STATE OF NORTH CAROLINA IN THE OFFICE OF

COUNTY OF ROBESON ADMINISTRATIVE HEARINGS

DAVID McMILLAN, McMILLAN CONTRACTING, INC., Petitioner,	
vs.	Case No. 10 EHR 4059
NC DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF AIR QUALITY, Respondent.	

Fayetteville, North Carolina
November 8, 2010
8:50 a.m.

TRANSCRIPT OF ADMINISTRATIVE HEARING
TRANSCRIBED FROM AN OPEN-MICROPHONE RECORDING

The above-entitled matter came on for hearing before The Honorable Beecher R. Gray, Administrative Law Judge Presiding, on the 8th day of November, 2010, in the Old Cumberland County Courthouse, Fayetteville, North Carolina, commencing at 8:50 a.m.

1 APPEARANCES

2

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7

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22 Reporter's Note: Quoted material is reproduced as read or

23 quoted by the speaker. Proper names are spelled

24 phonetically unless spelled into the record.

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1 E X H I B I T S

RESPONDENT'S EXHIBIT		IDENTIFIED/OFFERED/RECEIVED		
1	3/1/10 Notice of Violation/ Notice of Recommendation for Enforcement	23	94	94
2	Response by Taylor to DAQ	24	96	97
3	3/1/10 Notice of Violation/ Notice of Recommendation for Enforcement	34	123	123
4	Response by Johnson to DAQ	35	123	123
5	Parkton Fire Department Report	41	123	123
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8	Notice of Violation/Notice of Recommendation for Enforcement to McMillan	99	123	123
9	Response by McMillan to DAQ	67	123	123
10	Civil Penalty Assessment	106	123	123
11	Cost of Investigation and Enforcement Action	110	123	123
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RESPONDENT'S EXHIBIT		IDENTIFIED/OFFERED/RECEIVED		
13	3/1/06 Notice of Violation/ Notice of Recommendation for Enforcement documents	113	123	123
14	11/17/00 Notice of Violation/ Notice of Recommendation for Enforcement documents	117	123	123
15	6/1/99 Notice of Violation documents	118	123	123
16	(Not identified)		123	123
17	(Not identified)		123	123
18	(Not identified)		123	123
19	(Not identified)		123	123
20	(Not identified)		123	123
21	(Not identified)		123	123
22	Open Burning Regulations	76	123	123
23	Open Burning Insert	102	123	123
24	Color photograph		123	123

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1 Thereupon, the following proceeding was held:
2 THE COURT: Good morning. My name is
3 Beecher Gray, Administrative Law Judge in the
4 North Carolina Office of Administrative
5 Hearings. This morning the case on our
6 hearing docket is our Number 10 EHR 4059,
7 David McMillan, McMillan Contracting,
8 Incorporated, Petitioner versus the North
9 Carolina Department of Environment and
10 Natural Resources, Division of Air Quality,
11 Respondent.
12 Mr. McMillan, you represent yourself
13 this morning?
14 MR. McMILLAN: Yes, sir.
15 THE COURT: And, Ms. Bircher, would you
16 place your appearance on the record, please.
17 MS. BIRCHER: Excuse me, sir?
18 THE COURT: Would you place your
19 appearance on the record?
20 MS. BIRCHER: Yes. Amy Bircher for the
21 Department - Division of Air Quality, and I
22 have with me Scott Conklin, also representing
23 the Division of Air Quality.
24 THE COURT: All right. Thank you. By
25 way of preliminary matters this morning, are

1 the parties prepared to stipulate that notice
2 of hearing is proper in this case?
3 MR. McMILLAN: Yes, sir.
4 MS. BIRCHER: Yes, Your Honor.
5 THE COURT: All right. Any other
6 preliminary matters?
7 MS. BIRCHER: Your Honor, just a couple
8 of preliminary matters, if I may. This
9 penalty was assessed against David McMillan,
10 McMillan Contracting, and to the extent that
11 Mr. McMillan is here to represent McMillan
12 Contracting, we would object to that just
13 under the rules that he would need an
14 attorney, but everybody is here and we don't
15 want to take any more time on this case.
16 THE COURT: All right.
17 MS. BIRCHER: But we just would point
18 that out for the record. And then the other
19 thing I wanted to bring up to Your Honor---
20 THE COURT: Well, let me take up that
21 matter first. Are you doing that just to
22 preserve your record on the objection?
23 MS. BIRCHER: Yes.
24 THE COURT: Do you disagree with the
25 Allied Environmental case from the Court of

1 Appeals?
2 MS. BIRCHER: We believe - I've looked
3 at the Allied Environmental case, and we
4 believe that there is statutory language
5 that - that still prevails, that would still
6 argue that he was - that the corporation
7 needs counsel to represent themselves - to be
8 represented in the Office of Administrative
9 Hearings.
10 And I do recognize that there is some
11 debate about that, and it is not - I want to
12 put that on the record, but it is not
13 something that I'm going to push since we're
14 here and we're ready to go forward, and we're
15 going to be efficient about this.
16 THE COURT: Yeah. This keeps coming up,
17 but I've never tried to overrule a Court of
18 Appeals, and the Supreme Court refused cert
19 on that case, as you know, and I happen to
20 agree with Judge Stroud - I think she got it
21 right and I think the Court sort of missed
22 that. But until the legislature does
23 something with it, he can represent any
24 corporation he wants to.
25 MS. BIRCHER: Okay. Thank you.

1 THE COURT: I mean I think the law is
2 clear on that. I don't mind you establishing
3 your record on your objection.
4 MS. BIRCHER: Okay.
5 THE COURT: Okay. What other
6 preliminary matters do you have?
7 MS. BIRCHER: And then the other
8 preliminary matter is that the director of
9 the Division of Air Quality, Sheila Holman -
10 she called me at six a.m. this morning, and
11 she is sick, has a fever, and was absolutely
12 not able to come.
13 However, I do believe that the
14 contentions I have - we've exchanged
15 discovery with Mr. McMillan and his responses
16 to the contention interrogatory that I
17 submitted to him would indicate that we
18 really can proceed with the witnesses that we
19 have here today.
20 THE COURT: All right. Anything else?
21 MS. BIRCHER: We just wanted to make you
22 aware of that.
23 THE COURT: All right. We'll take
24 Respondent's evidence.
25 MS. BIRCHER: Respondent would first

1 call Mr. Ernest Taylor to the stand. You can
2 come up here, and they'll swear you in.
3 THE COURT: If you would slide that
4 Bible back to that corner back there - right
5 on the corner of the desk. Place your left
6 hand on the Bible and raise your right.
7 - - - - - - - -
8 ERNEST TAYLOR,
9 a witness called on behalf of the Respondent, being
10 first duly sworn in the above-entitled matter, was
11 examined and testified on his oath as follows:
12 THE COURT: All right. If you'd be
13 seated, then state and spell your name.
14 THE WITNESS: My name is Ernest Taylor,
15 E-r-n-e-s-t T-a-y-l-o-r.
16 THE COURT: All right. Thank you.
17 **DIRECT EXAMINATION**
18 **BY MS. BIRCHER:**
19 Q. Mr. Taylor, where do you live?
20 A. I stay in Lumberton. 2581 Old Rival Road in
21 Lumberton.
22 Q. Okay. And where are you employed?
23 A. Right now, I'm employed with Wilbert Vault Company
24 in Lumberton.
25 Q. Okay.

1 A. I was employed with [inaudible] just a few weeks
2 ago.
3 Q. Okay. Do you know Mr. David McMillan?
4 A. How I know him is through conversation that we've
5 had about getting a trailer off his property in -
6 back in February in Parkton. I don't remember the
7 address, but I know it's in Parkton.
8 Q. Okay. You know him in connection with the matters
9 at issue here today, is that correct?
10 A. Yes, ma'am.
11 Q. And can you identify Mr. McMillan?
12 A. He's sitting over to the left of you - over to the
13 right of you. Excuse me.
14 MS. BIRCHER: And if the record could
15 just reflect that he's identified the
16 Petitioner.
17 Q. Do you know Mr. Wayne Johnson?
18 A. Yes, ma'am, I do.
19 Q. And how do you know Mr. Johnson?
20 A. Me and Mr. Johnson was working together collecting
21 junk and stuff at this time back in February.
22 Q. And can you identify Mr. Johnson in the courtroom
23 today?
24 A. Yes, ma'am. He's sitting right there in the
25 audience over here.

1 Q. Okay. And are you familiar with the Scotch Pines
2 Trailer Park, sir?
3 A. Yes, ma'am. That's where we got the scrap from.
4 Q. Okay. And we'll try to proceed through this in an
5 orderly fashion, but I'll give you an opportunity
6 to tell everything, and if I don't, you let me
7 know, okay? So we'll go - if you'll just answer
8 the questions and see how quickly we can move
9 along.
10 Are you familiar with the property that is
11 specifically at 23 Birds Way Court?
12 A. Yes, ma'am. That's where---
13 Q. And how are you familiar with that property?
14 A. That's the property where we got the scrap metal
15 from off of a burned trailer that was previously
16 burned.
17 Q. Okay. So at that property, there was a trailer
18 sitting on that property when you first
19 encountered that property?
20 A. Yes, ma'am.
21 Q. And was that on February 17 of 2010?
22 A. Yes, ma'am.
23 Q. Okay. And did you actually see that trailer at an
24 earlier time?
25 A. Like the day before or something or other?

1 Q. Before the 17th of February, sir.
2 A. Yes, ma'am.
3 Q. Okay. And what was the condition of the trailer
4 that was on the property?
5 A. It was already partially burned.
6 Q. Was anyone living there?
7 A. No, ma'am, there was no one living there.
8 Q. Okay. And about how much of the trailer was
9 burned? Was it - would you say eighty percent
10 burned? I mean, could you give us an estimate?
11 A. I'd say probably every bit of eighty percent.
12 Q. Okay. Did you talk to Mr. McMillan before
13 February the 17th, 2010?
14 A. I think it was February the 16th.
15 Q. Okay. And how did you come to talk to him?
16 A. I contacted him over a phone to ask him could we
17 go and collect the steel off the trailer - me and
18 Mr. Johnson.
19 Q. And how did you - how did you know to contact
20 Mr. McMillan with regard to getting the steel from
21 that trailer?
22 A. Someone in the - in that trailer park give us his
23 name and number, and at that time, they give us
24 the number to the office.
25 Q. Had you asked that individual who owned the

1 property? Did you ask him who owned the property?
2 A. Yes, I did.
3 Q. Okay. So did you contact Mr. McMillan then to get
4 his permission to take the metal from the trailer?
5 A. Yes, ma'am, I did.
6 Q. Okay. And what did you say to Mr. McMillan when
7 you called him?
8 A. Told him that me and Wayne Johnson was picking up
9 scrap, and we seen the trailer on Lot 23 or
10 Address 23 or whatever. We seen that it was
11 burned, and we asked could we get the metal from
12 it.
13 Q. Okay. And what did Mr. McMillan say to you?
14 A. He said he didn't have no problem with it. He
15 said that---
16 Q. Did he give you permission?
17 A. Yes, ma'am, he did.
18 Q. Did he say anything about whether he needed that
19 trailer off the lot?
20 A. Yes, ma'am. He said he was going to have to clean
21 it up and get it off his lot because he was going
22 to sell it or something or other.
23 Q. Okay. So did he basically tell you that he wanted
24 the property cleared?
25 A. Yes, ma'am.

1 Q. Did he tell you why he wanted the property
2 cleared?
3 A. Not to a specific point, but he just said he
4 needed to have it cleared.
5 Q. Okay. Did you and Mr. Johnson then go out to
6 Birds Way - 23 Birds Way Court on February 17th,
7 2010?
8 A. Yes, ma'am, we did.
9 Q. And about what time did you go out there?
10 A. I believe we got out there about seven o'clock
11 that morning.
12 Q. Okay. Did you see Mr. McMillan on the property
13 that day?
14 A. Yes, ma'am. He come out there that day.
15 Q. Did you introduce yourself to Mr. McMillan?
16 A. Yes, ma'am, we did.
17 Q. Okay. Did you thank him for allowing you to scrap
18 the metal from this trailer?
19 A. Yes, ma'am, we did.
20 Q. At any time, did Mr. McMillan ever tell you that
21 you would need to get permission from anyone else
22 to scrap out the metal from that trailer?
23 A. No, ma'am, he did not.
24 Q. Was anyone else on the property when you were
25 there?

1 A. Nobody but me and Wayne and Mr. David McMillan.
2 Q. Were there any other people working nearby?
3 A. His - he had some people come out there from his
4 construction company or his company he owns.
5 Q. Did they actually come to 23 Birds Way Court, or
6 did they just come to the trailer park?
7 A. At first, they just come to the trailer park.
8 Q. Okay. Did they have any equipment when they were
9 working at the trailer park?
10 A. Yes, ma'am. A backhoe.
11 Q. Okay. Was it cold when you and Mr. Johnson
12 started working that morning on February 17, 2010?
13 A. Yes, ma'am, it was cold.
14 Q. And did you and Mr. Johnson light a fire to warm
15 by?
16 A. Yes, ma'am, for personal warmth, we had it in a
17 little thirty-gallon barrel.
18 Q. Okay. Did Mr. McMillan see the fire that you and
19 Mr. Johnson had lit to warm by?
20 A. Yes, ma'am, he did.
21 Q. Okay. I had placed in front of you a notebook
22 that says "Respondent's Exhibits."
23 A. Yes, ma'am.
24 Q. And if you open that up, you'll see some tabbed
25 numbers.

1 A. Yes, ma'am.
2 Q. And for some of these questions that follow, I may
3 refer you to some exhibits in the tabs. So I may
4 come to a few of those where I'll need to use
5 those.
6 Did you have a conversation at the time when
7 Mr. McMillan came by and saw you and Mr. Johnson
8 and the fire? Did Mr. McMillan talk to you at
9 that time?
10 A. You're saying "fire." What, you know, like, the
11 barrel?
12 Q. Well, I just - before I interrupted you about this
13 notebook, I had asked you if Mr. McMillan saw the
14 fire that you and Mr. Johnson---
15 A. Yes, ma'am.
16 Q. Okay. And at what time did he see that fire?
17 A. What time did Mr. David McMillan see that---
18 Q. Yes.
19 A. It was that morning. To be exact what time, I
20 cannot tell you. It was that morning.
21 Q. And what did Mr. McMillan say to you when he saw
22 that fire?
23 A. He said, "That's a good way to get rid of the
24 trailer. Set it afire."
25 Q. Okay. And then did Mr. McMillan leave the

1 property at that time?
2 A. Yes, ma'am.
3 Q. Okay. Did you and Mr. Johnson then set one end of
4 that trailer on fire?
5 A. Yes, ma'am, we did.
6 Q. Okay. Did Mr. McMillan return to the lot after
7 you'd set one end of the trailer on fire?
8 A. Yes, ma'am.
9 Q. And did you have a conversation with him this -
10 when he returned after you'd set that one end of
11 the trailer on fire?
12 A. I do not recall.
13 Q. Do you recall Mr. McMillan saying anything to you
14 regarding a backhoe coming to turn over the
15 trailer frame?
16 A. He said - let me see. He said in order for his
17 backhoe to be able to turn over the frame so we
18 could get the - we'd have to get the bottom off,
19 and that's the reason that the trailer was set
20 afire then.
21 Q. Okay.
22 A. And - but, yes, ma'am, he did say that his backhoe
23 would come and turn the trailer over.
24 Q. And then at what point during the day did he say
25 that to you? Was the trailer on fire at that

1 time?
2 A. Yes, ma'am. The trailer had been on fire for a
3 while.
4 Q. Okay. And then did you set the other end of the
5 trailer on fire?
6 A. No. Both ends was on fire at this - whenever he
7 said his backhoe was coming to turn over the
8 trailer.
9 Q. Okay. Now at some point, did the wind pick up and
10 spread that fire to the brush?
11 A. Yes, ma'am, it did.
12 Q. Okay. Did you call the fire department?
13 A. Yes, ma'am, I did.
14 Q. Did you speak to any of the firefighters?
15 A. After they had it out, yes, ma'am, we did.
16 Q. What happened after the fire was extinguished by
17 the firemen; did the backhoe arrive?
18 A. Yes, ma'am.
19 Q. What did the backhoe driver do?
20 A. Well, actually, let me back up, if you don't mind,
21 for a second.
22 Q. That's fine.
23 A. Before the fire was out, they had left and went to
24 lunch, and the backhoe driver was in the trailer
25 park taking his lunch and he seen us down there.

1 We were - me and Mr. Johnson was trying to get it
2 out, and he - the backhoe driver seen us down
3 there and he went down there and tried to help us,
4 and then whenever the fire department got there,
5 he - before the fire department got there, he
6 heard the sirens coming. He takes and leaves with
7 the - backs the tractor out and switches the
8 tractor off. He didn't try to help us no more.
9 Q. Okay. But did that backhoe driver - after the
10 fire was extinguished, did that backhoe driver
11 return to the lot and dig a hole?
12 A. Yes, ma'am, he did.
13 Q. And did he dig a hole in the adjacent lot?
14 A. Yes, ma'am.
15 Q. Okay. Was Mr. McMillan present when that backhoe
16 showed up after the fire had been extinguished?
17 A. Yes, ma'am.
18 Q. Okay. And can you describe to me what that
19 backhoe did after the fire was extinguished?
20 A. After the fire was put out, after the fire
21 department and everybody had left, he dug a real
22 huge hole and buried everything on the property.
23 Q. Okay.
24 A. All except the metal and steel.
25 Q. Okay. And can you give me an approximate size

1 description of the hole that was dug on the
2 23 Birds Way Court lot?
3 A. I believe the boom was probably about twenty-eight
4 foot long, and he had reached down just as far as
5 he could go with it.
6 Q. Okay.
7 A. And it was pretty wide.
8 Q. All right. And did the backhoe driver dig another
9 hole on an adjacent lot?
10 A. Yes, ma'am. For some trash that was over on that
11 lot - he buried some trash over there, too.
12 Q. Okay. Was it trash from the burning trailer?
13 A. Yes, ma'am. Some of it, yes, ma'am.
14 Q. Okay. So during the time when Mr. McMillan was
15 present on the lot, what was the backhoe driver
16 doing?
17 A. While Mr. McMillan was on the lot---
18 Q. Uh-huh.
19 A. ---after the fire and everything?
20 Q. Uh-huh.
21 A. The backhoe driver was digging a hole.
22 Q. Okay.
23 A. He was telling them what to do.
24 Q. Okay. Did you observe Mr. McMillan speaking to
25 the backhoe driver?

