

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
CASEYVILLE SPORT CHOICE,)
LLC, an Illinois Limited)
Liability Company,)
Complainant,) No. PCB 2008-030
vs.)
ERMA I. SEIBER,)
Administratrix of the Estate)
of James A. Seiber,)
Deceased, and ERMA I.)
SEIBER, in Her Individual)
Capacity, and FAIRMOUNT)
PARK, INC., a Delaware)
Corporation,)
Respondents.)

Discovery Deposition of
GLEN HIERLMEIER
Taken on behalf of Respondents
May 14, 2009

Reporter: Cindy McKinney, CSR/CCR
Missouri CCR No. 420 * Illinois CSR No. 084-003501

Cynthia E. McKinney, CSR/CCR
7160 Reinneck Road
Belleville, Illinois 62221
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SEIBER, in Her Individual)	
Capacity, and FAIRMOUNT)	
PARK, INC., a Delaware)	
Corporation,)	
)	
Respondents.)	

DISCOVERY DEPOSITION OF GLEN HIERLMEIER,
produced, sworn, and examined on the 14th day of May
2009, between the hours of eight o'clock in the
forenoon and six o'clock in the afternoon of that day
at the law offices of Belsheim & Bruckert, L.L.C,
1002 E. Wesley Drive, Suite 100, O'Fallon, IL 62269
before Cynthia E. McKinney, CSR/CCR and Notary
Public, in a certain cause now pending before the
Illinois Pollution Control Board in the Matter of
CASEYVILLE SPORT CHOICE, LLC, an Illinois Limited
Liability Company, Complainant, vs. ERMA I. SEIBER,
Administratrix of the Estate of James A. Seiber,

1 Deceased, and ERMA I. SEIBER, in Her Individual
2 Capacity, and FAIRMOUNT PARK, INC., a Delaware
3 Corporation, Respondents; taken on behalf of the
4 Respondents.

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6 **APPEARANCES**

7 Belsheim & Bruckert, L.L.C.
8 By: John P. Long, Esq.
9 1002 E. Wesley Drive, Suite 100
10 O'Fallon, IL 62269

11 For the Complainant;

12 The Livingston Law Firm
13 By: Penni S. Livingston, Esq.
14 5701 Perrin Road
15 Fairview Heights, IL 62208

16 For the Respondent
17 Fairmount Park, Inc.;

18 Sprague and Urban
19 By: Donald Urban, Esq.
20 26 E. Washington Street
21 Belleville, IL 62220

22 For the Respondent
23 Erma I. Seiber.

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GLEN HIERLMEIER,

of lawful age, being produced, sworn, and examined on
the part of the Respondents, deposes and says as
follows:

EXAMINATION

QUESTIONS BY MS. LIVINGSTON:

Q. Will you state your name and spell it for
the court reporter?

A. It's Glen T. Hierlmeier; G-L-E-N, T as the
Thomas, Hierlmeier, H-I-E-R-L-M-E-I-E-R.

Q. Thank you. And where do you live?

A. I live in Bakersfield, California.

Q. And could you tell us about your
educational background?

A. I graduated from the United States Air
Force Academy; graduated with an MBA with an emphasis
in finance from the University of Wisconsin, in
Madison, Wisconsin; and graduate of the Air Force
Institute of Technology and Advanced Economic
Analysis. And I attended the Rutgers University
School of Banking, graduate school of banking.

Q. Cool. Can you give me some years on these?

A. I'm sorry?

Q. Could you give me some years on these?

A. Oh. Graduated from the Air Force Academy

1 in 1967, from the University of Wisconsin in 1972,
2 from the Air Force Institute of Technology in 1969 or
3 maybe '70, 1970, and from Rutgers University in --
4 I'm not degreed. That's not a degreed program. It's
5 a graduate of banking program, in 1979.

6 Q. Very good. 30 years. I only know it's my
7 graduation high school year. I have a 30-year
8 reunion next month.

9 A. I should say then Central High School in
10 Madison, Wisconsin, 1963.

11 Q. I was alive. Very good. And in your
12 career what was your first job?

13 A. I was commissioned a second lieutenant in
14 the United States Air Force. I was a procurement
15 officer on the manned orbiting laboratory program.

16 Q. And what was that program?

17 A. It was our space program. It was -- the
18 Air Force was designated as our -- to conduct our
19 space program before it was shifted to NASA.

20 Q. Neat.

21 A. So it was the early stages of the manned
22 space craft program.

23 Q. Very cool. Did you enjoy it?

24 A. Well, yeah. I enjoyed it greatly.

25 Q. Good. And then what was your next job?

1 A. I was the financial manager for the engine
2 procurement for the F-15 aircraft program.

3 Q. I think they're going to survive.

4 A. The F-15?

5 Q. Yeah. Isn't that the one surviving?

6 A. Oh, yeah. I'm very proud of it, you know.

7 I was in the design and development, early
8 development stage, so...

9 Q. Very cool.

10 A. It has done its job and continues to do its
11 job.

12 Q. A friend of mine works on that.

13 A. Oh, is that right?

14 Q. Yeah, very neat. And what was your next
15 job?

16 A. I left the Air Force and went to work for
17 the First Wisconsin National Bank of Milwaukee,
18 Wisconsin, and I was -- I went into their executive
19 management banking program.

20 Q. And about what years were those?

21 A. That was 1974 through '79, and then became
22 a real estate executive with the bank.

23 Q. Very good. Were you concentrating on any
24 particular type of property?

25 A. The bank sponsored an REIT, Real Estate

1 Investment Trust, and in the 1970's there was a lot
2 of difficulty. You know, there was a recession that
3 people said it was brought on by the level of REIT
4 investments, and so I became a workout specialist for
5 the REIT on behalf of the bank. So it was, you know,
6 major real estate developments all across the
7 country.

8 Q. Cool. And how long did you do that?

9 A. Did that until 1979, as I stated. Left the
10 bank and went to work for Mortgage Guaranty Insurance
11 Corporation, MGIC, known as MGIC, their residential
12 mortgage insurer, and became the president and CEO of
13 the real estate subsidiaries.

14 Q. And after that?

15 A. After that I became the president and CEO
16 of Criterion Corporation, C-R-I-T-E-R-I-O-N, in 1984.
17 And that was a real estate development company
18 located in Tampa, Florida.

19 Q. And when you left there?

20 A. In 1990 I became president and CEO of
21 Castle and Cook Development Corporation and multiple
22 subsidiaries that were affiliated with the Dole Food
23 Company, D-O-L-E.

24 Q. They just won a landmark case.

25 A. Dole?

1 Q. Yes. In front of the Supreme Court.

2 A. Excuse me?

3 Q. In front of the Supreme Court recently.

4 A. Oh, is that right? What was the subject

5 matter?

6 Q. People claiming to be injured by

7 pesticides. Okay. And so you were there until 1990,

8 or in 1990?

9 A. No, I started with them in 1990.

10 Q. Okay. And where was the next place you

11 went?

12 A. To Watson Development Corporation.

13 Q. And what year was that?

14 A. 1993.

15 Q. And what did you do for them?

16 A. The president of the real estate

17 development company.

18 Q. And where were they located?

19 A. In Bakersfield, California.

20 Q. And you've stayed there since?

21 A. No.

22 Q. No?

23 A. No.

24 Q. You've come back there?

25 A. I went to work for Moreland,

1 M-O-R-E-L-A-N-D, Development Corporation in 1997 as
2 president -- excuse me, as a vice president.

3 Q. And where are they located?

4 A. In Bakersfield, California.

5 Q. Okay. And when did you leave there?

6 A. 2002, and became president of Sport Choice,
7 LLC, and then subsequently in 2003 became president
8 and CEO of Caseyville Sport Choice, LLC; so I guess
9 that brings us home.

10 Q. Okay. And Caseyville Sport Choice is still
11 out of Bakersfield, California?

12 A. No. It's an Illinois corporation.

13 Q. Okay.

14 A. This address here is the official address.

15 Q. Okay. You're able to do your work from
16 Bakersfield?

17 A. Yes.

18 Q. Okay. And from 2003 until now, have you
19 held any other positions with any other companies?

20 A. Yes. I'm also the president and CEO of
21 Praxis, P-R-A-X-I-S, Waterside, LLC, and Praxis
22 Development, LLC, and I'm also the -- well, as the
23 general manager of Praxis Development and the CEO,
24 they are the general manager of Islands of Waterside,
25 LLC.

1 Q. And what does that corporation do?

2 A. They develop real estate property in
3 Marissa, Illinois, M-A-R-I-S-S-A.

4 Q. Have you been there?

5 A. Yes.

6 Q. And you think it's a desirable place to put
7 a large number of homes?

8 A. It will be when I'm finished.

9 Q. Okay. Any other corporations that you are
10 working for from 2003 until now?

11 A. Well, you know, at first Wisconsin and at
12 MGIC, and Moreland and at Watson there were other
13 affiliated subsidiaries that I was also an officer
14 in, you know, maybe a total of 10 to 20, but what
15 I've given you is the lead company that I
16 represented.

17 Q. Okay. And as you sit here today, you're
18 president of the Sport Choice, LLC, and president and
19 CEO Caseyville Sport Choice?

20 A. Not Sport Choice, LLC. I resigned from
21 there. So as of today I'm president and CEO of
22 Caseyville Sport Choice, LLC; Praxis Waterside, LLC;
23 Praxis Development, LLC; and in my capacity with
24 Praxis Development which is the general manager of
25 Islands of Waterside, LLC, I operate on behalf of the

1 general manager.

2 Q. All right. Is Praxis Waterside, LLC, and
3 Caseyville Sport Choice, LLC, related in any way?

4 A. No.

5 Q. Do they have officers in common other than
6 you?

7 A. No.

8 Q. Would their shareholders be in common?

9 A. Some.

10 Q. Would it be fair to say that these are
11 closely held corporations?

12 A. Yes.

13 Q. And in addition to being president and CEO,
14 you're also a shareholder?

15 A. Yes.

16 Q. And what percentage would you say you own
17 of shares?

18 A. In Praxis Waterside, approximately 20
19 percent; in Praxis Development, 40 percent; and the
20 interest in Islands of Waterside is through Praxis
21 Waterside, so Praxis Waterside owns a 50 percent
22 interest in Islands of Waterside. So by virtue of my
23 ownership in Praxis Waterside, I have approximately a
24 20 percent interest in the 50 percent interest that
25 Praxis Waterside has in Islands of Waterside.

1 Q. Gotcha. And the other shareholders of
2 Praxis Waterside?

3 A. Are John Nicholson; Adam Hill; Don Ferris
4 F-E-R-R-I-S; Nordsee Partners, N-O-R-D-S-E-E
5 Partners; Jamieson, J-A-M-I-E-S-O-N, Trust. And
6 these are basically abbreviated, you know, versions
7 of these trust names. Nicholson Family Partnership;
8 and the Jeffries, J-E-F-F-R-I-E-S, Family Trust; and
9 Robert Doozam, D-O-O-Z-A-M.

10 Q. And the shareholders of Caseyville Sport
11 Choice?

12 A. Are Caseyville Management, LLC, which,
13 there again, I didn't mention them before because
14 they're one of those affiliated or related entities.
15 But Caseyville Management is owned by my wife and
16 myself. But Caseyville Management, LLC, is one of
17 the members; and the second member is Nicholson
18 Property Investments; and the third is Michael A.
19 Egan, LLC.

20 Q. Okay. And is Sport Choice related to
21 Caseyville Sport Choice?

22 A. No.

23 Q. Totally different company?

24 A. Yes.

25 Q. And they didn't do a development in

1 Illinois?

2 A. No.

3 Q. Okay. And other than developments in
4 Illinois right now, are you working on any other
5 states' developments?

6 A. No.

7 Q. Developments in any other state?

8 A. No.

9 Q. And how long have you known John Nicholson?

10 A. Since 2003.

11 Q. And how did you get to know him?

12 A. Through his investments in Caseyville Sport
13 Choice.

14 Q. You get along with him?

15 A. Yes.

16 Q. Okay. And Mr. Ferris, what role does he
17 play in Caseyville Sport Choice?

18 A. He operates as an independent agent in the
19 name of Ferris, F-E-R-R-I-S, Engineering, LLC.

20 (Mr. Urban entered the deposition.)

21 Q. (By Ms. Livingston) Do you know where he
22 lives?

23 A. In Fairview Heights, Illinois.

24 Q. Do you know if this is where he's from?

25 A. Yes.

1 Q. And can you tell me Mr. Egan's role in
2 Caseyville Sport Choice?

3 A. Well, he and his wife are the owners of
4 Michael Egan, LLC, and that is one of the three
5 general partners.

6 Q. Okay. Does he play any role in performing
7 work?

8 A. Yeah. He operates as one of the three
9 general partners, so we consult on major decisions.

10 Q. Okay. Would you say that your role in
11 Praxis is the same essentially as your role from
12 Caseyville Sport Choice, or do your roles differ?

13 A. Well, there's some differences that are
14 important.

15 Q. And what would they be?

16 A. I have more sole or unilateral
17 responsibility and authority in Praxis than I do in
18 Caseyville Sport Choice.

19 Q. And when did Caseyville Sport Choice get
20 set up?

21 A. In April of 2003.

22 Q. When was the first time that you
23 investigated the property where Caseyville Sport
24 Choice has its development in Caseyville?

25 A. In August of 2003.

1 Q. And what did that investigation include?

2 A. Can you be more specific or narrow the
3 question --

4 Q. Well, I mean did you come here --

5 A. -- or can I talk for a day on that.

6 Q. Oh, all right. Well, what was the first
7 action that you took to investigate the property or
8 to even look at it as something that you wanted to
9 do?

10 A. I came here to Illinois and I did a site
11 visit.

12 Q. Who was with you?

13 A. Various representatives of the Burns and
14 McDonnell Engineering design office, Don Ferris, Mark
15 Everett, Mark Harrison; Everett is E-V-E-R-E-T-T.

16 Q. And the second Mark's last name?

17 A. Harrison.

18 Q. Okay. Sorry, I was writing that one up.

19 A. And there were several others whose names I
20 don't recall right off the top of my head.

21 Q. Okay. How long have you had a relationship
22 with Burns and McDonnell?

23 A. Since then, August of 2003.

24 Q. Did they indicate to you that they had done
25 previous work on this location?

1 A. Yes.

2 Q. And what did they tell you about the
3 previous work they had done at this location?

4 A. Well, they told me that they had done work
5 for an organization called CELF...C-E-L-F, capital
6 letters. They provided me with some due diligence
7 type of information and, you know, maps of the
8 property, the preliminary plans that had been drawn,
9 previous TIF plans...capitals T-I-F...plans that had
10 been developed for the property; a very large volume
11 of information.

12 Q. I want to make sure I'm on the same page as
13 you. When you say due diligence, you're including
14 All Appropriate Inquiry?

15 A. Yes.

16 Q. And would you say that it's fair to say
17 that you have extensive experience in real estate
18 development?

19 A. Yes.

20 Q. And that would include commercial and
21 residential?

22 A. Yes.

23 Q. And having been a banker before as well,
24 would you be familiar with environmental Phase I
25 reports?

1 A. Yes.

2 Q. And also Phase II reports?

3 A. Yes.

4 Q. Okay. And on the properties that you
5 develop, what percentage would you say you perform
6 some kind of environmental report on or have someone
7 else perform an environmental investigation on?

8 A. The majority.

9 Q. Okay. After you did a site investigation
10 and reviewed all of the material that Burns and
11 McDonnell gave you, then what did you do to make this
12 happen?

13 A. Well, there again, if we could narrow that.
14 Do you want me to describe the entire development
15 process or --

16 Q. Well, I guess I'm interested in knowing
17 what you know.

18 A. Yeah. Well, with all that education I
19 guess I know a few things, so I --

20 Q. I guess you do.

21 A. -- I'm not trying to be funny. I'm just
22 saying, you know, that's a pretty broad question. So
23 I don't know what the parameters of the question are.

24 Q. I'll try to narrow it because I'm not a
25 developer and I've never developed anything. Did you

1 begin negotiations with the city of Caseyville or the
2 village of Caseyville?

3 A. Well, in the beginning I would not
4 characterize them as negotiation, but, yes, that was
5 part of the due diligence, was to meet with various
6 representatives of the city, the mayor, individual
7 board members, planning director, public works
8 director.

9 Q. Rick Casey?

10 A. Yes.

11 Q. When you first went to the site with Burns
12 and McDonnell and Don Ferris and others, was anyone
13 from the city there on that first site visit?

14 A. No.

15 Q. And about when in the process would you say
16 you started meeting with city officials?

17 A. I would say, you know, probably by
18 September of 2003.

19 Q. In your conversations with city officials,
20 did anyone ever give you information about the
21 history of this property?

22 A. Well, no. We got -- we did get some
23 background information from the previous failed
24 developer, CELF -- again, capital C-E-L-F -- so, yes,
25 to that extent.

1 Q. Who did you have conversations with at
2 CELF?

3 A. I never had any conversations with CELF.

4 Q. How did you get information from them?

5 A. From CELF?

6 Q. Yes.

7 A. I never got any information from CELF.

8 Q. Okay. When you say you got background from
9 the failed developer CELF, this was documentation
10 someone gave you?

11 A. No. My understanding of your question is
12 what did I talk to the village about, the history of
13 the property.

14 Q. Oh, okay. And they gave you information
15 about CELF?

16 A. Yes.

17 Q. Okay. Did anyone give you any
18 documentation of things that CELF had done?

19 A. Yes.

20 Q. And what kind of documentation did you get?

21 A. The TIF plan that CELF had developed, some
22 cost estimates that had been prepared by CELF or for
23 CELF, some preliminary plans that had been developed
24 on behalf of CELF. I'm sure there were some other
25 things as well, but I would say that goes with the

1 major items.

2 Q. And when did you purchase the property?

3 A. In December of 2004.

4 Q. And did you have any conversations with the
5 owner of the property prior to the purchase?

6 A. I didn't personally have any conversations.

7 Q. Who would have had conversations with the
8 prior owner?

9 A. Mike Egan, E-G-A-N, and Heather Emma,
10 E-M-M-A.

11 Q. And who is Heather Emma?

12 A. Heather Emma is an individual who was
13 engaged as an independent agent to assist Mike Egan
14 in discussions and negotiations with the land owners.

15 Q. And where is she out of?

16 A. I don't know at this point where she's
17 located, but at that time she was located in Arizona.

18 Q. And what was the name of her organization?

19 A. It was just her individually.

20 Q. Okay. How did you find out about her?

21 A. Through Mike Egan.

22 Q. Okay. She's someone that he worked with
23 before and trusted?

24 A. I know he trusted her. I don't know if he
25 had worked with her before or not.

1 Q. Okay. Well, I'll ask him. All right. In
2 your conversations with the mayor, did the mayor ever
3 indicate anything about this property to you?

4 A. Well, again, you know, that's a very broad
5 question, so I mean it's -- you know, we had over a
6 period of time probably 20 meetings with the mayor
7 regarding property, so, you know...

8 Q. And it was your understanding that this
9 property had been found to be eligible for TIF?

10 A. It was my understanding that there had been
11 a previous TIF approved by the village for the CELF
12 Development Group.

13 Q. And then you worked with the mayor to get a
14 new TIF agreement?

15 A. Yes.

16 Q. And you did, in fact, get a new TIF
17 agreement?

18 A. Yes.

19 Q. And under that TIF agreement, how much
20 money would be returned to the developer?

21 A. Let me clarify because there's no such
22 thing as a TIF agreement as such. It's a
23 redevelopment agreement.

24 Q. All right.

25 A. And then there's a TIF ordinance that

1 approves a TIF plan, so we successfully got an
2 approved TIF plan that was approved as an ordinance,
3 and we have an approved redevelopment agreement.

4 Q. Okay. And under that redevelopment
5 agreement, how does it function? The developer is
6 returned so many tax dollars?

7 A. That's correct.

8 Q. Okay.

9 A. The developer is entitled to reimbursement
10 of eligible development costs with eligibility
11 determined by state ordinance, state law, and we came
12 to agreement with the village, Caseyville Sport
13 Choice came to an agreement with the village for the
14 sharing of future real estate tax revenues and sales
15 tax revenues generated from the property.

16 Q. Okay. And what's the total amount that it
17 could max out at?

18 A. Fifty-eight million dollars, plus
19 escalation and interest.

20 Q. And over what period of time is that?

21 A. It was originally -- best of my
22 recollection it was originally a 17-year period of
23 time.

24 Q. Okay. What is your understanding about
25 what qualifies to be a TIF in Illinois?

1 A. What qualifies to be a TIF? Blighted.
2 Property that's found to be blighted.

3 Q. Would you agree that blight has to be
4 uniformly distributed throughout the land?

5 A. No.

6 Q. You wouldn't agree with me there?

7 A. No, of course not.

8 Q. Well, I could show you the law.

9 MR. LONG: I could show you the law too,
10 Penni. That's not the law.

11 Q. (By Ms. Livingston) Okay. What is your
12 understanding about how the blight must be or what
13 qualifies for blight?

14 A. Well, as you obviously know, there are a
15 lot of things. So, you know, erosion problems;
16 blighted properties; run-down properties; trash on
17 the property; zoning -- failure to provide adequate
18 zoning ordinances; you know, a variety of other
19 physical conditions that have created the lack of
20 development on the property. You know, you want to
21 fill in the blanks?

22 Q. Right. You would agree that "but for the
23 TIF the land would not develop" is the standard?

24 A. I would agree both that that was the
25 historical fact and, you know, as a developer would

1 have taken me about 20 minutes to make that
2 determination if it weren't for the TIF.

3 Q. Okay. So if it weren't for the TIF, you
4 would not be developing that area?

5 A. Absolutely not.

6 Q. Okay. And the reason for that is you
7 couldn't make it profitable?

8 A. Correct.

9 Q. Okay. And the blight on this particular
10 land, what would you say it consisted of?

11 A. Well, pretty much all of the above, you
12 know. They had inadequate zoning ordinances, you
13 know, over a long period of time; no development plan
14 on the property. So you had, you know, awkward or
15 substandard development of the property. You had,
16 you know, buildings that were in extreme disrepair;
17 you know, an old, large cabbage factory that was
18 run-down and dilapidated, something I didn't mention
19 on the list of "fill in the blanks". It had possible
20 environmental hazards that were located on a portion
21 of the property. Around the old cabbage plant on the
22 property known as the Payne, P-A-Y-N-E, property, you
23 had, you know, erosion issues, you know, due to the
24 fact that it's a very hilly property basically of six
25 large ridges on the property, and some of them with

1 heavy rains you get erosion and flooding. You have a
2 history of flooding on the property which is, again,
3 another cause of the blight. We can go back and fill
4 in the blank on that. We had, you know, an old kind
5 of a foundry building, Midwest Tire, something like
6 that, that had been located on the property and had
7 been shut down for some years. For what it's worth
8 you had a well-known whore house for want of a better
9 term. I don't know if that's a blight condition, but
10 at least it was there and it wasn't very pretty.

11 Q. I didn't know that.

12 A. No comment about the inhabitants. And you
13 had old vehicles that had been abandoned on the
14 property, old vehicle tires, tanks of a number of
15 varieties; you know, I want to say for some reason
16 the Cannon River. I'm pulling that out from another
17 development from years ago. The name of the river on
18 the property --

19 MR. LONG: Cahokia Creek's running by it.
20 Is that what you're thinking about?

21 A. No.

22 Q. (By Ms. Livingston) Little Canteen?

23 A. Canteen. I used to canoe the Cannon River
24 in Minnesota. So Canteen Creek, I probably called
25 the Canteen Creek the Cannon a hundred times over the

1 years.

2 Q. (By Ms. Livingston) That's all right.

3 A. And so you had some bridges that were in
4 danger because of the flooding. You had a gun club
5 on the property that, you know, was another, you
6 know, form of blight because they had, you know, not
7 properly managed that facility for years, so it was
8 an old, run-down facility. And I'm sure I missed
9 some things.

10 Q. Yeah.

11 A. But I think that's a pretty good start.

12 Q. I think you made your point. Okay. Did
13 you pop by there today?

14 A. No, I was there yesterday though.

15 Q. Is the erosion looking okay?

16 A. No.

17 Q. I didn't think it was either. Have you
18 sold any of the lots?

19 A. Two.

20 Q. Two?

21 A. Well, two that are closed if you mean by
22 sale, closed. We do have three contracts that --

23 Q. And how many lots will there be?

24 A. Approximately 576.

25 Q. And what did you pay for the land?

1 A. Approximately nine million dollars.

2 Q. And how many acres would that be?

3 A. Approximately 500.

4 Q. Was all the land that you purchased from

5 Mr. Seiber?

6 A. No.

7 Q. So how many other people would you say land

8 was purchased from?

9 A. I would guess somewhere between 10 and 15.

10 Q. Okay. About how many of the acres would

11 you say were Mr. Seiber's?

12 A. About 160, I guess. Again, I'm guessing.

13 Q. Estimate? Did you have an appraisal

14 performed on the property before you purchased it?

15 A. Yes.

16 Q. And what did it appraise out at?

17 MR. LONG: You talking about Seiber's or

18 the whole thing?

19 MS. LIVINGSTON: I was talking about the

20 whole thing, but...

21 MR. LONG: Okay.

22 A. To the best of my recollection it was

23 around thirty-five million dollars.

24 Q. (By Ms. Livingston) Okay. And do you

25 recall how much you paid Mr. Seiber's -- for his

1 land?

2 A. No.

3 Q. And your appraisal didn't do separate
4 parcels?

5 A. No, it did not.

6 Q. Looked at it as a whole, okay. And did you
7 go to the bank for financing?

8 A. You know, you're probably asking did we go
9 to a bank for financing initially?

10 Q. Yes.

11 A. And the answer is no, we did not.

12 Q. Subsequently you did?

13 A. Yes.

14 Q. But not for the purchase price; for
15 development costs?

16 A. Really couldn't distinguish.

17 Q. Okay. At this point in time could you say
18 how much of the development has been developed, like
19 the putting in of roads, putting in of gutters?

20 A. I'd estimate 95 percent.

21 Q. Not counting building houses?

22 A. That's correct.

23 Q. Okay.

24 A. Building houses was never a part of our
25 plan. That's somebody else's part of it.

1 Q. Okay.

2 A. We sell lots.

3 Q. All right. And do you pick out particular
4 builders to sell the lots, too? I mean, do they have
5 to qualify to build in your --

6 A. Yes.

7 Q. Do you have a set of standards you give
8 them that say here's what we require?

9 A. No.

10 Q. You just interview them and decide?

11 A. Interview them and also check on
12 developments that they have done and other -- you
13 know, check other houses that they build and check
14 with other people in the community on their
15 reputation.

16 Q. All right. And who are the builders that
17 you determine to be qualified to build in this
18 development?

19 A. Well, the builders that we actually enter
20 into contracts with, they're not all the ones that
21 are deemed to be qualified by any stretch of the
22 imagination, but we have contracts with American
23 Heritage Homes; with Padgett, P-A-D-G-E-T-T,
24 Construction and Development Company; and with
25 Phelps, P-H-E-L-P-S, Construction Company.

1 Q. And where are each these construction
2 companies out of?

3 A. American Heritage is in a suburb of
4 St. Louis on the west side; Phelps is in
5 Edwardsville; and Padgett is in Belleville.

6 Q. Are all of these still in business, to the
7 best of your knowledge?

8 A. Yeah, to the best of my knowledge Padgett
9 and Phelps are still in business. American Heritage
10 has reorganized and so the entity has changed.

11 Q. It might have a different name?

12 A. I don't think it has a different name, but
13 I think it has a different ownership structure.

14 Q. Okay.

15 A. But I don't know this. I'm not privy to
16 exactly the changes and that of the organization. I
17 just know that it has changed.

18 Q. Sure. Who was your contact person at
19 American Heritage Homes?

20 A. Sean Flower, S-E-A-N Flower.

21 Q. And who was your contact person at Padgett?

22 A. Well, Mr. Padgett. I apologize. I'm just
23 blanking out on his first name.

24 MR. URBAN: Was it Don?

25 A. The two brothers, Don and -- not Don.

1 MR. URBAN: The other one.

2 A. You can't remember either?

3 MR. URBAN: I can't.

4 A. And Craig Phelps. Do you remember
5 Padgett's first name?

6 MR. LONG: I don't.

7 A. I apologize; maybe early onset Alzheimer's.

8 Q. (By Ms. Livingston) Don't say that.

9 A. I have a sister-in-law who got that
10 diagnosis yesterday.

11 Q. I'm very sorry. I did two years on my
12 great-grandma like that.

13 A. Yeah. It's not a fun thing, is it?

14 Q. Not at all. Did you have any conversations
15 with Mike Egan about his conversations with
16 Mr. Seiber or anyone in Mr. Seiber's family?

17 A. Yes.

18 Q. And what kind of things did Mr. Egan tell
19 you about Mr. Seiber's conversations with him?

20 A. Well, my conversations had to do with the
21 negotiations for the property, so, you know, almost
22 exclusively had to do with what we consider to be the
23 value of the property and what we were willing to pay
24 and what they wanted to be paid.

25 Q. Terms of the contract?

1 A. Terms of the contract, right.

2 Q. Okay. Did he ever give you any impressions
3 of Mr. Seiber?

4 A. My impression is that Mike liked them. And
5 everybody likes Mike.

6 Q. Okay. That's good to know. Very good. Do
7 you remember the names of the people at Burns and
8 McDonnell who you worked with?

9 A. Well, you're referring to that design part
10 because there's -- you know, then there's another
11 group that came in as the construction group when we
12 got the construction contract.

13 Q. Okay.

14 A. The design people were the people I already
15 mentioned which were, you know, Don Ferris, Mark
16 Everett, Mark Harrison, and another one that comes to
17 mind is Bob Berry [phonetic] who was the regional
18 director and president -- not president. I'm not
19 sure what his title was, but he's the highest ranking
20 St. Louis person.

21 Q. So the people that we went through --

22 A. Yes.

23 Q. -- those are all Burns and McDonnell
24 people?

25 A. Yeah, those are all Burns and McDonnell

1 people that I was -- that I worked with in the design
2 phase.

3 Q. Got it. And then the construction phase
4 you had different people?

5 A. Had some additional people let's say.

6 Q. Okay. And who were they?

7 A. Russ deFlon, that's small D-E, no space
8 capital F-L-O-N; and Dick Gundlach, G-U-N-D-L-A-C-H;
9 and maybe a half dozen more from time to time.

10 Q. Worker bees?

11 A. Worker bees.

12 Q. Okay. Did you just adopt the plans of the
13 previous developer or did you have your own plans
14 made?

15 A. We had our own plans made.

16 Q. Who did you have design your plans?

17 A. Well, there was a team effort which, of
18 course, was, you know, after all my years in real
19 estate I have some expertise in that area, so I
20 basically outlined a general plan. And then, you
21 know, Burns and McDonnell design people were involved
22 as a team; and then there was a planning consulting
23 firm, capital letters P-G-A-V. I can probably
24 remember what those stand for if you want, but
25 they're a major planning firm located in St. Louis

1 and other parts of the country. And so those were
2 the primary players. Peckham, Guyton, Albers, and
3 Viets.

4 Q. Okay.

5 A. I just want to make sure she stays awake.

6 MS. LIVINGSTON: (To the Reporter) As long
7 as you know how to spell those.

8 Q. (By Ms. Livingston) Has Caseyville Sport
9 Choice been involved in any lawsuits?

10 A. Yes.

11 Q. And what would those lawsuits be?

12 A. Well, we had a lawsuit with a fellow by the
13 name of Bob Mueller, M-U-E-L-L-E-R, that had to do
14 with services that he inadequately provided.

15 Q. So you sued him?

16 A. No. He sued us.

17 Q. Okay. Inadequate services as your defense
18 or counter-claim?

19 A. Right.

20 Q. What did he sue you for? What is his
21 alleged --

22 A. Payment.

23 Q. Payment, okay. And how much is the dispute
24 about?

25 A. Again, to the best of my recollection,

1 maybe a hundred thousand dollars.

