 Alpha, Illinois 61413

18 for Respondent James Harris.

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20
21
22
23
24

1	COMPLAINANT WITNESS:	
2	GENE FIGGE	
3	Direct By Ms. Ryan	6
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8	JAMES HARRIS	
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1 HEARING OFFICER WEBB: We'll go ahead
2 and begin. Good morning. My name is Carol Webb.
3 This is the hearing for AC 13-60, IEPA versus James
4 Harris. It is August 27th and we are beginning at
5 10 o'clock a.m. There are no members of the public
6 present.

7 In this case the Agency alleges that
8 Respondent violated Sections 21 P-1, P-3, P-4, and
9 P-7 of the Environmental Protection Act at a site
10 located in Knoxville, Knox County. The Pollution
11 Control Board members will make the final decision
12 in this case. My purpose is to conduct the hearing
13 in a neutral and orderly manner so that we have a
14 clear record of the proceedings. This hearing was
15 noticed pursuant to the Act and the Board's rules
16 and will be conducted pursuant to Sections 101.600
17 through 101.632 of the Board's procedural rules.

18 At this time I will ask the parties to
19 please make their appearances on the record.

20 MS. RYAN: Michelle Ryan, Special
21 Assistant Attorney General for the Illinois
22 Environmental Protection Agency.

23 MR. KELLY: Mark Kelly, attorney for
24 James Harris.

1 HEARING OFFICER WEBB: Are there any
2 preliminary matters anyone would like to discuss on
3 the record?

4 MS. RYAN: No.

5 MR. KELLY: No.

6 HEARING OFFICER WEBB: All right.
7 Would the Agency like to make an opening statement?

8 MS. RYAN: We believe the evidence
9 today will show that on May 17th, 2013, open dumping
10 resulting in litter, open burning, deposition of
11 waste in standing or flowing waters and deposition
12 of construction or demolition debris occurred at the
13 Harris property at the end of Market Street in
14 Knoxville and that there are no defenses to these
15 violations.

16 HEARING OFFICER WEBB: Mr. Kelly,
17 would you like to make an opening statement?

18 MR. KELLY: Thank you. Mr. Harris'
19 defenses are that he was compelled to use his
20 property the way he did by duress by circumstances
21 beyond his control, that the violations that are
22 alleged won't be proven by evidence, that the board
23 can consider that the evidence that was obtained was
24 collected in violation of his constitutional rights

1 and should be excluded.

2 HEARING OFFICER WEBB: Okay. The
3 Agency may call its first witness.

4 MS. RYAN: I call Gene Figge.

5 HEARING OFFICER WEBB: Mr. Figge,
6 would you please come up here?

7
8 GENE FIGGE
9 called by the Agency,
10 being first duly sworn,
11 was examined and testified
12 as follows:

13
14 DIRECT EXAMINATION

15 BY MS. RYAN:

16 Q Can you state your name and spell it for
17 the court reporter, please?

18 A Gene Figge, G-E-N-E, last name F-I-G-G-E.

19 Q What is your job?

20 A I'm an environmental protection specialist
21 with the Illinois Environmental Protection Agency in
22 the Field Operations Section, Bureau of Land, Peoria
23 Regional Office.

24 Q And how long have you held that job?

1 A Twenty-four years.

2 **Q What are your duties as an environmental**
3 **protection specialist?**

4 A My duties include field inspections which
5 result from investigation of complaints, scheduled
6 inspections, and inspections at permitted and
7 unpermitted facilities.

8 **Q How many inspections do you think you've**
9 **conducted in your 24 years approximately?**

10 A In excess of 2,800.

11 **Q What's your educational background?**

12 A I have a Bachelor of Arts degree in
13 biology from Monmouth College. I graduated in 1999.

14 **Q Do you have any additional training**
15 **besides your college degree?**

16 A Yes. I am 40 hour hazardous waste
17 trained. I have been trained in groundwater
18 monitoring and sampling. I've also been trained in
19 multi-incremental sampling and had basic asbestos
20 awareness training.

21 **Q Are you familiar with the Harris property**
22 **in Knoxville?**

23 A Yes, I am.

24 **Q Where is that property located?**

1 A It is located at the end of Market Street
2 in Knoxville. It's a dead end at Haw Creek.

3 **Q Who owns that property?**

4 A James Harris.

5 **Q Prior to today, had you ever met**
6 **Mr. Harris?**

7 A No, I have not.

8 **Q How many inspections have you conducted at**
9 **the Harris property?**

10 A Four.

11 **Q I'm going to hand you what I marked for**
12 **identification as Exhibit 1. Can you tell me if you**
13 **recognize that document?**

14 A Yes, I do.

15 **Q What is it?**

16 A It is my inspection report dated May 7th,
17 2013.

18 **Q Can you page through it for me, please?**

19 A Yes.

20 **Q Is this a fair, accurate, and complete**
21 **copy of your report?**

22 A Yes, it is.

23 **Q Can you describe the property generally**
24 **for me?**

1 A The property, as I said, is located at the
2 end of Market Street and if I flip to a site sketch
3 of the property, Market Street dead ends at Haw
4 Creek. Also to the east of the property is Knox
5 Highway 8. It's a two lane road. There's a bridge
6 there that crosses Haw Creek.

7 **Q Are there any improvements on this**
8 **property, Mr. Harris' property?**

9 A There is a pole building on the south side
10 of the property as you enter down a lane which goes
11 into the property headed towards the west. The pole
12 building sits between the creek and the fence line
13 that runs along the north edge of the lane which
14 enters into the property.

15 **Q Are there any other natural features other**
16 **than the creek that you mentioned there?**

17 A There's a few trees and that and some
18 backwaters of Haw Creek, but other than that, no.

19 **Q Who took the photographs attached to your**
20 **report?**

21 A I did.

22 **Q And starting with photograph number one,**
23 **can you tell us what they show?**

24 A Photograph number one was taken as you

1 enter the property on the lane. It's taken towards
2 the west heading west down the lane. If you look to
3 the south of the lane, you can see accumulation of
4 bricks. You can also see the pole building I
5 earlier referenced. You can also see two wire
6 containers which hold waste material that appears to
7 have been open burning.

8 **Q Can you describe what is on top of those**
9 **two wire containers in that picture?**

10 A It appears to be couches or some other
11 sorts of furniture. Because they'd been partially
12 burnt, it was difficult to determine exactly what
13 they originally were.

14 **Q Continuing on with photograph number two?**

15 A Photograph number two is a close-up of the
16 burning. You can see the one container with the
17 couch or whatever type of furniture it is in the
18 right hand side of the photograph. There's also
19 evidence of ashes and other metal debris that
20 remained after the burning.

21 **Q The wire container in photograph number**
22 **two is the same, one of the same wire containers**
23 **visible in photograph number one?**

24 A Yes, it is.

1 **Q Go ahead and continue through the**
2 **photographs for me, please.**

3 A Number three is taken continuing further
4 west down the lane. For reference I would be
5 approximately even with the wire containers
6 referenced in the two previous photographs. You can
7 see the fence line I mentioned earlier that runs
8 along the edge of the lane. To the north of the
9 fence there is a green field, I don't know if it's a
10 hay field or pasture, that is off of the property.
11 There is another wire container located there
12 alongside the fence that appears waste has been
13 placed in and open burnt. There are also some five
14 gallon plastic buckets on the fence posts where they
15 run down the line.

16 **Q Please continue with the next photograph.**

17 A No. 4 is moving further down the lane and
18 taken facing south. You can see in the top left of
19 the photographs bricks and demolition debris. You
20 can also see white goods dead center in the
21 photograph. It appears to be air conditioning units
22 but it's difficult to determine, and to the left you
23 can see the two wire containers that were referenced
24 in the first two photographs.

1 Continuing on to photograph five, this is
2 a close-up of the wire container that was located
3 along the fence on the north side of the lane. In
4 the upper left corner for reference for location you
5 can see the green from the pasture. The wire
6 container contains ashes and metal debris that
7 appears to have been open burnt. If you look in the
8 upper side of the wire container, you can see what
9 appears to have been bed springs which had the other
10 waste material burnt off of them.

11 **Q Can you describe those bed springs for**
12 **people who might be looking at the photographs**
13 **later?**

14 A They're kind of S shaped with curved wires
15 running across the photograph from the right side to
16 the left hand side.

17 **Q And that's in contrast to the wire**
18 **container you referenced which has straight lines?**

19 A Correct. They're also located under some
20 white metal objects which appear to be possibly the
21 legs off of a table. Would you like me to proceed
22 to six?