1 A. Yes, ma'am.
2 Q. Were you present on the property the next day on
3 February 18th, 2010?
4 A. Yes, ma'am, I was.
5 Q. Do you recall speaking to a Ms. Debra McHargue
6 from the Division of Air Quality's Fayetteville
7 Regional Office?
8 A. Yes, ma'am, I do.
9 Q. Okay. Did you receive a notice of violation of
10 the open burning regulations from the Division of
11 Air Quality?
12 A. Yes, ma'am, I did.
13 Q. If you can take a look at Respondent's Exhibit 1,
14 which is just behind Tab 1 in that notebook. Do
15 you recognize that document?
16 (RESPONDENT'S EXHIBIT NO. 1
17 (MARKED FOR IDENTIFICATION
18 A. Yes, ma'am.
19 Q. Okay. Is that the notice of violation/notice of
20 recommendation for enforcement that you received
21 through the Division of Air Quality?
22 A. Yes, ma'am.
23 Q. And that's dated March 1, 2010?
24 A. Yes, ma'am.
25 Q. Okay. Did you prepare a written response to that

1 notice of violation?
2 A. Yes, ma'am, I did.
3 Q. Okay. If you can turn to Tab 2. Can you identify
4 that document for me?
5 (RESPONDENT'S EXHIBIT NO. 2
6 (MARKED FOR IDENTIFICATION
7 A. This is the one I handwritten to the Air Quality.
8 Q. Okay. And is this a true and accurate copy of
9 your handwritten response to the notice of
10 violation that you sent into the Division of Air
11 Quality?
12 A. Yes, ma'am.
13 Q. Can you take a moment and just review that
14 response for me? Does this response indeed
15 indicate that you state that you were told on
16 February 17, 2010, by David McMillan at 23 Birds
17 Way---
18 MR. McMILLAN: Object, Your Honor.
19 THE COURT: Just a minute.
20 Q. ---Court---
21 MR. McMILLAN: That's just hearsay. I
22 object to that.
23 THE COURT: All right. Restate your
24 question.
25 MS. BIRCHER: Your Honor, he's referring

1 to something that Mr. McMillan said to him,
2 and Mr. McMillan is here to testify and it's
3 an admission. So I don't think it's hearsay.
4 THE COURT: All right. State your
5 question.
6 Q. Okay. Does this letter that you wrote indeed say
7 that you were told by Mr. McMillan to remove the
8 metal and steel of the mobile home---that had
9 already been partially burned?
10 A. Yes, ma'am.
11 THE COURT: If there's an objection,
12 don't answer it until I tell you to.
13 THE WITNESS: Oh, I'm sorry.
14 THE COURT: I'm going to overrule the
15 objection. You'll ask him about that on
16 cross-exam---
17 MR. McMILLAN: Okay. Thank you.
18 THE COURT: ---and you'll be able to
19 testify about it.
20 Q. So does it indeed state that?
21 A. Yes, ma'am.
22 Q. Okay. And does this letter indeed state that
23 Mr. and Ms. McMillan told you that, quote, "He
24 wanted the metal and steel removed and burning it
25 would be a good way to get the metal and steel

1 from the property"?
2 A. Yes, ma'am.
3 Q. Okay. Were you assessed any civil penalty for
4 this fire?
5 A. Yes, ma'am, I do.
6 Q. And are you paying the penalty that you were
7 assessed?
8 A. Yes, ma'am, I am.
9 Q. Would you have burned that trailer - I understand
10 that you lit a fire to warm by, but would you have
11 burned the actual trailer if Mr. McMillan had not
12 suggested to you that burning it would be a good
13 way to get rid of it?
14 A. No, ma'am, I would not.
15 MS. BIRCHER: I have no further
16 questions at this time.
17 THE COURT: All right. Mr. McMillan, do
18 you have any questions for this witness?
19 MR. McMILLAN: Yes, sir.
20 THE COURT: All right.
21 **CROSS-EXAMINATION**
22 **BY MR. McMILLAN:**
23 Q. Mr. Taylor, had you - had we ever met before this
24 incident or - at my office or anywhere?
25 A. No, sir, not at your office. No, sir, we have

1 not.
2 Q. So you're saying that you called me on the
3 telephone. Is that the only way you've talked to
4 me?
5 A. Yes, sir, it is.
6 Q. And how did you get my phone number?
7 A. I called - out there in the subdivision - I called
8 the subdivision trailer park. I talked with a
9 lady out there. I cannot remember her name, but
10 she give me the office number, and the office give
11 me your cell phone number.
12 Q. Before this date, did you learn that - did anybody
13 in my office or myself give you permission to
14 burn?
15 A. You told us the day that we were out there burning
16 in a - thirty-gallon barrel for our personal
17 warmth - you said take and set the trailer on
18 fire.
19 Q. Have you - have I ever hired you to clean up a lot
20 for me or steel debris or anything?
21 A. No, sir, you have not hired us. You told us that
22 we could have the steel and stuff off the trailer.
23 Q. Do you know who is the owner of that property -
24 that lot?
25 A. I was told it was David McMillan - you.

1 Q. Who told you?
2 A. You told me yourself. You told us that you had to
3 clean the trailer up to get it---
4 MR. McMILLAN: Could I approach?
5 THE COURT: All right. Show Ms. Bircher
6 what you've got in your hand.
7 MR. McMILLAN: I have a land contract
8 here with the owner of the lot, and could I
9 show this to Mr. Taylor?
10 MS. BIRCHER: Yes. Actually, I think
11 I've got a copy of this in the book up there.
12 MR. McMILLAN: Okay.
13 THE COURT: All right.
14 Q. Mr. Taylor, why would I tell you that I own the
15 lot when, in fact, somebody else owned it and I've
16 got a land contract stating that somebody else
17 owned it?
18 MS. BIRCHER: I object, Your Honor.
19 Mr. Taylor can't know why Mr. McMillan would
20 say anything.
21 THE COURT: Mr. McMillan, why don't you
22 ask him what the document is. Let him
23 identify it and see what he says.
24 Q. What is that document that you have there,
25 Mr. Taylor, in front of you?

1 A. It's a contract between David McMillan and Wanda
2 L. McLean.
3 Q. And is that Lot 28, the lot that we are talking
4 about where the trailer was burned?
5 MS. BIRCHER: Your Honor, I object.
6 Mr. Taylor does not have - there is no basis
7 for Mr. Taylor to be talking about a contract
8 he's never seen before.
9 A. I've never seen this here.
10 THE COURT: What's your question,
11 Mr. McMillan?
12 Q. Could you read me the lot number on that land
13 contract, Mr. Taylor?
14 A. It says Lot 28.
15 Q. And that's the lot that we are here today about,
16 is that correct? Birds Way - Lot 28, Birds Way?
17 A. It's Lot 23, Birds Way. That's what I have here
18 in my statement.
19 Q. Could you read off the contract the lot number?
20 A. Lot 28.
21 Q. Okay.
22 A. Scotch Pine.
23 Q. The physical address is Lot 23, but---
24 MS. BIRCHER: Your Honor, we're
25 perfectly willing to address this document

1 with Mr. McMillan, but I'd just object, for
2 the sake of efficiency, that Mr. Taylor is
3 probably not likely to be able to interpret
4 this document or do much more than read it.
5 THE WITNESS: Right.
6 MS. BIRCHER: I recognize that the lots
7 might refer to different addresses, et
8 cetera. So, you know, I just---
9 THE COURT: All right. Are you prepared
10 to stipulate that the physical street address
11 23 Birds Way, is the same as lot 28?
12 MS. BIRCHER: Yes, Your Honor.
13 THE COURT: All right. Mr. McMillan,
14 you don't need to pursue that any further.
15 She has stipulated to it.
16 MR. McMILLAN: Sir?
17 THE COURT: Ms. Bircher has stipulated
18 to the fact that Lot 28 in Scotch Pines is
19 the same as 23 Birds Way - the physical
20 address.
21 MR. McMILLAN: Yes, sir.
22 THE COURT: All right. So what's your
23 next question to the witness?
24 Q. So on that day, Mr. Taylor, you initially had a
25 fire to warm by, is that true?

1 A. Yes, sir.
2 Q. And at that time, how were you cutting up the
3 steel?
4 A. With a - how were we cutting it up? With a
5 Sawzall.
6 Q. Did you ask a guy that lives in that neighborhood
7 that works with me to help you or ask him for a
8 torch on that day?
9 A. No, sir, we did not.
10 Q. Did you ask him to try to break the metal up with
11 a backhoe that day?
12 A. Yes, sir, I believe we did - I did ask him to turn
13 it over and break it up with the backhoe or try to
14 break it up with the backhoe.
15 Q. And, also, it is true that you started the mobile
16 home on fire?
17 A. After you telling us to set it on fire, that'd be
18 the easiest way to get it.
19 MR. McMILLAN: No further questions.
20 THE COURT: Redirect?
21 **REDIRECT EXAMINATION**
22 **BY MS. BIRCHER:**
23 Q. Mr. Taylor, you responded to Mr. McMillan with
24 regard to knowing him or having talked to him by
25 saying that you just talked to him on the phone,

1 but am I correct, as you testified earlier, that
2 you also talked to him in person---
3 A. At the lot.
4 Q. ---and you did introduce yourself to him?
5 A. Yes, ma'am.
6 Q. Okay.
7 MS. BIRCHER: Your Honor, I have no
8 further questions at this time, but I would
9 ask that the witness remain in the courtroom,
10 and I'll try to move on as quickly as I can.
11 THE COURT: All right. You may step
12 down. Thank you.
13 MS. BIRCHER: The State calls Mr. Wayne
14 Johnson.
15 THE COURT: Do you want to leave that
16 document up there? Do you want to show it to
17 the next witness?
18 MR. McMILLAN: Yes, sir.
19 THE COURT: All right. Place your left
20 hand on the Bible and raise your right.
21 - - - - - - - -
22 WAYNE JOHNSON,
23 a witness called on behalf of the Respondent, being
24 first duly sworn in the above-entitled matter, was
25 examined and testified on his oath as follows:

1 THE COURT: All right. After you're
2 seated, please state and spell your name.
3 THE WITNESS: Wayne Johnson, W-a-y-n-e
4 J-o-h-n-s-o-n.
5 THE COURT: Thank you.
6 **DIRECT EXAMINATION**
7 **BY MS. BIRCHER:**
8 Q. Mr. Johnson, you've heard the testimony of
9 Mr. Taylor, correct?
10 A. Yes, ma'am.
11 Q. You've been in the courtroom and haven't left the
12 courtroom the entire time he testified, did you?
13 A. No, ma'am.
14 Q. Did he say anything regarding the day of
15 February 17, 2010, that you do not agree is true?
16 A. No, ma'am.
17 Q. Okay. So you indeed - were you then at 23 Birds
18 Way Court on February 17, 2010, with Mr. Taylor?
19 A. Yes, ma'am.
20 Q. Okay. And did you indeed also participate in
21 setting that trailer on fire?
22 A. Yes, ma'am.
23 Q. Do you recall a conversation with Mr. McMillan
24 where he indeed said, as Mr. Taylor said, that
25 burning the trailer would be a good way to get rid

1 of it?
2 A. I did not hear him say that. I heard somebody say
3 that Mr. McMillan said that's the best way to get
4 rid of it, to burn it. I did not actually hear
5 him say it myself, no, ma'am.
6 Q. Okay. Did you - Mr. Johnson, did you speak to any
7 firefighters when they came out to extinguish the
8 fire?
9 A. Yes, ma'am.
10 Q. Okay. Did you talk to a Ms. McHargue, from the
11 Division of Air Quality Fayetteville Regional
12 Office, the very next day on February 18th?
13 A. Yes, ma'am.
14 Q. Did you - like Mr. Taylor, did you receive a
15 notice of violation/notice of recommendation for
16 enforcement for having set that trailer on fire?
17 A. Yes, ma'am.
18 Q. If you'll turn to Tab 3 in that notebook of
19 exhibits. Can you identify that document for me?
20 It's under Tab 3. It should be dated March 1st.
21 Right behind Tab 3, it begins. So if you turn
22 back. There you go. It begins right there.
23 (RESPONDENT'S EXHIBIT NO. 3
24 (MARKED FOR IDENTIFICATION
25 A. Yes, ma'am.

1 Q. Can you identify that document?
2 A. Yes, ma'am.
3 Q. Is that the notice of violation/notice of
4 recommendation for enforcement that you received?
5 A. Yes, ma'am.
6 Q. Okay. And did you prepare a written response to
7 that document?
8 A. Yes, ma'am.
9 Q. If you'll turn to Tab 4, the very next exhibit.
10 You have to look behind the numbered tabs, sir.
11 (RESPONDENT'S EXHIBIT NO. 4
12 (MARKED FOR IDENTIFICATION
13 A. Yeah. I'm there.
14 Q. Have you got that?
15 A. Yes, ma'am.
16 Q. Okay. Is that your signature on the bottom of
17 that page?
18 A. Yes, ma'am.
19 Q. Is this a letter response that you sent to the
20 Division of Air Quality?
21 A. Yes, ma'am.
22 Q. Okay. And can you just take a quick look at the
23 very first paragraph of that?
24 A. Yes, ma'am.
25 Q. Okay. In this statement here, it says - does it

1 indeed say that you were told by Mr. McMillan to
2 remove the metal and steel from a partially burned
3 mobile home at 23 Birds Way Court?
4 A. Yes, ma'am.
5 Q. And does it say in this letter that Mr. McMillan
6 stated he wanted the metal and steel of the mobile
7 home removed and that burning it would be a good
8 way to get to the metal?
9 A. Yes, ma'am.
10 Q. Okay. Does it also say here that after everything
11 was over, Mr. McMillan buried the remains except
12 the metal and steel?
13 A. Yes, ma'am.
14 Q. Okay. Is there anything else that you recall
15 about this case that Mr. Taylor has not mentioned
16 that you would like to bring up?
17 A. No, ma'am. I would like to say, though, I didn't
18 actually see them bury it, but like I said, when I
19 come back, the backhoe and some fresh dirt was
20 there where he had went through the yard. We come
21 back and seen where some dirt - fresh dirt had
22 been and a hole had been dug.
23 MS. BIRCHER: Okay. I have no further
24 questions for Mr. Johnson at this time.
25 THE COURT: All right. Mr. McMillan, do

1 you have any questions for the witness?
2 MR. McMILLAN: Yes, sir.
3 **CROSS-EXAMINATION**
4 **BY MR. McMILLAN:**
5 Q. Mr. Johnson, have I ever hired you to clean up the
6 lot or anything at any time?
7 A. No, sir.
8 Q. Have you ever talked to me before this day or seen
9 me before this day?
10 A. No, sir. Mostly, Mr. Taylor was talking to you on
11 the phone and stuff like that, and I was there
12 with him. And, like I said, we met you a couple
13 of times at the job.
14 Q. So every time you've been with Mr. Taylor down in
15 the parking area or talking on the phone, you've
16 been with him before?
17 A. Yes, sir.
18 Q. Have you ever heard him talk to me on the phone?
19 A. Yes, sir.
20 Q. Have you ever - you've never seen me before?
21 A. No, sir, not till that day you come out there.
22 Q. Did you know who was the property owner at that
23 time of that property?
24 A. No, sir.
25 Q. How would I give you the permission to go on

1 someone else's property, knowing that it belonged
2 to another person?
3 MS. BIRCHER: Objection, Your Honor.
4 Calls for speculation.
5 THE COURT: Sustained.
6 Q. Could you read the name of that land contract and
7 the owner of that property?
8 MS. BIRCHER: Objection, Your Honor, for
9 the same reasons stated.
10 THE COURT: He can read the document.
11 Overruled.
12 Q. Would you just read the name to us, Mr. Johnson?
13 A. Wanda L. McLean.
14 Q. Could you tell us which lot that is?
15 A. It says 72 Willow Street. That's in Saint Pauls.
16 Q. That's her previous address. The address below
17 that. The lot - there's a lot number.
18 A. Lot 28.
19 Q. Do you see David McMillan or McMillan
20 Contracting's name anywhere on that lot?
21 A. No, sir.
22 Q. I heard testimony, Mr. Johnson, that you or
23 Mr. Taylor - somebody in your party - set fire to
24 the trailer which eventually got out into other
25 lots, is that true?

1 A. Yes.
2 Q. And you have been submitted by DENR with the
3 violation?
4 A. Yes.
5 Q. And a fine---
6 A. Yes.
7 Q. ---for doing that?
8 MR. McMILLAN: No further questions,
9 Your Honor.
10 THE COURT: Redirect?
11 **REDIRECT EXAMINATION**
12 **BY MS. BIRCHER:**
13 Q. Mr. Johnson, are you paying the penalty that you
14 were assessed for starting this fire?
15 A. Yes, ma'am.
16 MS. BIRCHER: Okay. No further
17 questions at this time, and I'd just ask that
18 he remain for a few minutes anyway just in
19 case.
20 THE COURT: All right. You may step
21 down. Thank you.
22 MS. BIRCHER: Respondent calls Cindy
23 Grimes. Oh, I'm sorry, Your Honor.
24 Ms. Grimes, I'd like to call Mr. Jacob
25 first - Mitchell Jacobs.

