

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
GREENWOOD DISTRICT

PERRY HENSON and
MARTHA L. HENSON

PLAINTIFFS

v.

CASE NO. Civ-77-51

INDUSTRIAL WASTE CONTROL, INC.
and GRADY SHIPLEY, Individually

DEFENDANTS

ANSWERS OF DEFENDANTS TO INTERROGATORIES
AND RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

Now come the Defendants, Industrial Waste Control, Inc. and Grady Shipley, individually, by and through their attorney, Wayne Harris, and the undersigned, Grady Shipley, individually and as president of Industrial Waste Control, Inc. after having first been duly sworn and under oath answers Plaintiffs' Interrogatories and responds to Plaintiffs' Request for Production of Documents as follows:

INTERROGATORY NO. 1: Is the claim which is the subject of this lawsuit covered by a policy of liability or casualty insurance?

ANSWER NO. 1: Yes.

INTERROGATORY NO. 2: If the answer to the last interrogatory is in the affirmative, please produce photocopies of any such policies, including the application therefore and the schedule of limits under the coverage.

ANSWER NO. 2: A copy of Fireman's Fund Insurance Companies' Policy No. LC-264 72 54 which was in effect during the period between January 7, 1977 and January 7, 1978, together with application and schedule of limits is attached hereto.

INTERROGATORY NO. 3: Please list and attach photocopies of those documents the Defendants intend to introduce into evidence in the trial of this cause.

ANSWER NO. 3: The Defendants cannot determine the documents which they will introduce into evidence during the trial of this cause until the Plaintiffs have concluded with their evidence.

*copy to Carol & client
5-21-81 ✓ [initials]*

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However, the Defendants anticipate that the following documents will be among those introduced into evidence on behalf of the Defendants during the trial of this cause:

- (a) Escomlab test results consisting of 13 pages, copies of which are attached hereto;
- (b) Undated report of Dan M. Lawson concerning results of chemical analysis of Whirlpool sludge, a copy of which is attached hereto;
- (c) September 15, 1978 report of R. L. Large of A & L Agricultural Laboratories, Inc. pertaining to 7 forage samples for analysis, a copy of which is attached hereto;
- (d) September 7, 1978, soil analysis report of R. L. Large, A & L Agricultural Laboratories, Inc., a copy of which is attached hereto;
- (e) July 7, 1978, soil diagnoses and plant analysis report of Dr. Stanley L. Chapman, a copy of which is attached hereto;
- (f) March 3, 1978, report of Lancaster Laboratories, Inc. concerning analysis of molybdenum requested by L. H. Hileman, a copy attached hereto;
- (g) February 21, 1978 soil samples' analysis of L. H. Hileman, consisting of two pages, copies of which are attached hereto;
- (h) October 17, 1979, report of L. H. Hileman consisting of 9 pages concerning chemical analysis data obtained from the soil, plant and water samples taken from Plaintiffs' farm on June 16, 1979, copies of which are attached hereto;

000359

- (i) Official weather bureau daily precipitation record for March, 1977, consisting of two pages, copies of which are attached hereto;
- (j) A copy of Department of Pollution Control and Ecology permit issued to James H. Willis on May 24, 1970, Permit No. 1629-S, a copy of which is attached hereto;
- (k) Copy of November 23, 1971, letter written by Department of Pollution Control and Ecology Sanitary Engineer to James H. Willis, a copy of which is attached hereto;
- (l) One page monetary values of fish;
- (m) Copies of Department of Pollution Control and Ecology reports attached to Defendants' answers to interrogatories filed in connection with the above styled matter on August 26, 1977;
- (n) Plans, specifications and drawings for closing of landfill prepared by Rogers & Associates, Inc. The Plaintiffs may obtain a copy of said plans by contacting Defendants' attorney and advancing the necessary cost;
- (o) Photographs yet to be taken of Plaintiffs' land. Plaintiffs and their attorneys will be permitted to review these photographs within a reasonable period of time before trial;
- (p) Defendants reserve the right to introduce any documents which may be in the possession of Plaintiffs and their attorneys and which have been revealed in responses to Request for Production and Answers to Interrogatories filed on behalf of the Plaintiffs in connection with the above styled cause.

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INTERROGATORY NO. 4: In the deposition of the Defendant, Grady Shipley, he stated that he attended six seminars pertaining to waste and pollution control (Page No. 4 and 5). Please list the date, address of site and name and address of sponsor and the subjects covered in each seminar attended by Grady Shipley.

ANSWER NO. 4: Do not recall.

INTERROGATORY NO. 5: Please produce photocopies of any documents in the possession or control of Grady Dean Shipley or Industrial Waste Control, Inc. pertaining to the above described seminars.

ANSWER NO. 5: None.

INTERROGATORY NO. 6: Please produce photocopies of the lab analysis, data, reports, correspondence and recommendations pertaining to the closing down, neutralizing, pumping out and filling in or the liquid waste disposal or evaporation ponds which overflowed in March, 1977.

ANSWER NO. 6: This information is possessed by Rogers & Associates, Fort Smith, Arkansas.

INTERROGATORY NO. 7: Please list the name, address and substance of the testimony of each witness the Defendant intends to call in this cause.

