STATE OF NORTH CAROLINA IN THE OFFICE OF

COUNTY OF ROBESON ADMINISTRATIVE HEARINGS

BURT BENSON, CEO BENSON CONSTRUCTION, INC., Petitioner,	
vs.	Case No. 09 EHR 6251
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF AIR QUALITY, Respondent.	

Fayetteville, North Carolina
March 9, 2010
10:12 a.m.

ADMINISTRATIVE HEARING
TRANSCRIBED FROM AN OPEN-MICROPHONE RECORDING

The above-entitled matter came on for hearing before The Honorable Augustus B. Elkins, II, Administrative Law Judge Presiding, on the 9th day of March, 2010, in Room Number 3 of the Old Cumberland County Courthouse, 130 Gillespie Street, Fayetteville, North Carolina, commencing at 10:12 a.m.

APPEARANCES

APPEARING ON BEHALF OF THE PETITIONER:

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APPEARING ON BEHALF OF THE RESPONDENT:

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1 Thereupon, the following proceeding was held:
2 THE COURT: Good morning. This
3 contested case hearing will come to order.
4 I'm Augustus B. Elkins, II, and today is
5 March the 9th, 2010. The time is twelve
6 minutes after ten, and the location of this
7 hearing is the Old Cumberland County
8 Courthouse in Fayetteville, North Carolina.
9 Before the Office of Administrative
10 Hearings today is the case of the Department
11 of Environment and Natural Resources,
12 Division of Air Quality, Respondent, Burt
13 Benson, CEO Benson Construction, Inc.,
14 Petitioner. It carries the Office of
15 Administrative Hearings Number 09 EHR 6251.
16 We come to today's hearing by way of
17 notice of hearing sent to the parties on
18 February the 16th, 2010, notifying the
19 parties of today's date, time, and place.
20 That notice of hearing was sent as a result
21 of a petition being filed by Petitioner on
22 November 16th, 2009, with a notice of
23 contested case and assignment sent to the
24 parties, that is, Petitioner, Mr. Benson, and
25 the Respondent, the Division of Air Quality,

1 on November the 18th, 2009.
2 Let me ask, are all parties in possession of
3 these documents that I've mentioned?
4 MS. WEESE: Respondent has all
5 documents, Your Honor.
6 MR. MORTON: Yes, sir, Your Honor, we
7 have those documents.
8 THE COURT: And do the parties stipulate
9 that everything was timely filed in this
10 case?
11 MS. WEESE: Respondent so stipulates.
12 MR. MORTON: Yes, sir, Your Honor.
13 THE COURT: And do the parties stipulate
14 to receiving adequate notice in preparation
15 of today's hearing?
16 MR. MORTON: Yes, sir, Your Honor.
17 MS. WEESE: Yes, Your Honor.
18 THE COURT: Thank you. You may have a
19 seat. As is my practice, I held a brief
20 prehearing conference in which we went over
21 the order that we would proceed in today. We
22 talked about matters of number of witnesses,
23 talked about the burden of proof which I'll
24 make mention of in just a minute, and of
25 going forward.

1 Does that adequately but briefly
2 describe our prehearing conference?
3 MR. MORTON: Yes, Your Honor.
4 MS. WEESE: Yes. Yes, Your Honor.
5 THE COURT: Let's have an accounting of
6 the parties. As I stated, I am Augustus B.
7 Elkins, II, properly sworn and assigned to
8 this case. We're very fortunate in having an
9 experienced hearing assistant. I'll have him
10 introduce himself for the record.
11 THE HEARING ASSISTANT: William Reader.
12 THE COURT: And any questions you might
13 have about a copy of today's hearing, either
14 through tape or by transcript, Mr. Reader
15 will be glad to help you in any way. I do
16 note the Petitioner is represented by
17 counsel. If you'd introduce yourself for the
18 record and anyone at the table with you.
19 MR. MORTON: Jonathan Morton, Your
20 Honor, Robeson County Bar. This is my client
21 Burt Benson, CEO of Benson Construction.
22 THE COURT: Thank you. I note the
23 Respondent is also represented by counsel.
24 If you'd introduce yourself for the record
25 and anyone at the table with you.

1 MS. WEESE: I'm Elizabeth Jill Weese.
2 I'm an Assistant Attorney General with the
3 North Carolina Department of Justice. With
4 me at the table is Sheila Holman. She is the
5 deputy director of the Division of Air
6 Quality.
7 THE COURT: Thank you very much. It
8 appears that all prerequisites have been met
9 for us to proceed. No one has filed any
10 motions to disqualify the judge, and I am not
11 aware of any. Do either party wish to
12 challenge the judge for cause?
13 MS. WEESE: Respondent makes no
14 challenge, Your Honor.
15 MR. MORTON: No, sir, Your Honor.
16 THE COURT: Thank you. Let me make
17 mention on the record a notion of burden of
18 proof. It's fairly important in cases. The
19 burden of proof in the Office of
20 Administrative Hearings is twofold, one is
21 the burden of doing forward, and number two,
22 and more importantly, is the burden of
23 persuasion. The burden of persuasion is by a
24 preponderance or greater weight of the
25 evidence in this particular case.

1 Without having to elaborate, since both
2 parties are represented by counsel, the
3 burden of proof in this particular case is
4 borne by the Petitioner. However, in the
5 prehearing conference, an agreement was made
6 by counsel with my concurrence that we will
7 split that burden as is commonly done, that
8 is, the burden of going forward and the
9 burden of persuasion for logic reasons and
10 time reasons.
11 And that is in this particular case, the
12 Respondent will bear the burden of going
13 forward; that is, the Respondent will present
14 their evidence first. That, however, does
15 not in any way relieve the Petitioner of the
16 more important aspect of that burden of
17 proof, that is, the burden of persuasion.
18 My decision - it's my responsibility
19 today to hear all the evidence and to make
20 sure that both parties have a full and fair
21 opportunity to present all the evidence, all
22 the witnesses they wish to present. I do
23 this for two reasons, both extremely
24 important to me.
25 One is I need that in order to make a

1 decision myself, but equally important to me
2 is, it is my responsibility, which I take
3 very seriously, to be sure that we have a
4 full, fair, and complete record of today's
5 hearing. It is my understanding and belief
6 and experience over these last ten years that
7 this will probably be the only opportunity
8 that both parties have in which to present
9 witnesses and evidence.
10 Certainly decisions made after this
11 hearing and any appeals that are taken are
12 normally done on the record. If there is
13 anything beyond the record, it's usually just
14 brief arguments. So it's important to me,
15 not only for my own sake in making a
16 decision, but for anyone seeing this that the
17 record is very complete, very fair, and list
18 all the evidence that's relevant, materials
19 that both parties wished to present.
20 My decision could come at any time. It
21 could come during the hearing upon a proper
22 motion. It could come at the end of the
23 hearing. More than likely, it will come
24 sometime after today's hearing, but we'll get
25 to that as we get closer to the end.

1 Do either parties wish to take a moment
2 to talk to their client for any reason?
3 MR. MORTON: No, sir.
4 MS. WEESE: No, Your Honor.
5 THE COURT: That being the case, do the
6 parties wish to make an opening remark? I'll
7 turn first to you, Ms. Weese, and ask do you
8 wish to make a brief opening remark?
9 MS. WEESE: Yes, Your Honor.
10 THE COURT: Okay.
11 **OPENING STATEMENT BY MS. WEESE**
12 MS. WEESE: As the Court has just
13 addressed, the burden of proof does rest on
14 the Petitioner challenging this agency
15 decision, even if that burden requires
16 proving a negative. And in this case, based
17 on the grounds stated in its petition,
18 Petitioner must prove by a preponderance of
19 the evidence that the Division of Air Quality
20 acted erroneously in assessing it a civil
21 penalty for violating the open burning rule.
22 Petitioner cannot meet this burden by
23 simply alleging that the agency's evidence is
24 insufficient, but Petitioner must produce
25 affirmative evidence of the agency's alleged

1 failure to act properly in order to state a
2 proper basis.
3 The rule that the agency believes
4 Petitioner violated in this case is what is
5 commonly known as the open burning rule. In
6 North Carolina there's a general ban on open
7 burning because of the uncontrolled air
8 pollution that it creates. Enforcement of
9 this rule is typically complaint-driven, as
10 it was in this case, and the penalties
11 collected, except for investigative costs, go
12 to the State School Board Fund.
13 Now the open burning rule states that a
14 person shall not cause, allow, or permit open
15 burning of combustible material. There are
16 exceptions. We're not dealing with any of
17 those exceptions here, so I'll move beyond
18 that. The rule does apply to all operations
19 involving open burning, and again, this is
20 the Division of Air Quality. Their concern
21 is air pollution.
22 Under the open burning ban, the
23 definition of person as used in this rule
24 refers to the person in operational control
25 over the burning or the landowner or, as we

1 think is applicable to this case, the person
2 in possession or control of the land when he
3 has directly or indirectly allowed the open
4 burning or has benefitted from it. Again,
5 when he has directly or indirectly allowed
6 the open burning and has benefitted from it,
7 and that is part of the definition of person
8 with regard to this rule.
9 Going forward, the Division of Air
10 Quality will show that by actions taken on
11 the Townsend Farm site from late December of
12 2008 through March 2009, Benson Construction
13 either caused or allowed or permitted this
14 open burning to take place and that Benson
15 Construction meets the definition of person
16 as it's used in 15A NCAC 2D .1901 because at
17 the time of the burn, it was in possession or
18 control of the land when Benson Construction
19 has directly or indirectly allowed the open
20 burning or has benefitted from it.
21 You will hear testimony, Your Honor,
22 from our witnesses about the time and effort
23 spent by Benson's employees in making two
24 huge piles - sometimes referred to as
25 windrows - when a landfill was only two miles

1 away. You also will hear testimony about the
2 amount of material involved, created by
3 windrows, whose size will be testified - we
4 will hear testimony about their large size -
5 also about the location of the burn. It was
6 out in the country, not many houses or
7 businesses were around. It was near a
8 landfill after all, and we know that they're
9 often located out in rural areas.
10 But based on these facts, the Division
11 of Air Quality acted lawfully and correctly
12 when it identified Benson Construction as the
13 responsible party in this case and assessed
14 it a civil penalty. Thank you, Your Honor.
15 THE COURT: Thank you. Mr. Morton, do
16 you wish to make an opening statement or
17 waive your opening statement or wait until
18 the presentation of your case?
19 MR. MORTON: I will make a brief opening
20 statement, Your Honor.
21 THE COURT: All right.
22 **OPENING STATEMENT BY MR. MORTON**
23 MR. MORTON: This matter arises from a
24 burn that occurred sometime in the weekend of
25 March 20th, 2009. My client had agreed to

1 clean up an old abandoned hog farm for one of
2 his relatives. We believe the evidence will
3 show that he had his employees go out there
4 in December of '08 through January of '09,
5 and then they left the site for a period of
6 about two months.
7 While they were gone, another company
8 came out there and did some more work at the
9 site. The company that came out there was
10 coming out to remove some silos that were out
11 there. And once the silos were gone,
12 Mr. Benson made arrangements to have one of
13 his employees return to the site to bust up
14 the concrete pads that the silos had been
15 sitting on.
16 When the employee got back out to the
17 site, he saw that the burn had occurred.
18 That was the first notice that Benson
19 Construction had that a burn had occurred at
20 the site during the two-month period while
21 they were away.
22 We believe the evidence will show in
23 this case, Your Honor, that the Division has
24 acted erroneously in assessing my client and
25 also arbitrarily and capriciously. We

1 believe, once all the evidence is in, as a
2 factual matter that will be established, and
3 as a legal matter, we'll show they haven't
4 met the requirements briefly discussed in
5 opposing counsel's opening argument about the
6 requirements imposed by the Administrative
7 Code.
8 THE COURT: Thank you. Your first
9 witness, Ms. Weese?
10 MS. WEESE: At this time, Your Honor, I
11 would call Steve Edge to the stand, and I
12 believe it's right here.
13 THE COURT: As you approach, Mr. Edge---
14 Well, first, let me ask, is everybody
15 comfortable where they're at - their seats?
16 You're welcome to pull some of these seats if
17 they're more comfortable. Are counsel and
18 their clients comfortable enough?
19 Okay. Good. If you'll approach,
20 Mr. Edge. It would be our normal procedure
21 to swear you in unless you prefer to be
22 affirmed.
23 MR. EDGE: I'll swear. That's fine.
24 THE COURT: Okay. If you'll hold the
25 Bible in your left hand and raise your right

1 hand and face me, please.

2 - - - - - - - -

3 STEVEN EDGE,

4 a witness called on behalf of the Respondent, being

5 first duly sworn in the above-entitled matter, was

6 examined and testified on his oath as follows:

7 THE COURT: If you'll have a seat,

8 please, sir. If you would state your first

9 and last name and spell them both.

10 THE WITNESS: Steven Edge, S-t-e-v-e-n

11 E-d-g-e.

12 THE COURT: You may direct your

13 attention to Ms. Weese.

14 MS. WEESE: Thank you, Your Honor.

15 **DIRECT EXAMINATION**

16 **BY MS. WEESE:**

17 Q. Mr. Edge, where are you employed?

18 A. Robeson County Solid Waste.

19 Q. And what's your position with Robeson County Solid

20 Waste?

21 A. I'm the director of that department.

22 Q. How long have you worked for Robeson County Solid

23 Waste?

24 A. Approximately five years.

25 Q. And how long have you been the director?

1 A. Approximately five years - during that time.
2 Q. Okay. Prior to that time, how were you employed?
3 A. I was the public works director in Scotland County
4 for thirteen years.
5 Q. Okay. Now when was the first time you became
6 aware of activity on the site - the Townsend - Old
7 Townsend Farm site?
8 A. It was sometime during the month of December when
9 I first observed what appeared to be a contractor
10 on-site providing or performing demolition-type
11 activities on the - what used to be apparently a
12 swine production operation.
13 Q. And let me ask you this: When you say---
14 THE COURT: And for clarity of the
15 record, can you state what year?
16 THE WITNESS: December of 2009.
17 THE COURT: 2009?
18 THE WITNESS: I'm sorry. 2008. I'm
19 sorry.
20 THE COURT: Thank you.
21 MS. WEESE: Thank you. I was going to
22 ask for clarification on that.
23 Q. What were you doing when you noticed this
24 activity?
25 A. I was actually en route to my office. They're

1 just outside of Saint Pauls at the solid waste
2 facility.
3 Q. Okay. And where is the solid waste facility in
4 relationship to the site?
5 A. It's actually just north of where the hog
6 production facility was located at, approximately
7 two miles by road or a half a mile as the crow
8 flies, I reckon you'd say.
9 Q. Okay. And what is the name of that road that you
10 travel on?
11 A. Barker Ten Mile.
12 Q. Okay. Barker Ten Mile. What's that surrounding
13 area like? Would you just describe it?
14 A. Well, the area adjacent to the swine production
15 facility is pretty much farmland - open farmland.
16 To the north of it is the Great Marsh Swamp and
17 then to the north of that is a small residential
18 area between there and where Barker Ten Mile
19 intersects with NC 20.
20 Q. Okay. Now in late December 2008, when you were on
21 your way to work and noticed this demolition, did
22 you go on the site?
23 A. I don't recall if I stopped the very first day
24 that I noticed activity, but a few days later, I
25 noticed that the material was being stockpiled

1 instead of transported to the landfill for
2 disposal, so I did stop and made a site visit and
3 made contact with an employee of Benson
4 Construction.
5 Q. Okay. Now how do you know he was an employee of
6 Benson Construction?
7 A. He identified himself as an employee, and he
8 identified himself as the crew leader or the site
9 supervisor or something there on the site.
10 Q. Okay. And describe what the workers were doing at
11 this point.
12 A. There was heavy equipment such as excavators
13 on-site. They were actually tearing down what
14 remained of the old hog houses, loading them on
15 dump trucks, and then transporting them to one
16 area - one specific area there just west - on the
17 western part of the property and piling the
18 material or windrowing the material.
19 Q. Okay. Let's see. What type of materials did you
20 observe?
21 A. Well, I observed two types. I observed that they
22 were separating the woody or vegetative waste into
23 one pile or one windrow and the construction or
24 demolition material was being separated into
25 another windrow.

1 Q. All right. Did you have a conversation with the
2 person who identified himself as the crew leader
3 for Benson Construction?
4 A. I did.
5 Q. And what did you say?
6 A. Well, I inquired as to their intent of the
7 disposal of the material because it appeared that
8 at that point to me that the intent was not to
9 transport material to the landfill because they
10 were already loaded on the truck and then taking
11 it and unloading it still on-site instead of
12 directly transporting it to the landfill.
13 So I inquired as to their intent, and the
14 gentleman at that time just indicated that they
15 were going to stockpile the material at that point
16 for a period of time anyway. And I instructed him
17 at that time that - or informed him, rather, that,
18 you know, they do not need to make any attempt to
19 burn any of that material because if would be a
20 violation of air quality rules.
21 Q. All right. Now at some later time--- Describe
22 your next - the next time this site came onto your
23 radar, so to speak.
24 A. Well, I pass the site a minimum of two times a
25 day, so I do monitor it. And I also notified my

1 senior environmental control officer as to a
2 potential problem at the site due to the way the
3 material was being stored instead of disposed and
4 asked him to monitor the site also.
5 At a later date, I don't recall - it was
6 sometime after the first of the year - it was on a
7 Monday morning. Again, I was en route to my
8 office, and I noted that the piles of material had
9 burnt over the weekend. They were intact when I
10 left that Friday. They were burnt when I came
11 back that Monday.
12 Q. And what time of year was this?
13 A. It was shortly after the first of the year. I
14 don't recall the exact date. It may have been
15 late February, maybe early March or somewhere
16 along in there.
17 Q. That you believe you observed the piles burning?
18 A. Yes. Well, actually, what was left was just some
19 smoldering remains. There was no - I don't recall
20 seeing any open flame or anything when I stopped
21 that morning.
22 Q. Okay. Now based on your experience with solid
23 waste, could you estimate how many dump truckloads
24 of material were on that site?
25 A. Based on my experience, they probably had more

1 than - more than a hundred loads of material.
2 Because the material was of a bulky nature, you
3 wouldn't haul a whole lot on smaller dump trucks,
4 which is what they were using. So it would
5 probably have been in excess of a hundred
6 truckloads to actually haul the material.
7 Q. Okay. All right. Now you mentioned that you
8 asked one of your employees to keep an eye on the
9 site. Did you receive any reports between the
10 weeks when you actually went on-site in late
11 December or early January and when you reported
12 the burn to the Division of Air Quality in March?
13 A. I did.
14 Q. And I apologize. I need to back up. When you
15 observed that the debris had been burned on that
16 site, what did you do?
17 A. I contacted the Air Quality Section here in the
18 Fayetteville Regional Office and spoke to Ms. Pam
19 Vivian.
20 Q. Okay. And did you ever see a contractor on the
21 site?
22 A. I did.
23 Q. Okay. Describe that - what you saw.
24 A. There's a company by the name of D. H. Griffin.
25 They are primarily known for recycling scrap

1 metal, and I observed them there on-site for a
2 period of time, taking down the silos, and other
3 metal-type material and transporting it off-site.
4 Q. Did you actually observe D. H. Griffin hauling off
5 material in dump trucks?
6 A. Numerous times.
7 Q. Okay. After you reported the burn to the Division
8 of Air Quality, have you been back to the site?
9 A. Yes.
10 Q. Okay. When was that?
11 A. The most recent visit was probably about two
12 months ago.
13 Q. Okay. Why did you go on-site?
14 A. To see if the material that had actually burned
15 had been properly disposed of.
16 Q. And what did you see?
17 A. The material that was burnt that I observed the
18 day that I went there - that Monday - was still
19 on-site. It has not been properly disposed of at
20 this time.
21 Q. Okay. Prior to that time, did you have any
22 contact with a person named Jonathan Lewis?
23 A. I did.
24 Q. Okay. Was that contact on-site?
25 A. It was.

1 Q. Okay. Would you describe that interaction.
2 A. As I passed the site, I observed an excavator
3 on-site, and it appeared to be in some type of
4 activity of burying material on-site. So I
5 stopped and went back, and as I approached, I
6 recognized Mr. Lewis from previously at another
7 job for another employer actually.
8 And at that time, I inquired as to who he was
9 working for. He indicated he was working for
10 Benson Construction at this time, and he was
11 actually breaking up the concrete pads that the
12 silos had been sitting on and burying them there
13 on-site.
14 Q. Okay. Now with regard to your responsibility for
15 solid waste, is it allowable to bury those
16 concrete pads? Is that proper disposal?
17 A. My understanding of the solid waste rules are - it
18 is not allowable, and in fact, I told him that he
19 needed to cease those operations and probably have
20 his employer contact us, and he did. A short time
21 later, I did receive a call from Mr. Benson or a
22 gentleman who identified himself as Mr. Benson of
23 Benson Construction, and he indicated to me that
24 there was a clause under the solid waste rules in
25 which being that this was an agricultural-type

1 operation, that this activity was allowed and that
2 he had conferred with Mr. Dennis Shackelford of
3 the Solid Waste Section of the Fayetteville
4 Regional Office and that this - that
5 Mr. Shackelford had indicated that this wasn't
6 allowable.
7 Q. Okay. Now, of course, we're not - we're here
8 about the burning and the air pollution, so I want
9 to just turn back to that for a moment and ask you
10 to describe - and, again, what you saw in the
11 piles in early January when they were being - when
12 you saw them being stockpiled - I believe you
13 testified vegetative material and then woody
14 vegetative waste and demolition material?
15 A. I did. That's correct.
16 Q. Okay. When you - anything else? I don't want to
17 cut you off.
18 A. The - in the demolition material, there was wood
19 waste. There was the foam or plastic type of
20 insulation that is used in these types of
21 operation, and that was primarily the composition
22 of those piles of demolition material. The woody
23 waste was basically trees and other vegetative-
24 type waste.
25 Q. Okay. Would you consider it land clearing?

1 A. Land-clearing, that's correct.
2 Q. Now when you say "this type of operation," you
3 were describing the wood waste and the plastic and
4 the insulation. What type of operation are you
5 referring to?
6 A. In my observations of swine production facilities
7 or poultry production facilities such as that,
8 that's normally the type of insulation that is
9 used in those buildings.
10 Q. Okay. And another point I wanted to come back to,
11 could you give me an approximate time when you had
12 this conversation with Mr. Jonathan Lewis
13 regarding the breaking up of the concrete silo
14 pad?
15 A. It was probably a few weeks after I reported the
16 burn because there was no activity after I
17 reported the burn until such time as I observed
18 him there that I can recall.
19 Q. Okay. All right.
20 MS. WEESE: No further questions at this
21 time, Your Honor, for Mr. Edge.
22 THE COURT: Cross-examination,
23 Mr. Morton?
24 MR. MORTON: Yes, sir, Your Honor.
25 - - - - - - - -

1 CROSS-EXAMINATION

2 BY MR. MORTON:

3 Q. Mr. Edge, I'd like to clarify a few things that
4 you testified about. Now you testified you had
5 some concern about the way that things were
6 getting buried on-site?
7 A. I testified as to how the material was being
8 handled, and my concern was they were tearing down
9 the building, loading it onto dump trucks.
10 Q. Well, now then you said that you had some concern
11 about concrete being buried and you went out there
12 and told them to stop? You said that, right?
13 A. At a later date, yes.
14 Q. But that's not what we're here about today. We're
15 here about some burning today, right?
16 A. That's right.
17 Q. Okay. Now you testified that you went out there
18 in December of '08 and talked to some - talked to
19 the Benson Construction employees, is that right?
20 A. That's correct.
21 Q. All right. And then I believe you said the next
22 time you spoke to a Benson Construction employee
23 was in March, and that was Jonathan Lewis?
24 A. That's correct. I believe so.
25 Q. And that was after the fire?

1 A. After the fire, yes, sir.
2 Q. Did you ever see any Benson Construction employees
3 on-site after you stopped out there in December?
4 A. Oh, yes.
5 Q. When?
6 A. They were there probably a few weeks - probably a
7 couple of months maybe into the first of the year.
8 I don't recall the exact date that they left.
9 They were there - to the best of my recollection,
10 they were there during the period that D. H.
11 Griffin was removing the metal material. And then
12 there came a period of time where - where they
13 left, but I don't recall the exact date.
14 Q. Did you personally see the Benson Construction
15 employees out on-site in the month of February
16 2009?
17 A. I don't recall the exact dates. It could have
18 been February. I don't really recall.
19 Q. Did you personally see Benson Construction
20 employees out there the day before the fire
21 started or the weekend of the fire?
22 A. I don't recall seeing any activity on-site the
23 week - or the Friday prior to the material burning
24 that weekend. I don't recall seeing anybody
25 on-site, no, sir.

1 Q. You testified that when you saw Benson
2 Construction employees out there working that you
3 saw two types of piles: one of construction
4 debris and one of vegetative material?
5 A. Yes.
6 Q. Did you ever see any pile of just metal scrap?
7 A. I don't recall. I don't recall.
8 Q. Mr. Edge, when you discovered that there had been
9 a burn, did you call the fire department?
10 A. No, sir. There was nothing left to put out.
11 Q. When you reported it to - when you reported the
12 burns to the Division of Air Quality, I believe
13 you said you didn't know who was responsible?
14 A. I don't recall the exact conversation that I had
15 with Ms. Vivian that day. I called and indicated
16 to her where I was at, the type of activity that I
17 had observed there before, and that apparently
18 somebody had ignited this material over the
19 weekend and it had burnt, and I felt like it
20 warranted an investigation.
21 Q. Mr. Edge, do you know who owns that property where
22 the hog farm is?
23 A. I do not have personal knowledge. My
24 understanding is, it's a Mr. Townsend of Myrtle
25 Beach, South Carolina.