23 **Q Whenever you're ready.**

24 A Okay. Photograph No. 6 is taken

1 continuing down the lane. It is once again taken
2 towards the south and that would be facing Haw
3 Creek. If you look in the center of the photograph,
4 you can see a fan and some casings that indicate
5 white goods. Further up in the photograph there is
6 general refuse scattered about on the ground and you
7 can also see in the upper right a metal trough of
8 some sort. I'm not sure what it is. If I had to
9 make a guess, I'd say it's the casing off of
10 something like a freezer and it appears some other
11 furniture has been placed in it and it's open burnt
12 as evidenced by the size of the metal container
13 being rusted and charred.

14 **Q No. 7?**

15 A No. 7 is taken directly facing west down
16 the lane which enters into the property. Dead
17 center in the lane is what appears to be dry wall
18 and some lumber demolition debris. Generally this
19 is from the demolition of houses or some other
20 structures. In the upper right hand corner of the
21 photograph you can see another fan and small motor
22 that appears to have come from white goods.

23 Moving on to the next photograph, No. 8,
24 this one is taken to the south facing the creek

1 again. You can see general refuse scattered about.
2 In the foreground there is what appears to be a sink
3 as well as a blue tarp, and in the upper right you
4 can see the metal casing that I referenced in
5 photograph number seven. There's also a pallet up
6 there in that general direction on the left hand
7 side of the photograph. You can see various types
8 of general refuse. There's a bucket there, some
9 cans, some plastic material.

10 Moving on to photograph No. 9, this is
11 once more taken towards the west facing down the
12 lane. In the lower left-hand corner you can see a
13 white good. It appears that it is a stove that has
14 had the interior removed. Proceeding towards the
15 middle of the photograph you can see processed
16 lumber which is generally the remains of demolition
17 of houses or some other structures, and in the upper
18 right you can see other waste material scattered
19 about, general refuse. It's difficult to determine
20 the origins.

21 **Q On photograph No. 9 above the dandelions**
22 **can you identify that large yellow item?**

23 **A** It's difficult to identify. I think it is
24 a broken up plastic bucket. It's yellow plastic of

1 some type. I'm not sure exactly where it came from.

2 Moving on to photograph No. 10, this is
3 taken towards the west and I had moved further north
4 up the lane. I'm standing in virtually the same
5 location I was when I took photograph No. 9 just
6 standing a bit further to the north, and it's taken
7 down the lane along the fence line with the pasture
8 and you have more lumber and demolition debris. In
9 the lower right corner there is a white plastic jug
10 and towards the upper left-hand corner more general
11 refuse. From a distance it's difficult to tell
12 exactly what that is.

13 **Q Okay.**

14 **A** Moving on, photograph No. 11 is taken
15 towards the north. This is actually a close-up of
16 the general refuse that was too distant to see good
17 in photograph No. 10. This is another wire
18 container containing ash and evidence of open
19 burning. If you look on the ground to the right of
20 the wire container, you can see where it's blackened
21 from open burning. If you look in the left hand
22 side of the container, you can see a scrap of wood
23 that is charred on one end and appears to have been
24 left from open burning.

1 **Q Can you identify approximately the size of**
2 **this wire container in this photograph No. 11?**

3 A It's approximately the same size as the
4 ones referenced in other photographs, and that would
5 be approximately five foot by five foot square.

6 **Q Can you estimate the depth of the material**
7 **inside the container in this photograph?**

8 A The container is bent so it makes it
9 difficult but looking at the back panel which is
10 still straight, it appears to fill the container
11 approximately halfway.

12 **Q Okay. Photograph No. 12?**

13 A Photograph No. 12 is taken towards the
14 southwest at the end of the farm lane where it
15 becomes more brushy in the general direction of Haw
16 Creek. That photograph shows general refuse and
17 litter scattered about. In the dead center of the
18 photograph there's a green piece of plastic. To the
19 right of there there's a wash tub with some other
20 general refuse sticking out from it, and then
21 scattered about through the vegetation you can see
22 other items that it's difficult to determine their
23 exact origins.

24 Photograph No. 13 is taken towards the

1 east. We're not standing on the lane, we're
2 actually slightly south of it. It's taken back from
3 the direction from which I had walked. In the top
4 of the photograph you can see water as evidenced by
5 the reflection. The water is a small little
6 backwater of Haw Creek. In the lower half of the
7 photograph you can see general construction and
8 demolition debris which has been deposited in the
9 backwaters. In fact, if you look in the dead center
10 of the photograph towards the top, you can actually
11 see partially through the water and see some of the
12 debris. In the lower half of the photograph you can
13 see three pieces of glass which is mixed in with the
14 concrete and brick and in the upper left-hand corner
15 you can see a white piece of PVC pipe.

16 **Q In addition to the glass and the PVC pipe**
17 **that you mentioned, what is the nature of this**
18 **debris that you identified?**

19 **A** It's general construction demolition
20 debris most commonly left from the demolition of a
21 building. There's rock, concrete, brick. There's
22 some metal reinforcing wires it appears in the
23 center of the photograph. It looks like it runs
24 over the top of one brick there and some smaller

1 gravel and other aggregate generally left from when
2 buildings are demolished.

3 **Q And the glass that you identified in the**
4 **photograph 13, what's the approximate size of those**
5 **pieces of glass there?**

6 A The two on the left are approximately six
7 inches square. The one in the lower right corner is
8 probably a foot long and four to five inches wide.

9 **Q And photograph 14, is that a similar**
10 **photograph to 13?**

11 A Yes, it is. Photograph 14 is taken facing
12 the same direction, but the angle I took it at I
13 changed to adequately show the backwaters of the
14 creek where the waste material had been deposited.
15 If you look at photograph No. 14, to the right hand
16 side you can see other demolition waste underneath
17 the water. In the photograph I essentially changed
18 the angle to try and get past the reflection off of
19 the water.

20 **Q Okay.**

21 A Photograph No. 15 is taken facing the
22 south which would have been the direction of Haw
23 Creek. In the foreground is ash and blackened
24 material indicating open burning. Also you can see

1 brick, concrete, and other indications of demolition
2 debris.

3 **Q Is there anything in this photograph that**
4 **would give an indicate to the size of the material**
5 **or the size of the frame that you have in this**
6 **picture?**

7 A It's difficult to tell from this
8 photograph. I was trying to look for my shadow
9 because that sometimes gives a reference point, but
10 I took it more as a close-up to show open burning.

11 **Q Okay.**

12 A Photograph No. 16 is once again facing the
13 east, the direction from which I walked while
14 conducting the inspection. Excuse me, I'm about to
15 sneeze. (Short pause)

16 Photograph No. 16 is taken to the east
17 facing the direction I walked in from while I
18 conducted my inspection. It once again shows the
19 metal casing or container that open burning appears
20 to have taken place in simply from the opposing end
21 and in a close-up view. In the container appears to
22 be what is another piece of furniture that has been
23 partially burnt, and if you look in the center right
24 hand side of the photograph, outside of the

1 container there is some wood which displays charring
2 indicating open burning and then in the upper part
3 of the photograph you can see waste that has been
4 discussed in previous photographs. Actually if you
5 look in the upper left-hand corner, there is what
6 appears to be a ventilation cover that was also in
7 photograph No. 4.

8 **Q The large container in photograph 16, is**
9 **that the same as the container you referenced in**
10 **photographs 6 and 8?**

11 A Yes, it is. The last photograph I took
12 during my inspection is photograph No. 17. Again it
13 is taken facing south towards Haw Creek and it is
14 another close-up of open burning. On the left hand
15 side of the photograph towards the center you can
16 see what appears to be more bed springs or I suppose
17 those could possibly come out of a couch or other
18 item of furniture. They're wavy shaped springs
19 slightly rusted and blackened displaying evidence of
20 open burning. There is also ashes and partially
21 burnt lumber. The piece that is obviously lumber is
22 to the right and slightly up from the springs. As
23 far as size goes, I have a reference object in this.
24 In the lower part of the photograph there is the

1 bottom of what appears to be a pale or bucket or
2 some other type of container that is approximately
3 three feet across.