2 Q. Okay. Does Bob Mueller work for anyone in
3 particular?

4 A. My understanding at the time that he was an
5 independent contractor.

6 Q. Do you know where he works now?

7 A. No.

8 Q. And what kind of work did he perform?

9 A. He was evaluating new development
10 opportunities specifically having to do with TIF
11 projects.

12 Q. So not necessarily on this property?

13 A. No. He did assist on this property in some
14 of the early negotiations with the land owners.
15 Essentially was replaced by Heather Emma.

16 Q. And where is he out of?

17 A. St. Louis area. One of the western
18 suburbs.

19 Q. Anybody else?

20 A. We've got some small things. We have a
21 lawsuit that's pending by the Caseyville Gun Club
22 where they're suing for some costs associated with
23 completion of a new gun club facility in Mascoutah,
24 M-A-S-C-O-U-T-A-H, Illinois.

25 Q. So part of your agreement with them was to

1 relocate them?

2 A. Yes.

3 Q. And that's the amount in controversy?

4 A. I think, you know, they would like about
5 four hundred and I would like about a hundred, but it
6 all got put on hold because Scott Air Force Base, the
7 county, and County Administrator Kern have taken
8 action to try to get the gun club shut down because
9 they think they're in the flight path, so basically
10 that's all on hold.

11 Q. I think I heard about that. Any other
12 lawsuits Caseyville Sport Choice is involved with?

13 A. Well, it's not actually -- you know, we are
14 involved but we're not either the petitioner or
15 the -- what's the other word? We're not --

16 Q. Defendant?

17 A. Yeah, we have the village of Caseyville has
18 an eminent domain action that's currently on appeal,
19 and we're appealing the decision. We -- I should say
20 the village is appealing the decision, and we are
21 supporting that effort.

22 Q. It was an eminent domain to further your
23 development?

24 A. Yes.

25 Q. And where was the property located?

1 A. Adjacent to the present Caseyville Sport
2 Choice property.

3 Q. In which direction?

4 A. West.

5 Q. Across 159?

6 A. No, that would be east.

7 Q. Oh, you're right; it would. Okay. Does
8 this property back up to Hollywood Heights Road?

9 A. Yeah. Well, it's, you know -- yeah, one
10 small point there's an access road.

11 Q. Where there's a chain now?

12 A. Right.

13 Q. I thought so. All right. Any other
14 lawsuits that Caseyville?

15 A. You gonna give me your assessment of the
16 erosion?

17 Q. It was pretty bad. It's all the
18 developments around here, and we've had record
19 rainfall in the last 45 days. Hasn't helped.

20 A. We've had record weather conditions the
21 entire time we developed this property.

22 Q. Thank you --

23 A. Ice storms and all manner of things.

24 Q. Thank you, global warming.

25 A. I thought it was just bad luck.

1 Q. Our hundred-year events are turning into
2 ten-year events in this area. It's an identified
3 problem. If you have any pull with Chairman Kern --

4 A. You probably should add that to the list of
5 blight.

6 Q. If only. We'll think about that one. Any
7 other lawsuits Caseyville Sport Choice is involved
8 with, or has been?

9 A. Well, I think earlier your question would
10 have included anything that's current or past. There
11 was another lawsuit that has been resolved which was
12 with Kuhlmann Design Group, KDG, having to do with
13 engineering bills that I guess were -- I'm not an
14 attorney but I guess we were an additional named
15 party in it. I think KDG would have had to have sued
16 Sherbut Claxton Engineers, which is the village's
17 engineer, and there was a settlement of that case.

18 Q. Okay.

19 A. And the total amount, you know, was about
20 sixty, maybe sixty, seventy thousand matter that was
21 resolved for thirty thousand dollars.

22 Q. Okay. Did Caseyville Sport Choice have to
23 pay any of it?

24 A. Yes. We paid twenty-five thousand dollars,
25 best of my recollection.

1 Q. And when was that resolved?

2 A. Approximate oh, within the last six months.

3 Q. Okay. And the Bob Mueller lawsuit, when

4 was that filed?

5 A. Again, I guess it was in the 2006 time

6 period.

7 Q. And it's still pending?

8 A. No, it's resolved.

9 Q. Oh, it's resolved as well. Okay. And did

10 you make a payment to resolve it?

11 A. Yes.

12 Q. And how much was that?

13 A. I don't recall.

14 Q. It was under a hundred thousand?

15 A. Yes.

16 Q. And Caseyville Gun Club, when was that

17 filed?

18 A. Oh, again, pretty obscure. Maybe 2005,

19 just logically it would have been in maybe 2006.

20 Q. And that's still pending?

21 A. Yes.

22 Q. Okay. And the eminent domain case is on

23 appeal, and the Kuhlmann Design Group case is also

24 resolved?

25 A. Yes.

1 Q. No other lawsuits?

2 A. I can't think of any. Can you think of
3 any?

4 MR. LONG: No, I can't.

5 Q. (By Ms. Livingston) If you had lawsuits in
6 this area, would your attorneys be Belsheim &
7 Bruckert?

8 A. Yes.

9 Q. Have you sued anybody?

10 A. Me personally?

11 Q. Caseyville Sport Choice.

12 A. Caseyville Sport Choice?

13 Q. Yeah.

14 A. Have we sued anybody? I don't think we
15 have sued anybody.

16 Q. Okay. How many houses are built at the
17 moment?

18 A. None.

19 Q. None? Seemed like one was started?

20 A. Oh, there was a model home that is -- you
21 know, was started. It's incomplete and no work is
22 ongoing.

23 Q. Is there any dispute about it?

24 A. There's a lien filed against it, but...

25 Q. Any reason it's not completed?

1 A. That's -- actually they filed an action on
2 that, so that's another lawsuit. They have actually
3 filed an action to foreclose the lien. That's
4 pending in the early stages.

5 Q. Who is that with?

6 A. Padgett.

7 Q. Why didn't they finish?

8 A. We ran out of money.

9 Q. In addition to the amount of money to
10 remove horse manure, how much other money would you
11 say you've spent on this development?

12 A. Total cost?

13 Q. Yeah.

14 A. Right now, about 35,000,000.

15 Q. That's a lot.

16 MR. LONG: That includes the manure
17 removal?

18 A. Yes.

19 Q. (By Ms. Livingston) And the purchase
20 price?

21 A. And the purchase price of the land?

22 Q. Yeah.

23 A. It's about 9,000,000, like I said before,
24 approximately.

25 Q. Right. I mean, does the 35,000,000 include

1 that?

2 A. That's part of it, yes.

3 Q. So the rest was on design, putting in the
4 roads, getting everything ready?

5 A. Yes.

6 Q. Okay. Other than the property that we've
7 been talking about off of 159, does Caseyville Sport
8 Choice own any other property that they are
9 attempting to development?

10 A. No. Well, just because it, you know,
11 depends on what attempting to development means. We
12 do own a property in Mascoutah that, you know, is the
13 property that we acquired in order to relocate the
14 gun club. So there's some adjacent property that
15 we're in the process of getting approval of an
16 industrial development. We don't intend to develop
17 it in a sense of doing physical improvements, but we
18 do intend to have the preliminary plan approval on
19 it.

20 Q. And then sell it?

21 A. Yes.

22 Q. Okay. And that would be the extent of
23 property being owned by or developed by Caseyville
24 Sport Choice?

25 A. Right. But, again, just to make sure that

1 there's no, you know, question about it, we did
2 acquire some additional property that is in the TIF,
3 was identified in the TIF originally but wasn't a
4 part of the original acquisition, so it wouldn't have
5 been included in the nine million dollars, for
6 example.

7 Q. Okay.

8 A. And that's property that's east of -- on
9 the east side of Highway 159 directly across from the
10 entrance to Forest Lakes, and it's known -- you know,
11 we bought it from somebody by the last name of
12 Grinter, G-R-I-N-T-E-R.

13 Q. Funny, sorry.

14 A. You got another connection?

15 Q. Yes. I sued him to make him clean that
16 property up, and then I represented him.

17 A. Off the record.

18 (Discussion was had off the record.)

19 Q. (By Ms. Livingston) Prior to your purchase
20 of --

21 A. Would you like to let me know exactly where
22 those were?

23 Q. I'm thinking who could you do a FOIA
24 request to. The state's attorney's office has a file
25 with the pictures of what I made him clean up. I

1 believe the guy at the bottom of the hill in
2 Caseyville -- I can't think of their name.

3 MR. URBAN: Who's that?

4 A. Could we take a little break?

5 MS. LIVINGSTON: Sure.

6 MR. LONG: Yeah.

7 (A short recess was taken after which the
8 following proceedings were held:)

9 Q. (By Ms. Livingston) Who would you say is
10 the major decision maker at Caseyville Sport Choice?

11 A. Well, right now it's John Nicholson.

12 Q. Okay. In prior times?

13 A. Prior times, through the development
14 process it was me.

15 Q. Okay. And this was just a natural
16 progression of the change of role?

17 A. No. There's a common rule of thumb, and
18 that is who controls the money controls the deal.

19 Q. All right. And right now John Nicholson
20 controls the money?

21 A. Right.

22 Q. And previously he did not?

23 A. Well, previously, you know, yeah. Yes.

24 Q. Okay. Can you tell me who the officers are
25 and what their office is in Caseyville Sport Choice?

1 A. Well, we don't actually have officers other
2 than myself. It's an LLC, so you have the three
3 general managers that we mentioned earlier, the three
4 LLC's. The Mike Egan and Nicholson Property
5 Investments and Caseyville Management are the three
6 general managers. I am designated out of the
7 operating agreement as the president, CEO, and chief
8 operating officer, but there are no other officers as
9 such.

10 Q. Okay. Do you have any employees?

11 A. No.

12 Q. Did you put together a promotional video?

13 A. Yes.

14 Q. And would your lawyer have a copy of that?

15 A. I don't know.

16 MR. LONG: I've not seen it. We may have
17 it. I'll look for it.

18 Q. (By Ms. Livingston) Would it be available
19 on the web?

20 A. Yes.

21 Q. Do you have a website?

22 A. Yes.

23 Q. And what would it be?

24 A. Forestlakes.com.

25 Q. And in the promotional video what kinds of

1 amenities do you advertise for Forest Lakes?

2 A. Recreational center including a building
3 and playground and swimming pool.

4 Q. Is that built?

5 A. No.

6 Q. Anything else?

7 A. Yes.

8 Q. I interrupted you.

9 A. Parks with tennis courts, basketball
10 courts, a play area, and that's all.

11 Q. Okay. More than one park?

12 A. One large park.

13 Q. About how many acres?

14 A. Well, if you include the open spaces that
15 include the trail system, it's overall about 170
16 acres.

17 Q. Of open space?

18 A. Open space and parks.

19 Q. That's excellent.

20 A. Yes, it is.

21 Q. I like hearing that trail system. That's
22 beautiful. I saw ten turkeys out there one day.

23 A. Oh, yeah. They're all over the place right
24 now.

25 Q. Yes, they really are. Very good.

1 A. You know what a group of turkeys is? A
2 clutch.

3 Q. Really? Very good. They're weird. They
4 come and bang on my door. Anyway, at the moment what
5 would you say your funding source is?

6 A. The Nicholson Company.

7 Q. Is it fair to say that you are moving
8 forward with the development at this time?

9 A. Yes.

10 Q. What was the funding source for the
11 clean-up of the manure and trash?

12 A. The Nicholson Company.

13 Q. Okay. Did they loan the money to
14 Caseyville Sport Choice?

15 A. Yes.

16 Q. And were there other clean-up costs in
17 addition to Mr. Seiber's manure and debris?

18 A. Well, yes, you know.

19 Q. Demolishing the buildings, taking out
20 tanks?

21 A. All of the stuff that I mentioned in terms
22 of blight was all cleaned up, so...

23 Q. Very good. And about how much did you
24 spend on that?

25 A. I don't recall.

1 Q. Millions?

2 A. I'd say probably over a million, but not
3 millions.

4 MR. LONG: Cleaning up of the other stuff?

5 A. Right.

6 MR. LONG: Okay.

7 Q. (By Ms. Livingston) Who in the city of
8 Caseyville would you say was the point person for
9 discussing TIF issues?

10 A. Well, I'd say there were two. One is Paul
11 McNamara. Actually I'd say there were three; Paul
12 McNamara, Rick Casey, and Kevin Kaufhold, the
13 attorney.

14 Q. That is where I got the TIF agreement. All
15 right.

16 A. Whatever that is.

17 Q. Okay. The TIF ordinance. When was the
18 first time you or anyone in your organization
19 contacted New Horizon?

20 A. Oh, gosh, probably not earlier than August
21 of 2005, and that's a difficult kind of a question
22 without having the opportunity to review the record,
23 but --

24 Q. Well, for example --

25 A. -- logically it would be then.

1 Q. I believe you signed a site
2 characterization agreement with them on August 29th,
3 '05?

4 A. I did pretty well.

5 Q. Yeah.

6 A. We probably had contact with them a little
7 before that.

8 Q. Right. Have you used them in the past?

9 A. No.

10 Q. This was your first time of using them?

11 A. Yes.

12 Q. Have you used them again since then?

13 A. Yes.

14 Q. And what project?

15 A. Well, they did the Gun Club remediation on
16 Caseyville Sport Choice, and they have done erosion
17 control on the Islands of Waterside project which is
18 not Caseyville Sport Choice, but, you know, to give
19 you a complete full answer. They also are doing work
20 on the Islands of Waterside.

21 Q. What percent of that development is done?

22 A. About 25 percent.

23 Q. Are you in the old coal mine areas?

24 A. We're not in the old coal mine areas; we're
25 in the old coal mine.

1 Q. Itself?

2 A. Right. We're rehabilitating the actual
3 strip mine. It's now a 370-acre lake.

4 Q. Wow. What conversations did you have with
5 the Burns and McDonnell folks about any previous
6 environmental work that they had done?

7 A. I don't think I had any conversation with
8 them about environmental work. I don't think they do
9 environmental work, that I'm aware of.

10 Q. Okay. Do you have a relationship with
11 Geotechnology?

12 A. We don't have a relationship with
13 Geotechnology, but we have engaged them to do
14 subsurface soils analysis on or updates on several
15 occasions.

16 Q. Did you have any conversations with
17 Geotechnology folks about any environmental work they
18 had done on this site prior to your purchase?

19 A. No.

20 Q. Did you know they had done any work?

21 A. Yes.

22 Q. Okay. And did you know that Burns and
23 McDonnell had done work at this site prior to your
24 purchase?

25 A. Yes.

1 Q. And did you have any conversations with
2 them about the work that they had done?

3 A. That Burns and McDonnell had done?

4 Q. Yes.

5 A. Yes.

6 Q. And what conversations did you have about
7 the work that they had done?

8 A. Well, you know, a lot because that was
9 their knowledge base of the property, so, you know,
10 we engaged Burns and McDonnell as our engineer and
11 so, you know, basically they transmitted the
12 knowledge that they had of the property.

13 Q. Okay. And when would you say that that
14 began?

15 A. In August of 2003, at least on an informal
16 basis. I don't think we signed a contract with them
17 in August of 2003, but we would have signed a
18 contract with them fairly soon thereafter. When did
19 we sign the contract with them?

20 Q. I don't have a copy of that. I'm sure I'll
21 get one.

22 MR. LONG: Yeah.

23 Q. (By Ms. Livingston) Okay. And then did
24 they transfer their documents to you of what they had
25 discovered?

1 A. Well, I don't know what that means when you
2 say what they had discovered, so, you know, I'm
3 sorry. I just don't know what that question means.
4 If you want to rephrase it; I'm not trying to be
5 difficult.

6 Q. That's all right. When would you say you
7 received documentation from Burns and McDonnell of
8 any work that they had performed on the site?

9 A. Well, I think, as I answered earlier, we
10 got the due diligence information, we got maps, a
11 variety of maps. We got -- and that would have
12 included preliminary grading maps, you know, the
13 water analysis. I mean, not the quality of water
14 analysis but the drainage maps, et cetera, et cetera,
15 et cetera; you know, that, again, they had a large
16 volume of work they had done for the previous people,
17 and so, you know, what I did is take what they had,
18 evaluate it, and then entered into a contract with
19 them to do the remainder of the due diligence and the
20 design work.

21 Q. Okay. And when you say due diligence, we
22 are on the same page? You're talking about all
23 appropriate inquiry compliance with the American
24 Standard ASTM 1527 for doing environmental
25 assessments?

1 A. I didn't do that environmental assessment.

2 Q. Well, right. It wouldn't be your job? It
3 would be theirs?

4 A. Theirs.

5 Q. It would be their responsibility to perform
6 that work?

7 A. Burns and McDonnell?

8 Q. Yes.

9 A. I don't think so. I don't think I engaged
10 them to do that.

11 Q. Okay. But any work that they had already
12 performed towards that, they gave you?

13 A. Yes.

14 Q. In August of '03?

15 A. Yes.

16 Q. So when you say that you did enter into a
17 contract with them to evaluate the situation and do
18 further due diligence, now you're not referring to
19 environmental issues?

20 A. No. You know, environmental issues
21 obviously are an important part of the due diligence,
22 but I don't think Burns and McDonnell are
23 environmental engineers, at least the people I worked
24 with. So I subsequently am aware that they have some
25 environmental engineers in Kansas City who are

1 engaged on some other matters. But in terms of doing
2 the initial due diligence, you know, I did not
3 engage, you know, Burns and McDonnell to have Burns
4 and McDonnell do the environmental research or due
5 diligence.

6 Q. You had New Horizon do that?

7 A. No. New Horizons didn't get involved until
8 August of 2005.

9 Q. All right. Talk to me about what you did
10 to fulfill your due diligence prior to the purchase
11 of the property.

12 A. Again, for the third time?

13 Q. Oh, so we've covered everything that you
14 did with respect to due diligence?

15 A. Well, no.

16 Q. I mean, did you go to the courthouse and
17 look up Mr. Seiber? Did you look at the plat maps of
18 the property? I mean what --

19 A. No for the first and yes to the second.

20 Q. Okay. Didn't look up court cases on
21 Mr. Seiber, but, yes, looked at the plat maps?

22 A. Well, you didn't say court cases on Seiber
23 the first time.

24 Q. Sorry, okay.

25 A. I'm just trying to answer your question the

1 way you state them the best I can and as completely
2 as I can.

3 Q. I'm trying to figure out what due diligence
4 you performed prior to the purchase with respect to
5 environmental issues.

6 A. Right. You know, we characterized those,
7 again, twice already. I did due diligence starting
8 in August of 2003 and ending in December of 2004.

9 Q. All right.

10 A. So that's what, 18 months. So are we
11 saying that we want to cover all the due diligence I
12 did for, well, it's actually 17 months probably, but
13 a long period of time. So, you know, I'm absolutely
14 delighted to answer all your questions to the best of
15 my ability, but are we really saying we want to go
16 through 17 months of due diligence?

17 Q. Okay. Well, I guess I want to know what
18 you think falls into the category of due diligence,
19 and I'm only talking about environmental issues, not
20 financial or economic issues.

21 A. Right.

22 Q. Just, for example, you were telling me you
23 did not go to the courthouse and look up any lawsuits
24 on any of the property?

25 A. I wouldn't. I've never in 42 years in this

1 business, I've never gone to the courthouse. I've
2 never even gone to a planning commission.

3 Q. From August 2003 for December 2004, did you
4 engage anyone in doing an environmental investigation
5 of the property at Caseyville Sport Choice?

6 A. We did not engage anybody but Burns and
7 McDonnell -- if what you're trying to get to is the
8 Geotechnical report, then just ask about it.

9 Q. Okay.

10 A. You know, because in August of 2003 as part
11 of the due diligence, you know, part of the material
12 that Burns and Mac provided was a prior report from
13 Geotechnical that was a Phase I environmental report.

14 Q. Okay. And you got the Phase I
15 environmental report from Geotechnical in August
16 2003?

17 A. Yes.

18 Q. And any other documents that Burns and
19 McDonnell would have had, you would have received in
20 August 2003?

21 A. No. Again, a stretch over a long period of
22 time. They gave me some information, you know, more
23 than enough information to keep me occupied for some
24 time, and a part of that information was just this
25 Geotechnical report. You know, voluminous maps of

1 the property covering all aspects of the property,
2 drainage. You know, we even had a golf course plan.

3 Q. At any point in time in your conversations
4 with Burns and McDonnell, Geotechnology, city
5 officials -- anyone -- did anyone ever tell you that
6 Mr. Seiber had a longstanding contract with the race
7 track to haul horse manure?

8 A. No.

9 Q. No one ever told you that?

10 A. No.

11 Q. And no one in the city ever told you that
12 they had sued Mr. Seiber about disposal of horse
13 manure on that property?

14 A. Well, again, the phrasing of your question,
15 because -- no, during the due diligence period no one
16 ever told me that. Now, subsequent to that, you
17 know, yeah, there have been people who have told me
18 about that.

19 Q. Okay. After your purchase in December '04
20 they told you that?

21 A. After the purchase of the property. But
22 prior to the purchase of the property  ;
23 absolutely no, no one from the village, not
24 Mr. Seiber or anybody associated with Mr. Seiber or
25 anyone else.

1 Q. Okay. And did Mr. --

2 A. Not even Geotechnical.

3 Q. Did Mr. Egan ever tell you that Mr. Seiber
4 had talked to him about horse manure?

5 A. Well, yes.

6 Q. And what did Mr. Egan say about that?

7 A. That there was a -- it was what I would
8 characterize as a relatively small amount of horse
9 manure that had been -- that he had dumped on the
10 property.

11 (Defendant's Exhibit 1 was marked for
12 identification by the Reporter.)

13 Q. (By Ms. Livingston) I'm going to show you
14 what has been marked as Defendant's Exhibit Number 1,
15 and it also has a designation of 98 which is the 98th
16 document in the group of documents that your lawyer
17 provided. Have you ever seen this before, that you
18 recall?

19 A. Not that I recall.

20 Q. Okay. Well, I notice on the document that
21 at the very top it has January 19th, '99, at 11:22 am
22 Burns and McDonnell, appears to be a fax indicator
23 and it says page two. And then below it it has
24 January 18, '99, from a Joseph Kelleher, Jr. Do you
25 know who Joseph Kelleher, Jr., is?

1 A. No.

2 Q. Neither do I.

3 MR. LONG: He was the head of CELF, or he
4 was involved with CELF.

5 Q. (By Ms. Livingston) Then the letter itself
6 appears to be handwritten by Mr. Seiber and dated
7 January 7th, '99. And would you, at least, agree
8 that he does seem to indicate that he has some manure
9 buried in the land?

10 A. Straw and bedding material.

11 Q. Right.

12 MR. LONG: Is the word "manure" in here,
13 Penni? I'm looking for it. I'm not seeing it.

14 A. That's why I said straw and bedding
15 material.

16 MS. LIVINGSTON: I don't know because I
17 handed it to you guys and then I didn't read it all.
18 Yeah, it says straw and bedding material. I think
19 you're right.

20 MR. URBAN: Race track terms that could be.

21 MS. LIVINGSTON: Yeah, that's what the
22 contract says too, I think.

23 Q. (By Ms. Livingston) When was the first
24 time that you knew that the village of Caseyville had
25 sued Mr. Seiber to get him to stop hauling manure to

1 this property?

2 A. That was when New Horizons did their
3 investigation.

4 Q. And so we are sometime past August of '05?

5 A. Right. 

6 Q. Okay. Whatever the reports show?

7 A. Yes.

8 Q. And who did you have determine how to deal
9 with the material?

10 A. The material?

11 Q. Meaning the horse manure and trash and
12 debris, whatever was removed from the property.

13 A. Well, you mean after the -- at what point
14 in time?

15 Q. When you determined that there was an
16 environmental hazard from horse manure.

17 A. You mean after the New Horizons report?

18 Q. Right.

19 A. After we got the New Horizons report.

20 Q. Right. How did you determine what the
21 appropriate clean-up was or who helped you determine
22 that?

23 A. That was New Horizons. New Horizons, as
24 you know, put together a comprehensive plan.

25 Q. Did they ever have any discussion with you

1 or to the best of your knowledge anyone at Caseyville
2 Sport about the possibility of land applying the
3 manure after sorting the trash out of it?

4 A. Yes.

5 Q. And how did that discussion go?

6 A. Basically would have been impossible for
7 two reasons: One, the cost to sort the trash out of
8 it would have been prohibitive; and then the
9 resultant quantity would have taken something in the
10 neighborhood, if I recall, some twelve to fifteen
11 thousand acres to properly distribute the material.

12 Q. Okay. Where the bulk of the material was
13 located, about how many acres did it take up?

14 A. You mean just the specific areas?

15 Q. Right.

16 A. Oh, again, that's a memory tester that
17 probably exceeds my cognitive ability, but, you know,
18 maybe 20 to 30 acres.

19 Q. Okay. And when you drive in, say, George
20 Chance Parkway --

21 A. Right.

22 Q. -- approximately where would the manure
23 have been?

24 A. Well, you go about halfway back on the
25 planned parkway or maybe two-thirds of the way back

1 on the existing parkway, and it would have been right
2 on the parkway and to the -- generally to the left of
3 the parkway, or, you know, to the south.

4 Q. Towards Hollywood Heights Road area?

5 A. Yeah, but not, you know, not anywhere near
6 Hollywood Heights Road. It's basically through the
7 center of the property.

8 Q. Okay. When you walked the area for the
9 first time back in 2003, did you notice any stressed
10 vegetation?

11 A. Yes. It was identified to me by the Burns
12 and Mac people. They showed me two areas of -- I
13 wouldn't call it stressed, but they showed me areas
14 where the vegetation was different, and they said
15 that that vegetation was different because there was
16 some manure that had been dumped there. And then
17 they also demonstrated to me that, you know, it was
18 wet that day and that if you walked down it was
19 squishy and you got shit on your shoes.

20 Q. Been there. So were there also changes in
21 the topography in those areas?

22 A. Well, the whole site, you know, you had six
23 ridges and up to 360 feet of elevation change, you
24 know, and so that's the way -- just the way the site
25 is. It's in the ridge of the Mississippi Valley, And

1 that's what makes it beautiful] and also what makes
2 it difficult.

3 Q. It actually is very beautiful. When you
4 learned about the different vegetation or the
5 likelihood of manure being there from the Burns and
6 McDonnell people at your site visit in August of '03,
7 did you investigate that any further?

8 A. Well, yes. You know, we identified --
9 again, it was identified in the Geotechnical report,
10 and, you know, so I was assured that it was -- you
11 know, it could be either composted on-site or it was
12 salable. So that the amount of material there was,
13 you know, like, say, either salable or could be
14 easily spread on the site and composted in, and so we
15 didn't anticipate that there would be any cost
16 associated with it.

17 Q. And who indicated to you or who thought or
18 who told you that it could be composted on-site or it
19 would be salable?

20 A. The Burns and Mac people.

21 Q. I just can't believe nobody told you about
22 this. Did the Burns and Mac people indicate that
23 they thought any further investigation of the area
24 needed to be done?

25 A. We did, you know -- as you know, we did an

1 update to the physical -- actually the update was a
2 little awkward because there was an update of the
3 report but the report was actually done herself in
4 the first place, but that report was updated in
5 September of 2004. And at that time the manure
6 wasn't mentioned. So what was the original question?

7 Q. Whether or not the Burns and McDonnell
8 people had suggested that you --

9 A. No. They actually, you know, again, after
10 the updated report was done for the bond purposes
11 requested by AG Edwards and -- what was the name of
12 that firm you mentioned before with the real --

13 MR. LONG: Thompson Coburn?

14 A. Thompson Coburn, which it was outside
15 counsel to AG Edwards, you know, who were brought in
16 to complete due diligence for the bond, yeah, Burns
17 and Mac took the position that a Phase II was not
18 necessary based on that updated report.

19 Q. (By Ms. Livingston) Are you still doing
20 work with Burns and McDonnell?

21 A. Well, they're the design engineer so we
22 didn't -- we didn't -- yeah, we're there, tail end.
23 Very little, but some. So they're completing this
24 list, punch list. The five percent of the property
25 that's not done, they're still involved in.

1 Q. Okay.

2 A. Basically they're filing the plats, getting
3 plat approvals.

4 Q. Did you have any discussions with anyone at
5 AG Edwards or at Thompson Coburn that talked to you
6 about what would be required for them to complete
7 their due diligence for the bonding?

8 A. Yes, of course.

9 Q. And what did they tell you?

10 A. Well, we had a long list of due diligence
11 items.

12 Q. And who had to complete them?

13 A. Well, Caseyville Sport Choice is
14 responsible for completing them.

15 Q. And AG Edwards and Thompson Coburn never
16 asked you for any environmental assessment?

17 A. Yes. They asked for that update.

18 Q. Which was performed when?

19 A. September of 2004.

20 Q. So it was performed prior to your purchase?

21 A. Yes. You know, original bond closing was
22 scheduled for late October and so the updated report
23 was required for the bond closing.

24 (Defendant's Exhibit 2 was marked for
25 identification by the Reporter.)

1 Q. (By Ms. Livingston) I'm going to show you
2 what has now been marked as Defendant's Exhibit 2.

3 MS. LIVINGSTON: I'm sorry, Don, I only
4 have one copy of this.

5 MR. URBAN: That's fine.

6 Q. (By Ms. Livingston) This purports to be a
7 letter from Geotechnology dated September 8, 2004,
8 referencing Phase I Environmental Assessment Update.
9 Is this the report that you're talking about?

10 A. Well, this is a cover letter to the report
11 it appears, not the --

12 Q. So there was a full report?

13 A. Yes.

14 Q. Okay. I don't think I have that entire
15 report.

16 A. It says the accompanying report isn't --
17 you know, it "summarizes our findings and relates our
18 opinions..." Yes, there is a full report.

19 MS. LIVINGSTON: Okay. I'm going to have
20 you mark this one too then. It is page 12 and 13.

21 (Defendant's Exhibit 3 was marked for
22 identification by the Reporter.)

23 Q. (By Ms. Livingston) I'm going to show you
24 what the court reporter has just marked as Exhibit
25 Number 3 which is number 28 in your documents, and

1 ask you, this says Burns and McDonnell, September 8,
2 2004, page 12. Geotechnical and Burns and McDonnell
3 were working together on these issues?

4 A. I'm sorry, I got confused there.

5 Q. Burns and McDonnell and Geotechnology were
6 working together on the Phase I?

7 MR. LONG: This is the update on the Phase
8 I?

9 MS. LIVINGSTON: Right. This is dated
10 September 8, 2004, and this Burns and McDonnell is
11 dated September 8, 2004, as well.

12 A. Well, I think my understanding is that we
13 had engaged Burns and McDonnell, and Burns
14 and McDonnell --

15 Q. (By Ms. Livingston) Engaged Geotechnology?

16 A. Right.

17 Q. Do you see where it says James Seiber, and
18 it talks about two 500-gallon AST's?

19 A. Right.

20 Q. I'm sure that means above ground storage
21 tanks?

22 A. Right.

23 Q. And junk, metal --

24 A. Right.

25 Q. -- on the property. And then it says straw

1 and bedding material from Fairmount Race Track is
2 buried on the property?

3 A. Right.

4 Q. Can. And you got a copy of this report?

5 A. Yes.

6 Q. And they did not recommend doing further
7 investigation of how much material was there?

8 A. No, they don't. "They" being whom?

9 Q. Burns and McDonnell or Geotechnology.

10 A. Yes, that's correct.

11 Q. Neither one of them advised you to do a
12 Phase II to further investigate how much material was
13 there?

14 A. That's correct.

15 MS. LIVINGSTON: There's your next lawsuit.

16 MR. URBAN: Penni, let me see.

17 MR. LONG: I need to check something. I'll
18 be right back.

19 (A short recess was taken after which the
20 following proceedings were held:)

21 Q. (By Ms. Livingston) So it would be your
22 position that the major aspect of your environmental
23 due diligence was in having Burns and McDonnell who
24 had Geotechnology perform an update of their previous
25 Phase I investigation?

1 A. Yes.

2 Q. And they did not advise you to do any
3 further testing or bore samples to determine the
4 extent of Mr. Seiber's disposal of bedding material
5 and manure?