1 Q. Did you know that when you reported the burn?
2 A. I don't recall.
3 Q. Did you ever have a conversation with Mr. Benson
4 after you reported the burn?
5 A. Mr. Benson did call me sometime after the fact
6 after he received the - some type of notification
7 from Air Quality that there was an investigation
8 or something going on, yes.
9 Q. And it's your testimony that you saw Benson
10 Construction employees actually demolishing the
11 farm, razing the farm?
12 A. Yes. There were several pieces of equipment there
13 with Benson Construction written on it including
14 the trucks, and the gentleman that I talked to
15 that day identified hisself as a Benson
16 Construction employee.
17 Q. And that was in December of '08?
18 A. I believe so, yes, sir.
19 MR. MORTON: That's all I have for right
20 now, Your Honor.
21 THE COURT: Redirect, Ms. Weese?
22 **REDIRECT EXAMINATION**
23 **BY MS. WEESE:**
24 Q. Clarify just one point. Mr. Edge, you are the
25 person who made the complaint to the Division of

1 Air Quality about the burn, is that correct?
2 A. That's correct.
3 Q. All right.
4 MS. WEESE: Well, that's all I have,
5 Your Honor, for Mr. Edge.
6 THE COURT: Anything further?
7 MR. MORTON: Nothing further, Your
8 Honor.
9 THE COURT: You may step down. Thank
10 you, Mr. Edge.
11 MS. WEESE: And, Your Honor, Mr. Edge is
12 not a state employee. Is he free to go?
13 THE COURT: Do you see any reason why
14 you would need to recall him for any reason?
15 MR. MORTON: We may have to call him at
16 a later time, Your Honor.
17 THE COURT: Okay. I will certainly let
18 you leave now if you would not mind being on
19 telephone standby should you need to be
20 recalled.
21 MR. EDGE: No.
22 THE COURT: Thank you, Mr. Edge.
23 MS. WEESE: Okay. I do have your
24 number. Thank you very much.
25 THE COURT: Your next witness,

1 Ms. Weese?
2 MS. WEESE: At this time, I call Pam
3 Vivian, Your Honor.
4 THE COURT: As you approach, Ms. Vivian,
5 do you have a preference to be sworn or
6 affirmed?
7 MS. VIVIAN: Sworn.
8 THE COURT: Okay. If you would hold the
9 Bible in your left hand, please, and raise
10 your right.
11 - - - - - - - -
12 PAM VIVIAN,
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: If you'll have a seat,
17 please. Make yourself as comfortable as you
18 can, I guess, in those chairs.
19 THE WITNESS: I wish it was more firm,
20 to be quite honest.
21 THE COURT: And if you would state your
22 first and last name and spell them both.
23 THE WITNESS: Pam Vivian, P-a-m
24 V-i-v-i-a-n.
25 THE COURT: Thank you. You may direct

1 your attention to Ms. Weese.
2 MS. WEESE: Thank you, Your Honor.
3 **DIRECT EXAMINATION**
4 **BY MS. WEESE:**
5 Q. Ms. Vivian, how are you employed?
6 A. I'm employed with the North Carolina Department of
7 Environment and Natural Resources, Division of Air
8 Quality.
9 Q. How long have you worked for the Division of Air
10 Quality?
11 A. Yes, ma'am. Just under twelve years right now.
12 Q. Okay. And what is your current position with the
13 Division of Air Quality?
14 A. I'm an environmental specialist.
15 Q. Okay. What are some of your responsibilities as
16 an environmental specialist?
17 A. My primary responsibility is as a compliance
18 inspector to various different facilities that
19 emit emissions in the air, but my secondary duty
20 is, of course, open burning investigations.
21 Q. And you say, "of course, open burning
22 investigations." Will you explain what you mean
23 by that.
24 A. Yes, ma'am. When I say that as I do, it's just
25 that sometimes I think open burning investigations

1 are sometimes my primary investigation because
2 I've done so many of them, and at this point here,
3 open burning is definitely a primary thing when
4 you have a complaint.
5 Q. And are you the only person in the Fayetteville
6 Office who investigates open burning?
7 A. No, ma'am. There are lead people that are
8 identified, when a call does come in, to be that
9 lead person, but then there is also secondary
10 people. In other words, the entire office, if it
11 comes down to it, has to take the complaint.
12 Q. Okay. Ms. Vivian, let me just back up a moment
13 and ask about your educational background. Would
14 you describe that, please.
15 A. Yes, ma'am. Well, my background really is with
16 environmental health. It started out with
17 environmental engineering technology, but then I
18 transferred over to get my bachelor's degree for
19 environmental health. And through that, then I've
20 done various different types of environmental work
21 with land quality, air quality. I've done water
22 quality also.
23 Q. Okay. So have these positions with the Department
24 of Environment and Natural Resources, Water
25 Quality---

1 A. And land quality. Not the water quality. The
2 water quality was more so through an environmental
3 firm.
4 Q. All right. Now you've mentioned that you and
5 really everyone in your office can have
6 responsibilities for responding to complaints of
7 open burning.
8 With that in mind, are you familiar with the
9 Environmental Management Commission's open burning
10 rules?
11 A. Yes, ma'am, I am.
12 Q. Okay. I want to turn now to your involvement with
13 this case. How did you - what is your involvement
14 with this case?
15 A. Well, my direct involvement was when I did receive
16 the complaint from Steve Edge, and that was on -
17 actually, on March 23rd of 2009. He called our
18 office to make a complaint about a site off of
19 Barker Ten Mile Road, and I got some basic
20 directions from him as such and some information
21 concerning demolition of a hog farm.
22 And so from there, then I proceeded to go
23 ahead and do our procedure, which is put it into
24 the database and let everyone know how I was going
25 out, grabbing my safety bag, and taking off.

1 Q. Okay. So when you got your--- I'm sorry. What
2 was the date on that when you received the
3 complaint?
4 A. The actual date I received the complaint was
5 March 23rd, 2009.
6 Q. Okay. Now when you headed out, were you
7 accompanied by anyone?
8 A. No, ma'am.
9 Q. Okay. All right. Describe what happened when you
10 arrived at the site.
11 A. Once I actually arrived at the site, I drove up
12 and sort of parked closer to what I refer to as
13 pile number one. That's more so to the west.
14 And, of course, standing out there, I was, like,
15 overwhelmed. I truly was overwhelmed by the size
16 of what all I was seeing. I then pulled out my
17 camera, and I immediately took at least some
18 pictures of what I was viewing.
19 And then I actually then began to step off
20 the actual size of the piles, and from there then,
21 I went around and did a specific - I call it a
22 panoramic viewing. Shoot a picture, shoot a
23 picture, shoot a picture, shoot a picture, and
24 walked it all the way around. It took me a long
25 time to do that investigation.

1 Normally, it would take you twenty to thirty
2 minutes. It took me a good hour to go ahead and
3 do that. It would have been great to have had
4 somebody there going, "Take my pictures"; "Take my
5 pictures," while I do this other stuff," but it
6 didn't work that way.
7 Q. And why did it take so long, in your opinion?
8 A. It was humongous. It was a very large area, and
9 to actually then do all of the different protocol
10 that we do whenever we investigate an open burning
11 investigation, it was just so humongous.
12 Q. And are you talking about the site itself as
13 opposed to the piles?
14 A. I'm referring to the piles and also just walking
15 from one point to the next doing the different
16 picture-taking and stepping off the actual sizes,
17 trying to at least get into it and see what type
18 of actual demolition debris was in it because then
19 we have to sort of identify it, you know, from
20 there, taking notes and what have you.
21 Q. Right. And before you identify that material, let
22 me ask you, when you stepped off the size of the
23 piles, what was your estimate of the size?
24 A. I stepped off about a hundred and fifty feet
25 long - and this is each pile - by about forty feet

1 wide. And, of course, you can't really step
2 height, so I have to literally know, all right, my
3 height is and then standing at certain things
4 and - it's what I used to do with Land Quality
5 when we had to actually measure the size - the
6 back slope of a dam - you have to stand, know your
7 height, and then put your eyesight. Then you walk
8 up to that point and do it again, and that way,
9 then you know if it's fifteen, twenty, twenty-
10 five, thirty feet.
11 Q. Okay. And what was - what was that height of---
12 A. Yes, ma'am. It was about seven feet high.
13 Q. Okay. In your estimate. And how many piles were
14 there?
15 A. Two.
16 Q. Two. Now describe what you saw in the piles.
17 A. Yes, ma'am. There was some vegetative debris -
18 what we would call, you know, just vegetative -
19 trees from the land clearing-type part activity of
20 it. But then within it, there was a blend of all
21 sorts of wood and plastic and metal and wires. I
22 mean I even saw some tires and those type
23 materials.
24 Q. Okay. Could you tell where this debris came from?
25 A. At first, I didn't know, ma'am. I didn't know

1 what I was experiencing. I knew it was supposed
2 to be a hog farm, but - even though I know what
3 hog farms look like, but it was - it was just - I
4 didn't know what - I see a hog building - a couple
5 of buildings on different hog odor investigations
6 and such, too. But it was just a blend of all
7 sorts of debris, I mean, a lot of it.
8 Q. Were any buildings remaining on that site
9 standing?
10 A. No, ma'am. No, ma'am, there weren't.
11 Q. And, Ms. Vivian, on March 23rd was anyone on that
12 site?
13 A. No, ma'am. Nobody. There was no one on the site.
14 Q. Okay. And at that point, did you know who owned
15 the property?
16 A. No, ma'am, I did not.
17 Q. Okay. All right. Now before we - I know that you
18 have mentioned you've taken photographs, and I
19 would like to show you some of those. But before
20 we do that, let me ask you if you were at the site
21 at any other time.
22 A. Yes, ma'am. The following week exactly,
23 March 30th. I had been out doing other open
24 burning investigations, and I ended up on
25 Tolarsville Road, which Tolarsville and Ten Barker

1 sort of merge, and I went whoa. There - I would
2 like to go down Ten Barker. So I proceeded down
3 Ten Barker to get back to the Fayetteville region
4 because I knew it went straight into Saint Pauls.
5 So that's what I did, and that's when I was
6 driving on this very flat part of Ten Barker
7 Road - Barker Ten Mile Road - and that's when I
8 saw it way up ahead of me a big large dump truck
9 coming off from that area. And I was, like,
10 somebody is there. I got excited. And I
11 immediately, then, you know, just kept proceeding
12 as I was going, and the dump truck passed me and
13 then I entered into the site.
14 Q. Okay. Again, were you by yourself?
15 A. Yes, ma'am.
16 Q. Okay. So you entered onto the site. What
17 happened next?
18 A. Yes, ma'am. I went ahead and parked, closer now
19 this time to what I call pile number two, and I
20 could see up ahead from me - I saw a - I'm not
21 good at defining what type of vehicles. I should
22 start now calling them just earth-moving. I think
23 I called it a front-end loader, but now I know
24 it's called an excavator.
25 But I saw an excavator actually doing the

1 dig-type thing and doing something, dig-type thing
2 and doing something. I also saw a man standing by
3 an SUV, and I saw a smaller little pickup truck,
4 which then as I got closer down to the area -
5 because I got out of my car and I walked on over
6 towards the area. The man that was on the
7 excavator was dumping a load into a smaller pickup
8 truck.
9 At this point here, he turned things off,
10 and I came out and I said, "Hi," you know, and I
11 addressed who I was and introduced myself and such
12 and explained that I had been working on an open
13 burning case from last week. And this was the
14 first time I saw somebody on the site here, and I
15 asked who he was and, you know, what he knew about
16 it.
17 Q. And did this person identify himself to you?
18 A. Yes, ma'am.
19 Q. Who were you speaking with at this time?
20 A. Jonathan Lewis.
21 Q. Okay. Now did Mr. Lewis say what he was doing on
22 the site?
23 A. Well, when I asked him about, you know, what he
24 knew about the burn and such, he came out and he
25 told me - he said, "Listen." He said, "I know

1 nothing about it." He said, "All I know is my
2 boss sent me out here today to bury these concrete
3 silo pads." He said, "So I really don't know."
4 And that's when I proceeded - I said, "Well,
5 I need to talk to your boss." I said, "Who is
6 your boss?"
7 And so he said, "Steven Vincent."
8 And I said, "Okay. Could I get a contact
9 number for him because I need to call him up and
10 talk to him about this." And at that time, he
11 gave me the number.
12 And then, of course, I did note three other
13 men at pile number one doing digging-type
14 activities by hand.
15 Q. Okay. Describe that.
16 A. And so I said - well, and I just pointed over
17 there, and I went, "Who are they?"
18 "I don't know. I'm here doing this."
19 So I went, "Thank you so much. I'll see
20 you." And I proceeded to walk over to them, and
21 upon approaching those three men - it was a very
22 hot day - it was - and they were sweaty as could
23 be because they were still digging and what I - it
24 was still smoldering even from after a whole week.
25 And one of the men came and approached me,

1 and I looked at him and I said, "Hi." I said, "My
2 name is Pam Vivian," blah, blah, blah,
3 "investigating this burn." I said, "Do you know
4 anything about it?"
5 That really did intimidate me because he was
6 kind of - anyway, he was just sweaty and burly
7 looking, and he just gruffly went, "No."
8 And I went, "Okay. Thank you very much."
9 And I said, "I'm going to take a picture," and I
10 went, click, took a picture, and I left. And
11 before I left though, I made a point then to take
12 a picture of pile number two and - because it was
13 still smoldering. And I got into my state car and
14 I left.
15 Q. I think this might be a good place to introduce
16 some of the pictures that you've taken.
17 MS. WEESE: Your Honor, if I may
18 approach. I do have a notebook with exhibits
19 for you and for the witness. I've already
20 provided the photographs to Mr. Morton in
21 discovery, so he has those and I have copies
22 of our other exhibits here to provide to him
23 as we go through them.
24 THE COURT: All right.
25 Q. Okay. Ms. Vivian, if you would - before we get to

1 the photos, would you take a look at what's been -
2 at Respondent's Exhibit Number 1 in the - there in
3 the notebook, yeah, behind Tab 1. Okay. Do you
4 recognize that?
5 (RESPONDENT'S EXHIBIT NO. 1
6 (MARKED FOR IDENTIFICATION
7 A. Yes, ma'am. That's what I found on the GIS -
8 Robeson County GIS Map for this property.
9 Q. Okay. And now describe what it is that you're -
10 is this how the property appeared when you went
11 out there in March of 2009?
12 A. No, ma'am.
13 Q. Okay. What's different?
14 A. Every one of those buildings that you see are no
15 longer there, and those silos - those five - I
16 think there were five silo pads there - they're
17 no - well, the silos were not there. I mean
18 everything was cleared.
19 Q. Okay. And approximately, on this map, where were
20 the burn piles located?
21 A. Yes, ma'am. If you notice that little - I don't
22 know if that's a settlement pond of some sort to
23 the upper - to the - excuse me - to your left, the
24 little round circular one. It was sort of
25 curved - pile one was curved up along in that area

1 towards that pile - towards that body of water.
2 Q. And that body of water on this photograph - it
3 looks like it's sort of a circle?
4 A. Yes, ma'am. That's what I'm saying. It's the
5 circular-looking one.
6 Q. Okay. All right. I see it. And how about the
7 other pile?
8 A. Yes, ma'am. It was totally on the opposite side
9 where you see to the - I'm going to say to the
10 right where you see the property line, but it was
11 not that far back. It was not towards those waste
12 lagoons, but it was just to the - anyway, to the
13 right side of this property.
14 Q. And when you say "property line," what are you
15 referring to on this picture?
16 A. The bluish-greenish-looking line.
17 Q. Okay. All right. And while we have this map
18 here, do you know where the Robeson County
19 Landfill is?
20 A. Yes, ma'am, I do.
21 Q. Okay. Is it shown on this picture?
22 A. No, ma'am.
23 Q. Okay. If we enlarge this picture and pull back,
24 where approximately would the Robeson County
25 Landfill be?

1 A. It would be northeast.
2 Q. Okay. Now let's take a look - if you would turn
3 to Exhibit 2 in the notebook.
4 (RESPONDENT'S EXHIBIT NO. 2
5 (MARKED FOR IDENTIFICATION
6 A. Am I - I see I have a blue piece of paper. I'm
7 sorry. Maybe I'm---
8 MS. WEESE: Your Honor, are you behind
9 2? Do you have pictures in your---
10 THE COURT: I do.
11 MS. WEESE: Okay. All right.
12 Q. Well, here we go. I believe somebody neglected to
13 put those in, and I apologize on that.
14 A. That's fine.
15 MS. WEESE: May I approach the witness?
16 THE COURT: Yes, you may.
17 Q. Okay. Now do you recognize Respondent's Exhibit
18 2?
19 A. Yes, ma'am.
20 Q. Okay. What is it?
21 A. Yes, ma'am. What you're looking at here at the
22 top left is pile number one. When I first went to
23 the site on March 23rd, 2009, the way I drove in
24 was - how I was standing and angled and such, I
25 basically took a picture of one pile and then

1 another pile, you know, and so that's - and this
2 was pile number one that I was seeing at that
3 distance.
4 Q. Okay. If you would go through the other three
5 pictures on here and describe what it is you are
6 trying to show with these pictures.
7 A. Yes, ma'am. Well, since I'm talking about pile
8 number one right now, go to the one directly below
9 it, and that was the overall smoldering contents
10 of that pile.
11 Q. All right.
12 A. Then the top right is pile number two. From that
13 vantage point, when I took the picture of pile
14 number one that was to the left - top left, I then
15 pivoted and took the picture of pile number two
16 from that same point. Sort of get the distance,
17 you know, of both piles. And the pile directly
18 below it - the pile - the picture directly below
19 it at the bottom right, that is the smoldering
20 contents of pile number two.
21 Q. Okay. With regard to the two pictures on the
22 bottom, will you elaborate on the smoldering
23 contents? Can you recognize articles in there
24 based on your experience?
25 A. Yes, ma'am. Yes, ma'am.

1 Q. Okay. If you'd elaborate on that, please.
2 A. Yes, ma'am. There's a lot of different lumber,
3 and you know - and I must admit there was wire.
4 There was metal, cinder blocks, plastics, and
5 also, you know, vegetative material - some
6 vegetative material in it and some concrete -
7 broken up concrete, little chunks.
8 Q. Okay. Let's take a look, if you would, at
9 Respondent's Exhibit 3. And are those also
10 photographs that you took on March 23rd?
11 (RESPONDENT'S EXHIBIT NO. 3
12 (MARKED FOR IDENTIFICATION
13 A. Yes, ma'am, they are.
14 Q. Okay. What were you trying to show in those
15 pictures - with those pictures, Ms. Vivian?
16 A. The top left, which I identified as pile number
17 one, this was after I literally walked down to the
18 other end of pile number one, and I literally
19 looked back up towards the vehicle and snapped the
20 picture of that pile then looking back up. I was
21 standing more so north of the pile instead of
22 before I was standing more so south of the pile
23 when you saw the first picture on the other - the
24 previous page.
25 And now the one to the right of it, pile

1 number one, this was just more of the demolition-
2 type material, the wood and such and the wires and
3 metal and vegetative debris and cinder blocks and
4 concrete.
5 Q. Okay.
6 A. And then the picture at the bottom left, that is
7 actually now looking from where I was standing
8 down there looking up at pile number one, north
9 end of it, I then started - I just pivoted around
10 to go ahead and get a picture then of pile number
11 two from where I was standing from that point of
12 pile number one. I know it sounds confusing. I
13 wish I had a big circle here, but - anyway.
14 But then I took a picture then of pile number
15 two standing from the north end of pile number
16 one. Then literally I had walked on over to pile
17 number two and stood on the south end of pile
18 number two, looking downward at it is what these
19 pictures are.
20 Q. Okay. Now I believe you also took some pictures
21 on March 30th---
22 A. Correct.
23 Q. ---when you were back there?
24 Would you take a look at Respondent's
25 Exhibit 4 and tell us if those are photographs you

took on March 30th?

(RESPONDENT'S EXHIBIT NO. 4

(MARKED FOR IDENTIFICATION

A. Yes, ma'am.

Q. And why did you take those photographs?

A. Because it was still smoldering. I wanted to show then, one week later, there was still smoldering activity within the pile. And, of course, number one, still smoldering and then number two where it was still smoldering.

Q. Okay. How often in your ten-plus years with the Division of Air Quality had you seen piles the size of these two piles?

A. This is my first that I've actually seen piles this big that were actually, you know, from - especially from March 23rd - all the burning - because there was active burning within those piles. I could see it. Not just smoldering smoke coming up, there was activity burning - actual active burning going within the piles.

Q. Okay. Now we wouldn't be here today if a penalty was not assessed against the Petitioner Benson Construction, so I want to talk to you a little bit about your investigation and how you came to identify Mr. Benson or Benson Construction as the

1 responsible party in this case.
2 How did you learn of his company's
3 involvement?
4 A. It was by being on-site on March 30th whenever
5 Jonathan Lewis came out and told me that he worked
6 for Stephen Benson, Benson Construction.
7 Q. Okay. Now who is Stephen Benson, to your
8 knowledge?
9 A. Through my investigation, I found out that he is
10 the son of Burt Benson.
11 Q. Okay. Did you talk to Mr. Steve Benson?
12 A. I only spoke with Mr. Stephen Benson one time, and
13 I did talk to him - as a matter of fact, that day
14 whenever I went back to the office after I left
15 the site on the 30th of March, 2009, I went
16 straight back to the office. I started doing
17 some - we always have to search just to make
18 sure - start Google-searching and however we can
19 research to get more information.
20 And so that's what I did, and I then went
21 ahead and called up the number that was given to
22 me by Mr. Lewis, and that's when Stephen Benson -
23 he answered the phone. I explained who I was and
24 that I had been out there on Barker Ten Mile Road,
25 and the entire investigation that I had been doing

1 since the previous week and such and what he knew
2 about it.
3 And at that time there, he was under his
4 own - busy or something, you know, and he came out
5 and told me that, you know, I would have to call
6 his father Burt Benson, and so he went ahead and
7 provided that number to me.
8 Q. And were you able - able to make contact with
9 Mr. Benson?
10 A. Yes, ma'am. Immediately afterwards, I then called
11 up Burt Benson and was able to talk to him about
12 it.
13 Q. Okay. And did you document these conversations
14 with Mr. Benson?
15 A. Yes, ma'am.
16 Q. Okay. What else did you do to document this
17 investigation?
18 A. I'm not quite understanding your question - what
19 else I did.
20 Q. Okay. Did you identify an owner of the property?
21 A. At that time period whenever I was talking to
22 Mr. Benson - Burt Benson - he came out and told
23 me - you know, because I said, "What do you know
24 about the burn that's going on?" And he came out
25 and told me that he had, you know, been - that was

1 the first day that he'd been at that site to bury
2 the concrete silo pads.
3 And I came out and I said, "Well," I said,
4 "do you know what's been going on out there," you
5 know, type thing, you know, wanting to get some
6 information and such. And that's when he began to
7 tell me about D. H. Griffith Wrecking being out
8 there a few weeks back, I believe is how he put
9 it. He said a few weeks back that they were out
10 there and had actually taken down the grain silos
11 and such.
12 And, you know, then he had gotten to the
13 point where he was telling me about - that he was
14 actually at the site, you know, for the concrete
15 silo pads, but then he was telling me about
16 Mr. Griffith's, you know, activity.
17 Q. All right. As part of your investigation, did you
18 follow up with D. H. Griffith?
19 A. Yes, ma'am, I did.
20 Q. Okay. And were you able to identify the owner of
21 this property?
22 A. Yes, ma'am. I really was able to finally get the
23 ownership identified as James Townsend.
24 Q. Okay. Okay. So in addition to identifying the
25 owner, investigating - identifying that D. H.

1 Griffin had been on-site, identifying Mr. Benson's
2 company as having been on-site, what did you - did
3 you prepare, then, a written report of your
4 various efforts to investigate?
5 A. Yes, ma'am, I did.
6 Q. Okay. If you'd take a look at Respondent's
7 Exhibit 5. It consists of six pages.
8 MS. WEESE: And I'm handing those to
9 Mr. Morton as well. I produced those in
10 discovery to him.
11 (RESPONDENT'S EXHIBIT NO. 5
12 (MARKED FOR IDENTIFICATION
13 Q. Is that your written report of this investigation,
14 Ms. Vivian?
15 A. Yes, ma'am, this is.
16 Q. Okay. All right. Now do you prepare one of these
17 whenever you investigate an open burning
18 complaint?
19 A. Yes, ma'am, every time.
20 Q. Okay. All right. Let's see. And are these kept
21 on file in the office - in the Fayetteville
22 Office?
23 A. Yes, ma'am, on file. And also sent to central
24 office in Raleigh.
25 Q. Okay. And I want to get to that in a moment about

1 their involvement in central office. Before I go
2 there, would you take a look at Respondent's
3 Exhibit 6 and tell me if you recognize that and
4 what that is?
5 (RESPONDENT'S EXHIBIT NO. 6
6 (MARKED FOR IDENTIFICATION
7 A. Yes, ma'am. This is part of the cost enforcement
8 action that we do for an enforcement case writeup
9 that we do.
10 Q. Okay. And does this reflect your time and---
11 A. Yes, ma'am.
12 Q. ---expense for doing this investigation?
13 A. Yes, ma'am.
14 Q. Okay. Now you mentioned that this investigation
15 report goes - is sent to central office. What do
16 you mean by "central office"?
17 A. Yes, ma'am. In Raleigh - each division that we
18 have has the regional offices, and we have then
19 our central office where the main actual - all the
20 regional offices report then to the central
21 office, and that's where we end up sending
22 everything back to the central office for Division
23 of Air Quality.
24 Q. Okay. Now as - you know, as we've already said,
25 we wouldn't be here if a penalty was not assessed

1 against Mr. Benson. Did you have a role in
2 assessing that penalty?
3 A. Well, no, ma'am.
4 Q. No. As an investigator, did you recommend any
5 enforcement action in this case?
6 A. Through discussions with my supervisor and my open
7 burning coordinator, I can make recommendations,
8 but overall it is made through my supervisor.
9 Q. Okay. All right. Well, who did - did you make a
10 recommendation about enforcement action with
11 regard to this burn to your supervisor?
12 A. I recommended - yes, ma'am, I did.
13 Q. All right. What were your recommendations?
14 A. I recommended that he should actually look at the
15 cases of Benson as well as Townsend since we had
16 the property ownership and all the various
17 different investigations, things that I had had
18 with the phone calls and such, finding out that
19 property ownership - Mr. Townsend did have his
20 activity and involvement with this, maybe not
21 physically on that property, but that was his
22 property and he was involving Benson with it.
23 Q. Okay. So you recommended the landowner as well as
24 Mr. Benson?
25 A. Correct.

1 Q. Okay. Did your chain of command agree with your
2 recommendations?
3 A. Yes, ma'am.
4 Q. Okay. So since they agreed, what is the next step
5 in the agency's process when a regional office is
6 going to recommend enforcement action?
7 A. Yes, ma'am. We immediately then draft what we
8 call an NRE, a notice to recommend enforcement to
9 each of the parties, and an actual certified
10 letter is drafted for each party and is mailed to
11 them. And then, of course, that starts it off
12 right there.
13 Q. All right. Let me ask you this: Since you were
14 the investigator in this open burning case, was it
15 your responsibility to draft that letter for your
16 supervisor's signature?
17 A. I actually do the top drafting part of it to sort
18 of put it together, and then it's reviewed by my
19 open burning coordinator, who then helps me work
20 to put it, you know, together.
21 Q. Okay. Take a look at Respondent's Exhibit 7, and
22 that consists of a two-page letter and the third
23 page is the green card showing that it was
24 received certified mail.
25 Is that the notice of violation/notice of

1 recommendation for enforcement that you helped to
2 draft and what was sent to Burt Benson?
3 (RESPONDENT'S EXHIBIT NO. 7
4 (MARKED FOR IDENTIFICATION
5 A. Yes, ma'am.
6 Q. Okay. Now on the second page, we see - whose
7 signature is at the bottom?
8 A. My supervisor, Steven Vozzo.
9 Q. Okay. And next to his initials, are those your
10 initials, P.C.V.?
11 A. Yes, ma'am.
12 Q. Okay. All right, Ms. Vivian.
13 MS. WEESE: Now before I go any farther,
14 I want to move Respondent's Exhibits 1
15 through 7 into evidence.
16 (RESPONDENT'S EXHIBIT NOS. 1-7
17 (OFFERED INTO EVIDENCE
18 THE COURT: Any objections?
19 MR. MORTON: No objection, Your Honor.
20 THE COURT: Respondent's Exhibits 1
21 through 7 are admitted.
22 (RESPONDENT'S EXHIBIT NOS. 1-7
23 (RECEIVED INTO EVIDENCE
24 MS. WEESE: Thank you, Your Honor.
25 Q. Ms. Vivian, let me just take a moment, and I think

1 we're about to wrap up except for what Mr. Morton
2 needs to ask you.
3 MS. WEESE: All right. Ms. Vivian,
4 thank you very much.
5 THE WITNESS: Yes, ma'am.
6 MS. WEESE: No further questions at this
7 time.
8 THE COURT: Cross-examination,
9 Mr. Morton?
10 MR. MORTON: Your Honor, at this time,
11 my client has indicated he could take a short
12 break, if that would be all right.
13 THE COURT: Okay. That sounds
14 excellent. Let's take about a ten-minute
15 break.
16 (Thereupon, a brief recess was taken.)
17 THE COURT: This hearing will come to
18 order. It's now eleven-thirty on March the
19 9th, 2010, and all parties present when we
20 recessed are again present.
21 Cross-examination, Mr. Morton?
22 **CROSS-EXAMINATION**
23 **BY MR. MORTON:**
24 Q. Ms. Vivian, you testified that you've been working
25 as an investigator for the Division for about ten

1 years, is that right?
2 A. Really about twelve.
3 Q. About twelve. And investigated a lot of cases?
4 A. Yes, sir.
5 Q. All right. And you testified about going out to
6 the site and talking with some people basically
7 investigating the burn, and the purpose of that is
8 to find out who did it, isn't that right?
9 A. Correct.
10 Q. Now you testified from some documents which I'd
11 assume from the case file. Is it standard
12 practice when you're investigating the burn to
13 document what you learn and people you talk to and
14 things like that?
15 A. Yes, sir.
16 Q. And is it your - do you try to make sure that the
17 record is as accurate as possible?
18 A. My best.
19 Q. Because it's important to make accurate notes and
20 have complete records of what you learn, is that
21 right?
22 A. Yes, sir.
23 Q. Okay. All right. Ms. Vivian, you testified that
24 you went out to the site for the first time on
25 March 23rd, correct?