4 **Q Do these photographs attached to your**
5 **report accurately depict what you saw at the**
6 **property on May 7th, 2013?**

7 A Yes, they do.

8 **Q When was this report generated?**

9 A I generally try and complete my inspection
10 reports the business day after conducting my
11 inspection.

12 **Q Does Illinois EPA keep these reports in**
13 **the regular course of its business?**

14 A Yes, we do.

15 **Q Is it the regular course of Illinois EPA**
16 **business to make such records at or reasonably after**
17 **the event reflected thereof?**

18 A Yes, it is.

19 **Q At this time I move Exhibit 1 into**
20 **evidence.**

21 HEARING OFFICER WEBB: Exhibit 1 is
22 admitted into evidence.

23 MS. RYAN: I don't have any further
24 questions at this point.

1 HEARING OFFICER WEBB: Okay.
2 Mr. Kelly, would you like to cross examine?

3 MR. KELLY: Thank you.
4

5 CROSS EXAMINATION

6 BY MR. KELLY:

7 Q Good morning, Mr. Figge.

8 A Good morning.

9 Q We've never met, correct?

10 A No.

11 Q Before you conducted this inspection, did
12 you receive a complaint?

13 A Yes.

14 Q And when did you receive that complaint?

15 A I cannot say without looking at the
16 complaint form.

17 Q Do you recall about how long before you
18 went and visited the premises that you received the
19 complaint?

20 A Generally I try and have my complaints
21 investigated within a week of when I receive them.
22 That may not always be the case though depending on
23 scheduling. By agency policy, all complaints are
24 supposed to be inspected within thirty days of their

1 receipt.

2 **Q And you complied with agency policy in**
3 **this case?**

4 A Yes, I did.

5 **Q So the complaint could have come within**
6 **the week of the inspection or up to thirty days**
7 **before?**

8 A That's correct.

9 **Q Was the complaint -- you say there was a**
10 **complaint form. Was the complaint generated by**
11 **telephone call, in writing, do you know?**

12 A I'd have to see the form to recall how it
13 was generated. Most of my complaints come in by
14 phone though. There are a few that come in
15 electronically through the agency web page though.

16 **Q And do you know who made this complaint?**

17 A I would have to see the complaint form.
18 Most of my complaints come in anonymous. If I do
19 know who made the complaint, I am not allowed to
20 disclose that information.

21 **Q By what authority does not allow you to**
22 **disclose it?**

23 A Agency policy.

24 **Q Is that pursuant to any statute or**

1 **regulation?**

2 A I do not happen to know that.

3 **Q And as you sit here today, do you know who**
4 **made this complaint regarding Mr. Harris?**

5 A Again it's difficult for me to recall
6 without seeing the complaint forms which are kept
7 confidential. In this case there were two
8 complaints, if I'm not mistaken. One was anonymous
9 and the other one we knew who the complainant was.

10 **Q Was the complainant that you believe was**
11 **known a public official themselves, himself or**
12 **herself?**

13 A Not as I'm understanding the definition of
14 a public official.

15 **Q Were they connected with the Knox County**
16 **Landfill?**

17 A Okay. Yes.

18 **Q Did you, after you received the complaint**
19 **and conducted your inspection, did you send**
20 **Mr. Harris a notice of alleged violations under**
21 **31.131 of the statute?**

22 A I do not send out notices. In this case
23 the inspection that we're referring to resulted in
24 the administrative citation that we're having the

1 hearing on today. How that particular procedure
2 works is the agency sends out the administrative
3 citation notice. When I receive verification
4 through our normal channels that the notice has been
5 received, then the agency sends out a notice of
6 corrective actions required.

7 **Q Was there any notice sent to Mr. Harris**
8 **that offered him the opportunity to meet with the**
9 **IEPA and discuss the alleged violations and how to**
10 **cure them?**

11 A In this particular case, no, because this
12 was not a notice under Section 31.

13 **Q Why was that?**

14 A Section 31 entails formal enforcement
15 which could be and could include referral to the
16 Illinois Attorney General's office for formal
17 enforcement. Prosecuting in this case it would
18 probably be in Knox County court. In this
19 particular case it was an administration, an
20 administrative citation issued through the Agency's
21 authority before the Illinois Pollution Control
22 Board and that's why we're having a hearing with the
23 Pollution Control Board and not sitting in court.

24 **Q Thank you. Were you informally requested**

1 to meet with Mr. Harris or myself to discuss these
2 violations and how to cure them?

3 A Not to my knowledge.

4 Q Okay. Would you have any reason not to
5 desire to meet with Mr. Harris to discuss these, the
6 violations that you found and how to cure them?

7 A No, I would not.

8 Q Do you know persons in your professional
9 activity who know Mr. Harris?

10 A As I search through my mind and
11 recollection, I would say yes.

12 Q Who would they be?

13 A I have conducted inspections at Knox
14 County Landfill. There are fellow inspectors in my
15 office who have conducted inspections at Mr. Harris'
16 property prior to me taking over my complaint duties
17 in Knox County, and there are also other inspectors
18 in other regions that have inspected Mr. Harris
19 prior to when I believe the Peoria region existed.

20 Q Who is it that you know at the Knox County
21 Landfill?

22 A I know the operator.

23 Q And that is?

24 A His name is Greg. I can't think of his

1 last name.

2 **Q Greg Ingle?**

3 A Yes, and then I'm trying to think of the
4 other fellow's name who is Greg's boss but his name
5 escapes me.

6 **Q Would that be Jerry Reynolds?**

7 A Yes.

8 **Q Did either of those people talk about**
9 **Mr. Harris with you within the past year or actually**
10 **before and perhaps before, let's just say the past**
11 **five years?**

12 A Past five years, probably. I can't say
13 for sure.

14 **Q Did any of them discuss anything about**
15 **Mr. Harris that you recall in particular?**

16 A As best I can recall, I believe they
17 denied Mr. Harris access to dump waste at the
18 landfill on one occasion because it was after
19 business hours. I'm trying to recall. I believe
20 that would have been in 2011 because that was the
21 year I conducted my first two inspections on
22 Mr. Harris' property.

23 **Q Okay. Did they ever discuss anything**
24 **about him being barred from use of the Knox County**

1 **Landfill?**

2 A I believe after that incident he was.

3 Q Okay. And then did they discuss that they
4 had pressed charges against him?

5 A I believe they did.

6 Q So they told you the whole story about
7 that, correct?

8 A As I recall, yes.

9 Q Okay. Did you form an impression about
10 Mr. Harris as a result of that?

11 A No.

12 Q Did they tell you anything that he was
13 violent or aggressive or anything of that nature?

14 A As far as I recall, there was an incident
15 with Mr. Harris and Greg when they told him he
16 couldn't dump after hours and I believe in which
17 Mr. Harris nearly hit Greg with his truck.

18 Q And did they tell you then that matter
19 went to court?

20 A They told me the matter went to court.

21 Q Did they tell you Mr. Harris was acquitted
22 of that charge?

23 A No.

24 Q How frequently in your duties when you

1 **would go and perform an inspection would you then**
2 **actually meet with the land owner and discuss what**
3 **the problems you see are and what needs to be done?**

4 A I always try and contact the land owner.
5 Going back twenty years, most people had land lines
6 and such. It was easier to find their phone numbers
7 and such. In this day and age it's very difficult
8 to get a phone number. I've looked for Mr. Harris'
9 number and I noted it on this inspection and, if I
10 recall correctly, I came up with it from previous
11 correspondence but I didn't meet with him on this
12 particular occasion. In fact, I've never met with
13 Mr. Harris during my initial inspections in 2011. I
14 simply could not locate him.

15 Q **What percentage of other land owners that**
16 **you investigate would you say that you wind up**
17 **meeting with?**

18 A It's probably about 50/50. Obviously if
19 there's a residence there, it's easy to knock on the
20 door. They may or may not be home. If there's not
21 a residence there, most of those land owners I never
22 meet with because a lot I am not even sure of
23 ownership until I depart the property and go and
24 obtain a copy of the property deed and review it.

1 Many cases -- let's say I'm investigating an open
2 dump as a result of a complaint and it can have an
3 alleged property owner on it. An alleged property
4 owner, experience has taught me, could be a renter,
5 it could be someone purchasing the property contract
6 for deed who does not legally own the property. So
7 if there's not a residence on it, I am hard pressed
8 to track them down until after I get a copy of the
9 deed and review it. Generally in those cases I do
10 not try and meet with these people personally. All
11 correspondence is handled by writing one form of a
12 notice or another. If there's a home, a residence
13 on the property, I knock on the door. Sometimes
14 they're home, sometimes they're not.

15 **Q So most of the time you do make some**
16 **efforts to contact the property owner and work**
17 **things out, right?**

18 A I would not use the term work things out.

19 **Q Discuss the matter with them, would that**
20 **be a better way to term it?**

21 A Discuss the matter, yes. My approach is
22 it's irrelevant who the property owner is. Either I
23 saw violations or I did not. I can tell them what I
24 saw, but what I saw is what I saw.