6 A. Did not.

7 Q. Okay. And no one in the Caseyville
8 government told you prior to your purchase that they
9 had sued Mr. Seiber for illegal disposal?

10 A. They did not.

11 Q. And no one else did either?

12 A. They did not.

13 Q. Are there any other parent or subsidiary or
14 sister companies related to Caseyville Sport Choice,
15 LLC?

16 A. No.

17 Q. Okay. Are you familiar with the Illinois
18 state remediation program?

19 A. Not personally, no.

20 Q. Would it be fair to say that you know that
21 your environmental consultants entered you into the
22 Site Remediation Program which resulted in your
23 receiving a "no further remediation" letter?

24 A. Yes.

25 Q. And you would agree that's a desirable

1 thing?

2 A. Yes.

3 Q. And that's about your extent of knowledge
4 of the SRP program?

5 A. Yes.

6 Q. You left that to your environmental
7 consultants?

8 A. Wise thing to do.

9 Q. I would agree. Had you previously planned
10 to have more lots than you're having now?

11 A. Yes.

12 Q. Previously it was going to be 830 lots?

13 A. Well, we had an approval for 830 or
14 something like 830. I thought it was 825, but, you
15 know, in terms of just the maximum approval that we
16 got in the master plan approval, but the maximum
17 number that we ever actually had designed was about
18 710. And then, you know, as the design -- and that
19 was for phase one and Phase II. And so when I
20 earlier answered the question 576 lots, that was for
21 phase one. So it appears at this point in time that
22 the maximum number of lots possible on the property
23 is gonna be about 650, you know. That's certainly
24 not unusual on a property of this type. You know,
25 you don't really know all the things you're gonna run

1 into, do you? Emphasis added.

2 Q. Apparently not. I would agree with that.
3 And no one involved in the current Caseyville Sport
4 Choice company was involved in the CELF Trust
5 Development; is that true?

6 A. Yes.

7 Q. Was the Meridian Bank in Alton involved at
8 all in your development?

9 A. Yes.

10 Q. And what was their involvement?

11 A. In June of 2005 they made a first mortgage
12 that retired the commercial loan on the property.

13 Q. Do you still have a loan with them?

14 A. Well, you know, these days they're never
15 easy questions. They were taken over by the FDIC and
16 so the loan has transferred to another bank. But,
17 yeah, we do have a one hundred thousand dollar loan
18 with a successor to Meridian Bank, and I think that
19 is called National Bank, and I forget what little
20 town it's in off the top of my head.

21 Q. Did you have any dealings personally with
22 Todd Gross (phonetic) of New Horizon Environmental?

23 A. I don't recognize the name Todd Gross at
24 all.

25 Q. How about Mark Everett of Burns and

1 McDonnell?

2 A. Yes.

3 Q. And what did he do for you?

4 A. He was the head of the design office for
5 Burns and McDonnell in O'Fallon, Illinois. He was
6 the head of the design team.

7 Q. And how about Don Ferris, what did he do
8 for them?

9 A. He was a senior engineer.

10 Q. Does he still do work for you?

11 A. Yes.

12 Q. And what kind of work is he doing now?

13 A. Well, he's engaged as Ferris Engineering,
14 LLC, and he is -- you know, he's doing monitoring
15 work with the Corps of Engineers on mitigation
16 programs. He's monitoring erosion control, which he
17 could do a lot better job of if he had money, just to
18 make sure that doesn't come out as a disparaging
19 comment to him. But he is responsible for that.
20 He's working on those kinds of things,
21 engineering-related things. But primary right now,
22 erosion control matters and a pending amendment we
23 have on the Corps of Engineer permit.

24 Q. 404 permit?

25 A. Yes, 404/401 actually. The issue is

1 more -- he's working with both of them. The issue is
2 more with the 401 and the IDNR.

3 Q. Oh, IDNR is giving you trouble on your cert
4 too, certification?

5 A. No, not trouble. They're just not very
6 efficient.

7 Q. I agree.

8 A. So that's what he does, engineering-related
9 matters.

10 Q. You can't get the 404 until you get the 401
11 certification?

12 A. Well, we've got them but we have to have a
13 small amendment, so he's working on that small
14 amendment. And also we have a monitoring program for
15 the mitigation program that was put in place which
16 that's where it brings in the IDNR because the
17 mitigation is on the banks of the Canteen Creek, and
18 so that's the kind of thing that he's involved in.

19 Q. Okay. How many acres did you put into
20 wetland mitigation?

21 A. I can't recall.

22 Q. Okay. And do you have a relationship with
23 Brad Rench at Meridian Bank?

24 A. No, because Brad Rench is not at Meridian
25 Bank anymore. We do have -- well, we don't have a

1 relationship with Brad Rench of any kind right now.

2 Q. Okay. Did he ever ask you for any
3 environmental assessments or reports?

4 A. He got an update.

5 Q. Okay.

6 A. As you know.

7 Q. He got the '04 update as well?

8 A. No. He got his own update. Meridian Bank
9 got their own update for the loan that they made in
10 June of 2005.

11 Q. Who did they have perform is?

12 A. Geotechnical.

13 MR. LONG: It's Geotechnology actually.

14 Q. (By Ms. Livingston) I'm sorry. I thought
15 you were doing Geotechnology to satisfy AG Edwards?

16 A. We did.

17 Q. Oh. That also satisfied Meridian Bank?

18 A. No. There were two separate occasions.

19 MR. LONG: I don't think you have that
20 update, Penni. That's in this big volume that you've
21 asked for a copy of. I can give you a copy of that
22 right now if you want it.

23 MS. LIVINGSTON: Okay.

24 Q. (By Ms. Livingston) That's still in '04
25 though?

1 A. No, that was June of '05.

2 Q. I'm sorry, June of '05. You said that.

3 A. June '05.

4 MS. LIVINGSTON: I'll wait until he comes
5 back.

6 (A short recess was taken after which the
7 following proceedings were held:)

8 Q. (By Ms. Livingston) Could you tell me
9 about your relationship with Sean Flower?

10 A. Well, Sean was the president of American
11 Heritage Homes. I think he's the president of the
12 new American Heritage Homes too, but I think there's
13 different ownership. So we negotiated, I negotiated
14 directly with Sean Flower on the contract with
15 American Heritage Homes to purchase lots in Forest
16 Lakes.

17 Q. Will you still be having them build homes?

18 A. We hope that's gonna be the case, but they
19 have undergone some changes. I'm not sure whether we
20 will or not.

21 Q. Okay.

22 A. Oh, my gosh.

23 Q. Would you even believe?

24 A. Turn to the sports section.

25 Q. No, I saw it. Would you even believe that

1 the internet has --

2 A. Good grief.

3 Q. -- a copy of the Madison Mirror from 1963
4 where you are a famous baseball player.

5 A. I'm not that. This is basketball, this is
6 baseball, and this is track.

7 Q. Track, okay.

8 A. I was all-state in four sports.

9 MR. LONG: Wow.

10 A. This is going back to -- what else do you
11 know?

12 Q. (By Ms. Livingston) I know you're a cool
13 person and some people did not do you right, but I
14 don't think it was my client.

15 A. You're not talking about this deal though?
16 You're talking about something else, right?

17 Q. No, I was talking about this deal.

18 A. Well, that's what makes a horse race, which
19 is probably a pretty good term. Pun intended. But
20 that's really dating back, I'm telling you what.

21 Q. I thought it was surprising. In the real
22 estate contract that you had with Mr. Seiber, there
23 was a paragraph three that had seller's
24 representations, and when your lawyer sued Mr. Seiber
25 he seemed to be claiming a breach of contract for

1 representations that had been made in that contract.
2 Did you have any conversations with any
3 representative from the seller to talk about these
4 representations?

5 A. I want to make sure I understand the
6 question. Did I have discussions with Mr. Seiber or
7 anybody associated with Mr. Seiber?

8 Q. Right, any representative he might have had
9 about these --

10 A. No, I did not personally have.

11 Q. Okay.

12 A. I've never met Mr. Seiber, talked to him on
13 the phone, exchanged any correspondence with him.
14 Mr. Seiber, Jr., I saw once at a village counsel
15 meeting from a distance. Other than that, I mean,
16 that's the only contact. I may have seen Mr. Seiber,
17 Jr., at a distance on the property because he lived
18 on the property, as you know, but I had no contact
19 with him.

20 Q. And the person who would have talked to him
21 would have been Mike Egan?

22 A. Yes.

23 Q. And to the best of your knowledge Mike Egan
24 and Hannah would have been the only people who would
25 have talked to Mr. Seiber?

1 A. Not Hannah.

2 MR. LONG: Heather.

3 Q. (By Ms. Livingston) Heather, I'm sorry.

4 A. Heather Emma.

5 Q. Okay. When you first investigated this
6 property, had it already been annexed into the city
7 of Caseyville?

8 A. No. To the best of my recollection the
9 annexation had been prepared, but we had to have it
10 annexed.

11 MS. LIVINGSTON: Okay. I don't think I
12 have anything else for you.

13 MR. URBAN: I've got a few. Actually not
14 very many; Penni always does a good job.

15 **EXAMINATION**

16 **QUESTIONS BY MR. URBAN:**

17 Q. May I call you Glen?

18 A. Yes, please.

19 Q. Thank you. I'm Don Urban and I'm the
20 attorney for the Seibers.

21 A. May I call you Don?

22 Q. Please do. Just want to clean up a few
23 things. And actually Penni got to them right here at
24 the end. You had no contact at all with Jim Seiber,
25 Sr., or his wife Erma in the negotiations; is that

1 correct?

2 A. Never in any way, shape or form.

3 Q. And you testified that you saw Jim Junior
4 at a village meeting, but you never had conversations
5 with him?

6 A. Never.

7 Q. So it's fair to say that there were no
8 representations made by the Seibers directly to you
9 that give rise to this lawsuit; is that correct?

10 A. Not --

11 Q. You personally?

12 A. No. Never had contacts, no.

13 Q. Then is it also fair to say that Mike Egan
14 then was handling those negotiations?

15 A. Yes.

16 Q. And so we're really looking at
17 communications that might have existed between Mike
18 Egan and the Seibers that goes to the crux of this
19 lawsuit; is that correct?

20 A. Yes.

21 MR. LONG: Well, let me object to that, I
22 mean, so far as the Seibers are concerned perhaps;
23 but the crux of this lawsuit, as I see it, doesn't
24 really involve fraudulent representations by the
25 Seibers so much as it involves the question of

1 whether the horse manure was there, whether it came
2 from Fairmount Park, whether we had to remove it,
3 whether we did remove it, what it cost. So I didn't
4 want, by silence, to agree with your
5 characterization.

6 MR. URBAN: Right.

7 Q. (By Mr. Urban) I'm trying to nail down,
8 Glen, that you yourself had no communications with
9 the Seibers at any point in any --

10 A. Never --

11 Q. -- way?

12 A. -- in any way, shape or form.

13 Q. Glen, there were a couple questions that
14 Penni asked that -- she asked questions, and through
15 no fault of anybody the answers got a little longer
16 and I don't think they ever really got answered. One
17 of those is, there was some discussions as to the
18 transmittal of knowledge from Burns and Mac to you or
19 to your organization in August of 2003. And your
20 response was, well, if you're referring to due
21 diligence, maps, preliminary grading, water drainage,
22 things of that nature, but it never got to the final
23 answer of the question; and that was, was this
24 information transmitted by Burns and Mac to your
25 organization in August of 2003?

1 A. Well, some of it was, sure.

2 Q. So what is the "some of it", if you recall?

3 A. You know, there would be no way in the
4 world I would recall exactly. But that's when it
5 started.

6 Q. Okay.

7 A. That's, I think, if I will -- and I'll go
8 against all attorneys' advice and expand on that
9 answer -- is that it happened over a 17-month period
10 of time, so I can't tell you what I got in August or
11 what I got in September or what I got in October.

12 Q. That's fine. That was an open-ended thing
13 and I was just trying to nail down exactly what the
14 date was we had there.

15 MS. LIVINGSTON: Well, just to finalize
16 that --

17 MR. URBAN: Yeah.

18 MS. LIVINGSTON: -- what you are saying is
19 you did receive the data prior to the closing on the
20 property?

21 A. Yes.

22 MR. URBAN: Thank you. Another check mark
23 done here.

24 Q. (By Mr. Urban) And did I understand
25 correctly that at one point you did walk around on

1 the site prior to the closing and it was soft? They
2 pointed out some soft areas?

3 A. Yes. And actually I think the testimony
4 had to do within August of 2003. Of course, I was on
5 the site many, many times during that whole period
6 before closing and had been on the site many, many
7 times since. But, yes, they identified two areas
8 where the vegetation was distinctly different. They
9 identified to me it was different because of the
10 content of manure in those areas, and that, you know,
11 when wet -- which it was -- it was squishy. So if
12 you walked across the natural lowest soil, it would
13 be fairly firm, at least where it wasn't disturbed,
14 and, you know, you'd actually squish in areas that
15 they identified was where, you know, there had been
16 some manure and trash material dumped.

17 Q. When you say you walked on site -- and
18 we're talking quite a number of acres -- did you walk
19 around most of the site or just --

20 A. Well, most of the site I drove.

21 Q. Okay. The question I'm going after here is
22 if there's an indication that there were large
23 exposed piles of manure, from what I'm hearing from
24 you, you're saying you didn't see anything like that?

25 A. No. Absolutely not. Again, the only

1 thing, they had identified these two areas which were
2 fairly small areas that had this different
3 vegetation. And then, you know, we actually did --
4 we actually got out of the vehicle and walked on
5 those, at least one of those areas. And, you know,
6 they advised me that they could either be sold or
7 used as -- basically composted into the site during
8 the grading operation.

9 Q. And, once again, the "they" you're
10 referencing is who?

11 A. The Burns and Mac group.

12 Q. Now, you testified that you were aware that
13 Jim Seiber, Jr., lived on the site?

14 A. Yes.

15 Q. Or lived adjacent to the site?

16 A. Yes.

17 Q. Do you know whether or not your company at
18 any point in time ever hired Jim Seiber in any phase
19 of this development?

20 A. Not to my knowledge, but that kind of rings
21 a little bit of a bell maybe now that you mention it.
22 I think he may have been hired to clear some trees or
23 some stuff. I don't have any specific recollection.

24 Q. Okay.

25 A. Yeah, let me say I can't recall.

1 Q. That's fine.

2 A. May have.

3 Q. You testified that nine million dollars of
4 the money spent out there was purchasing the ground;
5 is that correct?

6 A. Yes.

7 Q. Approximately, thereabouts. Do you know as
8 you sit here how much you paid the Seibers per acre
9 for their property?

10 A. No, I don't as I sit here.

11 Q. Do you know, do you know whether it was
12 below the value that would have been paid for some of
13 the other acreage around there?

14 A. Well, I don't know specifically but, you
15 know, I know that there was, you know, an assessment
16 of the properties and there was a considerable range.

17 Q. I know that your attorney is in the process
18 of getting that information for me, so...

19 MR. LONG: Yeah, a lengthy process.

20 MR. URBAN: Some day.

21 MS. LIVINGSTON: Don, I wrote down 1.46.

22 MR. URBAN: Oh. For?

23 MS. LIVINGSTON: For the total purchase
24 price.

25 MR. URBAN: Right, yeah.

1 MS. LIVINGSTON: I don't remember where I
2 got it though.

3 MR. URBAN: Yeah.

4 Q. (By Mr. Urban) Another question that Penni
5 asked you that I also didn't hear a specific answer,
6 and that was, Penni asked you whether or not you had
7 gone to the courthouse ever to search any records
8 associated with Jim Seiber, and you commented that
9 you've never, yourself, ever gone to a courthouse and
10 searched any sort of records like this. Do you know
11 whether anybody at your direction, any of the
12 representatives that were working for you, ever went
13 to the courthouse and searched on these records?

14 A. I do not.

15 Q. Is that something that would have been
16 required as part of any due diligence search into
17 this?

18 A. So what kind of a search are you talking
19 about specifically?

20 Q. Just see what the name of Jim Seiber pops
21 up as you're about to buy property.

22 A. You mean in the same sense of maybe going
23 back to a high school newspaper or --

24 Q. Not quite that far. Penni outdid herself
25 here today, but I'm talking about just punching the

1 name into the computer. I mean, obviously what we're
2 dealing with here is a gentleman who was no stranger
3 to the legal system about this site. There have been
4 many enforcement actions. It's all public record,
5 and I'm curious as to what you or your agents did to
6 avail themselves of this information that was readily
7 available, if you know?

8 A. I don't know.

9 Q. Okay. Is that something you think that
10 should have been examined by your agents or
11 representatives?

12 A. Well, let me put it this way, I think in
13 maybe two and a half billion dollars' worth of deals
14 for a variety of clients, I don't recall that ever
15 having been done.

16 Q. Never? You don't think anybody in your two
17 and a half --

18 A. Not beyond the title report, title search.

19 Q. Okay.

20 A. But I'm not aware of that in any of those
21 instances.

22 Q. Do you think that that constitutes the
23 meeting of due diligence in searching out the facts
24 that might surround a piece of property?

25 A. I would say no. I would say we would rely

1 on the -- on the title record and the representations
2 in the contract.

3 Q. Fair to say you relied upon what's their
4 name, Burns and McDonnell to do this work for you?

5 A. To do...

6 Q. To do this examination, this type of
7 examination for you?

8 MR. LONG: Are you talking about searching
9 the courthouse records?

10 Q. (By Mr. Urban) Searching the courthouse,
11 is that something you think would have been within
12 the realm of their duties to you?

13 A. No.

14 Q. No?

15 MR. URBAN: Okay. Nothing further.

16 (Discussion was had off the record.)

17 MS. LIVINGSTON: Thank you.

18 MR. LONG: I'll just pose the question to
19 Glen. You've got the right to receive a copy of this
20 and read it over to make sure that your testimony has
21 been taken down accurately and sign it.

22 A. I want to do that, yes.

23 (SIGNATURE NOT WAIVED)

24 [Exhibits retained by Reporter.]

25

NOTARIAL CERTIFICATE

I, Cynthia E. McKinney, a Notary Public within and for State of Illinois, do certify that pursuant to Notice there came before me on May 14, 2009, at the law office of Belsheim & Bruckert, L.L.C., 1002 E. Wesley Drive, Suite 100, O'Fallon, Illinois,

GLEN HIERLMEIER,

a witness of lawful age, who was by me first duly sworn to testify the whole truth of the witness's knowledge touching and concerning the matters in controversy herein; that the witness was examined and the witness's examination reduced to shorthand writing by me on the day, at the place and in that behalf first aforesaid, and later transcribed into typewriting; that signature of the witness was not waived by agreement of counsel and consent of the witness and the witness's said deposition is now herewith returned.

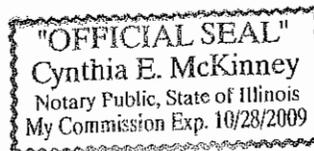
IN WITNESS WHEREOF, I have hereunto set my hand and seal this 21st day of May, A.D., 2009. My commission expires October 28, 2009.


Cynthia E. McKinney, CSR/CCR

Notary Public

IL License No. 084-003501

MO License No. 420





GEOTECHNOLOGY, INC.
ENGINEERING AND ENVIRONMENTAL SERVICES
SAINT LOUIS • COLLINSVILLE

September 8, 2004

0486904.45TA

Mr. Don Ferris
Burns & McDonnell
1105 Eastgate Drive
Suite 4
O'Fallon, Illinois 62269

Reference: Phase I Environmental Site Assessment Update
Forest Lake Development
St. Clair County, Illinois

**DEFENDANT'S
EXHIBIT**

2
5-14-09 CM

Dear Mr. Ferris:

In general accordance with our verbal proposal of August 2004, Geotechnology, Inc. has performed a Phase I Environmental Site Assessment (ESA) update of the subject site. The subject site consists of approximately 400 acres of residential, commercial, and vacant property between Highway 159 and Highway 147 south of the Conrail Railroad and South Morrison Street in Caseyville, Illinois. This Phase I ESA has revealed evidence of recognized environmental conditions (RECs) at the subject property. We urge you to read the entire report and to contact the undersigned with any questions or concerns you may have about it.

This report is an update to the Phase I ESA Report No. 0486901.8520, dated December 29, 1998, performed by Geotechnology, Inc., and comprises a number of individual elements, the basic nature and extent of which are determined in accordance with the standard of care applicable to Phase I ESA updates. The standard of care is commonly defined as the care applied by the ordinary practitioner at the time and in the area where the ESA was performed. We believe that we have complied with the applicable standard of care. Note that our services intentionally did not include any inquiries with respect to asbestos, lead-based paint, radon, wetlands, methane gas, lead-in-drinking water, formaldehyde or electromagnetic fields (EMFs).

The accompanying report is an instrument of service of Geotechnology. The report summarizes our findings and relates our opinions with respect to the potential for hazardous materials to exist at the site at levels likely to warrant mitigation pursuant to current regulatory guidelines. Note that our findings and opinions are based on information that we obtained on given dates, through records review, site review, and related activities. It is possible that other information exists or subsequently has become known, just as it is possible for conditions we observed to have changed after our observation. For these and associated reasons, Geotechnology and many of its peers routinely advise clients for ESA services that it would be a mistake to place unmerited faith in findings and opinions conveyed via ESA reports. Geotechnology cannot under any circumstances warrant or guarantee that not finding indicators of hazardous materials means that hazardous

Burns & McDonnell
September 8, 2004
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0486904.45TA

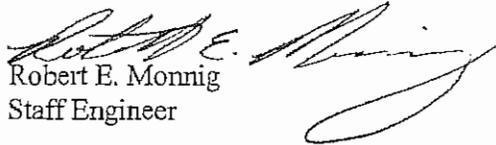


materials do not exist on the site. Additional research, including invasive testing, can reduce your risks, but no techniques now commonly employed can eliminate these risks altogether. Geotechnology will be pleased to provide more information in this regard.

We appreciate the opportunity to be of assistance. Please call either of the undersigned if you have any questions.

Very truly yours,

GEOTECHNOLOGY, INC.


Robert E. Monnig
Staff Engineer


for
Andrew J. Limmer, P.G.
Project Manager

AJL/REM:rem/jsj

Copies submitted: (3)

**PHASE I ENVIRONMENTAL SITE ASSESSMENT UPDATE
FOREST LAKE DEVELOPMENT
ST. CLAIR COUNTY, ILLINOIS**

Prepared for:

BURNS & McDONNELL
O'Fallon, Illinois

Prepared by:

GEOTECHNOLOGY, INC.
Collinsville, Illinois

Geotechnology, Inc. Report No. 0486904.45TA

September 8, 2004





GEOTECHNOLOGY, INC.
ENGINEERING AND ENVIRONMENTAL SERVICES
SAINT LOUIS • COLLINSVILLE

September 8, 2004

0486904.45TA

Mr. Don Ferris
Burns & McDonnell
1105 Eastgate Drive
Suite 4
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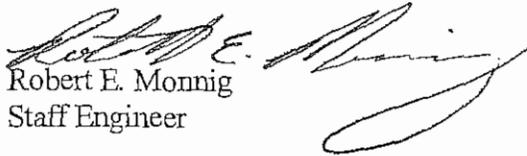
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Very truly yours,

GEOTECHNOLOGY, INC.


Robert E. Monnig
Staff Engineer

 for
Andrew J. Limmer, P.G.
Project Manager

AJL/REM:rem/jsj

Copies submitted: (3)

NOTICE

This report is an instrument of service prepared by Geotechnology, Inc. for the exclusive use of Burns & McDonnell. In order to create a report, upon which Burns & McDonnell could rely, Geotechnology, Inc. worked closely with Burns & McDonnell in development of the scope of service, upon which all subsequent tasks have been based. No party other than Burns & McDonnell is permitted by Geotechnology, Inc. to rely on this instrument of Geotechnology, Inc.'s service. With the permission of Burns & McDonnell, Geotechnology, Inc. will meet with a third party to help identify the additional services required, if any, to permit such third party to rely on the information contained in this report, but only to the same extent of Burns & McDonnell's reliance, and subject to the same contractual, technological, and other limitations to which Burns & McDonnell has agreed.



PHASE I ENVIRONMENTAL SITE ASSESSMENT UPDATE
FOREST LAKE DEVELOPMENT
ST. CLAIR COUNTY, ILLINOIS

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PHASE I ENVIRONMENTAL SITE ASSESSMENT
FOREST LAKE DEVELOPMENT
ST. CLAIR COUNTY, ILLINOIS

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--continued--

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PHASE I ENVIRONMENTAL SITE ASSESSMENT
FOREST LAKE DEVELOPMENT
ST. CLAIR COUNTY, ILLINOIS

1.0 INTRODUCTION

1.1 Purpose. The purpose of this environmental site assessment (ESA) update is to review past usage of the subject site and adjacent properties, to identify recognized environmental conditions (RECs) and to assess the environmental impact of the RECs on the subject site. RECs are defined in the American Society for Testing and Materials (ASTM) Standard E 1527-00 as "the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property. The term REC includes hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include de minimis conditions that generally do not present a material risk of harm to public health or the environment, and that generally would not be subject to enforcement action if brought to the attention of appropriate government agencies. Conditions determined to be de minimis are not recognized environmental conditions."

1.2 Methodology. This environmental site assessment was conducted in substantial accordance with the ASTM Standard Practice for Environmental Site Assessments - Phase I Environmental Site Assessment Process, ASTM E1527-00. The Phase I ESA update activities consisted of a records review, a site reconnaissance, interviews and documentation in the form of a report.

2.0 SITE DESCRIPTION

The subject property consists of approximately 400 acres of residential, commercial, and vacant property between Illinois Route 159 and Illinois Route 157 south of Conrail Railroad and S. Morrison Street. The site appears to contain approximately 60 structures. Most of the structures are residential/agricultural in nature with the exception of Midwest Tool and Die Company and Johnson Excavation and Trucking Services. The site location is shown on the United States Geological Survey (USGS) map included as Plate 1. A drawing of the subject site, adapted from a Madison County Surveyor's map obtained from Burns & McDonnell, is included as Plate 2.

Note that several properties originally assessed during the 1998 Phase I ESA have been excluded from the scope of this Phase I ESA update. Properties not assessed during this Phase I ESA update include the Payne, Tamburello and Davidson properties that are located at the southeast



corner of the Illinois Route 157 and Conrail rail road intersection and the approximately 80 acre tract located east of Illinois Route 159. The exclusion of these properties is reflected on the site plan included as Plate 2.

3.0 PHYSICAL SETTING

The soils in the area of the site are described as Fayette silt loams and silty clay loams, which are on narrow ridges, hilltops and steep valley slopes. These soils are described as well drained. Minor soils associated with the Fayette series are noted on St. Clair County Soils Maps including but are not limited to the Sylvan, Worthen, and Wakeland series. Worthen soils are found on foot slopes, Wakeland soils are found in small creeks and drainage ways, and the very steep Sylvan soils are in areas on side slopes and bluffs above major streams. "The hazard of erosion is serious in unprotected steep areas that were once in native hardwood forests. Many steep areas need improved woodland management."¹ Surficial soils may range in thickness between 50 and 200 feet thick and are underlain by Pennsylvanian Age deposits comprised of alternating layers of shale, limestone, coal, and sandstone. The Pennsylvanian Carbondale formation generally underlies the western portion of the site and the Pennsylvanian Modesto formation generally underlies the eastern portion of the site².

The nearest apparent natural surface water conduits to the subject property appear to be Canteen Creek and storm water runoff from adjacent properties, which appear to drain in a northerly direction across the subject site to Canteen Creek. Canteen Creek drains to the west and eventually joins the Cahokia Canal near Horseshoe Lake. Cahokia Canal drains into the Mississippi River.

Illinois American Water Company supplies water to the Village of Caseyville. The Mississippi River is the source of water provided by Illinois American Water Company.

In most areas, general estimations about the direction of groundwater movement can be derived from observations of land-surface topography. In effect, the water table often is a subdued replica of the land surface. In addition, the slope of the land surface is typically towards streams and rivers. Based on general topographic gradient and the location of surface water bodies as observed on topographic maps, the groundwater may be flowing in a westerly to northwesterly direction³.

¹ Soil Survey of St. Clair County, Illinois, U.S. Department of Agriculture, Soil Conservation Service in cooperation with Illinois Agricultural Experiment Station, 1978.

² State of Illinois, Department of Registration and Education, Illinois State Geological Survey, Geological Map of Illinois, 1967.

³ U.S. Geological Survey Map, Collinsville and Monks Mound, Illinois Quadrangles 7.5 Minute Maps, revised 1974.



The average annual temperature and rainfall in the St. Clair County area is 56 degrees Fahrenheit and 39.37 inches, respectively. The prevailing winds are generally from the west-northwest and south in the spring, the south in the summer, the south and west-northwest in the fall, and from the northwest to west-northwest in the winter⁴.

4.0 ENVIRONMENTAL RECORDS REVIEW

4.1 Government Agency Reference. File records from FirstSearch Technology Corporation, were obtained and reviewed to reference data provided by government agencies. The environmental data system furnished information on several database records including records of listings outlined in the American Society of Testing and Materials (ASTM) standards. The approximate minimum search distances from the subject site for each of the databases are as follows:

- National Priority List (NPL) – 1.0 mile
- Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS) – 0.5 mile
- Resource Conservation and Recovery Information System (RCRIS) Notifiers List including transport, storage and disposal (TSD) facilities – 0.5 mile; hazardous waste generators – adjoining properties
- Emergency Response Notification System (ERNS) spills – target property
- Underground Storage Tanks (USTs) – 0.25 mile
- Leaking Underground Storage Tanks (LUSTs) – 0.5 mile
- State Hazardous Waste Sites (SHWS) – 1.0 mile
- Solid Waste Facilities/Landfill Sites (SWF/LS) – 0.5 mile
- Corrective Action Report (CORRACTS) – 1.0 mile
- CERCLIS – No Further Remedial Action Planned (CERC-NFRAP) – 0.25 mile

The database searches were conducted by utilizing a polygon to represent the approximate boundary of the subject site and then searching within the above radii. The ASTM minimum search distance for the USTs and RCRIS small and large quantity hazardous waste generators is identified as "adjoining properties." Since ASTM does not define a specific search distance for "adjoining properties," FirstSearch utilizes a 0.25-mile search radius to satisfy these criteria. The facilities located are summarized in the following table:

⁴ Belleville Station – Historical Climate Data, Illinois State Climatologist Office, Illinois State Water Survey, 2004.

Table I Environmental Records Review		
Database Searched	Search Distance (miles)	Facilities Located
NPL	1.0	0
CERCLIS	0.5	0
RCRIS Generators	0.25	5
RCRIS TSD Facilities	Target Property	0
ERNS	0.5	0
UST	0.25	2
LUST	0.5	5
SHWS	1.0	0
SWF/LS	0.5	0
CORRACTS	1.0	0
CERC-NFRAP	0.25	0

Target Property Search Results

- Johnson Excavating and Trucking Service, 53 Lakeside Drive, Caseyville, Illinois, appears to be located on the subject property (see Site Reconnaissance Item 9). The site is classified as a RCRIS Transporter and has reportedly not been issued violations or reported any releases.

RCRIS Generators

- TJ's Auto Body, 2168 S. Morrison, Caseyville, Illinois, is located less than 1/4 mile northwest of the subject property. The site is classified as a RCRIS Small Quantity Generator and has reportedly not been issued violations or reported any releases.
- Collinsville High School, 2201 S. Morrison, Collinsville, Illinois, is located less than 1/4 mile northwest of the subject property. The site is classified as a RCRIS Very Small Quantity Generator and has reportedly not been issued violations or reported any releases.

- City of Collinsville Street Department, 850 S. Morrison, Collinsville, Illinois, is located less than 1/4 mile northeast of the subject property. The site is classified as a RCRIS Large Quantity Generator and has reportedly not been issued violations or reported any releases.
- Illinois Department of Transportation Bridge, Illinois Route 159 over Conrail Rail Road, Collinsville, Illinois, is located approximately 1/4 mile northeast of the subject property. The site is classified as a RCRIS Small Quantity Generator and has reportedly not been issued violations or reported any releases.