1 A. Yes.
2 Q. And when you went out there at that time, there
3 was nobody out there, is that right?
4 A. Correct.
5 Q. When you went out there that first time, was there
6 any - you know, was there any machinery out there?
7 Was there anything out there other than the burn
8 piles?
9 A. No.
10 Q. You testified that you had been informed of the
11 burn by Steve Edge, is that right?
12 A. Yes.
13 Q. And when Mr. Edge reported the burn, did he inform
14 you of Mr. - Benson Construction's involvement at
15 the site?
16 A. Not at that time, no, sir.
17 Q. Did he inform you of who owned the property?
18 A. No, sir.
19 Q. Now I understand that you - I understand there was
20 a little bit of difficulty finding out how the
21 property was listed at the tax office and who
22 owned the property?
23 A. Yes, sir.
24 Q. It was actually listed under Hole, is that
25 correct? It wasn't under the Townsend name,

1 right?
2 A. Correct.
3 Q. But you were able to find - to deduce that
4 Mr. Townsend owned that property?
5 A. That is correct.
6 Q. And you came to that conclusion before you spoke
7 to Mr. Benson, before you spoke to really anybody,
8 is that right?
9 A. Correct.
10 Q. Now it's not the Division's position that
11 Mr. Benson caused this property to be listed at
12 the tax office under the name Hole, right?
13 A. No, sir.
14 Q. Okay. Now you testified that you had gone---
15 Well, before we get to that, when you went out
16 there the first time, you said the piles were
17 still smoldering, right?
18 A. The first time?
19 Q. Right.
20 A. Yes.
21 Q. But at that time, you didn't call the fire
22 department?
23 A. No, sir.
24 Q. Didn't see a need to call the fire department?
25 A. No, sir.

1 Q. Now when you went back on March the 30th, you
2 testified that you saw a dump truck. I guess,
3 when you first saw the dump truck, it was entering
4 the road, is that right?
5 A. It was entering the road. That is correct.
6 Q. Okay. So you didn't see the dump truck actually
7 out at the hog farm site?
8 A. Correct.
9 Q. All right. Did you see anything on the truck that
10 identified it as a Benson Construction truck?
11 A. Not as it passed me, no, sir, I did not.
12 Q. Okay. Now if you could look at Respondent's
13 Exhibit Number 2, these are photos of the site and
14 the two different burn piles. Are the top two
15 pictures pile number one and pile number two?
16 A. Correct.
17 Q. I think you testified - and I think, looking from
18 these pictures - it looks like you were saying
19 pile number one, where you were standing, you were
20 kind of looking straight at it? Pile number one
21 was kind of in front of you when you took this
22 picture?
23 A. Where I was parked with my vehicle, yes.
24 Q. Okay. And then pile number two, you kind of
25 looked off to the right, and it looks like it's

1 down a row of trees so that the pile number two is
2 at the end of the row of trees?
3 A. Correct.
4 Q. Okay. Now you testified that pile number one was
5 sort of on the western side of the area and
6 towards the lake - the little pond?
7 A. Uh-huh.
8 Q. And pile number two was towards the east, and it
9 was kind of far away, you know, towards the woods,
10 I guess?
11 A. Yes. Yes.
12 Q. So let me clarify that. So pile number two was
13 towards the woods. Pile number one was towards
14 the - on the roadside of the property?
15 A. Yes, sir. West, east, yes.
16 Q. Okay. Now when you got out to the site, you
17 testified that you saw a person that you
18 eventually learned was Jonathan Lewis. You saw
19 him operating some machinery, and you saw some
20 individuals going through the burn pile?
21 A. Correct.
22 Q. Okay. Now you characterized it as a front-end
23 loader and then said you learned it was an
24 excavator. Just to be clear, did the equipment
25 that you saw out there, it wasn't like a bulldozer

1 kind. It was the kind with the arm with the scoop
2 at the end of it?
3 A. That is correct.
4 Q. Okay. Now how many - I guess, how many of those
5 excavators did you see out there?
6 A. Just that one.
7 Q. So there was just - was there any other machinery
8 out there?
9 A. No, sir.
10 Q. And you approached - you approached the excavator
11 and talked to the man operating it, and he
12 identified himself as Jonathan Lewis?
13 A. That is correct.
14 Q. Said he worked for Benson Construction?
15 A. Excuse me, sir?
16 Q. He say he worked for Benson Construction?
17 A. Yes.
18 Q. He said he didn't know anything about the burn?
19 A. Correct.
20 Q. And he gave you a phone number to contact Stephen
21 Benson?
22 A. Correct.
23 Q. If you could look at - if you could look at the
24 complaint investigation report. I'm not sure
25 which number---

1 A. 5? I think it's Number 5.
2 Q. If you'd look at Respondent's Exhibit Number 5.
3 The second page of that, I think, under "Summary
4 of Investigation," the paragraph that's numbered
5 5, after the phone number from Stephen Benson, the
6 sentence that starts, "Another pickup truck." If
7 you could read that sentence and the next two for
8 me, please.
9 A. That sentence where it says, "Another pickup
10 truck," right?
11 Q. Yes, ma'am.
12 A. "Another -" excuse me. "Another pickup truck was
13 observed near the first large smoldering pile with
14 three men removing metal pieces and putting each
15 into their pickup truck. I thanked Mr. Lewis and
16 walked to the men. They were salvaging any piece
17 of metal they could get from the pile." Do you
18 want me to continue?
19 Q. No. No, that's it, ma'am. Now you testified that
20 in speaking with them, it became - you felt like
21 it was an uncomfortable situation?
22 A. Yes, sir.
23 Q. During your experience as an investigator, have
24 you ever been in situations where you've had to
25 request the assistance from local law enforcement,

1 ever had to get, you know, the police involved to
2 make sure that your safety was assured?
3 A. No, sir, not at this point.
4 Q. Is it your opinion that if you ever had to get
5 local law enforcement involved, that as a state
6 agent, you'd be able to get some assistance? They
7 would provide it if you asked for it?
8 A. Yes, sir.
9 Q. Okay. Now you talked to the men that were going
10 through the burn pile briefly, and then you took a
11 picture of the burn pile?
12 A. Correct.
13 Q. And I believe that's Respondent's Exhibit
14 Number 4. Those are the pictures that you took on
15 March 30th?
16 A. Let me flip through here. I don't know if it's -
17 Number 4. Okay. Yes, sir.
18 Q. All right. Now you took a picture of pile number
19 one and pile number two. Now which pile were the
20 three men and the pickup truck at?
21 A. They were right behind me while I was taking that
22 picture of pile number one.
23 Q. So it was pile number one. But you didn't get a
24 picture of them going through the pile?
25 A. No, I didn't want to take a picture. I really

1 felt uncomfortable.
2 Q. But they were out there in a pickup truck?
3 A. They had a little red pickup truck.
4 Q. Okay. So it wasn't a full-size? It was one of
5 the smaller---
6 A. It was an older red pickup.
7 Q. Did you write down the license plate number of the
8 truck?
9 A. No, sir. It was parked towards. It was not
10 parked back.
11 Q. Did you ask them for their names or who they
12 worked for?
13 A. No, sir.
14 Q. Okay. All right. Now you testified that Jonathan
15 Lewis gave you some information about Stephen
16 Benson and a phone number to contact him?
17 A. Correct.
18 Q. And you were able to contact Stephen Benson?
19 A. Yes.
20 Q. And then he said - he gave you a number for Burt
21 Benson, and you were able to contact him?
22 A. Yes.
23 Q. So it looks like the first day that you're aware
24 that Benson Construction had any involvement at
25 the site, you were able to speak to the people you

1 needed to speak with?
2 A. Correct.
3 Q. Okay. And it was really - it was really Jonathan
4 Lewis that first informed you that Benson
5 Construction was involved?
6 A. That is correct.
7 Q. And then you went back to the office and you spoke
8 to Mr. Benson?
9 A. That is correct.
10 Q. Now he informed you that D. H. Griffin Wrecking
11 Company had been involved at the site, correct?
12 A. Yes.
13 Q. All right. He also informed you that he was
14 working on the site doing some work for a relative
15 of his, is that correct?
16 A. Yes.
17 Q. And didn't he also tell you that Jane Townsend
18 lived in Lumberton?
19 A. Yes.
20 Q. And that Jimmy Neil Townsend lived in Myrtle
21 Beach?
22 A. Correct.
23 Q. And isn't it true that based on the information he
24 provided you, the next day you found a phone
25 number for Jane Townsend and spoke with her?

1 A. Yes.
2 Q. And then I think the day after that or maybe two
3 days after that, you actually spoke to - or you
4 heard back from Mr. Townsend?
5 A. That is correct.
6 Q. So based on the information you received from
7 Mr. Benson, you were able to locate the Townsends?
8 A. Yes.
9 Q. All right. Now did you attempt to contact D. H.
10 Griffin?
11 A. Yes.
12 Q. Did you ever speak to anyone at D. H. Griffin?
13 A. Yes.
14 Q. Did you ever speak to anyone at D. H. Griffin
15 about the time frame when they were out on-site?
16 A. Yes.
17 Q. You spoke to them personally about that?
18 A. As far as Ms. Walker, the original person in the
19 Greensboro office, she didn't know anything, and
20 she was trying to track things down.
21 Q. So she didn't give you any information about when
22 D. H. Griffin was out there?
23 A. Correct.
24 Q. So did you ever speak to anybody that gave you
25 information about when they were out there?

1 A. Yes.
2 Q. And you spoke to them?
3 A. Yes.
4 Q. When did you speak to them?
5 A. I spoke to him - Mr. Lewis - Jimmy Lewis - and I
6 spoke to him later on that afternoon because it
7 ended up to where he ended up around - later on
8 that afternoon, he left a voice message because I
9 guess Ms. - my assumption was Ms. Walker, you
10 know, having contacted him - she finally tracked
11 down the information and such.
12 Q. So---
13 A. Oh. I see what you're saying.
14 Q. So did you ever speak to Mr. Lewis about it?
15 A. No, sir, not directly.
16 Q. So you never had direct conversation with anybody
17 from D. H. Griffin about when they were out there?
18 A. No, sir.
19 Q. Just got a voice mail with that information?
20 A. Correct.
21 Q. And you learned of their involvement because
22 Mr. Benson told you about their involvement?
23 A. Correct.
24 Q. All right. Now you spoke to Mr. Benson on
25 March 30th, is that right, the day that you saw

1 John Lewis out there?
2 A. Yes.
3 Q. Did you ever speak to him again after that?
4 A. There were various voice messages that were left.
5 Q. So he left voice messages for you?
6 A. Correct.
7 Q. But did you ever attempt to contact him after that
8 initial conversation?
9 A. There was - my boss then was trying to get up with
10 him because there was so much back-and-forth that
11 I was doing with not just Mr. Benson, but even
12 Mr. Townsend, you know, leaving voice messages and
13 such, and so my boss then talked to them.
14 Q. So your testimony is your boss spoke with
15 Mr. Benson?
16 A. No. That isn't correct.
17 Q. Let me ask you this: How many conversations did
18 you have with Mr. Benson?
19 A. I guess just one.
20 Q. Okay. Now you spoke to him for the first time on
21 March 30th, and then isn't it true that on
22 April 2nd, he called and left a voice mail for
23 you?
24 A. Yes.
25 Q. And in that voice mail, he left you the dates that

his employees had been out there during December '08, January '09?

A. Correct.

Q. If you could look at number 16 on the Complaint Investigation Report, what were the dates that you wrote down that he had conveyed to you?

A. December 18th, '08; January 12, '09.

Q. And then what did he - what did he tell you about D. H. Griffin's involvement at the site?

A. That they were there to go ahead and tear down the silos and use that scrap metal as their payment.

Q. Okay. And after Mr. Benson left that voice mail, you never tried to contact him, is that right?

A. Correct.

Q. When you spoke to Mr. Benson on March 30th, did you ask him what he intended to do about the fire?

A. No, sir.

Q. Did he ask you what he should do about the fire?

A. No, sir.

Q. Do you remember telling him to contact Steve Edge at Solid Waste?

A. Concerning solid waste, yes.

Q. So you did tell him to contact Steve Edge?

A. Uh-huh.

Q. Okay. Ms. Vivian, if you would turn to the NOV

1 letter that's dated April 23rd, 2009. That's
2 Respondent's Exhibit Number---
3 A. 8.
4 Q. Number 8?
5 A. 7.
6 Q. 7. All right. You testified that you actually
7 drafted this letter?
8 A. Yes.
9 Q. And this letter is basically a summary of the
10 investigation and what you learned?
11 A. Yes.
12 Q. And it's based on your investigation?
13 A. Yes.
14 Q. Are you the only division personnel that went out
15 to the site?
16 A. Yes.
17 Q. And the only times you were out on the site were
18 those two times we discussed previously?
19 A. Correct.
20 Q. Okay. If you would, in the first paragraph, the
21 sentence that starts, "On 30th March 2009," if
22 you'd read that sentence for me.
23 A. "On 30th March - on 30th March 2009, Ms. Vivian
24 returned to the site and observed both piles still
25 smoldering and an equipment operator from your

1 company actively working at the site."
2 Q. Now that's based on your direct observation,
3 correct?
4 A. Correct.
5 Q. And that's an accurate statement?
6 A. Correct.
7 Q. Okay. Ms. Vivian, in your capacity as an
8 investigator, did you prepare a civil penalty
9 assessment briefing sheet?
10 A. Yes.
11 MR. MORTON: Your Honor, may I approach?
12 THE COURT: Yes, you may.
13 THE WITNESS: I was confused.
14 Q. Ms. Vivian, is this the civil penalty assessment
15 briefing sheet that you prepared?
16 THE WITNESS: Your Honor---
17 THE COURT: You need to answer his
18 question.
19 A. No, sir.
20 Q. So are you saying that you didn't prepare this or
21 there's another one that you prepared but it
22 wasn't this one?
23 A. I'm saying I was confused on what you were
24 referring to.
25 Q. Okay. All right. Ms. Vivian, based on your -

1 based, I guess, on part of your investigation,
2 there was a civil penalty assessment prepared in
3 this case, is that right?
4 A. Yes.
5 MR. MORTON: Your Honor, if it please
6 the Court, this one has already been marked
7 1. Should I just leave that 1 and start with
8 2, or would you prefer that I - would the
9 Court prefer I start this one as number 1?
10 THE COURT: You can start with 2, is
11 fine. You can leave them as you've marked
12 them.
13 MR. MORTON: All right. May I approach,
14 Your Honor?
15 THE COURT: Yes, you may.
16 Q. Ms. Vivian, just to recap briefly the notice of
17 violation - the notice of violation letter that
18 you prepared, you testified that you saw an
19 equipment operator actually working at the site---
20 A. Correct.
21 Q. ---is that correct?
22 And you testified there was only one piece of
23 machinery out there?
24 A. Correct.
25 Q. And that was the piece of machinery that Jonathan

1 Lewis was on?
2 A. Correct.
3 Q. Now was he working the burn pile, or was he
4 working something else?
5 A. Something else.
6 Q. What was he working? I believe you testified he
7 was working some silo pads?
8 A. Correct.
9 Q. Was he busting up the concrete? Is that correct?
10 Is that what you saw?
11 A. What I saw, he was digging. I didn't see no
12 busting.
13 Q. Okay. But he was at kind of a silo pad area---
14 A. Correct.
15 Q. ---with concrete around?
16 A. Correct.
17 Q. He wasn't at the burn pile?
18 A. Correct.
19 Q. And you testified there was only one piece of
20 machinery out there?
21 A. Correct.
22 Q. Okay. If you'd look at what's been marked
23 Petitioner's Exhibit Number 2, could you identify
24 that for the Court?
25 - - - - - - - -

1 (PETITIONER'S EXHIBIT NO. 2
2 (MARKED FOR IDENTIFICATION
3 A. Yes, sir. This is what we call our actual
4 enforcement package.
5 Q. Well, this is actually - this is just the civil
6 penalty assessment, is that correct?
7 A. Meaning Number 1?
8 Q. No, Number 2.
9 A. Number 2. Well, this goes to central office.
10 It's what we - I'm not quite sure what you're
11 asking me because I call it a certain thing. This
12 is what I - I put a package together where I
13 basically sit down and say, okay, this is my
14 entire investigation, and then I do my
15 investigation costs and then I submit that, you
16 know, to my boss.
17 Q. I guess what I'm asking here is, Exhibit Number 2,
18 the civil penalty assessment - this is actually
19 the assessment that was laid against Benson
20 Construction?
21 A. Okay. Okay. Yes, sir.
22 Q. This is like the agency assessment against him?
23 A. Correct.
24 Q. All right. If you could read what it says under
25 Roman numeral I.

1 A. You're talking about---
2 Q. The underlined, all caps phrase there.
3 A. Are you talking about Exhibit Number 2?
4 Q. Yes, ma'am.
5 A. Okay. And you're saying the number I?
6 Q. Right. Roman numeral I. The underlined, all
7 caps---
8 A. Yes, sir.
9 Q. If you'd just read that phrase.
10 A. "Findings of Fact."
11 Q. All right. Now if you look at section C, if you
12 could read that paragraph for me.
13 A. "On 30th March 2009, staff returned to the site to
14 find workers moving the demolition debris with
15 front-end loaders. Piles were still smoldering.
16 Workers stated they were working for Benson
17 Construction, Inc., in Lumberton. Around this
18 same time, it was learned that the property owners
19 are James and Jane Townsend, d/b/a Townsend
20 Farms."
21 Q. Now this paragraph here says that there were
22 workers moving the demolition debris with
23 front-end loaders?
24 A. Yes, sir.
25 Q. That's plural - plural workers, plural loaders?

1 A. Yes, sir.
2 Q. And then the third sentence says, "Workers,"
3 plural, "stated they were working for Benson
4 Construction"?
5 A. Yes, sir.
6 (Tape changed.)
7 Q. Based on your testimony, there was one - there was
8 one front-end loader out there, and you only
9 talked to one person that said they worked for
10 Benson Construction?
11 A. Yes, sir.
12 Q. So this finding of fact here is - based on your
13 testimony - is inaccurate, isn't it?
14 A. Yes, sir.
15 THE COURT: For the clarity of the
16 record, Ms. Vivian, is the entire C
17 inaccurate?
18 THE WITNESS: The entire C?
19 THE COURT: Yeah. You said that was
20 inaccurate. What part, if any or all, was
21 inaccurate?
22 THE WITNESS: The plural word.
23 THE COURT: Okay.
24 Q. Ms. Vivian, just to be sure now, let's break this
25 down. In section C, it says found workers moving

1 demolition debris with front-end loaders. So the
2 plural is inaccurate. It's also inaccurate they
3 were working - that they were moving the
4 demolition debris. That's inaccurate, isn't it?
5 A. That is inaccurate, yes.
6 Q. And the other sentence about workers stated they
7 were working - the plural is inaccurate?
8 A. That is correct.
9 Q. Ms. Vivian, did you ever - did you ever speak with
10 Mr. Edge after the initial complaint was called
11 in, I guess?
12 A. Yes, sir.
13 Q. When was that?
14 A. I believe it was March 30th - I believe. Can I
15 refer back to my report?
16 Q. Yes, ma'am.
17 A. No, sir. It was April 2nd.
18 Q. At that time, did he give you information about
19 who had been out at the site?
20 A. Yes, sir.
21 Q. But that wasn't - he didn't give that information
22 when he initially filed the complaint, right?
23 A. That is correct.
24 Q. Didn't he tell you - didn't you learn from him
25 that Griffin Wrecking had demolished the entire

1 farm in December of '08?
2 A. That's what he said, yes, sir.
3 Q. That contradicts testimony we heard earlier today,
4 doesn't it?
5 A. To be quite honest, I know he wasn't up on his
6 dates and such.
7 Q. Okay.
8 MR. MORTON: Your Honor, if I could have
9 just a moment.
10 THE COURT: Yes, you may.
11 (Thereupon, there was a pause in the
12 proceeding.)
13 Q. Ms. Vivian, as part of your responsibilities, do
14 you prepare an enforcement new case data sheet?
15 A. Is that part of that enforcement package? Is that
16 what you're referring to?
17 Q. It may be. Did you prepare a document that's
18 simply titled "Other Information" that - I'm not
19 sure you prepared it. That's why I'm asking.
20 A. That one right there what you call Number 2 -
21 that's the one I did.
22 Q. Okay. All right. Thank you.
23 MR. MORTON: Your Honor, may I approach?
24 THE COURT: Yes, you may.
25 Q. Ms. Vivian, do you [inaudible] marked Petitioner's

1 Exhibit Number 3?
2 (PETITIONER'S EXHIBIT NO. 3
3 (MARKED FOR IDENTIFICATION
4 A. This is the beginning page when I begin to prepare
5 my enforcement package.
6 Q. And could you read the last line that's on that
7 page?
8 A. "For recommendation of regional office," is that
9 what you're referring to?
10 Q. Yes, ma'am.
11 A. "Assess as a business, Category 2.30(b), full and
12 unreduced due to deception."
13 Q. Now was that deception on the part of Benson
14 Construction?
15 A. Yes.
16 Q. Okay. And you testified, though, that when you
17 first talked to Mr. Benson, he told you who had
18 been out there, told you his company had been out
19 there, and he told you how to get up with the
20 property owners, is that correct?
21 A. That is correct.
22 Q. Okay.
23 MR. MORTON: Your Honor, that's all I
24 have at this time.
25 THE COURT: Redirect.

1 MS. WEESE: Thank you, Your Honor.
2 MR. MORTON: Your Honor, I'm sorry.
3 Could we move to introduce Exhibits 2 and 3
4 into evidence?
5 (PETITIONER'S EXHIBIT NOS. 2-3
6 (OFFERED INTO EVIDENCE
7 THE COURT: Any objection from
8 Respondent?
9 MS. WEESE: No objection, Your Honor.
10 THE COURT: Okay. Petitioner's Exhibit
11 2 and 3 are admitted.
12 (PETITIONER'S EXHIBIT NOS. 2-3
13 (RECEIVED INTO EVIDENCE
14 **REDIRECT EXAMINATION**
15 **BY MS. WEESE:**
16 Q. Ms. Vivian---
17 MS. WEESE: I withdraw that, Your Honor.
18 I don't have any redirect at this time.
19 Thank you.
20 THE COURT: All right. You may step
21 down. Thank you, Ms. Vivian.
22 THE WITNESS: Do I leave all this stuff
23 here?
24 THE COURT: Leave all that up there.
25 Your next witness, Ms. Weese?

1 MS. WEESE: At this time, the Division
2 would call Steven Vozzo.
3 THE COURT: And as you approach, do you
4 have a preference to be sworn or affirmed?
5 MR. VOZZO: Sworn.
6 THE COURT: Okay. If you would hold the
7 Bible in your left hand and raise your right.
8 - - - - - - - -
9 STEVEN VOZZO,
10 a witness called on behalf of the Respondent, being
11 first duly sworn in the above-entitled matter, was
12 examined and testified on his oath as follows:
13 THE COURT: If you'll have a seat,
14 please, sir. And if you would state your
15 first and last name and spell them both.
16 THE WITNESS: My name is Steven Vozzo.
17 First name is S-t-e-v-e-n. Last name, V, as
18 in Victor, o-z-z-o.
19 THE COURT: Thank you. You may direct
20 your attention to Ms. Weese.
21 MS. WEESE: Thank you, Your Honor.
22 **DIRECT EXAMINATION**
23 **BY MS. WEESE:**
24 Q. Mr. Vozzo, where do you work?
25 A. Fayetteville Regional Office, Division of Air

1 Quality.
2 Q. And what's your position there?
3 A. I'm the regional air quality supervisor.
4 Q. What is your educational background?
5 A. I've got a biology - a BS in biology, and I've got
6 a master's in crop science, studying air
7 pollution.
8 Q. Okay. How long have you worked for the Division
9 of Air Quality?
10 A. Eighteen years with the Division of Air Quality.
11 Fifteen years at the Fayetteville Regional Office
12 as supervisor.
13 Q. Okay. Have you investigated open burning
14 complaints during that - over that time period?
15 A. Yes, very - many.
16 Q. Do you still investigate them?
17 A. I do. I probably do about ten to fifteen a year
18 on my own.
19 Q. Okay. I'm going to ask you to describe your
20 involvement in this investigation, and I want to
21 start with this question: Did you ever have any
22 contact with Mr. Benson in this case?
23 A. Not before the NOV was sent out.
24 Q. Okay. Will you turn to Respondent's Exhibit 8
25 that's in the notebook in front of you?

1 (RESPONDENT'S EXHIBIT NO. 8
2 (MARKED FOR IDENTIFICATION
3 A. Okay.
4 Q. And tell me if you recognize that.
5 A. I recognize this as the - when we sent a letter of
6 violation, we ask people to send us a written
7 response, and this is the written response to that
8 letter of violation.
9 Q. Okay. And who is this - who signed this letter?
10 A. This is from Burt Benson of Benson Construction.
11 Q. Okay. And did you read and consider this letter?
12 A. Yes, I do.
13 Q. Okay. What's your role as far as a decision to
14 issue a notice of violation or a notice of
15 violation/recommendation for enforcement?
16 A. Staff is instructed to be our messengers. They
17 are out there to gather the information, to write
18 down the facts as contemporaneous as possible,
19 write down what people say, write down what they
20 observe, put that whole record together, and then
21 review it with me.
22 We also have an open burning coordinator who
23 also provides some input into looking at the
24 information, making sure it's consistent per our
25 procedures. So we gather all the information and

1 then come to a conclusion of figuring out, you
2 know, is it - was there a violation of the state
3 regulations? Was that violation serious enough to
4 cross over to where we would recommend the civil
5 penalty assessment?
6 Again, that's a recommendation from our
7 office, where any final decisions on whether a
8 penalty is issued comes out of our central office,
9 and it's either our deputy director or our
10 director who would make that final decision.
11 So in this case, I looked at all the facts
12 for this case. There were many - there were many
13 people involved with it and trying to figure out
14 who were all the responsible parties. And in this
15 case, as Ms. Vivian testified, this was a serious
16 burn. This was a very large burn. I probably
17 have seen in my office - over a couple of thousand
18 have come before me as supervisor, and this was a
19 really large burn.
20 So we were trying to - and so we considered
21 it serious and tried to figure out who were the
22 responsible parties - party or parties - and in
23 this case, you know, we ended up having - the
24 property owner was Mr. Townsend, and because he
25 lived out of state, we were having a hard time

1 getting up with him.
2 I ended up making a couple of phone calls,
3 and I called him myself and asked some questions,
4 and you know, he said he was a responsible party
5 to it, even though he was not on-site. We then
6 had a contractor who was also involved with the
7 land, and that contractor had a history with our
8 office of getting previous letters of violation,
9 so he knew the open burning laws in our state.
10 So when we looked at both pieces, we said
11 there were two responsible parties here. There
12 was the owner of the land who said he was
13 responsible and in charge of this project, and we
14 then had the contractor who was the on-site
15 operational - person in operational control
16 involved with it, and we believed he was also
17 responsible for the illegal burn that occurred.
18 Q. Now when you said that DAQ had taken enforcement
19 action previously against this contractor, let's
20 just be clear. Are you referring to Benson
21 Construction?
22 A. I didn't say enforcement. We had sent a letter of
23 violation to Benson Construction for - I think
24 there was a case in 2000, another one in 2004 time
25 frame, one for demolition debris, one for land

1 clearing within a thousand foot - kind of the two
2 areas of our open burning regulations where we see
3 contractors somewhat involved with burning
4 activities.
5 Q. Would you take a look at Respondent's Exhibit 9,
6 please.
7 (RESPONDENT'S EXHIBIT NO. 9
8 (MARKED FOR IDENTIFICATION
9 A. Okay.
10 Q. Okay. And just describe Respondent's Exhibit 9.
11 What is that?
12 A. This is something I authored. It was an e-mail to
13 my director and to Deputy Director Keith Overcash
14 and Sheila Holman. And it was a summary of what
15 was going on in this case here.
16 Q. When did you prepare this summary?
17 A. It's dated May 14th, 2009, so it was after we sent
18 the letters of violation. It was in response to a
19 legislative inquiry that was being made of the
20 Department as to why - what was going on with the
21 Mr. Townsend case, and that's sort of what it was
22 being called at the time - probably Jimmy Townsend
23 or - we would call it the Townsend Farms case.
24 And so this was a series of events summarized
25 from my reviewing the record, talking to the

1 inspector, my own conversations with Mr. Townsend,
2 the response from Mr. Benson. All this was a
3 summary of what we knew at that time, what was
4 going on with the case.
5 Q. Okay. Now we've heard the name of another
6 company, D. H. Griffin, mentioned a time or two at
7 this hearing. Why did you decide not to recommend
8 D. H. Griffin as a possible responsible party in
9 this case?
10 A. We did end up sending them a letter - a compliance
11 additional information letter - just to let them
12 know what was going on at the site because in the
13 conversation with D. H. Griffin, their job there
14 was to remove the silos. They were - everything
15 we had heard was that their role was to deal with
16 the silo structures and the silo pads, and that
17 wasn't what we saw being - what we thought of
18 being part of the project going on at that time in
19 March when we were called to the site.
20 Q. Okay. Now you've got Petitioner's Exhibit 2 up
21 there in front of you, I believe.
22 A. Yes.
23 Q. And that is the civil penalty assessment document.
24 Will you describe the role of the regional office
25 in preparing this document, please. Thank you.