1 **Q What's the purpose of contacting them**
2 **then?**

3 A So they know what's going on. I can
4 explain things and in many cases when I try and find
5 people, the purpose of contacting them is part of my
6 investigation. It's not uncommon for complaints to
7 come in with an unknown property owner. If I can
8 speak to someone in the vicinity, it can help narrow
9 things down as to who may or may not own the
10 property. As my career has progressed, we have 911
11 systems. Most places with a structure have a street
12 address. It's easier to track down who owns the
13 piece of property now. If there's no street
14 address, it can be very hard to figure out who owns
15 a piece of property without speaking to someone.

16 **Q Would one of the purposes of you**
17 **contacting a property owner after an inspection be**
18 **to resolve the complaint without the imposition of**
19 **fines?**

20 A I do not make decisions on if fines are or
21 are not imposed. That is a decision that's made by
22 the chain of command in the agency. Regardless --

23 **Q May I interrupt you and ask a question to**
24 **process that? At what point does your inspection**

1 **report get sent up the chain of command?**

2 A When I complete it.

3 Q **And do you send up the chain of command**
4 **every inspection report you do?**

5 A Yes, I do.

6 Q **And do those always result in the**
7 **imposition of fines?**

8 A No, they do not.

9 Q **So how is it that -- what's your**
10 **understanding of how it is that an inspection report**
11 **you refer does not result in the imposition of**
12 **fines?**

13 A Those are not decisions I make.

14 Q **Do you participate in them or play any**
15 **role in them?**

16 A I complete a report. I say what I saw,
17 you know, whether it be litter, open dumping, open
18 burning. Through that process I and others in the
19 agency can make recommendations. Whether those
20 recommendations are taken under advisement or not is
21 out of my hands.

22 Q **Okay. So a lot of times you would make**
23 **such a recommendation after meeting with the**
24 **property owner. Would that be correct?**

1 A I may or may not have met with the
2 property owner. It just depends, as I explained
3 earlier, how the inspection went, was I able to
4 track anyone down.

5 **Q Right. And you said that fifty percent of**
6 **the time or so you do meet with them?**

7 A Yes.

8 **Q And then at other times you make efforts,**
9 **you write a letter, for example, or go look and try**
10 **to investigate something about who owns the**
11 **property, right?**

12 A That's not exactly how that works. If I
13 complete an inspection report citing apparent
14 violations, notice is sent out. There are various
15 kinds of notices that can be different from
16 situation to situation. Regardless of if an
17 administrative citation is issued, if something is
18 following along the lines of a formal enforcement,
19 referral to the attorney general, whatever the case
20 may be as far as the legal standpoint, the apparent
21 violations need to be resolved. Regardless of any
22 of these other letters or notices or things, the
23 apparent violations need to be resolved. Waste
24 needs to be removed and properly disposed of. In

1 the case of open burning, no more open burning
2 should be taking place.

3 **Q Okay. I guess let me ask you this then.**
4 **What in your mind was the reason that you didn't**
5 **contact Mr. Harris?**

6 A Quite honestly it was difficult to locate
7 him. There is not a structure or residence on the
8 property. Going back to 2011, I initially couldn't
9 find a phone number. Like I said, I believe I found
10 this phone number in previous correspondence dating
11 back to 2011 and there is a certain point where, for
12 lack of a better description, I tried and it's
13 easier to keep track of things by using a written
14 notice.

15 **Q Okay. So did you try then calling the old**
16 **number you had?**

17 A Yes.

18 **Q And you didn't send a letter. You just**
19 **relied on the formal process?**

20 A Exactly.

21 **Q But you never received those -- after the**
22 **formal process was initiated, you never received any**
23 **inclination or any information that Mr. Harris**
24 **desired to meet with you to review the property?**

1 A No.

2 Q I have just some exhibits I want to go
3 over with you.

4 A Sure.

5 Q I hand you that packet. You're going to
6 have an inferior copy to go over than the hearing
7 officer but I don't think these hopefully will
8 impede you too much. This is just a packet that --
9 I'll just refer to the whole thing as to the
10 Respondent's first exhibit. Looking at the cover
11 page, would you recognize that as essentially an
12 aerial map of the property in general?

13 A Yes.

14 Q Okay. And then just turn to the second
15 page. Would you recognize that as basically an
16 aerial photograph, different orientation?

17 A Yeah. Actually to look at it so I can get
18 the north to the top of the page which I'm
19 accustomed to, it makes the words upside down.

20 Q Okay. Well, the lane that you
21 described --

22 A Okay. I was lost on the --

23 Q In the photograph there's a lane.

24 A I've got it right side up.

1 **Q That is running along one edge?**

2 A Yes.

3 **Q And that then is you think the north?**

4 A Yes, that's north of the pole building.

5 It took me awhile to find my orientation.

6 **Q Sure. The pole building is visible there?**

7 A Yeah.

8 **Q And now you would admit that there's not**
9 **just a few trees on the property, right? There's**
10 **vegetation all over the place, right?**

11 A Yes.

12 **Q Okay. Would that kind of vegetation then**
13 **have been basically present when you inspected the**
14 **property in May of 2013?**

15 A Well, in the spring obviously there's not
16 more leaves. There are fewer leaves because it's
17 early in the year and trees are just starting to
18 bud.

19 **Q And we don't know what time of year that**
20 **photo would have been taken?**

21 A This one here, no. Trees look to be
22 leafed out.

23 **Q And do you recall what the state was of**
24 **the vegetation then in May of 2013?**

1 A It was spring. It was just starting to
2 leaf out.

3 Q Some of your photographs would show that
4 in the background, correct?

5 A Yes.

6 Q Well, let's look at photograph 12. Would
7 you refer to that?

8 A Yes.

9 Q I notice back in the background there in
10 the upper left across the top half, in general
11 there's a significant degree of leafing out of trees
12 there. Wouldn't you say that?

13 A The botanist in me would say approximately
14 fifty percent.

15 Q Okay. I want to ask you about photographs
16 13 and 14.

17 A Yes.

18 Q On the State's Exhibit No. 1. Those are
19 essentially two photographs of the same thing?

20 A Yes, just as I said in my testimony, a
21 slightly different angle.

22 Q Okay. And except for perhaps a piece of
23 rock or concrete in the -- well, actually I don't
24 know. Is there anything in paragraph -- I mean in

1 **photograph 14 in terms of debris that you cannot see**
2 **in photograph 13?**

3 A The glass. You can see one piece of glass
4 in the lower right hand side of photograph 14. In
5 photograph 13 you can see four pieces of glass and
6 it looks like a partial piece of another in the
7 lower left.

8 **Q I guess maybe I phrased that wrong, but**
9 **everything that constitutes debris is visible in 13,**
10 **correct? There's nothing extra in 14?**

11 A Actually I believe if you look in 14, you
12 can see more of the waste that is underneath the
13 water in the dead center of the photograph and
14 towards the right hand side of the photograph.

15 **Q Okay. What can you see?**

16 A In 14 or 13?

17 **Q In 14, that you cannot see in 13.**

18 A If you look dead center in 14, you can see
19 what appears to be five pieces of concrete. If you
20 look in the same, at the same material in the same
21 area in photograph No. 13, only two are clearly
22 visible. Also if you look at the right hand side of
23 photograph No. 14, it appears three pieces of waste
24 are visible and in 13 same area, only two.

1 MR. KELLY: Your Honor, may I
2 approach and have him point these out to me?

3 HEARING OFFICER WEBB: Yes.

4 A Sure. What I'm looking at here is you can
5 see that. You can see that real clear. I think
6 that's another piece but it's kind of murky there
7 right on top of my finger. If you look in this one,
8 you can clearly see this one here, you see another
9 one here, see another one there, see another one
10 there, and see the edge of another one there.