UST Sites

- Han-Dee Mart, 411 N. Main, Caseyville, Illinois, is located less than 1/4 mile southwest of the subject property. Two 10,000-gallon gasoline underground storage tanks (USTs) are reportedly in use at the site. This site did not have any releases reported in the records reviewed.
- Gas Mart #17, 7900 N. Illinois Street, Caseyville, Illinois, is located less than 1/4 mile southeast of the subject property. Three gasoline USTs are reportedly in use at the site. This site did not have any releases reported in the records reviewed.

LUST Sites

- Dickerson Petroleum, 1035 Belleville Road, Caseyville, Illinois, is located less than 1/4 mile southeast of the subject property. This site had a reported release from a gasoline UST. The release was reported on 2/11/1993.
- City of Collinsville, 850 South Morrison Avenue, Collinsville, Illinois, is less than 1/4 mile northeast of the subject property. This site had a reported gasoline release from a UST. The release was reported on 11/1/1999.
- Hollywood Tavern, 1218 Hollywood Heights Road, Caseyville, Illinois, is located approximately 1/4 mile southeast of the subject property. This site had a reported release from a gasoline UST. The release was reported on 2/27/1990.
- Village of Caseyville, 13 West Barrett, Caseyville, Illinois, is located approximately 1/4 mile southwest of the subject property. This site had a reported release from a gasoline UST. The release was reported on 2/19/1991.

- Midwest Petroleum, 8907 Old Collinsville Road; Collinsville, Illinois, is located approximately 1/2 mile northeast of the subject property. This site had a reported release from a gasoline UST and a diesel UST.

Facilities may be listed in more than one category on the environmental screening report. Discrepancies between information provided by government agencies and FirstSearch may exist due to incomplete or non-updated databases. The FirstSearch Report is presented in Appendix B.

4.2 Local Fire Department. Geotechnology contacted the Caseyville Fire Department to obtain information regarding fires, hazardous material spills or complaints at or near the site. At the time of this report, a response has not been received from the Caseyville Fire Department; however, a representative of Geotechnology interviewed Fire Chief G.W. Scott during the previous 1998 Phase I ESA. At the time of the 1998 interview, Fire Chief G.W. Scott indicated that the Fire Department has not responded to spills or hazardous materials incidents at the subject site. The Fire Department has responded to weed fires and a trailer fire. He also stated that he was not aware of any railroad incidents along the site.

4.3 Electric Utility. Illinois Power was contacted regarding the PCB status of transformers on the subject site during the 1998 Phase I ESA. Mr. Chamblen of Illinois Power indicated that if transformers belong to Illinois Power, assume that the transformers have a PCB content of 50 to 499 ppm. He also stated that if there has been a release, Illinois Power assumes remedial responsibility for any of Illinois Power's equipment.

5.0 HISTORICAL RECORDS REVIEW

5.1 Aerial Photographs. Aerial photographs for the years 1955, 1962, 1968, 1978, 1988, 1993, and 1997 were reviewed to obtain information about the history of development on and in the vicinity of the site. The subject site and adjacent properties appear to be a mix of agricultural, residential, and commercial properties. The aerial photographs indicate a general increase in development over the years which have included what appear as soil borrow areas. The 1993 and 1997 aerial photographs indicate potential piles of rubble may be present at the location depicted as Site Reconnaissance Item Number 15 noted on Plate 2. The 1962 and 1968 aerial photographs indicate that prior to the construction of the existing Midwest Tool and Die Shop building, a previous building may have existed slightly farther west of the current location of the Midwest Tool and Die Shop. The 1988 aerial photograph indicates the presence of the Midwest Tool and Die Shop building.

5.2 Sanborn Maps. Sanborn Fire Insurance Maps are not available for this site.

6.0 SITE RECONNAISSANCE

A walking reconnaissance of the subject property was performed on August 30 and 31, 2004 by a representative of Geotechnology. The purpose of the reconnaissance was to note visual evidence of contamination such as staining, vegetation distress, remnant foundations, wastes, etc. Site photographs are presented in Appendix C. Field observations by Geotechnology personnel from the previous December 1998 and the August 2004 site reconnaissance are summarized below. The listed numbers correspond to the approximate location of the observations as shown on Plate 2.

1. 1998: *Midwest Tool & Die Company - Grey/brown stains were observed on the gravel parking lot. The site contained 3 tractor trailers which contained miscellaneous equipment including 5 gallon buckets, railroad ties, an air conditioning unit, and electrical equipment. Several 55-gallon drums were present with markings indicating tomato paste, waste oil, vinyl ester resin, and soluble cutting oil. A pallet and soils under some of the drums appeared to be stained. Several other small containers were noted including bleach bottles, compressed gas cylinders, and 5-gallon buckets. Two piles of a fine black material were noted on the site. One pile was approximately 8-foot by 2-foot and the second pile was approximately 6-feet by 60 feet. Also noted on the Midwest Tool & Die Company site was an aboveground storage tank approximately 100 gallons in size, miscellaneous tooling equipment, and brown and black stains on a concrete pad west of the building. Further west on the Midwest Tool & Die property piles of concrete and construction debris were noted.*

2004: The Midwest Tool & Die Company building appeared to be vacated with a few pieces of equipment remaining. Some portions of the concrete slab inside the building appeared to be stained with oil. Three 100- to 200-gallon ASTs and an apparent compressed gas tank were observed laying on the ground to the west of the Midwest Tool & Die building (Photograph 1). One piece of metal working equipment was located near the tanks. Several apparently empty containers were observed in two sheds to the west of the building. The containers included 5-gallon oil containers, small bleach containers, and small containers with Tobasco labels. Staining related to tanks or containers located outside or inside the sheds was not observed. A debris pile that included an apparently empty potassium/sodium bisulfite/sulfite container and apparent construction debris was observed to the west of the Midwest Tool & Die building. Another debris pile containing discarded residential appliances was observed to the southwest of the Midwest Tool & Die building. The three tractor trailers, 55-gallon drums, stained soil, and the two piles of fine, black material noted during the 1998 site reconnaissance were not observed.

2. 1998: *A limestone foundation and chimney were observed. In addition, debris was observed which consisted of roofing material, light ballasts, miscellaneous metals, appliances, etc.*

2004: These debris piles were not observed during the 2004 site reconnaissance. Thick vegetation may have obscured the debris piles.

3. 1998: *Debris piles, limestone foundations, and railroad ties were observed.*

2004: Debris piles were observed in this general area and appeared to include discarded residential appliances and glass and metal residential waste.

4. 1998: *Miscellaneous debris, which may be residential type trash was observed on an embankment.*

2004: The above item was not observed during the site reconnaissance.

5. 1998: *The Caseyville Gun Club appears to have areas for shooting shotguns, rifles, and pistols. Rubble piles were noted on the site as well as an approximate 8 foot by 6 foot structure built into the ground and a locked storage container approximately 40 cubic yards in size. It is unknown if gun powder and/or spare ammunition is stored on this site.*

2004: Small structures utilized by the Caseyville Gun Club were observed in this area.

6. 1998: *An approximately 15-foot by 10-foot pile of asphaltic roofing was observed.*

2004: The above item was not observed during the site reconnaissance.

7. 1998: *Piles of concrete, tires, and miscellaneous debris were observed along the bank of Canteen Creek.*

2004: Tires, lumber, construction materials, and miscellaneous debris were observed along portions of Canteen Creek.

8. 1998: *Abandoned farm equipment was observed including a truck and small trailer. What appeared to be a well was also observed at this location.*

2004: An abandoned truck and farm equipment was observed at this location (Photograph 2).

9. 1998: *Items observed in this area were a heating oil type delivery truck, 2 tractor trailers, mechanical components, various empty 55-gallon drums, and approximately 100 concrete cubes. The concrete cubes were approximately 4 feet by 4 feet by 6 feet in size and were brought on site from an electroplating operation located elsewhere.*
- 2004: The above items were observed in addition to approximately four automobile gas tanks on the ground. Oil staining was observed on the concrete cubes and on the ground near the oil delivery truck (Photographs 3 through 6).
10. 1998: *In this area 4 underground or aboveground storage tanks were sitting on ground surface. The tanks ranged in size from approximately 300- to 4,000-gallons. Also present were an abandoned truck, chassis motor, furniture, 10 tires, ice machines, hoses, wood, steel, about 100 compressed gas tanks, 14 55-gallon steel drums, a 130-gallon drum, concrete sewer pipe, painted wood, scrap metal, appliances, and an abandoned trailer. A pond was observed at this location. In addition, a 55-gallon drum was located at the edge of the pond.*
- 2004: The above items, with the exception of the pond and nearby 55-gallon drum, were observed during the site visit. The potential exists that the pond observed in 1998 has been filled.
11. 1998: *This approximately 100 x 200 foot area contained residential type debris which included tires, plastic bottles, etc.*
- 2004: This debris pile was not observed possibly due to dense vegetation (Photographs 7 and 8).
12. 1998: *A portion of this area was utilized as a soil borrow area. Along the toe of a bank in southeast area of this location, two areas of vegetation stress were noted. Along with the vegetation stress, seeps with brown and black staining were observed. Odors were not detected. Another small area to the northwest of this item was a pile of soil similar in shape to a ramp.*
- 2004: Areas where soil had been removed from hillsides were observed in this area. Stressed vegetation and staining was not observed in this area.
13. 1998: *At this location there were approximately 70 empty dumpsters, 7 abandoned trucks (including one oil truck), an abandoned car, a corrugated steel culvert, 3 storage tanks, and a 550gallon drum. Treated (creosote type) lumber approximately 6-inches by 6-inches by 20-feet long, small boat type trailer, and*

other miscellaneous debris. One of the tanks was an elevated aboveground tank with another storage tank adjacent to it. Areas of staining near these aboveground tanks were visible.

2004: The above items were observed during the site reconnaissance. Staining near the ASTs was not observed (Photographs 9 and 10).

14. 1998: *This appeared to be an old soil borrow area.*

2004: Areas where soil had been removed from hillsides were observed in this area.

15. 1998: *Two abandoned trailers, concrete rubble, a riveted steel tank, and one steel tank in the creek were observed near this location. The ends of the two tanks had been removed.*

2004: The above items were observed during the site reconnaissance (Photographs 11 and 12). One of the two trailers had apparently been burned.

16. 1998: *Twenty 55-gallon drums were observed at this location.*

2004: Drums were not observed at this location during the site reconnaissance.

17. 1998: *Five abandoned vehicles and two 200-gallon fuel oil tanks were observed near this location.*

2004: Abandoned vehicles and farm equipment, approximately ten 55-gallon steel drums, fluorescent light fixtures, one 200-gallon diesel fuel tank, and miscellaneous sheet metal and fiberglass debris were observed near this location (Photographs 13 and 14).

18. 1998: *Approximately 50 tires were observed in the creek bed near this location.*

2004: Approximately fifteen discarded tires were observed in the creek at this location (Photograph 15).

19. 1998: *A pile of roofing type material was observed at this approximately location.*

2004: [This item is not located in the current study area and was therefore not investigated.]

20. 1998: *An abandoned bus, 2 trucks, 2 storage tanks, 4 pieces of earth moving equipment, and tires were observed at this location.*
- 2004: The above items were observed during the site reconnaissance. The storage tanks appeared to be 200- to 300-gallon diesel ASTs (Photographs 16 and 17).
21. 1998: *A fill area was observed near this location. Concrete, sewer pipe, and rubble was observed at the surface.*
- 2004: The above items were not observed during the site reconnaissance.
22. 1998: *Concrete and rubble type materials were apparently dumped near this location*
- 2004: [This item is not located in the current study area and was therefore not investigated.]
23. 1998: *At this location two abandoned trailers, and 5 abandoned vehicles were observed. In addition a large amount of what appeared to be residential type debris was also observed. The debris included appliances, wood, metal, carpet, shingles, small containers, and at least one drum.*
- 2004: [This item is not located in the current study area and was therefore not investigated.]
24. 2004: At this location an apparent storage shed and a nearby abandoned truck were observed. Three 5-gallon containers of hydraulic oil, equipment, and construction materials were observed outside the shed.

7.0 INTERVIEWS

During the previous 1998 Phase I ESA, Geotechnology submitted Owner/Tenant Questionnaires to Burns & McDonnell to arrange for the distribution of the Questionnaire to the respective landowners. The purpose of the questionnaire was to obtain historical background information for the site, as well as other pertinent details. The questionnaires were completed and returned to Geotechnology after the 1998 Phase I ESA report was issued. The completed questionnaires were reviewed by a representative of Geotechnology during the current Phase I ESA update activities. Pertinent findings from the questionnaires are summarized in Table 2.

Table 2 Summary of Owner/Tenant Questionnaires	
Owner/Tenant	Summary of Pertinent Findings
Mr. & Mrs. James Lee	Septic tank on property.
Ms. Sharon Rose McCarmack	Potential private well on property. Pole-mounted transformer, AST, two discarded vehicles, and a small amount of dumping (material not specified) on property.
Midwest Tool and Die	Machine shop operated on property.
Clarence Bonebrake	In the early 1980s, material from an IDOT bridge was dumped and covered on a portion of the property along the edge of highway.
James Seiber	Two 500-gallon ASTs and junk metal on property. Straw and bedding material from Fairmount Race Track is buried on property.
Scott Maloney/William F. Gerhard	Two mobile homes and one burned downed residence on property.
Raymond & Betty Niel	One private well used for drinking water, one septic tank, and 3-4 discarded tires located on property. Household trash was burned on property until late 1960s.
Jimmy G. Fischer/Ted Paine	Trailer parts store operated on property. Tires used for horse jumping on property.
Richard & Kathy Toon	Private well, one 300-gallon gasoline tank, and one 1,000-gallon propane tank on property.
Maxim & Susan Jakovac	Horse farm operated on property. Septic tank and diesel AST located on property.
Tracey & Sandy Boyer	Septic tank located on property.
Judith Crocker Smith	Two private water wells located on property.
Steven Johnson	One 1,000-gallon septic tank on property.
John W. Baird	Horse farm and mobile homes located on property. Fill material from a local hillside was brought onto the property. One 200-gallon propane and heating oil tanks located on property.

Copies of the Owner/Tenant Questionnaires are included in Appendix D.

8.0 FINDINGS AND CONCLUSIONS

Geotechnology performed a Phase I ESA update of the subject property, an approximately 400 acre tract consisting of residential, commercial and vacant properties between Illinois Route 159 and Illinois Route 157 south of Conrail Railroad and South Morrison Street in Caseyville, Illinois. Geotechnology has endeavored to perform this Phase I ESA update in substantial conformance with the scope and limitations of ASTM Standard E1527-00. The Phase I ESA update activities consisted interviews, environmental conditions search and a reconnaissance survey. This Phase I ESA has revealed evidence of the following recognized environmental condition (REC) at the subject property:

- Apparent oil staining was observed on the ground near an oil delivery truck in the area of Site Reconnaissance Item 9. If desired, environmental sampling may be conducted to evaluate the extent of the apparent release.
- At several locations on the site, storage tanks, 55-gallon drums, and other containers were observed. Some of the steel storage tanks were aboveground tanks that appeared to be utilized to fill construction and/or farm vehicles other aboveground tanks appeared to have been discarded. Several steel tanks that were observed appeared to have been underground storage tanks that had been removed from the ground. Based on visual observations, Geotechnology could not ascertain if releases from the storage tanks, drums, or containers have occurred; however some of the tanks, drums, and containers appeared to be in poor condition. If desired, environmental sampling may be conducted to evaluate for the potential presence of contaminants related to the observed tanks, drums, and containers.
- Approximately 100 concrete cubes were observed in the area of Site Reconnaissance Item 9. According to the owner, the concrete cubes were previously utilized in an off site electroplating operation. The potential exists for the concrete cubes to contain contaminants related to the off site electroplating operation. If desired, environmental sampling may be conducted to evaluate for the potential presence of contaminants related to the concrete cubes and the off site electroplating operation.
- Light ballast and fixtures that may contain PCBs were observed in debris piles during the 1998 site reconnaissance (see Site Reconnaissance Item 2) and during the 2004 site reconnaissance (see Site Reconnaissance Item 17). The light ballasts/fixtures appeared to be in poor condition and may have been leaking. If desired, samples of the materials and surficial soils may be collected to evaluate the potential presences of PCBs.
- Based on observations from the 1998 site reconnaissance, the area near Site Reconnaissance Item 12 appears to contain leachate and materials that may indicate that disposal of materials may have occurred in the area. If desired, excavation of test pits and/or environmental sampling may be conducted to evaluate the extent of and to characterize the suspected fill or materials.
- The Caseyville Gun Club has areas that appear to be used for shooting shotguns, rifles, and pistols. The potential exists for the soils, in the area of the shooting ranges, to be impacted by lead. If desired, environmental sampling at these areas may be performed to evaluate the potential extent of lead contamination.

Based on the information readily available to Geotechnology, the following non-REC items are pertinent to the subject site:

- Johnson Excavating and Trucking Service is identified as a RCRIS Transporter in the Environmental FirstSearch report. This site appears to be located on the subject property near the location of Site Reconnaissance Item 9. The RCRIS Transporter designated indicates that this business is a potential transporter of hazardous wastes.
- The Environmental FirstSearch report identified four RCRIS Generator sites, two UST sites, and five LUST sites located within the ASTM specified search radius from the subject site. In our experience, such sites have the potential to impact soil and groundwater due to potential releases of hydrocarbons or other contaminants, however, these sites do not appear to pose a significant environmental threat to the subject property based on their distance and relative location.
- Numerous abandoned vehicles were observed at several locations on the subject site. If desired, environmental sampling may be conducted to evaluate for the potential presence of contaminants related to potential past releases of fuel, oil, or other automotive liquids from the abandoned vehicles.
- Debris piles were observed at several locations on the subject site. Some debris piles appeared to contain railroad ties, asphalt roofing materials, appliances, compressed gas cylinders, mechanical parts, and residential type refuse. In addition, the potential exists that the pond observed in the area of site reconnaissance Item 9 has been filled. When removed from the site, these items should be disposed in accordance with federal, state, and local laws. In addition, environmental sampling may be conducted to evaluate for the potential presence of contaminants related to these debris piles.
- Septic tanks are reportedly located on the subject property. Septic tanks can provide a vertical pathway for contaminants and should be properly removed during future construction activities.
- Due to the construction history of the subject site buildings, lead-based paint may be present. However, only a survey by a licensed inspector, with appropriate sampling/testing, can determine the actual presence of lead-based paint. A detailed lead-based paint survey of the subject site buildings is recommended prior to renovation, demolition, or impact to suspect painted material.

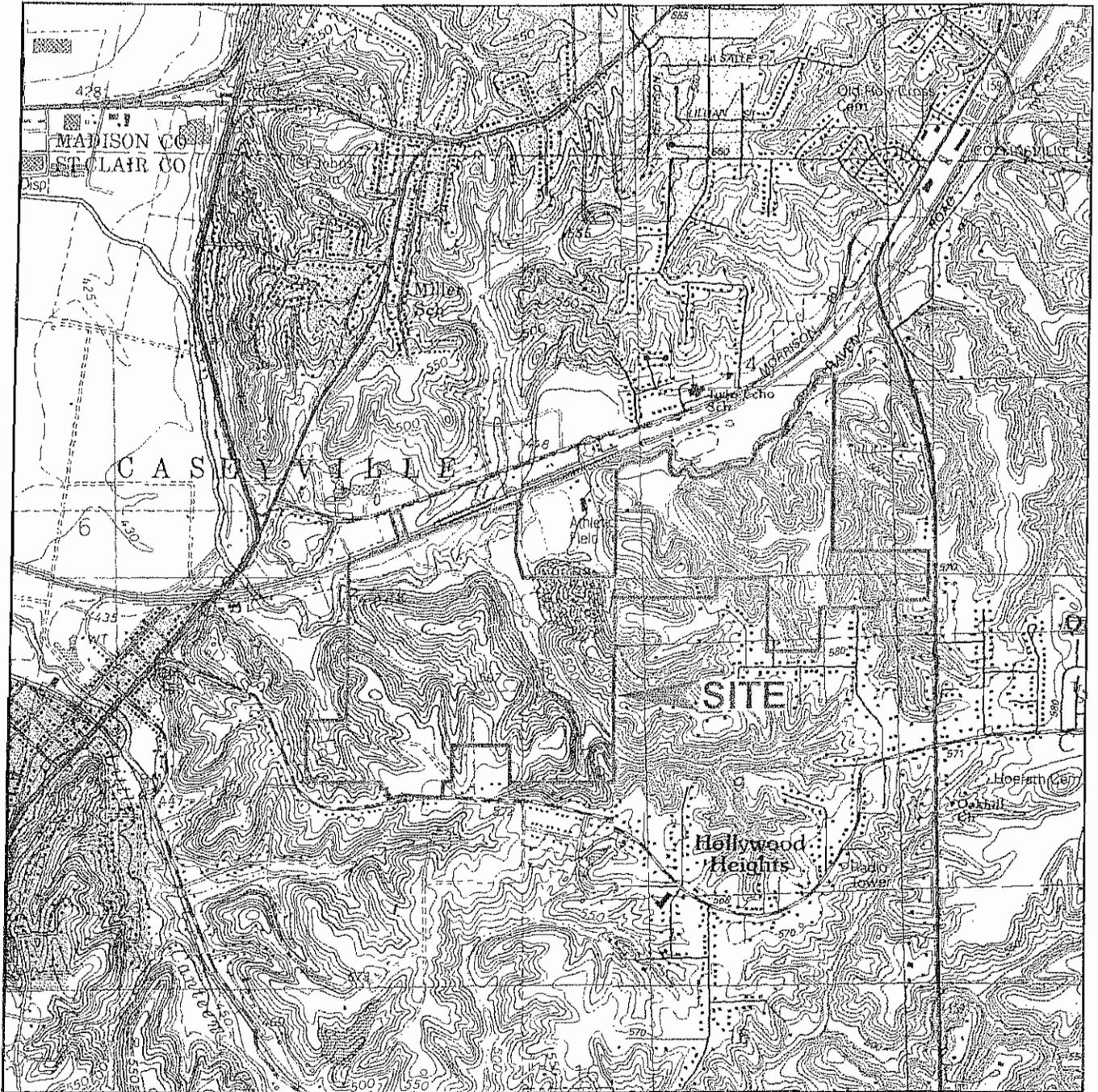


- Due to the construction history of the subject site buildings, asbestos-containing building materials (ACBM) may be present. Only a survey by an accredited inspector, with appropriate sampling/testing, can determine the actual presence of asbestos. A detailed asbestos survey of the subject site buildings is recommended prior to renovation, demolition, or impact to suspect building material.

While the above non-REC items may be of potential environmental concern, the information presented herein does not indicate the presence or likely presence of contamination due to the presence of the above-listed sites and features. In our opinion, the above items are not defined as RECs.

9.0 RESUMES OF ENVIRONMENTAL PROFESSIONALS

Resumes of the environmental professionals who performed this Phase I ESA of the subject property are presented in Appendix E.



NOTE

Plan adapted from 7.5 minute U.S.G.S. maps for Collinsville and Monks Mound, Illinois Quadrangles, last revised in 1991 and 1993, respectively.



Drawn By: MAS	Ck'd By: REM	App'vd By: AJL
Date: 9-7-04	Date: 9-8-04	Date: 9-8-04

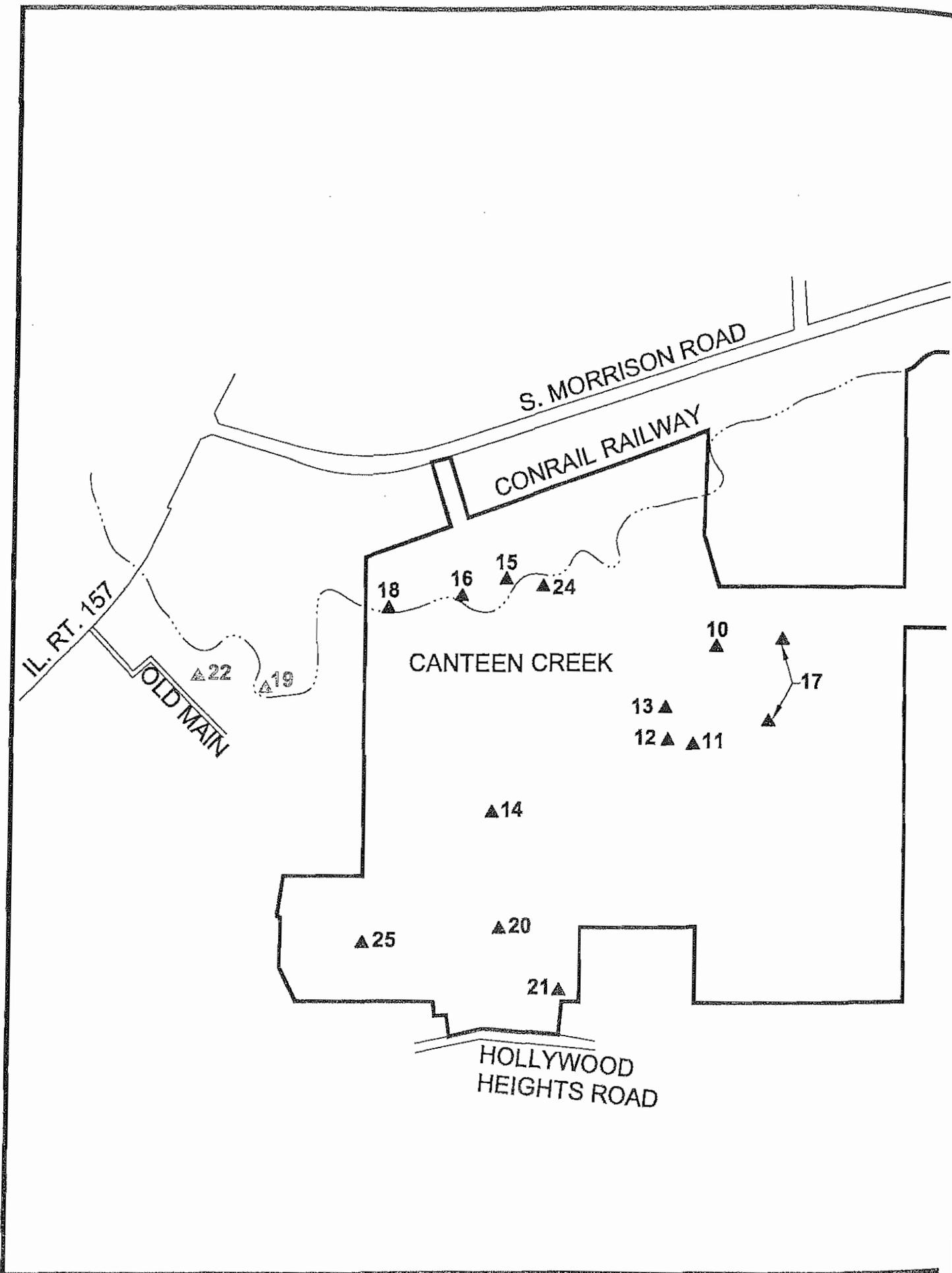


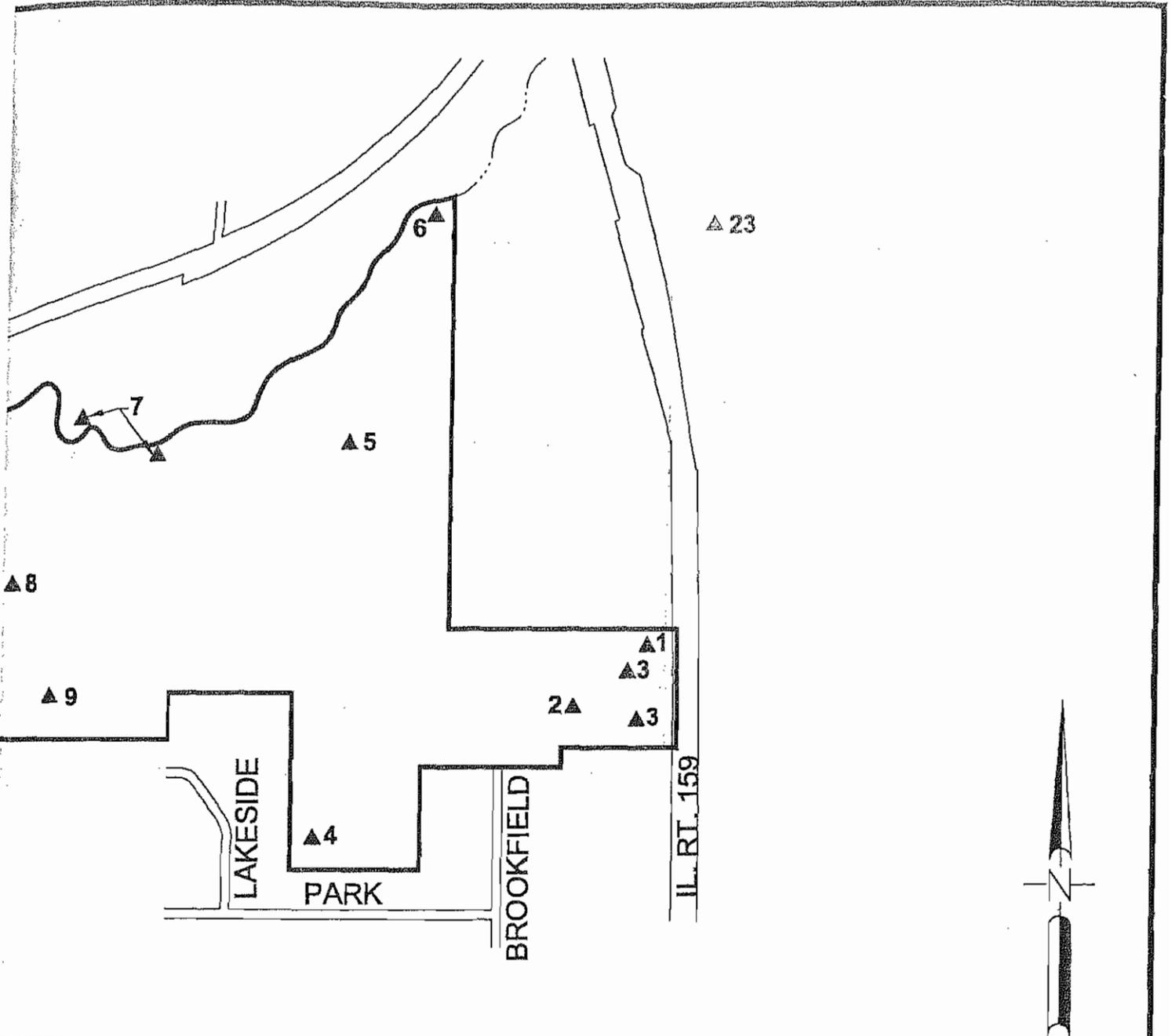
Forest Lake Development
St. Clair County, Illinois

**SITE LOCATION
AND TOPOGRAPHY**

Project Number
0486904.45TA

PLATE 1





NOTES

1. Plan adapted from an undated survey drawing titled "Exhibit 'B' Proposed T.I.F. Boundary", prepared by Madison County Surveyors, and supplied by the Client.
2. Locations of numbered items were established in the field with reference to existing site features and are shown approximate only.
3. Refer to Section 6.0 - Site Reconnaissance for a description of numbered items.