1 A. I think the word "draft" is a good idea in a lot
2 of things. And I'm going to back - you didn't
3 ask, but like, a letter of violation, it gets
4 drafted, but I'm the person who is going to sign
5 it. So I will become the final author. I will
6 make final edits. I will make final word changes
7 based on everything I know about the case, and
8 sometimes it's just more than just the inspector
9 because - especially this case with a couple of
10 other people being involved.
11 Likewise, with the civil penalty assessment,
12 our inspectors start it. They kind of put
13 together eighty percent of it. We then have one
14 of our coordinators review it to make sure it's
15 meeting the requirements of how the director wants
16 to see things put together, but eventually, then I
17 sign off on this draft that's going to the central
18 office as this is what we think the total story is
19 about this case.
20 And I say "draft" because when it gets to the
21 director's office, it's reviewed again by our
22 technical services enforcement group who then kind
23 of, again, edit it and prepares it to make sure
24 it's consistent for then the director or deputy
25 director to sign.

1 Q. And you used that word a couple of times
2 "consistent." Why is that important?
3 A. Well, again, our goal is to be fair when we look
4 at things. It's to be fair in our evaluation.
5 It's to be fair in our penalty assessments. It's
6 to be fair in just how we look at the cases, try
7 to take any emotions that we have or frustrations
8 or attitudes of people out of it, but just to make
9 sure that what we're presenting is what we think
10 are the facts for the best that we can put them
11 together.
12 Q. And to clarify when you say "we," you're talking
13 about your staff---
14 A. "We" is my staff, yes.
15 Q. ---in the Fayetteville Regional Office?
16 A. Yes. Right. My thirteen or fourteen staff,
17 depending on time frame.
18 Q. But to be clear, neither you nor any - certainly
19 any of your staff - makes the final decision about
20 whether or not to assess a penalty?
21 A. Correct. That is - when the director or the
22 deputy director signs off, that's the final
23 decision by the agency at that point.
24 Q. And looking at Petitioner's Exhibit 2, is there
25 any way you can tell whether or not that's the -

1 whether that's the draft that you sent up?
2 A. It's close. I would say - we are about - again,
3 most of the way there, but any final word edits, I
4 can't tell how - where they would have changed it
5 along the way.
6 Q. Okay. All right. But your staff does - what is
7 it that your staff forwards to Raleigh Central
8 Office to review in these - in order to make a
9 decision about whether or not to assess a penalty?
10 A. We create the civil penalty assessment finding of
11 fact, which is Exhibit 2. Exhibit 3 is a cover
12 letter that we put on it that we just try to
13 communicate our thinking to the director. It's
14 just our thoughts on how we're looking at things
15 to where we think it might fall in the penalty
16 tree, where we think other factors might be
17 considered.
18 And then we attach all the attachments of the
19 reports, of the photos, of the - if we do property
20 search records and tax records, if we get fire
21 companies giving us - fire departments giving us
22 reports - it's anything else we have gathered
23 that's significant to the fact - that we add up -
24 and we indicate that usually in one of the pages
25 that indicates here are the other attachments that

1 went with it. And I think the inspector costs -
2 the investigation cost was one of those
3 attachments as well.
4 Q. Okay. All right.
5 MS. WEESE: If I could just take one
6 minute, Your Honor.
7 THE COURT: All right.
8 (Thereupon, there was a pause in the
9 proceeding.)
10 Q. And one last question, Mr. Vozzo. Now it's my
11 understanding that you personally did not go out
12 to the site?
13 A. Not this one, no.
14 Q. Okay. Can you explain why - even though you
15 didn't go out, why the Division did not - did not
16 call the fire department in this case?
17 A. There is three groups involved with open burning
18 in North Carolina. There is the State Air Quality
19 where we worry about the air we breathe. There is
20 the fire departments which are concerned about the
21 safety of the community, and there's the Forest
22 Service which is involved with the safety of the
23 forest. And we all have our aspect on open
24 burning. We all work together from time to time.
25 In this case, by the time we observed this

1 pile, it was smoldering at that point, and we
2 typically do not call the fire department unless
3 we think there is more danger to life and limb to
4 where - of the spreading hazard - is when we get
5 them involved. And that's often when we call the
6 fire department. It's very limited when we'll
7 call them in. It's when we think there is other
8 dangers that are involved.
9 For our purposes at that point, you know, the
10 burn had occurred, and - now we tell - we usually
11 tell the companies about it. It's up to them to
12 do the right thing, and what is the right thing in
13 putting it out or putting dirt on it. There are
14 things you can do to put that fire out. And
15 typically when it comes to putting dirt on it,
16 it's going to be the company that's going to do
17 it.
18 So when you get a big fire like that, usually
19 the best recourse is for the company - the person
20 involved - is to smother it and not to come out
21 and put foam or water on it.
22 Q. From air pollution?
23 THE COURT: I need for - either for you
24 to backtrack to and then from now on. You
25 use "we" a lot. You said, "We saw it was

1 smoldering," and yet, you told me you did not
2 go out there. So if you could use particular
3 names. If you're a part of the "we -"
4 instead of "we," "they," if you would use
5 names of the "we," the multiple people that
6 saw it smoldering.
7 THE WITNESS: Okay. Sure.
8 THE COURT: Apparently, it wasn't you
9 from what your prior testimony was.
10 THE WITNESS: It was not, no. It was my
11 collective "we" of our staff.
12 THE COURT: If you could name specific
13 names.
14 THE WITNESS: Sure. In this case, Pam
15 Vivian was our inspector on-site who saw it
16 smoldering, and she did not call the fire
17 department. At the time, we got this
18 complaint - by the time the Fayetteville
19 Regional Office got this complaint, it had -
20 the burn had already occurred.
21 The local Solid Waste - the County
22 called us. So at that point, the County
23 would have responded - been the first
24 responder to say there was an issue going on,
25 and they, the County, would have probably

1 made any other action whether to call the
2 fire department or not.
3 Q. Well, from an air pollution standpoint, then, is
4 it sometimes not a good idea to put water on
5 smoldering fires?
6 A. That's what we hear and we hear that from the fire
7 departments, from the extra smoke that would be
8 caused, and the more smolder - the more smoldering
9 that could be caused from that. And that's why a
10 lot of times they would sometimes smother with
11 foam - the fire departments - or they would get
12 the local contractor to come in with their
13 bulldozers or the Forest Service gets involved
14 with their bulldozers to smother it with dirt.
15 Q. But you're the expert on air pollution---
16 A. Right.
17 Q. ---and when does the air pollution from these open
18 burnings occur?
19 A. The air pollution is caused when you're actually
20 combusting the material, and in the case when we
21 see the remnants of that point, the combustion has
22 occurred. The majority of the air pollution has
23 already occurred from this fire by the time we
24 came to the site.
25 Q. By the time, who came to the site?

1 A. By the time our staff, Pam Vivian, came to the
2 site.
3 Q. Okay.
4 MS. WEESE: Well, thank you, Mr. Vozzo.
5 I have no further questions at this time.
6 THE COURT: Cross-examination,
7 Mr. Morton?
8 **CROSS-EXAMINATION**
9 **BY MR. MORTON:**
10 Q. Mr. Vozzo, we've heard testimony this was a large
11 burn?
12 A. Yes.
13 Q. So it was important to find out who was
14 responsible, is that right? You want to make sure
15 you get the right people, right?
16 A. Yes.
17 Q. All right. Now you indicated that you had sent a
18 CAI to D. H. Griffin?
19 A. Yes.
20 Q. Did you receive any response any response from
21 that?
22 A. I would hope so. I don't know. I don't---
23 Q. If you received a response to that, has it been
24 made part of the agency file that you're aware of?
25 A. No.

1 Q. Okay.
2 THE COURT: And for the record, could
3 you indicate what CAI is - stands for?
4 THE WITNESS: CAI is a compliance
5 additional information letter.
6 Q. Now I believe you stated previously that you had a
7 conversation with somebody from D. H. Griffin. Is
8 that the case? Did you ever speak to anyone
9 personally at D. H. Griffin?
10 A. I do not recall me speaking. I think one of our
11 staff did.
12 Q. Okay. Mr. Vozzo, I believe at the table there
13 should be something marked Petitioner's
14 Exhibit Number 1.
15 (PETITIONER'S EXHIBIT NO. 1
16 (MARKED FOR IDENTIFICATION
17 A. Yes.
18 Q. That is a civil penalty assessment briefing
19 sheet---
20 A. Yes.
21 Q. ---is that correct?
22 Did you prepare that sheet?
23 A. No.
24 Q. Do you know who did prepare that sheet?
25 A. This form would have come out of our central

1 office, and I'm thinking in preparation for
2 talking with the director or the deputy director.
3 Q. Mr. Vozzo, if you would turn to the initial notice
4 of violation letter.
5 A. Yes.
6 Q. That is Respondent's Exhibit Number---
7 MS. WEESE: 7.
8 Q. ---7. Number 7. Now you heard - you testified
9 earlier that while someone else may draft this
10 letter, you review it, you sign it, it's your
11 letter, and you've adopted it?
12 A. Yes.
13 Q. All right. Now this letter states that Ms. Vivian
14 went to the site and spoke to an equipment
15 operator from Benson Construction, is that
16 correct?
17 A. Yes.
18 Q. Now if we could turn to Respondent's Exhibit
19 Number 9. That is, I believe, your e-mail, is
20 that correct?
21 A. Yes.
22 Q. Now the entry that's dated 30th March 2009, the
23 second line, could you read the first three
24 sentences of that?
25 A. "Inspector talks," is that---

1 Q. Yes, sir.
2 A. "Inspector talks with Jonathan Lewis operating a
3 large front-end loader. Other men are on-site
4 working as well. He states he is working for
5 Benson Construction out of Lumberton. He stated
6 his boss has just received permission from RCSW on
7 how to properly bury the debris."
8 Q. All right. So that says, "He states he," so one
9 person stated he is working for Benson
10 Construction, is that---
11 A. Yes.
12 Q. All right. If you could go down to the - I guess,
13 the second April 2nd, 2009 entry.
14 A. Okay.
15 Q. If you could read the last bracketed - well, read
16 that whole paragraph for us.
17 A. "Mr. Burt Benson stated his company was on-site
18 from 18 December 2008 to 12 January 2009 and not
19 back on-site until 30 March 2009. He said Griffin
20 Wrecking Company did their silo demolition between
21 January and March. These statements contradict
22 both Griffin Wrecking and RCSW," which is Robeson
23 County Solid Waste.
24 Q. So you made a notation here that there was a
25 contradiction between what Mr. Benson said and

1 what somebody else said?
2 A. Yes.
3 Q. All right. If you'd go to the first April 2nd,
4 2009, and read that paragraph.
5 A. "Mr. Jim Lewis of Griffin Wrecking Company stated-
6 --"
7 Q. Excuse me. Just read that first sentence.
8 A. "Mr. Jim Lewis of Griffin Wrecking Company stated
9 they removed the scrap metal in December 2008.
10 This was their payment."
11 Q. All right. And then read the second sentence for
12 me.
13 A. "They were not on-site in 2009."
14 Q. All right. If you'd go to the very top, where it
15 says, "December 2008," doesn't that say,
16 "According to RCSW, D. H. Griffin Wrecking
17 demolished the entire hog farm"?
18 A. Uh-huh, yes.
19 Q. So there's a contradiction between those two
20 statements, isn't there?
21 A. Yes.
22 Q. But you didn't make a notation that those two
23 statements contradict each other, did you?
24 A. I didn't make that notation, no.
25 Q. Okay. Now if you could turn to the second page of

1 that exhibit. The next - I guess, the next-to-
2 the-last line that starts, "We have had."
3 A. "We have had multiple conversations with Jimmy
4 Townsend, Burt Benson, and Jim Lewis of Griffin
5 Wrecking."
6 Q. And we heard testimony that Pam Vivian spoke to
7 Burt Benson once?
8 A. Right.
9 Q. You never spoke to Burt Benson?
10 A. Huh-uh, no.
11 Q. And no one ever really spoke to Jim Lewis, is that
12 correct?
13 A. I would have to look back at the report. I
14 thought Jim Lewis was - returned a call or left an
15 e-mail message. I would have to recall the -
16 again, that whole chronology of the inspection
17 report is step-by-step trying to put it in each
18 day, when someone says something, trying to make
19 the notations.
20 Q. Well, if he left a voice mail, that's not a
21 conversation with him, is it?
22 A. It's a contact, but it's not a conversation.
23 Q. Okay. If you could look at - if you could look at
24 Petitioner's Exhibit Number 1, the civil penalty
25 assessment briefing sheet.

1 A. Okay.
2 Q. There's a section marked "Description of
3 Violation."
4 A. Okay.
5 Q. The line that starts "March 30th," could you read
6 that line and the next line?
7 A. "March 30th. Returned to the site and found some
8 workers moving demo debris with front-end loaders.
9 Piles were still smoldering. Talked to one man.
10 He stated he works for Benson Construction in
11 Lumberton."
12 Q. What's the date of this briefing sheet?
13 A. Again, I'm not the author of this one. I do not
14 know.
15 Q. If you look down at "Company Response," doesn't it
16 say both responded on May 6th, '09? So I guess it
17 had to be written after that?
18 A. Yes. This would be prepared before the director
19 does the final review and sign off, so---
20 Q. So the date of the initial notice of violation was
21 April 23rd, 2009, isn't that right?
22 A. That's what I recall, yes.
23 Q. So in that letter, there was one equipment
24 operator there, and then sometime after May, it
25 became more than one worker using front-end

1 loaders to move the demolition debris, is that
2 right?
3 A. Yes. There's - it's been - "workers" has been
4 pluraled, yes.
5 Q. Okay.
6 MR. MORTON: Your Honor, we'd move to
7 enter Petitioner's Exhibit Number 1 into
8 evidence.
9 (PETITIONER'S EXHIBIT NO. 1
10 (OFFERED INTO EVIDENCE
11 THE COURT: Any objection?
12 MS. WEESE: No, Your Honor, no
13 objection.
14 THE COURT: Okay. Petitioner's
15 Exhibit 1 is admitted.
16 (PETITIONER'S EXHIBIT NO. 1
17 (RECEIVED INTO EVIDENCE
18 MR. MORTON: Your Honor, may I approach
19 the witness?
20 THE COURT: Yes, you may.
21 Q. Mr. Vozzo, I guess the next day, did you write
22 this document?
23 (PLAINTIFF'S EXHIBIT NO. 4
24 (MARKED FOR IDENTIFICATION
25 A. I was the final signer on this document, so it was

1 drafted for me. I read through it, put my
2 knowledge into it, and then signed off on this
3 document.
4 Q. Just for the record, the top of this document
5 says, "Other Information." Can you kind of
6 clarify what this was attached to or what this was
7 a part of?
8 A. Yeah. This is attached to your Exhibit 3. This
9 is the second page of the cover memo that goes to
10 our central office folks to review as they start
11 looking at the data to pull together to make a
12 summary for the director.
13 Q. Okay.
14 A. So it's our summary. It's our perception of what
15 is going on here.
16 Q. Okay. But you testified that this - you've
17 adopted this statement? This is prepared by you?
18 A. Yes, uh-huh.
19 Q. Do you have any idea when this - the date this was
20 prepared?
21 A. I can give you a pretty close date. The cover
22 letter was dated 19 June, so this would have been
23 prepared in the days leading - a couple of days
24 leading up to 19 June.
25 Q. All right. If you'd look at the fourth paragraph.

1 If you could read the first two sentences of that
2 paragraph.
3 A. "Burt Benson," that sentence?
4 Q. That's it.
5 A. "Burt Benson, owner of Benson Construction, gave
6 conflicting stories and claimed his company was
7 not on-site during this time period. His time
8 periods keep shifting, and he did not provide the
9 data requested in the NOV/NRE letter sent to him."
10 Q. All right. The next paragraph, if you could read
11 that first sentence of that paragraph.
12 A. "Throughout this investigation, there has been
13 inconsistencies and conflicting stories involving
14 Benson Construction to include their actual time
15 periods at this site."
16 Q. All right. If you could turn to the complaint
17 investigation report.
18 A. Okay.
19 Q. And then the numbered paragraph 16. I believe
20 that's a notation of a voice mail that Mr. Benson
21 left your office?
22 A. Yes.
23 Q. What are the dates that he - what are the dates
24 that he provided to your office?
25 A. He said that they were on-site from 18 December

1 and finished 12 January 2009.
2 Q. All right. Now if you could turn to the - if you
3 could turn to Mr. Benson's written response.
4 A. Okay.
5 Q. Now what are the dates he provided in that
6 response?
7 A. "We started the initial work on 18 December
8 through 14 January 2009---"
9 Q. Okay.
10 A. ---"and cleaned all but the large silos."
11 Q. So it does appear there's a discrepancy between
12 March 14th - January 14th and January 12th, but
13 other than that, those are the same dates, right?
14 A. From the two things you pointed to, yes.
15 Q. All right. Now the other information - memo that
16 you read from, it said that he did not provide the
17 data requested in the NOV letter. If we could
18 turn to the NOV letter. If you could turn to the
19 second page.
20 In the next-to-the-last paragraph, there's
21 a - I guess there's two bolded sentences. If you
22 could read the second bolded sentence.
23 A. "Please include the names, addresses, and phone
24 numbers of those with whom you contracted/dealt
25 with on this site project."

1 Q. All right. If you could turn back to Mr. Benson's
2 written response.
3 A. Okay.
4 Q. At the very first sentence, doesn't that say that
5 he'd been helping Mr. J. N. Townsend?
6 A. Yes.
7 Q. And then further down where we've read before
8 about the dates, doesn't the sentence after that
9 say, "D. H. Griffin, a large company, was
10 involved"?
11 A. Yes.
12 Q. And by the time that you sent the notice of
13 violation letter, hadn't you already sent a notice
14 of violation letter to Jimmy Neil Townsend?
15 A. I think it was - should have been around the same
16 date, yes.
17 Q. By the time that you requested this information,
18 you already had contact information for Jimmy Neil
19 Townsend and D. H. Griffin, didn't you?
20 A. Yes.
21 Q. Okay.
22 A. There were people we contacted at D. H. Griffin.
23 We don't know who he was working with or who he
24 contracted with at D. H. Griffin, but yes, we did
25 talk to D. H. Griffin at some point.

1 THE COURT: And by "we," who do you mean
2 for the record, please.
3 THE WITNESS: "We" meaning my staff - my
4 DAQ staff, whether it was - likely Pam
5 Vivian, who was the lead person on this.
6 THE COURT: Okay.
7 MR. MORTON: Your Honor, at this point,
8 we move to introduce Petitioner's Exhibit 1
9 and 4, I believe, into evidence. And if I
10 could have---
11 (PETITIONER'S EXHIBIT NO. 4
12 (OFFERED INTO EVIDENCE
13 THE COURT: I think 1 has already been
14 admitted.
15 MR. MORTON: Which one has?
16 THE COURT: 1 has already been admitted.
17 MR. MORTON: 1 has. All right. Thank
18 you, Your Honor.
19 THE COURT: Any objection to
20 Petitioner's Exhibit 4?
21 MS. WEESE: No objection, Your Honor.
22 THE COURT: Petitioner's Exhibit 4 is
23 admitted.
24 (PETITIONER'S EXHIBIT NO. 4
25 (RECEIVED INTO EVIDENCE

1 MR. MORTON: If I could have just a
2 moment, Your Honor?
3 THE COURT: Yes, you may.
4 (Thereupon, there was a pause in the
5 proceeding.)
6 MR. MORTON: Your Honor, I believe
7 that's all I have at this time.
8 THE COURT: Okay. Redirect?
9 MS. WEESE: I have no redirect, Your
10 Honor. I just wanted to make sure that I
11 moved Respondent's Exhibits 8 and 9 into
12 evidence.
13 (RESPONDENT'S EXHIBIT NOS. 8-9
14 (OFFERED INTO EVIDENCE
15 THE COURT: Any objection?
16 MR. MORTON: No, sir, Your Honor.
17 THE COURT: Respondent's Exhibits 8 and
18 9 are admitted. You may step down,
19 Mr. Vozzo. Thank you. Your next witness,
20 please.
21 (RESPONDENT'S EXHIBIT NOS. 8-9
22 (RECEIVED INTO EVIDENCE
23 MS. WEESE: The Division would call
24 Sheila Holman, Your Honor.
25 THE COURT: All right. As you approach,

1 do you have a preference to be sworn or
2 affirmed?
3 MS. HOLMAN: Swear, Your Honor.
4 THE COURT: Okay. If you would hold the
5 Bible in your left hand and raise your right.
6 - - - - - - - -
7 SHEILA HOLMAN,
8 a witness called on behalf of the Respondent, being
9 first duly sworn in the above-entitled matter, was
10 examined and testified on her oath as follows:
11 THE COURT: If you'll have a seat,
12 please. If you would state your first and
13 last name and spell them both.
14 THE WITNESS: First name is Sheila,
15 S-h-e-i-l-a. Last name is Holman,
16 H-o-l-m-a-n.
17 THE COURT: You may direct your
18 attention to Ms. Weese.
19 MS. WEESE: Thank you, Your Honor.
20 **DIRECT EXAMINATION**
21 **BY MS. WEESE:**
22 Q. Ms. Holman, where are you employed?
23 A. I'm employed with the North Carolina Department of
24 Environment and Natural Resources, Division of Air
25 Quality.

1 Q. And what is your current position with the
2 Division of Air Quality?
3 A. I am the deputy director.
4 Q. Have you held other positions with the Division of
5 Air Quality?
6 A. Yes, I've had three other positions.
7 Q. And what were those positions?
8 A. I was the planning section chief, the assistant
9 planning section chief, and the attainment
10 planning branch chief.
11 Q. How long have you been with the Division of Air
12 Quality?
13 A. Seventeen years.
14 Q. Okay. And prior to that, were you employed?
15 A. I was. I worked for five years with the United
16 States Environmental Protection Agency.
17 Q. Okay. What is your educational background?
18 A. I have a bachelor of science degree in chemical
19 engineering from North Carolina State University.
20 Q. Will you describe your responsibilities as deputy
21 director of the Division?
22 A. I am responsible really for helping the director
23 oversee all facets of the Air Quality Program, and
24 that includes budgeting, planning, personnel, and
25 enforcement.

1 Q. Okay. And have you been delegated authority to
2 assess civil penalties for violations of air
3 pollution rules?
4 A. Yes, I have. Shortly after I became deputy
5 director in August of 2008, I was delegated that
6 authority.
7 Q. Okay. Do your responsibilities require you to be
8 familiar with the state and federal laws and
9 regulations dealing with air pollution control?
10 A. Yes, they do.
11 Q. And you're also - and are you also familiar with
12 the regulations passed by the North Carolina
13 Environmental Management Commission which deal
14 with air pollution control?
15 A. Yes, I am.
16 Q. Specifically, are you familiar with the EMC's
17 rules regulating open burning?
18 A. Yes, I am.
19 Q. Okay. Would you describe these rules as a ban or
20 a prohibition against open burning?
21 A. Yes, they are. There are some exceptions, but
22 it's basically a ban on open burning.
23 Q. What types of air pollution can result from open
24 burning?
25 A. Smoke, fine particulate matter, acrolein. It's

1 synthetic materials that burn. There is a lot of
2 other toxic pollutants of other toxic pollution
3 that can be put into the air.
4 Q. Okay. Do the Environmental Management
5 Commission's regulations authorize burning as a
6 method of getting rid of debris documented by the
7 pictures described by Ms. Vivian?
8 A. Not the demolition debris from the hog farms, no,
9 they do not.
10 Q. Okay. Now with regard to assessing a penalty, I'd
11 like to clarify for the record. Who makes the
12 decision whether to assess a civil penalty?
13 A. Right now, it is - that falls with me. At times,
14 I will continue to consult with the director. He
15 was - it was his responsibility up until it was
16 delegated to me, and so sometimes I still consult
17 with him on certain penalties.
18 Q. Okay. But it's not your staff and it's not the
19 regional supervisor's, correct?
20 A. That's correct.
21 Q. Okay. What information is before you when you
22 review a case?
23 A. Well, much of what we've already talked about
24 today. Certainly, the investigation report, the
25 notice of violation, the respondent - any response

1 from the defendant. I think that's basically it.
2 Q. Okay. And that's true for all enforcement cases
3 of permitted facilities as well as open burning,
4 correct?
5 A. That's correct. We treat both kinds of violations
6 the same.
7 Q. Okay. Do you have access to prior history that
8 exists?
9 A. Yes. We have a compliance database where we do
10 log in the notice of violations, any enforcement
11 action that's taken against both permitted
12 facilities and individuals.
13 Q. Okay. Now do you recall assessing a penalty in
14 this case?
15 A. Yes, I do.
16 Q. Okay. Why did you conclude that Benson
17 Construction was a responsible party here?
18 A. Well, based on the body of evidence and, in a
19 large part, the response from Burt Benson himself.
20 Can I refer to that?
21 Q. Yes. That would be Respondent's Exhibit 8, I
22 believe. Is that correct?
23 A. Yes, that's correct. In his response, third line
24 down, he says that "We cleared what remained of
25 the sheds and buildings and cleared the trees and

1 piled them." So based on what we had - what the
2 Division had learned through the investigation
3 process, we knew that Benson Construction had been
4 on-site, had worked on cleaning up the various hog
5 barns, piling - putting them into piles.
6 And based on the conversations that had taken
7 place between our office and the Robeson County
8 Solid Waste, it was clear that they were piling
9 them there, I guess, with the intention of leaving
10 them. So I believe that in this case that there
11 had been all this material piled up and left
12 there.
13 There are some allegations both from
14 Mr. Townsend and Mr. Benson that there are vandals
15 in the area, but at the end of the day, the
16 actions by Benson Construction led to that
17 material being there so that someone could come
18 out and start the fire or it very well could have
19 been Benson Construction. We don't know.
20 The fire occurred over a weekend. There were
21 no eyewitnesses, and we do not know who lit the
22 fire, but I think there were actions taken by the
23 company that left the material there that led to
24 the fire.
25 Q. And you're not---

1 THE WITNESS: Excuse me. Can I get---
2 MS. WEESE: Yes. Yes. Absolutely.
3 THE WITNESS: Sorry.
4 Q. And you're not - the EMC's rule does not require
5 the Division to identify the match-lighter before
6 they can be cited with a violation of the open
7 burning rules; is that your understanding?
8 A. Yes, that is my understanding.
9 Q. Okay. And, to your knowledge, is assessing a
10 person who causes, allows, or permits open
11 burning - and in this case, it sounds like you
12 were relying on allowed via the piling and leaving
13 of these huge wind rows - is that position
14 consistent with how the Environmental Management
15 Commission interprets their rule?
16 A. Yes, I believe it is.
17 Q. Okay. Did you have the information that we've
18 been going over - Respondent's Exhibits 1 through
19 10 and Petitioner's Exhibits 1 through 4, I
20 believe - before you - when you determined the
21 penalty amount in this case?
22 A. Yes, I did.
23 Q. Earlier you testified that you're familiar with
24 our laws as they relate to air pollution. How
25 much can be assessed for violation of the Air

1 Pollution Control rules?
2 A. The law currently allows a civil penalty of up to
3 twenty-five thousand dollars per violation.
4 Q. Okay. And do you recall how much was assessed in
5 this case?
6 A. Yes, I do. We have an enforcement guidance and in
7 that what we call our penalty tree that helps us
8 look at cases consistently. And so we looked at
9 open burning of synthetic materials, and this was
10 an excessive amount due to a large pile that - or
11 the two large piles that have already been
12 described, so it was - I actually did go with the
13 low end of that range. It's four thousand to six
14 thousand for a business.
15 I split the penalty between the two parties
16 that I believed to be most responsible, Benson
17 Construction and the land property owner, Townsend
18 Farms. Benson Construction's was increased due to
19 the company's prior knowledge of the open burning
20 regulations. I think the prior notices of
21 violation on the open burning rules have already
22 been introduced into evidence.
23 Q. Okay. Will you look behind Tabs 10 and 11 in the
24 Respondent's exhibit notebook. And I would ask
25 you to just describe those - first, Exhibit 10,

1 what is that?
2 (RESPONDENT'S EXHIBIT NOS. 10-11
3 (MARKED FOR IDENTIFICATION
4 A. Exhibit 10 is the letter to Benson Construction
5 detailing the civil penalty assessment, giving
6 instructions on how to pay the penalty, or how to
7 request remission or a contested case.
8 Q. Okay. And what is Number 11?
9 A. Number 11 is the actual civil penalty assessment.
10 Q. All right. And does Respondent's 11 - how does it
11 compare with Petitioner's---
12 A. 2, I believe.
13 Q. ---2? Thank you. You're right. Petitioner's 2.
14 A. The front page, it's identical.
15 Q. Okay. All right. And on page 10, we see amounts
16 written in. Is that your handwriting?
17 A. Yes, it is.
18 Q. I'm sorry. I meant on page 2 of that exhibit.
19 And how about on page 3 of that exhibit; I see a
20 date of 9/4/09 and a signature?
21 A. Yes.
22 Q. Is that your signature?
23 A. Yes, it is.
24 Q. Okay. And behind Tab 12 of Respondent's exhibits,
25 Respondent's Exhibit 12. Do you recognize that?