ANSWER NO. 7: Until the Plaintiffs conclude their case in chief in connection with this cause, these Defendants cannot ascertain the individuals whose testimony will be required for their defense. However, it is anticipated that the following individuals may appear and testify on behalf of the Defendants and these individuals have already given discovery depositions in connection with the above styled cause:

- (1) L. H. Hileman;
- (2) James D. Brown, Sr.;
- (3) Dr. Stanley L. Chapman;
- (4) Grady Shipley;
- (5) Nick Cox;
- (6) Wayne Elliott;

000361

(7) Jim Ed Newman.

In addition, the following individuals who either are now or have been employees of the State of Arkansas Department of Pollution Control and Ecology may be called upon to testify concerning their knowledge from time to time since 1970 of the operation of the landfill adjacent to Plaintiffs' property by James H. Willis and these Defendants; their inspections of the landfill site from time to time, and requirements imposed upon these Defendants:

- (1) Jim Shell;
- (2) Carl Reams;
- (3) Warren Coleman Jennings;
- (4) A. L. Sparks.

Further, the following individuals may also be called upon to testify on behalf of the Defendants during the trial of this cause:

- (1) L. B. Daniels, Professor, Animal Sciences, University of Arkansas, Fayetteville, Arkansas. Mr. Daniels is expected to testify that he has reviewed the soil, sludge and forage analysis test results completed by Escomlab, L. H. Tileman, A & L Agricultural Laboratories, Inc., Lancaster Laboratories, Inc., and Dan M. Lawson, and finds no reason why Plaintiffs' cattle could not have eaten the forage present upon the land involved in this litigation at any time since the original test samples were obtained.
- (2) John M. Libby, 104 North 13th Street, Suite 101, Fort Smith, Arkansas. Mr. Libby will be offered as an expert real estate appraiser to testify that the fair market value of Plaintiffs' 40 acres involved in this litigation as of March 29, 1977, was \$48,000 and the highest and best

use for said property is for a small farm used for raising livestock;

- (3) Benny Hardgraves, Clarksville, Arkansas. Mr. Hardgraves will testify that in May, 1977, he purchased at the Johnson-Hale Sale Barn 11 pair of cows and calves brought to the auction by Perry Henson and paid the fair market value for said cows and calves existing at that time;
- (4) Don Summers, Danville, Arkansas, will testify that in May, 1977, he purchased one bull which had been brought to the Johnson-Hale auction by Plaintiffs and paid the fair market value for same;
- (5) Lila McMan, Office Secretary, Johnson-Hale Sale Barn, Fort Smith, Arkansas, will testify concerning the transactions in May, 1977, whereby the Plaintiff, Perry Henson, sold 13 pair of cows and calves to Benny Hardgraves, one bull to Don Summers, one cow to Raymond Griffith and one cow to an individual with the last name of Johnston;
- (6) James H. Willis, will appear and testify concerning his operation of the landfill site adjacent to Plaintiffs' property prior to the site being purchased by these Defendants;
- (7) John N. Rogers, Jr., Rogers & Associates, 5026 Old Greenwood Road, Fort Smith, Arkansas, will testify concerning the original site preparation for Defendants' landfill operation adjacent to Plaintiffs' property and the closing of same;
- (8) Kevin Hatfield, Chief Chemist, Escomlab, 1810 North College Avenue, Fayetteville, Arkansas 72701.

200363

will testify concerning his analysis of water and soil samples taken on Plaintiffs' property on November 27, 1977;

- (9) Bob Lewis, 4421 Royal Oak, Fort Smith, Arkansas, will testify concerning the chemicals used to close the landfill and the test analysis results relied upon to determine the proper chemicals to be used.
- (10) Defendants further reserve the right to call as a witness any other individual whose name has been previously listed on behalf of either party in answers to written interrogatories filed in connection with the above styled cause.

REQUEST NO. 1: Please produce copies of all reports by L. H. Hileman from the tests he conducted in 1979 and later.

RESPONSE NO. 1: See reports by L. H. Hileman which have been attached hereto in answer to Interrogatory No. 3 herein.

DATED this 26th day of August, 1981.

INDUSTRIAL WASTE CONTROL INC.
and GRADY SHIPLEY. Individually

WAYNE HARRIS of
WARNER AND SMITH
P. O. Box 1626
Fort Smith, Arkansas 72902

By Wayne Harris
Attorneys for Defendants

VERIFICATION

STATE OF ARKANSAS)
) ss.
COUNTY OF SEBASTIAN)

Comes now Grady Shipley, President of Industrial Waste Control, Inc., Defendant in the foregoing action and having first been duly sworn states on oath that he has read the statements contained in the above and foregoing Answers of Defendants to Interrogatories and Responses to Request for Production of Documents, and that the facts and matters therein contained are true and correct to the

best of his knowledge and belief.

Grady Shipley

Subscribed and sworn to before me this _____ day of August, 1981.

Notary Public

My Commission Expires:

CERTIFICATE OF SERVICE

I, Wayne Harris, attorney of record for the Defendants, do hereby certify that I have on this 26th day of August, 1981, served a copy of the above and foregoing Answers of Defendants to Interrogatories and Responses to Request for Production of Documents upon the Plaintiffs by mailing a copy of same to Mr. Robert R. Cloor, Attorney at Law, Court Plaza Building, Fort Smith, Arkansas 72901.

Wayne Harris
Wayne Harris

000365