1 MITCHELL JACOBS,
2 a witness called on behalf of the Respondent, being
3 first duly sworn in the above-entitled matter, was
4 examined and testified on his oath as follows:
5 THE COURT: All right. If you'd be
6 seated and then state and spell your name.
7 THE WITNESS: My name is Mitchell
8 Jacobs, M-i-t-c-h-e-l-l J-a-c-o-b-s.
9 THE COURT: All right. Thank you.
10 **DIRECT EXAMINATION**
11 **BY MS. BIRCHER:**
12 Q. Mr. Jacobs, are you the - can you tell the Court
13 what your job is in Parkton?
14 A. I'm the chief of the Parkton Volunteer Fire
15 Department.
16 Q. Okay. And were you at the scene of the fire at 23
17 Birds Way Court in Parkton on February 17th, 2010?
18 A. Yes, ma'am, I was.
19 Q. And were you there assisting in extinguishing that
20 fire?
21 A. Yes, ma'am.
22 Q. And can you tell us just - did your fire
23 department, first of all, take any photographs of
24 the fire?
25 A. No, ma'am, we didn't.

1 Q. Did you call that fire in as an illegal burn or
2 someone from the fire department call the fire in
3 as an illegal burn to the Division of Air Quality?
4 A. Yes. I had my assistant chief, Chris Nowak, call
5 it in.
6 Q. And is Mr. Nowak serving our country right now?
7 A. Yes, ma'am, he is.
8 Q. Okay. And if you'll look at that black notebook
9 that's under that contract there, if you'll take a
10 look behind Tab 5. Do you recognize this
11 document?
12 (RESPONDENT'S EXHIBIT NO. 5
13 (MARKED FOR IDENTIFICATION
14 A. Yes, ma'am.
15 Q. Can you identify it for the Court, please.
16 A. This is a document where we fill out for our alarm
17 calls for - for this call. We send it to Raleigh.
18 We put it in the system and send it to Raleigh.
19 Q. And if you can, just look at all the pages that
20 are attached to this document. I think there are
21 five pages. And I just want to ask you, did all
22 those five pages - did they come from the Parkton
23 Fire Department?
24 A. Yes, ma'am.
25 Q. And is this a report that you generate in the

1 regular course of your business and maintain in
2 your records in the regular course of your
3 business at the fire department?
4 A. Yes, ma'am.
5 Q. And is it a true and accurate copy?
6 A. Yes, ma'am.
7 Q. Okay. And is this a report of the fire that
8 occurred on February 17th, 2010, at 23 Scotch -
9 23 Parkton - Birds Way Court - I'm sorry - in
10 Parkton?
11 A. Yes, ma'am.
12 Q. Okay. Now the address there is a little bit
13 different, but we are referring to the same
14 trailer park, is that correct, Your Honor -
15 Mr. Jacobs?
16 A. Yes, ma'am.
17 Q. Okay. If you'd turn to the second page. It says
18 page 3 on the top of it, but it's actually the
19 second physical page. And in the block there
20 that's got a capital L on it, it says - does it
21 indeed say there that you extinguished the remains
22 of a single-wide mobile home that contractors were
23 attempting to dispose of by burning it down and
24 that you contacted Regional Air Quality to report
25 the illegal burn, is that---

1 A. Yes, ma'am.
2 Q. Okay. Did you actually speak to either
3 Mr. Johnson or Mr. Taylor on the day of the fire?
4 A. I believe I did speak with Mr. Johnson. I don't
5 think I seen Mr. Taylor out there.
6 Q. Okay. And did you advise Mr. Johnson that that
7 was an illegal burn?
8 A. At that time, I told him it was.
9 Q. Okay. And did you - did you know this to be
10 property that was owned by Mr. McMillan?
11 A. At that time, I didn't know who owned it.
12 Q. Did you know who owned the trailer park there?
13 A. No, ma'am.
14 Q. Okay. Are you familiar with the actual trailer
15 that burned down that day?
16 A. Yes, ma'am, I am.
17 Q. Had you been on the scene of the fire of that
18 trailer that had occurred in January of 2010?
19 A. Yes, ma'am.
20 Q. And was anybody living in that trailer in January
21 of 2010 when it burned?
22 A. I recall a firefighters that stays over on Scotch
23 Pine said there was two ladies that lived in that
24 home at that time.
25 Q. And after that fire in January of 2010, could

1 anybody have lived in that home?
2 A. No, ma'am.
3 Q. Was anybody hurt in that fire in January?
4 A. No, ma'am.
5 Q. Okay. And in February of 2010, was anybody living
6 in that trailer?
7 A. No, ma'am.
8 Q. Okay. Well, there is one more thing that I'd like
9 to have you do. And if you'd look at the very
10 back of that notebook, there should be in a vellum
11 sheet some photographs, and I understand you did
12 not take these photographs. I wanted to just ask
13 you if you recognize this site where these
14 photographs were taken.
15 A. Yes, ma'am.
16 Q. Was this indeed the site where the fire occurred
17 both in January and then the one in February of
18 2010?
19 A. Yes, ma'am.
20 MS. BIRCHER: Okay. I believe that
21 those are all the questions I have for this
22 witness at this time.
23 THE COURT: All right. Mr. McMillan?
24 - - - - - - - -
25

1 CROSS-EXAMINATION

2 BY MR. McMILLAN:

3 Q. Mr. Jacobs, you stated that when you originally
4 put the fire out that two black ladies owned the
5 trailer and were in the trailer when it burned the
6 first time?

7 A. No. They was - the guy - the [inaudible] guy that
8 lives there in Scotch Pines told me there was two
9 ladies that lived at that residence, but at that
10 time, they was not home.

11 Q. Okay. During a fire like this, do you investigate
12 to see who owns the property or who started the
13 fire?

14 A. No, sir, I do not. At that time we arrived on the
15 scene, I had a working grass fire. I put it out.
16 Then approached - one guy approached me. I asked
17 him did he set it afire. At the time, they said
18 no, and what's - Wayne - he approached me and said
19 he did set it afire.

20 Q. So, in other words, you're telling me you did this
21 in an investigation?

22 A. I did a little, yeah.

23 Q. Did you investigate to see who owned the lot---

24 A. No, I did not.

25 Q. ---after you found out who set the fire?

1 A. No, I did not.
2 Q. Did you call Air Quality and tell them that I
3 owned the lot?
4 A. No, I did not.
5 Q. How was my name ever brought about, then?
6 A. Your name was not---
7 MS. BIRCHER: Your Honor, this calls for
8 speculation.
9 THE COURT: You may ask him if he knows.
10 If he says no, then---
11 Q. How did my name get to the Division of Air Quality
12 and Control if someone from Parkton Fire
13 Department didn't call it in?
14 MS. BIRCHER: Objection, Your Honor.
15 Again, calls for speculation.
16 THE COURT: Mr. Jacobs, if you know, you
17 can tell him. If you don't, just tell him
18 you don't know.
19 A. I don't know.
20 Q. Didn't you say earlier - didn't you make a
21 statement to Ms. Bircher that you called - that
22 Mr. Chris Nowak called the Division of Air Quality
23 and Control?
24 A. Yes.
25 Q. Now you're telling me you didn't call them; is

1 that what you're saying?
2 A. I told him to call Air Control. As far as who
3 owned the property or who owns the land, I did not
4 know - I didn't know - I didn't know you had it -
5 you owned it.
6 Q. So, in other words, Mr. Nowak---
7 A. Nowak.
8 Q. ---he made false statements to Air Quality
9 people---
10 MS. BIRCHER: Objection, Your Honor.
11 Q. ---about who owned the property?
12 THE COURT: Sustained. We don't know
13 what he told them.
14 A. I don't know what he told them.
15 Q. All right. At the time you arrived on the scene,
16 Mr. Johnson did admit to burning the trailer?
17 A. Yes.
18 MR. McMILLAN: No further questions.
19 THE COURT: Any redirect?
20 MS. BIRCHER: No, Your Honor.
21 THE COURT: All right. You may step
22 down. Thank you.
23 MS. BIRCHER: And I do - if I might have
24 a moment to confer with Mr. Jacobs to see if
25 I can allow him to leave.

1 THE COURT: All right.
2 (Thereupon, there was a pause in the
3 proceeding.)
4 MS. BIRCHER: I think we can excuse the
5 fire chief, Your Honor.
6 THE COURT: Mr. McMillan, are you going
7 to have any further need for the fire chief?
8 MR. McMILLAN: No, sir.
9 THE COURT: All right. Chief Jacobs,
10 you're free to go. Thank you.
11 THE WITNESS: Thank you.
12 THE COURT: All right. We'll take your
13 next witness.
14 MS. BIRCHER: Your Honor, Respondent
15 calls Ms. Cindy Grimes.
16 - - - - - - - -
17 CINDY GRIMES,
18 a witness called on behalf of the Respondent, being
19 first duly sworn in the above-entitled matter, was
20 examined and testified on her oath as follows:
21 THE COURT: All right. We'll get you
22 seated there and then state and spell your
23 name, please.
24 THE WITNESS: Cindy, C-i-n-d-y, Grimes,
25 G-r-i-m-e-s.

1 THE COURT: All right. Thank you.

2 **DIRECT EXAMINATION**

3 **BY MS. BIRCHER:**

4 Q. Ms. Grimes, where are you employed?

5 A. I'm employed with the North Carolina Department of
6 Environment and Natural Resources, Division of Air
7 Quality.

8 Q. And are you in the Fayetteville Regional Office?

9 A. I am.

10 Q. And how long have you been employed by the
11 Division of Air Quality?

12 A. For three years.

13 Q. And what did you do prior to working at the
14 Division of Air Quality?

15 A. For about fifteen and a half years, I worked for
16 the North Carolina Department of Agriculture as a
17 gasoline and oil regulatory inspector - a field
18 inspector. And I have - I also worked nine years
19 for the US Department of Agriculture as a import
20 and export regulatory inspector.

21 Q. Okay. Did your previous job involve investigating
22 compliance in violations of regulations?

23 A. Yes.

24 Q. Okay. And what is your position at the Division
25 of Air Quality?

1 A. I'm an environmental specialist.
2 Q. And is it your job to investigate potential
3 violations of air quality laws and regulations?
4 A. Yes, it is.
5 Q. Including open burning violations?
6 A. Yes.
7 Q. Approximately how many open burning violations
8 have you investigated each year that you've been
9 at the Division of Air Quality?
10 A. Probably about twenty each year. There's a little
11 bit over sixty that I've investigated total in the
12 three years I've been here.
13 Q. Were you the lead investigator in this case,
14 Ms. Grimes?
15 A. Yes.
16 Q. If you'd look at the exhibit notebook there in
17 front of you. If you can turn to the exhibit
18 behind Tab 6, and just take a quick look through
19 that entire exhibit so that you will have looked
20 at each page.
21 (RESPONDENT'S EXHIBIT NO. 6
22 (MARKED FOR IDENTIFICATION
23 A. Yes.
24 Q. Can you identify this exhibit for us?
25 A. Yes. This is the complaint investigative report

1 that I wrote for this particular open burning
2 investigation.
3 Q. Okay. And does this document set forth factual
4 findings resulting from the investigation of this
5 case?
6 A. It does.
7 Q. And is it a document that is produced and
8 maintained at your office in the regular course of
9 your business?
10 A. Yes.
11 Q. And is it a true and correct copy?
12 A. It is.
13 Q. How did you find out about the fire at 23 Birds
14 Way Court that occurred on February 17, 2010?
15 A. The assistant chief, Chris Nowak, phoned me on
16 that day, and he told me that there was a - he had
17 just - he was on the site of - at 23 Birds Way
18 Court, the site of a fire - a grass fire that they
19 had just extinguished.
20 Q. If you'll take a look at the bottom of page 1
21 through page 2, and there are page numbers on
22 there now that I've placed on there for our
23 reference.
24 A. Uh-huh.
25 Q. So if you'll just look from page 1 to page 2,

1 there's a paragraph that starts, "On February 17,
2 I talked to Assistant Chief Nowak who told me the
3 following." Does that reflect your conversation
4 with Mr. Nowak?
5 A. It does.
6 Q. Okay. And after you heard about this fire, what
7 did you do next?
8 A. You mean the initial call or this second call
9 after---
10 Q. Yeah. After you heard of - after Mr. Nowak told
11 you about the fire, what steps did you then take?
12 A. Well, I started writing the investigation, the
13 initial complaint, and putting the conversation I
14 had down from - that I spoke to Chief - Assistant
15 Chief Nowak. And then it was very late in the
16 day, and so the next morning--- Do you want me
17 to---
18 Q. Yes. What happened the next morning?
19 A. The next morning, another inspector Debra McHargue
20 went to the site to take pictures to see if she
21 could learn anything more.
22 Q. Okay. And on page 2 under - it says, "On
23 February 18th, Debra McHargue arrived at 23 Birds
24 Way Court." Does that paragraph there reflect the
25 observations of Ms. McHargue on February 18, 2010?

1 A. Yes.
2 Q. Okay. And did you write that paragraph?
3 A. No. Ms. McHargue did.
4 Q. Okay. If you look at the - at the very last page
5 of this complaint investigation report, Exhibit 6,
6 can you identify that for me, please.
7 A. Can you?
8 Q. The last page - page 7 of this report.
9 A. Those were the pictures that Ms. McHargue took
10 when she went out on the 18th - on the morning of
11 the 18th.
12 Q. Have you ever - have you ever gone out onto this
13 site at 23 Birds Way Court yourself?
14 A. I have.
15 Q. Okay. And is this an accurate reflection of the
16 site?
17 A. Yes.
18 Q. Okay. If you'll turn to the back of the book
19 there, there are some color photographs that are
20 in the vellum sheet.
21 A. Yes.
22 Q. Is that just a color copy of what is included with
23 your report?
24 A. Yes, it is.
25 Q. And is that an actual part of your complaint

1 investigation report?
2 A. Yes.
3 Q. Okay. Also maintained in the regular course of
4 your business at the Division of Air Quality?
5 A. Yes.
6 Q. Did you talk to Ernest Taylor about this case?
7 A. Yes, I did.
8 Q. Okay. And how did you come to talk to Mr. Taylor
9 about the case?
10 A. When Ms. McHargue came back on the 18th of
11 February, from her investigation at the site and
12 taking pictures, she told me that she had met
13 Mr. Taylor and Mr. Johnson on-site and she asked
14 them to call me at our regional office. And the
15 initial call I received from Mr. Taylor was that
16 afternoon of February 18th.
17 Q. And then, again, turning to your complaint
18 investigation report on page 2 at the very bottom,
19 there is a paragraph that begins "On February 18,"
20 and then it continues on to page 3. It looks like
21 it's got thirteen numbered points in that. And is
22 that a reflection of your conversation with
23 Mr. Taylor?
24 A. Yes, it is, at that time, yes.
25 Q. Okay. Did you have other conversations with

1 Mr. Taylor?
2 A. I did.
3 Q. Now you heard Mr. Taylor's testimony in court this
4 morning?
5 A. Yes.
6 Q. Were you present during the entire time that
7 Mr. Taylor was on the stand?
8 A. Yes.
9 Q. Did the information that he provided on the
10 stand - is it consistent with the information that
11 he has provided to you in every conversation that
12 you've had with him?
13 A. Yes, it is.
14 Q. Okay. Did you ever - were you ever able to talk
15 to Mr. Johnson?
16 A. I don't believe I ever directly talked to
17 Mr. Johnson.
18 Q. Okay.
19 A. But the initial conversation I had with
20 Mr. Taylor - Mr. Taylor specified that Mr. Johnson
21 was in the truck next to him as he was talking to
22 me on the cell phone.
23 Q. Okay. If you'd take a look at page 4 of your
24 complaint investigation report, and in the very -
25 sort of in the middle there, there's another

1 section that starts "On February 19th, I talked to
2 Ernest Taylor again."
3 And following that, is that yet another
4 reflection of the conversation that you had with
5 Mr. Taylor?
6 A. Yes, it is.
7 Q. Okay. And there were - were there indeed other
8 conversations other than those that are
9 represented here in the complaint investigation
10 report that you had with Mr. Taylor?
11 A. I had several other conversations with Mr. Taylor
12 after this investigation - investigative report
13 was completed. He called the office and spoke to
14 me about the fine and the violation letter he
15 received, basically asking me what he should do
16 next about the cost of the penalty being assessed
17 and if he could make payments and such.
18 Q. All right. And did you refer Mr. Taylor to the
19 Raleigh Central Office with regard to paying the
20 civil penalty?
21 A. Yes, I did.
22 Q. Okay. Did you tell Mr. Taylor that he could
23 prepare a written response to the notice of
24 violation/notice of recommendation for enforcement
25 from your office?

1 A. Yes.
2 Q. Okay. And did you review Mr. Taylor's response to
3 the notice of violation?
4 A. When it came into our office?
5 Q. Yes.
6 A. Yes.
7 Q. Okay. Did you - first of all, take a look at
8 page 3 - turn to page 3 of your complaint
9 investigation report, and I'll ask you, did you
10 ever speak to Mr. McMillan?
11 A. Yes.
12 Q. Have you ever met Mr. McMillan?
13 A. No.
14 Q. But you've spoken to him on the phone?
15 A. Yes.
16 Q. Okay. And at the bottom of page 3, does that
17 introduce a representation of your conversation
18 with Mr. McMillan on February 19th of 2010?
19 A. Yes.
20 Q. And if you'll turn over to page 4, there are
21 numbered paragraphs 1 through 8. And does that
22 represent your conversation with Mr. McMillan?
23 A. It does.
24 Q. Okay. And did Mr. McMillan tell you that he did
25 not own the lot where the fire occurred?