1 (RESPONDENT'S EXHIBIT NO. 12
2 (MARKED FOR IDENTIFICATION
3 A. Yes, I do.
4 Q. Okay. Will you explain what that document is and
5 what it represents?
6 A. As we - as I do civil penalty assessments, there
7 are eight factors set out by law, what should be
8 considered in assessing the penalties. So as I do
9 a civil penalty assessment, I make notes on each
10 of those factors plus any additional notes that I
11 believe are relevant to the case.
12 Q. And do you prepare one of these assessment factor
13 worksheets in every case?
14 A. Yes, I do.
15 Q. Okay. And are these the same factors set out in
16 the statute and then repeated in EMC's regulation
17 when it comes to assessing penalties?
18 A. Yes, they are.
19 Q. Okay. And now are these your notes on Exhibit 12?
20 A. Yes, they are.
21 Q. What do they indicate as far as this particular
22 case?
23 A. Well, it gives the basic details on the - where
24 the complaint came from, what the investigation
25 revealed in terms of the size of the piles, the

1 information that we had received in the response
2 from Mr. Benson.
3 Q. Okay. And when did you take these notes?
4 A. On September 4th, 2009.
5 Q. And is that the same date that you reviewed the
6 documents and assessed the penalty?
7 A. Yes, it is.
8 Q. Okay. Ms. Holman, do you have the authority to
9 forego assessing a civil penalty if you learn of
10 circumstances that would support such an action?
11 A. Yes, I do. We can certainly rescind a notice of
12 recommendation for enforcement in those cases.
13 Q. Okay. Is the amount of this assessment consistent
14 with other cases with similar facts that you've
15 assessed or that you've - you're aware of the
16 Division assessing?
17 A. Yes, it is.
18 Q. Okay. Up to this point, have you heard anything
19 here today that would lead you to a different
20 decision about assessing Benson Construction a
21 penalty in this case?
22 A. No, I have not. I mean, clearly, there's a little
23 bit of sloppiness in our finding of fact, and
24 certainly that's something that I'll be discussing
25 with staff moving forward, but in general, again,

1 I based a lot of the information on the complete
2 investigation and not just one little element of
3 the finding of fact. I do believe that Benson
4 Construction, due to its operations on this site,
5 does bear some responsibility for what ended up
6 occurring at the site.
7 Q. Ms. Holman, at one time - what is your overall
8 focus when you're assessing these penalties? You
9 have two - at one time - I believe you told me you
10 have two goals in doing this?
11 A. For open burning cases, in particular, or just in
12 general?
13 Q. In general.
14 A. To be fair and consistent and try and make sure
15 that the penalties are being assessed on those
16 that are most culpable for the violation.
17 Q. Okay. All right.
18 MS. WEESE: Your Honor, I have no
19 further questions of Ms. Holman at this time,
20 but I would move to introduce Respondent's
21 Exhibits 10, 11, and 12 into evidence.
22 (RESPONDENT'S EXHIBIT NOS. 10-12
23 (OFFERED INTO EVIDENCE
24 THE COURT: Any objection?
25 MR. MORTON: No objection, Your Honor.

1 THE COURT: Respondent's Exhibits 10
2 through 12 are admitted.
3 Before I have you do cross-examination,
4 just for the clarity of the record, it's my
5 understanding from your testimony that the
6 assessment - the reason for assessment was
7 not the lighting of the fire or anything, but
8 it was for making a pile of debris. Is that
9 the reason for assessment?
10 (RESPONDENT'S EXHIBIT NOS. 10-12
11 (RECEIVED INTO EVIDENCE
12 THE WITNESS: I believe that the two
13 parties were responsible for what led to that
14 the illegal open burning fire, yes - their
15 actions.
16 THE COURT: Okay. I understand that.
17 But what I want to know in plain English is,
18 he was being assessed for creating a pile and
19 leaving it there?
20 THE WITNESS: Well, he was being
21 assessed for a violation of the .1900 open
22 burning rules for allowing.
23 THE COURT: And how did he allow it?
24 THE WITNESS: By not properly disposing
25 of all of that material.

1 THE COURT: Okay. So that's the first
2 question. The second question is, when
3 you're listing your factors here, you're
4 talking about the director of Robeson County
5 Solid Waste, the things that you learned from
6 him. You were sitting here during his
7 testimony, right? You're the agency
8 representative. Was what he testified to
9 what you understood? Are these one and the
10 same?
11 THE WITNESS: Yes, it is.
12 THE COURT: Okay.
13 THE WITNESS: I understand his memory is
14 a little shaky. I'm sure mine would be if I
15 hadn't been reviewing hard copy materials
16 from the case.
17 THE COURT: All right. But what he
18 testified to is the fact that I need to go
19 on - he didn't tell you anything different
20 when you did your assessment?
21 THE WITNESS: That's correct.
22 THE COURT: Okay. Cross-examination?
23 **CROSS-EXAMINATION**
24 **BY MR. MORTON:**
25 Q. Ms. Holman, you testified that - I believe you

1 testified that you make the final decision, is
2 that right?
3 A. That's correct.
4 Q. And that decision is reflected in the civil
5 penalty assessment?
6 A. Yes.
7 Q. And you base that assessment on the investigation
8 carried out by division staff, is that right?
9 A. Yes.
10 Q. All right. Now we heard testimony here today that
11 the Division investigator went out there and saw
12 one man with one piece of machinery not working
13 the burn pile, working somewhere else, and then in
14 the assessment, the finding of fact are there were
15 workers moving the burn piles with machine - with
16 more than one piece of heavy machinery, and I
17 believe you characterized that as a little element
18 of fact. That seems like a pretty important
19 difference, doesn't it?
20 A. Well, again, I will go back to what your client
21 told us in his response on April 27th, 2009, that
22 they had cleared what remained of the sheds and
23 buildings and cleared the trees and piled them.
24 So they were - in my reading of this, they were
25 saying that or he was saying that his company was

1 responsible for creating those large windrows.
2 Q. So is it your testimony that because Benson
3 Construction worked on the site, they're
4 responsible for what happened? That's your
5 testimony?
6 A. Well, there was a landfill two miles away. They
7 did have dump trucks. They could have properly
8 disposed of that material at that landfill two
9 miles away.
10 Q. So because they were there - because they were
11 there working, they're responsible for what
12 happened there? That's the basis of the agency
13 decision, is that right?
14 A. It is a part of it, yes.
15 Q. Because they had been there at any time?
16 A. They were responsible for creating these very
17 large piles, which is not the proper way to
18 dispose of this material.
19 Q. Okay. Now if you could turn to Respondent's
20 Exhibit Number 12.
21 THE COURT: What - just for clarity of
22 the record, what would be the proper way of
23 disposing of that and the time period that
24 your regulations require?
25 THE WITNESS: Well, it would not be our

1 regulation, sir, and you'd have to talk to
2 our Division of Waste Management. There were
3 some---
4 THE COURT: What did you mean, then, by
5 proper - it was not the proper way?
6 THE WITNESS: Well, they've talked about
7 burning material, burying the material. None
8 of that is proper. The demolished hog barns,
9 I believe, should have been taken to the
10 Robeson County Landfill---
11 THE COURT: Is there a time period?
12 You're basing your decision on a proper way,
13 and I need for the record to know what the
14 proper way is.
15 THE WITNESS: Is there a time period?
16 I'm sorry. I do not know the answer to that
17 question.
18 THE COURT: Okay. Thank you.
19 Q. Ms. Holman, if you could turn to Respondent's
20 Exhibit Number 12. That's the assessment factor
21 sheet, is that correct?
22 A. Yes.
23 Q. It appears on the right-hand side, there's kind of
24 a handwritten paragraph of notes. About halfway
25 down, there's a sentence that starts with

1 "Mr. Benson." Could you read that sentence?
2 A. "Mr. Benson replied that his company had not been
3 on-site during the month of March which is
4 contradicted by reports from Robeson County Solid
5 Waste."
6 Q. And was that - was that note there based on
7 Mr. Benson's April 27th written response to the
8 NOV?
9 A. No. It was based on a summary in the
10 investigation report, item number 10, on page 28.
11 I'm sorry. This is Exhibit Number 5, page 28.
12 Q. Now is that the complaint investigation report?
13 A. That's the complaint investigation report.
14 Q. So the note here says that Mr. Benson claimed he
15 hadn't been on the site in the month of March.
16 That's what that note says on the assessment - on
17 the factors?
18 A. Yes.
19 Q. Okay. Now during your testimony, you made several
20 comments like you split the assessment between the
21 parties that were most responsible and that there
22 was some responsibility and that you were looking
23 at who was most culpable.
24 I mean, isn't it true that Benson
25 Construction is just the person who is the closest

1 at hand to have lay an assessment on?
2 A. No. Benson Construction took action to demolish
3 the hog barns and put them into a pile and they -
4 and left them there. We don't know if Benson -
5 someone from Benson Construction went out and lit
6 the fire, we don't know if someone from Townsend
7 Farms went out and lit the fire, but what resulted
8 was an illegal fire.
9 Q. And your testimony is - your opinion is that
10 whatever happened there, they are responsible for?
11 A. I believe their actions led to the illegal open
12 burning.
13 MR. MORTON: Thank you. That's all I---
14 Hold on. If I could have a minute, Your
15 Honor.
16 THE COURT: All right.
17 MR. MORTON: That's all I have, Your
18 Honor.
19 THE COURT: Redirect, Ms. Weese?
20 MS. WEESE: No, Your Honor.
21 THE COURT: Okay. Thank you. The
22 reason I asked for clarity is, you're the
23 person under oath, so when I have findings of
24 fact, I can only take those findings from
25 people under oath. So I could - at times, I

1 may be given the law by somebody or something
2 else or attorneys may quote me different
3 things, but I can only take as evidence
4 properly admitted evidence or things under
5 oath. So I appreciate you trying to---
6 THE WITNESS: Well, unfortunately, my
7 full background is in air quality, so---
8 THE COURT: I understand. Thank you.
9 You may step down. I think this might be a
10 good time to take a lunch break. I see it's
11 about one o'clock, so if we could be back at
12 two o'clock. Then we can proceed.
13 (Thereupon, a luncheon recess was
14 taken.)
15 **AFTERNOON SESSION**
16 **2:00 P.M.**
17 THE COURT: This hearing will come to
18 order. It's now two o'clock on March the
19 9th, 2010, and all parties when we recessed
20 are again present, our last witness having
21 completed her testimony and stepped from the
22 stand.
23 Anything further Ms. Weese?
24 Ms. WEESE: One minute, Your Honor.
25 Nothing further, Your Honor. Thank you very

much.

THE COURT: Your first witness, Mr. Morton?

MR. MORTON: Your Honor, we'd call Mr. Burt Benson to the stand.

THE COURT: Okay. And as you approach, Mr. Benson, do you have a preference to be sworn or affirmed?

MR. BENSON: Sworn.

THE COURT: Okay. If you will place your left hand on the Bible and raise your right.

- - - - - - - -

BURRITT E. BENSON, JR., the Petitioner, being first duly sworn in the above-entitled matter, was examined and testified on his oath as follows:

THE COURT: Thank you. If you'll have a seat, please, sir, and make yourself comfortable. And are you the Petitioner in this case?

THE WITNESS: Yes, sir.

THE COURT: And would you state your full name and spell - spell it as well.

THE WITNESS: Burritt, B-u-r-r-i-t-t, E.

1 Benson, Jr.
2 THE COURT: Thank you. You may direct
3 your attention to Mr. Morton.
4 **DIRECT EXAMINATION**
5 **BY MR. MORTON:**
6 Q. Mr. Benson, are you a resident of Robeson County?
7 A. Yes, sir.
8 Q. Could you please explain your connection to Benson
9 Construction.
10 A. Well, I've reached over seventy years old, and I'm
11 now CEO. So I've been in construction all my
12 life---
13 Q. Do you---
14 A. ---and I own part of the company.
15 Q. Excuse me. And it's your company, is that
16 correct?
17 A. Yes, sir.
18 Q. What's the business address for Benson
19 Construction?
20 A. 1485 NC 711, Lumberton, North Carolina 28360.
21 Q. And what's the nature of the work that Benson
22 Construction does?
23 A. We're called a heavy civil contractor, a defense
24 contractor. Most of our work is at Fort Bragg or
25 large projects.

1 Q. Well, tell us a little bit more about the type of
2 work. Is it construction work, earth-moving work,
3 or---
4 A. We do water, sewer, paving, grading, like the
5 thousand-man prison at Tabor City. That was an
6 eight-million-dollar job. We've done probably
7 fifty jobs at Fort Bragg anywhere from a million
8 to, you know, eight million.
9 Q. All right. Just a ballpark, how many employees do
10 you currently have?
11 A. Currently, I have sixty-five. Had a lot more.
12 Q. Now during 2009, is that about the number you had,
13 or was it significantly different back last year?
14 A. Oh, back last year, it may have been a few more.
15 Q. Okay. How long have you been in this type of
16 business?
17 A. Forty-two years.
18 Q. And how long has - how long has Benson
19 Construction been operating?
20 A. We made our forty-first year.
21 Q. Okay. Just off the top of your head, can you
22 remember maybe the largest budget job you've
23 worked in the last ten years or so?
24 A. The last one would have been the Tabor City
25 thousand-man prison, about an eight-million-plus

1 job.
2 Q. All right. Now during the course of work that
3 your company does, are you often required to get
4 permits?
5 A. Yes, sir, every project.
6 Q. Could you list examples of the different types of
7 permits that you have to get for different types
8 of jobs you do?
9 A. Well, the first thing is the land disturbing
10 permit and the sediment control permit before you
11 can start work and which comes from DENR, another
12 branch. And then you have various permits for
13 your water, your sewer, your grading. You have to
14 get another permit sometimes from the towns and
15 cities.
16 And at Fort Bragg, you have to get almost
17 daily permits when you excavate or break the
18 ground, sediment control. You can burn on Fort
19 Bragg, but it's under very stringent conditions,
20 not only having a permit from DENR, but you have
21 to have a permit from the Corps and everybody else
22 and their brother out there.
23 Q. All right. Now as a general matter, the type of
24 work that your company does - I mean it sounds
25 like what you're saying - if you're hauling stuff

1 or disposing of stuff or either moving of
2 equipment, you've got to get clearance to do that?
3 A. Oh, yes.
4 Q. All right. Could you just list some of the
5 agencies - you mentioned some, but just list some
6 of the agencies that you have to deal with to get
7 authorizations?
8 A. Well, every city has a permitting process. Like
9 Tabor City, you have to get a city license. And
10 with DENR - that is the main one we work with,
11 like we have mines and we have to get permits from
12 the Mining Division. They inspect us
13 periodically, like almost every thirty days, if
14 it's an active mine, and we have about six mines.
15 So---
16 Q. So you're generally familiar with the idea of
17 obtaining permits for different phases of your
18 work?
19 A. Oh, yes. Oh, yes. Believe in them.
20 Q. And are you generally familiar with the open
21 burning law?
22 A. Oh, yes.
23 Q. Can you recite it verbatim---
24 A. No.
25 Q. ---or just generally familiar? Okay.

1 A. No.
2 Q. All right, Mr. Benson. I believe that your
3 company was involved with the cleaning up some
4 property owned by Jimmy Neil Townsend?
5 A. Yes.
6 Q. Could you tell us a little bit about the
7 arrangement that you had with Mr. Townsend.
8 A. Well, back in about September of '08, Mr. Townsend
9 contacted me and told me about his hog farm, and
10 he - he worked at that hog farm most of his life.
11 And the nitrogen ate his lung linings out and so
12 he's on a bed [inaudible]. And they didn't expect
13 him to live when he went to the beach, but he's
14 still alive doing, you know, good days, bad days.
15 And his children weren't interested in the
16 business or hog farming, and it's just there. You
17 saw - it was a two-and-a-half-million-dollar hog
18 farm, and he just let it go to pot and he was
19 unable to do anything about it. So before he died
20 or even thereafter, he wanted that cleaned up and
21 planted with longleaf pines, and he asked me could
22 I help him.
23 And I told him, well, you know, if we had
24 downtime - we do big projects - and his wife is my
25 first cousin - and I told him when we had downtime

1 on our equipment and all, we could come out there
2 and help clean up. It may take a couple of years
3 because, you know, I don't know how long it's
4 going to take to do it. It looked like a mighty
5 big project.
6 As it turned out, it only took initially
7 almost a little over a month to get the majority
8 of it cleaned up and - except for the great big
9 silos. And our deal with him was on an hourly
10 basis when we could send some trucks and a track
11 hoe out there. We didn't have enough trucks to
12 spare to haul it all to the landfill at that time.
13 We just piled it right there in a pile away
14 from the major portion. And then we'd come back
15 at the end of the job. DENR had already told us,
16 you know, to haul it to the landfill.
17 Q. Well, so it's - you mentioned he's your - he's
18 related to you, that's right?
19 A. His wife is my first cousin.
20 Q. And so have you billed Mr. Townsend for the work
21 you've done out there?
22 A. No, no. Not yet.
23 Q. And has he paid you anything?
24 A. No. But we have received payment for some of the
25 metal we hauled off - a lot of the metal we hauled

1 off.
2 Q. But that wasn't from Mr. Townsend?
3 A. Oh, no, no. But we got - it helped to pay our gas
4 and our labor---
5 Q. All right.
6 A. ---trying to help him out as much as possible.
7 MR. MORTON: Your Honor, may I approach?
8 THE COURT: Yes, you may.
9 Q. Mr. Benson, I've handed you what's been marked
10 Petitioner's Exhibits 5, 6, and 7. If you would
11 look at Number 5 first. Could you just state for
12 the Court what this is?
13 (PETITIONER'S EXHIBIT NO. 5
14 (MARKED FOR IDENTIFICATION
15 A. This is an aerial photo of the hog farm.
16 Q. And is this one of the tax maps from---
17 A. I would assume so.
18 Q. Okay. Could you point on here where--- Well, I
19 guess let me ask you this: Do you see the
20 Townsend Hog Farm on this picture?
21 A. Oh, yes. Right at the bottom.
22 Q. Could you hold that up and kind of point to the
23 Court where that's at?
24 A. Right there at the bottom.
25 Q. All right. Now do you see the Robeson County

1 Landfill on this picture?
2 A. Yes. It's right there.
3 Q. So is it this clear area that's down Landfill -
4 the road marked Landfill Road?
5 A. Yes.
6 Q. So it looks like it's pretty close to the
7 landfill, is that right?
8 A. Oh, yes. You can see it - from the landfill on
9 that hundred-foot-high pile of dirt, you can see
10 this property.
11 Q. When you first started working on the property,
12 were you aware that it was this close to the
13 landfill?
14 A. Oh, yes. We've worked over there.
15 Q. Mr. Benson, if you would turn to Exhibit Number 6.
16 Could you just state what this is?
17 (PETITIONER'S EXHIBIT NO. 6
18 (MARKED FOR IDENTIFICATION
19 A. That's just a blown up, you know, aerial of the
20 landfill.
21 Q. So it's just a little closer view of the hog farm?
22 A. Yes.
23 Q. Okay.
24 A. It is a very old one. You know, the trees aren't
25 shown here.

1 Q. All right. Well---
2 A. I mean the trees between the hog houses.
3 Q. All right. Let's talk a little bit about that
4 now. I guess, as an initial matter, there seems
5 to be a black line around the property?
6 A. Yes.
7 Q. Do you know how large this tract is that the hog
8 farm sits on?
9 A. Just this little portion right here is probably
10 fifty, sixty acres.
11 Q. Okay. At the time that you went out there, did
12 you realize - did you know that it was kind of on
13 a separate tract?
14 A. No, I did not.
15 Q. All right. If I could just point you back to
16 Number 5 for a second, Mr. Benson. Going back
17 down to the hog farm down here, do you know who
18 owns the property that kind of surrounds the left
19 and right bottom of the hog farm?
20 A. Oh, yes. Mr. Townsend.
21 Q. Any idea how big that tract of land is?
22 A. He told me it was around eight hundred and eighty
23 acres.
24 Q. So it's a big piece of land?
25 A. Oh, yes.

1 Q. Okay. Now I believe you mentioned that this is an
2 old photo - Number 6 - the close-up of the hog
3 farm?
4 A. Yes, sir.
5 Q. Is that how the property looked when your
6 employees first went out there on the site?
7 A. Oh, no. No.
8 Q. Could you tell us a little bit--- Well, we'll get
9 to that in a minute. Let me ask you about this.
10 Now it looks like there is a - identify what these
11 things are.
12 A. Those are lagoons - hog waste lagoons at the time.
13 Q. All right. Now there is a lagoon here that has a
14 black line around it and it looks like a dirt road
15 going out.
16 A. That is a dirt road.
17 Q. Is that how you access the property?
18 A. That was originally, but he dug trenches across
19 that to keep people from trying to get on the
20 property.
21 Q. Now was that the access road when your employees
22 were out there?
23 A. Oh, no. Oh, no.
24 Q. Could you tell us where the access road was?
25 A. We came in down Barker Ten Mile way off - off this

road down here - a road right here, coming here and then coming down.

Q. So for the clarity of the record, would it be safe to say that you kind of approached from the south - the bottom - and drive up?

A. Yeah, and drove up.

Q. Okay.

A. Yeah. That's the only way to drive a vehicle on the project.

Q. All right. Now as far as the - as far as this wooded area back here, is that still accurate? I mean, is it kind of - is it still on the edge of the woods?

A. Yes. It's a swamp.

Q. So these woods haven't been cleared?

A. No.

Q. I mean that's still woods?

A. They're still there.

Q. Okay. Now if you would turn to Exhibit Number 7. Could you describe what that is?

(PETITIONER'S EXHIBIT NO. 7

(MARKED FOR IDENTIFICATION

A. Well, that's how it was when we got there.

Q. Well, first of all, that's another aerial photo of---

1 A. Yes. Oh, yes. Another aerial photo of the same
2 site except it's a lot newer.
3 Q. Now do you know when that picture was taken?
4 A. No, I do not.
5 Q. Explain to the Court how you know that's a more
6 recent picture than the tax photo.
7 A. Well, there are rows of trees between these hog
8 houses, and if he was in an active situation
9 running that hog house, he wouldn't allow any
10 trees or anything in between those hog houses.
11 You'd keep that mowed, keep it clean for sanitary
12 purposes.
13 But this shows where it is grown up all
14 around the old hog houses and even in the hog
15 houses. Some of those trees are growing down in
16 the - you know, old hog houses have a sludge basin
17 and it's pretty good fertilizer, and a lot of
18 things were growing out of there.
19 Q. Now was - the buildings themselves, were they in
20 good shape when you got out here?
21 A. Oh, no.
22 Q. Tell us a little how they were.
23 A. They were in total disrepair. Most of the tin had
24 been stolen or removed, and as much metal as
25 anybody could get out of it had been gone. It had

1 been ramshackled. It just - it was a total mess.
2 The County wanted it cleaned up.
3 Q. Now can you talk a little bit about how the site
4 looks today?
5 A. Well, let's take this one.
6 Q. What number is that?
7 A. Number 6.
8 Q. All right.
9 A. From the lagoon back here, all the way around
10 here, all the way up to there is now pure sand.
11 This is on a sand hill and he knew it would be
12 good for growing pine trees and he put longleaf
13 pines in there. But that is completely cleaned
14 off and cleared.
15 Q. So it's your testimony that every single building
16 is gone?
17 A. Every one.
18 Q. And it's just a flat area?
19 A. Right.
20 Q. Now in looking at Number 6, the closeup of the tax
21 map, you know, on this picture, there are no
22 trees, and part of what you were saying is, there
23 were a bunch of trees out there?
24 A. Oh, yes.
25 Q. Is there still some trees out there?

1 A. Yes. There's - on the edge, we did not disturb
2 anything on the - as you come into the project
3 from the bottom, there's a row of pine trees right
4 there at the bottom.
5 Q. So you're saying there's a row of pine trees kind
6 of where that bottom first thing is?
7 A. Right. Right. Uh-huh.
8 Q. All right. Now the lagoons that are down here on
9 the south, this picture looks like they're kind of
10 clear. Is that still the case, or are trees
11 growing up around it?
12 A. No. They are now clear and they've been checked
13 by USDA.
14 Q. Okay. Now if you look along the road, it looks
15 like it's pretty clear in this picture. I mean,
16 is that the situation now? Is it just kind of a
17 straight shot? It's a wide-open road or have
18 trees grown up or---
19 A. No. It's growing up in volunteer pine trees.
20 Q. So it's not just open from the highway to where
21 the hog farm was?
22 A. You really couldn't see it from the highway. And
23 this is still an old picture. I mean, you know,
24 it's grown up, but it's - I don't know how old it
25 is, but---

1 MR. MORTON: Your Honor, we'd move to
2 introduce Exhibits 5, 6, and 7 into evidence.
3 (PETITIONER'S EXHIBIT NOS. 5-7
4 (OFFERED INTO EVIDENCE
5 THE COURT: Any objection?
6 MS. WEESE: No, Your Honor.
7 THE COURT: Petitioner's 5, 6, and 7 are
8 admitted.
9 (PETITIONER'S EXHIBIT NOS. 5-7
10 (RECEIVED INTO EVIDENCE
11 THE WITNESS: Could I add to first
12 statement about Mr. Townsend - our agreement?
13 Q. Yes, sir. Go ahead.
14 A. When I talked with him about this, I told him,
15 first off, we were going to have to go to an awful
16 lot of approvals before we did anything because I
17 knew what we were up against, and he understood.
18 I told him I didn't know if the permits were going
19 to cost money or whatever. And then that's when I
20 started calling everybody back in September before
21 I even agreed to do it because I didn't even want
22 go out there.
23 Q. We're going to talk about that in a minute.
24 A. Okay. I just wanted to mention I did bring him
25 abreast of all the permits.

1 Q. Okay. Now could just you say one more time,
2 Mr. Benson, kind of the time frame you got
3 involved in cleaning up the site or, you know,
4 kind of when you started checking in to what the
5 job might require?
6 A. Okay. Well, I know what the actual time frame is
7 because we have the payroll---
8 Q. Well, no, not the time that you were - that you
9 were working, but just kind of the month when you
10 started making inquiries and going out there
11 and---
12 A. Oh. Back in September of '08, he contacted me and
13 I started making phone calls to all the agencies
14 to see what we were up against. We may have had
15 to hire an engineer to get permits and all this,
16 you know.
17 MR. MORTON: May I approach, Your Honor?
18 THE WITNESS: Yes, you may.
19 Q. Mr. Benson, if you'd look at what's been marked as
20 Exhibit Number 8 - Petitioner's Exhibit Number 8.
21 Could you just briefly describe what that is?
22 (PETITIONER'S EXHIBIT NO. 8
23 (MARKED FOR IDENTIFICATION
24 A. Well, we met with this Jeremy - it's a letter from
25 Jeremy Ralston.