11 Q So you just pointed out the ones you
12 thought were more clear in 14?

13 A Yeah.

14 Q But in 13, that's the same one that you
15 pointed out to me?

16 A Yes.

17 Q Isn't this one the same one you pointed
18 out to me there?

19 A That one is, but then if you --

20 Q There's this little one here?

21 A And this one here and the one in the
22 middle though.

23 Q Okay. There's that one right there?

24 A Yeah.

1 **Q And then on the side you have one, two,**
2 **and where's the third?**

3 A You can't really see it in that one but if
4 you look right there in 14, see it at the edge?

5 **Q I'm looking at 13. Isn't that one**
6 **referred to?**

7 A I can't make it out there.

8 **Q And you can make out something down here?**

9 A Yeah. I was trying to beat the glare off
10 the water is what it came down to.

11 **Q Okay. But besides those items that**
12 **perhaps are more clear, clearly seen in photograph**
13 **14 than they are in photograph 13, there's no**
14 **other --**

15 A Fourteen excludes some of the glass.

16 **Q And do those photographs constitute all**
17 **the evidence that you have about a violation of**
18 **water pollution?**

19 A Yes.

20 **Q Did you -- and you said you haven't**
21 **obviously met Mr. Harris until today or seen him**
22 **until today, so you didn't get his permission to**
23 **enter onto his premises, correct?**

24 A No, I did not.

1 **Q And what's the reason you didn't get his**
2 **permission to enter on to the premises?**

3 A As per Section 4-D of the Environmental
4 Protection Act, I have the right to enter on
5 property at any reasonable time in order to conduct
6 inspections to determine compliance with the
7 Environmental Protection Act and/or Title 35
8 Illinois Administrative Code.

9 **Q And what's your understanding of the**
10 **phrase in 4-D? I believe it's in accordance with**
11 **constitutional limitations.**

12 A It's always worked out in application over
13 the course of my career if an individual is present
14 on property, they may deny me access and require me
15 to go get a search warrant. That has happened a
16 couple times in my career.

17 **Q So your interpretation of 4-D is that if**
18 **there's no one there to object, you're allowed to**
19 **enter onto premises and collect evidence that you**
20 **later use against them in administrative**
21 **proceedings?**

22 A Yes.

23 **Q And you had inspected these premises**
24 **before?**

1 A Yes.

2 Q And you had knowledge that in fact
3 violations were charged and violations and fines
4 were paid on the premises before?

5 A Yes.

6 Q And would you have anticipated you would
7 have been given permission to enter onto these
8 premises had you asked?

9 A I didn't even consider that.

10 Q Well, if you would consider it, you would
11 admit that it's unlikely someone would give you
12 permission to enter onto their premises again,
13 wouldn't you?

14 A Honestly in the course of my career, I've
15 had to get a search warrant one time.

16 Q Okay. And then you said that was when
17 someone was present on the premises?

18 A Yes.

19 Q And do you typically request permission in
20 advance?

21 A No.

22 Q Is the reason that you don't request
23 permission in advance at least in part because you
24 know people will object?

1 A No.

2 Q So you don't believe anyone would object
3 to your entering onto their premises to search for
4 EPA violations?

5 A Oh, they might object. Like I said, I've
6 had it happen one time in the course of my career
7 where I had to get a search warrant.

8 Q Are you aware of any authority that
9 ratifies your understanding of that interpretation
10 of Section 4-D?

11 A It has been agency policy over my entire
12 career.

13 Q Is that policy then something that you
14 were informed of just as a matter of instruction or
15 is it part of any written procedures you follow or
16 regulations you follow?

17 A I cannot say for sure if it's a part of a
18 written procedure. I do not recall ever reading
19 written procedure on it.

20 Q So at some point in your training likely
21 you were told by whoever was training you, this is
22 the rule that we follow?

23 A Yeah.

24 Q In your report you cited the, again

1 referring to the State's Exhibit No. 1, you refer to
2 the buckets visible in photograph No. 3 as having
3 been melted?

4 A No.

5 MS. RYAN: Objection.

6 A Not in this inspection report.

7 Q Oh, is that in prior -- the one after
8 that, okay. Now, so the buckets in photograph three
9 are unmelted?

10 A Correct.

11 Q Do you know who owns the adjacent property
12 to the north?

13 A No, I don't.

14 Q So you've never made any contact with that
15 person?

16 A Not to my knowledge. I could have but I
17 don't know who owns it so --

18 Q In the photographs that you took, were
19 they all inside actually taking place on the Harris
20 property?

21 A Assuming the fence is the property line,
22 yes.

23 Q And would you then assume that or would
24 you concede that photographs 13 and 14 at least were

1 taken from a location that you couldn't have seen
2 except for being on the premises or on the grounds
3 of the Harris property?

4 A Yes.

5 Q So you couldn't have seen those from the
6 adjacent field?

7 A No. Well, you maybe could. Maybe you
8 could have. I can't see what's out of the
9 photograph. It depends on vegetation and such.
10 They were taken on the Harris property.

11 Q Okay. Do you know whether the creek bed
12 is -- how far a slope down to it there is from the
13 lane, for example?

14 A Photographs 13 and 14 are taken as a
15 backwater. It's not actually an oxbow. It's
16 something similar to an oxbow.

17 Q Tell me more about a backwater. Is that
18 an occasional wet spot or part of the creek bed?

19 A This is not an actual oxbow.

20 Q What is an oxbow?

21 A That's what I was going to say.

22 Q I'm sorry?

23 A Similar to an oxbow is how I would
24 describe it. An oxbow occurs where a stream or

1 river has a bend. Over time that bend will get cut
2 off from the main stream or river and it forms a
3 lake. This is something along that nature.
4 However, it's not what I would think would be
5 formally called an oxbow because it doesn't have a
6 bend in it.

7 **Q Is the water present here present year**
8 **round?**

9 A I can't say if it ever or never dries up,
10 but every time I have conducted an inspection there
11 has been water there.

12 MR. KELLY: Those are all the
13 questions I have. Thank you.

14 HEARING OFFICER WEBB: Ms. Ryan?

15

16 REDIRECT EXAMINATION

17 BY MS. RYAN:

18 **Q Mr. Figge, in the twenty eight hundred**
19 **some inspections you've conducted, have all your**
20 **inspection reports shown observation of violations?**

21 A No.

22 **Q Do you have any idea of what percentage**
23 **might be not violations?**

24 A Oh, 50/50.

1 **Q** When you took over the complaint duties in
2 **Knox County and received a complaint on Mr. Harris'**
3 **property, did you review the Agency's file on that**
4 **property?**

5 **A** Not until after my initial inspection.

6 **Q** So you did review the file then after your
7 **initial inspection in 2011?**

8 **A** Yes.

9 **Q** Do you recall how long Illinois EPA has
10 **been doing inspections at Mr. Harris' property?**

11 **A** Approximately thirty years.

12 **Q** Was there anything in your review of the
13 **file that indicated that Mr. Harris had objected to**
14 **anyone accessing his property at any point during**
15 **those thirty years?**

16 **A** No, there was not.

17 **Q** Was there anything at the property that
18 **indicated that your access was restricted?**

19 **A** No, there was not.

20 **Q** Do you recall the nature of the complaints
21 **you received prior to the May 7th, 2013, inspection?**

22 **A** Similar to this one, open dumping, open
23 **burning. Pretty much the same thing.**

24 **Q** Do you recall anything more specific about

1 **it, how the complainants knew of the problem at the**
2 **site?**

3 A Not without looking back at the complaint
4 form.

5 MS. RYAN: Thank you. That's all.

6 HEARING OFFICER WEBB: Any follow up?

7 MR. KELLY: Nothing further.

8 HEARING OFFICER WEBB: Thank you,
9 Mr. Figge.

10 THE WITNESS: Thank you.

11 HEARING OFFICER WEBB: Does the
12 Agency have anything else they'd like to present?

13 MS. RYAN: We do not.

14 HEARING OFFICER WEBB: Okay, very
15 good. Mr. Kelly, you may call your witness.

16 MR. KELLY: I'd like to have
17 Mr. Harris' testimony, James Harris.

18 HEARING OFFICER WEBB: Mr. Harris, if
19 you don't mind, we could have the court reporter
20 swear in the witness.

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JAMES HARRIS
called by the Respondent,
being first duly sworn,
was examined and testified
as follows:

DIRECT EXAMINATION

BY MR. KELLY:

Q State your name for the record.
A James D. Harris.
Q Where do you live, Mr. Harris?
A 184 Duffield in Galesburg, Illinois.
Q How old are you?
A I'm seventy years old.
Q Are you married?
A I'm married.
Q For how long?
A Forty-seven years.
Q Do you have any children?
A Four children.
Q Are they adults?
A All of them are adults.
Q And what kinds of work do they do?

1 A Our oldest is a doctor in Kansas City and
2 our youngest daughter is a lawyer minister in Kansas
3 City and our son, he's a 23-year serviceman. He's
4 in Rye, New York now, and we have a daughter that's
5 with the gas company here, Ameren or whatever they
6 call it.