Drawn By: MAS	Ck'd By: REM	App'vd By: AJL
Date: 9-7-04	Date: 9-8-04	Date: 9-8-04
 GEOTECHNOLOGY INC. ENGINEERING AND ENVIRONMENTAL SERVICES ST. LOUIS • COLLINSVILLE • KANSAS CITY		
Forest Lake Development St. Clair County, Illinois		
PLAN OF SITE		
Project Number 486904.45TA		PLATE 2



GEOTECHNOLOGY, INC.
 ENGINEERING AND ENVIRONMENTAL SERVICES
 SAINT LOUIS • INDIANAPOLIS • COLLINSVILLE

December 29, 1998

4869.01.8520

Mr. Mark Everett
 Burns & McDonnell, Inc.
 Eagle Center #4
 O'Fallon, Illinois 62269

Re: Phase I Environmental Site Assessment Report
 CELF Trust Development
 Hwy 159 to Hwy 157 south of S. Morrison Street
 Caseyville, Illinois

Dear Mr. Everett:

In general accordance with our proposal number P7263.00.8520 of December 2, 1998, Geotechnology, Inc. has performed a Phase I Environmental Site Assessment (ESA) of the subject site.

The purpose of this Phase I Environmental Site Assessment was to provide a professional opinion, based on the limited Scope of Services given below, as to the potential for contamination to exist which may require remedial action. This scope of services has limitations including, but not limited to, the following examples. Subsurface contamination often times cannot be detected by a site walk, unless it appears at the surface. Most often, it requires subsurface investigation to be detected, or it is found during removal or construction activities. Another example is even though a site is not listed by the state as having a release number, that does not preclude the possibility a release has occurred and has not been detected. A Phase II Assessment is recommended for this site to further evaluate several areas of suspect contamination.

We urge you to read the entire report and to contact the undersigned with any questions or concerns you may have about it.

A Phase I ESA comprises a number of individual elements, the basic nature and extent of which are determined in accordance with the standard of care applicable to Phase I ESAs. The standard of care is commonly defined as the care applied by the ordinary practitioner at the time and in the area where the ESA was performed. We believe that we have complied with the applicable standard of care. Note that our services intentionally did not include any inquiries with respect to asbestos, lead-based paint, radon, methane gas, wetlands, lead-in-drinking water, formaldehyde, or electromagnetic fields (EMFs).

The accompanying report is an instrument of service of Geotechnology, Inc. The report summarizes our findings and relates our opinions with respect to the potential for hazardous materials to exist at the site at levels likely to warrant mitigation pursuant to current regulatory guidelines. Note that our findings and opinions are based on information that we obtained on given dates, through

Mr. Mark Everett
December 29, 1998
Page 2

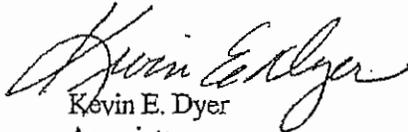
4869.01.8520

records review, site review, and related activities. It is possible that other information exists or subsequently has become known, just as it is possible for conditions we observed to have changed after our observation. For these and associated reasons, Geotechnology, Inc. and many of its peers routinely advise clients for ESA services that it would be a mistake to place unmerited faith in findings and opinions conveyed via ESA reports. Geotechnology, Inc. cannot under any circumstances warrant or guarantee that not finding indicators of hazardous materials means that hazardous materials do not exist on the site. Additional research, including invasive testing, can reduce Burns & McDonnell risks, but no techniques now commonly employed can eliminate these risks altogether. Geotechnology, Inc. will be pleased to provide more information in this regard.

We appreciate the opportunity to be of assistance. Please call me if you have any questions.

Very truly yours,

GEOTECHNOLOGY, INC.


Kevin E. Dyer
Associate

KED:RBP/ked:pjt

Copies Submitted: (3)

COPY

**PHASE I ENVIRONMENTAL ASSESSMENT
CELF TRUST DEVELOPMENT
ILLINOIS HIGHWAYS 159 TO 157
SOUTH OF S. MORRISON STREET
CASEYVILLE, ILLINOIS**

Prepared for:

BURNS & McDONNELL

O'Fallon, Illinois

Prepared by:

GEOTECHNOLOGY, INC.

Collinsville, Illinois

December 29, 1998

4869.01.8520



GEOTECHNOLOGY, INC.
ENGINEERING AND ENVIRONMENTAL SERVICES
SAINT LOUIS • INDIANAPOLIS • COLLINSVILLE

December 29, 1998

4869.01.8520

Mr. Mark Everett
Burns & McDonnell, Inc.
Eagle Center #4
O'Fallon, Illinois 62269

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Hwy 159 to Hwy 157 south of S. Morrison Street
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We urge you to read the entire report and to contact the undersigned with any questions or concerns you may have about it.

A Phase I ESA comprises a number of individual elements, the basic nature and extent of which are determined in accordance with the standard of care applicable to Phase I ESAs. The standard of care is commonly defined as the care applied by the ordinary practitioner at the time and in the area where the ESA was performed. We believe that we have complied with the applicable standard of care. Note that our services intentionally did not include any inquiries with respect to asbestos, lead-based paint, radon, methane gas, wetlands, lead-in-drinking water, formaldehyde, or electromagnetic fields (EMFs).

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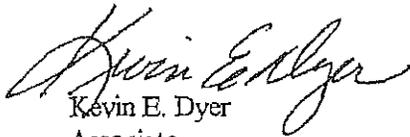
4869.01.8520

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We appreciate the opportunity to be of assistance. Please call me if you have any questions.

Very truly yours,

GEOTECHNOLOGY, INC.


Kevin E. Dyer
Associate

KED:RBP/ked:pjt

Copies Submitted: (3)

4869.01.8520

NOTICE

This report is an instrument of service prepared by Geotechnology, Inc. for the exclusive use of Burns & McDonnell. In order to create a report, upon which Burns & McDonnell could rely, Geotechnology, Inc. worked closely with Burns & McDonnell in development of the scope of service upon which all subsequent tasks have been based. No party other than Burns & McDonnell is permitted by Geotechnology, Inc. to rely on this instrument of Geotechnology, Inc.'s service. With the permission of Burns & McDonnell, Geotechnology, Inc. will meet with a third party to help identify the additional services required, if any, to permit such third party to rely on the information contained in this report, but only to the same extent of Burns & McDonnell's reliance, and subject to the same contractual, technological, and other limitations to which Burns & McDonnell has agreed.



4869.01.8520

PHASE I ENVIRONMENTAL ASSESSMENT
BURNS & MCDONNELL
CELF TRUST DEVELOPMENT
HWY 159 to HWY 157 SOUTH of S. MORRISON STREET
CASEYVILLE, ILLINOIS

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4869.01.8520

PHASE I ENVIRONMENTAL ASSESSMENT
BURNS & MCDONNELL
CEL F TRUST DEVELOPMENT
HWY 159 to HWY 157 SOUTH of S. MORRISON STREET
CASEYVILLE, ILLINOIS

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PHASE I ENVIRONMENTAL SITE ASSESSMENT
BURNS & MCDONNELL
CELF TRUST DEVELOPMENT
HWY 159 to HWY 157 SOUTH of S. MORRISON STREET
CASEYVILLE, ILLINOIS

1.0 SITE DESCRIPTION

The site under assessment consists of approximately 450 acres of residential, commercial, and vacant property between Hwy 159 and Hwy 157 south of the Conrail Railroad and S. Morrison Street, and 80 acres east of Hwy 159 in Caseyville, Illinois. The site appears to contain approximately 60± structures. Most of the structures are residential/agricultural in nature with the exception of at least the Midwest Tool and Die Company and the Johnson Excavation and Trucking Services. The site location is shown on the Environmental Data Resources (EDR) Overview Map included in Appendix B. A drawing of the subject property, adapted from a Madison County Surveyors' map obtained from Burns & McDonnell, is included as Plate 1.

2.0 PHYSICAL SETTING

The soils in the area of the site are described as Fayette silt loams and silty clay loams, which are on narrow ridges, hilltops and steep valley slopes. These soils are described as well drained. Minor soils associated with the Fayette series and noted on St. Clair County Soils Maps include but are not limited to the Sylvan, Worthen, and Wakeland series. Worthen soils are found on foot slopes, Wakeland soils are found in small creeks and drainage ways, and the very steep Sylvan soils are in areas on side slopes on bluffs above major streams. "The hazard of erosion is serious in unprotected steep areas that were once in native hardwood forests. Many steep areas need improved woodland management."¹ Surficial soils may range in thickness between 50 and 200 feet thick and underlain by the Pennsylvanian Cyclothem deposits comprised of alternating layers of shale, limestone, coal, and sandstone. The Pennsylvanian Carbondale formations generally comprise the western portion of the site and the Pennsylvanian Modesto formations generally comprise the eastern portion of the site.²

The nearest apparent natural surface water conduits to the subject property appear to be Canteen Creek and storm water runoff from adjacent properties, which appear to drain in a northerly direction across the subject site to Canteen Creek. Canteen Creek drains to the west and eventually joins the Cahokia Canal near Horseshoe Lake. Cahokia Canal eventually drains into the Mississippi River.

¹"Soil Survey of St. Clair County, Illinois", U.S. Department of Agriculture, Soil Conservation Service in cooperation with Illinois Agricultural Experiment Station, 1978.

² State of Illinois, Department of Registration and Education, Illinois State Geological Survey, "Geological Map of Illinois", 1967.

Illinois American Water Company supplies water to the Village of Caseyville. The Mississippi River is the source of water provided by Illinois American Water Company.

In most areas, general estimations about the direction of groundwater movement can be derived from observations of land-surface topography. In effect, the water table often is a subdued replica of the land surface. In addition, the slope of the land surface is typically toward streams or rivers. Based on general topographic gradient and the location of surface water bodies as observed on topographic maps, the groundwater may be flowing in a westerly to northwesterly direction.³

The average annual temperature and rainfall in the Bi-state area is 56.2 degrees Fahrenheit and 37.11 inches, respectively. The prevailing winds are generally from the west-northwest and south in the spring, the south in the summer, the south and west-northwest in the fall, and from the northwest to west-northwest in the winter. The probable maximum precipitation (water equivalent) for a 24-hour period is 4.91 inches.⁴

3.0 ENVIRONMENTAL RECORDS REVIEW

3.1 Government Agency Reference. File records from Environmental Data Resources (EDR) were obtained and reviewed to reference data provided by government agencies. The environmental data system furnished information on several database records including records of listings outlined in the American Society of Testing and Materials (ASTM) standards. The databases and approximate minimum search distance from the subject site for each of the databases is included after the listing in Table 1.

The ASTM minimum search distance for the USTs and RCRIS small and large quantity hazardous waste generators is identified as "adjoining properties". Since ASTM does not define a specific search distance for "adjoining properties", this EDR report utilizes a 1.25 mile search radius to satisfy this criteria. Due to the size of the site, a distance of 1.0 miles was added to the ASTM search radii for this report. Table 1 below summarizes the facilities located.

³ "U.S. Geological Survey Map", Collinsville and Monks Mound, Illinois Quadrangles 7.5 Minute Maps, revised 1974.

⁴ Local Climatological Data - Annual Summary with Comprehensive Data, St. Louis Missouri, National Oceanic and Atmospheric Administration, 1993.

TABLE 1
ENVIRONMENTAL RECORDS REVIEW

Database Searched	Search Distance (miles)	Facilities Located (Excluding Subject Site)
NPL	2.0	0
CERCLIS	1.5	0
CORRACTS	2.0	0
RCRIS-SQ Generators	1.25	5
RCRIS-LQ Generators	1.25	1
RCRIS TSD Facilities	1.5	0
ERNS	1.0	0
UST	1.25	12
LUST	1.5	7
FINDS	1.0	4
State Landfill	1.5	0
Consent	2.0	0
ROD	2.0	0
State Haz. Waste	2.0	0
Coal Gas	2.0	0

An Orphan Summary (i.e., unmappable sites) is explained and listed separately in the EDR Report. A cross reference of streets from orphan sites with the subject property address and street maps revealed two sites, the Village of Caseyville at 13 West Barrett, and TJS Auto Body at 2168 S. Morrison within the ASTM-specified vicinity. The report presented by EDR is included in Appendix B. Discrepancies between information provided by government agencies and EDR may exist due to incomplete or non-updated databases of either resource. In addition, facilities may be listed in more than one category on the environmental screening report. A summary of the EDR sites identified are listed in Table 2:

TABLE 2
EDR REPORT LISTINGS

	Site Name	Address	Approximate Distance from Site (miles)	Data Base	Status per EDR Report
1	Johnson Excavating and Trucking Service	53 Lakeside Drive Caseyville, IL	1/4-1/2 ESE	RCRIS-SQG FINDS	Violations were not found.
2	Collinsville High School	2201 S. Morrison Collinsville, IL 62234	1/4-1/2 West	FINDS	No Status
3	Buds Auto Body	604 Caseyville Road Collinsville, 62234	1/2-1 WNW	RCRIS-SQG, FINDS	EDR indicates that 3 violations are recorded
4	Bernice Jonas	1218 Hollywood Heights Rd, Caseyville	1/2-1 SE	UST	EDR indicates that USTs are not present and that this facility is exempt.
5	Hollywood Tavern	1218 Hollywood Heights Rd, Caseyville	1/2-1 SE	LUST	EDR indicates an Illinois EPA ID number of 1630255003 with an incident no. 900435
6	Willow Wood MHP	1166 Hollywood Heights Rd, Caseyville	1/2-1 SE	FINDS	EDR indicates that the facility has an active water discharge permit.
7	Dickerson Petroleum	1035 Belleville Road, Caseyville	1/2-1 ESE	UST	EDR report indicates that 3 USTs are present on the site.
8	Dickerson Petroleum	1035 Belleville Road, Caseyville	1/2-1 ESE	LUST	EDR indicates an Illinois EPA ID number of 1630255009 with an incident no. 930323
9	Clark Refining & Marketing	960 St. Louis Road, Collinsville	>1 NNW	UST	EDR indicates that this facility is closed and USTs are not registered at the site.
10	Clark Refining & Marketing	960 St. Louis Road, Collinsville	>1 NNW	LUST	EDR indicates an Illinois EPA ID number of 1194285035 with an incident no. 920701
11	Clark Refining & Marketing	960 St. Louis Road, Collinsville	>1 NNW	RCRIS-SQG FINDS	EDR report did not note any violations.
12	Thomas Bros. Auto Inc.	936 St. Louis Road Collinsville	>1 NNW	UST	EDR report indicates that 1 UST is present on the site.

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**TABLE 2 (cont'd)
 EDR REPORT LISTINGS**

	Site Name	Address	Approximate Distance from Site (miles)	Data Base	Status per EDR Report
13	EG Vogt Oil Co.	1101 St. Louis Road, Collinsville	>1 NNW	UST	EDR indicates that this facility is closed and USTs are not registered at the site.
14	Shell Oil Co.	701 St. Louis Road, Collinsville	>1 North	UST	EDR indicates that USTs are not present and that this facility is exempt.
15	Becker Automotive	1150 St. Louis Road, Collinsville	>1 NNW	LUST	EDR indicates an Illinois EPA ID number of 1194285043 with an incident no. 950240
16	Becker Automotive	1150 St. Louis Road, Collinsville	>1 NNW	RCRIS-SQG FINDS	EDR report did not note any violations.
17	Becker Automotive	1150 St. Louis Road, Collinsville	>1 NNW	UST	EDR indicates that this facility is closed and USTs are not registered at the site.
18	Gateway Industrial Power	Hwy 157 and Hwy 50	>1SW	FINDS RCRIS-LQG	EDR report did not note any violations.
19	Ron Becker Automotive	1200 St. Louis Road, Collinsville	>1 NNW	UST	EDR indicates that this facility is closed and USTs are not registered at the site.
20	Ron Becker Automotive	1200 St. Louis Road, Collinsville	>1 NNW	LUST	EDR indicates an Illinois EPA ID number of 1194285057 with an incident no. 950241
21	Southern Food Park	411 N. Main Street Caseyville	>1 WSW	UST	EDR report indicates that 2 USTs are present on the site.
22	Smiley Investments	535 St. Louis Road, Collinsville	>1 North	UST	EDR indicates that this facility is exempt and USTs are not registered at the site.
23	Smiley Investments	535 St. Louis Road, Collinsville	>1 North	LUST	EDR indicates an Illinois EPA ID number of 1194285036 with an incident no. 921872

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TABLE 2 (cont'd)
EDR REPORT LISTINGS

	Site Name	Address	Approximate Distance & Direction from Site (miles)	Data Base	Status per EDR Report
24	Larry Frederick	1001 S. Morrison Ave., Collinsville	>1 NE	UST	EDR report indicates that 4 USTs are present on the site.
25	Larry Reulecke	404 St. Louis Road, Collinsville	>1 North	UST	EDR report indicates that 2 USTs are present on the site.
26	Dalton Autobody	408 St. Louis Road, Collinsville	>1 North	RCRIS-SQG FINDS	EDR report did not note any violations.
27	Tri Star Marketing	501 Bluff Road, Collinsville	>1 NW	LUST	EDR indicates an Illinois EPA ID number of 1194285049 with incident nos. 972148 and 972391

GEOTECHNOLOGY



3.2 Local Fire Department. On December 15, 1998 the Village of Caseyville Fire Department was contacted to obtain information regarding fires, hazardous material spills, or complaints at or near the site in the recent past. Fire Chief G.W. Scott, of the Village of Caseyville Fire Department, informed Geotechnology that, to his knowledge, the Fire Department has not responded to spills or hazardous materials incidents at the subject site. The Fire Department has responded to weed fires and a trailer fire. He also stated that he was not aware of any railroad incidents along the site.

3.3 Electric Utility. During the site walk, pole mounted transformers were noted on the site. AmerenUE was contacted concerning the PCB status of the transformers. To date a response has not been received from AmerenUE. However, according to personnel at the Village of Caseyville, the subject area is serviced by Illinois Power. In a previous conversation with Bud Chamblen of Illinois Power regarding the PCB status of transformers, Mr. Chamblen stated that if the transformers belong to Illinois Power, assume that the transformers have PCBs from 50-499 ppm. He also stated that if there has been a release, Illinois Power assumes remedial responsibility for any of Illinois Power's equipment.

3.4 St. Clair County Health Department. Dave Walchshauer of the St. Clair County Health Department was contacted on December 23, 1998 concerning the subject site. Mr. Walchshauer has been with the County for approximately 8 years. He is not aware of any hazardous materials incidents or dumping activities which may have occurred on the subject site.

3.5 Illinois Environmental Protection Agency. Ken Mensing of the Illinois Environmental Protection Agency (IEPA) was contacted on December 23, 1998 concerning potential hazardous materials incidents and/or dumping activities which may have occurred on the subject site. Mr. Mensing stated that during the time frame of the mid to late 1980's to approximately 1990 he had dealings with a landowner, Mr. Siebers. Mr. Mensing stated that a large quantity of horse manure and general refuse from a local horse race track was buried on part of Mr. Siebers' property. Based on IEPA field observation notes, Mr. Mensing stated that the area of concern appeared to be about 400 feet long by 200 feet wide. The depth of the fill material is unknown. Mr. Mensing indicated on an aerial map that the location of the fill activities generally occurred in the vicinity of Site Reconnaissance Item #12 (See Section 5.0, #12).

4.0 HISTORICAL RECORDS REVIEW

4.1 Review of Aerial Photographs. Aerial photographs for the years 1955, 1962, 1968, 1978, 1988, 1993 and 1997 were reviewed to obtain information about the history of development on and in the vicinity of the site. The subject site and adjacent properties appear to be a mix of agricultural, residential, and commercial uses. The aerial photographs indicate a general increase in development

over the years which has included what appears as soil borrow areas. The 1993 and 1997 aerial photographs indicate potential piles of rubble may be present at locations depicted as Site Reconnaissance numbers 15 and 22 on Plate 1. The 1962 and 1968 aerial photographs indicate that prior to the construction of the existing Midwest Tool and Die Shop building, a previous building may have existed slightly further west of the current location of the Midwest Tool and Die Shop. The 1988 aerial photograph indicates the presence of the Midwest Tool and Die Shop building.

Sanborn Fire Insurance Maps were not available for this site.

4.2 Chain-of-Title Information. Burns & McDonnell has not provided, and, therefore, Geotechnology has not reviewed, a chain-of-title as prepared by a title company. We recommend that Burns & McDonnell obtain a chain-of-title or similar documents that contain past site ownership for indicators of past owners who may have conducted activities, which environmentally impacted the site.

5.0 SITE RECONNAISSANCE

5.1 Visual Reconnaissance. The site consists of approximately 530 acres and is a mix of vacant, residential, agricultural, and commercial uses. A walking reconnaissance at the site and observation of conditions at perimeter areas occurred on December 10, 1998 and December 14, 1998. The purpose of the reconnaissance was to note visual evidence of contamination such as staining, vegetation stress, remnant foundations, wastes, etc. Field observations by Geotechnology, Inc. personnel are listed below. The listed numbers correspond to the approximate location of the observations as shown on Plate 1. During the site walk, two autobody shops were discovered to be adjacent to the subject site. These two shops were Franks Automotive at 2038 S. Morrison Road, and AllN1 Autobody at 2168 S. Morrison Road. Franks Automotive appears to have previously been a residence. The AllN1 Autobody shop looks to be a relatively new structure. Neither of the autobody shops appears to have been previous gasoline stations. TJS Autobody, which is listed under the EDR orphan sites, has the same address as AllN1 Autobody. It is unknown if TJS and AllN1 are the same or separate businesses. The Handi Mart (Southern Food Park Inc., EDR Map finding #21), at 411 N. Main St., Caseyville is less than 1/4 mile from the western boundary of the subject site. EDR does not indicate that a release has been reported from the USTs at this site.

1. Midwest Tool & Die Company - Grey/brown stains were observed on the gravel parking lot. The site contained 3 tractor trailers which contained miscellaneous equipment including 5 gallon buckets, railroad ties, an air conditioning unit, and electrical equipment. Several 55-gallon drums were present with markings indicating tomato paste, waste oil, vinyl ester resin, and soluble cutting oil. A pallet and soils under some of the drums appeared to be stained. Several other small containers were noted including bleach bottles, compressed gas cylinders, and 5-gallon buckets. Two piles of a fine black material were

noted on the site. One pile was approximately 8-foot by 2-foot and the second pile was approximately 6-feet by 6-feet. Also noted on the Midwest Tool & Die Company site was an above ground storage tank approximately 100 gallons in size, miscellaneous tooling equipment, and brown and black stains on a concrete pad west of the building. Further west on the Midwest Tool & Die property piles of concrete and construction debris were noted.

2. A limestone foundation and chimney were observed. In addition, debris was observed which consisted of roofing materials, light ballasts, miscellaneous metals, appliances, etc.
3. Debris piles, limestone foundations, and railroad ties were observed.
4. Miscellaneous debris, which may be residential type trash was observed on an embankment.
5. The Caseyville Gun Club appears to have areas for shooting shotguns, rifles, and pistols. Rubble piles were noted on the site as well as an approximate 8 foot by 6 foot structure built into the ground and a locked storage container approximately 40 cubic yards in size. It is unknown if gun powder and/or spare ammunition is stored on this site.
6. An approximate 15-foot by 10-foot pile of asphaltic roofing was observed.
7. Piles of concrete, ties, and miscellaneous debris were observed along the banks of Canteen Creek.
8. Abandoned farm equipment was observed including a truck and small trailer. What appeared to be a well was also observed at this location.
9. Items observed in this area were a heating oil type delivery truck, 2 tractor trailers, mechanical components, various empty 55-gallon drums, and approximately 100 concrete cubes. The concrete cubes were approximately 4 feet by 4 feet by 6 feet in size and were brought on site from an electroplating operation located elsewhere.
10. In this area 4 underground or above ground storage tanks were sitting on ground surface. These tanks ranged in size from approximately 300- to 4000-gallons. Also present were an abandoned truck, chassis motor, furniture, 10 tires, ice machine, hoses, wood, steel, about 100 compressed gas tanks, 14 55-gallon steel drums, a 130-gallon drum, concrete sewer pipe, painted wood, scrap metal, appliances, and an abandoned trailer. A pond was observed at this location. In addition, a 55-gallon drum was located at the edge of the pond.

11. This approximate 100x200 foot area contained residential type debris which included tires, plastic bottles, etc.
12. A portion of this area was utilized as a soil borrow area. Along the toe of a bank in southeast area of this location, two areas of vegetation stress were noted. Along with the vegetation stress, seeps with brown and black staining were observed. Odors were not detected. Another smaller area to the northwest of this item was a pile of soil similar in shape to a ramp.
13. At this location there were approximately 70± empty dumpsters, 7 abandon trucks (including one oil truck), an abandon car, a corrugated steel culvert, 3 storage tanks, and a 55-gallon drum. Treated (creosote type) lumber approximately 6-inches by 6-inches by 20-foot long, small boat type trailer, and other miscellaneous debris. One of the tanks was an elevated above-ground tank with another storage tank adjacent to it. Areas of staining near these above-ground tanks were visible.
14. This appeared to be an old soil borrow area.
15. Two abandoned trailers, concrete rubble, a riveted steel tank, and one steel tank in the creek were observed near this location. The ends of the two tanks had been removed.
16. Twenty 55-gallon drums were observed at this location.
17. Five abandoned vehicles, and two 200-gallon fuel oil tanks were observed near this location.
18. Approximately 50 tires were observed in the creek bed near this location.
19. A pile of roofing type materials was observed at this approximate location.
20. An abandoned bus, 2 trucks, 2 storage tanks, 4 pieces of earth moving equipment, and tires were observed at this location.
21. A fill area was observed near this location. Concrete, sewer pipe, and rubble was observed at the surface.
22. Concrete and rubble type materials were apparently dumped near this location.
23. At this location two abandoned trailers, and 5 abandoned vehicles were observed. In addition a large amount of what appeared to be residential type debris was also observed.

The debris included appliances, wood, metal, carpet, shingles, small containers, and at least one drum.

5.2 Surrounding Land Use. The area appears to be a mix of agricultural, residential and commercial use.

6.0 QUESTIONNAIRES

Geotechnology, Inc. submitted Client and Owner/Tenant Questionnaires for completion to Burns & McDonnell. Burns & McDonnell arranged for the distribution of the Questionnaire to the respective landowners. The purpose of the Questionnaire was to obtain historical background information for the site, as well as other pertinent details. To date, response to the Questionnaires has not been received. If response to the Questionnaires are received within 10 days of the date of this report, Geotechnology will modify the contents of our recommendations as warranted based on the information provided.

7.0 FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The Phase I ESA activities consisted of historical and public records search, interviews, environmental conditions search, and a reconnaissance survey. Based on the information readily available to Geotechnology, Inc., the following conclusions and recommendations are pertinent to the subject site.

- The subject site consists of approximately 530 acres of land in Caseyville, Illinois, as indicated on Plate 1.
- Site Reconnaissance Item 1 - Midwest Tool and Die Company is located at 8105 N. Ill (Hwy 159) in Caseyville. Containers (e.g., 5-gallon containers, 55-gallon drums, etc.) and their contents, if any, should be disposed of in a manner consistent with federal, state, and local laws. If contents are present in any of the containers, the contents may need to be characterized prior to disposal. Two piles of fine black materials noted during the site walk including soils below the piles, and soils below the pallet of drums should be sampled and evaluated for the potential presence of contaminants. An above ground storage tank should be emptied, properly cleaned, and disposed. The contents of the tank, should be characterized if necessary, and disposed in a manner consistent with federal, state, and local laws.
- Site Reconnaissance Item 2 - A building foundation and chimney was observed. In addition, a debris pile contained light ballasts which may contain PCBs. These light ballasts appeared in poor condition and may have been leaking. Samples of the

materials and surficial soils should be collected to evaluate the potential presence of PCBs. In addition, roofing materials, which were present should be sampled for asbestos.

- Site Reconnaissance Item 5 – The Caseyville Gun Club has areas which appear to be used for shooting shotguns, rifles, and, pistols. The potential exists for the soils, in the area of the shooting ranges, to be impacted by lead. Sampling of these areas should be performed to evaluate the potential extent of lead contamination. If unused ammunition and/or gun powder is stored on the site, the current owners of the site should remove the materials or the materials must be disposed according to federal, state, and local laws.
- Site Reconnaissance Item 9 – According to the owner, the concrete cubes which were observed at this location were previously utilized in an off site electroplating operation. Dependent on the type of operation in which the cubes were utilized and/or whether the cubes were properly decontaminated, the concrete cubes may be a listed hazardous waste. The manufacturing operation in which these items were used should be reviewed and compared to the definitions under the Resource Conservation and Recovery Act (RCRA) 40 CFR 261.32. In addition, dependent upon the applicability of RCRA, the means by which the cubes were decontaminated should be reviewed and if such decontamination occurred, determine if the decontamination occurred on-site.
- Site Reconnaissance Item 10 – What appeared to be approximately 100 compressed gas cylinders were present. Some of these cylinders appeared to have been opened to atmospheric pressure. The tanks should be disposed of according to federal, state, and local laws. In addition, the storage tanks should be opened properly cleaned and sent to a recycler for disposal. If the tanks contain any materials, the material should be characterized and disposed of according to federal, state, and local laws. The soils adjacent to the drum near the edge of the pond should be sampled to evaluate if the adjacent soils have been impacted.
- Site Reconnaissance Item 12 - This area appears to contain leachates and materials, which indicate that past disposal practices may have occurred (refer to Section 3.5). Based on conversations with IEPA personnel, it is recommended to dig test pits in the Item 12 area and another other suspect area northwest of Item 12 in an attempt to evaluate the extent of the fill and types of materials which may be present. Samples should be collected to evaluate if the materials encountered exceed IEPA guidelines.
- Site Reconnaissance Item 13 – Surficial soil samples should be collected in the vicinity of the observed stains.

- At several locations on the site, piles of railroad ties, asphalt roofing materials, 55-gallon drums, and what appeared to be residential type refuse was observed. The asphalt roofing materials should be sampled for the potential presence of asbestos. The drums and any contents which may be present should be sampled and disposed according to federal, state, and local laws.
- At several locations on the site numerous abandoned vehicles, including a heating oil truck were observed. Product may exist in the heating oil truck. If residual liquids are present in its tank(s), the liquids should be characterized and disposed of properly.
- At several locations on the site steel storage tanks were observed. Some of the steel storage tanks were above-ground tanks, the type of which, are utilized to fill construction and/or farm vehicles. Other steel tanks, which were observed, may have been underground storage tanks, which were removed from the ground. If any of the tanks contain liquids, the liquids should be characterized and disposed of according to federal, state, and local laws. The tanks should be properly opened, cleaned, and sent to a metal recycler for disposal.
- Due to the construction history of the subject site buildings, lead-based paint may be present. However, only a survey by a licensed inspector, with appropriate sampling/testing, can determine actual presence of lead-based paint. A detailed lead-based paint survey in the subject site buildings is recommended prior to renovation, demolition, or impact to any suspect painted material.
- Due to the construction history of the subject site buildings, asbestos-containing building materials (ACBM) may be present. Only a survey by an accredited inspector, with appropriate sampling/testing, can determine actual presence of asbestos. The OSHA Asbestos (in Construction) standard 29 CFR 1926.1101, fully effective on October 1, 1995, requires a survey for or presumption of asbestos in buildings. The National Emission Standard for Hazardous Air Pollutants (NESHAP) and corresponding Illinois regulations require that an asbestos survey be performed prior to any renovation/demolition activity. A detailed asbestos survey in the subject site buildings is recommended prior to renovation, demolition, or impact to any suspect building material and to comply with OSHA requirements.