1 Q. Well, it's an e-mail actually.
2 A. All right. It's an e-mail. And we had met with
3 him on the site to determine what all was going to
4 be required because when I had talked to
5 Mr. Shackelford, he told me to call Soil
6 Conservation, that this is a farm. And so I
7 started with them, and he pretty well -
8 Mr. Ralston came out and made an assessment and
9 everything, and he pretty well dictated in this
10 letter what needed to be done.
11 Q. What's the date of this e-mail?
12 A. 11/5/08. November of '08.
13 Q. All right. Now if you could turn to Petitioner's
14 Exhibit Number 9 and just briefly explain what
15 that document is.
16 (PETITIONER'S EXHIBIT NO. 9
17 (MARKED FOR IDENTIFICATION
18 A. He recommended I call the Robeson County Health
19 Department to make sure there weren't any issues
20 with health as far as you dealing with a hog farm,
21 and so I talked with the director Mr. Smith and he
22 said he - and I told him we'd checked with
23 Mr. Shackelford, and Soil - Robeson Soil and
24 Water.
25 And he told us no, since this was a farm, no

1 permits were required other than, like, if we were
2 going to burn. Of course, I understood we had to
3 get a burning permit or anything like that. But
4 we didn't have to have any sediment control
5 permits which would have required an engineer to
6 draw a plan and would have cost a lot of money,
7 but being a farm, they don't fall under the law of
8 sediment control, which I found surprising.
9 And he told us that the lagoons had to
10 remain. We couldn't use the lagoons to fill
11 anything in, of course, and the area was planted
12 with longleaf pine. Yeah. It did not require any
13 special permits.
14 Q. Could you read the---
15 A. And we would carry any control materials to the
16 landfill---
17 Q. Thank you.
18 A. ---which we were planning to do.
19 Q. So you talked with the Health Department. You
20 spoke with - you made inquiries to the - I guess,
21 the Division of Waste Management? You checked
22 with---
23 A. Well, they checked - he checked with them, I
24 believe.
25 Q. Is it safe to say, Mr. Benson, that you made

1 inquiries around the different agencies to see
2 what you needed to do?
3 A. I thought I had covered every base before I
4 started because I didn't want to get out there and
5 have a problem---
6 Q. All right.
7 A. ---or Mr. Townsend to have a problem.
8 Q. Now based on your inquiries, I guess you - you
9 came up with the disposal plan, but I guess the
10 plan - how to work on the site, is that right?
11 A. Well, yes.
12 Q. Okay. Now when did - when did your employees
13 first arrive at the site and start working?
14 A. Our records show on the 15th - 18th of December.
15 Q. All right. Now what year is that?
16 A. Oh. 2008.
17 Q. Okay. Now what did they do while they were out
18 there? Just generally, what were they doing out
19 there at that time?
20 A. Well, you had great big excavators, track hoes,
21 which were cleaning up all the wooden debris, the
22 old trusses that had just fallen down into the hog
23 pens and cleaned everything off the concrete
24 because we were going to bury the concrete right
25 beside the hog houses. Dig a very deep holes,

1 sometimes ten, fifteen feet deep, to bury the
2 concrete.
3 But we knew you couldn't bury anything else.
4 That was considered like garbage and had to be
5 concrete - reinforced concrete or poured concrete.
6 And so we cleaned everything up in piles and piled
7 it as we were starting to dig holes and bury the
8 concrete.
9 Q. So you - let me make sure I understand this right
10 now. You testified that your employees demolished
11 most of the structures and piled everything up?
12 A. Uh-huh. And cleared the trees you see between
13 the - now we put the trees in a separate pile
14 because we knew we could get a permit later on to
15 burn those when they dried out.
16 Q. All right.
17 MR. MORTON: Your Honor, may I approach?
18 THE COURT: Yes, you may.
19 Q. Mr. Benson, I'm handing you what is Petitioner's
20 Exhibit Number 10. Could you describe what that
21 is?
22 (PETITIONER'S EXHIBIT NO. 10
23 (MARKED FOR IDENTIFICATION
24 A. Yes. The top picture is the three great big
25 silos, and they are gigantic.

1 Q. When you say "gigantic," can you give us an idea
2 of what the diameter was.
3 A. Well, at least forty feet.
4 Q. Okay. Now could you explain to me - it looks like
5 in this top picture that everything is gone but
6 the silos, is that accurate?
7 A. Well, pretty much.
8 Q. All the structures except - the silos were the
9 only structures remaining, is that right?
10 A. Yes. Yes.
11 Q. Now this bottom picture, it looks like there's a
12 track hoe there. If you look at this pile here,
13 it looks like there's a difference in what's
14 there. Could you explain what that is a little
15 bit for the Court.
16 A. Well, that's the debris that came out of the hog
17 houses, you know, the trusses. You see the wood
18 sticking there. Whatever was in those hog houses
19 that hadn't rotted, there's probably metal, tin.
20 I see some white stuff, probably some insulation.
21 There was very little insulation in the - the only
22 buildings that were insulated were these little
23 small buildings that they raised the little baby
24 pigs in, whatever they are.
25 Q. Well, if you look at the picture, it looks like on

1 the left-hand side, there's a pile of dirt or
2 something.
3 A. Oh, yeah.
4 Q. Could you explain what the difference is in those?
5 A. Well, you see that track hoe back over there? He
6 was digging a big deep hole to bury concrete. He
7 was working on the concrete behind there.
8 Q. Well, I guess what I'm asking, you said that you
9 demolished the structures and you took down trees?
10 A. Yeah, uh-huh.
11 Q. Did you just put those all in a big pile, the
12 trees and the structures, or did you separate them
13 or---
14 A. It was about four piles really, and they may all
15 have been in one line, but it was about four
16 piles. Here was the debris. Here was some trees.
17 Here was some debris. Here was some trees
18 because, you know, you wanted to take it as close
19 as you could get it from each direction.
20 Q. Well, just to clarify, I mean, are you saying that
21 the trees were all - everything was kind of mixed
22 together, or were there separate sections of the
23 pile?
24 A. No. There were separate piles.
25 Q. Now why were there separate sections of the piles?

1 A. Well, we knew that we could burn the trees at some
2 point. The other stuff was the stuff that had to
3 be hauled off.
4 Q. So are you saying there were separate sections so
5 you could get to what you had to haul off and
6 then---
7 A. Oh, yeah. Yeah, plenty of room to get to it.
8 Q. Do you know offhand about how many employees you
9 had working out there starting in mid December?
10 A. You have the list. I think it's eight.
11 Q. You think it was about eight?
12 A. Eight, I think. I may be off one or two.
13 Q. Weren't there a couple of employees that worked
14 out there that are no longer with your company?
15 A. Well, unfortunately, one passed away of cancer.
16 Q. And the other one just---
17 A. He left for another job.
18 Q. Okay. All right. Now were there any other piles
19 made other than - you talked about the demolition
20 and vegetation piles. Were there any other piles
21 made of anything?
22 A. No. We cleaned everything else up.
23 Q. Wasn't there a - wasn't there a pile of metal
24 that---
25 A. Oh, I'm sorry. Sure. Well, as we were cleaning

1 things up, you would pile the metal that we were
2 going to haul and sell here and take the trash
3 here and the trees here. And---
4 MR. MORTON: May I approach, Your honor?
5 THE COURT: Yes, you may.
6 A. (continuing) ---and we hauled the sellable metal
7 off.
8 Q. I hand you what's marked Petitioner's Exhibit
9 Number 11. Could you just - is that the pile of
10 metal you're talking about?
11 (PETITIONER'S EXHIBIT NO. 11
12 (MARKED FOR IDENTIFICATION
13 A. Yes, that's one of them. There were many like
14 that.
15 Q. Now could you explain what happened to this pile
16 and others like it of metal?
17 A. Well, the ones that were entirely metal got hauled
18 to Omnisource right here in Fayetteville.
19 Q. Now did you haul it off or did they come get it?
20 A. Oh. They furnished big containers on the job, and
21 we loaded the containers.
22 Q. And then they drove it off, is that right?
23 A. They drove it off.
24 Q. So there was some material that had been hauled
25 from the site, is that right?

1 A. That they hauled.
2 Q. That had been - that someone had taken away - you
3 had made arrangements to get someone to carry it
4 off the site, is that right?
5 A. Yeah. Yeah. We sold everything that pretty much
6 came out of the hog houses.
7 Q. Okay.
8 A. And that was a lot of metal.
9 Q. Now when did your workers - when was the last date
10 that one of your workers was at the site during
11 that initial time period?
12 A. We stopped on January the 14th and went right to
13 Fort Bragg.
14 Q. Now, again, what was left at the site when your
15 workers left? What was still there?
16 A. When they left, the piles were there. The
17 woodpiles, the debris piles, and the silos.
18 Q. All right. Mr. Benson, if you'd turn to Exhibit
19 Number 6. That's the tax photo of the Townsend
20 site.
21 MR. MORTON: May I approach, Your Honor?
22 THE COURT: Yes, you may.
23 Q. If you would, Mr. Benson, just to the best of your
24 recollection and kind of in a general sense, if
25 you could just place where you believe the piles

1 were.
2 A. (No audible response from witness.)
3 Q. Now why did your employees leave the site or why
4 did you - why did you leave in the middle of
5 January?
6 A. Well, we had work - you know, we couldn't spare
7 the equipment any longer. My deal with him was,
8 when we had spare equipment and spare operators,
9 we would go over there and try to help clean him
10 up, and it may take a year or two.
11 Q. Now were you - was the plan to come back and take
12 down the silos later?
13 A. No. No. We couldn't take down the silos. We
14 didn't have the equipment to do that.
15 Q. So is it fair to say one of the reasons you left
16 was because the silos were still there and---
17 A. Oh, yeah. Yeah. We had to wait till, hopefully,
18 somebody could take the silos down.
19 Q. Now who was it that was going to take down the
20 silos?
21 A. Well, I found out that the D. H. Griffin Company,
22 who took down the World Trade Center, was in
23 Fayetteville taking down the silos for Barnhill
24 Contractors, and I called the - one of the vice
25 presidents of Barnhill and asked him about them,

1 and he said, "Oh, yeah. They're here. They're
2 just about to finish up," and he said, "I'll tell
3 them."
4 And I said, "This gentleman over here has
5 some gigantic silos, and he would let them have
6 them if they would take them down." And, of
7 course, I knew that was a very good deal, and he
8 called me back and said the man said he would take
9 them.
10 Q. So you never actually spoke to anybody at D. H.
11 Griffin directly?
12 A. No, I did not speak to anybody at D. H. Griffin.
13 Q. But it's your understanding they went out there
14 and got them?
15 A. They came and got them, uh-huh. I called
16 Mr. Townsend and told him, of course, that these
17 gentlemen said they could come get them, and he
18 said please tell them they can have them.
19 Q. Do you remember when D. H. Griffin was out there
20 doing this?
21 A. Unfortunately, I know about when, but I was not
22 out there---
23 Q. Well, were they out there when your employees were
24 out there?
25 A. Right at the end maybe. When we left in - when we

1 left in the middle of January, they were on-site,
2 then, I think. They had moved in their equipment,
3 anyway.
4 Q. Okay. They had moved in their equipment. So
5 they - but they weren't the silos weren't down
6 when you-all left, were they?
7 A. No. No, no.
8 MR. MORTON: May I approach, Your Honor?
9 THE COURT: Yes, you may.
10 Q. I'm handing you what's marked Petitioner's Exhibit
11 Number 12. Can you explain to the Court what that
12 is?
13 (PETITIONER'S EXHIBIT NO. 12
14 (MARKED FOR IDENTIFICATION
15 A. That is - they're unloading a Dumpster so they can
16 load metal in it.
17 Q. Well, whose - I mean who is "they"? Whose truck
18 is that?
19 A. Oh. That's D. H. - the decal on the side of that
20 truck is the D. H. Griffin Company.
21 Q. Now it appears there is a piece kind of behind the
22 truck. Can you explain what that is back there?
23 It's a little blurry, but---
24 A. That green thing?
25 Q. No. That's behind the truck.

1 A. Oh. That's those big silos laying over on their
2 side pretty much.
3 Q. So this is actually - this is a picture of D. H.
4 Griffin taking away the silos?
5 A. Oh, yeah. Yeah.
6 Q. Okay. Mr. Benson, why do you have photos of the
7 job site?
8 A. Well, I don't know who took that one, but all our
9 foreman have photos - have telephones that take
10 photos, and they are told to take photos if
11 anything that they thought was important or they
12 needed to document. And at Fort Bragg you have to
13 do that. They want you - you have to turn in
14 photos monthly on your projects.
15 Q. Now is it - is it the kind of practice where they
16 take pictures every day or just every once in a
17 while or just---
18 A. No. Just periodically when they feel it
19 necessary.
20 Q. And is it safe to say that many jobs that your
21 company works at, there are at least some pictures
22 of somewhere?
23 A. Oh, yes.
24 Q. And do you place some of those pictures on, you
25 know, Web sites, and use them for advertising and

1 things like that?
2 A. We place them in - yes, they're on our Web site,
3 and we place them in our job files that the
4 pictures were taken on.
5 Q. Okay. Now let's talk about - a little about the
6 time frame when D. H. Griffin was out there. You
7 testified that you think they may have showed up
8 right there at the end of - in mid January when
9 you guys were leaving?
10 A. That was my recollection. I can't understand.
11 They said they were through in December, but they
12 may have been.
13 Q. Now based on your experience, do you have any idea
14 of, you know, how long it would take to get those
15 silos down? I mean, is this a one-day job? Is it
16 a two-month job?
17 A. Oh, no. No. It's a good two-week job.
18 Q. So when they arrived out there, I mean they were
19 there for a while?
20 A. Right. And their trucks had to haul that metal
21 all the way back to Greensboro. So depending on
22 how many trucks they had available, they might not
23 work a day, you know.
24 Q. Mr. Benson, did you have any employees out on the
25 Townsend site during the month of February of

1 2009?
2 A. We had no employees from January the 15th all the
3 way to the 25th of March, seventy days. Now if
4 somebody rode out there and stopped by to see what
5 Griffin was doing or something like that, I have
6 no record of it.
7 Q. Now was D. H. Griffin - now was the company, you
8 know, checking with you to let you know what the
9 progress was? Did you ever hear from them, or
10 just all of a sudden, they were gone?
11 A. I never heard from them. My son had - he may have
12 taken that picture even. He probably went by
13 there and saw them, maybe spoke to them or
14 something like that.
15 MR. MORTON: May I approach, Your Honor?
16 THE COURT: Yes, you may.
17 Q. Mr. Benson, this is Petitioner's Exhibit
18 Number 13. Can you explain what this is?
19 (PETITIONER'S EXHIBIT NO. 13
20 (MARKED FOR IDENTIFICATION
21 A. This is another permit.
22 Q. Now what type of permit is this?
23 A. This is with the Division of Highways, a single
24 trip permit. We have a big low boy tractor that
25 hauls our heavy equipment, and you have to have a

1 permit in order to haul overweight or big, large
2 equipment. And before we started back on this
3 job, we had to get this permit in order to haul a
4 big machine out there.
5 Q. Now what's the - what are the - I guess, the valid
6 dates on this permit?
7 A. I'm sure they're on there.
8 Q. I believe it's at the top - top right.
9 A. Okay. Yes. Okay. It's valid from 3/25 to 4/3.
10 Q. And up at the very top of the page, it's got a
11 date up there. What---
12 A. 3/25 is when they faxed it to us.
13 Q. Now it's your testimony that this was the permit
14 to get the equipment back out to the site?
15 A. The big machine on the site, yes.
16 Q. And that - what date was that that the equipment
17 was delivered out to the site?
18 A. The afternoon of the 25th.
19 Q. And that was - one of your employees delivered it,
20 is that right?
21 A. Our low boy driver.
22 Q. Now did he - did he stay out there? Did he work
23 out there? What all did he do?
24 A. He just unloaded that piece of equipment and came
25 back and told us that somebody had burned those

1 piles, that they were smoldering.
2 Q. All right. Now was that the first time that an
3 employee of yours had been back out there to work?
4 A. As far as I know, that was.
5 Q. Now you stated that you had the machinery
6 delivered out there on April 25th of 2009?
7 A. Yes, sir.
8 Q. Now, again, state for the record why you had
9 somebody going back out there.
10 A. Well, somebody--- Let's see. I think my youngest
11 son had been by there and seen the silos gone and
12 we knew they had been gone. I don't know how long
13 we had known that. And so the first time we had
14 some equipment free, we were going to run down
15 there and bury those rings. They're great big
16 concrete rings just wide enough around.
17 Q. So the specific job that you were having an
18 employee go out there for was to deal with the
19 silo pad rings?
20 A. Just had one machine and one employee.
21 Q. Okay. And let's go into a little more detail on
22 that. Now how many employees did you have go back
23 out to the site to work on the rings - the silo
24 pads?
25 A. Basically, just one.

1 Q. Just one. And how much equipment did you have out
2 there?
3 A. One piece of equipment.
4 Q. Okay. And how long was that employee out there?
5 A. Four days. The 26th through the 31st.
6 MS. WEESE: Excuse me, Your Honor. This
7 is not an objection. Just a clarification.
8 I believe you asked him about April 25th,
9 2009. Did you intend to say April or---
10 MR. MORTON: No, no. Your Honor, I move
11 to strike that. March 25th. I appreciate
12 that.
13 MS. WEESE: Thank you.
14 THE COURT: Thank you.
15 Q. Now have any employees been back out there since
16 the one employee was working on the silo pads?
17 A. No.
18 Q. Okay. Now, Mr. Benson, you were contacted by
19 Division staff, I believe?
20 A. Yes.
21 Q. About the burn?
22 A. Yes.
23 Q. Someone contacted you?
24 A. Yes.
25 Q. All right. Did you cooperate with them and---

1 A. Yes. I certainly tried to.
2 Q. Did you provide information to them that they
3 asked for?
4 A. I tried to provide everything they asked.
5 Q. How many - do you remember how many conversations
6 you had with the Division staff?
7 A. Basically one, with Ms. Vivian.
8 Q. So the day Ms. Vivian talked to you, did you ever
9 try to contact the agency after that?
10 A. Yes.
11 Q. Do you remember when that was? Just---
12 A. Yes. I left a voice mail on---
13 Q. Okay. Was that the same day or---
14 A. ---with the information she had requested.
15 Q. Was that the same day or a couple of days later?
16 A. That was a couple of days later. Yes, that was on
17 April the 2nd - the second time, yeah. I never
18 heard back.
19 Q. Okay. Now you heard a little earlier that your
20 company had some prior notice of violations?
21 A. Yes.
22 Q. Could you just tell us briefly what those were?
23 A. Well, the first one was for burning trash in a
24 fifty-five-gallon drum at the back of our yard at
25 our office in Lumberton, North Carolina, and we

had a seventy-year-old man who had retired three times and we told him we could no longer burn. We didn't use to have shredders, and he'd get the secretaries' confidential stuff and he'd take it down to the barrel and burn it over the last fifteen years or whatever. And, you know, one day he just took it upon himself to go down there and burn. He knew he wasn't supposed to. He'd been told he wasn't supposed to.

Q. And you said that was at the office?

A. And, you know, I thought we were just going to get a warning, but it turns out it was a citation. It didn't cost very much. I don't know if it cost anything and didn't pay much attention to it.

Q. Well, did you challenge it or did you---

A. No, did not challenge it, unfortunately.

Q. Tell us about the - tell us about the next - other notice of violation.

A. And the next time was, we were doing a road at White Lake for the Clark Brothers, and I had subcontracted the clearing of the street to two gentlemen. And they had gotten their permit and they were burning, but the man at the end of the street didn't want that road and he had called the Corps of Engineers, the Air Quality Control. He

1 called every regulatory agent to try and stop the
2 Clark Brothers from building that street.
3 Well, when Air Quality got there, they
4 measured from his house to the pile. Well, if you
5 measure from the back corner of his property to
6 the pile it was nine hundred and fifty feet
7 instead of - it should be a thousand. From his
8 house, it would be a thousand, but not from the
9 corner of his property.
10 And, of course, the subcontractors were
11 responsible and it was a seven-hundred-dollar
12 fine, and we weren't going to hire a lawyer and go
13 to court. I wasn't. I didn't think anything much
14 about it. I was just going to make them pay it.
15 Well, as it turns out - and that's violation
16 number two, and it's very important how many
17 violations you get.
18 Q. So is it your testimony they were your
19 subcontractors? They were within - they were
20 inside the limit they shouldn't have been and---
21 A. Oh, yeah. I mean it's my fault. I'm the
22 contractor. Just like burning in the drum. It's
23 my drum. I have to take - you can't fire a
24 seventy-year-old employee.
25 MR. MORTON: Your Honor, could I have

1 just a moment?
2 THE COURT: Yes, you may.
3 (Thereupon, there was a pause in the
4 proceeding.)
5 MR. MORTON: Your Honor, I would move
6 for Petitioner's Exhibits 5 through 13 to be
7 admitted into evidence.
8 (PETITIONER'S EXHIBIT NOS. 5-13
9 (OFFERED INTO EVIDENCE
10 THE COURT: Any objection, Ms. Weese?
11 MS. WEESE: These were the exhibits that
12 we've just gone through? No objections, Your
13 Honor.
14 THE COURT: 5 through 13 are admitted.
15 I would like for the witness - I believe it
16 was Number 6 where you marked trees in a red
17 pen or a red magic marker. Is that the right
18 number?
19 (PETITIONER'S EXHIBIT NOS. 5-13
20 (RECEIVED INTO EVIDENCE
21 THE WITNESS: Yes.
22 THE COURT: If you would perhaps put a
23 little star and write what that is. And then
24 I'll have counsel do the same thing on my
25 sheet as well at some other time.

1 Q. Mr. Benson, I just have one or two more questions.
2 If you would look at Respondent's Exhibit
3 Number 2, which is the colored photocopies. I
4 believe there is a copy up there of that. It may
5 be in that pile at the front there.
6 MR. MORTON: May I approach, Your Honor?
7 THE COURT: Yes, you may.
8 MS. WEESE: I might have it in the tabs
9 now, behind Tab 2, in that book.
10 Q. Looking at Respondent's Exhibit Number 2,
11 Mr. Benson, look at these top two photographs, and
12 if you could look at Exhibit Number 6. I just
13 want to get an - kind of get an idea of where
14 we're at in these pictures.
15 In this top picture here, there seems to be a
16 row of trees?
17 A. That would be that one.
18 Q. Right. And this picture right here on
19 Respondent's Exhibit Number 2 is looking down a
20 row of trees at the burn pile?
21 A. Yes. Right.
22 Q. So is it your understanding that it's looking down
23 this row of trees you talked about earlier to that
24 pile that's right here?
25 A. That's right. Yeah.

1 Q. Okay. And then the other picture---
2 THE COURT: And will you describe for
3 the record what you're pointing at,
4 Mr. Morton? Like left side, bottom, however
5 you want to describe it.
6 MR. MORTON: I'm pointing on
7 Petitioner's Exhibit Number 6. He had
8 previously testified there was a row of trees
9 at the first hog farm building at the bottom
10 that remained there.
11 THE COURT: Okay. That would be on the
12 left side - the left hog farm as you're
13 looking at it?
14 MR. MORTON: Yes, sir. Yes, sir.
15 THE COURT: All right.
16 Q. Now if you're looking back at Respondent's Exhibit
17 Number 2 at this photograph here, you're looking
18 kind of straight on a burn pile - that one right
19 there?
20 A. Yes. You're looking from the bottom of the
21 project up - up that way to that pile.
22 Q. So is it your understanding - I'm trying to place
23 that picture on Petitioner's Exhibit Number 6 -
24 that the first burn pile that we earlier testified
25 was near that lagoon, you're looking up at that

1 burn pile?
2 A. Well, it runs almost to that lagoon. Yeah, almost
3 that far.
4 Q. Okay.
5 MR. MORTON: Your Honor, at this point,
6 I believe that's all I have.
7 THE COURT: Okay. Cross-examination,
8 Ms. Weese?
9 MS. WEESE: Thank you, Your Honor.
10 Before I ask Mr. Benson a few questions, I
11 would like to approach the witness and just
12 see what this calendar is that he's been
13 referring to.
14 THE COURT: Okay. Thank you. You may
15 do that.
16 MS. WEESE: Thank you very much.
17 THE COURT: And you may approach with
18 her, if you'd like, Mr. Morton.
19 THE WITNESS: Well, I just did that to
20 clear myself up. Since I'm on the oxygen,
21 you don't remember as well as most people.
22 MS. WEESE: Well, I don't know. My
23 memory gets pretty faulty sometimes.
24 THE WITNESS: I have colored everything
25 that our office showed we paid employees to

1 be on the job.
2 MS. WEESE: Okay. That's what these
3 represent. Okay.
4 THE WITNESS: And we have payroll things
5 to back that up. So we know we were out
6 there paying people then, and he was paying
7 us by the hour. So we had to keep up with it
8 by the hour.
9 MS. WEESE: Okay. All right. Well,
10 thank you very much. Thank you, Your Honor.
11 THE COURT: Okay.
12 **CROSS-EXAMINATION**
13 **BY MS. WEESE:**
14 Q. Since I just took a look at that and it's fresh in
15 my memory, Mr. Benson---
16 THE COURT: And for the record, what I
17 want to do is, if you would describe - for
18 the record both counsel just approached the
19 witness, and in reciting the dates, the
20 witness Mr. Benson was looking at a calendar.
21 If you'll describe what that is, how you keep
22 it, why you keep it, that sort of thing.
23 THE WITNESS: Well, this is called an
24 Attendance Controller, and we just put on
25 here when our employees were working by date

1 and when they weren't, of course.
2 THE COURT: Okay. Thank you. You can
3 continue, Ms. Weese.
4 MS. WEESE: Thank you, Your Honor.
5 Q. Well, looking at that employee control sheet, when
6 in March does it indicate that your employees were
7 on the Townsend Farm site, Mr. Benson?
8 A. The 26th through the 31st.
9 Q. Now I believe - does that go over---
10 A. It does go over a weekend.
11 Q. ---a weekend?
12 So they were there the 26th, 27th---
13 A. Seventh, the 30th, and 31st. We did not pay any
14 time on Saturday.
15 Q. Okay. Another question I wanted to ask you,
16 Mr. Benson, is with regard to Petitioner's Exhibit
17 13, that's the DOT permit.
18 A. Okay. I know what that is.
19 Q. Right. Now I notice there's no signature on that.
20 Can you explain down there where it says,
21 "Permitting signature," it's blank?
22 A. This was a copy and the copy that went in our low
23 boy truck probably had a signature on it.
24 Q. I see.
25 A. This was a copy kept in the file in the office

1 that we keep of all permits. But one of our
2 people would have signed that in the truck, I
3 would think.
4 Q. You were here for Ms. Vivian's testimony this
5 morning, I believe?
6 A. Yes. yes.
7 Q. Now was this - this permit--- Oh, that was not
8 for the piece of equipment that she saw on the
9 site?
10 A. Yes. Yes.
11 Q. It was. Okay.
12 A. And his time is not included on the 25th because
13 he's not really - his time isn't charged to
14 projects. He's charged to the shop.
15 Q. Okay. He was sort of en route and delivery that.
16 A. Mr. Townsend didn't have to pay for him.
17 Q. Okay. All right. Well, you know, about your
18 arrangement with Mr. Townsend, when you were first
19 contacted by Pam Vivian, do you recall telling her
20 that you were working with a farm manager?
21 A. I've read that. I don't know why in the world I -
22 if I said that, why I would have said that. If it
23 is, I'm in error. There was no farm manager. It
24 was just Mr. Townsend. He was the farm manager.
25 I was going through a lot of things at that time,