7 **Q And what's your profession?**

8 A My profession was I would haul things for
9 people to make, you know, a living.

10 **Q You would have a business?**

11 A Right, doing business as Harris Trucking.

12 **Q And how long did you operate that?**

13 A Done that for probably forty-seven, eight
14 years, somewhere in that range.

15 **Q That's been your profession your whole
16 adult life essentially?**

17 A Yes, sir.

18 **Q Were you in the military service?**

19 A No, I was not.

20 **Q So you own property, the subject property
21 that this complaint is about in Knoxville, Illinois?**

22 A I do.

23 **Q And how long have you owned that?**

24 A I think I bought that in '75.

1 **Q And in the conduct of your business, where**
2 **would you normally dispose of the materials that you**
3 **were hauling?**

4 A Normally I would dispose of the material
5 at the Knox County Landfill.

6 **Q And for how long have you done that?**

7 A Until the incident, which it wasn't trying
8 to dump a truck after hours. What it was was they
9 wanted to double charge me for a load I brought in
10 after I dumped it. They said you're doubled, and to
11 be treated like the Dred Scott of Knox County
12 Landfill and have them have the full weight of the
13 law behind them and I have nobody.

14 **Q Let me sort of put that in some context.**

15 A Yes, sir.

16 **Q There's a packet in front of you with the**
17 **pen on it there.**

18 A Oh, okay.

19 **Q Let's just go through that, if we could**
20 **close it up there and we'll start with page one.**
21 **That essentially is just an aerial view of a map of**
22 **the Knoxville premises, correct?**

23 A Yes.

24 **Q And then it would be essentially -- is it**

1 oriented correctly so the top of the page is north
2 more or less?

3 A Yes, sir, it is.

4 Q All right. Then going to the second page,
5 if you rotated that so you could read the word
6 Google.

7 A Right.

8 Q And that orients the top of the page to
9 the north, correct?

10 A Yes.

11 Q And that looks like an aerial photograph
12 of your premises showing the vegetation?

13 A Right.

14 Q And the pole building, for example?

15 A Uh-huh.

16 Q And with the break in the vegetation would
17 be the creek?

18 A Right.

19 Q Let's go then to the --

20 A I have arthritis in my fingers so I'm not
21 quick.

22 Q Okay. We'll go to the next pages. Have
23 you had occasion to request the documentation
24 showing the implementation of the policies of the

1 Knox County Landfill through your various counsel
2 over the years?

3 A Yes, we have.

4 Q Okay. Looking at the page, the letter
5 dated July 22nd, 2014 -- and, Michelle, I'm going to
6 lead if that's okay with you to get through this.
7 Does that appear to be a letter that sets forth
8 their response to a request for the documentation of
9 the landfill policy that the Knox County Landfill
10 held against you, Mr. Harris?

11 A I'm sorry, I was trying to --

12 Q Let me ask it again.

13 A Go ahead.

14 Q The page before the one you're looking at
15 is a letter dated July 22nd, 2014?

16 A Okay.

17 Q Does that appear to be the request to get
18 the landfill policy documentation on the next page?

19 A Right.

20 Q Okay. And does the next page where on the
21 bottom it says page 172 of your exhibit --

22 A Right.

23 Q -- reflect that the city council on August
24 15th, 2007, was going to pass a resolution to

1 **"authorize the landfill operator to charge double**
2 **the tipping fee"?**

3 A Pardon me, sir. It would be the county
4 board.

5 Q Okay. The county board --

6 A Right.

7 Q -- was going to pass a resolution to
8 authorize the landfill operator to charge the double
9 tipping fee?

10 A Okay.

11 Q Is that correct?

12 A That's what I'm reading here.

13 Q And then in fact when you went to the
14 premises then after August 15th, 2007, the landfill
15 operator at that time tried to implement this policy
16 on you, correct?

17 A I can't testify with any accuracy because
18 I'm not -- the dates aren't coming up. I don't know
19 if it was 2007 or --

20 Q Let's leave the date aside then and just
21 say when were you banned from the landfill?

22 A I was banned when Greg Ingle took a county
23 truck and ran in front of me.

24 Q I want to go to the date first. I want to

1 **try to establish the parameters and try to find out**
2 **about when.**

3 A I think it was in February on a Friday.
4 That's about all I can remember.

5 **Q A few years ago?**

6 A Right.

7 **Q In 2011? Sound about right?**

8 A It sounds about right.

9 **Q And was the double tipping fee imposition**
10 **on you about a year or so before that?**

11 A Right.

12 **Q And so that would be after 2007 but before**
13 **2011, right?**

14 A Right.

15 **Q So I just want to set that time parameter.**
16 **Now, regarding the double tipping fee, you entered**
17 **into the landfill and you were allowed to proceed to**
18 **dump the load of things you had in your truck?**

19 A No, I can't say that.

20 **Q On the time that they imposed the double**
21 **tipping fee?**

22 A The time they imposed the double tipping
23 fee, when this incident occurred, I was taken aback
24 that I'm a taxpayer and a citizen.

1 **Q I want to establish first what happened.**
2 **You went and dumped your load?**

3 A Oh, yes, yes. It was after I dumped the
4 load that they said you're double. I said, well,
5 why did you let me dump it and I have to pay double?
6 And immediately he says I'll call the police. Well,
7 the police department were there in a flash and they
8 said you go into town, and I went to see the state's
9 attorney and I said this isn't fair.

10 **Q And then you tried to resolve the issue**
11 **about this double fee?**

12 A Right.

13 **Q But you didn't resolve it?**

14 A No.

15 **Q And did you refrain from using the**
16 **landfill for a while after that?**

17 A I did for a while because most of my
18 business just turned to scrap, recycling scrap
19 metal. So I didn't need the landfill very much.

20 **Q How would you operate the scrap metal**
21 **recycling part of your business?**

22 A Most of it was I picked it up at different
23 sites and I usually would have enough to make a
24 load. I'll give you an example. Electric motors in

1 Davenport, Iowa, sell for forty cents a pound. Here
2 in Galesburg they sell for seventeen cents a pound.
3 So what I'm saying if I had extra electric motors
4 like with the fans on them, rather than take
5 seventeen cents a pound, I would accumulate them and
6 throw them on when I had a load.

7 **Q Okay. Then at some point you needed to**
8 **use the Knox County Landfill?**

9 A Right.

10 **Q And what happened then?**

11 A When I got there Greg Ingles came out and
12 said have you got enough money to pay your old fees?
13 I said I got enough money to pay at least this load.
14 So the green light had already gone off so I took
15 off. I wasn't even aware he jumped in the county
16 truck and came around in front of me and stopped
17 abruptly, and there was nothing else I could do. So
18 that was that, and they charged me with about three
19 different felonies. I was acquitted of them all
20 except they did charge me with trespassing and they
21 found me guilty on that, but the rest I was
22 acquitted.

23 **Q And then after that then, looking at the**
24 **next couple documents in your packet there, there's**

1 a letter from the Knox County Landfill dated January
2 31st, 2011?

3 A Right.

4 Q From Jerry Reynolds from the landfill?

5 A Uh-huh.

6 Q The next page is a letter dated September
7 9th, 2011, from the States Attorney's office of Knox
8 County barring you from the landfill?

9 A With some exceptions.

10 Q Well, barring you personally?

11 A Right, okay.

12 Q From use of the landfill. Now, you tried
13 to resolve this issue with the State's attorney of
14 the double tipping fee and the charges that were
15 made to you for that?

16 A Yes, I've tried to resolve them with the
17 State's attorney.

18 Q And were you successful?

19 A No, I wasn't successful.

20 Q If you can't use the Knox County Landfill,
21 what do you have to do?

22 A I have to go take my loads to either
23 Kickapoo or up here. And let me just say this.
24 This remedy was suggested by Jerry Reynolds at a

1 meeting we had with the State's attorney because he
2 said he'll have to go to Kickapoo or the one up
3 here. I forget the name of it, by Coal Valley.

4 **Q Okay. So that's where you go?**

5 A Right, basically one hundred miles round
6 trip. So the burning, and when they talk about open
7 burning, I think we have some pictures for places
8 right across the street from my property, directly
9 across the street, property one and property two,
10 and I think it will enlighten you to see these
11 pictures.

12 **Q Mr. Harris, look at the last page, the**
13 **last two pages of the packet here.**

14 A Right.

15 **Q And are those the photographs that you're**
16 **referring to?**

17 A Yes, sir.

18 **Q And if I may approach him?**

19 HEARING OFFICER WEBB: Yes.

20 **Q I'm handing you the originals of those**
21 **photographs.**

22 A Okay. Do you want me to pass them around?

23 **Q Well, I just want you to identify them**
24 **first.**

1 A Okay. This is right across the street
2 from me on the road.

3 Q Let's refer to the packet and if you could
4 get the first photograph, get the photograph that
5 corresponds with the top photograph on the second to
6 last page of the packet.