1 A. That's correct.
2 Q. Okay. And did he identify an individual that he
3 said owned the lot and trailer?
4 A. He did.
5 Q. Did he tell you that he sometimes clears and
6 bush-hogs trailer lots for new buyers?
7 A. Yes.
8 Q. And so did he indicate to you that he did own and
9 sell lots at the Scotch Pines Trailer Park?
10 A. Yes. He said he sells the lots, is what he told
11 me.
12 Q. Okay. Did he tell you - I'm looking at paragraph
13 4 - that he had told a couple of men that they
14 could go on-site and collect scrap metal from the
15 demolished trailer?
16 A. Yes.
17 Q. Okay. And did he say anything - did he admit to
18 doing anything else at the site on February 17,
19 2010?
20 A. He said he went out to the fire after he heard
21 that it had burned. He said he went out in the
22 afternoon of the 17th to the property to see the
23 status of the trailer, what was left of it.
24 Q. After you spoke to Mr. McMillan and Mr. McMillan
25 told you that he did not own the property, did you

1 do any research to try to determine who actually
2 owned the property?
3 A. Yes.
4 Q. If you can take a look at the exhibits behind
5 Tab 7 - or it's one exhibit - Respondent's
6 Exhibit 7, but if you could just take a quick look
7 through all of those pages, and it goes from
8 page 1 to page 8.
9 (RESPONDENT'S EXHIBIT NO. 7
10 (MARKED FOR IDENTIFICATION
11 A. Yes.
12 Q. Do you recognize these documents?
13 A. I do.
14 Q. And can you identify these documents for the
15 Court?
16 A. These are documents that I've pulled offline on my
17 computer at different - various Web sites during
18 my investigation on this particular site and - for
19 the property ownership. Initially, the Geographic
20 Information System site of Robeson County.
21 Q. So if we look at page 1, that's what you're
22 referring to?
23 A. Yes.
24 Q. That's the GIS Web site?
25 A. Yes, the GIS. Yes.

1 Q. And the spot marked with the X, can you identify
2 that for me?
3 A. That's 23 Birds Way Court.
4 Q. And that's the location of the fire on
5 February 17th, 2010?
6 A. Yes. Yes.
7 Q. And if you'll turn to page 2, if you can - I'm
8 sorry. Going back to page 1, if you look at -
9 under "Owner and Name," does it indeed identify
10 David McMillan as the owner?
11 A. Yes, it does.
12 Q. And, again, is this for Lot 28 at Scotch Pines?
13 A. Yes.
14 Q. And you've been present during the testimony of
15 everyone who has been on the stand today, correct?
16 A. Yes.
17 Q. And you've heard reference to a land contract that
18 Mr. McMillan has been referring to, correct?
19 A. Yes.
20 Q. And he's been referring to a Lot 28?
21 A. Right.
22 Q. And so we're all referring to the same thing, is
23 that correct, Lot 28 which is 23 Birds Way Court?
24 A. Yes.
25 Q. Okay. If you'll turn to page 2, can you identify

1 that for me?
2 A. Yes. This is a search through to the Department
3 of the Secretary of State - an online search for
4 Mr.---
5 Q. Did you conduct this search?
6 A. Yes, I did.
7 Q. And why did you do this?
8 A. To see if Mr. McMillan operates a business - a
9 current business and if he's a registered agent
10 for that particular business.
11 Q. Okay. And then if you'll take a look at page 3
12 and identify that.
13 A. This, again, is the same Web site. It's just an
14 annual report - business annual report that is
15 documented online through - as the registered
16 agent, Mr. McMillan, and gives the office
17 information.
18 Q. Okay. And if you'll turn to page 4 of Exhibit 7
19 and take a look at that.
20 A. Yes.
21 Q. Can you identify that for me?
22 A. Yes. This is the deed - Robeson County deed that
23 comes up for this particular property.
24 Q. Okay. Does this deed cover actually more than
25 just this particular lot?

1 A. Yes. This covers the deed that Mr. McMillan owns.
2 Q. Okay. And is this - do you know if this is the
3 last deed on record for 23 Birds Way Court?
4 A. Yes, it is.
5 Q. Okay. And how do you know that?
6 A. Ms. McHargue called - and I was in the presence
7 when she did this - she called the Robeson County
8 Tax Office and asked if the deed that was online
9 was the last - the last certified deed of this
10 particular property, and they confirmed that.
11 Q. And does this deed identify David McMillan and
12 wife, Clair D. McMillan as managers of the
13 property?
14 A. Yes, it does.
15 Q. If you'll turn to page 5.
16 A. Yes.
17 Q. Can you identify that for me, please.
18 A. Yes. It's the property tax notice for this
19 particular address, 23 Birds Way Court.
20 Q. And why did you obtain this document?
21 A. Just to get proof of ownership and who pays the
22 taxes on this particular property.
23 Q. And what did you conclude from this document?
24 A. That Mr. McMillan pays the taxes.
25 Q. Okay. And take a look at page 6.

1 A. Yes.
2 Q. Can you identify that for me?
3 A. This is, again, more of the information for this
4 particular lot through the Robeson County Web
5 site - the property report just listing the
6 specifics of the property.
7 Q. And does it list Mr. McMillan as the owner of the
8 property?
9 A. It does.
10 Q. Okay. Take a look at page 7.
11 A. Yes.
12 Q. And can you identify that for me, please.
13 A. Yes. It gives us the continuation of the same Web
14 site, and it's just a transaction history of the
15 lots that Mr. McMillan is listed as the owner.
16 Q. And does this indicate the status of the payment
17 of taxes?
18 A. It does.
19 Q. Okay. But this particular document - this page
20 does not reference Mr. McMillan?
21 A. It does not say Mr. McMillan. It just gives the
22 account number.
23 Q. Okay. And how did you pull this up; is it
24 attached to the parcel number or---
25 A. Yes, it is.

1 Q. Okay.
2 A. On the Geographical Informational System.
3 Q. If you'd turn to Tab 8 - I'm sorry - to page 8 of
4 Tab 7.
5 A. Yes.
6 Q. Can you identify this document for me?
7 A. Yes. This was a document that Heather Hawkins and
8 myself - actually, she was the one that actually
9 was on my computer, and we decided to Google
10 mobile home parks in the Parkton area, and this is
11 what came up
12 Q. Did this just confirm to you that Mr. McMillan
13 operates the Scotch Pines Trailer Park?
14 A. Yes.
15 Q. Any other conclusions that you do from this
16 document?
17 A. No, other than it's called McMillan Mobile Home
18 Park.
19 Q. Please return to--- Well, first of all,
20 Ms. Grimes, with regard to - is this all of the
21 research that you conducted with regard to
22 property ownership?
23 A. Yes, I believe so.
24 Q. Okay. And what did you conclude after conducting
25 this research?

1 A. It was clear that Mr. McMillan was the - was the
2 owner of this particular property.
3 Q. If you'll go back to Exhibit 6, your complaint
4 investigation report. If you'll return to that
5 section that references your conversation with
6 Mr. McMillan. That's on page 3.
7 A. Yes.
8 Q. Did he tell you at that time that it was a
9 Ms. Wanda Taylor who owned the property?
10 A. He said Wanda McLean?
11 Q. Oh, I'm sorry. Wanda McLean.
12 A. Yes.
13 Q. And did he give you any information to allow you
14 to contact Ms. McLean?
15 A. No, he did not.
16 Q. Okay. How did - did you ever locate Wanda McLean?
17 A. No, I did not.
18 Q. Did you make any attempts to locate Ms. McLean?
19 A. Yes.
20 Q. And what did you do to try to locate her?
21 A. At one point, I Googled - I didn't - I'm sorry -
22 excuse me - I put Wanda McLean's name into the
23 White Pages of Robeson County, and I also - in
24 AnyWho.com, it's a Web site, and I got three
25 different hits off of that. And I called all

1 three names, and it was - they all said they did
2 not own this particular lot.
3 Q. Did anybody from - did Mr. McMillan or anyone - or
4 Betsy McMillan ever provide anyone at the Division
5 of Air Quality with a phone number for Wanda
6 McLean?
7 A. Excuse me a second here.
8 Q. If you'd turn to page 6 of your complaint
9 investigation report. About the middle of the
10 paragraph there, it says, "Ms. Hawkins asked for
11 the contact information for Wanda McLean."
12 Does that reflect there a telephone number
13 that was provided by Betsy McMillan to---
14 A. Yes. Yes.
15 Q. Did anyone call that number?
16 A. Yes.
17 Q. And were they able to reach Ms. McLean there?
18 A. No.
19 Q. Did you call that number?
20 A. I cannot recall. Give me a second here. I can't
21 recall if myself or Ms. Hawkins called. I believe
22 I called that number, and there was a gentleman
23 that answered and there was nobody by that name of
24 Wanda McLean.
25 Q. Do you see the land contract there sitting on the

1 desk that Mr. McMillan has provided to other
2 witnesses? Do you recognize that document?
3 A. Yes. Mr. McMillan - excuse me - Mr. McMillan sent
4 this as part of his response to the violation
5 letter.
6 Q. If you'd turn to Tab 9 in the exhibit book there.
7 Do you recognize that document?
8 (RESPONDENT'S EXHIBIT NO. 9
9 (MARKED FOR IDENTIFICATION
10 A. Yes.
11 Q. And can you identify that for me?
12 A. This is the response that Mr. McMillan sent.
13 Q. Okay. Did you review this document?
14 A. I did.
15 Q. Okay. And did you review the documents that are
16 attached to that document? Do you see two
17 documents attached?
18 A. Yes.
19 Q. And is one of the documents a copy of the document
20 that Mr. McMillan has presented to witnesses
21 today?
22 A. It is.
23 Q. Okay. So you - did you indeed have these
24 documents available to you when your office
25 recommended assessing a penalty to Mr. and

1 Ms. McMillan for this burning---
2 A. Yes.
3 Q. ---on - you did?
4 A. Yes.
5 Q. Okay. Did you review the documents?
6 A. Yes.
7 Q. And you earlier testified that you had concluded
8 from your research of property ownership that
9 Mr. and Ms. McMillan owned the property. Did
10 these documents that Mr. and Ms. McMillan provided
11 to you change your opinion in any way?
12 A. No.
13 Q. Okay. Did anyone in your office follow up on
14 additional issues with regard to property
15 ownership in this case?
16 A. (No audible response from witness.)
17 Q. Did anyone else in your office conduct any follow-
18 up research with regard to these documents that
19 were provided to the Division of Air Quality?
20 A. Well---
21 Q. And if you'll turn to page 5 after - of Exhibit 6,
22 your complaint investigation report. Do you see
23 in bold "Follow-Up"?
24 A. Yes.
25 Q. And that's dated March 29th, 2010, correct?

1 A. Yes. Yes.
2 Q. So would that be after you received Exhibit 9,
3 which is dated March 15, 2010?
4 A. That's correct.
5 Q. Okay. And so did one of your colleagues,
6 Ms. Hawkins, then follow up with regard to the
7 documents that were received in connection with
8 Mr. McMillan's response---
9 A. Yes.
10 Q. ---to the NOV?
11 A. Yes, she did.
12 Q. Okay. Did anyone in your office ever report this
13 incident to the Division of Solid Waste?
14 A. Yes.
15 Q. Did you do that?
16 A. I did not.
17 Q. Who reported it to Solid Waste?
18 A. Ms. McHargue.
19 Q. Okay.
20 A. She initially reported it.
21 Q. And so with regard to any violations of any
22 environmental laws that might have occurred with
23 regard to burying the trailer debris, would
24 that---
25 MR. McMILLAN: Object, Your Honor.

1 Object.
2 THE COURT: Sustained.
3 MR. McMILLAN: We're talking about air
4 quality.
5 THE COURT: Sustained.
6 MR. McMILLAN: We're not getting into---
7 THE COURT: I sustained the objection.
8 MR. McMILLAN: I don't think we should
9 get into solid waste or energy.
10 MS. BIRCHER: All right. No further
11 questions on that issue. And I don't think I
12 have any further questions for Ms. Grimes at
13 this time, unless there was anything,
14 Ms. Grimes, that you wanted to add?
15 THE WITNESS: I don't believe so.
16 MS. BIRCHER: Okay. I have no further
17 questions at this time, and I'll ask that she
18 remain in the courtroom.
19 THE COURT: Mr. McMillan, do you have
20 any questions for the witness?
21 MR. McMILLAN: Yes, sir.
22 **CROSS-EXAMINATION**
23 **BY MR. McMILLAN:**
24 Q. Ms. Grimes, are you familiar with real estate
25 practices in North Carolina?

1 A. No, I'm not.
2 Q. Are you aware that a deed of trust, a promissory
3 note, a land contract, in regards to that, that
4 the property will be still be listed on the tax
5 record and the owner until that note is satisfied?
6 MS. BIRCHER: Objection to the form of
7 the question. It assumes facts not in
8 evidence and it's compound.
9 THE COURT: Can you simplify the
10 question? You asked her two or three
11 questions in a series. Just ask her one.
12 Q. On a land contract in North Carolina, is it true
13 that the owner of that land is still on that deed
14 in the tax office until that note is satisfied?
15 Are you aware or that?
16 A. I am not aware of that.
17 Q. So you could go down to the tax office and pull up
18 anybody's name even though they didn't own the
19 property if someone owed moneys on that property,
20 is that correct?
21 MS. BIRCHER: Objection, Your Honor.
22 Calls for speculation. She just testify that
23 she doesn't know about those issues.
24 THE COURT: All right. Sustained.
25 Q. Could you pick up the contract that we're talking

1 about there---
2 A. Yes.
3 Q. ---and read the name on it and the lot number,
4 please.
5 A. Wanda L. McLean.
6 Q. And the lot number, please.
7 A. Lot Number - Lot 28.
8 MR. McMILLAN: Could I approach?
9 THE COURT: All right.
10 MR. McMILLAN: Would you like to see
11 this?
12 MS. BIRCHER: Yes, sir. I'll object to
13 this document, Your Honor. I asked that
14 Mr. and Ms. McMillan provide all documents
15 that he might introduce at trial, so I would
16 object to this document - both of these
17 documents. I've never seen them.
18 THE COURT: What do they purport to be?
19 MR. McMILLAN: It's just a photocopy of
20 Ms. McLean so I can identify her - that this
21 is the same person that's on this contract.
22 THE COURT: Ms. Bircher, are you willing
23 to stipulate that Ms. McLean's signature is
24 on the contract?
25 MS. BIRCHER: Your Honor, I can

1 stipulate that there is a contract that he
2 has provided to us, but I really have no
3 idea - I mean it's a notarized document,
4 so---
5 THE COURT: Will you stipulate that it
6 represents to be Ms. McLean?
7 MS. BIRCHER: Yes, I will stipulate that
8 it represents to be her signature.
9 THE COURT: All right. I'll sustain her
10 objection to those documents that were not
11 provided in discovery.
12 MR. McMILLAN: Okay.
13 THE COURT: And I don't know that it's
14 going to be very probative of the issue in
15 the case. She's stipulated that there's a
16 signature on there that purports to be
17 Ms. Wanda McLean.
18 MR. McMILLAN: Yes, sir.
19 Q. Ms. Grimes, again, you have the names of the
20 individuals that were responsible for setting the
21 fires? Mr. Johnson and Mr. Taylor?
22 MS. BIRCHER: Your Honor - Your Honor,
23 I'm object to the question in that it's again
24 compound.
25 MR. McMILLAN: I haven't finished the

1 question, Your Honor, but that's okay.
2 THE COURT: All right. Go ahead with
3 your question. Restate it.
4 Q. Ms. Grimes---
5 A. Yes.
6 Q. ---you have the individual names and your
7 paperwork that are responsible for setting the
8 fires, is that true?
9 A. They admitted to starting - igniting the fire,
10 yes.
11 Q. Is it standard procedure for you to send a
12 complaint out to a person that doesn't even own
13 the property or - and, in fact, that you already
14 have the names of who set the fire? Is that
15 standard procedure with DENR?
16 A. To send the complaint?
17 Q. A complaint to a person that doesn't own the
18 property or had not responsibility in setting the
19 fires?
20 A. You mean a violation letter?
21 Q. No - yes, ma'am. Is that standard procedure?
22 A. Well, from all of my research that I performed
23 before the violation letter was sent out, David
24 McMillan was in all the documents as the property
25 owner.

1 Q. Why would you send a complaint to David McMillan
2 or McMillan Contracting when, in fact, you had the
3 names of the people that started the fire?
4 A. Because it's property ownership. From all the
5 evidence that I gathered during the investigation,
6 David McMillan was listed as the responsible party
7 for the - for managing the property at 23 Birds
8 Way Court.
9 Q. Also, you have stated that you're not familiar
10 with real estate practices. And by just pulling
11 up a tax record, you insinuated that I owned the
12 property, is that correct?
13 A. I didn't insinuate it. It was in black and white
14 on the documents as the property ownership, David
15 McMillan.
16 MR. McMILLAN: That's all, Your Honor.
17 THE COURT: All right. Any redirect?
18 MS. BIRCHER: Yes, Your Honor.
19 **REDIRECT EXAMINATION**
20 **BY MS. BIRCHER:**
21 Q. Ms. Grimes, are you familiar with the open burning
22 regulations of the Division of Air Quality?
23 A. Yes.
24 Q. And if you'll turn to Tab 22 in the exhibit
25 notebook that is up there.