Burns & McDonnell
CELF Trust Development
Page 14

4869.01.8528

- Three locations in proximity to the subject site have reported releases. These sites are:
 - I. Village of Caseyville
13 Barrett Street
Caseyville, Illinois
 - II. Hollywood Heights Tavern
1218 Hollywood Heights Road
Caseyville, Illinois
 - III. Dickerson Petroleum Site
1035 Belleville Rd.
Caseyville, Illinois

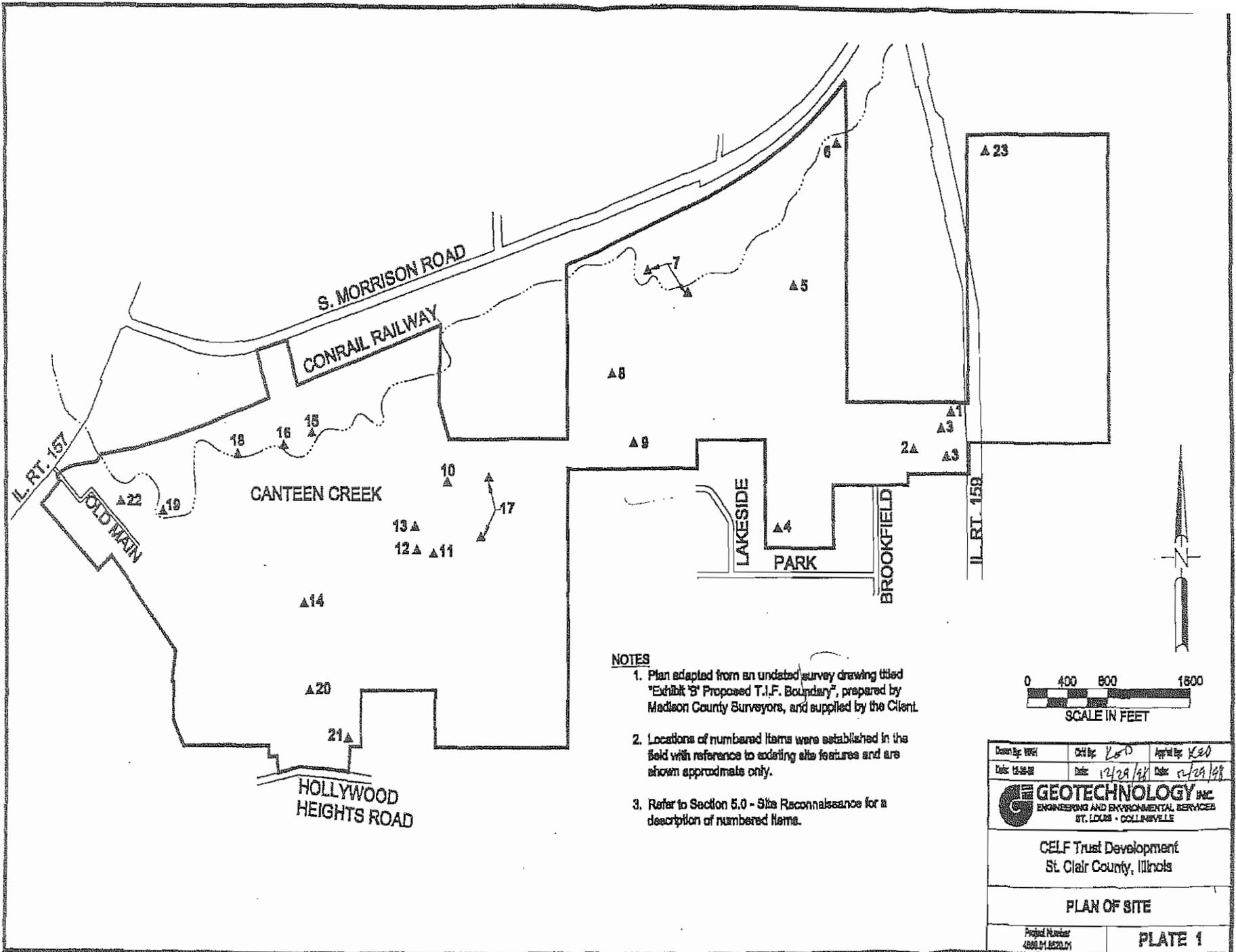
To evaluate the potential threat that the releases from these three facilities pose to the subject site, it is recommended that a Freedom of Information Act (FOIA) request be submitted to the IEPA on the status of these LUST sites.

- The Handi Mart, EDR's report #21, is not reported by EDR as having a reported release incident. However, due to its proximity to the western edge of the subject site, it is recommended that a FOIA should also be submitted to evaluate the facility's current status.
- EDR indicates that the Willow Wood Mobil Home Park has an active water discharge permit. This active discharge system could be for a wastewater treatment system that may discharge across the subject site toward Canteen Creek. It is recommended that the nature of this discharge permit be evaluated for potential impact to the subject site.

Geotechnology, Inc. has performed a Phase I ESA of the site in general located south of the Conrail railroad track west of Hwy 159 and east of Hwy 157 in Caseyville, Illinois as indicated on Plate 1. Geotechnology, Inc. has endeavored to perform this Phase I ESA in substantial conformance with the scope and limitations of ASTM Standard E 1527-97. The ESA has provided evidence suggesting recognized environmental conditions as previously mentioned.

E.O. ENVIRONMENTAL SITE ASSESSMENT
LIMITATIONS OF REPORT

1. This report has been prepared on behalf of and for the exclusive use of the addressee, solely for use in an environmental assessment of the site. This report and the findings contained herein



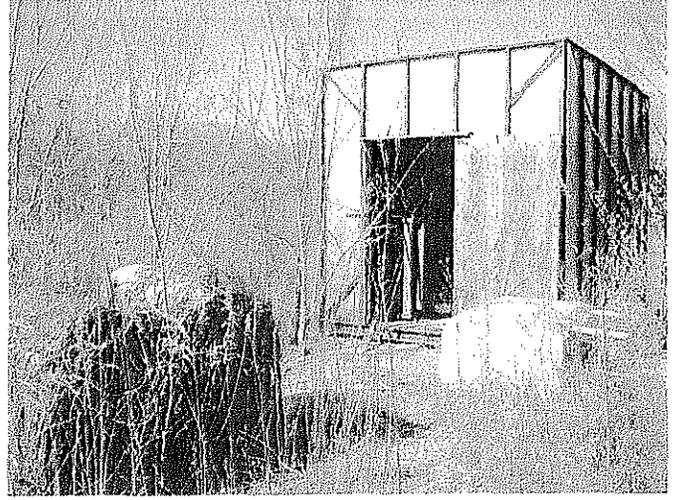
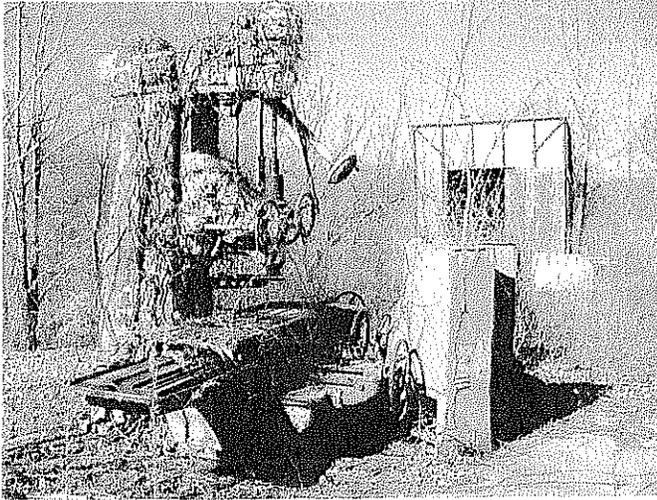
NOTES

1. Plan adapted from an undated survey drawing titled "Exhibit B" Proposed T.I.F. Boundary", prepared by Madison County Surveyors, and supplied by the Client.
2. Locations of numbered items were established in the field with reference to existing site features and are shown approximate only.
3. Refer to Section 5.0 - Site Reconnaissance for a description of numbered items.



Drawn by: WSH	Check by: LEO	App'd by: LEO
Date: 12-28-98	Date: 12/28/98	Date: 1/29/99
 GEOTECHNOLOGY INC. ENGINEERING AND ENVIRONMENTAL SERVICES ST. LOUIS - COLLINGSVILLE		
CELF Trust Development St. Clair County, Illinois		
PLAN OF SITE		
Project Number 48814-1022101	PLATE 1	

BLIGHT AND ENVIRONMENTAL
SITE #1



**BLIGHT AND ENVIRONMENTAL
SITE #1 (continued)**



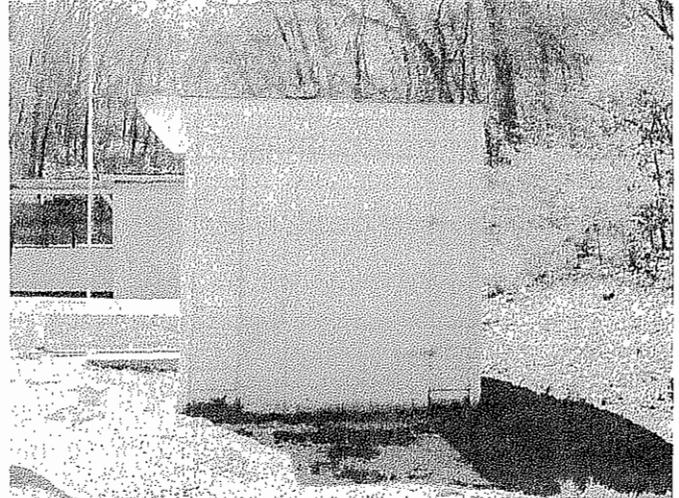
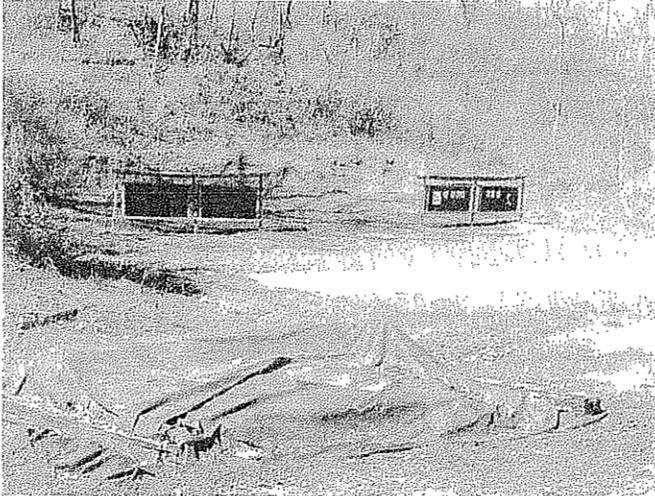
Midwest Tool & Die Company – Grey/brown stains were observed on the gravel parking lot. The site contained 3 tractor trailers which contained miscellaneous equipment including 5-gallon buckets, railroad ties, an air conditioning unit, and electrical equipment. Several 55-gallon drums were present with markings indicating tomato paste, waste oil, vinyl ester resin, and soluble cutting oil. A pallet and soils under some of the drums appeared to be stained. Several other small containers were noted including bleach bottles, compressed gas cylinders, and 5-gallon buckets. Two piles of a fine black material were noted on the site. One pile was approximately 8-foot by 2-foot and the second pile was approximately 6-feet by 6-feet. Also noted on the Midwest Tool & Die Company site was an above ground storage tank approximately 100 gallons in size, miscellaneous tooling equipment, and brown and black stains on a concrete pad west of the building. Further west on the Midwest Tool & Die property piles of concrete and construction debris were noted.

BLIGHT & ENVIRONMENTAL
SITE #3



Debris piles, limestone foundations, and railroad ties were observed

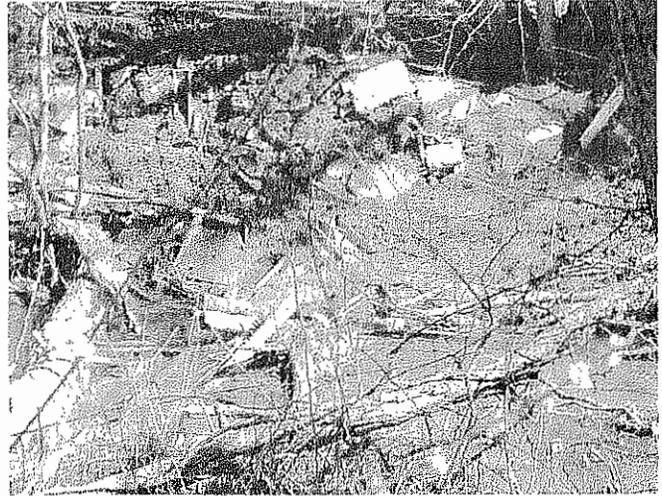
CASEYVILLE GUN CLUB QUICK-TAKE PROPERTY #6
BLIGHT AND ENVIRONMENTAL
SITE #5 AND #6



#5 - The Caseyville Gun Club appears to have areas for shooting shotguns, rifles, and pistols. Rubble piles were noted on the site as well as an approximate 8 foot by 6 foot structure built into the ground and a locked storage container approximately 40 cubic yards in size. It is unknown if gun powder and/or spare ammunition is stored on this site.

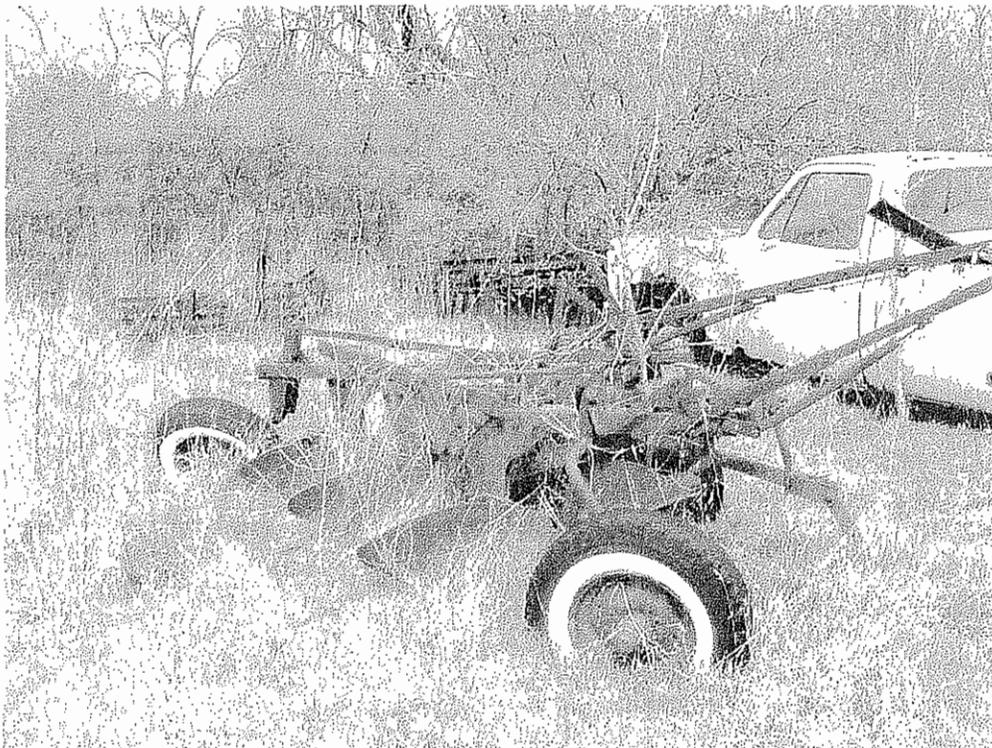
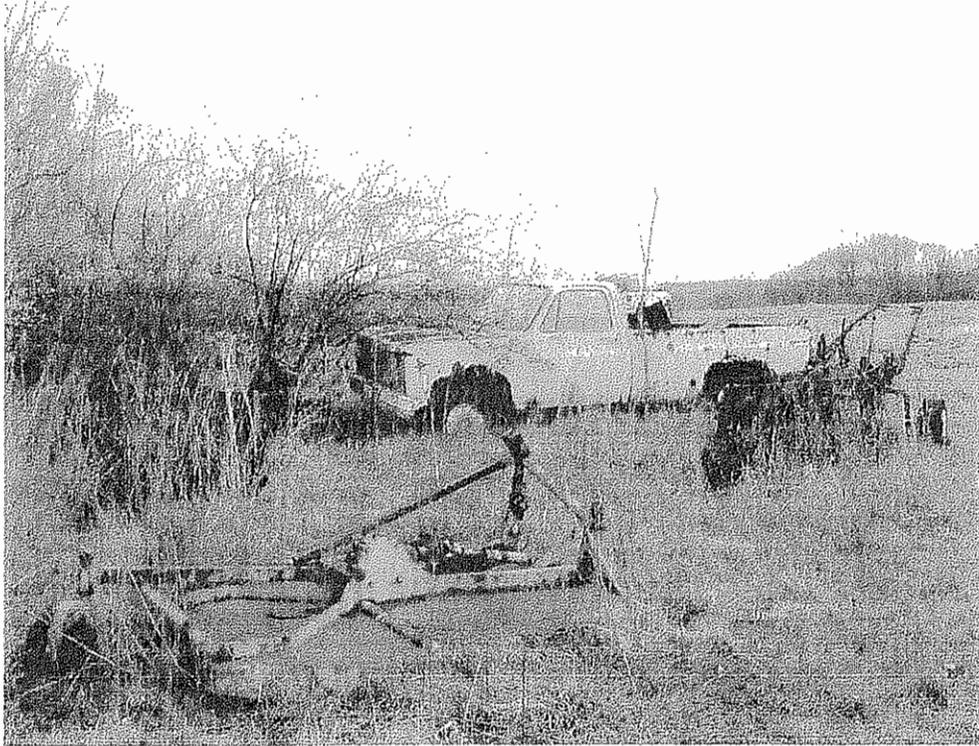
#6 - An approximate 15-foot by 10-foot pile of asphalt roofing was observed on this site.

**HAUGHT QUICK-TAKE PROPERTY #5
BLIGHT AND ENVIRONMENTAL
SITE #7**



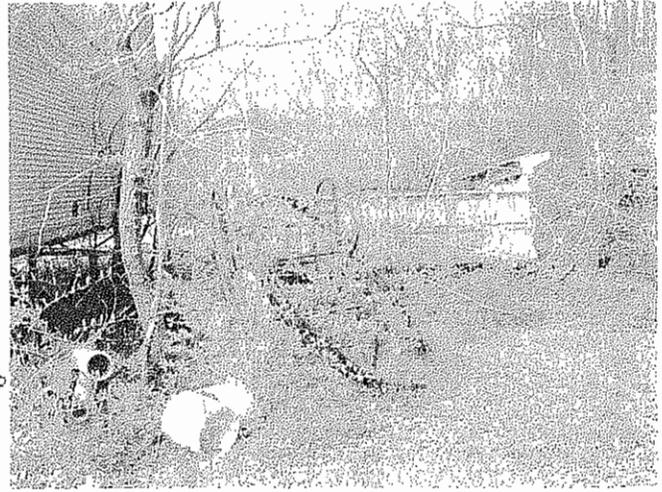
Piles of concrete, ties, and miscellaneous debris were observed along the banks of Canteen Creek.

BLIGHT AND ENVIRONMENTAL
SITE #8



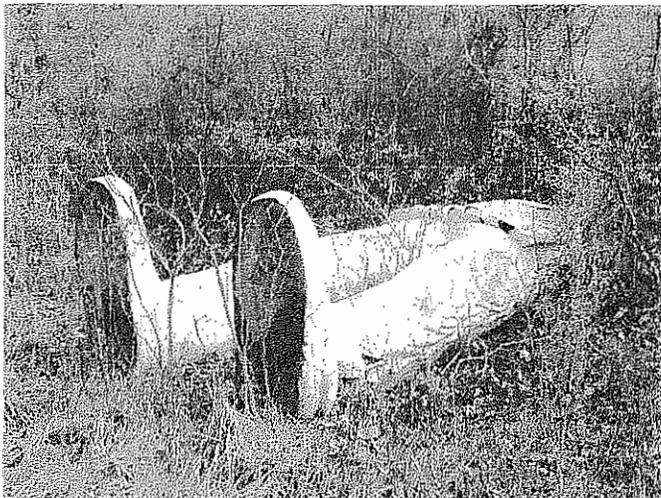
Abandoned farm equipment was observed including a truck and small trailer.
What appeared to be a well was also observed at this location.

**BLIGHT AND ENVIRONMENTAL
SITE #9**



Items observed in this area were a heating oil-type delivery truck, 2 tractor trailers, mechanical components, various empty 55-gallon drums, and approximately 100 concrete cubes. The concrete cubes were approximately 4 feet by 4 feet by 6 feet in size and were brought on site from an electroplating operation located elsewhere.

BLIGHT AND ENVIRONMENTAL
SITE #10



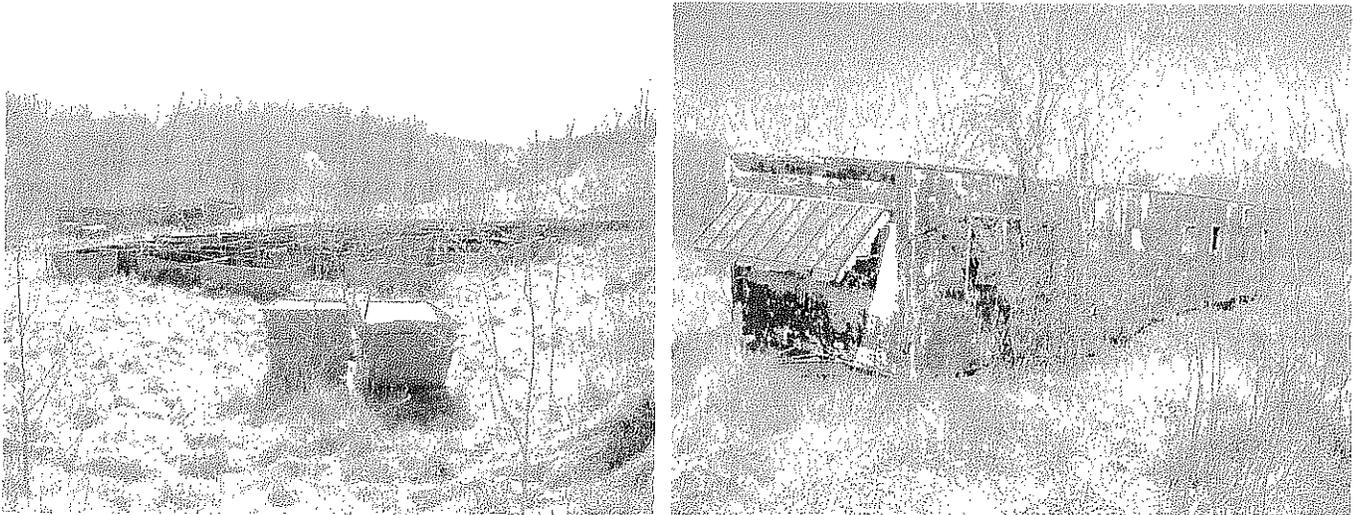
In this area 4 underground or above ground storage tanks were sitting on ground surface. These tanks ranged in size from approximately 300 to 4000 gallons. Also present were an abandoned truck, chassis motor, furniture, 10 tires, ice machine, hoses wood, steel, about 100 compressed gas tanks, 14 55-gallon steel drums, a 130-gallon drum, concrete sewer pipe, painted wood, scrap metal, appliances, and an abandoned trailer. In addition, a 55-gallon drum was located at the edge of a pond.

**BLIGHT AND ENVIRONMENTAL
SITE #10 (continued)**



In this area 4 underground or above ground storage tanks were sitting on ground surface. These tanks ranged in size from approximately 300 to 4000 gallons. Also present were an abandoned truck, chassis motor, furniture, 10 tires, ice machine, hoses wood, steel, about 100 compressed gas tanks, 14 55-gallon steel drums, a 130-gallon drum, concrete sewer pipe, painted wood, scrap metal, appliances, and an abandoned trailer. In addition, a 55-gallon drum was located at the edge of a pond.

BLIGHT AND ENVIRONMENTAL
SITE #13



SITE #13 - At this location there were approximately 70± empty dumpsters, 7 abandoned trucks (including one oil truck), an abandoned car, a corrugated steel culvert, 3 storage tanks, and a 55-gallon drum. Treated (creosote-type) lumber approximately 6-inches by 6-inches by 20-feet long, small boat type trailer, and other miscellaneous debris. One of the tanks was an elevated above-ground tank with another storage tank adjacent to it. Areas of staining near these above-ground tanks were visible.

**BLIGHT AND ENVIRONMENTAL
SITE #13 (continued)**



**BLIGHT AND ENVIRONMENTAL
SITES #14 and #23**



14 - This appeared to be an old soil-borrow area.

#23 – A large amount of what appeared to be residential-type debris was observed.
The debris included appliances, wood, metal, carpet, shingles,
small containers, and at least one drum.

**BLIGHT AND ENVIRONMENTAL FINDINGS
SITES #15 and #16**



Two abandoned trailers, concrete rubble, a riveted steel tank, and one steel tank in the creek were observed near this location. The ends of the two tanks had been removed. Twenty 55-gallon drums were observed at this location.

**BLIGHT AND ENVIRONMENTAL
SITES #15 and #16 (continued)**



Two abandoned trailers, concrete rubble, a riveted steel tank, and one steel tank in the creek were observed near this location. The ends of the two tanks had been removed.

Twenty 55-gallon drums were observed at this location.

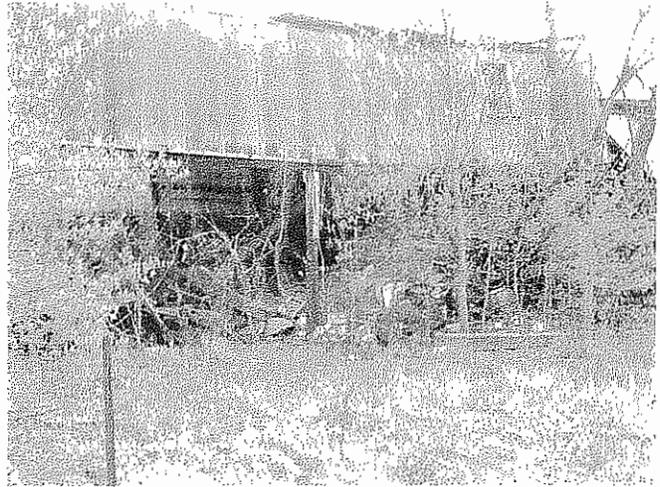
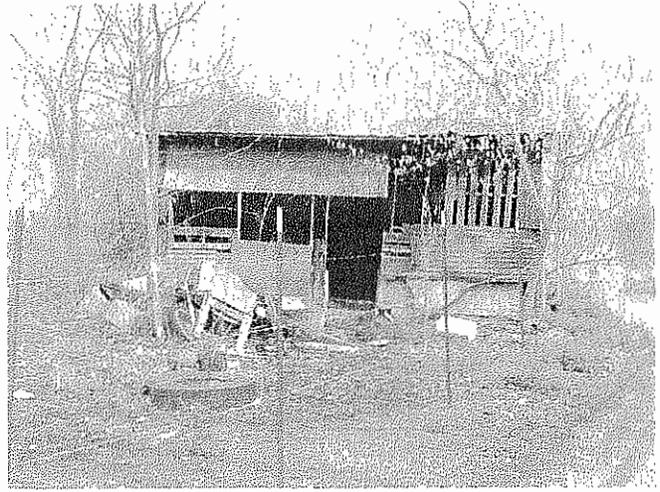
Tennis courts surface was dumped here.

BLIGHT AND ENVIRONMENTAL
SITE #17



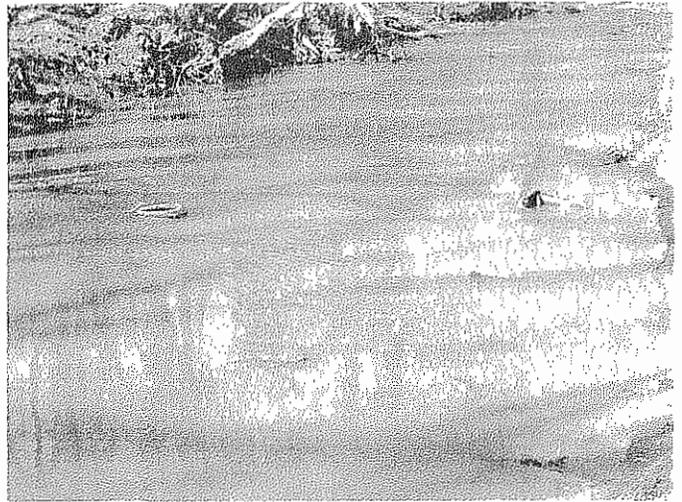
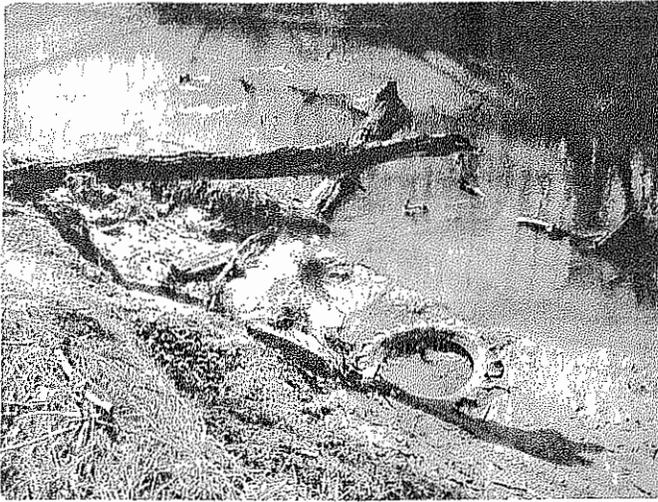
Site #17 - Five abandoned vehicles, two 200-gallon fuel oil tanks,
and several residential trash sites
were observed at this location.

**BLIGHT AND ENVIRONMENTAL
SITE #17 (continued)**



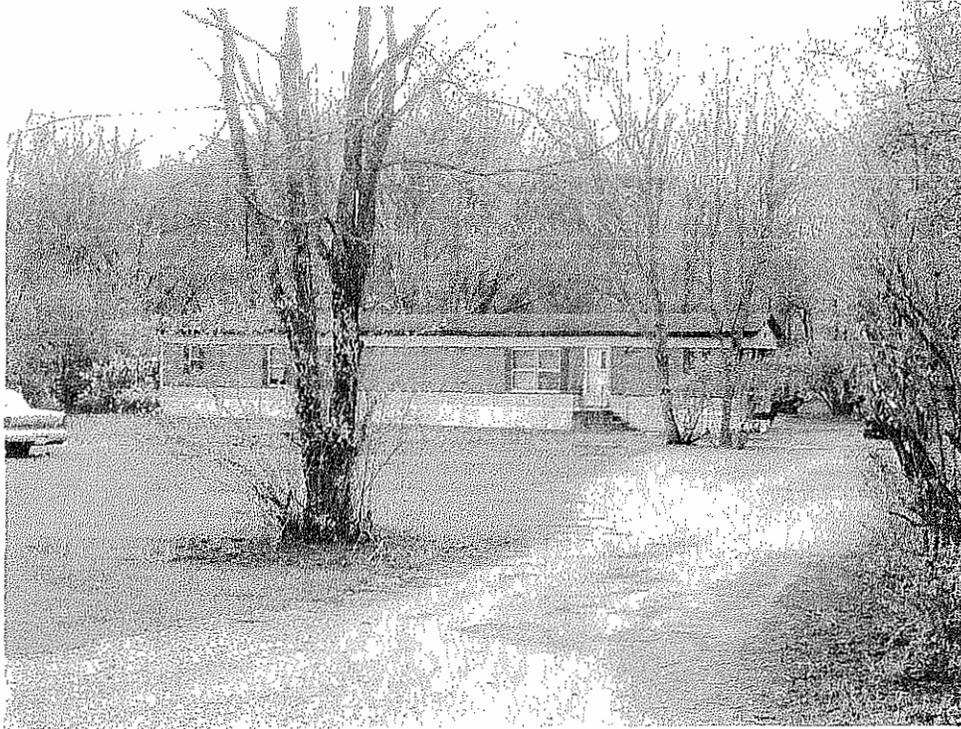
Site #17 – Numerous oil drums, old dilapidated buildings and trash dump sites were scattered throughout this site.

BLIGHT AND ENVIRONMENTAL FINDINGS
SITE #18



Approximately 50 tires were observed in the creek bed near this location.

**DUNHAM QUICK-TAKE PROPERTY #2
BLIGHT AND ENVIRONMENTAL
SITE #19**



Access to this site was not available to get complete photos.

A pile of roofing-type materials was observed at this approximate location.