1 and so I may have just misspoke.
2 Q. So in - but that was not - you're not asserting
3 that that was any misrepresentation on
4 Ms. Vivian's part in her report?
5 A. No, no. If she heard - if I said that, I could
6 have, but I would have meant him.
7 Q. Now do you recall on that first contact with
8 Ms. Vivian when she first contacted you and she
9 asked you about how to get in touch with the
10 Townsends - do you recall telling her that you
11 didn't know how to get in touch with them?
12 A. I thought I told her about - I told her where they
13 were, and like I say, I've only met with him once
14 myself. I had to drive down to his beach house
15 and---
16 Q. Yes. I apologize.
17 A. I can't find that in my thing, but anyway, I mean,
18 if - I don't know why I would have said that
19 because I - you know, I told her on April the 2nd
20 about Jane and Jimmy.
21 Q. All right. Okay. And I know you've - now you've
22 just testified that Ms. Townsend was your first
23 cousin?
24 A. She is my first cousin.
25 Q. Okay. But as far as Ms. Vivian's investigation

1 report, when she says that - when she notes that
2 "I asked if he -" meaning you Mr. Benson - "knew
3 how to contact either of them, and he said he did
4 not know because he dealt with the farm manager.
5 I told him I would get back with him if needed,"
6 you're not asserting that she made that up or
7 that's inaccurate on her part?
8 A. I don't - I don't think so. I don't know.
9 Q. Now you just testified also that the site is now -
10 is now clear, and trees have been planted, is that
11 correct?
12 A. Well, I understand trees have been planted. I
13 haven't seen them.
14 Q. Okay. You were also here when Mr. Edge testified,
15 I believe?
16 A. Yes.
17 Q. Okay. Mr. Edge testified that the debris piles
18 are still on that site?
19 A. Yes.
20 Q. Okay. So you don't dispute that?
21 A. No.
22 Q. That the debris piles have not been hauled away to
23 any landfill or any other disposal---
24 A. I asked Mr. Edge what to do with those, and he
25 said to leave them there, not to cover them up,

1 not to push them in piles, not do anything until
2 he told me further, and he's never gotten back to
3 me.
4 Q. Okay. Now I wanted to clear up another date with
5 you with regard to your response to the notice of
6 violation, and I believe in that response - and
7 that's in that blue notebook, if you want to take
8 a look at it, behind Tab 8.
9 About midway down in the paragraph, in the
10 middle of the sentence in the middle of the page,
11 you write, "They left the concrete support rings.
12 We then returned on April 26th to bury these
13 rings." Is that a typo, Mr. Benson? Should that
14 be March 26th?
15 A. Yeah, it should be March 26th. That was an error.
16 Q. Okay. Sometimes those typos happen, but I did
17 want to clarify that.
18 Mr. Benson, why are those silos so valuable?
19 Why would D. H. Griffin hustle down there to get
20 them?
21 A. Well, they weren't that valuable at the time.
22 Metal prices were very cheap, and the reason he
23 did not sell those silos, as I understand it, to
24 Omnisource was, he had to haul it back to his
25 place because he is a gigantic demolition

1 contractor, and like corn people, they hold the
2 corn until the price is right. So he was holding
3 the metal till the price was right, I guess.
4 Q. Okay. I noticed you said that was a good deal for
5 him and just - I just wanted to understand that -
6 or for that company.
7 A. Well, I hope it was. I'm not so sure.
8 Q. Okay. Let's see. Now this conversation or this
9 voice mail that you left for Ms. Vivian and you
10 testified that she never called you back---
11 A. Yes.
12 Q. ---weren't you leaving her a voice mail in
13 response to some questions she had asked you?
14 A. Oh, yes. Yes.
15 Q. So there really wasn't any need for her to call
16 you back unless she had a question, correct?
17 A. Well, I assumed she was wanting to call and talk
18 to me about them, and I just assumed - you know,
19 after a while she didn't call, so I probably
20 should have called her, but I didn't.
21 Q. But you actually did call the Fayetteville
22 Regional Office of the Division of Air Quality at
23 least one more time, didn't you?
24 A. When?
25 Q. After you received the notice of violation and

1 request for enforcement?
2 A. I may have.
3 Q. Didn't you call the Division of Air Quality and
4 have a phone conversation with Ms. Vivian, and I
5 believe another DAQ employee named Heather Hawkins
6 was on the phone at that time as well?
7 A. What date was that?
8 Q. This would have been after the receipt of the NOV
9 and--- Let me just flip back here.
10 THE WITNESS: John, can you hand me my
11 diaries, please.
12 MR. MORTON: Your Honor, may I approach?
13 THE COURT: Yes, you may.
14 MS. WEESE: May I have a moment, Your
15 Honor? I may withdraw that question.
16 THE COURT: Yes, you may.
17 (Thereupon, there was a pause in the
18 proceeding.)
19 Q. Check on April 24th.
20 A. Yes.
21 Q. Yes, you did call---
22 A. Yes.
23 Q. ---and speak with Ms. Vivian and Heather Hawkins?
24 A. I have on here "Pam Vivian, DENR, will send
25 letter." That's all I have.

1 Q. Now "Will send letter," who was going to send a
2 letter? Do you know - if you know?
3 A. I don't know. I would assume they would send a
4 letter. If I was going to send a letter, I don't
5 think I would put it in there.
6 Q. Not even as a reminder?
7 A. Well, I need to do that.
8 Q. Right. Thank you, Mr. Benson. Just a couple of
9 more questions. I believe you testified that it
10 was - it was your intention to haul the debris to
11 the landfill. That was your original intention?
12 A. Yeah. Original intention, yes.
13 Q. The demolition debris? Okay. Of course, being an
14 experienced contractor, you're aware that
15 landfills aren't free?
16 A. Right. Right.
17 Q. There are tipping fees involved?
18 A. Oh, yes.
19 Q. And the cost for operating your trucks?
20 A. Oh, yes.
21 Q. Now Mr. Edge testified that there were probably a
22 hundred dump truck loads of debris on that site?
23 A. There could have been. There could have been.
24 Q. So that would have meant quite a few trips to the
25 landfill?

1 A. A little bit of money for us to haul it.
2 Q. Absolutely. That's exactly right. Now - and the
3 other thing - I was very interested to hear your
4 testimony about intentionally separating it into a
5 wood pile versus a debris pile because you were
6 going to get a burn permit for the wood.
7 A. When it dried out.
8 Q. Who were you thinking - where would you get that
9 permit?
10 A. From DENR.
11 Q. Do you know which division?
12 A. Air Quality.
13 Q. Okay. So your understanding is---
14 A. We have gotten permits from them, you know, in the
15 past.
16 Q. Okay. And--- Okay.
17 MS. WEESE: If could just take one
18 moment, I think I'm about ready to wrap up,
19 Mr. Benson. Thank you.
20 THE COURT: All right.
21 THE WITNESS: Thank you.
22 (Thereupon, there was a pause in the
23 proceeding.)
24 Q. One last question, Mr. Benson. I listened to your
25 testimony talking about your notices of violation

1 and the first one with your seventy-year-old
2 employee who won't retire and just didn't pay much
3 attention it, I believe you said.
4 A. Right.
5 Q. And the second you had - you said you had a
6 subcontractor pay that fine. Were you aware that
7 for notices of violation, the Division does not
8 assess fines?
9 A. Notices of violation?
10 Q. Right. Which is---
11 A. I think we had a seven-hundred-dollar fine on
12 that.
13 Q. Well, if---
14 A. I don't remember.
15 Q. Okay. I'll just - I will show this to your lawyer
16 and ask the Court if I can approach and you can
17 take a quick look at this.
18 MS. WEESE: Your Honor, may I approach?
19 THE COURT: Yes, you may.
20 MS. WEESE: I only have one copy.
21 A. I mean I paid - I paid the fine, not to
22 subcontractors.
23 Q. I just - if you would---
24 MS. WEESE: Your Honor, I'm showing the
25 witness a copy of a letter dated 23 December

1 2004.
2 Q. And you can - if you'd like to just say for the
3 record to whom it's addressed.
4 A. Oh. It's to Burt Benson, owner, Benson
5 Construction, Inc.
6 Q. And is that the violation down at White Lake you
7 were talking about?
8 A. It should be. I don't know. Let's see here.
9 Yeah. White Lake Campgrounds.
10 Q. Okay. All right. And I don't believe you were
11 assessed civil penalty in that case.
12 A. I thought it was five hundred dollars - I mean,
13 seven hundred dollars.
14 Q. We'll just take a moment and look at that.
15 A. Well, I sure thought we were.
16 Q. As you said, you deal with a lot of permits.
17 A. Yeah.
18 Q. It could have been---
19 A. Well, I'm glad we didn't, but I thought you-all
20 said I had two violations.
21 Q. Well, and this is your - this is---
22 A. This is just a violation.
23 Q. Yes. It just says this is your second violation
24 on the record?
25 A. Yeah. Second violation, yeah.

1 Q. All right.
2 MS. WEESE: Mr. Benson, thank you so
3 much. I have no further questions.
4 THE WITNESS: You're welcome.
5 THE COURT: Redirect?
6 **REDIRECT EXAMINATION**
7 **BY MR. MORTON:**
8 Q. Mr. Benson, I just want to clarify a couple of
9 things. The first was an issue about the date
10 when you talked to Pam Vivian initially. Just to
11 clarify now, you heard testimony from her earlier
12 today that she spoke to you on the phone on
13 March 30th, the day that she had met Jonathan
14 Lewis out on the site.
15 Now I think when you testified earlier you
16 said on April the 2nd, you told her where the
17 Townsends live, but isn't it your testimony when
18 you spoke to her the first time and actually had a
19 conversation with her on the phone, that's when
20 you told her where the Townsends were?
21 A. I don't remember. I'll be honest with you. I
22 think I did, but I had no reason not to.
23 Q. But your recollection is, you provided her
24 information on where the Townsends were at some
25 point?

1 A. Yeah. And if Mr. Edge is going by there every
2 day, he knew that was the Townsend Farm.
3 Q. Okay.
4 A. I mean gracious. Everybody knew was that thing
5 was.
6 Q. Now you also said that you had called Steve Edge,
7 and he said, "Don't disturb the piles"?
8 A. Right.
9 Q. Now did he say that about putting the smoldering
10 out, or was he saying don't haul the piles off and
11 take them to the landfill?
12 A. No. He - Ms. Vivian had asked me to call him and
13 do whatever he said about the piles, and I called
14 him and I said do you want me to take a dozer -
15 bring a dozer out there and push the piles up and
16 put some dirt---
17 Q. Well, but when you're talking about pushing the
18 piles up, I mean was the concern they were still
19 smoldering?
20 A. Yeah. Yeah. Keeping - putting the fire out.
21 Q. Okay. So it wasn't to haul them off; it was that
22 they were still burning?
23 A. Yeah. And he said no, it was going to sprinkle
24 rain that night and that that would probably put
25 the fire out, and I haven't heard from him since.

1 Q. Okay. Now another thing that you mentioned was -
2 you talked about how many truckloads it would take
3 to haul off the piles?
4 A. Yes.
5 Q. And you kind of mentioned, yeah, that would be
6 some money for us for hauling it?
7 A. Sure.
8 Q. Do you mean it would cost you money to haul them,
9 or you'd get paid for hauling them?
10 A. No, no. He would have to pay us by the hour for
11 the truckload and the track hoe to load it.
12 Q. Now were you going to pay the dump fees to haul it
13 off?
14 A. No. He'd be paying the dump fees. I mean I may
15 pay them, but I would charge him for them.
16 Q. So, ultimately, he was going to have to pay for
17 hauling that stuff off?
18 A. Sure. And there's also a private dump we can take
19 it to for forty-five dollars a load, which is
20 cheaper than the landfill.
21 Q. Okay.
22 A. But that decision hasn't been made because it
23 costs money and we had time and still had a lot to
24 do.
25 Q. All right.

1 MR. MORTON: I think those are all the
2 questions I have, Your Honor.
3 THE COURT: Recross?
4 MS. WEESE: No, Your Honor. Thank you.
5 THE COURT: I have just kind of a -
6 based on your years of experience, I presume
7 you've done this sort of thing---
8 THE WITNESS: Oh, yes.
9 THE COURT: ---done piles and taken them
10 to the dump and that sort of thing. Is there
11 a requirement, either by permit or by rule or
12 law that you know, that when you create a
13 pile and leave it - is there a requirement to
14 keep it secure?
15 THE WITNESS: None that I've ever read,
16 and over the years, we've left a pile up for
17 a year in some cases on long-term jobs where
18 they're three-year jobs, and you eventually
19 have to haul it off, you know, but there is
20 no urgency. And in our case, that took a lot
21 of manpower at the time, which we didn't
22 have, and we were in no hurry to do it.
23 And, Mr. Townsend, he was not in a
24 hurry. He said, you know, just leave it
25 piled up. We had to wait until the trees

1 dried to burn.
2 THE COURT: Okay. Thank you. Do either
3 of the parties have any questions based on my
4 questions?
5 MS. WEESE: I may, Your Honor.
6 THE COURT: All right.
7 MS. WEESE: No. No. No, Your Honor.
8 THE COURT: Anything further?
9 MR. MORTON: Nothing further, Your
10 Honor.
11 THE COURT: You may step down,
12 Mr. Benson. Thanks very much.
13 THE WITNESS: Thank you, sir.
14 THE COURT: Your next witness,
15 Mr. Morton?
16 MR. MORTON: Your Honor, at this time,
17 we'd call Mr. Jonathan Lewis to the stand.
18 THE COURT: And as you approach,
19 Mr. Lewis, do you have a preference to be
20 sworn or affirmed?
21 MR. LEWIS: Affirmed.
22 THE COURT: Okay. If you would raise
23 your right hand and face me, please. I won't
24 make you put your hand on the Bible.
25 - - - - - - - -

1 JONATHAN LEWIS,
2 a witness called on behalf of the Petitioner, being
3 first duly affirmed in the above-entitled matter, was
4 examined and testified on his affirmation as follows:
5 THE COURT: Okay. If you'll have a
6 seat, please, sir. If you would state your
7 first and last name and spell them both.
8 THE WITNESS: Jonathan Lewis,
9 J-o-n-a-t-h-a-n L-e-w-i-s.
10 THE COURT: Thank you. You may direct
11 your attention to Mr. Morton.
12 **DIRECT EXAMINATION**
13 **BY MR. MORTON:**
14 Q. Mr. Lewis, are you here today under subpoena?
15 A. Sir?
16 Q. Are you here today because of a subpoena?
17 A. Yes, sir.
18 Q. What's your occupation, Mr. Lewis? What do you do
19 for a living?
20 A. Run equipment.
21 Q. Who do you work for?
22 A. Benson Construction.
23 Q. How long have you been doing that?
24 A. With Benson or---
25 Q. With Benson.

1 A. Two years.
2 Q. And were you doing that before you worked with
3 Mr. Benson?
4 A. Yes, sir.
5 Q. How long were you doing it before that?
6 A. Basically, ten years, I guess.
7 Q. Okay. What type of equipment do you operate?
8 A. Track hoe and bulldozer.
9 Q. Okay. Now are you a foreman of Benson
10 Construction or---
11 A. Operator.
12 Q. You're an operator?
13 A. Uh-huh.
14 Q. Okay. Mr. Lewis, if you would look at
15 Petitioner's Exhibit Number 6. That's the
16 enlarged tax photo of the site. Do you recognize
17 that, sir?
18 A. Yes, sir.
19 Q. Is that the Townsend Farm site?
20 A. It is.
21 Q. Okay. Did you work - did you have occasion to
22 work at that site while you were working for
23 Mr. Benson?
24 A. Yes, sir.
25 Q. Do you remember - specifically, if you remember,

1 but if you don't, just generally - when you first
2 went out there and did some work?
3 A. It was in December. I don't remember what date.
4 Q. What year was it? It wasn't this past December,
5 was it?
6 A. No, no, no, no, no.
7 Q. What were you doing when you were out there? Like
8 what kind of work were you doing?
9 A. When I first got it, I was tearing down the old
10 hog houses.
11 Q. Okay. What type of machinery were you operating
12 to do that?
13 A. A track hoe.
14 Q. Track hoe. Were you involved in making the piles
15 of debris that we've seen pictures of today?
16 A. Yes, sir.
17 Q. Could you tell us a little bit more about that?
18 A. I was tearing them down and keeping it separate.
19 I was separating the wood from the metal and
20 stuff.
21 Q. Okay. So it wasn't all piled together?
22 A. No, no, no.
23 Q. But they were - there was a big long pile with
24 sections; is that what you're saying?
25 A. Right. Right.

1 Q. Okay. Now you testified you got out there
2 sometime in December. Do you remember about how
3 long you were working out there that first time?
4 A. It was awhile. I can't recall how long I was---
5 Q. Did you work past Christmas? Do you remember
6 that?
7 A. Yeah, it was after Christmas.
8 Q. So sometime in January?
9 A. Right.
10 Q. Were you the only one working out there at that
11 time?
12 A. No. There was more of us out there.
13 Q. Were there a couple or were there like ten, or did
14 it just depend on which day it was?
15 A. It would depend on what day it was.
16 Q. When you first got out there to the site, did it
17 look pretty - were the buildings that are
18 represented in Exhibit 6 - were they still out
19 there? Did they look pretty much like that with
20 the buildings and everything?
21 A. Yes, sir.
22 Q. But there was more trees and it was more grown up
23 than that, is that right?
24 A. Right.
25 Q. Okay. Now that's when you first got out there.

1 When you left in January, what was left out there?
2 A. Just the bins.
3 Q. The silos?
4 A. The silos, yeah.
5 Q. Anything else out there?
6 A. No.
7 Q. Well, there were some piles out there?
8 A. Piles, right.
9 Q. But there wasn't any of those structures other
10 than silos?
11 A. Right.
12 Q. Now while you were out there working in December
13 or January, did you happen to see anybody from
14 Solid Waste come out there?
15 A. Yes, sir.
16 Q. Do you remember speaking to anybody from Solid
17 Waste, or did you just see it?
18 A. No. I just seen it. I didn't speak to nobody.
19 Q. Who did you - do you remember who you saw come out
20 there from Solid Waste?
21 A. I remember Steve Edge coming out.
22 Q. How do you know it was Steve Edge? Do you know
23 him?
24 A. Yeah, I know Steve Edge personally.
25 Q. Okay. How do you know him?

1 A. In the past working with my dad, my daddy knows
2 him and stuff.
3 Q. Okay. So can you just describe briefly how you
4 had seen him? Did he come out there and talk, or
5 where did you see him? What was he doing?
6 A. He would mostly just ride through and throw up his
7 hand, wave.
8 Q. Now you said "ride through." I mean do you ride
9 through on the road, or did he come on the site?
10 A. Come on - rode on the job site.
11 Q. So he was actually out there?
12 A. Right.
13 Q. Okay. Now you testified that you left in - you
14 got done out there sometime in January. And do
15 you remember when you went back out there?
16 A. No.
17 Q. Well, let me ask you this: When you got back out
18 there, what was out there?
19 A. When I got back out?
20 Q. You were working there December, January?
21 A. Right.
22 Q. Then you left and you came back later on?
23 A. Right.
24 Q. When you came back later on, what was out there?
25 A. Nothing.

1 Q. Well, were the silos out there?
2 A. The silos? No.
3 Q. They were gone?
4 A. They was gone, right.
5 Q. Were the piles out there?
6 A. Yeah.
7 Q. Now had they been burned or not?
8 A. Yes, they had been burned.
9 Q. So when you got back out there, the fire had
10 already happened?
11 A. Right.
12 Q. And what were you going back out there to do? Why
13 were you back out on the site?
14 A. To bury the concrete that the silos was sitting
15 on - the concrete pads.
16 Q. Were you out there to do anything with the piles?
17 A. Huh-uh. Just bury the concrete.
18 Q. Okay. Now when you went back out there after the
19 fire, you said when you went back out there, the
20 fire had already happened?
21 A. Right.
22 Q. Now I mean just kind of clarify this. You
23 testified you were out there in December and
24 January and you came back after the fire. When
25 you left in January, did you ever come back any

1 other time other than when you came back after the
2 fire?
3 A. No.
4 Q. Okay. So when you left in January, the silos were
5 there, right?
6 A. Right.
7 Q. When you came back out in March, they were gone,
8 right?
9 A. They was gone.
10 Q. And the fire had already happened?
11 A. Correct.
12 THE COURT: For clarity of the record,
13 how many piles were there when you came back
14 out? Do you recall?
15 THE WITNESS: When I came back out---
16 THE COURT: Out, the silos were gone.
17 THE WITNESS: Right.
18 THE COURT: Do you know how many piles
19 there were?
20 THE WITNESS: Two.
21 THE COURT: Two?
22 THE WITNESS: Two.
23 THE COURT: And were both of them - had
24 fires happened in both of them?
25 THE WITNESS: Correct.

1 THE COURT: Okay. Thank you.
2 Q. Mr. Lewis, when you got out to the site and you
3 saw the piles had been burned, what did you do?
4 Did you call anybody?
5 A. Yeah. I called Stephen Benson and let him know.
6 Q. Okay. We heard testimony about dates you were out
7 there. Do you remember what specific dates you
8 were out there?
9 A. No, sir, I don't.
10 Q. Do you know how many days you were out there?
11 A. No.
12 Q. We heard testimony that an excavator got delivered
13 out there. Like, can you kind of place it for
14 that? Was it a week after the excavator was out
15 there? Was it the next day?
16 A. After the excavator was delivered, I came the next
17 day.
18 Q. So the day after the excavator got delivered,
19 that's when you showed up?
20 A. Right.
21 Q. And you don't remember how long you worked out
22 there?
23 A. No, I don't.
24 Q. Was it two months?
25 A. No, no, no, no.

1 Q. Was it a few days?
2 A. A few days.
3 Q. Okay. Now what time did you get out - the first
4 day that you got out there and saw the piles had
5 been burned, was it afternoon? Morning? What
6 time was it?
7 A. Morning.
8 Q. Was anybody else out there when you first drove
9 up?
10 A. No.
11 Q. How did you get out?
12 A. I drove my vehicle - personal vehicle.
13 Q. Okay. And then so you drove up to the site. I
14 mean you see they're burned. You call in and talk
15 about it. Then what do you do?
16 A. I go to work.
17 Q. And then what were you doing?
18 A. Burying the concrete.
19 Q. Now were you - I guess, were they circular
20 concrete rings?
21 A. Rings, correct.
22 Q. Were you busting them up and burying them or---
23 A. Busting them up and burying them up, yes.
24 Q. Okay. Now was anybody else out there that first
25 day you were out there?

1 A. No.
2 Q. Nobody at all?
3 A. There were some guys out there.
4 Q. Okay. Let's talk about that. Who was out there?
5 A. Some guys out there in the burn pile.
6 Q. How many guys was it?
7 A. Two.
8 Q. were they out - just there by themselves? Did
9 they have a car? Were they out there---
10 A. They was out there with a pickup truck.
11 Q. And what color was the truck?
12 A. A red truck.
13 Q. All right. If you look at Petitioner's Exhibit
14 Number 6, that's the tax map of the site. Earlier
15 Mr. Benson testified that maybe this area that had
16 had the buildings was maybe ten acres or so.
17 A. Correct.
18 Q. Does that sound about right to you?
19 A. Correct, uh-huh.
20 Q. And where these silos are, is that where you were
21 working?
22 A. Yes, sir.
23 Q. Because you were busting up what they used to sit
24 on, is that right?
25 A. Right.

1 Q. Okay. Now we've heard testimony of where the
2 piles are. Was one pile closer to you than the
3 other one, or were they both about the same
4 distance away?
5 A. I would say one was probably closer than the
6 other.
7 Q. Okay. Now we heard testimony that there was a
8 burn pile kind of over on the - towards the road
9 and there was another pile kind of over towards
10 the lagoon?
11 A. Right.
12 Q. Now which pile were the guys that you saw out
13 there going through?
14 A. The one closer to the lagoon.
15 Q. They were going through this pile over here? Were
16 they going through the pile closest to you or
17 further away from you?
18 A. Farthest from me.
19 Q. Okay. All right. And you were working right
20 there, right?
21 A. Right.
22 Q. Okay. When I say "right there," I mean you're
23 working where the silos show up on the picture.
24 Now were they out there all day long? Were
25 they out there the whole time you were out there,

1 or did they come and go?
2 A. They was in and out, leave and come back.
3 Q. What did you say they were doing?
4 A. They were loading up the old metal and stuff and
5 putting it on the truck.
6 Q. Now just get an idea of the kind of distances
7 we're talking about here, you testified they're -
8 you're working silo pads, they're going through a
9 burn pile. I mean, are they - you know, were they
10 close enough that they were in this room? Were
11 they specks in the horizon? Were they - how close
12 were they to you? Were they a ways off?
13 A. Yeah. I'd say a football field.
14 Q. Now do you feel like - were you close enough where
15 you feel like you could recognize them if you saw
16 them? I mean, could you make out the features and
17 tell what they looked like?
18 A. No, sir.
19 Q. Okay. Did you ever go over to them?
20 A. No.
21 Q. Did they ever come over to you?
22 A. No.
23 Q. Did they ever come over to the other burn pile, or
24 did they just work that silo?
25 A. They worked that same one.

1 Q. Okay. Do you remember if there was anybody else
2 that came out to the site at all that day? Was
3 there any other people out there that first day
4 that you were there?
5 A. Steve Edge came out.
6 Q. Now tell me a little about that. What time of day
7 was it when he came out there?
8 A. It had to be late morning.
9 Q. And did he talk to you or did he just drive
10 through again or he stopped---
11 A. No. He came out and talked to me.
12 Q. So he actually stopped and talked to you?
13 A. Yes, sir.
14 Q. What did you-all talk about?
15 A. The burn. He asked if I knew what happened to the
16 piles, how they caught fire and stuff, and I told
17 him that I didn't. And I told him I didn't know
18 nothing about it, and he said, "Well, there's
19 going to be someone coming down from Fayetteville
20 to talk to you about that." And he said, "When
21 they get here, you just tell them the same thing
22 you just told me."
23 Q. Okay. So that's the first day out there. Did you
24 go back out there the next day?
25 A. Yes, sir.

1 Q. Did anybody show up that day?
2 A. I don't recall anyone showing up that day.
3 Q. All right. Now we've heard testimony that you
4 were out there - you know, there was a weekend
5 kind of in the middle of when you were out there,
6 is that - do you have any reason to doubt that?
7 A. No.
8 Q. All right. If I said that Monday, March the 30th,
9 that was the day Pam Vivian had said she came out
10 to the site and met you, do you have any reason to
11 doubt that - that it was a Monday?
12 A. No, I have no reason to doubt it.
13 Q. Okay. Now tell me a little bit about that. You
14 go back out there on a Monday, and then who else
15 is out there?
16 A. Them guys were back out there when I got back out
17 there.
18 Q. Oh. Let me ask you that now. Just to back up.
19 The first day that you were out there, there was
20 guys going through the burn pile?
21 A. Correct.
22 Q. And Steve Edge comes out?
23 A. Correct.
24 Q. And then the next day you're out there, which I
25 guess would be a Friday, was anybody out there

1 other than you?
2 A. Them guys was back out again.
3 Q. And then there's the weekend and then there's
4 Monday, and you come back out. Is anybody - and
5 Pam Vivian came out. Anybody else out there?
6 A. The guys.
7 Q. Were those guys out there every day you were out
8 there?
9 A. Every day.
10 Q. Now when - tell us what you remember about Pam
11 Vivian coming out to the scene.
12 A. What I remember her talking about?
13 Q. Well, just - I mean tell - did you see her drive
14 up?
15 A. No. I never seen her come up.
16 Q. All right. Tell us when you first noticed that
17 she was there.
18 A. I was out there working. I was digging a hole to
19 start burying the concrete, and I happened to look
20 up and she was standing there. And that's when I
21 stopped to see what she was doing.
22 Q. Now did you - I mean, did you get down from the
23 excavator, or did you just kind of talked to
24 her---
25 A. No. I stayed in the excavator.

1 Q. Okay. Did she ask you who you were?
2 A. Yes, sir.
3 Q. Did she ask you who you worked for?
4 A. Yes, sir.
5 Q. Did you tell her?
6 A. Yes, sir.
7 Q. All right. Did she ask you what you knew about
8 the burn pile?
9 A. She did.
10 Q. What did you tell her?
11 A. I told her it was burnt - when I came out on the
12 job site, it was already burnt.
13 Q. Now while she was out there talking to you, were
14 those guys going through the burn pile?
15 A. Yes, sir.
16 Q. Did she say anything about them?
17 A. She said - asked did I know who they was, and I
18 told her I didn't.
19 Q. Now at that point - well, did she say anything
20 else? Do you remember anything else she talked
21 about?
22 A. That's basically it.
23 Q. Okay. Do you know if she went over and talked to
24 those men over there?
25 A. No.