1 (RESPONDENT'S EXHIBIT NO. 22
2 (MARKED FOR IDENTIFICATION
3 A. Yes.
4 Q. Is this a copy of those open burning regulations?
5 A. Yes, it is.
6 Q. And if you'll look with me, please, at the first
7 paragraph there, it says, "A person shall not
8 call, allow, or permit open burning of combustible
9 materials except as allowed," and it references
10 some other rules, correct?
11 A. Yes.
12 Q. Okay. And then if you'll look at the next page,
13 there's some definitions there, correct?
14 A. Yes.
15 Q. And these are part of the open burning regulations
16 as well?
17 A. They are.
18 Q. And are you familiar with those definitions?
19 A. Yes.
20 Q. And if you'll look at paragraph 16 there. Is that
21 a definition of person?
22 A. Yes.
23 Q. And does it indeed say that a person who may be
24 found liable for open burning can be a person who
25 is in operational control over the open burning?

1 A. Yes.
2 Q. And would that be Mr. Johnson and Mr. Taylor who
3 were assessed a penalty in this case?
4 A. Yes.
5 Q. Okay. Does it also say the landowner or a person
6 in possession or control of the land when he has
7 directly or indirectly allowed the open burning or
8 has benefitted from it - does it also say that
9 that person can be liable for an illegal open
10 burning?
11 A. Yes.
12 Q. And when you were investigating this case,
13 Ms. Grimes, did you conclude that Mr. McMillan had
14 exercised control over this property by giving
15 Mr. Taylor and Mr. Johnson permission to scrap the
16 metal?
17 A. Yes.
18 Q. Did you conclude that he had allowed or permitted
19 the open burning by suggesting to those gentlemen
20 that burning the trailer would be a good way to
21 get rid of it?
22 A. Yes.
23 Q. And when you reviewed those contract documents
24 that he provided to you, did you observe in those
25 contract documents that if Ms. McLean had

1 defaulted on her payments that Mr. McMillan
2 could - could summarily eject or evict Ms. McLean
3 and take the property - take the property back or
4 that the property would revert to him?
5 A. Yes, from what I understood from the document.
6 Yes.
7 Q. Okay. And regardless of whether those documents
8 are legal, does your factual investigation in this
9 case indeed reveal that Mr. McMillan exercised
10 control of the land and benefitted from the
11 clearing of this land?
12 A. Yes.
13 Q. And if you'll look again at the photographs at the
14 very end of exhibit book - the colored photographs
15 series - is this property now graded and clear of
16 the trailer?
17 A. Yes.
18 Q. And have you seen that property since these
19 photographs were taken?
20 A. Yes.
21 Q. And does that property appear as though it would
22 be ready for another trailer to be put on the
23 property?
24 A. Yes.
25 MS. BIRCHER: Okay. I have no further

1 questions at this time.
2 THE COURT: Mr. McMillan, any follow-up
3 questions based on those questions?
4 MR. McMILLAN: No, sir.
5 THE COURT: All right. You may step
6 down. Thank you.
7 MR. CONKLIN: Your Honor, the State
8 would like to now call Ms. Heather Hawkins to
9 the stand.
10 - - - - - - - -
11 HEATHER HAWKINS,
12 a witness called on behalf of the Respondent, being
13 first duly sworn in the above-entitled matter, was
14 examined and testified on her oath as follows:
15 THE COURT: All right. If you'd be
16 seated and state and spell your name for us.
17 THE WITNESS: Heather Hawkins,
18 H-e-a-t-h-e-r H-a-w-k-i-n-s.
19 THE COURT: All right. Thank you.
20 **DIRECT EXAMINATION**
21 **BY MR. CONKLIN:**
22 Q. Ms. Hawkins, where are you currently employed?
23 A. I'm employed with the Division of Air Quality in
24 the Fayetteville Regional Office.
25 Q. And what is your position with the Division of Air

1 Quality?
2 A. I'm an environmental specialist.
3 Q. And what is that - what are the duties of that
4 position?
5 A. I coordinate the open burning complaints received
6 in our office for the region, and I also
7 coordinate our emission inventory process for our
8 region, and I inspect facilities and just basic
9 customer service.
10 Q. Did you participate in the investigation of this
11 case?
12 A. Yes, sir, I did.
13 Q. In what capacity?
14 A. I conducted a follow-up with Mr. McMillan on the
15 29th of March with Ms. Grimes.
16 Q. Would you please turn to Tab 6. Do you recognize
17 what has been marked as Respondent's Exhibit 6?
18 A. I do.
19 Q. Could you tell the Court what that is?
20 A. This is our complaint investigation report for the
21 McMillan case.
22 Q. And could you please turn to page 5. And if
23 you'll look midway down the page, it states
24 "Follow-Up." Do you see that part?
25 A. Yes, sir.

1 Q. Does the numbered paragraphs below that heading,
2 "Follow-Up," reflect your involvement in this
3 case?
4 A. Yes, sir.
5 Q. Does it accurately reflect your involvement in
6 this case?
7 A. Yes.
8 Q. Okay. And did you talk to Mr. McMillan on
9 March 29th, 2010?
10 A. Yes, sir, I did.
11 Q. And what was the purpose of that conversation?
12 A. Based on the documents received in his response to
13 the notice of violation and recommendation for
14 enforcement, we were calling to try to determine
15 his involvement with the property at hand.
16 Q. And what did Mr. McMillan say to you on that date?
17 A. Basically, he claimed that he was not involved
18 with the property and that Ms. Wanda McLean was
19 the owner of that property, that she owned the
20 trailer as well as the property, and he had no
21 involvement with that. He also said that he had
22 not given permission to anyone to salvage any
23 metal.
24 Q. Could you please turn to Tab 9 - Respondent's
25 Exhibit 9. If you'll turn to the second page. Do

1 you recognize this document?
2 A. Yes.
3 Q. Could you identify that document?
4 A. This is the information provided as a part of
5 Mr. McMillan's response to the notice of violation
6 and recommendation for enforcement.
7 Q. Did you ask Mr. McMillan about this document?
8 A. Yes, sir, I did. In reading through this document
9 as provided by Mr. McMillan, it was apparent to me
10 that it might indicate that he was the owner. If
11 Ms. McLean had not been holding up her end of the
12 bargain, so I called him to ask him about his
13 involvement with this property based on this
14 document.
15 Q. And what specifically did Mr. McMillan tell you
16 about this document?
17 A. Actually, he said - when I was reading a part of
18 the fine print to him, he said that he hadn't read
19 the document in years and wasn't really aware of
20 what it had said. All he knew was that she was
21 the property owner and he was not.
22 Q. After you talked with Mr. McMillan, did you call
23 Betsy McMillan?
24 A. Yes. Mr. McMillan had given permission for us to
25 obtain more information from his office - from

1 Betsy.
2 Q. And what did you talk to Ms. McMillan about?
3 A. Specifically, I was trying to obtain contact
4 information for Ms. Wanda McLean, the said
5 property owner of the trailer and the physical
6 property, and also was asking Miss Betsy about
7 Ms. McLean's payment history and whether she was
8 currently paying on the property and whether she
9 was up to date, that type thing.
10 Q. Did Ms. McMillan give you contact information for
11 Ms. McLean?
12 A. She gave us the most current available information
13 that she had in her files at the time, is what she
14 told us.
15 Q. Did you attempt to contact Ms. McLean?
16 A. Yes. We wrote down the information provided by
17 Betsy, and Ms. Grimes proceeded to do some
18 searches on the address as well as make the phone
19 call to that number, in addition to the other
20 numbers that she searched.
21 Q. Were you able to reach Ms. McLean?
22 A. No.
23 Q. Did you find out whether Ms. McLean was current on
24 her rent payments?
25 A. According to Betsy, she had not paid as of - I

1 think it was November of '09 and - November or
2 December of '09 was the last time she remembered
3 receiving a payment from Ms. McLean.
4 MR. CONKLIN: Your Honor, if I may just
5 have a moment.
6 THE COURT: All right.
7 MR. CONKLIN: Thank you.
8 (Thereupon, there was a pause in the
9 proceeding.)
10 MR. CONKLIN: I have no further
11 questions, Your Honor.
12 THE COURT: All right. Mr. McLean - I
13 mean, Mr. McMillan?
14 MR. McMILLAN: Yes, ma'am.
15 **CROSS-EXAMINATION**
16 **BY MR. McMILLAN:**
17 Q. So it is true that you have a copy of the payment
18 record from Ms. McLean?
19 A. No, sir.
20 Q. Ma'am?
21 A. No, sir.
22 Q. But you talked to Betsy and received a just
23 verbal; is that what you're saying?
24 A. Yes, sir.
25 Q. Is that--- That's fine.

1 MR. McMILLAN: That's all, Your Honor.
2 THE COURT: All right. Anything else?
3 MR. CONKLIN: No, Your Honor.
4 THE COURT: All right. You may step
5 down. Thank you.
6 MR. CONKLIN: Your Honor, the State
7 would like to call Ms. Debra McHargue,
8 please.
9 THE COURT: If you'd place your left
10 hand on the Bible and raise your right.
11 - - - - - - - -
12 DEBRA J. McHARGUE,
13 a witness called on behalf of the Respondent, being
14 first duly sworn in the above-entitled matter, was
15 examined and testified on her oath as follows:
16 THE COURT: All right. If you'd be
17 seated and state and spell your name.
18 THE WITNESS: Debra McHargue, D-e-b-r-a
19 J. M-c-H-a-r-g-u-e.
20 THE COURT: All right. Thank you.
21 **DIRECT EXAMINATION**
22 **BY MR. CONKLIN:**
23 Q. Good morning.
24 A. Morning.
25 Q. Where are you currently employed?

1 A. NC DENR, Division of Air Quality.
2 Q. And what is your position?
3 A. Environmental senior technician.
4 Q. And what does that position entail?
5 A. Open burning investigations. I inspect for risk
6 management program. Occasionally inspect other
7 facilities. I do ambient monitoring primarily.
8 Q. And were you a coinvestigator on this case?
9 A. Yes.
10 Q. Okay. And if you could turn to Tab 6, please, in
11 the notebook in front of you, and if you could
12 turn to page 2. About the beginning of the middle
13 of the page where it starts with "On 18 February
14 2010," do you see that part?
15 A. Uh-huh, yes.
16 Q. Is this a record of your investigation on this
17 case?
18 A. Yes, it is. Yes, it is.
19 Q. Does that accurately reflect your investigation?
20 A. Yes, it does.
21 Q. Did you speak with Mr. Taylor on February 18th,
22 2010?
23 A. Yes.
24 Q. And did you speak with Mr. Johnson that day?
25 A. Yes.

1 Q. If you'll look at paragraphs 1 through 7 under
2 that paragraph I just asked you to identify, 18
3 February 2010, if you see---
4 A. The bullets 1 through 7, yes.
5 Q. Do those accurately reflect the conversations that
6 you had with Mr. Taylor and Mr. Johnson?
7 A. Yes, they do.
8 Q. If you'll take a look at Exhibit - the same
9 exhibit but paragraph - excuse me - page 7. Do
10 you recognize that?
11 A. Yes.
12 Q. Could you please identify.
13 A. This is what I photographed when I came out
14 on-site. I saw where there was obviously a mobile
15 home previously and the site where it was and the
16 power cord and there's the post there, and this
17 other site over - the second picture to the right
18 is where the gentlemen on-site, Taylor and
19 Johnson, told me that McMillan had buried parts of
20 a demolished trailer and there was disturbed soil
21 there.
22 And the third photograph also - there was
23 disturbed soil, and the rest of it was blackened
24 back towards the trees where the fire had spread.
25 And then the last one is the remnants of the

1 trailer that they were hauling off for scrap metal
2 for payment.
3 Q. Do these photographs accurately reflect what you
4 saw at the time that you took them?
5 A. Yes, they do.
6 Q. Okay. Did it look like the property was ready for
7 a new trailer during the time that you took these
8 pictures?
9 A. Yes.
10 Q. Did you ever call the Robeson County Register of
11 Deeds?
12 A. Yeah.
13 Q. What was your purpose of making that call?
14 A. To find out if Mr. McMillan was indeed the actual
15 owner of the property at the time.
16 Q. And what did you conclude?
17 A. That was the current property owner.
18 MR. CONKLIN: Your Honor, if I may just
19 have a moment.
20 THE COURT: All right.
21 (Thereupon, there was a pause in the
22 proceeding.)
23 MR. CONKLIN: No further questions, Your
24 Honor.
25 THE COURT: Mr. McMillan, questions?

1 MR. McMILLAN: No, sir.
2 THE COURT: All right. You may step
3 down. Thank you.
4 MS. BIRCHER: Respondent calls Steven
5 Vozzo to the stand.
6 THE COURT: How many more witnesses do
7 you anticipate?
8 MS. BIRCHER: Mr. Vozzo will be our last
9 witness, and I would like to call Ms. Betsy
10 McMillan, but if he's going to call
11 Ms. McMillan, I can ask her some questions.
12 I only have a couple of questions for her,
13 but then that would be all of our case.
14 THE COURT: All right. Mr. McMillan,
15 are you planning to call Betsy McMillan?
16 MR. McMILLAN: Yes, sir. That's all,
17 and it will just take me a few minutes.
18 THE COURT: Okay. Let's get Mr. Vozzo
19 sworn in. Let's take a brief recess, and
20 then we'll come back and take his testimony.
21 - - - - - - - -
22 STEVEN VOZZO,
23 a witness called on behalf of the Respondent, being
24 first duly sworn in the above-entitled matter, was
25 examined and testified on his oath as follows:

1 THE COURT: All right. We'll have you
2 come back and state and spell your name.
3 We'll take a short recess.
4 (Thereupon, a brief recess was taken.)
5 THE COURT: (Tape begins mid sentence.)
6 ---please.
7 THE WITNESS: My name is Steven Vozzo,
8 S-t-e-v-e-n V-o-z-z-o.
9 THE COURT: All right. Thank you.
10 **DIRECT EXAMINATION**
11 **BY MS. BIRCHER:**
12 Q. Mr. Vozzo, where are you employed?
13 A. I work with NC DENR, Division of Air Quality in
14 the Fayetteville Regional Office.
15 Q. And what is your title?
16 A. I'm the Regional Air Quality Supervisor.
17 Q. And how long have you been with the Division of
18 Air Quality?
19 A. Division of Air Quality for nineteen years.
20 Q. And how long have you been a regional supervisor
21 at the Fayetteville Regional Office?
22 A. Almost fifteen years now.
23 Q. And can you please tell me something about your
24 education.
25 A. I have a biology degree, and then I've got a

1 master's in crop science, studying air pollution.
2 Q. And is that from NC State?
3 A. That's from NC State University.
4 Q. Okay. What are your job duties as the regional
5 supervisor at the Fayetteville Regional Office?
6 A. Our regional office has between twelve and
7 fourteen people. We oversee the ambient
8 monitoring in this area. We issue air permits.
9 We oversee a compliance inspection program. We
10 respond to complaints, and we work with the
11 public.
12 Q. Okay. And do you oversee the open burning
13 investigations?
14 A. I oversee them, yes.
15 Q. Okay. Do you supervise Ms. Hawkins who testified
16 here today?
17 A. Yes.
18 Q. Do you supervise Ms. Cindy Grimes?
19 A. Yes.
20 Q. And how about Ms. McHargue?
21 A. Supervise her as well.
22 Q. Okay. And other staff members as well, correct?
23 A. Yes, that's right.
24 Q. How many investigations of open burning violations
25 would you say you oversee each year?

1 A. We average around two hundred complaints a year
2 that we are involved with.
3 Q. And "involved with," do you mean investigations?
4 A. Investigate, yes, ma'am. Investigate.
5 Q. Okay. Have you ever personally investigated an
6 open burning case?
7 A. Yes, many. I probably handle about ten a year
8 still even as supervisor.
9 Q. Okay. So over the course of your career, then,
10 you said about two hundred a year. You've been
11 there for fifteen years. Would it be about maybe
12 three thousand open burning violations over the
13 course of your career you've investigated?
14 A. I've been involved with, yes, uh-huh.
15 Q. Okay. Do many of the illegal burns within your
16 jurisdiction - the Fayetteville Regional Office's
17 jurisdiction involve the burning of mobile homes
18 or portions of mobile homes?
19 A. We have a good number of those. I would say ten
20 to fifteen percent are involved in that kind of
21 burning.
22 Q. Okay. So maybe, what, twenty, twenty-five?
23 A. That's a fair estimate, yes.
24 Q. Okay. A year. How does burning a mobile home
25 harm the environment?

1 A. Well, a mobile home is full of synthetic
2 materials. Synthetic materials from the plastics
3 to the fiberglass to the flooring materials to the
4 glues that hold it together - all of that contains
5 toxic materials, and when you burn those, you emit
6 those into the air. Neighbors breathe it. It
7 just gets into our air stream as well, and it goes
8 out beyond just the local boundaries.
9 Q. Okay. So are there toxic emissions, then, from
10 burning a mobile home?
11 A. Yes, many.
12 Q. Carcinogenic emissions from burning mobile homes?
13 A. Yes.
14 Q. Okay. Did you oversee the investigation of the
15 open burning violation we're discussing here
16 today?
17 A. I did.
18 Q. If you'll take a look at Exhibit 1 in that
19 notebook, and it's Respondent's Exhibit 1. Can
20 you identify that document for me?
21 A. This is the 1 March 2010 notice of
22 violation/notice of recommendation for enforcement
23 to Ernest Taylor.
24 Q. Is that your signature there on page 2?
25 A. Yes, it is.