BLIGHT AND ENVIRONMENTAL
SITES 20 AND 21

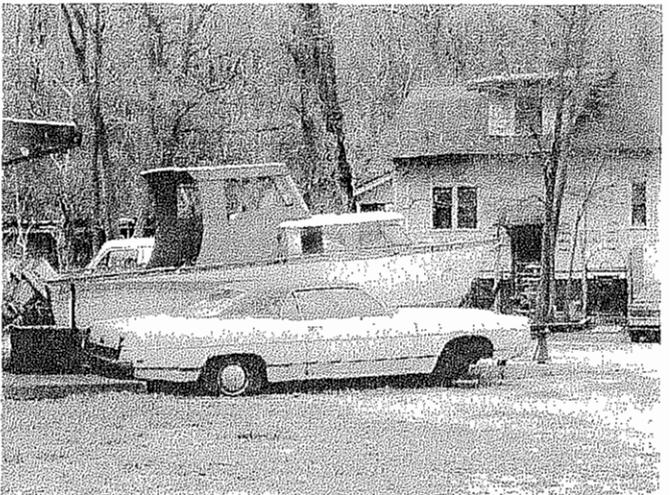
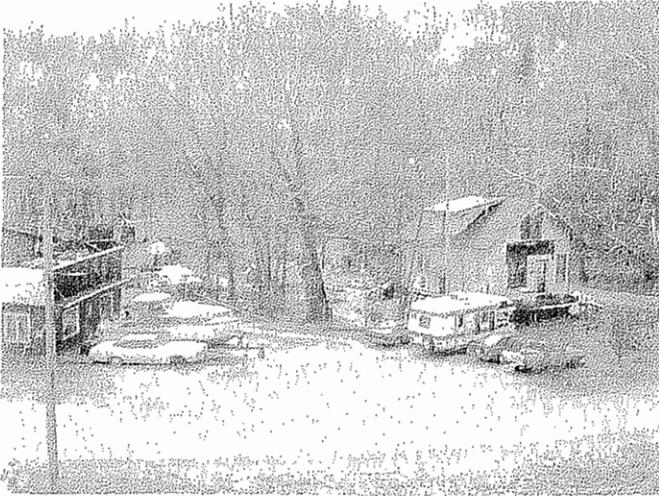


Site 20 - An abandoned bus, 2 trucks, 2 storage tanks, 4 pieces of Earth moving equipment and tires were observed at this location.



Site 21 - A fill area was observed near this location. Concrete, sewer pipe, and rubble was observed at the surface.

**PAYNE QUICK-TAKE PROPERTY #1
SITE #22**



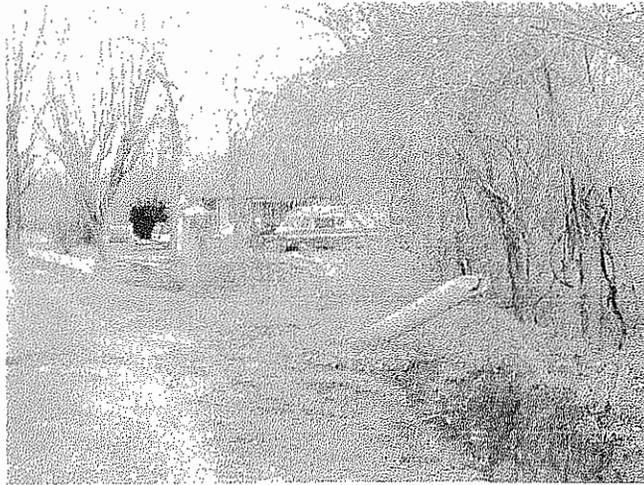
**Access to this property was not allowed, so
photos of possible additional blight could not be obtained.**

PAYNE QUICK-TAKE PROPERTY #1 (continued)
SITE #22



Access to this property was not allowed, so photos of possible additional blight could not be obtained.

EXAMPLE OF CREEK FLOODING
SITE #24



Creek flooding problems.

**LEE QUICK-TAKE PROPERTY #5
BLIGHT AND ENVIRONMENTAL
SITE #25**



Access to this site was not available to get complete photos

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
)
 CASEYVILLE SPORT CHOICE,)
 LLC, an Illinois Limited)
 Liability Company,)
)
 Complainant,)
) No. PCB 2008-030
 vs.)
)
 ERMA I. SEIBER,)
 Administratrix of the Estate)
 of James A. Seiber,)
 Deceased, and ERMA I.)
 SEIBER, in Her Individual)
 Capacity, and FAIRMOUNT)
 PARK, INC., a Delaware)
 Corporation,)
)
 Respondents.)

Discovery Deposition of
DON FERRIS
 Taken on behalf of Respondents
 September 11, 2009

Reporter: Cindy McKinney, CSR/CCR
 Missouri CCR No. 420 * Illinois CSR No. 084-003501

 Cynthia E. McKinney, CSR/CCR
 7160 Reinneck Road
 Belleville, Illinois 62221
 618-277-5040 * 618-210-6026 (Cell)

ORIGINAL

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
CASEYVILLE SPORT CHOICE,)	
LLC, an Illinois Limited)	
Liability Company,)	
)	
Complainant,)	
)	
vs.)	No. PCB 2008-030
)	
ERMA I. SEIBER,)	
Administratrix of the Estate)	
of James A. Seiber,)	
Deceased, and ERMA I.)	
SEIBER, in Her Individual)	
Capacity, and FAIRMOUNT)	
PARK, INC., a Delaware)	
Corporation,)	
)	
Respondents.)	

DISCOVERY DEPOSITION OF DON FERRIS,
produced, sworn, and examined on the 11th day of
September, 2009, between the hours of eight o'clock
in the forenoon and six o'clock in the afternoon of
that day at the law offices of Belsheim & Bruckert,
L.L.C, 1002 E. Wesley Drive, Suite 100, O'Fallon,
Illinois 62269, before Cynthia E. McKinney, CSR/CCR
and Notary Public, in a certain cause now pending
before the Illinois Pollution Control Board in the
Matter of CASEYVILLE SPORT CHOICE, LLC, an Illinois
Limited Liability Company, Complainant, vs. ERMA I.
SEIBER, Administratrix of the Estate of James A.

1 Seiber, Deceased, and ERMA I. SEIBER, in Her
2 Individual Capacity, and FAIRMOUNT PARK, INC., a
3 Delaware Corporation, Respondents; taken on behalf of
4 the Respondents.

5 o-O-o

6 **APPEARANCES**

7 Belsheim & Bruckert, L.L.C.
8 By: John P. Long, Esq.
9 1002 E. Wesley Drive, Suite 100
10 O'Fallon, IL 62269

For the Complainant;

11 The Livingston Law Firm
12 By: Penni S. Livingston, Esq.
13 5701 Perrin Road
14 Fairview Heights, IL 62208

For the Respondent
Fairmount Park, Inc.;

15 Sprague and Urban
16 By: Donald Urban, Esq.
17 26 E. Washington Street
18 Belleville, IL 62220

For the Respondent
Erma I. Seiber.

19 **INDEX OF INTERROGATION**

20 Questions by Ms. Livingston: Page 4
21 Questions by Mr. Urban: Page 42
22 Questions by Ms. Livingston: Page 45

23 **INDEX OF EXHIBITS**

24 Respondent's Exhibit 1: marked Page 16
25 Respondent's Exhibits 2 & 3: marked Page 18
Respondent's Exhibit 4: marked Page 22
Respondent's Exhibit 5: marked Page 55

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DON FERRIS,

of lawful age, being produced, sworn, and examined on
the part of the Respondents, deposes and says as
follows:

EXAMINATION

QUESTIONS BY MS. LIVINGSTON:

Q. Don, will you spell your last name for the
record?

A. F-E-R-R-I-S.

Q. And what's your middle name?

A. Louis, L-O-U-I-S. First name is Donatus.
I do not use that. I go by Don.

Q. That's nice.

A. I am a Junior, but my father passed away so
I don't use that anymore either.

Q. That makes perfect sense. And where do you
live?

A. 1444 Second Avenue, Fairview Heights,
62208.

Q. I also live in Fairview Heights.

MR. URBAN: The compound.

A. French Village.

Q. (By Ms. Livingston) I'm not far from
there. I'm on Pleasant Ridge.

A. Okay.

1 Q. What is the name of your business?

2 A. Ferris Engineering and Consulting.

3 Q. And where is that out of?

4 A. My home.

5 Q. And in Fairview Heights?

6 A. Correct.

7 Q. And how long have you been in that

8 business?

9 A. Since 2005, March, I believe.

10 Q. All right. And prior to that where did you

11 work?

12 A. Burns and McDonnell Engineering.

13 Q. And where were you located in your

14 employment with them?

15 A. O'Fallon, Illinois.

16 Q. And they have an office in O'Fallon?

17 A. Still do.

18 Q. All right. How many people do they usually

19 have working in that office?

20 A. Five to eight depending on workload.

21 Q. And who would be the boss at that office?

22 A. Right now it's Mark Harrison, just like it

23 sounds.

24 Q. And what was your role with Burns and

25 McDonnell?

1 A. I guess my business card had project
2 manager or project engineer. I can't remember.

3 Q. All right. And when did you start with
4 them?

5 A. 1998.

6 Q. All right. And for the entire time were
7 you a project manager and a project engineer?

8 A. Correct.

9 Q. You didn't have any other roles?

10 A. No.

11 Q. All right. And prior to 1998 where did you
12 work?

13 A. I had my own engineering company called
14 AES -- Associate Engineering Services -- from '94 to
15 '98.

16 Q. And before '94?

17 A. I was in Arizona.

18 Q. Nice.

19 A. Yeah.

20 Q. My favorite state.

21 A. It is. I was in Arizona from '83 to '94.

22 Q. Why would you come back here?

23 A. My dad got sick.

24 Q. That's a good reason though.

25 A. And Don said he was there a couple hours

1 before dad died.

2 Q. Where did you get your education?

3 A. St. Louis University.

4 Q. And what year did you graduate?

5 A. 1967.

6 Q. Was that in engineering?

7 A. Bachelor of science in civil engineering.

8 Q. Have you had any further education since
9 then?

10 A. No.

11 Q. I mean, you do updates and seminars and
12 things?

13 A. Right.

14 Q. Like everybody else, all right. And did
15 you get a PE?

16 A. I did.

17 Q. And when was that?

18 A. Oh, I would say '73 maybe.

19 Q. Very good. All right. And when you were
20 at Burns and McDonnell as a project manager and
21 engineer, what kind of projects did you work on?

22 A. Municipal engineering. One of my clients
23 was a -- I was a sewer engineer for Sugar Loaf
24 Township. I did highway projects, design, some
25 development work, things like that.

1 Q. Very good. And did you leave on good
2 terms?

3 A. I did.

4 Q. That's good. And did you continue to work
5 with Burns and McDonnell after you left them in March
6 '05?

7 A. Work with them as --

8 Q. Cooperatively?

9 A. Yes. Not work with them as in they were my
10 client or anything, no. Yes, I still keep in contact
11 with them.

12 Q. All right. Good. When was the first time
13 that you knew anything about Mr. Seiber's property?

14 A. 1998.

15 Q. Okay. And how is it you knew about his
16 property?

17 A. He was one of 20, more or less, people who
18 were going to sell their property to a client of
19 mine.

20 Q. All right. And who was the client?

21 A. CELF. It stands for Caseyville Equity
22 Leverage Financing.

23 Q. All right. Did you meet with Mr. Seiber
24 personally?

25 A. Never.

1 Q. Okay. Not in any context at any time?

2 A. No.

3 Q. He's a trip. Never met him. All right.

4 Did you ever talk to anyone in his family?

5 A. His son.

6 Q. Okay. And in 1998 did you talk to his son?

7 A. No.

8 Q. When would the first time you talked to his
9 son be?

10 A. I would guess 2004 or '05.

11 Q. All right. And what did you talk about?

12 A. His son had a piece of property -- he was
13 one of the other 20 -- and we had talked about his
14 property because he wanted to live there after the
15 closing, so we talked about that.

16 Q. And that would have been difficult?

17 A. No, we let him.

18 Q. Oh, okay. So after the property changed
19 hands in December 2004, Mr. Seiber's son continued to
20 live on the property?

21 A. Yes, he did.

22 Q. Okay. For how long?

23 A. Oh, I don't remember. Six months, a year.
24 More than a week but probably less than a year.

25 Q. Okay. Did you ever have any conversations

1 with him about horse manure?

2 A. No.

3 Q. As part of your job as project manager and
4 engineer and as part of your job now as an engineer
5 and consultant, do you ever get involved in phase I
6 environmental assessments?

7 A. Involved as in?

8 Q. As in performing them?

9 A. No.

10 Q. Overseeing them?

11 A. Contracting for them.

12 Q. All right. Did Burns and McDonnell perform
13 phase I environmental assessments?

14 A. They did.

15 Q. Okay. Who in their office would have
16 performed environmental assessments during the period
17 of time that you were there?

18 A. Nobody in this state. They do them in
19 their base state which is Missouri, Kansas City area.

20 Q. Okay. If they need an environmental
21 assessment in Illinois then, they would contract out?

22 A. Correct.

23 Q. And did they contract out with anyone other
24 than Geotechnical --

25 A. Geotechnologies?

1 Q. There you go.

2 A. Not on this project, but they may have
3 contracted with others.

4 Q. Okay. Did you have a working relationship
5 with people at Geotechnology while you were at Burns
6 and McDonnell?

7 A. I knew their project manager, whatever. I
8 knew the fellow that ran their office only from my
9 boss. I never knew him before that.

10 Q. Okay. So with respect to the American
11 Standard Testing Method for performing environmental
12 assessments, that would not be within your purview of
13 what you know how to do?

14 A. No.

15 Q. Oh, that takes a whole line of questioning
16 away. All right. Good to know. Did you ever have
17 any conversations with Geotechnology about how they
18 performed environmental assessments?

19 A. No.

20 Q. Do you know who Kevin Dyer is?

21 A. Yes, that's the fellow I met with.

22 Q. Oh, all right. So he's the one who ran the
23 office?

24 A. Correct.

25 Q. Did he seem like he knew what he was doing

1 to you?

2 A. Yes.

3 Q. I noticed Andy Limmer's name in here. Did
4 you ever work with him?

5 A. The name is familiar. Can't put a face to
6 the name, so I don't know.

7 Q. He's been an expert for me before.

8 A. Okay.

9 Q. I really like him. I didn't know he worked
10 for Geotechnology.

11 A. And.

12 Q. And still in Fairview. So did you ever
13 read the Phase I Environmental Assessment that was
14 put together for this CELF Trust Development in 1998?

15 A. Nope. I looked at the cover page and
16 talked to Ken Dyer.

17 Q. Would it be your understanding that the
18 purpose of an environmental assessment is to provide
19 a professional opinion as to the potential for
20 contamination to exist which may require remedial
21 action?

22 A. That's what it's for.

23 Q. All right. I was reading that right out of
24 their letter. Okay. And so in 1998 when you were
25 working for your client -- CELF -- what were you

1 doing for them?

2 A. They were doing the initial concept design
3 for that -- now it's called Forest Lakes. I think it
4 was called Wildwood or something for that project.

5 Q. So you were doing design work?

6 A. Concept design.

7 Q. Concept design, okay. Putting it together
8 and making it real?

9 A. With others.

10 Q. All right. Did you ever have any
11 conversations with people from the city of Caseyville
12 about this project when you were working for CELF?

13 A. No.

14 Q. All right. At any other time did you ever
15 have conversations with anyone from the city of
16 Caseyville about this project, for example, when you
17 were working for Mr. Hierlmeier?

18 A. Of course.

19 Q. And, well, let's talk about that for a
20 minute. When did you first meet Mr. Hierlmeier?

21 A. I would say probably 2003. I couldn't tell
22 you when.

23 Q. That's about when he said. And what was
24 the context in which you met him?

25 A. The first time I talked to him was over the

1 telephone, and he wanted to know if I had any
2 information about this project.

3 Q. All right. And did you?

4 A. I did.

5 Q. All right. And so what did you tell him?

6 A. I told him that the client who we worked
7 for, we did -- I'll think of the name of what we did.
8 Like a due diligence study for them and that they had
9 not paid us and they owed Burns and McDonnell
10 something around two hundred fifty thousand dollars.
11 And he asked if he could see a copy of that.

12 Q. And you said pay the bill?

13 A. I said I only have my own personal copy and
14 I got to think about that.

15 Q. Yeah, I would have to think about it too.
16 All right. And did he eventually hire you?

17 A. I eventually sent him that document.

18 Q. All right. And this due diligence study,
19 was it along the lines of the concept design or did
20 it also include all due diligence including
21 environmental?

22 A. It included everything.

23 Q. Okay. Do you know what the name of the
24 document was?

25 A. No, I don't. I don't have it, so --

1 Q. Okay. Do you recall what the time frame
2 was of when the document was created?

3 A. 1998.

4 Q. All right.

5 A. Oh, yes. Yeah, 1998 to '99, somewhere in
6 there.

7 Q. All right. Did you have time to meet with
8 Mr. Long before your deposition today?

9 A. Yes, ma'am.

10 Q. And how long did you guys meet?

11 A. Half hour.

12 MR. LONG: Yeah, something like that.

13 A. Half hour.

14 Q. (By Ms. Livingston) Okay. And did you
15 review any documents?

16 A. Yes.

17 Q. And what documents did you review?

18 A. The 1998 Geotechnology report that I had
19 not seen before this morning.

20 Q. Oh, all right.

21 A. The 2004 update to that, which I had seen,
22 and I gave him those photographs.

23 Q. Oh, yes. Thank you for that.

24 MS. LIVINGSTON: I think I'll have you mark
25 that one.

1 (Plaintiff's Exhibit 1 was marked for
2 identification by the Reporter.)

3 Q. (By Ms. Livingston) I will show you what
4 our court reporter has just marked as Exhibit Number
5 1 which purports to be a Phase I Environmental
6 Assessment for CELF Trust Development, Illinois
7 Highway 159 to 157, South of South Morrison Avenue,
8 Caseyville, Illinois, prepared for Burns and
9 McDonnell, prepared by Geotechnology, dated December
10 29th, 1998. Is that the document he showed you?

11 A. Yes, it is.

12 Q. Okay. And when you looked at this
13 document, did you notice that Geotechnology, Inc.,
14 had identified areas where vegetation was stressed
15 and where there were seeps in brown and black
16 staining being observed?

17 A. Yes.

18 Q. Okay. Was this report included in the
19 material that you sent Mr. Hierlmeier after your
20 first phone call?

21 A. I believe it was.

22 Q. All right. After your first phone call
23 with Mr. Hierlmeier, did you have further phone calls
24 with him?

25 A. Oh, I'm sure. Yes, of course.

1 Q. Multiple ones?

2 A. Yes.

3 Q. And when would you say you were retained by
4 him to work for him?

5 A. That, I can't recall.

6 Q. Okay. Do you recall if you were still at
7 Burns and McDonnell?

8 A. Oh, yes. It was in late 2003 or 2004. I
9 just don't recall when we had our first contract.

10 Q. Okay. Would you say it was prior to
11 closing on the property?

12 A. Yes.

13 Q. And so prior to closing on the property you
14 would have given Mr. Hierlmeier a copy of documents
15 including this Exhibit Number 1, the Phase I
16 environmental report?

17 A. I believe that was in the due diligence
18 report that he had before, yes.

19 Q. All right. And it would be your opinion as
20 an engineer that due diligence would include
21 performing an environmental assessment of the
22 property?

23 A. Correct.

24 MS. LIVINGSTON: I'll have you mark that
25 one and that one. Off the record.

1 (Plaintiff's Exhibits 2 and 3 were marked
2 for identification by the Reporter.)

3 (Discussion was had off the record.)

4 MS. LIVINGSTON: Back on the record.

5 Q. (By Ms. Livingston) I'm gonna show you
6 what has now been marked as Exhibit Number 2 by our
7 court reporter which purports to be a Phase I
8 Environmental Assessment Update, Forest Lake
9 Development, St. Clair County, prepared for Burns and
10 McDonnell, prepared by Geotechnology, dated September
11 8, 2004. This document you recognize?

12 A. Absolutely.

13 Q. Okay. And when did you first see that
14 document?

15 A. Probably in September of 2004.

16 Q. All right. Okay. I don't know if you
17 noticed this today, but when you looked at this
18 2000 -- I'm sorry, this 1998 Phase I that
19 Geotechnology did, did you notice that in the cover
20 letter they were requesting -- I'm sorry, they were
21 recommending that a Phase II environmental assessment
22 be performed?

23 A. That's customary.

24 Q. Well, then you got a lot of property there
25 and there was a lot of stuff. Pictures looked pretty

1 bad, right?

2 A. Uh-huh.

3 Q. Did you notice that in the September 2004
4 report they didn't recommend a Phase II?

5 A. No, I didn't pay attention to that.

6 Q. Do you know if a Phase II was ever
7 performed prior to closing?

8 A. I don't believe there was one performed.

9 Q. Now, I'm gonna show you what we have marked
10 as Exhibit Number 3 which purports to be a letter
11 from SCI to you dated December 21st, 2005. I believe
12 Mark Harms signed this one. He did, indeed. Do you
13 remember receiving this letter? That one I actually
14 have an extra two of. I have another one somewhere.
15 I'll find it for you.

16 A. Yes, I believe it is.

17 Q. Okay. And have you had dealings with SCI
18 in the past?

19 A. Yes. I can't remember prior to that or
20 not, but, yes.

21 Q. Have they all been favorable?

22 A. Yes.

23 Q. Why would you have been the contact person
24 for SCI in this December 2005 letter?

25 A. If I remember correctly the project

1 manager -- which is a guy named Russ DeFlaun
2 [phonetic] -- requested that Caseyville Sport Choice
3 provide proof that they -- Burns and McDonnell --
4 could build fill in the areas where the horse manure
5 was removed. In other words, Burns and McDonnell as
6 general contractor did not want to put any new dirt
7 on top of a bad fill because it would settle, so they
8 said you have to make sure that you get all the horse
9 manure out and you have something stable for us to
10 start building the fill on. That was the purpose of
11 this letter.

12 Q. Oh, makes sense. Okay. And so in this
13 letter they're telling you about the characteristics
14 of the soil in that area?

15 A. Of the soil after the horse -- the bottom
16 of the horse manure pit.

17 Q. Oh, okay. Well, that explains why the pits
18 came up clean. So this is a good report, right?

19 A. Better be.

20 Q. Okay. Well, I was looking at photographs
21 and I was looking at the pit and I'm thinking where's
22 the horse manure, and you just explained it.

23 A. It's gone.

24 Q. It's gone.

25 A. In fact, what we requested the contractor

1 to do was go down another foot below, once he hit
2 good dirt go down another foot and make sure it was
3 really good dirt, so that's what was tested.

4 Q. Exactly, okay. That's good. Well, that
5 sure explains a lot. All right. So when they talk
6 about, in this letter, the surficial debris that were
7 observed in the cells -- rubbish, plastic bags,
8 glass, et cetera, and some horse manure -- this was
9 before they took their testing?

10 A. Let me read it.

11 Q. I'm on the second paragraph.

12 A. Okay, so they went down four feet below the
13 surface of the pit after the removal. They went
14 down.

15 Q. Okay. Now, this soft, moist topsoil, you
16 think that might have been horse manure too? Well,
17 it couldn't have been. It just seemed kind of odd,
18 you know, the low, plastic wet silt at the top couple
19 inches.

20 A. Yeah, that's because the -- I believe
21 because the manure was, you know, more or less -- the
22 manure itself was gone but it was sort of mixed. The
23 liquid from the manure was mixed with the top couple
24 inches of the clay. That's the only reason I could
25 think of. That's why it would change its

1 characteristic.

2 Q. That would make sense. Then do you see on
3 the very last paragraph on this first page where it
4 says when the remaining two cells are stripped of the
5 horse manure, that SCI will come back and do some
6 additional testing?

7 A. Uh-huh.

8 Q. Do you know how many cells there were?

9 A. There were seven.

10 Q. I think I have an exhibit on that too.

11 MS. LIVINGSTON: I'm just gonna be having
12 you marking and marking and marking.

13 A. I should say there were seven that we found
14 and removed. There may be more in Phase II that we
15 haven't found yet.

16 (Plaintiff's Exhibit 4 was marked for
17 identification by the Reporter.)

18 Q. (By Ms. Livingston) Just to follow up on
19 that idea -- I have to wait until she marks things
20 until she can type -- I would say the same thing,
21 since I noticed in the original Phase I one they had
22 a conversation with Ken Mensing at Illinois EPA. Do
23 you know him?

24 A. No.

25 Q. He would have been my primary witness when

1 I sued Mr. Seiber for the horse manure, but I'm not
2 gonna ask you questions about the ASTM and looking up
3 cases at the courthouse since you don't do Phase I's.

4 A. I don't.

5 Q. I gotcha. As I said, a line of questioning
6 that's gone. But it was interesting to me to see
7 them describe how much Mr. Mensing thought was left
8 there in 1998 versus how much we thought was there
9 versus how much you all actually found, which is why
10 I would imagine you see language in the Phase I
11 originally saying we need more exploration because we
12 don't know what's below the surface, which would make
13 sense.

14 A. For those that were visible, right.

15 Q. Right. When was the first time you visited
16 this site?

17 A. '98, and I couldn't tell you when.

18 Q. Do you recall if at the time you saw any
19 stressed vegetation?

20 A. Yes.

21 Q. And how much stressed vegetation would you
22 say you saw?

23 A. I can tell you where.

24 Q. Okay.

25 A. It was in cell one since you have an

1 exhibit. And, I don't know, maybe a half acre.

2 Q. And was that on Mr. Seiber's land?

3 A. Correct.

4 Q. Were you at all involved in any of the
5 clean-up of any of the other environmental harms that
6 were discovered, the tanks, the other kinds of
7 things?

8 A. At Burns add McDonnell we contracted to
9 have those things looked at and then as -- I can't
10 remember. Yes, we hired a company called New
11 Horizons Organic to remove most of those items
12 identified in the 2004 update.

13 Q. So New Horizons didn't just remove the
14 horse manure, they also removed the above-ground
15 tanks, the buried trucks, all of the other stuff that
16 was out there?

17 A. Right.

18 Q. Do you recall if, when they had completed
19 their clean-up, if they had tested the soil on a grid
20 or anything like that, final testing to make sure
21 everything really was cleaned up?

22 A. For what item?

23 Q. Oh, well, for the site. I mean, they would
24 have identified the various areas. I'm just
25 wondering if they did soil testing when they were

1 done.

2 A. In the area of the horse manure, yes, they
3 had a firm do some testing.

4 Q. Okay. The rest of the areas you're not
5 sure about?

6 A. I don't think so. I don't think they did,
7 but I couldn't tell you.

8 Q. Okay. Now, how did it come about that New
9 Horizon was hired?

10 A. A man who had done our tree survey told me,
11 while I was at Burns and McDonnell, told me of this
12 young fellow who has some pretty interesting ways of
13 doing work, and I called and talked to him and then
14 we went from there.

15 Q. And what was his name?

16 A. Chad Hurley.

17 Q. Is he a local person?

18 A. Jersey County, I guess. Jerseyville.

19 Q. Did you enter into a written contract with
20 Mr. Hierlmeier when you were at Burns and McDonnell?

21 A. Burns and McDonnell did.

22 Q. Okay. Do you know who at Burns and
23 McDonnell would have signed that contract?

24 A. No. It could have been one of three
25 people. It could have been me, it could have been

1 Mark Everett who was my boss or it could have been
2 Bob Berry who was his boss, and I don't recall right
3 now the initial contract.

4 Q. Okay. But you would have had a written
5 contract?

6 A. Of course.

7 Q. I'm gonna show you what I've now marked as
8 Exhibit Number 4, which has a fax cover sheet to Glen
9 Hierlmeier from Don Ferris regarding horse manure
10 report dated 8/26/05. Do you recognize this? And
11 then, of course, when you turn the fax page it has a
12 manure location report.

13 A. Yes.

14 Q. And at the bottom it indicates Ferris
15 Engineering and Consulting; is that correct?

16 A. That is correct.

17 Q. And at the top there's a date up here of
18 8/26/2005. Would that date indicate when this was
19 printed or when this was actually given?

20 A. I do not know. It looks to me like it was
21 already printed on there for each page.

22 Q. That's the way it seems to me too.

23 A. So I would say that's when it was printed.
24 It looked like it was given to him on the same day or
25 by fax.

1 Q. And would you be the author of this report?

2 A. I was.

3 MS. LIVINGSTON: I actually have a colored
4 version too. It's the only one I have. It's
5 probably what I ought to show him, is the colored
6 version.

7 MR. LONG: I've got an original he can look
8 at, too, if you want.

9 Q. (By Ms. Livingston) All right. On the
10 first page, especially when you have the colored
11 version where it has one-two-three-four in different
12 colors, are those the locations of all the manure
13 pits or cells that you found?

14 A. At that time.

15 Q. There were more found?

16 A. Yeah, there were a total of seven.

17 Q. Oh, yeah, you did say that. And let's
18 start with, why did you first go out and do a manure
19 location report?

20 A. It goes back to that photograph. In June
21 of '05 Dick Gundlach [phonetic] called and said I've
22 got a problem. We've run across some unsuitable
23 materials I believe was the word he used, when he was
24 installing the trunk sewer line. That would have
25 been right here in cell three.

1 Q. All right. Okay. That wasn't a good phone
2 call, was it?

3 A. No. As of this date I didn't know there
4 was a cell three. I knew of cells one and two.

5 Q. Okay. And for the record when we read this
6 some other day, we have three photographs here that
7 were provided by Mr. Ferris that show piles of
8 stained-looking dirt.

9 A. Well, yes, that's a good way, mixed with
10 trash.

11 MR. LONG: I'll give you color photocopies
12 of that before you go today and the court reporter
13 color copies also.

14 Q. (By Ms. Livingston) Cool. And the
15 photographs that you provided us with, these are
16 which cell?

17 A. Three.

18 Q. Okay. Cell three. You just did say that,
19 sorry. And that's the first cell that they were
20 digging in the sewer line, and that's when they found
21 this?

22 A. Correct.

23 Q. Okay. And who was it, who asked you to
24 perform a manure location report?

25 A. I don't know if anybody asked me to perform

1 it. I think I just did it.

2 Q. Okay. It would have fell within the scope
3 of work of what you were doing for the project?

4 A. Correct. And in August of '05 I was no
5 longer with Burns and McDonnell. I had Ferris
6 Engineering.

7 Q. Right. Okay. And when you left Burns and
8 McDonnell, they had an ongoing contract with
9 Mr. Hierlmeier?

10 A. Correct.

11 Q. Did that contract continue or did you take
12 over the role?

13 A. It continued.

14 Q. Okay. So you had a separate role that you
15 played in the project?

16 A. Correct.

17 Q. And what was your -- what was the general
18 scope of your separate role?

19 A. Burns and McDonnell's contract was a design
20 build where they did the design and they were the
21 general contractor. In March of 2005 I started my
22 own company and Caseyville Sports Choice was my
23 client, and my job was to watch what Burns and Mac
24 were doing.

25 Q. Well, that's what needs to be done

1 sometimes.

2 A. Well, somebody had to represent Caseyville
3 Sport Choice, and it really couldn't be Burns and
4 McDonnell anymore since they were under contract to
5 do the general construction.

6 Q. Exactly. Good. Are you still under
7 contract with Mr. Hierlmeier to do work?

8 A. That contract was extended so I guess the
9 answer is yes.

10 Q. All right. And what is the current
11 description of your scope of work?

12 A. I'm on an hourly billing basis for any work
13 that I do in Caseyville Sport Choice. Today will be
14 billable.

15 Q. Whatever they need?

16 A. Correct.

17 Q. Do you have employees?

18 A. No.

19 Q. Lucky you.

20 A. Yes, ma'am, no kidding.

21 Q. No kidding. And who is Dick Gundlach?

22 A. Dick Gundlach was an employee of Burns and
23 McDonnell. He no longer is. He was the field
24 superintendent or the construction superintendent for
25 this project. He was hired specifically for this

1 project.

2 Q. All right. And the photographs that are
3 attached to Exhibit Number 4, they show the cells and
4 the things that you were finding, they show where
5 there is manure, they show where there isn't manure,
6 pretty much? Some of them I saw said there is no
7 manure in this picture.