7 A Second to last you say?

8 Q The last two pages of the packet are four
9 photographs.

10 A Right.

11 Q So let's talk about the photograph --
12 actually this is the one. Let's talk about this
13 photograph here.

14 A Okay. That's all the same.

15 Q So we're referring to the original
16 photograph that is copied on the top of the second
17 to last page of the exhibit, correct?

18 A Yes, sir.

19 Q What does that show?

20 A It shows debris, fairly large amount.

21 Q Where?

22 A In a field across the road from my place.

23 Q Referring to the photograph or to the map
24 on the cover of the packet, where would this

1 **property be located in reference to this map?**

2 A Okay. The property would be located going
3 back towards Knoxville.

4 **Q Okay. So to the north of this map?**

5 A To the north.

6 **Q Would this property be -- would you pass
7 it on the way to Market Street?**

8 A Every time.

9 **Q Is it off of Market Street?**

10 A It's on Market Street every time I've been
11 there over twenty years.

12 **Q So that photograph was something that was
13 on Market Street?**

14 A Right.

15 **Q Then what does it show?**

16 A It shows debris. It shows building
17 material and it's in a large pile. It is together
18 but it's all a big large pile.

19 **Q And when did you take that photo?**

20 A I took these photos July the 16th.

21 **Q And had that, the conditions that are
22 shown in that photo, had they existed prior to you
23 taking that photo?**

24 A For many years. This is a dump site and

1 it's been active for at least twenty years.

2 Q And is that the same location as shown on
3 the photo below it on the exhibit?

4 A Yes, sir, it is.

5 Q Are those two, looking to the last page of
6 the exhibit, are those photographs of the same
7 premises or different?

8 A Same premise.

9 Q So they're the four photographs of the
10 same premises north of Market Street from your
11 property in Knoxville?

12 A Right.

13 Q And those conditions are visible from
14 Market Street as you drive by?

15 A They definitely are.

16 Q All right. If I may be excused for just a
17 second to plug in my computer, it seems to need me
18 to put a power supply to it.

19 HEARING OFFICER WEBB: Sure. Go off
20 the record for a minute.

21

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

24

1 HEARING OFFICER WEBB: Back on the
2 record. Mr. Kelly, would you like to finish up your
3 questioning?

4 MR. KELLY: Thank you.

5 **Q So, Mr. Harris, what's the reason, what**
6 **use did you make of your Knoxville property after**
7 **you were barred from the Knox County Landfill?**

8 A Well, what I'm doing with my Knoxville
9 property was I would save things that I can recycle
10 and sell. I noticed every time they mentioned
11 burning, it was open burning, so I think anybody
12 burning in a burning barrel or anything is still
13 open burning. I had these in containers that I was
14 trying to control, and then I would -- when you go
15 up to Coal Valley, they just charge you by the
16 yardage so I could have a heavy load going to Coal
17 Valley and my price would be the same. So I had to
18 reduce the volume because if the volume was greater,
19 that's the way they would charge you. Kickapoo over
20 here charges by ton.

21 **Q Okay. So what was the cost impact on you**
22 **from not being able to use the Knox County Landfill?**

23 A Okay. To give you an example, a truck
24 that gets, say, five miles a gallon and if you have

1 a one hundred mile round trip, that's pretty easy to
2 figure out. Plus I don't know what the tipping fees
3 out at the landfill are, but with the people running
4 it that were less than hospitable, I knew I couldn't
5 go there. So it would be I would figure at least
6 one hundred dollars time and gas just to go to
7 Kickapoo or Coal Valley and plus the cost of
8 dumping. Now, Kickapoo I think is fifty-seven
9 dollars a ton. The other one was one hundred twelve
10 dollars straight. So it would be about two hundred
11 twenty five, two hundred thirty dollars.

12 **Q Could you make a living paying those fees?**

13 A No, because I had to let people, very good
14 customers go because I told them I don't have a
15 place to take it. And I'm not saying this bragging
16 but -- well, I'll just say this, that this old
17 raggedy piece of property out there, I have to pay
18 nine hundred dollars a year taxes on it because of
19 this Knox County vendetta.

20 **Q Did you say that you stored items that**
21 **you're going to recycle on the premises?**

22 A Recycle, or I have a few rentals so once
23 in awhile there would be something in the building
24 material that I would re-use and that would be a

1 place where I might put it off to take it to the
2 place I was going to use it later.

3 **Q Have you ever had anything stolen from the**
4 **property?**

5 A Yes, I have.

6 **Q And taken any action in relation to that?**

7 A Well, yes, I have. I've had numerous
8 thefts. And the one thing about a theft, I'm the
9 last one to get reimbursed because the courts get
10 their fines and stuff first and then in so many
11 cases, because the thieves are easy to catch,
12 they're usually pretty stupid, but it takes two
13 years to get your money.

14 **Q What have you done though on your property**
15 **regarding theft?**

16 A Well, what I've done, I've tried to put
17 things around where they're not just all centrally
18 located and someone could just back in and swoop in
19 and grab up what they wanted to take and it would
20 all be right there for them. So if they don't like
21 to traipse through the weeds, it discourages them.

22 **Q Some of the items in the photographs, the**
23 **17 photographs that Mr. Figge discussed, were some**
24 **of those items items you would recycle?**

1 A Yes, they are.

2 **Q Now, you have had a 2011 administrative**
3 **complaint filed against you, correct?**

4 A Yes, sir.

5 **Q And you conceded those violations and paid**
6 **those fines?**

7 A That was right after the landfill and it
8 was because of dumping on the ground and that's what
9 I felt the violation was about, dumping on the
10 ground. That's why I went through these containers.

11 **Q Were you under the same pressure from the**
12 **landfill barring as you are now?**

13 A Yeah. I hear things from the landfill.
14 There are people that feed me a little information.
15 I can't say how truthful it is, but you'd wonder why
16 would somebody tell you about them out there
17 laughing about what was going to happen along with
18 an EPA representative. This got back to me. Now I
19 can't testify it's truthful.

20 **Q But would it be fair to say, and correct**
21 **me if I'm wrong and object, that you feel the Knox**
22 **County barring you from the landfill is the cause of**
23 **the EPA violations you're being charged with now?**

24 A Definitely.

1 MR. KELLY: Those are all the
2 questions I have.

3 HEARING OFFICER WEBB: Ms. Ryan?
4

5 CROSS EXAMINATION

6 BY MS. RYAN:

7 Q Mr. Harris, are you still operating Harris
8 Trucking?

9 A On a very slow schedule.

10 Q Were you surprised when you were charged
11 that double tipping fee at Knox County?

12 A Yes, I was.

13 Q Why is that?

14 A Because there was no -- it wasn't
15 legitimate. They said you have to be covered and I
16 was covered. The guy said my end gate wasn't good
17 enough.

18 Q What was your truck covered with?

19 A It was covered with a canvas, a tarp.

20 Q A tarp. If you can look at the documents
21 that your attorney gave you there and turn back to
22 the page -- well, hang on. Let me see if I can
23 count them for you. I think it's page five. It's
24 the one that says Knox County Landfill up at the

1 top. It's from Jerry Reynolds, that one.

2 A No.

3 Q That's the one I'm looking at so try and
4 find this page, (Indicating). I have an extra page
5 in mine so mine may not be in the exact same order.
6 It's a duplicate page.

7 A Okay.

8 Q In the middle of that page it says
9 non-secured load charge and your failure to follow
10 instructions at the landfill. What does that phrase
11 refer to, failure to follow instructions at the
12 landfill?

13 A This is an inappropriate way to answer
14 questions but how do you defend yourself against a
15 lie when someone says you didn't follow
16 instructions? But Greg Ingles is the one I have to
17 answer to and in court when the trial was going on,
18 he said in court that I am the law at the Knox
19 County Landfill.

20 Q Okay. But do you know what he meant by
21 failure to follow instructions? What instructions
22 was he talking about?