1 Q. And so is this a letter that you wrote?
2 A. This is a letter that I signed. I get final edits
3 on. The original draft comes usually from the
4 inspector. In this case, that would be Cindy. It
5 then goes through Heather's office where Heather
6 reviews it for consistency, and then I make any
7 final changes to it and then make a final approval
8 on this letter.
9 Q. And this document is a true and accurate copy and
10 maintained in the regular course of your business
11 at the Division of Air Quality?
12 A. Yes.
13 MS. BIRCHER: I'd move the admission of
14 Exhibit 1, Your Honor.
15 (RESPONDENT'S EXHIBIT NO. 1
16 (OFFERED INTO EVIDENCE
17 THE COURT: All right. Show Number 1
18 admitted for Respondent.
19 (RESPONDENT'S EXHIBIT NO. 1
20 (RECEIVED INTO EVIDENCE
21 Q. Had you participated on any of the calls your
22 investigator had with Mr. Taylor?
23 A. I believe I was on one of the early calls, yes.
24 Q. Okay. You heard Mr. Taylor's testimony this
25 morning, did you not?

1 A. I did.
2 Q. Did you remain in the courtroom during the
3 entirety of his testimony?
4 A. No. I stepped out for a brief minute or two just
5 near the end of your part with Mr. Taylor, just
6 before the cross-examination occurred.
7 Q. Okay. Did you hear Mr. Taylor testify that he -
8 that Mr. McMillan suggested to he and Mr. Johnson
9 that burning the trailer would be a good way to
10 get rid of it?
11 A. Yes. I heard that whole testimony, yes.
12 Q. Okay. With regard to the testimony that you heard
13 except for the minute that you did step out at the
14 very end there, was the information that
15 Mr. Taylor provided on the stand today consistent
16 with the information you understand that you heard
17 when you participated on a call with your
18 investigators with Mr. Taylor?
19 A. Yes, it was.
20 Q. Okay. So now by the time you issued this NOV to
21 Mr. Taylor, had you reviewed the investigative
22 reports that were prepared by Ms. Grimes?
23 A. To the extent that they were available, yes. And
24 then, of course, there was some follow-up later
25 on, but yes, I did review the report.

1 Q. Okay. And is the information that's set forth in
2 the Exhibit 1 - is that consistent with the
3 information that Mr. Taylor had provided to your
4 investigators?
5 A. Yes. Okay. Now take a look at Exhibit 2, if you
6 would.
7 A. Okay.
8 Q. Can you identify that document for me?
9 A. This is the response letter we received from
10 Mr. Ernest Taylor.
11 Q. Again, is this a document that's maintained in
12 your files in the regular course of your business?
13 A. Yes, it is.
14 Q. And you recognize this document?
15 A. I do.
16 Q. Did you review this document before you issued a
17 penalty to Mr. Taylor?
18 A. Before we - yes, we recommended penalty to
19 Mr. Taylor, yes.
20 MS. BIRCHER: Okay. I'd move admission
21 of Exhibit 2, Your Honor.
22 (RESPONDENT'S EXHIBIT NO. 2
23 (OFFERED INTO EVIDENCE
24 THE COURT: All right. And rather go
25 through these documents singularly, let's

1 wait till you get to the end of your evidence
2 and offer all of them at once, unless you
3 need to identify another separate exhibit
4 through Mr. Vozzo.
5 MS. BIRCHER: Okay. Thank you, Your
6 Honor. I will do that.
7 Q. Back to Exhibit 2---
8 THE COURT: And I'll show Respondent's
9 Number 2 admitted.
10 (RESPONDENT'S EXHIBIT NO. 2
11 (RECEIVED INTO EVIDENCE
12 Q. Mr. Vozzo, if you'll take a look at that document.
13 Mr. Taylor here states that, again, is it correct,
14 that Mr. McMillan suggested that burning the
15 trailer would be a good way to get to the metal
16 and steel, is that correct?
17 A. Yes, it does. Yes.
18 Q. Okay. If you'll take a look at Exhibit 3, please.
19 A. Okay.
20 Q. Can you identify that document?
21 A. This is the notice of violation and notice of
22 recommendation for enforcement that we sent to
23 Mr. Wayne Johnson.
24 Q. And did you prepare this document?
25 A. Just - I signed this document and reviewed it and

1 approved it.
2 Q. Okay. Is this document a notice of violation to
3 Mr. Johnson with the same fire that occurred on
4 February 17, 2010, at 23 Birds Way Court?
5 A. Yes, it is.
6 Q. Okay. If you could take a look at Exhibit 4. Can
7 you identify that document for me?
8 A. This is the response that we received from Wayne
9 Johnson for that violation letter we sent.
10 Q. Were you in the courtroom for Mr. Johnson's
11 testimony?
12 A. I was.
13 Q. Was any of the testimony that Mr. Johnson provided
14 today inconsistent at all with the testimony
15 that - or with the information that you had
16 gathered in your investigation?
17 A. It was consistent.
18 Q. Did you consider this response of Mr. Johnson
19 that's marked Exhibit 4 when you assessed a civil
20 penalty against Mr. Johnson?
21 A. Yes, this was considered.
22 Q. If you'll just take a look at Exhibit 6, please.
23 A. Okay.
24 Q. Do you recognize this document?
25 A. Yes. This is the fire report that we received

1 from Parkton.
2 Q. All right. I'm sorry. I was referring to
3 Exhibit 6.
4 A. Oh, I'm sorry. Exhibit 6 - yes, Exhibit 6 is our
5 investigation report.
6 Q. Okay. And have you reviewed this investigation
7 report?
8 A. Yes, I have.
9 Q. And did you review all the information in this
10 investigation report prior to assessing a civil
11 penalty against Mr. Johnson, Mr. Taylor, and
12 Mr. McMillan?
13 A. Yes.
14 Q. Okay. Now you've heard the testimony of three of
15 your investigators here today. The testimony that
16 was provided today, is that consistent with your
17 recollection of the investigation of this case?
18 A. Yes, it is.
19 Q. If you'll take a look at Exhibit 8, please. Can
20 you identify this document for me?
21 (RESPONDENT'S EXHIBIT NO. 8
22 (MARKED FOR IDENTIFICATION
23 A. This is the letter of violation/notice of
24 recommendation for enforcement to David McMillan.
25 Q. Did you prepare this document?

1 A. I reviewed it and signed it, yes.
2 Q. And is it a true and accurate copy of the notice
3 of violation/notice of recommendation for
4 enforcement?
5 A. Yes, it is.
6 Q. Okay. Look at the - and does this indeed provide
7 notice to Mr. McMillan that the burning at 23
8 Birds Way Court was illegal?
9 A. Yes.
10 Q. Okay. And if you look at the third paragraph on
11 the first page of this letter, it states here,
12 "Through your various companies, this is your
13 fifth violation since May 1999 for burning
14 illegally"?
15 A. That's right.
16 Q. Do you see that paragraph?
17 A. I see that.
18 Q. Was it relevant to the Division of Air Quality in
19 assessing a civil penalty whether or not there had
20 been prior violations?
21 A. Yes. It's - calls to the person's knowledge of
22 whether what they're doing is illegal or not.
23 Q. And is it something that is considered when you
24 actually assess a civil penalty against---
25 A. Yes, it - yes, it is.

1 Q. Okay. And here you mention - can you just go
2 through the violations that you mentioned here in
3 this notice of violation?
4 A. Just reading through it here, it says he was
5 assessed a civil penalty in August of 2006 for a
6 February 2006 violation, and he also received
7 violation letters from us in July 2000, September
8 2000, and May 1999. And two of these violations
9 were for burning demolition debris.
10 Q. And then do you advise him there that he
11 essentially needs to find a legal method to
12 dispose of waste?
13 A. Yes. Exactly.
14 Q. Okay. If you look at page 2, there is a reference
15 to attachments. It says, "OB Brochure, OB Insert,
16 and P2 Insert."
17 A. Yes.
18 Q. Can you tell us what those are?
19 A. The Open Burning Brochure is a document that we
20 put together that explains the open burning
21 regulations that we will give to violators, we'll
22 give to people when we're doing investigations.
23 It just informs them of what the open burning
24 rules are, lets them know they can be subject to
25 fines.

1 The Open Burning Insert is just a smaller
2 version of that that kind breaks it down even -
3 with some more pictograms on it in case people
4 needed those.
5 And the P2 Insert is our pollution prevention
6 group that will provide assistance to people if
7 they so ask. From anything from how do I get rid
8 of this waste the proper way - you know, it helps
9 all kinds of folks from manufacturing through this
10 kind of situation as well.
11 Q. If you'll turn to - keep your hand on that exhibit
12 there, Exhibit 8, but if you'll look at - behind
13 Tab 23 and see if you can identify that document
14 for me.
15 (RESPONDENT'S EXHIBIT NO. 23
16 (MARKED FOR IDENTIFICATION
17 A. This is the open burning insert that we've
18 referenced in the letter.
19 Q. So is this indeed information that would have been
20 provided to Mr. McMillan?
21 A. Yes, it was.
22 Q. Okay. Now on the right-hand side, it says,
23 "Illegal Burning," is that correct?
24 A. That's right.
25 Q. And does it mention there buildings and mobile

1 homes?
2 A. It sure does. It shows a picture of them and it
3 lists it, yes.
4 Q. And says - up there, does it say, "Never burn
5 these items"?
6 A. Never burn these items.
7 Q. All right. Does it provide a number so people can
8 call you for information?
9 A. There is a general 800 number and also a Forestry
10 number, but there's the number that would go to
11 our central office and any questions would be
12 forwarded down to the appropriate region.
13 Q. All right. If you'll turn to Tab 9, please.
14 A. Okay.
15 Q. Can you identify that document for me?
16 A. This is the response letter that we received from
17 Mr. David McMillan, McMillan Contracting.
18 Q. Okay. And did you review this document?
19 A. I did.
20 Q. And is this an accurate copy of the document?
21 A. Yes, it is.
22 Q. And do you see the documents attached to this
23 letter?
24 A. Yes.
25 Q. And have you seen those documents before?

1 A. I have seen those before.
2 Q. Did you review those documents?
3 A. I reviewed those, yes.
4 Q. Okay. Did anyone else in your office review those
5 documents?
6 A. Our investigative staff, which would have been
7 Heather and Cindy, would have reviewed this.
8 Q. And you heard your investigators testify that they
9 had initially concluded that Mr. McMillan was the
10 owner of the property at 23 Birds Way Court,
11 correct?
12 A. That's correct.
13 Q. And this document did not change their opinions in
14 any way, did it?
15 A. It did not change their opinions.
16 Q. And did it change your opinion in any way?
17 A. It did not change my opinion.
18 Q. You're familiar with the open burning regulations,
19 Mr. Vozzo?
20 A. Yes.
21 Q. And you've had many opportunities to enforce those
22 regulations, have you not?
23 A. Yes, I have.
24 Q. If you'd turn to Tab 22 and take a look at that
25 exhibit for me, please.

1 A. Okay.
2 Q. Are you familiar - was this the open burning
3 regulations we were discussing?
4 A. Yes. This is 2D .1900, yes.
5 Q. Okay. And you were present when Ms. Grimes was
6 testifying?
7 A. I was.
8 Q. And you heard our discussion with regard to the
9 people who may be liable for illegal burning?
10 A. Yes.
11 Q. Okay. And do you agree, Mr. Vozzo, that an
12 individual who was in - who exercises control over
13 property and benefits from burning may be
14 responsible for an open burning?
15 A. Yes, that's correct.
16 Q. Did you agree with your investigators that when
17 Mr. McMillan gave permission to the individuals,
18 Mr. Taylor and Mr. Johnson, to scrap metal from
19 the trailer at 23 Birds Way Court that he had
20 exercised control over the property?
21 A. Yes, that's correct.
22 Q. Did you agree with your investigators that when
23 Mr. McMillan suggested that burning the trailer
24 would be a good way to get rid of it that
25 Mr. McMillan had caused, permitted, or allowed the

1 illegal open burning to occur?
2 A. Yes, that's correct.
3 Q. And so is that then your basis for not only
4 assessing Mr. Taylor and Mr. Johnson with a
5 penalty but also assessing Mr. McMillan?
6 A. Yes.
7 Q. Okay. And you considered Mr. McMillan's response
8 at Exhibit 9 before a penalty was assessed against
9 Mr. McMillan?
10 A. Yes. Yes, I did.
11 Q. If you'll take a look at Exhibit 10, please.
12 (RESPONDENT'S EXHIBIT NO. 10
13 (MARKED FOR IDENTIFICATION
14 A. Okay.
15 Q. Can you identify that document for me?
16 A. This is the civil penalty assessment document that
17 was issued to Mr. McMillan and McMillan
18 Contracting.
19 Q. And if you can just take a look through all of
20 those pages carefully.
21 A. Okay.
22 Q. Is it a true and accurate copy of the civil
23 penalty assessment in this case?
24 A. It is.
25 Q. And maintained in the file of DAQ in the regular

1 course of your business?
2 A. Yes, it is.
3 Q. All right. If you'll take a look at the - after -
4 there's a letter that submits the civil penalty
5 assessment, and then it looks like just a few
6 pages in is the actual civil penalty assessment?
7 A. Yes.
8 Q. And there is a listing of the findings of facts
9 there?
10 A. Yes.
11 Q. Have you reviewed these findings of fact before?
12 A. I have.
13 Q. Did your office and you personally have
14 involvement in preparing these findings of fact?
15 A. We did.
16 Q. Okay. And do these findings of fact accurately
17 reflect the information that has been presented
18 here in court today?
19 A. Yes, it does.
20 Q. Okay. Paragraph G of the findings of fact - it's
21 page 2 of the civil penalty assessment - there is
22 an indication of air quality enforcement history?
23 A. Yes.
24 Q. And did you prepare - did you put this information
25 together here?

1 A. Our office did, yes.
2 Q. Okay. And does this, again, refer to prior
3 violations of Mr. McMillan?
4 A. Yes, it did.
5 Q. And in paragraph (a), does that refer to a prior
6 civil penalty assessment being assessed against
7 Mr. McMillan?
8 A. Yes. In 2006.
9 Q. Okay. And was that penalty eventually collected?
10 A. It was eventually collected in 2008.
11 Q. Via collection from the Attorney General's Office?
12 A. Yes, by the collection of the Attorney General's
13 Office.
14 Q. Okay. And then it also refers to the November 17,
15 2010 notice of violation, is that correct?
16 A. That's right.
17 Q. And what - a penalty was not assessed for that, is
18 that right?
19 A. A penalty was not assessed.
20 Q. Could you always assess civil penalties for open
21 burning violations?
22 A. Not every violation - not every violation gets
23 assessed a penalty.
24 Q. So is it relevant to you, then, sir, that an
25 individual has previously had an open burning

1 violation when you need to decide whether or not
2 to assess a penalty?
3 A. That is one of the factors.
4 Q. Okay. Is it also relevant to you whether or not
5 that individual has actual - has knowledge of your
6 open burning regulations when you're deciding
7 whether to assess a penalty?
8 A. Yes, that's a factor as well.
9 Q. Okay. And so we see there is a couple of other
10 violations that are listed in this findings of
11 fact, correct?
12 A. That's correct.
13 Q. Okay. And then if you'll turn to the next page.
14 You recognize this here as the actual civil
15 penalty that was assessed against Mr. McMillan, is
16 that correct?
17 A. That's correct.
18 Q. And you see they have three hundred and one
19 dollars in investigative costs, is that right?
20 A. That's right.
21 Q. Are you familiar with the assessment of the
22 investigative costs in open burning enforcement
23 actions?
24 A. Yes, I am.
25 Q. If you'll turn to Tab 11, please.

1 (RESPONDENT'S EXHIBIT NO. 11
2 (MARKED FOR IDENTIFICATION
3 A. All right.
4 Q. Can you identify this document for me?
5 A. This one of the documents that we prepare when we
6 send the case forward, and it's the cost of
7 investigative - this is the cost of our
8 investigation and preparation of the enforcement.
9 Q. It looks to me like you've got here some hourly
10 rates for Ms. McHargue's contribution to the case?
11 A. That's right.
12 Q. And Ms. Cindy Grimes?
13 A. They were both there, yes.
14 Q. Okay. It looks like there are some costs which
15 involve the use of an official state vehicle, is
16 that correct?
17 A. That's right.
18 Q. Cost and preparation of the enforcement action?
19 A. That's one of the factors, yes.
20 Q. It looks also like these costs - the cost of the
21 investigation were divided by two businesses, is
22 that right?
23 A. Yes. Since there were two different entities
24 involved, we took the - the top cost was divided
25 up between the two different groups.

1 Q. So Mr. Taylor and Mr. Johnson had paid a part of
2 the investigative costs, is that correct?
3 A. Yes, they sure did. Yes.
4 Q. And there is also an administrative cost listed
5 there?
6 A. That's right.
7 Q. Is that a standard---
8 A. That's standard - that's part of every package.
9 Q. Were the investigative costs in this case what you
10 would typically expect to see in an open burning
11 investigation of this nature?
12 A. That was in the range of what we do, yes.
13 Q. And this Exhibit 11 is a true and accurate copy of
14 the cost of the enforcement action?
15 A. Yes, it is.
16 Q. All right. If you'll take a look at Exhibit 12.
17 (RESPONDENT'S EXHIBIT NO. 12
18 (MARKED FOR IDENTIFICATION
19 A. Okay.
20 Q. Can you identify that document?
21 A. This is the assessment factor document that gets
22 prepared for each of the enforcement cases that
23 the Division assesses.
24 Q. Okay. And this was prepared by the director of
25 the Division of Air Quality, is that correct?