1 Q. I mean, did you see her going that direction?
2 A. Yeah, I seen her go that direction. I don't know
3 if she talked or what.
4 Q. Okay. Now the day after Ms. Vivian came out
5 there, again, who was out there that day?
6 A. The day she showed up?
7 Q. No. The day after that.
8 A. After - the guys were still digging in the pile.
9 Q. Did anybody else show up that day?
10 A. Huh-uh.
11 Q. Did anybody from Solid Waste show up the last day
12 that you were out there?
13 A. No. No.
14 Q. Did somebody from Solid Waste show up while you
15 were out there during those days and tell you to
16 stop working?
17 A. Which days?
18 Q. Any day that you were out there when you were
19 busting out the silo pads.
20 A. Yes, sir.
21 Q. Did someone from Solid Waste come out and tell you
22 to stop working?
23 A. Yes.
24 Q. Do you remember what day it was?
25 A. I do not.

1 Q. Was it - do you remember was it before Pam Vivian
2 came out there or after Pam Vivian came out there?
3 A. After.
4 Q. So if Pam Vivian came on Monday, it must have been
5 the day after that, is that right? Does that
6 sound right?
7 A. Right.
8 Q. Okay. So somebody from Solid Waste comes out and
9 tells you to stop working. What happens then?
10 A. When he told me to stop working? I called Stephen
11 Benson.
12 Q. Well, did you stop work?
13 A. Yeah.
14 Q. And then just while you were out there, what
15 happened? Did you leave? Did you sit there and
16 wait?
17 A. I sat there and waited.
18 Q. Then what happened?
19 A. I sat there and waited, and they called me back
20 and told me I could continue back working.
21 Q. All right. Now do you know who was from Solid
22 Waste that was out there telling you to stop? Was
23 it Steve Edge?
24 A. It wasn't Steve Edge.
25 Q. But it was somebody else?

1 A. Yes.
2 Q. All right. Did he stay out there the whole time,
3 or did he just told you to quit and then he left?
4 A. He just told me to quit and left.
5 Q. Okay. Did anybody else besides the guys going
6 through the burn pile and that guy from Solid
7 Waste - did anybody else show up while you were
8 out there?
9 A. No.
10 Q. All right. While you were out there, was there
11 ever - while you were out there, what equipment -
12 what machinery was out there while you were out
13 there?
14 A. Just a track hoe.
15 Q. How many?
16 A. Just one.
17 Q. Just one?
18 A. Uh-huh.
19 Q. Any other type of machinery that was out there?
20 A. No, sir.
21 Q. Did you ever work the burn piles with the track
22 hoe with the excavator?
23 A. No, sir.
24 Q. While you were out there those four days - while
25 you were out there anytime after the fire, did any

1 other Benson Construction employees work out there
2 with you?
3 A. After the fire?
4 Q. No, sir. I was out there by myself.
5 Q. So you were the only Benson Construction employee
6 out there?
7 A. Right.
8 THE COURT: And for clarity of the
9 record too, you were out there how many days?
10 Do you recall?
11 THE WITNESS: I don't recall exactly how
12 many days I was out there.
13 THE COURT: So if Mr. Morton said four
14 days, that may or may not be correct?
15 THE WITNESS: I mean they've got it on
16 my time sheet.
17 THE COURT: Okay. Okay. And on all of
18 those days, were these two individuals out
19 there every day that you were there?
20 THE WITNESS: Yes, sir.
21 THE COURT: And then did Ms. Vivian ever
22 come back to talk to those individuals, to
23 your knowledge?
24 THE WITNESS: After she came out the
25 first time?

1 THE COURT: Right.
2 THE WITNESS: No, I never---
3 THE COURT: Did anybody from Air Quality
4 come out to talk to those individuals?
5 THE WITNESS: No.
6 THE COURT: Okay. And they were out
7 there the entire time that you were there,
8 though---
9 THE WITNESS: Right.
10 THE COURT: ---correct? Okay. And then
11 other than a person - not Mr. Edge - that
12 came out, did anybody ever come out? So that
13 entire time it was you and these two
14 individuals that you didn't know?
15 THE WITNESS: Right.
16 THE COURT: Okay. Thanks.
17 MR. MORTON: If I could have a moment,
18 Your Honor?
19 THE COURT: Yes, you may.
20 (Thereupon, there was a pause in the
21 proceeding.)
22 Q. Mr. Lewis, you've got these people out there while
23 you're working. Why didn't you go over and kind
24 of ask them who they were or tell them to go away,
25 or why didn't you go up there and see what they

1 were up to?
2 A. Because - why didn't go and talk to them? Is that
3 what you're asking?
4 Q. Yes, that's what I was asking.
5 A. Oh. Because I was out there by myself and I
6 didn't want to get no trouble started or nothing
7 like that.
8 Q. Were they out there in suits? Did they - what
9 kind of - I mean, did they look like--- Well, you
10 said that they were out there in a truck, right?
11 A. Right.
12 Q. Was it a full-size new truck or---
13 A. No.
14 Q. Could you tell - were you close enough to even
15 tell?
16 A. It wasn't a new truck.
17 Q. Okay.
18 MR. MORTON: I think that's all I have
19 at this time, Your Honor.
20 THE COURT: Cross-examination?
21 MS. WEESE: Thank you, Your Honor.
22 **CROSS-EXAMINATION**
23 **BY MR. WEESE:**
24 Q. Good afternoon, Mr. Lewis. You just testified
25 that at some point someone - not Steve Edge - from

1 Solid Waste came over and told you to stop
2 working, and you testified that you stopped
3 working and called Steve Benson. And then you
4 said somebody - and then you said someone told you
5 to continue. Who was it that told you to continue
6 working?
7 A. Continue working? It was our - Benson's
8 superintendent.
9 Q. Okay. What's his name?
10 A. Joe Williams.
11 Q. Joe Williams?
12 A. Uh-huh.
13 Q. Okay. How did he reach you? On your Nextel or---
14 A. My cell phone.
15 Q. On your cell phone. Okay. Now in order to -
16 after you busted up those silo pads - concrete
17 pads, in order to bury them, were you having to
18 dig down into the earth?
19 A. Yes.
20 Q. Okay. And were you successful in burying them and
21 covering them up with dirt?
22 A. Yes, ma'am.
23 Q. Okay. All right. Now based on the time frame
24 that you and Mr. Morton just went through about
25 when you came back to the site and discovered that

1 the piles had been burned, it looks to me like
2 your first contact with Ms. Vivian was on
3 March 30th. That would have been the third day
4 you were out there. That was a Monday.
5 And you were out there Thursday, Friday -
6 Mr. Benson said you-all didn't work Saturday and
7 Sunday - so back out there on Monday. Is that the
8 first time you saw Ms. Vivian as far as you can
9 remember?
10 A. Yes, ma'am.
11 Q. You had already been out there for a couple of
12 days and then she came out and---
13 A. Yes, ma'am.
14 Q. Okay. All right. Did I understand your testimony
15 a few minutes a go about when Mr. Morton asked you
16 why you didn't go over and ask those people who
17 they were - did I understand you to say you didn't
18 want to start any trouble?
19 A. Correct.
20 Q. And you had the sense that if you got in their
21 way, that trouble would happen?
22 A. I didn't want to find out.
23 Q. Okay. Fair enough. Fair enough. All right.
24 MS. WEESE: I'll take just a moment, but
25 I believe that's all I have for you,

1 Mr. Lewis.
2 Q. Okay. I guess the only other thing, it sounded to
3 me like maybe--- Okay. My recollection of
4 Mr. Edge's testimony is that he did speak with you
5 and told you not to bury the pads, but that's not
6 how you recall it? You recall it was someone else
7 from Solid Waste?
8 A. Correct.
9 Q. Okay. All right.
10 MS. WEESE: Well, thank you very much,
11 Mr. Lewis. Appreciate it.
12 THE COURT: Redirect, Mr. Morton?
13 **REDIRECT EXAMINATION**
14 **BY MR. MORTON:**
15 Q. But you do remember Steve Edge came out there and
16 talked to you, right?
17 A. Right.
18 Q. And just to clarify, you may have said this
19 before, but you were out there after the fire for
20 a few days - several - a few days, but it wasn't
21 two weeks? It wasn't a long period of time, is
22 that right?
23 A. Right.
24 Q. And do you feel pretty confident that whatever the
25 record showed for your time sheets, that's - those

1 are the days you were out there---
2 A. Right.
3 Q. ---that's the number of days you were out there?
4 A. Correct.
5 Q. Okay. All right.
6 MR. MORTON: That's all I have, Your
7 Honor.
8 THE COURT: Anything further?
9 MS. WEESE: Yes, Your Honor. Just one
10 quick question that Mr. Morton helped remind
11 me.
12 **RECROSS-EXAMINATION**
13 **BY MS. WEESE:**
14 Q. Why didn't you ever call - why didn't you call the
15 fire department when you came back to the site and
16 saw those piles were burned - burning?
17 A. When I got back on the site?
18 Q. Yes, sir.
19 A. Because it was just smoking when I got there.
20 There wasn't no flames.
21 Q. Okay. All right.
22 A. Just smoke.
23 Q. And did I understand you to say that's when you
24 called - did you call Steve Benson and tell him
25 that they had been burned?

1 A. Correct.
2 Q. Okay. All right.
3 MS. WEESE: And that really is it.
4 Thank you very much.
5 THE COURT: Anything further?
6 MR. MORTON: Just a minute, Your Honor.
7 THE COURT: All right.
8 MR. MORTON: I think that's all I have,
9 Your Honor.
10 THE COURT: Okay. Just one quick
11 clarification for me. All that you've told
12 us of the times you were out there, were you
13 ever contacted again by Ms. Vivian or anybody
14 as part of an investigation to question you
15 where you could say these things to them?
16 In other words, were you asked to make
17 any statements or anything as part of an
18 investigation?
19 THE WITNESS: No, sir.
20 THE COURT: Okay. So the only time you
21 ever spoke to Ms. Vivian or anybody from the
22 Division of Air Quality was that one time
23 when she came out?
24 THE WITNESS: Correct.
25 THE COURT: Okay. Thank you. Anything

1 further based on my questions by either
2 party?
3 MR. MORTON: That's all I have, Your
4 Honor.
5 THE COURT: Okay. You may step down.
6 Thank you, sir.
7 MR. MORTON: Your Honor, at this point,
8 I believe that's all that we have.
9 THE COURT: Okay. Anything further,
10 Ms. Weese, from you?
11 MS. WEESE: The only thing is, I would
12 like to ask the Court to take official notice
13 of a statute, and it's contained in
14 Petitioner's Exhibit 8, an e-mail from Jeremy
15 Ralston to Mr. Benson.
16 And while does not relate to Air
17 Quality, it does relate to activities that
18 have been testified about extensively in
19 today's hearing, and that would be 15A NCAC
20 13B .0562, with particular emphasis on paren
21 (2) - subparagraph (2) in that list.
22 THE COURT: Okay.
23 MS. WEESE: Thank you, Your Honor.
24 THE COURT: I will take official notice
25 of 15A NCAC 13B .0562 with special emphasis

1 on paren (2). Anything further, Mr. Morton?
2 MR. MORTON: No, Your Honor.
3 THE COURT: What I'd like to do is - do
4 counsel wish to make any brief closing
5 remarks?
6 MS. WEESE: I would like to make a brief
7 closing, Your Honor.
8 MR. MORTON: Yes, Your Honor.
9 THE COURT: Okay. What I'd like to do
10 is take about a five-to-ten-minute break, and
11 then we will come back with that. What I
12 will say is that I will have Ms. Weese go
13 first since you bear the burden of proof.
14 I'll have you go last, Mr. Morton.
15 MR. MORTON: Thank you, Your honor.
16 THE COURT: Thank you.
17 (Thereupon, a brief recess was taken.)
18 THE COURT: This hearing will come to
19 order. It's now three forty-five on March
20 the 9th, 2010, and all parties present when
21 we recessed are again present, our last
22 witness having completed his testimony.
23 Closing remarks, Ms. Weese?
24 **CLOSING ARGUMENT BY MS. WEESE**
25 MS. WEESE: Thank you. Your Honor,

1 despite all the responsibilities that the
2 Division of Air Quality has for regulating
3 and controlling air pollution, more staff
4 time is spent on enforcing this open burning
5 rule than on any - on enforcing any other
6 rule.
7 Why? Well - and we ask ourselves why.
8 DAQ does extensive educational outreach about
9 the rule in both English and Spanish. When
10 DAQ has a detailed Web site with all the
11 information you could ever want about open
12 burning, and the rules have been around for
13 years.
14 And, in fact, that's really not an issue
15 in this case because, as Mr. Benson
16 forthrightly testified to, he's aware of the
17 rule. And they - he forthrightly admitted
18 that they'd had NOVs before, but no fines,
19 and that he was prepared to seek a permit if
20 necessary.
21 What we have here, Your Honor, is a
22 party - a person who - defined under the
23 definition of person in this open burning
24 regulation - who, by virtue of being in
25 control of this land and this project,

1 essentially allowed or permitted directly or
2 indirectly or benefitted from these huge
3 piles being burned.
4 The reason we say that is not because
5 it's not possible that construction debris
6 and land clearing waste - that that fire
7 could have been started by vandals. Yes,
8 it's possible. Is it likely? I don't know.
9 Perhaps, it is.
10 We know that both Mr. Benson and his
11 relative, Mr. Townsend, told staff about -
12 that there had been vandals and thieves in
13 and out of this property for years. So,
14 again, that's an aspect of knowledge on their
15 part if you're going to leave these huge
16 windrows piled up, there's a good chance that
17 somebody is going to come on that property,
18 if you don't block them off, and something's
19 going to happen with those piles.
20 Another thing that troubles the Division
21 was the time and effort spent by the Benson
22 employees in making the huge piles when the
23 landfill was two miles away. First, the
24 piles were made. Then later even the pile
25 that was not going to perhaps be permitted to

1 be burned was not moved at the same time.
2 There were trucks moving on the site,
3 separating the material, but they didn't take
4 it on down to the landfill. It was left in
5 place.
6 So, Your Honor, is it possible that it
7 wasn't allowed or permitted, directly or
8 indirectly, by Benson Construction? With
9 those facts it seems not likely, not when you
10 consider the way the piles were assembled.
11 And whether or not there was a huge
12 benefit to Mr. Benson in this case - or
13 Benson Construction, not Mr. Benson - it
14 would have taken a hundred loads and even at
15 forty-five dollars a load in the less
16 expensive private landfill, that's a quite a
17 bit of money. I understand, through his
18 testimony, that Mr. Townsend was to reimburse
19 him, but we don't know whether or not that
20 would have happened.
21 And I guess the other thing, Your Honor,
22 is really where this happened. This burn was
23 out in the country, in a rural area. There
24 weren't houses around or businesses. It
25 happened over the weekend. Some people might

1 say, "What's the harm? What's the big deal?"
2 But there is harm. We heard - we know that
3 air pollution comes from these fires. It's
4 not treated in any way and harm does result,
5 and DAQ cares about that. They care about
6 the air pollution, and when they have
7 complaints reported to them, they have to
8 investigate. They cannot look the other way.
9 And so that's why we ask you, Judge, to
10 uphold the agency's position that Benson
11 Construction Company were responsible parties
12 under the open burning rule. And thank you
13 so much, Your Honor.
14 THE COURT: Thank you. Mr. Morton,
15 closing?
16 **CLOSING ARGUMENT BY MR. MORTON**
17 MR. MORTON: Your Honor, in this case,
18 we've got the burden of proof to show that
19 the agency acted erroneously or arbitrarily
20 and capriciously. I'd like to start off by
21 saying that we think the Division does
22 important work. Open burning is against the
23 law, and it's important that people that
24 violate the law pay for it. It's important
25 that the right people pay for it, and that's

1 what really this case is about.
2 Your Honor, it was a little difficult to
3 kind of know which aspect to argue here. The
4 civil penalty assessment, which I understand
5 is the decision that the Court is reviewing,
6 the findings of fact in that document and the
7 notice of violation letter - the clear
8 implication in those documents is that the
9 agency believed that Benson Construction
10 started the fire. The findings of fact were
11 that they had employees out there with
12 front-end loaders working the burn piles.
13 Now the agency's own staff has testified
14 that that's flawed. That's not correct. To
15 the extent that that's still the basis of a
16 decision, let's walk through what - exactly
17 what they're saying happened here.
18 All right. Benson Construction gets
19 involved to clean up the site, and they check
20 with different agencies to find out the
21 proper way to do it. They check with Solid
22 Waste. They check with the Health
23 Department. They make sure they're doing the
24 right thing.
25 Now there was testimony that personnel

1 from Solid Waste had been out to the site.
2 Then there may be some disagreement about
3 when and what they said when they were out
4 there, but there is no question Benson
5 Construction knew people from Solid Waste
6 were driving by checking things out. No
7 question about that.
8 There was no question that the landfill
9 was right there. They are in the back of the
10 landfill. So I guess the agency's position
11 was that Benson Construction caused the
12 fire - I mean I guess the theory here was,
13 well, we're in the back of the landfill that
14 you can just about see right over there.
15 And we've got these huge piles - big
16 piles - a hundred and fifty by fourteen -
17 that was after the burn. So they were bigger
18 than that before the burn happened. So I
19 guess the thinking is, well, we know people
20 are looking, we know we're right at the
21 landfill, but I guess we're going to burn
22 these piles and just hope nobody notices.
23 So - and then after the burn, this
24 company that does million-dollar jobs that
25 has earth-moving equipment and machinery -

1 afterwards I guess the plan to haul off that
2 pile is to have a couple of guys come up and
3 load up a pickup truck bed at a time and haul
4 it off. I mean that's - the implication was
5 the people out there working with Benson
6 Construction employees, so the guys loading
7 the pickup truck work for them. Well, that
8 doesn't make much sense.
9 Now there is also an issue whether the
10 agency acted arbitrarily and capriciously.
11 Now let's think about the investigator who
12 arrives on the site. I mean she gets out
13 there and she's there with the avowed purpose
14 of investigating the burn. She's out there
15 to find out who did it.
16 She gets out there, and there's a guy on
17 heavy machinery working over here and there's
18 some guys going through the burn pile over
19 here. Now, obviously, if you're out there to
20 investigate the burn, the first person you
21 want to talk to would be the guy over on the
22 machinery. Well, you know, she's out there.
23 She talks to him. She finds out who he works
24 for. She goes to talk to these guys, and
25 it's an uncomfortable situation for which I

1 don't blame her a bit, but you know, doesn't
2 ask name, doesn't get pictures of them. She
3 takes pictures of the pile after talking to
4 them but doesn't get a picture of them.
5 Doesn't try to get a license plate number. A
6 license plate number would have gone a long
7 way towards resolving this. That's a lapse
8 of basic investigative procedures.
9 Now why wouldn't they pursue that lead?
10 Why - you've got your guys out there going
11 through the burn pile. Why aren't they the
12 focus of the investigation?
13 It's interesting to note here, Your
14 Honor, that the agency has applied an
15 extremely high standard to Mr. Benson
16 throughout this process. Anytime that
17 anybody contradicted anything he said, you
18 know, they made note of it and that mattered
19 and they always blame the other person. And
20 it didn't really - you know, it wasn't an
21 honest mistake. It wasn't a simple
22 disagreement. It was proof positive that he
23 was wrong, that he wasn't telling the truth.
24 Well, you know, if we apply that same
25 standard to the Division, then the answer to

1 why they wouldn't pursue those guys going
2 through the burn pile is pretty clear. I
3 mean, if we assume the worst intent - just,
4 you know, taking its worst - well, the reason
5 they didn't go after those guys is, they
6 didn't have to.
7 They had the name of a company that
8 could foot the bill. They had a property
9 owner that could foot the bill. And if they
10 didn't - if they didn't happen to set the
11 fire or be responsible for it, well, they're
12 still on the hook.
13 Now that's a harsh judgment to make
14 against the Division and its staff and the
15 work they do. That's harsh and it's probably
16 unfair, but it's no more severe and it's no
17 more unfair than the judgment that the agency
18 made against Mr. Benson.
19 Now we think, as a factual matter, we've
20 established that assessing a penalty against
21 them is erroneous. They just - they didn't
22 do it. There was an issue here today where
23 it seems like now the basis isn't that they
24 caused it; it's that they allowed it just by
25 working out there. So let's - let me talk a

1 little bit about that. We've talked about
2 the factual issues. Now let's talk about it
3 as a matter of law.
4 As opposing counsel has pointed out, the
5 code is - the code says a person shall not
6 cause, allow, or permit - cause, allow, or
7 permit open burning. There has been - I
8 think we've established that they didn't
9 cause it, and the testimony was, well, they
10 allowed it. I don't think there is any issue
11 about permitting. There doesn't seem to be
12 any permission granted to burn it.
13 So the testimony was, you know, they
14 allowed it because they made the piles, and
15 that somehow - by making the piles, they
16 somehow allowed them to get burned. Well,
17 can Benson Construction be responsible for
18 the actions of unabided trespassing
19 third-party criminals, I guess, or at least
20 trespassing third parties?
21 If they are to be held responsible for
22 that, think about the implications of that.
23 Now they're responsible for, I guess,
24 whatever happens. Well, if we follow that,
25 that means what the Division is saying that

1 anybody works on a site - which I shall
2 presume would include the Department of
3 Transportation - anybody that works on a site
4 becomes the guarantor of the site. If
5 somebody - if somebody breaks in your house
6 and burns it down, well, that's an open
7 burning because, you know, it's your house.
8 There's an issue of they should have
9 secured the site. Well, how are they
10 supposed to secure a ten-acre area? How are
11 they supposed to secure - should they have
12 hired personnel to come out there and walk -
13 I mean, security guards?
14 Should they have - you know, it's
15 difficult to know exactly how an area this
16 size that's as remote as they freely
17 acknowledge - I mean it's at the back of the
18 landfill. It's out kind of in the middle of
19 the country on the edge of the woods. You
20 know, it's not really nearby anything.
21 Well, how are they supposed to secure
22 it? Put up a fence, should have been a
23 concrete wall around this fifty-acre lot or
24 around the ten-acre lot? It's hard to see
25 how they could secure it. You know, they

1 freely admit that there doesn't seem to be a
2 time limit on - they felt - the testimony
3 was, well, we feel like they made the piles
4 and they should have got rid of them.
5 Well, you know, when? I mean, what
6 basis is there for Benson Construction to
7 have a duty to have a time frame to get rid
8 of it? None has been pointed out to the
9 Court.
10 The second issue - the second legal
11 issue is, the definition of person under the
12 code is the landowner or person in possession
13 or control of the land. Well, there is a
14 real issue there. I mean, again, this is a
15 piece of property on the edge of the woods
16 behind the landfill - you know, it's on a
17 hundred - you know, it's on farmland that's
18 hundreds of acres big.
19 You know, they're out there working, and
20 then they're gone for two months. While
21 they're gone, another company comes out
22 there, not to imply that the other company,
23 you know, started the burn, but just there
24 were other people out there. And, you know,
25 when they get back to the site, there had

1 been a fire over a week ago. It had already
2 happened.
3 So, you know, again, kind of the basis
4 for saying that they're responsible, that
5 they allowed it. Well, you know, if you ever
6 work on a site and plan to come back, I mean,
7 are you---
8 (Tape changed.)
9 MR. MORTON: That's not really
10 sufficient under the code.
11 In closing, Your Honor, we believe, as a
12 factual matter and as a legal matter, that
13 we've met our burden of proof on the issues
14 and that the assessment should not be upheld.
15 THE COURT: Thank you. I think I told
16 the parties at the beginning that my decision
17 could come at any time. I obviously have
18 exhibits here that I've not had a chance to
19 read, so it would be a bit disingenuous and,
20 plus, I'm not going to do it. I'm not going
21 to render any kind of judgment without
22 reading all the evidence that's been
23 admitted. Consequently, my decision
24 obviously didn't happen during the hearing
25 and will not happen at this point in time.

1 Let me ask, though, do the parties
2 anticipate ordering a transcript or either
3 copies of a recording of today's hearing?
4 MS. WEESE: We anticipate ordering a
5 transcript, Your Honor.
6 THE COURT: Okay. What I'm about to
7 say - the time frame starts after receiving
8 the transcript. So I don't know if you plan
9 to order a transcript or not, Mr. Morton, but
10 you can let me know later on by e-mail to my
11 assistant. But if the Department is the only
12 party ordering a transcript, then it would be
13 upon receipt of the transcript.
14 If both parties order a transcript, it
15 will be the last person getting the
16 transcript which will start a thirty-day
17 period in which time I would seek from
18 you-all proposals as to findings of fact,
19 conclusions, and any memorandum of law that
20 you wish to attach or make part of that.
21 In other words, I am closing the record
22 for purposes of further testimony and further
23 exhibits now, but I am leaving the official
24 record open for submission of those
25 proposals. I would ask that you do that

1 within a thirty-day time period. So after
2 the last person receives a transcript -
3 again, if there is only one person receiving
4 the transcript, it will be at that time
5 period - will trigger a thirty-day time
6 period for me to receive any proposals along
7 with memorandum of law to support that.
8 When I receive those from both of you,
9 at that point in time, I will officially
10 close the record permanently. By our
11 regulations, I have forty-five days to issue
12 a final decision in that regard or a decision
13 in that regard, and it's my general practice
14 to try to do that in a quicker time period,
15 but that's how we're looking at the time
16 period.
17 Obviously, I know both of you are busy
18 practicing attorneys, and if you need any
19 extensions of time, simply let me know. I
20 certainly know Ms. Weese has done this, and
21 I'm not sure, Mr. Morton - this is the first
22 time I've met you, but on our Web site are
23 plenty of those kinds of proposals and stuff
24 if you need kind of a guide to go by or to
25 look at.

1 Also, my assistant Anita Wright is more
2 than happy to help anyone with any questions.
3 Her e-mail is Anita.Wright, W-r-i-g-h-t,
4 @OAH.NC.gov. And then you can reach her
5 through the main line at the Office of
6 Administrative Hearings as well.
7 Thank you both. You both are extremely
8 professional attorneys. You both have
9 represented your clients very well, and it's
10 a pleasure for me to hear these types of
11 hearings when I have this kind of
12 professionalism, and I do appreciate that.
13 Folks will often ask me, you know, what
14 are your favorite kind of cases to hear, and
15 my favorite kind of case is to hear any case
16 where there is - I don't have to sit and
17 manage discipline in the courtroom, and
18 unfortunately, that's becoming more and more
19 frequent.
20 But that certainly has not been the
21 case, and I express my gratitude to you both,
22 and certainly your clients should be well
23 pleased with the excellent representation,
24 too.
25 Anything further or any questions that

1 you-all have for me?
2 MR. MORTON: Your Honor, I'd just like
3 to say along those lines that it has been an
4 absolute pleasure to work with Ms. Weese.
5 Her professionalism and courtesy has really
6 been greatly appreciated. Too often nowadays
7 lawyers think that hostility is diligence,
8 and I really appreciate her willingness to
9 work with us on things.
10 THE COURT: Thank you. Anything
11 further?
12 MS. WEESE: On the record, I'd like to
13 thank you for those kind words and say that
14 the feeling is mutual. It has been a
15 pleasure and I - unfortunately, it is
16 becoming a bit rare these days, so---
17 THE COURT: Okay. Good. Thank you.
18 And what I've said applies to you in the
19 audience and witnesses as well. It's just
20 more common that I - I can do it if I have
21 to. I can discipline a courtroom if I need
22 to, but it's nice not to.
23 And I appreciate the audience not
24 rolling their eyes or grunting or groaning
25 and certainly witnesses testifying the best

1 they can. That simply makes for a fair and
2 very balanced sort of hearing, I think, and
3 one that we can all concentrate on the facts
4 themselves.
5 Anything further? With that, we're
6 adjourned. Thanks very much.
7 (Thereupon, the proceeding was
8 adjourned.)
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1 **CERTIFICATE**

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3 I, REBECCA P. SCOTT, State-Certified
4 Verbatim Reporter, do hereby certify that the
5 foregoing pages numbered one (1) through two hundred
6 forty-two (242), inclusive, constitute a transcript of
7 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 31st day of March, 2010.
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19 _____
20 REBECCA P. SCOTT
21 STATE-CERTIFIED VERBATIM REPORTER
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