23 A Building a case. Jerry Reynolds hides in
24 the shadows.

1 **Q** **What I'm trying to get at is do you know**
2 **what instruction they argued you failed to follow?**

3 **A** **No.**

4 **Q** **You don't know, okay. And then if you**
5 **look at the next page I think it is, that's the**
6 **letter from Eric Gibson.**

7 **A** **Uh-huh.**

8 **Q** **It says that they want outstanding**
9 **invoices and restitution for damage to the truck.**
10 **What does that refer to, damage to the truck?**

11 **A** **The truck was the one that Greg Ingles**
12 **used and evidently it sustained over two thousand**
13 **dollars worth of damage that the court said I wasn't**
14 **liable for.**

15 **Q** **Do you know what the nature of that damage**
16 **was?**

17 **A** **Yeah, when he got in front of me and I hit**
18 **him.**

19 **Q** **Did you ever pay the amounts that were**
20 **indicated on this September 9, 2011, letter?**

21 **A** **The ninety-three dollars?**

22 **Q** **Either one of those.**

23 **A** **I paid half of it.**

24 **Q** **You paid half of the ninety three dollars?**

1 A Right.

2 MS. RYAN: That's all I have for
3 Mr. Harris.

4 HEARING OFFICER WEBB: Any follow-up?

6 REDIRECT EXAMINATION

7 BY MR. KELLY:

8 Q **The half that you paid was the correct**
9 **charge?**

10 A Yes, sir.

11 Q **For the dumping that you did at that time?**

12 A Yes, sir.

13 Q **So you paid half because they had doubled**
14 **it improperly in your view?**

15 A That's right.

16 Q **And the damage to the truck charge they**
17 **wanted that they referred to is as a result of the**
18 **collision that you were criminally charged about?**

19 A Right.

20 Q **And were you acquitted of that charge?**

21 A That's right.

22 Q **So you feel that you proved that Greg**
23 **Ingle caused the damage?**

24 A It was Greg Ingle's wreck, not mine.

1 MR. KELLY: Those are all the
2 questions I have.

3 MS. RYAN: Are you going to offer
4 this as evidence?

5 MR. KELLY: Yes.

6 MS. RYAN: I would object to the last
7 photographs at the end. They appear to have been,
8 from what I can understand from the testimony, they
9 were taken in 2014 which is after the incident that
10 the citation is referring to and, therefore, they're
11 not relevant and also they're not of the subject
12 property and, therefore, they're not relevant.

13 MR. KELLY: My response is that he
14 said it's the same conditions that existed for
15 thirty years.

16 MR. HARRIS: Twenty years.

17 MR. KELLY: Twenty years.

18 MS. RYAN: I have no problem with his
19 testimony. I have a problem with the photographs.

20 HEARING OFFICER WEBB: Do you have
21 any problem with anything other than the
22 photographs, the rest of the packet?

23 MS. RYAN: No. I have an extra page
24 on the back. I don't think everybody has this on

1 the back. I think that's an extra Google map.
2 Other than that, the last two pages I think are just
3 the photographs.

4 HEARING OFFICER WEBB: Well, I do
5 agree with Ms. Ryan. It is not relevant because it
6 is not the subject of what this citation is about.
7 If you'd like to make an offer of proof, I can take
8 it as an offer of proof.

9 MR. KELLY: Thank you. I would offer
10 it to prove that the properties on the way to the
11 subject property off Market Street in Knoxville,
12 Illinois, are accurately depicted in the photographs
13 objected to.

14 HEARING OFFICER WEBB: Okay. We'll
15 call the inspection report the Agency Exhibit 1 and
16 this packet is Respondent's Exhibit 1. I'm going to
17 physically separate them at the board so we'll have
18 the Respondent's Exhibit 1 is admitted and then I
19 will offer as proof the photos. I will file those
20 with the clerk's office separately. Ms. Ryan, would
21 you like to -- oh, I'm sorry. Are you finished?

22 MR. KELLY: I'm finished with
23 Mr. Harris. I would like to re-call Mr. Figge just
24 for one or two questions.

1 HEARING OFFICER WEBB: Okay. You
2 were done with him?

3 MS. RYAN: Yes.

4 HEARING OFFICER WEBB: Okay.
5 Mr. Figge, you're still under oath.

6
7 GENE FIGGE
8 re-called by the Respondent,
9 being first duly sworn,
10 was examined and testified
11 as follows:

12
13 DIRECT EXAMINATION

14 BY MR. KELLY:

15 Q I apologize for forgetting to ask you this
16 before. There was a past complaint based on
17 inspections you performed in 2011 regarding
18 Mr. Harris and the Knoxville property, correct?

19 A Yes.

20 Q 1127 AC?

21 A I'd have to look at the file to tell you
22 the number.

23 Q And those premises were, well, they were
24 cited and violations were found and fines paid.

1 **There was never a point thereafter when you**
2 **inspected the property and found them basically**
3 **clean and free of debris, was there?**

4 A There was a follow-up inspection after the
5 resolution of the administration citation in 2011.
6 During that violation -- sorry; during that
7 inspection afterwards, an in general compliance
8 letter was sent. That's a notice the agency sends
9 saying essentially when I did my inspection no
10 apparent violations were observed.

11 **Q And about when would that have been**
12 **generated?**

13 A It was 2011. Without looking at the
14 report, I can't tell you the exact date.

15 **Q Would that inspection have generated a**
16 **report with photographs similar to Administrative**
17 **Exhibit No. 1?**

18 A Yes, it would have.

19 **Q And would that report have been ever**
20 **supplied to Mr. Harris?**

21 A I believe a copy of the report would have
22 been attached to the letter.

23 **Q What records would exist in your agency**
24 **that sort of document that that in general**

1 **compliance letter was sent?**

2 A Essentially the same thing Mr. Harris
3 would receive a copy thereof.

4 Q Do you have a file in your office that you
5 could refer to to show when that would have been
6 sent and what was sent?

7 A Yes. I don't have it with me, but yes.

8 MR. KELLY: Those are all the
9 questions I have.

10 MS. RYAN: I do have one cross
11 question but I do have follow up direct questions as
12 well, if I can just continue with those.

13 HEARING OFFICER WEBB: Yes.

14

15 CROSS EXAMINATION

16 BY MS. RYAN:

17 Q You returned to section compliance in 2011
18 so the violations that you cited in 2013 then were
19 not continuing violations from the previous
20 citation, is that correct?

21 A That's correct.

22 Q So these were new observations that you
23 had made in 2013 that are the subject of this
24 citation today?

1 A That is correct.

2 **Q Thank you. How do you get to the Harris**
3 **property when you go to inspect it?**

4 A Generally I go down, I believe it's Knox
5 Highway 8 and park alongside the road and then walk
6 across. I haven't gone down Market Street, or one
7 or two occasions. Market Street happens to be a
8 dead end street though, and to be quite honest I get
9 confused trying to find it. I'm not from Knoxville
10 and Knox Highway, I've had some other facilities on
11 it and it's easy to find. It's a two lane road.

12 **Q Did anything you learn from Knox County**
13 **Landfill or their personnel influence how you did**
14 **your job with respect to Mr. Harris' property?**

15 A No.

16 **Q How does how you handle your job at this**
17 **property compare to how you handle your job at any**
18 **of the other sites that you inspect?**

19 A It's the exact same every time.

20 MS. RYAN: Thank you.

21 HEARING OFFICER WEBB: Any more?

22 MR. KELLY: Nothing.

23 HEARING OFFICER WEBB: Thank you.

24 Are you finished with your --

1 MR. KELLY: Yes.

2 HEARING OFFICER WEBB: Ms. Ryan,
3 would you like to make any closing statement?

4 MS. RYAN: No, I'd like to reserve it
5 for my brief.

6 HEARING OFFICER WEBB: Mr. Kelly,
7 would you like to make any closing statement?

8 MR. KELLY: No, not at this time.

9 HEARING OFFICER WEBB: The transcript
10 is due by September 9th and will be posted on the
11 Board's website. The public comment deadline is
12 September 10th. Public comment must be filed in
13 accordance with Section 101.628 of the Board's
14 procedural rules. The Agency's brief is due by
15 September 23rd and the Respondent's brief is due by
16 October 7th. At this time I'll conclude the
17 proceedings and thank everyone for their
18 participation.

19 MS. RYAN: Thank you.

20 *****HEARING ADJOURNED*****.

21

22

23

24

1 STATE OF ILLINOIS :

2 COUNTY OF PEORIA :

3

4 I, Paula A. Morsch, a certified shorthand
5 reporter in and for the County of Tazewell, State of
6 Illinois, do hereby certify that the foregoing
7 transcription is true and correct to the best of my
8 knowledge and belief;

9 That I am not related to any of the parties
10 hereto by blood or marriage, nor shall I benefit by
11 the outcome of this matter financially or otherwise.

12

13

14


Paula A. Morsch, C.S.R. 84-002965

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