1 A. That's correct.
2 Q. This is a standard form for every case?
3 A. Standard form for every case.
4 Q. Okay. If you'll look at the - off to the right
5 there, there is a notation of Ms. Holman, and if
6 you'll just read along and tell me if I'm reading
7 this correctly.
8 "OB---" And I guess that refers to open
9 burning?
10 A. Yes.
11 Q. "---of partially burned remains of a mobile home.
12 Mr. McMillan says he does not own any mobile homes
13 in Scotch Pines Subdivision. He says he was not
14 on-site when fire started and that he did give
15 Mr. Taylor and Mr. Johnson permission to burn. He
16 said the only reason his name was on the deed is
17 that he is the owner and financed the land via a
18 promissory note, is that correct?
19 A. Right. That's correct.
20 Q. So before Ms. Holman signed the civil penalty
21 assessment, all the information that Mr. McMillan
22 presented to you in response to the notice of
23 violation was provided to Ms. Holman, is that
24 correct?
25 A. That is correct.

1 Q. And, again, this form represents her consideration
2 of all the assessment factors in this case, is
3 that right?
4 A. That's correct.
5 Q. Okay. Including the prior record of the violator,
6 correct?
7 A. Prior record is listed, yes.
8 Q. Okay. Let's take a look at Exhibit 13, please.
9 (RESPONDENT'S EXHIBIT NO. 13
10 (MARKED FOR IDENTIFICATION
11 A. Okay.
12 Q. Can you identify that document for me?
13 A. This is the - appears to be the 2006 notice of
14 violation/notice of recommendation for enforcement
15 case. I think---
16 Q. Is that your signature on page 2 there?
17 A. That is my signature, yes.
18 Q. And that's March 1, 2006?
19 A. Yes.
20 Q. And can you identify for me what's on page 4 of
21 this Exhibit 13?
22 A. Page 4 is Mr. McMillan's response to the original
23 open burning violation letter we sent him.
24 Q. All right. And what about page 5?
25 A. Page 5 is the civil penalty assessment document

1 that was issued by the Division.
2 Q. And if we turn to page 6, we see that that was a
3 three-thousand-three-hundred-and-thirty-three-
4 dollar penalty - I'm sorry - that was a three-
5 thousand-dollar penalty, is that correct?
6 A. That's right.
7 Q. And then the investigation costs for that one were
8 a little higher at three hundred and thirty-three
9 dollars, correct?
10 A. That's right.
11 Q. If you'll take a look at page 7 and identify that
12 for me, please.
13 A. This is a - this is in response to the civil
14 penalty assessment. This is a request for
15 remission that Mr. McMillan submitted to the
16 director for reconsideration of the penalty that
17 was assessed.
18 Q. There's a stamp on there that says it was received
19 in your Fayetteville Regional Office, correct? It
20 stamped, "Received October 2nd, 2006, DENR
21 Fayetteville Regional Office"?
22 A. It was received on the - I'm not certain there if
23 it was our---
24 Q. There's two stamps. One says September 27, and
25 one says October 2nd.

1 A. Oh, yes. I'm sorry. I was looking at the top.
2 Yes. October 2nd, we received it, yes.
3 Q. Okay. So this is something that's maintained in
4 your files, correct?
5 A. It sure is, yes.
6 Q. And attached to that letter was page 8, is that
7 correct, the remissions request?
8 A. That's right.
9 Q. And then can you tell me what page - what begins
10 on page 9, please.
11 A. After the Division director had an opportunity to
12 review it, the case then moves forward to the
13 Emissions Management Commission - the
14 Environmental Management Commission where they'll
15 evaluate it further to see if there is any need to
16 remit it any further. And this letter was sent
17 then which indicated that the penalty was upheld
18 as it was issued.
19 Q. Okay. So they found no grounds for remission or
20 reduction of the penalty, then?
21 A. That's correct.
22 Q. Okay. If you'll go back to page 1 of Exhibit 13,
23 your notice of violation?
24 A. Yes.
25 Q. And can you tell me what this violation was for?

1 A. It is for the open burning of demolition debris.
2 I believe it was an old building in Parkton that
3 had been hauled to his property and burned.
4 Q. Okay. If you'll look at page 2 of that document.
5 A. Yes.
6 Q. See there where it says, "Attachments: Open
7 Burning Brochure and Flyer"?
8 A. Yes.
9 Q. Okay. Earlier we had looked at Exhibit 23.
10 A. Okay. All right.
11 Q. Is Exhibit 23 - was that one of - was that
12 document sent to Mr. McMillan also in March of
13 2006?
14 A. That's probably the flier, yes. That is the
15 flier - what we called it at the time.
16 Q. Okay. And this flier, it does have a date of
17 January 10th, 2006, in the bottom left-hand side?
18 A. Right. Yes.
19 Q. Okay. And at this time, did Mr. McMillan tell you
20 that it was the City of Parkton that was dumping
21 on his property? If you look at page 4, his
22 response to the NOV.
23 A. Yes. That's what he's claimed, yes.
24 Q. If you'll take a look at Exhibit 14, please. Can
25 you identify that document for me?

1 (RESPONDENT'S EXHIBIT NO. 14
2 (MARKED FOR IDENTIFICATION
3 A. Yes. This is a 17 November 2000 notice of
4 violation to Mr. McMillan and McMillan
5 Contracting.
6 Q. And why did you send him this notice of violation?
7 A. There was land clearing being burned in that
8 area - in the area where this was, and he was - it
9 was being burned less than a thousand foot away
10 from occupied structures. So, therefore, it was a
11 violation of our rules.
12 Q. Okay. And take a look at the second page of that
13 document. That's your signature, correct?
14 A. Yes, it is.
15 Q. Okay. And, again, you're referring to some
16 attachments. It says, "OB Regulations and
17 Summary." Is "OB" open burning again?
18 A. That's right.
19 Q. Okay. And this is November 2000. I don't have a
20 copy of any flyers for November of 2000, but can
21 you tell me what sort of information you would
22 have provided to Mr. McMillan with this
23 attachment?
24 A. Yeah. At the time, the summary would have been
25 the brochure that we were sending out at that

1 time. The regulation would have been the actual
2 open burning regulation in its eight to ten,
3 twelve pages that - you know, the written official
4 regulation itself.
5 Q. Would it be like what we have at Tab 22, the
6 actual regulation?
7 A. Yes, it would have been.
8 Q. Okay. So in November of 2000, you provided to
9 Mr. McMillan the actual regulations regarding open
10 burning?
11 A. Yes.
12 Q. Was it permissible in November of 2000 to burn
13 trailers?
14 A. No. No, it's never been permissible, at least
15 since the rules have been in place for over
16 thirty, near forty years.
17 Q. Is open burning regulations one of the oldest
18 environmental laws on the books?
19 A. It's one of the oldest for the Division of Air
20 Quality, yes.
21 Q. Okay. If you'll take a look at Exhibit 15 for me.
22 (RESPONDENT'S EXHIBIT NO. 15
23 (MARKED FOR IDENTIFICATION
24 A. Okay.
25 Q. Can you identify that document, please.

1 A. This was a case in June 1, 1999, where McMillan
2 Construction was burning, again, trees and stumps
3 from a project at the Scotch Pines development
4 site, again, being less than a thousand foot away
5 from other occupied structures.
6 Q. Was a civil penalty ever assessed in this case?
7 A. In this case, at the time this was assessed, the
8 civil penalty was not assessed in this case.
9 Q. If you'll turn to page 2 of your notice of
10 violation.
11 A. Yes.
12 Q. Again, you see, "Attachment: Open Burning
13 Regulations and Summary," right?
14 A. That's correct, yes.
15 Q. So would this be the same sort of information
16 we've been discussing that you sent to him in June
17 of 1990?
18 A. Certainly.
19 Q. Okay. But at this time, you didn't assess a
20 penalty. Were you able to actually work something
21 out with Mr. McMillan?
22 A. Yes. We were contacting both Betsy and
23 Mr. McMillan, and in the end, he was able to get
24 permission from the people who were within that
25 thousand-foot radius of his burn, which is one of

1 the provisions if people did that in advance.
2 Again, this was vegetative debris. It wasn't any
3 kind of synthetic material. Because it was
4 vegetative debris from that location, he got
5 permission from the neighbors, you know, post, but
6 we considered that and then, therefore, dropped
7 the enforcement portion of it. It was still a
8 violation because the rules weren't followed.
9 Q. So if you look at the last page of Exhibit 15,
10 it's an October 20, 1999 withdrawal of
11 recommendation for the enforcement of action.
12 Does that reflect the conclusion of that case?
13 A. Yes. That summarizes what I was just saying, yes.
14 Q. Okay. After hearing all the testimony you've
15 heard in this case today, Mr. Vozzo, and being
16 aware of the penalty that was recommended in this
17 case, is there anything that would change your
18 opinion with regard to whether Mr. McMillan should
19 indeed have been assessed the civil penalty he was
20 assessed in this case?
21 A. Nothing changed my mind. I think it was done fair
22 and consistent.
23 Q. Okay.
24 MS. BIRCHER: If I could just have a
25 moment to confer.

1 THE COURT: Okay.
2 (Thereupon, there was a pause in the
3 proceeding.)
4 MS. BIRCHER: Those are all the
5 questions I have of Mr. Vozzo at this time.
6 THE COURT: All right. Mr. McMillan, do
7 you have questions for the witness?
8 MR. McMILLAN: Just a couple.
9 **CROSS-EXAMINATION**
10 **BY MR. McMILLAN:**
11 Q. Mr. Vozzo, is it true that you've issued
12 violations and fines to Mr. Taylor and Mr. Johnson
13 for burning the mobile home on Lot 28?
14 A. Yes.
15 Q. Is it also true that within a thousand feet of a
16 brush pile that if you have signatures from the
17 occupied dwellings that you're legal?
18 A. And if you submit those to us and receive
19 permission, allow us to evaluate all that, you can
20 be legal, yes.
21 Q. Is it true that your office received signatures
22 from my office in those incidents?
23 A. For the '99 one, yes.
24 Q. And if - Mr. Vozzo, if somebody were to approach
25 you, even though it's not true hopefully, and ask

1 you to go out and burn a trailer down in a trailer
2 park occupied, would you do that?
3 A. I would not do that.
4 MR. McMILLAN: No further questions,
5 Your Honor.
6 THE COURT: Anything else?
7 MS. BIRCHER: No, Your Honor.
8 THE COURT: All right. You may step
9 down. Thank you.
10 MS. BIRCHER: Your Honor, if
11 Mr. McMillan is going to call Betsy, I can
12 wait until she gets on the stand.
13 THE COURT: Right. That's what he's
14 indicated.
15 MS. BIRCHER: Okay. I just move the
16 admission of all the exhibits that we have in
17 our notebooks.
18 THE COURT: That's 1 through 23?
19 MS. BIRCHER: 1 through 23.
20 THE COURT: 24?
21 MS. BIRCHER: I think it's - just 23
22 exhibits. I've got 24 tabs. Behind 24 is
23 actually part of another exhibit. It's just
24 in color.
25 THE COURT: All right. So you're not

1 offering 24?
2 MS. BIRCHER: Yeah. 24 is actually just
3 a color photo. I guess you could call it
4 another exhibit number.
5 THE COURT: All right.
6 MS. BIRCHER: So 1 through 24.
7 (RESPONDENT'S EXHIBIT NOS. 1-24
8 (OFFERED INTO EVIDENCE
9 THE COURT: Mr. McMillan has copies of
10 each one?
11 MS. BIRCHER: Yes. In the notebook
12 right in front of him.
13 THE COURT: All right. We'll show
14 Respondent's 1 through 24 admitted.
15 (RESPONDENT'S EXHIBIT NOS. 1-24
16 (RECEIVED INTO EVIDENCE
17 MS. BIRCHER: Thank you, Your Honor.
18 THE COURT: And I take it that
19 Respondent rests at this point?
20 MS. BIRCHER: Yes, Your Honor.
21 THE COURT: All right. Mr. McMillan, do
22 you wish to call any witnesses or put on any
23 evidence this morning?
24 MR. McMILLAN: Just a few questions,
25 Your Honor, of Betsy Corney.

1 THE COURT: Just have her come up and be
2 sworn.
3 MR. McMILLAN: Okay.
4 - - - - - - - -
5 BETSY CORNEY,
6 a witness called on behalf of the Petitioner, being
7 first duly sworn in the above-entitled matter, was
8 examined and testified on her oath as follows:
9 THE COURT: All right. And if you'd be
10 seated and state and spell your name for us.
11 THE WITNESS: Betsy Corney, B-e-t-s-y
12 C-o-r-n-e-y.
13 THE COURT: All right. Thank you.
14 **DIRECT EXAMINATION**
15 **BY MR. McMILLAN:**
16 Q. Betsy, at any point, do you know of Mr. Johnson or
17 Mr. Taylor talking to me on the phone or at my
18 office or anywhere other than the day of this
19 burn?
20 A. No, not that I know of. Mr. Taylor and
21 Mr. Johnson actually called the office previous -
22 before the day of the burn and asked about this
23 mobile home, and I said that it was not our mobile
24 home. We could not give them permission to burn
25 that mobile home, that I could try and help them

1 get in contact with the owner, but that I, you
2 know, couldn't promise anything. So at that
3 point, you know, I didn't hear anything else from
4 them, whether they - you know, that's the only
5 communication.
6 Now the day of the burning when the fire
7 department was out there, I rode out there because
8 it was in our subdivision, of course, and
9 actually, Mr. Ernest - I think it was Mr. Taylor
10 who came up and handed me his card and wanted to
11 know if we had any other mobile homes - abandoned
12 ones that could be, you know, taken off the lot.
13 And I, again, told him, "We do not own any
14 mobile homes in the subdivision. So, therefore, I
15 can't give you permission to do anything with any
16 homes, but I can try to get you in contact with
17 the owner." Sometimes I can and sometimes I
18 can't. You know, it just depends on if we've
19 heard from them. And that's my only communication
20 with them.
21 Q. What is our only purpose for being in these
22 subdivisions? Is it to - what are our
23 subdivisions for only?
24 A. We - in all of our subdivisions, we just subdivide
25 the land, and then we sell the lots - individual

1 lots. We really don't have any dealings or we
2 don't have any dealings with the actual mobile
3 homes whatsoever.
4 Q. And could you explain to the Court how we sell
5 these lots to these individuals and - as far as---
6 A. The individual comes in, and we do a land contract
7 and promissory note. At that point, you know,
8 it's their lot. It's an owner finance. They're
9 paying us for the lot so the lot's theirs. You
10 know, the only regulations that they follow are
11 the ordinances, the subdivision, the covenants.
12 But as far as that, you know, we don't have
13 any control or contact with them. They just make
14 their payments and owner finance, and then when
15 they've paid, you know, us in full, then we give
16 them a deed.
17 Q. So if someone would go to the tax office, our
18 names would still be on the land until it's
19 satisfied, is that correct?
20 A. Yes, sir. They - if they were to go to the tax
21 office, our name would be on it. Actually - I
22 actually get the tax notices in the mail and mail
23 them to the individuals. In our original
24 contract, it states that they are responsible for
25 the land taxes, and you know, they pay those as

1 well. That's in our agreement with them.
2 Q. Is it true that we - the only other fine that
3 we've paid is a thirty-two-hundred-dollar fine for
4 the Town of Parkton dumping on our property? Is
5 that true?
6 A. As I remember it, they tore down a building in
7 town, and they wanted permission - or I don't even
8 know if they got permission - I knew that - I know
9 that they did haul the old building out to our
10 land and we got in trouble for it. I do remember
11 that and we had to pay.
12 Q. And is it true the reason we paid that thirty-two-
13 hundred-dollar fine is because DENR stopped our
14 permits on the next project?
15 A. Right. We had to pay that in order to move on
16 with the other subdivisions. They were, you know,
17 giving us a hard time about it, so we really
18 didn't want to get the Town of Parkton in any
19 trouble, you know, and proceed any further, so we
20 just decided to pay the fine to keep going.
21 Q. Is it also true that we notified the Town of
22 Parkton and they were unavailable - unable to pay
23 that fine?
24 A. They said - when we contacted tem, they said that
25 they just didn't have the money in their budget

1 and that they couldn't help us with it. Those
2 were their words.
3 Q. Any other violation that we've had? Haven't we
4 turned in the proper signatures with the
5 surrounding people - dwellings around that burn
6 site?
7 A. I, on several occasions, have seen signatures that
8 you've received, and I've mailed those in to DENR,
9 yes, sir.
10 MR. McMILLAN: No further questions,
11 Your Honor.
12 THE COURT: All right.
13 MS. BIRCHER: Just a few questions,
14 Ms. McMillan.
15 THE WITNESS: Yes, ma'am.
16 **CROSS-EXAMINATION**
17 **BY MS. BIRCHER:**
18 Q. Were you present for the testimony of Ms. Heather
19 Hawkins earlier today?
20 A. Yes, ma'am.
21 Q. And she was testifying with regard to a
22 conversation that she had with you. Do you recall
23 that testimony?
24 A. Yes. Yes.
25 Q. And do you recall speaking to Ms. Hawkins?