8 A. Show me where it is.

9 Q. I just thought it was kind of odd because
10 it said notice no manure. Like where it says near
11 dirt road, no trash visible from road. That doesn't
12 mean that there's no visibility though. Or I mean,
13 that just means not from the road. Well, when it
14 says little trash visible in disturbed areas, that
15 doesn't mean that you don't think there's manure
16 there. It just means you gotta dig to find it, is
17 that it?

18 A. Yeah. Page 10? Looking south. Oh. Very
19 little trash in disturbed areas. Well, I think
20 it's says just what it says. There's no -- in the
21 area that is undisturbed there was no visible trash,
22 and even in the area that was disturbed it looks like
23 there's not much trash.

24 Q. Okay. And who would have disturbed the
25 area?

1 A. It could have been two different people.
2 It could have been Burns and McDonnell who did some
3 testing to see to try to quantify how much manure was
4 there or it could have been New Horizons who was -- I
5 can't remember when they started -- who were actually
6 removing the cells one and two.

7 Q. Were you pleased with the work that New
8 Horizons did?

9 A. Very.

10 Q. Had you ever heard of being able to land
11 apply manure?

12 A. You can.

13 Q. At agronomic rates?

14 A. If it doesn't have trash in it, but with
15 the trash in it it became landfill material.

16 Q. I can understand that position.

17 A. That was the original intent, was to apply
18 it to this, more or less, infertile soil and disk it
19 in and have better topsoil.

20 Q. And when did that original intent get
21 formed?

22 A. It was not formed. It was part of the
23 intent from, probably, I don't remember when.

24 Q. Well, would it have been from 1998?

25 A. I don't know if CELF ever got that far. It

1 could have been. I don't recall. It was probably
2 for sure in 2005.

3 Q. Okay. When Mr. Hierlmeier first went to
4 the site, I'm pretty sure he said in his deposition
5 that you were one of the people from Burns and
6 McDonnell who he met with at the site. Do you
7 remember that?

8 A. No, I don't, but I don't question it. I'm
9 sure it was.

10 Q. Well, do you recall, do you remember being
11 at the site with Mr. Hierlmeier?

12 A. I remember being at the site many times
13 with Mr. Hierlmeier and others, but, no, I don't
14 recall any particular first time; no, ma'am.

15 Q. Do you remember ever pointing out to
16 Mr. Hierlmeier distressed vegetation?

17 A. I surely could have. I don't remember a
18 specific time.

19 Q. All right. If he said it, you wouldn't
20 doubt it?

21 A. Oh, not at all.

22 Q. Okay. Would someone else from Burns and
23 McDonnell have been there with you where they could
24 have been the person from Burns and McDonnell to
25 point it out to him or would you have been the only

1 person form Burns?

2 A. Oh, if somebody else was with me I would
3 have been the one to point it out to them. The only
4 one that pointed it out to me was Geotechnologies.

5 Q. And when did Geotechnology point it out to
6 you?

7 A. '98, '99.

8 Q. Prior to the closing on the property in
9 December of '04, do you recall conversations with
10 Mr. Hierlmeier about the manure?

11 A. None specific, but that's very likely we
12 talked about it.

13 Q. And would you have been the person that he
14 would have asked questions about the reports that he
15 was reading that you provided him with?

16 A. Could have been, but he could have also
17 called Geotechnology. I don't know.

18 Q. Okay. So Burns and McDonnell hired
19 Geotechnology because they were the general
20 contractor?

21 A. Burns and McDonnell hired Geotechnology in
22 1998 to do the Phase I.

23 Q. Okay.

24 A. Burns and McDonnell hired Geotechnology to
25 do the construction and inspection and testing.

1 Q. Okay. And then --

2 A. Geotechnology was always a sub to Burns and
3 McDonnell, not to Caseyville Sports Choice.

4 Q. I'm sorry?

5 A. Not to Caseyville Sports Choice.

6 Q. I got you. That's the way I'd do it too.
7 And then in 2004 Geotechnology would have been hired
8 by Burns and McDonnell?

9 A. Correct, to do the update.

10 Q. And Burns and McDonnell would have had the
11 '98 report in addition to the 2004 report?

12 A. Geotechnology would have had it and Burns
13 and McDonnell may have had it. My only copy was
14 given away in 2003.

15 Q. Okay. But you did agree that when you sent
16 Mr. Hierlmeier the first due diligence from the job
17 that was done in '98, it would have included the
18 original?

19 A. It very likely would have been in there.

20 Q. The original Phase I?

21 A. Correct.

22 Q. Okay. Do you recall having any
23 conversations with anyone about processing manure and
24 utilizing it, perhaps, for a profit?

25 A. Mike Egan.

1 Q. That's who it was.

2 A. Right. Mike Egan and I had several
3 conversations, and I gave him a name of a local
4 contractor who took horse manure and blended it with
5 dirt and made topsoil.

6 Q. Excellent. And who would that local
7 contractor have been?

8 A. It would have been Ed Barbier.

9 Q. Oh, really?

10 A. You know Ed?

11 Q. I do.

12 A. And then Ed and Mike had subsequent
13 conversations that I was not involved in.

14 Q. I think he used to be a Catholic priest.

15 A. He was.

16 Q. Yeah. Had a very cool encounter with him.

17 A. He's a very nice mane. He's retired now.

18 Q. I was going after Mr. Fults at the time.

19 A. Oh, Kenny.

20 Q. Actually it was Dennis.

21 MR. URBAN: I represented Debbie.

22 A. If you ever want to get off the record I'll
23 give you a great story about Kenny Fults.

24 Q. (By Ms. Livingston) Oh, when we're done.
25 I got a few too. Oh, man, those people are a trip.

1 I really do like Mr. Barbier. And then do you recall
2 approximately when that conversation with Mike Egan
3 would have been?

4 A. Yes. Sometimes probably in 2005.

5 Q. So it would have been after the closing?

6 A. After the closing.

7 Q. And what was your understanding of the role
8 of Mike Egan?

9 A. Mike was one of the three owners of
10 Caseyville Sport Choice.

11 Q. Do you have any ownership interest in
12 Caseyville Sport Choice?

13 A. None.

14 Q. Have you ever?

15 A. No, ma'am.

16 Q. Okay. Have you ever had any other business
17 ventures with Mr. Egan or Mr. Hierlmeier or anyone
18 else involved in Caseyville Sports Choice?

19 A. Mr. Hierlmeier is also the CEO of a company
20 called Praxis Development. Currently they are my
21 other client.

22 Q. Okay. So they're a client; you're not an
23 owner with them on something?

24 A. In Praxis Development I am a five percent
25 owner or something.

1 Q. But your consulting for Praxis is
2 independent of your five percent ownership interest?

3 A. Correct.

4 Q. Okay. And what is Praxis Development
5 developing?

6 A. 900 acres south of Marissa.

7 Q. And what is it called?

8 A. Islands of Waterside.

9 Q. Is it an old strip mine area?

10 A. It is.

11 Q. And it has ponds?

12 A. Yes.

13 Q. Are they pretty?

14 A. 60 foot deep. You got to hide behind the
15 trees to bait your hook.

16 Q. Good fishing, huh?

17 A. I don't fish.

18 Q. Well, I heard recently in expert testimony
19 that the best fishing in the state was in old strip
20 ponds.

21 A. I have no doubt.

22 Q. So 60 feet deep, I guess so. That's good.
23 And how many houses have you developed in that
24 900-acre development?

25 A. It's in the -- it was planned. The TIF was

1 approved, and it's temporarily on hold. It was maybe
2 25 percent completed construction when was it was put
3 on hold a year ago. 750 homes.

4 Q. Well, with the Prairie State generating
5 facility going in, it would have made sense. Why did
6 he put it on hold?

7 A. This is a year or so ago. The TIF bonds
8 were the first to fall. They couldn't get the
9 bonds -- couldn't get the bonds sold, and that was
10 well before the housing collapse or the bank collapse
11 or anything else, so they knew something was wrong.
12 So, intentionally, Praxis and their joint venture
13 partner, Peabody Energy, put the project on hold, put
14 enough money in a budget to fund it for 18 to 24
15 months, and it's still there.

16 Q. So Peabody Energy is part owner in Praxis
17 Development?

18 A. No. Praxis is fifty percent owner of
19 Islands of Waterside. Peabody Energy is the other
20 fifty percent partner.

21 Q. And how close is it to the Prairie State
22 generating facility?

23 A. We are a mile south of Marissa. Prairie
24 State is probably two to three miles northeast of
25 Marissa, so we're four or five miles away.

1 Q. Easy commute.

2 A. 45 minutes from downtown.

3 Q. That's good. When did you first meet
4 Mr. Egan?

5 A. I met Mr. Egan before I met Mr. Hierlmeier
6 in 2003 sometime. I couldn't tell you when. Spring,
7 summer. I don't remember.

8 Q. But you met him after Mr. Hierlmeier would
9 have made a phone call to you?

10 A. No.

11 Q. No? Before that?

12 A. Correct.

13 Q. Okay. And did you meet him in the context
14 of Caseyville Sport Choice?

15 A. Correct.

16 Q. Okay. And what was your contact with him?

17 A. He contacted me -- this gets a little
18 complicated. The CELF people were gonna design a
19 golf course on this property. The golf course
20 designer was from Phoenix, Arizona. Somehow or
21 another Mr. Egan and Mr. Hierlmeier were at a
22 conference in Arizona where this golf course
23 architect made a presentation. Afterwards he got
24 ahold of them, said, hey, I got a piece of property
25 you might want to look at and gave them my number.

1 So Mike Egan called me.

2 Q. So he called you about the Marissa
3 property?

4 A. No, he called me about the Caseyville Sport
5 Choice property.

6 Q. So in the presentation it was already known
7 that CELF was not gonna go forward?

8 A. Correct.

9 Q. Okay. Well, they hopped on it. That's
10 good. Did you ever have any dealings with anyone
11 else at Caseyville Sport Choice?

12 A. Dealings as in?

13 Q. Conversations, meetings. I mean, is it
14 just Glen?

15 A. No, there's a third partner, a guy named
16 John Nicholson. I've been in many meetings with
17 Mr. Nicholson.

18 Q. Okay. Is he also involved in Praxis?

19 A. You know, I think he is but I'm not sure.

20 Q. Okay. But Mr. Hierlmeier and Mr. Egan are?

21 A. No. Mr. Egan is not involved in Praxis at
22 all.

23 Q. Was he ever?

24 A. No.

25 Q. Okay. Did you ever have conversations with

1 any of the other owners of property that you were
2 putting together for CELF?

3 A. At what time, in 1998?

4 Q. 1998.

5 A. I don't believe I had a conversation with
6 any of them. All the property was -- I was not
7 involved in the property acquisition side.

8 Q. And at any point prior to the closing in
9 2004, would you have interviewed any of the property
10 owners?

11 A. Interviewed them? No.

12 Q. Okay.

13 MR. URBAN: Penni, while you're looking,
14 let me ask a couple questions --

15 MS. LIVINGSTON: Go right ahead.

16 MR. URBAN. -- and that way I can get out
17 of here.

18 **EXAMINATION**

19 **QUESTIONS BY MR. URBAN:**

20 Q. Don, we've been going for about an hour
21 here today and I've heard your testimony. But am I
22 correct, do I understand, you never met with Jim
23 Seiber, Senior, at all?

24 A. Never.

25 Q. Never had any conversations with him at any

1 point?

2 A. Never.

3 Q. So you can't really add anything --

4 A. I wouldn't know him. Of course, he's
5 deceased now.

6 Q. He's deceased now, right, but you can't add
7 anything to the process as far as determining what
8 communications he had with any of these folks; is
9 that correct?

10 A. No, sir.

11 Q. And I think you testified that you had some
12 contact with Jim Seiber, Junior?

13 A. Correct.

14 Q. But that was limited to just determining
15 how long he was gonna live on the property or what?

16 A. He had equipment stored on the property and
17 his home that he lived in was on the property, and we
18 talked about how he could stay, yes. I worked that
19 out.

20 Q. Was that the extent of that conversation?

21 A. Oh, there was a pile of trash behind the
22 building I think that I asked him about, and he said
23 he was gonna remove it. But other than that, that's
24 it.

25 Q. We've heard testimony from Jim and other

1 individuals that Jim took folks on a tour of the
2 property at some point or another and pointed out
3 different locations.

4 MR. LONG: Jim Junior?

5 MR. URBAN: Jim Junior, I'm sorry. Yeah.

6 Q. (By Mr. Urban) You weren't on that tour;
7 is that correct?

8 A. No, sir.

9 Q. You provided us today with a survey in
10 which you located four different cells of manure.
11 Did Jim assist you in any way of locating those
12 different cells?

13 A. No, sir.

14 Q. You just did that on your own as far as
15 your own search?

16 A. Cells one and two were known from 1998.
17 Cell three was found in June of '05 and cell four was
18 found at that time.

19 Q. When you say cells one and two were known,
20 do you know how they came to be known?

21 A. You can see them from the dirt road, and,
22 yes. From the very beginning I saw that that cell
23 was there, and I walked on it and the golf course
24 architect walked on it, so we all knew it was there.

25 Q. You don't have any knowledge about the tour

1 that Jim Junior took the folks on and pointed out
2 different cells?

3 A. No.

4 Q. Different locations I should say.

5 A. No, sir.

6 MR. URBAN: I don't think I have anything
7 else.

8 MR. URBAN: Off the record.

9 (Discussion was had off the record.)

10 (Mr. Urban left the deposition.)

11 **EXAMINATION CONTINUED**

12 **QUESTIONS BY MS. LIVINGSTON:**

13 Q. Do you know a fellow named Jackivac?

14 A. He was -- I think his name is Max Jackivac.
15 He was one of the property owners.

16 Q. Did you ever any conversations with him?

17 A. I have.

18 Q. Were any of those conversations ever about
19 manure?

20 A. Only one, and it had to do with manure on
21 his property.

22 Q. Do you recall the time frame that that
23 conversation would have taken place?

24 A. It would have -- I'm not sure if it was
25 before or after bond closing. I'm thinking it was

1 probably after bond closing.

2 Q. In the second case, in the second project?
3 In other words, not 1998 but the 2004?

4 A. So this would have been in 2005.

5 Q. Okay.

6 A. And it was a small pile that he had on his
7 property that he said he was going to remove. He
8 also had stables. He wasn't importing. This was his
9 own horse manure.

10 Q. Did you ever have any conversations with
11 Mr. Egan where Mr. Egan indicated to you that he had
12 conversations with Mr. Jackivac about manure?

13 A. About Mr. Jackivac's manure or somebody
14 else's manure?

15 Q. Well, somebody else's, but if you had any
16 conversations about manure.

17 A. I think I talked to Egan about
18 Mr. Jackivac's manure because Mr. Jackivac had an
19 active horse farm and he was going to remove it, but
20 I don't recall ever talking to Mr. Egan or having him
21 tell me that he talked to Jackivac about anybody
22 else's manure. I don't recall that, no, ma'am.

23 Q. I'm not gonna mark this, but I'm gonna show
24 it to you. This would be the discovery deposition of
25 Michael Egan which was taken on May 19th, 2009. You

1 see the letterhead being the same as this case here.
2 And on page -- I'll lead up to the one that I just
3 read so it shows you a progression here. Do you see
4 on page 83 where it says, I first met Don Ferris. He
5 was working for Burns and McDonnell. He was familiar
6 with the site and familiar with the group involved
7 before. And then he kind of talks about the group
8 before. He says you're a very solid individual, a
9 really good guy and a professional engineer.

10 A. That's suspect right off the bat.

11 Q. No, not at all. And then on page -- I'm
12 asking him about manure here and he's telling me that
13 he's had a conversation with Mr. Jackivac, and here
14 he says, well, yeah, but I also needed to know where
15 it was at. I'm sorry, we're talking about the
16 material here. I mean, I had no reason to expect
17 there was anything else other than the manure that
18 was being represented. Do you see where it says
19 that?

20 A. Okay.

21 Q. But I'm really getting to another part of
22 it.

23 A. Okay.

24 Q. Then up here, I'm sorry, up here at the top
25 of page 85, do you see where he says, and then we had

1 a conversation about manure. He and I actually
2 bounced ideas off of each other how to utilize the
3 manure?

4 A. I see that.

5 Q. And --

6 A. But what is this relation here? Fill from
7 the gun shot?

8 Q. He's talking about the lead from the gun
9 club.

10 A. Yes.

11 Q. Now, I got to find where he's really
12 talking to you to show you this. Okay. My
13 question -- there we go -- to the answer. Did you
14 ever have any conversations with Don Ferris about
15 conditions at the site, specifically environmental
16 conditions at the site? Do you see where I asked him
17 that?

18 A. Okay, you're talking about the whole site
19 and not just Jackivac?

20 Q. Actually, yes. I think we're talking about
21 the entire site. But he had just told me -- you
22 don't see on this here, but he had just told me that
23 Jackivac told him in 2003 that there was manure
24 throughout the site. I mean, I could show you where
25 it's at.

1 MR. LONG: Penni, I don't remember him
2 saying that there was manure throughout the site. He
3 mentioned Seiber had manure on the land, but I don't
4 remember him saying throughout the site.

5 MS. LIVINGSTON: I think you're correct,
6 that I misstated my associate's notes, are little
7 overly broad.

8 Q. (By Ms. Livingston) I'll show it to you.
9 And he mentioned there was some manure that was
10 brought into the site by Mr. Seiber's property.

11 A. Uh-huh (witness nods head).

12 Q. And then I ask him about when was this
13 conversation -- and he's talking about a conversation
14 with Mr. Jackivac -- and he can't decide if it's '03
15 or '04 but he thinks it was the end of '03, sometime
16 beginning of '04, and it was before they closed on
17 the property. And then he goes on; I say, and did he
18 tell you that Mr. Seiber was bringing horse manure in
19 daily for a period of time, and his answer is, he
20 just said that he knew that he had brought it -- he
21 had brought in a lot, and Mr. Jackivac said, quote, I
22 believe he got the horse manure from the race track.
23 So you're right, it did not say throughout the site.
24 But he's saying that he knew that in 2003/2004, which
25 would certainly be before December 2004. And I guess

1 my question to you was if he ever talked about this
2 with you, because it seems back here on page 83 where
3 he says that he met with you and then we talk about
4 his conversations with you, and then he says, and
5 then we had a conversation about manure. He and I
6 actually bounced ideas off of each other how to
7 utilize the manure. And I'm wondering if that
8 refreshes your recollection.

9 A. Sure, that would have been in connection
10 with Ed Barbier.

11 Q. Okay.

12 A. And that's when I think either then or
13 right after that I had Ed Barbier's telephone number
14 and gave it to Mike Egan. And that's one of the ways
15 of getting rid of the manure, was to blend it with
16 the dirt and make topsoil or to mix it in situ and
17 laid it in or whatever.

18 Q. All right. And then when New Horizons came
19 in, they determined that there was too much trash to
20 be able to do it that way?

21 A. Yes. I guess -- I'm not sure how they --
22 they're environmental type people. They said no, you
23 can't blend this because it's got racing forms and
24 oil cans and tires in it. You can't.

25 Q. Boy, I agree with that. Were you ever

1 involved in any discussions though about sifting this
2 so that the manure could be land applied and the
3 trash could be separated so you'd have lower
4 landfilling fees?

5 A. Yeah. I believe I had that conversation
6 with Chad Hurley because we thought is there any of
7 this that you could use, and he said every now and
8 then they had a pocket -- he didn't tell me how big a
9 pocket was, a dump truck or two -- that's clean, but
10 then right next to it stuff that's all intermixed.
11 And his opinion was you couldn't sift it out. It
12 would cost more to sift it out than it would just
13 landfill it.

14 Q. I know, it's a hard call and I'm not the
15 expert he is. All right.

16 A. And, you know, he represented himself as
17 being the guy to haul it to the landfill. He
18 certainly could have, you know, been slanted toward
19 that and may not have wanted to separate it because
20 that was a lot more work. I don't know. Anyway, we
21 all made the determination to go ahead and landfill.

22 Q. And who would the "we" all be?

23 A. It would have been everybody; Caseyville
24 Sport Choice, probably it would have included Harold.

25 MR. LONG: I don't know about that. That

1 was before I got here.

2 A. I know, but I'm sure Harold was involved in
3 those conversations when we thought, oh, my gosh,
4 what are we gonna do.

5 Q. (By Ms. Livingston) Yeah, it would freak
6 you out. Of course, if they would have done a Phase
7 II that would have helped. Okay. When
8 Mr. Hierlmeier identifies you as an independent agent
9 of Caseyville Sport Choice, you would agree with
10 that?

11 A. Yeah. Yeah.

12 Q. You have a contract with him?

13 A. Right.

14 Q. And he said that he first investigated the
15 property in August of 2003. Would you remember -- I
16 mean, I know I've asked this already, but do you
17 remember at all being at the site with him in 2003 to
18 look at it?

19 A. I surely could have been, but, no, I don't
20 recall our first time that we visited. I remember
21 our first two conversations on the phone when he was
22 in California where he asked for and I called him
23 back and gave him the -- got his address to FedEx him
24 that due diligence report, but I couldn't tell you
25 exactly when we first met.

1 Q. I gotcha. He says the site visit was with
2 Burns and McDonnell, and he identified Don Ferris --
3 ergo, why you're being deposed -- Mark Everett, Mark
4 Harrison and others.

5 MR. LONG: What was that context?

6 A. Mark Everett surely would have been there.

7 MS. LIVINGSTON: Page 15 of his deposition.

8 A. Mark Everett surely would have been there.
9 He was my boss. And I reported to him on everything,
10 but I'm not sure about Mark Harrison. I don't think
11 Mark Harrison would have been there.

12 MR. LONG: I just want to look at that
13 briefly.

14 A. I think -- I think the chronology is a
15 little wrong there.

16 MS. LIVINGSTON: I'll have to go to the
17 previous page to see what we're talking about.

18 Q. (By Ms. Livingston) And I'm seeing four
19 different places -- at least in the cheat sheet my
20 associate gave me -- where Mr. Hierlmeier says that
21 Burns and McDonnell provided him with due diligence
22 information. Do you think that's an accurate
23 description?

24 A. I sent it to him when I was an employee of
25 Burns and McDonnell, so yes. Burns and McDonnell

1 officially didn't do that. I did that on my own.

2 Q. All right. Do you ever recall having any
3 discussions with Mr. Hierlmeier about the
4 environmental reports?

5 A. Oh, I'm sure we talked about them. The
6 horse manure was not one of the main issues. It was
7 a lot of dumping, trucks, vehicles. I think the
8 largest concern was the gun club, the lead
9 contamination.

10 Q. I do recall seeing some things this morning
11 about RCRA.

12 A. We had many conversations about that.

13 Q. He also says that he had a conversation
14 with Burns and McDonnell about salable manure. Do
15 you think you might have had conversations with him
16 about what they could do with the manure too?

17 A. He certainly could have been involved with
18 that. I know I had the conversation with Mike Egan
19 because I gave Mike the contractor's name who would
20 be willing to blend it. And Glen, certainly, could
21 have been involved in those conversations. I don't
22 recall.

23 Q. Okay. But manure was discussed with the
24 Caseyville Sport Choice people?

25 A. Yes.

1 MS. LIVINGSTON: Okay. I'm gonna give you
2 something else to mark.

3 (Plaintiff's Exhibit 5 was marked for
4 identification by the Reporter.)

5 MR. LONG: Is that a copy for me, Penni?

6 MS. LIVINGSTON: Yeah.

7 Q. (By Ms. Livingston) I'm gonna show you
8 what we have marked as Exhibit Number 5. Do you see
9 at the top that it says January 19th, '99, 11:22 am,
10 Burns and McDonnell?

11 A. I see that.

12 Q. And underneath it says January 18th, '99,
13 maybe 1:16. Sometime in the morning. 11:16, oh, pm,
14 to Joseph I. Kelleher, Junior?

15 A. Uh-huh.

16 Q. Do you know who Joseph Kelleher, Junior,
17 is?

18 A. He was the primary -- the head or the
19 leader of CELF. He is a retired judge in Madison
20 County. He has since passed away. He put together
21 this CELF group which was his son-in-law, his son, a
22 contractor friend, a real estate friend.

23 Q. I knew the name sounded familiar but no one
24 else has told me who that is --

25 A. Now you know.

1 Q. -- until just now. Very good. Okay. And
2 do you see that this is a handwritten note that
3 appears to be from Mr. Seiber?

4 A. I see a handwritten note -- oh, there it
5 says James Seiber, yeah.

6 Q. To the best of your recollection, do you
7 ever remember seeing this?

8 A. No. So does it look to you as this was
9 sent to Joe Kelleher and then Joe sent it to Burns?
10 Is that how you read this?

11 Q. I'm not sure. I guess January 18th seems
12 to be to Joseph and the 19th to Burns and Mac.

13 A. So Mr. Kelleher would have gotten it. I
14 don't know if this was sent to Burns and Mac or sent
15 from Burns and Mac. I'm not sure if he came to our
16 office and faxed it to somebody else. I don't know.
17 This may be a send note on the 19th, not a receive
18 note. I don't know. But I don't remember seeing
19 this letter, no, ma'am.

20 Q. Okay. So you also wouldn't know if this
21 letter was forwarded to Geotechnology?

22 A. Oh, I have no idea.

23 Q. Okay. You could see how useful these
24 exhibits are. Okay. Just to give you a gauge, I am
25 almost done.

1 THE WITNESS: Straw and bedding materials.
2 That's all it says is buried there.

3 MR. LONG: I notice they said straw and
4 bedding.

5 THE WITNESS: Doesn't say manure or
6 anything else.

7 MS. LIVINGSTON: I think that's an
8 interesting way to put it as well. At the hearing
9 that we had with Mr. Seiber on the remedy for his
10 violations of the Environmental Protection Act, the
11 testimony from Ken Mensing was that there was enough
12 manure and bedding material to fill the courthouse
13 five times.

14 MR. LONG: Five times.

15 THE WITNESS: Oh, that's funny.

16 MS. LIVINGSTON: And that's what I made him
17 clean up, and that's all I thought was there or I
18 would have made him clean the rest up too.

19 THE WITNESS: I thought the only thing he
20 had to do was pay a \$5,000 fine. He was supposed to
21 clean it up? I didn't know that.

22 MS. LIVINGSTON: Let me look through my
23 notes real quick, but I think that's about it since I
24 can't ask you all those ASTM questions, and they were
25 really good.

1 A. I bet they were.

2 Q. (By Ms. Livingston) Are there any other
3 conversations that you had with any other persons
4 about horse manure on the Caseyville Sport Choice
5 property that we have not talked about?

6 A. Any other conversations? Oh, gosh, I don't
7 know. Where would you want to start? Well, I'm not
8 sure if I talked to anybody else besides Ed Barbier.
9 There may have been another contractor I talked to.
10 I don't recall who it would have been.

11 MR. LONG: Penni, what was your question
12 again?

13 MS. LIVINGSTON: If there were any other
14 conversations about horse manure that we haven't
15 discussed.

16 A. From '98 'til now, oh, my gosh.

17 Q. (By Ms. Livingston) Let me ask it this
18 way.

19 A. Yes.

20 Q. Is it fair to say that in 1998 horse manure
21 was, at least, an identified issue on the Seiber
22 property?

23 A. Yes.

24 Q. And is it fair to say in 2004 prior to
25 closing on this property, that horse manure was, at

1 least, an identified environmental concern?

2 A. It was identified. It was not hazardous
3 material, so go ahead. Environmental concern. It
4 was of minimum concern because, again, we thought
5 we'll just use it on the land. It wasn't an
6 environmental issue as an EPA infringement. You know
7 what I'm saying?

8 Q. Okay. Because it was thought that whatever
9 material was there would be utilized?

10 A. Sure, as almost an asset. In fact, if they
11 could have gotten the right contractor, they may have
12 been able to sell it. I think Mike Egan thought that
13 was the case, and when he and Ed Barbier talked,
14 apparently they couldn't work out a deal where they
15 could sell it and so nothing ever happened. You
16 might ask Egan about that. I don't know.

17 Q. Did you ever have any conversations with
18 anyone at Caseyville Sport Choice or at Geotechnology
19 or Burns and McDonnell where a discussion was had
20 about doing further exploratory borings or testings
21 of the land?

22 MR. LONG: You talking about before the
23 purchase in December of 2004?

24 MS. LIVINGSTON: I would say that would be
25 good.

1 A. No.

2 Q. (By Ms. Livingston) No, you don't remember
3 any of that?

4 A. No, I know --

5 Q. Oh, there weren't any?

6 A. Not that I'm aware of. Of the
7 environmental issues in Phase I from 2004 and from
8 1998, were of concern, had more to do with oil tanks
9 and transformers with staining underneath them, those
10 kinds of things, and particularly the lead. We knew
11 that the lead contamination was a big one. That was
12 a half million dollar minimum. In fact, Burns and
13 Mac wanted a million dollars to clean it up. So we
14 were all focused on that. There were some tires in
15 the creek and there was some asphalt shingles on the
16 side of the road, so we had the contractor to clean
17 all those little ones up. But, no, the horse manure
18 was never in the queue as far as being a major issue.

19 Q. I will agree with you that the pictures are
20 horrendous. Mr. Seiber ran a pig sty.

21 A. Well, one of the first change orders with
22 Burns and Mac is that there was -- on his property
23 there was some trash, and it was like years' worth
24 that was hidden by dirt that we didn't know about.
25 So we had to pay Burns and Mac extra to remove all

1 that. Horse manure was not on the radar screen.

2 Q. I got you. Do you see here on the December
3 29th, 1998, of Geotechnology where they say a Phase
4 II assessment is recommended for this site to further
5 evaluate several areas of suspect contamination?

6 A. You showed that to me before.

7 Q. I just can't figure out how someone would
8 spend nine million dollars on a piece of property and
9 not do a Phase II when the place looks like a pig sty
10 with environmental hazards everywhere.

11 A. That would have been for Caseyville Equity
12 Leverage Financing, and they ran up a 250,000 dollar
13 bill and they are never paid a dime, so that fell on
14 deaf ears.

15 Q. Yeah, I hear you, except I also can't
16 figure out how Geotechnology can make a
17 recommendation for a Phase II in 1998, and when
18 nothing has changed in 2004 they don't make the same
19 recommendation.

20 A. I don't know.

21 Q. And I was gonna ask you a bunch of
22 questions about that, but you don't know about the
23 ASTM so I really don't have anything further.

24 MR. LONG: I don't have any questions for
25 Don. Do you want to receive a copy and review and

1 sign or do you want to waive your signature?

2 THE WITNESS: It's up to you. I mean, you
3 were here for the whole thing.

4 MR. LONG: Let's make sure we turn it and
5 around, get it back quickly. What I'm always worried
6 about is people forgetting to do that and find out
7 that they haven't gotten the signature.

8 MS. LIVINGSTON: In this instance I think
9 it's a good idea for you to read it too just because
10 when you look at it, it will look different to you.

11 THE WITNESS: I am semi-self
12 under-employed, so I can do that.

13 (SIGNATURE NOT WAIVED)

14

15 [Exhibits were retained
16 by the Court Reporter.]

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NOTARIAL CERTIFICATE

I, Cynthia E. McKinney, a Notary Public within and for State of Illinois, do certify that pursuant to Notice there came before me on September 9, 2009, at the law office of Belsheim & Bruckert, L.L.C., 1002 E. Wesley Drive, Suite 100, O'Fallon, Illinois,

DON FERRIS,

a witness of lawful age, who was by me first duly sworn to testify the whole truth of the witness's knowledge touching and concerning the matters in controversy herein; that the witness was examined and the witness's examination reduced to shorthand writing by me on the day, at the place and in that behalf first aforesaid, and later transcribed into typewriting; that signature of the witness was not waived by agreement of counsel and consent of the witness and the witness's said deposition is now herewith returned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of September, A.D., 2009. My commission expires October 28, 2009.



Cynthia E. McKinney, CSR/CCR
Notary Public

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