1 A. I spoke to several people. I'm not sure over the
2 course of all of this. I don't remember speaking
3 to her, but I'm not saying I didn't. You know, I
4 might have. I might have spoke to two different
5 ladies.
6 Q. Ms. McMillan, what is your position - is
7 Mr. McMillan your father?
8 A. Yes.
9 Q. Okay. And he refers to "our." Is that referring
10 to a business that you run with your father?
11 A. Yes.
12 Q. Okay. What is your position in that business?
13 A. Secretary.
14 Q. Okay. Did you - you recall speaking with
15 Ms. Hawkins, though, correct?
16 A. Right.
17 Q. Okay. Now did you indeed tell Ms. Hawkins that
18 Ms. McLean was not up to date on her payments?
19 A. We have a lot of people in the subdivision that
20 get behind, but we always give them an endless
21 amount of chances. So she was behind, but it
22 wasn't unlike her to come in and catch up a bunch
23 all at, you know, one time. She had done that in
24 the past, so---
25 Q. But she has - was not living there in February

1 2010, was she?
2 A. I really don't know. Just through talk through
3 the neighborhood, I did hear that she had moved
4 out but that her children - her daughters were
5 staying there.
6 Q. Okay. But you had not---
7 A. But that's really none of our concern just as long
8 as we have the - you know, we don't monitor who
9 stays in the home.
10 Q. I understand.
11 A. Yes, ma'am.
12 Q. But it is true that you told Ms. Hawkins that
13 Ms. McLean had not made a payment since November
14 of two thousand - or December of 2009, is that
15 correct?
16 A. I think that's correct, yes, ma'am.
17 Q. Okay. And you haven't talked to Ms. McLean since
18 that time, have you?
19 A. That would be the last time I had contact with
20 her. I've tried, but all of, you know, the
21 contract, the addresses or telephone numbers, you
22 know, I wasn't able to get her on any of them or
23 some of them had been disconnected and---
24 Q. I understand. There's an exhibit notebook in
25 front of you. If you can turn to Tab 19 for me,

1 please. Now the first page is some information I
2 received from your father. Do you recognize this
3 handwriting?
4 A. Yes, ma'am.
5 Q. That's your father's?
6 A. Yes, ma'am.
7 Q. Okay. And I just want to ask you one thing. Are
8 you - when you and your father are running this
9 business, you're not with him every single part of
10 the day, are you?
11 A. No, ma'am.
12 Q. So he can certainly have conversations with people
13 when you are not present, is that correct?
14 A. Yes, ma'am.
15 Q. Okay. If you will look at the second page of this
16 document after the page with your father's
17 handwriting, you should see three pages with
18 some - it looks like - they say, "Date Reference,"
19 "Charges," "Credits," "Balance." Do you recognize
20 that document?
21 A. Yes, ma'am.
22 Q. And can you identify that for me?
23 A. This is how we keep up with the payments that
24 our - the people that make, you know, owner-
25 financed. This is where Ms. McLean has made a

1 lot - quite a few payments to us over quite a few
2 years.
3 Q. Uh-huh. Okay. And it looks like on this first
4 page, we see some '06-07 payments, is that
5 correct?
6 A. Yes, ma'am. It's '06 through the '09 that we
7 talked about.
8 Q. Okay. But this last entry here looks like
9 4/2/07 - it says 3/19/07 and then it looks like
10 4/2/07. I'm talking about the first page here.
11 A. Yes, ma'am.
12 Q. Okay. And then on the second page, it looks like
13 it begins at - for 3/1/04 and ends at 1/17/06?
14 A. Yes, ma'am. They're just out of order, it looks
15 like.
16 Q. Yeah. That's what it looks like. And then on the
17 third page, it looks like it begins at 7/2/07, and
18 it looks like it ends on 8/6/08?
19 A. It looks like 7/2/07 and 12/10/08 on mine.
20 Q. And where is that? Oh, I'm sorry. Yes, you're
21 correct. There's a notation 12/10. The one is
22 running into the edge here, so 12/10/08?
23 A. Yes, ma'am.
24 Q. And these are your payment records from
25 Ms. McLean?

1 A. Yes, ma'am.
2 Q. Okay. So the last payment that you had recorded
3 in your business looks to be 12/10/08, is that
4 correct?
5 A. Yes, ma'am.
6 Q. Okay. Do you - are you the individual who would
7 be responsible for the paperwork in the office?
8 A. Yes, ma'am.
9 Q. Okay. So do you get the contracts - the land
10 contracts and promissory notes ready---
11 A. Yes.
12 Q. ---for signature?
13 A. Uh-huh.
14 Q. Where did you obtain those documents that you use
15 for those contracts?
16 A. We actually, in the beginning when we started up,
17 worked with a mortgage company, and they actually
18 provided us with the documents that they wanted us
19 to have in order to - sometimes they would buy our
20 contracts from us. And so that's where we got
21 those from, and that's how - we did it just the
22 way that they told us to do it.
23 Q. Have you ever read those documents?
24 A. Yes, ma'am.
25 Q. And your father signs the documents, is that

1 right?
2 A. Yes, ma'am.
3 Q. Do you ever sign the documents?
4 A. I have in the past with a power of attorney.
5 Q. Okay.
6 A. I have his power of attorney and my mother's.
7 Q. Okay. If you'll look at Tab 17 in that notebook.
8 If you'd look at the last couple of pages there,
9 and they should be legal-length pages with the
10 edges folded up - the bottom edges sort of folded
11 up so they'll fit in the notebook.
12 A. Yes. Yes, ma'am.
13 Q. And your father has presented one of these
14 documents today, but can you identify these
15 documents for me?
16 A. This is the land contract and promissory note.
17 Q. Okay. If you'll take a look at this first
18 document, it doesn't have anything on the top.
19 One of the documents says, "Promissory Note," and
20 then this other document doesn't have anything on
21 the top. Do you see that?
22 A. Yes, ma'am.
23 Q. And it looks like it's dated February 6th, 2004?
24 A. Yes, ma'am.
25 Q. And this document says that in the event payments

1 were - and I'm looking at - let's see - it looks
2 like in the bottom half of the document,
3 second-from-the-last paragraph before the capital
4 letters begin.
5 A. Yes, ma'am.
6 Q. It says, "In the event of any - that any payment
7 is more than thirty days in arrearage, said
8 agreement be in default and parties of the first
9 part, David McMillan and wife, Clair D. McMillan,
10 at their option may demand the payment of all
11 remaining outstanding balance within ten days," is
12 that correct?
13 A. Yes, ma'am. From what I understand---
14 Q. I just wanted to ask you if it's correct. I'm not
15 asking about your understanding. I just want to
16 ask if it's correct.
17 A. No, ma'am, not from what I---
18 Q. Is that a correct reading of the paragraph?
19 A. Oh, yes. Yes.
20 Q. Okay. And in the second paragraph, it states -
21 you know, you demand that they pay within ten
22 days, and the second paragraph states, "If
23 thereafter -" if you could read it with me because
24 I'm going to ask you if I read it correctly.
25 A. Okay.

1 Q. "If thereafter payment is not made within the
2 ten-day period after demand, parties of the first
3 part -" meaning your father and mother - "may
4 institute -" or your father and his wife - "may
5 institute legal action in the form of summary
6 judgment against said parties of the second part
7 to recover premises. Said parties of the second
8 part being responsible for costs."
9 So, basically, if an individual defaults on
10 the property, you can take action in the form of
11 summary judgment, according to this document,
12 correct?
13 A. From my understanding, it has to go to court, and
14 the people - in order for us to take the property
15 back, a release has to be signed by Ms. McLean.
16 And normally in the past, if we go - take someone
17 to court for nonpayment, there in court if they
18 give the property back, we'll have them sign a
19 release or either they can come in and sign a
20 release or either than can come in and sign a
21 release, you know, voluntarily giving it back.
22 Q. So then you don't have to take them to court if
23 they voluntarily release it - I understand that -
24 correct?
25 A. If we have that release, yes, ma'am.

1 Q. Yes. And that's a lot easier, right?
2 A. Hopefully, yes, ma'am.
3 Q. But these legal documents give you the right to
4 take someone to court---
5 A. Through court.
6 Q. ---for nonpayment, correct?
7 A. Through court, yes, ma'am.
8 Q. Okay. And if you look at that promissory note - I
9 guess it's the second document, and it does have
10 the title, "Promissory Note," right?
11 A. Yes, ma'am.
12 Q. Okay. Take a look at the very bottom paragraph,
13 the last sentence there says, "The failure to
14 exercise any such right or remedy shall not be
15 waiver or release of such rights or remedies or
16 the right to exercise any of them at any - at
17 another time." Did I read that correctly?
18 A. Yes, ma'am.
19 Q. Okay. So you have not gone to court and proceeded
20 with summary judgment against Ms. McLean, have
21 you?
22 A. No, ma'am.
23 Q. But you have not waived your right to do that,
24 have you?
25 A. No, ma'am. We have done nothing with her.

1 Q. Okay. And you have not deeded this property over
2 to Ms. McLean, have you?
3 A. No, because it has not been paid in full.
4 MS. BIRCHER: Okay. Those are all the
5 questions I have, Your Honor.
6 THE COURT: All right. Mr. McMillan,
7 any further questions?
8 MR. McMILLAN: Just one, Your Honor.
9 THE COURT: All right.
10 **REDIRECT EXAMINATION**
11 **BY MR. McMILLAN:**
12 Q. Betsy, are those documents legal and - as far as
13 our attorneys?
14 A. As far as I've been told by the attorneys for
15 Wells Fargo---
16 MS. BIRCHER: Objection. Calls for
17 hearsay. I'm sorry.
18 THE WITNESS: That's okay.
19 Q. Have we ever had any trouble with our---
20 THE COURT: Your question was---
21 MR. McMILLAN: Okay. I'm sorry.
22 THE COURT: ---according to her
23 understanding. I'll overrule. Her answer
24 stands. Go ahead with the next question.
25 She's not making a conclusion about whether

1 they're legal but whether it's her
2 understanding from the attorneys. Go ahead
3 with your next question.
4 MR. McMILLAN: Yes, sir.
5 Q. Have we had any trouble with our documents with
6 any - over the last fifteen, twenty years or
7 however long we've been in business?
8 A. No, sir, not that I'm aware of.
9 Q. Why is it that we do not repossess lots or ask
10 people to get off of our lots?
11 A. Well, number one, going through the court system
12 costly and we don't have that kind of funds, and
13 number two is we give people a last chance, you
14 know, to be able to pay. A lot of these people
15 don't have money, and a lot of these people will
16 get their tax returns or a big chunk and come in
17 and pay a couple of years up at a time.
18 And, you know, we'd like someone to give us
19 those same changes, and I'm close to a lot of
20 people in the neighborhood, and I do give them
21 chances a lot longer than I should. And that's
22 just our way of business. It might not be the
23 best way of business, but that's the way we do
24 things.
25 Q. Approximately how many lots do you think we've

1 been in this situation with over the years?
2 Dozens or hundreds or---
3 A. Hundreds. As far as owner-financed.
4 Q. And we have repo'd one lot, as I remember, and how
5 much is that costing us?
6 MS. BIRCHER: I object to him testifying
7 from---
8 THE COURT: You may ask her if she
9 remembers a repo and then ask her about it.
10 Q. Do you remember the lot that we had won a
11 repossession of?
12 A. The only one that I can remember was a long time
13 ago, and the guy - we went to court, and it wasn't
14 even worth the money. He never paid us. He just
15 left the land. That's the only one I remember.
16 Q. How about the one that's in repossession at this
17 time in Parkton?
18 A. I don't know of one.
19 Q. It's a town lot - commercial lot.
20 A. Oh, oh. Yes. Yes.
21 Q. Do you know how much money that's costing us just
22 to repo that one lot?
23 A. Today it's at an attorney's. It's about two
24 thousand dollars.
25 Q. Per lot?

1 A. Yes. As of to date, but we haven't even finished
2 it yet.
3 MR. McMILLAN: No further questions.
4 THE COURT: All right. Any further
5 questions?
6 MS. BIRCHER: Just one question.
7 THE WITNESS: Yes, ma'am.
8 **RECROSS-EXAMINATION**
9 **BY MS. BIRCHER:**
10 Q. Ms. McMillan, have you testified in court for your
11 father before?
12 A. Yes.
13 Q. How many times?
14 A. Twice.
15 Q. Okay. And what kind of actions were testifying---
16 MR. McMILLAN: Object, Your Honor. That
17 has nothing to do with - that's another civil
18 case. It has nothing to do with this case.
19 THE COURT: Can you relate your question
20 to the issues in this case?
21 MS. BIRCHER: I just wanted - Your
22 Honor, I just wanted to ask what kind of
23 actions they were where she testified for her
24 father.
25 THE COURT: I'll sustain the objection.

1 Any other questions?
2 MS. BIRCHER: No. Thank you, Your
3 Honor. Thank you, Ms. McMillan.
4 THE COURT: You may step down. Thank
5 you.
6 MR. McMILLAN: No, sir.
7 THE COURT: Any further evidence,
8 Mr. McMillan?
9 MR. McMILLAN: No, sir.
10 THE COURT: All right. We'll go off the
11 record. Let me see---
12 (Thereupon, a brief recess was taken.)
13 THE COURT: Mr. McMillan wants to be
14 heard on final argument. Mr. McMillan, go
15 ahead.
16 **CLOSING ARGUMENT BY MR. McMILLAN**
17 MR. McMILLAN: Your Honor, this was a
18 case where we had two individuals who just
19 come out on the property not knowing who
20 owned the property. They were just riding
21 through neighborhoods trying to collect
22 metal. And I know times are hard, but they
23 used poor judgment in starting a fire. The
24 reason they started that fire was to clean
25 the debris off the metal so they could easily

1 cut the metal up.
2 They had no permission whatsoever from
3 my office, from my daughter - we didn't even
4 know they were out there until somebody
5 reported a fire, and I had a couple of men go
6 out there and see what was going on. You
7 know, we've heard testimony that they
8 admitted to burning it.
9 And it's a situation where the fire
10 department pulled up and they know that
11 that's one of my subdivisions, and they
12 called DENR and presented my name to them for
13 no reason at all, without even investigating
14 it, without even finding out whose lot it is.
15 And they also at that time - Mr. Taylor
16 explained to him that they set the fire and
17 the fire got away. So that's all I've got to
18 say, Your Honor.
19 THE COURT: All right. Thank you,
20 Mr. McMillan.
21 **COURT'S DECISION**
22 THE COURT: All right. Without further
23 argument, I'm going to give you a decision in
24 the case.
25 MS. BIRCHER: Okay.

1 THE COURT: And I find that the evidence
2 upholds the action taken. I'll sustain the
3 civil penalty, and I would put a
4 recommendation in that penalty that since
5 you - since the Department already has the
6 two individuals who admitted to setting the
7 fire and the evidence about Mr. McMillan
8 either had control, authorized, or caused the
9 fire to be burned, that the Department
10 consider something less than the full penalty
11 you levied by way of a negotiated settlement
12 since you already got the two prime
13 initiators of the fire.
14 And that's in the Department's
15 discretion. I was willing to recommend to
16 Mr. McMillan that he take the eighty percent,
17 but whatever you can negotiate, I think he
18 would be entitled to some relief on that
19 based on the facts.
20 And if you would draft a decision for
21 me, send Mr. McMillan copy.
22 MS. BIRCHER: Yes. When would you like
23 the order by?
24 THE COURT: As soon as you can do it is
25 fine. You know, whatever the reasonable

1 amount of time.
2 MS. BIRCHER: We should be able to get
3 it to you within a week, Your Honor.
4 THE COURT: Okay. Make sure to e-mail
5 it in Word so I can work with it on the
6 computer.
7 MS. BIRCHER: Yes, I will.
8 MR. McMILLAN: I need - one more
9 question, Your Honor, before we go.
10 THE COURT: All right.
11 MR. McMILLAN: Who do I appeal this to?
12 Is it a commission or---
13 THE COURT: It goes back to the
14 Environmental Management Commission or its
15 designee, and I'm not sure who that is.
16 MR. McMILLAN: Environmental Management
17 Commission?
18 THE COURT: Commission.
19 MR. McMILLAN: And how many days do I
20 have to appeal it?
21 THE COURT: You'll get notice of all
22 that. When I send out a decision, it will
23 tell you about your appeal rights. It will
24 go before the Commission, and probably you
25 can appear, make an argument about it. After

1 that, you can go to Superior Court.
2 MR. McMILLAN: I just want to go to
3 Superior Court. I want a trial by jury.
4 That's the way I want to go.
5 THE COURT: You can appeal the decision,
6 but it won't be a trial by jury. It's called
7 judicial review because it's an
8 administrative agency decision. But you can
9 get in Superior Court in Wake County or in
10 Robeson County.
11 MR. McMILLAN: So there is no way I can
12 get a trial by jury?
13 THE COURT: Not on this administrative
14 action.
15 MR. McMILLAN: So who do I - in other
16 words, it will be appealed to a Superior
17 Court Judge?
18 THE COURT: After it goes back through
19 the Department, the Environmental Management
20 Commission or its designee. That will
21 conclude our business this morning. Thank
22 you. I need two copies of each exhibit
23 admitted.
24 MS. BIRCHER: Thank you, Your Honor.
25 THE COURT: Did you say you thought

1 you'd have that draft within a couple of
2 weeks or so?
3 MS. BIRCHER: I can get it to you within
4 a week, Your Honor.
5 THE COURT: All right. That's fine.
6 Thank you.
7 (Thereupon, the proceeding was
8 adjourned.)
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1 **CERTIFICATE**

2

3 I, REBECCA P. SCOTT, State-Certified
4 Verbatim Reporter, do hereby certify that the
5 foregoing pages numbered one (1) through one hundred
6 forty-seven (147), inclusive, constitute a transcript
7 of a hearing that was recorded; that I was not in the
8 courtroom at the time of the hearing; that I did
9 listen to the recording with diligence; and that the
10 transcript produced is a verbatim record of what is on
11 the recording, to the best of my knowledge and belief.
12 I further certify that I am not of
13 counsel for, or in the employment of, either of the
14 parties in this action, nor am I interested in the
15 results of this action.
16 Certified this 21st day of February,
17 2011.
18
19
20
21 _____
22 REBECCA P. SCOTT
23 STATE-CERTIFIED VERBATIM REPORTER
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